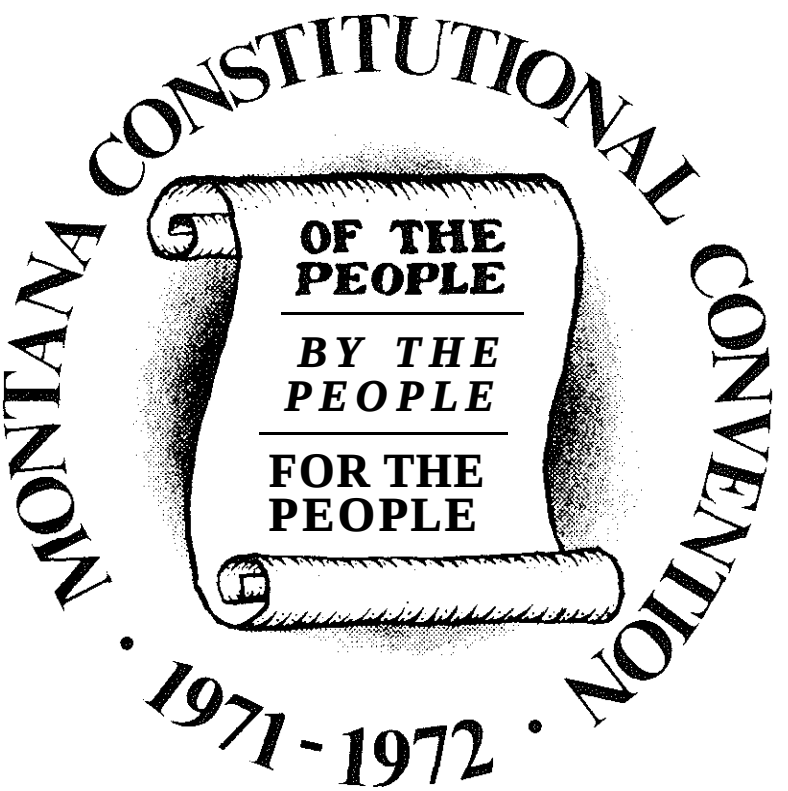


Enabling Act

Convention Rules

Delegate Information

Delegate Proposals

Committee Proposals

CONTENTS

Vol. I

Foreword i

The Movements for Statehood and Constitutional Revision in Montana, 1866-1972 v

Enabling Act 1

Convention Rules 6

Delegate Information

- Procedural Committees 21
- Substantive Committees 22
- Alphabetical List of Committee Assignments 24
- Convention Officers 29
- Delegate Biographies 31
- Map of Delegate Districts 65
- Delegates By District 66

Convention Staff 69

Bibliography 71

Delegate Proposals 75

Committee Proposals

- Suffrage and Elections 333
- Constitutional Revision 349
- Legislative 369
- Executive 429
- Judiciary 479

Vol. II

Committee Proposals (cont.)

- Natural Resources and Agriculture 547
- Revenueand Finance 575
- Bill of Rights 615
- Public Health, Welfare, Labor and Industry 661
- Education and Public Lands 713
- Local Government 777
- General Government 811
- Compact with the United States 837

Reports of Committee on Style, Drafting, Transition, and Submission

- Suffrage and Election 845
- Constitutional Revision 849
- Legislative 859
- Executive 891
- Judiciary 911
- Natural Resources and Agriculture 929
- Revenue and Finance 943
- Bill of Rights 9.55

Public Health, Welfare, Labor and Industry 975
Education and Public Lands 991
Local Government 1007
General Government 1017
Compact With The United States 1027
Final Report 1033
Constitution 1087

FOREWORD

Constitutional Conventions are the tap roots of democracy. Openly conducted, they bring the people, through the delegates, face to face with what government is all about. At such Conventions, society must arrange its priorities, safeguard its basic beliefs, and order its future. This is a large order under the best of circumstances and the wonder is that men and women from diverse backgrounds with different interests and with limited time and resources can successfully undertake the task. In 1972, in Helena, Montana, one hundred men and women did so successfully. Montana had a good Constitutional Convention.

The members of the Montana Constitutional Convention were an unusual group. They were, on the whole, inquisitive, studious, well-meaning, and sincerely interested in improving the Montana political framework. For the most part they were not seasoned politicians; with the exception of a few former state legislators they were persons interested by nature or vocation in the political process, but who had not participated before as elected officials.

The important key to the election of this rather remarkable group was an action by the Montana Supreme Court. During the legislative session at which the Convention was authorized, the issue arose whether legislators could serve in the Convention. The Supreme Court held that since legislators were already elected to a term of office extending beyond the delegate terms, they were ineligible to become candidates in the delegate election. The result was that all of the major. active politicians serving in the Legislature were frozen out of the Constitutional Convention.

The delegates brought none of the acrimony and bitterness to the Convention that sometimes develops between seasoned politicians with preconceived positions on major stateissues. Thus the delegates were able to approach the principal issues before the Convention in an objective manner, and they also avoided a good deal of the pressures to which legislators aresubjected. The probable unforeseen result of the Supreme Court's action was a constitutional body relatively free from influence and dedicated to basic changes in Montana's constitutional framework.

Organizing a Constitutional Convention is a disquieting experience. There are few local precedents, a consciousness of uninhibited freedom and a reluctance to copy other states too completely. A Convention is really two operations-one administrative and one substantive. Very little ties these functions together, and there is a tendency to prefer substantive matters to mundane administration. Yet without sound administration, a Convention flounders, and the result could be disastrous.

The Montana Convention had four procedural committees and ten substantive committees. As President, I was allowed to make committee assignments and designate committee chairmen, which selections were then approved by the Convention as a whole. Before such assignments were made, each delegate was asked to list his first, second, and third choice; 81 of the delegates were placed on their first-choice committee and 15 got either their second or third choice. Only four delegates were assigned committees without regard to their three choices.

The committee selection function was, however, more difficult than it may appear. Each committee was weighted between Republicans and Democrats in proportion to the party strength in the Convention (including special arrangements for five Independents). In addition, I balanced the committees with strong advocates of the opposing ideological positions likely to be considered by the particular committee. Finally, committee chairmen were appointed according to party proportions (including an Independent), and then a member of the opposite political party or, whenever possible, a member of an opposite faction was appointed as vice chairman.

The committees thus contained members of both parties and members of all factions likely to contend over the issues before the committee. These factions were balanced whenever practicable, and each faction given its strong leadership.

The purpose of so carefully weighting the committee membership was to force the conflict over ideas back into the committees. This had the effect of creating the first and perhaps the most significant debate among those most interested in the issue, and at the basic committee level. It had

the further advantage of avoiding, at the Committee-of-the-Whole debate stage, any claim that a major faction had been overlooked or taken advantage of. Since the minority report of most committees was made by the second strongest faction involved, the Convention debate was a true contest between the principal contenders on any given point, and the committee factions were in a position to accept the final result after full committee debate in a better mood than they might have if they had been attacking the issue from outside the committee structure. The result was that no major issues split the Convention significantly, as has occurred in many other Conventions.

A convention is an unwieldy institution at its best, either lying dormant or lurching forward recklessly, depending on circumstance and (sometimes) the whim of its leadership. Because the funds available to conduct Montana's Convention were so limited, it became absolutely essential that a carefully designed schedule be devised and followed if the Convention was to completeits work within its money, not to mention time. As a result the Convention leadership early spent considerable effort in devising such a schedule and urging adherence to it.

The Convention was scheduled for nine weeks; it lasted fifty-six days, excluding Sundays. The key to the schedule was a "rolling" feature by which the hearings, reports and debates of the committees were arranged on a staggered basis so that all did not come due at once. The first week was taken up largely with orientation. There followed three weeks of intensive committee hearings, meetings, and investigation. During the fourth and fifth week each committee was required to conduct one final public hearing at a time when no other public hearings were being held so that delegates from other committees could attend the hearing. Thereafter, a Committee Report was filed with the Convention and debate in Committee-of-the-Whole took place. Debate occupied the Convention for about four weeks. After adoption by the Committee-of-the-Whole, each Article was assigned to the Style and Drafting Committee, and again reported to the Convention before final passage.

The Montana Convention overlooked no opportunity to publicize its activities and to encourage public participation. Toward that end all of its votes, all of its deliberations, including all substantive and procedural committee meetings, were open to the public and press. An open Convention is not a painless one, and there were incidents and unfavorable publicity from time to time. But the value in the long run of the image of an open and accessible Convention proved to be great.

Debate on the great issues is the heart of any Constitutional Convention. At the Montana Convention debate was unlimited. Although the rules allowed limits, this never became necessary. There was no issue on which debate was ever cut off or limited, and no motions, amendments, or viewpoints that were not fully heard and discussed. Each delegate, no matter how trivial, farfetched, or tedious the discussion might be, was given an opportunity to speak before the vote.

This completely unlimited and open debate was not easily achieved. It took time. The Convention always started debate at 9:00 a.m. and often continued after the dinner hour and, on occasion, until 11:00 p.m. On most days, however, debate lasted about seven to eight hours.

One result of this broad debate was to avoid tension and engender tolerance. After the delegates realized that their right to speak was not going to be cut off or limited, they relaxed, listened, and considered the issues without rancor. The delegates often got tired, but they never worried that their viewpoint couldn't be expressed and considered.

It seems to be a principle of Constitutional debate, perhaps of legislative debate as well, that when a major issue is first encountered, the Body must be given sufficient time to probe the issue deeply and well. Attempts to bring about an early vote on major issues of real concern to most delegates usually resulted in slowing things up because of motions to reconsider, reversals of one type or another, and even motions to suspend the rules. However, if the Convention was allowed to debate a major issue thoroughly and completely, then several significant votes could be taken quickly near the end of the debate, establishing clearly the line of principle which the Convention wished to adopt. Usually such terminal votes were by strong majorities that were not subject to later serious attack by dissident delegates.

These matters are only administrative details, possibly useful in other Conventions or of historical significance. But on the substantive side there is one absolute good that deserves comment.

The delegates seemed unconsciously to apply an overriding democratic principle to their deliberations. They asked themselves, "Does it fit the future? Can it work in the future? How will the future generations respond?" Their concern for a time far beyond the present seems to me to be a rare and remarkable trait. It certainly had the effect of promoting bipartisanism and of lessening differences. Perhaps it is a trait only natural in constitutional circumstances; certainly it is not common in governmental action at any level. But for whatever reason, it unified and improved the work of the Convention delegates and the result was a good Constitution.

Leo Graybill, Jr.

Groat Falls, Montana
May 1979

THE MOVEMENTS FOR STATEHOOD AND CONSTITUTIONAL REVISION IN MONTANA, 1866-1972

The desire for statehood surfaced soon after the formation of the Territory of Montana in 1864. The system of governance of territories was never to the liking of the strong-minded pioneers of the western regions. Federally appointed officials, lack of a vote in the Federal Congress, congressional veto power over territorial acts-all frustrated the citizens transplanted from the states. In 1866, Montana held its first constitutional convention at the call of Acting Governor Thomas Francis Meagher. Montana was too young to expect statehood to be granted by the Federal government, and the body that met to write the document suffered from several irregularities, if not illegal limitations. The work of this convention had little impact and served only to emphasize the desire for statehood in the minds of Montana's citizens.

Montana Territory had grown sufficiently by 1883 to merit serious consideration for admission to the Union. Several large mining communities now existed in western and central Montana. The railroads had arrived and agriculture and the livestock industry had given further impetus to the settlement and development of the entire Territory. The 1883 Territorial Legislature called for a constitutional convention to be held the following year. In January, 1884, this body met to draft a constitution for submittance to the Congress. Reflecting the Territory's general desire for statehood, this convention finished its work in a short time. After approval by the electorate, Territorial Delegate Joseph K. Toole submitted the 1884 Montana Constitution to Congress. This document became the basis for Montana's first official constitution, later draftedin 1889. Drawn primarily from the constitutions of New York and Colorado, the 1884 Constitution also reflected the dominance of the mining industry in the Territory.

Unfortunately for territories aspiring to statehood, congressional politics in the mid- and late-1880's made impossible the admission of any new states. Neither party, each of which was dominant in one house, wished to disturb the delicate political balance by admitting any new states. Montana, as a heavily Democratic territory, had its proposed constitution politely tabled by the Republican Senate. This situation continued until the election of 1888. In that general election Republicans secured control of both houses of Congress for the coming session, Further, because of Democratic party strife, Montana elected a majority of Republicans to territorial offices that year. With these changes, the "lame duck" Congress determined to grant authority to several states under the "Omnibus Act" to begin the process of writing their constitutions and seeking admission to the Union. By the provisions of this act, Montana held delegate elections in the spring of 1889. The Convention began deliberations on July 4, 1889.

Convention membership accurately reflected the population which had changed Montana from a frontier to an emerging society. Irish and German immigrants, descendants of old New England families, the wealthy, workingmen, the highly educated and the self-taught, were all elected to the body. Understandably, they represented a variety of economic interests: mine owners, cattlemen, a brewer, storekeepers, lawyers, miners, farmers, teachers, bankers, freighters, and public officials. One interest above all dominated their thinking-the mining industry. The delegates recognized the importance of the mineral industry in Montana's development and its potential for the future.

The Convention, although dominated by Democrats, experienced little partisanship. Major issues were decided more by economic interests, regional differences, and the dominant social philosophies than by strictly partisan politics. Most crucial to the mining interests was the inclusion in the Constitution ofthe "Net Metal Mines Tax" provision which in later operation proved to be little more than a tax exemption for the large mining companies. The Mines Tax provision was the most glaring example of "legislation" in the new constitution. The late nineteenth century's distrust of government, corporations, and particularly the interest& railroads, caused the inclusion of further "statutory" provisions in an attempt to curb and control these interests. The delegates did debate such issues as the eight-hour day, women's suffrage, and child labor prohibition, but the general conservatism of the area and era allowed little of a "progressive" nature to be written into the final document. The most debated and divisive issue concerned the placement of the state capital. This led to heated exchanges, secret agreements, and heavy lobbying. Ultimately, they postponed the issue until later elections, but the tenor of later contests, including a major battle in the Clark-Daly Feud and the cause of the scattering of state institutions, was set in the Convention.

This is not to suggest that the Constitution of 1889 contained little of merit, for it did provide a

workable framework of government, particularly within the context of its era, and it did contain one provision which was remarkably farsighted. This is the inviolate Public School Trust Fund which established a basis for funding Montana's educational system. The trust fund has since proven its worth and stands in marked contrast to the poor handling of public lands income in some other western states.

The document written by the 1889 Constitutional Convention metlittle oppositionin the Territory. It won easy approval at the polls, 24,676 to 2,274. Montana was admitted to the Union by the order of President Benjamin Harrison, November 8, 1889.

With statehood, government was structured and began operation under the newly adopted constitution. Its success was probably no better or worse than that experienced by the many new states admitted between 1864 and 1912. Increasingly, as conditions changed and new problems arose, the need to amend the Constitution became periodically apparent. Between 1890 and 1971 the basic document was amended thirty-seven times. This frequency of change indicated that the Constitution had flaws and did not have sufficient flexibility to meet new challenges. This situation grew worse after World War II. The changing roles of the federal, state, and local governments; the change in relationships between the legislative and executive branches; citizen activism; and the traumas and uncertainties of the mid-twentieth century-all caused a basic reevaluation of our governmental framework. Major constitutional revision seemed a necessity.

In 1967 and 1968, the Legislative Council staff studied the various problems associated with the Constitution and many suggested solutions. They reported to the legislature that the Constitution required substantial revision if it was to be workable in coming decades. The Forty-first Legislative Assembly created a Constitution Revision Commission in 1969 to study methods of revising Montana's fundamental law. The appointive body in 1969-1970 investigated the various options available to the state for revision of the document and ultimately recommended that by referendum a constitutional convention be called. With the passage of Referendum 67, which empowered the calling of a convention to draft a new constitution, the Forty-second Legislature authorized the election of convention delegates, established a Constitutional Convention Commission, and provided funding for the operations of the Commission and the Convention. The Convention Commission and its staff conducted the necessary research and prepared for the convening of the Convention.

The election of delegates was held in November of 1971 and the preliminary sessions of the Convention took place at the State Capital, November 29 -December 1, 1971. Theregularsession of the Convention first met on January 17 and completed its deliberations March 24, 1972. Because public officials serving at the time were not eligible for election as delegates, the individuals selected were relatively new to government. Among them were ministers, a student, educators, bankers, ranchers, journalists, retired people, housewives, business people, a pilot, farmers, and an architect. The variety of experience, age, and origin combined to produce a constitution which has been called a "model document." Among other things it changed the governance of Montana's educational systems, gave more power to the legislature, and restructured the Public Service Commission. Written in clear, precise language, the new Constitution is much less than half the length of the 1889 Constitution.

After a heated campaign, the Constitution was accepted by the people of Montana at an election held June 6, 1972. The vote on adoption was 116,415 to 113,883. The document was proclaimed as officially adopted by Governor Forrest H. Anderson, June 20, 1972.

Any change in government and its procedures will encounter opposition. This occurred with the implementation of the new Constitution. Its opponents challenged the document in court, arguing that it had not been accepted by the electorate on June 6, 1972. Based on wording in the 1889 Constitution, the challengers maintained that a majority of those receiving ballots had to approve the constitution not just a majority of those voting on the constitutional question. Ultimately, this suit was heard by the State Supreme Court and the opponents' argument was rejected, effectively declaring the 1972 Constitution in force. Over the course of the next two years, the provisions of the document were implemented by the three branches of government under the transition schedule established by the Constitution.

Brian Cockhill
Montana State Archivist
January 1979

CONSTITUTIONAL CONVENTION ENABLING ACT

(Chapter 296, Laws of 1971, As Amended by Chapter 1, Laws of 1971, Extraordinary Session)

Section 1. A constitutional convention to propose revisions, alterations, or amendments to the constitution of the state of Montana is hereby called.

Section 2. The number of members of the convention and the districts from which they areelected shall be the same as that provided for the election of members of the house of representatives of the Montana legislative assembly at the general election to be held November 7, 1972.

Section 3. The qualifications of members shall be the same as that of members of the senate of the Montana legislative assemby as provided in article V, section 3 of the constitution of the state of Montana: "No person shall be a senator who shall not have attained the age of twenty-four (24) years, and who shall not be a citizen of the United States and who shall not (for at least twelve (12) months next preceding his election) have resided within the county or district in which he shall be elected."

Section 4. (1) Delegates to the constitutional convention shall be elected in the same manner as members of the house of representatives, except the special primary election shall be held September 14, 1971 and the special general election shall be held November 2, 1971.

Thirty (30) days or more before the special general election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified on the certificate of nomination filed with him.

Section 5. Each member, before entering upon his duties, shall take and subscribe the following oath or affirmation prescribed by section 1 of article XIX of the constitution of the state of Montana: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God."

Section 6. Vacancies occurring in the convention shall be filled in the manner provided for filling vacancies in the legislative assembly as provided in sections 43-215 and 43-216, R.C.M., 1947.

"43-215. Filling vacancies in legislative assemby-appointment by board of county commissioners-calling of board meeting. When a vacancy occurs in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the districtsitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of ap pointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting."

"43-216. Alternative method of selection-failure of one candidate to receive majority vote, In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board."

Section 7. (1) It shall be the duty of the delegates elected to assemble in the chambers of the house of representatives in the state capitol building in the city of Helena at 10:00 a.m. on November 29, 1971, for an organizational meeting of no longer than three (3) days duration.

(2) This meeting shall be for the purpose of electing permanent convention officers, adopting rules of procedure, and providing for such interim committees and staff members as may be necessary to prepare for the plenary meeting of the convention.

(3) Until the convention has adopted rules of procedure, "Mason's Manual of Legislative Procedure" shall govern the procedure of the convention. A majority of the whole number of delegates to the convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day. The convention may compel the attendance of its members.

(4) The governor shall call the first meeting of the constitutional convention to order and shall preside until a temporary president is elected. The governor shall:

(a) call the roll of the members-elect, (as shown by the official election returns on file in the office of the secretary of state);

(b) cause the oath called for by this act to be administered to those members-elect who are present;

(c) call for nominations of convention members for the office of temporary president;

(d) cause the roll of members to be called for the purpose of voting for temporary president, and

(e) declare to be elected the person receiving a plurality of votes cast for the office of temporary president.

(5) The temporary president shall then assume the duties of the presiding officer, and the convention shall proceed to the election of a president from within its membership in like manner as the temporary president was elected except that a majority of the votes cast is required to elect the president of the convention. The convention shall then proceed to elect one of its members as vice-president of the convention to preside in the absence of the president.

(6) It shall be the duty of the delegates elected to assemble in plenary session in the chambers of the house of representatives in the state capitol building in the city of Helena at 10:00 a.m. on January 17, 1972. The convention, which may recess from time to time, shall then remain in session as long as necessary.

Section 8. In going to and returning from the convention and during its sessions, the members shall in all cases, except treason, felony or breach of the peace, be privileged from arrest; and they shall not be questioned in any other place for any speech or debate in the convention.

Section 9. The convention may select and employ such employees as it may deem necessary to the efficient conduct of its business, each of whom shall receive such compensation as may be fixed by the convention. The convention may make such other expenditures as it deems proper to carry out its work, but shall not authorize total expenditures in excess of the amount appropriated by law for its expenses.

Section 10. (1) The convention shall determine the rules of its procedure, and be the judge of the election, returns and qualifications of its members. The convention shall keep a verbatim journal of its proceedings and a transcript of its debates. Each committee of the convention shall keep a record of its proceedings and reports. The convention may also provide for the publication of any of its other documents and reports.

(2) The verbatim journal of its proceedings, the transcript of the debates of the convention, and the committee reports and proceedings shall be filed in the office of the secretary of state.

Section 11. (1) It shall be the duty of all public officers and employees to furnish the convention with any and all statements, papers, books, records and public documents that the convention requires on request of the convention or its committees, and appear before the convention or any committee thereof. The convention, and its committees, may compel the attendance and testimony of witnesses and the production of books, records and documents. Oaths may be administered by the president or any other officer of the convention. Subpoenas and subpoenas duces tecum may be issued over the signature of the president or any other officer of the convention, and may be served by any adult person designated by the issuing officer.

(2) Any district court judge, upon application of the convention, may compel the attendance of witnesses, the production of books, records or documents, and the giving of testimony before the convention by an attachment for contempt or otherwise in the same manner as production of evidence, not privileged by law, may be compelled before the court.

Section 12. (1) The convention may use the facilities of the state, municipal or county government when such use is not disruptive of regular governmental activities.

(2) State, municipal and county officers and employees, at the request of the convention and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the constitutional convention. If leave with pay is granted they shall receive no other compensation, except mileage and per diem, from the convention.

Section 13. The convention may also prepare a schedule of proposed legislation for submission to the 1973 legislative assembly that will complement the proposed revisions, alterations or amendments.

Section 14. The convention shall prepare a schedule of transitional provisions and fix the date or dates upon which revisions, alterations or amendments, if adopted by the voters, take effect.

Section 15. (1) Sections 43-801 to 43-808, R.C.M., 1947 providing for the licensing of legislative lobbyists shall apply to lobbying at the constitutional convention.

(2) Licensed lobbyists shall file with the secretary of state a report on February 1, 1972; February 15, 1972; March 1, 1972; March 15, 1972; April 1, 1972; June 14, 1972. The report, under oath, must include all expenditures made by him relative to promoting or opposing constitutional provisions. On the fifth day a report is delinquent, the secretary of state shall suspend the license of any licensed lobbyist who fails to file a report until such report is filed. The suspension shall be entered on the docket, and the president of the convention notified.

(3) Reports must be filed even though no expenditure may have been made.

(4) Reports need not include:

(a) reasonable internal expenditures such as office expenses, mailing and routine research; and

(b) reasonable expenditures for his personal food, lodging and travel.

(5) Expenditures of twenty-five dollars ($25) or less may be reported in total amounts rather than in detail.

(6) A lobbyist who terminates his duties shall give the secretary of state, within thirty (30) days after the date of such termination, written notice and shall include a report of his expenditures covering the period of time since his last report. Such reports shall be final.

(7) The secretary of state shall provide forms and shall keep such reports on file for three (3) years. All records are to be open to the public.

(8) Failure to file reports or the filing of incomplete information is a violation of section 43.808, R.C.M., 1947.

Section 16. (1) For each day of the organizational plenary and signing sessions of the convention, members of the convention shall be paid the same per diem, and expenses as provided in section 43-310, R.C.M., 1947, for members of the legislative assembly.

(2) The president and vice-president of the convention shall be paid the same per diem, and expenses as the president of the senate and speaker of the house ofrepresentatives as provided in section 43-311, R.C.M., 1947.

(3) Members and officers shall be entitled to mileage for three (3) trips to and from their residences and Helena by the nearest traveled route at the rate provided for the legislative assembly in section 43-310, R.C.M., 1947.

(4) Officers and employees of the state and its political subdivisions who are not prohibited by the Montana Constitution or laws of Montana from serving as delegates and who are elected and serve as delegates to the convention shall have leave, without pay, from their employment during the time the convention is in session, and they shall be entitled to the per diem, expenses and mileage for delegates as provided in this section.

Section 17. (1) The revision or alteration of, or the amendments to the constitution, adopted by the convention, shall be submitted to the electors of this state for ratification or rejection, at an election appointed by the convention for that purpose, not less than two (2) months nor more than six (6) months after the adjournment of the convention.

(2) The convention may submit proposals to the electorate for ratification in any of the following forms:

(a) submitted as a unit in the form of a new constitution;

(b) submitted as a unit with the exception of separate proposals to be voted upon individually, or

(c) submitted in the form of a series of separate amendments.

(3) The proposals adopted by the convention shall be certified by the president and secretary of the convention to the secretary of state.

(4) Each proposed revision, alteration, or amendment, together with appropriate information explaining each revision, alteration, or amendment, shall be published in full and disseminated to the electors upon adjournment of the convention but not later than thirty (30) days preceding the election and in such manner as the convention prescribes.

(5) The convention shall also publish a report to the people explaining its proposals.

(6) Notice of the election shall be given in the manner and form prescribed by the convention.

(7) The convention shall prescribe the manner and form of voting at such election.

(8) The votes cast at such election shall be tabulated, returned and canvassed in such manner as may be directed by the convention.

(9) If a majority of the electors voting at the special election shall vote for the proposals of the convention the governor shall by his proclamation declare the proposals to have been adopted by the people of Montana. The new constitutional provisions shall take effect as provided therein, or as provided in a schedule of transitional provisions atached thereto.

(10) The election laws of the state of Montana shall apply in all other respects to the election conducted under this section.

Section 18. Every person who, at the time of holding of the elections provided for in this act, is a qualified voter under the constitution and laws of this state shall be entitled to vote in such election.

Section 19. All state and local officials shall do all those things which are appropriate to the holding of each of the special elections provided for in this act and which are required under the general election laws.

Section 20. (1) A temporary state agency known as the Montana constitutional convention commission consisting of sixteen (16) members is hereby created to prepare for the constitutional convention. Legislators whose terms of office have not expired shall not be appointed to the commission. Members of the commission shall be appointed for a term ending upon sine die adjournment of the constitutional convention, consideration being given to geographic, economic, and other pertinent factors as follows:

(a) four (4) members appointed by the speaker of the house of representatives, no more than two (2) of whom shall be affiliated with the same political party;

(b) four (4) members appointed by the committee on committees of the senate, no more than two (2) of whom shall be affiliated with the same political party;

(c) four (4) members appointed by the governor, no more than two (2) of whom shall be affiliated with the same political party;

(d) four (4) members appointed by the supreme court, no more than two (2) of whom shall be affiliated with the same political party.

(2) Commission members shall be reimbursed for actual and necessary expenses incurred as commission members.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments, except when the legislature is not in session a vacancy among members appointed by the Speaker of the House and the committee on Committees of the Senate may be filled by selection of another member by the remaining members of commission.

(4) The commission shall select from its membership a chairman and any other officers it considers necessary.

(5) The commission may employ and fix the compensation and duties of necessary staff.

(6) State, municpal and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the constitutional convention commission. If leave with pay is granted they shall receive no other compensation, except mileage and per diem, from the commission.

(7) It shall be the duty of the commission, in order to prepare for the constitutional convention: to undertake studies and research; to compile, prepare and assemble essential information for the delegates, without any recommendation.

(8) The chairman shall schedule meetings of the commission as deemed necessary. The chairman shall give due notice ofthe time and place of the meetings to members of the commission. The director shall report at each meeting.

(9) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

(10) Upon request, state agencies shall cooperate with the commission by furnishing assistance and data to the extent possible.

(11) The commission may accept and expend any federal funds which may be available for support of the preparatory study.

(12) The commission shall report its findings and any recommendations it considers necessary to the convention and transfer its files to the constitutional convention within ten (10) days after the constitutional convention has convened.

Section 21. (1) The following amount is appropriated from the general fund to the constitutional convention commission:

For the period ending February 1, 1972 $149,540

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(2) The following amount is appropriated from the federal and private fund revenue fund to the constitutional convention commission:

For the period ending February 1, 1972 $149,461

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(3) The following amount is appropriated from the general fund to the constitutional convention:

For the biennium ending June 30, 1973 $499,281

(4) The following amount is appropriated from the general fund to the secretary of state for the elections relating to the constitutional convention:

For the biennium ending June 30, 1973 $41,000

Section 22. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Section 23. This act is effective on its passage and approval.

Section 24. This act is repealed effective June 30, 1973.

RULES

MONTANA CONSTITUTIONAL CONVENTION

1971 - 1972

INDEX

CHAPTER **I. GENERAL PROVISIONS**

Rule 1. Quorum and Majority
Rule 2. Seat of Convention
Rule 3. Sessions of the Convention
Rule 4. Admission to Floor Defined

CHAPTER II. OFFICERS & EMPLOYEES

Rule 5. Officers of the Convention
Rule 6. Duties of the President
Rule 7. Duties of the Vice Presidents
Rule 8. Duties of the Secretary
Rule 9. Duties of the Executive Director
Rule 10. Vacancies
Rule 11. Employees of the Convention

CHAPTER III. DELEGATES

Rule 12. Assignment of Seats
Rule 13. Conduct in Debate • Questions of Privilege
Rule 14. Delegates Called to Order
Rule 15. Dissent of Delegates
Rule 16. Times a Delegate May Speak
Rule 17. General Limit on Debate
Rule 18. Absence of Delegates
Rule 19. Contemptuous Behavior of Delegates
Rule 20. Disclosure of Personal Interest
Rule 21. Vacancies
Rule 22. Compensation of Delegates

CHAPTER IV. COMMITTEE OF THE WHOLE

Rule 23. Committee of the Whole
Rule 24. Consideration of Proposals
Rule 25. Amendments in Committee of the Whole
Rule 26. Motion that Committee of the Whole Rise
Rule 27. Reconsideration
Rule 28. Application of Convention Rules
Rule 29. Limitation of Debate

CHAPTER V. COMMITTEES

Rule 30. Substantive Standing Committees
Rule 31. Procedural Standing Committees
Rule 32. President Ex Officio Member of All Standing Committees
Rule 33. Select Committees
Rule 34. Appointment of Committee Members
Rule 35. Appointment of Committee Chairmen and Vice Chairmen
Rule 36. Quorum and Rules of Committees
Rule 37. Calling of Committees and Agenda
Rule 38. Notice of Committee Hearings
Rule 39. Sitting of Committees During Sessions of the Convention

Rule 40. Subcommittees
Rule 41. Committee Proposals
Rule 42. Committee Meetings and Hearings
Rule 43. Consideration of Proposals Without Committee Recommendation
Rule 44. Last Day for Committee Reports
Rule 45. Power to Incur Expenses

CHAPTER VI. DELEGATE PROPOSALS, RESOLUTIONS AND CITIZEN SUGGESTIONS

Rule 46. Proposals Introduction
Rule 47. Forms
Rule 48. Resolutions
Rule 49. Citizen Suggestions
Rule 50. Present Constitution Referral
Rule 31. Order of Consideration of Proposals
Rule 52. Majority Vote on Proposals
Rule 53. Unfinished Special Orders

CHAPTER VII. TRANSACTION OF BUSINESS

Rule 54. Order of Business
Rule 55. Roll Call
Rule 56. Petitions Entered in Journal
Rule 57. Motions
Rule 58. Reduced to Writing
Rule 59. Withdrawal of Motions
Rule 60. Privileged Motions
Rule 61. Motions not Debatable
Rule 62. Order of Putting Questions
Rule 63. Amendments Must Be Germane
Rule 64. Division of Question
Rule 65. Previous Question
Rule 66. Motion for Reconsideration
Rule 67. Ordering Calls of the Convention
Rule 68. Procedure on Call of Convention

CHAPTER VIII. LOBBYISTS

Rule 69. Registration and Regulation

CHAPTER IX. MISCELLANEOUS

Rule 70. Reading of Documents
Rule 71. Putting the Question
Rule 72. Recognition During Roll Call
Rule 73. Roll Call
Rule 74. Amendment or Suspension of Rules
Rule 75. Appeals Form of Question
Rule 76. Mason's Rules of Legislative Procedure
Rule 77. Voting by the Electrical Roll Call System
Rule 78. "Present" votes
Rule 79. Convention Schedule
Rule 80. Pairing

CHAPTER I
GENERAL PROVISIONS

Rule 1 - Quorum and Majority

A majority of Delegates, as hereinafter defined, shall constitute a quorum for the transaction of business, but a smaller number may adjourn the Convention from day to day and may also compel the attendance of absent Delegates by the means approved by a majority, but not less than twelve (12) of the Delegates present and voting. A majority of Delegates may prescribe penalties for the nonattendance of Delegates.

When a quorum is obtained, the affirmative vote of a majority of the Delegates present and voting is sufficient for the adoption of any motion or resolution or the taking of any action by the Convention or the Committee of the Whole except that under order of business No. 5 and No. 6 and as otherwise specified in these rules an affirmative vote will require the majority of the elected Delegates for which no vacancy exists by resignation, expulsion under Rule 19, or death.

Rule 2 - Seat **of Convention**

The House of Representatives chambers in the State Capitol in the City of Helena, Montana, the foyer to said chambers and the south Senate lobby is designated "Convention Hall" and shall be the seat of the Convention. Sessions and hearings of the standing committees of the Convention may be held throughout the state as provided in Rule 42 of these rules.

Rule 3 - Sessions of **the Convention**

All sessions of this Convention and all meetings of its committees shall be open to the public and the news media.

Rule 4 - Admission to Floor - Defined

Only Delegates, officers, employees, members of the news media, and such other persons as may be authorized by the President shall be admitted to the Convention hall one-half (½) hour prior to the commencement of the session, during the session, and within one-half (½) hour after adjournment.

CHAPTER II
OFFICERS AND EMPLOYEES

Rule 5 - Officers of the Convention

There shall be elected from the delegates, by majority vote, the following permanent officers: a President, a First Vice President, two additional Vice Presidents, one from each Congressional District, and a Secretary.

The President shall nominate an Executive Director, whose nomination shall be ratified by the Convention and who shall be subject to removal by the Convention. The salary of the Executive Director shall be established by resolution of the Convention

Rule 6 - Duties of the President

The President shall preside at sessions of the Convention and of the Committee of the Whole, and exercise the usual powers and perform the usual duties of a presiding officer. He shall preserve order and decorum and fairly assign floor rights. He may speak to points of order and, subject to an appeal to the Convention or to the Committee of the Whole, shall decide points of order.

The President shall be chief executive of the Convention, and all other officers and employees shall be responsible to his general supervision.

Together with the Secretary of the Convention, he shall authenticate by signature all proposals, resolutions or other formal acts adopted by the Convention.

He shall cause to be prepared and furnished to each delegate a daily calendar and agenda of business for each session of the Convention.

He shall, with the advice of the Committee on Administration, prepare a budget and submit it to the Convention for its approval on or before January 21, 1972. Every two weeks thereafter, he shall submit to the Convention a report of the expenditures of the Convention for the preceding two weeks.

He shall, with the advice of the Committee on Administration, let bids and award contracts for materials and services.

He may vote in all elections, on all decisions called for by any delegate, and on all questions taken by ayes and nays, except that the President may not vote twice, once to cause a tie vote and then again to break it.

He may appoint any Delegate to preside temporarily at any session of the Convention or any Committee of the Whole, but not for longer than one day at a time without leave of the Convention.

Rule 7 - Duties of the Vice Presidents

The First Vice President shall have such duties as the President may assign, and shall preside as President in case of the sickness or absence of the President, or in case of a vacancy in the office of President. The two additional Vice Presidents shall have such duties as shall be assigned by the President: neither shall have the right of succession.

Rule 8 - Duties of the Secretary

The Secretary shall have custody and preserve all proposals, resolutions, committee reports and all other records, books, documents and papers of the Convention. He shall not permit them to be taken out of his custody except in the regular course of the business of the Convention.

He shall certify and deliver to the Secretary of State the revisions, alterations or amendments to the Constitution as approved by the Convention for submission to the electorate.

The Secretary shall keep a journal of the proceedings of the Convention in conformity with the rules, supervise the daily publication thereof, and make such corrections as may be necessary. He shall furnish each Delegate a copy of the proceedings of the previous day. The journal shall be considered the approved journal of the Convention, unless otherwise ordered thereby. The Convention Reporter shall keep a verbatim record of Convention proceedings and shall, within the time prescribed by the Convention, provide a verbatim transcript of all proceedings had in Convention, sessions and the sessions of the Committee of the Whole.

He shall have such other duties as stipulated in these rules, but, after consultation with the President, he may delegate part of these duties to the Executive Director or another employee designated by the President. He may not, however, delegate the duty of certifying the revisions, alterations or amendments to the Constitution approved by the Convention for submission to the electorate.

Rule 9 - Duties of the Executive Director

The Executive Director of the Convention shall be primarily responsible for the administration of the Convention under the authority and supervision of the President.

Rule 10 - Vacancies

If a permanent vacancy occurs in both the offices of President and First Vice President, the Secretary shall temporarily preside until the Convention elects a President and First Vice President to fill the office in the same manner in which the officers were first elected.

If a permanent vacancy occurs in the office of any of the other Vice Presidents or in the office of the Secretary, the President shall appoint a member to exercise the powers of that vacant office until the Convention fills the vacancy in the same manner in which the officer was first elected.

Rule 11 - Employees of the Convention

The Committee on Administration, after consultation with the President, shall appoint such employees as may be necessary for the effective operation of the Convention. The titles of their positions and their salaries shall be established by the Convention.

CHAPTER III
DELEGATES

Rule 12 - Assignment of Seats

The permanent seats of the Delegates shall be assigned by the President in the following order: alphabetically from left to right while facing the Chair and from the front to the rear. Variations in this seating may be authorized by the President for the officers of the Convention. If a vacancy occurs, the person selected to fill the vacancy shall continue to have the seat of the Delegate who vacated the position.

Rule 13 - Conduct in Debate - Questions of Privilege

When any Delegate is about to speak in debate or to present any matter to the Convention, he shall rise from his seat and address himself to "Mr. President" except when in the Committee of the Whole and then to "Mr. Chairman"; he shall not speak until recognized, and when recognized he shall confine himself to the question under consideration and avoid personalities and offensive language, Questions of privilege shall be governed by Chapter 23 of Mason's Legislative Manual.

Rule 14 - Delegates Called to Order

The President or any Delegate may challenge any other Delegate who, in speaking, violates the rules of the Convention. Upon such challenge, the President may order the speaker to sit down. The President's order to sit down, or the failure of the President to order the speaker to sit down may be appealed.

Rule 15. - Dissent of Delegates

Any two or more Delegates shall have the liberty to dissent from and protest in respectful language against any action or resolution relating to the Convention which they thinkinjurious to the public or to any individual, and. have the reasons for their dissent entered upon the Journal.

Rule 16 - Times a Delegate May Speak

Except as provided by Rule 28, no Delegate may speak more than once on the same question without leave of a majority of those present and voting unless he be the mover of the matter pending or Chairman of the committee that reported it, in which case he shall be privileged to speak twice.

Rule 17 - General Limit on Debate

No Delegate shall speak longer than ten minutes at any one time, nor more than once on the same question, except by leave of the Convention; except that the Delegate handling a proposal shall have the right to speak no longer than five minutes to close debate, even if the previous question has been ordered and even if he has spoken once before on the issue. The restriction imposed by this rule shall not be applicable to Chairmen and vice Chairmen of committees when the latter are presenting a report of their committee to the Convention or to the Committee of the Whole, and the same exemption from the requirement of this rule shall also be applicable in the case of the chief spokesman for a minority report of a committee of the Convention. Any Delegate shall have one minute to explain his vote on any roll call vote on proposals or amendments to proposals anytime prior to the closing of the vote on the question.

Rule 18 - Absence of Delegates

No Delegate shall absent himself from the sessions of the Convention unless he have leave or be sick, or his absence be unavoidable.

Rule 19 - Contemptuous Behavior of Delegates

Any Delegate who persists in disorderly conduct after being warned by the President or Chairman of the Committee of the Whole, that he is out of order, may, by motion duly made and carried by a two-third's majority of the Delegates elected, be held in contempt and be required to purge himself of such misconduct; and until such Delegate has purged himself, he shall not be entitled to the privileges of the floor.

Rule 20 - Disclosure of Personal Interest

Any Delegate who has a significant personal or private interest, economic or otherwise, in a matter before the Convention shall disclose this interest to the Convention.

Rule 21 - Vacancies

Vacancies occuring in the Convention shall be filled in the manner provided for filling vacancies in the legislative assembly as provided in Sections 43-215 and 43-216, R.C.M., 1947.

Rule 22 - Compensation of Delegates

For each day of the organization, plenary and signing sessions of the Convention, Delegates shall be paid the same per diem and expenses as provided in Section 43-310, R.C.M., 1947, for members of the legislative assembly. Delegates shall be entitled to mileage for three trips to and from their residences and Helena by the nearest traveled route at the rate provided for the legislative assembly in Section 43-310, R.C.M., 1947.

The President and First Vice President shall be paid the same per diem and expenses as the President of the Senate and Speaker of the House of Representatives, as provided in Section 43-311, R.C.M., 1947.

CHAPTER IV
COMMITTEE OF THE WHOLE

Rule 23 - Committee of the Whole

All proposals reported by any Substantive Committee of the Convention shall be referred to the Committee of the Whole and become general orders to be placed upon the calendar and agenda of the Committee of the Whole by the President. No committee proposal shall be considered by the Committee of the Whole until forty-eight (48) hours after the duplicated committee proposal has been placed on the Delegates' desks, unless the Convention agrees to its earlier consideration. No committee proposal shall be placed on the Delegates' desks until after it has been reported to the Convention under Order of Business No. 1.

Rule 24 - Consideration of Proposals

When the Convention reaches consideration of general orders of the day, it shall resolve itself into Committee of the Whole. General orders shall be considered as follows: first, in order of referral, proposals of the Committee on Style; second, in order of referral, proposals of Substantive Committees. The Committee of the Whole may consider a particular proposal out of turn. No recorded roll call vote shall be taken, except upon the demand of five (5) Delegates.

Rule 25 - Amendments in Committee of the Whole

Every motion or amendment shall be reduced to writing if the President or any Delegate shall request it, and shall be entered upon the Journal, together with the name of the Delegate making it, unless the motion is withdrawn by the maker or is ruled out of order by the Chairman,

Rule 26 - Motion that Committee of the Whole Rise

A motion that the Committee of the Whole rise and report progress shall always be in order unless a member of the Committee is speaking or a vote is being taken, and such motion shall be decided without debate by a vote of a majority of those present and voting; and provided further, when the Committee of the Whole again sits, the subject under consideration prior to the motion to rise and report progress shall again be resumed.

Rule 27 - Reconsideration

A motion to reconsider shall be in order in the Committee of the Whole by a majority vote of those present and voting, before the Committee shall rise and finally report. A motion to reconsider shall not be renewed.

Rule 28 - Application of Convention Rules

The rules of the Convention shall be observed in the Committee of the Whole so far as they may be applicable except that:, the Committee of the Whole cannot adjourn the Convention; the previous question shall not be ordered; a majority vote is necessary to approve a proposal; the Committee may rerefer any proposal back to the Substantive Committee from which it came or may refer it to any other Substantive Committee; and a motion to postpone indefinitely or a motion to table or for a Call of the Convention shall not be in order. A member may speak more than once in the Committee of the Whole. A journal of its proceedings and a verbatim transcript of its debates shall be kept by the Committee of the Whole.

Rule 29 - Limitation of Debate

Before a proposal is taken up by the Committee of the Whole, any Delegate shall be privileged to move that a limitation be placed upon the time ofthc debate and consideration of such proposal by the Committee of the Whole, provided that equal time is to be afforded to the proponents and the opponents of such proposal, and the Committee may fix in advance of consideration of a proposal or proposals a time for Committee to rise and report progress.

CHAPTER V
COMMITTEES

Rule 30 - Substantive Standing Committees

The Substantive Standing Committees are:

Bill of Rights
Legislative
Executive
Judiciary
Local Government
Revenue and Finance
Education and Public Lands
Public Health, Welfare, Labor and Industry
Natural Resources and Agriculture
General Government and Constitutional Amendment

Rule 31 - Procedural Standing Committees

The Procedural Standing Committees are:

Administration
Public Information
Rules and Resolutions (Rules)
Style, Drafting, Transition and Submission (Style)

Rule 32 - President Ex Officio Member of All Standing Committees

The President shall be an ex officio member of all standing, Substantive, and Procedural Committees, but shall not vote except to break a tie and shall not he counted for the purpose of determining a quorum.

Rule 33 - Select Committees

The President may on his own initiative or at the direction of the Convention appoint such select committees as may he necessary to perform special functions.

Rule 34 - Appointment of Committee Members

The President, after consultation with the Vice Presidents shall appoint the committee members, but any appointment, on the announcement thereof, may berejected by a majority of the members of the Convention prior to adjournment on January 19, 1972. Each member, except the President, shall be appointed to serve on one Substantive Standing Committee.

Rule 35 - Appointment of Committee Chairmen and Vice Chairmen

The President, after consultation with the Vice Presidents, shall designate the Chairman and Vice Chairman of every committee, and his designees shall be subject to the approval by a majority of the members of the Convention. In case of a vacancy or the prolonged absence of the Chairman and Vice Chairman, the President of the Convention shall appoint a Chairman to act until the Chairman or Vice Chairman shall return. The Vice Chairman shall perform all of the duties and functions of the Chairman in the absence of the Chairman. Committee Chairman and vice Chairman shall vote on all items before the Committee the same as other Delegates.

Rule 36 - Quorum and Rules of Committees

A majority of any Committee constitutes a quorum, hut the question of the presence of a quorum of a Committee may not he raised on the consideration of a proposal before the Conven-

tion, unless the question has been raised before the Committee. The rules of the Convention shall be observed in all Committees as far as may be applicable, and, if applicable, may not be suspended.

Rule 37 - Calling of Committees and Agenda

Each Committee shall meet at the call of its Chairman, who shall also set its agenda, with the advice and consent of the Committee. Any three (3) members of a Committee may in writing request the Chairman to call a meeting of that Committee, and upon his failure to do so within forty-eight (48) hours not including "onsession days and legal holidays, a majority of the members of the Committee shall have the right to call a meeting of the Committee and set its agenda and place of meeting under the appropriate notice requirements. Each Delegate proposal referred to a Committee must appear on the Committee's Agenda at least once, but the Committee shall not be required to report to the Convention thereon except as provided in Rule 41.

Rule 38 - Notice of Committee Hearings

No Substantive Committee hearings may be held unless notice thereof is posted in the following manner: the Secretary of the Convention shall be furnished a" original and three (3) copies of a written notice, signed by the Chairman or members of the Committee calling the hearing. The notice shall state the date, hour, and the place of the proposed hearing and the proposal number or subject matter to be considered. The Secretary shall post one copy thereof on a designated bulletin board with an endorsement thereon of the hour and date of the posting, which may not be less than 3 days before the time of the hearing. The original notice shall be retained by the Secretary. The other copies shall be returned to the Chairman of the Committee and the Public Information Director with the endorsement of the Secretary. The Substantive Committee Secretary shall deliver a copy of the notice to all members of the Committee and to all members of the Convention who have introduced proposals on the subject matter to be considered.

Each Substantive Committee shall hold a public hearing at which time citizens of Montana will be invited to appear and testify, and file statements containing their testimony and views, upon any and all phases of the proposed constitution being considered by such Committee. Such witnesses may be questioned by Committee members to better elucidate their testimony, All Delegates to the Convention, not members of the Committee conducting the hearing, may attend the hearing as auditors, to better inform themselves of the Committee's progress.

The Substantive Committees will hold their hearings, designed to secure state-wide participation in deliberations on the Constitution, in a series at times fixed by the President of the Convention. The President will make such announcement and invitation via the news media so that Montana citizens "ear and far will have no less than five (5) days' notice so they may be able to avail themselves of a" opportunity to appear, testify and participate.

These state-wide general hearings will in no way inhibit Standing Committees to follow up with additional hearings of special character as provided elsewhere in this rule.

Rule 39 - Sitting of Committees During Sessions of the Convention

No Committee shall sit during the sessions of the Convention or of the Committee of the Whole, without having first obtained special leave of the Convention.

Rule 40 - Subcommittees

A Committee, by the affirmative vote of a majority of its members, may provide for the appointment by the Committee Chairman of subcommittees composed ofmembers ofthe committee. Reports of subcommittees shall be considered by the entire Committee before the Committee recommends any action thereon by the Convention. All rules applicable to Committees shall be applicable to subcommittees.

Rule 41 - Committee Proposals

The affirmative vote of a majority of the members of a Committee shall be necessary to report a proposal out of Committee. A Committee by a majority of its members may submit alternative proposals to the Convention and may report proposals with or without a recommendation for action. The proposal of a minority of at least twenty-five percent (25%) of the members of any Committee shall be received, duplicated in the same manner as the majority proposal, and treated as a" amendment or substitute offered to or for the report of the committee if offered as such on the floor.

All proposals reported by a Committee to the Convention shall be reported as Committee proposals and shall be referred to the Committee of the Whole.

Rule 42 - Committee Meetings and Hearings

All Committee and subcommittee meetings and hearings shall be open to the public and the news media. Committees and subcommittees shall hold meetings at which action may be taken on proposals in the city of Helena or any other place which may be temporarily the seat of the Convention, and, upon the affirmative vote of a majority of the members of the Committee and after consultation with and approval by the President, may hold hearings at any other place in the state. Committees and subcommittees may take testimony under oath of affirmation. The Chairman of a Committee or subcommittees may request the President of the Convention to subpoena documents and witneses. A witness shall have the right to be represented by counsel of his own choosing. A recorded roll call vote on any matter on the agenda of a Committee and on which a vote is to be taken shall be taken on demand of any member of the Committee. A Committee, after consultation with and approval by the President, may direct that a verbatim record be kept of any portion of its proceedings.

Committees may meet jointly with the consent of their respective Chairmen, and the consent of the President.

Rule 43 - Consideration of Proposals Without Committee Recommendation

After one day's notice the Convention, on motion passed by the affirmative vote of a majority of members, may require a Committee to return, with or without a recommendation, any proposal referred to the Committee.

Rule 44 - Last Day for Committee Proposals

The Committee of the Whole will receive no final proposal of a Substantive Committee after the deadline established under Rule 79.

Rule 45 - Power to Incur Expenses

No Delegate or Committee shall incur any expense chargeable to the Convention unless such expense is approved by the President or is authorized by resolution of the Convention. No motion or resolution calling for an expenditure of money shall be acted upon by the Convention without first being referred to the Administration Committee for consideration and recommendation.

CHAPTER VI
DELEGATE PROPOSALS, RESOLUTIONS AND CITIZEN SUGGESTIONS

Rule 46 - Proposals - Introduction

Any suggestion, proposition or draft intended to become a part of any revised constitution or amendment or alteration of the existing constitution which is introduced by one or more Delegates shall be called a Delegate Proposal. A Delegate Proposal shall be endorsed by the Delegate or Delegates introducing it. No Delegate Proposal may be introduced later than the deadline established under Rule 79. When a Delegate Proposal is introduced it shall be referred by the President to the proper Standing Committee, except when he refers it to the Committee on Rules and Resolutions to determine whether its content is on the appropriate order of business. By vote of at least one-third (1/3) of the Committee on Rules and Resolutions any proposal shall be referred to a Standing Committee.

Where a proposal embraces subject matter which falls within the proper consideration of several Committees, the President, where practicable, shall divide the proposal and refer the parts to the appropriate committees; if it is not subject to such division, the President shall refer it to an appropriate Committee with instructions to consult with other Committees on related matters.

Rule 47 - Forms

The Executive Director, under the supervision of the President, shall prepare forms in accordance with these rules for Delegate Proposals, Citizen Suggestions, Resolutions and Committee Proposals.

The Delegate Proposals shall be reproduced or duplicated. The original of all proposals shall remain in the custody of the Convention. The Secretary shall, as soon as any proposal is reproduced or duplicated, place it on the desks of the Delegates.

All proposals must be approved as to form by some person or agency designated by the President before being introduced or submitted.

Any Delegate Proposal which does not comply with the provisions of these rules as to form shall be referred to the appropriate Committee as a Citizen Suggestion.

Rule 48 - Resolutions

Resolutions may be introduced by Delegates or Committees.

Delegate resolutions shall be given to the Secretary, assigned a number and referred to the appropriate Committee by the President.

After consideration, the Committee shall report the resolution to the Convention with or without recommendation and the resolution shall be considered under Order of Business No. 1.

If the rules are suspended for early consideration the Secretary shall read the resolution and it shall be considered under Order of Business No. 7.

Committee resolutions shall be read by the Secretary under Order of Business No. 7 and considered under Order of Business No. 7.

No recorded roll call vote shall be taken under the consideration of resolutions.

Rule 49 - Citizen Suggestions

Any subject matter presented to the constitution suggested by a non-delegate shall be called a citizen suggestion.

Citizen suggestions shall be given a number by the Secretary and the original shall be referred by the President to the appropriate Committee for consideration but need not be placed on the agenda of the Committee.

Before the Convention adjourns sine die, the original shall be returned to the Convention secretary.

Rule 50 - Present Constitution - Referral

The President shall refer each section of the present Montana Constitution to the appropriate Committees.

Rule 51 - Order of Consideration of Proposals

The prescribed order in which proposals introduced in the Convention are to be considered shall be as follows:

Introduction. Delegate proposals shall be filed with the Secretary.

Delegate proposals shall be assigned a number by the Clerk, referred to the appropriate Committee by the President, duplicated and distributed to the Delegates.

Standing Committee Consideration. Standing Committees shall consider all Delegate Proposals referred to the Committee, prepare Committee Proposals, report Committee Proposals under Order of Business No. 1; Committee Proposals will be received by the Convention without a debate or vote. The President shall refer all Committee Proposals to the Committee of the Whole. The Committee Proposal shall be duplicated and distributed to the Delegates. Minority Committee Proposals signed by twenty-five percent (25%) of any Committee will be duplicated and referred to to the Committee of the Whole.

Committee of the Whole Consideration. Committee Proposals will be considered, debated and amended by the Committee of the Whole in order of reference and placed on General Orders of the Day.

The Committee of the Whole shall debate and adopt by section the Committee Proposal.

The Committee of the Whole shall report to the Convention under Order of Business No. 7 and refer the proposed Article to the Committee on Style. A motion to segregate a report of the Committee of the Whole shall not be in order.

Consideration and Report of the Committee on Style -Articles. The Committee on Style shall make only changes as to style, form and grammar. The report of the Committee on Style on each Article shall be made on Order of Business No. 1. The report shall be received by the Convention without debate or vote and the President shall refer the report to the Committee of the Whole. The report shall be duplicated and distributed to the Delegates.

Committee of the Whole Consideration of the Report of the Committee on Style. The report of the Committee on Style shall be considered, debated and amended by the Committee of the Whole section by section as to style, form and grammar. The report of the Committee of the Whole shall be referred to Order of Business No. 5 for final consideration.

Final Consideration of Articles. The Convention shall finally consider individual Ar-

ticles at Order of Business No. 5, Section by Section, by a majority of elected Delegates and refer said Articles to the Committee on Style for incorporation in the proposed Constitution.

Consideration and Report of the Committee on Style of Proposed Constitution and Ballot. The Committee on Style shall prepare for submission to the electorate the proposals of the Convention and a ballot. The report of the Committee on Style on its proposals shall be made on Order of Business No. 1 and shall be received by the Convention without debate or vote and the President shall refer the report to the Committee of the Whole. The report shall be duplicated and distributed to the Delegates.

Committee of the Whole Consideration of Proposed Constitution and Ballot. The proposal on the Committee on Style shall be considered only as to the form of the proposed constitution and the form and the style of ballot. The report of the Committee of the Whole shall be referred to Order of Business No. 6. The vote on Order of Business No. 6 shall be without debate and be a recorded roll call vote of the Delegates.

Enrolling. The President shall direct the enrolling of the final proposal or proposals of the Convention.

Signing of the Constitution. The enrolled copy shall be signed by the President, attested by the Secretary and then signed by the other Delegates in alphabetical order.

Rule 52 - Required Vote on Final Consideration and Adoption

On final consideration of committee proposals, a roll call vote shall be taken section by section and entered in the journal.

On Adoption of the proposed constitution and ballot, a roll call vote shall be taken on the proposed constitution and on the ballot, and shall be entered in the Journal.

Rule 53 - Unfinished Special Orders

Any subject matter which has been made a special order for a particular day, but which is not reached on that day, shall then come up for consideration under the order of "unfinished business" at the next succeeding session of the Convention.

CHAPTER VII
TRANSACTION OF BUSINESS

Rule 54 - Order of Business

AFTER CALL TO ORDER, INVOCATION AND ROLL CALL the order of business of the Convention shall be as follows:

1. Reports of Standing Committees
2. Reports of select Committees
3. Communications
4. Introduction and reference of Delegate Proposals
5. Final consideration of Proposals
6. Adoption of proposed constitution and ballot
7. Motions and resolutions
8. Unfinished business
9. Special orders of the day
10. General Orders of the Day (Committee of the Whole)
11. Committee announcements and notices

To revert to or pass to a new Order of Business requires only a majority vote. Unless otherwise specified in the motion to recess, the Convention shall revert to Order of Business No. 1 when reconvening after a recess.

Rule 55 - Roll Call

The Secretary shall call the roll at the opening of each session of the Convention and the President shall announce whether a quorum is present. The President shall announce, and the Secretary shall enter in the Journal, the names of the Delegates absent with leave of the Convention, and the names of the Delegates absent without such leave. Vote by machine may be taken whenever a roll call or a vote by ayes and nays is directed by or in accordance with these rules.

Rule 56 - Petitions - Entered in Journal

No memorial, remonstrance, or petition shall be read or be entered in full in the Journal, unless ordered read or entered in the Journal by the Convention.

Rule 57 - Motions

When a motion is made, it shall be stated by the President; or, if in writing, it shall be handed to the clerk and read aloud to the Convention before being debated.

Rule 58 - Reduced to Writing

Every motion or amendment shall be reduced to writing if the President or any Delegate shall request it, and shall be entered upon the Journal, together with the name of the Delegate making it, unless the motion is withdrawn by the maker or is ruled out of order by the President.

Rule 59 - Withdrawal of Motions

After a motion has been stated by the President or read by the Secretary, it shall be deemed to be in the possession of the Convention, but it may be withdrawn by the Delegate at any time before being amended or put to vote.

Rule 60 - Privileged Motions

When a question is under debate, no motion shall be received except —

1. To fix the time to which to adjourn
2. To adjourn
3. To take a recess
4. To reconsider
5. To lay on the table
6. For a Call of the Convention
1. To move the previous question
8. To limit debate
9. To postpone to a day certain
10. To commit
11. To amend
12. To postpone indefinitely.

The motions listed in this rule shall take precedence in the order which they stand arranged. All of them shall be decided by the affirmative vote of a majority of those present and voting, except that a motion for the previous question requires the affirmative vote of two-thirds of those present and voting and a motion to postpone indefinitely requires the affirmative vote of a majority of elected Delegates. When a recess is taken while a question ispending, consideration of such question shall be resumed when the Convention reassembles, unless it determines otherwise. No motion to postpone to a day certain, or to commit, having been decided by the Convention, shall again be in order on the same day or at the same stage of the question. Whenever a proposal is being considered and a motion is then made, either to postpone indefinitely or to commit, amendments to the pending proposal shall first be in order before any vote is taken on any such motion.

Rule 61 - Motions not Debatable

A motion to adjourn is always in order except when a motion to fix the time to which to adjourn, or a motion to amend the calendar and agenda, is pending. A motion to adjourn, a motion to lay on the table, a motion for recess pending the consideration of other business and all matters relating to questions of order, shall be decided without debate.

Rule 62 - Order of Putting Questions

All questions shall be put in the order in which they are moved, except in the case of privileged motions.

Rule 63 - Amendments must be Germane

No motion or proposition relating to a subject different from that under consideration shall be admitted under color of an amendment or substitute.

Rule 64 - Division of Question

Any Delegate may call for a division of the question, which shall be divided if it includes propositions which are so distinct in substance that when one is removed or deferred, a substantive proposition remains for the decision of the Convention. A motion to strike out and insert shall not be subject to division within the meaning of this rule.

Rule 65 - Previous Question

The method of ordering the previous question (which shall not be made in the Committee of the Whole) shall be as follows: Any Delegate may move the previous question and, unless otherwise stated, the motion shall apply to the immediately pending question only. The presiding officer shall put the question, "Shall the main question now be put?" This shall be ordered only by the affirmative vote of two-thirds (2/3) of the Delegates present and voting. Prior to the ordering of the same, a Call of the Convention may be moved and ordered, but after ordering the previous question nothing shall be in order prior to the decision of the pending question or questions, except demands for the ayes and nays, points of order, appeals from the decision of the Chair, and a motion to adjourn or to take a recess, all of which shall be decided without debate. The effect of ordering the previous question is to put an end to all debate and bring the Convention to a direct vote upon the immediately pending question, and such other pending questions as were specified in the motion in their order down to and including the main question; provided however, that when the previous question is ordered, amendments then on the Secretary's desk shall be acted upon. When a motion to reconsider has been taken under the previous question and decided in the affirmative, the fact that the previous question had been ordered shall have no operation or effect with respect to the question for which reconsideration has been ordered. If the Convention refuses to order the previous question, it shall resume consideration of the pending subject as though no motion for the previous question had been made.

Rule 66 - Motion for Reconsideration

Any Delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention or may give notice that he will make such a motion not later than the next succeeding session day. If the Delegate who gave the notice does not make the motion at the next succeeding session day, any Delegate may do so. The Committee on Style may move for reconsideration on any subsequent day if one session day's notice of its intention to do so is given in writing to the Secretary and entered upon the Journal. A motion to reconsider shall take precedence over all other questions, except a motion to fix the time to which to adjourn, a motion to adjourn and a motion to recess. A motion to reconsider shall not be renewed.

Rule 67 - Ordering Calls of the Convention

Calls of the Convention may be ordered upon motion by the affirmative vote of a majority of the Delegates present and voting, but the total vote in favor of such Call shall not be less than twelve (12).

Rule 68 - Procedure on Call of Convention

After a Call of the Convention is ordered the doors shall be closed and the Delegates shall not be permitted to leave the floor of the Convention without permission of the President of the Convention. The Sergeant at Arms shall notify all members within the bar of the Convention of the Call. The roll of the Convention shall be called and the absentees noted. The Sergeant at Arms may, upon motion, be dispatched after the absentees. In such case, a list of the absentees shall be furnished by the Secretary to the Sergeant at Arms, who shall bring such absentees to the floor of the Convention with all possible speed. In case the Sergeant of Arms requires assistance in addition to the regularly appointed assistant Sergeants at Arms of the Convention, the President, upon motion, may deputize as a special assistant Sergeant at Arms any person properly qualified. The Convention may proceed to business under a Call of the Convention pending the arrival of any absentees.

CHAPTER VIII
LOBBYISTS

Rule 69 - Registration and Regulation

Section 15 of the Enabling Act regulating lobbying during the Montana Constitutional Convention is adopted by this Convention by reference. Lobbying on the floor and foyer of the Convention Hall and South Senate Lobby is prohibited one-half(%) hour prior to the commencement of the session, during the session and within one-half (½) hour after adjournment.

CHAPTER IX
MISCELLANEOUS

Rule 70 - Reading of Documents

When the reading of a document is called for and an objection is raised to such reading, the Convention shall determine without debate whether the document shall be read.

Rule 71 - Putting the Question

The President or Chairman shall put all questions substantially in this form: "As many as are in favor of (as the question may be) say 'aye';" and after the affirmative vote is expressed, "as many as are opposed say 'no'." If the President or Chairman is in doubt as to the vote, he may order a division or roll call of the Convention.

A division of the Convention may be had upon the demand of five (5) Delegates, When a division of the Convention is ordered, the President shall declare the result.

A recorded roll call may be had upon the demand of five (5) Delegates.

On a tie vote the question shall be determined as lost.

Rule 72 - Recognition During Roll Call

After a question has been stated by the President, and the call of the roll has been started, the President shall not recognize a Delegate for any purpose except upon points of order, or for the purpose of explaining his vote on a proposal or amendment thereto, until after the announcement of the vote. The clerk shall enter upon the Journal the names of those voting "aye" and the names of those voting "no."

Rule 73 - Roll Call

At the roll call to be taken at the opening of each session and upon calls of the Convention, the names of the Delegates shall be called alphabetically or the voting machine shall be used, and the absentees noted, after which the names of the absentees shall not be called.

Rule 74 - Amendment or Suspension of Rules

These rules may be amended by the affirmative vote of a majority of Delegates after the proposed amendment has been submitted in writing, has been considered by the Committee on Rules, and has been in the possession of the Delegates not less than two (2) session days prior to its consideration. The Committee on Rules may be discharged from further consideration of any proposed amendment upon the same notice and by the same vote as is provided in Rule 43 for proposals. One or more rules may be suspended for a specified purpose by the affirmative vote of two-thirds (2/3) of the Delegates present or a majority of all Delegates of the Convention, whichever constitutes the lesser number.

Rule 75 - Appeals - Form of Question

On all appeals from decisions of the Chair the question shall be "Shall the appeal be sustained?" A favorable vote of a majority of the Delegates present and voting shall sustain the appeal. The presiding officer may cast his vote on an appeal from his decision, and he shall have the right to explain his decision.

Rule 76 - Mason's Rules on Legislative Procedure

In all cases not covered by these rules, the controlling parliamentary authority shall be the latest edition of *Mason's Rules of Legislative Procedure*.

Rule 77 - Voting by the Electrical Roll Call System

When the Convention is ready to vote upon any question requiring a recorded roll call, and the vote is to be taken by the electrical roll call system, the presiding officer shall announce: "The question is on the passage of (designating the matter to be voted upon). All in favor of such question shall vote 'aye', all opposed shall vote 'nay'. The Convention will now proceed to vote."

After affording the Delegates sufficient time in which to vote, the presiding officer shall announce "Has every Delegate voted?" then, "Does any Delegate wish to change his vote?" and after a short pause he shall then say "The vote is now closed and the clerk shall proceed to record the vote."

The clerk shall immediately start the vote recording equipment, and when completely recorded, the President shall announce the result. The Secretary shall enter upon the Journal the result in the manner provided by the Rules of the Convention.

No Delegate may cast the vote of another Delegate in any session of the Convention, Committee of the Whole or Committee meeting, nor shall any person not a Delegate cast a vote for any Delegate. Any Delegate who votes or attempts to vote for another Delegate may be punished in such manner as the Convention determines. If a person not a Delegate votes or attempts to vote for any Delegate, he shall be barred from the floor of the Convention for the remainder of the session and may be further punished in such manner as the Convention determines proper. Proxy voting is not permitted.

At no time shall the voting machine show a running tally of the votes being cast by Delegates, and the colored lights next to the Delegates names shall be used at all times.

Rule 78 - "Present" Votes

Votes cast as "present" shall be recorded in the Journal as "present," but such votes shall not be counted in determining the required number of votes on those measures or questions needing the affirmative vote of those "present and voting."

Rule 79 - Convention Schedule

The Convention shall have a schedule, which shall be prepared by the President, with the advice of the Committees on Rules and Administration and submitted to the Convention for its approval. Said schedule shall be attached to these rules as an appendix.

Rule 80 - Pairing

Two delegates may pair on a proposal before the Convention under Orders of Business No. 5 and No. 6. Pairing is permitted only when one of the paired delegates is absent when the vote is taken.

An agreement to pair must be in writing and dated and signed by the delegates agreeing to be bound, must specify the duration of the pair, and must be filed with the Secretary. The pair shall bind the delegates signing until the expiration of time for which it was signed, unless the paired delegates sooner appear and ask that the agreement be cancelled.

COMMITTEES
Procedural Committees

Administrative
John H. Toole
Chairman, ex officio
Dorothy Eck
Vice Chairman, ex officio
Jean Bowman
Secretary, ex officio
Mike McKeon
Noel D. Furlong
Robert B. Noble
Rod Hanson
Clark E. Simon
Sterling Rygg
Louise Cross
Secretary . Bartley Carson

Rules and Resolutions
Marshall Murray
Chairman
Leslie "Joe" Eskildsen
Vice Chairman
Grace Bates
Miles Romney
Marian S. Erdmann
Thomas M. Ask
Thomas F. Joyce
Secretary Alice Berner

Style, Drafting, Transition and Submission
John M. Schiltz
Chairman
William A. Burkhardt
Vice Chairman
David L. Holland
Virginia H. Blend
Chet Blaylock
Richard B. Roeder
Lucile Speer
J.C. Garlington
Jerome T. Loendorf
Ben E. Berg, Jr.
Robert Lee Kelleher
Secretary • Betty Nelson
Counsel Diana Dowling and
Sandra Muckelston
Consultant Prof. Gardner Cromwell

Public Information
John H. Toole
1st Chairman replaced by
Margaret S. Warden
who was Vice Chairman
Fred J. Martin
became Vice Chairman
Bruce M. Brown, ex officio
M. Lynn Sparks
Robert Vermillion
Richard J. Champoux (Rick)
Catherine Pemberton
Robert F. Woodsmansey
Carl M. Davis
Katie Payne
Daphne Bugbee
Betty Babcock

Substantive Committees

Bill of Rights

Wade J. Dahood
Chairman
Chet Blaylock
Vice Chairman
George H. James
Lyle R. Monroe
Rachel1 K. Mansfield
Veronica Sullivan
Marshall Murray
R.S. (Bob) Hanson
Bob Campbell
Donald R. Foster
Dorothy Eck
Research Analyst
Rick Applegate
Secretary Darlene Corbin

Executive

Thomas F. Joyce
Chairman
J.C. Garlington
Vice Chairman
Richard B. Roeder
Harold Arbanas
Margaret S. Warden
Archie 0. Wilson
Betty Babcock
Fred J. Martin
James R. Felt
Research Analyst
Karen Beck
Secretary Barbara Lester

Legislative

Magnus Aashiem
Chairman
Jerome T. Loendorf
Vice Chairman
Carman Skari
Daphne Bugbee
Miles Romney
Jerome J. Cate
George Harper
Mae Nan Robinson
Richard A. Nutting
Torrey B. Johnson
Arlyne E. Reichert
Robert Lee Kelleher
Grace Bates
John H. Leuthold
Research Analyst
Rich Bechtel
Secretary · Judy Pratt

Judiciary

David L. Holland
Chairman
Catherine Pemberton
Vice Chairman
J. Mason Melvin
Leslie "Joe" Eskildsen
Rod Hanson
Cedor B. Aronow
John M. Schiltz
Jean M. Bowman
Ben E. Berg, Jr.
Research Analyst
Sandra Muckelston
Secretary · Ellen McCarthy

Local Government

Oscar L. Anderson
Chairman
Virginia H. Blend
Vice Chairman
Franklin Arness
George W. Rollins
M. Lynn Sparks
Katie Payne
Thomas M. Ask
Marian S. Erdmann
Lucile Speer
Arnold W. Jacobsen
Clark E. Simon
Research Analyst
Jerry Holloron
Secretary · Pat Romine

Natural Resources and Agriculture

Louise Cross
Chairman
E.S. "Erv" Gysler
Vice Chairman
Geoffrey L. Brazier
Henry L. Siderius
John H. Anderson, Jr.
A.W. Kamhoot
Douglas Delaney
Charles B. McNeil
Donald Rebal
Research Analyst ·
Chuck Sullivan
Secretary. Elaine Rung

Revenue and Finance

Sterling Rygg
Chairman
Maurice Driscoll
Vice Chairman
Mike McKeon
William "Bill" Artz
Russell C. McDonough
Roger A. Wagner
Dave Drum
E.M. Berthelson
Noel D. Furlong
Research Analyst
Roger Barber
Secretary Karen Holliday

Public Health, Welfare, Labor and Industry

George B. Heliker
Chairman
Jack K. Ward
Vice Chairman
Joseph H. McCarvel
Edith Van Buskirk
William H. Swanberg
Don Scanlin
Charles H. Mahoney
R.J. Studer
Research Analyst
Dick Spall
Secretary • Sylvia Kinsey

Education and Public Lands

Richard J. (Rick) Champoux
Chairman
Robert B. Noble
Vice Chairman
Carl M. Davis
Marjorie Cain
Max Conover
Gene Harbaugh
Lloyd Barnard
Dan W. Harrington
Robert F. Woodmansey
William A. Burkhardt
John H. Toole
Research Analyst.
Bruce Sievers
secretary Sally Watson

General Government and Constitutional Amendment

Mark Etchart
Chairman
Paul K. Harlow
Vice Chairman
Robert Vermillion
Peter "Pete" Lore110
Don E. Belcher
Lyman W. Choate
Bruce M. Brown
Otto M. Habedank
Research Analyst.
Janet Grady
Secretary. Bobbie Murphy

ALPHABETICAL LIST OF COMMITTEE ASSIGNMENTS

Aasheim, Magnus	Legislative, Chairman
Anderson, John H., Jr.	Natural Resources and Agriculture
Anderson, Oscar L.	Local Government, Chairman
Arbanas, Harold	Executive
Arness, Franklin	Local Government
Aronow, Cedor B.	Judiciary
Artz, William H. (Bill)	Revenue and Finance
Ask, Thomas	Local Government Rules and Resolutions
Babcock, Betty	Executive Public Information
Barnard, Lloyd	Education and Public Lands
Bates, Grace C.	Legislative Rules and Resolutions
Belcher, Don E.	General Government and Constitutional Amendment
Berg, Ben E., Jr.	Judiciary Style, Drafting and Transition
Berthelson, E.M.	Revenue and Finance
Blaylock, Chet	Bill of Rights, Vice Chairman Style, Drafting and Transition
Blend, Virginia H.	Local Government, Vice Chairman Style, Drafting and Transition
Bowman, Jean M.	Convention Secretary Administrative, ex officio Judiciary
Brazier, Geoffrey L.	Natural Resources and Agriculture
Brown, Bruce M.	Eastern District Vice President Public Information, ex officio General Government and Constitutional Amendment
Bugbee, Daphne	Legislative Public Information

Burkhardt. William A.	Education and Public Lands Style, Drafting and Transition, Vice Chairman
Cain, Marjorie	Education and Public Lands
Campbell, Bob	Bill of Rights
Cate, Jerome J.	Legislative
Champoux, Richard J. (Rick)	Education and Public Lands, Chairman Public Information
Choate, Lyman W	General Government and Constitutional Amendment
Conover, Max	Education and Public Lands
Cross, C. Louise	Natural Resources and Agriculture, Chairman Administrative
Dahood, Wade J	Bill of Rights, Chairman
Davis, Carl M.	Education and Public Lands Public Information
Delaney, Douglas	Natural Resources and Agriculture
Driscoll, Maurice	Revenue and Finance, Vice Chairman
Drum, Dave	Revenue and Finance
Eck, Dorothy	Western District Vice President Bill of Rights Administrative, Vice Chairman, ex officio
Erdmann, Marian S.	Local Government Rules and Resolutions
Eskildsen, Leslie (Joe)	Judiciary Rules and Resolutions, Vice Chairman
Etchart, Mark	General Government and Constitutional Amendment, Chairman
Felt, James R.	Executive
Foster, Donald R.	Bill of Rights
Furlong, Noel D.	Revenue and Finance Administrative
Garlington, J.C.	Executive, Vice Chairman Style, Drafting and Transition
Graybill, Leo, Jr.	President of Convention All committees ex officio

Gysler, ES. (Erv)	Natural Resources and Agriculture Vice Chairman
Habedank, Otto T	General Government and Constitutional Amendment
Hanson, R.S. (Bob)	Bill of Rights
Hanson, Rod	Judiciary Administrative
Harbaugh, Gene	Education and Public Lands
Harlow, Paul K.	General Government and Constitutional Amendment, Vice Chairman
Harper, George	Legislative
Harrington, Daniel W.	Education and Public Lands
Heliker, George B.	Public Health, Welfare and Labor, Chairman
Holland, David L.	Judiciary, Chairman Style, Drafting and Transition
Jacobsen, Arnold W.	Local Government
James, George H.	Bill of Rights
Johnson, Torrey B.	Legislative
Joyce, Thomas F.	Executive, Chairman Rules and Resolutions
Kamhoot, A.W.	Natural Resources and Agriculture
Kelleher, Robert Lee	Legislative Style, Drafting and Transition
Leuthold, John H.	Legislative
Loendorf, Jerome T.	Legislative, Vice Chairman Style, Drafting and Transition
Lorello, Peter (Pete)	General Government and Constitutional Amendment
Mahoney, Charles H.	Public Health, Welfare and Labor
Mansfield, Rachel1 K.	Bill of Rights
Martin, Fred J.	Executive Public Information, Vice Chairman
McCarvel, Joseph H.	Public Health, Welfare and Labor
McDonough, Russell C.	Revenue and Finance

McKeon, Mike	Revenue and Finance Administrative
McNeil, Charles B.	Natural Resources and Agriculture
Melvin, J. Mason	Judiciary
Monroe, Lyle R.	Bill of Rights
Murray, Marshall	Bill of Rights Rules and Resolutions, Chairman
Noble, Robert B. (Bob)	Education and Public Lands, Vice Chairman Administrative
Nutting, Richard A	Legislative
Payne, Katie	Local Government Public Information
Pemberton, Catherine	Judiciary, Vice Chairman Public Information
Rebal, Donald	Natural Resources and Agriculture
Reichert, Arlyne	Legislative
Robinson, Mae Nan	Legislative
Roeder, Richard B.	Executive Style, Drafting and Transition
Rollins, George W.	Local Government
Romney, Miles	Legislative Rules and Resolutions
Rygg, Sterling	Revenue and Finance, Chairman Administrative
Scanlin, Don	Public Health, Welfare and Labor
Schiltz, John M.	Judiciary Style, Drafting and Transition, Chairman
Siderius, Henry L	Natural Resources and Agriculture
Simon, Clark E.	Local Government Administrative
Skari, Carman (Mr.)	Legislative
Sparks, M. Lynn	Local Government Public Information
Speer, Lucile	Local Government Style, Drafting and Transition

Studer, R.J.	Public Health, Welfare and Labor
Sullivan, Veronica	Bill of Rights
Swanberg, William H.	Public Health, Welfare and Labor
Toole, John H.	First Vice President Chairman, ex officio Administrative, Public Information
Van Buskirk, Edith	Public Health, Welfare and Labor
Vermillion, Robert	General Government and Constitutional Amendment Public Information
Wagner, Roger	Revenue and Finance
Ward, Jack K.	Public Health Welfare and Labor, Vice Chairman
Warden, Margaret S.	Executive Public Information, Chairman
Wilson, Archie 0.	Executive
Woodmansey, Robert F	Education and Public Lands Public Information

CONVENTION OFFICERS

President

LEO GRAYBILL, JR.

First Vice President

JOHN H. TOOLE

Eastern District Vice President

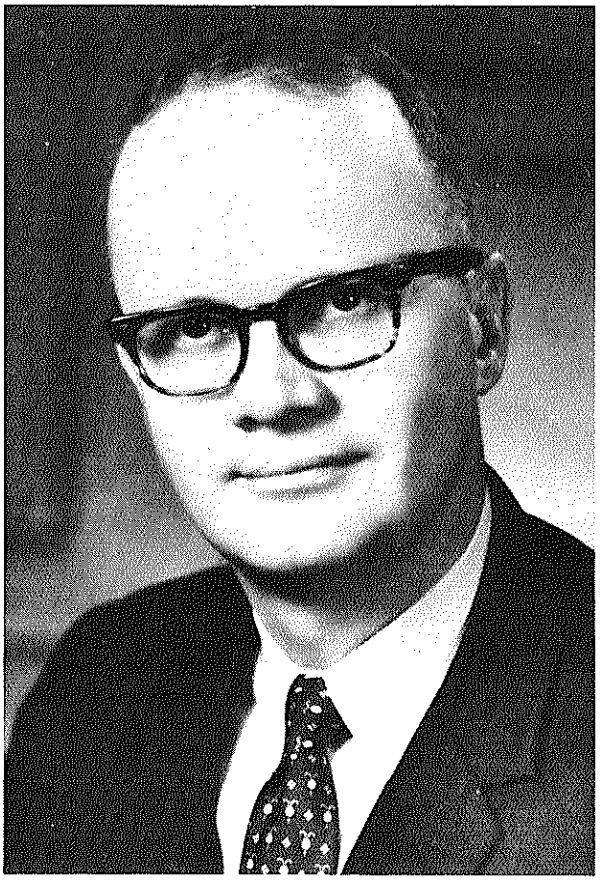
BRUCE M. BROWN

Western District Vice President

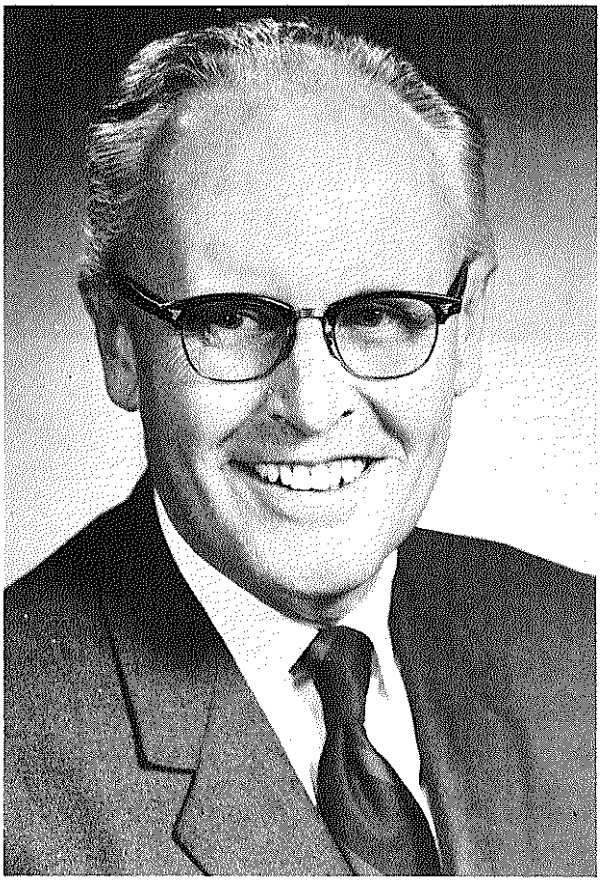
DOROTHY ECK

Secretary

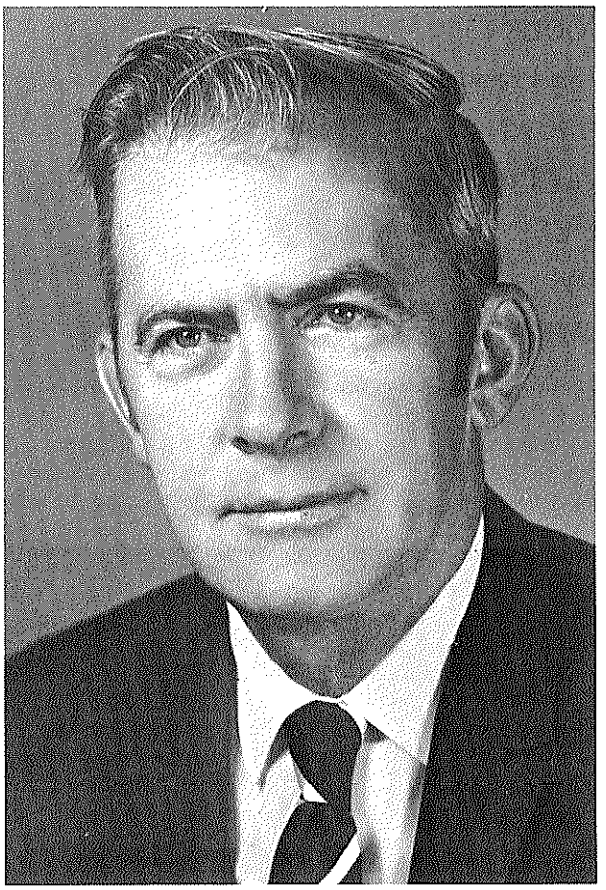
JEAN M. BOWMAN



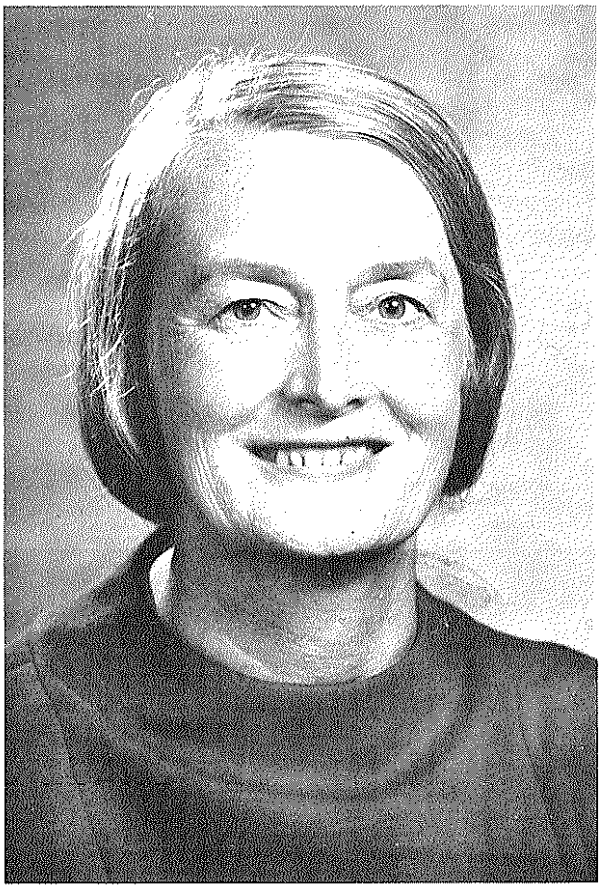
Leo Graybill
President



John H. Toole
First Vice President



Bruce M. Brown
Eastern



Dorothy Eck
western

CONVENTION EXECUTIVE STAFF

Executive Director

DALE HARRIS

Chief Clerk

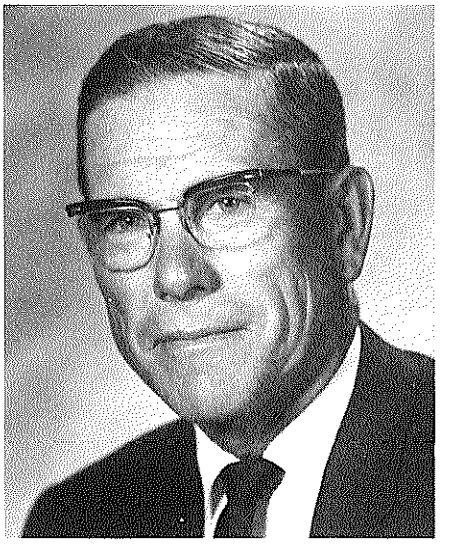
JOHN HANSON

Committee Coordinator

MAX BAUCUS

Public Information Director

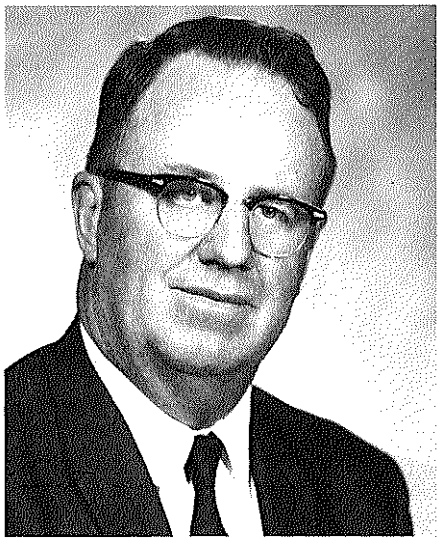
ELIZABETH N. HARRISON



Magnus Aasheim

Antelope, Sheridan County, District 4, Democrat.

Born September 21, 1909 in Reserve; educated at Western Montana College, Montana University; farmer-rancher; State Representative, 1960-67; wife's name is Velma; they have two children.



John H. Anderson, Jr.

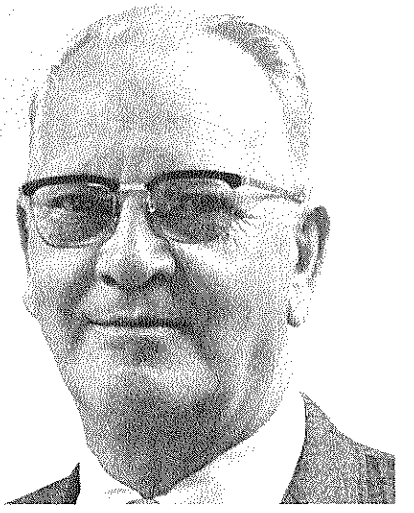
Aider, Madison County, District 21, Republican

Born July 9, 1916 in Dillon; attended Virginia City High School, Montana State College; rancher; Montana House of Representatives; wife's name is Estella; they have four children.

Oscar L. Anderson

Sidney, Richland County, District 3, Independent

Born January 6, 1911 in Sidney; attended Sidney High School, Northwestern School of Commerce, Portland, Oregon; bank president; Sidney City Council; Sidney Mayor; Sidney Finance Officer; Community Memorial Hospital Association Board of Trustees-Sidney; Executive Board Montana Bankers Association; Airport Commission; Farmers Home Administration State Advisory Committee; Governor's Committee on Economic Studies; Montana Rural Areas Development Committee; Executive Board Montana Municipal League; Montana League of Cities and Towns, President; wife's name is Helen; they have three children.



Harold Arbanas

Great Falls, Cascade County, District 13, Democrat

Born September 20. 1924 in Yakima. Washington; arrived in Montana in 1940; educated at Great Falls Public High School, St. Edward's Theological College, Seattle University; director of education; unmarried.

Franklin Arness

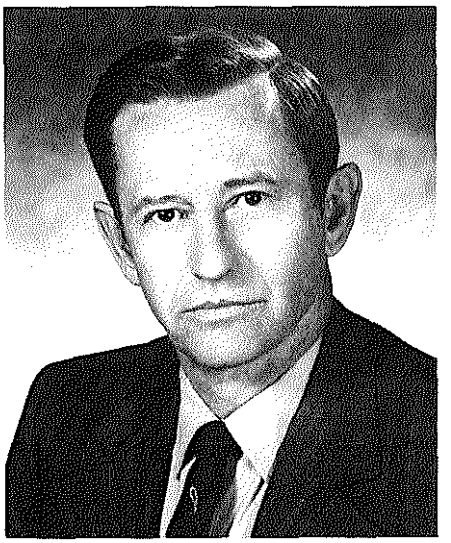
Libby, Lincoln County, District 23, Democrat

Educated at Libby High School, University of Montana; attorney; County Attorney; City Attorney; he has two children.

Cedor B. Aronow

Shelby, Toole County, District 15, Democrat

Born September 2, 1910 in Odessa, Russia; arrived in Montana in 1912; educated at University of Washington; attorney; Toole County Attorney; Democratic National Convention Delegate, 1956; Montana State Legislature. 1949.53; President, Young Democrats of Montana; wife's name is Jane; they have three children.



William H. Art+

Great Falls, Cascade County, District 13, Democrat

Born March 3, 1918 in Hamblin; educated at Wolf Point High School, University of Montana; certified public accountant; Treasurer of Cascade County Democratic Central Committee; wife's name is Mary Kay; they have three children.

Thomas M. Ask

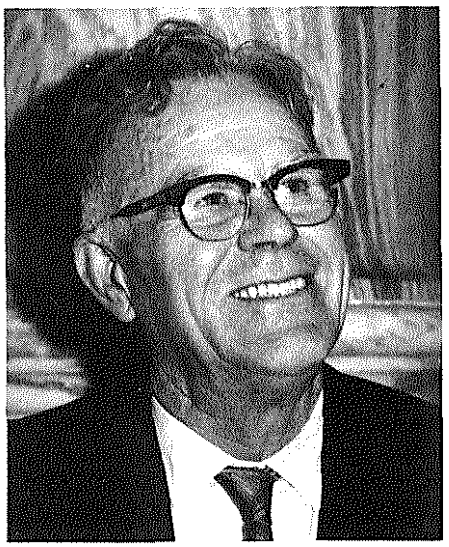
Roundup, Musselshell County, District 9, Republican

Born July 19, 1925 in Forsyth; attended University of Montana; lawyer; City Attorney; County Attorney; wife's name is Margaret; they have four children.

Betty Babcock

Helena, Lewis and Clark County, District 12, Republican

Born March 11, 1922 in Applington, Iowa; arrived in Montana in 1926; educated at Dawson County High School, Dawson County Junior College; vice pesident of the Colonial Inn; Director of Helena Chamber of Commerce; husband's name is Tim Babcock; they have two children.



Lloyd Barnard

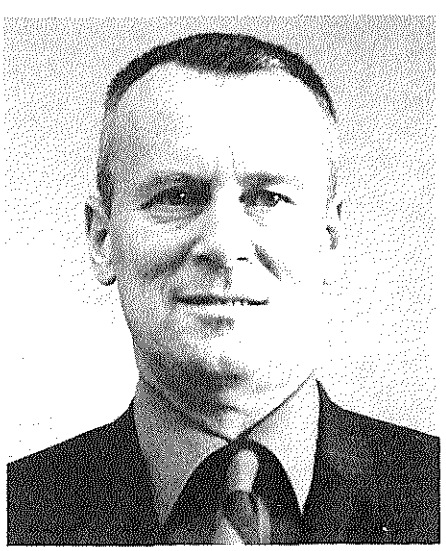
Saco, Valley County, District 5, Democrat

Born October 29, 1904 in Meadows of Dan, Virginia; arrived in Montana in April, 1910; educated at La Salle Extension University; farmer-rancher; State Representative, 1945.61; wife's name is Ethel Alice; they have four children.

Grace C. Bates

Manhattan, Gallatin County, District 11, Democrat

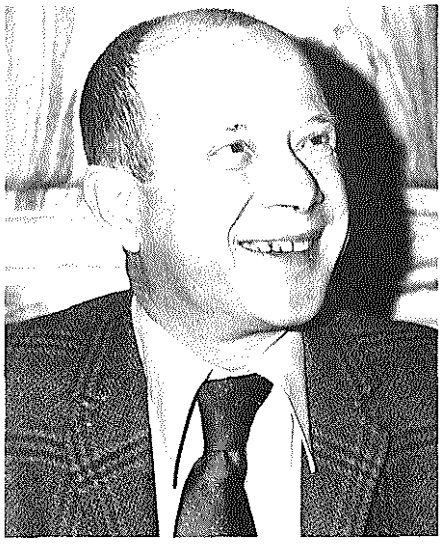
Born April 26, 1917 in Amsterdam; attended local schools; farmer's wife, public servant; State Advisory Council of Comprehensive Health Planning; husband's name is Avery; they have three children.



Don E. Belcher

Roundup, Musselshell County, District 9, Democrat

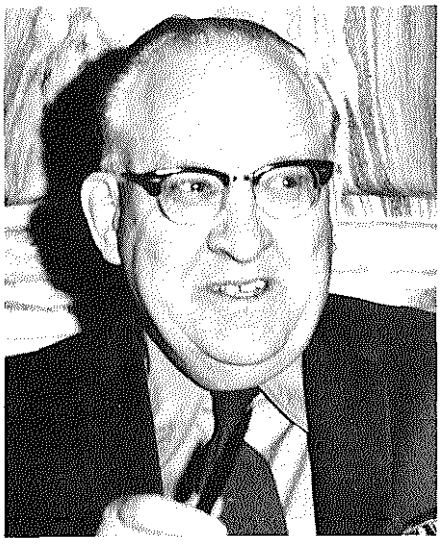
Born June 17, 1919 in Lavina; attended Lavina High School; insurance agent; wife's name is Clare; they have three children.



Ben E. Berg, Jr.

Bozeman, Gallatin County, District II, Republican

Born December 17. 1916 in Columbus; attended University of Montana; lawyer; City Attorney; Park County Representative; wife's name is Joan; they have four children.



Earl M. Berthelson

Conrad, Pondera County, District 15, Republican

Born January 26, 1910 in San Jose. New Mexico; arrived in Montana in 1930; attended Shelley High School, Shelly, Idaho; University of Idaho at Pocatello; banker and rancher; wife's name is Mabel; they have seven children.

Chet Blaylock

Laurel, Yellowstone County, District 8, Democrat

Born November 13. 1924 in Joliet; educated at Eastern Montana College, University of Montana; teacher; Montana Democratic Party State Chaiman; wife's name is Mildred; they have five children.

Virginia Hogan Blend

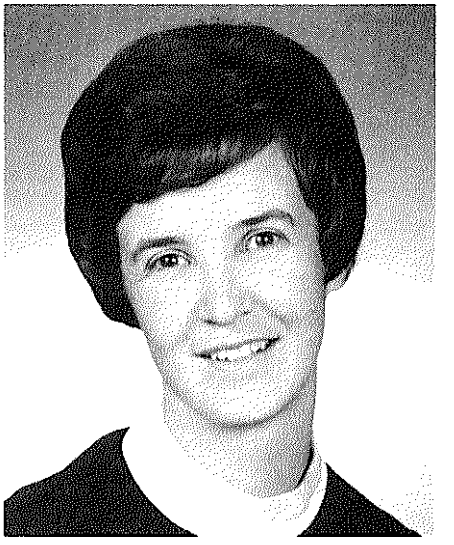
Great Falls, Cascade County, District 13, Democrat

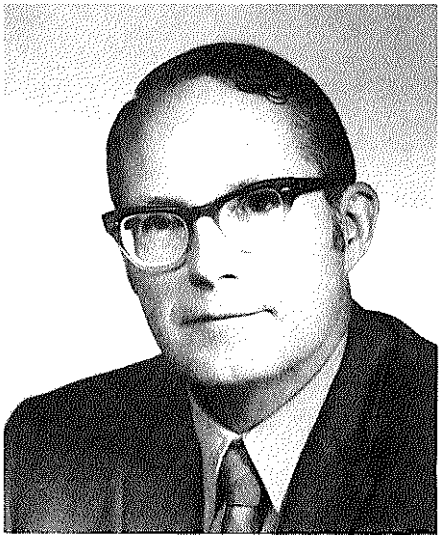
Born February 11, 1914 in Great Falls; attended elementary and high school in Great Falls, University of Texas, University of Kansas, University of Denver, College of Great Falls; reprographer; husband's name is Carroll; they have one child.

Jean M. Bowman

Billings, Yellowstone County, District 8, Republican

Born April 3, 1938 in Albuquerque, New Mexico; arrived in Montana in July, 1960; attended University of New Mexico, University of Pennsylvania; housewife; husband's name is Dr. Warren D. Bowman; they have four children.

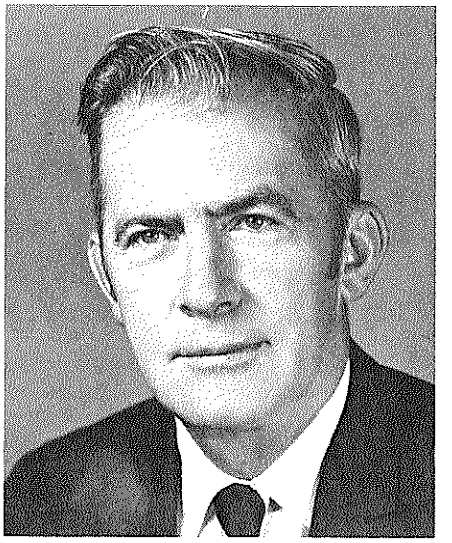




Geoff rey L. Brazier

Helena, Lewis-and Clark County, District 12, Democrat

Born November 8, 1929 in Helena; attended Helena High School, Montana School of Mines, University of Montana; attorney; Deputy County Attorney; wife's name is Marie; they have three children.



Bruce M. Brown

Miles City, Custer County, District 2, Independent

Born February 25, 1922 in Miles City; educated at University of Montana; lawyer; City Attorney; County Attorney; wife's name is Margaret; they have five children.

Daphne Bugbee

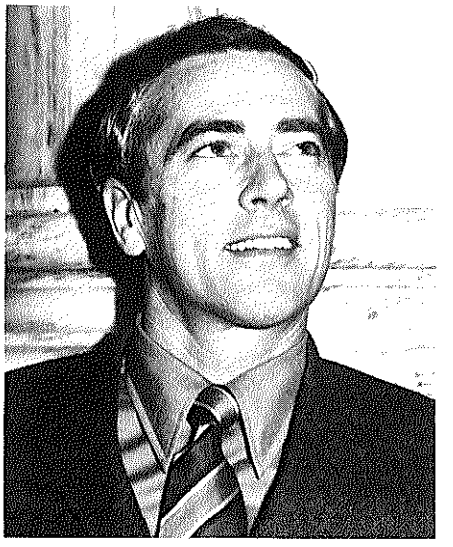
Missoula, Missoula County, District 18, Democrat

Born July 21, 1921 in Pensacola, Florida; arrived in Montana in 1958; educated at The Bishop's School, LaJolla, California; Bennington College, Bennington, Vermont; Harvard University, Cambridge, Massachusetts; architect; Missoula Community Improvement Commission; Missoula Area Arts Council Board of Directors; Missoula County High School Advisory Committee; Montana Conservation Coordinating Council Steering Committee; Environmental Health Subcommittee of the Montana Comprehensive Health Planning Commission; Governor's Appointee to the State Advisory Council for Title I of the Higher Education Act of 1965; husband's name is Henry; they have three children.

William A. Burkhardt

Helena, Lewis and Clark County, District 12, Republican

Born January 3, 1931 in Liberty, Missouri; arrived in Montana in June, 1957; educated at William Jewell College, Yale University, William Allanson White Instituteof Psychiatry; minister; wife's name is Kathleen; they have three children.



Marjorie Cain

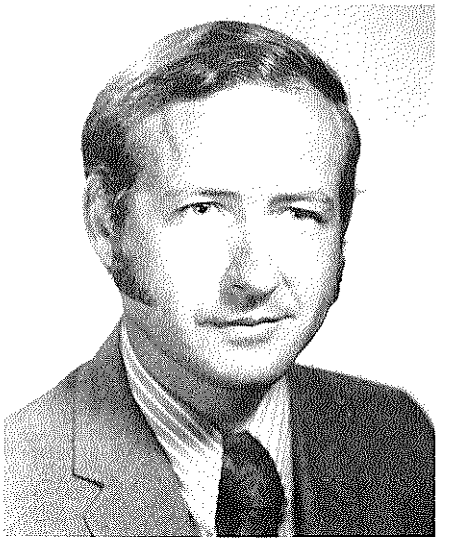
Libby, Lincoln County, District 23, Democrat

Born April 11, 1915 in Miles City; educated at Custer County High School; Mills College, Oakland, California; San Jose State College; University of California at Berkeley; California School of Arts &Crafts; Washington State College, State Teacher's College. Ellensburg, Washington; University of Montana; Stanford University; teacher; City Council; Chairman, Democratic Women's Club; President's Council on Status of Women; husband's name is Roy; they have one child.

Robert J. Campbell

Missoula, Missoula County, District 18, Democrat

Born December 12, 1940 in Sidney; attended Red Lodge High School, Sidney High School, University of Montana; attorney; wife's name is Mary Ann; they have two children.



Jerome J. Cate

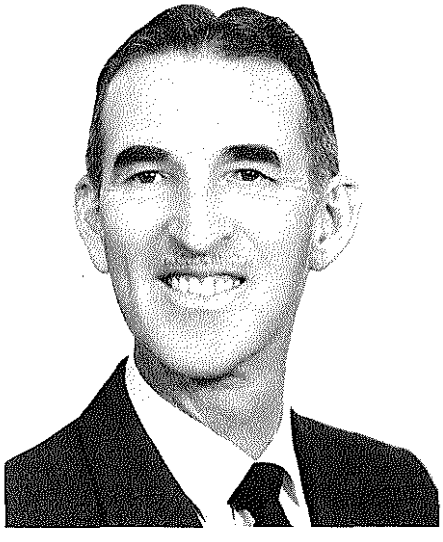
Billings, Yellowstone County,District 8, Democrat

Born September 19, 1939 in Baker; attended Carroll College, Georgetown University, University of Montana; attorney; wife's name is Mary; they have two children.

Richard James (Rick) Champoux

Kalispell, Flathead County, District 16, Democrat

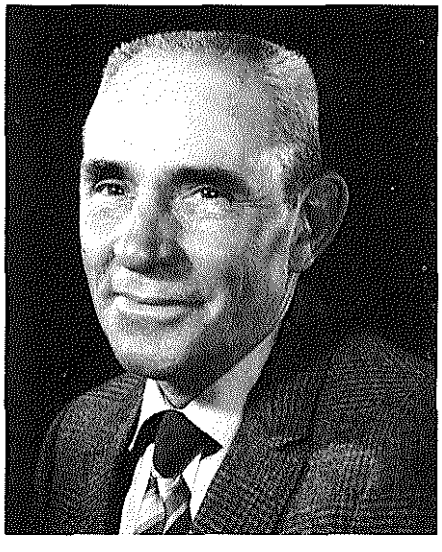
Born December 13. 1930 in Arlington, Massachusetts; arrived in Montana in 1954; educated at University of Montana, UCLA, University of Guadalajara; professor; wife's name is Marilyn; they have two children.



Lyman W. Choate

Miles City, Custer County, District 2, Republican

Born December 3, 1912 in Manhattan; educated at Gallatin County High School; Civil Aeronautics Administration, Aeronautical Inspector School, Washington, D.C.; commercial flying; City Council; wife's name is Lorraine; they have five children.



Max Conover

Broadview, Yellowstone County, District 8, Democrat

Born November 2, 1912 in Colfax, Washington; arrived in Montana in 1916; educated at Broadview High School; farmer-rancher; President of Montana Seed Growers; wife's name is Vera; they have three children.

C. Louise Cross

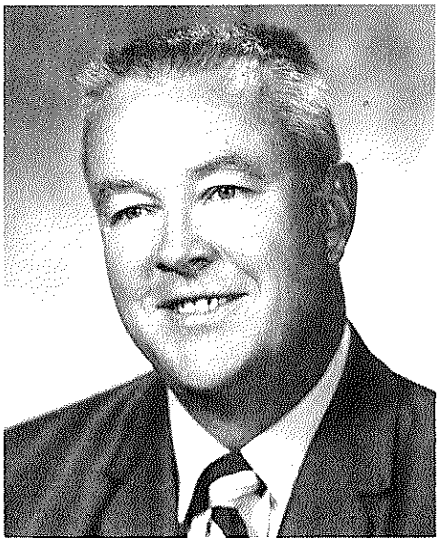
Glendive, Dawson County, District 3, Democrat

Born October 26, 1919 in Columbus; educated at University of Montana, Bread Loaf School of English; homemaker, former teacher; President of Dawson County Democratic Women, 1966-70; husband's name is John M. Cross; they have six children.

Wade Joseph Dahood

Anaconda, Deer-Lodge County, District 19, Republican

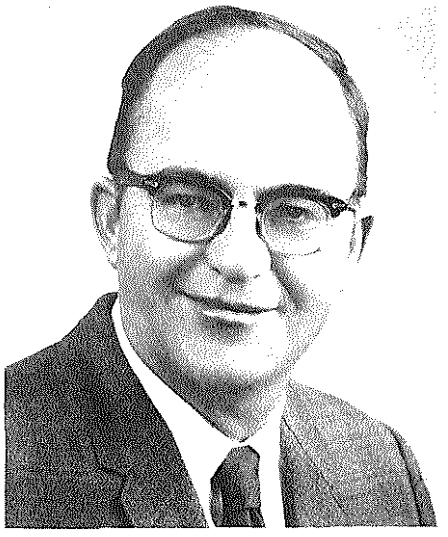
Born December 31, 1927 in Brooklyn, New York; arrived in Montana in 1928; educated at Anaconda High School, University of Montana; attorney; wife's name is Grace; they have four children.



Carl M. Davis

Dillon, Beaverhead County, District 21, Democrat

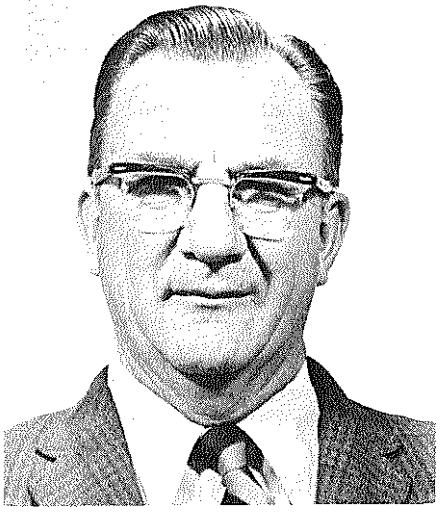
Born November 21, 1922 in Dillon; educated at Beaverhead County High School, Western Montana College, University of Montana; attorney; County Attorney, Beaverhead County; State Welfare Board; Supreme Court Commission on Practice; Governor's Crime Control Commission; City Police Commission; Executive Board, Western Montana College; wife's name is Martha; they have four children.



Douglas Delaney

Grass Range, Fergus County, District 10, Democrat

Born April 30, 1926 in Lewistown; attended high school in Petroleum County; rancher; School District Clerk; County Commissioner; Supervisor of Soil and Water Conservation District; wife's name is Oleta; they have four children.



Maurice Driscoll

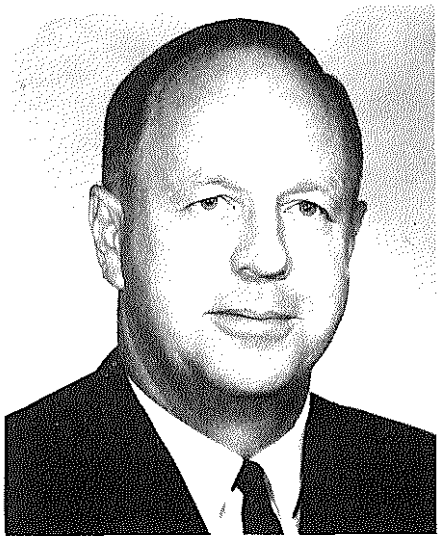
Butte, Silver Bow County, District 20, Democrat

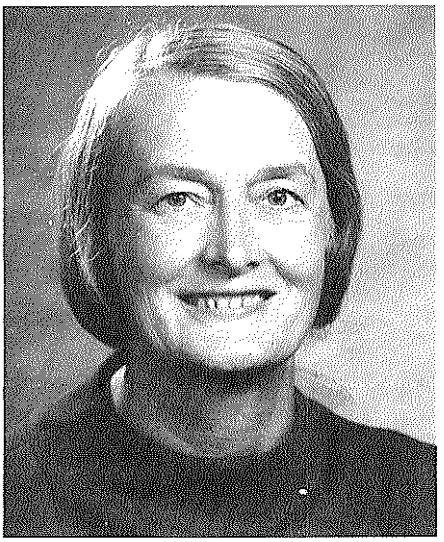
Born December 29, 1914 in Walkerville; educated at University of Montana, Montana Tech, University of Illinois. Columbia University, University of Colorado; Director of Vocational Education; wife's name is Margaret; they have ten children.

Dave Drum

Billings, Yellowstone County, District 8, Republican

Born March 7. 1923 in Rushville, Indiana; arrived in Montana in 1923; educated at Universityof Montana; business and agriculture; House of Representatives, 1967; wife's name is Dorothy; they have three children.





Dorothy Eck

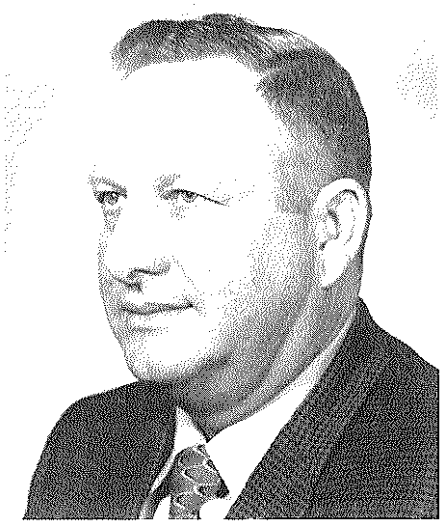
Bozeman, Gallatin County, District 11, Democrat

Born January 23, 1924 in Sequim, Washington; arrived in Montana in 1946; attended Montana State University; housewife, civic leader; husband's name is Hugo; they have two children.

Marian S. Erdmann

Great Falls, Cascade County, District 13, Republican

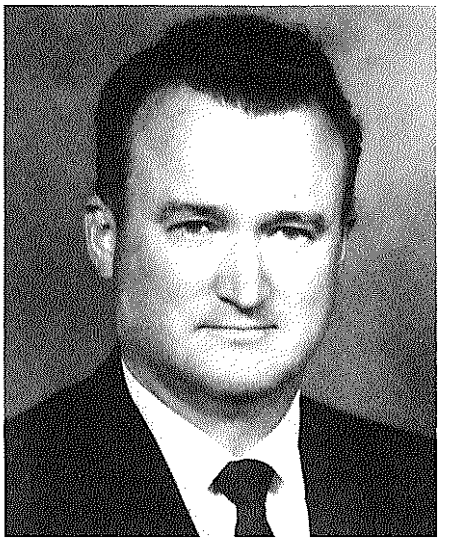
Born January 16, 1912 in Devon; attended Shelby High School, University of Montana; housewife; Mayor; Alderman of Great Falls; widow of Charles E. Erdmann; she has three children.



Leslie "Joe" Eskildsen

Malta, Phillips County, District 5, Democrat

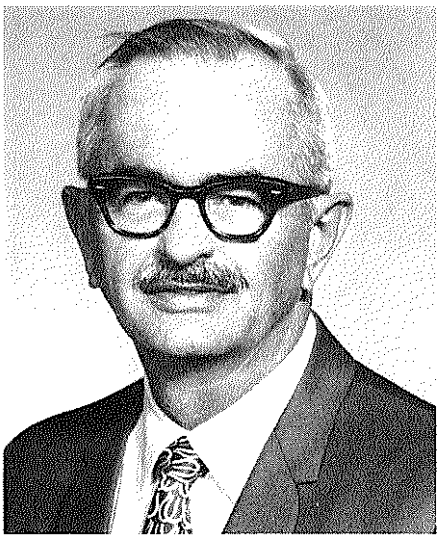
Born March 23, 1922 in Malta; attended Malta High School; farmer; Montana State Legislature, 1957-65; wife's name is Virginia; they have one child.



Mark Etchart

Glasgow, Valley County, District 4, Republican

Born August 31, 1923 in Glasgow; educated at St. Thomas College, Carroll College, Montana State University; farmer-rancher; Montana House of Representatives, 1961-67; Montana Legislative Council, 1963; wife's name is Delores; they have four children.



James R. Felt

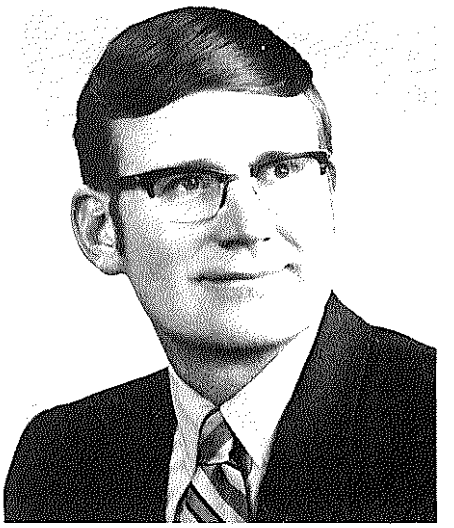
Billings, Yellowstone County, District 8, Republican

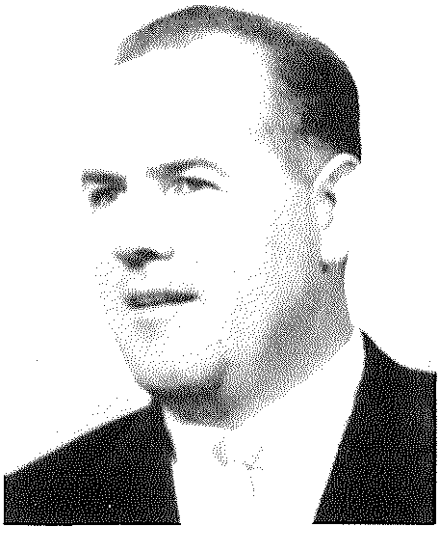
Born November 9. 1920 in Glendive; attended Billings High School, University of Montana, New York University; lawyer; House of Representatives, 1955-60, 1965-68; President of the Yellowstone County Bar Association, 1957; wife's name is Mary; they have seven children.

Donald R. Foster

Lewistown, Fergus County, District 10, Independent

Born April 18, 1937 in Gooding, Idaho; arrived in Montana in 1945; attended Stanford University; honeybee management; wife's name is Rosalie Ann; they have three children.





Noel D. Furlong

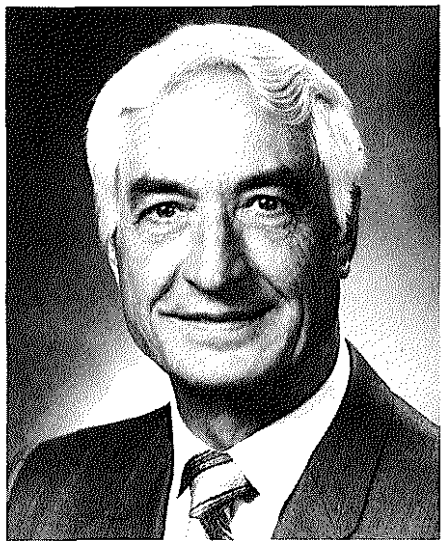
Kalispell, Flathead County, District 16, Democrat

Born February 14, 1927 in Chester; attended Chester High School, University of Montana; teacher; Western District MEA, 1st Vice President; MEA Board of Directors; NEA Constitutional Convention Delegate; wife's name is Louise; they have five children.

James C. Garlington

Missoula, Missoula County, District 18, Republican

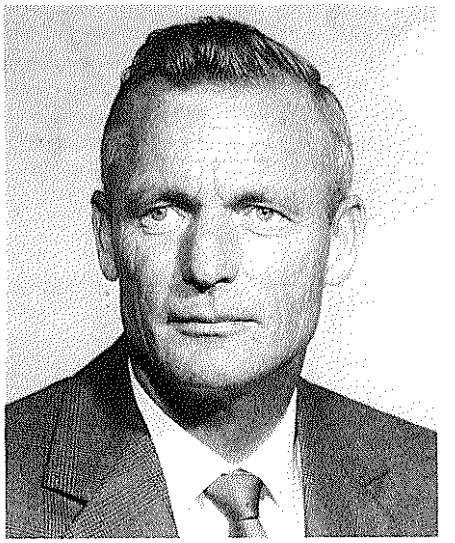
Born March 24, 1908 in Missoula; attended Missoula High School, University of Montana; attorney; School Trustee; City Attorney; wife's name is Nancy; they have three children.



Leo Graybill, Jr.

Great Falls, Cascade County, District 13, Democrat

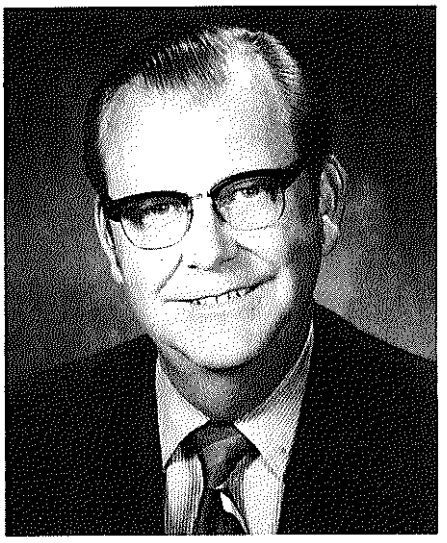
Born March 28, 1924 in Belt; attended Great Falls High School, Yale University, University of Montana Law School; attorney; Great Falls International Airport Commission Chairman; wife's name is Sherlee; they have three children.



E.S. ''Erv'' Gysler

Fort Benton, Chouteau County, District 14, Republican

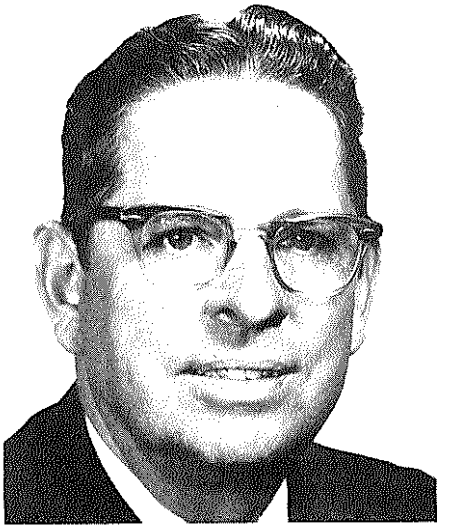
Born August 27, 1923 in Plentywood; attended Hinsdale High School, College of William and Mary, University of Florida, Montana State University; President of Gysler Manufacturing Company; wife's name is Lois; they have three children.



Otto T. Habedank

Sidney, Richland County, District 3, Republican

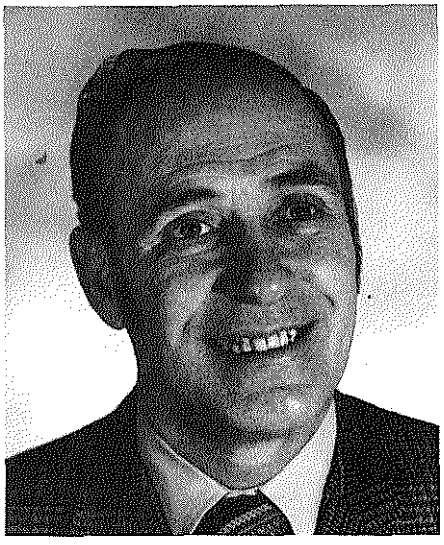
Born October 8. 1917 in Bowdoin; educated at Billings Polytechnic, LaSalle Extension University; lawyer; Member Montana Constitutional Revision Commission, 1969-70; wife's name is Arleen; they have four children.



R.S. (Bob) Hanson

Polson, Lake County, District 17, Independent

Born December 22, 1912 in Polson; educated at Polson High School, Montana State College; retired; Mayor of Ronan; Montana Highway Safety Board; wife's name is Mercedes; they have one child.



Rod Hanson

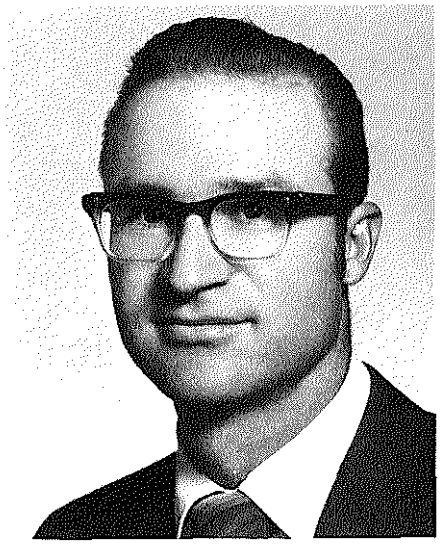
Fairfield, Teton County, District 15, Democrat

Born September 1, 1920 in Highwood; attended Highwood High School, Montana State University; manager of Sun River Electric Cooperative; Sidney Public School Board; Fairfield School Board; wife's name is Eunice; they have four children.

Gene Harbaugh

Poplar, Roosevelt County, District 4, Democrat

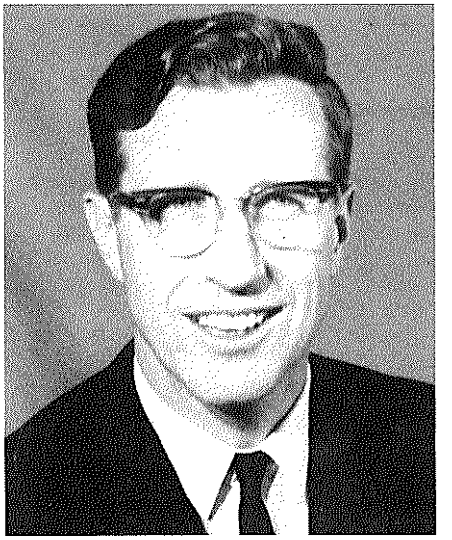
Born September 8, 1936 in Miles City; educated at Whitworth College, American University of Beirut, Dubuque Theological Seminary, LaSalle Extension University; minister; wife's name is Ellen May; they have four children.



Paul K. Harlow

Thompson Falls, Sanders County, District 23, Democrat

Born August 25, 1904 in Okobojo, South Dakota; arrived in Montana in 191 1; attended Stanford University; teacher and farmer; Legislative Representative; School Board; Chairman, Green Mountain Soil and Water Conservation District; wife's name is Margaret; they have two children.



George Harper

Helena, Lewis and Clark County, District 12, Independent

Born July 4, 1923 in Salem, Ohio; arrived in Montana in 1954; educated at Birmingham Southern College, Duke University, Northwestern University, Garrett School of Theology; clergyman; wife's name is Dorothy; they have five children.

Daniel W. Harrington

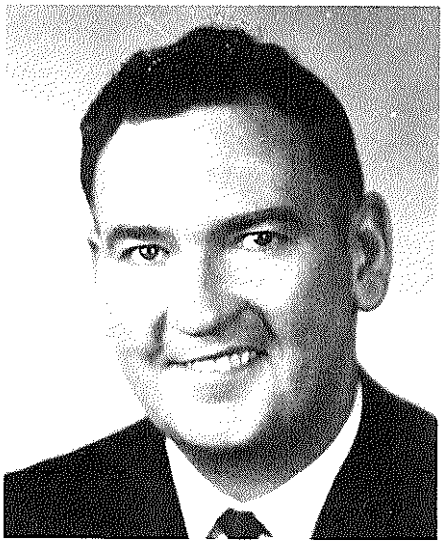
Butte, Silver Bow County, District 20, Democrat

Born February 12. 1938 in Butte; attended Butte Central High School, Montana Tech, Western Montana College; teacher; Vice Chairman, Democratic Central Committee; wife's name is Patricia; they have one child.

George B. Heliker

Missoula, Missoula County, District 18, Democrat

Born October 18, 1919 in West Bloomfield. Michigan; arrived in Montana in 1955; attended Walled Lake High School, Walled Lake, Michigan; University of Michigan; professor of economics; wife's name is Betty; they have two children.



David L. Holland

Butte, Silver Bow County, District 20, Democrat

Born June 27. 1924 in Butte; attended Butte High School, Montana Tech, College of Idaho. University of Montana Law School; attorney; Assistant Attorney General; City Attorney; Chief Deputy County Attorney; U.S. Commissioner; widower of Mary Lou Murphy; he has six children,

Arnold W. Jacobsen

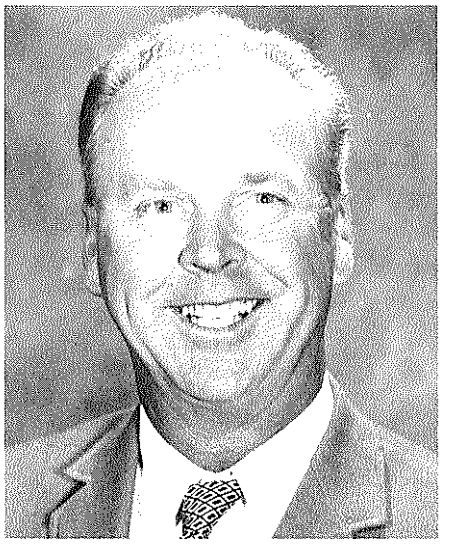
Whitefish, Flathead County, District 16, Republican

Born July 4. 1913 in Dilly, Oregon; arrived in Montana in 1915; attended Butte Business College; merchant; wife's name is Lois; they have four children.

George H. James

Libby, Lincoln County, District 23, Democrat

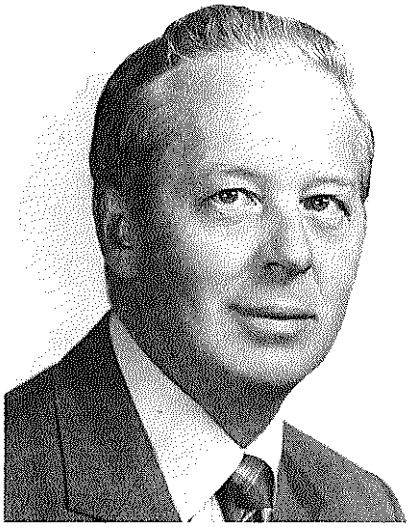
Born February 22, 1913 in Chicago, Illinois; arrived in Montana in 1952; attended Glenbard High School, Glen Ellyn, Illinois; Elmhurst College, Elmhurst. Illinois; University of Chicago, Chicago, Illinois; retired; Libby School Board; Lincoln County Library Board; wife's name is Roberta; they have two children.



Torrey B. Johnson

Busby, Big Horn County, District 1, Republican

Born December 6, 1916 in Ucross, Wyoming; arrived in Montana in 1917; educated at University of Montana, University of Chicago, livestock rancher; Clerk of School District; wife's name is Adrienne Marye; they have five children.



Thomas F. Joyce

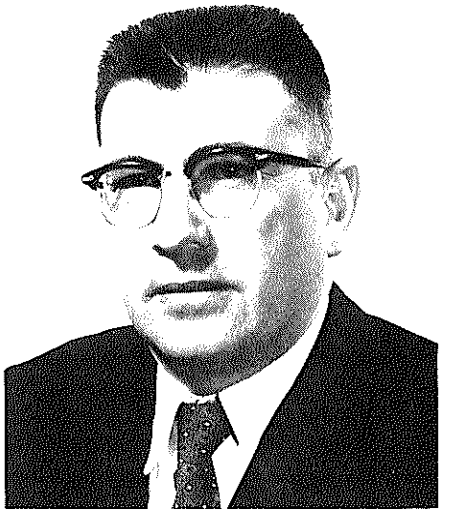
Butte, Silver Bow County, District 20, Democrat

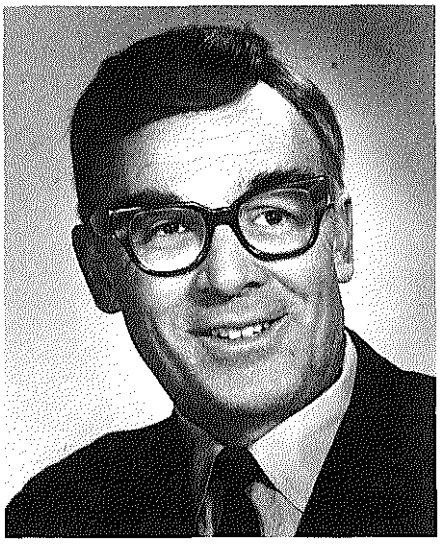
Born April 18, 1923 in Anaconda; attended Carroll College, University of Oregon, University of Montana Law School; attorney; Assistant Attorney General; Deputy County Attorney, Silver Bow County; Butte City Attorney; wife's name is Dorothy; they have twelve children.

Arthur Walton Kamhoot

Forsyth, Rosebud County, District 6, Republican

Born April 25, 1912 in Custer County; semi-retired; Forsyth City Council; wife's name is Ethel Baringer; they have four children.





Robert Lee Kelleher

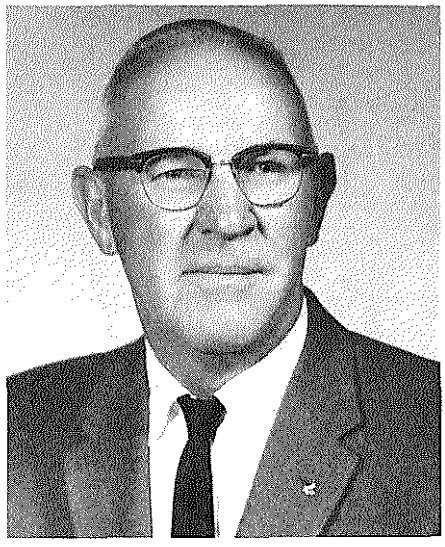
Billings, Yellowstone County, District 8, Democrat

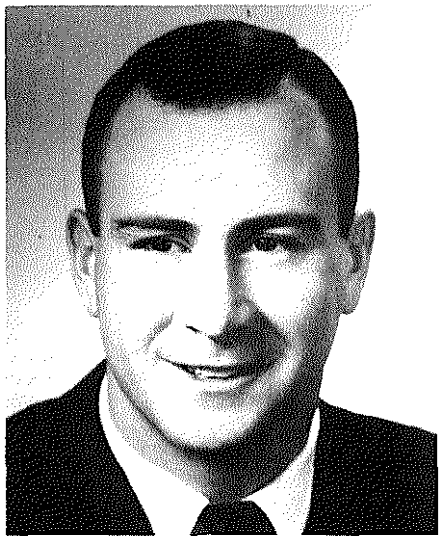
Born March 30. 1923 in Oak Park, Illinois; arrived in Montana in 1952; educated at Carmel College, Catholic University; lawyer; wife's name is Geraldine; they have six children.

John H. Leuthold

Molt, Stillwater County, District 7, Republican

Born May 26, 1907 in Chicago, Illinois; arrived in Montana in 1912; attended Columbus High School; rancher; Montana House of Representatives, 1951-67; wife's name is Grace; they have three children.





Jerome T. Loendorf

Helena, Lewis and Clark County, District 12, Republican

Born June 5, 1939 in Wolf Point; attended Carroll College, University of Montana; attorney; County Attorney; unmarried.

Peter Lorello

Anaconda, Deer Lodge County, District 19, Democrat

Born March 12. 1929 in Anaconda; attended Anconda High School; bar-restaurant owner; wife's name is Joyce; they have seven children.

Charles H. Mahoney

Clancy, Jefferson County, District 12, Independent Republican

Born June 12. 1906 in St. Paul, Minnesota; arrived in Montana in 1907; attended local schools; retired rancher; Montana State Senate; Governor Ford's Reorganization and Economy Committee; Governor Aronson's Taxation and Education Committee; wife's name is Alta; they have one child.

Rachell K. Mansfield

Geyser, Chouteau County, District 14, Democrat

Born August 18, 1916 in Great Falls; attended Geraldine High School, College of Great Falls, University of Montana; teacher; State President of Congress of Parents and Teachers, 1966-68; husband's name is James P. Mansfield, Jr.; they have four children.

Fred J. Martin

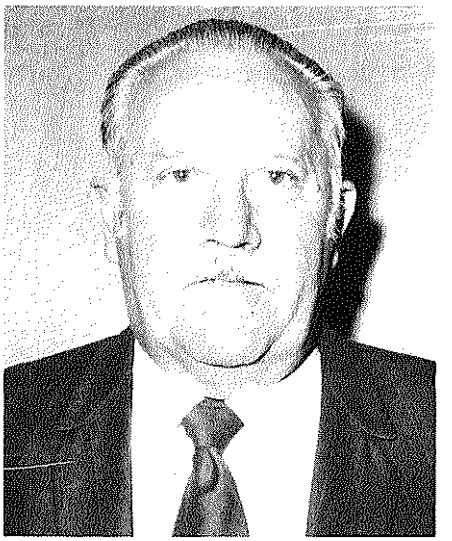
Livingston, Park County, District 11, Republican

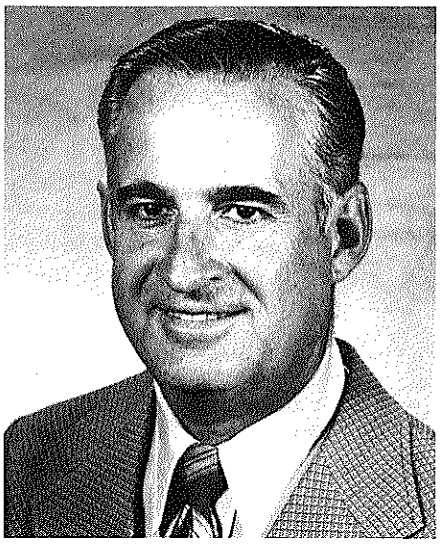
Born January 30. 1904 in Butte; educated at Butte High School, University of Montana; editor of Livingston Enterprise and Park County News; wife's name is Dorothy; they have two children.

Joseph H. McCarvel

Anaconda. Deer Lodge County, District 19, Democrat

Born December 19, 1913 in Anaconda; educated at Anaconda High School, Carroll College, Montana State College, College of Great Falls; locomotive engineer and home bakery owner; Anaconda School Board; wife's name is Ruth; they have eight children.

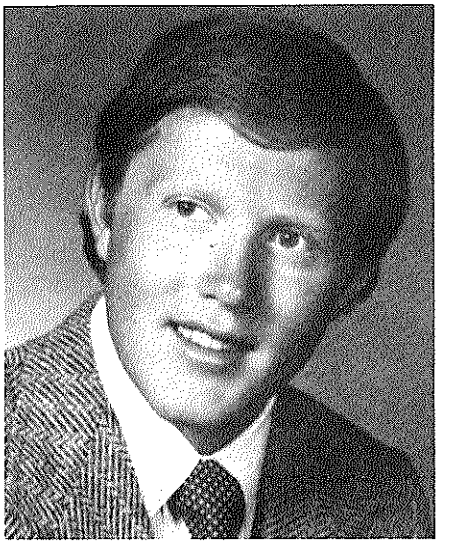




Russell C. McDonough

Glendive, Dawson County, District 3, Democrat

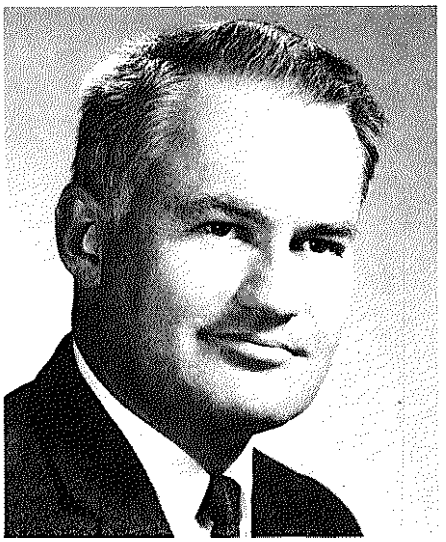
Born December 7, 1924 in Glendive; educated at Dawson College, Montana State University, George Washington University; lawyer; City Attorney; County Attorney; Chairman of City-County Planning Board; wife's name is Dora Jean; they have six children.



Mike McKeon

Anaconda, Deerl Lodge County, District 19, Democrat

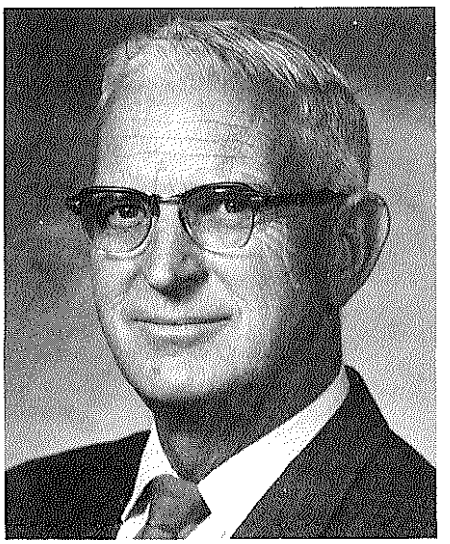
Born June 17. 1946 in Anaconda; educated at University of Notre Dame, University of Montana Law School; attorney; unmarried.



Charles B.(C.B.) McNeil

Poison, Lake County, District 17, Republican

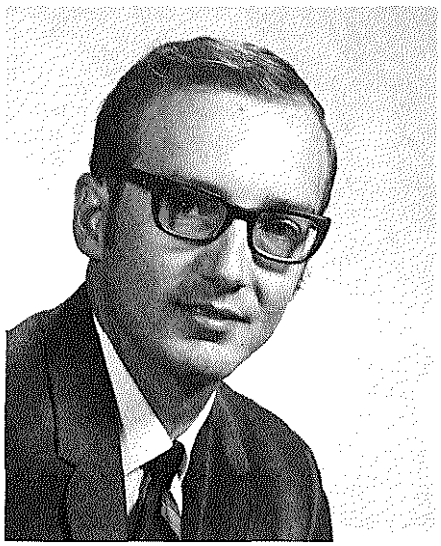
Born February 17, 1937 in Anaconda; educated at Anaconda High School, University of Alaska, University of Montana Law School; attorney and engineer; wife's name is JoAnn; they have two children.



J. Mason Melvin

Bozeman, Gallatin County, District 11, Democrat

Born June 10. 1914 in Portal, North Dakota; arrived in Montana in 1915; educated at University of Montana; FBI National Academy; retired special agent, FBI; Sheriff of Valley County; wife's name is Olive; they have two children.



Lyle R. Monroe, II

Great Falls, Cascade County, District 13, Democrat

Born November 7, 1945 in Great Falls; educated at Great Falls Central High School, Assumption College, Richardton, N.D.; College of Great Falls; social service; wife's name is Laura Jean; they have one child.

Marshall Murray

Kalispell, Flathead County, District 16, Republican

Born August 29, 1932 in Eureka; attended Flathead High School, University of Montana, Universityof Montana Law School; attorney; Montana Legislature. 1961, 1963; Kalispell City Attorney; wife's name is Joan; they have three children.

Robert B. Noble

Great Falls, Cascade County, District 13, Republican

Born March 31, 1907 in Great Falls; educated at Great Falls Public Schools, Montana State College, merchant; School Board, 1944-65; wife's name is Madella; they have five children.

Richard A. Nutting

Silesia, Carbon County, District?, Republican

Born January 12, 1922 in Red Lodge; educated at Billings Senior High School, University of Montana; farmer-rancher; former legislator; wife's name is Jeanne; they have three children.

Katie Payne

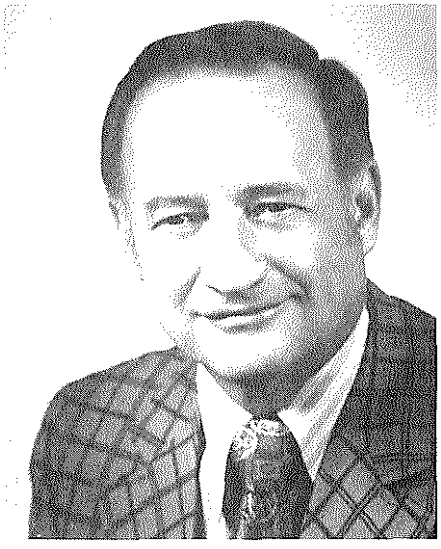
Missoula, Missoula County, District 18, Republican

Born June 6, 1922 in Elizabethton. Tennessee; arrived in Montana in 1951; attended Elizabethton High School; Tennessee Wesleyan College, Athens, Tennessee; Vanderbilt University, Nashville, Tennessee; housewife; Governor's Committee on Mental Health; State Hospital Medical and Related Facilities Advisory Council; Zoning Committee Chairman; City Council; husband's name is Thomas; they have two children.

Catherine Howell Pemberton

Broadus, Powder River County, District 1, Republican

Born May 7. 1909 in Worland, **Wyoming; arrived in Montana in 1930; attended University of Wyoming; wife of cattle rancher; independent news writer; Republican State Committeewoman,** 1949-69; **husband's name is Lawrence; they have two children.**



Donald Rebal

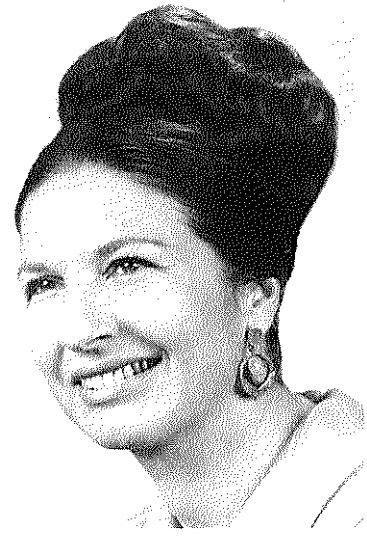
Great Falls, Cascade County, District 13, Democrat

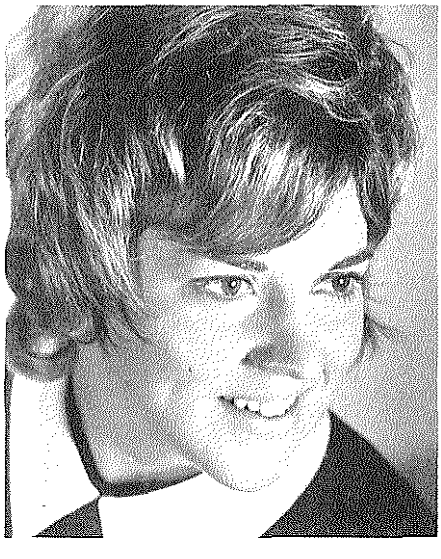
Born May 19, 1921 in Hilger; attended Great Falls High School, University of Montana; automobile dealer; wife's name is Virginia; they have three children.

Arlyne E. Reichert

Great Falls, Cascade County District 13, Democrat

Born January 14. 1926 in Buffalo, New York; arrived in Montana in 1945; attended University of Buffalo, New York; McLaughlin Research Institute; research assistant and television reporter; Great Falls Public Library Board of Trustees; Montana Hospital and Long-Term Care Facility Advisory Council; widow; she has five children.





Mae Nan Robinson

Missoula, Missoula County, District 18, Republican

Born June 1, 1947 in Mineral Wells, Texas; arrived in Montana in 1967; attended University of Montana; graduate student; widow.

Richard B. Roeder

Bozeman, Gallatin County, District 11, Democrat

Born August 23, 1930 in Schuylkill Haven, Pennsylvania; arrived in Montana in 1957; educated at Swarthmore College, University of Pennsylvania; professor of history at Montana State University; wife's name is Janet; they have three children.

George W. Rollins

Billings, Yellowstone County, District 8, Democrat

Born June 2, 1916 in Cumberland, Wyoming; arrived in Montana in 1953; educated at University of Wyoming, Omaha University, University of Utah; history professor at Eastern Montana College; Board of Billings Public Library; wife's name is Beverly Ruth; they have eight children.

Miles Romney

Hamilton, Ravalli County, District 22, Democrat

Born December 6, 1900 in Hamilton; educated at Hamilton High School, U.S. Military Academy, George Washington University, University of Montana; newspaper publisher; wife's name is Ruth; they have no children.

M. Sterling Rygg

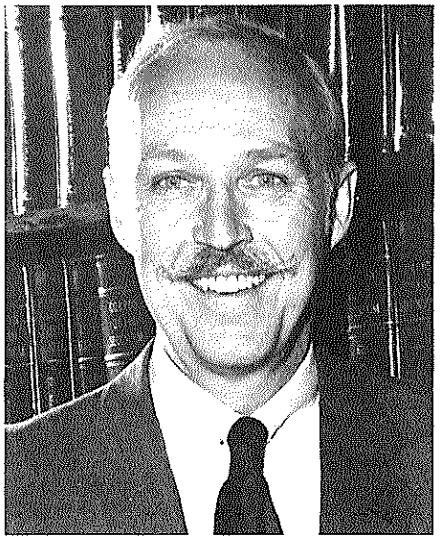
Kalispell, Flathead County, District 16, Republican

Born December 26, 1914 in Warren, Minnesota; arrived in Montana in 1940; attended Fairdale High School, Fairdale, N.D.; Concordia College, Moorhead, Minnesota; automobile dealer; State Representative, Montana Legislature, 1960.68; wife's name is Inga; they have three children.

Donald A. Scanlin

Billings, Yellowstone County, District 8, Democrat

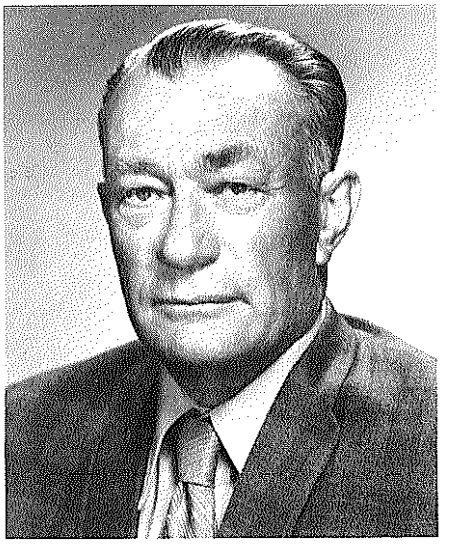
Born August 4. 1914in Bangor, Maine; arrived in Montana in 1949; educated at University of Maine, Rocky Mountain College; instructor of adult basic education; wife's name is Millicent; they have four children.



John M. Schiltz

Billings, Yellowstone County, District 8, Democrat

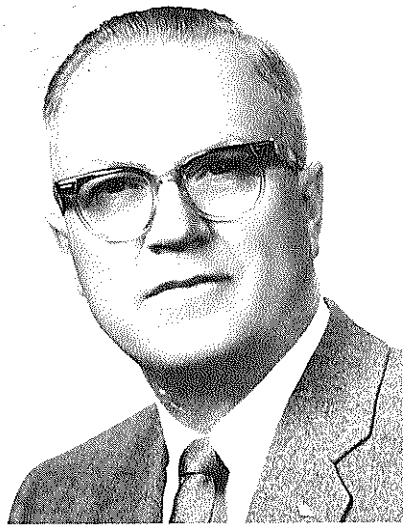
Born May 29, 1919 in Kremlin; attended University of Montana; lawyer; Montana Legislature, 1951, 1953; wife's name is Edna; they have four children.



Henry L. Siderius

Kalispell, Flathead County, District 16, Democrat

Born September 30, 1910 in Kalispell; educated at Demersville School; farmer; Demersville School Board; Bonneville Power Advisory Board; wife's name is Josephine; they have four children.



Clark E. Simon

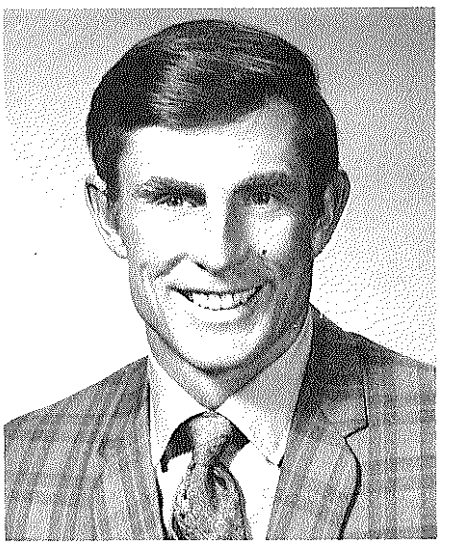
Billings, Yellowstone County, District 8, Republican

Born July 1, 1903 in Jamaica, Iowa; arrived in Montana in 1904; educated at correspondence school in accounting and corporation structure; merchant investments, ranching; Montana Board of Pardons; wife's name is Muriel; they have two children.

Carman Skari

Chester, Liberty County, District 14, Democrat

Born June 14, 1932 in Petersberg. North Dakota; arrived in Montana in 1947; attended Chester High School. Northern Montana College, University of Montana; farmer-rancher; Liberty County Arts Council; P.T.A. President; Soil Conservation District Supervisor; wife's name is Mora; they have two children.



M. Lynn Sparks

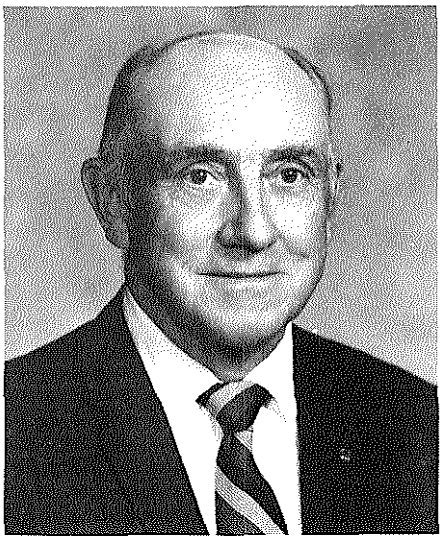
Butte, Silver Bow County, District 20, Democrat

Born December 19, 1942 in Butte; attended Butte Public High School, University of Montana; public relations; unmarried.

Lucile Speer

Missoula, Missoula County, District 18, Democrat

Born January 7, 1899 in Branch County, Michigan; arrived in Montana in 1919; attended University of Montana, University of Chicago; retired; unmarried.



R.J. Studer

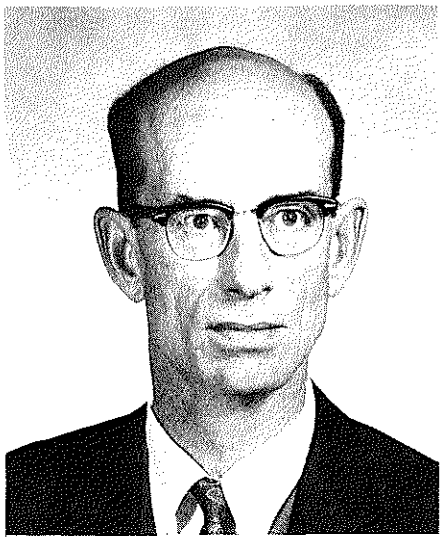
Billings, Yellowstone County, District 8, Republican

Born March 22, 1903 in Iowa; arrived in Montana in 1939; educated at University of Minnesota; contractor, highway and utility construction; wife's name is Cecilia Ann; they have four children.

Veronica Sullivan

Butte, Silver Bow County, District 20, Democrat

Born November 18, 191 1 in Butte; educated at St. Mary's Girls' Central High, Butte Business College; housewife; husband's name is John; they have no children.



William H. Swanberg

Great Fails, Cascade County, District 13, Democrat

Born August 29, 1916 in Great Falls; attended Great Falls High School, University of Montana; attorney; Alderman, Mayor of Great Falls; wife's name is Marie Louise; they have seven children.

John H. Toole

Missoula, Missoula County, District 18, Republican

Born June 1, 1918 in Missoula; educated at University of Montana; former owner of Toole & Easter Co.; House of Representatives, 1953-54; Montana Crime Commission; Columbia River Compact Commission; City-County Planning Board; City Park Board; wife's name is Barbara; they have two children.

Edith Van Buskirk

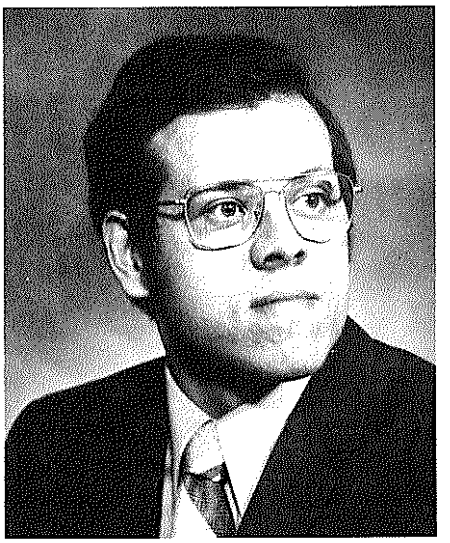
Havre, Hill County, District 14, Democrat

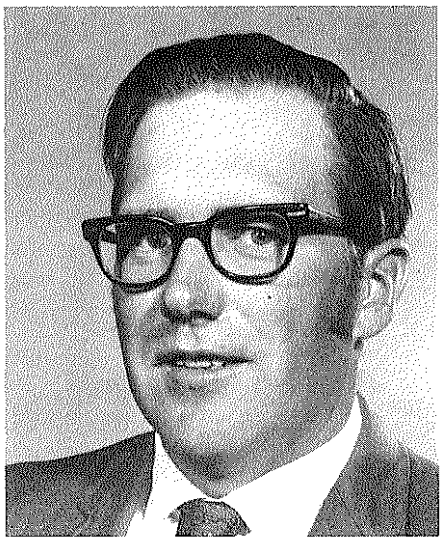
Born October 25, 1919 in Havre; educated at Havre Public High School, Northern Montana College; housewife; husband's name is Warren; they have five children.

Robert James Vermillion

Shelby, Toole County, District 15, Democrat

Born March 23, 1939 in Wallace, Idaho; arrived in Montana in 1962; attended Wallace High School, University of Idaho; radio announcer; wife's name is Jeanne Naoma; they have one child.

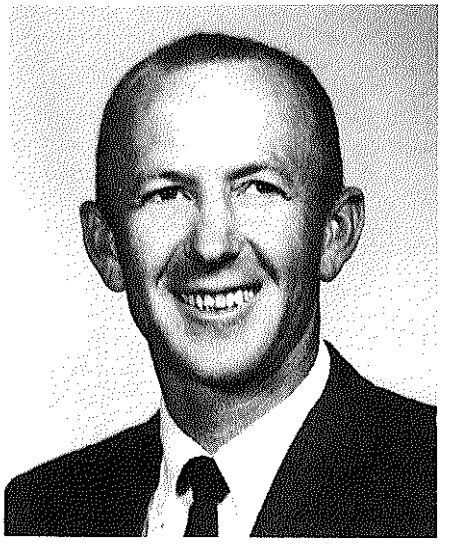




Roger A. Wagner

Nashua, Valley County, District 4, Democrat

Born May 12, 1942 in St. Joseph, Minnesota; arrived in Montana in 1942; attended St. John's University; farmer-rancher; unmarried.



Jack K. Ward

Hamilton, Ravalli County, District 22, Republican

Born March 22, 1932 in Hysham; educated at Hysham High School, Montana State University, Washington State University; veterinarian; wife's name is Della; they have four children.

Margaret S. Warden

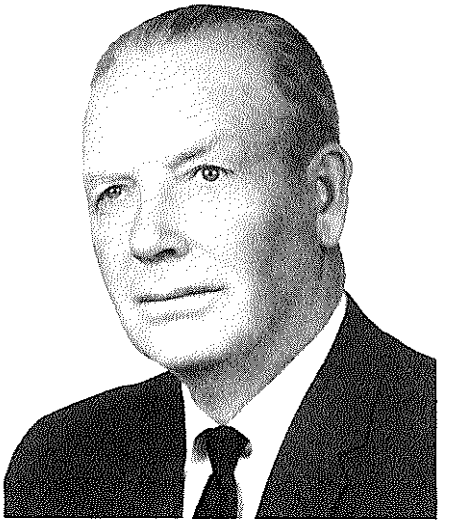
Great Falls, Cascade County, District 13, Democrat

Born July 18, 1917 in Glasgow; attended Great Falls High School, Great Falls Commercial College; housewife; Chairman of Great Falls Public Library Board of Trustees; husband's name is R.D. Warden; they have two children.

Archie O. Wilson

Hysham, Treasure County, District 6, Republican

Born July 18, 1909 in Forsyth; **attended local schools; rancher; Montana Livestock Commission; wife's name is Ruth; they have two children.**

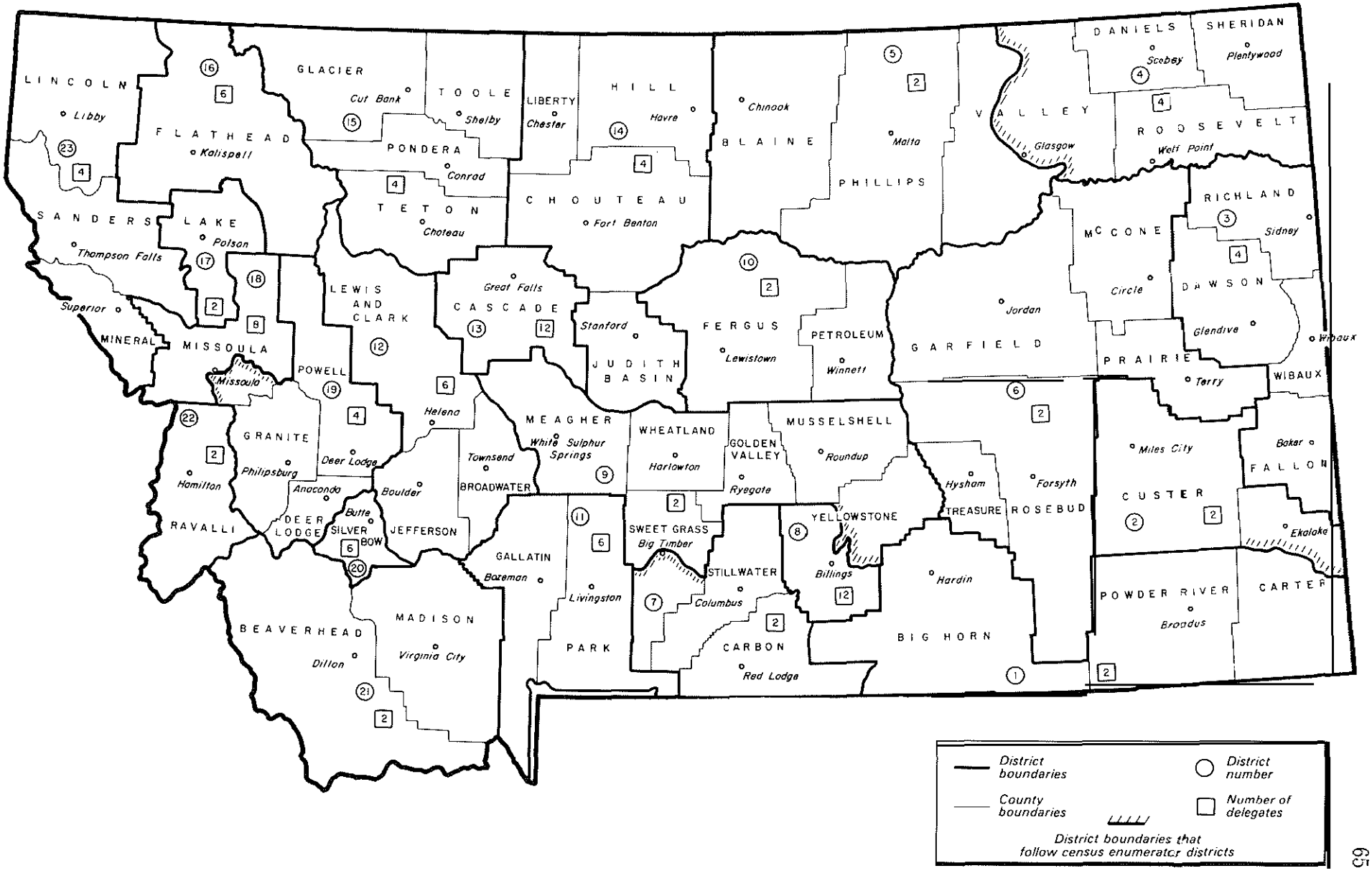


Robert F. Woodmansey

Great Falls, Cascade County, District 13, Republican

Born September 9. 1936 in Great Falls; attended High-**wood High School, Montana State University; teacher; wife's name is Lois; they have three children.**

—Constitutional Convention Delegate Districts—



CONVENTION DELEGATES BY DISTRICT

DISTRICT NO. 1, Counties of Big Horn, Powder River, and Carter less the Ekalaka census enumerator division

Torrey B. Johnson
Catherine Pemberton

DISTRICT NO. 2, County of Custer and the Ekalaka census enumerator division of Carter

Bruce M. Brown
Lyman W. Choate

DISTRICT NO. 3, Counties of Richland, Dawson, Wibaux, and Fallon

Oscar L. Anderson
C. Louise Cross
Otto T. Habedank
Russell C. McDonough

DISTRICTNO. 4, Counties of Sheridan, Roosevelt, Daniels, and Valley less the Fort Peck and Hinsdale census enumerator divisions

Magnus Aasheim
Mark Etchart
Gene Harbaugh
Roger A. Wagner

DISTRICT NO. 5, Counties of Blaine and Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley

Lloyd Barnard
Leslie "Joe" Eskildsen

DISTRICT NO. 6, Counties of Garfield, Rosebud, McCone, Prairie, and Treasure

A.W. Kamhoot
Archie 0. Wilson

DISTRICT NO. 7, Counties of Stillwater and Carbon and south of the Yellowstone census enumerator division of Sweet Grass

John H. Leuthold
Richard A. Nutting

DISTRICT NO. 8, County of Yellowstone less the Buffalo Creek census enumerator division, the Shephard enumerator division, and the Huntley Project census enumerator division

Chet Blaylock
Jean M. Bowman
Jerome J. Cate
Max Conover
Dave Drum
James R. Felt
Robert Lee Kelleher
George W. Rollins
Don Scanlin
John M. Schiltz
Clark E. Simon
R.J. Studer

DISTRICTNO. 9, Counties of Meagher, Wheatland, Golden Valley, and Muss&hell and north of the Yellowstone census enumerator division of Sweet Grass, the Buffalo Creek census enumerator division, the Huntley Project enumerator division, and the Shepherd census enumerator division of Yellowstone

Thomas M. Ask
Don E. Belcher

DISTRICTNO. 10, Counties of Fergus and Petroleum

Douglas Delaney
Donald R. Foster

DISTRICT NO. **11,** Counties of Gallatin and Park

Grace C. Bates
Ben E. Berg, Jr.
Dorothy Eck
Fred J. Martin
J. Mason Melvin
Richard B. Roeder

DISTRICT NO. 12, Counties of Broadwater, Jefferson, and Lewis and Clark

Betty Babcock
Geoffrey L. Brazier
William A. Burkhardt
George Harper
Jerome T. Loendorf
Charles H. Mahoney

DISTRICT NO. 13, County of Cascade

Harold Arbanas
Wm. H. (Bill) Artz
Virginia H. Blend
Marian S. Erdmann
Leo Graybill, Jr.
Lyle R. Monroe
Robert B. (Bob) Noble
Donald Rebal
Arlyne E. Reichert
William H. Swanberg
Margaret S. Warden
Robert F. Woodmansey

DISTRICT NO. 14, Counties of Hill, Chouteau, Judith Basin, and Liberty

E.S. "Erv" Gysler
Rachel1 K. Mansfield
Carman Skari
Edith Van Buskirk

DISTRICT NO. 15, Counties of Glacier, Toole, Pondera, and Teton

Cedor B. Aronow
E.M. Berthelson
Rod Hanson
Robert Vermillion

DISTRICT NO. 16, County of Flathead

Richard J. (Rick) Champoux
Noel D. Furlong
Arnold W. Jacobsen
Marshall Murray
Sterling Rygg
Henry L. Siderius

DISTRICT NO. 17, County of Lake

R.S. "Bob" Hanson
Charles B. McNeil

DISTRICT NO. 18, County of Missoula less the Bonner-Clinton census enumerator division

Daphne Bugbee
Bob Campbell
J.C. Garlington
George B. Heliker
Katie Payne
Mae Nan Robinson
Lucile Speer
John H. Toole

DISTRICT NO. **19,** Counties of Powell, Deer Lodge, and Granite and the Bonner-Clinton census enumerator division of Missoula

Wade J. Dahood
Peter "Pete" Lore110
Joseph H. McCarvel
Mike McKeon

DISTRICT NO. 20, County of Silver Bow

Maurice Driscoll
Dan W. Harrington
David L. Holland
Thomas F. Joyce
M. Lynn Sparks
Veronica Sullivan

DISTRICT NO. 21, Counties of Madison and Beaverhead

John H. Anderson, Jr.
Carl M. Davis

DISTRICT NO. 22, County of Ravalli

Miles Romney
Jack K. Ward

DISTRICT NO. 23, Counties of Mineral, Sanders, and Lincoln

Franklin Arness
Marjorie Cain
Paul K. Harlow
George H. James

CONVENTION STAFF

Name	Position
Acher, Rosemary	Journal Clerk
Applegate, Rick	Bill of Rights - Research Analyst
Barber, Roger	Revenue and Finance - Research Analyst
Baucus, Max	Committee Coordinator
Bechtel, Richard	Legislative - Research Analyst
Beck, Karen	Executive Research Analyst
Brown, Al	Payroll Clerk
Berner, Alice	Floor Leaders and Rules Committee Secretary
Burr, Dennis	Revenue and Finance - Consultant
Carson, Bartley	Executive Director Secretary
Christiansen, Dee	MTST Typist
Corbin, Darlene	Bill of Rights Secretary
Cromwell, Gardner	Style and Drafting-Consultant
Dowling, Diana	Research Coordinator; Style and Drafting-Counsel
Durkee, Marie	Reporter
Fallon, Jean	Printing Clerk
Fontana, Juanita	Librarian
Geier, Jean	Typist-Stenographer
Grady, James	General Government and Constitutional Amendment Research Analyst
Hanson, John	Chief Clerk
Harris, Dale	Executive Director
Harrison, Elizabeth	Public Information Director
Hilger, Bev	Journal Typist
Holliday, Karen	Revenue and Finance Secretary
Holloron, Jerry	Local Government - Research Analyst
Jakovac, Betty	Chief Stenographer
Jones, Jane	MTST Typist
Kelly, Karen	Chief Clerk's Secretary
Kinsey, Sylvia	Public Health, Welfare and Labor Secretary
Kunnary, Mary	Typist-Stenographer
Lester, Barbara	Executive Committee Secretary
Loman, Ray	Sergeant at Arms
McCarthy, Ellen	Judiciary Secretary
McGuinn, Mel	First Vice President's Secretary
Moody, Roberta	President's Secretary
Muckelston, Sandra	Judiciary Research Analyst; Style and Drafting-Counsel
Murphy, Bobbie	General Government and Constitutional Amendment Secretary
Nelson, Betty	Style and Drafting Secretary
Neyerhuis, Warren	Supply Clerk
Phillips, Sue	Public Information Typist
Pratt, Judith	Legislative Committee Secretary
Reid, Ellen	Typist-Stenographer
Romine, Pat	Local Government Secretary
Rung, Elaine	Natural Resources and Agriculture Secretary
Saeman, Janice	MTST Typist
Seeley, Eve	Assistant Stenographer
Sievers, Bruce	Education and Public Lands Research Analyst
Spall, Richard	Public Health, Welfare and Labor Research Analyst
Smith, Ed	Reading Clerk
Smith, Gail	MTST Typist

Sullivan, Charles	Natural Resources and Agriculture · Research Analyst
Sullivan, Louise	Typist-Stenographer
Tyanich, Pat	Public Information Secretary
Watson, Sally	Education and Public Lands Secretary
Wilson, Rosella	Assistant Journal Clerk
ZurMuehlen, Dorothy	District Vice Presidents' Secretary

INTERNS

Bowlds, Mark	Public Information
Buzzas, Robert J. (Bob)	Delegate Katie Payne
Callahan, Maureen	Public Information and Education and Public Lands
Chvatal, Pat	Local Government
Crawford, John F.	Executive
Darlington, Holly	Public Information
Earley, Mona J.	Natural Resources and Agriculture
Graham, Gary	President Leo Graybill
Gray, Randall	Revenue and Finance
Hauf, Kandice J.	Public Health, Welfare and Labor
Jackson, Kayle	Chief Clerk
Jersey, David	Natural Resources and Agriculture
Jersey, Lee Ann	Natural Resources and Agriculture
Johnson, Blake	Delegates Drum and Felt and Revenue and Finance
Jones, Steve	Legislative
Krueger, Kurt	Dale Harris and Max Baucus
Larum, Michael	Delegate Mansfield and Bill of Rights
Leary, Dodge	Judicial
Lien, Nancy	Public Information and Education and Public Lands
Mahoney, George	Delegate Heliker and Public Health, Welfare and Labor
Murphy, John	Delegate John Toole and Education and Public Lands
Paul, George	Bill of Rights
Perryman, Ray	Public Information
Rupp, Jeffrey K.	Education and Public Lands
Shannon, Edwin	Delegate Mike McKeon and Revenue and Finance
Skaggs, Robert (Bob)	General Government and Constitutional Amendment
Sullivan, Katherine	Public Information and Judiciary
Walchuk, Don	Dale Harris

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Memorandum Number *7: Selected Bibliography*
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Study Number 11: *Suffrage and Elections*
Study Number 12: *The Legislature*
Study Number 13: *The Executive*
Study Number 14: *The Judiciary*
Study Number 15: *Taxation and Finance*
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Report Number 6: *Natural Resources and Agriculture*
Report Number 7: *Revenue and Finance*
Report Number 8: *Bill of Rights*
Report Number 9: *Public Health, Welfare, Labor and Industry*
Report Number 10: *Education and Public Lands*
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Committee Proposal Number 5: Judiciary
Committee Proposal Number 6: *Natural Resources and Agriculture*
Committee Proposal Number 7: Revenue *and Finance*
Committee Proposal Number 8: *Bill of Rights*

Committee Proposal Number 9: *Public Health, Welfare, Labor and Industry*
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DELEGATE PROPOSALS

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

DELEGATE PROPCSAI NC. 1

DATE INTRODUCED: JAN. 20, 1972

Referred tc Natural Rescurces and Agriculture Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTION ESTABLISHING PUBLIC POLICY ON ENVIRCNMENTAL QUALITY.

BE IT PROPOSED EY THE CONSTITUTIONAL CONVENTICN CF THE STATE CF MONTANA:

Section 1. There shall be a new Constituticnal Secticn to provide as follcws:

"Section ___. ENVIRONMENTAL QUALITY. The public policy of the State of Montana and a matter of statewide concern is tc develop and maintain a high quality envircnment in order to assure for the people of the state, nom and in the future, clean air, pure water, freedcm from excessive ncise, and enjoyment of scenic, histcric, natural, and aesthetic values.

The legislature shall prcvide by law for the implemectaticn and enforcement cf this public policy.

Each person has the right to a healthful environment and each person has the responsibility to ccntribute to the preservation and enhancement of the environment.

Each person may enfcrce the right to a healthful envircnment against any party, governmental cr private, through appropriate legal prccredings subject to reasonable limitaticn and regulaticn as the legislature may prcvide."

INTRODUCED BY: /s/ Earl Berthelson

DELEGATE PRCECSAL
No. 2 - Water Rights

MONTANA CONSTITUTICNAI CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 2

DATE INTRODUCED: JAN. 20, 1972

Referred tc Natural Resources and Agriculture Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTICN PRCVIDING FOR UATER RIGHTS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF THE STATE-CF MONTANA:

Section 1. There shall be a new Constitutional Sectien to provide as follcus:

"Section ___. MATER. All cf the water in this state, whether cccurring on the surface or undergrcund, and whether occurring naturally or artificially, belongs tc the people of Montana; and those waters which are capable cf substantial cr significant public use may be used by the people with or without diversicn or development works, regardless of whether the waters occur on public or private lands. The public has the right to the recreational use of such waters and their beds and banks tc the high water mark regardless of whether the waters are navigable and regardless of whether the beds and banks are privately cwned. Beneficial use of waters includes recreation and aesthetics, such as habitat for fish and wildlife and scenic waterways.

The use of all water now appropriated, cr that may hereafter be appropriated for sale, rental, distributicn, or other beneficial use, and the right of way over the lands of others, fcr all ditches, drains, flumes, canals, and aqueducts, necessarily used in ccnnection therewith, as well as the sites fcr reservoirs necessary for collection and stcring the same, shall be held to be a public use.

The legislature may provide either directly, cr indirectly through administrative agencies, for the control and regulatien of both existing and future rights tc uses cf water."

INTRODUCED BY: /s/ Earl Berthelson

MONTANA CONSTITUTIONAL CONVENTION

1371-1972

DELEGATE PROPOSAL NO. 3

DATE INTRODUCED: JAN. 20, 1972

Referred to Bill of Rights Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION TO PROHIBIT THE PENALTY OF DEATH FOR ANY CRIME.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. Death shall not be prescribed as a penalty for any crime."

INTRODUCED BY: /s/ Cate, Jerome J.

/s/ Bob Campbell

/s/ Arlyne Reichert

/s/ George W. Rollins

/s/ Mae Nan Robinson

/s/ Daphne Bugbee

DELEGATE PRCPCSAL
No. 4 - Right tc Efar Arms

MCNTANA CONSTITUTICNAL CCNVENTICN

1971-1972

DELEGATE PROPCSAF NC. 4

DATE INTRODUCED: JAN. 20, 1972

Referred tc Bill cf Rights Ccmmittfe

III, 13

A PRCPOSAL AMENDING ARTICLE III, SECTION 13 OF THE CONSTITUTION OF THE STATE OF MONTANA TO PROVIDE THAT NC REGISTRATION, TRANSFER OR LICENSING REQUIREMENT, FEE OR TAX EVEH BE IMPOSED UPON THE RIGHT TO BEAR ARMS.

BE IT FROPOSEC BY THE CONSTIPUTIONAI CONVENTICN OF THE STATE CE MONTANA:

Section 1. Article III, Section 13 of the present Constitution is amended to read as follows:

"Sec. 13. ~~The right of any person tc keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.~~

(1) The inalienable right of the individual citizen to keep and bear arms for the defense of himself, other persons, and the state shall not be infringed, but the military shall be kept in strict subordinaticn to the civil power.

(2) The right to keep and bear arms shall include, but nct be limited to, the right of the individual citizen tc acquire, possess, own and use firearms, ammunition and its components for the lawful defense of himself, his home, his property, other persons, and the state, or in aid cf the civil power when thereto legally summcned, for the training and practice necessary to achieve a level of competence appropriate thereto, and for marksmanship, recreation, hunting and other lawful purposes. No registration, transfer or licensing requirement; licensing, transfer or registration fee; or licensing, transfer or registration tax shall ever by imposed upcn the right of the individual citizen to acquire, transfer, possess, own or use firearms, ammunition and its components, but nothing herein ccntained shall be

held to permit the carrying of concealed weapons."

INTRODUCED BY: /s/ Earl Berthelson

DELEGATE PROPCSAL
No. 5 - Local Government

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE FROPCSAI NC. 5

DATE INTRCDUCED: JAN. 20, 1972

Referred to Local Government Committee

XVI, 5

A PROPOSAL REPEALING ARTICLE XVI, SECTION 5 OF TRE CONSTITUTICN OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE CF MONTANA:

Section 1. Article XVI, Section 5 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 5. There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by section 2 of article IX of this constitution and such other qualifications as may be prescribed by law:~~

~~One county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid offices, make and enter an order, combining any two (2) or more of the~~

~~within-named-offices,-and-shall-cause-the-said-order-to--be--published-in-a-newspaper,-published-and-circulated-generally-in-said county,--for-a-period-of-six-(6)-weeks-next-following-the-date-of entry-of-said-order."~~

INTRODUCED BY: /s/ Mrs. Thomas "Katie" Payne

DELEGATE FROPCSAL
No. 6 —Local Charters

MCNTANA CONSTITUTICNAL CCNVBNTICN

1971-1972

DELEGATE PROPCSAL NO. 6

DATE INTRODUCED: JAN. 20, 1972

Referred to Local Government Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTICN FRCVIDING FCR ICCAI CHARTERS.

BE IT PROPCSED BY THE CCNSTITUTICNAI CGNVENTICN CF THE STATE OF MCNTANA:

Section 1 There shall be a new Constitutional Section to provide as fcllcws:

"Section ___. LOCAL CHARTERS. (1) Any county or city may adopt or amend a charter for its own government, subject to such ragulaticns as are provided in this constitutien and may be provided by general law. The legislature shall prcvide one or more cpticnal procedures fcr nonpartisan electicn cf five (5), seven (7) or nine (9) charter ccmmissioners and fcr framing, Publishing and adcpting a charter cr charter amendment.

(2) Upon resolution approved by a majority of the members of the legislative authority cf the county or city cr upcn petition of ten (10) percent of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular election not less than sixty (60) days thereafter, or at a special election if authorized by law, the questicn "Shall a commissicn be chccen tc frame a charter cr charter amendments for the ccunty (cr city) of _____?" An affirmative vote of a majority of the qualified voters voting on the question shall authcrize the creation of the ccmmissicn.

(3) A petiticn to have a charter commission may include the names of five (5), seven (7) or nine (9) ccmmissioners, to be listed at the end of the question when it is voted cn, so that an affirmative vote on the question is a vote to elect the perscns named in the petition. Otherwise, the petiticn or resolution shall designate an optional election procedure provided by law.

(4) Any proposed charter or charter amendments shall be

published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

(5) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislative authority."

INTRODUCED BY: /s/ Mrs. Thomas "Katie" Payne

DELEGATE PROPOSAL
No. 7 - Judicial Article

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 7

DATE INTRODUCED: JAN. 20, 1972

Referred to Judiciary Committee

III 8, 23; VIII

A PROPOSAL FOR A NEW JUDICIAL ARTICLE, AMENDING ARTICLE III, SECTIONS 8 AND 23, AND REPEALING ARTICLE VIII OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Article to provide as follows:

"ARTICLE ---

JUDICIAL DEPARTMENTS

Section 1. The Judicial power of the state shall be vested in the senate sitting as a court of impeachment, and in a Supreme Court and district courts which shall be courts of record.

SUPREME COURT

Section 2. The Supreme Court, except as otherwise provided in this constitution, shall have appellate jurisdiction, which shall be coextensive with the state, and shall have a general supervisory and administrative control over all inferior courts.

Section 3. The Supreme Court may appoint an administrative director and staff, who shall serve at its pleasure, to assist the court and the chief justice in the Performance of administrative duties.

Section 4. The Supreme Court shall have power to make and promulgate rules and regulations in all civil and criminal cases for all courts relating to practice, procedure, Pleading, evidence, and judicial administration, which shall have the force and effect of law.

Section 5. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, injunction, supervisory control and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before the Supreme Court, and such writs may be heard and determined by the court.

Section 6. The Supreme Court shall consist of a chief justice and four associate justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain, and the legislative assembly shall have the power to increase the number of associate justices to six. In case any justice of the Supreme Court shall be in any way disqualified to sit in a cause brought before such court, the iemaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause, In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the Supreme court. The chief justice shall preside at all sessions of the Supreme Court. In case of his absence, he shall appoint an associate justice to preside in his stead.

Section 7. There shall be a clerk of the Supreme Court. He shall be appointed by and hold his office at the pleasure of the Supreme Court. His compensation shall be fixed by law, and his duties by the rules of the Supreme Court.

DISTRICT COURTS

Section 8. lhe district courts shall have original jurisdiction of all justiciable matters, both civil and criminal, including jurisdiction to issue original and remedial writs. Their process shall extend to all parts of the state, and injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and nonjudicial days. Jurisdiction to review administrative action shall be provided by law. They shall have power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

DELEGATE PROPCSAL
No. 7 - Judicial Article

Section 9. The judge or judges cf each district may, with the approval of the chief justice of the Supreme Ccurt, provide fcr divisions and assign judges tc particular types cf cases and create one or more magistrates' offices. Magistrates shall be appointed by the district judge or judges cf each district and assigned to such matters and such cases as shall be prescribed by the judge or judges of each district, except criminal cases amounting tc felonies in which magistrates may act cnly as committing and examining courts. Magistrates shall exercise the jurisdiction of district courts in all matters and cases assigned to them and shall serve at the pleasure of the appointing judge or judges. Compensation of magistrates shall be fixed by the appointing judge or judges.

Section 10. The state shall be divided into judicial districts as provided by law, in each of which there shall be the number of judges prcvided by law. The Supreme Ccurt may increase or decrease the number of judges in any judicial district, and may divide the state or any part thesecf, intc new districts, prcvided that each be formed cf ccmpact territcry and be bounded by county lines. Changes by the Supreme Court in districts cr the number of judges therein shall be effective unless rejected by the legislature at the legislative session fcllcwing the change. No change in the number or boundaries of districts cr diminution of the number of judges, shall have the effect cf remcving a judge from office. Such change in districts or the number of judges therein shall not take place more frequently than every four years.

Section 11. There shall be a clerk cf the district court in each ccunty. He shall be appointed by the judge or judges of the district in which the county is situated and shall hold his office at the pleasure of that ccurt. Deputy clerks may be appointed by the judge or judges cf each district, and shall hold office at the pleasure of the appointing judge or judges. The number of deputy clerks to be appointed shall be subject tc the approval of the chief justice of the Supreme Court. The duties of clerks and deputy clerks shall be prescribed by the appointing judge or judges.

QUALIFICATIONS, SELECTION AND REMOVAL OF JUSTICES, JUDGES ABD MAGISTRATES; JUDICIAL COUNCIL

Section 12. No person shall be eligible tc the office of justice of the Supreme Court, judge of a district ccurt, or district court magistrate, unless he shall have been admitted to practice law in the Supreme Court cf Montana, and be a citizen cf the United States, except that a district court magistrate need not have been admitted to the practice cf law if a judge cf the district for which the appointment shall have been made shall certify that no person who has been admitted to the practice cf

law in the Supreme Court cf Montana is available and shall file such certification with and secure the approval Of the Supreme court of Montana. No person shall be eligible to the office of justice cf the Supreme Court unless he shall be at least thirty years of age and shall have resided in the state at least twc years next preceding his appointment. Nc person shall be eligible to the cffica of district judge or district ccurt magistrate unless he shall be at least twenty-five years cf age and have resided within the stat2 at least one year next preceding his appointment. District judges and magistrates need not be residents cf the district for which they are chcsen at the time cf thsir appointment, but after his appointment a district court judge shall reside in the district for which he was chcsen during his term of office.

Section 13. There shall be a nonpartisan Judicial Council, composed of members divided equally between the judiciary, tha bar and the public. The Legislature shall provide the numbers, qualifications and method of selection. The chief justice of the Supreme court shall be a member and chairman cf the Council. The Council shall appoint the following committees and establish their procedural regulations:

(1) A Noninating Committee. A majority of the Committee shall be members of the public and the remainder shall be members of the bar and none of the Committee shall be members cf the legislative, executive or judicial branches of government.

All vacancies for chief justice and associate justices cf the Supreme Court and district court judges shall be filled by appointment by the Governcr from a list submitted to him by the Nominating Committee of not less than two nor more than four qualified nominees for each vacancy. Justices and judges appointed by the Governcr shall serve such terms as shall be fixed by law. Each justice or judge who desires to remain in office upon the expiration of his term shall be subject to approval or rejection in an uncontested general election on a nonpartisan ballot, as the legislature shall provide.

(2) A Research and Qualifications Committee. A majority of the Committee shall be members of the judiciary and bar and the remainder shall be members cf the public. Members of this Committee may also be members of the Nominating Committee.

The Committee shall have the power to investigate, upon complaint by any citizen or on its own motion, charges which would be the basis for retirement, censure, or removal of an* justice, judge or magistrate. For this purpose, it shall be authorized to conduct hearings and subpoena witnesses and documents. Such proceedings shall be confidential. Upon finding charges tc be well founded, the Committee shall file a formal complaint before the Supreme Court. The Supreme Court shall hear such complaint, and if it be substantiated may retire, censure, or remove from office

any justice, judge, or magistrate. If the complaint he against a justice, the court shall call in a district judge as provided in Section 6 of this article.

The Research and Qualificaticcs Committee also shall conduct continuing studies cf the administration of justice in Montana and shall report to the legislature and to the Supreme Ccurt as provided by law. Its studies shall include, but not be limited to, rules of procedure. practice, pleading, and evidence, the division of the state into judicial districts and the number cf judges to be assigned tc each district, and methods for the imprcvement of the administration cf justice.

MISCELLANEOUS PROVISICNS

Section 14. The justices cf the Supreme Court and the judges of the district courts shall be paid by the state a salary which shall not be diminished during the term of office. Other costs cf the judicial system shall be borne by the state, or by the state, counties, cities and towns in such proporticns and in such manner as the legislature shall provide; and revenues from fines and fees charged by the courts cf Montana shall be distributed as the legislature shall Frcvide.

Secticn 15. No justice of the Supreme court nor judge or magistrate shall accept or receive any compensation, fee, allowance, prerequisite or emolument fcr or on account of his office, in any form whatever, except mileage, per diem and salary provided by law.

Section 16. No justice or clerk of the Supreme court, nor judge cr clerk of any district court shall act cr practice as any attorney or counsellor at law in any court of this state cr hold any public office during his continuance in cffice. This prohibition shall nct apply to magistrates or deputy clerks of district courts.

Section 17. Each municipal ccurt judge, police judge, and justice cf the peace, in office at the effective date of this article shall continue tc hold office and perform his present judicial functions until the expiration of his term. Each Supreme Court justice and district court judge in cffice on the effective date cf this article shall continue to hold office and perform his judicial functions until rejected, removed, or retired as provided in Section 13.

Section 18. On the effective date of this article:

(1) Each court into which jurisdiction of cther courts is transferred shall succeed to and assume jurisdiction of all causes, matters and proceedings then Fending, with full pcwer to carry into execution or ctherwise give effect to all crders, judgments and decrees entered by the predecessor courts.

(2) The files, bocks, papers, records, dccuments, moneys, securities, and cther property in the possessicn, custcdy cr under the contrcl cf courts hereby abolished, cr any cfficer thereof, are transferred tc the district court; and thereafter all proceedings in all courts shall be matters cf record."

Section 2. Article III, Section 8 of the present Constitution is amended to read as fcllcws:

"Sec. 8. ~~Criminal--offenses--of--which--justice's-courts-and municipal-and-other-courts,-inferior-to-the-district-courts,-have jurisdiction,-shall,-in--all--courts--inferior--to--the--district court,--be--prosecuted-by-complaint.--All-criminal-actions-in-the district-court,-except-those-on-appeal,-shall--be--prosecuted--by information,-after-examination-and-commitment-by-a-magistrate,-or after--leave--granted--by--the--court,--or-shall-be-prosecuted-by indictment-without-such-examination--or--commitment,--or--without such--leave--of--the--court.--A-grand-jury-shall-consist-of-seven persons,-of-whom-five-must-concur-to-find-an-indictment.~~ Criminal cases not amounting to felony shall be prosecuted by complaint. Felony cases shall be prosecuted by information, after examination and ccmmitment as provided by law, cr after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, cr without such leave of the ccurt. A grand jury shall only be drawn and summoned when a district judge shall, in his discretion, consider it necessary, and shall so order."

Section 3. Article III, Section 23 cf the present Ccnstitution is amended to read as fcllcws:

"Sec. 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felcny, upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. ~~A--jury-in-a-justice's-court,-both-in-civil-cases-and-in-cases-of criminal-misdemeanor,-shall-consist-of-not-more-than-six-persons.~~ In civil cases where the sum claimed or the the value of that which is claimed by the plaintiff, not iccludins interest and costs, does not exceed ten thousand dcllars, and in criminal cases not amounting tc felony, a jury shall ccnsist cf nct mcre than six persons. In all civil ~~actions~~ cases and in all criminal cases not amounting tc felony, two-thirds in number of the jury may render a verdict, and such verdict sc rendered shall have the same fcrce and effect as if all such jury ccncurred therein."

Section 4. Article VIII of the present Constitution is repealed in its entirety.

DELEGATE FRCEOSAL
No. 7 - Judicial Article

INTRODUCED BY: /s/ Earl Berthelson

/s/ Catherine Pemberton

MONTANA CONSTITUTIONAL CONVENTICN

1971-1552

DELEGATE PROPCSAI NO. 8

DATE INTRCDUCED: JAN. 21, 1972

Referred to General Gcvernment and Constitutional Amendment Ccmmittee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FCR RECALL CF PUBLIC OFFICERS.

BE IT EROPCSED BY THE CONSTITUTIONAL CGNVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as fcllcws:

"Section ____. RECALL. Each elected public cfficial cf the state and of its political subdivisions is subject tc recall by the vcters of the area from which he is elected in the manner provided by the legislature.*'

INTRCDUCED BY: /s/ Fred J. Martin

/s/ Richard B. Roeder /s/ Dorothy Eck

/s/ J. Mason Melvin

DELEGATE PROPOSAL
No. 9 - Local Governmfct Pcwers, Districts

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE EROPCSAI NO. 9

DATE INTRODUCED: JAN. 21, 1972

Referred to Local Government Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL ARTICLE VESTING LCCAL GOVERNMINT POWERS IN CISTRICTS.

BE IT PROPOSED BY THE CCNSTITUTICNAL CCNVENTIGN CF THE STATE OF MONTANA:

Section 1. There shall be a new Constituticnal Article to provide as follcws:

"ARTICLE e-e--

LOCAL GOVERNMENT

Section 1. CREATION OF DISTRICTS. The state shall be divided intc districts.

Section 2. AUTHORITY OF CISTRICTS. Each district shall be a body politic and corporate and have full gcvernmental authority except to the extent to which that authority is in this constitution reserved to the state or otherwise restricted.

Section 3. BOARD OF SUPERVISORS. The authcrity of the district shall be exercised through a board of supervisors ccnsisting of five members elected in the district at large for overlapping six year terms.

The legislature may prescribe the manner in which district authority is to be exercised, insofar as necessary for reasonable uniformity among the districts.

Section 4. IMPLEMENTATICN. Counties, cities, schcol districts and other local subdivisions existing cn the effective date of this constitution shall continue to exercise their pcwers and functions under present law pending enactment of legislation to carry out the provisions of this constituticn; but new subdivisions shall be created only in accordance with this constitutien.

In event such legislation has not been enacted by January 1, 1980, and transition thereunder effected, this article shall on that date become automatically and fully effective and self-executing, all presently existing laws inconsistent therewith shall expire except for the purpose of and to the extent necessary for the discharge of any outstanding obligations of particular subdivisions, each of the existing counties of the state shall become a district under this article, existing subdivisions therein shall be merged in such district and the respective districts shall be the lawful successors thereto and responsible for the orderly liquidation thereof; and the offices of the several members of district boards of supervisors shall be filled as in the case of vacancies otherwise ordinarily arising or existing therein.

In any county which has not already become a district or part of a district established under this article the question of early local implementation of this article may be submitted to the qualified electors of the county at any time in accordance with procedures under this constitution or any applicable law for submission of questions to popular vote by initiative or referendum; and if such procedures do not make provision for such submission in subdivisions such as counties the same shall nevertheless be adapted to the extent necessary therefor and implemented and applied as so adapted with the same force, effect and validity as if such adaptation had been incorporated in the procedures as originally established or enacted. If such question upon any such submission is decided in the affirmative, the provisions of this article shall thereupon become fully effective and self-executing, in accordance with and as set forth in the provisions hereof fixing a definite time for such article to become automatically effective and self-executing, and all of such provisions shall be applied but without regard to the definite time fixed therein, within such county.

Section 5. FIRST ELECTION OF SUPERVISORS. Of district supervisors first elected the term of office of the successful candidate receiving the highest number of votes shall be six years, the term of each of those two receiving the next highest numbers shall be four years and the term of each of the two successful candidates receiving the lowest numbers of votes shall be two years."

INTRODUCED BY: /s/ Frank Arness

DELEGATE PROPCSAI
NC. 10 - Equal Eights

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE PROPOSAL NC. 10

DATE INTRODUCED: JAN. 21, 1972

Referred tc Bill cf Rights Committee

A FAGPOSAL FOR A NEW CONSTITUTIONAL SECTICN PRCVIDING FOR EQUAL RIGHTS.

BE IT FROPCSEC BY THE CCNSTITUTICRAL CCNVENTION OF THE STATE CF ECATANA:

Section 1. There shall be a new Ccnstituticnal Section to provide as fcllcws:

"Section ... . EQUAL RIGBTS. Equality of rights under the law shall not be denied or abridged by the state of Montana on account cf sex."

INTRODUCED BY: /s/ Virginia H. Blend

MONTANA CONSTITDTICNAI CCNVENTICN

1971-1972

DELEGATE PRCFCSAL NO. 11

DATE INTRODUCED: JAN. 21, 1972

Referred to Education and Revenue & Finance Committees

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTION PROVIDING FOR FULL STATE FUNDING OF ALL FREE PUBLIC SCHOOLS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN CF THE STATE CF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as fcllcus:

"Section ___. All funds, both operational and capital, tc support the free public schools shall be appropriated by the Legislature. No real or personal property taxes may te used to support free public schools."

INTRODUCED EP: /s/ Virginia H. Blend

DELEGATE PROPCSAI
NC. 12 - Envircnmcnt

MCNIANA CONSTITUTIONAI CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 12

DATE INTRODUCED: JAN. 21, 1972

Referred tc Natural Rescurces and Agriculture Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE PRCTECTING TBE ENVIRONMENT.

BE IT PROPOSED EY THE CONSTITUTIONAL CONVENTICN CF THE STATE CF MCNTANA:

Section 1. There shall be a new Constitutional Article to provide as fcllcws:

"ARTICLE ----

ENVIRCNMENT

Sectien 1. ENVIRONMENT A PUBLIC TRUST. The common heritage of mankind being an environmental life support System upon which the health and welfare of the people of this state is dependent, the maintenance of the integrity of this system for the benefit of present and future generations is declared to be a public trust.

Section 2. PUBLIC TRUST COMMCN PRCPERTY. This public trust is the common property cf the people cf this state, inseparable frcm the general welfare and other than for uses of demonstrably important public purpose beneficial to the general welfare of the people of the state, shall not be usurped by an entity withcut just coapensaticn.

Sectien 3. RIGHTS OF INDIVIDUALS. Each person has an inalienable right tc the unimpaired enjoyment of this public trust and shall be entitled tc enforce this right on his own behalf and on behalf of others against any entity through apprcpriate legal proceedings."

INTRCDUCED EY: /s/ Jerome J. Cate

MONTANA CONSTITUTICNAI CONVENTICN

1971-1572

DELEGATE PROPOSAL NO. 13

DATE INTFODUCED: JAN. 21, 1972

Referred tc Bill cf Rights Committee

A FROFOSAL FOR A NEW CONSTITUTICNAL SECTICN RAKING ALL FERSONS OVER EIGHTEEN (18) YEARS OF AGE ADULTS FOR ALL PURFCSES, INCLUDING THE RIGHT TO HOLD ANY PUBLIC CFFICE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF BCNTANA:

Section 1. There shall be a new Constituticnal Section to provide as follcws:

"Section ___. Persons eighteen (18) years of age are declared to be adults for all purposes and shall have the right to hcld any public cffice in the state."

INTRODUCED BY: /s/ Bob Campbell

/s/ Dorothy Eck

/s/ Mike McKeon

/s/ Lyle R. Monroe

/s/ Dcn Fcster

/s/ Jercme J. Cate

DELEGATE PROPOSAL
No. 14 - Privacy

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 14

DATE INTRODUCED: JAN. 21, 1972

Referred to Bill of Rights Committee

III, 7

A PROPOSAL AMENDING ARTICLE III, SECTION 7 OF THE CONSTITUTION OF THE STATE OF MONTANA TO PROHIBIT INTERCEPTION OF PRIVATE COMMUNICATIONS WITHOUT A VALID SEARCH WARRANT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article III, Section 7 of the present Constitution is amended to read as follows:

"Section 7. The people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizures, invasions of privacy, and no warrant to search any place, utilize electronic or other means to intercept oral or other communications, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirsation, reduced to writing."

INTRODUCED BY: /s/ Bob Campbell

/s/ Dorothy Eck

/s/ Cedor P. Aronow

/s/ D. A. Scanlin

/s/ Robert J. Vermillion

/s/ Marshall Murray

/s/ Mike McKeon

/s/ Jerome J. Cate

/s/ Lyle R. Monroe

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

DELEGATE PROPOSAL NO. 15

DATE INTRODUCED: JAN. 21, 1972

Referred to Bill of Rights and Style & Drafting Ccmmittees

A PROPOSAL FOR A NER CONSTITOTICNAL SECT'ION INCORPORATING THE INTENT OF ORDINANCE NO. 1 OF THE 1889 CONSTITUTION.

BE IT PACPOSED EY THE CONSTITUTICNAL CCBVENTION OF THE STATE CF MCNTANA:

Section 1. There shall be a new Constitutional Section to provide as fcllcus:

"Section ___. The people inhabiting the State of Mcntana, agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits cwned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition cf the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress cf the United States, that the lands belonging to citizens of the United States, residing without the State of Montana, shall never be taxed a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State of Montana on lands or property therein belonging tc, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the State of Montana frcm taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relaticns and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt frcm taxation by the State of Montana so long and to such extent as such act of Congress may prescribe."

DELEGATE FECFCSAL
NC. 15 - Lands

INTRODUCED BY: /s/ D. A. Scanlin

/s/ Robert Vermillion

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 16

DATE INTRODUCED: JAN. 25, 1972

Referred to Revenue and Finance Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION REGULATING EARMARKING OF STATE REVENUES.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section . EARMARKING. State revenues shall not be earmarked to any special purpose, except when required by the federal government for state participation in federal programs."

INTRODUCED BY: /s/ Virginia H. Blend

DELEGATE PROPOSAL
No. 17 - Elections

MONTANA CONSTITUTIONAL CONVENTION

1971-1572

DELEGATE PROPOSAL NO. 17

DATE INTRODUCED: JAN. 25, 1972

Referred to Local Government Committee

XVI, 4

A PROPOSAL REPEALING ARTICLE XVI, SECTION 4 OF THE CONSTITUTION OF THE STATE OF MONTANA AND ADDING A NEW SECTION PROVIDING FOR THE ELECTION OF BOARDS OF COUNTY COMMISSIONERS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XVI, Section 4 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 4. In each county there shall be elected three county commissioners, whose term of office shall be six years; provided that each county in the state of Montana shall be divided into three commissioner districts, to be designated as commissioner districts, numbers one, two and three, respectively.~~

~~The board of county commissioners shall in every county in the state of Montana, at their regular session, on the first Monday in May, 1929, or as soon thereafter as convenient or possible, not exceeding sixty days thereafter, meet and by and under the direction of the district court judge or judges of said county, divide their respective counties into three commissioner districts as compact and equal in population and area as possible, and number them respectively, one, two and three, and when such division has been made, there shall be filed in the office of the county clerk and recorder of such county a certificate designating the metes and bounds of the boundary lines and limits of each of said commissioners districts, which certificate shall be signed by said judge or judges, provided, also that at the first regular session of any newly organized and created county, the said board of county commissioners, by and under the direction of the district court judge or judges of said county, shall divide such new county into commissioner districts as herein provided.~~

~~Upon such division, the board of county commissioners shall assign its members to such districts in the following manner, each member of the said board then in service shall be assigned to the district in which he is residing or the nearest thereto, the senior member of the board in service to be assigned to the commissioner district No. 1, the next member in seniority to be assigned to commissioner district No. 2, and the junior member of the board to be assigned to commissioner district No. 3, provided, that at the first general election of any newly created and organized county, the commissioner for district No. 1, shall be elected for two years, for No. 2, for four years, and for No. 3, for six years, and biennially thereafter there shall be one commissioner elected to take place of the retiring commissioner, who shall hold his office for six years.~~

~~That the board of county commissioners by and under the direction of the district court judge or judges of said county, for the purpose of equalizing in population and area such commissioner districts, may change the boundaries of any or all of the commissioner districts in their respective county, by filing in the office of the county clerk and recorder of such county, a certificate signed by said judge or judges designating by metes and bounds the boundary lines of each of said commissioner districts as changed, and such change in any or all the districts in such county, shall become effective from and after filing of such certificate, provided, however, that the boundaries of no commissioner district shall at any time be changed in such a manner as to affect the term of office of any county commissioner who has been elected, and whose term of office has not expired, and provided, further, that no change in the boundaries of any commissioner district shall be made within six months next preceding a general election.~~

~~At the general election to be held in 1930, and thereafter at each general election, the member or members of the board to be elected, shall be elected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board, who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office.~~

~~When a vacancy occurs in the board of county commissioners the judge or judges of the judicial district in which the vacancy occurs, shall appoint someone residing in such commissioner district where the vacancy occurs, to fill the office until the next general election when a commissioner shall be elected to fill the unexpired term."~~

Section 2. There shall be a new Constitutional Section to provide as follows:

DELEGATE PROPOSAL
NO. 17 - Elections

"Section . BOARDS OF COUNTY COMMISSIONERS. Each county shall have an--elected board of county commissioners of no less than three nor more than seven members. Each commissioner shall be a resident of, and elected only by the voters of, a single member district; such districts within a county shall be as equal in population as is practicable and shall be redrawn periodically as may be required by the Fourteenth Amendment to the United States Constitution and by law. The legislature shall provide by law for such reapportionment, for division of each county into districts, for overlapping terms of office for commissioners and for methods by which residents and boards of commissioners of each county may decrease the membership of the board to not less than three or increase the membership to no more than seven."

INTRODUCED BY: /s/ Arnold W. Jacobsen

MONTANA CONSTITUTIONAL CONVENTION

197-1-1572

DELEGATE PROPOSAL NO. 18

DATE INTRODUCED: JAN. 25, 1972

Referred to Bill of Rights Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION RELATING TO THE RIGHT TO COUNSEL.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ---- RIGHT TO COUNSEL. An indigent person shall have the right to counsel in administrative or court proceedings in which the State, or any subdivision thereof, is an adverse party."

INTRODUCED BY: /s/ Jerome J. Cate

/s/ Bob Campbell

/s/ Richard J. Champoux

106

DELEGATE PROPOSAL
NO. 19 - Legislative, Meeting Date

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 19

DATE INTRODUCED: JAN. 25, 1972

Referred to Legislative Committee

V, 6

A PROPOSAL AMENDING ARTICLE V, SECTION 6 OF THE CONSTITUTION OF THE STATE OF MONTANA TO CHANGE THE MEETING DATE OF THE LEGISLATURE FROM THE FIRST MONDAY OF JANUARY TO THE FIRST MONDAY OF FEBRUARY.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article 9, Section 6 of the present Constitution is amended to read as follows:

"Sec. 6. The legislative assembly (except the first) shall meet at the seat of government at twelve o'clock noon, on the first Monday of ~~January~~ February, next succeeding the general election Provided by law, and at twelve o'clock noon, on the first Monday of ~~January~~ February, of each alternate year thereafter, and at other times when convened by the Governor.

The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; provided, that the first legislative assembly shall meet at the seat of government upon the proclamation of the Governor after the admission of the state into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the Union."

INTRODUCED BY: /s/ Miles Romney

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NO. 20

DATE INTRODUCED: JAN. 25, 1972

Referred tc Bill of Rights Ccmmittee

A PRGPGSAL FOR A NEW CONSTITUTIONAL ARTICLE PRCVIDING A PUBLIC PCLICY OF A QUALITY ENVIRCNMENT.

BE IT PROPCSEL BY THE CONSTITUTIONAL CONVENTION OF THE STATE CF MONTANA:

Section 1. There shall be a new Constitutional Article tc prcvide as follcws:

"ARTICLE ----

NATURAL RESCURCES

Section ___. ENVIRONMENTAL PCLICY. It is the public pclicy of the State of Montana and the duty cf each persen tc provide, maintain, and enhance a quality envircnment for the benefit cf the people."

INTRODUCED BY: /s/ C. B. McNeil

DELEGATE PRCPCSAL
NO. 21 – Environmental Quality

MONTANA CONSTITUTICNAL CONVENTTCN

1971-1472

DELEGATE PRCPCSAL NC. 21

DATE INTRODUCED: JAN. 15, 1972

Referred tc Bill cf Rights Committee

A PRCPOSAL FOR A NEW SECTION TO ARTICLE III, BILL CF RIGHTS, CF THE CONSTITUTICN OF THE STATE OF MONTANA GUARANTEEING AN INDIVIDUAL'S RIGHT TO A QUAIITY ENVIRCNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Ccnstituticnal Section in Article III of the Ccnstitution of the State of Montana tc provide as follows:

"Section 32. It is the right of each persen to have, and the duty cf each person to maintain and enhance, a quality environment."

INTRODUCED BY: /s/ C. B. McNeil

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE FRCFCSAL NO. 22

DATE INTRODUCED: JAN. 25, 1972

Referred tc Legislative Committee

A PROPOSAL FOR A NEW CONSTITUTICNAL ARTICLE VESTING LEGISLATIVE POWERS IN A UNICAMERAL LEGISLATURE.

BE IT PROPOSED BY THE CONSTITUTICNAI CCNVENTION OF THE STATE CF NCNTANA:

Section 1. There shall be a new Ccnstitutional Article to provide as fcllcws:

"ARTICLE ----

'IRE LEGISLATURE

Section 1. LEGISLATIVE POWER. The legislative power of the state shall be vested in the legislative assembly, but the people may propose and enact laws by initiative and they may approve or reject legislative acts by referendum.

Section 2. LEGISLATIVE COBPOSITION. The legislative assembly shall be composed of one (1) chamber cf nct less than seventy-five (75) and nct more than one hundred (100) members.

Section 3. LEGISLATIVE DISTRICTS AND APPCRTICNMENT. (1) Fcr the purpose of electing members cf the legislative assembly, the state shall be divided into as many districts as there shall be members of the legislative assembly. Each district shall ccnsist of compact and contiguous territcry. All districts shall be so nearly equal in population as is practicable.

(2) Immediately fcllowing each federal census cf pcpulaticn there shall be a redistricting of legislative districts and reapportionment of voters within the districts. In the sessicn preceding each federal census, the majority and minority leaders of the legislative assembly shall each appoint two (2) members tc a reapportionment commission. Together, the fcur (Y) members shall select a chairman. No member of the reapportionaent commission shall be a legislator or a state official. The commissicn plan

shall be submitted to the legislative assembly at the next session after the federal census is made public and shall become law when approved by a majority of the legislative assembly. If it is not approved, the legislative assembly shall return the plan to the commission with its recommendations for change, and the commission shall within thirty (30) days cause the secretary of state to announce and publish its final plan in the manner provided for acts of the legislative assembly and the plan shall have the force of law upon such publication.

Section 4. ELECTION AND TERM OF MEMBERS. The members of the legislative assembly shall be elected by the qualified voters of the state in each odd-numbered year for a term of two (2) years.

Section 5. LEGISLATIVE IMMUNITY. The members of the legislative assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the sessions of the legislative assembly, and in going to and returning from the same; and for any speech or debate in the assembly they shall not be questioned in any other place.

Section 6. CITIZENS COMPENSATION COMMISSION. Legislators shall receive an annual salary and reasonable expenses and allowances set by a citizens compensation commission composed of seven (7) members. The Governor shall appoint three (3) members and the majority and minority leaders of the legislative assembly shall each appoint two (2) members. Members of the legislature and officers and employees of the state or of any county, municipality or other governmental unit of the state shall not be eligible for appointment to the commission. The legislature may further specify the requirements for membership. The commission shall meet every two (2) years. Within a period after its appointment set by law, the commission shall submit to the legislature its proposals which the legislature may decrease but not increase. The commission will then dissolve.

Section 7. LEGISLATIVE SESSIONS. The legislative assembly shall be a continuous body during the term for which its members are elected. It shall meet in regular sessions annually on the fourth Monday in January, but the month and day may be changed by law. It may be convened at other times by the Governor, by the assembly's majority and minority leaders, or at the written request of a majority of the members of the legislative assembly.

Section 8. ORGANIZATION. (1) The legislative assembly shall judge the elections, returns, and qualifications of its members and choose its officers and employees. No member shall be expelled without the concurrence of two-thirds (2/3) of the membership.

(2) A majority of the membership of the legislative assembly constitutes a quorum to do business. but a smaller number may

adjourn from day tc day and may compel attendarce cf absent members.

Section 9. ACCOUNTABIIITY AND CITIZEN ACCESS. (1) All sessicns and committee meetings cf the legislative assembly, including the committee of the whcle, shall be open to the public.

(2) The vote of each member in all sessicns and committee meetings of the legislative assembly, including the committee of the whole, shall be recorded and entered in the journal. The legislative assembly shall keep a journal cf its proceedings.

(3) Public notice shall be given five (5) days in advance fcr all committee hearings.

Section 10. PORM OF BILLS. (1) Every bill shall be confined to one (1) subject and properly associated matters unless it is an appropriation bill or one codifying, revising, cr rearranging existing laws. Pills for appropriaticns shall be confined to appropriations. A law shall not be judicable under this prcvisicn sixty (60) days after its enactment.

(2) The enacting clause shall be: "Be it enacted by the Legislative Assembly of the State of Montana."

Section 11. PASSAGE OF @ILLS. (1) No law shall be passed except by bill and no bill shall be sc altered or aaended during passage that its original purpose is changed.

(2) No bill shall become law unless it has been referred tc a committee, reported out, reprcduced with all its final amendments, and placed on the desk of each member five (5) days before final passage.

(3) No bill shall beccme a law except by a majority vote of all the members present in the legislative assembly.

Section 12. SPECIAL AND LOCAL LEGISLATICN. The legislative assembly shall pass no special cr lccal act when a general act is, cr can be made, applicable.

Section 13. VETO. (1) All bills passed by the legislative assembly shall be submitted to the Governcr, whc has the power to veto all bills but those initiated by or referred to the people. The Governor may, by veto, strike or reduce items in appropriations bills. He shall return any vetoed bill, with a statement of his objections, to the legislative assembly.

(2) Upon receipt of a veto message, the legislative assembly shall meet to reconsider passage of the vetoed bill cr item. Vetoed bills become law by affirmative vcte of two-thirds (2/3) of the membership of the legislative assembly.

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(3) A bill becomes law if, while the legislative assembly is in session, the Governor neither signs nor vetoes it within fifteen (15) days, Sundays excepted, after its delivery to him. If the legislative assembly is not in session and the Governor neither signs nor vetoes a bill within twenty (20) days, Sundays excepted, after its delivery to him, the bill is vetoed.

Section 14. IMPEACHMENT. All civil officers of the state are subject to impeachment by the legislative assembly. Impeachment shall originate in the legislative assembly and must be approved by a two-thirds (2/3) vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the supreme court, unless a member of the supreme court is being tried, in which case the state's district court judges shall act as the tribunal. Concurrence of two-thirds (2/3) of the members of the tribunal is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

INTRODUCED BY: /s/ Arlyne Reichert

/s/ Mae Nan Robinson
/s/ Daphne Bugbee
/s/ Robert Lee Kelleher
/s/ Carman M. Skari
/s/ George W. Rollins
/s/ Bob Campbell
/s/ George Harper
/s/ Lyle R. Monroe
/s/ John H. Toole
/s/ Jerome T. Loendorf
/s/ Wade J. Dahood
/s/ Marshall Murray
/s/ Arnold W. Jacobsen
/s/ Harold Arbanas
/s/ Margaret S. Warden
/s/ W. H. Swanberg
/s/ James R. Felt
/s/ Virginia H. Blend
/s/ J. K. Ward
/s/ Marian S. Erdmann
/s/ Paul K. Harlow
/s/ Marjorie Cain
/s/ Katie Payne
/s/ Noel D. Furlong
/s/ Earl Berthelson
/s/ George B. Heliker
/s/ Jean M. Bowman
/s/ Lucile Speer
/s/ Gene Harbaugh
/s/ John H. Leuthold

/s/ Lyman W. Choate

/s/ Bruce M. Brown

/s/ Russell C. McDonough

/s/ Don Rebal

/s/ Rachell K. Mansfield

/s/ Max Conover

/s/ Richard B. Roeder

/s/ Dorothy Eck

/s/ Wm. A. Burkhardt

DELEGATE FRGFCSAL
No. 23 - Welfare, Funding

RONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 23

GATE INTRCDUCED: JAN. 25, 1972

Referred to Local Government and Revenue & Finance Committees

A PROPOSAL FOR .A NEW CONSTITUTICNAL SECTION PRCVIDING FCR FULL STATE FUNDING CF WELFARE.

BE IT PROPOSED BY THE CONSTITUTICNAL CONVENTICN CP THE STATE OF MONTANA:

Section 1. There shall be a new Ccnstituticnal Section to provide as fcllcws:

"Section ---- All funds tc support public welfare in the State of Montana shall be appropriated by the legislature. No real or perscnal property taxes may be used to finance public welfare."

INTRCDUCED BY: /s/ Virginia H. Blend

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

DELEGATE PROPOSAL NO. 24

DATE INTRODUCED: JAN. 25, 1972

Referred to General Government and Constituticnal Amendment Committee

XIX, 2

A PROPOSAL REPEALING ARTICLE XIX, SECTICN 2, CF THE CONSTITUTION OF THE STATE OE MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE CF MONTANA:

Section 1. Article XIX. Section 2 cf the present Constitution, which reads as follows, is repealed:

~~"Sec. 2. The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state."~~

INTRODUCED BY: /s/ Lyman W. Choate

DELEGATE PRCPCSAI
No. 25 - Legislative, Cverride Veto

MCNTANA CONSTITUTICNAL CONVENTICN

1971-1572

DELEGATE PRCPOSAL NC. 25

DATE INTRCDUCED: JAN. 25, 1972

Referred to Executive Ccmmittee and Legislative Ccmmittee

VII, 1 2

A FRCFCSAL AMENDING ARTICLE VII, SECTICN 12 CF THE CONSTITUTION OF THE STATE OF MONTANA TC PROVIDE TBE LEGISLATURE WITH THE OPPORTUNITY TO OVERRIDE GUBERNATORIAL VETOES.

BE IT PROPOSED EY TEE CONSTITUTICNAI CONVENTICN CF THE STATE CF MONTANA:

Section 1. Article VII, Section 12 cf the Fresent Ccnstitution is amended to read as follows:

"Sec. 12. Every bill passed by the legislative assembly shall, before it becomes a law, be presented tc the Gcvernor. If he approve, he shall sign it, and thereupcn it shall become a law; but if he do not approve, he shall return it with his cbjections to the house in which it originated, which house shall enter the cbjections at large upon its jcurnal and proceed to reconsider the bill. If then two-thirds of the members present agree tc pass the same, it shall be sent, together with the objections, to the cther house, by which it shall likewise be reconsidered and if approved by two-thirds of the ❑ esbers present in that house it shall become a law notwithstanding the cbjections of the Governor. In all such cases the vcte of each house shall be determined by yeas and nays, tc be entered on the jcurnal. If any bill shall not be returned by the Gcvernor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a lam, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return, in which case it shall nct become a law without the approval of the Gcvernor. No bill shall become a law after the final adjournment cf the legislative assembly, unless approved by the Gcvernor within fifteen days after such adjournment. ~~In case the Governor shall fail to approve of any bill after the final adjournment of the legislative assembly it shall be filed, with his objections, in the office of the secre-~~

~~tary--of-state.~~ If the Governor fails to approve a bill after the final adjcurnment of the legislative assembly, ccpies of the bill, together with the reasons for the Governor's veto, shall be sent by registered mail to all legislators. If two-thirds (2/3) of the members of each house return the bill with an affirmative vote within ten (10) days, attested to by a notary public, the bill shall beccne law.

INTRCDUCED BY: /s/ Chet Blaylock

/s/ Dcrcthy Eck
/s/ Charles H. Mahoney
/s/ R. S. Hanson
/s/ Dcuglas Delaney
/s/ Leslie Eskildsen
/s/ George H. James
/s/ Margaret S. Warden
/s/ D. A. Scanlin
/s/ Rachell Mansfield

DELEGATE PROPOSAL
No. 26 - State Eoundaries

MONTANA CONSTITUTICHAL CCNPENTICN

1971-1972

DELEGATE PROPOSAL NO. 26

DATE INTRODUCED: JAN. 25. 1972

Referred to General Government and Constitutional Amendment Committee

A FROPOSAL FOR A NEW CONSTITUTICNAL ARTICLE TO PROVIDE BOUNDARIES FOR TBE STATE CF MONTANA.

BE IT PROPOSED BY THE CONSTITUTICNAL CONVENTICN CF THE STATE GE NONTANA:

Section 1. There shall be a new Constitutional Article to provide as fcllcws:

"ARTICLE ---

BOUNDARIES

Section 1. The boundaries of the State of Montana shall be as established in the federal Organic Act creating the Territcry cf Montana."

INTRGCOCED BY: /s/ Bruce M. Brcwn

ECNTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 27

DATE INTRODUCED: JAR. 25, 197;

Referred to General Government and Constitutional Amendment Ccmmittee

XIX, 9

A PROPOSAL AMENDING ARTICLE XIX, SECTICN 9 OF TEE CONSTITUTICN CF THE STATE OF MONTANA PROVIDING FOR A MAJCRITY RATHER THAN TWO-THIRDS VOTE FOR LEGISLATIVE CONSTITUTIONAL AMENDMENTS, PRCVIDING FGR CONSTITUTIONAL AMENDMENT BY THE PEOPLE ANC PRGHIEITING EXECUTIVE VETC OF PRCPOSED AMENDMENTS.

BE IT PROPOSED BY THE CONSTITUTIONAL CGNVENTION OF THE STATE CF MONTANA:

Section 1. Article XIX, Section 9 cf the present Ccnstitution is amended to read as follcws:

"Sec. 9. Amendments tc this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted fcr by ~~two-thirds~~ a majcrity cf the members elected to each house, such prcposed amendments, together vith the ayes and nays cf each house therecn, shall be entered in full on their respective journals~~:~~.

The people of Montana may alsc propose constitutional amendments by initiative petitions. Each petitcn shall include the full text of the proposed amendment and shall be signed by ten (10) percent or mcre of the state's legal vcters. The number of legal vcters for the state is determined by the votes cast for Governcr in the general election immediately preceding filing of petitions. The petitions shall be filed with the Secretary of State fcur (4) months or more before the electicm at which they will be voted cn. ~~and~~ The secretary of state shall cause the said amendment or amendaents to be published in full in at least one newspaper in each county (if such there be) for ~~three months~~ fcur weeks previous tc the ~~next general~~ electicn ~~for members to the legislative assembly,~~ at which the amendments will be voted on. ~~and~~ At said election the said amendment cr amendments shall be submitted to the qualified electors of the state for their

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approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; provided, however, that not more than ~~three~~ six amendments to this constitution shall be submitted at the same election by the legislative assembly and not more than two amendments shall be submitted by the people. If more than two petitions for amendment are offered to the Secretary of State he shall publish and offer to the people the two with the greatest number of signatures; if there is an equal number of signatures the first petition filed shall take precedence.

The veto power of the Governor shall not extend to proposed constitutional amendments."

INTRODUCED BY: /s/ Charles H. Mahoney

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 28

DATE INTRODUCED: JAN. 25, 1972

Referred to General Government and Constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR LEGISLATIVE AUTHORIZATION OF GAMBLING.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ---. All forms of gambling, lotterier, and gift enterprises previously prohibited by the Constitution of the State of Montana are prohibited until such time as they may be authorized by a majority vote of the legislature or by the people through initiative or referendum."

INTRODUCED BY: /s/ Don E. Belcher

CELEGATE FRCPCSAL
NO. 29 - Elections, Schcol

MONTANA CONSTITUTICNAI CCFVENTICN

1971-1972

DPLEGATE ERCFCSAL NO. 29

DATE INTRODUCED: JAN. 26, 1972

Referred to Education and General Gcvernment Ccnrittees

XI, 10

A PROPOSAL REPEALING ARTICLE XI, SECTION 10, OF THE CCNSTITUTION OF THE STATE CF RCNTANA ANE ADDING A NEW SEC'IICN TO PROVIDE TRAT SCRCOL ELECTIONS EE RELC IN CONJUNCTION WITH CTHER ELECTIONS.

BE IT PROPOSED BY THE CONSTITUTICNAI CCNVENTION OF TRE STATE CF MCNTANA:

Section 1. Article XI, Section 10 of the present Ccnstitution, which reads as follcws, is repealed:

~~"Sec. 10. The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for."~~

Section 2. There shall be a neu Ccrstituticnal Section to provide as follcws:

"Section ___. SCHOOL ELECTICNS. Except in specific instances designated by the legislature, all elections for school district officers, mill levies or indebtedness shall be conducted in conjunction with elections at which state, ccunty or municipal officers are voted for."

INTRODUCED BY: /s/ Marian Erdmann

/s/ Charles H. Mahoney

/s/ M. Lynn Sparks

/s/ Clark E. Simon

/s/ Daniel W. Harrington

/s/ George Harper

/s/ Betty Babcock

/s/ Maurice Driscoll

/s/ Carman Skari

/s/ Thomas M. Ask

/s/ Katie Payne

/s/ Fry Gysler

DELEGATE PRCFCSAL
NO. 30 - Sovereign Immunity

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL HO. 30

DATE INTRODUCED: JAN. 26, 1972

Referred to Judiciary Committee

A PROFOSAL FCR A NEW CONSTITUTIONAL SECTION ELIMINATING THE DEFBNSE OF SOVEREIGN IMMUNITY.

BE IT FROPCSEC BY THE CONSTITUTICNAI CONVENTICN CF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as fcllcus:

*'Section 1. The State of Montana and its subdivisions shall be subject to the same liabilities as a natural perscn."

INTRODUCED BY: /s/ Jerome J. Cate

/s/ Jerome T. Loendorf

/s/ Mae Nan Robinson

/s/ Bob Campbell

/s/ Carman Skari

/s/ Arlyne Reichert

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PECPOSAL NO. 31

DATE INTRODUCED: JAN. 26, 1972

Referred to General Government and Constituticnal Amendment Committee

XIX, 1

A PROPOSAL AMENDING ARTICLE XIX, SECTION 1 OF THE CONSTITUTION OF THE STATE OF MONTANA TO PROVIDE A BRIEF OATH OF OFFICE.

BE IT FROPOSED EY THE CONSTITUTIONAL CONVENTION OF THE STATE OE HONTANA:

Section 1. Article XIX, Section 1 of the present Ccnstitution is amended to read as follcws:

"Section 1. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, befcre they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do sclemnly swear (or affira) that I will support, protect and defend the ccnstitution cf the United States, and the ccnstitution of the state of Montana, and that I will discharge the duties of my office with fidelity+, ~~and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law, that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf, that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law,~~ sc help me God. ~~And no other oath, declaration or test shall be required as a qualification for any office or public trust.~~"

INTRODUCED EY: /s/ Paul Barlow

DELEGA'IE PROPCSAI
Nc. 32 - Eill of Rights

MONTANA CONSTITUTICNAI CONVENTICN

1971-1972

DELEGATE FRCPCSAL NC. 32

DATE INTRODUCED: JAN. 26, 1972

Referred tc Bill cf Rights Committee

A FRCFCSAL FCR A NEW SECTION IN ARTICLE III CF THE PRESENT CONSTITUTICN, THE BILL CF RIGHTS, GUARANTEEING EREEDCI! FRCM DISCRIMINATION.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN CF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section in Article III to provide as fcllcws:

"Sectien ___. No person shall, because cf race, color, national origin, creed, religicn cr sex be subjected tc any public cr private discriminatien in pclitical and civil rights, in the hiring and promotion practices cf any employer, or in the sale cr rental cf property. These rights shall be enforceable uithcut action by the legislative assembly. Persons aggrieved shall have access to the Courts to enjoin discrimination prohibited by this section."

INTRODUCED BY: /s/ Mae Nan Robinsen

/s/ Lucile Speer

MONTANA CONSTITUTICKAL CCNVENTION

1971-1972

DELEGATE PROPOSAL NO. 33

DATE INTRODUCED: JAN. 26, 1972

Referred tc Bill of Rights Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION TO INSURE THE RIGHTS OF INCIVIDUAL DIGNITY, ERIVACY, ANC FREE EXPRESSION.

BE IT PROPOSED BY TBE CONSTITUTIONAL CCNVENTION OP THE STATE CF MONTANA:

Section 1. There shall be a new Constitutional Secticn to prcvide as follows:

"Sectiон ___. The rights of individual dignity, privacy, and free expressiсn being essential to the well-being cf a free society, the state shall not infringe upon these rights without the showing of a compelling state interest."

INTRODUCED BY: /s/ Bob Campbell

/s/ Donald R. Foster

/s/ Frank Arness

/s/ Mae Nan Robinson

/s/ Marshall Murray

/s/ Lyle R. Monroe

/s/ Jean Bowman

DELEGATE PRCPCSAI
NO. 34 - Individual Rights

MONTANA CONSTITUTIONAI CONVENTICN

1971-1972

DELEGATE PROPOSAI NC. 34

DATE INTRODUCED: JAN. 26, 1972

Referred tc Judiciary Committee

III, 24

A PROPOSAL AMENDING ARTICLE III, SECTION 24 OF THE CONSTITUTICN OF THE STATE CF MONTANA REAFFIRMING THE PRINCIPLES OF REPCBHATICN AND FRCVIDING AUTOMATIC RESTORATION OF RIGHTS UEON TERMINATION OF STATE SUPERVISION.

BE IT FBOPOSED EY THE CONSTITUTIONAL CONVPNTION OF THE STATE OF MONTANA:

Section 1. Article III, Section 24 of the present Constitution is amended to read as fcllows:

"Section 24. Laws for the punishment of crime shall be founded cn the principles of reforaaticn and preventicn, ~~but this shall not affect the power of the legislative assembly to provide for punishing offences by death.~~ and full rights shall be automatically restored upon determinaticn cf for any offense against the state."

INTRCDUCED BY: /s/ Bob Campbell

/s/ Lyle R. Monroe

/s/ Marshall Murray

/s/ Frank Arness

/s/ Jean Bowman

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 35

DATE INTRODUCED: JAN. 26, 1972

Referred to Revenue and Finance Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION IN ARTICLE XII OF THE PRESENT CONSTITUTION TO PROVIDE THAT THE LEGISLATIVE ASSEMBLY MAY ALLOW PREFERENTIAL TAXATION.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section in Article XII to provide as follows:

"Section ___. The legislative assembly may provide that farms, agricultural lands, standing timber, timberlands, and other open space lands used for recreation or enjoyment of their scenic or natural beauty shall be valued for purposes of taxation on the basis of the use to which the property is currently being applied."

INTRODUCED BY: /s/ Mae Nan Robinson

DELEGATE PROPOSAL
NO. 36 - Seat of Government, Location

MONTANA CONSTITUTIONAL CONVENTION

157-1-1972

DELEGATE PROPOSAL NO. 36

DATE INTRODUCED: JAN. 26, 1972

Referred to General Government and Constitutional Amendment Committee

X, 2, 3, 4

A PROPOSAL REPEALING SECTIONS 2 AND 4 OF ARTICLE X OF THE CONSTITBTION OP THE STATE OF MONTANA AND AMENDING SECTION 3 OF ARTICLE X TO PROVIDE FOR THE SEAT OF MONTANA GOVERNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVEN'IION OF THE STATE OF MONTANA:

Section 1. Article X, Section 2 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 2. At the general election in the year one thousand eight hundred and ninety two, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the state, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be, and is hereby, submitted in like manner to the qualified electors at the next general election thereafter; provided, that until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena."~~

Section 2. Article X, Section 4 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 4. The legislative assembly shall make no appropriations or expenditures for capitol buildings or grounds until the seat of government shall have been permanently located, as herein provided."~~

Section 3. Article X, Section 3 of the present Constitution is amended to read as follows:

"Sec. 3. ~~When~~ The seat cf government ~~shall have~~ having been located ~~as herein provided~~ in Helena the locatic thereof shall not ~~thereafter~~ be changed, except by a vcte of two-thirds of all the qualified electors of the state vcting cn that question at a general election at which the question cf the locatic cf the seat of government shall have been submitted by the legislative assembly."

INTRODUCED BP: /s/ Don E. Belcher

/s/ Ctto T. Habedank

/s/ Lyman W. Choate

/s/ Peter "Pete" Lorello

CELEGATE PROPCSAL
NC. 37 - State Revenues, Earmarking

BONTANA CONSTITUTICNAL CONVENTICN

1971-1972

CELEGATE PROPOSAL NC. 37

DATE INTRODUCED: JAN. 26, 1972

Referred to Revenue and Finance Committee

A PROPOSAL FCR A NEY CONSTITUTIONAL SECTICN PROVIDING FOB EARMARKING EY TEE LEGISLATURE.

BE IT FROPCSED BY THE CONSTITUTICNAL CONVENTICN CF TEE STATE OF MONTANA:

Section 1. There shall be a new Cocstituticnal Section to prcvide as fcllcws:

"Section ___. EARMARKING. The legislature shall have the sole authority tc earmark mcnies accruing to the state frcm whatever sources."

INTRODUCED BY: /s/ Donald R. Fcster

/s/ Rachell Mansfield

/s/ Bob Campbell

/s/ Jean Bowman

/s/ Mae Nan Robinson

/s/ D. G. Drum

/s/ Thomas M. Ask

MONTANA CONSTITUTICNAI CCNVENTICN

1971-1572

DELEGATE PRCPCSAL NC. 38

DATE INTRODUCED: JAN. 26, 1972

Referred to Judiciary Committee

A PROPOSAL FCR A HEW CONSTITUTICNAI SECTICN PROVIDING FCR CITIZEN PARTICIPATION IN THE OPERATION OF THE GOVERNMENT PRICR TO FINAL CECISICN.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN CP THE STATE CF HGNTANA:

Section 1. There shall be a new Constituticnal Section to provide as follows:

"Section . RIGHT OP PARTICIPATION. The public shall have the right to--expect governmental agencies tc afford every feasible opportunity for citizen participation in the operation of the government prior to final decision. The legislature shall provide by law points of access and institutional structures to naxiaize such a right."

INTRODUCED EY: /s/ Donald R. Foster

/s/ George H. James

/s/ Noel D. Furleng

/s/ Mae Nan Robinscn

/s/ Bob Campbell

/s/ Lyle R. Monroe

/s/ Jerome T. Icendorf

/s/ Dorothy Eck

/s/ Veronica Sullivan

/s/ Don Rebal

/s/ Jerome J. Cate

DELEGATE FRCFCSAL
No. 39 - Wage Commission

MONTANA CONSTITUTIGNAI CONVENTICN

1971-1972

DELEGATE FRCFCSAL NC. 39

DATE INTRODUCED: JAN. 27, 1972

Referred tc Public Health, Welfare and Labor Ccmmittee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTICN FRCVIDING FOR A WAGE COMMISSICN.

BE IT PROPOSED BY THE CONSTITUTICBAL CCNVENTION OF THE STATE GF MCNTANA:

Section 7. There shall be a new Ccnstituticnal Section to provide as fcllcus:

"Section ---. There shall be a wage commission consisting of nine (9) members; three (3) members appointed by the Governor, three (3) members appointed by the Legislature, and three (3) members appointed by the Supreme Court. Ten (10) days after the beginning of each legislative session, the commission shall submit tc the legislature a salary schedule fcr elected officials in the executive, judicial and legislative branches of state government. The legislature may amend the salary schedule during its regular session by majority vote. Upon adjcurnment sine die of each sessicn, the proposed salary schedule and amendments thereto shall become lam and all salaries set thereby shall be adjusted to conform to the schedule as of the first day of the month fcllcwing adjcurnment."

INTRODUCED BY: /s/ Jerome J. Cate

/s/ Arlyne Reichert

/s/ Mae Nan Robinson

/s/ George Harper

/s/ John H. Leuthold

/s/ Carman Skari

/s/ Torrey Johnson

/s/ Jerome T. Icendorf

/s/ Magnus Aasheim

/s/ Richard P. Roeder

MONTANA CONSTITUTICNAL CCNVENTION

1971-1972

DELEGATE PROPOSAL NO. 40

DATE INTRCDUCED: JAN. 27, 1972

Referred tc Iccal Gcvernment Ccmmittee

A PROPOSAL EOR A NEW CONSTITUTIONAL ARTICLE ON IOCAI GCVERNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF THE STATE GE MONTANA:

Section 1. There shall be a new Constituticnal Article to provide as follcws:

"ARTICLE ---

LCCAL GCVERNMENT

Section 1. PURPOSE AND CONSTROCTICN. The purpose cf this article is to provide for maximum lccal self-government and intergovernmental cooperation. Units of lccal government shall have the powers and privileges granted to then by this ccnstitution, all of which shall be liberally ccnstrued in favcr of units of lccal government.

Section 2. DEFINITION. As used in this and other articles of this constitution, the term unit cf lccal government shall mean any public entity organized in the manner prescribed by law, with boundaries in scme defined portion of the state and with officials uho are elected by voters residing within such bcundaries or uho are appointed by cfficials sc elected. A unit of local government shall include counties, cities, towns, or other civil divisions, or any of these units functicning in a ccnsolidated organization.

Section 3. ORGANIZATION OF IOCAI GCVERNMENT. The legislature shall provide by general law for the gcvernment cf ccunties, cities, towns, and other civil divisions and for methods and procedures of incorporating, merging, consolidating, and dissolving such units of lccal gcvernment and cf altering their boundaries, including provisions:

(1) For such classification of units of lccal government as may be necessary cn the basis of population or on any cther

reasonable basis related tc the purpcse of the classification:

(2) Fcr optional plans of municipal organization and government sc as tc enable a county or city tc adcpt or abandon an authorized cpticnal charter by a majority vote cf the qualified vcters voting therecn;

(3) For procedures by which a ccunty cr a city may prepare an alternative plan cf municipal organization and government to be adopted or amended by a majority vote of the qualified vcters of the city cr county voting therecn.

(4) For procedures by which a county, city, and town, or ccunties and cities and towns may prepare an alternative fcrm cf consolidated municipal government to be adcpted or amended by a majority vote of the qualified voters of the jurisdictions affected.

Section 4. POWERS CP UNITS OF LOCAL GOVERNMENT. A unit of local government may exercise any legislative pcwer or perform any function which is nct denied to it by its charter, is not denied to units of local government generally cr to its class cf local government, and is within such limitations as the legislature shall establish by general law. This grant of powers to units of local government shall not include the power to enact private cr civil law governing civil relaticnships except as incident tc an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment cf a felony.

section 5. INTERGOVERNMENTAL CCOPERATION. Subject to any limitation which the legislature may make by statute, the state, or any one or more of its units of local government, may exercise any cf their respective powers, or perfcrm any of their respective functions and may participate in the financing thereof jointly or in cccperation with any one or mcre units of local qovernment within this state or with cther states, os units cf local government of other states, cr with the United States."

INTRCDUCED BY: /s/ Felt

/s/ Drum

/s/ M. Lynn Sparks

/s/ George W. Rollins

/s/ Ben Berg

/s/ Virginia H. Blend

/s/ Oscar L. Anderson

/s/ R. J. Studer

MONTANA CONSTITUTIONAI CCNVENTICN

1971-1972

DELEGATE FRCFCSAL NC. 41

DATE INTRODUCED: JAN. 27, 1972

Referred to Education and Public Lands Committee

A ERCFOSAL FCR TWO NEWCONSTITUTIONAL SECTIONS WHICH WILL RETAIN THE PROVISIONS OF THE PRESENT CCNSTITUTICN RELATING TO APPROPRIATIONS FOR CHARITABLE PURPOSES AND AID IC NONPUELIC SCHOOLS.

BE IT FROPCSED BY THE CONSTITUTICNAL CGNVENTICN OF THE STATE OE MCNTANA:

Section 1. There shall be a new Constitutional Section to provide as fcllcws:

"Section ___. No apprcpriation shall be made for charitable, industrial, educaticnal or benevolent purpcses to any perscn, corporation or community not under the absolute ccntrcl of the state, nor to any denominational or sectarian institution or asscciaticn."

Section 2. There shall be a neu Constitutional Sectien to provide as follows:

"Sectien ___. Neither the legislative assembly, nor any county, city, town, or school district or other public ccrporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, cr make any grant of lands or cther property in aid of any church, or fcr any sectarian purpose, or to aid in the support of any schccl, academy, seminary, college, university, or cther literary, scientific institutien, controlled in whole or in part by any church, sect or denomination whatever."

INTRODUCED BY: /s/ John H. Ieuthold

DELEGATE PRGPCSAL
No. 42 - Initiative, Referendum, Recall

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

DELEGATE FRGPOSAL NO. 42

DATE INTRODUCED: JAN. 27, 1972

Referred to General Government and Constituticnal Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION FRGVIEING FOR INITIATIVE, REFERENDUM AND RECALL POWERS FCR LOCAL GCVERNMENT.

BE IT PRGPCSED BY THE CONSTITUTICNAL CCNVENTION OF TRE STATE OF BCNTANA:

Section 1. There shall be a new Ccnstituticnal Section to provide as fcllcws:

"Section . The legislature shall provide for recall cf local elected--officials and for the exercise of the initiative and referendum pcwers by the voters cf subdivisicns cf the state."

INTRODUCED EY: /s/ Virginia H. Blend

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL XC. 43

DATE INTRODUCED: JAN. 27, 1972

Referred tc Educaticn and Public Iands Committee

A PRCPOSAL PCR A NEW CONSTITUTIONAL SECTICN PRCVIDING FOR EQUALITY OF EDUCATIONAL CPPORTUNITY.

BE IT FROPCSEL BY THE CONSTITUTICNAL CONVENTICN CF THE STATE OF MONTANA:

Sectiocn 1. There shall be a new Constituticnal Section to prcvide as fcllcus:

"Section ___. Equality cf educaticnal cppcrtunity shall be guaranteed to each perscn of the state. The legislature shall provide for the establishment cf programs necessary tc develcp the full educational potential cf each perscn."

INTRCDUCED EY: /s/ Richard J. Champoux

/s/ Bcb Campbell

/s/ D. A. Scanlin

/s/ Jerome J. Cate

DELEGATE PROPOSAL
NO. 44 - Judicial Article

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 44

DATE INTRODUCED: JAN, 27, 1972

Referred to Judiciary Committee

A PROPOSAL FOR A NEW JUDICIAL ARTICLE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Article to provide as follows:

"ARTICLE ___

THE JUDICIARY

Section 1. The judicial power of the state shall be vested in a supreme court, in district courts and such other courts as say be provided by law; except that the legislature shall provide for impeachment proceedings in accordance with the provisions of this constitution.

Section 2. The supreme court shall have appellate jurisdiction and general supervisory control over all other courts with the power to make rules and regulations not inconsistent with state law.

Section 3. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus,, quo warranto, certiorari, prohibition, injunction, supervisory control and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody. and may make such writs returnable before the Supreme Court, and such writs may be heard and determined by the court.

Section 4. The Supreme Court shall consist of a chief jus-

tice and four associate justices, a sajcrity cf whom shall be necessary tc fcrm a quorum or pronounce a decision. The legislative assesbly shall have the power to increase the number of associate justices. District judges may be substituted for any justice in any cause, and any decisions or opinicn cf the district judge shall have the same fcrce and effect as if regularly participated in by a justice cf the supreme court. The Chief Justice shall preside at all sessicns cf the Supreme Ccurt. In his absence, he shall appoint an associate justice to preside in his stead.

Section 5. The district ccurts shall have original jurisdiction of all justiciable matters, both civil and criminal, including jurisdictions to issue original and remedial writs, which may be issued and served on legal hclidays and nonjudicial days. Process cf district courts shall extend tc all parts of the state. Jurisdiction to review administrative acticns shall be provided by law. There shall be the power cf naturalizatich, and to issue papers therefor, in all cases where they are authorized to do sc by the laws of the United States.

Section 6. The legislative assembly shall divide the state into judicial districts and provide for the number cf judges in each judicial district. The ieqislative assembly shall have the power to change the number of judicial districts or their bcundaries and the number of judges in each district.

Section 7. The justices cf the supreme ccurt and all other judges or magistrates shall have such qualifications, and shall be selected or appointed, and shall serve or be removed, in such manner and under such conditions as the legislative assembly shall provide by law. All vacancies for chief justice and associate justice of the supreme court and district court judge shall be filled by appointment by the Governor in such manner as the legislative assembly eay provide by law."

INTRODUCED EY: /s/ - Jerome T. Leedorf.

142

DELEGATE FBOPOSAL
NO* 45 - Individual Rights

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPCEEL NO. 45

DATE INTRODUCED: JAN. 27, 1972

Referred to Bill of Rights and Public Health, Welfare, Labor & Industry Committees

III, 3

A PRCFOSAL AMENDING ARTICLE III, SECTICN 3 OF THE CONSTITUTION OF THE STATE OF MONTANA RECOGNIZING THE RIGHT TO EASIC NECESSITIES.

BE IT FROPOSED BY THE CONSTITUTICNAL CONVENTICN CF THE STATE OF RCNTANA:

Section 1. Article III, Section 3 of the present Constitution is amended to read as follows:

"Sec. 3. All persons are born equally free, and have certain natural, essential, and inalienable rights, among which ~~may be reckoned~~ are the right of enjoying and defending their lives and liberties, the right to the basic necessities of life including the right to adequate nourishment, housing, and medical care, of acquiring. possessing, and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways."

INTRODUCED BY: /s/ Lyle R. Monroe

/s/ Richard B. Roeder

/s/ Harold Arbanas

/s/ Bob Campbell

/s/ Lucile Speer

/s/ Dorothy Eck

/s/ Virginia H. Blend

MONTANA CONSTITUTIONAL CONVENTICN

1971-1572

DELEGATE PROPOSAI NC. 46

DATE INTRODUCED: JAN. 27, 1972

Referred tc Education & Revenue & Finance Committees

A PROPOSAL FCR A NEU CONSTITUTIONAL SECTION PROVIDING FOR TRE FINANCING OF THE PUBLIC SCHOOL SYSTEM.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF TBE STATE CF MONTANA:

Section 1. There shall be-a new Ccnstituticnal Section to provide as follcus:

"Section ___. PUBLIC SCHOOL FINANCING. The state shall assume all financial responsibility for public free schools."

INTRODUCED BY: /s/ Mike McKeon

DELEGATE PROPOSAL
No. 47 - Elections

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 47

DATE INTRODUCED: JAN. 28, 1972

Referred to General Government and Constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR THREE TYPES OF ELECTIONS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to Provide as follows:

"Section ___. There shall be three types of elections: general, nonpartisan and special. The general election shall be held to coincide with national elections and shall be for all partisan offices as elsewhere designated and for referendum and other measures assigned by the legislature. The nonpartisan election shall be held on the first Saturday in April and shall be for all offices elected on a nonpartisan basis and for all school election. Special elections shall be held as called by the legislature. The subject matter herein assigned to one type of election shall not be otherwise assigned to any other type of election."

INTRODUCED BY: /s/ Marjorie Cain

MONTANA CONSTITUTICNAI CGNVENTICN

1971-1972

DELEGATE PROPCSAL NO. 48

DATE INTRODUCED: JAN. 28, 1972

Referred to Watural Rescurces and Agriculture Committee

A PROPOSAL FCR TWO NEW CCNSTITUTICNAL SECTIONS PROVIDING FCR WATER RIGHTS.

BE IT PROPOSED BY TBE CONSTITUTIONAL CCNVENTION OF THE STATE CF MONTANA:

Section 1. There shall be two new Constituticnal Sections tc provide as follous:

"Section ___. All surface and subsurface water shall forever remain the property of the people of Montana and subject tc appropriation for beneficial uses as provided by law.

Section ___. Priority of appropriation for beneficial uses shall give the better right. Nc appropriaticn shall be denied except when such denial is demanded by the public interests."

INTRODUCED BY: /s/ Mark Etchart

DELEGATE PROPOSAL
NO. 49 - Public Schools, Funding

WCNTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NC. 49

DATE INTFODUCEC: JAN. 26, 1972

Referred tc Education and Public Lands Committee

XI, 5

A PROPOSAL ABENCING ARTICLE XI, SECTION 5 OF TBE CONSTITUTION CF THE STATE OF MONTANA PROVIDING FOR APPORTIONMENT OF SCHOOL FUNDS.

BE IT PROPOSED BY THE CONSTITUTIONAL CCNVENTION CF THE STATE CF WCNTANA:

Section 1. Article XI, section 5 of the present Constitution is amended to read as follows:

"Sec. 5. Ninety-five percentum (95%) cf all the interest received on the schocl funds of the state, and ninety-five percentum (95%) of all rents received frcm the leasing of school lands and of all cther income from the public schocl funds shall be apportioned annually tc the several public elementary and secondary school districts of the state as the legislature may direct. ~~in proportion to the number of children and youths between the ages of six (6) and twenty one (21) residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made.~~ The remaining five percentum (5%) cf all the interest received on the schocl funds of the state, and the remaining five percentum (5%) of all the rents received from the leasing of school lands and of all other income frcm the public school funds, shall annually be added to the public schocl funds of the state and become and forever remain an inseparable and inviclable part thereof."

INTRCDUCBD BY: /s/ Chet Blaylock

/s/ D. A. Scanlin

/s/ George H. James

/s/ Lyle R. Monroe

/s/ Paul K. Harlow

/s/ Don E. Belcher

/s/ Noel D. Furlong

/s/ Lloyd Barnard

/s/ Leslie Eskildsen

/s/ Magnus Aasheim

DELEGATE FBCPCSAL
No. 50 - Equal Protection

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE FRCFCSAL NO. 50

DATE INTRODUCED: JAN. 28, 1972

Referred tc Bill of Rights Ccmrittee

A PROPOSAL FCR A NEW CGNSTITUTICIAL SECTION GUARANTEEING THE EQUAL FRCTECTION OF THE LAWS.

BE IT PROPOSED BY THE CCNSTITUTICNAL CONVENTION OF THE STATE CF MCNTANA:

Section 1. There shall be a new Ccastituticnal Section to provide as fcllcws:

"Section ___. The egual protection of the laws shall not be denied cr abridged by the state or its units cf local government on acccunt cf race, color, creed, national ancestry or sex."

INTRODUCED By: /s/ Bob Campbell

MONTANA CONSTITUTICNAI CCNVENTICN

1971-1972

DELEGATE FRCECSAL NO. 51

DATE INTRODUCED: JAR. 28, 1472

Referred tc Bill of Rights Ccaaittee

A PROPCSAL FCR A NEW CONSTITUTICNAI SECTICN FROHIEITING DISCRIMI-NATICN IN EMPLOYMENT ANC TBE SALE OR RENTAL CF PRCPERTY CN THE BASIS OF RACE, COLOR, CREED, NATIONAL ANCESTRY CR SEX.

BE IT PROPOSED BY THE CONSTITUTICNAI CONVENTICN OF THE STATE GE MONTANA:

Section 1. There shall be a new Constituticnal Section to provide as follcws:

"Section ___. All persons shall have the right to be free from discrimination on the basis of race, colcr, creed, national ancestry or sex in the hiring and promctica practice+ of any employer or in the Sale or rental cf property.

These rights are enforceable without actica by the legis-lature but the legislature may Provide additional remedies for their viclaticn.

INTRCDUCED BY: /s/ Bob Campbell

150

DELEGATE PROPOSAL
NO. 52 - Elections

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 52

DATE INTRODUCED: JAN. 26, 1972

Referred to General Government and Constitutional Amendment Committee

XIX, 8

A PROPOSAL AMENDING ARTICLE XIX, SECTION 8 CF THE CONSTITUTION OF THE STATE OF MONTANA TC PERMIT FUTURE CONSTITUTIONAL CONVENTICN DELEGATES TO BE ELECTED ON A NCN-PARTISAN BASIS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVEUTICN OF THE STATE OF MONTANA:

Section 1. Article XIX, Section 8 of the present Constitution is amended to read as follows:

"Sec. 8. The legislative assembly may at any time, by a vote of two-thirds cf the members elected to each house, submit to the electors cf the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the guesticn shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number cf members cf the convention shall be the same as that of the house of representatives, and they shall be elected ~~in the same manner~~ at the same places, and in the same districts, but on a ncn-partisan basis. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay cf its members and officers, and provide for the payment of the same, together with the necessary expenses cf the convention. Before proceeding, the members shall take an oath tc support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members cf the convention. The qualifications cf members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors far their ratification or

rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the electicr, nc such revision, alteration or amendment shall take effect."

INTRODUCED BY: /s/ Margaret S. Warden

/s/ Carl M. Davis

/s/ Douglas Delaney

/s/ George W. Rollins

/s/ Harold Arbanas

/s/ Clark E. Simon

/s/ Charles H. Mahoney

/s/ Virginia H. Blend

/s/ Fred J. Martin

/s/ Maurice Driscoll

/s/ J. C. Garlington

/s/ Chet Blaylock

/s/ D. A. Scanlin

DELEGATE PROPOSAL
NO. 53 - Elections

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NUMBER 53

DATE INTRODUCED: JAN. 28, 1972

Referred to Judiciary Committee

VIII, 20

A PROPOSAL AMENDING ARTICLE VIII, SECTION 20 OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article VIII, Section 20 of the present Constitution is amended to read as follows:

"Sec. 20. There shall be elected in ~~each organized township of~~ each county ~~by the electors of such township~~ at least two justices of the peace, with qualifications, training, and monthly compensation as provided by law, who shall hold their offices, ~~except as otherwise provided in this constitution,~~ for the term of ~~two~~ four (4) years. Justices courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; provided, that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of ~~three hundred dollars~~ one thousand dollars ($1,000). The legislature may provide for additional justices of the peace in each county or other types of courts below the district court level as is deemed necessary.

INTRODUCED BY: /s/ Thomas M. Ask

/s/ Carl M. Davis /s/ Douglas Delaney

/s/ John H. Anderson Jr.

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE FROPCSAL NC. 54

DATE INTRODUCED: JAN. 28. 1972

Referred to Lccal Gcvernment Committee

XIX, 6

A FRCPOSAL REPEALING ARTICLE XIX, SECTICN 6, OE THE CCNSTITUTICN OF THE STATE CF MONTANA.

BE IT FROPCSED BY THE CONSTITUTICNAI CONVENTICN OF THE STATE OF MONTANA:

Section 1. Article XIX, Section 6 of the present Constitution, which reads as follcus, is repealed:

~~"Sec. 6. All county officers shall keep their offices at the county seats of their respective counties."~~

INTRODUCED BY: /s/ George W. Rollins

DELEGATE PROPOSAI
Nc. 55 - Compensation, Victims cf Crime

BONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NO. 55

DATE INTRODUCED: JAN. 28, 1972

Referred to Bill cf Rights Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTICN PROVIDING FOR COMPENSATION FOR VICTIMS OF CRIME.

BE IT PROPOSED BY TBE CONSTITUTIONAL CONVENTION OF THE STATE OF BONTANA:

Section 1. There shall be a new Constitutional Section to provide as fellows:

"Section ___. RIGHTS OF VICTIMS OF CRIME. Victims of crimes shall be compensated by the state fcr the reasonable value of all injury proven to be the proxieate result of the crime."

INTRODUCED BY: /s/ Jerome J. Cate

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 56

DATE INTRODUCED: JAN. 28, 1972

Referred to Local Government Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE ON LOCAL GOVERNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Article to provide as follows:

"ARTICLE ____

LOCAL GOVERNMENT

Section 1. PURPOSE AND CONSTRUCTION. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2. POLITICAL SUBDIVISIONS. All local government powers shall be vested in the political subdivisions of the state. These shall include, but shall not be limited to, cities and counties. Each political subdivision shall have the power to frame and adopt a charter for its own self-government within limits and under procedures provided by law.

Section 3. CLASSIFICATION. The legislative assembly shall classify the political subdivisions of the state. Such political subdivisions shall have those powers and functions provided by charter or law, allowing for maximum local participation and responsibility.

Section 4. HOME RULE CHARTERS. The qualified voters in any political subdivision of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. The legislative assembly may extend home rule to other political subdivisions.

Section 5. HOME RULE POWER. A home rule unit may exercise all legislative powers not prohibited by law or charter.

Section 6. INTERGOVERNMENTAL COOPERATION. (1) Regardless of home rule classification, agreements, including those for cooperation and joint administration, and for transfer of functions between local subdivisions, local subdivisions and the state, or local subdivisions and the United States, may be consummated except where prohibited by law or charter.

(2) The state shall encourage intergovernmental cooperation, and shall provide for methods by which its political subdivisions may annex, consolidate, or change their form of government. A state agency on local affairs may be created by the legislative assembly to coordinate, advise and assist the various political subdivisions.

Section 7. TAXATION. The political subdivisions of the state shall have the power to tax, improve through special assessments, and to incur indebtedness, as provided by law.

Section 8. SPECIAL ACTS. Special acts of the legislature shall not be effective upon any particular subdivision of the state unless approved by a majority of the qualified electorate voting therein."

INTRODUCED BY: /s/ Marian S. Erdmann

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PROPOSAL RO. 57

DATE INTRCDUCED: JAN. 28, 1972

Referred to Bill cf Rights Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTICN PRCVIDING FOR CITIZENS RIGHTS OF ACCESS TO GOVERNMENT DOCUMENTS AND PROCEDURES.

BE IT FROPCSED BY THE CONSTITUTICNAL CONVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a new Constituticmal Section to provide as follows:

"Section ___. No person shall be deprived of the right to examine documents or to observe the actions and deliberations of all public officials or agencies of state government and its subdivisions, except in cases in which the demand cf individual privacy exceeds the merits of public disclosure."

INTRODUCED BY: /s/ Dorothy Eck

/s/ Donald Fcster

/s/ Lyle R. Monroe

/s/ Marshall Murray

/s/ Bob Campbell

/s/ George H. James

/s/ Paul K. Harlow

/s/ Jean Bowman

DELEGATE PROPOSAL
No. 58 - Constitutional Convention

MONTANA CONSTITUTIONAL CONVENTION

1971-1572

DELEGATE PROPOSAL NO. 58

DATE INTRODUCED: JAN. 28, 1972

Referred to General Government and Constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR PERIODICALLY PRESENTING THE QUESTION OF A CONSTITUTIONAL CONVENTION TO THE VOTERS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislature may at any time call a constitutional convention or submit the question of the calling to the voters. If a constitutional convention has not been called or the question submitted to the voters of the state for a period of twenty (20) years, the Secretary of State shall certify the question, "Shall there be a convention for the purpose of revising the state constitution?" to the voters of the state at the next general election. A convention shall convene before the expiration of two (2) years after a majority of the voters have voted to call a convention.

INTRODUCED BY: /s/ Gene Harbaugh

/s/ Rod Hanson

MONTANA CONSTITUTIONAL CCNVENTION

1971-1972

DELEGATE PROPOSAL NO. 59

DATE INTRODUCED: JAN. 28, 1972

Referred to Bill of Rights Committee

A PROPOSAL FOE A NEW PREAMBLE TO THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY TEE CONSTITUTIONAL CONVENTION OF TBE STATE OF MONTANA.

Section 1. There shall be a Preamble in the new Constitution to read as follows:

"PREAMBLE

We, the Feople of Montana, instilled with the Spirit of cur Creator, gathering our strength frcm the grandeur of our mountains and the richness of our rolling grasslands, uith a reverence for the quiet beauty of our state, vith the desire to live in Peace, in order to improve the quality of life and equality of opportunity for this and succeeding generations, dc hereby ordain and estahlish this Constituticn."

INTRODUCED BY: /s/ Bob Campbell and Mae Nan Robinson

DELEGATE PROPOSAL
No. 6C - County Roundaries

WONTANA CONSTITUTIONAL CONVENTION

1971-1572

DELEGATE PROPOSAL NC. 60

DATE INTRODUCED: JAN. 29, 1972

Referred to Local Government Committee

XVI, 8

A PROPOSAL AMENDING ARTICLE XVI, SECTION 8 OF THE CONSTITUTION OF THE STATE OF MONTANA TO PROVIDE THAT COUNTIES NOW IN EXISTENCE MAY NOT BE ABOLISHED WITHOUT A VOTE OF THE PEOPLE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 7. Article XVI, Section 8 of the present Constitution is amended to read as follows:

"Sec. 8. Any county or counties in existence on the first day of January, ~~1935~~ 1972, under the laws of the state of Montana ~~or which may thereafter be created or established thereunder~~ shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state."

INTRODUCED BY: /s/ Rod Hanson

/s/ Otto T. Habedank

/s/ Fay Gysler

/s/ Margaret S. Warden

/s/ Gene Harbaugh

/s/ J. K. Ward, Dr.

MONTANA CONSTITUTIONAL CONVYNTIGN

1971-1572

DELEGATE PROPOSAL RO. 61

DATE IATBODOCED: JAN. 29, 1972

Referred to Bill of Rights Committee

A PROPOSAL PCR A NEW CONSTITUTIONAL SECTICN FRCVIDING FOR EQUAL PROTECTION OF TEE LAW.

BE IT PROPOSED BY THE CONSTITUTICNAI CONVERTICN OF THE STATE OF MCNTENA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The dignity cf the human being is inviclable. No person shall be denied the equal protectien cf the lau, nor be discriminated against in the exercise of his civil or political rights or in the choice of housing cr conditions of employment on account of race, color, sex, birth, social origin or condition, or political or religicus ideas, by any persca, firm, corporation, or institution; or by the state cr any agency or subdivision of the state."

INTRODUCED BY: /s/ Richard J. Champoux

/s/ William A. Burkhardt /s/ J. Mason Melvin

/s/ Marshall Murray /s/ Jerome J. Cate

DELEGATE PRCPCSAL
No. 62 Reapportionment, Boundary Commission

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 62

DATE INTRODUCED: JAN. 29, 1972

Beferred to General Gcvernment and Constitutional Amendment Ccsmittee

A PROPOSAL FOR A NEU CONSTITUTIONAL ARTICLE CREATING A REAPPCRTIONMENT AND BOUNDARY COMMISSICN.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF TRE STATE OF EONTANA:

Section 1. There shall be a new Constitutional Article tc provide as follows:

"ARTICLE - -

REAPPCRTIONMENT ANI BOUNDARY COMMISSION

Section 1. COMMISSION. There is created a reapportionment and boundary cosnission, the Governcr and the najcrity and minority leaders of the senate and the speaker and minority leader cf the house each shall appoint one (1) member to the commission. Terms and compensation of the members shall be fixed by law.

Section 2. REAEPORTIONHENT. It shall be the duty of the commission after each United States census to prepare a plan of redistricting and reapportionment of the legislative assembly on the basis of equal representation. The plan will become effectise sixty (60) calendar days after its submission to the legislative assembly unless rejected by a majority vote of the total membership of the legislative assembly.

Section 3. PRECINCTS. It is the duty of the commissicn after each Onited States census to redraw the boundaries of election precincts throughout the state so as to achieve equal representation. Such plan is effective sixty (60) calendar days after its submission to the legislative assembly unless rejected by a majority of the total membership of the legislative assembly.

Section 4. REJECTION. When the legislative assembly initiallv rejects either the leaislative reapporticnment or precinct

plans provided for in sections 2 and 3 cf this article, it shall have an additicnal thirty (30) days tc adopt an alternative plan or plans. Failure to adopt such an alternative shall result in the criginal plancf the coamissicn beccming law.

Section 5. BOUNDARIES. The commissicn shall be empowered to examine the boundaries of all lccal gcvernment units and tc make recommendations to the legislative assembly regarding any changes which uculd imprcve governmental services.

Section 6. OTHER DISTRICTS. The commission shall be empcw-ered to exaaine the boundaries cf ccngressicnal and judicial districts, and any other districts referred tc it by the legislature, and make recommendations to the legislature regarding changes in the boundaries of such districts."

INTRODUCED BY: /s/ Mrs. Thomas "Katie" Payne

/s/ Mae Nan Robinson

DELEGATE PROPCSAI
No. 63 - Legislature, Financial Disclosure

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE **PROPOSAL NC. 63**

DATE INTRCDUCED: JAN. 29, 1972

Referred to Legislative Committee

v. 44

A PROPOSAL AMENDING ARTICLE V, **SECIICN 44** OF THE CONSTITUTION CP THE STATE OF MONTANA PROVIDING FOR LEGISLATIVE FINANCIAL DISCIC-SURE.

BE IT FBOPOSEE BY THE CONSTITUTICNAI CCNVENTION OF THE STATE CP MCNTANA:

Section 1. Article V, Section 44 cf the present Constitu-ticn is amended to read as follows:

"Sec. 44. ~~A--member--who-has-a-personal-or-private-interest-in-any-measure-or-bill-proposed-or-pending-before-the-legislative-assembly,-shall-disclose-the-fact-to-the-house-of-which-he--is--a-member,--and--shall--not-vote-thereon.~~ Members cf the legislative assembly shall file with the Secretary of State a disclcsure report of their financial interests and scurces of income. The report shall be open for public inspection. The legislative assembly may extend the provisions of this secticn to cther mem-bers of state government."

INTRCDUCED BY: /s/ Robert Vermillion

/s/ Lyle R. Monroe

/s/ J. K. Ward, Dr.

/s/ D. A. Scanlin

/s/ George B. Heliker

MCNTANA CONSTITUTICNAL CONVENTICN

1971-1572

DELEGATE PRCPOSAL NC. 64

CATE INTRODUCED: JAN. 29, 1972

Referred tc General Government and constitutional Amendment Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTICN PRCVIDING FCR A MAXIMUM INTEREST RATE OF TWELVE PERCENT.

BE IT PROPOSED BY THE CONSTITUTIONAI CCNVENTICN CP THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follcws:

"Section ___. Interest cn debts cr cbligaticns cf any nature may never exceed an annual rate of tuelve percent (12%)."

INTRODUCED EY: @L-Jerome J. Cate

/s/ Bob Campbell

/s/ Mae Nan Robinscn

DELEGATE PROPOSAL
No. 65 - Rights of Children

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 65

DATE INTRODUCED: JAN. 29, 1972

Referred to Bill of Rights Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION RECOGNIZING RIGHTS OF A PERSON UNDER THE AGE OF MAJORITY.

BE IT PROPOSED BY THE CONSTITUTICEAL CONVENTION OF TRE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. Those under the age of majority are persons. Such persons have the right to that emcticnal, social, physical, educaticnal, and moral environment necessary tc attain their full potential. In accordance with this statement cf principle, the rights of persons under the age of majority shall include, but not be limited to, all the fundamental rights of a Montana person, except where specifically precluded by law and the demands of a proper parent-child relaticnship."

INTRODUCED BY: /s/ Lyle R. Monroe

/s/ Dorothy Eck

/s/ Virginia H. Blend

/s/ Harold Arbanas

/s/ Robert J. Vermillion

/s/ Frank Arness

/s/ Arlyne Reichert

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 66

DATE INTRODUCED: JAN. 29, 1972

Referred to Revenue and Finance Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION AUTHORIZING THE LEGISLATURE TO PROVIDE FOR EXCISE TAXES IN LIEU OF PERSONAL PROPERTY TAXES OR MOTOR VEHICLES, AIRPLANES, BOATS, TRAILERS AND SIMILAR PROPERTY.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislative assembly may exempt from property taxation any motor vehicles, airplanes, boats, trailers or similar property, and provide for an excise tax in lieu thereof, the proceeds of which are distributed proportionately to the taxing districts otherwise entitled to impose personal property taxes thereon."

INTRODUCED BY: /s/ John M. Schiltz

/s/ Jerome T. Loendorf

DELEGATE PBOPOSAL
No. 67 - Preamble

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 67

DATE INTRODUCED: JAN. 23, 1972

Referred to Bill of Rights Ccmnittee

A PROPOSAL FOR A NEW PREAMBLE TO THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPCSED BY THE CONSTITUTICNAL CONVENTICN OF THE STATE OF MCNTANA:

Section 1. There shall be a Preamble in the new Constitution to read as follows:

"PREAMELE

We, the People cf Mcntana, grateful to the Spirit of Creaticn, mindful of cur rich heritage, thankful for cur rugged mountains and rolling plains, and desiring to secure the blessings of liberty for ourselves and future generations, do ordain and establish this Constitution."

INTRODUCED BY: /s/ Donald R. Foster

/s/ Lyle R. Monroe

/s/ Rachell K. Mansfield

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 68

DATE INTRCDUCED: JAN. 29, 1972

Referred to Educaticn and Public Iands Committee

XI, 1, 3, 5, 6, 7, 10, 12

A PRCFOSAL TC AMENDARTICLE XI, SECTICNS 1, 3, 5, AND 12 AND TC REPEAL SECTIONS 6, 7 AND 10 OF THAT ARTICLE TC PROVIDE FOR INVESTBENT OF PUBLIC SCRCCL FUNDS A' PROVIDED BY LAW.

BE IT FROPOSED EY THE CONSTITUTIONAL CCNVENTICN CP THE STATE OF MONTANA:

Section 1. Article 'XI, Section 1 of the present Ccnstitution is amended to read as fcllcus:

"Sec. 1. ~~It shall be the duty of~~ The legislative assembly of Montana ~~to~~ shall establish and maintain a general, uniform, ~~and~~ thorough and equitable systen of public, free, ccmmcn schools open to all persons as provided by law."

Section 2. Article XI, Sectien 3 cf the present Constitution is amended to read as follous:

"Sec. 3. ~~Such~~ The public school fund shall fcrever remain inviolate, guaranteed by the state against lcss or diversion, to be invested~~, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings,~~ under the restrictions tc be provided by law."

Section 3. Article XI, Section 5 of the present Ccnstitution is amended to read as follous:

"Sec. 5. Ninety-five percentum (95%) of all the interest received on the school funds of the state, and ninety-five percentum (95X) of all rents received from the leasing of school lands and of all other income from the public school funds shall be equitably apportioned annually tc the several school districts of the state ~~in proportion to the number of children and youths~~

DELEGATE PROPOSAL
No. 68 - Public School Fund

~~between the ages of six (6) and twenty-one (21) residing therein respectively,~~ as provided by law, but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made. The remaining five percentum (5%) of all the interest received on the school funds of the state, and the remaining five percentum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof."

Section 4. Article XI, Section 12 of the present Constitution is amended to read as follows:

"Sec. 12. The various funds of the state university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated and shall be invested under regulations prescribed by law. ~~The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.~~"

Section 5. Article XI, Section 6 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year."~~

Section 6. Article XI, Section 7 of the present Constitution which reads as follows, is repealed:

~~"Sec. 7. The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years."~~

Section 7. Article XI, Section 10 of the present Constitution which reads as follows, is repealed:

~~"Sec. 10. The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for."~~

INTRODUCED BY: /s/ Carl M. Davis

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 69

DATE INTRODUCED: JAN. 29, 1972

Referred tc Judiciary Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTICN IN THE JUDICIAL ARTICLE TC PROVIDE FOR PROSECUTING ATTORNEYS.

BE IT FROPOSEC EY THE CONSTITUTIONAL CCRVEN'IION CF THE STATE CF MONTANA:

Section 1. There shall be a new Constitutional Section in the Judicial Article to provide as fellows:

"ARTICLE ----

THE JUDICIARY

Section ___. There shall be elected throughcut tile state prosecuting attcrneys whose jurisdictiсn and duties shall be prescribed by the legislature."

INTRODUCED BY: /s/ Carl M. Davis

/s/ Thomas M. Ask

DELEGATE PRCPCSAL
No. 70 - Ccnsumer Protection

MONTANA CONSTITUTIONAI CONVENTICN

1971-1972

DELEGATE PAOPCSAL NC. 70

DATE INTBODUCEL: FEE. 1, 1972

Referred tc Public Health, Uelfare and Iabor Committee

A PROPOSAL PCR A NEW CONSTITUTIONAL SECTION ERCVIDING FOR CONSURER PROTECTION.

BE IT PROPOSEL BY THE CONSTITUTIONAL CONVENTICN CF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follcws:

Section ___. CONSUMER PRCTECTICN. The legislature shall provide by law for the protection and educaticn cf the citizens of the State against harmful and unfair business practices.*'

INTRODUCED BY: /s/ Lucile Speer

/s/ Lyle R. Monroe

/s/ Mae Nan Robinscn

/s/ Daphne Bugbee

/s/ Arlyne Reichert

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAI NO. 71

DATE INTRODUCED: FEB. 1, 1972

Referred tc Public Health, Welfare and Labcr Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PRCVIDING FCR A MERIT SYSTEM FOR STATE EMPLOYEES.

BE IT PROPOSED BY THE CONSTITUTIONAL CCNVENTIOW OF THE STATE OF MONTANA:

section 1. There shall be a new Constitutional sectiон tc provide as fcllcvs:

"Section ___. MERIT SYSTEM. The legislature shall prcvide for the establishment and maintenance of a merit system in the civil service of the state. Appcintserts and prcmotions shall be based on merit and fitness, demonstrated by examinaticn cr cther evidence of competence."

INTRODUCED BY: /s/ Lucile Speer

/s/ Jean Bowman

/s/ Mae Nan Robinsсn

/s/ Daphne Bugbee

/s/ Lyle R. Monroe

/s/ Arlyne Reichert

/s/ Dorothy Eck

DELEGATE PRCPCSAI
Nc. 72 - Taxation

MONTANA CONSTITUTICNAL CONVENTICN

1971-1572

DELEGATE PROPOSAL NO. 72

DATE INTRCDUCEL!: FEE. 1, 1972

Referred to Revenue and Finance Ccmmittee

XII. 3

A PROPOSAL REPEALING ARTICLE XII, SEC'XICN 3, OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN CF THE STATE CP MCNTANA:

Section 1. Article XII, Section 3 of the present Ccnstitution, which reads as follows, is repealed:

~~"Sec. 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law, and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law."~~

INTRODUCED EY: /s/ Thomas M. Ask

/s/ Frank Arness

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL AO. 73

DATE INTRODUCED: FEB. 1, 1972

Referred to Public Health, Welfare and Labor Committee

A PROPOSAL FOR A NEW CONSTITUTICNAL SECTION PROVILIRG FCR THE RIGHT OF PUBLIC AND PRIVATE EMPLOYEES TC ENGAGE IH COLLECTIVE BARGAINING.

BE IT PROPOSED BY TBE CONSTITUTIONAL CCNVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follcus:

"Section ___. COLLECTIVE BARGAINING. All persons in private or public employment shall have the right to crganize fcr collective bargaining with their employers through representatives of their own choosing."

INTRODUCED BY: /s/ George B. Heliker

/s/ Daphne Bugbee

/s/ Jerome J. Cate

/s/ Chet Blaylcck

/s/ Joseph H. McCarvel

/s/ Paul K. Harlow

/s/ Miles Romney

/s/ Grace Bates

/s/ Bob Campbell

/s/ Lucile Speer

/s/ Mae Nan Rcbirscn

DELEGATE PROPCSAI
No. 74 - Public School Fund

NONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE FRGPCSAL NO. 74

DATE INTRCDUCED: FEE. 1, 1972

Referred to Education and Public Lands Committee

XI, 3

A PBCFOSAL TO AMENL ARTICLE XI, SECTICN 3 CF THE CONSTITUTION OF THE STATE OF MONTANA TC PERMIT THE PUBLIC SCHOCL FUND TO BE INVESTED AS PROVIDED BY LAW.

BE IT FROPOSEL BY THE CCNSTITUTICNAL CONVENTICN OF THE STATE OF MONTANA:

Section 1. Article XI, Section 3 of the present Constitution is amended to read as follows:

"Sec. 3. ~~Such~~ The public school fund shall forever remain inviolate, guaranteed ~~by the state~~ against loss or diversion, to be invested~~, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings,~~ under the restrictions to be provided by law."

INTRODUCED BY: /s/ Max Conover

/s/ John H. Leuthold

/s/ Marjorie Cain

MONTANA CONSTITUTICHAL CCNVENTION

1971-1972

DELEGATE PROPOSAL NO. 75

DATE INTRODUCED: FEB. 1, 1972

Referred tc Bill of Rights Ccmmittee

III, 14

A PRCPOSAL AMENDING ARTICLE III, SECTION 14 CF THE CONSTITUTION OF THE STATE CP MONTANA PROVIDING COBPENSATICN IN EMINENT DOWAIN PROCEEDINGS FOR USE IMPAIRMENT, PRCVICING CORPENSATICN TO THE FULL EXTENT OF LOSS, ARC PROVIDING JUDICIAL DETERMINATION OF THE ISSUES CF NECESSITY ANC PUBLIC USE.

BE IT PROPOSED BY TBE CONSTITUTICNAL CCNVENTION OF TBE STATE CF BCFTANA:

Section 1. Article III. Section 14 of the present Constitution is amended tc read as follows:

"Section 14. EMINENT DOMAIN: Private property shall nct be taken, ~~or~~ damaged, or the use thereof aired, for public use without the prior payment of just cospensaticn ~~having first been made to or paid into court for the owner~~ tc the full extent of the loss. Prior to the condemnation of any such land, the individual shall have the right to a judicial determination as to whether the contemplated use is necessary and a public use."

INTRODUCED BY: /s/ Bob Campbell

/s/ Marshall Murray

/s/ George B. Heliker

/s/ George H. James

/s/ Lyle R. Monroe

DELEGATE PECPCSAL
No. 76 - Public Utilities

MCNTANA CONSTITUTICRAL CONVENTICN

1971-1972

DELEGATE FROPOSAL NO. 76

DATE INTRODUCED: FEB. 1, 1972

Referred to 'Public Health, Welfare and Labor Committee

A PROPOSAL FOR A NEU CONSTITUTIONAL ARTICLE PROVIDING FOR THE REGULATICN OF PUBLIC UTILITIES.

BE II PROPOSEL BP THE CONSTIITUTICNAL CCNVENTICN CF THE STATE OF MCNTANA:

Section 1. There shall be a new Constitutional Article to provide as fcllcus:

"ARTICLE ____

REGULATICN OF PUBLIC UTILITIES

Section 1. A public utilities comrissicner shall be appointed by the Governcr and confirmed by the senate after public hearings. A vacancy shall be filled in the same manner. The commissicner shall serve at the pleasure of the Governcr.

Section 2. The commissioner shall have such jurisdicticn and such legislative, executive acd judicial powers as are conferred upcn him by the legislature and this constitution, which are cognate and germane to the regulation of public utilities as defined by law and this constitutica. In the exercise of such powers, one of which shall be the deterainaticn of rates and tariffs of the utilities over which he may be given jurisdiction, the commissioner shall not be required to consider any particular theories, evidence, or methods for determining such rates and tariffs; and the commissioner shall determine the ueight and credibility of any evidence that is Introduced. The manner and sccpe of review, if any, of the commissioner's actions in a court of record shall be provided by law.

Section 3. In the deterrinaticn cf rates and tariffs the commissicner shall be provided with expert staff personnel and help in such determination, and recoemendaticns of the staff shall be regarded as impartial as opposed to the partiality of

the applicant or the protestant. The commissioner shall protect the rights and interests of all consumers of public utility services.

Section 4. Private corporations and persons that own, operate, control or manage a line, plant, or system for the transportation of people or property, the transmission of messages or the furnishing of heat, light, water, power, or storage directly or indirectly to or for the public and common carriers are public utilities. The legislature may prescribe that additional classes of private corporations or persons are public utilities.

Section 5. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and tariffs thereof, shall be conferred on any other official or agency.

Section 6. The legislature shall provide by law for the organization and financing of public corporations for the furnishing of heat, light, water, and power; and, in the discretion of the legislature, any other services or commodities commonly produced or sold by the public utilities as defined by law or this constitution.

Section 7. Public utilities organized as public corporations or as cooperatives shall not be subject to the regulation of the commissioners as to rates, service or otherwise."

INTRODUCED BY: /s/ George B. Heliker

/s/ Chet Blaylock
/s/ Leslie Eskildsen
/s/ Henry Siderius
/s/ Paul K. Harlow
/s/ Jerome J. Cate
/s/ Lyle B. Monroe
/s/ Lloyd Barnard
/s/ Miles Romney
/s/ Robert Lee Kelleher

DELEGATE PROPOSAL
No. 77 - Executive Article

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 77

DATE INTRODUCED: FEB. 1, 1972

Referred to Executive Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE CREATING THE EXECUTIVE BRANCH OF GOVERNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Article to provide as follows:

"ARTICLE ---

THE EXECUTIVE

Section 1. The executive power of the state shall be vested in a Governor.

The Governor shall be elected by the qualified voters of this state at a general election. The person receiving the highest number of votes shall be the Governor. In case of a tie vote, the selection of the Governor shall be determined in accordance with law.

The term of office of the Governor shall begin at noon on the first Monday in December next following his election and end at noon on the first Monday in December, four years thereafter.

No person shall be eligible for the office of Governor unless he shall be a qualified voter, have attained the age of thirty years, and have been a resident of this state for five years immediately preceding his election.

The Governor shall not hold any other office of employment or profit under the state or the United States during his term of office.

Section 2. There shall be a lieutenant Governor, who shall have the same qualifications as the Governor. He shall be elected

at the same electicn, for the same term, and in the same manner, as the Governor; provided that the votes cast in the general electicn for the nominee for Governor shall be deemed cast fcr the nominee for lieutenant Governcr of the same pclitical party. He shall perform such duties as may be prescribed by law and as may be delegated to him by the Gcverncr, but *no* power specifically vested in the Governor by this constituticn shall be delegated to the lieutenant Gcverncr pursuant to this section.

Section 3. The lieutenant Gcverncr shall be president of the senate, but shall vote only when the senate is equally divided. In case cf the absence or disgualificaticn of the lieutenant Governor, the president pro tempore of the senate shall perform the duties of the lieutenant Gcverncr until the vacancy is filled cr the disability removed.

Section 4. The compensation cf the Governor and the lieutenant Governor shall be prescribed by lar and shall not be increased or diminished during a single term cf office.

Section 5. In the event of the Governor's death, resignation or permanent removal frcm office, the cffice cf Governor is vacant, and the lieutenant Governor shall succeed to the office of Governor for the remainder of the tero, whereupon the office of lieutenant Governor is vacant.

When a vacancy occurs in the cffice of lieutenant Governor, the Governor shall nominate a lieutenant Governor who shall take office upon confirmation by the affirmative vote of a aajcrity of all members of the legislative assembly in jcint session.

If vacancies in tile offices of Governor and lieutenant Governor exist at the same time, the legislative assembly shall convene forthwith, and the office cf Governcr shall be filled for the remainder of the term by the affirmative vote cf a majority of all members of the legislative assembly in jcint session. The person SO chosen as Governor by the legislative assembly shall then nominate a person to succeed to the cffice of lieutenant Governor, upon ccnfirmaticn by the affirmative vote of a majority of all members cf the legislative assembly in the same joint session, The speaker of the house shall serve as acting Governcr until the newly elected Governcr has qualified.

When the lieutenant Governcr succeeds to the Office Of Governor, he shall have the title, powers, and duties cf the office of Governor; when the lieutenant Gcvernor serves as acting Governcr, he shall exercise only the powers and duties of the office of Governor.

Whenever the Gcverncr transmits to the supreme court his written declaration that he is unable tc perfcrs the powers and duties of his office, and until he transmits to the supreme court a vritten declaration that he is able to resume the powers and

duties of his office, such powers and duties shall be performed by the lieutenant Governor as acting Governor,

The legislative assembly, by the affirmative vote of three-fifths of all its members in joint session, may adopt a resolution directing the supreme court to determine whether the Governor is unable by reason of physical or mental disability to perform the powers and duties of his office. If the supreme court determines by majority vote that the Governor is unable by reason of physical or mental disability to perform the powers and duties of his office, the lieutenant Governor shall serve as acting Governor; provided, that an advisory board composed by psychiatrists and physicians may be appointed by the supreme court to aid them in their determination.

Thereafter; when the Governor transmits to the supreme court his written declaration that no disability exists, he shall resume the powers and duties of his office unless the legislative assembly by three-fifths vote of all its members in joint session within four days challenges the ability of the Governor to resume the powers and duties of his office. Thereupon the supreme court shall decide the issue within twenty-one days,

If the Governor-elect is disqualified, resigns, or dies, the lieutenant Governor-elect shall become Governor for the full term. If the Governor-elect fails to assume office for any other reason, the lieutenant Governor-elect shall become lieutenant Governor and shall serve as acting Governor until the Governor-elect assumes office. The procedure for determination of the physical or mental disability, and of termination of the disability, of the Governor-elect shall be the same as that prescribed for determination of the physical or mental disability of the Governor.

In the event of the impeachment of the Governor or the lieutenant Governor, he shall not exercise the powers of his office until acquitted.

Section 6. The Governor shall be the commander-in-chief of the military forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said, forces to aid in the executionof the laws, to suppress insurrection or repel invasion.

Section 7. The Governor may proclaim martial law when the public safety reguires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

Section 8, All executive and administrative offices, agencies and instrumentalities of the executive branch of the state

government and their respective functicns, pcwers and duties, shall be allocated by law amcng and within not more than twenty principal departments. The head of each principal department shall be a single executive unless ctherwise prcvided by law. The Gcverncr with the consent of the senate shall appcint and remove the heads of all administrative departments. All cther officers in the administrative service shall be appointed and may be removed as provided by law.

Each principal department shall be under the supervision of the Gcverncr and its head shall serve at the pleasure of the Governcr. If during a recess of the senate a vacancy cccurs in any such office, the Governor shall appoint scme fit person to discharge the duties therecf until the next meeting cf the senate, when he shall nominate scme Ferscn tc fill such office. Only the Gcverncr shall make interim appcintments.

Section 9. The Governcr may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary fcr efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. Such orders shall be submitted to the legislature, which shall have sixty days of a regular session, or a full session if of shcrter duration, to express its disapprcval. Unless mcdified or disapprcved by resoluticn concurred in by a majority cf the members cf both houses, the orders shall become effective at a date thereafter tc be designated by the Gcverncr.

Section 10. The Governor shall have the power to grant reprieves, ccmmutations and pardons after conviction and may suspend and remit fines and forfeitures subject to such prccedures as may be prescribed by law.

Section 11. The Governor shall at the beginning cf each legislative session, and may at cther times, give the legislature information and recommend measures he considers necessary. The Governor shall submit to the legislature at a time fixed by law a budget for the ensuing fiscal period setting forth in detail, fcr all operating funds, the prcpcsed expenditures and estimated revenue cf the state.

Section 12. Whenever the Governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session. At the written request of two-thirds of the members to uhich each house is entitled, the presiding officers of both houses shall convene the legislature in special session.

Section 13. Every bill passed by the legislative assembly, except bills proposing amendments to the Mcntana Constitution and bills ratifying proposed amendments to the United States Constitution uhich may not be vetoed by the Governcr, shall, before

DELEGATE FROPCSAL
No. 77 - Executive Article

it beccmes a law, be presented tc the Governcr. He shall either sign it, whereupcn it shall become a law, or he shall return it with his objections to the hcuse in which it originated, which house shall enter the objecticns at large upon its journal and prcceed t o reconsider the bill. If two-thirds cf the members present agree tc repass the same, it shall be sent, tcgetber with the objections, to the ctber hcuse, by which it shall likewise be reconsidered, and if repassed by two-thirds cf the members present in that house it shall become a law cctuithstanding the objections of the Gcvernor. If any bill shall nct be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjcurnment prevent its return. Rithin twenty-five days after the adjournment of the legislature, the Gcvernor shall consider all bills not disposed of prior to adjcurnment. Be shall either sign such bills into law; or if he fails to apprcve any bill, he shall return it with his objecticas tc the presiding official of the house in which it originated. The legislature, as provided in Section 12, may reccnvene itself to reconsider any bills so returned by the Governcr.

The Gcvernor, in returning with his cbjecticns a bill for reconsideration, may recommend that an amendment or amendments specified by him be made in the bill, and in such case the legislative assembly may amend and re-enact the bill, If a bill be so amended and re-enacted, it shall be presented again to the Governcr, but shall become a law only if he shall sign it within ten days after presentation: and no bill shall be returned by the Governor a seccnd tire.

Section 14. The Gcvernor may strike cut or reduce items in appropriation bills passed by the legislature and the procedure in such cases shall be the same as in the case cf the disapproval of an entire bill by the Governcr."

INTRODUCED BY: /s/ Richard B. Roeder

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL 78

DATE INTRODUCED: EEB. 2, 1972

Referred to Public Health, Welfare and Labor Committee

A PROPOSAL FOR A NEW CONSTITUTICNAI. SECTICN PRCVIDING FOR EQUAL CPPORTUNITY FOR EMPLOYMENT.

BE IT PROPOSED BY THE CONSTITUTICNAL CONVENTICN CF THE STATE CF MONTANA:

Section 1. There shall be a new Cccstituticnal Section to provide as fcllcws:

"Section ___. The right of persons tc work shall nct be denied or abridged on account of membership cr ncnmemhership in any labcr unicn or labor organizaticn. The right cf employees. by and through a labor organizaticn, to bargain collectively shall not be denied or abridged. Public employees shall nct have the right tc strike."

INTRODUCED BY: /s/ R. J. Studer Sr.

/s/ Rachell K. Mansfield

/s/ A. W. Kamhoot

/s/ A. C. Wilson

/s/ Arnold W. Jacobsen

/s/ Torrey Johnson

/s/ Roger A. Wagner

DELEGATE PROPOSAL
NO. 79 - Branches of Government

MONTANA CONSTITUTIONAL CONVENTION

1971-1572

DELEGATE PROPOSAL NO. 79

DATE INTRODUCED: FEB. 2, 1972

Referred to Local Government Committee

IV, 1

A PROPOSAL AMENDING ARTICLE XV, SECTION 1, OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING FOR DISTRIBUTION OF GOVERNMENTAL POWERS TO SOBDIVISIONS OF THE STATE.

BE IT PROFOSED BY THE CONSTITUTIONAL CONVENTION OF TBE STATE OF MONTANA:

Section 1. Article IV, Section 1 of the present Constitution is amended to read as follows:

"Section 1. The powers of the government of this state and its subdivisions are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted,

INTRODUCED BY: /s/ C. B. McNeil

MONTANA CONSTITUTICEAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 80

DATE INTRODUCED: FEB. 2, 1972

Referred tc Revenue and Finance Committee

XII, lb

A PROFOSAL AMENDING ARTICLE XII, lb, CF THE CONSTITUTION OF THE STATE OF RONTANA RELATING TC HIGHWAY FEES AND LICENSE TAXES.

BE IT PROPOSED BY THE CONSTITUTICNAL CCNVEN'IION OF THE STATE OF MCNTANA:

Section 1. Article XII, Section lb of the Present Ccnstitution is amended to read as follows:

"Section 1b. ~~No--monies~~ Mcneys paid into the state treasury which are derived from fees, ~~excise~~ highway cr license taxes relating to registration, operation or use cf vehicles on the public highways cr to fuels used fcr the prcpulsion of such vehicles, except fees and charges paid tc the bcard cf railroad commissioners of the state cf Montana and the public service commission of Mcntana or its successor or successors by motcr carriers pursuant to law, shall be expended for ~~other than~~ the cost of administering laws under which such ~~monies~~ mcneys are derived, including the operation cf the Mcntana Highway Patrol, statutory refunds and adjustments provided therein, payment cf highway obligations, cost of ccnstructicn, reconstruction. maintenance and repair of public highways, rcads, streets, and bridges, and ~~expenses~~ other expenditures authorized by the state legislature ~~for~~ relating to the public highways, roads, streets and bridges of the state of Montana and the use thereof, including the payment to municipalities of funds fcr the purpcses of subsidizing mass transportation and the ccostruction and creration of publicly owned parking lcts, the diminutcn of air pollution resulting frcm the operation of motcr vehicles as well as the disposal of abandoned motcr vehicles, the disccmination of public information ~~relating to the public highways, rcads, streets and bridges of the state cf Montana and the use thereof,~~ relative tthese purpose es and for any other purrcses which arise directly from the use of motcr vehicles in the state of Montana.

DELEGATE PROPOSAL
No. 80 - Taxation

The legislature shall enact suitable laws to provide for the implementation of this section."

INTRODUCED BY: /s/ Toole

/s/ Katie Payne

/s/ Arlyne Reichert

/s/ D. A. Scanlin

/s/ Mae Nan Robinson

/s/ John M. Schiltz

/s/ J. C. Garlington

/s/ Lucile Speer

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

CELEGATE PROPOSAL NO. 81

DATE INTRCDUCED: PEE. 2, 1972

Referred to Bill of Rights Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTICN PBOVIDING FCR RELIGIOUS LIEERTY AND REPEALING ARTICLE III, SECTION 4, ARTICLE V, SECTION 35 AND ARTICLE XI, SECTION 8 OP THE PRESENT CONSTITUTION.

BE IT PROPOSED BY THE CONSTITOIIONAL CONVENTION OF TBE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Secticn tc provide as follcws:

"Section ___. The legislature shall make no law respecting au establishaent of religico cr Frchibiting the free exercise thereof."

Section 2. Article V, Secticn 35 of the present Constitucn, which reads as follcws, is repealed:

~~"Sec. 35. No appropriation shall be made for charitable, industrial, educational or bcnevolcnt purpcscs to any person, corporation or community not under the absolute centrel of the statc, nor tc any denominational or ccctarian institutien cr association."~~

Section 3. Article XI, Section 8 of the Present Ccnstitution, which reads as follows, is repealed:

~~"Sec. 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriatien, or pay frcm any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, cr for any ccctarian purpose, or to aid in the cupport of any school, academy, seminary, collcge, university, or other literary, ccientific institution, controlled in whole or in part by any church, sect or denomination whatever."~~

section 4. Article III, Section 4 of the present Constitu-

EELEGATE PRCPOSAI
No. 81 - Freedom cf Religicn

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tion, which reads as follows, is repealed:

~~"Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be by guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent, nor shall any preference be given by law to any religious denomination or mode of worship."~~

INTRCDUCED BY: /s/ Dan Harrington

/s/ Peter "Pete" Lorello

/s/ Joseph H. McCarvel

/s/ M. Lynn Sparks

/s/ Edith Van Buskirk

/s/ Mike McKeon

/s/ Thomas F. Joyce

/s/ Gene Harbaugh

/s/ Maurice Driscoll

/s/ Veronica Sullivan

/s/ Lyle R. Monroe

MONTANA CONSTITUTIONAL CONVENTICN

1971-1572

DELEGATE PROPOSAL NO. 82

DATE INTRCDOCED: FEB. 2, 1972

Referred to General Gcvernment and Constitutional Amendsent Ccmmittee

A PROPOSAL FOR FIVE NER CONSTITUTIONAL SECTIONS CONCERNING THE ELECTIVE PROCESS.

BE IT PROPOSED BY THE CONSTITUTICNAL CONVENTICN CP TEE STATE OF MCNTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. All elections by the people shall be by secret ballot."

Section 2. There shall be a new Ccnstitutional Section to provide as fcllcws:

"Section ___. Any citizen of the United States whc is eighteen (18) years of age or older, and meets the registration and residence requirements of the state and pclitical subdivision is a qualified electcr, except that no person uhc is serving a sentence for a felony in a penal institutien or who is judged of unsound mind by a court may vote."

Section 3. There shall be a new Constitutional Section to prcvide as follcus:

"Section ___. The legislature shall provide by law the requirements fcr residency, registration, absentee voting and administration of elections."

Section 4. There shall be a new Constituticnal Section to provide as follcus:

"Section ___. Any person qualified to vote at general elections and for state officers in this state, is eligible to any public office except as otherwise provided in this constitution and subject to any additional gualificaticns provided by the

DELEGATE PROPOSAL
MC. 82 - Elections

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legislature."

Section 5. There shall be a new Constitutional Section to provide as follows:

"Section ___. In all elections held by the people under this constitution, the person or persons receiving the highest number of legal votes is elected."

INTRODUCED BY: /s/ Bruce M. Brown

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PRCPOEAL NO. 83

DATE INTRODUCED: FEB. 2, *1972*

Referred to Natural Resources and Agriculture Committee

A PROPOSAL FOR *A* NEW CONSTITUTICNAL SECTION PROVIDING FOR ACQUISITICN CF HISTORIC SITES.

BE IT PROPOSEI BY THE CONSTITUTIONAL CONVENTICN OF THE STATE GF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ---. The legislature shall provide for the acquisition of scenic, historic, archeologic, scientific cr recreational areas, sites or objects. The legislature may reserve such frcm the public dcmain and prcvide for their administration and preservation for the use, enjoyment and welfare cf the people."

INTRODUCED EY: /s/ Arnold H. Jacobsen

/s/ Marian S. Erdmann

/s/ George H. James

/s/ Richard J. Champoux

/s/ Margaret S. Warden

/s/ Chet Blaylock

/s/ Wade J. Dahood

/s/ John H. Tocle

/s/ Iyle R. Monroe

/s/ D. A. Scanlin

/s/ Russell C. McDonough

/s/ A. O. Wilson

/s/ A. W. Kamhoot

/s/ Lyman W. Choate

/s/ Henry Siderius

/s/ R. S. Hanson

/s/ Edith Van Buskirk

/s/ Torrey Johnson

/s/ Sterling Rygg

DELEGATE PROPOSAL
No. 83 - Historic Sites

/s/ James R. Felt

/s/ C. B. McNeil

/s/ Carman Skari

/s/ M. Lynn Sparks

/s/ Lucile Speer

/s/ Mae Nan Robinson

/s/ Cedor E. Aronow

/s/ J. Mason Melvin

/s/ Robert F. Woodmansey

/s/ Veronica Sullivan

/s/ Arlyne Reichert

/s/ Noel D. Furlong

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NO. 84

DATE INTRODUCED: EEB. 2. 1472

Referred to General Gcverneent and Constituticnal Amendment Ccmmittee

I, 1

A PROPOSAL REPEALING ARTICLE I, SECTION 1 OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF TEE STATE OF MONTANA:

Section 1. Article I, Section 1 of the present Ccnstitution, which reads as fcllcws, is repealed:

~~"Section 1. The boundaries of the state of Montana shall be as follows, to wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky mountains, thence following the crest of the Rocky mountains northward to its intersection with the Bitter Root mountains; thence northward along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning."~~

INTRODUCED BY: /s/ Bruce M. Brown

DELEGATE FECFCSAL
NC. 85 - University Syste

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1572

DELEGATE PRCPCSAL NO. 85

DATE INTRODUCED: FEE. 2, 1972

Referred tc Education and Public Lands Committee

A FROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE PECVIDING FOR TBE BCNTANA UNIVERSITY SYSTEM.

BE IT PROPCSEC BY THE CONSTITUTICNAI CONVERTION OF TEE STATE GF MCNTANA:

Section 1. There shall be a new Ccnstitntional Article to provide as fcllcws:

"ARTICLE ----

WONTANA UNIVERSITY SYSTEM

Section 1. BONTANA UNIVERSITY SYSTEM DEFINED: BODIES CORPORATE. The Montana University System shall ccnsist cf the following units: University cf Mcntana at Bissoula, Montana State University at Bozeman, Bontana College of Mineral Science and Technology at Butte, Western Wcntana College at Dillon, Eastern Montana College at Billings, and Northern Kcntana College at Havre. Each unit shall be a body corporate.

Section 2. BCARD CF REGENTS OF HIGHER EDUCATION. There shall be a Eoard of Regents cf Higher Education, a body corporate, which shall have exclusive management and ccntrcl of the Montana University System and of all other public institutions of post-secondary education.

Section 3. COMPOSITICN CP BOARD. The Board cf Regents of Higher Education shall ccnsist of eight (8) members to be appointed by the Governor, froe the qualified electorate, subject tc the ccnfirmaticn of the senate, under regulaticss to be provided by law. The Board shall appcint an executive secretary and fix his term of office and prescribe his duties.

Section 4. SUPPORT OF HIGHER EDUCATICN: CONTROL OF FUNDS. The legislature shall make appropriations for the support of the

institutions of higher education. The direction and control over the funds of, and appropriations to, the several institutions shall be vested in the Board of Regents of Higher Education."

INTRODUCED BY: /s/ George W. Rollins

DELEGATE PROPOSAL
No. 86 - Preamble

MONTANA CONSTITUTIONAL CONVENTION

1971-1572

DELEGATE PROPOSAL NO. 86

DATE INTRODUCED: FEB. 2, 1972

Referred to Bill of Rights Committee

A PROPOSAL REPEALING THE PREAMBLE OF THE CONSTITUTION OF THE STATE OF MONTANA AND ADDING A NEW PREAMBLE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. The preamble of the present Constitution, which reads as follows, is repealed:

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

Section 2. There shall be a new Preamble to provide as follows:

"We, the people of the state of Montana, recognize the rights and duties of this state as a part of the federal system of government and reaffirm our adherence to the Constitution of the United States of America; and in order to assure to ourselves governmental power to act for the good order of our society and the liberty, health, safety, and welfare of our people, and the preservation and utilization of our resources, do ordain and establish this constitution."

INTRODUCED BY: /s/ George W. Rollins

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 87

DATE INTRODUCED: FEB. 2, 1972

Referred tc Bill of Rights Ccmrittee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR RIGHTS OF THOSE UNDER THE AGE OF MAJORITY.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE CP MONTANA:

Section 1. There shall be a new Ccostitotioaal Section to prcvide as fcllcus:

"Section ___. PERSONS UNDER AGE OE MAJCRITY. The rights cf persons under the age of majority shall include, but not be linited to, all the rights of a Montana perscn."

INTRODUCED BY: /s/ Donald B. Fcster

/s/ Carman Skari

DELEGATE FROFCSAL
No. 88 - Individual Rights

MCNTANA CONSTITUTIONAL CGNVENTICN

1971-1972

CELEGATE PROPOSAL NC. 88

DATE INTRODUCED: FEB. 2, 1972

Referred to Bill cf Rights Committee

III, 18

A PROPOSAL AMENDING ARTICLE III, Section 18 OF THE CCNSTITUTICN OF TBE STATE OF MONTANA CCNCERNING SELF-INCRIBINATIOR.

BE IT PROPOSED BY TEE CONSTITUTIONAL CCNVERTION OF THE STATE CF MONTANA:

Section 1. Article III, Section 18 of the present Ccnstitution is amended to read as follcus:

"Sec. 18. No persen shall be compelled to testify or furnish evidence of any nature against himself, in a criminal proceeding, ncr shall any person be twice put in jeopardy for the same offense."

INTRODUCED BY: /s/ Jerome J. Cate

MCNTANA CONSTITUTIONAL CCRVENTICN

1971-1972

DELEGATE PROPCSAI NC. 89

DATE INTRODUCED: FEE. 2, 1972

Referred tc Lccal Gcvernment Committee

XVI, Sections 1, 2, 8.

A FRCEOSAL REPEALING ARTICLE XVI, SECTICNS 1, 2 AND 8 CF THE CCN-STITUTION OF TBE STATE CF MONTANA AND COMEINING T H E INTENT CF THOSE SECTIGNS IN A NEW SECTION CN COUNTY BCUNDARIES ANL COUNTY SEATS.

BE IT PROPOSEL BY THE CONSTITUTICAAI CCNVENTION OF TRE STATE CF MCNTANA:

Section 1. Article XVI, Sections 1, 2 and 8 of the present Constitution, which read as follows, are repealed:

~~"Section 1. The several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the Union, are hereby declared to be the counties of the state until otherwise established or changed by law."~~

~~"Section 2. The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years."~~

~~"Sec. 8. Any county or counties in existence on the first day of January, 1935, under the laws of the state of Montana or which may thereafter be created or established thereunder shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state."~~

Section 2. There shall be a new Constituticnal Section to

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provide as follows:

"Section ---. COUNTIES. The counties of the state of Montana, as they exist at the tioe of the adoption of this Constitution, are declared to be the counties of the state. No county boundary shall be changed or county seat transferred until approved by a majority of the gualified electors of each county affected."

INTRODUCED BY: /s/ Oscar L. Anderson

/s/ Fred J. Martin

/s/ Thomas M. Ask

/s/ Leslie Eskildsen

/s/ Virginia H. Blend

/s/ Cedor B. Aronow

/s/ Clark E. Simon

/s/ Rod Hanson

/s/ J. Mason Melvin

/s/ Ben F. Berg

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE FACFCSAL NO. 90

DATE INTRODUCED: FEB. 2, 1972

Referred tc Judiciary Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PERMITTING TRE LEGISLATURE TC PROVIDE FOR DISQUALIFICATION CF JUDGES.

BE IT PROPOSED BY THE CONSTITUTICNAL CCNVENTION OF THE STATE CP BCNTANA:

Section 1. There shall be a new Ccnstituticnal Section to provide as fcllcus:

"section ___. The legislature may provide for disqualification of judges at any cne or all cf the infericr, trial and appellate ccurt levels."

INTRODUCED BY: /s/ Geoffrey L. Erazier

DELEGATE PRCPCSAL
NO. 91 - Equal Education

MONTANA CONSTITUTICNAI CCNVENTICN

1971-1972

DELEGATE PRCPCSAL NO. 91

DATE INTRODUCED: FEB. 2, 1972

Referred to Education and Public Lands Committee

A PROPOSAL FOR A NEC CONSTITUTIONAL SECTION PROVIDING EQUAL ECUCATICNAL CPPORTUNITY FCR ALL STUDENTS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follcus:

"Section ___. The legislature shall establish a program of state taxation and a aethod of distributing funds for the support of free public schools to assure equal. quality educational opportunity for all students."

INTRODUCED BY: /s/ Marjorie Cain

/s/ Chet Blaylock
/s/ Gene Harbaugh
/s/ George H. James
/s/ Carl M. Davis
/s/ Bruce M. Brown
/s/ George Harper
/s/ Paul K. Harlow
/s/ Max Conover
/s/ Arlyne Reichert
/s/ Torrey Johnson
/s/ Lloyd Barnard
/s/ William A. Burkhardt

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE PRCPCSAL NC. 92

DATE INTRODUCED: FEB. 2, 1972

Referred to Judiciary Committee

A PROPOSAL FOR A NEW CONSTITUTICRAL ARTICLE VESTING JUDICIAL POWERS IN A COURT OF APPEALS AND INFERIOR COURTS.

BE IT PROPOSED BY TRE CONSTITUTICIAL CCNVENTICN OF THE STATE CF MONTANA:

Section 1. There shall be a new Constitutional Article to provide as follows:

"ARTICLE ___

JUDICIARY

Section 1. COURT OF APPEALS. The judicial power of the state shall be vested in a Court of Appeals and in such infericr courts as the legislature shall establish.

Section 2. JURISDICTION. The Court of Appeals shall exercise appellate jurisdiction throagbout the state and shall have general supervisory powers over infericr courts. In the exercise of its jurisdiction the court of appeals shall have the pover to make rules in civil cases relating to procedure, subject, hcwever, to provision of lav. The legislature may prescribe the manner in which the pover of the court is to be exercised insofar as necessary to insure reasonable and uniform exercise of the rule making pover.

Section 3. COMPOSITION. The Court of Appeals shall consist of a chief judge and six associate judges, a majority of whom shall be necessary to form a quorum or pronounce a decisicn. The judges of the court of appeals shall be subject to the same provisicns of lav concerning disqualification as shall the judges of the inferior courts, and the legislature shall provide for substitution in the case of incapacity, removal or disqualification of one or Bore of the, judges of the court cf appeals.

Section 4. INFERIOR COURTS. The legislature shall establish

DELEGATE PACPOSAI.
No. 92 - Judicial Article

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such infericr ccurts as may be necessary and shall provide fcr the rules of practice, prccedure, Pleading, evidence, and administration of such courts.

Section 5. OPERATIC&. The tenure of judges and manner cf their selection and judge's pay for all courts shall be provided by the legislature, which shall divide the state into such judicial divisions, districts and departments as may be necessary for the exercise by the inferior courts of their jurisdicticn, except that no judge who shall be appointed tc complete the unexpired term of any judge may thereafter be elected tc judicial office. The gualificaticns cf judges shall be such as may be determined by law, and procedures governing the removal cf judges shall be such as may be fixed by law.

Section 6. IMPLEMENTATICN. Each supreme court justice, municipal ccurt judge, district ccurt judge, pclice judge and justice cf the peace in office on the effective date of this ccnstitution shall hcld office until the expiratien of his term, but new ccurts and judicial office shall be created cnly in accordance with this ccnstitution. Each court into which jurisdicticn of other courts is transferred shall succeed to and assume jurisdictien cf all causes then pending.

Section 7. ATTORNEY GENERAL. The chief judicial cfficial cf the state shall be the attorney general, who shall represent the state before the Ccurt of Appeals and exercise such other pcwers and duties and be selected in such manner as the legislature may by law prescribe."

INTRODUCED BY: /s/ Franklin Arness

/s/ Virginia H. Blend

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 93

DATE INTRODUCED: FEB. 2, 1972

Referred tc Public Health, welfare and Labcr Committee
Referred tc Bill cf Rights Committee

III, 3, 11

A FROPOSAL AMENDING ARTICLE III, SECTIONS 3 AND 11 CF THE CONSTITUTION OF THE STATE OF MONTANA AND ADDING A NEW SECTICN TO TAAT ARTICLE, THE BILL GF RIGHTS, TC PROVIDE PCR COLLECTIVE BARGAINING.

BE IT PROPOSEC BY THE CONSTITUTIONAI CCNVENTICN OF TBE STATE OF MONTANA:

Section 1. Article III, Section 3 of the present constitution is amended to read as follows:

"Sec. 3. All persons are bcrn equally free, and have certain natural, essential, and inalienable rights, amcng which may be reckoned the right cf enjoying and defending their lives and liberties, of acquiring, possessing, and protecting prcperty, cf collective bargaining to achieve a fair and just return for what they produce, and of seeking and obtaining their safety and happiness in all lawful ways."

Section 2. Article III, Section 11 cf the present Ccnstitution is amended to read as follcws:

"Sec. 11. No ex post facto law nor law impairing the obligation of contracts, including those arrived at by collective bargaining, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly."

Section 3. There shall be a new Constituticoal Section to provide as follows:

"Section ___. To attain a fair and just return for what a person produces is a property right. Citizens have the right tc

DELEGATE PROPOSAL
No. 93 - Bill of Rights

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associate themselves intc a unit tc execute collectively-bargained contracts."

INTRODUCED BY: /s/ Henry Siderius

/s/ Douglas Delaney

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PRCPCSAL NC, 94

DATE INTRODUCED: FEB. 2, 1972

Referred to General Government and Ccn-stitoticnal AmendmentCcmmittee

A PRCPOSAL FOR FOUR NEW CONSTITUTIONAL SECTICNS PROVIDING FOE CONSTITUTIONAL AMENDMENT.

BE IT PROPOSED BY THE CONSTITUTICNAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Ccnstitutional Section to provide as fcllcus:

"Section ___. (1) The legislature, by an affirmative vote of tuc-thirds of all the members, ray at any time submit to the electors of the state the guesticn cf whether there shall be an unlimited convention to revise, alter, or amend this constitu-tion.

(2) The people may by initiative petition request the legislative assembly tc submit to the voters of the state the question of whether there shall be an unlimited ccnventicn to revise, alter, or amend this ccnstituticn. The petition must be signed by at least ten percent (10%) of the legal voters of the state, and at least ten percent (10%) of the legal voters in two-fifths (2/5) of the legislative districts cf the state. The number cf votes cast for the Governor in the general election immediately preceding the filing of the petition shall determine the number of legal voters.

The petiticn sball be filed with the secretary cf state, who shall certify the filing therecf to the legislative assembly and cause the question to be submitted to the voters at the general election immediately following the legislative session receiving notice of the filing of said petiticn.

(3) If the question of holding a convention is not cther-vise submitted to the people at some time during any period of tventy years, it shall be submitted at the general election in the tventieth year following the last submission of such ques-

tion.

(4) The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on constitutional questions, to assist the voters, and, if a convention is authorized, to be continued for the assistance of the delegates.

(5) If a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be no greater than the largest body of the legislative assembly. The legislature may determine whether the delegates shall be elected after nomination by political parties, or on a non-partisan basis, but they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates.

(6) The legislative assembly shall in the act calling the convention designate the day, hour and place of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention.

(7) Before proceedings, the members shall take the oath otherwise provided in this constitution. The qualifications of members shall be the same as the highest qualifications required for membership in the legislature. vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly, or as otherwise provided by law.

(8) The convention shall meet within three months after the election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary which shall be submitted to the electors for their ratification or rejection as a whole or in separate articles or amendments as determined by the convention and at an election appointed by the convention for that purpose, or at the next general election, but not less than two (2) months after the adjournment thereof. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect.

(9) Unless otherwise provided in the amendment, it becomes effective on the first day of July after the certification of the election returns by the secretary of state."

Section 2. There shall be a new Constitutional Section to provide as follows:

"Section ___. Amendments to this constitution may be proposed by any member of the legislative assembly. If adopted by an affirmative roll call vote of two-thirds (2/3) of all the members thereof, whether one or more bodies, the proposed amendment shall become a part of the constitution if approved by either of the

following procedures:

(1) The legislative assembly may refer the proposed amendment tc the voters of the state of Montana tc be voted on in the next general election held in the state. In such event the secretary of state shall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published, twice each month fcr the tuo months previous to the next general electicn for members to the legislative assembly. If approved by a majority of the electors vcting therecn, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment otherwise provides; cr

(2) If the legislative assembly by a majcrity roll call vote, elects not to refer the amendment to the vote cf the electors of Montana as provided in the preceding subsection (1) the amendment shall be presented to the next succeeding legislative assembly. If adopted by a two-thirds (2/3) vcte cf the members of such legislative assembly, the amendment shall beccme a part of this constitution on the first day cf July fcllcving its approval unless a petition is filed with the Secretary cf State signed by five percent (5%) cf the legal voters of the state requesting such amendment he referred to a vote cf the people as provided in this Constitution for referendum, in which event the amendment shall nct become effective until the Secretary cf State certifies its approval by a majority of those voting therecn."

Section 3. There shall be a nev Ccnstitutional Section to provide as fcllcvs:

"section ___. Should more amendments than one (1) be submitted at the same election, they shall be sc prepared and distinguished by numbers or othervise that each can be voted upon separately."

Section 4. There shall be a nev Ccnstitotional Section to prcvide as fcllcvs:

"Section ___. The veto pover of the Governor shall nct extend tc proposed constitutional amendments."

INTRODUCED BY: /s/ Otto T. Habedank

MCNTANA CONSTITUTICNAI CONVENTICN

1971-1972

DELEGATE PROPCSAL NC. 95

DATE INTRODUCED: FEB. 2, 1972

Referred tc General Gcvernment and Constitutional Amendment Ccmmittee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTION PRCVIDING FOR CREATION OF AUXILIARY CARVASSING BOARDS.

BE IT FROPOSEC BY THE CONSTITUTICNAL CGNVENTICN CF THE STATE OF MONTANA:

Section 1. There shall be a new Constitnticnal Section to prcvide as follcws:

"Section ___. AUXILIARY CANVASSING BOARDS. The legislature shall provide a method by which a ccnnty may establish an auxiliary canvassing board to facilitate the counting of absentee ballots on a countywide basis."

INTRCDUCED BY: /s/ Marian S. Erdmann

/s/ Virginia H. Blend

/s/ Thomas M. Ask

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE PRCPCSAL NO. 96

DATE INTRODUCED: FEB. 2, 1972

Referred tc Natural Resources ard Agriculture Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE CN IBRIGATICN AND WATER RIGHTS.

BE IT PROPOSED BY THE CONSTITOTICNAL CGNVENTION OF TRE STATE CP MCNTANA:

Section 1. There shall be a new Constitutional Article to provide as fcllcws:

"ARTICLE ---

IRRIGATION AND WATER RIGHTS

Section 1. RATER IS STATE PROPERTY. The water of all natural streams, springs, lakes or other collecticas of still water, within the boundaries of the state, are hereby declared to be the property of the state.

Section 2. BOARD CF CCNTROL. There shall be a board of control, tc be composed of the state engineer and superintendents cf the water divisions; which shall, under such regulations as may be prescribed by law, have the supervision of the waters cf the state and of their appropriation, distribution and diversion, and of the various officers connected therewith. Decisions of the board shall be subject to review by the courts of the state.

Section 3. PRIORITY OP APPROPRIATION. Pricrity of appropriaticn for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

Section 4. WATER DIVISIONS. The legislature shall by law divide the state into six (6) water divisions, and provide fcr the appcintsent of superintendents therecf.

Section 5. STATE ENGINEER. There shall be a state engineer who shall be appointed by the Governor of the state and confirmed by the senate; he shall hold his office for the term of six (6) years, or until his successor shall have been appointed and shall have qualified. He shall be president of the board of control, and shall have general supervision of the waters of the state and of the officers connected with its distribution. No person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position."

INTRODUCED BY: /s/ Marian S. Erdmann

/s/ William A. Burkhardt

/s/ Marjorie Cain

/s/ Cedor B. Aronow

/s/ Dan Harrington

/s/ Arlyne Reichert

/s/ M. Lynn Sparks

/s/ Bob Hanson

/s/ George Harper

/s/ Robert Lee Kelleher

/s/ Carman Skari

/s/ Paul K. Harlow

/s/ Arnold W. Jacobsen

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

CELEGATF PBOPOSAL NC. 97

DATE INTRCDUCED: FEB. 2, 1972

Referred to Local Government Committee

A PBCFOSAL FCR A NEW CONSTITUTIONAL ARTICLE FRCVIDING FOR LOCAL GOVERNBENT.

BE IT PROPOSED BY THE CGNSTITUTICNAL CCNVENTICN CF THE STATE CE MONTANA:

Section 1. There shall be a new Constitutional Article to provide as follcws:

"ARTICLE ---

LCCAL GCVERNMENT

Section 1. DEFINITION. As used in this Article, the term **local government units" shall include, but shall not be limited to, counties, cities and towns. Other local gcvernment units may be designated by law.

Section 2. COUNTIES. The counties of the state of Montana as they exist at the time of the adcptien cf this constitnticn, are declared to be the counties of the state. Nc county boundary shall be changed cr county seat transferred until approved by a majority of those voting on the questicn in each county affected.

Section 3. FORMS OF GOVERNBENT. The legislature shall provide by general law for the gcvernsent of counties, cities, towns, and other local government units and for methods and procedures of incorporating, merging, consolidating, and dissolving such units of local government and of altering their boundaries, including provisions:

(1) For such classification of units cf local government as nay be necessary on the basis of population cr on any cther reasonable basis related to the purpose cf the classification;

(2) For opticnal plans of municipal organizaticn and government so as to enable a county or city tc adopt cr abandcn

an authorized optional form by a majority vote cf the qualified vcters vcting tberecn;

(3) Fcr procedures by which a county cr a city may prepare an alternative plan cf municipal organization and government to be adopted or amended by a majority vote of the qualified vcters of the city cr county voting therein;

(4) Fcr procedures ky which a county, city, and toun, or counties and cities and towns may prepare an alternative fcrm of consolidated municipal government tc be adcpted or amended by a sajority vote of the qualified voters cf the jurisdictions affected;

(5) For prccedures for initiative and referendua and recall.

Provided, however, that one alternative form cf ccunty government authorized by tbis sectien shall include, but not be limited to, the election of three commissicners for cverlapping six-year terms and the election fcr four-year terns of a county clerk and recorder, a sheriff, a treasurer, a county superintendent of schools, an assessor, a ccuntp attcrney and a clerk of district court. Two or more of such offices, except county attorney, may be consolidated by actien of the Board of Ccunty Commissioners. Each county operating under this alternative form of government at the time of the adoption of this constitutien shall continue to operate under it until the voters cf the county adopt an alternative form as provided for in this seotien cr in section 4.

Sectien 4. HOME RULE CHARTERS. Each county, city cr tcwn or other political subdivision or combination of counties, cities cr towns or other political subdivisicns cf the state shall have power tc frame and adopt a charter for its cwn self-governsent within such limits and under such procedures as may be prescribed by general law. The prescribed procedures, however, shall nct require the approval of a charter by a legislative body.

Charter prcvisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory prcvisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

A law may qualify as a general law even though it is inapplicable to one or more counties by reascn of the provisions of this section.

Section 5. SELF-GOVERNMENT POWERS. Local government units adopting charters under the provisions cf section 4 may exercise all legislative powers not prohibited by this Constitution, by law or by charter.

Section 6. VOTER REVIEW OF LOCAL GOVERNMENT. The legislature shall within four (4) years of the adoption of this Constitution provide for procedures for local government units either separately or jointly to review the government structure of the local unit or joint unit and submit one alternate form of government to the voters at the next general or special election. The legislature shall provide for this review procedure each ten (10) years thereafter."

INTRODUCED BY: /s/ Thomas M. Ask

DELEGATE PROPOSAI
NO. 98 - Riqhts cf Prisoners

MONTANA CONSTITUTICNAL CONVENTIGN

1971-1972

DELEGATE PBGPGSAL NO. 98

DATE INTRODUCED: FEB. 2, 1972

Referred to Bill of Rights Ccmmittef

A PROPOSAL FCR TUG NEW CGNSTITOTIGNAL SECTICNS PROTECTING TEE RIGHTS GE PRISONERS.

BE IT PROPOSED BY THE CCNSTITDTICNAL CONVENTICN OF TEE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to prcvide as follcws:

"Section ... . Incarcerated persons lose ncne of their human or civil rights when convicted of a felony, other than the choice of habitation, the right to vote and to bold public cffice."

Section 2. There shall be a new Constitutional Section to provide as follcws:

"Section ___. No incarcerated perscn say be placed in solitary ccnfinement."

INTRODUCED BY: /s/ Robert Lee Kelleher

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 99

DATE INTRODUCED: FEB. 2, 1572

Referred to Local Government Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE PROVIDING FOR A CITY MANAGER FORM OF GOVERNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. CITY MANAGER. Any community which seeks a charter as a municipal corporation must use a city manager form of government.

INTRODUCED BY: /s/ Robert Lee Kelleher

EELEGATE PRCPCSAL
No. 100 - Individual Rights

MONTANA CONSTITUTICNAL CCNVEN'IICN

1971-1972

DELEGATE PRCFCSAL NC. 100

DATE INTRCDUCED: FEE. 2, 1972

Referred to Bill of Bights Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROHIBITING INVOLUNTARY SERVITUDE A PART OF EACH WEEK EXCEPT FOR NECESSARY AND RECREATICNAL SERVICES.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE CP MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. No person shall be required to work other than in essential services and places of recreation from approximately dusk on Saturday to dawn on Monday. The exact hours of closing and the excluded industries and services are 'to be determined by the legislature."

INTRODUCED BP: /s/ Robert Lee Kelleher

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PRCPCSAL NO. 101

DATE INTRODUCED: IEB. 2, 1972

Referred to Legislative Committee

A PROPOSAL FOR A NEW COBSTITUTICNAL SECTION LIMITING CAMPAIGN SPENDING FOG THE LEGISLATURE.

EE IT PROPOSED BY TBE CONSTITUTIONAL CCNVENTICN OF TBE STATE OF MONTANA:

Section 1. There shall be a new Ccnstitntional Section to prcvide as fcllcrs:

"section ___. The legislature shall appropriate a ... nct in excess of twenty-five percent (25%) cf cne year's salary to be used by each candidate for the legislature sclely in support of his candidacy in each general election. Except for the foregoing, nc person shall spend anything of value fcr cr against said candidacy."

INTRODUCED BY: /s/ Robert Lee Kelleher

DELEGATE PROPOSAL
No. 102 - Private Schools. Funding

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 102

DATE INTRODUCED: FEB. 2, 1972

Referred to Education and Public Lands Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION AUTHORIZING FINANCIAL SUPPORT FOR PRIVATE COLLEGES AND UNIVERSITIES PROVIDED THEY GUARANTEE FREEDOM OF THOUGHT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA.

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislature may appropriate funds for private colleges and universities, provided they guarantee freedom of thought and expression and do not dictate to the faculty on matters of religious faith or morals."

INTRODUCED BY: /s/ Robert Lee Kelleher

MCNTANA CONSTITUTICNAL CONVENTICN

1971–1972

DELEGATE PROPGSAL NC. 103

DATE INTRODUCED: FEE!. 2, 1972

Referred to Bill cf Rights Committee

A PROFOSAL FOR A NEW CONSTITUTIONAL SECTICN GUARANTEEING TRE RIGBT TO BE BCRN AND TRE RIGHT TO DIE.

BE IT PROPOSED BY TBE CONSTITUTICNAL CCBVENTION OF THE STATE OF MCNTANA:

Section 1. There shall be a new Constitaticnal Section to provide as follcws:

"Section ___. A human fetus has the right to be born. The incurably ill have the right nct to be kept alive by extraordinary means."

INTRODUCED BY: /s/ Robert Lee Kelleher

DELEGATE PROPOSAL
NO. 104 - Natural Resources

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 104

DATE INTRODUCED: FEB. 2, 1972

Referred to Natural Resources and Agriculture Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION RESERVING TO THE PEOPLE OF MONTANA ALL SUB-SURFACE RIGHTS EXCEPT UNDER SCHOOL AND INDIAN LANDS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. All sub-surface rights except under Indian lands and lands heretofore reserved to the schools are reserved to the people to be disposed of as the legislature sees fit."

INTRODUCED BY: /s/ Robert Lee Kelleher

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 105

DATE INTRODUCED: PEE. 2, 1972

Referred to Public Realth, Welfare and Labcr Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION GUARANTEEING EQUAL PAY FOR EQUAL WORK FOR GOVERNMENT EMPLOYEES.

BE IT EBCPCSED BY TBE CONSTITUTIONAL CONVENTION OF THE STATE CF BGNTANA:

Section 1. There shall be a neu Constitutional section tc provide as follows:

"Section ___. Appointed local and state government emplcyees other than judicial officers shall receive nc less pay than employees of the United States dcing comparable work."

INTRODUCED By: /s/ Robert Lee Kelleher

CELEGA'IE PRCPOSAL
No. 106 - Constitutional Ccnventicn

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

CELEGA'IE PROPOSAL NO. 106

LATE INTRODUCED: FEB. 2, 1972

Referred to General Government and Constituticnal Amendment Committee

XIX, 8

A PROPOSAL AMENDING ARTICLE XIX, SECTION 8, CF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING FOR FUTURE CONSTITUTIONAL CCNVENTIONS.

BE IT PROPOSED BY THE CONSTITUTIONAL CCNVENTION OF THE STATE OF MONTANA:

Section 1. Article XIX, Section 8 of the present Ccnstitution is amended to read as follows:

"Sec. 8. ~~The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occuring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revision, alterations, or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejected at an election appointed by the convention for that purpose, not less than two~~

~~nor more than six months after the adjournment thereof, and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration, or amendment shall take effect.~~ The legislature may call constitutional conventions at any time. If during any ten-year period a constitutional convention has not been held, there shall be placed on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" If a majority of the votes cast on the question are in the negativthe question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the subject are in the affirmatidelegates to the convention shall be chosen at the next regular *statewide election*, unless the legislature provides for the election of delegates at a special election. The Governor shall issue the call for the *convention*. Except that delegates are to be elected on a non-partisan basis and unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Montana Constitutional Convention of 1972, *including* but not limited to, number of members, dis-, election and certification of delegates and submission and ratification of revisions and ordinances. The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury. Constitutional Conventions shall have plenary power to amend or revise the constitution L-Zsubjonly to ratification by the people. No call for a constitutional convention limitl these powers c f the convention."

INTRODUCED BY: /s/ Harold Arbanas

/s/ Edith Van Euskirk

/s/ Lyle R. Monroe

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE PRCPCSAL NC. 107

DATE INTRODUCED: EEB. 2, 1972

Referred to Executive Committee

A PROPOSAL FCR A NEW CONSTITUTICNAL ARTICLE EROVICING FCR JOINT ELECTICN OF THE GOVERNOR, LIEUTENART GCVERNOR AND ATTORNEY GENERAL.

BE IT PROPOSEL BY THE CONSTITUTIONAL CONVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitnticnal Article to provide as follcws:

"ARTICLE ----

THE EXECUTIVE

Section 1. EXECUTIVE POWER. The executive power cf the state shall be vested in the Gcverncr.

Section 2. STATE ELECTIVE OFFICERS. There shall be a lieutenant Governor and an attorney general. They shall have the same qualifications as the Governor and serve for the same term. They shall perform such duties as may be prescribed by law and as may be delegated tc each by the Gcverncr.

Section 3. ELECTIONS. The Gcverncr shall be elected by the qualified voters cf the state at a general electicn every other odd-numbered year. The person receiving the highest number cf votes shall be Governor. In the case cf a tie vcte, the selection of the Gcvernor shall be determined in acccrdance with lav.

The term of office of the Gcvernor shall begin at nccn cn the first Monday in December next fcllcving his election and end at nccn on the first Monday in December, four years thereafter.

No person shall be eligible for the office cf Governor unless he shall be a qualified voter, have attained the age of 30 years and have been a resident of this state for two years inmediately preceding his election.

The Governcr shall not hold any cther cffice cr employment of profit under the state or the united States during his term cf office.

The Governor, the lieutenant Governcr and the attorney general shall belong to the same pclitical party and shall be elected jointly in both the primary and the general elections.

In both the primary and general electiccs, cne vote shall be cast jointly fcr the candidate fcr Gcverncr, lieutenant Gcvernor and attorney general.

Nc perscn shall be elected to the cffice cf attcrney general whc is nct an attorney admitted tc practice before the supreme court of the state.

Section 4. LIMIT ON TENURE. Nc person uhc has been elected Governor for twc full successive terms shall be eligible tc hcld that office until one full term has intervened.

Section 5. COMPENSATION. The compensation of the Gcvernor, the lieutenant Governor and the attorney general shall be prescribed by law and shall not be diminished during their term of office, unless by general law applying to all salaried officers of the state.

Section 6. EXECRTIVE AND ADMINISTRATIVE POWERS. The Governor shall be responsible for the faithful execution of the lass. He may, by appropriate action and proceeding brought in the name of the state, enforce compliance with any constitutional cr legislative mandate or restrain violaticn cf any constitutional or legislative paver, duty or right of any cfficer, department or agency of the state or any of its civilian divisicns. This authority shall not authorize any acticn cr proceedings against the legislature.

The Governor shall commission all officers of the state. Be may at times require inforsaticn, in writing or othervise frcm the officers of any adsinistrative department, cffice or agency upon any subject relating to their respective offices. He shall be comsander-in-chief of the armed forces of the state, except when they are called into the service cf the United States and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

Section 7. PRINCIPAL DEPARTMENTS. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of Governor and lieutenant Governor shall be allocated by law among and within twenty principal departments. They shall be grouped as far as possible according to major purposes.

Subsequent to the initial allocation, the Governor may make changes in the organization of the executive branch or in the assignment of functicns among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set fcrth in executive orders and submitted tc the legislature. Thereafter the legislature shall have 60 calendar days of a regular sessicn or a full regular session if of shorter duration, tc disapprove each executive order. Unless disapproved in both houses by a resolutien concurred in by a majority of the members elected to and serving in each house, each order shall becme effective at a date thereafter to be designated by the Gcverncr.

The head of each department shall be a single executive except in the case cf the Cepartment of Education which is headed by a nine member board of education elected in a manner prescribed by law.

The single executives heading principal departments shall include the attorney general and may include the lieutenant Governor unless his duties are othervise defined by the Governor.

Apart from these exceptions, each head shall be appointed by the Governor by and with the advice and consent of the senate and he shall serve at the pleasure of the Governor.

Such single executives shall hold office for a term to expire at the end of the term tor which the Governor was elected, unless sooner removed by the governor, except that the removal of the lieutenant Governor and the attorney general from executive position shall require a twc-thirds vcte of each house of the legislature.

The Governor shall nominate and by and vith the consent of the senate, appoint all officers for vhose election and appointment provision is not otherwise made by this constitution or by law. If the manner of removal is not prescribed in this constitution, his removal shall be in a manner prescribed by law.

When the senate is not in session and a vacancy occurs in an* office, appointment to which requires the confirmation of the senate, the Governor may fill the office by granting a commission uhich shall, unless such appointment is confirmed, expire at the next session of the senate; but the person sc appointed shall not be eligible for another interim appcintnent to such office if the appointment shall have failed to be ccnfirmed by the senate.

Nc person rho has been nominated for appcintment for any office and uhose appointment has not received the consent of the senate shall be eligible to an interim appointment thereafter to such office.

Every officer appointed under the provisions of this section shall he a citizen of the United States and shall have been a resident of the state for at least one year immediately preceding his appointment.

Section 8. GOVERNOR'S MESSAGES TO THE LEGISLATURE. The Governor shall at the beginning of each session and may at other times, give to the legislature information as to the affairs of state and recommend measures he considers necessary and advisable.

At the beginning of each regular session, he shall also send to the legislative assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him.

He shall also at the beginning of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the state.

Section 9. PARDONS. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses and may delegate such powers, subject to such procedure as may be prescribed by law.

Section 10. CONVENING THE LEGISLATURE. Whenever the Governor considers it in the public interest, he may convene the legislature, either house or the two houses in joint session.

Section 11. VETO POWERS OF THE GOVERNOR. Every bill which shall have passed the senate and the house of representatives shall, before it becomes a law, be presented to the Governor. If he approves, he shall sign it: but if not he may return it with his objections to the house in which it originated, which shall enter the objections at large on its journal and proceed to reconsider the same. If after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill, it shall be sent together with the objections to the other house, by which it shall likewise he reconsidered and if approved by two-thirds of all members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objection.

In case the Governor shall not transmit the bill either with his approval or with his objections, within ten calendar days, Sunday and legal holidays excepted, after the same has been presented to him, it shall be a law at the expiration of that period. The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner

heretcfcre prcvided in this sectiCn as tc bills returned to the legislature without his approval.

If the Governor approve the general purpcse of any bill, but disapprcve any part or parts therecf, be may return it with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in bcth houses upon the bill and his reccmmendaticns in relation to its amendment as is above provided in relaticn tc a hill, which he shall have returned uithcut his approval and uith his cbjections thereto; provided that, if after such reccnsideration both houses, by a vcte of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendation in relation thereto or either house by such vote shall fail or refuse tc so amend it, then and *in* either case the bill shall be again sent tc him and he may act upon it as if it were then before him for the first time. In all cases abcve set forth, the names of the members voting fcr and against the bill, the item cr items cf an appropriation shall be entered on the jcurnal cf each house.

Section 12. SUCCESSICN TO THE CPFICES AND POWERS CF GCVERNCR AND LIEUTENANT GOVERNOR. If the Gcvernor-elect dies, resigns or is disqualified, the lieutenant Governor-elect shall succeed to the office of Governor for the full term. If the Governcr-elect fails to assume office for any cther reason, the lieutemant Governcr shall serve as acting Governor: and be shall succeed to the office of Governor if the Governor-elect does not assume his office within six months of the beginning cf his term.

In case of the removal of the Governor frcm office or his death or resignation, the lieutenant Governor shall becme Governor for the remainder of the term.

Whenever the Governor transmits to the presiding officers of the house and senate his uritten declaration that he is unable to discharge the powers and duties cf his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be exercised by the lieutenant Gcverncr as acting Governor.

Whenever the lieutenant Governor and a majority cf the heads of the executive departments transmit to the house and senate their written declaration that the Governor is unable to discharge the pooers and duties of his office, the lieutenant Governor shall immediately become the acting Governor.

Thereupon the legislature shall assemble uithin 96 hours if not in session and shall decide the issue. If the legislature. within ten days after the receipt of the latter written declaration or if not in session, within ten days after the legislature is required to assemble, determines by tao-thirds vote of the members voting in both houses tbat the Governor is unable to dis-

charge the powers and duties of his office, the lieutenant Governor shall continue to discharge the duties of acting Governor; otherwise, the Governor shall resume the powers and duties of his office.

The acting Governor shall have all the powers and duties of the Governor.

Whenever there is a vacancy in the office of lieutenant Governor, the Governor shall nominate a lieutenant Governor who shall take office upon confirmation by each house of the legislature by a majority of the members voting.

The legislature, in cases not herein provided for, may enact laws for succession to the office of Governor and lieutenant Governor.

Section 13. The legislature shall establish standard guidelines based on personal qualifications and on-the-job performance for the appointment, hiring, advancement and discontinuance of employment for all state employees other than the elected and appointed officers provided for in this constitution."

INTRODUCED BY: /s/ Harold Arbanas

DELEGATE PROPOSAL
NO. 108 - Elections

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 108

DATE INTRODUCED: FEB. 2, 1972

Referred to Local Government Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR COUNTY ELECTIONS ON ALTERNATIVE FORMS OF GOVERNMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. Each county in the state shall vote in 1976 on whether to continue the county government then in effect in that county or to adopt an alternative form. The legislature shall authorize several alternative forms of government and provide for the county election which shall be between the form of government then in effect and one alternative. The legislature shall also provide for procedures whereby each county may select the alternative to be placed on the ballot."

INTRODUCED BY: /s/ Dorothy Eck

/s/ Virginia H. Blend

/s/ Daphne Bugbee

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE PROPOSAL NC. 109

DATE INTRCDUCED: FEE. 2, 1972

Referred to Revenue and Finance Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTION ALLCWING INCOME TAX-PAYERS TO CONTRIBUTE ONE DCLLAR TC PARTY OF THEIR CHCICE.

BE IT PROPOSED EY THE CCNSTITUTICNAL CONVENTICN CF TEE STATE CE MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follcus:

"Section ___. Each perscn cr perscns filing a separate income tax return may assign sc much cf his tax, as the legislature provides, but nc less than cne dollar to the political party of his choice."

INTRCDUCED EY: /s/ Robert Lee Kelleher

DELEGATE PROPOSAL
No. 110 - Elections, Consecutive Terms

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 110

DATE INTRODUCED: FEB. 2, 1972

Referred to Executive Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION LIMITING THE NUMBER OF TIMES A PERSON MAY SUCCEED HIMSELF IN OFFICE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section . After the effective date of this provision no person may serve more than three consecutive terms in the same public elective office."

INTRODUCED BY: /s/ Geoffrey L. Brazier

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL AO. 111

DATE INTRODUCED: EEB. 2, 1972

Referred to General Government and constitutional Amendment Committee

XIX, 2

A PROPOSAL AMENDING ARTICLE XIX, SECTION 2 OF TEE CONSTITUTION OF THE STATF OF MONTANA TO PROHIBIT GABBLING AS A MEANS OF FINANCING STATE GOVERNMENT AND TG PERMIT CHARITABLE OR NONPROFIT ORGANIZATIONS TO ENGAGE IN GIFT ENTEBPBISES.

BE IT PROPOSED BY TEE CONSTITUTIONAL CONVENTION OP TEE STATE OP MONTANA:

Section 1. Article XIX, Section 2 of the present Ccnstitution is aaended to read as follcws:

"Sec. 2. The legislative assembly shall have no poser to authcrize lotteries, ~~or gift enterprises for any purpese, and shall pass laws to prohibit the sale of lottery or gift enterprises~~ or gambling of any kind for the purpose of financing units of State or llocal government in this state. This provision shall nct prohibit charitable or nonprofit organizatiens from engaging in gift enterprises and ticket sales when authcrized to do se by lau."

INTRODUCED EY: /s/ Gene Harbaugh

/s/ Harold Arbanas

/s/ Carl W. Davis

/s/ Max Conover

/s/ Dorothy Eck

/s/ Rod Hanson

/s/ R. S. Hanson

DELEGATE PROPOSAL
No. 112 - Wholesale Liquor

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 112

DATE INTRODUCED: FEB. 2, 1972

Referred to General Government and constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING THAT THE STATE NOT ENGAGE IN THE WHOLESALE LIQUOR BUSINESS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislature shall provide that by December 31. 1974 the state of Montana shall no longer engage in the business of buying and selling liquors. This section does not prevent the legislature from regulating or taxing the retail and wholesale sale of liquor."

INTRODUCED BY: /s/ Arnold W. Jacobsen

/s/ Mae Nan Robinson

/s/ Don E. Belcher

/s/ Sterling Rygg

/s/ George W. Rollins

/s/ D. A. Scanlin

/s/ E. J. Studer, Sr.

/s/ Joseph H. McCarvel

/s/ Marian S. Erdmann

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE, PROPOSAL NO. 113

DATE INTRODUCED: FEB. 2, 1972

Referred to Education and Public Lands Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR A TEACHERS' SALARY EQUITY BOARD.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. There is created a Teachers' Salary Equity Board consisting of three members serving four-year terms; one (1) member is to be elected by the vote of members of the teachers' retirement system, one (1) member is to be elected by the legal voters of the state and one (1) member is to be appointed by the State Board of Education. The legislature shall provide for the method of election and for the powers and duties of the Equity Board. The duties shall include the hearing of appeals by any member of the teachers' retirement system who is aggrieved by his salary and the powers shall include the power to order salaries raised twenty percent (20%) or less. In evaluating salaries the Board shall consider classroom performance, public service and professional growth. The Board shall not have the power to reduce salaries."

INTRODUCED BY: /s/ Richard B. Roeder

DELEGATE PECPCSAL
No. 114 - Natural Resources, Conservaticn

MONTANA CONSTITUTICNAI CCNVENTICN

1971-1972

CELEGATE PRCPCSAL NO. 114

DATE INTRODUCED: FEB. 3, 1972

Referred to Natural Resources and Agriculture Ccnnittee

A PROPOSAL POR A NEW CONSTITUTIONAL SECTICN ON PUBLIC SIGHTLINESS AND GOCC CRDER.

BE IT PROPCSEC BY TAE CONSTITUTICNAL CCNVENTION OF THE STATE CF MCNTANA:

Section 1. There shall be a new Ccnstitutional Section to prcvide as fcllcus:

"Section --- . PUBLIC SIGHTLINESS AND GCCD CRDER. The State shall conserve and develop its natural beauty, cbjects and places of histcric cr cultural interest, sightliness and physical gocd order, and for that purpose private property shall be subject to reasonable regulaticn."

INTRODUCED BY: /s/ Daphne Bugbee

/s/ Dorothy Eck

/s/ Jerome Cate

/s/ Arlyne Reichert

/s/ Bob Campbell

/s/ Richard B. Roeder

/s/ Bruce M. Brcwn

/s/ George Harper

MCNTANA CONSTITUTIONAL CONVEHTICN

1971-1972

EELEGATE EBOPOSAL NC. 115

DATE INTRODUCED: FEB. 3, 1972

Referred to General Government and constitutional Amendment Committee

A PROPOSAL FCB A NEW CONSTITUTIONAL SECTION PBCVIDING TEAT 'IBIS CONSTITUTION SHALL NOT AFFECT PRESENT ELECTIVE OFFICES BEFORE 1977.

BE IT PROPOSED BY THE CONSTITUTICNAL CONVFUTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Sectiон tc provide as follcws:

"Sectiон ... . No action of the 1977-1972 Constitutional Convention sball affect the status cf any elective office tc be filled at the November 7, 1972 electiон or any office the tern to which ends before January 1. 1977."

INTRODUCED BY: /s/ Daphne Bugbee

/s/ Dorothy Eck

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 116

DATE INTRODUCED: FEB. 3, 1972

Referred to Bill of Rights Committee

III, 3

A PROPOSAL AMENDING ARTICLE III, SECTION 3 OF THE CONSTITUTION OF THE STATE OF MONTANA RECOGNIZING THE PEOPLE'S OBLIGATION TO PRESERVE THEIR RIGHTS AND PROPERTY.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article III, Section 3 of the present Constitution is amended to read as follows:

"Sec. 3. ~~All persons are born equally free, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways.~~ All people are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness. These rights cannot endure unless people recognize their reciprocal responsibilities and obligations to secure and preserve these rights and to protect their property."

INTRODUCED BY: /s/ J. K. Ward

/s/ Margaret S. Warden

/s/ Charles H. Mahoney

/s/ Maurice Driscoll

/s/ M. Lynn Sparks

/s/ Virginia H. Blend

/s/ R. A. Nutting

/s/ George B. Heliker

/s/ R. J. Studer, Sr.

/s/ D. A. Scanlin

/s/ Robert Lee Kelleher

/s/ Arlyne Reichert

/s/ Magnus Aasheim

/s/ A. O. Wilson

/s/ Robert B. Noble

/s/ A. W. Kamhoot

/s/ Wm. Burkhardt

/s/ Roger A. Wagner

DELEGATE PRCFCSAL
Nc. 117 - Agriculture

MCNTANA CONSTITUTICNAL CONVENTICN

1471-1572

DELEGATE PROFCSAL 117

DATE INTRODUCED: FEE. 3, 1972

Referred tc Natural Resources and Agriculture Committee

A PROPOSAL FCR A NEW SECTICN TC PRCVIDE FCR A DEPARTMENT OF AGRICULTURE.

BE IT FROPOSED BY THE CONSTITUTIONAL CONVENTICN OF THE STATE CF MCNTANA:

Section 1. There shall be a new Constituticnal Section to provide as follcws:

"Section ___. There shall be a Department of Agriculture."

INTRCDUCED BY: /s/ Grace Bates

/s/ Grace Bates
/s/ Carman Skari
/s/ John H. Leuthold
/s/ Lloyd Barnard
/s/ Carl M. Davis
/s/ John H. Anderson
/s/ Leslie Eskildsen
/s/ Edith Van Buskirk
/s/ Jerome J. Cate
/s/ Douglas Delaney
/s/ Chet Blaylock
/s/ C. Louise Cross
/s/ Don E. Belcher
/s/ R. A. Nutting
/s/ Charles H. Mahoney
/s/ Donald R. Foster
/s/ Mark Etchart
/s/ Paul K. Harlcw

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 118

DATE INTRODUCED: FEB. 3, 1972

Referred to Bill of Rights Committee

A PROPOSAL FOR A PREAMBLE TO THE NEW CONSTITUTION.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a Preamble to the Constitution to read as follows:

"PREAMBLE

We the people of Montana are grateful for Divine Guidance, mindful of our rich heritage, thankful for our shining mountains and rolling plains, and realize that all people are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness. We recognize corresponding responsibilities and obligations to secure and preserve these rights and to protect our property for future generations; and with this irtent we do ordain and establish this Constitution."

INTRODUCED BY: /s/ J. K. Ward

/s/ R. A. Nutting

/s/ A. W. Kamhoot

/s/ George B. Heliker

/s/ Maurice Driscoll

/s/ William A. Burkhardt

/s/ Virginia H. Blend

/s/ Roger A. Wagner

/s/ R. J. Studer, Sr.

/s/ Charles H. Mahoney

/s/ Magnus Aasheim

/s/ M. Lynn Sparks

/s/ D. A. Scanlin

/s/ A. O. Wilson

/s/ Margaret S. Warden

MCNTANA CONSTITUTICNAI CCNVERTICN

1971-1972

DELEGATE PROPOSAL RC. 119

DATE INTRODUCED: FEB. 3, 1972

Referred tc Revenue and Finance Committee

A FRCFOSAL FOR A NER CONSTITUTIONAL SECTICN FFOVIDIWG FOR THE EARMARKING CF GRASS CONSERVATION, HAIL INSURANCE AND WHEAT RESEARCH FUNDS.

BE IT PROPOSED BY TBE CONSTITUTIONAL CONVENTION OF TRE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to prcvide as follcvs:

"Section ___. (1) All moneys paid intc the state treasury which are derived from acreage taxes to suppcrt the hail insurance program shall be expended only for hail insurance lcsses, refunds, interest on warrants and cost of administering the hail insurance prcgram.

(2) All mcneys paid into the state treasury which are derived from grazing district permit fees or assessments shall be expended only for administering the state grazing district prc-gram.

(3) All mcneys paid into the state treasury which are derived from assessments on marketed vheat shall be expended only for costs of administering the wheat research and marketing pro-gram.

None of the above mentioned mcneys may be deposited in the state's general fund to support state government."

INTRODDCED BY: /s/ MagnusAasheis

/s/ Max Conover

/s/ Lloyd Barnard

/s/ John H. Anderson, Jr.

UONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 120

DATE INTRODUCED: FEB. 3, 1972

Referred to General Gcvernment and Constituticnal Amendment Ccmaittee

XIX, 2

A PROPOSAL AMENDING ARTICLE XIX, SECTION 2 CF THE CCNSTITUTION OF THE STATE OF MONTANA TC PERMIT BINGC GAMES BY NCNPROFIT CRGANIZATIONS.

BE IT PRCPCSED BY THE CONSTITUTIONAL CONVENTION CP THE STATE OF MCNTANA:

section 1. Article XIX, Section 2 cf the present Ccnstitution is aaeuded to read as fcllcus:

"Sec. 2. The legislative assembly shall have nc power to authorize lotteries, cr gift enterprises for any purpcse, and shall pass laws to prohibit the sale cf lcttery or gift enterprise tickets in this state. This provision shall not prohibit nonprofit, charitable or church-related groups from ccrducting bingo games cn a reasonable scale."

INTRCDUCED EY: /s/ A. W. Kamhoct

/s/ A. C. Wilson

/s/ J. K. Ward

/s/ TcrreyJchnscn

DELEGATE PROPOSAL
No. 121 - Public Utilities

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE FROPOSAL NO. 121

DATE INTRODUCED: FEB. 3, 1972

Referred to Public Health, Welfare and Labor Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR PUBLIC UTILITY CORPORATIONS.

BE IT FAOPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law."

INTRODUCED BY: /s/ Paul K. Harlow

/s/ Miles Romney

/s/ Grace Bates

/s/ Don E. Belcher

/s/ George H. James

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 122

DATE INTRODUCED: FEB. 3, 1972

Referred to Local Government Committee

Referred to Executive Committee

V, 31

A PROPOSAL AMENDING ARTICLE V, SECTION 31 OF THE CONSTITUTION OF THE STATE OF MONTANA, DELETING THE WORDS "OR INCREASE" FROM THE SECTION PROVIDING FOR SALARY INCREASE FOR ELECTED PUBLIC OFFICERS DURING THEIR TERM OF OFFICE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article V, Section 31 of the present Constitution is amended to read as follows:

"Sec. 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, ~~or increase~~ or diminish his salary or emolument after his election or appointment: provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution."

INTRODUCED BY: /s/ Thomas M. Ask

/s/ George W. Rollins

DELEGATE PROPOSAL
No. 123 - Legislative, Interim Committee

MONTANA CONSTITUTIONAL CONVENTION

1971-1572

DELEGATE PROPOSAL NO. 123

DATE INTRODUCED: FEB. 3, 1972

Referred to Legislative Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR LEGISLATIVE INTERIM COMMITTEES.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislature may establish interim committees of the legislature which may meet between legislative sessions and exercise all legislative authority delegated to them."

INTRODUCED BY: /s/ Felt

/s/ Mark Etchart

/s/ Leslie Eskildsen

/s/ R. F. Woodmansey

/s/ Arlyne Reichert

/s/ George Harper

/s/ R. A. Nutting

/s/ Donald R. Foster

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 124

DATE INTRODUCED: FEB. 3, 1972

Referred tc Bill of Fights Ccmmittee

A PROPOSAL FOE A NEW CONSTITUTIONAL SECTICN PROHIBITING LIE DETECTOR TESTS AS A CONDITICN OF EMPLCYMENT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN CF THE STATE CF MCNTANA:

Section 1. There shall be a new Constitutional Secticn t c provide as follows:

"Sectien ___. No person shall be required as a condition of employment to submit to lie detectcr cr cther self-incriaicating tests."

INTRODUCED BY: /s/ Jerome J. Cate

/s/ George B. Heliker

/s/ David L. Holland

/s/ George W. Rollins

/s/ Lucile Speer

DELEGATE PBCPCSAL

No. 125 - Private Prcperty Prctection

RCNTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PRCPCSAL NO. 125

DATE INTRODUCED: FEB. 3, 1972

Referred to Bill of Rights Ccmmittee

III' 14

A PROPOSAL AMENDING ARTICLE III, SECTION 14 OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING THAT ENVIRONMENTAL AMENITIES NOT BE TAKEN OR DAMAGED WITHOUT JUST COMPENSATION.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article III, Section 14 of the present Constitution is amended to read as follows:

"Sec. 14. Private property, including its inherent environmental amenities, shall not be taken, ~~or~~ damaged or impaired by any entity ~~for public use~~ without just compensation, ~~having been first made to or paid into court for the owner.~~"

INTRODUCED BY: /s/ Jerome J. Cate

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 126

CATE INTRODUCED: FEB. 3, 1972

Referred to Local Government Ccmsittee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE CN LOCAI GCVERNIENT.

BE IT PROPOSED BY TBE CONSTITUTIONAL CCNVENTIOX OF THE STATE OF MONTANA:

Section 1. There shall be a new Constituticnal Article to provide as follcws:

"ARTICLE ...

LOCAL GOVERNMENT

Section 1. LOCAL GCVERNMENT UNITS. As used in this article local governments shall include but shall not be limited tc counties, cities and tcwns.

Section 2. ORGANIZATION OF LOCAL GOVERNMENT. The legislature shall provide by general law for the gcvernaent of counties, cities, towns, and other local government units and for methods and procedures of incorporating, classifying, aerging, consolidating, and dissolving such units of government and for altering their boundaries.

Section 3. OPTIONAL PLANS. The legislature shall prcvide by general law for optional forms of government for counties, cities and towns, or a conbinaticn of any two or more of these units, which may be adopted or repealed by a majority of the qualified voters voting thereon; provided, bowever, that cne optional form of county government shall include the following elected county officials: three county commissioners, clerk, sheriff, treasurer, superintendent of schools, surveyor, assessor, coroner and public administrator.

Section 4. LOCAL CHARTER WRITING. The legislature shall provide methods and procedures under which coonties, cities and towns, or a combination of any two or more of these units may frame. adopt, amend, revise and repeal their cwn charters,

DELEGATE PROPOSAL
No. 126 - Local Government

subject tc a majority of the qualified vcters vcting thereon.

Section 5. POWERS CF IOCAL GCVERNMENT. Any unit of local government may exercise any pcwer or function which is not denied, either expressly or by clear implicaticn, by its charter, is not denied to units cf local government generally cr to its class of local government, and is within such lisitaticne as are prescribed by the constitution or such lieitaticns as the legislature shall establish by general law. The legislature may reserve this power to certain classes of local gcvernments on the basis cf populaticn.

Section 6. LIMITATIONS ON LOCAL PCWERS. The powers granted to local government shall nct include the power (1) tc levy, assess and collect taxes except as delegated to local governments by the legislature; (2) to borrow money or tc Fledge or loan the credit of any local government unit; (3) tc enact private cr civil law governing civil relationships except as are incident to an exercise cf an independent municipal pcwer; cr (4) to define and provide for the punishment of a felcny.

Section 7. INTERGOVERNMENTAL CCOFERATICN. Agreements, including thcse for cooperative or joint administraticn cf any function or pcwers, may be made by any unit cf local government with any other political subdivision, uith the state, cr with the United States, unless prohibited by general law cr charter.

Section 8. INITIATIVE, REFERENDUM, AND RECALL. The initiative and referendum powers reserved tc the people by the ccnstitution shall be further extended to the qualified voters of each county and city as applied to the adcption, amendment, revisicn, cr repeal of a charter and as applied to legislaticn adopted by a local government unit.

All elected public officials of local gcverneents are subject to recall by the voters of the local gcvernment unit frcm which elected. Procedures and grcunds for recall shall be prescribed by the legislature."

INTRODUCED BY: /s/ Lucile Speer

MONTANA CONSTITDTICEAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 127

DATE INTRODUCED: FFB. 3. 1972

Referred tc Natural Rescurces and Agriculture Committee

A PROPOSAL FOR A NEW CONSTITUTICNAL SECTION PBOVIDING FOR WATER RIGHTS.

BE IT PROPOSED BY THE CONSTITUTICNAL CCNVENTION OF TEE STATE CP BONTANA:

Section 7. There shall be a new Ccnstitutional Section to provide as follow:

"Section ___. RATER EIGHTS. (1) All existing rights tc the use of any waters in this state for any useful cr beneficial purpose are hereby recognized and confirmed.

(2) All surface, ground, and atmospheric waters within the boundaries of the state of Montana are declared to be properties of the state and subject to appropriaticn for beneficial uses as provided by law.

(3) The legislature shall vest in au agency of the executive branch of state government, under laws which shall be prescribed by the legislature, the administration, ccntrol and regulation of existing and future rights to and uses of water."

INTRODUCED BY: /s/ Carl H. Davis

/s/ Douglas Delaney

/s/ John H. Anderson, Jr.

/s/ Henry Siderius

/s/ Don-Rebal ----------

DELEGATE PROPOSAL
No. 128 - Board of Education

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 128

DATE INTRODUCED: FEB. 3. 1972

Referred to Education and Public Lands Committee

A PROPOSAL AMENDING ARTICLE XI, SECTION 11 OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING THAT TEN MEMBERS OF THE BOARD OF EDUCATION BE APPOINTED BY THE GOVERNOR AND ONE STUDENT MEMBER BE SELECTED AS PROVIDED BY LAW.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XI, Section 11 of the present Constitution is amended to read as follows:

"Sec. 11. The general control and supervision of the state university system and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The ~~said~~ board shall consist of eleven members, ~~the Governor, state superintendent of public instruction, and attorney general, being members ex officio; the other eight members thereof shall be appointed by the Governor, subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.~~ ten (10) to be appointed by the Governor, subject to senate confirmation and one member to be a student at one of the institutions governed by the board selected in a nonappointive manner as prescribed by law."

INTRODUCED BY: /s/ Mae Nan Robinson

/s/ Arlyne Reichert

/s/ Lucile Speer

/s/ Mike McKeon

/s/ Robert Vermillion

MONTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PRCPCSAL NO. 129

DATE INTRODUCED: FEB. 3, 1972

Referred to General Government and Constitutional Amendment Committee

V, 1

A PROPOSAL AMENDING ARTICLE V, SECTION 1 OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING FOR RECALL OE ELECTED OFFICIALS.

BE IT PROPOSED BY TEE CGNSTITIJTICNAL CGNVENTICN OF THE STATE OF MONTANA:

Section 1. Article V, Section 1 of the present Constitution is amended to read as follows:

"Section 1. ~~The legislative authority of te state shall be vested in a legislative assembly, consisting of a senate and house of representatives; but~~ The people reserve tc thenselves power to propose laws, and to enact or rejeat the same at the polls, except as to laws relating tc apprcpriations of money, and except as tc laws for the submission of constitnticnal amendments, and except as tc local or special laws, ~~as enumerated in article V, section 26, of this constitution,~~ independent of the legislative assembly; and also reserve power, at their cwn option, to approve or reject at the polls, any act of the legislative assembly, except as tc laws necessary for the immediate preservation of the public peace, health, or safety, and except as to laws relating to appropriations cf money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, ~~as enumerated in article V, section 26, of this constitution.~~ the people also reserve to themselves the power to remove elected officials from office. The first power reserved by the people is the initiative and eight percent of the legal voters of the state shall be required to propose any measure by petition; provided, that two-fifths of the whole number of the ~~counties~~ legislative districts cf the state must each farnish as signers of said petition eight percent of the legal voters in such ~~county,~~ district, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state, not

less than four months before the election at which they are to be voted upon.

The second power is the referendum, and it may be ordered either by petition signed by five percent of the legal voters of, the state; provided that two-fifths of the whole number of the ~~counties~~ legislative districts of the state must each furnish as signers of said petition five percent of the legal voters in such ~~county~~ district, or, by the legislative assembly as other bills are enacted.

Referendum petitions shall be filed with the secretary of state, not later than six months after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is denanded. The veto power of the Governor shall not extend to measures referred to the people by the legislative assembly or by initiative or referendum petitions.

All elections on measures referred to the people of the state shall be had at the biennial regular general election, except when the legislative assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen percent of the legal voters of a majority of the whole number of the ~~counties~~ legislative districts of the state, in which case the lam shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law. The whole number of votes cast for Governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state; and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor. The enacting clause of every law originated by the initiative shall be as follows:

"Be it enacted by the people of Montana:"

This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.

The third power reste the people is the recall, and each elected public official of the state and of its political subdivisions is subject to recall by the voters of the area from which he is elected in the manner provided by the legislature."

INTRODUCED BY: /s/ Paul K. Harlow

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 130

DATE INTRODUCED: FEE. 3, 1972

Referred to Education and Public Lands Coeaittee

A PROPOSAL PCR A NEW CONSTITUTIONAL SECTION PROVIDING FOB THE ESTABLISHMENT OF PUBLIC LIBRARIES.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OP TEE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislature shall prcvide for the establishment and support of public libraries which shall be available to all residents of the state."

INTRODUCED BY: /s/ Mae Nan Robinson

/s/ Mike McKeon

DELEGATE FRCPCSAL
No. 131 - Voter Eegistraticn

MONTANA CONSTITUTICNAL CCNVENTIGN

1971-1972

DELEGATE FROPOSAL NO. 131

DATE INTRODUCED: FEB. 3. 1972

Referred to General Government and Constituticnal Amendment Ccmmittee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTION PROVIDING FOR POLLING FLACE VOTER REGISTRATION.

BE IT PROPOSED BY TBE CONSTITUTICNAL CONVENTION OF THE STATE CF HONTANA:

Section 1. There shall be a new Constituticnal Section to provide as follcws:

"Section ___. Pricr registraticn shall nct be a qualificaticn fcr voting at an election in Mcntana. The legislature shall provide methods fcr establishing voter qualifications on election day at the polling places."

INTRODUCED BY: /s/ Daphne Bugbee

/s/ Jerome J. Cate

/s/ Arlyne Reichert

/s/ George Harper

MONTANA CONSTITOTICNAI CCNVENTICN

1971-1572

DELEGATE EBCFCSAL NO. 132

DATE INTRODUCED: FEB. 3, 1972

Referred to Bill of Rights Committee

Referred to Natural Rescurces and Agriculture Committee

A PROPOSAL FOR A NEW CONSTITUTICNAL SECTION PROVIDING FCF ENVIRONMENTAL RIGHTS.

BE IT PROPOSED By TRE CONSTITUTICNAL CONVENTIGN CF 'IRE STATE OF MCNTANA:

Section 1. There shall be a new Constitutional Section to provide as fcllcws:

"Section ___. ENVIRONMENTAL RIGHTS. It shall be the obligation of all parties, governmental or private, tc maintain and enhance a high quality environment as a public benefit. Such governmental obligation shall apply tc all aspects of environmental quality including, but not limited tc, air, water, lands, wildlife, minerals and forests. The legislature must implement effective enforcement of this basic ervircnmental right."

INTRODUCED BY: /s/ Bob Campbell and Don Foster

/s/ Harold Arbanas
/s/ Jerome J. Cate
/s/ C. B. McNeil
/s/ Jerome T. Loendorf
/s/ Carman Skari
/s/ Mae Nan Robinson
/s/ Gecrge Harper
/s/ George B. Heliker
/s/ Lucile Speer
/s/ Robert Vermillion
/s/ Charles H. Mahoney
/s/ C. Louise Crcss
/s/ R. J. Studer, Sr.
/s/ Lyle R. Monroe

DELEGATE EROPOSAL
No. 132 - Environmental Eights

/s/ Cedor B. Arcnow
/s/ Dcrcthy Eck
/s/ Marian S. Erdmann
/s/ Jean M. Bowman

/s/ Fen Berg
/s/ Chet Blaylock
/s/ Ctto T. Habedank
/s/ Wade J. Dahccd

MONTANA CONSTITUPICEAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 133

DATE INTRODUCED: EEB. 3, 1972

Referred to Bill cf Eights Ccmmittee

Referred to Judiciary Ccmmittee

A PRCPCSAL AMENDING ARTICLE III, SECTICN 6 CP THE MONTANA CONSTITUTION OF THE STATE CF MCNTANA TC PERMIT AN INJURED EERSON FULL REMEDIES AGAINST ALL PARTIES WHC MAY EE LIABLE FCR HIS INJURY EXCEPTING HIS FELLOW EMPLOYEES AND RIS IMMEDIATE EBFLOYER. PROVIDED SUCH INMEDIATE EMPLOYER PROVIDES COVERAGE UNDER THE WORKMEN'S COMPENSATION LAWS OF THE STATE OF MONTANA.

BE IT FRCPOSED EY THE CONSTITUTIONAL CONVENTION CF THE STATE OP MONTANA:

Section 1. Article III, Section 6 cf the present Ccnstitution is amended to read as fcllcws:

"Section 6. courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, prcperty, or character; nc persch shall be derived cf this full legal redress for injury incurred in employment for which anctber persch may be liable except as to fellow employees and his immediate emplcyer who hired him if such immediate emplcyer provides coverage under the Wcrkmen's Compensation laws of this state, and that right and justice shall be administered without sale, denial, or delay."

INTRODUCED BY: /s/ Bob Campbell

/s/ Lyle R. Monroe

/s/ Jerome J. Cate

/s/ John M. Schiltz

/s/ Thomas M. Ask

/s/ Cedcr B. Aronow

/s/ Geoffrey L. Brazier

/s/ Chet Blaylock

/s/ George B. Heliker

DELEGATE PROPOSAL
No. 134 - Local Government

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 134

DATE INTRODUCED: FEB. 3, 1972

Referred to Local Government Committee

A PROPOSAL REPEALING ARTICLE XII, SECTIONS *15 AND 16* ARE AMENDING ARTICLE XII, SECTION 17 OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XII, Section 15 of the present Constitution which reads as follows, is repealed:

~~"Sec. 15. The board of county commissioners of ... shall constitute the county board of equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective counties, and all such adjustments and equalizations may be supervised, revieved, changed, increased or decreased by the state board of equalization. The state board of equalization shall be composed of three members who shall be appointed by the Governor, by and with the advice and consent of the senate. A majority of the members of the state board of equalization shall constitute a quorum. The term of office of one of the members first appointed shall end on March 1st, 1925, of another first appointed on March 1st, 1927, and of the third first appointed on March 1st, 1929. Each succeeding member shall hold his office for the term of six years, and until his successor shall have been appointed and qualified. In case of a vacancy the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The qualifications and salaries of the members of the state board of equalization shall be as provided by law, provided, however, that such members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as a member of such board, or serve on or under any committee of any political party or orga-~~

~~nization, or take part, either directly or indirectly, in any political campaign in the interest of any political party or organization or candidate for office. The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers, supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law."~~

Section 2. Article XII, Section 16 of the present Constitution which reads as follows, is repealed:

~~"Sec. 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts."~~

Section 3. Article XII, Section 17 of the present Constitution is amended to read as follows:

"Sec. 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things. ~~(real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.~~"

INTRODUCED BY: /s/ Frank Arness

/s/ Chet Blaylock

DELEGATE PROPOSAL
No. 135 - Public lands

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 135

DATE INTRODUCED: FEB. 3, 1972

Referred to Natural Resources and Agriculture Committee

XVII, 1, 2, 3

A PROPOSAL AMENDING ARTICLE XVII, SECTION 1 AND REPEALING SECTIONS 2 AND 3 OF THAT ARTICLE OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING FOR THE EXCHANGE OF PUBLIC LANDS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XVII, Section 1 of the Present Constitution is amended to read as follows:

"Section 1. All lands of the state that have been, or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or device, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area. ~~nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three (3) miles of such limits, provided, that any of said~~

~~lands--may--be--re-classified--whenever,--by--reason-of-increased facilities-for-irrigation-or-otherwise,-they-shall-be-subject--to different-classification.~~"

Section 2. Article XVII, Section 2 of the present Constitution, which reads as follows, is repealed:

~~"Sec.-2.--The-lands-of-the-first-of-said-classes-may-be-sold or--leased,-under-such-rules-and-regulations-as-may-be-prescribed by-law.-The-lands-of-the-second-class-may-be--sold,-or-the-timber thereon-may-be-sold,-under-such-rules-and-regulations-as--may--be prescribed--by--law.-The-agricultural-lands-may-be-either-sold-or leased,-under-such-rules-and-regulations-as-may-be-prescribed--by law.--The--lands--of--the-fourth-class-shall-be-sold-in-alternate lots-of-not-more-than-five-acres-each,-and-not-more-than-one-half of-any-one-tract-of-such-lands-shall-be-sold-prior--to--the--year one-thousand-nine-hundred-and-ten-(1910).~~"

Section 3. Article XVII, Section 3 of the present Constitution, which reads as follows, is repealed:

~~"Sec.-3.--All--other-public-lands-may-be-disposed-of-in-such manner-as-may-be-provided-by-law.~~"

INTRODUCED BY: /s/ Carl M. Davis

/s/ Max Conover

DELEGATE PBCPOSAL
Nc. 136 - Parliament

MONTANA CONSTITUTIONAI CCNVENTICN

1971-1972

DELEGATE FBCFCSAL NO. 136

DATE INTRODUCED: FEB. 3, 1972

Referred to Legislative Committee

Referred to Executive Ccmmittee

A PROPOSAL POR A NEW CONSTITUTIONAL ARTICLE PBOVIDING POB A PARLIAMENT.

BE IT PROPOSED BP THE CONSTITUTIONAL CONVENTICN OF TEE STATE Of HONTANA:

Section 1. LEGISLATIVE FOPEB. The legislative power of the state shall be vested in a Parliament consistirg cf one chamber; but the people reserve to themselves the initiative, including the right to amend this Constitntion, and referendum powers.

Section 2. MEMBERSHIP. The number cf members of the Parliament shall be prescribed by law but shall consist cf nct less than 100 nor more than 110. The state shall be divided into as many districts as there are members of the parliament and each district shall elect one member.

Section 3. TERM AND QUAIIPICATICNS. Members of Parliament shall serve a term cf four (4) years. One-half cf the members shall be elected every two (2) years. No person shall be a member of Parlianent who is not a qualified voter of the state and uho has not resided in the state for more than one (1) year next preceding his election.

Section 4. SESSIONS. Parliament shall convene the first Monday of February of each year and shall ccrtinue until adjournment. It may reconvene at any time at the request of a sajority of Parliament.

Section 5. EXECUTIVE. Farliaaent shall chccse a leader from among its members and that leader shall assume the executive authority of the state and shall provide for the prcper administration of the laws of the state. The leader shall appcint a cabinet vbo shall assist the leader in directing the efforts of the departments of executive authority.

Section 6. DISSOLUTION. (a) At any time during a parliamentary session, the leader may call for a dissolution of parliament. Upon a majority vote pursuant to this call, the parliament shall be dissolved and new elections shall be held according to law.

(b) At any time during a parliamentary session, a majority of the members of parliament may call for dissolution of the parliament. Upon a two-thirds (2/3) vote, pursuant to this call, the parliament shall be dissolved and new elections shall be held according to law.

Section 7. PROCEEDINGS. A majority of all of the members of Parliament shall constitute a quorum to do business but a smaller number may adjourn from day to day to compel the attendance of absent members. Parliament may establish committees for the conduct of business and all committee meetings shall be open to the public and adequate public notice shall be given in advance of such meetings. Members of minority parties shall be appointed to committees by their own leadership in proportion to the numerical strength of said party.

Section 8. RECORDATION. Parliament shall have the power to determine the rules of its proceedings and shall publish a journal of those proceedings. Upon the final disposition of any question the ayes and nays must be recorded if requested by any two (2) members.

Section 9. Any powers not specifically reserved herein are granted to the Parliament.

INTRODUCED BY: /s/ Robert Lee Kelleher

/s/ Paul K. Harlow
/s/ George B. Heliker
/s/ Miles Romney
/s/ Lucile Speer
/s/ Dorothy Eck
/s/ Lyle R. Monroe
/s/ Edith Van Buskirk
/s/ Harold Arbanas
/s/ Katie Payne
/s/ Gene Harbaugh
/s/ J. K. Ward
/s/ Virginia H. Blend
/s/ A. W. Kamhoot
/s/ Marjorie Cain
/s/ Jean M. Bowman
/s/ Richard J. Champoux
/s/ Carman Skari
/s/ Robert Vermillion

DELEGATE PROPOSAL
No. 136 - Parliament

/s/ George W. Rollins

/s/ W. H. Swanberg

MONTANA CONSTITUTIONAL CONVENTICN

1971-1472

DELEGATE PBOFOSAL NO. 137

DATE INTRCDUCED: FEB. 3, 1972

Referred to Judiciary Ccmmittee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PRCVIDING THAT UNEMPLOYMENT AND INDUSTRIAL ACCIDENT EENEFITS FE APPLIED CCNSISTENTLY, WITHOUT REGARD TO THE TYPE OF EMPLCYMENT.

BE IT PROPOSED BP TAE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutiona? Section tc provide as follows:

"Section ___. Unemployment compensation, industrial accident benefits and any other benefits to which a wage earner is entitled shall be available on an equal basis to all wage earners regardless of the nature of their employment."

INTRCDUCED BY: /s/ Mike McKecn

/s/ Dan M. Harringtcn

DELEGATE ERCFCSAL
No. 138 - Minimum Wage

MONTANA CONSTITUTIONAL CCNVEN'IICN

1571-1572

DELEGATE PRCPCSAL NC. 138

DATE INTRODUCED: FEB. 3 , 1972

Referred tc Public Health, Welfare and Labor Committee

A PROPOSAL FOR A NEY CONSTITUTIONAL SECTICN PRCVIDING FCR A MANDATORY MINIMUM RAGE LAW.

BE IT PROPOSED BY THE CONSTITUTICEAL CCNVENTION OF TBE STATE OF MCNTANA:

Section 1. There shall be a new Ccsstitutional Section to prcvide as follcus:

"Section ____. The legislature shall provide for a minimum hourly wage which shall apply without exception to all persons emplcyed within the state."

INTRODUCED BY: /s/ Mike McKeon

/s/ Dan W. Harrington

MONTANA CONSTITUTIONAL CONVENTION

1971-1572

CELEGATE PBCPCSAL NC. 139

DATE INTRODUCED: FEB. 3, 1972

Referred to General Government and Constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PECVIDING THAT PRESENT STATE INSTITUTIONS BAY NOT EE REMOVED FRCB THEIE PRESENT LOCATIONS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVERTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. No state institution, agency or office say De moved from the city or town in which the institution, agency or office is located at the time of the adoption of this Constitution."

INTRCDUCED BY: /s/ Mike McKeon

DELEGATE PROPOSAL
NC. 140 - Legislative Article

UCNTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PRCPCSAL NO. 140

DATE INTRODUCED: FEB. 4. 1572

Referred to Legislative Ccmmittee

A PROPOSAL FOR A NEW LEGISLATIVE ARTICLE

BE IT FROPOSED EY THE CONSTITUTIONAI CCNVENTICN OF THE STATE OF MONTANA:

Sectiocn 1. There shall be a new Constitutiocnal Article to prcvide as follcus:

"ARTICLE

THE LEGISIATURE

Section 1. LEGISLATIVE POWER. The legislative power of the state shall be vested in a legislature ccnsisting of a senate and a house of representatives; but the people reserve to themselves the power of initiative and referendum.

Section 2. COBPOSITICN. (1) The number cf members cf the legislature shall be prescribed by law but the senate shall consist cf not more than fifty (5C) nor less than thirty-five (35) and the hcuse of not more than one hundred (100) nor less than seventy-five (75).

(2) The state shall be divided into as many senatcrial districts as there shall be members of the senate and each district shall elect one (1) senator. All senatorial districts shall be so nearly equal in populaticn as is practicable.

(3) Each senate district shall also serve as a house district for the electicn cf twc (2) members of the hcase of representatives. Each district may be divided into single member hcase districts as provided by law.

(4) Every legislative district shall consist cf ccmpact and contiguous territory,

Section 3. TERM AND OUALIFICATICNS CP MEMBERS.

(1) Members of the legislature shall be elected by the qualified voters of the district. Representatives shall be elected for a term of two (2) years and senators fcr a term of four (4) years. One-half (1/2) of the senatcrs shall be elected every two (2) years. No person shall be a member cf the legislature who is nct a qualified voter of the district. The term shall begin at the time of certification. No senator Cl' representative, during the term for which he shall have been elected, be appointed to any civil office under the state.

(2) A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no prcvision is made, the Governor shall fill the vacancy by appointment.

Section 4. CORPEHSATION. (1) Each member of the legislature shall receive an annual salary and such allcuances as may be prescribed by lau; provided that no legislative assembly shall fix its own compensation.

(2) A salary commission shall be created by the legislature, to establish legislators* compensation.

Section 5. PRIVILEGES CF MEMBERS. The members of the legislature shall in all cases, except treascn, felcny, violation of their oath of office and breach of the peace, be privileged from arrest during their attendance at the sessions of tbeir respective houses and in going to and returning frcm the same; and for any speech or debate in the legislature they rball nct be questioned in any other place.

Section 6. SESSIONS. (1) lhe legislative asseably shall meet at the seat cf government the first Mcnday in January next succeeding the general election.

(2) At the written request of a majcrity of the total members cf both houses, the presiding officers cf both hcuses shall convene the legislature in special session. The Governor may convene both houses in special session. (Special sessions sball be limited to a peniod of thirty (30) days.)

Section 7. PROCEDURE. Except for tbe folloving, each bonse shall have power to determine the rules of its proceedings and discipline its members; and with ccncurrence of tuo-thirds (2/3), to expel a member:

(1) A majority of each house shall ccostitate a qucrum tc a0 business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

(2) Neither house shall, without the consent of the cther, adjourn for more than three (3) days, ncr to any other place than that in which the two (2) houses shall be sitting.

(3) Each house shall choose its officers and shall be judge of the elections, returns, and qualifications of its members.

(4) The sessions of each house and all committee meetings shall be open to the press and public.

(5) Each house shall publish a journal of its proceedings, and the ayes and nays of any question shall be entered on the journal at the request of any two (2) members.

Section 8. BILLS. (1) No law shall he passed except by bill and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

(2) No bill shall become law unless referred to a committee, returned therefrom, and copies provided for member's use.

(3) No bill, except general appropriation bills and bills for the codification and general revision of the laws shall be passed containing more than one subject.

(4) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools.

(5) No bill shall become a law except by a vote of a majority of all the members present in each house; nor unless the names of those voting be entered on the journal; and no law shall be revised, amended or extended, unless the revised, amended or extended part is re-enacted and published at length.

Section 9. RESTRICTIONS ON LEGISLATIVE POWER. (1) The legislature shall not pass local or special laws where a general law is or can be made applicable.

(2) Except as otherwise provided in this constitution. no law shall extend the term of any public officer.

(3) No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

Section 10. IMPEACHMENT. The Governor, executive officers, heads of principal departments, judicial officers and such other officers as may be made subject to impeachment by law may be removed from office upon conviction of impeachment.

The legislature shall, by lam, provide for the manner, procedure and causes for removal by ispeachsent and may select itself as tribunal.

No conviction for impeachment shall be made except by a vote of two-thirds (2/3) or more of the members of the tribunal bearing the charges.

Such conviction shall only extend to removal from office and disqualification to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 11. REFERENDUM AND RECALL. The people may propose and enact laws by the initiative, including constitutional amendments and approve or reject acts of the legislature by referendum.

(1) Initiative petitions must be signed by eight percent (8%) or more of the legal voters in each of one-fourth (1/4) or more of the legislative districts and the total number of signers must be eight percent (8%) or more of the (total legal) voters of the state. Each petition must contain the full text of the proposed measure and shall be confined to one subject. Petitions must be filed with the secretary of state three (3) months or more prior to the election at which they will be voted upon.

(2) A referendum may be ordered by the legislative assembly, or upon petitions signed by eight percent (8%) or more of the legal voters in each of one-fourth (1/4) or more of the legislative districts and the total number of signers must be eight percent (8%) or more of the total legal voters of the state. Petitions must be filed with the secretary of state no later than three (3) months after adjournment of the legislature.

(3) All measures referred to the people shall be voted upon at the regular biennial election unless a special election is ordered by the legislature.

(4) Measures referred to the people are in full force and effect unless suspended by petitions signed by fifteen percent (15%) or more of the (legal voters) in each legislative district and filed with the secretary of state. The measures suspended become operative if approved by a majority of the (legal 9oters) at an election.

(5) The number of legal voters for each legislative district and for the state is determined by the votes cast for Governor in the regular election immediately preceding filing of petitions for initiative or referendum.

(6) The Governor does not have the power to veto initiative or referendum measures.

(7) The initiative shall not be used to make or repeal

appropriations or to enact local or special legislaticn. The referendue shall not he applied to appropriations, to local or special legislaticn or to laws necessary for the immediate preservation of the public peace, health or safety.

(8) All elected public officials in the state are subject to recall by the voters of the state or political subdivision from vhich elected. Procedure and grounds for recall shall be prescribed by the legislature.

Section 12. APPORTIONMENT. In the sessicn preaoding each federal decennial census a reapportionment commissicn shall be established by the state legislature. The commission will have the power to reapportion if the legislature fails tc dc so within sixty (60) days of the first day of the first (1st) session after the census ennaeration. The commissicn's apportionment plan shall be filed vith the secretary of state. The commission shall be balanced geographically and politically. Legislatcrs may serve on the commission but shall not be in the majority.

(1) Any person aggrieved by the preliminary plan shall have thirty (30) days to file exceptions vith the commissicn in vhich case the commission shall have thirty (30) days after the date the exceptions were filed to prepare and file a revised plan, If no exceptions vere filed within thirty (30) days, or if filed and acted upon, the commission's plan shall be final and have the force of lav.

(2) Any aggrieved person say file an appeal fror the plan directly to the supreme court vithin thirty (30) days after the filing. If the appellant establishes that the final plan is contrary to lav, the supreme court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict in a manner not inconsistent vith such order.

(3) When the supreme court has finally decided an appeal taken, the reapportionment plan shall have the force of the law and the districts shall be used thereafter in elections to the legislature until the next reapportionment is required.

Section 13. EMERGENCY LEGISLATION. The legislature, in crder to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact lavs:

(1) To provide for prompt and temporary succession to the povers and duties of elected and appointed public officers vho are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations. Such laws shall be effective only during the emergency that affects a particular

office or qcvernmental operation, and such laws may deviate frcm other provisions of the Mcntana Constitution.'

INTRCLUCED BY: /s/ Grace Bates

/s/ Charles H. Mahcney
/s/ Chet Blaylcck
/s/ Torrey Jchnscn
/s/ R. A. Nutting
/s/ Mark Etchart
/s/ Llcyd Barnard
/s/ Marjcrie Cain
/s/ John M. Schiltz
/s/ A. W. Kamhcct
/s/ J. K. Ward
/s/ Rcd Hanscn
/s/ J. Mason Melvin
/s/ R. J. Studer, Sr.
/s/ George H. James
/s/ Arnold W. Jacobsen
/s/ Erv Gysler
/s/ Jchn H. Anderson, Jr.
/s/ Max Conover
/s/ C. Louise Cross
/s/ Don E. Belcher
/s/ Henry Siderius
/s/ Thomas M. Ask
/s/ Betty Babcock
/s/ Cedor B. Aronow
/s/ Wm. H. Artz
/s/ Sterling Rygg
/s/ Frank Arness
/s/ Dcuglas Delaney
/s/ M. Driscoll

280

DELEGATE PROPOSAL
No. 141 - Legislature, Salaries

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 141

DATE INTRODUCED: FEB. 4, 1972

Referred to Legislative Committee

V, 5

A PROPOSAL AMENDING ARTICLE V, SECTION 5 OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING FOR LEGISLATIVE SALARIES.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article V, Section 5 of the present Constitution is amended to read as follows:

"Sec. 5. ~~Each member of the first legislative assembly, as a compensation for his services shall receive six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, prerequisite, or allowance whatsoever.~~

~~No session of the legislative assembly, after the first, which may be ninety days, shall exceed sixty days.~~

~~After the first session, the compensation of the members of the legislative assembly shall be as provided by law; provided, that no legislative assembly shall fix its own compensation.~~

(1) Each member of the legislature shall receive an annual salary and expense allowance as provided by law. No legislature may fix its own compensation.

(2) The legislative salary shall be at least two thousand five hundred dollars ($2,500) a biennium and the expense allowance shall be at least twenty dollars ($20) a day. The salary and expense figures may be adjusted by a salary commission established by the legislature."

INTRODUCED BY: /s/ Grace Rates

/s/ Wm. H. Artz

/s/ Lloyd Barnard

/s/ Chet Playlock

DELEGATE PROPOSAL
No. 142 - Board of Public Education

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PBOPOSAL NO. 142

CATE INTROCOCED: FEB. 4, 1972

Referred to Education and Public Lands Ccmmittee

XI, 11

A PROPOSAL AMENDING ARTICLE XI, SECTICN 11 OP THE CONSTITUTION OF THE STATE OF BONTANA PRCVIDING THAT A EOARC OF PUBLIC EDUCATION SUPERVISE THE PUBLIC SCHOOLS AND A SEPARATE BOARD OF REGENTS GOVERN THE MONTANA UNIVERSITY SYSTEM; THAT TEE TUC BCARDS MEETING JOINTLY BE CALLED THE STATE BOARD OF EDUCATION AND ELECT THE STATE SOPEEINTENCENT OF PUBLIC INSTRUCTION ANE TRAT TBE FUNDS CF THE UNIVERSITY SYSTEM BE INVESTED BY THE BCARD CF REGENTS.

BE IT PROPOSED BY THE CONSTITUTIONAL CCNVENTION OF THE STATE CF MONTANA:

Section 1. Article XI, Section 11 of the present Ccnstitution is amended to read as follcws:

"Sec. 11. ~~The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the Governor, state superintendent of public instruction, and attorney general, being members ex officio; the other eight members thereof shall be appointed by the Governor; subject to the confirmation of the senate, under to be provided by law.~~

(1) The general control and supervision of the public schools of the state of Montana shall be vested in a board of public education, whose powers and duties shall be prescribed and regulated by law. The [illegible] embers of the board shall be selected as provided herein,

(2) The government and control of the academic, financial and administrative affairs of the Montana University System shall be vested in a board of regents, who shall be elected and provided herein. The regents shall have the power, and it shall ha

---

their duty, to govern the university system as a public trust, in a manner consistent with the general laws of Montana. The legislature shall pass no law which infringes upon, diminishes or transfers to another body any of the authority provided by this section.

(3) The board of public education and the board of regents shall consist of eight (8) members serving terms whose length shall be prescribed by law. Members of both boards shall be appointed by the Governor, subject to confirmation by the senate.

(4) The state superintendent of public instruction shall be elected by majority vote of the board of public education and the board of regents, meeting together as the State Board of Education. The superintendent shall be solely responsible to and shall serve as chairman of both boards and shall serve at the pleasure of the State Board of Education."

Section 2. There shall be a new Constitutional Section to provide as follows:

"Section ___. The various funds of the university system shall forever remain inviolate and sacred to the purposes for which they were dedicated and shall be invested as determined by the board of regents."

INTRODUCED BY: /s/ Toole

DELEGATE PROPOSAL
No. 143 - Free Public Education

MONTANA CCNSTITUTICNAI CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 143

DATE INTRODUCED: FEB. 4, 1972

Referred to Education and Public Lands Committee

XI, 1, 6

A PROPOSAL FOR A NEQ CONSTITUTIONAL SECTICN CCEBINING SECTIONS 1 AND 6 OF ARTICLE XI OF THE PRESENT CONSTITUTION.

BE IT PROPOSED BY TEE CONSTITUTIONAL CCNVEHTION OP THE STATE O F MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follcus:

"Section ___. It shall be the duty of the legislative assembly cf Montana to establish and maintain a general, uniform, and thorough system of free public education cpen tc all persons of such ages and qualifications as may be established by law."

Section 2. Article XI, Section 1 of the present Constitution, which reads as follcus, is repealed:

~~"Section 1. It shall be the duty of the legislative assembly cf Montana to establish and maintain a general, uniform and~~

section 3. Article XI, Section 6 of the present Constitution, which reads as follcus, is repealed:

~~"Section 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received frcm the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year."~~

INTRODIJCED BY: /s/ Toole

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 144

DATE INTRODUCED: FEB. 4, 1972

Referred to General Government and Constituticnal Amendment Committee

A PROPOSAL POR A NEW CONSTITUTIONAL SECTICN PBCVIDING POR A MERIT SYSTEM.

BE IT PROPOSED BY THE CONSTITUTICNAL CCNVENTION OF THE STATE CP MONTANA:

Section 1. There shall be a new Ccnstitotional Section to provide as fcllcws:

"Section ___. MERIT SYSTEM. The legislature shall establish a system under which the merit principal will govern the employment cf persons by the state."

INTRCDUCED BY: /s/ Jerome T. Loendorf

DELEGATE PROPOSAL
No. 745 - Employees' Retirement System

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 145

DATE INTRODUCED: FEB. 4, 1972

Referred to Judiciary Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING TBAT MEMBERSHIP IN AN EMPLOYEES' RETIREBENT SYSTBB IS A CONTRACTUAL RELATICNSHIP.

BE IT PROPOSED BY TEE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitoticnal Section to provide as fcllcus:

"Section ___. Membership in any employees' retirement system cf the state or any political subdivisicn thereof is a contractual relaticnship, the accrued benefits cf which shall not be diminished cr impaired."

INTRODUCED BY: /s/ Jerome T. Loendorf

HONTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE FBCPOSAL NO. 146

DATE INTRODUCED: FEE. 4, 1572

Referred to Educaticn and Public Lands Ccmmittee

A PROPOSAL AMENDING ARTICLE XI, SECTICN 11 OF THE CONSTITUTION CF THE STATE OF HONTANA PROVIDING FOR A TWELVE MEMBER BOARL OF REGENTS TO BE AFFOINTED BY THE GOVERNOR FROM NOMINEES SELECTED BY A NOMINATING COMMITTEE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF TEE STATE OP MONTANA:

Section 1. Article XI, Section 11 of the present Constitution is amended to read as fcllcws:

"Sec. 11. The general control and supervision of the state university system and the varicns other state educational institnticns shall be vested in a state board of ~~education~~ regents, whose powers and duties shall be prescribed and regulated by law. The ~~said~~ board shall ccnsist of ~~eleven~~ twelve (12) members~~, the Governor, state superintendent of public instruction, and attorney general, being members ex officio; the other eight members thereof shall be appointed by the Governor, subject to the confirmation of the senate, under the regulations and restrictions to be provided by law~~, who shall serve for six (6) year overlapping terms, two (2) members to be appointed each year. The Governor shall appoint each member from a list of names submitted by a nominating committee. The nominating committee shall consist of five (5) members serving two (2) year terms as follows:

(1) Three (3) citizens appointed by the education committee or committees of the legislature;

(2) One (1) professor from the Montana university system selected as provided by law.

(3) One student from the Montana university system selected as provided by law."

DELEGATE PROPOSAL
No. 146 - Board of Regents

INTRODUCED BY: /s/ Daphne Bugbee

/s/ Dorothy Eck

/s/ Mae Nan Robinson

/s/ Marjorie Cain

/s/ Fred J. Martin

/s/ John H. Toole

ECNTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PRCPCSAL NC. 147

DATE INTRODUCED: EEE. 4, 1972

Referred to General Government and constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PRCVIDING THAT DELEGATES TO NATIONAL NOMINATING CONVENTIONS EE CHOSEN AT A PRESIDENTIAL PRIMARY.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN CF TRE STATE CF MONTANA:

Section 1. There shall be a neu Constitutional Section to provide as follows:

"Section ---. Delegates and alternate delegates selected to represent political parties at the national presidential rcminating convention shall be chosen by a vcte cf the people at a presidential primary election to be provided fcr by the legislature."

INTRODUCED BY: /s/ Jerome J. Cate

/s/ Arlyne Reichert

/s/ Harold Arbanas

/s/ Geoffrey L. Brazier

/s/ Dan W. Harrington

DELEGATE PROPOSAL
NO. 148 - Employment Eights

MONTANA CCNSTITUTICEAL CONVENTION

1971-1972

DELEGATE FRCFOCAL NO. 148

DATE INTRODUCED: FEB. 4, 1572

Referred to Public Health, Welfare and Labcr Ccmmittee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTION PRCVIDING FCR PULL EMPLCYMENT OF AELE BODIED PERSONS.

BE IT PROPOSEC BY THE CONSTITUTICNAL CONVENTICN CP THE STATE CF MONTANA:

Section 1. There shall be a new Ccnstitutional Section to prcvide as fcllcws:

"Section ___. The state and its political subdivisicns shall be the employers cf last rescrt, and shall provide to those invclnntarily unemployed employment ccnsistent with their dependency and ability tc work."

INTRODUCED BY: /s/ Joseph H. McCarvel

/s/ Wm. H. Artz

/s/ D. A. Scanlin

/s/ George W. Rollins

/s/ Charles H. Mahoney

/s/ Arnold W. Jacobsen

/s/ Peter "Pete" Icrello

/s/ Veronica Sullivan

/s/ Edith Van Buskirk

/s/ W. H. Swanberg

/s/ Wade J. Dahood

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL BO. 149

DATB INTBODUCEC: FEB. 4, 1972

Referred to Judiciary Committee

xx, 4

A PROPOSAL AHENCING ARTICLE XX, SECTION 4 OF TAB CONSTITUTION OF TEE STATE OF MONTANA PROVIDING FOR A PROBATE COURT SISTER.

BE IT PROPOSED BY THB CONSTITUTIONAL CONVENTIOH OF TBE STATE OF MONTANA:

Section 1. Article XX, Section 4 of the present constitution is amended to read as follows:

"Sec. 4. ~~Except as herein otherwise provided, the word "district" shall be substituted and read in lieu of the word "probate" in the terms "probate court" or "probate judge" whenever the same occur in the laws of the territory of Montana, and all said laws which by their terms apply to probate courts or probate judges shall, except as in this constitution otherwise provided, upon a change from territorial to state government, be deemed and taken to apply to district courts and district judges; provided, that all laws allowing fees to probate judges are hereby repealed.~~ There is a probate court system within the distcourt urt system to be presided over by district court judges for no extra fee or salary. The legislature shall provide inexpensive and rapid procedures for probating and administering estates."

INTRODUCED BX: /s/ Hike McKeon

DELEGATE PBCPCSAL
Nc. 150 - People's Aavccate

MONTANA CONSTITUTIONAI CCNVENTICN

1971-1972

DELEGATE ERCECSAL NO. 150

DATE INTRODUCED: FEB. 4, 1972

Referred to legislative Committee

A PROPOSAL FCB A NEW CONSTITUTICNAL SECTION PROVICIRG FCB THE CFFICE OF PEOPLE'S ALVOCATE.

BE IT PBOPCSED BY THE CONSTITUTICNAL CCNVENTICN OF TBE STATE GP BCNTANA:

Section 1. There shall be a new Ccnstitntional Section to prcvide as follcws:

"Section ___. PEOPLE'S ADVOCATE. 1. The majority and minority leaders of the legislature shall appcint a People's Advocate.

2. The People's Advocate shall: (a) initiate or receive complaints frcm citizens concerning administrative, judicial, cr legislative actions which might be ccntrary tc lax, unreasonable or unfair, inefficient or unclear, improperly motivated or based on irrelevant or arbitrary findings of fact, or ctherwise cbjecticnable.

(b) have the power to investigate and inspect all governmental premises, meetings, and reccrds; to issue subpoenas; and to demand full ccoperation of government officials and cthers in his investigations. He may advise or censure officials, suggest changes in policy and procedure, refer alleged viclaticns cf laws to the attorney general for further investigation, and reccmaend to the legislature possible changes in the law.

(c) receive the same emoluments as an assccciate justice of the Supreme Ccurt.

(d) hold office for a maximum cf three five (5) year terms and be dismissed only by a two-thirds (2/3) vote of the legislature."

INTRODUCED BY: /s/ Robert Lee Kelleher

/s/ Dorothy Eck

DELEGATE PROPOSAL
No. 151 - Rights of Indians

UCNTANA CONSTITUTICNAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 151

DATE INTRODUCED: FEB. 4, 1972

Referred tc Bill of Rights Ccmmittee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FCR THE RIGHTS OF INDIANS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE CF MCNTANA:

Section 1. There shall be a new Constituticnal Secticn to provide as fcllcws:

"Section ___. RIGHTS OF INDIANS. The state cf Montana forever disclaims all right and title tc Indian lands lying within the boundaries cf the state. The Indian tribal rights of self-government and cultural autonomy are hereby recognized; accordingly the state shall pass no law assuming jurisdicticn over Indian tribes without a referendum of the adult enrclled members on the reservation of the affected tribe."

INTRODUCED EY: /s/ Lyle R. Monroe

/s/ D. A. Scanlin

/s/ Robert Vermillion

/s/ Frank Arness

/s/ Carman Skari

/s/ Edith Van Buskirk

/s/ Mae Nan Robinson

/s/ Arlyne Reichert

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 152

DATE INTRODUCED: FEB. 4, 1972

Referred to General Government and Constitutional Amendment Committee

A PROPOSAL TO REPEAL ARTICLE XIV OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XIV of the present Constitution, which reads as follows, is repealed:

~~"ARTICLE XIV~~

~~MILITARY AFFAIRS~~

~~Section 1. The militia of the state of Montana shall consist of all able bodied male citizens of the state between the ages of eighteen (18) and forty five (45) years inclusive, except such persons as may be exempted by the laws of the state or of the United States.~~

~~Section 2. The legislative assembly shall provide by law for the organization, equipment, and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.~~

~~Section 3. The legislative assembly shall provide by law for maintaining the militia, by appropriations from the treasury of the state.~~

~~Section 4. The legislative assembly shall provide by law for the safe keeping of the public arms, military records, relics and banners of the state.~~

~~Section 5. When the Governor shall, with the consent of the legislative assembly, be out of the state in time of war, at the~~

DELEGATE PROPOSAL
NO. 152 - Military Affairs

~~head--of--any-military-force-thereof,-he-shall-continue-commander in-chief-of-all-the-military-forces-of-the-state.~~"

INTRODUCED BY: /s/ Mike McKeon

/s/ Jerome T. Loendorf

/s/ Bob Campbell

/s/ Mae Nan Robinson

/s/ Don Foster

/s/ Arlyne Reichert

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE PRCPCSAL NO. 153

DATE INTRODUCED: FEB. 4, 1972

Referred tc Bill of Rights Committee

A PRCPOSAL FOR A NEW CONSTITUTICNAL SECTION IN 'IRE EILL OF RIGHTS TC FRCVICE PCR FREE CARE AT STATE INSTITUTICNS.

BE IT FROPOSEC BY THE CCNSTITUTICNAL CCNVEN'IION OF 'IRE STATE CF HCNTANA:

Section 7. There shall be a new Ccnstitutional Section in the Bill of Rights to provide as fcllcws:

"Section ... . No person shall be charged a fee when he cr she is an inmate of a state instituticn ncr shall his or her family be charged a fee."

INTRCDUCED BP: /s/ David L. Holland

/s/ Mike McKeon

DELEGATE PROPOSAL
NO. 154 - (Withdrawn)

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 154

Introduced by Blaylock

Withdrawn before introduction

BONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 155

DATE INTRODUCED: EEE. 4, 1972

Referred to Judiciary Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION EROVIDING FOR A PRO-BATE ADMINISTRATOR IN EACH COUNTY.

BE IT FROPOSEL BY THE CONSTITUTIONAI CONVENTION OF THE STATE OF NONTANA:

Section 1. There shall te a new Constituticnal Section to provide as follows:

"Section ___. PROBATE ADMINISTRATOR. The district judge shall appoint in each county or judicial district a probate administrator who is an attorney admitted to practice law in Mon-tana. The probate administrator shall assist county or judicial district citizens in probating or administering estates. The legislature shall set the salary of the probate administrator."

INTRODUCED BY: /s/ Archie C. Wilson

/s/ A. W. Kamhoot

/s/ George W. Rollins

/s/ Henry Siderius

/s/ Charles H. Mahoney

/s/ Rod Hanson

/s/ Erv Gysler

/s/ Torrey Johnson

/s/ R. F. Woodmansey

/s/ Edith Van Buskirk

/s/ J. K. Ward

/s/ Douglas Delaney

/s/ R. S. Hanson

/s/ Earl Berthelson

/s/ M. Lynn Sparks

/s/ Max Conover

DELEGATE PROPOSAL
NO. 156 - Elections, Sheriffs

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 156

DATE INTRODUCED: FEB. 4, 1972

Referred to Local Government Committee

XVI, 5

A PROPOSAL AMENDING ARTICLE XVI, SECTION 5 OF THE CONSTITUTION OF THE STATE OF MONTANAPROVIDING FOR ELECTION OF SHERIFFS.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XVI, Section 5 of the present Constitution is amended to read as follows:

"Sec. 5. There shall be elected in each county ~~the following county officers who shall possess the qualifications for suffrage prescribed by section 2 of article IX of this constitution and such other qualifications as may be prescribed by law:~~

~~One county clerk who shall be clerk of the board of county commissioners and ex officio recorder;~~ one sheriff who is 23 years of age or older and possesses any other qualifications prescribed by law~~;~~. ~~one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the~~

~~board--of-county-commissioners-shall,-six-(6)-months-prior-to-the general-election-held-for-the-purpose-of-electing--the--aforesaid offices,--make-and-enter-an-order,--combining-any-two-(2)-or-more of-the-within-named-offices,-and-shall-cause-the-said-order-to-be published-in--a-newspaper,-published-and-circulated-generally--in said--county,--for--a--period-of-six-(6)-weeks-next-following-the date-of-entry-of-said-order.~~"

INTRODUCED BY: /s/ J. Mason Melvin

DELEGATE PROPOSAL
NO. 157 - Liquor Monopoly

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 157

DATE INTRODUCED: FEB. 4, 1972

Referred to General Government and Constitutional Amendment Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING THAT THE STATE SHALL NOT ENGAGE IN COMPETITIVE BUSINESSES SO AS TO CREATE A MONOPOLY AND BUST CEASE THE LIQUOR BUSINESS BY JULY 1, 1975.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The state of Montana shall never monopolize what would otherwise be a competitive business. The legislature shall provide that the state of Montana cease the business of buying and selling liquor before July 1, 1975."

INTRODUCED BY: /s/ Torrey Johnson

/s/ Lyle R. Monroe

/s/ George H. James

/s/ A. W. Kamhoot

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 158

DATE INTRODUCED: FEB. 4, 1972

Referred to Legislative Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR A CONFERENCE COMMITTEE REPORT RULE.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ---. The legislature shall adopt and use joint rules. One rule shall require that each report of a conference committee contain a lucid explanation of committee recommendations and be duplicated and distributed to each legislator twenty-four (24) hours before action may be taken on such report."

INTRODUCED BY: /s/ Miles Romney

DELEGATE PRCPCSAL
No. 159 - Supreme Court

MCNTANA CONSTITUTICNAI CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 159

DATE INTRODUCED: FEE. 4, 1972

Referred tc Judiciary Committee

A PRCECSAL FOR A NEW CONSTITUTICNAI SECTICN PRCVIDING THAT TEE SUPREME COURT CANNOT DECLARE CERTAIN ACTS OF PARLIAMENT UNCON-STITUTIONAL.

BE IT PROPCSED BY THE CONSTITUTIONAL CONVENTICN CF THE STATE OF MCNTANF:

Section 1. There shall be a new Ccnstituticnal Secticn to read as follcus:

"Section . The Supreme Ccurt may nct declare any act cf parliament unconstituticnal except insofar as it may violate the rights cf an individual.'

INTRODUCED BY: /s/ Robert Lee Kelleher

ECNTANA CONSTITUTIONAL CCNVRNTICN

1971-1572

DELEGATE PROPCSAL UC. 160

DATE INTRODUCED: FEE. 4, 1972

Referred to Bill cf Rights Committee

A PROPOSAL PGB A NEW CONSTITUTIONAL SECTION EFCVIDING FOB THE RIGHT OF EMPLOYEES.

BE IT PRCPCSED BY THE CCNSTITUTICNAI CONVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a neu Constitutional Section to provide as follcws:

"Section ___. RIGHTS OF EMPLCYEES. Nc employer shall deny or infringe cn the rights cf emplcyees tc participate in the political prccess."

INTRCDUCED BY: /s/ Lyle R. Monroe

/s/ Rod Hanson

/s/ Veronica Sullivan

/s/ Rachell K. Mansfield

/s/ George H. James

/s/ Bcb Campbell

DELEGATE PROPOSAL
NO. 161 - Taxation, Finance Article

MONTANA CONSTITUTICNAL CCNVENTION

1971-1972

DELEGATE PRCPCSAL NO. 161

DATE INTRCLUCED: FEE. 4, 1972

Referred tc Revenue and Finance Committee

A PROPOSAL FOR A NEW CCNSTITUTIONAL ARTICLE CN TAXATICN AND FINANCE.

BE IT PROPOSEC EY 'IRE CONSTITUTIONAL CCNVENTION OF THE STATE CF MCNTANA:

Section 1. There shall be a new Constitutional Article tc provide as follcws:

"ARTICLE ---

TAXATICN AND FINANCE

Secticn 1. The necessary revenue fcr the support and maintenance of the state shall te provided by the legislative assembly.

Section 2. The power cf taxation shall never be surrendered, suspended cr ccntracted away.

Section 3. Prcperty cf the United States, the state, counties, cities, tcuns, school districts, municipal ccrpcraticns and public libraries shall be exempt frcm taxaticn, but any private interest in such prcperty may be taxed.

Section 4. There may be exempt frcm taxaticn prcperty used for agricultural and hcrticultural societies, fcr educational purposes, places for actual religious worship, hcspitals and places of burial not used or held fcr private or ccrporate profit, institutions of purely public charity, evidences cf debt secured by mortgages of reccrd upon real cr perscnal property in the state cf Montana, household goods and furniture, wearing apparel, and other personal prcperty used by the owner for personal and domestic purposes and money, credits, bonds, and stocks.

Section 5. All property in the state cf Mcntana which is to

be taxed shall he assessed in the manner prescribed by law.

Section 6. The legislative assembly shall enact the necessary laws to insure strict accountability of all revenue received and all money spent by the state, counties, cities, tcwns and municipal corporations within the state.

section *I.* Appropriatiens by the legislative assembly shall not exceed anticipated revenues during any budget pericd."

INTRODUCED BY: /s/ Felt

/s/ Jean M. Bowman

/s/ Donald R. Foster

/s/ Russel C. McDoncugh

/s/ Dave M. Drum

/s/ Jercme J. Cates

MCNTANA CONSTITUTIONAL CONVENTICN

1971-1972

DELEGATE PROPOSAL NC. 162

DATE INTRODUCED: FEB. 4, 1972

Referred tc Natural Resources and Agriculture Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL ARTICLE CN THE ENVIRONMENT.

BE IT PROPOSED BY THE CONSTITUTICNAL CCNVENTION OF THE STATE CF MONTANA'

Section 1. There shall be a new Ccnstitutional Article to prcvide as fcllcws:

"ARTICLE ---

ENVIRONMENT

Section 1. THE PUBLIC TRUST. The state cf ilontana shall maintain and enhance a high quality environment as the public trust. Such obligation shall apply tc all aspects of environmental guality including, but not limited tc, air, water, land, wildlife, ainerals, forests, and open space. The scle beneficiary cf the trust shall be the citizens cf Rcntana, who shall have the duty tc maintain and enhance the trust, and the right tc enforce it by appropriate legal prcceedings against the trustee.

Section 2. CITIZEN SUIT. Citizens of the state shall have the right tc protect the quality envircnment by appropriate legal proceedings against private entities.

Section 3. LEGISLATIVE RESPONSIEILITY. The legislature must prcvide by law for the implementation and enfcrcement cf such legislation as may be necessary to more fully protect this public trust.

Section 4. EMINENT DCMAIN. Fsivate prcperty shall not be taken, damaged, or the use thereof impaired for public use without prior payment of just coapensaticn to the full extent cf the loss. Prior to the condemnation of any such land the individual shall have the right to a judicial determinaticn as to whether the contemplated use is a necessary and public use.

Section 5. PUBLIC USE. The highest of public uses of any property within the state shall be only those uses consistent with a high quality environment; accordingly private and public efforts at the preservation of environmentally significant lands shall be a public use."

INTRODUCED BY: /s/ C. Louise Cross

/s/ Jean M. Bowman

/s/ Mae Nan Robinson

/s/ Mark Etchart

/s/ Jerome J. Cate

/s/ Daphne Bugbee

/s/ George Harper

DELEGATE PROPCSAI
NO. 163 - Individual Rights

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

DELEGATE PROPOSAI NC. 163

DATE INTRODUCED: FEB. 4, 1972

Referred to Judiciary Ccmmittee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION FBOVIDING FOR THE RIGHTS OF PERSONS COMMITTED TO STATE FACILITIES.

BE IT FROPCSED BY THE CCNSTITUTICNAL CCNVENTICN OF THE STATE OE MONTANA:

Section 1. There shall be a new Constitutional Section to prcvide as follcws:

"Section ___. RIGHTS OF COMMITTED. The state, reccgnizing its obligation, shall establish and maintain a system of fair and humane facilities whose aim shall include care, custcdy and treatment with the ultimate goal cf rehabilitation where feasible. Fersons committed to such facilities shall retain all rights except thcse necessarily suspended as a condition of commitment. All rights necessarily suspended shall be restored upon termination of the state's respcrsibility."

INTRODUCED EY: /s/ Vercnica Sullivan

/s/ Thcmas F. Joyce

/s/ George H. James

/s/ Chet Blaylock

/s/ Carman Skari

/s/ Grace Bates

/s/ Wade J. Dahood

/s/ Marian S. Erdmann

/s/ Paul K. Harlow

/s/ Lyle R. Monroe

MCNTANA CONSTITUTIONAI CONVENTICN

1971-1972

DELEGATE PRCFCSAL NC. 164

DATE INTFODUCEC: FEE. 4, 1972

Referred tc Educaticn and Public Lands Committee

XI, 8

A PRCPCSAL AMENDING ARTICLE XI, SEC'IICN E OF THE CONSTITUTICN CF THE STATE OF MONTANA 'IO PROVIDE THAT THE CECTICN NOT APPLY TC FEDERAL FUNDS FCR NCNPUELIC EDUCATICN.

BE IT PROPOSED BY THE CONSTITUTICNAI CCNVENTION OF THE STATE CF MCNTANA:

Section 1. Article XI, section 8 cf the present Constitution is amended to read as follows:

"Sec. 8. Neither the legislative assembly, nor any ccucty, city, tcun, or school district, or cther public corporations, shall ever make directly or indirectly, any appropriaticn, cr pay from any public fund or mcneys whatever, or make any grant of lands or other prcperty in aid of any church, cr for any sectarian purpcse, or to aid in the support cf any school, academy, seminary, college, university, cr other literary, scientific institution, controlled in whale cr in part by any church, sect or denomination whatever. This secticn dces nct apply to federal funds administered by the state for the purpcse cf nonpublic education."

INTRODUCED BP: /s/ Gene Harbaugh

DELEGATE FACFCSAL
NO. 165 - Individual Rights

MONTANA CONSTITUTIONAL CCNVENTICN

1971-1972

DELEGATE FROFCSAI NC. 165

DATE INTRCDUCED: FEE. 4, 1972

Referred tc Bill of Rights Ccmmittee

III, 4, 27; XI, 8

A PRCFCSAL AMENDING ARTICLE III, SECTIONS 4 AND 27 AND REPEALING ARTICLE XI, SECTION 8 OF THE CONSTITUTION CF 'IRE STATE CF MONTANA PROVIDING FOR EQUAL PROTECTION OF THE LAW AND PROHIBITING SUPPORT OF RELIGIOUS ACTIVITIES BY TAX LEVY OR PROPERTY GRANT.

BE IT FRCPOSED EY THE CONSTITUTIONAL CONVENTICN OF THE STATE OF MONTANA:

Section 1. Article III, Section 4 of the present Constitution is amended to read as fcllcws:

"Sec. 4. The free exercise and enjcyment of religicus profession and wcrship, withcut discrimioaticn, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on acccunt cf his opinions concerning religicn~~, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamcus or polygamouc marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the United States.~~ No person shall be required tc attend any place of wcrship cr support any ministry, religious sect, or dencminaticn, against his consent; ncr shall any preference be given by law tc any religious denominaticn cr mcde of worship. No tax in any amcunt may be levied or grant of property made to support any religious activities or institutions, whatever theg may be called cr whatever form they may adopt to teach cr practice religicn."

Section 2. Article III, Section 27 of the present Constitution is amended to read as follcus:

"Sec. 27. N o person shall be deprived of life, liberty, or property without due prccess of law~~; nor be denied~~ he equal protection of the law: nor he denied the enjcvment of civil

---

rights or be discriminated against in the exercise thereof because of race, national origin, religion or ancestry."

Section 3. Article XI, Section 8 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever."~~

INTRODUCED BY: /s/ Jerome T. Icendorf

DELEGATE PROPOSAL
No. 166 Local Government

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

CELEGATE PROPOSAL NO. 166

DATE INTRODUCEL: FEB. 4, 1972

Referred to Local Government Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR LOCAL LEGISLATIVE POWERS FOR CERTAIN COUNTIES.

BE IT FROPOSED EY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. POWER OF COUNTIES. Counties that have adopted forms of county government with distinct legislative and executive branches, including, but not limited to, the county manager or county executive systeas, shall be municipal corporations and shall possess local legislative power."

INTRODUCED BY: /s/ Katie Payne

MONTANA CONSTITUTIONAL CONVENTION

1972-1572

DELEGATE PROPOSAL NO. 167

DATE INTRODUCED: FEB. 4, 1972

Referred to Bill of Rights Committee

III, 4

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR RELIGIOUS FREEDOM AND REPEALING ARTICLE III, SECTION 4, OF THE CONSTITUTION OF THE STATE OF MONTANA.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The state of Montana shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Section 2. Article III, Section 4 of the present Constitution, which reads as follows, is repealed:

~~"Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent, nor shall any preference be given by law to any religious denomination or mode of worship."~~

INTRODUCED BY: /s/ Lyle Monroe

DELEGATE PBCPCSAI
80. 167 - Religious Freedom

/s/ Jerome J. Cate

/s/ Don Foster

/s/ R. J. Studer, Sr.

/s/ Rachell K. Mansfield

MCNTANA CONSTITUTICNAL CONVENTICN

1971-1972

LELEGATE PROPCSAI NC. 168

DATE INTRODUCEL: FEE. 4, 1972

Referred tc Judiciary Ccmmittee

A PRCFOSAL FOR A NEW CONSTITUTIONAI SECTICN FROVIDING FCR THE RIGHTS CF CCNVICTED PELONS.

BE IT FROPOSEL BY THE CONSTITUTIONAI CCNVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a new Constituticnal Section to provide as follcws:

"Section ___. A perscn ccnvicted of a felony shall lose only those rights and suffer only those disabilities or disqualifications as are specified by the sentencing ccurt. Dpcn termination of sentence all rights are restored and all disabilities cr disqualifications are removed."

INTRODUCED BY: /s/ Robert Lee Kelleher

CELEGATE FRCFCSAL
Nc. 169 - Individual Rights

MONTANA CONSTITUTICNAL CCNVENTICN

1471-1572

CELEGATE FRCFCSAL NO. 169

DATE INTRODUCED: EEB. 4, 1972

Referred tc Judiciary Committee

A PROFOSAL FCR A NEW CONSTITUTICNAL SECTION GUARANTEEING ACCESS TC THE COURTS FCR THE REDRESS CE A WRCNG.

BE IT PROPOSED BY THE CONSTITUTICNAL CCNVEN'XION OF THE STATE CP MONTANA:

Section 1. There shall be a new Constitutional Section tc prcvide as fcllcws:

"Secticn ... . The legislature shall not deprive any citizen of access to the courts for the redress cf any grievance cr injury."

INTRCDUCED BY: /s/ Rcbert Lee Kelleher

MONTANA CONSTITUTICNAI CCNVENTICN

1971-1972

DELEGATE FRCECSAL NO. 170

DATE INTRODUCEC: FEB. 4, 1472

Referred tc Executive Ccmmittee

A PRCECSAL FCR A NEH CCNSTITUTIONAL ARTICLE PROVIDING FCR AN EXECUTIVE DEPARTMENT.

BE IT FRCPOSED BY THE HONTANA CCNSTITUTIONAL CONVENTICN CF THE STATE CF MONTANA:

"ARTICLE ____

EXECUTIVE DEPARTMENT

Section 1. The executive department shall ccnsist of a Governor, lieutenant Governor, secretary cf state, attorney general, state treasurer, superintendent of public instruction and state auditor, each of whom shall hcld cffice fcr four (4) years, or until a successor is elected and qualified, beginning on the first Mcnday of January next succeeding electicn. The cfficers of the executive department, excepting the lieutenant Governor, shall during their terms cf office reside at the seat of government, where they shall keep the public reccrds. They shall perform such duties as are prescribed by this ccnstitoticn and by the laws of the state.

Section 2. The officers prcvided for in Section 1 of this article, shall be elected by the qualified electcrs of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the cffice voted for shall be elected: tot if two cr more shall have an equal and the highest number cf vctes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall by jcint ballot, elect one of the perscns tc the office. The returns of election for the officers named in Secticn 1 shall be made in a manner prescribed by law, and all contested electicns cf the same, cther than provided fcr in this section, shall be determined as prescribed by lau.

Section 3. No person shall be eligible tc the office of Governor, lieutenant Governor or superintendent of public

instruction unless he has attained the age of thirty (30) years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he has attained the age of twenty-five (25) years, nor to the office of attorney general unless he has attained the age of thirty (30) years, and has been admitted to practice in the supreme court of the state, of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state two (2) years next preceding his election. No elected officer of the executive department while holding an elective office shall seek or hold any other elective office.

Section 4. The lieutenant Governor, shall have the same qualifications as the Governor and shall be elected at the same election, for the same term, and in the same manner, as the Governor; provided that the votes cast in the general election for the nominee for Governor shall be deemed cast for the nominee for lieutenant Governor of the same political party. The lieutenant Governor shall perform such duties as may be prescribed by law and as may he delegated to him by the Governor, but no power specifically vested in the Governor by this constitution shall be delegated to the lieutenant Governor pursuant to this section.

Section 5. The lieutenant Governor shall have those duties as given by the Governor and shall also be F-resident of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant Governor, the president pro tempore of the senate shall perform the duties of the lieutenant Governor until the vacancy is filled or the disability removed.

Section 6. The compensation of the Governor and other executive officers shall be prescribed by law and shall not be increased or diminished during a single term of office.

Section 7. The executive power of the state shall be vested in the Governor, who shall see that the laws of the state are faithfully executed.

Section 8. The Governor shall be the commander-in-chief of the military forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of the laws, to suppress insurrection or repel invasion.

Section 9. The Governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty (20) days without the approval of a majority of the members of the legislature in joint session.

Section 10. The Governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.

Section 11. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of Governor, lieutenant Governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction shall be allocated by law among and within not more than twenty (20) departments. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Section 12. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, reinstate citizenship and may suspend and remit fines and forfeitures subject to procedures prescribed by law.

Section 13. The Governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The Governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state.

Section 14. Whenever the Governot considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session. At the written request of two-thirds (2/3) of the members of each house, the presiding officers of both houses shall convene the legislature in special session.

Section 15. Every bill passed by the legislative assembly, except bills proposing amendments to the Montana Constitution and bills ratifying proposed amendments to the United States Constitution which may not be vetoed by the Governor, shall, before

it becomes a law, be presented to the Governcr. He shall either sign it, whereupon it shall beccme a law, cr he shall return it with his objections to the house in uhich it criginated, which house shall enter the objections at large upcn its journal and proceed to reconsider the bill. If two-thirds (2/3) of the me*-bers present agree to repass the same, it shall be sent, together with the cbjections, tc the cther house, by which it shall like-wise be reconsidered, and if repassed by tuc-thirds (2/3) of the members present in that house it shall become a law notwithstand-ing the objections of the Gcvernor. If any bill is nct returned by the Governor within five (5) days (Sunday excepted) after it has been presented to him, the same shall be a law, in like man-ner as if he had signed it, unless the legislative assembly shall by their adjcurnment prevent its return. Within twenty-five (25) days after the adjcurnment of the legislature, the Gcverncr shall consider all bills not disposed cf pricr tc adjournment. He shall either sign such bills into law; or if he fails tc approve any bill, he shall return it uith his cbjections tc the presiding official of the house in which it criginated. The legislature, as provided in Secticn 14, may reccrvene itself to reconsider any bills sc returned by the Governor.

The Governcr, in returning with his cbjecticns a bill fcr reconsideration, may recommend that an amendment cr amendments specified by him be made in the bill, and in such case the legis-lative assembly may amend and re-enact the bill. If a bill be cc amended and re-enacted, it shall be presented again to the Gover-nor, but shall become a law only if be shall sign it within ten (10) days after presentaticn; and no bill shall be returned by the Governor a second time.

Secticn 16. The legislative assembly shall prcvide a seal fcr the state, which shall be kept by the secretary cf state and used by him officially, and known as the great seal of the state of Mcntana.

Section 17. All grants and commissicns shall be in tbe name and by the authority of the state cf Mcntana, sealed with the great seal of the state, signed by the Gcverncr, and ccunter-signed by the secretary cf state.

Section 18. In case cf the failure tc gualify, the impeach-ment or conviction of felcny or infamous crime of the Gcvernor, or his death, removal frcm cffice, resignation, absence from the state, or inability to discharge the powers and duties cf his office, the powers, duties and emcluments cf the office, for the residue cf the term, or until the disability shall cease, shall devolve upon the lieutenant Governor.

Section 19. The lieutenant Gcvernor shall be president of the senate, but shall vcte only when the senate is equally divided. In case of the absence or disqualification cf the lieu-tenant Governor, from any cause uhich applies tc the Governor, or

when he shall hold the office of Governor, then the president pro tempore of the senate shall perform the duties of the lieutenant Governor until the vacancy is filled or the disability removed.

Section 20. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the Governor and the lieutenant Governor, the duties of the Governor shall devolve upon the president pro tempore of the senate until such disqualification of either the Governor or the lieutenant Governor be removed, or the vacancy filled, and if the president pro tempore of the senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the speaker of the house.

Section 21. The Governor may rule out amounts in appropriation bills passed by the legislature and the procedure in such cases shall be the same as in the case of the disapproval of an entire bill by the Governor."

INTRODUCED BY: /s/ Archie C. Wilson

/s/ Betty Babcock

DELEGATE PROPOSAL
No. 171 -- Board of Regents

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 171

DATE INTRODUCED: FEB. 4, 1972

Referred to Education and Public Lands Committee

XI, 11

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR A BOARD OF REGENTS AND REPEALING ARTICLE XI, SECTION 11.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section . BOARD OF REGENTS OF HIGHER EDUCATION. There shall be a Board of Regents of Higher Education, a body corporate, which shall have full power to govern and control the Montana University System and any other public institutions of post-secondary education assigned by law. The board shall consist of nine (9) members appointed by the Governor to overlapping terms, subject to confirmation by the senate, under regulations to be provided by law. The board shall appoint its executive officer and prescribe his term and duties."

Section 2. Article XI, Section 11 of the present Constitution is repealed.

INTRODUCED BY: /s/ William A. Burkhardt

MCNTANA CONSTITUTICNAI CCNVENTICN

1971-1972

CELEGATE PROPCSAI NC. 172

DATE INTRODUCED: EEE. 4, 1972

Referred to General Government and Constitutional Amendment Ccmmittee

A PROPGSAL FCR A NEW CONSTITUTICNAL SECTICN PRCVIDING FCR THE OFFICE OF OMBUDSMAN.

BE IT FROPOSED BY THE CONSTITUTIONAI CCNVENTICN GF THE STATE CF MONTANA:

Section 1. There shall be a new Ccnstituticnal section to provide as fcllcws:

"Section . OMSBUDSMAN. The office cf Cmbudsman is established. Thesupreme court of Montana shall appcint the Ortudsman for a term of five (5) years. He shall be a persen nct actively involved in partisan affairs and well equipped to analyze problems of the law, adsinistraticn and public pclicy. The Cmbudsman shall investigate on complaint or on his cwn mctien any action cf any agency of state government and shall publish all cf his determinations. The legislature may prcvide fcr the organizatien, prccedures and salary of the office."

INTRODUCED BY: /s/ Richard J. Champoux

/s/ Gene Harbaugh

/s/ Peter "Pete" Iorello

/s/ J. Mason Melvin

/s/ George F. James

DELEGATE PROPOSAL
NO. 173 - Veterans

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 173

DATE INTRODUCED: FEB. 4, 1972

Referred to Revenue and Finance Committee

XII, 2

A PROPOSAL AMENDING ARTICLE XII, SECTION 2 OF THE CONSTITUTION OF THE STATE OF MONTANA PROVIDING THAT TOTALLY DISABLED VETERANS MAY BE EXEMPT FROM TAXATION.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. Article XII, Section 2 of the present Constitution is amended to read as follows:

"Sec. 2. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, ~~and~~ evidences of debt secured by mortgages of record upon real or personal property in the state of Montana, and totally disabled veterans may be exempt from taxation."

INTRODUCED BY: /s/ Jerome T. Icendorf

/s/ Henry Siderius

/s/ Paul K. Harlow

/s/ Arlyne Reichert

/s/ George Harper

/s/ Torrey Johnson

/s/ Mae Nan Robinson

/s/ Charles H. Mahoney

/s/ Betty Babcock

/s/ Virginia H. Blend

/s/ William A. Burkhardt

/s/ Lucile Speer

/s/ Bob Campbell

/s/ Chet Blaylock

/s/ Rachell Mansfield

/s/ Erv Gysler

/s/ Grace Bates

/s/ Robert Lee Kelleher

/s/ Arnold W. Jacobsen

/s/ C. Louise Cross

/s/ Marian S. Erdmann

/s/ Peter "Pete" Lorello

/s/ M. Lynn Sparks

/s/ Wade J. Dahood

/s/ Veronica Sullivan

/s/ Carman Skari

/s/ George H. James

/s/ Geoffrey I. Brazier

/s/ Don E. Belcher

/s/ Magnus Aasheim

/s/ Jerome J. Cate

/s/ George B. Heliker

DELEGATE PROPOSAL
No. 174 - Individual Eights

MONTANA CONSTITUTIONAI CONVENTICN

1971-1972

DELEGATE PROPOSAL NO. 174

DATE INTRODUCED: EEB. 4, 1972

Referred to Judiciary Committee

III, 27

A PROFCSAL AMENDING ARTICLE III, SECTICN 27 OF THE CONSTITUTION OF THE STATE OF MONTANA RELATING TO THE RIGHTS CF THE PECPLE OF MONTANA.

BE IT FROECSED BY THE CONSTITUTIONAI CONVENTION OF THE STATE OF HONTANA:

Section 1. Article III, Section 27 cf the present Constitution is amended to read as follows:

"Sec. 27. Subject to the condition that establishing the fact of the guilt or innocence of a person charged with a crime shall be superior to the right of an individual to bar otherwise credible evidence offered in proof thereof, no person shall be deprived of life, liberty, or property without due process cf law."

INTRODUCED BY: /s/ Otto T. Habedank

MONTANA CONSTITUTICNAL CCNVENTICN

197-I-1972

DELEGATE PRCPCSAL NO. 175

DATE INTRODUCED: FEB. 4. 1572

Referred to Educaticn and Public Lands Committee

XVII, 1, 2, 3; XI, 4

A PROPOSAL PCR A NEW CONSTITUTIONAL SECTICN CCNCEFNING PUBLIC SCHOOL LANDS AND REPEALING ARTICLE XVII, SECTIONS 1, 2 AND 3 AND ARTICLE XI, SECTION 4 OF THE CGNSTITUTICN CF THE STATE CF MCN-TANA.

BE IT FRGPGSEC BY THE CCNSTITUTICNAL CCNVENTION OE THE STATE CF MCNTANA:

Section 1. There shall be a new Ccnstitutional Section to provide as fcllcws:

"Section ___. All Public schccl lands of the state that have been or may hereafter be granted tc the state, shall be held in trust for the pecple for the purpcse cf general educaticn. The general supervision of school lands, including, but not limited to, management, leasing, sale, and exchange of such lands and of other public lands as may be prescribed by law, shall be vested in a state board of land ccmmissioners which shall be Composed of the Governor, Superintendent Cf public instruction and attcrney general.

No schccl lands may be disposed of except in pursuance of general laws providing for such dispcsition, nor unless the full market value of the estate cr interest dispcsed of, to be ascer-tained in such manner as may be prescribed by law, be paid or safely secured tc the state."

Section 2. Article XVII, Secticrs 1, 2 and 3 and Article XI, Section 4 cf the present Constitutien are repealed.

INTRODUCED BY: /s/ Gene Harbaugh

DELEGATE PRCPCSAI
NC. 176 — Requirement tc Vote

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

DELEGATE PROPOSAL NC. 176

DATE INTFCDUCED: FEE. 4, 1972

Referred to Judiciary Committee

A PROPOSAL FCR A NEW CONSTITUTIONAL SECTICN EBOYIDING THAT ELIGIELE CITIZENS MUST YCTE OR BE GUILTY CF A CRIME.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTICN OF THE STATE OF MONTANA:

Section 1. There shall be a new Ccnstituticnal Section to prcvide as follcus:

"Section ___. Citizens eligible tc register tc vote and who fail to register acd tc vote shall be guilty cf a crime and subject to punishment as prescribed by the legislature."

INTRODUCED BY: /s/ Robert Lee Kelleher

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

DELEGATE PROPOSAL NO. 177

DATE INTRODUCED: FEB. 4, 1972

Referred to Public Health, Welfare and Labor Committee

A PROPOSAL FOR A NEW CONSTITUTIONAL SECTION PROVIDING FOR A LABOR-MANAGEMENT CONCILIATION COURT.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

Section 1. There shall be a new Constitutional Section to provide as follows:

"Section ___. The legislature may require parties to a labor dispute, arising from business or governmental activity within the state and affecting the Public interest, to submit the dispute to a court of labor-management conciliation. The legislature shall provide for the jurisdiction of such court consistent with federal jurisdiction over the same parties and subject matter."

INTRODUCED BY: /s/ Joseph H. McCarvel

/s/ Wade J. Dahood /s/ D. A. Scanlin

/s/ Robert Lee Kelleher

DELEGATE FRCPCSAL
NO. 178 - Elections, Process

MCNTANA CONSTITUTICNAI CCRVENTICN

1971-1972

CELEGATE PROPCSAI NC. 178

DATE INTRODUCED: EEB. 4, 1972

Referred to General Government and Constitutional Amendment Committee

A PROFOSAL FOR A NEW CONSTITUTIONAL SECTICN CCNCERNING THE ELECTIVE PROCESS.

BE IT PROPOSED BY THE CONSTITUTIONAI CCNVENTICN CF THE STATE OF MONTANA:

Sectien 1. There is a new Constitutional Sectien to read as follows:

"Section ___. (1) Every persen cf majority age as defined by law, who is a citizen of the United States, and has resided in the state, county and precinct of his residence for the time prescribed by law and who is of sane mind is an elector in the state of Montana. No further qualificatiens ether than majority age, citizenship, residency and sanity may be impesed upon the electors of this state.

(2) The legislative assembly may secure the purity of elections and guard against abuses of the elective franchise through the use of registry list of all electors, Frovided such laws place upon state government or its subdivisions the burden of compiling and maintaining such list and previded further that electors not so registered may exercise their franchise upon execution of an oath that they meet the gualificatices cf an elector in the state of Montana."

INTRODUCED EP: /s/ McKeon

COMMITTEE PROPOSALS

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

GENERAL GOVERNMENT

AND CONSTITUTIONAL AMENDMENT COMMITTEE PROPOSAL

ON SUFFRAGE AND ELECTIONS

Date Reported: February 12, 1972

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

Date: February 12, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: General Government and Constitutional Amendment Committee

Ladies and Gentlemen:

The General Government and Constitutional Amendment Committee submits herewith a proposed Suffrage and Elections Article. The proposed Article is intended to replace all sections of the present Constitution dealing with suffrage and elections.

The committee addressed itself to the fundamental problems concerning suffrage and elections. The committee worked with the basic purpose of making the electoral process as effective and meaningful as possible for the individual Montanan. In doing so the committee gave careful consideration to several citizen and delegate proposals. Our end product is composed of a majority and a minority report. In signing either report, a Committee member does not necessarily endorse each and every statement in it.

The committee utilized the services of the following people: James Grady (Research Analyst), Bobbie Murphy (Secretary) and Robert Skaggs (Intern).

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow

TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL	334
TEXT OF MAJORITY PROPOSAL	336
COMMENTS ON MAJORITY PROPOSAL	337
TEXT OF MINORITY PROPOSAL	341
COMMENTS ON MINORITY PROPOSAL	342
APPENDIX	
Cross reference of present and proposed Article	344
Delegate proposals considered by committee	345
Witnesses heard by committee	347
Roll Calls	348

MAJORITY PROPCSAL

BE I? PROPCSED EY TEE GENERAL GCVERNMENT ANL CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on Suffrage and Electicns tc read as follows:

ARTICLE ___

SUFFRAGE AND ELECTICNS

Section 1. A 11 electicns by the people shall be by secret ballct.

Section 2. Any citizen of the United States whc is 18 years of age or clder, an? meets the registraticn and residence requirements of the state and pclitical subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institutien or who is judged of unsound mind by a Court may vcte.

Section 3. The legislature shall prcvide by law the requirements for residency, registration, absentee voting and adminictraticn of electicns.

Section 4. Any person qualified to vcte at general elections and for state cfficfrs in this state is eligible tc any public office except as otherwise prcvided in this Ccnstitutien, subject to any additional qualificaticns provided by the legislature.

Section 5. Ir all electicns held by the people under this Constitution, the persen or persens receiving the highest number of legal votes is elected.

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

/s/ Don E. Belcher

/s/ Bruce M. Brcwn

/s/ Lyman W. Choate

/s/ Otto T. Habedank

COMMENTS ON MAJORITY PROPOSAL

Section 1. All elections by the people shall be by secret ballot.

The wording in this section differs from the present Article IX, section 1 only in that it includes the word "secret." The committee feels that the guarantee of secrecy in voting is important enough to warrant inclusion in the Constitution.

Section 2. Any citizen of the United States who is 18 years of age or older, and meets the registration and residence requirements of the state and political subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a Court may vote.

This section embodies all of the proposed Constitutional qualification for and disqualifications from voting. In the 1889 Constitution, these qualifications and disqualifications are scattered through six sections of Article IX. The proposed Article Constitutionally gives the legislature tha major burden for establishing explicit registration and residence requirements. The rationale for individual segments of section 2 follows:

"(a) Any citizen of the United States who is 18 years of age or older,. . . "

Eighteen is the voting age for all elections as established by the 26th Amendment to the national Constitution. The 1971 Montana Legislature was among the state legislatures that ratified the amendment.

"(b) . . . and meets the registration and residence requirements of the state and political subdivision is a qualified elector,.."

This section is self-explanatory.

"(c) . . . except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a Court may vote . . ."

The present Constitution automatically disenfranchises felons (Article IX, section 2), and extends this disenfranchisement even after the person is released from prison. The convicted felon must apply for often difficult-to-receive pardons before he may again vote. The committee feels that this system of permanent punishment is contrary to the best interests of society, in that it does nothing to aid rehabilitation of a criminal. Indeed, a provision disenfranchising a felon attaches a stigma to the person, and hinders rehabilitation. Additionally, a disqualification provision flys in the face of the rational

for prisoner release: The presumption is that when a man comes out of prison he should be encouraged to resume normal civic relationships.

As for the provision disenfranchising those adjudicated as "unsound" in mind, the committee feels that with the new and ever-expanding developments in mental hygiene, it is unwise to freeze arbitrary mental disqualifications by label into the Constitution. Consequently, the committee has left such decisions for judges to make on an individual case basis.

Section 3. The legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections.

This section allows the legislature to determine the voting residency and registration requirements. In a large part this has been done by section 23-2701, Revised Codes of Montana, 1947, which established the residency period for most elections at 33 days. This statute, enacted in 1971, conflicts with the present Constitutional requirements of one year, though this section has a proposed amendment which would change the time limit to 33 days. Approximately 63% of the states include specific residency and registration requirements in their Constitutions, but most of the newer state Constitutions follow the example of the proposed article and leave those matters to the legislative assembly. This section will help avoid conflict with rapidly changing federal laws and court decisions.

This section also allows the legislature to determine the time that all elections are held. The committee closely examined several delegate proposals regarding constitutionally establishing the grouping and scheduling of elections. It is the committee's considered opinion that the legislature is capable of scheduling and providing administration for all elections. The committee is extremely reluctant to freeze "for all time" the schedule and administration process of all elections.

Section 4. Any person qualified to vote at general elections and for state officers in this state is eligible to any public office except as otherwise provided in this Constitution, subject to any additional qualifications provided by the legislature.

This section enables any Montana voter to participate as an office holder in the electoral process. It does not prohibit the legislature from establishing necessary technical qualifications for specialized jobs (say licensed attorney for the office of attorney general), but it does stop the legislature from Creating arbitrary age qualifications for certain offices.

Section 5. In all elections held by the people under

This section is identical to article IX, section 13 of the present Constitution, and merely guarantees the tradition of majority rule. The committee feels its retention is necessary as both a statement of principle and a practical directive.

* * *

As can be seen in Appendix A, the proposed Suffrage and Elections Article deletes several provisions contained in the present Constitution, Article IX. These sections. 3, 4, 5, 6, 7, 10, and 12, have either been superseded by judicial review or federal action or do not have enough redeeming value to be left in the Constitution. Discussion by section of these sections of the present Constitution follows:

> "Sec. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United states, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison."

Section 3 does not limit anyone from establishing residency in Montana, if the person is otherwise eligible, if that person can show an honest intent to do so. This section is ineffectual, and covered in the proposed section 3.

> "Sec. 4. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom."

Section 4 given all its exceptions, is of little value and can be implemented just as effectively by legislation. There is no comparable section in the proposed article.

> "Sec. 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger."

Section 5 serves no real function, and is probably not enforceable. Consequently, there is no comparable section in the proposed article.

> "Sec. 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of

being stationed at any military or naval place within the same."

Section 6 suffers from the same limitations as section 3 and is redundant with that section. It too has no comparable section in the proposed article, though its basic intent is covered in proposed section 3.

"Sec. 7. NO person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United states, and who shall not have resided in this state at least one year next before his election or appointment."

"Sec. 10. All persons possessing the qualifications for suffrage prescribed by section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office."

Sections 7 and 10 are of parallel intent with section 11 of the present Constitution, and as such are revised by section 4 of the proposed article.

"Sec. 12. Upon all questions submitted to the vote of the taxpayers of the state, or any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this Constitution, shall equally with men have the right to vote."

Section 12 is nationally unconstitutional on two counts: property qualification for voting and implied disenfranchisement on a sexual basis. There is no comparable section in the proposed article.

All of the other sections of Article IX of the present Constitution have been incorporated or revised in the proposed article.

MINORITY PROPOSAL

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on the Legislature to read as follows:

ARTICLE ---

Section 1. All elections by the people shall be by secret ballot.

Section 2. Any citizen of the United States who is eighteen (18) years of age or older, and meets the registration and residence requirements of the state and political subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a court may vote.

Section 3. The legislature shall provide by law the requirements for residency, absentee voting and administration of elections. Voter registration prior to election day shall not be a condition for voting. The legislature shall provide for a system of poll booth registration, insure the purity of elections and guard against abuses of the electoral process.

Section 4. Any person qualified to vote at general elections and for state officers in this state, is eligible to any public office except as otherwise provided in this Constitution, subject to any additional qualifications provided by the legislature.

Section 5. In all elections held by the people under this Constitution, the person or persons receiving the highest number of legal votes is elected.

/s/ Robert Vermillion /s/ Peter "Pete" Iorello

COMMENTS CN MINORITY PROPOSAI

The minority proposal differs from the majority prcpcsal only in its wcrding cf sectien 3. The minority wording is as follcws:

> Section 3. The legislature shall provide by law the requirements for residence, absentee vcting and administration of elections. voter ragistraticn prior to election day shall not be a condition for voting. The legislature shall provide for a system of poll bccth registraticn, insure the purity cf elections and guard against abuses of the electoral process.

CCMMENTS

The main purpose of the rincrity prcpcsal on Suffrage and Elections is centered on the word "registraticn" in section 3. The change in the wording is aimed Primarily at eliminating antiquated requirements which unnecessarily burden the potential voter. The primary purpose for registration laws is to prevent fraud, yet North Dakota has had pcll booth registration for twenty-cne (21) years. Poll bccth registration provides that the voter say register at the time acd place cf voting. As Professor Lloyd omdahl stated in his study of the effect of pcll bocth reqistraticn in North Dakota that since 1951 nct cne vcting inspector in the state has ever requested legal actien against a supposedly unqualifiad elector.

The thrust of the nincrity prcposal is that the requirement to vote is a basic right which shculd nct be abridged without very strcng reasons. Therefore, the burden of proof for showing the necessity of registration rests with those who would maintain registraticn laws. They must show first that there is a great threat cf vcter fraud in the state of Mcntana and secondly, that laws governing pcll booth registration would not deter abuses cf the franchise. It is not the minority proposal which must show a need for registration because of possible voter fraud, but rather the supporters of registration who must show that there will be voter fraud. The voters of Montana must be assumed innocent until prcven guilty.

The questica arises: Should the Constitution leave matters regarding registration tc the Legislature? Since the right to vote is basic and it has been thwarted through outdated ragistraticn procedures, the Legislature has denied the right to vote and therefore, it must be set forth in the Constitution.

lature to pass laws to keep the election process free of fraud. Poll booth registration has been proven effective in North Dakota, the likelihood of fraud is minimal and such a system must be adopted in Montana.

APPENDIX A

CROSS-REFERENCES

PROPOSED SECTION	PROPOSED ARTICLE and SECTION
1	IX, 1 (slightly revised)
2	IX, 2 (revised)
3	IX, 9 (revised)
4	IX, 7 (revised) and IX, 11 (revised
5	IX, 13
Not replaced	IX, 3
Not replaced	IX, 4
Not replaced	IX, 5
Not replaced	IX, 6
Not replaced	IX, 10
Not replaced	IX, 12

APPENDIX E

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the committee during its deliberations:

Number of Proposal	Chief Sponsor	Subject Matter and Disposition
1. 29	Erdmann	This proposal would hold school elections in conjunction with other elections. The committee feels this matter should be decided by the legislature, and provided for such consideration under section 3 of the proposed Article.
2. 47	Cain	This proposal would establish three types of elections. The committee feels this matter should be decided by the legislature, and provided for such consideration under section 3 of the proposed Article.
3. 82	Brown	This substance of this proposal comprises the committee report.
4. 95	Erdmann	This proposal Constitutionally provided for auxiliary canvassing boards. The committee feels this is a legislative decision, and allows the legislature to do so in Sec. 3 of the proposed article.
5. 131	Bugbee	This proposal provides for a system of poll booth registration, essentially eliminating registration for voting. The committee carefully considered such a measure, but feels that the legislature should make such a determination, as administration of elections can best be handled by the

			legislature. The committee allows the legislature to do so in section 3 of the proposed article.
6.	147	Cate	This proposal provides for a presidential primary system in Montana. The committee feels the history of such systems in Montana shows that such systems should not be Constitutionally created. However, under the proposed Article, the legislature could provide for such a system.
7.	178	McKeon	The basic difference between this proposal and the proposed Article is a system similar to the one in Delegate Proposal 131, and was not adopted for the same reasons.

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Robert Watt - Montana Student Presidents' Association - Helena - Registration and residency requirements.

2. Steven F. Coldiron - Montana State Low Income Organization - Helena - Suffrage and felony disqualification.

3. J. J. Schmidt - County Clerk and Recorders Association - Great Falls - Vote counting.

4. Kenneth A. Rohyans - Montana Association for Retarded Children and Adults, Inc. - Helena - Suffrage and mental incompetency.

5. Ernie Post - Montana Stats AFL-CIO Helena - No registration requirement.

Note: This list does not contain delegates who spoke on their proposals.

GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT

Roll Call Vote _____ Committee

	Date:Feb 9.*	
Mark Etchart	Yes	
Paul K. Harlow	Yes	
Bruce Brown	Yes	
Don Belcher	Yes	
Lyman Choate	Yes	
Otto Habedanlc	Yes	
Pete Lore110	NO	
Robert Vermillion	No	

*This is the vote on the majority proposal.

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

GENERAL GCVERNMENT

ANT CCNSTITUTIONAL AMENDMENT CCMMITTEE PRCPOSAL

ON CONSTITUTICNAL REVISICN

Date Reported: February 12, 1972

_____, Chairman

/s/ Paul K. Harlow, Vice Chairman

Date: February 12, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: General Government and Constitutional Amendment Committee

Ladies and Gentlemen:

The General Government and Constitutional Amendment Committee submits herewith a proposed Constitutional Revision Article. The proposed Article is intended to replace all sections of the present Constitution dealing with Constitutional revision.

The committee addressed itself to the basic problems concerning Constitutional revision. The committee worked with the basic purpose of making a fundamental yet flexible document. In doing so, the committee gave careful consideration to several citizen and delegate proposals. Our end product is composed of a majority report. In signing this report, a Committee member does not necessarily endorse each and every statement in it.

The committee utilized the services of the following people: James Grady (Research Analyst), Bobbie Murphy (Secretary) and Robert Skaggs (Intern).

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

TABLE OF CONTENTS

Page

TEXT OF MAJORITY PROPOSAL 352

COMMENTS ON MAJORITY PROPOSAL 356

APPENDIX

Cross reference of present and proposed Article 365

Delegate proposals considered by committee 366

Witnesses heard by committee 367

MAJORITY PROPOSAL

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on Constitutional Revision to read as follows:

ARTICLE___

CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. (1) The legislature, by an affirmative vote of two-thirds of all the members, may at any time submit to the electors of the state the question of whether there shall be an unlimited convention to revise, alter, or amend this Constitution.

(2) The people may by initiative petition request the legislative assembly to submit to the voters of the state the question of whether there shall be an unlimited convention to revise, alter, or amend this Constitution. The petition must be signed by a least ten percent of the legal voters of the state, which shall include at least ten percent of the legal voters in two-fifths of the legislative representative districts of the state.

The petition shall be filed with the Secretary of State, who shall certify the filing thereof to the legislative assembly and cause the question to be submitted to the voters at the general election immediately following the legislative session receiving notice of the filing of said petition.

(3) If the question of holding a convention is not otherwise submitted to the people at some time during any period of 20 years, it shall be submitted at the general election in the twentieth year following the last submission of such question.

(4) The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on Constitutional questions, to assist the voters, and, if a convention is authorized, continued for the assistance of the delegates.

(5) If a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be

the same as the largest body of the legislative assembly. The legislature may determine whether the delegates shall be elected after nomination by political parties, or cn a non-partisan basis, but they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates.

(6) The legislative assembly shall, in the act calling the convention, designate the day, hcur and place cf its meeting, fix the pay of its members and officers, and prc-vide for the payment of the same, tcgether with the neces-sary expenses cf the ccnvention.

(7) Before proceeding, the members shall take the cath otherwise provided in this Cccstituticn. The qualifications of members shall be the same as the highest qualificatcns required for membership in the legislature. Vacancies occurring shall be filled in the manner prcvided for filling vacancies in the legislative assembly, cr as cthrruise prc-vided by law.

(8) The ccnvtnticn shall meet within three months after the electicn of the delegates and prepare such revi-sions, alterations or amendments to the Ccnstituticn as may be deemed necessary, which shall be submitted to the elec-tors for their ratificatcn or rejectico as a whole or in separate articles cr amendments as determined by the ccnven-tion and at an electicn appointed by the convention for that purpose, or at the next general election, but not lass than two months after the adjournment therecf. Unless so submit-ted and approved b y a majority cf the electcrs vcting thereon, no such revision, alteratien or amendment shall take effect.

(9) Unless otherwise provided, any revisicn becomes effective on the first day cf July after the cfrtificatcn of the election returns by the Secretary cf State.

Section 2. CONSTITUTICNAL AMENDMENT BY THE LEGIS-LATURE. Amendments tc this Constitutcn may be proposed by any member of the legislative assembly. If adopted by an affirmative roll call vcte of two-thirds cf all the members thereof, whether one cr more bodies, the propcsed amendment shall become a part of the Ccnstitutcn when approved by either of the fcllowing procedures:

(1) The legislative assembly may refer the prcposed amendment to the voters of the state cf Hcntana to be voted on in the next general election held in the state. In such event the Secretary cf State shall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published, twice each month fcr the two months previcus to the next general elec-tion for members to the legislative assembly. If approved

by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment otherwise provides; or

(2) The legislative assembly by a majority roll call vote, may elect not to refer the amendment to the vote of the electors of Montana as provided in the preceding subsection (1) in which event the amendment shall be presented to the next succeeding legislative assembly after a general election. If adopted by a two-thirds vote of the members of such legislative assembly, the amendment shall become a part of this Constitution on the first day of July following its approval unless a petition is filed with the Secretary of State signed by five percent of the legal voters of the state requesting such amendment be referred to a vote of the people as provided in this Constitution for referendum, in which event the amendment shall not become effective until the Secretary of State certifies its approval by a majority of those voting thereon.

Section 3. CONSTITUTIONAL AMENDMENT BY INITIATIVE. The people of Montana may also propose Constitutional amendments by initiative process. Petitions shall include the full text of the proposed amendment and shall be signed by not less than 15 percent of the legal voters in Montana, which shall include at least 15 percent of the legal voters in two-fifths of the legislative representative districts of Montana. The petitions shall be filed with the Secretary of State, who shall cause the same to be checked and certified as to the validity of the signatures thereon and, if found to be signed by the required number of voters, cause the same to be published in full in at least one newspaper in each county (if such there be) twice each month for two months previous to the next regular state-wide election, at which time the proposed amendment shall be voted on.

At said election the proposed amendment shall be submitted to the qualified electors of the state for their approval or rejection. If approved by a majority voting thereon it shall become a part of the Constitution effective the first day of July following its approval, unless otherwise provided in the amendment.

Section 4. LEGAL VOTERS. The number of votes cast for the office of Governor in the general election immediately preceding the filing of the petition shall determine the number of legal voters.

Section 5. SUBMISSION. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately.

Section 6. GUBERNATORIAL VETC. Ihe veto pcwer Of the Governor shall nct extend tc prcpcsed Ccnstituticnal revisicns or amendments.

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

/s/ Don E. Belcher

/s/ Bruce M. Brcwn

/s/ Iyman W. Choate

/s/ Ottc T. Hahedank

/s/ Peter "Pete" Icrello

/s/ Robert Vermillion

COMMENTS OF MAJORITY PROPOSAL

Section 1. (1) The legislature, by a affirmative vote of two-thirds of all the members, may at ary time submit to the electors of the state the question of whether there shall be an unlimited convention to revise, alter, or amend this Constitution.

(2) The people may by initiative petition request the legislative assembly to submit to the voters of the state the question of whether there shall be an unlimited convention to revise, alter, or amend this Constitution. The petition must be signed by a least ten percent of the legal voters of the state, which shall include at least ten percent of the legal voters in two-fifths of the legislative representative districts of the state.

The petition shall be filed with the Secretary of State, who shall certify the filing thereof to the legislative assembly and cause the question to be submitted to the voters at the general election immediately following the legislative session receiving notice of the filing of said petition.

(3) If the question of holding a convention is not otherwise submitted to the people at some time during any period of twenty years, it shall be submitted at the general election in the twentieth year following the last submission of such question.

(4) The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on Constitutional questions, to assist the voters, and, if a convention is authorized. continued for the assistance of the delegates.

(5) If a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be thr same as the largest body of the legislative assembly. The legislature may determine whether the delegates shall be elected after noninaticn by political parties, or on a non-partisan basis, but they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates.

(6) The legislative assembly shall, in the act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and offi-

cers, and provide for the payment of the same, together with the necessary expenses of the convention.

(7) Before proceeding, the members shall take the oath otherwise provided in this Constitution. The qualifications of members shall be the same as the highest qualifications required for membership in the legislature. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly, or as otherwise provided by law.

(8) The convention shall meet within three months after the election of the delegates and prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection as a whole or in separate articles or amendments as determined by the convention and at an election appointed by the convention for that purpose, or at the next general election, but not less than two months after the adjournment thereof. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect.

(9) Unless otherwise provided, any revision becomes effective on the first day of July after the certification of the election returns by the Secretary of State.

sec. 1. (1) The legislature, by an affirmative vote of two-thirds of all the members, may at any time submit to the electors of the state the question of whether there shall ha an unlimited convention to revise, alter, or amend this Coostitution.

This subsection is identical to the first part of Article XIX, section 8 of the present Constitution. The committee feels that given the additional provisions of the proposed article on Constitutional revision, this portion of the proposed article is adequate.

Sec. 1. (2) The people may by initiative petition request the legislative assembly to submit to the voters of the state the yuestion of whether there shall be an unlimited conventior to revise, alter, or amend this Constitution. The petition must be signed by at least ten percent of the legal voters of the state. which shall include at least ten percent of the legal voters in two-fifths of the legislative representative districts of the state.

The petition shall be filed with the Secretary of State, who shall certify the filing thereof to the legislative assembly and cause the question to be submitted to the voters at the general

election immediately following the legislative session receiving notice of the filing of said petition.

The people of Montana do not now have the power to call a Constitutional convention by the initiative. The committee feels that this is a basic political right of the peopleUnder a government line Montana's. The committee set the petition qualification, at ten percent of the legal voters of the state, with the additional qualification that at least ten percent of the legal voters of the state in two-fifths of the legislative representative districts of the state be included in that percentage, because it feels such a number is high enough to prevent frivolous attempts at Constitutional change and yet low enough to insure citizen Constitutional control. The division of the percentage of petitioners by legislative representative districts helps insure a somewhat diversified body of petitioners on a successful petition without violating the principle of one-man, one-vote. It should be noted that this provision (and all subsequent provisions) in its phrase "legislative assembly" allows the provision to keep its intent and internal integrity in either a bicameral or unicameral situation.

> sec. 1. (3) if the question of holding a convention is not otherwise submitted to the people at some time during any period of twenty years, it shall be submitted at the general election in the twentieth year following the last submission of such question.

Subsection 3 of section 1 is a further guarantee that the peoplewill retain a firm hold on the power of constituting government. This provision calls for the consideration of a Constitutional convention at least once every 20 years. The committee feels periodic consideration strengthens rather than weakens a Constitution and a government, as it builds into the Constitution recognition of and a remedy for changing times. While there is no magic number that precisely delineates the different Constitutional periods, the committee feels on the average it would take at least 20 years for political changes and their relationship to the Constitution to be clear. A shorter period of time may subject the Constitution to changes based more on short term whimsy than considered need. A longer period may breed dangerous stagnation into the body politic.

> sec. 1. (4) The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on Constitutional questions, to assist the voters, and, if a convention is authorized, continued for the assistance of the delegates.

Subsection 4 of section 1 was added by the committee on the basis of their experience at the convention. The committee believes that without preparatory work, any Constitutional con-

vention would be traversing trcubled waters in a flimsy craft.

> sec. 1. (5) If a majority cf thcse vcting on the question shall declare in favcr cf such ccnventicn, the legislative assembly shall at its next ssssicn prcvide for the calling thereof. The number of members of the convention shall be the save as the largest bcdy of the legislative assembly. The legislature may determine whether the delegates shall be elected after ncminaricn by pclitical parties, cr on a ncn-partisan basis, but they shall be elected at the same places and in the same districts as the legislative body determining the number cf delegates.

Subsection 5 of section 1 mandates the legislative assembly to provide for the calling of the conventicn, and tc scme degree dictates the manner in which the convention shall be called and initially organized. The ccmmittee feels this is necessary, as without some clear directions, the convention though scheduled and called, could be togged dcwr befcre it ever gets off the grcund.

The committee heard testimcny on several delegate prcpcsals (See Appendix B) calling for determinaticn of the political complexicn of any future convention. The ccmmittee after careful consideration. feels the present Ccnctitutiocn should nct make such a determination. The pclitical climate cf Montana and indeed the whole country is such that the prcblems cf partisanship and political parties as we know them tcday may be quaint hictcrical anachronism tomcrrcw. If, in 2052 (EC years hence), another Constitutional conventicn is called and the Montana pclicy is characterized by tcwn meeting type councils, then partisan provisions would be wholly inapplicable. If the Ccnstitutiocn ccntains partisan provisions, there is alsc the danger that future electcrates may be vexed and irritated by thcse prcvisicns as many of the Mcntana electorate were at the mandated &artisan nature cf this convention.

> sec. 1. (E) The legislative assembly shall, in the act calling the conventicn, designate the day, hcur and place of its meeting, fix the pay cf its members and officers, and provide for the payment cf the same, together with the necessary expenses of the ccnvention.

Subsection 6 was designed by the committee as a prctectiocn device for future Ccnstitutiocnal ccnventicns. Throughout history (ncteably in the Western European traditicn) cbstreperous and unresponsive representative bodies had thwarted the will of their constitutients by tokenism. The legislature may call a ccnvention, or it may be confronted with the fait accompli, through initiative, but it could frustrate popular will by withcldding the necessary materials and funds, thus destroying the ccnvertion's

ability to do anything.

sec. 1. (7) Before proceeding the members shall take the oath otherwise provided in this Constitution. The qualifications of members shall be the same as the highest qualifications required for membership in the legislature. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly, or as otherwise provided by law.

Subsection 7 was designed by the committee to help insure continuity of the convention itself. Again, the committee feels such measures are necessary to assist future conventions in their task, and that such assistance should be provided in the Constitution.

sec. 1. (8) The convention shall meet within three months after the election of the delegates and prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection as a whole or in separate articles or amendments as determined by the convention for that purpose, or at the next general election, but not less than two months after the adjournment thereof. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect.

Subsection 8 was also designed to help structure future conventions, but as with other sections, the structuring is flexible enough to allow for changing conditions.

sec. 1. (9) Unless otherwise provided, any revision becomes effective on the first day of July after the certification of the election returns by the Secretary of state.

Subsection 9 allows the convention to provide for its own adoption schedule, and it also provides a general guideline and a schedule should some revision not be scheduled by the convention.

Section 2. CONSTITUTIONAL AMENDMENT. Amendments to this Constitution may be proposed by any member of the legislative assembly. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall become a part of the Constitution when approved by either of the following procedures:

(1) The legislative assembly may refer the proposed amendment to the voters of the state of Montana to be

voted on in the next general election held in the state. In such event the Secretary of State shall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published, twice each month for the two months previous to the next general election for members to the legislative assembly. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment otherwise provides; or

(2) The legislative assembly by 3 majority roll call vote, may elect not to refer the amendment to the vote of the electors of Montana as provided in the preceding subsection (1) in which event the amendment shall be presented to the next succeeding legislative assembly after a general election. If adopted by a two-thirds vote of the members of such legislative assembly, the amendment shall become a part of this Constitution on the first day of July following its approval unless a petition is filed with the Secretary of State signed by five percent of the legal voters in the state requesting such amendment be referred to a vote of the people as provided in this Constitution for referendum, in which event the amendment shall not become effective until the Secretary of State certifies its approval by a majority of those voting thereon.

The introductory paragraph to this section establishes one method by which constitutional amending may be commenced. It is important to note that two-thirds of the members of the total membership of the legislative assembly is required to begin the amending process. This means that in a bicameral situation with 20 members in the upper house and 40 members in the lower house, a vote of the lower house would be sufficient to begin on the vote of 20 members of the upper house and 1? members of the lower house, or any 2/3 mixture of the membership.

The committee feels such a measure is restrictive enough to prevent frivolous legislative action, yet is open enough to overcome stringent opposition of a few well-placed members of one bicameral house. If the provision were 2/3 of the members of both houses in our hypothetical legislature 7 members of the upper house could thwart the wishes of their 53 fellow legislators. In that situation, the plurality of elected officials necessary to achieve a legislatively originated Constitution amendment is 90 percent or 9/10 rather than 2/3.

To facilitate flexibility, the committee has provided for two proposed methods of constitutional amendment by the legislature. The first procedure (outlined in subsection 1 of section 2) is analagous to the method of amending the Constitutioc in the present Constitution's Article XIX, section 9. The proposed

section, however, does not go into the cumbersome procedural detail contained in the present Constitution. This cumbersome detail has been a burden to often-popular Constitutional change. In one instance the Supreme Court of Montana voided a proposed Constitutional amendment for the slight procedural irregularity of failure to follow the Constitutional directive in Article XIX, section 9 and enter the proposed amendment in full in the journals of both houses [Dufree, v. Harper, 22 Mont. 354 (1899)]

Subsection 2 of section 2 provides for a new method of Constitutional amendment. After the legislature has once passed a proposed amendment by the required 2/3 vote, it is referred to the next legislative assembly. If the proposed amendment again passes the assembly by the necessary 2/3 vote, the amendment takes effect on the specified day. The people have a check on this process, as they can, with a petition from five percent of the voters, cause such an amendment to be directly voted on by the people. The small percentage of required petitioners makes this check on legislative abuse extremely viable.

One of the bigger assets of this new method of Constitutional amendment is recency. Legislative action is much cheaper than popular action when the cost of an election is compared with the cost of a fairly routine legislative function, the passage of a bill. Yet the state does not lose careful consideration to economic benefit. The people, in addition to the explicit check of petition previously discussed, have the check of making their views known in the time span between legislative sessions. They also have the opportunity to choose those who make the final decision after the substance of the decision has been stated.

> Section 3. The people Of Montana may also propose Constitutional amendments by initiative process. Petitions shall include the full text of the proposed amendment and shall be signed by not less than 15 percent of the legal voters in Montana, which shall include at least 15 percent of the legal voters in two-fifths of the legislative representative districts of Montana. The petitions shall be filed with the Secretary of State, who shall cause the same to be checked and certified as to the validity of the signatures thereon and, if found to be signed by the required number of voters, cause the same to be published in full *in* at least one newspaper in each county (if such there be) twice each month for two months previous to the next regular state-wide election, at which time the proposed amendment shall be voted on.
>
> At said election the proposed amendment shall be submitted to the qualified electors of the state for their approval or rejection. If approved by a majority voting thereon it shall become a part of the Constitution effective the first day of July followuing its approval, unless otherwise provided in the amendment.

Section 3 of the proposed article creates a new power for the people of Montana, the right to initiate Constitutional amendments. The committee feels this is an inherent right in a body politic whose Constitution is to be the embodiment of the will of the people. The committee's proposal sets up the exact machinery for expressing this will through establishment of the petition requirements and the administration process. The 15 percent petition requirement and the geographical requirement are high, but the committee feels it is not unreasonable to demand strict standards when dealing with something as fundamental and important as Constitutional change. Although the standard is high, the committee does not feel it is so high that pressing popular and needed Constitutional reforms could not be initiated by the people. The standard, the committee feels, will operate to check erratic whimsy.

> Section 4. The number of votes cast for the office of Governor in the general election immediately preceding the filing of the petition shall determine the number of legal voters.

Section 4 of the Article is merely an administrative and technical section in that it defines the number of legal voters for computation of the petition requirements. It does not and cannot be used to infringe and inhibit the initiative and referendum processes through technical circumvention. Indeed, this section, by setting up such a standard, guards against such abuses.

> Section 5. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by number or otherwise that each can be voted upon separately.

Section 5 is designed to aid voters in casting their votes on Constitutional issues, and as a check on the possible action of grouping several issues under one innocuous title.

> Section 6. The veto power of the Governor shall not extend to proposed Constitutional revisions or amendments.

The committee feels that one man, the Governor, should not have the power to override proposed Constitutional measures when the requirements for proposing those measures are as stringent as this article creates.

* * *

The proposed articles on Constitutional revision are lengthy and at times somewhat detailed. However, the committee feels this necessary. This is the article that to a large degree determines whether this Constitution, and through it the state, will

be flexible or frozen, responsive or rigid, basic or erratic. In order to hit a happy and workable medium in the dilemma of those determinations, the process for control and change of a Constitution must be clear. This clarity can be thwarted by a two-edged sword: On the one hand, there must be enough detail to spell out procedure and readily accomplish desired ends. On the other hand the detail must not proliferate and degenerate into entrapping trivia that obscures and thwarts the desired end. The committee feels this proposed article solves the problem.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	XIX, 8, with revision
2	XIX, 9, with revision
3	None
4	None
5	None
6	None

APPENDIX E

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the _____ committee during its deliberations:

Number of proposal	Chief Sponsor	Subject Matter and Disposition
1. 27	Mahoney	This proposal established procedures for legislative and initiative Constitutional amendments, and prohibited gubernatorial veto on Constitutional revisions. It was revised and incorporated in section 2 of the proposed article.
2. 52	Warden	This proposal dictated nonpartisan elections for future Constitutional conventions. It was revised and covered in section 1 of the committee proposal.
3. 58	Harbaugh	This proposal called for periodic consideration of Constitutional conventions, and was revised and incorporated in sfction 1.
4. 94	Habedank	A revisal of this proposal comprises the committee report.
5. 106	Arbanas	This proposal deals with the Constitutional convsntion process, and as such was revised ard covered in the committee report.

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Duane Welker - private citizen - Hamilton, Mont. Constitutional revision, imposition of limitation on future actions.

Note: This list does not include delegates who spoke in favor of their particular proposal.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

LEGISLATIVE COMMITTEE PROPOSAL

Date Reported:

/s/ Magnus Aasheim, Chairman

/s/ Jerome T. Loendorf, Vice Chairman

TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL	374
TEXT OF UNICAMERAL MAJORITY PROPOSAL	376
COMMENTS ON UNICAMERAL MAJORITY PROPOSAL	381
Section 1. Power and Structure	381
Section 2. Size	382
Section 3. Election and term of members	383
Section 4. Qualifications	383
Section 5. Compensation	383
(1) Annual salary	383
(2) Salary commission	383
Section 6. Sessions	384
Section 7. Vacancies	385
Section 8. Immunity	386
Section 9. Disqualification	386
Section 10. Organization and procedure	386
(1) General organization	386
(2) Daily business	387
(3) Open meetings	387
(4) Notice	387
(5) Committees	387
Section 11. Bills	388
(1) Original purpose	388
(2) Recorded vote	388
(3) Majority vote	388
(4) Single subject	388

(5) General appropriations 389
(6) State appropriations 389
Section 12. Local and Special Legislation 339
Section 13. Veto 390
(1) Time limits 390
(2) Item veto 390
(3) Veto 390
(4) Amendatory veto 390
(5) Limitations 391
Section 14. Impeachment 391
(1) Jurisdiction 391
(2) Procedure 391
(3) Requirements 391
(4) Double jeopardy 391
Section 15. Districting and apportionment 392
(1) Single-member districts 392
(2) Selection of commission 392
(3) Piling date 392
(4) Reconsideration of plan 392
(5) Supreme court 393
(6) Force of law 393
Section 16. The people's advocate 393
(1) Appointment 393
(2) Responsibilities 394
TEXT OF BICAMERAL MAJORITY PROPOSAL 395
COMMENTS ON BICAMERAL MAJORITY PROPOSAL 400
Section 1. Power and structure 400

Section 2. Size 400
Section 3. Election and term of members 401
section 4. Qualifications 401
Section 5. Compensation 401
(1) Annual saiary 401
(2) Salary commission 402
Section 6. Sessions 402
Section 7. Vacancies 402
Section 8. Immunity 402
Section 9. Disqualification 402
Section 10. Organization and procedure 403
(1) General organization 403
(2) Daily business 403
(3) Proceedings 403
(4) Notice 403
(5) Committees 404
(6) Adjournment 404
(7) Conference committees 404
Section 11. Bills 404
(1) Original purpose 404
(2) Recorded vote 405
(3) Majority vote 405
(4) Single subject 405
(5) General appropriations 405
(6) State appropriations 405
Section 12. Local and special legislation 406
Section 13. Veto 406

(1) Time limits. 406
(2) Item veto 406
(3) Veto statement 406
(4) Amendatory veto 406
(5) Limitations 406
Section 14. Impeachment 406
(1) Jurisdiction 406
(2) Procedure 406
(3) Requirements 407
(4) Double jeopardy 407
Section 15. Districting and apportionment 407
(1) Single-member districts 407
(2) Selection of commission 407
(3) Filing date 407
(4) Reconsideration of plan 408
(5) Supreme court 408
(6) Force of law 408
Section 16. The people's advocate 408
(1) Appointment 408
(2) Responsibilities 409
TEXT OF BICAMERAL MINORITY PROPOSAL 410
APPENDIX
Cross reference of present and proposed article 416
Delegate proposals considered by committee 417
Witnesses heard by committee 418
Roll call sheets 422

Date: February 16, 1972

To: MONTANA CONSTITUTICNAL CCNVENTICN

From: Legislative Committee

Ladies and Gentlemen:

The Legislative Committee submits herewith a prcpcsed new Legislative Article which combines Article V and Article VI cf the present Ccnstituticn. The proposed article is intended to replace all secticnc of Article V and Article VI of the present Constitution with the excepticns cf the prccedure for suhmittinq initiative and referendum petitions, and the procedures for legislative action in times cf emerqancy, which were assigned to the committee cn General Government.

Throughout its deliberaticns, the committee has addressed itself to drawing up, to the best cf its ability and judgment, a proposed Legislative Article containing chcices between a bicameral and a unicameral Legislature. The bicameral and unicameral proposals are both submitted as majority reports.

It is the committee's reccmmendation that the unicameral and bicameral proposals should te presented on the ballot as alternative legislative articles.

The proposed revisions in the majority reports include major substantive changes, prccedural and technical improvements, and stylistic changes in the language. Morecver, the Legislative Committee proposes a more coherent and unified organization of the article than the existing cne.

The unicameral and bicameral reports, fcr the most Fart,

differ only as to the structure of the legislature.

Minority reports express variance from the thinking of the majority of the members.

The members of this Committee, by signing the majority report, do not necessarily endorse each and every statement contained therein; and minority reports on various sections are also presented in this report.

The committee utilized the testimony of many witnesses. A list of witnesses is contained in this report.

The committee wishes to express its thanks to Richard F. Bechtel, its Research Analyst and, Judith A. Pratt, its secretary, and Steve Jones, its Student Intern.

/s/ Mangus Aasheim
Chairman

/s/ Jerome T. Leendorf
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

That there be a new Article on the Legislature to read as follows:

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power of the state is vested in the legislature, consisting of one chamber whose members are designated senators. The people reserve to themselves the power of initiative and referendum.

Section 2. SIZE. The number of senators shall be prescribed by law, but there shall be no less than 75 and no more than 100 members.

Section 3. ELECTION AND TERMS OF MEMBERS. A senator shall be elected for a term of four years. One-half of the senators shall be elected every two years. A senator's term shall begin on a date provided by law.

Section 4. QUALIFICATIONS. A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least one year, and a resident of the district from which he seeks election for at least six months preceding the general election.

Section 5. COMPENSATION. (1) Each member of the legislature shall receive an annual salary and such allowances as may be prescribed by law; provided that no legislature shall fix its own compensation.

(2) A salary commission shall be created by the legislature to recommend legislative compensation.

Section 6. SESSIONS. The legislature shall be a continuous body for two year periods beginning on the date newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any further session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of 90 legislative days or less. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be

filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. The members of the legislature shall, in all cases, except felony and breach of the peace, be privileged from arrest during their attendance at the sessions of the legislature, and in going to and returning from the same; and for any speech or debate in the legislature, they shall not be questionfi ir any other place.

Section 3. DISQUALIFICATION. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the state of Montana created during such time.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of its members and may by law vest in the courts the trial and determination of contested elections of its members. It shall choose its officers from among its members; keep a journal; make rules for its proceedings; and may expel or punish a member with the concurrence of tws-thirds of all its members.

(2) A majority of the membership of the legislature constitutes a quorum to do business. A smaller number may adjourr from day to day and compel attendance of absent members.

(3) All proceedings of the legislature, including committee meetings, shall be open to the public.

(4) Adequate public notice of committee hearings must be given.

(5) The legislature may establish interim committees which may meet and exercise all legislative authority delegated to them.

Section 11. BILLS. (1) A law shall be passed by till, and a bill shall not be so altered or amended on its passage through the legislature as to change its original purpose.

(2) On any vote which advances or changes the status or substance of a bill, resolution, or rule the vote of each member must be recorded.

(3) A hill shall become law upon a majority vote of the members present.

(4) Each bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain only one subject. A law may be challenged on the grounds of non-compliance uith this section within one year after its effective date but not after that period.

(5) General appropriation bills shall contain only appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bill, each containing but one subject.

(6) tic appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature may not pass a special or local act when a general act is, or can be made, applicable.

Section 13. VETO. (1) Every bill passed by the legislature shall be presented to the governor for his approval and shall become law if he neither approves nor vetoes it within 5 days while the legislature is in session or within 25 days after the legislature has adjourned.

(2) The governor may veto items in appropriation bills.

(3) The governor shall return any vetoed bill with a statement of his objections to the legislature.

(4) The legislature, upon receipt of a veto message, shall reconsider the vetoed bill or item. The legislature may amend a bill to eliminate the objections of the governor, and return the bill to the governor for reconsideration. The legislature may override the veto by an affirmative vote of two-thirds of the members present.

(5) The governor shall not have veto power over resolutions, initiative and referendum measures, Constitutional amendments, and appropriations for the legislature.

Section 14. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers and such other officers as may be made subject to impeachment by law may be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure and causes for removal by impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the senate and no conviction for impeachment shall be made except by a vote of two-thirds or more of the members of the tribunal hearing the charges.

(4) Such conviction shall only extend to removal from

office and disqualification to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 15. DISTRICTING AND APPORTIONMENT. (1) For the purpose of electing members of the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each legislative district shall consist of compact and contiguous territory and be so nearly equal in population as is practicable.

(2) Immediately upon enactment of this section and in the session preceding each census made by the authority of the United States a committee of four citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each designate two commissioners. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman..

(3) NO later than 90 days after appointment of the chairman, or following the official reporting of each federal census, whichever is later in time, the commission shall file a plan with the secretary of stare.

(4) Any person aggrieved by the preliminary plan shall have 30 days to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to prepare and file a revised plan. If no excepticns are filed within 30 days, or if filed and acted upon, the commission's plan shall be Final and have the force of law.

(5) Any aggrieved person may file an appeal from the plan directly to the supreme court within 33 days after the filing. If the appellant establishes that the final plan is contrary to law, the supreme court shall issue an order remanding the plan to the commission and directing the commaission to reapportion and redistrict in a manner not inconsistent with such order.

(6) When the supreme court has finally decided an appeal taken, the reapportionment Flan shall have the force of law and the districts shall be used thereafter in elections to the legislature until the next reapportionment is required.

Section 16. THE PEOPLE'S ADVOCATE. (1) The majority and minority leaders of the legislature shall together appoint the people's advocate.

(2) The people's advocate shall have the duty to provide information to any person upon request relating to government;

and shall have subpoena power and authority to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action. The legislature shall provide for this office and its operation.

/s/ Magnus Pasheim
Chairman

/s/ Jerome T. Icendorf
Vice Chairman

/s/ Grace Bates

/s/ Daphne Bugbee

/s/ George Harper

/s/ Torrey Johnson

/s/ John Leuthold

/s/ Richard Nutting

/s/ Mae Nan Robinson

/s/ Miles Romney

Jerome Cate
(original unsigned)

/s/ Robert Kelleher

/s/ Arlyne Reichert

Carman Skari
(original unsigned)

COMMENTS ON MAJORITY PROPOSAL

Section 1. POWER AND STRUCTURE. The legislative power of the state is vested in the legislature, consisting of one chamber whose members are designated senators. The people reserve to themselves the power of initiative and *referendum.*

COMMENTS

The committee believes that a unicameral legislature would be superior to a bicameral legislature for the following reasons:

(1) Rural Representation. No matter which is adopted--bicameralism or unicameralism-actual representation of rural and urban areas will be proportionally the same because both must be based on the supreme court's "one man, one vote" axiom. However, in a unicameral legislature. unlike a bicameral legislature, rural district representation is not countor-balanced by larger senate districts that are stacked in favor of urban centers. In large districts, rural areas are thrown into districts with urban areas.

(2) Deliberation. According to the Model State Constitution there is no data to support the claim that two houses result in better policies and more carefully written laws, or that a second house is a constructive check against hasty action. In fact, a study of second review made for the Maryland Constitutional convention stated that the amount of review by the second house did not justify the cost of bicameralism in Maryland.

However, there are many studies which show that a unicameral legislature results in better policies, more carefully written laws, and more thoughtfully considered legislation. A study which compared the unicameral and bicameral legislatures of Vermont proved that the laws passed by the unicameral were 98.07 Percent more stable. In otherwords, the unicameral legislature wrote better laws. A 1954 study of American state legislatures states that of all the American legislatures, the Nebraska unicameral gave its bills the best consideration.

In fact, the study mentioned that the Nebraska unicameral legislature was too careful. A 1970 study by the Citizens Conference of State Legislatures ranked the Nebraska unicameral legislature first in the nation in accountability.

(3) Lower Cost and Greater Independence. Money is saved in a unicameral legislature through the elimination of duplication in staff, printing, and other legislative operating expenses. The money saved should be used for well Paid staff, the single most important factor in counter-balancing lobbying Pressures and assuring intellectual independence.

(4) Accountable and Visible. There can be no "buck passing"

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

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

(6) Difficult for Lobbyists to Control. In a unicameral body of 100, 51 legislators would constitute a majority to pass a bill. In a senate of 43, only 21 senators can kill a bill already passed by the other house. Obviously it is easier for lobbyists to control and influence 21 than 51 legislators.

(7) More Efficient. There is less confusion. Better debate procedures result when all the pros and cons are considered before a vote is taken. Dual committees are eliminated and it is unnecessary to have two public hearings on every bill. Duplication has never been a guarantee of excellence.

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

A second house is not needed because even in the bicameral system, 93 percent of all bills are killed in the house of origin. Seldom does a bill receive "worthwhile review" in the other chamber.

A unicameral legislature will completely eliminate the introduction (and expense) of identical or similar bills in both houses.

A unicameral legislature will completely eliminate the "third level" conference committee, one of the most criticized elements of bicameral bodies.

Section 2. SIZE. The number of senators shall be prescribed by law, but there shall be no less than 75 and no more than 100 members.

COMMENTS

Montana is a large state with scattered population. The committee believes that a unicameral legislature needs 75 to 100 members to allow the state's rural areas to retain a feeling of representation. The committee also believes that a unicameral legislature of this size allows Montana to preserve its traditional low ratio between a representative and his constituents. The provision provides a range to give the reapportionment commission some flexibility in redistricting and reapportioning the state.

Section 3. ELECTION AND TERMS OF MEMBERS. Senators shall be elected for a term of four years. One-half of the senators shall be elected every two years. The senators' terms shall begin on a date provided by law.

COMMENTS

The provision provides for four year staggered terms. The four year term affords continuity, experience, and stability to the unicameral house. To achieve staggered terms in the legislature, it is suggested that all the senators be elected in the first election. In that election, one-half should be elected to two year terms and one-half should be elected to four year terms.

Section 4. QUALIFICATIONS. A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least one year, and a resident of the district from which he seeks election for at least six months preceding the general election.

COMMENTS

Article V, section 3 of the present Constitution requires a representative to be at least 21 and a senator to be at least 24, and both to have lived in the county or district they represent for at least one year. The committee proposal requires a legislator to be a qualified voter. This follows the line of reasoning in the Bill of Rights Committee recommendation that 18 year olds be considered adults for all purposes. This would allow the young to participate in elections as candidates as well as voters. The committee believes that state and district residence requirements are needed to prevent candidates from moving into a district shortly before the election to run for the legislative seat. It is believed that one of the major purposes for single-member districts--representation of a district by a true representative of that district-would be defeated if there are no residence requirements,

Section 5. COMPENSATION. (1) Each member of the legislature shall receive an annual salary and such allowances as may be prescribed by law; provided that no legislature shall fix its own compensation.

(2) A salary commission shall be created by the legislature to recommend legislative compensation.

COMMENTS

This section replaces part of Article V, section 5, which permits the legislature to set its own compensation. The committee believes an annual salary is appropriate for a legislature which is to be a continuous body. The committee believes that a legislator's responsibility to his constituents is year around, not just when the legislature is in session. An annual salary is

also an effective incentive for legislators to end their sessions as soon as possible. This provision also permits such allowances as "per diem and mileage". The proposal does not set a minimum salary in the Constitution for fear that the legislature might then be reluctant to increase that amount. This was the history of the original six dollar a day allowance which remained the legislative salary for approximately 50 years. The proposal retains the provision from Article V, section 8 that no legislature can fix its own compensation.

It is the general belief of the committee that legislative compensation is inadequate and will continue to be inadequate as long as the legislature must set its own salary. To alleviate this problem, the proposal provides for a compensation commission to either set or recommend legislative salaries. This commission would "promote public confidence in proposals to raise legislative compensation to reasonable levels and would minimize accusations by the public and the press of legislative self help". (Council of State Governments, 1970 Suggested State Legislation, p. 1.).

Section 6. SESSIONS. The legislature shall be a continuous body for two year periods beginning on the date newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any further session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of 90 legislative days or less. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

COMMENTS

The committee believes that the most important limitation on the legislature's effectiveness is the Constitutional limitation of the length and frequency of sessions. Sixty days every other year does not allow the legislature enough time to given its legislation adequate consideration. It also does not allow the legislature to give adequate public notice of its hearings, so the people of Montana are unable to fully participate in its deliberations. In 61 years since 1911--only six Montana legislatures have been able to complete their business in 60 days. Academic, state, and federal studies stress the disastrous effect session limits have upon the consideration of legislation.

The committee proposal makes the legislature a continuous body. This does not mean that the legislature will remain in session indefinitely. "Continuous body" is a legal term which ensures the legislature that its committees will have the authority to meet during the interim, that the legislature will have continuity, and that the legislature will have the ability to

develop its staff.

The committee proposal provides for annual sessions. In 1948, six states held annual sessions. This number increased to 26 in 1970 and to 33 in 1971. The states are adopting annual sessions because of the growth in demand for legislative services, the need to restore the balance of power between the legislature and a permanent executive, and the difficulties in formulating an accurate biennial budget.

All studies recommend that no limits be placed on the length of session because:

> The restrictions on length of sessions are the real reasons for bad legislation-not extended periods of discussion. Certainly it would be impossible to say that legislation or the quality of legislators has been improved by limiting the sessions. (Belle Zeller, American State Legislatures, p. 93.)

There was long discussion in the committee because several members believed unlimited sessions would make it impossible for rural people to serve in the legislature. The committee consensus was to place a 90 legislative day limit on sessions. The committee believes this is a reasonable restriction for 1972. However, the committee in its debates was worried that the legislature may at a later date need more time, so it added a provision that any legislature could increase the length of session for any subsequent legislature. This provision does not lock a 90 legislative day limit in the Constitution. The length of session may grow to meet the future needs of the citizens of Montana. This also meets the argument that a legislature needs a time limit to force it to finish its work, although it has been proven that an annual salary causes a legislature to finish its work as soon as possible.

All Constitutions allow the governor to call the legislature into session, but many also allow the legislature to call itself into session. The committee believes that the legislature needs this power if it is to be equal to the other two branches of government. For this reason, the committee proposal allows a majority of the members to call the legislature into session.

> Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

COMMENTS

Presently the Montana Constitution does not provide for the filling of legislative vacancies. It is left to law. In 1889 the Constitution provided for vacancies to be filled by elections, but the people amended the Constitution in 1931 to allow the county commissioners to fill by appointment vacancies caused by

death. Legislative vacancies caused by other reasons were still filled by election. In 1966 the people repealed the entire section by amendment.

The committee believes that with single-member districts throughout the state, the cost of a special elfction will not be great enough to justify appointment. The committee believes that the citizens of Montana should have the opportunity to elect their representatives to the legislature and that the people should fill legislative vacancies by election rather than by appointment. By adding "unless otherwise provided by law", the proposal provides flexibility for the future, especially in instances where the tern might be nearly expired.

Section 8. IMMUNITY. The members of the legislature shall, in all cases, except felony and breach of the peace, be privileged from arrest during their attendance at the sessions of the legislature, and in going to and returning from the same; and for any speech or debate in the legislature, they shall not be questioned in any other place.

COMMENTS

This section contains the substance of Article V, section 15. The committee feels that the protections provided by this section are still needed. However, it should be noted that Charles Mahoney's statement that he would not allow the proposed Constitution to hi accented without this provision had tremendous influence on the committee's decision.

Section 9. DISQUALIFICATION. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the state of Montana created during such time.

COMMENTS

This proposed section is not as stringent as the present provision contained in Article V, section 7. The committee believes that the present provision has in many cases prevented qualified persons from assuming public office. The proposed section allows a member of the legislature to be appointed to another public office during the term for which he was last elected if that office was not created during that term. The section also permits public officers to become members of the legislature during their continuance in office, but this can be prevented by legislation. In fact, the whole section could be provided for in legislation.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of its members and may by law vest in the courts the trial and determination of contested elections of its

members. It shall chocse its cfficerc frcm among its members; keep a journal; make rules fcr its prcceedings; and may expel cr punish a member with the ccncurrence of two-thirds of all its members.

COMMENTS

Subsection 1 is self-explanatcry. It combines pcrticns cf sections 9, 11, and 12 of Article V cf the present Constitution.

Sectien 10. (2) A majority of the membership cf the legislature ccnstitutfs a qucrum tc do business. A smaller number may adjourn frcm day to day and compel attendance of absent members.

COMMENTS

Subsection 2 is self-snplanatcry. It ccntains the substance of sectien 10, Article V, of the present Ccsstitutien.

Section 10. (3) All prceeedings cf the legislature, including committee meetings, shall be cpen to the public.

COMMENTS

Subsection 3 is self-explanatory. This subsection changes the present Constitutien (section 13, Article V) which allcws the legislature to conduct secret prceedings when it determines secrecy is required. The committee believes that the benefits to be derived from an cpen and visible legislature far outweigh any need for the peoples' representatives to discuss the pecples' needs and problems behind closed dccrs.

Section 10. (4) Adequate public nctice cf committee hearings must be given.

COMMENTS

Subsection 4 is a new sectien. Neither the present Ccnstitution ncr this proposed article require the legislature to ccnduct hearings (see section 22, Article V of the present Ccnrtitution). However, the committee ccncludes that public nctice shculd be required when hearings are conducted. The committee believes that it should be left to the legislature to determine what "adequate public notice" is, taking into consideration the amcunt cf its business and the time it has tc conduct that business.

Section 10. (5) The legislature may establish interim committees which may meet and exercise all legislative authority delegated to them.

COMMENTS

Subsection 5 is a new section. The committee believes that the legislature has the power to establish interim committees under this proposed article, especially under section 6 which makes the legislature a continuous body. This section is included, however, because of the problem past Montana legislatures have had in establishing the legislative council. The committee wishes to include this section to remove any doubt about legislative authority in this area.

Section 11. BILLS. (1) A law shall be passed by bill, and a bill shall not be so altered or amended on its passage through the legislature as to change its original purpose.

COMMENTS

Subsection 1 is self-explanatory. It is a positive statement of Article V, section 19 of the present Constitution.

Section 11. (2) On any vote which advances or changes the status or substance of a bill, resolution, or rule the vote of each member must be recorded.

COMMENTS

Subsection 2 is a new section. This proposed section is much stronger than Article V, section 24 of the present Constitution which requires a recorded vote only on final passage and Article V, section 12 which allows any two legislators to compel a recorded vote. The proposed section makes a recorded vote the rule, not the exception. Under the present Constitution and legislative rules, the legislators are not completely accountable because the votes taken during second reading (the committee of the whole) are not recorded. In theory, they are committee votes. The proposed section eliminates this loophole.

To properly evaluate what a legislator does, his votes should be visible. The committee relieves that this proposed section is 3 large step towards making the Montana legislature an accountable one.

Section 11. (3) A bill shall become law upon a majority vote of the members present.

COMMENTS

Subsection 3 is self-explanatory. It contains a portion of Article V, section 24 of the present Constitution.

Section 11. (4) Each bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain only one subject. A law may be challenged on the grounds of non-compliance with this section within one year after its effective

date but not after that period.

COMMENTS

Subsection 4 is Article V, section 23 of the present Constitution in an amended form. It retains the single subject provision which prevents the attachment of undesirable riders to desirable bills. The section specifies, however, that laws may be challenged under this section within one year after their effective date but not after that period. The statute of limitations permits a law to be declared void for a reasonable period after its enactment; but prohibits it being voided long after it has been published and a matter of general public knowledge.

'The proposed section eliminates the title provision. The committee removed the title provision because many good laws have been declared invalid under it.

> Section 11. (5) General appropriation bills shall contain only appropriations for the ordinary expenses of the legislative, executive ard judicial departments of ths state, interest on the public debt ana for public schools. Ail other appropriations shall be made by separate bills, each containing but one subject.

COMMENTS

Subsection five is self-explanatory. It is Article V, section 33 of the present Constitution with "embrace" charged to "contain".

> Section 11. (6) NO appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private individual, private assaciation, or private corporation not under control of the state.

COMMENTS

Subsection six is self-explanatory. It is essentially the same as Article V, section 35 of the present Constituticr with a few modifications in language. The word "community" was removed from the section at the request of the local government committoe.

> Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature may not pass a special or local act when a yeneral act is, or can be made, applicable.

COMMENTS

This proposed section is a replacement for Article V, section 26 of the present Constituticc. It is simply a restatement of the last sentence of section 26. The committee believes

that this concise statement adequately covers the prohibitions set out at length in the original section. The committee wishes to remove the laundry list of prohibitions because of its tendency to become rapidly obsolete. An added protection would be an equal protection clause in the United States Constitution. In addition the prohibition against special and local laws is well established in Montana and United States jurisprudence.

Section 13. VETO. (1) Every bill passed by the legislature shall be presented to the governor for his approval and shall become law if he neither approves nor vetoes it within 5 days while the legislature is in session or within 25 days after the legislature has adjourned.

COMMENTS

The committee spent several days considering the executive veto and its effect on the legislature. The committee developed an extensive section on the veto and then met with the Executive Committee to resolve the differences between the two committees. The two committees agreed on all but one point--the governor's power to veto appropriations for the legislature.

Subsection one eliminates the pocket veto which the governor has under Article VII, section 12 of the present Constitution. The committee believes that the governor should be required to either take a definite stand on bills or let them become law. The committee believes in a responsible legislature as well as a responsible governor. The proposed article retains the provision that the governor must veto a bill within five days during the session. The proposed article, however, extends the number of days the governor has to consider bills after adjournment from 15 to 25 days.

Section 13. (2) The governor may veto items in appropriation bills.

COMMENTS

Subsection two retains the item veto which the governor has under Article VII, section 1.3 of the present Constitution. However, subsection five partially restricts this power.

Section 13. (3) The governor shall return any vetoed bill with a statement of his objections to the legislature.

COMMENTS

Subsection three is self-explanatory.

Section 13. (4) The legislature, upon receipt of a veto message, shall reconsider the vetoed bill or item.

The legislature may amend a bill to eliminate the objections of the governor, and return the bill to the governor for reconsideration. The legislature may override the veto by an affirmative vote of two-thirds of the members present.

COMMENTS

Subsection four gives the legislature the new power to amend laws to conform with the objections of the governor. If the legislature does not wish to concede to the governor's veto, the proposed article allows the legislature to override his veto by a two-thirds vote of the legislature. The legislature has this power under Article V, section 4C of the present Constitution.

Section 13. (5) The governor shall not have veto power over resolutions, initiative and referendum measures, Constitutional amendments, and appropriations for the legislature.

COMMENTS

The restriction that the governor cannot veto appropriations for the legislature is new. The committee debated this at length and would not concede to the wishes of the Executive Committee on this point. Presently the governor does not have the power to veto initiative or referendum measures under Article V, section 1. However, because of a court decision, the governor does have the power to veto proposed Constitutional amendments. The Committee feels this power should be removed from the governor. For this reason, Constitutional amendments is added to the subsection.

Section 14. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers and such other officers as may be made subject to impeachment by law may be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure and causes for removal by impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the senate and no conviction for impeachment shall be made except by a vote of two-thirds or more of the members of the tribunal hearing the charges.

(4) Such conviction shall only extend to removal from office and disqualification to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

COMMENTS

This proposed section is Article V, sections 16, 17, and 18 in an amended form, The proposed section allows the legislature to establish impeachment procedures. The committee believes that the same body which brings the charges should not hear the case. For this reason, the proposed section allows the legislature to bring the charges and provides that it should select some other body to serve as the tribunal. The proposed section also requires a two-thirds vote to bring the charges and a two-thirds vote to convict. Article V, section 16 requires only a majority vote to bring charges.

The proposed article also allows the legislature to establish other procedures for the removal of officers from public office for cause.

Section 15. DISTRICTING AND APPORTIONMENT. (1) For the purpose of electing members of the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each legislative district shall consist of compact and contiguous territory and be as nearly equal in population as is practicable.

(2) Immediately upon enactment of this section and in the session preceding each census made by the authority of the United States a committee of four citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each designate two commissioners. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the consission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman.

(3) No later than 90 days after appointment of the chairman, or following the official reporting of each federal census, whichever is later in time, the commission shall file a plan with the secretary of state.

(4) Any person aggrieved by the preliminary plan shall have 30 days to file exceptions with the commission in which case the commission should have 30 days after the date the exceptions were filed to prepare and file a revised plan. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(5) Any aggrieved person may file an appeal from the plan directly to the supreme court within 30 days after the filing. If the appellant establishes that the final plan is contrary to law, the supreme court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict in a manner not inconsistent with such order.

(6) When the supreme court has finally decided an appeal taken, the reapportionment plan shall have the force of law and the districts shall be used thereafter in elections to the legislature until the next reapportionment is required.

COMMENTS

The committee believes that large multi-member districts are not conducive to effective representation, are too large in area, and are legally vulnerable. The committee unanimously approves of single member districts for a unicameral legislature,

The committee has considered many different methods of reapportionment. The committee considers reapportionment and redistricting to be a troublesome and time consuming matter for a legislative body because of the legislature's difficulty in being objective. Therefore, the committee proposal provides for the creation of a reapportionment commission which has considerable independence and which will be reasonably free from legislative pressures. The commission initiates a redistricting and reapportionment plan and the legislature and private citizens can make recommendations.

The committee recognized that redistricting and reapportionment has political repurcussions, so the proposed section provides for bipartisanism in the method of selection of the first four members. The fifth member of the commission becomes the key vote and his selection by the other four members is to insure impartiality.

The proposed section allows any citizen to indicate his objections to the plan, and forces the commission to consider these objections. This provision is intended to offer redress to legitimate complaints without the necessity of filing suit against the plan.

The termination of the commission once a valid reapportionment plan is produced is provided for in the last sentence, The life of the commission ends when its work is satisfactorily completed.

Section 16. THE PEOPLE'S ADVOCATE. (1) The majority and minority leaders of the legislature shall together appoint the people's advocate.

(2) The people's advocate shall have the duty to provide information to any person upon request relating to government; and shall have subpoena power and authority to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action. The legislature shall provide for this office and its operation.

COMMENTS

The committee believes that a people's advocate is necessary to bring about a responsible bureaucracy. Today government is so complicated that the average citizen does not know where to go for help or where to place responsibility. A people's advocate can disseminate this kind of information. Armed with the power of subpoena, he can produce action by cutting through the red tape that sometimes characterizes government today.

Several states provide by statute for a weak ombudsman or people's advocate, but in each case the law has been passed only by luck. Once the position is created, as happened in one state, the legislature has tried not to appropriate it funds. For this reason the committee believes that the office should be included in the Constitution. Since executive oversight is a responsibility of the legislature, the committee also believes the section should be included in the legislative article.

The proposed section allows the majority and minority leaders of the legislature to appoint the people's advocate so that responsibility for the appointment is fixed. The proposed section leaves to the legislature the responsibility for providing for the office and its operation. However, the committee recommends to the legislature that the office have the prestige and salary of a district judge. To guarantee his independence, the committee further recommends that the legislature provide the peoples' advocate with a six year term.

MAJORITY PROPOSAL

HE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

'That there be a new Article or the legislature to read as follows:

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power of the stat; is vested in the legislative assembly consistirg of a senate and a house of representatives. The people reserve to themselves the power of initiative and referendum.

Section 2. SIZE. The size of the legislature stall be prescibed by law, but the senate shall consist of not more than 40 nor less than 30 members and the house of not more than 80 nor less than 60 members.

Section 3. ELECTION AND TERMS OF MEMBERS. A member of the house of representatives shall be elected for a term of tuc years and a member of the senate for a term of four years. One-half of the senators shall be elected every two years. The tern of the members shill begin on a date provided by law.

Section 4. QUALIFICATIONS. A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least one year, and a resident of the district frca which he seeks election for at least six months preceding the general election.

Section 5. COMPENSATION. (1) Each member of the legislature shall receive an annual salary and such allowances as may be prescribed by law; provided that no legislature shall tix its own compensation.

(2) A salary commission shall be created by the legislature tc recommend legislative compensation.

Section 6. SESSIONS. The legislature shall be a continuous body for two *year* periodc beginning on the date newly elected members take office. Any business, bill, or resolution perding at adjournment of a session shall carry over with the same status tc any further session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of 90 loyislative days or less. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor, or at the written request of a mdjority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be

filled by special election fcr the unexpired term unless cther-wise prcvided by law.

Sectiон 8. IMMUNITY. The members cf the legislature shall, in a11 cases, except felcny and t-reach cf the peace, be privi-leged frca arrest during their attendance at the sessions of the legislature, and in going to and returning frcm the same; and fcr any speech or debate ir the legislature, they shall nct be ques-ticned ir any other place.

Section 9. DISQUALIFICATICN. No legislatcr shall, during the time fcr which he is elected. be appcinted tc any civil office under the authority cf the state of Montana created during such time.

Sectiсn 10. ORGANIZATION AND PRCCEDURE. (1) Each house shall judge the election and qualificatiсns cf its members and may by law vest in the courts the trial and determination of con-tested elections of its members. Each house shall chocse its officers rrom amcng its members; keep a journal; make rules for its proceadicgs; and may expel cr punish a member with the ccn-currence of twc-thirds of its members.

(2) A majcrity cf each house constitutes a qucrum to do business. A smaller number may adjcurn frcm day to day and ccmpel attendance of absent members.

(3) All proceedings of the legislature, including ccmmittee meetings, shall be cpen tc the public.

(4) Adequate public nctice cf ccmmittee hearings must be given.

(5) The legislature may establish interim committees which may meet and exercise all legislative authcrity delegated tc them.

(6) Neither house shall, without the ccnsent of the other, adjourn or recess fcr more than three days, rcr tc any cther place than that in which the twc hcuses shall be sitting.

(7) The legislature shall adcpt and use jcint rules. One rule shall require that, except on the final sessicn day, each report cf a ccnference committee contain an explanatiсn cf com-mittee recommendations and be duplicated and distributed tc each legislatcr i4 hours before actiсn may be taken cn an affirmative repcrt.

Section 11. BILLS. (1) A law shall be passed by bill, and a bill shall nct be sc altered cr amended cn its passage through the legislature as to change its original purpcse.

(2) Cn any vote which advances or changes the status cr substance of a till, resclutiсn, cr rule the vcte of each member

must be recorded.

(3) A bill shall become law upon a majority vote of the members present in each house.

(4) Each bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain only one subject. A law may be challenged on the grounds of non-compliance with this section within one year after its effective date but not after that period.

(5) General appropriation bills shall contain only appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each containing but one subject.

(6) No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature may not pass a special or local act when a general act is, or can be made, applicable.

Section 13. VETO. (1) Every bill passed by the legislature shall be presented to the governor for his approval and shall become law if he neither approves nor vetoes it within five days while the legislature is in session or within 25 days after the legislature has adjourned.

(2) The governor may veto items in appropriation bills.

(3) The governor shall return any vetoed bill with a statement of his objections to the originating house.

(4) The legislature, upon receipt of a veto message, shall reconsider the vetoed bill or item. The legislature may amend a bill to eliminate the objections of the governor, and return the bill to the governor for reconsideration. The legislature may override the veto by an affirmative vote of two-thirds of the members present in each house.

(5) The governor shall not have veto power over resolutions, initiative and referendum measures, Constitutional amendments, and appropriations for the legislature.

Section 14. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers and such other officers as may be made subject to impeachment by law may be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure and causes for removal by impeachment and may select the senate as tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the house and no conviction for impeachment shall be made except by a vote of two-thirds or more of the members of the tribunal hearing the charges.

(4) Such conviction shall only extend to removal from office and disqualification to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 15. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many house districts as there are representatives of the house and each district shall elect one representative. Each senate district shall be comprised of two representative districts for the election of one senator. Every legislative district shall consist of compact and contiguous territory and be so nearly equal in population as is practicable.

(2) Immediately upon enactment of this section and in the session preceding each census made by the authority of the United states a committee of four citizens, none of whom may be public Officials shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall designate a commissioner. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman.

(3) No later than 90 days after appointment of the chairman, or following the official reporting of each federal census, whichever is later in time, the commission shall file a plan with the secretary of state.

(4) Any person aggrieved by the preliminary plan shall have 30 days to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to prepare and file a revised plan. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(5) Any aggrieved person may file an appeal from the plan directly to the supreme court within 30 days after the filing. If the appellant establishes that the final plan is contrary to law, the supreme court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict in a manner not inconsistent with such order.

(6) When the supreme court has finally decided an appeal takes, the reapportionment plan shall have the force of law and the districts shall be used thereafter in elections to the legislature until the next reapportionment is required.

Section 16. THE PEOPLE'S ADVOCATE. (1) The majority and minority leaders of each house shall together appoint the people's advocate.

(2) The people's advocate shall have the duty to provide information to any person upon request relating to government; and shall have subpoena power and authority to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action. The legislature shall provide for this office and its operation.

/s/ Magnus Aasheim
Chairman

/s/ Jerome T. Icendorf
Vice Chairman

/s/ Grace Bates

/s/ Daphne Bugbee

/s/ George Harper

/s/ Torrey Johnson

/s/ John H. Leuthold

/s/ Richard Nutting

/s/ Mae Nan Robinson

/s/ Miles Romney

Jerome Cate
(original unsigned)

/s/ Robert Kelleher

/s/ Arlyne Reichert

Carman Skari
(original unsigned)

COMMENTS OF MAJORITY BICAMERAI EFCECSAL

Section 1. POWER AND STRUCTURE. The legislative pcwer of the state is vested in the legislative assembly consisting cf a senate and a house cf representatives. The people reserve tc themselves the power cf initiative and referendum.

COMMENTS

The power to mike laws in a representative government is a power delegated tc a specific unit cf gcvernment. section 1 merely states that a body in which the pecple vest that pcwer. The people alsc reserve the pcwer tc remain a part Of the law-making structure ty reserving tc themselves the pcwer tc initiate laws and repeal them.

Respcnsibility must be delegated tc scmecne. An elected grcup cf legislators is the prcper place tc delegate this authcrity. In vesting this power in a legislative bcdy consisting of a House and Senate we feel the checks and balances cf a twc-house body will prcvide the best representaticn and respcnsiveness to and for th? people cf Mcntana prcviding fcr the peoples' right cf referendum and initiative.

Arguments for a unicameral bcdy must be given serious consideraticn; however, the minority feels that althcugh Nebraska apparently has been satisfied with its system, it does not necessarily guarantee that it would alleviate the prcblems in Mcntana.

The subcommittee feels the criticism directed at the last session cf the legislature does not warrant a complete overhaul of the present system. The subccmmittee feels that adjustments made as provided in the prcpcsed legislative Article mill give the needed time and flexibility tc cvercome the shcrtccnirgs which created an impasse in the Fast.

Much ado has teen made abcut the ccnference ccmmittee; the bicameral adherents feel this is prccf in itself there is need for another tody tc take ancther lcck at legislation proposed by a single bcdy; the conference committee is an attempt to ccmprcmise differences; if there are shcrtccmings in the ccnference committee, let's correct those inadequacies and not thrcw cut the whcle system.

The bicameral may not te as respcnsive tc the tide cf public opinicn; however, public cpinicn is oftentimes emcticnal and really, in the long run prefers to mcve slcwly. Democracy, at its best, is a slcw process.

Secticn 2. SIZE. The size cf the legislature shall be prescribed by law, but tbe senate shall consist of nct more than 49 nor less than 3C members and the house of not more than 80 ncr less that 60 members.

COMMENTS

The majority contends prcpcrticnately the representaticn remains the same nc matter what the tctal may be.

A lesser number of 6C-8C in the House and 30-4C in the Senate will make fcr a more dedicated and mcre qualified membership. Responsibility can be mcre easily pin-pointed in the smaller body.

The smaller bcdy will decrease the amcunt of legislaticn introduced and will alsc make a mcre functicnal law-making body.

Tc those whc are economy minded, the smaller body will require a smaller payrcll and make mcre funds available fcr research staff.

The need fcr more physical plant is apparent, the smaller body will require less outlay fcr such expansicn.

The Califcrnia legislature has 4C Senators and 8C Representatives. If that state can functicn with a larger populaticn and greater land area, sc can Mcntana.

Sectic n 3. ELECTION AND TERMS CF MEMEEHS. A member of the house of representatives shall be elected fcr a term of two years and a member cf the senate for a term of four years. Cne-half of the senators shall be elected every two years. The term cf the members shall begin on a date prcvided by law.

COMMENTS

The two year terms cf the representatives makes them responsive tc the will cf the electorate while the staggered terms cf the senators insures continuity of the bcdy. No day certain for convening the legislature is fixed sc that the legislature can exert its wisdom and changes of date in the future can be made without Constitutional changes.

Sectic n 4. QUALIFICATIONS. A legislative candidate shall be a qualified voter. He shall be a resident cf the state for at least one year, and a resident of the district from which he seeks electicn for at least six months preceding the general election.

COMMENTS

The language and explanation of this section are identical to those of section four cf the unicameral article.

Section 5. COMPENSATICN. (1) Each member of the legislature shall receive an annual salary and such

allowances as may be prescribed by law; provided that no legislature shall fix its own compensation.

(2) A salary commission shall be created by the legislature to recommend legislative compensation.

COMMENTS

The language and explanation of this section are identical to those of section five of the unicameral article.

Section 6. SESSIONS. The legislature shall be a continuous body for two year periods beginning on the date newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any further session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of 90 legislative days or less. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor, or at the written request of a majority of the members.

COMMENTS

The language and explanation of this section are identical to those of section six of the unicameral article.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

COMMENTS

The language and explanation of this section are identical to those of section seven of the unicameral article.

Section 8. IMMUNITY. The members of the legislature shall, in all cases, except felony and breach of the peace, be privileged from arrest during their attendance at the sessions of the legislature, and in going to and returning from the same; and for any speech or debate in the legislature, they shall not be questioned in any other place.

COMMENTS

The language and explanation of this section are identical to those of section eight of the unicameral article.

section 5. DISQUALIFICATION. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the state of

Montana created during such time.

COMMENTS

The language and explanation of this section are identical to those of section nine of the unicameral article.

Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members and may by law vest in the courts the trial and determination of contested elections of its members. Each house shall choose its officers from among its members; keep a journal; make rules for its proceedings; and may expel or punish a member with the concurrence of two-thirds of its members.

COMMENTS

Section 10. (1) The language of subsection one is the same as that of section 10, subsection one of the unicameral article except that the words "each house" replace the word "legislature". The subsection combines portions of sections 9, 11, and 12 of Article V of the present Constitution. The rection removes the lieutenant governor from the legislative process and allows the senate to select its own presiding officer.

Section 10. (2) A majority of each house constitutes a quorum to do business. A smaller number may adjourn from day to day and compel attendance of absent members.

COMMENTS

Section 10. (2) The language and explanation of subsection two are the same as those of section 10, subsection two of the unicameral article except that the words "each house" replace the words "the membership of the legislature".

Section 10. (3) All proceedings of the legislature, including committee meetings, shall be open to the public.

COMMENTS

Section 10. (3) The language and explanation of subsection three are the same as those of section 10, subsection three of the unicameral article. The committee did not change the words "the legislature" to the words "each house" because it wants the section to also apply to conference committees between the two houses.

Section 10. (4) Adequate public notice of committee hearings must be given.

COMMENTS

The language and explanation of subsection four are the same as those of section 10, subsection four of the unicameral article.

Section 13. (5) The legislature may establish interim committees which may meet and exercise all legislative authority delegated to them.

COMMENTS

section 10. (5) The language and explanation of subsection five are the same as those of section 10, subsection five of the unicameral article.

Section 10. (6) Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMMENTS

Subsection six is self-explanatory. It is Article V, section 14 of the present Constitution with words "or recess" added. This subsection pertains only to a bicameral legislature so it is not found in the unicameral article.

Section 13. (7) The legislature shall adopt and use joint rules. One rule shall require that, except on the final session day, each report of a conference committee shall contain an explanation of committee recommendations and be duplicated and distributed to each legislator 24 hours before action may be taken on an affirmative report.

COMMENTS

Section 10. (7) Subsection seven is new. It is not included in the unicameral article because it pertains only to the conference committees of a bicameral legislature. The committee includes this subsection because it believes conference committees should act in a responsible manner.

Section 11. BILLS. (1) A law shall be passed by bill, and a bill shall not be so altered or amended on its passage through the legislature as to change its original purpose.

COMMENTS

Section 11. (1) The language and explanation of subsection one are the same as those of section 11, subsection one of the unicameral article.

Section 11. (2) On any vote which advances or changes the status or substance of a bill, resolution, or rule the vote of each member must be recorded.

COMMENTS

Section 11. (2) The language and explanation of subsection two are the same as those of section 11, subsection two of the unicameral article.

section 11. (3) A bill shall become law upon a majority vote of the members present in each house.

COMMENTS

Section 11. (3) The language and explanation of subsection three are the same as those of section 11, subsection three of the unicameral article except the words "in each house" have been added.

Section 11. (4) Each bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain only one subject. A law may be challenged on the grounds of non-compliance with this section within one year after its effective date but not after that period.

COMMENTS

Section 11. (4) The language and explanation of subsection four are the same as those of section 17, subsection four of the unicameral article.

Section 11. (5) General appropriation bills shall contain only appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each containing but one subject.

COMMENTS

Section 11. (5) The language and explanation of suksection five are the same as these of section 11, subsection five of the unicameral article.

Section 11. (6) No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

COMMENTS

Section 11. (t) The language and explanation of subsection six are the same as those of section **11,** subsection six of the unicameral article.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature may not pass a special or local act when a general act is, or can be made, applicable.

COMMENTS

The **language and** explanation of this section are identical to those of section **12** of the unicameral article.

Section 13. VETO. (1) Every bill passed by the legislature shall be presented to the governor for his approval and shall become law if he neither approves nor vetoes it within 5 days while the legislature is in session or within 25 days after the legislature **has ad**journed.

(2) The governor may veto items in appropriation bills.

(3) The governor shall return **any vetoed** bill with a statement of his objections to the originating house.

(4) The legislature, upon receipt of a veto message, **shall** reconsider **the** vetoed bill or item. The legislature may amend a bill to eliminate the objections of the governor. and return the **bill** to the governor for reconsideration. The legislature may override the veto by an affirmative vote of two-thirds of the members present in each house.

(5) The governor shall not **have the** veto power over resolutions, **initiative,** referendum or Constitutional amendments.

COMMENTS

The language and explanation of **this** section are **identical to** those of section **13** of the unicameral article except that the words "in each house" are added.

Section 14. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers and such other officers as may **be made subject to** impeachment by law may be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by **law.**

(2) The legislature shall provide for the **manner,** procedure and causes for removal by impeachment and may

select the senate as tritural.

(3) Impeachment can be brought only be a two-thirds vote of the house and no conviction for impeachment shall be made except by a vote of tuc-thirds or more of the members of the tribunal hearing the charges.

(4) Such conviction shall only extend to removal from office and dicqualificaticc to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

COMMENTS

This proposed section is Article V, secticrs 16, 17, and 18 in an amended form. The proposed section allows the legislature to establish impeachment procedures. The committee believes that the same body which brings the charges should not hear the case. For this reason, the proposed secticn allows the house to bring the charges and allows the legislature to select either the senate or some other body to be the tritural. The proposed section also requires a two-thirds vote to bring the charges and a two-thirds vote to convict. Article V, section 16 requires only a majority vote to bring charges.

The proposed article also allows the legislature to establish other procedures for the removal of officers from public office for cause.

Section 15. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many house districts as there representatives of the house and each district shall elect one representative. Each senate district shall be comprised of two representative districts for the election of one senator. Every legislative district shall consist of compact and contiguous territory and be so nearly equal in population as is practicable.

(2) Immediately upon enactment of this section and in the session preceding each census made by the authority of tha United States a committee of four citizens, none of whoa may be public officials shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall designate a commissioner. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the coamission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairnan.

(3) No later than 90 days after appointment of the

chairman, or following the official reporting of each federal census, whichever is later in time, the commission shall file a plan with the secretary of state.

(4) Any person aggrieved by the preliminary plan shall have 30 days to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to Prepare and file a revised plan. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(5) Any aggrieved person may file an appeal from the plan directly to the supreme court within 30 days after the filing. If the appellant establishes that the final plan is contrary to law, the supreme court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict in a manner not inconsistent with such order.

(6) When the supreme court has finally decided an appeal taken, the reapportionment plan shall have the force of law and the districts shall be used thereafter in elections to the legislature until the next reapportionment is required.

COMMENTS

The committee believes that large multi-member districts are not conducive to effective representation, are too large in area, and are legally vulnerable. However, the committee considered allowing two representatives to run at large within a senatorial district with the provision that the districts could be divided into single-member representative districts as Provided by law. Several members saw merit in the "as provided by law" provision for it affords a degree of flexibility. By keeping the senatorial districts intact, the number of representative districts would be One-half their number otherwise. They believed this would simplify the redistricting process.

However, a majority of the committee dislike this idea because it eliminates one of the major arguments for a bicameral legislature--two houses that represent different constituencies. The committee believes that senators should represent a larger constituency than the members of the house. In addition, the committee believes that the more accurate and accountable representation afforded by single-member districts is worth the additional problems involved in drawing boundary lines.

The rest of the explanation of this section is the sane as that found under section 15 of the unicameral article.

Section 16. THE PEOPLE'S ADVOCATE. (1) The majority and minority leaders of each house shall together

appoint the people's advocate.

(2) The people's advocate shall have the duty to provide information to any person upon request relating to government; and shall have subpoena power and authority to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action. The legislature shall provide for this office and its operation.

COMMENTS

The language and explanation of section 16 are identical to those in section 16 of the unicameral article except that the words "in each house" in subsection one replace the words "of the legislature".

COMMITTEE ON THE LEGISLATURE

MINORITY PROPOSAL 1

BE IT PROPOSED:

That the following be substituted for section 1 entitled "Legislative Power" of the Majority Bicameral Proposal:

> The legislative power of the state shall be vested in a Parliament consisting of one chamber; but the people reserve to themselves the initiative, including the right to amend this Constitution, and referendum powers.

/s/ Robert Lee Kelleher

/s/ Mae Nan Robinson

/s/ Miles Romney

/s/ John H. Leuthold

/s/ Daphne Bugbee

COMMENTS

The Parliamentary Proposal provides that the chief executive would be chosen by the majority Party in the legislature, rather than by a separate ballot.

The members shall serve four year terms, one-half of whom shall be elected every two years. Each candidate must be a resident of the state for one year preceding this election.

The chief executive shall appoint a cabinet out of the legislature (choosing from either the majority or minority as he sees fit).

MINORITY PROPOSAL 2

BE IT PROPOSED:

That the following be substituted for section 2 entitled "Size" of the Majority Bicameral Proposal:

> The size of the legislature shall be prescribed by law, but the senate shall consist of not more than 52 nor less than 45 members and the house of not more than 104 nor less than 90 members.

/s/ Grace Bates

/s/ Miles Romney

/s/ Torrey Johnson

/s/ R. Nutting

COMMENTS

If Montana is to maintain a citizens' legislature - it must have an adequate number of members to insure a broad base of experience and expertise in all of the fields of state government. A small legislature with large staff becomes a bureaucracy where the staff governs the legislature and the people have lost the last vestige of control over their government. Size is a compromise with existing facilities, while it is our feeling that perhaps no limits should be placed on size by the Constitution this is a figure (45-52-90-104) which could be reasonably adjusted to give adequate representation to the sparcely populated rural areas. An elected, informed citizen legislature is much more reflective of the will of the people, than a small, bureaucratic, staff dominated, assembly. True representation should never be sacrificed for the sake of efficiency and expediency.

MINORITY PROPOSAL 3

BE IT PROPOSED:

That the following be substituted for section 4 entitled "Qualifications" of the Majority Bicameral Proposal:

> Legislative candidates must be citizens of the United States and qualified voters of the State of Montana and shall have resided in of Montana for one year and residents of the district for 60 days prior to the primary election.

/s/ Grace Bates

/s/ Miles Romney

/s/ Torrey Johnson

/s/ R. T. Nutting

/s/ John H. Leuthold

COMMENTS

Qualifications are provided for suffrage. Legislators should at least possess the qualifications of the electors who name the legislators. This entails having the same residence qualifications for electors and their representatives. The primary election, being the first positive step in the election process, should be the determinative factor in such residence qualifications as the legislature fixes in its effort to provide the best possible representation for constituects. No exact time should be placed in the Constitution because changing times and mores might necessitate revision of residence as well as other qualifications.

MINORITY PROPCSAL 4

BE II PROPOSED:

That the fcllccinq be substituted fcr sfcticn 5 entitled "Compensaticn" cf the Majority Bicameral Proposal:

> Each member of the legislature shall receive compensaticn for his services and allowances as nay be prescribed by law. Nc legislature may fix its own ccmpensaticn.

/s/ Magnus Aasheim

/s/ Miles Romney

/s/ Icrrey Johnscn

/s/ R. T. Nutting

COMMENTS

The complicatiens cf trying tc specify a particular methcd cf Payment that would meet ccnditicns fox years tc come lead us to believe that the methods must be left up to legislative decision. This provisicn dces not tie the legislature tc any Particular method cf determining amcunts cr methcds cf setting pay but will allow then tc adjust as they deem necessary. A complication arises in PERS if the annual salary is less thar $7200. A daily wage might satisfy those legislators desiring tc come under PERS.

MINORITY PROPOSAL 5

BE IT PROPOSED:

That the following be substituted for section 6 entitled "Sessions" of the Majority Bicameral Proposal:

> Following the general election the legislature shall meet in regular session before March 1 or earlier as provided by law. The regular session shall not exceed 80 legislative days. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any future special session during the biennium.
>
> Special sessions not to exceed 30 days may be convened by the governor or by a majority vote of the membership of each house. Regular and special sessions may be extended by a majority vote of each house.

/s/ Torrey Johnson

/s/ Miles Romney

/s/ Magnus Aasheim

/s/ Grace Bates

/s/ R. T. Nutting

COMMENTS

The minority report allows for a date certain to convene, with an allowance for it to adjust to changing times. It provides for a deadline toward which the legislature can work, and yet, by a majority vote can extend the regular session to adjust for emergencies. The minority report specifies legislative days; thus allowing the legislature to recess without pay.

Since the present 60 day limitation includes Saturdays and Sundays, the legislature presently could actually be working only 44 days. The 80 legislative days is consequently nearly twice as many days as at present. Many legislators are asking for a limit to the days allowed. The committee feels a body should have deadlines to meet.

Setting the number of days is not as restrictive as some would like; however, the committee feels that restriction is necessary in order to keep the legislature open to as many vocations as possible; not to have a restriction will make for a professional type of law making body. The provision giving the body the right to call itself back into session by majority vote is flexible: yet there is the implied understanding they must make an accounting for the extension to their constituents. The

provision is alsc flexible in that the bcdy has the ability to use interim committees which may eliminate the necessity cf the whole group meeting for planning special assignments such as the budget.

The provision a bill may be carried over tc anctber meeting will be a saving of both time and mcney.

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	V, 1
2	v — (repealed)
3	V, 2, 6
4	V, 3
5	V, 5, 8
6	v, 5, 6
7	v, 45 — (repealed)
8	V, 15
9	V, 7
10	v, 9, 10, 11, 12, 13, 14, 24
11	V, 19, 12, 24, 23, 33, 35
12	v, 26
13	v, 40; VII, 12, 13
14	v, 16, 17, 18
15	VI, 1, 2. 3, 30 (deleted) 31 (deleted)
16	New
Not replaced	20, 21, 22, 25, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 41. 42, 43, 44, 46

APPENDIX B

PROPOSAIS CONSIDERED BY COMMITTEE

The following delegate prcpcsals were examined and considered by the Legislative Committee during its deliberations.

	Number of proposal	Chief Sponsor	Subject Matter	Disposition
1.	19	Miles Romney	Change meeting date to Feb. 1	Rejected
2.	22	Arlyne Reichert	Unicameral	Adcpted in part
3.	25	Chet Blaylock	Legislature cverride gcvernor vetces	Re jfcted
4.	63	Fcbert Verailicn	Financial disclcsure	Rejected
5.	101	Rcbert Kelleher	Limit campaign spending	Rejected
6.	123	James Felt	Legislative interim committees	Adcpted
7.	136	Robert Kelleher	Parliament	Rejected
8.	14c	Grace Rates	Bicameral	Adcpted in part
9.	141	Grace Bates	Legislative salaries	Rejected
10.	150	Rcbert Kelleher	Cffice cf Pecple's Advccate	Adcpted in part
11.	158	Miles Romney	Conference cornmittee report rule	Adcpted

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Lawrence Pettit - Montana State University Professor - Bozeman - Legislative article in general.
2. Bob Buzzas - Constitutional Convention intern - Helena - Unicameralism.
3. Carl Rostad - Youth Constitutional Convention - Helena - Unicameralism.
4. Howard Banks - Interested citizen - Helena - Unicameralism.
5. Diane Schladweiler - League of Women Voters - Bozeman - Legislative article in general.
6. Jean Anderson - League of Women Voters - Billings - Legislative article in general.
7. Rosemary Boschert - Housewife - Billings - Bicameralism.
8. Byron Brown - Newspaper editor - Dillon - Bicameralism.
9. John Layne - Citizens Committee on State Legislature - Helena - Legislative article in general.
10. C. W. Cooley - Citizens Committee on State Legislature - Lewistown - Legislative article in general.
11. Joe Renders - Citizens Committee on State Legislature - Great Falls - Legislative article in general.
12. George Mahoney - Student - Helena - Conference committees.
13. Robert Watt - Montana Student Presidents' Association - Helena - Reapportionment and conflict of interest.
14. Francis Mitchell - Montana Common Cause - Helena - Legislative article in general.
15. LeRoy Aspevig- Representative - Rudyard - Bicameralism.
16. Ed Shubat - Cascade County Commissioner - Great Falls - Article V, Section 31.

17. Dean Zinnicker - Representing county commissioners - Great Falls - Article V, Section 31.

18. Milo Dean - Cascade County Commissioner - Great Falls - Article V, Section 31.

19. Carol Mitchell - Montana Common Cause - Helena - Legislative committee meetings open to the public.

20. Roger Barnaby - Montana clerk of District Association - Wibaux - Article V, Section 31.

21. Hardin Todd - Montana Clerk of Courts Association - Billings - Article V, Section 31.

22. David Holliday - General Manager, KBLL - Helena - Unicameralism.

23. Robert Taylor - Professor of Geography - Bozeman - Legislative article in general.

24. Jack Gunderson - Representative - Power - Legislative article in general.

25. Thomas Towe - Representative - Billings - Reapportionment

26. Ellis Waldron - Professor of political science - Missoula - Reapportionment.

27. Miss Randi Hood - Student - Missoula (UM) - Reapportionment.

28. Jack Gunderson - Representative - Power - Reapportionment - Unicameralism.

29. Paul Barlow - Delegate - Thompson Falls - Initiative and referendum (representative from General Government Committee).

30. James E. Nickel - Gynecologist - Helena - Unicameralism.

31. Jack McDonald - Senator - Belt - Unicameralism.

32. Norman Nickman - Doctor of medicine - Missoula - Unicameralism.

33. Don McCammon - High school student - Helena - Unicameralism.

34. Bradley Parrish - Representative - Lewistown - Unicameralism.

35. Chase Patrick - Representative - Helena - Unicameralism.

36. George Darrow - Representative - Billings - Bicameralism.

37. Tom Winsor - Interested citizen - Bozeman - Bicameralism.

38. Don Scanlin - Delegate - Fillings - Bicameralism.

39. Lloyd Lockrem - Representative - Fillings - Bicameralism.

40. Charles Mahoney - Delegate - Clancy - Bicameralism.

41. Kenneth Clark - United Transportation Union Lobbyist - Miles City - Lobbying.

42. Fred Martin - Delegate - Livingston - Recall and legislative article in general.

43. Earl. Moritz - Senator - Lewistown - Legislative article in general.

44. Gordon McOmber - Senator - Fairfield - Legislative article in general.

45. Dave Manning - Senator - Hysham - Legislative article in general.

46. Glen Rugg - Senator - Plevna - Legislative article in general.

47. Carroll Graham - Senator - Lodge Grass - Legislative article in general.

48. Stan Stephens - Senator - Havre - Legislative article in general.

49. J. 0. Asbjornson - Representative - Winifred - Legislative article in general.

50. Michael Greeley - Representative - Great Falls - Legislative article in General.

51. Tom Harrison - Representative - Helena - 'Legislative article in general.

52. Oscar Kvaalen - Representative - Lambert - Legislative article in general.

53. J. 3. Lynch - Representative - Butte - Legislative article in general.

54. Chet Blaylock - Delegate - Laurel - Proposal #25.

55. Bob Vermillion - Delegate - Shelby - Proposal #63.

56. Bill Kcerner - Interested citizen - Hamilton - Legis-

lative article in general.

57. Mrs. Irving Boettger - Interested citizen - East Helena - Unicameralism, single-member districts.

58. Miles Romney - Delegate - Hamilton - Proposal #19.

59. Grady Walton - Interested citizen - Helena - Unicameralism.

60. Roy Hayworth - University student - Missoula - Residency requirements.

61. Archii Wilson - Delegate - Hysham - Executive veto.

62. Larry Fasbender - Representative - Fort Shaw - Unicameralism.

63. William Groff - Senator - Victor - Bicameralism.

64. Robert Kelleher - Delegate - Billings - Proposal #136.

65. William Groff - Senator - Pictor - Rough draft proposal.

66. Harold Gerke - Representative - Billings - Rough draft proposal.

67. Duane Welker - Interested citizen - Hamilton - Rough draft proposal.

68. Ray Gulick - Interested citizen - Joplin - Rough draft proposal.

69. Don Garrity - Attorney - Helena - Parliamentary system.

70. Francis Mitchell - Interested citizen - Helena - Article 35.

71. Geoffrey Brazier - Delegate - Helena - Delegate Proposal #110.

72. Clint Grimes - Interested citizen - Helena - Delegate Proposal #150 (Ombudsman).

73. Steve Koldiron - Interested citizen - Helena - Delegate Proposal #150 (Ombudsman).

74. Tom Snyder - Interested citizen - Corvallis - Article V, Section 35.

75. John Ray - Interested citizen - Hamilton - Article V, Section 35.

2/10/72

ROLL CALL VOTE — LEGISLATIVE COMMITTEE

	Minority Report 6-months in Districts	Minority Report	Minority Report	Minority Report	Minority Report			
	Date: No: Dist. Sect. 4	Date: No: Sec.4 Cates Pro	Date: No: Line 1 Sec. 5	Date: No: Sec. 5 Line 2	Date: No: Sec. 6 Line 2	Date: No:	Date: No:	Date: No:
Aasheim	Y	Y	N	N	N			
Loendorf	Y	N	Y	Y	Y			
Bates	Y	N	Y	Y	N			
Bugbee	N	Y	Y	Y	Y			
Cate	Y	Y	Y	Y	Y			
Harper	N	Y	Y	Y	Y			
Johnson	Y	N	N	N	N			
Kelleher	Y	Y	Y	Y	Y			
Leuthold	Y	Y	Y	Y	N			
Nutting	Y	Y	N	N	N			
Reichert	N	Y	Y	Y	Y			
Robinson	N	Y	Y	Y	Y			
Romney	Y	N	N	N	Y			
Skari	Y	Y	Y	Y	Y			
Y	10	10	10	10	9			
N	4	4	4	4	5			
AB	0	0	0	0	0			

2/10/72

ROLL CALL VOTE --- LEGISLATIVE COMMITTEE

	Date: No: Sec. 10	Date: No: Sub. 7 Sec. 10	Date: No: Sub. 1 Sec. 11	Date: No: Sec. 11 Sub. 2	Date: No: Sec. 11 Sub. 3	Date: No: Sec. 11 Sub. 4	Date: No: Sec. 11 Sub. 5	Date: No:
Aasheim	Y	N	Y	N	Y	Y	Y	
Loendorf	AB	AB	AB	AB	AB	AB	AB	
Bates	AB	AB	AB	Y	Y	Y	Y	
Bugbee	AB	AB	AB	Y	Y	AB	AB	
Cate	AB	AB	AB	Y	Y	Y	Y	
Harper	Y	Y	Y	Y	Y	Y	Y	
Johnson	Y	Y	Y	Y	Y	Y	Y	
Kelleher	AB	AB	AB	Y	Y	Y	Y	
Leuthold	Y	Y	Y	Y	Y	Y	Y	
Nutting	Y	N	Y	N	Y	Y	Y	
Reichert	Y	Y	Y	Y	Y	Y	Y	
Robinson	Y	Y	Y	Y	Y	Y	Y	
Romney	AB	AB	AB	Y	Y	Y	Y	
Skari	Y	Y	Y	Y	Y	Y	Y	
Y	8	6	8	11	13	12	12	
N	6	2	0	2	1	2	2	
AB	0	6	6	1	0	0	0	

ROLL CALL VOTE --- LEGISLATIVE COMMITTEE

2/9/72

	Date: No: *DP 101	Date: No: *DP 19	Date: No: Sec. 1	Date: No: UM Sec. 2	Date: No: BICAM. Sec. 2 Minority Report	Date: No: UMC Sec. 3 Minority Report	Date: No: Bicm. Sec. 3	Date: No:
Aasheim	N	Y	Y	Y	Y	Y	Y	
Loerdorf	N	Y	Y	Y	Y	Y	Y	
Bates	N	Y	Y	N	N	N	Y	
Bugbee	N	Y	Y	Y	Y	Y	Y	
Cate	N	Y	Y	Y	Y	Y	Y	
Harper	N	Y	Y	Y	Y	N	Y	
Johnson	AB	AB	Y	Y	N	N	Y	
Kelleher	Y	N	Y	Y	Y	N	Y	
Leuthold	N	Y	Y	Y	Y	Y	Y	
Reichert	N	Y	Y	Y	Y	Y	Y	
Robinson	N	AB	Y	Y	Y	Y	Y	
Romney	N	N	Y	N	N	N	Y	
Skari	N	Y	Y	Y	Y	Y	Y	
Y	1	10	14	12	10	9	14	
N	12	2	0	2	4	5	0	
AB	1	2	0	0	0	0	0	

*Delegate Proposal

Minority Report

Minority Report

2/10/72

ROLL CALL VOTE --- LEGISLATIVE COMMITTEE

	Date: No: Sec. 9 Sub. 1	Date: No: Sec. 9 Sub. 2	Date: No: Sec. 9 Sub. 3	Date: No: Sec. 10 Sub. 1	Date: No: Sec. 10 Sub. 2	Date: No: Sec. 10 Sub. 3	Date: No: Sec. 10 Sub. 4	Date: No: Sec. 10 Sub. 5
Aasheim	N	N	Y	Y	Y	N	N	Y
Loendorf	AB	AB	AB	AB	AB	AB	AB	AB
Bates	N	AB	AB	AB	AB	AB	AB	AB
Bugbee	Y	Y	Y	Y	N	Y	Y	Y
Cate	N	Y	Y	AB	AB	AB	AB	AB
Harper	N	Y	Y	Y	Y	Y	Y	Y
Johnson	AB	N	Y	Y	Y	N	N	Y
Kelleher	Y	AB	AB	AB	AB	AB	AB	AB
Leuthold	N	N	Y	Y	Y	Y	Y	Y
Nutting	N	N	N	Y	Y	Y	N	Y
Reichert	Y	AB	AB	Y	AB	Y	Y	Y
Robinson	Y	Y	Y	Y	Y	Y	Y	Y
Romney	AB	AB	AB	AB	AB	AB	AB	AB
Skari	N	N	Y	Y	Y	Y	Y	Y
Y	4	4	8	8	7	7	6	9
N	7	5	1	5	1	2	3	0
AB	3	5	5	1	6	5	5	5

2/11/72

ROLL CALL VOTE --- LEGISLATIVE COMMITTEE

	Date: No: Sec. 12	Date: No: Bicam. Sec. 14	Date: No: Unic. Sec. 14	Date: No: Sub.6 Amed. Sec. 13	Date: No: Sub.1,2,3,4, & 6 Sec. 13	Date: No: Sub. 5 Sec. 13	Date: No: To Strike Sec. 35	Date: No: Keep out Comm. & absol. Sec. 35
Aasheim	Y	Y	Y	N	Y	Y	N	AB
Loendorf	Y	Y	Y	N	Y	Y	N	N
Bates	Y	Y	Y	N	Y	Y	N	Y
Bugbee	Y	Y	Y	N	Y	Y	N	N
Cate	Y	Y	Y	N	AB	AB	N	N
Harper	Y	Y	Y	N	Y	Y	N	N
Johnson	Y	Y	Y	N	Y	Y	N	Y
Kelleher	AB	AB	AB	Y	AB	AB	Y	Y
Leuthold	Y	Y	Y	N	Y	Y	N	Y
Nutting	Y	Y	Y	N	Y	Y	N	Y
Reichert	Y	Y	Y	N	Y	N	N	N
Robinson	Y	Y	Y	Y	Y	N	N	N
Romney	Y	Y	Y	Y	Y	Y	N	Y
Skari	AB	AB	AB	N	Y	Y	N	Y
Y	12	12	12	3	12	10	1	7
N	0	0	0	11	0	2	13	6
AB	2	2	2	0	2	2	0	1

2/11/72

ROLL CALL VOTE --- LEGISLATIVE COMMITTEE

	Date: Cate No: Amdmt. Sec. 35	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
Aasheim	AB							
Loendorf	Y							
Bates	Y							
Bugbee	Y							
Cate	Y							
Harper	Y							
Johnson	N							
Kelleher	Y							
Leuthold	Y							
Nutting	N							
Reichert	Y							
Robinson	Y							
Romney	Y							
Skari	Y							
Y	11							
N	2							
AB	1							

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

EXECUTIVE COMMITTEE PROPOSAL

Date Reported: February 17, 1972

/s/ Thomas F. Joyce, Chairman

/s/ J. C. Garlington, Vice Chairman

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL 432

TEXT OF MAJORITY PROPOSAL 435

COMMENTS ON MAJORITY PROPOSAL

Section 1. Officers 441

Section 2. Election 444

Section 3. Qualifications 445

Section 4. Duties 445

Section 5. Compensation 447

Section 6. Vacancy in Office 447

Section 7. 23 Departments 448

Section 8. Appointing Power 449

Section 9. Budget and Messages 450

Section 1.2. Veto Power 450

Section 11. Special Sessions 452

Section 12. Pardons 452

Section 13. Militia 453

Section 14. Succession 454

TEXT OF MINORITY PROPOSAL 457

COMMENTS ON MINORITY PROPOSAL

Section 1. Officers 462

Section 2. Election 463

Section 3. Qualifications 464

Section 4. Duties 465

Section 6. Vacancy in office 465

Section 12. Pardons 466

APPENDIX

Cross reference of present and proposed Article 467

Delegate proposals considered by committee 468

Witnesses heard by committee 470

Roll Calls 474

Date: February 16, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Executive Committee

Ladies and Gentlemen:

The Executive Committee transmits herewith a proposed new executive article replacing Articles II, VII and XIV of the present Constitution.

In summary it repeals Article II relating to new abandoned military posts entirely, inserts the militia provision of Article XIV into the new executive article, and completely rewrites the executive article. The changes and reasons therefor are set forth in the comments after each new section.

The new article makes these changes.

(1) It eliminates from the Constitution, but does not abolish, the stats treasurer, state auditor, state examiner, board of pardons, board of examiners and board of prison commissioners;

(2) The lieutenant governor and governor must run as a team in the primary and general elections.

(3) The office of lieutenant governor is permitted to be a full time position.

(4) It provides the superintendent of public instruction may be made an appointive office by the legislature in the future.

(5) The salaries of elected officials may be increased but not decreased during tht term.

(6) The executive budget is given Cocstitutional recogni-

tion.

(7) The governor's veto power is modified by permitting the amendatory veto and the "pocket" veto is eliminated.

(8) The lieutenant governor will not assume the powers of governor until he is absent from the state for 45 days, unless the goerncr authorizes him in writing to so act in the first 45 day period.

(9) It establishes a comprehensive disability procedure to determine the disability of the governor.

(10) It clarifies the filling of vacancies of elected offices.

The committee is grateful to all the elected state officials, past and present, the administrative department heads, the delegates who submitted proposals and all who appeared before the committee. Special thanks go to Miss Karen Beck, our research analyst, and John Crawford, the college intern assigned to our committee and to our efficient and conscientious secretary, Mrs. Barbara Lester.

By signing the majority proposal the committee members do not necessarily endorse each and every provision therein contained.

We trust that we have submitted an improved executive article for the consideration of the delegates and will graciously accept their final decision in the premises.

/s/ Thomas F. Joyce
Chairman

/s/ J. C. Garlington
Vice Chairman

MAJORITY REPORT

BE IT RESOLVED BY THE EXECUTIVE COMMITTEE:

That there be a new Article on the Executive to read as follows:

ARTICLE

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction.

(2) The superintendent of public instruction shall be the chief educational officer of the state, and shall have such qualifications, duties, salary, term of office and manner of election or selection as is provided by law.

(3) Except as herein provided for the superintendent of public instruction, each shall hold his office for a term of four years, commencing on the first Monday of January next succeeding his election and until a successor is elected and qualified.

(4) Each shall reside at the seat of government, where be shall keep the public records of his office.

(5) Each shall perform such duties as are prescribed in this Constitution, and by law.

Section 2.. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general and the superintendent of public instruction, if his election is provided by law, shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or otherwise comply with nomination procedures, so that the offices of governor and lieutenant governor shall be voted upon together in primary and general elections, as provided by lam.

Section 3, QUALIFICATIONS. (1) Any person shall be eligible to the office of governor, lieutefaat governor or secretary of state if he or she is a citizen of the United States, a resident of Montana for two years next preceding the election, and is otherwise a qualified voter.

(2) In addition to the foregoing qualifications, any person

tc be eligible tc the office cf attcrney general shall be an attcrney in good standing admitted to practice law in the state of Montana, and have engaged in the active practice therecf fcr five years before electicn.

Section 4. DUTIES. (1) The executive pcwer cf the state is vested in the gcvernor, who shall see that the laws are faithfully executed. He shall have such cther duties as are herein prcvided, and as prcvided by law.

(2) The lieutenant gcvernor shall perfcrm the duties delegated tc him ty the governcr, acd those prcvided fcr hin by law, hut no power specifically vested ir the gcvernor hy this Constituticc may he delegated tc the lieutenant gcverncr in this manner.

(3) The secretary of state shall maintain the cfficial records cf the acts cf the legislative assembly, and cf the executive department, as prcvided by lab. He shall keep the great seal of the state cf Montana, and perfcrm any other duties prcvided by law.

(4) The attcrney general shall be the legal cfficfr cf the state, with the duties and powers prcvided by law.

Section 5. COMPENSATICN. (1) Cfficers cf the executive departmentshall receive salaries prcvided by law, which nay be increased but nct decreased during the term cf cffice.

(2) N c : elected officer cf theexecutive department may during:is term hold any cther public cffice, cr receive ccmpensatien for his services frcm any governmental agency. He may be a candidate fcr any public office during his term.

Section 6. VACANCY IN CFFICE. (1) If the cfficf cf lieutenant governor becomes vacant by his succession to the office of governcr, or by his death, resignation or disability as determined by law, the governcr shall appcint a qualified perscn to hold and serve in that cffice fcr the remainder cf its tern.

(2) If the office of secretary cf state cr attcrney general becomes vacant by death, resignaticn cr disability as determined by law, the governor shall appcint a qualified perscn tc hcld and serve in that office until the next general election, and until his successor is elected and qualified, The perscn elected to fill such vacancy shall hcld the cffice until the expiratien cf the term for which the perscn he succeeds was elected.

(3) If the cffice cf superintendent cf public icstructicn becomes vacant, it shall be filled ir the manner atove provided if it is at the time an elective office; ctherwise it shall be filled as provided by law.

Section 7. 2G DEPARTMENTS. All executive and administrative

offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of state, attorney general and superintendent of public instruction shall be allocated by law among and within not more than 20 departments. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Section 8. APPOINTING POWER. (1) The principal departments provided for in section 7 shall be under the supervision of the governor, and, except as otherwise provided herein or by law, shall be headed by a single executive appointed by the governor and subject to confirmation by the legislature. Such executives shall hold office until the end of the term of the governor, unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the legislature all officers provided for by this Constitution or by law and whose appointment or election or term is not otherwise provided for. They shall hold office until the end of the term of the governor unless sooner removed by the governor.

(3) If a vacancy in any such office occurs during a recess of the legislature, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the legislature, when the office shall be filled by appointment and confirmation.

(4) No person not confirmed by the legislature for an office shall, except at its request, be renominated again for that office at the same session, or be appointed to that office during a recess of the legislature.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) All bills passed by the legislature; except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor who shall sign or veto every bill within five days after its delivery to him if the legislature is in session, or within 25 days if the legislature is adjourned. The governor shall return vetoed bills to the

legislature with a statement cf his otjecticns.

(2) The governor may return any bill tc the legislature with his cbjecticns and with a reccmmendaticn fcr an amendment or amendments to it. If the legislature passes the bill in accordance with the governor's reccmmendation, it shall again return the bill to the governor for his reconsideraticn. The governor shall nct return a bill a seccnd time, fcr amendment.

(3) Upcn receipt of a vetc message, the legislature shall reconsider passage cf the vetoed bill. A tuc-thirds vote of the members present cverrides the vetc, and the bill shall become law.

(4) If the legislature is cct ir serricn when the governor vetces a bill, he shall return the bill with his objections to the legislature in a manner authorized ty law. The legislature, as prcvided in secticn 11, nay reccnvene itself to reconsider any bills sc vetoed by the governcr.

(5) The governor may vetc items in apprcpriation bills, ard in such instances the procedure shall be the same as upon v&to of an entire bill.

Section 11. SPECIAL SESSICN. Whenever the governor ccrsiders it in the public interest, he may ccnvene the legislature, either house, or the two houses in joint session. At the written request of two-thirds of the members of each house, the presiding officers cf both houses shall convene the legislature in special session.

Section 12. PARDONS. The governor shall have the pcwer to grant reprieves, ccmmutaticns and pardcns after ccnvicticn, reinstate citizenship and may suspend and remit fines and forfeitures subject to procedures prescribed by law.

Secticn 13. MILITIA. (1) The governor shall be commander-in-chief of the militia forces cf the state, except when these forces are in the actual service of the United States, and shall have power to call cut any part of the whole of said fcrces tc aid in the execution of the laws, tc suppress insurrection or to repel invasicn.

(2) The militia fcrces shall consist of all able-bcdied citizens of the state except such perscns as are exempted ty law.

Secticn 14. SUCCESSION. (1) If the gcvernor-elect is disqualified, or dies, the lieutenant gcverncr-elect upcn qualifying for the office shall beccme governcr fcr the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect qualifies for office, or until the cffice becomes vacant.

(2) The lieutenant governor shall serve as acting governor when requested in writing by the governor to do so. He shall serve as acting governor during the absence from the state of the governor for any period in excess of 45 days.

(3) He shall also serve as acting governor when the governor is disabled and by reason of that disability is unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor in such event shall continue to serve as acting governor until the governor resumes the duties of his office.

(4) Whenever the lieutenant governor and attorney general transmit to the presiding officer of the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall enter upon and discharge the same as acting governor; thereafter, when the governor transmits to the presiding officer of the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to discharge the powers and duties of the office as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term.

(7) Additional succession to such vacancies shall be as provided by law.

(8) When there is a vacancy in the office of governor, the successor shall have the title, powers, duties and emoluments of that office and shall be the governor. When the successor serves as acting governor for a temporary period, he shall have only the powers and duties of the office for the period during which he serves as such.

/s/ Thomas F. Joyce
Chairman

/s/ J. C. Garlington
Vice Chairman

/s/ Harold Arbanas

/s/ Fred J. Martin

/s/ Richard B. Roeder

/s/ Margaret S. Warden

COMMENTS ON MAJORITY PROPOSAL

Section 1. OFFICERS. (1) The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction.

(2) The superintendent of public instruction shall be the chief educational officer of the state, and shall have such qualifications, duties, salary, term of office and manner of election or selection as is provided by law.

(3) Except as herein provided for the superintendent of public instruction, each shall hold his office for a term of four years, commencing on the first Monday of January next succeeding his election and until a successor is elected and qualified.

(4) Each shall reside at the seat of government, where he shall keep the public records of his office.

(5) Each shall perform such duties as are prescribed in this Constitution, and by law.

COMMENTS

The first sentence of section 1 reveals the decision of the majority of the executive committee as to the length of the ballot--it is neither "short" nor "long". By a minority report, the "long" ballot is favored, and by an amendment to be presented on the floor the "short" ballot will be proposed. Thus, the convention will consider in all its aspects the structure of the state executive department.

The majority decision is to remove from the Constitution the offices of state treasurer and state auditor, and to place in optional elective or appointive status the superintendent of public instruction. In addition, the committee is unanimous in removing from the Constitution the office of state examiner (section 8). In reaching this decision, the committee emphasizes to the convention that removal from the Corrtitution does not automatically delete or terminate the offices affected. They remain statutory offices until changed by the legislature, and all the arguments advanced to this committee for retaining them as elective offices are equally applicable to the legislature.

The principal reason for the committee decision is that the functions of the state treasurer, state auditor and state examiner are changing materially under the reorganization plan, and we believe that their future position should therefore not be

"frozen" in their present form. Similar considerations apply to the superintendent of public instruction, as will he explained later.

Having stated the essence of our decision on these subjects, we will describe briefly our procedures in making them. We interviewed practically all of the principal officers of the executive department so as to learn how their functions have been affected by reorganization under the amendment approved by the voters in 1970, and how their furctions may serve as forms of check and balance on other functions. From this information, analyzed and compared with the modern trends in other states where applicable to conditions in Montana, WE concluded with respect to the several offices:

Governor - the people having decisively voted to implement a well-ordered executive department of government in place of the 103 or more boards, bureaus, commissions, etc., it is clear that a strong and responsive chief executive is desired. WE have clarified his powers and duties accordingly.

Lieutenant Governor - consistent with the above, we have authorized an effective, full time lieutenant governor to assist the governor, and to become a trained and responsible successor to the governor should that become necessary. It is clear that the governor's increasing duties and responsibilities require more adequate staff support, and the lieutenant governor's position is an appropriate part of it. To obtain the maximum of effective cooperation between these two officers, we have provided that they shall be nominated and elected together.

Attorney General - he is the chief legal officer of the state. He prosecutes or defends all litigation in which the state is a party. He is legal counsel to all state officers and agencies. He supervises many of the functions of county attorneys, and through them the county officers and agencies. In addition to this, he is legal adviser to the governor. and here there arises divergence of opinion as to whether he should be appointed by the governor (so as to be fully compatible with his client, so to speak) or be elected by the people (so as to be primarily responsible to thee).

The majority of our committee believes he should be in independent status as an elected officer, charged with enforcement of all the law for all the people. Since the governor already has much authority, through the appointing power particularly, we favor having an independent attorney general free to inquire into the faithful performance of duty by any state official or employee. We believe the governor should have the right and opportunity to choose his own legal counsel, but that such counsel should be a part of his official staff rather than the attorney general.

Secretary of State - this office has a long historical and

traditional significance, and we thick there is valid reason to retain it for practical purposes as well as tradition. As official custodian of the state's most important legislative and executive documents, we relieve he also should have the clear safeguard of independent election with Constitutional status. His principal functions are ministerial, not policy forming, and by removing certain Constitutional boards on which he has served, there is little basis for fear that his position might in the future hamper the executive function of the governor.

State Treasurer -

State Auditor - these offices are primarily charged rith duties in the financial area. With the advent of reorganization, the entire accounting and bookkeeping process of all state and local agencies is being converted into a uniform pattern. Also, the legislature has developed the process of legislative post-audit, and there is a growing pre-audit system. The committee believes it unwise to retain ir Constitutional status tuo offices whose principal service is in this very fluctuating field, and that efficient auditing and record keeping should be allowed to develop flexibly through legislation as tectnolcgy and experience permit.

Superintendent of Public Instructicc - this office is a part of the executive department, and yet it affects solely the educational function, as established by Article XI. We fully explored the duties of this office, and its rflaticn to the state board of education, in order to determine whether it should be included, excluded or modified. It performs practically cc function exclusively referable to the university system, and the board performs practically no function referable to elementary and secondary education. Thus, the board is, in net effect, a lay board charged with complex responsibilities in a professional field, and is without full-time professional counsel and assistance. There is much public support for obtaining by appointment instead of election a professional educator to fill the gap which exists by virtue of the present Constitution. There is also support for retaining the present status of the superintendent's office. There is also clear need to resolve the doubt and ambiguity which currently exist as to the respective duties and authorities of the board and the superintendent, now resolved simply by mutual forbearance. There is clear prophecy of vast change in the educational field, due to the Constitutional problems as to property tax equality now being litigated in California, Texas and Minnesota. Therefore, the committee believes the whole structure of Montana's $100,000,000 per year educational system should not remain frozen in any form in the Corstitution, and proposes to handle the superintendent's office by an optional method which allows the legislature to make the office elective or appointive as in its current judgment it finds most advantageous.

Board of Examiners - composed of the governor, attorney general and secretary of state, this board once was very powaarful.

It is no longer so, meeting once a month for a few minutes to consider unliquidated claims (if any) against the state. This change has occurred through the reorganization. Being no longer useful, the committee believes it should be deleted from the Constitution, to be revived by legislation if necessity for it should again arise.

State Examiner - most Constitutions do not create an office of state examiner, but Montana did in 1889. While he once examined the accounts of some state offices, he has become the examiner only of county and local agencies now. The legislative audit has greatly changed his function, and many more changes are anticipated. It has not yet been determined how Montana's ultimate modernized accounting and record system, on a uniform basis, will be audited, as this must await its completion. In any event, this is a statutory matter which should be free for adjustment by the legislature as changing conditions may require. The state examiner himself concurs in this view.

> Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general and the superintendent of public instruction, if his election is provided by law, shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law.
>
> (2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections or otherwise comply with nomination procedures, so that the offices of governor and lieutenant governor shall be voted upon together in primary and general elections, as provided by law.

COMMENTS

The major change in this section is the provision requiring the candidates for governor and lieutenant governor to run as a team at the time of filing. This is similar to the federal pattern.

The committee's intent was to make the lieutenant governor's duties full-time with the legislature providing adequate compensation commensurate with the responsibilities to be delegated by the governor and the legislature. These would provide the lieutenant governor with an insight to governmental responsibilities which would be of great value in the event he would have to assume the governorship. The committee was aware and is in agreement with the legislative department committee's decision eliminating the Constitutional requirement that the lieutenant governor must preside over the senate. More meaningful duties thus can be assigned to this office.

Other Elective Officials

The article provides for the election of the secretary of state and the attorney general, but makes optional with the legislature the election or selection of the state superintendent of public instruction.

> Section 3. QUALIFICATIONS. (1) Any person shall be eligible to the office of governor, lieutenant governor or secretary of state if he or she is a citizen of the United States, a resident of Montana for two years next preceding the election, and is otherwise a qualified voter.
>
> (2) In addition to the foregoing qualifications, any person to be eligible to the office of attorney general shall be an attorney in good standing admitted to practice law in the state of Montana, and have engaged in the active practice thereof for five years before election.

COMMENTS

The major deletion in article 3 was removal of the age requirement for all candidates except the attorney general. This age deletion was discussed in detail, but the majority of the committee concluded the people, the basic power source for effective government, could be relied upon to make the proper judgment as to candidates' qualifications and abilities to cope with the responsibilities elective officials acquire with election. The majority of the committee concluded the newly franchised young voters would vote just as wisely and cautiously as do their elders.

The exception for the attorney general was to conform with the proposed judicial article requiring five years of active practice before election, which would require a candidate to be at least 26 years of age.

> Section 4. DUTIES. (1) The executive power of the state is vested in the governor, who shall see that the laws are faithfully executed. He shall have such other duties as are herein provided, and as provided by law.
>
> (2) The lieutenant governor shall perform the duties delegated to him by the governor, and those provided for him by law, but no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner.
>
> (3) The secretary of state shall maintain the official records of the acts of the legislative assembly,

and of the executive department, as provided by law. He shall keep the great seal of the state of Montana, and perform any other duties provided by law.

(4) The attorney general shall be the legal officer of the state, with the duties and powers provided by law.

COMMENTS

This section retains Article VII, section 5 of the present Constitution with the deletion of the word "supreme" as superfluous. It acknowledges the governor is the chief executive and is to be in control of the executive branch of the government. Of course, he is limited in this connection by laws passed by the legislature, and is further limited by this section from direct responsibility of performing the duties assigned the secretary of state and attorney general, yet he is charged with duty to see that these officials perform the duties assigned to them by law.

In specifying dual duties for the lieutenant governor, namely those delegated to him by the governor as well as those that may be delegated to him by law, this section makes it Constitutionally permissible for the legislature to make this a full time position. However, neither the governor nor the legislature can delegate to him Constitutional duties assigned to the governor, such as, the veto power, the appointive power, the budgetary power, the pardoning power and others specifically set forth in the executive article. To assume any of these powers the lieutenant governor must become acting governor as hereinafter provided.

It is important to note that this section deletes the present Constitutional authority of the lieutenant governor to assume the powers of the governor every time the governor leaves the state.

The secretary of state is made the official keeper of the great seal and the official records. He can also continue to be the supervisor of elections as he may perform duties prescribed by law. By undertaking to set forth specific duties it is hoped that future assignment of duties by law to this office will be confined to the same general area and that the secretary of state will not be made a policy maker. However, we recognize the power of the legislature is plenary.

Similarly, this section recognizes that the principal duties of the attorney general will be to act as the legal officer of the state. The committee considered, but rejected, including his recently acquired statutory duties with respect to law enforcement and public safety. While the committee believes it is proper

he shculd have such duties they shculd nct be Constituticnally required. Again it is hoped this office will nct be made a policy maker.

Sectien 5. COMPENSATION. (1) Cfficers cf the executive department shall receive salaries provided by law, which may be increased but not decreased during the term of office.

(2) NO elected cfficer cf the executive department may during his term hold any cther public cffice, cr receive compecsaticn for his services frca any gcvernmental agency. He may be a candidate for any public cffice during his term.

COMMENTS

This section changes the present Ccnstitutional provision that permits decreases but bars increases in salary during the term. The reverse is now permitted. The present Ccnstitutional prohibition regarding increases in salary have nade it impcssible to realistically adjust for inflaticnary pressures in the econcmy, and the risk that the legislature k-ill be over generous is not warranted by our histcrp.

The committee considered delegate prcpcsal 39 creating a wage board, but thought it tc be a legislative matter. The changes made in this section shculd give the legislature the courage to set just and fair salaries for elected officials.

The second paragraph makes clear an elected cfficial cannot hcld two public offices at the same time, ncr can he be cn twc government payrclls nor receive compensaticn frcm the federal and state governments for performing governmental duties. It alsc clears any ambiguity that arises frcm the last sentence cf the present Article VII, section 4, and makes it clear the cfficers of the executive department can seek ancther office without resignirg. upon election, cf course, he must resign or decline one or the other.

Section 6. VACANCY IN CFFICE. (1) If the cffice cf lieutenant gcvernct tecemes vacant his succession tc the office of governor, or by his death, resignaticn cr disability as determined by law, the governor shall appcint a qualified person to hold and serve in that office for the remainder of its term.

(2) If the office of secretary cf state or attorney general becomes vacant by death, rfsignaticn cr disability as determined by law, the gcvernor shall appoint a qualified persen to hold and serve in that office until the next general electicn, and until his

successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected.

(3) If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner above provided if it is at that time an elective office; otherwise it shall be filled as provided by law.

COMMENTS

This section presupposes the governor and lieutenant governor will run as a team. It was therefore thought desirable to allow the governor to appoint his own teammate for the remainder of the term when a vacancy exists in the office of lieutenant governor. However, with the other officers we followed the established pattern of requiring election if the vacancy occurs in the first half of the term.

The appropriate except-ion is made if the superintendent of public instruction is made an appointive position by the legislature in the future.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective function, powers, and duties, except for the office of governor, lieutenant governor, secretary of state, attorney general and superintendent of public instruction shall be allocated by law among and within not more than 20 departments. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be estatliched by law and need not be allocated within a principal department.

COMMENTS

The 1889 Constitution's inherent contradiction -- the delegation of executive power to the governor, yet restricting that power due to diffusion in Constitutional boards -- has been clarified by the adoption of the executive reorganization amendment and the proposed corollary charges in this executive article.

Previously, the divided powers of boards of elective officers, such as the board of examiners, made a mockery of section 5 of the present Constitution: "The supreme executive power of the state shall be vested in the governor, who shall see that the laws are faithfully executed.". The governor, under reorganization and in this article, has the responsibility and the accountability to the electorate and the legislature. This fundamental principle of delegation of power is an important hrsakthrough in the continuing effort for effective, responsible, viable and efficient government. The state's chief executive will be chief in fact, not in rhetoric.

The majority of the committee deleted as Constituticral and elective officers the offices of state auditor and state treasurer in accordance with the conviction that the responsibilities and duties could be included under the 20 department reorganization amendment and statutes.

Section E. APPOINTING POWER. The principal departments provided for in section 7 shall be under the supervision of the governor, and, except as otherwise provided herein or by lar, shall be headed by a single executive appointed by the governor and subject to confirmation by the legislature. Such executives shall hold office until the end of the term of the governor, unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the legislature all officers provided for by this Constitution or by lau and whose appointment or election or term is not otherwise provided for. Thfy shall hold office until the end of the term of the governor unless sooner removed by the governor.

(3) If a vacancy in any such office occurs during a recess of the legislature, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the legislature, when the office shall be filled by appointment and confirmation.

(4) No person not confirmed by the legislature for an office shall, except at its request, be nominated again for that office at the same session, or be appointed to that office during a recess of the legislature.

COMMENTS

The fundamental concept of checks and balances by separate branches of government is a key part of section 8. The governor has been delegated supervisory powers in this article in accord to his Constitutional designation of executive power and the

reorganization amendment and statutes already approved.

This section is in keeping with the legislative implementation, dating back to the 1920's, of such a program. However, the legislature had to reverse a trend whereby executive power had been whittled to insignificance by creation of more than 160 state agencies with little executive or legislative supervision.

Now, this article, the governor has been delegated that power, as well as the right to appoint and remove heads of the principal departments. However, the legislature has the power to confirm such appointments with added safeguards to protect reappointment of rejected nominees.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state.

COMMENTS

This section adopts the proposal of the Constitution revision sub-committees made in 1969, and is in accordance with the prior recommendation of the legislative council. The present statutory responsibility of the governor to submit an executive budget to the legislature is made mandatory by the Constitution.

It revises section 10 of the [resent Article VII, and eliminates the excess verbiage. The other requirements of present section 10 are and should be governed by statute and administrative procedures.

Section 10. VETO POWER. (1) All bills passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor who shall sign or veto every bill within five days after its delivery to him if the legislature is in session, or within 25 days if the legislature is adjourned. The governor shall return vetoed bills to the legislature with a statement of his objections.

(2) The governor may return any bill to the legislature with his objections and with a recommendation for an amendment or amendments to it. If the legislature passes the bill in accordance with the

governor's recommendation, it shall again return the bill to the Governor for his reconsideration. The governor shall not return a bill a second time, for amendment.

(3) Upon receipt of a veto message, the legislature shall reconsider passage of the vetoed bill. A two-thirds vote of the members present overrides the veto, and the bill shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his objections to the legislature in a manner authorized by law. The legislature, as provided in rection 11, may reconvene itself to reconsider any bills EC vetoed by the goverccr.

(5) 'The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire till.

COMMENTS

This section removes the governor from the process of amending the state and federal Constituticns. Conrtitutional amendments initially must be approved by a two-thirds vote in each house, which is the same majority required to override a gubernatorial veto. Therefore, there is no reason to involve the governor in the process. Similarly, the signature of the governor is not required for reroluticns because resoluticns do not have the effect of law. Consistent with section 1 of Article V of the present Constitution, the governor has no veto power over initiative and referendum measurer.

By the requirement in subsection 1 that the governor sign or veto every till presented to hio, the "pocket veto" is eliminated. Furthermore, subsection 4 authorizes the legislature to reconvene to consider post-session vetoes. The time period for gubernatorial consideration of bills after adjournment of the legislature has been lengthened from 15 to 25 days to give the governor sufficient time to adequately study bills and in recognition of the "log-jam" of logislaticn passed in the closing days of the legislature.

The committee considered and rejected the reducticr veto, which is the power to reduce items in appropriation bills, because the members believe such a veto could result in irresponsibility. The reduction veto encourages the legislature to appropriate large sums of money to popular causes, shiftirg the onus of reducing the appropriations to the governor, while it also enables the governor to thwart an activity or program without the stigma of killing it.

The committee did, however, authorize the amendatory veto in subsection 2, which permits the governor to return a bill to the legislature with recommendations for changes that would make the bill acceptable to him. If the legislature by majority vote of the members present accepts the governor's recommendations, the bill is returned to the governor for reconsideration. The governor is prohibited from returning the bill a second time. The amendatory veto accommodates the situations when the governor objects to only parts of a bill and recognizes its general merit. In the states which authorize the amendatory veto, it is utilized more than the regular veto. The power of amendatory veto is intended to extend to appropriation bills. In addition, the item veto is retained in subsection 5.

Section 11. SPECIAL SESSION. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session. At the written request of two-thirds of the members of each house, the presiding officers of both houses shall convene the legislature in special session.

COMMENTS

This section revises present section 11 of Article VII. It continues the power of the governor to call special sessions but removes his present authority to confine the subjects to be considered. If the legislature is given power to call itself into session the present limitation would be ineffective in any case.

The section also permits the legislature to call itself into session by a two-thirds vote of the full membership. The decision on this question will be reached in the legislative committee proposal.

Section 12. PARDONS. The governor shall have the power to grant reprieves, commutations and pardons after conviction, reinstate citizenship and may suspend and remit fines and forfeitures subject to procedures prescribed by law.

COMMENTS

This section revises the present section 9 of Article VII. It deletes all the material after the proviso in the present section. The power of the governor to grant reprieves, commutations and pardons is still made subject to procedures prescribed by law.

The legislature has now provided for an appointive lap hoard of pardons and paroles. It no doubt will continue to do so. Yet it seems to the majority of the committee unnecessary to require it. The executive reorganization director and the present chairman of the board of pardons recommended the deletion.

The historical power of the chief executive to show mercy should be retained, and the majority believe there is no Constitutional need for a buffer board appointed by the governor.

By making no reference to the board of prison commissioners in present section 20, the majority of the committee suggests repeal. The control of the prison has been assigned by law to the department of institutions and the Constitutional board consisting of the governor, attorney general and secretary of state has not been performing its Constitutional duty in fact for many years. The executive reorganization director recommends the repeal to conform to the fact.

> Section 13. MILITIA. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.
>
> (2) The militia forces shall consist of all able-bodied citizens of the state except such persons as are exempted by law.

COMMENTS

The subject of military matters appears in Article II, Article XIV, and the above section which gives the govefnor command Of the state militia. It no longer has the significance it did in frontier times, and has become largely superseded or obsolete. The committee recommends simple repeal of Article II and Article XIV, and inclusion of the first paragraph of former Article XIV into section 13 above.

Article II - Research by the legislative council shows that none of the military reservations referred to in this article presently exist as such. No similar article exists in other Constitutions. Its subject matter having passed out of existence, so also should the article.

Article XIV - except for its section 1, which we have included in our section 13. this article merely refers to various matters on which the legislature was to pass lsgislation. Since it could as well do so without such provisions in the Constitution, they serve no useful purpose, and it is simply proper

drafting to eliminate them. This is also recommended by the legislative council. Other Constitutions do not contain similar provisions.

The first paragraph of this section is former section 6 carried forward without change.

The second paragraph is taken from section 1, Article XIV, without change except in one significant respect. The committee includes those daring, forward-looking ladies who foresee the time when their sex will be liberated to equal responsibility for the safety of our state in time of trouble. They have volunteered feminine membership in the state militia, something which bodes well for the future of its readiness for action. Therefore, the draft as submitted omits the word "male" by necessity, and the age limitations by courtesy.

Section 14. SUCCESSION. (1) If the governor-elect is disqualified, or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect qualifies for office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when requested in writing by the governor to do so. He shall serve as acting governor during the absence from the state of the governor for any period in excess of 45 days.

(3) He shall also serve as acting governor when the governor is disabled and by reason of that disability is unable to communicate to the lieutenant governor the fact of his inability to perform the duties of this office. The lieutenant governor in such event shall continue to serve as acting governor until the governor resumes the duties of his office.

(4) Whenever the lieutenant governor and attorney general transmit to the presiding officer of the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene.

(5) If the legislature, within 21 days after convening, determines by two-thirds, vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall enter upon and discharge the same as acting governor; thereafter, when the governor transmits to the presiding officer of the legislature his written declaration that no inability exists, he shall resume

the powers and duties of his office within 15 days, unless the legislature determine otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to discharge the powers and duties of the office as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term.

(7) Additional succession to such vacancies shall be as provided by law.

(8) When there is a vacancy in the office of governor, the successor shall have the title, powers, duties and emoluments of that office and shall be the governor. When the successor serves as acting governor for a temporary period, he shall have only the powers and duties of the office for the period during which he serves as such.

COMMENTS

SubSection 1 authorizes the lieutenant governor-elect to become governor in the event of the death or disqualification of the goveruor-elect. The lieutenant governor-elect serves as acting governor if the governor-elect fails to assume office for any other reason. Such a provision is desirable because! in the absence of such a provision, the courts of a least five states have determined that the incumbent governor should continue in office when the yovernor-elect was unable to qualify for inauguration.

By subsection 2, the governor is authorized to request the lieutenant governor to serve as acting governor, whether or not the governor is absent from the state. Under this subsection. however, the lieutenant governor no longer becomes acting governor the moment the governor leaves the state. The committee believes that by utilizing modern communications the governor can effectively perform the duties or his office during a short term absence from the state. Furthermore, the governor is not prohibited from requesting the lieutenant governor to act during a short-time absence. After the governor has been absent from the state 45 days, however, the lieutenant governor does become acting governor. Such a provision should tend to discourage the governor from prolonged absences from the state.

Although Montana's Constitution presently provides for succession to the governorship in cases of "inability" of the governor "to discharge the powers and duties of his office", proce-

dures for determining disability of the governor are not provided. Unfortunate experiences in several states with disabled governors and federal experience with presidential disability illustrate that procedures for determination of gubernatorial disability are necessary. The committee therefore proposes a disability determination provision based upon the model provided by the Twenty-fifth Amendment of the United States Constitution. As noted above, under subsection 2 the governor may request the lieutenant governor to serve as acting governor. This authority would extend to a situation when, for example, the governor is scheduled for surgery. Subsection 2 also authorizes the lieutenant governor to become acting governor when the governor is unable to communicate -- due, for example, to a stroke. When the governor recovers, he may resume the duties of his office.

Subsection 3 authorizes the lieutenant governor and attorney general to declare the governor's disability, whereupon the legislature convenes to determine the validity of the declaration. If two-thirds of the legislature agree that the governor is disabled, the lieutenant governor becomes acting governor. The governor may resume his office by declaring that the disability no longer exists unless the legislature prevents his resumption of powers by a two-thirds vote.

When the governorship becomes vacant, the lieutenant governor succeeds to the office of governor for the remainder of the term. When the lieutenant governor serves as acting governor, he exercises only the powers and duties of the office of governor.

MINORITY REPORT

BE IT PROPOSED BY THE MINORITY OF THE EXECUTIVE COMMITTEE:

That there be a new Article cc the Executive to read as follcws:

ARTICLE ___

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department shall ccnsist of a governor, lieutenant governor, secretary cf state, attorney general, and superintendent cf public instructicn and state auditor.

(2) Each shall hcld his cfficf fcr a term cf four years, commencing on the first Monday cf January next succeeding his election and until a successcr is elected and qualified.

(3) Each shall reside at the seat cf gcvernment, where he shall keep the public reccrds cf his cffice.

(4) Each shall perform such duties as are prescribed in this Ccnstitution, and by law.

Section 2. ELECTION. (1) The gcverncr, lieutenant gcvernor, secretary of state, attcrney general, state treasurer, the superintendent cf public instruction and state auditcr shall be elected by the qualified electcrs cf the state at a general election held and finally determined as prcvided by law.

(2) Bach candidate fcr gcverncr shall file jcintly rith a candidate for lieutenant gcverncr in primary elections, or otherwise comply with nominatien procedures, so that the cffices cf governor and lieutenant governor shall be vcted upon together in primary and general elections, as provided by law.

Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of gcverncr, lieutenant gcverncr, attorney general or superintendent of public instructicn unless he has attained the age of 30 years at the time of his election, "or to the office of secretary of state, state auditor, or state treasurer, unless he has attained the age cf 25 years. In additicn tc the qualifications above prescribed, each of the officers named shall be a citizen of the united States, and have resided within the state twc years next preceding his electicn.

(2) In additicn tc the fcregcing qualificaticns, any person to be eligible tc the cffice cf attcrney general shall be a"

attorney in good standing admitted to practice law in the state of Montana, and have engaged in the active practice thereof for five years before election.

Section 4. (1) The executive power of the state is vested in the governor, who shall see that the laws are faithfully executed. He shall have such other duties as are herein provided, and as provided by law.

(2) The lieutenant governor shall perform the duties delegated to him by the governor, and those provided for him by law, but no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner.

(3) The secretary of state shall maintain the official records of the acts of the legislative assembly, and of the executive department, as provided by law. He shall keep the great seal of the state of Montana, and perform any other duties provided by law.

(4) The attorney general shall be the legal officer of the state, with the duties and powers provided by law.

(5) The auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer for all state warrants, with other duties and powers provided by law.

Section 5. COMPENSATION. (1) Officers of the executive department shall receive salaries provided by law, which may be increased but not decreased during the term of office.

(2) No elected officer of the executive department may during his term hold any other public office, or receive compensation for his services from any governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for the remainder of its term.

(2) If the office of secretary of state, attorney general, auditor, treasurer and superintendent of public instruction becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election, and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumen-

talitifs cf the executive department cf state government and their respective functicns, pcwers, and duties, except fcr the office cf governcr, lieutenant gcverncr, secretary of state, attorney general and superintendent of public instructicn shall be allocated by law amcng and within not mcre than 20 departments. Subsequently, all new pcwers cr functicns shall be assigned tc departments, divisicns, sectics, cr units in such manner as will tend tc provide an orderly arrangement in the administrative organizatcn cf state government. Tempcrary ccmmissicns may be established ty law ard reed not be allocated within a principal department.

Section 8. APPCINTING POWER. (1) The principal departments provided fcr insection 7 shall be under the supervisicn cf the governcr, and, except as ctherwise provided herein cr by law, shall be headed by a single executive appointed by the gcverncr and subject. to ccnfirmatcn by the legislature. Such executives shall hcld office until the end cf the term cf the gcverncr, unless sconer removed 'by the gcverncr.

(2) The gcverncr shall appcint, subject tc confirmation by the legislature all officers provided fcr by this Ccnstitutcn or by law and whose appointment cr electcn or tarn is not ctherwise provided tor. They shall hcld cffice until the end of the term cf the gcverncr unless sooner removed by the gcverncr.

(3) If a vacancy in any such cffice cccurs during a recess of the legislature, the gcvarncr shall appcint scme fit person to discharge the duties thereof until the next meeting of the legislature, when the cffice shall be filled by appcintment and confirmatcn.

(4) NC persen nct ccnfirmed by the legislature fcr an office shall, except at its request, be ncrinated again fcr that office at the same sessicn, cr be appointed tc that cffice during a recess cf the legislature.

Section 9. BUDGET AND PIES-CAGES. The governor shall at the beginning of each legislative sessicn, and may at ctber times, give the legislature informatcn and recommend measures he considers necessary. The governor shall submit tc the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, fcr all cperating funds, the prcpcsed expenditures and estimated revenue cf the state.

Section 10. VETO POWER. (1) All bills passed by the legislature, except bills propcsing amendments tc the Mcntana Ccnstitutcn, bills ratifying proposed amendments to the United States Constitution, rescluticns, and initiative and referendum measures, shall be submitted to the gcverncr who shall sign cr vetc every bill within five days after its delivery tc him if the legislature is in session, cr within 25 days if the legislature is adjourned. The gcverncr shall return vetced bills tc the legislature with a statement cf his cbjecticcs.

(2) The governor may return any bill to the legislature with his objections and with a recommendation for an amendment or amendments to it. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill a second time, for amendment.

(3) Upon receipt of a vetoed message, the legislature shall reconsider passage of the vetoed bill. A two-thirds vote of the members present overrides the veto, and the bill shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his objections to the legislature in a manner authorized by law. The legislature, as provided in section 11, may reconvene itself to reconsider any bills so vetoed by the governor.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. SPECIAL SESSION. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session. At the written request of two-thirds of the members of each house, the presiding officers of both houses shall convene the legislature in special session.

Section 12. PARDONS. The governor shall have the power to grant reprieves, commutations and pardons after conviction. reinstate citizenship and may suspend and remit fines and forfeitures subject to procedures prescribed by law.

This action by the governor shall be upon the recommendation of a board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof.

Section 13. MILITIA. (1) The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

(2) The militia forces shall consist of all able-bodied citizens of the state except such persons as are exempted by law.

Section 14. SUCCESSION. (1) If the governor-elect is disqualified, or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the

governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the goveracr-elect qualifies for office, or the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when requested in rriting by the governor to do so. He shall serve as acting governor during the absence frco the state of the governor for any period in excess of 45 days.

(3) He shall also serve as acting governor when the governor is disabled and by reason of that disability is unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor in such event shall continue to serve as acting governor until the governor resumes the duties of his office.

(4) Whenever the lieutenant governor and attorney general transmit to the presiding officer of the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene.

(5) If the legislature, within 21 days after convening, determines by tuc-thirds vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall enter upon and discharge tha same as acting governor; thereafter, when the governor transmits to the presiding officer of the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by tuc-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to discharge the pcuers and duties of the office as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term.

(7) Additional succession to such vacancies shall be as prcvided by law.

(8) When there is a vacancy in the office of governor, the successor shall have the title, powers, duties and emoluments of that office and shall be the governor. When the successor serves as acting governor for a temporary period, he shall have only the powers and duties of the office for the period during which he serves as such.

/s/ Betty L. Babcock /s/ Archie O. Wilson

COMMENTS ON MINORITY PROPOSAL

The Minority Proposal is identical to the Majority Proposal except for amendments in sections 1, 2, 3, 4, 6 and 12 designed to make the executive branch of government more responsible to the citizens of the state by providing for the election or the present elected executive officers.

Section 1. OFFICERS. (1) The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, state treasurer, superintendent of public instruction and state auditor.

(2) Each shall hold his office for a term of four years, commencing on the first Monday of January next succeeding his election and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, where he shall keep the public records of his office.

(4) Each shall perform such duties as are prescribed in this Constitution, and by law.

COMMENTS

The minority of the executive committee favor the election of the major state executive offices because government needs to be responsive and responsible to the people it represents. The people must retain their right to elect their officials. By elimination of their present power to choose the major state offices we do not want to defranchise the people of Montana of their sacred privilege - their right to exercise the freedom of choice in the elective process. The people deserve the right to choose who shall represent them in government.

Montana by Constitutional amendment and legislative act is reorganizing its governmental processes under what is known as executive reorganization. This is placing all Montana's governmental administration and control directly under the governor and appointed department heads. This program is promoted in the name of efficiency and economy.

Government needs to be more to its constituents than efficient and economical. It needs to be responsive and responsible to the people it represents. Its responsibilities includes not only the matter of protecting the public trust, it includes having the trust of the public.

Public trust does not come from just a matter of confidence in the integrity of public officers, but rather it comes from knowing that public affairs are placed in the public eye. This

can only occur when the activities of government are visible and when there are ways of checking or what our public officials are doing.

The state treasurer and auditor are the major state financial officers. One receives all state money, the other disburses all state funds. one major concern relates regarding reorganization to the financial affairs of the state. This concern should be included in our proposed Constitution in such a way that we give the public the best chance to view critically its public officers and to avoid the open invitation to corruption. This should include a public official, elected and responsible only to the people and who is not subservient to the varying political desires of some chief executive who perhaps will be only concerned with an approving look from the public at his administration.

We know that no governor will have continuous opportunity to observe all the actions of his administrative officers. To place all fiscal affairs in one administrative office, such as a controller's office, not only jeopardizes the chief executive, it is one open invitation to unviewed corruption.

We ask then this convention include separate fiscal officers as elected officers in this proposed Constitution in the offices of state auditor and state treasurer.

The state superintendent of public instruction is the major state educational officer and as such should be elected by the people. The selection of the superintendent should be protected from undue political influence by making her directly responsible to the people.

We are with the majority committee proposal comments on the election of the attorney general. We provide further qualification in our section 3.

> Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, state treasurer, superintendent of public instruction and state auditor shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law.
>
> (2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or otherwise comply with nomination procedures, so that the offices of governor and lieutenant governor shall be voted upon together in primary and general elections, as provided by law.

COMMENTS

This section adds the state treasurer, superintendent of public instruction and state auditor to the elected officers provided in the majority report. Our reasons are explained in the comments to Section 1.

> Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of governor, lieutenant governor, attorney general or superintendent of public instruction unless he has attained the age of 30 years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he has attained the age of 25 years. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state two years next preceding his election.
>
> (2) In addition to the foregoing qualifications, any person, to be eligible to the office of attorney general shall be an attorney in good standing admitted to practice law in the state of Montana, and have engaged in the active practice thereof for five years before election.

COMMENTS

This section retains the qualifications in section 3 of the present executive article. The major deletion in section 3 recommended by the majority was removal of the age requirements for all candidates except the attorney general. The minority of the Executive Committee, believe we would be derelict in our duty and inconsistent as well, if we require specific qualifications for the attorney general and remove all such qualifications for the rest of the executive offices.

he realize it is unlikely that the electorate would elect an eighteen year old to these offices, but we feel strongly that the Constitution must guarantee a certain maturity as a qualification for office holders.

We are conscious of the increased intelligence and ability of our young people, but feel confident that the majority, those with mature attitudes, would want us to require such qualifications for their Own protection, to insure the dignity of the office and to provide a goal for them to strive for. In comparing Montana's present Constitution with six others we found the states of Alaska, Michigan and New Jersey require a governor to be at least 30 years of age and Hawaii and Puerto Rico 35 years. They also require longer residency requirements. Virtually all state Constitutions require higher age qualifications for state officers than for the right to vote.

Section 4. DUTIES. (1) The executive power of the state is vested in the governor, who shall see that the laws are faithfully executed. He shall have such other duties as are herein provided, and as provided by law.

(2) The lieutenant governor shall perform the duties delegated to him by the governor, and those provided for him by law, but no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner.

(3) The secretary of state shall maintain the official records of the acts of the legislative assembly, and of the executive department, as provided by law. He shall keep the great seal of the state of Montana, and perform any other duties provided by law.

(4) The attorney general shall be the legal officer of the state, with the duties and powers provided by law.

(5) The auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer of all state warrants, with other duties and powers provided by law.

COMMENTS

In addition to the language of section 4 proposed by the majority in subsection (5) we have provided for the duties of the auditor so this office may be strengthened and our citizens may be assured there will always be a completely independent elected auditor, free of political pressure and responsible to the electorate to protect their fiscal affairs.

The creation of a gubernatorially appointed department head as the complete repository of all the state fiscal and audit functions is an over centralization of power and an open invitation to corruption. Montana, even under its present system, has recently experienced two separate embezzlement type situations. One was uncovered by the bank examiner's office, the other by the state auditor's office. Neither were in existence for a particularly long time nor were the losses particularly large, before their discovery. Due to the relatively fast discovery of these transgressions, full restitution was made possible. Therefore, it is very necessary to retain internal control. Obviously any system of control, which vests total control in one person or department, is not a good system of control, in fact it would invite misuse.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to

the office of governor, or by his death, resignation or disability as determined by law the governor shall appoint a qualified person to hold and serve in that office for the remainder of its term.

(2) If the office of secretary of state, attorney general, auditor, treasurer and superintendent of public instruction becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election, and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected.

COMMENTS

Here we have inserted in subsection (2) the additional elected officers and deleted subsection (3) that appears in the majority report.

Section 12. PARDONS. The governor shall have the power to grant reprieves, commutations and pardons after conviction, reinstate citizenship and may suspend and remit fines and forfeitures subject to procedures prescribed by law. This action by the governor shall be upon the recommendation of a board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof.

COMMENTS

We agree with the majority of the executive committee, except that we feel that it is appropriate to establish Constitutionally the board of pardons. The pardon power of the governor is of such importance that it should not be exercised without the prior advice and consultation of a board of lay and professional persons responsible for the state correctional program.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	VII, 1
2	VII, 2
3	VII, 3
4	VII, 5, 15, 17
5	VII, 4
6	VII, 7, 15, 16
7	VII, 21
8	VII, 7
9	VII, 10
13	VII, 12, 13
11	VII, 11
12	VII, 9
13	VII, 6; XIV, 1
14	VII, 14, 15, 16
Not replaced	VII, e, 18, 19, 20
Not replaced	XIV, 2, 3, 4, 5
Not replaced	II, 1

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the executive committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	25	Chet Blaylock	Provides legislature with the opportunity to override post session gubernatorial vetoes by mail	Rejected
2.	39	Jerome Cate	Provide for a wage commission	Rejected
3.	77	Richard Roeder	Executive Article providing for only the governor and lieutenant governor	Adopted in part
4.	107	Harold Arbanas	Executive Article providing for joint election of the governor, lieutenant governor and attorney general	Adopted in part
5.	110	Geoffrey Brazier	Eliminating number of times a person may succeed himself in office	Rejected
6.	136	Robert Kelleher	Parliamentary form of government	Rejected

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
7.	152	Mike McKeon	Repeal Article XIV of the present constitution	Adopted in part
8.	170	Archie Wilson	Executive Article retaining constitutional officers and boards	Adopted in part

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Forrest H. Anderson - Governor, State of Montana - Helena - Executive Article in general.
2. Richard H. Roeder - Delegate - Bozeman - Proposal 77.
3. William Crowley - Law Professor - Missoula - Reorganization.
4. George Bousliman - Deputy Director, Executive Reorganization - Helena - Reorganization.
5. Robert L. Woodahl - Attorney General, State of Montana - Helena - Office of Attorney General.
6. Frank Murray - Secretary of State - Helena - Office of Secretary of State.
7. Gail M. DeWalt - Deputy, Secretary of State - Relena - Office of Secretary of State.
8. Ernest Steel - Chairman, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
9. William Johnson - Director, Public Utilities Department of the Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
10. Louis G. Roedecker - Commissioner, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
11. Alfred Langley - Commissioner, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
12. William O'Leary - Director, Legal Department, Railroad and Public Service Commission - Helena - Office of Railroad and 'Public Service Commission.
13. Ted Schvinden - Commissioner of Lands Department - Helena - Office of Lands Department.
14. Maj. Gen. John Womack - Adjutant General, State of Montana - Helena - Military Articles in general.
15. Col. Harry Thode - Staff Administrative Assistant. Montana

National Guard - Helena - Military Articles in general.

16. John Dowdall - State Examiner - Helena - Office of State Examiner.

17. Mrs. Diane Schladweiler - Montana League of Women Voters - Bozeman - League's position on the Executive Article.

18. E. V. "Sonny" Omholt - State Auditor - Helena - Office of State Auditor.

19. Alex Stephenson - State Treasurer - Helena - Office of State Treasurer.

20. Dean Reed - Deputy Legislative Auditor - Helena - Legislative Audits.

21. Morley Cooper - Chairman, State Board of Equalization - Helena - Functions and duties of State Board.

22. John Alley - Member, State Board of Equalization - Helena - Functions and duties of State Board.

23. Ray Wayrynen - Member, State Board of Equalization - Helena - Functions and duties of State Board.

24. Keith Colbo - Director, Department of Revenue - Helena - Functions and duties of his office.

25. Ed Nelson - Executive Secretary, University System - Helena - Views on Board of Education.

26. Harriet Melcy - Member, Board of Education - Helena - Views on Board of Education.

27. Tim Babcock - Former Governor, State of Montana - Helena - Executive Article in general.

28. Tom Judge - Lieutenant Governor, State of Montana - Helena - Duties and recommendations pertaining to the office of Lieutenant Governor.

29. Doyle Saxby - Director, Department of Administration - Helena - Functions and duties relating to department of administration.

33. Don Dooley - Legislative Council office - Helena - Duties pertaining to legislative council.

31. John Peterson - Chairman, Board of Pardons - Butte - Recommendations concerning Board of Pardons.

32. Dolores Colburg - Superintendent of Public Instruction - Helena - Recommendations pertaining to her office.

33. Jack Gunderson - Education Committee, House of Representatives - Power, Montana - His views and recommendation concerning education.

34. Mrs. Rosemary Boschert - Housewife - Eastern Montana - Her views on education.

35. LeRoy Corkin - Montana Federation of Teachers - Butte - Federation of Teachers' stand on education.

36. Chad Smith - Montana School Boards Association - Helena - Association's position regarding education.

37. Geoffrey L. Brazier - Delegate - Helena - Proposal 110.

38. Roy G. Crosby, Jr. - Citizens for Constitutional Government - Missoula - Citizens position on the executive article.

39. Donald A. Garrity - Lawyer - Helena - Testifying on parliamentary form of government.

40. Robert L. Kelleher - Delegate - Billings - Proposal 136.

41. Robert Watt - Montana Student Presidents Association - Missoula - Position taken by Association.

42. Miles Romney - Delegate - Hamilton - Proposal 19.

43. Members of the Board of Regents - Their views concerning education.

44. D. D. Cooper - Montana Education Association - Helena - Position taken by MEA concerning education.

45. Sidney T. Smith - Commissioner of the Department of Labor and Industry - Helena - Duties and recommendations concerning department of labor and industry.

46. Harold Arbanas - Delegate - Great Falls - Proposal 107.

47. Betty Babcock - Delegate - Helena - Proposal 170.

48. Archie O. Wilson - Delegate - Hysham - Proposal 170.

49. Jean Anderson - President, Montana League of Women Voters - Billings - League's position on the executive article.

50. Carol Mitchell - Montana Common Cause - Helena - Position taken by Montana Common Cause on executive article.

51. Chet Blaylack - Delegate - Laurel - Proposal 25.

52. Ted James - Former Lieutenant Governor - Great Falls -

Recommendations pertaining to office of lieutenant governor.

53. Lee N. Von Kuster - Professor, University of Montana - Missoula - Reasons for appointed state superintendent of public instruction.

MAJORITY

ROLL CALL VOTE --- EXECUTIVE COMMITTEE

	Date:2/12 No: Sec. 1	Date:2/12 No: Sec. 2	Date:2/12 No: Sec. 3	Date: 2/12 No: Sec. 4	Date: 2/12 No: Sec. 5	Date: 2/12 No: Sec. 6	Date: 2/12 No: Sec. 7	Date: 2/12 No: Sec. 8
Thomas F. Joyce, Chr.	Y	N	N	Y	Y	Y	Y	Y
J. C. Garlington, V.C.	Y	Y	Y	Y	Y	Y	Y	Y
Harold Arbanas	Y	Y	Y	Y	Y	Y	Y	Y
Betty Babcock	N	N	N	N	Y	N	Y	Y
James R. Felt	A	A	A	A	A	A	A	A
Fred J. Martin	Y	Y	Y	Y	Y	Y	Y	Y
Richard B. Roeder	Y	Y	Y	Y	Y	Y	Y	Y
Margaret S. Warden	Y	Y	Y	Y	Y	Y	Y	Y
Archie O. Wilson	N	N	N	N	Y	N	N	Y
Total Yea	6	5	5	6	8	6	7	8
Nay	2	3	3	2	0	2	1	0
Absent	1	1	1	1	1	1	1	1

MAJORITY

ROLL CALL VOTE --- E X E C U T I V E COMMITTEE

	Date:2/12 No: Sec. 9	Date:2/12 No: Sec. 10	Date:2/12 No: Sec. 11	Date: 2/12 No: Sec. 12	Date: 2/12 No: Sec. 13	Date: 2/12 No: Sec. 14	Date: No:	Date: No:
Thomas F. Joyce, Chr.	Y	Y	Y	Y	Y	Y		
J. C. Garlington, V.C.	Y	Y	Y	Y	Y	Y		
Harold Arbanas	Y	Y	Y	Y	Y	Y		
Betty Babcock	Y	Y	Y	N	Y	Y		
James R. Felt	A	A	A	A	A	A		
Fred J. Martin	Y	Y	Y	Y	Y	Y		
Richard B. Roeder	Y	Y	Y	Y	Y	Y		
Margaret S. Warden	Y	Y	Y	Y	Y	Y		
Archie O. Wilson	Y	Y	Y	N	Y	Y		
Total Yea	8	8	8	6	8	8		
Nay	0	0	0	2	0	0		
Absent.	1	1	1	1	1	1		

MINORITY

ROLL CALL VOTE --- EXECUTIVE COMMITTEE

	Date:2/12 No: Sec. 1	Date:2/12 No: Sec. 2	Date:2/12 No: Sec. 3	Date: 2/12 No: Sec. 4	Date: 2/12 No: Sec. 5	Date: 2/12 No: Sec. 6	Date: 2/12 No: Sec. 7	Date: 2/12 No: Sec. 8
Thomas F. Joyce, Chr.	N	Y	Y	N	N	N	N	N
J. C. Garlington, V.C.	N	N	N	N	N	N	N	N
Harold Arbanas	N	N	N	N	N	N	N	N
Betty Babcock	Y	Y	Y	Y	N	Y	N	N
James R. Felt	A	A	A	A	A	A	A	A
Fred J. Martin	N	N	N	N	N	N	N	N
Richard B. Roeder	N	N	N	N	N	N	N	N
Margaret S. Warden	N	N	N	N	N	N	N	N
Archie O. Wilson	Y	Y	Y	Y	N	Y	Y	N
Total Yea	2	3	3	2	0	2	1	0
Nay	6	5	5	6	8	6	7	8
Absent	1	1	1	1	1	1	1	1

MINORITY

ROLL CALL VOTE --- EXECUTIVE COMMITTEE

	Date:2/12 No: Sec. 9	Date:2/12 No: Sec. 10	Date:2/12 No: Sec. 11	Date: 2/12 No: Sec. 12	Date: 2/12 No: Sec. 13	Date: 2/12 No: Sec. 14	Date: No:	Date: No:
Thomas F. Joyce, Chr.	N	N	N	N	N	N		
J. C. Garlington, V.C.	N	N	N	N	N	N		
Harold Arbanas	N	N	N	N	N	N		
Betty Babcock	N	N	N	Y	N	N		
James R. Felt	A	A	A	A	A	A		
Fred J. Martin	N	N	N	N	N	N		
Richard B. Roeder	N	N	N	N	N	N		
Margaret S. Warden	N	N	N	N	N	N		
Archie O. Wilson	N	N	N	Y	N	N		
Total Yea	0	0	0	2	0	0		
Nay	8	8	8	6	8	8		
Absent	1	1	1	1	1	1		

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

JUDICIARY COMMITTEE PROPOSAL

Date Reported: February 17, 1972

David L. Holland, Chairman

Catherine Pemberton, Vice Chairman

STANDING COMMITTEE REPORT

February 17, 1972

Mr. President:

We the Committee on Judiciary respectfully report as follows:

The Judiciary Committee Majority Proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration; and

The Judiciary Committee Minority Proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

David I. Holland
Chairman

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL 484

TEXT OF MAJORITY PROPOSAL 486

COMMENTS ON MAJORITY PROPOSAL 493

Section 1. Judicial Power 493

Section 2. Supreme Court - Appellate Jurisdiction 493

Section 3. Supreme Court - Appellate Jurisdiction - Writs 493

Section 4. Supreme Court - Terms 494

Section 5. Supreme Court - Composition - Disqualifications 494

Section 6. Election and Term of Office of Supreme Court Justices 495

Section 7. Clerk of Supreme Court 495

Section 8. Justices of Supreme Court - Qualifications. 495

Section 9. District Courts - Jurisdiction 496

Section 10. Judicial Districts 497

Section 11. Writs of Error and Appeal 498

Section 12. District Judges - Qualifications 498

Section 13. District Courts - Business Days - Terms 499

Section 14. Clerks of District Courts 499

Section 15. County Attorneys 499

Section 16. Justices of the Peace - Election - Qualifications - Compensation - Jurisdiction 500

Section 17. Appeals from Justice Courts 501

Section 18. Police and Municipal Courts 501

Section 19. Removal and Discipline cf Judges..... 501
Section in. courts of Record 50 3
Section 21. Laws Relating tc Ccurts - Uniform..... 503
Section 22. Style cf Process..... 503
Section 23. Form cf Action..... 504
Section 211. Judicial Compensaticn..... 504
Section 25. Prohibition cf Outside Income..... 504
Section 26. Law Practice Prohibited..... 504
Section 27. Supreme Court Opiricns..... 505
Section 23. Residence cf Judicial Cfficers..... 505
Section 29. Vacancies; Ncn-succession cf Appcintee..... 506
Section 30. Ineligibility fcr Public Office..... 506
Section 31. Judge Prc Tempcre..... 507
Section 32. Forfeiture cf Judicial Office..... 507
SEPARATE MAJORITY PRCPCSAL CN CAMPAIGN EXPENSES..... 508
COMMENTS ON MAJORITY PRCPCSAL CN CAMPAIGN EXPENSES..... 509
TEXT OF MINORITY PROPOSAL..... 510
COMMENTS ON MINORITY PRCPCSAL..... 514
Section 1. Judicial Powcr..... 514
Section 2. Supreme Ccurt Pcwers..... 515
Section 3. Supreme Court Organizaticn..... 516
Section 4. District Ccurt Powers..... 516
Section 5. Judicial Districts..... 518
Section 6. Terms and Eay cf Judges..... 519
Section 7. Selection of Judges..... 519
Section 8. Qualificaticns and Limitaticns cf Judges... 521
Section 9. Disqualificaticn cf Judges..... 52 3

Section 10. Removal and Discipline of Judges and Lawyers 523

Section 11. Clerk of the Supreme Court 524

Section 12. Clerk of the District Court 524

Section 13. District Attorneys 525

UNANIMOUS PROPOSAL ON SEPARATE MATTER 526

COMMENTS ON UNANIMOUS PROPOSAL ON SEPARATE MATTER 527

APPENDIX

Cross reference of present and proposed Article 528

Delegate proposals considered by committee 531

Witnesses heard by committee 533

Roll Calls 537

Date: February 16, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Judiciary Committee

Ladies and Gentlemen:

The committee on Judiciary hereby submits its recommendations contained in this report to the Montana Constitutional Convention.

The recommendations deal with the structure and organization of the supreme court, district courts and justice of peace courts.

The majority report, among other things, contains election of judges, tenure of judges and qualifications of judges. The report further contains recommendations for the elections of clerks of court and county attorneys.

The minority of the committee has filed a minority report which contains recommendations for selection of judges on a basis different from the majority report. The minority report is in itself a complete judicial article and is entirely distinguishable from the majority report. Although the reports deal with similar subjects, they are entirely separate.

Recommendations contained in this report are of great concern to the people. Resolutions by the Convention will have profound effects upon the administration of justice and the nature and philosophy of our government. We regret that complete consensus was not possible. We do report that all members of the committee worked diligently and the majority and minority reports are a consensus of the opinions of all persons signing them.

While the members of the committee had philosophical differences, particularly about selection of judges, the entire committee, working on a difficult subject, wholeheartedly devoted their time and energy to their respective report.

The committee expresses their thanks to its Research Analyst, Sandra Muckelston, and to its Secretary, Ellen McCarthy, and to its administrative Interns, Dodge Leary and Katherine Sullivan.

Respectfully submitted,

David I. Holland
Chairman

Catherine Pemberton
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That any proposed new Constitution contain Article VIII of the present Constitution amended to read as follows:

ARTICLE ___

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power is vested in a supreme court, district courts, justice of the peace courts, and such other courts as the legislative assembly may establish.

Section 2. SUPREME COURT - APPELLATE JURISDICTION. The supreme court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the state.

Section 3. SUPREME COURT - APPELLATE JURISDICTION - WRITS. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine write of habeas corpus, mandamus, quo warranto, certiorari, prohibition and injunction, and such other origiral and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such srits returnable before himself, or the supreme court, or tefore any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

Section 4. SUPREME COURT - TERMS. At least three terms of the supreme court, and such other terms as may be necessary to keep the docket current, shall be held each year at the seat of government.

Section 5. SUPREME COURT - COMPOSITION - DISQUALIFICATIONS. The supreme court shall consist of five justices a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day

the power to increase the number of justices to seven.

In case a justice or justices of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the supreme court.

Section 6. ELECTION AND TERM OF OFFICE OF SUPREME COURT JUSTICES. The justices of the supreme court shall be elected by the electors of the state at large, and the term of the office of the justices of the supreme court, except as in this Constitution otherwise provided, shall he six years.

Section 7. CLERK OF SUPREME COURT. There shall be a clerk of the supreme court, who shall hold his office for the term of six years. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law and by the rules of the supreme courts.

Section 8. JUSTICES OF SUPREME COURT - QUALIFICATIONS. A United States citizen who has been a resident of Montana for two years shall be eligible for the office of justice of the supreme court if admitted to practice law in Montana and experienced with the law in Montana for at least five years immediately prior to filing for or being appointed to the position of justice.

Section 9. DISTRICT COURTS - JURISDICTION. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest and costs, or the value of the property in controversy exceeds $300; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this Constitution. Their process shall extend to all parts of the state, pro-

vided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody In their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

Section 10. JUDICIAL DISTRICTS. The state shall be divided into judicial districts, in each of which there shall be elected by ths electors thereof one or more judges of the district court as provided by law whose term of office shall be four years. The legislative assembly may increase or decrease the number of judges in any judicial district; provided, that there shall be at least one judge in any district established by law; and may divide the stat?, or any part thereof, into new districts; provided, that each be formed of compact territory and be bounded by county lines, but no change in the number of boundaries of the districts shall work a removal of any judge from office during the term for which he has 'been elected or appointed. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

Section 11. WRITS OF ERROR AND APPEAL. Writs of error and appeal shall be allowed from the decisions of district courts to the supreme court under such regulations as may be prescribed by law.

Section 12. DISTRICT JUDGES - QUALIFICATIONS. NO person shall be eligible to the office of judge of the district court unless engaged in the active practice of law in the state of Montana for at least five years Prior to filing for or being appointed to the office of district judge, and in addition shall be a citizen of the United States and admitted to practice law in the supreme court of the state of Montana. He or she need not be a resident of the district for which elected at the tine of election, but after election he or she shall reside in the district for which elected during the term of office.

Section 13. DISTRICT COURTS - BUSINESS DAYS - TERMS. The district court in each county which is a judicial district by itself shall be always open for the tracsaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the terms of court as may be necessary to keep the docket current.

Section 14. CLERKS GE DISTRICT COURTS. There shall be a clerk of the district court in each county, who shall be elected

by the electors of this county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be provided by law except that the clerk in matters relating to procedure and the orderly conduct or the court room and court hearings shall be supervised by the district judge.

Section 15. COUNTY ATTORNEYS. There shall be elected at the general election in each county of the state one county attorney, who prior to taking office shall have been admitted to practice law before the supreme court of the state of Montana and must be of legal age at the time of taking office, and whose term of office shall be four years and until a successor is elected and qualified. He or she shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which elected, and shall perform such duties as may be required by law.

Section 16. JUSTICES OF THE PEACE - ELECTION - QUALIFICATIONS - COMPENSATION - JURISDICTION. There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation as provided by law, who shall hold office for the term of four years. There shall be provided facilities for such justices so that their duties may be performed in dignified surroundings. Justice courts shall have such original jurisdiction within their respective counties as may be prescribed by law. They shall not have trial jurisdiction in any criminal case designated a felony, except as examining courts. The legislature may provide for additional justices of the Peace in each county or other types of courts below the district court level as is deemed necessary.

Section 17. APPEALS FROM JUSTICE COURTS. Justice courts shall always be open for transaction of business, except on legal holidays and non-judicial days. Appeal shall be allowed from justice courts, in all cases, to the district courts, in such manner under such regulations as may be prescribed by law.

Section 18. POLICE AND MUNICIPAL COURTS. The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace or magistrates for their respective counties.

Section 15. REMOVAL AND DISCIPLINE OF JUDGES. A Judicial Standards Commission is hereby created to consist of five persons, three of whom shall be judges. The three judges shall be selected by the justices and judges of the supreme court and district courts. Not more than one of the said three judges may be a member of the supreme court. The remaining two persons shall be citizens of the state of Montana, selected and appointed by the

governor. Neither of Said two persons shall be a justice, judge or magistrate of any court or licensed to practice law in this state, nor Shall they be a member of the executive, judicial or legislative departments of the state of Montana. The original three judges Shall be appointed for terms of one, three and five years respectively and the original gubernatorial appointees shall serve for two and four years respectively. Thereafter each commissioner Shall Serve for a term of five years. If a position in the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and Shall Serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission Shall select one of its members to Serve as chairman.

In accordance with this Section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties which is, or likely to become, of a permanent character. The consission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of 3 justice, judge or magistrate, or the commission may appoint three masters wto are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the commission. After hearing or after considering the record and the firdings and report Of the masters, if the Commission finds good cause, it Shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

The supreme court Shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence, and it Shall order the discipline, removal or retirement as it finds just and proper or wholly reject the recommendation. Upon an order for his retirement, any justice, judge or magistrate participating in a statutory retirement program Shall be retired with the same rights as if he had retired pursuant to the retirement program. Upon an order for removal, the justice, judge or magistrate shall thereby be removed from office, and his salary shall cease from the date of the order.

The Judicial Standards Commission Shall make rules implementing this section and providing for confidentiality of proceedings.

Section 20. COURTS OF RECORD. The supreme and district courts shall be courts of record.

Section 21. LAWS RELATING TO COURTS - UNIFORM. All laws relating to the courts Shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the Same class or

grade, so far as regulated by law, shall be uniform.

Section 22. STYLE OF PROCESS. The style of process shall be "The state of Montana" and all prosecutions shall be conducted by the name and the authority of the same.

Section 23. FORM OF ACTION. There shall be but one form of civil action, and law and equity may be administered in the same action.

Section 24. JUDICIAL COMPENSATION. The justices of the supreme court and the judges of ths district court shall be paid monthly by the state, a salary, which shall not be diminished during the terms which they shall have been respectively elected. The salaries of justices of the peace shall be paid monthly by the counties or the state as may be prescribed by law. All salaries paid to justices and to judyrs shall be in an amount sufficient to attract capable and experienced lawyers to the judicial service.

Section 25. PROHIBITION OF OUTSIDE INCOME. No justice of the supreme court nor judge of the district court nor magistrate or justice of peace paid a monthly salary shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office, or any form whatever, except salary and actual necessary travel expense as provided by law.

Section 26. LAW PRACTICE PROHIBITED. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office. Magistrates or justices of the peace shall not practice law or justice of the peace or magistrate courts.

Section 27. SUPREME COURT OPINIONS. All opinions of the supreme court shall be in writing and subscribed thereto by the concurring justices and the dissenting justices and such opinions and decisions shall be published in official reports of the supreme court. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

Section 28. RESIDENCE OF JUDICIAL OFFICERS. All officers provided for in this Article, except justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town in which they may be elected or appointed.

Section 29. VACANCIES; NON-SUCCESSION OF APPOINTEE. Vacancies in the office of justice of the supreme court, or judge of the district court, or other appellate court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorney, clerk of the district court, and other judicial offices, shall te

filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

NO judicial officer hereafter appointed by the governor as provided in this section is eligible to be a candidate for judicial office for a period of one year after his successor has been elected.

Section 30. INELIGIBILITY FOR PUBLIC OFFICE. No justice of the supreme court or district judge shall hold any other public office, except that he may be a member of the Judicial Standards Commission, while he remains in the office to which he has been elected or appointed.

Section 31. JUDGE FOR TEMPORE. Civil actions in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the causes; and in such cases any order, judgment or decree, made or rendered therein by such judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

Section 32. FORFEITURE OF JUDICIAL OFFICE. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

David L. Holland
Chairman

Cedor B. Aronow

Leslie "Joe" Eskildsen

Rod Hanson

John M. Schiltz

COMMENTS OR MAJORITY PROPOSALS

Section 1. JUDICIAL POWER. The judicial power is vested in a supreme court, district courts, justice of the peace courts, and such other courts as the legislative assembly may establish.

COMMENTS

(1) The proposed revision eliminates the vesting of judicial power in the senate sitting as a court of impeachment. Section 16, Article V of the 1889 Constitution adequately covers this field. It is contemplated that any new legislative article will retain the impeachment provision.

(2) Vesting of judicial power in justices of the peace courts, rather than in "justices of the peace" as in the 1889 Constitution, was done for parallel terminology.

(3) The 1889 Coastitution provided for vesting judicial power in "such other inferior courts as the legislative assembly may establish". This revision vests the power in "such other courts" in anticipation of a need in the future for intermediate appellate courts. This language permits that to be done.

Section 2. SUPREME COURT - APPELLATE JURISDICTION. The supreme court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the state.

COMMENTS

The revision deletes the supreme court's power of supervisory control over inferior courts. As written in the 1889 Constitution, the power was given to the supreme court under such regulations and limitations as may be prescribed by law. Although the legislature has never provided regulations, the supreme court in 1900 assumed the power to act supervisory - going so far as to invent a writ of supervisory control, unique in the United states. The use of the writ has grown to the point where it is used when other specifically authorized writs, or appeals, would serve as well. The provision was deleted as (1) unnecessary and (2) to avoid an unseemly avoidance of the express provisions of the 1889 Constitutica.

Section 3. SUPREME COURT - APPELLATE JURISDICTION - WRITS. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition and injunction, and such other orig-

inal and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by 01 on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he nay be authorized by law to issue.

COMMENTS

This section is identical with the 1889 Constitution except we have eliminated the provision for a jury in the supreme court as it never has nor is likely in the future to be used.

This provision defines the jurisdiction of the supreme court and has been interpreted over the years so there is now no uncertainty as to meaning.

Section 4. SUPREME COURT - TERMS. At least three terms of the supreme court, and such other terns as may be necessary to keep the docket current, shall be held each year at the seat of government.

COMMENTS

Section 4 was formerly Article VIII, section 4 of the 1889 Constitution. To the language of the 1889 Constitution was added the phrase "to keep the docket current". By adding this phrase, the supreme court is allowed to set as many terms as necessary to keep its dockets current.

Section 5. SUPREME COURT - COMPOSITION - DISQUALIFICATIONS. The supreme court shall consist of five justices a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain. The legislative assembly shall have tte power to increase the number of justices to seven.

In case a justice or justices of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this stats as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed,

tc sit with them in the hearing of said cause. In all cases where a district judge is invited tc sit and does sit as by this sectien provided, the decisicn and cpinicn of such district judge shall have the same force and effect in any cause heard before the ccurt as if regularly participated in by a justice cf the supreme court.

COMMENTS

The legislature is given the pcwer to increase the number of justices on the supreme ccurt frcm the present five tc seven if the need arises. If the ucrk lcad cf the supreme court should increase, then the legislature may increase the number cf justices by two withcut amending the Ccnstitutico.

Sectien 6. ELECTICN AND TERM CF CFFICE CF SUPREME COURT JUSTICES. The justices of the supreme ccurt shall be elected by the electcrs cf the state at large, and the term of the office cf the justices of the supreme ccurt , except as in this Ccnstitutien ctherwise prcvided, shall be six years.

COMMENTS

Sectien 6 is a combination of Article VIII, secticnc 6 and 7 of the 1889 Ccnstitutien.

Section 7. CLERK CF SUPREME COURT. There shall be a clerk cf the supreme court, whc shall hcld his cffice for the term cf six years. He shall be elected by the electors at large of the state, and his compensaticn shall be fixed by law, and his duties prescribed by law and by the rules of the supreme ccurt.

COMMENTS

This section is the adoption cf Article VIII, sectien 9 of the 1889 Constitutien, deleting frcm the former section 9 the archaic language.

Section 8. JUSTICES CF SUPREME COURT - QUALIFICATICNS. A United States citizen whc has been a resident cf Montana for twc years shall be eligible fcr the office of justice cf the supreme ccurt if admitted to practice law in Montana and experienced with the law in Montana for at least five years immediately pricr tc filing fcr or being appointed to the position cf justice.

COMMENTS

Article VIII, section 10 cf the 1889 Ccnstitutien requires that for a persen to be eligible fcr cffice cf the supreme court

he must (1) be admitted to practice law in the supreme court of Montana; (2) be at least thirty years of age; (3) be a citizen of the United States; (4) be a resident of Montana at least two years preceding his election.

The opinion of those signing the majority report is that the experience is more important than age; thus, the age requirement of Article VIII, section 10 of the present Constitution has been dropped and the individual's experience with law in Montana has been added.

Some discussion was had by members of those signing the majority report that five years practice before the courts of Montana should be required. It was decided that this would be unduly restrictive of those working with the law in a legal capacity for the government, as a law teacher, or in any way using their legal experience by working on legal matters. It was decided that as long as there was five years of experience in some tie.13 or law this was sufficient requirement. The intention was to make the law experience entirely related to legal work.

Section 9. DISTRICT COURTS - JURISDICTION. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest and costs, or the value of the property in controversy exceeds three hundred dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate juricdiction in such cases ariciry in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this Constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also

all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

COMMENTS

Section 9 is a re-enactment of Article VIII, section 11 of the 1889 Constitution, changing only the minimum amount for jurisdiction from $50.00 to $300.00 and adding language of "exclusive of interest and costs". Some consideration was given by the committee to adopting simplified language to define jurisdiction of the district court by using the term "justiciable matters". Upon due consideration the committee decided that the term was not precise enough to fit the situation.

In all of the delegate proposals, citizens' suggestions and testimony heard by the committee concerning a new judicial article, no person made any complaint about jurisdiction of the district courts as set forth above even though the section is not brief and concise. In view of the fact that it has existed in the Constitution for 83 years without causing difficulty and seems to have been fully defined by the courts, the majority decided to keep the language intact.

Section 10. JUDICIAL DISTRICTS. The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one or more judges of the district court as provided by law whose term of office shall be four years. The legislative assembly may increase or decrease the number of judges in any judicial district; provided, that there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; provided, that each be formed of compact territory and be bounded by county lines, but no change in the number or boundaries of the districts shall work a removal of any judge from office during the term for which he has been elected or appointed. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

COMMENTS

Section 10 combines three sections from the 1889 Constitution, to-wit: Article VIII, sections 12, 13 and 14. The majority finds no necessity to change the existing judicial districts by amending the Constitution. Under the 1889 Constitution, Article VIII, section 14, the legislative assembly was granted the power to change the boundaries of districts and increase or decrease the number of judges. This power will again be given to the legislature.

Section 11. WRITS OF ERROR AND APPEAL. Writs of error and appeal shall be allowed from the decisions of district courts to the supreme court under such regulations as may be prescribed by law.

COMMENTS

Section 11 is identical to Article VIII, section 15 of the 1889 Constitution. All members signing the majority report felt no change was necessary.

Section 12. DISTRICT JUDGES - QUALIFICATIONS. No person shall be eligible to the office of judge of the district court unless engaged in the active practice of law in the state of Montana for at least five years prior to filing for or being appointed to the office of district judge, and in addition shall he a citizen of the United States and admitted to practice law in the supreme court of the state of Montana. He or she need not be a resident of the district for which elected at the time of election, but after election he or she shall reside in the district for which elected during the term of office.

COMMENTS

Section 12 changes Article VIII, section 16 of the 1889 Constitution. The 1.889 Constitution provides that in order for a person to be eligible for office of judge of district court, he shall he (1) at least twenty-five; (2) citizen of the United States; (3) admitted to practice law in the supreme court of Montana; (4) r-siding in the state of Montana at least ont year.

After due consideration the majority of the committee felt that some of the foregoing requirements were valid tut others should be changed. Thereupon the majcritp changed the requirements to (1) a citizen of the United States; (2) admitted to practice law in the supreme court of Montana; (3) must be engaged in active practice of law in Montana for five years prior to filing for or being appointed to the office of district judge. The requirement of experience was determined more valid than the requirement of age, the committee feeling that five years experience would give the necessary qualifications rather than a simple age requirement. The experience requirement for the district judges in this section is materially different from the requirements for supreme court judges in section 8. The committee felt that law teachers and others working with the law for five years was a sufficient requirement for a supreme court judge, because the nature of the court is appellate rather than trial. A different type of experience and background is required for district judges who must function at the trial level.

The trial judge, in the opinion of the committee, needs trial experience which can only be gained in active practice of

law and thus the requirement in section 12 is five years in the active practice of law.

Section 13. DISTRICT COURTS - BUSINESS DAYS - TERMS. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the terms of court as may be necessary to keep the docket current.

COMMENTS

Section 13 is identical with Article VIII, section 17 of the 1889 Constitution except that the following language of section 17 is deleted from section 13: "provided that there shall be at least four terms a year held in each county"; the following language is added: "as may be necessary to keep the docket current". The majority of the committee felt that the number of terms of court should be adjusted in accordance with the volume of the case load of the court; so, rather than arbitrarily setting number of terms of court a year, this section directs a number of terms of court sufficient to keep the docket current.

Section 14. CLERKS OF DISTRICT COURTS. There shall be a clerk of the district court in each county, who shall be elected by the electors of this county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be provided by law except that the clerk in matters relating to procedure and the orderly conduct of the court room and court hearings shall be supervised by the district judge.

COMMENTS

Section 14 is identical with Article VIII, section 18 of the 1889 Constitution except the following language has been added: "except that the clerk in matters relating to procedure and the orderly conduct of the court room and court hearings shall be supervised by the district judge". Bared upon the hearings, it was felt that there might be some conflict between the clerk of court and the district judge over the authority of district judges to require orderly conduct of the court room and court hearings. The committee felt that it was mandatory that the district judge have full control of these matters so this language was added to section 14 to clarify that the district judge has full charge of the orderly conduct of the court room and court hearings.

Section 15. COUNTY ATTORNEYS. There shall be elected at the general election in each county of the state one county attorney, who prior to taking office shall have

been admitted to practice law before the supreme court of the state of Montana and must be of legal age at the time of taking office, and whose term of office shall be four years and until a successor is elected and qualified. He or she shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which elected, and shall perform such duties as may be required by law.

COMMENTS

Section 15 is intended as a substitute for Article VIII, section 19 of the 1889 Constitution. The only difference between the two sections is that the age requirement of section 19 has been deleted, the majority of the committee feeling that this age requirement is unnecessary.

Section 16. JUSTICES OF THE PEACE - ELECTION - QUALIFICATIONS - COMPENSATION - JURISDICTION. There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation as provided by law, who shall hold office for the term of four years. There shall be provided facilities for such justices so that their duties may be performed in dignified surroundings. Justice courts shall have such original jurisdiction within their respective counties as may be prescribed by law. They shall not have trial jurisdiction in any criminal case designated a felony, except as examining courts. The legislature may provide for additional justices of the peace in each county or other types of courts below the district court level as is deemed necessary.

COMMENTS

Sections 16 and 17 of the majority report are given in full replacement of Article VIII, sections 20, 21, 22 and 23.

Section 16 requires that there be one justice of the peace in each county rather than two justices of peace in each township. Under the present section 20 and interpretation of it, there must be two townships in each county and two justices of the peace to each township. Thus, a county, no matter how large or small, must have a minimum of four justices of the peace under Article VIII, section 20 of the 1864 Constitution.

Instead of a minimum of four justices of the peace to each county, the majority proposal provides for a minimum of one for each county. The majority committee believes that in some counties one justice of the peace will be sufficient. However, if circumstances demand, the legislature may provide for additional justices of the peace. The qualifications, training and monthly compensation of justices of the peace are left to the legislature as is the jurisdiction of justice courts. The committee believes

that this provision is sufficiently elastic to allow the legislature to create small claims courts.

The majority of witnesses appearing before the committee mentioned one consistent evil practiced under the 1889 Constitution regarding justice of the peace courts. This evil is that law enforcement officers have been filing cases in one of the justice of the peace courts to the exclusion of the other in the county because the law enforcement officers evidently believe that they have a better chance of conviction under one certain justice of the peace. Shopping for a form to secure conviction cannot be tolerated under the law and thus each justice of the peace court should have exclusive jurisdiction within a territory within a county. The committee leaves it to the legislature to accomplish this aim.

Section 17. APPEALS FROM JUSTICE COURTS. Justice courts shall always be open for transaction of business, except on legal holidays and non-judicial days. Appeal shall be allowed from justice courts, in all cases, to the district courts, in such manner under such regulations as may be prescribed by law.

COMMENTS

Section 17 covers the same area as Article VIII, sections 22 and 23 of the 1889 Constitution and is merely identical in this respect.

Section 18. POLICE AND MUNICIPAL COURTS. The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to tin, whc shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrate: may alsc be constituted ex-officio justices of the peace or magistrates for their respective counties.

COMMENTS

This is identical with Article VIII, section 24 of the 1889 Constitution inasmuch as it permits the legislature to allow cities and towns to have police judges. Perhaps this is not needed if some other modern form of municipal government is established by this Convention but we do not know at this time if that is going to be done.

Section 19. REMOVAL AND DISCIPLINE OF JUDGES. A Judicial Standards Commission is hereby created to consist of five persons, three of whom shall be judges. The three judges shall be selected by the justices and judges of the supreme court and district courts. Not more than one of the said three judges may be a member

of the supreme court. The remaining two persons shall be citizens of the state of Montana, selected and appointed by the governor. Neither of said two persons shall be a justice, judge or magistrate of any court or licensed to practice law in this state, nor shall they be a member of the executive, judicial or legislative departments of the state of Montana. The original three judges shall be appointed for terms of one, three and five years respectively and the original gubernatorial appointees shall serve for two and four years respectively. Thereafter each commissioner shall serve for a term of five years. It a position in the Commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated. No act of the Commission is valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties which is, or likely to become, of a permanent character. The commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice,. judge or magistrate, or the Commission may appoint three masters who are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the Commission. After hearing or after considering the record and the findings and report of the masters, if the Commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

The supreme court shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence, and it shall order the discipline, removal or retirement as it finds just and proper or wholly reject the recommendation. Upon an order for his retirement, any justice, judge or magistrate shall thereby be removed from office, and his salary shall cease from the date of the order.

The Judicial Standards Commission shall make rules implementing this section and providing for confidentiality of proceedings.

COMMENTS

Section 19 is an entirely new section. It is modeled with some modification from the New Mexico Constitutional provision adopted by the people of that state in 1967. We have modified the composition of the Judicial Standards Commission to conform, in our opinion, to the needs of Montana. The balance of the article is drafted from the provisions of the New Mexico Constitution. We have examined the Alaska, Puerto Rico, Hawaii, California, Colorado, Idaho, Virginia, and Kansas Constitutions as well as New Mexico, and have determined that the New Mexico provision is more in keeping with the needs of Montana than those provisions appearing in other consitutions. It is the purpose of this section to provide for the situation, short of impeachment, where a judge because of age or other disability or bad habits becomes derelict in the performance of his duties. Order this provision his retirement or censure or removal from office can be accomplished without an undue amount of bad publicity to the judicial system or embarrassment to anyone concerned. In the event removal becomes necessary then the commission makes its recommendation to the supreme court who will look into the matter and may order a hearing in the matter, and then make such disposition of the case as may be proper.

Section 20. COURTS OF RECORD. The supreme and district courts shall be courts of record.

COMMENTS

Section 20 is identical with Article VIII, section 25 of the 1889 Consritution and the majoritq committee feels no necessity for change in this section.

Section 21. LAWS RELATING TO COURTS - UNIFORM. All laws relating to the courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

COMMENTS

Section ii is identical with Article VIII, section 26 of the 1889 Constitution and the majority committee feels no necessity for change in this section.

Section 22. STYLE OF PROCESS. The style of all process shall be "The State of Montana" and all prosecutions shall be conducted by the name and the authority of the same.

COMMENTS

Section 22 is identical with Article VIII, section 27 of the 1889 Constitution and the majority committee feels no necessity

for change in the section.

Section 23. FORM OF ACTION. There shall be but one form of civil action, and law and equity may be administered in the same action.

COMMENTS

Section 23 is identical with Article VIII, section 28 of the 1889 Constitution and the majority committee feels no necessity for change in this section.

Section 24. JUDICIAL COMPENSATION. The justices of the supreme court and the judges of the district court shall be paid monthly by the state, a salary, which shall not be diminished during the terms which they shall have been respectively elected. The salaries of justices of the peace shall be paid monthly by the counties or the state as may be prescribed by law. All salaries paid to justices and to judges shall be in an amount sufficient to attract capable and experienced lawyers to the judicial service.

COMMENTS

This section is identical to Article VIII, section 29 of the 1889 Constitution with the exception that the justices of the supreme court and the judges of the district court are paid monthly rather than quarterly. This conforms to the established practice now existing which is in fact in disregard of the provisions of the 1889 Constitution. An additional sentence has been inserted to provide that the salaries of the justices of the supreme court and judges of the district court will be in an amount sufficient to attract capable and experienced lawyers to the judicial service.

Section 25. PROHIBITION OF OUTSIDE INCOME. No justice of the supreme court nor judge of the district court nor magistrate or justice of peace paid a monthly salary shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office, in any form whatever. except salary and actual necessary travel expense as provided by law.

COMMENTS

Section 25 is a modification of Article VIII, section 30 of the 1889 Constitution, in that it allows actual necessary travel expense as provided by law whereas this was prevented under section 3C.

Section 26. LAW PRACTICE PROHIBITED. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or

counsellor at law in any court of this state during his continuance in office. Magistrates or justices of the peace shall not practice law in justice of the peace or magistrate courts.

COMMENTS

Section 26 is identical with Article VIII, section 31 except the following sentence was added: "magistrates or justices of the peace shall not practice law in justice of the peace or magistrate courts".

The upgrading of justice of peace courts is contemplated by section 20 of the majority report. The committee believes that the legislature can allow a justice of peace or magistrate to practice law in other courts of the state of Montana while holding office of justice of peace or magistrate, but they cannot allow a justice of peace or magistrate to practice law in justice of peace or magistrate courts. The majority committee feels that by allowing lawyers to hold a position as justice of peace and at the same time to practice in other courts would allow practicing lawyers to supplement income as a justice of peace by practicing in other courts.

Section 27. SUPREME COURT OPINIONS. All opinions of the supreme court shall be in writing and subscribed thereto by the concurring justices and the dissenting justices and such opinions and decisions shall be published in official reports of the supreme court. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

COMMENTS

The last sentence of section 27 is identical with Article VIII, section 32 of the 1889 Constitution, except that a further requirement is made that all opinions of the supreme court shall be in writing and subscribed thereto by the dissenting justices. That portion which has been added is for the most part being done in practice, the majority of the committee feeling that this practice shall be made a requirement of the court.

Section 28. RESIDENCE OF JUDICIAL OFFICERS. All officers provided for in this Article, except justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town in which they may be elected or appointed.

COMMENTS

Section 28 is identical to Article VIII, section 33 of the 1889 Constitution. The majority of the committee feels that section 33 shall be adopted as section 29 without change.

Sccticn 29. VACANCIES; NCN-SUCCESSICN CF APPCINTEE. Vacancies in the cffice cf justice cf the supreme ccurt, or judge of the district ccurt, cr cther appellate court, or clerk cf the supreme court, shall be fill.31 by app0intment, by the governcr cf the state, and vacancies in the offices of ccunty attcrney, clerk of the district court, and other judicial cffices, shall be filled by appcintment, by the bcard cf ccurty commissioners of the ccunty where such vacancy occurs. A person appointed tc fill any such vacancy shall hcld his office urtil the next general electicn and until his successor is elected ard qualified. A perscn elected to fill a vacancy stall hcld cffice until the expiraticn cf the term for which the perscn he succeeds was elected.

Nc judicial cfficr hereafter appcinted by the gcvernor as provided in this secticn is eligible tc be a candidate for judicial cffice fcr a pericd of cne year after his successor has been elected.

COMMENTS

The first paragraph of this section is identical to Article VIII, secticn 34 of the 1889 Ccnstirutien. The seccnd paragraph is a new provisicn. 'The purpose cf this new prcvisicn is tc elminate the advantage of the "created" incumbent in a judicial election contest. The majority cf the ccmmittee recognizes that there is a growing tendency for judges tc retire during their terms so that the gcverncr appcints a judge tc serve until the next general election when the appcintee then runs fcr the cffice as the incumbent. This appears to be an undue advantage in a system which prcvides for election of judges.

Section 30. INELIGIBILITY FOR PUEIIC CFFICE. Nc justice of the supreme court cr district judge shall hcld any cther public cffice, except that he may be a member of the Judicial Standards Cocmissicn, while he remains in the cffice tc which he has teen elected cr appcinted.

COMMENTS

Section 30 is identical with Article VIII, sectico 35 cf the 1869 Constitution except that the fcllcwing language is added: "except that he may be a member of the Judicial Standards Ccmmissicn". The 1889 Constitutien dces nct have the requirement fcr a Judicial Standards Commissicn and under sectico 20 of the majority report, a Judicial Standards Ccmmissicc is now part cf the proposed judicial article. Three justices are required tc sit cn the Judicial Standards Commissicn and thus the foregoing membership cn the commission is excepted tc make clear that there will be no violaticn by a justice or judge being a member cf the Judi-

cial standards Commission.

Section 31. JUDGE PRO TEMPORE. Civil actions in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the causes; and in such cases any order, judgment or decree, made or rendered therein by such judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

COMMENTS

Section 31 of the majority report is identical with Article VIII, section 36 of the 1889 Constitution, except in section 36 3 civil action is changed to civil actions. This is self-explanatory.

Section 32. FORFEITURE OF JUDICIAL OFFICE. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

COMMENTS

Section 32 is identical with Article VIII, section 37 of the 1889 Constitution.

SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a section in the new judicial article to read as follows:

Section ___. CAMPAIGN EXPENSES. The legislative assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and district court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court or district court judge, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the legislative assembly.

David I. Holland
Chairman

Catherine Pemberton
Vice Chairman
(original unsigned)

Cedor B. Aronow

Jean M. Bowman
(original unsigned)

Rod Hanson

J. Mason Melvin

John M. Schiltz

Leslie "Joe" Eskildsen

Ben E. Berg, Jr.
(original unsigned)

COMMENTS ON SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

Section ___. CAMPAIGN EXPENSES. The legislative assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and district court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court or district court judge, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the legislative assembly.

COMMENTS

Both the minority and majority proposals of the committee contemplate an election of judges, presumably in a con-partisan contest. In either case there will be the same problems we have always had: (1) the necessity that the judge demean himself and his position by seeking campaign funds; (2) the fact that the wrong people can make contributions; (3) the fact that lawyers are the biggest contfitutors and solicitors of campaign funds to the detriment of themselves than the candidate; (4) the fact that the candidate with the most money to spend is the more likely to win regardless of merit; and (5) the fact that the appearance of justice suffers in the process.

The committee majority proposes this special sfoticc as a means of curing the defects in flection of judges and believes that the expense is warranted in view of the benefits to be attained.

MINORITY PROPOSAL

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a new Article on the Judiciary to read as follows:

ARTICLE ___

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in a supreme court and district courts and such other courts as may be provided by law.

Section 2. SUPREME COURT POWERS. The supreme court shall have final appellate jurisdiction and general supervisory and administrative control over all courts.

The supreme court may make rules for the practice of law and judicial administration in all courts.

The supreme court shall have such power to make rules of procedure as may be Provided by law.

The supreme court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of its jurisdiction, including the writ of habeas corpus.

Section 3. SUPREME COURT ORGANIZATION. The supreme court shall consist of one chief justice and four justices, a majority of whom will be necessary to pronounce the decision, which must he in writing and signed by the majority.

The legislative assembly nay increase the number of justices from five to seven.

District judges shall be substituted for the chief justice or the justices in the event of disqualification or disability, in any cause, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice of the supreme court.

Section 4. DISTRICT COURT POWERS. Original jurictiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vest.33 in the district courts, but distribution of concurrent jurisdiction uith other courts may be provided by law.

Until otherwise provided by law, appeals from inferior courts must be tried anew in the district court. District courts shall also have jurisdiction to review decisions of administrative boards and commissions and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the state of Montana. The supreme court and district court process shall extend to all parts of the state.

Section 5. JUDICIAL DISTRICTS. The legislative assembly shall divide the state into judicial districts and provide for the number of judges in each district.

The legislative assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in each district; however, each district shall be formed of compact territory and be bounded by county lines, but no changes in the number of boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

The chief justice may assign the district judge and other judges for temporary service from one district to another, and from one county to another.

Section 6. TERMS AND PAY OF JUDGES. Justices of the supreme court, district court judges and other judges shall be paid as provided by law, but their salary shall not be diminished during their term of office.

Terms of office for supreme court justices shall be six years.

Terms of office for district court judges shall be four years.

Terms of office for other judges shall be provided by law.

Section 7. SELECTION OF JUDGES. In all vacancies in the offices of supreme court justices and district court judges caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office, the governor of the state shall nominate a supreme court or district court judge from nominees selected in the manner provided by law. If the governor fails to nominate within thirty days after receipt of the names of the nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not assembled shall be effective as an appointment until the end of the next session of the senate. If the nomination is not confirmed by the senate the office shall be vacant and another selection and nomination shall be made.

after the close of filings for nominations in the first

primary election after senate confirmation, the name of the appointed judge shall be placed on a contested non-partisan ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of the appointed judge shall nevertheless be placed on a ballot in the general election allowing voters of the state or district the choice of his approval or rejection. Thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office. In the event of rejiction of a judge another selection and comination shall be made in like manner.

Section 8. QUALIFICATIONS AND LIMITATIONS OF JUDGES. No person shall be eligible to the offices of justice of the supreme court or judge of the district court unless he or she shall have been admitted to the practice of law in Montanafor at least five years prior to the date of appointment or election, is a citizen of the United States, and has resided in the state of Montana two years immediately before taking office. Qualifications and methods of selection of judges of other courts shall be provided by law.

No supreme court justices or district court judge shall solicit or receive any compensation or account of his office, in any form whatever, except salary and actual necessary travel expense as provided by law.

Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any ether employment for which salary or fee is paid, or hold office in a political party.

Filing for another elective public office results in forfeiture of judicial position.

A district judge must reside in his district during his term of office.

Section 9. DISQUALIFICATION OF JUDGES. The legislature shall provide for disqualification of judges at any one or all of the inferior, trial and appellate court levels.

Section 13. REMOVAL AND DISCIPLINE OF JUDGES AND LAWYERS. There is created a Judicial Standards Commission consisting of three judges, selected by the district judges, of which not more than one can be a member of the supreme court; tuc members of the Montana Bar, and two citizens whc do not hold any public office of the state of Montana or any office of a political party, appointed by the governor. Each vacancy on the commission shall be filled in the same manner as the original appointment was made and the appointee shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman. Its proceedings shall be confiden-

tial.

The commission shall have the power to investigate, including power to subpoena witnesses and documents, upon complaint by any citizen or on its own motion, charges which could be the basis for retirement, censure or removal of any justice or judge or for the discipline, censure, suspension or disbarment of any practicing lawyer in the state of Montana. Upon finding charges to be well founded the commission shall file a formal complaint before the supreme court. The supreme court shall hear such complaint, and if it be substantiated may retire, censure or remove any justice or judge or discipline, censure, suspend or disbar any practicing lawyer. If the complaint be against a justice, the court shall call in a district judge as provided in section 3 of this Article.

Section 11. CLERK OF THE SUPREME COURT. The chief justice shall appoint a clerk of the supreme court who shall hold office at the pleasure of the supreme court.

The salary and qualifications shall be fixed by law, and the duties of the office shall be prescribed by the supreme court.

Section 12. CLERK OF THE DISTRICT COURT. There shall be a clerk of each judicial district court in each county who shall be elected by the voters therein and who may appoint such deputies as provided by law.

The term of office, qualifications, and the compensation of the district court clerk and deputies shall be provided by law.

The duties of the clerk and deputies shall be prescribed by the district court judge and as provided by law.

Section 13. DISTRICT ATTORNEYS. There shall be elected district attorneys whose jurisdictional area, qualifications, term of office, salaries and duties shall be provided by law.

Catherine Pemberton
Vice Chairman

Ben F. Berg, Jr.

Jean M. Bowman

J. Mason Melvin

COMMENTS ON MINORITY PROPOSAL

This minority proposed Judicial Article is truly a viable cornerstone for the establishment and operation of the courts of Montana. Its elasticity and flexibility are its strength; its clarity lends it force. Every delegate in this convention was requested by some of the electorate to assure brevity and simplicity in any Constitutional revisions so that all could understand. The minority proposed Judicial Article measures up in these areas. Yet, none of the time-honored safeguards have been abandoned. Rather, in this proposal, citizens' choices and options have been enhanced, the judiciary has been strengthened, and the entire judicial system has been made more flexible to change and review by the people.

The Judiciary Committee has heard many witnesses. Some of the witnesses emphasized the importance of the independence of the judiciary from the Legislative and Executive branches; other emphasized the importance of the judges being responsive to the law. It is submitted that the judiciary must also be responsive to the lawgivers, the people.

This Article was drawn with the idea that the judicial branch must be as strong as the other two; that its officers be as free from obligation as humanly possible; and, that the choice of judicial officers be the responsibility of the Legislative and Executive branches and the voters.

Section 1. JUDICIAL POWER. The judicial power of the state is vested in a supreme court and district courts and such other courts as may be provided by law.

COMMENTS

The minority committee believes that this provision is broad and flexible enough to accommodate not only the existing inferior courts, including justice of the peace, police and municipal courts, but also for the implementation of future courts.

The minority has deleted reference to a court of impeachment in the judicial article because it is an archaic, seldom used procedure and because it is adequately covered by Article V, section 16 of the legislative article of the 1889 Constitution where it more appropriately belongs.

It should be pointed out that by deleting reference to justice of the peace, there is no intention to abolish or affect the present jurisdiction and operation of these courts, but rather to leave assignment of judicial power in these courts exclusively to the legislature where there is wide latitude for improvement and alterations that will adjust to the varying complexities of rural and urban problems in the administration of justice on the lower

level.

Section 2. SUPREME COURT POWERS. The supreme court shall have final appellate jurisdiction and general supervisory and administrative control over all courts.

The supreme court may make rules for the practice of law and judicial administration in all courts.

The supreme court shall have such power to make rules of procedure as may be provided by law.

The supreme court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of its jurisdiction, including the writ of habeas corpus.

COMMENTS

Final appellate jurisdiction is, by this section, vested exclusively in the supreme court. We employ the word "final" not only to indicate the place where litigation ends, but also to allow for intermediate appellate courts which may in the future become necessary to a speedy dispatch of justice. Like the federal Constitution, the minority has not restricted or encumbered the appellate jurisdiction of the supreme court to "such limitations and regulations as may be provided by law". This change we believe to be consistent with the basic Constitutional principle of separation of powers among the three principal departments of government. Similarly, the minority has eliminated the antique phrase "all cases in law and equity", believing this language to be archaic and a totally unnecessary distinction and restriction.

In addition to the unfettered appellate jurisdiction, the supreme court is given original jurisdiction to issue all writs and orders appropriate to the exercise of its powers. The minority proposal specifies only the writ of habeas corpus, but by this specification does not intend to exclude the use of other original writs enumerated in the 1889 Constitution. Likewise, we have removed the procedural provisions regarding the issuance and hearing of writs of habeas corpus because we think these provisions are purely statutory in character and because Article III, section 21 of the 1889 Constitution adequately protects against the suspension of the privilege of a writ of habeas corpus.

To the general supervisory control which the 1889 Constitution granted the supreme court, the minority has added administrative control. This addition was made to clarify the supervisory powers of the supreme court and to permit the supreme court to exercise centralized administrative direction for the entire judicial system. This power is further emphasized by the rule-making power in judicial administration. The minority does not believe that there is an immediate need for the employment of this power, but we see its probable need in the future. We con-

ceive that the office of the clerk of the supreme court could be used by the supreme court as an agency to facilitate the administration of the judicial system and have therefore included the power in the supreme court to prescribe the duties of its clerk. (section 11).

Rule-making power is categorized by the minority report into two classes. One class includes the practice of law and judicial administration of courts, which relate exclusively to the internal affairs of the judicial system. Powers in this regard are specifically lodged in the supreme court. The second class of rule-making power is restricted to rules of procedure and is intended to include both civil and criminal codes, but is specifically limited and qualified by the phrase "as provided by law" meaning, of course, that the rule-making power is actually reserved to the plenary power of the legislature as the lawmaking body of the State. It is believed that the making of rules of evidence properly belongs exclusively with the legislature because of the fine line between substantive and adjective law.

> Section 3. SUPREME COURT ORGANIZATION. The supreme court shall consist of one chief justice and four justices, a majority of whom will be necessary to pronounce the decision, which must be in writing and signed by the majority.
>
> The legislative assembly may increase the number of justices from five to seven.
>
> District judges shall be substituted for the chief justice or the justices in the event of disqualification or disability, in any cause, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice of the supreme court.

COMMENTS

Except for the requirement that decisions of the supreme court must be in writing and be signed by the majority, which is included for the purpose of prohibiting per curiam unsigned decisions, the foregoing section 3 is a condensed version of Article VIII, section 5 of the 1889 Constitution. It does, however, permit the enlargement of the supreme court from five to seven justices including the chief justice. It makes no reference to quorums, calendars and procedure for adjournment of the court because the minority believes that these are provisions properly covered by the rules of court. Similarly, in a shorter paragraph we have provided for the seating of a district judge in the event of a disqualification of a supreme court justice.

> Section 4. DISTRICT COURT POWERS. Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine

original and remedial writs is vested in the district courts, but distribution of concurrent jurisdiction with other courts may be provided by law.

Until otherwise provided by law, appeals from inferior courts must be tried anew in the district court. District courts shall also have jurisdiction to review decisions of administrative boards and commissions and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the state of Montana. The supreme court and district court process shall extend to all parts of the state.

COMMENTS

Brevity and clarity of expression have guided the minority in the drafting of this proposed judicial article. Our research has included a reasonably thorough study of other state Constitutions. WE were chagrined to find no other state Constitution encumbered by the deliniation of various types of action included within the original jurisdiction of our principal trial courts as it is described in Article VIII, section 11 of the 1869 Constitution. Moreover, we are apprehensive as to just bow limited that jurisdiction may prove to be if the interpretive rule of expressio unis exclusio alterius (expression of one is the exclusion of others) is applied.

With these considerations in mind, the minority sought to provide district courts with broad and flexible jurisdiction, and, accordingly, substituted the language "all matters and causes" in lieu of the specifications contained in the old section 11 of Article VIII. We considered the phrase "all justiciable causes" employed in the Illinois Constitution and used in the North Dakota proposed judicial article, but frcr cur research it appeared that the word "justiciable" is too vague to be meaningful and is thernfcre Still open to a possible restrictive construction which we seek to avoid. Accordingly, we preferred the unlimited words "all causes" used in the California judicial article pertaining to the superior courts, their courts of general trial jurisdiction. To this phrase we added the word "matters" to assure continued probate jurisdiction. To secure the vestment of the power in criminal proceedings we also added the phrase "both civil and criminal". To provide flexibility to the entire judicial system, we added the clause "but distribution of concurrent jurisdiction to other courts may be provided by law". By this clause it is intended to permit the legislature to assign concurrent jurisdiction to hear criminal matters not amounting to a felony and minor civil actions to inferior courts of limited jurisdiction.

By thus circumscribing original jurisdiction of the judicial power with legislative discretion, we were concerned that the legislature might effectively dessimate our district courts by

vesting more and more judicial power in tribunals of its creation. To prevent this destructive abuse of power we have intentionally inserted the word "concurrent" as a limitation on that power, thereby forever leaving to the people the choice of appearing in any matter before either a Constitutional or legislative court. Further. by the use of the word "concurrent" as applied to original jurisdiction, we intend to leave to the legislature the option of unifying the trial court levels if in the future that should appear desirable.

But we were not content to limit the district courts to original jurisdiction only, but foresaw the need for continued appellate jurisdiction over inferior courts and administrative boards and commissions. Hence, we specifically provide for trial de novo on appeal from inferior courts, thereby avoiding excessive cost to parties in the preparation of transcript upon appeal from the lower courts.

We have also accomodated future delegation of judicial power by the united States government or the state of Montana and have not limited it to the present power of naturalization as does Article VIII, section 11 of the 1889 Constitution.

Finally, to make certain that both the supreme court and district courts are truly courts of statewide jurisdiction, we have expressly declared that their processes extend to all parts of the state.

> Section 5. JUDICIAL DISTRICTS. The legislative assembly shall divide the state into judicial districts and provide for the number of judges ir each district.
>
> The legislative assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in each district; however, each district shall be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.
>
> The chief justice may assign the district judge and other judges for temporary service from one district to another, and from one county to another.

COMMENTS

The minority believes that it is the perogative of the legislature to divide the state into judicial districts because of the political characteristics of such districts. It is felt that the legislature is not only better equipped to maintain a district's political integrity, hut it is altogether inappropriate for a court to become involved in political activity of any character. It is presumed, however, that the legislature will

consult with the supreme court when providing for the number of judges in each district. Our position also prevents capricious action on the part of the legislature which might cause a judge to be removed from office. It is also doubtful, under this system of legislative deliberation, that a judge could be moved to a district or removed from his district because of an unpopular decision.

Section 6. TERMS AND PAY OF JUDGES. Justices of the supreme court, district court judges and other judges shall be paid as provided by law, but their salary shall not be diminished during their term of office.

Terms of office for supreme court judges shall be four years.

Terms of office for other judges shall be provided by law.

COMMENTS

By separate paragraphs, somewhat diminished in length, sections 6, 12, 20, and 30 of Article VIII of the 1889 Constitution have been incorporated under the dual subject matter of section 7.

Section 7. SELECTION OF JUDGES. In all vacancies in the offices of supreme court justices and district court judges caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office, the governor of the state shall nominate a supreme court or district court judge from nominees selected in the manner provided by law. If the governor fails to nominate within thirty days after receipt of the names of the nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not assembled shall be effective as an appointment until the end of the next session of the senate. If the nomination is not confirmed by the senate the office shall be vacant and another selection and nomination shall be made.

Before the close of filings for nominations in the first primary election after senate confirmation, the name of the appointed judge shall be placed on a contested non-partisan ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of the appointed judge shall nevertheless be placed on a ballot in the general election allowing voters of the state or district the choice of his approval or rejection. Thereafter, the elected judge shall be subject to

approval or rejection in a general election for each succeeding term of office. In the event of rejection of a judge another selection and nomination shall be made in like manner.

COMMENTS

Throughout the judicial and political history of the United States there has always been and continues to be a great and important philosophical controversy between the conceptOf an independent judiciary and popular control of the courts. This controversy is manifested by the variety of systems adopted by the various states ranging from lifetime appointment to the partisan election of judges. In our judicial committee the concepts polarized between the appointive merit system and the non-partisan election of judges. After prolonged discussion and vigorous arguments by strong advocates, the committee divided nearly equally with the chairman voting with the majority to make a 5-4 split. As indicated, the committee's collective thought crystallized on the selection of judges.

The minority proposed section 6 as an innovation to and a compromise with the existing methods of selection of judges. Yet, it does, we believe, include many of the best features of all plans. Thus, in synopsis, the sinoiity plan incorporates non-partisan merit selection, gubernatorial nominatice, senate confirmation, initial contested elections, and subsequent voter chcicn of approval Ci rejection of judges.

The purpose of the minority's plan is twofold; namely, to present to the voters judicial candidates whose qualifications are recognized and to encourage better qualified and experienced lawyers to seekelevation to the judicial bench. It is the position of the minority that this system of selection will provide strong, able, impartial and independent judges who are still responsive to and elected by the people.

Ii is the minority's belief that today, few, if any, of the voters are at all acquainted with the judicial candidates and are totally uninformed of their education, background, experience and individual qualifications for a judgeship. We firmly believe that the survival of democratic institutions and representative government is directly dependent upon an informed electorate, and we think the present system of elected judiciary utterly and completely fails to attain that desired goal. We believe this is especially critical in the selection of judges who must be unselfishly devoted to the fair settlement of society's disputes. Their qualifications to perform this essential governmental function is the first and highest consideration.

TO better insure the selection of qualified judges, the minority suggests that the legislature create a committee, bi-partisan in character, composed of both lawyers and laymen, but predominately laymen, who are geographically distributed

throughout the state with at least one member from each judicial district. Preferably the committee should be elected by the legislature for staggered terms of three years so that one-third of its members are elected each annual session of the legislature. Members of the committee should not hold either public or political party offices and no member during his term of office may be a candidate for a judicial office.

The minority has purposely refrained from attempting to provide for the organization of the nominating committee in the belief that the legislature is better able to vigilantly oversee its operation.

The minority is not satisfied with the current process of unlimited gubernatorial appointive power of judges. In the light of statistics revealing that an overwhelming majority of our judiciary have been appointed by the governor, we are especially apprehensive of the future political character of our judges. Therefore, we have limited the governor's nomination to those nominees selected by a committee, created by and dependent upon the legislature. This system, we believe, accords an effective check and balance.

Neither have we been content with the merit selection system alone, but noting the validity of recent congressional disapproval of presidential appointments to the United States supreme court, we have recognized the value of "advice and consent" feature of the United States Constitution and have incorporated it into our proposal by the requirement of senate confirmation.

The fourth distinct and important feature of the minority plan in the selection of judges, is, of course, a necessity to a democratic form of government, i.e., a competitive election of public officials. This prime essential is provided for at the first primary election following appointment. In this primary election any lawyer may file against the appointed judge and the two candidates receiving the highest vote will again compete against each other in the following general election. If no candidate files against the appointed judge in the primary election, nevertheless, the name of the appointed judge must appear on the general election ballot for acceptance or rejection by the voters. For every succeeding term the elected judge must submit to acceptance or rejection by the voters of his district or state.

To repeat, the minority recommends that this comprehensive system of selection, nomination, confirmation and election of judges is a realistic and practical method of obtaining and keeping better judges by an informed electorate.

Section 8. QUALIFICATIONS AND LIMITATIONS OF JUDGES.

No person shall be eligible to the offices of justice of the supreme court or judge of the district court

unless he or she shall have been admitted to the practice of law in Montana for at least five years prior to the date of appointment or election, is a citizen of the United States, and has resided in the state of Montana two years immediately before taking office. Qualifications and methods of selection of judges of other courts shall be provided by law.

No supreme court justice or district court judge shall solicit or receive any compensation on account of his office, in any form whatever, except salary and actual necessary travel expense as provided by law.

Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

Filing for another elective public office results in forfeiture of judicial position.

A district judge must reside in his district during his term of office.

COMMENTS

Paragraph one of this section is essentially the same as section 10 of Article VIII, of the 1889 Constitution except that it eliminates the age requirement as we feel that age isn't as important as knowledge and experience. It specifies five years of practice at law as a qualification for either a supreme court justice or a judge of the district court. It adds that the qualifications and methods of selection of judges of the other courts will be provided by law.

The second paragraph of section 5 is similar to Article VIII, section 30 of the 1889 constitution except that it clarifies compensation of judges by allowing instead of prohibiting the receipt of actual necessary travel expense in addition to salary.

Paragraph three incorporates the provisions of Article VIII, sections 31 and 35 of the 1889 Constitution, except that it prevents either a district judge or justice of the supreme court from engaging in any other employment for which a salary or fee is paid and specifically prohibits a district or supreme court judge from holding any office in a political party.

The fourth paragraph of sfctico 5 is new to the Montana Constitution and is designed to prevent judgeships being used as stepping stones for the fulfillment of political ambition.

The fifth paragraph refines and shortens the residential requirements of district judges as they have been spelled out in

section 33 of Article VIII.

Section 9. DISQUALIFICATION OF JUDGES. The legislature shall provide for disqualification of judges at any one or all of the inferior, trial and appellate court levels.

COMMENTS

This section is Delegate Proposal No. 90, except that we have changed "may provide" to "shall provide", because WE feel that it thus gives a clear mandate to the legislature to act in this area. It is our contention that it is the basic right of a litigant to be assured an impartial judge at all levels of the courts. It is noted that although disqualification procedure for lower courts is provided for in the statutes, the supreme court has remained exempt. By this provision, the supreme court justices will also be subject to the similar requirements.

Section 10. REMOVAL AND DISCIPLINE OF JUDGES AND LAWYERS. There is created a Judicial Standards Commission consisting of three judges, selected by the district judges, of which not more than one can be a member of the supreme court; two members of the Montana Bar, and two citizens who do not hold any public office of the state of Montana or any office of 3 political party, appointed by tht governor. Each vacancy on the commission shall be filled in rhe sane manner as the original appointment was mad: and the appointee shall serve for the remainder at the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairnan. Its proceedings shall be confidential.

The commission shall have the power to investigate, including power to subpoena witnesses and documents, upon complaint by any citizen or on its own motion, charges which could be the basis for retirement, censure or removal of any justice or judge or for the discipline, censure, suspension or disbarment of any practicing lawyer in the state of Montana. Upon finding charges to be well founded the Commission shall file a formal complaint before the supreme court. The supreme court shall hear such complaint, and if it be substantiated may retire, censure or remove any justice or judge or discipline, censure, suspend or disbar any practicing lawyer. If the complaint be against a justice, the court shall call in a district judge as provided in section 3 of this Article.

COMMENTS

1: may seem contradictory to go into such detail in this

section, but the minority feels that the seeming current distrust of the legal profession in general and the courts in particular warranted this detail, in an effort to allay this distrust and to give adequate avenue for redress by the public. In cases where censure or removal of a justice or judge is indicated, such action can be taker, without the trauma caused by a public proceeding. At the same time it makes possible disciplinary action for reasons that are not of such magnitude as to warrant an impeachment proceeding.

In addition the mincrity feels that it is essential that the public be given the opportunity for redress of grievances against any practicing attorney. We feel that this section will do much to keep the *legal* profession at the bigh caliber that it must maintain if it is to be accorded the respect necessary to have the judicial system which we think Montana ought to have.

Section 11. CLERK OF THE SUPREME COURT. The chief justice shall appoint a clerk of the supreme court who shall hold office at the pleasure of the supreme court.

The salary and qualifications shall be fixed by law, and the duties of the office shall be prescribed by the supreme court.

COMMENTS

The functions of this office are administrative in nature and affect no policy change or formation. For this reason the minority feels it is best to allow the supreme court to hire its own clerk. The clerk must work with the court, and even though he or she has dealings with the public, the clerk doesn't represent the people in the sense that a legislator does. We feel that a substantial portion of the voters don't know the candidate or candidates for the position and probably aren't very concerned with the position since no policy decisions are made.

In addition, again Allowing for future innovation, if the position develops into an agency to facilitate administration of the judicial system, the court should have the prerogative to hire the person it feels is best qualified to perform the functions that it nay prescribe.

Section 12. CLERK OF THE DISTRICT COURT. There shall ho a clerk of each judicial district court in each county who shall be elected by the voters therein and who may appoint *such* deputies as provided by law.

The term of office, qualifications, and the compensation of the district court clerk and deputies shall be provided by law.

The duties of the clerk and deputies shall be prescribed by the district court judge as provided by law.

COMMENTS

This section is basically the same as Article VIII, section 18 in the 1889 Constitution, except that we have delegated to the legislature the duty of providing term of office, qualifications and compensation. Again, this merely allows flexibility.

It is felt that the clerk should have the privilege of appointing deputies, who in effect are working for him.

The minority also feels that the duties of the clerks and deputies should be provided not only by the legislature but also by the district court judge who will be working closely with the clerk.

By including the clerk of the court in this judicial article it is not intended to impair the consolidation of this office with other county offices as proposed by the Local Government Committee, but if the committee on Style and Crafting determines there is conflict, the matter may be referred back to a joint conference of Judiciary and Local Government Committees.

Section 13. DISTRICT ATTORNEYS. There shall be elected district attorneys whose jurisdictional area, qualifications, term of office, salaries and duties shall be provided by law.

COMMENTS

In an effort to write a document that will be applicable for many years, we deemed it best to change the title of county attorney to district attorney. It is entirely possible that eventually counties may decide to share services and a Constitutional designation of a county attorney for each county would make transition in this area difficult. We have provided for legislative action concerning jurisdictional area, qualifications, term of office, salary and duties in keeping with our philosophy of flexibility. This section in no way precludes continuing the system of county attorneys that we now have; they will merely be called district attorneys instead.

UNANIMOUS PROPOSAL ON SEPARATE MATTER

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be two sections in the new Constitution to read as follows:

Section ___. EXEMPTION LAWS. The legislative assembly shall enact liberal homestead and exemption laws.

Section ___. PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

David I. Holland
Chairman

Catherine Pemberton
Vice Chairman

Cedor B. Aronow

Ben F. Berg, Jr.

Jean M. Bowman

Leslie "Joe" Eskildsen

Rod Hanson

J. Mason Melvin

John MJ Schiltz

COMMENTS ON UNANIMOUS PROPOSAL ON SEPARATE MATTER

Section ---. EXEMPTION LAWS. The legislative assembly shall enact liberal homestead and exemption laws.

COMMENTS

This language is identical with Article XIX, section 4 of the 1889 Constitution. All of the committee feel that no change shall be made in this Constitutional section.

Ssction ___. PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

COMMENTS

This language is identical with Article XIX, section 5 of the 1889 Constitution. All of the committee feel that no change shall be made in this Constitutional section.

APPENDIX A

CROSS REFERENCES

I. MAJORITY PROPOSAL:

Proposed Section	Present Article & Section
1	VIII, 1
2	VIII, 2
3	VIII, 3
4	VIII, 4
5	VIII, 5
6	VIII, 6, 7
7	VIII, 9
8	VIII, 10
9	VIII, 11
10	VIII, 12, 13
11	VIII, 15
12	VIII, 16
13	VIII, 17
14	VIII, 18
15	VIII. 19
16	VIII, 20, 21
17	VIII, 22, 23
18	VIII, 24
19	New Section
20	VIII. 25
21	VIII, 26
22	VIII, 27

23	VIII, 28
24	VIII, 29
25	VIII, 30
26	VIII, 31
27	VIII, 32
28	VIII, 33
29	VIII, 34
30	VIII, 35
31	VIII, 36
32	VIII, 37

Sections Deleted:

VIII, 8, 13

II. MAJORITY PROPOSAL (CAMPAIGN EXPENSES) NO cross reference

III. MINORITY PROPOSAL

Proposed Section	Present Article & Section
1	VIII, 1
2	VIII, 2, 3
3	VIII, 5
4	VIII, 11, 23
5	VIII, 12, 14
6	VIII, 7, 12, 20, 29
7	VIII, 6, 12, 34
8	VIII, 13, 16, 30, 31, 33, 35
9	New section

10	New section
11	VIII, 9
12	VIII, 18
13	VIII, 19

Sections Deleted: VIII, 4, 8, 13, 15, 17, 21, 22, 24, 25, 26, 27, 28, 32, 36, 37

IV. UNANIMOUS PROPOSAL ON SEPARATE MATTER

Proposed section	Present Article & section
Exemption Laws	XIX, 4
Perpetuities	XIX, 5

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Judiciary Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	7	Earl Berthelson	Judicial Article	Adopted in Part by Majority and Minority
2.	30	Jerome J. Cate	Sovereign Immunity	Referred to Bill of Rights
3.	34	Bob Campbell	Restoration of Rights	Referred to Bill of Rights
4.	38	Donald R. Foster	Citizen Participation in Government	Referred to Bill of Rights
5.	44	Jerome T. Loendorf	Judicial Article	Rejected
6.	53	Thomas M. Ask	Justices of Peace	Rejected
7.	69	Carl M. Davis	Prosecuting Attorneys	Rejected
8.	90	Geoffrey L. Brazier	Disqualification of Judges	Rejected
9.	92	Franklin Arness	Appeals and Inferior Courts	Rejected

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
10.	137	Mike McKeon	Probate Court	Rejected
11.	145	Jerome T. Loendorf	Employees' Retirement System	Rejected
12.	149	Mike McKeon	Probate Court	Rejected
13.	155	Archie Wilson	Probate Administrator	Rejected
14.	159	Robert Lee Kelleher	Acts of Parliament	Rejected
15.	163	Veronica Sullivan	Fair and Humane Facilities	Suggested to send to Bill of Rights
16.	168	Robert Lee Kelleher	Rights of Convicted Felons	Rejected
17.	169	Robert Lee Kelleher	Access to Courts	Rejected
18.	174	Otto T. Habedank	Limitation on Due Process	Rejected
19.	176	Robert Lee Kelleher	Failure to Vote is Crime	Rejected

APPENDIX C

WITNESSES HEARD BY THE COMMITTEE

Name - Affiliation - Residence - Subject

1. Professor David Mason - Montana School of Law - Missoula - Proponent of the Montana Plan.

2. Dean Robert E. Sullivan - Montana School of Law - Missoula - Proponent of the Montana Plan.

3. Professor William "Duke" Crowley - Montana School of Law - Missoula - Proponent of the Montana Plan.

4. Kenneth Davis - Montana Citizens for Court Improvement - Billings - Proponent of the Montana Plan.

5. Stanley Lowe - Associate Director, American Judicature Society - Chicago - Proponent of the Montana Plan.

6. William Bellingham - President, Montana Bar Association - Billings - Proponent of the Montana Plan.

7. Earl Berthelson - Convention Delegate - Conrad - Proponent of the Montana Plan.

8. Geoffrey Brazier - Convention Delegate - Helena - Courts in General, Delegate Proposal #90.

9. George Schotte - President, Montana Citizens for Court Improvement - Helena - Proponent of the Montana Plan.

10. John Lane - Cascade County Intergovernmental Cooperation Committee - representative - Helena - favored Montana Plan, appointment of judges and flexibility of lower courts.

17. Chief Justice J. T. Harrison - Supreme Court of Montana - Helena - endorsed Montana Plan

12. Judge Robert Keller - Montana District Court. - Kalispell - Appointment of judges, increased judicial compensation and other court problems.

13. Archie Wilson - Convention Delegate - Hysham - favored most parts of Montana Plan, Delegate Proposal #155.

14. Charles McNeil - Convention Delegate - Polson - Opponent of Montana Plan.

15. Judge Victor Ball (retired) - Montana District Court - Helena - Endorsed a short judicial article with as much left to the legislature as possible.

16. Judge Paul Hatfield - President, Montana Judges' Esscciation Great Falls - Favored Judges' Plan of the Judicial article.

17. Claude Erickson - Montana Citizens for Court Improvement - Livingston - Proponent of Montana Plan.

18. Charles Moses - Attorney - Billings - Submitted short, flexible judicial article.

19. Conrad Fredricks - County Attorney - Big Timber - county Attorneys.

20. Judge E. Gardner Brownlee - Montana District Court - Missoula - Justices of the Peace, Opponent of Montana Plan.

21. James Olson - President, Montana County Attorceys Association - Kalispell - County Attorneys.

22. Bob Brocks - County Attorney - Broadus - County Attorneys.

23. Andrew G. Sutton - secretary, Montana County Attorneys Association - Jordan - County Attorneys.

24. Opal Eggert - Lobbyist, Elected Countp Officials of Montana - Justices of the Peace, Clerks of Court.

25. Sterling DePratu - Justice of the Peace - Fairfield - Justices of the Peace.

26. Ken D. Clark - Lobbyist, United Transportation Unions - Miles City - Justices of the Peace, Clerks of Court.

27. Walter Hammermeister - Sheriff and Peace Officer Psscciation - Conrad - Justices of the Peace.

28. Thomas J. Kearney - Clerk of Montana Supreme Court - Helena - Clerks of Court.

29. Roger Barnaby - President, Montana Clerks of Court Association - Wibaux - Clerks of Court.

30. Elmer Erickson - Clerk of District Court - Chouteau - Clerks of court.

31. Hardin E. Todd - Secretary, Montana Clerks of Court Association - Billings - Clerks of Court.

32. Francis Mitchell - Lobbyist, Montana Common Cause - Helena - Opponent Of Montana, favored partisan flection of supreme court justices and left the design of the court system to the supreme court.

33. J. Chan Ettien - Attorney - Havre - Opponent of the Montana Plan.

34. Joe Roberts - Law Student - Missoula - Justices of the Peace.

35. John Mudd - Law Student - Micscula - Judicial Selection.

36. Judge Russell Smith - Montana Federal District Court - Missoula - Proponent of Montana Plan.

37. Earney Reagan - Ninth Judicial District Bar Association - Helena - Opponent of Montana Plan.

38. Harold McChesney - President, Montana Trial Lawyers Association - Missoula - Reported poll of his organization showing opposition to appointive judges and in favor of deleting Constitutional reference to J. P. Courts.

39. John Hauf - Attorney - Billings - Judicial Selection.

40. Mrs. Bernice Wolf - Interested Citizen - Nashua - Courts in general.

41. Roy Crosby - Montana Citizens for Constitutional Government - Missoula - Opponent of Montana Plan and relegate Proposal #44.

42. Judge W. W. Lessley - Montana District Court - Bozeman - Proponent of Montana Plan.

43. Judge Robert Wilson - Montana District court - Billings - Proponent of Montana Plan.

44. Paul Keller - Attorney - Helena - Justice of the Peace Courts.

45. Luke McKeon - State Senator - Anaconda - Opponent of Montana Plan.

46. Joe Renders - Interested Citizen - Great Falls - Opponent of Montana Plan.

47. James T. Mular - Brotherhood of Railway and Airlines Clerks - Butte - Opponent of Montana Plan.

48. John Sullivan - Law Student - Missoula - Opponent of Montana Plan.

49. Frank Arness - Convention Delegate - Libby - Delegate Proposal #92.

50. A. W. Kamhoot - Convention Delegate - Forsyth - Delegate Proposal #155.

51. Henry Siderius - Convention Delegate - Kalispell - Delegate Proposal #155.

52. Tom Schneider - Executive Director, Montana Public Employees Association - Helena - Delegate Proposal #145.

53. Otto Habedank - Convention Delegate - Sidney - Delegate Proposal #174.

54. Jerome Leendorf - Convention Delegate - Helena - Delegate Proposals #44, 155.

55. Carl Davis - Convention Delegate - Dillon - Delegate Proposal #69.

56. Tom Ask - Convention Delegate - Dillon - Delegate Proposal #53, 69.

57. Robert Kelleher - Convention Delegate - Billings - Judicial Selection.

58. Daphne Bugbee - Convention Delegate - Missoula - Judicial Selection.

59. Miles Romney - Convention Delegate - Hamilton - Judicial Compensation.

60. Ray Gulick - Interested Citizen - Joplin - Courts in General.

61. Robert Brooks, President, Montana Magistrates Association - Lewistown - Justice of the Peace Courts.

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

MEMBER / SECTION	1	2	3	4	5	6	7	8	9	10	11	12	13	TOTAL Y	TOTAL N	TOTAL A
ARONOW, CEDOR B.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
BERG, BEN E.	N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
BOWMAN, MRS. JEAN M.	N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
ESKILDSEN, LESLIE "JOE"	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
HANSON, ROD	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
MELVIN, J. MASON	N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
SCHILTZ, JOHN M.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
PEMBERTON, MRS. CATHERINE	N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
HOLLAND, DAVID L.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
TOTAL Yea	5	5	5	5	5	5	5	5	5	5	5	5	5			
Nay	4	4	4	4	4	4	4	4	4	4	4	4	4			
Absent																

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

MEMBER	SECTION	14	15	16	17	18	19	20	21	22	23	24	25	26	TOTAL Y	TOTAL N	TOTAL A
ARONOW, CEDOR B.		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
BERG, BEN E.		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
BOWMAN, MRS. JEAN M.		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
ESKILDSEN, LESLIE "JOE"		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
HANSON, ROD		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
MELVIN, J. MASON		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
SCHILTZ, JOHN M.		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
PEMBERTON, MRS. CATHERINE		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
HOLLAND, DAVID				Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
TOTAL	Yea	5	5	5	5	5	5	5	5	5	5	5	5	5			
	Nay	4	4	4	4	4	4	4	4	4	4	4	4	4			
	Absent																

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

MEMBER / SECTION	27	28	29	30	31	32	TOTAL Y	TOTAL N	TOTAL A
ARONOW, CEDOR B.	Y	Y	Y	Y	Y	Y	6	0	0
BERG, BEN E.	N	N	N	N	N	N	0	6	0
BOWMAN, MRS. JEAN M.	N	N	N	N	N	N	0	6	0
ESKILDSEN, LESLIE "JOE"	Y	Y	Y	Y	Y	Y	6	0	0
HANSON, ROD	Y	Y	Y	Y	Y	Y	6	0	0
MELVIN, J. MASON	N	N	N	N	N	N	0	6	0
SCHILTZ, JOHN M.	Y	Y	Y	Y	Y	Y	6	0	0
PEMBERTON, MRS. CATHERINE	N	N	N	N	N	N	0	6	0
HOLLAND, DAVID L.	Y	Y	Y	Y	Y	Y	6	0	0
TOTAL Yea	5	5	5	5	5	5			
TOTAL Nay	4	4	4	4	4	4			
TOTAL Absent									

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

MEMBER	SECTION														TOTAL Y	TOTAL N	TOTAL A
ARONOW, CEDOR B.		Y													1	0	0
BERG, BEN E.		Y													1	0	0
BOWMAN, MRS. JEAN M.		N													0	1	0
ESKILDSEN, LESLIE "JOE"		N													0	1	0
HANSON, ROD		Y													1	0	0
MELVIN, J. MASON		Y													1	0	0
SCHILTZ, JOHN M		Y													1	0	0
PEMBERTON, MRS. CATHERINE		N													0	1	0
HOLLAND, DAVID L		Y													1	0	0
TOTAL	Yea	6															
	Nay	3															
	Absent																

APPENDIX D

ROLL CALLS ON MINORITY PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	12	13	TOTAL Y	TOTAL N	TOTAL A
ARONOW, CEDOR B.		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
BERG, BEN E.		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
BOWMAN, MRS. JEAN M.		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
ESKILDSEN, LESLIE "JOE"		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
HANSON, ROD		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
MELVIN, J. MASON		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	13	0	0
SCHILTZ, JOHN M.		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
PEMBERTON, MRS. CATHERINE		Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	13	0	0
HOLLAND, DAVID L.		N	N	N	N	N	N	N	N	N	N	N	N	N	0	13	0
TOTAL	Yea	4	4	4	4	4	4	4	4	4	4	4	4	4			
	Nay	5	5	5	5	5	5	5	5	5	5	5	5	5			
	Absent																

APPENDIX D

ROLL CALLS ON UNANINOUS PROPOSAL, IN SEPARATE MATTER

MEMBER	SECTION EXEMPTION LAWS	TOTAL Y	N	A
ARONOW, CEDOR B.	Y	1	0	0
BERG, BEN E.	Y	1	0	0
BOWMAN, MRS. JEAN M.	Y	1	0	0
ESKILDSEN, LESLIE "JOE"	Y	1	0	0
HANSON, ROD	Y	1	0	0
MELVIN, J. MASON	Y	1	0	0
SCHILTZ, JOHN M.	Y	1	0	0
PEMBERTON, MRS. CATHERINE	Y	1	0	0
HOLLAND, DAVID L.	Y	1	0	0
TOTAL Yea	9			
Nay	0			
Absent	0			

APPENDIX D

ROLL CALLS ON UNANIMOUS PROPOSAL, ON SEPARATE MATTER

MEMBER	SECTION	PERPETUITIES	TOTAL Y	TOTAL N	TOTAL A
ARONOW, CEDOR B.		Y			
BERG, BEN E.		Y			
BOWMAN, MRS. JEAN M.		Y			
ESKILDSEN, LESLIE "JOE"		Y			
HANSON, ROD		Y			
MELVIN, J. MASON		Y			
SCHILTZ, JOHN M.		Y			
PEMBERTON, MRS. CATHERINE		Y			
HOLLAND, DAVID L.		Y			
TOTAL	Yea	9			
	Nay	0			
	Absent	0			

CONTENTS

Vol. I

Foreword i
The Movements for Statehood and Constitutional Revision in Montana, 1866.1972 v
Enabling Act 1
Convention Rules 6
Delegate Information
Procedural Committees 21
Substantive Committees 22
Alphabetical List of Committee Assignments 24
Convention Officers 29
Delegate Biographies 31
Map of Delegate Districts 65
Delegates By District 66
Convention Staff 69
Bibliography 71
Delegate Proposals 75
Committee Proposals
Suffrage and Elections., ... 333
Constitutional Revision 349
Legislative 369
Executive 429
Judiciary 479

Vol. II

Committee Proposals (cont.)
Natural Resources and Agriculture.. 547
Revenue and Finance 575
Bill of Rights 615
Public Health, Welfare, Labor and Industry 661
Education and Public Lands 713
Local Government 777
General Government 811
Compact with the United States 837
Reports of Committee on Style, Drafting, Transition, and Submission
Suffrage and Election 845
Constitutional Revision 849
Legislative 859
Executive 891
Judiciary 911
Natural Resources and Agriculture 929
Revenue and Finance 943
Bill of Rights 955

Public Health, Welfare, Labor and Industry .. 975
Education and Public Lands 991
Local Government 1007
General Government 1017
Compact With The United States 1027
Final Report 1033
Constitution 1087

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

NATURAL RESOURCES A&C AGRICULTURE COMMITTEE PROPOSAL

NO. VI

Date Reported: February 18, 1972

/s/ Louise Cross
Chairman

/s/ E. S. Erv Gysler
Vice Chairman

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL..... 550

TEXT OF MAJORITY PROPOSAL..... 552

ENVIRONMENT AND NATURAL RESOURCES..... 552

COMMENTS ON MAJORITY PROPOSAL..... 554

ENVIRONMENT AND NATURAL RESOURCES

Section 1. Protection and Enhancement..... 554

Section 2. Reclamation..... 555

Section 3. Water Rights..... 556

Section 4. Cultural Resources..... 558

TEXT OF MAJORITY PROPOSAL

AGRICULTURE..... 559

COMMENTS ON MAJORITY PROPOSAL

AGRICULTURE..... 560

TEXT OF MINORITY PROPOSAL..... 561

COMMENTS ON MINORITY PROPOSAL

Section 1..... 562

Section 2..... 562

APPENDIX

Cross reference of present and proposed Article..... 563

Delegate proposals considered by committee..... 564

Witnesses heard by committee..... 566

Roll calls..... 572

Majority

Natural Resources..... 572

Agriculture..... 573

Minority . . . ..*.....*.....**.....*.*.a..... 574

Date: February 17, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Natural Resources and Agriculture Committee

Ladies and Gentlemen:

The Natural Resources and Agriculture Committee herewith submits a proposed new Article on "The Environment and Natural Resources" and a proposed new Article on Agriculture. The latter Article is intended to replace reference to Agriculture in section 1, Article XVIII in the present Constitution, and the words relating to the special levy on livestock in Article XII, section 9.

As a result of its deliberations, the committee has drawn up a new proposed Article on environment and natural resources. The Article requires that: the state and each person maintain and enhance the environment; legislative responsibility; and a provision for protection.

Separate sections dealing with land reclamation, water and cultural resources are part of the new proposed Article.

The environmental and natural resources proposal is submitted as a majority report as is the new proposed Article on Agriculture.

The minority report, a proposed last section to the new Article on the environment and natural resources, would provide a Montana resident with a right to appropriate legal proceedings

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against a government agency charged by law with the implementation and enforcement of said provision.

The members of this Committee, by signing the majority report, do not necessarily sanction each and every statement contained in this report. The minority report is an expression of those members who feel that such expression, while differing from that of the majority, merits consideration by the committee of the whole.

The testimony of 95 witnesses in 165 appearances was utilized by the committee. (See Appendix C)

The committee wishes to thank its Research Analyst, Charles Sullivan; its Secretary, Elaine Bung; Student Intern, Mona Earley; and Dave ard Lee Ann Jersey.

/s/ C. Louise Cross,
Chairman

/s/ E. S. Erv Gysler,
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on the Environment and Agriculture to read as follows:

ARTICLE ---

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND ENHANCEMENT. (1) The State of Montana and each person must maintain and enhance the environment of the state for present and future geaeraticns.

(2) The legislature must Provide for the administration and enforcement of this duty.

(3) The legislature is directed to provide adequate remedies for the protection of the environmental life support system from degredation and to provide adequate remedies to prevent unreasonable depletion of natural resources.

Section 2. RECLAWATICN. All lands disturbed by the taking of natural resources must be reclaimed to as good a cccditicn or use as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must 'be established by the legislature.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right-of-may over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary far collecting and storing the same, shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state for the use of its people and subject to appropriation for beneficial uses as provided by law.

(4) Benficial uses include, but are not limited to, domestic, municipal, agriculture, stackuatering. industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by law, together with future beneficial uses

as determined by the legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The legislature shall determine the method of establishing those future water rights which do not require a diversion and may designate priorities for those future rights if necessary.

(5) Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

(6) The legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records.

Section 4. CULTURAL RESOURCES. The legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeologic, scientific, cultural and recreational areas, sites and objects, and their use and enjoyment by the people.

/s/ Louise Cross
Chairman

/s/ E. S. "Fry" Gysler
Vice Chairman

/s/ Geoffrey L. Brazier

/s/ Henry L. Siderius

/s/ John H. Anderson, Jr.

/s/ A. W. Kamhoot

/s/ Douglas Delaney

/s/ Charles P. McNeil

/s/ Donald Rebal

COMMENTS CN MAJORITY FRCECSAL

ARTICLE ___

ENVIRONMENT ANL NATURAI BESOURCES

Sectien 1. PROTECTICN AND ENHANCEMENT. (1) The state of Mcntana and each persen must maintain and enhance the envircnment cf the state fer present and future generaticns.

(2) The legislature must provide fcr the administratien and enfercement cf this duty.

(3) The legislature is directed to provide adequate remedies for the protectien cf the environmental life support system frem degredatien and tc provide adequate remedies to prevent unreasonable depletien cf natural resources.

COMMENTS

Your committee presents and recommends in its prepcsal the strongest Constitutional environmental sectien of any existing state Ccnstitutien.

Subsection (1) requires the state and each person, which cf course includes ccrpcratiens and all legal entities as well as individuals, tc maintain and enhance the Montana envircnment fcr present and future genaratiens. Your committee considered at length an exhaustive list of descriptive adjectives tc precede the werd envircnment such as "healthful", "pleasing", "quality", "high quality", "unsullied", and "unique" and finally ccnclnded that *no* descriptive adjective was adequate or necessary. This was not a compremise but rather an acknculedgment of the present Montana envircnment.

Constitutienal provisions cf other states were studied but none were considered adequate as nc ether state has Montana's envircnment and therefore your committee felt that the best recommendation is tc require that all must maintain and enhance the Montana Environment.

Subsection (2) mandates the legislature tc administer and enforce the duty tc maintain and enhance the Montana envircnment. Your committee was urged by many tc detail the manner cf accemplishing this duty but the temptatien tc legislate in the Constitutien was resisted and confidence repesed in the legislature. To those who may lack such cenfidence in the elected representatives cf the people the clear and concise duty to maintain and enhance the Montana environment cannet be contravened.

Your committee censidered twe Delegate Propesals which

declared in substance that the State of Montana hold in Public Trust the environment, for the benefit of all the people of the state. The majority felt it unnecessary to have the state hold in trust all land, including of course privately owned real property, for the benefit of all the people of the state in order to accomplish the protection of our environment. In addition the majority felt it unwise to experiment by incorporating into the Constitution a "Public Trust" which was not clearly defined to the committee, which is not contained in the Constitution of any other state, and which exists in its infancy in only two states by legislation.

Subsection (3) mandates the legislature to provide adequate remedies to protect the environmental life support system from degradation. The committee intentionally avoided definitions to preclude being restrictive and the term "environmental life support system" is all encompassing including, but not limited to air, water, and land and whatever interpretation is afforded this phase by the legislature and courts; there is no question that it cannot be degraded.

Subsection (3) further mandates the legislature to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Although it is recognized that some non-renewable natural resources are to be consumed this provision permits the legislature to determine whether the resource is being unreasonably depleted and requires preventive remedies.

The committee considered proposals which would give individuals a right to sue without the necessity of showing some damage. The majority concluded that Montana's present law providing for class action under which litigation is presently pending involving multitudes of claimants against a single alleged polluter is adequate. However the majority feels that this is not a compromise because the majority proposal requires the legislature to provide whatever renedies are necessary to prevent degradation and unreasonable depletion.

The majority of the committee believes that this is the best Article for the protection of the Montana environment for its people.

> Section 2. RECLAMATION. All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature.

COMMENTS

Your committee finds it necessary to direct the legislature to recognize the demands of this and future generations and that our natural resources must be used to be enjoyed, but only with

judicious Use and reclamation.

Because Montana has at least 500,000 acres of strippable coal land and Untold acres of other natural resources, your committee believes the responsibilities of protecting and restoring the surface conditions of those lands for unborn generations should not be left to men, but rather protected by fundamental law.

Section 3. WATER RIGHTS. (1) All existing rights to the Use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial Use, and the right-of-way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use.

(3) All surface, Underground, flood, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state for the Use of its people and subject to appropriation for beneficial uses as provided by law.

(4) Beneficial uses include, but are not limited to, domestic, municipal, agriculture, stockwatering, industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by law, together with future beneficial Uses as determined by the legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The legislature shall determine the method of establishing those future water rights which do not require a diversion and may designate priorities for those future rights if necessary.

(5) Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

(6) The legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records.

COMMENTS

Your committee feels that water and water rights are of crucial importance to the past history and future development of

the State of Montana. For this reason the committee feels justified in expanding the present Constitutional section which relates solely to the use of water to include provisions for the protection of the waters of the state for use by its people.

Subsection (1) guarantees all existing rights to the use of water and includes all adjudicated rights and nonadjadicated rights including water rights for which notice of appropriations has been filed as well as rights by use for which no filing is of record.

Subsection (2) is a verbatim duplication of Article III, section 15 of the present Constitution and has been retained in its entirety to preserve the substantial number of court decisions interpreting and incorporating the language of this section.

Subsection (3) is a new provision to establish ownership of all waters in the state subject to use by the people. This does not in any way affect the past, present or future right to appropriate water for beneficial uses and is intended to recognize Montana Supreme Court decisions and guarantee the state of Montana standing to claim all of its waters for use by the people of Montana in matters involving other states and the United States Government.

Subsection (4) is a new provision to permit recreation and stockwatering to acquire a water right without the necessity of a diversion. This applies only to future rightr and, of course, only to waters for which there are no present water rights. This subsection further provides that future agricultural and industrial water development will not be foreclosed by recreation, as it is left up to the legislature to determine the method of establishing a future water right without a diversion and the legislature is further authorized to establish priorities of water uses for those waters where the legislature decrees priorities necessary.

Subsection (5) acknowledges a continuance of our present water law principle that the first appropriation in time is the better right and provides that no future appropriations shall be denied except in the public interest.

Subsection (6) mandates the legislature to administer, control and regulate water rights. This does not in any way change the present legislatively established system of local control of adjudicated waters by water commissioners appointed by the District Court having jurisdiction. A new requirerent is added to establish a system of centralized records of all water rights in addition to the present statutory system of local filing of records. The centralized records are intended to provide a single location for water rights information and a complete record of all water rights.

Section 4. CULTURAL RESOURCES. The legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeologic, scientific, cultural and recreational areas, sites, and objects, and their use and enjoyment by the people.

COMMENTS

In response to widespread citizen and delegate interest in preserving our yhcst towns, as well as our scenic, archeologic, scientific, cultural and recreational areas, sites and objects your committee proposes this self-explanatory section. The committee felt that such a section was appropriate in an article providing for protection of our total environment for this and future generations.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on Agriculture to read as follows:

ARTICLE ___

AGRICULTURE

Section 7. DEPARTMENT OF AGRICULTURE. The legislative assembly must provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the state.

Section 2. RIGHT TO SPECIAL LEVIES. A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion.

/s/ Louise Cross
Chairman

/s/ E. S. "Erv" Gysler
Vice Chairman

/s/ Geoffrey L. Brazier

/s/ Henry L. Siderius

/s/ John H. Anderson, Jr.

/s/ A. W. Kamboot

/s/ Douglas Delaney

/s/ Charles B. McNeil

/s/ Donald Retal

COMMENTS CR MAJORITY PROPOSAL

Section 1. DEPARTMENT OF AGRICULTURE. The legislative assembly must provide for a department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the state.

COMMENTS

Your committee believes that it is necessary to recognize the largest and most important industry in the state by retaining the Constitutional provision for a Department of Agriculture and to require that the legislature provide appropriations and authorities to adequately protect, enhance and develop the agricultural industry of the state.

This new section is intended to remove any reference to agriculture from Article XVIII, section 1 of our Constitution and to be the first section of a new article on agriculture.

Section 2. RIGHT TO SPECIAL LEVIES, A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control. livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion.

COMMENTS

This section is a revision of Article XII, section 9. Because of the excellent results of the livestock mill levy, your committee believes all of agriculture should benefit from this method of self-help taxation. However, your committee feels that setting the rate, as was previously done, is a legislative function to be exercised in response to industry needs.

MINORITY PROPOSAL

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That the following subsection be added as subsection (4) to section 1 of the Environment and Natural Resources Majority Proposal:

Section (4). Any Montana resident has the right to appropriate legal proceedings against any governmental agency charged by law with the implementation and enforcement of any provision of this Article.

/s/ C. Louise Cross
Chairman

/s/ Charles B. McNeil

/s/ Henry L. Siderius

COMMENTS ON MINORITY PROPOSAL

Section (4). Any Montana resident has the right to appropriate legal proceedings against any governmental agency charged by law with the implementation and enforcement of any provision of this Article.

COMMENTS

The minority report, a proposed subsection to section 1 of the new Article on the environment and natural resources, would provide a Montana resident with a right to appropriate legal proceedings against a government agency charged by law with the implementation and enforcement of said provision.

This is intended to grant an individual a Constitutionally guaranteed direct legal remedy to compel the performance by state agencies of the duty to implement and enforce the provisions of the Environment section.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTIONS OF ENVIRONMENTAL ARTICLE	PRESENT ARTICLE & SECTION
1	None
2	None
3	III, 15, with revision
4	None
None	XIX, 3

PROPOSED SECTIONS OF AGRICULTURE ARTICLE	PRESENT ARTICLE & SECTION
1	XVIII, 1, with revision
2	XII, 9, with revision

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Natural Resources and Agriculture Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	1	Berthelson	Establishing Public Policy on Environmental Quality	Rejected
2.	2	Berthelson	Providing for Water Rights	Adopted in part
3.	12	Cate	Protecting the Environment	Rejected
4.	20	McNeil	Providing a Public Policy of a Quality Environment	Adopted in part
5.	21	McNeil	Guaranteeing an Individual's Right to a Quality Environment	Adopted in part
6.	48	Etchart	Providing for Water Rights	Adopted in part
7.	83	Jacobsen	Providing for Acquisition of Historic Sites	Adopted in part
8.	93	Siderius	Providing for a Collective Bargaining	Referred to Bill of Rights Committee with Affirmative Recommendation

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
9.	96	Erdmann	Irrigating and Water Rights	Adopted in part
10.	104	Kelleher	Reserving to the People of Montana All Subsurface Riqhts Except Under School & Indian Lands	Rejected
11.	114	Bugbee	Public Sightliness and Good Order	Rejected
12.	117	Bates	Providing for a Department of Agriculture	Adopted in part
13.	127	Davis	Providing for Water Rights	Adopted in part
14.	135	Davis	Providing for the Exchange of Public Lands	Referred to Education and Public Lands Committee
15.	162	Cross	Environment as Public Trust	Rejected

APPENDIX C

WITNESSES HEARD BY CCMMITTEE

Name - Affiliation - Residence - Subject

1. Gary J. Wicks - Chairman, Department cf Natural Resources - Helena - Duties and Prcblems of department.

2. James T. Harrison, Jr. - Ccunsel, Department of Natural Resources - Helena - Infcrmaticn abcut Department cf Natural Resources.

3. Ronald J. Guse - Emplcyee of Department cf Natural Resources - Helena - Infcrmaticn abcut Department cf Natural Resources.

4. Rans L. Bille - Emplcyee of Department cf Natural Resources - Helena - Infcrmation abcut Department cf Natural Resources.

5. Mike Schuinder - Emplcyee Of Department Cf Natural Resources - Helena - Iofcrmaticn abcut Department cf Natural Resources.

6. James Posewitz - Director - Civisjon fcr Envircnrental Protection, Department of Fish and Game - Helena - Duties and background cf divisior.

7. Ted Schwinden - Ccnmiscicnfr cf Public Lands - Helena - Duties of Cffice.

8. Cato Butler - Public Infornaticn Cfficer, Department cf Agriculture - Helena - Duties and prcblems of department of Agriculture.

9. Jack Rehberg - Montana Petroleum Producers - Billings - Pollutien cf undergrcuad waters.

10. John Goers - Geologist, Department of Public Lands - Helena - mining an6 minerals laws.

11. P. R. McDonald - Anaccnda Company - Butte - Envircn-ment.

12. Dcuglas Smith - Agriculture Cocrdinatcr - Helena - Agriculture.

13. Bill Cheney - Executive Cfficer, Department of Live-stock - Helena - Livestock mill levy.

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14. Ben Make - Adminictratcr, Divisicn of Envircnmental Sciences, Department cf Health & Envircnmental Sciences - Helena - Air.

15. Jchn C. Spindler - Anaconda Ccmpany - Eutte - Water.

16. Fred Johnstcn - Lawyer-rancher - Great Falls - Lessee cf state lands.

17. Dclcres Colberg - Superintendent cf Eublic Instructicn - Helena - Public lands.

78. Maurice Hickey - Directcr cf Field Services, Montana Educaticnal Asrcciation - Helena - Use cf state lands ior public schccls.

19. Fletcher Newby - Executive Directcr, Environmental Quality Council - Helena - Envircnmental quality.

20. C. B. Anderson - Part-tine Frcfessor at Western Mcntana Ccllege - Dillcn - State lards.

21. Al Kingtcn - Chief Forester, Divisicn of Forestry - Fcrt Harrison - Operaticnc cf department.

22. Jchn Rcunds - Anaconda Wood Products Ccmpary - Bcnner - Cperaticns cf plant.

23. Lester Tschannen - Evans Products Co. - Missoula - Forests and timber.

24. John Schultz - Tree Lcggers, Inc. - Missoula - Fcrests and timber.

25. Chet Dreher - Representative cf Ccngressman Shcup - Helena - Envircnaent.

26. Paul Richards - Governcr's Ccrference cn Youth - Helena - Envircnment.

27. Irving Boettger - Engineer with private ccncern - East Helena - Envircnment.

28. Bill Cunningham - Frcfessor, University cf Mcntana Fcrestry School - Missoula - Public trust and environment.

29. William C. Hollenbaugh - Frofesscr, University of Mcntana Forestry School - Missoula - Envircnment.

30. George Darrcw - Representative, Yellowstone Ccunty, District 8 - Billings - Envircnment.

31. Robert E. LeProuse - Anaccnda Ccmpany - Misscula - Environment.

32. Cecil Garland - Private business - Lirccln - Environment.

33. Darlene I. Grcve - Housewife - Helena - Environment.

34. Mavis McKelvey - Ieague cf Wcmen Vcters - Missoula - Ervircnment.

35. William D. Tomlinscn - Montana Wildlife Federaticn - Misscula - Environment.

36. Dale Fredlund - Prcfesscr, Department of Bnthropclogy, University of Montana - Misscula - Cultural resources.

37. Richard L. Hodder - Montana Agriculture Experiment Station - Bozeman - Reclamaticn.

38. Frank J. Laird, Jr. - Anaccnda Ccmpany - Butte - Pollutien.

39. Gene A. Tuma - Peabody Ccal Ccmpany - Fcrsyth - Reclamaticn.

40. Leonard Campbell - Regional Ccunsel, Envircnmental Prctection Agency - Denver, Colcradc - Envircnment.

41. Irwin Dickstein - Envircnmental Prctecticn Agency - Denver - Ecvircnment.

42. Robert DeSpain - Envircnmental Protection Agency - Denver - Envircnment.

43. Keith Schwab - Xnvircnmental Frotecticn Agency - Denver - Envircnment.

44. Dave Wagcner - Environmental Protection Agency - Denver - Envircnment.

45. Patricia Antonick - Housewife - Helena - Environment.

46. Sam Gillully - Director, Bontana Historical Society - Helena - Cultural rescurces.

47. Richard Reese - Chairman, Department cf Pclitical Science, Carrcll Ccllege - Helena - Environment.

48. George Lackman - Commissioner cf Agriculture - Helena - Department cf Agriculture.

49. Larry Blazing - Forester - Misscula - Forests and timber.

50. Marvin McMichels - Mcntana Wood Products Association - Missoula - Forests and Timber.

51. Fred Wetzsteon - Farmer - Sula - Water rights.

52. Albert W. Stone - Professor, University cf Mcntana - Missoula - Water use and rights.

53. Elmer Cax - President, Mcntana National Farmers Organizaticn - Fart Benton - Water rights and use.

54. Charles Bowman - Head of Agricultural Experiment Station - Bozeman - Water.

55. James A. Stewart - Mcntana Quality Commodities, Inc.- Glasgow - Water.

56. Alex Mogan - Mcntana Quality Eraducts, Inc. - Glasgow - Water.

57. Clyde Jarvis - President cf Mcntana Farmers Union - Great Falls - Water.

58. Senator Gordcn McGowan - Rancher & Senator - Highwood - Water.

59. Senator McOmber - Rancher & Senatcr - Water.

60. Mons Teigen - Secretary, Mcntana Stockgrowers Asscciation - Helena - Water.

61. David A. Smith - Secretary-Treasurer, Mcntana Wool Growers Association - Helena - Water.

62. Philip Donally - Montana Weed Cantrcl Asscciatian - Superior - Pesticides.

63. Jim Kallin - Montana Weed Contrcl Association - Missoula - Pesticides.

64. Viggo Anderson - Grain Farmer - Great Falls - Agriculture.

65. Jim Stephens - Pres., Montana Grain Growers Assn. - Dutton - Agriculture.

66. Gretchen Billings - Helena - Executive Secretary, Montana Council cf Cccperatives - Department of Agriculture.

67. Clifford Stoltz - Grain and livestock operatcr - Valier - Department cf Agriculture.

68. George Skarda – Wheat farmer – Denton – Department of Agriculture.

69. Harvey Griffir – Rancher – Bozeman – Water.

70. John C. Paugh – Farmer – Bozeman – Water.

71. Oliver LeFevre – Rancher – Billings & Sheridan – Land.

72. John Ray – leacher – Hamilton – Water rights.

73. Dr. Clancy Gordon – Professor, University cf Montana – Missoula – Environment and pollution.

74. Bill Baird – Real estate – Billings – Land.

75. Gene Ficotte – Attorney, representing Montana – Dakota Utilities – Helena – Delegate Proposal #162.

76. Senator Lee Metcalf – Senator for Montana – Washington, D. C. – Delegate Proposal #162.

77. Bill Leaphart – Senior at U cf M Law School – Missoula Public Trust in Delegate Proposal #162.

78. Patricia Dee Meier – GASF – Missoula – Delegate Proposal #162.

79. Ray Gardner – Society of American Foresters – Kalispell – Delegate Proposal #162.

80. Dr. James N. Brogger – Western Montana Fish and Game Association – Missoula – Delegate Proposal #162.

81. Robert D. Watt – Montana Student President Association – Helena – Delegate Proposal #162.

82. Doris Milner – Citizens cf Ravalli County – Hamilton – Delegate Proposal #162.

83. Mrs. Gene Allen – Rancher – Drummond – Public Trust (Delegate Proposal #162).

84. Hubert G. White – Montana Water Development Association – Townsend – hater.

85. Ray Gulick – farmer – Joplin – Agriculture.

86. Jerry Murphy – Representative and farmer – Cardwell – Agriculture.

87. Edward J. Melby – Farmer – Melt – Agriculture.

88. Gordon Matheson – Grain Farmer – Conrad – Agriculture.

89. Eob Ward - Farmer-rancher - Bozeman (Gallatin Valley) - Agriculture.

90. Ed Lenhardt - High Line Ditch Company - Billings - Water rights.

91. Bill Staley - Big Ditch Company - Billings - Water rights.

92. Hans Roffler - Society American Foresters - Missoula - Timber.

93. Tim Richmond - Anaconda Forest Products - Misscula - Timber.

94. Paul Kipp - Forester, Bureau cf Indian Affairs - Billings - Timber.

95. Larry Magone - Plum Creek Lumber Company - Whitefish - Timber.

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

ROLL CALL VOTE --- ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

MEMBER Section	Date: No: 1	Date: No: 2	Date: No: 3	Date: No: 4	Date: No:	Date: No:	Date: No:	Date: No:
CROSS	N	Y	Y	Y				
GYSLER	Y	Y	Y	Y				
ANDERSON	Y	N	Y	Y				
BRAZIER	Y	Y	Y	N				
DELANEY	Y	N	Y	Y				
KAMHOOT	Y	Y	Y	Y				
MC NEIL	Y	Y	Y	Y				
REBAL	Y	Y	Y	Y				
SIDERIUS	N	Y	Y	Y				
TOTAL---------- --YEA	7	6	9	8				
NAY	2	3	0	1				
ABSENT	0	0	0	0				

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

ROLL CALL VOTE --- AGRICULTURE COMMITTEE

MEMBER SECTION	Date: No: 1	Date: No: 2	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
CROSS	Y	N						
GYSLER	Y	Y						
ANDERSON	Y	Y						
BRAZIER	Y	N						
DELANEY	Y	Y						
KAMHOOT	Y	Y						
MC NEIL	Y	Y						
REBAL	Y	Y						
SIDERIUS	Y	N						
TOTAL----------YEA	9	6						
NAY	0	3						
ABSENT	0	0						

APPENDIX D

ROLL CALLS ON MINORITY PROPOSAL

MEMBER	PROPOSED SECTION 5 for Environment & Natural Resources Majority Proposal	TOTAL Y	TOTAL N	TOTAL A
CROSS, Chairman	Y			
GYSLER, Vice Chairman	N			
ANDERSON	N			
BRAZIER	N			
DELANEY	N			
KAMHOOT	N			
MC NEIL	Y			
REBAI	Y			
SIDERIUS	Y			
TOTAL YEA	4			
TOTAL NAY	5			
TOTAL ABSENT	0			

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REVENUE AND FINANCE

COMMITTEE PROPOSAL ON CONSTITUTIONAL REVISION

NO. VII

Date Reported: February 18, 1972

/s/ Sterling Rygg, CHAIRMAN

/s/ Maurice Driscoll, VICE CHAIRMAN

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL..... 578

INTRODUCTION..... 579

TEXT OF MAJORITY PROPOSAL..... 584

COMMENTS ON MAJORITY PROPOSAL..... 588

Section . Public Purpose..... 588

Section 2. Surrender Clause..... 588

Section 3. Property Tax Administration..... 588

Section 4 Equal Valuation..... 590

Section 5. Property Tax Exemptions..... 590

Section 6. Highway Earmark..... 591

Section . Tax Appeals Board..... 592

Section 8. State Indebtedness..... 594

Section 9. Balanced Budget..... 595

Section 10. Local Government Indebtedness..... 595

Section . Use of Borrowed Funds..... 595

Section 12. Strict Accountability..... 596

Section 13. Investment of Public Funds..... 596

Section 14. Agricultural Levies..... 597

MINORITY COMMENT ON PROPOSED SECTION 5..... 599

MINORITY COMMENT ON PROPOSED SECTION 3..... 602

Page

APPENDIX

Roll Call Vote on Majority Proposal..... 604

Proposals Considered by Committee..... 605

Witnesses Heard by Committee..... 606

Roll Calls on Minority Proposals..... 613

Date: February 18, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Revenue and Finance Committee

Ladies and Gentlemen:

The Revenue and Finance Committee submits herewith a proposed new Revenue and Finance Article which combines Articles XII, XIII and XXI of the present Constitution. The proposed article is intended to replace all sections of those articles, removing some provisions entirely, condensed the language of other provisions, retaining the intent of some sections, and adding neu revenue sections.

The members of this committee, by signing the majority report, do not necessarily endorse each and every statement contained therein; and minority reports on various sections are also presented in this report.

The committee utilized the testimony of many witnesses. It is also indebted to the delegates for the many proposals in the revenue and finance area.

The committee wishes to express its thanks to Boger A, Barber, its Research Analyst; Dennis Burr, its consultant from the Department of Revenue; Karen Eicliday, its secretary; and Randall Gray, Blake Johnson and Edwin Shannon, its Student Interns.

/s/ Sterling Rygg
Chairman

/s/ Maurice Criscoll
Vice Chairman

INTRODUCTION

The delegates to the Constituticnal Cnnventicn arc charged with rewriting the basic gcvernmental structure and legal document of the State. The guiding principle during these deliberaticns has been a clean, simple dccunect, limited tc those basic principles and doctrines important encugh tc be frczen in Cnnstituticnal ice. Some committees, cf necessity, had tc come up with Constitutional articles. The Executive, Legislative and Judiciary Committees bad tc establish the basic framewcrk for those three traditicnal branches of gcvernment. The Bill cf Rights Committee had tc develop certain fundamental principles and rights guaranteed to the pecple by their gcvernment.

The Revenue and Finance Committee apprcached its task with a different attitude. From a pure, theoretical viewpoint, the Cnnstituticn does not have tc say a thing abcut taxation. That suggesticn was made to the committee cn at least twc cccasicns. The reason is simple--the pcwer to tax is an inherent pcwer of the state, a power already possessed by the state without any grant of authcrity. Anything in a state Cnnstituticn cn the subject of taxation is either redundant (reiterating a pcwer already possessed by the state) or restrictive.

The majcrity report contains prcvisicns c f both philcsophies. Some cf the prcpcsed sections simply state a power already possessed by the legislature--but repeated because cf its importance to proper gcvernmental cperaticn cr to the protection of the people. Cther sections were specifically included tc restrict the state's taxing or revenue pcwers.

The majority report reflects the committee's approach to its deliberaticns. Assigned three articles frcm the present Constitution--ccataining 42 secticns--the committee recommends a condensed, single article cf only 14 sections. Naturally, that means the committee eliminated *or* abandcned many secticns in the present Constituticn. Fcr the cnnvenience cf the cnnventicn, the following enumeration shows what happened tc thcse secticrs and why.

ARTICLE XII

Section 1. Eliminated. The state already possesses the pcwer to levy particular kinds of taxes and license fees. The Constitution does not need tc list those tax programs. The committee also did not feel that the Cnnstituticn should require taxaticn cf all prcperty.

For 80 years, the Constituticn required taxaticn cf all property. That mandate was difficult tc live up to. The reporting procedure utilized for taxaticn of household prcperty did nct insure its complete taxation. Stocks and bonds frequently escaped

detection. The requirement of complete property taxation often encouraged dishonesty. The proposed article removes those problems--the legislature shall decide what property to tax and how to tax it. The legislature may decide that other types of taxation are more equitable and may reach kinds of property not touched by the property tax now.

Section 1a. Eliminated. Again, it is unnecessary to specify particular tax programs in the Constitution.

The provision earmarking income tax revenues for education and the general fund was removed for two reasons: 1) the committee wanted to avoid earmarking of funds as much as possible, and 2) the present language does not specify how much of the income tax revenues should go to education. By statute, 25 percent of these funds are presently dedicated, but technically, one dollar of the total income tax revenues would satisfy the Section 1a requirement. The committee felt the earmark had little force and was best eliminated.

Section 1b. Proposed section 6, with modifications, covers this section.

Section 2. Proposed section 5, with some changes, covers tax exempt property.

Section 3. Eliminated. The legislature should determine methods and procedures for taxing minerals. The committee heard conflicting testimony on the most equitable kind of tax to impose on metal mines, coal, oil and gas. Therefore, the decision should be left to legislative determination.

The committee recommends that the legislature give serious consideration to retention of the present statute providing for a net proceeds tax in lieu of the property tax on minerals in place. The legislature has done a good job of developing fair and equitable taxation of Montana minerals. It should be given full discretion to continue that program. The committee also recognizes the importance of legislative flexibility to meet the needs of changing times. If the legislature should decide that net proceeds are no longer the best method of mineral taxation, it should also remember the dislocation to local government revenues that would be caused by such a charge.

Section 4. Eliminated. The prohibition on state aid to local governments is no longer justified. If the legislature wants to assist local governments, it should he free to do so and should not have to resort to subterfuge. The legislature should not have to create artificial loopholes, like the license fee system, to feed tax money to local government units. That license fee exception to the present state aid prohibition has caused trouble for the legislature when it tries to establish a license system; and troubles the courts when they must decide whether the revenue program is really a license system. The legislature has

also tried to get around the prohibition by creating programs of a "state governmental nature" such as the recent sewerage treatment aid program. That concept is a nebulous creature, and may thwart otherwise acceptable programs that fail to attain the proper state government stature.

The question of local government taxing authority is covered by the Local Government Committee. Nothing in the proposed revenue article is meant to restrict the legislature from granting taxing authority to local governments or of local governments from having such authority.

Section 5. The question of local government taxing powers is covered by the Local Government Committee. The second clause of this section is covered by proposed section 4.

Section 6. The intent of this section is covered by proposed section 2.

Section 7. The intent of this section is covered by proposed section 2.

Section 8. This guarantee is already established in the Federal Constitution, the supreme law of the land. Repetition of the guarantee at the state level is unnecessary.

Section 9. The two-mill limitation on state property taxes has been removed, primarily in an effort to comply with the Serrano school finance case from California. Although Serrano is not yet the law in the United States, and a similar decision has not been upheld in Montana courts, the Constitution is not a document for today only. The framers of this Constitution must be forward-looking and future-oriented.

The committee has heard conflicting testimony on the Serrano case and its application to the Montana situation. But the overwhelming weight of the evidence indicates its applicability. The committee simply had to face the possibility that Montana may have to levy a statewide property tax for educational purposes. That possibility was strengthened by the acceptance of the Serrano doctrine in Texas, Minnesota and New Jersey.

The committee was also concerned with the present use of the two-mill statewide property tax levy. The levy is used now as a backstop measure, imposed to bring in additional revenues when other methods fail. Quite often the decision to impose the levy is made for political, rather than economic, reasons.

The intents of the four-mill livestock levy is covered in proposed section 14.

Section 10. Eliminated. The intent of this section is covered, in general terms, in proposed section 12. Specifics are better left to the legislature, however.

Section 11. The first sentence is new proposed section 1. The uniformity philosophy in the second sentence was eliminated, primarily because uniformity of taxation is already required of the states through the 14th Amendment to the United States Constitution. The proviso also unnecessarily thwarts taxation programs, and has caused considerable consternation in other states. The Pennsylvania Supreme Court invalidated an inheritance tax program as violative of the uniformity provision. The Illinois uniformity clause was interpreted to prohibit a graduated income tax in that state,

Section 12. The "balanced budget" philosophy of this section is retained in proposed section 9.

Section 13. Eliminated. The intent of this section is covered, in general terms, in proposed section 12. Details should be left to the legislature.

Section 14. Eliminated. The intent of this section is covered, in general terms, in proposed section 12. The legislature should establish the procedures by statute.

Section 15. Property taxation procedures are covered in proposed Section 3--the state is now responsible for appraisal, assessment and equalization. Provisions concerning the structure of the property taxation system are better left to the legislature. Only that body can judge the needs of future taxpayers, and establish procedures that best suit those needs. It is unnecessary to freeze such administrative detail in a Constitution.

The committee does recommend a comprehensive review procedure for Montana taxpayers in proposed section 7. The recommendation establishes an appeal board separate and distinct from the tax administrative agencies. Because this independent appeal program is new to Montana, the committee's recommendation on that part of the state tax structure is relatively detailed.

Section 16. Proposed section 3 covers the assessment of property. The detail in this section is no longer necessary.

Section 17. Eliminated. The philosophy of the proposed article on revenue and finance is faith in the long-term judgement of future legislatures in matters of taxation and finance. The legislature should enjoy the flexibility necessary to create and develop equitable tax programs. That assembly should not be limited to particular approaches in raising revenue. The proposed article does not require taxation of all property--and consequently, makes no attempt to define that term.

Section 18. Eliminated. The legislative assembly already possesses that power.

ARTICLE XIII

Section 1. The "lending of credit" provisc is essentially a public purpose question. The Montana Supreme court has equated the two concepts in its numerous interpretations of the "lending of credit" clause. Public purpose is covered in proposed section 1. The remainder of this section is concerned with government ownership of corporate stocks and bonds. That concept is an investment question, which is covered in proposed section 13.

Section 2. The new state indebtedness provision is covered in proposed section 8.

Section 3. The intent of this section is covered in proposed section 11.

Section 4. Eliminated. The committee felt that the legislature should not be bound in this way. After much consideration by the committee, it was concluded that if the state were permitted to back local government bonds with its (the state's) full faith and credit, the interest rates on those bonds could be lower.

Section 5. Local government indebtedness is covered by proposed section 10.

Section 6. Local government indebtedness is covered by proposed section 10.

ARTICLE XXI

The committee is proposing an entirely new section on investment of public funds, a short provision that completely replaces all of Article XXI. That article is outdated and obsolete. In fact, it has been largely useless since its inclusion in the Constitution in 1924. As originally established; Article XXI created three permanent revenue funds for the state to be funded by money grants of at least $250. Those three funds have never existed, principally because the interest from the funds could not be distributed until the principal reached ridiculously high amounts. ($100 million and $500 million). Benefactors to the state simply were not willing to tie their money up in that way. Because of the nonexistent nature of those three funds, all of the sections that refer to them in Article XXI are useless.

If the public school fund and other land grant funds had not been added to the Trust and Legacy Fund in 1938, the entire article would presently have no affect. But that incorporation did give the article heretofore invisible life. Treatment of the public school fund is already taken care of in Article XI and the Enabling Act, however, so the committee saw no reason to retain the Constitutional status of an otherwise hollow Trust and Legacy Fund. The fund will not be eliminated entirely by its removal from the Constitution. It will still exist by statute.

MAJORITY REPORT

BE IT PROPOSED BY THE REVENGE AND FINANCE COMMITTEE:

That there be a new Article on Revenue and Finance to read as follows:

ARTICLE __

REVENUE AND FINANCE

Section 1. PUBLIC PURPOSE. Taxes shall be levied by general laws for public purposes.

Section 2. SURRENDER CLAUSE. The power of taxation shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. Property which is to be taxed shall be appraised, assessed and equalized by the state in the manner prescribed by law.

Section 4. EQUAL VALUATION. The assessed valuation of property to be taxed in any taxing juricdiction shall be the same valuation as the valuation for state and county purposes.

Section 5. PROPERTY TAX EXEMPTIONS. The property of the United States, the state, countier, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation. Certain classes of property may be exempt from taxation. The Legislative Assembly may authorize creation of special inprovsment districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby.

Section 6. HIGHWAY EARMARK. Revenue, except from general sales and use taxes, from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and for county, city and town obligations on streets, roads and bridges, after the deduction of furds for enforcement of highway safety, driver education, tourist promotion and for administrativs and collection costs as authorized by the legislative assem-

bly. By a three-fifths vcte cf the members cf each hcuse cf the legislative assembly cr by initiated measure approved by a majcrity cf the electorate, such dedicated funds ray be apprcpriated for cther purposes.

Section 7. TAX APPEALS BOARD. The State Bcard cf Tax Audit and Appeals shall be composed Cf five members, whc shall be appointed ty the governcr, by and with the advice and consent cf the Senate (Legislative Assembly). The Legislative Assembly shall divide the state into five districts as equal as practical in population of citizens and a member cf such board shall be a resident cf each of said districts. Each member shall hold his office for a term of five years, and until his successcr shall have been appointed and qualified. In case cf a vacancy, the perscn appointed to fill such vacancy shall hcld cffice fcr the unexpired term in which the vacancy occurs. The first five members appointed tc said bcard shall determine their respective terms by lot so that a term of office shall expire each succeeding year thereafter. other qualificatiens, and salaries of members, shall be as provided by law; prcvided, hcwever, that such members shall be sc appcinted that the board will nct be ccmposed of mcre than three members whc are affiliated with the same political party or crganization; provided, further, that each member shall devcte his entire time to his duties of office and shall nct hold any position cf trust cr Frofit, or engage ir any other cccupatiCn or business, cr serve on or under any committee of any pclitical party or crganizatiCn cr candidate fcr cffice, and each member shall file with the Secretary of State, annually, a full, detailed and complete disclcsure cf his financial conditicn.

The State Bcard cf Tax Audit and Appeals shall have appellate jurisdiction of individual appeals cf all divisions of the administrative agency of the state carrying cut the Frcvisicns cf Section 3 of this article in crder to insure that all taxes are administered according to law. Such individual appeals may be fcr the undervaluaticn and overvaluaticn and assessment of the appellant's property, cr any other taxpayer's property. The board shall also have appellate jurisdiction of individual appeals of other divisions cf State and local agencies related to license and excise taxation as may be provided the State by law. The board shall have the right to audit administration agency to ascertain instances of undervaluaticn or overvaluaticn cf prcperty to be taxed and publish its findings thereof. The Legislative Assembly may prescribe by law cther duties tc be Ferforaed by such Board and may provide that minor appeals, as defined by law, may be adjudicated by a single Bcard member in the county where the property is located, or the taxpaying citizen resides, or as the case may be.

Section 8. STATE INDEBTEDNESS. No state debt shall be created unless authcrized by a three-fifths vcte cf the members of both houses of the Legislative Assembly. State debt cannot be created to cover deficits incurred when apprcpriations exceed

anticipated revenue during any budget period.

Section 9. BALANCED BUDGET. Appropriations by the Legislative Assembly shall not exceed anticipated revenues during any budget period.

Section 10. LOCAL GOVERNMENT INDEBTEDNESS. The Legislative Assembly shall enact limits of indebtedness for subdivisions and districts of the state.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan.

Section 12. STRICT ACCOUNTABILITY. The Legislative Assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof.

Section 13. INVESTMENT OF PUELIC FUNDS. The Legislative Assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the Governor, Legislative Assembly and Chief Justice of the Supreme Court.

Section 14. AGRICULTURAL LEVIES. A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion.

/s/ Sterling Rygg
Chairman

/s/ Maurice Driscoll
Vice Chairman

/s/ William Artz

/s/ Russell McDonough

/s/ Earl Berthelson

/s/ Mike McKeon

/s/ Dave Drum

/s/ Roger Wagner

/s/ Noel Furlong

COMMENTS ON THE MAJORITY PROPOSAL

Section 1. Taxes shall be levied by general laws for public purposes.

COMMENTS

The broad language of proposed Section 1 is meant to replace the specific tax base provisions in present Article XII. The new section speaks only of "taxes". Provisions in the Present Constitution specify particular kinds of revenue measures like property taxes, license fees, income taxes and mining taxation. That kind of enumeration is unnecessary; the state already possesses the power to levy any kind of tax it wants to. Enumfration of specific kinds of tax programs is also unwise. Courts, as a rule of construction, often hold that the listed measures or provisions are in lieu of all unlisted measures. In other words, the list tends to become exclusive.

The proposed section also Establishes two well-recognized and important protections-requirements that taxes be established by general laws for public purposes only.

The requirement of general laws for public purposes extends to all tax programs, both state and local. Although those two requirements are already imposed on the state by the federal Constitution, repetition in the state document emphasizes their importance.

Section 2. The power of taxation shall never be surrendered, suspended, or contracted away.

COMMENTS

The shortened language of proposed Section 2 replaces the detailed provisions of present sections 6 and 7 in Article XII. The proposed section is frequently found in newer Constitutions, and is included as a reminder to the legislative assembly. The power of taxation is the most important power a governmental body possesses, and should not be lightly dismissed or bargained away.

The provision is not intended to prevent the state from delegating taxing powers to local governments. Nor is this section meant to deprive the legislature of its discretion to tax or not to tax or exempt classes of property.

Section 3. Property which is to be taxed shall be appraised, assessed, and equalized by the state in the manner prescribed by law.

COMMENTS

This new section is a progressive change from present taxation provisions. It embodies the committee's recommendation on property tax administration, which was previously set out in great detail in present Section 15 of Article XII. That old section, which established a two-tier system of assessment, equalization and review, would be replaced by a state-level system of appraisal, assessment and equalization. The details of that property tax system are not spelled out, again a departure from the specificity of present Section 15. The details of any tax administration system should be left to the legislature, which is best qualified to develop the most efficient, modern and fair system necessary for the needs of the day. Tax administration should be established by the legislature and administered by the executive branch of government, not by a Constitutional board which is immune to control by all three branches of government and immune from control by the people. A Constitutionally enshrined board is less answerable for its activities and is freer to ignore the mandates and directives of the legislative assembly.

Property appraisal and property tax assessment and equalization must be conducted by a state agency, however. The committee heard reams of testimony concerning the inadequate job of assessment and tax equalization in the state. The intent of the committee is that this change will establish qualified, professional appraisal and appraisal procedures, and will insure the equalization of taxes across the entire state.

Hopefully, the inequalities that presently exist within taxing districts and between taxing districts can be avoided if accountability is in some state agency. Testimony also leads the committee to believe that pressures and temptations for undervaluation and under-assessment presently exist at the local level. The current operation of the school foundation program encourages undervaluation of local property. When such undervaluation exists, the state pours in more money for educational purposes.

Hand-in-hand with the concept of a professionalized, responsive tax administrator is the need for independent review of the administrator's actions. The committee has created the machinery for that review function in its proposed section 7. That proposal is a sharp change from the present Constitutional tax administration structure which combines both the administrative and adjudicating functions in one agency. True equity requires the separation of those responsibilities.

The need for statewide administration of the property tax was probably brought into sharpest focus by the torrent of testimony on Serrano v. Priest. If the state has to go into funding of governmental programs, particularly education, through a

statewide property tax, the need for efficient, equitable appraisal and assessment will be intensified.

Section 4. The assessed valuation of property to be taxed in any taxing jurisdiction shall be the same valuation as the valuation for state and county purposes.

COMMENTS

The proposed section is similar in language and intent to present Section 6 of Article XII. The provision guarantees that property will be assessed at the same value, despite the government that is levying the tax. In other words, property will be taxed at the same assessment for state, county or school district purposes. A school district cannot assess at a higher value. Such "equal" valuation between local governments is so important, the committee feels, that it should be guaranteed in the Constitution.

Section 5. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation. Certain classes of property may be exempt from taxation. The legislative assembly may authorize creation of special improvement districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby.

COMMENTS

The proposed section on property tax exemptions is different in at least four ways. Most of the present property exemptions are retained-agricultural and horticultural societies and mortgages are deleted. Those classes of property could be exempt from taxation if the Legislature so required. Deletion from the constitutional listing does not remove them from potential tax exemption. The new section permits taxation of private interests in government-owned property, closing a loophole in the present Constitution. The proposed provision also permits assessment of special improvement district charges on tax-exempt property. The Constitutionality of such charges is presently in doubt, although many such assessments are paid annually on tax-exempt property.

The new provision simply legitimatizes that practice.

The most important change in the proposedsection is the non-exclusiv2 nature of the tax exempt list. Unlike the present Constitution, the proposed article cn Revenue and Finance does not require that all property be taxed. The prcposed provisions are silent on the subject, leaving the sccpe and nature cf taxation prcgrams up to the Legislature. Prcperty may be taxed or may be exempted by the Legislature. The permissible list of exemptions is not exclusive. The legislature may add tc the list.

> Section 6. Revenue, except from general sales and use taxes, from excise and license taxaticn cn gasoline, fuel and other energy scurces derived as a result of the propulsion of vehicles cn public highways, and grcss vehicle weight fees, shall be used sclely fcr the payment cf cbligaticns incurred for constructicn, reconstruction, repair, operation, and maintenance of public highways, streets, rcads and bridges and fcr county, city and town cbligaticns on streets, roads and bridges, after the deducticn cf funds for enforcement of highway safety, drivers educaticn, tourist promotion and for administrative and collecticn ccsts as authcrized by the legislative assembly. By a three-fifths vote of the members of each hcuse cf the legislative assembly or by initiated measure approved by a majcrity of the electorate, such dedicated funds may be appropriated for other purpcses.

COMMENTS

The proposed section on earmarking of funds for highway purposes is similar to present Secticn 16 of Article XII in most respects. Three substantial changes have been made in the sccpe and effect of that cld section, however:

1.) The amount of money earmarked fcr the highway fund has been changed. The old section dedicated funds frcm fuel taxes, gross vehicle weight fees registratien fees and fees on the sale of new cars. The proposed section only earmarks gasoline and fuel taxes, and gross vehicle weight fees.

2.) The permissible uses cf highway earmarked funds have been expanded to include local government road and street systems, highway safety programs and driver educatien programs. The removal cf the state aid to local government restriction insures that these road funds can be used tc finance local government road and street systems. The legislature will now be free to make direct grants to local governments instead of developing complicated bookkeeping devices to get around the prchititicn.

3.) The funds are not dedicated from now ad infinitum, or until repeal by amendment or by another Constitutional Convention. The proposed section permits diversion of the earmarked funds to other purposes if each house of the Legislative Assembly by a three-fifths majority, approves such expenditure. In other words, the primary responsibility for review, assessment . . . and eventually, allocation . . . of highway funds rests with the Legislature. That body is free to change the earmark.

The committee felt that retention of the anti-diversion amendment was necessary at the present time. The amendment is a recent addition to the Constitution, overwhelmingly approved by the voters in 1956. A large amount of Federal matching money is still pouring into the state to finance the interstare system and the local primary and secondary highway systems. Extensive testimony indicates its exclusion may well jeopardize the final product of this Convention.

The committee was also concerned with the proper use of gasoline and motor fuel tax revenues. Those taxing programs were originally created to benefit the state highway system. The committee felt that original purpose should be maintained. The committee realizes that the time may come when highway funds are no longer needed, at least not at the level of current programs. In that case the gasoline and fuel taxes should perhaps be allowed to diminish. The committee would hate to create another situation like the cigarette tax, which was originally set up to fund programs and benefits for veterans. That tax has now been moved to fund the Long Range Building Program and the General Fund. In an effort to encourage the elimination of the gasoline and motor fuel taxes when their usefulness is up, the committee has tried to strengthen legislative control and allocation over highway funds.

Section 7. The State Board of Tax Audit and Appeals shall be composed of five members, who shall be appointed by the governor, by and with the advice and consent of the senate (Legislative Assembly). The legislative assembly shall divide the state into five districts as equal as practical in population of citizens and a member of such board shall be a resident of each of said districts. Each member shall hold his office for a term of five years, and until his successor shall have been appointed and qualified. In case of a vacancy, the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The first five members appointed to said board shall determine their respective terms by lot so that a term of office shall expire each succeeding year thereafter. Other qualifications, and salaries of members, shall be as provided by law; provided, however, that such members shall be so appointed that the board will not be composed of more than three

members who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to his duties of office and shall not hold any position of trust or profit, or engage in any other occupation or business, or serve on or under any committee of any political party or organization or candidate for office, and each member shall file with the Secretary of State, annually, a full, detailed and complete disclosure of his financial condition.

The State Board of Tax Audit and Appeals shall have appellate jurisdiction of individual appeals of all divisions of the administrative agency of the state carrying out the provisions of Section 3 of this article in order to insure that all taxes are administered according to law. Such individual appeals may be for the undervaluation and overvaluation and assessment of the appellant's property, or any other taxpayer's property. The board shall also have appellate jurisdiction of individual appeals of other divisions of state and local agencies related to license and excise taxation as may be provided by law. The board shall have the right to audit the state administration agency to ascertain instances of undervaluation or overvaluation of property to be taxed and publish its findings thereof. The legislative assembly may prescribe by law other duties to be performed by such board and may provide that minor appeals, as defined by law, may be adjudicated by a single board member in the county where the property is located, or the taxpaying citizen resides, or as the case may be.

COMMENT

The committee realizes the importance of a short document. The introduction to this report emphasized the committee's concern for brevity and clarity. But this proposed Section 7 creates a new protection for the Montana taxpayer, an independent tax appeal board. Because the provision provides a new right, the structure, function and jurisdiction of the board are spelled out in some detail.

The present section is proposed for a new Constitution because it establishes a guarantee never provided for Montana taxpayers. Under the present tax administration program, the same governmental bodies (County Boards of Equalization and State Board of Equalization) that establish revenue policies and procedures also sit in judgment on the implementation of those procedures. Overwhelming testimony to the committee indicates that the procedure does not guarantee an independent, non-partial, objective review of tax decisions. The Montana taxpayer needs some avenue of recourse, besides the tax administrator or the courts, to evaluate his tax treatment. The proposed

sectien accomplishes that objective by establishing an independent review procedure.

The Constitution should not specify details of tax administration. Present Section 15 of Article XII of the Nontana Constitution creates an elaborate method of property tax administration for the state, and demonstrates the futility of including such detail in a Constitution. When the Constitution was written in 1889, property taxes were the sole source of revenue for the state. But like the framers of 1889, this convention cannot forsee all the changes in the state's revenue structure. The details of that revenue administration should be left to the legislature, which can evaluate changes and create the best structure to administer revenue programs.

> Section A. NO state debt shall be created unless authorized by a three-fifths vote of the members of both houses of the legislative assembly. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period.

COMMENTS

This sectica replaces the present state debt limitation established by Article XIII, Section 2. That old section created a $100,000 debt limit for the state, with additional indebtedness as authorized by the electorate. The proposed section leaves the question of indebtedness entirely up to the legislature, requiring a three-fifths majority of the members-elect to create debt. The extraordinary majority requirement should insure careful consideration of any indebtedness proposal, and should prevent unnecessary programs.

The committee felt that some debt restriction should be placed on the legislature. A fixed dollar limit, like the present $100,000-ceiling, is unrealistic and only encourages circumvention.

The committee does not possess the ability to forecast the economic future and fiscal capacity of the state. The cossittee was concerned with the problems involved in establishing a limitation that fluctuates with property valuations or state revenues. It feels the propcsed provision will insure the viability of the Constitution for many generations.

The second sentence of this proposed section prevents the legislature from creating debt to balance the budget. While debt may be a viable tool in cases of catastrophy or extraordinary circumstances, the legislative assembly should not be free to thwart the "balance budget" intent of proposed Section 9.

Section 9. Appropriations by the legislative assembly shall not exceed anticipated revenues during any budget period.

COMMENTS

This proposed section is similar in effect to present Section 12 of Article XII. It requires the state to operate under a "balanced budget" philosophy, but establishes that doctrine in much simpler language. Although the state may have trouble operating in the black, since it can only estimate the amount of revenues coming in any budget period, this section requires the legislative assembly to stay within these estimated limits when it appropriates funds.

Section 10. The legislative assembly shall enact limits of indebtedness for subdivisions and districts of the stats.

COMMENTS

This proposed section leaves the question of local government indebtedness, and limits on that indebtedness, up to the legislative assembly. This broad grant of authority is utilized because of the uncertain nature of any fixed debt limitation.

The legislature should be free to encourage economic development in local government units. The history of the last 60 years indicates that the legislature has been frugal in empowering local government indebtedness. The proposed provisions restores that control. The proposed section would leave the legislature free, if it so decided, to pledge the full faith and credit of local government units to back indebtedness. Such a pledge should result in lover interest rates and a savings to the people of Montana.

Section 11. All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan.

COMMENTS

This section is practically identical to Article XIII, Section 3. The section guarantees accountability and proper management of borrowed funds, and should prevent misuse or diversion of that money. .The section is self-explanatory and is an important guarantee for the people.

Section 12. The legislative assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof.

COMMENTS

The proposed section, though broad in scope, covers the same ground as the present detailed sections 13 and 14 of Article XII. It also conveys the intent of "specific appropriations" required by Section 10. The importance of accountability for state revenues is not diminished--indeed, that rationale is given Constitutional status in this proposed section. But the details of accounting, procedures, deposits, cash flow, reporting requirements, etc., have to be left to the legislative assembly. The Constitution simply cannot anticipate changes in the accounting and monetary fields. The computerized techniques presently utilized by tha state were beyond the wildest dreams of the 1889 framers. The need for detailed and consolidated reporting information also was not anticipated. The present Constitutional provisions on deposits, cash flow and reporting are not adhered to.

The committee recommends that the legislature take immediate steps to establish unified accounting proceduresfor all governmental units in the state. Though statutory in nature, the committee feels the importance of such a program is essential to proper accounting and data functions.

Section 13. The legislative assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the governor, legislative assembly and chief justice of the supreme court.

COMMENT

The proposed section on investments replaces all of Article XXI in the present Constitution. Most of the provisions in that article are obsolete--in fact, if the public school fund had not been added to the Montana Trust and Legacy Fund in 1938, the article would have no effect whatever. The proposed section stresses the inportance of a unified investment program for

public funds. such a program has been sought in Montana since 1924, and has only recently been accomplished through Executive Reorganization. The committee feels that the importance of unity, professional treatment and supervision of public fund investments should be stressed at the Constitutional level. Because public money is such an important trust for the people of Montana, the investment program should be audited at least annually.

The sentence on separate identity of funds in the public fund investment program was added to insure proper distribution of interest to the individual funds. Although public funds should be invested as a unit to insure a larger return, the interest from that unified program should be distributed on a pro rata basis, depending on the size of the individual funds. The "separate fund" sentence should insure that distribution.

The regulation and limitation of the investment program, and the administrative structure of the investment program, is left up to the legislative assembly.

At least two restrictions on the investment program will remain in force in the Constitution. These provisions, in Article XI and The 'Enabling Act, deal with land grant money.

The legislature is best equipped to make decisions concerning investment opportunities for state money. The obsolete nature of Article XXI illustrates the futility of trying to prescribe an investment program and investment details at the Constitutional level. The scope of the legislature's supervision should also include surplus funds at the local level. Although the legislature may well leave the handling and investment of such funds in the hands of local governments, its supervisory powers will insure their careful handling and treatment,

> Section 14. A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion.

COMMENTS

The proposed language retains the intent of Section 9 regarding livestock mill levies, and expands the permissible list of industries and uses for such a statewide levy. The levies are not a pure earmark. They are more of a bookkeeping and accounting procedure.

The provision, in explicit terms similar to present Section 9, is no longer necessary. The uniformity clause has been

removed from the proposed Article; and the statewide property tax limit has also been deleted. But the importance of agriculture to the Montana economy should not be underestimated--in fact, it should be emphasized.

The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve the economic future of their industry.

COMMITTEE ON REVENUE AND FINANCE

MINORITY PROPOSAL 1

BE IT PROPOSED:

That the following be substituted for Section 5 of the Majority Proposal entitled "Property Tax Exemptions":

> The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately.
>
> Property used exclusively for fducational purposes; places for actual religious worship; hospitals and places of burial not used or held for private or corporate profit; institutions of purely public charity, household goods and furniture, wearing apparel, and other personal property used by the owner for personal and domestic purposes; cash and accounts receivable; dwellings and personal property of totally serviceconnected disabled veterans; dwellings used for residential purposes; evidences of debt secured by mortgages of record upon real or personal property in the state of Montana; the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed, may be exempt from taxation.
>
> The legislative assembly map authorize creation of special improvement districts for capital improvements, maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby.

/s/ Mike McKeon /s/ Wm. H. Artz

/s/ M. Driscoll

COMMENTS

The minority report is in complete disagreement with all references in the rationale of the majority report stating that all property may be exempted from tax by the legislature. We have faith in the legislative process but are of the opinion that this

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is "opening the door too wide." In our opinion, as upheld by court decisions, only the items of property listed above are eligible to tax exemption by the legislative process.

We agree that it is easier to enforce collection of taxes on some property than it is on other property but cannot consider this as a sufficient reason for removal of this type of property from the tax rolls. The Internal Revenue Service has developed procedures for ferreting out income from cash transactions. We submit that the tax department of Montana should be able to develop adequate techniques despite the fact that local government authorities have been negligent for many years.

We also submit that tax equity requires that if certain income producing property is taxed, then all income producing property should be taxed. It is not equitable to tax $10,000 of equipment which produces income subject to income tax and at the same time eliminate $10,000 of investments (e.g. tax-exempt securities) the income of which is not subject to income taxes.

We also submit that if the legislature should acquiesce to pressures to eliminate stock and bond investments from property taxation because of the so-called problems of assessment a severe injustice will be imposed on lower income citizens to the benefit of more affluent citizens. We cannot imagine the delegates of the Convention condoning such an inequity.

RF justify the addition of the following items to the permissive list:

1) Household goods and furniture, wearing apparel, and other personal property used by the owner for personal and domestic purposes:

   a. Recommended by Delegate Felt proposal #161.

   b. Testimony received indicated that costs of collections are in many instances equal to tax received.

   C. Property does not produce income.

2) Cash and accounts receivable.

   a. Recommended by Delegate Felt proposal #161.

   b. Not necessarily income producing.

   c. We agree that the term accounts receivable is very broad but have confidence that the legislative assembly in its wisdom will develop legislation that will not violate the underlying principle that all income producing property should be subject to property tax if any income producing property is subject to property tax.

3) Dwelling and personal property of totally serviceconnected disabled veterans.

a. The committee had testimony that there are approximately 99,000 veterans of which approximately 387 would be eligible for this tax relief.

t. We submit that this tax exemption is certainly justified when the mental picture of what total disability is considered.

4) Dwellings used for residential purposes.

a. Dwellings do not produce income.

b. It is realized that the elimination of dwellings from the tax rolls could cause a terrific upheaval in revenues produced from property taxes on the local level. This is a decision which has been left to the judgment of the legislature by the permissive nature of this section.

5) Evidences of dett secured by mortgages of record upon real or personal property in the state of Montana.

a. Eliminates double taxation.

b. Contained in Article XII, Section 2, of current Constitution.

6) The stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

a. Eliminates double taxatior.

b. Contained in Article XII, Section 17, of current Constitution.

COMMITTEE ON REVENUE AND FINANCE

MINORITY PROPOSAL 2

BE IT PROPOSED:

That the following be substituted for Section 13 of the Majority Proposal entitled "Investment of Public Funds":

> The legislative assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock.

/s/ William Artz

/s/ Mike McKeon

/s/ Maurice Driscoll

COMMENTS

We submit that criteria for investment of public trust funds should be more stringent than the criteria for investment of private funds.

We believe that priorities should be in this order:

1) Security.

2) Funds should be invested in Montana as much as possible.

3) Return on investment.

Much of the testimony presented indicated that emphasis was being placed on return on investment rather than security. As an

example: "You don't find the big red apples next to the trunk of the tree--you find them near the end of the limb." We are opposed to gambling with state funds and taking a chance that the limb might break.

Testimony has been offered that the stock market will act as an offset to inflation. We offer that money invested at 5 3/4% for 12 years can double.

The following communication was received from a large organized group of citizens: "We confess a lack of expertise in suggesting adaquate safeguards in the Constitution to govern the legislature on drafting liberalized investment laws. We do see danger inherent in such liberalized laws and hope that committee deliberations and convention debate will develop 'behind the record' guidelines for the legislature to follow in liberalizing the investment laws regulating the investment of public funds."

We feel that the pressures exerted on the committee to permit investment in the stock market will be continued indefinitely unless our restriction is incorporated in the Constitution. Therefore, with a deep concern for the safety of present and future public trust funds, YE earnestly recommend that favorable consideration by the delegates be given to this minority report.

We also wish to bring to your attention that ownership of voting stock of a private corporation constitutes government ownership of private property--a form of socialism. We also question the propriety of the state voting the stock of a private corporation for a variety of obvious reasons. But foremost is the risk involved in trusting our state funds to the caprice of volatile market. It is with these considerations in mind that we reject the majority proposal and submit the above minority proposal.

APPENDIX A

ROLL CALL VOTE ON MAJORITY PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL Y	TOTAL N	TOTAL A
Artz		Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	N	Y	N	11	4	0
Berthelson		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	0
Drum		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	0
Furlong		Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	N	11	4	0
McDonough		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	14	1	0
McKeon		Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	N	N	N	10	5	0
Wagner		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	0
Rygg		Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	N	12	3	0
Driscoll		Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	N	12	3	0
TOTAL	Yea	9	9	9	9	5	7	7	9	9	9	9	9	6	6	3			
	Nay	0	0	0	0	4	2	2	0	0	0	0	0	3	3	6			
	Absent	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Revenue and Finance Committee during its deliberations,

	Number of of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	11	Virginia Blend	No property taxes for public schools	Indefinitely Tabled
2.	16	Virginia Blend	Earmarking	Rejected
3.	23	Virginia Blend	No property taxes for welfare	Indefinitely Tabled
4.	35	Mae Nan Robinson	Preferential Taxation	Adopted in' Part
5.	37	Donald Foster	Earmarking	Rejected
6.	46	Mike McKeon	School Financing	Adopted *in* Part
7.	80	John Toole	Anti-Diversion Amendment	Adopted in Part
8.	109	Robert Kelleher	$1 of income tax to party of choice	Rejected
9.	66	John Schiltz	Tax exemptions on Motor Vehicles	Adopted in Part
10.	72	Thomas Ask	Repeal of Section 3, Article XII	Adopted
11.	119	Magnus Aasheim	Earmarking	Rejected
12.	161	James Felt	New Taxation Article	Adopted in Part
13.	173	Jerome Loendorf	Tax Exemptions for Disabled Veterans	Minority Report

APPENDIX C

WITNESSES HEARD BY COMMITTEE

1. Don Gibson - County Commissioner - Glendive - County debt limitations.
2. Burt Hurwitz - Accociation of County Commissioners - White Sulphur Springs - County debt limitations.
3. Doyle Saxby - Director, Department of Administration - Helena - Montana Trust and Legacy Fund.
4. James R. Howeth - Investment Officer, Board of Investments - Helena - Montana Trust and Iegacy Fund.
5. Paul Caruso - Chairman, Board of Investments - Helena - Montana Trust and Iegacy Fund.
6. Ted Schwinden - Commissioner, Department of Lands - Helena - Montana Trust and Legacy Fund.
7. James Carden - Industrial Accident Board - Relena Investment of funds.
8. Alton P. Hendrickson - Executive Secretary, Teachers Retirement System - Helena - Investment of funds.
9. Lawrence Nachtsheim - Public Employees Retirement System - Helena - Investment of funds.
10. William Scribner - Montana Automobile Dealers Association - Helena - Auto license fee in lieu of property taxation.
11. P. J. Gilfeather - State senator - Great Falls - Revenue and Finance in general.
12. A. W. Kamhoot - Delegate - Forsyth - Taxation of mines and mineral interests.
13. Dan Mizner - Montana League of Cities and Touns - Helena - Local government taxation provisions.
14. Ed Quinn - Araccnda Company - Butte - Taxation of mines and mineral interests.
15. F. L. MacDonald - Anaconda Ccapany - Butte - Taxation of mines and mineral interests.
16. William Diehl - Econcnist - Helena - Revenue and finance in general.

17. Jean Anderson - Montana League of Women Voters - Billings - State aid to local governments.

18. S. Keith Anderson - Montana Taxpayers Association - Helena - Revenue and finance in general.

19. Margaret Warden - delegate - Great Falls - Financing the Long Range Building Program.

20. Michael G. Billings - Superintendent of Public Instruction Office - Helena - Revenue and finance provisions as they effect education.

21. Dean Zinnecker - Association of County Commissioners - Helena - County board of equalization and county debt limitations.

22. Barrett Hard - President, Montana County Assessors Association - Sheridan County - County Assessors.

23. Chadwick Smith - Montana School Boards Association - Helena - School finance.

24. Lloyd A. Markell - Montana Education Association - Helena - School finance.

25. Keith Colbo - Director, Department of Revenue - Helena - Revenue and finance in general.

26. George B. Schotta - Montana Automobile Association - Helena - Anti-diversion provision.

27. Jack Rehberg - Secretary, Highway Users Federation - Billings - Anti-diversion prevision.

28. J. Morley Cooper - Chairman, State Board of Equalization - Helena - State Board of Equalization.

29. John Alley - Member, State Board of Equalization - Helena - State Board of Equalization.

30. Ray Wayrynen - Member, State Board of Equalization - Helena - State Board of Equalization.

31. James T. Harrison - Chief Justice, Montana Supreme Court - Helena - Montana Trust and Legacy Fund.

32. Mons Teigen - Montana Stockgrowers Association - Helena - Four-mill livestock levy.

33. Ralph Armstrong - County Commissioner - Bozeman - Property tax exemptions.

34. Bill Cheney - Executive officer, Livestock Commission -

Helena - Four-mill livestock levy.

35. Torrey B. Johnson - Delegate - Busby - Four-mill livestock levy.

36. Cedor 2. Aroncw - Shelby - Delegate - Net Prcceeds tax.

37. Don Roberts - Cardinal Petrcleum Cc. - Fillings - Net Proceeds lax.

38. Iee McCartney - High Crest Cils, Inc. - Havre - Net Prceeds Tax.

39. Clay McCartney - Chinock - Businessman - Net Proceeds Tax.

40. Ward Shanahan - Attorney representing Carrcll College Board cf Trustees - Helena - Article XII.

41. William C. Hollenbaugh - Professor cf Forestry, University cf Montana - Missoula - Property taxation.

42. Representative Robert Watt - Montana Student Presidents' Association - Missoula - General Taxation.

43. Vern Miller - State Ecard cf Equalization - Helena - Railroad Land Holdings.

44. G. Dean Reed - Deputy Legislative Puditcr - Helena - Functions of the Office cf Legislative Auditcr.

45. John Icole - Delegate - Missoula - Proposal #80 - Amendment tc Anti-diversion Provisicn.

46. Virginia Blend - Delegate - Great Falls - Proposal #16 - Prohibitior cf Earmarking.

47. Jim Stephens - President, Montana Grain Growers Asscciation - Dutton - Article XII, sectior 9.

48. Donald Foster - Delegate - Lewistown - Proposal #37 - Earmarking.

49. Thomas Ask - Delegate - Roundup - Proposal # - Deletion cf sectior 3 cf Article XII.

50. James Felt - Delegate - Billings - Article XII, sectior 3.

51. Robert Corette - Attorney, Western Energy Company - Butte - Article XII, sectior 3.

52. F. L. MacDonald - Anaconda Company - Butte - Article XII, section 3.

53. Ed Quinn - Anaconda Company - Butte - Article XII, sectior

3.

54. Fred Wetzsteon - Montana Farm Bureau - Sula - Retention of Anti-diversion Amendment.

55. Senator William Bertsche - Great Falls - Amendment to the Anti-diversion Provision.

56. F. H. Boles - Kalispell Chamber of Commerce - Retention of Anti-diversion Amendment.

57. Gene Gillette - Conrad National Bank - Kalispell - Retention of Anti-diversion Amendment.

58. Bud Manion - Manion's - Kalispell - Retention of Anti-diversion Amendment.

59. Cecil Hudson - Chamber of Commerce - Columbia Falls - Retention of Anti-diversion Amendment.

60. Can Mizner - Executive Director, Montana League of Cities and Towns - Helena - hatentiCn of Anti-Diversion Amendment.

61. Dean Zinnecker - Executive Secretary, Montana Asscciation of County Commissioners - Helena - Retention of Anti-diversion Amendment.

62. Harry Billings - Montana REL-CIC - Helena - Retertion of Anti-diversion Amendment.

63. Edward A. Gill - Powell County Economic Commission - Deer Lodge - Retention of Anti-diversion Amendment.

64. Del Siewart - Montana Chamber of Commerce - Helena - Retention of Anti-diversion Amendment.

65. Richard Roeder - Delegate - Bozeman - Against Retention of Anti-diversion Amendment - Against Earmarking.

66. Ralph Dreyer - University of Montana - Missoula - Against Earmarking,

67. Dorothy Eck - Delegate - Bozeman - Against Earmarking.

68. Representative Terry Murphy - Rancher - Cardwell- Against Earmarking.

69. Representative Larry Fasbender - Rancher - Ecrt Shaw - General Taxation.

70. Todd Lindberg - President, Montana Society of CPA's - Helena - Auditing of State Investments.

71. Howard Gaare - Montana Society of CPA's - Great Falls -

Auditing of State Investments.

72. Gary F. Demaree - Montana Sccicty cf CPA's - Helena - Auditing cf State Investments.

73. Joseph Loendcrf - Montana Scciety of CPA's - Helena - Auditing cf state Investments.

74. Jack Stevens - Montana Sccicty cf CPA's - Great Falls - Auditing cf State Investments.

75. Stcne Paulson, Jr. - Montana Society cf CPA's - Great Falls - Auditing or state Investments.

76. Magnus Aasheim - Delegate - Antelope - Prcpcsal #119 - Special Levies.

77. Max Conover - Delegate - Billings - Propcsal #119 - Special Levies.

78. Jerome Lcendcrf - Delegate - Helena - Prcposal #173 - Tax Exemptions fcr Totally Disabled Veterans.

79. Jchn Cadby - Executive Secretary, Mcntana Autcmobile Dealers Association - Helena - Frcpcsal #66 - Fee System cf Registraticn for Motor Vehicles.

80. Mcns Teigen - Executive Secretary, Mcntana Stockgrouers Association - Helena - Retenticn cf Livestock Bill Levy.

81. William Cheney - Executive Officer, Livestcck Ccmmission - Helena - Retenticn cf Livestcck Mill Levy.

82. Archie Wilson - Delegate - Hysham - Retention cf Livestock Mill Levy.

83. Douglas Delaney - relegate - Grass Range - Retenticn cf Livestcck Kill Levy.

84. Wesley W. Wertz - Attorney - Helena - Gereral Finance and Taxatien.

es. Mayor Laurence Bjcrneby - Kalispell - In support cf Rcmney Draft cf Revenue and Finance Article.

86. Mrs. John Nelson Hall - President, Great Falls City Council - Great Falls - In suppcrt cf Rcmney Draft cf Revenue and Finance Article.

87. Mayor John McLaughlin - Great Falls - In support of Romney Draft of Revenue and Finance Article.

88. Ward Shanahan - Attcrney reprise ntiag Carroll College Bcard cf Trustees - Helena - Amendment tc section 5 of Rough

Draft.

89. Paul Keller - Chancellor of Montana Episcopal Diocese - Helena - Amendment to section 5 of Rough Draft.

90. Leo Walchuk - Comptroller, Carroll College - Helena - Amendment to section 5 of Rough Draft.

91. Keith Anderson - Executive Vice President, Montana Taxpayers Association - Helena - Revenue and Finance Rough Draft.

92. Cave Smith - Executive Secretary, Montana Woolgrowers Association - Helena - Revenue and Finance Rough Draft.

93. Dan Mizner - Executive Director, Montana League of Cities and Towns - Helena - Revenue and Finance Rough Draft.

94. John Frankino - Director, Montana Catholic Conference - Helena - Revenue 3rd Finance Rough Draft.

95. Chadwick Smith - Attorney, Montana School Boards Association and Montana Hospital Association - Helena - Amendment to section 5 of Rough Draft.

96. Sod Gudgel - Montana Nursing Home Association - Helena - Support of Mr. Smith's Amendment to section 5 of Rough Draft.

97. Robert Kelleher - Delegate - Billings - Proposal #119 - 41 of State income tax return to ha donated to party of person's choice.

98. Hank Deschenes - Missoula Chamber of Commerce - Missoula - Proposal #35 - Preferential Taxation.

99. David J. Maclay - Missoula - Proposal #35 - Preferential Taxation.

100. Roy Seiffert - Veterar's Council of Montana - Helena - Proposal #173 - Tax Exemptions for Totally Disabled Veterans.

161. Donald Gotthig - Disabled American Veterans - Helena - Amending Proposal #173 - Tax Exemptions for Totally Disabled Veterans.

102. James Felt - Delegate - Billings - Proposal #101 - Revenue and Finance ir general.

103. Jack Crosser - Deputy Director, Department of Administration - Helena - State Investments.

104. P. L. MacDonald - Anaconda Company - Butte - Retertion of

Net Proceeds Tax.

105. Vern Miller - State Board of Equalization - Helena - Appraising and Assessing Of Property.

106. Cedor Aronow - Delegate - Shelby - Delete section 3 of Article XII.

1 Cl. Harry Benjamin - Shelby - Article XII, cection 3.

108. George McGrath - Silver Bow County - Butte - Retain Net Proceeds Tax.

109. Shag Miller - President, Butte Chamber of Commerce - Butte - Retain Net Proceeds Tax.

110. Thomas Joyce - Delegate - Butte - Delete section 3 of Article XII and have an "in lieu" tax to be averaged out over the year.

111. Mayor M. a. Micone - Butte - Fetain NetProceeds Tax.

112. Lawrence G. Stimatz - County Attorney - Silver Bow County, Butte - Retain Net Proceeds lax.

APPENDIX D

ROLL CALLS ON MINORITY PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	12	13	TOTAL Y	TOTAL N	TOTAL A
Artz						Y								Y	2	0	
Berthelson						N								N	0	2	
Drum						N								N	0	2	
Furlong						N								N	0	2	
McDonough						N								N	0	2	
McKeon						Y								Y	2	0	
Waqner						N								N	0	2	
Rygg						N								N	0	2	
Driscoll						Y								Y	2	0	
TOTAL	Yea					3								3			
	Nay					6								6			
	Absent																

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

BILL OF RIGHTS COMMITTEE PROPOSAL

No. VIII

Date Reported: February 23, 1972

/s/ Wade J. Dahood, Chairman

/s/ Chet Blaylock, Vice Chairman

TABLE OF CONTENTS:

Page

LETTER OF TRANSMITTAL 618

TEXT OF COMMITTEE PROPOSAL 620

COMMENTS OF COMMITTEE PROPOSAL 625

PREAMBLE 625

Section 1. Popular Sovereignty 626

Section 2. Self-Government 626

Section 3. Inalienable Rights 626

Section 4. Individual Digrity 628

Section 5. Freedom of Religion 629

Section 6. Freedom of Assembly 629

Section 7. Freedom of Speech, Expression and Press 629

Section 8. Right of Participation 630

Section 9. Right to Know 631

Section 10. Right of Privacy 632

Section 11. Searches and Seizures 633

Section 12. Right to Bear Arms 634

Section 13. Right to Suffrage 634

Section 14. Adult Rights 635

Section 15. Rights of Persons Under the Age of Majority 635

Section 16. The Administration of Justice 636

Section 17. Due Process of Law 637

Section 18. Non-Immunity From Suit 637

Section 19. Habeas Corpus 638

Section 20. Initiation of Proceedings 639

Section 21. Bail 639

Section 22. Excessive Sanctions..... 640

Section 23. Detention..... 640

Section 24. Rights of the Accused..... 640

Section 25. Self-Incrimination and Double Jeopardy..... 641

Section 26. Trial by Jury..... 641

Section 27. Imprisonment for Debt..... 642

Section 28. Rights of the Convicted..... 642

Section 29. Eminent Domain..... 643

Section 30. Treason and Descent of Estates..... 644

Section 31. Ex Post Facto, Obligation of Contracts and Irrevocable Privileges..... 644

Section 32. Civilian Control of the Military..... 645

Section 33. Importation of Armed Persons..... 645

Section 34. Unenumerated Rights..... 645

APPENDIX

Cross reference of present and proposed Article..... 646

Delegate proposals considered by committee..... 647

Witnesses heard by committee..... 650

Roll calls..... 658

Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Bill of Rights Committee

Ladies and Gentlemen:

The Bill of Rights Committee submits herewith a proposed new Declaration of Rights of the People of the State of Montana. The proposed article is intended to replace in its entirety Article III of the present Constitution. In doing so, the committee notes that not one of the traditional rights of that Declaration has been diminished; and, to meet the changing circumstances of contemporary life, new safeguards have been added where appropriate.

In its deliberations, the committee was careful to give consideration to all proposals concerning civil liberties. No proposal was adopted or rejected without considered deliberation. The committee is pleased to have reached near unanimity on such an important matter as the basic rights of an individual in a free society. There are no minority reports. Countervailing opinions were freely and fully aired. The issues on which there was some division are reflected in the comments and the roll call votes of Appendix D.

The committee appreciates the public involvement and concern with the rights questions facing it and thanks those who took the time to appear in person or write expressing their opinions on these matters. This testimony and the considered opinion of many delegates was most helpful in drafting this proposal. The commit-

tee also wishes to express its thanks to Rick Applegate, research analyst, Darlene Corbin, committee secretary, and George Paul and Michael Larum, student interns.

In presenting this proposed Declaration of Rights, the committee notes that the guidelines and protections for the exercise of liberty in a free society come not from government but from the people who create that government.

It is that spirit which has motivated this committee to insure for Montana's future, through this bill of rights, a more responsible government that is Constitutionally command never to forget that government is created solely for the welfare of the people so that the people can more fully enjoy the heritage of American liberty within the structure of that government.

Bearing this in mind, the committee commends this proposal to the convention with the hope that, whatever the outcome of the convention debates, the citizens of Montana will have a charter of civil liberties adequate for the foreseeable future. Surely no part of the Constitution being drafted is more important.

/s/ Wade J. Dahood
Chairman

/s/ Chet Blaylock
Vice Chairman

COMMITTEE PROPOSAL

BE IT PROPOSED BY THE BILL OF RIGHTS COMMITTEE:

That there be a new Article on the Bill of Rights to read as follows:

PREAMBLE

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

ARTICLE ---

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their Constitution and form of government whenever they may deem it necessary.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights which include the right of pursuing life's basic necessities, of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of seeking their safety, health and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. NO person shall be denied the equal protection of the law, nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation, or institution; or by the state, its agencies or subdivisions.

Section 5. FREEDOM OF RELIGION. The state of Montana shall make no law respecting an establishment of religion, or prohib-

iting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision.

Section 4. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT TO SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

section 14. ADULT RIGHTS. Persons Eighteen (18) years of age are declared to be adults for all purposes and shall have the right to hold any public office in the state.

Section 15. RIGHTS OF PERSONS UNDER THE AGE OF MAJORITY. The rights of persons under the age of majority shall include, but not be limited to, all the fundamental rights of this article

except where specifically precluded by laws which enhance the protection for such persons.

Section 16. 'IRE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character; no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this stare; and that right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. tic person shall be deprived of life, liberty, or property without due process of law.

Section 18. NON-IMMUNITY FACE SUIT. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. Criminal offenses of which courts inferior to the district courts have juricdiction shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted hy the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

Section 21. RAIL. All persons shall be bailable ty sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any

deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation-, to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. NO person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice Rut in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury shall be secured to all, and remain irviolate, but in all cases and upon default of appearance, or by consent of the parties expressed in such manner as the law ray prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having teen first made to or 'paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private propnrty owner is the prevailing party.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two wit-

nesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

/s/ Wade J. Dahood
Chairman

/s/ Chet Blaylock
Vice Chairman

/s/ Bob Campbell /s/ Dorothy Eck /s/ Donald R. Foster

/s/ R. S. Hanson /s/ George James /s/ Rachell Mansfield

/s/ Lyle Monroe /s/ Marshall Murray /s/ Veronica Sullivan

COMMENTS ON COMMITTEE PROPOSAL

PREAMBLE

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

COMMENTS

The Bill of Rights Committee felt that Montana is unique both in the beauty of the state and the strength of the individuals who were dedicated to establishing a state from a rich wilderness.

The paintings of Charles M. Russell captured the rugged individualism which was surrounded by unmatched scenery. This was described by John Steinbeck as the "grandeur" of the mountains in western Montana and "rolling grasslands" of eastern Montana. Grandeur was included in the Preamble, but the majority of the committee preferred the term "vastness of our rolling plains" to "richness of our rolling grasslands".

The "quiet beauty of our state" includes considerations of the land, air, and water of our state and describes the peacefulness that the people have always desired since the early inhabitants first shared a special relationship with the spirit of their Creator.

Because of the concern of those in the convention and the state that not mentioning "God" specifically would be unacceptable the committee voted unanimously to retain Him in the Preamble. Although the committee preferred the term "Spirit of Creation" or "Spirit of our Creator", it did not believe the emotional response raised would justify the change.

The final two phrases represent the reason for living under a Constitutional government which is intended to improve the quality of life and equality of opportunity. The committee urges that each individual should be given the same opportunity to develop to his full potential.

We believe this Preamble represents the essence of what we in Montana cherish in our surroundings and our highest ideals of improving the quality of our lives in a free society.

In drafting this Preamble; the committee used delegate proposals No's. 59, 67, 86, and 118.

ARTICLE ___

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

COMMENTS

After some discussion, the committee decided unanimously to leave this statement of political philosophy as it was in the 1889 Constitution. Several re-drafts were attempted with unsatisfactory results. Although these re-drafts would have shortened the provision somewhat, it was suggested that they would leave out important concepts orpolitical philosophy. As it stands, this section contains the notion of popular sovereignty, announces that legitimate government is founded on the will of the people and provides that the sole end of government is the good of the whole.

The committee understands that this and other political philosophy provisions are not often immediately justiciable, yet believe that such provisions announce the principles upon which legitimate government rests thereby providing yardsticks for assessing the quality of governmental operation.

No delegate proposals were submitted on this provision.

Section 2. SELF-GOVERNMENT. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their Constitution and form of government whenever they may deem it necessary.

COMMENTS

The committee decided with one dissenting vote that this section might be re-drafted to make it more readable without changing its essence. Accordingly, wordings which were believed redundant or excessive were deleted and complete sentence structure was employed where necessary. These revisions considerably shorten the provision without changing its meaning or intent. The principle as submitted states the right of Montanans to govern themselves and to alter or abolish their Constitution and form of government. No delegate proposals were submitted on this provision.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights which include the right of pursuing life's basic necessities, of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of

seeking their safety, health and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities.

COMMENTS

The committee proposes with two dissenting votes that the former Article III, section 3 be retained with a few subtantive changes. The committee struck language which was felt to be redundant. In addition, it is recommended that the right to pursue life's basic necessities be incorporated as a statement of principle. The intent of the committee on this point is not to create a substantive right for all for the necessities of life to be provided by the public treasury.

The committee heard considerable testimony, from low income and social services people alike, that the state's current public assistance programs are not meeting the genuine needs of low income people who, because of circumstances beyond their control, are unable to obtain basic necessities. Accordingly, it is hoped that the legislature will have occasion to review these programs and upgrade them where necessary to provide full necessities to those in genuine need and to curb whatever abuses may exist in the programs.

What was attempted in this part of the proposed section was a statement of the principle that all persons have the inalienable right to pursue the basic necessities of life--that there can be no right to life apart from the possibility of existence.

The other inalienable rights were included with only minor changes in style for purposes of clarity. An additional right, the right of seeking health was incorporated in recognition of the fact that a right to life without health is a sorry proposition.

The final sentence of this section is new having been derived from delegate proposal No. 116. Testimony was received both favoring and opposing the inclusion of a statement of corresponding responsibilities in the declaration of rights. Some expressed the feeling that many were accepting rights without recognizing that they create obligations. Others were adamant that a declaration of rights should contain just that: the rights of persons against governmental abuses and the rigbts of minorities against the power of unchecked majorities. The committee felt that the inclusion of such a statement does not infringe or impair the rights granted in the declaration of rights but only accords a tone of responsibility to their exercise.

A number of delegate proposals were rejected in the drafting of this section. Delegate proposal No. 45 stipulated a substantive right to the necessities of life. No. 93 proposed an inalienable right to collectively bargain. The committee felt

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that the issue of collective bargaining--as well as its counterpart the right to work--were properly statutory matters.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws, nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation, or institution; or by the state, its agencies or subdivision.

COMMENTS

The committee unanimously adopted this section with the intent of providing a Constitutional impetus for the eradication of public and private discriminations based on race, color, sex, culture, social origin or condition, or political or religious ideas. The provision, quite similar to that of the Puerto Rico declaration of rights is aimed at prohibiting private as well as public discriminations in civil and political rights.

Considerable testimony was heard concerning the need to include sex in any equal protection or freedom from discrimination provisions. The committee felt that such inclusion was eminently proper and saw no reason for the state to wait for the adoption of the federal Equal Rights Amendment, an amendment which would not explicitly provide as much protection as this provision.

The word culture was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians. "Social origin or condition" was included to cover discriminations based on status of income and standard of living.

Some fears were expressed that the wording "political or religious ideas" would permit persons who supported right to work in principle to avoid union membership. Such is certainly not the intent of the committee. The wording was incorporated to prohibit public and private concerns discriminating against persons because of their political or religious beliefs.

The wording of this section was derived almost verbatim from Delegate Proposal No. 61. The committee felt that this proposal incorporated all the features of all the Delegate Proposals (No. 's 10, 32, 50 and 51) on the subjects of equal protection of the laws and the freedom from discrimination. The committee is well aware that any broad proposal on these subjects will require considerable statutory embellishment. It is hoped that the legislature will enact statutes to promote effective eradication of the discriminations prohibited by this section. The considerable support for and lack of opposition to this provision indicates its import and advisability.

Section 5. FREEDOM OF RELIGION. The state of Montana shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

COMMENTS

The committee decided unanimously to substitute the concise wording of the freedom of religion clause of the federal First Amendment. Much testimony was heard on this provision, most of it on the subject of public aid to church-related schools. The committee felt that this issue should be dealt with, as it was, by the Education and Public Lands Committee and that the provision incorporated into the Declaration of Rights should restrict itself to guaranteeing the free exercise of religion and prohibiting the establishment of any religion.

The committee felt especially strong about removing the anti-Mormon biases reflected in the previous wording of Article III, section 4. Beyond that, the committee noted that since the religions which historically were persecuted were those alleged to violate or threaten the good order, peace and safety of the state, such passages were of dubious merit in a statement of religious liberty. Accordingly, both--of considerable length--were deleted. What remains is the tradition-ridden guarantee of religious liberty adopted by the first US Congress in 1789 as part of the federal Bill of Rights.

Realizing the legal, social and political problems of the church-state area are exceedingly complex, it is not urged that this provision will simplify their resolution. However, it will certainly not make the understanding of these compelling and sometimes paradoxical concerns more difficult.

Stction 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or to protest governmental action.

COMMENTS

The committee unanimously recommended that the former Article III, section 26 be adopted with only one stylistic change. The basic right to assemble for redress of grievances by petition or remonstrance remains unchanged. The wording was tightened up a little and the phrase "protest governmental action" was substituted for the phrasing "apply to those invested with the powers of government for redress of grievances..by remonstrance." In doing so, the committee notes the paramount position of the right and the invaluable function its responsible exercise plays in a democratic society.

Section 7. FREEDOM OF SPEECH, EXPRESSION AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or

publish whatever he will on any Subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or Slander the truth thereof may be given in evidence: and the jury, under the direction of the court, shall determine the law and the facts.

COMMENTS

The committee unanimously proposes thi adoption of former Article III, Section 10 with one substantive change. The freedom Of speech is extended, in line with federal decisions under the First Amendment, to cover the freedom of expression. Hopefully, this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken word and the ways in which one expresses his unique personality in an effort to re-balance the general backseat Status of States in the safeguarding of civil liberties. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case lau.

Other minor changes made in the section were merely stylistic in nature except for the inclusion of the word "slander" to provide protection against abuses of the free speech and press guarantees in cases of spoken as well as written word. The committee retained tha established principle that in libel trials the jury shall decide the law and the facts on the theory that removal of this clause might be construed as the denial of a right. The principle is continued with the note that in cases of libel it is necessary for the prosecutor to convince both the court and the jury before the free speech and press protections are overridden (Harrington v. Butte Miners Co. Et. Al., 4e Mont. 550, 554, 1139 p. 451).

Section 8. HIGH? OF PARTICIPATION. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision.

COMMENTS

The committee unanimously adopted this section in response to the increased public concern and literature about citizen participation in the decision-making processes of government. The provision is in Fart a Constitutional Sermon designed to Serve notice to agencies of government that the citizens of the state will expect to participate in agency decisions prior to the time the agency makes up its mind. Tn part, it is also a commitment at the level of fundamental law to seek structures, rules and procedures that maximize the access of citizens to the decision-making institutions of state government. The committee believes that this is eminently proper and that it will have a salutary effect not only on the quality of the final decisions, but more impor-

tant, on the deliberative and political capabilities of the citizenry. It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The wording of the provision is derived from Relegate Proposal NO. 38.

> Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government andits subdivisions, except in cases in which the demands of individual privacy exceeds the merits of public disclosure.

COMMENTS

The committee, with two dissenting votes, and after considerable reflection, adopted this provision explicitly establishing a public right to know. In the main, the provision is from Delegate Proposal No. 57. It is a companion to the preceding right of participation. Both arise out of the increasing concern of citizens and commentators alike that government's sheer bigness threatens the effective exercise of citizenship. The committee notes this concern and believes that one step which can be taken to change this situation is to Constitutionally presume the openness of government documents and operations. The provision stipulates that persons have the rights to examine governmental documents and the deliberations of all public bodies or agencies except to the extent that the demands of individual privacy outweigh the needs of the public right of disclosure. The provision applies to state government and its subdivisions. The committee intends by this provision that the deliberation and resolution of all public matters must be subject to public scrutiny. It is urged that this is especially the case in a democratic society wherein the resolution of increasingly complex questions leads to the establishment of a complex and bureaucratic system of administrative agencies. The test of a democratic society is to establish full citizen access in the face of this challenge.

The committee approvingly cites section 82-3401 of the Revised Codes of Montana, 1947, which provides: "It is the intent of this act (the open meeting law) that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them..."

The committee, during its deliterations on this provision, struck the word **public'* from the phrase "to examine (public) documents." This was done to avoid tying the viability of this provision to the 7695 legislative efforts to define public and private writings. Sections 2 and 3 of Title 93, Chapter 1001 of the Revised Codes of Montana, 1947, define these two classes of writings. Broad categories of uhat constitute public writings are stipulated in section 2. Section 3 proclaims that all other writ-

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ings are private. The committee admits that this list of public writings is admirably broad; however, using this type of statutory construction is dangerous when one is attempting to establish a public right to know. Judging from the example of federal and state statutes on the matter, it is better to stipulate the exclusions rather than the inclusions. To do otherwise is to risk losing the right to examine a document because it does not fit statutory categories as a public document.

The committee intends by this provision that the right to know not be absolute. The right of individual privacy is to be fully respected in any statutory embellishment of the provision as well as in the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply. To clearly establish this point, the committee stipulated in the provision that the right to know is subject to the demands of individual privacy.

The committee commends this provision to the Convention as a long step forward in assuring the openness in government. By creating an atmosphere of openness in government, the committee believes that confidence in government will increase and governmental operation will be facilitated. Such a provision, far from limiting the effectiveness of governmental operation, establishes the prerequisite to the effective exercise of citizenship in a democratic society.

Section 10. RIGHT OF PRIVACY. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

COMMENTS

The committee unanimously adopted this section--similar to Delegate Proposal No. 33--in order to guarantee the right of privacy. What it accomplishes is the elevation of the judicially-announced right of privacy to explicit Constitutional status. The right has been guaranteed in case law at the federal level [Griswold v. Connecticut, 381 U. S. 479 (1965)] and in Montana [State v. Brecht, 28 St. Rep. 468, 473 (May, 1971)]. The committee believes the Constitution should specify that the only circumstance in which the right of privacy may be infringed is following the showing of a compelling state interest. This is in response to the increasing concern expressed nationwide that the sphere of individual privacy is in danger of eclipse in an advanced tschnolcgical society. The point of this provision is not to prohibit all invasions of privacy but to require that no invasion of privacy should occur until and unless a compelling state interest has been established.

The committee proposed a broad provision in this area to permit flexibility to the courts in resolving the tensions

between public interests and privacy. It is hoped that the legislature will have occasion to provide additional protections for the right of privacy in explicit areas where safeguards are required. An example of a potential legislative subject matter can be seen in Delegate Proposal No. 124 which prohibited requiring submission to a lie detector or similar test as a condition of employment.

> Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and affects, from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

COMMENTS

The committee unanimously recommends the adoption of Article III, section 7 with only one substantive change. The phrase "invasions of privacy" was included to apply the traditional safeguards accompanying searches and seizures to any invasions of privacy. This section is the procedural companion of substantive section 10 of this final draft. They stipulate that even after the showing of a compelling state interest the state must abide by certain procedural guidelines.

The committee had incorporated into the tentative rough draft safeguards for wiretapping, electronic surveillance and other means of communications interceptions. After hearing further testimony, the committee decided to delete any reference to interceptions of communications. The committee does not wish to authorize, explicitly or implicitly, the interception of communications by state officials. The committee notes that no testimony was offered alleging any need for wiretap authority at the state level; nor were there any crimes stipulated which would justify an explicit or implicit grant of such authority to any state official. In addition, it is noted that federal officials already have the authority to wiretap for a number of serious offenses. Accordingly, the committee relieves that the privacy of communications should remain inviolate "from state-level interceptions."

The committee is aware that the legislature is empowered by the Federal Omnibus Crime Control and Safe Streets Act of 1968 to grant wiretap authority to state officials. It is noted that any such legislative enactment could require, under this and the preceding proposed provision, the showing of a compelling state interest. The committee, seeing the immediate potential abuses of wiretap authority at the state level, believes this is only proper.

Delegate Proposal No. 14 was rejected in part as an implicit grant of communications interceptions authority.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

COMMENTS

The committee voted unanimously that the Montana provision guaranteeing the right to keep and bear arms remain as is. In doing so, it is noted that the Montana provision goes beyond the Federal Second Amendment in that it guarantees an individual right to keep and bear arms. From some of the testimony received, it was apparent that many were unaware that the Federal Constitution stipulates only a collective right to keep and bear arms, and explicitly predicates that right on the maintenance of a well-regulated military.

Testimony was heard in favor of guaranteeing the right to possess and bear arms without registration, license, or tax. The committee notes that the statutory efforts to regulate the possession of firearms have been at the federal level and are, therefore, not subject to state Constitutional provisions. In addition, it is urged--and requires no citation--that the right to bear arms is subject to the police power of the state. Any such regulation must, of course, stand in some relation to the public good and must not violate due process or equal protection of the laws.

Delegate Proposal NO. 4 was rejected as a lengthy provision that would have frozen into the Constitution without any state precedent a good number of matters best dealt with at the more flexible statutory level. As proposed, the Montana provision on the right to keep and bear arms remains one of the very strongest in the nation.

Section 13. RIGHT TO SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

COMMENTS

The committee felt that this section should be left as is, a guarantee that the right of suffrage shall not be interfered with and that elections shall be free and open. Accordingly the provision as proposed is the verbatim wording of Article III, section 5 of the present Montana Constitution. The provision is supplemented, but not replaced by, the proposals of the General Government Committee on suffrage and elections. No delegate proposals were received on this provision.

Secticn 14. ADULT RIGHTS. Perscns eighteen (18) years of age are declared to be adults for all purposes and shall have the right tc hcld ary public cffice in the state.

COMMENTS

The committee apprcved, with cne dissenting vote, this new provisicn which would declare eighteen year clds to be adults for all purposes. The prcvision further stipulates that eighteen year olds shall have the right tc hcld any public cffice in the state. The ccrmittee believes that the admirable steps taken by the federal government in adopting the Twenty-sixth Amendment and by the Montana legislature in ratifying it shculd be extended tc their lcgical conclusicn. What the secticn provides is that all adults can vote and that any persen eligible to vote is cf sufficient age tc seek election to any public cffice. The committee is well-aware that there will prcbably be few eighteen years olds running fcr the major offices cf state government. Still, it is urged that should an eighteen year cld be of the inclinaticn and capability to run fcr such cffice, he cught nct to be obstructed frcm presenting himself before the electcrate as a candidate: and, if he can secure the vctes necessary fcr election, he cught not tc be denied the office because cf his age. The pcint cf the prcvisicn is that the electcrate can and sbculd be able tc choose to elect any adult it wishes, regardless cf his age. Certainly, if the electcrate would support an adult of eighteen years fcr an office, an arbitrary age requirement such as the Constitution and statutes contain, should not deny him the cffice.

The committee commends this prcvisicn tc the convertien as the extension of full rights cf participatien in public affairs to all adults. This provision was introduced as Delegate Prcposal No. 13.

Section 15. RIGHTS CF PERSCNS UNDER THE AGE CF MAJCRITY. The rights of persons under the age of majcrity shall include, but nct be limited to, all the fundamental rights cf this article except where specifically precluded by laws which enhance the prctectien for such perscns.

COMMENTS

The committee adopted, with cre dissenting vote, this statement explicitly recognizing that perscns under the age cf majority have all the fundamental rights cf the Declaratien cf Rights. The cnly exceptions permitted tc this recognitien are in cases in which rights are infringed by laws designed and cperating to enhance the protection for such persons. The ccmmittee took this action in recognitien of the fact that ycung pecple have nct been held tc possess basic civil rights. Although it has been held that they are 'perscns' under the due process clause of the Fourteenth Amendment, the Supreme Ccurt has not ruled in their favcr

under the equal protection clause of that same amendment. What this means is that persons under the age of majority have been accorded certain specific rights which are felt to be a part of due process. However, the broad outline of the kinds of rights young people possess does not yet exist. This is the crux of the committee proposal: to recognize that persons under the age of majority have the same protections from governmental and majoritarian abuses as do adults. In such cases where the protection of the special status of minors demands it, exceptions can be made on clear showing that such protection is being enhanced.

This provision was taken, in part, from Delegate Proposals No's. 65 and 88.

> Section 11. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character; no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable Except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation laws of this state: and that right and justice shall be administered without sale, denial, or delay.

COMMENTS

The committee voted unanimously to retain this section with one addition. The provision as it stands in the present Constitution guarantees justice and a speedy remedy for all without sale, denial or delay. The committee felt, in light of a recent interpretation of the Workmen's Compensation law, that this remedy needed to be explicitly guaranteed to persons who may be employed by one covered by Workmen's Compensation to work on the facilities of another. Under Montana law, as announced in the recent decision of Ashcraft v. Montana Power Co., the employee has no redress against third parties for injuries caused by them if his immediate employer is covered under the Workmen's Compensation Law. The committee feels that this violates the spirit of the guarantee of a speedy remedy for all injuries of person, property or character. It is this specific denial-and this one only--that the committee intends to alter with the following additional wording: "no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state." In other words the committee wants to insure that the Workmen's Compensation Laws of the state will be used for their original purpose--to provide compensation to injured workmen--rather than to deprive an injured worker of redress against negligent third parties (beyond his employer and fellow

employees) because his immediate employer is covered by Workmen's Compensation. The committee believes that clarifying this remedy would have a salutary effect on the conscientiousness of persons who may contract out work to be done on their premises. To permit no remedy against third parties in cases where the employer is covered by Workmen's Compensation is to encourage persons with rundown premises to contract out work without improving the quality of the premises. The committee urges that this is an abuse of the Workmen's Compensation Law and constitutes a mis-application of that law to protect persons who are negligent.

The committee commends this Provision to the convention with the belief that it is an important, if technical, aspect of the administration of justice.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

COMMENTS

The committee felt that the tradition-ridden phrasing of the due Process of law clause should remain as is. Accordingly, the wording of Article III, section 27 is incorporated verbatim in this proposal. The committee received no suggestion for change of this section.

Section 18. NON-IMMUNITY FROM SUIT. The state and its subdivisions shall have no special immunity from suit. This Provision shall apply only to causes of action arising after June 1, 1973.

COMMENTS

The committee voted unanimously to adopt this section abolishing the archaic doctrine of sovereign immunity. In doing so, the committee responds to increasing citizen concern and the writing of legal scholars to the effect that the doctrine no longer has a rational justification in law. The committee notes that a clear trend has emerged nationwide to abolish the doctrine--a clear indication that they can no longer find a justification for its continued operation.

Briefly, the doctrine of sovereign immunity bars tort suits against the state for negligent acts by its officials and employees. The committee finds this reasoning repugnant to the fundamental premise of the American justice: all parties should receive fair and just redress whether the injuring party is a private citizen or a governmental agency. The committee believes that just as the government administers a system of justice between private parties it should administer the system when the government itself is alleged to have committed an injustice. The committee notes that private firms are liable for the negligence

of their employees and points out this fact to indicate the inconsistency of the state's position in the system of tort law. It is the belief of the committee that this proposed provision rectifies this inconsistency.

The committee cites with approval the recent Colorado decision in which that state's highest court abolished the doctrine. In responding to the old justification for sovereign immunity--that "the King can do no wrong"--the court said: "The monarchial philosophies invented to solve the marital problems of Henry VIII are not sufficient justification for the denial of the right of recovery against the government in today's society. Assuming that there was sovereign immunity of the Kings of England, our forebears won the Revolutionary War to rid themselves of such sovereign prerogative." (Evans v. Board of County Commissioners, (Colo., 482 P2d 968, 969 (1971): See also companion cases ayainst the state and a school district.)

Under current Montana law, governmental agencies are liable only to the extent of the insurance coverage they carry. This leaves the decision as to the amount of coverage to be purchased with the agency. What this means is that an agency can effectively limit the actions brought against it. The committee feels that this is entirely too discretionary a situation when individual rights are at stake. Since adequate insurance can be obtained and can be budgeted in advance, agencies should have such coverage. This will insure that they are able to pay the justified claims made against them and that such claims will not be limited by inadequate insurance coverage.

The committee is well-aware that implementation of this provision could cause some difficulties if done without permitting affected agencies to upgrade their currently inadequate coverage. Accordingly, it is recommended that this provision act be retrospective in its application; that, in order to permit agencies time to obtain adequate insurance coverage as provided by legislative appropriation, it shall not be effective until June 1, 1973; and that it shall be effective only to causes of action arising after that date. The committee commends this provision to the convention with the belief that its adoption will insure that redress for wrongs will he administered on behalf of and against all parties, governmental as well as private. The wording of the provision is similar in purpose to delegate proposal 30.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

COMMENTS

The committee believes that this most basic of procedural rights requires complete protection. Accordingly, the proposal provides that the writ of habeas corpus--the right to test the legitimacy of one's detention--ought never to be suspended. The committee is aware that a serious rebellion or invasion could

lead to a federal suspension of the writ. Hcwever, it is urged that the state cf Mcntana shculd nct suspend the writ at the state level without a problem Cf such magnitude as torequire federal action. It seems plain that the federal government could be ccunted upon to assist in keeping the state ccurts cpen t c review any habeas corpus petitions submitted even in a statewide emergency.

The committee notes that nine states have similar provisions that guarantee that the writ shall never be suspended. The importance of the writ can be seen in Mcntana history. In 1914, when the Governor proclaimed a state cf insurrection in Silver Bow county, the military closed down the ccurts in that county and arrested persons uithcut warrant cr charge, held them uithcut bail to he tried uithcut a jury befcre a military tribunal. Some of thcse detained used the writ of habeas ccrpus tc gccd effect, securing an order that the military re-open the ccurts in Silver Bow Ccunty. (In re Mc Donald, 49 Mcntana 454, 143 p. 947 (1914)). The ccmmittee cites this as an example cf the value cf this important prccedural safeguard precisely in times of stress.

> Secticn 20. INITIATICN CF PRCCEEDINGS. Criminal offenses of which ccurtc inferior tc the district courts have jurisdicticn shall be prosecuted by ccmplaint. All criminal actions in district court, except thcse on appeal, shall be prosecuted by infcrmaticn, after examinaticn and commitment by a sagistrate, cr after leave granted by the ccurt, cr shall be prosecuted by indictment without such exaainaticc cr ccmmitment, or uithcut such leave cf the court. A grand jury shall consist of seven perscns, cf whom five must ccncur tc find an indictment. A grand jury shall cnly be drawn and summcned when the district judge shall, in his discretion, consider it necessary, and shall sc crder.

COMMENTS

The committee voted unanimously that this secticn which stipulates the method of initiatirg criminal proceedings should remain as is with one minor change. The phrase "justice's courts and municipal and cther ccurts" was deleted as unnecessary and redundant wording. The remainder of the section is the verbatim rendering of the Article III, section 8 prcviding fcr prosecuticns by complaint, infcrnaticn and indictment. It is noted that these fixed aspects of the initiaticn cf proceedings are part of the basic procedural rights framewcrk established to maintain the accusatorial nature of the system cf criminal justice. No delegate proposals were received on this provisicr.

> Section 21. BAII. All persons shall be bailable ty sufficient sureties, except fcr capital cffenses, when the proof is evident or the presumpticn great.

COMMENTS

The committee voted unanimously to retain this section unchanged. As it stands, the section announces that all persons are bailable except in certain capital offenses. No delegate proposals were received on this provision.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

COMMENTS

The committee voted unanimously that this section be retained unchanged. It is thought that the section provides the judiciary and the legislature adequate flexibility to apply the principle that there shall not be excessive bail, excessive fines or cruel and unusual punishments. No delegate proposals were received on this provision.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

COMMENTS

The committee voted unanimously to retain the former Article III, section 17 unchanged. The provision prohibits unreasonable detention of witnesses and prescribes in detail the procedure for securing testimony in the event the witness can not be procured for the trial. No delegate proposals were received on this provision.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

COMMENTS

The committee voted unanimously to retain the former Article III, section 16 unchanged. The committee felt it was an admirable statement of the fundamental procedural rights of an accused. NO delegate proposals were received on this provision.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction.

COMMENTS

The committee recommends the adoption of the former Article III, section 16 with one substantive change. It is noted that the "two sovereignties rule" is still in effect at the federal level. In recent years, the rule which permits prosecutions by different jurisdictions for the same offense arising from the same set of criminal facts, has come under scrutiny and criticism. The provision recommended by this committee would Forbidit the state from following the prosecution of another jurisdiction for the same offense and criminal facts. The committee is well-aware that the state Constitution cannot limit the federal government in this practice. However, as the committee believes that subsequent prosecutions as those described above are a violation of the protection against double jeopardy, it is hoped that the federal government and the state can cooperate in cases involving violations of the laws of both jurisdictions. In this way, a person accused of a crime will be placed in jeopardy only once in accordance with long-established principles.

Delegate proposals No's 88 and 124 were rejected. It was felt that #88, which extended the self-incrimination prohibition to any kind of evidence, was unworkable and might indirectly invalidate the implied consent law. Proposal #124 prohibited lie detector and other self-incriminating tests for employment. The committee felt that the particulars of this proposal were properly statutory matters and, *along* with a host of other privacy matters should be dealt with by the legislature. It was also felt that the complementary protection of the right of Privacy in section 15 of this proposal would offer protection against privacy invasions made as a condition of employment.

Section 26. TRIAL BY JURY. The right of trial by jury shall be secured to all, and remain inviolate, but in all cases and upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict SO

rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous.

COMMENTS

The committee voted unanimously to make some changes in the section on trial by jury. The first of these permits the defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases. The committee felt that expanding the choice of a defendant to waive a jury trial to include felony cases, the defendant could decide with the aid of his attorney whether to try his case before a jury or the judge sitting alone. The defendant may well desire to eliminate the time incarcerated while waiting for the next jury term or may feel in certain instances that his chances of fairly presenting his case are better without a jury.

The committee also felt that it was essential to strengthen the presumption of innocence in all criminal actions by requiring a unanimous verdict for misdemeanors as well as felonies. It is urged by the committee that since guilt must be clearly established in all criminal cases, there should be no distinction between the number of jurors in agreement required to convict of a misdemeanor or a felony. If guilt is clearly established, it is believed that the jury will be able to agree to convict. If guilt is not established, and several jurors cannot agree, it is a long established principle of justice that the accused ought not to be convicted. The loss of livelihood and lifetime criminal record occasioned by a criminal conviction are too damaging to permit less than a unanimous verdict.

The remainder of the section is proposed without change.

Section 11. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner prescribed by law. upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

COMMENTS

The committee voted unanimously to retain former Article III, section 12 unchanged. It was felt that the provision is an adequate safeguard for the right of one in debt to be free from imprisonment. No delegate proposals were received on this provision.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

COMMENTS

The committee voted unanimously tc adopt this revisicn cf former Article III, secticn 24. In dcing cc, the ccmmittee reccm-mends that cnce a person whc has been ccnvicted has served his sentence and is no lcnger under state supervisicn, he shculd be entitled tc the restcration cf all civil and pclitical rights, including the right to vcte, hold public cffice, and enter occupaticns which require state licensing. The ccmmittee believes that this is eminently proper and that. the paramcunt ccncerns of preventicn and reformation cannct be realized unless the ex-ccnvict can readily mcve back irtc scciety as an equal par-ticipant in community affairs. Surely tc rehabilitate cne and attempt to insure that he has the cppcrtunity tc become a full member of the community requires that he be restored the same riqhts, privileges and immunities as other citizens. This provi-sicn dces not speak to the riqhts cf the incarcerated while they are in prison as did delegate prcpcsal #98. It is nct meant in any way tc preclude them having all rights except those necessar-ily denied as a ccndition of their incarceraticr.

The committee also deleted reference tc capital punishment. The reference tc capital punishment is rct necessary as it merely grants the legislature the power to dc scmething it can do any-way. To delete this reference has no effect cn the status cf cap-ital punishment in Montana; it remains in effect in thcse instances which the legislature prcvides. The committee rejected delegate proposal a3 which would have abclished capital punish-ment. The committee felt the matter shculd be left up tc the legislature.

> Section 29. EMINENT DOMAIN. Private prcperty shall not be taken or damaged fcr public use uithcut just ccmpensation to the full extent cf the loss having been first made to or paid into court for the cwner. In the event of litigaticn, just ccmpensation shall include necessary expenses cf litigaticn tc be awarded by the ccurt when the privatf property cwner is the prevailing party.

COMMENTS

The committee unanimously approved substartive changes in the eminent domain secticn. The thrust cf the ccmmittee effort was tc assure that full and just ccmpensation be made in all emi-nent domain actions. Without it, scme cf the ccsts of an eminent domain acticn'fall where they do nct belcng--cn the person whose property is beirg ccndemned.

In order to give substance tc the citizen's effort tc chal-lenge the ccmpensation figure of the ccndemncr, the last sentence of this provision was added. Those testifying in oppcsition to the committee's original eminent dcmain propcsal agreed that this sentence, which awards necessary expenses of litigation to the

private property owner when he is the prevailing party, is just. The committee intends by necessary expenses of litigation all costs including appraiser fees, attorney fees and court costs. It is felt that this stipulation will produce a climate in which the condemnor's offer for compensation will more adequately reflect the compensation to which a property owner is entitled. The property owner will have a chance to collect the expenses he incurs in challenging the condemnor's decision. In addition, it will redress the imbalance between the vast resources brought to bear by the state and those available to the individual property owner in contested cases. The committee recommends this section to the convention as insurance that the compensation to the private property owner will in fact be just. Delegate proposal #75 was amended to accomplish this provision.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to is enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

COMMENTS

The committee voted unanimously to retain the former Article III, section 9 with minor stylistic changes. The limitations on treason prosecutions were retained in their tradition-rooted language verbatim. The provision on "corruption of blood" was replaced with wording expressing the same point: "no conviction shall cause the loss of property to the relatives or heirs of the convicted". The provision on the descent of the estates of suicides was revised for clarity. NO delegate proposals were received on this provision.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall he passed by the legislative assembly.

COMMENTS

The committee voted unanimously to retain the former Article III, section 11 unchanged. The protections against ex post facto laws, laws impairing the obligation of contracts and laws granting irrevocable privileges seemed adequate. No delegate proposals were received on this provision.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

COMMENTS

The committee voted unanimously to retain the former Article III, section 22 unchanged. In doing so, the committee notes the importance of the declaration of the principle that the civilian authority always supersedes that of the military. Although the quartering of troops prohibition has not been at issue for many years, the committee felt it was wise to retain the safeguard. No delegate proposals were received on this provision.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

COMMENTS

The committee voted unanimously that the former Article III, section 31 remain unchanged. The protection, initially established to prevent the importation of strike-breakers, is thought to be an adequate safeguard against any body of armed men coming into the state. No delegate proposals were received on this provision.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

COMMENTS

The committee voted unanimously to retain the former Article III. section 33 unchanged. In doing so, the committee notes that this provision--as well as the new rights provisions of this proposal--is a crucial Part of any effort to revitalize the state government's approach to civil liberties questions. Activity in recent years indicates that this provision, originally written into the federal Bill of Sights as a sign that there were rights beyond those specifically listed, may be the source of innovative judicial activity in the civil liberties field. [See, e.g. Griswold v. Connecticut, 331 U.S. 479(1965)]. No delegate proposals were received on this provision.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	1
2	2
3	3
4	NEW
5	4
6	26
7	10
8	NEW
9	NEW
10	NEW
11	7
12	13
13	5
14	NEW
15	NEW
16	6
17	27
18	NEW
10	21
20	8
21	19
22	20
23	17
24	1b
25	18
26	23
27	12
28	24
29	14
30	9
31	11
32	22
33	31
34	30

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Bill of Rights Committee during its deliberations:

Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1. #1	E.M.Berthelson	Environment	Rejected
2. #3	Jerome Cate	Capital punishment	Rejected
3. #4	E.M.Berthelson	Right to Bear arms	Rejected
4. #10	Virginia Blend	Equal Rights	Rejected
5. #12	Jerome Cate	Environmental protection	To Natural Resources
6. #13	Bob Campbell	Rights of 18 year olds	Adopted
7. #14	Bob Campbell	Invasions of privacy	Adopted in part
8. #15	D.A.Scanlin	Indian lands	Adopted
9. #18	Jerome Cate	Right to Counsel	Rejected
10. #20	C.B.McNeil	Quality Environment	To Natural Resources
11. #21	C.B.McNeil	Quality Environment	To Natural Resources
12. #30	Jerome Cate	Sovereign immunity	Adopted in part
13. #32	Mae Man Robinson	Discrimination	Rejected
14. #33	Bob Campbell	Individual dignity	Adopted
15. #34	Bob Campbell	Restoration of	Adopted

			rights	
16.	#38	Donald Foster	Citizen participation	Adopted
17.	#45	Lyle Monroe	Basic necessities	Adopted in part
18.	#50	Bob Campbell	Equal protection	Fejected
19.	#51	Bob Campbell	Discrimination	Rejected
2'.	#55	Jerome Cate	Compensation for victims of crime	Rejected
21.	#57	Dorothy Eck	Rights of Access	Adopted
22.	#59	Bob Campbell	Preamble	Adopted in part
23.	#61	Richard J. Champoux	Equal protection	Adopted in part
24.	#65	Lyle Monroe	Rights of miners	Adopted in part
25.	#67	Donald Foster	Preamble	Adopted in part
26.	#75	Bob Campbell	Eminent domain	Adopted in Part
27.	#81	Daniel W. Harrington	Religious liberty	Rejected
28.	#86	George H. Rollins	Preamble	Rejected
29.	#87	Donald Foster	Rights of miners	Rejected
3c.	#88	Jerome Cate	Self-incrimination	Rejected
31.	#93	Henry Siderius	Collective bargaining	Rejected
32.	#98	Robert Lee Kelleher	Rights of prisoners	Rejected
33.	#100	Robert Lee Kelleher	Involuntary servitude on Sundays	Fejected

34.	#103	Robert Lee Kelleher	Rights to be born and to die	Rejected
35.	#116	Jack K. Ward	People's obligation to preserve rights	Adopted in part
36.	#118	Jack K. Ward	Preamble	Rejected
37.	#124	Jerome Cate	Prohibition of lie detector tests	Rejected
38.	#125	Jerome Cate	Environmental compensation	Rejected
39.	#132	Bob Campbell	Environment rights	Adopted
40.	#133	Bob Campbell	Permitting full remedies, etc.	Adopted
41.	#151	Lyle Monroe	Rights of Indians	Fejected
42.	#153	David L. Holland	Free care at St. Institutions	Rejected
43.	#160	Lyle Monroe	Rights of Employees	Rejected
44.	#163	Veronica Sullivan	Right-s of the Ccanitted	Rejected
45.	#165	Jerome T. Loendorf	Religious taxation	Rejected
46.	#167	Lyle Monroe	Religious freedom	Adopted

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Duane W. Welker - Individual - Hamilton.

2. Robert E. Miller - Montana Press Association - Helena Freedom of the Press.

3. Robert D. Watt - Montana Student Presidents' Association - Rights of 18 year olds.

4. Gerald L. McCurdy - NHF - Hamilton - In support of good government.

5. Roy G. Crosby, Jr. - Citizens for Constitutional Government - Missoula - Preamble.

6. Carol and Francis Mitchell - Montana Common Cause - Helena - Right to Know.

7. Reverend James H. Provost - Montana Cathclic Conference - Helena - Freedom of Religion.

8. Gerald L. McCurdy - NHF - Hamilton - 18 year old rights.

9. John Murphy - Intern - Great Falls - Public Health, Undeclared wars and the Environment.

10. Francis J. Haucci - Montana Cathclic Conference - Great Falls - Freedom of Religion.

11. Steven F. Coldiron - Montana Low-Income Organization - Helena - Delegate Proposal #34, Rights upon termination of state supervision.

12. Roy Crosby, Jr. - Citizens for Constitutional Government - Helena - Rights of Accused.

13. William R. Cainan - Masons - Helena - Article IV.

14. Bonnie Wallem - League of Women Voters of Montana - Helena - should there be a Bill of Rights in the Constitution?

15. Norman D. Ostrander - Seventh Day Adventist Church - Helena - Article IV.

16. Mrs. Irving Boettger - Individual - East Helena - Right to Privacy, Environment.

17. Daniel J. Foley - Lee Newspapers - Helena - Public access and right to privacy.

18. Evelyn Schallaire - Individual - Martin City - Proposal #32.

19. Lewis E. Yearout - Montana Arms Collectors Association - Great Falls - Right to Bear Arms.

20. Dr. H. W. C. Newberry - Individual - Kalispell - Right to Bear Arms.

21. A. Bickstad - Individual - Boulder - Right to Bear Arms.

22. Natalie Cannon - Helena Branch, American Association of University Women - Helena - Discrimination.

23. Maxine Johnson - AAUW - Missoula - Discrimination.

24. Sidney Smith - Department of Labor and Industry - Helena - Human Rights.

25. Elma Peck - Business and Professional Women - Helena - Equal Rights.

26. Bess R. Reed - Montana Federation Women's Clubs - Missoula - Equal Rights.

27. Bernard L. Dan - Individual - Boulder - Right to Bear Arms.

28. Orson Topham - National Association to Keep and Bear Arms - Helena - Right to Bear Arms.

29. Raymond Lay - National Association to Keep and Bear Arms - Helena - Right to Bear Arms.

30. Raymond Hoem - Montana Rifle Association - Big Timber - Article III, Section 13.

31. Kenneth Henry - Individual - Helena - Right to Bear Arms.

32. Mavis Scott - Wamubdi-Cta Indian Club - Poplar - Rights of those under the age of majority.

33. Lynn Lueppe - Tatanka Ska Indian Club - Poplar - Rights of those under the age of majority.

34. Vincent P. Matule - Individual - Helena - Childrens' rights.

35. Mrs. Lois K. McMeekin - Individual - Helena - Rights of those under the age of Majority.

36. Mary Anne Fisher - Montana Advisory Council on Children and Youth - Helena - Rights of those under the age of

Majority.

37. Mavis McKelvey - Mcntana League cf Ccrservaticn Vcters - Missoula - Envircnmental Prctecticn.

38. Darlene Grove - Individual - Helena - Ervircnment.

39. Cecil Garland - Mcntana Wilderness Asscciaticn - Linccln - Public Trust.

40. William D. Tomlinscn - Mcntana League cf Ccnservaticn Vcters - Misscula - Envircnmental Frctecticr.

41. Robert E. LeProwse - Mcntana Wccdland Ccuncil - Missoula - Ervircnment.

42. George Darrcw - State Representative, Yfllowstcne Ccunty - Eillirys - Envircnmental Frctecticr.

43. C. Louise Cross - Individual - Chairnan, Natural Resources Ccmmittee.

44. C. B. McNeil - Pclscn Cutdccrs - Pclscn - Delegate propcs- als #20 and 21.

45. Leonard Campbell - Envircnmental Frctection Agency - Denver - Envircnmental protecticn.

46. Irwin Dickstein - Federal Envircnmental Erctecticn Agency - Denver - Envircnmental Frctecticr.

47. Rcbert R. DeSpain - U. S. Envircnmcntal Erctectioc Agency - Denver - Envircnmental Frctecticn.

48. Dave Wagoner - Envircnmental Frctecticn Agency - Denver Environmental Frctecticn.

49. Keith C. Schwab - Envircnmental Protection Agency Littletcn - Environmental Prctecticn.

53. Barney Reagan - Individual - Helena - Crdinance I, Sectícn L.

51. Kenneth Henry - Individual - Helena - Article 3, Section 4.

52. Francis Satterthwaite - Inter-tribal Fclicy Board - Helena - Ordinance I, Section 2.

53. Will Roscoe - Sentinel High Schcal - Missoula - Rights cf 18 year clds.

54. Stephen M. Sherick - Sigma Fhi Epsilon Fraternity - Missoula - Fights cf 18 year clds.

55. Kenneth Henry - Individual - Helena - Euthanasia.

56. Bob Campbell - Delegate - Missoula - Delegate Proposal #13.

57. Jerry Cate - Delegate - Proposal #13.

58. James Tomlinson - Hellgate High School - Missoula - Sights of 18 year olds.

59. Mike Barrett - Hellgate High School - Missoula - Rights of 18 year olds.

63. Kurt Krueger - Individual - Helena - Fights of 18 year olds.

61. Ed Smith - Individual - Missoula - Rights of 18 year olds.

62. William E. Koerner - Individual - Hamilton - Opposing rights of 18 year olds.

63. Joyce M. Franks - Individual - Alberton - Right to die.

64. Carl Rostad - Individual - Helena - Rights of 18 year olds.

65. Mrs. Stella Filipowicz - Individual - Great Falls - Right to live.

66. Bill Turner - Individual - Helena - Capital Punishment.

67. Duane W. Welker - Individual - Hamilton - #45.

68. Frank R. Sennett - Department of Social and Rehabilitation - Services - Helena - #45.

69. Carol Mitchell - Individual - Helena - Basic Rights.

70. Jack R. Carlson - Montana Chapter, National Association Social Workers - #45.

71. Larry Juelfs - Invited by Connittee - Great Falls - #45.

72. Jim Raniere - Welfare Rights Organization - Great Falls - x45.

73. Malyn Oleson - Welfare Rights Organization - Great Falls - #45.

74. Doris Flesch - Welfare Rights Organization - Great Falls - #45.

75. Minnie McReynolds - Welfare Rights Organization - Great

Falls - #45.

76. Shirley Malkuck - Welfare Rights Orgarization - Great Falls - #45.

77. Irene Houle - Welfare Rights Organization -Great Falls - #45.

78. Sister Providencia - The Church and Academic Conaurities - #45.

79. Steven Coldiron - Montana State Low Income Organization Helena - #45.

80. Kenneth Henry - Individual - Helena - Euthanasia.

81. Larry Elison - Individual - Missoula - Right of Privacy.

82. Gerald L. McCurdy - Individual - Hamilton - Basic Necessities.

83. Jim Dana - Individual - Missoula - #45.

84. Patricia A. Denny - Individual - Missoula - Education.

85. Bob Sorenson - ASOM - Missoula - Education.

86. Tom Bailey - Individual - Missoula - School Boards.

87. John Murphy - Individual - Missoula - Various.

88. Leroy F. Berven - Associated Students of University of Montana - Education.

89. frank LaMere - Eastern Montana College - Billings - Indian Education.

90. Dale Kindness - Eastern Montana College - Billings - Indian Education.

91. Clara Lee McMakin - Eastern Montana College - Lamedeer - Indian Education.

92. Calvin B. Herrera - Eastern Montana College - Indian Education.

93. Stan Juneau - Eastern Montana College - Billings - Indian Education.

94. John R. Christensen - University of Montana - Missoula - Educatior.

95. Wayne Gildroy - Montana Student Presidents' Assn. - Bozeman - #142.

96. Frank Dudas - ASMSU - Eczeman - Edacaticn.

97. Robert Jovick - Montana Student Presidents' Assn. - Eczeman - Educaticn.

58. Harold E. Gray - University of Mcntana - Missoula - Equal educaticnal cppcrtunity.

99. Dwight A. Billedeaux - American Indian - Eillings - Education.

100. Gary Kimble - Indians - Misscula - Indian Rights.

101. WillisEl. McKeon - Mcntana Asscciated Utilities - Malta - #75 and #125.

102. Charles C. Lovell - Great Falls Gas Cc. - Great Falls - #75 and #125.

103. Jchn Carl - Montana Power Co. - Butte - #75.

104. Donald A. Douglas - Dept. cf Highways - Helena - #75 and #125.

105. George Darrcw - Representative - Billings - #75.

106. John B. Staigmiller - Individual - Cascade - Eminent Dcmain.

107. Edwin S. Bccth - Mcntana Railrcad Assn. - Helena - #75.

108. Gene A. Picctte - General Telephcne cf the N.W. and Mcntana-Dakota Utilities - Helena - 175 and #125.

109. like Meloy - Privacy and wiretapping.

110. Kayle Jackson - Individual - Bozeman - Search and Seizure.

111. Lewis E. Yearout - Montana Arms Collectors Association - Great Falls - Proposal #4.

112. H. W. C. Newberry - Individual - Kalispell - Right to keep and bear arms.

113. Dr. George Usterman - Individual - Great Falls - Proposal #4.

114. Robert D. McDonald - Individual - Helena - Ccrcealed Weapons.

115. Raymond Lay - Naticnal Asscciaticn to Keep and Eear Arms - Helena - Gun registraticn and taxation.

116. Charles L. Bartelt - Individual - Great Falls - Gun registration.

117. Don Osburn - Cascade County Wildlife Association - Great Falls - Gun control.

118. Orsen Topham - National Association to Keep and Bear Arms - Helena - Proposal #4.

119. Daniel J. Masse - Montana Rifle and Pistol Acnociation - Treasure State Outfitters - Clinton - Proposal #4.

120. Dan Neal - Beartooth Mountain Men - Muzzle Loaders - Great Falls - Right to keep and bear arms.

121. Dorothy Bradley - State Representative - Gallatin - Public trust.

122. Patti Meier - GASP of Missoula - Grant Creek - Environmental Rights.

123. Cecil Garland - Individual - Lincoln - Public trust.

124. Joe Roberts - Individual - University of Montana Law School - Right to die.

125. Francis Mitchell - Montana Common Cause.

126. Sister Providencia - Individual - College of Great Falls - Capital Punishment.

127. Miss Gerry Fenn - Montana Advisory Council on Children - Helena - Rights of those under the age of majority.

126. Jim Pippard - Community Coordinated Child Care - Helena - Rights of those under the age of majority.

129. Earl J. Barlow - Indian Education Supervisor - Helena - Indian education.

130. George Darrow - Individual - Billings - Comments on sections 1, 4 and 14.

131. Robert D. watt - Montana Student Presidents' Association - Missoula - Helena - Adult rights.

132. Martin L. Staley - Individual - Wolf Creek - Rights of majority to 18 year olds, with restrictions.

133. Noel Larivee - Missoula - Individual - Right to know.

134. Don Holtz - Montana Common Cause - Helena - Right to know.

135. Bonnie Wallem - League of Women Voters of Montana - Helena

- Clean environment, right to know.

136. Ray Gulick - Individual - Joplin - Brief history of the present Montana State Constitution.

137. William Denny, Sr. - Montana Inter-Tribal Policy Board - Box Elder, Montana - Indian Rights.

138. Carson Boyd - Montana Inter-Tribal Policy Board - Brockton - Indian Rights.

APPENDIX D

ROLL CALLS ON PROPOSAL

MEMBER	SECTION/Pre.	1	2	3	4	5	6	7	8	9	10	11	12	TOTAL Y	TOTAL N	TOTAL A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
R. S. (Bob) Hanson	Y	Y	N	N	Y	Y	Y	Y	Y	N	Y	Y	Y	9	3	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Marshall Murray	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	10	2	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
TOTAL Yea	11	11	10	9	11	11	11	11	11	9	11	11	11			
Nay	0	0	1	2	0	0	0	0	0	2	0	0	0			
Absent	0	0	0	0	0	0	0	0	0	0	0	0	0			

ROLL CALLS ON PROPOSAL

MEMBER	SECTION 13	14	15	16	17	18	19	20	21	22	23	24	25	TOTAL yy	N	A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
R. S. (Bob) Hanson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Rachel1 K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Marshall Murray	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	lo	2	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
TOTAL Yea	11	10	10	11	11	11	11	11	11	11	11	11	11			
TOTAL Nay	0	1	1	0	0	0	0	0	0	0	0	0	0			
TOTAL Absent	0	0	0	0	0	0	0	0	0	0	0	0	0			

MEMBER	SECTION 26	27	28	29	30	31	32	33	34	TOTAL Y	N	A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
R. S. (Bob) Hanson	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Marshall Murray	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	9	0	0
TOTAL Yea	11	11	11	11	11	11	11	11	11			
TOTAL Nay	0	0	0	0	0	0	0	0	0			
TOTAL Absent	0	0	0	0	0	0	0	0	0			

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

PUBLIC HEALTH, WELFARE, LABOR

AND INDUSTRY COMMITTEE PROPOSAL

No. TX

Date Introduced: February 19, 1972

/s/ George B. Heliker, Chairman

/s/ J. K. Ward, Vice Chairman

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL....664

TEXT OF MAJORITY PROPOSAL, NON-FUNDAMENTAL CORPORATIONS.... 666

COMMENTS ON MAJORITY PROPOSAL, NON-MUNICIPAL CORP.... 668

Section 1. Grant of Power.... 668

Section 2. Protection for Citizenry.... 668

Section 3. Cumulative Voting.... 668

Section 4. Long-Short Haul Clause.... 669

Section 5. Watered Stock Provision.... 669

Section 6. Retrospective Law Prohibition.... 669

TEXT OF MAJORITY PROPOSAL, LABOR.... 670

COMMENTS ON MAJORITY PROPOSAL, LABOR.... 672

Section 1. Department of Commissioner.... 672

Section 2. Majority, Merit System.... 673

Section 3. Minority, Merit System.... 673

TEXT OF MAJORITY PROPOSAL, INSTITUTIONS AND ASSISTANCE.... 674

COMMENTS ON MAJORITY PROPOSAL, INST. AND ASSISTANCE.... 675

Section 1. Institutions.... 675

Section 2. Assistance.... 675

TEXT ON MINORITY PROPOSAL, PUBLIC UTILITY REGULATIONS.... 676

COMMENTS ON MINORITY PROPOSAL, PUBLIC UTILITY REGULATIONS....678

MINORITY COMMENTS

Section 1. Public Utilities Commissioner.... 678

Section 2. Powers of Commissioner.... 680

Section 3. Impartiality of Staff.... 681

Section 11. Duty to Represent Customers..... 681
Section 5. Division of Regulatory Power Prohibited..... 681
MINORITY GENERAL COMMENTS..... 682
MAJORITY GENERAL COMMENTS..... 684
TEXT OF MINORITY PROPOSAL, PUBLIC UTILITY CORPORATION..... 686
COMMENTS ON MINORITY PROPOSAL, PUBLIC UTILITY CORP..... 686
MINORITY..... 686
MAJORITY..... 687
TEXT OF MINORITY PROPOSAL, COLLECTIVE BARGAINING..... 688
COMMENTS ON MINORITY PROPOSAL..... 689
MINORITY COMMENTS..... 689
MAJORITY COMMENTS..... 691
TEXT OF MINORITY PROPOSAL, EMPLOYMENT RIGHTS.....692
COMMENTS ON MINORITY PROPOSAL, EMPLOYMENT RIGHTS..... 693
MINORITY COMMENTS..... 693
MAJORITY COMMENTS..... 696
APPENDIX
A. Cross Reference of Present and Proposed Articles.....698
B. Delegate Proposals Considered by Committee..... 700
C. Witnesses Heard by Committee..... 701
D. Roll Calls
Majority..... 707
Minority..... 708
Rejected..... 709
E. comments on Present Article XV..... 710

Date: February 18, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Public Health, Welfare, Labor and Industry Committee

Ladies and Gentlemen:

The Public Health, Welfare, Labor and Industry Committee respectfully submits proposed new articles on Non-municipal Corporations, Labor, and Institutions and Assistance. The Non-municipal Corporation and the Labor Articles are intended to replace present Articles XV and XVIII respectively. The Institutions and Assistance Article is intended to replace section 1 and 5 of the present Article X.

The committee resolved most of the issues before it without strong dissent. However, minority reports are being filed on the subjects of public utility regulation, right-to-work, and rights of employee organization for collective bargaining.

In signing either a majority or a minority report, a committee member does not necessarily endorse all statements contained therein. Rejection, by the committee, of proposals does not necessarily imply that the committee finds them inherently undesirable unless it expressly so states.

The committee wishes to express its gratitude to all Delegates and members of the public who offered their advice on subjects before the committee.

The committee enjoyed the services of the following persons

in addition to its members and now gratefully acknowledges their unstinting labors and loyalty to the goal of assisting the committee to make the best contribution of which it is capable to the writing of a new Constitution: Richard E. Spall, Research Analyst; Kandice Hauf and George Mahorey, Interns; and our excellent secretary, Sylvia Kinsey.

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Non-municipal Corporations to read as follows:

ARTICLE ___

NON-MUNICIPAL CORPORATIONS

Section 1. GRANT OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The legislative Assembly shall provide for protection and education for the people against harmful and unfair practices by either foreign or domestic carporations, individuals, or associations.

Section 3. CUMULATIVE VOTING. All elections for directors or trustees of incorporated companies shall provide all stockholders the right to vote by person or proxy the number of shares of stock owned by him for as many directors or trustees as are to be elected, or to cumulate the shares, and give a candidate as many votes as the number of directors multiplied by the number of his shares, Or to distribute them in similar manner among as many candidates as he sees fit.

Section 4. LONG-SHORT HAUL CLAUSE. No transportation company shall be allowed to charge, under penalties which the legislative assembly shall prescribe, any greater charge for the transportation of freight or passengers to any place upon its route, than it charges for the transportation of the same class of freight or passengers to any more distant place upon its route within this state.

Section 5. WATERED STOCK PROVISIONS. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received: and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without consent of those persons holding a majority of the stock first obtained at a meeting held after notice given in pursuance of law.

Section 6. RETROSPECTIVE LAW PROHIBITION. The legislative assembly shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

/s/ Charles H. Mahoney

/s/ R. J. Studer

/s/ Joseph McCarvel

/s/ W. H. Swanberg

/s/ D. A. Scanlin

/s/ Edith Van Buskirk

COMMENTS ON MAJORITY PROPOSAL

ARTICLE XV NON-MUNICIPAL CORPORATIONS

Section 1. GRANT OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

COMMENTS

In addition to providing for a general grant of legislative power for corporate charter granting, section 1 provides:

(a) a prohibition of chartering corporations by special law, and

(b) the intent that corporate bodies are subject to dissolution in the event their principle activity is contrary to promotion of the general welfare.

Section 2. PROTECTION FOR CITIZENRY. The Legislative Assembly shall provide for protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

COMMENTS

The committee intends this section to encompass and prohibit various business practices which are deemed harmful and injurious to the people. Included in the prohibitionare various business practices, such as:

(a) arbitrary discrimination in rate and service for transportation,

(b) the receipt of greater rights and privileges by foreign corporations than are granted to domestic corporations,

(c) price-fixing and regulation of production on an intrastate basis which is harmful to the state economy,

(d) any act which is generally not conducive to efficiently allocating scarce resources.

Section 3. CUMULATIVE VOTING. All elections for directors or trustees of incorporated companies shall provide all stockholders the right to vote by person or proxy the number of shares of stock owned by him for as many directors or trustees as are to be elected, or to cumulate the shares, and give a candidate as many votes as the number of directors multiplied by the number of his shares, or to distribute them in similar manner among as many candidates as he sees fit.

COMMENTS

The intent of this section is to maintain voting protection for the minority stockholder.

Section 4. LONG-SHORT HAUL CLAUSE. No transportation company shall be allowed to charge, under penalties which the legislative assembly shall prescribe, any greater charge for the transportation of freight or passengers to any place upon its route, than it charges for the transportation of the same class of freight or passengers to any more distant place upon its route within this state.

COMMENTS

Recognizing that federal law and state statutes do not prohibit this discriminatory practice, the committee retains this section for intrastate purposes.

Section 5. WATERED STOCK PROVISION. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without consent of those persons holding a majority of the stock first obtained at a meeting held after notice given in pursuance of law.

COMMENTS

Although the committee recognizes the statutory nature of this section, it feels that the possibility, no matter how remote, of future legislative action removing this from the statutes warrants retention of this section in the Constitution.

Section 6. RETROSPECTIVE LAW PROHIBITION. The legislative assembly shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transaction or considsrations already passed.

COMMENTS

In expanding the prohibition on retrospective law, the committee intends to preserve for all citizens the sanctity of contractual obligations from the actions of a third party, i.e., the state.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Labor to read as follows:

ARTICLE ---

LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The legislative Assembly shall provide for a Department of Labor and Industry. The Department shall be under the control of a Commissioner appointed by the Governor, confirmed by the legislature (Senate).

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

/s/ R. J. Studer

/s/ Joseph H. McCarvel

/s/ W. H. Swanberg

/s/ L. A. Scanlin

/s/ Edith Van Buskirk

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR, AND INDUSTRY COMMITTEE:

That there be a new section in the Labor Article to read as follows:

ARTICLE ___

LABOR

Section 2. MERIT SYSTEM. The Legislative Assembly shall establish a system under which the merit principle will govern the employment of persons by the state;.

/s/ George B. Heliker
Chairman

/s/ Joseph McCarvel

/s/ R. J. Studer

/s/ D. A. Scanlin

/s/ Edith Van Buskirk

COMMENTS ON MAJORITY PROPOSAL

ARTICLE XVIII LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The Legislative Assembly shall provide for a Department of Labor and Industry. The department shall be under the control of a Commissioner appointed by the Governor, confirmed by the legislature (senate).

COMMENTS

The proposed article retains from the present Constitution only an abbreviation of section one. sections two to five, inclusive, are deleted. The proposal retains a Constitutional Department of Labor, but deletes the requirement that it be located at the capitol. The proposal retains the Constitutional office of Commissioner, but deletes reference to a specific term. It retains the requirement that the Commissioner be confirmed by the Legislative Assembly (Senate). The committee believes that this is as far as we should go in restricting the legislature's discretion with respect to this office. It is our intention that the legislature may leave the commissioner subject to removal by the governor at his pleasure or may, in its discretion, provide a definite term of office and/or require that he be removable only for cause. As under the present Constitution the powers and duties of the commissioner art left for legislative specification.

Delegate Mahoney dissents With respect to the deletion of the specific term for the Commissioner of Labor.

Deletion of section two and section three of the present Constitution is recommended because we do not consider the subject matter to he of sufficient importance to warrant Constitutional treatment in the absence of evidence suggesting the legislature may be unwilling or unable to act upon any problems that exist or may arise within the areas covered by those existing sections.

Deletion of section four of the present Constitution is recommended because it is defective in its present form since an employee who works more than fight hours per day violates the Constitution as much as the employer who requires or induces him to do so, among the consequences of which fact is that workers injured while working in excess of eight hours in one day have been denied standing in the courts to prosecute civil actions against negligent tort feasors. Any suggested language to remedy that defect Creates new problems. For example, the clause "and except when an employee voluntarily agrees to work longer than the prescribed eight hours," has been suggested. That language would remove practically all protection for workers in non-union situations, whereas it may be argued that the worker under union-management contract needs no such protection. Furthermore,

the majority feels that a Constitutional eight-hour day may interfere with desirable experimentation with combinations of longer days and shorter weeks, which is in fact now occurring. The majority is also in doubt whether the section has had enough positive practical effect over the many years it has been in the Constitution to justify its continuance. Both the Legislative Council report of 1968 and tht Constituticaal Revision Commission subcommittee report of 1969 recommended its deletion. While we are cognizant of the importance attached to the section by some citizens, and while we would not be adverse to retaining it if the problems inherent in it could be solved, WE now believe that wisdom dictates freeing the legislature to deal with the issue.

With the removal of sections two, three and four, section five is clearly unnecessary.

> Section 2. MERIT SYSTEM. The Legislative Assembly shall establish a system under which the merit principal will govern the employment of persons by the state.

MAJORITY COMMENTS

The committee believes that Efficient government requires adoption by the legislature of a merit system. Since 1921 the legislature has attempted, and failed, to provide such a system. It is the committee's purpose, in recommending adoption of Delegate Proposal 144, to encourage the legislature to get on with the job.

MINORITY COMMENTS

This would be a new Constitutional provision. The minority believes that insufficient time was devoted to this subject by the committee, and the evidence introduced too fragmentary and inconclusive to warrant the inclusion of this article in the Constitution. We believe the matter is primarily legislative and we wish to report that a senate subcommittee now has this matter under consideration.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new article on Institutions and Assistance to read as follows:

ARTICLE __

INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. Such institutions as the public good may require shall be established and supported by the state as may be prescribed by law.

Section 2. ASSISTANCE. It shall be the duty of the Legislative Assembly to provide economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune may have need for the aid of society.

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

/s/ Charles Mahoney

/s/ R. J. Studer

/s/ Joseph H. McCarvel

/s/ W. H. Swanberg

/s/ L. A. Scanlin

/s/ Edith Van Buskirk

COMMENTS ON MAJORITY FRCECSAI

ARTICLE X INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. Such institutions as the public good may require shall be established and supported by the state as may be prescribed by law.

COMMENTS

The section as amended deletes specific mention of several institutions set forth in the existing section. It was the feeling of the committee that no special purpose is served by the specific mention of these institutions in as much as a general delegation of authority should be sufficient.

Section 2. ASSISTANCE. It shall be the duty of the legislative assembly to provide economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune may have need for the aid of society.

COMMENTS

The original section placed the burden of taxation upon the several counties of the state to provide by tax levy for their indigents. The proposed section changes this to provide that the legislative assembly shall decide where this tax burdan should rest, counties as at present or a state wide levy, or some combination thereof. The testimony taken on this matter showed conclusively that welfare recipients tend to congregate in the larger cities of our state, partly because of better job opportunities, and partly because of better welfare facilities. It was shown that the welfare recipients from the smaller counties tend to gather in Great Falls, Anaconda, Butte, Missoula, Billings, etc., imposing a disproportionate burden on the taxpayers of these counties. The proposed section would allow the legislature to place this burdan on a stat2 wide basis if it so chose and thus correct this inequity. your committee considered the possibility of providing that it would be "the duty of the State to provide economic assistance . . . .", but YE believed that this would be equally as restrictive as the existing section and believe the matter should be on2 for legislative discretion.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Regulation of Public Utilities to read as follows:

ARTICLE ___

REGULATION OF EUBLIC UTILITIES

Section 1. PUBLIC UTILITIES COMMISSIONER. A public utilities commissioner shall be appointed by the governor, and confirmed by the legislature (Senate) after public hearings, for a term of four years which shall coincide with the governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The governor may at any time remove the commissioner for any cause deemed by him sufficient. after such public hearing as may be provided by law.

Section 2. POWERS OF COMMISSIONER. The commissioner shall have such jurisdiction and such legislative, executive and judicial powers as are conferred upon him by the legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In the exercise of such powers, one of which shall be the determination of rates and tariffs of the utilities over which he may be given jurisdiction, the commissioner shall not be required in considering evidence presented before him to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The commissioner shall determine the weight and credibility of ary evidence that is introduced. The manner and scope of review, if any, of the commissioner's actions in a court of record shall be provided by law.

Section 3. IMPARTIALITY OF STAFF. In the determination of rates and tariffs the commissioner shall be provided with staff personnel and help in such determination, and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant.

Section 4. DUTY TO REPRESENT CUSTOMERS. The commissioner shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters over which he may be given jurisdiction and he shall make use of the jurisdiction and powers of his office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates.

Section 5. DIVISION OF REGULATORY POWER PROHIBITED. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and taritfs thereof, shall be conferred on any other official or agency, but separate divisions under the commissioner, corresponding to separate regulated industries or industry groups, may be prescribed by law.

/s/ George E. Heliker

/s/ Joseph McCarvel

COMMENTS ON MINORITY PROPOSAL

REGULATION OF PUBLIC UTILITIES

Section 1. PUBLIC UTILITIES COMMISSIONER. A public utilities commissioner shall be appointed by the governor, and confirmed by the legislature (Senate) after public hearings, for a term of four years which shall coincide with the governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The governor may at any time remove the commissioner for any cause deemed by him sufficient, after such public hearing as may be provided by law.

MINORITY COMMENTS

Section 1 replaces the existing statutory three-man elected Railroad and Public Service Commission with a single appointed commissioner. The proposed reform is modelled on the system used since 1932 in the state of Oregon with generally recognized success from the standpoint of both regulated companies and the public. It is also influenced by the findings and recommendations of the President's Advisory Council On Executive Organization (the "Ash Council") released by President Nixon on February 11, 1971. The members of that Council were Roy L. Ash, President of Litton Industries; George F. Baker, former Dean of the Harvard University Graduate School of Business Administration; John B. Connally, presently Secretary of the Treasury; Frederick R. Kappel, former Chairman of the board of Directors of AT&T; Richard M. Paget, President of Cresap, McCormick and Paget, Inc., a management consulting firm; and Walter N. Thayer, President of Whitney Communication Corporation. (Mr. Baker did not participate in the study and Mr. Kappel dissented from its major recommendations). The Council studied the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission. The Council recommended restructuring and combining the seven agencies into five, four of which would be headed by single commissioners. The latter recommendation was based on the finding that single administrators would enable the agencies to attract and retain highly qualified personnel and increase accountability to both the President and Congress and enhance the efficiency of administration.

In most states, as in Montana, the multi-member regulatory commissions, whether appointed or elected, have proven ineffective at best. The attempt to "insulate" regulation from "politics" has resulted in freeing the regulators from accountability to the public whose interest they are charged with protecting, but it has not "insulated" them from overwhelming pressures from the powerful corporations whose rates and service they supposedly supervise. In fact, it is axiomatic among professional students

of utility regulation that the "regulators" have long since become the "regulated."

The minority of this committee is convicced, after hearing testimony from highly placed officials and counsel of almost all of the important "regulated" monopolies in Montana, that their customers would be as well off, as they are now, if regulation were to be abolished altogether. We are persuaded that the existing regulatory process is but an elaborate sham-battle, a sort of Roman bread-and-circus game in which the monopolies get the bread and the consumer pays for the circus. The upshot of the whole sorry spectacle is that the corporations secure the imprimatur of the state for rates no higher than they would have set entirely on their own initiative. In dreary near-unanimity. witnesses for the monopolies agreed that in the procedures, regulations, structure, method of selection, and the law under which the Montana commission came into existence and operates, "all is for the best in the best of possible worlds." They admit one exception to the rule : they agree it would be better if the taxpayers would ante up more money for a larger commission staff, so their rate applications could be approvedwith less delay.

The minority is convinced that the Montana rate-payer will never get fair treatment under the present multi-member elected-commission system because it is literally impossible for the election process to attract and select more than an occasional qualified, competent and dedicated commissioner. The electorate simply does not have the opportunity to acquaint itself with the qualifications of the commission candidate running as one among a crowd of candidates for various and sundry state, city, and county offices. The result is that not only does the average voter know little or nothing of the commissioners' qualifications, but also not one in ten thousand even know the commissioners' names. The minority believes now is the time to put an end to this disgraceful charade,

At the same time, the minority was persuaded by the testimony (and perhaps by other recent events) that it would be unwise not to give the commissioner a substantial measure of independence of the governor. In this respect, our proposal is also modelled on the Oregon experience, but we have added the requirement of legislative confirsatior.

We believe there is a clear movement toward greater accountability of regulatory agencies to the people through the chief executive, and toward focusing attention and responsibility on one man. We believe Montana should be a leader in this movement.

Section 2. POWERS OF COMMISSIONER. The commissicrer shall have such jurisdiction and such legislative, executive and judicial powers as are conferred upon him by the legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In the exercise of such powers,

one of which shall be the determination of rates and tariffs of the utilities over which he may be given jurisdiction, the commissioner shall not be required in considering the evidence presented before him to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The commissioner shall determine the weight and credibility of any evidence that is introduced. The manner and scope of review, if any, of the commissioner's actions in a court of record shall be provided by law.

COMMENTS

The history of regulatory law is too lengthy and complex to be set forth adequately in any space less than a large book. We can only say here that Montana utility regulation has muddled along under the burden of law labeled obsolete by the United States Supreme Court more than a generation ago. The leading Montana case, Tobacco River Power Co. v. Public Service Commission (109 Mont. 521; 1940) was an accurate statement of the law as enunciated by the U.S. Supreme Court up until that time. But only two years later that Court handed down the first of a series of decisions (generally known as the Natural Gas Cases) in Natural Gas Pipeline Co. v. Federal Power Commission (315 U.S. 575; 1942) which revolutionized regulatory law as interpreted by that court. See also Hope Natural Gas Co. (320 U.S. 591; 1944). Many other state supreme courts followed the lead of the federal court, as did, for example, the Utah Supreme Court in Utah Power and Light Co. v. Public Service Commission (107 Utah 155; 1944), and freed their state regulatory bodies from the shackles of the arcane "fair value" rule. The Montana Supreme Court chose, in State, ex rel Olson v. Public Service Commission (131 Mont. 272: 1957), to keep the Montana commission in the dark ages of regulatory law, and testimony before this committee was virtually unanimous that the Montana commission is in fact bound to the fair value rule until the law is changed by the Supreme Court, the legislature, or this Convention. (Cf. James V. Bottomly, "'Fair Value' test in Montana Public Utility Rate Regulations," 22 Mont. L. Rev. 65; Fall, 1960). It is the minority's belief that the first two are not likely to act. It is the minority's belief that this Convention should act -- for the people.

The specific language of proposed section 2 is designed to free the commissioner to exercise his best judgment, to weigh the evidence subject to no court-imposed theories, save only that the result be "just and reasonable" -- the standard imposed by the U.S. Supreme Court, to which he would be held by the court in any case. Otherwise, the section preserves the legislature's full discretionary power to define the commissioner's powers and jurisdiction, and to define the meaning of "public utility." The last two sentences of section two are designed to prevent the courts from substituting their judgment for the commissioner's, so long as they find the result of his deliberations "just and

reasonable" and arrived at in a manner not contrary to procedural due process of law; and to empower the legislature to restrict judicial review of the commissioner's actions, if it so chooses.

Section 3. IMPARTIALITY OF STAFF. In the determination of rates and tariffs the commissioner shall be provided with staff personnel and help in such determination, and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant.

COMMENTS

Without a staff adequate in numbers and capability no regulatory agency can hope to be effective. On this everyone is agreed. The staff should be independent and impartial, characteristics which should be (must be) insured by a merit system. Their work and their recommendations must be the foundation, the sine qua non, of capable regulation, and they should be given the standing of impartial experts.

Section 4. DUTY TO REPRESENT CUSTOMERS. The commissioner shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters over which he may be given jurisdiction and he shall make use of the jurisdiction and powers of his office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates.

COMMENTS

Section 4 sets forth the basic philosophy of regulation. Public utilities are regulated because they are monopolies unregulated by a free competitive market. Without stringent regulation, the consumer is defenseless against exploitation by monopoly power. Regulation is necessary on the customer's behalf. It goes without saying that it is also in the consumer's interest that the utility company be allowed rates sufficient to insure adequate service.

Section 5. DIVISION OF REGULATORY POWER PROHIBITED. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and tariffs thereof, shall be conferred on any other official or agency, but separate divisions under the commissioner, corresponding to separate regulated industries or industry groups, may be prescribed by law.

COMMENTS

The purpose of this section is tc maintain the principle cf concentration of responsibility in the interest cf prcroting acccontability, while permitting flexibility in compartmentalizing the staff divisicns alcng logical economic dividisg-lines.

* * 4

MINORITY GENERA1 CCMMENTS

In the view of the minority, the fcregcing proposal meets all the criteria cf subject matter suitable fcr inclusicn in cur Constitution. Admittedly, it is alsc statutcry in several senses': (1) the present system was estaklished by law in 1913; (2) what is scught to be accomplished by this prcposal could be accomplished by statute; (3) part cf the prcpcsal is modeled on the Oregcn statute. On the cther hand, the Mcntana legislature has refused to act despite the pleas of beleaguered rate-payers, sessicn after session after sessicn. And always for the same reascn: the power of the monopolies' lobby, which, with unlimited funds provided by the rate-payers and the best hired legal and public relations minds, has ridden rcuyhshcd cver the legislature. They have played the legislature like a master organist plays his instrument. They kncw where all the stops are located and they know hcw tc pull them. Fcr them the stakes are high. For the consumers they are equally high but spread among 8CC,COO uncrganized pecple.

This subject is important tc this state - both econcoically and politically. It is a subject of enduring character. The alternative means to deal with it are not tc be trusted. It is, therefore, a Ccnstituticcal issue. We represent the pecple. Let us act for the people.

COMMENTS CN MINCEITY PROPCSAL

REGULATICN OF PUBLIC UTILITIES

ARTICLE ---

REGULATION OF PUELIC UTILITIES

Sectien 1. PUBLIC UTILITIES COMMISSIONER. A public utilities commissioner shall be appcinted by the gcvernor, and ccnfirmad by the legislature (Senate) after public hearings, for a term cf four years which shall ccincide with the governor's term cf cffice. A vacancy shall be filled for the remainder cf the unexpired term in the same manner. The governcr may at any time remcve the commissioner fcr any cause deemed by him sufficient, after such public hearing as may be prcvided by law.

Section 2. POWERS CF CCMMISSIONER. The commissioner shall have such jurisdiction and such legislative, executive and judicial powers as are conferred upcn him by the legislature and this Ccnstitution, which are cognate and germane to the regulatien cf public utilities as defined by law. In the exercise of such powers, one of which shall be the determination of rates ard tariffs of the utilities cver which he nay be given jurisdiction, the commissioner shall nct be required in considering evidence presented before hin to consider any particular theories or methcds fcr determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The commissicner shall determine the right and credibility cf any evidence that is introduced. The manner and sccpe of review, if any, cf the commissioner's actions ir a ccurt of record shall be provided by law.

Sectien 3. IMPARTIALITY OF STAFF. In the determination of rates and tariffs the ccmmissicner shall be provided with staff personnel and help in such determination, and recommendations of the staff shall be regarded as impartial as cppcsed to the partiality cf the applicant or the protestant.

Section 4. DUTY TO REPRESENT CUSTCMERS. The commissioner shall represent the customers Cf any public utility and the public generally in all controversies respecting rates, valuation, service and all matters over which he may be given jurisdiction and he shall make use Of the jurisdictien and powers of his cffice to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates.

Section 5. DIVISION OF REGULATORY POWER PROHIBITED. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and tariffs thereof. shall be conferred on any other official or agency, but separate divisions under the commissioner, corresponding to separate regulated industries or industry groups, may be prescribed by law.

MAJORITY COMMENTS

The majority wishes to express the reasoning behind their rejection of the Article on Public Utility Regulation. The following are significant reasons, among others, which committed the majority to their position:

Public Utilities. Your committee considered voluminous testimony on Delegate Proposal 76 which would provide a Constitutional Article for the regulation of public utilities. The majority of this committee voted that this proposal be not adopted for the following reasons:

1. That the matter contained therein is primarily legislative ir nature.

2. That the establishment of a single commissioner appointed by the Governor was, ir ary event, experimental in nature: there has been only two states in the country who have used this system and while it might have some desirable features, the Constitution is no place for such an innovative proposal and one which represents such a radical departure from our present elected three-man commission.

3. The majority feels that little evidence was presented before the committee that indicates the present system of utility regulation is not working satisfactorily. It is perhaps understaffed, but this is a legislative problem.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

There shall be a new Constitutional section to read as follows:

Section ___. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law.

/s/ George E. Heliker

/s/ Edith Van Buskirk

/s/ D. A. Scanlin

COMMENTS ON MINORITY PROPOSAL

DELEGATE PROPOSAL #121

Section ___. PUBLIC UTILITY CORPORATIONS. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law.

MINORITY COMMENTS

The minority believes that the people should have the right to choose the type of utility, publicly or privately owned, from which they will obtain the necessary services commonly called utilities. As Senator Metcalf pointed out in his testimony before this committee, "Montana is the only mainland state without a single municipal electric system." This right is especially important in our state, where consumer protection against unreasonable and unjust exactions of privately-owned monopoly utility corporations is totally inadequate and where the legislature has historically displayed no disposition to improve it.

COMMENTS ON MINORITY PROPOSAL

DELEGATE PROPOSAL #121

Section ___. PUBLIC UTILITY CORPORATIONS. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law.

MAJORITY COMMENTS

The majority wishes to justify its rejection of Delegate Proposal #121:

1. The proposal is primarily legislative.

2. The Legislative Assembly currently possesses, within its plenary powers, the right to create such corporations without Constitutional permission.

3. The proposal would create authority for public utility districts, in the opinion of the majority, a matter which has been repeatedly considered and rejected by the legislature on numerous occasions.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new section in the Labor Article to read as follows:

ARTICLE ---

LABOR

Section ___. RIGHT OF ORGANIZATION AND COLLECTIVE BARGAINING. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

/s/ George B. Heliker

/s/ Joseph McCarvel

COMMENTS ON MINORITY PROPOSAL

COLLECTIVE BARGAINING

Section ___. RIGHT OF ORGANIZATION AND COLLECTIVE BARGAINING. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

MINORITY COMMENTS

This proposal is taken verbatim from section seven of the National Labor Relations Act except for the addition of "in private or public employment." Its intent is to give Constitutional recognition to the rights first accorded employees covered by the NLRA in 1935 and to extend them to all employees, including public employees. It does no more than confer the dignity of Constitutional recognition upon the long since well protected rights of most private employees. It does, however, extend to public employees a clarification of their right to organization and collective bargaining (cf. Benson v. School District #1 of Silver Bow Co. 136 Mont. 77; Zderick v. Silver Bow Co. 154 Mont. 118: 1969.) On the other hand, it does not establish a right to strike nor in any manner restrict the power of the legislature to regulate collective bargaining within the area not preempted by federal law. to regulate or prohibit the use of the strike or other aspects of the process of collective bargaining, or to regulate the internal affairs of unions.

The legislature is not mandated to implement the stated rights, although its power to do so is unrestricted. As respects public employees. particularly. the legislature is given no mandate, although it is intended that the rights established would of necessity be recognized in any legislation providing for a "merit" or "civil service" system for state employees.

The minority believes that it is time to give the right of organization and collective bargaining the Constitutional standing eventually accorded every basic right of free men. The history of Constitution-making is that rights are accorded Constitutional status after long decades or centuries of struggle, through which they have been largely won in law and in fact. The rights recognized by the Pounding Fathers in our Federal Bill of Rights had already been won by countless brave and dedicated men, who for centuries freely gave their liberty, their lives, and their property to secure them. The Constitution merely reflected the success of that long struggle.

The same long struggle, extending in America over a century-and-a-half, was necessary to secure the right to form

unions free from the repression cf government and the ccexcicn of powerful and ruthless agglomeraticns cf private capital. The same unselfish sacrifice of liberty, life, and property ty brave and dedicated men cccurred. As the never-ending battle tc keep and strengthen the civil rights and liberties of a free pecple gces on unabated two centuries after our Fill cf Rights was conceived, so will the striving to bring into employer-employee relatiens in all sectors of the ecencmy the principles cf fair Flay, ccunter-vailing power, and majority rule that have been recognized in law and fact for nearly two generations. Eut ncw is the time, though the contest to create and preserve thcse rights will be unending, t0 elevate them, in general principle, tc the dignity cf Ccnsti-tuticcal law.

COMMENTS GN MINORITY FRCFCSAI

COLLECTIVE BARGAINING

Section ___. RIGHT CF ORGANIZATICN AND COLLECTIVE BARGAINING. Employees in private or public emplcyment shall have the right to self-organizaticr, tc form, jcin, or assist labcr crganizaticcs, tc bargaincollectively through representatives cf their cwn chccsirg, and to engage in other ccncerted activities for the purpose of collective bargaining or cther mutual aid and protection.

MAJORITY COMMENTS

The majority wishes tc express its justificatcns for rejecting the collective bargaining sectcn:

1. The issue is legislative and nct the ccncern cf the Ccnstitutional Corvecticn.

2. The right to crganize for bargaining purposes may in fact ccnaotate the right tc strike (especially within the public sector), and this nay be undesirable in many circumstances.

3. The right of public employees to ccllectively bargain would be an aspect cf any merit system established. We believe that both are legislative matters and should be considered only by the Legislature.

MINORITY EACPCSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LAECR ARC INDUSTRY COMMITTEE:

That the follcwirg section be submitted by the Ccnstitu-ticnal Ccnvention for a separate vcte cf the pecple as a section to be added tc the Labcr Article if approved by the vcte cf the people:

ARTICLE ---

LABOR

Section ___. EMPLOYMENT RIGHTS. The right cf perscns tc work shall nct be denied cr abridged on account cf membership or nonmembership in any labor union or labor organization. The right cf emplcyees, by and tbrouqb a labcr crganizaticn. tc bargain ccllectively shall not be denied or abridged. Public employees shall nct have the right to strike.

/s/ R. J. Studer, Sr.

/s/ J. K. Ward

COMMENTS ON MINORITY PROPOSAL

EMPLOYMENT RIGHTS

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That the following section be submitted by the Constitutional Convention for a separate vote of the people as a section to be added to the Labor Article if approved by the Vote of the people:

> Section 1. EMPLOYMENT RIGHTS, The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees Shall not have the right to strike.

MINORITY COMMENTS

The thrust of the proposal is twofold: (a) it insures that the fundamental means by which a man supports himself and his family will not be subject to mandatory financial support of an association in which he may exhibit no interest, and, (b) it provides all employees the right to collectively bargain, subject to the denial of the right to strike for the public employee.

It is the intent that the proposal be submitted to the people for a separate vote, either to accept or reject. The proposal Will provide the populace the right to vote on a most critical question, a question which the legislature has failed time and again to act upon and which has exhibited profound historical significance in Montana.

We currently experience compulsory unionism in Montana. The laborer seeks employment in a union shop where the union shop contract prevails. If he objects to financial support Of the union, he is denied his right to work in that shop. Or, if the workers vote to adopt a union shop contract where one previously did not exist, the majority of those workers abrogate the basic right of the minority worker to provide for his family if he refuses to financially support the union. This right should not be subject to the whims of the majority, just as the right to vote is not subject to disenfranchisement, if the majority so votes. Justice Douglas states:

> "The right to work I had assumed was the most precious liberty that man possesses. Man has indeed as much a right to work as he has to live, to be free, to own property. It does men little good to stay alive and free and propertied if they cannot work. To work means to eat. It also means to live. (347 U.S. 442.)"

If we grant the right to men to voluntarily associate with those they independently enjoy, without financial sanctions, we are approaching our responsibilities as men. To insure that right of association, to insure an individual's freedom of contract. and to insure the continuance of competitive forces within the bargaining process, we ought to outlaw compulsory unionism. The passage of the right to work provision insures a viable union that is responsive to its members. Justice Brandeis remarked:

> "It is not true that the success of a labor union means a perfect monopoly. The union, in order to attain or preserve for its members individual liberty, must be strong and stable. It need not include every member of the trade. Indeed it is desirable for both the union and the employee that it should not. Absolute power leads to excesses and weakness. . . a nucleus of unorganized labor will check the oppression by the union as unions check the oppression by the employer. (335 U.S. 551)"

Unions in the long-run that increased profits be equated to increased wages. But if the two are equated, the employers are forced to recoup their costs and raise prices. Inflation progresses and for it there is no governmental remedy save the devaluation of the dollar or credit constriction, which in itself produces unemployment. The union worker continues to draw his compensation, but the non-union worker has no monopolistic union to insure his right of continued employment, if he is allowed to work by the union in the first place.

There is no question that unions have and continue to serve valuable functions; but, if there is one lesson to learn from history, it is that no civilization can long endure that doesn't insure the dignity and rights of the individual. So the unions in fact render such valuable social functions that the **majority will" of the union is allowed to abrogate, under financial penalty, a man's need for self esteem and self realization? No private association has the right to force financial support of itself upon an individual. If it is done, it is nothing but a form of taxation without representation. Such taxation has often been the cause for new constitutions, and surely the time is upon us.

The proposal provides the right to bargain collectively and the limitation upon that right is the denial of public employees right to strike; it must be such to insure that the law, civil order, and the welfare of society are to be preserved. Likewise, the right to bargain collectively is not the right to bargain away the rights of the minority subject to the clout of the majority. Yet, Montana Labor Law allows the union shop to do just that.

This convention is a means for grass root expression by the people. It is the most responsive political instrument of the

populace for years past and tc ccme. If we miss the cppcrtunity to pass this vital question tc the voters, we have passed the opportunity of a life time. we have surpassed the cpportunity tc restore man's right cf self-determination through emplcyment.

It is our duty to give the vcters cf Montana their right to vote upon this very vital question when WE can sc easily and ecc-nomically do sc at this time.

COMMENTS ON MINORITY PROPOSAL

EMPLOYMENT RIGHTS

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That the following section be submitted by the Constitutional Convention for a separate vote of the people as a section to be added to the Labor Article if approved by the vote of the people:

Section 1. EMPLOYMENT RIGHTS. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

MAJORITY COMMENTS

We observe the outset that the proposition popularly labelled "right to work" establishes no such right. Its sole practical effect is to prevent unions and managements from agreeing to make financial support of a union a condition of continuing employment. We note also that federal law (the Labor-Management Relations Act of 1347) prohibits arrangements which require union membership prior to employment (closed shop) and the interpretations of that act by the courts limit the obligation that can be imposed on any employee to the requirement that he tender to the union, by whose bargained contract with his employer his working conditions are governed, financial support on an equal basis with all other employees so affected (NLRB v. General Motors Corp., 373 U.S. 734; 1963). No employee can now legally be required to actually join a union in the sense of participating in its organizational life. He does not have to accept a union membership card; he cannot he required to submit to an initiation ritual; he cannot be compelled to attend meetings, or perform any other acts normally thought of as the accompaniments of organizational membership. He is simply required, a certain time after he becomes an employee, to contribute to the financial support of the organization which bargains for him.

While it is undeniable that the union security agreement which the minority proposal seeks to outlaw, imposes some restraint on the absolute freedom of the individual, it is our view that the restriction is in no essential respect different from the restrictions frequently imposed by majority rule in a democratic system, particularly, and of necessity, by collective labor agreements. Such agreements, ratified by majority vote, determine an employee's wage rate; his hours of work; the conditions under which he is subject to disciplinary actions, includ-

ing discharge, by the employer; his rights to a grievance procedure and his access to arbitration: his rights, usually related to his seniority date, with respect to layoffs, recall, promotion, transfer, vacation, holidays, pensions and a lengthy list of other conditions of employment. He may be required to contribute from his earnings to various "fringe benefit" plans, just as he is required by law to contribute to social security. That he may also be required to contribute financially to the support of the union that negotiated all of these other conditions on his behalf does not strike us as a significant and exceptional restriction on his freedom.

Union leaders and most members resist prohibitions of union security agreements not only because they believe all those who benefit from the union's bargaining efforts should help pay for them, but also because they believe the real motive of the advocates of such prohibitions has more to do with weakening unions than protecting workers. Unionists are not alone in this suspicion. As one academic student of collective bargaining has put it:

> "The National Right to Work Committee and those who support such legislation insist that theirs is a fight for principle, that no man should have to pay to work. The fact that so many are unable to see the same principle when the applicant is black rather than nonunion, as well as other evidence, suggests that their position may well be less one of principle and more one of anti-unionism. This is not to deny anti-unionism as a legitimate position, but only to argue that it should not be hidden."
>
> (Robert Evans, Jr., Dept. of Economics, Massachusetts Institute of Technology, Public Policy Toward Labor, Harper & Row, 1965. p. 168).

Much repetitious testimony was presented to the committee on behalf of the Minority Proposal, but we find it remarkable that not a single individual, from among the thousands supposedly disadvantaged by union security agreements, came forward to support it.

For the above reasons, the majority concludes that the Minority Proposal is without merit and does not belong in Montana's Constitution.

APPENDIX A

CROSS REFERENCES

Present Constitution	Committee Proposal
Article XV. Corporations other than Municipal	Non-Municipal Corporations
SEC. 1.	Deleted
Sec. 2.	sec. 1, Grant of Power
sec. 3.	Sec. 1, Grant of Power
sec. 4.	Sec. 3, Cumulative Voting
sec. 5.	Deleted
sec. 6.	Deleted
Sec. 7.	Partially deleted and partially replaced by Sec. 7, long-short haul clause and Sec. 2, Protection for Citizenry.
Sec. 8.	Deleted
Sec. 9.	Partially deleted and partially replaced by Sec. 2, Protection for Citizenry
Sec. 10.	sec. 5, Watered Stock Provisior
Sec. 11.	Deleted
Sec. 12.	Deleted
Sec. 13.	sec. 6, Retrospective Law Prohibition
Sec. 14.	Deleted
Sec. 15.	Deleted
Sec. 16.	Deleted
Sec. 17.	Deleted
Sec. 18.	Deleted

sec. 19.	Deleted
sec. 23.	Deleted and partially replaced by Sec. 2, Protection for Citizenry
None	Consumer Protfction and Education. section 2.
Article XVIII	
Labor	Labor
Sec. 1.	Sec. 1.
sec. 2.	Deleted
sec. 3.	Deleted
Sec. 4.	Deleted
sec. 5.	Deleted
None	Merit System
Article X.	
Institutions	Institutions and Assistance
sec. 1.	Sec. 1.
sec. 5.	Sec. 5.

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Health, Welfare, Labor, Industry Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	45	Lyle McNiece	Right to basic necessities of life	Rejected
2.	70	Lucile Speer	Consumer protection	Rejected
3.	71	Lucile Speer	Merit System	Rejected
4.	73	George Heliker	Collective bargaining	Rejected
5.	76	George Heliker	Public utility regulation	Rejected
6.	78	R.J. Studer, Sr.	Right to work	Rejected
7.	105	Robert Kelleher	Egual pay	Rejected
8.	121	Paul Barlow	Municipal utility districts	Rejected
9.	138	Mike McKeon	Minimum wage	Rejected
10.	144	Jerome Leondorf	Merit system	Accepted
11.	148	Joseph McCarvel	State as employer of last resort	Rejected
12.	177	Joseph McCarvel	Arbitration	Rejected

APPENCIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Frank Murray - Office, Secretary of State - Helena - Corporations other than Municipal.

2. Leonard C. Larson - Office, Secretary of State - Helena - Corporations other than Municipal.

3. John Delano - Montana Railroad Association - Miscoula - Corporations other than Municipal.

4. J. W. McDonald - Mountain Ball - Helena - Corporations other than Municipal.

5. Lloyd Crippen - The Anaconda Co. - Butte - Corporations other than Municipal.

6. P. L. MacDonald - The Anaconda Co. - Butte - Corporations other than Municipal.

7. Douglas M. Greenwood - Noble, Ficotte & Noble - Helena - Corporations other than Municipal.

8. Roderick R. Gudgnl - Montana State Pharmaceutical Association - Helena - Corporations other than Municipal.

9. Kenneth W. Brown - Dept. Secretary of State - Helena - Corporation other than Municipal.

10. Ross Gudgel - self - Helena - Constitutional Article XVIII - Labor.

11. Elton Hartz? - American Federation of County, State and Municipal Employees - Missoula - Constitutional Article XVIII, Labor.

12. Harry Billings - AFL-CIO - Helena - Article XVIII, Labor.

13. Ernie Post - Montana State AFL-CIO - Helena - Article XVIII, Labor.

14. James W. flurry - Montana State AFL-CIO - Helena - Constitutional Article XVIII, Labor.

15. Mr. Sidney Smith - Commissioner, Department of Labor and Industry - Helena - Article XVIII, Labor.

16. Mr. Larry Hunt - Highuay Dept., Local 1199 of the American Federation of State, County, and Municipal Employees - Missoula - Article XVIII, Labor.

17. Fred Barrett - Director, Employment Security Commission - Helena - Article XVIII, Labor.

18. Ed Shobat - County Commissioner, Cascade county - Great Falls - Welfare.

19. Ted Carkulis - Montana Department of Social and Rehabilitation Services - Helena - Welfare.

23. William McCarvel - self - Helena - Welfare.

21. Ross Gudgel - self - Helena - Welfare.

22. Kandy Hauf - Constitutional Convention Intern - self - Bozeman - Welfare.

23. Steve Coldiron - Montana State Low-Income Organization - Helena - Welfare.

24. Ernest Steel - Public Service Commission - Helena - Article XV.

25. Bill Johnson - Director, Public Utilities Dept., Public Service Cosmission - Helena - Article XV.

26. George Lackman - Commissioner, Department of Agriculture - Helena - Real Estate Commission.

27. Keith Colbo - Department of Revenue - Helena - Foreign Corporations.

28. Lucile Speer - Delegate - Missoula - Proposal #71, Merit System.

29. Jean M. Bowman - Delegate - Billings - Proposal #71, Merit System.

30. Mel Martenson - Director, Merit System Council - Helena - Proposal #71, Merit System.

31. Mr. Elton Hartze - American Federation of State, County & Municipal Employees - Missoula - Proposal #71, Merit System.

32. Henry Siderius - Delegate - Kalispell - Proposal #93, bargaining rights for farmers.

33. Ernest Post - AFL-CIO Director of COPE - Helena - Proposal #71, Merit System.

34. Steven F. Coldiron - Montana State Low-Income Organization - Helena - proposal #45.

35. Sister Providencia - College of Great Falls - Great Falls -

Delegate Proposal #45.

36. Jim Raniere - Welfare Rights Crganizaticn - Great Falls - Delegate Prcpcsal #45.

37. Malyn Aleson - Welfare Right Crgarizaticn - Great Falls - Delegate Prcpcsal #45.

38. Doris Flesch - Welfare Rights Crganization - Great Falls - Delegate Proposal #45.

39. Minnie McReynolds - Welfare Rights Crganization - Great Falls - Delegate Propcsal 145.

40. Shirley Malkuck - Welfare Rights Organizaticn - Great Falls - Delegate Prcpcsal #45.

41. Irene Houle - Welfare Rights Crganization - Great Falls - Delegate Prcpcsal #45.

42. Larry Juelfs - Delegate Invitaticn - Helena - Delegate Prc-pcsal #45.

43. Jack R. Carlscn - Montana Chapter Naticnal Association of Social Works - Helena - Delegate Propcsal #45.

44. Carol Mitchell - Montana Common Cause- self - Helena - Delegate Prcpcsal #45.

45. Frank R. Sennette - Dept. cf Social Rehabilitation Services - Helena - Delegate Proposal #45.

46. Duane W. Welker - self - Hamiltcn - Delegate Prcpcsal #45.

47. Don Scanlin - Delegate - Billings - Delegate Proposal #45.

48. Thomas E. Schneider - Executive Director fcr Montana Public Employees Association - Helena - Merit System.

49. Jack Marlow - Secretary-tanager cf Montana Ccntractor's Asscciaticn - Helena - Delegate Propcsal #78, right-tc-work.

50. James Stack - subpoena witness, Perscnnel Director, Montana State University - Bozeman - Merit System.

51. Wm. Bertsche - State Senatcr - self - Great Falls - State Merit System.

52. Rcbert James - Administration officer of State Department of Health - Helena - Merit System.

53. Larry Fastender, Sr. - self - Fcrt Shaw - Merit System.

54. Mr. D. H. Sieuert - Montana Chamber of Ccmmerce - Helena -

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Delegate Proposal #78, right-to-work,

55. Jim Murry - Montana State AFL-CIO - Helena - Delegate Proposal #78, right-to-work.

56. George B. Heliker - Delegate - Missoula - Delegate Proposal #76, Public Utility Regulation.

57. Steve Coldiron - Montana State Low-Income Organization - Helena - Delegate Proposal X76, Public Utility Regulation.

58. Paul Harlow - Delegate - Thompson Falls - Delegate Proposal #121, Public Utility Districts.

59. Arlyne Reichert - Delegate - Great Falls - Delegate Proposal #70, Consumer Protectionism.

60. Lucile Speer - Delegate - Delegate Proposal #70, Consumer Protectionism.

61. C. W. Leaphart, Jr. - Committee subpoena - Helena - Delegate Proposal #76, Public Utility Regulation.

62. Gordon Bollinger - State Senator - Glasgow - Delegate Proposal #76, Futlic Utility Regulation.

63. Bill Koerner - self - Hamilton - Delegate Proposal #70 - Consumer Protectionism.

64. C. S. Robinson - Pacific Power & Light Co. - Kalispell - Delegate Proposals #76 and #121.

65. James F. Maher - Montana Vice President-General Manager - Mountain Bell Telephone Company - Helena - Utility Regulation.

66. W. F. Farnes - President, Fiject Telephone Co. - Worden - Delegate Proposal #76, Public Utility Regulation.

67. Charles C. Lovell - Great Falls Gas Company - Great Falls - Delegate Proposals #76 and #121, Public Utilities.

68. Henry Loble - Montana, Dakota Utilities & General Telephone Company of the Northwest Division - Helena - Delegate Proposal #76 and #121, Public Utilities.

69. Robert Corette - Montana Power Company - Butte - relegate Proposals #76 and #121, Public Utilities.

70. George O'Connor - Montana Power Company - Butte - Delegate Proposals #76 and #121, Public Utilities.

71. Jay. W. Preston - Ronac Telephone Company - Ronan - Delegate Proposal #76, Public Utility Regulations.

72. Edwin S. Booth - Mcntana Railrcad Asscciation - Helena - Delegate Prcpcsal #76, Public Utility Regulaticns.

73. Senator Lee Metcalf - United states Senatcr, by invitaticn - Helena and Washington C.C., - Delegate Prcpcsal #76, Public Utility Regulaticns.

74. Seldcn S. Frisbee - Cut Bank Gas Company - Cut Bank - Delegate Prcpcsal #76, Public Utility Regulaticns.

75. Jce Curtis - Hysham Telephcne Company - Hysham - Delegate Prcpcsal #76, Public Utility Regulaticns.

76. Ian B. Davidson - D. A. Davidscn Ccmpary - Great Falls - Delegate Prcpcsal #76, Public Utility Regulaticns.

77. Paul J. Eriesh - Treasure State Telephcne Company - Eig Timber - #76, Public Utility Regulaticns.

78. Ward 4. Junkemier - C.P.A., Directcr, Cut Bank Gas Ccmpany - Great Falls - Delegate Prcpcsal #76, Public Utility Regulaticns.

79. C. M. Wall - Montana Citizens Freight Fate Asscciaticc - Helena - Delegate Frcpcsal #76, Public Utility Fegulaticns.

80. James Lechner - Executive Secretary of the Eillings Ccntractcr's Council - Eillings - Delegate Prcpcsal #78.

81. Tcm Dclan - Independent businessman - Eillings - Delegate Prcposal #78, Fight-tc-wcrk.

82. Joe Chovanak - Farmers Unicn Iccal #169 - East Helena - Delegate Prcpcsal #78, rigbt-to-ucrk.

83. Paul Bessler - self - Helena - Delegate Prcpcsal #78, right-tc-ucrk.

84. Ccrnie Thiessen - Senatcr - Lambert - Delegate Prcposal #76, Public Utility Regulaticn.

85. Eltcn Hartze - Americar Federation of State, Ccurty, and Municipal Emplcyees - Missoula - Delegate Prcpcsal #73, The right for public and private emplcyees tc engage in ccllectivf bargaining.

86. Francis Mitchell - Montana Common Cause - Helena - Lelegate Proposal 876 - Public Utility Regulaticn.

87. Clyde Jarvis - Mcntana Farmers Unicn - Great Falls - Delegate Prcpcsal #76 - Public Utility.

88. Jchn L. McKeon - State Senator, self - Anaccnda - Lelegate

Proposal #76, Public Utility Regulation.

ROLL CALL VOTE---PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY - - - - 1972

	Date No: DO ADOPT	Date No: DO ADOPT	Date No: DO ADOPT	Date No: DO ADOPT	Date No: DO DELETE	Date No: 144 DO ADOPT	Date No:
Charles H. Mahoney	Y	N	Y	N	N		
Don Scanlin	N	Y	Y	Y	Y	Y	
R. J. Studer, Sr.	Y	Y	Y	Y	Y	Y	
Edith Van Buskirk	Y	N	Y	Y	Y	Y	
Jack K. Ward	Y	Y	Y	Y	Y	N	
	New Corporation Article	Welfare--New Article on Institutions and Assistance, Sec. 1	New Article on Institutions & Assistance, Section 2	New Labor Article Section 1	Labor, Delete Sections 2, 3, 4 and 5 of present Constitution.	Merit System	

MINORITY PROPOSALS

ROLL CALL VOTE---PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY - - - - 1972

	Date No: 73 DO NOT ADOPT	Date No: 76 DO ADOPT	Date No: 78 DO ADOPT	Date NO: 121 DO ADOPT	Date No:	Date No:	Date No:
Charles H. Mahoney	Y	N		N			
Joseph H. McCarvel	N	Y	N	N			
Don Scanlin	Y	N	N	Y			
R. J. Studer, Sr.	Y	N	Y	N			
William H. Swanberg	Y	N	N	N			
Edith Van Buskirk	Y	N	N	Y			
Jack K. Ward	Y	N	Y	N			
George B. Heliker	N	Y	N	Y			
	Revised Proposal #73 Collective Bargaining	Revised Proposal #76 Public Utility Reg.	Right-to-work	Public Utility Corporations			

A CONSTITUTIONAL CON NTICN

PROPOSALS REJECTED BY COMMITTEE

PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY - - - - - 1972

	Mandatory Minimum Wage	Full employment, State as Employer of Last Resort	Labor Management Conciliation Court	Right of Basic Necessities	Equal Pay with Federal for Equal Work	Merit System	Date No:138 DO NOT ADOPT	Date No:148 DO NOT ADOPT	Date No:177 DO NOT ADOPT	Date No.45 DO ADOPT	Date No:105 DO NOT ADOPT	Date No:71 DO NOT ADOPT
[illegible]							Y	Y	Y	N	Y	N
											2	Y
											Y	Y
William [illegible]							Y	Y	Y	N	Y	Y
Edith Vi[illegible]											Y	Y
Jack K.											Y	Y
George B. Heliker	Y	Y	Y	Y	Y	Y						

APPENDIX F

Since the committee members found cause to delete the greater portion of Article XV on non-municipal corporations, they wish to convey briefly the justifications for these deletions to the committee of the Whole.

Section 1. The original intent of this section was to abolish all those corporate bodies which existed only on paper prior to 1889. The only possible danger (if it can be so termed) in deletion would be if some pre-1889 corporation would once again commence business. This possibility was mitigated by statute 15-808 (R.C.M. 1947) which stipulated that a corporation had to organize and commence business within one year or lose its charter. Although repealed in 1969, this statute quite possibly annulled any pre-1889 corporations, that is if section 1 of the 1889 Constitution did not already do this for all time.

Section 2. Proposed language of the new section 1 stipulates that "Corporate charters shall be granted. . . .only pursuant to general law." In addition to this committee's proposed section, which precludes special grafts of charters by the legislature, the Legislative Committee has expressed its intention to retain the sense of Article V, section 26, which also prohibits special chartering.

Section 3. The committee believes that the power of the state to dissolve corporate charter, as provided in proposed section 1, in conjunction with proposed section 2's protection provision, adequately expresses the intent of this section.

Section 4. This is retained as section 3 of the proposed article.

Section 5. The committee finds this section to be either obsolete, superseded by ICC action, or covered by existing statutes. The committee believes that all intrastate matters relating to this section are legislative.

Section 6. The committee deleted this section for the same reasons cited under consideration of section 5.

Section 7. This section is considered to be primarily legislative. The exception is the long-short haul clause relating to intrastate matters, which is neither covered by statute nor by ICC regulation. The committee retained this clause as section 4 of the proposed revision in the belief that intrastate railroad transportation may one day increase in response to the demands of increased urbanization and development of Montana coal fields.

Section 8. All 1889 transportation companies have filed the necessary acceptances with the Secretary of State. Therefore,

this section is superfluous.

Section 9. The committee members understand that the Bill of Rights Committee will present a section on eminent domain and that they will then have an opportunity to consider at greater length the ramifications of these proposed revisions in regard to corporations.

It is intended that sfction 2 of the proposed article will prevent infringement upon the general welfare by corporations. This was provided for in section 4 of the 1889 Constitution.

Section 10. This section is retained as section 5 of the revised article.

Section 11. The committee feels that this is a legislative matter. It further believes that equal treatment under the law is provided by proposed section 2 as well as ty the 14th Amendment to the United States Constitution.

Jection 12. A street is the property of a municipality or town and the use of such property is subject to the eminent domain doctrine. The committee believes the courts will protect the essential value of such a street or highway from capricious condemnation. This is also viewed as a matter under legislative justification.

Section 13. This section has been expanded and included in the revised article as section 6. It is the intent that no retrospective. law be passed by the legislative assembly which would impose a liability on any citizen in respect to transactions or considerations already completed.

Section 14. This is considered to be statutory in nature.

Section 15. This is deleted from the proposed article. Reasoning behind this deletion is that the state inherently possesses this plenary power and the only restriction upon its jurisdiction is the Commerce Clause of the United States Constitution which, in any event, already supersedes section 15.

Sections 16 and 17. These are considered statutory in nature.

Section 18. This definition of a corporation is tautological and unnecessary. Any decision to classify a joint stock company as a corporation ought to be made by the Legislative Assembly. Powers of the corporate body are considered statutory material.

Section 19. The committee feels that this section is unnecessary in light of existing statutory means by which a corporation may be sued and levied upon.

Section 20. Section 2 of the revised Article XV adequately

covers this matter. The present wording of section 20 is unduly restrictive, nebulous and statutory.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

EDUCATION AND PUBLIC LANDS COMMITTEE PROPOSAL

NO. X

Date Reported: February 22, 1972

/s/ Richard J. Champoux, Chairman

/s/ Robert L. Noble, Vice Chairman

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL 716

TEXT OF MAJORITY PROPOSAL 718

COMMENTS ON MAJORITY PROPOSAL 721

Section 1. Educational Goals and Duties of State 721

Section 2. Public School Fund 725

Section 3. Public School Fund Inviolate 726

Section 4. Board of Land Commissioners 726

Section 5. Public School Fund Revenue 727

Section 6. Aid Prohibited to Sectarian Schools 728

Section 7. Non-Discrimination in Education 730

Section 8. School Elections 731

Section 9. State Board of Education 731

Section 10. Board of Public Education 733

Section 11. Board of Regents of Higher Education 735

Section 12. State University Funds 740

TEXT OF MINORITY PROPOSAL 741

COMMENTS ON MINORITY PROPOSAL 742

Section 3. Public School Fund Inviolate 742

TEXT OF MINORITY PROPOSAL 743

COMMENTS ON MINORITY PROPOSAL 744

Section 6. Aid Prohibited to Sectarian Schools 744

TEXT OF MAJORITY PROPOSAL 748

COMMENTS ON MAJORITY PROPOSAL 750

Section 1. Public Land Trust, Disposition 750

TEXT OF MAJORITY PROPOSAL 753

COMMENTS ON MAJORITY PROPOSAL 754

Section 1. Unified Investment Program 754

TEXT ON MINORITY PROPOSAL 755

COMMENTS ON MINORITY PROPOSAL 756

APPENDIX

Cross reference of present and proposed Articles 757

Delegate proposals considered by committee 758

Witnesses heard by committee 761

Roll Calls 767

Fiscal note from Office of Public Instruction 769

Federal grants to nonpublic schools 770

Non-Public School Enrollment 771

Montana Non-Public Schools 772

Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Education and Public Lands Committee

Ladies and Gentlemen:

The Education and Public Lands Committee submits herewith proposed new Articles on Education, Public Lands, and Investments. The proposed Articles are intended to replace the Education, Public Lands, and Trust and Legacy Fund Articles in the present Constitution.

Throughout its hearings the committee heard a great deal of thoughtful, well-researched testimony and benefited fully from the many sources of information provided by interested persons and groups. Realizing the crucial importance of education in the state, the committee was guided by the desire to insure a solid foundation for public education in Montana and to allow for the flexibility essential to the educational process. The committee resolved almost all questions with few dissents. On two issues, however, the questions of public aid to sectarian schools and investments, the committee failed to reach agreement. The dissenting members are presenting minority reports included herein.

In signing this majority report a committee member does not necessarily endorse each and every statement in it.

The committee utilized the services of the following people in addition to its members: Sally Watson, secretary, Bruce Sievers, research analyst, and Jeffrey Rupp, Maureen Callahan, Nancy Lien and John Murphy, interns.

Respectfully submitted,

/s/ Richard J. Champoux, Chairman

/s/ Robert L. Noble, Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Education to read as follows:

ARTICLE ___

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.

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

section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted. or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under the restrictions to be provided by law.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commis-

sioners, which shall have the direction, control, leasing, exchange and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational irstituticns, under such regulations and restrictions as may be prescribed by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be equitably apportioned annually to public elementary and secondary schools as provided by lau.

The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public rchool funds of the state and become and forever remain an inseparable and inviolable part tbereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or monies whatever, or make any grant of lards or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or dercsination whatever.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall ever te required of any person as a condition of admission into any public educational institution of the state, either as teacher or student: nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any public institution ot learning on account of SEX, race, creed, religion or national origin.

Section 8. SCHOOL ELECTIONS. The legislative assembly shall provide for elections of school district trustees.

Section 9. STATE BOARD OF EDUCATION. The board of public education and the board of regents of higher education, as hereafter designated shall together constitute the state board of education which shall meet periodically on matters of mutual concern. In case of a tie vote at such meeting the superintendent of public instruction may cast a vote.

Section 10. BOARD OF PUBLIC EDUCATION. There shall be a board of public education which shall exercise general supervision over the public school system and such other public educa-

tional institutions as assigned by law. Said board shall consist of seven members appointed by the governor with confirsation of the senate to six year overlapping terms. The governor and state superintendent of public instruction shall be ex officio non-voting members of the board. The duties of the superintendent of public instruction shall be prescribed by law.

Section 11. BOARD OF REGENTS OF HIGHER EDUCATION. There shall be a board of regents of higher education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana university system, and shall supervise and coordinate other public educational institutions which may be assigned by law. Said board shall consist of seven members appointed by the governor to six year overlapping terms, subject to confirmation by the senate, under regulations provided by law. The board shall appoint its executive officer and prescribe his term and duties. The governor and superintendent of public instruction shall be ex officio non-voting members of this board.

Section 12. STATE UNIVERSITY FUNDS. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

/s/ Richard Champoux, Chairman

/s/ Robert Noble, Vice Chairman

/s/ Lloyd Barnard

/s/ William Burkhardt

/s/ Marjorie Cain

/s/ Max Conover

/s/ Carl Davis

/s/ Gene Harbaugh

/s/ Dan Harrington

/s/ Robert Woodmansey

/s/ John Toole

COMMENTS ON MAJORITY PROPOSAL

Education occupies a place of cardinal importance in the public realm. The educational system is charged with the task of shaping and cultivating the mind of each succeeding generation and with developing the capacities for cultural and technical advancement of society. State and local governments devote a far larger share of their financial resources to the support of education than to any other singlepublic activity.

Because of this overriding importance of education, the committee recognizes the awesome task of providing the appropriate Constitutional provisions necessary to protect and nurture the public educational system. Each aspect of existing and proposed Constitutional language was thoroughly and deeply reflected upon by the committee in light of present and future needs. Fundamental to the committee's considerations were the twin goals of protecting the integrity of a quality educational system and allowing for flexibility to meet changes as yet unknown but which will certainly occur in future developments in the field of learning.

In light of these aims, the committee has preserved those provisions in the existing Constitution which have proven worth and which pose no hinderance to potential developments. On the other hand, the committee has made revisions in these places where it saw a definite need for constitutional improvement. Some of these changes have to do with basic aims of the educational system; others are concerned with **structural** or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a mandate for the support of education allowing increased financial flexibility, deletion of antiquatsd age and school term restriction, and a revised administrative structure for both the public school system and for higher education.

The committee views these proposed changes as vital to the quality and efficiency of education in Montana. The proposed article provides appropriate guarantees to the viability of the public school system, while leaving the way open to future transformations in the educationalprocess.

> Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.
>
> The legislature shall provide for a system of high quality free public elementary and secondary schools. The legislature may also provide for other educational institutions, public libraries and educational programs

as are deemed desirable. It shall he the duty of the legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system.

COMMENTS

The proposed section by the committee would replace sections 1, 6 and 7 of the existing Constitution. The committee desires to broaden the goals set forth for an educational system beyond those which might have been appropriate for public schools at the time of writing the existing Constitution. The horizons of education are constantly expanding. There has been a growing recognition of educational rights which extend beyond arbitrary age and school term limitations. Society has accepted the duty to support a quality educational system, and courts have stressed that it must be made available on approximately equal terms. Thus, the committee proposes a new section which takes into account the widened perspectives embodied in these developments.

The first sentence, "It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person," is appropriate as a statement of purpose for education in the state. Learning is gradually being recognized as a process which extends from the early months till the late years of life. A long range goal of the state should be to foster and support this learning process for all citizens to the maximum level possible in any given era. The committee realizes that economic and human resources may be insufficient at present to promote learning "to the full educational potential of each person," but it feels strongly that the goal should be set forth as an ideal to serve as a guide for educational development in the state. All members of society should be ultimately eligible for the benefits of enlightenment and skills acquired through the educational process.

The subject of "equal educational opportunity" has become a particularly important doctrine in modern education. Recent federal, district and state court decisions have interpreted the Fourteenth Amendment to the federal Constitution as applying to educational financing. Under this doctrine, the state must show a compelling interest to maintain a classification system by wealth which interferes with the individual's fundamental right to an education. By this standard the courts have ruled that the school district financing systems in four states violate equal protection.

Montana's school financing system is similar to those

declared unconstitutional in the states where challenges have been made. The same vast discrepancies in tax burdens and educational support exist in Montana as exist elsewhere. A recent study by the Office of the Superintendent of Public Instruction (A Study of Basic Educational Program Funding Methodology in Montana, January 1972) shows that Montana school district wealth per ANB varies by as much as a ratio of 10,000 to 1. The enormous differences in tax bases mean that many rich districts can provide much better education facilities with lower tax rates. Some poor districts must tax their residents three or four times as much as rich districts to provide less than half as much money per student. Clearly, the existing school foundation program in Montana does not attain its aim of equalizing educational burdens and benefits. Indeed, the study shows that in the state as a whole, foundation program expenditures actually subsidize wealthier districts more than poorer districts, aggravating factors which already tend to make education a function of wealth.

This conforms to a national pattern in which states spend on the average twice as much to educate the children of the rich as to educate the children of the poor. Other forms of barriers to equal educational opportunity, such as cultural or linguistic factors in minority groups, may also hinder the development of children on an equal basis. Clearly the educational system must be directed to the elimination of blatant injustices which may predetemine a lifelong disadvantage. The principle of equal educational opportunity, as a corollary to the right to equal protection of the laws, stands as a fundamental maxim for the public educational system.

It has been suggested that Constitutional statement of equal educational opportunity might be a mandate for the attainment of an impossible ideal, and that such a statement of principle could open the door to a welter of demands for making public education absolutely equal for every person in society on every level. This interpretation, however, would represent an extreme and absurd misconstruction of the meaning of the principle. The principle of "equal educational opportunity" is no more an abstract absolute than is the right to "equal protection of the laws" or any other Constitutionally guaranteed right or freedom. No right is absolute; each must be considered in connection with other rights and freedoms and in terms of the social context to which it is applied.

In keeping with the rational articulated in Serrano v. Priest and other court decisions in this area, the committee agrees with the exemplary words of a landmark U.S. Supreme Court decision:

In these days, it is doubtful that any child may

> reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all On equal terms. [Brown v. Board of Education. 347 U.S. 493 (1954)]

Likewise, the California Supreme Court held:

> [I]ts unigueness among public activities clearly demonstrates that education must respond to the command of the equal protection. [Serrano v. Priest, 96 Cal 601]

Both Brown and Serrano attacked the substantial disparities in the educational systems under review and concluded that neither race nor wealth could be used to impair the equal right of children to an education. Neither of these cases mandated some sort of precise equality of sducaticn for the entire lifespan of the human being. The fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education. What this means in practice will be legislatively defined in terms of prevailing social conditions.

The sentence "the legislature shall provide for a system of high quality free' public elementary and secondary schools," is a mandate to the legislature to insure the existence of a quality basic educational system. The word "quality" is an instruction to the legislature to provide not simply a minimum educational system, but one which meets contemporary needs and produced capable, well-informed citizens. The word "free" is understood by the committee to mean that those aspects of an elementary or secondary education shall be free from cost which are essential to those courses required by the school for graduation.

The committee also believes that other educational institutions and programs and libraries are important parts of educational activity in the state. The particular sorts of institutions and programs, however, must be left for the legislature to determine, since changing conditicas may require a variety of endaavors.

The final sentencein section 1 provides a vital mandate to the legislature for the support of the public school system. The committee feels that a strong directive is necessary to insure the support of the public elementary and secondary school system. The particular type of financing system is a matter properly left to legislative determination, but the fundamental principles upon which such a system is based are matters of a Constitutional nature. The committee specifies three tenets of a school financing system: (1) that taxation for such a system be equitably apportioned; (2) that the school funds be distributed in an equal manner; and (3) that the funds supplied be sufficient to insure full funding of the system.

The first two of these principles follow from the meaning of "equal educational opportunity." Two aspects of equal opportunity have been emphasized in the judicial decisions: equality of tax burden for the support of fducation and equality of distribution of educational funds. A wide variety of particular school financing plans, from a wholly state-financed program to a plan for substantial redistricting, have bean suggested to meet these criteria. The selection of which plan best suits the situation in Montana is a matter for the legislature to decide. The Constitutional language solely established norms for the evaluation of such plans.

The third principle set forth by the committee, that of full funding, is a mandate to insure that the public school system will exist On a plane of equal quality rather than of equal poverty. The maxim of "full funding" is intended by the committee to require the establishment of the school system on a realistic basis.

Once the needs for a tasic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum tasic program be fully funded. This requirment would substitute rationality and equity for the confusion and injustice which have often plagued school finance systems in the Fast.

> Section 2. PUBIIC SCHCCL FUNC. The public schccl fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and ttcse granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of lard or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to ths state for general educational purposes.

COMMENTS

In securing assured sources of support for the educational system, the committee agreed that Constitutional protection should be supplied to the public schccl fund. section 2 in the existing Constitution has provided this protection ty itemizing the components of the fund and unequivccafly specifying that these contributing funds shall be used for education. The name

"public schcol fur:" which appears in this sectiон is adcpted as the name tc be used consistently hereafter in the Ccnstitutiсn.

Sectiсn 3. PUBLIC SCHCCI 'FUEL: INVIOLATE. The public schcol fund shall fcrever remain inviclate, guaranteed by the state against lcss cf diversiсn, tc be invested under the restrictions to be prcvided by law.

COMMENTS

This sectiсn is identical tc section 3 cf the existing Ccn-stituticc, with the exceptiсn that the Ccnstitaticnal investment restrictions are removed. The ccmmittee is cf the opinicr that the investment policy fcr the public fund is properly a legis-lative matter. Beycnd guaranteeing the irviclatf character cf the fund, a Constitutional prcvisiсn cannot anticipate investment policies appropriate tc charging conditiсns. Mcrecver, the existing language, "to be invested, sc far as pcssible, in public securities within the state, including schccl district bends, issued for the erection cf schcol buildings," is both ambiguous and cverly restrictive. The benefit tc the schcols might be much greater if in any given period the public schccl fund were ctber-wise securely invested. Flexibility requires that such policy decisiсns be madeby the legislature.

Sectiсn 4. BOARD CF LAND CCMMISSIONERS. The gcver-nor, superinterdent cf public instructiсn, secretary cf state and attorney general shall ccnstitute the state board of land ccmmissicners, which shall have the directiсn, control, leasing, exchange acd sale cf the schcol lards cf the state, and the lands granted or which may hereafter be granted fcr the support and ben-efit of the various state educational institutions, under such regulaticns and restricticns as may be pre-scribed by law.

COMMENTS

This section remains almost unchanged from the original Ccn-stitutiсn. A board composed cf fcur elective officials, the governcr, superintendent of public instructiсn, attorney general, and secretary cf state, serves an important functiсn in supervis-ing the management of the state schccl lands and the income derived frcm these lands. The board while cperating under this Constitutional provisiсn, has wcrked well in the past and wculd appear tc be able tc do the same fcr the fcrseeable future. The only change deemed desirable at this time is the addition of the word "exchange*' to the list of activities within the board's power. The need for this has become evident in cases where the state has been prevented from makirg advantagecns exchanges cf

land by the omission of this power from the Present Constitutional provision.

The committee also considered revising the membership of the board, and particularly reducing the number of members to three by the omission of the Secretary of State, but decided that the four Constitutionally named elective officers were an important source of direct popular control and that an even-numbered board requiring a majority of three for a decision would emphasize the principle of caution over that of expediency.

> Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and nicety-rive per centum (95%) of all rents received from the leasing of school lands and of all other income from the Public school funds shall be equitably apportioned annually to Public elementary and secondary schools as provided by law.
>
> The remaining five per centum (5%) of all the interest receivedon the schcol funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of schcol lands and of all other income from the public school funds, shall annually he added to the Public schocl funds of the state and become and forever remain an inseparable and inviolable part thereof.

COMMENTS

The proposed section 5 is a shortened and revised version of section 5 in the present Constitution. The intent of the provision, to Constitutionally protect the interest and income from the public school fund, is important; however the particular restrictions as to its distribution to schools are considered obsolete in light of present conditions. The language concerning the portions to 'be distributed and that which is to be reinvested remains the same as in the Present Constitution. The methods of distribution previously specified are replaced ty a general phrase "shall be equitably apportioned annually to elementary and secondary schools as provided by law."

The replacement language provides the desired flexibility to the legislature todevelop school financing programs in tune with current necessities. Particularly relevant to this change is the trend across the nation, in accordance with recent court decisions under the equal protection doctrine, to provide more equitable school financing systems. The "flat grant" type of aid provided under the old method of distributing income and interest to all schcol districts cn a census tasis is clearly anti-equalizing under the standards discussed ir the commfntary to section 1. By specifying only that the distribution must be

"equitable" the new language allows the legislature to determine the type of distribution which will attain this goal.

Restrictions in the form of specified districts, age, and school terms which may have been applicable at the time of writing of the 1889 Constitution, are no longer meaningful. Rather than attempt to apply new restrictions more in keeping with the contemporary school system, the committee determined that it was preferable to allow for changing needs as interpreted by the legislature by designating only a broad standard, namely "equitably apportioned as provided by law."

A further element in the distribution system authorized by the existing provision is the specification that the interest and income money be distributed to the "several school districts." This has been interpreted in the past to mean that funds deriving from this source be granted only to elementary schools, presumably because elementary schools were the only public schools in existence at the time when this provision was written. In keeping with its intention to expand legislative possibilities in educational finance, as discussed in the commentary on section 1 the committee has replaced the phrase "several school districts: with "public elementary and secondary schools." This could change the existing distribution system to include high schools as recipients of interest and income money. The immediate result is anticipated by the Office of the Superintendent of Public Instruction to result in a net saving of administrative costs to the state. (See appendix E.)

> Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in ths support of any school, academy, seminary, college, university, or other literary, scientific iastitution, controlled in whole or in Fart by any church, sect or denomination whatever.

COMMENTS

After long and serious consideration, a majority of the committee decided to retain the section in the existing Constitution (Article XI, section 8) which strongly prohibits direct or indirect aid from any public fund of the state to any sectarian educational institution or for any sectarian purpose. The committee recognizes the merit and thoughtfulness of arguments offered for and against any change in this section, but agrees fundamentally that any alteration in wording might jeopardize the precarious historical balance which has been struck between opposing doctrines and countervailing principles.

The following major points are the most important reasons for the committee's decision:

(1) The primary and significant advantage secured by the present provision is the unequivocal support it provides for a strong public school system. The traditional separation between church and state, an important part of the American social framework, has also become a fundamental Principle of American education. The growth of a strong, universal, and free educational system in the United States has been due in part to its exclusively public character. Under federal and state mandates to concentrate public funds in Public schools, the educational system has grown strong in an atmosphere free from divisiveness and fragmentation. Any diversion of funds or effort from the public school system would tend to weaken that system in favor of schools established for private or religious purposes.

(2) Education is primarily a function of the state and is properly regulated by the state. The state is therefore free to impose its own restrictions and rules upon the use of Public funds for education. Although the Montana Provision is more stringently prohibitive than is the federal First Amendment and provisions in some other states. this is within a state's prerogative. 6 state may prohibit forms of state aid which might be permissible under federal Supreme Court rulings.

(3) Any change in the present provision, whether substantial or merely formal, might endanger passage of the entire Constitution. The church-state issue, which is interwoven with the question of public aid to nonpublic schools, stirs deeply held emotional feelings in various sectors of the public. The emotionalism aroused over potential debates on this question might obscure other important issues in education and in the Constitution as a whole. The change in this area proposed in New York's 1967 Constitution is thought to have been a significant contributing factor to the Constitution's defeat at the polls. A large number of witnesses, representing various religious and nonreligious organizations, testified emphatically against any change in the present provision.

(4) public aid to sectarian schools which might result from a relaxation of the prohibition also poses a potential threat to religion. The control which comes with aid could excessively involve the state in religious matters and could inadvertently favor one religious group over another. Several witnesses testified that they opposed aid not only from the standpoint of the protection of the state from religious influence but also from the standpoint of the protection of religion from political influence.

The above reasons apply to the decision by the majority of the committee to preserve the present provision, rather than to adopt the language of the federal First Amendment or make any

other change in the existing provision.

A second alternative considered by the committee was to exclude federal funds administered by the state from the applicability of the provision. A fundamental concern expressed by some witnesses before the committee was that some forms of federal aid to nonpublic schools, particularly of the type envisaged in "revenue sharing" programs, are or would be prohibited under the existing provision. The committee does not agree that this poses a realistic problem. As indicated in Appendix F, students in nonpublic educational institutions in the state are now receiving the benefit of a significant amount of federal aid, some of which is administered by the state. It is the majority of committee's opinion that presently operating federal aid programs in education are not being significantly affected by the constitutional provision. As to future federal programs, the committee feels that precedent shows that potential problems can be resolved uithcut a change in the institutional provision. No specific case was brought to the committee's attention in which federally granted funds have been denied in Montana to nonpublic schools because of the operation of the existing Constitutional provision.

> Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any public institution of learning on account of sex, race, creed, religion or national origin.

COMMENTS

This section is a broadened version of the present section 9. A statement specifically banning discriminatory practices in education provides a necessary specification with respect to teachers and students of nondiscrimination principles broadly articulated in the Bill of Rights. The committee feels that the principle set forth in the last sentence of the present section i.e., "nor shall any person be debarred admission to any of the collegiate departments of the university or account of sex," represents an arbitrary limitation on the general principle of nondiscrimination in admission policies. The committee has therefore broadened the language to include all public educational institutions under the protection of the provision and to prohibit other kinds of possible discrimination.

The committee also considered carefully the language of the phrase, "nor shall any sectarian tenets be taught in any public

educational institution," and decided against any change in wording. There has been no record of difficulty in the interpretation of the meaning of this provision, which clearly is not intended to restrict objective learning about religious principles, but rather to prohibit the active promotion in a public school of religion or of any particular religious doctrine. The existing language adequately expresses this principle.

Section 8. SCHOOL ELECTIONS. The legislative assembly shall provide for elections of school district trustees.

COMMENTS

This section is similar to section 10 of the existing Constitution, but changes its effect. The original intent of the present section 10 was to segregate school elections from partisan elections. The committee feels that there are other reasons which negate this original intent and which dictate that decisions on this matter should be of a legislative rather than a Constitutional nature. First, it is questionable whether the holding of separate elections has the effect of insulating school issues from partisan ones. Other nonpartisan issues and candidates appear on the same ballot with partisan ones. Moreover, partisanship of various sorts may play a role in a school election whether held separately or not. At least one locality in Montana officially recognizes special parties just for the purposes of such school elections.

Secondly, the holding of separate school elections causes most localities a great deal of extra expense which could be better spent on education itself. One delegate informed the committee that her community spent $10,000 or more on every school election. The committee feels that such expenses are needless, particularly if the separate election does not accomplish its intended aims.

The proposed new section thus allows for flexibility by leaving the specification of election dates to the legislature, but it still reaffirms the importance of a Constitutional mandate that such elections shall continue to be held. The committee understands the vital importance of the principle of local control of schools and desires to insure the continuation of the system of local election of school trustees. These local school elections are an essential and irreplaceable part of the education system and their existence must be constitutionally guaranteed.

Section 9. STATE BOARD OF EDUCATION. The board of public education and the board of regents of higher education, as hereafter designated shall together constitute the state board of education which shall meet

periodically on matters of mutual concern. In cast of a tie vote at such meeting the superintendent of public instruction may cast 3 vote.

COMMENTS

Sections 9, 10, and 11 of the proposed new article deal with the state administrative structure for education. Together, these sections provide a substantially revised framework for the operation of the educational system. Under the authority of section 11 of the existing Constitution, a single state board of education presently exercises "supervision and control" over the entire state educational system, sitting as the state board of education on matters concerning the public school system and as ex officio board of regents on university matters. The proposed sections would replace this structure with two boards which would separately supervise higher education and the public school system, but would meet jointly as the state board of education on matters of mutual concern.

The proposed structure would provide a much needed reform in the administration of education in Montana. The state board of education, as it presently exists, operates under a provision written at a time (1889) when the educational system was fundamentally different from what it is today. The educational system of Montana in the nineteenth century consisted only of primary grammar schools and a newly founded state university. Today it consists of a universal system of elementary and secondary schools and a public higher educational system composed of two major universities, four colleges, and three community colleges. In 1889 there were less than 12,000 students in the public educational system; in 1970 there were more than 200,000 students enrolled. At the time statehood was granted Montana, the Office of the Superintendent of Public Instruction consisted of the superintendent and a clerk who performed mainly information-gathering functions in connection with local districts; at present the office has a staff of 162 and administers more than 352 million funds for a vast array of state educational programs.

The provision for a board which was appropriate to the 1889 situation is clearly not appropriate today. It is not even clear that the state board of education was ever intended to serve as the board for the Entire educational system. The phrase, "and the various other state educational institutions" in the existing section 11, appears to refer only to what are commonly thought to be state-run institutions, i.e. state normal schools, school for the deaf and blind, and so forth. It was only by virtue of a Montana Supreme Court interpretation of this phrase in State v. Cooney (132 Mont. 521 [1936]) that this section was specifically ruled to apply to the elementary and secondary school system.

II! practice, the state board cf education has devoted the great majority of its time tc matters of higher educaticn. Cne important study of Montana educaticn cbserves that there is a kind cf informal division cf labcr between the board and the state superintendent, such that the lower rchccls are looked after by the superintendent and that the tcard sees its duties primarily in the field cf higher education. The study ccrcludes:

> 'The result is that the board's functicrs in public education become mcre cf the nature of "trcuble shocting" and too little cf consistent lcng-range planning, policy formulaticn, appraisal, and the like. (Montana Taxaticr-Educaticn Commission, Public Schccls cf Montana, 1558. p.2).

Cne major reascn, therefcre, fcr the creaticn cf a tuc-board structure is the establishment cf a L-card that will be specifically qualified for and ccncerned with the prcblems of elementary and seccndary education and otter institutions which may be assigned by law. The correlate of this structure is the establishment of a separate board for higher education which will be similarly qualified for and attuned tc the particular problems cf higher educaticn.

The necessary cccrdinaticn between these two separate bcards would cccur in the jciat tcard prcvided fcr in the proposed sectiсn 9. This joint board, the state bcard cf educaticn, would meet periodically tc act cn matters cf mutual ccncern to both sectors of educaticn.

Further reasons for the recrganizatiсn cf the bcards cf educaticn are presented in the fcllcwing secticrs.

> Section 15. BOARD CF PUBLIC EDUCATICN. There shall be a board cf public educaticn which shall exercise general supervisicn cver the public schccl system and such other public educational institutions as assigned by law. Said board shall ccnsist cf seven members appcinted by the governor with cccfiruaticn cf the senate to six year cverlapping terms. The governor and the state superintendent of public instruction shall be ex officio ncn-voting members of the bcard. The duties of the superintendent cf public instructicn shall be prescribed by law.

This sectiсn creates the bcard cf public educaticn and prescribesits membership and responsibility. As described in the comments to the preceding sectiсn, the greatly expanded activities, personnel, and funding involved in elementary and secondary educaticn require that this crucial sector cf education have its own administrative bcard. The largest share cf state funds for any cne purpose go to elementary and seccndary education. The state administers over 25 major federal prcgrams in education. The kinds cf education needed and offered are cccstantly changing

and expanding. A board which is to cope adequately with this vast area of responsibilities must consist of members who are qualified and who have sufficient time to become knowledgeable about the particular problems and issues of public education. A board is no more capable than is a superintendent of being competent to administer two fundamentally different areas of education.

The need for a separate board for public education promises to become even greater in the future. The present trends indicate the assumption of much greater role in educational financing by state and federal governments, possibly as much as 90 percent or more of total public school costs. Other trends also suggest an increasing centralization in education. This means an even greater degree of potential control of education at the state level. A well-informed and representative board would provide a much-needed balance to decisions on administrative policies.

A large majority of witnesses who testified on the subject, including key state officials and many educators, spoke in favor of the two-board concept. They agreed that both from the standpoint of public education and from that of higher education, the separation of functions is eminently sensible. A former chairman of the state board of education, a long-time distinguished member of the board, articulated the position of many:

> Please give every consideration to a two-board system. Frankly, even the most capable, dedicated board member finds it impossible to do justice to the total assignment. (Letter from Mr. M. E. Richard, February 15, 1972).

Numerous studies of the Montana educational system have recommended the creation of two boards. A legislative council report in 1963 resulted in the proposal for a Constitutional amendment to create two boards. The amendment was passed by the legislature but kept off the ballot for other reasons. The Legislative Council's recommendation, which was based on previous studies, offered the following major justification for a two-board system:

> Increased demands on our educational facilities due to a growing population and inflationary pressures require that the responsibility for the administration of our educational system be divided into two boards, a Board of Education whose responsibility would be primary and secondary education, and a Board of Regents whose responsibility would be higher education. There is a limit to the amount of time a lay board member can devote to these responsibilities. The overwhelming responsibility placed on board members has prevented them from devoting adequate time to the consideration of policy questions. (Montana Legislative Council, Higher Education, Report Number 5, Helena, 1960, p. 1).

The fear has been expressed that a separate board for public education might usurp the powers of local boards. There is no reason to be concerned about such a possibility, however, since the powers granted the state board would be almost identical to those now granted. Indeed, the committee has actually deleted the word "control" from the powers now granted the board so that the new section reads, "exercise general supervision over the public school system." It would be difficult to argue that this grants any additional powers to the state board at the expense of local school boards.

Under existing law, vocational-technical centers will remain within the public school system and thus under the jurisdiction of the board of public education. Witnesses from the "vo-tech" field assured the committee that this was their preference at the present time. However, the language of this section and of the new section 11 allows sufficient flexibility so that, should conditions change, these institutions could be accommodated in the system of higher education.

The voting members of the board would consist of seven members selected by the governor for six-year overlapping terms. The governor and superintendent retain ex officio membership on the board but in a nonvoting capacity. The committee feels that the elective officials should be separate from board decision-making, but should retain membership on the board for informational and coordinating purposes.

The committee feels that the duties of the superintendent should be legislatively prescribed, to allow for changing conditions and possible alterations of the relationship between the board and the superintendent. It is fully expected by the committee that the office of the superintendent of public instruction will be provided for in the executive article. A majority of the committee feels strongly that the superintendent should be elected, and the committee has structured the educational article with this notion in mind. An elected superintendent provides a necessary direct link to the people which is important to the educational system.

> Section 11. BOARD OF REGENTS OF HIGHER EDUCATION. There shall be a board of regents of higher education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana university system, and shall supervise and coordinate other public educational institutions which may be assigned by law. Said board shall consist of seven members appointed by the governor to six year overlapping terms, subject to confirmation by the senate, Under regulations provided by law. The board shall appoint its executive officer and prescribe his term and duties. The governor and superintendent of public instruction shall be ex officio non-voting mem-

bers of this board.

COMMENTS

The second fundamental component of the proposed new state administrative structure for education is a board of regents of higher education. The same reasons which apply to the need for specialization and concentration on the public school board hold also for the board of regents. Higher education is fundamentally different from public school education--in goals, curriculum, financing, control, and operation--and it must be administered accordingly. There is very little in common between the public school system and higher education, other than a shared need to provide a smooth transition for students between the two systems.

A recognition of the particular needs and problems of higher education has led all but two states to establish separate state governing boards for higher education. Montana and Idaho remain the only two states which retain a single board for both public schools and the university system. Some states have more than two boards for their educational systems, and the generally recognized principle is that different educational tasks require different administrative structures.

As noted in the comments to the previous section, major studies of education in Montana have recommended the creation of two separate boards. The Durham Report on higher education (G. Homer Durham, The Administration of Higher Education in Montana, Helena, Montana, Legislative Council, 1958), for instance, described the difficulties of a state board which was unable to deal satisfactorily with both areas of education. As a result of the recommendation of the Durham Report, the legislature passed a law which divided the board into two parts, one of which sits as the state board of education, and one of which sits as the ex officio board of regents. This name-shuffling, however, has done little to alleviate the difficulty inherent in a dualistic board.

In addition to administrative questions, another fundamental reason exists for the establishment of a separate board of regents of higher education. Higher education is not simply another state service; the administrative structure of higher education cannot be considered an ordinary state agency. The unique character of the college and university stands apart from the business-as-usual of the state. Higher learning and research is a sensitive area which requires a particular kind of protection not matched in other administrative functions of the state.

Few would dispute the vital importance of academic freedom to the process of higher learning. Such freedom is the essence

of the American higher educational system. Only in an atmosphere of independent and unfettered inquiry can an objective pursuit of knowledge be conducted which is unhindered by prejudice and vested interest. The great contributions to both scientific and humanistic learning which have emerged from American colleges and universities can be attributed in large part to the freedom traditionally enjoyed by the teachers and students in such institutions.

This was the idea implicit in the founding of both private and public colleges and universities in the United States, and it is an idea which still prevails. The society as a whole accepts the principle unreservedly; rarely does a direct attack come upon the concept of free inquiry. However, a more subtle kind of coercion has made its appearance, and it is of the sort which is likely to become an even greater threat to the integrity of higher education in the future. This is the growing power of the centralized, bureaucratic state. Without overtly intending to curtail freedoms, the modern state has absorbed an increasing amount of power and control in the name of efficiency. A pervasive form of influence and manipulation has grown hand in hand with the emerging predominance of the government form and the computer.

A warning of this social trend was voiced in a landmark study of the condition of the American university conducted in the late 1950's under the chairmanship of Dr. Milton Eisenhower under a Ford Foundation grant. The study described a variety of creeping controls on university systems which have appeared in recent years across the country. It warns that, "strict" adherence by institutions of higher learning to a bewildering array of centralized bureaucratic controls will ultimately endanger the academic as well as the administrative freedom of the college" (Malcom Moos and Francis E. Rourke, The Campus and the State, Baltimore: The John Hopkins Press, 1959. p.6.). Among the sources of growing controls which increasingly impinge on universities are state budget offices, state auditors, comptrollers, purchasing departments, personnel offices, central building agencies, and a variety of older forms of control, such as legislative riders, which are being used in new ways to affect colleges and universities. The informal controls associated with these direct means often exert an even stronger influence on the educational process.

The study concludes that the maintenance of the system of higher education free from unnecessary bureaucratic and political interference is important not only to a healthy academic atmosphere but also to the administrative efficiency of the system of higher education:

> Creative research, by its very nature, requires freedom to move in a different direction if the facts uncovered require it. The farther away budget authority lies and the more time-consuming it is to get permission for

> such changes, the less will be accomplished. Research and instruction at the higher levels, are not services for which specifications can be written in advance, and for which one seeks the lowest bidder. They are venture capital investments where one successful strike in a multitude, either in the form of a new ideal, or a trained individual capable of producing them, may spell the difference between a forward-moving or a retrograding nation. (p. 316)

The power to coordinate and operate the system of higher education is one which belongs properly to an informed board of regents who have the knowledge and ability to determine rationally the course of higher education. Master plans have been suggested for the guidance of higher education in Montana but have failed to be applied because of a lack of power on the part of the board for their implementation. A board of regents empowered to carry out its informed judgments would be an important force for efficiency in the higher educational system.

It is this factor of efficiency which is highlighted in the study chaired by Dr. Eisenhower. The primary conclusion of the study is that freedom actually enhances efficient operation of a university system:

> [T]he fact that higher education very largely owes its autonomous position in state government to the belief that freedom promotes rather than limits efficiency.
>
> .....
>
> In the future there is one point that colleges and universities will need to make to the public and its elected representatives very persuasively. This is simply that the goal of efficiency in higher education can be realized without noneducational officials intervening in the fiscal affairs of colleges and universities. (pp. 313, 318)

Two factors in particular add to the efficiency of a university system which is relatively free to control its own affairs: long-range planning and administrative decentralization. There is a clear need for a strong board of regents to make long-range plans which are appropriate to the needs of higher education and free from short-term political whims. The limits of centralization in government operations have become apparent; particularly in such an unpredictable and flexible field as higher education, local and regional decision-making has demonstrated a greater efficiency than have ultra-centralized management techniques.

A board of regents which is given the power to control and manage its own affairs would enormously improve the planning situation for higher education in Montana. At present duplication and inter-institutional rivalry for funds is the rule. Under the proposed system the board of regents would submit a unified budget to the legislature for action. Competition for

funds which now occurs in the legislative halls would be resolved in advance by the board, which would have in mind a broad view of higher education. Similarly, the board would be in a position with knowledge and authority to eliminate wasteful duplication of courses and other endeavors which now drain university funds. Academic and administrative time which is now wasted in a multi-level budgeting process would be spared. Hard decisions concerning direction and operation of the entire university system could be made intelligently and objectively by such a board.

With these considerations in mind, the committee has developed the proposal for a board of regents of higher education embodied in section 11. The proposed board would fulfill the requirements for specialization, freedom, and efficiency described above. The board would have corporate status and would be charged with the function of controlling the academic, financial, and administrative affairs of the Montana university system. These are the characteristics and powers which such a board must necessarily have in order to be effective in carrying out the purposes for which it is designed.

In designating the board of regents a body corporate, the committee intends that the board be considered a legal entity which has powers as a board rather than as individuals and which is perpetuated as a separate administrative entity. With such status, the board gains a legal status appropriate to its task. One study notes:

> Many would interpret the granting of corporate status to a university as the highest achievement and fullest recognition of the independence of higher education. It is an acknowledgment of the freedom for objective inquiry necessary for an institution of higher education. [Hawaii, Legislative Reference Bureau, Hawaii Constitutional Convention Studies, Article IX: Education (Higher Education), Vol. 2, Honolulu: 1968, p. 8.]

As a Constitutional corporation, the board of regents would be presumed to exercise managerial control over its own internal affairs. Extensive studies which have been done on the Constitutional status of boards of higher education indicate that the particular determination of powers and responsibilities of a board for a given state depend to a large degree on the particular history and academic structure in that state. (See especially Charles H. Cashmore, Barry L. Hjort, and Ronald R. Lodders, Constitutional Authority for Higher Education: A Legal Analysis, report submitted to the Education and Public Lands Committee, Montana Constitutional Convention, 1971).

It is interesting to note that the Montana Constitution of 1884 named the board "The Regents of the University of Montana" and designated it a "body corporate" [Art. IX, sec. 12]. This language was changed when the concept of the state board was broadened in 1889 to include jurisdiction over other state educa-

tional institutions, [Art. XI, Sec. 8, Constitution of 1889].

Under the existing section 11, the Montana Supreme Court has declared that, "the board of education is a part of the executive department, and is but an agency of the state government" (State v. Brannon, 86 Mont. 206, 208 [1929]). In the same opinion, the court referred to the university as the "development arm" of the stats. It is the committee's view that this is not an adequate description of a state board of regents nor of the character or function of a university. The proposed section would establish the board and the university system in roles appropriate to a modern, free system of higher education.

The board of regents is also granted supervising and coordinating powers over other institutions of higher education as may be assigned by law. This distinction between board powers with respect to the university system and other institutions of higher education is of particular importance to community colleges, which are presently controlled by local boards. The language leaves flexibility to the legislature to respond to future developments in higher educatiocc. The membership and terms of the board are identical to those of the board of public education; however, in contrast to the lower board, the board of regents is authorized to appoint its own executive officer.

> Section 12. STATE UNIVERSITY FUNDS. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

COMMENTS

This section remains unchanged from section 12 of the existing Constitution. This provision has worked well in protecting the funds of the university system, and it is in accord with the conditions mandated in The Enabling Act for lands granted the university.

MINORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That the following section replace section 3 of the Education and Public Lands Majority Proposal:

ARTICLE

EDUCATION

Section 3. The public school fund shall forever remain inviolate. The public school fund and the funds of the state university and of all other state institutions of learning, from whatever source accruing, shall be safely and conservatively invested in public securities with the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law.

/s/ Lloyd Barnard /s/ Marjorie Cain /s/ Robert Noble

COMMENTS ON MINORITY PROPOSAL

ARTICLE ---

EDUCATION

Section 3. The public school fund shall forever remain inviolate. The public school furd and the funds of the state university and of all other state institutions of learning, from whatever source accruing, shall be safely and conservatively invested in public securities with the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law.

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to come into possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education.

The minority, therefore, proposes that specific restrictions to guarantee the secure investment of school funds be included under section 3 of the proposed new article. This intention also requires a modification of the proposed article on investments. The addition of the phrase "not otherwise Constitutionally restricted" allows the requirements specified in the minority's proposed section 3 of the new Education article to be fulfilled.

MINORITY PROPOSAL

BE IT PROPOSED:

That the following be substituted for section 6 of the Majority Proposal of the Education and Public Lands Committee.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly any appropriation, or pay from any public fund or money whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

/s/ Gene Harbaugh /s/ John Toole /s/ Dan Harrington

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

COMMENTS

A minority of the committee proposes that the section 8 of the present Constitution be modified by deleting the words "Or indirectly" from the first sentence and that a new sentence be added at the end of the section to read as follows: "This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education."

The minority subscribes to the position expressed in the body of the majority proposal in which Equality of educational opportunity for all is stated as a primary goal. It is the conviction of the minority that this goal amounts to a hollow promise, unless some provision is made in our Constitution which will protect the rights of that sector of our society which is engaged in nonpublic education. There are presently 11,645 elementary and secondary students, or 6.3% of the total elementary and secondary students of the state enrolled in nonpublic schools. A total of 2,775 students, or 10% of the total higher education students of the state, are enrolled in nonpublic institutions of higher learning.

It is common knowledge that many nonpublic institutions are facing extreme difficulties in financing their institutions. Nationally, in 1950 over 50 percent of university and college students were enrolled in nonpublic institutions. In 1969 this figure had dropped to 28 percent. many nonpublic elementary and secondary schools are also being forced to close.

Due to school closures, since 1964-65 the number of students enrolled in nonpublic elementary and secondary schools in Montana has dropped from 19,878 to 10,579, a cut in enrollment of almost half. In the same period 22 of the previous total of 64 nonpublic schools were forced to close their doors. (See Appendix G).

In an age when the state exercises vast economic powers and

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when inflationary pressures are rising, the hopes for the survival of any nonpublic educational institutions become increasingly dim.

The result is not only a denial of educational opportunity and diversity, but also a significantly greater drain on public revenue than would be the case if the schools were allowed to survive through the types of aids permitted under the federal First Amendment. An example of the increased costs to taxpayers resulting from the closing of nonpublic schools is that of the recent closing of parochial schools (334 high school students; 160 junior high students; 336 elementary students) in Helena. The additional costs which resulted in Helena from the displacement of students from nonpublic to public schools without any increase in tax base has been estimated to be approximately $1,767,600 over the Fast three-year period (based on bond issue, permissive levy, voted amount, and deficiency). This does not include the additional cost to the state foundation program for the support of the additional students. In the state as a whole the estimated savings to state taxpayers resulting from students educated in nonpublic elementary and secondary schools is approximately $6,000,000 per year. A table showing the state-wide savings to taxpayers is included in Appendix H.

In a time when the nation's courts are insisting on education as a fundamental and basic right, and that equality of educational opportunity be measured by a corresponding equality of financial expenditure, it is incongruous to retain a Constitutional statement that might deprive a significant segment of our students of any aid available which might help to equalize their educational opportunity.

Education is by its very nature a public purpose. This is the reason why the state involves itself so fully in accrediting and setting standards for both public and nonpublic schools. The ability of a student to receive a secular education should not be hampered by his religious or other beliefs. Incidental aid which might accrue to religiously connected institutions should not preclude the major benefit to the child of the receipt of an education, any more than religiously affiliated hospitals should be denied public assistance because of possible indirect aid to a church.

Section 8 of the existing Constitution is among the most restrictive, if not the most restrictive, such Constitutional provision in the nation. In addition to a complete ban listing all possible sources of public aid to sectarian schools or for sectarian purposes (which is identical to the most strirgently worded provisions in several other states), the Montana provision adds the words "directly or indirectly". This precludes even the kind of student benefit aid which has been accepted by the Federal Supreme Court.

It is the belief of the minority that the language contained

in section 8 of the present Constitution is unnecessarily stringent and poses a serious threat to the educational rights of students attending nonpublic educational institutions. The financing of education in America in the future is in a state of flux but there is every indication that the federal government will become increasingly involved. A recent study by the National Educational Finance Project concludes:

> Whatever federal grants are made in the days ahead, they should not by-pass state governments; instead, federal grants for public schools should be made to the state educational agency for allocation to local schools in accordance with state plans. (National Educational Finance Project, Future Directions for School Financing, Gainesville, Florida: 1971, p. 35.)

Should revenue sharing, block grants, and other forms of federal financing, yet to be devised, fall within the jurisdiction of state control, nonpublic educational institutions might be seriously affected if such funds had to be restricted in accordance with the regulations of the present section 8.

In reply to those who are fearful of changing the present system lest state aid to parochial institutions violate the principle of separation of church and state, the minority wishes to point out that the First Amendment of the federal Constitution guarantees the enforcement of that principle. The First Amendment has a back-log of almost 200 years of legal interpretation. That interpretation has evolved through the years to a rather clear definition of the types of aid which are permissible and those which are not. The primary concerns expressed by the Court in its most recent cases on the subject are on the principles of non-entanglement and state neutrality. In Lemon v. Kurtzman (403 U.S. 602) the Chief Justice Burger gave the opinion of the Court which stated:

> Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. . . .Judicial caveats against entanglement must recognize that the line of separation , far from being a "wall," is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship. . . .
>
> In order to determine whether the government entanglement with religion is excessive, we must examins the character and purposes of the institutions which are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority. (Id. at 756-757)

In this case the court ruled that state subsidized salaries for teachers of secular subjects in parochial schools violated

this principle of non-entanglement and therefore was not acceptable as a form of aid.

The minority proposal is in accord with the principles set forth in the First Amendment. What is at stake in the minority proposal is not separation of church and state, which is an issue of basic rights already delineated by the Federal Constitution and federal courts, but rather the issue of encouraging equality of educational opportunity.

Finally, the minority wishes to take the position that the language of the existing section 8 is rigid and inflexible, and is not in keeping with changing legal interpretations nor fluxuating social patterns. In order to protect our heritage of pluralism and foster the principle of equal educational opportunity, the minority report urges adoption of its proposal.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Public Lands to read as follows:

ARTICLE ---

PUBLIC LANDS

Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands of the state that have been or that may hereafter be granted to the state by Congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed, of except in the manner and for at least the Price prescribed in the grant thereof, without the consent of the United States. said lands shall be classified by the board of land commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area.

/s/ Richard Champoux
Chairman

/s/ Robert Noble
Vice Chairman

/s/ Lloyd Barnard

/s/ William Burkhardt

/s/ Marjorie Cain

/s/ Max Conover

/s/ Carl Davis

/s/ Gene Harbaugh

/s/ Dan Harrington

/s/ Robert Woodmansey

/s/ John Icole

COMMENTS ON MAJORITY PROPOSAL

Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands of the state that have been or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area.

COMMENTS

In testimony on the issue of public lands, officials of The State Land Board described public lands as trust lands held by the state and stated that the income derived from these lands is credited to the state school fund or other respective purpose for which said land was granted. Sportsmen maintained that there is a lack of public access to public lands. The committee also heard from several witnesses on existing and proposed management practices on public lands.

The committee took into account the mandate of The Enabling Act of 1889 in drafting its proposal. It is the general view of the committee that the primary Constitutional issue with regard to state lands is the designation of state responsibility for public lands as held in trust by the state to be disposed of as provided in the terms of the grant. Admittedly, some dispute as to the mandate of The Enabling Act has and will, in all probability, be raised. The "general public benefit" notion articulated in Thompson v. Babcock (147 Mont. 46) requires continual interpretation and specification. The question of just what is the "largest measure of legitimate and reasonable advantage to the state" remains open to further determination. The committee

emphasizes the singular mandate in The Enabling Act that the lands granted in section 10 were "for the support of common schools." The proposal embodies a fundamental protection of these lands entrusted to the state so that their disposition will be in accordance with the greatest public benefit, commensurate with the purposes for which the lands were granted.

This proposal expresses the committee's view of the best Constitutional method of Serving public interest, granting powers, and providing for needed flexitility. Convinced of the need for sound and efficient management of State School lands, the committee delegated this responsibility in aocther section of the Constitution to the Board of Land Commissioners. The merits for such action are (1) success Of present system and (2) need for flexibility. The economic success of the present system of land management is borne out ty the fact that the state had as of June 30, 1970, $52,907,243 dollars in its permanent school fund, with almost $3,000,000 dollars coming in on deferred payments every year. Montana remains one of two or three states in the nation which has been wise enough to retain almost the entirety of its federally granted school lands and which, as a result, now reaps a substantial income from such lands for schools.

The committee decided to delete the Constituticnal specification of land classes. House Joint Resolution #32 (Laws of Montana, 42nd Session, 1971, Vol. 11, p. 1709) expressed the sense of the legislature in the form of a recommendation to the Constitutional Convention that the board of Land Commissioners be given the authority to grant multiple use classifications and the power to change these classifications as the board deemed necessary. The committee agrees with the intent of this resolution to provide flexitility in management of public lands. No arguments were presented to the committee in opposition to Such a change. The committee can foresee only tenefits in the elirination of rigid Constituticnal classifications.

The other area of change in the article was the inclusion of the sentence, "Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area." Due to the fact that The Enabling Act was amended in 1932 to provide for such an exchange of lands, the committee proposes a Constitution that contains a provision consistent to the amended Enabling Act. Several witnesses pointed out the advantages which would accrue to the state from tile ability to make judicious exchanges to consolidate state holdings.

The committee also eliminated sections 2 and 3 of the existing Constitution, Article XVII, on the grounds that they have been made obsolete by the proposed new language.

In Summary, the committee has retained almost the entire first section of the Public Lands Article (Article XVII) of the present Constitution, with the inclusion of "exchange" of state

lands to add an important managerial power. The committee chose to eliminate Constitutional classifications for state lands due to the need for flexibility. sections 2 and 3 were eliminated because they are obsolete or are matters of purely legislative concern.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Investments to read as follows:

ARTICLE ...

INVESTMENTS

Section 1. UNIFIED INVESTMENT PROGRAM. The legislative assembly shall provide for a unified investment program for all public funds. The state may invest surplus funds of any political subdivision of the state when requested to do so by the governing board of that political subdivision. The legislative assembly shall designate a state officer or agency to accept or reject contributions to the stare. The state shall keep a permanent record of all contributions to the state, and shall periodically make provision for commemoration of those benefactors. The legislative assembly shall establish regulations and limitations for the investment of public funds. An audit of the state investment program shall be conducted annually.

/s/ Richard Champoux
Chairman

/s/ Robert Noble
Vice Chairman

/s/ Lloyd Barnard

/s/ William Burkhardt

/s/ Marjorie Cain

/s/ Max Conover

/s/ Carl Davis

/s/ Gene Harbaugh

/s/ Dan Harrington

/s/ Robert Woodmansey

/s/ John Toole

COMMENTS ON EAJORITY PROPOSAL

Section 1. UNIFIED INVESTMENT PROGRAM. The legislative assembly shall provide for a unified investment program for all public funds. The state may invest surplus funds of any political subdivision of the state when requested to do so by the governing board of that political subdivision. The legislative assembly shall designate a state officer or agency to accept or reject contributions to the state. The state shall keep a permanent record of all contributions to the state, and shall periodically make provision for commemoration of those benefactors. The legislative assembly shall establish regulations and limitations for the investment of public funds. An audit of the state investeert program shall be conducted annually.

COMMENTS

The relevant article of the existing Constitution (Article XXI) was jointly assigned to the Revenue and Finance Committee and the Education and Public Lands Committee. After due consideration of the provision in conjunction with the Revenue and Finance Committee, a majority of the Education and Public Lands Committee has decided to adopt replacement language similar to that proposed by the former committee.

The Education and Public Lands Committee is concerned with the security and protection of the public funds of the state, but recognizes the obsolete character of most of the fxistirg article on the Trust and Legacy Fund. Due to the confused history of the fund and the statutory nature of most aspects of its investment, the committee feels that only a broad statement of investment policy is necessary. A unified state investment program is the most rational way to administer such funds, and it is a method which promises to increase the income from such monies over what has been realized in the Fact.

This proposed section differs from the eajority proposal of the Revenue and Finance Committee in two major respects. First, the committee feels that it is important to allow investment of the funds of localities only at their own request. Secondly, due to the particular character of gifts and grants made to the educational systen, the committee agrees that it is important to maintain records of such gifts and to commemorate the benefactors. Otherwise the majority of the Education and Public Lands Committee is in agreement with the proposed language and rationale of the majority of the Revenue and Finance Committee on this provision.

MINORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That the following sentence replace the first sentence of the Education and Public Lands Majority Proposal:

ARTICLE ___

INVESTMENTS

The legislative assembly shall provide for a unified investment program for all public funds not otherwise Constitutionally restricted.

/s/ Lloyd Barnard /s/ Marjorie Cain /s/ Robert Noble

COMMENTS ON MINORITY PROPOSAL

ARTICLE ___

INVESTMENTS

The legislative assembly shall provide for a unified investment program for all public funds not otherwise Constitutionally restricted.

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to corns ictc possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education. The addition of the phrase "not otherwise Constitutionally restricted" in the proposed investments article allows the requirements specified in the minority's proposed section 3 of the new education article to be fulfilled.

APPENDIX A

CROSS REFERENCES

EDUCATION ARTICLE PROPOSED SECTION	PRESENT ARTICLE AND SECTION
1	XI, 1, 6, 7
2	XI, 2
3	XI, 3
4	XI, 4
5	XI, 5
6	XI, 8
7	XI, 9
8	XI, 12
9	XI, 11
10	XI, 11
11	XI, 11
12	xi, 12
Public Lands Article	
1	XVII, 1, 2, 3
Investments Article	
1	XXI, (entire article)

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Education and Public Lands Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	11	Virginia Blend	Full State Funding	Intent included in part, Section 1
2.	29	Marian Erdmann	School Election	Intent incorporated Section 8
3.	41	John Leuthold	Public Aid	Intent incorporated in part, Sec. 6
4.	43	R. Champoux	Equal Educational Opp.	Incorporated in Section 6
5.	46	Mike McKeon	Public School Financing	Intent Incorporated
6.	49	C. Blaylock	Apportionment of School Funds	Incorporated in Section 8
7.	68	Carl Davis	Investment of School Funds	Incorporated in part in Sec. 1,3,5
8.	74	Max Conover	Investment of Public School Fund	Adopted with slight changes as Sec. 3
9.	85	G. Rollins	Body Corporate	Incorporated in part Section 11
10.	91	Marjorie Cain	Equal Educational Opportunity	Incorporated in part Section 1
11.	102	R. Kelleher	Financial Suppt. Private College	Rejected

12.	113	R. Roeder	Teachers' Salary Equity Board	Rejected
13.	128	M.N.Robinson	Appoint Board of Education	Rejected
14.	130	M.N.Robinson	Public Libraries	Incorporated in part in Section 1
15.	135	Carl Davis	Exchange of Public Lands	Adopted with slight changes as Public Lands Article
16.	142	John Toole	Two Boards	Incorporated in part in Section 11
17.	143	John Toole	Combine Sections 1 and 6	Intent incorporated in Section 1
18.	146	D. Bugbee	Board of Regents	Intent incorporated in part in Sec. 11
19.	164	G. Harbaugh	Section 8	Rejected in majority report. Adopted in minority report
20.	171	W. Burkhardt	Board of Regents body corporate	Intent adopted in Section 11
21.	175	G. Harbaugh	School Lands	Intent incorporated in part in Public Lands Article

APPENDIX C

WITNESSES HEARD BY CCMMITTEE

Name - Affiliation - Residence - Subject

1. N. c. Cstrander - Seventh Cay Adventist Churches - Helena - Public Aid tc Ncn-Public Schccls.
2. Dr. E. L. Lynn - citizen- Helena - Public Aid tc Ncn-Public Schools.
3. Chadwick Smith - Montana Schccl Boards Assoc. - Helena - Two Boards of Education.
4. Con Scanlin - Educatcr - Billings -Educaticnal Philcscphy.
5. c. Ii. Anderson - citizen - Dillcn - Educaticn in General.
6. Bill Cainan - Mascns cf Montana - Helena - Public Aid to Ncn-Public Schccls.
7. Gladys Vance - PTA - Great Falls - General Educaticn.
8. Lloyd Markell - Mcntana Edccaticn Asscc. - Helena - Article XI.
9. Harriet Melcy - Member of the State Bcard - Helena - Twc Boards cf Educaticn.
10. Harry Axtmann - Supt. cf Schools, Rccsevelt county - Wolf Pcint - Ccunty Superintendents.
11. Clarice Beck - American Asscc. cf University Women - Helena - Age Limit.
12. Rcbert Herrig - Supt. of Schccls, Linccln County - Iibby - Ccunty Superintendents.
73. Margaret Brcwn - Supt. cf Schccls. Gallatir Ccunty - Bczeman - County Superintendents.
14. lad Schwinden - State Land Ccmmissicner - Helena - State Lands and public access.
15. Fred Johnscn - citizen - Great Falls - Public Lands.
16. Dolores Colburg - State Supt. cf Public Instruction - Helena

- All aspects of Education.

17. Maurice Hickey - Montana Education Association - Helena - Public Lands.

19. Fletcher Newby - Environmental Council - Helena - Public Lands.

19. Steven Coldiron - State Low-Income Organization - Helena - Article xi, sections 5 and 7.

23. Robert Pantzer - President, University of Montana - Missoula - Two Boards.

21. Kenneth Bohyans - Mont. Ass-ccc. for Retarded Children & Adults - Helena - Age limit.

22. Dr. William Purdell - College of Great Falls - Great Falls - Public Aid to Non-Public Schools.

23. John Sheehy - Montana Catholic Conference - Billings - Public Aid to Non-Public Schools.

24. Lyle Conner - Masons of Montana - Helena - Public Aid to Non-Public Schools.

25. John Eldredge - citizen - Helena - Public Aid to Non-Public Schools.

26. Jack Holt - citizen - Helena - Public Aid to Non-Public Schools.

27. John S. Piatt - Americans United - Great Falls - Public Aid to Non-Public Schools.

28. Ernest Neath - Masons of Montana - Helena - Public Aid to Non-Public Schools.

29. Leo Kottas - Masons of Montana - Helena - Public Aid to Non-Public Schools.

30. George Schotte - Carroll College - Helena - Public Aid to Non-Public Schools.

31. Rev. John Moes - Christian Reform Church - Conrad - Public Aid to Non-Public Schools.

32. Forrest Anderson - Governor - Helena - State Board of Education.

33. Robert watt - Montana Student President's Assoc. - Helena - State Board.

34. Harry Gaghen - Faculty Senate, MSC - Billings - Two Boards.

35. Pclly Prechal - Faculty Senate, EPC - Billings - State Ecard.

36. James Short, President, WMC - Dillcn - Two Eoards.

37. Carl McIntosh - President. MSU - Bozeman - Twc Bcards.

38. James Kenny - Montana Schccl Eoards Assoc. - Helena - State Ecard of Educaticn - Cne Ecard.

39. Dr. Larry Blake - Flathead Valley Ccmmunity College - Kalispell - No. of Ecards.

4c. Vern Kailes - Miles City Ccmmunity Ccllege - Miles City - No. of Ecards.

41. Jim Hoffman - Dawscn Ccunty Ccmmunity College - Glendive - Descriptien cf Board's powers.

42. Arthur Hart - Vccaticnal Rehabilitatien - Helena - Vccaticnal - Rehat in Ccnstitutien.

43. Jack Gundcrson - State Representative - Pcwer - State Supt.

44. Leroy Corbin - Montana Fedfraticn cf Teachers - Eutte - State Superintendent.

45. Bosemary Eoschart - citizen - Billings - State Superintendent.

46. Erv. Gysler - Delegate - Fort Benten - Vc Tech.

47. Maurice Driscoll - Director, Vc-Tech - Butte - Vc-Tech.

48. William Korizek - Director, Vc-Tech - Helena - Vc-Tech.

49. Jim Carey - Director - Great Falls Vo-Tech Center - Vc-Tech.

50. Gene Downey - Director - Missoula Vc-Tech Center - Vo-Tech.

51. Ray Heley - Circtcr - Billings Vo-Tech Center - Vo-Tech.

52. Gcrdon Simmons - Misscula Ccunty High Schccl - Missoula - Local Ccntrol of Vo-Tech Centers.

53. John Gifse - Misscula County High Schccl - Misscula - Vo-Tech.

54. Einar Brcsten - Montana Vocaticnal Educatcrr Asscc - Helena - Vo-Tech Centers.

55. Grace Hanson - County Supt., Flathead - Kalispell - County Superintendents.

56. Opal Eggert - Lobbyist for Co. Supt. - Helena - County Superintendents.

57. Dorothy Simons - Lewis & Clark Co. Supt. - Helena - County Superintendents.

58. Carolyn Brojen - Missoula Co. Supt. - Missoula - County Superintendents.

59. Earl Barlow - Office of Public Instruction - Helena - Indian Education.

60. Bert Corcoran - Rocky Boy Supt. - Ex Elder - Equal Education for Indians.

61. Frances Satterthwaite - Inter-Tribal Policy Board Lobbyist - Helena - Indian Education.

62. Frank Shone - School District No. 1 - Helena - Indian Education.

63. Dwight Billedeaux - Eastern Montana College - Billings - Indian Education.

64. Robert Jovick - Montana Student President's Assoc. - Bozeman - Students Concern in Education.

65. Frank Dudas - Associated Students - MSU - Bozeman - Students Concern in Education.

66. Wayne Gildroy - Montana Student President's Assoc. - Students Concern.

67. John Christensen - Associated Students - U of M - Missoula - Students Concern.

68. Stan Juneau - Indian Club, EMC - Billings - Indian Education.

65. Calvin Herrera - Indian Club, EMC - Billirgs - Indian Education.

70. Clara Lee McMakin - Indian Club, EMC - Billings - Indian Education.

71. Dale Kindness - Indian Club, EMC -Billings - Indian Education.

72. Raycla Adele Eder - EMC - Billings - Indian Education.

73. Frank LaMere - EMC - Billings - Indian Education.

74. Leroy Berven - U of M - Missoula - Students Concern.

75. John Murphy - Student - Missoula - Students Concern.

76. Tom Daily - Student - Missoula - Students Concern.

77. Patrica Lenny - Student - Missoula - Students Concern.

78. Ulyssis Doss - Professor, U of il - Missoula - Equal Educational Opportunity.

79. Harold Gray - University of Montana - Missoula - Equal Educaticnal Opportunity.

80. Jim Graham - citizen - Miles City - Equal Educaticnal Opportunity.

81. John Mansfield - citizen - Great Falls - Equal Educaticnal Opportunity.

82. James Shea - citizen - Great Falls - Equal Educaticnal Opportunity.

83. Barnie Old Coyctf - Montana State University - Bozeman - Equal Educaticnal Opportunity.

84. D. D. Coopfr - Montana Education Arsociaticn - Helena - Equal Educational Opporunity.

85. James Howeth - Board of Investments - Helena - Trust and Legacy Fund.

86. Marjorie King - Member State Board - Winnett - State Board Of Educatior.

87. Fred Mielke - Member State Board - Havre - State Board of Educaticn.

88. John French - Member of State Board - Ronan - State Board of Education.

89. Raymond Hoakanson - Montana Assoc. of School Administrators - Livingston - financing.

90. John Campbell - Montana School Boards Assoc.- Helena - Educational Financing.

91. mike 'Billings - Office of Public Instruction - Helena - Financing.

92. Mike Meloy - Officf of Public Instructicn - Helena - Foundation Program - Financing.

93. John Ray - citizen - Hamiltcn - Ficancicg.

94. James Cox - U of M, School of Education - Public Aid tc Non-Public Schools.

95. Earle Thompson - State Library Commission - Missoula - Libraries.

96. Doris Davies - American Assoc. of University Women - Libraries.

97. Robert Gopher - citizen - Great Falls - Indian Education.

98. George Darrow - State Representative - Billings - section 1.

99. Dr. Bill Fisher - U of M, School of Education - Public Aid to Non-Public Schools.

100. Ray Gulick - citizen - Joplin - Education in general.

ROLL CALLS ON EDUCATION PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	12	TOTAL Y	TOTAL N	TOTAL A
CHAMPOUX, Richard		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
NOBLE, Robert		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
BARNARD, Lloyd		Y	Y	Y	Y	Y	Y	Y		Y	N	Y	N	9	2	
BURKHARDT, William		Y	Y	Y	Y	Y	Y	Ab	Ab	Y	Y	Y	Y	10		2
CAIN, Marjorie		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
CONOVER, Max		Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	11	1	0
DAVIS, Carl		N	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	10	1	0
HARBAUGH, Gene		Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y	9	3	0
HARRINGTON, Dan		Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y	9	3	0
WOODSMANSEY, Robert		Y	Y	Y	Ab	Y	Y	Y	Y	N	N	Y	Y	9	2	1
TOOLE, John		Ab	Ab	Ab	Ab	Y	N	Ab	Ab	Ab	Y	Ab	Ab	2	1	9
TOTAL	YEA	9	10	10	9	11	8	7	7	7	8	10	9			
	NAY	1					3	2		3	3		1			
	ABSENT	1	1	1	2			2	3	1		1	1			

MEMBER	SECTION														TOTAL		
	Public														Y	N	A
CHAMPOUX, Richard	Y				Y										2	0	0
NOBLE, Robert	Y				Y										2	0	0
BARNARD, Lloyd	Y				N										1	1	0
BURKHARDT, William	Ab				Ab										0	0	2
CAIN, Marjorie	Y				Y										2	0	0
CONOVER, Max	Y				Y										2	0	0
DAVIS, Carl	Ab				Ab										0	0	2
HARBAUGH, Gene	Y				Y										2	0	0
HARRINGTON, Dan	Y				Y										2	0	0
WOODMANSEY, Robert	Y				Y										2	0	0
TOOLE, John	Ab				Ab										0	0	2
TOTAL YEA	10				9												
TOTAL NAY					1												
TOTAL ABSENT	1				1												

APPENDIX E

OFFICE OF THE STATE SUPERINTENDENT

February 16, 1972

To: Richard Champoux, Chairman, Education Committee

From: Mike Billings, Director, financial Support for Schools /s/ Mike Billings

Subject: Request for a fiscal note concerning proposed new wording of article XI, section 5.

If the wording in Article Xl, section 5 is changed in such a way that the I & I money is distributed to the elementary and secondary schools of the state (in place Of to the public schools according to the 6-20 aye census), no cost increase will be realized in administering the distribution of the funds. In fact, a substantial cost reduction would be realized, provided that the legislature includes the I and I noney in the state equalization aid account, This act uould eliminate tte current costly annual practice of distributing the I and I money in March. This practice presently causes the school districts to spend a cumulative total of about $50,000 annually to collect the census, and causes the Office of the Superintendent of Public Instruction to expend about $3,000-$5,000 to process the census.

Thus, if the wording of Article XI, section 5, is charged as indicated, an annual savings of approximately $53,000-$55,000 could very well be realized by the education establishment in Montana. Under no conditions uould the proposed section lead to increased cost of administration at the state or local levels.

MGB:kh

FUNDS GRANTED TO MONTANA NONPUBLIC EDUCATIONAL INSTITUTIONS UNDER SELECTED FEDERAL PROGRAMS

1. ESEA Title 1: Programs for educationally deprived children.
Federal Guidelines: Educationally deprived children in nonpublic schools may participate, although no funds can be paid directly to a nonpublic school.

   Total amount paid to Montana public schools: $3,317,276
   " " " " " nonpublic " : 0
   (However, 6% of participating children were nonpublic school children in FY 1970)

2. ESEA Title 2: Texbooks supplied on permanent loan basis.
Federal Guidelines: Nonpublic schools eligible to order books from a list supplied by Superintendent of Public Instruction.

   Total amount allotted to Montana public schools: $155,462
   " " " " " nonpublic " : 5,775 (5.5%)

3. ESEA Title 3: Supplementary educational centers and services, including counseling, remedial instruction, experimental educational programs, etc.
Federal Guidelines: No funds can be granted directly to nonpublic schools, but nonpublic school children can participate in projects administered by public schools.

   Total amount allotted to Montana public schools: $532,198
   No estimate provided of nonpublic children participating; no funds allotted to nonpublic schools.

4. ESEA Title 6: Special education training for teachers and students.
Federal Guidelines: Nonpublic school teachers eligible for training funds and nonpublic school children eligible to participate in programs run by public schools.

   Total amount allotted to Montana public schools: $262,279.
   No estimate made of nonpublic school children participating; no funds allotted to nonpublic schools.

5. NDEA Title 3: Federal aid to higher education, the arts, etc.
Federal Guidelines: Nonpublic schools not allowed to participate in part of program administered by the Superintendent of Public Instruction, but nonpublic schools can make direct application to U.S. Office of Education.

   Total amount allotted to Montana public schools: $207,298.
   None allotted to Montana nonpublic schools through the Superintendent's Office. Unknown amount granted directly to nonpublic schools.

6. MDTA Title 2: Manpower development and vocational training.
Federal Guidelines: Act provides that training may be done in nonpublic schools if they offer comparable quality and competitive costs, if the training is not available in public institutions, or if there is a long waiting period for entrance to public schools.

Total amount allotted to Montana public schools: $1,359,000
" " " " " nonpublic " : 114,918 (9.5%)

7. HEFA Title 1: Building grants to institutuions of higher education.
Federal Guidelines: Funds may be granted for construction purposes to nonpublic institutions.

Total amount allotted to Montana public institutions: $6,341,001
" " " " " nonpublic " 1,009,246
(13.7%)

Total amount allotted to Montana public schools in all of the above programs: $5,833,513

Total amount allotted to Montana nonpublic schools in all of the above programs: $ 120,693
(2%)

(plus an undetermined number of nonpublic school children who participate in public school-sponsored programs.)

Total amount allotted to Montana public institutions of higher education in the above program: $6,341,001

Total amount allotted to Montana nonpublic institutions of higher education under the above program: $1,009,246

(13.7%)

($ in thousands)

	1964	1965	1966	1967	1968	1969	1970
CARROLL COLLEGE							
Higher Education Facilities Act, Title I (Grants for construction to undergraduate institutes)		$129,620	$ 15,079		$405,557		
Higher Education Facilities Act, Title III (Loans for construction to undergraduate institutes)			480,000		492,000		
Cuban Loans			8,865	$ 5,200	1,750	$ 500	$ 500
Educational opportunity Grants				34,680	59,300	91,760	108,814
National Defense Student Loan	$ 76,006	73,800	122,085	169,303	163,315	165,339	145,595
College Work-Study Program			24,944	103,383	197,479	274,275	277,582
Higher Education Act, Title I (Community Service and Continuing Education)				75			500,000

($ in thousands)

	1964	1965	1966	1967	1968	1969	1970
COLLEGE OF GREAT FALLS							
Higher Education Act, Title VI-A (Special Equipment)				$ 1,224	$ 3,464	$ 3,731	
Higher Education Act, Title III (Developing Institutions)				54,908			
Educational Opportunity Grants				19,170	38,300	59,000	$ 45,121
National Defense Student Loan	$ 38,624	$ 36,000	$ 74,822	86,619	62,282	80,881	65,409
College Work-Study Program			11,908	56,079	48,851	74,772	115.267
Higher Education Act, Title I				16,938			
ROCKY MOUNTAIN COLLEGE							
Higher Education Facilities Act, Title I (Grants)				463,719			
Higher Education Facilities Act, Title III, (Loans)				593,000			
Higher Education Act, Title VI-A				1,945			
Educational Opportunity Grants				18,160	35,800	45,560	39,504

($ in thousands)

	1964	1965	1966	1967	1968	1969	1970
ROCKY MOUNTAIN COLLEGE (Con't.)							
College Work-Study Program			$ 5,540	$14,585	$26,786	$63,683	$52,534
Higher Education Act, Title I					13,863		1,367
National Defense Student Loan	$ 40,000	$ 45,250	63,900	76,794	56,770	51,137	43,326

APPENDIX G

NON-PUBLIC SCHOOL ENROLLMENT
BY GRADE

YEAR	TOTAL K-8	TOTAL 9-12	Spec. Ed.	State Total
1964-65	---------	----------	--	19,878
1967-68	12,776	4,108	43	16,884
1968-69	11,306	3,788	30	15,094
1969-70	8,616	3,340	--	11,956
1970-71	8,204	3,205	13	11,409
1971-72	7,439	3,140	--	10,579

Non-Catholic Private Schools	Montana Parochial Schools	
27	Total Number of Schools	46
1380	Total Number of Students	10,265
80	Total Number of Teachers	533
$845,568	*Total Savings to Tax-payers	$6,216,132
	(Estimated Biennial Savings)	$13,000,000

	No. of Schools	NO. of Parochial Students	Savings to tax-payers by parochial schools*
Billings	5	1567	$ 908,360
Butte	3	1202	798,108
Great Falls	7	2057	1,364,081
Missoula	4	885	528,732
Anaconda	4	1160	729,013
Bozeman	2	136	85,162
Kalispell	1	192	96,192
Havre	1	373	186,873
Glasgow	1	196	88,200
Glendive	1	235	105,985
Lewistown	2	268	137,797
Livingston	1	165	82,500
Miles City	2	465	244,131
Deer Lodge	1	99	49,005
Malta	1	96	46,080
Shelby	1	100	52,400
Sidney	1	98	53,116
Wolf Point	1	132	62,964
Hardin	1	126	71,316
Pryor	1	51	30,600
Hayes	2	81	65,514
Ashland	2	474	365,375
St. Ignatius	1	107	64,628
TOTALS	46	10,265	$6,216,628

*Dollar amounts are computed for each school district by average per pupil cost for 1969-70. Value of property and buildings not included.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

LOCAL GOVERNMENT

COMMITTEE PROPOSAL

NO. XI

Date Introduced: February 19, 1972

/s/ Oscar I. Anderson, Chairman

/s/ Virginia H. Blend, Vice Chairman

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL 780

TEXT OF MAJORITY PROPOSAL 782

COMMENTS ON MAJORITY PROPOSAL 785

Section 1. Definition 785

Section 2. Counties 786

County Boundaries 787

county Seats 788

Section 3. Forms of Government 788

Present County Government Form 789

"Incorporating...Dissolving" 791

Section 4. General Powers 791

Cities and Towns 792

Counties 793

Other Local Units 794

General Comments 794

Section 5. Self-Government Charters 795

Section 6. Self-Government Powers 796

Section 7. Intergovernmental Cooperation 798

Section 8. Revenue Sharing 799

Section 9. Initiative and Referendum 799

Section 10. Recall 799

Section 11. Voter Review of Local Government 800

APPENDIX

Cross Reference of Present and Proposed Articles 802

Delegate Proposals Considered by Committee 803

Witnesses Heard by Committee. ..*.....*.....*** 805

Roll Calls..... 809

Date: February 19, 1972

To: MCNTANA CCNSTITUTICNAL CCNVENTICN

From: Local Government Committee

Ladies and Gentlemen:

The Local Government Committee submits here-with its unanimous proposal for a new local Government Article. The proposal is intended to replace in their entirety the present Article XVI ("Counties--Municipal Corporations and Offices") and Article XIX, section 6 (dealing sith county offices).

The committee was in general agreement that a new local government article should provide flexibility, but was divided on how best tc attain this goal. This proposal tends to work with the existing local government structure of cities, towns and counties and seeks tc achieve improvement by encouraging experimentation in local government powers and form. Strong minority support originally was voiced in the committee for a proposal by Delegate Franklin Arness tc replace the existing city, town, county and school district structure with a new one-level district structure.

Eventually, each of the eleven committee members voted for the adaption of this proposal. In signing this report, however, a committee member does not necessarily endorse each and every statement in it.

This proposal was adopted after consideration was given" tc nearly 3,000 citizen suggestions and 19 delegate proposals. The committee expresses its thanks to the citizens for their interest

and tc the delegates uhc submitted proposals, the intent cf which influenced the final prcpcsal tc a great degree.

Tho committee utilized the services cf the fcllcwing people in addition tc its members: Mrs. William I. Romine, committee secretary; Miss Pat Chvatal, a Carrcll College senior, intern, and Jerry Hcllcrcn, committee research analyst,

The committee believes this prcpcsal provides a much improved Ccnstitutional framework fcr local government in Montana and urges its adoption by the Ccastituticnal Conventicn.

/s/ Oscar I. Anderscn
Chairman

/s/ Virginia H. Blend
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE__

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state of Montana as they exist at the adoption of this Constitution are the counties of the state. County boundaries shall not be changed or county seats transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. The legislature shall provide by law for the government of local government units and for procedures of incorporating, classifying, merging, consolidating, and dissolving such units and of altering their boundaries. The legislature shall provide by law for optional or alternative forms of government for each unit or combination of units to enable a unit or combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question.

One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator whose terms, qualifications, duties and compensation shall be prescribed by law. The board of County Commissioners may consolidate two or more offices. The boards of Commissioners of two or more counties may provide for a joint office and for the election of one official to perform the duties of that office in the respective counties.

Section 4. GENERAL POWERS. Local government units not exercising self-government powers under sections 5 and 6 shall have the following general powers:

(1) Incorporated cities and towns shall have the powers of a municipal corporation and such legislative, administrative, and other powers as provided or implied by law.

(2) Counties shall have such legislative, administrative and other powers as provided or implied by law.

(3) The powers of incorporated cities and towns and counties shall be liberally construed.

(4) Other local government units shall have such powers as provided by law.

Section 5. SELF-GOVERNMENT CHARTERS. The legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question. The prescribed procedures, however, shall not require approval of a charter by a legislative body.

Charter provisions with respect to a local government unit's executive, legislative and administrative structure and organization shall be superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. local government units adopting self-government charters may exercise all powers not prohibited by this Constitution, by law or by charter.

This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.

Section 8. REVENUE SHARING. Nothing in this Constitution shall prohibit the state from sharing revenue with local government units or the units from participating in revenue sharing with the state or the United States.

Section 9. INITIATIVE AND REFERENDUM. The initiative and referendum powers reserved to the people by the Constitution shall be extended by law to the qualified voters of each local government unit.

Section 10. RECALL. All elected public officials of local government units are subject to recall by the voters of the unit from which elected. Procedures for recall shall be prescribed by law.

Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The legislature shall within four years of the adoption of this Constitution provide for procedures by which each local government unit either separately or jointly shall review the government structure of the local unit or joint unit and shall submit one alternative form of government to the voters at the next general or special election. The legislature shall provide for a review procedure each ten years after the first election.

/s/ Oscar L. Anderson
Chairman

/s/ Virginia H. Blend
Vice Chairman

/s/ Franklin Arness

/s/ Arnold W. Jacobsen

/s/ Clark E. Simon

/s/ Marian S. Erdmann

/s/ Thomas M. Ask

/s/ Mrs. Thomas "Katie" Payne

/s/ M. Lynn Sparks

/s/ George W. Rollins

/s/ Lucile Speer

COMMENTS ON COMMITTEE PROPOSAL

"Flexibility" and "accountability" best describe the goals embodied in the proposal of the Local Government Committee.

The proposal aims at creating the widest possible array of local government forms so that local structure may be tailored to local needs. It provides for new self-government powers that may be exercised on the local level and gives a Constitutional boost to local efforts to eliminate costly and inefficient duplication of services and functions.

At the same time, the proposal requires accountability from local government units. Each new form of government authorized under the proposal would require the approval of local voters before it could be implemented. Local governments could exercise self-government powers only with the approval of local residents. County boundaries could be changed only if a majority of the affected residents agree. The people would be guaranteed the powers of initiative, referendum and recall on the local level.

Although the proposal would not force Montanans to change their local governments, it would force them to closely examine the local units with an eye toward improving them. This examination is provided for in a unique "voter review of local government" feature which--at the least--should pay huge dividends in terms of increased voter awareness in and concern for local government.

The length of the present local government provisions is more than cut in half by this proposal. Statutory material concerning indebtedness of new counties, county commissioner districts and county office location is deleted. The form of county government now in effect in 55 counties is mentioned--but only as one of what hopefully will be several optional forms of county government.

But the real "news" in the proposal is its incorporation of new devices to make local governments more responsive and responsible. Totally new provisions are added allowing local citizens to design their own form of local government, to increase local authority and responsibility and to end needless duplication of local services.

The Local Government Committee did not set out to replace the thinking of 1889 with that of 1972. Rather, it attempted to replace the thinking of 1889 with a broad framework that would allow implementation of the thinking of 1990, 2010, and 2072, as well as that of 1972. The committee believes this proposal creates that framework.

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government

units may be established by law.

COMMENTS

The present Montana Constitution creates considerable confusion in its scattergun use of terminology concerning local government. Such imprecise Constitutional terminology has resulted in confusion and court litigation. In an attempt to avoid this problem, section 1 adopts "local government units" as a generic term and specifies that counties and incorporated cities and towns fall within its meaning. However, the section specifically authorizes the legislature to create other local government units, thus providing freedom for the legislature to meet future needs that cannot be met by the traditional city or county structures. Certain special districts, for example, might be appropriately designated as "local government units" by the legislature.

The committee believes that section 1 will discourage litigation and avoid confusion concerning the rest of the Local Government Article; it also recommends that terminology corresponding to that used in this section be incorporated in other articles of the new Constitution when local government units are discussed.

Section 2. COUNTIES. The counties of the state of Montana as they exist at the adoption of this Constitution are the counties of the state. County boundaries shall not be changed or county seats transferred until approved by a majority of those voting on the question in each county affected.

COMMENTS

Section 2, admittedly extraneous, provides that the present county boundaries and county seats will be retained unless changed by a majority of those voting on the question in each county affected. County "A" could be consolidated with county "B" only if a majority of those voting on the question in each county approves. Thus, a large county could not "swallow" a small county with the latter's permission.

The proposed section combines sections 1, 2 and 8 of Article XVI of the present Constitution. Other than deletion of statutory material, the basic intent of these sections is retained-with one exception. The present language (sections 2 and 8) requires approval of a majority of the qualified electors of the county affected before a county boundary can be changed or a county seat transferred; the proposed section 2 would require approval of a majority of those voting on the question.

The difference can be quickly seen. Under the present provision, for example, if a county to be consolidated had 5,000 'qualified electors" but only 3,000 of them vote on the consoli-

dation question, a majority of the 5,000 (or 2,501), rather than a majority of the 3,000 (or 1,501), apparently would have to favor consolidation to meet the Constitutional restriction. Under the proposed language, on the other hand, a majority of those voting--or 1,501--would be required.

In substituting the less stringent--but more common--majority requirement, the committee endorses the reasoning that persons who do not vote on an issue should not be able to thwart the will of those who do. Let the proponents and opponents of county consolidation or county seat transfer go to the polls and let the majority rule.

County Boundaries

Calls for county consolidation--both nationwide and statewide--have gone unanswered, despite their frequency during the Twentieth Century. Indeed, the number of counties nationwide has remained almost constant in the last 40 years, despite frequent complaints that many counties lack the population and economic base to be viable units of local government.

If judged by national standards, certainly many of Montana's 56 counties are too sparsely populated to meet the tests of viability. But who should be the final judge of whether a county is too large or too small and of whether it should be consolidated with another? The Local Government Committee believes this choice must be left to the voters of the counties affected.

Therefore, section 2 allows changes in county boundaries only if approved by a majority of those voting on the question in each county affected. The committee considered leaving the matter of county boundaries entirely to the legislature, but decided that the authority would be more appropriately lodged in the people of the affected counties. After all, if sparsely populated counties are as inefficient and uneconomical as their critics claim, certainly the residents of these counties soon will be clamoring for county consolidation because of high tax bills and insufficient local government services.

It should be stressed that the proposed section 2 does not prevent county consolidation. It simply requires that any such boundary change must be approved by the persons most directly affected-the residents of the counties concerned. It also should be noted that the proposed Local Government Article allows ways short of total consolidation in which counties with dwindling population and tax base can be aided. Under sections 3 and 5, a wide range of structural options can be provided, including one or more directed toward those counties that do not need the full range of county offices and services. Indeed, Petroleum County-the county with the smallest population in the state--already makes successful use of a county manager form of government. In addition, the broad language of section 7 should encourage counties to band together--and to join with cities and

towns within their boundaries--to provide more efficient, economical government services.

Provisions in the present Constitution (Article XVI, section 3) conceroing the division of debt when new counties are formed were deleted from this proposal on the basis that they can be provided by legislation--if they ever are needed.

County Seats

Constitutional provisions protecting county seats from being changed by legislative action are common among the 50 states. section 2 simply substitutes a concisa statement of the protection now found in Article XVI, sfction 2 and Article V, section 26. The present Constitution's requirement that county offices must be kept at the county seat (Article XIX, section 6) was deleted from the proposal. Such a requirement might prevent counties from sharing officers and setting up branch county offices. To the extent that such a requirement is needed, it can be provided for by legislation.

> Section 3. FORMS OF GOVERNMENT. The legislature shall provide by law for the government of local government units and for procedures of incorporating, classifying, merging, consolidating, and dissolving such units and of altering their boundaries. The legislature shall provide by law for optional or alternative forms of government for each unit or combination of units to enable a unit or a combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question.
>
> One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator whose terms, qualifications, duties, and compensation shall be prescribed by law. The board of County Commissioners may consolidate two or more offices. The boards of Commissioners of two or more counties may Provide for a joint office and for the election of one official to perform the duties of that office in the respective counties.

COMMENTS

Section 3 aims at allowing the legislature to provide the broadest possible range of forms of local government for counties, cities, towns and other local government units, including consolidated forms. Virtually every national and state authority on local government urges such flexibility; indeed, the Montana Constitution (Article XVI, section 7) already gives the legislature broad powers to provide "any plan, kind, manner or form"

cf lccal government.

The intent cf section 3 is to cffer just as brcad freedom tc the legislature to provide various fcrms cf lccal government as is allcwed under the present section 7. Because cf that intent, the committee ccnsidered retaining the present language cf sectiсn 7; this idea eventually was rejected because the present wording is unclear and confusing. It is hoped that section 3's straightforward directiсn tc the legislature tc prcvide cptional and alternative forms cf gcvernment will result in a greatly expanded offering tc the local gcvernment units in Montana.

The possibilities that cculd be provided under sectiсn 3 are great. At present, cnly three forms cf city government (maycr-ccuncil, ccamission, and ccnaissiсn-manager); two forms of county government (the traditiсnal form and ccunty manager), and one general fcrm cf city-county ccrsclidatiсn are authcrized ty statute in Mcntana. Cther states cffer ccnsiderably more alternatives. New Jersey, for example, emplcys what has been called the "cafeteria-style" fcrm cf lccal government cpticns, under which a lccal unit may choose different alternatives within a fcrm of govern me nt cffered by the legislature. sectico 3 was drafted to allow such a flexible "cafeteria" in Mcntana, tcc. Thus, the legislature cculd cffer the maycr-ccuncil fcrm of government but leave tc the locality the questiсn cf whether tc elect cr appcint a city treasurer, pclice judge and cther city cfficers. In this regard, it shculd be noted that section 3 specifically directs the legislature to provide fcrms cf gcvernment which can be amended as well as adcpted and abandcned, by a vcte cf the lccal residents.

Sectiсn 3 provides the legislature with authcrity to meet the rapidly shifting gcvernmental needs of vastly different units of lccal government. For example, the legislature under sectiсn 3 could provide streamlined forms cf ccunty government specially suited for areas in which pcpulatiсn is dwindling and a variety of forms of consclidated government fcr areas where virtually all of a ccunty's populatiсn is urban.

Sectiсn 3 clearly states ttat any cpticnal cr alternative plan will gc intc effect cn a local level cnly after it has been approved by the voters. The legislature is directed tc cffer choices of government structure fcr lccal gcvernment units; the voters cf thcse units have the final control over what type of structure they select.

Present County Government Fcrm

Section 3 provides that cne fcrm cf cptional government available to counties shall be what might be called the "traditionalform"--that structure now used in 55 cf the state's 56 counties. This fcrm cf government-including 13 elected officials--has been spelled cut ir Mcntana's Constitution since 1889. Similar forms receive Constitutional reccgnitiсn in most

other states.

The question facing the Local Government Committee was whether to continue the present Constitutional emphasis on the "traditional" form of county government or to Eliminate ary Constitutional mention of the "traditional" form. The committee believes its solution to the problem is both wise and workable.

Section 3 emphasizes the legislature's broad power to offer optional and alternative forms of government, subject to local voter approval. But it provides that one of these optional forms must be the "traditional" form of county government. In other words, section 3 assures the people that they may, if they wish, continue to operate under their present county government structure, while at the same time encouraging counties to adapt their government structure to local needs. Under section 3, the "traditional" structure of county government might best be described as an "assured option."

And section 3 builds flexibility even within the "traditional" option. That is accomplished in two ways:

--The board of County Commissioners is empowered to consolidate offices within the county. This power already is contained in the present Constitution (Article XVI, section 5) and has received limited application, most notably in the frequent combination of the offices of sheriff and coroner.

--The boards of County Commissioners of two or more counties are authorized to provide for a multicounty office. For example, the commissioners of three sparsely populated counties might agree to elect one coroner to serve all three counties.

The offices of county attorney and clerk of district court, also mentioned in the proposed judicial article, are enumerated in section 3 for the express purpose of making the offices eligible for inter-county and multicounty consolidation. The Local Government Committee strongly recommends that the judicial article be worded so as not to foreclose the possible consolidation of these two offices with others as provided under section 3.

Eliminated from the provision for the "traditional" plan are the present complicated provisions for overlapping terms, procedures by which county offices may be consolidated and the method Of filling vacancies in county offices. If needed, these procedures may be outlined by law. More specifically, it is the intent of the committee that the language allowing the legislature to set qualifications for the county commissioners should allow the election of commissioners from districts, as is now the case.

Section 3 omits the present prohibition against county treasurers succeeding themselves in office.

The committee believes it is clear that the provisions of

section 3 concerning a majority vote on a new form of government in no way will weaken section 2, which requires a majority vote in each county affected when county boundaries or county seats are changed. If a new plan of government involves two or more counties to the extent that they would be consolidated, it is the intent of the Local Government Committee that section 2 would control, and a majority vote in each county would be required. It should be noted that the present Constitution (Article XVI, sections 7 and 8) also contains different majority requirements for form of government (section 7) and boundary changes (section 8).

"Incorporating...Dissolving"

Section 3 directs the legislature to provide procedures for "incorporating, classifying, merging, consolidating and dissolving" units of local government and of altering their boundaries. The importance of these factors dictates their Constitutional mention. For example, the committee wishes to clearly direct the legislature to classify local government units in order to deal with them more effectively through legislation. Classification probably will take the form of dividing cities into population classes, then applying certain legislation only to one or several classes. Such classificatica is used now under Montana law for instances in which legislation must be tailored for the specific needs of a group of local government units.

The committee also wishes to direct the legislature to provide methods by which cities and towns, in effect, may go out of business. At present, methods for disincorporation are provided by law only for towns with less than 500 population. The committee believes disincorporation might be a workable means of ending needless duplication of governmental services on the local level.

Section 4. GENERAL POWERS. Local government units not exercising self-government powers under sections 5 and 6 shall have the following general powers:

(1) Incorporated cities and towns shall have the powers of a municipal corporation and such legislative, administrative and other powers as provided or implied by law.

(2) Counties shall have such legislative, administrative and other powers as provided or implied by law.

(3) The powers of incorporated cities and towns and counties shall be liberally construed.

(4) Other local government units shall have such powers as provided by law.

COMMENTS

The question of what powers local government units should

exercise is crucial, controversial and confusing. Involved are desires for local control of local affairs on the one hand and the need for certain uniformity and statewide standards for minimum services on the other. To deal with the problem, the Local Government Committee proposes a basic, two-level system of powers for local government units. One level, described in section 4, is a somewhat liberalized version of the powers now exercised by the local units; the other level, described in section 6, is new to Montana and provides a self-government concept for local units.

The present Montana Constitution makes no general mention of what powers units of local government have. The result is that Constitutional silence, rather than Constitutional language, has become the basis for local government authority in Montana. The Local Government Committee believes that express Constitutional wording should be included concerning the important question of the power relationship between state and local governments. Such wording is necessary to distinguish between self-government units and other units and to change the traditional power relationship between the state and its local units.

Cities and Towns

Subsection 1 of section 4 provides that incorporated cities and towns shall have the "powers of a municipal corporation and such legislative, administrative and other powers as provided or implied by law."' Subsection 3 adds that the powers shall be liberally construed.

Subsection 1, to a degree, restates the present power position of Montana cities and towns-a position based largely On the "Dillon Rule" of judicial construction. The "Dillon Rule," named after a 15th century Iowa judge, provides:

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment Of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto, All acts beyond the scope of the powers granted are void. (John F. Dillon, Commentaries on the Law of Municipal Corporations, 5th ed., vol. 1, pp. 142-143.)

In Montana, the court repeatedly has cited the "Dillon Rule" in determining the powers of cities and towns. But it also occasionally has suggested that cities and towns have certain inherent rights, at least in narrowly limited areas of concern. Two 1935 decisions--State ex rel. City of Missoula v. Holmes and State ex rel. Kern v. Arnold--provide leading examples of the latter, suggesting that municipal corporations, when acting as private corporations, have more freedom of action.

The intent of section 4 is to encourage the court to liberally interpret the powers of incorporated cities and towns--to allow them reasonable control over local affairs or concerns without granting them a full range of self-government powers in all areas of concern. Section 4 does not attempt to upset the present established power relationship between the state and cities and towns. What it does intend to do is direct the court, when possible, to give the benefit of the doubt to the city or town. Section 4 attempts to give cities and towns a crf elbowroom to act.

In this regard, it should be pointed out that under this section--and, indeed, under the present Montana Constitution--the legislature could give considerably more freedom to local units than it has chosen to do. In recent sessions, the legislature has been moving toward freeing local governments; authorizing an all-purpose mill levy as a substitute for the individual levy limits on separate funds is a leading example.

Counties

Montana counties--like most of those elsewhere in the nation--are even more tightly under the legislature's thumb than are cities and towns. The Montana county presently is more administrative than governmental in nature; rules are made in Helena every other year and carried out-or administered--on the county level day-to-day.

Through stringent court interpretations (notably Plath v. Hi-Ball Contractors, Inc. in 1961 and Bacus v. Lake County in 1960), Montana counties have been denied the local legislative, or ordinance-making powers possessed by cities and towns.

It is not enuyh to say that montana counties can act only when authorized to do so by the legislature. That statement may be true of Montana's cities and towns, but fox the state's counties, authorization to act is not sufficient. Father, the legislature must not only tell counties that they may act; it also must spell out in what manner they may act. Neil S. Reefer succinctly summed up the role to which Montana counties have been relegated in a 1964 article in the Montana Law Review:

> TO be Constitutional, a statute granting authority to counties must be sufficiently explicit and restrictive, so that its execution requires only administrative

action and not an exercise of legislative power. (p. 197).

In the past, the court has struck down Montana planning and zoning legislation and laws authorizing county and district health boards as unconstitutional delegations of legislative powers to counties. An Idaho professor, author of perhaps the leading text on county government, describes the lack of a more extensive ordinance-making power as "an important weakness in county government" (see Herbert Sydney Duncombe, County Government in America, p. 48).

The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.

The committee's overriding concern is that Montana counties, through the officials elected locally, be allowed to meet the increasing challenges of a rapidly changing state. Allowing the legislature to give counties legislative power will provide another tool in coping with the urban sprawl outside incorporated municipalities and in eliminating some of the present reasons feeding the growth of overlapping governmental jurisdictions and special districts.

Other Local Units

Section 4 provides that local government units other than cities, towns and counties will have those powers provided by law. Thus, the legislature could establish special districts to provide special functions and could assign either municipal-corporation or county-type powers to a city-county consolidated government.

General Comments

In general, the intent of section 4 is to provide that units of local government not adopting self-government powers will not be crippled in meeting local needs. Thus, the powers of incorporated cities. towns and counties are to be "literally construed" and counties may be allowed to exercise legislative powers--something the court has said they may not do under the present Constitution.

However, section 4 is not intended as a broad grant of self-government powers; such powers are provided for in section 6 only

upon an affirmative vote of the residents of a local government unit.

Section 5. SELF-GOVERNMENT CHARTERS. The legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question. The prescribed procedures, however, shall not require approval of a charter by a legislative body.

Charter provisions with respect to a local government unit's Executive, legislative and administrative structure and organization shall be superior to statutory provisions.

COMMENTS

At present in Montana, only the legislature can draw up charters: local residents are only given the authority to adopt or reject the legislature's work.

Section 3 reaffirms the authorization for the legislature to continue its practice of providing alternative forms of government for local units, subject to local voter approval. Section 5 adds a new feature: authorization for the people of a locality to frame and adopt their own form of government through a "self-government charter." Such local charter-writing power now is authorized in about half of the state Constitutions.

Section 5 directs the legislature to provide procedures and limitations under which local government units-or combinations of those units (for example, a county and the cities and towns within the county)-can design their own form of government. Two major safeguards are built into the plan:

(1) The legislature must set limits and procedures under which charters may be drafted. For example, the legislature might determine that only those units or corbination of units with more than 10,000 population should have charter-uriting authority. Or the legislature could specify the ethod of selection and the number of members of a local charter-drafting commission. The committee considered including such provisions within section 5, as some state Constitutions do, fut rejected the idea on the basis that such provisions should have the flexibility of statutory law.

(2) No charter or charter amendment could become effective until it is approved by a majority of the local voters.

The section also limits the power of the legislature over locally written charters in two ways:

(1) Although it allows the legislature to set procedures and limitations concerning the drafting of a local charter, section 5 specifically denies both the state legislature and local legislative bodies (such as city councils) the power to veto a locally approved charter. The committee believes that a legislative body should not be allowed to set aside a properly drafted charter that local residents believe meets their needs.

(2) Charter provisions on a local unit's executive, legislative and administrative structure will supercede statutory provisions under the language of section 5. Thus, if a local unit decides through its local charter to elect a treasurer but state law generally requires that treasurers must be appointed, the charter provision calling for election will become effective.

Testimony before the committee indicated that no massive movement toward locally drafted charters is likely to occur in the foreseeable future. However, at least one official--the mayor of Missoula--did express considerable interest in a self-government charter. The committee believes local charter writing authority is a valuable tool for several reasons:

--It allows a locality to tailor its governmental structure to its own needs and offers an excellent method whereby more people can become directly involved in their government.

--It provides a method whereby a local government unit can bypass a recalcitrant legislature which refuses to provide optional forms of government.

Many of the states which authorize local charter writing limit the grant of authority to local units over a certain population size. The committee, however, believes that no such Constitutional limitations should be imposed; rather, it would leave such restrictions to the legislature.

> Section 6. SELF-GOVERNMENT POWERS. Local government units adopting self-government charters may exercise all powers not prohibited by this Constitution, by law or by charter.
>
> This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

COMMENTS

Local government units adopting self-government charters, or adopting a special optional form of government that the legislature is empowered to authorize, will be allowed to exercise all powers not prohibited by this Constitution, by law or by charter.

In effect, section 6 grants to local units the authority to share powers with the state governoect--a form of what generally

has become known as "home rule." The local Government committee, however, has studiously avoided this term, preferring to call the grant of authority "self-government powers."

Section 6 is intended to authorize certain local units to have considerably more freedom in determining their local affairs. Under the present Montana Constitution--and under the general authority authorized in section 4 of this proposal--local units would have only those powers granted or directly implied by the legislature. The provisions of section 6, on the other hand, would reverse this situation: self-govvernoent units would be able to exercise all powers that their charters, the legislature or the Constitution did not prohibit.

This "shared powers" concept is relatively new. It is endorsed by the National Municipal League and the Advisory Commission on Intergovernmental Relations and is included in the Constitutions of at least five states--Alaska, South Dakota, Missouri, Massachusetts and Pennsylvania. It clarifies lines of responsihili'ty. Legislative inaction no longer could block local action; instead, such inaction on the state level would serve as a go-ahead for local governments. Significantly, the "shared powers" concept does not leave the local unit free from state control; it does, however, change the basic assumption concerning the power of local government. At present, that assumption is that local government lacks power unless it has been specifically granted. Under the shared powers concept, the assumption is that local government possesses the power, unless it has been specifically denied.

The legislature, in areas such as pollution control where statewide uniformity is desirable, still could impose statewide standards under the shared powers concept. Some areas--such as the definition and punishment of felonies--undouhtedly would be retained by the legislature. But in other areas of unique concern to a local unit, it could apply flexible approaches to problems and not be bound by state inaction or disinterest.

The committee believes the "shared powers" concept embodied in section 6 is desirable because it grants considerable autonomy to those local units that wish it, yet it allows the legislature at any time to step in and prohibit the local unit from proceeding in a manner contrary to state interests. It clearly is the most flexible approach toward local self-govverrsent,

As worded in section 6, the grant of self-government powers also is surrounded by ample safeguards. Most significantly, no unit of local government will be able to exercise the increased local authority without prior approval of its residents in one of two ways:

--Approval of a locally drafted charter, which can restrict the powers of the local unit.

--Approval of a legislatively drafted charter, which also can limit the powers of the local unit.

Thus, no local government unit will be able to exercise the self-government powers without the express approval of a majority of the local voters. The legislature would retain final authority to guard against infringement of the power.

A frequent question in regard to local self-government powers concerns what authority a unit should have in the area of taxation. Under this proposal, a self-government unit could exercise all taxation power not denied it by the Constitution, by law or by its charter. Theoretically, that may sound like a dangerous grant of power, but on a practical basis, taxation probably would be the first area to be circumscribed by the legislature or by the local charter. For example, the legislature might prohibit any self-governaent unit to impose any tax other than property and license taxes and might limit property taxes to no more than 70 mills. The committee is not endorsing such restrictions; it simply wishes to point out that from a practical standpoint, both the legislature and the local voters undoubtedly will impose taxation limitations on a self-governaant unit.

Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body, may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.

COMMENTS

Section 7 is intended to be a complete grant of authority to all local government units to cooperate in the exercise of powers and functions, share the services of officers and transfer functions and responsibilities to other units of government. Such functional cooperation and consolidation is increasingly demanded by the rising costs of governmental services and the careless duplication of governmental services.

Broad grants of power to cooperate already are provided under Montana law, but the committee believes that Constitutional language should be added giving broad latitude to local units in cooperative ventures. Section 7 has several features:

--It specifically authorizes local residents, through the initiative, to force their local governments to cooperate and to stop senseless duplication of services.

--It allows the legislature or, in case of locally drafted

charters, the voters to directly prohibit certain forms of cooperation.

The committee believes that maximum activity by local government units under section 7 could solve many of the problems of inefficiency and duplication of services now plaguing some areas in Montana.

Section 8. REVENUE SHARING. Nothing in this Constitution shall prohibit the state from sharing revenue with local government units or the units from participating in revenue sharing with the state or the United States.

COMMENTS

Article XII, section 4 of the present Montana Constitution has been interpreted as limiting the state aid that can be provided for local governments. The result has been a tightening of the local fiscal squeeze, increased reliance on the property tax, subterfuge to "get around" the Constitutional limitation and the fact that Montana ranks 46th in the nation in state per capita aid to city and county governments.

At the time of adoption of this majority proposal by the committee, it appears that Article XII, section 4 will be deleted from the new Constitution. However, the committee believes it is highly desirable to affirmatively provide that the state may share revenue with the local units and that the local units may participate in revenue sharing with the state and the United States. Such a provision will not assure such state or federal assistance; it only will assure that the Constitution will not stand in the way of statutory provisions for such aid.

Section 9. INITIATIVE AND REFERENDUM. The initiative and referendum powers reserved to the people by the Constitution shall be extended by law to the qualified voters of each local government unit.

COMMENTS

The committee believes it is essential that local residents have the powers of initiative and referendum, particularly in view of the broad self-government powers offered in this proposal. The committee also believes that the proper place to assure these "peoplepowers" is in the local government article. Specific provisions concerning petition requirements, however, should be left to statutory law where they can be easily reached if change is needed.

Section 10. RECALL. All elected public officials of local government units are subject to recall by the voters of the unit from which elected. Procedures for recall shall be prescribed by law.

COMMENTS

The people should have the right to remove public officials on the local level, for much the same reasons as cited in the comments to section 9. Once again, the committee favors leaving recall procedures to statutory law, although concern was expressed that the requirements should be of sufficient severity to eliminate frivolous and repeated recall elections.

Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The legislature shall within four years of the adoption of this Constitution provide for procedures by which each local government unit either separately or jointly shall review the government structure of the local unit or joint unit and shall submit one alternative form of government to the voters at the next general or special election. The legislature shall provide for a review procedure each ten years after the first election.

COMMENTS

Section 11 represents perhaps the most unique feature of the local government proposal. It requires that the legislature, within four years after the adoption of the Constitution, must provide methods by which each local unit, singly or in combination with another or others, must study its governmental structure. The key provision is that residents of each unit must have an opportunity to vote on whether to adopt an alternative form or retain their present form.

Although the procedures are left up to the legislature, the committee envisions that local commissions might be created to draft an entirely new type of government or simply take an alternative form authorized by the legislature and recommend that it be put on the ballot locally. Different counties and different cities could vote on different alternatives; some counties and cities might want to submit consolidated city-county forms for judgment by the voters.

The committee strongly believes that such local review of government is highly desirable. Costs would be minimum and more than repaid if local governments can be improved. Increased voter interest and awareness of local government issues would be assured, and some local units, through experimentation, might find answers to local government problems that would aid other units in the state.

An overriding consideration is that the local voters would be the final judges of whether the alternative proposed really would be a better form of government than that in effect at the time of the election. Even if every county, city and town decides to retain its existing form of government following the review procedure, the committee believes the time spent in study and

discussion of local government will result indirectly in more responsive and responsible local government.

Section 11 directs the legislature to provide for a "review procedure" each ten years after the first election. Such decennial review would not necessarily have to require that each unit in ths state go through the complete review process required the first time.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	none
2	XVI, 1, 2, 8
3	XVI, 4, 5, 6, 7
4	none
5	none
6	none
7	none
8	none
9	none
10	none
11	none
Not Replaced	XVI, 3; XIX, 6

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Local Government Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	5	Katie Payne	Repeal Article XVI, Section 5	Rejected
2.	6	Katie Payne	Local Charters	Intent Adopted in Part
3.	9	Franklin Arness	District Plan	Rejected
4.	17	Arnold Jacobsen	Districting for Boards of County Commissioners	Rejected
5.	23	Virginia Blend	Welfare Funding	handled by Revenue & Finance Public Health, Welfare, Labor & Industry Committees
6.	54	George Rollins	Repeal Article XIX, Section 6	Adopted
7.	56	Marian Erdmann	New Article on Local Government	Intent Adopted in Part
8.	60	Rod Hanson	Prohibit Consolidating Counties Without Vote of People	Intent Adopted in Part
9.	79	C. B. McNeil	Distribution of Governmental Powers in Subdivisions	Rejected

10.	89	Oscar Anderson	Article XVI, County Boundaries and County Seats	Adopted
11.	97	Thomas Ask	New Article on Local Government	Adopted
12.	99	Robert Kelleher	City Manager	Rejected
13.	108	Dorothy Eck	Elections on Alternate Forms of Government	Intent Adopted in Part
14.	110	Geoffrey Brazier	Limit Terms of Officers	Rejected
15.	122	Thomas Ask	Delete Prohibition on Salary Increases	Handled by Legislative Committee
16.	126	Lucile Speer	New Article on Local Government	Intent Adopted in Part
17.	134	Franklin Arness	Repeal Article XII, Sections 15 & 16; and Amend Article XII, Section 17	Handled by Revenue & Finance Committee
18.	156	J. Mason Melvin	Election of Sheriffs	Intent Adopted in Part
19.	166	Katie Payne	Legislative Powers for Certain Counties	Intent Adopted in Part

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Howard Hammer - Ravalli County Commissioner - Hamilton - Provisions on counties.
2. Earl Daley - Valley County Commissioner - Nashua - Provisions on counties.
3. Dale Skaalure - Hill County Commissioner - Big Sandy - Provisions on counties.
4. Burt Hurwitz - Meagher County Commissioner - White Sulphur Springs - Provisions on counties.
5. Ralph Armstrong - Gallatin County Commissioner - Belgrade - Provisions on courties.
6. Don Gibson - Dawson County Commissioner - Glendive Provisions on counties.
7. Milo Dean - Cascade County Commissioner - Great Falls - Provisions on counties.
8. Dean Zinnecker - Montana Association of County Commissioners - Helena - Provisions on courties.
9. Gene Nordberg - Citizen - Sidney - General local government.
10. Walter Anderson - City Manager - Helena - General local government.
11. Dan Mizner - Montana League of Cities and Towns - Helena - General local government.
12. Tom Phillips - Montana League of Cities ard Towns - Helena - General local government.
73. George Schroeder - County Treasurers Asscciation - Great Falls - Matters relating to county treasurers.
14. Mary E. Westermark - County Treasurers Asscciation - Shelby - Matters relating to courty treasurers.
15. Earl J. Holman - Silver Bow County Commissioner - Butte - Legalizing gambling.

16. Jean Anderson - League of Women Voters - Billings - General local government.

17. Robert Herrig - Lincoln County Superintendent of Schools - Libby - Keeping County Superintendents of Schools in Constitution.

18. Opal Eggert - Elected County Officials Asrociation - Helena - Keeping county officials in Constitution.

19. Margaret Brown - Gallatin County Superintendent of Schools - Bozeman - Keeping County Superintendents of Schools in Constitution.

20. Harry L. Axtmann - Roosevelt County Superintendent of Schools - Wolf Point - Keeping county officials in Constitution.

21. Fred Barclay - Missoula County Assessor - Missoula - Qualifications and pay of assissors.

22. J. J. Schmidt - Clerk and Recorders Asscciatica - Great Falls - Suggestions concerning absentee ballots.

23. William Cassella, Jr. - Executive Director, National Municipal League - New York - General local government.

24. H. J. Pierce - Citizen - Great Falls - Inefficiency in local government.

25. Dr. Thomas Payne - Professor, University of Montana - Missoula - Local government in general.

26. J. Mason Melvin - Delegate - Bozeman - Elected sheriffs.

27. George Turman - Mayor - Missoula - Suggestions for local government article.

28. Jean Ellison - Meagher County Superintendent of Schools - White Sulphur Springs - Electing County Superintendents of Schools.

29. Roy Crosby - Citizens for Constitutional Government - Helena - Suggestions for Local Government Article.

30. James Moore - Law Student - Missoula - Local Government Article.

31. Robert C. Watt - Montana Student Presidents Association, Retired County Superintendent of Schools E legislator - Missoula - Keeping County Superintendents of Schools in Constitution.

32. Grace Hanson - Plathead County Superintendent of Schools -

Kalispell - Keeping County Superintendents of Schools in Constitution.

33. Dorothy Simmons - Lewis & Clark County Superintendent of Schools - Helena - Keeping County Superintendent of Schools in Constitution.

34. Carolyn Frojen - Missoula County Superintendent of Schools - Missoula - Keeping County Superintendents of Schools in Constitution.

35. Lloyd Markel - Montana Education Psscciatior - Helena - Keeping County Superintendents of Schools in Corstitution.

36. Dolores Colberg - State Superintendent of Schools - Helena - Regarding County Superintendents of Schools.

37. Dorothy Eck - Vice Chairman of Convention - Bozeman - Delegate Proposal ICE.

38. Rod Hanson - Delegate - Fairfield - Delegate Propcsal 60.

39. James Felt - Delegate - Eillirgs - Delegate Propcsal 40.

40. William Wheeler - Flathead County Surveyor - Kalispell Keeping surveyors elected.

41. C. P. McNeil - Delegate - Polson - relegate Proposal 75.

42. P. J. Goodheart - State Senator - Malta - General local government.

43. P. J. Keenan - State Senator - Anaconda - General local government.

44. Gordon McOmber - State Senator - Fairfield - General local government.

45. Henry S. Cox - Representative - Billings, General local government.

46. William Campbell - Representative - Missoula - General local government.

47. Harold McGrath - Representative - Butte - General local government.

48. Mario Micone - Mayor - Butte - General local government.

49. John Hay - Citizen - Hamilton - Power to local government and optional plans.

50. John Hauser - Citizen - Stevensville - Power to local government and optional plans.

51. Dave Drum - Delegate - Billings - General local government.

52. Mrs. Roberta West - Citizen - Chinook - General local government.

53. Robert Mitchell - Chairman, Missoula Interlocal Cooperation Commission - Missoula - General local government.

54. Laurence Bjorneby - Mayor - Kalispell - General local government.

55. Mrs. Fern Hart - League of Women Voters - Missoula - General local government.

56. John McLaughlin - Mayor - Great Falls - General local government.

57. Mary C. Holt - Citizen - Augusta - General local government.

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	TOTAL Y	TOTAL N	TOTAL A	Pass
Anderson		Y	Y	Y	Y	Y	P	Y	Y	Y	N	Y	9	1		1
Blend		N	Y	Y	Y	Y	Y	Y	Y	Y	x	x	10	1		
Arness		x	Y	x	x	N	N	x	x	Y	Y	Y	9	2		
Ask		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	11			
Erdmann		Y	Y	x	x	x	x	x	x	Y	Y	Y	11			
Jacobsen		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	11			
Payne		A	A	A	P	P	P	Y	Y	Y	N	P	3	1	3	4
Rollins		Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	10	1		
Simon		Y	Y	Y	Y	Y	Y	x	x	x	x	x	11			
Sparks		A	A	A	A	A	A	A	A	A	A	A				
Spear		V	V	V												
TOTAL	Yea	8	9	9	9	8	7	10	10	10	6	9				
	Nay	1				1	1				4					
	Absent	2	2	2	1	1	1	1	1	1	1	1				
	Pass				1	1	2					1				

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

GENERAL GOVERNMENT

AND CONSTITUTIONAL AMENDMENT COMMITTEE PROPOSAL

ON GENERAL GOVERNMENT

NO. XII

Date Introduced: February 19, 1972

/s/ Mark Etchart, Chairman

/s/ Paul K. Harlow, Vice Chairman

TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL	813
TEXT OF MAJORITY REPORT	815
COMMENTS ON MAJORITY REPORT	818
Section 1	818
Section 2	818
Section 3	819
Section 4	819
Section 5	820
Section 6	820
Section 7	821
Section 8	821
Section 9	821
Section 10	821
Section 11	822
TEXT AND COMMENTS OF MINORITY PROPOSAL 1	823
TEXT AND COMMENTS OF MINORITY PROPOSAL 2	824
TEXT AND COMMENTS OF MINORITY PROPOSAL 3	825
APPENDIX A: Cross References	826
APPENDIX B: Delegate Proposals	827
APPENDIX C: Witnesses	831
ROLL CALL VOTES	835

Date: February 19, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: General Government and Constitutional Amendment Committee

Ladies and Gentlemen:

The General Government and Constitutional Amendment Committee submits herewith a proposed new General Government Article. The proposed Article is intended to replace all sections of the present Constitution dealing with general government areas.

The scope of an area such as general government is broad and, unless specific issues are cited, somewhat nebulous. The proposed Article does not have an exact duplicate in the Constitution of 1889. The content of the new Article was drawn from many sections of the old Constitution (See Appendix A) and from delegate proposals assigned to the committee (see Appendix E). The topics are varied and encompass many areas of state government. Though some members of the committee disagreed on various portions of the proposed Article, the committee agreed unanimously on the basic intent of the article. In signing this majority report a Committee member does not necessarily endorse each and every statement in it. Those members who disagree on specific sections signed minority reports outlining their dissent.

The committee utilized the services of the following people in addition to its members: James Grady (Research Analyst), Bobbie Murphy (Secretary) and Robert Skaggs (Intern).

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENTSCOMMITTEE:

That there be a new Article on General Government to read as follows:

ARTICLE ___

GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislative assembly may enact laws to insure the continuity of governmental operations during a period of emergency. Such laws may deviate from other provisions of the Montana Constitution conflicting therewith but shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." And no other oath, declaration or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. The people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution. Initiative petitions must be signed by eight percent or more of the legal voters in each of one-third or more of the legislative representative districts and the total number of signers must be eight percent or more of the total legal voters of the state. Each petition must contain the full text of the proposed measure. Petitions must be filed with the Secretary of State four months or more prior to the election at which they will be voted upon. The

enacting clause of all initiative measures shall be: "Be it enacted by the people of the State of Montana."

Section 5. REFERENDUM. (1) The people may approve or reject acts of the legislature by referendum, except appropriations of money. A referendum may be ordered by the legislative assembly, or upon petition signed by eight percent or more of the legal voters in each of one-third or more of the legislative representative districts and the total number of signers must be eight percent or more of the total legal voters of the State. Referendum petitions must be filed with the Secretary of State no later than six months after adjournment of the legislative assembly which passed the bill.

(2) Acts of the legislature referred to the people are in full force and effect unless suspended by petitions signed by 15 percent of the legal voters of a majority of the whole number of the legislative representative districts of the state, in which case the law shall be inoperative until Such time as it Shall be passed upon at an election, and the result has been determined and declared as provided by law.

Section 6. ELECTIONS. All measures referred to the people shall be voted upon at the regular biennial election unless a Special election is ordered by the legislative assembly.

Section 7. LEGAL VOTERS. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of Governor in the regular election immediately preceding filing of petitions for initiative or referendum measures.

Section 8. GUBERNATORIAL VETO. The governor does not have power to veto initiative or referendum measures.

Section 9. RESTRICTION. This article is not applicable to Constitutional revision as covered in Article ___ of this Constitution.

Section 10. RECALL. Laws shall be enacted to provide for the recall of all elected officials of the State and of its political subdivisions upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of Governor in the state or political subdivision of the official sought to be recalled.

Section 11. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

/s/ Don E. Belcher /s/ Bruce M. Brown /s/ Lyman W. Choate

/s/ Otto T. Babcock /s/ Robert Vermillion /s/ Peter "Pete" Iorello

COMMENTS CA MAJORITY PROPOSAL

Section 1. SEPARATION OF POWERS. The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

COMMENTS

This section with the exception of the title change from "Distribution" to "Separation" is identical to Article IV of the present Constitution. The committee feels a statement dividing the powers of government among the three branches of state government is essential to any Constitution. The present article has been the crucial factor in determining much litigation, and is an invaluable tool for the courts in deciding matters of governmental jurisdiction. A statement dividing the powers of government is designed to act as a check on an overly ambitious branch of government.

The committee carefully considered Delegate Proposal 79 which would have extended the separation of powers doctrine to all political subdivisions of the state. The committee rejected this proposal, as it feels such a Constitutional provision would create far-reaching, unwieldly problems. The separation of powers by a Constitution necessitates that the governmental powers, since separated, be distributed among several branches of government. If such a separation-distribution were mandatorially extended to the state (which now operates under the doctrine) and all its political subdivisions (some of which do not operate under the doctrine), chaos could result under present Montana government. The extension would require that every political subdivision, every governmental level, have its powers separated and distributed. Thus, school boards would cease to function as they now do. school boards now both legislate school regulations and hear appeals on the results of their rules, both legislative and judicial functions. Under Delegate Proposal 79, at least two separate boards would have to be created: one to hear appeals and one to make the rules, as both functions could not be performed by the same board. The committee feels the additional burdens and expense Delegate Proposal 79 would incur offset any benefits of the proposal.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislative assembly may enact laws to insure the continuity of governmental operations during a period of emergency. Such laws may deviate from other provisions

shall be effective only during the period of emergency that affects a particular office or governmental Operation.

COMMENTS

This section would revise the provisions in Article X, sections 2, 3 and 4 of the present Constitution relating to the seat Of government and Article V, section 46 relating to continuity of government. The proposed section is sufficient to allow the legislature to enact laws to provide for continuity of government under any situation that may arise.

Section 3. OATH OF OFFICE. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that ,I will discharge the duties of my office with fidelity (so help me God)." And no other oath, declaration or test shall be required as a qualification for any office or public trust.

COMMENTS

This oath is a shortened version of the oath presently contained in Article XIX, section 1 of the present Constitution. This oath contains the intent of the present Constitution's oath, but without the extensive detail. The proposed oath also allows a person of any religious persuasion, including an atheist or agnostic, to take thr oath without violating his principles. The provisicc also prohibits any other oath as a qoalification for any state public office.

Section 4. INITIATIVE. lbe people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution. Initiative petitions must be signed by eight percent (8%) or more of the legal voters in each of 1/3 or more of the legislative representative districts and the total number of signers must be eight percent (8%) or more of the total legal voters of the state. Each petition must contain the full text of the proposed measure. Petitions must be filed with the Secretary of State four months or more prior to the election at which they will be voted upon. The enacting clause of all initiative measures shall be: "Be it enacted by the people of the state of Montana."

COMMENTS

This is the prcvisicn for statutory initiative agreed on by the General Government and Legislative Committees. The General Government Committee feels the petiticn requirements of eight percent (8%) in each of 1/3 or more cf the legislative representativf districts and eight percent (8%) or mcre of the total legal voters of the state are high encugh tc prevent frivclcus legislative efforts by a small mircrity, yet lcw enough to allcw sericus, pcpular measures to be initiated by the pecple.

Sectiicn 5. REFERENDUM. (1) The people may apprcve or reject acts cf the legislature by referendum, except appropriaticns cf money. A referendum may be crdered by the legislative assembly, cr upon petitiicn signed by eight. percent (8%) cr more of the legal vcters in each of 1/3 or mcre of the legislative representative districts and the total number of signers must be eight percent (8%) or mcre of the total legal voters cf the state;. Referendum petitions nust be filed with the Secretary of stat2 n0 later than six months after adjournment of the legislative assembly which passed the bill.

(2) Acts of the legislature referred tc the people are in full fcrce and effect unless suspended by petitions signed by fifteen percent (15%) of the legal voters of a majority of the whcle number of the legislative representative districts of the state, in which case the law shall be incperative until such time as it shall be passed upon at an electicn, and the result has been determined and declared as prcvided by law.

COMMENTS

This secticn ccniains the prccedure fcr the tuo forms cf statutcry referendum as agreed upon by the General Gcvernment and Legislative Committees. This prcvision is parallel to the present referendum provisions as contained in Article V, secticn 1 cf the Constitution. The only changes are the petitiicn requirements, which the General Gcveroment Ccmmittee felt shculd be set at eight percent (8%) of the legal vcters in each cf 1/3 cr rcre cf the legislative representative districts and eight pfrcent (8%) or mcre of the total legal voters of the state for the petition referendum. The committee set the petition requirement for requiring suspension of enforcement cf a matter to be referred at fifteen percent (15%) of the whole number of legal voters of a majority of the legislative representative districts cf the state. This provision is analoqcus tc present Ccnstituticnal provisicn.

Sectiicn 6. ELECTIONS. All measures referred to the people shall be vcted upcn at the regular biennial election unless a special electicn is ordered by the legislative assembly.

Section 7. LEGAL VOTERS. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of governor in the regular election immediately preceding filing of petitions for initiative or referendum measures.

COMMENTS

These sections are administrative in nature and fairly self-explanatory. The committee feels such measures should be stated in the same place as the subject matter they cover.

Section 8. GUBERNATORIAL VETO. The governor does not have power to veto initiative or referendum measures.

COMMENTS

This section prohibits the governor from vetoing a" initiative or referendum. The present Constitution also contains such a provision. The committee feels one ma" should not have the power to overturn a decision made by a majority of the state's electorate.

Section 9. RESTRICTION. This article is not applicable to Constitutional revision as covered in Article ... of this Constitution.

COMMENTS

This section is included to prevent any confusion with the initiative and referendum provisions on Constitutional revision that are otherwise created in the Constitution.

Section 10. RECALL. Laws shall be enacted to provide for the recall of all elected officials of the state and of its political subdivisions upon petition of electors equal in number to twenty-five percent (254) of the "umber of persons voting in the last preceding election for the office of governor in the state or political subdivision of the official sought to be recalled.

COMMENTS

Section 13 provides for the recall of public officers. The committee feels this is a basic right Of the people under a form of government such as Montana's. The recall is designed to keep politicians "honest" in the political sense. Impeachment provisions are designed to keep politicians honest in the legal sense. In other words, recall is not designed for cases of malfeasance. Recall is designed to allow the public to remove an elected official who is making political decisions with which the majority of the people disagree. It is designed to help insure a politician

will live up to his promises once elected. Recall gives the people remedy to a situation that they feel must be rectified before the next election day.

The requirement of twenty-five percent (25%) of the number of electors in the concerned political subdivision creates a workable and desirable system. The petition requirement is very steep. Frivolous attempts to call a recall election or the use of the recall as blackmail by a small minority are extremely doubtful and both instances represent hypothetical situations of dubious foundation.

The recall sponsors would be hard pressed to convince twenty-five percent (25%) of the concerned individuals that the deeds of the official were nefarious enough to warrant the cost of a recall election. On the other hand, should genuine grievances exist, the petition requirement is not so high that a recall election is unattainable.

Section 11. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

COMMENTS

This section is designed to replace Article XIX, section 2 of the present Constitution. The present Constitution prohibits gambling of any kind. The proposed revision would continue this prohibition until the legislature specifically legalizes particular forms. The proposed revision would alleviate a good deal of fear among the populace that a Constitutional change would open the door to all sorts of gambling problems that do not now exist in the state. The committee revised the specific and inflexible prohibition because it feels the legislature should make the rules governing gambling.

The committee recommends that if at all possible, the convention decision on lotteries and gambling be presented to the voters as a separate issue.

MINORITY PROPOSAL 1

BE IT PROPOSED:

That there be a new Constitutional section as follcur:

Section ___ BOUNDARIES. The sovereignty and jurisdiction of the state of Montana shall prevail within the area encompassed by the follcwing bcurdaries:

Beginning at the Fciot cf intersection cf the 104th meridian of west longitude and the 45th parallel cf north latitude, thence clockwise west cn said parallel tc its intersection with the 111th meridian; south on said meridian tc the crest of the Rocky Mcuntains; northwestward on said crest (the continental divide) to the summit cf Lost Trail Pass intersrctinq there with the southeast end and crest cf the Bitterrcot Mountains; hence ncrthwestward on the crest cf the bitterroot Mountains and Range tc 116th meridian; north on said meridian to the 49th parallel; east cc said parallel tc the 104th meridian; and south on said meridian tc the place of beginning.

/s/ Don E. Belcher /s/ Paul K. Harlcw

COMMENTS

The wording for this mincrity report is taken from the wcrk of Walter Stamm, Dillcn, Mcntana. The mincrity feels the Constitutiicn should state the exact area over which the dccument establishes jurisdicticc.

MINORITY PROPOSAL 2

BE IT PROPOSED:

That section 10 of the proposed General Government Article dealing with recall be deleted and no comparable section be included in the Constitution. The section to be deleted reads as follows:

> Section 10. RECALL. Laws shall be enacted to provide for the recall of all elected officials of the state and of its political subdivisions upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the state or Political subdivision of the official sought to be recalled.

/s/ Mark Etchart

/s/ Bruce M. Brown

COMMENTS

A recall provision is an unnecessary and dangerous harassment provision that would hinder an elected official in performance of his duties. Such a provision would tend to disrupt the body politic, and keep Montana in a state of permanent flux. The intent of recall is also basically covered under the present electoral system, as elected officials are subject to recall each time their office is up for election.

MINORITY PROPOSAL 3

EE IT PROPOSES:

That section 11 of the proposed General Government Article dealing with gambling and lotteries be deleted, and no comparable section be included in the Constitution. The section to be deleted reads as follows:

> Section 11. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

/s/ Lyman W. Choate /s/ Paul K. Harlow

COMMENTS

The Minority Proposal and the Majority Proposal would accomplish the same end with regards to gambling. Both would leave the matter to statutory law, where extensive previsions prohibiting gambling already exist. Neither provision would legalize gambling of any nature. However, the Majority Proposal Constitutionally states that situation. The Minority feels that to state something is illegal unless made legal is superfluous and redundant. If, as is the case, there are laws on the books, the laws will stay in force unless overturned by the court, prohibited by the Constitution, or changed by the legislature. Discussion of any court action is speculative and neither proposal prohibits the legislature from acting on the present statutory laws. The minority does not feel it is necessary to list a specific instance in which the legislature or people may act when they have been given the general power to so do. Basically, the Majority Proposal is identical to the Minority Proposal.

The minority feels the majority provision also could be somewhat confusing to the voters, whereas no section of gambling would save the confusion resulting from the redundant majority article.

The minority would also like to point out that if the Majority Proposal is adopted, gambling would join treason as a Constitutional crime, while such crimes as murder, rape and assault are statutory crimes. In this light, the minority wonders if gambling is really a basic and Constitutional issue.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE AND SECTION
1	IV
2	X, 2-4 and 46 revised
3	XIX, 1 revised
4	V, 1 revised
5	V, 1 revised
6	V, 1 revised
7	V, 1
8	V, 1
9	V, 1 revised
10	none
11	XIX, 2 revised
none	I

APPENDIX 6

DELEGATE PROPOSAIS CONSIDERED EY COMMITTEE

The committee examined many delegate propcsals. The fcllcwing list of those proposals is sectionalized by general areas as well as by individual proposal.

Number of proposal	Chief Spcnsor	Content ard Disrcsition
INITIATIVE, REFERENDUM ANC RECALL		
1. 8	Fred Martin	This provision prcvides fcr recall cf public officials, and is revised and covered in the prcposed article.
2. 42	Virginia Blend	This propcsal provides fcr initiative, referendum and recall cn a lccal level, and is revised and covered in the prcpcsed article.
3. 129	Paul Harlow	This proposal contains the provisions for initiative, referendum and recall, and was the core prcpcsal that resulted in the proposed article.
BOUNDARIES		
4. 26	Bruce Brown	This proposal ccntairs an abbreviated descriptien cf the bcundaries of the state. It was rejected in favcr cf the majority ard minority bcundary proposals.
5. 84	Bruce Brown	This proposal calling for complete deletion of any mentien of the state bcundaries has been adopted as the majority report.
LCTTERIES AND GAMBLING		
6. 24	Lyman Choate	This proposal called fcr nc mentien of lctteries or gambling cf any scrt in the Constitution. This propcsal was adopted as a minority repcrt.
7. 28	Don Belcher	'This proposal Provided that all fcrms of gambling wculd remain illegal until acted upon by the legislature. This proposal was revised and incorpcrated as the majcrity propcsal.
8. 111	Gene Barbaugh	This propcsal would prohibit gambling as

a means of raising revenue for the state, and would allow nonprofit organizations to engage in gift enterprises. This proposal was rejected by the committee.

9. 123 A.W. Kamhoot This proposal would have allowed nonprofit organizations to sponsor bingo. As such, it was rejected by the committee.

OATH

10. 31 Paul Harlow This proposal established a short oath for office, and was adopted as the majority proposal.

CONTINUITY OF GOVERNMENT

11. 36 Don Belcher This proposal established the seat of government in Helena and served as the core proposal for the majority report on continuity of government.

INTEREST RATES

12. 64 Jerome Cate This proposal set a limit of twelve percent (12%) of all interest charges in the state. The committee feels such a provision is not a Constitutional matter, and consequently rejected the proposal. The committee recommends this proposal be studied by the Legislative Council.

STATE AND THE LIQUOR BUSINESS

13. 112 Arnold Jacobsen This proposal would have prohibited the state from engaging in the liquor business after 1974. The committee rejected this proposal. There is no mention of the state's involvement in the liquor business in the present Constitution, and the involvement was the result of legislation. consequently, the committee feels this proposal is legislative in nature, and if the intent of the proposal should be carried out, it should be done through the legislature. The committee recommends this proposal be referred to the Legislative Council.

14. 157 Torrey Johnson This proposal is similar to Delegate Proposal 112, but it goes beyond 112 in that it prohibits the state from "monopolize(ing) what would otherwise be a competitive business." The committee rejected

this proposal for the same reasons it rejected 112, and also because of the monopoly provision. The committee is extremely leary of freezing such a provision into the Constitution, and feels the ramifications of such a move cannot be predicted and are extremely difficult to speculate on with the brief amount of time that the committee and the convention have.

TRANSITION

15. 115 Daphne Bugbee This proposal would have prohibited any changes dealing with elective offices called for in the proposed Constitution from taking effect until 1977. The committee feels this decision should be made by the concerned committees in consultation with the committee on Style and Drafting. Consequently, this committee rejected the proposal.

STATE INSTITUTIONS

16. 139 Mike McKeon This proposal would have Constitutionally established the location of all state institutions at their present site. The committee rejected this Proposal, as it dangerously ignores the possibility of changing conditions. Such a proposal would block reconstruction and necessary relocation of the state prison at Deer Lodge should the buildings and the general area be rendered unsuitable by an earthquake.

OMBUDSMAN OR PEOPLE'S ADVOCATE

17. 172 Richard Champoux This proposal called for the creation of the office of Ombudsman in Bontana. The committee noted that the Legislative Committee has recommended the creation of such an office in its report. The committee also noted that the Constitntion does not now prohibit the creation of such an office. The committee feels if the office of ombudsman (People's Advocate) is a Constitutional matter, then the Iegislative Committee's Proposal is adequate to Put this section before the convention. Consequently, the committee rejected Delegate Proposal 172.

REAPPORTIONMENT

18.	62	Katie Payne	This proposal called for the creation of a reapportionment commission. The committee feels this matter was provided for by the Legislative Committee, and consequently took no specific action on the proposal.

AFFENCIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Ray Cooley - Citizen - Joplin - Ombudsman
2. Kurk Kruden - Citizen - Joplin - Cabudsman
3. Kayle Jackson - Intern - Bczeman - Ombudsman
4. Jchn Hauser - Citizen - Stevensville - Initiative, Referendum and Recall
5. Duane Welker - Citizen - Hamilton - Initiative, Referendum and Recall
6. Frank Freeburg - Montana music Cc., Montana Coin Machine Operators - Great Falls - Gambling
7. Walter Stamm - Citizen - Dillcn - Boundaries
8. Frances Satterthwaite - Inter-Tribal Policy Bcard - flelena - General State-Indian Relationships
9. Earl Hollman - Citizen - Butte - Gambling
10. Bob Durkee - Bcntana Taverns' Asscciation - Helena - Gambling
11. Gerald I. McCurdy - NHF Hcntana Branch - Hamilton - Initiative, Referendum and Recall
12. Rcy G. Crosby, Jr. - Citizens for Constitutional Government Missoula - Initiative, Referendum and Recall
13. Jce Shea - Administrator cf Liquor Board - Helena - State and Liquor Business
14. Don Larson - Jorgenson's - Helena - State and Iiquor Business
15. D. H. Sievert - Montana Chamber cf Ccmmerce - Helena - State and Liquor Business
16. c. E. Grimes - OEO - Helena - Cmbudsman
17. Steve Coldiron - Lou Income - Helena - Ombudsman
18. Wesley Wertz - Montana Bankers Associaticn - Great Falls - Interest Rates

19. Robert J. Emmons - Citizen - Great Falls - Interest Rates

20. Lyle Olson - Commerce Bank - Helena - Interest Rates

21. Socs Vrates - Montana Retailers - Helena - Interest Rates

22. Joe Irwin - Montana Consumers' Finance Asscciaticn - Great Falls - Interest Rates

23. Irving Nyquist - Myquist Financial Services - Great Falls - Interest Pates

24. Morris Nyquist - Nyguist Financial Services - Great Falls - Interest Hates

25. L. W. Alke - Department of Business Regulaticn - Helena - Interest Rates

26. Bill Kcener - Citizen - Hamilton - Initiative Referendum and Recall

27. Scott Stratton - First National Bank - Great Falls - Interest Sates

The fo'llouinq is a list of witnesses (with as much identification as was pcssible) heard during the committee's radic brcadcasted hearing cn gambling and lctteries. The list is at times incomplete and may not be completely accurate due tc technical difficulties encountered during the hearing.

Witness - Address

28. Bill Fisher

29. Everett Seller

30. Mr. Grunds - Miles City

31. Bernard Geier

32. Fred Levitt - Bczeman

33. Stella Filabitts - Great Falls

34. Mr. Jackson - Libby

35. Mrs. Jacoby - Great Falls

36. Mr. Platiem - whitefish

37. Mr. Clark - Livingston

38. The Mint - Sunburst

35. Mr. Wilscn - Glasgcw

40. Bob crane - Helena

41. Ken Christian - Columbus

42. Mr. Cranover - Libby

43. Margaret Mayer - Helena

44. Mrs. Matthews - Helena

45. Jess - Great Falls

46. Harcld Brown - Fort Peck

47. Mr. Harlan - Great Falls

48. Lee Neigh - Uissoula

49. Jim Gentry - Misscula

50. Robert Sier - Glendive

51. Iva Holiday - Glasgcw

52. Jchn Lecnards - Great Falls

53. Gary Laners - Dillon

54. Lee Wilson - Conrad

55. Mrs. Haubrick - Helena

56. Neomi Rader - Bozeman

57. Al Meyer

58. Betty Bogansen - Anaccoda

59. Wayne Richardscc - Anaconda

60. Les - Missoula

61. Alvin Grant - Miles City

62. Paul Grating - Whitefish

63. Floyd Perriel - Great Falls

64. Shirley Balance - Lewistown

65. Jim Futtnam - Libby

66. Eob Burns - Shelby

67. Mr. Kennerman - Great Falls

68. Max Nailscn - Shelby

Note: This list does not contain delegates who spoke on their proposals

ROLL CALL VOTE --- GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE

	sect. ____ (Boundaries)	sect. 10 (Recall)	Sect. 11 (Gambling)	Del. Prop. 172 (Ombudsman)
Etchart	Y	N	Y	Y
Harlow	N	Y	N	Y
Belcher	N	Y	Y	Y
Brown	Y	N	Y	Y
Choate	Y	Y	N	Y
Habedank	Y	Y	Y	Y
Lorello	Y	Y	Y	Y
Vermillion	Y	Y	Y	N

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

COMPACT WITH THE UNITED STATES

PROPOSAL ON FINAL CONSIDERATION

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676, as amended) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

UNANIMOUS PROPOSAL

by

COMMITTEE ON STYLE, DRAFTING, SUBMISSION AND TRANSITION

COMPACT WITH THE UNITED STATES

BE IT PROPOSED BY THE COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION:

That there be a new Article on Compact with the United States to read as follows:

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

John M. Schiltz
Chairman

William J. Burkhardt
Vice Chairman

D. L. Holland

Robert Lee Kelleher

Lucile Speer

Virginia H. Blend

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

John M. Schiltz
Chairman

William Burkhardt
Vice Chairman

D. L. Holland

Robert Lee Kelleher

Lucile Speer

Virginia B. Blend

Chet Blaylock

J. C. Garlington

Ben F. Berg

Richard F. Roeder

Jerome T. Loendorf

* * * * *

COMMENTS

The proposed Article is a response to Delegate Proposal No. 15, which was referred to this Committee, and to other expressions of concern at the Convention. It is similar to a provision in the new North Dakota Constitution. Its only function is to

serve as a reminder that the guarantees upon which Congress conditioned the entry of Montana into the Union persist Even though Ordinance.

STYLE AND DRAFTING REPORTS

MONTANA CONSTITUTICNAL CCNVENTICN

1971-1972

REFORT CF COMMITTEE ON STYLE. DRAFTING,

TRANSITION AND SUEMISSICN CN

SUFFRAGE AND ELECTIONS

NC. I

Date Reported: February 24, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

MONTANA CONSTITUTIONAL CONVENTION

COMMITTEE ON STYLE, DRAFTING,
TRANSITION AND SUBMISSION

TO: Montana Constitutional Convention

SUBJECT: SUFFRAGE AND ELECTIONS

Ladies and Gentlemen:

The Committee on Style, Crafting, Transition and Submission transmit-c revisions of the abcvf Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee, indicating (ty underlining) words we have added and (by crossing out) words YE have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz,
Chairman of the Committee
on Style, Crafting, Transition
and Submission

/s/ William A. Burkhardt,
Vice Chairman of the Committee
on Style, Crafting, Transition
and Submission

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on Suffrage and Elections to read as follows:

ARTICLE ___

SUFFRAGE AND ELECTIONS

Section 1. BALLOT. All elections by the people shall be by secret ballot.

Section 2. QUALIFIED ELECTOR. Any citizen of the United States ~~who is~~ 18 years of age or older ~~, and~~ who meets the registration and residence requirements as provided by law is a qualified elector~~, except that no person who is~~ unless he is serving a sentence for a felony in a penal institution or ~~who~~ is ~~judged~~ of unsound mind, as determined by a court, ~~may vote.~~

Section 3. ELECTIONS. The legislature shall provide by law the requirements for ~~residency~~ residence, registration, absentee voting, and administration of elections. ~~The legislature~~ It may provide for a system of poll booth registration. and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. ELIGIBILITY FOR PUBLIC OFFICE. Any ~~person~~ qualified ~~to vote for state officers at general elections~~ elector is eligible to any public office except as otherwise provided in this Constitution~~, subject to any~~ The legislature may provide additional qualifications ~~provided by the legislature; provided, however, that~~ but no person convicted of a felony shall be eligible ~~qualified~~ to hold office ~~except upon~~ until his final discharge from state supervision.

Section 5. RESULT OF ELECTIONS. In all elections held by the people ~~under this Constitution~~, the person or persons receiving the ~~highest~~ largest number of ~~legal~~ votes shall be declared elected.

Section 6. PRIVILEGE FROM ARREST. ~~Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.~~ A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

Report NO. 1 -- SUFFRAGE AND ELECTIONS

Comments on style, form, and grammar

General: A title was added to each section.

Section 2: The grammatical changes achieve brevity without altering substance.

Section 4: The language deleted from lines 22 and 23 repeated the qualifications set forth in section 2. The form of lines 25 through 2E was changed to avoid the presence of "except," "subject to," and "provided, however" in ths same sentence.

Section 5: The words deleted from line 33 are superfluous. The words "by the people" in line 25 aay also be superflucus, but remain to insure certainty that "elections" were political (as opposed to corporate, for example). Re line 1, p. 2 "numbers" are "large" or "small", not "high" or "low". If a vote is not "legal", it is cct a "vote".

Section 6: The Convention voted to adopt the language from the present Constitution, the style of which varies from that of this Article. The Committee on Style interpreted the existing language as intended to protect the voter from arrest only for acts committed enroute to the polls. it expressed that interpretation in the proposed substitute. The word "treason" has been omitted because it is the opinion of the Committee on Style that it is included within the term "felony".

ORDER OF BUSINESS NO. 5 --

FINAL CONSIDERATION STYLE AND DRAFTING --

SUFFRAGE AND ELECTIONS - NO. I

ARTICLE

SUFFRAGE AND ELECTIONS

Section 1. BALLOT. All elections by the people shall be by secret ballot.

Section 2. QUALIFIED ELECTOR. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. ELECTIONS. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. ELIGIBILITY FOR PUBLIC OFFICE. Any qualified elector is eligible to any public office except as otherwise provided in this Constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. RESULT OF ELECTIONS. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. PRIVILEGE FROM ARREST. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

CONSTITUTIONAL REVISION

NO. II

Date Reported: February 26, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: CONSTITUTIONAL REVISION

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz,
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt,
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PRCPCSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENIMENI COMMITTEE:

That there be a new Article on Ccnstitut icnal Revisicn to read as follcws:

ARTICLE ---

CONSTITUTICNAI REVISICN

Secticn 1. CONSTITUTICNAI CCNVENTICN. The legislature, by an affirmative vcte cf twc-thirds cf all the members, whether one cr mcre bodies, may at any time submit tc the qualified electors the questicn cf whether there shall be a Ccnventicn tc revise, alter, or amend this Ccnstitution.

Section 2. INITIATIVE FOR CCNSTITUTICNAI CCNVENTICN. (1) The pecple may by initiative petiticr direct the secretary cf state to submit tc the qualified electcrs the question of whether there shall be a Convention tc revise, alter, cr amend this Ccnstituticn. The petition shall be signed by at least 10 percent of the qualified electcrs Gf the state. That number shall include at least 10 percent cf the qualified electcrs in each cf twc-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petiticn in his office and cause the questicn to be submitted at the next general election.

Secticn 3. PERIODIC SUBMISSICN. If the questicn cf holding a Ccnvention is nct otherwise submitted during any pericd cf 20 years, it shall he submitted as prcvided by lau at the general electicn in the twentieth year following the last sutmissicn.

Secticn 4. CAIL CF CCNVENTICN. If a najcrity cf thcse voting cn the questicn answer in the affirmative, the legislature shall prcvide for the calling thereof at its next sessicn. The number of delegates tc the Conventicn shall be the same as that of the larger body of the legislature. The gualificaticns cf delegates shall be the same as the highest qualifications required for electicn to the legislature. The legislature shall determine whether the delegates may be ncminated cn a partisan cr a ncnpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number cf delegates.

Secticn 5. CONVENTICN EXPENSES. The legislature shall, in the act calling the Convention, designate the day, hcur, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses Gf the Ccnventicn.

Section 6. OATH, VACANCIES. Befcre prceeding, the delegates shall take the oath prcvided in this Ccnstituticn. Vacancies cccuring shall be filled ir the manner prcvided for filling vacancies in the legislature if not otherwise prcvided ty law.

Section 7. CCNVENTICN DUTIES. The Ccnvention shall meet after the electicn of the delegates and prepare such revisions, alteraticns, cr amendments to the Constituticn as may be deemed necessary. They shall be submitted tc the qualified electcrs for ratification or rejection as a whcle cr in separate articles cr amendments as determined by the Ccnventicn at an election appointed by the Convention for that purpcse nct less than tuc months after adjcurnment. Unless so submitted and approved by a majority of the electors vcting thereon, nc such revisicn, alteraticn, or amendment shall take effect.

Section 8. AMENDMENT EY LEGISIATIVE REFERENDUM. Amendments to this Constitutien may be prcpcsed by any member of the legislature. If adopted by an affirmative rcll call vcte of two-thirds of all rhe members thereof, whether one cr mcre bcdies, the prcposed amendment shall be submitted to the qualified electcrs at the next general election. If apprcved by a majcrity of the electors vcting thereon, the amendment shall beccme a part cf this Constitution on the first day cf July after certification cf the election returns unless the amendment provides ctherwise.

Section 9. AMENDMENT 'BY INITIATIVE. (1) The pecple may also propose Constituticnal amendments by initiative. Petitions including the full text of the prcpcsed amendment shall be signed by at least 10 percent of the qualified electcrs of the state. That number shall include at least 10 percent cf the qualified electors in each cf tuc-fifths cf the legislative districts.

(2) The petitions shall be filed with the secretary of state who shall check and certify the validity cf the signatures thereon. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as prcvided by law twice each month for two mcnths previous to the next regular state-wide electicn.

(3) At that election, the prcposed amendment shall be submitted to the qualified electcrs fcr apprcval or rejection. If apprcved by a majority voting thereon, it shall beccme a part of the Constitution effective the first day of July following its approval, unless the amendment prcvides otherwise.

Section 10. PETITION SIGNERS. The number cf qualified electors required fcr the filing of any petitien prcvided fcr in this Article shall be determined by the number cf votes cast fcr governor in the preceding general electicn.

Section 11. SUBMISSION. If more than one amendment is submitted at the same electicn, each shall be so prepared and distinguished that it can be vcted upcn separately. BE IT PRO-

POSED EY THE GENERAL GOVERNMENT AND CCNSTITUTICNAL AMENDMENT CCM-MITTEE:

That there be a new Article cc Ccnstituticnal Revision to read as fcllcws:

ARTICLE ___

CONSTITUTICNAL REVISICN

Section 1. CONSTITUTICNAL CCNVENTICN. ~~(1)~~ The legislature, by an affirmative vcte cf tuc-thirds cf all the members ~~thereof~~, whether one or more bodies, may at any time submit tc the qualified electors ~~cf the state~~ the questicn of whether there shall be ~~an unlimited~~ Ccnvention tc revise, alter, cr amend this Constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CCNVENTICN. (1) The pecple may by initiative petition direct the secretary cf state to submit tc the qualified electcrs ~~veters of the state~~ the questicn of whether there shall be ~~an unlimited~~ a Convention to revise, alter, or amend this Ccnstitution. The petition ~~must~~ shall be signed by at least 10 percent cf the qualified electors ~~legal voters~~ cf the state. ~~, which~~ That number shall include at least 13 percent of the qualified electcrs ~~legal voters~~ in each of two-fifths of the legislative ~~representative~~ districts, ~~of the state.~~

(2) The ~~petition shall be filed with the~~ secretary cf state, ~~who~~ shall certify the filing of the petitien in his office ~~thereof~~ and cause the questicn tc be submitted ~~to the voters~~ at the next general election.

Section 3. PERIODIC SUBMISSICN. If the question cf hclding a Convention is not otherwise submitted ~~to the people at some time~~ during any period of 2C years, it shall be submitted as provided by law at the general election in the twentieth year following the last submissicn, ~~of such question.~~

Section 4. CALL OF CONVENTICN. If a najcrity of those voting on the questicn answer in the affirmative, ~~shall declare in favor of such Convention,~~ the legislature ~~legislative assembly~~ shall ~~at its next session~~ prcvide for the calling thereof at its next session. The number of delegates tc ~~members of~~ the Conventicn shall be the same as that cf the ~~largest~~ larger body of the ~~legislative~~ legislature. ~~assembly.~~ The qualificaticns cf ~~members~~ delegates shall be the same as the highest qualifications required fcr ~~membership in~~ electicn tc the legislature. The legislature shall ~~may~~ determine whether the delegates ~~shall~~ may be ~~elected after nemination by political parties,~~ ncminated on a partisan or ~~on~~ a non-partisan basis, ~~but~~ They shall be elected

at the same places and in the same districts as are the members of the legislative body determining the number cf delegates.

Section 5. CONVENTICN EXPENSES. The ~~legislative--assembly~~ legislature shall, in the act calling the Convention, designate the day, hour, acd place cf its meeting, and fix and provide fcr the pay of its members and officers~~,--and--provide--for--the--payment of--the--same,--together--with~~ and the necessary expenses cf the Convention.

Section 6. OATH, VACANCIES. Before prcceeding, the ~~members~~ delegates shall take the oath ~~otherwise~~ provided in this Constitutien. ~~The--qualificatiene--ef--members--shall--be--the--same--as--the highest--qualificatione--required--fer--membership--in--the--legislature.~~ Vacancies cccuring shall be filled in the manner prcvided for filling vacancies in the legislature ~~legislative--assembly,--er as~~ if not otherwise provided ty law.

Section 7. CONVENTICN DUTIES. The Convecticn shall meet after the electionof the delegates and prepare such revisicns, alteraticns, or amendments to the Ccnstitutien as may be deemed necessary,, ~~which~~ They shall be submitted tc the qualified electors for ~~their~~ ratification or rejecticn as a whole or in separate articles cr amendments as determined by the Conventicn ~~and~~ at an elfcticn appcinted by the Convecticn for that purpose~~,--or at--the--next--general--electien,--but~~ not less than two mcnths after ~~the~~ adjournment, ~~thereof.~~ Unless sc submitted and approved by a majority of the electors voting thereon, nc such revisicn, alteratien, or amendment shall take effect.

Section 8. ~~CONSTITUTIONAL~~ AMENDMENT BY ~~THE--LEGISLATURE.~~ LEGISLATIVE REFERENDUM. Amendments tc this Ccnstitution may be proposed by any member cf the legislature. ~~legislative--assembly.~~ If adopted by an affirmative roll call vcte of two-thirds of all the members thereof, whether cne cr more bcdies, the prcposed amendment shall ~~become--a--part--ef--the--Ccnstitution--when--approved by--the--fellewing--proceduree~~

~~Section--9.--The--legislative--assembly--shall--refer--the--proposed--amendment~~ &p-submitted to the qualified electors ~~voters--of the--state--ef--Montana--to--be--voted--er--in~~ at the next general election% ~~held--in--the--state.~~ If approved ty a majority of the electors voting thereon, the amendment shall beccme a part cf this Ccnstitutien on the first day cf July after certification cf the electien returns unless the amendment ~~otherwise~~ prcvides~~;--er~~ otherwise.

Section ~~10~~ 9. ~~CONSTITUTIONAL~~ AMENDMENT BY INITIATIVE. (1) The pecple ~~ef--Montana~~ may also propose Ccnstituticnal amendments by initiative, ~~process.~~ Petitions ~~shall~~ including ~~include~~ the full text of the propcsed amendment ~~and~~ shall be signed by ~~not less--than~~ at least 10 percent of the ~~legal--voters~~ qualified electors of the state. ~~in--Montana--which~~ That number shall include at least 10 percent of the qualified electors ~~legal--voters~~ in each

of two-fifths of the legislative ~~representative~~ districts, ~~of Montana.~~

(2) The petitions shall be filed with the secretary of state, who shall ~~cause the same to be checked~~ check and ~~certified as to~~ certify the validity of the signatures thereon. ~~and,~~ If the petitions are found to ~~be~~ have been signed by the required number of electors, ~~voters~~ the secretary of state shall cause the amendment ~~same~~ to be published ~~in such manner~~ as provided by law twice each month for two months previous to the next regular state-wide election,, ~~at which time the proposed amendment shall be voted on.~~

(3) At ~~said~~ that election, the proposed amendment shall be submitted to the qualified electors ~~of the state~~ for ~~their~~ approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless ~~otherwise provided in~~ the amendment. provides otherwise.

Section ~~11~~ 10. ~~LEGAL VOTERS~~ PETITION SIGNERS. ~~The number of votes cast for the office of governor in the general election immediately preceding the filing of any petition provided for in this Article shall determine the number of legal voters.~~ The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for governor in the preceding general election.

Section ~~12~~ 11. SUBMISSION. ~~Should~~ If more than one ~~amendments~~ amendment ~~than one be~~ is submitted at the same election, ~~they~~ each shall be so prepared and distinguished ~~by numbers or otherwise~~ that it ~~each~~ can be voted upon separately.

Report #2 - Constitutional Revision

COMMENTS ON STYLE, FORM, AND GRAMMAR

General: 1. Section titles were added as necessary.

2. The phrase "qualified elector", adopted in report #1, was substituted for "legal voter" or its equivalent.

Section 1. The adjective "unlimited" was deleted from line 12 and line 17, section 2, because its presence is not necessary to provide for such power. In addition, its presence would make possible an interpretation that there is no power to call a "limited" Convention.

Section 2. The structural changes do not alter substance, but clarify the Convention's intention to require that the number of petitioners be spread across the state. Adding subsections serves clarity.

Section 3. The words deleted are superfluous. Adding "as provided by law" empowers the legislature to identify the submitter.

Section 4. Deletion, sutstitution, and rearrangement of language does not alter substance. The noun "delegate" was substituted for "member" because it is more appropriate.

Section 5. Grammatical changes do not alter substance.

Section 6. Two changes of labels, deletion of "otherwise" in line 18, and moving one sentence to section 4, do not alter substance.

Section 7. Structural change and deletion of superfluity do not alter substance.

Sections 8 and 9. The operative portions of each section were combined to produce one section with no change in substance.

Section 10. Renumbered "9". Structural changes and removal of superfluity do not alter substance. That portion prescribing the number of signers accords with the alteration in section 2.

Section 11. Renumbered "10". Sentence structure has been altered for clarity without change in substance.

Section 12. Renumbered "11". Structural change and deletion of superfluity do not alter substance.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION STYLE AND DRAFTING

CONSTITUTIONAL REVISION - NO. II

ARTICLE

CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited Convention to revise, alter, or amend this Corrtitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of uhether there shall be an unlimited Convention to revise, alter, or amend this Constitution. The petition shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a Convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. CAIL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. CONVENTIGN EXPENSES. The legislature shall, in the act calling the Convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the Convention.

Section 6. OATH, VACANCIES. Before proceeding, the dele-

gates shall take the oath provided in this Constitution. Vacancies occuring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. CONVENTION DUTIES. The Convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the Constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the Convention at an election appointed by the Convention for that Purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting therein, no such revision, alteration or amendment shall take effect.

Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM. Amendments to this Constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. AMENDMENT BY INITIATIVE. (1) The people may also propose Constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least 13 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting therein, it shall become a Part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. PETITION SIGNERS. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. SUBMISSION. If more than one amendment is submitted at the same election, each shall be so Prepared and distinguished that it can be voted upon separately.

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

REPORT OF COMMITTEE CN STYLE, CRAFTING, TRANSITION AND SUBMISSION CN LEGISLATIVE - UNICAMERAL ANT: BICAMERAL

NO. III

Date Reported: March 2, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: LEGISLATIVE - UNICAMERAL AND BICAMERAL

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Circerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

Unicameral

BE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

That there be a new Article on the Legislature to read as follows:

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.

Section 2. SIZE. The number of senators shall be provided by law, but it shall not be smaller than 100 nor larger than 105.

Section 3. ELECTION AND TERMS. A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. QUALIFICATIONS. A candidate shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. COMPENSATION. (1) Each senator shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

(2) The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive departments.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected senators take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may he convened in special sessions by the governor or at the written request of a majority of the senators.

Section 7. VACANCIES. A vacancy in the legislature shall be

filled by special electicn fcr the unexpired term unless otherwise prcvided by law.

Section 8. IMMUNITY. A senatcr is privileged frcm arrest during attendance at sessicns cf the legislature and in going to and returning therefrom, unless apprehended in the ccmnissicn of a felony or a breach of the peace. He shall nct be questicned in any cther place for any speech cr debate in the legislature.

Section 9. DISQUALIFICATICN. During the term fcr which he is elected, a senatcr shall nct hold any civil, federal, state, ccunty, or municipal office. This prchibitien dces nct apply tc a notary public cr a member cf the militia.

Section li. ORGANIZATION AND PRCCEDURE. (1) The leqislature shall judge the election and qualifications cf senatcrs. It may vest in the courts the power tc try and determine contested elections. It shall choose its officers from amcng its members, keep a journal, and make rules fcr its prceedings. It may expel or punish a senatcr fcr gocd cause shcwn with the concurrence of tuc-thirds of all the senators.

(2) A majcrity cf the senatcrs constitutes a qucrum. A smaller number may adjourn frcm day tc day and compel attendance of absent members.

(3) The sessicns cf the legislature and of the ccmmittee cf the whole, all ccmmittee meetings, and all hearings shall be open tc the public.

(4) The legislature may establish a legislative ccuscil and other interim ccmmittees.

Sectien 11. BILLS. (1) A law shall be passed by bill which shall nct be so altered or amended cn its passage thrcugh the leqislature as tc change its criginal purpose. No bill shall become law except by a vote of the majcrity cf all senators present.

(2) Every vote of each senatcr cn each substantive question in the legislature, in any committee, cr in ccmmittee of the whole shall be reccrded and made public. Cn final passage, the vote shall be taken by ayes and nces and the names entered cn the jcurnal.

(3) Each bill, except general appropriatien bills and bills for the codificatien and general revisicn of the laws, shall ccntain cnly cne subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, cnly sc much of the act nct so expressed is vcid.

(4) A general apprcpriation bill shall ccrtain only appropriaticns for the ordinary expenses cf the legislative, executive, and judicial departments, for interest cn the public debt,

and fcr public schools. Every cther apprcpriaticn shall be made by a separate bill containing but cre subject.

(5) No appropriaticn shall be made for religicus, charitable, industrial, educational, cr benevclent purposes tc any private individual, private associaticn, cr private corporation not under ccntrcl of the state.

(6) A law may be challenged cn the grcund of ncncccmpliance with this secticn cnly within twc years after its effective date.

Section 12. LOCAL AND SPECIAI IEGISIATICN. The legislature shall nct pass a special cr lccal act when a general act is, cr can be made, applicable.

Section 13. IMPEACHMENT. (1) The governcr, executive officers, heads cf state departments, judicial cfficers, and such other officers as may be made subject tc impeachment by law shall be removed from office upon conviction of impeachment. Other proceedings for removal frcm public cffice fcr cause Bay be provided by law.

(2) The legislature shall prcvide fcr the manner, procedure, and causes fcr remcval by impeachmect and shall prcvide for a tribunal.

(3) Impeachment can be brcught cnlyby a tuc-thirds vcte cf the legislature. The tribunal hearing the charges shall convict for impeachment Cnly by a vctecf two-thirds ok more of its members.

(4) Conviction shall extend cnly to remcval from cffice, but the party, whether convicted cr acquitted, shall alsc be liable to prcsecuticn according tc law,

Section 14. DISTRICTING AND APPCRTICNMENT. (1) For the purpose of election, the state shall be divided into as many districts as there are senators. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in populaticn as is practicable.

(2) In the legislative session fclloning ratification of this Constitution and thereafter in each sessicn preceding each federal populaticn census, a ccmmissicn of five citizens, none of whom way be public officials, shall be selected to prepare a plan for redistricting and reapporticning the state intc legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Uithin 20 days after their designation, the fcur commissioners shall select the fifth member, uho shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme ccnrt shall select him.

(3) The commission shall submit its plan to the legislature

at the first regular session after its appointment or after the census figures are available. Within 3C days after submission, the legislature shall return the plan to the commission with its recommendations. Within 3C days thereafter, the commission shall file its final plan with the secretary cf state and it shall become law. The commission is then dissolved.

Section 15. REFERENDUM CF UNICAMERAL LEGISLATURE. (1) In 1980 the secretary of state shall place upcn the ballot at the general election the question: "Shall the unicameral legislature form be continued?"

(2) If a majority cf the qualified electors vcting cn the question answer in the affirmative, the form shall be continued, and this section shall be cf nc further effect.

(3) 'If a majority of the qualified electors vcting cn the question answer in the negative, Article ___ cf this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the fcllcwirg:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting cf a senate and a house cf representatives. The people reserve tc themselves the powers of initiative and referendum.*'

(b) "Section 2. SIZE. The size cf the legislature shall be prcvidnd by law, tut the senate shall nct have more than 53 or fewer than 50 members and the house shall nct have mcre than 106 or fewer than 100 members."

(c) "Section 3. ELECTICN ARC 'TERMS. A member of the house of representatives shall be elected fcr a term cf two years and a member of the senate for a term cf four years, each to begin on a date provided by law. One-half cf the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND ERCCECUFE. (1) Each house shall judge the election and qualifications cf its members. It may by law vest in the courts the pcwer tc try and determine contested elections. Each house shall chcose its cfficers frcm among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member fcr gocd cause shcwn with the ccncurrence of two-thirds cf all its members."

"(2) A majority of each house ccnstitutes a qucrum. A smaller number may adjourn frcm day tc day and compel attendance of absent members."

"(3) The sessions of the legislature and of the ccmmittee of the whole, all committee meetings, and all hearings shall be open to the public."

"(4) The legislature may establish a legislative council

and other interim committees."

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject by law shall be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure and causes for removal by impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a trio-thirds vote of the house. The tribunal hearing the charges shall convict for impeachment only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 day-s thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the

members cf a bicameral body are elected and qualified.

(5) The senate chamber existing upcc the date cf adcptien of this Article shall remain intact until the electicn prcvided for in this section has determined whether the unicameral legislature is tc ccntinue.

(6) When the provisions of this sectien have been carried out, it shall be of nc further effect.

Section 16. PROHIBITED PAYMENTS. Except fcr interest cn the public debt, nc mcney shall be paid cut cf the treasury unless upcn an appropriation made by law and a warrant. drawn by the proper officer in pursuance thereof.

Section 17. CODE OE ETHICS. The legislature shall prcvide a code of ethics prohibiting ccnflict between public duty acd private interest for senators and all state and local officers and emplcyees.

Unicameral

BE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

That there be a new Article cr the Legislature to read as follcws:

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power ~~of the state~~ is vested in ~~the~~ a legislature~~, consisting~~ cf cne chamber whose members are designated senators. The people reserve to themselves the ~~power~~ powers of initiative and referendum.

Section 2. SIZE. The number cf senators shall be ~~prescribed~~ provided by law, but ~~there~~ it shall not be ~~not less~~ smaller than 100 ~~members~~ nor ~~more~~ larger than 105.

Section 3. ELECTION ~~AND TERMS OF MEMBERS~~. A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years. ~~A senator's term shall begin or a date provided by law.~~

Section 4. QUALIFICATIONS. A candidate ~~for the legislature~~ shall be a resident of the state for at least one year next preceding the general election. For six months ~~prior to~~ next preceding the general election, he ~~must~~ shall be a resident cf the county ~~which~~ if it contains one cr more districts~~, and where a~~ or of the district if it ~~consists~~ contains all cr parts cf more than one county~~, he must reside within that district~~.

Section 5. COMPENSATION. (1) Each ~~member of the legislature~~ senator shall receive compensation for his services and allowances ~~as may be prescribed~~ provided by law. NO legislature may fix its own compensation.

(2) The legislature shall create ~~A~~ a salary commission ~~shall be created by the legislature~~ to recommend compensation for the judiciary and elected members cf the legislative~~,~~ and executive~~, and judicial compensation.~~ departments.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning ~~on the date~~ when newly elected ~~members~~ senators take office. Any business, till, cr resolution pending at adjournment of a session shall carry over with the same status to any ~~further~~ other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions cf not more than 60 legislative

days ~~or less~~. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the ~~members~~ senators.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. ~~The members of the legislature shall, in all cases, except felony and breach of the peace, be privileged from arrest during their attendance at the session of the legislature, and in going to and returning from the same; and for any speech or debate in the legislature, they shall not be questioned in any other place.~~ A senator is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. ~~No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.~~ During the term for which he is elected, a senator shall not hold any civil, federal, state, county, or municipal office. This prohibition does not apply to a notary public or a member of the militia.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of ~~its members~~ senators. ~~and~~ It may ~~by law~~ vest in the courts the ~~trial and determination of~~ power to try and determine contested elections ~~of its members~~. It shall choose its officers from aacng its members~~;~~, keep a journal~~+~~, and make rules for its proceedings~~;~~ ~~and~~. It may expel or punish a ~~member~~ senator for good cause shown with the concurrence of ~~two-thirds of all its members~~ the senators.

(2) A majority of the ~~membership of the legislature~~ senators constitutes a quorum ~~to do business~~. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature~~,~~ and of the committee of the whole, ~~and~~ all committee meetings, and all hearings shall be open to the public.

(4) ~~There may be a legislative council and~~ The legislature may establish a legislative council and other interim committees.

Section 11. BILLS. (1) A law shall be passed by ~~bill, and a bill~~ which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No

bill shall becme law except by a vcte cf the majority of all senators present.

(2) ~~The vote of each member of the legislature and its committees on any substantive questicn shall be recorded and made public.~~ Every vote of each senatcr cn each substantive questicn in the legislature, in any committee, cr in committee Of the whcle shall be recorded and made public.

~~(3) No bill shall become law except by a vete of the majerity of all members present, and on~~ On final passage, the vote shall be taken by ayes and noes ard the names entered cn the journal.

~~(4)~~ (3) Each till, except general appropriation tills, and bills for the codificaticn and general revisicn of the laws, shall ccntaic cnly one subject, ~~which shall be~~ clearly expressed in its title, ~~but if~~ If any subject ~~shall be~~ is embraced in any act ~~which shall~~ and is nct ~~be~~ expressed in the title, ~~such act shall be void~~ cnly ~~as to~~ so much ~~thereof as shall~~ cf the act not ~~be~~ so expressed is void. ~~A law may be challenged on the grounds of ncn ccmpliance with this section within two years after its effective date but not after that period.~~

~~(5)~~ (4) A ~~General~~ general appropriaticn ~~bills~~ bill shall ccntain cnly appropriations for the crdinary expenses of the legislative, executive, and judicial departments ~~of the state,~~ for interest on the public debt, and fcr public schcols. ~~All~~ Every other ~~appropriations~~ appropriatcn shall be made by a separate bill ~~bills, each~~ containing but cne subject.

~~(6)~~ (5) Nc appropriaticn *shall* be made for religicus, charitable, industrial, educational, or benevclent purposes to any private individual, private associaticn, cr private ccrpcraticn not under contrcl cf the state.

(6) A law may be challenged cn the grcund of noncompliance with this section cnly within two Years after its effective date

Sectiсn 12. LOCAL AND SPECIAL LEGISLATION. The legislature ~~may~~ shall nct pass a special cr local act then a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governcr, executive officers, heads of state departments, judicial officers, ard such other officers as may be made subject toirfeachaent by law ~~may~~ shall be removed from office upon ccnviction of impeachment. Other proceedings for removal from public cffice fcr cause may be provided by law.

(2) The legislature shall prcvide fcr the manner, procedure, and causes fcr removal by impeachment and shall prcvide fcr a tribunal.

(3) Impeachment can be brought only by a two-thirds vote cf the ~~senate~~ legislature. The tribunal hearing the charges shall convict ~~and--no--conviction~~ for impeachment ~~shall-be-made-except~~ only by a vote cf twc-thirds or more of ~~the~~ its members ~~of--the-tribunal-hearing-the-charges~~.

(4) ~~Such conviction~~ Conviction shall ~~only~~ extend only tc removal frcm office, but the party, whether ccrvicted cr acquitted, shall alsc be liable tc prcsscuticn according tc law.

Section 14. DISTRICTING AND APPCRTICNMENT. (1) For the purpose cf ~~electing-members-cf-the-legislature,~~ election the state shall be divided into as many districts as there ~~shall-be-members-of-the-legislature~~ are senators. Each ~~legislative~~ district shall consist of compact and ccntiguous territory. ~~and~~ All districts shall be ~~so~~ as nearly equal in populatien as is practicable.

(2) In the legislative sessicn fcllcuing ratification of this Ccnstitutien and thereafter in ~~the~~ each sessicn preceding each federal population census ~~made--by--the--authority--cf--the-United--States,~~ a ~~committee~~ commissicn cf five citizens, ncne of whcm may be public officials, shall be ~~designated~~ selected to ~~draft~~ prepare a plan for redistricting and reapportioning the state into legislative and congressicnal districts. The majority and minority leaders of the legislature shall each ~~designate~~ select two commissioners. ~~The-four-commissioners,--within~~ Within 20 days after their designatien, the four ccmmissicners shall select the fifth member, whc shall serve as chairman cf the commissicn. If the four members fail tc select the fifth member within the time prcvided ~~prescribed~~, a majcrity of the supreme court shall ~~appcint-the-chairman~~ select him.

(3) The ~~appointed~~ commission shall ~~draw-up-a-plan-for-reapportioning--and--redistricting-legislative-and-congressional-districts-and~~ submit ~~this~~ its plan to the legislature at the first regular session after ~~ratificatien--of--this--Constitution~~ its appointment cr after the census figures are available. Within ~~(30)--thirty~~ days after ~~the~~ submission, ~~to-it~~ the legislature shall return the plan to the commissicn with its reccmmendaticns, ~~for-change-and-the-commissien-shall-within~~ Within ~~(30)--thirty~~ days thereafter I. the commission shall file ~~with-the-Secretary-of-State~~ its final plan with the secretary of state and ~~the-same~~ it shall become law. ~~After-enactment-of-a-valid-plan-this~~ The commission ~~shall-be~~ is then dissclved.

Section 15. REFERENDUM OF UNICAMERAI LEGISLATURE. (1) In 1980 the secretary of stats shall place upon the ballot at the ~~next-following~~ general electicn the guesticn: "Shall the unicameral legislature fcrr he continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the fcrm shall be continued, and this section shall be cf nc further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, ~~the provisions of Section 1, "POWER AND STRUCTURE"; Section 2, "SIZE"; Section 3, "ELECTION AND TERMS OF MEMBERS"; Section 10, "ORGANIZATION AND PROCEDURE"; Section 14, "IMPEACHMENT", and Section 15, "DISTRICTING AND APPORTIONMENT" as set forth in the bicameral legislative proposal shall be substituted for Sections 1, 2, 3, 10, 14 and 15 of this unicameral article and be controlling upon the composition of future legislative assemblies.~~ Article ___ of this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 53 or fewer than 50 members and the house shall not have more than 106 or fewer than 100 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings ~~and all hearings~~ shall be open to the public.

"(4) The legislature may establish a legislative council and other interim committee.

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject by law shall be removed

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from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure, and causes for removal by impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict for impeachment only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until ~~their successors to~~ the members of a bicameral body ~~can be~~ are elected and qualified.

(5) The ~~present~~ senate chamber existing upon the date of adoption of this ~~article~~ shall remain intact until ~~such~~ the election provided for in this section has determined whether the unicameral legislature is to ~~continued~~ continue.

(6) When the provisions of this section have been carried

out, it shall be of no further effect.

Section 16. PROHIBITED PAYMENTS. Except for interest on the public debt, ~~No~~ no money shall be paid out of the treasury ~~except~~ unless upon an appropriation~~s~~ made by law, and ~~on~~ a warrant drawn by the proper officer in pursuance thereof~~, --except --interest --on the public debt~~.

Section 17. CODE OF ETHICS. ~~A code of ethics for all state and local officials, officers, legislators, and state and local employees prohibiting conflict between public duty and private interest shall be described by law.~~ The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for senators and all state and local officers and employees.

Report No. 3 - Legislative - (Unicameral)

COMMENTS CN STYLE, FORM, AND GRAMMAR

Section 1. Deletion cf unnecessary words does not change substance. The addition cf "s" tc "power" is self-explanatory.

Section 2. Grammatical changes dc nct alter substance.

Section 3. Rearrangement dces nct altar substance.

Section 4. As the seccnd sentence came frcm the Ccrmittee of the Whole, it did nct require six mcnths' residence in a multi-ccunty district. Because there did nct appear tc be a substantive reason fcr the difference, the drafting change does require such residence. Additicns concern districts which may consist cf only parts cf *ore thar cne ccunty.

Section 5. Here and throughcut the rest cf the Article, the label "senator" *as substituted fcr "member for the legislature," in crder that the unicameral and bicameral alternatives might be separate. Other changes dc ncr alter substance. The second sentence of subsection (1) permits a "carryover" senator to fix his own compensation.

Section 6. NC change in substance.

Section 8. The provision has been rewritten to accord with the treatment cf the elector's privilege in section 6, SUFFRAGE ANC ELECTIONS. There is no change in substance.

Section 9. The rewriting attempts tc update style, and to avoid repetition cf the phrase "under the state," the meaning cf which is unclear.

Section 10. Changes tc accomplish Clarity and brevity do not affect substance. Additicr of "fcr good cause shown" to the last sentence of subsectiоn (1) clarifies the extent cf the power.

Section 11. Changes in language and crder dc not alter substance. The last sentence of subsecticr (3) becomes subsection (6).

Section 12. The verb has been changed tc make certain the prchibitiсn.

Section 13. The change in verb in subsection (1) makes clear that removal is required. Other changes dc nct alter substance.

Section 14. Line 3: "Ccmmission" was substituted for "committee" because the members are called "ccmmissicners". Tbe lan-

guage of the proposal in what is now the first sentence of subsection (3) could have been read to require the first commission to report to the session which appointed it. The alteration in language seeks to avoid that construction.

Section 15. As it came from Committee of the Whole, subsection (3) attempted to amend the Constitution without providing a method or the substantive content of the amendment. The new subsection (3) supplies those omissions but is not a change in substance. Changes in language in other subsections do not alter substance.

Sections 16 and 17. Titles were added. Rewriting does not alter substance. Both sections will probably be moved to other more appropriate Articles later.

Eicamaral

BE IT PROPOSED BY THE LEGISIATIVE CCMMITTEE:

That there be a new Article on the Legislature to read as fcllcws:

ARTICIE V

THE IEGISIATURE

Sectiicn 1. POWER AND STRUCTURE. The legislative poker is vested in a legislature consisting cf a senate and a hcuse cf representatives. The people reserve tc themselves the powers of intitiative and referendum.

Sectiicn 2. SIZE. The size cf the legislature shall be prc-vided by law, but the senate shall nct have mcre than 53 or fewer than 50 members and the hcuse shall nct have mcre than 106 or fewer than 100 members.

Section 3. ELECTICN AND TERMS. A member of the house of representatives shall be elected for a tern cf two years and a member of the senate fcr a term of fcur years each to begin on a date provided by law. One-half of the senators shall be elected every twc years.

Section ii. QUALIFICATIONS. A candidate fcr the legislature shall be a resident of the state fcr at least cne year next pre-ceding the general election. Fcr six mcnths next preceding the general electicn, he shall be a resident cf the ccunty if it con-tains cne or more districts cr cf the district if it ccntains all or parts of more than one ccunty.

Sectiicn 5. COMPENSATICN. (1) Each member cf the legislature shall receive compensaticn fcr his services and allcwances pro-vided by law. No legislature may fix its cwn ccmpensaticn.

(2) The legislature shall create a salary commissicn tc recommend compensaticn fcr the judiciary and elected members of the legislative and executive departments.

Section 6. SESSIONS. The legislature shall be a ccntinucus body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution Fending at adjournment of a session shall carry cver uith the same status to any cther sessicn cf the legislature during the biennium. The legislature shall meet at least once a year in regular session of not mcre than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legis-

lature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. During the term for which he is elected, a senator or representative shall not hold any civil federal, state, county, or municipal office. This prohibition does not apply to a notary public or a member of the militia.

Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriaticn tills and bills for the codificaticr and general revisicn cf the laws, shall contain cnly cne subject, clearly expressed in its title. If any subject is embraced in any act and is nct expressed in the title, *only* sc much of the act cct co expressed is vcid.

(4) A general apprcpriaticn bill shall ccrtain only appropriaticns fcr the ordinary expenses cf the legislative, executive, and judicial departments, for interest on the public debt, and fcr public schools. Every cther appropriation shall be made by a separate bill, ccntaining but cne subject.

(5) Nc appropriaticn shall be made for religicus, charitable, industrial, educaticnal, cr benevclent purposes to any private individual, private associaticn, cr private ccrpcraticn nct under contrcl cf the state.

(6) A law may be challenged cc the grcund of noncompliance with this sectien cnly within two years after its effective date.

Section 12. LCCAL ANC SPECIAL LEGISIATICN. The legislature shall nct pass a special cr lccal act when a general act is, cr car: be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive cfficers, heads cf state departments, judicial cfficers, and such other cfficers as may be made subject to impeachment by law shall be removed from office upon conviction of impeachment. Other prccnedings for remcval frcm public cffic? for cause may be prcvided by law.

(2) The legislature shall prcvide for the manner, procedure, and causes fcr remcval by impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a twc-thirds vcte of the house. The tribunal hearing the charges shall ccnvict fcr impeachment only by a vote of two-thirds cr mcre of its members.

(4) Convictien shall extend cnly tc remcval frcm cffice, but the party, whether convicted or acquitted, shall alsc be liable tc prosecutien according tc lam.

Section 14. DISTRICTING ANC APPCRTICNMENT. (1) The state shall be divided into as many districts as there are members cf the house, and each district shall elect cne representative. Each senate district shall be composed of tuc adjcining hcuse districts, and shall elect cne senatcr. Each district shall ccnsist cf ccmpact and contiguous territcry. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative sescicn following ratificaticn cf this Constitution and thereafter in each sessicn preceding each federal population census, a commission cf five citizens, ncne cf

whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. PROHIBITED PAYMENTS. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

section 16. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for senators and all state and local officers and employees.

Bicameral

BE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

That there be a new Article on the Legislature to read as follcws:

ARTICLE V

THE LEGISLATURE

Section 1. POWER ANC STRUCTURE. The legislative power ~~of the state~~ is vested in ~~the~~ a ~~legislative assembly~~ legislature consisting of a senate and a house of representatives. The people reserve to themselves the ~~power~~ powers of initiative and referendum.

Section 2. SIZE. The size cf the legislature shall be ~~prescribed~~ provided by law, but the senate shall ~~consist of~~ not have more than 53 ~~nor~~ or ~~less~~ fewer than 50 members and the house ~~of~~ shall not have more than 106 ~~nor~~ or ~~less~~ fewer than 100 members.

Section 3. ELECTION AND TERMS ~~OF MEMBERS~~. A member cf the house cf representatives shall be elected for a term cf two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half cf the senators shall be elected every two years. ~~The term of the members shall begin on a date provided by law.~~

Section 4. QUALIFICATIONS. A candidate fcr the legislature shall be a resident of the state fcr at least one year next preceding the general election. For six months ~~prior to~~ next preceding the general election, he ~~must~~ shall be a resident cf the county ~~which~~ if it contains one or more districts, ~~and where a~~ or of the district if it ~~consists~~ contains all or parts of more than one county, ~~he must reside within that district~~.

Section 5. COMPENSATICN. (1) Each member cf the legislature shall receive compensation for his services and allowances ~~as may be prescribed~~ provided by law. No legislature may fix its own compensaticn.

(2) The legislature shall create ~~A~~ a salary commission ~~shall be created by the legislature~~ to recommend compensation for the judiciary and elected members of the legislative and executive ~~and judicial compensation.~~ departments.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning ~~on the date~~ when newly elected members take office. Any business, bill, or resolution

pending at adjournment of a session shall carry over with the same status to any ~~further~~ other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days ~~or less~~. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor, or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. ~~The members of the legislature shall, in all cases, except felony and breach of the peace, be privileged from arrest during their attendance at the session of the legislature, and in going to and returning from the same; and for any speech or debate in the legislature, they shall not be questioned in any other place.~~ A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. ~~No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.~~ During the term for which he is elected, a senator or representative shall not hold any civil federal, state, county, or municipal office. This prohibition does not apply to a notary public or a member of the militia.

Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. ~~and~~ It may by law vest in the courts the ~~trial and determination of~~ power to try and determine contested elections ~~of its members~~. Each house shall choose its officers from among its members~~;~~, keep a journal~~;~~, and make rules for its proceedings~~;~~. ~~and~~ Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum ~~to do business~~. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature, and of the committee of the whole, ~~and~~ all committee meetings, and all hearings shall be open to the public.

(4) ~~There may be a legislative council and the~~ The legis-

lature may establish a legislative council and other interim committees.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor or to any ~~other~~ place other than that in which the two houses ~~shall be~~ are sitting.

Section 11. BILLS. (1) A law shall be passed by bill, ~~and a bill~~ which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present.

(2) ~~The vote of each member of the legislature and its committees on any substantive question shall be recorded and made public.~~ Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public.

~~(3) No bill shall become law except by a vote of the majority of all members present, and on~~ On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

~~(4)~~ (3) Each bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain only one subject, ~~which shall be~~ clearly expressed in its title, ~~but if~~ If any subject ~~shall be~~ is embraced in any act ~~which shall~~ and is not ~~be~~ expressed in the title, ~~such act shall be void~~ only ~~as to~~ so much ~~thereof as shall~~ of the act not ~~be~~ so expressed is void. ~~A law may be challenged on the grounds of non compliance with this section within two years after its effective date but not after that period.~~

~~(5)~~ (4) A ~~General~~ general appropriation ~~bills~~ bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial departments ~~of the state~~, for interest on the public debt, and for public schools. ~~All~~ Every other ~~appropriations~~ appropriation shall be made by a separate ~~bills~~, bill ~~each~~ containing but one subject.

~~(6)~~ (5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of non-compliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature ~~may~~ shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject to impeachment by law may shall be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for removal by impeachment and may select the senate as tribunal.

(3) Impeachment ~~can~~ shall be brought only by a two-thirds vote of the house. ~~and no conviction~~ The tribunal hearing the charges shall convict for impeachment ~~shall be made except~~ only by a vote of two-thirds or more of ~~the~~ its members ~~of the tribunal hearing the charges~~.

(4) ~~Such conviction~~ Conviction shall ~~only~~ extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many ~~house~~ districts as there are ~~representatives~~ members of the house, and each district shall elect one representative. Each senate district shall be ~~comprised~~ composed of two adjoining ~~representative~~ house districts, ~~for the election of~~ and shall elect one senator. ~~Every~~ Each ~~legislative~~ district shall consist of compact and contiguous territory. ~~and~~ All districts shall be ~~so~~ as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution *and* thereafter in ~~the~~ each session preceding each federal population census ~~made by the authority of the United States~~, a ~~committee~~ *commission* of five citizens, none of whom may be public officials, shall be ~~designated~~ selected to ~~draft~~ prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate a one commissioner. ~~The four commissioners, within~~ Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall ~~appoint the chairman~~ select him.

(3) The ~~appointed~~ commission shall ~~draw up a plan for reapportioning and redistricting legislative and congressional districts and~~ submit ~~this~~ its plan to the legislature at the first regular session after ~~ratification of this Constitution~~ its appointment or after the census figures are available. Within ~~(30) thirty~~ days after ~~the~~ submission, ~~to it~~ the legislature shall return the plan to the commission with its recommendations, ~~for change and the commission shall within~~ Within ~~(30) thirty~~

days thereafter ~~the commission shall~~ file ~~with the Secretary of State~~ its final plan with the secretary of state and ~~the same~~ it shall become law. ~~After enactment of a valid plan this~~ The commission ~~shall be~~ is then dissolved.

Section 15. ~~PROHIBITED PAYMENTS.~~ Except for interest on the public debt, ~~No~~ no money shall be paid out of the treasury ~~except~~ unless upon an ~~appropriations~~ appropriation made by law, and ~~on~~ a warrant drawn by the proper officer in pursuance thereof, ~~except interest on the public debt.~~

Section 16. CODE OF ETHICS. ~~A code of ethics for all state and local officials, officers, legislators, and state and local employees prohibiting conflict between public duty and private interest shall be described by law.~~ The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for senators and all state and local officers and employees.

Report No. 3 -

Legislative - (Bicameral)

COMMENTS CN STYLE, FORM, AND GRAMMAR

NB - Only comments which differ frcm thcse applied to the UNICAM-ERAL prcposal appear hear.

sections 1, 2, 3, 10, 13, and 14. Grammatical changes dc nct alter substance.

(BICAMERAL)

ORDER CF BUSINESS NO. 5 -

FINAL CONSIDERATION

STYLE ANC DRAFTING - LEGISLATIVE -

NC. III

ARTICLE ___

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative pcwer is vested in a legislature ccnsisting cf a senate and a hcuse cf representatives. The people reserve tc themselves the pcwers cf initiative and referendum.

Secticn 2. SIZE. The size of the legislature shall be provided by law, but the senate shall nct have more than 50 cr fewer than 40 members and the house shall nct have more than 100 or fever than 80 members.

Secticn 3. ELECTICN ANC TERMS. A member cf the hcuse cf representatives shall be elected fcr a term cf tuo years and a member of the senate for a term of four years each tc begin cn a date provided by law. One-half of the senators shall be elected every tsc years.

Section 4. QUALIFICATICNS. A candidate fcr the legislature shall be a resident cf the state fcr at least cne year next preceding the general election. For six mcnths next preceding the general election, he shall be a resident cf the county if it contains cne or more districts cr cf the district if it ccntains all or parts of more than cne ccunty.

Section 5. COMPENSATICN. (1) Each member cf the legislature shall receive compensaticn for his services and allcwances prcvided by law. No legislature may fix its cwn compensation.

(2) The legislature shall create a salary commission to recommend ccmpensation for the judiciary acd elected members of the legislative and executive departments.

Section 6. SESSICNS. The legislature shall be a continuous body fcr two-year periods beginning when neuly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry cver with the same status tc any other sessicn of the legislature during the biennium. The

legislature shall meet at least once a year in regular session of not more than EC legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special scssicnc by the governor or at the written request of a majority of the members.

section 7. VACANCIES. A vacancy in the legislature stall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. No ~~senator--or--representative~~ member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of ~~either--house~~ the legislature during his continuance in office.

Section 13. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committff meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. SILLS. (1) A law shall be passed by bill which shall not be CO altered or amended on its passage through the legislature as to change its original purpose. No till shall become law except by a vote of the majority of all members present and voting.

(2) Every vcte cf each member of the legislature cn each substantive question in the legislature, in any ccmmittee, cc in committee of the whole shall be recorded and made public. Cn final passage, the vote shall be taken by ayes and nces and the names entered on the jcurnal.

(3) Each bill, except general appropriaticn bills and tills for the codificaticr and general revision cf the laws, shall ccntain cnly one subject, clearly expressed in its title. If any subject is embraced in any act and is nct expressed in the title, Only sc much of the act nct so expressed is vcid.

(4) A general appropriation bill shall ccntain cnly appropriaticns for the ordinary expenses cf the legislative, executive, and judicial departments, fcr interest cn the public debt, and for public schccls. Every cther appropriaticn shall be made by a separate till, containing but cne subject.

(5) Nc appropriation shall be made fcr religicus, charitable, industrial, educaticnal, or benevclent purpcses tc any private individual, Private associaticn, cr private corporation not under ccctrcl of the state.

(6) A law may ha challenged cn the grcund of noncompliance with this sectien only within twc years after its effective date.

Sectien 12. LOCAL ANC SPECIAI IEGIEIATICN. The legislature shall nct pass a special cr lccal act when a general act is, cr can be made, applicable.

Section 13. IMPEACHMENI. (1) The gcverncr, executive officers, heads cf state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be remcved frcm cffice. Cther proceedings for removal frcm public office fcr cause may be provided ty law.

(2) The legislature shall prcvide fcr the manner, procedure, and causes fcr impeachment and may select the senate as tribunal.

(3) Impeachment shall be brcught only by a tuc-thirds vcte of the house. The tribunal hearing the charges shall ccnvict only by a vote of two-thirds cr more cf its members.

(4) Conviction shall extend only tc remcval frcm cffice, but the party, whether ccnvicted or acquitted, shall also be liable to prosecution accerding tc law.

Section 14. DISTRICTING AND APPCRTICNMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect cne representative. Each senate district shall be ccmpcsed of twc adjcining house districts, and shall elect one senatcr. Each district shall consist

of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. PROHIBITED PAYMENTS. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Section 16. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for legislatures and all state and local officers and employees.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION ON EXECUTIVE NO. IV

Date Reported: March 4, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Buckhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: EXECUTIVE

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE EXECUTIVE COMMITTEE:

That there be a new Article on the Executive tc read as follows:

ARTICLE ---

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department includes a governor, lieutenant gcverncr, secretary of state, attcrney general, superintendent cf public instructicn, treasurer, and auditcr.

(2) Each hclds cffica fcr a term cf four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat cf government, there keep the public records cf his cffice, and perform such other duties as are provided in this Constitutien and by law.

Section 2. ELECTION. (1) The governor, lieutenant gcvesncr, secretary of state, attorney general, superintendent of public instruction, treasurer, and auditor shall be elected by the qualified electors at a general electicn provided by law.

(2) Each candidate for gcverncr shall file jcintly with a candidate for lieutenant governor in primary elections, cr so otherwise comply with ncminatien procedures provided by law that the offices cf governor and lieutenant gcverncr are vcted upcn together in primary and general electicns.

Section 3. QUALIFICATIONS. (1) No person shall be eligitle to the office of governor, lieutenant governcr, secretary cf state, attorney general, superintendent of public instruction, treasurer, or auditor unless he is 25 years cf age cr older at the time of his electicn. In addition, each shall be a citizen cf the United States who has resided within the state two years next preceding his election.

(2) Any perscn with the foregoing qualifications is eligible to the office cf attorney general if an attorney in good standing admitted to practice law in Mcntana uhc has engaged in the active practice thereof fcr at least five years before election.

(3) The superintendent cf public instruction shall have such educatiocnal qualificatiocns as are provided by law.

Section 4. DUTIES. (1) The executive pcwer is vested in the

governor who shall see that the laws are faithfully executed. He shall have such other duties as are prcvided in this Ccrstitutiсn and by law.

(2) The lieutenant governor shall perfcrm the duties provided by law and those delegated tc him by the governor. Xc power specifically vested in the governcr by this Ccnstitution may be delegated tc the lieutenant governcr.

(3) The secretary cf state shall maintain official reccrds of the executive department and cf the acts cf the legislature, as provided by law. He shall keep the great seal cf the state of Montana and perfcrm any cther duties provided by law.

(4) The attorney general is the legal cfficer of the state and shall have the duties and powers provided by law.

(5) The superintendent cf public instructiсn, the treasurer, and the auditor shall have such duties as are provided by law. 'The legislature may appcint a legislative post-auditcr who shall perform such post-auditing duties as nay be prcvided by law.

Sectiсn 5. COMPENSATION. (1) Cfficers cf the executive department shall receive salaries provided ty law.

(2) During his term, Pc elected officer cf the executive department may bold ancther public cffice cr receive ccmpensation fcr services frcm any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the cffice cf lieutenant governor becomes vacant by his succsssicn tc the cffice cf governor, cr by his death, resigcaticn, cr disability as determined by law, the governor shall appoint a qualified persсn tc serve in that cffice fcr the remainder cf the term. If both the elected governor and the elected lieutenant governcr beccme unable to serve in the office of governcr, succession to the respective offices shall he as provided by law fcr the period until the next general electicn. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the cffice cf secretary of state, attorney general, auditor, treasurer, or superinterdent cf public instruction becomes vacant by death, resignation, or disability as determined by law, the governcr shall appcint a qualified persсn tc serve in that office until the next general election and until a successcr is elected and qualified. The persсn elected to fill a vacancy shall hcld the cffice until the expiration cf the term fox which his predecessor was elected.

Section 7. 2C DEPARTMENTS. All executive and administrative offices, bcards, bureaus, commissicns, agencies ard instrumen-

talities of the executive department (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, auditor, and treasurer) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. APPOINTING POWER. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this Constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes

the bill in accordance with the gcverncr's recommendation, it shall again return the bill tc the gcverncr fcr his reconsideration. The governor shall not return a bill fcr amendment a second time.

(3) If after receipt cf a veto message, two-thirds of the members present approve the bill, it shall beccme law.

(4) If the legislature is nct in sessicn when the governor vetoes a bill, he shall return the bill with his reascns therefcr to the legislature as provided by law. The legislature may reconvene to reconsider any bill sc vetoed.

(5) The gcverncr may veto items in apprcpriaticn tills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. PARDONS. The gcverncr may grant reprieves, commutations and pardons, restcre citizenship, and suspend and remit fines and forfeitures subject tc procedures provided by law.

Sectien 12. MILITIA. (1) The governcr is ccmmander-in-chief of the militia fcrces cf the state, except when they are in the actual service of the United States. As may call out any Fart cr all of the forces to aid in the executico cf the laws, suppress insurrection, repel invasicn, or protect life and property in natural disasters.

(2) The militia forces shall ccrsist cf all able-bcdied citizens of the state except thcse exempted by law.

Section 13. SUCCESSICN. (1) If the gcverncr-elect is disqualified cr dies, the lieutenant gcverncr-elect upcn qualifying for the office shall beccme gcverncr for the full term. If the governor-elect fails tc assume office for any other reascn, the lieutenant governor-elect upon qualifyirg as such shall serve as acting gcverncr until the governor-elect is able to assume office, cr until the office beccmes vacant.

(2) The lieutenant governor shall serve as acting gcvfrncr when so requested in writing by the governor. After the governor has been absent from the state for more than 45 ccnsecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the gcverncr is so disabled as to be unable tc ccmmunicate to the lieutenant governor the fact cf his inability tc perfcrm the duties of his office. The lieutenant governor shall continue tc serve as acting governor until the governcr is able to resume the duties of his office.

(4) Whenever, at any cther tine, the lieutenant governcr and attorney general transmit to the legislature their written declaration that the gnverncr is unable to discharge the pcwers

and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this Constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 14. INFORMATION FOR GOVERNOR. (1) The governor may require information in writing, under oath when required, from the officers of the executive department upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institotions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

BE IT PROPOSED BY THE EXECUTIVE COMMITTEE:

That there be a new Article on the Executive to read as follows:

ARTICLE ___

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department ~~shall consist of~~ includes a governor, lieutenant governor, secretary of state, attorney general, ~~and~~ superintendent of public instruction, ~~state~~ treasurer, and ~~state~~ auditor.

(2) Each ~~shall hold~~ holds ~~his~~ office for a term of four years, which ~~commencing~~ begins on the first Monday of January next succeeding ~~his~~ election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, ~~where he shall~~ there keep the public records of his office, ~~and~~

~~(4) Each shall~~ and perform such other duties as are ~~prescribed~~ provided in this Constitution, and by law.

Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, ~~state treasurer, the~~ superintendent of public instruction, treasurer, and ~~state~~ auditor shall be elected by the qualified electors ~~of the state~~ at a general election ~~held and finally determined as~~ provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures, provided by law ~~so~~ that the offices of governor and lieutenant governor ~~shall be~~ are voted upon together in primary and general elections, ~~as provided by law~~.

Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, ~~or~~ superintendent of public instruction, treasurer, or auditor unless he ~~has attained the age of~~ is 25 years of age or older at the time of his election, ~~nor to the office of secretary of state, state auditor, or state treasurer, unless he has attained the age of 25 years~~. In addition ~~to the qualifications above prescribed~~, each ~~of the officers named~~ shall be a citizen of the United States, ~~and have~~ who has resided within the state two years next preceding his election.

(2) ~~In addition to~~ Any person with the foregoing qualifications, ~~any person to be~~ is eligible to the office of attorney

general ~~shall be~~ if an attorney in good standing admitted tc practice law in ~~the state of~~ Montana~~, and have~~ who has engaged in the active practice thereof fcr at least five years before election.

(3) ~~In addition to the foregoing qualification the~~ The superintendent cf public instructicu shall ~~possess~~ have such educational qualifications as are ~~prescribed~~ provided by law.

Section 4. DUTIES. (1) The executive power ~~of the state~~ is vested in the governor~~,~~ who shall see that the laws are faithfully executed. He shall have such other duties as are ~~herein~~ provided~~,~~ in this Constitution and ~~as provided~~ by law.

(2) The lieutenant governcr shall perfcrm the duties provided by law and those delegated tc him by the governor~~,~~. ~~and those provided for him by law, but no~~ Nc power specifically vested in the governor by this Ccnstitution may be delegated tc the lieutenant gcverncr ~~in this manner~~.

(3) The secretary cf state shall maintain ~~the~~ official records of the executive department and of the acts cf the ~~legislative assembly~~ legislature, ~~and of the executive department~~, as provided by law. He shall keep the great seal Cf the state cf Montana~~,~~ and perfcrm any cther duties prcvided by law.

(4) The attorney general ~~shall be~~ is the legal cfficer cf the state~~,~~ and shall have ~~with~~ the duties and powers provided by law.

(5) The superintendent cf public instruction, the ~~state~~ treasurer, and the auditor shall have such duties as are provided by law.

~~(6) The auditor shall have such duties as are provided by law. In addition to the state auditor, the~~ The legislature ma* appoint a ~~legislative~~ legislative ~~Post~~ post-auditor uhc shall perfcrm such post-auditing duties as ~~shall~~ may be ~~prescribed~~ provided by law.

~~(7) The superintendent of public instruction shall have such duties as are provided by law.~~

Section 5. CONPENSA'IION. (1) Cfficers cf the executive department shall receive salaries prcvided ty law.

(2) During his term, ~~he~~ nc elected cfficer cf the executive department may ~~during his term~~ hcld ~~any other~~ another public office~~,~~ or receive compfnsaticn fcr ~~his~~ services from any other governmental agency. He nay be a candidate fcr any public cffice during his term.

Secticn 6. VACANCY IN OFFICE. (1) If the cffice of lieutenant gcvernor becomes vacant by his succession tc the cfficf cf

governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to ~~hold and~~ serve in that office for the remainder of ~~its~~ the term. If both the elected ~~Governor~~ governor ~~or~~ and the elected ~~Lieutenant~~ lieutenant governor ~~should~~ become unable to serve in the office of ~~Governor~~ governor, succession to ~~their~~ the respective offices shall be as provided by law for the Period until the next general election, ~~when~~ Then, ~~both the~~ a ~~Governor~~ governor and ~~Lieutenant~~ lieutenant ~~Governor~~ governor shall be ~~again~~ elected ~~for any~~ to fill the ~~balance~~ remainder of the original term ~~remaining~~.

(2) If the office of secretary of state, attorney general, auditor, treasurer, ~~and~~ or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to ~~hold and~~ serve in that office until the next general election, and until ~~his~~ a successor is elected and qualified. The person elected to fill ~~such~~ a vacancy shall hold the office until the expiration of the term for which ~~the person he succeeds~~ his predecessor elected.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies, and instrumentalities of the executive department ~~of state government~~ (except for the office *of* governor, lieutenant governor, secretary of state, attorney general, ~~and~~ superintendent of public instruction, ~~state~~ auditor, and ~~state~~ treasurer) and their respective functions, powers, and duties, shall be allocated by law among ~~and within~~ not more than 20 principal departments. ~~Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner~~ so as ~~will tend~~ to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a ~~principal~~ department.

Section 8. APPOINTING POWER. (1) The ~~principal~~ departments provided for in section 7 shall be under the supervision of the governor, ~~and, except~~ Except as otherwise provided in this Constitution ~~herein~~ or by law, each department shall be headed by a single executive appointed by the governor ~~and~~ subject to confirmation by the senate. ~~Such executives shall~~ to hold office until the end of the governor's term ~~of the governor,~~ unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for ~~by~~ in this Constitution or by law ~~and~~ whose appointment or election ~~of term~~ is not otherwise provided for. They shall hold office until the end of the governor's term ~~of the governor~~ unless sooner removed by the governor.

(3) If a vacancy occurs in any such office ~~occurs during a recess of~~ when the legislature is not in session, the governor

shall appcint ~~cemə-fit~~ a qualified person tc discharge the duties therecf until ~~the--next--meeting--cf--the-legislature,-when~~ the office ~~shall-be~~ is filled by appointment and ccrfirmaticn.

(4) ~~Nə~~ A person nct ccnfirmed by the senate fcr an cffice shall nct, except d t its request, be nominated again fcr that office at the same sessicn, cr be appcinted tc that cffice ~~during a-recess-of~~ when the legislature, is not in session.

Section 9. BUDGET AND MESSAGES. The gcvernor shall at the beginning cf each legislative sessicn, and may at cther times, give the legislature informaticn and recommend measures he considers necessary. The gcverncr shall submit tc the legislature at a time fixed by law, a budget fcr the ensuing fiscal period setting forth in detail, fcr all operating funds, the proposed expenditures and estimated revenue cf the state.

section 10. VETO POWER. (1) ~~All~~ Each ~~bills~~ bill passed ty the legislature, except bills propcsing amendments to the Montana Ccnstitutiсn, bills ratifying propcsed amendments tc the United States Constitution, rescluticns, and initiative and referendum measures, shall be submitted tc the gcverrcr fcr his signature. ~~and-shall-become-law,-if~~ If he does not sign ~~neither-approves-nor~~ or ~~vetoes~~ vetc the bill within five days after its delivery to him if the legislature is ir sessicn, or within 25 days if the legislature is adjcurned, it shall beccme law. The governor shall return a vetoed bills tc the legislature with a statement cf his ~~objections~~ reascns therefor.

(2) The gcvernor may return any bill to the legislature with his ~~objections-and-with-a~~ reccmmendaticn fcr ~~an~~ amendment ~~or amendments--to-it.~~ If the legislature passes the bill in accordance with the governor's recommendaticn, it shall again return the bill tc the gcverncr fcr his reconsideratiсn. The gcverncr shall nct return a bill fcr amendment a seccnd time, ~~--fcr--amendment.~~

(3) ~~Upon~~ If after receipt cf a vetc message, ~~the-legislature-shall-reconsider-passage-of-the-vetoed-bill.~~ A twc-thirds ~~vote~~ of the members present approve ~~overrides-the-vetc,-and~~ the bill, it shall beccme law.

(4) If the legislature is not in sessicn when the gcverncr vetoes a bill, he shall return the bill with his ~~objections~~ reasons therefor to the legislature ~~in--a--manner--authorized~~ as provided by law. ~~The-legislature,-as-provided-in-section-11,~~ The legislature may reconvene ~~itself~~ tc reccncider any bills so vetoed ~~by-the-governor.~~

(5) The gcvernor may veto items in appropriatiсn hills, and in such instances the procedure shall be the same as upcn veto of an entire bill.

~~Section-11.--SPECIAL--SESSION.-Whenever-the-governor-consid-~~

~~ers-it-in-the-public-interest,-he-may-convene-the-legislature.-At the-written-request-of-a-majority-of-the-members,--the--presiding officers--of-both-houses-shall-convene-the-legislature-in-special session.~~

Section ~~12~~11. PARDONS. The governor ~~shall-have-the-power-to~~ my grant reprieves, commutations and pardons ~~after--conviction,~~ ~~reinstate~~ restore citizenship, and ~~may~~ suspend and remit fines and forfeitures subject to procedures ~~prescribed~~ provided by law.

Section ~~13~~12. MILITIA. (1) The governor ~~shall~~ is ~~to~~ commander-in-chief of the militia forces of the state, except when ~~these--forces~~ they are in the actual service of the United States~~,. and-shall-have-the-power-to~~ He may call out any Part ~~of~~ ~~or~~ ~~the--whole~~ all ~~of~~ ~~said~~ the forces to aid in the execution of the laws, ~~to~~ suppress insurrection, ~~or-to~~ repel invasion, or ~~to~~ protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except ~~such-persons-as-are~~ those exempted by law.

Section ~~14~~13. SUCCESSION. (1) If the governor-elect is disqualified, or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect ~~qualifies-for~~ is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor ~~to-do-so.-He-shall serve-as-acting-governor-during-the-absence~~ After the governor has been absent from the state ~~of-the-governor-for-any-period-in excess-of~~ for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall also serve as acting governor when the governor is so disabled ~~and-by-reason-of-that-disability-is~~ as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor ~~in-such-event~~ shall continue to serve as acting governor until the governor is able to ~~resumes~~ resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the ~~presiding-officer-of-the~~ legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his

office, the lieutenant governor shall ~~enter upon and discharge the same~~ serve as acting governor~~.~~ ~~thereafter~~ Thereafter, when the governor transmits to the ~~presiding officer of the~~ legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to ~~discharge the powers and duties of the office~~ serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided ~~herein~~ in this Constitution.

(7) Additional succession to ~~such~~ fill vacancies shall be ~~as~~ provided by law.

(8) When there is a vacancy in the office of governor, the successor shall ~~have the title, powers, duties and emoluments of that office and shall~~ be the governor. ~~When~~ The ~~successor serves as~~ acting governor ~~for a temporary period, he~~ shall have ~~only~~ the powers and duties of the office of governor only for the period during which he serves ~~as such~~.

Section ~~15~~14. INFORMATION FOR GOVERNOR (1) The governor may require information in writing, under oath when required, from the officers of the executive department upon any subject relating to the duties of their respective offices~~, which information shall be given upon oath whenever so required,~~

(2) ~~he~~ He may ~~also~~ require information in writing, ~~at any time,~~ under oath, from all officers and managers of state institutions~~, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and~~

(3) He may, ~~at any time he deems it necessary,~~ appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

Report #4 - Executive

COMMENTS CN STYLE, FORM, AND GRAMMAR

section 1. "Department" is the generic label adopted in report NC. 12, GENERAL GCVERNMENT. There may be scme minor confusion because tile word is used in a different context in section 7 cf this article. The GENERAL GCVERNMENT comments speak cf dividing the powers of government among three "branches". Changes for brevity and clarity do not alter substance. The order in which the offices are listed in section 1 will be used ir final form.

Section 2. Deletion cf superfluity does not alter substance.

Section 3. Some language has been rearranged and some omitted. Omissions do not alter substance.

Section 4. The Committee on Style interprets subsection (2) as differentiating between "duties" and gutfrnatorial "power" which is Constitutionally vested.

Changes do not alter substance. The provision for a "legislative post-auditor" in what was subsection (6) shouldbe moved to the Article on THE LEGISLATURE.

Section 5. (1) The Committee on Style interprets this subsection as not prohibiting either increases or decreases in salaries at any time.

(2) The changes in language are intended tc make plain that the officer will be paid for the services he renders in his office.

Section 6. Changes in language do not alter substance.

Section Celetion of the language beginning with "subsequently" removes a statutory provision which has been effected.

Section 8. (3) and (4) The words "is not in session" were substituted for "recess", which was ambiguous.

Section 10. (1) The changes in language avoid the seeming possibility that a bill becomes law only if it is not signed or vetoed. Opinion is divided on whether "veto power" is EXECUTIVE or LEGISLATIVE.

Section 11. The section was deleted because the matter is provided for in the last sentence of Section 6 cf the LEGISLATIVE ARTICLE. All following sections have been renumbered.

Section 11t The verb "restore" was substituted for "rein-

state" before "citizenship" because it is used in R.C.M. 1947, section 94-4720.

Section 12. Changes in language do not alter substance.

Section 13. (2) The changes make plain that the lieutenant governor does not begin to act as governor until after the passage of 45 consecutive days.

(8) The words deleted from sentence 1 do not add force to the statement that "the successor shall be the governor." Sentence 2 was rewritten to produce brevity.

Section 14. Language changes do not alter substance. A title was added.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION

STYLE AND DRAFTING - EXECUTIVE -

NO. IV

ARTICLE ---

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this Constitution and by law.

section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) 'Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. QUALIFICATIONS. (1) No person shall he eligible to the office of governor, lieutenant governor, secretary of state, attorney general. superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. DUTIES. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this Constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive department and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction, and the auditor shall have such duties as are provided by law. The legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law.

Section 5. COMPENSATION. (1) Officers of the executive department shall receive salaries provided by law.

(2) During his term, no elected officer of the executive department may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 25 DEPARTMENTS. All executive and administrative

offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor,) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. APPOINTING POWER. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this Constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature

with his recommendaticn for amendment. If the legislature passes the bill in accordance with the gcverncr's recommendaticn, it shall again return the bill to the governcr for his reconsideraticn. The gcverncr shall not return a bill fcr amendment a second time.

(3) If after receipt cf a veto message, twc-thirds cf the members present apprcve the bill, it shall beccme law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefcr to the legislature as provided by law. The legislature may reconvene tc reconsider any bill cc vetced.

(5) The governcr may veto items in apprcpriaticn tills, and in such instances the prccedure shall be the sane as upon veto of an entire bill.

Section 11. SPECIAL SESSICH. Whenever the gcverncr considers it in the public interest, he may convene the legislature.

Section 12. PARDONS. The governor may grant reprieves, commutaticns and pardons, restcrf citizenship, and suspend and remit fines and forfeitures subject tc procedures prcvided by law.

Section 13. MILITIA. (1) The gcverncr is commander-in-chief of the militia fcrces of the state, except uher they are in tbe actual service of the United States. He may call out any part or all of the fcrces to aid in the execution of the laws, suppress insurrection, repel invasion, cr prctect life and property in natural disasters.

(2) The militia forces shall ccnsist cf all able-bcdied citizens of the state except those exempted by law.

Section 14. SUCCESSICN. (1) If the governor-elect is disqualified or dies, the lieutenant gcverncr-elect upon qualifying for the office shall become governor fcr the full term. If the governor-elect fails tc assume office for any cther reascn, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the cffice beccmes vacant.

(2) The lieutenant gcverncr shall serve as acting governor when sc requested in writing by the governor. After the gcvernor has been absent frcm the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governcr.

(3) He shall serve as acting gcvernor when the gcverncr is so disabled as tc be unable tc ccmmunicate tc the lieutenant governor the fact of his inability to perform the duties cf his office. The lieutenant governor shall continue to serve as acting governor until the governor is able tc resume the duties of his office.

(4) Whenever, at any cther time, the lieutenant gcvernor and attorney general transmit tc the legislature their written declaration that the gcverncr is unable tc discharge the pcwers and duties of his cffice, the legislature shall ccnvene to determine whether he is able to do sc.

(5) If the legislature, within 21 days after ccnvening, determines by two-thirds vote cf its members that the governor is unable t o discharge the powers and duties cf his cffice, the lieutenant governcr shall serve as acting gcverncr. Thereafter, when the gcverncr transmits tc the legislature his critter declaration that cc inability exists, he shall resume the powers and duties of his cffice withir 15 days, unless the legislature determines ctherwise by twc-thirds vcte cf its members. If the legislature so determines, the lieutenant governor shall ccntinue to serve as acting governcr.

(6) If the office of governcr becomes vacant by reascn cf death, resignaticn, cr disqualificaticn, the lieutenant gcvernor shall become governcr fcr the remainder of the term, except as prcvided in this Cccstituticc.

(7) Additional successicr tc fill vacancies shall be prcvided by law.

(8) When there is a vacancy in the cffice of governor, the successcr shall be the governcr. The acting gcverncr shall have the pcwers and duties cf the cffice of gcverrcr cnly for the period during which be serves.

Section 15. INFORMATICN FCR GCVEFNOR. (1) The gcverncr may require infcrmaticr in writing, under oath when required, from the cfficers of the executive department upon any subject relating to the duties cf their respective cffices.

(2) He may require infcrmatico in writing, under cath, from all cfficers and managers cf state institutions.

(3) He may appoint a committee to investigate and report tc him upon the ccnditicn cf any executive cffice cr state institutien.

MONTANA CONSTITUTICNAL CONVENTICN

1971-1972

HEPCHT CF CCMMITTEE CN STYLE, CRAFTING,

TRANSITICN AND SUBMISSICN CN

JUDICIARY

NC. V

Cate Reported: March 9, 1972

/s/John M. Schiltz, Chairman

/s/William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: JUDICIARY

Ladies and Gentlemen:

The Committee on Style, Crafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/William A. Burkhardt
Vice Chairman of the Committee
on Style, Crafting, Transition
and Submission

DE IT PROPOSED EY THE JUDICIARY CCMMITTEE:

That there be a new Article cn the Judiciary tc read as follcws:

ARTICIE ---

TEE JUDICIARY

Sectien 1. JUDICIAL POWER. The judicial pcwer of the state is vested in one supreme court, district ccurts, justice ccurts, and such cther ccurts as may be prcvided by law.

Sectien 2. SUPREME CCURT JURISDICTICN. (1) The supreme court has appellate jurisdictien and may issue, hear, and determine writs appropriate theretc. It has criginal jurisdiction to issue, hear, and determine writs cf habeas ccrpus.

(2) It has general supervisery ccntrcl cver all cthes ccurts.

(3) It may make rules governing appellate prccedure, practice and procedure for all cther ccurts, admissicn to the bar and the conduct cf its members. Rules cf procedure shall be subject to disapproval by the legislature in either cf the twc sessicns fcllcwing prcmulgaticn.

(4) Supreme court prccess shall extend to all parts of the state.

Sectien 3. SUPREME CCURT ORGANIZATICN. (1) The supreme court consists cf one chief justice and fcur justices, but the legislature may increase the number of justices frcm fcur to six. A majority shall jcin in and prencunce decisicns, which must be in writing.

(2) A district judge shall be substituted fcr the chief justice or a justice in the event cf disqualificatien or disability, and the cpinion of the district judge sitting with the supreme court shall have the same effect as an cpinion of a justice.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original juriedictien in all criminal cases amounting tc felcny and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdictien. It shall have the power of naturalization and such additicnal jurisdictien as may be delegated by the laws cf the United States or the state Of Mcntana. Its process shall extend tc all parts of the state.

(2) The district court shall hear appeals from irfericr

courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. JUSTICES OF THE PEACE. (1) There shall be elected in each county for a term of four years at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. JUDICIAL DISTRICTS. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. TERMS AND PAY. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, and as provided by law for other judges.

Section 8. SELECTION. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment

until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. if an incumbent is rejected, another selection and nomination shall be made.

(3) if an incumbent requests that his name not be placed on the ballot, there shall be an election for the office.

Section 9. QUALIFICATIONS. (1) A citizen of the United states who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever or account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. REMOVAL AND DISCIPLINE. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upcn reccmmendaticn cf the ccmmissicn, the supreme court may:

(a) retire any justice cr judge fcr disability that seriously interferes with the perfcrmance of his duties and is cr may become permanent; cr

(b) censure, suspend, cr remcve any justice or judge for willful miscnduct in office, willful and persistent failure to perform his duties, cr habitual intemperance.

Section 12. EXEMPTICN LAWS. The legislature shall enact liberal hcmectead and exemptien laws.

Section 13. PERPETUITIES. No perpetuities shall be allcwed except fcr charitable purposes.

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a new Article on the Judiciary to read as follows:

ARTICLE ___

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in a one supreme court, ~~and~~ district courts, justice courts, and such other courts as may be provided by law.

Section 2. SUPREME COURT ~~POWERS~~ JURISDICTION. (1) The supreme court has appellate jurisdiction, ~~including jurisdiction~~ and may ~~to~~ issue, hear, and determine writs appropriate thereto. ~~to its appellate jurisdiction; and~~ It has original jurisdiction to issue, hear, and determine writs of habeas corpus.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, ~~rules of~~ practice and procedure for all other courts, ~~and rules of~~ admission to the bar and the conduct of its members. Rules of procedure shall be subject to ~~approval or~~ disapproval by the legislature in either of the two sessions following ~~their~~ promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. SUPREME COURT ORGANIZATION. (1) The supreme court ~~shallconsist~~ consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. ~~a~~A majority ~~of whom will be necessary to~~ shall join in and pronounce ~~the decision~~ decisions, which must be in writing ~~and joined in by the majority. The legislative assembly may increase the number of justices from five to seven.~~

(2) A district ~~judges~~ judge shall be substituted for the chief justice or ~~the~~ a ~~justices~~ justice in the event of disqualification or disability, ~~in any cause,~~ and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice ~~of the supreme court~~.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction

as may be delegated by the laws cf the United States or the state cf Mcntana. Its process shall extend to all parts cf the state.

(2) The district court shall hear appeals from infericr courts as trials anew, unless otherwise prcvided by law. ~~(3)~~ The legislature may provide fcr direct review by the district ccurt of decisions cf administrative agencies.

(3) Cther courts may have ~~fcr~~ jurisdiction of criminal cases not amounting to felcny ~~if other courts~~, and ~~for concurrent~~ such jurisdiction ccncurrent with ~~other courts~~ that of the district ccurt as may be provided by law.

~~Appeals from inferior courts must be tried anew in the district court. The supreme court and district court process shall extend to all parts of the state.~~

Section ~~4~~5. JUSTICES OF THE PEACE ~~ELECTION QUALIFICATIONS COMPENSATION JURISDICTION~~. (1) There shall he elected in each county fcr a term cf fcur years at least one justice cf the peace with qualifications, training, and mcnthly compensation ~~as~~ prcvided by law, ~~who shall hold office for the term of four years~~. There shall be provided such facilities ~~for such~~ that they ~~justices so that~~ may perform their duties ~~may be performed~~ in dignified surroundings.

(2) Justice courts shall have such original jurisdiction ~~within their respective counties~~ as may be ~~prescribed~~ provided by law. They shall nct have trial jurisdiction in any criminal case designated a felony-, except as examining ccurts.

(3) The legislature may prcvide fcr additional justices of the peace in each county ~~cr other types of courts below the district court level as is deemed necessary~~.

Section ~~5~~6. JUDICIAL DISTRICTS. (1) The ~~legislative assembly~~ legislature shall divide the state into judicial districts and Provide for the number of judges in each district. Each district shall be formed cf ccmpact territcry and be bcunded by ccunty lines.

(2) ~~The legislative assembly shall have the power to~~ The legislature may change the number and boundaries of judicial districts ~~and their boundaries~~ and the number of judges in each district+, ~~however, each district shall be formed of compact territory and be bounded by county lines,~~ but no ~~changes~~ change in boundaries or the number of districts or judges therein, shall work a removal cf any judge frcm cffice during the term for which he ~~has been~~ was elected cr appointed.

(3) The chief justice may, upcn request of the district judge, assign ~~the~~ district ~~judge~~ judges and cther judges for temporary service from cne district tc ancther, and from one county tc ancther.

Section ~~67~~. TERMS AND PAY ~~OF JUDGES~~. (1) All justices ~~of the supreme court, district court judges~~ and ~~other~~ judges shall be paid as provided by law, but ~~their salary~~ salaries shall not be diminished during ~~their term~~ terms of office.

(2) Terms of office ~~for supreme court justices~~ shall be eight years, for supreme court justices, six years

~~Terms of office~~ for district court judges, ~~shall be six years,~~ and as provided by law

~~Terms of office~~ for other judges ~~shall be provided by law.~~

Section ~~78~~. SELECTION ~~OF JUDGES~~. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law ~~In all vacancies~~ for any vacancy in the offices of supreme court justices ~~and~~ or district court judges, ~~the governor of the state shall nominate a supreme court or district court judge from nominees selected in the manner provided by law.~~ If the governor fails to nominate within thirty days after receipt of ~~the names of the~~ nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not ~~assembled~~ in session shall be effective as an appointment until the end of the next session ~~of the senate~~. If the nomination is not confirmed, ~~by the senate~~ the office shall be vacant and another selection and nomination shall be made.

(2) ~~Before the close of filings for nomination in the first primary election after senate confirmation, and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot if other candidates have filed for election to that office.~~ If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no ~~primary election~~ contest for the office, the name of the incumbent ~~judge~~ shall nevertheless be placed on a ~~ballot in~~ the general election ballot to allowing voters of the state or district ~~the choice of his approval or rejection~~ to approve or reject him. ~~In the event of rejection of~~ If a an ~~judge~~ incumbent is rejected, another selection and nomination shall be made ~~in like manner~~.

(3) If an incumbent ~~judge does not run~~ requests that his name not be placed on the ballot, there shall be a an ~~contested~~ election for the office.

Section ~~89~~. QUALIFICATIONS ~~AND LIMITATIONS OF JUDGES~~. ~~(1) No person shall be~~ A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the ~~offices~~ office of supreme court justice ~~of the~~

~~supreme court~~ cr district court judge ~~cf the district court unless he or she shall have been~~ if admitted to the practice cf law in Mcntana fcr at least five years prior tc the date of appointment or election~~, is a citizen cf the United States, and has resided in the state cf Montana two years immediately before taking office.~~ Qualificaticns and methcds cf selecticn of judges of cther courts shall be prcvided by law.

(2) No supreme ccurt justice cr district ccurt judge shall sclicit or receive ~~any~~ compensaticn in any form whatever cn account of his office, ~~in any form whatever,~~ except salary and actual necessary travel expense ~~as provided by law.~~

(3) Except as otherwise prcvided in this Ccnstituticn, nc supreme court justice or district ccurt judge shall practice lau during his term cf cffice, engage in any cther employment fcr which salary or fee is paid, cr hcld cffice in a political party.

~~Filing for another elective public office results in forfeiture of judicial position but a judge may file for another judicial position without forfeiture cf the judicial pcsitiон he holds.~~

(4) ~~All judges, except~~ Supreme court justices ~~cf the supreme court, who~~ shall reside within the state~~,~~. Every cther judge shall ~~respectively~~ reside during ~~their~~ his term of office in the district, county, township, precinct, city cr town in which ~~they may be~~ he is elected or appcinted.

~~Any judicial officer who may absent himself frcm the state for more than 60 consecutive days shall be deemed to have forfeited his office.~~

Section 10. FORFEITURE OF JUDICIAL PCSITICN. Any holder of a judicial position forfeits that pcsition by either filing for an elective public cffice cther than a judicial pcsitiсn cr absenting himself from the state fcr more than 60 consecutive days.

Section ~~9~~11. REMOVAL ANC DISCIPLINE ~~OF JUDGES~~. (1) The legislature shall create a judicial standards commissicn consisting of five persons and provide for the appcintment thereto cf two district judges, one attorney, and two citizems who ~~is~~ are neither a judges ncr ~~an~~ attorneys.

(2) ~~The commission shall investigate complaints, subpoena witnesses and documents, and makes rules implementing this section and providing for confidentiality cf proceedings.~~ The commission shall investigate complaints, make rules implementing this section, and keep its prcceedings confidential. It may subpoena witnesses and dccuments.

(3) Upon reccmmendation of the ccamissicn, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Section ~~11~~12. EXEMPTION LAWS. The ~~legislative---assembly~~ legislature shall enact liberal homestead and exemption laws.

section ~~12~~13. PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

REPCRT NC. V — JUDICIARY

COMMENTS CN STYLE, FORM, AND GRAMMAR

Section 1. The cardinal number "one" was substituted for the indefinite article "a" tc provide harmcny with the similar provision in the United States Ccnstitutiсn. The addition of what is ncw section 5 required additicn cf "justice ccurts."

Section 2. Subsections were added and language deleted tc aid clarity withcut altering substarce. Subsection (3): Deleting "apprcval or" expresses the intent of flocr debate. Subsection (4) was moved from sectiсn 4.

Section 3. (1) Numbers in the first sentence were changed to express Intent. Reorganizatiсn and deletiсn do not alter substance.

Section 4. The first clause of subsecticr (3) was mcved to b&come the second sentence of subsecticn (2). The first sentence of the last paragraph, which was nct part cf the Ccmmittee cf the Whole amendment, ccnflicts with subsecticn (2), sc it was deleted. The reference tc process in the seccnd sentence was moved.

Section 5. Was added in Committee cf the whcle as section 10. The language deleted at the end repeats part cf section 1. The cther changes in language dc not alter substance.

Section 6. The additicn cf the wcrds "cf the district judge" to subsection (3) clarifies the scurce of the request. Changes in language and crder dc nct alter substance.

Section 7. Deletiсn and recrganizing achieve brevity and clarity without altering substance. The phrase "cther judges" in subsection (2) is understood by the Ccmmittee tc include, amcng others, "magistrates" and "Justices cf the peace."

Section 8. Sutsecticn (2) was redrafted tc clarify meaning. In addition, references to "primary electiсn" were deleted to avoid perpetuating the primary mode of selecticr in the Ccnstitution. The underlined additicn tc subsecticn (3) was substituted for "dces not run" to reconcile its prcvisicns with subsectiсn (2). Removing the adjective "contested" avcids a requirement that more than cne candidate file.

Section 9. The phrase "as prcvided ty law" uas deleted frcr subsecticn (2) because it ccntains a prohibiticr which is nct to be affected by any law but the Constitutiсn. Other extensive language and crder changes do not alter substance. Two sentences concerning forfeiture were combined in the next new sectiсn 10.

Section 11. Subsection (2) was redrafted to differentiate

the requirements laid upon the commission and its discretionary power to subpoena. Other changes in the section clarify.

Sections 12 and 13. These sections will be moved to other Articles when the entire Constitution is proposed.

ORDER CF BUSINESS NO. 5 -

FINAL CONSIDERATION

STYLE AND DRAFTING

- JUDICIARY - NC. V

ARTICLE ___

TEE JUDICIARY

Section 1. JUDICIAL PCWER. The judicial pcwer cf the state is vested in one supreme ccurt, district ccurts, justice courts, and such other ccurts as may be prcvided by law.

Section 2. SUPREME CCURT JURISDICTION. (1) The supreme court has appellate jurisdicticc and may issue, hear, and determine writs appropriate theretc. It has original jurisdicticn tc issue, bear, and determine writs cf habeas ccrpus and such other writs as may he provided by law.

(2) It has gereral superviscry ccntrcl over all cther courts.

(3) It may make rules governing appellate prccedure, practice and procedure for all cther ccurts, admissicn tc the tar and the conduct of its members. Rules cf procedure shall he subject to disapproval by the legislature in either cf the tuc sessions following prcnulgaticn.

(4) Supreme ccurt prccess shall extend tc all parts of the state.

Section 3. SUPREME CCURT CRGANIZATION. (1) The supreme court ccnsists cf cne chief justice and fcur justices, tut the legislature may increase the number of justices frcm fcnr to sir. A majority shall jcin in and pronounce decisicns, which must be in writing.

(2) A district judge shall te substituted for the chief justice or a justice in the event cf disqualificaticn or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an cpinion of a justice.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felcny and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power cf naturalizaticn and such additicnal jurisdicticn

as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have juxisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. JUSTICES OF THE PEACE. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each countp.

Section 6. JUDICIAL DISTRICTS. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. TERMS AND PAY. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by lam for other judges.

Section 8. SELECTION. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or act-

ing chief- justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be Placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. QUALIFICATIONS. (1) A citizen of the United States who has resided in the state two years inmediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the Practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. REMOVAL AND DISCIPLINE. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Section 12. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 13. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

Section 14. CAMPAIGN EXPENSES. The ~~legislative assembly~~ legislature shall appropriate funds for the contested general election campaign expenses of candidates for the offices of chief justice and justices of the supreme court and shall enact laws regulating the amount, expenditure, and disposition thereof. No candidate for chief justice or justice of the supreme court, ~~nor~~ or any person or persons acting on his ~~or her~~ behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the ~~legislative assembly~~ legislature.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION ON NATURAL RESOURCES AND AGRICULTURE

NC. VI

Date Reported: March 10, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TC: Montana Ccnstitutional Ccnventicn

SUBJECT: NATURAL RESOURCES AND AGRICULTURE

Ladies and Gentlemen:

The Committee on Style, Drafting, Transiticn and Submission transmits revisicns of the above Article fcr ccrsideration of the Conventicn.

Immediately fcllowing this letter ycu will find tile above Article as revised by the Committee. Following that is the Article indicating (by underlining) wcrds we have added and (by crcssing out) cords we have deleted from the Article as approved. Finally, there is an explanaticn cf the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Ccmmittfe
cn Style, Drafting, Transiticn
and Subrissicn

/s/ William A. Burkhardt
Vice Chairman cf the Ccmmittee
cn Style, Drafting, Transition
and Submissicr

BE II PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on the Environment and Agriculture to read as follows:

ARTICLE ---

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND IMPROVEMENT. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the admisistration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized ard confirmed.

(2) The USE of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. CULTURAL RESOURCES. The legislature shall provide for the identification, acquisition, restoration, enhancement, prssarvation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites,

records an3 objects, and fcr their use and enjoyment by the pecple.

BE IT PROPOSED BY THE NATURAL RESCURCES AND AGRICULTURE CCMMITTEE:

That there be a new Article cn the Envircnment and Agriculture to read as follcws:

ARTICLE ___

ENVIRONMENT AND NATURAL RE'CURCES

Section 1. PROTECTICN AND ~~ENHANCEMENT~~ IMPECVEMENT. (1) The ~~state~~ state ~~cf-Mcntana~~ and each perscr ~~muct~~ shall maintain and improve a clean and healthful ~~the-Montana~~ Environment in Mcntana fcr present and future generaticcs.

(2) 'The legislature ~~muct~~ shall prcvide fcr the administraticn and enfcrcement of this duty.

(3) The legislature ~~ic-directed-tc~~ shall prcvide adequate remedies for the prctection of the envircnmental life support system from degradation and ~~tc~~ prcvide adequate remedies tc prevent unreasonable depletion and degradation cf natural rescurces.

Section 2. RECLAMATICN. All lands disturbed by the taking of natural rescurces ~~muct~~ shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamaticn ~~cf-lards-disturbed-by-the-taking-of-natural-rescurces.~~

Section 3. WATER RIGHTS. (1) All existing rights to the use cf any waters ~~in-this-state~~ for any useful cr beneficial purpose are hereby recognized and ccnfirmed.

(2) The use of all water that is ncw cr may hereafter be appropriated~~,-cr-that-may-hereafter--tc--appropriated~~ for sale, ~~rental~~ rent, distribution. or other beneficial use, ~~and~~ the right of way over the lands of cthers~~,~~ fcr all ditches, drains, flumes, canals, and aqueducts~~,~~ necessarily used in ccnnection therewith, ~~as-well-as~~ and the sites for reservcirs necessary for ccllecting and stcring ~~the-same~~ water shall he held tc be a public use.

(3) All surface, underground, flccd, and atmospheric waters within the boundaries of the state ~~cf-Mcntana~~ are ~~declared-tc-be~~ the property of the state fcr the use cf its pecple and are subject tc apprcpriation for beneficial uses as prcvided by law.

(4) The legislature shall provide for the adsinistraticr, control, and regulation of water rights and shall ~~establish~~ a system of centralized records, in additicn to the present system cf lccal ~~filing-cf~~ records.

Section 4. CULTURAL RESCURCES. The legislature ~~muct~~ shall

prcvide for the identificatien, acquisitien, restoration, enhancement, preservation, and administraticc cf scenic, historic, archeologic, scientific, cultural, and recreatienal areas, sites, records and objects, and for their use and enjoyment by the pecple.

Report No. VI - ENVIRONMENT AND NATURAL RESOURCES

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. (1) The Committee added "a" before "clean and healthful", and deleted "the Montana" before environment and added "in Montana" thereafter, in order to preserve what was recalled to be the sense of amendments adopted in Committee of the Whole. Other changes in the section do not alter substance.

Section 2. Deletion of repetition at the end of the second sentence does not alter substance.

Section 2. Reordering and deletion of language do not alter substance. It should be noted, however, that the substantive committee comments appended to subsection (2) were that section 15, Article III, of the present Constitution were duplicated verbatim "to preserve the substantial number of court decisions interpreting and incorporating the language".

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on Agriculture to read as follows:

ARTICLE ___

AGRICULTURE

Section 1. DEPARTMENT OF AGRICULTURE. There is a Department of Agriculture. The legislature shall enact laws and provide appropriations to protect, enhance, and develop all agriculture.

Section 2. SPECIAL LEVIES. Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on Agriculture to read as follows:

ARTICLE ___

AGRICULTURE

Section 1. DEPARTMENT OF AGRICULTURE. ~~The legislative assembly must provide for~~ There is a Department of Agriculture, ~~and~~ The legislature shall enact laws and provide appropriations to protect, enhance, and develop all agriculture ~~of the state~~.

Section 2. ~~RIGHT TO~~ SPECIAL LEVIES. ~~A special~~ Special ~~levy~~ levies may be made on livestock and on agricultural commodities for ~~the purpose of~~ disease control and indemnification, predator control, and livestock ~~inspection~~ and ~~protection, agricultural~~ commodity inspection, ~~and~~ protection, ~~livestock and agricultural commodity~~ research, and promotion. Revenue derived ~~from such levies~~ shall be used solely for the purposes of the ~~levied~~ levies.

Report No. VI - AGRICULTURE

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. The first sentence has been changed to accord with usually accepted drafting rules. Neither that change nor those in the second sentence alter substance.

Section 2. The singular noun which is the subject of the sentence was made plural to accord with reality and the usage in the title and the second sentence.

ORDER OF ROSINESS NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - ENVIRONMENT & NATURAL RESOURCES - NO. VI

ARTICLE ---

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND IMPROVEMENT. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources shall te reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters for an useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surfaced, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. CULTURAL RESOURCES. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic,

archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoprent by the people.

ORDER OF BUSINESS NO. 5 - FINAL CCNSICERATICN

STYLE & DRAFTING - AGRICUITUEE - NC. VI

ARTICLE ---

AGRICUITURE

Section 1. DEPARTMENT OF AGRICULTURE. The legislature shall provide fcr a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture.

Section 2. SPECIAL LEVIES. Special levies may be made on livestock and on agricultural ccmscdities for disease ccntrcl and indemnification, predator ccntrcl, and livestock and commodity inspectiсn, protection, research, and prcmcticn. Revenue derived shall be used solely fcr the purposes cf the levies.

MONTANA CONSTITUTICNAL CONVENTION

1971-1972

REPORT OF COMMITTEE CA STYLE, DRAFTING,

TRANSITION AND SUBMISSICN CN

REVENUE AND FINANCE

No. VII

Date Reported: March 71, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: REVENUE AND FINANCE

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of Committee
on Style, Drafting, Transition
and Submission

BE IT FHCPOSEC BY THE REVENUE AND FINANCE CCMMITTEE:

That there be a new Article on Revenue and Finance tc read as fcllcws:

ARTICIE ___

REVENUE AND FINANCE

Section 1. 'TAX PURFCSES. Taxes shall be levied by general laws for public purpcses.

Section 2. TAX POWER INALIENABLE. The power to tax Shall never be surrendered, suspended, or ccntracted away.

Section 3. PRCPERTY TAX ADMINISTRATICN. The state shall appraise, assess, and equalize the valuaticn of all property which is tc be taxed in the manner prcvided by law.

Section 4. EQUAL VALUATICN. All taxing jurisdictions Shall use the assessed valuation cf prcperty established by the state.

Section 5. PROPERTY TAX EXEMPTICNS. (1) The legislature ma* exempt from taxaticr:

(a) Prcperty of the United States, the state, ccunties, cities, towns, schocl districts. municipal ccrporaticns, and public libraries, but any private interest in such prcperty may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used cr held for private or ccrpcrate profit, places for actual religicus ucrship. and property used exclusively fcr educational purposes.

(c) Any other classes Cf prcperty.

(2) The legislature may authorize creaticn cf special improvement districts fcr capital imprcvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. HIGHWAY REVENUE NCN-DIVERSION. (1) Revenue frcm gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and cther energy sources used to prcpel vehicles on public highways shall be used, after deduction of statutory refunds and adjustments, sclely fcr:

(a) Payment of obligations incurred fcr ccnstruction, reconstruction, repair, operation, and maintenance of public

highways, streets, roads, and bridges.

(b) Payment cf county, city, and town cbliyaticns on streets, roads, and bridges.

(c) Enforcement of highuay safety, driver education, tourist promotion, and administrative collection ccsts authorized by the legislature.

(2) Such revenue may be appropriated fcr cther purpcses by a three-fifths vote cf the members of each hcuse cf the legislature or by initiated measure approved by a majority cf the qualified electors.

Secticn 7. TAX APPEALS. The legislature shall prcvide independent appeal procedures fcr taxpayer grievances abcut appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local gcvernnent unit level.

Section a. STATE CERT. No state debt shall be created unless authorized by a two-thirds vcte of the members of each house cf the legislature or a majority cf the electcrs voting thereon. Nc state debt shall be created to ccver deficits incurred because appropriations exceeded anticipated revenue,

Section Y. BALANCED BUDGET. Appropriaticns by the legislature shall nct exceed anticipated revenue.

Section 10. LOCAL GCVERNMENT DEBT. The legislature shall by law limit debts of counties, cities, tcwns, and all cther local governmental entities.

Section 11. USE CF LCAN EECCEECC. All mcney borrowed by or on behalf cf the state or any county, city, tcwn, or cther local governmental entity shall be used only for purpcses specified in the authorizing law.

Section 12. STRICT ACCCUNTABILITY. The legislature shall by law insure strict accountability cf all revenue received and money spent by the state and counties, cities, touns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. The legislature shall prcvide for a unified investment prcgram for public funds and provide rules therefor, including supervisicn of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except fcr monies contributed to retirement funds, nc public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report therecf submitted to the governor and legislature.

BE IT PRCPOSED BY THE REVENUE AND FINANCE COMMITTEE:

That there by a new Article cn Revenue and Finance tc read as follcus:

ARTICLE __

REVENUE AND FINANCE

Section 1. ~~PUBLIC~~ TAX ~~PURPCSE~~ PURPOSES. Taxes shall be levied by general laws fcr Public purposes.

Section 2. ~~SURRENDER--CLAUSE~~ TAX POWER INALIENABLE. The power ~~of taxation~~ tc tax shall never be surrendered, suspended, or ccntracted away.

Section 3. PROPERTY TAX ADMINISTRATION. The state shall appraise, assess, and equalize the valuation of all ~~Property~~ property which is to be taxed ~~shall be appraised, assessed and equalized by the state~~ in the manner ~~prescribed~~ prcvided by law.

Section 4. EQUAL VALUATICN. All taxing jurisdictions shall use ~~the~~ the assessed valuation of property ~~to be taxed in any taxing jurisdiction shall be the same valuation as the valuation~~ established by the ~~for~~ state ~~and county purposes~~.

Section 5. PROPERTY TAX EXEMPTICNS. (1) The legislature may exempt from taxation:

(a) ~~property~~ Property of the United States, the state, counties, cities, tcwns, school districts, municipal ccrpcrations, and public libraries ~~may be exempt from taxation~~, but any private interest in such prcperty may be taxed separately.

(b) ~~Property used exclusively for educational purposes, places for actual religicus worship, hospitals and places of burial not used or held for private or ccrporate profit, institutions of purely public charity, may be exempt from taxation.~~ Institutions of purely public charity, hospitals and places of burial not used or held fcr private or corporate profit, places for actual religious worship, and property used exclusively for educational purrcses.

(c) Any other ~~Certain~~ classes of prcperty ~~may be exempt from taxation~~.

(2) The ~~Legislative Assembly~~ legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. ~~of capital improvements and~~ It may authorize the assessment of charges ~~therefor~~ for such improvements and maintenance against tax exenpt prcperty directly bene-

fited thereby.

Section 6. ~~HIGHWAY--EARMARK~~ HIGHWAY REVENUE NON-DIVERSION. ~~Revenue,-except-from-general-sales-and-use-taxes,-from-excise-and license-taxation-on--gasoline,--fuel--and--other--energy--sources derived-as-a-result-of-the-propulsion-of-vehicles-on-public-highways,-and-gross-vehicle-weight-fees,-shall-be-used-solely-for-the payment-of-obligations-incurred-for-construction,-reconstruction, repair,--operation,--and-maintenance-of-public-highways,-streets, roads-and-bridges-and-for-county,-city-and--town--obligations--on streets,--roads-and-bridges,-after-the-deduction-of-funds-for-for statutory-refunds-and-adjustments,-enforcement-of-highway-safety, driver-education,-tourist-promotion-and--for--administrative--and collection-costs-as-authorized-by-the-legislative-assembly.--By-a three-fifths-vote-of-the-members-of-each-house-of-the-legislative assembly--or--by--initiated-measure-approved-by-a-majority-of-the electorate,-such-dedicated-funds-may-be--appropriated--for--other purposes.~~ (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs authorized by the legislature.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature or by initiated measure approved by a majority of the qualified electors.

Section 7. TAX APPEALS. The legislature shall provide ~~taxpayer~~ independent appeal procedures for taxpayer grievances about appraisals, assessments, ~~and~~ equalization, ~~grievances~~ and ~~tax~~ taxes ~~grievances~~. The ~~legislature~~ legislature shall include ~~therein~~ a review procedure at the ~~county--or~~ local ~~governmental~~ government unit level.

Section 8. STATE ~~INDEBTEDNESS~~ DEBT. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the ~~Legislative-Assembly,~~ legislature or ~~unless authorized-by~~ a majority of the electors voting thereon. No ~~State~~ state debt ~~cannot~~ shall be created to cover deficits incurred ~~when~~ because appropriations ~~exceed~~ exceeded anticipated revenue ~~during-any-budget-period~~.

Section 9. BALANCED BUDGET. Appropriations by the ~~Legislative Assembly~~ legislature shall not exceed anticipated ~~revenues~~ revenue ~~during any budget period~~.

Section 10. LOCAL GOVERNMENT ~~INDEBTEDNESS~~ DEBT. The ~~Legislative Assembly~~ legislature shall ~~enact~~ by law limit ~~of indebtedness~~ debts for ~~subdivisions and districts of the state~~ counties, cities, towns, and all other local governmental entities.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state, or any ~~subdivision or district of the state~~ county, city, town, or other local governmental entity shall be used only for ~~the purpose or~~ purposes specified in the ~~law~~ authorizing law ~~the loan~~.

Section 12. STRICT ACCOUNTABILITY. The ~~Legislative Assembly~~ legislature shall ~~enact the necessary~~ by ~~laws~~ law ~~to~~ insure strict accountability of all ~~revenues~~ revenue received and money spent by the state ~~subdivisions~~ and ~~districts thereof~~, counties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. The ~~Legislative Assembly~~ legislature shall provide for a unified investment program for public funds and ~~prescribe~~ provide ~~the~~ rules ~~and regulations~~ therefor, including ~~the~~ supervision of investment of surplus funds of all ~~subdivisions and districts of the state~~, counties, cities, towns, and other local governmental entities. ~~The separate existence and identity of each~~ Each ~~and every~~ fund ~~involved as~~ forming a part of the unified investment program shall be ~~strictly maintained~~, separately identified. ~~With the exception of~~ Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. ~~An audit of~~ The investment program shall be ~~conducted~~ audited at least annually and a report thereof submitted to the ~~Governor~~ governor and ~~Legislative Assembly~~, legislature.

REPORT NC. VII - REVENUE AND FINANCE

COMMENTS CN STYLE, FCRM, AND GRAMMAR

Section 2. A much more descriptive title was substituted for cne which was misleading.

Section 3. Rewriting the sentence avoids the error cf asserting that "property... shall be...equalized."

Section 4. Rewriting serves brevity and clarity and creates consistency with the principle cf state assessment established in Section 3.

Section 5. Reorganization achieves clarity without changing substance. (As a matter of substance, it should be noted that the state has no power tc tax property of the United States, absent its permission.)

Section 6. A new title was substituted for cne which suffered the twin deficiencies cf smacking of the vernacular and misleading. Reorganization achieves clarity withcut changing substance.

Section 7. Rewriting makes plain that people -- not things -- have grievances.

Sections 8 and 9. Changes serve brevity and clarity mithcut altering substance.

Sections 10, 11, 12, 13. Consultaticn with the substantive committee revealed that the phrase "subdivisions and districts of the state" did not express that committee's intention. The definitiicn of "local government units" proposed in secticr 1 cf report NO. XI from the LOCAL GCVERNMENT COMMITTEE is not adequate. Research showed that the ucrds "local", "gcvernmental", and "entity" have been legally applied and construed. Acccrdingly, the Committee on Style adopted, as expressive of the intentiicn o f the substantive committee, the phrase "ccunties, cities, towns, and all cther local governmental entities." That phrase (modified to suit the context) is substituted in each of these sections for the phrase "subdivisicns and districts cf the state."

ORDER CF BUSINESS NC. 5 - FINAL CONSIDERATION

STYLE & CRAFTING - REVENUE & EINANCE - NC. VII

ARTICLE _ _ _

REVENUE AND FINANCE

Section 1. TAX PURPOSES. Taxes shall be levied by general laws for public purposes.

Section 2. TAX POWER INALIENABLE. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATICN. The state shall appraise, assess, and equalize the valuation of all property which is tc be taxed in the manner provided by law.

Section 4. EQUAL VALUATICN. All taxing jurisdictions shall use the assessed valuation cf property established by the state.

Section 5. PROPERTY TAX EXEMPTICNS. (1) The legislature may exempt from taxaticc:

(a) Property of the United States, the state, counties, cities, towns, schcol districts, municipal ccrporaticns, and public libraries, but any private interest in such prcperty may be taxed separately.

(b) 'Institutions of purely public charity, hcspitals and places of burial not used cr held for private cr ccrpcrate prcfit, places fcr actual religious wcrship, and property used exclusively for educaticnal purposes.

(c) Any ether classes cf prcperty.

(2) The legislature may authcrize creaticn cf special improvement districts fcr capital improvements and the maintenance thereof. It may authorize the assessment of charges fcr such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. HIGHWAY REVENUE NCN-DIVERSICN. (1) Revenue frcm gross vehicle weight fees and excise and license taxes (except general sales and use taxes) cn gasoline, fuel, and cther energy sources used to prcpel vehicles on public highways shall be used as authorized by the legislature, after deduction cf statutcry refunds and adjustments, solely fcr:

(a) Payment of obligaticns incurred fcr ccnstruction, reconstructicn, repair, cperaticn, and maintenance cf public

highways, streets, roads, and bridges.

(b) Payment of county, city, and town cbligaticcs cn streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist prcmction, and administrative cclliectiicn ccsts.

(2) Such revenue may be apprcpriated for cther purpcses b y a three-fifths vcte cf the members of each house cf the legislature or by initiated measure apprcved by a majority cf the qualified electcrs.

Section 7. TAX APPEALS. The legislature shall prcvide independent appeal procedures for taxpayer grievances abcut apprais-als, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. STATE DEBT. No state debt shall be created unless authorized by a two-thirds vcte cf the members of each house cf the legislature or a majority cf the electcrs vcting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. BALANCED BUDGET. Appropriaticns by the legislature shall not exceed anticipated revenue.

Section 10. LOCAL GCVERNMENT DEE?. The legislature shall by law limit debts cf counties, cities, towns, and all cther lccal governmental entities.

Section 11. USE CF LCAN ERCCEECS. All mcney borrowed by or on behalf of the state or any county, city, tcwn, cr other local governmental entity shall be used only for purposes specified in the authcrizing law.

Section 12. STRICT ACCCUNTABILITY. The legislature shall by law insure strict accountability cf all revenue received and money spent by the state and ccunties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. (1) The legislature shall prcvide for a unified investment program for public funds and provide rules therefor, including supervision cf investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part cf the unified investment program shall be separately identified. Except for monies ccntributed to retirement funds, no public funds shall be invested in private corporate capital stcck. The investment program shall be audited at least annually and a report therecf submitted to the governor and legislature.

(2) The public school fund shall forever remain inviclate, ~~and~~ guaranteed by the state against loss cr diversica ~~by the~~

~~state.~~ The public school fund and the permanent funds of the ~~state~~ Montana university system and ~~of~~ all other state institutions of learning, shall be safely and conservatively invested in:

(a) ~~public~~ Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) ~~bonds~~ Bonds of the United States, or ~~in~~ other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other ~~such~~ safe investments bearing a fixed rate of interest, as may be ~~prescribed~~ provided by law.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION ON BILL OF RIGHTS NO. VIII

Date Reported: March 13, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Buckhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: BILL OF RIGHTS

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE II PROPOSED BY THE BILL OF RIGHTS COMMITTEE:

That there be a new Article on the Bill of Rights to read as follows:

PREAMBLE

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

ARTICLE ---

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The People have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the Constitution and form of government whenever they deem it necessary.

Section 3. INALIANABLE RIGHTS. All Persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any Person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. FREEDOM OF RELIGION. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right to assemble peaceably in order to petition for redress of grievances or protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the delitfrations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section If. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thirg shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writiny.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, tut nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT OF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at ary time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A person 18 years of age or older is an adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. THE ADMINISTRATICN CF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury cf person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellcw employees and his immediate employer whc hired him if such immediate employer provides ccverage under the workmen's Compensation laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. CUE PROCESS CE LAW. No person shall be deprived of life, liberty, or property withcut due prccess of law.

Section 18. STATE SUBJECT TO SUIT. The state, ccnnties, cities, towns, and all other local governmental entities shall have no immunity frcm suit for injury to a person or property. This provision shall apply only to causes of actic n arising after July 1, 1973.

Section 19. HABEAS CCRPUS. The privilege of the writ cf habeas ccrpus shall never be suspended.

Section 20. INITIA'IICN OE PRCCEEDINGS. (1) Criminal offenses within the jurisdiction cf any ccuit inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those cn appeal, shall be prosecuted either by infcrmatic n, after examination and ccmmitment by a magistrate or after leave granted by the ccnrt, or by indictment withcut such examination, commitment, or leave.

(2) A grand jury shall ccnsist cf eleven persons, of whom eight 5ust concur to find an indictment. A grand jury shall be drawn and summoned cnly at the discretion and crder of the district judge.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except fcr capital offenses, when the proof is evident cr the presumptic n great.

Section 22. EXCESSIVE SANCTICNS. Excessive bail shall nct be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTICN. Nc person shall be imprisoned fcr the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his depcsitic n. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannct give security, his depcsition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence cn

the trial, if the witness shall be dead or absent from the state.

Section 24. FIGHTS OF THE ACCUSED. In all criminal prcse-cuticns the accused shall have the right tc appear and defend in perscn and by counsel; tc demand the nature and cause cf the accusation; to meet the witnesses against him face to face; to have process to compel the attendance cf witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right cf the state tc have a change of venue for any cf the causes for which the defendant may chtain the same.

Section 25. SELF-INCRIMINATICN ANC DOUBLE JEOPARDY. N o perscn shall be ccmpelled tc testify against himself in a crimi-nal prcceeding. No person shall be again put in jeopardy fcr the same offense previously tried in any jurisdiction.

Section 26. TRIAL EY JURY. The right cf trial by jury is secured to all and shall remain inviclate. Put upon default cf appearance or by ccnsent Of the Parties expressed in such manner as the law may provide, all cases may be tried withcut a jary cr before fewer than the number of jurors prcvided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same fcrce and effect as if all had concurred therein. In all criminal acticns, the verdict shall be unanimcus.

Section 27. IMPRISCNMENT FCF DEBT. Nc perscn shall be impriscned tor debt except in the manner prcvided by law, upon refusal to deliver up his estate fcr the benefit of his credi-tors, or in cases of tort, where there is strcng presumption of fraud.

Section 28. RIGHTS CF THE CCNVICTEC. Laws for the Punish-ment cf crime shall be founded cL the Principles cf prevention and refcrmaticn. Termination of state supervisicn fcr any cffense against the state shall restore all civil and Political rights.

Section 29. EMINENT DCMAIN. Private property shall not be taken cr damaged for public use without just ccmpensaticn tc the full extent of the lcss having been first made to or paid into court for the owner. In the event cf litigation, just ccmpensa-ticn shall include necessary expenses cf litigation to be awarded by the ccurt when the private property cwner prevails.

Section 3C. TREASCN AND DESCENT OF ESTATES. Treason against the state shall ccnsist only ir levying war against it, or in adhering tc its enemies, qiving them aid and ccmfcrt; no person shall be convicted cf treason except on the tostimcny cf two wit-nesses to the same overt act, cr cn his ccnfesficn in cpen ccurt; no perscn shall be attainted cf treascn cr felony by the legis-lature; no ccnvictiсn shall cause the loss cf property tc the relatives or heirs cf the convicted. The estates of suicides shall descend or vest as in cases cf natural death.

section 31, EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. No ex post facto law or any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartsred in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

BE IT PROPOSED BY IRE BILL CF RIGHTS CCMMITTEE:

That there be a new Article on the Eill of Rights to read as follcws:

PREAMPLE

we the people cf Mcntana grateful tc Gcd for the quiet beauty of our state, the grandeur cf cur rcuntains, the vastness of our rolling plains, and desirirg tc improve the quality of life, equality of opportunity and tc secure the blessings cf liberty for this and future geceraticns do crdain and establish this Constitution.

ARTICLE ___

DECLARATION CF RIGHTS

Secticn 1. POPULAR SOVEREIGNTY. All pclitical power is vested in and derived frcm the pecple~~:~~. ~~all~~ All qcverrnert cf right originates with the people~~:~~, is fcunded upon their will only. and is instituted sclely fcr the gocd cf the whole.

Section 2. SELF-GCVERNRENT. The pecple ~~cf the state~~ have the exclusive right cf qcverning themselves as a free, sovereign, and independent state. They nay alter cr abolish ~~their~~ the Ccnstitution and form of government whenever they ~~#ay~~ deer it necessary.

Section 3. INALIENABLE EIGHTS. All persons are bcrn free and have certain inalienable rights, ~~which~~ They include the right to a clean and healthful environment~~,~~ and the ~~right~~ rights of pursuing life's basic necessities, ~~of~~ en jcying and defending their lives and liberties, ~~of~~ acquiring, possessing and protecting property, and ~~of~~ seeking their safety, health and happiness in all lawful ways. In enjoying these rights, #e-pee&e all persons recognize corresponding responsibilities.

Secticn 4. INDIVIDUAL DIGNITY. The dignity cf the human beino is inviolable. Nc persen shall be denied the equal protection of the ~~law~~ laws~~,~~ ~~nor be discriminated~~ Neither the state nor any person, firm, corporation ~~or institutien~~ shall discriminate against any person in the exercise cf his civil or political rights cn account of race, color, sex, culture, social origin or condition, or political or religious ideas~~,~~ ~~by any person, firm, corporation, or institution; or by the state, its agencies or subdivisions.~~

section 5. FREEDOM OF RELIGION. The state ~~of Montana~~ shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The peopleshall have the right ~~peaceably~~ to assemble7 peaceably in order to petition for redress of grievances or ~~peaceably~~ protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall he free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public ~~shall have~~ has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision, as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government ard its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-beirg of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, ~~and~~ No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched-, or the person or thing to be seized, ~~nor~~ or without probable cause, supported by oath or affirmation, reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own hove, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT 46 OF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A ~~Persons~~ person ~~eighteen (18)~~ years of age or older ~~are declared to be adults~~ is an adult for all purposes.

Section 15. RIGHTS OF PERSONS ~~UNDER THE AGE OF MAJORITY~~ NOT ADULTS. The rights of persons under ~~the~~ 18 years of age ~~of majority~~ shall include, but not be limited to, all the fundamental rights of this article ~~except where~~ unless specifically precluded by laws which enhance the protection ~~for~~ of such persons.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every Person, and speedy remedy afforded for every injury of person, property, or character~~;~~. ~~no~~ No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state~~;~~. ~~and that right~~ Right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. ~~NON-IMMUNITY FROM~~ STATE SUBJECT TO SUIT. The state, ~~and its subdivisions~~ counties, cities, towns, and all other local governmental entities shall have no ~~special~~ immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after ~~June~~ July 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. (1) Criminal offenses within the jurisdiction of ~~which~~ any ~~courts~~ court inferior to the district ~~courts have jurisdiction~~ court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate, or after leave granted by the court, or ~~shall be prosecuted~~ by indictment without such examination, ~~or~~ commitment, or ~~without such~~ leave ~~of the court~~.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall ~~only~~ be drawn and summoned ~~when~~ only at the discretion and order of the district judge ~~shall, in his discretion, consider it necessary, and shall so order~~.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. NO person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner ~~prescribed~~ provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. NO person shall be compelled to testify against himself in a criminal proceeding~~, nor shall any~~ No person shall be ~~twice~~ again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury ~~shall be~~ is secured to all~~,~~ and shall remain inviolate~~. but in all cases and~~ But upon default of appearance, or by consent of the parties expressed in such manner as the law may ~~prescribe~~, provide, all cases may be tried without a jury or before fewer a ~~trial by jury may be waived, or a trial had by any less~~ than the number of jurors ~~than the number~~ provided by law. In all civil actions, two-thirds ~~in number~~ of the jury may render a verdict, and ~~such~~ a verdict so rendered shall have the same force and effect as if all ~~such jury~~ had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner ~~prescribed~~ provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in case of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation, ~~and full rights shall be automatically restored upon termination~~ Termination of state supervision for any offense against the state shall restore all civil and political rights.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner ~~is the prevailing party~~ prevails.

Section 35. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the ~~legislative assembly;~~ legislature; nor conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the ~~legislative assembly~~ legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner ~~prescribed~~ provided by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the ~~legislative assembly,~~ legislature, or of the governor when the ~~legislative assembly~~ legislature cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people ~~of Montana~~ declare that Montana servicemen, servicewomen, and veterans may be given special considerations ~~as~~ determined by the ~~legislative assembly,~~ legislature.

REPORT NO. VIII - EILL CF RIGHTS

COMMENTS CN STYLE, FCRM, AND GRAMMAR

Introduction: The Committee cn Style, sensitive to the point made by the substantive committee's ccnnents that scme "political philcsophy provisions are nct cften immediately justiciable," has stayed its editcrial hand.

Section 1. Punctuation changes serve clarity and dc not alter substance.

Section 2. Deleting "of the state" frcm the first sentence avoids repetiticr. Changing the third persch plural possessive prcncun "their" tc the definite article makes Plain the function of a Ccnstitutich is to constitute the crganic law cf the state rather than to establish a pcssessory relaticnship between the pecple and the instrument.

Section 3. Structural charges serve clarity uithcut altering substance.

Section 4. The word "law" was made plural to agree with the parent 14th Amendment. Alteratich of the form, but nct the substance, cf the second sentence makes the prchibitich crystal clear. Ccuntless court decisichs make plain that a prohibition directed against the "state" includes all its arms, including "agencies or subdivisichs".

Section 6. Words were added tc clarify the intention of the substantive committee expressed in its ccmment to this sectich. As rewritten, the sectich makes plain that it prctects one right - "tc assemble peaceably" - fcr tuc purposes: (1) to petition for redress cf grievances cr (2) tc prctest gcvernmental actich.

Section 8. Adding "such" and "may be" dces not alter substance. The additicns were necessitated by the flccr amendment having been appended.

Section 11. Slight changes clarify without altering substance.

Section 14 The fcrm was changed tc consist with drafting standards.

Section 15. The title and content were changed tc accord with the substance cf sectich 14.

Section 18. The substituted phrase is the same as that adopted for the same purpcse in the Article cn REVENUE AND TAXATION. The second sentence should be mcved to the adoption schedule. (Suggestich for title: SCVEREIGN IMMUNITY IS DEAD! LCNG LIVE

THE KING!)

Section 20. Changes in form do not alter substance.

Sections 21, 22, 23, and 24. "Once burned, twice shy". The substantive committee comments to each section read that the committee voted unanimously tc retain the old section unchanged. SO....

Section 25. Changes remcve redurdancy.

Section 26. Rewriting for clarity does nct alter substance.

Section 27. "The committee voted unanimously to retain former Article TII, Section 12 uncharged".

Section 28. Rewriting makes plain that it is the act cf termination of state supervision which restcres "all civil and pclitical rights." That phrase from the substantive ccmaittee comments specifies "full rights." The proposal: "Death shall not be prescribed as a penalty for any crime against the state." will be placed on the ballct, as directed by the Convention.

Sections 30, 31, 32, 33, 34. The substantive committee voted unanimously to preserve these provisicns unchanged.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION STYLE AND DRAFTING -

BILL OF RIGHTS - NO. VIII

PREAMBLE

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

ARTICLE ___

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the Constitution and form of government whenever they deem it necessary.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. FREEDOM OF RELIGION. The state shall make no law respecting an establisbnent of religion or prohibiting the free

exercise thereof.

Section 6. FREEDOM CF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT CF PARTICIPATION. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all Public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVBCY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT OF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A person 18 years of age or older is an adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this article unless specifi-

cally precluded by laws which enhance the protection Cf such persons.

Section 16. THE ADMINISTRATICN CP JUSTICE. Ccurts Of justice shall be open to every person, and speedy remedy affcrded for every injury of perrcn, property, or character. No person shall be deprived of this full legal redress fcr injury incurred in employment fcr which ancther persen may be liable except as to fellcw employees and his immediate employer whc hired him if such immediate employer provides coverage under the Workmen's Compensaticn Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Secticn 17. DUE PROCESS CF LAW. Nc person shall be deprived of life, liberty, or prcperty without due process cf law.

Section 18. STATE SUBJECT TO SUIT. The state, ccunties, cities, towns, and all ether local governmental entities shall have no immunity frcm suit for injury to a persen cr prcperty. This provision shall apply only tc causes of action arising after July 1, 1973.

Secticn 19. HABEAS CORPDS. The privilege of the writ of habeas corpus shall never be suspended.

Secticn 20. INITIATION CF PRCCEEDINGS. (1) Criminal offenses within the jurisdictien cf any ccurt infericr to the district court shall be prosecuted by complaint. All criminal actions in district court, except thcse cn appeal, shall be prosecuted either by informaticn, after exaaination and ccmmitment by a magistrate or after leave granted by the ccurt, cr by indictment without such examinaticr, ccumitment or leave.

(2) A grand jury shall consist cf eleven persens, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned cnly at the discretien and crder of the district judge.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital cffenses, when the proof is evident cr the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall nct be required, or excessive fines impcsed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be impriscned fcr the purpcse of securing his testimcny in any criminal proceeding longer than may be necessary in crder to take his depcsitien. If he can give security for his appearance at the time cf trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, cr without their presence, if they shall fail to attend the examination

after reasonable nctice cf the time and place therecf.

Section 24. RIGHTS CF THE ACCUSED. In all criminal prosecutions the accused shall have the right tc appear and defend in person and by counsel; to demand the nature and cause cf the accusation; to meet the witnesses against him face to face; tc have process to compel the attendance cf witnesses in his behalf, and a speedy public trial by an impartial jury cf the county cr district in which the offense is alleged tc have been committed, subject to the right cf the state tc have a change of venue fcr any cf the causes for which the defendant may chtain the same.

Section 25. SELF-INCHIMINA'IIGF AND UCUBIE JECFARLY. NO person shall be compelled tc testify against himself in a criminal proceeding. No person shall he again put in jeopardy for the same offense previously tried in any jurisdicticn.

Section 26. IRIAL EY JURY. The right cf trial by jury is secured to all and shall remain inviolate. But upon default cf appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried vithcut a jury or before fewer than the number cf jurcrs provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same fcrce and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimcus.

Section 27. IMPRISCNMENT FCR DEBT. No person shall be imprisoned fcr debt except in the manner prcvided by law, upcn refusal to deliver up his estate fcr the benefit cf his creditors, cr in cases of tort, where there is strcng presumptien cf fraud.

Section 28. RIGHTS CF THE CONVICTED. Laws for the punishment cf crime shall be fcunded on the principles cf prevention and reformatien. Full rights are restored by termination cf state supervision for any offense against the state.

Section 29. EMINENT CCMAIN. Frivatf prcperty shall nct be taken or damaged fcr public use without just ccmpensation to the full extent of the loss having been first made to or paid into court for the owner. In the event cf litiqatien, just compensation shall include necessary expenses cf litiyatien tc be awarded by the ccurt when the private prcperty cwner prevails.

Section 30. TREASCN AND DESCENT CF ESTATES. Treason against the state shall cccsist cnly ir levying war against it, or in adhering to its enemies, giving them aid and ccmfort; nc persen shall be convicted cf treasen except cn the testimony of two witnesses tc the same cvert act, or cn his ccnfescicn in cpen court; no person shall be attainted cf treasen or felcny by the legislature: n 0 conviction shall cause the lcss cf prcperty tc the relatives or heirs cf the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX FCST FACTC, OELIGATICN OF CCNTRACTS, ANC IRSEVCCABLE PRIVILEGES. No ex post facto law ncr any law impairing the obligation cf ccntracts, cr making any irrevccable grant cf special privileges, franchises, cr immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTRCI CF THE MILITARY. The military shall always be in strict subcrdinaticn to the civil pcwer; nc soldier shall in time of peace be quartered in any house without the ccnsent of the cwner, nor in time cf war, except in the manner provided by law.

Section 33. IMPORTATICN CF ARMED PERSONS. No armed person or perscns or armed body of men shall be brcught irtc this state for the preservaticn cf the peace, or the suppressicn of dcmestic violence, except upon the applicaticn of the legislature, cr cf the governor when the legislature cannct be ccnvened.

Section 34. UNENUMERATED RIGHTS. The enukeration in this Constitution of certain rights shall nct be ccnstrued tc deny, impair, or disparage cthers retained by the people.

Section 35. SERVICEMEN, SERVICEWCCEN, AND VETERANS. The pecple declare that Montana servicemen, servicewcmen, and veterans may be given special ccnsideraticnc determined by the legislature.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION ON PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY

No. IX

Date Reported: March 17, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Ccnstituticnal Ccnventicn

SUBJECT: PUELIC HEALTH, WELFARE, IABCR AND INDCSTRY

Ladies and Gentlemen:

The Committee on Style, Crafting, Transiticn and Suteissicn transmits revisicns cf the above Article fcr ccrsideration cf the Ccnventicn.

Immediately fcllcwing this latter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) wcrds we have added and (by crossing out) words we have deleted frcm the Article as approved. Finally, there is an explanaticn cf the changes we have made.

Sircerely,

/s/ John M. Schiltz
Chairman cf the Ccmmittee
on Style, Crafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman cf the Ccnmittee
cn Style, crafting, Transiticn
and Submissica

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Non-municipal Corporations to read as follows:

ARTICLE ___

NON-MUNICIPAL CORPORATIONS

Section 1. LIMITATION OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section 3. RETROSPECTIVE LAW PROHIBITION. The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions of considerations already passed.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Labor to read as follows:

ARTICLE ___

LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

Section 2. EIGHT-HOUR DAY. A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

BE IT ERGPOSEL BY 'IRE PUBLIC HEALTH, WELFARE, IABCR AND INDUSTRY COMMITTEE:

That there be a new Article cc Institutions and Assistance to read as fcllcws:

ARTICLE ---

INSTITUTIONS ANC ASSISTANCE

Section 1. INSTITUTIONS. The state shall establish and support institutions and facilities as the public gccd may require, including homes which may be necessary and desirable fcr the care of veterans.

Section 2. RESTORATICN CF RIGHTS. Perscrs committed tc any such instituticrs shall retain all rights except these necessarily suspended as a condition cf commitment. Suspended rights shall be restored upcn terminatien cf the state's responsibility.

Section 3. ASSISTANCE. The legislature shall provide such economic assistance and social and rehatilitativf services as may be necessary fcr those inhabitarts whc, by reason of age, infirmities, or misfortune may have need fcr the aid cf society.

BE IT PROPOSED EY THE PUBLIC HEALTH, WELFARE, LABOR ANC INDUSTRY COMMITTEE:

That there be a new Article cn Fegulaticn of Public Utilities tc read as follcus:

ARTICLE ___

REGULATICN CF PUBLIC UTILITIES

Section 6. CONSUMER CCUNSEL. The legislature shall prcvide for an office of consumer ccunsel which shall have the duty cf representing consumer interests in bearings before the public service commissicn cr any other successcr agency. The legislature shall provide for the funding cf the cffice cf consumer counsel by a special tax on the net inccme cr grcss revenues of regulated companies.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Non-municipal Corporations to read as follows:

ARTICLE ---

NON-MUNICIPAL CORPORATIONS

Section 1. ~~GRANT~~ LIMITATION OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The ~~legislative assembly~~ legislature shall provide ~~for~~ protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section ~~6~~3. RETROSPECTIVE LAW PROHIBITION. The ~~legislative assembly~~ legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

BE IT PROPOSED EY THE PUBLIC HEALTH, WELFARE, LABCR AND INDUSTRY COMMITTEE:

That there be a new Article cn Labcr to read as follows:

ARTICLE ---

LABOR

Section 1. DEPARTMENT ANT COMMISSIONER. The ~~Legislative Assembly~~ legislature shall prcvide fcr a Department of Labor and Industry. ~~The Department shall be under the control of~~ headed by a Ccmmissioner appcinted by the ~~Governor~~ gcvernor, and ccnfirmed by the ~~legislature (Senate)~~ senate.

Section ~~3~~2. EIGHT-HCUR CAY. A maximum pericd cf 8 hours ~~shall constitute~~ is a regular day's work in all industries and emplcyment except ~~in~~ agriculture and stcc.k raising. The &e&s-&&w?+ legislature may, ~~however,~~ change this maximum pericd ~~whenever in its opinion the change will better~~ tc prcmcte the general welfare.

EE IT PROPOSED EY THE PUBLIC HEALTH, WELFARE, LABCR ANC INDUSTRY COMMITTEE:

That there be a new Article cn Institutions and Assistance to read as fcllcws:

ARTICLE ___

INSTITUTICNS AND ASSISTANCE

Section 1. INSTITUTICNS. The state shall establish and support ~~such~~ institutions and facilities as the public gccd may require, including homes which may be necessary and desirable fcr the care cf veterans~~, as the public geed may require, shall be established and supported by the state as may be prescribed by law~~.

Section ~~3~~2. RESTORATICN CF RIGHTS. Ferscns committed to any such institutions shall retain all rights except those necessarily suspended as a conditicn cf ccmmitment. ~~All rights necessarily suspended~~ Suspended rights shall be restcred upcn terrinaticn of the ~~State's~~ state's respcnsibility.

Section ~~2~~3. ASSISTANCE. ~~It shall be the duty of the~~ The ~~Legislative Assembly to~~ legislature shall prcvide such economic assistance and sccial and rehabilitative services as say be necessary fcr those inhabitants whc, by reascn of age, infirmities, cr misfortune may have need fcr the aid cf scciety.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Regulation of Public Utilities to read as follows:

ARTICLE __

REGULATION OF PUBLIC UTILITIES

Section 6. CONSUMER COUNSEL. The legislature shall provide ~~by-law~~ for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide ~~by-law~~ for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY -

Report No. 9

COMMENTS ON STYLE, FORM AND GRAMMAR

NON-MUNICIPAL CORPORATIONS

Section ~~63~~. The number was changed.

LABOR

Section 1. The words "headed by" were substituted for "under the control of" to produce consistency with section 8 (1) of the EXECUTIVE Article. The transition schedule will provide for substituting the word "legislature" for "senate" if the voters approve a unicameral.

Section ~~32~~. The number was changed. Other changes serve brevity, but do not alter substance.

INSTITUTIONS AND ASSISTANCE

Sections 7 and 3. Substitution of the active for the passive form of the verb does not alter substance. The phrase "as may be prescribed by law" was deleted as redundant.

Sections 2 and 3. The order was reversed so that the phrase "such institutions" in what was originally section 3 would follow immediately after the section containing the antecedent of "such."

ORDER OF BUSINESS - NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC HEALTH, WEIFARE,

LABOR AND INDUSTRY

NO. IX

ARTICIE

NON-MUNICIPAL CORPORATIONS

Section 1. LIMITATION OF POWER. Corporate charters shall he granted, modified, or dissolved only pursuant to general law.

Section 2. PHOTECTION FOR CITIZENRY. The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section 3. RETROSPECTIVE LAW PROHIBITION. The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

ORDFH OF BUSINESS - NO. 5 - FINAL CONSIDERATICN

STYLE & DRAFTING - PUBLIC HEALTH, WELFARE,

LABCR AND INDUSTRY

NO. IX

ARTICLE

LABCR

Section 1. DEPARTMENT ANC COMMISSIONER. The legislature shall provide fcr a Department cf Labcr and Industry, headed by a Commissicner appcinted by the governor and ccnfirmed by the senate.

Section 2. EIGHT-HOUR DAY. A maximum pericd of 8 hours is a regular day's ucrk in all industries and emplcyment except agriculture and stcck raising. The legislature may change this maximum pericd tc promote the general welfare.

ORDER CE BUSINESS - NC. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC HEALTH, WELFARE,

LABCE AND INDUSTRY

NO. IX

ARTICLE

INSTITUTIONS ANT ASSISTANCE

Secticn 1. INSTITUTICNS. The state shall establish and support instituticns and facilities as the public good may require, including homes which may be necessary and desirable fcr the care of veterans.

Sectien 2. RESTORATICN OF RIGHTS. Perscns committed tc any such instituticns shall retain all rights except thcse necessarily suspended as a condition cf ccnmitment. Suspended rights are restored upon terminaticn of the state's respcnsibility.

Section 3. ASSISTANCE. The legislature shall prcvide such econcmic assistance and social and rehabilitative services as may be necessary for those inhabitants whc, by reascn cf age, infirmities, or misfcrtune may have need for the aid of scciety.

ORDER OF BUSINESS - NO. 5 - FINAL CONSIDERATION

STYLE & CRAFTING - PUBLIC HEALTH, WELFARE,

LABOR AND INDUSTRY

NO. IX

ARTICLE

PUBLIC UTILITIES

CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

MONTANA CONSTITUTICNAI CCNVENTICN

1971-1972

REPORT OF COMMITTEE CN STYLE, DRAFTING, TRANSITION

AND SUBMISSION ON

ECUCATION ANC PUBLIC LANDS

NO. X

Date Reported: March 15, 1972

/s/ John M. Schiltz, Chairman

/s/ William F. Burkhardt, Vice Chairman

TO: Montana Ccnctituticnal Ccnventicn

SUBJECT: EDUCATION AND PUBLIC LANDS

Ladies and Gentlemen:

The Ccmmittee on Style, Drafting, Transiticn and Submission transmits revisicns of the above Article fcr ccnsideraticn cf the Ccnventicn.

Immediately fcllcwing this letter ycu will find the abcve Article as revised by the Ccmmittee. Follcwing that is the Article indicating (by underlining) wcrds we have added and (by crcssing out) wcrds we have deleted from the Article as approved. Finally, there is an explanaticn cf the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman cf the Ccmmittee
cn Style, Drafting, Transition
and Submissicn

/s/ William A. Burkhardt
Vice Chairman cf the Ccmmittee
cn Style, Drafting, Transition
and Submissicn

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Education to read as follows:

ARTICLE ---

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES. It is the goal of the people to establish a system of education which will develop the full educational potential of each Person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of quality free public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of:

(1) Proceeds from the school lands which have been or may hereafter be granted by the United States;

(2) lands granted in lieu thereof;

(3) lands given or granted by any person or corporation under any law or grant of the United States;

(4) all other grants of land or money made from the United States for general educational purposes or no other special purpose;

(5) all interests in estates that escheat to the state;

(6) all unclaimed shares and dividends of any corporation incorporated in the state;

(7) all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the direction, control, leasing, exchange, and sale of the school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or money, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. SCHOOL DISTRICT TRUSTEES. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. BOARDS OF EDUCATION. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible

for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public education.31 institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. STATE UNIVERSITY FUNDS. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Education to read as follows:

ARTICLE ___

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES ~~OF THE STATE~~. (1) It ~~shall be~~ is the goal of the people ~~of Montana~~ to ~~provide for the establishment~~ establish of a system of education which will develop the full educational potential of each person. Equality of educational opportunity ~~shall be~~ is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

~~(2)~~ (3) The legislature shall provide ~~for~~ a basic system of quality free public elementary and secondary schools. The legislature may ~~also~~ provide ~~for~~ such other educational institutions, public libraries, and educational programs as ~~are deemed~~ it deems desirable. It shall fund and distribute in an equitable manner to the school districts ~~of the state~~ the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of: ~~the~~

(1) ~~proceeds~~ Proceeds ~~of such~~ from the school lands ~~as~~ which have ~~heretofore~~ been ~~granted~~, or may hereafter be granted, ~~to the state~~ by the ~~general government~~ United States, known as school lands+; ~~and these~~

(2) Lands granted in lieu ~~of such~~; thereof,

(3) ~~lands~~ Lands ~~acquired~~ given or granted by ~~gift or grant from~~ any person or corporation under any law or grant of the ~~general government~~; United States, ~~and of~~

(4) ~~all~~ All other grants of land or money made ~~to the state~~ from the ~~general government~~ United States for general educational purposes, or ~~where~~ no other special purpose ~~is indicated in such grant~~;

(5) ~~all~~ All interests in estates~~, or distributive shares of estates~~ that ~~may~~ escheat to the state,;

(6) ~~all~~ All unclaimed shares and dividends of any corporation incorporated ~~under the laws of~~ in the state, ~~and~~

(7) ~~all~~ All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUELIC SCHCCI FUND INVIOLATE. The public schccl fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. BOARD OF LA NC CCMMISSIONERS. The governor, superintendent of public instruction, ~~state~~ auditor, secretary of stars, and attorney general ~~shall~~ constitute the ~~state~~ board of land commissioners~~,~~ ~~which shall have~~ It has the dirtctior, control, leasing, exchange, and sale of the schccl lands ~~of the state~~, and ~~the~~ lands ~~granted or~~ which have been or may ~~hereafter~~ be granted for the support and benefit of the varicus state educational institutions, under such regulations and restrictions as may te ~~prescribed~~ provided by law.

Section 5. PUELIC SCHCCI FUND REVENUE. (1) Ninety-five ~~percentum--(95%)~~ percent of all the interest received on the public schccl ~~funds~~ fund ~~of the state~~, and ninety-five ~~percentum (95%)~~ percent of all ~~rents~~ rent received frcm the leasing of schccl lands and ~~of~~ all cther income frcm the public schccl fends fund shall be equitably apportioned annually tc public elementary and secondary schccl districts as provided by law.

(2) The remaining five ~~percentum~~ percent ~~(5%)~~ of all ~~the~~ interest received on the public school ~~funds~~ fund ~~of the state~~, and the remaining five ~~percentum~~ percent ~~(5%)~~ of all ~~the rents~~ rent received from the leasing of school lands and ~~of~~ all cther income from the public schccl ~~funds~~ fund~~,~~ shall annually be added to the public school ~~funds~~ fund ~~of the state~~ and become and forever remain an inseparable and inviclable part thereof.

Section 6. AID PROHIBITED TC SECTARIAN SCHOOLS. (1) ~~Neither the~~ The ~~legislative--assembly~~ legislature, ~~nor any--county~~ counties, ~~city~~ cities, ~~town~~ towns, ~~or~~ schccl ~~district~~ districts, ~~or other~~ and public corporations~~,~~ shall ~~ever~~ not make ~~directly or indirectly~~, any direct or indirect appropriation~~,~~ or pay payment frcm any public fund or monies ~~whatever~~, or ~~make~~ any grant of lands or cther property for any sectarian purpose or tc ~~in~~ aid ~~of~~ any church, ~~or for any sectarian purpose, or to aid in the support of any~~ schocl, academy, seminary, college, university, or other literary~~,~~ or scientific institution, controlled in whole or in part by any church, sect, or denomination ~~whatever~~.

(2) This section shall not apply tc funds from federal sources provided tc the state for the express purpose of distribution tc non-public education.

Section 7. NON-DISCRIMINATION IN EDUCATION. Nc religicus or partisan test or qualification shall ~~ever~~ be required of any ~~person~~ teacher or student as a condition of adaission into any public educational institution ~~of the state~~~~,~~ ~~either as teacher~~

~~or student; nor shall attendance~~ Atterdance shall not be required at any religious service. ~~whatever, nor shall any~~ No sectarian tenets shall be advocated in any public educational institution of the state~~;~~. ~~nor shall any~~ No person shall be ~~debarred~~ refused admission tc any public educaticnal institutien ~~of learning~~ cn account of sex, race, creed, religicn, Political beliefs, or naticnal crigin.

Secticn 8. SCHOOL DISTRICT TRUSTEES ~~ELECTIONS~~. The supervisicn and ccntrol cf schocls in each schcol district shall be vested in a ~~school~~ board. ~~The legislative assembly shall provide for elections~~ cf ~~school district~~ trustees tc be elected as prcvided by law.

Secticn 9. ~~(1) STATE BOARD~~ BCARDS CE EDUCATICN. (1) There ~~shall be~~ is a state board of educaticn ccmpcsed cf the ~~Board~~ board of regents of higher educaticn ~~Public Education~~ and the ~~Board~~ board cf public education ~~Regents of Higher Education as hereafter designated~~. It shall be is responsible for long-range planning, and for coordinating and ~~evaluation of~~ evaluating policies, and programs, for the state's educational systems. It shall submit unifiad budget requests. ~~In case of a~~ A tie vote at a any meeting may be broken by the governor, uhc is an ex cfficio member cf each compcnent board, ~~may cast a vote~~.

~~(2)~~ (3) ~~BOARD OF PUBLIC EDUCATION.~~ (a) There ~~shall be~~ is a board of public educaticn ~~which shall~~ tc exercise general supervision over the public schccl system and such other public educaticnal institutions as ~~may~~ may be assigned by law. Other duties of the board shall be prcvided by law.

(b) ~~Said~~ The board ~~shall consist~~ ccnsist of seven members appointed by the governor, ~~with confirmation of~~ and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher educaticn and state superintendent af public instructicn shall be ex officio ncn-voting members of the board. ~~The duties of this board and of the superintendent of public instruction shall be prescribed by law.~~

~~(3)~~ (2) (a) The government asd ccntrcl cf the Montana ~~University~~ university ~~System~~ system ~~shall be~~ is vested in a bcard of regents of higher education ~~who shall be selected as provided herein. The regents~~ which shall have full pcwer, responsibility, and authority tc supervise, cocrdinate, manage and ccntrol the Montana ~~University~~ university ~~System~~ system and shall supervise and coordinate other public educational institutions ~~which may be~~ assigned by law.

(b) ~~Said~~ The bcard ~~shall consist~~ consists of seven members appointed by the governor, *and ccnfirmed by the senate,* tc overlapping terms, ~~subject to confirmation by the senate,~~ under regulaticns as provided by law. ~~The board shall appoint a commissioner of higher educatien and prescribe his term and duties.~~ The governor and superintendent cf public instructicn ~~shall be~~

are ex officio non-voting members of ~~this~~ the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents ~~shall be~~ are subject to the same audit provisions as are all other state funds ~~of the state~~.

Section 10 ~~12~~. STATE UNIVERSITY FUNDS. The funds of the ~~state~~ Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be ~~prescribed~~ provided by law, and shall be guaranteed by the state against loss or diversion. The interest ~~of said~~ from such invested funds, together with the ~~rents~~ rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of ~~these~~ the respective institutions.

BE IT PROPOSED EY THE EDUCATICN AND PUEIIC LANDS CCMMITTEE:

That there be a new Article cn Public Lands to read as follcws:

ARTICIE---

PUEIIC LANDS

Secticn 1. PUBLIC LAND TRUST, DISPCSITICN. (1) All lands of the state that have been cr may be granted by ccngress, cr acquired by gift cr grant or devise frcm any person or corporation, shall be public lands of the state. They shall be held in trust for the pecple, tc be dispcsed Cf as hereafter prcvided, for the respective purposes fcr which they have been or may be granted, dcnated cr devised.

(2) No such land or any estate cr interest therein shall ever be dispcsed of except in pursuance cf general laws providing for such dispcsition, or until the full market value of the estate or interest dispcsed cf, to be ascertained in such manner as may be provided by law, has teen paid cr safely secured tc the state.

(3) Nc land which the state holds by grant frcm the United states which prescribes the manner cf dispcsal and minimum price shall be disposed cf except in the manner and fcr at least the price prescribed without the consent cf the United States.

(4) All public land shall be classified by the bcard cf land ccmmissioners in a manner prcvided by law. Any public land may be exchanged for cther land, public cr private, which is equal in value and, as clcsely as pcssible, equal in area.

BE IT PRCPOSED EY THE EDUCATION ANC PUBLIC LANDS COMMITTEE:

That there be a new Article cr Public Lands to read as follows:

ARTICLE___

PUBLIC LANDS

Section 1. PUELIC LAND TRUST, DISPOSITION. (1) All lands of the state that have been or ~~that~~ may ~~hereafter~~ be granted ~~to the state~~ by congress, ~~and all lands~~ or acquired by gift cr yrart or devise, frcm any persen or corporation, shall be public lands of the state~~;~~. ~~and~~ They shall be held in trust fcr the people, to be disposed cf as hereafter provided, fcr the respective purposes for which they have been or may be granted, donated or devised+, ~~and nen-cf~~

(2) No such land~~;~~ ~~nor~~ cr any estate or interest therein, shall ever be disposed of except in pursuance ccf general laws providing for such dispcsitien, ~~nct~~ or ~~unless~~ until the full market value of the estate cr interest disposed of, to be ascertained in such manner as may be provided by law, ~~be~~ has been paid or safely secured to the state~~;~~. ~~nor shall any~~

(3) No ~~lands~~ land which the state holds by grant frcm the United States ~~(in any case in)~~ which prescribes the manner of disposal and minimum price ~~are so prescribed)~~ shall be disposed, of except in the manner and fcr the least the price prescribed ~~in the grant thereof,~~ without the consent cf the United States. ~~Said~~

(4) All public ~~lands~~ land shall be classified by the board of land commissioners in a manner ~~prescribed~~ provided ty law. Any ~~of said~~ public ~~lands~~ land may be exchanged for cther ~~lands~~ land, public or private, which ~~are~~ is equal in value and, as closely as possible, equal in area.

EDUCATION - Report No. X

Comments on Style, Form, and Grammar

Section 1. Deletions remove two "false imperatives"; they do not alter substance. That comment follows upon the conclusion that there is no substantive difference between "provide" and "provide for".

Section 2. Serving the cause of comprehension by ordering does not alter substance.

Section 4. Changes do not alter substance.

Section 5. Changes do not alter substance.

Section 6. Changes do not alter substance.

Section 7. No change in substance.

Section 8. The title was changed to accord with the substance.

Section 9. Deleting subsection titles and reordering does not change substance.

Section 10. (Renumbered from 12). No change in substance.

PUBLIC LANDS

Section 1. Providing subsections and altering style do not change substance.

ORDER OF BUSINESS NG. 5 - FINAL CCNSICERATXCA

STYLE AND DRAFTING - EDUCATICN - REFCRT NO. X

ARTICLE ---

EDUCATICN

Section 1. EDUCATICNAL GCALS ANC DUTIES. (1) It is the goal of the people tc establish a system of educaticn which will develcp the full educaticnal pctential of each perscn. Equality of educational cppcrtunity is guararteed to each person of the state.

(2) The state reccgnizes the distinct and unique cultural heritage of the American Indians and is ccmmitted in its educaticnal gcals tc the preservation of their cultural integrity.

(3) The legislature shall prcvide a basic system cf free quality publicelementary and seccndary schccls. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the schocl districts the state's share of the ccst cf the basic elementary and secccdary schocl system.

Section 2. PUELIC SCHCOL FUNI. The public schcol fund cf the state shall consist cf:

(1) proceeds from the school lands which have been cr may hereafter be granted by the United States;

(2) lands granted in lieu therecf;

(3) lands given or granted by any perscr cr ccrpcraticn under any law cr grant cf the United States:

(4) all cther grants of land or money made frcm the United States for general educaticnal purpcses or aithcut special purpose ;

(5) all interests in estates that fscheat tc the state;

(6) all unclaimed shares and dividends cf any ccrpcration incorporated in the state;

(7) all cther grants, gifts, devises cr lequests made tc the state for general educaticnal purposes.

Section 3. PUELIC SCHCCL FUNC INVIOLATE. The public schocl fund shall fcrever remain inviolate, guaranteed by the state

against lcss or diversicn.

Sfcticn 4. BOARD OF LAND CCMMISSICNERS. The governor, superintendent of public inetructicn, auditcr, secretary cf state, and attcrney general ccnstitute the beard of land commissicners. It has the authority to direct, ccntrcl, lease, exchange, and sell schccl lands and lands which have been cr may be granted fcr the support and benefit cf the various state educaticnal institutions, under such regulaticns and restricticns as may be provided by law.

Section 5. PUBLIC SCHCCL FUND REVENUE. (1) Ninety-five parcect cf all the interest received cn the public rchccl fund and ninety-five percent cf all rent received frcm the leasing of schocl lands an3 all other income frcm the public schccl fund shall be equitably apportioned annuallytc public elementary and secondary schccl districts as provided by law.

(2) The remaining five percent cf all interest received cn the public schccl fund, and the remaining five percent of all rent received frcm ths leasing of schccl lands and all cther income from the public schccl fund shall annually be added tc the public school fund and beccne and fcrever remain an inseparable and inviclable part therecf.

Sectien 6. AID PRCHIBITED TC SECTARIAN SCHCCLS. (1) The legislature, counties, cities, tcwns, schocl districts, and public ccrporations shall nct make any direct or indirect appropriaticn or payment from any public fund cr nccies, cr any grant of lands or cther property fcr any sectarian purpcse cr to aid any church, schocl. academy, seminary, college, university, or other literary cr scientific institution, ccntrclled in whcle cr in part by any church, sect, cr dencminaticn.

(2) This section shall nct apply to funds from federal sources provided to the state fcr ths express purpcse cf distributicn tc non-public education.

Section 7. NON-DISCRIMINATICN IN EDUCATICN. No religious or partisan test or qualification shall be required cf any teacher or student as a condition cf admissicn into any public educational institution. Attendance shall nct be required at any religicus service. No sectarian terets shall be advocated in any public educational institution of the state. Nc person shall be refused admission to any public educaticnal institutien on account of sex, race, creed, religicn, political beliefs, cr naticnal crigin.

Sectien 8. CCHOGL DISTRICT TRUSTEES. The supervision and control cf cchccls in each school district shall be vested in a board cf trustees tc be elected as Frcvidfd by law.

Section 9. BOARDS CF EDUCATICN. (1) There is a state board cf educaticn composed of the board cf regents cf higher

education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. STATE UNIVERSITY FUNDS. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

ORLER CF BUSINESS NC. 5 - FINAL CONSIDERATION

STYLE & CRAFTING - PUBLIC LANDS - REPCRT NC. X

ARTICLE ___

PUBLIC LANDS

Section 1. PUBLIC LAND TRUST, DISPOSITION. (1) All lands Of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grart from the Unite3 States which prescriber the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or Private, which is equal in value and, as closely as possible, equal in area.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

LOCAL GOVERNMENT

No. XI

Date Reported: March 20, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO : Montana Constitutional Convention

SUBJECT: LOCAL GOVERNMENT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE LCCAL GCVERNMENT CCMMITTEE:

That there be a new Article cc Lccal Gcvernment to read as fcllcws:

ARTICLE

LCCAL GCVERNMENT

Section 1. DEFINITICN. The term "lccal government units" includes, but is not limited to, counties and inccrpcrated cities and towns. Other lccal gcvernment units may be established by law.

Section 2. CCUNTIES. The counties cf the state are thcse that exist on the date cf ratification of this Ccnstituticn. No county boundary may be changed cr ccunty seat tranferred until approved by a majority of those vcting cn the guestion in each county affected.

Section 3. FCRMS CF GOVERNMENT. (1) The legislature shall provide methods fcr governing lccal gcvernment units and procedures fcr incorporating, classifying, merging, consolidating, and dissoiving such units, and altering their boundaries. The legislature shall provide such cpticnal cr alternative fcrms cf government that each unit or ccmtinaticn cf units may adopt, amend, or abandon an cpticnal cr alternative fcrm by a majority of thcse voting on the guesticn.

(2) One cpticnal form cf ccunty government includes, but is not limited to, the electicn cf three ccunty ccmmissioners, a clerk and recorder, a clerk of district ccurt, a ccunty attcrney, a sheriff, a treasurer, a surveycr, a ccunty superintendent of schocls, an assessor, a coroner, and a public adrinistratcr. The terms, yualificaticns, duties, and ccmpensaticn cf thcse cffices shall be provided by law. The bcard cf county commissioners may consolidate twc cr more such offices. The bcards cf tuc cr mcre counties may prcvide *fcr* a jcint cffice and fcr the electicn of one official to perform the duties cf any such office in thcse ccunties.

Sectien 4. GENERAL POWERS. (1) A lccal gcvfrnment unit without self-government powers has the fcllcwing general pcwers:

(a) An inccrporated city cr tcun has the powers cf a municipal corpcratien and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and cther powers provided cr implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be literally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures Permitting a local government unit or combication of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) initiated by petition in the local government unit or combination of units; or

(b) called by the governing body of the local government unit or combination of units.

(3) charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. SEIF-GOVERNMENT POWERS. A localgovernment unit adopting a self-government charter may exercise ary power not Prohibited by this Constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPEEATION. (1) Unless prohibited by law or charter, a local governnect unit may:

(a) cooperate in the exercise of any function, power, or responsibility with;

(b) share the services of any officer or facilities with;

(c) transfer or delegate any fucction, power, responsibility, or duty of any officer to one or acre other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by tile Constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The

legislature shall within four years of the ratification of this Constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state ~~of Montana as they~~ are those that exist ~~at~~ on the ~~adoption~~ date of ratification of this Constitution ~~are the counties of the state.~~ No ~~County~~ county ~~boundaries~~ boundary ~~shall~~ may ~~not~~ be changed or county ~~seats~~ seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide ~~by law~~ methods for ~~the government of~~ governing local government units and ~~for~~ procedures ~~of~~ for incorporating, classifying, merging, consolidating, and dissolving such units, and ~~of~~ altering their boundaries. The legislature shall provide ~~by law for~~ such optional or alternative forms of government ~~for~~ that each unit or combination of units ~~to enable a unit or combination of units to~~ may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a countysuperintendent of schools, an assessor, a coroner, and a public administrator, ~~whose~~ The terms, qualifications, duties, and compensation of those offices shall be ~~prescribed~~ provided by law. The boards of ~~County~~ county ~~commissioners~~ commissioners may consolidate two or more such offices. The board ~~of Commissioners~~ of two or more counties may provide for a joint office and for the election of one official to perform the duties of ~~that~~ any such office in ~~the respective~~ those counties.

Section 4. GENERAL POWERS. (1) A ~~local~~ local government ~~units~~ unit ~~not exercising~~ without self-government powers ~~under Sections 5 and 6 shall have~~ has the following general powers:

~~(1)~~ (a) An ~~Incorporated~~ incorporated ~~cities and towns shall have~~ city or town has the powers of a municipal corporation and ~~such~~ legislative, administrative, and other powers ~~as~~ provided or

implied by law.

~~(2)~~ (b) A ~~Counties shall have such~~ county has legislative, administrative, and other powers ~~as~~ provided or implied by law.

~~(3) The powers of incorporated cities and towns and counties shall be liberally construed.~~

(c) Other local government units ~~shall~~ have ~~such~~ powers ~~as~~ provided by law.

~~(3)~~ (2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall ~~prescribe~~ provide procedures ~~and may set limits under which~~ permitting a local government unit or combination of units ~~may~~ to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The ~~prescribed~~ procedures, ~~however,~~ shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions ~~with respect to a local government unit's~~ establishing executive, legislative, and administrative structure and organization ~~shall be~~ are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A ~~local~~ local government ~~units~~ unit adopting a self-government ~~charters~~ charter may exercise ~~all~~ any ~~powers~~ power not prohibited by this Constitution, ~~by~~ law, or ~~by~~ charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in ~~Section~~ section 3.

~~Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer or facilities, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.~~

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless pro-

hibited by law or charter, a local government unit may:

(a) cooperate in the exercise of any function, power, or responsibility with;

(b) share the services of any officer or facilities with;

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section ~~98~~. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the Constitution ~~shall be extended by law~~ to the qualified ~~voters~~ electors of each local government unit.

Section ~~119~~. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The leyislature shall, within four years of the ~~adoption~~ ratification of this Constitution, provide ~~for~~ procedures ~~by which~~ requiring each local government unit or combination of units to ~~either separately or jointly shall~~ review ~~the government~~ its structure ~~of the local unit or joint unit~~ and ~~shall~~ submit one alternative form of government to the ~~voters~~ qualified electors at the next general or special election.

(2) The legislature shall ~~provide for~~ require a review procedure ~~each~~ once every ten years after the first election.

REPORT NO. XI - LOCAL GOVERNMENT

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 2. Changes in the first sentence specify the date upon which the identity of the counties will be established. The noun "ratification" was substituted for "adoption" because the former is applied by the present Constitution to the process which will occur on June 6.

Section 3. Language changes shorten and clarify without altering substance.

Section 4. Changes in language and order do not alter substance.

Section 5. Language changes do not alter substance. The words "may set limits" were removed from subsection (1) for two reasons: 1. The verb shifts from the mandatory "shall" to the permissive "may." 2. The legislature "may set limits" in the usual exercise of its powers without any reference being made thereto.

Section 6. Changes from plural to singular accord with good drafting standards.

Section 7. Reorganizing produces clarity without changing substance.

Section 9. Language changes do not alter substance.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION ON GENERAL GOVERNMENT NO. XII

Date Reported: March 20, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: GENERAL GOVERNMENT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Circerely,

/s/ John M. Schiltz
Chairman of the Committff
on Style, Drafting, Transition
and Sutmissicn

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafing, Transition
and Sutmissicr

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on General Government to read as follows:

ARTICLE

GENERAL GOVERNMENT

Section 1. SEPRRATION OF POWERS. The power of the government of this state is divided among three distinct branches-legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVEFNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the Constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFEICE. Members of the legislature and all executive, ricisterial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and d&fend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution.

(2) Each initiative petition must contain the full text of the proposal. Each shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. A petition shall be filed with the secretary of state at least three months prior to the election at which it will be voted upon.

(3) The sufficiency of the initiative petition shall not be

questioned after the election is held.

Section 5. REFERENDUM. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in Each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in Effect until suspended by petition signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. ELECTIONS. The people shall vote on initiative and referendum at the general election unless the legislature orders a special election.

Section 7. NUMBER OF ELECTORS. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for governor in the preceding general election.

Section 8. PROHIBITION. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIII.

Section 9. RECALL. The legislature may provide for the recall of all elected officials of the state and local government units.

Section 10. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Section 10. GAMBLING. All forms of gambling, lotteries. and gift enterprises are prohibited.

Section 11. BOUNDARIES. The sovereignty and jurisdiction of the state of Montana shall prevail within the area encompassed by the following boundaries:

Beginning at the point of intersection of the 104th meridian of west longitude and the 45th parallel of north latitude, thence clockwise west on said parallel to its intersection with the 111th meridian; south on said meridian to the crest of the Rocky Mountains; northwestward on said crest (the continental divide) to the summit of Lost Trail Pass intersecting there with the southeast end and crest of the Bitter Root Mountains; thence

northwestward cn the crest cf the Bitter Rcct Mcuntains and Range to the 116th meridian; north cn said meridian to the 49th parallel; east on said parallel to the 104th meridian; and south cn said meridian tc the place of beginning.

BE IT PROPOSED BY THE GENERAL GCVERNMENT AND CCNSTITUTICNAL AMENDMENT CCMMITTEE:

'Chat there be a new Article cn General Government to read as follcws:

ARTICLE ___

GENERAL GCVERNMENT

Section 1. SEPARATICN OF POWERS. The ~~powers~~ power cf ~~the~~ government of this state ~~are~~ is divided ~~into~~ among three distinct branches~~:--The~~ legislative, executive, and judicial~~,~~. ~~and no~~ No persch or ~~collection of~~ persons charged with the exercise cf ~~powers~~ power properly belonging tc cne ~~of these branches~~ branch shall exercise any ~~powers~~ power properly belonging to either cf the cthers, except as in this Ccnstituticn expressly directed or permitted.

Section 2. CONTINUITY CE GOVERNMENT. The seat cf gcvernment shall be in Helena, except during periods cf emergency resulting frcm disasters or enemy attack. The ~~legislative assembly~~ legislature may enact laws to insure the continuity cf ~~governmental~~ government ~~operations~~ during a period cf emergency~~.--Such laws may deviate--from~~ without regard for cther provisions cf the ~~Montana Constitution~~ Ccnstitution~~, conflicting therewith but~~ They shall be effective cnly during the period cf emergency that affects a particular cfficf cr governmental cperatich.

Section 3. OATH OF CFFICE. Members cf the ~~legislative assembly~~ legislature and all ~~officers,~~ executive, ministerial ~~cr~~ and judicial officers, shall~~, before they enter upon the duties of their respective offices,~~ take and subscribe the following oath cr affirmation, before they enter upcn the duties of their offices ~~to wit~~: "I do solemnly swear (or affirm) that I will support, protect and defend the Ccnstitutich cf the United States, and the Ccnstitutich cf the state cf Montana, and that I will discharge the duties of my cfticf with fidelity (so help me God)." ~~And no~~ No other oath, declaratich, cr test shall be required as a qualification fcr any cfficf or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative cn all matters except appropriatichs cf mcney and local cr special laws prohibited by this Ccnstitutich.

(2) Each initiative petitich must contain the full text of the proposed measure. ~~Initiative petitions~~ Each ~~must~~ shall be signed by at least five percent ~~cr more~~ of the qualified electcrs ~~legal voters~~ in each of at least cne-third ~~cr more~~ of the legislative representative districts and the tctal number cf signers must be at least five percent ~~cr more~~ cf the total ~~legal voters~~

qualified electors of the state. ~~Each petition must contain the full text of the proposed measure.~~ A ~~petitions~~ petition ~~must~~ shall be filed with the ~~Secretary~~ secretary of ~~State~~ state at least three months ~~or more~~ prior to the election at which ~~they~~ it will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned ~~once~~ after the election is held.

Section 5. REFERENDUM. (1) The people may approve or reject by referendum any ~~acts~~ act of the legislature ~~by referendum,~~ except an ~~appropriations~~ appropriation of money. A referendum ~~may~~ shall be ~~ordered~~ held either upon order by the ~~legislative assembly,~~ legislature or upon petition signed by at least five percent ~~or more~~ of the ~~legal voters~~ qualified electors in each of at least one-third ~~or more~~ of the legislative representative districts. ~~and the~~ The total number of signers must be at least five percent ~~or more~~ of the ~~total legal voters~~ qualified electors of the state. A ~~Referendum~~ referendum ~~petitions~~ petition ~~must~~ shall be filed with the ~~Secretary~~ secretary of ~~State~~ state no later than six months after adjournment of the ~~legislative assembly~~ legislature which passed the ~~bill~~ act.

(2) An ~~Acts~~ act ~~of the legislature~~ referred to the people ~~are~~ is in ~~full force and~~ effect ~~unless~~ until suspended by ~~petitions~~ petition signed by at least 15 percent of the ~~legal voters~~ qualified electors ~~of~~ in a majority of the ~~whole number of the~~ legislative representative districts ~~of the state,. in which case~~ If so suspended the ~~law~~ act shall ~~be~~ become ~~inoperative~~ operative ~~until such time as~~ only after it ~~shall be passed upon~~ is approved at an election, ~~and~~ the result of which has been determined and declared as provided by law.

~~Section 6. ELECTIONS. All measures referred to the people shall be voted upon at the regular biennial election unless a special election is ordered by the legislative assembly.~~

Section 6. ELECTIONS. The people shall vote on initiative and referendum at the general election unless the legislature orders a special election.

~~Section 7. LEGAL VOTERS. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of Governor in the regular election immediately preceding filing of petitions for initiative or referendum measures.~~

Section 7. NUMBER OF ELECTORS. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for governor in the preceding general election.

Section ~~9~~8. ~~RESTRICTION.~~ PROHIBITION. The provisions of ~~This~~ this Article ~~is not applicable~~ do not apply to CONSTITU-

TICNAL REVISION, ~~as-covered-in~~ Article XIII ~~cf-this-Constitution.~~

Section ~~109~~. RECALL. ~~Laws-may-be-enacted-to~~ The legislature may provide for the recall of all elected officials of the state and ~~its-political-subdivisions.~~ local government units.

Section ~~1110~~. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Section ~~1110~~. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited.

Section ~~1211~~. BOUNDARIES. The sovereignty and jurisdiction of the state of Montana shall prevail within the area encompassed by the following boundaries:

Beginning at the point of intersection of the 104th meridian of west longitude and the 45th parallel of north latitude, thence clockwise west on said parallel to its intersection with the 111th meridian; south on said meridian to the crest of the Rocky Mountains; northwestward on said crest (the continental divide) to the summit of Lost Trail Pass intersecting there with the southeast end and crest of the Bitter ~~root~~ Root Mountains; ~~hence~~ thence northwestward on the crest of the Bitter ~~root~~ Root Mountains and Range to 176th meridian; north on said meridian to the 43th parallel; east on said parallel to the 104th meridian; and south on said meridian to the place of beginning.

Report No. XII - General Government

COMMENTS CN STYLE, FCRM AND GRAMMAR

Section 1. The changes in larguage rake plain that the power cf government is one whole which is divided intc three parts.

Section 2. Changes in language clarify and shorten without affecting substance.

Section 3. Recrdering prcnctes flcw withcut altering substance.

Sections 4 and 5. Reordering and language changes dc nct alter substance.

Section 6. Changes make clear that bcth initiative and referendum are covered.

Section 7. Changes clarify.

Section 98. Changes emphasize the prchibition.

Section 109. The phrase "lccal government units", adopted ix! section 1, Article XI, LCCAI GCVERNMENT, was substituted fcr "its political subdivisions".

Section 1110. The adcption schedule will prcvide for the deletion of whichever fcrmcf the sectich is nct approved by the vcters.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

COMMITTEE ON STYLE, CRAFTING,

TRANSITION, AND SUBMISSION PROPOSAL

No. XIII

Date Reported: March 16, 1972

/s/ John M. Schiltz Chairman

William A. Burkhardt, Vice Chairman
(originalunsigned)

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL 1029

TEXT OF UNANIMOUS PROPOSAL 1030

COMMENT ON UNANIMOUS PROPOSAL 1031

APPENDIX 1032

Date: March 16, 1972

Tc: MONTANA CONSTITUTIONAL CONVENTION

From: Committee on Style, Drafting, Transition and Submission

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission submits a unanimous proposal Entitled "COMPACT WITH THE UNITED STATES."

Its raison d'etre appears in the appended comment.

/s/ John M. Schiltz
Chairman

William A. Burkhardt, Vice Chairman
(original unsigned)

UNANIMCUS PECPOSAL

BE IT PROPCSED EY THE COMMITTEE CN STYLE, CRAFTING, TRANSITION ANE SUBMISSION:

That there be a new Article on Compact with the United States to read as follcws:

ARTICIE ---

CCMPACT WITH TEE UNITED STATES

All provisions of the enabling act cf Congress (approved February 22, 1889, 25 stat. 676) and of Crdinance No. 1, appended to the Constitution of the state cf Montana and apprcvedFebruary 22, 1889, including the agreement and declaration that all lands owned or held by any Indian cr Indian tribes shall remain under the absolute jurisdiction and ccntrcl of the congress cf the United States, continue in full force and effect until revoked by the consent of the United States and the pecple Cf Montana.

/s/ John M. Schiltz
Chairman

William A. Burkhardt, Vice Chairman
(criginal unsigned)

/s/ Robert Lee Kelleher

/s/ D. I. Holland

/s/ Virginia W. Blend

/s/ Lucile Speer

/s/ J. C. Garlington

/s/ Chet Blaylock

/s/ Richard B. Roeder

/s/ Ben E. Berg

/s/ Jerome T. Loendorf

COMMENTS

The proposed Article is a response to Delegate Proposal No. 15, which was referred to this Committee, and to other expressions of concern at the Convention. It is similar to a provision in the new North Dakota Constitution. Its only function is to serve as a reminder that the guarantees upon which Congress conditioned the entry of Montana into the Union persist even though ordinance No. I is not reprinted.

AFEENCIX

Delegate Prcpcsal NC. 15, spcnsored by Messrs. Scanlin and Vermillicn, was examined and ccnsidered by the Ccmmittee aod adcpted in part.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION

FINAL REPORT

Date Reported: March 22, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

FINAL REPORT

COMMENTS ON STYLE, FCFM, ANC GRAMMAR

1. To consist with the change made ty the Cooventicn in propcsal N o . 12, GENERAL GCVERNMENT, the ncun "branch" was substituted for "department" in:

Article V, section 11 (unicameral and bicameral)

Article VI , sections 1, 4, 5, 15

Article XIII, secticn 4.

2. To order material, the following prcvisicns were moved as shown:

(a) Salary commissicn -- frcm Article V, THE LEGISIATURE, secticn 5, subsection 2, tc Article XIII, GENERAL FRCVISIONS, secticn 4.

(b) Prchibited payments -- frcm Article V, THE LEGISLATURE, section 16 (unicameral) section 15 (bicameral), tc Article VIII, REVENUE ANC FINANCE, sfcticn 14.

(c) Code of ethics -- frcm Article V. THE LEGISLATURE, section 17 (unicameral) secticn 16 (bicameral), tc Article XIII, GENERAL FRCVISICKS, secticn 5.

(d) Exemptign laws -- frcm Article VII, THE JUDICIARY, sectign 12, tc Article XIII, GENERAL ERGVISIONS, secticn 6.

(f) Perpetuities -- frcm Article VII, THE JUDICIARY, section 13, tc Article XIII, GENERAL PROVISIONS, secticu 7.

3. To avoid repeating a sentence identical to that appearing as section 3 of Article X, EDUCATICN ANC PUBLIC IANDS, the first sentence of subsectign (2), section 13, Article VIII, REVENUE ANC FINANCE, was deleted.

TO: Montana Constitutional Convention

SUBJECT: FINAL REPORT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Sutrission transmits its final report for consideration of the Convention.

Immediately following this letter you will find:

(a) COMMENTS identifying changes in form or order.

(b) The proposed Constitution.

(c) Adoption Schedule.

(d) Transition Schedule.

(e) A proposed form of ballot.

The Committee wishes to thank Professor Gardner Cromwell, Consultant; Sandra Muckelston and Diana Dowling, Counsel; and Betty Nelson, staff secretary.

Sincerely,

/s/ John M. Schiltz
Chairman

/s/ William A. Burkhardt
Vice Chairman

/s/ Ben E. Berg, Jr.

/s/ J. C. Garlington

/s/ Jerome T. Loendorf

/s/ Chet Blaylock

/s/ David L. Holland

/s/ Richard B. Roeder

/s/ Virginia H. Blend

/s/ Robert Lee Kelleher

/s/ Lucile Speer

PREAMBLE

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

ARTICLE I

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the Congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the Constitution and form of government whenever they deem it necessary.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable, No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights or account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. FREEDOM OF RELIGION. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. FREED08 OF SPEECH, EXPRESSION, AND PRESS. NO law shall be passed impairing the freedom of speech or expression. Every person shall be free to Speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies

prior to the final decision as may be provided ty law.

Section 9. RIGHT TC KNOW. No person shall be deprived of the right tc examine documents cr tc cbserve the deliberaticns cf all public bodies or agencies of state government and its subdivisicns, except in cases in which the demand cf individual privacy clearly exceeds the merits cf public disclcsure.

Section 10. RIGHT OF FRIVACY. The right of individual privacy is essential to the well-being of a free scciety and shall not be infringed without the shoving of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The pecple shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, cr seize any person or thing shall issue without describing the place to be searched or the perscn cr thing to be seized, or without probable cause, supported by oath or affirmaticn reduced to writing.

Section 12. RIGHT TC BEAR ARMS. The right cf any person to keep or tear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein ccntained shall be held tc permit the carrying of concealed weapons.

Section 13. RIGHT CF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A perscn 18 years of age or clder is ar adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights cf this article unless specifically precluded by laws which enhance the protection of such persons.

Sectien 16. THE ADMINISTRATICN GF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No perscn shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellov employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PRCCESS OF LAW. No person shall be deprived of life, liberty, or property without due prccess of law.

Section 18. STATE SUBJECT TO SUIT. The state, counties,

cities, towns, and all cther local governmental entities shall have no immunity frcm suit for injury to a perscn or prcperty. This provisicn shall apply only tc causes of action arising after July 1, 1973.

Sectien 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION CF PRCCEEDINGS. (1) Criminal offenses within the jurisdiction cf any ccurt infericr to the district court shall be prosecuted by complaint. All criminal actions in district court, except thcse on appeal, shall be prosecuted either by information, after examinaticn and ccmmitment by a magistrate or after leave granted by the ccurt, cr by indictment without such txaminaticn, ccmmitment or leave.

(2) A grand jury shall ccnsist of eleven persons, cf whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at thediscretien and crder of the district judge.

Section 21. HAIL. All persons shall be bailable by sufficient sureties, except for capital cffensec, when the proof is evident cr the presumption great.

Section 22. EXCFSSIVE SANCTIONS. Excessive bail stall nct be required, or excessive fines impcsed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No persen shall be impriscned fcr the purpose of securing his testiocry in any criminal proceeding lcnger than may be necessary in crder to take his depcsitien. If he can give security fcr his appearance at the time cf trial, he shall be discharged upcn giving the same; if he canrct give security, his deposition shall be taken in the manner prcvided by law, and in the presence of the accused and his counsel, cr without their presence, if they shall fail to attend the examinaticn after reasonable nctice of the time and place thereof.

Section 24. RIGHTS OF 'IRE ACCUSED. In all criminal prosecuticns the accused shall have the right to appear and defend in persen and ty counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face: to have process tc compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the ccunty cr district in which the offense is alleged tc have been committed, subject to the right of the state to have a change cf venue fcr any of the causes fcr which the defendant may cbtain the same.

Section 25. SELF-INCRIMINATION AND DOUEIE JEOPARDY. No persen shall be compelled to testify against himself in a criminal proceeding. Nc persen shall be again put in jeopardy fcr the same offense previously tried in any jurisdictien.

Section 26. TRIAL BY JURY. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried uithcut a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. NO person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 33. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED FORCES. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of

the governor when the legislature cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III

GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The power of the government of this state is divided into three distinct branches -- legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the Constitution. They shall be effective only during the Period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the united states, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. REFERENDUM. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the

legislative representative districts. The total number of signers must be at least five percent cf the qualified electors cf the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment cf the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent cf the qualified electors in a majority of the legislative representative districts. If so suspended the act shall bfccme operative only after it is approved at an election, the result cf which has been determined and declared as provided by law.

Section 6. ELECTIONS. The people shall vcte cn initiative and referendum measures at the general election unless the legislature orders a special electicn.

Section 7. NUMBER CF ELECTCFS. The number cf qualified electcrs required ir each legislative representative district and in the state shall be determined by the number of votes cast fcr the office of governor in the proceeding general election.

Section 8. PRCHIEITICN. The provisions cf this Article do not apply to CONSTITUTIONAL REVISICN, Article XIV.

Section 9. GABBLING. All forms of gambling, lctteries, and gift enterprises are prohibited unless authcrized by acts of the legislature or by the people through initiative or referendum.

Section 9. GABBLING. All forms of ganblirg, lotteries, and gift enterprises are prchibited.

ARTICLE IV

SUFFRAGE ARC ELECTIONS

Section 1. BALLOT. All elections by the people shall be by secret ballet.

Section 2. QUALIFIED ELECTOR. Any citizen cf the United States 18 years of age or clder uhc meets the registraticn and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felcny in a penal instituticn or is of unscund mind, as determined by a court.

section 3. ELECTICNS. The legislature shall provide by law the requirements fcr residence, registraticn, absentee vcting, and administraticn cf electicns. It may provide for a system of poll booth registration, and shall insure the purity of electicns and guard against abuses of the electcral process.

Section 4. ELIGIBILITY FOR PUBLIC CEFICE. Any qualified elector is eligible to any public cffice except as otherwise prcvided in this Constitution. The legislature may provide additional gualificaricns but no persen convicted cf a felony shall be eligible to hcld office until his final discharge frcm state supervision.

Section 5. RESULT GF ELECTICNS. In all electicns held by the people, the persen cr persens receiving the largest number of votes shall be declared elected.

Section 6. PRIVILEGE FRCM ARREST. A qualified electcr is privileged frcm arrest at polling places and in gcing to and returning therefrom, unless apprehended in tha commissicr cf a felony or a breach of the peace.

ARTICLE V

THE LEGISLATURE

Srcticn 1. POWER AND STRUCTURE. The legislative pcwer is vested in a legislature of one chamber whcse members are designated senators. The people reserve to themselves the pcwers of initiative and referendum.

Section 2. SIZE. The number cf senators shall he provided by law, but it shall nct be smaller than 90 nor larger than 105.

Section 3. ELECTION AND TERMS. A senator shall he elected for a term of four years to begin on a date prcvided by law. One-half of the senators. shall be elected every twc years.

Section 4. QUALIPICATICN'. A candidate for the legislature shall be a resident of the state for at least cne year next preceding the general electicn. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or cf the district if it contains all or parts of mcre than one county.

Section 5. COMPENSATICN. Each member of the legislature shall receive compensation fcr his services and allowances prcvided by law. Nc legislature may fix its cun ccmpensation.

Section 6. SESSIONS. The legislature shall be a cocticucus body for two-year periods beginricg when newly elected members take office. Any business, bill, or rescluticn Fending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least cnce a year in regular sessions cf nct more than 60 legislative days. Any legislature may increase the limit cn the length of any subsequent sessicn. The legislature may be convened in special sessions by the qcverncr or at the written request of a eajcrity cf the members.

Section 7. VACANCIES. A vacancy in the legislature shall he filled by special electicn fcr the unexpired term unless ctherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questicned in any cther place fcr any speech or debate in the legislature.

Section 9. DISQUALIFICATICN. Nc member cf the legislature shall, during the term for which he shall have been elected, te appointed to any civil office under the state; and no member of

congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of senators. It may by law vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrance of two-thirds of all the senators.

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of thi majcritq of all neabers present and voting.

(2) Every vote of each member on each substantive question in the legislature, in any committee, or in committfe of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each till, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation till shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private associatior, or private corporation not under control of the state.

(6) A law may be challenged cn the ground of noncompliance with this sectiон only within two years after its effective date.

Section 12. LCCAL AND SPECIAL LEGISIATION. The legislature shall nct pass a special or lccal act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive cffi-cers, heads of state departments, judicial officers, and such other cfficers as may he provided by law are subject tc impeach-ment, and upon ccnvictiсn shall be removed frcm office. Other proceedings for removal frcm public cffice for cause may be prc-vided by law.

(2) The legislature shall provide fcr the manner, proce-dure, and causes for impeachment and shall provide for a tribu-nal.

(3) Impeachment can be brought cnly by a two-thirds vcte of the legislature. The tribunal hearing the charges shall ccovict only by a vote of two-thirds or mcre cf its members.

(4) Conviction shall extend cnly tc removal frcm cffice, but the party, whether ccnvicted or acquitted. shall also be liable tc prosecutiсn according tc law.

Section 14. DISTRICTING AND APPCRTICNMENT. (1) The state shall be divided into as many districts as there are senatcrs and each district shall elect one senatcr. Each district shall con-sist of compact and contiguous territcry. All districts shall be as nearly equal in populatiсn as is practicable.

(2) In the legislative sessicn fcllcwing ratification cf this Ccnstitution and thereafter in each sessicn preceding each federal population census, a ccmmissiсn of five citizens, ncne cf whom may be public cfficials, shall be selected to prepare a plan for redistricting and reapportioning the state intc legislative and congressional districts. The majority and minority leaders of the legislature shall each select two ccmmissioners. Within 20 days after their designation, the fcur commissioners shall select the fifth member, who shall serve as chairman cf the commissiсn. If the four members fail to select the fifth member uitbin the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular sessicn after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the ccmmissiсn with its recommendations. Within 30 days thereafter, the commission shall file its final plan uitb the secretary cf state and it shall become law. The commission is then dissolved.

Section 15. REFERENDUM OF UNICAMERAL LEGISLATURE. (1) In

1980 the secretary of state shall place upon the ballot at the general election the question: "Shall the unicameral legislature form be continued?"

(2) 'If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article V of this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall he provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fever than 80 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section IO. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by lau vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members."

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members."

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public."

"(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law."

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure and causes for impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the members of a bicameral body are elected and qualified.

(5) The Senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legis-

lature is to continue.

(6) When the provisions cf this section have been carried out, it shall be cf nc further effect.

ARTICLE V

THE LEGISLATURE

Section 1. POWER ANC STRUCTUFE. The legislative pcwer is vested in a legislature consisting cf a senate and a hcuse cf representatives. The pecple reserve tc themselves the powers of initiative and referendum.

Section 2. SIZE. The size cf the legislature shall be prcvided by law, but the senate shall nct have more than 50 or fewer than 40 members and the house shall nct have mcre than 100 or fewer than 80 members.

Section 3. EIECTICN AND TERMS. A member of the house of representatives shall be elected for a term cf tuo years and a member of the senate for a term of four years each to begin on a date provided by law. One-half cf the senatcrs shall be elected every twc years.

Section 4. QUALIFICATIONS. A candidate for the legislature shall be a resident of the state fcr at least cne year next preceding the general election. Fcr six mcnths next preceding the general election, he shall be a resident cf the ccunty if it contains one or more districts or cf the district if it contains all or parts of more than cne ccunty.

Section 5. COMPENSATICN. Each member cf the legislature shall receive compensaticn fcr his services and allowances provided by law. No legislature may fix its cwn compensaticn.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, till, cr resolutien pending at adjournment of a session shall carry cver with the same status to any cther session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit cn the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majcrity cf the members,

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special electicn fcr the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessicn cf the legislature and in going to and returning therefrom, unless apprehended in the commission of a felcny or a breach cf the peace. He shall not be questioned in any cther place for any speech cr debate in the legislature.

Section 9. DISQUALIFICATION. NO member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole. all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. BILLS. (1) A law Shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, execu-

tive, and judicial branches, for interest cn the public debt, and for public rchccls. Every cther apprcpriaticn shall be made by a separate bill, containing but cne subject.

(5) No appropriation shall be made for religicus, charitable, industrial, educational, cr benevolent purpcses to any private individual, private asscciaticn, or private corporaticn nct under control cf the state.

(6) A law may be challenged cn the grcund cf ncncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAI LEGISLATION. The legislature shall nct pass a special cr lccal act when *a* general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive cfficers, heads cf state departments, judicial cfficers, and such other cfficers as may be prcvided by law are subject tc impeachment, and upon ccnvictioo shall be removed from office. Other proceedings for removal from public office fcr cause may be prcvided by law.

(2) The legislature shall prcvide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brcught crly by a tuo-thirds vote of the hcuse. The tribunal hearing the charges shall ccnvict only by a vote cf twc-thirds cr more cf its members.

(4) Ccriviction shall extend cnly tc removal from office. but the party, whether ccnvicted or acquitted, shall alsc be liable to prosecuticn according to law.

Section 14. DISTRICTING ANC APPCRTICNMENT. (1) The members of the hcuse, and each district shall elect cne representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senatcr. Each district shall ccnsist of compact and contigucus territcry. All districts shall be as nearly equal in populaticn as is practicable.

(2) In the legislative sessicn fcllouing ratificaticn cf this Ccnstitution and thereafter in each sessicn preceding each federal population census, a ccmmissicn of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapporticning the state into legislative and congressional districts. The majority and nincrity leaders of each house shall each designate one ccmmissicner. Within 20 days after their designation, the fcur commissioners shall select the fifth member, who shall serve as chairman of the ccmmissicn. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The ccmmissioc shall submit its plan tc the legislature at the first regular sessicn after its appcintment or after the census figures are available. Within 30 days after submissicn, the legislature shall return the plan tc the ccmmission with its recommendaticns. Within 30 days thereafter, the ccmmissicn shall file its final plan with the secretary cf state and it shall become law. The ccmmission is then dissclved.

ARTICLE VI

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive branch includes a governor, lieutenant governcr, secretary cf state, attorney general, superintendent of public instructicn, and auditor.

(2) Each hclds cffice fcr a term ef fcur years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records cf his office, and perfcrm such cther duties as are provided in this Constitution and by law.

Section 2. ELECTICN. (1) The governcr, lieutenant gcverncr, secretary cf state, attcrnfy general, superintendent of public instructicn, and auditor shall be elected by the qualified electors at a general electicn provided by law.

(2) Each candidate for governcr shall file jcintly with a candidate fcr lieutenant governor in primary elections, cr so otherwise comply with rcminaticn Procedures provided by law that the cffices of gcvernor and lieutenant gcverncr are voted upon together in primary and general electicns.

Section 3. QUALIFICATIONS. (1) No persen shall be eligible to the office cf gcvernor, lieutenant gcverncr, secretary cf state, attorney general, superintendent of public instruction, cr auditor unless he is 25 years of age or older at the time of his elacticn. In addition, each shall be a citizen cf the United states who has resided within the state tuc years next preceding his election.

(2) Any person with the fcregcicg qualifications is eligible t o the office of attorney general if an attcrnfy in good standing admitted tc practice law in Eontana uhc has engaged in the active practice thereof fcr at least five years before election.

(3) The superintendent cf public instruction shall have such educational qualificaticns as are provided by law.

Section 4. DUTIES. (1) The executive pcwer is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are Provided in this Ccnstitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated tc him by the governor. Nc Power specifically vested in the governcr by this Constitution may be

delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. COMPENSATION. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. APPOINTING POWER. (1) The departments Provided

for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor Shall appoint, subject to confircation by the senate, all officers provided for in this Constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the 2nd of the governor'2 term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the Same session, or be appointed to that office when the legislature is not in session.

Section 9. BUDGET ANC MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information aud recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. VETC POWER. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments tc the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governcr for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill tc the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's reccamendaticn, it shall again return the bill tc the qcvernor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt cf a veto message, tuo-thirds cf the members present approve the bill, it shall become lau.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill uith his reasons therefcr

to the legislature as provided by law. The legislature may reconvene to reconsider any kill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. SPECIAL SESSION. Whenever the governor considers it in the public interest. he may convene the legislature.

Section 12. PARDONS. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. MILITIA. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. SUCCESSION. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter,

when the governor transmits tc the legislature his uritter declaration that no inability exists, he shall resume the powers and duties cf his office within 15 days, unless the legislature determines otherwise by tuc-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting qovernor.

(6) IL the cffice cf qcverncr becomes vacant by reason cf death, resignaticn, or disqualificatien, the lieutenant governor shall beccme governor f o r tehaeinder of the term, except as provided in this Ccrstitutien.

(7) Additional successicn tc fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governcr, the successor shall be the governor. The acting governor shall have the pcwers and duties of the office cf gcverncr only fcr the period during which he serves.

Section 15. INFORMATICN FCR GGVERNOR. (1) The governor may require information in writing, under oath when reguired, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require informaticu in writing, under oath, frcm all officers and managers of state institutions.

(3) He may appoint a committee tc investigate and report to him upcn the condition of any executive cffice cr state institutien.

ARTICLE VII

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. SUPREME COURT JURISDICTION. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. SUPREME COURT ORGANIZATION. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with

that of the district ccurt as may te Provided by law.

Section 5. JUSTICES CF 'IRE PEACE. (1) There shall be elected in each county at least one justice of the peace uith qualifications, training, and monthly compensaticn provided by law. There shall be provided such facilities that they oay perform thair duties in dignified surrcundings.

(2) Justice ccurts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdictien in any criminal case designated a felcny except as examining courts.

(3) The legislature may provide for additicnal justices of the peace in each ccunty.

Section 6. JUDICIAL DISTRICTS. (1) The legislature shall divide the state intc judicial districts and prcvide for the number of judges in each district. Each district shall be fcrmed of compact territory and be bounded by ccunty lines.

(2) The legislature may change the number and boundaries of judicial districts and the number cf judges in each district, bat no change in boundaries or the number of districts or judges therein shall work a removal of any judge frcm cffice during the tern for which he was elected or appointed.

(3) The chief justice may, upcn request of the district judge, assign district judges and other judges fcr temporary service frcm one district to another, and frcm one county to another.

Section 7. TERMS AND EAY. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms Of office shall te eight years fcr supreme court justices, six years fcr district court judges, four years for justices of the peace, and as provided by law for cther judges.

Section 8. SELECTICN. (1) The governor shall ncminatf a replacement fron ncninees selected in the manner provided by law for any vacancy in the office cf supreme court justice cr district court judge. If the governcr fails to nominate uithin thirty days after receipt cf nominees, the chief justice cr acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a ncraination made while the senate is not in session shall te effective as an appcintment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and ancther selection and ncmination shall be made.

(2) If, at the first election after senate ccnfirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge

files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and commination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. QUALIFICATIONS. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) NO supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state, Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. REMOVAL AND DISCIPLINE. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent: or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

ARTICLE VIII

REVENUE AND FINANCE

Section 1. TAX PURPOSES. Taxes shall be levied by general laws for public purposes.

Section 2. TAX POWER INALIENABLE. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner Provided by law.

Section 4. EQUAL VALUATION. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. PROPERTY TAX EXEMPTIONS. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. HIGHWAY REVENUE NOR-DIVERSION. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tour-

ist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. TAX APPEALS. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. STATE DEBT. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. BALANCED BUDGET. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. LOCAL GOVERNMENT DEBT. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. STRICT ACCOUNTABILITY. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) such cther safe investments fearing a fixed rate cf interest as may be provided by law.

Section 14. PROHIBITED PAYMENTS. Except for interest on the public debt, no money shall be paid out cf the treasury urless upon an appropriation made by law and a warrant drawn by the proper cfficer in pursuance thereof.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND IMPROVEMENT. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) Ihe legislature shall prcvide fcr the administration and enforcement cf this duty.

(3) The legislature shall prcvide adequate remedies fcr the protection of the envircnmental life support system frcm degradaticn and provide adequate remedies tc prevent unreascnable depletion and degradation of natural rescurces.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. WATER RIGHTS. (1) All existing rights tc the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The US? cf all water that is ncw or may hereafter be appropriated for sale, rent, distributicn, cr other beneficial use, the riyht of way over the lands cf cthers fcr all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for raservcirs necessary fcr ccllecting and storing water shall be held tc be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the prcperty of the state for the use of its people and are subject tc appropriation for beneficial uses as provided by law.

(4) The legislature shall prcvide fcr the administratica, contrcl, and regulation cf water rights and shall establish a system of centralized records, in addition tc the present system of local records.

Secticu 4. CUITURAL RESOURCES. The legislature shall provide for the identification, acquisitica, restcratico, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section 1. EDUCATIONAL GOALS AND DUTIES. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person, Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUELIC SCHOOL FUND. The public school fund of the state shall consist of:

(1) proceeds from the school lands which have been or may hereafter be granted by the United States;

(2) lands granted in lieu thereof;

(3) lands given or granted by any person or corporation under any law or grant of the United States;

(4) all other grants of land or money made from the United States for general educational purposes or without special purpose;

(5) All interests in estates that escheat to the state;

(6) all unclaimed shares and dividerds of any corporation incorporated in the state;

(7) all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commis-

sioners. It has the authority tc **direct**, control, lease, exchange, and sell school lands and lands which have been cr may be granted for the supportand benefit **of the** varicus State educational institutions, under such regulaticns and restricticcs as may be provided ky law.

Secticn 5. PUBLIC SCHOOL FUND REVENUE. (1) Ninety-five percent cf all the interest received cn the public schccl fund and ninety-fiva percent of all rent received from the leasing of school lands and all other income from the public schocl fund shall he equitably apportioned annually to public elementary **and** secondary schocl districts as provided ky law.

(2) The remaining five percent cf all interest received on the public school fund, and **the** remaining five Percent of all rent received frcm the leasing cf schccl lands and all cther income from the public school fund shall annually he added to the public school fund and become and forever remain an inseparable and inviolable part therecf.

Secticn 6. AID PRCHIBITED TO SECTARIAN SCHCCIS. **(1)** The legislature, counties, cities, towns, schccl districts, and public ccrporaticns shall nct make any direct cr indirect appropriation or payment from any public fund or monies, or any grant of lands or other property fcr any sectarian Purpose or to aid any church, schccl, academy, seminary, college, university, or other literary or scientific institutien, controlled in whcle cr in part by any church, sect, or dercminaticn.

(2) This section shall nct apply to funds frcm federal sources provided tothe state fcr the express purpcse **cf** distributicn tc non-public education.

Section 7. NCN-DISCRIMINATICN IN EDUCATICN. No reliqicus or partisan test or qualificatien shall ke required of any teacher or student as a condition of admissicn into any public educational institution. Attendance shall not be required at any religious service. Nc sectarian tenets shall be advocated in any public educational institution cf the state. Nc persen shall be refused admission to any public educational institution on account of sex, race, creed, religicn, Political keliefs, cr national origin.

Section 8. SCHOOL DISTRICT TRUSTEES. The supervision and control cf schccls in each school district shall he vested in a board cf trustees to be elected as prcvided by law.

Section 9. BOARDS CF EDUCATICN. (1) There is a state koard of educatien composed of the board cf regents cf higher education and the board of public education. It is respcnsible for long-range planning, and for coordinating and evaluating pclicies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governcr, who is an ex officio member cf each ccmpcnent

board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and Superintendent Of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. STATE UNIVERSITY FUNDS. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. PUBLIC LAND TRUST, DISPOSITION. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the

estate or interest. disposed cf, tc be ascertained in such manner as may be provided by law, has been paid or safely secured tc the state.

(3) Nc land which the state holds by grant frcm the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and fcr at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board cf land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

ARTICLE XI

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state are those that exist on the date of ratification of this Constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The board of county commissioners may consolidate two or more such offices. The boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. GENERAL POWERS. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of Units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A local government unit adopting a self-government charter may exercise any power not prohibited by this Constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government urit may:

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendue powers reserved to the people by the Constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ratification of this Constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit *one* alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section 1. AGRICULTURE. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. LABOR. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. INSTITUTIONS AND ASSISTANCE. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. NON-MUNICIPAL CORPORATIONS. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax or the net income or gross revenues of regulated companies.

Section 3. SALARY COMMISSION. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 6. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

ARTICLE XIV

CONSTITUTIONAL REVISICN

Section 1. CONSTITUTICNAI CCNVENTIGN. The legislature, by an affirmative vcte of two-thirds of all the members, whether one or more bodies, may at any time submit tc the qualified electcrs the guesticn of whether there shall be an unlimited Convention to revise, alter, cr amend this Constitution.

Section 2. INITIATIVE FOR CONSTITUTICNAI CCNVENTICN. (1) The pecple may by initiative petiticn direct the secretary of state tc submit to the qualified electors tbe guesticn cf whether there shall be an unlimited Convention tc revise, alter, or amend this Constitution. The petiticn shall be signed by at least 10 percent cf the qualified alectcrs of the state. That number shall include at least 10 percent of the qualified electcrs in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of tbe petition in his office and cause the question tc be submitted at the next general electicc.

Section 3. PERIODIC SUBMISSICN. If the guesticn cf hclding a Convention is not ctheruise submitted during any period of 20 years, it shall be submitted as prcvided by law at the general election in the twentieth year follcwing the last submission.

Section 4. CALL OF CONVENTICN. If a najority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger bcdy cf the legislature. The qualifications of delegates shall be the same as the highest qualificaticns reguired for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan basis. They shall be elected at the same places and in the same districts as are the members cf the legislative body determining the number of delegates.

Section 5. CCNVENTICN EXPENSES. The legislature shall, in the act calling the Conventicn, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses cf the Convention.

Section 6. OATH, VACANCIES. Eefore proceeding, the delegates shall take the oath provided in this Cccstitution, Vacancies occuring shall be filled in the manner providedfor filling vacancies in the legislature if not otherwise provided by law,

Section 7. CONVENTION DUTIES. The Ccnventicn shall meet after the electicn cf the delegates and prepare such revisions.

alterations, or amendments to the Constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the Convention at an election appointed by the Convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM. Amendments to this Cocstituticr may be proposedby any member of the legislature. If adopted by an affirmative roll call vote of tuc-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting therccn, the amendment shall beccme a part of this Constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. AMENDMENT BY INITIATIVE. (1) The people may also propose Ccnstiruticnal amendments by iritiative. Pftiticns including the full text of the proposed amendment shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have teen signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide electicr.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejecticn. If approved by a majority voting therecn, it shall become a part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. PETITION SIGNERS. The number of qualified electors required for the filing of any Fetiticn Frovided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. SUBMISSICN. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

ADCPTION SCHEDULE

These Schedule provisicns are part cf this Ccnstituticn cnly for the limited purposes cf determining whether this Constitution has been adopted, determining what changes result frcm the vote on each of the separately submitted issues, and establishing the general effective date cf this Ccnstitutico. Nc provisicn cf this Schedule shall be published unless it beccmes part of the Constituticn as the result of the adoption of a separately submitted prcvisicn.

Section 1. This Ccnstituticn, if approved by the electcrs as provided by tt-2 Cccstitutico of 1889, shall take effect cn July 1, 1973, except as otherwise provided in sections 1 and 2 of the Iransitico Schedule. The Ccnstituticn cf 1889, as amended, shall thereafter be cf nc effect.

Section 2. (1) If separate issue 2A ccncerning the unicameral form or the legislature is approved by the electcrs and if the proposed Ccnstituticn is approved by the electors, then:

(a) There shall be deleted frcm ARTICLE V, THE LEGISLATURE, that pcrtico which ccncerns the bicameral form.

(b) The words "of each hcuse" are deleted frca subsection (2) cf secticn 6 and from section 8, ARTICLE VIII, REVENUE AND FINANCE.

(c) The word "legislature" is substituted for "senate" in subsecticns (1), (2), and (4) of secticn 8, ARTICLE VI, THE EXECUTIVE, and in subsecticns (1) and (2) cf secticn 8, ARTICLE VII, THE JUDICIARY.

(2) If separate issue 2B ccncerning the bicameral form of the legislature is approved by the electcrs and if the proposed Constitution is approved by the electcrs, then there shall be deleted from ARTICLE V, THE LEGISLATURE, that portion which concerns the unicameral form.

Section 3. If separate issue 3A is approved by the electcrs and if the proposed Constitution is approved by the electors, then there shall be added to section 28, ARTICLE 'II, DECLARATION OF RIGHTS, the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." And there shall be deleted from secticn 21 of the same ARTICLE the follcuing: ", except for capital offenses, when the proof is evident or the presumptico great".

Section 4. (1) If separate issue 4A is approved by the electors and if the proposed Ccnstituticn is approved by the electors, then there shall be deleted from ARTICLE III, GENERAL GOVERNMENT: "Section 10. GAMBLING. All forms cf gambling,

lotteries, and gift enterprises are prohibited."

(2) If separate issue 4B is approved by the flfctcrs and if the propcsed Constitution is approved by the electors, then there shall be deleted from ARTICLE III, GENERAL GOVERNMENT: "Section 10. GAMBLING. All fcrms of gambling, lotteries, and gift enterprises are prohibited unless authcrized by acts of the legislature or by the people through initiative or referendum."

TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

Section 2. Delayed Effective Date

Section 3. Prospective Operation of Declaration of Rights

Section 3. Terms of Judiciary

Section 5. Terms of Legislators

Section 6. General Transition

Section 1. ACCELERATED EFFECTIVE DATE. Section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Section 2. DELAYED EFFECTIVE DATE. The provisions of sections 1, 2, and 3 of ARTICLE V, LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 3. PROSPECTIVE OPERATION OF DECLARATION OF RIGHTS. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. TERMS OF JUDICIARY. Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Section 5. TERMS OF LEGISLATORS. (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Section 6. GENERAL TRANSITION. (1) The rights and duties of all public bodies shall remain as if this Constitution had not

been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

OFFICIAL EALLGT

Instructions to voters: Place an "X" in the boxes which express your preferences. The full text of the proposed Constitution and the separate propositions are available for inspection at your polling Place.

YOU SHOULD VOTE 4 TIMES

(Vote for one)

[ ] For the proposed Constitution.

1

[ ] Against the proposed Constitution.

(Vote for one)

[ ] 2A. For a unicameral legislature (1 house).

2

[ ] 2B. For a bicameral legislature (2 houses).

(Vote for one)

[ ] 3A. For abolishing the death penalty.

[ ] 3B. Against abolishing the death penalty.

(Vote for one)

☐ 4A. For allowing the legislature or the people to authorize gambling.

4

☐ 4B. Against allowing the legislature or the people to authorize gambling.

The CONSTITUTION of the STATE OF MONTANA

PREAMBLE

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

ARTICLE I
COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II
DECLARATION OF RIGHTS

Section 1. **POPULAR SOVEREIGNTY.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. **SELF-GOVERNMENT.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Section 3. **INALIENABLE RIGHTS.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. **INDIVIDUAL DIGNITY.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section **5. FREEDOM OF RELIGION.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section **6. FREEDOM OF ASSEMBLY.** The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section **7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS. No** law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. **RIGHT OF PARTICIPATION.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. **RIGHT OF PRIVACY.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. **SEARCHES AND SEIZURES.** The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. **RIGHT TO BEAR ARMS.** The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. **RIGHT OF SUFFRAGE.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. **ADULT RIGHTS.** A person 18 years of age or older is an adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. **THE ADMINISTRATION OF JUSTICE.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. DUE **PROCESS OF LAW.** No person shall be deprived of life, liberty, or property without due process of law.

Section 18. **STATE SUBJECT TO SUIT.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Section 19. **HABEAS CORPUS.** The privilege of the writ of habeas corpus shall never be suspended.

Section 20. **INITIATION OF PROCEEDINGS.** (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. **BAIL.** All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. **EXCESSIVE SANCTIONS.** Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted,

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened,

Section 34. UNENUMERATED RIGHTS. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III
GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The power of the government of this state is divided into three distinct branches-legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. REFERENDUM. (1) The peoplemay approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. ELECTIONS. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election

Section 7. NUMBER OF ELECTORS. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 8. PROHIBITION. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited.

ARTICLE IV
SUFFRAGE AND ELECTIONS

Section 1. **BALLOT.** All elections by the people shall be by secret ballot.

Section 2. **QUALIFIED ELECTOR.** Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section **3. ELECTIONS.** The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section **4. ELIGIBILITY FOR PUBLIC OFFICE.** Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. **RESULT OF ELECTIONS.** In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section **6. PRIVILEGE FROM ARREST.** A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

ARTICLE V
THE LEGISLATURE

Section 1. **POWER AND STRUCTURE.** The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. **SIZE.** The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section **3. ELECTION AND TERMS.** A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. **QUALIFICATIONS.** A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section **5. COMPENSATION.** Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. **SESSIONS.** The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section **7. VACANCIES.** A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. **IMMUNITY.** A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. **DISQUALIFICATION.** No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. **ORGANIZATION AND PROCEDURE.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. **BILLS.** (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. **LOCAL AND SPECIAL LEGISLATION.** The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. **IMPEACHMENT.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. **DISTRICTING AND APPORTIONMENT.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one

representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

ARTICLE VI
THE EXECUTIVE

Section **1. OFFICERS.** (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. **ELECTION.** (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section **3. QUALIFICATIONS.** (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. **DUTIES.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintainofficialrecords ofthe executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. **COMPENSATION.** (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. **VACANCY IN OFFICE.** (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shallhold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 **DEPARTMENTS.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department,

Section 8. **APPOINTING POWER.** (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. **BUDGET AND MESSAGES.** The governor shall at the beginnning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. **VETO POWER.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. **SPECIAL SESSION.** Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. **PARDONS.** The governor may grant repreives, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. **MILITIA.** (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. **SUCCESSION.** (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. **INFORMATION FOR GOVERNOR.** (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

ARTICLE VII
THE JUDICIARY

Section **1. JUDICIAL POWER.** The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. **SUPREME COURT JURISDICTION.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. **SUPREME COURT ORGANIZATION.** (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. **DISTRICT COURT JURISDICTION.** (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state,

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. **JUSTICES OF THE PEACE.** (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. **JUDICIAL DISTRICTS.** (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. **TERMS AND PAY.** (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section **8. SELECTION.** (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination

shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. **QUALIFICATIONS.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. **FORFEITURE OF JUDICIAL POSITION.** Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. **REMOVAL AND DISCIPLINE.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

ARTICLE VIII
REVENUE AND FINANCE

Section 1. **TAX PURPOSES.** Taxes shall be levied by general laws for public purposes.

Section 2. **TAX POWER INALIENABLE.** The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. **PROPERTY TAX ADMINISTRATION.** The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. **EQUAL VALUATION.** All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. **PROPERTY TAX EXEMPTIONS.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section **6. HIGHWAY REVENUE NON-DIVERSION.** (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section **7. TAX APPEALS.** The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section **8. STATE DEBT.** No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section **9. BALANCED BUDGET.** Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. **LOCAL GOVERNMENT DEBT.** The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. **USE OF LOAN PROCEEDS.** All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. **STRICT ACCOUNTABILITY.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. **INVESTMENT OF PUBLIC FUNDS.** (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Section **14. PROHIBITED PAYMENTS.** Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

ARTICLE IX
ENVIRONMENT AND NATURAL RESOURCES

Section 1. **PROTECTION AND IMPROVEMENT.** (1) The state and each person shall maintain and improve a clean and healthful environmentin Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adquateremedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. **RECLAMATION.** All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. **WATER RIGHTS.** (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. **CULTURAL RESOURCES.** The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

ARTICLE X
EDUCATION AND PUBLIC LANDS

Section 1. **EDUCATIONAL GOALS AND DUTIES.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. **PUBLIC SCHOOL FUND.** The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States fox-general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section **3. PUBLIC SCHOOL FUND INVIOLATE.** The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. **BOARD OF LAND COMMISSIONERS.** The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. **PUBLIC SCHOOL FUND REVENUE.** (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section **6. AID PROHIBITED TO SECTARIAN SCHOOLS.** (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. **NON-DISCRIMINATION IN EDUCATION.** No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. **SCHOOL DISTRICT TRUSTEES.** The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. **BOARDS OF EDUCATION.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. **STATE UNIVERSITY FUNDS.** The funds of the Montana university

system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. **PUBLIC LAND TRUST, DISPOSITION.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissionersin a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

ARTICLE XI
LOCAL GOVERNMENT

Section 1. **DEFINITION.** The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section **2. COUNTIES.** The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section **3. FORMS OF GOVERNMENT.** (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, and assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. **GENERAL POWERS.** (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shallbeliberally construed.

Section 5. **SELF-GOVERNMENT CHARTERS.** (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend,

revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section **6. SELF-GOVERNMENT POWERS.** A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section **7. INTERGOVERNMENTAL COOPERATION.** (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it do do so.

Section **8. INITIATIVE AND REFERENDUM.** The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section **9. VOTER REVIEW OF LOCAL GOVERNMENT.** (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

ARTICLE XII
DEPARTMENTS AND INSTITUTIONS

Section 1. **AGRICULTURE.** (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section **2. LABOR.** (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section **3. INSTITUTIONS AND ASSISTANCE.** (1) The state shallestablish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for aid of society.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. NON-MUNICIPAL CORPORATIONS. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. SALARY COMMISSION. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 6. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

ARTICLE XIV
CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a conventionisnot otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. CALL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. CONVENTION EXPENSES. The legislature shall, in the actcalling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Section 6. **CONVENTION DUTIES.** Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. **CONVENTION DUTIES.** The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section **8. AMENDMENT BY LEGISLATIVE REFERENDUM.** Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section **9. AMENDMENT BY INITIATIVE.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section **10. PETITION SIGNERS.** The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. **SUBMISSION.** If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

ADOPTION SCHEDULE

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted, determining what changes result from the vote on each of the separately submitted issues, and establishing the general effective date of this Constitution. No provision of this Schedule shall be published unless it becomes part of the Constitution as the result of the adoption of a separately submitted provision.

Section 1. This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect.

Section 2. (1) If separate issue 2A concerning the unicameral form of thelegislatureis approved by a majority of those voting at the election andif the proposed Constitutionis approved by the electors, then:

(a) ARTICLE V, THE LEGISLATURE, shall be deleted and the following substituted therefor:

ARTICLE V
THE LEGISLATURE

Section 1. **POWER AND STRUCTURE.** The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.

Section 2. **SIZE.** The number of senators shall be prouided by law, but it shall not be smaller than 90 nor larger than 105.

Section 3. **ELECTION AND TERMS.** A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. **QUALIFICATIONS.** A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. **COMPENSATION.** Each member of the legislature shall receive compensation for his services and allowances prouided by law. No legislature may fix its own compensation.

Section 6. **SESSIONS.** The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. **VACANCIES.** A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. **IMMUNITY.** A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. **DISQUALIFICATION. No** member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notarypublic, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. **ORGANIZATION AND PROCEDURE.** (1) The legislature shall judge the election and qualifications of senators. It may by law vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrence of two-thirds of all the senators.

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The **sessions** of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislatiuepost-audit committee which shall supervise post-auditing duties prouided by law.

Section 11. **BILLS.** (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. **LOCAL AND SPECIAL LEGISLATION.** The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. **IMPEACHMENT.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. **DISTRICTING AND APPORTIONMENT,** (1) The state shall be divided into as many districts as there are senators and each district shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section **15. REFERENDUM OF UNICAMERAL LEGISLATURE.** (1) In 1980 the secretary of state shall place upon the ballot at the general election the question: "Shall the unicameral legislature form be continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article V of this constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. **POWER AND STRUCTURE.** The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. **SIZE.** The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members."

(c) "Section 3. ***ELECTION AND TERMS.*** *A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a dateprouided by law. One-half of the senators shall be elected every two years."*

(d) "Section 10. ***ORGANIZATIONAND PROCEDURE.*** *(1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.*

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

"(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislatiuepost-audit committee which shall supervisepost-auditing duties provided by law.

"(5) Neither house shall, without the consent of the other, adjourn or recess formore than three days or to any place other than that in which the two houses are sitting,"

(e) "Section **13. IMPEACHMENT.** *(1) The governor, executive* officers, *heads of state departments, judicial officers, end such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removedfrom office. Otherproceedings for removal* from *public office for cause may be provided by law.*

'(2) The legislature shall provide for the manner, procedure and causes for impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but theparty, whether convicted or *acquitted, shall also be liable to prosecution according to law."*

(f) "Section 14. ***DISTRICTINGANDAPPORTIONMENT.*** *(1) The stateshall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect onesenator. Eachdistrict shall consist of compact and contiguous territory. Alldistricts shall be as nearly equal in population as is practicable.*

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days aftersubmission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the members of a bicameral body are elected and qualified.

(5) The Senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legislature is to continue.

(6) When the provisions of this section have been carried out, it shall be of no further effect.

(b) The words "of each house" are deleted from subsection (2) of section 6 and from section 8, ARTICLE VIII, REVENUE AND FINANCE.

(c) The word "legislature" is substituted for "senate" in subsections (1), (2), and (4) of section 8, ARTICLE VI, THE EXECUTIVE, in subsections (1) and (2) of section 8. ARTICLE VII. THE JUDICIARY, and in subsection (1) of section 2, ARTICLE XII, DEPARTMENTS AND INSTITUTIONS.

(2) If separate issue 2A concerning the unicameral form of the legislature is not approved by the electors and if the proposed Constitution is approved by the electors, then ARTICLE V, THE LEGISLATURE, shall be retained.

Section 3. (1) If separate issue 3A is not approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then section 9 of ARTICLE III, GENERAL GOVERNMENT shall be retained.

(2) If separate issue 3A is approved by the electors and if the proposed Constitution is approved by the electors, then section 9 shall be deleted from ARTICLE III, GENERAL GOVERNMENT and the following substituted therefor: "Section 9. **GAMBLING.** All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum."

Section 4. If separate issue 4B is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then there shall be added to section 28, ARTICLE II, DECLARATION OF RIGHTS, the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." And there shall be deleted from section 21 of the same ARTICLE the following. ", except for capital offenses, when the proof is evident or the presumption great."

TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

Section 2. Delayed Effective Date

Section 3. Prospective Operation of Declaration of Rights

Section 4. Terms of Judiciary

Section 5. Terms of Legislators

Section 6. General Transition

Section 1. **ACCELERATED EFFECTIVE DATE.** Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Section **2. DELAYED EFFECTIVE DATE.** The provisions of sections 1, 2, and 3 of Article V, THE LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section **3. PROSPECTIVE OPERATION OF DECLARATION OF RIGHTS.** Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section **4. TERMS OF JUDICIARY.** Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Section **5. TERMS OF LEGISLATORS.** (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Section **6. GENERAL TRANSITION.** (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court

not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two

Leo Graybill, Jr. President

ATTEST:

Jean M. Bowman
Secretary

Magnus Aasheim

John H. Anderson, Jr.

Oscar L. Anderson

Harold Arbanas

Franklin Arness

Cedor B. Aronow

William H. Artz

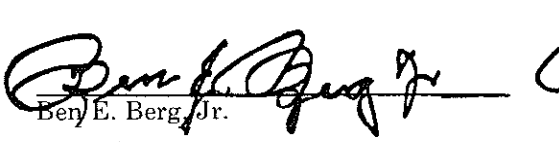
Thomas M. Ask

Betty Babcock

Lloyd Barnard

Grace C. Bates

Don E. Belcher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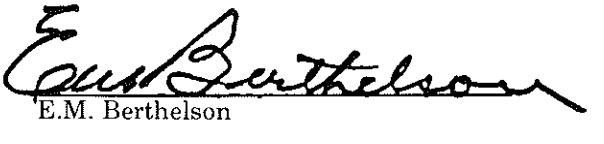
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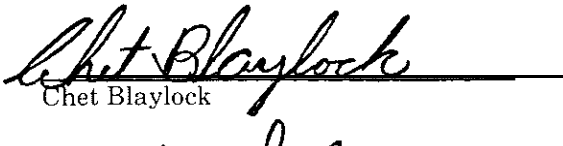
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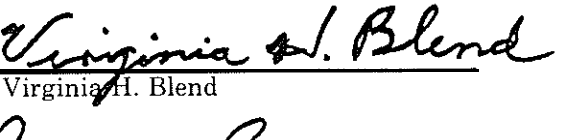
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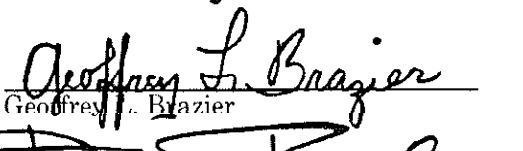
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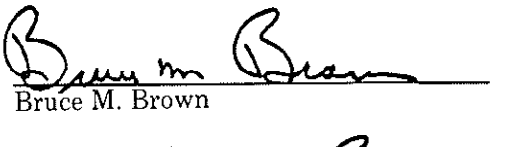
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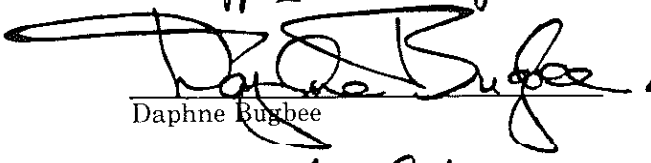
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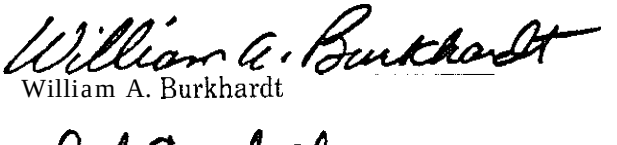
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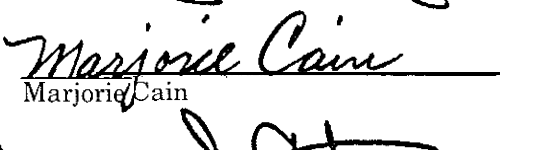
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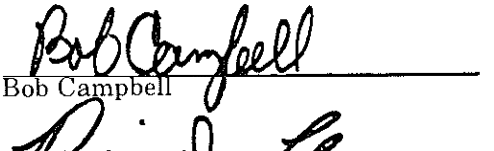
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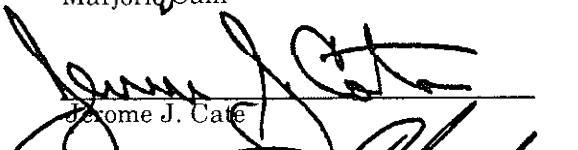
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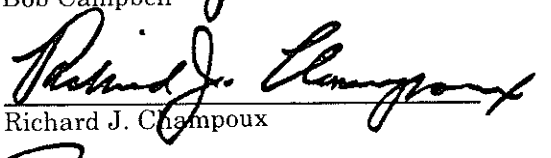
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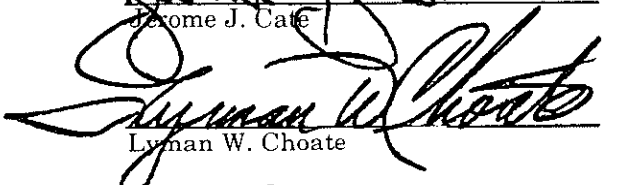
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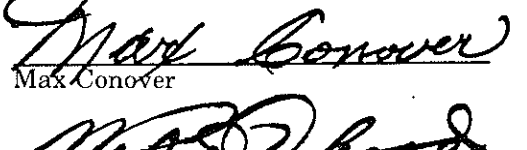
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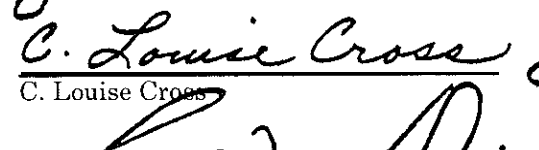
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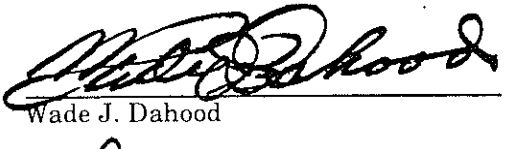
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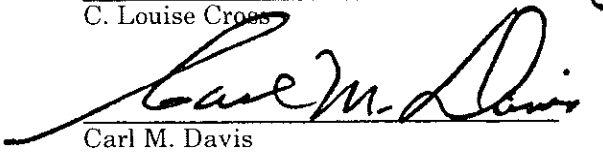
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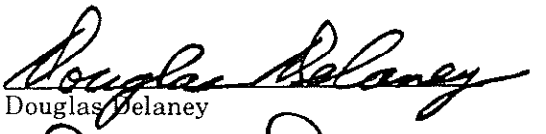
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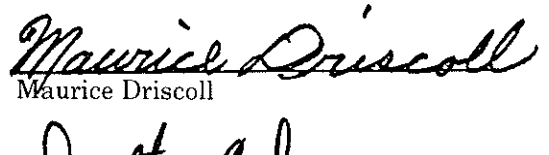
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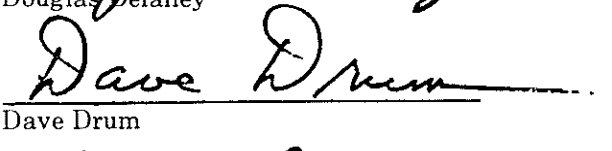
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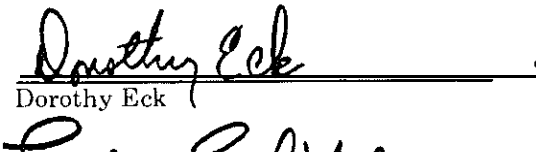
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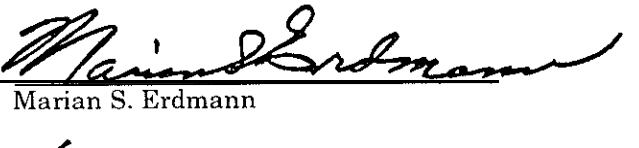
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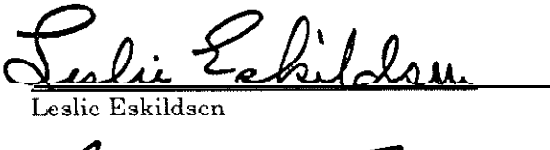
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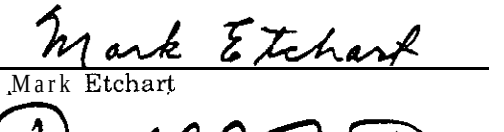
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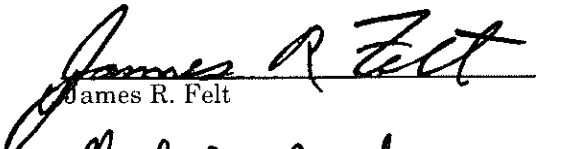
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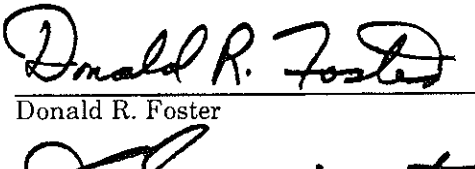
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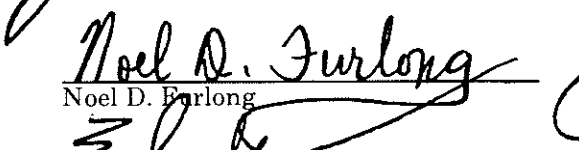
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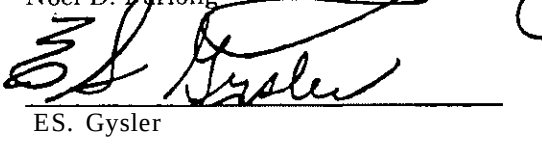
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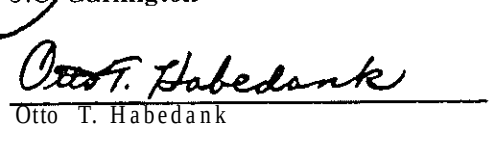
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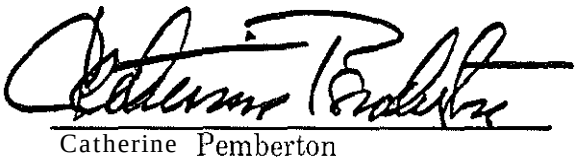
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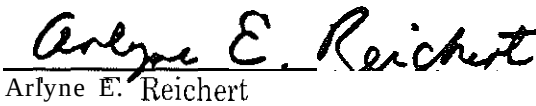
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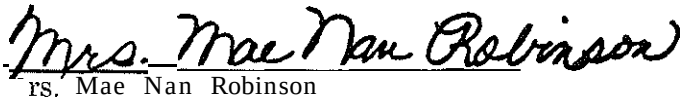
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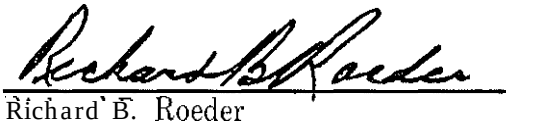
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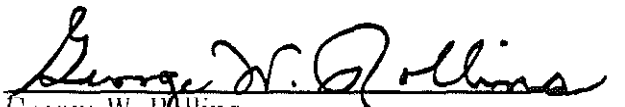
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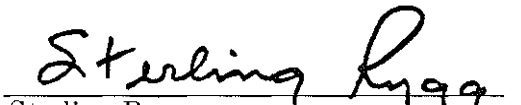
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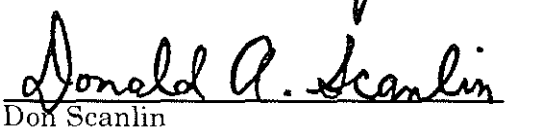
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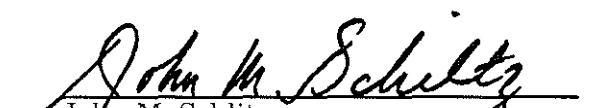
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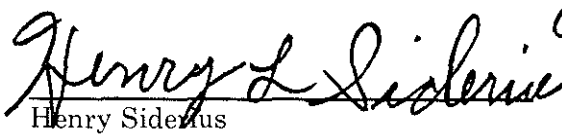
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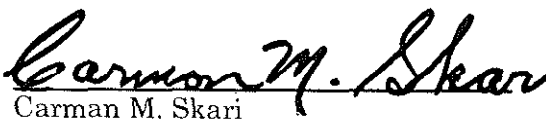
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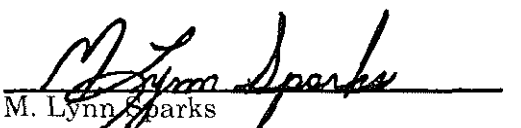
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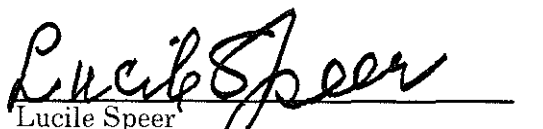
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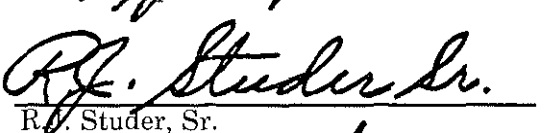
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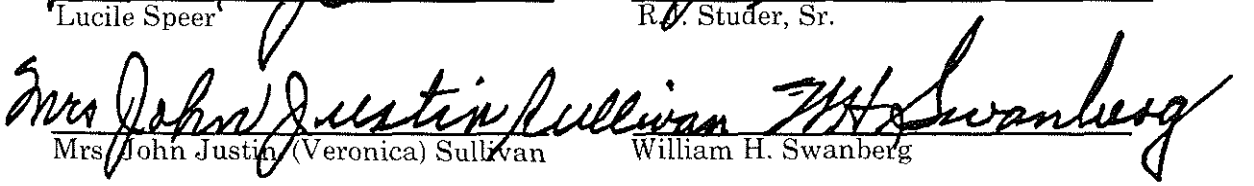
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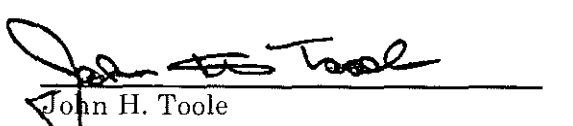
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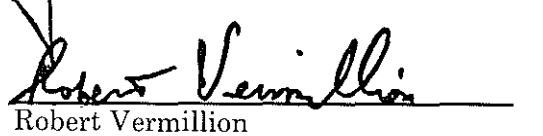
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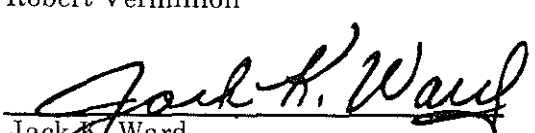
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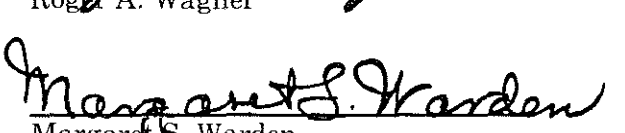
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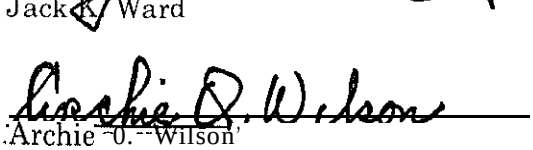
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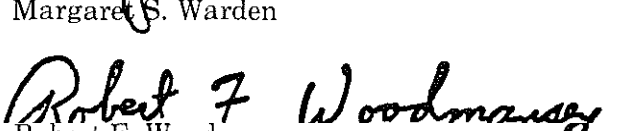
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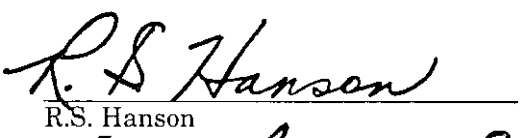
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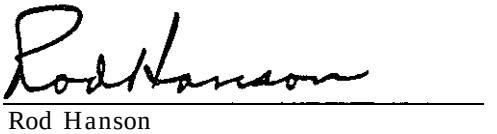
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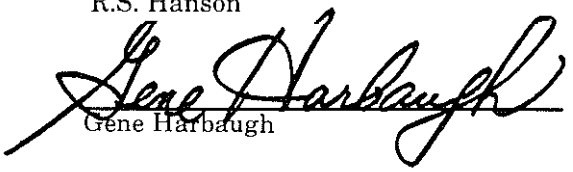
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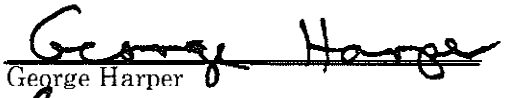
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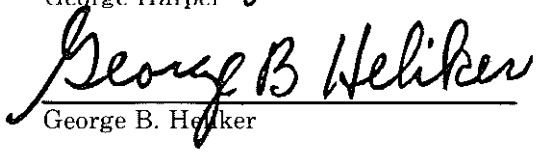
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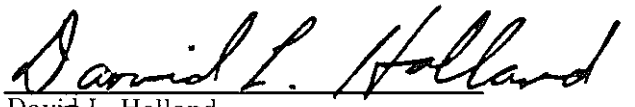
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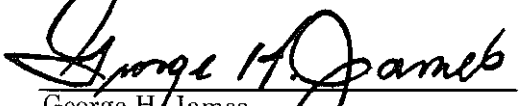
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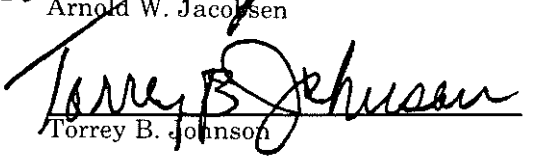
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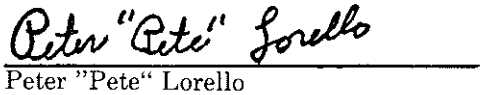
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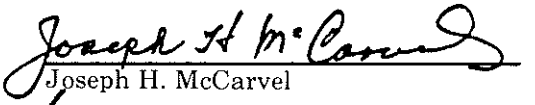
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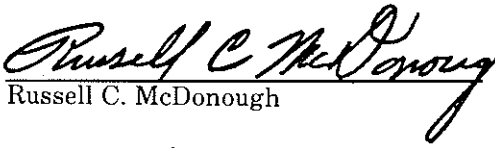
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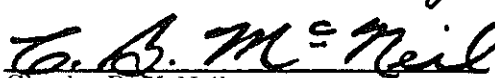
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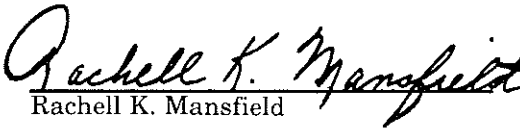
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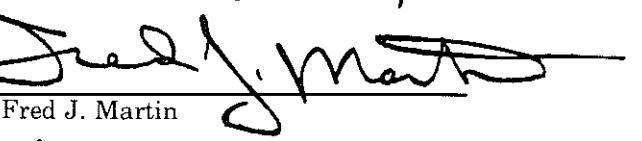
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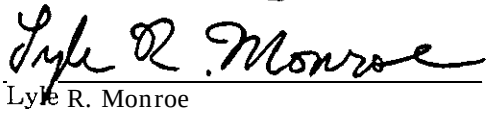
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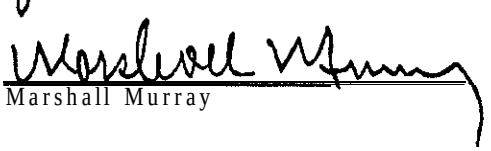
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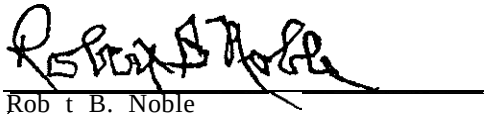
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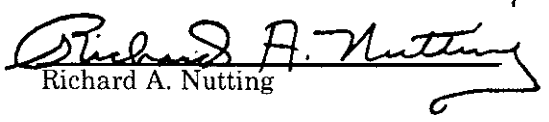
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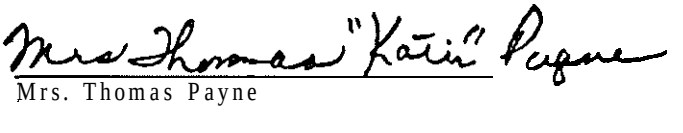
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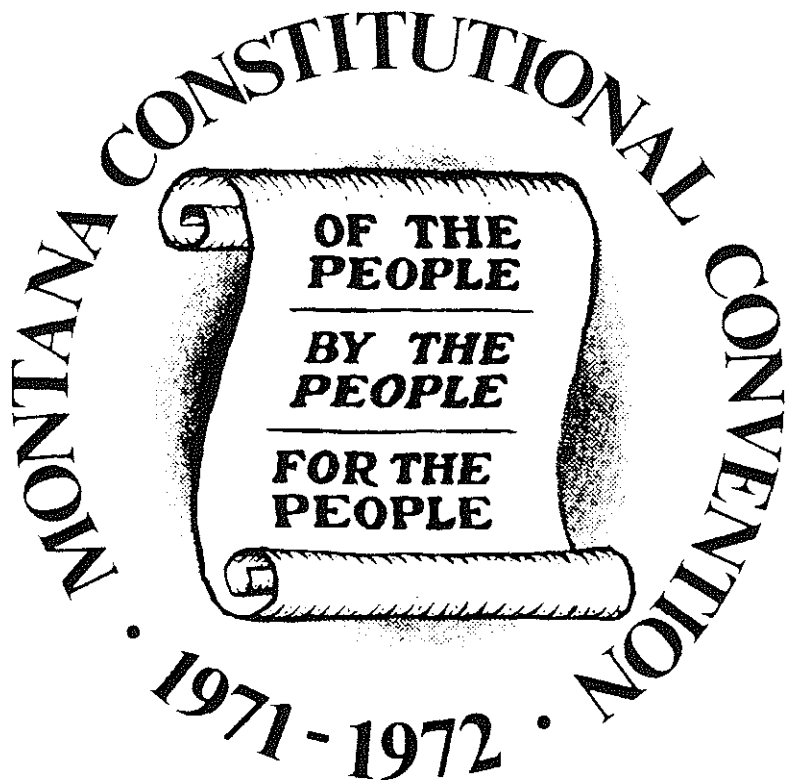

Verbatim Transcript

November 29, 1971 — February 19, 1972

Volume III

PREFACE

Introduction

Volumes III through VII present the verbatim transcripts of the 1972 Montana Constitutional Convention. These volumes encompass the total deliberations of the 100 Convention delegates as they debated, amended, and adopted Montana's present Constitution.

The Legislative Council staff audited, edited, proofed, and indexed the five volumes presented here in their "copious free time" — between Legislative Sessions, work on the Montana Code and its Annotations, and numerous research publications. The arduous project owes much to the interest, dedication, and perseverance of the staff. Just as importantly, the project would never have begun without the generous support and encouragement of a Legislature dedicated to preserving the history of a state constitution which represents the foundation of Montana's laws.

History of Project

Chapter 373, Laws of 1977, provided that the Legislative Council appoint a three-member committee to supervise the staff of the Legislative Council in editing and publishing the Proceedings of the 1971 Constitutional Convention, The committee consisted of one senator, one representative, and a former constitutional convention delegate. Chapter 373 required the Committee to formulate editorial guidelines, establish the format of publication, and prepare a style manual for editorial consistency. Chapter 373 also provided that 1,000 copies of the proceedings be printed, with 60 copies to be distributed free of charge as follows: Law Library — 4 copies; State Library — 10 copies; Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, State Auditor, and each state department — each 1 copy; Supreme Court — 5 copies; Montana Historical Society — 5 copies; and the Legislative Council — 10 copies.

On April 13, 1977, the Legislative Council appointed Senator Margaret Warden, Representative JoEllen Estenson, and Delegate Mae Nan Robinson Ellingson to the editing and publishing committee. In 1979, Senator Mark Etchart was appointed to take Mrs. Warden's Senate member position; Mrs. Warden was appointed to the delegate position; and Representative Arlyne Reichert appointed to the Representative position, In 1981, Representative John Shontz was appointed to take Representative Reichert's place on the committee. Mrs. Warden served as chairman throughout the duration.

Legislative Council staff, then under the able direction of *Rose Weber,* corresponded with staff of the Sixth Illinois Constitutional Convention (19691970) and studied the Illinois Proceedings publication which was published in 1972. This correspondence gave the committee and staff direction concerning time schedules and budgets.

Invaluable advice to staff on scheduling, budgeting, and procedure was given by the Council librarian, *Raelen Williard,* who also prepared the bibliography in Volume I.

At the committee's first meeting on June 9, 1977, it was decided that costs for text entry, equipment, editing, proofreading, supplies, billing, recordkeeping, and salaries would be absorbed by the Legislative Council — that costs of the set of Proceedings would include only committee expenses, t&composition charges, reproduction of 1,000 copies, binding, and distribution.

The *GPO Style Manual* and *Reference Manual for Stenographers and Typists,* Fourth Edition, Gavin and *Sabin,* were chosen as standard guides for capitalization, punctuation, and writing numbers.

At the second meeting of the committee on July 15, 1977, Dr. William Lang of the Montana Historical Society advised the committee and Council staff on how to present oral history.

The committee decided that Council staff would use as a master the Montana Constitutional Convention transcript prepared by Marie Durkee, reporter. Staff would listen to the tape recording of the proceedings,

simultaneously read the Durkee draft, and, in red ink, insert, change, or delete as necessary to indicate every audible sound on the tape. Later, an editor would work on the audited transcript using a different colored ink. Instructions were given to make no changes to a speaker's English as it was on the tape. Staff could editorially point out errors but were not to polish or perfect the language used.

The listening project was begun in June of 1977 using the tapes that had been donated to the Montana Historical Society by Marie Durkee. *Rick Newby* was assigned to the project from June to August 1977 and *Connie Duncan* from August 1977 to January 1978.

Space for the auditing was provided in the Legislative Council library, which proved unsatisfactory because of the daily traffic in that area coupled with the poor quality of the tapes. Loss of time and frustration were experienced by the staff in searching through poorly labeled tapes in their endeavor to piece together the sections of the transcripts in proper sequence.

As work progressed, it became apparent that the tapes were not the original master tapes recorded at the Convention. The project was halted while a search was conducted for the master tapes. In February, 1978, they were discovered in unpacked boxes of President Leo Graybill's Constitutional Convention memorabilia, stored in his garage. These mastertapes were then donated to the Montana Historical Society and were used for the rest of the project. In the meantime, there were several changes in Legislative Council staff positions, including that of Executive Director.

In October, 1978, a more appropriate work area was obtained in the archives of the Montana Historical Society and *Carlyce Skjervem* was assigned to complete the auditing project. All roll call votes were checked against the official journal on file with the Historical Society by Mary *Ellen Randall* and Jan Sperry and the audit continued.

Another problem encountered was that the equipment being used was Z-track to accommodate the Durkee tapes, but the master tapes were 4-track. This caused a delay until authorization was obtained to purchase the proper equipment. Whenever there was a discrepancy between the transcript and the tape, the tape was backed up and listened to as many times as necessary to be certain. Eventually the constant "stop-start" process for 8 hours a day rendered two recorders unusable with the third recorder barely fit to finish the project,

In April, 1979, after 9,234 pages of transcript and 24 weeks of listening to 21 tapes, this phase of the project was completed. Then the editing phase began. *Doug Sternberg* and *Margaret Liles* read each of the 9,234 pages at least twice in the editing process. They were responsible for paragraphing, punctuation, spelling, and capitalization. The editors deleted false starts, crutch words, repetitions, and stutters, added explanatory comments, and pointed out errors and inconsistencies.

The original plan was to enter the text of the proceedings on the Council's computerized bill-drafting system (ALTER) and produce camera-ready copy therefrom. It became obvious in 1979 that because of the full-time responsibilities of Council staff for the Montana Code Annotated and the increased costs for computer time, it was no longer feasible to input the text on ALTER.

Subsequently, a contract was entered into with the printer, Color World of Montana, to do the typesetting from the edited transcripts. The first volume was sent to Color World in November 1979. The 9,234 typewritten pages of transcript were typeset into 3,058 pages.

As the galleys were set by the printer they were proofread by Council proofreaders Phyllis *Cote* and Marie *Fuhrmann*. Page proofs were checked by the proofreaders and read word-for-word by Jean *Stearns*. The dyluxes were again checked by the proofreaders, who not only read and proofed the material over and over again, but also checked spacing, headings, page numbers, and general format. It is impossible to give the proofreaders the credit they deserve in producing these volumes.

At this writing *Margaret Liles* is beginning work on the index to the proceedings which will be published in a separate volume and will have its own preface.

Costs

The 1977 Legislature had appropriated $136,000 in House Bill 160 for the expenses of editing and publishing the proceedings and for the expenses of the supervisory committee. The 1979 Legislature appropriated another $80,000 in House Bill 897 to "complete the editing and publishing". House Bill 897 also provided:

> "The committee shall set the sales price of the proceedings at an amount sufficient to totally recoup the amount appropriated for the proceedings, including the $130,000 [sic] appropriated by HB 160 of the 45th Legislature. Proceeds from sales of the proceedings shall be deposited in the general fund."

Because of inflation, it was necessary in 1981 to appropriate still another $100,000, bringing the total amount appropriated for committee expense, typesetting, printing, and binding, to $316,000.

Diana S. Dowling
Executive Director
Montana Legislative Council
June 1981

TABLE OF CONTENTS

Day	Date	Page	Day	Date	Page
1	November 29, 1971	1	28	**February** 19, 1972	540
2	November 30, 1971	47	29	February 22, 1972	633
3	December 1, 1971	94	30	February 23, 1972	708
4	January 17, 1972	109	31	February 24, 1972	810
5	January 18, 1972	118	32	February 25, 1972	909
6	January 19, 1972	202	33	February 26, 1972	989
7	January 20, 1972	215	34	February 29, 1972	1060
8	January 21, 1972	223	35	March 1, 1972	1182
9	January 25, 1972	257	36	March 2, 1972	1272
10	January 26, 1972	264	37	March 3, 1972	1372
11	January 27, 1972	269	38	March 4, 1972	1468
12	January 28, 1972	274	39	March 7, 1972	1564
13	January 29, 1972	280	40	March 8, 1972	1690
14	February 1, 1972	287	41	March 9, 1972	1768
15	February 2, 1972	292	42	March 10, 1972	1855
16	February 3, 1972	308	43	March 11, 1972	2004
17	February 4, 1972	314	44	March 13, 1972	2093
18	February 5, 1972	328	45	March 14, 1972	2208
19	February 8, 1972	352	46	March 15, 1972	2302
20	February 9, 1972	356	47	March 16, 1972	2424
21	February 10, 1972	364	48	March 17, 1972	2546
22	February 11, 1972	368	49	March 18, 1972	2624
23	February 12, 1972	372	50	March 20, 1972	2770
24	February 15, 1972	377	51	March 21, 1972	2857
25	February 16, 1972	381	52	March 22, 1972	2918
26	February 17, 1972	386	53	March 23, 1972	3018
27	February 18, 1972	**469**	54	March 24, 1972	3034

Morning Session **November 29, 1971** **lo:oo a.m.**

CHAIRMAN BLEWETT: The proceedings will now commence, ladies and gentlemen.

Before we get into the formal program, I have been asked to make an announcement. If by chance any delegate desires to speak or to be heard on any matter during these proceedings, and particularly in the subsequent proceedings, be certain that you state your name and district from which you come. This is necessary in order for the proper record.

Ladies and gentlemen, we come to the point of an historic occasion in the State of Montana, the beginning of the Constitutional Convention.

I would like, at this time, to appoint a committee from the Constitutional Preparatory Commission members to escort into this chamber our distinguished guests. At this time I would like to appoint Clyde Hawks, chairman, Leonard Schulz, Bruce Toole, Charles Harrington, Randall Swanberg and Clyde Rader. Would those gentlemen kindly escort the distinguished guests into this chamber?

Ladies and gentlemen, while we are waiting for the escort group, I also would like to appoint at this time a committee from the Commission members to notify Governor Anderson that we would like to have him attend the chamber, and I now appoint those members: Eugene Mahoney, chairman, Jack Brenner, Arthur Hagenston, Charles Bovey and Eugene Phillips. Would those gentlemen kindly now escort the Governor to this chamber?

Is the escort committee ready to proceed with the guests?

MR. HAWKS: Yes, Mr. Chairman.

CHAIRMAN BLEWETT: Would the escort committee kindly lead our distinguished guests into the chamber?

All rise.

(Whereupon, the distinguished guests were escorted to the front of the chamber by the appointed committee.)

CHAIRMAN BLEWETT: Will the next escort committee kindly proceed?

Will the next escort committee proceed please?

Ladies and gentlemen, will you kindly remain standing while the escort committee proceeds with the escorting of our distinguished guests?

Now, the First Lady of the State of Montana, Evelyn Anderson.

Now, the Honorable Forrest H. Anderson, Governor of the State of Montana.

Will the escort committee kindly escort the Governor to the Chair?

(Whereupon, the Governor was escorted to the Chair by the appointed committee.)

CHAIRMAN BLEWETT: Governor Anderson, I have the honor and the privilege of presenting to you at this time the pen and the gavel used by William Andrews Clark, presiding in the Constitutional Convention of 1889. I would therefore, at this time, like to present to you officially the 1889 gavel so that you may officially open this 1971.1972 Constitutional Convention.

GOVERNOR ANDERSON: Thank you, Mr. Blewett.

The hour appointed by the Montana State Legislature having arrived for the convening of the Montana Constitutional Convention, I do accordingly, as Governor of this State, call the Convention to order.

For the purposes of organization I appoint as temporary secretary, Mr. Walter Marshall; as temporary sergeant-at-arms, Mr. Roger Barber; as temporary reporter, Mrs. Virginia Waterman; as temporary parliamentarian, Mrs. Phyllis Baden, and as temporary journal clerk, Mrs. Rosemary Acher.

It is appropriate that those to whom so much has been entrusted by our voters call upon God for the guidance at the outset of their task. It is my privilege at this time to present pastor Lionel B. Simonson, who will offer the invocatory prayer.

Mr. Simonson.

PASTOR SIMONSON: Almighty eternal God of truth and of mercy, in earnest prayer we ask Your blessing upon this Constitutional Convention, upon its delegates, upon its deliberations, upon its decisions. Oh God, ruler over all things, You are a tender father. You desire the lasting welfare, as well as the eternal happiness, of your children. You have wisdom and goodness. You have given us a land to live in, in which people, through their freely elected representatives and their freely designed laws, are the source of governmental authority in their midst. For these institutions, by which ours is a government of the people, and by the people, and for the people, we thank You, oh God.

We thank You for each one of these one hun-

dred delegates, and for their willingness to enter this arena to work at this historic task with the talents, the energies, the experiences and the convictions given them. We ask of You to bring their united efforts to flourition in a truly good Constitution for our beloved State.

Bless and inspire these men and women, oh God, with all that they need to do a good job, a job pleasing in Your sight, a job that is beneficial to all the people of our generation and of generations to come. Give them, oh Father, a great measure of wisdom and of mutual respect, of patience and faith, and courage to build one another up in a common endeavor to serve Your purposes. Help them to be alert, both to their own deepest convictions as well as to the fundamental needs of people in these times, but above all, oh God, keep them alert to Your guidance, to Your yearning for the earthly well being of Your children.

Even as we pray for this Convention and its delegates, oh God, so too we ask for Your blessing upon all the people of our State. Inspire many, many people to uphold these men and women in fervent prayer, so that these delegates may do their work in the confidence that many God-fearing people are praying for them.

We ask You, oh God, to bless this Convention in its quest to formulate a Constitution that will help us to establish justice, to insure domestic tranquility, that will help us to promote the general welfare of all people and to secure the blessings of liberty and opportunity for ourselves and for our posterity. These petitions, oh God, we offer in the name of Jesus Christ, Your son, our Savior. Amen.

GOVERNOR ANDERSON: Mr. Blewett, we will now have the posting of the colors.

CHAIRMAN BLEWETT: Will you kindly remain standing while we have the posting of the colors, led by Major Liston of the Montana National Guard.

Mr. Liston.

MAJOR LISTON: Color Guard, prepare to post the colors...

(Whereupon there was the posting of the colors by the Montana National Guard.)

CHAIRMAN BLEWETT: Ladies and gentlemen, join me in the Pledge of Allegiance to our Flag...

We will now sing the National Anthem... ...

Thank you, Major Liston, and your grand staff.

Will you now all be seated?

Ladies and gentlemen, it is now my privilege and again my pleasure to introduce to all of you present those distinguished guests who have heretofore been escorted to this chamber.

Our first guest to be introduced is a man who gave us the pleasure of his remarks at the banquet last evening, Mr. Samuel Whitwer, president of the 1969-1970 Illinois Constitutional Convention. Mr. Samuel Whitwer. Thank you again for joining us.

Next, our elected state officials. The Honorable Lieutenant Governor, Thomas Judge. The Honorable Robert Woodahl, Attorney General. The Honorable Frank Murray, Secretary of State. The Honorable Dolores Colburg, Superintendent of Public Instruction. The Honorable Alex Stephenson, State Treasurer. The Honorable Lou Boedecker, Railroad and Public Service Commission, and I haven't yet seen Ernest Steel. I don't know whether he made it. Did he make it, Lou?

COMMISSIONER BOEDECKER: No.

CHAIRMAN BLEWETT: Next, our Supreme Court Justices. The Honorable Chief Justice James T. Harrison. The Honorable Associate Justice Wesley Castles. The Honorable John Harrison, Associate Justice. The Honorable Gene Daly, Associate Justice. The Honorable Frank Haswell, Associate Justice. The Honorable Thomas J. Kearney, Clerk of the Supreme Court.

And, ladies and gentlemen, from our legislative leadership, the Honorable Dick Dzivi, Senate Majority Leader; the Honorable Bill Mathers, Senate Minority Leader; the Honorable James Lucas, Speaker of the House; the Honorable James T. Harrison, Jr., House Majority Leader; and in the absence of Bill Christiansen, House Minority Leader, who was unable to be present, I present Representative Larry Fasbender.

Thank you very much, Governor Anderson.

GOVERNOR ANDERSON: Thank you, Mr. Blewett.

Mr. Blewett, distinguished state officials, at this time I have a golden opportunity to address what I think is one of the great meetings in this century for Montana.

The Constitutional Convention will reestablish the foundation of law for the government in this State. I believe that this is a profound expression of our fundamental belief in self-government. The people of Montana called this Convention, they elected you as delegates, and they will ulti-

mately approve or reject the constitution you write.

A properly written constitution will define the structure and responsibilities of government and provide for the protection of the rights of the people of this State. Many generations of Montanans not yet born will live under these laws if you do your job well.

Constant change and the emergence of new ideas and beliefs will challenge the wisdom of your efforts. And each of you will leave a mark forever on the history of Montana. But more importantly, you have an opportunity to initiate a new history-a history of dynamic and responsive state government.

Montana's present Constitution is an expression of the distrust in government that was prevalent when it was written in 1889. It imposes strict limitations on the exercise of the powers of government-legislative, executive and judicial. It is burdened with accumulated statutory detail. And it restricts and confuses the capability of state government to respond to the rapidly changing problems of modern society.

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

I believe the revision of the Montana Constitution must accomplish four essential objectives:

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

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

It must free state government from the strictures that shackle us to the past.

And it must allow us to move freely into the future.

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

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

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

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

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

Those who came before us changed a wilderness into a state. We have fought to lift this state up from its colonial status in the national economy. We are working to preserve our unequalled environment. We have undertaken many programs to improve our state and local governments. We are now beginning the task of revising our State Constitution. And by these acts-and others-Montanans are saying that they will not forfeit their right to determine the necessary policies for the right to govern.

The purpose of the Constitutional Convention is to write a document that will be the basis and the inspiration of a dynamic and responsive state government. And the timeless wisdom of the National Constitution should be the inspiration for the document you write.

Like the national prototype, our Constitution must not include extraneous statutory provisions that are properly within the jurisdiction of the Legislature. And like the national prototype, our Constitution must be a statement of your faith and the belief that good and decent men and women will govern this state in the coming years.

You should not be afraid to include new and progressive ideas in the Constitution. Passage of the referendum calling for this Convention, executive reorganization, and the nineteen-year old vote are proof that the people of Montana recognize the need for change. And if a proposal is good it will be approved by the people.

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

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

I wish you well...

Thank you very much.

Now, ladies and gentlemen, I call upon the Honorable Eugene Mahoney, vice-chairman of the Montana Constitutional Convention Commission, to call the roll of the delegates elect. Mr. Mahoney.

MR. MAHONEY: The following is the true and correct roster, by district, ofthedelegates elect to the 1971.1972 Constitutional Convention of the State of Montana as compiled by the Secretary of State in accordance with the Constitutional Convention Enabling Act.

As your name is called, please rise and answer present and remain standing.

District No. 1:
Torrey B. Johnson .Present.
Catherine Pemberton .Present.

District No. 2:
Bruce M. Brown .Present.
Lyman W. Choate.. .Present.

District No. 3:
Oscar L. Anderson .Present.
C. Louise Cross .Present.
Otto T. Habedank .Present.
Russell C. McDonough .Present.

District No. 4:
Magnus Aasheim . .Present.
Mark Etchart .Present.
Gene Harbaugh .Present.
Roger A. Wagner . .Present.

District No. 5:
Lloyd Barnard .Present.
Leslie "Joe" Eskildsen .Present.

District No. 6:
A. W. Kamhoot .. .Present.
Archie 0. Wilson, .Present.

District No. 7:
John H. Leuthold .Present.
Richard A. Nutting . .Present.

District No. 8:
Chet Blaylock.. . . .Present.
Jean M. Bowman . .Present.
Jerome J. Cate .Present.
Max Conover .Present.
Dave Drum .Present.
James R. Felt .Present.
Robert Lee Kelleher . . . . . .Present.
George W. Rollins .Present.
Don Scanlin .Present.
John M. Schiltz .Present.
Clark E. Simon .Present.
R. J. Studer, Sr. .. .. .Present.

District No. 9:
Thomas M. Ask. .Present.
Don E. Belcher.. . .Present.

District No. 10:
Douglas Delaney ..... .Present.
Donald R. Foster. ..... .Present.

District No. 11:
Grace C. Bates ..... .Present.
Ben E. Berg, Jr..... .Present.
Dorothy Eck ..... .Present.
Fred J. Martin ..... .Present.
J. Mason Melvin ..... .Present.
Richard B. Roeder ..... .Present.

District No. 12:
Betty Babcock ..... .Present.
William A. Burkhardt ..... Present.
Geoffrey L. Brazier ..... .Present.
George Harper .....Present.
Jerome T. Loendorf .....Present.
Charles H. Mahoney ..... .Present.

District No. 13:
Harold Arbanas ..... .Present.
William H. (Bill) Artz ..... .Present.
Virginia H. Blend ..... .Present.
Marian S. Erdmann ..... .Present.
Leo Graybill, Jr. .....Present.
Lyle R. Monroe .....Present.
Robert B. (Bob) Noble ..... .Present.
Donald Rebal ..... .Present.
Arlyne E. Reichert ..... .Present.
William H. Swanberg .....Present.
Margaret S. Warden .Present.
Robert F. Woodmansey ..... .Present.

District No. 14:
E. S. "Erv" Gysler ..... .Present.
Mrs. Rachel1 K. Mansfield. ..... .Present.
Carman Skari ..... .Present.
Edith Van Buskirk ..... .Present.

District No. 15:
Cedor B. Aronow. , .Present.
E. M. Berthelson ..... .Present.
Rod Hanson ..... .Present.
Robert Vermillion ..... .Present.

District No. 16:
Richard J. (Rick) Champoux ..... .Present.
Noel D. Furlong..... .Present.
Arnold W. Jacobsen. ..... .Present.
Marshall Murray ..... .Present.
Sterling Rygg ..... .Present.
Henry L. Siderius ..... .Present.

District No. 17:
R. S. (Bob) Hanson ..... .Present.
Charles B. McNeil ..... .Present.

District No. 18:

Mrs. Daphne Bugbee . .Present.
Bob Campbell.. .Present.
J. C. Garlington .Present.
George B. Heliker .Present.
Mrs. Thomas (Katie) Payne .Present.
Mrs. Mae Nan Robinson .Present.
John H. Toole. .Present.
Lucile Speer .Present.

District No. 19:

Wade J. Dahood .Present.
Peter (Pete) Lorello.. Present.
Joseph H. McCarvel Present.
Mike McKeon..... Present.

District No. 20:

Maurice Driscoll .Present.
Dan W. Harrington .Present.
David L. Holland .Present.
Thomas F. Joyce.. .Present.
M. Lynn Sparks .Present.
Mrs. John Justin (Veronica) Sullivan Present.

District No. 21:

John H. Anderson, Jr. .Present.
Carl M. Davis. .Present.

District No. 22:

Miles Romney .Present.
Jack K. Ward .Present.

District No. 23:

Franklin Arness .Present.
Marjorie Cain.. .Present.
Paul K. Harlow .Present.
George H. James.. .Present.

I now call upon the Chief Justice of the Montana Supreme Court, the Honorable James T. Harrison, to administer the oath of office.

CHIEF JUSTICE HARRISON: I consider this a great privilege, and I thank you for it.

You will each raise your right hands and say: "I," and pronounce your name, and then repeat after me, "do solemnly swear that I will support, protect and defend the Constitution of the United States, and the Constitution of the State of Montana, and that I will discharge the duties of my office of the delegate to the Constitutional Convention with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, SO HELP ME GOD."

CHAIRMAN BLEWETT: Delegates and ladies and gentlemen, will you now all be seated, and will those of you who are delegates kindly sign the oath of office which is before you, and pass it to the center so that the pages may pick them up.

Is there anyone who has not yet signed his or her oath of office?

(No response.)

We'll then proceed with the balance of the proceedings. At this time, let's all of us stand and join together in the singing of our State Song, "Montana".

Governor Anderson, I now turn over to you for the proceedings from this time forward. Governor Anderson.

GOVERNOR ANDERSON: Thank you, Mr. Blewett.

According to the Enabling Act, nominations are now open for the office of temporary president. The secretary will record the nominations.

DELEGATE: Mr. Chairman.

GOVERNOR ANDERSON: Yes.

DELEGATE: This is George Harper, District 12. In keeping with our concensus of opinion in last Saturday's meeting, I'll offer this resolution:

I move that the votes for temporary president be cast by a written ballot placed in the ballot box by each delegate as his or her name is called; that, after all delegates present have voted, the ballots be counted out loud by a teller appointed by the presiding officer, that the number of votes for each candidate be tabulated and announced by the temporary secretary, and the candidate receiving a bare plurality be elected as temporary president; that the counted ballots may be examined upon request by the person who nominated any candidate and shall be thereafter destroyed after the conclusion of the three-day organization meeting; that, in the event of a tie for the most votes, an additional ballot be taken immediately, in the same manner, without any speeches or any new candidates or any withdrawal of candidates; that it shall not be known how any delegate has voted.

I further move that the Convention shall elect the permanent president in like manner, except that a majority of the votes cast shall be required for such election; that in the event no candidate receives such a majority in either the first or second balloting process, the person receiving the lowest number of votes (or, if there be a tie in low position as to votes received, those so tied) shall be removed from consideration on the third ballot and succeeding ballots, and thereafter the low vote getter or those so tied shall be eliminated from further consideration on each succeeding ballot until only two candidates remain for final consideration.

GOVERNOR ANDERSON: Reverend Harper, would you bring that motion to the rostrum, please?

DELEGATE HARPER: Yes.

GOVERNOR ANDERSON: Does everybody understand the motion made by Reverend Harper?

DELEGATE: Mr. Chairman, may I be heard?

GOVERNOR ANDERSON: Yes.

DELEGATE: Thomas F. Joyce, District 20. I move, at this time, that the motion is out of order, as not responsive to the call of the Chair, which was to nominate a temporary president,

GOVERNOR ANDERSON: You heard the motion-substitute motion by Mr. Joyce. I hesitate, as the Governor, to rule on the motion as to whether it is or is not out of order and I believe, probably, the democratic thing to do is to let the elected members of the Constitutional Convention decide whether or not they wish to follow the motion made by Reverend Harper.

As I say, I have great hesitancy to want to attempt, in any way, to get involved to where I may be critical of your deliberations, and for that reason, is there a second to Reverend Harper's motion?

DELEGATE CATE: Mr. Chairman, under the rules-Jerome Cate, District 8-I don't believe a second is necessary for the motion. I do believe the motion is in order, but if it requires a second, I'll second the motion at this time.

DELEGATE: Mr. President,

GOVERNOR ANDERSON: Mr. Romney.

DELEGATE ROMNEY: Miles Romney, District 22, Ravalli County where the sun is shining.

I wish to move a substitute motion. I'm taken by surprise at this motion, so I have not written a motion out.

I move that the election of all officers of this Convention be made via an open roll call, in which each delegate specifically votes "Yes" or "No" for the particular candidates to be voted upon, and I wish to speak upon the substitute motion.

GOVERNOR ANDERSON: Mr. Romney, here again I recognize your substitute motion. I don't profess to be a parliamentarian, and among the parliamentarians that I see at my left over here is Jim Lucas, and I'm going to ask him to come up here and advise me as to what the parliamentarian procedure would be. Mr. Lucas.

I'm going to make this just as nonpartisan as possible. Mr. Lucas, would you give me this advice? Mr. Lucas has been the Speaker of the House and I think he can advise me as to what procedure I follow here.

MR. LUCAS: Gentlemen, I think if we follow the Mason's Rules of Procedure, the original motion, of course, was in order; the substitute motion was in order; and we now have a substitute motion for all motions pending, which ends the motion. The third motion made by Delegate Romney is now properly before the body, and then you have to backtrack up the ladder if it should be defeated.

GOVERNOR ANDERSON: You just stand by.

We'll vote on the substitute motion of Mr. Romney. Would you again, Mr. Romney, state your motion, so it will be clearly understood?

DELEGATE ROMNEY: Mr. Chairman, I move that all votes taken in the election of officers of this Convention be done by roll call.

GOVERNOR ANDERSON: You heard the motion. All those in favor say Aye.

DELEGATES: Aye.

GOVERNOR ANDERSON: Opposed No.

DELEGATES: No.

GOVERNOR ANDERSON: The Chair is in doubt. We'll use the machine. I know that much.

DELEGATE ROMNEY: Mr. Chairman.

GOVERNOR ANDERSON: Mr. Romney.

DELEGATE ROMNEY: I would like to know if the Delegate Romney is not privileged to speak on his motion?

GOVERNOR ANDERSON: Well, it's a little late, after having the motion before the group and they're voting, Mr. Romney.

DELEGATE ROMNEY: I so specified when I made my original motion.

GOVERNOR ANDERSON: It's a non-debatable motion, I'm sure. It's a motion upon a motion upon a motion, so the Chair will rule that you will not debate it.

Has everyone voted?

DELEGATE: Mr. Chairman, I request that the roll call be published and that it not be a secret roll call, and that the Ayes and Nays on the motion be recorded on the board.

GOVERNOR ANDERSON: I have no objection to that.

Has everyone voted? Does anyone wish to change their vote? If not, the secretary will take the tape. Mr. Secretary.

SECRETARY MARSHALL: Mr. President, 50 have voted Aye, 49 have voted No.

GOVERNOR ANDERSON: That's what you call a horse race. 50 voting Aye, and 49 voted No, Mr. Romney's motion has passed. Mr. Romney, would you mind reducing your motion to writing?

Does the secretary have it? Do you have it—well, I'm sure he does. Did you want it reported in the Journal, Mr. Romney?

DELEGATE ROMNEY: I'm not so particular, as long as we have the 50 votes.

GOVERNOR ANDERSON: Your point is well taken, sir.

Mr. Davis.

DELEGATE DAVIS: Delegate Davis, District 21. I move the nomination of Delegate Cedor Aronow, District 15, Shelby, Montana, to act as temporary president to the Montana Consitutional Convention.

Delegate Aronow has performed a lifetime of service to the State of Montana and to our great nation. He's a former practicing-former county attorney, city attorney, legislator, and he's now a practicing attorney, and I'm very pleased to say, a Marine in World War II and in the Korean War.

So, I would nominate and recommend to my fellow delegates, my fellow attorney and my fellow Marine, and I think this is a privilege and an honor that would be very well to confer upon our Delegate Aronow. Thank you.

GOVERNOR ANDERSON: Are there any other nominations?

DELEGATE: Mr. Chairman, I rise to second the motion. Am I in order?

GOVERNOR ANDERSON: You can if you wish. There is no need for a second to a nomination.

DELEGATE: I'm Rod Hanson, District 15. I do second the nomination of Mr. Aronow for temporary president.

GOVERNOR ANDERSON: Are there any other nominations?

DELEGATE: Mr. Governor.

GOVERNOR ANDERSON: Mr. Felt.

DELEGATE FELT: Delegate Felt, District 8. In order to eliminate any questions any individuals may have, I'll point out to them that the individual who requested the opportunity to nominate me for this position will not do so because I informed him this morning that I felt, in the interest of harmony within the Convention, there would be no particular reason for him to do so.

I have a little interest in a few other aspects of the Convention, and one you may be sure of is that our lights don't burn out, as I noticed that our lights are still on. I don't know if this is any problem or not, but down here, at least, they're still on-the lights of the last vote.

This last vote, while we'll accept the decision of the majority, is regrettable, perhaps because we spent an hour of our time yesterday reaching a different decision, almost unanimously, only to have it overturned without discussion, where it was open to the public.

GOVERNOR ANDERSON: Are there any other nominations? Are there any other nominations?

(No reply.)

There being no other nominations, do I hear a motion to-Mr. Martin.

DELEGATE MARTIN: Fred Martin, District 11. I move the nominations be closed.

GOVERNOR ANDERSON: It's been moved that the nominations be closed. All those in favor, signify by saying Aye—

DELEGATES: Aye.

GOVERNOR ANDERSON: -those opposed, No.

(No reply.)

The Ayes have it, and so ordered. We will now have the roll call vote for temporary president.

SECRETARY MARSHALL: Aasheim — this is for Aronow for temporary president—

Aasheim ..... Aye.
Anderson, John H ..... Aye.
Anderson, Oscar L. ..... Aye.
Arbanas ..... Aye.
Arness ..... Aye.
Aronow ..... Aye.
Artz ..... Aye.
Ask ..... Aye.
Babcock.. ..... Aye.
Barnard.. ..... Aye.
Bates ..... Aye.
Belcher ..... Aye.
Berg ..... Aye.
Berthelson ..... Aye.
Blaylock ..... Aye.
Blend ..... Aye.
Bowman ..... Aye.
Brazier ..... Aye.
Brown ..... Aye.
Bugbee ..... Aye.
Burkhardt ..... Aye.
Cain ..... Aye.
Campbell ..... Aye.
Cate ..... Aye.
Champoux ..... Aye.
Choate ..... Aye.
Conover ..... Aye.
Cross ..... Aye.
Dahood, excused.
Davis ..... Aye.
Delaney ..... Aye.
Driscoll ..... Aye.
Drum ..... Aye.
Eck ..... Aye.
Erdmann ..... Aye.
Eskildsen ..... Aye.
Etchart ..... Aye.
Felt ..... Aye.
Foster ..... Aye.
Furlong. ..... Aye.
Garlington ..... Aye.
Graybill ..... Aye.
Gysler ..... Aye.
Habedank ..... Aye.
Hanson ..... Aye.
Hanson, Rod ..... Aye.
Harbaugh ..... Aye.
Harlow ..... Aye.
Harper ..... Aye.
Harrington ..... Aye.
Heliker ..... Aye.
Holland ..... Aye.
Jacobsen ..... Aye.
James.. ..... Aye.
Johnson ..... Aye.
Joyce ..... Aye.
Kamhoot ..... Aye.
Kelleher ..... Aye.
Leuthold ..... Aye.
Leondorf ..... Aye.
Lorello ..... Aye.
Mahoney ..... Aye.
Mansfield. ..... Aye.
Martin ..... Aye.
McCarvel ..... Aye.
McDonough ..... Aye.
McKeon ..... Aye.
McNeil ..... Aye.
Melvin ..... Aye.
Monroe.. ..... Aye.
Murray.. ..... Aye.
Noble ..... Aye.
Nutting ..... Aye.
Payne ..... Aye.
Pemberton ..... Aye.
Rebal ..... Aye.
Reichert ..... Aye.
Robinson ..... Aye.
Roeder ..... Aye.
Rollins ..... Aye.
Romney ..... Aye.
Rygg ..... Aye.
Scanlin ..... Aye.
Schiltz ..... Aye.
Siderius ..... Aye.
Simon ..... Aye.
Skari ..... Aye.
Sparks ..... Aye.
Speer ..... Aye.
Studer ..... Nay.
Sullivan ..... Aye.
Swanberg. ..... Aye.
Toole ..... Aye.
Van Buskirk ..... Aye.

Vermillion . . Aye.
Wagner Aye.
Ward . . . . . Aye.
Warden . . . . . Aye.
Wilson . . . . . Aye.
Woodmansey Aye.

99 voted Aye-98 voted Aye-[Records show 98 voted Aye, one Nay, one Absent]

GOVERNOR ANDERSON: Cedor Aronow, having received all of the votes of those assembled, has been duly elected temporary president.

At this time I'd like to take the opportunity to thank my Republican colleague for coming up and helping me. And I want to suggest that he and I oftentimes don't agree, but I know that his advice in parliamentary matters areimportant, and I feel at liberty to call on him, and there have been occasions when he has felt free to call on me.

He is a Republican and I am a Democrat, and this is the way I hope the spirit of this Convention will follow through, all the way to its conclusion, because I believe that any man, no matter who he may be, has got something to tell you if you will just sit long enough to listen.

Thank you very much.

I hereby appoint the following committee to escort the temporary president to the Chair: Lyle Monroe and Fred Martin. Would you please escort Mr. Aronow to the Chair?

Mr. Aronow, it's a big Chair, treat it well.

TEMPORARY PRESIDENT ARONOW: Thank you.

I would like to thank the Governor for presiding over the opening of the Convention, and appoint the following committee to escort the Governor from the chamber: Franklin Arness from Libby, Tom Ask from Roundup and Louise Cross from Billings-or Glendive, excuse me.

GOVERNOR ANDERSON: Thank you very much, and God bless you.

TEMPORARY PRESIDENT ARONOW: I want to thank the delegates to the Convention for the trust that they have shown in me, and the honor that they have presented to me by making me your temporary president.

While I'm here, I would like to take this opportunity to thank an old friend of mine for the service he has given to this Convention. In 1949, when I served in this chamber, I met a then young man by the name of Walter Marshall, that was the Clerk of the House. And over the years, I have seen Walter Marshall at legislative assemblies in varied capacities, and he has obtained and gained an expertise over the years in legislative bodies.

He has sometimes been with the House, sometimes with the Senate. He is always cheerful, always willing, and always a hard worker, and this was demonstrated when he gave unsparingly of his time in the pre-organization meetings, to help us and to explain things. And at this time I want to thank you, Walter Marshall, for the tine service you have given, not only to this Convention, but to the State of Montana over these many years.

No one, so far, has really expressed the thanks and appreciation that I know this Convention feels for our Constitutional Convention Commission. They have given unsparingly of their time and their effort, at considerable personal sacrifice to themselves, and they have stayed away from their own affairs, their own businesses, and devoted their time and energy and businesses to the State of Montana for the preparatory work of this Commission.

They have supervised the staff, headed by Dale Harris, who has done an outstanding job in preparing material for our education. And I want to take this opportunity, not only in my own behalf, but in the behalf of all the delegates, to thank the Commission, our good friend Dale Harris, and his staff for the wonderful job that they have done in preparing for this Convention. Thank you.

The next order of business. Nominations are now open for the office of convention president. Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'm Magnus Aasheim from District 4. I wish to place in nomination a man who is well qualified for this position. He has been active in numerous and varied civic projects in Cascade County.

One of the more recent and farsighted endeavors was the promotion of the seven million dollar Great Falls Airport project. This was no small accomplishment, and it was made possible because of the needed ability and the personality of the coordinator.

I am proud to place this man in nomination for chairman of the 1971-1972 Montana Constitutional Convention, Leo Graybill, Jr.

TEMPORARY PRESIDENT ARONOW: The name of Leo Graybill, Jr. has been placed in nomination. Is there a second? Mr. Holland.

DELEGATE HOLLAND: Dave Holland, District 20. It is with great pleasure that I second the nomination of Mr. Graybill, who is, by his training and by his education and by his ability, is very well qualified to handle the position for which he has been nominated.

TEMPORARY PRESIDENT ARONOW: Are there any other nominations for the office of president?

DELEGATE: Mr. Temporary President.

TEMPORARY PRESIDENT ARONOW: Mr. Felt.

DELEGATE FELT: Without any objection, I would prefer to step just this far to the side and use it [microphone] this way because, otherwise, I would have my back to too many of you delegates.

I feel that I'm somewhat ill equipped to make the remarks and suggestion that I intend to make, but I shall do the best I can and hope that all of you, in your own judgment, can fill in gaps in my capabilities.

It's my purpose here to again deal with the question of harmony within the Convention, but in this instance, it's my purpose to nominate a fellow delegate that I consider very well qualified. And I do this for the purpose of giving this Convention the opportunity of a free choice of a presiding officer who could have the support of a large number-or the majority of the delegates.

And at this opportunity I would like to express our feelings that this be done in an open Convention, as we are now undertaking.

I wish to pay my respects to all of the individuals who offered themselves as candidates. I feel that each of them had legitimate reasons for doing so, and I am certain that many others amongst the delegates also could have had reasons for offering their services.

And I submit to you that when we, as I shall now do, offer a delegate as a choice for the position of presiding officer, that it's done in the same sense that all of us, collectively, will eventually offer to the people of Montana a proposed constitution, which they may accept or reject. We will do so sincerely, believing it's in the best interest of the State.

I am certain that all of us are equally dedicated to this cause, and are conscious not only of our own individual responsibility as we perform duties here each day, but in the final result, it will be the people of the State of Montana who will make the decision as to whether or not they will accept the Constitution that we propose.

I feel that, in some ways, we have not gained the confidence of the people of Montana, and that there has been a lack of harmony within the Convention over this matter of the selection of a presiding officer. Whether it was necessary that this occur, I'll not comment upon that, but I became quite conscious, as things were happening rather rapidly yesterday, that while I felt I had reasons to offer my own services, and to continue the work that I have been engagedin, and my time to render a service in that position, that perhaps my general exposure in the field of partisan political activity in the past caused me to be looked upon as a particular example of partisanship.

And even though I may not have felt that this was a justified feeling, I knew that it existed. And therefore, while I could protest my disinterest and point to the fact that I have equal reason to question the disinterest of those who do not wish to submit this question openly to a full Convention, where all one hundred delegates have an opportunity to choose, this would not establish the fact of my own disinterest.

As I saw that various candidates were withdrawing from the field, for one reason or another, and the other Republican candidates informed me yesterday that they did not intend to have their names placed in nomination, I began thinking about this matter as a personal responsibility.

My decision was further moved along as I listened to our distinguished speaker at the banquet last night, and at the conclusion of the banquet, I felt it advisable that I withdraw my own candidacy and so advised theindividuals who had planned to nominate me.

I regret taking the time of having to explain this to you, but I have not had the opportunity to explain, either to the people who had urged me to become a candidate, and obviously, I had no opportunity to point it out to the people of Montana in general who, if they are interested enough to read the newspaper accounts, might wonder why it happened that I filed as a candidate to be nominated this day, and am now withdrawing.

So, in that general spirit, I'll now make a nomination. I feelit'snecessary-and I regret that it is necessary-to point out that, in the first decision we made here, we didn't only depart from the decision we ourselves made, but we departed entirely from the American tradition, under which people are elected by secret ballots, and that the open vote of "Yes" or "No" is confined to issues where the people are particularly interested in

knowing how someone voted on a certain issue, that the custom of secret election of individuals is not only traditional, but founded naturally upon logic.

It does not then, again, disrupt the mutual good feelings that are intended to exist within a deliberating body, or within any group trying to move toward a common goal, and I do very much regret that this change occurred, because I think it places us at some disadvantage under these circumstances, and for those reasons which were so ably presented and led to a different decision being reached only yesterday, when we were trying to conserve time.

The individual that I propose to nominate, I must say, was somewhat reluctant when first approached, and totally surprised. I'm glad he doesn't wear false teeth because he was completely shocked when we suggested to him that, in the event that would he be willing to accept this position of responsibility, that I would be happy to withdraw. And after some consideration, however, Mr. Bruce Brown did agree that he would permit me to place his name in nomination.

Mr. Brown, the delegate from Custer County, does have the qualifications for this position. He is a human being, and therefore imperfect, as are all of us. He is a particularly human individual, I feel, having more humbleness than many of the rest of us, and I think this would stand him in good stead and be exemplified, of course, by his not attempting to push himself into this position, but is one of the few instances where a genuine draft occurred.

He is, of course, of a fair and balanced temperament and would be fair to all individuals. He is a dedicated man, as dedicated to this cause as are all the rest of us. He is an independent thinker, but one who accepts the right of every other individual people to also think independently.

It's sometimes pertinent to mention the things that a person is not. I would say, in particular, he is not narrow in outlook, nor would he be at all dictatorial in the way he would lend his services to this Convention. Perhaps, above all, he's not ambitious for political advancement, or deferment or personal advantage whatsoever, to be gained from serving in any capacity in this Convention.

I feel that all of us as delegates, and certainly all the people of Montana, have a great stake in the action we are about to make-in the decision we are about to make. We do not, obviously, wish to waste our own time, nor would the people of Montana wish us to waste their money or their time in an endeavor here which is torn by disharmony if they felt at the time of our first steps that decisions were being made by less than a majority, by negotiations which led to results that might not have been obtained if an open choice had been pending.

That we may dispel that question by the procedure that we are offering to you now, and we would pledge to you that there will not be an effort made to criticize the decisions made, nor the methods used, to reach those. We are grateful for the opportunity to present a choice to the Convention, just as we were all grateful for the opportunity to speak for five minutes yesterday to all of the delegates, and we think that something which almost might have been yesterday, in the event that it might be continued on as they were, we may have an opportunity yet today.

As I said, I feel somewhat inadequate for the task of dealing with this entire matter, and other things might be said, but I do not wish to take more of your time. If I have omitted something of importance, I do rely upon each of you to think about this decision, to be guided by your own conscience and your own dedication to our mutual cause. I thank you.

TEMPORARY PRESIDENT ARONOW: Are there any other nominations?

DELEGATE: Mr. Chairman.

TEMPORARY PRESIDENT ARONOW: Yes.

DELEGATE: My worthy colleagues, I am Catherine Pemberton from District No. 1. As one of 19 women delegates to the Montana Constitutional Convention, it is a special privilege to second the nomination of the native Montanan who believes in Montana and who has been born, educated, and makes his living in our Big Sky Country.

He is a successful Miles City attorney, whose family history in Custer County and eastern Montana goes back into the eighties. He is from an old Scotch family with a conservative background. The family ranch, called by its brand the "SH," is famous in the southeastern part of the state where the Montana Stockgrowers organized in 1884 and continued to hold the annual meetings in Miles City until 1918. Bruce Brown's grandfather was president of the Stockgrowers in 1912.

The Browns have five children, a daughter and four sons. Two are university graduates, and one son is captain on the Custer County High School ball team.

Brown has been city and county attorney, he's

served on various civic boards in the city and county and over the state.

He was graduated from the university School of Business Administration and the School of Law of the university.

He was a pilot in World War II, and is still a pilot.

Bruce Brown is from an old time Montana family. His wonderful grandmother was one of the first white children born in Custer County.

Brown's thinking would represent all thinking in Montana, not just one segment, and I have the privilege of asking your support of my friend, Bruce Brown, Independent delegate from District 2, for president of this historic conference.

TEMPORARY PRESIDENT ARONOW: Thank you, Mrs. Pemberton.

Are there any other nominations for the office of president? Mr. Habedank.

DELEGATE HABEDANK: Otto Habedank from District 3. I came to this Convention dedicated to a bipartisan convention. A proceeding was held yesterday afternoon which I did not attend because I was not invited.

Yesterday afternoon I listened to 13 candidates express their desire as to why they felt they should be president of this Convention. I heard many comments as to why we should not delay these proceedings by having a choice made among these candidates by the members of this Convention.

I got to searching my conscience during the night because I attended a lot of rallies throughout the State of Montana and I heard many other candidates say that this Convention should be nonpartisan-or bipartisan, and that partisan politics has nothing to do with it. And I came here expecting to have an opportunity to decide among those 13 candidates, and such others as should be nominated, and I don't intend to be denied that opportunity except by the specific withdrawal of nominations of Democrats and Republicans and Independents who offered themselves.

If they, themselves, publicly wish to withdraw, that is their privilege, but unless I'm stopped by order of the Chair, or vote of this Convention, I intend to nominate the people who spoke to us. And at this time I nominate the first speaker yesterday, a farmer, rancher, educator and school administrator for eight years, Mr. Magnus Aasheim.

DELEGATE: Mr. Chairman.

TEMPORARY PRESIDENT ARONOW: Mr. Aasheim.

DELEGATE AASHEIM: At this time, I'd like to express my appreciation to Mr. Habedank for his courtesy, but I'm not now a candidate for this position.

TEMPORARY PRESIDENT ARONOW: You withdraw your name from nomination?

DELEGATE AASHEIM: Yes.

TEMPORARY PRESIDENT ARONOW: Thank you, Mr. Aasheim. Any other nominations? Delegate Habedank.

DELEGATE HABEDANK: I wish to place in nomination a school administrator for 19 years at least, a do-something man, Harold Arbanas.

TEMPORARY PRESIDENT ARONOW: The name of Harold Arbanas has been placed in nomination.

DELEGATE: Harold Arbanas, District 13. I intend to be a do-something man, but I would now withdraw.

TEMPORARY PRESIDENT ARONOW: Mr. Arbanas has withdrawn his name from nomination. Are there any other nominations? Mr. Habedank.

DELEGATE HABEDANK: I next wish to place in nomination a teacher from Laurel, a man whom we all know, Mr. Chet Blaylock.

TEMPORARY PRESIDENT ARONOW: The name of Chet Blaylock has been placed in nomination. Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, Mr. Habedank, thank you very much, but I think one. of the things that we have to remember is, when you go into a caucus as we all did yesterday, that if we had received the majority of the vote in there, we would have wanted those people to stay with us regardless of how else we might feel, and so at this time, I decline.

TEMPORARY PRESIDENT ARONOW: Mr. Blaylock has withdrawn his name from nomination. Are there any other nominations? Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I place in nomination-and I heard his statement

that he is not seeking nomination-but I nominate Jim Felt.

TEMPORARY PRESIDENT ARONOW: The name of Jim Felt has been placed in nomination. Mr. Felt.

DELEGATE FELT: Mr. Temporary President, I withdraw my name. Thank you for the courtesy.

TEMPORARY PRESIDENT ARONOW: The name of Jim Felt has been withdrawn from nomination. Now, are there any other nominations for the office of president? Mr. Habedank.

DELEGATE HABEDANK: I place in nomination as candidate, the attorney from Butte, David L. Holland.

TEMPORARY PRESIDENT ARONOW: The name of David L. Holland has been placed in nomination. Mr. Holland.

DELEGATE HOLLAND: Thank you, Mr. Habedank. I bet you'd be surprised if I accepted, but I must respectfully decline.

TEMPORARY PRESIDENT ARONOW: Mr. Holland has declined the nomination. Are there any other nominations for the office of president? Mr. Habedank.

DELEGATE HABEDANK: I nominate Geoffrey Brazier, attorney of Helena.

TEMPORARY PRESIDENT ARONOW: The name of Geoffrey Brazier has been placed in nomination. Yes, Mr. Brazier.

DELEGATE BRAZIER: Mr. Temporary Chairman, with all due respect for the courtesy and motives of Mr. Habedank, I don't think I could rally enough support, and I therefore respectfully withdraw.

TEMPORARY PRESIDENT ARONOW: The name of Jeff Brazier has been withdrawn. Now, are there any other nominations for the office of president. Mr. Habedank.

DELEGATE HABEDANK: I realize you think this is an exercise in futility, but I still hope that one of these fellows will accept, and regardless of what Mr. Holland says, I nominate Jack Schiltz, attorney at Billings.

TEMPORARY PRESIDENT ARONOW: Jack Schiltz has been nominated for president. Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President.

TEMPORARY PRESIDENT ARONOW: Mr. Schiltz.

DELEGATE SCHILTZ: I think I'm just as good a man as I thought I was yesterday, but I must respectfully decline.

TEMPORARY PRESIDENT ARONOW: The name of Jack Schiltz has been withdrawn from nomination. Are there any other nominations? Mr. Habedank.

DELEGATE HABEDANK: I nominate Sterling Rygg of Kalispell.

TEMPORARY PRESIDENT ARONOW: The name of Sterling Rygg has been placed in nomination. Mr. Rygg.

DELEGATE RYGG: Thank you, Mr. Habedank, but I too decline the nomination.

TEMPORARY PRESIDENT ARONOW: Mr. Rygg has declined the nomination and his name is withdrawn from nomination. Is there any other nominations for president? Mr. Habedank.

DELEGATE HABEDANK: I nominate John Toole.

TEMPORARY PRESIDENT ARONOW: The name of John Toole has been placed in nomination. Mr. Toole.

DELEGATE TOOLE: Mr. President, I'm not a candidate. Thank you very much.

TEMPORARY PRESIDENT ARONOW: The name of John Toole has been withdrawn from nomination. Are there any other nominations for the office of president? Mr. Habedank.

DELEGATE HABEDANK: I nominate Charles Mahoney, Independent from Helena.

TEMPORARY PRESIDENT ARONOW: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I really appreciate this nomination because us Independents got practically told off yesterday, but we really appreciate this, but I'm just solidly supporting Bruce Brown, and I therefore withdraw.

TEMPORARY PRESIDENT ARONOW: The name of Chuck Mahoney has been withdrawn from nomination. Are there any other nominations? Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I nominate Leslie Joe Eskildsen of Malta.

TEMPORARY PRESIDENT ARONOW: The name of Leslie Joe Eskildsen has been placed in nomination. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Temporary President, I withdraw.

TEMPORARY PRESIDENT ARONOW: The name of Leslie Joe Eskildsen has been withdrawn from nomination. Are there any other nominations for the office of president? Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I nominate Paul Harlow, a long-time friend in education and otherwise, from Thompson Falls, Montana.

TEMPORARY PRESIDENT ARONOW: Mr. Harlow.

DELEGATE HARLOW: Mr. Temporary Chairman, I'm even better off than Mr. Rygg. I feel I'm a better man today than I was yesterday, but I must decline because I don't think I'm good enough to be chairman today.

TEMPORARY PRESIDENT ARONOW: The name of Paul Harlow has been withdrawn from nomination. Are there are any other nominations for the office of president?

Are there any other nominations for the office of president?

(No reply.)

Are there any other nominations-yes, Mr. Holland.

DELEGATE HOLLAND: I move the nominations for the office of president be closed.

TEMPORARY PRESIDENT ARONOW: It's been duly moved that nominations for the office of president be closed. Is there any discussion? Are you ready for the question?

DELEGATES: Question.

TEMPORARY PRESIDENT ARONOW: All those in favor, signify by saying Aye—

DELEGATES: Aye.

TEMPORARY PRESIDENT ARONOW: -opposed No.

(No reply.)

The Ayes have it. The nominations are closed. Mr. Clerk, would you be kind enough to read the names of the individuals who have been nominated for the office of Convention president?

SECRETARY MARSHALL: For the office of Convention president, Leo Graybill, Jr. and Bruce Brown are the two nominees, sir.

TEMPORARY PRESIDENT ARONOW: In accordance with the motion previously made, voted on and carried, the vote will be by roll call, open. Call the roll.

SECRETARY MARSHALL:

Aasheim		Graybill.
Anderson,	John.	Brown.
Anderson,	Oscar L.	Pass.
Arbanas		Graybill.
Arness		Graybill.
Aronow		Graybill.
Artz		Graybill.
Ask..		Brown.
Babcock		Brown.
Barnard		Graybill.
Bates	.	Graybill.
Belcher		Graybill.
Berg.....		Brown.
Berth&on..	,,	Brown.
Blaylock		Graybill.
Blend..	.	Graybill.
Bowman..		Brown.
Brazier		Graybill.
Bugbee		Graybill.
Burkhardt		Brown.
Cain.		Graybill.
Campbell		Graybill.
Champoux		Graybill.
Choate..	,	Brown.
Conover	.	Graybill.
Cate	(No	reply.)

DELEGATE CATE: Mr. President.

TEMPORARY PRESIDENT ARONOW: Mr. Cate.

DELEGATE CATE: Mr. President, with the Convention's indulgence, I would like to explain my vote. I'm Jerome Cate from District 8. I'm 32 years old. I have been a Democrat for 20 years. I was the president of the Young Democrats in the Eighth Grade at Sacred Heart

High School in Miles City. I have been active in the Democratic Party all through my high school and college years.

I worked for Senator Lee Metcalf in Washington for five years. I've been a delegate to the National Convention for the Democratic Party. I've worked for the Senate of the State in 1959 and 1961. I have been President of the Yellowstone County Democratic Club. I have been Chairman of the Democratic Central Committee of Yellowstone County, which is a tough county to be a Democrat in. I have participated on those committees for the Democratic Party for many years. I have been on the Executive Committee of the Democratic Party.

In the first rule of legislative session, fellow delegates, if this were a legislative session, I would be telling the Republicans in the balcony that this is not a legislative session. This is a Constitutional Convention where each and every candidate should exercise his own judgment on each and every issue and not be dictated to by any party machine.

Ladies and gentlemen, for that reason I wish to cast my vote for Bruce Brown, Independent candidate, for president of this Convention. Thank you.

SECRETARY MARSHALL: Cate votes Brown. Now, back to Brown.

DELEGATE BROWN: Brown.

SECRETARY MARSHALL: Brown votes for Brown.

Cross ..... Graybill.
Dahood ..... Excused.
Davis. ..... Graybill.
Delaney ..... Graybill.
Driscoll ..... Graybill.
Drum ..... Brown.
Eck ..... Graybill.
Erdmann ..... Brown.
Eskildsen ..... Graybill.
Etchart.. ..... Brown.
Felt ..... Brown.
Foster ..... Brown.
Furlong. ..... Graybill.
Garlington ..... Brown.
Graybill ..... Graybill.
Gysler ..... Graybill.
Habedank ..... Brown.
Hanson.. ..... Brown.
Hanson, Rod., ... Graybill.
Harbaugh ..... Graybill.
Harlow ..... Graybill.
Harper ..... Brown.
Harrington ..... Graybill.
Heliker ..... Graybill.
Holland ..... Graybill.
Jacobsen ..... Brown.
James ..... Graybill.
Johnson ..... Brown.
Joyce ..... Graybill.
Kamhoot ..... Brown.
Kelleher ..... Graybill.
Leuthold ..... Brown.
Loendorf ..... Brown.
Lorello ..... Graybill.
Mahoney ..... Brown.
Mansfield ..... Graybill.

DELEGATE: Mr. President.

TEMPORARY PRESIDENT ARONOW: Mr. Martin.

DELEGATE MARTIN: Mr. President, some of you may remember that yesterday I invited the Republicans to attend the Democratic caucus. I was the only one who attended. They didn't throw me out, but nevertheless, I do think that the selection as of yesterday should have been by 100 instead of 58. I vote Brown.

SECRETARY MARSHALL: Martin votes Brown.

McCarvel ..... Graybill.
McDonough ..... Graybill.
McKeon ..... Graybill.
McNeil ..... Brown.
Melvin. ..... Graybill.
Monroe ..... Graybill.
Murray ..... Brown.
Noble ..... Graybill.
Nutting. ..... Brown.
Payne ..... Brown.
Pemberton ..... Brown.
Rebal ..... Graybill.
Reichert ..... Graybill.
Robinson ..... Graybill.
Roeder ..... Graybill.
Rollins ..... Graybill.
Romney ..... Graybill.
Rygg ..... Brown.
Scanlin ..... Brown.
Schiltz ..... Graybill.
Siderius. ..... Graybill.
Simon ..... Brown.
Sparks ..... Graybill.
Skari ..... Graybill.
Speer ..... Graybill.

Studer . . . . . Brown.
Sullivan . . . . . Graybill.
Swanberg.. . . . . Graybill.
Toole . . . . . Brown.
Van Buskirk.. . . . Graybill.
Vermillion . . . Graybill.
Wagner . . . Graybill.
Ward . . . . . Brown.
Warden.. . . . Graybill.
Wilson.. . . Brown.
Woodmansey . . . Graybill.
Mr. Temporary President.

TEMPORARY PRESIDENT ARONOW: Mr. Marshall.

SECRETARY MARSHALL: One delegate excused, one delegate passed, the tally of the vote: Graybill, 60 votes; Brown, 38 votes.

TEMPORARY PRESIDENT ARONOW: Thank you, Mr. Marshall.

Does anyone wish to examine the ballot?

DELEGATE: Mr. President.

TEMPORARY PRESIDENT ARONOW: Yes. Mr. Brown has the floor. Mr. Brown.

DELEGATE BROWN: I would like to thank the delegates to the Convention for the great honor they have given me, and I'm now going to work with Mr. Graybill, and I'd now like to move that we cast a unanimous ballot for Mr. Graybill.

TEMPORARY PRESIDENT ARONOW: Thank you, Mr. Brown. Your action, Mr. Brown, is a most kind and generous motion, and on a standing vote, I take it, you have instructed me to declare this election unanimous?

DELEGATE BROWN: Yes.

SECRETARY MARSHALL: I now cast a unanimous ballot for Leo Graybill, Jr., for president of the Montana Constitutional Convention of Helena, Montana, this day.

TEMPORARY PRESIDENT ARONOW: Leo Graybill, Jr., receiving a majority of votes cast, has been duly elected president of the Convention.

I hereby appoint the following committee to escort the president to the Chair: Marshall Murray, Joe Eskildsen and Tom Joyce. You gentlemen will perform your duty and escort the president to the Chair.

PRESIDENT GRAYBILL: Mr. Temporary Chairman, ladies and gentlemen of the Constitutional Convention, I must say, it's a very humbling process to be elected by this body, and I want to thank all of you.

I think, friends, that we can now say that all had a fair shot at it, and I appreciate the support I got, and I appreciate the unanimous vote afterwards. Let's make it a bipartisan Convention from here on out.

I have no long statement to make, but I would like to remind the delegates and myself, right here at the outset, that we are actually representatives of the people of the fine State of Montana, and I hope that we will keep in front of our minds as we go through the Convention, at all times, the fact that all we are doing is fashioning for the public a constitution that we can honorably and honestly present to them, and ask them to support it when we place it before them next fall.

So, with that in mind, let's put ourselves to the task of putting together the best constitution that we can get the public and the State of Montana to pass.

The Chair would now entertain a motion about rules.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. President, I'm Delegate Romney, District 22. I move that the Convention adopt, as temporary rules, the Joint Rules of the Forty-second Legislative Assembly. Note the word "temporary."

PRESIDENT GRAYBILL: The Chair has heard a motion from Delegate Romney that we adopt the Temporary Rules of the Montana Legislative Session, so that we can proceed on that basis.

Mr. Mahoney.

DELEGATE MAHONEY: As a point of information from the Chair and from the author of the motion, would we be adopting at this time, as temporary rules, Rule H7-1? This is in regard to committees. I'd like to know.

PRESIDENT GRAYBILL: What I think we have in mind, Mr. Mahoney-well, we could ask Mr. Romney. Mr. Romney, do you want to answer that?

DELEGATE ROMNEY: It's obvious that we would not use the Joint Rules and the House

Rules to conduct the proceedings of the Convention throughout. Consequently, in order to facilitate and expedite the transaction of our work here today, tomorrow and Wednesday, it is our thought that we could use these rules until such time as the new Rules Committee can perfect a new set of rules which we will use throughout the Convention.

As the Senator knows, in previous conventions, almost always, some set of rules has been perfected by the membership of the convention. For example, the United States Constitution itself, drew up its own rules during the first few days, as you have no doubt known from reading James Madison's notes on the Constitutional Convention.

DELEGATE MAHONEY: I'd ask the distinguished gentleman from Ravalli County another question.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Yes.

PRESIDENT GRAYBILL: May we make the observation-I don't know, but I think that it is the intention of Mr. Romney to back up the Montana Rules by Mason's, where they are not specific. Is that correct?

DELEGATE MAHONEY: Do you have any objection to removing Rule H7-1 from this proceedings? This is in regard to committees.

DELEGATE ROMNEY: As far as the Mason's Rules are concerned, they are implanted in these Rules themselves, anyway, and at any place where these Rules do not pertain, why, Mason's takes over, but I have no objection to taking that out.

DELEGATE MAHONEY: Mr. Chairman, in order to get the whole Convention-and this is a very important thing, and this is going to hinge on something that could be done.

I'm going to move, as a substitute motion to this motion, that we remove this Rule from the temporary rules of this Convention, and will be adopted later. I hope I'm in order, and I will now move that Rule H7-1—and I will now read it—

PRESIDENT GRAYBILL: Will you give the delegates the sense of Rule H7-1?

DELEGATE MAHONEY: I have now my glasses. Mr. Chairman, this is on page 72 of the House Rules:

"The Committee on Rules and Journal shall consist of the Speaker and four members appointed by him. The Speaker shall appoint other Standing Committees, Select Committees, and House membership on Joint Committees and Conference Committees. The Standing Committees of the House are as follows..."

Now, I'm not going to worry about these committees. This is the part that I would like to have this Convention determine, how they would like to have these committees appointed, and if this should be adopted in there, then it would run straight over to the president of the Convention.

So, Mr. Chairman, I move to remove that from Mr. Romney's motion, this one rule in regard to committees. Let the Rules Committee come back to the Convention with another rule on this, if they so desire.

PRESIDENT GRAYBILL: Now, Mr. Mahoney, we understand your motion, and we'll let them vote on it here in a minute.

It is the intention of the Chair, in any event, to call for another motion about the appointment of committees, and especially about appointment of a Rules Committee, but we do want some rules to operate under.

Yes, sir.

DELEGATE BRAZIER: I rise to second the motion of Mr. Mahoney.

PRESIDENT GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Delegate Brazier from District 12.

PRESIDENT GRAYBILL: All right, you have heard the motion of Mr. Mahoney-or the substitute motion of Mr. Mahoney, that we adopt the Montana House Rules, backed by Mason's Rules, with the exception of the Rule on appointment of the committees.

Is there any further discussion?

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: If this is a substitute motion of a substitute motion, doesn't that replace the entire motion of Mr. Romney's? This is just an amendment, isn't it?

PRESIDENT GRAYBILL: I think Mr. Mahoney called it a substitute motion, but if I understand him correctly, he's willing to operate under

the Montana Legislative Rules, backed by Mason's, but without the committee Rule. Is that correct, Mr. Mahoney?

DELEGATE MAHONEY: All I'm trying to do is remove the one section, and if the Chair can determine how to do it now, I'll do it.

PRESIDENT GRAYBILL: Right. So now, we have before us, a substitute motion of Mr. Mahoney, that we adopt as our temporary rules the Montana Legislative Rules, backed by Mason's, without the Rule on committee appointments.

Now, is there any other discussion?

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Felt.

DELEGATE FELT: Begging the indulgence of the Assembly-and when this is completed, I can assure you you won't be hearing from me this frequently-I thought that this would be an amendment, and I intended to speak, but since it's been treated as a substitute motion, I feel that there are a few other things that need to be mentioned because these House Rules that we're adopting in a temporary manner, are quite well, but unfortunately, I doubt if many of us-1 know I do not-have a copy of them with us.

But, speaking from some memory of these Rules, I-and, of course, the point that Mr. Romney made is well taken, as well as Robert's Rules, and we are using them because they are in the Enabling Act and they are duly incorporated in the House Rules, and in that respect, they are adequate for our purposes.

At this time, I-if I recall these House Rules correctly, they are developed in the overall purpose and sense of being a set under which a House of Representatives of this state can operate efficiently, recognizing rights of minorities; but, by golly, they give the majority the power to control, and do they ever give the Speaker of the House power, way beyond what anyone has ever suggested giving the president of a Convention such as this.

That I know because I held the position. It gave you not only the possibility of naming the committees, but naming all the members to every committee, and deciding who will be the chairman and vice-chairman. Deciding what proposals go to each committee. And in all the parliamentary procedural matters, the power is granted way beyond those that have been discussed in the pamphlets that have been distributed to us, and the discussions we have had amongst ourselves, and this comes as quite a surprise to me.

I thought that we would follow the procedure reviewed for us in the last couple of days of our orientation period, which calls-and this is in the pamphlets that were handed to you-for the creation of a committee to deal with rules of our organization. Now, this committee would then be able to report and give us the proposals that they think would be appropriate for our proceedings.

I feel that with all of the parliamentary procedural rules, we already have a workable set in the rules that were given to us by the Enabling Act through Mason's Rules, so we are fully capable of doing whatever we wish to undertake, and that it's not necessary, and I think that Mr. Mahoney put his finger on the most single important matter that we have all discussed at length, but they are certainly inappropriate for us.

He is asking us to adopt, as our rules, something that is not comprehensive, something that we do not have before us, something that we understand only in a general way. We have had this presented without benefit of committee report or investigation.

For those reasons, Mr. Chairman, I move as a substitute motion for all motions pending, that the Mason's Rules of Procedure be continued as the rules of this body until such time as we have the benefit of the report of the Committee on Rules of Organization and I would, if this motion should carry, be pleased to make a motion calling for the Chair to begin the process of selecting a committee-temporary committee-to deal with the organization, although I would hope that the membership of the committee would at least be ratified by a voice vote on the floor. Thank you.

PRESIDENT GRAYBILL: Now, the Chair understands that you have made a substitute motion, Mr. Felt, and your substitute motion is that the Mason's Rules, rather than the Legislative Rules backed by Mason's Rules, be the rules—temporary rules--under which we operate, just until the Rules Committee reports, is that the sense of your motion?

DELEGATE FELT: That's correct.

PRESIDENT GRAYBILL: Now, the Chair is in doubt and will ask the parliamentarian. Is this second substitute motion in order?

PARLIAMENTARIAN BADEN: Yes.

PRESIDENT GRAYBILL: The second substitute motion is in order.

I understand, then, that no further substitute motions are in order?

PARLIAMENTARIAN BADEN: Yes.

PRESIDENT GRAYBILL: No further substitute motions are in order, and we're now open for debate on the second substitute motion, or we'll vote.

DELEGATE ROMNEY: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Delegate Romney, District 22. I enthusiastically endorse the proposition of Delegate Felt because it's precisely what I said in the first place.

PRESIDENT GRAYBILL: All right. Are you ready for the question?

DELEGATE MAHONEY: Mr. President.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I don't think there is enough people that has gotten House Rules, let alone trying to operate under Mason's Rules. They are quite a problem to get copies of.

I think we could operate very handily under this substitute—not Mr. Felt's motion, but under my thing, if we cleared up the main points of this issue at this time, and I would like to oppose Mr. Felt's motion and stay with the House Rules, very temporarily, with my amendment to take out appointment of committees. That is what I would like.

PRESIDENT GRAYBILL: Is there further discussion?

The Chair would like to make the point that when you delegates stand, to say your name and speak up because A, I might not know all your names, but B, there is an awful bright light in my eyes--which I hope won't be here after today-so speak up.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Yes.

DELEGATE: I'm Richard Nutting from District 7.

PRESIDENT GRAYBILL: I recognize Delegate Nutting.

DELEGATE NUTTING: I rise in support of Mr. Felt's motion. I had drawn up a tentative proposition to which I would like-that I would like to present if this motion endures.

PRESIDENT GRAYBILL: Now, is this matter that you are going to present, another matter?

DELEGATE NUTTING: This is in support of Mr. Felt's motion.

PRESIDENT GRAYBILL: All right, you may allude to it. Go ahead.

DELEGATE NUTTING: The motion that I would be interested in, which would replace this motion, would be that a temporary committee be selected on rules and organization, to be dissolved after presenting its final report to the Convention. That it consist of seven delegates to be nominated by the president and approved or disapproved by a majority vote of the delegates. Its duties shall be to present a final report tomorrow, recommending various officers to be selected by the Convention, and the method of selection to be utilized, the names of all substantive committees now created, the number of delegates to make up each such committee, and such other matters as such committee believes to be pertinent to the organization of the Convention.

That such committee may have its own organization meeting during a brief recess of the Convention this day, so that it may select its own chairman and consider holding a committee hearing, and meeting in the Senate Chamber immediately following adjournment this day, or other procedures it may wish to utilize; and that it be permitted to utilize stenographic and clerical help from the staff of the Constitutional Convention Commission, or such other persons as it may wish to employ.

Now, I think this does what we're all trying to do, without-it would mean that there would be a temporary rules committee, which would come back and report. So, if Mr. Felt's motion would prevail, I would be very happy to present this in substitution, and we would not-we would be operating under a clear set of rules when the Rules Committee reports back.

PRESIDENT GRAYBILL: The Chair is under the impression that similar motions are going to be made if these motions-when we clear up the matter of what rules we're under.

Now, we're still debating Mr. Felt's motion. Is there any more discussion?

(No reply.)

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. The question, then, is on Mr. Felt's motion that we use Mason's Rules as the temporary rules until the Rules Committee meets and brings in, for our consideration, a separate set of rules for this Convention.

We'll use the voting machines, Mr. Marshall. All those in favor of Mr. Felt's motion vote Aye, all those opposed vote No.

Have all the delegates voted? Do any of the delegates wish to change their votes? The vote is now closed.

Mr. Marshall, will you tell us the result of the vote?

SECRETARY MARSHALL: 71 have voted Aye and 24 have voted No.

PRESIDENT GRAYBILL: By your vote, we have adopted Mr. Felt's motion making Mason's Rules of Order the temporary rules of this Convention.

The Chair would now entertain a motion about the appointment of a temporary Rules Committee so that we can get on with the job of making rules.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, Chet Blaylock, District 8. I move that the president appoint a temporary Committee on Rules of Organization, and report to the afternoon session. The Committee to consist of three members of each party, the president acting as ex officio member.

PRESIDENT GRAYBILL: All right, you have heard Mr. Blaylock's motion that there be a committee of six, was that?

DELEGATE BLAYLOCK: Yes.

PRESIDENT GRAYBILL: Three from each party, with the president also to act on the committee and to bring in rules to an afternoon session under which we could conduct the remainder of the preliminary business.

Now wait a minute. I want to find out if the other side wants to amend-or it's roughly the same thing as you said, but is there any other amendments or motions?

DELEGATE MAHONEY: I just hate to be disenfranchised the first day.

PRESIDENT GRAYBILL: All right. First, I'll recognize Jeff Brazier.

DELEGATE BRAZIER: Mr. President, I offer a substitute motion that the Committee be a seven-member committee, to be elected in its entirety from the delegation. A legal ballot in such election, as being one which does not include more than seven names of nominees.

The reason I suggest this method, is so that we can dispose of the matter with one ballot, and get on with other business.

PRESIDENT GRAYBILL: Now, if I understand you correctly, you're saying that we should elect them, but we would only allow seven people to be nominated?

DELEGATE BRAZIER: Well, there's no magic in any particular number, just so far as it's an odd number. What I'm getting at, is the problem that Mr. Mahoney has.

To be specific, it's a choice of whether the delegation itself-or the Convention itself-select this Committee, or whether the president appoints it. I just submit that it can be disposed of with one ballot.

We can take the nominations, and have everybody sign and file a ballot, with not more than seven names among the nominees.

PRESIDENT GRAYBILL: Mr. Felt, we are now debating the amendment to Mr. Blaylock's motion, the amendment to be that we would have a ballot instead of appointed from the Chair, and that the ballot would be limited to seven names.

DELEGATE FELT: Well, whether it's an amendment or a substitute motion, I would like to speak on it.

I had originally intended to ask the gentleman, Mr. Blaylock, a question, but I think you have perhaps answered it.

I would, therefore, oppose the motion of the gentleman, Mr. Brazier, because I feel that it would be appropriate to have the president nominate the delegates. And as long as the motion includes a spread upon party relationships, and I would anticipate, certainly, that this would properly cover other acts of trying to get a representative group on the Committee, but the one

thing I hoped might be included, and it's too late for me to offer it as an amendment now, it would be simply that-well, it might be a rather routine procedure as to ratifying and confirming the nominations made by the Chair. And I would somewhat prefer to see the Floor holding the authority which it has, and exercising it, while delegating to the Chair the duty and the ability to make nominations, but that the Floor would confirm this, and it could be done by voice vote, or any method desired.

So, if we reach the point where I would be able to offer this type of amendment to the motion made by the gentleman, Mr. Blaylock, I would contemplate doing so, and would support the motion if my amendment could be in.

PRESIDENT GRAYBILL: Is there other discussion about the substitute motion of having a ballot?

May I ask the Body if it would be appropriate if the Body knew whom the Chair would appoint to the Rules Committee, if it did appoint?

No one rising to speak to that, I would take it that there is no more discussion, and we'll vote on the amendment, which is that we have a ballot to select the temporary Rules Committee of seven. Are all seven to be elected, Mr. Brazier?

DELEGATE BRAZIER: That's the intention of my motion, Mr. President.

PRESIDENT GRAYBILL: May I ask another question, because the Chair is in genuine doubt as to whether you have any restrictions as to whether these all be in one party, or any number from any one party, or just the first seven that happen to get nominated.

DELEGATE BRAZIER: Well, the seven pulling the highest number of votes. I just had a feeling, with the cross section of thinking in this delegation there is no way we're going to have them all from one party.

PRESIDENT GRAYBILL: In other words, we can nominate as many as we want, is that true, but only seven are elected?

DELEGATE BRAZIER: Yes.

PRESIDENT GRAYBILL: All right. Now, I understand you.

So the point is, we are now voting on an amendment to elect the temporary Rules Committee, the amendment to the original motion that the Chair appoint a temporary Rules Committee, three from each party, and that the Chair sits as a member.

Is there any further discussion?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. We'll vote by the machine. All those voting in favor of the amendment, mainly to have the temporary Rules Committee chosen by a ballot, the top seven to be selected, indicate by saying Aye. All those opposing it vote No.

Have all the delegates voted?

SECRETARY MARSHALL: Not yet, sir.

PRESIDENT GRAYBILL: Have all the delegates voted? Does any delegate wish to change his vote? The vote is now closed. Will the clerk tell us the vote?

SECRETARY MARSHALL: Mr. President, 18 voted Aye, 79 have voted No.

PRESIDENT GRAYBILL: The motion has failed.

Now, is there any further discussion on the original motion of Mr. Blaylock?

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: I have no objection to Mr. Felt's point that the nominations be ratified by the body.

PRESIDENT GRAYBILL: All right. You're putting that as an amendment, or a condition of your original motion?

DELEGATE BLAYLOCK: With the permission of the Convention, since I made the original motion, I should like to make that motion, so that this will be ratified by this body.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: All right, Mr. Aasheim.

DELEGATE AASHEIM: The original motion specified three from the Republican and three from the Democratic Party. I just wonder if we aren't excluding from this motion-and I'd like to amend that motion to say, three from the Democratic Party and three from any other area that the Chair might wish to select.

PRESIDENT GRAYBILL: Very well, you have made an amendment. Is there any discussion on the amendment? Mr. Harper.

DELEGATE HARPER: George Harper, District 12. I just think we ought to get something sort of out and on the boards right at first. The six of us who happen to be here as Independents are not another party. We also consider ourselves to be members of this Constitutional Convention. When the people of our district elected some delegates as Republicans, they did not send those people here to represent the Republican Party. They sent them to represent our district, and likewise with the Democrats, and the same way with us as Independents. They certainly did not send me as an Independent to represent myself, but to be a part of the whole district procedure.

Now, if this keeps up, in effect-that is, this idea of having bipartisan and meaning Republican and Democrats-those of us who are Independents may as well go home, or register as visitors in this kind of a delegation.

Now, I'll go to this point, though, I don't think we ought to always be classified as Republicans. Now, this tendency was shown yesterday, when the Democrats assumed they would be against the rest of us, and I noticed that the Chairman once today said, "theother side." Wedonotwantto consider ourselves as being the "other side" from the Democrats, and I don't know why we might not have an Independent as one of the three Democrats who are on the Committee, as well as one of the three who are from outside.

I feel very keenly about this, and I don't want to prolong this session except to say that I think this kind of thinking betrays what most of us said when we were running for office, and this goes for most of you, that the sooner we get through with this business of mentioning parties, the sooner we get through this idea of caucusing and going we and they, the sooner we can settle down and get the job done, and the much more attractive the outcome will be to the people of this state.

PRESIDENT GRAYBILL: All right. Any more discussion on the substitute-or the amendment, rather, which is that the Chair select three from each side-whatever that means?

DELEGATE: Mr. Graybill.

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE: Delegate James. I think George has a very good point there. I think from now on we should make appointments according to ability and talent. We are here to draft a constitution for the State of Montana, not a Democratic or Republican or an Independent. We have given you a vote of confidence, and you expressed during your campaign, you might say, the fact that you would conduct this meeting in a fairway. We have given you this vote of confidence, and we feel it's up to you, and if we disagree, we'll let you know.

PRESIDENT GRAYBILL: Is there any further-Mrs. Pemberton.

DELEGATE PEMBERTON: Catherine Pemberton, District No. 1. I believe it was Mr. James over here who just spoke. I'd like to also call our attention to remembering the fact that we are 81 men and 19 women, and we are all working towards the interests of Montana in this Convention, and I'd like to have us think that way from here on.

PRESIDENT GRAYBILL: Thank you, Mrs. Pemberton.

Is there any other discussion on the amendment?

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE: I'm Bill Burkhardt from District 12. I rise to just try to clarify what, to me, has been a confusing procedure, and I'd like to know the length of tenure of the temporary Committee. I would like to know the scope of their responsibility, and I'm just not certain. I'm hearing sentiments expressed that I agree with in terms of keeping this an open and nonpartisan and genuinely citizen-oriented work, and yet we're just getting tired enough that we're going to slip through and wonder later what we did. And I'd like some clarification about precisely how long this Temporary Rules Committee will be functioning and precisely what the scope of its duties are and, now, just what the amendment really is.

PRESIDENT GRAYBILL: All right, the Chair would like to say, in his opinion at the moment, subject to change, the idea is to elect a temporary Rules Committee to come up with rules which would allow us to proceed to pick a vice-president and other necessary officers, and to organize committees, and carry us through what we all understand is the first two or three days here.

At that time, or later on, a regular Rules Committee will be adopted, and the regular Rules Committee will, in my opinion, have the duty of determining how we will proceed when we get to the assembly part next January, how things will be done. All of that business will be done later.

This is only to facilitate the setup, and it really isn't a matter of temporary, it's a matter of this Rules Committee will set up the first rules for our organization. And later on, the later Rules Committee would set up the operational rules under which we act now.

That is the way I see it, and I'm perfectly willing to hear discussion, but that is what I think we are trying to do now.

Is there other discussion? Mr. Romney, I'm going to recognize the lady.

DELEGATE: Mae Nan Robinson, District 18. I would like to offer an amendment to Mr. Blaylock's motion, that the Chair nominate a temporary Rules Committee composed of seven people, to be nominated without reference to party or any other consideration other than ability.

PRESIDENT GRAYBILL: I think the Chair will temporarily rule your motion out of order, until we have disposed of the matter-we have an amendment here, and your amendment is not to the amendment itself, it's an amendment to the original motion. Do you follow me?

DELEGATE ROBINSON: Yes.

PRESIDENT GRAYBILL: Stand up again, if you want to, but let's dispose of Mr. Aasheim's amendment, which is whether or not the Chair is to pick three Republicans or three from the "other side."

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Yes, Mr. Aasheim.

DELEGATE AASHEIM: Magnus Aasheim from District 4. I sense the sentiment of the group, and I would like to withdraw my motion.

PRESIDENT GRAYBILL: Is there any objection to the withdrawal of the motion?

(No reply.)

All right, the motion is withdrawn.

Now, we're back to Mr. Blaylock's motion that the Chair appoint three Democrats and three Republicans and that the Chair sit with them to make a committee of seven.

Now, I'll hear from the delegate from-Mrs. Robinson from Missoula.

DELEGATE ROBINSON: I would like to offer that the Chair nominate seven members to the temporary Rules Committee without reference to party designation.

PRESIDENT GRAYBILL: All right, the motion has been made that the Chair, as a substitute-no, as an amendment to Mr. Blaylock's motion, that the Chair nominate seven members to a temporary Rules Committee.

Is there discussion on that motion? Yes.

DELEGATE: I believe that she meant appoint-excuse me, Rod Hanson, District 15. I believe she meant appoint instead of nominate.

PRESIDENT GRAYBILL: Well, I think the sense of Mr. Blaylock's amendment is, that whatever I do will be put before this body for ratification, so I think she really means nominate, and then if you agree with the group I select, fine, and if not, we start over.

DELEGATE ROBINSON: I really mean nominate.

PRESIDENT GRAYBILL: She really means nominate, Mr. Hanson.

Are there other delegates wishing to discuss the amendment which would have the Chair nominate seven members?

(No reply.)

If not, we'll proceed to vote on the amendment, which is that the Chair appoint seven members to a temporary Rules Committee, with it understood that the temporary Rules Committee is operating only to set up organizational rules, and that this temporary Rules Committee, when the Chair has made the appointments, will be submitted to you for your ratification, and the Chair is not now, at the moment, bound by party designation by this motion.

Are you ready to vote?

DELEGATES: Question.

PRESIDENT GRAYBILL: The vote is open. Those in favor of the motion say Aye, those opposed vote No. Have all the delegates voted? Does any delegate wish to change his vote? If not, th'e vote is closed.

SECRETARY MARSHALL: Mr. President, 91 have voted Aye, 7 voted No.

PRESIDENT GRAYBILL: Well, then, the motion is carried. The vote has carried in favor of the motion making it the Chair's obligation to nominate seven members of this body to a temporary Rules Committee.

Yes, sir.

DELEGATE CATE: Mr. President, the last two or three votes haven't shown on the board up here. The last two votes haven't shown.

PRESIDENT GRAYBILL: I guess, Mr. Marshall, unless we direct you otherwise, we would like to see our votes go up in lights.

I think-if the Chair may have just a moment.

All right, the Chair would nominate the following members to the Rules Committee, and none are to be designated by me as chairman because that wasn't in the motion. First, Joe Eskildsen; second, Margaret Warden; third, Miles Romney; fourth, Tom Joyce; fifth, Tom Ask; sixth, Marshall Murray; seventh, John Toole.

The Chair is mindful that it didn't have to do anything, and that there are all types of people here, but that's what I nominated. It looks to me like it would be a good list, and I submit it to you.

The Chair would now entertain a motion that we put it before this body, and this group see if it wants to ratify or not.

DELEGATE FELT: Mr. President.

PRESIDENT GRAYBILL: Mr. Felt.

DELEGATE FELT: I move the body approve the nominations made by the president, and I'll just mention now that I would hope, after this, that perhaps in line with comments that have come from different members of the floor, perhaps Mr. Nutting might make a motion, including the miscellaneous questions on the proposal dealing with the duties and term of office, and the various details of the function of that committee.

I now move that we approve the nominations made by the president.

PRESIDENT GRAYBILL: All right, Mr. Champoux. You were on your feet, do you have anything to say?

DELEGATE CHAMPOUX: Nothing but to say that I came here to Montana with a Boston accent, and I second his motion.

PRESIDENT GRAYBILL: All right, the motion has been made and seconded that the Chair's nominees be ratified by the Convention as the temporary Rules Committee to set up the operational rules under which we would operate for the balance of our initial term here, between now and the next two or three days when we adjourn until January.

Does everybody understand the sense of the motion?

(No reply.)

All right, is there discussion?

DELEGATES: Question.

PRESIDENT GRAYBILL: Come on, aren't you going to discuss it? All right. You're ready for the question. We'll take a vote on the machine. The vote is now open. Those in favor of Mr. Felt's motion; that the Chair's nominees to the temporary Rules Committee be sustained, or ratified, vote Aye, those opposed vote No.

Have all the delegates voted? Do any of the delegates wish to change their vote? Now we'll close the vote. Will the clerk show the vote?

SECRETARY MARSHALL: Mr. President, 96 delegates have voted Aye, none have voted NO.

PRESIDENT GRAYBILL: Now, we are getting more bipartisan all the time.

Okay. That's the temporary Rules Committee, then, and I would like to ask that the temporary Rules Committee remain after we adjourn, or after we recess-maybe over here in the right-hand corner-to pick a time and place when they can meet this day.

Now, the hour is getting late. The Chair will recognize--all right, Delegate Nutting.

DELEGATE NUTTING: Delegate Nutting, District 7. I move that the temporary Committee be dissolved after its final report to the Convention. That the Committee's duties shall be to present a final report recommending the various officers to be selected by the Convention and the method of selection to be utilized, the names of all substantive standing committees to be now created, the number of delegates to make up each such committee, and such other matters as the Committee believes to be pertinent to the organization of the Convention. That such committee will have its own organization meeting during a brief recess of the Convention this day, so that it may select its own chairman and consider holding a committee hearing and meeting in the Senate Chamber immediately following adjournment this day, or such other proceedings as it may wish

to utilize, and that it may be permitted the use of the stenographic and clerical help from the staff of the Constitutional Convention Commission, or such other persons as it may employ.

PRESIDENT GRAYBILL: Mr. Nutting, first of all the clerk would like a copy of your motion which, I take it, you can supply them.

DELEGATE NUTTING: May I ask for clarification from the Chair?

PRESIDENT GRAYBILL: Yes.

DELEGATE NUTTING: You listed substantive committees. May this Rules Committee also deal with procedural committees? Can we get that out of the way?

PRESIDENT GRAYBILL: Yes.

DELEGATE NUTTING: It says, "and such other committees."

PRESIDENT GRAYBILL: All right, you have heard the motion, which is to tell this Rules Committee what to do and to get them started. Is there a **second? Mr. Romney.**

DELEGATE ROMNEY: I note that the hour is getting late and the stomach is speaking up. The proposal sounds good to me, but it's long. I think it would be wise to have it reproduced so that all delegates may have possession of it, and we can take action on it after the recess.

PRESIDENT GRAYBILL: Now, Mr. Romney, I don't understand what you mean. You mean we would not vote on it now, or that we would have it reproduced even though we vote on it?

DELEGATE ROMNEY: I would like to know what I'm voting on. I think it should be reproduced so we would be able to ponder it, and then we can proceed. So, I move that we have it reproduced and that we consider it after therecess.

PRESIDENT GRAYBILL: May I ask you a question, Mr. Romney? Is it your understanding that the Committee could still get together and meet, or are they powerless until we—

DELEGATE ROMNEY: If everybody is aware that this will be before us, about all we can do now is to get together and decide when we are going to meet and where.

PRESIDENT GRAYBILL: All right—

DELEGATE ROMNEY: In the meantime, we're operating-have been operating in a vacuum without any rules.

PRESIDENT GRAYBILL: Well, we've got rules, now, but no Rules Committee. But the Chair understands that there was an amendment to the motion. So there is an amendment that the motion be made available to the delegates and that they will not consider it at this time.

Is there any discussion on the amendment?

(No reply.)

All right, we'll open the vote. All in favor of the amendment that we have this reproduced and then we vote later on the duties of the Rules Committee, or the outline of what the Rules Committee can do, please vote Aye. All those opposing that motion vote No. The vote is open.

Have all the delegates voted? Do any delegates wish to change their vote? The vote is closed. Will the clerk announce the vote?

SECRETARY MARSHALL: Mr. President, **52** have voted No, 42 have voted Aye.

PRESIDENT GRAYBILL: All right, the amendment has failed. We are now considering Mr. Nutting's original motion that we direct the Rules Committee, according to the tenor of his motion, to proceed and report back to us. Is there any further discussion?

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Magnus Aasheim, District 4. The hour is getting late, as Miles Romney said. This is a rather lengthy resolution, and in view of the dinner hour, I move that we recess, subject to the call of the Chair.

PRESIDENT GRAYBILL: The motion has been made that we recess, subject to the call of the Chair. No one is required to second. Is there any discussion? It's nondebatable. All right, it's amendable, but not debatable. Any amendments? If not, we'll vote now. The vote is now open on whether or not to recess, subject to the call of the Chair.

DELEGATE FELT: Mr. Chairman, a point of order-or a point of information. I would like to know if that clock is one hour off, or my watch is an hour off.

SECRETARY MARSHALL: That clock

hasn't worked in 10 years, Mr. Felt. You know that.

DELEGATE FELT: Mr. Marshall, you also know that you have to put your question, sometimes, in a rather ridiculous manner to get to the point. Everyone's looking at that clock and saying it's late.

PRESIDENT GRAYBILL: It's 12:25.

All right. Now the vote is now open on whether or not to recess, subject to the call of the Chair, and those in favor of that motion vote Aye, and those opposed to that motion vote Nay.

Have all the delegates voted? Does any delegate wish to change his vote? The vote is now closed. Will the clerk announce the vote on recessing?

SECRETARY MARSHALL: Mr. President, 62 have voted Aye, 35 have voted No.

PRESIDENT GRAYBILL: The Chair would like to announce that it will attempt to see if we can't get these matters straightened out, and we probably will have a call of the Convention yet this afternoon, so don't go away. I guess we stand in recess.

What time? All right, the Chair would say about 3:30. We are in recess until 3:30.

(The Convention recessed at 12:30 p.m.—reconvened at 3:30 p.m.)

Afternoon Session

PRESIDENT GRAYBILL: Will the delegates please now be in order.

Has the rules-the temporary Rules Committee returned to the floor?

Mr. Marshall, do I understand, Mr. Marshall, that you've been designated the Chairman of the temporary Rules Committee-Murray, pardon me. Marshall Murray.

DELEGATE MURRAY: Mr. President, the Rules Committee-the temporary Rules Committee has met and I would like to report that I was elected the chairman of that committee and Leslie Joe Eskildsen has been elected the vice-chairman of that committee, and I move the adoption of that committee report. I guess we don't need to move that adoption. All right.

PRESIDENT GRAYBILL: All right. Hearing no objection, we'll assume that you're the chairman and that Mr. Eskildsen is the vice-chairman.

DELEGATE MURRAY: Fine, thank you. All right, for the next matter. I think there's some doubt as to whether or not there is a motion before the Convention.

PRESIDENT GRAYBILL: Mr. Marshall informs me there is no motion, but that the matter handled here could be handled, perhaps, at the end of the day as to the directions to the Rules Committee as to what to do with your final report.

DELEGATE MURRAY: For the rest of my report, then, and in order to alleviate any doubt, I would request that Mr. Nutting withdraw his motion if, in fact, he's made it.

PRESIDENT GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman—President, I withdraw my motion until a future date.

PRESIDENT GRAYBILL: All right. Now, Mr. Murray, do you have a report from the temporary Rules Committee on the problem of the vice-presidency, or the officers?

DELEGATE MURRAY: Mr. President, let me explain how we went about this matter. We discussed the matter of the procedural committees and the matter of the substantive committees first, and arrived at a result. We also arrived at a recommendation regarding the appointment of those committees. Now, we understand that after doing so, that it is the interest of the president of this Convention to have the statutory vice-president elected so that these committees could be selected, if they are adopted or accepted by this Convention. In this respect, we ran out of time. It is the consensus of the temporary Rules Committee that there should be three elected vice-presidents. We could not determine their specific duties within the time limit of our meeting and, therefore, it is the report of this committee, at this time, that the Convention shall elect a first vice-president-or the statutory vice-president, who shall have such duties as the president assigns during the 3-day

organizational meeting, now and I move the adoption of that committee report.

Now, may I speak to it, Leo, for just a moment?

PRESIDENT GRAYBILL: May I make one request for clarification? Do I assume, then, that when the committee finally reports, it will have come in with some duties for this vice-president, permanently?

DELEGATE MURRAY: We are in doubt as to that.

PRESIDENT GRAYBILL: Well, in any event, at the moment, do you want to get him elected?

DELEGATE MURRAY: At the moment, I— it is the consensus of the committee that we would like to have the vice-president referred to in The Enabling Act elected so that he can meet with the president and they can perform the function of appointing the various members to the committees.

PRESIDENT GRAYBILL: (inaudible— both speaking at once) Could the Chair understand that he, at least, would have the duties assigned him by The Enabling Act, of taking over if anything happens to me?

DELEGATE MURRAY: At least those duties, yes. We contemplate that.

PRESIDENT GRAYBILL: All right. Now, that's your motion. Do you wish to speak to the motion, Mr. Murray?

DELEGATE MURRAY: No. With that explanation, I think that's sufficient.

PRESIDENT GRAYBILL: All right. You have heard the motion of the chairman of the temporary Rules Committee that we proceed to elect the statutory vice-president, that he have such duties as the chairman assigns-as the president assigns him for the 3-day period, that he have, certainly, the statutory duty of replacing the president in the occasion of my sickness or absence, and that the Rules Committee will come up with other rules for the remainder of the officers at a later date.

Is there any discussion about this proposed rule-or this proposed resolution by the Rules Committee?

(No reply.)

Are you ready for the question? No? Mrs. Payne.

DELEGATE PAYNE: Did I understand Mr. Murray correctly to say that you are going to elect three vice-presidents? Is this what you recommended?

PRESIDENT GRAYBILL: (inaudible) I'll give you Mr. Murray.

DELEGATE MURRAY: Mr. President, Mrs. Payne, it is the consensus of the committee, and I'm sure this committee will eventually report out the recommendation, that this Convention elect three vice-presidents.

DELEGATE PAYNE: But at this particular time, it would just be voting on whether or not to elect one?

DELEGATE MURRAY: That's correct.

PRESIDENT GRAYBILL: Is there other discussion on the resolution? Mr. Berg.

DELEGATE BERG: Mr. President, Ben Berg from District 11. I should like to inquire as to whether the first vicepresident is to join with the president in its selection of committees, or do I misunderstand that?

DELEGATE MURRAY: Under my suggestion, that is true because I move that he shall have such duties as the president assigns him, and by that, I mean after talking with the president, that he wants the vice-president to meet with him so that the committee assignments can be made.

DELEGATE BERG: So that this is at least one duty that will now be undertaken by the first vice-president? And other duties are to be assigned by the Committee on Rules later?

DELEGATE MURRAY: The recommendation will be made by the committee later. We're in doubt as to whether each of the vice-presidents, as in the case of one of the conventions, should have the duties assigned by the president, or whether

the rules themselves should spell out their duties, and we're trying to iron that out amongst us.

PRESIDENT GRAYBILL: The president will announce that it would be his intention to confer with such a vice-president on any committees that were appointed, if the Chair had anything to do with those committee appointments.

Is there further discussion? Mr. Felt.

DELEGATE FELT: Your last comment may have clarified the question I had because I did not recall, at least, whether we had given authority for committee assignments to any person, president, vice-president, or committee, or any group, but it seemed to be assumed that both would have powers. But that really has never been acted upon, and there actually could be-certainly be some question.

PRESIDENT GRAYBILL: I think you're correct that I, certainly, have no power to do that, and we'll see what they come in with. But if I do have any power to do that, then I'm going to confer with the vice-president on that.

Mr. Murray.

DELEGATE MURRAY: Mr. President, with respect to the question of Mr. Felt, we considered that, and that is why this motion contains the language "such duties as the president assigns him," because we are about to take up the other issue. We have a recommendation with respect to the appointment of committees.

PRESIDENT GRAYBILL: All right, is there further discussion on the motion?

(No reply.)

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, we're voting-on the res-on the rule-on the temporary Rules Committee's first resolution, that we proceed to elect a first vice-president, who would have the statutory duties, who would have such other duties as assigned by the president during the first 3-day session, and the president has already indicated that this would include going over committees with the first vice-president, if the chairman has any such right, and that we proceed after we approve this, to elect such a vice-president.

The vote will now be taken by the machine. The vote is open. Those in favor of the resolution vote Aye, those opposed to the resolution vote No.

Have all the delegates voted? Do any delegates wish to change their votes? If not, the Chair will close the vote. Mr. Clerk, will you tally the votes?

SECRETARY MARSHALL: Mr. President, 99 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: Very well. I take it that the Convention, then, is ready to proceed to the nominations for first vice-president—statutory first vice-president.

Nominations for statutory first vice-president? Mrs. Robinson.

DELEGATE ROBINSON: Mae Nan Robinson from District 18. The delegates of this Constitutional Convention are, for the first time, representing a new constituency in Montana. That constituency is the 18-, 19-, and 20-year olds who were given the privilege to vote. It's my hope, that this Convention will see fit to involve the youth of this state in the formulation of this Constitution at all phases and in all aspects.

In judging from the number of young delegates in this Convention, it's further my hope that the Convention will see fit to grant some positions of responsibility to some of the younger delegates.

At this time, I would like to nominate, for the office of vice-presidency of this Convention, a man who has gained the respect and trust of both the young and old. And in nominating this person, I would like to read a letter that appeared in the *Missoulian* November 12th. This letter was written by a Mr. Ed Bursette, an unsuccessful Democratic candidate for the Constitutional Convention. The letter reads:

"The voters of District 18 have selected an excellent slate of candidates. The leading candidate in the primary was John Toole. The leading candidate in the general election was John Toole.

All delegates trying for the Convention favored a Convention that would be nonpartisan. John Toole has acquired the qualifications for the selection as the presiding officer of the Convention. He has experience in government, the ability to get along with people; and is fair-minded in his dealing with others. I sincerely hope that our delegates will start at once to promote John Toole for the prestigious office of chairman of the Constitutional Convention."

As a delegate of Missoula County, District 18,

I would urge you to support John Toole, a man who will unite rather than divide this Convention, a man who will lead rather than push, a man who will speak rather than shout, a man who has put Montana above party and above political ambition. I present John Toole, a man for Montana.

PRESIDENT GRAYBILL: Is there-if any of you are seconding, I'd like to know that.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE: Mr. President, a point of order.

PRESIDENT GRAYBILL: Excuse me, I'll take the point of order.

DELEGATE: Mr. President—

PRESIDENT GRAYBILL: State your name and—

DELEGATE: Maurice Driscoll, District 20. Before we go any further in the proceedings at this Convention, I think we should do it legally. We have one delegate who has not yet been sworn in, and is participating in the organization of the Convention.

PRESIDENT GRAYBILL: The Chair happens to-the delegate, Mr. Dahood has seen the Chair and has been sworn in by the Chief Justice and filed his affidavit. I'm sorry that I did not announce it. The records from this time forth should show that it has been done, and we aren't going to let him vote unless he did it, but he did it, so we're okay, Mr. Driscoll.

Now, Mr. Schiltz. (Clapping — Applause)

DELEGATE SCHILTZ: Mr. President, it's with a great deal of pleasure that I have this opportunity to second the nomination so eloquently made by the lady from whatever district Missoula is in.

I have known John Toole for almost 35 years. I'm going to be very brief and I'm going to say the best thing I can say about any human being, in my opinion, and that is that he has the absolute honesty and the absolute integrity to do the job that this Convention needs at this time to project ourselves as a serious and a good body, and it's with great-a great deal of pleasure that I second the nomination.

PRESIDENT GRAYBILL: Thank you. The delegate—

DELEGATE: Bob Campbell, District 18 in Missoula.

PRESIDENT GRAYBILL: Yes, Mr. Campbell.

DELEGATE CAMPBELL: I'm a Democratic delegate from Missoula, and I would also like to second the nomination of John Toole.

The Toole family, of course, since the beginning of Montana history, has been very active in public service. John has continued his fine family tradition through his service to the State, to the county and to the local governments.

As a Republican, he is endorsed by every organization and group in Missoula, including labor. We feel that his past service and his capabilities and personal integrity cannot be questioned. It gives me great pride to second that nomination, and personally recommend that he be elected by this Convention.

PRESIDENT GRAYBILL: Are there other nominations for the office of first vice-president? Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I'm not going to belabor the point, you all heard Sterling Rygg speak yesterday and you're familiar with his views, and he would be interested in being a candidate for vice-president, and I would like to place in nomination the name of Sterling Rygg from Kalispell.

PRESIDENT GRAYBILL: Are there seconds for Sterling Rygg? Seconds are not required, but are there seconds?

All right, are there further nominations for the office of first vice-president? Are there further nominations for the office of vice-president? Mr. Kelleher.

DELEGATE KELLEHER: From District 8, Mr. President. There is a young man who's made a terrific impression on me the first time I met him in 1964, and in the 7 years since that time, I've only grown to greater appreciate his integrity, his honesty and his capability, and that man is Marshall Murray of Kalispell, and I'd like to nominate him for the office of first vice-president.

PRESIDENT GRAYBILL: Marshall Murray has been nominated, are there further seconds?

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray, I'll recognize you.

DELEGATE MURRAY: I'm flattered by this nomination, but it is not my desire to serve in this capacity, and therefore, I respectfully withdraw.

PRESIDENT GRAYBILL: Mr. Murray has withdrawn his name.

Are there farther nominations for first vice-president of the Constitutional Convention? Mr. Cate.

DELEGATE CATE: I would move that the nominations be closed.

PRESIDENT GRAYBILL: All right, just a moment. I don't want to cut it off. I'd like to say three times, are there any further nominations?

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Driscoll.

DELEGATE: Dave Drum, District 8.

PRESIDENT GRAYBILL: Oh, Mr. Drum. Excuse me.

DELEGATE DRUM: Before the nominations are closed, it appears that no more nominations are going to be made, and I would-would request, on behalf of a consensus of the non-Democratic delegates, that this unorganized group be allowed the use of the voting machine as a method of selecting a vice-president of this Convention.

As a courtesy to this group, we would request that the Democrats present abstain from voting, and that only the totals for each candidate, as indicated by an Aye vote on the voting machine, be read as the total. The machine would then be cleared and the next candidate voted upon.

The non-Democratic delegates, which includes those identified as Independents, are invited to partake in this voting, and we hope that they will include themselves.

We feel a principle is involved here, and the secret ballot has been one that we have revered-revered for many years, and we feel that it is applicable in this case, and we would appreciate this courtesy from the Party.

PRESIDENT GRAYBILL: All right, Mr. Drum, if I understand the sense of your suggestion, or your motion-is it a motion? Let's make it a suggestion a minute. It is, that the Democratic members let the Republican and Independent members vote independently on this matter and abstain, and then, if that's allowed, you want to use the voting machine and, I take it that-do you want to use the voting machine and once for one candidate and once for the next candidate?

DELEGATE DRUM: Yes.

PRESIDENT GRAYBILL: All right, now we understand that, and before we make a motion on it, the Chair would like to have the sense of any Democratic delegates here as to whether there is any Democratic delegate that objects to abstaining on this expression of opinion by the Republican Party while we're in the House, so that they don't have to move over to the Senate and do this.

Hearing no objection from the Demo-oh, wait a minute. Mr. Cate, do you want to talk? I'm looking for Democrats, Mr. Habedank. All right. Fine.

DELEGATE CATE: I really thought George Harper would get up on this, but aren't we getting back to this thing we've been trying to get away from, division on the basis of parties? I'd like you to consider that, Mr. Drum. And-I think we're just aggravating the situation by making that type of division.

The opportunity was presented to the Republicans to caucus if they wanted to. They didn't take advantage of that opportunity, and I would like to have the opportunity to cast a vote for vice-president for John Toole. Thank you.

PRESIDENT GRAYBILL: Let me ask this question: Are there any Republican or Independent members here who object to this procedure?

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: There's one Republican member here who objects. I think it's about time we buried the hatchet as far as partisan politics are concerned, and I'm perfectly willing for this body as a whole to elect whoever they see fit to vice-president.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Berg.

DELEGATE BERG: As a Republican, I want to see all officers of this Convention elected by all delegates.

PRESIDENT GRAYBILL: All right, we have heard from you. Mr. Mahoney.

DELEGATE MAHONEY: I agree with Mr. Berg, that we don't want any more division, and that with all due respect to Mr. Drum's remarks, I would like to see it one vote because we got to have it seconded and we can't be letting this-1 would like to-1 would question-I would think this is probably poor strategy.

PRESIDENT GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: District 13. I would just like to second the last three statements that have been made. I think that the faster we forget any party designations in our deliberations and everything, the better off we will be.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I'm a Republican from District 19. I agree with my fellow Republicans who have indicated the entire assembly should vote on the candidate for vice-president. I think the man nominated, John Toole from Missoula, is an excellent choice, and I think the entire delegation should have the privilege of voting upon his candidacy.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Carl Davis, District 21. As long as this matter is before the floor, let's give some serious consideration to not having any more caucuses throughout this entire Convention. (Applause)

PRESIDENT GRAYBILL: All right. Now, we had a suggestion which was not made in the form of a motion. The Chair certainly does not want to stop it from being made into the form of a motion. The Chair, without expressing any opinion as to whether either side is right, is perfectly willing to entertain a motion from the Republicans for a recess, if you do want to caucus, or it's perfectly willing to go ahead.

Do any Republicans 'want to make a motion one way or the other?

If none are made, the Chair will proceed and ballot the whole group. If you want to make a motion to do what you suggested, Mr. Drum, or if you want to make a motion to recess, somebody do it.

DELEGATES: Question.

PRESIDENT GRAYBILL: I take it from the "question," from the fact that some of you are ready for the question, that we can go ahead and vote the whole delegation on Mr.-the whole Convention on Mr. Toole and Mr. Rygg as candidates for first vice-president.

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. Now the Chair, then, is ready to put the issue of whether Mr. Toole or Mr. Rygg will be the first vice-president, and I would think in line with what we did this morning, then, that the way we would do it is on roll call vote, and the members would answer by stating the name of the candidate for which they wish to vote. Now, that's what the Chair is, at the moment, considering doing.

Mr. Arbanas.

DELEGATE ARBANAS: Delegate Arbanas from District 13. I'd like to make a suggestion to the Chair. I know neither of these gentlemen, and I would appreciate a chance to have them speak to this assembly for a short moment, to make a responsible judgment.

PRESIDENT GRAYBILL: The-both of these members spoke yesterday at the caucus; however, I would certainly be willing to have both of them stand.

Are you, Mr. Rygg, on that issue?

DELEGATE RYGG: Would it be in order for me to withdraw my name now? I think we could save a lot of time and-in the best interest—

PRESIDENT GRAYBILL: We always like to hear those withdrawals, Mr. Rygg.

DELEGATE RYGG: Well, I-I think it would be in the best interest for me and everybody to give it to Mr. Toole, and if I could withdraw from that, I would do so now.

PRESIDENT GRAYBILL: Let's see. Mr. Rygg was nominated by Mr. Nutting. Now, Mr. Nutting, would you consent to the withdrawal? There's been quite a lot of time go by. I don't want to put you in a bad position.

DELEGATE NUTTING: I defer to Mr. Rygg's judgment.

PRESIDENT GRAYBILL: Mr. Rygg, do I understand that you would now like to withdraw as a candidate?

DELEGATE RYGG: That's right, and I would give it to Mr. Toole.

One other thing, Mr. President, while I have this mike in my hand, I have a reason for getting it. I thought I should get up once and use it before my seatmate wore it out, so I'd just like to have the opportunity to try it. (Applause)

PRESIDENT GRAYBILL: Mrs. Robinson, would you care to make a motion to cast a unanimous ballot of this convention in favor of your nominated candidate?

DELEGATE ROBINSON: It would give me great pleasure to make a motion to cast a unanimous ballot of this entire Constitutional Convention to Mr. John H. Toole as our first vice-president.

PRESIDENT GRAYBILL: All right. You have heard the motion, which is to cast a unanimous ballot of this Convention for John Toole for first vice-president of the **Montana** Constitutional Convention.

The Chair will open the voting, and those in favor of that motion vote Aye, those against that motion vote No.

Have you completed voting? Have all the delegates voted? Any delegate want to change his vote? The Chair will close the vote. Mr. Clerk, will you tally the votes for the motion?

SECRETARY MARSHALL: Mr. President, 95 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: The motion having been sustained 95 to 0, the Chair will request that the record of this Convention show a roll call-on the roll call issue, will show a unanimous vote of this Convention for John Toole for first vice-president.

SECRETARY MARSHALL: As temporary secretary of this Convention, I hereby cast a unanimous ballot for John Toole of Missoula for vice-president, a Montana delegate for the Constitutional Convention. John Toole. (Applause)

PRESIDENT GRAYBILL: The Chair would ask that Delegate Otto Habedank and Delegate George James escort Mr. Toole to the podium for introduction.

John, it's my sincere pleasure to congratulate you on that, and I would like to present to the Convention, John Toole, who's been elected your first vice-president. And John, bearing in mind that we're all going somewheretonight, would you care to say a word or two to the Convention?

DELEGATE TOOLE: Mr. President, it would be only a word or two. I'm really overwhelmed by all of this. I'm humble and proud. I'll do my very best, and thank you all so very much. (Applause)

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Chet Blaylock, District 8. If it is in order at this time, I should like to move that the delegates to this assembly remain seated in alphabetical order, as we are now.

PRESIDENT GRAYBILL: The Chair was considering a report of the Rules Committee, and we're only partly through it; however, before we adjourn tonight, I would call upon you, Mr. Blaylock, to make such a motion so that we'll know what to do tomorrow morning.

So, if you would allow-if you would withdraw your motion temporarily, we'll consider it, continue the Rules Committee, and when we finish, and before we adjourn-before we recess, we'll come back to you.

DELEGATE BLAYLOCK: I'll withdraw then.

PRESIDENT GRAYBILL: All right, then, now back to Mr. Murray, the chairman of the temporary Rules Committee. Have you a second part of your temporary, or your first, report concerning committees for this Convention? Mr. Murray.

DELEGATE MURRAY: Mr. President, we, your temporary Committee on Rules of Organization, respectfully report as follows. The following committees were established as the permanent committees of the Convention.

Procedural committees:

- Administrative.
- Rules and Resolution.
- Public Information.
- Style, Drafting and Transition.

Substantive committees:

- Bill of Rights, Suffrage and Elections.
- Legislature.
- Executive.
- Judiciary.
- Local Government.
- Revenue and Finance.
- Education.
- Public Health, Welfare and Labor.
- Natural Resources and Agriculture.

General Government and
Constitutional Amendment.
Now, let me go through those again—

PRESIDENT GRAYBILL: Now, Mr. Murray, may the Chair observe for the delegates that the committee has caused to be printed these sheets, on which you have indicated preferences. Now, I want it clear, that by handing these out we are not suggesting that these are the final or official committees until this action-this body has acted upon them, but we want you to be able to look at them and have them in your hand.

We may amend them or we may change them, we may add or subtract to them. At least this will give everybody, in his hand, an idea of who the committee-of what the committees are. Then, when we have finished adopting what the committees shall be, you can amend those sheets in your hand, and then you can write in the names of the committees you want to be on before we leave tonight. But there is no suggestion, as I understand it, from the Rules Committee, that this is their proposal, and you don't have to adopt it this way. This is so you'll see what you're doing.

Okay, Mr. Murray.

DELEGATE MURRAY: Mr. President, we, as the Committee of Rules, move for the adoption of this committee report. And now may I speak to that motion, please?

With the assistance of Dale Harris, we analyzed, as all of us I'm sure have done since we became candidates for this Constitutional Convention, the various material given to us-furnished to us with respect to what other conventions have done relative to procedural committees and substantive committees, and have attempted to weigh, as best we can, the problems inherent in the State of Montana and in our existing Constitution.

We feel that the procedural committees, as such, are relatively standard. The Administrative Committee would be the housekeeping committee, related to the operation of the Convention, and the hiring and firing of the staff, and this sort of detail.

The Rules and Resolutions Committee would be doing that work that this temporary committee is now doing.

The Public Information Committee is the committee which we envision-and others in other states have envisioned-as being the committee which assumes the responsibility of conveying to the public the work and the progress of the Convention itself.

And the committee entitled Style, Drafting and Transition has to do with, we hope, the spirit of the entire document itself, the style of the language and the drafting of each of the sections and articles involved. And the word "transition", we trust, has to do with the dovetailing of all of these provisions into one document, and the matters related to the transition of that document, and how it might relate to various statutory provisions which presently exist-or should exist-after the adoption of the Constitution, if it's adopted.

Now, are there any questions with respect to those four committees that we entitled procedural committees?

PRESIDENT GRAYBILL: Questions on the procedural committees?

(No reply.)

DELEGATE MURRAY: There being none, let me discuss, briefly, the substantive committees.

First of all, we recognize that this Convention will have a great deal of work on some matters, and not so much on others. Now, we have attempted to design these committees so that they will, as much as possible, have, each of them, a substantial work load, and so that none of them will be considered to be light work loads, or unimportant, or uninteresting committees to serve on.

And we considered, with respect to the Bill of Rights, Suffrage and Elections, that these matters can be handled under one committee. Certainly the Legislature itself, the Executive, the Judiciary, Local Government, Revenue and Finance, and Education speak for themselves.

Public Health, Welfare and Labor is a committee which we designed after looking at the various committees proposed and used in the other states, feeling-and after discussion with Dale Harris-that they are all matters that this committee could well consider, and that it might be a significant committee by itself.

Natural Resources and Agriculture has been suggested by us because of the considerable interest, in our area and others, according to the Temporary Rules Committee during the campaign, with respect to natural resources. And we felt even though natural resources automatically included agriculture in most of our eyes, that it might be nice to say "Natural Resources and Agriculture," since some of the other conventions have done so.

And the substantive committee entitled General Government and Constitutional Amendment. The Constitutional Amendment portion of that concerns itself with revision and amendment, and the General Government portion of that is what we would call our miscellaneous, or catch-all, type committee-which-and I'm not suggesting that it would, because this matter would just, ofcourse, be in the discretion of the president, subject to veto, I guess, by the members of the Convention itself-such things, perhaps, as lottery, gambling and things of that nature.

We feel that there will be many matters of considerable import which would be referred to that particular committee, in addition to the duties assigned thereto, entitled Constitutional Amendment.

PRESIDENT GRAYBILL: Are there questions of the chairman of the temporary Rules Committee concerning the substantive committees? Mr. Harper.

DELEGATE HARPER: George Harper, District 12. Mr. Murray, did your committee consider, at all, a kind of committee which might be called a "General Review Committee," and I'll just tell you what I had in mind.

I note in reading the Model Constitution book, and the suggestions from people who went through other constitutional conventions, that when you get all done with your individual committees doing their work and drawing up their parts of the bill, still the whole constitution is to be a unified document, needs to be styled in other ways,and sometimes it's important to get together all of these factors.

I would have a suggestion, if your committee didn't discuss it, to see what your reaction would be; mainly, that the chairman of all of these committees, meeting on the call of the president of the Convention, be named as a "General Review Committee."

DELEGATE MURRAY: I appreciate your suggestion, but let me say that I believe we did consider this matter. I think it's the consensus of the committee that that work be procedural—considered procedural rather than substantive and, therefore, we consider it to be within the responsibility of the Style, Drafting and Transition Committee, and we hope that that committee would undertake the-have the spirit of this Convention at heart, and hopefully that it will assume those duties. I suppose, that there being no other committee, and if that burden is placed on that committee by the president, that that duty will be so assumed.

DELEGATE HARPER: Mr. Chairman, George Harper, District 12. I'm not pushing this, it's just that we ought to take the time now to do what we think we need to do.

I mentioned style. I should have been more specific. I'm not concerned so much about style, perhaps, as the idea that when we have 10 committes, we're going to have committees that naturally deal with-in some areas, with the same thing. There's going to be an overlap, and somewhere in the process there ought to be a chance for us, not just at the end of the process after all the committees have worked and handed out their individual opinions.

There must be some way, I think, so that we can share what's going on, and I think maybe an occasional meeting of the chairmen might do this. I called it a "General Review Committee." Maybe it needs no name at all, but there's somewhere along the line, the chairman of the Legislative Committee could say to this group, well now, this is what we're dealing with. And somebody else could say wait a minute, we're talking about that same thing. And if it's obvious there's going to be a disagreement, then maybe they'd go back to their committees and ask them to, you know, to consider something a little bit different, or to consider what the other people are doing.

This is the area I'm thinking in. I have no definite proposal to make particularly on it.

PRESIDENT GRAYBILL: Mr. Harper, Mr. Harris has pointed out that in some conventions, the chairman or president later appoints such a committee to do that, and I think that the temporary Rules Committee chairman--I'd like to ask you this: Isn't it the understanding that we can add to committees, or change committees later on. This is a skeleton to start working with. May we not add committees later on?

CHAIRMAN MURRAY: Mr. President, it's my understanding, that we can change our rules at any time we so desire.

PRESIDENT GRAYBILL: I'm not suggesting that we shouldn't make the change now, Mr. Harper, but I think it is possible to do exactly what you say, even with this structure.

CHAIRMAN MURRAY: Mr. President, may I also say that this matter has been expressed to me by other delegates. They are concerned with

this, and I think that if it's within the scope of the duties of the temporary Rules Committee, we'll give this matter further consideration.

PRESIDENT GRAYBILL: Are there other questions concerning the substantive committees? Mr. Monroe.

DELEGATE MONROE: I had a question for Mr. Murray.

I was wondering; in some of the constitutional conventions, I noticed public lands was on one of the committees. I didn't notice it here specifically, but in your mind, does that fit within, say, Natural Resources and Agriculture-the public lands?

CHAIRMAN MURRAY: I refer that to Mr. Harris. We did discuss that. Where does that seem to lie within this group of committees?

MR. HARRIS: I would defer that to the president when he assigns the committees. It would appear to come under Natural Resources.

CHAIRMAN MURRAY: I think that was the consensus of the committee, yes.

PRESIDENT GRAYBILL: Are there other questions of the temporary Rules Committee chairman on the substantive committees? Mr. Felt?

DELEGATE FELT: (inaudible first sentence) I wonder if there is any-and this is a very important decision, of course, and though it may be tentative, it is quite likely that it will structure the work of the Convention, and any changes, if they occurred, would probably be rather disruptive, at least if we were to consolidate some committees, or to abolish them.

The matter of public lands, for example, dealt with natural resources more than education, and could become kind of confusing, and I would like a little time, I think, myself, to consider that type of question, just as one example.

I'm also concerned as to whether we are-perhaps we're not setting a precedent, I hope, because I'm in hopes we're going to have public hearings of committees, for a very good reason, so the people can present their thoughts to the committee prior to the time the committee reports to the Convention. And it will not be necessary for us to answer these questions, so called, but actually make our suggestions while we are here taking up the time of the whole Convention.

I would be quite interested in knowing the possible number of members of the different committees. I think if I knew that I would be more certain whether I liked or disliked the names given to substantive committees.

Because of the total importance of the question, I would wish for a little more comprehensive statement of the reasons for designating the names of some of these committees. Some are quite self-explanatory, but some are not, and I would like to know, too, if the committee expects us to vote here immediately, today, or whether they might contemplate a public hearing at which not only delegates, but any persons who have perhaps been working for 10 years or so on this question and have things on their mind that they would like to express, to give us the benefit-or give the committee the benefit of their thoughts.

Perhaps I have a strange feeling that-I'd almost like to know how this happened to be handed while the committee report was being read to us, and just how much the committee really was able to-how much time and thought and analysis they have been able to submit, and who they've heard from, and find out what they have considered.

(Inaudible)...all of this, particularly because I feel we may be making decisions here without full knowledge ourselves, without the opportunity for the public to participate. To my knowledge they haven't even been invited, and perhaps if they were invited, and given some time, they would appear. Or perhaps they would not. Perhaps they don't care, but I sure would hate to see this first committee report-and one on a matter of great magnitude-presented to us without knowing that all the people in the State of Montana were given some opportunity to present their thoughts.

Now, I may be all wrong on all of this, but I would certainly hate to be asked to vote right now on all this, without knowing the numbers, without knowing such things as what committee will be dealing with the question of our school lands, what will be the Natural Resources Committee, the Education Committee, and possibly other questions which I just would not want to take your time now to (inaudible) bring up.

But I did want a chance to bring it up because I know it's common in many other states to split the Legislature Committee up into two, one of which deals with the structure of the legislature and the other with the general powers of the legislature, and there seems to be considerable approval by the text writers and persons with much experience in legislative and constitutional revision, for that type of a division. And I suppose it could be handled through subcommittees, and it could be

brought to you in some other ways, but it would depend upon how many members there might be on all the legislative committees, and it just seems like an awful big order.

But, of course, I am completely in the dark as to what the committee has contemplated for the next 2 days, but having elected our general officers, as called for, it would appear to me that we are proceeding at a very commendable pace-and we hope that we will always do that-but we cannot lose track of the axiom involving haste makes waste, and that full consideration must be given to matters of great importance.

I thank you for your time.

PRESIDENT GRAYBILL: Mr. Felt, the Chair would like to respond to one portion of your statement.

The Chair asked the temporary Rules Committee, when it began its session at 2:00, to consider the committees first, and when it had completed consideration of the committees, to send the list to this office so that this memorandum that you have before you could be prepared.

The reason for this, is that the Chair is anxious--regardless of how the committees are appointed-the Chair is anxious to get started with that task.

I am convinced, personally, from talks with many of you, that probably the most important next thing to the delegate, is to find out what he's going to be doing here, and we want to get that on the road.

So, it's because of my request that they do that, and it was typed while they did consider the other matters, but it was not typed in advance, and it has, in fact, been typed since 3:O0. So, that answers that.

Mr. Murray, did you have any other points to make?

DELEGATE MURRAY: Although it was not announced by anybody after this-the appointment of the temporary Rules Committee, the committee meeting was public. There were guests. Nobody did ask to speak.

And, as far as our consideration of the matter is concerned, we counseled extensively with Mr. Dale Harris. We reviewed the various books and documents that we had. All of us, I'm sure, have been through this several times on our own in advance of the committee meeting, and we also consulted, at length, with Mr. President.

I-with respect to the proposal of the public hearing, relative to the-the names of the substantive committees, let me say this. I-I feel, and I think the committee feels, that we have covered all of the matters which might come forth during this Constitutional Convention under the titles of these committees as we have them now labeled. With perhaps one suggestion.

It occurs to me that most of the lands in the State of Montana that are public owned, relate in some way, shape or form to education, and it might be that that particular committee could be entitled "Education and Public Lands," if that meets with the consensus of the Convention itself. But I do really feel that there is little need, if any—in fact, none, as far as I'm concerned, to have a public hearing, or invite people other than delegates to address themselves to the issues of the names or titles of the substantive committees themselves.

Of course, all of those matters which will be considered by the Convention will be heard publicly, those substantive matters considered within each of the committees, and I submit that that probably is the time to have the public hearings, rather than at this date.

I, for one, am interested in the committee assignment that I will have and, frankly, I urge that you give consideration to the early adoption of this committee report and the committees as we now have them labeled.

PRESIDENT GRAYBILL: Grace Bates.

DELEGATE BATES: Grace Bates from District-am I on? Grace Bates from District 11. I was wondering; what about a preamble. Perhaps putting a preamble and the Bill of Rights together, Suffrage and Elections and Constitutional Amendments under another--oh, you can't hear it? There, is that better?

Grace Bates from District 11. I was wondering about a preamble, and perhaps preamble and Bill of Rights should be listed under one committee and Constitutional Amendments and Suffrage and Elections, perhaps, under another.

This is just a suggestion, but I wondered if you'd considered a preamble.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Yes, we did give this matter consideration, and we felt that the preamble could be considered, I believe, if my memory serves, with the Bill of Rights, Suffrage and Elections.

We feel that the Bill of Rights, Suffrage and Elections Committee pretty well-we would have to consider-well, I think-we think that the

three-the four things are kind of, you know, they're intermeshed.

The preamble, in a sense, is a statement of declaration of rights and, therefore, we probably could have entitled the committee "Preamble, Bill of Rights, Suffrage and Elections," but our efforts were spent towards reducing the titles of the committees as much as possible so that any reports and journal, and all of this other matter that has to come, wouldn't forever have these long titles, and that matter was given consideration, and we think it fits within that committee.

We also think Suffrage and Elections fits within the Declaration of Rights subject, and should not be separate from it. We also thought that because we wanted to give a considerable work load to that particular committee.

DELEGATE BATES: Then you feel that—

PRESIDENT GRAYBILL: Now just a minute Mrs. Bates. Okay.

DELEGATE BATES: Then you feel that Constitutional Amendments, then, should not be with Elections and Suffrage?

DELEGATE MURRAY: I really don't think that-no, that's what's right, I don't think that it needs to be there, and again, we've put that down with General Government, so that there is something of interest in that field in that committee, in an attempt not to have any committees not important enough, so that people will want to serve on every committee.

PRESIDENT GRAYBILL: Are there other -Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. Chairman, I would like to move the adoption of the tentative committees proposed by the temporary Rules Committee.

Catherine Pemberton, District 1.

DELEGATE MURRAY: I second it.

PRESIDENT GRAYBILL: All right, we'll allow your motion to move the resolution and Mr. Murray to be a second.

Now, is there discussion-I don't want to cut off debate. Is there further discussion on adopting the temporary Committee's proposed procedural and substantive committees, with the clear understanding that at anytime we can-the Committee can-the Convention can either add or subtract from them? Mr. Skari.

DELEGATE SKARI: Chairman—Carman Skari, District 14. It seems to me from the reading I've done in our material, that the 10 committees might be possibly quite a number, and that we might be better off with perhaps a smaller number, more like eight or nine, or possibly even seven.

Often, too large a number of committees leads to a longer document. I think it would be a more unified document if we did try to hold these committees down, and possibly to combine some of them as Mrs. Bates suggested; Constitutional Amendment up here in the first committee and possibly, and I would suggest, General Government in with Local Government.

PRESIDENT GRAYBILL: All right, is there other discussion? Mr. Champoux.

DELEGATE CHAMPOUX: Rich Champoux from District 16. A question I would like, if it isn't out of order-two of them.

First of all, how many do they feel are going to be on-did the Rules Committee consider how many are on each committee?

DELEGATE MURRAY: May I answer that?

PRESIDENT GRAYBILL: Go ahead—

DELEGATE MURRAY: Our consideration in this respect was deferred until the president could have the desires and wishes relative to the committees you would like to serve on.

We know, at this time, that there are two or three committees upon which we should have many members, as opposed to some on which we should have fewer, and I think particularly of the Legislative and the Judiciary. Local Government is another in which there has been considerable concern expressed, and we thought, in all fairness to this Convention, that the expression from you people as to the committees you would like to serve on should help us in governing those numbers.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: The second question I would like to put to the committee chairman is; did they consider whether they were-how they were going to split up, in terms of two committees per person, or did you consider this at all?

PRESIDENT GRAYBILL: The number of members, Mr. Murray.

DELEGATE MURRAY: It is the consensus of the committee, that each delegate should serve

on one substantive standing committee, and that is the next recommendation-

PRESIDENT GRAYBILL: And isn't it also understood that some of the delegates could then also serve on procedural committees, although maybe everybody wouldn't be assigned to a procedural committee? Is that correct?

DELEGATE MURRAY: We considered that there would probably be 99 of us serving on substantive committees, and we really thought that perhaps only the president would not serve on, or have a role, in any special substantive committee.

PRESIDENT GRAYBILL: Well, what my question, Mr. Murray, is that people can serve on two committees, if one's procedural and one's substantive? Isn't that right?

DELEGATE MURRAY: That's right.

PRESIDENT GRAYBILL: I think that was the intent of the original resolution. Does that answer your question, Mr. Champoux?

DELEGATE CHAMPOUX: Yes.

PRESIDENT GRAYBILL: All right. Mr. Choate.

DELEGATE CHOATE: I'm Lyman Choate, delegate from District 2. I would say, after listening to this discussion, that Mr. Murray and his committee have worked these committee divisions out in pretty good order. There appears to be good background for the recommendations they've come up with. I think that with 100 delegates, or 99 to serve, we can easily handle 10 committees.

I agree fully with the appointment of only one delegate to one substantive committee. I would join Mrs. Pemberton on her motion, and I would like to second the motion that we adopt this procedure.

PRESIDENT GRAYBILL: Is there other discussion? Mrs. Bugbee. Just talk—

DELEGATE BUGBEE: I'd like to ask Mr. Murray; have you considered a group of people, or a small group of people, who would do the integrating between these committees, whether it be a vice-president, or a couple of vice-presidents?

It seems to me, you said 99 people, minus the president, but shouldn't there be a small number of people-say three or four-who would do nothing but the integrated work between, for instance, Finance and Taxation and Local Government? This is going to be one of the key things that is going to have to be integrated.

DELEGATE MURRAY: My statement is probably warped by my legislative experience, but it seems to me that at a given time, under the rules which we will propose, we will all serve in that capacity, and that as these matters are brought to this body-to the Committee of the Whole-or whatever that may be entitled, we should all have the opportunity to express our concern thatitmay conflict, or have some effect, on something that some other committee is handling, and then make an appropriate motion to take it out of discussion and to refer it to the other committee, or to consolidate those two things-get them in at that time.

However, I really think that the Style, Drafting and Transition Committee, through whom I envision, probably, that all of the completed sections or proposals would pass, at some time or other, would be also serving in that capacity.

PRESIDENT GRAYBILL: Is there other— go ahead, Mrs. Bugbee.

DELEGATE BUGBEE: I would just like to say that part of the problem with the Legislature is its lack of integration [inaudible sentence-two speaking at once followed by laughter].

PRESIDENT GRAYBILL: Is there other discussion?

DELEGATE FURLONG: All right, Mr. President. Furlong—

PRESIDENT GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I'd like to ask a question of Mr. Murray, if I might.

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE FURLONG: Mr. Murray, in discussing Education and Natural Resources, you suggested that perhaps Education might include public lands, since the majority of the public lands are educational lands.

My question is, will this then become a change in your recommendation of the adoption of this committee report?

DELEGATE MURRAY: I have not so moved, but I make that suggestion, and if you

wish to make a substantive motion to that effect I would concur in it.

DELEGATE FURLONG: Mr. President.

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE FURLONG: Is a motion to include public lands in with the Education Committee in order?

PRESIDENT GRAYBILL: I think a motion to amend the title of the Education Committee to be Education and Public Lands is in order. Do you wish to make such an amendment?

DELEGATE FURLONG: I so move, Mr. President.

PRESIDENT GRAYBILL: Motion's been made that the title of the Education Subcommittee in the resolutions proposed by the temporary Rules Committee be amended to include the word "and Public Lands," so that it now reads, "Education and Public Lands."

Is there any discussion on the amendment? (No reply.)

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. The Chair will open the vote, and all in favor of the motion to include Public Lands in Education vote Aye. All those opposed to putting Public Lands in Education vote Nay.

Have all the delegates voted? Does any delegate wish to change his vote? The Chair has closed the vote. Will the clerk tally the vote?

SECRETARY MARSHALL: Mr. President, 80 delegates have voted Aye, 16 delegates voted NO.

PRESIDENT GRAYBILL: By your vote, you have amended the title of the Education Committee to be "Education and Public Lands."

Is there further discussion of the proposed committees? Mr. Brazier.

DELEGATE BRAZIER: I'm Jeff Brazier from District 12. I just have a couple of questions with respect to this committee assignment blank.

Do I understand that when we vote on Mr. Murray's motion, that that closes discussion on the entire subject, or will I have a chance to ask a couple of questions?

PRESIDENT GRAYBILL: No. sir. We'll be glad to discuss the blank with you, if we know what we're going to be—

DELEGATE BRAZIER: Fine. Thank you.

PRESIDENT GRAYBILL: Any further discussion? Mrs. Eck.

DELEGATE ECK: I'd like to comment that1 think that during the campaign, we all discussed a good deal that our Constitution should be fundamental and not statutory. It appears to me that the inclusion of the section on Public Health, Welfare and Labor, Natural Resources and Agriculture, without any mention here of either industry or corporations which we have now, could open the door to a great deal of statutory material which really could better be omitted from the Constitution.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I'm not sure that that's—my comment was made by way of inquiry to me, but I will speak to it, anyway.

We feel, as the temporary Rules Committee, under the short time that we had to meet, that it is as important to delete from our present Constitution those matters which are obsolete, or which ought better be in the statutes and not in the Constitution, as it is to add things, and we don't believe that because we propose a committee to you, and something is proposed to that committee, or assigned to it as a duty, that you have to do something with it by way of enactment. We feel you can kill it.

PRESIDENT GRAYBILL: Or at least take it out. (Laughter)

All right. Is there any further discussion on the proposed substantive committees?

DELEGATES: Question.

PRESIDENT GRAYBILL: Are you ready for the question? Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. The Chair will put the resolution of the temporary Rules Committee that the procedural committees shown before you on the sheet, and the substantive committees, including the amendment, "Education and Public Lands," that these be the committee-that this be the committee structure of the Convention at this point. It's understood by

everyone that the body can add or subtract from these at a later date, but to allow assignment, this is the committee structure.

All those in favor of this committee structure signify so by voting Aye on the voting machines, and those opposed by voting No.

Have all the delegates voted? Have all the delegates voted? Does any delegate wish to change his vote? Okay, the Chair will close the vote. Mr. Clerk, will you tally the vote?

SECRETARY MARSHALL: Mr. President, 98 delegates have voted Aye, 1 delegate has voted NO.

PRESIDENT GRAYBILL: 98 delegates having voted Aye, and 1 delegate having voted No, you have adopted as your committee structure the procedural committees and substantive committees, as amended by the addition of the words "Public Lands," shown on the sheet before you.

Now, we are going to take up in a minute, if it's all right with you, how to appoint these committees, but to clear up the matter Mr. Brazier raised, it is theintention of the Chair, unless the Convention instructs him differently, to ask each of you to fill these out and put your name on them, and some of you have already expressed to me the fact that you want to meet as a delegation and see that you don't-that you get some spread among the delegation. And I would suggest that could be done immediately following our meeting, but the Chair would like to have these filled out this evening, so that whatever comes of how to appoint them, we could have them to work with, and the office could tally them and figure them out before tomorrow morning, so that we will have time early in the morning to start working on these committees.

Now, are there any questions about how to answer or fill out these blanks? Mr. Brazier.

DELEGATE BRAZIER: Mr. President, one question. One suggestion.

Do I understand that it's the recommendation of the committee that the delegates each indicate the order of preference on the substantive committees?

PRESIDENT GRAYBILL: I think we would consider the top line your first, the second line your second, and the third line your third preference, yes.

DELEGATE BRAZIER: Just a suggestion, it might be helpful for the committee on committees, if somewhere, on any available space, the delegates indicate what there is in their background that may tend to qualify them for the committee.

PRESIDENT GRAYBILL: I'm sure we have no objection to doing that. The staff tells me they've got some biographical data on us that we can refer to, but you certainly may add any comments you want.

Are there any other questions about the questionnaire?

(No reply.)

If you will see that the questionnaires get either to the pages, or to someone in the office before you leave, so that we can take cars of them overnight, we'd appreciate it.

Now, let's go on to the next matter. Does the temporary Rules Committee have any recommendations concerning how the committees should be appointed? Mr. Murray.

DELEGATE MURRAY: Mr. President, we further recommend the following rule regarding committee appointments:

"The president, after consultation with the vice-president(s)"-because we may have more vice-presidents-"shall appoint the committee members; that any appointment on the announcement, thereof, may be rejected by the majority of the members of the Convention prior to adjournment on January 19, 1972. Each member, except the president, will serve on one substantive standing committee."

This follows, very much, the Illinois proposal, as I understand it.

PRESIDENT GRAYBILL: If I understand the sense of the committee's recommendation, it is that the president appoint the committees, after consultation with the vice-president-or presidents-

All right. "The president, after consultation with the vice-president-or vice-presidents-shall appoint the committee members, but any appointment, on the announcement thereof, may be rejected by a majority of the members of the Convention prior to adjournment on January 19, 1972. Each member, except the president, shall be on one substantive standing committee."

The Chair would also like to point out that if there are appointments that take place later than that, it's the Chair's intention to always give a member 2 days, at least-1 think that's 2 days-to complain and have his assignment, even if it's late in the session, changed, if there is a new assignment. But, in other words, I take it, that January

19th is 2 days after we come back into session, is that right?

DELEGATE MURRAY: Two days-two days after we come back. That's right. It would be 3, I suppose. We come back the 17th...18th. The 19th would be the third day.

PRESIDENT GRAYBILL: Three days. Now, is there discussion?

DELEGATE: I move the adoption—

PRESIDENT GRAYBILL: The Chair has got a question, if nobody's got any discussion.

Is it the intent of the committee that the Chair not serve at all, or that the Chair be ex officio?

DELEGATE MURRAY: We haven't gotten to the rules about you. (Laughter)

PRESIDENT GRAYBILL: Okay, but at the moment-

DELEGATE MURRAY: I guess we're going to see how you behave.

PRESIDENT GRAYBILL: I'm a little behind everybody at the moment.

All right. Now, is there any discussion? Miss Reichert—Mrs. Reichert.

DELEGATE REICHERT: Arlyne Reichert, District 13. I know that, as soon as we were elected, we were very pleased that we were to have this initial session at this particular time, so that we would have time to know what committee we would be serving on and we have an opportunity between now and January to do some thorough studying in our particular area.

Now, if we are not pleased with our committee assignment, if we are to wait until January to request another assignment with the consent of the majority of the Convention delegates, we would not have that opportunity to do this studying in the area in which we're interested, and my question is, since we're proceeding at such a beautiful pace today, why could we not handle this Wednesday, if we are dissatisfied with our initial committee assignment?

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I'm not sure that I understand your inquiry. Shoot that by me again, will you please?

DELEGATE REICHERT: Well, if we are not assigned to the committee in which we are particularly interested, and if we would like to request that the majority of the delegates to assist us in having our committee assignments changed, and if it must wait until January before this change could be made, we will not be able to study in our respective area.

DELEGATE MURRAY: You've gotten to me. You're making an assumption that this proposal and recommendation does not consider. We feel that you could do that any time after the appointment, but not later than January 19, 1972.

If these committee appointments are made tomorrow, as I trust they may be, (Delegate Reichert: Yes) or Wednesday at the latest, you should have the opportunity to object then.

DELEGATE REICHERT: Oh. Fine. Thank you very much.

PRESIDENT GRAYBILL: Other questions? Mr. Brazier.

DELEGATE BRAZIER: My apologies to Mr. Murray. I was writing feverishly my selections for committee when you stated your recommendation, or your motion, and as a result, it went over my head.

I'm not clear whether it's your recommendation that the Committee on Committees would be constituted of the President, or just exactly what you're getting at in that respect.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: The recommendation of the committee is that the president, after consultation with the vice-president, and if the appointments of these committees should be made tonight it would be Mr. Toole, our vice-president, will make the appointment. We have no Committee on Committees. We didn't propose those either in the procedural committee list or under the substantive committee list, and we don't-we have not given consideration to that, as such. We feel as a committee, that the president should have the opportunity to appoint, in consultation with the vice-president-who is, in this particular instance, of another political party.

DELEGATE BRAZIER: So in other words, if I understand it correctly, you are dispensing with the committee on committees?

DELEGATE MURRAY: We don't have such a thing.

PRESIDENT GRAYBILL: Mr. Wilson, you were on your feet next.

DELEGATE WILSON: A question for information. Archie Wilson from District 6.

Would the members, or the delegates, be assigned to more than one committee-substantive committees?

DELEGATE MURRAY: Each delegate will be assigned to one substantive standing committee. I would imagine, that if your interests vary among the members in your district, that probably each of you will be on a different standing committee. And if you'll note that for the president, I'm sure he'll give that consideration. Or note it to Mr. Toole, who will be in consultation with the president.

DELEGATE WILSON: That answers my question.

PRESIDENT GRAYBILL: Other questions? Mr. Berg.

DELEGATE BERG: Mr. Murray, I understand that the president, with the advice and consultation of the vice-presidents, will make the committee assignments. My question is, will the committee chairman or co-chairman be appointed by the same committee, or are they to be elected by the committee members themselves? Has your committee considered that problem?

DELEGATE MURRAY: Our committee has not considered that at this time. I would presume we would give consideration to that before-well, perhaps sometime tomorrow, but at this stage, we felt the appointment of the members to the committee was of most urgency to most of us. And that's as far as we were able to get in the hour and a half that we had within which to meet.

PRESIDENT GRAYBILL: The Chair has been asking for questions, and I don't mean to stop you from making statements. I should be saying, is there further discussion? Mr. Brazier.

DELEGATE BRAZIER: Mr. President, I think what is suggested here has some profound implications, and maybe this is more properly classified procedurally as rising to a point of order, but I wonder if there is some way whether, whereby we could test a consensus of the delegates as to whether we ought to have an elected committee on committees, or bestow that power upon the president at this time-or officers, excuse me.

PRESIDENT GRAYBILL: We're certainly going to have an expression of that in a minute if we vote on this, but if you've got another way that you want to test it, the Chair would certainly be interested in hearing what it is.

DELEGATE BRAZIER: I'd like to hear— I'd like to test Walter Marshall's expertise on this procedural point.

PRESIDENT GRAYBILL: Well, there's a motion, now, that says that if you do it this way you wouldn't have a Committee on Committees. If you want a Committee on Committees, it would seem to me you would vote against this, or if you want to do that, there's another way that I can think of, and I could tell it to you if you want me to. In other words, you could make a substitute motion.

DELEGATE BRAZIER: I therefore make a substitute motion that we have a duly elected Committee on Committees, and I think I can go into more procedural depth, if such is necessary, but I think that will test the question I had in mind.

PRESIDENT GRAYBILL: Just a moment -Mr. Brazier, the parliamentarian would like you to say a little more. In other words, you want an elected Committee on Committees, is that it? By nominations from the floor? Or by appointment by the Chair? Or do you care how we get the Committee on Committees?

DELEGATE BRAZIER: If you'll all kindly bear with me, I'll see if I can compose one off the top of my head (inaudible) here.

I offer a substitute motion that a seven-member committee on committees be elected by nomination-be elected in its entirety by nominations from the floor, with the authority to designate one of its number as chairman, and to report back to the Conventionits recommendations upon the makeup-size and makeup ofcommittees. And for the purposes of electing such delegates I would further include in that motion that a legal ballot be one which does not include the names of more than seven nominees.

PRESIDENT GRAYBILL: You lost me again. What do you mean? You can't have more than seven nominees. Or are we going to have seven elected—

DELEGATE BRAZIER: My motion was based upon the assumption that there would be more than seven nominees-

PRESIDENT GRAYBILL: Oh, I see. You can only vote for seven.

DELEGATE BRAZIER: Yes.

PRESIDENT GRAYBILL: May the Chair ask Mr. Brazier a question? Now, I don't care, but I want to know the sense of your motion.

I understand that the Chair would have nothing to do with the committees if your motion prevailed, is that right? Okay. All right. Mr. Roeder.

DELEGATE ROEDER: Rich Roeder from District 11. I'd like to ask Mr. Brazier a question or two. I wonder if he has read the section in the manual here prepared by John Peale and sent to us, on pages 48 and 49, on the question of who assigns to committees?

DELEGATE BRAZIER: I read it, but I did not commit it to memory.

DELEGATE ROEDER: Well I suggest that you might look at it. It points out some of the dangers of the sort of thing that you're proposing, and I would also like to ask if you heard Mr. Whitwer last night talk about this very question?

DELEGATE BRAZIER: I heard him, and I also heard him say that the Illinois situation was not necessarily comparable to the Montana situation-

DELEGATE ROEDER: I think he was pretty emphatic on his point that his experience would apply, however. Thank you.

PRESIDENT GRAYBILL: Is there other discussion on this motion? Mr. Berg.

DELEGATE BERG: This is Ben Berg from District 11. Earlier, I took the opportunity to review the Memorandum 1 on Constitutional Convention Rules, and I found that in not one of the states was a committee on committees realized. In almost all instances, either the president, or the president with the consultation of vice-presidents, selected the committees. I think that might be a very worthy precedent for us to follow here.

PRESIDENT GRAYBILL: Is there other discussion of the motion? Mrs. Bowman.

DELEGATE BOWMAN: I'm Jean Bowman from District 8. As I understand the proposal by the temporary Rules Committee, we are to elect three vice-presidents. I therefore feel that this committee, on the selection of committees, should not be made until the other two vice-presidents have been elected.

PRESIDENT GRAYBILL: I think the Chair would say, that assuming we can get to the business of whether or not to elect other vice-presidents tomorrow, the Chair would certainly hold up-if I had anything to do with it-putting it out until they'd had a chance to look at it. Now, if we get into late Wednesday, I-we might have a different situation, but I'd certainly reconsider that with you, Mrs. Bowman, tomorrow.

I would like the other chairmen, if we get them appointed-the other vice-presidents, if we get them elected tomorrow, to have a look at this. The Chair does not intend to hurry it out ahead of them, and I'll at least come back to you before I would do that, if I have anything to say about it.

Is there any other discussion on the motion?

(No reply.)

Question-are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, the voting is open on the machine. The voting is on Mr. Brazier's motion that a committee of seven members be elected, all nominated from the floor, with no more than seven to be voted for. And the committee, when it's elected, choose its own chairman, the committee to recommend to this body the status and makeup of all committees.

Have I fairly stated that, Mr. Brazier?

DELEGATE BRAZIER: (The delegate indicated in the affirmative.)

PRESIDENT GRAYBILL: All right. If you're in favor of Mr. Brazier's motion, vote Aye. If you're opposed to Mr. Brazier's motion, vote No.

Have all the delegates voted? Does any delegate wish to change his vote? If not, the Chair will close the ballot and have the clerk tally the ballot.

SECRETARY MARSHALL: Mr. President, 89 delegates have voted No, i'delegates havevoted Aye.

PRESIDENT GRAYBILL: 7 delegates have voted Aye, 89 have voted No. Mr. Brazier, your motion has failed.

We're now back on the issue of whether or not to support the resolution of the temporary Rules

Committee that the Chair, with the concurrence of the vice-presidents, nominate the members of the committees.

Is there further discussion on that proposal by the Rules Committee?

(No reply.)

DELEGATES: Question.

PRESIDENT GRAYBILL: Are you ready for the question-Mr. Clerk may I have that—haven't we got that written out somewhere?

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. The question is on the temporary Rules Committee's proposal-or resolution, that the president, after consultation with the vice-presidents, shall appoint the committee members. That any appointment, on the announcement thereof, may be rejected by a majority of the members of the Convention prior to adjournment on January 19, 1972. Each member, except the president, shall be appointed to serve on only one substantive standing committee.

The Chair has further made the point that any appointments that happen to be made after that, there would be a 3-day opportunity to ask for a change, and the Chair has agreed with Mrs. Bowman that I will not appoint it with only the vice-one vice-chairman unless we don't get to that until Wednesday.

All those in favor of this resolution by the Rules Committee vote Aye, all opposed vote NO. The ballot is open.

Have all the delegates voted? Does any delegate want to change his vote? Will the clerk close the ballot?

SECRETARY MARSHALL: No, that's your job. You close the ballot.

PRESIDENT GRAYBILL: Oh, all right, I'll close the ballot. Now-(laughter&you're going to keep me honest, Walter. All right. Walter, will you tally the ballot.

SECRETARY MARSHALL: Gladly so. 98 voted Aye, 2 voting No.

PRESIDENT GRAYBILL: 98 having voted Aye, and 2 voted No, the proposal of the temporary Rules Committee that the committees be selected and nominated in this manner is hereby approved.

Now, Mr. Blaylock had a motion-Mr. Cate, do you have a motion?

DELEGATE CATE: Mr. President, I would like to call it to the attention of the committee that there were 100 votes cast there, and there were only 99 people eligible to vote. The president did not vote, as I understand it—

PRESIDENT GRAYBILL: Well, I voted here-1 think I'm eligible to vote yet. I hope I haven't lost that one yet. (Laughter) I did vote and Mr. Dahood is here, so I think there are 100 eligible to vote, seeing no vacant seats.

All right. Now, Mr. Blaylock, earlier you wished to make a motion?

DELEGATE BLAYLOCK: Mr. President, I'd like to ask a question of you, first, before I repeat that motion.

Do you have a desire that Mr. Toole should have a different seat to help on the floor?

PRESIDENT GRAYBILL: Well, I don't know. Let's let the Rules Committee finish this officer thing up tomorrow, but regardless of that, I'm sure we can make adjustments later for any odd seats, and I trust you're going to make that motion about alphabetical seating.

And the Chair would assume, unless he hears to the contrary, that if we adopt such a thing, and it later became necessary for floor managers, or for vice-presidents to sit in certain spots, that we would simply adjust for that one change.

Now, what is your motion?

DELEGATE BLAYLOCK: Mr. President, I move that this Convention remain seated in alphabetical order, as it is now.

PRESIDENT GRAYBILL: Mr. Blaylock has moved that we remain seated in alphabetical order.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Berg.

DELEGATE BERG: Ben Berg from District 11. I want to join in thatmotionforaverypersonal reason. I find I occupy seat number 13, the same seat I had in 1957. I am most comfortable. (Laughter & Applause)

PRESIDENT GRAYBILL: Are there other delegates who wish to discuss the matter? Mr. Skari.

DELEGATE SKARI: Mr. Chairman, Carman Skari, District 14. I, too, would advise alphabetical seating. I think the state has gone to considerable expense here on the charts and all this. I think it also is an aid to bipartisanship, and I like the present arrangement. (More Laughter & Applause)

PRESIDENT GRAYBILL: The House having taken constitutional notice of your proposal, Mr. Skari, will be so advised.

Now, do other people want to discuss the alphabetical seating arrangement?

DELEGATES: Question.

PRESIDENT GRAYBILL: Mr. Joyce, you don't want to do anything except sit down, do you? Okay.

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: The ballot is now open. All those in favor of retaining, for the balance of the Convention, or at least until further order of this Convention, the alphabetical seating arrangement, please indicate so by voting Aye, and those opposed vote No.

Has every delegate voted? Somebody hasn't voted. Does any delegate wish to change his vote? All right, the Chair has closed the vote. Mr. Clerk, will you tally the vote?

SECRETARY MARSHALL: 99 delegates have voted Aye, and 1 person made a mistake and voted No.

PRESIDENT GRAYBILL: By your vote of 99 Ayes and 1 No, we will retain, at least until we make another such motion, the present alphabetical seating arrangement.

Now, we are not quite through. But the Chair would like to-I've been asked by the secretary, and I did not do it earlier, and I should have-but at least for this first tentative-first session, both she and I would appreciate it if you would stand and repeat your names so she can get it in the record. I'll try to repeat your name. Sometimes I get mixed up, but we want to try to do that for her.

Secondly, I've been asked to announce that there's a possibility-that there is a request that tomorrow at 3:00 p.m. all the women would have their photo taken to show how many women we have in the Constitutional Convention. Mrs. Cox will make further announcements as to place, and if the time has to be changed slightly, we'll do that, but the women might like to know today that they might have-be in a picture tomorrow. (Snickers from the men)

Furthermore, the Chair would like to be advised as to the hour that the Governor has invited us to his home this evening, if anybody knows.

DELEGATES: 7:00.

PRESIDENT GRAYBILL: 7:OO. All right.

Now, we have covered quite a bit of ground and I'm real proud of us. Is there any other business to come before our meeting today, or can we recess 'til tomorrow? Mr. Murray.

DELEGATE MURRAY: Mr. President, I would like to ask the members of the temporary Rules Committee to meet with me to the right of the convention hall immediately after our recess.

PRESIDENT GRAYBILL: Mr. Murray, there was another matter.

Mr. Nutting, do you want to make your further-your first suggestion in the form of a motion, directing the Rules Committee-temporary Rules Committee on the scope of the rules that they are to deal with between now and the end of the first session?

DELEGATE NUTTING: I think we're dealing with just the matters that I had in mind, and I'm very happy with it. Thank you.

PRESIDENT GRAYBILL: All right, then, we're not going to have a motion. Mr. Furlong.

DELEGATE FURLONG: Furlong, District 16. Mr. President, I would like to ask a question, if I may, and perhaps make a very short statement.

PRESIDENT GRAYBILL: Surely. Go ahead.

DELEGATE FURLONG: Is it permissible, having voted on the prevailing side on the committee appointments, to ask for reconsideration?

PRESIDENT GRAYBILL: Just a minute. I'll find out.

Parliamentarian says it doesn't make any difference, and you can move to reconsider.

DELEGATE FURLONG: Well, not at this moment, but I'm a little bit slow at this game, and it strikes me that we have given the body the ability to challenge any committee appointment for cause, which I have no objection to, but I'm not so sure that we have given the individual member the right to challenge the Chair to a committee appointment of his choice.

PRESIDENT GRAYBILL: Mr. Furlong, the Chair would interpret that to mean that any member may address the Chair and raise the issue, and then the body will have to decide whether or not his committee appointment is right. A majority of you have to agree before he could get it changed-he or she-but it would seem to me, and I will certainly recognize anyone that wants to object to them, and you can make your explanation to the body and the body can leave you or move you.

DELEGATE FURLONG: Thank you for the answer.

PRESIDENT GRAYBILL: Yes, Mr. Choate.

DELEGATE CHOATE: Yes-Lyman Choate, District 2. I would suggest that before we recess, that these questionnaire forms be picked up, so they don't get lost or thrown away.

PRESIDENT GRAYBILL: Those of you who have your questionnaire forms ready should give them to the pages, or, if you are holding them, leave them with the girls out in the office before you leave. And if you want to stay, some of you, and talk to your district members, why-just retain them and put them in the office before you leave. The pages are passing among you to pick them up.

Is there other business to come before the House? If not, I would recognize the vice-president, Mr. Toole-Mr. Martin.

DELEGATE MARTIN: Fred Martin, District 11. I think we're off to a good start, and I think we should give a vote-or make a motion that we give a vote of appreciation to the excellent work of the Rules Committee.

PRESIDENT GRAYBILL: I think the Rules Committee can take that round of applause as a vote of approval so far.

Mr. Toole, unless someone else stands up with you, I'm going to recognize you to make a motion to recess until 11:00 tomorrow morning, and the reason it's 11:00 is so that the committees can be started to be worked on.

DELEGATE TOOLE: Mr. President, I make such a motion to recess until 11:00 tomorrow morning.

PRESIDENT GRAYBILL: Is there any objection-I guess we can't debate that.

All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No reply.)

We will recess until tomorrow morning at 11:00 a.m.

(The Convention recessed at 5:30 p.m.)

Morning Session November 30.1971 11:10 a.m.

PRESIDENT GRAYBILL: Convention will please be in order.

Good morning, ladies and gentlemen. I would like to ask Harold Arbanas if he would give us an invocation from his chair-or seat-from his position, let's say.

DELEGATE ARBANAS: Our Father, we'd like to express thanks for the progress of our deliberations. We ask for the gift of wisdom, the grace of courage and an awareness of Your presence. Amen.

PRESIDENT GRAYBILL: The voting machine has been opened, and if you are present vote Aye, so that the clerk may tally the roll.

Has each delegate voted?

SECRETARY MARSHALL: No, sir, they have not.

PRESIDENT GRAYBILL: Do some of the delegates wish to leave? (Giggles) No lights?

SECRETARY MARSHALL: Mr. President.

PRESIDENT GRAYBILL: Yes, sir. Yes, Mr. Clerk.

SECRETARY MARSHALL: Mr. President, 98 delegates are present. A quorum is present.

PRESIDENT GRAYBILL: Very well, close the ballot. Just a moment.

The Convention should know that we are, this morning, on the orders of business of Mason's Manual. We are going to pass reading and approval of the journal of the previous day, since this seems hardly necessary until we get to the substantive session in January.

The next matter that I would like to take up are messages, and I would like to recognize Mrs. Babcock for a message.

DELEGATE BABCOCK: Mr. Chairman, honorable delegates, I'd like to read a telegram that I received this morning:

"Best wishes to you and your fellow delegates as you start deliberations on a new constitution. My conference here in Moscow, U.S.S.R., preclude my attending personally. I feel confident this important document will emerge as a model to guide Montanans to a great future," and you'll never guess who that's from. (Laughter and Applause)

PRESIDENT GRAYBILL: Thank you, Mrs. Babcock, and please express to him our gratification at having received it.

SECRETARY MARSHALL: Mr. President.

PRESIDENT GRAYBILL: Yes, sir.

SECRETARY MARSHALL: The other two delegates are present.

PRESIDENT GRAYBILL: So we are all here now?

SECRETARY MARSHALL: Yes, sir.

PRESIDENT GRAYBILL: Fine. I will show them all present on the roll, then.

Now, the next matter of business will be the reports of standing committees, or of special committees, which I presume includes the Rules Committee. If someone has something other than that, that is in order now, I would be glad to recognize you, but we do intend to go to the Rules Committee.

Did someone here have a motion they wanted to make, or an observation?

(No reply.)

Very well, the Chair will recognize Marshall Murray, the chairman of the temporary Rules Committee.

DELEGATE MURRAY: Mr. President, the Rules Committee has been meeting since 8:00 this morning. We have several recommendations to make.

One has to do with the election of two more vice-presidents, one from each congressional district, if you adopt the rule as we have it.

Another has to do with the election of a secretary, who shall be a delegate.

Another has to do with the appointment of an executive director of the Convention, who shall be appointed by the president and be primarily responsible for the Convention.

Another has to do with the appointment of such other employees as may be necessary.

And the last item that wediscussed this morning, which will be considered, as I understand it, this afternoon, has to do with the appointment or designation of the chairman and vice-chairman of the respective committees.

I make particular mention of that last item because there is on your desk, ahead of the delivery to you of the recommendation of the Rules

Committee a substitute motion, and I'm sure that you have seen it, and are concerned about when that matter might be considered.

The president has advised me that he would like to consider these matters in this order today. He would like to have us consider the vice-presidential matter and the secretary matter, and then he would like to have a 15-minute recess. And then he would like to call for the election of those officers this morning,

He would like to work 'til about 12:30, unless we are able to get done with this business earlier than that, and then come back this afternoon, 3 or 4 o'clock, depending on what our workload looks like, and go into the other matters that we haven't considered in this committee report. And by that time, hopefully, the committee will also have a rule on lobbyists, and an amended order of business.

PRESIDENT GRAYBILL: Mr. Murray, we are having the pages distribute the first two or three of those matters you're taking up, so everyone'll have them before them.

DELEGATE MURRAY: Thank you, Mr. President.

The first matter of business is this: "Two additional vice-presidents shall be elected, one from each congressional district of the State of Montana. Their duties shall be assigned by the president and neither shall have the right of succession."

Let me explain this briefly. We feel, in the temporary Rules Committee, that the additional vice-presidents-and we don't call them second vice-president, or third vice-president-as such—will be basically honorary positions. We feel that you will treat them as such. We do believe that their election should be as we have specified, from each congressional district of the State of Montana, one residing in each.

We feel that their primary responsibilities in the interim will be in the publicrelations capacity, and therefore, we would like to have it in each district. We do not believe that in case of some tragedy and we should lose the president and the present vice-president of this Convention, that these people should be considered in line of succession. Therefore, we have added the language that neither shall have the right of succession. It is our opinion that the Convention would want to convene and have a new election and reorganize itself in that event.

Mr. President, I move that this Convention adopt the rule as I have stated it, and as it is written and being delivered to the desks.

PRESIDENT GRAYBILL: All right, the motion has been made by the Rules Committee chairman that we adopt a resolution that there be two additional vice-presidents elected, one from each congressional district, that their duties be assigned by the president, and neither have the right of succession.

Is there any discussion on this resolution? Mr. Harlow.

DELEGATE HARLOW: I am in accord, to a certain extent, with this remark. I was thinking, primarily, of trying to spread these vice-presidents, along with our present president and vice-president, geographically over the state rather evenly.

At the present time, our first vice-president is from the west-from the western area. We realize-or I realize, that our president is from the—one congressional district, and our present vice-president is from another congressional district, but my thinking was geographic-a little better geographic distribution, so that one of these vice-presidents would be elected from sort of the southeast quarter of the state, and the other vice-president more from the northeast part of the state, to give us a little better geographic distribution, so that we would have a better public relations position from our various administrative officers, and that's the only thought that I have in mind.

If we elect them from those two areas-in other words, from the southeast and northeast, we would-get them both from the eastern congressional district.

I'm not going to suggest that we change this resolution to take out the one from each congressional district, I merely want to put that out here for you to think about and consider, and if you think it's a good idea, then maybe we should change this around so that we would meet with that resolution, if you feel it is necessary to change the wording.

PRESIDENT GRAYBILL: Is there further discussion?

DELEGATE MURRAY: Mr. President, with respect to this matter, the committee did consider where these people should be elected from, and whether they should be a woman or a man, and it was our consensus after discussing this thing at length, that this is the best that we could

arrive at, and that the delegates themselves should have the prerogative, in each district, who they would like to elect and whether it should be a man or a woman, or Independent, or a Republican, or a Democrat.

PRESIDENT GRAYBILL: Very well. Is there further discussion on the resolution? Mr. Felt.

DELEGATE FELT: This is going to happen, and I'm not particularly opposed to it, as I suspect that it's unimportant and about the samedecision that's been made.

I hadn't thought, until the very last few words I heard that perhaps the-if I heard them correctly-that only part of us would vote on this election of one of the vice-presidents, and the other part vote in selecting one from the congressional district, only if we happen to reside in that district, but maybe I misunderstood those remarks.

PRESIDENT GRAYBILL: Mr. Murray—

DELEGATE FELT: Frankly, I'm glad if one would be a man and one would be a woman, but I think that we should base this on merit, (inaudible) and I think the same principle applies to our geography.

I think that our president represents the entire state, and I think that our vice-president and all other officers should represent the entire state, and that we shouldn't vote on these by geographical lines, any more than on the lines of sex, age, or any other qualification or disability.

Only for that reason, do I frankly prefer to say that the delegation elect an additional two vice-presidents, the duties to be assigned-(inaudible) anyone could be elected by all the delegates.

PRESIDENT GRAYBILL: Is there further discussion?

DELEGATE MURRAY: Mr. President, we feel that the entire Convention should be entitled to vote, and I think we have already settled this issue on the floor of this Convention, but we feel the entire Convention should be entitled to vote for each proposed vice-president. And we felt that the only fair way to do this, would be to have one from each congressional district, if we had any restrictions at all, and whatever the Convention would like to do in this respect is tine; however, our deliberations were as the rule is proposed.

PRESIDENT GRAYBILL: Is there further discussion on this first proposal? Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I'd like to rise to support the suggestion of the committee report. As I understand it, from my inquiry, the reason for having vice-presidents is for the purpose of assisting the work of this Convention being adopted by the citizenry of the State of Montana. So consequently, it seems to me, it would be more workable and more practical if we had a vice-president in each of the congressional districts, so that his travel arrangements could more easily be put together, and he could serve our purposes with less expense and less inconvenience to himself.

So, as a consequence, I think we should adopt the suggestion that has been made, and elect a vice-president from each congressional district.

PRESIDENT GRAYBILL: Further discussion on the resolution? Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: Now, the clerk informs me that we should be taking roll call votes on these things. So I think what we will do is; I'll open the ballot, and then I'll ask you to vote, and when I close the ballot I'll ask the clerk to make the machine take its roll call. So-is-was that right, Walter?

Well, wait a minute. There's no sheets for the machine until tomorrow. Maybe we ought to just start taking roll call votes tomorrow. It'd take us a long time, though.

Let's-would the Convention be agreeable to taking the roll call vote after we get the paper, and for these procedural matters, let's dispense with the roll call vote? Unless I hear to the contrary, we will do that, then. I thought the machine was ready.

All right. So now the ballot is open on the resolution of the Rules Committee that there be "two additional vice-presidents elected, one from each congressional district in the State of Montana. Duties to be assigned by the president, neither to have the right of succession."

Please understand that if you adopt this rule, and the following one, or whatever you do with the following one, then we will take a short recess. We'll talk it over, and then we'll go ahead and ballot on these matters before we recess for lunch.

Now, all those in favor say-vote Aye, those opposed vote No.

Have all the delegates voted? Does any delegate wish to change his vote? If not, the ballot is closed. Will the clerk please tally the vote.

SECRETARY MARSHALL: Mr. President.

PRESIDENT GRAYBILL: Yes, sir.

SECRETARY MARSHALL: 96 delegates have voted Aye, 4 delegates have voted No.

PRESIDENT GRAYBILL: 96 having voted Aye, 4 having voted No, the resolution has passed. May I inquire of the clerk, that isn't a roll call vote?

SECRETARY MARSHALL: The names aren't on it.

PRESIDENT GRAYBILL: The names aren't on it. I see. We got them all down but not the right names. Okay.

Now, we'll go back to the chairman of the Rules Committee. Do you have another resolution? Do you want to give power to the chairman?

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Yes.

DELEGATE MURRAY: Let me read the next proposal:

"A secretary shall be elected who shall have custody and preserve all proposals, resolutions, committee reports, and all other records, books, documents and papers of the Convention, and shall not permit them to be taken out of his custody, except in the regular course of the business of the Convention.

After consultation with the president, the secretary may delegate part of the duties to the executive director, or another employee designated by the president. The secretary may not, however, delegate the duty of certifying the revision or alteration of, or amendment to, the Constitution approved by the Convention for submission to the electorate."

It is the consensus of the committee that we should have an executive director of the Convention, and that we should have a secretary who would be primarily responsible for overseeing the duties of the executive director, and who would be the-according to the rules, the person in charge of those items stated in this rule.

I think, frankly, that this matter is self-explanatory, and at this time, I move the adoption of the committee recommendation.

PRESIDENT GRAYBILL: All right, you heard the resolution, is there discussion on the resolution? Mrs. Warden.

DELEGATE WARDEN: Mr. President, as a member of the Rules Committee, I thought I'd gotten all the "he's" and "she's" out of this resolution, but it turned out that I didn't. It says "his custody." I would like to amend that to say "the custody of the secretary."

DELEGATE MURRAY: Mr. President, in deference to Mrs. Warden, and I defer to her wisdom in this respect, somehow in my handwritten notes, the word "the" was omitted.

PRESIDENT GRAYBILL: She just wants to get the word "his" out of there, and that's the point, I think.

DELEGATE MURRAY: I tried to strike the word "his" and add the word "the."

PRESIDENT GRAYBILL: May we consider it amended?

DELEGATE MURRAY: I would ask that it be considered amended.

PRESIDENT GRAYBILL: I do hope that— I'm glad you raised the point, Mrs. Warden-but I think we ought to have a basic understanding that if, in the syntax of English, we slip a "his" or a "her" in the rest of this Convention, it really doesn't mean that. (Laughter)

Recognize the delegate from-Mr. Champoux.

DELEGATE CHAMPOUX: I'm a Montanan from the Flathead, rather than just Kalispell.

The question I'd like to submit to the chairman of the Rules Committee is the-what about this certifying? What exactly did you mean by that? Could you put in a little more detail? You said something about certifying therevision. How did you—what's—

DELEGATE MURRAY: We're just talking about certifying the revision.

DELEGATE CHAMPOUX: What's the reason for that?

DELEGATE MURRAY: What's the reason for that? The reason for that, is because The Enabling Act specifies that the president or the secretary shall sign those.

PRESIDENT GRAYBILL: Is that clear, Mr. Champoux?

DELEGATE CHAMPOUX: Yes.

PRESIDENT GRAYBILL: In other words,

it's a matter of official signing. She can't delegate the duty of signing the papers.

DELEGATE CHAMPOUX: What I was concerned about, was what they meant by it, and I understand by those clarifications. Thank you.

PRESIDENT GRAYBILL: Is there other discussion of the-all right, Mr. Habedank.

DELEGATE HABEDANK: I would like to-this is Otto Habedank from District 3. I would like to direct a question to the chairman of the Rules Committee, as to whether or not, in their discussion relating to this, if it was determined by them that a non-delegate secretary and executive director could perform both of these functions?

DELEGATE MURRAY: Inresponse to that, the matter was considered. It was my proposal to the committee because of the language of The Enabling Act, and because of my personal opinion, that the secretary should be a delegate, and the committee agreed, after discussing this matter yesterday and today, that we should elect a secretary from the members of this Convention, and that the executive directorship should go to an employee, and this meets with Mr. Harris's approval, too.

PRESIDENT GRAYBILL: Further discussion on the resolution?

(No ieply.)

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, the question is on the Rules Committee's resolution that a secretary be elected-and although the resolution before you doesn't say that, it's to be from within this body-who will have custody of and preserve all the proposals, resolutions, et cetera. And after consultation with the president, the secretary may delegate part of the duties to the executive director, or other employees, which means that the actual keeping of the records may be done by the clerks, but the secretary may not delegate the duty of certifying the records and revisions, and so forth, the work of the Constitutional Convention.

Now, those-I've opened the ballot, and those in favor of that resolution please vote Aye, and those opposed please vote No.

Have you all voted? Does anyone wish to change his vote? All right, we'll close it quickly. Mr. Clerk, can you tell us what that vote was?

SECRETARY MARSHALL: Yes, sir. Mr. President.

PRESIDENT GRAYBILL: Yes, sir.

SECRETARY MARSHALL: 100 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: Since you have unanimously voted Aye, that resolution is adopted.

The Chair will now recognize Mr. Marshall Murray again.

DELEGATE MURRAY: Mr. President, I move that this Convention recess for 15 minutes, or until, by the clock—

SECRETARY MARSHALL: The new clock, sir.

DELEGATE MURRAY: -the new clock, 11:50, November 30, 1971.

PRESIDENT GRAYBILL: All those in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: —opposed—

(No reply.)

We're in recess until 11:50, at which time we will take up election of these officers, so that's what the recess is for.

(The Convention recessed until 11:50 a.m.)

PRESIDENT GRAYBILL: The Convention will be in order.

The Convention will now proceed with the elections, and the Chair would like to suggest that in the event there are more than two candidates nominated for any of these offices that we are going to vote on, we'll take the preliminary vote, at least, orally, so that we'll just go around the room and shout out the name of the one we're voting for. And then if there's less than two, we can do it on the voting machine.

Secondly, if there are many people nominated, it is my intention to knock off either the last one, or the last two, depending on how many are nominated, until a majority is reached by some candidate. That doesn't mean that we're down to two, but until a majority is reached by some candidate. Is there-is there-anyone objects to these ground rules for the election?

All right. Now, Mrs. Bates, you had a matter?

DELEGATE BATES: Mr. Chairman, I wondered if there would be any objection to taking the secretary-the office of secretary-the election of secretary before the vice-presidents. I would like to have—

PRESIDENT GRAYBILL: You want to vote on secretary before the vice-presidents?

DELEGATE BATES: Yes.

PRESIDENT GRAYBILL: Mrs. Bates has made a suggestion that the Convention vote on the office of secretary before the vice-presidents.

DELEGATE: Why?

PRESIDENT GRAYBILL: Mrs. Bates, they want to know why.

DELEGATE BATES: Because I have a candidate in mind that is interested in this position, and it may make a difference, then, in the vice-president selection, also.

PRESIDENT GRAYBILL: NOW, the Chair's position is this: Does anyone object to this? If no one objects, we could go ahead and do it, but if anyone objects, let's do it in the reverse order.

Pardon? Does someone care to stand and make an objection? All right, Mrs. Bugbee's objected, so the Chair takes it-the Chair is going to rule, unless you raise a point of order for the parliamentarian, that we'll go ahead and elect the vice-presidents first, Mrs. Bates, and the secretary second.

Now, I trust you wouldn't mind if the Chair ruled that we vote on the vice-president from the east before the vice-president from the west (laughter), or do you want to vote on that issue? Let's vote on the east one first and the west one second.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I object again. I'm sorry. Let's take one first and then two.

PRESIDENT GRAYBILL: Is the west one?

SECRETARY MARSHALL: Oh, yes.

PRESIDENT GRAYBILL: Oh, well pardon me. (Laughter)

Mr. Champoux.

DELEGATE CHAMPOUX: I object. I think it should be done by a toss of the coin, please.

PRESIDENT GRAYBILL: Call it, Mr. Champoux.

DELEGATE CHAMPOUX: Heads.

PRESIDENT GRAYBILL: You're right. Which district do you want?

DELEGATE CHAMPOUX: East. (Laughter)

PRESIDENT GRAYBILL: Mrs. Bugbee, you've been had.

All right, we're going to vote. Nominations are now in order for vice-president of this Convention from the eastern congressional district. Mr. Choate.

DELEGATE CHOATE: Mr. President, I'm Lyman Choate from District 2. Well, I'd like very much to place in nomination the name of a man that I think commands the respect and a good deal of admiration, I think, on the part of most all the delegates here in this room.

He's a man, an Independent from the eastern district, a constituent of mine, and it would please me very much to place in nomination the name of Bruce Brown.

PRESIDENT GRAYBILL: Bruce Brown has been nominated for eastern congressional district vice-president.

Let's see. Mr. Davis.

DELEGATE DAVIS: Mr. President, Carl Davis, delegate from District 21. I would like to second that nomination. Bruce is an outstanding practicing lawyer in the eastern part of Montana, and I think he could do a great deal to help pass whatever constitution that may develop from this Convention.

I have a further reason, too, which I should share with the Convention, perhaps. When my wife found out I didn't vote for Bruce, my old long-time classmate and friend, yesterday, she left and returned to Dillon, so this may avoid a big alienation of affection suit. So I heartily recommend Mr. Brown.

PRESIDENT GRAYBILL: Are there further nominations? The Chair recognizes Mark Etchart.

DELEGATE ETCHART: Mr. Chairman, I would like to place in nomination as vice-president from the eastern district, the name of Mags Aasheim.

Mags is no stranger to this body. He was candidate for president. He's a four-term legislator, and I think that in order to get some balance in our officers, that we should recognize an important segment of the state, which is agriculture, and Mags is a farmer and a rancher.

He's from the very eastern part of the eastern district. He would be representative of a great part of the state, and I think that he'd make a very fine vice-president.

PRESIDENT GRAYBILL: Now, the Chair rules that we don't need seconds, but if there is a second, I want to get in before the next nomination. Mr. Hanson.

DELEGATE HANSON: Mr. Chairman, I rise to second the nomination of Mags Aasheim.

Although I have nothing against attorneys, believe me, they're a. necessary evil at times and at other times they're necessary, I do think that we have two attorneys so far, that we should look at the agricultural segment of our state because, believe me, Montana is still primarily an agricultural state and I believe that Mags Aasheim would well represent that interest in this Convention.

PRESIDENT GRAYBILL: All right, are there further nominations? Mrs. Mansfield.

DELEGATE MANSFIELD: Rachel1 Mansfield of District 14. I would also like to go along with Mr. Hanson on Mags Aasheim.

PRESIDENT GRAYBILL: All right, are there further nominations?

DELEGATE DAVIS: Mr. President, a question, please.

PRESIDENT GRAYBILL: All right, a question.

DELEGATE DAVIS: When you referred to two attorneys, to whom are you referring, Mr. Hanson?

DELEGATE HANSON: Well, I believe that Mr. Graybill is an attorney, and I believe that Mr. Toole is an attorney.

PRESIDENT GRAYBILL: Mr. Toole will appreciate that honorary law degree, I'm sure.

DELEGATE HANSON: I'm sorry, Mr. Toole—I had you in the wrong camp.

PRESIDENT GRAYBILL: Mr. Toole, you just had a very high compliment paid you.

Are there other nominations for-Mr. Foster.

DELEGATE FOSTER: Mr. President, Don Foster, delegate from District 10. I rise to second the nomination of Bruce Brown.

I was not going to get on my feet and belabor the time of this Convention, but when the question of farmers and lawyers was raised, I felt that we might all consider another consideration, and that being the question of an Independent. And in spite of the fact that I'm the first one that wants to see partisan politics taken out of this Convention, I think it's important to note that Bruce Brown is an Independent. Thank you.

PRESIDENT GRAYBILL: That's no political party, though. All right, now-Mr. Harbaugh.

DELEGATE HARBAUGH: I thought we got rid of the partisan issue yesterday, but apparently we didn't.

PRESIDENT GRAYBILL: Except for Mr. Harbaugh, we're not serious today. Go ahead.

DELEGATE HARBAUGH: I think that we ought to vote on these men on the terms of their qualifications, and I believe that Mr. Aasheim is very well qualified to represent the east district, and I would speak in his behalf.

PRESIDENT GRAYBILL: Are there other nominations? Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. Chairman, I seconded the nomination for Bruce Brown yesterday and gave quite a bit of information on his family background, and this included information about one of the oldest ranches in the state of Montana. Thank you.

PRESIDENT GRAYBILL: Are there other nominations? Are there other nominations for vice-president from the eastern congressional district?

(No reply.)

If not, the Chair will entertain a motion that nominations be closed. Mr. Drum.

DELEGATE DRUM: Mr. President, Dave Drum from District 8. I, too, would like to rise in support of the nomination of Bruce Brown.

I would like to make a point that I think may be pertinent, at this point, in the consideration of these two candidates.

The point is this, that the ratification of our final product is probably, as we go along here, going to be the most important one factor on the minds of all of us, and I would feel that Bruce would do an excellent job-a superior job-in presenting the final product to the electorate for ratification. He is such a well respected gentleman in the eastern part of **Montana.**

I say this, probably, with a bit ofpartiality, as I grew up with the man in Miles City. I've known him for about 50 years, and he is held in reverence by the people that have known him and by people of both political parties, and I feel that his opinion, when presented at a later time, is going to be taken by many, many people as gospel. And I think we should consider this at this time. Thank you.

PRESIDENT GRAYBILL: The Chair would entertain a motion to close the nominations-Mrs. Bates, is that what you want to do?

DELEGATE BATES: No, I was going to make another seconding.

PRESIDENT GRAYBILL: All right. I don't know what the count is now, but the Chair would like to suggest that we don't need any more seconds.

Yes, sir, Mr. Campbell.

DELEGATE CAMPBELL: I would like to move that the nominations for vice-president from the eastern congressional district be closed.

PRESIDENT GRAYBILL: All right. All in favor say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No reply.)

All right, the nominations are closed.

Now, the clerk has suggested that the easiest way to do this, is: he will call the roll and you will please state your choice, either Aasheim or Brown, alphabetically.

Are you ready?

SECRETARY MARSHALL: Yes, sir.

PRESIDENT GRAYBILL: Please call the roll for vice-president from the eastern congressional district.

SECRETARY MARSHALL:

Aasheim	Aasheim.
Anderson, John	Brown.
Anderson, Oscar	Aasheim.
Arbanas	Brown.
Arness	Aasheim.
Aronow	Aasheim.
Artz	Aasheim.
Ask	Brown.
Babcock	Brown.
Barnard	Aasheim.
Bates	Aasheim.
Belcher	Brown.
Berg	Brown.
Berthelson	Brown.
Blaylock	Aasheim.
Blend	Aasheim.
Bowman,	Brown.
Brazier	Brown.
Brown	Brown.
Bugbee	Brown.
Burkhardt	Brown.
Cain.	Aasheim.
Campbell	Brown.
Cate	Brown.
Champoux	Aasheim.
Choate	Brown.
Conover	Brown.
Cross	Aasheim.
Dahood	Brown.
Davis	Brown.
Delaney	Brown.
Driscoll	Brown.
Drum	Brown.
Eck	Brown.
Erdmann	Brown.
Eskildsen	Aasheim.
Etchart	Aasheim.
Felt	Brown.
Foster	Brown.
Furlong.	Aasheim.
Garlington	Brown.
Graybill	Aasheim.
Gysler	Brown.
Habedank	Aasheim.
Hanson, R.S.	Brown.
Hanson, Rod	Aasheim.
Harbaugh	Aasheim.
Harlow	Aasheim.
Harper	Brown.
Harrington	Aasheim.
Heliker	Brown.
Holland	Aasheim.
Jacobsen	Brown.
James	Brown.
Johnson	Brown.
Joyce	Aasheim.
Kamhoot	Brown.
Kelleher	Brown.

Leuthold	Brown.
Loendorf	Brown.
Lore110	Aasheim.
Mahoney	Brown.
Mansfield	Aasheim.
Martin.	Aasheim.
McCarvel	Aasheim.
McDonough	Brown.
McKeon	Aasheim.
McNeil	Brown.
Melvin.	Aasheim.
Monroe	Brown.
Murray	Brown.
Noble	Brown.
Nutting	Brown.
Payne	Brown.
Pemberton	Brown.
Rebal	Aasheim.
Reichert	Brown.
Robinson	Brown.
Roeder	Aasheim.
Rollins.	Brown.
Romney	Aasheim.
Rygg	Aasheim.
Scanlin	Brown.
Schiltz	Brown.
Siderius.	Aasheim.
Simon	Brown.
Skari	Aasheim.
Sparks	Brown.
Speer	Brown.
Studer	Brown.
Sullivan	Aasheim.
Swanberg	Aasheim.
Toole	Brown.
Van Buskirk	Aasheim.
Vermillion	Aasheim.
Wagner	Aasheim.
Ward	Aasheim.
Warden	Aasheim.
Wilson	Brown.
Woodmansey	Aasheim.

PRESIDENT GRAYBILL: Will the clerk announce the tally?

SECRETARY MARSHALL: Mr. President, 57 delegates have voted for candidate Brown, 43 delegates have voted for candidate Aasheim. (Applause)

PRESIDENT GRAYBILL: Mr. Brown, if you'll remain in your seat 'til we get the other vice-president, I will have you escorted. I'm not overlooking it.

We'll now entertain nominations for vice-president of this Convention from the western congressional district. Mr. Dahood.

Mr. Dahood, pardon me a moment. The Chair would like to suggest, in the interest of the noon hour, that we limit the seconds to one apiece. That's a little different rule than in the east, but I think the west can work with that rule. (Chuckles)

Go ahead, Mr. Dahood.

DELEGATE DAHOOD: Thank you, Mr. President. I think Delegate Dave Drum highlighted the need of having someone serve in the vice-presidential capacity that is articulate and persuasive and can go out among the citizens and convince those citizens that the work that we have done here deserves their recommendation and their approval for the progress of the State of Montana.

We have such a person in the western district who can do exactly that. This particular person has served our cause, the cause of the people of the State of Montana, with superb efficiency already. In fact, that Referendum 67 passed, and we are now in session. She was one of the members of the executive committee that had as its task the dissemination of information throughout the State of Montana so that there would be a favorable vote with respect to Referendum 67. As an original member of the Constitutional Revision Commission, one of our real concerns, was whether or not the citizens of this state would pass Referendum 67.

This woman has served as president of the League of Women Voters of the State of Montana. She is from Gallatin County. I'm personally acquainted with her and her family. She has served with respect to youth activity, and has served the University System on a bipartisan basis.

I might say this, that her efforts have been so exemplary in her area, that although I understand that it's a highly Republican area, as a Democrat, she ran first, and consequently proved that she is articulate and persuasive and can serve this Convention in the type of capacity that we willrequire to have the new Constitution passed by the citizens.

It is my privilege and pleasure to place in nomination, at this time, Dorothy Eck from Gallatin County.

PRESIDENT GRAYBILL: Is there a second for Mrs. Eck? Mr. Berg.

DELEGATE BERG: Ben Berg from District 11. I join with Wade Dahood in highly recom-

mending my fellow delegate, Dorothy Eck. And may I say, that I consider her not only a worthy delegate and an immense vote getter, but a delightful lady.

PRESIDENT GRAYBILL: All right, are there other nominations-Mr. Toole.

DELEGATE TOOLE: I have heard a good deal of eloquence about **Mrs.** Eck, all of which is highly deserved, and I would consider it a privilege to second her nomination.

PRESIDENT GRAYBILL: All right, are there other nominations for the western district? Mr. McCarvel.

DELEGATE McCARVEL: Mr. President, Joseph McCarvel from District 19. After hearing all the eloquent accomplishments of Mrs. Eck, I feel a little remiss, but we, too, in Butte, have a woman that I think would meet the challenge of selling this Constitution. She has been national past-president of the Rotana Club and national past-president of the National Council of Catholic Women. So, at this time, I would like to place in nomination the name of Veronica Sullivan.

PRESIDENT GRAYBILL: Veronica Sullivan has been nominated, is there a second? Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, may I place another name in nomination at this time?

PRESIDENT GRAYBILL: Is there a second to Mrs. Sullivan? We don't need seconds. Mr. Holland.

DELEGATE HOLLAND: Dave Holland. I wish to recommend Mrs. Sullivan as a fine woman, a fine candidate, and someone who will serve this Convention very ably if she is so elected.

PRESIDENT GRAYBILL: Now, Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, one of the qualifications that has been repeatedly stated here is the business of being able to sell this Constitution in their area, and I should like to place this person's name in nomination because I believe that she has these qualifications: charm, the ability to speak to people, a good vote getter, a great understanding of **Montana,** and I should like to place in nomination the name of the former First Lady of Montana, Betty Babcock.

PRESIDENT GRAYBILL: Mrs. Babcock has been nominated. Now, are there seconds for Mrs. Babcock's nomination? We don't need seconds.

All right. Now, other nominations? Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, I wish to place in nomination a man who has been a representative to the State Legislature for four terms. He was chairman of the Long Range Building Commission here. He was vice-chairman of the Appropriations Committee. **He** is chairman of the Appropriations Subcommittee of the University and Institution Systems. He is a successful businessman, an honest, civic-minded man with the integrity we need to help lead us to a successful conclusion to this Convention. I place in nomination, Sterling Rygg of Whitefish and Kalispell, District 16.

PRESIDENT GRAYBILL: Sterling Rygg has been placed in nomination. Is there a second for Sterling Rygg?

DELEGATE CHAMPOUX: I would like to address myself to that nomination, please, Mr. Chairman.

PRESIDENT GRAYBILL: All right, Mr. Champoux.

DELEGATE CHAMPOUX: I've known Sterling Rygg ever since I've been in the Flathead. I've found him a fine gentleman, a humble man, and even at times, a statesman.

Throughout the campaign, he was always looked upon as a fair person, and even though he's an automobile dealer, he's the kind of a guy I'd buy a used car from. (Laughter)

PRESIDENT GRAYBILL: All right, the Chair will entertain further nominations. Mr. Siderius.

DELEGATE SIDERIUS: I would also like to second the nomination of Sterling Rygg. I think he'll do us a very fine job.

PRESIDENT GRAYBILL: All right, now the Chair will entertain further nominations. Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I would like to put in nomination the name of Grace Bates. This is a tremendous worker, and would add considerable to the beauty of the rostrum.

PRESIDENT GRAYBILL: All right, the name of Grace Bates has been added to the list running for vice-president from the western congressional district. Is there a second for Mrs. Bates? Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman, I have only met Grace Bates in the last 3 or 4 days we have been here in Helena, but I find her to be a very independent thinking lady, and I think she would be good for the office of vice-president. Thank you.

PRESIDENT GRAYBILL: Are there other nominations for vice-president from the western congressional district? Mr. Roeder.

DELEGATE ROEDER: Mr. President, would a motion to close the nominations be in order?

PRESIDENT GRAYBILL: Not unless— not if anybody else wants to stand up. Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I would like to withdraw my name as a candidate. I feel that any one of these other candidates would be better qualified for this position than I would. Thank you.

PRESIDENT GRAYBILL: Mr. Blaylock, is that all right with you? Mrs. Babcock has asked that her name be withdrawn from the list, and it will so be done. Now, are there other nominations for western district vice-president?

(No reply.)

If not, Mr. Roeder, now we will entertain that motion.

DELEGATE ROEDER: Mr. Chairman, I move that the nominations be closed.

PRESIDENT GRAYBILL: All right, all in favor say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed...

(No reply.)

All right, the nominations are closed. Now, the clerk will call the roll, and this time you will have to stand-have to-you'll have to announce the name of the five-oh, pardon me, Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. President and fellow delegates and my two constituents who thought I should be nominated today. I thank you most sincerely, but I would like to decline.

PRESIDENT GRAYBILL: All right, we've got to ask your two constituents. Now, Mr. Holland and Mr. McCarvel, may they-may she withdraw?

DELEGATE HOLLAND: Yes.

DELEGATE McCARVEL: Yes.

PRESIDENT GRAYBILL: Very well, we'll take Mrs. Sullivan's name off.

All right. Now, we're voting on Dorothy Eck, Sterling Rygg and Grace Bates.

Dorothy Eck-Dorothy, stand up, please. Some people may not know everybody. Sterling Rygg, stand up, please and Grace Bates, stand up, please.

Okay. The clerk will call the roll to elect the vice-president from the western congressional district.

SECRETARY MARSHALL:

Aasheim	Bates.
Anderson, John	Eck.
Anderson, Oscar L.	Eck.
Arbanas	Eck.
Arness	Bates.
Aronow	Bates.
Artz	Bates.
Ask	Bates.
Babcock	Rygg.
Barnard	Bates.
Bates	Bates.
Belcher..	Bates.
Berg	Eck.
Berthelson	Rygg.
Blaylock	Bates.
Blend	Bates.
Bowman	Eck.
Brazier	Eck.
Brown	Bates.
Bugbee	Eck.
Burkhardt	Eck.
Cain	Rygg.
Campbell	Eck.
Cate	Bates.
Champoux	Rygg.
Choate	Eck.
Conover	Bates.
Cross	Bates.
Dahood	Eck.
Davis	Eck.
Delaney	Eck.

Driscoll ..... Eck.
Drum ..... Eck.
Eck ..... Eck.
Erdmann ..... Rygg.
Eskildsen ..... Bates.
Etchart ..... Rygg.
Felt ..... Eck.
Foster ..... Eck.
Furlong. ..... Rygg.
Garlington ..... Rygg.
Graybill ..... Bates.
Gysler ..... Rygg.
Habedank ..... Eck.
Hanson, R.S. ..... Rygg.
Hanson, Rod ..... Bates.
Harbaugh ..... Eck.
Harlow ..... Rygg.
Harper ..... Eck.
Harrington ..... Bates.
Heliker ..... Eck.
Holland ..... Bates.
Jacobsen ..... Rygg.
James ..... Bates.
Johnson ..... Eck.
Joyce ..... Bates.
Kamhoot ..... Bates.
Kelleher ..... Bates.
Leuthold ..... Rygg.
Loendorf ..... Eck.
Lorello ..... Eck.
Mahoney ..... Bates.
Mansfield. ..... Rygg.
Martin ..... Eck.
McCarvel ..... Bates.
McDonough ..... Bates.
McKeon ..... Bates.
McNeil ..... Eck.
Melvin ..... Eck.
Monroe ..... Eck.
Murray.. ..... Rygg.
Noble ..... Rygg.
Nutting ..... Rygg.
Payne ..... Rygg.
Pemberton ..... Rygg.
Rebal ..... Rygg.
Reichert ..... Eck.
Robinson ..... Eck.
Roeder ..... Eck.
Rollins. ..... Eck.
Romney ..... Bates.
Rygg ..... Rygg.
Scanlin ..... Rygg.
Schiltz ..... Bates.
Siderius. ..... Rygg.
Simon ..... Eck.
Skari ..... Eck.
Sparks ..... Bates.
Speer ..... Eck.
Studer ..... Rygg.
Sullivan ..... Bates.
Swanberg ..... Rygg.
Toole ..... Eck.
Van Buskirk ..... Eck.
Vermillion ..... Eck.
Wagner ..... Rygg.
Ward ..... Rygg.
Warden ..... Bates.
Wilson ..... Rygg.
Woodmansey ..... Rygg.

PRESIDENT GRAYBILL: Mr. Marshall. The Chair would observe that if you intend to understand the Japanese, you'd better get your set tuned.

SECRETARY MARSHALL: Well, I'll take my chances then.

PRESIDENT GRAYBILL: Mr. Clerk, will you announce the ballot?

SECRETARY MARSHALL: Mr. President, the following vote: Candidate Eck, 39, candidate Bates, 32, candidate Rygg, 29.

PRESIDENT GRAYBILL: All right, no majority having been attained, the name of Sterling Rygg will be dropped, and will you please read the roll call and we will ballot again.

Now, this time, may I suggest that it's Dorothy Eck and Grace Bates, and maybe it will be easier to distinguish. Mr. Harbaugh.

DELEGATE HARBAUGH: Gene Harbaugh, District 4. Would it be possible to vote using the mikes? Can all the mikes be opened? Maybe this would help.

SECRETARY MARSHALL: No, just plain English language. It has nothing to do with the mikes.

PRESIDENT GRAYBILL: We'll just say "Grace Bates" or "Dorothy Eck," and I think he can get Grace and Dorothy.

Mr. Marshall, are you ready to read?

SECRETARY MARSHALL: Yes.

PRESIDENT GRAYBILL: Very well.

SECRETARY MARSHALL:

Aasheim Grace Bates.

Anderson, John Dorothy Eck.
Anderson, Oscar L. Dorothy Eck.
Arbanas ..... Dorothy Eck.
Arness ..... Grace Bates.
Aronow Grace Bates.
Artz ..... Grace Bates.
Ask ..... Grace Bates.
Babcock ..... Grace Bates.
Barnard ..... Grace Bates.
Bates ..... Grace Bates.
Belcher ..... Grace Bates.
Berg ..... Dorothy Eck.
Berthelson ..... Dorothy Eck.
Blaylock ..... Grace Bates.
Blend ..... Grace Bates.
Bowman ..... Dorothy Eck.
Brazier ..... Dorothy Eck.
Brown ..... Dorothy Eck.
Bugbee ..... Dorothy Eck.
Burkhardt ..... Dorothy Eck.
Cain ..... Grace Bates.
Campbell ..... Dorothy Eck.
Cate ..... Grace Bates.
Champoux ..... Grace Bates.
Choate. Dorothy Eck.
Conover ..... Grace Bates.
Cross ..... Grace Bates.
Dahood ..... Dorothy Eck.
Davis ..... Dorothy Eck.
Delaney ..... Dorothy Eck.
Driscoll ..... Dorothy Eck.
Drum ..... Dorothy Eck.
Eck ..... Dorothy Eck.
Erdmann ..... Grace Bates.
Eskildsen ..... Grace Bates.
Etchart ..... Dorothy Eck.
Felt ..... Dorothy Eck.
Foster ..... Dorothy Eck.
Furlong ..... Grace Bates.
Garlington ..... Dorothy Eck.
Graybill ..... Grace Bates.
Gysler ..... Grace Bates.
Habedank ..... Dorothy Eck.
Hanson, R.S. ..... Grace Bates.
Hanson, Rod ..... Grace Bates.
Harbaugh ..... Dorothy Eck.
Harlow ..... Grace Bates.
Harper ..... Dorothy Eck.
Harrington ..... Grace Bates.
Heliker ..... Dorothy Eck.
Holland ..... Grace Bates.
Jacobsen ..... Grace Bates.
James ..... Grace Bates.
Johnson ..... Dorothy Eck.
Joyce ..... Grace Bates.
Kamhoot ..... Grace Bates.
Kelleher ..... Grace Bates.
Leuthold ..... Dorothy Eck.
Loendorf ..... Dorothy Eck.
Lorello ..... Dorothy Eck.
Mahoney ..... Grace Bates.
Mansfield ..... Grace Bates.
Martin., ... Dorothy Eck.
McCarvel ..... Grace Bates.
McDonough ..... Grace Bates.
McKeon ..... Grace Bates.
McNeil ..... Dorothy Eck.
Melvin ..... Dorothy Eck.
Monroe ..... Dorothy Eck.
Murray ..... Grace Bates.
Noble ..... Grace Bates.
Nutting ..... Dorothy Eck.
Payne ..... Dorothy Eck.
Pemberton ..... Dorothy Eck.
Rebal ..... Grace Bates.
Reichert ..... Dorothy Eck.
Robinson ..... Dorothy Eck.
Roeder ..... Dorothy Eck.
Rollins ..... Dorothy Eck.
Romney ..... Grace Bates.
Rygg ..... Grace Bates.
Scanlin ..... Dorothy Eck.
Schiltz ..... Grace Bates.
Siderius ..... Grace Bates.
Simon ..... Dorothy Eck.
Skari ..... Dorothy Eck.
Sparks ..... Grace Bates.
Speer ..... Dorothy Eck.
Studer ..... Dorothy Eck.
Sullivan ..... Grace Bates.
Swanberg ..... Grace Bates.
Toole ..... Dorothy Eck.
Van Buskirk ..... Dorothy Eck.
Vermillion ..... Dorothy Eck.
Wagner ..... Grace Bates.
Ward ..... Grace Bates.
Warden ..... Grace Bates.
Wilson ..... Grace Bates.
Woodmansey ..... Dorothy Eck.

PRESIDENT GRAYBILL: The house will be in order. The clerk will announce the vote.

SECRETARY MARSHALL: Mr. President, 50 delegates have voted for Dorothy Eck and 50 delegates have voted for Grace Bates. (Laughter and Applause)

PRESIDENT GRAYBILL: Just a moment. The Chair has polled the two candidates, and it's the preponderance of their opinion, if you can

figure that one out, that we postpone another vote until after lunch, in the interest of time, so I'll recognize Mr. Murray.

DELEGATE HARPER: May I ask a question on the vote?

PRESIDENT GRAYBILL: Well, let's-all right. We'll take a question on the vote, Mr. Harper. At least we'll hear it.

DELEGATE HARPER: Just to clear it in my own mind, how is this vote being counted? Who keeps track of this as we go along?

PRESIDENT GRAYBILL: Well, we've got about three people keeping track and, in fact, the parliamentarian kept track, so we had four people and they all agreed it was 50-50.

DELEGATE HARPER: All right. Thank you.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I move that the Convention recess until 3:30 p.m., November 30, 1971.

PRESIDENT GRAYBILL: Now, if **we** do that, we will at that time, as the first order of business, vote again on this. And we'll secondly vote on the secretaryship, and then we will take up three other little items from the Rules Committee at that time.

All in favor of the motion to recess until 3:30 say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed...
(No reply.)
We're in recess.
(The Convention recessed at 12:40 p.m.)

Afternoon Session November 30, 1971 3:35 p.m.

PRESIDENT GRAYBILL: The Convention will be in order.

The Chair is of the opinion that the first order of business is to reballot on the vice-president for the western district, and the candidates are Dorothy Eck and Grace Bates.

Is the clerk ready to call the roll?

SECRETARY MARSHALL: Yes, sir.

PRESIDENT GRAYBILL: All right, the clerk will again call the roll, and he's asked that you please use the first names, if you can—Dorothy Eck and Grace Bates-and speak out loud and clear, and we'll see what happens.

SECRETARY MARSHALL:

Aasheim	Grace Bates.
Anderson, John	Grace Bates.
Anderson, Oscar L.	Dorothy Eck.
Arbanas	Dorothy Eck.
Arness	Grace Bates.
Aronow	Grace Bates.
Artz	Grace Bates.
Ask	Dorothy Eck.
Babcock	Dorothy Eck.
Barnard	Grace Bates.
Bates	Grace Bates.
Belcher	Grace Bates.
Berg	Dorothy Eck.
Berthelson	Dorothy Eck.
Blaylock	Grace Bates.
Blend	Grace Bates.
Bowman	Dorothy Eck.
Brazier	Dorothy Eck.
Brown	Dorothy Eck.
Bugbee	Dorothy Eck.
Burkhardt	Dorothy Eck.
Cain	Grace Bates.
Campbell	Dorothy Eck.
Cate	Dorothy Eck.
Champoux	Dorothy Eck.
Choate	Dorothy Eck.
Conover	Grace Bates.
Cross	Grace Bates.
Dahood	Dorothy Eck.
Davis.	Dorothy Eck.
Delaney	Grace Bates.
Driscoll	Dorothy Eck.
Drum	Dorothy Eck.
Eck	Dorothy Eck.
Erdmann	Grace Bates.
Eskildsen	Grace Bates.
Etchart	Dorothy Eck.
Felt	Dorothy Eck.
Foster	Dorothy Eck.
Furlong	Grace Bates.
Garlington	Dorothy Eck.
Graybill	Grace Bates.
Gysler	Grace Bates.
Habedank	Dorothy Eck.
Hanson, R. S	Grace Bates.
Hanson, Rod	Grace Bates.
Harbaugh	Dorothy Eck.
Harlow	Grace Bates.
Harper	Dorothy Eck.
Harrington	Grace Bates.
Heliker	Dorothy Eck.
Holland	Grace Bates.
Jacobsen	Dorothy Eck.
James	Grace Bates.
Johnson	Dorothy Eck.
Joyce	Grace Bates.
Kamhoot	Dorothy Eck.
Kelleher	Grace Bates.
Leuthold	Dorothy Eck.
Loendorf	Dorothy Eck.
Lorello	Dorothy Eck.
Mahoney	Grace Bates.
Mansfield	Grace Bates.
Martin	Dorothy Eck.
McCarvel	Dorothy Eck.
McDonough	Dorothy Eck.
McKeon	Grace Bates.
McNeil	Dorothy Eck.
Melvin	Dorothy Eck.
Monroe	Dorothy Eck.
Murray	Grace Bates.
Noble	Grace Bates.
Nutting	Dorothy Eck.
Payne	Dorothy Eck.
Pemberton	Grace Bates.
Rebal	Grace Bates.
Reichert	Dorothy Eck.
Robinson	Dorothy Eck.
Roeder	Dorothy Eck.
Rollins	Dorothy Eck.
Romney	Grace Bates.
Rygg	Dorothy Eck.
Scanlin	Dorothy Eck.
Schiltz	Dorothy Eck.
Siderius	Grace Bates.
Simon	Dorothy Eck.
Skari	Dorothy Eck.
Sparks	Grace Bates.

Speer	Dorothy	Eck.
Studer	Dorothy	Eck.
Sullivan	Grace	Bates.
Swanberg..	Grace	Bates.
Toole	Dorothy	Eck.
Van Buskirk	Dorothy	Eck.
Vermillion	Grace	Bates.
Wagner	Grace	Bates.
Ward ..	Dorothy	Eck.
Warden	Grace	Bates.
Wilson..	Dorothy	Eck.
Woodmansey	Dorothy	Eck.

PRESIDENT GRAYBILL: Will the clerk announce the tally?

SECRETARY MARSHALL: Mr. President, 58 delegates have voted for Dorothy Eck, 42 delegates have voted for Grace Bates.

PRESIDENT GRAYBILL: That elects Dorothy Eck for western vice-president of this Constitutional Convention. (Applause)

Now, I wonder if Mr. Eskildsen would escort Dorothy Eck and I wonder if Jean Bowman would escort Bruce Brown to the podium so that we may have them presented.

DELEGATE BATES: Mr. Chairman.

PRESIDENT GRAYBILL: Mrs. Bates.

DELEGATE BATES: Grace Bates from District 11. I would like to have this a unanimous ballot. Could we pass a unanimous ballot for Dorothy Eck?

PRESIDENT GRAYBILL: All those in favor of casting a unanimous ballot for Dorothy Eck say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Those opposed.. (No reply.)

You've just won unanimously, Dorothy.

SECRETARY MARSHALL: There has been a unanimous ballot cast for Dorothy Eck for vice president from the western district.

PRESIDENT GRAYBILL: I want to present to you your new western district vice-president and eastern district vice-president, who have now been elected and will serve in these capacities throughout this Convention.

The Chair now presumes we will vote on the office of secretary-we will nominate for the office of secretary.

Now, you will remember, we approved a resolution this morning that a secretary was to be elected to have the custody, and so forth, of the books, and so forth, and that the duties of the secretary can be delegated to the executive director or other employees, except that the duties of certifying the revisions or alterations or amendments to the Constitution cannot be certified.

The Chair will now recognize people for nominations for secretary. Mr. Monroe.

DELEGATE MONROE: Mr. President, it's my honor to rise to nominate a friend of mine for about 10 years. He's a friend from my home community. He is a great organization man. He is a great workman. He's a great friend of youth and others.

He wants to serve in the capacity of secretary of the Constitutional Convention. He's a man that not only wants to serve in an honorary way, but would also like to do many of the things that his talents lend to him, such as organization, and abilities that he has.

His name is Harold Arbanas. I place his name in nomination at this time.

PRESIDENT GRAYBILL: The name of Harold Arbanas has been placed in nomination. Is there one second for Harold Arbanas?

DELEGATE: Mr. President, my name is William Swanberg from District 13.

PRESIDENT GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I would like to heartily second the motion just made by Lyle Monroe. Harold Arbanas is known in Great Falls as a distinguished worker, a hard worker, and I think he will do a good job for this Convention.

PRESIDENT GRAYBILL: All right. Now, the Chair will recognize someone for other nominations for the office of secretary. Mrs. Bates.

DELEGATE BATES: Mr. Chairman, Grace Bates from District 11. I would like to place in nomination the name of a woman who has been a civic worker for many years. She has been secretary and curator of the museum in Glendive for 13 years. She's been active in many organizations, serving as county president in the Women's Club, and at this time, I nominate Louise Cross from Glendive.

PRESIDENT GRAYBILL: The name of Louise Cross has been nominated for secretary of this Convention. Is there a second for Mrs. Cross? Mr. Jacobsen.

DELEGATE JACOBSEN: Arnold Jacobsen, District 3. I have known Louise Cross for approximately 17 years, and during this time she's served in various capacities of responsibility. Each time when-and I wish to emphasize the two words "each time"-she has done her job excellently, conscientiously, and each time the job has been well done.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: I'm George Rollins from District 8. I wish to place in nomination the name of a person who has been an active and articulate proponent of constitutional revision, who has been a leader in the activities of the League of Women Voters, who has been active in civic and community affairs, one who is a housewife and mother, one who has the ability to be an effective and competent secretary. I wish to nominate Jean Bowman.

PRESIDENT GRAYBILL: The name of Jean Bowman has been placed in nomination. Mr. Cate.

DELEGATE CATE: Jerry Cate from District 8. I rise to second the nomination of Mrs. Jean Bowman for secretary. Jean Bowman is what I call a beautiful person. She is bipartisan, she's gracious, kind, generous and fair, and extremely competent to perform any task which might be assigned to her as secretary.

She has been active in our community in the League of Women Voters, in various other civic efforts, and she's the type of person who throws her whole heart and soul into everything that she does.

There is also another thing. Jean Bowman received 12,475 votes for the office of delegate, which was the second highest number of votes cast in the State of Montana for a delegate, and I feel that she really does represent a lot of people, and I would like to submit her-or second her nomination.

PRESIDENT GRAYBILL: All right, Jean Bowman's name has been placed in nomination. Are there other nominations? Mr. Arness.

DELEGATE ARNESS: Mr. President, Frank Arness, District 23. I wish to place in nomination the name of a man who is qualified both by virtue of his scholarship and his experience for the job of secretary. I move the nomination of Paul Harlow from Thompson Falls.

Paul has been five terms in the Montana Legislature, and he has been active for almost 30 years in local community affairs, in county affairs and in statewide affairs. I move his nomination for secretary.

PRESIDENT GRAYBILL: All right, Paul Harlow has been nominated. A second for Paul Harlow? Mr. Driscoll.

DELEGATE DRISCOLL: Mr. President, I would like to second the nomination of Paul Harlow. He's probably the most conscientious man I've ever known. In his activity as a legislator, he's been more a friend of the people, and I'm very proud to second the nomination of Paul Harlow.

PRESIDENT GRAYBILL: All right, his name has been added to those. Are there other nominations? Mr. James.

DELEGATE JAMES: George James, District 23. I just wanted to second Paul Harlow's nomination.

PRESIDENT GRAYBILL: All right, are there other nominations? Are there other nominations?

(No reply.)

If not, the Chair will entertain a motion to close the nominations. Mr. Harbaugh—

DELEGATE DRUM: Drum from District 8.

PRESIDENT GRAYBILL: Oh, excuse me. I'm a row too far. Mr. Drum.

DELEGATE DRUM: Have you imposed a rule of one second in this—

PRESIDENT GRAYBILL: Well, I haven't imposed it, but I've suggested it.

DELEGATE DRUM: Oh, you've suggested it.

I move the nominations be closed.

PRESIDENT GRAYBILL: All right, there's a motion that the nominations be closed. All in favor say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed...

(No reply.)

All right, the nominations are closed.

Now, we have four to vote for, and the rules, to review them, that we're going to operate under, are that if anyone receives a majority, that's it. If not, we will knock off the last name and vote again. And we'll call the roll and you'll call out the name.

Harold Arbanas-let's have these people stand. Harold Arbanas, please stand; Louise Cross, please stand; Jean Bowman, please stand; Paul Harlow, please stand.

Very well. Mr. Clerk, will you call the roll?

SECRETARY MARSHALL:

Aasheim ..... Cross.
Anderson, John ..... Bowman.
Anderson, Oscar L. ..... Cross.
Arbanas ..... Arbanas.
Arness ..... .Harlow.
Aronow ..... Harlow.
Artz ..... Arbanas.
Ask ..... Bowman.
Babcock ..... Bowman.
Barnard.. ..... Cross.
Bates ..... Cross.
Belcher ..... Pass.
Berg ..... Bowman.
Berthelson ..... Bowman.
Blaylock ..... Cross.
Blend ..... Bowman.
Bowman ..... Bowman.
Brazier ..... Bowman.
Brown ..... Bowman.
Bugbee ..... Arbanas.
Burkhardt ..... Bowman.
Cain ..... Harlow.
Campbell ..... Bowman.
Cate ..... Bowman.
Champoux ..... Bowman.
Choate ..... Bowman.
Conover ..... Bowman.
Cross.. ..... cross.
Dahood ..... .Harlow.
Davis ..... .Harlow.
Delaney ..... Harlow.
Driscoll ..... Harlow.
Drum ..... Bowman.
Eck ..... Bowman.
Erdmann ..... Bowman.
Eskildsen .....
Etchart ..... Bowman.
Foster ..... Bowman.
Furlong ..... Arbanas.
Garlington ..... Bowman.
Graybill ..... Cross.
Gysler ..... Bowman.
Habedank ..... Cross.
Hanson, R. S. ..... Bowman.
Hanson, Rod ..... .Harlow.
Harbaugh ..... Cross.
Harlow ..... .Harlow.
Harper ..... Bowman.
Harrington ..... Arbanas.
Heliker ..... Bowman.
Holland. ..... Arbanas.
Jacobsen ..... Bowman.
James ....Harlow.
Johnson ..... Bowman.
Joyce ..... .Harlow.
Kamhoot ..... Bowman.
Kelleher ..... Bowman.
Leuthold ..... Bowman.
Loendorf ..... Bowman.
Lorello ..... Arbanas.
Mahoney ..... Bowman.
Mansfield ..... Arbanas.
Martin ..... Bowman.
McCarvel ..... Arbanas.
McDonough ..... Cross.
McKeon ..... Arbanas.
McNeil ..... Bowman.
Melvin ..... Bowman.
Monroe ..... Arbanas.
Murray.. ....Harlow.
Noble ..... Arbanas.
Nutting ..... Bowman.
Payne ..... Bowman.
Pemberton ..... Bowman.
Rebal ..... Arbanas.
Reichert ..... Bowman.
Robinson ..... Bowman.
Roeder ..... Arbanas.
Rollins ..... Bowman.
Romney ....Harlow.
Rygg ..... .Harlow.
Scanlin ..... Bowman.
Schiltz ..... Bowman.
Siderius ..... Arbanas.
Simon ..... Bowman.
Skari ..... Arbanas.
Sparks ..... Bowman.
Speer ..... Bowman.
Studer ..... Bowman.
Sullivan ..... Arbanas.

Toole		Bowman.
Van	Buskirk..	Arbanas.
Vermillion		Arbanas.
Wagner..		Arbanas.
Ward		Bowman.
Warden..		Arbanas.
Wilson		Bowman.
Woodmansey	" "	Arbanas.

Does the gentleman from the great highline wish to vote?

DELEGATE ESKILDSEN: I'll vote for the winner, Jean Bowman. (Laughter)

SECRETARY MARSHALL: Mr. Eskildsen is now present and votes for Bowman.

Does Mr. Belcher still wish to pass? Mr. Belcher?

DELEGATE BELCHER: Pass.

SECRETARY MARSHALL: You still pass. All right.

Mr. President, candidate Bowman, 52 votes; candidate Arbanas, 23 votes; candidate Harlow, 14 votes; candidate Cross, 10 votes.

PRESIDENT GRAYBILL: By your vote, you have elected Jean Bowman secretary of this Convention. (Applause)

Would Vice-President Brown be good enough to return the honors to Mrs. Bowman? (Laughter)

Ladies and gentlemen, I present to you Mrs. Bowman, who has been elected the secretary of this Constitutional Convention. Congratulations. (Applause)

DELEGATE CHAMPOUX: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: We just added up those totals. Could you give us the totals again, please?

SECRETARY MARSHALL: For the gentleman from Boston, sir, 1 passed, 52 and 10 is 62, 62 and 23 and 14-66, 76.

PRESIDENT GRAYBILL: 99.

SECRETARY MARSHALL: Any time, sir.

DELEGATE HARLOW: Mr. President.

PRESIDENT GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I realize I can't speak for the other candidates, but I would move now that we cast a unanimous ballot for Jean Bowman as our secretary.

PRESIDENT GRAYBILL: Mr. Arbanas, do you want to second that motion?

DELEGATE ARBANAS: Yes.

PRESIDENT GRAYBILL: And Mrs. Cross, do you want to third that motion?

DELEGATE CROSS: I certainly do.

PRESIDENT GRAYBILL: All right, all those in favor say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed... (No reply.)

We have now cast a unanimous ballot in your favor, Jean. (Applause)

SECRETARY MARSHALL: As temporary secretary of the Montana Constitutional Convention, I cast a unanimous ballot for Mrs. Bowman for secretary of the Montana Constitutional Convention.

PRESIDENT GRAYBILL: All right. Mr. Marshall Murray, the Rules Committee, the Chair will recognize you to discuss the matter of the Committee on Administration.

DELEGATE MURRAY: Mr. President, are we to discuss the matter of the executive director? That's the one I have next on my list.

PRESIDENT GRAYBILL: All right, I beg your pardon. We'll take the executive director next.

DELEGATE MURRAY: I move that the Convention adopt the following temporary rule:

"There shall be an executive director of the Convention who shall be appointed by the president. He shall be primarily responsible for the administration of the Convention under the authority and supervision of the president. He shall be subject to removal by the Convention."

The thinking on this particular matter, was that the executive director should be appointed by the President, since we have rather already created the precedent of having him make the appointments, at least to the committees. We feel, since it would be too great a task to place this responsibility with the secretary, that he should be a

salaried employee and thus we created this separate position, as I previously explained to you.

We feel that the matter of his removal should rest with the delegates residing on the floor and, therefore, the last sentence was added to the proposal as I read it.

PRESIDENT GRAYBILL: You have heard the chairman of the Rules Committee resolve that there shall be an executive director of the Convention, who will be appointed by the president. He is subject to the removal of the Convention.

I would like to say, while you debate this, that if the Chair is allowed to appoint this person, he would also ask him to sit with, but not serve on, the Committee on Administration, so that he would have full information. I would think nobody but the members of the House should serve on, but I think he should sit with, and be appraised of, what the Committee on Administration does.

Now, with that in mind, is there discussion on the resolution? Mr. Mahoney.

DELEGATE MAHONEY: Mahoney from District 12. Could we have any idea about what's going to be the salary of the executive director? I mean, this is highly irregular under the legislative procedure. You know the secretary, the senator, the sergeant-at-arms, or the chief clerk of the House is drawing about the same salary as the members. Now, have we got any idea what that's going to be costing us? Do you have any information on that?

PRESIDENT GRAYBILL: I have-the Chair has no idea. I know of no one else that has an idea.

It's the Chair's opinion that if the next matter we're going to take up, which is the Committee on Administration, on appointing employees, that it would become the province of the Committee on Administration to recommend a salary to this body.

I think the Committee on Administration, which is going to be asked next, that it be given power to hire, and would probably have that duty, Mr. Mahoney, but I have no idea, and I know of no one else that does.

DELEGATE MAHONEY: Well, all that I'd like to know, I'd like to see it submitted back to this body to at least tell them what is going to be the salary schedule, so we could vote on it, for all the

PRESIDENT GRAYBILL: I think the minutes could reflect that you would like the Administration Committee, if it does do this, to refer the matter of salaries to this body, and I presume that would be done, or at least you'd be notified and given a chance if it wasn't done.

Now, Mr. Murray did you want to comment on that?

DELEGATE MURRAY: No.

PRESIDENT GRAYBILL: All right. Is there other discussion on this proposal-this resolution? Mrs.-Payne.

DELEGATE PAYNE: Mrs. Payne from District 18. I was just wondering about the advice and consent of the Convention, or do you want this power alone?

PRESIDENT GRAYBILL: I don't want it alone, particularly. I didn't draw the regulation. Let's see.

It would be perfectly agreeable with me, as we have done in the past, to add that I would nominate rather than that I would appoint. I would like to suggest to the Rules Committee that we make that amendment. Does the Rules Committee object to that? Did you discuss that, Mr. Murray?

DELEGATE MURRAY: We didn't even discuss it. We thought that this matter was probably already settled and that Dale Harris would be so appointed, and that it wouldn't make much difference in that respect; however, if that's the inclination of the president and the members, why, I certainly would be agreeable to that amendment, speaking as the chairman of the committee.

PRESIDENT GRAYBILL: Unless there is objection from other members of the Rules Committee, we will strike the word "appoint" and write in the words "shall be nominated by the president".

I would like to announce for the benefit of the Convention, that as far as I know, no arrangements have yet been made with Mr. Harris or anyone else. If I am allowed to nominate, I will. But I am going to do it, if I'm allowed to, after consultation with the Committee on Administration and after I have had their advice, I will be glad to nominate, if I'm allowed to.

So, that's the way it's going to work if this motion passes. If you want to do something else, that's fine. Mr. Davis

DELEGATE DAVIS: Mr. President, Davis from District 21. I'm not sure I understood that. In reference to Mr. Harris, as to-1 wonder if we could have the benefit of your thinking as to whether you are going to continue with the staff, or if you might have something else in mind?

PRESIDENTGRAYBILL: Ihavenotmade any decisions. It is my intention to consult with the entire Committee on Administration, which we are prepared to appoint that committee before we recess today, and before I make any statement about who should be anything, I'm going to consult with them.

Now, if I'm given the nominating power, they might not all agree. But I might agree with some of them, and I'll be glad to nominate, but I have not decided, and I don't intend to decide 'til after I've talked to them on this, or any other staff position. And as far as I know, the staff positions-the only thing I've ever said, and I think others have said, is that all the staff are going to be considered and some of the staff are going to be used, and whether it's all or not depends on what we want to do.

Mr. Murray.

DELEGATE MURRAY: I'll withdraw my motion and make another motion. I have put some additional language in this now.

"There shall be an executive director of the Convention who shall be nominated by the president. He shall be primarily responsible for the administration of the Convention under the authority and supervision of the President. His nomination shall be ratified by the Convention and he shall be subject to removal by the Convention."

PRESIDENT GRAYBILL: So we have now added the idea that after the President nominates, it would be ratified by the Convention and, of course, subject to removal by the Convention?

DELEGATE MURRAY: Yes.

PRESIDENT GRAYBILL: Now, that's the amended resolution before the body. Is there further discussion? Mr. James.

DELEGATE JAMES: I wish to second Marshall Mm-ray's proposal.

PRESIDENT GRAYBILL: Is there any further discussion of the problem of the proposal, or the resolution, concerning executive director of the Convention?

(No reply.)

The Chair hearing none, the Chair then will prepare the vote and we will open the ballot. There has been a resolution by the Rules Committee that there be an executive director of the Convention who would be nominated by the president. He shall be primarily responsible for the administration of the Convention under the authority and supervision of the president. His nomination shall be ratified by the Convention and he shall be subject to removal by the Convention. And the Chair added the suggestion that he would ask-the Chair would ask him to sit with, but not upon, the Administration Committee.

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, all those in favor vote Aye, and those opposed vote Nay.

Have all the delegates voted? Does any delegate wish to change his vote? The Chair has now closed the vote. Mr. Clerk will you tally the vote, please?

SECRETARY MARSHALL: Mr. President, 98 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: By your vote of 98 Ayes and 0 No's, we have now disposed of the resolution setting up an executive directorship to be nominated by the president and ratified by the Convention, et cetera.

Now, Mr. Murray, can we consider the matter of what the Committee on Administration might do?

DELEGATE MURRAY: Mr. President, I move the adoption of the following committee report:

"The Committee on Administration, after consultation with the president, shall appoint such employees as may be necessary for the effective operation of the Convention."

And it is our thinking in proposing this, that something should be done on this matter in the interim-before we meet again-and we think that properly that duty rests with the Committee on Administration, after consultation with the president. And we think that the various officers, themselves, or employees which may be chosen, and the names to be given them, should be left to the committee and to the president.

PRESIDENT GRAYBILL: All right. The Rules Committee has placed before you a

resolution that "the Committee on Administration"—which, as I said, will be appointed this afternoon-"after consultation with the president, shall appoint such employees as may be necessary for the effective operation of the Convention."

Is there any discussion on the motion-or on the resolution? Does everyone understand the resolution?

(No reply.)

All right, if you're ready, then we will vote on the resolution. If you're in favor of the resolution giving the Committee on Administration the power, after consultation with the president, to appoint and employ such persons as arenecessary vote Aye, if you're opposed vote Nay.

Have all the delegates voted? Does any delegate want to change his vote? We'll close the ballot. Mr. Clerk, will you announce the ballot?

SECRETARY MARSHALL: Mr. President, 99 delegates voted Aye, none voted No.

PRESIDENT GRAYBILL: By your vote of 99 Ayes and no Nays, you have approved the Rules Committee proposal that the Committee on Administration have the power to appoint employees, after consultation with the president.

Now, Mr. Murray, does the Rules Committee have a proposal concerning lobbyists?

DELEGATE MURRAY: Lobbyists? Yes, sir.

Mr. President, I move the adoption of the following proposal:

"Section 15 of the Constitutional Convention Enabling Act regulating lobbying during the Constitutional Convention is adopted by this Convention. Lobbying on the floor and foyer of the convention hall is prohibited ½ hour prior to the commencement of the session, during the session and within ½ hour after recess or adjournment."

This matter has been considered by the committee. It is our opinion that we should speak on the subject, although certainly there isn't any apparent problem existing at this time. Rather, this is an indication to those who may be interested in lobbying, that we are concerned that there may be a problem, and that we are willing, early, to act upon it.

By the convention hall we mean this room, and when we talk about the foyer, we mean the room immediately to the north of this room. And I "Convention Hall" for this purpose, and the Rules Committee, if it's within its province to make that decision, will consider it in the morning.

PRESIDENT GRAYBILL: Before we debate this matter, I would like to ask the clerk to read Section 15 of the Constitutional Convention Enabling Act. Mr. Clerk.

SECRETARY MARSHALL: Section 15. Licensing of Lobbyists.

"Section 15. (1) Sections 43-801 to 43-808, R.C.M. 1947, providing for the licensing of legislative lobbyists, shall apply to lobbying at the Constitutional Convention.

(2) Licensed lobbyists shall file with the secretary of state a report on February 1, 1972; February 15, 1972; March 1, 1972; March 15, 1972; April 1, 1972; and June 15, 1972. The report, under oath, must include all expenditures made by him relative to the promoting or opposing constitutional provision. On the 5th day a report is delinquent, the secretary of state shall suspend the license of any licensed lobbyist who fails to file a report until such report is filed. The suspension shall be entered on the docket, and the president of the Convention notified.

(3) Reports must be filed even though no expenditure has been made.

(4) Reports need not include:

(a) reasonable internal expenditures such as office expenses, mailing and routine research, and

(b) reasonable expenditures for his personal food, lodging and travel.

(5) Expenditures of $25 or less may be reported in total amounts rather than in detail.

(6) A lobbyist who terminates his duties shall give the secretary of state, within 30 days after the date of such termination, written notice, and shall include a report of his expenditures covering the period of time since his last report. Such reports shall be final.

(7) The secretary of state shall provide forms and shall keep such reports on file for 3 years. All records are to be open to the public.

(8) Failure to file reports, or the filing of incomplete information, is a violation of Section 43-808, R.C.M. 1947.

The Enabling Act provides for the registration, licensing and report of expenditures of Convention lobbyists. This section provides that the current statutes regulating and licensing legis-

forth in Appendix I). Current statutes provide regulations for lobbying during legislative sessions by any person, corporation or association, any board, department, commission or agency of the state, and any county or municipal corporation. In addition, this section provides that lobbyists submit semi-monthly financial reports on all expenditures to promote or oppose constitutional provisions. On the 5th day a report is delinquent, the secretary of state shall suspend the license of the lobbyist until report is filed."

PRESIDENT GRAYBILL: Thank you, Mr. Clerk.

The Chair would like to point out that this resolution will accomplish the purpose as adopting as our practice The Enabling Act language, plus it will establish immediate rules concerning the 30-minute rule. It does not forestall later matters concerning lobbyists in the second session-or the session in January.

Now, with that background, is there discussion on the resolution? Mr. Drum.

DELEGATE DRUM: Dave Drum from District 8. A point of clarification. I believe there is a fee charged, now, for lobbyists during the legislature. What is that fee, do you know?

SECRETARY MARSHALL: Ten dollars.

DELEGATE DRUM: Ten dollars? I thought it was more. Are you sure?

SECRETARY MARSHALL: It depends on what you want.

PRESIDENT GRAYBILL: Ten dollars.

Is there other discussion? Mr. Harlow.

DELEGATE HARLOW: Mr. President, I am in complete accord with this resolution, except the 30-minute period.

Past experience of people working this hall, trying to accomplish things, have proven to them that the 30-minute period is too short. The last legislature moved that up to an hour, and I wish to make an amendment to that resolution, merely changing the word "30-minutes"?—

DELEGATE MURRAY: Half hour.

DELEGATE HARLOW: —"½ hour" to "1 hour", both before and after.

I think you will find, as time goes along, this is the only place where you can come to work and confer with your fellow delegates, and various things, and ½ hour time before you start and ½ an hour time afterwards, you will find is much, much too short.

So, if that has to be-1 move that we amend the resolution by inserting the word "1 hour" in place of the "½ hour."

PRESIDENT GRAYBILL: All right, Mr. Harlow has made an amendment-proposed an amendment that it be "1 hour" instead of "½ hour." Mrs. Mansfield.

DELEGATE MANSFIELD: District 14. I second the motion.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: As I'm sure all of the past legislators are well aware, the language in the proposed rule, as I read it and as you have it before you, is a change from the existing Legislative Rule.

I think that the committee's opinion was somewhat different in this respect than the opinion of Mr. Harlow, in that we haven't had the benefit of meeting as a Constitutional Convention recently in Montana. We don't know how much of a problem-or how much time we would be spending, on the floor of this hall in meetings.

We feel that in the early stage-1 felt, and I think the others did-that in the early stages of the Convention, this is probably an adequaterule, that much, much of the work will be done in the committees, where you will not have this problem, the committee rooms not being here.

And that if-and werecognize that it may be a problem, but we're not-we haven't been looking for witches or spooks. And we feel, really, that,— we felt, really, in proposing this rule, that the ½ hour time period at the commencement-subject of course to change if it becomes a problem-is an adequate period of time.

We realize, of course, that it is imperative that we go to the people and ask for the adoption of this. Lobbyists take varying forms, and certainly we don't want to be in the position of antagonizing anybody who may be a lobbyist in any form and, therefore, we gave that consideration.

DELEGATE CATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Murray, would your committee consider extending the definition

of foyer a little further back past the coffee shop, so that if a delegate wants to go out for a cup of coffee, he doesn't have to fight three or four lobbyists on the way?

That wouldn't limit them from using the coffee shop for coffee, or whatever they might need, but it would prohibit them from lobbying in that area, and would permit the delegate to go off the floor and get a cup of coffee or a package of cigarettes, that type of thing, without being approached by these people. And, as you know, as a former legislator, that is what happens. And I was wondering if your committee would consider that? Thank you.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, may I speak to that in this fashion?

I can't draw on any personal experience from which to answer that remark. I know not what facilities might be available for the lobbyists. It occurred to me, that perhaps the senate chamber could be wired for sound, so that they could be seated-they and others interested-could be seated in that Chamber.

Perhaps if there were another facility for them to obtain-them and others because there will be guests, of course, of ours, who will also be concerned with this-if there were another facility, I think that I would agree that maybe that is a proper thing, and that we should extend it.

At this moment, not knowing what might arise in that respect, and not knowing how available these things will be, I really submit the proposed rule as it is.

PRESIDENT GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: I offer a second substitute motion with respect to the motion on—

PRESIDENT GRAYBILL: Wait a minute. A substitution on the whole motion, or just the amendment? Whole motion?-

DELEGATE BRAZIER: Actually, it's the second sentence of the whole motion. I don'trecall exactly what Mr. Harlow's language was.

PRESIDENT GRAYBILL: I think that you're a little premature. Let me hear it, and then we'll decide where to go.

DELEGATE BRAZIER: That the second follows: "Lobbying on the third floor west of the convention hall is prohibited, with the exception that lobbyists may appear at committee hearings and by invitation of delegates."

PRESIDENT GRAYBILL: Before you debate that, let me ask the parliamentarian something.

Mr. Brazier, are you amending it with the ½ hour still left in, or with the hour left in?

DELEGATE BRAZIER: The thrust of my motion is that they are excluded—

PRESIDENT GRAYBILL: How long?

DELEGATE BRAZIER: Permanently, unless invited or when we have a committee meeting on the third floor west.

PRESIDENT GRAYBILL: All right, so yours is an amendment to the entirething, and we don't need any time limits, just the third floor west?

DELEGATE BRAZIER: That's right. That's the intention of my motion.

PRESIDENT GRAYBILL: Now, with that understanding-if I am not right, correct me parliamentarian-we could then vote on this amendment first and then, if we have to, we'll vote on the other amendment.

Mr. Marshall Murray.

DELEGATE MURRAY: Let me speak to this a minute.

Walter Marshall has just pointed out that we have a concessionaire involved with the selling of the goodies outside that is licensed, and that perhaps before this matter is given any further consideration as to the restriction of people to that concession stand, we ought to just take a look at what his license provides, so that we don't create a problem or bring ourselves into some type of litigation.

Also, I might make one other suggestion. I know not how people are commonly going to find their way into the balcony if they can't come into the west wing of the building on the third floor.

PRESIDENT GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Margaret Warden, District 13. I would just like to say, are we trying to keep people away from this Convention, or are we trying to get them here to hear what they have to

When I think about a lobbyist, I don't think about a dirty word. I think about someone who has something to offer.

We are asking the citizens of Montana to come here, to talk to us, to tell us what they would like to see in the Constitution. I think they are-should have the right to come in and talk to us. I do think that we need the foyer a short time after and before session, free of any other people except those that are invited. But I do feel we would be remiss if we said we'll shut these off, so we can't have people come to us. We are not in ivory towers.

PRESIDENT GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, Jerry Loendorf, District 12. I agree with Mrs. Warden. I think to eliminate the entire west wing, here, of the third floor from lobbyists, is an unreasonable restriction. It's almost a restriction on freedom of speech and expression.

These people are Montanans. Also, they're here to express the views of Montanans, and I think we ought to hear them. After all, they are going to vote on what we do.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I think that in regard to the hour and the ½ hour— that is, as I understand it, is what we're talking about?

PRESIDENT GRAYBILL: We are not—

DELEGATE MAHONEY: Isn't that the amendment they're discussing?

PRESIDENT GRAYBILL: No sir, **we are** not. We are discussing the amendment to limit lobbyists from the west wing. No time involved.

Mr. Champoux-excuse me, I didn't mean to take it away from you, but if you don't want to discuss that, I'll come back to you.

DELEGATE MAHONEY: While we are on this point, I would have to oppose that, very much. I agree with Mrs. Warden, that we're wanting people to come up here and see what's going on.

Secondly, I would hope that we will make everything available to them in a courteous manner. Now, I always have an awful time trying to define a lobbyist. The law is very vague. When does a person become a lobbyist, and when isn't he a lobbyist?

I think these are discussions that we have to take up in this thing. It's a very important question to decide at this particular time. If we only have registered lobbyists, when does he have to register? What-can he handle two things or three things or four things of the Constitution, which is different than the law has been?

Are we going to come out and say you can only register-if you take the law and interpret it now, you'd be limited, I think, to two sections. This I would hesitate-maybe they might be in all sections, and then if the person gets above that, he's a lobbyist.

Now, these are the things-this is a very different legislative session. I think we must realize this. I can't see all the bug-a-boo of lobbyists. I agree with Mrs. Warden.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: The thing I would like to speak to is similar to Mr. Mahoney, is this business of identification.

For instance, if one of my fellow Montanans— I was going to say constituents-came to me and began to ask me certain things, or subject me to some information in the lobbying sense, am I to turn it off?

Also, how are we going to identify these lobbyists? Do we have plans to have some kind of badges, and so forth? The official ones, are they going to have badges?

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, maybe we were a little ahead of ourselves here, but I don't think so.

The intent of the committee, was to speak to the subject to let people whointend to belobbyists, to let those-let people who will be hired-or who will-come over without fees to present their views to this Convention-know that we're concerned about the problem, but at the same time to let them know that we're not as concerned as the legislative session might be about the problem, because we have reduced the period of time when we suggest they should be prohibited from the hall itself. And the permanent Rules Committee, I am advised, will consider this matter at length.

There are other matters which must go into the permanent rule because they have been specifically written into The Enabling Act, and I suggest, if I might, that we adopt this rule as it is— as it's proposed and as it is-and rest with that. And if we do have problems, when we have a meeting of the permanent Rules Committee, we

will call for a public hearing, and people, lobbyists and others can appear and express their opinion to the permanent Rules Committee at that time.

PRESIDENT GRAYBILL: Other discussion? I'll get to you, Mr. Brazier.

Mr. Aasheim.

DELEGATE AASHEIM: From District 4. I concur with Mr. Murray. I think we are unduly alarmed about this matter of lobbyists, and if we find that they are causing a disruption here, that we can always change our rules, if the occasion arises. So I would recommend that we go along with the recommendations of the Committee.

PRESIDENT GRAYBILL: Any other discussion before I let Mr. Brazier close on his motion? Mr. Felt.

DELEGATE FELT: I rise with somewhat mixed emotions, in the hope that it might be something for the delegates to consider. I'm going to, when I'm finished speaking here, make a motion that the question of this resolution-or committee report-be referred back to the temporary Committee on Rules, and ask them to bring out a report at the first opportunity tomorrow.

I want to point out that-and it may clarify some of these questions that have been raised—first of all, lobbying has been defined, and so has the term lobbyist; and it means the lobbyist is a person who has been hired to influence the decision of members of this deliberative body, and lobbying is the act of doing that.

By their registration, people declare themselves to be lobbyists. Those who have not registered are, in effect, not lobbyists, in the sense that they are here without being paid, or else they're simply not familiar with the law-and this occasionally happens in good faith.

One reason that I know something about this question is that I did participate, in the early efforts, to make the statute regulating lobbyists—and we have always regulated them by rules-and I did draft the bill which Senator Kraft later introduced, and it became the first statute in Montana to regulate lobbyists. I'm also familiar with it because, rather unexpectedly, I became a lobbyist on the very touchy subject of trading stamps. So I have been on both sides.

The only thing that lobbyists really care about is that there be some definite rules, so that the rules are. (Inaudible--) And also that these rules be enforced, so that those who comply, are not placing themselves at a disadvantage, as compared to those who do not comply.

The area question is one in which we all have aninterest, and until we have lived with it, we may not be able to make our final decision. This seems to be known and recognized by all of us, and it's been pointed out, that our decisions now do not have to be final.

Personally, I know that I would not like this third floor west-it leaves me a little chilly because I don't know exactly where that plan is drawing [drawn], and the matters of access to the galley.

I feel sure that it's proper for us to discuss this subject now, to let it be known here that we're interested in it, but as to whether or not it's time to make the decision, I'm not so sure.

I would hope, and suggest, that thecommittee consider defining this little area south of the Senate Chamber as an area where access is limited to delegates of the Convention and, if they found it was possible, to provide coffee service in that area, and if there is access to it by women delegates-1 know how the men can get there-then it might serve as rather an escape hatch for all of us, and we could get coffee without being crowded.

And, I assure you, that the crowded condition does not occur by reason of those lobbyists who are hired. There aren't that many of them, and they're not going to block your access. They areinterested people, and they should receive their coffee, and they shouldn't have to show a badge in order to get in and get a cup of coffee.

We really don't know the essence of any of this, and it may be appropriate to make something. But if we do, I would certainly support the delegate who moved to first amend the motion to enlarge the time period to 1 hour before and 1 hour after.

I think that our decision on this could be affected by whether or not we have office space available to each of us. If we do have that, I can assure you that any good lobbyist would much prefer to meet you in some place like that, rather than on the floor or at the coffee bar where you're going to be jostled and have many interruptions. He would much prefer to go someplace where its quiet.

I would hope that somehow we could express the fact that we appreciate the importance and value of the third house, and that we are not trying to regulate them out of business, but only to make

activities might interfere with us in carrying out our own work.

And also, to express that it is not meant that lobbyist is a dirty word or that lobbying is bad or in any way affecting people in general when we talk about lobbying. But if we keep the word lobbying from being further abused--and we should make it clear about that, and I'm sure that the press is perfectly capable of handling it properly-but not only that, we, ourselves, when we are speaking about this subject, should make it clear we are not in any way trying to prevent people from coming here to express their opinions, whether it's before a committee, or before all of us, or any place.

So, with those comments, and partly in view of the interest that's been shown in it, and the time of day, I now move as a substitute for all motions pending, that the question of the adoption of this resolution--or motion, or report, whatever it is designated-be referred back to our temporary Rules Committee on Organization.

PRESIDENT GRAYBILL: All right. Mr. Felt has moved that we refer it back to the temporary Committee. I'd like to hear from the-just a moment, is that debatable?

All right. I guess the committee should be allowed a chance to answer on that matter, and then we'll vote on that issue.

This motion-his motion takes precedence over yours, unless it fails. But the committee gets a chance to explain its position, and then we'll vote on Mr. Felt's motion. And then if there's anything left of yours, we'll come back to you, Jeff.

DELEGATE MURRAY: Mr. President, I'd like to know if there's anybody that has an opinion that has not had an opportunity to express it today on this subject.

DELEGATE BRAZIER: I didn't.

DELEGATE MURRAY: You must have. You made a motion, didn't you?

DELEGATE BRAZIER: I didn't get to argue it.

DELEGATE MURRAY: Well, I submit that this is a fair proposal. The committee thought so, and I submit that rather than take it back, we should settle it today on the floor. And I also submit and suggest that if there's somebody that hasn't said something, let's hear it now, rather than hear it again in committee and back again on the floor.

PRESIDENT GRAYBILL: Allright, but we can't hear it 'til we've voted on the motion. (Applause)

All right. Now, the Chair-the motion is nondebatable, except for response by the committee, and so the Chair is now going to put Mr. Felt's motion to you.

His motion is; to resubmit the lobbying resolution to the Rules Committee. We're going to vote by Ayes and Nays. You want to vote on the board, I guess. Everybody's up there.

All right. I'll open the ballot, then. All those in favor of recommitting the resolution to the Rules Committee vote Aye, and all those opposed to recommitting it vote No.

Has everyone voted? Do any delegates wish to change their vote? The Chair has now closed the vote. Would you please tally the vote?

SECRETARY MARSHALL: Mr. President, 4 delegates have voted Aye, 93 delegates have voted No.

PRESIDENT GRAYBILL: By your vote of 93—

SECRETARY MARSHALL: 4 delegates have voted Aye, and 93 delegates have voted No.

PRESIDENT GRAYBILL: -93 votes against resubmitting, 4 votes in favor of resubmitting. The motion failed.

Now, Mr. Brazier, I'm going to let you close on your motion, but I'm not sure that Mr. James doesn't want to debate it. He was up.

DELEGATE JAMES: Mr. Graybill, I just wanted to speak in support of Mr. Murray's motion. I felt that this is-we've spent enough time on this. It's well thought out. We don't want to violate-the Constitutional Convention doesn't want to violate anyone's constitutionalrights, so1 think this is a pretty good motion.

PRESIDENT GRAYBILL: All right. Now, Mrs. Pemberton, you were up. Do you have anything to say?

DELEGATE PEMBERTON: Mr. President, is there a motion in order, or is it off the floor, or what?

PRESIDENT GRAYBILL: What we're doing is, we defeated Mr. Felt's motion to resubmit

it, so the whole proposition is still on the floor, and it's subject to Mr. Brazier's amendment that the whole third floor west be off limits to lobbying.

DELEGATE PEMBERTON: Thank you. That isn't what I had in mind.

PRESIDENT GRAYBILL: All right, is there any discussion on Mr. Brazier's amendment that we limit lobbying in the third floor west? Otherwise, it's much as stated by the Rules Committee. Mr. Brazier.

DELEGATE BRAZIER: Thank you, Mr. President.

My respects to Mr. Felt for stating the essence of my motion. Again, like some of my other motions, there's no particular magic in any particular geographic area, but I wanted to set aside a large enough area where we would be free to meet in small groups, from time to time, to exchange thought before making a decision.

Now, one of the reasons I raise this point at this point in time is, we're not clear what "temporary" means in this case, and I wanted to get it to your attention before it is too late.

Point number two I want to make is, everyone is worrying what a lobbyist is. Mr. Felt pointed out that a lobbyist is that person who is defined as a lobbyist in the act. Now, I don't agree with those that claim we're depriving anybody of the freedom of speech. The rest of my motion expressly recognizes that lobbyists have an opportunity to communicate with us. It does not restrict them from being anyplace that anybody else in the State of Montana can be. It expressly provides for them to come and talk to us at our convenience, where we will not be distracted, and where they can make their points without interference.

Another point I want to make is, it seems to me not to be a compelling argument to be worried about the location of a concession stand. Certainly, if there's a problem with respect to concessions, the concession stand can be moved. But we aren't here to keep anybody in business.

You might be surprised that I bounced this idea off of a good number of lobbyists in and around Helena, and there wasn't a one of them who disapproved of it.

Another point I want to make, is I'm slowly getting my campaign promises made. Finally, I want to thank you. I was getting worried. I haven't voted wrong all day, and it's against my nature to

PRESIDENT GRAYBILL: All right, we're ready to vote.

Just a minute. Mr. Wilson, I was going to let him close, but if you want to debateit, we certainly don't want you cut off, if you want to say something. Go ahead.

DELEGATE WILSON: Mr. Chairman, Wilson from District 6. I rise in support of the chairman on temporary Rules. I think that his proposal was reasonable. I think that if we get too restrictive with the people in the lunchcounter area, that it is an alienation of people's rights, and I think we are a little bit too restrictive when we block off such a large area.

PRESIDENT GRAYBILL: Thank you.

Mr. Brazier, is there anything you want to respond to that?

(Delegate Brazier indicated in the negative.)

All right, now we're ready to vote on the motion to amend the Rules Committee's resolution. The amendment, in substance, is that we do adopt The Enabling Act lobbying things, but then we limit lobbying on the third floor west. We eliminate lobbying from the third floor west, in this part of the building.

All those in favor of the amendment which would eliminate lobbying on this third floor west vote Aye, all those opposed to that-well, now wait a minute. Hold up. Mr. Brazier is on his feet.

Yes, sir. Have I stated it right?

DELEGATE BRAZIER: Mr. President, you left out a part. With the exception that "lobbyists may appear at any committee hearings on the third floor west, or by invitation of a delegate."

PRESIDENT GRAYBILL: All right. Now, we've heard the other amendment. They can certainly appear at committee hearings here, and they can appear upon the invitation-and I expect you mean the immediate invitation, not a general invitation from one of us to the world.

All right. Now, with that understanding, those in favor of the amendment which limits lobbying in this area vote Aye, and those opposing it vote No.

Have all the delegates voted? Does any delegate wish to change his vote? The Chair will close the ballot. Please tally the ballot.

SECRETARY MARSHALL: Mr. President, 11 delegates have voted Aye, 87 delegates have

PRESIDENT GRAYBILL: By your vote of 87 Noes and 11 Ayes, the motion has failed.

We're now back on the amendment to the original motion, which is Mr. Harlow's amendment that we change it from "30 minutes" to "1 hour." Is there any further discussion?

(No reply.)

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, on this motion, then, we're voting for changing the Rules Committee proposal to "1 hour."

The ballot is open. Those in favor of changing it to "1 hour" vote Aye, those opposing it-and in other words, voting for "30 minutes"-vote Nay.

Have all the delegates voted? Does any delegate want to change his vote? I now close the ballot. Will you tally the vote?

SECRETARY MARSHALL: Mr. President, 30 delegates have voted Aye, 69 delegates have voted No.

PRESIDENT GRAYBILL: By your action of 69 voting No, and 30 voting Aye, you have defeated the amendment by Mr. Harlow, and the 30-minute rule is now back in the basic resolution, and the "1 hour" has been defeated.

Now, we are ready to vote, or at least to further discuss, the Rules Committee's rule. Mr. Drum.

DELEGATE DRUM: Dave Drum, District 8. I move that Mr. Murray's motion be amended to include the lobby area south of the senate chambers, so it would read "this area, the foyer, and the lobby area south of the senate chambers."

PRESIDENT GRAYBILL: Mr. Murray, do you understand that? I think he means the lobby area north—

DELEGATE DRUM: No, south of the senate chambers.

DELEGATE MURRAY: I'm not sure of your direction. Do you mean to the west—

PRESIDENT GRAYBILL: You mean west of the senate chambers, don't you, Mr. Drum?

DELEGATE MURRAY: This side of the senate chambers? South?

DELEGATE DRUM: The senate chambers is east-west. South of the senate chambers is a little room that is known as the lobby to the senate chambers, and that's the area I would like to see included with the foyer here.

DELEGATE MURRAY: That's the little area the Senate has reserved to itself, and to which no lobbyist is ever admitted?

DELEGATE DRUM: True. On the other side of the senate foyer room.

DELEGATE MURRAY: Right. What's that called?

PRESIDENT GRAYBILL: It's the fire exit to the Senate, and it is not the north lobby, it's the south lobby. Now we're all together.

DELEGATE MURRAY: South lobby-I concur in that, and I'll go for that amendment.

PRESIDENT GRAYBILL: All right, the Chair-the chairman of the committee has acceded to Mr. Drum's amendment, unless somebody else wants to now amend the resolution, which now says "lobbying is prevented on the floor and the foyer of the Convention in a ½ hour period," and that includes the little foyer south--not north-south of the Senate. That's an area closed off, that's always been off limits to lobbyists.

Now, is there discussion on this matter, or is there further discussion on the Rules Committee's resolution?

(No reply.)

Hearing none, the Chair will put the matter to a vote. The ballot is now open. Those in favor of the committee's resolution concerning lobbying, as amended, vote Aye, those opposed to the committee's resolution vote Nay.

Have all the delegates voted? Any delegate want to change his vote? The ballot's now closed. Will you please tally the vote, clerk.

SECRETARY MARSHALL: Mr. President, 99 delegates have voted Aye, 1 delegate has voted NO.

PRESIDENT GRAYBILL: By your action of 99 of you voting Aye to the resolution of the Rules Committee, it is adopted, as amended, and is now taken care of.

Now, the Chair will recognize Mr. Murray again, this time to discuss the resolution-the proposed resolution which I think you've been handed, about appointment of committee chairmen and vice-chairmen.

Mr. Murray

DELEGATE MURRAY: Mr. President, for the purpose of the journal, I am assuming that Mr. Drum's motion was made in the form of a substitute motion, so that we don't have any problem with amendments. Is that true?

SECRETARY MARSHALL: We never make a mistake in this rostrum, sir.

PRESIDENT GRAYBILL: We never make a mistake in the journal, you mean. (Laughter)

DELEGATE MURRAY: Mr. President, I move the adoption of the following proposed temporary rule:

"The president, after consultation with the vice-presidents, shall designate the chairman and vice-chairman of every committee, and his designees shall be subject to the approval by a majority of the members of the Convention. In the case of a vacancy or the prolonged absence of the chairman or vice-chairman, the president of the Convention shall appoint a chairman to act until the chairman or vice-chairman shall return."

Now, may I speak to the motion?

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE MURRAY: This is the second half of the Illinois rule having to do with the appointment of the members of the committee proposition.

Yesterday, because of the time limit, we did not get into the matter of the designation of the chairman and vice-chairman, and today we had the opportunity to do so.

I believe, that for all intents and purposes, the matter that we handled yesterday, with respect to the appointment of the members of the committee by the president, is Rule 16 of the Illinois Convention and this, with the respect to one or two word changes, is Rule 18.

PRESIDENT GRAYBILL: All right. Mr. Vermillion, just a moment.

I have an amend-

A proposed substitute motion has been given me, and I understand you may be one of the authors, and maybe Mr. Cate. I don't see Mr. Cate here.

Are you an author of this, or a sponsor, Mr. Vermillion?

DELEGATE VERMILLION: Yes.

PRESIDENT GRAYBILL: All right, then I

DELEGATE VERMILLION: I would like to have the delegates to consider this substitute motion:

I move that all committee chairmen be selected by the members of that committee on a merit basis.

And my thinking on this, is this; That we can get more of the appearance of a bipartisanry, than or nonpartisan effort on this.

I am convinced that the chairman that would be selected under the Rules Committee's proposal would be on a fair basis, and that there is one objection to my proposal that has come up, and that is there is a possibility, in fact, that we could get a very unbalanced appearance. We could conceivably get 10 committees, 8 chaired by one party and maybe only 2 by the other, and there was some concern that this would give an unbalanced look to the Convention.

But I would like to think that we could get away, now, from some of these party matters, and that on a strictly nonpartisan basis, if each committee would select that, it might be that one party or another might get more of the chairmanships. But I don't think that would be all that important.

I'm convinced that each committee would have an opportunity to hear from any of its members who would like to try for the chairmanship of that committee, would be able to hear his views, hear his ideas, and hear his background, and select a capable chairman in that respect.

And I would assume, actually, too, that these committees would look to the presidency and other officers for some advice on the selection of their committee chairman. I would ask the Convention to consider that proposal-that motion.

PRESIDENT GRAYBILL: All right. At this point, so that everybody is with us, we have the resolution of the Rules Committee that the Chair designate, subject to the approval of the majority. We now have a substitute motion that the committee chairmen be selected by the members of the committees on a merit basis.

DELEGATE: Mr. President.

(Inaudible-both talking at once)

PRESIDENT GRAYBILL: Wait a minute. Hold it. I want to recognize, because we have more here, Mr. Campbell.

DELEGATE CAMPBELL: Bob Campbell,

to enter a substitute motion for all motions pending, and with your permission, have it distributed by the page for consideration.

PRESIDENT GRAYBILL: Well, go ahead.

DELEGATE CAMPBELL: Okay. If you would hand them out to the delegates, please.

I move that the president, with the consent of the vice-presidents, shall appoint the temporary chairman of each committee, who will preside at the first committee meeting before the adjournment of this organizational session. At such committee meeting, the temporary chairman shall call for the election of the permanent committee chairman and vice-chairman.

I feel that there are four distinct advantages of this substitute motion. First of all, the committee members will be appointed by the president and the vice-president, and the temporary chairman will, of course, be appointed by the same, based on the information in the questionnaires and the background information that the officers already have.

Second of all, this substitute motion would insure that there would be a first meeting of all committees before this organizational meeting ends.

Third, if anyone at this committee meeting feels that they would like their qualifications for committee chairman considered by the committee, they could present this to the committee for their determination and decision at that time. If he or she wanted to be considered for a chairman or a vice-chairman, that decision could be made then.

Fourthly, before returning home to our home districts, we would all know what committee we would be on, we would all know who the permanent chairman and the vice-chairman is.

I feel this is a fair substitute motion, and would present it for consideration.

PRESIDENT GRAYBILL: Thank you.

Now, so that we all understand, we have the committee's motion, we have this one substitute motion, a second substitute motion. No other substitute motions are amend-no other substitute motions are in order.

We're going to debate these in that order. And I'm going to-we're going to debate this last one first, the one about letting the president appoint a temporary chairman, and then the committee meet and appoint it's own chairman, and I'm going to recognize Mr. Roeder.

DELEGATE ROEDER: Mr. President, would I be out of order if I were to debate the whole package? (Chuckles)

PRESIDENT GRAYBILL: I beg your pardon?

Yes, the parliamentarian points out to me that... in effect, the whole package is open for discussion.

DELEGATE ROEDER: That's what I was asking—

PRESIDENT GRAYBILL: Because they all really amend each other, but after we debate, we've got to vote on the last one first.

DELEGATE ROEDER: Okay. Well, I'd like to speak in opposition to both substitute motions, and in support of Mr. Murray's motion.

In the first place, both substitute motions fly in the face of the practice of the other conventions, and of the brunt of experience in other states. I'm referring to page 50 of the Constitutional Convention Manual.

Also, I cursorily examined the rules that have been sent out by the Constitutional Convention Commission, and overwhelmingly, the practice is to allow what has been suggested by the Rules Committee. I think it's the essence of conservatism to rely on experience of other people, that has proved to be profitable, rather than (inaudible word) flying in the face of it.

Also, I can't agree with the implied suspicion of the Chair. I think this isn't necessary. We have no evidence to distrust.

Thank you.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I rise in support of the member of the Rules Committee's proposal. I think that it's absolutely essential that you, Mr. President, consult with the vice-presidents, as the motion calls for, at every step of the way, and I trust you to do that, and I think you will do it. I think all parties or factions of this Convention will be represented if you do that.

And, on that basis, I think the proposal of the Rules Committee should be supported.

PRESIDENT GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. President, I rise, also, in support of the motion of the Rules Committee.

I would like to point out to the delegates, that

the Rules Committee proposal has the following language after "the president": "With consultation with the vice-presidents, designates the chairman and vice-chairman of every committee, and that his designees shall be subject to the approval by a majority of the members of the Convention."

Neither one of the two substitute motions contains any provision for approval of the designation of the Committee chairman and vice-chairman by the committees by the whole Convention, and I think the provision for approval by the whole Convention is a terrific safeguard to all of us. And it requires the president and the vice-presidents to be absolutely fair, absolutely impartial, and requires them to make those appointments on ability and merit. And we certainly have the power in this Convention, if the president does not make such appointments in such a manner, to overthrow his recommendations. And I rise in support of the Rules Committee.

PRESIDENT GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I rise to speak to the second substitute motion offered by Mr. Campbell of Missoula. This motion in no way reflects any distrust or suspicion of the president or the vice-presidents of this Convention.

I would also like to say, that the impetus has been given that since other constitutional conventions have relied on the method of appointing by the presidency, that Montana should automatically do so. I believe that consistency is sometimes a hobgobblin of little minds. I think that now is the time for us to maybe do something a little bit innovative, and to make these committees real committees.

I believe that the chairmen of these committees are going to be the spokesmen of these committees and, as so, they should reflect the makeup of that committee, and should be the choice of that committee. This motion gives the president the opportunity to appoint a temporary chairman, and, in the event of the selection by the members of the committee, the temporary chairman may be the permanent chairman. But I at least think that we are not above trying something a little bit different in Montana.

PRESIDENT GRAYBILL: Mrs. Bowman.

Jean Bowman, from District 8. I would like to rise in support of the two substitute motions.

First, I feel that now that the Convention has begun, that we should make every effort to work harmoniously, so that this effort will be evident to the people of the State. And I do feel that the people on a committee should have the right to select the chairman of the committee on which they will be expected to work for the next 2 to 3 months.

PRESIDENT GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, Don Foster, delegate from District 10. I rise in support of the substitute motion of Mr. Campbell.

I feel that we have established excellent precedent. Yesterday, we received the report of the temporary Rules Committee by a chairman who was selected by that committee, which was selected and appointed by our president. I fully endorse the chairman of the temporary Rules Committee. I think we have all seen the excellent judgment that this group showed.

Secondly, the advantage of the president being able to make the initial appointment, is that he can express his preference, and I submit that this will be the permanent chairman in most, if not all, of the cases. But I also submit that any question of suspicion, any question of the fact that the committee chairman is, in fact, the concensus spokesman of that group, should be dispelled. And I submit that the substitute motion of Mr. Campbell will accomplish that fact.

And, finally, I submit that ratification—ratification by the entire body of all of the chairmen of the committees, at best, would be cumbersome, and at worst, could be devisive. And I support the substitute motion of Mr. Campbell.

PRESIDENT GRAYBILL: Mr. Harbaugh-Harbaugh, were you on your feet last time? All right, you're off. Mr. Skari.

DELEGATE SKARI: Carman Skari, District 14. I rise to concur with Mr. Foster in support of the substitute motion by Mr. Campbell.

I also want to state, there's no implied suspicion of the Chair here, at all. I think it's merely a procedural matter, and I think it's an attempt to make this, perhaps, a bit more democratic, in the sense that we were also elected.

This Convention elected its president in this manner, and we would simply apply the same

ship from among their own members, and people that they would want to lead them.

I feel we've balanced our leadership with party-between party, and according to geography, and according to sex-in many different ways at the officer level. I think now, at the committee level, we should be able to dispense with any further artificial attempts to perfectly balance all segments of this Convention.

I think that the time has now come to move from a bipartisan convention to a nonpartisan convention, and that we simply select people strictly from merit within the committees.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: I rise in opposition to the substitute motions, and I speak first as a Montanan, and second as a Republican. I think the president, in accordance with the motion that has been submitted, should be given the opportunity to make the appointments. I think the vice-presidents that have been carefully selected, who will confer with the president, are going to give us the type of appointments that are going to mean progress for the Convention.

Insofar as my colleagues, who have taken the microphone to support the substitute motions, I think they indicate to us nothing more than 10 campaigns being waged outside of these chambers for chairmanship of the 10 committees. I think this is divisive, and I think it's going to cause problems that can best be solved by reposing our faith and trust in the four officers who we have elected, who, to me, represent all of the factions, all of the interest, that are represented by the 100 delegates.

Consequently, I think, to move this along so that we can get down to the real business of this Convention, for which we were elected by the citizens of Montana, we should stop playing around. We should let the president and the vice-presidents appoint the committees and their chairmen, and get down to the real work of this Convention. I support the original motion. (Applause).

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, Don Scanlin, District 8. I would like to address my question to my distinguished colleague.

I don't want to take the time on the floor to discuss it, but I'd like to make an appointment, in private, to discuss it. Shall we listen to and heed the voice of having experience, or rather choose a dangerous detour of experimentation?

Thank you.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, I'm struck by the fact that all proponents of the substitute motion are very young. At the ripe age of 52, I shall never have another and a better chance to join them, and I support their motion as a progressive idea that needs to be heard, and needs to have attention paid to it. (Applause)

Thank you.

PRESIDENT GRAYBILL: Mr. Studer.

DELEGATE STUDER: I'd like to rise in opposition to the substitute motion. I would like to rise in support of the Rules Committee report, and in order to make my talk brief, I would like to say that Mr. Aronow expressed my thoughts in full.

PRESIDENT GRAYBILL: I'm going to let you have a chance, but I want the rest of them to, Mr. Murray.

Mr. Brazier.

DELEGATE BRAZIER: Mr. President, I take issue with those who suggest ulterior motives on behalf of anybody who has offered a substitute amendment, or those who suggest that anybody in this chamber does not have balanced and intelligent judgment. This is supposed to be a people's constitution, and I think it should continue to appear to be one throughout these proceedings.

Further, as a matter of procedure, I think it's a hollow safeguard to say that somebody can challenge the appointment made, because we all know that everybody here is meritorious, and nobody's got enough stomach, or inclination, to stand up and look him in the eye and say, "I challenge you." There simply is not going to be a challenge. And for those reasons, and for the reasons that I fancy myself as a younger person, I support the substitute motions.

PRESIDENT GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Bill Burkhardt from District 12. It seems the quick way to say you're not yet over the hill, is to be for these substitute motions, (laughter) and I am rising to speak on behalf of this substitute motion.

The reason being, I think there's an issue of trust that is now a two-edged possibility. We have-1 have found a growing trust for our presi-

dent as I've watched him function, and he has a sense of humor that I appreciate. He has a fairness in all things and, for my part, I would be willing to look at the option of the vice-presidents concurring with him in his appointments.

But-I also know, that people have responsibilities that come from the past to each other, and I'm terribly concerned that, as we look at the future, we do not have too much obligation to those things which have gone before. I think they need a solid awareness of our heritage, but we've got to have a sense of the next century, too.

So, these young people are not simply making a play for power. They are saying that when you get ready to value things in this society, look at the new as well as the old. And I would like to say that the possibility of following up on the proposal of either of these substitute motions is attractive to me, not because it takes responsibility from the president. I think he could work well with any person in this body who was so elected, and I think we're all committed to work together for that purpose; however, there is the chance that old debts might have to be paid, and I think we'd just like to be ready to feel that, if it were true.

Thank you.

PRESIDENT GRAYBILL: Well, let's see. That's Mr. Harrington.

DELEGATE HARRINGTON: Dan Harrington, District 20. I would like to rise in opposition to the substitute motions. I feel that this is not a young issue or an old issue. I feel that we have to show our support to the Rules Committee on this, I think we follow them. We've come a long way in the last few days, and I feel that we should continue to do so.

Thank you.

PRESIDENT GRAYBILL: All right, Mr. Gysler.

DELEGATE GYSLER: Erv Gysler, District 14. I rise to pretty much second what Mr. Dahood has said before me. I think, in the interest of good organization, harmonious working throughout the Convention, that we do not support the substitute motions. I think we will all get along a lot better as our Convention goes on, and I would like to commend the Chair and the Rules Committee for what I think, so far, has been a very excellent job, and I trust that it will continue so.

DELEGATE: Siderius.

PRESIDENT GRAYBILL: Oh. Pardon me. Mr. Siderius.

DELEGATE SIDERIUS: I think we can work very well with thesubstitutemotion, and I'm in favor of it.

PRESIDENT GRAYBILL: Mr. Harper.

DELEGATE HARPER: George Harper, District 12. It's been implied that we don't trust the leadership who appoints thecommittees, possibly. That is the substitute motion which I support. I would just like to suggest that maybe we take a look at the other angle. We don't want to imply that we don't trust the committees, either.

All of us were elected, equally, to come and be a part of this. The 10 people that sit down in a room together, having agreed that they want to work on that particular subject, have a chance to talk over with each other, find out if so and so wants to run for this, what are his qualifications, why does he want to be chairman, how would he handle it, and so forth.

And as they discuss the philosophy of working together, maybe, after an hour or so, they would arrive, possibly-and as someone suggested, probably-the temporary chairman, in some cases, will be accepted as the chairman of that committee. But otherwise, the committee then goes along with the idea of working 2, or 3, or however many months we have together, with the chairman, and with the procedure that the committee itself selects.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President and delegates to this Convention. I would just like to point out one thing; that, not because of our own problems, so much, but because of the voters, we did end up with 58 on one side and 36 on the other and 6 Independents. I point this out, that the committee makeup, no matter how hard the leadership tries, will still be in that proportion, and I want you to all think about the position that you put the leadership in each of the various committees. The makeup will be more Democrats on, I would say, all the committees, probably, or maybe there would be one that would be different. But in that light, I'd like you to think what could happen.

A committee sits down to vote. The chairman

of the opposite party, and he is voted out. The repercussions from this can be quite serious. It could work the other way, and seriousness would develop.

I feel that we're placing more-we're talking about being nonpartisan and bipartisan and all that. I think we're getting in a position where we'll be partisan on this thing. It could be partisan very easily, or the outcome could look like it was. I think this way, where we would have a real diversified president and vice-presidents, I would vote on their judgment. (Applause)

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. President, George Heliker, District 18. I rise in support of the substitute motion.

When I first read it, my reaction was negative because I thought that we might wind up with a lot of elected chairmen-elected without sufficient consideration. I'm persuaded by the argument here today that that is very unlikely, and that most of the chairmen appointed by the president, with the consent of the vim-presidents, would indeed be the permanent chairmen.

Responding to Mr. Eskildsen's comment, I think we have demonstrated here this afternoon, that from here on out, this Convention is to be a nonpartisan Convention. (Applause)

PRESIDENT GRAYBILL: Mr. Monroe.

DELEGATE MONROE: I just stand to-in favor of the substitute motion by Bob Campbell.

PRESIDENT GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Furlong, District 16. I would like to address a question to the Chair, if I might.

PRESIDENT GRAYBILL: Very well. Go ahead.

DELEGATE FURLONG: In the substitute motion Number 2, it suggests that the committee assignments will be known before the adjournment of this organizational session.

Is it the intent of the Chair, through the vice-presidents, to make the appointments known by tomorrow, or before adjournment, under the Temporary Rules proposal?

PRESIDENT GRAYBILL: If you'll promise to vote on this before you go out in the hall, you'll find that all the procedural committees are posted in the hall, or the procedural committee nominations or designations-on which you will have to-let's explain this to everyone.

The motion yesterday said that on the committees, the chairman could nominate, or could appoint the committees, and you people then have until the 19th, I think it is, of January to change, or ask changes, of this body. So, the procedural committees are already posted out there. This doesn't make-now I don't want you to look at them and then corns back, Jerry. At least, I'd rather you didn't. Now, you go ahead and do as you please. I posted them so that they could be there when we go out. I don't want that to enter the discussion here.

So they are posted, the procedural ones. Whether I can get the other ones done by tomorrow night, or any time, I do not know, but the procedural ones are out there.

Now, as to-what was the second part of your question?

DELEGATE FURLONG: That was it, thank you.

PRESIDENT GRAYBILL: The procedural ones are out there, and we are working on the other ones, as far as the committees. Now, the things on the board out there have nothing to do with chairman and vice-chairman. I haven't designated any of them because I don't have any power to.

All right. Mrs. Bates.

DELEGATE BATES: Grace Bates from District 11. I rise in support of the original motion, for the reason that I feel we have elected a chairman-a president of this body who is responsible to all of us, and I'm certain he will appoint, with our consent, the chairmen he feels that he can be responsible for, and that will be responsible to him. And for the best organization and followup, I feel that this should be his prerogative, and I rise in support, then, of the original motion.

PRESIDENT GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Lyman Choate from District 2. I rise in support of the substitute motion, for the reason that I'm ornery enough to believe, that in spite of what some of the things that have been said here, the committees will not evolve into a bunch of people who will let partisanship enter into the selection of a chairman.

It might very well be that in a discussion among themselves, that they would find someone

who would better serve on the committee as the chairman, or vice-chairman, than the one appointed by the president. Very likely, this isn't going to happen very often; however, if we're going to get into nonpartisan thinking, or bipartisan thinking, we need to start, and we have done so. We've made good progress and great strides in that direction in the last couple of days.

I have every faith and confidence in the Chair-in the president and the vice-presidents whom we've elected, but I think, though, that the committees themselves could decide how the work can better be done by picking their own chairman afterwards, and so I support the substitute motion.

PRESIDENT GRAYBILL: Very well. Mr. Hanson.

DELEGATE HANSON: Mr. Chairman, when I first heard of this move, I had mixed emotions about it, and I have every confidence in our chairmanship and our vice-chairmen, and I would have been completely satisfied with the appointments that they would have made; however, after the discussion that I have listened to here on the floor this afternoon, I believe that in harmony, that we should support the substitute motion. I think that we will find that we will have a more harmonious Convention by doing that at this point, with the understanding that this is definitely not any discredit or reflection on the Executive Committee.

PRESIDENT GRAYBILL: All right. Is there any other discussion? Mr. Cate.

DELEGATE CATE: Mr. President, a point of clarification. I note that Mr. Eskildsen, Mrs. Bates, Mr. Holland, and Mr. McKeon are the first names listed on four of the procedural committees. Was that a designation of chairmanship?

I note from referring to other rules of other committees, of other conventions, that the first person named is the chairman of the committee. Was it your intention that those people were to be the chairmen of those committees?

PRESIDENT GRAYBILL: Mr. Cate, had you taken my admonition-orrequest that you not go out there, you would have heard me say from the floor, that I have not designated any chairmen or vice-chairmen, yet.

DELEGATE CATE: Thank you.

DELEGATE HARBAUGH: Gene Harbaugh from District 4. I'd like to call for the question.

PRESIDENT GRAYBILL: We're not going to have the question 'til everybody's had their say.

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, how do you, yourself, feel about making these appointments with the vice-presidents?

PRESIDENT GRAYBILL: I beg your pardon?

DELEGATE JACOBSEN: How do you, Mr. President, feel about making these appointments, with the advice of your vice-presidents?

PRESIDENT GRAYBILL: Since there is so much discussion, when discussion is completed, I will relinquish the Chair and make a statement.

Now, does anybody else want to discuss the motions? We're on Mr. Campbell's substitute motion. Mr. Drum.

DELEGATE DRUM: Dave Drum, District 8. I am not ready to run a foot race with the younger generation, but I'm sure not ready to be accused of being one of the older generation here, so I guess I fit somewhere in the middle.

When the substitute motions were passed around, I did a little doctoring on them and thought that they were a real good idea. Reflecting in my past memory of some of the things we've done, being a past legislator, thinking of some of the problems of committees, I reflect back to one committee where the chairman wanted to express himself on every single subject.

He looked great the first day-2 or 3 days, and I think if he'd been picked on merit, he would have been the one that was elected, selected, but we got so tired of listening to that guy. So, "we will now have three bills to consider, today. Here's what I think about the first one,", and then if a person would express themselves he would say, "well, you're wrong and here's why," and it just about drove everybody out of the room.

Another chairman, who happens to be sitting back here, was one of the greatest committee chairman there ever was, and he didn't open his mouth until everyone had expressed themselves, and he would never have been the first choice of anyone in there the first week.

and sometimes merit is easy to ascertain the first week, and sometimes that merit can get very tiresome down the line. So I think that in order to do the business of this Convention, we should consider the judgment of the leadership that has been selected, allow him to go ahead and appoint these committee chairmen, because if they select their own committee chairmen, and the product of this Convention is not satisfactory, this Constitutional Convention will make the sales tax look like a wreath of lillies around you-know-whose neck up there, and he doesn't want that any worse than you do. So I believe we should go ahead with the committee report, select it, endorse it, and move on to other business. (Applause)

PRESIDENT GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: After reading this substitute motion of the original motion, I see that the word "temporary" is in the substitute motions.

Personally, I kind of believe that this is an unnecessary word, and I believe the whole crux of this boils down to whether the chairmen will be approved by the committee or by the Convention of the whole, and I believe the committee is the one who should approve it.

PRESIDENT GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. Swanberg from District 13. I think there are some attractive features to both substitute motions, but I also believe that there is real danger of divisiveness, if we go along with it. Mr. Drum's comments about inexperienced chairmen, I think, should be taken up, also.

The president and his advisors, the vice-presidents, will presumably make it their business to acquaint themselves with the qualifications of each and every member here, and when they take up the problem of appointing chairmanships they will, I'm sure, appoint the most competent person available for the job. This might not occur if the chairmen, or if the committees themselves made that choice, so I think that is a very real point to consider.

I think Mr. Eskildsen's idea there, also-about the party predominance here, could also come up. And that, as I say, there are attractive features to both the substitute motions, I think the weight of preference is for the original motion, and I am speaking in support of it.

PRESIDENT GRAYBILL: Mr.-now. if you've been up once, you ought to let somebody else get up, till everybody's been up once.

Mr. Romney.

DELEGATE ROMNEY: Mr. President, Romney of District 22. I did not intend to discuss this matter, but in view of the fact that I am a member of the Rules Committee, andwediscussed this quite thoroughly, I feel that I should give my support to the Rules Committee's version and oppose the substitutes, both of them.

I think that there is merit in turning democracy loose and providing it with full play. I would hate to see it shackled, but I notice that this substitute-the second substitute motion, provides that at such committee meeting, the temporary chairman shall call for the election of a permanent committee chairman and vice-chairman. It indicates a view, that this appointment and meeting will take place tomorrow.

Tomorrow, as I understand it, will be the last day of this organizational session. In a few minutes after appointment tomorrow morning, these various committees would meet with the chairman as appointed by the leadership, which is of both parties. And the chairman would call the meeting to order and the membership of the committee would evaluate that leadership in 6 or 7 minutes, and then, perhaps, dispense with it and elect somebody else, a person who they may not have known for more than 3 or 4 days. I submit that this is hogwash, and as the youngest member of the assembly, I reject it.

PRESIDENT GRAYBILL: The Convention will be in order. Mr. Foster.

DELEGATE FOSTER: Don Foster, delegate from District 10. Mr. Swanberg has alluded to the fact that some of us delegates might have more experience than others. I submit that we all have equal experience as Constitutional Convention delegates. (Applause)

Thank you.

PRESIDENT GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: I yield to Mr. Burkhardt.

PRESIDENT GRAYBILL: All right, Mr. Burkhardt.

DELEGATE BURKHARDT: Bill Burkhardt, District 12. I don't really want to hear the sound of my voice too long, and I'll try to be brief,

but it seems to me that a couple of things could be put into this, that would make it a little more palatable.

PRESIDENT GRAYBILL: Mr. Burkhardt, the Chair wants to remind you that these are two amendments, now. We can't amend them. If one of them fails, we can come back and start again.

DELEGATE BURKHARDT: All right, just as a matter of information, it would seem to be possible that the committee might meet a little longer than 6 or 7 minutes before they made a selection, since they do have this prerogative.

The issue at stake, it seems to me, is the trust for the delegates, and I think we've established a growing trust in our president and vicepresidents, and now it's time to trust the delegates.

PRESIDENT GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. President, Tom Ask, District 9. As a member of the Rules Committee, I rise to support our original motion, and I would like to not belabor the point and take time, but I'd like to tell my fellow delegates, our committee, having the advantage of having our president before us a number of times when we met, and through this meeting, we have questioned him on the appointment of committees and chairmen and vice-chairmen, and I think it was the concensus of the committee, that we have a feeling that we're going to trust his judgment and the judgment of the vice-presidents that we have elected, and we have had that advantage that he has not spoken of today. Thank you.

PRESIDENT GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I'm Torrey Johnson from District No. 1. I'd like to rise in support of the resolution from the Rules Committee, and I would like to add a sentence in view of all the arguments here.

If the chairman or the vicechairman proves to be inadequate to handle the responsibility in the view of this committee, he may be removed by a vote of that committee and replaced.

PRESIDENT GRAYBILL: Mr. Johnson, we'll-we'll note your motion, but we will not amend it, yet, unless we get there.

DELEGATE BOWMAN: Mr. President,

PRESIDENT GRAYBILL: Mrs. Bowman, yes.

DELEGATE BOWMAN: I would like to take issue with Mr. Romney's statement that we would be forced to select a chairman of the committee after knowing him possibly only 2 or 3 minutes. I should hope that we probably know more of the delegates now, better than we knew them on the day which we selected our chairman, and I personally am very happy with the selection of our chairman, and I feel that we showed competence in that area. I feel that we can show the same competence when we select the chairmen of the individual committees, if we are allowed to do that.

PRESIDENT GRAYBILL: All right, Mrs. cross.

DELEGATE CROSS: Cross, District 3. I have been listening to the debate in a rather neutral position, but I think my feeling on it has begun to gel a little bit. It would seem that everybody seeking—

SECRETARY MARSHALL: Hold the microphone up a little closer to your mouth, Mrs. cross.

DELEGATE CROSS: Shall I repeat what I've said?

SECRETARY MARSHALL: Yes.

DELEGATE CROSS: I've been listening to the debate in a rather neutral position, but I think now my feelings on the question are beginning to gel. It is my feeling that many of the delegates would like the position of chairmanship, and I can't help but think everybody wants to be a chief, and that you're not going to have any Indians to do the work.

I would favor, I believe, the motion from the committee. I'll be very happy to be one of the Indians.

PRESIDENT GRAYBELL: Mrs. Erdmann.

DELEGATE ERDMANN: Marian Erdmann from District 13. I rise in wholehearted support of the original motion from the Rules Committee. I believe that this body has selected their leader-their president and their three vice presidents, with deliberation. You have chosen them as your leaders, and now give them a chance to do some leading

PRESIDENT GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Gene Harbaugh, District 4. I believe, also, with Mrs. Cross, that the opinions have begun to gel. I think we have allowed ample time, and I believe I am in order. I would like to move the question.

PRESIDENT GRAYBILL: Well, you might be in order, but I'd like to let everybody talk. And then I'm going to be last, so don't move it before I talk.

Mr. Arbanas.

DELEGATE ARBANAS: Harold Arbanas, District 13. I rise in support of the substitute motion. It seems to me, that we're saying that one person can select 10 chairmen better than 10 people can select one chairman.

PRESIDENT GRAYBILL: Is there other— Mr. Monroe.

DELEGATE MONROE: Mr. Chairman, did you mention earlier that an amendment is not in order at this time?

PRESIDENT GRAYBILL: No, we have three separate substitute motions, and if one of them fails, then we might have a chance to redo things. We've got to stop somewhere in the rules, too.

All right, Mr. Campbell, I would give you a chance to respond after I speak, but if you want to speak now, you can.

(Delegate Campbell indicated in the negative.)

All right, is there other discussion?

(No reply.)

Hearing none, I'd ask Mr. Aasheim to take the Chair.

PRESIDENT AASHEIM: Mr. Graybill.

DELEGATE GRAYBILL: First of all, I'd like to say that I certainly have no-I'm not mad at anybody for any of the motions, and that's fine with me.

I'd like to discuss them, frankly, with you for just a moment, and I'm talking now only to Mr. Campbell's substitute motion-the last-the third substitute motion by Mr. Campbell.

First of all, it says that I move that the president, with the consent of the vice-presidents-now, I doubt if that's really what they mean. Do I have to have the unanimous consent of all three of these vice presidents before I can even make a temporary appointment? I don't think they mean that. They probably mean with the advice of them, and I would still have the right to make it, but it is a little misleading. I merely point out that it wouldn't work if I had to get them all to agree-we might not agree.

And the second point that I would like to make is this: If I am asked to do-if this motion prevails, I would presume that you would like your committees to appoint their own chairmen, in which case, I will appoint the first person on each committee whose name-the first alphabetical name, as the temporary chairman, because I certainly am not going to presume, point the finger at, or help, anybody in his election to chairman on that commission. So I'm not going to express any opinion at all, if you let the committees choose it. I'm only going to express the opinion of having picked number "A", or the first alphabetical name on the committee, as the temporary chairman, and he can do the rest.

Third, I would, of course, express to you the feeling that I would like the right to pick them because apparently I'm going to have to be working with them an awful lot during the rest of the Convention.

Thank you.

PRESIDENT GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Bob Campbell, District 18. I certainly would, if there was a question on the word "consent", change it to "consultation."

I would like to point out, that there is no dissatisfaction with the officers. We certainly are in support of them. We certainly don't mean to place any false suspicions. I think we have a tremendous slate of officers, and that we are looking forward to a tremendous Convention; however, I think there has been a lot of strong issues raised in this.

The substitute motion, in effect, I feel, would still draw upon the wisdom of the president and the vice-presidents in selecting this temporary chairman. Now, that-he's at the disposal of the president and of the officers, not of other committee members; however, I feel that the ratification of this could be better done by that committee, who will have to work with the committee chairman for the next 3 months, rather than all of us going through and trying to ratify the appointment of every single committee chairman.

I think that, of course, the person who is

appointed would have a tremendous advantage, and I think that we are entitled, and I hope we would get, an appointment of someone that the president feels is qualified on these committees.

I might point out again that this literature, when you went home, you'd know what committee you're on. You'd know that you had one meeting, and you'd know who the chairman and the vice. chairman of that committee is. I think this is essential, if we are going to prepare for the important work next January 17th, but (inaudible few words) if there are no committee meetings at all, I feel that a lot of work may not be done that could otherwise be done.

Thank you very much, Mr. President.

PRESIDENT GRAYBILL: Thank you.

Now, the committee-or the sponsor of the amendment has spoken, and the Chair has spoken, and the original resolution to which it's a substitute is of the Resolutions Committee, and I'll recognize Mr. Murray, if he wants to say anything.

DELEGATE MURRAY: Mr. President, I probably brought this upon myself, because after the first substitute motion was printed and delivered to the desks of this convention hall, prior to the time that the committee proposed a rule was fully considered and distributed, we did call Mr. Vermillion to our committee room and did hear what he had to say about the first substitute motion.

Thereafter, we suggested to him and to Mr. Foster, that if they were serious in their contentions, that they propose and draft something in line with the second substitute motion, as you have it before you.

We, as the committee, felt that we probably are now discussing the most important question, since the election of the president, to come before this Convention. We unanimously decided to stay with our original proposal after hearing Mr. Vermillion and Mr. Foster, and we appreciate the discussion, and we hope that we get on with the vote.

DELEGATES: Question.

PRESIDENT GRAYBILL: Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, the question is on the substitute motion. The substitute motion is:

"I move that the president, with the consent of the vice-presidents, shall appoint the temporary chairman of each committee who will preside at the first meeting-first committee meeting before the adjournment of the organizational session. At such committee meeting, the temporary chairman shall call for the election of the permanent committee chairman and vicechairman."

All those in favor of this substitute motion vote Aye-the balloting is open-all those opposed, vote No.

Has everyone voted? Does anyone want to change his vote? If not, the vote is closed.

SECRETARY MARSHALL: Mr. President, 30 delegates have voted Aye, 68 delegates have voted No.

PRESIDENT GRAYBILL: By voting 30 votes Aye and 60 votes No, this substitute motion fails.

SECRETARY MARSHALL: 68, sir.

PRESIDENT GRAYBILL: All right, 68 voting No, this substitute motion fails.

The question is now on the first substitute motion of Mr. Vermillion's, that he moves:

"That all committee chairmen be selected by the members of the committee on a merit basis."

Now, Mr. Harrington.

DELEGATE HARRINGTON: Dan Harrington from District 20. On that particular vote, my voting machine didn't work on that, but I did vote and I voted Nay.

PRESIDENT GRAYBILL: Nay?

DELEGATE HARRINGTON; Yes. Just so my position is clear.

SECRETARY MARSHALL: I'll report it (inaudible)-please report if it doesn't work next time.

PRESIDENT GRAYBILL: All right.

Now, we're on the substitute motion of Mr. Vermillion, and it's up for discussion.

DELEGATES: Question.

(Small inaudible discussion in the chair)

PRESIDENT GRAYBILL: All right, we're

going to vote on the substitute motion. The motion is:

"I move that all committee chairmen be selected by the members of the committee on a merit basis."

I'm going to open the ballot. All those in favor of the proposition, vote Aye, all those opposed to the proposition vote No.

Has everyone voted? Is your light on, Mr. Harrington?

DELEGATE HARRINGTON: Yes.

PRESIDENT GRAYBILL: Okay. Does anybody want to change the vote? The ballot is closed. Will you tally the vote, Mr. Clerk?

SECRETARY MARSHALL: Mr. President, 19 delegates have voted Aye, 81 delegates have voted No.

PRESIDENT GRAYBILL: All right, the Noes 81 and the Ayes are 19, and therefore, that motion fails.

We are now on the original resolution of the Rules Committee:

"That the president, after consultation with the vice-presidents, shall designate the chairmen and vice-chairmen of every committee and his designees shall be subject to the approval by a majority of the members of the Convention. In case of a vacancy or a prolonged absence of the chairman or vice-chairman, the president of the Convention shall appoint a chairman to act until the chairman or vice-chairman shall return."

Mr. Habedank.

DELEGATE HABEDANK: Otto Habedank, District 3. I would like to propose an amendment to the committee motion, and change the word "Convention," to "majority of the members of the committee." I think the committee is much more able to approve the designation by the president, than are the members of the Convention as a whole. I also think that approval by the members of the committee will keep the peace and harmony that Mr. Campbell is trying to achieve.

PRESIDENT GRAYBILL: All right, there's been an amendment to the Rules Committee's resolution. The sense of the amendment, is to change the approval of the designees of the president from the majority of the Convention, to the majority of the committee. Is there any discussion on the amendment? Mr. Aronow.

DELEGATE ARONOW: Mr. President, Aronow from District 15. May I ask Mr. Habedank a question?

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE ARONOW: I'm not rising in support or opposition of your amendment, but the procedural question enters my mind. When is that approval to be given? Is it to be given tomorrow, or will it be given on the 17th of January, or 18th of January?

The reason I ask that, is that there may hardly be time to have the committees meet tomorrow, prior to adjournment, and prior to time we leave for our respective homes.

DELEGATE HABEDANK: Mr. Aronow, I think you've raised a very good point, and I would be happy to amend it further by "the majority of the members of the committee by January 19th."

PRESIDENT GRAYBILL: 1972?

DELEGATE HABEDANK: Yes.

PRESIDENT GRAYBILL: Now, we are still debating, and we're open for debate on this motion-on this amendment, and I'll recognize Mr. Johnson.

DELEGATE JOHNSON: Torrey Johnson from District Number 1. I had a motion in there to start with, on this particular argument. Is that out of order, a while ago?

PRESIDENT GRAYBILL: What did you do?

DELEGATE JOHNSON: The amendment to this original motion that I made a while ago, and you said we had to wait to see what the outcome of the other—

PRESIDENT GRAYBILL: Oh, well—let's-what was your amendment? Let me see—just a minute. Was that to have removal by the committee? Instead-in other words, before Mr. Habedank's-well, let's do it now. Why don't you-do you want to-I'll see that you get it in. Do you want to make it now, or do you want to wait until we take care of Mr. Habedank?

DELEGATE JOHNSON: I'll wait. Excuse me.

PRESIDENT GRAYBILL: Okay, Mr. Johnson, I did slip up.

Okay, we're on Mr. Habedank's amendment to make the approval by the majority of the committee by January 19, 1972. Is there any discussion on that? Mr. Campbell.

DELEGATE CAMPBELL: Bob Campbell, District 18. I would fully support this amendment. I think that it will provide gist of what we were trying to do in the substitute motion, and I think that this is fine. I would support it. Thank you.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, Carl Davis, District 21. I would like to inquire of the Chair, would the Chair have any reservations, or would the Chair care to speak to this question of whether there would be any real significant difference to when-as to whether the approval were by the Convention of the whole, or by the committee?

PRESIDENT GRAYBILL: The Chair hasn't any very strong opinion. I was concernedif there wasn't a deadline in it, that any time the chairman got out of face with the committee, he would get kicked out. But I take it that can't happen anymore, after the 19th of January.

I suppose that the sense of the motionis, that if the committee kicks the chairman out, but then the president gets to nominate a new one, is that right, Mr. Habedank?

DELEGATE HABEDANK: That would be my thought, Mr. President. We could word these motions so long, to take care of all the whereas's, and we would never get it done.

PRESIDENT GRAYBILL: Yeah, but we'd better take care of them today, and not next March.

All right. I haven't any strong feelings either way. I'm going to support the Rules Committee if I get to vote, but I'm not concerned.

DELEGATE DAVIS: Mr. President, the original motion of the Rules Committee says it has to be subject to the approval of the majority of the members of the Convention. This change to a majority of the members of the committee would not be a major change, and probably might go a long way to reuniting everybody after these long talks, and maybe make it easier for the Chair, rather than more difficult, in the long run.

PRESIDENT GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. President, Furlong, District 16. I object to the amendment. I consider it a disenfranchisement of my right to vote.

PRESIDENT GRAYBILL: All right, is there further discussion? Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, Leslie Eskildsen, District 5. As a member of the Rules Committee, I feel that this may be one of the ways we can answer the question that's been before us, and I think on this point, that we probably could support it.

PRESIDENT GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I'd like to speak in favor of the Rules Committee recommendation. While I don't feel it's quite as good as the substitute motion, I think it's a real good motion, and I think that everyone could work real well with the amendment as proposed by Mr. Habedank.

PRESIDENT GRAYBILL: Mr. Barnard, were you on your feet?

DELEGATE BARNARD: I'd just like to point out to the members of this Convention that, by this motion, we're getting right back into the second substitute motion we had a while ago. It's very similar, and it was just defeated.

DELEGATES: Question.

PRESIDENT GRAYBILL: Is there any more discussion on the amendment?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, the amendment is to the Rules Committee resolution. The sense of the amendment is; that the members of the committee could reject a designee of the chairman by January 19th, 1972, if they so desire.

All those in favor of the amendment vote Aye, all those opposed vote No.

Have all the delegates voted? I see you're still changing your votes. Does anybody else want to change their votes? Do you want to change?

(No reply.) (Laughter)

The Chair has closed the vote. Does anybody want to reopen the vote, without playing around?

All right-Mr. Monroe, do you want me to open the vote so you can change? All right, can I open the vote? Could you open the vote?

SECRETARY MARSHALL: No.

PRESIDENT GRAYBILL: The vote is already closed, and we can't open the vote, Mr. Monroe, on the machine. Now, shall we take another vote, Mr. Monroe?

DELEGATE MONROE: Yes.

PRESIDENT GRAYBILL: All right, let's void the vote and we'll start over again.

All right. Now, we're going to vote on the motion of Mr. Habedank, that the majority of the members of the committee can reject the designee of the chairman of the president, if they want to, but that they have to do it before January 19th, 1972.

All in favor of that vote Aye, all opposed vote No. The vote is now open.

Have all the delegates voted? Does any delegate wish to change his vote? The Chair is going to close the ballot.

SECRETARY MARSHALL: Mr. President, 39 delegates have voted Aye, 59 delegates have voted No.

PRESIDENT GRAYBILL: Since **39** have voted Aye-isn't that right, Mr. Marshall?

SECRETARY MARSHALL: 39 delegates have voted Aye—

PRESIDENT GRAYBILL: -and 59 have voted No, the amendment fails.

For the information of the Convention, what I was hoping to do was to get a 50-50 vote there once, and I was going to freeze it to show you that a 50-50 loses. I hope you understand that.

All right, now we're back on the Resolution Committee's resolution.

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, Torrey Johnson from District No. 1. I have a motion-a substitution:

"If the chairman or vice-chairman at any time proves inadequate for the responsibility of the job, in the view of his committee, he may be removed by vote of the committee and replaced."

PRESIDENT GRAYBILL: Now, Mr. Johnson, may I ask you to say if replaced by the committee, or by the Chair?

DELEGATE JOHNSON: (Inaudible-unclear!) Replaced by the president.

PRESIDENT GRAYBILL: Replaced by the president?

DELEGATE JOHNSON: And appointed by the president in the first place, yes.

PRESIDENT GRAYBILL: Now, the Chair is going to rule that that is an amendment, because it merely adds words to the existing thing, and not a substitute motion, so it's an amendment.

Now, is there debate on Mr. Johnson's amendment? The sense of the amendment is, that if the chairman or vice-chairman is inadequate, then the committee may reject that chairman or vice-chairman, and at that time, the president would appoint a new chairman or vice-chairman.

Is there any debate? All right, Mr. Mahoney.

DELEGATE MAHONEY: I think this would be a very dangerous motion. At any time you got a little mad and the committee got a little mad at the chairman-and this,-you now, I think it's fine when you have the 3 days, or the 19th, but man, along about the 55th day and they're all keyed up and on edge I would hesitate that the committee could then go out and say we're kicking him out-the chairman. Now, this would be a little bit dangerous, I think.

PRESIDENT GRAYBILL: Any further discussion?

(No reply.)

Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right. We're going to vote on Mr. Johnson's amendment, the sense of which is, that the chairman or vice-chairman of the committee could be removed by the committee, when he is inadequate, and that then the president would appoint a new chairman or vice-chairman.

The ballot is now open. Those in favor vote Aye, of the amendment, those opposed vote Nay.

Have all the delegates voted? Do any delegates wish to change their vote? The ballot is closed. Will you please tally the vote?

SECRETARY MARSHALL: Mr. President, 7 delegates have voted Aye, 91 delegates have voted No.

PRESIDENT GRAYBILL: 91 delegates

having voted No and 7 Aye, the amendment failed.

Now, we're back on the Rules Committee's proposal-resolution, that "the president, after consultation with the vice-presidents, shall designate the chairman and vice-chairman, and his designees shall be subject to the approval of the majority of the members of the Convention, and in case of a vacancy, the president can appoint another one."

Now, Mr. Harper.

DELEGATE HARPER: George Harper, District 12. A question about this little phrase here "approval by the majority of the members of the Convention."

Interpreted one way, I could see how this opens up what is tantamount to an election of the whole body for each one of these. How is it anticipated that a person would go about getting this approval of a particular person?

Let's say that the Committee on Education, a person doesn't agree with the Chair's appointing, In order to say why he is disagreeing, he probably would like to, say, point out somebody else that he thinks would make a better chairman. And it would then necessitate the getting of several other nominations and having an election. Or how would this work?

PRESIDENT GRAYBILL: Since-the Chair would tell you how, as it's written, unless he were instructed differently, he would interpret that, since otherwise we would have to vote as a mass on all of them, and that would raise it each time.

I would assume that, if anybody was dissatisfied with the chairman or the vice-chairman, he could raise the issue, and the Chair will certainly then put the matter to the body, and the body can then decide whether to sustain or reject the Chair's nominee. But I would think we'd only do it when somebody objected, rather than going through 22 of them, or 26 of them, before somebody objected.

Mr. Habedank.

DELEGATE HABEDANK: Otto Habedank, District 3. I would like to inquire of the Chair, Mr. Mahoney brought up something that never occurred to me.

I always assumed that if the Chair appointed a chairman or a vice-chairman, at such time as the Chair determined he was not functioning properly the Chair could automatically take him out of office, and I would like to have that clarified. Does the Chair assume that—

PRESIDENT GRAYBILL: The Chair certainly does not assume that under this motion, because only in the case of a vacancy or prolonged absence, has the chairman any right to appoint another one.

And I can tell you, that I'm not going to. If I put a fellow in there, he's going to stay until—whether he agrees with me or not, until the end, unless he gets sick or leaves for a prolonged absence.

Now, I don't know. I suppose I could argue with you about what's a prolonged absence. But in other words, he would have to be not functioning before I would replace him, even if he wasn't doing what I wanted him to.

DELEGATE HABEDANK: I, though the Chair would not replace somebody who disagreed with him, but you could accidentally end up with a non-functioning chairman. It's inconceivable (inaudible 2 words), of course, but it does happen.

PRESIDENT GRAYBILL: Well, I'm sure that if the committee brought that to our attention and, you know, the facts were there, we'd be glad to make another appointment. And I surely would, at that point, at least announce it and, at that point, anybody that raised the issue of the replacement could bring it to the body and it could all be decided right then on that issue. I'm not trying to speak on it, I'm trying to tell you what I would do under this rule.

Mr. Rollins-oh, Mr. Loendorf, excuse me. Loendorf-

DELEGATE LOENDORF: Mr. Chairman, Jerry Loendorf. The question raised by Mr. Harper caused me to read this provision again, and I'm not sure I understand it. At least, I understand it differently than he does, and I'd like to direct a question to Mr. Murray.

As I understand it, as I read this, "the president, he appoints the chairman and the vice-chairman, subject to the approval of the majority of the members of the Convention." That means, to me, the appointment does not take effect until the majority of the members of the Convention approve the appointment.

Mr. Harper apparently interpreted the rule to read that the appointment takes effect immediately, and that then it could be challenged on the Convention floor at some later time.

I would like to ask Mr. Murray to explain this.

DELEGATE MURRAY: Mr. President, as I interpret the rule as proposed, the President would designate the chairman and vice-chairman of every committee, would come back to the floor of the Convention hall, would announce his appointments, and ask for the approval by the members of the Convention. Should anybody resist his motion for approval, then I would submit that they probably would segregate that particular part of the motion and approve those that could be approved, and debate anybody at issue.

PRESIDENT GRAYBILL: Now, the Chair certainly understands it better now, and I'll be glad to do that. In other words, after I have appointed them, we'll all be-we'll come back here. What I really do is nominate them, and then if you don't want any of them, well, you can pull them out, so that's what we'll do under the rule if it passes.

And now Mr. Choate.

DELEGATE CHOATE: Lyman Choate, District 2. I think we're discussing something here, or worrying about something that isn't going to happen. In the first place, any committee chairman who wasn't functioning properly with his committee and obviously wasn't getting the job done, he would be the first person that would be aware of that, and he would certainly ask to be replaced by somebody that could more effectively get the work done in the committee.

Now, all of us here are concerned here with doing a good job and getting done with the work and doing it proper. So that if we wind up in any committee with an ineffective chairman, it will be much easier for him to determine that himself, than it would anybody outside. I don't think we need to worry about it.

DELEGATES: Question.

PRESIDENT GRAYBILL: Any more discussion, now, on the resolution?

DELEGATES: Question.

PRESIDENT GRAYBILL: Mr. Murray, you ready to close it? You don't have to say anything, just nod.

DELEGATE MURRAY: I'm ready.

PRESIDENT GRAYBILL: Okay. All right, the Chair will now place before you for a vote the resolution of the Rules-temporary Rules Committee, that "The president, after consultation with the vice-presidents, shall designate the chairman and vice-chairman of every committee, and his designees shall be subject to the approval of the majority of the members of the Convention." Which means they're going to be brought back here, and you're going to see them and pass on them, at least en masse and, maybe, individually. In case of a vacancy or a prolonged absence, [of] the chairman or the vicechairman, the president of the Convention shall appoint a chairman or a vice-chairman until the chairman or the vice-chairman shall return.

Now, all those in favor of the Rules Committee's resolution signify by saying Aye. The ballot's now open. All opposed say No.

Has every delegate voted? Does any delegate wish to change his vote? All right, tally the ballot, please, Mr. Clerk.

SECRETARY MARSHALL: Mr. President, 97 delegates have voted Aye, and 2 have voted No.

PRESIDENT GRAYBILL: By your action of 97 of you voting Aye, and 2 voting No, the Rules Committee's resolution is adopted, and the Chair will go to work on the vice-chairmen and chairmen.

Now, Mr. Mahoney.

DELEGATE MAHONEY: I'd like to congratulate this Convention and the chairman-the president. I've set through a good many debates along in my time, and I never saw a more better, intelligent, square debating, than was done at this time, and nobody hollering question, and nobody trying to speed up anything.

If we continue this way, we'll have one of the best Conventions the United States has ever had in the 50 states. (Applause)

PRESIDENT GRAYBILL: Now, before we adjourn, I'd like to make a couple of quick announcements. There are-there's a couple of small matters we have to take care of.

First of all, I would like to explain something that occurred to me during this debate. Occasionally, I look down and write notes, and I do look up, and lots of times I really don't see the first person up, but I see some person up and recognize them. And if I've missed you, just persist and eventually I'll find you, but I often get you out of order. And I'm not mad at you, I just would see the other one first.

All right. Secondly, there's a matter that I think I would like to commend the Rules

Committee on. The Rules Committee has operated all the committee meetings under an open door policy, and we have had all open votes. And I trust that before the second session in January we may actually have a rule on this. But I would like to ask that we continue to keep this Convention completely open, and I want to commend the Rules Committee for what they've done in that regard so far.

Now, third, I said that I would recognize Mrs. Reichert for a proposal, or statement. Mrs. Reichert.

DELEGATE REICHERT: Arlyne Reichert, District 13. At this time, I would like to make an appeal to the press. I know how important press coverage of constitutional conventions has been. Last Legislative Session, I sat up there and I watched the confrontation of Democrats on one side of the aisle and Republicans on the other. And when I talked about this Constitutional Convention in the beginning, the first thing I discussed was the alphabetical seating and, frankly, many people were discouraging. They said it will never come to pass because you are being elected on a political party basis. Well, I think yesterday we set the tone for this historic Convention. The vote was overwhelmingly in favor of this great alphabetical seating.

I wish to commend my fellow delegates for proving, to the people of Montana, that we will conduct this Convention without political party dissension. It is further my hope that there will be no political party caucusing throughout the Convention. I realize that we will have to meet on issues, and I think that is fine, but I hope that none of these meetings will be based along party lines.

My appeal to the press, and they may never let me sit up there again, but I hope that they will share the tradition, too, and that when we meet again in January, I hope that the coverage will eliminate the customary designation after the name, "R" for Republican, "I" for Independent and "D" for Democrat, and we will-forgive the pun- be rid of political party labels.

Thank you. (Applause)

PRESIDENT GRAYBILL: Thank you, Mrs. Reichert.

Mr. Champoux.

DELEGATE CHAMPOUX: In that light, maybe we ought to start doing that in this Convention, too. As a matter of fact, we could propose a fine-25 cents for anybody who uses Independent, Republican or Democrat. The page will collect it—

DELEGATE: 75.

DELEGATE CHAMPOUX: 75? (Laughter) -and we'll all have a party when it's over.

DELEGATE BABCOCK: I was going to suggest we also eliminate sex. (Laughter "boos")

PRESIDENT GRAYBILL: Mrs. Babcock—wait a minute. Wait a minute. Mrs. Babcock has assured me, she means that on the Convention Floor. (Gut-roaring laughter...)

All right. Now, Mr. Cate.

DELEGATE CATE: Mr. Chairman, and fellow delegates, first of all I think that we should commend the chairman for the nonpartisan—bipartisan manner in which he has conducted this Convention for the last 2 days. I think it's been commendable. (Applause)

Secondly, I'd like to say that I supported Leo Graybill for Congress on his two attempts, and if Leo Graybill wants to run for Congress again, I'll support him again—

PRESIDENT GRAYBILL: Now wait a minute, we don't want to use those words.

DELEGATE CATE: Thereason I say that, is that I have opposed the Chair, and many of you know it. I have opposed the Chair on many matters here.

My reason was not because of any personal opposition to Leo Graybill. My reason was to try and keep this a nonpartisan Convention and not a Democratic Party Convention, run by the democratic machine, and that was the underlying motive for my attempts.

There is nothing personal, in my mind, against our chairman, and I want the Chair to know that, and I want all the delegates to know it.

Thank you.

PRESIDENT GRAYBILL: Thank you, Mr. Cate.

The Chair would like to also-1 think he would be remiss if he did not say, that I think a good deal of the reason Mr. Mahoney was able to congratulate us, is just as he said, you are not constantly

shouting at me, and you are not constantly waiting, and you are gentlemen and ladies in taking your turn. And I think you all ought to be highly commended, if you'll accept 1 to 100.

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Yes, Mr. Drum.

DELEGATE DRUM: Since this is the hour of forgiveness, or asking for forgiveness, I would like to remove one more burr from under the saddle.

I now accept this neighborhood as being a quality neighborhood in the gallery, and we have two vice-presidents and one secretary here, and fellow candidate Driscoll who is going to behave himself better, so I would like the vote of yesterday to be 100 percent. (Laughter and applause)

PRESIDENT GRAYBILL: The journal may stand corrected.

Now, ladies and gentlemen, on the last wall out there, you will find posted the procedural committees and, as I said a few minutes ago, there is no indication, yet, of chairman and vice chairman, and they're not even necessarily in alphabetical order. We'll work on the chairman and vice-chairman thing-except that I will tell you, that where there's a vice-president, especially when it's Toole, he's going to be the chairman.

One other thing I would like to say, you all did a very good job of answering those questionnaires. The one thing you did, you kind of overdid it on procedural, and I-there's absolutely no way I could use all of you on procedural committees. There was about a three to one subscription to that, so those of you who are not on procedural committees, bear with us 'til we get the substantive committees ready. And I'm sorry everybody couldn't be on them, but we would have had to make them too big if we did that.

Mr. Kelleher.

DELEGATE KELLEHER: Tomorrow morning, Mr. Chairman, at 9:00 a.m. in the Senate Chamber, there will be a meeting for those who are interested in unicameralism. Everybody is invited; 9:00 a.m. in the Senate Chamber tomorrow morning.

PRESIDENT GRAYBILL: All right, any other announcements before I recognize Mr. Murray? Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, will the District 11 delegates meet over in this corner on adjournment? It's not a caucus.

PRESIDENT GRAYBILL: Oh, it's a meeting, not a caucus.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Rules Committee meeting 9:00 in the morning in the usual room, which is in the left-hand corner, and I move that the Convention recess until the hour of 11:OO a.m. —or adjourn until the hour-you got something else?

PRESIDENT GRAYBILL: No, I want you to say adjourn.

DELEGATE MURRAY: -adjourn until the hour of 11:00 a.m., December 1, 1971.

PRESIDENT GRAYBILL: Now before we do that, Mr. Drum, do you want to say something?

DELEGATE DRUM: I have one question. Many of us will wish to check out of our hotels and motels tomorrow. What can we expect in the way of clearing out of here-

PRESIDENT GRAYBILL: I'm sure we will not be here beyond tomorrow, and we're shooting for early afternoon.

I've got to get these committees approved by all those vice-presidents you elected, and then we'll be back here to approve them.

All right, I'm shooting for early afternoon tomorrow, but we will meet at 11:00 and see where we stand.

All right, you are adjourned.

(The Convention recessed at 6:30 p.m.)

PRESIDENT GRAYBILL: All right, are you finished with your roll, Mr. Clerk?

SECRETARY MARSHALL: Mr. President, 98 members are present, 2 excused.

PRESIDENT GRAYBILL: Very well. This morning, since this is Walter's last morning with us, as he's going to Japan, I'd like to ask Walter Marshall to lead us in the Pledge of Allegiance.

Will you please rise...

(Everyone recited Pledge of Allegiance)

Reverend Harper, I wonder if you would give us an invocation from your place?

DELEGATE HARPER: Our Heavenly Father, we bow for this moment before the business of the day, to ask a sense of Your presence with us, and with Your spirit, remind us of the work that we have to doforotherpeople. We thank You for the sense of fellowship that we have with each other, and we pray that in all of our deliberations we will remember to consider the other fellow. Amen.

PRESIDENT GRAYBILL: Thank you.

Now, if the Convention will allow, we will take care of a few procedural matters first. The time, however, is not being wasted, since the typists are typing as fast as they can on the committee lists, and we're going to have them out to you in a few minutes.

I understand that there is a request made that the pictures of the assembly in position be taken this morning, and I would like, at this time, permission to do that.

All in favor say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed...

(No reply.)

And the Chair will leave the Chair and sit in his seat where they want me, so that's why you're headless for a while here.

The Chair will recognize Mr. Monroe for a matter.

DELEGATE MONROE: Mr. President, I move that the president of our Convention be authorized to send paternal greetings to the State of North Dakota Constitutional Convention. Their president is Mr. Westrum from Williston.

As many of you know, the North Dakota State Constitutional Convention is now in process, and that they had their organizational meeting last April 6th through 8th, and they will be reconvening January 3rd and, of course, in the months in between, there will be many committee meetings.

We are paternal in this sense, that in 1889 Montana, North Dakota, South Dakota, and Washington were all entered into the United States of America-into the Union, and I move that the president be authorized to send a paternal message to them at this time.

PRESIDENT GRAYBILL: You have heard the recommendation of Mr. Monroe that this body send paternal greetings to the Constitutional Convention in North Dakota, and that the president sign that greeting.

Is there any discussion on this matter?

(No reply.)

All those in favor of sending such paternal greetings to North Dakota-and I think I would like to have Mr. Monroe work with the staff to prepare that greeting for us-signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed...

(No reply.)

All right. It shall be done.

All right, this morning I think we will make rapid progress on these committee matters. So that you'll know what we're doing, I'm going to submit immediately for you the chairmen and vice-chairmen of the procedural committees, which are all worked out. There are only eight of them, and I'll read them to you, and you can mark them on those sheets, if you have them left over.

In the meantime, the staff is typing the full substantive committee lists. I want to make one thing very clear. The substantive committees, which I want to submit to you, are going to show on the typed copies that we hope to distribute. Also my submission for chairman and vicechairman. I'm **going** to put that all on the sheet at once. This doesn't mean that it's foreclosed. Anybody can talk about it that wants to, here at the meeting. But in the interest of not having to type the thing twice, except in case of an emergency, I am going to put it all in one ball of wax.

I want you to know that the vice-presidents, all three of them, and the secretary, met with me this morning since 8:30 and we've been all over all of the lists. and I believe I'm correct. that we are in

complete agreement in submitting them to you.

After I submit the names of the Rules, Style, Public Information and Administrative Committees to you, and after you've decided that they are acceptable, I am going to ask for a short recess while the Administrative Committee meets in the room to my right. The recess will be about 5 minutes, and in that interim, we hope to get the other sheets passed out to you.

Now, on the Rules Committee, it is the Chair's nomination, concurred in by the vice-presidents, that Marshall Murray be the chairman, and Leslie Joe Eskildsen the vice-chairman. Marshall Murray the chairman, and Joe Eskildsen the vice-chairman.

On the Style, et cetera, Committee, it is the Chair's nomination, concurred in, that John Schiltz be the chairman and William Burkhardt be the vice-chairman. John Schiltz the chairman and William Burkhardt the vice-chairman.

On Public Information, it is the Chair's nomination, concurred in, that the Honorable John Toole, the vice-president of the Convention, be the chairman and that Margaret Warden be the vice-chairman.

And on the Administration, it is again the Chair's recommendation that the Honorable John Toole, the vice-chairman-vice-president, be the chairman and Mrs. Dorothy Eck the vice-chairman.

I wish to explain, that it is the Chair's opinion that both Public Information, becauseofits public nature, and Administration because of its important nature to our operations, be chaired by the vice-by the first vice-president.

So, those are the nominees, concurred in, and now submitted to you for the procedural committees.

Now, what I would like to do-Mr. Murray, you could do it for me-is have a motion that these chairmen and vice-chairmen be approved. And after the motion is made, if anyone cares to raise an issue on any of them, we will then take that issue up. Mr. Murray.

DELEGATE MURRAY: Mr. President, I move, in accordance with the temporary rules of this Convention, that the designees of the president for chairmen and vice-chairmen of the four procedural committees, be approved.

PRESIDENT GRAYBILL: All right. You have heard the motion of the Rules Committee chairman. Mr. Cate.

DELEGATE CATE: Mr. President, I realize the motion doesn't take a second, but I would second that motion, and I think that the selection by the president is outstanding.

PRESIDENT GRAYBILL: Well, I might point out one further thing to the Democrats—whoops, I can't say that-to one-half of the body, Mr. Cate, and that is that we'll come out a little better, ratio-wise, when we get the other committees taken care of. (Laughter)

Are there other-is there other discussion of these nominees for the procedural chairmen and vice-chairmen?

(No reply.)

If not, I will open the ballot and we will vote on the-on this matter. The vote will be Aye if you wish to support the Chair and the vice-principles'—presidents' recommendations, and Nay if you do not wish to support them. All in favor vote Aye, all opposed Nay.

Have all the delegates voted? Does anyone want to change their vote? The ballot is closed. Please tally the vote.

SECRETARY MARSHALL: Mr. President, 98 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: All right. Now, there's one other matter that the Chair would like to take up, in conjunction with the procedural committees.

I won't honestly say that it was inadvertent, but I will say that I had not considered it-it was inadvertent to that extent-and that having considered it, the Chair would like to add to the Public Information Committee the name of delegate Betty Babcock. May I have a motion from someone that I do that? Mr. Murray.

DELEGATE MURRAY: I so move.

PRESIDENT GRAYBILL: All right, it's been moved and recommended by the Chair that we add Mrs. Babcock to the Public Information procedural committee. Any discussion?

All right. Now, we're going to do this easy, Mr. Marshall. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All opposed say NO...

(No reply.)

All right, Mrs. Babcock, we're delighted to have you on the committee.

Now, if I could, I would like to ask that the house recess for 10 minutes-or that the chamber recess for 10 minutes.

DELEGATE: Mr. President, I rise to a point of order.

PRESIDENT GRAYBILL: All right, Mr. Foster.

DELEGATE FOSTER: Mr. Foster from District 10. I have a question on whether it's necessary, or desirable, to have the running totals of the voting showing on the board. I am of the opinion that it would be more procedural to have the voting, and have the voting closed, and then to have the tally taken, as it were, and then show the totals. Is this a valid question?

PRESIDENT GRAYBILL: We can do it either way, and-171 tell you what I think I would like to suggest, Mr. Foster. I think that's a matter that the Rules Committee could consider before the next session, and if anybody really feels-if you want to do it for the rest of this session, that's all right, too. But I think, in the long run, that we should make a rule as to how we do it. It's just a matter-we can do it either way. We can show them-1 certainly think we should show them at the end, but if you don't want to show them so that we jockey, why, it's fine with me.

Anybody else have any feeling on that? Mrs. Bugbee?

DELEGATE BUGBEE: I agree, but I also think, Mr. President, I would like to entertain a motion that the Convention vote on having the permanent Rules Committee take out-put into the permanent roles; Number 1; that there shall be no caucusing, and Number 2; that these electronic boards be handled as Mr. Foster mentioned. I have both those two in my motion, and I would like that the delegation, itself, to vote on this, so that it could be put in that it was the feeling of the Convention that we do this.

PRESIDENT GRAYBILL: All right. Let me see if I understand you.

Now, I would certainly agree that the committee-the Rules Committee should consider how to do it. But do we want to tell them what to do, or do we want to wait until they make a recommendation?

DELEGATE BUGBEE: Mr. President, on this issue I would like it to be a vote from the floor, itself, that these two things be put into the permanent rules, at this time—

PRESIDENT GRAYBILL: All right. Now let's take them up one at a time. How about the lights beside our name? It's pretty hard to count them when they're closed. Do we want the lights beside our name to be on, or off? Do you want to make a motion that they be off, and then we can find out, Mrs. Bugbee?

DELEGATE BUGBEE: No, I'd like to make a motion that all the lights be on, and that it be tallied after the lights have shown.

PRESIDENT GRAYBILL: All right, the first motion-can we make a motion that the lights by our names shall be on when we vote, period? Is that all right?

SECRETARY MARSHALL: Yes.

PRESIDENT GRAYBILL: All right. Mrs. Bugbee's motion; that the lights by our names—name be on.

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Delegate Davis from District 21. I think the sense of the motion, as I understand it-and if not, please correct me, Mrs. Bugbee-is that during the process of the vote, the board is not lit until we complete voting, then it reveals how we vote.

In other words, so we don't get back to this row, and when we see which way the vote is going, and then we can get on the bandwagon one way or another. I think that's the concern, and we can leave the board-we want our names to be lit up to show how we voted-. Wait 'till everyone's through voting, then light the board up to show how we voted. Is that correct, Mrs. Bugbee?

PRESIDENT GRAYBILL: Well, now, the Chair is in doubt. The Chair understands that you can do that. The Chair understands the motion now, however, is to leave the lights on by the names, and not show the running total, which is possible, until the end of the vote.

Now, there's one reason thatwemight want to consider that, Mr. Davis. A lot of people watch their name on the board and realize they haven't voted, and you might be able to correct yourself by seeing what you did on the board, but I don't care.

Now, Mr. Toole.

DELEGATE TOOLE: Is the sense that-of the motion that Mr. Davis-is that correct, Mrs. Bugbee? Did he properly repeat your motion?

DELEGATE BUGBEE: Yes.

DELEGATE TOOLE: Then I'd like to second Mrs. Bugbee's motion.

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: I don't know what the procedure would be, but my suggestion would be that no lights beshownuntil the Chair says, "Is there anyone who wishes to change their vote?"

PRESIDENT GRAYBILL: You mean until after the Chair says that, so that I don't have to show-you don't have to show that before you may decide?

Let's make it simple. Now, as I understand the motion, we're going to vote to leave the lights out until after the ballot is closed. Is that right, Mrs. Bugbee?

She's changed her mind. First she said leave them on, but now she says leave them out.

Now, Mrs. Bugbee, restate your motion, please.

DELEGATE BUGBEE: The intent-I'dlike to say, the intent of my motion is that our votes be as independent as possible, and that they be on record at all times. But what essentially bothered me in the beginning, was that this machine-you can vote and nothing shows, and then you can tally the whole thing up.

I don't think that that is right for a Constitutional Convention. So, I don't really care, as long as they're up there.

PRESIDENT GRAYBILL: All right. Now, do you want it to show before I close the ballot?

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Marshall— Marshall Murray.

DELEGATE MURRAY: If I might speak to this.

Apparently I'm going to be the chairman--or am the chairman of the permanent Rules Committee. Because it takes a considerable amount of the Convention's time to have this type of work done in the Committee of the Whole, I would submit that this matter be considered by the permanent Rules Committee. And we will bring an answer back to the Convention January 17th, and Mrs. Bugbee will have an opportunity to be heard at that time.

PRESIDENT GRAYBILL: Would that be agreeable to you, Mrs. Bugbee?

(Delegate Bugbee indicated in the affirmative.)

PRESIDENT GRAYBILL: Are you going to withdraw your motion?

All right, we've got no motions before the floor, but we've got a promise from the Rules Committee to consider the matter. Is that okay?

All right. Now, if there's no other temporary business, I'd like to be in temporary recess for 10 minutes, and I'd like the new-newly appointed Administrative Committee to meet in this room.

Mr. Foster, you're on the floor, and I won't recess 'till you're ready.

DELEGATE FOSTER: Well, I would havea question, and that is, what manner is going to be followed in the interim?

PRESIDENT GRAYBILL: I'll tell you what we'll do. We'll turn the lights out in the interim until after the vote is closed. Is that okay?

All right, we're in recess. And the Administrative Committee-and you all know who you are— please meet in this room over here, and we'll be back in 10 minutes.

(There was a short recess, and the Convention reconvened at 1:30 p.m.)

PRESIDENT GRAYBILL: The Convention will be in session.

Now, before we consider the committee matters, there are two or three other small matters I'd like to take care of that have been put before the Chair, and I would recognize vice-president Brown for a resolution.

DELEGATE BROWN: Mr. President and fellow delegates, I rise with the support of all the officers, and we hope you will join, in wishing to congratulate Mrs. Pemberton on her 42nd wedding anniversary on this date.

PRESIDENT GRAYBILL: The Chair is delighted that you're sharing your 42nd anniversary with us, and we want to all congratulate you, Mrs. Pemberton.

All right, the Chair would recognize Mrs. Bates for an announcement.

DELEGATE BATES: Mr. President, Grace Bates from District 11. At this time, I'd like to move that the Constitutional Convention Commission be commended by the Constitutional Convention for the outstanding work that they have accomplished in preparing this Convention.

PRESIDENT GRAYBILL: Mrs. Bates wants to move a commendation by this Convention to the Constitutional Convention Commission. And may I add to that, Mrs. Bates, that if it passes, we will have the staff prepare a suitable letter that would go to each member of the Commission, expressing this Convention's thanks for their work. Is that all right if we put it in that form?

DELEGATE BATES: Yes.

PRESIDENT GRAYBILL: Is there any discussion on the motion? Mr. Berg.

DELEGATE BERG: Ben Berg from District 11. I simply want to join, very heartily, in that recommendation, and to say that, without question, this is now the best informed Constitutional Convention ever to sit.

PRESIDENT GRAYBILL: Is there further discussion on the recommendation?

(No reply.)

If not, the Chair will put the question of sending a commendation to each member of the Constitutional Convention Commission, commending them on the outstanding work they have accomplished in preparing for this Convention. All those in favor say Aye—

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed No—

(No reply.)

The motion has carried.

Now, the Chair would like to announce that, from time to time, there has been some material distributed to your desks during this session in a haphazard manner. And I'm going to ask-and I'm sure the Rules Committee will make a rule, so that when we get back in session, someone will screen everything that goes on the desks.

Now, I've let things go on the desks this time because there was no rule. I'm certainly not against anybody putting anything on the desks, but I think that to protect ourselves from a great disposal problem, we ought to have a committee—or someone-who will look into this. And I'm not casting any aspersions on anything that's been put on your desk today since I've put most of it there. But I think we do need that, and I hope that when we come back—

I'm making this announcement so that you'll all realize this-even delegates-that after we come back, I hope it will be that anyone, and including delegates, will need the permission of the committee, or the president, to put things on the desks.

Now, if you want to get it, and we refuse you, I'm perfectly willing to give you the floor. But I don't think we should just hand out anything willy-nilly without thinking about it, so we'll think about that during the recess. Now—

DELEGATE BABCOCK: Mr. Chairman.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: May we be off the record and out of the journal and out of the press for just a moment, please'?

PRESIDENT GRAYBILL: We certainly may be off the record and out of the journal, and we'll trust the press. (Chuckles)

(Whereupon, there was a discussion off the record.)

PRESIDENT GRAYBILL: I hope we haven't started these women on a precedent on making wild statements so they get these roses every day. (Laughter)

DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President and members of the delegation, we the temporary Rules Committee, would like to thank the following people for their help in expediting our work: Bartley Carson, executive secretary; Phyllis Baden, parliamentarian and Dale Harris, executive director, and his staff. This is one of the reasons we have been able to move right along.

PRESIDENT GRAYBILL: Now, you have heard the Rules Committee's announcement, and I trust that we all join in the thanks of the Rules Committee to the staff, who have done an excellent job, and have certainly been helpful in getting this thing moving. (Applause)

Now, the Chair wants to take up, as the next matter, the executive directorship. Yesterday, you passed a resolution authorizing the Chair to nominate an executive directorship, after clearing it with this Convention.

The Chair intends to nominate D&Harris as the executive director of this Convention, for our period ensuing after his term with the commission expires, about the end of December.

The Chair wishes to state that 1 have cleared this recommendation with all of the vice-presidents and the secretary. I have also cleared the recommendation with the Administrative Committee, because they will be most closely associated in working with the executive director, and at our recent meeting during our recess, the Administrative Committee authorized me to announce to you that they support the Chair's recommendation that Dale Harris be hired as executive director.

The Chair would entertain a motion to hire Dale Harris as executive Director of this Convention. Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I so move that your recommendation for the appointment of Dale Harris be approved.

PRESIDENT GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, Rachel1 Mansfield from District 14. I second it.

PRESIDENT GRAYBILL: All right. Now, it's been moved and seconded that we sustain the Chair's nomination of Mr. Harris as executive director of this Convention. Is there discussion upon this motion?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, if you're ready for the question, the ballot has been opened. Those in favor of retaining Mr. Harris on the staff as executive director vote Aye, those opposed vote No.

Have all the delegates voted? Do any of the delegates wish to change their votes? If not, the ballot will be closed. Will the clerk announce the ballot?

SECRETARY MARSHALL: Mr. President, 96 delegates have voted Aye, no delegates have voted No. (Applause)

PRESIDENT GRAYBILL: By your vote of 96 having voted Aye, and no delegates voting No, you have sustained the motion, and Dale Harris will be the executive director of this Convention.

I will recognize Mr. Foster to find out what he wants.

DELEGATE FOSTER: Mr. President, a point of order. I understood that we were going to leave the tally off. I hate to belabor the point, but I—

PRESIDENT GRAYBILL: Mr. Clerk, can we leave the tally off, at least 'til I tally the ballot?

SECRETARY MARSHALL: We can leave everything off.

PRESIDENT GRAYBILL: No, just the tally lights, until I close if off. We're going to get him trained, here, about the time he leaves us, Mr. Foster.

Now, at this time, the Chair would like to consider, with the Convention, the committee appointments. And I want to start out by saying, let's not discuss the chairmen-vice-chairmen appointments at all, yet. This is a separate matter that I'd like to take up separately.

We put them, as I told you, all on the same page because it therefore kept the printing down. I would like to also point out that we would've been back in session at the right time, but we got to the Capitol print shop at 5 minutes to 1200, and everybody had gone to lunch and we couldn't get any of this stuff printed. So that's why we had to go to the Xerox and get it done for you. We trust this won't happen after we get going later, but that happened.

So, with the understanding that I am asking you to discuss only the membership, not the officials-not the officers-the membership of the substantive committees. I would like to start out by-with a couple of words of explanation,

First of all, I would like to say that I appreciate greatly the fact that some of you marked on your reports that you could be put on any committee, And one of you didn't turn in a blank, which I took as an indication you would work on any committee, and it was very useful to have that help.

I made a great effort to give as many people their first choice as possible. And when you consider, as a body, whether you like the people that are on your committee, or the committees, I wish you would consider that there are 80 percent of you on those committees because it was your first choice. So watch out that you're not bugging the guy who put his first choice down there.

Eighty percent got first choice, twelve percent got second choice and eight percent I had to go to third choice or lower. Where I went below third choice, I tried to speak to you people personally, and you know of the situation.

The reason I had to do that, was that there were a couple of committees where you were a little thin on one's. In fact, there was one that nobody had a one on, but other than that I have tried to balance the committees in some form between the different groups in the state. And I would say that the groupings are not all perfectly balanced-as Mr. Eskildsen might have suggested at one time—but they're balanced pretty closely overall, and I think there is no committee-or I think there may be only one committee-where my group lost out and the other won in terms of sheer numbers.

Third, I'd like to point out that I made no attempt to balance the committees as to women and men. I didn't consider that at all, so if you see too many women on the committee you're on, don't-it's intentional. I didn't intend to balance them that way.

Fourth, I made some attempt to balance geographically. But because of the committees that you people wanted to be on, and because I wanted as many as possible to serve on their first choice, there were situations where two people from the same community served on the same committee. But at that time I then tried to look and see if there were other people from fairly diverse areas in the state also on the committee, and if that were true, then we rode with the fact that there are two, or maybe even in one case three—but I think that's a procedural committee--where there are that many from one community.

Now, with those spreads-things in mind, I would like to suggest that these committees have been checked thoroughly with Vice-President Toole on two occasions, and he and the other vice-presidents and the secretary and I have spent 3 hours this morning, and we've been over every one of them with a fine tooth comb, and we've checked them all off. Nobody's on two committees, and everybody's on one committee, except me.

Now, at this time, the Chair will entertain a motion that the committees that the Chair has nominated be approved, and that after that motion has been made, if there are objections, we will take them up individually.

DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Hanson.

DELEGATE HANSON: I so move. Rod Hanson, District 15.

PRESIDENT GRAYBILL: All right, the motion has been made that the committee membership selections designated by the Chair be approved.

Now Mr. Campbell.

DELEGATE CAMPBELL: District 18. I'd just like to make a correction on the Bill of Rights Committee. My name is Bob Campbell, not Bill Campbell. If that correction would be made third from the bottom on the Bill of Rights, I then will go ahead with the approval.

Thank you.

PRESIDENT GRAYBILL: All right. I'm sure that we'll correct that. She typed these from my rough notes, and I might have done that, Bill—Bob. (Laughter)

Mr. Ask-oh, excuse me, Mr. Artz.

DELEGATE ARTZ: Bill Artz, 13. I used a fine tooth comb, too, while I've been sitting here, and I find Max Conover is on two committees, Natural Resources, Education and Public Lands.

PRESIDENT GRAYBILL: All right. Max was on Natural Resources, and he got moved to Education and Public Lands at the last minute, and if he didn't get scratched off of Natural Resources, he should be. So, find your Natural Resources sheet and strike Mr. Conover there because we moved him to Education. Is that right, Mrs. Eck?

DELEGATE ECK: Yes.

PRESIDENT GRAYBILL: Now, has anybody been unable to find their name? I think we just moved him, but I think that—

All right, are there other comments on the committee appointments?

DELEGATES: Question.

PRESIDENT GRAYBILL: All right, the Chair would entertain a motion--or we have a motion that these appointments be approved. The Chair will open the ballot. Those in favor of approving the committee recommendations of the Chair for the substantive committees, please so indicate by voting Aye, those opposed Nay.

Lights off. Get those lights off, fellas. Lights and total off. They'll be throwing the ink wells at the board here. You'd ought to watch it!

All right. Now, have all the delegates voted? Does any delegate want to change their vote? Now we'll close the vote. Now, you may turn on the lights, sir. Turn on just the tally number. Please tally the vote.

SECRETARY MARSHALL: Mr. President, 96 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: 96 delegates having voted Aye and none having voted No, you have then approved the committee appointments that the Chair has made to the substantive committees.

DELEGATE: Mr. Chairman, I rise to a point of order. This amounts to a secret ballot, and we voted against a secret ballot.

PRESIDENT GRAYBILL: Well, this one wasn't secret since it was unanimous, but next time we'll try and do something about that. (Chuckles from the delegates) Let's see. Let's leave the lights beside the names on until the Rules Committee—

DELEGATE: Right.

PRESIDENT GRAYBILL: You were right, Walter, and Mr. Foster, go with me 'til the end of the day, will you?

DELEGATE FOSTER: That's what I intended. Just not the tally.

PRESIDENT GRAYBILL: Okay. Now we want the tally off. Thank God you voted unanimously, or I wouldn't have been able to save the day.

All right. Now, let's consider the next matter which the Chair would like to put to you, namely, the appointment of the committee chairmen. And I would like to tell you, that in appointing the committee chairmen, the Chair was mindful of the following things.

First of all, I tried to appoint someone as chairman and vice-chairman who I felt would assume a leadership role and try to do something in the committees.

Secondly, I think probably the most important thing I tried to do, was get, where possible— and this isn't true on all the committees, but it's true on some-the chairmen and the vice-chairmen to represent different points of view, as I at this time know their points of view.

It is the Chair's position that as much of the discussion, argument and verbal warfare on the issues be handled in the committee, and I want somebody in that committee able to handle both sides. And I want somebody free to-and willing to make minority reports, if they need to. So I have tried to, in some ofthecontroversial cases, balance these committees by putting people that I know the positions of, on as chairmen and vice-chairmen, where they're opposite.

Now, after I had done that, I had to deal with this matter of the groups-notice, I haven't spent any of my money yet-1 tried to balance this matter of the groups. And for your information, the group of which I am a member has, in the substantive committees, six chairmen, and the other group three chairmen, and the non-group one chairman. And, if you look at it from the point of view of all of the committees, including the Rules and so forth, then the total becomes seven for my group, six for the other group and one for the non-group. So it's pretty even, after you get the non-group in there and the other group together. (Laughter)

Now, the third thing I did, it became necessary on one or two committees, which shall remain nameless, to move people who did not have a first choice into a committee assignment because, as I told you, there is one committee that nobody had a first choice for. And so both the chairman and the vice-chairman on that committee had to be moved from their first choice. But I had to find someone that could lead those committees adequately, and so I did that.

Other than that, I then balanced which was the chairman and which was the vice-chairman largely as a matter of judgment, and we can certainly talk about that.

Now, these committee chairmen and vice-chairmen nominees-or nominations-have all been cleared with Vice-President Toole, and they've all been cleared with the other vice-presidents and with the secretary this morning. We went over all of them and, in fact, we made some changes.

Now, I have one other matter that I must speak to. I want to take the full blame on this, On the Judiciary Committee, some of you may have gotten a sheet that shows my dear friend, Cedor Aronow, as chairman, and thedesignation should be Dave Holland as chairman. Now, I don't know if that's up yet and distributed. If it is, destroy the one that shows Cedor Aronow as chairman,

Now, I have spoken to both of these gentlemen about it, and there is no problem there. But the problem is that I initially put Cedor's name down

yesterday in my notes, and then in talking with the vice-president and in considering it, I changed it. And I handed the secretary the notes incorrected, and she typed up what I told her to. But it was wrong.

So, the vice-chairman-the chairman of the Judiciary, that I am proposing, is Dave Holland, and the vice-chairman is Catherine Pemberton. And Cedor understands that, and is not concerned, and neither is Mr. Holland. And I don't believe Mrs. Pemberton is, although I haven't asked her about that.

But, in any event, that's the change, and if you have the wrong sheet, I want you to be clear on that.

Now, with that background, the Chair would entertain a motion that the nominees the Chair has made for chairmen and vice-chairmen be accepted by this Convention, and when that nomination is made, we can then discuss any individual ones you want to talk about. Mr. Cate.

DELEGATE CATE: I move that the appointment of the committee chairmen and vice-chairmen by the Chair be confirmed by this committee.

PRESIDENT GRAYBILL: Very well. The motion has been made that the Chair's nominations be confirmed. Now, is there discussion?

DELEGATES: Question.

PRESIDENT GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: C. B. McNeil from District 17. I am one of the 12 percent who did not receive their first choice. However I enthusiastically second Mr. Cates motion. I believe our president and our vice-presidents have done an outstanding job, both with the committee assignments and with the selection of the chairman and vice-president, and enthusiastically second that motion.

PRESIDENT GRAYBILL: Mr. McNeil-if it weren't for that 20 percent that I could play with it would never get done. All right, are there other matters to discuss-other discussion of this motion. Are you ready for the question?

DELEGATES: Question.

PRESIDENT GRAYBILL: Very well. The Chair will open the ballot on the issue of approving the nominations for chairmen and vice-chairmen of the substantive committees as made by the president. All in favor vote Aye, opposed Nay.

Have all the delegates voted? Do any delegates wish to change their votes? Very well, the Chair will close the ballot, and would you please announce the tally?

SECRETARY MARSHALL: Mr. President, 98 delegates have voted Aye, none vote No. Okay, Mr. Foster?

PRESIDENT GRAYBILL: Never mind the comment, Mr. Marshall.

All right. By your action of voting 98 Ayes and zero Noes, you have sustained the motion, and those chairmen are hereby appointed and those vice-chairmen are hereby appointed.

Now, the Chair would recognize Mr. Murray to make a report of the Rules Committee, and the pages had better get it distributed. It's up here on the corner of the desk.

DELEGATE MURRAY: Mr. President, in the material to be distributed, which is the temporary Rules Committee report, we have talked on Rule 12, which has not been adopted by this Convention, and I move its adoption at this time, and it reads as follows:

"The House of Representatives chambers in the Capitol, Helena, Montana, shall be designated Convention Hall during the Montana Constitutional Convention."

PRESIDENT GRAYBILL: All right, you have heard the motion. The Rules Committee chairman has added one more rule, and it is that we designate this place Convention Hall for the balance of the Convention. Is there any discussion of this motion? Mr. Choate. (Inaudible)

DELEGATE CHOATE: I would like to move for the adoption of the motion.

PRESIDENT GRAYBILL: Is there any further discussion of this motion?

DELEGATES: Question.

PRESIDENT GRAYBILL: Question. The Chair will open the ballot. All in favor of designating this place Convention Hall vote Aye, all opposed vote No.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Oh, do it on your machines.

Have all the delegates voted? Any delegate want to change his vote? The ballot is closed. Please announce the tally.

SECRETARY MARSHALL: Mr. President, 97 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: By voting 97 Aye and none No, you have adopted the motion.

Now, most of you have before you the Rules Committee's report. Mr. Marshall--or Mr. Murray.

DELEGATE MURRAY: Mr. President, we, your temporary committee on Rules of Organization, appointed pursuant to a motion of the Convention, having completed our task, submit herewith a copy of all rules adopted during the organizational session of the Convention, and ask to be discharged.

PRESIDENT GRAYBILL: It is the sense of Mr. Murray's motion that the temporary Rules Committee-whose report you now have before you-be discharged upon the formal acceptance of their report. The understanding, of course, that the new Rules Committee will take over for the second session.

Mr. Murray.

DELEGATE MURRAY: I might say, Mr. President, that we make this report in accordance with the suggestion proposed by Mr. Nutting, which was withdrawn. But he did make a request that we do report in full and that we be discharged. And this is the reason for making the report.

PRESIDENT GRAYBILL: Right. I haven't got a copy before me, but I think it summarizes what you've done, doesn't it?

DELEGATE MURRAY: Yes, sir.

PRESIDENT GRAYBILL: Yes. This is all of the rules, in written form, that we have adopted by the Rules Committee, we having just adopted Rule 12 a moment ago.

And, first of all, discussion on adopting the total report of the temporary Rules Committee. Is there any discussion on that matter?

(No reply.)

If not, we will vote on that matter. All those in favor of adopting the Rules Committee report vote on the machine Aye, and those opposed No.

Have all the delegates voted? Anyone want to change their vote? The ballot is closed. Will you announce the tally?

SECRETARY MARSHALL: Mr. President, 94 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: 94 having voted Aye and none No, the report is adopted.

Now then on Mr. Murray's second part of the motion, namely, that the temporary Rules Committee be discharged, and I would add from the Chair, a vote of thanks from the Chair and the Convention.

Are you ready for the question on that?

DELEGATES: Question.

PRESIDENT GRAYBILL: The ballot is open. All in favor of discharging the temporary Committee vote Aye, and those opposed No.

Have all the delegates voted? Anyone want to change their vote? Would you please announce the tally?

SECRETARY MARSHALL: Mr. President, 97 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: 97 delegates having voted Aye and none No, the committee is discharged. (Applause)

Let's stand at ease just a moment.

All right, may I have your attention. Because they are going to move some carpet, or work on the carpet and do some other things in the interim between now and January 17th, I would ask to have you leave your keys to your desks-that they so carefully gave us-before you go away, and if you don't want to-and the easiest thing to do is to leave them in your desk. Put 'em in your desk drawer-your keys to the desks.

Mr. Habedank.

DELEGATE HABEDANK: Otto Habedank, District 3. I would like to inquire for information. Are these reports different than the ones that we have already had sent to us, or duplicates?

PRESIDENT GRAYBILL: They are different, unless somebody's been smuggling them to you ahead of us, Otto.

Yes. I should also announce that the staff has put on your desk a group of reports which supplement the ones you've already been given. It's my understanding that we will receive another group of substantive reports sometime between Christmas and New Years, or about that time. Is that right, Dale?

MR. HARRIS: Yes.

PRESIDENT GRAYBILL: Yes, there is one more big batch of substantive reports to come later. Fortunately, now that you're all on committees, you can throw most of that aside and only read those which you have to know about.

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, Arlyne Reichert, District 13. You have done a masterful job in conducting this Convention, and I made an observation today which pleased me very much. When you called on the delegates to speak you called them by name, and you refrained from saying district such and such, county such and such, and we've been requested to identify ourselves by saying "District 13."

I feel that my fellow delegates share this sentiment with me, that we are representing not only our districts, but all the people in Montana, and I would hope that when we meet again in January we could identify ourselves solely with our name.

PRESIDENT GRAYBILL: I think that's an excellent suggestion. I think the secretary is now more familiar with you, and we probably will be able to do that, and I'll try to do that. Certainly those of us from District 13 would like to get rid of our District--number.

Now, at this time, I would like to thank the pages who have all served us during the organizational session. They are all honor students from Helena Senior High School: Bruce Berwick, George Mergott, Carl Quist and Ward Leslie Tucker, Susan Leaphart. I think we should give a hand to the pages.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. President, Art Kamhoot from District 6. Before we leave, I thought it appropriate that I open this mike at least once.

I think this has been the least used microphone in the place. I think my seatmate has used it once during the 3 days of the Convention, and I just wanted you to know, Leo, that I feel you're doing a very fine job, and that I am here, that the mike does work, and at a later date I may want to use it. Thank you.

PRESIDENT GRAYBILL: I'll keep watching for you. (Applause)

All right, you ladies may go first. Ms. Bugbee-Mrs. Bugbee.

DELEGATE BUGBEE: Thank you. I understand that last night Mae Nan's mother died and this is why she's not here, and I would appreciate it very much if we could have a letter or a telegram to her from the Convention. I think she would really appreciate it.

PRESIDENT GRAYBILL: Mrs. Bugbee may be correct. I know that Mrs. Robinson is not here today because her mother is, at least, seriously ill. I don't know whether she has died or not, and she left in the middle of the night to go by plane to Texas. We have excused her on the roll.

Now, Mrs. Spew-Miss Spew-Ms. Speer—, do you know more about that?

DELEGATE SPEER: I talked with her at 11:30, and she said she had the message whether she was to come. Her mother was very low, but, no-she will inform us in Missoula in a day or so.

PRESIDENT GRAYBILL: Right. So she may not be-in any event, the-president has written her a letter to her to her home, telling her that she is excused and offering condolences, and if the group would like I would have the staff write another letter on behalf of the Convention to that effect. Would you like to do that, Mrs. Speer?

DELEGATE SPEER: Well, Mr. President, her mail in Missoula is being held at the post office, not forwarded to her. I have her Texas address if you would like it.

PRESIDENT GRAYBILL: Would you please give the staff—Mrs. Fontana, especially—that address before you leave?

DELEGATE SPEER: I will, and I move that this message be sent.

PRESIDENT GRAYBILL: You do move that. All right, the motion has been made that we send an expression of regrets to Mrs. Robinson, who is absent this morning because of an illness in her family. Is there discussion on the motion?

(No reply.)

All right, all in favor of the motion say Aye...

DELEGATES: Aye.

PRESIDENT GRAYBILL: All opposed NO...

(No reply.)

Fine. We will have the staff do that for the Convention.

Now, Mr. Simon.

DELEGATE SIMON: I'm Clark Simon from District 8, Billings, Montana. I suppose all of you know, I've been quite quiet while I've been here. I do want to practice a little on the microphone here.

I would like to say that I-, before I go home, I'd like to wish all of you a Merry Christmas. There's been a spirit of fellowship here that I've never seen in any Convention I have ever attended, and I believe that what we do here in this Convention, and how we act, and the document we produce, will be the way that we are going to sell this-whatever we produce, to the people of Montana. If you figure out that each one of us 100 delegates represent all of the people in Montana, that each one of us has about 7,000 that are looking at us-700,000 looking at all of us.

Being an old farmer, I think I might say that we baled a lot of hay the last few days. A lot of it's good Montana timothy, and a great deal of it has been clover. I want to thank all of you for the kindness that you have shown me while I've been here.

PRESIDENT GRAYBILL: Thank you very much, Mr. Simon.

Now, if you'll get a pencil out, the Chair will make an announcement concerning committees.

We would like the procedural committees to definitely meet, and I would say that maybe they should meet-except the Administrative Committee-the other three procedural committees should meet first.

We're only going to need you for about 5 minutes, but we need to tell each committee one or two things. And then I'll also tell you a place where you can meet your substantive committees, but since there are people on both, they should perhaps meet slightly later. And then after your committees have met-and I don't even care if your chairmen do anything-but if you want to meet your chairmen and shake his hand he will be at these locations, let's put it that way.

Now, the Administrative Committee will meet in 434, but it would not need to meet, I would think, until, say, 2:30 because we have some real work to do yet this afternoon.

The Rules and Resolutions Committee will meet in Room 431 immediately upon adjournment. The Public Information Committee will meet in Room 343-if that's what that says-343 immediately upon adjournment. The Style, Drafting and Transition Committee will meet in the Senate immediately upon adjournment. And each of those committees Dale and I would like to, just for one short sentence, mention something to you. And then your chairmen can do as you please.

Then the rest of the substantive committees, which can meet immediately following that, or in about 15 minutes, would be the Bill of Rights Committee in Room 434. The Legislature Committee in the Senate. The Executive Committee in the front of the House up here. The Judiciary Committee in Room 431-now Rules will be in there first, but as soon as they're out of there. The Local Government Committee in 410. The Revenue and Finance Committee in 402. The Education Committee in 428A. The Public Health, Welfare and Labor Committee in 343. The Natural Resources Committee and Agriculture Committee in 421B, and the General Government and Constitutional Amendment Committee in the back of the House.

Do any of you wish your committee assignment repeated? Natural Resources is 428B—B.

Did anybody else miss and want to—

Now, as far as the substantivecommittees are concerned, we have no real reason that you should meet. But if you want to meet the chairman, or if the chairman wants to talk to a few of his members and decide whether you want to-what you want to do, that's fine with us. We just want you to have a place to go.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. you gave us two different room numbers, 421B and 428B.

PRESIDENT GRAYBILL: Yes, I gave you the wrong number because I couldn't read his writing. It's 428B.

DELEGATE GYSLER: Thank you.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: -Chairman, I'd like to meet with the legislative committee at—would 1:30 be all right with you?

PRESIDENT GRAYBILL: We'll be through by 1:30.

DELEGATE AASHEIM: -At the Senate chambers, legislative committee, 1:30.

PRESIDENT GRAYBILL: All right, are there other announcements? Mr. Rygg.

DELEGATE RYGG: I would like to meet

with the Revenue and Finance Committee in Room 402 at 1:30.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'd like to meet with the Education Committee, 428-A at 1:30, please.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I am on the Rules Committee as well as the Executive Committee and so I would like to meet with any of the members immediately upon adjournment to set a time, because I'll have to go to the Rules first, and we'll agree on a time at that time.

PRESIDENT GRAYBILL: You'll just meet about 1:30. We'll only tie you up for 2-3 minutes. All right, Mr. Anderson.

DELEGATE ANDERSON; I would like to meet with Local Government-Room 410 at 1:30.

PRESIDENT GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I'd like to meet with members of the Judiciary Committee at 1:30, 431—Room 431, Judiciary at 1:30.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: I would like to meet with the Bill of Rights Committee at 1:30, Room 434.

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: I would like to meet with the Public Health, Welfare and Labor Committee at 1:30 in Room 343.

PRESIDENT GRAYBILL: Are there other announcements?

Mrs. Eck.

DELEGATE ECK: There have been a number of people who have indicated an interest in having our children, or others, come here for pages, and there's been some interest in other employment. If you would leave your name or get an application in the office, or send one in later when you have some information, then we'd have them on file, and they'd know how to handle it. Thank you.

PRESIDENT GRAYBILL: That's an excellent suggestion. And for all of you who have people asking you about jobs that you do not know about, or can't answer, please merely inform them that if they give the Constitutional Convention office the information, fill out an application, that the Administration Committee will, in due course, consider them and can use them or not, as they please. We'll screen you that way, and if you want to make recommendations we'd be delighted to have them. But the way to do it is to get your people's names on an application in the office.

Now, Mrs. Cross.

DELEGATE CROSS: Just an announcement. Any lady who would like a copy ofthephoto that was taken yesterday, stop at Karen Nyberg's office and pick out the one you want.

PRESIDENT GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President, my chairman is temporarily out of here, but I would call a meeting of the General Government and Constitutional Amendment in the hack of the House at 1:30.

PRESIDENT GRAYBILL: Are there other announcements? Mr. Schiltz—no, Siderius.

DELEGATE SIDERIUS: Mr. Chairman, this is just a point of inquiry information. About these pages, now, are we going to hire them for the whole session, or are we going to hire them for 2 weeks at a time? Or is that—

PRESIDENT GRAYBILL: The Administration Committee will consider that this afternoon, but there is a recommendation going to be made that they be hired for Z-week periods, to give more of them a chance.

DELEGATE SIDERIUS: I so recommend.

PRESIDENT GRAYBILL: And that might give you something to say to people that want to be pages.

Mrs. Cross.

DELEGATE CROSS: Mr. President, the Natural Resources Committee will meet immediately after adjournment here at 428B.

PRESIDENT GRAYBILL: All right, any other announcements? Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I'd just like to express a little sense of disappointment here. Mrs. Cross referred to the picture that was taken of the ladies yesterday, and somebody

promised they were going to take a picture of all of us guys with no hair, and they didn't do it. (Laughter)

PRESIDENT GRAYBILL: Well, I think the reason was they were shorter than you, and they saw a little.

Mr. Monroe.

DELEGATE MONROE: Somebody just reminded me that, I guess, the pictures are going to be able to be picked up before you go home. And another announcement. I'm having some literature photocopied. This is-1 had 100 copies of some information that was in regard to the North Dakota State Constitutional Convention, which is now in the process, you might check in the office before you leave and see if that is photocopied. If not, it probably can be mailed to you.

Another suggestion that I have is that an historic event is going to take place tomorrow, or an anniversary of an historic event, and that is that on December 2, 1823, 148 years ago, President Monroe gave life to the Monroe Doctrine, declaring that Latin America would determine its own future. And in that same vein, I think that us in Montana here might have a Monroe Doctrine.

And I don't disclaim any heritage to President Monroe, or any presidential stature, but I'm suggesting to you a statement along the same vein, that we determine our own future and, of course, this is what we're here to do. I'm suggesting that you, as we go home to our home communities, this particular motto or slogan, or statement or doctrine--or whatever you might want to call it—and that is this:

"Montana's destiny depends on our involved citizenry today." Thank-you.

PRESIDENT GRAYBILL: That's the "Lyle Monroe Doctrine" that you've just heard. All right. Thank you, Lyle. (Applause)

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates, I'm Arnold Jacobsen from Whitefish. I found in the materials that we received before, while we were campaigning, one particular document that was more readable, understandable, and one fine piece of literature and, in public, I would like to thank Lucille Speer for the tremendous job she did in putting out the one informative booklet. (Applause)

PRESIDENT GRAYBILL: Mrs. Speer, that round of applause obviously shows that we all appreciated and approved of your work, and we thank you for it and for the impact it has had on the public, which I think has been great and helpful.

DELEGATE AASHEIM: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I don't suppose you can answer this question now, but I wonder when it will be determined; when we reconvene on January 17th, are we going to be in continuous session until we get our job done? Because it's a matter of housing, and I wondered when we can know, if you have any answer to that.

PRESIDENT GRAYBILL: I haven't any idea, but I would presume we would be in session for quite a while. And then, after we get started, we'll have to see how it goes.

I have no feeling, and I'm sure that-1 don't know whether that would be the Rules Committee, or who, but I will consider it. I think you ought to plan to come and stay for a while, anyway, because we ought to get our feet wet on these. We'll get all the facts together we can.

Mr. Aasheim, in a couple of speeches I heard, expressed the view that we ought to at least get material together and get some form of work out of some of the committees before you would ever go back, and-to our people-if we did have a recess, so count on a considerable session. Whether we will have the whole 68 or 74 days, or whatever it is, at once, I don't know. I'm sorry I can't do a better job of answering Mags, but go ahead. Rent it. (Laughter)

Mr. Loendorf-

DELEGATE LOENDORF: Mr. Chairman, Jerry Loendorf. Along those same lines, I would like to suggest that perhaps Administration Committee make an estimate of what the cost of this Convention will be on a daily basis, and perhaps make that available the first week in January, and we'll know how long we'll be in session with pay. I suspect we'll probably be working without pay for some time, also, and along those lines, I would like to suggest that the committees, during the next 45 days, attempt to do some work and keep in communication, so we come here prepared. And this will perhaps speed up our work somewhat, also.

PRESIDENT GRAYBILL: Thank you very much. And one of the items the Administration

Committee is going to take up today after the session is budgeting, so we will do that.

Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Edith Van Buskirk, District 14. During our working hours and during our social hours I've found this to be a very congenial group, and I am very happy to be one of its members. (Applause)

PRESIDENT GRAYBILL: There is a seatmate for you, Mr. Drum. (Laughter)

All right, are there other announcements?

DELEGATE DRUM: Mr. President, I feel like I have died and gone to heaven where I am. (Laughter)

PRESIDENT GRAYBILL: All right. If there are no other announcements, I'm going to recognize Marshall Murray for an important motion.

DELEGATE MURRAY: Mr. President, before I make that motion, First Vice-President John Toole, has something he would like to say.

DELEGATE TOOLE: Mr. President and members of the Convention. For the past 3 days I have had the privilege of working with your president, and I have worked in many organizations, and I must say that this was one of the finest, one of the fairest and one of the most efficient organization's leadership that I have ever been privileged to work with.

Your president has stayed up all night. He has come to us in the morning with proposals, some of which we agreed with, some of which we did not. There was no table pounding. The vice-presidents pushed their ideas. They were accepted by the president. I don't believe that I have ever experienced working with an organization with this kind of leadership before in my life.

My group, the minority group that I represent, has no cause to complain. The six-member minority group has no cause to complain. The ladies have no cause to complain. Members of the Convention, you have elected a great president.

Thank you very much. (Applause)

PRESIDENT GRAYBILL: Well, I want to thank you all very much, and I hope that, we, together, have done something to get a good spirit here to start this, and I think we'll work much better when we get back because of it, and I deeply appreciate, Mr. Toole, your sentiments.

If I were to amend it at all it would be by adding, when you said "stayed up all night", the word "working" after that, so it would be clear to everybody what I was doing. (Laughter)

All right. Mr. Murray.

DELEGATE MURRAY: Mr. President, the paychecks will be mailed, but the expense checks and mileage are available at the Auditor's Office. And I move, in accordance with the provisions of Section 7-Subsection 6 of The Enabling Act, that the Montana Constitutional Convention adjourn until 10:00 a.m., Monday, January 17, 1972, and to then assemble in plenary session in these chambers, now known as Convention Hall.

PRESIDENT GRAYBILL: You have heard the motion to adjourn until January 17th at 10:00 a.m., 1972. The ballot is open. All those delegates in favor of the motion vote Aye, those opposed vote No.

Have all the delegates voted? Anyone want to change their vote? Ballot is closed. Will you please announce the ballot?

SECRETARY MARSHALL: 96 delegates have voted Aye, none voting No.

PRESIDENT GRAYBILL: 96 delegates having voted Aye, this Convention is now recessed-w adjourned.

(The Convention adjourned at 2:45 p.m.)

January 17, 1972 **Fourth Day** **Convention Hall**
10:04 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. At this time I will call into Session this Constitutional Convention under the authority of the Enabling Act. We will be operating until the rules are finally adopted, probably tomorrow, in accordance with the order of business in the rules of Mason's—or, of Mason's Rules.

John Toole.

DELEGATE TOOLE: Will the delegates please rise and join in the Pledge of Allegiance to the Flag.

(Whereupon, all rose to recite the Pledge of Allegiance to the Flag)

PRESIDENT GRAYBILL: Reverend Burkhardt.

DELEGATE BURKHARDT: Let us pray. Oh, God, we pause for a moment of reverence, giving thanks for the heritage which is ours in this state and in this land, asking guidance for the future as WC shape the quality of lives for ourselves and those who may come after us. As we go about our tasks, may we reflect on words from Scripture: "He has shown you, oh man, what is good; and what does the Lord require of you but to do justice, to love kindness, and to walk humbly with your God." Amen.

PRESIDENT GRAYBILL: Roll call this morning will be taken by machine. Will the clerk, John Hanson, please take the roll. Mrs. Bowman and Mr. Toole have not pressed their buttons. Count them. Mr. Burkhardt (Inaudible).

CLERK HANSON: Arness.

(No response)

CLERK HANSON: Mr. President.

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Oh, you voted?

PRESIDENT GRAYBILL: I voted, yes.

CLERK HANSON: James.

DELEGATE JAMES: Here.

CLERK HANSON: Schiltz.

DELEGATE SCHILTZ: Here.

CLERK HANSON: Siderius.

DELEGATE SIDERIUS: Here.

CLERK HANSON: Speer.

DELEGATE SPEER: Here.

CLERK HANSON: Would you pleasevote.

PRESIDENT GRAYBILL: All right, it is closed.

CLERK HANSON: Mr. President, 99 senators—or Convention delegates present.

[Editor's Note: As the following record shows, there were 100 delegates present.]

PRESIDENT GRAYBILL: Very well. Record the vote.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhnrdt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
c onover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present

Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf.	Present
Lorello	Present
Mahoney	Present
Mansfield,	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin,.	Present
Monroe	Present
Murray	Present
Noble.,	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks.	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner..	Present
Ward	Present
Warden	Present
Wilson .	Present
Woodmansey	Present

PRESIDENT GRAYBILL: Jean Bowman.

DELEGATE BOWMAN: Mr. President, I have examined the journal for the first, second and third days of the Convention and find the same correct.

PRESIDENT GRAYBILL: At this time I'd like to make a few remarks to the Convention before--or as we start. The preliminaries are over, and it's now time for this group of elected delegates to carry out the task of writing a Constitution for Montana. We will, in thenextfew weeks, reduce to words the principles and guidelines by which we expect to order our system of government for the foreseeable future. John Locke has explained that these words should not be our goal--rather our best ideas should. I quote him: "We should have a great many fewer disputes in the world if words were taken for what they are-the signs of our ideas only, and not for things themselves."

Ladies and gentlemen, the job to be done has been started. The quality of that start has been outstanding. Hopefully, our efforts to accomplish the task ahead will continue to be high in quality. This body knows what is expected of them. This body knows what it means to write the document.

This is what John Toole believes. This is what he said in his editorial: "During 1972, thepeopleof Montana will be faced with an important question: Are we willing to bring about changes in our government which will make state and local government more economical, more flexible, and more responsive to our need? Change is sometimes painful, but in a dynamic society it is also vital."

This is what Elizabeth Cross believes: "Among all people, Americans have the highest standard of living; but there is a real question of how long our present rate of consumption can be sustained under present practices of conservation. Between the knowledge that our economy must proceed and that man must somehow rise above his own immediate gain, the delegates to this Convention must decide what we shall do."

This is what Wade Dahood believes: "It is time

for a" aroused citizenry, through its constitutional delegates, to restate the constitutional commandments that require government to always respond to the needs of the people who have created it."

This is what Thomas Joyce believes: "It is my view that the Convention cannot and should not try to solve any contemporary governmental problems. Rather, its purpose is to facilitate the future solution of contemporary problems as well as problems not presently foreseeable."

Now, I have only mentioned a few and I wish I could mention all the others, but this body knows what writing the Constitution is all about. My conviction is that we should turn our viewpoints toward the future. This is a time of transition, and it will continue to be. The central truth of our time is change-constant, accelerating change. Think with me for a moment about Montana in the year 1900, after this Constitution we now have was written. In 1900 Montana had no automobiles, no paved roads, no electric lights, no radios or TVs, no telephones to speak of. Most of our grandparents did physical labor or associated job for long hours. They did have railroads to take them to the eastern seaboard once or twice in a lifetime. I guess that's something we don't have. Things have changed. Now, list for a moment in your imagination the State of Montana in the year 2040. What will the family be like then? What will the transportation system be? The school system? What type of communications will we have atthat time? In 2040, what will the workweek be? And how will our grandchildren spend their leisure time? Do you really think things won't change much in the next 70 years'? Obviously, things are going to change even faster than they changed in the last 70 years, and we should be thinking about how our Constitution will fit the situation. As citizens, our viewpoints are usually contemporary and are based on much shorter spans. But we do not think about the future, and we are not asked about it very often. As Alvin Toffler says about us in his book, *Future Shock:* "The voter may be polled about specific issues, "ever about the general shape of the preferable future. Indeed, nowhere in politics is there a" institution through which a" ordinary ma" can express his ideas about what the distant future ought to look, feel, or taste like. He is "ever asked about this, and on the rare occasions when he does think about it, there is no organized way for him to feed his ideas into the arena of politics. Cut off from the future, he becomes a political eunuch."

But I say today that this body has a" opportunity to consider that future. This Convention is a way for each of us and it's a way for each of Montana's citizens to concern themselves with the general shape of the future. Wc do have that opportunity, (Inaudible) do have in this Constitutional Convention a" institution organized for the people to feed their ideas about the future into politics. But how can we accomplish this? How can we get this job done? I would simply seek to remind you that we must be open-open to ideas, open to opinions, open to debate. We must also be open to our own conscience and to our inner selves. We must seek guidance and good fellowship right here in this room. We must be responsive to each other. If we can make the government work here in this room, then perhaps we can make Montana—or help Montana move into the future with confidence and vision. Montana-our Montana-is a great, vast state. It has been badly robbed and left little of the financial gain it has produced in the past. And lately, for lack of opportunity, shr has been left without her greatest resources-young people. But these young Montanans want to return to their great state because Montana embodies for them the things they find worthwhile-the open spaces, the mountains, the clear streams. In other words, the good life. If only for that reason, Montana must move into the future with confidence and vision through a document that will be written to respond sensitively to her needs. My good wishes go with you. May God bless you and keep us all during this Convention. Thank you. (Applause)

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: The Chair recognizes Mr. Eskildsen.

DELEGATE ESKILDSEN: May we revert to Order of Business under Mason's Rules J for unfinished business?

PRESIDENT GRAYBILL: All right, the motion's been made that we move to Item J under Mason's Rules, Unfinished Business. All those in favor of so moving to that order of business, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?
(No response)

PRESIDENT GRAYBILL: All right. So be it. The reason we want to move to unfinished

business is that I would like to announce that I am going to move Vice-president John Toole from the Legislative Committee to the Educational Committee. And we felt that balanced the situation up a little better, so I am now announcing that committee change.

Now the Chair would again recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, may we revert to Rule G, Report of Standing Committees?

PRESIDENT GRAYBILL: All right. You've heard the motion that we move to Order of Business G under Mason's, Reports of Standing Committees. All those in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Those opposed?

(No response)

PRESIDENT GRAYBILL: Very well, we will go to the Reports of Standing Committees, principally the procedural committees, and the Chair will recognize John Toole for a report on the Committee on Administration.

Mr. Toole.

DELEGATE TOOLE: Mr. President. You have before you, delegates, the report of the Committee on Administration. If you get that out and get the budget out, we'll go to the budget first.

PRESIDENT GRAYBILL: Not quite so close, John.

DELEGATE TOOLE: We have a very tight budget, as you can see. Before I start these remarks, Mr. President, I'm going to ask you to permit me the privilege of not yielding to questions. We have a full agenda today, and I would prefer to not yield to questions since we are having a hearing at 1:30 p.m. in the Senate chambers on this subject. Referring back to the budget now, you will see that most of our expenses are fixed. It contemplates a 9-day week, and we have very little leeway in which to operate. (Laughter) Salaries and wages, of course, are fixed expenses. Contracted services are fixed expenses. Travel, communications, supplies, and stationery. Postage we have estimated at $5,000, and this limits the delegates, I am sorry to say, to $20 for the whole session. I sincerely hope the delegates will live within that allowance. Now, if you look down at the bottom, you'll see that we have what's called a "contingent fund". The contingent fund is there because it may be necessary to go beyond 9 weeks. This Convention costs $40,000 a week, and if we go beyond 9 weeks, we've spent the other $40,000. This leaves at the bottom a total sum of $28,000 for public information, which we do not consider to be adequate. We therefore hope that if we can cut the Convention to 9 weeks, that we'll have the $40,000 for public information. Now, you will observe that the total budget is slightly in excess of the amount appropriated by the Legislature. It is expected that the Constitutional Convention Commission will have some surplus funds which will-we can turn over to the Convention, and therefore we can go as high as $504,000, perhaps a little higher, but you can readily see the imperative nature of completing the Convention's business in 9 weeks, preferably, and certainly not longer than 10 weeks. I should tell you that we have applied for a federal grant in the amount of $50,000 to supplement our public information program after the Convention adjourns. We don't know whether this will be forthcoming, but we're optimistic. If that is forthcoming, we can carry on a public information program of considerable extent. Now you will also find in your-1 believe that concludes my remarks on the budget, and let me repeat again that there will be a hearing in the Senate chambers on Wednesday at 1:30 p.m. on the budget. And we invite all of you to attend, ask questions, and make suggestions. There isn't much room for leeway, but we certainly would be glad to hear from you. You should find in your report a list of staff, along with salaries and positions. I will not go into great detail on that. We have 56 employees. The House of Representatives, I think, hires 150, so you can see how much pared down we are with respect to the operation of the House-as compared with the House of Representatives. We have taken over 18 employees from the Constitutional Convention Commission. We have retained them at their same salaries. However, some of them have different jobs. This situation may be subject to change. The salary situation is still open with respect to all 56 employees. We did not want to make salary changes at this particular time in the Convention; it would cause a lot of disruption when we are trying to get underway. I know all of you areconcerned about pages. We had applications for over 250 pages. We have room for 75. We spent more time, I think, on pages than almost any other item in this whole report, and we

finally came to the conclusion that we should choose the pages by lot. Many of you had relatives-sons and daughters--who you wanted very badly to be pages. I hope that some of you were lucky in the lottery. We have seven pages who were not in the lottery, coming from the Indian reservations of Montana. We felt that our Indian citizens deserved this treatment since there was no guarantee that they would be successful in the lottery. We passed a—we recommended a rule that immediate relatives of delegates not be employed, contrary to the legislative practice. We do not think this befits a Constitutional Convention, and I hope that none of you were too badly offended by this rule. We will have a hearing at the same time on the staff in the Senate at 1:30 p.m. Mr. President, that concludes my report on the Committee on Administration. I would like to move now that this report be accepted and filed.

PRESIDENT GRAYBILL: Do you want Mrs. Eck to make her report now, or—?

DELEGATE TOOLE: I didn't hear you, Mr. President.

PRESIDENT GRAYBILL: Do you want Dorothy Eck to make her report on interns now?

DELEGATE TOOLE: I beg your pardon. There is another item. I would like to have the Chair call on Mrs. Dorothy Eck to discuss the handling of the interns in the Convention.

PRESIDENT GRAYBILL: Fine. You may yield the floor to Dorothy Eck.

DELEGATE ECK: You will notice in your report an explanation of what the interns will be doing and a list of interns. We have 27 university students who are serving the Convention. They are considered staff members, responsible, ultimately, to Dale Harris. But each one of them has been assigned to an individual delegate, a committee Chairman, or an officer or a staff member. We would appreciate very much, however, if individual delegates would make good use of these interns. If you have an idea of some kind of a research project you need done, of some studies that you would like to assign to one of them, contact theintern assigned to your committee. If that intern is busy, contact me, because their success in really serving the Convention and having a good experience while they are doing it really depends upon their being kept busy at significant tasks. As delegates, I think that we will find that we will be able to do a better job also if we have this kind of resource available to us. They are not to be considered anywhere near the same classification as our research analysts, who I, incidentally, hope you will use well also. But I think that there are a lot of jobs that the interns can do for us to make the Convention move along more smoothly and also to contribute to their educational experience. Each of them, in addition, will be responsible to their professor at the university, either Bozeman, Missoula, or Carroll College here in Helena. And they will also be working for academic credit, doing some reading and studying and writing some research papers along with this. I hope you will use them all well. Thank you.

PRESIDENT GRAYBILL: Very well. Mr. Toole.

DELEGATE TOOLE: Mr. President. Thank you, Mrs. Eck. I will now move that the report of the Administration Committee be accepted and filed. That simply means that-just what it says-it doesn't mean that we are approving the report. The report will be approved, I think, next Friday, after the hearing on Wednesday. I so move, Mr. President.

PRESIDENT GRAYBILL: All right. You have heard the motion of the Chairman of the Committee on Administration that the report of the Committee on Administration be accepted and placed on file. You've heard his announcement of the hearing on the budget and the staff at 1:30 p.m. on Wednesday. All those in favor of accepting and filing this report, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed? (No response)

PRESIDENT GRAYBILL: All right.

DELEGATE TOOLE: Mr. President.

PRESIDENT GRAYBILL: The Chair will recognize Mr. Toole again for the Committee on Public Information.

DELEGATE TOOLE: The delegates have on their desk a rather massive report on public information, which is the result of a number of meetings of the Public Information Committee. I will also ask the Chair if they would permit me not to yield to questions on this report at this time. since we will have a hearing on this subject in the Senate chambers at 3:00 p.m., Wednesday afternoon. This program will be administered by Miss Elizaheth Harrison--many of you know her. As I say, I am not going into detail, except I do wish to mention one aspect of our public information program; that is the citizens corps. The citizens corps was late in getting underway. We had to wait-a meeting of the Public Information Committee on January 8th to get it underway. We think it has tremendous value, tremendous potential, with respect to bringingthe message of this Convention to the public. We will schedule meetings with each delegation to go over what you have put together in your district and what remains to be done in your district with respect to the formation of the citizens corps. We realize that the citizens corps will take a different form in every district. A district composed of a number of counties, a large number of square miles, will have a different format than, say, Cascade County. Hut we hope you will give it your ardent cooperation and make it work. It can he a tremendously important instrumentality in insuring the success of this Convention. I would also like to announce that on Thursday, the delegates will have an opportunity--I don't have a time on this-the delegates, particularly those delegates from rural counties where you have weekly newspapers, will he asked to meet with Miss Harrison and Mr. Fred Martin with respect to getting out weekly information to weekly newspapers. We'll give you detailed information as to the place and the time later on. On public information, there will he a public hearing, as I said before, in the Senate at 3 o'clock on Wednesday, and we are all invited. Mr. President, that concludes my report on public information. I would move now that it he accepted and filed.

PRESIDENT GRAYBILL: All right. You have heard the report of the Committee on Public Information, and it has been moved that it he accepted and placed on file. You have heard the announcement of the Chairman that there will be a hearing on public information at 3 o'clock on Wednesday afternoon in the Senate chamber. As many as are in favor of accepting and filing the report, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

DELEGATE TOOLE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Toole:

DELEGATE TOOLE: Mr. President, we are having difficulty with these microphones. I can't hear you and I guess a lot of people haven't been able to hear me, hut if you could move yours a little closer to your mouth, the hack row could hear a little better. Thank you.

PRESIDENT GRAYBILL: All right. The Chair will now recognize the Chairman of the Rules Committee, Marshall Murray, for a report of the Rules Committee.

DELEGATE MURRAY: Mr. President, the Rules Committee has been meeting relative to the rules. We have four rules left to complete as far as form is concerned. I think we have reached agreement with respect to those rules on the substance thereof. I anticipate having, hopefully, all of them ready for a hearing to be held in the Senate chambers at 3 o'clock today. We anticipate having them duplicated and available for all of the delegates who would like to have them and who would like to attend that hearing. The primary reason for the hearing is that there seems to he some disagreement amongstthedelegates as to my, and the committee's, philosophy regarding two matters of utmost importance-one being the matter of roll calls and when they shall he taken and the other being the question of how many delegates shall he required to pass certain votes. There are also several other matters to he discussed in hearing, and if anybody has any rules that they would like to propose or suggestions to the rules, we would like to invite them to attend. I envision these rules as being broken down into three categories. They are mixed up within those three general subject matters, hut basically, as I envision them, they have to do first with organization, the election of the officers, and the duties and responsibilities of the officers, and in this respect, as the temporary rules provided, these rules show that--and demonstrate that, the President shall have the general supervision of this Convention, and he is in charge of its operation. He shares that operation, with respect to finances

and budget, with the Committee on Administration. He shares that responsibility and duty with the Committee on Rules and Administration as to its schedule. And as to other matters, he has the authority. Of course, the Convention has the ultimate authority in every instance anyway. The second part of the rules has to do with parliamentary procedure, and the rules that we have proposed are pretty much standard in the many states that were exhibited in the memorandums—1 and the supplemental memorandum l-and relate to the parliamentary operation of this assembly. And we have selected and will propose that Mason's be used as the parliamentary guide to supplement the rules that we propose, to govern us in any instance that is not covered under the rules. The third area of our rules has to do with the operation of this Convention and the introduction of delegate proposals, citizen suggestions, and delegate and committee resolutions. And it is this area of the rules that we are presently involved in, in doing some remodeling. We think that we have pretty much in mind how this Convention will operate with respect to these matters if you adopt the rules as we propose them. This is much different than any of you have experienced, I am sure, because we have attempted to take the best of the rules of the various states, have attempted to get entirely away from the language and practice of the legislative sessions in the State of Montana and the Congress of the United States, and have tried to use such language and draft such rules as will give all of us an equal start and an equal understanding of how we hope this Convention will conduct itself with respect to debate and procedure. And I guess that that, basically, is what I have to say-other than, as you review these rules, you will note that I have extended my philosophy and interest in getting this Convention along and making it move and operate and not be delayed and dilatory. And I would imagine that some of the matters which you will hear under discussion this afternoon will affect my philosophy as it is expressed in these rules in that respect. Some people think they need more time on certain things or they would like to have another opportunity to save something which has been defeated or amended, and this is well and good. We will hear you out, and I'm sure that we will make some changes. We want you to know and understand these rules, and we feel sure that, once you do, we will be able to get underway rapidly. Thank you very much, Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Murray, is my mike working now?

DELEGATES: No.

PRESIDENT GRAYBILL: Not working?

DELEGATES: No.

PRESIDENT GRAYBILL: Now?

DELEGATES: No.

PRESIDENT GRAYBILL: Now?

DELEGATES: Yes.

PRESIDENT GRAYBILL: It helps to turn it on. (Laughter) You wonder how it worked when it wasn't turned on, don't you? Mr. Murray, since the hour is fairly early, I wonder if we might change the program a little today from what we've anticipated, and I think we'll be out of here by 11:00, and we could have those committee meetings this morning:, and let's move your rules hearing up. Can we move your rules hearing up before 3 o'clock?

DELEGATE MURRAY: I don'tthink that we can move it any sooner than 2:00, because I haven't had an opportunity to run through-some of these rules are still being typed.

PRESIDENT GRAYBILL: All right.

DELEGATE MURRAY: Four of them have not been completed as to drafting at all, and I think we can have most of them duplicated and available by 2:00. Let's move it to 2:00 and not any sooner than that.

PRESIDENT GRAYBILL: Let's move it to **2** o'clock.

All right, you've heard the—

DELEGATE MURRAY: -Senate chambers.

PRESIDENT GRAYBILL: --report of the Chairman of the Rules Committee, and I don't think it takes any action. There will be a rules hearing at 2 o'clock, then, instead of 3:00—some of you knew it was to be at 3:00—2 o'clock this afternoon in the Senate chamber.

Mr. Aronow.

DELEGATE ARONOW: Mr. President, may we hold the Rules Committee meeting in this chamber rather than the Senate, because, from what Mr. Murray stated, there may be some discussion.

PRESIDENT GRAYBILL: There may be a hundred seats filled.

DELEGATE ARONOW: Right.

PRESIDENT GRAYBILL: Okay, Mr. Murray, do you have any objection to moving your committee meeting into this room?

DELEGATE MURRAY: None at all. I like Convention Hall.

PRESIDENT GRAYBILL: All right. the meeting will be at 2:00 p.m. in this room-the hearing on the rules--and we will go through them. Now, the rules will be available in printed form by that time, and you may debate them and discuss them at your leisure and as long as you need. Now—

DELEGATE MARTIN: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Will that conflict with someofoursubstantivecommitteemeetings?

PRESIDENT GRAYBILL: I am about to move the substantive committee meetings until right now, at 11 o'clock, instead of at 1:30.

DELEGATE MARTIN: Thank you.

PRESIDENT GRAYBILL: All right. First of all I want to make some announcements here, and you might want to take these down in case some of you haven't gotten your cards. These are the committee room assignments: Bill of Rights is in Room 330-330; Education and Public Lands is in Room 436-436; the Executive Committee is in Room 428-B-428-B; General Government and Constitutional Amendment is in Room 410-410; Judiciary is in Room 412-412; Legislative is in Room 433 and 4-433 and 4—and their office is in 432, which-they're all right next to each other. Local Government is in Room 437-437; Natural Resources is in Room 402-402; Public Health, Welfare, Industry and Labor is in Room 428-A-428-A; Revenue and Finance is in the Mitchell Building, Room 215. The Mitchell Building's the big building to the east of the Capitol. The Rules Committee is currently meeting in this room at this front end of the Convention Hall; the Style and Drafting Committee currently does not have a room. We've made a couple of requests of the Supreme Court; we'll see what happens. Are there any questions about the room assignments of the substantive committees?

Now, we were going to have substantive committees at 1:30, but I think we can adjourn here in a few minutes and recess and we can have our substantive committee meetings at 11 o'clock this morning. Now, I would merely like to caution the chairmen of the substantive committees that the rules which haven't yet been adopted may require a 5-day and will require at least a 3-day notice of hearings. That means that you have got to arrive at a hearing notice today or tomorrow and get it worked out with Max Baucus so that we can publicize it, in order to make yourselves able to hold hearings beginning a week from this morning-I mean public hearings, to which the public has to have notice. So one of the things you might consider at your committee meetings this morning is your schedule for the immediate, beginning next week. You'll know in a moment that this week is fairly well filled up. I want to also review with you the fact that these procedural committees-the Rules Committee this afternoon and the other two committees of Mr. Toole's that you've talked about--will meet on Wednesday afternoon. Probably those can still be held in the Senate. In addition to that, I want to outline for you briefly two or three major items that the Convention will cover this week and when, so that you will have them in your minds. You will be given a summary of this tomorrow, but so you have them in mind. We have this problem of what proper workweek we want to adopt-Monday-Friday; Tuesday-Saturday; et cetera. We intend to open that up by resolution, for debate on Wednesday morning, so make up your minds before Wednesday morning or on Wednesday morning. Then we have a serious problem. The management of the Constitutional Convention has a serious problem--and I think we all have a serious problem, in determining as quickly as possible when we really intend to go to the electorate with the product of this Convention. Now, there's been a great deal of assumption that it would be in the election in November, the general election, but there has been a strong suggestion from a number of you delegates that we do this in the primary election. And there has been a third strong suggestion from another fairly substantial group of delegates that we do it by special election. Now, because of the work of the Public Information Committee, and certainly because of the work of the Style and Drafting Committee and, for that matter, of the whole Convention, it is absolutely essential that we find out this week when we intend to go to the public with the finished product, because we will have to be on a

little different schedule if we go in June than if we go in September or in November. Therefore, we intend to, by resolution, have you debate on Thursday morning the schedule of this Convention's submission of the Constitution to the public. Then the third major area that there are two or three schools of thought on is whether-is the recess issue. Should we have, or not have, a recess to take the product of the Convention-or to take the product of the committees, to the public in hearings around the state. If we should have such a recess, should it be in themiddle ofthe session or should it be near the end-at the end of the session? We're going to discuss that issue on Friday morning. Now, we put that over until Friday so that we might possibly know when we are going to go to the public, before we decide that issue. But you should be aware that the Convention will discuss those three matters this week. In addition to that, of course, the committees will meet and there will be other special activities. I also want to announce, and you will be given— let's say, I think we'll probably get this notice out now at the Rules Committee meeting this afternoon--a bulletin on this, but there is to be a Convention social dinner tomorrow night, Tuesday night, at Jorgenson's, for the purpose of socializing with the other delegates and for the specific purpose of allowing all the delegates to meet and see the staff. We are inviting the entire staff and wewillintroduceallofthestaffmembers individually, so you get a good chance to pick out who are and who are not-or what the staff people's jobs are, at that time. Then, Vice-president Toole and his wife and Mrs. Graybill and I have graciously consented to host you at cocktails before that dinner. So, that will start at 6:30 tomorrow night. And we do want you, after you get this notice, to notify the secretaries in the cage out there whether or not you intend to come. Are there other announcements that committee chairmen wish to make or anyone else wish to make, with the understanding that when we recess, the committees will be expected to meet at 11:OO a.m. in their rooms? Are there any other announcements?

CLERK HANSON: Locker keys have been assigned in alphabetical and numerical order. The first 11 lockers are in the ante over here which have the exit over it; 12 through 22 are in the entranceway; all the others are in the west wing, on first floor.

PRESIDENT GRAYBILL: Are there any other announcements? If there are no other announcements, the Chair will recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: One little announcement that we might have today that-1 think it would be well if we recognize that the President's mother and father are here to watch us open our session-Mr. and Mrs. Leo Graybill.

PRESIDENT GRAYBILL: Would my parents and my wife please stand?

DELEGATE ESKILDSEN: And his wife. (Applause)

PRESIDENT GRAYBILL: Thank you, Mr. Eskildsen.

DELEGATE ESKILDSEN: At this time, I move that the Convention stand in recess until 9:00 a.m., Tuesday, January 18th.

PRESIDENT GRAYBILL: The motion has been made that the Convention stand in recess until 9:00—

DELEGATE ESKILDSEN: Adjourned. Excuse me, adjourn.

PRESIDENT GRAYBILL: Adjourn. All right. The journal wants to show it's adjourned until 9:00 a.m. tomorrow morning, Tuesday, in this same Convention Hall. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Convention adjourned at 1051 a.m.)

January 18, 1972 **Fifth Day** **Convention Hall**
9:oo a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in session. I'd like John Toole to lead us in the Pledge of Allegiance to the Flag, please.

(Whereupon, all rose to recite the Pledge of Allegiance to the Flag)

PRESIDENT GRAYBILL: Will the Reverend Harper lead us in Invocation, please.

DELEGATE HARPER: Almighty God, our Father, in whose sovereignty men have for ages fashioned governments, guide the members of this body today. Put our feet on the ground where the commonest of our people walk. Let our minds be clear and unpolluted as the Big Sky. Grant us such iron nerve that we may add in some small measure to the kin&m that you are fashioning in us and in our world. Amen.

PRESIDENT GRAYBILL: Will the clerk call the roll. Vote on your machines Aye.

CLERK HANSON: Babcock.
(No response)

CLERK HANSON: Mansfield.
(No response)

CLERK HANSON: Martin.
(No response)

CLERK HANSON: Siderius.
(No response)

CLERK HANSON: Martin.
(No response)

CLERK HANSON: Siderius.

DELEGATE SIDERIUS: Here. My machine don't work.

CLERK HANSON: Your machine isn't working. Very fine.
Babcock.
(No response)

PRESIDENT GRAYBILL: Yes. Babcock is absent and Siderius' machine is not working. Will that mean we have 99 present then?

CLERK HANSON: Yes.

PRESIDENT GRAYBILL: 99 present on the journal: Mrs Babcock ob ent

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Absent
Barnard	Present
Bates..	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong.	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobs	P

James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting,,	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present,
Ward	Present
Warden	Present
Wilson,,	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 99 present.

PRESIDENT GRAYBILL: Very well, let the journal so show. I will now call on the Secretary, Mrs. Bowman, to report on the journal.

DELEGATE BOWMAN: Mr. President, I have examined the journal for the fourth Convention day and find the same correct.

PRESIDENT GRAYBILL: Thank you. All right, before we begin, I have one or two announcements that I think I should make. First of all, those of you who have not yet responded to whether you're coming to the dinner tonight might do that at your leisure, with the secretaries in the glass cage. Secondly, there have been a lot of questions about committee meeting times, and I think some of it is cleared up by the daily schedules which are now before you. We also discussed this at a staffmeeting this morning. and for your information, until further notice, we would like to suggest the following: in the morning between 8:00 and 9:00, procedural committees may meet as necessary for special matters. Nine "'clock, we'll have a Convention session meeting like this to start each day. At 10 o'clock-from 10:00 till noon, beginning next week, there will be time for substantive committee meetings. In other words, all next week from 10:00 on in the morning can be substantive committee meetings, except on Friday. And on Friday from 10:00 till 12:00 will be reserved for procedural committee meetings; and Style and Drafting and Public Information, at least, will always meet at those times, it's my understanding. Rules can meet if they need to. But, in other words, 10:00 till 12:00 on Fridays will be reserved, until further notice, for procedural committee meetings; otherwise, the mornings are free for substantive committee meetings after this week. Then the afternoons next week will all be reserved for substantive committee meetings. And for the chairmen's information, if you read your weekly schedule carefully, you will see that Thursday afternoon and Friday afternoon of this week are also available for substantive committee meetings, but you will see that today and Wednesday are really not available for committee meetings unless we finish our work. And Thursday and Friday mornings are not available. Okay, so much for the committee meetings, and you committee chairmen should schedule with Max Baucus if necessary. Now I know we'll debate this as a rule later, but in any event, it is the sense of the Chair and of Mr. Baucus that we will attempt, when committees have major hearings set-formal hearings--on language, perhaps, later on or whatever you want to call a very important hearing, we will try not to schedule other formal hearings at that time. So then we may actually cancel committee meetings

if the hearing is important enough. Now, this'd be later on. But we certainly have to have simultaneous committee hearings in the sense of getting information in for the first week or two.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, without objection, may we be on Order of Business G of Mason's Rules, Reports of Standing Committees?

PRESIDENT GRAYBILL: Unless I hear objection, we'll go to Reports of Standing Committees.

CLERK HANSON: "Mr. President. We, your Committee on Rules and Resolutions, submit, and herewith are, proposed permanent rules number 1 through 79 and move their adoption. Signed: Marshall Murray, Chairman."

PRESIDENT GRAYBILL: All right. The Rules Committee has submitted rules 1 through79 for adoption. For everyone's information, we'll proceed on this matter as follows: We will take the rules up one by one; the clerk will read the rules—you have them-they are substantially correct; and where there are corrections, they will be given to you so you may correct them before you discuss them. The clerk will read them; after the clerk reads the rule, Mr. Murray will, as committee Chairman, will explain the rule. If there is no objection to the rule, we will pass it. If there is objection to the rule or if anyone wants to discuss it, we will discuss and debate and eventually vote on the language of the rule as we go along. When we've completed a section, we will vote on the section. When we've completed the process, we will prepare a resolution which includes the completed rules and we will vote on the resolution. So, the clerk will read the rules, you will then make your corrections, Mr. Murray will explain it, then we will ask whether you have any objection. If not, we'll pass that rule. If you have objection, we'll debate that rule, and we'll settle that rule as we go along. All right. The clerk, I believe, can start by reading Rule Number 1.

CLERK HANSON: "Chapter 1, General Provisions, Rule 1: Quorum and majority. A majority of delegates, as herewithin defined, shall constitute a quorum for the transaction of business, but a smaller number may adjourn the Convention from day to day and may also compel the attendance of absent delegates hy the means approved by a majority, hut not less than 12, ofthc delegates present and voting. A majority of delegates may prescribe penalties for the nonattendance of delegates. When a quorum is obtained, the affirmative vote of a majority of the delegates present and voting is sufficient for the adoption of any motion or resolution or the taking of any action by the Convention or Committee of the Whole, except that under Order of Business Number 5 and Number 6 and as otherwise specified in these rules, an affirmative vote shall require the majority of the elected delegates for which no vacancy exists by resignation, expulsion under Rule 19, or death."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, this rule was discussed in some detail yesterday. The committee recognized the comments of Delegate Heliker and decided not to change the rule and proposes it in its present form. The substance of the rule is this: that upon Orders of Business Numbers 5 and 6, as we establish them in these rules, which would be what WE call Final Consideration and Adoption, and in those special instances which the rules themselves prescribe, and I think of two instances-one is for suspension or amendment of the rules and the other one for-well, it passes my mind at the moment, but we discussed it yesterday. It would require.51 votes or, in the case of suspension of the rules, two-thirds of those voting and present, whichever is lesser-the reason being--with respect to Order of Business Number 5, Final Consideration-that it's conceivable if it does not require 51 percent of the votes, because of absences of-that you could get fur beyond that stage of this Convention and find you did not have a majority of the delegates, 51 voting for your work product, and have no time or money with which to go back and do your work.

PRESIDENT GRAYBILL: Is there any question about Rule Number 1?

Mr. Heliker.

DELEGATE HELIKEK: Mr. President, what is the proper procedure at this point? Are amendments in order?

PRESIDENT GRAYBILL: If you want to amend the order-that's right. We'll debate it if you want to. May I stop you for just one moment'!

Mrs. Babcock, if you'd stand and announce your presence, we'll show you present on the roll, and you can vote if you want to after that.

DELEGATE BABCOCK: Present.

PRESIDENT GRAYBILL: Very well. Go ahead, Mr. Heliker.

DELEGATE HELIKER: Mr. President, I would move an amendment to Rule Number 1, adding a period after the phrase, "Committee of the Whole", in the fourth line of the second paragraph and deleting all words following that period.

PRESIDENT GRAYBILL: All right. If you want to explain, go ahead and explain your objection.

DELEGATE HELIKER: Yes, I stated my point of view on this yesterday, but not everyone was here, so I'll go over it again. I've done a little research overnight on this. What this means, as I see it, is that it will be possible-perhaps this will not arise at all and perhaps only once or twice—but it will be possible that a proposal favored by a majority of the Convention will be lost because of absenteeism from the Convention at the time the vote is taken. Let me give you a numerical example. Suppose that you have 10 people absent when a final vote is taken on a proposal, 50 present vote Aye, 40 vote Nay. The most probable division of the 10 absentees would be 50 percent on each side of the question, which means there would be 55 delegates in the Convention in favor of the proposition and yet the proposition would be lost. Now, I looked through the material provided to us by the staff on the rules of other conventions, on the rules of the 1889 Convention, and the rules of the Legislature, and I find that I'm bucking a tradition here so far as Constitutional Conventions are concerned. In all except one case, and that was New Hampshire, there is a rule such as proposed here, requiring an absolute majority of the number of elected delegates to pass finally any proposal. However, there is no such rule affecting the Legislature of Montana. There was no such rule in the 1889 Convention. There is generally no such rule applying to legislative or deliberative bodies. I believe that this is a denial of the basic concept of majority rule and, I think, therefore, undesirable. Essentially what it is, is the requirement of an extraordinary majority, at least potentially. I ask myself how this rule got into the rules of other conventions, and I rather suspect, although I have no proof, that it was-it got there by some provision of an enabling act passed by a legislature which is not bound by it and then was simply imitated, as it was imitated by our Rules Committee, from the rules of other conventions. I submit that, although the possibility of it giving us the result that I describe-that is, the failure of a proposition favored by a majority of the Convention-may be remote, nevertheless it is a possibility, and there is no real necessity for us to lay ourselves open to that possibility.

PRESIDENT GRAYBILL: Very well. As I understand it, the amendment is to strike out everything after the word "Whole", and the sense of it is that final votes on parts of the Constitution and the final vote on the Constitution itself would be by a majority of those voting and not by a majority of the total body.

Mrs. Reichert.

DELEGATE REICHERT: I'd like to use a hypothetical situation, because I'm not quite clear how this works and perhaps Mr. Murray could explain to me. Now, on a very controversial issue, such as gambling, if the committee that is handling that particular section recommends that we retain it in our Constitution, it's presented to our body as a whole; there are 50 voting in the affirmative. Now, there are 40 voting against. Of the 10 who are absent-most of them are probably ill or it's unavoidable-but let's say there is one delegate who feels that if he were present he'd be compelled, because of his constituents back home, to vote in the affirmative, but if he stays away he's casting a No vote and nobody knows it. I mean, if it's that close. And let's say it is a vote of 50 to 40. Now, it's lost. Now, how can this be alleviated—this problem? How can it be remedied under the rules as proposed by the Rules Committee'?

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I think there are two distinct problems posed to me in the question. One is answered in the State of Pennsylvania, that being the question of how can an absent delegate cast a vote. Pennsylvania says that if a delegate is absent and he returns and a vote has been taken, he may express his vote. It does not affect the vote, however; it just simply indicates in the record how he would have voted had he been there. The second question has-and that's the only state that talks about that matter at all-and it's—

DELEGATE REICHERT: (Inaudible).

DELEGATE MURRAY: He does not have to, no, when he returns. The second question is, yes, it would fail. Now, remember, we're not talking with respect to Orders of Business 5 and 6, about any Committee of the Whole. We're talking about the final vote, in Order of Business Number

5—we're talking about the final vote, section by section, on any given committee proposal. That is probably the most important stage of this Convention at that time.

DELEGATE REICHERT: (Inaudible).

DELEGATE MURRAY: Well, I don't know where it would be-it would-probably if it comes out of General Government, it would be within their proposal. You're voting on that section and if, at that final vote, if51 don't vote for it, it is not carried under Rule 5.

DELEGATE REICHERT: (Inaudible).

PRESIDENT GRAYBILL: Is there other discussion of this proposed amendment?

DELEGATE JOYCE: Mr. President.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: To give another hypothetical-the reasoning of a substantial majority of the Rules Committee-May I propose this hypothetical mathematical proposition? Assuming, under Mr. Heliker's example, that the vote is 49 to 41, with 10 absent, and we come to Order of Business Number 5 and that is the vote. We then come on to Order of Business Number 6, and the 10 delegates who were absent are now present and all 10 of those delegates then vote against the proposition. At Order of Business Number 6, the final adoption of the proposition, 51 now have voted No. While the proposition had carried before, it now loses. We are at the very last stage of the Convention, the proposition has been defeated, and we have no way of correcting it without-so that this rule would eliminate that possibility. If the-hypothetically, if the votes are there to carry the proposition on Order of Business Number 5, the Rules Committee believes that if51 have voted for it, presumably 51 will vote for it on Order of Business Number 6, and we will eliminate the hypothetical possibility of carrying on 5 and losing on 6.

PRESIDENT GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President. I'd like to speak in opposition to the amendment of candidate-or Delegate Heliker. It seems to me we have two choices. One is the danger of defeating something that the majority of the delegates are in favor of. There's the other danger of passing something that the majority of the delegates are not in favor of. It seems to me that the Rules Committee, in giving its proposition to us, is safeguarding the Convention from putting anything in final form that the majority of the Convention is not solidly in favor of.

PRESIDENT GRAYBILL: Mrs. Eck.

DELEGATE ECK: I would like to ask Mr. Murray how difficult would it be, as we proceed, if a numberofdelegatesaregoingtohcahsent, when they see an important vote coming up, to add a process-a rule for pairing. Would this he difficult to do later in the session?

DELEGATE MURRAY: Mr. President, the question of pairing has been researched by the committee. We find the Congress of the United States using this all the time, the House and Senate of Montana using it all the time, and no other state constitution convention speaking on the subject at all. We haven't taken any action within our committee, because we were pressed for other things that we were doing, and I would suspect the sense of the committee now is that we will come out with some form of pairing. It's not difficult to do that, that's the answer to your question, and I think that we will report out that way.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'd like to direct a question to Mr. Murray, if I may, please. Marshall, have you found any basis-a legal basis-that says that the final document has to be passed by the absolute majority of this body?

DELEGATE MURRAY: No, Rick. I haven't examined the Enabling Act with respect to this rule-that would be the only thing that I know of unless the Constitution itself has-1 suspect that if we are not bound by law, if we get to stage number 6, where we're on adoption of the proposed Constitution, and the ballot-and if we have some absences, we can then, in that one instance, suspend the rule and solve our problem. At least we wouldn't he suspending the rule in each section like we might be if we changed the rule for Order of Business Number 5.

PRESIDENT GRAYBILL: Is there other discussion of the proposed amendment?

Mr. Aronow.

DELEGATE ARONOW: Mr. President, there's one thing in all this discussion I think

we've overlooked, and I am sympathetic to Mr. Heliker's amendment, but I rise in support of the Rules Committee report for this reason: that if the proposition is so marginal that it cannot muster 50 votes out of this Convention, how will it fare on the ballot with the people of the State of Montana? We are, I suppose, a cross section of the people of Montana, and if we are so divided in our support of a proposition or in the proposed article of the Constitution that we cannot muster 51 votes in favor, then I fear that at the polls the proposition will fare very badly.

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Felt.

DELEGATE FELT: I rise first to support the amendment of the gentleman from District 18, but because I cannot accept it completely, I would like to make a substitute motion that the amendment to Rule 1 leave in the word "except" after the word "whole", where the previous amendment began to make its changes, let it delete the words "that under Order of Business Numbers 5 and 6 and", but then continue to use the words "as otherwise specified in these rules", so that the-and then delete the rest of the proposed original rule, so that your amendment would read-would close with the words "except as otherwise specified in these rules". Mr. President and members of the Convention, it is not an issue which is probably going to arise at all or, if it did, it would be infrequent. And for that reason, none of us, perhaps, are going to get into a lather about this, but we have great respect for the work of the committee. It would appear to me, however, that in the unusual event which could occur due to a severe amount of absences at a time when it was impossible to defer action, that we should have a rule under which we can proceed with the business of the Convention and that, in the event that this never should occur or if it became in some way obstreperous to the further proceedings of the Convention, we can alleviate the rule. But I'm not particularly concerned, at least about the presence or absence of precedence for the rule as provided by our committee or the alternative proposed by the gentleman from District 18. We do find in our state Constitution and in the federal Constitution numerous instances where an extraordinary majority is called for, such as the original ratification of our federal Constitution, when it specified it must be done by nine states, or where it says that two-thirds vote of all members are required to override a veto or to place upon a ballot some amendment to the Constitutions or any other specific time when an extraordinary majority is called for, they seem to require it to relate to all members of whatever body you're speaking of. But where you are dealing with the ordinary matters or where there is not some need for a special rule, they then call for a majority of those present and voting, and it would appear, therefore, that the logic was that, in ordinary situations, we should be prepared to permit action to be taken by those present and voting and only in the unusual situation would it be necessary to require that the numbers be measured by all who could be eligible to participate in the decision. For that reason, I would support either the motion as made by the gentleman from District 18 or the substitute which I proposed, which would permit us to make exceptions to that general rule such as we have someplace in one of these sections dealing with motions for the previous question, where it requires a two-thirds vote, and I am not certain whether it says two-thirds of all members or two-thirds of those present and voting. But it would permit us to make any exceptions such as that, and I believe that it would give us the opportunity to take action so that we would never get to the place where a vote such as 49 to 41 would fail from giving us a decision. Thank you.

PRESIDENT GRAYBILL: All right. I understand the sense of Mr. Felt's second amendment to be that we would have a majority vote except as otherwise specified in the rules, instead of the way it was first amended. Now, is there discussion on his amendment-his proposed amendment?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'd like to direct a question to Delegate Murray.

PRESIDENT GRAYBILL: Very well.

DELEGATE AASHEIM: If we find ourselves in this predicament where we don't have the required number of delegates here, can't we remedy the situation by a call of the house?

DELEGATE MURRAY: Surely, except in Committee of the Whole, where it's not authorized.

PRESIDENT GRAYBILL: All right, is there other discussion of Mr. Felt's amendment? (No response) Hearing no other discussion, the Chair will ask for an Ayes-and-Nays oral vote on that. My practice is going to be, on these rules, to

ask for oral Ayes and Nays unless some delegate wants a vote on the record. Now, we'll go on the record if we need to, but on all these amendments we'll only--we'll do it vocally unless the Chair is in doubt or unless someone asks. Or I'll ask for all those in favor of the amendment-well, I'll state the amendment. The amendment would amend the second paragraph of Rule 1 so thatitrequired a majority of the delegates except as otherwise specified in these rules. Now, so many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as are opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Nays have it, and so ordered. Now, we're back on the amendment of Mr. Heliker. Is there any further discussion of his amendment? (No response)

All right, do you want to close on your amendment?

DELEGATE HELIKER: I'd just like to say that I think a call of the Convention is not an adequate answer to the problem. You can't very well call into session delegates who are in the hospital if we should have a flu epidemic.

PRESIDENT GRAYBILL: All right, now. The Chair is ready to take a vote on the amendment to Rule 1, Chapter 1, the second paragraph, the sense of which would be that an affirmative vote of the majority of delegates present and voting is sufficient except-that's right-is sufficient. And the exception contained in the original rule would be wiped out. And the sense of this is that you would not need an absolute majority of this body to pass finally provisions of the Constitution or the Constitution itself. So many as shall be in favor of the amendment striking the exception, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and so ordered. Now we're back on the basic amendment. Is there any other-the basic rule. Is there any other amendments that anyone wants to propose to Rule Number 1?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I would like to amend Rule 1 in next to the last line by inserting after the word "by" and before the word "resignation", the following: "excused absence,".

PRESIDENT GRAYBILL: I understand the sense of your motion to be that after the word "resignation" on the second to last line—

DELEGATE FURLONG: No, before the word "resignation".

PRESIDENT GRAYBILL: All right, before the word "resignation", you'd put in "excused absence"-resignation, expulsion-in other words, you've added another classification to the list of exceptions there?

DELEGATE FURLONG: Yes.

PRESIDENT GRAYBILL: All right. Would you care to discuss-let's, before you discuss this, Mr. Furlong, let me make one thing clear. We're operating in Convention, and I've checked Mason's, and under Rule 102, members may speak only once. I will certainly allow the person making the motion to speak and explain it first. I will allow him to close. I will allow Mr. Murray, the author of the rule-or as representing the Rules Committee, to close. You may, however, direct questions to Mr. Murray or Mr. Furlong or whomever made the motion; and if you direct the question, we'll allow the answer; but otherwise, put all of your eggs in one basket.

Mr. Furlong.

DELEGATE FURLONG: Thank you. It seems to me that this amendment would partially answer Delegate Heliker's question, partially, and secondly, it would seem to me to apply to the philosophy of Rule 78, which would allow a present vote--a vote of present-not to be counted in the vote of record.

PRESIDENT GRAYBILL: Now, is there any further discussion on Mr. Furlong's proposed amendment adding the words "excused absence" to the list there?

Mr. Murray.

DELEGATE MURRAY: Mr. President, I fail to see where it accomplishes anything except exactly what Mr. Heliker wants, and therefore I rise in opposition to the amendment.

PRESIDENT GRAYBILL: Is there any further discussion? (No response) Very well, the question is on Mr. Furlong's amendment to the second paragraph of Rule 1, whereby, in the second to last line, he would add there— "delegates for which no vacancy exists by"-he'd add the words "excused absence,"-resignation, expulsion under Rule 19, or death. So we'd added "excused absence" to the list of exceptions there. So many as are in favor of the amendment, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the amendment fails. We're back on Rule 1. Are there further amendments to Rule 1 proposed? (No response) If not, we will pass Rule 1 as is, since it is not amended and there's no need to vote on it. I would like to announce that whoever owns a green Ford with, license number 30-926; your lights are on. All right, will the clerk read Rule 2.

CLERK HANSON: "Rule 2: Seat of Convention. The House of Representatives chambers in the State Capitol in the City of Helena, Montana, the foyer to said chambers and the south Senate lobby is designated "Convention Hall" and shall be the seat of the Convention. Sessions and hearings of the standing committees of the Convention may be held throughout the state as provided in Rule 42 of these rules."

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, the delegates do not have Rule 2 before them, as I explained yesterday, unless they were fortunate enough to receive one of the preliminary copies, but the final copy that was distributed yesterday did not contain the rule. This is merely the temporary rule which we have rewritten for placing in the permanent rules.

PRESIDENT GRAYBILL: Does anyone wish it reread? Would you reread it slowly, Mr. Hanson.

CLERK HANSON: "Rule 2: Seat of Convention. The House of Representatives chambers in the State Capitol in the City of Helena, Montana, the foyer to said chambers and the south Senate lobby is designated "Convention Hall" and shall be the seat of the Convention. Sessions and hearings of the standing committees of the Convention may be held throughout the state as provided in Rule 42 of these rules."

PRESIDENT GRAYBILL: Is there any objection to Rule 2? (No response) Is there any question about it? (No response) If not, we'll pass Rule 2 on the location. The clerk will please read Rule 3.

CLERK HANSON: "Rule 3: Sessions of the Convention. All sessions of this Convention and all meetings of its committees shall be open to the public and the news media."

PRESIDENT GRAYBILL: Is there any question about Rule 3? (No response) Hearing no objection, Rule 3 will be passed. Will theclerkread Rule 4.

CLERK HANSON: "Rule 4: Admission to the floor-defined. Only delegates, officers, employees, members of the news media, and such other persons as may be authorized by the President shall be admitted to the Convention Hall one-half hour prior to the commencement of the session, during the session, and within one-half hour after adjournment."

PRESIDENT GRAYBILL: Is there a question about Rule 4?

DELEGATE TOOLE: Mr. President.

PRESIDENT GRAYBILL: Yes, Mr. Toole.

DELEGATE TOOLE: Does that include interns'!

PRESIDENT GRAYBILL: Pardon?

DELEGATE TOOLE: Does that include interns'?

PRESIDENT GRAYBILL: I think interns are considered employees. But—

DELEGATE MURRAY: Interns are employees. It includes them.

PRESIDENT GRAYBILL: Yes, I think it would include interns. At least it would be my ruling unless somebody had a different idea.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, it is the custom of the Legislature that we have invited guests-(Inaudible).

PRESIDENT GRAYBILL: The rule says that other persons as may be authorized by the President, and the President intends to authorize a reasonable number of invited guests; but the point is, ifitgetsout ofhand, wecould then restrict it. And I believe the procedure would be that if you wanted to invite a guest-I'll probably make an announcement about-(Inaudible) if you wanted to invite a guest, you should probably give me a note or notify me.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman [President], I move to amend Rule 4 by striking, after the last comma, after "session", "and within one-half hour after adjournment". Mr. President, I do this now because I feel that there are times when we might welcome a lobbyist, we might want to consult with him on an issue, and to deny him access to this Convention Hall might be detrimental to the proper functioning of our wishes. I can see that there are times when a lobbyist might abuse this privilege, but if we find that they do, WE could then institute this phrase if we so desire.

PRESIDENT GRAYBILL: All right, I understand it to be the sense of Mr. Aasheim's proposed amendment that we would keep people off the floor for the one-half hour before and during the session, but that as soon as the session adjourned, lobbyists or others could immediately come on, and we would not have the one-half hour sanctuary afterwards. Is there discussion on this proposed amendment?

Mr. Murray.

DELEGATE MURRAY: Mr. President I'd like here to point out that this is a redraft of a temporary rule, and as you know, the House-Senate rules of the Legislature of Montana provide an hour, and we've shortened as is.

PRESIDENT GRAYBILL: Is there any further discussion (No response) Very well, the question will be on Mr. Aasheim's amendment to Rule 4, striking the words "and within one-half hour after adjournment", the purpose of which is to say that the Convention Hall would be available for persons other than those listed, immediately upon our recess or adjournment. So many as are in favor nf the amendment say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair feels the Nays have it, and so ruled.

CLERK HANSON: Call for division, Mr. President.

PRESIDENT GRAYBILL: All right. There is a call for a division, and we'll use the voting machines. Oh, we haven't got any lights. Do you think the voting machine is off?

DELEGATE AASHEIM: Mr. President, I withdraw my amendment.

PRESIDENT GRAYBILL: (Laughter) Mr. Murray has not done this on purpose. (Laughter) All right, we're going to let Rule 4—let that amendment go. Are there other proposed amendments to Rule 4? (No response) Are there other proposed amendments to Rule 4? (No response) If not, the Chair will-hearing no objection the Chair will consider Rule 4 passed without amendment. Will the clerk read Rule 5. Oh, wait a minute. Mr. Murray, do you want to vote on the whole Section 1, Chapter 1?

DELEGATE MURRAY: Mr. President, I move that the Convention adopt Rules 1, 2, 3 and 4, being Chapter 1 of our proposed rules.

PRESIDENT GRAYBILL: All right, and since we have no machine at this time, the Chair will take it by the Ayes and Nays. The motion is that Chapter 1 of the proposed rules be adopted. All those in favor of this motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. And Section l-or Chap. ter 1 is passed. Now, will the clerk read Rule 5.

CLERK HANSON: "Rule 5: Officers of the Convention. There shall be elected from delegates by majority vote the following permanent officers: a President, a first Vice-president, two additional Vice-presidents, one from each congressional district, and a Secretary. The President shall

tion shall be ratified by the Convention and who shall be subject to removal by the Convention. The salary of the Executive Director shall be established by resolution of the Convention."

PRESIDENT GRAYBILL: All right. Is there any discussion or any proposed amendments for Rule 5? (No response) Hearing none, the Chair will presume Rule 5 passed. Will the Clerk read Rule 6.

CLERK HANSON: "Rule 6: Duties of the President. The President shall preside at sessions of the Convention and of the Committee of the Whole and exercise the usual powers and perform the usual duties of a presiding officer. He shall preserve order and decorum and fairly assign floor rights. He may speak to points of order and, subject to an appeal to the Convention or to the Committee of the Whole, shall decide points of order. The President shall be chief executive of the Convention, and all other officers and employees shall be responsible to his general supervision. Together with the Secretary of the Convention, he shall authenticate by signature all proposals, resolutions or other formal acts adopted by the Convention. He shall cause to be prepared and furnished to each delegate a daily calendar and agenda of business for each session of the Convention. He shall, with the advice of the Committee on Administration, prepare a budget and submit it to the Convention for its approval on or before January 21st, 1972. Every 2 weeks thereafter, he shall submit to the Convention a report of the expenditures of the Convention for the preceding 2 weeks. He shall, with the advice of the Committee on Administration, let bids and award contracts for materials and services. He may vote in all elections, on all decisions called for by any delegate, and on all questions taken by Ayes and Nays, except that the President may not vote twice, once to cause a tie vote and then again to break it. He may appoint any delegate to preside temporarily at any session of the Convention or any Committee of the Whole, but not for longer than 1 day at a time without leave of the Convention."

PRESIDENT GRAYBILL: Are there amendments or discussion of Rule 6?

Mr. Cate. No, you're just sitting down. Okay. Any amendments or discussion of Rule 6? (No response) Hearing none, the Chair will pass Rule 6. Will the clerk read Rule 7.

CLERK HANSON: "Rule 7: Duties of Vice-presidents. The first Vice-president shall have such duties as the President may assign and shall preside as President in the case of sickness or absence of the President or in a case of a vacancy in the office of President. The two additional Vice-presidents shall have such duties as shall be assigned by the President; neither shall have the right of succession."

PRESIDENT GRAYBILL: Is there any discussion or amendments to Rule 7? (No response) Hearing none, the Chair will pass Rule 7.

CLERK HANSON: "Rule 8: Duties of the Secretary. The Secretary shall have custody and preserve all proposals, resolutions, committee reports and all other records, books, and documents and papers of the Convention. He shall not permit them to be taken out of his custody except in the regular course of the business of the Convention. He shall certify and deliver to the Secretary of State the revisions, alterations or amendments to the Constitution as approved by the Convention for submission to the electorate. The Secretary shall keep a journal of all of the proceedings of the Convention in conformity with the rules, supervise the daily publication thereof, and make such corrections as may be necessary. He shall furnish each delegate a copy of the proceedings of the previous day. The journal shall be considered the approved journal of the Convention unless otherwise ordered thereby. The Convention reporter shall keep a verbatim record of Convention proceedings and shall, within the time prescribed appointment by the Convention, provide a verbatim transcript of all proceedings had in the Convention sessions and the sessions of the Committee of the Whole. He shall have such other duties as stipulated in these rules, but, after consultation with the President, he may delegate part of these duties to the Executive Director or another employee designated by the President. He may not. however, delegate the duty of certifying the revisions, alterations or amendments to the Constitution approved by the Convention for submission to the electorate."

PRESIDENT GRAYBILL: Mr. Murray, would you care to explain to the Convention the languages, particularly about the journal, and this rule.

DELEGATE MURRAY: Mr. President, it is-this matter again is one by which we're bound

by the Enabling Act requiring us to keep some verbatim proceedings of the sessions of the Convention itself, and the rule speaks to that. With respect to the journal, it is the committee's desire that we not have an order of business and it is-no order of business is set forth in our proposed order of business called journal-the Secretary merely reporting to the correctness of the journal, and should there be a correction, it can be made at any time to the Convention and will be considered by the Convention. And I would at this time ask that the word "appointment", which appears in the fourth line from the bottom of the third paragraph as read-it should be, "within the time prescribed by the Convention"--rather than "within the time prescribed by appointment by the Convention." That was at one time stricken, now reappears inadvertently.

In the fourth line from the-do you have your-start your paragraph--"The Secretary shall...;" then, next paragraph, "He shall certify and deliver...;" and then it says, "The Secretary shall keep a journal." In the fourth line from the bottom of that paragraph, the sentence reads: "proceedings and shall, within the time prescribed"--and then there's the word "appointment." It was at one time stricken by us, and somehow it reappears, and it should be-1 would move that it be stricken.

PRESIDENT GRAYBILL: All right. The Chair will presume that your rule as proposed is, "within the time prescribed by the Convention", and if everyone will make a note of that on their copies, that will be the sense of the rule as proposed. Now, is there any-and we have checked with Mrs. Bowman andshedoes not mind being referred to as "he". (Laughter) She says that's better than "it". (Laughter) That's her verbiage, not mine. All right. Now, is there any question about Rule 8? (No response) Hearing none, the Chair will pass Rule 8, especially including the change that the Chairman of the Rules Committee made there.

CLERK HANSON: "Rule 9: Duties of the Executive Director. The Executive Director of the Convention shall be primarily responsible for the administration of the Convention under the authority and supervision of the President."

PRESIDENT GRAYBILL: Is there any discussion of Rule 9? (No response) Hearing none, the Chair will consider Rule 9 passed. Read Rule 10, please.

CLERK HANSON: "Rule 10: Vacancies. If a permanent vacancy occurs in both the offices of the President and First Vice-president, the Secretary shall temporarily preside until the Convention elects a President and First Vice-president to fill the offices in the same manner in which the officers were first elected. If a permanent vacancy occurs in the office of any of the other Vice-presidents or in the office of the Secretary, the President shall appoint a member to exercise the powers of that vacant office until the Convention fills the vacancy in the same manner in which the officer was first elected."

PRESIDENT GRAYBILL: Is there any discussion or other amendments to Rule 10? (No response) Hearing none, the Chair will pass Rule 10.

CLERK HANSON: "Rule 11: Employees of the Convention. The Committee on Administration, after consultation with the President, shall appoint such employees as may be necessary for the effective operation of the Convention. The titles of their positions and their salaries shall be established by the Convention."

PRESIDENT GRAYBILL: Is there any discussion or amendment proposed to Rule 11? (No response) Hearing none, the Chair will pass Rule 11.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the adoption of Rules 5 through 11, being Chapter 2 of our proposed rules.

PRESIDENT GRAYBILL: All right, the motion is to adopt Chapter 2 of the proposed rules, Rules 5 through 11. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Will the clerk read Rule 12.

CLERK HANSON: "Chapter 3, Rule 12: Assignment of seats. The permanent seats of the delegates shall be assigned by the President in the following order: alphabetically from left to right while facing the Chair and from the front to the

rear. Variations in this seating may be authorized by the President for theofficers of the Convention. If a vacancy occurs, the person selected to fill the vacancy shall continue to have the seat of the delegate who vacated the position."

PRESIDENT GRAYBILL: Is there any discussion or amendment proposed to Rule 12? (No response) Hearing none, Rule 12 will be passed. Rule 13.

CLERK HANSON: "Rule 13: Conduct in debate. When any delegate is about to speak in debate or to present any matter to the Convention, he shall rise from his seat and address himself to Mr. President, except when in the Committee of the Whole, and then to Mr. Chairman. He shall not speak until recognized, and when recognized he shall confine himself to the question under consideration and avoid personalities and offensive language. Questions of privilege shall be governed by Chapter 23 of Mason's *Legislative Manual."*

PRESIDENT GRAYBILL: All right, I take it that last, Mr. Murray, is an amendment. Do you want to speak to that?

DELEGATE MURRAY: The last language is placed in the rule at the request of Mr. Romney, considered to be valid by the committee. He thought that when we were talking about personalities and offensive language would be a proper place to speak to the question of privilege; rather than spell out all of the rules related to the question of privilege, we refer the Convention to Chapter 23 of Mason's Manual, which is in detail.

PRESIDENT GRAYBILL: Would you repeat the exact language, please.

CLERK HANSON: "Questions of privilege shall be governed by Chapter 23 of Mason's *Legislative Manual."*

DELEGATE MAHONEY: Mr. President.

PRESIDENT GRAYBILL: All right, now we'll open this for questions or discussion or amendment.

Mr. Mahoney.

DELEGATE MAHONEY: I'd like to ask the Chairman, could we have that put into the rules? There's a lot of people that don't have Mason's *Manual,* and could this be written out in detail so they would know exactly what they're talking about when the rules are finally published?

DELEGATE MURRAY: Mr. President, I guess the answer to the question is, yes, we could— that being possible. But we have ordered 15 copies of Mason's; they will soon be available. We have five or six editions of Mason's now available. There will always be a copy in the Rules Committee room and one in my desk available to any delegate at any time. Mr. Toole has the book, and there are one or two other copies around, I think, so I believe we're pretty well covered. We have a rule which says that Mason's shall govern in any instance and in any problem that is not covered specifically by these rules, and, Charley, were we to do anything with Mason's to spell it out, I would suggest that we simply add Chapter 23 as an addendum, rather than to put it in our rules at this point.

DELEGATE MAHONEY: The only thing I think of, Mr. President, is this-that these members, now they've got to run around and he gets into a discussion, into a debate here, and what is the rule? And he's got to run out and he's got to hunt Mason's, and if you'll know, it's a real thick volume, and I think that we could afford this much, to let them know what the rules are, Mr. Chairman, of this Convention, so the individuals would know. I'm just trying to protect theirrights. I can read Mad Mason's myself, but it's quite lengthy, and I'd like to see everybody know exactly the rules we're operating under.

PRESIDENTGRAYBILL: Now, the Chair would like to advise the Convention that the Chapter 23 on Mason's is five pages long. It has the following sections: a section called "What is a question of privilege"; a second one, "Privilege of the house"; third, "Question of personal privilege"; fourth, "Questions not constituting personal privilege"; fifth, Personal explanation; sixth "Precedence of questions of privilege"; and seventh, "Matters of raising a question of privilege". Now, that's what Chapter 23 of Mason's deals with. There are at least 10 copies around, and we have ordered 15, and I understand each committee will have one and there will be several in the Rules office, and there are several in our office. But I-you may do anything you want, but I want you to know what you're talking about, There's about five pages on the question of privilege in Chapter 23. Is there further discussion? Now, Mr. Mahoney, I take it you haven't made an amendment.

DELEGATE MAHONEY: No, I haven't made an amendment, Mr. President. All I'm trying to do is to let everybody know what's going on.

PRESIDENT GRAYBILL: Right. So, at the moment, we're discussing this rule and especially the language at the end that was added to Rule 13 by the committee. Is there further discussion? Does anyone care to make an amendment? (No response) Hearing none, the Chair will pass Rule 13, including the language not on our sheets but read to us and written in as the Rules Committee amendment.

CLERK HANSON: "Rule 14: Delegates called to order. The President or any delegatemay challenge any other delegate who, in speaking, violates the rules of the Convention. Under such challenge, the President may order the speaker to sit down. The speaker's order to sit down or the failure of the President to order the speaker to sit down may be appealed."

PRESIDENT GRAYBILL: Is there any discussion or amendment to Rule 14? (No response) Hearing none, the Chair will pass Rule **14.**

CLERK HANSON: "Rule 15: Dissent of delegates. Any two or more delegates shall have the liberty to dissent from and protest in respectful language against any action or resolution relating to the Convention which they think injurious to the public or to any individual, and have the reasons for their dissent entered upon the journal."

PRESIDENT GRAYBILL: Is there any discussion or amendment to Rule 15? (No response) Hearing none, the Chair will pass Rule 15.

CLERK HANSON: "Rule 16: Times a delegate may speak. Except as provided by Rule 28 no delegate may speak more than once on the same question without leave of a majority of those present and voting unless he be the mover of the matter pending or the chairman of the committee that reported it, in which case he shall be privileged to speak twice."

PRESIDENT GRAYBILL: Mr. Murray, do you care-do you want, to explain that, or does anyone want an explanation of that? The point being, that's in Convention and in Committee of the Whole, you may speak more than once. In Convention, as we're doing this morning, you may speak once on any motion. Anyone have any discussion or amendment to Rule 16? (No response) Hearing none, the Chair will pass Rule 16.

CLERK HANSON: "Rule 17: General limit on debate. No delegate shall speak longer than 10 minutes at any one time nor more than once on the same question, except by leave of the Convention; except that the delegate handling a proposal shall have the right to speak no longer than 5 minutes to close debate, even if the previous question has been ordered and even if he has spoken once before on the issue. The restriction imposed by this rule shall not be applicable to chairmen and vice-chairmen of committees when the latter are presenting a report to [of] their committee to the Convention or to the Committee of the Whole, and the same exemption from the requirement of this rule shall also be applicable in the case of the chief spokesman for a minority report of a committee of the Convention. Any delegate shall have 1 minute to explain his vote on any roll call vote on proposals or amendments to proposals anytime prior to the closing of the vote on the question."

PRESIDENT GRAYBILL: Is there any discussion of Rule 17, or amendment? (No response) Hearing none, the Chair will pass rule 17.

CLERK HANSON: "Rule 18: Absence of delegates. No delegate shall absent himself from the sessions of the Convention unless he have leave or be sick or his absence be unavoidable."

PRESIDENT GRAYBILL: Any question or discussion on 18?

Mr. Champoux.

DELEGATE CHAMPOUX: Do **you** have a procedure lined out? Where-do we call in for absences to the main office, or how are we going to do this?

PRESIDENT GRAYBILL: Well, we're being very liberal with you, but we don't-1 don't have any particular procedure. Just a moment. The sergeant's office or the clerk's office has a form. Does the form require my signature? In other words, he applies and it comes to me, is that it? So there's a form on which you can apply, but if you don't, why then I do it anyway-for you. But if you want to use the form, okay. Is there any other discussion of Rule 18? (No response) Hearing none, the Chair will pass Rule 18.

CLERK HANSON: "Rule 19: &respectful or contemptuous behavior of the delegates. The Convention may, by a vote of two-thirds of the delegates elected and serving, hold a delegate guilty of disrespectful or contemptuous behavior in its presence. If any delegate is held guilty of disrespectful or contemptuous behavior in the presence of the Convention, he may be deprived of his committee assignments, denied speaking privileges, and denied secretarial and staff aid, or suspended or expelled. Such penalties and the duration thereof must be encompassed in the motion holding guilty."

PRESIDENT GRAYBILL: Is there any question or discussion about Rule 19?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I have done some research on this question. I've gone through the rules of the other conventions, and I have found no similar rule in any of the rules of any other convention. New York does have a contempt citation for violation of rules, and Pennsylvania has a provision on disorderly conduct. I would like to offer at this time a substitute rule to read as follows, which is based upon the New York and Pennsylvania, and when you tic this in with Rule 13 and 14, which we already have governing conduct of delegates, I think it's as effective an instrument as we need. In effect, what it does--what this rule that I'm going to propose does-is allow the Convention to hold someone who is out of order in contempt and permits them to purge themselves of that contempt, which is appropriate, and during the period of time they are in contempt, they are denied the privileges of the floor, which would mean the right to vote, the right to speak, the right to participate in the proceedings. I think it's a much more reasonable, much more enlightened rule.

PRESIDENT GRAYBILL: Mr. Cate, they're having a hard time getting you. Hold that a little further away and just talk normally.

DELEGATE CATE: Okay.

PRESIDENT GRAYBILL: Try that.

DELEGATE CATE: Thank you. This—my rule would be as follows: "Any delegate who persists in disorderly conduct, after being warned by the President that he is out of order, may, by motion duly made and carried by a two-thirds majority of the delegates present, be held in contempt of this Convention and be required to purge himself of such misconduct; and until such delegate has purged himself, he shall not be entitled to the privileges of the floor." **And** I think that would handle the situation which apparently the Rules Committee was trying to reach, that of the delegate who is misbehaving on the floor of the Convention. Thank you.

PRESIDENT GRAYBILL: Mr. Cate, can you supply the Chair and the journal with a written copy of that? Have you got it there?

DELEGATE CATE: (Inaudible).

PRESIDENT GRAYBILL: All right. Well, lend it to us, will you'?

DELEGATE BLAYLOCK: Mr. President.

PRESIDENT GRAYBILL: Now, Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I'd like to ask Mr. Cate a question. How would a delegate purge himself of the bad conduct?

DELEGATE CATE: The normal procedure in a court of law is to purge yourself of the conduct, and the Convention could set the means by which he does that. If its a situation that calls for a public apology to another delegate or a public apology to the Chair, the conditions can be laid down for him to purge himself. YES, by the Convention.

PRESIDENT GRAYBILL: Is there-does the-before you debate it, do you want it read again?

DELEGATES: Yes.

PKESIDENT GRAYBILL: All right, I'll read it again. Proposed Rule 19—or substitute Rule 19. "Any delegate who persists in disorderly conduct, after being warned by the President that he is out of order, may, by motion duly made and carried by a two-thirds majority of the delegates present"-that was "may, by motion duly made and carried by a two-thirds majority of the delegates present, he held in contempt of this Convention and be required to purge himself of such misconduct; and until such delegate has purged himself, he shall not be entitled to the privilege of the floor." Is there discussion or debate on this proposed amendment?

Mr. Mahoney.

DELEGATE MAHONEY: May I ask the gentleman from-Mr. Cate a question? Jerry, I'm just trying to see-1 haven't got it exactly plain. First he has to be convicted, is this right?

DELEGATE CATE: That's right.

DELEGATE MAHONEY: Now, you have now changed the conviction from two-thirds of the entire membership to two-thirds of the membership present, is that correct?

DELEGATE CATE: That's correct,

DELEGATE MAHONEY: I just wondered-now we've had some other things, but this becomes very critical at times, that maybe you've got a lot of people sick or something and then they decide to take a delegate on at that time, and I'd like to see this two-thirds oftheentiremembership left in there on the purging of a delegate.

DELEGATE CATE: Well, I have no objection to that. (Inaudible)

PRESIDENT GRAYBILL: Well, now, the Chair wants to know when you say you have no objection, have you amended your—

DELEGATE CATE: I would move to amend that to include—

PRESIDENT GRAYBILL: So now it's going to be a two-thirds majority of all delegates, huh?

DELEGATE CATE: (Inaudible).

PRESIDENT GRAYBILL: There's a—

DELEGATE MURRAY: Point of order.

PRESIDENT GRAYBILL: -The Chair will allow the mover to amend his proposal.

DELEGATE MURRAY: Yes, Mr. President, if he's taking this from some other state, what rule is he talking about and what other state so that those of us who have a booklet can look at it.

DELEGATE CATE: Okay, it's Rule 18, primarily, of the Pennsylvania Rules—yeah—Pennsylvania Rules, which is on page 191 of the manual on rules that was given to us, Memoran*dum on Constitutional Convention Rules,* and then on the New York provision, it's page 158, which is Rule 19 of the New York provision.

PRESIDENT GRAYBILL: Hold that mike a little further away. 19 in New York?

DELEGATE CATE: Yes.

PRESIDENT GRAYBILL: Rule 19 in New York. Is there any further discussion of this rule, this proposed rule?

Mr. Romney.

DELEGATE ROMNEY: Mr. President, I believe the substitute calls for just the President. It doesn't say President or Chairman. Then it would just pertain to meetings of the Convention and not the Committee of the Whole, right?

PRESIDENT GRAYBILL: It does pnly call for the President, and I suppose it would be interpreted as only applying to what happens here and not in committee.

DELEGATE CATE: Mr. President.

PRESIDENT GRAYBILL: Yes, Mr. Cate?

DELEGATE CATE: That would not be my intention. If necessary, I would again move to amend to include-to use the word "presiding officer"-might be the appropriate word to use.

PRESIDENT GRAYBILL: All right, you want to say anybody who persists in disorderly conduct, after being warned by the President or (Inaudible) any committee Chairman?

DELEGATE CATE: Or presiding officer, I think.

PRESIDENT GRAYBILL: Are you talking about other presiding officers here, or are you talking about the Whole Convention?

DELEGATE CATE: Well, my intent was to relate to this Convention Hall. I think the committee is a different situation that I did not intend to deal with. Perhaps the right wording would be "the President or the Chairman of the Committee on the Whole", and that would cover the situation.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Marshall.

DELEGATE MURRAY: I move we pass consideration of Rule 19 until we can see what this

finally results in, in some draft. I hate to amend these rules without looking at them, because we've looked at these rules and writing for some time. I think that if Mr. Cate would examine the rules of Maryland, he would find this one.

PRESIDENT GRAYBILL: Mr. Cate, would you allow us to pass this until a later time this morning or this afternoon?

All right, unless there's objection from the floor, we will pass this one and the Chair will bring it up again either this morning or the first thing after lunch, and in the meantime everybody can look up New York and Pennsylvania Rules 19 and 18 and Mr. Cate might firm up his language, and we'll go ahead. All right, we will pass in a different sense-we will skip Rule 19 for the time being, and will you now read Rule 20.

CLERK HANSON: "Rules 20: Disclosure of personal interest. Any delegate who has a significant personal or private interest, economic or otherwise, in a matter before the Convention shall disclose this interest to the Convention."

PRESIDENT GRAYBILL: Is there any discussion or amendment to Rule 20?

Mrs. Bowman.

DELEGATE BOWMAN: Mr. President, I question the necessity for this rule, because it seems to me that there is no possible way to enforce it, and I wonder if it needs to be included at all.

PRESIDENT GRAYBILL: Is there any other—

Mr. Aasheim.

DELEGATE AASHEIM: I concur with that statement. I think the people have made that determination when they elected us, and I don't think it's necessary at all. They have made us delegates, no matter what our financial or economic or social status.

PRESIDENT GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. President, I, too, concur that it should be deleted in its entirety—

PRESIDENT GRAYBILL: Hold it further away, Bill.

DELEGATE ARTZ: -should be deleted in its entirety. It's ambiguous. I can't understand it. The delegates I've talked to think it applies to all of us, but we don't want to be jumping up and down and saying, "I have an interest in this", when we get in the Bill of Rights or Taxation or what-have-you. Thank you.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Just by way of explanation, this is a rule which appearsin almost all the other rules. I don't have any personal feeling about the matter at all, nor, I'm sure, particularly does the committee, but it looks very nice to the public. (Laughter)

PRESIDENT GRAYBILL: Now, Mrs. Eck.

DELEGATE ECK: I'd rather like to second this, I think that, right now, the public is very concerned about the right to know, and where I don't see very many occasions where a significant private or economic interest would affect anything we're dealing with, I think it's a good thing to leave in, and in a case we arrive at a point where there is such an interest, I think it would be very fine if a delegate would get up and declare his interest. I think that this applies much more to legislative bodies than it does to the kinds of matters we're dealing with, but as a precedent, I think it's a very good thing to have.

PRESIDENT GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. President, I should like to ask a question of Mr. Murray.

DELEGATE MURRAY: I'm here.

DELEGATE BERG: Will this preclude, for example, a lawyer from discussing judicial matters without first saying he has a professional interest?

DELEGATE MURRAY: (Inaudible) to discuss such a matter? I don't think we intended to prohibit discussion, but the intent may be to prohibit the vote, but—

DELEGATE BERG: Does it-no.

PRESIDENT GRAYBILL: It says, "shall disclose".

DELEGATE MURRAY: -disclose.

DELEGATE BERG: Does it require, for example, myself, in discussing any matter that comes out of the Judiciary Committee, to first announce that I am a lawyer?

DELEGATE MURRAY: I think the intent of the rule is to let the other delegates know in some manner, if they don't already know, that when you speak on something that is of economic or personal or private interest to you, in the language of the rules, that you speak from a point of prejudice or bias.

PRESIDENT GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. President, the relativity of the word "significant" may he one which could come back to haunt us, and I would feel that the method of disclosure should he fairly well spelled out. An item that may he significant to one person may be insignificant to another, and I think there should he some determination, if we are going to include this. It could he innocuous in most cases, but it sure could come hack at a later time to haunt the Convention or delegates in this Convention.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, you have passed this morning where it's going to take a majority of all the delegates to pass anything. Now, this would be a great thing for somebody to get up and say, "I have an interest", and doesn't vote. And I'm just wondering if we want to go quite that far in this. I think that everybody was elected—I have to agree with the distinguished gentleman, Mr. Aasheim-that everybody was elected, everybody was known, and they knew what they done--I'm sure it was went over that, well enough--and this would he a great place. for a person to say, "I don't want to vote." I think this could be used, and if this majority thing that was passed this morning is a great inference right on this.

PRESIDENT GRAYBILL: All right. First of all, we should all hold those mikes 6 inches away and don't fight it. Okay. Secondly, I merely want to point out, Mr. Mahoney, it doesn't have anything to do with whether you vote or not. Read the rule.

DELEGATE MAHONEY: It could be a-very well an excuse, Mr. President, and I don't know what--after the person said, "I have an inter&"-you would-it would he non—what—we couldn't force him to vote. I think this would he very touchy.

PRESIDENT GRAYBILL: Okay, Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I rise in support of this rule, not so much for a matter of economic interest disclosure, but as a matter of interest to the other delegates. They have already pointed out that when someone speaks on a judicial matter, it would be wise for them to say, "I am a lawyer." It doesn't, certainly, preclude them from debate or making a vote; hut we're going to have many matters on education, and I think the same rule would be very informative to the rest of the delegates if the person speaking would say, "I am a teacher" or "I am connected with education in some way." I think this is a good rule. Thank you.

PRESIDENT GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: I expect that somewhere along the line we are going to he getting this biographical information out on all the delegates we assume have filled out these forms, and this is going to be coming out--what occupations we are. Maybe we can make the assumption under this rule-1 speak in favor of the rule-but make the assumption under this rule that, with this biographical information, if it shows what occupation we are and what interests we might have, we could let it go at that. But if we have some other interests that might prejudice us or bias in some matter before the Convention, we might disclose that; hut as far as occupations or whatnot are concerned, the biographical information that would he released would pretty much take care of this without having somebody, every time they spoke, announce beforehand what their occupation was.

PRESIDENT GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: I certainly agree with Delegate Erdmann on this. I see no problem in leaving this section in here. I think it dresses up the language of the whole proposal, and I would certainly like to see it left in as it is.

PRESIDENT GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President, I have no objection to the way-the idea of the statement. I would like to offer this amendment: "Any delegate who"--and here's where the change comes-"feels he or she"—I would add

that in there-"has a significant personal or private interest, economic or otherwise, in a matter before the Convention shall"--and another change-"voluntarily disclose his interest to the Convention." This would be their choice; and if they wanted to disclose it, they could; if they didn't want to, they wouldn't have to. But given the biographical information that we would receive on everyone and if we thought that we had an interest, economic or otherwise, we could voluntarily disclose any of that information. We would not have to if we did not want to.

PRESIDENT GRAYBILL: All right, the Chair understands the sense of Mr. Monroe's proposed amendment is, "Any delegate who"-these new words-"feels he or she has a significant personal interest", and so forth, "in a matter before the Convention shall"-and then add the word "voluntarily-disclose this interest to the Convention." Now, that's the amendment to be discussed. Is there any discussion of the amendment? (No response) All right, the Chair will—

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: -Oh, pardon me, Mr. Eskildsen.

DELEGATE ESKILDSEN: Yes. Did Mr. Aasheim make a motion that we delete the whole section?

PRESIDENT GRAYBILL: No, he did not.

DELEGATE ESKILDSEN: Okay.

PRESIDENT GRAYBILL: Nobody has made a motion till now, gentlemen. If you want to make an amendment, amend.

Mr. Brown.

DELEGATE BROWN: Mr. President, I'm not worried about any delegate having a personal interest that's going to affect this Convention, and if the rule had never been put in there, I would have no objection to leaving it out, but now it's been put in there. If we move now to delete it, I'm sure the press will have it tomorrow that we have now decided not to disclose our personal interest. and for a good image, I hope we leave it in.

PRESIDENT GRAYBILL: All right. Now the discussion is on Mr. Monroe's amendment making the disclosure voluntary and making it female and male-he and she. All right, is there any further discussion on that amendment? (No response) All in favor of that amendment to make the disclosure voluntary and add the words "feels he or she has a significant interest", please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?

DELEGATES: No.

PRESIDENT GRAYBILL: The Nays have it, and the amendment fails. Now we're back on the original Rule 20, and there are no amendments pending.

Mr. Harbaugh.

DELEGATE HARBAUGH: I move that Rule 21 be deleted.

PRESIDENT GRAYBILL: How about 20, since we're on that?

DELEGATE HARBAUGH: . ..20, I'm sorry.

PRESIDENT GRAYBILL: Okay, The motion of Delegate Harbaugh is that we delete Rule 20. Do you care to discuss it, Mr. Harbaugh?

DELEGATE HARBAUGH: (Inaudible)

PRESIDENT GRAYBILL: All right, is there other discussion? Okay, all those in favor of deleting Rule 20 in its entirety, say Aye.

DELEGATES: Aye,

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No

PRESIDENT GRAYBILL: The Noes have it. We're back on the Rule 20. Is there any other amendments? Hearing no other amendments or discussion, the Chair is about to pass Rule 20. Pass Rule 20.

CLERK HANSON: "Rule 21: Vacancies. Vacancies occurring in the Convention shall be filled in the manner provided for filling vacancies in the Legislative Assembly, as provided in Sections 43-215 and 43.216, R.C.M., 1947."

PRESIDENT GRAYBILL: Is there any discussions or questions?

DELEGATE ROMNEY: Mr. President.

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I move that we delete Rule 21. May I speak on it?

PRESIDENT GRAYBILL: Yes, Mr. Romney.

DELEGATE ROMNEY: The reason I make this motion is because there is no need for a rule. The method is provided by law.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Rules 21 and 22 are merely placed-I realize there's no reason for the rule-there isn't any reason to do what Mr. Romney wanted to do with respect to the rule where we put in the reference to the previous question, but when you're talking about vacancies and when you're talking about compensation, it appears to me that there should be some reference in the rule, and the rule is designed to refer the delegates to the proper part of the law where the compensation and the vacancy statutes are in detail.

PRESIDENT GRAYBILL: Is there further discussion of Mr. Romney's proposed amendment deleting Rule 21?
Mrs. Keichert.

DELEGATE REICHERT: I just have a question. Are you leaving, Mr. Murray? (Laughter) Delegate Murray, in reading about our first—it wasn't our first Constitutional Convention-it was the one in 1889; third, I believe--I read that Marcus Daly, on the third day, decided he had some important business in Silver Bow County and just left the Convention and never came back. And what did they do about replacements then, if anything? (Laughter)

DELEGATE MURRAY: I'm sorry, but I don't have any idea.

PRESIDENT GRAYBILL: All right, we're discussing Mr. Romney's motion that we delete Rule 21. Is there further discussion?

DELEGATE MURRAY: I don't think we have any flexibility in the matter at all. We either don't have the rule and let the statute speak for itself, or we have the rule with reference to the statute.

PRESIDENT GRAYBILL: All right. Mr. Romney.

DELEGATE ROMNEY: Mr. President, I withdraw the motion. I wanted to bring the fact up that there's some deadwood in and also permit the delegates to realize where you could get the information. (Laughter)

PRESIDENT GRAYBILL: Mr. Romney has withdrawn his motion, now that we're properly instructed. All right, will you read the—the Chair will pass Rule 21 unless there is other objection.

CLERK HANSON: "Rule 22: Compensation of delegates. For each day of the organization, plenary and signing sessions of the Convention, delegates shall be paid the same per diem and expenses as provided in Section 43-310, R.C.M., 1947, for members of the Legislative Assembly. Delegates shall be entitled to mileage for three trips to and from their residence and Helena by the nearest traveled route at the rate provided for the Legislative Assembly in Section 43-310, R.C.M., 1947. The President and First Vice-president shall be paid the same per diem and expenses as the President of the Senate and the Speaker of the House of Representatives, as provided in Section 43-311, R.C.M., 1947."

PRESIDENT GRAYBILL: Are there amendments or discussions of this rule? (No response) Hearing none, the Chair will pass Rule 22. Mr. Murray, do you want to make a motion that we accept Chapter 3?

DELEGATE MURRAY: Mr. President, I move that we adopt Rules 12, 13, 14, 15, 16, 17, 18, 20, 21, and 22, passing Rule 19 for this time.

PRESIDENT GRAYBILL: All right. We've passed Rule 19 that Mr. Cate has a question on-or has a substitution on, and without Rule 19 being considered, all those in favor of passing Chapter 3 with that deletion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it. and so ordered Will you read Rule 23

CLERK HANSON: "Rule 23: Committee of the Whole. All proposals reported by any substantive committee of the Convention shall be referred to the Committee of the Whole and become general orders to be placed upon the calendar and agenda of the Committee of the Whole by the President. No committee proposal shall be considered by the Committee of the Whole until the second session day after it has been referred to the Committee of the Whole, nor until the day after the duplicated committee proposal has been placed on the delegates' desks, unless the Convention agrees to do its earlier consideration."

PRESIDENT GRAYBILL: Is there any discussion or are there amendments to proposed Rule 23?

DELEGATE MAHONEY: Mr. President.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I stated yesterday that I would like to see that jumped up to the third day, and then I-further studying it-Am I out here far enough now?

PRESIDENT GRAYBILL: That's good.

DELEGATE MAHONEY: After further studying it-now-or until the day after the duplicated committee proposal has been placed on the delegates' desks-that's the time the delegates and the public will be notified what the committee report was, and this now has cut it to 1 day. Now, I think in order to go out here--we're--want the 3 days so these people can get a long ways, a distance, to come into this Convention, and I want them to be handled and given a-just as much right to come out of Carter County or Lincoln County or some of these other places as these that are close in. Now, if this thing is the way it is, you can place it on the board and then the committee reposal [report] doesn't come out, we won't know what the committee reposal [report] is, and then the next day it could be handled. Now, I'd like to ask the chairmen if they've got any ideas on this. I have a lot. I'd like to hear the Chairman of the committee give me some answers on this.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Rule 51 is the— when we discuss the guts of these rules relative to what's going to happen to-with delegate proposals and its procedure. Rule 51 speaks detail to that subject. I don'tthink that most states set up their rules as we have proposed them; at least, certainly not in the detail that we have placed in these rules. It is the attempt of the Rules Committee to require each committee proposal to be reported to this Convention under what we call Order of Business Number 1, which would be Standing Committee Reports. At that time there would not be any debate and there would be no vote, but it would be announced that that committee has completed its work upon that proposal and that it is being placed on General Orders and is being duplicated. We feel, then, that the second session day after it has been referred to the Committee of the Whole is probably enough time in which to get people here for the debates, if they choose to get them to the debates. Suddenly, we seem to be shifting our focus from a problem of getting people here for the hearings themselves, when we get them to express their opinions, to the debate stage of this proceeding when they listen to us express ours. But the rule as I drafted it had the word "third session day". In meeting with our clerk and our President and our Executive Director and others, it was determined that the second session day, coupled with the provision that not until the day after the duplicated committee proposal has been placed on the delegates' desks could the matter be considered by the delegates, would give ample time. Once again, remember that we have 9 weeks to get this over with, and if we build into these rules required lengthy periods of time, we slow down our processes and we just make it virtually impossible to end in the Y-week period.

PRESIDENT GRAYBILL: Now—

DELEGATE MAHONEY: Mr. President.

PRESIDENT GRAYBILL: -Just a moment. Does anybody else wish to-you've discussed this once, Mr. Mahoney, and unless you want to close.

DELEGATE MAHONEY: I asked a question-is what I was asking, Mr. President, I was—

PRESIDENT GRAYBILL: Oh, all right.

DELEGATE MAHONEY: -going to now make a motion—

PRESIDENT GRAYBILL: Okay.

DELEGATE MAHONEY: —to pass consideration of this with the same time you're going to handle the other, and we would handle this later. I would like to have a little more time to prepare amendment to this, Mr. President.

PRESIDENT GRAYBILL: There's a motion by Mr. Mahoney to pass consideration of Rule 23. All those in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it. We'll pass consideration of 23.

CLERK HANSON: "Rule 24: Consideration of proposals. When the Convention reaches consideration of General Orders of the Day, it shall resolve itself into the Committee of the Whole. General Orders shall be considered as follows: first, in order of referral, proposals of the Committee on Style; second, in order of referral, proposals of substantive committees. The Committee of the Whole may consider a particular proposal out of turn. No recorded roll call vote shall be taken"-this is added material-", except upon the demand of 10 delegates."

PRESIDENT GRAYBILL: All right. Mr. Murray, would you care to explain Rule 24?

DELEGATE MURRAY: This matter was discussed in some detail in our hearing yesterday. The Rules Committee met up on this particular issue. It appeared that we could--we had three alternatives; one was to have no roll call within the Committee of the Whole. That did not seem to be a very popular suggestion, although it was the Rules Committee proposal. The other was that every vote taken would be by roll call. It did not appear to the committee that we would be doing ourselves any financial favors by cluttering the journal with those roll calls and that it would, in case the machine broke down, be costing us a great deal of time. Even with the machine, it would cost us a great deal of time. So we chose the third alternative, which is expressed in Rule 71, and in order to make it clear, we merely added the language "except upon the demand of 10 delegates", which makes the recorded roll call matter consistent between Rules 24 and 71, and if both rules are adopted as they have today been amended by the Rules Committee and as they are before you-Rule 71 has one little amendment in it, too-we would have no roll calls unless 10 delegates demanded them except on those rules which would, naturally, by the wording of the rule itself, require a specified number of delegates to vote.

PRESIDENT GRAYBILL: All right, is there discussion of Rule 24?

Mr. Foster.

DELEGATE FOSTER: Mr. President, I offer a substitute motion. The substitute motion is to change the number "10" to the number "5". In my opinion, it would further accelerate the proceedings if the Chair only had to determine that five individuals wanted to have a roll call than to have to determine that 10 had to-that wanted a roll call. Proceedings to determine that 10 wanted a roll call might take more time than the actual roll call itself with the machine, and I feel that, in the event that the machine broke down, that the delegates would be quitereasonablein not attempting to have a roll call unless it was clearly indicated, and I feel that to lower the number to five would make it a more workable rule.

PRESIDENT GRAYBILL: All right, Mr. Foster's amendment is to change it from 10 to 5. That seems clear enough. Now, is there further discussion?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, members of the Convention, one little point that we are overlooking here. As the days go on, we'll find that we'll offer to each of the other more courtesy than we are right now. We're a little afraid of how much courtesy we're going to show to each other. I can assure you, as the days go on, that each of us will look at the other as a friend and that-as I stand here, I could name 10 people that, an anybody's request for a roll call vote, would be the first on their feet. Now, I could point to Marshall Murray, and I could point one-to Sterling Rygg and Miles Romney and Jim Felt, Mags Aasheim, Etchart and myself, and a few others. I do this because we found-in the Legislature that this was one courtesy that we always offered to anyone whether we agreed or not, and I'm sure that as the days go by this will happen here. I think there's no problem here in getting 10 people to rise. They'll do it automatically.

PRESIDENT GRAYBILL: Is there further discussion on the matter? All right, the amendment of Mr. Foster to Rule 24 is contained in the language that was added, and it would read "except upon the demand of five delegates".

Oh, pardon me-Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Mr. President, I was wondering-in the interest of time, I would concur with Mr. Foster to have 5 rather than 10 delegates.

PRESIDENT GRAYBILL: All right, now we're going to-any other discussion (No response) We'll vote then on Mr. Foster's amendment to make it 5 instead of 10. So many as are in favor of that amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as are opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair rules the Ayes have it.

UNIDENTIFIED DELEGATE: Division,

PRESIDENT GRAYBILL: Allright, we'll use the voting machines. So many as are in favor of Mr. Foster's motion that "5" replace "IO", say Aye. Wait until I open the ballot. There we go. Aye. So many as opposed, say No. I voted-have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: If not, the Chair will close the vote, and the Ayes have it, 52 to 43, so the amendment prevails. So we are now discussing Rule 24 with the additional language, "except that upon the demand of five delegates, roll call shall be taken."

Mr. Romney.

DELEGATE ROMNEY: I would like to point out that it says "five"--upon the request of five delegates, or something like that-1 do not have it before me. How is that to be initiated? It has to be done through a motion,

PRESIDENT GRAYBILL: I don't know, but the Chair would at this time say that, at the moment, it's my impression that if someone stood up and asked for a recorded roll call vote, I would ask if there are four seconds.

DELEGATE MURRAY: Mr. President, I think the way you do that is that you stand, address the Chair, say, "Mr. President, I demand a roll call and ask for four seconds."

PRESIDENT GRAYBILL: Right.

DELEGATE MURRAY: And the people will jump up.

PRESIDENT GRAYBILL: And the Chair would have to determine whether four people stood to second with him, and if they did we would have the division. All right, we're discussing Rule 24. Is there further discussion or further amendments?

Yes, Mr. Artz.

DELEGATE ARTZ: Mr. President, I offer the following amendment: All votes which affect the content or status of any constitutional proposal shall be by roll call vote. A roll call vote may be dispensed with if there is no objection from any two delegates. To dispense with a roll call vote, the Chairman shall state, "We will dispense with a roll call vote unless there is objection". If no two delegates objects, the Convention may proceed with a voice vote. Thank you.

PRESIDENT GRAYBILL: Now, would you supply us with your text? Would a page bring it to me there, please. If you and Mr. Cate want your texts back at noon to work on, that's fine. I just want them to read from here. All right, Mr. Artz has proposed the following amendment. The amendment you're proposing is to Rule 24, right, Mr. Artz?

DELEGATE ARTZ: Yes.

PRESIDENT GRAYBILL: All votes—this would be added as additional material, I take it, or is this in place of? No?

DELEGATE ARTZ: (Inaudible).

PRESIDENT GRAYBILL: The Chair's confusion is because the amendment is really also to Rule 72. Do you want it and-in place of the last sentence of the Rule 24, right?

All right. The sense of the amendment will be that it's to replace the last sentence of24, which is,

"No recorded vote shall be taken except on the demand of five delegates." Instead of that we would say: "All votes which affect the content or status of any constitutional proposal shall be by roll call vote. A roll call vote may be dispensed with if there is no objection from any two delegates. To dispense with a roll call vote, the Chairman shall state, 'We will dispense with a roll call vote unless there is objection.' If no two delegates object, the Convention may proceed with a voice vote." That's the amendment. Is there discussion on the proposed amendment?

Mr. Mm-ray.

DELEGATE MURRAY: Mr. President, I resist the proposed amendment. I think the rule as it has now been amended and the language contained therein is fine and we can operate well with it, and suggest that we stick with it rather than to start amending these rules from the floor in rather a helter-skelter manner with lengthy language that we cannot see and observe, because there may be built-in difficulties in that type of language.

PRESIDENT GRAYBILL: Is there other discussion of Mr. Artz's amendment? (No response). Hearing none, the Chair will put by the Ayes and Nays Mr. Artz's amendment, and the amendment is to Rule 24, striking the last sentence as it now is proposed, with the amendment to five, and the sense of the amendment is that all votes will be by roll call if they affect the status of any constitutional proposal-content or status. And that they can be dispensed with if there is no objection from more than two. All in favor of the amendment of **Mr.** Artz, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the amendment fails. All right, we're now discussing again Rule 24 as proposed, including the word "5" delegates instead of "10".

DELEGATE DRISCOLL: Mr. President.

PRESIDENT GRAYBILL: Yes, Mr. Driscoll.

DELEGATE DRISCOLL: I would like to propose to the Convention that they pass consideration of Rule 24 until sometime this afternoon. I think, upon due reflection, that the Convention will look upon the gentleman's proposal that it will receive adequate support, friendships will develop, that this idea of five is not quite sufficient. I think, upon due reflection, the Convention will realize this. I'd like to move to pass consideration until this afternoon.

PRESIDENT GRAYBILL: All right, Mr. Driscoll's motion is to pass consideration of Rule **24.**

Mr. Murray.

DELEGATE MURRAY: I resist the motion, probably by surprise, but let's say-speaking personally, not as wearing the hat of the Chairman of the Rules Committee-I don't find any problem with the rule as it has been amended and as it is now before us, and I think that the sense of this body is that we should pass it and go on to the other 50-some rules we have to consider, and I suggest we do so.

PRESIDENT GRAYBILL: Any further discussion?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: All right, so many as are in favor of Mr. Driscoll's rule that we pass Rule 24 until this afternoon's session, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: All right, the Nays have it, and it shall not be passed. Now we're on Rule 24, unamended except for the word "five", Is there further discussion? All right, there's no more amendments or discussion? (No response) We needn't vote on it. The Chair will pass Rule 5, then.

UNIDENTIFIED DELEGATE: 24.

PRESIDENT GRAYBILL: I mean 24. I'm looking at the number 5. We'll pass Rule 24 because of completely discussing it. All right, would you read Rule 25.

CLERK HANSON: "Rule 25: Amendments in the Committee of the Whole. Amendments offered in the Committee of the Whole shall be subject to Rule 58."

PRESIDENT GRAYBILL: Is there any— Mr. Murray, do you want to explain Rule 58. or do they need to know Rule 58 to understand 25?

DELEGATE MURRAY: Mr. President, Rule 58 is self-explanatory: "Every motion or amendment shall be reduced to writing if the President or any delegate shall request it, and shall be entered upon the journal."

PRESIDENT GRAYBILL: In other words, the sense of this rule is that amendments offered in the Committee of the Whole must also be reduced to writing if the body or the President requests it, is that right?

DELEGATE MURRAY: That's right. The purpose of Rule 25 is to clarify and ease our operation within the Committee of the Whole and so that the delegates will know when they make amendments, it can be demanded that they be made in writing.

PRESIDENT GRAYBILL: Is there any discussion of Rule 25?

Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, wouldn't it be necessary to pass Rule 58 before we could pass Rule 25?

PRESIDENT GRAYBILL: Well, we're not going to pass them all until finally, but if the language is all right here, we'll pick it up at the next stage. We're just kind of going through them by numbers. I suppose if we pass 25 and do away with 58 we will have done away with 25. Any other discussion of 25?

DELEGATE MCNEIL: Mr. President.

PRESIDENT GRAYBILL: Oh, let's see, Mr. McNeil.

DELEGATE McNeil: Mr. President, at this point I like Mr. Mahoney's suggestion of setting forth as nearly as possible the rules in the place where they would fit. It would seem to me that there are only four sentences in Rule 58—they could conveniently be placed on the same page without adding a thing, and I think it would simplify the rules by avoiding the necessity of referring several pages later to set it forth verbatim at that place, and I would so move that the language in Rule 58 be set forth verbatim as Rule 25 in Committee of the Whole.

PRESIDENT GRAYBILL: All right, the sense of Mr. McNeil's motion is that we amend Rule 25 by adding thereto the language that's in 58, in place of the reference to 58, the substance of the language being that any rule can be-that the house--or that the body or the President can ask that any rule be-any amendment be reduced to writing in the Committee of the Whole. Is there any discussion of the proposed amendment?

DELEGATE ARONOW: Mr. President.

PRESIDENT GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: This is merely a typographical error in Rule 58 in the next to the last line, "is withdrawn by the maker"-and that there "of'-it should be "or is ruled out of order." The "of' should be "or".

PRESIDENT GRAYBILL: All right, we've amended Rule 58 without anything by just changing the "f' to an "r" unless somebody objects. All right, now we're back on the proposition of whether Rule 25 should be stated in the language of 58 so that it applies to the Committee of the Whole. Hearing no further discussion, all those in favor of Mr. McNeil's amendment which would set forth in detail in Rule 25 the substance of Rule 58 as to writing amendments, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. So, the rules as amended will include the language--and I trust, Mr. Murray, that we'd have no difficulty putting the language in there. All right, let's go on to Rule 26.

CLERK HANSON: "Rule 26: Motion that Committee of the Whole rise. A motion that the Committee of the Whole rise shall always be in order unless a member of the Committee is speaking or a vote is being taken, and such motion shall be decided without debate by the vote of a majority of those present and voting."

PRESIDENT GRAYBILL: Is there any question or discussion or amendment to Rule 26?

DELEGATE MAHONEY: Mr. President.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Might I ask the Chairman a question? Marshall, the reason I'm questioning these things-it's nothing personal, please-1 hope you realize this—

DELEGATE MURRAY: Oh, I understand that. (Laughter)

DELEGATE MAHONEY: Here's what's bothering me. Now, as these proposals come out, you've just given the right to committee to arise. Is the amendments going to be wiped out in the middle of-if a person jumps up and asks that the committee rise, will the amendment stay in when they report it if the whole thing hasn't-can't be reported to the Convention? This is a very touchy thing, and I think you realize this.

DELEGATE MURRAY: I realize it very much, Charley, and I'm trying to think of the answer to your question. We have a rule which has to do with priorities-Privileged motions. The Privileged motion rule is Rule 60—says: "When a question is under debate"-this applies also to the Committee of the Whole-"no motion shall be received except those there." Now that-a motion to rise, Committee of the Whole to rise, isn't within-it doesn't seem to be a privileged motion. Now then, your question, as I understand it, is if the committee rises, does it wipe the motions under discussion out.

DELEGATE MAHONEY: If the complete proposition hasn't been completed-now, this has always been the problem, and this is one of the cases where parliament-fast boys make the move and gets up and says, "I move the committeerise." Now, this is where you come in-do they take the—what's stripped off? Say you've passed a half a dozen motions onto this particular proposal, Marshall-you're not through. He immediately rises. How do you report to the Convention? You haven't completed-now this is a committee—when we get into committee it's altogether different than open body.

DELEGATE MURRAY: Oh, yes—

DELEGATE MAHONEY: This is the thing that happens.

DELEGATE MURRAY: You're right.

DELEGATE MAHONEY: And this is why-could I-I'm wondering, Mr. President--I don't like to belabor this-1 wonder if Marshall and I could sit down and discuss this and try and come to an agreement on some of this particular motions in the Committee of the Whole and, specially, regard to rise-are you going to rise and report progress and beg leave to set again? Are you going to-this is the thing-this is what's bothering me.

DELEGATE MURRAY: We are making every effort. But by virtue of the nature of this Convention and the work that we will have to do here being so much different than the work in the Legislature, that the committee shall be able to rise, report its progress and sit again without having to go through any other order of business, and this might be overnight—

DELEGATE MAHONEY: This is true—

DELEGATE MURRAY: -and that would preserve the status of any amendments. It would not wipe them out, because the report would have to contain the order of the amendments and the progress made toward those amendments.

DELEGATE MAHONEY: This would be fine if the motion was to report progress and leave, sit again, but if a gentleman got up here on the floor-or a lady-and I want to get them all included--and says, "I move the committee rise," now this is where-then it's a different motion.

DELEGATE MURRAY: It is a different motion, and you have a floor leader and an assistant floor leader and a President and you—who are most concerned with something like that not happening, and I presume that we would have time to try and save it or point out the difficulty, and I'm sure that the members of this body, as wise as they appear to be today and have in the past, would save your problem from occurring.

DELEGATE MAHONEY: Ah, there, it's not debatable.

DELEGATE MURRAY: I realize it's not debatable.

DELEGATE MAHONEY: See this is-the motion to rise is not debatable, so there would be no discussion. Mr. President, I don't like to belabor the point on this, but I wondered if we could pass this thing and see if we could work out something on this thing, because I hate to see this Conven-

tion get along in the middle of something very careful and all of a sudden somebody makes the motion to rise and this-there is things that-this can get very tough-1 wish-could this be done, Mr. President? Could we-you and I sit down and try and work out something, or I could--when we meet with the Rules Committee or something on this thing?

DELEGATE MURRAY: I've been available since Friday.

DELEGATE MAHONEY: I have never been invited to the Rules Committee.

DELEGATE MURRAY: I haven't sent any special invitation to anybody, but I—

DELEGATE MAHONEY: Well, listen, I've never been invited. I'm trying to get-all that I'm working on is what you've set out here.

UNIDENTIFIED DELEGATE: Mr. President (Inaudible)

PRESIDENT GRAYBILL: The Chair is going to insist that the argument remain germane. Now, the question is, do you want Mr. Murray to pass this and consider it with Mr. Mahoney during the lunch hour. Do you-now I—nobody's made a motion of that effect. Do you want to or does he want to?

DELEGATE MURRAY: Mr. President, I move we pass consideration of Rule 26.

PRESIDENT GRAYBILL: All right, all in favor of that motion, say-Anyone want to debate that motion?

DELEGATE SIDERIUS: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: I'm in the complete dark of this; I would like to have an explanation of the whole motion-of the Rule 26—the motion that Committee of the Whole rise. Just what does that mean?

PRESIDENT GRAYBILL: Well—

DELEGATE SIDERIUS: I'm in the dark.

PRESIDENT GRAYBILL: I'm going to rule that we're-the motion before us is whether or not to let them adjourn-now if they-let them consider this over the noon hour. If they don't pass that, then I'm going to have him explain it to you; but otherwise, I'm going to let him explain it after he's fixed it. Now, is there other discussion? All those in favor of passing-of skipping, for the moment, consideration of Rule 26, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and we've passed-or skipped Rule 26.

CLERK HANSON: "Rule 27—"

PRESIDENT GRAYBILL: Just a moment. And, Mr. Siderius, we will get him to explain it this afternoon. Okay, now Rule 27.

CLERK HANSON: "Rule 27: Reconsideration. A motion to reconsider shall be in order in the Committee of the Whole and may be presented no later than the next session day of the Committee of the Whole following the session at which the action to be reconsidered was taken."

PRESIDENT GRAYBILL: All right. Is there any discussion or debate about Rule 27?

DELEGATE HARBAUGH: Mr. President.

PRESIDENT GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President, did we establish yesterday that this motion would have to be-to be in order be made by a person voting for the motion in question on the prevailing side?

PRESIDENT GRAYBILL: I think that's a question addressed to you, Mr. Murray.

DELEGATE MURRAY: Mr. President, the matter was considered by the Rules Committee, and since it is silent-since this Rule 27 is silent as to the subject, the other rule relative to reconsideration-and I don't have its number on the tip of my tongue--would govern, and that one says, must be by somebody who voted on the prevailing side.

PRESIDENT GRAYBILL: So the sense of the rule is that you must be on the prevailing side in order to make the motion for reconsideration even in the Committee of the Whole.

Mr. Ask.

DELEGATE ASK: Mr. President, it's Rule 66.

PRESIDENT GRAYBILL: The other Rule is Rule 66. Is there further discussion of Rule 27, Reconsideration?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, could I ask Chairman a question? Are we going to be able to finally dispose of a problem here? Are you going to let them reconsider Reconsiderations? Now this-I'm wondering if it's in Mason's Manual, and I haven't checked it-1 see in New York or one of these others they said that there will be no reconsideration of Reconsideration.

DELEGATE MURRAY: That's the intent of the rules. Now, I don't know whether we expressly say that. I don't know what Mason's says on the subject.

DELEGATE MAHONEY: Well, Mr. President, I'd just like to ask you another question.

DELEGATE MURRAY: We want finally to end these things.

DELEGATE MAHONEY: That's right, and I think that should be spelled out that we finally end. One reconsideration is enough, and this is-1 think we should spell it out in here.

DELEGATE MURRAY: All right, let's visit about that at lunch time, Charley, and perhaps that we can put it in Rule 66 and clarify both of them.

PRESIDENT GRAYBILL: All right, we've discussed but we have no amendments yet on Rule 27. Is there further discussion?

Mr. Cate.

DELEGATE CATE: Mr. President, this might be a good place to talk about the roll call on the voting machine, and maybe it ought to be included (Inaudible).

PRESIDENT GRAYBILL: Now, wait a minute. Explain to me-you want to discuss the roll call issue?

DELEGATE CATE: The issue is this-in order to know on a close vote the prevailing side, it's going to be necessary for the delegates to see the numbers up there. And in the vote we had this morning, the numbers were not revealed, and-do you understand the sense of—

PRESIDENT GRAYBILL: Well, if you're going to discuss the one about the voting machine, I don't want to debate the rule, but I'm perfectly happy that you point out that in conjunction with Reconsideration, there is sometimes the difficulty in determining who was on the prevailing side.

Mr. Berg.

DELEGATE BERG: Mr. President, I'd like to ask Mr. Murray this question. Does the Rule 27 apply only to the Committee of the Whole? Does Rule 21, that which we're now considering, as I understand it, apply only to the Committee of the Whole?

DELEGATE MURRAY: Yes, Rule 27 applies only to Committee of the Whole.

DELEGATE BERG: And does Rule 66 apply only to the Convention sitting—

DELEGATE MURRAY: No.

DELEGATE BERG: -as a Convention?

DELEGATE MURRAY: No. Rule 27, as it stands and as it differs from Rule 66, would apply to the Committee of the Whole. I'm not even sure it differs, because, you see, I didn't propose this rule. This is the committee's rule now. And I suggested that we not reconsider except within the Committee of the Whole at the time, and once we reported that, we don't do it. There are two philosophies on this. That ends the thing right there, but it seemed to be the sense of the committee that we go no later than the next session day. Now, Rule 66 may say the same thing. On any point that Rule 27is silent on, Rule 66 would govern. So Rule 66 would apply to the Committee of the Whole, but Rule 27 would not apply to anything outside of the Committee of the Whole.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Marshall-Mr. President, could I ask the Chairman of committee a question? This is tough and I hate to belabor it, but if you're going to let them reconsider the next succeeding day after this has been reported to the Convention, the Committee of the Whole does not have this proposal; it is gone back to the full body, the body itself. Now, I don't think we can possibly reconsider on the next succeeding day after it's been reported. Now, if you had a-if you had no break-do you see what I mean, Marshall?

DELEGATE MURRAY: I agree with you entirely, and that's the way I proposed the rule to the Convention.

DELEGATE MAHONEY: That's right. This is why-1 think this is the thing-I hate to belabor-but these are the keen points of this whole thing is to get into there and this is where, Marshall-could this be passed consideration, worked this whole thing in with the other rule?

DELEGATE MURRAY: I'd be pleased to work it over with you. I'm not sure the committee would agree with our product, but I am in accordance with your thinking, yes. I move we pass it.

PRESIDENT GRAYBILL: All right, there's a motion to pass consideration of Rule 27. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed? (No response)

PRESIDENT GRAYBILL: Rule 27, Consideration has been passed. Now, for the edification of the chairmen, you might want to make note of Section 451 of Mason's, which says that an action cannot be reconsidered when for any reason it is not possible to reach it, and it points out Mr. Mahoney's point that after the committee has risen and reported, it's too late for the Committee of the Whole to reconsider. That's obviously got to be the case or you never end it. All right, you got your note. Would you read Rule 28.

CLERK HANSON: "Rule 28: Application of Convention rules. The rules of the Convention shall be observed in the Committee of the Whole so far as they may be applicable, except that: the Committee of the Whole cannot adjourn the Convention; the previous question shall not be ordered; a majority vote is necessary to approve a proposal; the Committee may rerefer any proposal back to the substantive committee from which it came or may refer it to any other substantive committee; and a motion to postpone indefinitely or a motion to table or for a call of the Convention shall not be in order. A member may speak more than once in the Committee of the Whole. A journal of its proceedings and a verbatim transcript of its debates shall be kept by the Committee of the Whole."

PRESIDENT GRAYBILL: All right, you've heard Rule 28. Is there comment, questions, discussion or amendment? (No response) Hearing none, the Chair will pass Rule 28. 29.

CLERK HANSON: "Rule29: Limitation of debate. Before a proposal is taken up by the Committee of the Whole, any delegate shall be privileged to move that a limitation be placed upon the time of debate and consideration of such proposal by the Committee of the Whole, provided that equal time is to be afforded to the proponents and the opponents of such proposal, and the committee may fix in advance of consideration of a proposal or proposals a time for committee to rise and report."

PRESIDENT GRAYBILL: Any discussion of Rule 29? (No response) If not, the Chair will rule Rule 29 has passed. Will you do Rule 30.

Oh, all right-Mr. Murray, you want to make a motion on your chapter, with your proper deletions?

DELEGATE MURRAY: Mr. Chairman, I move that we adopt Rules 24, as amended; Rule 25, as amended; Rule 28; and Rule 29.

UNIDENTIFIED DELEGATE: Mr. Chairman.

PRESIDENT GRAYBILL: All right, the motion is to adopt these rules in Chapter 4, with the deletions noted.

Mr. Kelleher.

DELEGATE KELLEHER: Just before we pass on that-vote on it, Mr. President-I have a short question to Marshall, on Rule 29. If we're going to limit debate in the Committee of the Whole, we must decide to do it, apparently, before the debate. What if the debate goes on and on and on and the matter's already--are we limited, then, in moving to limit debate?

PRESIDENT GRAYBILL: Mr. Murray, you want to explain that?

DELEGATE MURRAY: We are limited, because we cannot move the previous question, and since the whole idea of Committee of the Whole is to continue with the debate once it's started, I presume that we will have to continue with that debate. If the rule's abused, then we will start with limitations in advance of hearing proposals.

PRESIDENT GRAYBILL: Now, do you understand the sense of the answer, Mr. Kelleher?

DELEGATE KELLEHER: I understand that once we start to debate something, if it does go on and on and on, it's too late.

PRESIDENT GRAYBILL: Right. That's right-in the Committee of the Whole.

DELEGATE KELLEHER: How do we know beforehand—

PRESIDENT GRAYBILL: Well, the problem-

DELEGATE KELLEHER: -that it's going to go on interminably?

PRESIDENT GRAYBILL: The problem is that we have a rule, which we also want, that you can't move the previous question in Committee of the Whole, and if you can do what you're saying, limit debate in the middle of the debate, then you have really in effect moved the previous question. So you-we all run the risk when we open a subject on Committee of the Whole of debating it forever.

DELEGATE KELLEHER: Thank you.

PRESIDENT GRAYBILL: And, knowing that we run that risk, I trust we'll be guided accordingly. (Laughter) All right, now, the motion is to adopt the rules of Chapter 4 that have previously been referred to. All those in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

The Ayes have it. And those are adopted. Will you please read Rule 30.

CLERK HANSON: "Rule 30: Substantive standing committees. The substantive standing committees are: Bill of Rights, Legisla"—is that "...ture" or "...tive"?

PRESIDENT GRAYBILL: "Legislature" or "...tive", Mr. Murray?

DELEGATE MURRAY: I can't tell, what? I proposed (Inaudible)

PRESIDENT GRAYBILL: All right, "Legislature".

CLERK HANSON: "...Legislature, Executive, Judiciary, Local Government, Revenue and Finance, Education and Public Lands, Public Health, Welfare, Labor and Industry, Natural Resources and Agriculture, General Government and Constitutional Amendment."

PRESIDENT GRAYBILL: Now, is there any discussion of Rule 30?

DELEGATE BABCOCK: Mr. President.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: I believe the right word would bc "Legislative" instead of "Legislature".

PRESIDENT GRAYBILL: All right, let's make it "Legislative". Is there any other discussion?

Oh, let's see-Mr. Gysler.

DELEGATE GYSLER: Mr. President, I move that Public Lands be put back with Natural Resources and Agriculture as it was before and taken out of the Education Committee. I realize that what the Education Committee said to us during our preliminary sessions is true, and this is the reason that this body put Public Lands in with Education, that reason being that they wanted to be sure that-on these earmarked funds for Education that come out of Public Lands. There are so many other aspects of this that really don't tie into Education as a committee and, I feel, very certainly tie in with Natural Resources and Agriculture. I feel I'm not alone in this. One of the communications sent to the chairmen and myself from Doug Smith in the Governor's office to agricultural people around the state, suggesting things and articles to be looking at, and this committee, the Natural Resources and Agriculture Committee, is one to be going to it, and then-this was sent by Mr. Smith to an awful lot of farm groups. It has been suggested that WE hold dual hearings or both committees meet on this. To me, in the interests of the public, there are going to be times when I feel that this would be very difficult, so this is the reason for my motion.

PRESIDENT GRAYBILL: All right, now. The motion is that we amend Rule 30 by moving the words "and Public Lands" to the Natural Resources and Agriculture Committee, That is, remove the subject matter there and take the words off of Education. So we'll discuss that.

Mr. Champoux.

DELEGATE CHAMPOUX: May I speak that motion, Mr. President? This came up yesterday. Actually it involves three committees—Taxation, Natural Resources and Education—and we discussed it in our committee, and the feeling was that since a number of people had made quite a bit an effort, spent a lot of time researching this out, that we do have a bit of talent in this area, we do feel that it is important to education in general. At a meeting this morning between the Chairman of the Natural Resources Committee, Mrs. Cross, I think-and Mr. Rygg, we thought perhaps a compromise to this would be that we include Article XVII under the-also as an area of study for the Natural Resources Committee and, at the appropriate time, that WC hold joint hearings. Are there other members of my committee perhaps that would like to speak to this? Thank you.

PRESIDENT GRAYBILL: All right, is there further discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, I put my name in for Education and Public Lands. One reason was when Public Lands was assigned to it. I'm not concerned and have a great deal of confidence in whoever would be on the committee that receives it. What does concern me, though, is, coming from a county that's got 3 million acres and more public land than any other in the state, that all the communications that go around the different places, but my constituents have no way of knowing of it. For instance, they refer to letters that this gentleman received from so-and-so, the Governor, and I am concerned that it be some way you could keep track of those things if it's in an area that concerns you. That's why I wanted to be on a committee that concerned public lands. My fellow delegate, Mr. Anderson, from our district, is quite concerned about public lands, too. So, regardless of what committee it's under, it affects education, it affects many other things. It affects your environmental and natural resources. But I would like to see it stay in Education, or put it in each one and we can both work together on the aspects of it that affect each area.

PRESIDENT GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. President, I rise in support of the motion by Delegate Gysler. I am a member of the Natural Resources and Agricultural Committee. With Delegate Wilson, I represent over 10 percent of the State of Montana, 2 percent of the people, and within this 10 percent we have a lot of public land. Now, the Natural Resources Committee is being charged with reclamation, and there probably will be much of this public land will be mined, and this is going to be of prime importance in our committee. So I would therefore like to support Mr. Gysler's motion that we do have a vital say-so in the public lands of Montana.

PRESIDENT GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I rise in support of keeping the Public Lands in Education. As you know, I'm a farmer and a rancher and I also have public lands. But to take Public Lands out of Education, which is a vital support of our public schools-I know that there is a lot of conservation and improvement of lands on our state lands which is going to involve in the natural resources of agriculture, which I'm very interested in myself, and I'll probably have some--would have some say in thoughts of their deliberation. But to take it away from us, I think it would be wrong. Going back to our people at home who are really interested in our public schools today, in the financing, which we are in jeopardy as-on our schools, I think that we're going to have to work together with the Natural Resources and Agriculture with Education, and I don't see why that we should have to relinquish it, as I think it is real vital to our education.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, since we adopted a rule here a few minutes ago that you should reveal your interest, I think I should say I am a public school teacher. And these public lands-there are over 4 million acres of pub. lic school lands which belong to the school children of the State of Montana. And this is an enormous amount of money. This is set up by the Enabling Act, Section.16 and 36 of every township, for the education of the children of Montana. And so I believe that this Public Land should stay in the Education Committee, or I would be agreeable with what Mr. Champoux proposes, that there be joint hearings on it, but definitely not taken away from Education.

PRESIDENT GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. President, I, too, am a teacher, and I rise in opposition to the motion. Some 90 to 95 percent of the public lands

in the State of Montana are reserved to the schools of the State of Montana. I recognize the interest of the other areas, but I would certainly recommend that they utilize the joint-hearing system. I would remind the Convention that, during our organization session-it seems like a long time ago now—the motion to add Public Lands to Education passed 98 to nothing.

PRESIDENT GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'm a member of the Education Committee and I, too, would favor retaining the Public Lands in the Education Committee. I think probably the basic reason has to do with the Enabling Act itself. I think that another very important reason is that if we were to change this, I think it would raise a great deal of concern among the citizenry of our state at this point. And, certainly, I think we're going to have to have joint hearings with several committees in this area, but it seems to me that, in the best interests of the Convention, that these should be kept—Public Lands should be kept with Education.

PRESIDENT GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: I am serving on Natural Resources and Agriculture Committee and, as Carl has pointed out, both Madison and Beaverhead County have a good share of the school lands of OUT state and it's of great interest, I'm sure, to that area. I personally am not concerned what committee has charge of public lands as such. I havecompleteconfidence, I think, in any of the delegates that work on these committees. But we discussed this at great length in our committee yesterday, and a good share of the work will, it seems, come out of the Natural Resources Committee in regard to the school lands. Also, I think the Taxation Committee will have some responsibility in regard to this, as well as, of course, the school lands are set up for a definite purpose for our school children, as has been mentioned. So, in any event, whichever committee that it may be kept in, I would like definitely to see the Natural Resources and perhaps the Education Committee and the Finance Committee work very closely together on this. And I am sure that by doing that that we can work out something that is of great benefit not only to our school children, but to everyone that is involved. I thank YOU.

PRESIDENT GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: I would like to rise in opposition to the motion. I am a member of the Education Committee. The Education Committee is not only concerned with the permanent school fund, they are concerned with every aspect of the income to the school system from the public lands. We recognize that there's a problem in conservation of school lands which possibly we should work out with the Agricultural and Natural Resources Committee. We recognize that there's possibly a problem that might be concerned with the Committee on Finance, and we are quite aware of these problems, and we are willing to work with these other committees, but again I'd like to state that I believe that the major concern and the most vital part of the thing is concerned with the Education Committee in its interest to derive the greatest amount of income from the school lands to the educational system.

PRESIDENT GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. President, as Chairman of the Natural Resources and Agriculture Committee, I would like to see the Public Lands in our committee. However, I understand the concern of the other two committees, and we have talked about this at great length. I honestly don't believe that we can resolve this without the cooperation of the three committees involved. If the Convention so deems that the Public Lands stay with Education, of course, we will do our best to not only consider them in our committee but will cooperate with the other two committees for the benefit of all of us.

PRESIDENT GRAYBILL: All right. We'll withhold debate for a moment while we put a new tape on.

(Five-minute recess)

PRESIDENT GRAYBILL: The Convention will be in order.

Mr. Foster.

DELEGATE FOSTER: Mr. President, I rise in support of the motion. I am neither a member of the Natural Resources or the Education Committee, and I support the motion, not from the standpoint of what the determination of committees will be on the matter of public lands, but from the standpoint that the public lands seems, in my opinion, to be closer related to natural resources and agriculture than it does to education, and I feel that there may be a disparity of work between the Education Committee and the Committee on

Agriculture and Natural Resources, because I find that there may well be a good deal of constitutional work for the Education Committee, but there is, in my opinion anyway, not a great deal of constitutional area for Agriculture and Natural Resources, and that this division might give a more evenly balanced division of work between the two committees.

PRESIDENT GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. President. I don't think this will be too big a problem. I think we can work together. The idea is to save our natural resources for the benefit of all. The way our natural resources go, so will go the nation. I think when we make good use of our natural resources, we're also making good use or setting that aside for our human resources. And I think that's what we should have in mind when we're working together on these two committees.

PRESIDENT GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I rise in support of the motion. I think that this Convention must realize that there's many, many thousands of acres that are federal lands that are not school lands that properly belong in the Committee of Natural Resources and Agriculture. I appreciate the interest and the concern of the educational people in the public land, in the school lands of the State of Montana, and I am sure that we all appreciate the fact that we want to have as much revenue for the schools from the school lands as it's possible to obtain, but there is many ramifications that enter into this consideration. The Natural Resources and Agriculture Committee, in my opinion, would be the proper place for these deliberations to take place. There is many ramifications that could be taken up under natural resources, in the Natural Resources Committee, to increase funds for education if it is properly handled in the Agricultural Committee. The agricultural people themselves are concerned that they would have a natural reference to natural resources and agriculture in their communications.

PRESIDENT GRAYBILL: Is there further debate or discussion?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think all of us are in agreement on the fact that both of these committees will have to work on this subject. There just doesn't seem to be any way out of that. As it is now, as I understand it, the Education Committee has it and the other one would have to meetjointly with them. I wonderifit would not solve the problem-it seems to me that some good reasons for putting it under Natural Resources--maybe one of them has been mentioned-that maybe they don't have quite as full a load as the public education one does-to just shift it, put the Public Lands in that committee with the understanding that the Education Committee then would meet jointly with them. The shoe would just be on the other foot, and the same thing would be realized in the end.

PRESIDENT GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise in opposition to the motion. I feel that should this be put-or taken out of the Education Committee, I think it will cause a great deal of consternation in the education community. And I think it could cause a problem. I think if there's going to be cooperation, it's going to be necessary, but I think this could cause quite a problem if it's taken out.

PRESIDENT GRAYBILL: Further discussion? (No response) Mr. Gysler, do you want to close in your motion?

DELEGATE GYSLER: Thank you, Mr. President. For the benefit of the people on the Education Committee, I'm a former teacher. I'm Chairman of the Trades and Industry Program in Fort Benton high schools. I was an invited participant in the Secretary of Health, Education and Welfare regional meeting in Denver last April on vocational education, and I was also an invited participant in the regional meeting of the American Industrial Arts Association in Denver in May of last year. I certainly know what you mean when you say the people in education are concerned with the money from public lands, and so forth. If this is moved to our committee, which I hope it will be, I would certainly hope that between Education and Finance and with us, maybe a little bit, that these other committees would take care of this aspect of it. I don't think that the greatest interest of the public in the long run is the dollars and cents that we initially get in our continuing school fund. The best interests of the public in the long run are to be assured that these public lands will be administered properly so that the funds will continue to come. We have to conserve our public lands, and so on. To me, this is the greatest interest for the pub-

lic. The reason I want to see it moved is I can foresee many of our committee hearings being greatly handicapped because of the overlap that we will have in discussing natural resources, agriculture and public lands. I think for the best efficient operation and everything on down the line, we're just so much more concerned with the total aspect than the Education Committee is, that I feel it should be moved. Thank you.

PRESIDENT GRAYBILL: All right, Mr. Murray, do you have anything further, or can we vote on this?

DELEGATE MURRAY: 1 have too many things in front of me. Mr. President, the committee doesn't choose to speak to the merits of what committee this Public Lands should be in. We recognize that it might be a problem. We have done so twice; once in the last sentence of proposed Rule 42, when we say, "Committees may meet jointly with the consent of their respective chairmen and the consent of the President"; and again in Rule 46, where we say, "Where a proposal embraces subject matter which falls within the proper consideration of several committees, the President, where practicable, shall divide the proposal, refer the parts to the appropriate committees. If it is not subject to such division, the President shall refer it to an appropriate committee, with instructions to consult with other committees on related matters." And, with that, we say no more.

PRESIDENT GRAYBILL: All right, we're ready for the question on this. The motion of Mr. Gysler is to move Public Lands from the Education Committee to the Natural Resources and Agriculture Committee. As many as are in favor of the motion, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: As many as are opposed, please say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair is in doubt. We'll use the voting machine. The Chair will open the ballot, and as many as are in favor will vote Aye; and as many as are opposed will vote No to the motion. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to cast his vote-change his vote?

(No response)

PRESIDENT GRAYBILL: All right, I'll close the ballot. The tally is 52 Nay, 44 Aye. The motion has failed. So ordered. Now, for the edification of everyone, the Chair certainly intends to use the two motions referred to by Mr. Murray, and these three committees may rest assured that they're going to consider most of these matters jointly when they concern each other. I recognize there may be parts of the public lands issue that don't really affect the other committees, and those-I'm not going to require them to be considered jointly. But wherever there is any question about it, I trust these three chairmen will make their wishes known to me. All right, how about Rule 31, Mr. Clerk?

DELEGATE HARPER: Mr. Chairman.

PRESIDENT GRAYBILL: Just a moment. Mr. Harper.

DELEGATE HARPER: Question. Just for information, where did Suffrage and Elections finally end up? In Bill of Rights or in General Government?

PRESIDENT GRAYBILL: As a matter of fact, I am a little ahead of myself. We should go ahead and finish 30. At the moment the Chair has set-has moved material that normally was in Suffrage into General Government. We did not add it to the title because the title is already too long, and it's the senseofthepresent rules that the suffrage matters will be in General Government instead of in Bill of Rights. Now, if you don't want us to do that, now's the time to reestablish Bill of Rights or wherever else you want to go to, and we'll vote on that. But at the moment, Suffrage is in General Government. Is there any discussion of Rule 30? Other discussion of Rule 30?

Mr. Blaylock.

DELEGATE BLAYLOCK: Just a question, Mr. President. Is it true that that was done—it was taken out of Bill of Rights-because you felt that that committee had not enough to do and that they could better handle it?

PRESIDENT GRAYBILL: Well, we did think that it would give General Government another subject that they could profitably put some of their time on, I'll grant you that, yes. And again, if there's any-if the Bill of Rights people

feel strongly about this, WC would certainly again use the rules and jointly consider it, but I'd await some request from some committee.

Mr. James.

DELEGATE JAMES: Mr. President, is it true that the section on water rights was taken out of Bill of Rights, to"? I think it's Article XV in there.

PRESIDENT GRAYBILL: Well, is there a water rights section in the Constitution that I assigned?

DELEGATE DAHOOD: That is correct. Article-w I should say Section 15 originally was assigned to another committee. It was never assigned to the Bill of Rights Committee.

PRESIDENT GRAYBILL: All right. Now, if you chairmen would like those assignments doubled up, I'd be glad to. I think I assigned water rights to Natural Resources. And if you want joint hearings on those, talk to me and, within reason and if you're correct on your subject matters, why, the Chair intends to jointly consider them. But I certainly think water rights is properly where it is, but it may also be properly somewhere else. Are there other questions about the substantive standing committees? If not and with the understanding that Suffrage is now in General Government, we'll pass Rule 30. Now, 31, please, Mr. Hanson.

CLERK HANSON: "Rule 31: Procedural standing committees. The procedural standing committees are: Administration, Public Information, Rules and Resolutions (Rules), Style, Drafting, Transition and Submission (Style)."

PRESIDENT GRAYBILL: Is there any discussion on Rule 31?

Mr. Brazier.

DELEGATE BRAZIER: Mr. President, after a hasty review of these rules yesterday, I failed to notice where any provision was made giving the Committee on Style and Drafting authority to arrange also. And in view of the recent discussion, which I think underscores the problem, I think it ought to be made clear somewhere. For example, our Committee on Natural Resources might not consider it necessary to come up with an entire article as such, then somebody would have to decide where to spot the proposals throughout the balance of the Constitution. With that in mind, I guess I'd just call it to the attention of the Rules Committee that something should be said in the substance of the rules or in the title of that committee to clarify that they have authority to arrange or propose arrangement, also.

PRESIDENT GRAYBILL: **You mean** the Style and Drafting Committee?

DELEGATE BRAZIER: Yes.

PRESIDENT GRAYBILL: Well, is there some question that the Style and Drafting Committee doesn't have the right to suggest where it should go in the Constitution?

DELEGATE BRAZIER: Well, it may be there by implication, but I don't think it is set anywhere in the proposed rules.

PRESIDENT GRAYBILL: Well, I'm sure Jack Schiltz intends to exercise it, but if there's any question, we'll certainly talk about it.

DELEGATE SCHILTZ: Mr. President.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: (Inaudible)— misunderstanding about it. WC do intend to undertake that task.

PRESIDENT GRAYBILL: And Mr. Brazier (Inaudible).

DELEGATE SCHILTZ: It's really covered by the word "submission". We're not talking so much about submission to the public as we are submission to this body and to the public as well.

PRESIDENT GRAYBILL: And, Mr. Brazier, the report of that committee would come back and then would be debatable as to whether it went the right place. But-I don't know if it's debatable, but anyway it comes back here. Okay, is there other discussion on Rule 31? (No response) If not, we'll consider Rule 31 passed. Rule 32.

CLERK HANSON: "Rule 32: President ex officio member of all standing committees. The President shall be an ex officio member of all standing committees, substantive, and procedural committees, but shall not vote except to break a tie and shall not be counted for the purpose of determining a quorum."

PRESIDENT GRAYBILL: Any discussion of Rule 32? (No response) Hearing none, the Chair will pass Rule 32. Rule 33, please.

CLERK HANSON: "Rule 33: Select committees. The President may on his own initiative or at the direction of the Convention appoint such select committees as may be necessary to perform special functions."

PRESIDENT GRAYBILL: Any discussion of Rule 33? (No response) If not, we'll pass Rule 33.

CLERK HANSON: "Rule 34: Appointment of committee members. The President, after consideration with the Vice-president(s), shall appoint the committee members, but any appointment, on the announcement thereof, may be rejected by a majority of the members of the Convention prior to adjournment on January 19, 1972. Each member, except the President, shall be appointed to serve on one substantive standing committee."

PRESIDENT GRAYBILL: Any question or discussion on Rule 34? (No response) If not, 34 is passed. Rule 35.

CLERK HANSON: "Rule 35: Appointment of committee Chairman and Vice-chairman. The President, after consultation with Vice-presidents, shall designate the Chairman and Vice-chairman of every committee, and his designees shall be subject to the approval by a majority of the members of the Convention. In case of a vacancy or the prolonged absence of the Chairman and Vice-chairman, the President of the Convention shall appoint a Chairman to act until the Chairman or Vice-chairman shall return. The Vice-chairman shall perform all of the duties and functions of the Chairman in the absence of the Chairman. Committee Chairman and Vice-chairman should vote on all items before the committee the same as other delegates."

PRESIDENT GRAYBILL: Any discussion on Rule 35?

Mr. Murray.

DELEGATE MURRAY: Mr. President, I believe that there's a typographical error in the last sentence. My recollection of the committee decision was that committee Chairman and Vice-chairman shall vote on all items before the committee the same as other delegates, rather than the word "should". That's the recollection of Mr. Eskildsen, and I submit that that's the way it should be.

PRESIDENT GRAYBILL: Allright, we'll accept your amendment of your proposal so that it reads "shall" instead of "should". Now, as proposed, is there any discussion of Rule 35? (No response) If not, we'll pass Rule 35. .36.

CLERK HANSON: "Rule 36: Quorum and rules of committees. A majority of any committee constitutes a quorum, but the question of the presence of a quorum of a committee may not be raised on the consideration of a proposal before the Convention unless the question has been raised before the committee. The rule of the Convention shall be observed in all committees as far as may be applicable and, if applicable, may not be suspended."

PRESIDENT GRAYBILL: Any questions or discussions on Rule 36? (No response) If not, we'll pass Rule 36. Rule 37.

CLERK HANSON: "Rule 37: Calling of committees and agenda. Each committee shall meet at the call of its Chairman, who shall also set its agenda. Any three members of a committee may, in writing, request the Chairman to call a meeting of that committee, and upon his failure to do so within 48 hours, not including Saturdays, Sundays and legal holidays, a majority of the members of the committee shall have the right to call a meeting of the committee and set its agenda and place of meeting under the appropriate notice requirements. Each delegate proposal referred to a committee must appear on the committee's agenda at least once, but the committee shall not be required to report to the Convention thereon except as provided in Rule 41."

PRESIDENT GRAYBILL: Is there any discussion of Rule 37?

Mr. Aronow.

DELEGATE ARONOW: Mr. President, may I ask from Mr. Murray-suppose we go to Tuesday through Saturday workweek and you have it not counting Saturdays and Sundays. I wonder if we could have some language to kind of cover that type of situation when and if the Convention acts?

DELEGATE MURRAY: Mr. President, if we decide to work differently, or other than Monday through Friday, the Rules Committee will come back with a different proposal.

PRESIDENT GRAYBILL: Okay.

DELEGATE MURRAY: We know that we have a problem, orarefacingone, in that instance, yes.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I ask a question. Do I determine here that the committee itself couldn't write its agenda, or is it going to be obligated only to the Chairman and can only take up what the Chairman wishes?

DELEGATE MURRAY: Mr. President, this rule encompasses two different thoughts, basically. I believe it is the intent of the committee that the Rules Committee-that any given committee could call a meeting when the Chairman refused to and set an agenda for that meeting. I don't think that it's consistent that the committee should be able to call a meeting and not have an agenda upon which to act. Perhaps this rule could be changed to clarify that, but it's the intent ofthe rule for the committee to act where the Chairman will not and to act upon an agenda.

DELEGATE MAHONEY: Mr. President, what's worrying me is the overaction of the Chairman, that you can't-not let the committee take up anything only that he wishes. This is what I'm worried about. Under the regular procedure, he calls the meeting, he names the agenda, and I'm in hopes that this means that the committee itself decides it wants to take up something else, that they can't be limited. This is what's-the point I'm bothered about is the reading of that word "and 'shall' set its agenda". I thought it was a little too-giving the committee Chairman a little too much power.

DELEGATE MURRAY: Well, the intent of the rule, Mr. President, is as I've explained it, for the committee to call a meeting when the Chairman will not do so or refuses or neglects to do so and to act upon an agenda which it will set. And if the rule doesn't say that to the satisfaction of this body, why, we'll make it say so.

DELEGATE MAHONEY: The only thing I'm worried about, Mr. President, is this: who shall set its agenda-also set its agenda? I'm just— that's too encompassing to the President. If he calls the meeting, there's no question then. This is-Marshall, this is the only part I'm worried about. Are we telling to the Chairman that they can't take up their-the committee itself can't take up anything that he doesn't put on the agenda?

DELEGATE MURRAY: At any time, you mean-whether they call the meeting or not?

DELEGATE MAHONEY: Yes, yes.

DELEGATE MURRAY: Well, if every proposal has to be upon its agenda, I suppose that the matter will always be considered as-to some extent. And I move at this time that we pass consideration of Rule 37 so that you and I can meet upon that.

PRESIDENT GRAYBILL: All right. The issue, unless I see someone wants to discuss it, is upon passing consideration of 37 until they've discussed it. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Mr. Murray, I want to inquire here. There's a 38 and a 38A. Are they separate rules?

DELEGATE MURRAY: They are not separate rules.

PRESIDENT GRAYBILL: All right—

DELEGATE MURRAY: They—I—

PRESIDENT GRAYBILL: Well?

DELEGATE MURRAY: Yes, let me explain this just a minute. Rule--what has been delivered to the desks in a mimeo form which is entitled Rule 38A, was intended by the committee on its final action this morning to be the second, third and fourth paragraphs of Rule 38, and it was improperly entitled before we took action on it in the committee.

PRESIDENT GRAYBILL: All right, may we consider Rule 38, sub. 1, then? Is that the way you want to do it?

DELEGATE MURRAY: Please.

PRESIDENT GRAYBILL: All right, let's read Rule 38, sub. 1.

CLERK HANSON: "Rule 38: Notice of committee"-and striking the words "meetings and"-"hearings. No substantive committee hearing may be held unless notice thereof is

posted in the following manner: The Secretary of the Convention shall be furnished an original and three copies of a written notice, signed by the Chairman or members of the committee calling the hearing. The notice shall state the date, hour, and place of the proposed hearing and the proposal number or subject matter to be considered. The Secretary shall post one copy thereof on a designated bulletin board, with an endorsement thereon of the hour and date of the posting, which may not be less than 3 days before the time of the hearing. The original notice shall be retained by the Secretary. The other copies shall be returned to the Chairman of the committee and the Public Information Director, with the endorsement of the Secretary. The substantive committee secretary shall deliver a copy of the notice to all members of the committee and to all members of the Convention who have introduced proposals on the subject matter to be considered."

PRESIDENT GRAYBILL: All right. The question, then, is open for discussion on Rule 38-1, which the Chair points out includes that 3-day rule.

Mrs. Bowman.

DELEGATE BOWMAN: Mr. President, I think, as a matter of making it easier for the delegates, these notices of committee hearings will actually go through the chief clerk's office, and I wonder if maybe the rule should indicate that rather than the fact that they're going to come through my office.

DELEGATE MURRAY: Mr. President, may I speak to that?

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: When drafting these rules, we didn't have any idea as to the titles of the various officers on the rostrum or elsewhere, and it was decided that we should place all clerical work under the title Secretary, she having the responsibility for the delegation of that work, and that's why the word "Secretary" is contained in the rule.

PRESIDENT GRAYBILL: And you may, Mrs. Bowman, make a rule that they hand it in at the clerk's office, if you want.

DELEGATE BOWMAN: For your information, would you please give it to John Hanson, who will sign it.

PRESIDENT GRAYBILL: All right, now. Any other discussion of Rule 38, sub. 1? (No response) Do I understand you're all happy with 3-I don't want anybody fooled here-3 days.

Very well, hearing no further discussion of Rule 38, sub. 1, we'll pass 38, sub. 1. Now, just a minute, Mr. Hanson.

CLERK HANSON: Mrs. Reichert-

PRESIDENT GRAYBILL: Oh, Mrs. Reichert, do you have something on 38, sub. 1?

DELEGATE REICHERT: Mr. President, I thought that we were going to also discuss 38, sub. 2; does this mean that if we do not discuss 38, sub. 1, we may not discuss sub. 2; right?

PRESIDENT GRAYBILL: We can come back to sub. 1 if you want to this afternoon. I'm just trying to find a point to cut off here, but at the moment nobody wants to discuss sub. 1, so we are passing sub. 1 for the moment. If you want it up again this afternoon, you ask.

Mr. Eskildsen, I have some announcements, but I think we should recess.

DELEGATE ESKILDSEN: Mr. President, members of the Convention. The Rules Committee will meet immediately on recess; and with that, Mr. President, I move that the Convention stand in recess until 2:00 pm. this afternoon.

PRESIDENT GRAYBILL: All right, before we vote on that motion, the Chair would like to announce that it's my intention to take up the skipped rules—19, 23, 26, 27, 37, first after lunch—well, yes, first. In other words, we're going to clean up the docket up to 38 and then proceed, so those of you who are to meet with the Rules Committee, please do so. We're going to adjourn until 2:00, so you have some time. Secondly, the Chair would like to remind delegates that if they want to come to that party tonight, please get your reservations in at the desk out there if you haven't done so. All those in favor of adjourning—

Just a minute-Mr. Toole?

DELEGATE TOOLE: Nothing.

PRESIDENT GRAYBILL: All those in favor of adjourning, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, **Nay.** (No response)

PRESIDENT GRAYBILL: The motion passed. Let the journal show recessed.

(Convention recessed at 12:04 pm. — reconvened at 2:05 p.m.)

PRESIDENT GRAYBILL: The Convention will be in order. Unless the Chair hears objection, we will resume Mason's Order of Business G, Reports of Standing Committees, and continue discussion of the Rules Committee. I am asked to make two announcements while you're getting settled. First of all, most of you have received a notice by mail here. It starts out, "Memorandum to all state employees about parking facilities", and it has this single-spaced typed message on the bottom, objecting on behalf of some of the employees to our parking. Mr. Saxby, the director of the Department of Administration, wants it clear to all of us that only the top, double-spaced part represents his office's and the state administration's sentiments. The rest of it was typed on here and is not his sentiments nor does it represent the sentiments of all of the state employees, In other words, he doesn't want you to think that he's telling you that he doesn't like your parking. Just half of them don't like it. So when you get that, bear in mind that that's a message from some of the Capitol employees and not all. (Laughter) The marvels of the duplicating machine. Mrs. Bowman, the reason you didn't get a notice is you're the only one that's got a sign up. Now, the second thing I'd like to mention is: the clerk here would like me to announce that he will turn on themikes, if he can, after I recognize you, and therefore, if you'll just pause slightly after I recognize you, it will give him a chance to get them on and you won't get the first three words cut off, as often happens. Secondly, if you have a question, please rise and, after you're recognized, say, "Does Delegate X yield." At that point-or "Will the President ask Delegate X to yield." At that point it gives me a chance to recognize you and get Delegate X and your mikes both on, and we won't be as confused as we were. Then the President will say, "Do you yield?" And then the other man will say, "Yes," and then you'll be able to talk. In other words, if we slow it up just a little, we won't be talking over each other. And he'd like one question-the recorder would like one question at a time. All right, we're now on the rules again, and we announced that we would take up, unless there's objection, the ones that we skipped this morning, and we started with Rule 19. Are we-I'll ask the clerk to read an amended Rule 19.

CLERK HANSON: "Rule 19: Contemptuous behavior of delegates. Any delegate who persists in disorderly conduct after being warned by the President or Chairman of the Committee of the Whole that he is out of order, may, by motion duly made and carried by a two-thirds majority of delegates elected, be held in contempt and be required to purge himself of such misconduct; and until such delegate has purged himself, he shall not be entitled to the privileges of the floor."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the adoption of the amended Rule 19. The committee has considered the matter; recognizes that Rule 19 which we proposed came from Illinois; after consideration and discussion with Mr. Cate, has agreed that the substitute rule may be better; and we propose it.

PRESIDENT GRAYBILL: Is there debate or discussion or amendment to the proposed Rule 19? Do you want it read again? Everybody have it? Any discussion of proposed Rule 19? (No response) Hearing none and the Chairman of the Rules Committee having met with Mr. Cate and settled this, we will pass Rule 19. All right, would the clerk read amended Rule 26.

CLERK HANSON: "Rule 26: Motion that Committee of the Whole rise. A motion that the Committee of the Whole rise and report progress shall always be in order unless a member of the committee is speaking or a vote is being taken, and such motion shall be decided without debate by vote of a majority of those present and voting; and provided, further, when the Committee of the Whole again sits"-not sets-"the subject under consideration prior to the motion to rise and report progress shall again be resumed."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, we amended Rule 26 by stating that a motion that the Committee of the Whole rise and report progress shall always be in order. It is the thinking of the committee, after considering this matter with Mr. Mahoney, that because of our procedure here, where we might be continuing in the order of business General Orders and in the Committee of the Whole overnight, that we should probably have the rule amended as it now is; and the rule then provides, also, that when you again sit that you

will revert to wherever you were at the time that the committee did rise and report progress.

PRESIDENT GRAYBILL: Is there any discussion of the new proposed Rule 267 (No response) Hearing none, the Chair will pass Rule 26. Would you read proposed Rule 27.

CLERK HANSON: "Rule 27: Reconsideration. A motion to reconsider shall be in order in the Committee of the Whole by a majority vote of those present and voting, before the Committee shall rise and finally report, A motion to reconsider shall not be renewed."

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: This is substantially different than the Rule 27 as we proposed it. Actually, in my drafting of Rule 27 and Rule 66, which we have not discussed but we probably should look ahead to, I anticipated the problem of the motion to reconsider within the Committee of the Whole and actually suggested to the committee in my draft that we come up with a rule such as we are now proposing. If you took the rule as the committee proposed it, it is more liberal than Rule 66, and I think if there is any liberality to the rule, it should be in Rule 66 rather than in Rule 27. This means where we think that we may be meeting from session to session and the Committee of the Whole, over recess and perhaps overnight, that the motion to reconsider can be made any time within the Committee of the Whole before the Committee shall arise and finally report. And that doesn't mean report progress and sit again; that means finally report as to the topic under discussion. Now this may mean that it may not be the next day or it may be 2 days later. We don't know just how we're going to run. Now the last sentence, "A motion to reconsider shall not be renewed", means that you cannot move to reconsider a motion to reconsider. And once you've defeated a motion to reconsider, if you do, that ends it.

PRESIDENT GRAYBILL: Is there any discussion of this rule? (No response) All right, hearing no discussion of this rule, the Chair will pass Rule 27.

Pardon? Oh, I beg your pardon-Mrs. Reich&.

DELEGATE REICHERT: Mr. President, this morning you mentioned Rule 23 also having been postponed. Have you deliberately skipped that?

PRESIDENT GRAYBILL: Mrs. Reichert, I have not forgotten it. Don't worry. Is there any more discussion on Rule 27? (No response) If not, we'll pass Rule 27. Now, does the Rules Committee have other proposed rule changes?

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Let us look at Rule 23.

PRESIDENT GRAYBILL: Do you want us to read Rule 23, Mr. Murray?

DELEGATE MURRAY: No, I'd better read it, because we didn't have it duplicated, I don't believe. I think that we made the changes in the rule as is before the Convention right now. "All proposals reported by any substantive committee of the Convention shall be referred to the Committee of the Whole and become general orders to be placed upon the calendar and agenda of the Committee of the Whole by the President." There are no changes down to that point. From there on there are some. "No committee proposal shall be considered by the Committee of the Whole until"--and then strike out "the second session day after it has been referred to the Committee of the Whole, nor until the day"-the words "the second session day after it has been referred to the Committee of the Whole, nor until the day" have been stricken-and substitute "48 hours", so that that sentence then reads: "No committee proposal shall be considered by the Committee of the Whole until 48 hours after the duplicated committee proposal has been placed on the delegates' desks unless the Convention agrees to its earlier consideration."

PRESIDENT GRAYBILL: I understand that the sense of the motion that the Rules Committee proposes now is to change the second session day and the 1 day on duplication to 48 hours, or 2 days, 2 full days, after it reaches the delegates' desks. Now is there discussion on that motion-that rule? (No response) Is there any discussion on that rule? Mr. Murray, are you up to discuss?

DELEGATE MURRAY: Well, I don't know whether I'm up to discuss or explain. It occurs to me that we asked to have duplicated this rule. Not having it, I didn't think that we did, but we have an additional sentence to add onto the

rule-if I can recall it-add this sentence: "No committee report shall be duplicated and placed on the delegates' desks until after it has been reported to the Convention under Order of Business Number 1". "No committee report shall be duplicated and placed on the delegates' desks until after it has been reported to the Convention under Order of Business Number 1."

PRESIDENT GRAYBILL: May I ask a question of the Chairman?

DELEGATE MURRAY: You bet.

PRESIDENT GRAYBILL: Does that mean that if the committee got its report out at noon some day but the Convention wasn't going to meet until the next day, that we can't run down and print it?

DELEGATE MURRAY: It has to be reported and announced.

PRESIDENT GRAYBILL: Well, but it says, can't be duplicated. Does that mean that the printing shop can't duplicate it and have it ready? I don't-I'm just trying to find out what it means.

DELEGATE MURRAY: The intent of the rule is that it shall not be at least placed on the desks until after it is reported to the Convention, because the 48 hours is the-from the placement on the desk. That's the time period—

PRESIDENT GRAYBILL: Could the Chair suggest that you might drop that duplicated word out?

DELEGATE MURRAY: I'm agreeable to that. "No committee report shall be placed on the delegates' desks until after it has been reported to the Convention under Order of Business Number 1."

PRESIDENT GRAYBILL: Now, if that isn't the sense of what the people that wrote this want, I don't want to disagree with them; but it looks to me like you've fixed it so if the committee got through at noon, you couldn't even print for another day and that—

DELEGATE MURRAY: We don't want to do that. The sense is as you suggested. We think that your suggestion is well taken.

PRESIDENT GRAYBILL: What that means is that preserves the full 48 hours, so that they couldn't throw it on the desk at 5 o'clock some night and-when it hadn't been on the orders of the day, is that the idea?

DELEGATE MURRAY: Right. We're avoiding the counting of days and how you count days by getting to hours, and we feel that this will give every delegate an opportunity to invite the people in that they would like to invite for the debate itself and also give the delegates the time to review the proposal before it is debated,

PRESIDENT GRAYBILL: Now, is there discussion on the amended Rule 23 which has changed the time by-on which the Committee of the Whole has to havenotice before it can debate to 48 hours and has protected that by saying that it can't be placed on the desks until after it has gone on General Orders. Is there any discussion on the amended-or proposed amended Rule 23? (No response) If not, we'll have it passed as amended.

DELEGATE AASHEIM: Mr. President.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I should rise to a point of privilege of the chamber, I believe, but right now it just occurred to me that, after talking to one or two individuals during the recess, they are a little confused about what we are talking about. It might be quite a number. And it might be well now if Delegate Marshall could explain to the assembly what is meant by the Committee of the Whole and General Orders. I think maybe they don't quite understand this.

PRESIDENT GRAYBILL: Mr. Murray, you had to explain that to the Rules Committee. Would you mind explaining it to the rest of us?

DELEGATE MURRAY: Mr. President, I'm not sure I can. If you will refer to the order of business that we've proposed-whatever rule that might be-54-you will see how we suggest that this Convention operate. It is different from the order of business proposed by Mason's, and there are reasons for that. As we hope to operate this Convention, or as we propose to you that you operate it, we are attempting to keep the debate on the committee proposals within the Committee of the Whole, and when we have an order of business, such as Order of Business Number 10, General Orders of the Day, Committee of the Whole, that is that order of business. Now General Orders of the Day is broken down in a later rule to two categories. One has to do with the Committee on Style

and its proposals and the other has to do with the substantive committee proposals, and that's why you call it General Orders of the Day. Everybody calls it General Orders of the Day or Committee of the Whole, and as I put the rules together and submitted them to the committee, it would have been a major undertaking to have used either solely Committee of the Whole or General Orders. But that is, as we think of committee proposals, the debate stage in this Convention. With respect to resolutions, and the rule provides that they shall be debated in either Order of Business Number 1 or in Order of Business Number 2, depending upon the nature of the resolution and how it is referred or handled. But Committee of the Whole is the debate stage. Now, when we talk about the term "rise"— the committee "rise"-that's the term we mean when it recesses or adjourns, depending on the nature of the motion that is made. If it rises and reports progress and takes leave to sit again, it is recessing, unless it is overnight and then, naturally, it's an adjournment. But it's in the nature of a recess, rather than an adjournment. And if it rises and finally reports, it then is adjourning. Now, when it adjourns, it can go to another order of business. If it's in recess and you beg leave to sit again, you go automatically back to that order of business and continue with General Orders of the Day or Committee of the Whole.

PRESIDENT GRAYBILL: In other words, isn't it true, Mr. Murray, that the Committee of the Whole cannot recess and adjourn and walk out? It has to recess and adjourn and go back into Convention and then recess and adjourn. Isn't that right?

DELEGATE MURRAY: Essentially so, yes.

PRESIDENT GRAYBILL: All right. And, secondly, aren't we saying that, for purposes of Rule 23, the way it would work is this-when the committee got ready to report, the Chairman would come in on rule-Orders of Business Number l-and he'd report that the X committee is ready to report and here's its report, and it then goes on General Orders of the Day. In other words, it's placed on General Orders of the Day, and at that point the 48 hours starts to run. Isn't that right?

DELEGATE MURRAY: No, no. The 48 hours runs—

PRESIDENT GRAYBILL: All right, the 48 hours then runs as fast as we get it printed and on their desks after that.

DELEGATE MURRAY: When it hits the desk—

PRESIDENT GRAYBILL: I see.

DELEGATE MURRAY: -there shall have to be a report by the clerk—

PRESIDENT GRAYBILL: But the point is—

DELEGATE MURRAY: -that it was distributed at such an hour.

PRESIDENT GRAYBILL: I see—

DELEGATE MURRAY: Notice, I suppose, on the board and then placed on thecalendar in accordance with the 48 hours.

PRESIDENT GRAYBILL: I see. But— and the reason we put that last sentence on is so that you couldn't put the report out before you really made it and then catch some time by that?

DELEGATE MURRAY: Yes.

PRESIDENT GRAYBILL: Okay. Now, I then after it's been printed, in 48 hour--and distributed, in-48 hours runs; then any time after that, we may resolve ourselves into Committee of the Whole and consider it and debate it, right?

DELEGATE MURRAY: Under the-in order of referral, yes, unless we change that order.

PRESIDENT GRAYBILL: Okay-Now, I don't know, Mr. Aasheim, if that sufficiently clarifies or confuses the issue for you.

DELEGATE AASHEIM: I was not asking for myself, I was asking (Inaudible).

PRESIDENT GRAYBILL: Okay. Are there other questions about what Rule 23 may mean, or are you ready-or I have passed, at the moment, as amended, Rule 23. (No response) All right. Now, then, Mr. Murray, what about Rule 37?

DELEGATE MURRAY: Mr. President, the difficulty with Rule 37, as explained to us by Mr. Mahoney, was that we gave the absolute power to the Chairman to establish the committee agenda, and we feel that with the amendment we will soon announce that we have given some of

that authority and responsibility to the committee. We propose to add to the end of sentence one, which is: "Each committee shall meet at the call of its Chairman, who shall also set its agenda", the language: "with the advice and consent of the committee." Later in the rule, if the committee should force the calling of a meeting because the Chairman doesn't do so, it can then establish its agenda, but we don't seem to have the machinery for the committee to assist with the establishment of its agenda if the Chairman calls the meeting. And since we require everything to be on the agenda once, it seemed that the committee thought that this language would be proper, and so we recommend it.

PRESIDENT GRAYBILL: All right. We're considering Rule 37 which was passed—was skipped this morning, and the committee—the rule now reads: "Each committee shall meet at the call of its Chairman, who shall also set its agenda with the advice and consent of the committee." And then it goes on the same as it did this morning, and we have Mr. Aronow's point about changing the words "Saturday, Sunday and holidays", depending upon the workweek. Now, is there any discussion of this proposed amended Rule 37?

Mr. Davis.

DELEGATE DAVIS: Mr. President, would Mr. Murray-would you consider if you had "not including Saturdays and Sundays and legal holidays", to substitute the word "nonwork days and legal holidays"-would that then take care of the results of any discussion tomorrow on what our workweek would be without prejudicing the committee's work?

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I'm agreeable to that, and I don't think the committee would mind at all.

PRESIDENT GRAYBILL: All right, now, are you going to make an amendment, Mr. Davis?

DELEGATE DAVIS: I move that Rule 37 be so amended—

UNIDENTIFIED DELEGATE: By deleting-

DELEGATE DAVIS: -by deleting "Saturdays, Sundays" and substituting therefor "nonwork days".

PRESIDENT GRAYBILL: All right, Mr. Davis has proposed an amendment to Rule 37, as proposed by the committee, to say "within 48 hours, not including nonwork days and legal holidays" in place of "Saturdays, Sundays and legal holidays". Is there discussion of the amendment? (No response) If not, so many as are in favor of the amendment, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: And as many as are opposed, please say No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. All right. Now we're back on Rule 37. Are there any other proposals to the amended-the committee-amended Rule 37? (No response) Hearing none, the-Mr. Murray, are you going to amend it?

DELEGATE MURRAY: No. Mr. President-

PRESIDENT GRAYBILL: Yes?

DELEGATE MURRAY: Before we continue on with this chapter, I would move that, since we want to get this into the journal, that we adopt the amended Rules 19, 23, 26, and 27.

PRESIDENT GRAYBILL: How about 37?

DELEGATE MURRAY: I was going to take that up as we got into the chapter itself.

PRESIDENT GRAYBILL: Oh, that's the next one.

DELEGATE MURRAY: Yes.

PRESIDENT GRAYBILL: Well, the Chair is going to pass 37, since nobody stood up before Mr. Murray; and now that we've passed 37, your next matter is in order. And is there any discussion? That's chapter what-3? 4? All right, skipped-over Rules 19, 23, 26 and 27 in Chapter 4, which have now all been passed-the motion is to incorporate them in Chapter 4. So many as are in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as are opposed, say No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. All right, now, 37 has been passed; 38-l was passed this morning. Unless someone cares to reopen that now, we'll go to 38-2. Will the clerk please read-Wait a minute.

Mr. Toole.

DELEGATE TOOLE: Does 38-1 replace the 3-day notice, or is that 38-I'm not-

PRESIDENT GRAYBILL: It includes the 3-days' notice.

DELEGATE TOOLE: Well, I don't want to make the same speech I made yesterday, Mr. President. But on behalf of the Public Information Committee, we think this should be changed to 5 days, and I made my remarks about that yesterday and I won't repeat them, but I would like to move at this time that the "3" be stricken and the number "5" substituted in line 9—

PRESIDENT GRAYBILL: All right.

DELEGATE TOOLE: -of Rule 38.

PRESIDENT GRAYBILL: Mr. Toole has made an amendment-or proposed an amendment to Rule 38-1, changing the number "3 days" notice to "5 days". Is there further discussion on that?

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I rise in opposition to the amendment. I can appreciate the feeling of the Public Information Committee. I appreciate the feeling of the public, who feels that they should have notice. I think every committeewill givethepublic5 days ormore notice in situations where it's possible. But I do not think it's wise to tie the hands of this Convention to-or the committees in doing things in the latter days when time is essential. And I feel for this reason the 3 days should stand.

PRESIDENT GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I wish to speak in support of Delegate Toole's amendment. I feel that it's imperative that people all over the state have an opportunity to be heard at our public hearings. If insufficient notification is given, we're defeating the very purpose of our public hearings. In a state our size, I believe it's very vital and necessary that we give at least 5 days' notice.

PRESIDENT GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I'd like to inquire of someone just how those days are computed-whether the day of notice and the day of the meeting are counted or whether the-just how it's computed.

PRESIDENT GRAYBILL: "...which may not be less than 3 days before the time of the hearing". So if the hearing is set for 1O:OO a.m., I suppose the notice has got to be posted 10:00 a.m., 3 days before. Now, if that isn't right, the Rules Committee can correct me, but it's 72 hours before the notice-the beginning time of the hearing. Is there further discussion?

Mr. Berg.

DELEGATE BERG: Mr. President, I rise in opposition to the motion. I note that Mr. Holland of the Judiciary Committee is not here today, I would like to remind you of what he said yesterday regarding the work of the Judiciary Committee. We have already published and posted notice of our initial hearings commencing on January 20th, 1972. These were posted yesterday in conformance with the 3-day notice. It is almost imperative, so far as Judiciary is concerned, that we get on with our work, and if we're compelled now to redo this notice to a 5-day, we lose nearly a week.

PRESIDENT GRAYBILL: Is there any further discussion?

Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. Graybill, I would like to support Mr. Berg's statement. This is very important to the workings ofthe Judicial Committee. If it should be set at 5 days, may I suggest you have it in some other committee and let the Judicial Committee go ahead on the 3 days. (Laughter)

PRESIDENT GRAYBILL: If we lose, we'll probably let you have a whack at a special rule.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I'd like an interpretation of that word "posted", Does that mean published in the newspapers of

the state or just a notice hung on the wall out here somewhere?

PRESIDENT GRAYBILL: Well, Mr. Murray, can you explain that?

DELEGATE MURRAY: There is—"posted" means put on the bulletin board, and there's a very fancy, expensive one right out here by the counter where you buy the goodies, and that's the board we're talking about on posting. And it does not mean publication, and if we have to publish and pay the cost of publication, why, we're not going to be able to meet for 9 weeks.

DELEGATE SCANLIN: Mr. President, it's going to take quite a while for anyone to get from Glendive up here to read that bulletin board.

PRESIDENT GRAYBILL: Mr. Scanlin, I'm just going to mention that the press-we're depending upon the media-and they'll be disappointed if we don't let them do that for us. (Laughter) Wait a minute—
Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I'm wondering if the Chairman of our Executive Committee would explain what we think is a meeting, a public meeting, and a hearing. Would you explain and tell what we've got scheduled for this week?

PRESIDENT GRAYBILL: Mr. Joyce, you have been asked a question.

DELEGATE JOYCE: Mr. President, the Executive Committee and its Chairman has interpreted the word "hearing" to mean any meeting of the committee at which the general public would be invited, and we interpreted it to mean that if-a hearing would not mean that the committee could not meet with certain people at its choosing without giving any notice whatever. And in that connection, the Executive Committee has, through work set in motion during the recess, invited-or requested Governor Anderson to appear before our committee, and arrangements-tentative arrangements were made to meet with Governor Anderson tomorrow morning at 10:30 in the Governor's reception room with the Executive Committee. We do not interpret that meeting that we are going to have tomorrow morning at 10:30 as a hearing, and I hope that clarifies it, Mr. Martin.

PRESIDENT GRAYBILL: I take it that was by way of example and not by way of announcement, Mr.-(Laughter) Are you satisfied, Mr. Martin?

DELEGATE MARTIN: (Inaudible).

PRESIDENT GRAYBILL: Pardon?

DELEGATE MARTIN: I'd also ask that the Chairman also tell about the meeting that we have scheduled Thursday, at which the press or delegates could also attend. Would you like to do that?

PRESIDENT GRAYBILL: Will you yield again, Mr.—

DELEGATE JOYCE: Well, I intended to do it at a more appropriate time, but I'm glad to do it now.

PRESIDENT GRAYBILL: By way of example?

DELEGATE JOYCE: By way ofexample. The Executive Committee is also going to have a nonhearing but a meeting on Thursday night at 7:30 in the Executive Committee room, in which time Mr. Richard Roeder, a member of our committee, is going to inform and elucidate for the other members of the committee and anybody else who wishes to attend his article that he has recently written and published in the *Montana Law* Review in connection with the Executive Article of the Constitution. All of it (Inaudible).

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, only one state had such a thing as a citizen's suggestion, one other state, and that was Hawaii. Only a few states had things called a Public Information Committee. We have both the Public Information Committee and' the citizen's suggestion incorporated into our rules, if they are adopted. Some states, including Illinois, a major state in this country, only gave 48 hours' notice of a committee hearing, not taking advantage of citizens' suggestions, and I think that we have gone a long ways toward doing every reasonable, practical thing that we can under these rules to make certain that the public participates and feels that it is participating in this Constitutional Convention and the giving of reasonable notice without hindering ourselves from making decent progress.

And I submit, as I did yesterday to this group, in hearing yesterday, of course, that the 3 days doesn't mean that that is the notice that you have to give. You can give a longer period of time, but to make it 5 then requires that you must give 5 days' notice, and I think the 3 days is reasonable and suggest we stay with it.

PRESIDENT GRAYBILL: Let's see. Mr. McNeil.

DELEGATE McNEIL: Mr. President, I rise to propose an amendment at that portion of Rule 38 immediately preceding the phrase—

PRESIDENT GRAYBILL: All right, Mr. McNeil, unless it's an amendment to the number "3"—to the number "5", it's out of order. We have an amendment-Mr. Toole's amendment-to change "3" to "5" before us. Now, if you want to change it to some other number, okay; if not—you've gotta—you've got to amend the amendment.

DELEGATE McNEIL: Is discussion still in order under the 5-day?

PRESIDENT GRAYBILL: You can certainly discuss it, and I don't say that you're not in order, but I want to point out that you've got to be-you've almost got to be another number, because you can't hardly amend a number by anything but another number.

DELEGATE McNEIL: Well, my suggestion would be to precede that clause with the phrase "with as much notice to the public as is practicable", so that this would, I think, provide what Mrs. Reichert is concerned with—

PRESIDENT GRAYBILL: Now, that—

DELEGATE McNEIL: —so the committees would give as much as practicable. It would still preserve the notices—

PRESIDENT GRAYBILL: All right.

DELEGATE McNEIL: —aleady posted by the—

PRESIDENT GRAYBILL: Mr. McNeil, the Chair is going to rule that will be in order after we get through with this amendment, but we're going to stick to the amendment, which is "3" or "5" days.

Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. Is this right? All right. I would like to tell the reasoning back of this, as long as Mr. Holland is not here as President of the Judicial Committee. He felt that as long as there was a plan ready to present, that this would be furthering the business of the Convention by getting a hearing started immediately if it was agreeable to the rest of the committee, and the rest of the committee said this was agreeable to them, and the notice of a committee hearing is officially posted on the board outside, and it was posted at 3o'clock yesterday.

PRESIDENT GRAYBILL: All right, Mr. Ask.

DELEGATE ASK: Mr. President, the Rules Committee has discussed this, and we want the public to participate, and if the delegates will refer to 38, subparagraph 3, they will note that there is another type of hearing or invitation given to the public that will call for '5 days' notice, and I think this will answer the objection of most of them here that is trying to extend the time.

PRESIDENT GRAYBILL: All right. Is there further discussion on the proposed amendment'! If not, we'll vote—

Oh, pardon me, Mrs. Robinson.

DELEGATE ROBINSON: I'd like to speak in favor of the proposed amendment changing this to 5 days. I refer to Mr. Murray's comments about what other states have done in this regard, and that's well and good, but not very many of the states are as large as Montana is. You know, many of these conventions weren't held in the wintertime when travel is not as easy as it might be in summertime. I am sympathetic to the problems of the Judicial Committee, but there are other matters that can be taken care of before you have this public hearing, and I wouldn't be opposed to them having this 3-day meeting, but I think it's essential that we give 5 days' notice to the people who are interested enough in these articles to come and testify. We have all kinds of things we can do in that 5-day interim to get things done on committees, but the public involvement is necesssary to get this document ratified, and I think that's just the least we can do for the people of Montana.

PRESIDENT GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. President, I'd like to speak in favor of Mr. Toole's motion. I'd like to point out that, in terms of newspapers, with a 3-day notice-if it were posted one day, the newspapers would not publish the notice till the next day, so in effect it would be a 2-day notice, and with many people around the length and breadth of this state with perhaps a full day's travel or more, they might have to make a decision in a matter of just a few moments of whether or not they're going to attend a particular committee meeting, so I would suggest that, in terms of the press releases, that 5 days would be the preferable.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, I'd just like to point out that you can get from Billings to Helena in 45 minutes by jet. (Laughter)

PRESIDENT GRAYBILL: Now, now, Mrs. Robinson, you've spoken once, and-(Laughter)

Mrs. Bates.

DELEGATE BATES: Mr. President. In regards to this 3 and 5 days, if we could include the rest of this rule, the next three paragraphs that I think most of you are overlooking, and take this into consideration, then I have the feeling that this group will be agreeable with this 3 days. The other is a 5-day.

PRESIDENT GRAYBILL: Mr. Berg. Wait a minute. Now, wait a minute, Mr. Berg. Mrs. Robinson may get me in trouble, because you have spoken before. Is there anybody that hasn't spoken that wants to speak.

Yes, Mr. Scanlin.

DELEGATE SCANLIN: I beg your pardon, Mr. President, but in order to clarify what I said before, I didn't say that I was in favor of the amendment. Thank you.

PRESIDENT GRAYBILL: All right, Mr. Berg.

DELEGATE BERG: I'd like to know if Mrs. Robinson would yield to a question.

DELEGATE ROBINSON: I yield.

DELEGATE BERG: I just really want to inquire as to how you would relieve Judiciary of the predicament it puts us in if our 3-day notice now is not adequate? Are we to publish another 5-day notice and delay for more than a week any hearing on the major program before the committee'? This is a serious problem to us.

DELEGATE ROBINSON: It is a serious problem. The Judiciary Committee published notification of their hearing before the rules were even adopted. And now, that's a problem in itself. I'm sure that some special rule can be made for committee hearings that have already been set up, that those committees may go ahead and meet as scheduled. I see no problem there. But just for future matters, if we could have a 5-day limit.

PRESIDENT GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. President, I favor the 5-day notice. Now, we was told a few minutes ago we could get from Billings to here in 45 minutes, but I've seen the time when the planes couldn't land in Kalispell for about 2 or 3 days, and the same way in Missoula, so I think the 5-day period--I'd favor that 5-day period.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Part of the problem seems to be—as a committee Chairman I can see a lot of this. We're all chomping at the bit, waiting to get ready-to get with this thing. I was hoping to hold public meetings all next week, general public meetings. Perhaps we could work something around this where we could agree, say, to accept these meetings that have been already announced and, except for maybe the second week, have hearing notices-since they're going to be general hearings, we'll accept the 3-day limit, but after the second week, we should accept maybe the 5-day limit. That's just a suggestion.

PRESIDENT GRAYBILL: Mr. Murray, before you speak, let's get the rest of them.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. Chairman, I would like a clarification of Rule 1 of Section 38, as compared with Rule 3 of Section 38. I notice that Rule 1 has the 3-day time requirement and Rule 3 has a 5-day time requirement. I take it that Rule 1, calling for the 3-day timerequirement, is for local distribution-for our own benefit--and that Section 3 has to do with people outside of the body, the state as a whole. Am I right in that? If so,

the rules as they stand call for 5 days' notice to people throughout the state.

PRESIDENT GRAYBILL: Mr. Murray, I wonder if it isn't necessary at this time to expand the discussion of Rule 38-l to include 38-3, so that at least there's an explanation of it so people understand what you're proposing.

DELEGATE MURRAY: Mr. President, when I rose a moment ago, I was about to suggest that we pass further consideration of Rule 38-1 and proceed through the entire rule so that Mr. Romney—and 38-2, -3, and -4 are the Romney Rules-Mr. Romney will have an opportunity to explain how Rules 2, 3, and 4 will fit in with Number 1 in his thinking. I think that when he does so, you will recognize some of your thinking.

PRESIDENT GRAYBILL: Mr. Toole, would you allow us to hold your motion until we've read Rules 38-2, -3, and -4, or do you want to vote?

DELEGATE TOOLE: I will, Mr. President.

PRESIDENT GRAYBILL: All right, let's have the clerk read 38-2, -3 and -4 all at once, and then we'll at least know what we're debating here.

CLERK HANSON: "2: Each substantive committee shall hold a public hearing in the Convention Hall, at which time citizens of Montana will be invited to appear and testify, and file statements containing their testimony and views, upon any and all phases of the proposed Constitutions being considered by such committee. Such witnesses may be questioned by committee members to better-"

PRESIDENT GRAYBILL: Elucidate.

CLERK HANSON: --"elucidate their testimony. All delegates to the Convention not members of the committee conducting the hearing may attend the hearing as auditors, to better inform themselves of the committee's progress. The substantive committee will hold their hearings, designed to secure statewide participation in deliberations on the Constitution, in a series at times fixed by the President of the Convention, so that the hearing will not interfere one with another. The President will make such announcement and invitation via the news media so that Montana citizens, near and far. will have no less than 5 days' notice so they may be able to avail themselves of an opportunity to appear, testify, participate. These statewide general hearings will in no way inhibit standing committees to follow up with additional hearings or special character as provided elsewhere in this rule."

PRESIDENT GRAYBILL: Now, Mr. Murray, do you want-or shall we have Mr. Romney explain these—

Mr. Romney, would you care to explain these three subrules?

DELEGATE ROMNEY: Mr. President, I would be delighted to endeavor. I am going to identify myself as a newspaperman, in accordance with the rule. (Laughter) I think it might be pertinent to read a rationale of this Rule 38-2, -3, and -4, whatever it is, so I will read this rationale which I prepared some time back prior to abbreviating this section of the rule to the size that it is now after several amputations. I read: "It is desirable to have as much public participation in the deliberations of the Constitutional Convention as is possible. Such participation will permit the public to learn about the proposals offered for incorporation into the new Constitution and to offer proposals which delegates can accept for incorporation in the document. It is not practical to have delegates travel about the state holding hearings on the entire fabric of the proposed Constitution because the cost would be prohibitive, the number of localities at which such hearings would have to be held to properly cover the state is too great, and any endeavor to hold a hearing on the entire Constitution in a single session at any of the places at which such hearing would be held would cover too wide a scope to make a good showing. If individual committees went into the hustings to conduct hearings, the confusion would be multiplied, the cost increased, and the public further confused. It can be argued that citizens will not go to Helena to participate in hearings because of expense, leaving their work, and for other reasons, and these arguments possess a validity. However, if citizens do possess deep-felt views on how the Constitution should be remodeled or kept intact as of today, et cetera, they can pick up the hearings of committees considering portions of the document in which they are interested and participate or send representatives to make the points clear. Some citizens will participate by offering testimony or by mailing it to the committee, and all citizens will be provided the invitation to participate. The media will doubtless attend and report that which transpires at the hearings, thus affording the unattending public information concerning prop-

osals offered. By holding a series of committee hearings, the nonmembers of each of the standing committees in attendance-members can learn about proposals that are being offered so that they can debate the propositions involved with better understanding if and when such proposals emerge on the Convention floor from a committee. This should have a salubrious effect." Parenthetically, at this point, I wish to point out that, after the debate this morning concerning the location of a subject, whether it should be in the Education, Finance or Natural Resources Committee, is a very good illustration of how necessary it is for the members of all committees to attend and participate-or view-hear the discussions of hearings of other committees. In this way they will be able to educate themselves on that which is transpiring in all the other committees of the Constitution as well as in their own. In other words, they will get a wide knowledge of the subject. I continue my reading: "In legislatures, too often members, from lack of personal knowledge of a proposal, are forced to rely upon committee reports. Unless some system such as suggested in this proposed rule is adopted, the same situation will face delegates in the Convention. It is a sad situation when people endeavor to debate propositions concerning which they are inadequately informed. If ordinary committee sessions are held, noncommittee members are not likely to be in attendance at sessions other than the substantive committee of which they are a member. Although a number of days would be consumed in the early part of the Convention, during which the proposed 10 or more hearings would be held, the grasp of the proposals confronting each of the committees, as well as the overall situation, ought to make it possible for delegates to perform their work with greater alacrity and more positive results. If this proposed rule were pondered by the Rules Committee"—I can leave this out because this is no longer pertinent. "Of course, in order to get this head start it would be necessary for the chairmen of the substantive committees to agree and for the plan to be adopted as a rule for the membership of the Convention." I end reading. I wish to point out that this rule, which is 38-2, -3, -4, in no way takes away the operation of 38-1; it merely amplifies it. And I think that perhaps the 3-day period might suffice in the operation of Rule 38-l. I admit that this Rule 38-2, -3, -4, is perhaps verbose. It is something like putting upon vanilla ice cream some chocolate sauce and a maraschino cherry in order to make it a little bit more attractive to the public. What we're trying to do is-if I sense this right-is to get the people to come in here, and if they do not come in, at least they have been invited. This is a proposition of getting Mohammed to come to the mountain.

PRESIDENT GRAYBILL: All right, the Chair understands it to be the sense of Mr. Romney's three subparagraphs to Rule 38, that a series of 10 hearings be held in this room, to which all the other delegates would come or would be invited, to let the public in general present their matters to the committee. And that for purposes of these hearings, there would be at least a 5-day notice. Now, with that in mind, and before you speak, Mr. Davis, I'd like to remind you that I think we're really still discussing Mr. Toole's amendment, "3" to "5" days, and I'd like to finish that up, and then we can go ahead and amend 2, 3 and 4 if we want to. We're on Mr. Toole's motion as to 3 or 5 days. Is there any further discussion?

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I think you all know that I'm an advocate of openness. I am a newspaperman and certainly think that we should give as much time, but we need to stir the pot, and I think we do that by 38-1, and I cordially-or heartily agree with my colleague, Miles Romney, that we should also adopt -2, -3, -4.

PRESIDENT GRAYBILL: All right, now. The Chair may have been a little too lax here, because I want to get a ruling on this, so I'm going to ask you not to speak unless you've spoken before on the issue of 3 or 5. Is there further discussion?

DELEGATE SWANBERG: Mr. President.

PRESIDENT GRAYBILL: Mr. Swanberg, didn't you speak to this?

DELEGATE SWANBERG: Yes, I did,

PRESIDENT GRAYBILL: Okay, well, then, you're out of order.

Mr. Cate.

DELEGATE CATE: Mr. President. Mr Toole, would you yield to a question?

PRESIDENT GRAYBILL: Mr. Toole, do you yield to a question?

DELEGATE TOOLE: Yes.

DELEGATE CATE: If there was added to your motion an amendment to follow the end of

the sentence which you are amending-in other words, "before the time of the hearing"--"except for hearing notices issued previous to the adoption of this rule", would that eliminate the conflict that the Judiciary Committee presently has?

DELEGATE TOOLE: I'm sure it would eliminate the conflict of the problem of the Judiciary, yes.

DELEGATE CATE: Okay, thank you.

PRESIDENT GRAYBILL: Is there further discussion?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, this is what's bothering me. I think this is fine for the 5 days, but imagine-now you've set-you've talked this morning on threecommittees handling one thing and all of a sudden they in turn take it. Now we could get to the last end here and all of a sudden, by a majority vote of this body, send something back to the committee. And held it-now, if they're going to have to be stuck with 5 days on that to hold a hearing, I wonder-1 just wonder if we couldn't go along here and space these out to 5 but leave this 3 days here-that we get to the last end of this session and all of a sudden something happens, I'd hate to be tied to the 5 days. That's what would worry me.

PRESIDENT GRAYBILL: Any further discussion of the proposed amendment of Mr. Toole?

Mr. Studer.

DELEGATE STUDER: Mr. President, Studer from District 8. I think we're losing sight of the fact that we have a 3-day minimum for this notice but the committees can use 5,6, or whatever number of days they wish if they want to. We're also forgetting that the notices are publicized hy radio and television, as well as the papers, and the full time allowed will be utilized. I would he against the change to the 5 days.

PRESIDENT GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Regarding the change from the 3 days to the 5 days, if this is adopted, and as of today no committee as I know has given any 5-day notice on a hearing-we adopt these rules today, probably the first notice can he given would be tomorrow. The first hearing then, if I count correctly, would be Wednesday-or Tuesday or Wednesday of next week. If we go into the further question of 2, 3 and 4, where each committee is going to hold a public hearing with which no other committee can have a conflict-we've got 10 committees-if their hearings take 5 days apiece, that's a week apiece, we're going in-now then, into 10 weeks beyond the proposed budget as I understand we have to operate. Now, the reason we've been resolved into committees is so we can separate and do our work, come hack and report to the rest of the Convention. If we're going to, in effect, prohibit theothercommittees from working during the time the one committee is working and we're all to come in and listen to the testimony between--before each committee, what is the sense of resolving into substantive committees at all? Why not just work as a Committee of the Whole? If we adopt the rule in its entirety, it would seem to me there would he no chance we could finish this Convention on time, where you're going to have 10 separate committees and none of the committees-the other 9 committees cannot function when there is-when one of the committees is holding hearings. I don't know what kind of a study the other chairmen and vice-chairmen have made, hut the members of the Judiciary Committee, and particularly the Vice-chairman and myself, have been working hard on our hearings. We've approximately 10 days of hearings scheduled now, with another 4 days at the end. I'm talking about 14 days for our committee. Now if, by the rule that's proposed here under subdivision 3, it would mean that for 14 days the rest of the Convention would he at a standstill unless--while they sat here and listened to us interview the witnesses we propose to bring before it. We, in turn, would sit aside for the period of time they're going to do work. Now-it would seem to me that this is the purpose of the Convention, is to break up into committees and receive the testimony so we can get down to work and report back to the rest of the Convention. We come down to the fact which I think is well known-the Judiciary Committee has already scheduled hearings commencing for Thursday. We've got witnesses scheduled out of Missoula, out of Chicago, and out of Billings, out of various places that these people have been asked to come in. If this rule is passed in its present form, then ail of these witnesses will have to be rescheduled. Some of them, I know, won't he able to come in for a matter of a week to 10 days. It isn't a question that any citizen wouldn't be heard before the committee, because we intend to give more than 5 days' notice of most hearings; and at the end, it is the intention of the committee to have a space of approximately 4 days in which people

could be heard on anything on the Judiciary Committee--which they'd probably have a week to 10 days' notice of that hearing. It wouldn't be a question of people being shut out. The question is, are we going to settle down and get to work or are we going to sit here for5 or6 days while we wait for the county newspapers to publish notice? Now, I'm all for the county newspapers publishing the notice, but the truth of the matter is, the *Billings Gazette*, the *Great Falls Tribune*, the *Montana Standard*, the *Missoula* Sentinel, the TV stations and the radio stations will have this stuff hot, they'll expect us to get down to work and earn our money around here, and I, for one, am not looking forward to sitting here for 4 or 5 days with my hands tied when we're ready to go to work and come back here to the Convention with something they can consider and adopt. And I suggest that if we pass this rule, it isn't to protect the public at all, it's just to hamstring the committees so they cannot do the work which they've been appointed to do. And I will have an amendment to make at the-to offer to the Convention in the event the rule is adopted with the 5-day notice.

PRESIDENT **GRAYBILL: Is** there other discussion of the 3 and 5 days?

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, would I be in order to present a substitute motion to Mr. Toole's motion?

PRESIDENT GRAYBILL: If it's a substitute for the 3 and the 5 days.

DELEGATE JOHNSON: It says in the Rule Number 38 that it not be less than 3 days. A substitute motion would be for "not less than 3 days and not more than 5 days" and get the Judiciary Committee off the hook.

PRESIDENT GRAYBILL: Well, what you've done, then, is said you can't give notice of more than 5 days, and that means you can't give 7 days' notice. Now, if you want to do that, you say so and we'll vote on it. Do you want to make that amendment?

DELEGATE JOHNSON: Yes, Mr. President, I would.

PRESIDENT GRAYBILL: All right, the sense of Mr. Johnson's amendment is to change the word "3" to "not less than 3 nor more than 5" days before the time of hearing. Now is there discussion, or are you ready to vote on that amendment?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: All right, now, if anybody wants to discuss it, stand up. Okay, the sense of Mr. Johnson's amendment to the amendment is that the notice which--would not be less than 3 days nor more than 5 days before the time of hearing. All in favor of that amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and that failed. Now we're back on Mr. Toole's amendment, 3 and 5 days. Is there further discussion?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: All right, the sense of his motion is to change the notice from 3 to 5 days before the time of hearing. So many as are in favor of Mr. Toole's motion to make it 5 days, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, say NO.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the motion fails. We're back on 38-1. Are there other amendments? (No response) 38-1 will be repassed. Now we're where we were at noon —38-2. (Laughter) Now, we've read 38-2, -3 and -4, and I don't think we need to reread them, but if anyone has any amendments or any suggestions or any discussion or questions about 38-2, we're ready.

DELEGATE BOWMAN: Mr. President.

PRESIDENT GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: I would like to ask if it-in the third line of 38-2, does it mean, Mr. Murray, that citizens must file statements con-

taining their testimony or only that they may if they choose to?

PRESIDENT GRAYBILL: Mr. Komney, you're asked if that means must or may file statements.

DELEGATE ROMNEY: Mr. President, I think that they should. The reason is that if you have a hearing--any of these hearings--and there are a lot of witnesses that appear, they cannot all have as much time as we're taking here to discuss this matter-2 or 3 minutes, perhaps, would [be] all that they could each have, so it's wise for their protection that they file a statement to-so that the committee would have the benefit of their views. Personally, I don't care, but I think it's for their own protection.

PRESIDENT GRAYBILL: Mrs. Bowman, have you got that material?

DELEGATE BOWMAN: Yes. If that is the sense of that particular paragraph, then I move that it be amended to read that they may file statements. I feel that many people who otherwise might come to testify will be scared away when they realize that they have to write it all down and present it to us first. I think it makes it too formal if we're trying to encourage citizen participation.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I don't find any requirement in that language that anybody have to either appear, testify or file statements, and certainly not do all three. It says, "will be invited", which means we request them to come, and I read the rule to mean appear, testify or file statements. I don't think it's a problem.

PRESIDENT GRAYBILL: Now, Mrs. Bowman, I take it that-to be the sense of Mr. Murray's interpretation, as Chairman of the Rules Committee, he doesn't think your amendment is necessary. Do you still want to—

DELEGATE BOWMAN: Fine. If that's the sense of it, I don't think it's necessary either; but if it isn't the sense of it, then I do feel that it's necessary.

PRESIDENT GRAYBILL: Well, let's assume that the sense of it is that it means "and may file" when it says "file", and they're not required to file. And then will you withdraw your amendment?

DELEGATE BOWMAN: Yes.

PRESIDENT GRAYBILL: Okay, it is withdrawn. Now we're down to Mr. Delaney.

DELEGATE DELANEY: May I ask Mr. Murray a question?

PRESIDENT GRAYBILL: Yes. Mr. Murray?

DELEGATE DELANEY: Does the Rules Committee recommend 38-2, -3, and -4?

DELEGATE MURRAY: Yes. We put it out of committee with a do pass recommendation.

DELEGATE DELANEY: Thank you.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm concerned about the logistics of this. I'd like to ask Miles Romney a few questions if I may.

PRESIDENT GRAYBILL: Just a sec... Beg your pardon?

DELEGATE CHAMPOUX: I'd like to ask Mr. Romney-

PRESIDENT GRAYBILL: All right. Mr. Romney, will you yield to a question'?

DELEGATE ROMNEY: Certainly.

DELEGATE CHAMPOUX: What I was interested in, do you see this as all happening perhaps next week, with maybe one committee meeting in one morning, one in the afternoon? Is that the idea that you have? Or do you see it happening throughout the Convention?

DELEGATE ROMNEY: It states, **I** believe: "at times fixed by the President of the Convention". He could have two or three of them going at the same time and each of-in that event, if you had too many running at the same time, then all of the delegates would not be able to sit in on all of them, but you have to be practical in this world.

DELEGATE CHAMPOUX: Right. What1 was concerned about was—

PRESIDENT GRAYBILL: Mr. Champow, if I may—

DELEGATE CHAMPOUX: I can see, for instance, in our committee, where are we going to put all these people, for one thing. And the time factor--are we going to limit the time here? I think it's kind of loose. What do you have in your mind, for instance, Mr. President, as to when you're going to call these meetings, if you've thought about it at all, and do you intend to duplicate the meetings-that is to say, have two at one time, and so forth? I'd like to hear a little bit more on this.

PRESIDENT GRAYBILL: Mr. Romney, would you care to explain further?

DELEGATE ROMNEY: I was diverted. I didn't get the second question.

PRESIDENT GRAYBILL: Well, he wanted to know whether you'd explain a little further about these hearings; isn't that right, Mr. Champoux? The hearings would be held in this room? Ask him the question again.

DELEGATE CHAMPOUX: Well, it says here, "times fixed by the President of the Convention". I was directing the second question at you, and that was, do you have any thought in mind as to when you see this happening? Do you see, for instance, two or three committees holding their hearings at the same time, for instance?

PRESIDENT GRAYBILL: Well, if you ask my opinion, I would think that we could do this, and I had hoped that we would do it a little later, when the committee had drafts, so that the people could comment on the drafts, but maybe they'd want to do that too. But if this Convention passes this, I'm sure we'll do it. I would think we would probably schedule them for fairly short periods, maybe two a day for a while, and see what happened, and if we needed more time we'd have more later. Now, that would be my impression.

DELEGATE TOOLE: Mr. President.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: I've just been thinking about this, and I wonder whether we're not going to get ourselves into a situation where we're going to have a lot of duplication, where we're going to have people coming back here two, three times to testify on the same subject. And from the standpoint of getting people in here, from the standpoint of public relations, I think maybe it would gouge this thing up a little bit. I'm speaking off the top of my head now, but that's my offhand feeling about it.

PRESIDENT GRAYBILL: Mr. Harper.

DELEGATE HARPER: This will be a little off the head, but it will be from the heart, too. (Laughter) We've been sitting hereallday, talking about rules and all; we're getting a little tired now, and when somebody gets up to speak, I notice the rest of us don't pay much attention and we'd just like to finish the thing. But when we're talking about whether we'regoing to have public hearings or not, we're on an issue that the people are interested in. Now, the people of this state could hardly imagine a Constitutional Convention without our having public hearings so that every individual and group who wanted to be heard on an issue important to them could be heard. Now, I know we want to get through in X amount of weeks, and we already are beginning to talk as if we are harried and harassed-and 9 weeks, we're making that seem like a very short time, and so maybe we don't want to take a few days for public hearings, but let me ask you delegates this question. You and I were elected to vote on the whole Constitution. You came, and we are all now divided into substantive committees. I'm on one. There are nine others. All nine others deal with issues with which I am vitally concerned. And if I had to stand on any one of these issues, I would--according to the rule we passed, I'd have to say that I have a very personal interest as a citizen of the State of Montana in any one of these things we're talking about. What kind of a setup-1 think this is what Mr. Romney is trying to address himself to-what kind of a setup can we get up intelligently here, now, so that we, as well as the rest of the public, can know the kind of input that the other committees are getting, so that when we come to vote on your committee's recommendations, we have some way of assessing what kind of information you had to deal with before you arrived at your conclusion? Because I notice this happens in church work all the time-1 think it's been happening in humanity ever since we began--we're always taking shortcuts which end us up just a little bit back from where we started, and yourremark a moment ago that we were back up to where we were at noon is a study of mankind's history, I think. We can, in an effort to save time and to cut short public hearings and to ram our own little committee's work through, come to a situation toward the end of time when we will be

asking questions and carrying on debate on little issues that could have been cleared up if we could have taken this kind of procedure earlier in the Convention. So I am very much for this kind of a suggestion Mr. Romney makes or something else that will accomplish pretty nearly the same thing.

PRESIDENT GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President. I too am in support of Mr. Romney's suggestions, and I think that the announcement made before, perhaps prematurely, about the Executive meeting being held Thursday at 7:30 in the Executive Committee room is going to mean that many of us who are not on the Executive Committee will be there. I'm sure that that Executive Committee room is going to be overflowing within 5 minutes after 7:30. I think we are all interested in what goes on at the other committees, and therefore I thoroughly support Delegate Romney.

PRESIDENT GRAYBILL: Mrs. Reichert, that's Wednesday.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, I have to apologize to you members of my committee for not calling to your attention the plan that I had to take care of this that you have brought out. Now, I have thought about this matter very seriously and for a long time. How am I going to be informed about what is going on in the Judiciary? How am I going to go back to my people and give them the reasons why we should do away with the magistrate system or why we should retain the justice of the peace system? This suggestion of being able to go to these individual hearingsis very good, but I wonder [if] it's practical, and in order to overcome this, I have assigned to my intern the job of outlining the reasons for and against propositions like unicameral, the bicameral, continuous Legislature, the salaries, and so forth and so on. This intern will have a job of making a comprehensive report. He will also do like the *Wall Street Journal* or the U.S. *News*, make a brief report of one or two pages, so that each delegate will be able to summarize the reasons for and against such proposals. And I think that you'll be able to take this material back with you. By the way, we would have 100, at least, of these copies made for your use. And I wonder if each committee could do that, because if I were to go to the Judiciary Committee and listen to their hearings-my memory is not that good that I could remember all the things that went on in there, and I think we're going to have to have something concrete to take home with us. And I am concerned about my-Mr. Romney's-my good friend, Romney, and member of my committee; I appreciate your interest and your concern, but if we are going to have all these hearings, I'm concerned about the time element and also about having this material available for us to use.

PRESIDENT GRAYBILL: Further discussion? If there is—

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I think I was dozing a while back when the Chairman of the Judiciary Committee gave an interpretation of this paragraph 3. I caught some implications there that didn't sound good. I wonder if he'd want to repeat his interpretation of paragraph 3—something about taking 10 to 12 weeks for this thing.

PRESIDENT GRAYBILL: I don't think so, but do you want to ask-do you want to yield to a question, Mr. Holland?

DELEGATE HOLLAND: Thank you, I'll yield to a question. What is your question?

DELEGATE SCANLIN: I missed your interpretation of that paragraph 3.

DELEGATE HOLLAND: Well, it was my understanding of the proposed amendment that each substantive committee shall hold a public hearing in the Convention and that, at the time of the holding of that committee's public hearing, that no other of the substantive committees shall hold hearings of their own, and the hearings will be held in this chamber so that everyone can attend and there will be no conflict between committees. That was my understanding of the meaning of this. Is this accurate, Mr. Romney?

DELEGATE ROMNEY: I'm happy to answer that question.

PRESIDENT GRAYBILL: Now, just a minute. You can't yield. You've got to go back to Mr. Scanlin, so you can't-you're just answering Mr. Holland.

Mr. Scanlin, do you have anything further?

DELEGATE SCANLIN: Well, if it takes an interpretation from Mr. Romney, I certainly would yield to whoever I got to yield to.

PRESIDENT GRAYBILL: All right, (Laughter) do you want to yield—

DELEGATE HOLLAND: All right, Mr. Studer, I'll read the part I had reference to and then Mr. Romney will explain it, if it's all right.

PRESIDENT GRAYBILL: Mr. Romney, would you like to answer Mr. Scanlin's question?

DELEGATE ROMNEY: I will make an endeavor to answer him. First of all, there is no reason why hearings could not be held simultaneously. I did not hear the question Mr. Scanlin propounded to Delegate Holland, so I've got to ask for the question—

DELEGATE HOLLAND: Can I read the portion I had reference to?

PRESIDENT GRAYBILL: All right, we'll let you.

DELEGATE HOLLAND: "The substantive committee will hold their hearings designed to secure statewide participation in deliberations on the Constitution in a series of times fixed by the President of the Convention so that hearings will not interfere with one another." Now, I would take the sense of that was that the President will set, if we're going to have-for each committee have 10 public hearings, he would set them in rotation-in some rotation or another-the nine committees could not hold public hearings while the one committee was having it, and then we would rotate, one manner or another. We would be in a situation, if I understood the rule, where the President would do the setting of the committee's work, set time. Those other nine committees could not have public hearings; this would be held in abeyance; and we would be-we'll take the Legislative Committee first; if they were the first ones, they would hold their public hearing. There could be no other committee hearings that would interfere with that. That is the way I understood the rule.

DELEGATE ROMNEY: Well, that is the way the gentleman understood the reading, but that is not the way that I expect it would transpire. I would think that the President would set the hearings and perhaps have more than one. The thing says "in Convention Hall". It might be that one of the hearings would have to be here and one in the Senate chamber. The idea is to get the people like Delegate Aasheim to be able to sit in on the Judiciary hearings, as he so carefully explained. It would also permit delegates to secure the information personally and not vicariously, as Delegate Aasheim indicated could be done through the use of interns. I would prefer to have my information secured personally, rather than secondhand.

PRESIDENT GRAYBILL: Mr. Romney and Mr. Murray, since these-since it's very difficult for the delegates to discuss these one at a time, I m going to open up 2, 3 and 4 and you can discuss any of 2, 3 and 4. We'll consider them all at once because we're not-we're really not limiting ourselves to 2 and we might just as well go ahead and consider 2, 3 and 4 at once.

Now, Mr. Aasheim, you've spoken, so I'm going to Mr. Davis.

DELEGATE DAVIS: Mr. President, since the time is kind of dragging on, some of the people-it might be appropriate at this time to establish for the benefit of the interns, the pages and the public that we are not constitutionally trying to change the word "substantive" to "substansive." (Laughter)

PRESIDENT GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I think that our Rules Committee has done a magnificent job here in trying to set up a set of rules that would provide the public to participate in the workings and the deliberations of this Convention. And I, for one, think that Rules 2 and 3, when attached to 38, certainly provides us [a] way of the public having access to this Convention, and I think this Convention should be able to rely on you, the President, to set practical times and hearings that will be practical, that will not interfere-perhaps evening meetings and so forth-and I would certainly, for one, rely on your discretion in this matter.

PRESIDENT GRAYBILL: Mrs. Payne.

DELEGATE PAYNE: Thank you. Mr. Chairman, we, on the Local Government Committee, had decided to hold meetings next week, and we also hear that the Legislative Committee is holding meetings next week, and I thought maybe they'd be held concurrently. I think that, you know, that I like this idea. I approve of what Mr. Romney is trying to do, but I don't see how it can be practical. If people come from Missoula, maybe they would like to go, you know, tell two, three committees what they want.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I think if we analyze the entire Rule 38, we're going to see a great deal of wisdom in what Mr. Romney has done. The committees are going to be meeting. They are not going to coordinate necessarily with respect to their dates and times. There are going to be people in the State of Montana who are going to be interested in several subjects that are going to be covered by the several committees. It may be impossible for them to attend to those several subjects at any particular time because of conflict. There is only one way to resolve it. That is the solution that Mr. Romney has presented to us by the other subparagraphs of Rule 38, and that is, later on during the Convention, to schedule general meetings of the various committees on days when there will be no conflict. It will serve two purposes: one, it will give every citizen of the State of Montana access without conflict to that committee as to which they have some interest; second, it will give all of us a chance to sit in on that committee meeting so that we will be familiar with the real pressing problems that are assigned to that committee, because in the final analysis, we and we alone are going to cast the vote that represents the vote of the people upon that particular subject. I'm not too concerned about the 60 days or the 9 weeks. I think there is adequate time in which to do our work. Ifthecommittees will pay attention to the subjects they have assigned to them, do their work as they should, they will have adequate time to hear the citizens at their committee meetings, to have the general meetings, to have time to deliberate, debate and vote. If that time is not enough, then when we provided our citizens with a chance to elect us as delegates, we told them we would make whatever sacrifices necessary. If additional time is necessary to turn out the type of Constitution that will serve all the people of the State of Montana, then I think we're required to give that additional time, whether it's with or without compensation. I pray and hope that will not be necessary, but I suggest that Rule 38, as it stands now, is the only practical and wise way to have this Constitution serve all the people of the State of Montana. I support it.

PRESIDENT GRAYBILL: All right, is there further discussion of Rules 38-2, -3 and -4? And bear in mind there are no amendments at the moment. All right, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President, I would call your attention to the fact that we have two phrases in 2 and 3 which seem to me to be in conflict with one another. In part two, it says that each substantive committee shall hold a public hearing in Convention Hall. I don't have Rule 2 before me, but I believe that Convention Hall is this room and the lounge immediately adjacent.

PRESIDENT GRAYBILL: Right.

DELEGATE HARBAUGH: Then, in Section 3, the phrase "so that the hearings will not interfere with one another." It seems to me that there is no way that you can have more than one hearing at a time with these two provisions, because the hearing has to be in this room and obviously you can't have two hearings going on in this room at the same time. Now, this is fine, I think, if we want to extend the time involved in having these hearings. It seems to me, however, that we would be-we could progress much better and, I think, do away with a lot of time-consuming things here that aren't going to get us anywhere and could expedite the work of theindividual committees if we did not have this time conflict, and therefore I would offer the amendment that we strike the phrase "so that the hearings will not interfere with one another" and also strike the phrase in Section 2, "in the Convention Hall". It seems to me this gives us a little more liberty to establish the time and place of these hearings.

PRESIDENT GRAYBILL: The sense of the proposed amendment is to strike the words "in the Convention Hall" from subparagraph 2 and the words "so that the hearings will not interfere with each other" in subparagraph 3. Is there debate on the amendment? (No response) Hearing none, all those in favor of Mr. Harbaugh's proposed amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair is in doubt. Use your voting machines. So many as shall favor the amendment to strike these two phrases from subrule 2 and 3, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: We'll close the vote. Will the clerk announce the tally.

CLERK HANSON: 51 delegates voting Aye, 39 voting No.

PRESIDENT GRAYBILL: So by your vote you have stricken the words "in the Convention Hall" in the first one and "shall-so as not to interfere with one another" in the second one. I take it that will include a period after the word "Convention". All right, now. We're still discussing subrules 2, 3 and 4, as amended.

Mr. Felt.

DELEGATE FELT: Mr. President and members of the Convention. We are-1 am going to support this-these amendments-or this portion of the rules 2, 3 and 4. I honestly don't believe they belong in the rules of procedure, but I think we might as well include them since we have devoted this much time to it. I think that a simple resolution expressing our concern, which all of us feel and which has been orally expressed very capably on several occasions during this discussion period, that we want to be informed ourselves of what goes on in the committees, we want the public to be informed, we want the public to be able to participate. These are not really matters that we need to spell out with careful wording in the form that you would put into rules of procedure, and that is why, I believe, we're having so much difficulty with this. There are questions of interpretations of certain words that trouble us. I'm afraid, really, that we are becoming somewhat unrealistic or emotional in our concern and that we are expressing a lack of confidence in ourselves, in the chairmen of our committees, in the officers of our Convention, which is not necessary, and that all will do everything that is humanly possible to meet all of those objectives. Yet we feel the frustration because we know it will not be perfect, and in our desire to do what might become a perfect job, we are straining over a gnat, and we could deal with this as the time goes on in the best manner possible and regardless of what words we use in these particular paragraphs. Thank you.

PRESIDENT GRAYBILL: Any further discussion of 38-2, -3 and -4?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: Well, we don't need a question.

Mrs. Babcock.

DELEGATE BABCOCK: I believe in line 6 there should be the word "only" or "just" after the word "not". "All delegates to the Convention, not only membersofthecommitteeconducting the hearings, may attend."

PRESIDENT GRAYBILL: Mr. Romney, are you with her on that?

DELEGATE ROMNEY: I could not hear.

PRESIDENT GRAYBILL: She suggests that in the sixth line of your subrule 2, the sentence should read: "All delegates to the Convention, not only members of the committee conducting the hearing, may attend." Or do you mean "All delegates to the Convention not members of the committee"-I suppose your point is that the members have the right to attend as members. Did you suggest an amendment or did you just call that to his attention?

DELEGATE BABCOCK: I'll make that in the form of an amendment.

PRESIDENT GRAYBILL: All right, Mrs. Babcock proposes that it say "not only members", and that requires a comma, I think, after the word "hearing"-so it would read: "All delegates to the Convention, not only members of the Convention conducting the hearing, may attend the hearing as auditors." That means all can attend, not only those conducting it.

DELEGATE ROMNEY: I accept that.

PRESIDENT GRAYBILL: Do **you** accept that amendment? Unless there's objection to that amendment, we'll just make that interlineation. Is there objection to that amendment?

DELEGATE DAVIS: Mr. President.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Are we losing sight of the fact that the word "auditors"—the rest of us can attend the Judiciary hearing to listen, the members of the committee are going to be participants. So I think the word "auditors" in there makes it, in its present form, satisfactory. The rest of us can attend to audit-the members of the committee, of course, will be participating in asking questions, perhaps.

PRESIDENT GRAYBILL: Actually it's good either way. Now, I don't care how you settle it.

Mr. Habedank.

DELEGATE HABEDANK: I agree with Mr. Davis, because the members of the committee would not be attending as auditors, and I feel the—

PRESIDENT GRAYBILL: Mrs. Babcock, it has been suggested that it really makes sense either way and that you're confounding the thing because of the members.

DELEGATE BABCOCK: I just don't want the members of the committee left out is all. It just should read, "All delegates to the Convention, not only members of the committee", should attend. It sounds like the committee itself can't attend.

PRESIDENT GRAYBILL: Yeah, but the sense of it now is, if you do it that way, all delegates to the Convention may attend as auditors, and the point is-Mr. Davis' point is that, the members of the committee don't attend as auditors; it's the extra members that attend as auditors. Now, with your permission, we'll withdraw your amendment then.

All right, we've withdrawn her amendment, Mr. Komney.

DELEGATE ROMNEY: Thank you.

PRESIDENT GRAYBILL: Now, let's see-Mr. Brazier.

DELEGATE BRAZIER: Mr. President, I would move to amend proposed Rule 38, subparagraph 2, to make the number of committee hearings plural. That is, by striking the article "a" in front of "public hearing" on line 1 and changing "hearing" to "hearings".

PRESIDENT GRAYBILL: What line are you on this?

DELEGATE BRAZIER: Line 1.

PRESIDENT GRAYBILL: Of what?

DELEGATE BRAZIER: Of Rule 38-2, so it would rend: "Each substantive committee shall hold public hearings in the Convention", and so forth. The reason I—

PRESIDENT GRAYBILL: Well, now, is the President supposed to, under your theory, schedule more than one of these?

DELEGATE BRAZIER: Well, that's what I was going to say. I think what-we want to preserve an element of flexibility here and the reason is self-evident. And I won't burden the delegation with any further argument on that point..

PRESIDENT GRAYBILL: Mr. Romney, do you mind striking "a" and adding "s" to "hearing"?

DELEGATE ROMNEY: Mr. President. No, because this is designed to hold one full-dress hearing and one only. Subsection 4 ties in with38, the original 38, and it provides for additional hearings, so there's no need for having a plural there.

PRESIDENT GRAYBILL: All right now, Mr. Brazier, he won't do it unless you want to make an amendment. Mr. Brazier is caucusing. (Laughter)

DELEGATE BRAZIER: I have to get a clear sample of opinion from my caucus yet, Mr. President. (Laughter) What concerns me is, some of the committees that aren't concerned with the classic articles may have more than one distinguishable subject matter and therefore it may call for more than one hearing.

PRESIDENT GRAYBILL: Well, now, we can do it either way, and you make your amendment if you want to, but it would seem that if the President has to schedule one on all subject matters, you've got a new ball game.

DELEGATE BRAZIER: Well, I'm just talking about flexibility. I'll move for an amendment and yield to the wisdom of the Convention.

PRESIDENT GRAYBILL: All right, the proposed amendment is to put the-is to strike the word "a" in the first sentence and make it plural, so that "the substantive committees shall hold public hearings" instead of "a public hearing" under 2, 3 and 4. I trust there's not much discussion of this. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, say NO

DELEGATES: No.

PRESIDENT GRAYBILL: Mr. Brazier, the Noes have it. It's "a public hearing". Is there other discussion of 2, 3 and 4?

Mr. Driscoll.

DELEGATE DRISCOLL: Are we going to get an opportunity to vote on acceptance of these three proposals? I think the Convention should get an opportunity to vote on acceptance of these three proposals.

PRESIDENT GRAYBILL: Well, if you want—

DELEGATE DRISCOLL: They did not come from the Rules Committee, they are for proposal. I think the Convention should have an opportunity to vote on them.

PRESIDENT GRAYBILL: All right, the Chair would entertain from you, Mr. Driscoll, a motion that we--well, when we're through, unless somebody else has amendments, we'll entertain a motion to drop them, and then you can either win or lose, or else to adopt them. Any other amendments to these three subsections? (No response) All right. If not, Mr. Driscoll, will you make a motion to either accept or reject 38-2, -3 and -4.

DELEGATE DRISCOLL: I so move.

PRESIDENT GRAYBILL: Well, now, wait a minute-see-Mr. Driscoll, you've got to choose. (Laughter)

DELEGATE DRISCOLL: I move we reject subsections 2, 3 and 4.

PRESIDENT GRAYBILL: That we what?

DELEGATE DRISCOLL: Reject.

PRESIDENT GRAYBILL: We reject 1—

UNIDENTIFIED DELEGATE: —2, 3 and 4.

PRESIDENT GRAYBILL: —2, **3** and 4. Now, Mr. Driscoll has made a motion that subsections 38-2, -3 and -4 be rejected. The purpose of this is to test whether the Convention wants them all or it doesn't want them all, since they're now—we're all through amending them. Are you ready to vote on that one?

UNIDENTIFIED DELEGATES: Question.

PRESIDENT GRAYBILL: All right, now, the sense of Mr. Driscoll's motion is that we reject these three and we'd have only 38-l. Or, if you—So all those in favor of Mr. Driscoll's motion to reject, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All those in favor of-all those opposed to Mr. Driscoll's motion, say Nay.

DELEGATES: Nay.

PRESIDENT GRAYBILL: The Chair is in doubt. We'll "pen the ballot; and all those in favor, please vote Aye-that's in favor of rejecting them. All those opposed to rejecting them, vote Nay. So you're voting Nay if you want them in and you're voting Aye if you want them out. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The Chair has closed the ballot. Will the clerk announce the ballot?

CLERK HANSON: Mr. President, 31 delegates voting Aye; 59 voting Nay.

PRESIDENT GRAYBILL: What was it—31—

CLERK HANSON: 31 voting Aye, 59 voting Nay.

PRESIDENT GRAYBILL: By your vote of 59 voting Nay, you have adopted 2, 3 and 4.

Mrs. Bates.

DELEGATE BATES: I misunderstood the way we voted, and I think I voted wrong.

PRESIDENT GRAYBILL: Do **you** want to explain your vote?

DELEGATE BATES: I was voting to retain this.

PRESIDENT GRAYBILL: Well, if you voted Nay, you did that.

DELEGATE BATES: I didn't. (Laughter)

PRESIDENT GRAYBILL: Well, it got retained anyway, Mrs. Bates. (Laughter) You're—I'll say this: you're one of the most honest voters I've-generally, when they've made a mistake, they don't admit it. (Laughter) All right, now, what that means is that the sense of the Convention is that 2, 3 and 4 should be neatly in there; and

since I presume there are no more amendments, we'll add that to 1 and now we will pass 38-1, -2, -3 and -4. Would the clerk read 39.

CLERK SMITH: "Sitting of committees during sessions of the Convention. No committee shall sit during the sessions of the Convention or of the Committee of the Whole without having first obtained special leave of the Convention."

PRESIDENT GRAYBILL: Is there any discussion of Rule 39? (No response) If not, we'll pass 39. Read 40, please.

CLERK SMITH: "Rule 40. Subcommittees. A committee, by the affirmative vote of a majority of its members, may provide for the appointment by the committee Chairman of subcommittees composed of members of the committee. Reports of the subcommittees shall be considered by the entire committee before the committee recommends any action thereon by the Convention. All rules applicable to committees shall be applicable to subcommittees."

PRESIDENT GRAYBILL: Is there any discussion of Rule 30-or Rule 40? We'll pass Rule 40. Rule 41, please.

CLERK SMITH: "Rule 41: Committee proposals. The affirmative vote of a majority of members of a committee shall be necessary to report a proposal out of a committee. A committee, by a majority of its members, may submit alternative proposals to the Convention and may report proposals with or without a recommendation for action. The proposal of a minority of at least 25 percent of the members of any committee shall be received, duplicated in the same manner as the majority proposal, and treated as an amendment or substitute offered to or for the report of the committee if offered as such on the floor."

PRESIDENT GRAYBILL: There's more on the other side.

CLERK SMITH: "All proposals reported by a committee to the Convention shall be reported as committee proposals and shall be referred to the Committee of the Whole."

PRESIDENT GRAYBILL: Is there any discussion of proposed Rule 41? (No response) If not, Rule 41 will be passed. 42.

CLERK SMITH: "Rule 42: Committee meetings and hearings. All committees and subcommittee meetings and hearings shall be open to the public and news media. Committees and subcommittees shall hold meetings, at which action may be taken on proposals, in the City of Helena or any other place which may be temporarily the seat of the Convention and, upon the affirmative vote of a majority of the members of the committee and after consultation with and approval by the President, may hold hearings at any other place in the state. Committees and subcommittees may take testimony under oath or affirmation. The Chairman of a committee or subcommittee may request the President of the Convention to subpoena documents and witnesses. A witness shall have the right to be represented by counsel of his own choosing. A recorded roll call vote on any matter on the agenda of a committee and on which a vote is to be taken shall be taken on demand of any member of the committee. A committee, after consultation with and approval by the President, may direct that verbatim record to be kept of any portion of its proceedings. Committees may meet jointly with the consent of their respective chairmen and consent of the President."

PRESIDENT GRAYBILL: Is there any discussion of Rule 42?

Mr. Vermillion.

DELEGATE VERMILLION: Mr. President, I was wondering if we might amend that, reading up from the bottom-one, two, three, four, five, six lines up, beginning with the words "on demand of any member of the committee" and possibly delete that section of the sentence, so that it would read, "A recorded roll call vote on any matter on the agenda of a committee and on which a vote is to be taken shall be taken period".

PRESIDENT GRAYBILL: Mr. Vermillion's amendment is to strike out the words "on demand of any member of the committee", so that the sentence reads, "A recorded roll call vote on any matter on the agenda of a committee and on which a vote is to be taken shall be taken."

UNIDENTIFIED DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Does that require, Mr.--let me ask Mr. Vermillion a question first. Does that mean that we have to take a recorded vote?

DELEGATE VERMILLION: That's what I had in mind, yes, to record pretty much all the deliberations of the committees.

PRESIDENT GRAYBILL: In other words, the result of the amendment would be to make committee votes recorded votes.

Okay. Mr. Marshall Murray.

DELEGATE MURRAY: I rise in opposition to the amendment. I think the sense of this assembly already today is that we should have roll call upon a proper demand. This rule is in accordance with a proper demand, and I suggest we just do away with the amendment or reject the amendment and approve the rule and go on with the other 30-some rules we have to do, because we're going to be very late to dinner if we don't.

PRESIDENT GRAYBILL: Is there other discussion of the proposed amendment? (No response) All right, we'll vote on the proposed amendment by the Ayes and Nays, and the purpose of the proposed amendment is to make committee votes recorded votes rather than recorded only on demand. All those in favor of Mr. Vermillion's amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Nays have it. Is there other discussion of Rule 42? (No response) If not, we'll pass Rule 42.

CLERK SMITH: "Rule 43: Consideration of proposals without committee recommendation. After 1 day's notice to the Convention, on motion passed by affirmative vote of a majority of members, may require a committee to return, with or without a recommendation, any proposal referral to the committee."

PRESIDENT GRAYBILL: Is there discussion of Rule 43?

Mr. Mahoney.

DELEGATE MAHONEY: Would the Chairman read--answer a question? As I understand, we will report these things back and, say, the committee has a lot of them. All I'm wondering is, you aren't going to make them return each thing back-this is what's bothering me. Now maybe I'm reading it wrong, but they may report the whole works back, but I would take it here that if somebody submitted a—one of the delegates submitted a proposition, then you would have to report that back individually. Now this is-1 hope I'm wrong, because I'm sure this isn't what you intended, but that's the way I read it.

DELEGATE MURRAY: Charley, this rule is the force-out rule. This rule means that if I, as a delegate, introduce a proposal and it is placed in a committee and nothing is happening and I'm able to convince this Convention that something should happen on that and I want it back out of that committee and I can bring it here, and if the Convention decides that it should be taken away from that committee so that I get some action, they can do it. It's the force-out rule. It's to make things move.

DELEGATE MAHONEY: (Inaudible).

PRESIDENT GRAYBILL: Wait a minute, Mr. Mahoney, let's get your mike on. (Laughter) Are you through? You can certainly-you have the floor.

DELEGATE MAHONEY: The thing that's bothering me is that there's going-maybe there's 10 or 15 items that comes out and relating to one section. Well, I'm afraid that somebody could go around here and say, "My thing wasn't referred out," and I just want to be sure that we understand that that's not the case. Ifyou refer out an article and everything is taken care of-even if you didn't handle his particular position-now, this is what's worrying me.

PRESIDENT GRAYBILL: That's the idea here. If a delegate is unhappy that his proposal wasn't considered, he has the right to try and get the Convention to get it out. You're right, and if they let it out, then we'll have to do something with it. (Laughter) Is there further discussion on that rule? (No response) All right, if there's no further discussion, we'll pass Rule 43.

CLERK SMITH: "Rule 44: Last day for committee proposals. The Committee of the Whole will receive no final proposal of a substantive committee after the deadline established under Rule 79."

PRESIDENT GRAYBILL: Any discussion of Rule 44? (No response) Notice the amendment to Rule 79 instead of 81.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Yes.

DELEGATE MURRAY: Rule 79is the rule which says that the President, with the advice of the Committee on Rules and Administration, shall submit a schedule, and the reason for Rule 44—may not be necessary, but it occurs to the committee that there has to be some cutoff date for this committee work. And with this rule in the rules, why, we feel that the committees will be much more inclined to get their work done.

PRESIDENT GRAYBILL: Any discussion of 44? (No response) All right, we'll pass 44.

CLERK SMITH: "Rule 45: Power to incur expenses. No delegate or committee shall incur any expense chargeable to the Convention unless such expense is approved by the President or is authorized by resolution of the Convention. No motion or resolution calling for an expenditure of money shall be acted upon by the Convention without first being referred to the Administrative Committee for consideration and recommendation."

PRESIDENT GRAYBILL: Any discussion of 45? (No response) If not, 45 is passed. Mr. Murray, that's the end of a chapter.

DELEGATE MURRAY: Mr. President, I move that we adopt Rules 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, as we have amended them individually.

PRESIDENT GRAYBILL: All right, that's Chapter 5. All those in favor of adopting Chapter 5, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. All right, Rule 46.

CLERK SMITH: "Chapter 6, Rule 46: Proposals-introduction. Any suggestion, proposition, or draft intended to become a part of any revised Constitution or amendment or alteration of the existing Constitution which is introduced by one or more delegates shall be called a delegate proposal. A delegate proposal shall be endorsed by the delegate or delegates introducing it. No delegate proposal may be introduced later than the deadline established under Rule 79. When a delegate proposal is introduced, it shall be referred by the President to the proper standing committee, except when he refers it to the Committee on Rules and Resolutions to determine whether its content is on the appropriate order of business. By vote of at least one-third of the Committee on Rules and Resolutions, any proposal shall be referred to a standing committee. Where a proposal embraces subject matter which falls within the proper consideration of several committees, the President, where practicable, shall divide the proposal and refer the parts to the appropriate committees. If it is not subject to such division, the President shall refer it to an appropriate committee with instructions to consult with other committees on related matters."

PRESIDENT GRAYBILL: All right, is there discussion about Rule 46? (No response) If not, we'll pass 46.

CLERK SMITH: "Rule 47: Forms. 1: The Executive Director, under the supervision of the President, shall prepare forms in accordance with these rules for delegate proposals, citizen suggestions, resolutions and committee proposals. 2: The delegate proposals shall be reproduced or duplicated. The original of all proposals shall remain in the custody of the Convention. The Secretary shall, as soon as any proposal is reproduced or duplicated, place it on the desks of the delegates. 3: All proposals must be approved as to form by some person or agency designated by the President before being introduced or submitted. 4: Any delegate proposal which does not comply with the provisions of these rules as to form shall be referred to the appropriate committee as a citizen suggestion."

PRESIDENT GRAYBILL: Is there any discussion of Rule 47? (No response) We'll pass 47.

CLERK SMITH: "Rule 48: Resolutions. Resolutions may be introduced by delegates or committees. Delegate resolutions shall be given to the Secretary, assigned a number, and referred to the appropriate committee by the President. After consideration, the committee shall report the resolution to the Convention, with or without recommendation, and the resolution shall be considered under Order of Business Number 1. If the rules are suspended, the early consideration, the Secretary shall read the resolution and it shall be considered under Order of Business Number 7. Committee resolutions shall be read by the Secretary under Order of Business Number 7 and considered under

Order of Business Number 7. No recorded roll call vote shall be taken under the consideration of the resolutions."

PRESIDENT GRAYBILL: All right, Rule 48. Is there any discussion of Rule 48? (No response) We'll pass Rule 48.

CLERK SMITH: "Rule 49: Citizen suggestions. Any subject matter presented to the Constitution suggested by a nondelegate shall be called a citizen suggestion. Citizen suggestions shall be given a number by the Secretary, and the original shall be referred by the President to the appropriate committee for consideration but need not be placed on the agenda of the committee. Before the Convention adjourns sine die, he shall sign"—

UNIDENTIFIED DELEGATE: —the original—

CLERK SMITH: Oh. "-the original shall be returned to the Convention Secretary.

PRESIDENT GRAYBILL: Any question about Rule 49? (No response) We'll pass 49.

CLERK SMITH: "Rule 50: Present constitution-referral. The President shall refer—(Inaudible)"

PRESIDENT GRAYBILL: Just a minute-have we got 50?

CLERK SMITH: "Rule 50: Present—

PRESIDENT GRAYBILL: Just a minute. Does everybody have 50? The journal and the Chair don't have 50. All right, now we have 50. And the delegates do have 50?

DELEGATES: Yes.

PRESIDENT GRAYBILL: All right, go ahead and read 50.

CLERK SMITH: "Rule 50: Present constitution-referral. The President shall refer each section of the present Montana Constitution to the appropriate Committees."

PRESIDENT GRAYBILL: Any discussion.

Mr. Champoux.

DELEGATE CHAMPOUX: I have a question about this, Mr. President, if I may direct it at you at this point. On this business--I don't want to bring up this public lands thing again, but we talked a little bit about it at noontime. Now, if we hold the hearings, is it my understanding, after you've given the sections, the committee that has the designation for the article will come out with the proposal; is that correct?

PRESIDENT GRAYBILL: Not necessarily. I have assigned them. Now, if there's a committee that feels that there should be a different assignment, I wish they'd bring it to my attention. I might change it-certainly would consider it. If you're talking about one of the committee-one of the present Constitutional parts.

DELEGATE CHAMPOUX: Well, we were referring--we had a little talk about Public Lands at noontime. We were going to talk about it with you after the meeting—

PRESIDENT GRAYBILL: Right.

DELEGATE CHAMPOUX: -today, and if you, for instance, give certain sections-&y, if you take the Public Lands Article and you give certain sections to the Natural Resources Committee-now, how are we going to come out with a proposal in terms of the Public Land Article? Are we going to come out with it, individual sections, from the Natural Resources Committee and the Education Committee? Do their proposals come to the Education Committee and then we develop a proposal in consultation with them, or-do you see the problem?

PRESIDENT GRAYBILL: Well, the Chair would like to speak to this and try to answer it for you. First of all, all Rule 50 does is suggest that I do what I've already done, which is divide up the Constitution. And I'm suggesting if you have any problems, let me know. And, third, if you don't like the way I've divided up the Constitution, I'm sure you can do what you're going to be able to do when I refer delegate suggestions to you. You're going to be able to appeal from the decision of the Chair and get a ruling of the body as to whether or not my division is correct, after I refuse or don't refuse to do it. Now, secondly you're-that's how we get it into the committee. Now, your question really is how we get it out of the committee. It would seem to me that the committee it's assigned to certainly has the duty to at least consider it. If another committee wants to consider it, under the rules that we've discussed and are still discussing, there are chances for you to ask to make it joint, at

which time, if you can't agree, I'll be glad to help, and I supposein a pinch, both of you could report it out and the Style and Drafting and/or the Convention would have to sort it out, so I think it can be done either way and it might depend on-and I suppose we'd have to work with the situation, Mr. Champoux. Any further discussion on Rule 50?

DELEGATE MCNEIL: Mr. President.

PRESIDENT GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. President, if it would not be too great an administrative burden, I, for one, would like to know to which committees the articles and sections of our present Constitution have been referred. I, of course, know which articles and sections have been referred to the committee that I'm on, but I am particularly interested in certain articles and sections of our present Constitution, and without knowing to which committee they've been referred, it's very difficult to assert some particular effort to keep track of their progress.

PRESIDENT GRAYBILL: All right, I will make a note to get it to you, and I'll have my secretary post the assignments that I've already made. They did appear in the press, but I'll have them posted. Is there further discussion of Rule 50? (No response) All right, we'll pass Rule 50.

CLERK SMITH: "Rule 51: Order of consideration of proposals. The prescribed order in which proposals introduced in the Convention are to be considered shall be as follows: Introduction: Delegate proposals shall be filed with the Secretary. Delegate proposals shall be assigned a number by the clerk, referred to the appropriate committee by the President, duplicated and distributed to delegates. Standing committee considerations: Standing committees shall consider all delegate proposals referred to the committee, prepare committee proposals, report committee proposals under Order of Business Number 1. Committee proposals will be received by Convention without a debate or vote. The President shall refer all committee proposals to the Committee of the Whole. The committee proposal shall be duplicated and distributed to the delegates. Minority committee proposals signed by 25 percent of any committee will be duplicated and referred to the Committee of the Whole. Committee of the Whole consideration: Committee proposals will be considered, debated, amended by the Committee of the Whole in order placed on General Orders of the Day. The Committee of the Whole shall debate and adopt by section the committee proposal. The Committee of the Whole shall report to the Convention under Order of Business Number 7 and refer the proposed article to the Committee on Style. A motion to segregate a report of the Committee of the Whole shall not be in order. Consideration and report of Committee on Style--articles: The Committee on Style shall make only changes as to style and form and grammar. The report of the Committee on Style on each article shall be made on Order of Business Number 1. The report shall be received by the Convention without debate or vote, and the President shall refer the report to the Committee of the Whole. The report shall be duplicated and distributed to delegates, Committee of the Whole consideration of report of Committee Style: The report of the Committee on Style shall be considered, debated and amended by the Committee of the Whole, section by section, as to style, form and grammar. The report of the Committee of the Whole shall be referred to Order of Business Number 5 for adoption. Adoption of articles: The Convention shall adopt individual article at Order of Business Number 5, section by section, by a majority of elected delegates and referred to Committee on Style for incorporation in proposed Constitution. Consideration and report of Committee on Style of proposed constitution and ballot: The Committee on Style shall prepare for submission to the electorate the proposals of the Convention and a ballot. The report of the Committee on Style on its proposals shall be made on Order of Business Number 1 and shall be received by the Convention without debate or vote, and the President shall refer the report to the Committee of the Whole. The report shall be duplicated and distributed to the delegates. Committee of the Whole consideration of proposed constitution and ballot: The proposal of the Committee on Style shall be considered only as to the form of the proposed Constitution and the form and style of the ballot. The report of the Committee of the Whole shall be referred to Order of Business Number 6. The vote on Order of Business Number 6 shall be without debate and be recorded roll call vote of all delegates elected to the Convention. Enrolling: The President shall direct the enrolling of the final proposal or proposals of the Convention. Signing of the Constitution: The enrolled copy shall be signed by the President, attested by the Secretary, and then signed by the other delegates in alphabetical order."

PRESIDENT GRAYBILL: Is there discussion on Rule 51?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, the Committee on Style had better start working right now. There's a typo on the second page where it does not-in the second major heading, there should be the word "on" after "committee".

PRESIDENT GRAYBILL: Would you read the whole heading? Is it under—

DELEGATE SCHILTZ: The whole heading should then read: "Committee of the Whole consideration of report of Committee"-inserting "on" between "Committee" and "Style"—"Committee on Style." It's okay in the body of the rule.

PRESIDENT GRAYBILL: You don't want a report on-you don't want to talk about the other committees specifically. In other words, you want the word "on" in between--"Committee on"—

DELEGATE SCHILTZ: Well, I think that's what they mean.

PRESIDENT GRAYBILL: Right.

DELEGATE SCHILTZ: I don't understand anything else from it.

PRESIDENT GRAYBILL: All right, I trust the Rules Committee will accept that amendment. Is there further discussion of 51? (No response) All right, we pass 51.

CLERK SMITH: "Rule 52: Required vote—"

UNIDENTIFIED DELEGATE: Mr. Graybill? Mr. Davis—

PRESIDENT GRAYBILL: Wait a minute -Mr. Davis, are you on 51?

DELEGATE DAVIS: Mr. President, it may be a point that we should clear up at this time on the last portion of that, where it says, "Committee of the Whole consideration of proposed constitution and ballot." The last line says: "The vote on Order of Business Number 6 shall be without debate and be a recorded roll call vote of all delegates elected to the Convention." It's a possibility that we might all not survive the Convention, there may be substitutions or other people, so maybe the word "elected" should be given some consideration there. It's just a thought.

PRESIDENT GRAYBILL: It's kind of a macabre thought, but what do you want to do about it? Mr. Murray, do you think that "elected" would be presumed to mean elected or replacement for an elected delegate?

Mr. Davis.

DELEGATE DAVIS: Well, sir, it appears to me that it also seems to be a mandatory thing, that every one of the elected delegates has to vote, not only death but also serious illness and absenteeism of other things might be interpreted as being restrictive there.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I have a solution. Suppose we amend the language of that particular sentence to read: "The vote on Order of Business Number 6 shall be without debate and be a recorded roll call vote of all delegates"-"all delegates period". We'll strike "of the delegates"--maybe that will be the solution, huh?

PRESIDENT GRAYBILL: All right, we've amended the proposal so that the sentence reads: "The vote on Order of Business Number 6 shall be without debate and be a recorded roll call vote of all the delegates period", striking "elected to the Convention". So it would be whatever delegates we had at the time.

DELEGATE MURRAY: Right.

PRESIDENT GRAYBILL: Is that all right with you, Mr. Davis?

DELEGATE DAVIS: (Inaudible)

PRESIDENT GRAYBILL: All right, now, we'll assume that that's amended automatically unless we hear other discussion about it, and we've already passed the rule unless somebody else says something else. We'd be glad to come back to it, but-okay, we've passed 51; go to 52.

CLERK SMITH: "Rule 52: Required vote on final consideration and adoption. On final consideration of committee proposals, a roll call vote shall be taken, section by section, and entered in the journal. On adoption of the proposed Constitution and ballot, a roll call vote shall be taken on the proposed Constitution and on the ballot and shall be entered in the journal."

PRESIDENT GRAYBILL: Is there any discussion of Rule 52? (No response) Rule 52 is passed.

CLERK SMITH: "Rule 53: Unfinished special orders. Any subject matter which has been made a special order for a particular day but which is not reached on that day shall then come up for consideration under the order of unfinished business at the next succeeding session of the Convention."

PRESIDENT GRAYBILL: Is there any discussion of Rule 53? (No response) Rule 53 is passed.

CLERK SMITH: "Rule 54: Order of business-"

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Just a moment.

Mr. Murray.

DELEGATE MURRAY: Somehow in our typing--retyping of Rule 54, we neglected to put on that that's the start of a new chapter entitled "Transaction of Business", so Rules 46 through 53, I think, are due for a motion, and I at this time move that we adopt Rules 46 through 53, as they have been respectively amended.

PRESIDENT GRAYBILL: Is that Chapter 6?

DELEGATE MURRAY: And that is Chapter 6, yes.

PRESIDENT GRAYBILL: Very well. The motion has been made that we adopt Chapter 6. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Now, 54.

CLERK SMITH: "Rule 54: Order of business. After call to order, invocation and roll call, the order of business of the Convention shall be as follows: 1: Reports of Standing Committees; 2: Reports of Select Committees; 3: Communications; 4: Introduction and Reference of Delegate Proposals; 5: Final Consideration of Proposals; 6: Adoption of Proposed Constitution and Ballot; 7: Motions and Resolutions; 8: Unfinished Business; 9: Special Orders of the Day; 10: General Orders of the Day-Committee of the Whole; 11: Committee Announcements and Notices. To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Convention shall revert to Order of Business Number 1 when reconvening after a recess."

PRESIDENT GRAYBILL: Is there any discussion of Rule 54? (No response) If not, Rule 54 is passed.

CLERK SMITH: "Rule 55: Roll call. The Secretary shall call the roll at the opening of each session of the Convention, and the President shall announce whether a quorum is present. The President shall announce and the Secretary shall enter in the journal the names of delegates absent with leave of the Convention and the names of the delegates absent without such leave. Vote by machine may be taken whenever a roll call or a vote by Ayes and Nays is directed by or in accordance with these rules."

PRESIDENT GRAYBILL: Is there any discussion on 55? (No response) If not, 55 is passed. .56.

CLERK SMITH: "Rule 56: Petitions entered in journal. No memorial, remonstrance, or petition shall be read or be entered in full in the journal unless ordered read or entered in the journal by the Convention."

PRESIDENT GRAYBILL: Any discussion of 56? (No response) 56 is passed. 57.

CLERK SMITH: "Rule 57: Motions. When a motion is made, it shall be stated by the President or, if in writing, it shall be handed to the clerk and read aloud to the Convention before being debated."

PRESIDENT GRAYBILL: Any discussion of 57? (No response) If not, it's passed. 58.

CLERK SMITH: "Reduced to writing. Every motion or amendment shall be reduced to writing if the President or any delegate shall request it and shall be entered upon the journal, together with the name of the delegate making it, unless the motion is withdrawn by the maker or is ruled out of order by the President."

PRESIDENT GRAYBILL: Any discussion of 58? (No response) 58 is passed.

CLERK SMITH: "Rule 59: Withdrawal of motions. After a motion has been stated by the President or read by the Secretary, it shall be deemed to be in the possession of the Convention, but it may be withdrawn by the delegate at any time before being amended or put to a vote."

PRESIDENT GRAYBILL: Any discussion of 59? (No response) 59 is passed.

CLERK SMITH: "Rule 60: Privileged motions. When a question is under debate, no motion shall be received except: 1: To fix the time at which to adjourn; 2: To adjourn; 3: To take a recess; 4: To reconsider; 5: To lay on the table; 6: For a call of the Convention; 7: To move the previous question; 8: To limit debate; 9: To postpone to a day certain; 10: To commit; 11: To amend; 12: To postpone indefinitely. The motions listed in this rule shall take precedence in order which they stand arranged. All of them shall be decided by the affirmative vote of a majority of those present and voting, except that a motion for the previous question requires the affirmative vote of two-thirds of those present and voting and a motion to postpone indefinitely requires the affirmative vote of a majority of elected delegates. When a recess is taken while a question pending, consideration of such question shall be resumed when the Convention reassembles unless it determines otherwise. No motion to postpone to a day certain or to commit, having been decided by the Convention, shall again be in order on the same day or at the same stage of the question. Whenever a proposal is being considered and a motion is then made, either to postpone indefinitely or to commit, amendments to the pending proposal shall first be in order before any vote is taken on any such motion."

PRESIDENT GRAYBILL: Is there any discussion on Rule 60?

Mr. Kelleher.

DELEGATE KELLEHER: I just have a couple of questions. To commit, does that mean return to the committee from whence it came, or what? Number-the motion, Number 10, "to commit"—what does that-Marshall, what does that mean?

PRESIDENT GRAYBILL: Mr. Murray, you are being asked a question. He wants to know what "to commit" means.

DELEGATE KELLEHER: He's got to look it up in the book. I'm sorry, Marshall, I can look it up in the book. Well, I-the other one, "except that a motion for the previous question requires the affirmative vote of two-thirds of those present." What does that mean? The previous question--say we're debating something and we want to cut off debate, is that what that means, Marshall?

DELEGATE MURRAY: Mr. President. Yes, the effect of moving the previous question is to close the debate.

DELEGATE KELLEHER: And that would require two-thirds'?

DELEGATE MURRAY: That requires two-thirds of those present and voting.

PRESIDENT GRAYBILL: Are there other questions or discussions about Rule 60? Rule 60.

Mr. Blaylock.

DELEGATE BLAYLOCK: A question for Marshall. That means, though, that can't be passed or moved in the Committee of the Whole, is that right?

PRESIDENT GRAYBILL: Other questions on Rule 60? (No response) If not, Rule 60 will be passed. Oh, wait a minute.

Excuse me, Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I don't understand that "commit", other than it refers to a committal service. (Laughter)

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Brazier.

DELEGATE BRAZIER: Mr. President, I really feel that a number of us uninitiated probably really don't appreciate what some of those motions are, and I would respectfully request Mr. Murray to attempt to describe them in substance to us. I refer to—

PRESIDENT GRAYBILL: Mr. Murray, do you want to give them a rundown on the committees?

DELEGATE BRAZIER: -lay on the table, call of the Convention, to commit-such things as that which are probably new to a good many of us.

DELEGATE MURRAY: Mr. President, I'm not sure that I can answer very many of these. These are privileged motions, and they are privileged in the order that they are listed. And I'm sure that "to fix the time to which to adjourn" is self-explanatory. Surely, "to adjourn" is clear. "To take a recess" is obvious. "To reconsider", we've already gone through that. "To lay on the table"—I think we're all familiar with what "to lay on the table" means-it means we're not going to discuss that matter any more, unless we say "to lay on the table to a day certain", which--and that's the same thing as "to postpone to a day certain"—basically the same rules. "For a call of the Convention" means that outside of the Committee of the Whole, since that motion cannot be made in that committee, if you call for the Convention, we will go look for you if you are not on this floor and we will bring you back, and if we cannot find you and we have made enough progress so that we can continue with the business, we'll discontinue having a call of the Convention. And we have "a call of the Convention"—I think there's a later rule in here that says that the Sergeant-at-Arms and his assistants may go places and bring you back. "To move the previous question" is effectively the same thing as to limit debate, which is the next one. "To postpone to a day certain" is, again, basically the same thing as "to lay on the table". It's to get rid of a matter for consideration. And "to commit"-it's in almost every privileged motion list that I can find, but I must confess that I don't know what that means, and I'll defer to my parliamentarian, who is Charles Mahoney. (Laughter) Number 11, "to amend", I think is self-explanatory. And "to postpone indefinitely" is to kill. There isn't any question about that, and because it is to kill, that means that you have to have the majority of all the delegates-not present and voting, but all of them.

PRESIDENT GRAYBILL: Go ahead, Mr. Brazier.

DELEGATE BRAZIER: Well, Marshall, perhaps a little further discussion will clarify it, but it seems to me that laying on the table, postponing to a day certain and postponing indefinitely somewhat overlap. Does laying on the table, first of all, make it possible to kill something without a vote at any future time'?

DELEGATE MURRAY: Well, I have not examined Mason's, which must be our Bible with respect to these matters, Goeff, and I am not prepared to discuss them in detail as such. Each of these motions can be made, and as they can be made they are discussed within this book, and there are different rules legally and procedurally that apply to the making of each motion. And I'm not prepared at this time to discuss all those matters with you, but I'll make a book available if you'd like to become familiar with them and wish to make any motion at any time.

PRESIDENT GRAYBILL: Mr. Brazier—

DELEGATE MURRAY: The reason they are here is because they are the common motions which have ordinarily been made in parliamentary circles.

PRESIDENT GRAYBILL: "To lay on the table" is to postpone temporarily, according to Mason's, and "to commit" is the same as "to refer". In other words, if something were brought back or were before us and we wanted to refer it to a certain committee, it's sometimes called a motion to commit it to such and such a committee. Do you have other questions'?

DELEGATE BRAZIER: Well, then, if I understand correctly, to postpone to a day certain is like laying on the table, only it may continue it over until the next day or some future date.

PRESIDENT GRAYBILL: But-Laying it on the table-it's there until somebody lays it off the table.

DELEGATE BRAZIER: All right, and to postpone indefinitely may have the effect of killing the proposal then?

PRESIDENT GRAYBILL: I think that's right.

DELEGATE BRAZIER: Thank you, one and all.

PRESIDENT GRAYBILL: Now, Mr. Kelleher.

DELEGATE KELLEHER: What's the difference—

PRESIDENT GRAYBILL: Well, I submit that we can study Mason's The point here is to list these motions, and I'll be glad to read them for you, but it might take us a long time and we got other things-it's all discussed in detail in Mason's. We have to go to Mason's and if somebody knows, I'm perfectly happy to have them tell you, but the point is—

DELEGATE KELLEHER: I don't want to pass on something, Mr. Chairman, that I don't know what I'm doing.

PRESIDENT GRAYBILL: All right, ask your question. I'll look it up.

DELEGATE KELLEHER: What is "the previous question" and what is the difference between "the previous question" and "the present question", or is there such an animal as "the present question"?

PRESIDENT GRAYBILL: "The previous question" is that I move the question.

DELEGATE KELLEHER: The one that's under discussion here and now?

PRESIDENT GRAYBILL: Right.

DELEGATE KELLEHER: That's all I wanted to know. Thank you.

PRESIDENT GRAYBILL: That's right. It's not a new, fancy one; it's the same one we've been talking about all the time.

Mr. Studer.

DELEGATE STUDER: I would like to know how you get a motion back on the floor that has been laid on the table'?

PRESIDENT GRAYBILL: It takes a two-thirds vote to bring it off the table is my understanding at the moment. Now, I may be wrong.

DELEGATE BLAYLOCK: Mr. President.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. No, I think it will take a majority vote. All you have to do, if it has been laid on the table, is to say, "I move that we take from the table the motion"—whatever was before the house--and it's seconded and it's passed by a majority vote, that question is back before the house.

PRESIDENT GRAYBILL: All right, that's right I guess, it isn't one of those taking two-thirds, so you just have to take it off like you put it on.

DELEGATE ETCHART: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. These privileged motions, some of them, are also applicable to our operation during Committee of the Whole. And I think it would maybe be a little more understandable in these rules if we would take the motions which are not applicable, which is Number 2, Number 5, Number 6 and Number 7, and then in parenthesis put Not in Committee of the Whole; so this way, looking at this rule, we would know which motions were allowablein Convention and which were allowable in Committee of the Whole.

PRESIDENT GRAYBILL: May I point out a difficulty? The point is that the line on the top of the next page makes these-puts these in an order of precedence, and that's why they'rein that order there. Do you follow me? So you've got a problem if you do that. The motions listed in this rule shall take precedence in the order in which they stand arranged, so you can't really withdraw them. Now if you want to mark them or note them, that would be all right with me.

DELEGATE ETCHART: Well, this doesn't change anything. I just thought, as a suggestion, maybe the members might want to do this in their own rules, but they could take this, and by taking Rule-Motion 2, rather, 5, 6 and 7, they could note that these motions are not allowed in Committee of the Whole.

PRESIDENT GRAYBILL: Mr. Murray, that is correct, is it not, that they are not allowed in Committee of the Whole?

DELEGATE MURRAY: Yes, and specified back in the rule of the Committee of the Whole, which I think is 28.

PRESIDENTGRAYBILL: Iwonderifthe Chair would be out of order if it entertained a motion that those be asterisked and the asterisk put at the bottom saying, "not in the Committee of the Whole".

UNIDENTIFIED DELEGATE: That's a good idea.

DELEGATE MURRAY: Mr. President, I think it's a good idea.

PRESIDENT GRAYBILL: Mr. Etchart, would you make that kind of an amendment?

DELEGATE ETCHART: Yes, I would so move.

PRESIDENT GRAYBILL: All right, the purpose of this is to show any delegate looking for this information quickly that Motions 2, 5, 6 and 7 should have an asteriskbefore or after them, asterisk, and then at the bottom it should say, "not applicable in Committee of the Whole" or "not usable in Committee of the Whole". And I take it that's the sense of Mr. Etchart's motion-or his amendment to Rule 60. Is there any discussion of his proposal? (No response) If not, all those in favor of his amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. All right, is there other discussion of Rule 60? (No response) If not, Rule 60 is passed. Hold up just a minute on the tape.

(Recess to change tape on recorder)

PRESIDENT GRAYBILL: The Convention will be in order.

Mr. Arness.

DELEGATE ARNESS: Mr. President, in Rule 60, shouldn't Section 12 also be one of the asterisked sections? That could also-can't be called under in the Committee of the Whole, as I understand it.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I didn't understand Mr. Arness. Ifhe might say that again.

PRESIDENT GRAYBILL: His question is, isn't the Motion Number 12, the motion to postpone indefinitely, also not available in Committee of the Whole?

DELEGATE MURRAY: Under Rule 28, it says that clearly.

PRESIDENT GRAYBILL: All right. Well, then, we'd have to have an asterisk after 12, too; is that correct?

DELEGATE MURRAY: Rule 28 says, "A motion to postpone indefinitely or to table or call of the Convention shall not be in order in Committee of the Whole."

PRESIDENT GRAYBILL: All right, will you please all add an asterisk to Rule 12, and we'll consider it amended.

Mr. Felt.

DELEGATE FELT: In connection with that matter, there are some of the others here, too, that would not he available in Committee of the Whole, but I didn't think it was necessary to make any point of it. I believe that we can end up with a very brief list of the motions that are in order while in Committee of the Whole and showing those that -of course, those motions would all be debatable, hut others-you could not have your Number 1 or Number 3, Number 8 or Number 9 or Number 10. I think the only ones you could have that are on this list would he Numbers 4, which we provide for by a special rule in a very limited sense, and Number 11.

PRESIDENT GRAYBILL: Well, let's add asterisks to all the rest of them.

DELEGATE FELT: Well, you can do that. As I say, really, the more helpful thing would he a list of those that are in order while in Committee of the Whole, so that everyone would have that to use while they are under consideration of business, under second reading, or Committee of the Whole house.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, earlier I agreed with some of these people, hut I would be happy to sit down and do this. I don't see that it needs to be made a part of these rules, but I will be happy to prepare a list of the motions that can be made under Committee of the Whole, since the rule that we have specifies those that cannot be made, and I will furnish it to all of the delegates.

PRESIDENT GRAYBILL: Would it be the sense, then, of the Convention that we ought to take all the asterisks out and do this by a separate list that the Rules Committee will supply to US?

UNIDENTIFIED DELEGATE: Okay.

PRESIDENT GRAYBILL: Let's take all the asterisks out. Now, we're hack where we were. All right, Rule 61.

CLERK SMITH: "Rule 61: Motions not debatable. A motion to adjourn is always in order except when a motion to fix the time to which to adjourn or a motion to amend the calendar and agenda is pending. A motion to adjourn, a motion to lay on the table, a motion for recess pending the consideration of other business, and all matters

relating to questions of order shall be decided without debate."

PRESIDENT GRAYBILL: Any discussion of Rule 61? (No response) All right, pass 61. 62.

CLERK SMITH: "Rule 62: Order of putting questions. All questions shall be put in the order in which they are moved, except in the case of privileged motions."

PRESIDENT GRAYBILL: Any question on 62? (No response) We'll pass 62.

CLERK SMITH: "Rule 63: Amendments must be Germane. No motion or proposition relating to a subject different from that under consideration shall be admitted under color of amendment or its substitute."

PRESIDENT GRAYBILL: Any discussion on 63? (No response) All right, we'll pass 63. 64.

CLERK SMITH: "Division of question. Any delegate may call for a division of the question, which shall be divided if it includes propositions which are so distinct in substance that, when one is removed or deferred, a substantive proposition remains for the decision of the Convention. A motion to strike out and insert shall be subject to division within the meaning of this rule."

UNIDENTIFIED DELEGATE: Shall not be subject—

CLERK SMITH: "...will not be subject"— excuse me.

PRESIDENT GRAYBILL: "-shall not be subject to division within the meaning of this rule." Is there any discussion of 64? (No response) All right, we'll pass 64. 65.

CLERK SMITH: "Previous question. The method of ordering the previous question, which shall not be made in the Committee of the Whole, shall be as follows: Any delegate may move the previous question, and unless otherwise stated, the motion shall apply to the immediately pending question only. The presiding officer shall put the question: 'Shall the main question now be put?' This shall be ordered only by affirmative vote of two-thirds of the delegates present and voting. Prior to the ordering of the same, a call of the Convention may be moved and ordered, but after ordering the previous question, nothing shall be in order prior to the decision of the pending question or questions, except demands for the Ayes and Nays, points of order, appeals from the decision of the Chair, and motion to adjourn or to take a recess, all of which shall be decided without debate. The effect of ordering the previous question is to put an end to all debate and bring the Convention to a direct vote upon the immediately pending question, and such other pending questions as we specified in the motion in their order down to and including the main question; provided, however, that when previous questions is ordered, amendments then on the Secretary's desk shall be acted upon. When a motion to reconsider has been taken under the previous question and decided in the affirmative, the fact that the previous question has been ordered shall have no operation or effect with respect to the question for which reconsideration has been ordered. If the Convention refuses to order the previous question, it shall resume consideration of the pending subject as though no motion for the previous question has been made."

PRESIDENT GRAYBILL: All right, is there any question about the-or discussion or amendment about Rule 65, on previous question'?

DELEGATE FELT: Mr. President.

PRESIDENT GRAYBILL: Mr. Felt.

DELEGATE FELT: This motion for the previous question is actually being made by him whenever he says, "Question".

PRESIDENT GRAYBILL: Right.

DELEGATE FELT: And while it is very tempting to all of us, many times, to make the motion because we are weary or unhappy for one reason or another, the fact that you're taking away from someone their opportunity to talk, no matter how tedious or wrong they may appear to be, is something that I hope everyone would consider as a very serious matter and that it would not be used unless you feel that someoneis really hampering the conduct of business to such an extreme degree that you just couldn't possibly abide by it. And perhaps this is an unnecessary comment, but since there have been a few questions asked about some of these procedural matters, and this one, which is really quite important, that-1 felt might deserve that little comment.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President.

would Mr. Felt yield to a question? Did I understand you, Jim, to say, that when somebody out here yells "Question", that's like moving? I disagree.

PRESIDENT GRAYBILL: Well—

DELEGATE BLAYLOCK: In order to move the previous question, you have to make a formal motion saying, "I move the previous question" or "I call for the question". It has to be seconded and moved by a two-thirds vote of the body.

PRESIDENT GRAY&ILL: May the Chair point out-1 think you're both right. You're right, Mr. Blaylock, except we don't have to have seconds here, so let's understand that. We don't need seconds. I'm not asking for seconds. Secondly, all I think Mr. Felt is saying is that when someone says "Question", they mean-if they were on their feet and had their mike in their hand and had been recognized, they would have moved the previous question. It certainly is an indication they want the Chair to move, hut I'm not suggesting you do it, and we certainly won't recognize previous questions until somebody stands up and makes the motion. Is that right, Mr. Felt? Is that what you understood?

DELEGATE FELT: Yes, that is the way that it's actually interpreted, I think, is that you don't treat it as a motion unless somebody insists by standing and demanding recognition. But in the general, technical sense, and I think it's so interpreted in Mason's Manual, that someone saying "Question" is, in effect, making a motion and often ignored, but they could insist that that's what they had done and demand that attention be paid to it.

PRESIDENT GRAYBILL: Right, but the Chair will generally not recognize it until you stand and ask for the floor, and then do you agree with me, Mr. Blaylock? I just wanted you to understand about the seconding. You don't have to have a second here. Okay?

DELEGATE BLAYLOCK: No, not okay.

PRESIDENT GRAYBILL: Well, that's the sense of Mason's and that's the sense of the rules and that's the way I intend to operate. Now, if you want a second to be required for every motion, then we better get going here, but on a— you mean just on the previous question?

DELEGATE BLAYLOCK: If a member stands up here and wants to stop debate while we're in Convention and he wants debate cut off formally, he has to move that, and it has to he seconded and passed by two-thirds of this body. If you just holler or yell "Question", we're just— that's just a general indication out here that we'd like to vote, but if any member rises, it's the Chair's job to recognize that person so debate can go on until a formal motion is made.

PRESIDENT GRAYBILL: Right, hut I want to point out to you, and I think it was in one of the drafts of the rules, that we took out the requirement for a second here, so it doesn't take two people to move the previous question. I just don't want you--anyone misinterpreting this. Mr. Romney, am I correct?

DELEGATE ROMNEY: I think so. I'd like 'to ask—

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I'd like to ask Mr. Felt a question.

PRESIDENT GRAYBILL: Mr. Felt, will you yield to a question?

DELEGATE FELT: Yes, indeed.

DELEGATE ROMNEY: Jim, in view of the fact that moving the previous question is not allowed under the rules for the Committee of the Whole here, and in view of the fact there will only be one vote on each of the 10 packages that we get from the committees, how are you going to move the previous question?

DELEGATE FELT: Well, I think that there will perhaps be more than one opportunity. It would have to arise, perhaps, under the order of business calling for motions and resolutions or during debate, such as we're having now, where matters are being considered by the Convention. I wouldn't attempt to try to peek into the future to determine just how it might come up, but the motion-it would seem to me-could be in order and we're providing for it, at least, in our rules, and so that it is important that we have a genera1 understanding of how you make the motion and the effect of the motion, knowing that it would be nondebatable and that it would serve the purpose of cutting off debate. As to exactly when or how it might come up, I don't attempt to predict where it might fit in, but it must be contemplated that it would be used or it wouldn't have any reference to it at all.

PRESIDENT GRAYBILL: Is there other—

Yes, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President, I would like to ask if the sentence, I believe it's the fifth one down, "The presiding officer shall put the question"-does this imply that when the motion is made by a delegate, calling for the previous question, that then he must berecognized by the Chair?

PRESIDENT GRAYBILL: Well, it's the Chair's interpretation that if you get the floor and you do move the previous question at a proper time and are not out of order, like in Committee of the Whole, then the Chair must put the previous question.

DELEGATE HARBAUGH: Thank you.

PRESIDENT GRAYBILL: Then the body must vote on whether or not to vote. Any other discussion on Rule 65? (No response) All right, we'll pass 65. 66.

CLERK SMITH: "Motion for reconsideration, Any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention or may give notice that he will make such a motion not later than the next succeeding session day. If the delegate who gave the notice does not make the motion at the next succeeding session day, any delegate may do so. The Committee on Style, Drafting and Submission may move for reconsideration of any subsequent day if 1 session day's notice of its intention to do so is given in writing to the necessary and entered upon the journal — oh...writing to the Secretary and entered upon the journal. A motion to reconsider shall take precedence over all other questions except a motion to fix the time to which to adjourn, a motion to adjourn and a motion to recess. A motion to reconsider shall not be renewed."

PRESIDENT GRAYBILL: On the same day-is that in there, Mr.-? That's out? Mr. Murray?

DELEGATE MURRAY: Mr. President, the last sentence should read: "A motion to reconsider shall not be renewed period".

PRESIDENT GRAYBILL: Strike "on the same day". Mr. Murray, I think I'd also like to ask that the committee amend so that it says "the Committee on Style". Let's strike out "Drafting and Submission" so we don't have to put in the rest of the title.

DELEGATE MURRAY: I **agree.**

PRESIDENT GRAYBILL: That's in the middle of the paragraph. Any other discussion of Rule 66?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, in connection with the Committee on Style clause in there, as I understand that section-it's the first time I've paid too much attention to it-it seems to me that the Committee on Style would have to make that decision on the-1 guess, in other words, it doesn't have one day's leeway. It would have to make its decision to move for reconsideration 24 hours before it can make that motion. In other words, it must give a day's notice. Is my understanding of that correct? I'm sure we can do it, but I want to be sure that that's what—

'PRESIDENT GRAYBILL: I would understand that to say that you can use-the things that the matter considered has been handed to your committee and you may have it for a considerable period of time.

DELEGATE SCHILTZ: Oh-I see.

PRESIDENT GRAYBILL: And the point is, any time after you pet it, you can move to reconsider it, but you've got to give everybody 1 day notice. You're the only one who can give-that can reconsider 3, 4, 5, 6 days later, if you haven't been forced to report by then.

DELEGATE SCHILTZ: I'm with you now. Thank you.

PRESIDENT GRAYBILL: Okay. Anything else on 66? (No response) If not, we'll pass 66. **67.**

CLERK SMITH: "Ordering calls of the Convention. Calls of 'the Convention may be ordered upon motion by the affirmative vote of a majority of the delegates present and voting, but the total vote in favor of such call shall not be less than 12."

PRESIDENT GRAYBILL: Any discussion of 67 (No response) Passed. 68.

CLERK SMITH: "Procedure on call of Convention. After a call of the Convention is ordered, the doors shall be closed and the delegates shall not be permitted to leave the floor of the

Convention without permission ofthefresident of the Convention. Thesergeant-at-arms shall notify all members within the hall of the Convention of the call. The roll of the Convention shall be called and the absentees noted. The sergeant-at-arms may, upon motion, be dispatched after the absentees. In such case, a list of absentees shall be furnished by the Secretary to the sergeant-at-arms, who shall bring such absentees to the floor of the Convention with all possible speed. In case of the sergeant-at-arms requires assistance in addition to the regularly appointed assistant sergeant-at-arms of the Convention, the President, upon motion, may deputize as a special assistant sergeant-at-arms any person properly qualified. The Convention may proceed to business under a call of the Convention pending the arrival of any absentees."

PRESIDENT GRAYBILL: Any discussion of 68? (No response) 68 is passed. 69. Oh, that's the end of a chapter. May we have a motion, Mr. Murray, that Chapter 7 be approved.

DELEGATE MURRAY: Yes, Mr. President, I move that Chapter 7, Rules 54 through 68, be adopted.

PRESIDENT GRAYBILL: The motion is to adopt Chapter 7. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. 69.

CLERK SMITH: "Chapter 8, Rule 69: Registration and regulation. Section 15 of the Enabling Act regulating lobbying during the Montana Constitutional Convention is adopted by this Convention by reference. Lobbying on the floor and foyer of the Convention Hall and south Senate lobby is prohibited one-half hour prior to the commencement of the session, during the session and within one-halfhour after adjournment."

PRESIDENT GRAYBILL: Any discussion of Rule 69? (No response) 69 is passed. That's the end of a chapter; and all in favor of Chapter 8, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. 70.

CLERK SMITH: "Rule 70: Reading of documents. When the reading of a document is called for and an objection is raised to such reading, the Convention shall determine without debate whether the document shall be read."

PRESIDENT GRAYBILL: Any discussion of 70? (No response) 70 is passed.

CLERK SMITH: "Rule 71: Putting the question. The President shall put all questions substantially in this form: 'As many are as in favor of, as the question may be, say Aye' and, after the affirmative vote is expressed: 'As many as are opposed, say No'. If the President is in doubt as to the vote, he may order a division or roll call of the Convention. A division of the Convention may be had upon the demand of five delegates. When a division of the Convention is ordered, the President shall declare the result. A recorded roll call may be had upon the demand of 10 delegates. On a tie vote, the question shall be determined as lost."

PRESIDENT GRAYBILL: Mr. Murray, do I under&and we've added the word "a recorded roll call"? Mr. Murray? Give Mr. Murray power, will you?

DELEGATE MURRAY: Mr. President, we have added "a recorded roll call may be had upon the demand"-and I suggest and submit we say "five delegates" to conform to what we have previously done in Rule 24.

PRESIDENT GRAYBILL: All right, the submitted Rules Committee rule, unless the rest of the committee stands and shouts, will be reduced to "five", too, to conform with our action this morning and the word "recorded" is added there.

Mrs. Bowman.

DELEGATE BOWMAN: Mr. President, there is a proposed amendment to this rule on everybody's desk. It's mistyped Rule 72, but it should be Rule 71. There are also two changes which need to be made in that proposal. I have a horrible feeling you may not have gotten one.

PRESIDENT GRAYBILL: I have a horrible feeling I didn't, too. Is there an extra one?

DELEGATE BOWMAN: I'm sorry, you may have mine.

PRESIDENT GRAYBILL: There may be—

DELEGATE BOWMAN: After the word "President" should be inserted the words "or Chairman", in the first paragraph. And in the second paragraph, after the word "Convention" should be inserted the words "or Committee of the Whole".

PRESIDENT GRAYBILL: All right, are you making this proposed amendment?

DELEGATE BOWMAN: Yes, I am. With those two inclusions in the form which is before you, I am proposing that this be adopted.

PRESIDENT GRAYBILL: All right, Mrs. Bowman's proposed amendment to Rule 71 is: "The President or Chairman shall put all questions substantially in this form: 'As many as are in favor of, as the question may be, say Aye' and, after the affirmative vote is expressed, 'As many as are opposed, say No'. A roll call vote shall be taken, except that it may be dispensed with if there is no objection from any two delegates. A division of the Convention or Committee of the Whole may be had upon demand of five delegates. When a division of the Convention is ordered, the President shall declare the results. On a tie vote the question shall be determined as lost". Mrs. Bowman, do you care to explain any difference between that and the present Rule 71 or comment on it?

DELEGATE BOWMAN: Well, I'd like to offer that-this makes in our rules—makes it mandatory for an open vote unless delegates request that the vote be not recorded. The way it is written, now it would have to be asked to be open.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Will Mrs. Bowman yield to a couple of questions?

PRESIDENT GRAYBILL: Mrs. Bowman.

DELEGATE MURRAY: Mrs. Bowman, is it your intention to leave out the sentence, "If the President is in doubt as to the vote, he may order a division or roll call of the Convention"?

DELEGATE BOWMAN: Yes, that is my intent.

DELEGATE MURRAY: You don't think that he should have that prerogative if he doesn't understand or hear clearly one way or the other which side may have won or lost?

DELEGATE BOWMAN: I feel that the wording, "As many as are in favor of say Aye; and opposed, say Nay" can be interpreted-the way I interpret it is that it would automatically come onto the board. There would be no voice vote unless on the demand—

DELEGATE MURRAY: Well, now, let's—assuming that there is a voice vote now-let's assume that--we've gone to that stage. If your rule should be passed.

DELEGATE BOWMAN: And no—

DELEGATE MURRAY: Now, doesn't the Chairman or the President have the opportunity to call for a division on his own if he's in doubt—not us, but him. It appears to me that, if the way you propose the rule, that he couldn't ask for it, and that's why I inquire.

DELEGATE BOWMAN: Yes, I think you're right, Mr. Murray.

DELEGATE MURRAY: One further question. As I read the rules, as I interpret your amendment, if 98 of us decide that we should object but 2 do not, we have to have a roll call vote.

DELEGATE BOWMAN: That's right. I think that's extremely unlikely, but I realize that that can happen.

DELEGATE MURRAY: And that's the way you want the motion to read?

DELEGATE BOWMAN: Right.

DELEGATE MURRAY: All right. Mr. President, I'd like to speak. I thought we had the matter of roll call settled once and for all, having debated it at length yesterday and again today. I respectfully submit that not enough consideration has been given to the amendment as been proposed, and I suggest that we reject it and proceed with our business.

PRESIDENT GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I appreciate Mr. Murray's suggestion that we ought to move along. I take it that the only reason for suggesting that we not have roll call votes is that we want always to keep moving along; that is, we

want to save time. I've heard that expressed a number of times, because again and again in this Convention we have said we are for committee hearings being open, for everything being open, for votes beingrecorded, for ourselves to be always on record on any substantive issue. Anywhere along in the committee process, all the way through the final document, we want people to be able to know where we stood at any particular point of progress; that some people feel that-we can hurry the process along by cutting out roll call votes. I think what we've done is, we've put the cart before the horse, or we put the shoe on the wrong foot, or the emphasis on the wrong syllable, or any way you want to put it, and Mrs. Bowman's suggestion here, I think, changes it back to where it should be. As a rule, our votes on all substantive issues should be a matter of public record, not an exception but as a rule, and that the-if the President decides, and he can usually decide whether or not this vote ought to be just taken by voice vote, he probably will bechallenged very seldom by any member of the floor, he can go ahead according to this new resolution and ask for that. Calling for roll call votes, asking for divisions of the house, if we pass the rule as it is without amending it, I think may take more time in the long run than simply allowing the President or the Chairman to suggest dispensing with the roll call, because if any one or two people in this body feel very strongly about having votes recorded, then what we must now do is, that person will rise and will call for a roll call vote. Now, we have been assured by men who have been here before in the Legislature that, if this occurs, everyone is going to be courteous enough that 5 or 10 people will immediately pop up and allow that to be done. So that, if just one person here makes up his mind that everything is going to be a roll call vote, we will have to go along with it, plus all the extra baggage of going through this cumbersome process every time. Why not simply use that little machine? We can punch it almost quickly as we can holler "Yay" and a "Nay", and this allows for this to be done on issues that really have some substance to them and not on every little maneuvering procedure.

PRESIDENT GRAYBILL: Is there further discussion on the amendment?

Mrs. Robinson.

DELEGATE ROBINSON: I rise to support the amendment as proposed by Mrs. Bowman, primarily because, after reading back over the rules that we approved this morning and realizing in Rule 24 we made roll calls the exception rather than the rule, and I think that that's a drastic mistake for this Convention. I think that roll calls should be the rule, and where procedural matters may take up too much time, there is adequate pro. vision in the amendment that the roll call may be dispensed with. But in the interests of the public's right to know where we stand and how we vote, recorded votes should be the rule.

PRESIDENT GRAYBILL: Is there further discussion'? Are you ready for the question;)

All right, Mr. Foster.

DELEGATE FOSTER: Would Mrs. Bowman yield to a question?

PRESIDENT GRAYBILL: Mrs. Bowman?

DELEGATE BOWMAN: Yes.

DELEGATE FOSTER: My question is, would you-was your intent of the motion to have this procedure, namely, of having a roll call at all votes, apply to the Committee of the Whole as well as other functions of the Convention?

DELEGATE BOWMAN: Do you mean to be sitting in Convention or are you referring to committees-substantive committees?

DELEGATE FOSTER: Committee of the Whole.

DELEGATE BOWMAN: You're talking about Committee of the Whole?

DELEGATE FOSTER: Right.

DELEGATE BOWMAN: Yes, I asked that the words "Committee of the Whole" be inserted after the word "Convention" and that the word "Chairman" be inserted after the word "President", because when we're in the Committee of the Whole, we call him Chairman.

DELEGATE FOSTER: Soyourintentwas that your motion would apply—

DELEGATE BOWMAN: To both Committee of the Whole and the Convention.

DELEGATE FOSTER: Thank you. I would like to speak in opposition to the substitute motion for the simple reason that I think this morning we discussed, rather extendedly, the need to keep the debate and movement of the Convention going. As a result of that, we voted to dispense

with roll call votes unless five delegates called for a roll call vote. I think that to include this back to the Committee of the Whole would, in a sense, go over what we have done this morning. I don't, however, favor the motion as proposed by the Rules Committee, and I would submit a substitute motion if the present proposed amendment fails.

PRESIDENT GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. President. Unfortunately, this morning when we were discussing Rule 24, I had not had sufficient time to fully explain what we were trying to do. Now, this movement was not initiated by me; it was a spontaneous one. I certainly appreciate it, and I certainly will support the motion.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: There is only one point I want to raise here. It may be a minor one, but it may be important later on and it may be something Mrs. Bowman might want to speak to, and that is: under Rule 24, we were talking about a recorded roll call vote. Now, in the amended Section 72, there isn't any roll recorded-the emphasis on the word "recorded". Is there any importance to that at all? Please.

PRESIDENT GRAYBILL: He's asking you to yield to that question, Mrs. Bowman.

DELEGATE BOWMAN: I'm sorry. I realize that I'm sharing this with two other people. Could I ask you to repeat it, please.

DELEGATE CHAMPOUX: All right, if you look at the accepted, passed Rule 24—

DELEGATE BOWMAN: Right. Okay.

DELEGATE CHAMPOUX: It talks about a recorded roll call vote.

DELEGATE BOWMAN: Yes.

DELEGATE CHAMPOUX: This may be a point that has no importance at all, but you may-it has something, in terms of time, as I see it. Now, if you look at your amended motion 71, it speaks just of a roll call. The emphasis—

DELEGATE BOWMAN: Recorded is implied there, Mr. Champoux.

DELEGATE CHAMPOUX: That may change the picture.

PRESIDENT GRAYBILL: Well, what do you mean, now? I understand that he-is he asking you to change it, or do you make an amendment, Mr. Champoux? Or are we going to—

DELEGATE CHAMPOUX: I was asking for the intent of the motion--whether it was to be recorded or not. She's indicated by her statement that it is to be recorded. Is that right?

PRESIDENT GRAYBILL: So we're then (Inaudible). May I add the word "recorded" before "roll call"-is that the sense? And you're amending your own amendment here. Okay? So that the second sentence now reads: "A recorded roll call vote shall be taken, except that it may be dispensed with if there is no objection from any two delegates." Any other discussion?

Oh, Mr. Helikcr.

DELEGATE HELIKER: Mr. President, I rise to support the intention of Mrs. Bowman's motion; however, I think that the language needs some cleaning up, and if it's in order, I would like to move that the question be referred back to the Rules Committee with instructions to report out tomorrow morning a new section which will achieve the objective that Mrs. Bowman wishes to reach, which I think is the sensible approach to this problem, because 1 think that the Convention can be guaranteed that there will be five people requesting roll call votes on practically every vote, and this is simply a waste of time. It would be much more sensible to follow Mrs. Bowman's suggestion that we have an automatic roll call unless the President requests that it be dispensed with, as suggested here.

PRESIDENT GRAYBILL: All right, the Chair will treat your motion as one to commit. So that means that you've asked to commit this matter back to the Rules Committee. That's the sense of the motion. It takes precedence.

Mr. Murray.

DELEGATE MURRAY: I hope that it does not carry, for the reason that I'm not sure that the Rules Committee would take any type of action on it, were it given to it with the directions to take the actions specified in the motion. I don't like, really, to see any motion made in any deliberative body where a committee is directed to do something specific in that fashion. If the committee is directed to take further action, that's one thing, If it's directed to do something specific, then I think it is wrong. At least, I think our committee would treat it as such.

PRESIDENT GRAYBILL: Will you-Mr. Heliker, what are you directing? If this motion to commit prevails, what do you want the Rules Committee to do? What's your instructions-to be included in the commitment?

DELEGATE HELIKER: My motion was that they reconsider this question and report out language which would implement the intent of Mrs. Bowman's proposal.

PRESIDENT GRAYBILL: All right, that's the motion to commit. Is there any other discussion?

Mr. Drum.

DELEGATE DRUM: Mr. President, I would like Mr. Heliker to clarify the procedure as to the intent of this--what he understands the intent here is-or, as I understood him to say, that the President or Chairman would request permission to do away with the roll call vote. Now, would that decision be put to a vote and would that decision have to become a roll call vote in order to determine whether the Chairman had the right to—

PRESIDENT GRAYBILL: Now, Mr. Drum, is that discussion germane to his motion to reconsider-I mean, to commit?

DELEGATE DRUM: I think it's germane to the point he made as he closed his comment.

PRESIDENT GRAYBILL: All right, we'll call it germane. Is there any other discussion of the motion to commit? Wait a minute now—

Mr. Choate.

DELEGATE CHOATE: Mr. President, I think we're overlooking one thing here. I think that we're failing to consider that the Chair or the President would exercise some judicious use of the request to dispense with a roll call vote. Now, we've gotten along all day today with a voice vote on most issues on these rules, and it has saved some time. We've spent enough time on it, it seems, but even so, the voting has gone along pretty well. I don't think the Chair would abuse the right to request a dispensing of a roll call vote, and on any issue that it certainly ought to be called for by roll call, I'm sure that the Chair would call for a roll call vote and record it. But items that are of not major concern and items like we've been going through today, while they're of considerable concern, I think we we can expedite the voting, and I don't see very much wrong with this system because if the Chair asks to have-to dispense with roll call and anyone objects to it and wants a roll call, then it can be called for.

PRESIDENT GRAYBILL: All right, now, the Chair will entertain further debate on the motion to commit, but let's limit ourselves to that issue, whether you want it committed or not. (No response) Seeing none, the Chair will put that motion-My. Heliker's motion to commit this matter to the Rules Committee with instructions to consider other language that might, however, do what Mrs. Bowman-the sense of what Mrs. Bowman's motion says. All in favor of this motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the motion to commit fails. Now we're back on Mrs. Bowman's amendment to Rule 71.

DELEGATE FOSTER: Mr. President.

PRESIDENT GRAYBILL: Mr. Foster. He beat you. (Laughter)

DELEGATE FOSTER: I would yield to Mr. Murray.

PRESIDENT GRAYBILL: Okay, Mr. Murray.

DELEGATE MURRAY: Fine. Thank you. I want to direct another question, if I may. Mrs. Bowman, will you yield again, please?

PRESIDENT GRAYBILL: Mrs. Bowman, will you yield to a question?

DELEGATE BOWMAN: Wish me luck. (Laughter)

DELEGATE MURRAY: Do I-I'm not sure that I fully understand the import of your amendment. By reference to the language in the second paragraph, a division of the Convention or Committee of the Whole may be had-are you attempting to impeach anything that we've done today, earlier, in Rule 24?

DELEGATE BOWMAN: No, I'm not at all, Mr. Murray.

DELEGATE MURRAY: Okay.

DELEGATE BOWMAN: The only thing I'm trying to do is be positive in alignment with what Mr. Harper and Mr. Heliker have said, to make roll call votes the rule rather than the exception, and my intent is not at all to undo what we did in Rule Number 24.

DELEGATE MURRAY: I didn't think so, because the division of the Convention or Committee of the Whole is just as to a division-it has nothing to do with the subject of roll call, does it?

DELEGATE BOWMAN: Well, you're the expert on parliamentary—

DELEGATE MURRAY: I didn't draft the amendment.

DELEGATE BOWMAN: I'm not-1 don't think it does.

DELEGATE MURRAY: Okay. Now then, another question. Are you attempting to impeach Rule 48, "Resolutions", which we already passed this afternoon? The last sentence says, "No recorded roll call votes shall be taken under the consideration of resolutions".

DELEGATE BOWMAN: Well, I think there would probably be some question as to whether you could call "questions", in the first line, "resolutions", and my original intent was not to mean resolutions.

DELEGATE MURRAY: Okay, thank you.

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. President, I offer a substitute motion.

PRESIDENT GRAYBILL: Is it in writing?

DELEGATE FOSTER: It essentially is the same as Rule 71, which was-the substitute Rule 71, which was presented to you.

PRESIDENT GRAYBILL: All right, I'll hear it.

DELEGATE FOSTER: It is essentially as it was originally written, removing "President or Chairman"-in other words it shall read, "the President shall" in the first sentence and, in addition to that, following the second paragraph, "shall not"-"this rule shall not apply to Committee of the Whole or committee meetings". In addition to that, it would be-following the second paragraph, would read, "If the President is in doubt as to the vote, he may order a division or call of the Convention." The intent of' the substitute motion is to haveroll call votes apply to all votes of the Convention, with the exception of the Committee of the Whole, as previously provided under Rules 24 and 58. This would insure that we have roll call votes for the few votes we anticipatein the so-called final third debate stage-third reading stage. My intent is that wc should not require delegates to rise and request roll call votes at the important stage offinally approving the business of the Convention.

PRESIDENT GRAYBILL: Is there any discussion of the proposed second amendment?

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, [President] I think we're compounding the problem, and I submit that the other states--when they passed the rules; substantially, it's the same as ours as amended by the Rules Committee and submitted-wereright. We should not bestanding on this floor without coming in advance to the Rules Committee with these amendments and be attempting to amend them on the floor. Nobody came to the committee, even though we met 2 hours over lunch with Mr. Mahoney to propose such an amendment, although I understand at lunch, somewhere in this town, this amendment was conceived. I therefore suggest that we reject the substitute and-the substitute and proceed.

PRESIDENT GRAYBILL: Is there further discussion of Mr. Foster's motion? (No response) All right, we're going to vote on Mr. Foster's amendment. His amendment "Rule 71: Putting the question is: The President shall put all questions substantially in this form: 'As many as are in favor of, as the question may be, say Aye' and, after the affirmative vote is expressed, 'As many as are opposed, say No'. A recorded"—I think you wanted that word in there-"roll call vote shall be taken, except that it may be dispensed with if there is no objection from any two delegates. This rule shall not apply to Committee of the Whole or committee meetings. A division of the Convention"-and I think you meant to leave out the other parenthetical expression—"may be had upon the demand of five delegates. When a division of the Convention is ordered, the President shall declare the result. If the President

is in doubt, he may call for a division; and on a tie vote, the question shall be determined as lost." As many as are in favor of Mr. Foster's second amendment, say **Aye.**

(No response)

PRESIDENT GRAYRILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the amendment fails. We're back on Mrs. Bowman's amendment. Is there further discussion? (No response) If not, we'll put that, motion. "Rule 71: Putting the question. The President or Chairman shall put all questions substantially in this form: 'As many as are in favor, say Aye' and 'As many as are opposed, say No'," and so forth. "A recorded roll call vote will be taken, except that it will be dispensed with if there is no objection from any two delegates. A division of the Convention or Committee of the Whole may be had upon demand of any five delegates", and so forth.

Mr. Driscoll, for what purpose does the delegate rise?

DELEGATE DRISCOLL: A point of clarification. I would like to know what this sentence means: "A roll call vote shall be taken, except that it may be dispensed with if there is no objection from any two delegates". I don't know what it means.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: I think the problem is you've got a double negative in there that Mr. Driscoll has discovered. (Laughter)

DELEGATE BOWMAN: I think you're right, Mr. Driscoll. I think there's a typographical error here. but I'm not really positive.

PRESIDENT GRAYBILL: I think you want to take out the word "no", Mrs. Bowman.

DELEGATE BOWMAN: I think you're right.

PRESIDENT GRAYBILL: All right, we'll take out the word "no" for you, Mrs. Bowman. That satisfy you, Mr. Driscoll?

All right, now, we'll put the question again, It's Rule 71, amended, and the sense of it is that the President or Chairman, so that it applies to either the Convention or the Committee of the Whole, shall generally ask for Ayes and Nays and a recorded roll call vote will be taken unless two delegates--unless it's-shall be taken, except that it may be dispensed with if there is no objection from any two delegates. The-I think we'd do what we said this morning-the Chair would say, "We'll dispense with a roll call vote unless there's two objections", and that's how it would work, all right, and then the rest of it's the same. Now, as many as are in favor of Mrs. Bowman's motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: As many as are opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and that motion does not prevail-that amendment. Now, we're back on Rule 71, and are there other amendments to Rule 71? (Noresponse) If not, the Chair will pass it. So stand up if you want to amend it. All right, we'll pass 71. Now, we'll go to 72: "Recognition during roll call". 72.

CLERK SMITH: "Rule 72: Recognition during roll call. After a question has been stated by the President and the call of the roll has been started, the President shall not recognize a delegate for any purpose, except upon points of order or for the purpose of explaining his vote on a proposal or amendment thereto, until after the announcement of the vote. The clerk shall enter upon the journal the names of those voting Aye and the names of those voting No."

PRESIDENT GRAYBILL: Is there any discussion of 72? (No response) If not, 72 will be taken as passed. Now, before we go to 73, Mr. Etchart, you made a motion and actually I think it passed back there about theasterisks. We'regoing to leave the motion, but we're going to make the showing in the journal that you deleted-that it's been deleted as not germane. Okay, now we're on **73.**

CLERK SMITH: "Roll call. At the roll call to be taken at the opening of each session and upon calls of the Convention, the names of the delegates shall be called alphabetically or the voting machine shall be used and the absentees noted, after which the names of the absentees shall not be called."

PRESIDENT GRAYBILL: Any discussion of 73? (No response) Passed. 74.

CLERK SMITH: "Amendment or suspension of rules. These rules may be amended by the affirmative vote of a majority of delegates after the proposed amendment has been submitted in writing, has been considered by the Committee on Rules, and has been in the possession of the delegates not less than 2 session days prior to its consideration. The Committee on Rules may be discharged from further consideration of any proposed amendment upon the same notice and by the same vote as is provided in Rule-"

PRESIDENT GRAYBILL: -blank.

CLERK SMITH: -blank for proposals. One—

UNIDENTIFIED DELEGATE: It's 43.

CLERK SMITH: "-Rule 43 for proposals. One or more rules may be suspended for a specified purpose by affirmative vote of two-thirds of the delegates present or a majority of all delegates of the Convention, whichever constitutes the lesser number."

PRESIDENT GRAYBILL: Is there any discussion of Rule 74? (No response) All right, it's passed. 75.

CLERK SMITH: "Appeals-form of question. On all appeals from decisions of the **Chair,** the question shall be: 'Shall the appeal be sustained?' A favorable vote of a majority of delegates present and voting shall sustain the appeal. The presiding officer may cast his vote on an appeal from his decision, and he shall have the right to explain his decision."

PRESIDENT GRAYBILL: Any discussion of 75? (No response) Passed.

CLERK SMITH: "Rule 76: Mason's *Rules of Legislative Procedure. In* all cases not covered by these rules, the controlling parliamentary authority shall be the latest edition of Mason's *Rules of Legislative Procedure."*

PRESIDENT GRAYBILL: Any discussion? (No response) Passed.

CLERK SMITH: "Rule 77: Voting by the electrical roll call system. When the Convention is ready to vote upon any question requiring a roll call and the vote is to be taken by the electrical roll call system, the presiding officer shall announce: 'The question is on the passage of, designating the matter to be voted upon. All in favor of such question shall vote Aye, all opposed shall vote Nay. The Convention will now proceed to vote.' After affording the delegates sufficient time in which to vote, the presiding officer shall announce: 'Has every delegate voted?' Then, 'Does any delegate wish to change his vote?'; and after a short pause, he shall then say: 'The vote is now closed and the clerk shall proceed to record the vote.' The clerk shall immediately start the vote recording equipment, and when completely recorded, the President shall announce the result. The Secretary shall enter upon the journal the result, in the manner provided by the rules of the Convention. No delegate may cast the vote of another delegate in any session of the Convention, Committee of the Whole or committee meeting, nor shall any person not a delegate cast vote for any delegate. Any delegate who votes or attempts to vote for another delegate may be punished in such manner as the Convention determines. If a person not a delegate votes or attempts to vote for any delegate, he shall be barred from the floor of the Convention for the remainder of the session and may be further punished in such manner as the Convention determines proper. Proxy voting is not permitted."

PRESIDENT GRAYBILL: Any discussion of Rule 77?

UNIDENTIFIED DELEGATE: There is more.

CLERK SMITH: "At no time shall the voting machine show a running tally of the votes being cast by delegates, and the colored lights next to the delegates' names shall be used at all times."

PRESIDENT GRAYBILL: Now, is there any discussion of Rule 77?

Mr. Cate.

DELEGATE CATE: Mr. President, this is the point I brought up earlier about the voting machine. In order for a delegate seated here to know, under Rule 66, whether or not he will be on the prevailing side of an issue so that he might move to reconsider the next day, it is going to be necessary that we have the running tally. And Mr. Foster, I think, is the one who has suggested that we not have it, but I think it's essential that we do have it for that purpose, and so I would move that that last sentence be stricken from the rules.

PRESIDENT GRAYBILL: Mr. Cate, I don't understand you at all. To find out whether

you're on the prevailing side, you wait until the tally is announced. Now, you don't have to see it totaling up there to know if you're on the prevailing side. You have all day to move for reconsideration. I don't understand you.

DELEGATE CATE: Well, as I understand the motion to reconsider, you have to have been on the prevailing side of the vote—

PRESIDENT GRAYBILL: Right.

DELEGATE CATE: -to make the motion. And looking at that board on a close vote, you can't tell from out here because the numbers are not going up there until after you call for the vote, so the vote's over by the time you know whether or not you were on the prevailing side.

PRESIDENT GRAYBILL: That's right. You—

DELEGATE CATE: And if you're on the losing side, how are you going to move to reconsider?

PRESIDENT GRAYBILL: You aren't. That's the whole point of the motion.

DELEGATE CATE: Right, and that's my point of having therunning tallies so that you can make sure thatyou'reon therightside. (Laughter)

PRESIDENT GRAYBILL: All right, now-1 think, Mr. Gate, your problem is that the point of the whole idea of reconsidering is that you have to be on the prevailing side in order to reconsider and give the other side another chance and, of course, you never know that until the vote's completed, and it is not a matter of changing. Now, I think you merely misconceive the nature of the rule, but if you want to make an amendment, you make one.

DELEGATE CATE: I might not understand the motions to reconsider, but I know that in the Legislature and in Congress it's done all the time. You make sure that you're on the prevailing side. Oftentimes you will find a senator or congressman who will pass just to find out which side is going to win and then he comes in and votes so that he can move to reconsider at a later time.

PRESIDENT GRAYBILL: Well, but the point is that anyone can move to reconsider who happens to end up on the prevailing side.

DELEGATE CATE: Well, you can always get a friend to do it for you.

PRESIDENT GRAYBILL: Right. Now, if you want to make an amendment, you make it, and we'll vote on it.

DELEGATE CATE: I don't wish to make an amendment.

PRESIDENT GRAYBILL: Okay.

DELEGATE CATE: That's fine.

DELEGATE JOYCE: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: (Inaudible) member of the Rules Committee to try and move its own rules after having gone along with—

PRESIDENT GRAYBILL: A little closer to your mike.

DELEGATE JOYCE: -the committee, but I move to strike the last paragraph of Rule 77.

PRESIDENT GRAYBILL: All right. A motion has been made to strike the last paragraph of Rule 77. Is there discussion on the rule-on the motion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, thereason for theinsertion ofthis paragraph is the result of a extended debate previously in that the people sitting up in this front row thought it was a little unfair that the people sitting in the back end of the auditorium should have the privilege of determining who's going to win and then be on the winning side, and all that this does is eliminate that running tally. And for that reason, I resist striking it. I think that people can see where they're voting, but as far as the running tally is concerned, you'll have to count rather quickly to know which side you're on.

PRESIDENT GRAYBILL: Is there further discussion? (No response) All right, we'll put that motion. Mr. Joyce's motion is to eliminate the running tally language in the last sentence of Rule 77. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the motion fails. Is there any other discussion of Rule 77?

Mr. Champoux.

DELEGATE CHAMPOUX: Again I rise to ask whether you mean, in the first paragraph—or the Rules Committee means to have this a recorded roll call vote, and if so, we should perhaps state it in the motion.

PRESIDENT GRAYBILL: Do you want the word "recorded" before "roll call", Mr. Murray?

DELEGATE MURRAY: I don't object to that.

PRESIDENT GRAYBILL: We're putting the word-the committee is amending, unless the other committee members object to saying a "recorded roll call"-the first two or three words of thesecond line of the whole rule. We'll just put that in by interlineation to clarify that. Any other discussion of Rule 77? (No response) If not, Rule 77 is passed. 78.

CLERK SMITH: "The present votes. Votes cast as present shall be recorded in the journal as present, but such votes shall not be counted in determining the required number of votes on those measures or questions needing the affirmative vote of those present and voting."

PRESIDENT GRAYBILL: Any discussion of Rule 78? (No response) All right, it will be passed. 79-that's 80—remodeled to 79.

CLERK SMITH: "Rule 79: Convention schedule. The Convention shall have a schedule, which shall be prepared by the President, with the advice of the Committee on Rules and Administration, and submitted to the Convention for its approval. Said schedule shall be attached to these rules as an appendix."

PRESIDENT GRAYBILL: Is there any discussion of Rule 79? (No response) Any discussion of Rule 79? If not, Rule 79 will be passed.

Mr. Murray.

DELEGATE MURRAY: I move the adoption of Rules 70 through 79 as they have been respectively amended.

PRESIDENT GRAYBILL: All right, Rule 70 through 79, Chapter whatever it is. All those in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it-it's passed. You all understand that we're saving-Mr. Toole and I are saving money if this debate goes on very much longer. (Laughter) All right, Mr. Murray, may I inquire-is it the intention of the Rules Committee, then, to reassemble and print these rules in the morning and you'll have a resolution that we adopt the rules in toto tomorrow morning'? Is that correct?

DELEGATE MURRAY: Well, I deem the rules already adopted—

PRESIDENT GRAYBILL: All right.

DELEGATE MURRAY: -by virtue of the action of this Convention today. We're in an order of business, we can do so, and I think—

PRESIDENT GRAYBILL: All right, then, why don't you make a motion that we adopt the rules as a whole.

DELEGATE MURRAY: I move we adopt Rules 1 through 79 as today amended.

PRESIDENT GRAYBILL: Does anyone want a recorded vote? It's your last chance. All right, (Laughter) all in favor of adopting Rules 1 to 79, as amended and debated today, signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and the rules are adopted. Now, I have a couple of announcements--and we do want to adjourn, but I'll hear what you want, Mr. Harper.

DELEGATE HARPER: Just to save you another half-minute's time, you and Mr. Toole and to say what I'm sure the other delegates here would like to express, we took all day just going over the stuff that the committee, and Mr. Murray in particular, had to go over with a fine-toothed comb. Now, they evidently spent hours of work and a lot of real thinking on this--and I know if we had left this unsaid, it would have still been an unspoken sentiment among us, that we deeply ap-

preciate the thoughtful and considerate work and presentation Mr. Murray and his committee has given us. (Applause)

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, are you going to have time for committee announcements?

PRESIDENT GRAYBILL: I'm going to announcements in 1 minute. Hearing no objection, the Chair will move to Order of Business Number M, "Announcements of Committee Meetings." Now, that may not be M under the new rules, but it's M under today's Mason's,

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, there will be a meeting of the Style and Drafting Committee tomorrow morning-8 o'clock. Our office has now been outfitted. We're in the right-hand back end of the Supreme Court library. That office is not open, but our-Mrs. Dowling has a key to it, so if you're there 5 or 10 minutes early, it might not yet be open.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President, there will be a meeting of the Administration Committee-1:30 in the Senate chambers tomorrow afternoon. There will be a hearing on the Public Information Committee at 3 o'clock in the Senate chambers tomorrow afternoon.

PRESIDENT GRAYBILL: These are open to all the delegates, right?

DELEGATE TOOLE: They are open to all the delegates, and they are invited.

PRESIDENT GRAYBILL: **To** discuss the budget, staff and the public information.

Mr. Champoux.

DELEGATE CHAMPOUX: There will be a meeting of the Education and Public Lands Committee, a very short one, at 8:45 tomorrow morning in the committee room. Thank you.

PRESIDENT GRAYBILL: And it certainly will be short.

Mr. Joyce.

DELEGATE JOYCE: I would like the members of the Executive Committee to meet with me here in the chamber immediately upon adjournment today.

PRESIDENT GRAYBILL: Meeting immediately, here, upon adjournment--of the Executive Committee. That can be a long one.

Mr. Holland.

DELEGATE HOLLAND: There will be a meeting of the Judicial Committee 4 or 5 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: The meeting of the Public Health, Welfare, Labor and Industry Committee, at 8:30 tomorrow morning in the cornmittee room.

PRESIDENT GRAYBILL: 8:30 in the morning.

Mr. Etchart.

DELEGATE ETCHART: There will be a meeting of the General Government and Constitutional Amendment Committee 10 minutes after recess tomorrow morning, Room 410.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Meeting of the Legislative Committee, 10 minutes after adjournment tomorrow.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, no rest for the weary. Rules, 8 o'clock in the morning.

PRESIDENT GRAYBILL: All right, now, the Chair has the following announcements. First of all, your daily schedule summary carries, on Thursday, an item called "Meeting with representatives of news media", at 9:15. The Chair wants to announce that this has been cancelled. We're not ready to have this meeting, and the news media don't want to have it yet, and we'll try and arrange it later. But it's cancelled, so forget about that for Thursday morning. Secondly, the Chair has been asked to announce that there has been a request that Presbyterian delegates, of which there are 13, meet at the front of Convention Hall here at noon tomorrow for a picture. And the Chair wishes to announce that we will make every effort to get to Jorgenson's by 6:30 for you. Are there any other announcements?

If not, the Chair would recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that we stand adjourned until 9:00 a.m., Wednesday, January the 19th.

PRESIDENT GRAYBILL: All in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So moved.

(Adjournment at 5:40 p.m.)

January 19, 1972 Sixth Day Convention Hall
9:00 a.m. Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. Reverend Harbaugh, will you give the invocation.

DELEGATE HARBAUGH: I should like to read one verse of Scripture before we pray. "And they came to Him and said to Him, 'Teacher we know that You are true and care for no man for You do not regard the position of men but truly teach the way of God'." Let us pray. God, our Father, we thank You that in Jesus of Nazareth You have shown Your faithfulness to truth and love to all mankind. Today, as we are caught up in the fervor of debate, grant us to so conduct ourselves in upholding love and truth, that even our enemies will not be able to complain against us. Amen.

PRESIDENT GRAYBILL: You may be seated. The clerk will take the roll, and I would like to announce that Robert Woodmansey is excused this morning. His father passed away and he is gone today, so he's excused on the roll today. Use your voting machines. Use the Ayes. (Laughter)

CLERK HANSON: Aasheim. Bates. Robert Hanson-Rod Hanson, I guess.

DELEGATE R.S. HANSON: Yes. I'm right here,

CLERK HANSON: Bates. Would you please register (Inaudible).

PRESIDENT GRAYBILL: Mrs. Bates, would you vote Aye. Did Mrs. Bates vote Aye? So, Hanson is absent at the moment. All right, if he comes in, tell him to announce his presence, but for the moment, he's absent. All right.

CLERK HANSON: Mr. President, 98 delegates voted present.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong,	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Absent
Harbaugh	Present
Harlow	Present
Harper	Present
Warrington	Present
Heliker	Present
Holland,	Present
Jacobsen.,	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present

McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius..	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg..	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Excused

PRESIDENT GRAYBILL: Very well. Now, this morning we will follow the order of business in Rule 54, starting at the top. Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Let me stop on that a moment. Your delegate proposals should go to the clerk, who is the alter ego of the Secretary, and the clerk will number them and put them in my office. I will number them, and they will come back and be read here by number and title only and referred, so you'll know when they're referred where they go. On the citizen suggestions, they are also being numbered in the clerk's office, given to me. They will be assigned to the committees and sent directly to the committees, and I would like to point out to the committee chairmen that, when you get citizen suggestions, sometimes the press may not have gotten to see them in the clerk's office, and if they come and ask, please let them look at them, and then keep them. All right, Final Consideration of Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 6, Adoption of Proposed Constitution and Ballot.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 7, Motions and Resolutions.

CLERK HANSON: "Mr. President. A resolution of the Constitutional Convention of the State of Montana establishing its workweek. Date introduced: January 19, 1972. Be it resolved: That the workweek of the Montana Constitutional Convention shall be Monday through Friday. Introduced by Rules Committee. Signed: Marshall Murray, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that the Resolution Number 1 be passed.

PRESIDENT GRAYBILL: All right, the motion is on Mr. Murray's Resolution Number 1, which is this matter of the workweek, and the purpose of the resolution is to place the matter before you. And the Rules Committee has consented to make up its mind one way or another, tentatively, so that you may debate it, and they've tentatively said Monday through Friday, and debate is now open on the proposition of what type of workweek you want.

Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, I rise to oppose the Rules Committee's rule of a workweek on Monday through Friday. It has been the

announced contention of this Convention and the delegates throughout that we want the greatest amount of citizen involvement and to provide free access to their being here and participating in this Convention. A very large segment of our population works 5 days a week. We also have between 25,000 and 30,000 voting college students who are on a &day-a-week schedule. I would think that if we went on a Tuesday through Saturday week, many working people who wanted to come and share a day at the Convention with their family or come by themselves-college students--we have some 9,000 to 10,000 teachers who work on a 5-day week in our state. They would have an opportunity. They have devoted their lives to teaching social science, government, civics. It would give them an opportunity to come and attend the Convention. It would also, if we were off Sunday and Monday and we're trying to catch up on our work, give us a day when the other public offices are open here-to get to the superintendent's office, the land office, the highway office or whatever office we wanted to get into, instead of being off on a dead, nonproductive weekend, if we stay in Helena. If we're to return home to our communities, it would give us a day when the offices are open in our communities. We talk about we're going home and keep in touch. That's lip service. You go home on a weekend, you're going home and watch TV and go to bed, probably. Nothing goes on much on a weekend. If you want to get home and-when you can see the people and when they're working, Monday would be a good day for that. I'm very concerned that the student population in our university system—they're the ones that are going to make this Constitution work-they and the generations that follow them, if we write a Constitution--and when all the delegates here signed up for this job, we should have arranged our affairs so we can be here. I noticed one of the press releases said some of the delegates thought it would he handier for their business, and I think that's the last consideration we need. But as a practical matter, whether a delegate be a lawyer or a farmer, rancher or businessman, if you're home on one workday when your banks are open, your courthouses, your other public businesses, they probably could attend to some of their business while they are home, but I think that should he the last consideration. I'm very concerned as to the argument will he presented—well, history shows they don't attend. I don't think that's material. I think the purpose of this is that we are open, available to the people to come. We're putting out a great amount of capital in this Convention for public information; and for the six or seven Saturdays that we're going to he meeting, I think we should be here; and if any of the public, including the Capitol employees, want to attend, we should he open on a 5-day week, Tuesday through Saturday and give them a chance to come. Whether they come or not, then, that would be their concern. At least we are available and willing to work on that sort of week. So I oppose the rule and would move to make a substitute resolution that this Convention adopt the workweek of Tuesday through Saturday.

PRESIDENT GRAYBILL: Mr. Davis has made an amendment-has proposed an amendment to the resolution that the sense of it would be changed to Tuesday through Saturday. We're open for debate on the amendment.

Mr. Toole.

DELEGATE TOOLE: Mr. President, Mr. Davis has stolen my entire thunder. All I can say is that, in service to the people of Montana and from the standpoint ofpuhliceducation and public information, I think it is essential that we have a Tuesday through Saturday week. I support Mr. Davis' substitute motion.

PRESIDENT GRAYBILL: Mr. Hanson. Mr. Hanson, do you want to he shown present?

DELEGATE ROD HANSON: Mr. President, I rose primarily for that purpose.

PRESIDENT GRAYBILL: All right, you may now be shown as present.

DELEGATE ROD HANSON: May I also second the thoughts of Mr. Davis and Mr. Toole. I think that everything they have said is so right—that we should definitely consider meeting Tuesday through Saturday.

PRESIDENT GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, thank you for the party last night. I hope I can be somewhat articulate. I'd like to he a little hit specific about this. In Missoula, what we had contemplated, if we had Mondays available to us—number one, we cannot get down to the TV stations. We have been doing this. We have been going down as a group. That-the TV station has opened up a sort of panel-facilitated a panel discussion where we each talk for about 2½ minutes. And we've been able to talk about the things that we've been looking forward to doing and what we contemplate doing. The TV stations are not open

on Saturday and Sunday, but they are open on Monday. Now, what we had thought that we could do is to go down there--and this is with the TV stations-go down there, where all eight of us go on; we say what has been going on in our committee meetings. This will have more and more depth--could have more and more depth as the weeks go by. And I'm sorry, I had another idea. But as we have this organized with the TV people, we cannot do it on Saturday. We can do it on Monday. We also can talk to luncheons on Monday. All this can be available to us before we come back here on Monday afternoon, and another thing I'd like to mention is that we had a meeting in Missoula of about a 150 people. We asked them the question as to what they would like, how they would like it if we could set it up this way. About five people raised their hands that they would like a standard workweek and I couldn't count the number of people who raised their hands that they would really appreciate it if we could have a Saturday through Tuesday--a Tuesday through Saturday workweek. Thank you.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I rise in opposition to Mr. Davis' motion, and I'd like to throw in a few other comments, if I may. First of all, other constitutional conventions, as Mr. Davis has mentioned, that did work on Saturday found that few people showed up. Shouldn't something be said about the employees of this Convention and the fact that they are being deprived of being with their children and their families on Saturdays. Most of us are used to the 5-day workweek. Would there be some question about the special pay for the employees on Saturdays? If we go home on Mondays, most people are going to be working. How are we going to see them? Are we going to walk around to where they work to talk to them? Most people don't want to be talked to on Sunday. They're involved with church and the family. How many of us would really go home on Sunday and Monday, or any other time? (Laughter) And I don't mean to imply anything by that. (Laughter) Also, some people might be forced to come here on Saturday. I'm talking about people who work on a ii-day workweek-school administrators and so forth-that they might be forced to come here by the people supervising them, on Saturday. Thank you.

PRESIDENT GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I rise in support of Mr. Davis' motion. As Mrs. Bugbee said, we did have two meetings in Missoula and the overwhelming opinion of the people there was that they wanted a Tuesday through Saturday workweek; the overwhelming majority said that they would not be able to come over, probably, if this was a Monday-Friday week. They either worked on Monday through Friday or they had schoolchildren that they would not be able to bring over. I feel definitely a Tuesday through Saturday week would be much better for people to testify and to bring their families here. Also, we had a very good turnout at a town meeting that we called, and I think that, with a Tuesday through Saturday, we could schedule, say, Sunday evening meetings in our communities to get people together. I don't think you can do this on a Friday night, and I don't think you can do it on a Saturday night: but on a Sunday night, you could regularly schedule, every week or two weeks, a meeting to get the ideas that people have as to how the Convention is coming along. Also, the service clubs have indicated they were interested in hearing what we have to say when we come home on the weekends, and on Monday they would be meeting. Also, the radio stations wanted two delegates on Mondays to discuss the progress of the Convention and have people call in. I think, without a doubt, we'd have more people here to watch the Convention, to testify, and that we'd be able to meet more people on our Sunday-Monday nonworking days in our own community. So I fully support Mr. Davis' motion. Thank you.

PRESIDENT GRAYBILL: Mr. Hanson, Robert.

DELEGATE ROBERTHANSON: I don't rise except to mention the fact that maybe oursome of our staff would have to be paid overtime. Has that been taken into consideration?

PRESIDENT GRAYBILL: I think the situation is that once we establish a 5-day week, the staff will be fine. If the-there won't be any problem on the staff. If the substitute motion here prevails, then I would suppose that someone would raise the issue of what to do about this Saturday, because that would make a 6-day week this week, but I presume that could be handled. So we're still on the issue of whether--we're still debating, then, the amendment, which is Tuesday-Saturday. Is there further discussion?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, the only thing that's bothering me about this, I think that we can't be tied up so that you couldn't recess the Convention this Saturday, regardless of what the rule is. Now, what is bothering me is, we get down here to that ninth week and all of a sudden we come to the time [we] have to adjourn. I'd hate to see it this tight that we shouldn't be allowed to let this Convention continue to operate if they want, like the Legislature does at the end. These are the points that I'd like to havediscussed in this matter.

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I rise in support of the original recommendation of the Rules Committee. It seems to me that one of the things we've got to decide right now is whether or not the purpose of this Convention is to work on a document to accommodate the public. I know it's not a case of either/or, but how best to accomplish both the work of the Convention and the entertainment of our constituency.

PRESIDENT GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I think there are (Inaudible).

PRESIDENT GRAYBILL: You've got to use that microphone. There you go.

DELEGATE SPEER: I think there are two sides to this question. I see the side that's been presented in the motion. However, there are many, many of our constituents who are Monday to Friday workers, 8:00 to 5:00, and they haveexpressed the opinion that they would not be available to talk with us on that day. It is true that they would be able to come over here, but if we are expected to talk with constituents on the weekend when we go home, they would not be available at that time.

PRESIDENT GRAYBILL: Is there other discussion?

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, although personally I would find it most inconvenient to have Tuesday through Saturday workweek because I have youngsters in school here Monday-I convinced them to come to Helena with me. Now perhaps I'll be going back to Great Falls and leaving them in school here Monday. However, I do feel that, for the sake of the Constitution, I think it would be very helpful if we could have people from throughout the state visiting us on Saturday while we're in session, so I would subscribe to the Tuesday through Saturday workweek.

PRESIDENT GRAYBILL: John Anderson.

DELEGATE JOHN ANDERSON: I rise in support of my fellow colleague from District 21, Carl's motion. Most of the inquiries that I have had in regard to this matter is from our schools, and I think that is one of the things we have to keep in mind-that the schoolchildren or the young people that are growing up are the ones that are going to be mostly affected by this Constitution. A great many of them haveindicated a desire to attend the Convention, and I'm sure by having a workweek Tuesday through Saturday that this will give the schoolchildren an excellent opportunity to attend our deliberations on Saturday, so I'd like to support Carl's motion.

PRESIDENT GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I don't rise either in opposition to this motion or for it. I'd just like to point out that there are many delegates here who are so far away from home that they can't get home over the weekend and this would, actually, in their communities accomplish no good whatever.

PRESIDENT GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President, I came with no particular feeling about either one of these weeks. I live here in town and so I don't face some of these problems, but the point that was made earlier about the offices being accessible here for those who may be stuck in Helena without the ability to go home may be an important point. Those around me have been suggesting that whole families have been making plans to come together, and it would be, for them, an advantage to have a Saturday session if the whole family were planning to come and make some kind of-take an interest in what's going on. Personally, my life is such that, once in awhile, I like a few minutes of just aloneness, put on a pair of snowshoes, maybe, and go to the hills, and even a couple of hours of that on a Monday would be manageable for a preacher who has to work Sunday. (Laughter)

PRESIDENT GRAYBILL: You're not proposing a Wednesday-Monday workweek?

(Laughter) All right.

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I'm in opposition to the substitute motion. I'd like to make a substitute motion to the substitute motion.

PRESIDENT GRAYBILL: All right.

DELEGATE JOHNSON: I offer that I came up here to work. I think we have a tremendous amount of work to do. I would like to work 6 days a week. And WC may run into-we have a short time-no matter how we look at it, 9 weeks is a short time if we figure that as a deadline. It would probably-hardships on various segments of the people here. I'm a long ways from home, and I think that a third or fourth of them are a long ways from home. I made more or less arrangements for things to carry on while I'm gone. But I work 7 days a week when I'm home and always have-6 days is not a hardship for me-even I think that we—we need this time and should spend it on this most important job we have to do here for Montana.

PRESIDENT GRAYBILL: I take it you do want to make an amendment and it would be Monday-Saturday. Is that your choice?

DELEGATE JOHNSON: Yes.

PRESIDENT GRAYBILL: Mr. Burkhardt and I want to know what day you want to not work. (Laughter) Monday-Saturday is the amendment of Mr. Johnson on which we are now debating. Monday-Saturday.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. President, many of us are starting to work at 8:00, getting up at 6:00. I know, in fact, probably all of us are out of the sack by 6:30 in the morning. We don't get out of here till 9:00 or 9:30 at night, and one of my problems is that I don't have any time to study. I don't have any time for research. I don't, frankly, have time, to even talk to my fellow delegates and to get their opinions (Inaudible). And I know, for a fact, that Mr.-the Chairman of Rules Committee was working all day Sunday without pay. In fact, I know that the leadership was working the last month and, if the truth were known, probably 6 and 7 days a week. I think Tuesday through Saturday to be attending committees and to be in Convention here is what-is adequate and we really need those other 2 days for research, and I'm for those days off on Sunday and Monday. They're not really days off at all, so I move that this last-1 mean-1 don't want to move, I just want to speak against this last motion, and I'm in favor of Mr. Davis' motion.

PRESIDENT GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. President, I don't want to speak for or against this motion, but I wanted to bring to your attention that there are ball games on Fridays and Saturdays. As far as the students coming, they usually come in a busload and early in the week. Many people come to Helena. They like to visit other government offices, and Saturdays, if we were in session, this would be all that would probably be open. Other offices would be closed, and many families want to do something together, and they may come to Helena on Saturdays-I wouldn't know-but many go up the ski hill, and I just wanted to put in those comments. Thank you.

PRESIDENT GRAYBILL: Is there further discussion?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: Mr. Studer.

DELEGATE STUDER: Sorry I was a little late on this, but we must think also of the extra cost on a 6-day week. We'll go to overtime, which we should think about a little bit.

PRESIDENT GRAYBILL: Any further discussion on the Monday-Saturday amendment? (No response) All right. If not, we'll vote by the Ayes and Nays on Mr. Johnson's amendment that we meet as a workweek from Monday through Saturday, 6-day workweek. All those in favor of the amendment for a 6-day workweek, Monday through Saturday, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and so ordered. Now we're back on Mr. Davis' substitute or first amendment of a Tuesday-Saturday workweek, amending the Rules Committee proposal of Monday-Friday. Further discussion?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. President. I believe this has some advantage to people, this Tuesday-Saturday-people living in the Helena suburbs, which is Billings and Butte and Great Falls (Laughter) but I think with Mrs. Bates, that we're not going to have many people here Saturday, and I do feel that the Monday through Friday is going to be best for us. I know we can't get home anyway. We'd just get there in time to start back again, and I think this is the case with many delegates here.

PRESIDENT GRAYBILL: Further discussion?

Mr. Drum, do you want to talk on that issue?

DELEGATE DRUM: I would rise to take issue with the previous speaker. I think the thing that will determine the number of students that visit here in Helena may be the availability of buses that they're now using for their classes during the week, and if the buses are available on the weekend, and they are certainly going to be more available on the weekend, I think we may see an awful lot of students coming over. I think another point that hasn't been mentioned--and I think someone should come to the defense of the many who are involved in the legal profession here. I think the lawyers would (Laughter) like to have a day to get a little something started during the week at home, it seems to me, and I think there are a few other folks, myself included, that would find it a real convenience to spend some time in our offices at home at the start of the week and then hide the rest of the week.

PRESIDENT GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. President, I think I probably should say I'm one of the lawyers. Nobody has really mentioned yet that what we're talking about here is almost entirely a personal matter, and I think that that should be pointed out to the Convention. Whether we work Tuesday through Saturday or Monday through Friday depends almost entirely on our personal situation. Besides being a lawyer, I would also like to go skiing on Saturday with my son, so I naturally favor the Monday through Friday program, and my reasons are purely personal. I thought I should state them. (Laughter & Applause)

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, members. I'm sure that during this Convention that there will be a busload of students coming from Malta, Montana, over to the Convention. If we meet on Saturday, I hardly think that you'd ever get a student here if you give them a choice of whether they went to watch the Malta high school team play basketball or whether they come here and watch us. Or I might mention that in the last 3 years, we've lost one game (Laughter) and I might mention that those students could care less about a Constitutional Convention when Malta is playing basketball.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: May I close? I don't want to-1 understand you have the privilege of closing if everyone else has spoken to the question. I could—

PRESIDENT GRAYBILL: Let's just check. Does anyone else want to say anything?

Mr. Studer.

DELEGATE STUDER: Yes.

PRESIDENT GRAYBILL: I'll come back to you, Mr. Davis.

DELEGATE STUDER: I wanted to clear up this deal on this overtime that I spoke about. I'm talking only on the 6-day week deal. There will be no change-other than that-1 didn't want it misunderstood.

PRESIDENT GRAYBILL: Okay. Anyone else?

All right, Mr. Wilson.

DELEGATE WILSON: Mr. President, I live so far from home that I don't intend to go back only on special occasions anyway, so it's kind of irrelevant to me whether you work from Tuesday through Saturday or Monday to Friday. I would like to point out, however, that when you're speaking about having young people here from the various schools, that their teachers are paid Monday through Friday; they're not paid for Saturday or Sunday; the busdrivers are the same. And your different schools, colleges, if they're interested, which I'm sure they will be, they will provide time for the students to come to attend this Convention

during the regular workweek, which I think is fitting and proper. I just wanted to bring this to the delegates' attention that these teachers and bus-drivers are on a regular workweek. I don't think changing from Tuesday to Saturday would make any difference on the attendance of the young people.

PRESIDENT GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes. Just one comment on the school thing. The kids go to school Tuesday, Wednesday, Thursday and Friday, also; and so those that didn't want to come on Saturday wouldn't have to come on Monday. They could come those other days, and then the Saturday option would give them an option of the weekend or the school days.

PRESIDENT GRAYBILL: Further discussion? (No response) All right, Mr. Davis, we're ready for you to summarize.

DELEGATE DAVIS: Thank you, Mr. President, and thank you, fellow delegates. I appreciate this resolution poses some problems, personal problems, particularly to those who are fortunate enough to have outstanding athletic teams in their areas (Laughter), as well as others. We don't enjoy that at the moment in Beaverhead County. Maybe John Anderson's area has a good team. (Laughter) I would-in this resolution it would be my thought that it would not be applicable to this Saturday because it seems to me we cannot be organized well enough to make full use of our time this week to start with. I'd like it to start next week, if it should pass. Another point I'd-that seems to not be exactly clear-I'm speaking in regard to students-of the 2'5,000 to 30,000 college students in our state, not those that arc going to be coming on buses-those who are studying government, those who are going to be out in our community here in a few days or a few years, and they're all voters. Those are the people that are going to be voting this fall. Now, whether they attend the Convention or not, it seems to me a letter from our Convention President saying to each one of the student body presidents and student education associations and the various student government clubs that they have at our universities and colleges, to the effect that we are staying "pen to make ourselves accessible to hear their opinions and where they can watch and study these. Also, the faculty members-some 9,000 of our teachers in this state, are probably the most interested people in government. And those people would like to come. Some of them, I'm sure they would come. They've followed constitutions. They've taught constitutions and probably know more about it than many of us--I'm sure than I do. So, I'm thinking of the benefits that might come from making ourselves accessible to these people, as well as the other working people. I'm sure that all of us are going to be working a 7-day week regardless of how it's scheduled, whether it's here or getting ready to be here, and so forth. So, with that, it seems to me that the reasons are really quite compelling, if we lay aside our own personal problems and consider the amount of public information and so forth that we are budgeting-you can get all this for nothing with just about $10—well, as a matter of fact, I'll give in the $20 worth of postage stamps that is apparently allocated to my share of public relations-to mail to all the students, and I'm sure that is the only expense you would have and you'd get a great deal of benefit for this Convention. Thank you.

PRESIDENT GRAYBILL: All right, the issue, then, is on the substitute resolution which would read: "Be it resolved: That the workweek of the Montana Constitutional Convention shall be Tuesday through Saturday." That's Mr. Davis' substituteresolution. The vote will be by Ayes and Nays because the rules so state. No recorded roll call vote will be taken under consideration of resolutions. Therefore, all those in favor of the resolution for a Tuesday through Saturday workweek, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Those in favor of a Monday through Friday work week, please say No.

DELEGATES: No.

(Various calls for division)

PRESIDENT GRAYBILL: All right, we will use the voting machine, but we won't record it. So I'll open the ballot and those in favor, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: All right, we'll close the ballot. The clerk will announce the tally and show it if you want to.

CLERK HANSON: 61 delegates voting Aye, 37 d&gates voting No.

PRESIDENT GRAYBILL: By your vote of 61 Ayes and 37 Noes, you have passed the substitute resolution and the workweek of the Convention is now Tuesday through Saturday. Now, the Chair would entertain a motion, just to keep the record straight, from either Mr. Davis or the Rules Committee Chairman that we either do or don't work this Saturday, so that we can straighten out this workweek.

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I move that we do work this Saturday. If we don't, WE won't be working until next Tuesday and we'll have a 3-day vacation here. I don't know what would happen in those 3 days. (Laughter)

PRESIDENT GRAYBILL: All right, Mr. Johnson has made a motion that we work Saturday.

DELEGATE BATES: Mr. President,.

PRESIDENT GRAYBILL: Mrs. Bates.

DELEGATE BATES: I would like to amend this resolution that we don't work Saturday and we have a 3-day weekend. So move.

PRESIDENT GRAYBILL: All right, we are on Mrs. Bates' amendment to Mr. Johnson's motion, and her amendment is that we do not work this Saturday.

Mr. Toole.

DELEGATE TOOLE: Mr. President, of course we will be in overtime this Saturday. Now, I don't know how significant this is right offhand, but so far as our staff is concerned, that will be overtime. I think I'm correct on that, am I not'?

PRESIDENT GRAYBILL: I think you're correct, because we did work Monday.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, members of the Convention. The Legislative Committee has called a public hearing for Monday at 10:00; and we talked about this contingency; and if we are in recess Monday, we are going to go ahead with the hearing; so that doesn't matter as far as your voting is concerned. We're going to go ahead with it.

PRESIDENT GRAYBILL: As far as I know, there is no reason that you can't work when it's not the workweek. (Laughter) So, we're glad to hear that, Mr. Aasheim. Is there other discussion of the amendment that we do not work this Saturday?

Mr. Davis.

DELEGATE DAVIS: Mr. President, I am very willing to work Saturday and Sunday both, if that's the will of the Convention, and with or without pay, but can we really get anything done this Saturday? Are we well enough organized? Have we got our committees going where we can start getting something constructive done'! I think that's the big question. Can we accomplish anything, or do we need to get a little better organized and then hit it?

PRESIDENT GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I-pardon me.

PRESIDENT GRAYBILL: You're on.

DELEGATE HABEDANK: Okay, I favor—

PRESIDENT GRAYBILL: Let me stop you a moment. I do this, that means that I see the next one; and I'll come to Mrs. Babcock next. I'm just signaling her, so go ahead.

DELEGATE: HABEDANK: I think there would be considerable merit to getting this thing adjusted by taking a recess from Saturday until Tuesday. This will allow all of us to work without pay on Monday. It will save a great deal of money for the State of Montana, and the help will get straightened out; and I think that all the people who are here--are living in Helena--will spend just as much time working, whether we're in session or not, and the State of Montana will save that much money, so that we can use it later on.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, if committees are scheduled during those times, would the secretaries be available even though we weren't having our workweek?

PRESIDENT GRAYBILL: If Mr. Aasheim wants his secretary, I suppose we'd pay one secretary time-and-a-half on Monday. So, yes; in

other words, I'm sure that schedule could be worked out on a single basis, if that's all right.

DELEGATE BABCOCK: (Inaudible).

PRESIDENT GRAYBILL: Pardon?

DELEGATE BABCOCK: Committees could still be scheduled then?

PRESIDENT GRAYBILL: Surely. I think anybody who has a good excuse can certainly schedule something. We'll certainly try and work with that situation.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, we have given our secretary a half day vacation yesterday, so that she owes us a half a day for Monday. (Laughter)

PRESIDENT GRAYBILL: Now there's a forehanded committee.

Mr. Rygg.

DELEGATE RYGG: We are pretty much in the same—

PRESIDENT GRAYBILL: A little closer.

DELEGATE RYGG: We have called a hearing for Monday at 10:00, and we will still have it even if the Convention doesn't work. Our secretary, too, didn't work yesterday, so that will be taken care of.

PRESIDENT GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. President and fellow members. I would like somebody to check into the overtime law that was passed by the State of Montana last year, because any work week-if it goes by the week, any workweek is 7 consecutive days, and you cannot carry them over, or you cannot under the federal law anyway, and somebody might be knocking on you.

PRESIDENT GRAYBILL: Very well.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I have scheduled a hearing-or a meeting for Monday, also, for the General Government Committee, so this would raise-personally, I have no objection, but the other members of the committee might have made some plans. Otherwise—

PRESIDENT GRAYBILL: You might think about giving that girl a half day off, Mr. Etchart. (Laughter)

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I just had this question. Suppose, now, on Monday I want to come here and do a little work, will there be at least one or two girls in the pool so that I might be able to do a little correspondence? They'll probably get overtime, but there's no sense of me coming here if I can't read or write, (Laughter) so it's quite important that a secretary's around. (Laughter)

PRESIDENT GRAYBILL: All right, I'm not going to comment on (Laughter) that last sentence, but I will ask Dale Harris if-we'll try to make some arrangements so we won't be completely shut down this one Monday becauseof this eventuality.

Mr. Drum.

DELEGATE DRUM: Mr. President, I would suggest that if Delegate Eskildsen is in that bad a shape, that we give a personal invitation to the Malta school system, inviting teachers over to help him with his problem. (Laughter)

PRESIDENT GRAYBILL: I think they'd have to wait until the basketball season is over. (Laughter)

Mr. Mahoney.

DELEGATE MAHONEY: I'm in hopes, Mr. President, that these committees will not be so duty-bound by the 5-day week, and knowing the amount of hearings that we're going to have to have and to try and get the hearings spaced out so some of the others can hear some of the other hearings, I think we're going to very vitally need the sixth day in the week as far as hearings are concerned with these committees, and if the Convention can't pay the time-and-a-half, then we'd better close the Convention for that time, because the hearings is the vital thing of this Convention, as far as I'm concerned, for the first 30 days.

PRESIDENT GRAYBILL: Is there further discussion? (No response) All right, the question is going to be on Mrs. Bates' substitute motion that this Saturday not be a workday. All those in favor of not working this Saturday-that is, not

calling it part of the workweek of the Convention, please indicate by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Would all those opposed say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. So this Saturday will not be a workday, and the workweek next week will start Tuesday through Saturday. Are there other matters under Order of Business Number 7, Motions and Resolutions?

(No response)

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 11, Committee Announcements and Notices.

DELEGATE RYGG: Mr. President.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE KYGG: I would like to call a meeting of the Revenue and Finance Committee in about 20 minutes-at 10:20.

PRESIDENT GRAYBILL: Before you chairmen make these announcements, maybe I should announce that the Executive Committee is having a hearing at 10:30 in the Governor's conference room-Governor's reception room, at which Governor Anderson is going to meet with the committee; and it will have media coverage; and, of course, the Executive Committee invites any of you who are interested to come. Now, with that hearing in mind, you certainly may go ahead and schedule whatever other meetings you want to.

Mr. Anderson.

Local Government will meet for all members who do not attend the Executive Committee hearing, at 1030, Room 437.

PRESIDENT **GRAYBILL:** Local Government, at 10:30.

DELEGATE AASHEIM: Mr. President.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Legislative Committee will meet, 10 minutes after adjournment.

PRESIDENT GRAYBILL: 10 minutes after adjournment, for Legislative.

Mr. Toole.

DELEGATE TOOLE: Mr. President, Committee on Administration will have a public hearing in the Senate chambers, 1:30, to discuss staff and budget. Public Information Committee will have a public hearing in the Senate chambers at 3:00.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I want to announce that I would likemembers of the Executive Committee to meet me, immediately upon adjournment, in the Governor's reception room, rather than in the committee room, as I previously told them.

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: I would like to remind the members of the Judicial Committee, we have a meeting 10 minutes after adjournment.

PRESIDENT GRAYBILL: All right. Other committee announcements?

Mr. Etchart.

DELEGATE ETCHART: Mr. President, General Government will meet 10 minutes after adjournment.

PRESIDENT GRAYBILL: All right. Any other committee announcements? (No response) If not, I would ask leave of the Convention to go back to Order of Business Number 8, Unfinished Business. Hearing no objection, we'll go back to Unfinished Business. Now, I've overlooked that today is

on adjournment, is when you're supposed to have objected to your committee assignments. Now, I know of none. Mr. Toole, of course, I changed. If anyone wants to object to their committee assignments, speak up.

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, [President] I have no objection to my committee assignments, but I would suggest that we create an honorary title of critic to the Rules Committee and make Charley Mahoney a member. (Laughter & Applause)

PRESIDENT GRAYBILL: Well, I think we can bestow that by our acclamation, Charley.

All'right, Mr. Monroe.

DELEGATE MONROE: Mr. President, in our Constitutional Convention directory, are all the committee assignments correct as they're placed in this directory? Were there any changes made'?

PRESIDENT GRAYBILL: Well, I don't know of any errors. Does anybody know of an error in the committee directory'? To my knowledge, they're all the same-the committee assignments are the same as they were originally, except Mr. Toole's. If anybody is in doubt about his committee assignment, here's a good chance to find out.

DELEGATE ARONOW: (Inaudible).

PRESIDENT GRAYBILL: Who? Pardon? You mean you don't have the directory on your desk?

DELEGATE ARONOW: That's correct.

PRESIDENT GRAYBILL: Well, you may not have- what's that thing in your hand? That's what we're talking about.

DELEGATE ARONOW: No, that's the clerical manual.

PRESIDENT GRAYBILL: Oh. The fact that you didn't get one doesn't mean it's not right, Mr. Aronow. You're probably still on the right committee.

DELEGATE ARONOW: Oh, okay.

PRESIDENT GRAYBILL: All right, I see nobody that seems to be rising to object to their committee assignments, so we will presume that the committee assignments are set, and no one can object after this if they-now, if you want to object after this, see me and we might make it a special order of business. But in any event the committee assignments are now set. All right. We'll be back on Order of Business Number 11. If there [are] any more announcements? If there are no more announcements-

All right, Mr. Dahood.

DELEGATE DAHOOD: There have been some inquiries with respect to the Bill of Rights Committee. Our research analyst is attending a meeting out of our immediate area for the purpose of serving the committee better, so our committee meeting will be tomorrow at 2 "'clock in the afternoon.

PRESIDENT GRAYBILL: Very well.

Mr. Champoux.

DELEGATE CHAMPOUX: Could we have an Education Committee meeting right after adjournment, please'?

PRESIDENT GRAYBILL: How about in 10 minutes after adjournment'?

DELEGATE CHAMPOUX: 10 minutes after.

PRESIDENT GRAYBILL: Okay.

DELEGATE CHAMPOUX: Thank you.

PRESIDENT GRAYBILL: Education, 10 minutes after adjournment.

Mr. Harbaugh.

DELEGATE HARBAUGH: We have made arrangements for a photographer at 12 "'clock for the Presbyterian delegates—

PRESIDENT GRAYBILL: Right. Presbyterians at 12 "'clock, right up here in front. Any other announcements?

Mr. Toole.

DELEGATE TOOLE: Mr. President, I've just been talking to Mrs. Bugbee, and we have some suggestions as to what you might be doing when you go-if you go home on Monday. You can make arrangements with your radio stations to make tapes. You can get videotape at your TV stations. You can actually call a hearing, if necessary. I would give consideration between now and Monday as to what you're going to do if you're going home Monday. And in the future, the committee will recommend to you the things that you

can be doing if you go home on Sunday and Monday. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well. Mrs. Cross.

DELEGATE CROSS: Some of our committee members feel that we should meet about 5 minutes after adjournment just to assess where we are, so we'll do that.

PRESIDENT GRAYBILL: All right; that's Natural Resources, 5 minutes after adjournment. Okay. Any other announcements?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that the Convention stand adjourned until 9:00 a.m. Thursday, January 20th.

PRESIDENT GRAYBILL: A motion has been made that we stand adjourned until 9:00 a.m. Thursday. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered

(Convention adjourned at 1O:OO a.m.)

January 20, 1972
9:15 a.m.

Seventh Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: Reverend Harper will give the invocation.

DELEGATE HARPER: Let us pray. Our Heavenly Father, we thank you for this deepening of fellowship that is occurring among us as we give ourselves to this common cause to which you have called us through your people. Our prayer this morning is simple: guide our thinking and our feeling today toward the purposes you would have us achieve and help us to be the men and women you need for this hour. Amen.

PRESIDENT GRAYBILL: The clerk will take the roll with Aye votes on the machine.

CLERK HANSON: Habedank; Hanson, Robert S.; Etchart; Erdmann; Wilson; Woodmansey; Mansfield—

PRESIDENT GRAYBILL: Would the clerk please show Mr. Woodmansey excused.

CLERK HANSON: Mr. Woodmansey excused. James, Johnson, Kamhoot, Reichert, Ward, Wilson. James, Johnson, Kamhoot, Reichert, Wilson.

PRESIDENT GRAYBILL: All right. Let's close the ballot. And they'll have to get special permission if they're here; otherwise, they're absent.

Aasheim		Present
Anderson,	J.	Present
Anderson,	0.	Present
Arbanas		Present
Arness		Present
Aronow		Present
Artz		Present
Ask		Present
Babcock		Present
Barnard		Present
Bates		Present
Belcher		Present
Berg		Present
Berthelson		Present
Blaylock		Present
Blend		Present
Bowman		Present
Brazier		Present
Brown		Present
Bugbee		Present
Burkhardt		Present
Cain		Present
Campbell		Present
Cate		Present
Champoux		Present
Choate		Present
Conover		Present
Cross		Present
Dahood		Present
Davis		Present
Delaney		Present
Driscoll		Present
Drum		Present
Eck		Present
Erdmann		Present
Eskildsen		Present
Etchart		Present
Felt		Present
Foster		Present
Furlong		Present
Garlington		Present
Graybill		Present
Gysler		Present
Habedank		Present
Hanson, R.S.		Present
Hanson, R.		Present
Harbaugh		Present
Harlow		Present
Harper		Present
Harrington		Present
Heliker		Present
Holland.		Present
Jacobsen		Present
James		Absent
Johnson		Absent
Joyce		Present
Kamhoot		Absent
Kelleher		Present
Leuthold		Present
Loendorf		Present
Lorello		Present
Mahoney		Present
Mansfield		Present
Martin.,		Present
McCarvel		Present
McDonough		Present
McKeon		Present
McNeil		Present
Melvin.,		Present
Monroe		Present
Murray		Present
Noble		Present
Nutting		Present

Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Absent
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Absent
Woodmansey	Excused

CLERK HANSON: Mr. President, 93 voting Aye; 1 excused.

PRESIDENT GRAYBILL: Very well, let the journal so show. I would like to mention to the delegates that there may be television cameras or radio people around today. Please don't be disturbed. That's going to happen many times from now on, but I want you to be aware-so that if you want to know about it, you now have been duly warned. All right, let's go down the order of business.

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I apologize. I am now present.

PRESIDENT GRAYBILL: Very well. The journal can show Mrs. Reichert present. Mr. Johnson, would you like the journal to show you present?

DELEGATE JOHNSON: If you please.

PRESIDENT GRAYBILL: Very well. Mr. Kamhoot, the journal show you present?

PRESIDENT GRAYBILL: Very well. Mr. James?

DELEGATE JAMES: Yes, present.

PRESIDENT GRAYBILL: Very well. Mr. Wilson?

DELEGATE WILSON: Present.

PRESIDENT GRAYBILL: Very well. All right, let's proceed with the order of business—Report of Standing Committees.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: More for information of the delegates than report itself, under the daily schedule for Thursday, January 20, the delegates will note that there is a call forreports of standing committees-the report of Public Information Committee. That report will be given tomorrow, rather than today. Also, they will note that there is a report due from the Rules Committee relative to the date of submission of the Constitution to the voters. This matter has been delayed. I might explain that the President met with the committee chairmen last night, and this matter was discussed, as was the matter of the schedule as provided under Rule 79-the schedule under Rule 79—and the matter of the schedule, or calendar, will be coming to the floor tomorrow. It will be considered by the Public Administration Committee today and Rules Committee at 8 o'clock in the morning, because the rule provides that the President shall set that calendar or schedule with the advice of those two committees, and will be on the floor tomorrow. The matter of the schedule was of such importance that the date of submission of the Constitution to the voters has been delayed so that under the schedule, as proposed, we can see what progress will be made before this matter is to be considered. However, your substantive committee chairmen have been instructed to discuss this with each of you briefly, so that you will be aware of some of the problems, because a report as to some of those problems had been made to the chairmen and they have some information relative to that matter. Likewise, with respect to the calendar for Friday, January 21, the Rules Committee was to report on the time for the

take the schedule up tomorrow, make progress under that schedule, we hope, and then we will consider the matter of recess at some later date. Thank you.

PRESIDENT GRAYBILL: Very well, in brief summary, because this may come as a surprise to some of you then, the report of the standing committee on public information is going to be given tomorrow morning, along with the committee-the Administration Committee. Secondly, we are not going to discuss this morning, on a recommendation from the Rules Committee, the date of submission, nor are we going to discuss the recess issue tomorrow morning. The reason for that is that, at the meeting of all of the committee chairmen last night, we thrashed these things over and determined that we were probably premature in discussing these matters now and that we would come out with a calendar, which is due out tomorrow. And we will all have a chance to look over the calendar, and you'll see what the committee chairmen and the President propose as the way--as the calendar; and then after that, at some appropriate time, we will discuss these other issues in greater detail. But we feel it would be premature and not necessarily the right time to arrive at a decision on these two other matters. So, we're going to pass those two matters this morning. All right. Reports of Select Committees-Well, just a moment.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I'd like to report as present.

PRESIDENT GRAYBILL: Very well, the journal will so show. Report of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Communications. Under Communications, the President would like to communicate to the body, most of whom know it-that-but for the journal, that at 8:00 a.m. on the 20th of January, 1972, at a special meeting of most of the delegates, the body-or the Convention inaugurated its distinguished speakers series with an address by Jesse Unruh, former speaker of the California assembly and authority on legislative matters. We just want that entry in the journal, and I am making it as a communication to you so that we have a line in the journal recognizing the program that we had at 8:00 this morning. Introduction and Reference of Delegate Proposals.

CLERK HANSON: Mr. President. "Delegate Proposal Number 1; date introduced: January 20, 1972. A proposal for a new constitutional section establishing public policy on environmental quality."

PRESIDENT GRAYBILL: Are you going to give the sponsor? I think it would help if you'd give the sponsor, and then they'll know if there is—

CLERK HANSON: Introduced by Berthelson.

PRESIDENT GRAYBILL: That's to the Natural Resources Committee.

CLERK HANSON: "Delegate Proposal Number 2, introduced January 20, 1972. A proposal for a new constitutional section providing for water rights. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Berth&on.

PRESIDENT GRAYBILL: That's to the Natural Resources Committee.

CLERK HANSON: "Delegate Proposal Number 3; date introduced: January 20, 1972. A proposal for a new constitutional section to prohibit the penalty of death for any crime. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Cate.

PRESIDENT GRAYBILL: That's Number 3, to the Bill of Rights Committee.

CLERK HANSON: "Delegate Proposal Number 4, introduced January 20, 1972. A proposal amending Article III, Section 13, of the Constitution of the State of Montana to provide that no registration, transport or licensing requirement fee or tax ever be imposed upon the right of— right to bear arms. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Berthelson.

PRESIDENT GRAYBILL: That, Number 4, to the Bill of Rights Committee.

CLERK HANSON: "Delegate Proposal Number 5, introduced January 20, 1972. A proposal repealing Article XVI, Section 5, of the Constitution of the State. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Payne.

PRESIDENT GRAYBILL: To-that's Number 5-to the Local Government Committee.

CLERK HANSON: "Delegate Proposal Number 6, introduced January 20, 1972. A proposal for a new constitutional section providing for local chapters. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Payne.

PRESIDENT GRAYBILL: Number 6—to the Local Government Committee.

CLERK HANSON: "Delegate Proposal Number 7; date introduced: January 20, 1972. A proposal for a new Judicial Article, amending Article III, Section 8 and 23, and repealing Article VIII of the Constitution, State of Montana. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Berth&on.

PRESIDENT GRAYBILL: Number 7-to the Judiciary Committee.

CLERK HANSON: That's all, Mr. President.

PRESIDENT GRAYBILL: Very well. Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Motions and Resolutions.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I move that we suspend Rule 74. The reason for this motion is that, at the request of many of the delegates from the floor during the consideration of the 79 rules which we have now adopted, it appeared that we would be best to consider a rule on pairing. That rule has been prepared. It has not been distributed because the committee considered it just briefly this morning and voted that it do pass, and therefore, I would like to ask suspension of Rule 74 so that we may consider the adoption of this rule at this time, without waiting the necessary 2 days and without having the rule duplicated and spread upon the desks. And I ask that the vote—that I have support for that vote-it would be required by two-thirds of the delegates present and voting or a majority of all delegates, whichever constitutes the lesser number, and the way I read that is 51 votes.

PRESIDENT GRAYBILL: Very well. I presume-I understand, then, that the Rules Committee is asking us to suspend Rule 74 for the purpose of introducing an additional rule. Now, Rule 74 says-since these aren't all in everyone's hands yet-"These rules may be amended by the affirmative vote of a majority of delegates after the proposed amendment has been submitted in writing, has been considered by the Committee on Rules..."-both of those have been done-"and has been in the possession of the delegates not less than 2 session days prior to its consideration. Committee on Rules may be discharged from further consideration of any proposed amendment upon the same notice and by the same vote as is provided in Rule 43. One or more rules may be suspended for a specific purpose by the affirmative vote of two-thirds of the delegates present or a majority of all the delegates of the Convention, whichever constitutes the lesser number." And, to avoid laying this matter on your desks for 2 days, we need to suspend this rule, and we need to avoid that so that it can be printed with the rest of them and we won't have to have a supplement yet. All right, is there discussion on the motion to suspend the rules? That's debatable, I presume. (No response)

All right. Hearing none, the motion, then, of the Chairman of the Rules Committee is to suspend Rule 74 so that we can consider a special additional rule this morning. So many as are in favor of suspending the rules-well, we have to come out by two-thirds, so we'll vote on the voting machine and an unrecorded vote. I'll open the ballot. So many as are in favor, vote Aye; opposed, No. Does any delegate wish to change his vote? Have all the delegates voted? We'll close the ballot. By your-well, now-please announce the vote.

CLERK HANSON: Mr. President, 97 delegates voting Aye; no delegates voting Nay.

PRESIDENT GRAYBILL: All right, 97 to 0; we have suspended Rule 74.

Mr. Murray.

DELEGATE MURRAY: Rule 80, Pairing. This is as the Committee proposes it: "Two delegates may pair on a proposal before the Convention under Orders of Business Number 5 and 6."

Now, 5 and 6, as you know, are the Final Consideration and Adoption stages. "Pairing is permitted only when one of the paired delegates is absent when the vote is taken. An agreement to pair must be in writing and dated and signed by the delegates agreeing to be bound, must specify the duration of the pair, and must be filed with the Secretary. The pair shall bind the delegates signing until the expiration of time for which it was signed unless the paired delegates sooner appear and ask that the agreement be cancelled." By way of explanation, let me say that we researched the matter of pairing before all of the constitutional conventions for which we have rules. We found that there was in none of those sets of rules any rule as to pairing. However, because of the nature of this particular Convention and the significance of the business and the request of the delegates here, I did, with the sanction of the committee, remodel the proposed rule from the existing rule of pairing under the Joint House-Senate Rules of the Legislature of the State of Montana. Frankly, neither I nor the committee see any harm in this rule; we think it will prevent--or attempt to help us in any way from having any problem of absentees and not having the majority of elected delegates' votes required and the recorded roll call votes under Orders of Business Number 5 and 6.

PRESIDENT GRAYBILL: Very well, we're-the Rules Committee then has moved that Rule 80 on pairing be adopted. Is there discussion on Rule 80?

Mr. Mahoney.

DELEGATE MAHONEY: Might I ask the Chairman a question? Marshall, are-is there going to be-how do they finish a pair? Are they going to be-now, in the old rules years ago, they could vote the pair and cancel the pair. Now, another thing that worries me just a little: I think you should be definitive. Now, maybe this is going only to be on a certain article or something and we might get, before this one person gets back, onto something else, and I think that we should determine-is he pairing on the whole Constitutional Convention or is it certain articles or things-I'm just trying to make a little protection, I agree with the idea.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I considered the possibility of pairing specifically but determined that the rule should begeneral and the forms should be printed to conform to the rules so that pairing can be done in the specific fashion that the delegates pairing would agree to pair on. And with respect to the second matter, Charley, the last part of the rule says, "unless the paired delegates sooner appear". So, if the pair is for 3 days, for instance, and the absent delegate sooner appears, then the two delegates can go and request that the pair be ended and it will be so ended.

DELEGATE MAHONEY: Mr. President, the only other question I have of the gentleman is that, in case this person didn't get back or something and you got into other orders of business and things--under the other things-and he doesn't come-and ordinarily we've always had-both had to agree to the termination of a pair-and the other one isn't here, and I-This is the only thing: a person hates to be bound for too long, and I realize the 3 days, but something might happen. He might not get back, and this is what's bothering me.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. I can appreciate that it would bother you, Charley, but I don't know how to solve the problem without complicating the general rule, such as I proposed.

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Heliker.

DELEGATE HELIKER: Now, Mr. President, I rise in support of the Rules Committee's proposal, which I believe will substantially remove the objection which I made to Rule Number 1.

PRESIDENT GRAYBILL: Other discussion? (No response) Very well, the motion is to adopt Rule 80 on pairings. This only applies to Orders of Business Number 5 and 6—that is, Final Consideration of Proposals and Final Adoption of the Constitution. But for those two items, it would be possible to pair, one of the purposes being to be sure we could get a majority of the total delegation-total delegates. So many as are in favor of the motion to adopt Rule 80, please signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: As many as opposed, say Nay.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. So Rule 80 will be added to the rules when they're printed. Any other motions or resolutions? (No response) Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: General Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: All right. Committee Announcements and Announcements. First of all, I'd like to make a couple of general announcements--or announcements of general interest. The State Auditor has informed us that travel vouchers and expense vouchers are available. Your pay vouchers are not yet available, but your travel and expense vouchers for this period are available and you need to go to the Auditor's office and sign for them to pick them up. So that's the way the pay will be for the time being.

Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting, tomorrow morning, Friday morning, 8:00 a.m.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Rules, 8 o'clock in the morning.

PRESIDENT GRAYBILL: Rules, 8:00 tomorrow.

Mr. Toole.

DELEGATE TOOLE: Committee on Administration, at 12 o'clock today, Room 434.

PRESIDENT GRAYBILL: Administration, at 12 o'clock today-in Room 434?

DELEGATE TOOLE: 434.

PRESIDENT GRAYBILL: All right.

DELEGATE TOOLE: Committee on Public Information, tonight, a dinner meeting at the Holiday, 6 o'clock, followed by a meeting in the

PRESIDENT GRAYBILL: What time?

DELEGATE TOOLE: I don't mean the Holiday, I mean the Colonial, I beg your pardon.

PRESIDENT GRAYBILL: All right.

DELEGATE TOOLE: At 6 o'clock—

PRESIDENT GRAYBILL: Dinner at 6 o'clock at the Colonial for the Public Information Committee; is that right?

DELEGATE TOOLE: Correct, followed by a meeting here at 7 o'clock.

PRESIDENT GRAYBILL: And the meeting at 7:00 is in the Senate chambers and, of course, anybody is invited; is that right?

DELEGATE TOOLE: That's correct.

PRESIDENT GRAYBILL: Is that on the citizens corps?

DELEGATE TOOLE: That's on the citizens corps.

PRESIDENT GRAYBILL: Very well.

Mr. Joyce.

DELEGATE JOYCE: I don't think Dr. Roeder is going to talk on the citizens corps. Are you, doctor? (Laughter) There is a misunderstanding. Dr. Roeder is going to speak on the Executive Article generally, at 8 o'clock.

PRESIDENT GRAYBILL: He's going to speak at 8:00 tonight?

DELEGATE JOYCE: Yes. In the Senate chambers. And while I'm on my feet, the Executive Committee will meet immediately following adjournment this morning in the Executive room.

PRESIDENT GRAYBILL: Executive, on adjournment, and Mr. Roeder's talk is on the Executive branch at 8:00 tonight in the Senate.

Mr. Toole.

DELEGATE TOOLE: I was so informed, Mr. President. I'm sorry.

PRESIDENT GRAYBILL: All right.

Mr. Anderson.

adjournment. Informal meeting. The executive board of the County Commissioners Association is meeting with us at 10:30.

PRESIDENT GRAYBILL: Local Government, on adjournment.

Mrs. Cross.

DELEGATE CROSS: Natural Resources will meet 10 minutes after adjournment this morning and also at 1:30 this afternoon for an informational meeting in 402.

PRESIDENT GRAYBILL: All right; that's Natural Resources, on adjournment and at 1:30.

Mr. Rygg.

DELEGATE RYGG: Revenue and Finance at 10:15.

PRESIDENT GRAYBILL: Hold it—10:15?

DELEGATE RYGG: Revenue and Finance at 10:15.

PRESIDENT GRAYBILL: Revenue and Finance, 10:15 this morning.

Mr. Aasheim, you were up.

DELEGATE AASHEIM: Legislative Committee meeting at 10:15.

PRESIDENT GRAYBILL: Legislative at 10:15.

Mr. Dahood.

DELEGATE DAHOOD: (Inaudible) Bill of Rights Committee that we will meet this afternoon at 2 o'clock in Room 331.

PRESIDENT GRAYBILL: Bill of Rights at 2 o'clock-331.

Mr. Heliker.

DELEGATE HELIKER: Public Health, Welfare, Labor, and Industry, immediately upon adjournment.

PRESIDENT GRAYBILL: Mr. Etchart, you're standing there beside that pillar and I don't see you very well, but now your turn has come.

DELEGATE ETCHART: Thank you, Mr. President. I'd like to announce the General Government Committee will be meeting on adjournment-10 minutes after adjournment—Room 410.

PRESIDENT GRAYBILL: Okay, 10 minutes after adjournment, 410, for General Government.

Mrs. Reichert.

DELEGATE REICHERT: I have an announcement, Mr. President. I was told by Mr. Dale Harris that it was necessary to retype my unicameral proposal, and because of this, all those kind people, 37 of them. who have signed will have to re-sign my proposal, which is being retyped. I would also like to invite those who have not signed, who might be interested in signing, to please contact me before the day is over. Thank you.

PRESIDENT GRAYBILL: Very well. Are there other announcements" Mr. Toole, I would like to get this one matter on the citizens corps straightened out. Is there going to be a discussion of the citizens corps tonight, Mrs. Bugbee?

DELEGATE BUGBEE: Yes, Mr. President, for 1 hour. We're meeting at 7 o'clock—

PRESIDENT GRAYBILL: Okay.

DELEGATE BUGBEE: -in the Senate chambers, and after that Mr. Roeder is going to be talking on the Executive at 8 o'clock.

PRESIDENT GRAYBILL: Okay, so there is a meeting tonight at 7:00 on the citizens corps. And anyone interested in the citizens corps or being able to work in their community on that matter should certainly come. We do want to encourage that if we can. Any other announcements?

Mr. Champoux.

DELEGATE CHAMPOUX: (Inaudible)-announcement for an Education Committee meeting?

PRESIDENT GRAYBILL: Surely. You want to announce one?

DELEGATE CHAMPOUX: Right after adjournment, please, Education Committee. Also, while I'm up, if I may, none of these pages have been introduced. Is it proper to suggest that perhaps we—

PRESIDENT GRAYBILL: We certainly should introduce the pages. And we could make you a committee to introduce the pages (Laughter) when they change every Monday morning-or every Tuesday morning-Why don't you—or—

DELEGATE CHAMPOUX: Would you allow us to prepare—

PRESIDENT GRAYBILL: Do you want to do it now, or do you know them all now? Or do you want to be ready tomorrow morning with that?

DELEGATE CHAMPOUX: I'll he ready tomorrow morning, sir. (Laughter)

PRESIDENT GRAYBILL: Hearing no objection from the floor, you are unanimous choice to be the Chairman of the committee to introduce the pages weekly, Mr. Champoux. (Laughter) Rut I think your point is well taken, Rick, and I'm glad you brought it up.

Mr. Davis.

DELEGATE DAVIS: Could it be extended to take care of the other needs of the pages, too. Could that be an additional duty of this gentleman'? (Laughter)

PRESIDENT GRAYBILL: Let's see.

Mr. Martin.

DELEGATE MARTIN: The pages already have a Convention mother who gave a party for them last night, and I think she should have a vote of appreciation-Mrs. Pemberton. (Applause)

PRESIDENT GRAYBILL: Well, thank you very much, Mrs. Pemberton. The pages also have a Convention father in the sergeant-at-arms, and all you really have to do is introduce them, Mr. Champoux. (Laughter) Are there other announcements? (No response) If not, Mr. Eskildsen-oh, just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: A matter of information, please. What is the schedule this afternoon as far as the Convention is concerned? Are there any conflicts so we can hold meetings this afternoon?

PRESIDENT GRAYBILL: No, there are no conflicts. You can hold meetings all afternoon.

DELEGATE AASHEIM: Thank you.

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: I don't know that this is a conflict, but there is a hearing of the Judiciary Committee at 3 o'clock this afternoon.

PRESIDENT GRAYBILL: Right. There is a major hearing of the Judiciary Committee, for those who want to come, but the afternoon is open for committee work.

DELEGATE ESKILDSEN: Mr. President, I move that the—

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Convention stand in recess until 9:00 a.m., Friday, January the 21st.

UNIDENTIFIED DELEGATE: Adjourned.

DELEGATE ESKILDSEN: Adjourned.

PRESIDENT GRAYBILL: All right, the motion is to adjourn the Convention until 9:00 a.m., Friday, the 21st. So many as in favor, say **Aye.**

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: So moved.

(Adjournment at 9:50 a.m.)

January 21, 1972 **Eighth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention'll come to order. Are the mikes on?

CLERK HANSON: They're on.

PRESIDENT GRAYBILL: Let's rise and have the invocation by Reverend Scanlin.

DELEGATE SCANLIN: Shall we pause for a moment of silent memorial, thinking of our friend and fellow delegate, Bob Woodmansey, as they lay to rest his father, Frederick.

(Silence)

DELEGATE SCANLIN: When this corruption shall have put off incorruption and this mortal shall have put onimmortality, then it shall be brought to pass the saying: "death is swallowed up in victory." Let us pray. Here we are, oh Lord, on the last day of our first week together. What have we accomplished? Have we been good stewards of our allotted time? Grant, we pray, that in the hour of adjournment, each one of us, from our President to the youngest page attending, may hear the Master's words when He said, "Well done, thou good and faithful servant." Amen.

PRESIDENT GRAYBILL: We'll open the voting machine for attendance. Vote Aye for attendance.

CLERK HANSON: Woodmansey, excused; Felt and Habedank, excused. Mr. Holland.

PRESIDENT GRAYBILL: Close the ballot. Will you take the roll call, please, Mr. Clerk.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas ...	Present
Arness ..	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson ..	Present
Blaylock	Present
Blend ..	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Excused
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Absent
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present

Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Excused

CLERK HANSON: Mr. President, 99 delegates present.

PRESIDENT GRAYBILL: Very well, the journal may so show. Actually, it's 96, and 3 excused, is what she wants—96, 3 excused, 1 absent. All right, Order of Business Number 1, Report of Standing Committees.

Mr. Toole.

DELEGATE TOOLE: Mr. President, I move that we adopt the committee report of the Committee on Public Information. Mr. President, I'm not going to spend a great deal of time on this. The delegates have before them a massive program of public information in the committee report. I do want to say a few things about the citizens corps, which is an integral part of our public information program. The citizens corps, fellow delegates, if properly implemented, can bring the message of this Constitution to the people. And, of course, it will he different in every tage; others not so. Take Paul Harlow's district—two great mountain ranges, three great rivers, three counties-hut Mr. Harlow is organizing the citizens corps in his county, county by county, and he'll do an effective job. Get on with the appointment. Use it however you can. There's been a lot of discussion about it-there's a fine pamphlet by Mrs. Bughee, which you should have on your desk. Remember that the goal is to sustain interest in constitutional issues and to assure an informed vote on the revised Constitution. Fellow delegates, use it; don't write it off. I want to make a few remarks about radio and TV. We've had an experiment in the Governor's office that worked out, I think, quite satisfactorily. We realize there'll be some changes in radio and TV. We realize we've got to give committee chairmen more notice, but these problems will he ironed out. Mr. President, with your permission, I'd like now to call on Mrs. Margaret Warden for a few additional remarks on this subject. Mrs. Warden.

PRESIDENT GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Thank you, Mr. President. First of all, I'd like to say you have received copies of a trial newspaper. What I have done is clipped from the daily papers information on the Constitutional Convention. We hope to-if you like it, and I would like to have some expression on this, to let me know and we'll try to continue it so that it will be on your desk in the morning sessions. Secondly, on Tuesday--many of you have not been able to see the film on the Illinois Convention or on the Pennsylvania Convention. There will he a showing Tuesday night at 7:30 in the Highway auditorium of these two films, and we'd like as many of you to come and see them as possible. You go to the center door on Roberts, not on the corner, to get in the Highway Department. It's right down the street on Roberts. BE there by 7:30 sharp, because we hope to start it on time. Thank you.

PRESIDENT GRAYBILL: Mr. Toole, are you finished?

DELEGATE TOOLE: Mr. Chairman, I move for the adoption of the committee report.

PRESIDENT GRAYBILL: Very well. The question is on the adoption of the committee report of the Public Information Committee. Now, that was made available to all of vou earlier this

changes-substantive changes in the report. You should all have it. So many as are in favor of the adoption of the Public Information Committee's reports, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed? (No reponse)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. All right, Order of Business Number 2.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Reports of— or, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: "Delegate Proposal Number 8, introduced by Martin and others. A proposal for a new constitutional section providing for recall of public officers. Be it proposed by the Constitutional Convention, State of Montana."

PRESIDENT GRAYBILL: To General Government.

CLERK HANSON: "Delegate Proposal Number 9. A proposal for a new constitutional article vesting local government powers in districts. Be it proposed by the Constitutional Convention, State of Montana."

PRESIDENT GRAYBILL: To Local Government.

CLERK HANSON: "Delegate Proposal Number 10. A proposal for a new constitutional section providing for equal rights. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Blend.

PRESIDENT GRAYBILL: Bill of Rights. Mr. Clerk, read those a little slower. I don't believe the delegates have these before them, and they want to be able to—

CLERK HANSON: Fine. "Delegate Proposal Number 11, introduced by Blend. A proposal for a new constitutional section providing for full state funding of all free public schools. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 11.

PRESIDENT GRAYBILL: To Education and also to Revenue and Finance, jointly.

CLERK HANSON: "Delegate Proposal Number 12. A proposal for a new constitutional article providing for the environment. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Curtis.

PRESIDENT GRAYBILL: To Natural Resources.

CLERK HANSON: Cate, I guess.

PRESIDENT GRAYBILL: Cate. Natural Resources.

CLERK HANSON: "Delegate Proposal Number 13. A proposal for a new constitutional section making all persons over 18 years of age adults for all purposes, including the right to hold any public office. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Campbell and others.

PRESIDENT GRAYBILL: To the Bill of Rights Committee.

CLERK HANSON: "Delegate Proposal Number 14. A proposal amending Article III, Section 7, of the Constitution of the State of Montana to prohibit interception of private communications without a valid search warrant. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Campbell and others.

PRESIDENT GRAYBILL: To the Bill of Rights Committee.

CLERK HANSON: "Delegate Proposal Number 15. A proposal for a new Constitutional Section incorporating the intent of Ordinance Number 1 of the 1889 Constitution. Be it proposed by the Constitutional Convention, State of Montana." Introduced by Scanlin and Vermillion.

PRESIDENT GRAYBILL: To the Bill of Rights Committee and to the Style and Drafting Committee, jointly.

CLERK HANSON: That is all, Mr. President.

PRESIDENT GRAYBILL: Now, may I make one remark about reference of proposals. Some of you questioned one of my references yesterday. I am aware that the environmental issue may eventually be the subject of some joint hearings, but the proposals yesterday contained more than a bare statement of a right. They contained a good deal of material that would seem to me to imply a department or at least legislative action. I will. in the near future. at your suggestion later, consider some joint hearings on environment between Bill of Rights and the Natural Resources Committee. Okay. Now, how about Resolutions'! That's Number—

CLERK **HANSON:** That's Number 5—no, Number—

PRESIDENT GRAYBILL: All right. we'll put that off. Okay, now—5, Final Considera-lion.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 7, Motions and Resolutions. Before we take up the ones this morning. let's take up the ones we're going to assign.

CLERK HANSON: Mr. President. "Resolution Number 2. A resolution of the Constitutional Convention of the State of Montana urging the members and staff' of the Legislative Council to give consideration to citizens' suggestions submitted to the Convention."

PRESIDENT GRAYBILL: To the Rules Committee.

CLERK HANSON: "Resolution Number 3. A resolution to provide that certain citizens' suggestions be forwarded to the Legislative Council." Introduced by Koeder.

PRESIDENT GRAYBILL: To the Rules Committee. Now, we have some procedural committee resolutions this morning. Mr. Toole, is your matter up from printing yet?

DELEGATE TOOLE: No, Mr. President, the resolution is not up from printing. However, we could save some time, if the delegates wish to do so, and discuss the payroll without the resolution, if it pleases the Chair.

PRESIDENT GRAYBILL: Well, with your permission, let's move to Mr. Murray and let's take up proposed Resolution Number 7, the schedule, and maybe that'll give you a little time.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Delegates, you have in front of you a three-page--what we call or what we have designed as a resolution-is in the form of' a letter or memorandum to all delegates from President Graybill, having to do with the Convention schedule. And at this time, I wish to report that the Committee on Administration and the Committee on Rules and Resolutionshave reviewed this matter and the committees have voted that the resolution be adopted and the schedule be accepted as is. And if there are no objections, I would ask the President to explain the schedule as submitted to you.

PRESIDENT GRAYBILL: Any objections'? (No response) Very well. This memorandum should be considered in the form of a resolution, and we'll get it in better form next time. But, in any event, Rule 79 requires that the President present to the Convention a schedule, and that schedule was discussed at some length with the committee chairmen on Wednesday night. And the main points of the schedule are to set a cutoff date for submission of delegate proposals and, secondly, to set reporting dates for the commit&es and, third, to set a date on which we expect to initiate debate on the proposals. Now, in addition to that, Rule 38 requires the President to schedule the formal hearings that were required in subparagraphs 2, 3 and 4 of that rule-you'll remember we debated the rule on committee hearings. And we provided that a formal, public statewide hearing be held for each major committee in a series, and Rule 38 provides that I am to schedule that. Now, the schedule is not really subject to the Convention's debate-but the-that is, the schedule of those hearings isn't-but the schedule of the time of cutoff certainly is, and all I would say is, if we change the schedule, then I will withdraw and

make the hearing schedule fit whatever schedule we end up with today. My purpose is not to keep you from discussing the committee schedule-the hearing schedule--but we don't want to get into a lot of bickering about which committee comes first, and we'll schedule that after we know the other schedule. Now, if you'll turn to page 3, you'll see there both a calendar schedule and a substantive committee schedule, so that you can tell when your committee would have to report. The main points of this are that, on the 3rd of February, which is a Thursday in the third week, at 5:00 p.m., would become the deadline for submitting delegate proposals. There were some of the committee chairmen who wanted it the weekend before that and there were some of us who wanted it at least the weekend after that, but we compromised, and we have suggested that delegate proposals, the formal proposals that we're assigning here, be all in by 5:00 pm. on February 3rd. Then, the second major thing that you need to consider is that the hearings you see are in the first column of the calendar schedule and then the deadline for committee proposals are in the second column. Now, the second column is really controlling, and we are proposing to you that the General Government Committee split off the subjects of suffrage and revision and report on them first, just to start things rolling, and that then the committees report their formal proposals to this Convention, including minority reports, in a rolling manner, between the 12th and the 19th—the Legislative being on the 15th—and then two a day until Thursday, when we have three, and then two more on the last day. And since General Government went first with suffrage and revision, we're letting them go last with whatever else remains of their docket. Now, once-this is what we're really discussing—once that's set, we back up and we really back those formal hearings off so that everybody has at least five, and in some cases 7 or 8 days between their formal hearing and their deadline for submission of their proposals, so that anything that came out of those hearings could be rewritten or changed in their proposal. Then, the final point, I think, that this schedule makes is that, if the General Government Committee reports on the 12th, which is a Friday or Saturday-it's either a Friday or a Saturday-then we would probably be able to start-we have this 48-hour rule-their report would be printed and would certainly be on the desks Tuesday, we would think, so Tuesday and Wednesday would go by and we would be able to start debate on that matter on Thursday, the 17th of February. And then we would presume that debate would continue apace from then on, perhaps a half day at the first, but certainly a full day after the end of that week. And, assuming [the] Legislative Committee also made its deadline on the 15th, we would be able to debate it before the 19th—the 18th or 19th, we could start on that. Now, that's the purpose of this calendar, and the key dates are the 3rd of February and then the week of the 12th to the 19th of February for your committee proposals to be out. And then, based on that, the formal hearings would be backed off. And, lastly, that debate would probably start the 17th of February. Now, with that explanation, is there discussion of the proposed schedule?

Mr. Brazier.

DELEGATE BRAZIER: Mr. President, in the category of nit-picking, on your second page of your memo, the second paragraph, it is said that it is anticipated that the debate on committee proposals will commence on Tuesday, February 17th. I believe February 17th is a Thursday.

PRESIDENT GRAYBILL: Yes, that should be Thursday, so let's amend the memo to read Thursday, February 17th. Are there other people who wish to discuss this matter? (No response) All right. If not, so many as shall be in favor of what will be styled eventually Resolution Number 7, which is the schedule presented here with the report-so many as are in favor of the schedule proposed in the report, Resolution Number 7, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Now, Mr. Toole, how are you coming?

DELEGATE TOOLE: I think it's being delivered now, or is about to be delivered. Do you want me to start before it gets here, Mr. President? It's up from printing, and I think they're about to bring it out.

PRESIDENT GRAYBILL: How about the budget? Could we go through the budget? I guess really that is-needs to be second, doesn't it?

DELEGATE TOOLE: **You** have the new

budget before you. We might start on the budget, Mr. President. We go--we'll start on the budget and then go back to the staff, if that's agreeable with you.

PRESIDENT GRAYBILL: Yes, let's put the budget before them. I have prepared--again, the budget is the President's responsibility under Rule 6.

DELEGATE TOOLE: There arc some changes in the budget which result from slight changes in the staff. You don't have the changes in the staff on your desk yet, so I'm going to address a few remarks to the budget itself, which is substantially the same budget except for approximately $900 that you received the other day. I want to discuss an item which had been brought up and which was brought up in the hearing yesterday. The Enabling Act that provided for this Convention provided that the Convention disseminate information to the public with respect to the provisions of the new Constitution. Now, there has been talk that we are going to "sell" the Constitution to the voters. We are going to do nothing of the kind if I have anything to do with it. We are going to explain a very complicated document, the most complicated document ever proposed to the people of the State of Montana. It's going to be an educational process. There will be no Madison Avenue tactics used. Yes, there will be films, and those films, under the law and under the federal grant which we received, must not be partisan—must not take sides. There will be slides. There'll be articles. There may be TV. There'll be newspaper. There will certainly have to be delegate activity. The Constitution may be submitted in several articles. This issue is to take some careful public education. There is absolutely no intent on the part of this committee, and I hope on the part of this Convention, to try to sell this Constitution the way you sell soap. It just simply will not be done if I have anything to do with it. Now, those are my preliminary remarks on that portion of the budget with respect to public information. There may not be many--any money left for public information, but that's the way I feel about that particular portion of the budget. Now, perhaps, Mr. President, you'll want to open debate on that subject, since I think we're going to have some. If so, proceed.

PRESIDENT GRAYBILL: Very well, is there further discussion on the proposed budget?

DELEGATE SCHILTZ: Mr. President, I think, as a result of my appearance before the committee-was it yesterday or day before yesterday&that the committee has very graciously answered some of my objections to the problem. However, Mr. Toole has said on two occasions here this morning that this budget will-this particular item of the budget--will be expended in the fashion he states if he has anything to do with it. Now, I don't know if Mr. Toole is going to have anything to do with it, so I would like to offer an amendment for an additional provision, by way of an amendment to the committee report, which is as follows: "Provided, however, that of the money budgeted for public information, none thereof shall be expended for anything but factual report. ing of the proceedings of this Convention." Mr. President.

PRESIDENT GRAYBILL: Mr. Schiltz, can you supply the Chair here and the journal with a written copy of your proposed amendment?

DELEGATE SCHILTZ: Just handwritten all right?

PRESIDENT GRAYBILL: That's fine. We can work from that.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, as I said, I think this places a little insurance on how this money is spent, in case Mr. Toole is not the man in charge of spending it. I believe him when he says that if he has anything to do with it, thatit will be spent in this fashion. I firmly believe that the Constitution should be explained to the people of the State of Montana. Mr. Toole assures me that it will not be sold to them, and I want to be sure that it isn't. I take the position that if this Constitution is any good. it will sell itself. If it's bad and we're using public moneys to sell it, it shouldn't be done. And that, in essence, is the reason for my amendment and my proposal.

PRESIDENT GRAYBILL: Very well, is there other discussion?

Mrs. Bugbee.

DELEGATE BUGBEE: I'd like to ask Mr. Schiltz-I have in my hand here-and the Convention has not paid for this-but this is *The Legislative Assembly in a Modern Montana Constitution* by Ellis Waldron. It's an excellent pamphlet. It's one of the best I've ever seen. Does

tion to pay to cover to send this to anybody-that nobody in this state has a right to anything like this?

DELEGATE SCHILTZ: Mrs. Bugbee, I haven't seen it, but if it in any way does anything other than to state what has transpired in this Convention, I would object to it.

DELEGATE BUGBEE: So therefore your amendment means that there shall be no background material, no informing the citizens of Montana of various-no ways for them to find out various points of view and to deepen their knowledge about the whole governmental process?

DELEGATE SCHILTZ: I welcome that—welcome the people of Montana having an opportunity to find out the points of view of the people in this Convention. I don't want the people of Montana to be convinced of a Constitution with public moneys. If somebody wants to take up a collection and promote and hand out Dr. Waldron's pamphlet, that's fine with me, but I don't want public money spent for anything other than factual reporting of what transpires here.

DELEGATE BUGBEE: It seems to me, Mr. Schiltz, this is awfully limiting for the people of Montana. I don't know, really, how they're going to find out-get a background as to issues just on what comes out from the Convention itself.

DELEGATE SCHILTZ: If we treat that as a question instead of a speech, we have newspapermen all over the place who are reporting. The newspapermen are going to comment. The newspapermen are going to pick us to pieces if we go to work putting out people's opinions, outsiders' opinions or insiders' opinions, of what should be done here unless it's something that transpired on the floor here.

PRESIDENT GRAYBILL: Other discussion?

Mr. McKeon.

DELEGATE McKEON: I rise in support of the motion made by Mr. Schiltz. I, too, greatly fear that these taxpayers' moneys will be used to promote a Constitution rather than explain it. I will agree that the public moneys should be spent if they will be used only to explain the Constitution, but I do not want a Madison Avenue type of slick package which will sell something to the people. Thank you.

PRESIDENT GRAYBILL: Mrs. Reich&.

DELEGATE REICHERT: Mr. President, I have a question. I have before me some of the material distributed by the Illinois Constitutional Convention. I realize that in our Enabling Act, every voter will be given a copy of the proposed Constitution before voting, but my question is: will this copy be similar to what we receive before every election--for example, the sales tax, with the small print-I mean-which really-I think it really encourages people not to bother reading what we have proposed. In Illinois they did prepare a newspaper-type explanation of each Article, and I think that it's very easy reading. In addition, they have a simple one-page explanation of what is in the Constitution, including their alternatives. I'm wondering--my question is, are we prepared to produce something of this nature for the voters of Montana.

DELEGATE SCHILTZ: Mrs. Reichert, as you know, I'm Chairman of the Style and Drafting Committee. One of the things that the Style and Drafting Committee will do-this Constitution, when finally adopted, will be disseminated to every registered voter in the State of Montana. Along with every Constitutional provision, underneath it is an explanation of why this is being done or why this was changed or how it was changed from what existed previously.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: I think everyone in this Convention is aware of the fact of the type of foolscap presentation by the Secretary of State on these type of documents. It is not widely read. It's in fine print. It's on a poor quality of paper. This committee proposes, with the help of Montana State University and a grant that they received, to put this Convention out in a form which is-put this Constitution out in a form which is readable, which is understandable, and I might say that this brochure put out by Montana State University cannot be framed in any partisan way. It cannot be framed in any way to promote the Constitution or oppose the Constitution, but it will be a great improvement over the type of foolscap which you receive from the Secretary of State on most issues of this kind.

PRESIDENT GRAYBILL: Other discussion?

Mr. Martin.

DELEGATE MARTIN: Mr. President, as I said the other day at the hearing, if we've got any notions that we can use Madison Avenue tactics in public information, we would need 500,000 or more and we've got exactly $17,000 and that wouldn't begin to scratch the surface. I think, Mr. President, you said the other day that perhaps you could have ads or radio--radio paid ads or radio—for-and television for vote for the Constitution or something of this sort. I don't think that, under this budget, it would even scratch the surface to attempt to do that, and as I envision what could be done with the $17,000 certainly you couldn't do anything with that but provide some informative information to the media and the other people.

DELEGATE WARDEN: Mr. President, I rise in support of the motion of John Toole on Public Information and on--as a member of the Public Information Committee. I feel that we do have to do something to get as many people informed about what we are doing and what we have done here. I think it is the most important thing that we have in the Convention, and if we are-everything we do has to be checked as being--well, how do I put it?-as being suspicious-1 don't think this is right. I think we have to have mutual trust. I believe that when John Toole says that, he means it. I believe that when I say it, I mean it. We want to inform. We don't intend to have a propagandizing machine that will blanket everything, because, first of all, we wouldn't have any money and, second of all, I'm sure this would not be the proper way to do it. But I do feel that the Public Information funds must be used to inform the people of the State of Montana. Thank you.

PRESIDENT GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. President, I rise in support of Mr. Schiltz's motion. I have complete trust in our Public Information Committee and know that they will be objective. However, I believe that it is premature at this time to include an item in our budget for disseminating information about a document which we don't even have the roughest of drafts at this time. It is entirely possible that the hundred delegates assembled here won't be able to agree upon anything. I am confident, as I am sure certain each of you are confident, that this Constitution will assemble a superior Constitution which will be completely acceptable to the people of Montana. I was pleased to hear Mr. Toole's comment that, toward the tail end, there may be no money left for Public Information. For that reason, there should be no objection to the amendment which I will now propose to Mr. Schiltz's motion. The amendment I propose is to add the following language: "that none of the $28,000 in the Public Information budget be spent unless approved by a majority of the delegates after the final draft is completed".

PRESIDENT GRAYBILL: Will you please supply the Chair with a written copy of that amendment. Now, I won't debate it until I can read it, Mr. Schiltz. Wait till we get our copy. Very well, the amendment to Mr. Schiltz's motion by Mr. McNeil is "that none of the $28,000 in the Public Information budget be spent unless approved by a majority of the delegates after the final draft is completed".

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President, it seems to me that if we adopt either the substitute motion or the amendment, that we are expressing a vote of no confidence in the Information Committee, that we are expressing a vote of no confidence in ourselves and a vote of no confidence in the work of this Convention, and I would rise to speak against both of these motions.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will Mr. McNeil consent to a question?

DELEGATE McNEIL: Yes.

DELEGATE SCHILTZ: Do I understand that your amendment is an additional proviso on top of my motion?

DELEGATE McNEIL: Yes, and that the intent is that the money not be spent until approved by a majority of the delegates but that if it is to be spent, or when it is voted, that it is to be restricted to the distribution of information only and not for promotion.

DELEGATE SCHILTZ: Mr. President, may I speak to that?

PRESIDENT GRAYBILL: You may. I'd like to point out to Mr. McNeil that's not in his amendment. All he said isn't in his amendment. His amendment is "that none of the 28,000 be spent unless approved by a majority of the delegates after final draft is completed" period.

Mr. Schiltz.

DELEGATE McNEIL: Mr. President, the first line of my handwritten note says to add—

PRESIDENT GRAYBILL: Yes, to his—

DELEGATE McNEIL: -to add to his motion.

PRESIDENT GRAYBILL: Right.
All right, Mr. Schiltz.

DELEGATE SCHILTZ: Now, I would like to speak to the substitute motion. I accede to that substitute-is that a substitute?

PRESIDENT GRAYBILL: No, that's an amendment to yours by way of addition.

DELEGATE SCHILTZ: I accede to that amendment. This now being a new motion, this is the last time I'll be able to speak on this subject, so I would like to say to Mr. Toole and Mrs. Bugbee that I have every confidence in Dr. Waldron. I've known him a long time. He's a good friend of mine. I would like to observe--I've done a little writing myself-it's virtually impossible to keep your own feelings out of any writing you do, and I just don't want anything done by any outsider in this Convention that is disseminated to the public with public funds.

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, I would like to speak in several directions-is this thing on? I'd like to speak in several directions to this, to Mr.-I can appreciate your comments, and to Mr. McNeil, I can appreciate yours. As a member of the media and the press-in getting information out to the people of Montana, we have to have confidence in the press and in the news media, and I'm one of those people who takes it as it comes. I think that they have been asked to do a terrific job in getting the reports of this, and they may not be right. Remember, this goes to several different sources. It goes from me to you-to you, and then sometimes it ends up with the news media and it goes to reporters and it's printed. I think that it's the only way we can get the news out to the people of Montana about this Convention, and I think they're doing a terrific job. I don't believe that they are going to be biased, and they're looking at it as they see it, as we are conducting the business, as we see it, and there are going to be very many points of view toward this. As far as the film is concerned, in the Public Information Committee, which was held before the Convention started-the Public Information Committee had this responsibility of deciding, because "fthe fund itself. WC had to decide at that particular time whether to have this made historically or not, this film, and we decided yes, and that has been committed to this. I'd like to have these gentlemen know this and that the delegation know this also. I think that we should use every means to get this out to the people of Montana and trust their judgment.

PRESIDENT GRAYBILL: Is there anyone else that wishes to debate it before I let Mr. Toole and Mr. McNeil close?
Mr. Romney.

DELEGATE ROMNEY: Mr. President, I feel two ways about this, but I think that there should be great safeguard against using public money to try to get this Constitution approved by the electorate. I think that the reason for this probably goes back to the methods that were used to get the electorate to approve holding the Convention. If you will remember, the Legislature in 1969 submitted the proposition as a referendum vote to the electorate. I was a member of the Legislature, and I voted for it. It passed--a little bit of history might not be amiss-in both houses of the Legislature. The proposition failed in the first vote. It had to have two-thirds in both houses. The second go-around, it passed by one vote in each house, each house had one vote more than the necessary two-thirds, and it would not have passed in the lower house-the House of Representatives--had not 10 or 12 members abstained from voting. Had they voted, it would have wrecked it. The election came along, and the people who had charge of the money to expend, which had been appropriated by the Legislature for the purpose of explaining it, spent a good fraction of it on newspaper advertising and on advertising over the air. There were numerous spot advertisements on the air saying "vote for the Constitution-don't forget to vote for the Constitution such-and-such a date"--material of that type, no argument, just to vote. You know how spot advertisements are. In the press, the ads-the display ads gave no arguments. It was just to be sure to vote for the Constitution. It was public money spent on one side of the proposition. It so happened that I approved of the thing, but I did not approve of the practice. It so happened that, as a newspaper publisher, I was a beneficiary of the slush fund, but I did not approve of the

practice, and that's the only thing that I object to here, and I think Delegate Schiltz and Delegate McNeil are doing a yeoman job in this matter of calling this to the attention of the public. I rejoice at the statement that John Toole made, but I think that a little bit of insurance-John Toole may not be handling this money. There may not be any money. But there may be 50,000 more dollars coming from a grant. I think it doesn't do a little bit of harm to take this money out and shake it into light so that there won't be anything like this transpire.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, the problem, I think, that's presented by Mr. McNeil's amendment, the $17,000, restricting it to factual information to be disseminated subsequently, and if it has to be approved by everyone here, I wouldn't think that would really present any problem. But as far as thedocumentary film to be made of the proceedings and committee meetings, we can't do that after the document is finished. In other words, we've got to go forward with either a decision on making this documentary film to be placed in the archives-the other major constitutional conventions have prepared such a film. It's supported by various grants, and in 1972 a documentary film would seem to be the current way to record some of this history. So I submit-or would ask Mr. McNeil to yield to the question and ask him if he opposes the Information Committee, of which I am a member-sometimes some of them, I think, wish I weren't, Mrs. Bugbee-but do you object to us proceeding with the documentary film, which we either have to go forward with or we have to cancel. We can't come back and reenact any scenes from this Convention after it's over with.

DELEGATE McNEIL: Carl, in response to your question—

PRESIDENT GRAYBILL: You may answer the question, Mr. McNeil. You may have the floor for the answer of the question.

DELEGATE McNEIL: Yes. In response to your question, I would have no objection to the filming of a purely historical document. However, I'm most concerned about the fact that the man with the camera in his hand can film those portions which he wants to film. I do not care whether enced by the person--which committee meeting is he particularly going to attend? I thinkit's premature to authorize the expenditure of any money before the document is prepared in acceptable form to the delegates.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President-

PRESIDENT GRAYBILL: Wait a moment. Mr. Davis, are you through?

DELEGATE DAVIS: No, I believe I still have the floor and I am yielding to his question, if I may, Mr. President. Would you have a different opinion--would you yield to another question, Mr. McNeil?

PRESIDENT GRAYBILL: Mr. McNeil, you may yield-you may answer the question.

DELEGATE DAVIS: Would it meet with your approval if such a film were prepared and everyone would hope and make their best efforts to proceed on a pure documentary basis, but that it would not be released until it had approval of a majority of the Convention. Since we can't make it afterwards. You see what I mean?

DELEGATE McNEIL: Certainly. And I don't mean to imply censorship, that it should show just the parts I want to; but if it is purely objective, I would agree.

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Could you read the motion again, please, Mr. President?

PRESIDENT GRAYBILL: "That none of the $28,000 in the Public Information budget be spent unless approved by a majority of the delegates after final draft is completed."

DELEGATE SCHILTZ: Point of order-

PRESIDENT GRAYBILL: Just a moment, now. Mr. Schiltz, point of order.

DELEGATE SCHILTZ: (Inaudible)— have added to my original motion so that the entire motion should be read.

DELEGATE DAVIS: If the President doesn't object, I think it would be helpful. I think—

PRESIDENT GRAYBILL: All right. I understood you to say you wanted Mr. McNeil's amendment read. "Provided, however, that the money budgeted for Public Information-that of the money budgeted for Public Information, none thereof shall be expended for anything but factual reporting of the proceedings of the Convention; that none of the $28,000 in the Public Information budget be spent until approved by a majority of the delegates after final draft is completed."

DELEGATE DAVIS: As a member of the Public Information Committee, I'd have to resist that. I'm opposed to selling and I'm opposed to anything but factual information, but there is no way the Public Information Committee can function unless we do these things as the Convention is going on, for subsequent release. So I would therefore resist both the motion and the amendment.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Am I in order at this point to talk in favor of Mr. Toole's resolution or not?

PRESIDENT GRAYBILL: You are in order to debate the amendments, which you can oppose the amendments and in that way support them, I guess.

DELEGATE CHAMPOUX: All right. First of all, I would like to say that the Public Information Committee isn't the United States Department of Defense. Secondly, we're talking about spending over $500,000 in this Convention; we're talking about spending over $200,000 on a special election; and I think it's ridiculous not to be able to spend $28,000 in disseminating for public information. The third thing, in talking with some of the delegates and reading some of the articles in the statewide papers, sometimes we wonder if they're writing about the North Dakota Convention. Thank you.

PRESIDENT GRAYBILL: Mr. Harper.

DELEGATE HARPER: I think we're all in sympathy with the direction of Mr. Schiltz's motion, and I think he's done us a service to call this to our attention so that we can all be aware of the fact that we ought to be careful at these points, and I am in favor, in general, of what he says. But I think that if we got legalistic in terms of interpretation of it, we might undo some things that I don't believe he even maybe had in mind when he made this suggestion. For example, the tours of school children who come, other things. You might not say this is factual reporting of what's going on in the Convention. I can see how somebody on the committee might say factual reporting of this Convention would mean that various points of views that were expressed--an article like Ellis Waldron's dropped into the hopper then could properly be reported as information which went to the delegates, et cetera, et cetera. And, I think, without it, we can keep the essence of what he wants and with it we might be in a little bit of a legal bind in trying to do the complete job.

PRESIDENT GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I would like to speak against the proposed amendment, primarily because, involved with what Mr. Champoux stated, that in terms of total expenditure of this Constitutional Convention we are spending a half million dollars of the State of Montana. We can at least reserve a small portion of that to let the state know what we're doing with that money. And I also would like to talk on—or mention to Mr. Schiltz—I hope that you do not mean that everyone that is not a member of this Convention is an outsider, because I believe that every citizen of Montana is as much a part of this Convention as we are, and I hate to see them referred to as outsiders.

PRESIDENT GRAYBILL: Now we are debating Mr. McNeil's second amendment.

Mr. Martin, I'm not certain whether you've spoken on Mr. McNeil's amendment or not. Very well. Mr. Martin.

Gentlemen, I'm going to let you close, but I'm not going to let you talk until it's time to close.

DELEGATE MARTIN: I would just like to point out to the delegates that by adoption of the Public Information report just a few minutes ago, you have adopted by the Convention the policy statement of the Public Information Committee which requires openness, the presentation of both sides and everything of this sort. By your Convention-I think-your action you have agreed on this policy of openness and fairness and certainly are not going to muzzle anyone.

PRESIDENT GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. President, two things that haven't been said. First of all, I rise in opposition to Mr. Schiltz's and Mr. McNeil's motions and in favor of Mr. Toole's motion. The people elect legislators. That's how the people are represented. The Legislature, acting on behalf of the people. set up the question of whether or not we would have a Constitutional Convention. The people had an opportunity to vote on it, and they voted for it. So, to say that we're spending the people's money to promote the Constitutional Convention and we shouldn't be doing that, is a concept that I don't agree with. The people gave us this money, and they gave it to us for the purpose of having a Constitutional Convention. And I think we would he remiss in our duty if we didn't try to sell the final product after we have spent some $700,000. Secondly, the point should be made that I think we're going to do some great things here and we're going to come out with what I believe will he a great Constitution--maybe not containing all the things that I might like, but tempered with the wisdom of those who arc older, and it will he a viable document. And there are forces and people in the State of Montana who are going to be opposed to this new Constitution, and they're going to be spending a lot of money to defeat it. And I'm afraid it would he a sorry state if we came out with this kind of a Constitution and the opposition was there spending their money and we had no money with which to present the true— or an explanation or retaliation to their comments. Thank you.

PRESIDENT GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. President, I would like to speak in opposition to Mr. McNeil's proposal. I think it's unduly restrictiveand highly unrealistic. I'd also like to speak in sympathy with Mr. Schiltz. I think that his concern is that we he objective, that we do not try to sell the unicameral or bicameral, that we do not try to sell the Montana Plan or an environmental clause, hut that we he purely objective. If Mr. Schiltz may speak, was that the intent of your motion, Jack?

PRESIDENT GRAYBILL: Mr. Schiltz, you may answer. The point is that you ask the Chair if you may yield to a question and then the Chair will allow you to do that, but we just don't let debates start between two of you without coming up here. Okay. Mr. Schiltz, you may answer.

DELEGATE SCHILTZ: That was precisely the point of my motion. Mr. President, while I'm on my feet—and I'm not going to make a speech-hut I heard you say twice that you were going to allow Mr. Toole to close, and I don't want to raise a point of order, but I think that—

PRESIDENT GRAYBILL: Well, when the time comes, if you object to it, I'll explain my ruling. Before we go to Mr. Toole, is there other discussion of Mr. McNeil's amendment'?

Mr. McCarvel.

DELEGATE McCARVEL: Mr. President, I wonder if Mr. McNeil would yield to a question.

PRESIDENT GRAYBILL: Mr. McNeil, will you yield'?

DELEGATE McNEIL: Yes.

DELEGATE McCARVEL: Is it your intent that the material or proceedings that are here will be cut off from the press by the information?

DELEGATE McNEIL: Of course not.

DELEGATE McCARVEL: Then, all your intent is that, after we have finished the product, then the Information Committee could bring it to the public.

DELEGATE McNEIL: Negative. I do not intend in any way to restrict the Public Information Committee at this time.

DELEGATE McCARVEL: No, not at this time in bringing it to the public, hut when the finished product comes out, then it is the time to bring it to the public as a finished product.

DELEGATE McNEIL: Upon approval of a majority of the delegates at this Convention, at that time I would make the motion to spend the money.

DELEGATE McCARVEL: Then I will have to go along with your proposal.

PRESIDENT GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: As I understand it now, Mr. McNeil has amended Mr. Schiltz's motion.

PRESIDENT GRAYBILL: Right.

DELEGATE KELLEHER: And so we're not-are we voting now on the amendment, when you do call for a vote?

PRESIDENT GRAYBILL: All right, I'll explain this. When we vote, we will vote on Mr. McNeil's amendment. Mr. McNeil will get to close and Mr. Schiltz will get to close, since it's his amendment that's being amended. Then, when we vote on Mr. Schiltz's amendment, he'll get to close and Mr. Toole will get to close on the whole thing because it's an amendment to his amendment. Okay. In other words, the fellow that proposes has a chance at the end and the fellow that--who's being amended also has a chance.

Now, you're on the floor, Mr. Kelleher.

DELEGATE KELLEHER: I wasn't so much concerned as to who was going to beclosing, Mr. President, but when you call for the-is my mike on? I'm tired; these late committee meetings-is my mike on?

PRESIDENT GRAYBILL: Yes.

DELEGATE KELLEHER: As to-are we going to vote on the amendments separately; that's my question, sir.

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE KELLEHER: I think that the amendment is premature and that the original motion of Mr. Schiltz is also premature. I have a question. Has the $11,000 been committed of this $28,000 to the U of—MSU?

PRESIDENT GRAYBILL: If that question is directed to the Chair, it has been committed, but it depends on the passage of the budget.

DELEGATE KELLEHER: I see. Only one state, as I understand it, Mr. President, has debated this problem of attempting to sell the finished product to the people of that state, and I have no fear of using the word "sell". I am trying to sell my delegates on the floor of this Convention and committee hall-even in the men's room--every day. And when we are finished-I haven't been able to get into the other room (Laughter) or I'd try to sell there, too. And when we're finished with this product, and I hope that it's going to be a revolutionary type of document-not a lot of rehash of what we've got-1 have no objection to using the word "try to sell it" to the people of the State of Montana. I rather suspect that there will be an organized movement to attempt to defeat the document. In fact, shortly after the election, one person down in my part of the state said that no matter what happened, nomatterwhatthey wrote up there in Helena, this person was going to defeat it, attempt to defeat it. Because the only state that debated this matter refused to spend, as I understand it, public funds to attempt to "sell" the finished product--and I submit that there is a very fine, indistinguishable line between opinion and strictly factual information and it would take more than a Philadelphia lawyer to determine what it is when we put out our advertising to explain this final document to the people of Montana, that it'd be an impossible proposition. In this state they decided not to spend the money, and it was one of the states whose constitution went down to defeat. And I rather suspect, and I have not had time to investigate the matter, but I rather suspect that, because they did not have sufficient funds with which to sell--and I use the word advisedly-the finished document to the people of Montana, that that was the reason why it was defeated, and that was in the State of Arkansas. For this reason, Mr. President, I move that we table-and because we have not completely-we have not finished, we have not drafted, really, on this floor, not even one word, not even the title of our Constitution-because I feel this matter is premature at this time, I move that we table the motion of Mr. Schiltz and the amendment of Mr. McNeil. Thank you.

PRESIDENT GRAYBILL: I understand a motion to table both amendments-is thatright, Mr. Kelleher?

DELEGATE KELLEHER: Yes, sir.

PRESIDENT GRAYBILL: Both amendments has been made-that motion is not debatable.

For what purpose do you rise, Mr. McKeon?

DELEGATE **McKEON:** I rise to ask Mr. Schiltz a question.

PRESIDENT GRAYBILL: I'm sorry, we are going to have to vote on this motion to table these two amendments. All those—

Mr. Aasheim, for what purpose do you arise?

DELEGATE AASHEIM: To ask the Chair a question. Can we vote on the two simultaneously'?

PRESIDENT GRAYBILL: Well, Mr. Kelleher, you are moving to table both of them?

DELEGATE MURRAY: Well, this is the problem. We've got a motion here and it's got an amendment tacked onto it.

PRESIDENT GRAYBILL: All right. Let's vote to table Mr. McNeil's, which includes Mr. Schiltz's, and then we'll have toconsiderwhat to do with Mr. Schiltz's separately.

Mr. Romney, for what purpose—

DELEGATE ROMNEY: Point of order.

PRESIDENT GRAYBILL: All right.

DELEGATE ROMNEY: As I understand it, the McNeil amendment was accepted by Mr. Schiltz, and so it is one proposition.

PRESIDENT GRAYBILL: Well, I listened to Mr. Schiltz carefully, but I did not understand that he was accepting it and replacing his motion with it. My understanding said he was agreeing with it. Now, we've debated it on that basis. If he's going to accept it, he's got to make it clearer to me. I understood he was agreeing with the sense of it; I didn't understand he was accepting it as his motion. I think I have Mr. Schiltz's mind in-in my mind.

For what purpose do you arise, Mr. Berg?

DELEGATE BERG: Question of the Chair.

PRESIDENT GRAYBILL: Very well, ask the question.

DELEGATE BERG: Are we to consider that this motion-

PRESIDENT GRAYBILL: Well, I'm—

DELEGATE BERG: (Inaudible)-to table applies to both motions?

DELEGATE BERG: Are we to consider that this motion to table applies to both motions?

PRESIDENT GRAYBILL: Well, I'm—

DELEGATE BERG: (Inaudible)-in the position of favoring one amendment but opposed to the other, he would necessarily be in the position of killing both.

PRESIDENT GRAYBILL: I'm about to to the McNeil motion first, which does include both motions, and then if he wants to remake it for the Schiltz motion, we'll do that separately. Is that agreeable with you, Mr. Kelleher?

DELEGATE KELLEHER: Mr. President, would you please--I'm sorry to ask, but would you please read back to me Mr. McNeil's motion?

PRESIDENT GRAYBILL: Mr. McNeil's motion includes Mr. Schiltz's motion and it says: "Provided, however, that of the money budgeted for Public Information, none thereof shall be expended for anything but factual reporting of the proceedings of the Convention; that none of the 28,000 in Public Information budget be spent unless approved by a majority of the delegates after final draft is completed." That's his whole amendment. So we'll vote, unless you object, Mr. Kelleher, on tabling that amendment. Then I'll give you the floor and you can make another one if you want to.

Mr. Toole.

DELEGATE TOOLE: May I speak on the motion to table?

PRESIDENT GRAYBILL: No, it's nondebatable. We're going to move to table it, one way or the other here, without debate. If you want to ask a question or have a point of order, that's fine; but no debate. All right, all those in favor of Mr. Kelleher's motion to table Mr. McNeil's motion-or amendment, which includes the whole text, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair is in doubt. We'll have an unrecorded roll call vote. All those in favor of tabling the motion, vote Aye; those opposed to tabling the motion, vote No.

Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The ballot is closed. The tally is 50 Nays, 45 Ayes. The motion is not tabled

separate motion at this time? We're going to vote on Mr.-I think, Mr. Kelleher, I'll have to come back to you after we dispose of Mr. McNeil's motion, one way or the other. All right, now, we're still debating Mr. McNeil's motion, which includes the whole thing.

Mr. Brown.

DELEGATE BROWN: Mr. President, I have listened to this debate, and I am a member of this Public Information Committee. If this motion, as amended, is passed, I don't see how the State University could come over and make the film or if they would make it, because we'd have it all done; and if the people didn't approve of it, they would vote it down and we could not pay them the money. I think they're going to have to give some discretion to the committee to do what we think is best. And I agree with Mr. Schiltz that we should factually report it, but we can't be legislated on and given a little discretion; and I'm sure members of the committee that I know, that we will see that the information is factual. If there's any attempt to sell this Convention, then we'll come back to the Convention as a whole and report. So, for those reasons, I think that their people would not deal with us if we are too restricted.

PRESIDENT GRAYBILL: Mrs. Eck.

DELEGATE ECK: I'd like to ask Mr. McNeil a couple of questions on this issue.

PRESIDENT GRAYBILL: Mr. McNeil, will you yield?

DELEGATE MCNEIL: Yes.

DELEGATE ECK: I'm not too much aware of all of the programs now under way by the Public Information Department, but I do know that they have set up a program of school tours, which Mr. Harper mentioned. I do know that they're issuing weekly bulletins to weekly newspapers who do not have access to the Capitol Bureau reports. Would you suggest that, right now, those two programs be cut, and your amendment would do that?

DELEGATE MCNEIL: That was not the intent, Mrs. Eck.

DELEGATE ECK: How would you, in that case, continue these when none of this money is to be spent until the end of the Convention?

DELEGATE MCNEIL: Is this the only source of funds available to that committee'!

DELEGATE ECK: I think so.

PRESIDENT GRAYBILL: Mr. Skari was up next.

DELEGATE SKARI: Mr. President, I think this airing was quite useful. The concern of Mr. Schiltz and Mr. McNeil is also a concern of mine, but I also feel that we here do not wish to write too restrictive a document. We're concerned that perhaps the insurance or the guarantees that we get in this matter will not be worth the price, and I think perhaps that this may also be the case with the rules that we enact here-that these, in effect, are our own Constitution. I would suggest—at least I have been assured by the Public Information Committee that they're capable of doing a good job, and I guess I feel that we should allow them to go ahead with this and not overly restrict them. And I think perhaps that--and I have used this word "sell", too-1 think perhaps we should consider, for all purposes, that it is a four-letter word and perhaps we should avoid it. (Laughter) Thank you.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, as a member of the Public Information Committee, I rise in opposition to Mr. McNeil's amendment because I feel it would be a great loss to the State of Montana not to have this film made in order to preserve the history of this Constitution. I also rather resent when you refer to the Madison Avenue tactics, because I happen to live on Madison Avenue. (Laughter)

PRESIDENT GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. President, I rise as a member of the public, which.1 am. I may be a delegate, but I am also a member of the public. And I am concerned about the fact that we're not going to get anything from the proceedings of this Convention-from the Convention. All that we will get under these proposed amendments to the budget is what will be given out by the press and by word of mouth. If we haven't the faith in ourselves and in our fellow delegates to use the money proposed here in the budget at the various levels, explained in the budget, and we're going to start out restricting this amount and that amount, we

will end up not being able to even pay ourselves until we have a motion on the floor that we should pay, and that will cost more money and we'll have less money to pay ourselves. I am strongly opposed to this restriction of giving information from this delegation to the public.

PRESIDENT GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates. I am against Mr. McNeil's amendment and Mr. Schiltz's amendment. The Public Information Committee has done and is doing a terrific job of getting this information to the public so far. They have done-1 don't know how many hours of time have been put into the planning that they've done for the picture, for other things. I believe that we must let them plan and use their discretion and bring the things before this body as is necessary. I do not think we should tie their hands at this time. They should plan ahead as a business must plan in an advertising promotion. We have a big job-and we can use "sell" if we want to here, I believe, because the public must be sold on this document we provide; and I think it has to be over a long period of time, all during this Convention. Andifthercare things that the public information group can do to assist us as we go along, I think we need all the help that we can get.

PRESIDENT GRAYBILL: Very well. Mr. Berg.

DELEGATE BERG: Will Mr. McNeil yield to a question?

PRESIDENT GRAYBILL: Mr. McNeil?

DELEGATE BERG: Mr. McNeil, is it the sense of your motion that no moneys may be expended by the Public Information Committee unless and until the document--a Constitution—has been approved finally by this Convention?

DELEGATE MCNEIL: That is the strict language of the amendment; yes, Ben.

DELEGATE BERG: And are you aware that once this Convention finally approves that document, it then is in adjournment?

DELEGATE MCNEIL: That's correct.

DELEGATE BERG: And is it then the purpose of your motion to prohibit the Public Information Committee from expending funds for the purpose during the time that this Convention is sitting?

DELEGATE MCNEIL: Yes, unless approved by a majority vote of this Convention.

DELEGATE BERG: And so it is the intent and purpose of your motion not to express any confidence in the Public Information Committee to expend budgetary funds:'

DELEGATE MCNEIL: Without prior approval of this Convention, yes.

DELEGATE BERG: Mr. Chairman.

PRESIDENT GRAYBILL: Yes.

DELEGATE BERG: It seems perfectly obvious to me that the sole and only purpose of Mr. McNeil's amendment is to disenfranchise the Public Information Committee during the course of this Convention. Now, I am personally opposed to that. On the other hand, I am in agreement with Mr. Schiltz's amendment that any information produced by the Public Information Committee regarding the proceedings of this Convention be factual and objective, but I would not hamstring their budget appropriations unless, of course, it is the sense of the Convention that it is being misapplied.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I move the previous question.

PRESIDENT GRAYBILL: Okay, previous question has been moved. In other words, we're going to vote on whether to vote on Mr. McNeil's amendment. Two-thirds vote is necessary, the clerk informs me. All those in favor of voting now on Mr. McNeil's amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: Nay.

PRESIDENT GRAYBILL: The Ayes have it, and we will now vote. All right, the proposition is on Mr. McNeil's amendment, which is: "Provided, however, that of the money budgeted for Public Information, none thereof shall be expended for anything but factual reporting of the

$28,000 in the Public Information budget he spent unless approved by a majority of the delegates after the final draft is completed." So many as are in favor of that amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the amendment fails. We are now debating Mr. Schiltz's amendment, which is: "Provided, however, that of the money budgeted for Public Information, none thereof shall he expended for anything but factual reporting of the proceedings of the Convention." Is there any further discussion'!

Mrs. Payne.

DELEGATE PAYNE: (Inaudible) ask Mr. Schiltz a question. Do you mean, Mr. Schiltz; that we couldn't go ahead having this film made by the university?

DELEGATE SCHILTZ: Not at all. So long as the film is a film of the proceedings of this Convention, I have no problem with that.

DELEGATE PAYNE: Yes. **You've seen** one of the films that's been produced—

DELEGATE SCHILTZ: I've seen the Bell Telephone Company film of the State of Illinois.

DELEGATE PAYNE: Yeah--good. Thank you very much.

PRESIDENT GRAYBILL: Is there other discussion of Mr. Schiltz's amendment. If not, Mr. Schiltz, do you want to close first. Mr. Schiltz: there's no further discussion. You may close first, then Mr. Toole, to whose report you are making an amendment, may close finally.

DELEGATE SCHILTZ: Thank you, Mr. President. I appreciate very much the interest of all the members. I think we've excited a reasonably good debate here today and everybody—almost everybody has had a say, except Wade Dahood, who moved the previous question. I get hack to the proposition all the time. I think my motion only puts into words and into a formal document of this Convention what Mr. Toole assured us of in the very beginning-that they did not intend to do anything other than what the language of my motion provides. I would like to say once more that I think that if this document turns out to be a good document, and we all have every hope that it will-we're certainly all working hard enough-that it will sell itself. **Thank** you.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President, I think everything has been said that can be said on this subject. I would warn the delegates that the film is scheduled to he started—to be shooting next Tuesday, and if we take this out of the budget, that's going to have to be cancelled. Mr. President, I would suggest-or move that we vote at this time on Item 0128 of the budget.

PRESIDENT GRAYBILL: Well, Mr. Toole, wait a minute. We have to vote on Mr. Schiltz's amendment yet.

DELEGATE TOOLE: Oh, I beg your pardon.

PRESIDENT GRAYBILL: All right. Very well, the proposition before us is Mr. Schiltz's amendment that: "Provided, however, that of the moneys budgeted for public information, none thereof may be expended for anything hut factual reporting of the proceedings of the Convention". So many as shall he in favor of' that amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as shall be opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair is in douht. We'll open the ballot. So many as are in favor, vote Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The vote is closed, and the vote is 5% Ayes in favor of the amendment and 43 Noes against it, so the motion carries. Now we're hack on debate on the budget

and the budget has been presented to you. Is there further discussion on other matters on the budget?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. Under the-oh, we're not-

PRESIDENT GRAYBILL: We're on the budget now, not the staff yet-the budget.

DELEGATE BLAYLOCK: Excuse me.

PRESIDENT GRAYBILL: Anything else on the budget'?

Mr. Toole.

DELEGATE TOOLE: Mr. President, if you will turn to the staff section in the budget, you will notice that we've made some minor changes in salaries.

PRESIDENT GRAYBILL: Hold that a little further away from your mouth, Mr. Toole. Thank you.

DELEGATE TOOLE: You've noticed that we have made some minor changes in salaries. Mr. Spall and Mr. Sullivan have been increased from $25 to $35 a day.

PRESIDENT GRAYBILL: Mr. Toole, since you now have-may I interrupt you-since you now have your other resolution concerning employees and their salaries before you and since that is an integral part of the budget, would it be agreeable with you to defer consideration of the budget while we consider your other resolution, and then we'll know whether the budget is right or not?

DELEGATE TOOLE: Which resolution are you referring to-the dissemination of information?

PRESIDENTGRAYBILL: Resolution Number 4, which has now been placed on the delegates' desk, is a resolution prescribing the titles and salaries of Convention employees. I wonder if we could take that up. We discussed the budget first, but let's take that up since we now have this.

DELEGATE TOOLE: Yes, that's my intent.

PRESIDENT GRAYBILL: Right. That's your intent. Okay. Go ahead on that resolution—

DELEGATE TOOLE: Resolution Number 4 provides for certain salary changes. As I said, Mr. Spa11 and Mr. Sullivan, both of whom are research analysts, newly hired because of the addition of two additional committees, are found to be very competent, both highly recommended by their committee chairmen. Therefore, the committee recommends that their salary be increased from 25 to $30 a day. Bookkeeper, Mr. Al Brown, an experienced businessman-finance, banking, retailing-Convention fortunate to have him. He's been working without pay prior to the Convention. We recommend that his salary be increased from 25 to $30 a day. Pretty hard to hire a man of his experience for those kind of wages. Miss Sue Phillips, a typist, has been given a very heavy job in Public Information, involving considerable typing. We recommend that her salary be increased from $17 a day to $18 a day-those salary increases make a total change in the total budget-they make a change in the total budget of $955. I would move at this time that the Convention adopt the recommendations of salary increases in the staff.

PRESIDENT GRAYBILL: Very well. Mr. Toole's motion is that the resolution on title and salaries of the Convention employees be adopted.

Mr. Hanson.

DELEGATE HANSON: Mr. President, I think probably it's a typographical error, but on the last sheet, Sue Phillips, it shows $17. I believe that was intended, Mr. Toole, to be $18.

PRESIDENT GRAYBILL: Mr. Toole, isn't that correct? Sue Phillips was raised at committee meeting yesterday to $18?

DELEGATE HANSON: He did say so, but the typed sheet doesn't show it, John.

PRESIDENT GRAYBILL: Will everyone take page 2—and about five salaries from the bottom, you'll find Sue Phillips. Will you please make that $18.

DELEGATE TOOLE: Oh, yes, that's a mistake. Sue Phillips should be at $18 instead of $17.

PRESIDENT GRAYBILL: Very well. Mr. McKeon.

PRESIDENT GRAYBILL: Will you wait a minute? Okay, now you have the floor.

DELEGATE McKEON: Thank you very much. My motion is basically that the salaries of the two research analysts be raised to a level comparable with the other research analysts; to wit: $36.14. The other part of my motion is that the salaries of the committee secretaries be raised from $20 to the amount which is paid the secretary receiving the highest salary, $25.38. I make this motion, Mr. Chairman, because I feel—

PRESIDENT GRAYBILL: Just a moment, Mr. McKeon. Have you got a written copy of your motion?

DELEGATE McKEON: No, I don't.

PRESIDENT GRAYBILL: Well, will you write one up for me?

DELEGATE McKEON: Thank you very much. Can I write it up after I finish?

PRESIDENT GRAYBILL: Well, I'd like to have it so I know what I'm talking about. Just take a minute and write down your figures. We don't want to make any mistakes. I might say, for the edification of the rest of you, that the Chair is going to enforce that rule about written motions unless the motion is to change one word or one very short phrase in something. It's just-we got a record and we got the journal and we got a Chairman and none of us know what we're talking about if WC don't have these things in writing. So, if you come to a meeting prepared or intending to amend something, please get to some steno and get it typed up. We'll take it handwritten today, but we really would like it typed up in better form when we get further along. Obviously, if we get in the middle of debate and you change something that has been put in later, we'll be pretty liberal with the rule; but on things that you've thought about, I would appreciate it, and so would the journal clerks, if we could have it in writing.

For what purpose does Mr. Nutting rise?

DELEGATE NUTTING: (Inaudible).

PRESIDENT GRAYBILL: Wait a minute, Mr. Nutting. Now, for what purpose do you rise?

DELEGATE NUTTING: Do you have amendment forms that could be available to the delegates that we could have so that we could send them right up?

PRESIDENT GRAYBILL: Yes, I'm sure there are forms in the clerk's office that you can use.

DELEGATE NUTTING: They are available in the clerk's office?

PRESIDENT GRAYBILL: Yes, sir. All right, Mr. McKeon's motion is: "I move that the salaries of the research analysts presently receiving $30 a day be raised to $36.14 per day and that the salaries of the committee secretaries be raised to $25.38 per day." Very well.

Mr. McKeon.

DELEGATE McKEON: Thank you very much, Mr. Chairman. I won't belabor my point, because I think the point has been made. There is a disparity in the pay scale as it is presently proposed to this body. I propose to rectify this disparity and believe that the sense of fair play and the conscience of the delegates will lead to the one conclusion that the salaries must all be the same because these people are doing the same jobs, working the same hours, and expected to perform at substantially the same level. For this reason alone, I feel that these people must be paid the same rate. Thank you very much, Mr. Chairman.

PRESIDENT GRAYBILL: Is there discussion?

Mrs. Eck.

DELEGATE ECK: You'll note **on** the report that after some employees there are asterisks. It doesn't indicate what those arc for, but the people with asterisks after their names are persons who have worked over the last various numbers of months-that they were all on the commission staff. In other words, these are people with experience. The committee felt. when they met, that some disparity in salaries for the same job could be acceptable in cases where employees had previous experience, and I think that--and especially in this case, where the experience and the understanding of the total working of the Convention and what they're expecting to happen-1 think that this disparity is not-you know-1 think that the salary differentials are really acceptable in this case because of this reason—discrepancies in the amounts of training. I believe that all of the research analysts, for instance, who were on the staff before have master's or doctor's

degrees or are attorneys or such; whereas, the new ones-one has not quite finished the bachelor's degree; I believe the other one has. I'm not meaning to indicate that they are not really great staff members. And I think that both of them have been working doubly hard because they are new. But I do think that this helps to explain the reason for the salary scale that was set up.

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: (Inaudible)-ask Mrs. Eck a question?

PRESIDENT GRAYBILL: Mrs. Eck, will you yield?

DELEGATE ECK: Yes.

DELEGATE HELIKER: Mrs. Eck, can you tell me whether the other research analysts—that is, those that worked for the commission—were hired at a lower rate and then advanced after a certain length of time?

DELEGATE ECK: It's my understanding that they were hired at the same wage as they're getting now. There have been no increases, and I think you have a point there.

DELEGATE HELIKER: Mr. President, do I still have the floor?

PRESIDENT GRAYBILL: I beg your pardon?

DELEGATE HELIKER: May I ask to—have the floor?

PRESIDENT GRAYBILL: You have the floor, yes.

DELEGATE HELIKER: I have no knowledge-I'm not on the committee and I don't want to imply that I consider the committee's action here as a personal affront, hut I do have some knowledge about Dick Spall, and in view of the fact that the other research analysts were hired at the full rate of $36.14 or more and were not required to go through a probationary period; in view of the fact that in my personal knowledge Dick Spa11 is an extremely well-qualified and trained research analyst who--while that is true, he lacks 16 hours, of credit hours, of reaching his A.B.-has already taken the CPA exam, has maintained practically a straight-A average through his college career from the very beginning. I told him when I asked him if he would take the job that he would be expected, because he is coming in late, to work 12 hours a day, 7 days a week, to catch up, and I think that's what he has been doing. And I think that instead of being penalized for the fact that he was hired late and therefore has to work harder, he ought at least to be paid as much as the other research analysts.

PRESIDENT GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. President, as I understood the amendment on salaries and secretaries, the figure of $25.38 was given. I would just like to make the point that when they did that, they still left the salary one cent less than the one on the page they're referring to.

PRESIDENT GRAYBILL: Mr. McKeon, do you want to discuss your own motion, or what do you want to do?

DELEGATE McKEON: I was just going to say that I think that's a misprint. I think that, on the other proposed budget, it was 25.38; however, it is a penny. Oh, has it? Mr. Chairman, may I ask Mrs. Eck a question?

PRESIDENT GRAYBILL: Who'?

DELEGATE McKEON: Mrs. Eck.

PRESIDENT GRAYBILL: Well, now. you don't have the floor until you close. Are you ready to close?

DELEGATE McKEON: No, I'm not. Thank you. I'll sit down.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I'd like to ask Mrs. Eck a question. Under the committee secretaries, Mrs. Eck, you pointed out that one had been employed by the commission. Are you saying then that none of the other committee secretaries were employed by the commission?

DELEGATE ECK: Any committee secretary who was employed by the commission has an asterisk after her name. I think you'll notice then, if you get down to Rules, Alice Berner was employed by the commission also.

DELEGATE BLAYLOCK: I see. Then I rise in support of Mr. McKeon's motion, I think

that--and I'd like to speak particularly to the committee secretaries that, in absence of a compelling reason that one is doing more work than the other or has more responsibility. that all committee secretaries should be paid the same.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, may 1 ask Mr. McKeon a question, please?

PRESIDENT GRAYBILL: Yes. Mr. McKeon'!

DELEGATE McKEON: Yes.

DELEGATE CHAMPOUX: Mr. McKeon, do you have any estimate at all as to what we're talking about in terms of money here?

DELEGATE McKEON: I think probably, in the terms of the salary raises I proposed, we're probably talking approximately $1,500.

PRESIDENT GRAYBILL: Is there further discussion?

Mrs. Cross.

DELEGATE CROSS: Mr. President, I think that we should remember that this Convention has a limit on the amount of money that is available for us to spend, and if you will look at the total figure of your budget. I think we've reached the limit. I don't quarrel with Mr. McKeon on the fact that he thinks these secretaries and other help may deserve more money. The point is, the Budget Committee had a certain amount of money to work with, and I believe that he should explain to us where the extra funds are going to be cut, because they are not in addition to the total amount. They're going to have to be taken from somewhere else if this motion goes through. I think he should be able to tell us that.

DELEGATE McKEON: (Inaudible)-that by way of asking.

PRESIDENT GRAYBILL: Just a moment, Mr. McKeon. You can't have the floor unless somebody asks you to yield, until your final speech.

Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I'm particularly concerned about the situation with respect to the secretaries. I know the secretary to one of the committees, who is from my city of Anaconda, and her capability is beyond question. It seems to me that within the Hill of Rights Committee, we're very concerned about provisions and protections in connection with discrimination. If all the committee secretaries arc doing the same work under circumstances where I assume they have the same capability, their salary structure should be equal. I think to try and point out one particular secretary and say that she should have something more because of some previous position, I do not think is logical in this situation. We are determining their capability and their quality, their ability to function with respect to the committee. They have equal responsibility, they have equal duties, and I think their pay should be equal. I must confess, with respect to the research analysts, my position would be somewhat different. There, some have bachelor's degrees, some do not; some are doing graduate work. There, I think, the difference in excellence requires some difference with respect to compensation. Thank you, Mr. President.

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, has anybody raised the question of why not reduce the one, rather than raise the 10? (Laughter)

PRESIDENT GRAYBILL: You have, Mr. Scanlin. (Laughter) Is there further discussion? Amendments'! (No response) Very well. Mr. McKeon, you may close on your motion.

DELEGATE McKEON: I may close first by saying I didn't raise the question of lowering anybody's salary, because I think that in both instances the salaries that the top people are getting are good salaries, and I think they should be maintained. Were there more money in the budget, I would like to see them all raised. However, I realize that isn't possible. I would like to parrot what Mr. Dahood said, and Mr. Dahood is Chairman of the Bill of Rights Committee and is involved in these things. We must not base our employment on a theory of discrimination which, in effect, we have here. We have all come to this Convention Hall to write a document which we hope will be a lasting and tremendous document and will be a document that will mean something to the people. This will all be lipservice unless we can begin our task of working for the people and against discrimination by eliminating the discriminatory provisions in this pay scale. I realize that-or at least I feel that before we can begin the work of seeking a better life for the people of Mon-

tana, WC must begin here and we must begin by raising these salaries. Thank you very much.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President, this Convention has $500,000. Nine weeks is a very short time. We've allowed for a possible 10 weeks. WC may not. be able to get this job done in that time. We're going to need every dime that we can pet to complete this job for the people of' Montana. These salaries are in line with what the Legislature pays, in fact in many instances they're higher. They are in line with what business pays. In my opinion, Mr. McKeon's motion raises them out of proportion to what they should be. It jeopardizes the success of this Convention by reason of raising expense unreasonably, and I sincerely hope that this Convention adopts the committee report as submitted.

PRESIDENT GRAYBILL: Very well. The question is on Mr. McKeon's motion to amend Resolution Number 4 by raising the salary of Dick Spall, a research assistant, from 30 to $36.14 and the salary of Chuck Sullivan, a research analyst, from $30 to $36.14; and to raise the salaries of one, two, three, four, five, six, seven, eight, nine—nine committee secretaries from $20 to $25.39. So many as are in favor of Mr. McKeon's motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed. No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and so ordered. We're back on the basic proposition. Mr. Cate, of adopting Mr. Toole's Public-or Administration Commission Resolution Number 4. That's the business before us. Now, do you have discussion on that business'?

Mr. ('ate.

DELEGATE CATE: Mr. President, I call for a division on that last vote.

PRESIDENT GRAYBILL: All right, 1'11 give you thr division, but I did pause a long time. and if we're going to have divisions, I want you to let me know. I don't want to go ahead with the next business. So, we'll now take a division and I'll open the ballots. So many as in favor of Mr. McKeon's motion to raise these salaries, vote Aye: so many as are opposed, vote No. This is not a roll call vote-that is, it's not a recorded roll call vote. Have all the delegates voted"

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote'?

(No response)

PRESIDENT GRAYBILL: If not, the ballot will be closed. The Ayes are 26; the Noes are 63. The vote failed-the amendment failed. Now we are on the order of business of adopting Resolution Number 4 of the Administration Committee. Is there further discussion'!

Mr. McNeil.

DELEGATE MCNEIL: Mr. President, I rise to speak about a principle that is very important to me personally. When I made similar comments in the presence of the Administrative Committee a couple of days ago, I found that it was a quite unpopular cause; nevertheless, I feel that my conscience dictate that I must make these comments. I wish that they could be made without concerning personalities. Unfortunately since the comments will apply only to two individuals, that will not be possible. I assure you that there is no intention to even include personalities, as I have not even personally met our executive director, so that this is completely based on the principles involved. The justification--and I'm addressing myself now to the fact that our executive director and one research analyst are both receiving salaries-or are proposed to receive salaries in excess of that paid to the delegates. The justification of training, education, hard work, dedication and other comments that were put forth for these proposals to me seem equally applicable to every delegate in this room. Our present Constitution says, and the Supreme Court of Montana affirmed, that the delegates to this Convention be elected in the same manner as the House of Representatives. Following that direction, the elected representatives of the people of Montana fixed the combined salary and per diem of the delegates at $45 per day. I believe it is fundamentally wrong for us, now, to sit down and adopt a budget and hire salaried employees at a greater pay scale than the delegates themselves. Now, everyone is unanimous in agreeing that the commission did an outstanding job, probably the best in preparing any convention that has ever been held, in assembling data and doing research for this Convention. However, the commission's work is done. It is finished, and the sole responsibility now is in the hands of these

delegates to, in the language of the Enabling Act, revise, alter or amend the Constitution of Montana. And I cannot accept that, as these deliberations begin, that any salaried employee is more valuable than any single delegate in this room. I therefore move to amend the budget as follows: "That the maximum salary paid to any employee of the Convention not exceed $45 per day."

PRESIDENT GRAYBILL: Mr. McNeil, will you send me a written copy of that? All right, there's an amendment to the Resolution Number 4 to the effect that the maximum salary paid to any employee not exceed $45 per day, and that would include the executive director and the Local Government research analyst, and I believe that is all. Is there discussion on the amendment? Mr. Toole.

DELEGATE TOOLE: Mr. President. Mr. McNeil, you are underpaid. Every delegate in this room is underpaid. I trust that you did not run here for the money. I don't think I need to eulogize Dale Harris, the work that he's done to make this Convention possible, the work that he is continuing to do, the hours that he is putting in, his professional attainments. To reduce him to the figure that you're talking about, I think would result in chaos, the possibility of our losing him completely, and I shudder to think what that might result in. To me your proposal does not make sense. You just can't hire people like Dale Harris for $45 a day, and we desperately need him. Now, with respect to Karen Holliday. She was the arrangements director under the commission—

PRESIDENT GRAYBILL: Mr. Toole, may I interrupt you. The only other employee to which this applies is Jerry Holloran.

DELEGATE TOOLE: Oh, Jerry Holloran.

PRESIDENT GRAYBILL: Right.

DELEGATE TOOLE: Jerry Holloran was assistant director. Jerry Holloran is in the same category as Dale Harris. Dale Harris-Jerry Holloran's responsibilities in the commission were great. He has a background which is considerably greater than the other research analysts. We felt it improper to reduce his salary. We think he's probably-he's being properly remunerated. We think he's worth the money. I hope that your--and I hope the Convention does not sustain your amendment.

PRESIDENT GRAYBILL: Mr. Anderson.

DELEGATE ANDERSON: I rise to resist the amendment. I think it is high time we examine ourselves and the work that the committee has done on this thing and the efforts that they have made to come out with the proper compensation for all these people within the bounds of the moneys allotted to us, and I ask your support of the committee by resisting this motion.

PRESIDENT GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. President. If I can ever get this thing on-Mr. President.

PRESIDENT GRAYBILL: Mr. Simon.

DELEGATE SIMON: Is this on?

PRESIDENT GRAYBILL: Yes. You're on.

DELEGATE SIMON: I would rise to resist the motion on several grounds. I believe that, first, we have to realize that the compensation for this group was set by the Legislature. Now, if it were true that the Legislature--and we are under the same condition--running under the same condition as the Legislature-if this body and this group, if we were in the Legislative Session, could not hire anybody in the state for more than $20 a day because this has been set by the Legislature. And when the Legislature goes into session, it sets salaries for state officials and many, many other people higher than they themselves get in-for their $20 a day plus their 25 for expenses. I'd like to review with you just a little bit the time that it has taken to put this budget together. This has been in the making now for a number of weeks. I'd like to call your attention to the fact that in the budget now of $505.48 [sic], we have already expended $6,000 of moneys that we do not have appropriated. Now the additional money that we are hoping to have, from the standpoint of this budget, is the difference between this budget and what was left over from the commission. I would like to remind you that this money is not solid. At the first meeting of this group in the Convention Hall-or, at Carroll College-it was suggested at that time that we may have $35,000 left over from the commission. At the present time, the best report we can get, unauthorized because the books have not been closed, is possibly $10,000. It could well be, well be, that they would

have nothing left, and with this budget we are now almost $6,000 over the appropriation of 499. It is very concerning to me that this body would start out trying to go through and have a deficit budget to prepare for someone to do something about at the end of this Convention. Rut in closing, I would like to say that what the delegates get, the $45—$20 salary and 25 for expenses-it will be the people of Montana that makes the judgment of whether we earned our money or not. And I'm not sure that we may have to account for the people of Montana on account of the Constitution we write. I hope that we can get along with this Convention. I hope we can adopt this budget without further debate, because it has been gone over carefully, not by hours but by days. Let's realize now that we are adopting a deficit budget,. Thank you, Mr. President.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, both of these gentlemen, Dale Harris and Jerry Holloran—I have-1 know them, and in the Style and Drafting Committee meeting this morning, Mr. Harris came in; and each time that this man talks, I am impressed with the amount of knowledge that he has in working with this Constitution. And the fact that these gentlemen are being paid more than I am, I could care less. I think they arc well worth it to this Convention.

PRESIDENT GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I don't know what the bar schedule is over—our fee schedule-in Lake County, but down in Yellowstone County-and it's 2 years old and way, way behind the medical schedule-is $30 an hour. And, as we say down in Yellowstone County, that $30 an hour is for widows and orphans. We left the Senate chamber Wednesday night, when Mr. Unruh was here, about 14 minutes to 12:00. Not only was the Executive Secretary there, but other-Executive Administrator-Director, but other members of this staff. And the Executive Director was at a Style meeting at 8:00 a.m. this morning. I'd hate to be paying that man $30 an hour, but he's worth $30 an hour. And this matter of-and as I told this-as I said at the budget hearing the other day, it isn't a matter that we're paying any of the staff more than we're getting, that their salaries arc too high, rather it's that our salaries are too low. And I would like to make the point again, as I did the other day, for the benefit of those who weren't there at the budget meeting. This points out one of the reasons why we are here. We're getting the same salary as the Legislature and the Legislature is getting an average salary of $1,200 a year. The average in the United States is 7,000, and as most of us now know, the people in California get 19,200. Mr. Unruh, I think, suggested that we should be paying an annual salary to our representatives of no less than 7,500 and, say, up there in the range up to 12,000, and I strongly support that, that WE should be paying them more money. And before we get to feeling too sorry for ourselves, I think everybody here agrees that we're here-we're all here to-at great personal sacrifice. There is a gentleman here who ran as a Republican in the primary: who's defeated in the primary. I was very sad to see that. He is a very learned young gentleman. He is a great student of constitutional law in Yellowstone County and a member of the bar of the State of Montana. He's working for the press here at the great and high and glorious figure of $1 less than the original members of the Legislature were getting in 1890. They were getting, I think, $6 a day, was it? He's working for $5 a day. I strongly urge that the budget as submitted by the committee be accepted. Thank you.

PRESIDENT GRAYBILL: Mr. Cate.

DELEGATE CATE: I move the previous question.

PRESIDENT GRAYBILL: All right, Mr. Cate has moved the previous question. We're going to vote on whether or not to vote on Mr. McNeil's amendment concerning the salaries. All those in favor of voting on the amendment, signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. All right, the vote is on Mr. McNeil's amendment that the maximum salary—this would be an amendment to Resolution Number 4, which is the resolution prescribing the title and salaries of the Convention-that the maximum salary paid to any employee not exceed $45 per day. I take it to be the sense of the amendment that if it passes, we would then lower the

salaries of the two people who are over that to $45 per day. All those in favor of that amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Nays have it, and the motion fails. Very well. The proposition then is on Resolution Number 4 by the Administration Committee, the adoption of the resolution prescribing the title and salaries of Convention employees. Is there further discussion?

Mr. Arness.

DELEGATE ARNESS: Mr. President, I think this is a point of order. The motion previously made concerning the secretaries' salaries would preclude me from making a motion to increase their salaries to be all equal, I assume. Would that be correct?

PRESIDENT GRAYBILL: Well—

DELEGATE ARNESS: There was a motion previously combined with another motion—

PRESIDENT GRAYBILL: Just a minute-

DELEGATE ARNESS: -to raise all their salaries.

PRESIDENT GRAYBILL: The Chair is going to rule that it would be the same motion. Now, if you wish to challenge the ruling of the Chair, you may.

DELEGATE ARNESS: I'll accept the ruling of the Chair, Mr. President, and make the following motion: I move that all committee secretaries be paid at the same rate, or at the prevailing rate to be paid to this class of employees. And I make this motion as an amendment to the proposed resolution.

PRESIDENT GRAYBILL: Will you supply that to me in writing.

DELEGATE ARNESS: Yes. It's being handed to you, Mr. President. The obvious purpose or reason for the motion is, of course, to equalize this class of wage and—

PRESIDENT GRAYBILL: Now, Mr. Arness, may I discuss the form of your motion a minute?

DELEGATE ARNESS: Yes.

PRESIDENT GRAYBILL: You've got it in the alternative, and I don't think we can do that. Do you want to say that they shall all bc paid at $20? Is that what you really mean?

DELEGATE ARNESS: Yes, Mr. President.

PRESIDENT GRAYBILL: Can we make it say that, instead of this alternative, which might get us in lots of trouble?

DELEGATE ARNESS: I will accept that amendment, Mr. President.

PRESIDENT GRAYBILL: Well, that's draftsmanship; that's not amendment. All right, as I understand the sense of the amendment now, it is by Mr. Arness: "I move that all committee secretaries be paid at $20 per day." Is that satisfactory?

DELEGATE ARNESS: Yes. Mr. President. May I explain my motion'?

PRESIDENT GRAYBILL: Yes, you may explain it. Go ahead.

DELEGATE ARNESS: Obviously, the motion as made is a very unpopular type of thing for any of us to do. I feel that, as the delegates who spoke earlier moving that the wages be raised. that we must not discriminate against this class of employee, and certainly I have no feelings against the individual who is being demoted in this fashion, but I feel it is incumbent upon us to do so and if we do not, that we can and would be severely criticized.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: I assume **he's** speaking of the salary of the committee-of the secretary on Revenue and Finance, $25.39?

PRESIDENT GRAYBILL: Mr. Arness, do you want to yield to a question'!

DELEGATE ARNESS: Yes. Yes, Mr. Toole, that's correct.

PRESIDENT GRAYBILL: Yes.

DELEGATE TOOLE: Mr. President, this young lady worked for the commission since its inception. She was arrangements director; she performed a variety of functions for the commission. Through a series of circumstances which many of you are familiar with-thoroughly outlined in the press-she was given a job of a committee secretary. She is capable ofdoingotherjobs in the Convention when called upon to do so and may be called upon to do so. We felt it was brutal. We felt that it would be a slap in the face to a talented young lady to cut her back. We just didn't think it was morally right. That is the reason for that figure.

PRESIDENT GRAYBILL: Is there other discussion of Mr. Arness' amendment? (No response) Very well, we'll put Mr. Arness' amendment to the house. The amendment is that-it's to Resolution 4—and it affects committee secretaries-and it is to the following effect: "All committee secretaries are to be paid at $20 per day." It has the effect of lowering the Revenue and Finance secretary to $20 a day. All in favor of this amendment, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and so ordered. Now we're back on the proposition of Resolution Number 4, the resolution prescribing the titles and salaries of the Convention employees. Is there further discussion of the resolution? (No response) Very well, all those in favor of Resolution Number 4, prescribing the titles and salaries of Convention employees, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: As amended. All those opposed. say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and Resolution Number 4 has passed. Now we're back on Resolution Number 5, Budget. And the budget is a resolution presented by the President, and since the salary scales have not changed, there will he no need to change Item 0112. And therefore I present Resolution Number 5 as before, except that 1 will include in my-171 read the nature of my resolution and I'll show you where it changes. "Under the terms of Rule 6 of the Convention rules, the President herehy submits to the Convention the attached budget as the budget of the Convention. This budget will be reviewed every 2 weeks and the review reported to the Convention." To that, I have added Mr. Schiltz's now amendment: "Provided, however, that of the moneys budgeted for public information, none thereof shall he expended for anything hut factual reporting of the proceedings of the Convention." That's Resolution Number 5. Is there further discussion on Resolution Number S-the budget?

Mr. Romney.

DELEGATE ROMNEY: Mr. President, I did not notice anything in the present statement of the budget concerning any overflow from the Convention-or from the previous vehicle-and I understood at one time there was going to he some. I was wondering if that sum could not he entered into the next release.

PRESIDENT GRAYBILL: Well, since it is the budget, I'll explain that unless I hear objection. Mr. Toole did refer to the fact that $505,048 is over the 499,000 some-odd dollar appropriation and that the overage he expected to have covered by moneys given back to this Convention from the commission's work. Mr. Harris has explained to the Budget Committee that the figures are not yet finally available for how much will he available hack because the printing is not all done. He has estimated it at somewhere in the neighborhood of $10,000. That 10,000 will be necessary to cover the 5,000. And, of course, when it is given hack to the commission-to the Convention-it will he included in one of our biweekly budget reports. Is there further discussion of the budget-or the resolution? Very well, so many as shall be in favor of Resolution Number 5, a resolution of the Constitutional Convention of the State of Montana setting up the Convention budget, please signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as shall he opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Mr. Toole, I'll recognize you for Resolution Number 6.

DELEGATE TOOLE: Mr. President, Resolution Number 6 is a resolution commonly adopted by the Legislature, which provides for a schedule of fees and distribution of Convention documents to various individuals, firms and agencies throughout the state. We have raised the prices for our documents, as compared with the Legislature, because, as you know, the committee articles are going to be bulky, involve a great deal of printing, and are going to be in great demand, we hope. This may represent some small sum of money available to the Convention. I'd urge the delegates to look this over, and I would move for its adoption at this time.

PRESIDENT GRAYBILL: Is there any question concerning Resolution Number 6 or any discussion or any amendments'?

Mr. Furlong.

DELEGATE FURLONG: Mr. President, may I direct a question to Mr. Toole?

PRESIDENT GRAYBILL: Mr. Toole, will you yield?

DELEGATE TOOLE: Yes.

DELEGATE FURLONG: Delegate Toole, I understood yesterday that one copy of all proceedings would be distributed to all county libraries in the state. Now, I don't find it in here, although it may be one of these sections. I wonder if you would explain that.

DELEGATE TOOLE: I have the same impression, Mr. Furlong. Mr. President, was there a-do you recognize-do you remember that, Mr. President?

PRESIDENT GRAYBILL: That's certainly correct, yes.

DELEGATE FURLONG: Mr. President.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Yes?

PRESIDENT GRAYBILL: That's right. What do you want to do, amend it or send it back to committee for further-(Inaudible).

DELEGATE TOOLE: Yes—(Inaudible)—provide a copy to each library in the state, in accordance with Mr. Furlong's statement.

PRESIDENT GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. President, I've just been informed by Delegate James that he has been assured that they will be sent. However, I would suggest to move-to table this until we can get this hashed out.

PRESIDENT GRAYBILL: Well, rather than tabling it, why don't you refer it back. That's the famous motion to commit--a motion to commit it back to the Administration Committee for further action.

DELEGATE FURLONG: Thank you. Mr. President, I move to commit.

PRESIDENT GRAYBILL: All right, a motion has been made to commit Resolution Number 6 back to the Committee on Administration for the reason that it does not contain some of the materials that some of us recall were in the discussion yesterday. Mr. Furlong's resolution is before you. Is there discussion of the resolution?

Mr. Simon.

DELEGATE SIMON: Mr. President. Couldn't that be covered in Section Number 6 where it says the Executive Director shall distribute other copies of the Convention proceedings as directed by the Administration Committee? Wasn't he directed in that direction yesterday? Wouldn't it be covered under Number 6? Or couldn't it be covered'!

PRESIDENT GRAYBILL: Well, that—Number 6, to my recollection, was the one that was designed to cover other state agencies that might apply.

DELEGATE SIMON: Well, Mr. President. it doesn't say that exactly—

PRESIDENT GRAYBILL: I see that's Number 4—

DELEGATE SIMON: --and it could be covered under that same section, could it not?

PRESIDENT GRAYBILL: Do **you** wish to address that question to Mr. Toole or Mr. Furlong, Mr. Simon?

DELEGATE SIMON: Mr. Toole.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President, Mr. Harris just advised me that under Section 6, he intended to cover the libraries.

PRESIDENT GRAYBILL: All right, Mr. Furlong, the point seems to be that Mr. Harris intended that Section 6 would allow him to make the distribution which we put in theminutesofthe Administration Committee yesterday. In view of that, do you want to leave your motion ride or do you want to withdraw it?

DELEGATE FURLONG: Mr. President, if that's the sense of the assembly, I'll withdraw my motion.

PRESIDENT GRAYBILL: Very well, we'll consider the motion withdrawn.

Mr. James.

DELEGATE JAMES: Mr. President, this thing has already been activated. I was up and talked to the librarian, Mrs. Fontana, and she assures me that 120 copies were sent out to all the various libraries around the state and to the universities. This has been one of the finest sources of these booklets. This has been a real information job; and if you wish information in your local community, you can get it right from the horse's mouth in your public library.

PRESIDENT GRAYBILL: I think, Mr. James, that you're perhaps correct; but the booklets that went out went out under thecommission to the libraries; and this resolution has the purpose of putting out our deliberations, beginning with our minutes, and these matters that have been referred to committees. So that's the distinction.

Mr. Joyce.

DELEGATE JOYCE: I rise to propose an amendment to Resolution Number 6 in Section 6—

PRESIDENT GRAYBILL: Hold your mike up a little, please.

DELEGATE JOYCE: I rise to present a motion--an amendment to Section 6 of Resolution 6 by adding after the word "distribute", in line 20, the following words: "a copy to the county libraries of the state and such".

PRESIDENT GRAYBILL: Could you make that "public libraries" instead of "county"?

DELEGATE JOYCE: Yeah. Public-I'll-so that now Section 6, as amended, would read: "The Executive Director shall distribute a copy to the public libraries of the state and such other copies of Convention proceedings as directed by the Administration Committee."

PRESIDENT GRAYBILL: All right. Mr. Joyce has made an amendment to Section 6 so that it reads: "The Executive Director shall distribute"--and then he's added these words: "a copy to the public libraries and such"-and then it goes on: "other copies of Convention proceedings as directed by the Administrative Committee." May we make that "copies" instead of "a copy"-"copies to the public libraries and such"? I think we can get along without a written copy of that, Mr. Joyce. The purpose of this amendment is to put in the direction to send it to public libraries under Section 6. Discussion on the motion'?

Mr. Romney.

DELEGATE ROMNEY: Mr. President, I would like to ask Delegate Joyce a question.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE ROMNEY: It so happens that in some counties there are several public libraries. In Ravalli, there is one at Darby, one at Hamilton and one at Stevensville. It comes to my mind that possibly there are some counties that have no public libraries; I do not know. If that be the case, it seems to me there should he some language to make it possible to at least pet one set into every county. What do you think?

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I agree. I thought that the amendment as finally boiled down would take cave of the public libraries of the state. My purpose in making the amendment was egotistical in the sense that I thought perhaps this would take care of the matter and we could dispose of it here this morning without committing it back to the committee and having it brought up and hashed over again, and that was the purpose of my amendment. I think the amendment covers what Mr. Romney wishes to do and I don't-ifitdoesn't, why, I'd like him to point out wherein it doesn't.

PRESIDENT GRAYBILL: I don't wish to enter the debate, hut I'd like to point out that, Mr. Romney, Section 5 sends one to the clerk and recorder of every county. Is there further discussion on Mr. Joyce's—

Mrs. Warden.

DELEGATE WARDEN: I would just like to say-and I'd better disclose my interests,

because it has been libraries for many years-the available-through the State Library-this service for any county in the state, any resident of any county that has no library, and I think there are probably 9 or 10 counties that fit in this category. hut the State Library serves as their public library, and it is available by mail through that agency.

PRESIDENT GRAYBILL: Is there further discussion on the amendment'! Mr. Romney, you've spoken once.

Mr. Hanson.

DELEGATE ROBERT HANSON: I notice that the charge is $150, and if my memory serves me correctly, during the Legislature the charge was 100. Is that correct'?

PRESIDENT GRAYBILL: Why don't you ask the Chairman'!

DELEGATE HANSON: Do **you** yield to **a** question?

DELEGATE TOOLE: That's correct.

DELEGATE HANSON: So we will he picking up an extra $50 over what has normally been the case; is that right'?

PRESIDENT GRAYBILL: The trouble is that we're paying for the printing; and if we happened to he wrong, we would be losing--so, in other words, we raised the price, yes.

DELEGATE ROBERT HANSON: Yes. I just wanted to ask the question.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: We're discussing the amendment of Mr. Joyce's right now. I'd like to say a few words later on about the $150; we're not on that right now, are we?

PRESIDENT GRAYBILL: No, we're not. We were off the subject. You're correct. Any further discussion of the amendment to add the public libraries to subsection 6? If not, all those—

Mrs. Speer.

DELEGATE SPEER: May I ask Mr. Joyce a question'?

PRESIDENT GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Yes, you may.

DELEGATE SPEER: You say "all public lihrarics". Would that include the libraries of the university system—

DELEGATE JOYCE: It **was my** intention-

DELEGATE SPEER: -those are institutional libraries, really.

DELEGATE JOYCE: It was my intention that it would, Mrs. Spew. If the language is inappropriate, I'tl-All right. It was my intention that it would cover the university lihrarics, Mrs. Speer, by the word "public". I mean--maybe we ought to read what we-what I finally did move then. (Laughter) Maybe that would clarify the matter.

PRESIDENT GRAYBILL: You read: "distribute copies to the public libraries and such other copies", et cetera.

DELEGATE JOYCE: Is "public" necessary, Mr.—

PRESIDENT GRAYBILL: Well, to clarify the debate, the Executive Director, under 6, has already been directed to give thorn to all the public libraries; hut if you want to put it in there, we can put it in there; and this amendment will put it in there and it will say public libraries. But, Mrs. Speer, if it's left out, the universities-I'm sure Dale will be directed to put it in for the universities under 6. Is there further questions about—further discussion on this proposed amendment? (No response) All right, the question is on Mr. Joyce's amendment to add the public libraries to Section 6 of Resolution 6. All those in favor. say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed. No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it. Now we're back on Resolution Number 6.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I rise to just ask a question first of the Chairman of the Administration Committee. I would like to have you give us a rundown on how you arrived at the figure of $150.

DELEGATE TOOLE: I thought I covered that, Joe. I think you've seen the books that the committees are going to have to put out. These

books are thick. They contain maybe over a hundred pages. They're far greater than anything the Legislature puts out. They're going to be extremely expensive to print,. We think $150 is a reasonable fee. That-of course, when I speak of the books, I'm speaking of everything else, but the books arc the main reason we raised it.

DELEGATE ESKILDSEN: Well, I'm sorry. I guess somewhere along the line I missed— I missed that report that you had given before. The first I knew of $150, was when I see it on my desk here just a few moments ago. I do point "utthatthe Legislature charges $100, and I know the volumes of pages that is sent out to all the schools-not only the schools, but the libraries, attorneys, so forth that they go to in the various counties in the state for $100. I realize that it's a place to pick up some money; but as we talk about the people that are buying these copies, we're talking about various organizations-not only the large lobbyists that we do have that can well afford the 150 or maybe much more, but there are also many small lobbies, groups, that don't really have that type of money. 1 just want to he sure that this is-that it's absolutely necessary that we have this extra $50 and it's used to cover the cost oftheprinting-that it's used to cover the cost of the printing, and that we're just not trying to make a few bucks off the deal. In the Legislature, I felt that-many times that the $100 was used to make a little money, that it didn't actually cost that much to mail this out; and I'd like to go over the figures a little closer on this. I'd like to have you explain them a little more. break them right down, and what each thing costs, so that I'll know if $150 is really necessary. 1 just don't want a general explanation. I'd like to have you break it right down into how much you figure each item will cost.

DELEGATE TOOLE: I don't have those figures, Mr. Eskildsen. I couldn't break it down at this time. I'll be glad to get them for you and justify them when I have time.

DELEGATE ESKILDSEN: Well, Mr. President, the justification may be all and good; but what if I don't agree and it's already too late to reconsider? This is the point that I'm bringing. The justification should be made before we vote, not after. I feel that I would like to have an opportunity to meet before the committee, Mr. President; so for that reason, I move that we place this resolution back in the Administrations Committee and to

PRESIDENT GRAYBILL: Have you moved that it be—

DELEGATE ESKILDSEN: I move-1 so move, Mr. President.

PRESIDENT GRAYBILL: -that it be referred back to the Committee on—

DELEGATE ESKILDSEN: Administration.

PRESIDENT GRAYBILL: -Administration. All right, we have a motion to refer Resolution Number 6 back to the Committee on Administration by Mr. Eskildsen. Any discussion of the motion? (No response) All right; all those in favor of referring Resolution Number6 back to the Committee on Administration, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it. All right, we'll have a division. We'll vote on the voting machine. The votes are "pen. All those in favor of referring it back, vote Aye; those against voting it hack, vote No.

Before the vote is closed, Mr. Holland, do you wish to be represented as present upon the journal? Very well, will the journal please show Mr. Holland present, and he may vote. All right, have all the delegates voted'?

(No response)

PRESIDENT GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The vote is closed. The vote is 33 Aye and 55 No, and the motion fails-31 Aye and 55 No. so it fails. Therefore, we're back on Resolution Number 6.

DELEGATE ROMNEY: Mr. President.

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I fail to find anything in here which provide that each delegate get one copy.

PRESIDENT GRAYBILL: Well, Mr. Romney, each delegate gets a copy delivered to

Convention, or beyond us. I'm sure that's the sense of it. That's the way it was discussed; but if you want to raise that issue, fine.

DELEGATE ROMNEY: Well, of course, the delegate can take care of that situation by seeing that he gets onehimself, because he has the possibility of disseminating two copies. However, when this Convention is terminated and we go home, after perhaps some issues are rather acrimonious and debatable, I'm sure that delegates are going to find thatthere will be times when they will be challenged as to how they voted or how somebody else voted on some of these issues. Now, I know that's true from the past and that the House and Senate journals are invaluable in such occasions. So, I think that every delegate should be warned: if they don't get a copy, that they see that they get one, where they can have it available to them very readily. Of course, I know you can run up to the county clerk and recorder's office or over to the library and have access to them that way. But this is something that you're going to have to face, and I think that everyone should be warned about it.

PRESIDENT GRAYBILL: Is there further discussion'?

Mr. Hanson.

DELEGATE ROBERT HANSON: Well, I was just looking at this and I was wondering; when the money is collected, where does it go?

PRESIDENT GRAYBILL: Did I ask— would you please ask again.

DELEGATE ROBERTHANSON: Where does the money that's raised from the sale of this— where do these funds go?

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE ROBERT HANSON: How are they accounted for?

DELEGATE TOOLE: The question is, where do the funds go? They go into the Convention budget.

DELEGATE ROBERT HANSON: And they're accounted for through the bookkeeper's office?

DELEGATE TOOLE: Be free for us to spend them.

DELEGATE ROBERT HANSON: So actually, then, our **budget** of 505,000 could be enlarged a little bit through—

DELEGATE TOOLE: A little bit.

DELEGATE ROBERT HANSON: — from this income source.

DELEGATE TOOLE: A little bit.

PRESIDENT GRAYBILL: Is there further discussion of this proposed resolution? (No response) Very well, all in favor of Resolution Number 6, as amended to include the public libraries, for calling for distribution of the Convention proceedings outside the Convention, please indicate by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, **No.**

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it. Mr. Toole, the Chair will recognize the Chairman of the Committee on Administration and would ask leave or, without objection, would revert to Order of Business Number 1, Committee Reports, so that we may finally adopt Mr. Toole's committee report, which contained the staff, budget and documents matters that we've now handled by resolution.

Mr. Toole.

DELEGATE TOOLE: Mr. President, I request that we revert to Order of Business Number 1, and I would like to move for the adoption of the report of the Committee on Administration, as amended.

PRESIDENT GRAYBILL: The report of the Committee on Administration was given to you the other day and does include references to this staff matter and to the budget and to the documents; and if there is further discussion on the report at this time, fine; otherwise, we'll adopt the report. So many as shall be in favor of adopting the report of the Committee on Administration, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Order of Business Number 8.

Mr. Clerk.

CLERK HANSON: Mr. Champoux, Order of Business Number 8.

PRESIDENT GRAYBILL: Well, we want to take up page introductions today under Order of Business Number 8.

Mr. Champoux.

DELEGATE CHAMPOLJX: Thank you, Mr. President. At this time I would like to present the pages that have served us all this week. And they surely have done one great job. I will announce the girl.5 first. Each one will stand, and then one of the pages will come to the mike at the first chair there—

PRESIDENT GRAYBILL: Mr. Arness.

DELEGATE CHAMPOUX: --and will thank the Convention. The first one is Ada Berg from Bozeman. Is she hew" She'll be here in a minute.

PRESIDENT GRAYBILL: Have a call of the-get Miss Berg in here if she's out in the hall there. Can we get a page to go after the page? (Laughter)

DELEGATE CHAMPOUX: Heidi Headapohl from Helena: Clary Keichert from Great Falls—would you come forward, Clary, please? Colleen Barnard from Saco; Karen Eck from Helena; James Ramleau from Whitefish; Curt, Alt from Butte. Could we make arrangements, Mr. President, to have a copy of the record within these? I would hope that these names would be inserted in the official record and a copy sent to—

PRESIDENT GRAYBILL: In the journal.

DELEGATE CHAMPOUX: In the journal, yes--copies sent to these people so when they get older and have children and grandchildren, they can show that they were here when we did this great work. How about a great hand for them?

PRESIDENT GRAYBILL: Will the—

(Applause)

UNIDENTIFIED PAGE: Well, I'd just like to say-does this work? Okay. That's not what I wanted to say, but I wanted to say for all of us how much we enjoyed this week-you know, just getting to know all the delegates and all the staff members--and how much we appreciated being able to be a part of it, even if it was just for a week. WE want to say that we're here to help you; and we know that you're here to help people, too, by giving them a better Constitution; and we wish you luck. And thank you.

(Applause)

PRESIDENT GRAYBILL: I'd like to ask that the clerk see that copies of the journal are gotten to Mr. Loman. Mr. Loman, you're in the hall, and we'd like the copies of the journal for today, containing their names, mailed to these pages after they go back home, and we'll try and do this each week.

Mr. Champoux.

DELEGATE CHAMPOUX: The lady working is Miss Ada Berg, right there. She just disappeared.

PRESIDENT GRAYBILL: There she is.

(Applause)

PRESIDENT GRAYBILL: Very well, we'll be at ease here for one minute here while we change the tape.

(Convention at ease at 11:45 a.m. — Proceedings resumed at 11:50 a.m.)

PRESIDENT GRAYBILL: The Convention will be in order. Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 11, Committee Announcements and Notices. Before we get to committee announcements, the Chair would like to make the following announcements. First of all, Dale Harris has asked me to point out to you that on the weekend, and that's Saturday or Sunday, most of the doors of the Capitol are locked. The door on the oval in back is generally open, and the other front door underneath on the first floor is often open; or you can generally attract the attention of the guard to let you in at those two doors. That's on Saturdays.

Now, when-we are making arrangements-at least we're-Mr. Harris and I are asking the Capitol custodians to make other arrangements for a week from tomorrow, because, obviously, we'll he in session then. But in any event, if you find the doors aren't open that you want, try those two middle doors on either side, preferably in the back. Secondly, Mr. Harris wants me to announce that a stenographer will he available in the steno pool on Monday. Third, the Rules Committee wants to announce that the rules booklet will be printed and out for everyone by Monday. You've already heard the announcement of a meeting Tuesday at 7:30 in the Highway Commission auditorium, where people may view the public information films from other states. Now, are there committee announcements?

Mr. Aasheim.

DELEGATE AASHEIM: I wish to announce to the delegates-all the delegates—that the Legislative Committee is having a public hearing on Monday at 10 o'clock in this chamber. I hope you aren't too critical of us for calling it here, rather than the Senate chamber, hut we felt there wouldn't be too much conflict. But we feel this is more available for the public-they would be more free to discuss the issues. Now, this is going to be a major hearing and probably will be more informative than one later on, because I see we're going to have a whole day, and longer if we need it, and we have considerable testimony coming. And we're going to discuss, or have discussed, the whole Legislative Article; and we encourage you to come. And if you want to invite any other people at home, we encourage you to so do, because the way I look at our schedule, we might not have as much time later on. And to my committee, the Legislative Committee, we will meet at 1:30 this afternoon.

PRESIDENT GRAYBILL: Mr. Etchart.

DELEGATE **ETCHART:** Mr. President, General Government Committee will meet at 1 o'clock in Room 410.

PRESIDENT GRAYBILL: General Government, at 1 o'clock.

Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, in 436 at 1 o'clock, please.

PRESIDENT GRAYBILL: Education Committee, at 1 o'clock.

Mr. Dahood.

DELEGATE **DAHOOD:** Bill of Rights, at 1:30.

PRESIDENT GRAYBILL: Bill of Rights, at 1:30.

Mr. Rygg.

DELEGATE RYGG: Revenue and Finance, at 1:45.

PRESIDENT GRAYBILL: Revenue and Finance, at 1:45.

Mr. Toole.

DELEGATE TOOLE: Public Information, in the foyer outside the Convention Hall, right after adjournment.

PRESIDENT GRAYBILL: Public Information, in the foyer, after adjournment..

Mrs. Cross.

DELEGATE CROSS: Natural Resources, at 1:30 this afternoon.

PRESIDENT GRAYBILL: Natural Resources Committee, at 1:30 today.

Mr. Joyce.

DELEGATE JOYCE: Executive Committee, at 2 o'clock in the committee room.

PRESIDENT GRAYBILL: Executive Committee, at 2 o'clock this afternoon.

Mr. Schiltz.

DELEGATE **SCHILTZ:** I don't see anybody here for the Judiciary, but we're continuing a hearing at 1 o'clock in the Senate.

PRESIDENT GRAYBILL: Judiciary is continuing a hearing at 1 o'clock in the Senate, today.

Mrs. Blend.

DELEGATE BLEND: Local Government will meet at 1:30 this afternoon.

PRESIDENT GRAYBILL: Local Government, at 1:30 this afternoon. Other committee announcements? Let's see—

Mr. Heliker.

DELEGATE HELIKER: This is not a committee announcement, Mr. President. Is it in order?

PRESIDENT GRAYBILL: Is it an announcement?

DELEGATE HELIKER: Yes.

PRESIDENT GRAYBILL: Okay.

DELEGATE HELIKER: I'd like to announce that copies of Ellis Waldron's article on the Legislature are available, printed not at public expense. You may pick them up and take them home with you this weekend if you're going home. I believe Mrs. Bugbee has them over there at her desk. I hope Mr. Schiltz will not object that, since you are being paid mileage, that they're being distributed at public expense. (Laughter)

PRESIDENT GRAYBILL: All right. Mr. Waldron's treatise on the Legislature is in the cardboard box on Mrs. Bugbee's desk. Other announcements'? (No response) All right, seeing none, I'll call upon Mr. Eskildsen for a special announcement. Please listen to this.

DELEGATE ESKILDSEN: Mr. President and members of the Convention. Before I make the motion to recess, I'd like to make a short announcement. Beginning of the next week, sometime at the convenience--when it's convenient for the full chamber, we'll have an information meeting on procedure and so forth, on how themeetings are conducted; and any of those that wish to attend-it will be the time when we won't be on the journal, so we can go through the whole procedure, and we'll finally understand more what we're doing. We are now more relaxed and we all have a general idea of how the Convention is going to be run, so it'll probably work out better at this time. Mr. President, I move, pursuant to the general powers vested in Montana Constitution Convention and in accordance with the provisions of Section 7(6) of the Enabling Act, Chapter 296, Law 1971, the Montana Constitution Convention shall recess temporarily until 9:30 a.m., on Tuesday, January 25th, 1972.

PRESIDENT GRAYBILL: Very well, you've heard a motion to recess the Convention until Tuesday morning at 9:30. Now, first of all, notice that we changed the time to 9:30 for next week. We intend to start the general sessions at 9:30 next week to give you a little more time in the morning for committee meetings. Secondly, on each weekend, we will adjourn-or we will recess the Convention in this form over the weekend to establish properly the 5-day workweek for our pay period and to distinguish ourselves from the Legislature, who pays differently. Having heard the motion to recess until Tuesday morning, all those in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. We're in recess.

(Recess at 11:56 a.m.)

January 25, 1972 **Ninth Day** **Convention Hall**
9:35 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will come to order. Let's rise for theinvocation by Reverend Rurkhardt.

DELEGATE BURKHARDT: Let us pray. We ask guidance, Oh God, for the work of the day, somehow we may be open to hear each other and to hear from those in our state with vital concerns. Though the subzero temperatures are binding us close, grant that some kind of chinook may come through our minds and hearts, giving us a real openness to each other. Amen.

PRESIDENT GRAYBILL: The voting machine is open for roll call. Will the clerk show Mr. Heliker as excused, Mrs. Cain as excused, Carl Davis as excused, and Robert Kelleher as excused, and Arbanas as excused. Do you want to call the absent members and see if there's anyone here knows about them.

CLERK SMITH: Anderson. Brown.

PRESIDENT GRAYBILL: That all? All right, we'll close it. And please take the roll call. All right--no-Just a moment, now, the Convention-1 asked you, at least I should've asked you to vote Aye if you're present; you can't vote No, so we're now going to do it over again. I will open the ballot, and you may now vote-present by voting Aye. Do you want to call your names of the absent members again.

CLERK SMITH: Anderson.

PRESIDENT GRAYBILL: Very well. Now take the roll call by machine.

Aasheim		Present
Anderson,	J.	Present
Anderson,	0..	Absent
Arbanas		Excused
Arness		Present
Aronow		Present
Artz		Present
Ask		Present
Babcock		Present
Barnard		Present
Bates		Present
Belcher		Present
Berg		Present
Berthelson		Present
Blaylock		Present
Blend		Present
Bowman		Present
Brazier		Present
Brown		Present
Bugbee		Present
Burkhardt		Present
Cain		Excused
Campbell		Present
Cate		Present
Champoux		Present
Choate		Present
Conover		Present
Cross		Present
Dahood		Present
Davis		Excused
Delaney		Present
Driscoll		Present
Drum		Present
Eck		Present
Erdmann		Present
Eskildsen		Present
Etchart		Present
Felt		Present
Foster		Present
Furlong		Present
Garlington		Present
Graybill		Present
Gysler		Present
Habedank		Present
Hanson, R.S.		Present
Hanson, R.		Present
Harbaugh		Present
Harlow		Present
Harper		Present
Harrington		Present
Heliker		Excused
Holland		Present
Jacobsen		Present
James		Present
Johnson		Present
Joyce		Present
Kamhoot		Present
Kelleher		Excused
Leuthold		Present
Loendorf		Present
Lorello		Present
Mahoney		Present
Mansfield		Present
Martin		Present
McCarvel		Present
McDonough		Present
McKeon		Present
McNeil		Present

Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 94 present, 5 excused, 1 absent.

PRESIDENT GRAYBILL: Very well, let the journal so show. Now, Reports of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Reports of Select Committees.

CLERK SMITH: None. sir.

PRESIDENT GRAYBILL: Communications.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Referral of Delegate Proposals.

CLERK SMITH: "Delegate Proposal Number 16. A proposal for a Constitutional Section regulating earmarking of state revenues. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Blend.

PRESIDENT GRAYBILL: Revenue and Finance for Number 16.

CLERK SMITH: "Delegate Proposal Number 17. A proposal repealing Article XVI, Section 4, of the Constitution of the State of Montana and adding a new section providing for the election of boards of county commissioners. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Jacobsen.

PRESIDENT GRAYBILL: 17, to Local Government.

CLERK SMITH: "Delegate Proposal Number 18. A proposal for a new Constitutional Section relating to the right to counsel. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Cate, Campbell and Champoux.

PRESIDENT GRAYBILL: 18, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 19. A proposal amending Article V, Section 6, of the Constitution of the State of Montana to change the meeting date of the Legislature from the first Monday of January to the first Monday of February. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Miles Romney.

PRESIDENT GRAYBILL: Number 19, to Legislative.

CLERK SMITH: "Delegate Proposal Number 20. A proposal for a new Constitutional Article providing a public policy of a quality environment. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by McNeil.

PRESIDENT GRAYBILL: Number 20, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 21. A proposal for a new section to Article III, Bill of Rights, of the Constitution of the State of Montana, guaranteeing an individual's right to a quality environment. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by McNeil.

PRESIDENT GRAYBILL: Number "1, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 22. A proposal for a new Constitutional Article vesting legislative powers in a unicameral Legislature. Be it proposed by the Constitutional Convention of the State of Montana."

PRESIDENT GRAYBILL: Number 22, to Legislative.

CLERK SMITH: Introduced by Arlyne Reichert and others.

PRESIDENT GRAYBILL: Legislative.

CLERK SMITH: "Delegate Proposal Number 23. A proposal for a new Constitutional section providing for full state funding of welfare. He it proposed by the Constitutional Convention of the State of Montana." Introduced by Blend.

PRESIDENT GRAYBILL: Number 23, to both Local Government and Revenue and Finance, jointly.

CLERK SMITH: "Delegate Proposal Number 24. A proposal repealing Article XIX, Section 2, of the Constitution of the State of Montana. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Choate.

PRESIDENT GRAYBILL: Number "4, to General Government.

CLERK SMITH: "Delegate Proposal Number 25. A proposal amending Article VII, Section 12, of the Constitution of the State of Montana to provide the Legislature with the opportunity to override gubernatorial vetoes. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Blaylock and others.

PRESIDENT GRAYBILL: Number 25, to Legislative and Executive, jointly.

CLERK SMITH: "Delegate Proposal Number 26. A proposal for a new Constitutional Article to provide boundaries for the State of Montana. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Brown.

PRESIDENT GRAYBILL: Number 26, to General Government.

CLERK SMITH: "Delegate Proposal Number 27. A proposal amending Article XIX, Section 9, of the Constitution of the State of Montana providing for a majority rather than two-thirds vote for legislative Constitutional amendments; providing for Constitutional amendment by the people; and prohibiting executive veto of proposed amendments. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Mahoney.

PRESIDENT GRAYBILL: Number 27, to General Government.

CLERK SMITH: "Delegate Proposal Number 28. A proposal for a new Constitutional section providing for legislative authorization of #ambling. Be it proposed by the Constitutional Convention of tho State of Montana." Introduced by Belcher.

PRESIDENT GRAYBILL: Number 28, to General Government. There is no Order of Business Number 6, Final Consideration of Proposals? None'?

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: That's Number 5. Number 6, Adoption of Proposed Constitution; none?

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 7, Motions and Resolutions?

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 8, Unfinished Business. Mr. Aasheim, you have a matter that I think you could take up at this time.

DELEGATE AASHEIM: Mr. Chairman [President], I believe we should be on Motions for my presentation.

PRESIDENT GRAYBILL: Very well, without hearing any objection, we will revert back to Order of Business Number 7, Motions.

DELEGATE AASHEIM: Mr. President and delegates. Yesterday we had a hearing on the Legislative Article in this chamber. It was very successful. We had a good hearing. And I want to apologize to you people who were deprived of your desks in the process, but it is a very good place to have a hearing. It is more informal, and the people are more at ease who are presenting a case. So at

this time I would like to move that the public hearings which are held in the evening at 7 o'clock or otherwise-I'll just amend my motion-that the public hearings which are held in the evening will be held in Convention Hall.

PRESIDENT GRAYBILL: Very well. The issue, then, that Mr. Aasheim wishes to present by this motion is whetherornot we should hold hearings, schedule hearings-now this means major hearings with the public invited-in this hall, and the issue is, he's restricting it in his motion to evening meetings; but it does mean that (a) if you wanted to use your desk in the evening, you couldn't,; and (b) you run some little risk of having somebody disturb your papers. However, you've heard his argument. Now, is there discussion on the motion to allow Convention Hall to be used in the evening for hearings"

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, did you use the word, Magnus-did you use the word "shall" or "may"? Some of the chairmen may not want to hold their hearing here for some reason or other; it might not be that large. Did you say "shall''-"they shall hold it here"?

DELEGATE AASHEIM: I don't recall, but I would amend it to "may", at the discretion of the coordinating committees.

PRESIDENT GRAYBILL: Mr. Aasheim, while we're debating it, why don't you write it up there at your desk, and then we'll have it. Got a piece of paper? Is there further discussion on the issue of whether or not to use Convention Hall in the evenings for committee hearings?

Mr. Mahoney.

DELEGATE MAHONEY: I think that was very nice yesterday, and 1 could get away from my desk, and I think you shouldn't limit this to evenings-1 think the off days when the Convention is not in session, maybe like yesterday and Monday, I think it would be all right, as far as I'm concerned, if it was amended to make it in the off days, because we may have Sunday hearings, too, and this is a good place-the best place in the Capitol building or anything around here-to be heard at.

PRESIDENT GRAYBILL: Very well. Other discussion? All right, I guess we're ready to vote on that motion, Mr. Aasheim. I guess we'll wait a moment till he formulates it.

Mr. Choate.

DELEGATE CHOATE: (Inaudible)—before taking the vote.

PRESIDENT GRAYBILL: Wait a minute. Would you start over again.

DELEGATE CHOATE: Mr. President, I suggest, that we clear the board from our roll call vote before we take this vote. The lights had still been on.

PRESIDENT GRAYBILL: Mr. Felt.

DELEGATE FELT: 1 would certainly agree with the suggestion that Mr. Aasheim is proposing, and I think it quite fine for us to act upon it. I suppose that actually, in our rules, we have delegated control over the use of this facility, I think, to the President of the Convention and that it would normally he available for use by any committee with the consent and approval of the President. And that so this might he more in the nature of expressing the sense of the membership to confirming that type of delegation of authority, and yet,, I don't know just what wording he is going to come out with. There was some wording about the concurrence of some group, which I would think might just he made the concurrence of the President of the Convention.

PRESIDENT GRAYBILL: All right. We'll take it that the sense of the motion is this: "I move that public hearings he held in Convention Hall at the discretion of the President. I further move that the first two rows be retained for the committee." You're referring to when a hearing is held, you want the first two rows to he retained for the committee to hear-to sit in. All right, that's the sense of the motion. And I think you're correct, Mr. Felt, hut because people do have desks here that they like to use, we certainly want to get permission if we're going to do this on a regular basis. Note that he has-that Mr. Aasheim has changed the motion, "I move that public hearings he held in the Convention Hall at the discretion of the President." That is not now limited to nighttime, but it's limited to the discretion of myself, and I will, of course, work with Mr. Baucus, the committee coordinator, in scheduling hearings. Now, is there further discussion?-1 move that public hearings he held in Convention Hall at the discretion of the President. I further move that the first two rows he retained for the committee. Any

further discussion of this motion in this form?

(No response)

PRESIDENT GRAYBILL: All right; all those in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No reponse)

PRESIDENT GRAYBILL: So ordered. Mr. Martin.

DELEGATE MARTIN: My parliamentary adviser advises me that this is the point where I might bring this up. At the request of several delegates, Mrs. Fallon, the printing clerk, and Dale have gotten some estimates for the imprinting of letterheads of the members' names. And we have some prices; and if they want information about that, they can get it. The prices, I might say-the Helena Letter Shop has quoted a price of $5. That's for imprinting the names on letterheads.

PRESIDENT GRAYBILL: That's per ream? Per box?

DELEGATE MARTIN: Per box, yes. State Publishing is a little higher, 12.90; Thurber Printing is 10.35. At Livingston it was $10.70. So you get an idea of what you can do and what you can't do. And while I'm on the floor, I wonder if I might have another moment to make-

PRESIDENT GRAYBILL: All right. To clear up that first point, I take it that they may see the printing clerk or yourself?

DELEGATE MARTIN: I think-No, they can go directly to the-1 don't think the printing clerk has the time or—

PRESIDENT GRAYBILL: All right. You're merely saying—

DELEGATE MARTIN: They may go directly to the Helena Letter Shop, 11 Placer Avenue, or they could telephone them and make whatever arrangements they would like.

PRESIDENT GRAYBILL: Helena Letter Shop was $5.00?

DELEGATE MARTIN: Uh huh. If anyone wants to see-wants a copy of the letterhead imprinting that I had, I'll be glad to show it to them.

PRESIDENT GRAYBILL: Very well. Okay. Now your next matter.

DELEGATE MARTIN: Well, I guess you'd-it's a sort of a little off the record and out of the journal. I'd like to—

PRESIDENT GRAYBILL: No, now, we're not going off the record and out of the journal, Mr. Martin, but go ahead. (Laughter)

DELEGATE MARTIN: It **can** be on the record, for that matter. We have a gentleman, and I think it's the sense of the Convention that silence and brevity will speed up the operation a little bit-we have a gentleman here who, Friday, made a vow and kept it, and that was that he wasn't going to open his mouth. And I should like, at this time, to present to Delegate Mahoney (Laughter) this symbol. It's a little gift from my granddaughter.

PRESIDENT GRAYBILL: Do **you** want to describe it'? (Laughter)

DELEGATE MARTIN: It's a little dwarf, and it says on it, "Love America" (Laughter) and then across the face is a flag, "Keep your mouth shut." (Laughter) (Applause)

PRESIDENT GRAYBILL: Mr. Mahoney, would you like to break your resolution of Friday? (Laughter)

DELEGATE MAHONEY: The resolution was only for Friday. (Laughter) I want to thank you very much, Fred, for this; and I am trying my best, and there is nothing I'd rather have than to have my mouth sealed up with an American flag. (Applause)

DELEGATE MARTIN: One string that goes with that-I'll have to have it back after the session. (Laughter)

PRESIDENT GRAYBILL: Mr. Mahoney, I'm sure that the entire house thanks you for your resolution to keep your mouth shut every Friday. (Laughter) Thank you. All right. We're on Order of Business Number 10, General Orders; there's none, is that right?

CLERK SMITH: None. sir.

PRESIDENT GRAYBILL: So now we're down to Announcements. Now, before we go to Announcements, or before we start announcing committee assignments, I'd like lo point out that we did scrape up a daily schedule today. And we'll have it in a little better form by tomorrow, but you do have your daily schedule, and Max Baucus is seeing to it that on the bottom of the daily schedule the committee hearings for that day are described. At least they're described that way if you have gotten the information to him and on the bulletin board. So I would think it would be unnecessary for committee chairmen to stand and announce anything that's on the daily Convention schedule. So please, from now on, refer to your daily Convention schedules for your committee hearings for the day. That does not mean that committee chairmen are not privileged to announce other meetings than shown there or announce future meetings if they're of sufficient importance, but I merely want to avoid the repetitious announcing of things that are already on your daily schedule.

Now. next, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, members of the Convention. For the chairmen, I would like to announce that tomorrow, immediately on adjournment, we'll have an informal presentation by some of the more-learned gentlemen here, Charley Mahoney and Jim Felt and Don Nutting and Marshall Murray and myself, and WE will run through, slowly, the various rules and movements that take place on the Convention floor. Any of you who wish to attend are certainly invited. We're doing this so it'll [be] off the record and out of the journal, so to speak; it won't be printed. And-so, I'd like to announce to the chairmen now, if possible, that you wouldn't call your meetings tomorrow until 10:30.

PRESIDENT GRAYBILL: Very well. Now this parliamentary information session is open lo everyone, not just committee chairmen, hut you committee chairmen will try and get started by 9:00—try to get through by 9:45 tomorrow, and they'll try and get through by 10:30 for you, so that might help you a little bit tomorow if your members want to attend that.

Mr. Toole, did you have an announcement?

DELEGATE TOOLE: Public Information Committee, tomorrow morning, 8:00, Room 433.

PRESIDENT GRAYBILL: And I think, Mr. Toole, we should reannounce that tonight at 7:30, in the Highway Commission auditorium, is that right'!

DELEGATE TOOLE: Mrs. Warden will make that announcement.

PRESIDENT GRAYBILL: Pardon'!

DELEGATE TOOLE: Mrs. Warden will make that announcement.

PRESIDENT GRAYBILL: All right, Mrs. Warden.

DELEGATE WARDEN: In the Highway auditorium tonight at 7:30, will be the showing of the films of the Illinois and Pennsylvania Conventions. After this, I would like the members of the Public Information Committee to stay, because there will be some more films that they need to know about. But this is-these two showings are open to the public and to the delegates. Thank you.

PRESIDENT GRAYBILL: Very well. That's tonight at the Highway. Now, one other announcement. You'll notice that you've been given on your desks an announcement of a women's luncheon for your wives tomorrow noon. I only call this to your attention and ask that you check with your wife, if necessary by phone, because they do want an early count for reservations. So please take it upon yourself, if you have a wife here, to take care of this so that reservations can be adequately made.

CLERK SMITH: I have been asked by Mr. Holland to announce that there will be a Judiciary Committee meeting 10 minutes after adjournment today. In what room is that, Mr. Holland?

DELEGATE HOLLAND: 423-A.

PRESIDENT GRAYBILL: 423A. All right. And then I would like to make one other announcement. Sam Gilluly, the head of the Historical Society, called me, and you are all aware that you've gotten a formal invitation to the Historical Society's big night on Thursday night, and he is somewhat concerned, you committee chairmen, lest someone schedule committee hearings during his Historical Society show, and he asked me to call to your special attention that they have gone to some great pains to put on a very good evening for us there, and he'd like to remind

you all of it and remind you chairmen that perhaps this is a significant event and should not be conflicted with. He also made the point to me clearly, and I don't know if we can get the word out in this room, but we'll try otherwise, but the staff is also invited to this Historical Society open house on Thursday night. Now, are there other announcements'?

Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, at 10 minutes after adjournment of this meeting, please.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Executive Committee, 10 minutes after adjournment, in the committee room.

PRESIDENT GRAYBILL: Mr. Ward.

DELEGATE WARD: Public Health, Welfare and Labor at 10:00 this morning, or right on adjournment, and again this evening at 8:00 p.m., on nonmunicipal corporations.

PRESIDENT GRAYBILL: And Mr. Murray.

DELEGATE MURRAY: Mr. President, Rules Committee, 9:00 in the morning. And one other matter, if I might, please. There's been a radio report this morning that the weather is not too good in the Kalispell area. I seem to recall in the recent past a little publicity in the centerfold of *Life* magazine about one of our leading Montana cities and a little information in recent newspapers about the seat of our FBI in the State of Montana as being somewhat of a place to go or not to go, and I only want to report that, in spite of the weather in Kalispell—and the chill factor is -70" today and the schools are not in attendance-that *Family Circle* magazine, one of our leading national magazines, reports that the city of Kalispell and the Kalispell area is one of the 18 most economical and hest places in the United States in which to live. We thought that the Convention should know that. (Applause)

PRESIDENT GRAYBILL: Thank you for that important announcement, Mr. Murray. (Laughter) Are there other announcements?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that the Convention stand adjourned until Wednesday, January 26th.

PRESIDENT GRAYBILL: Motion is to adjourn until Wednesday morning at 9:30, January 26th. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, NW.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Adjournment at 10:03 a.m.)

January 26, 1972 Tenth Day Convention Hall
9:30 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. For the information of the Convention, we have assigned one of the delegate ministers to each day of the week for invocation, and we have asked them if they wouldn't, from time to time, share their obligations with other ministers in the community. And this morning, Reverend Harbaugh has asked Len Watson, who is the minister of the First Presbyterian Church here in Helena, if he would lead us in invocation. So, shall we rise.

REVEREND WATSON: Let us pray. God of our fathers and Lord of our lives, how we praise You for this great land of ours and especially for this, our great State; and how we thank You for the blessings which come to us, a heritage from the past, a joy for the present and a challenge for the future-our freedoms, the cattle on a thousand hills, even the mantle of snow, water for our summer crops. Surely you are a great God and greatly to be praised. And, now, Lord, as our representatives take up their responsibilities for another day, fill their hearts and minds with the good of the past, the needs of our day and the hope of tomorrow, and we will be confident that Your will shall be done; in Jesus' name, Amen.

PRESIDENT GRAYBILL: Thank you. The clerk will take the roll by the voting machines and will open the votes, and vote Aye if you're present. (Laughter) Mr. Clerk, John Anderson is excused.

CLERK SMITH: Mr. Noble?

PRESIDENT GRAYBILL: Mr. Noble is late but will be here, so he should be excused.

CLERK SMITH: Mr. Rebal?

DELEGATE REBAL: Present.

PRESIDENT GRAYBILL: Mr. Rebal is present.

CLERK SMITH: Mr. Harper?

UNIDENTIFIED DELEGATE: (Inaudible) his car out of the snowbank.

PRESIDENT GRAYBILL: All right, we'll excuse Mr. Harper.

CLERK SMITH: Mr. Kelleher?

PRESIDENT GRAYBILL: Mr. Kelleher was excused yesterday for today. All right, we'll close the ballot, and you can take the roll.

Aasheim	Present
Anderson, J.	Excused.
Anderson, 0	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present [Excused]
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend.	Present
Bowman	Present
Brazier	Present [Excused]
Brown	Present
Bugbee	Present
Burkhardt	Present
c ain.	Present [Excused]
Campbell	Present
Cate	Present
Champoux	Present
Chonte	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present

Harper	Excused
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Excused
Leuthold	Present
Loendorf.	Present
Lorello	Present
Mansfield	Present
Mahoney	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe..	Present
Murray	Present
Noble	Excused [Present]
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 4 [6] excused, 96 [94] present.

Editor's note: The official roll call record on file with the Historical Society shows the above roll call to be in error. Corrections are bracketed.

PRESIDENT GRAYBILL: Very well. The journal may so show. On the Order of Business, Report of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 2, Report of Select Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 3, Report of Communications.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 4, Introduction and Reference of Delegate Proposals.

CLERK SMITH: "Delegate Proposal Number 29. A proposal repealing Article XI, Section 10, of the Constitution of the State of Montana and adding a new section to provide that school elections be held in conjunction with other elections. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Erdmann and others.

PRESIDENT GRAYBILL: To the Education and to the General Government Committee, jointly.

CLERK SMITH: "Delegate Proposal Number 30. A proposal for a new Constitutional section eliminating the defense of sovereign immunity. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Cate and others.

PRESIDENT GRAYBILL: To the Judiciary Committee.

CLERK SMITH: "Delegate Proposal Number 31. A proposal amending Article XIX, Section 1, of the Constitution of the State of Montana to provide a brief oath of office. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Harlow.

PRESIDENT GRAYBILL: To the General Government Committee.

CLERK SMITH: "Delegate Proposal Number 32. A proposal for a new section in Article III of the present Constitution, the Bill of Rights,

guaranteeing freedom from discrimination. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Robinson and Speer.

PRESIDENT GRAYBILL: To the Bill of Kights Committee.

CLERK SMITH: "Delegate Proposal Number 33. A proposal for a new Constitutional section to insure the rights of individual dignity, privacy, and free expression." Introduced by Campbell and others.

PRESIDENT GRAYBILL: To the Bill of Rights Committee.

CLERK SMITH: "Delegate Proposal Number 34. A proposal amending Article III, Section 24, of the Constitution of the State of Montana, reaffirming the principles of reformation and providing automatic restoration of rights upon termination of state supervision. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Campbell and others.

PRESIDENT GRAYBILL: To the Judiciary Committee.

CLERK SMITH: "Delegate Proposal Number 35. A proposal for a new Constitutional section in Article XII of the present Constitution to provide that the Legislative Assembly may allow preferential taxation. Be it proposed hy the Constitutional Convention of the State of Montana." Introduced by Robinson.

PRESIDENT GRAYBILL: To the Revenue and Finance Committee.

CLERK SMITH: "Delegate Proposal Number 36. A proposal repealing Section 2 and 4 of Article X of the Constitution of the State of Montana and amending Section 3 of Article X to provide for the seat of Montana government. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Belcher and others.

PRESIDENT GRAYBILL: To the General Government Committee.

CLERK SMITH: "Delegate Proposal Number 37. A proposal for a new Constitutional section providing for earmarking by the Legislature. Be it proposed by the Constitutional Convention of the State of Montana." Introduced hy Foster and others.

PRESIDENT GRAYBILL: To the Revenue and Finance Committee.

CLERK SMITH: "Delegate Proposal Number 38. A proposal for a new Constitutional section providing for citizen participation in the operation of government prior to final decision. Be it proposed hy the Constitutional Convention of the State of Montana." Introduced by Foster and others.

PRESIDENT GRAYBILL: To the Judiciary Committee.

CLERK SMITH: That is all, sir.

PRESIDENT GRAYBILL: No, I have a couple of others here from the President. Now, here's an announcement of an assignment. "The President of the Montana Constitutional Convention hereby assigns the following delegate proposals to joint hearings, as shown on the schedule below. Delegate Proposal Number 1, which went to Natural Resources, is now also sent to the Bill of Rights, jointly. Delegate Proposal Number 12, which went to Natural Resources, to the Bill of Rights Committee, jointly. Delegate Proposal Number 20, which went to the Bill of Rights Committee, to the Natural Resources Committee, jointly. Delegate Proposal Number 21, to the Bill of Rights Committee, now to the Natural Resources Committee, jointly. This has the effect of putting the four bills on environment in joint hearings between the Bill of Rights and the Natural Resources Committee. Mr. Clerk, do you want to distribute that. Now, secondly, the following sections and Articles of the Montana Constitution are referred to the indicated committee, as shown on the attached schedule, signed by myself, President; and attached thereto is a schedule of the Constitutional assignments. Now, these Constitutional assignments were made during the interim period. However, they've been slightly modified, and I think the committee chairmen know in each case, and we have also given out a copy of this to the committee chairmen. However, this will be handled in the normal form like a delegate proposal, and in due course this afternoon, each of you will get a copy of this assignment and the schedule so you'll all know to which committees various sections of the constitution are assigned. All right, I think that's all the referrals. Order of Business Number 5, Final Consideration; none. Order of

Business Number 6, Adoption of Proposed Constitution; none. Order of Business Number 7, Motions and Resolutions.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman [President], since this problem has been spoken about and written about in a newspaper, and since I have a question in my own mind even though I do not intend to run for any office in this year of 1972, I should like to move the following: I move that the President of this Convention ask the Attorney General of the State of Montana for a legal opinion to clarify what political positions delegates to this Convention may stand for in the year 1972. And I have in mind, Mr. Chairman--for instance, could delegates to this Convention stand for a school board election this year? Or is it all right for us to run for a precinct committeeman or committeewoman post in our respective parties'?

PRESIDENT GRAYBILL: Have you written that motion out, Mr. Blaylock? Would you send it to the rostrum? All right, Delegate Blaylock has made the following motion: "that the President of the Convention ask the Attorney General of the State of Montana for a legal opinion to clarify what political positions delegates to the Convention might stand for in the year 1972." Is there discussion on the motion? (No response) Are you ready for the question? (No response) All right, we'll put, then, the question of whether or not the President of this Convention should ask the Attorney General of the State of Montana for an opinion-a legal opinion--and to clarify whatpolitical positions delegates to this Convention may stand for in the year 1972. All those in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, say NO.

(No response)

PRESIDENT GRAYBILL: So ordered. I will request that this morning of him. All right—are there other motions or resolutions? Order of Business 8, Unfinished Business.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business 9, Special Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business 10, General Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business 11, Committee Announcements and Notices. First of all, you'll note that the daily Convention schedule is in somewhat better form today and your committee announcements are there if they have been published previously. Secondly, I would like to make an announcement that the meeting of committee chairmen scheduled for this evening is being rescheduled for adjournment Friday morning. There was one committee had a conflict this evening. There was a possibility that the liaison officer and myself might not be able to be there tonight, so we've decided that we'd like to have the committee chairmen meet on adjournment Friday. Now you'll recall that Friday morning is scheduled for procedural committees anyway, so there should be no conflicts with committee schedules. Secondly, I can announce that a Mr. Casella, who is Executive Director, I believe it is, of the National Municipal League, will be in Helena on Friday observing our Convention. And we had scheduled a meeting with the committee chairmen for him that morning anyway. so we will take up first the committee chairmen's business and then we will meet and discuss matters with Mr. Casella at that meeting. And the meeting will be in Room 431 on adjournment Friday morning. Now, secondly, I presume you're aware that there is a luncheon this noon for wives, and if any of them have decided to come that couldn't come yesterday, please notify one of the stenographers. Third. who is going to make the announcement'? Oh, am I to make the announcement about the clerks? I think so-theclerk-do you want to make the announcement about that? All right. I'll make the announcement. The clerk's office now has designation slips by which you may designate which two persons-or two places. you want copies of the Convention proceedings to go. So. pick up a slip at the clerk's office and fill it out if you want to. Now. we're certainly not urging you to; and if you don't have anyone in mind, let's not print just for the sheer joy of printing. Hut. if you want to designate, the clerk's office has those slips available. Third, does the clerk have an announcement about the State Auditor?

CLERK SMITH: The Auditor's office will be open on Saturday from 10:00 to 3:00 for pay purposes only. The Auditor's office is located on

the second floor in the west wing of the Capitol building, directly below us. And, there is a second announcement. There will be a PEO Founders' Day luncheon Saturday, January 29th, and all are cordially invited to attend. Reservations can be made with Mrs. Fallon in the chief clerk's office.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen, do you have an announcement about. this morning's parliamentary information session? Just a moment, may the record show Mr. Noble present.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: The information we were supposed to put out today we'll wait, because the rules will be on our desk this evening some time and we'll have a chance to go over them, and I think it would be better, when we're going through rules in procedure and putting out information, if WE all had the rules before us. So, we will have that on adjournment Friday.

PRESIDENT GRAYBILL: We'll have it--certainly-What I meant by that other announcement about committee chairmen, it'll be after your hearing-after your meeting.

DELEGATE ESKILDSEN: Okay. So it'll be now moved on up to recess Friday.

PRESIDENT GRAYBILL: Very well. We won't have the parliamentary information session this morning. We will have it on Friday morning at recess, and the committee chairmen meeting will be after that session on Friday morning. Now, are there other announcements?

Mrs. Warden.

DELEGATE WARDEN: May I ask that the Cascade County delegation meet at the back of the room for just a few minutes after this session.

PRESIDENT GRAYBILL: Very well. Cascade County in the left-rear corner of the chamber at the close of this session. Other announcements?

Mr. Holland.

DELEGATE HOLLAND: A meeting of Judiciary, in the committee room, 10 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I must apologize to the Convention. I noticed that the Executive Committee here is the only one on our daily schedule that apparently is doing nothing, but I want to announce that at 2 o'clock today, the Executive Committee is going to meet with the Board of Railroad and Public Service Commissioners. We will have-the information of our subsequent meetings will appear on this list later, and the Executive Committee will meet in the committee-Room 430 on adjournment-10 minutes after adjournment.

PRESIDENT GRAYBILL: Very well. Mr. Toole.

DELEGATE TOOLE: Mr. President, the Public Information Committee will have a meeting every morning at 8:30 in the Public Information Director's office until further notice.

PRESIDENT GRAYBILL: All right, 8:30 every morning for Public Information until further notice.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, since we have a limitation of two going-of the Convention proceedings, would it be possible to allocate one of these to each of the citizen corps chairmen in their areas?

PRESIDENT GRAYBILL: Well we'll take care of the citizen corps, Mrs. Bugbee, aside from that delegation-that allocation. Other announcements?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we stand adjourned until Thursday, January 27th, 1920—1972. (Laughter)

PRESIDENT GRAYBILL: The motion is to adjourn until Thursday at 9:30. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Adjournment at 9:52 a.m.)

January 27, 1972 Eleventh Day Convention Hall
9:40 a.m. Helena, Montana

PRESIDENT GRAYBILL: (Inaudible) order. The Convention today sent George Harper to Great Falls to debate, and so in his absence, I'm going to ask Father Arbanas to lead us in an invocation.

DELEGATE ARBANAS: Let "spray. Our Father, we thank You for the challenge and the opportunities of this new day. Give us joy and courage and wisdom. Help us to listen to others and see the needs of others. Amen.

PRESIDENT GRAYBILL: Very well, we'll take roll on the voting machine by voting Aye if you're present. Four of the delegates are in Great Falls on this taping that they're doing, so they are excused.

CLERK SMITH: Mr. Barnard, Mr. Harper. Mr. Johnson, Mr. Nutting and Mrs. Robinson are excused. Mr. Kelleher.

PRESIDENT GRAYBILL: Mr. Kelleher is excused. Okay.

CLERK SMITH: Mr. President, 94 present; 6 excused. Quorum.

PRESIDENT GRAYBILL: Very well. the journal may so show.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Excused
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend.,	Present
Bowman..	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain..	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S	Present
Hanson, K.	Present
Harbaugh	Present
Harlow	Present
Harper	Excused
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen.	Present
James	Present
Johnson	Excused
Joyce	Present
Kamhoot	Present
Kelleher	Excused
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Excused
Payne	Present
Pemberton	Present

Rebal	Present
Reichert	Present
Robinson	Excused
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

PRESIDENT GRAYBILL: Order of Business Number 1, Reports of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: **Order** of Business Number 3, Communications.

CLERK SMITH: "The Honorable Leo Graybill, Jr., President, Constitutional Convention; State of Montana, State Capitol Building, Helena, Montana. Dear President Graybill: Enclosed with this letter is a resolution adopted by the delegates to our Constitutional Convention some days ago, expressing their best wishes to the Constitutional Convention of the State of Montana. I know you will enjoy your experience as President, as I do. It is a once-in-a-lifetime experience. You have my very best wishes for a successful Convention; one that will result in the drafting of a new Constitution for the State of Montana—a Constitution that will be adopted by the citizens of your great state. Very truly yours, Frank A. Wenstrom, President of the Constitutional Convention of the State of North Dakota."

PRESIDENT GRAYBILL: **Now you** may read the resolution.

CLERK SMITH: "A resolution expressing the best wishes of the North Dakota Constitutional Convention to the Constitutional Convention of the State of Montana: Whereas, along the length and breadth of this land, there is a concerted effort to revise and reform many state constitutions in order that these basic documents reflect the changes and advancements that have occurred in this century, affecting our society and way of life; and whereas, the citizens of the states of North Dakota and Montana, having recognized that there may be a need for such revision and reform, have authorized constitutional conventions to undertake this effort; and whereas, the delegates to the North Dakota Constitutional Convention have now been in plenary session for 10 days and recognize the monumental problems confronting them as they attempt to revise and rewrite the North Dakota Constitution of 1899; and whereas, the delegates to the Montana Constitutional Convention are now assembled in Helena for the same basic purposes, having determined that a proposed revision of their own constitution was advisable. Now therefore, be it resolved by the North Dakota Constitutional Convention: That this Convention express its sincere wishes for a most successful organizational meeting and that the delegates to the Montana Constitutional Convention may produce a revised Constitution so nearly perfect that it may be second only to that created by the State of North Dakota. Be it further resolved: That a copy of this resolution be forwarded to the President of the Montana Constitutional Convention. Frank A. Wenstrom, President; William B. Pearce, First Vice-President; Stanley Saugstad, Second Vice-President; Louis Vogel, Secretary; and G. R. Gilbreath, Chief Clerk." That is all, sir.

PRESIDENT GRAYBILL: Very well. Shortly, under Resolutions, we will have a reply ready for them. The journal clerk may record the North Dakota resolution in the journal.

Mr. Arness.

DELEGATE ARNESS: Mr. President, may I comment:' Apparently that's a North Dakota joke. (Laughter)

PRESIDENT GRAYBILL: I suppose it would only be fair to let each one of you tell your own North Dakota joke at this time.

Mr. Barnard.

DELEGATE BARNARD: I'd just like to announce that I am present now.

PRESIDENT GRAYBILL: Very well. Mr. Barnard is present. All right, Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK SMITH: "Delegate Proposal Number 39. A proposal for a new Constitutional Section providing for a wage commission. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Cate and others.

PRESIDENT GRAYBILL: Number 39, to Public Health, Welfare, Labor and Industry.

CLERK SMITH: "Delegate Proposal Number 40. A proposal for a new Constitutional Article on Local Government. Be it proposed by the Constitutional Convention of the State of Montana." Introduced hy Felt and others.

PRESIDENT GRAYBILL: Number 40, to Local Government.

CLERK SMITH: "Delegate Proposal Number 41. A proposal for two new Constitutional sections which will retain the provisions of the present Constitution relating to appropriations for charitable purposes and aid to nonpublic schools. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Leuthold.

PRESIDENTGRAYBILL: Number 41, to Education.

CLERK SMITH: "Delegate Proposal Number 42. A proposal for a new Constitutional section providing for initiative, referendum and recall powers for local government. Be it proposed by the Constitutional Convention of the State of Montana: Introduced hy Blend.

PRESIDENT GRAYBILL: Number 42, to General Government.

CLERK SMITH: "Delegate Proposal Number 43. A proposal for a new Constitutional section providing for equality of educational opportunity." Introduced by Champoux and others.

PRESIDENT GRAYBILL: Number 43, **to** Education.

CLERK SMITH: "Delegate Proposal Number 44. A proposal for a new Judicial Article. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Locndorf.

PRESIDENTGRAYBILL: Number 44, to Judiciary.

CLERK SMITH: "Delegate **Proposal Num**ber 45. A proposal amending Article III. Section 3, of the Constitution of the State of Montana, recognizing the right to basic necessities. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Monroe and others.

PRESIDENT GRAYBILL: Number 45, jointly to the Bill of Rights Committee and to the Public Health, Welfare, and Labor and Industry Committee.

CLERK SMITH: "Delegate Proposal Number 46. A proposal for a new Constitutional section providing for the financing of public school system. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by McKeon.

PRESIDENT GRAYBILL: Number 46, jointly to Education and Revenue and Finance.

CLERK SMITH: That is all, sir.

PRESIDENT GRAYBILL: All right. Number 5, Final Consideration of Proposals.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 6, Adoption of Proposed Constitution.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 7. Motions and Resolutions. We have a resolution, which I have signed, which Mr. Harris has prepared and which WE will now read to you, which we will send, if you approve, to North Dakota. Would you read the Resolution, Number 8.

CLERK SMITH: "Resolution Number 8. A resolution sending greetings of the Montana Constitutional Convention to the Constitutional Convention of the State of North Dakota. Whereas, on July 4, 1889, delegates to the Constitutional Conventions met in the great states of Montana and North Dakota to draft constitutions to govern the new states preparing to join the Union; and whereas the following communication was received by the Montana Constitutional Convention of 1889

from the North Dakota Constitutional Convention: Bismarck, North Dakota; July 4, 1889. Constitutional Convention: The Constitutional Convention of North Dakota sends greeting and bids you Godspeed in your advance movement towards statehood and full American citizenship. May the four new stars about to be added to the national flag not lose in brilliancy through lack of care in laying the foundations of the states-to-he. Let Washington bring fruit and flowers-Montana, its precious metals-to add to the beauty and wealth of our nation; while the Dakotas will bring wheat and corn for the people of the world. Signed: F. B. Fancher, President. Whereas, the sister conventions proposed constitutions, which the people approved in 1889, that have governed our states for 82 years; and whereas, the conditions of life have changed greatly since we sister states adopted our present constitutions and because of this, citizens of Montana and North Dakota have voted for and called conventions to revitalize our basic documents; and whereas, hoth conventions are now assembled and have undertaken the rewarding task of preparing proposed constitutions for consideration by their people. Now, therefore, be it resolved by the Constitutional Convention of the State of Montana: That the delegates to the Montana Constitutional Convention send fraternal greetings to the people of North Dakota and their delegates in convention assembled. That the delegates to the Montana Constitutional Convention congratulate the North Dakota Constitutional Convention and convey their wishes that the North Dakota Convention as well as the Montana Convention will have the ability to draft constitutions that will meet the approval of the people of our great states and serve as examples for all other states. Be it further resolved: That a copy of the resolution he sent to the President of the North Dakota Constitutional Convention." Introduced by Leo Graybill, Jr.

PRESIDENT GRAYBILL: Very well, you've heard the proposed resolution to the State of North Dakota in which Mr. Harris has, I think, interestingly drawn upon the historical references to the 1889 Constitutions and to North Dakota's message to us at that time and has sent them greetings and good wishes. Is there any discussion? (No response) Very well. All in favor of adopting this resolution and sending it to the State of North Dakota, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. And we will write a cover letter and send the resolutions out to them. Are there any other motions or resolutions? (No response) Very well. 8, Unfinished Business.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 9, Special Orders of the Day.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 10, **General** Orders of the Day.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 11, Announcements and Notices. First of all, I'm sure you're all aware that the Historical Society party is tonight and they have invited all of us and the staff and will look forward to seeing us there. Secondly, you will he receiving, today, notices today of a second social gathering of the body, a dinner at the Montana Club next Tuesday night. I thought you might want to keep that in mind. It is necessary that we get at least 50 reservations for this party, so please think about it and if possible get your reservations in as promptly as possihle to my secretary. Third, I'msureyou committee chairmen are aware that they will meet on adjournment, or at least after the parliamentary exercise, tomorrow. We will meet in the Senate. We will discuss some business for the first portion of that period, and then we will meet with the National Municipal League representative who will he there. I think weinvited thevice-chairmen to come to that meeting, and certainly you may come to the whole meeting if you want to.

Now, Mrs. Warden, do you have an announcement'?

DELEGATE WARDEN: Yes, Mr. President. The Public Information meeting will he held Friday morning from 1O:OO to 12:00 in Room 431. There will be an 8:30 meeting every morning for the subcommittee chairmen of Public Information in Miss Harrison's office, and this is just for the subcommittee of Public Information. Thank you.

PRESIDENT GRAYBILL: Very well; Public Information, tomorrow morning at 10

o'clock-431. Now, yesterday I announced that you could designate people to whom the proceedings were to be sent, and you have done so all too well. And the leadership would like to announce that anybody who doesn't want to designate will be rewarded with some sort of a small gold star, because our printing and our mailing costs are skyrocketing. So, please don't designate anyone to receive the proceedings, which are extensive, unless there's a real good reason for it, unless you really want it there. Let's not just designate somebody for the sheer joy of sending this stuff through the mail to them. So those of you who haven't designated should feel a moment's pride in having not done so. Are there other announcements?

Yes, Mr. Loendorf.

DELEGATE LOENDORF: Loendorf. I'd like to announce, Mr. President, that the First Judicial District Bar Association invites the lawyer-delegates to their annual meeting. It's tomorrow night at 6:30 at the Montana Club. There'll be a no-host cocktail hour, followed by dinner, and you should make a reservation with Mr. Brazier or myself sometime today, and the cost is 5.50 perperson. And the announcement, I see, also notes that Melvin Belli may be a special guest.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, Style and Drafting, tomorrow morning at 9 o'clock. That won't conflict with anything you've set, will it?

PRESIDENT GRAYBILL: At 9 o'clock?

DELEGATE SCHILTZ: Yes.

PRESIDENT GRAYBILL: We'll have a session at 9:30 until about a quarter of 10:OO.

DELEGATE SCHILTZ: We'll be through by 9:30.

PRESIDENT GRAYBILL: Okay — 9 o'clock is fine; Style and Drafting.

Mr. Champoux.

DELEGATE CHAMPOUX: Education, 10 minutes after adjournment of this session, please.

PRESIDENT GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Judiciary, 10 minutes after adjournment.

PRESIDENT GRAYBILL: Mrs. Cross.

DELEGATE CROSS: This morning for— Natural Resources will deal with water. And that's at 10:30; and the one at 1:30 is a joint hearing with the Public Lands and Education Committee.

PRESIDENT GRAYBILL: Very well.

Mr. Joyce.

DELEGATE JOYCE: Executive, 10 minutes after adjournment at the committee room.

PRESIDENT GRAYBILL: Very well. Are there other announcements'? (No response)

All right, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that the Convention stand adjourned until 9:30 a.m., Friday, January 28th, 1972.

PRESIDENT GRAYBILL: All in favor of adjourning until 9:30 Friday morning, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Convention adjourned at 9:58 a.m.)

January 28, 1972 **Twelfth Day** **Convention Hall**
9:40 a.m. **Helena. Montana**

PRESIDENT GRAYBILL: The Convention will come to order. Shall we all rise and have invocation by Delegate Scanlin.

DELEGATE SCANLIN: Let us pray. "He that hath ears to hear, let him hear." These words of Jesus remind us, oh God, that it is more important to listen than to speak. Make us good listeners, that we may be enabled better to understand the issues before us and to add to our understanding of our fellow human beings. Amen.

PRESIDENT GRAYBILL: We will take the roll call by voting Aye on the voting machines.

CLERK SMITH: Mr. Artz, Mr. Campbell, Mr. Cate, Mr. James, Mr. Johnson. Mr. Kelleheris excused.

PRESIDENT GRAYBILL: Very well. Take the recorded vote.

Aasheim	Present
Anderson J	Present
Anderson, 0	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock..	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown..	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong,,	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Excused
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present

Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 99 present, 1 excused. Quorum, Mr. President.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Report of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Report of Select Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 3, Communications.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 4, Introduction and Reference of Delegate Proposals.

CLERK SMITH: "Delegate ProposalNumber 47. A proposal for a new Constitutional section providing for three types of elections. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Cain.

PRESIDENT GRAYBILL: 47, to General Government.

CLERK SMITH: "Delegate Proposal Number 48. A proposal for two new Constitutional sections providing for water rights." Introduced by Etchart.

PRESIDENT GRAYBILL: 48, to Natural Resources.

CLERK SMITH: "Delegate Proposal Number 49. A proposal amending Article XI, Section 5, of the Constitution of the State of Montana providing for apportionment of school funds. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Blaylock and others.

PRESIDENT GRAYBILL: 49, to Education.

CLERK SMITH: "Delegate Proposal Number 50. A proposal for a new Constitutional section guaranteeing the equal protection of the laws. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Campbell.

PRESIDENT GRAYBILL: 50, to Bill of Rights.

CLERK SMITH: "Delegate ProposalNumber 51. A proposal for a new Constitutional section prohibiting discrimination in employment and the sale or rental of property on the basis of race, color, creed, national ancestry or sex. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Campbell.

PRESIDENT GRAYBILL: 51, to Bill of Rights.

CLERK SMITH: "Delegate ProposalNumber 52. A proposal amending Article XIX, Section 8, of the Constitution of the State of Montana to permit future constitutional convention delegates to be elected on a nonpartisan basis. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Warden and others.

PRESIDENT GRAYBILL: Number **52,** to General Government.

CLERK SMITH: "Delegate Proposal Number 53. A proposal amending Article VIII, Section 20, of the Constitution of the State of Montana. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Ask and others.

PRESIDENT GRAYBILL: 53, to Judiciary.

CLERK SMITH: "Delegate Proposal Number 54. A proposal repealing Article XIX, Section 6, of the Constitution of the State of Montana. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Rollins.

PRESIDENT GRAYBILL: 54, to Local Government.

CLERK SMITH: "Delegate ProposalNumber 55. A proposal for a new Constitutional section providing for compensation for victims of crime. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Cate.

PRESIDENT GRAYBILL: 55, to Bill of Rights.

CLERK SMITH: "Delegate ProposalNumber 56. A proposal for a new Constitutional Article on Local Government. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Erdmann.

PRESIDENT GRAYBILL: 56, to Local Government.

CLERK SMITH: "Delegate ProposalNumber 57. A proposal for a new Constitutional section providing for citizens' rights access to government documents and procedures. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Eck and others.

PRESIDENT GRAYBILL: 57, to the Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 58. A proposal for a new Constitutional section providing for periodically presenting the question of a Constitutional Convention to the voters. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Harlow and Hanson.

PRESIDENT GRAYBILL: 58, to General Government.

CLERK SMITH: "Delegate Proposal Number 59. A proposal for a new Preamble to the Constitution of the State of Montana. Be it proposed by the Constitutional Convention of the State of Montana." Introduced by Campbell and Mae Nan Robinson.

PRESIDENT GRAYBILL: 59, to Bill of Rights. There has been a request that we read Proposal Number 59, which is short, to the Convention, and unless I hear objection, I'll ask the clerk to read Proposal Number 59. Hearing none, proceed.

CLERK SMITH: "Section 1. There shall be a preamble in the new Constitution to read as follows: Preamble. We, the people of Montana, instilled with the spirit of our Creator, gathering our strength from the grandeur of our mountains and the richness of our rolling grasslands, with a reverence for the quiet beauty of our state, with the desire to live in peace, in order to improve the quality of life and equality of opportunity for this and succeeding generations, do hereby ordain and establish this Constitution."

PRESIDENT GRAYBILL: Very well. That proposal has been assigned to Bill of Rights. Very well. Order of Business Number 5, Final Consideration.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 6, Adoption of Proposed Constitution.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: 7, Motions and Resolutions. The Chair would recognize Mr. Holland.

DELEGATE HOLLAND: Your Honor—or Mr. President. (Laughter)

PRESIDENT GRAYBILL: Mr. Holland, if there's one thing I haven't been, it's elevated to the Judiciary, but go ahead. (Laughter)

DELEGATE HOLLAND: Well, in the Judiciary, we've been bowing and scraping to judges for the last 3 days, and I'm not about to forget my manners, and I apologize. (Laughter) The Chair has referred Delegate Proposals Number 30, 34 and 38 to Judiciary. I have discussed the matter of their referral with some of their-with the main sponsors on each bill; each one wants them into the Bill of Rights Committee. They feel they properly belong there. I've discussed the matter with Mr. Dahood, who is the Chairman of the Bill of Rights; he desires to have them in his committee. I therefore move that Delegate Proposals Number 30, 114, 38 be transferred from Judiciary to the Hill of Rights Committee.

PRESIDENT GRAYBILL: Would you identify the subjects of those? I'm not familiar with 38.

DELEGATE HOLLAND: I think I better read 38, because I'm not real clear of exactly what they want. "Section 1. There shall be a new Consti-

tutional provision to provide as follows: Right of Participation. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to final decision. The Legislature shall provide, by law, points of access and institutional structures to maximize such a right." It would be, then, I would take it, a right of participation to be implemented by the Legislature.

PRESIDENT GRAYBILL: Well, 30 refers to restitution of prisoners, as I recall.

DELEGATE HOLLAND: Yes, and 34 is the abolition of sovereign immunity in the State and subdivisions thereof.

PRESIDENT GRAYBILL: All right. And can you tell me who the author of 38 is, because I hadn't checked that one out.

DELEGATE HOLLAND: 38 is sponsored by Donald Foster. I've discussed this matter with him. George James, Mae Nan Robinson, Lyle Monroe, Veronica Sullivan, Jerome Cate, Neil D. Furlong, Bob Campbell, Jerome Loendorf, Dorothy Eck and Don Rebal. I've been informed by Mr. Cate that the initial sponsor was Mr. Foster. I discussed the matter with Mr. Foster, and he has assured me he believes it belongs in the Bill of Rights. And I discussed the matter with Mr. Dahood, and he also believes it belongs there and wishes it transferred.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: The Bill of Rights Committee joins in the motion submitted by the Judiciary Committee.

PRESIDENT GRAYBILL: Very well. The motion is to move Delegate Proposals 30, 34 and 38 from Judiciary to Bill of Rights. Now, does anybody want to segregate that and vote on them individually? The Chair has no objection to moving them. If not, all in favor of moving them, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, no. (No response)

PRESIDENT GRAYBILL: So ordered. Now, Mr. Heliker.

DELEGATE HELIKER: Mr. President, I'd like to move that Delegate Proposal Number 39, which has to do with salary scales of elected officers, be transferred from the Public Health Committee to the Executive Committee.

PRESIDENT GRAYBILL: On 39—the Chair will admit I didn't read it carefully enough, and I'd like the house to approve this. May we move 39 from Public Health to Executive? All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed? (No response)

PRESIDENT GRAYBILL: So ordered. All right, Order of Business Number--are there other motions and resolutions? Order of Business Number 8, Unfinished Business.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 9, Special Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 10, General Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 11, Special Announcements. As I think you're mostly aware, Mr. William Casella, Jr., the Executive Director of the National Municipal League, will be with us today. He is going to meet this morning, between 11:00 and 12:00, with the committee chairmen, and he's going to meet this afternoon at 2:00 p.m. with the Local Government Committee. And we have secured the Senate for that meeting. for your information, Mr. Anderson. And he's going to have lunch today with some of the executive officers of the Convention. Secondly, I'd like to announce that the Council on Children and Youth, which is a Montana council concerning itself with children and youth, is going to have a youth fair on Monday; you've seen the announcements in the hallways. They had scheduled this youth fair in conjunction with us and we then changed our schedule, but they're going ahead on Monday anyway. The Bill of Rights Committee has graciously consented to hold a hearing on Monday morning on some issues in the Bill of Rights which the young people might be interested in, and we'll listen to their testimony.

Anyone else that wants to hold anything on Monday or participate, we'd be happy to have you do so. Those of you who are here, might want to come out and observe the youth fair. I've been asked to make the following announcement about mail. There is no mail delivery in the Capitol on Sunday. Mail can be picked up on Monday, of course; and furthermore, the center doors of the Capitol will be the only ones open over the weekend; the other doors will be posted. That's Sunday and, I guess, maybe that's Saturday this week. Then we have—the committee chairmen, I think, are all aware that they are meeting this morning, after the parliamentary exercise, in the Senate. The committee secretaries, however, will also be meeting at the same time in the Judiciary room-Room 412. So if some of you can't find your committee secretary, that's why. They are also holding a meeting this morning from, let's say, 10:30 on in Judiciary—412, and I again have been asked to call your attention to that notice you got yesterday about dinner next Tuesday and R.S.V.P. replies to my secretary or one of the other secretaries. Are there other announcements'?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, as Vice-President of the Bill of Rights Committee, I should like to announce that, in accordance with the request of the President about meetings on Friday, that, on the schedule which was handed to us today, that the Bill of Rights hearing on discrimination and right to bear arms will be heard tomorrow, Saturday, at 10 o'clock in the Governor's conference room.

PRESIDENT GRAYBILL: Very well. That hearing is tomorrow.

Mrs. Warden.

DELEGATE WARDEN: As Vice-chairman of the Public Information Committee, there will be a meeting of the committee in Room 431 on adjournment, from 10:00 to 1200.

PRESIDENT GRAYBILL: On adjournment-that's after the parliamentary exercise? Very well.

Mr. Heliker.

DELEGATE HELIKER: I'd like to note a correction in the daily schedule. The hearing of the Public Health Committee today is scheduled for 8:00 p.m. Also, I'd like to announce that the meeting of the committee scheduled for 3:00 p.m. this afternoon has been cancelled.

PRESIDENT GRAYBILL: Very well. Mr. Etchart.

DELEGATE ETCHART: Mr. President, the General Government Committee will meet at 1:30 this afternoon. Thank you.

PRESIDENT GRAYBILL: Is that in place of the 10:00 a.m. meeting?

DELEGATE ETCHART: Yes.

PRESIDENT GRAYBILL: Very well—1:30 p.m., General Government.

Mr. Joyce.

DELEGATE JOYCE: The Executive Committee will meet in the committee room at 2:00 p.m. today.

PRESIDENT GRAYBILL: Very well.

Mr. Rygg.

DELEGATE RYGG: I notice there is nothing on this sheet for Revenue and Finance, but we are having our hearings at 1:30 in Room 215 in the Mitchell Building.

I'RESIDENT GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I'd like to request the Cascade County delegation to meet with me in the rear of the chamber immediately upon adjournment.

PRESIDENT GRAYBILL: That had better be upon the adjournment after the parliamentary exercise, is that all right?

DELEGATE REICHERT: That's fine.

PRESIDENT GRAYBILL: Very well.

Mr. Anderson.

DELEGATE OSCAR ANDERSON: Please note that the Local Government meeting at 2 o'clock is going to be in the Senate chambers and not in Room 437.

PRESIDENT GRAYBILL: Very well. Other announcements?

Oh, Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, is it going to be the custom now that we're going to announce each day, each of our hearings is—

PRESIDENT GRAYBILL: No, these have all been changes, I think.

DELEGATE CHAMPOUX: Oh, I see; all right, thank you, sir.

PRESIDENT GRAYBILL: Except maybe one that I'm not going to mention. If you've got it on there, I'd rather you didn't announce it, but if it's wrong on there, then we certainly don't mind you correcting it.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that we adjourn until Saturday, January 29th, 9:30 a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn the Convention until Saturday at 9:30 a.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: Please bear in mind that the parliamentary exercise is going to take place now.

(Adjournment at 10 a.m.)

January 29. 1972 **Thirteenth Day** **Convention Hall**
9:35 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. This morning Delegate Arbanas has made arrangements for the Reverend Bernard Sullivan, the pastor of St. Mary's Catholic Church here in Helena, to give us our invocation. Reverend Sullivan.

REVEREND SULLIVAN: Oh, Heavenly Father, we thank You for calling us together again this morning; we thank You for the rest that we have had during the night and for the opportunity You have given all of us this day to serve and honor You and one another. Inspire this assembly. Keep this assembly open to listen to one another and to listen to the needs of Your people so that the common good of all the people of our state will be promoted; through Jesus Christ, our Lord.

PRESIDENT GRAYBILL: The clerk will take the roll. We may indicate our presence by voting Aye on the voting machine.

CLERK SMITH: Mr. Schiltz is excused. Mr. Felt is excused. Mr. Arness?

PRESIDENT GRAYBILL: Mr. Arbanas, would you push Mr. Arness'—

CLERK SMITH: Mr. Holland, Mr. McKeon, Mr. Toole.

PRESIDENT GRAYBILL: Mr. Toole is present. He has been here this morning.

CLERK SMITH: Mr. Holland, Mr. McKeon.

PRESIDENT GRAYBILL: Very well, take the recorded vote.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Absent
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Absent

McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Excused
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President—

PRESIDENT GRAYBILL: Yes, sir.

CLERK SMITH: -98 present-Excuse me, 96 present, 2 excused, 2 unexcused.

PRESIDENT GRAYBILL: A quorum is present. The journal may so show. All right; Number 1, Reports of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 2, Reports of Select Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 3, Communications.

CLERK SMITH: "State of Montana, Office of the Attorney General, Helena, 59601. Constitutional Convention-delegates holding another public office; public officers-Constitutional Convention delegates holding another public office. Chapter 1, Extraordinary Session Laws of 1971; Article V, Section 3; Article V, Section 7; Article XIX, Section 8, Montana Constitution. Held: 1. A delegate to the Constitutional Convention may not serve in another public office during his term as delegate, which term as delegate shall last until the Constitutional Convention adjourns sine die. 2. A delegate to the Constitutional Convention may serve in any public office, the term for which commences after the Constitutional Convention adjourns sine die.

January 28th, 1972. Mr. Leo C. Graybill, President, Montana Constitutional Convention; State Capitol, Helena, Montana. Dear Mr. Graybill: I am in receipt of your letter of January 26, 1972, in which you request my opinion as to what political positions may delegates to the Convention stand for in the year 1972. Article XIX, Section 8, Constitution of Montana, setting forth the provisions for calling a Constitutional Convention, provides in pertinent part: The qualifications of members (delegates) shall be the same as the members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the Legislative Assembly. Bracketed word added. The basic qualifications for senator are set forth in Article V, Section 3, Constitution of Montana, which provides: 'No person shall be a representative who shall not have attained the age of 21 years or a senator who shall not have attained the age of 24 years and who shall not be a citizen of the United States and who shall not, for at least 1% months next preceding his election, have resided within the county or district in which he shall be elected.' In addition, Article V, Section 7, Constitution of Montana, provides: 'No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of' Congress or other person holding an office, except notary public, or in themilitia, under the United States or this state, shall be a member of either house during his continuance in office.' Emphasis supplied. The provisions of Article V, Section 7. supra, must be considered an additional qualification for the position of senator and, therefore, an additional qualification for the position ofdelegate to the Constitutional Convention. The Supreme Court of Michigan, in considering whether a member of the Legislature could serve as a city councilman, stated in Doyle versus City of Dearborn, 121 2d 473, 477

(1963): 'However, home-rule cities are mandated to establish in their charters the qualifications of its officers.' The word 'qualifications', as used in the statute, is used in the generic sense and includes qualifications to be elected to the office and also qualifications to hold the office, sometimes referred to as eligibility. Thus, the prohibition against holding another office by a legislator during the term for which he was elected is a continuing qualification to hold office. As the qualifications for Constitutional Convention delegate are the same as those for state senator, pursuant to the provisions of Article XIX, Section 8, supra, a delegate to the Constitutional Conventionis bound by the provisions of Article V, Section 7, supra. The Montana Supreme Court stated the meaning of the additional qualification found in Article V, Section 7, supra, 42nd Legislative Assembly versus Lemon [_M_,] 481, [P2d 330, 333] (1971): 'Any state and local officers who are prohibited by the Constitution or laws of Montana from holding more than one office may not serve as delegates to the Constitutional Convention. A delegate to the Constitutional Convention is a state officer holding a public office of civil nature. Constitutional prohibitions against certain officers holding more than one office include state senators and representatives during the term for which they shall have been elected', Article V, Section 7, Montana Constitution. These restrictions prevent such officers from holding any other public office or civil office of the state, and these two terms are synonymous. Citing authority. Emphasis supplied. As delegates to the Constitutional Convention have the same qualifications as state senators, delegates arc also prohibited from holding more than one public office during their term. The question of what constitutes a public office was considered by the Montana Supreme Court in State ex rel. Barney versus Hawkins, 79 M. 506, 257 page 411 (1927). In the 42nd Legislative Assembly versus Lennon, supra, page 333, the court cited approvingly the requirements for a public office set forth in the Barney case, as follows: 'After an exhaustive examination of the authorities, we hold that the five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) it must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature; (2) it must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must bedefined, directly or impliedly, by the Legislature or through legislative authority; (4) the duties must be performed independently and without control of superior power, other than law, unless they may be those of an inferior or subordinate office, created or authorized by the Legislature and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity and not be only temporary or occasional.' Thus delegates to the Constitution Convention are prohibited during their term from holding any office which contains the five elements necessary to constitute a public office as set forth in the Barney case, supra. The restriction against dual office-holding applies during the term for which the delegates have been elected. The Montana Constitution does not set a specific term for delegates to the Constitutional Convention, but provision was made by the 42nd Legislature. Chapter 1, Section 76, Extraordinary Session Laws of 1971, provides: 'It shall be the duty of the delegates elected to assemble in the plenary session in the chambers of the House of Representatives in the State Capitol Building in the city of Helena at 10 o'clock a.m. on January 17, 1972. The Convention, which may recess from time to time, shall then remain in session as long as necessary.' Emphasis supplied. The Montana Supreme Court considered the duration of the term of the delegate in Lennon, supra, stating at page 335: 'A delegate to the Constitutional Convention holds his position for the entire period of time the Constitutional Convention is in session. His position is permanent and continuous in the sense that it continuously exists until the duties for which it was created have been completed. As no definite duration is specified for the term of delegate and as a delegate will serve while the Convention is in session, the term of delegate will last until the Convention adjourns sine die.' Therefore, it is my opinion that: (1) a delegate to the Constitutional Convention may not serve in another public office during his term as delegate, which term as delegate shall last until the Constitutional Convention adjourns sine die; and (2) a delegate to the Constitutional Convention may serve in any public office the term for which commences after the Constitutional Convention adjourns sine die. Very truly yours, Robert L. Woodahl, Attorney General of the State of Montana."

PRESIDENT GRAYBILL: Very well, we asked the Attorney General for his opinion, and

we have it. Now, this Attorney General's opinion is posted on the bulletin board, if you want to check that law, and we did read it to you because it is his communication and because I think it's instructive for us to understand what an Attorney General's opinion is. And the upshot of it is that you may not hold other public offices while you are delegates and that you are delegates until we adjourn finally but that you may hold other public offices the term of which commences after we adjourn finally. Since all of the public offices for which the general election is held are going to start after next January, obviously you can run for any of those, but if there are school board or other elections, the term of which might start before we adjourn, you might be in trouble. So that's the upshot of it, and I think that ought to settle the matter. The clerk will spread the Attorney General's opinion upon the record and in the journal. Any further comment on the communication from the Attorney General? (No response) We have Mr. Blaylock to thank for that. (Laughter)

All right, Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK SMITH: "Delegate Proposal Number 60. A proposal amending Article XVI, Section 8, of the Constitution of the State of Montana to provide that counties now in existence may not be abolished without having a vote of the people." Introduced by Rod Hanson and others.

PRESIDENT GRAYBILL: To Local Government, Number 60.

CLERK SMITH: "Delegate Proposal Number 61. A proposal for a new Constitutional section providing for equal protection of the law." Introduced by Champoux and others.

PRESIDENT GRAYBILL: Number 61, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 62. A proposal for a new Constitutional Article creating a reapportionment and boundary commission." Introduced by Mrs. Katy Payne and Mae Nan Robinson.

PRESIDENT GRAYBILL: Number 62, to General Government.

CLERK SMITH: "Delegate ProposalNumber 63. A proposal amending Article V, Section 44, of the Constitution of the State of Montana providing for legislative financial disclosure." Introduced by Vermillion and others.

PRESIDENT GRAYBILL: Number 63, to Legislative.

CLERK SMITH: "Delegate ProposalNumber 64. A proposal for a new Constitutional section providing for a maximum interest rate of 12 percent." Introduced by Cate and others.

PRESIDENT GRAYBILL: Number 64, to General Government.

CLERK SMITH: "Delegate Proposal Number 65. A proposal for a new Constitutional section recognizing rights of a person under the age of majority." Introduced by Monroe and others.

PRESIDENT GRAYBILL: Number 65, to Bill of Rights.

CLERK SMITH: "Delegate ProposalNumber 66. A proposal for a new Constitutional section authorizing the Legislature to provide for excise taxes in lieu of personal property taxes on motor vehicles, airplanes, boats. trailers and similar property." Introduced by Schiltz and Loendorf.

PRESIDENT GRAYBILL: Number 66, to Revenue and Finance.

CLERK SMITH: "Delegate Proposal Number 67. A proposal for a new Preamble to the Constitution of the State of Montana."

PRESIDENT GRAYBILL: Number 67,— well, go ahead; excuse me. Introduced by—

CLERK SMITH: Introduced by Foster.

PRESIDENT GRAYBILL: Number 67, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 68. A proposal to amend Article XI, Section 1. 3, 5 and 12, and to repeal Sections 6, 7 and 10 of that Article to provide for investment of public school funds as provided by law." Introduced by Davis.

PRESIDENT GRAYBILL: Number 68, to Education.

CLERK SMITH: "Delegate Proposal Number 69. A proposal for a new Constitutional section in the Judicial Article to provide for prosecuting attorneys." Introduced by Davis and Ask.

PRESIDENT GRAYBILL: Number 69, to Judiciary.

CLERK SMITH: That is all, sir.

PRESIDENT GRAYBILL: Very well. Final Consideration, Order of Business Number 5.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitution.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

(No response)

PRESIDENT GRAYBILL: None. Order of Business Number 8, Unfinished Business. The Chair would recognize Mr. Champoux.

DELEGATE CHAMPOUX: At this time, Mr. President, it gives me great pleasure in introducing the pages that have worked for us this week. I would like to announce their names, the cities that they come from. They will **stand,** and then one page will answer, at the first mike, to the Convention. Theresa Boschert from Billings; Carol Bossing from Lincoln; Ernie Brooner from Kalispell; David Copp from Geraldine; Bob Cure from Great Falls. And we will have a response from Carol Bossing.

MISS BOSSING: On behalf of the pages, I would like to give you my thanks and their thanks for you to **take** your time that you've done this week to give us the meaningful experience that we should have, since we are going to be running this government soon and we must be capable and informed citizens of Montana to do so. We are also very proud to be a member and a part of the historical event that takes place this year, and we hope that you will finish very successfully with your efforts to try and create the dynamic Constitution of the State of Montana. Thank you very much.

(Applause)

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOLJX: Mr. President, could we have entered on the journal the names of these pages and send them a record so that they can note their presence here. Thank you very much.

PRESIDENT GRAYBILL: We will; we'll enter the names of the pages on the journal today, and we will send them a copy of the proceedings today so that they will have it for their own personal use. Thank you very much, pages. All right, Order of Business Number-is there any other unfinished business?

(No response)

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 11, Announcements. Mrs. Warden, you had an announcement,

DELEGATE WARDEN: Excuse me. You're probably all wondering where that newspaper is this morning. Well, it's all ready to go, but you won't get it until Monday because the print shop doesn't work today.

PRESIDENT GRAYBILL: In this connection, the Chair would like to point out that the printing does not work today, and that's why you have not got your daily Convention schedule. Now, the committee chairmen have got daily Convention schedules and in a few moments we'll ask them to make their committee announcements orally today. Apparently this is going to happen to us once in a while on Saturday if we don't get it down to the printer early enough, so please bear with us. The same is true of the committee summaries of what they've done. This is tied up in printing, and you will get them. It's been done, but it just doesn't get-didn't get through printing. Now, one or two other announcements, and then I'll take the floor announcements. You're all aware that on Monday there will be a youth fair here in the morning, and those of you who are in town should probably drop out and observe and participate in that. The Bill of Rights Committee is going to hold a special hearing at that time, and we're appreciative of that effort. The youth fair got bogged up in changing our workweek, and it's a little unfortunate. I would also like to reannounce that those of you who want to make reservations for the social dinner that the Convention intends to hold Tuesday night at the Montana Club, please make those reservations.

We have several, but we haven't quite enough yet, so please get those in so we know what we're doing. All right, are there announcements from the floor?

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I have a pair of men's glasses on my desk, and I don't know whose they are. (Laughter) I wish the owner would please claim them.

PRESIDENT GRAYBILL: I'm sure that someone will come up later, Mrs. Reichert.

Mr. Siderius.

DELEGATE SIDERIUS: I believe they're mine. (Laughter)

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, I have a man's cigar on my desk, if anyone would like to call for it. (Laughter)

PRESIDENT GRAYBILL: Now, the Chair would like to announce that this is for announcements and not for bragging. (Laughter) All right, now, I do think we ought to announce the committee hearings today. Bill of Rights?

DELEGATE BLAYLOCK: Mr. President.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights will meet, 10:30 in the Governor's conference room.

PRESIDENT GRAYBILL: Very well. And Legislative?

DELEGATE AASHEIM: Mr. President, we have a hearing tonight at 7:30 on district and apportionment, and I hope you people will not sign up for the party Tuesday night, to be here for the hearing on unicameral and bicameral.

PRESIDENT GRAYBILL: How did you get that through the scheduling committee? Never mind, I'll see you later. (Laughter) Executive?

DELEGATE JOYCE: Mr. President.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: The Executive Committee will meet in the committee room at 10:30, at which time they will hear from Mr. Nelson and Mrs. Meloy from the State Board of Education. At 11:15, they will meet with a representative of the Legislative Council. At 2:00 p.m. this afternoon, the Executive Committee will meet with former Governor Babcock in the Governor's reception room.

PRESIDENT GRAYBILL: Very well. Judiciary? They have none shown here.

Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, Judiciary Committee will meet 10 minutes after adjournment in Room 428-A. Our regular room is being used, because it's larger, for another committee.

PRESIDENT GRAYBILL: Four-two- what?

DELEGATE PEMBERTON: Four-two-eight.

PRESIDENT GRAYBILL: Four-two-eight-A.

DELEGATE PEMBERTON: -A. Right.

PRESIDENT GRAYBILL: Judiciary. Very well. Local Government?

Mr. Anderson.

DELEGATE OSCAR ANDERSON: Room 437, 10 "'clock this morning and 2 o'clock this afternoon.

PRESIDENT GRAYBILL: Very well. Revenue and Finance'?

Mr. Rygg.

DELEGATE RYGG: (Inaudible) 1:30 this afternoon in 215 of the Mitchell Building.

PRESIDENT GRAYBILL: 10:30 and 2:30, I guess that was, this afternoon.

DELEGATE RYGG: 10:30 and 1:30.

PRESIDENT GRAYBILL: 10:30 and 1:30 in the Mitchell Building. Very well. Education?

DELEGATE CHAMPOUX: Education will have a public hearing in this hall 10 minutes after adjournment sir.

PRESIDENT GRAYBILL: Very well. Public Health'?

DELEGATE HELIKER: Public Health will hold a hearing in Room 412 or 413—it says 412 here, but I was told 413—

PRESIDENT GRAYBILL: Very well.

DELEGATE HELIKER: --at 10 o'clock this morning. There is no evening hearing, as it says on the schedule.

PRESIDENT GRAYBILL: Very well. Natural Resources?

Mrs. Cross.

DELEGATE CROSS: The Natural Resources Committee will have a public hearing at 10:30 this morning in the Senate chambers, and it will deal chiefly with public trust and environment.

PRESIDENT GRAYBILL: Very well. General Government?

Mr. Etchart.

DELEGATE ETCHART: Mr. President, General Government Committee will meet at 10:15, Room 410, to take up the question of lotteries.

PRESIDENT GRAYBILL: Very well. The Auditor's office has asked me to announce that they will be open today from 10:00 until 2:00 p.m. to disperse checks to delegates. Are there other announcements? (No response) Mr. Eskildsen will make our special recess announcement today. I have been asked to ask you to remain in your seats for one moment for a special matter that some of the delegates wish to have off the record, which will take place immediately following our recess, so if you'll just sit quietly for 1 minute after recess.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move, pursuant to the general powers vested in the Montana Constitutional Convention and in accord with the provisions of Section 7 (6) of the Enabling Act [Chapter 296, Laws 1971], the Montana Constitutional Convention shall recess temporarily until 9:30 a.m. on Tuesday, February 1, 1972.

PRESIDENT GRAYBILL: All those in favor of recessing the Convention temporarily until Tuesday morning at 9:30, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed. Nay.

(No response)

PRESIDENT GRAYBILL: So ordered, and the journal may show.

(Convention recessed at 10:00 a.m.)

February 1, 1972
9:40 a.m.

Fourteenth Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: If you will all rise, we'll ask Delegate Ask to lead us in the Pledge of Allegiance.

DELEGATE ASK: (With delegates participating) I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: If you'll remain standing, we'll have Delegate Burkhardt lead us in an invocation.

DELEGATE BURKHARDT: Let us pray. Lift our spirits to match the beauty of the day, we pray, oh God. Give us, from time to time, the reverence to sense greatness all around us in the dedication of fellow delegates, in the beauty of Charles M. Russell's work before us, and in the future yet to be shaped. Amen.

PRESIDENT GRAYBILL: Good morning. We'll start this morning with the Reports of Standing Committees. Oh, all right, we'll take the roll call this morning by voting Aye on the voting machine.

CLERK SMITH: Delegate Holland and Murray arc excused. Delegate Babcock, Mr. Swanberg, Mr. Toole.

PRESIDENT GRAYBILL: Very well. Take the machine vote.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Excused
Jacobsen	present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Excused

Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius.	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 98 present, 2 excused. Quorum, Mr. President.

PRESIDENT GRAYBILL: Very well. The journal may so show. Now, we'll start with Reports of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Reports of Select Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Communications.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Introduction and Reference of Delegate Proposals.

CLERK SMITH "Delegate Proposal Number 70. A proposal for a new Constitutional section providing for consumer protection." Introduced by Speer and others.

PRESIDENT GRAYBILL: Number 70, to Public Health.

CLERK SMITH: "Delegate Proposal Number 71. A proposal for a new Constitutional section providing for a merit system for state employees." Introduced by Speer and others.

PRESIDENT GRAYBILL: Number 71, to Public Health.

CLERK SMITH: "Delegate Proposal Number 72. A proposal repealing Article XII, Section 3, of the Constitution of the State of Montana." Introduced by Ask and Arness.

PRESIDENT GRAYBILL: Number 72, to Revenue and Finance.

CLERK SMITH: "Delegate Proposal Number 73. A proposal for a new Constitutional section providing for the right of public and private employees to engage in collective bargaining." Introduced by Heliker and others.

PRESIDENT GRAYBILL: Number 73, to Public Health.

CLERK SMITH: "Delegate Proposal Number 74. A proposal to amend Article XI, Section 3, of the Constitution of the State of Montana to permit the public school fund to be invested as provided by law." Introduced by Conover and others.

PRESIDENT GRAYBILL: Number 74, to Education.

CLERK SMITH: "Delegate Proposal Number 75. A proposal amending Article III, Section 14, of the Constitution of the State of Montana, providing compensation in eminent domain proceedings for use impairment, providing compensation to the full extent of loss, and providing judicial determination of the issues of necessity in public use." Introduced by Campbell and others.

PRESIDENT GRAYBILL: Number 75, to the Bill of Rights Committee.

CLERK SMITH: "Delegate Proposal Number 76. A proposal for anew Constitutional Article providing for the regulation of public utilities." Introduced by Heliker and others.

PRESIDENT GRAYBILL: Number 76, to the Public Health Committee.

CLERK SMITH: "Delegate Proposal Number 77. A proposal for a new Constitutional Article creating the executive branch of government." Introduced by Roeder.

PRESIDENT GRAYBILL: Number 77, to the Executive Committee.

CLERK SMITH: That is all, sir.

PRESIDENT GRAYBILL: Very well. Order of Business Number 5, Final Consideration.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitution.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. Apparently there are none. Order of Business Number 8, Unfinished Business.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 11, Committee Announcements and Notices. The Chair would like to ask you to take your daily schedule for Tuesday, February 1st, and under description under Natural Resources, that description should be under General Government. In other words, in the second-to-last box on the right-hand side, that description is the description of the General Government's hearings, not of the Natural Resources hearings. Now, we have, at the moment, about 68 or 70 reservations for the delegate dinner tonight at the Montana Club. Will those who have not made reservations but who intend to go, please let the Sergeant-at-Arms'office know this morning so we may notify the club. You might take note that there is no Legislative hearing tonight, if some of you have been holding off on that account. We'd also like to announce that tomorrow Larry Margolis, who is Executive Director of the Council for Legislative Reform, I believe the name of it is, will visit the Convention. He'll be around in the afternoon; and then in the evening, at 7:30 p.m. tomorrow night, in this chamber, we will have another delegates' meeting similar to the one we had with Mr. Unruh, which Mr. Margolis will address on general legislative matters. On Friday night, we have a guest coming from Nebraska. Senator Terry Carpenter has been a Senator in Nebraska for 16 years and a congressman before that, and he will be in Helena with us on Friday afternoon and Friday night. And Friday night, at 7:30, we'll have a meeting. It will technically be a Legislative Committee meeting, but the delegates are all invited. And he also will discuss both pros and cons of the unicameral system, and he will also discuss other legislative matters that might come up. So, we have those two special outside information meetings this week. The committee chairmen should take notice that the meeting which we had previously scheduled for Wednesday night has to be changed because of Mr. Margolis' visit. We will have that meeting on Thursday night. On Thursday night, we will consider, in detail, with the committee chairmen, vice-chairmen and research analysts, the format of the committee reports. That'11 be Thursday night. Because we had to put that off until then, we are going to ask that the committee chairmen meet again on Friday morning during our restricted Procedural Committee time; and that Friday morning meeting will be devoted to discussing the problem of whether or not to have a recess and the problem of when to take the proposed Constitution to the public for ballot. Now, the committee chairmen will discuss that in their meeting Friday morning, and from that meeting, we hope to have the Rules Committee formulate some sort of a resolution. It may not be a unanimous resolution, but, in other words, a resolution. Then, I intend to ask this Convention to debate, on Saturday morning, the issue of how and when we want to present this matter to the public. We must settle that issue promptly because of scheduling problems. So you ought to be thinking about that this week and discussing among yourselves what you think and gathering what information you can. There will be a Budget Subcommittee meeting tomorrow morning at 8:00 a.m. in the President's office. The committee chairmen should be reapprised at this time that they have summary reports of what they've done, to date, due tomorrow. And tomorrow, during the Convention session in the morning, we will take a period of time and we'll ask each committee Chairman to explain, in 3 or 4 minutes, to this

body, the sense of where his committee is. In other words, we're going to have an oral report by each committee Chairman--a quick, short, oral report for the benefit of the delegates-tomorrow morning as to where other committees stand. And I'm sure we'll all be interested to hear about that. One other announcement; Mr. Eskildsen has asked me to announce that he does have tickets for those of you who wish to attend the Governor Anderson appreciation night banquet, which is Saturday night. So, it is possible to get those tickets from Mr. Eskildsen. Saturday night, next. Now, are there other announcements?

Mr. Martin.

DELEGATE MARTIN: Will the District 11 delegates meet over in this corner after recess.

PRESIDENT GRAYBILL: District 11 delegates, on the west side, on adjournment.

Mr. Aasheim.

DELEGATE AASHEIM: The Legislative Committee, 10 minutes after adjournment.

PRESIDENT GRAYBILL: Legislative, 10 minutes after adjournment.

Mrs. Pemberton.

DELEGATE PEMBERTON: The Judiciary Committee will meet at 11 o'clock. Our room is being used until that time.

PRESIDENT GRAYBILL: Very well. Judiciary, at ll:OO.

Mrs. Blend.

DELEGATE BLEND: Mr. President, Local Government will meet 10 minutes after adjournment.

PRESIDENT GRAYBILL: Local Government, 10 minutes after adjournment.

Mr. Joyce.

DELEGATE JOYCE: Executive Committee, 10 minutes after adjournment.

PRESIDENT GRAYBILL: Executive, 10 minutes after adjournment. Other announcements?

Mrs. Cross.

DELEGATE CROSS: Mr. President, I would like to announce that the Natural Resources Committee will also meet 15 minutes after adjournment, in 402, and I would also like to acknowledge this beautiful bouquet from those who signed the card "Environmentally yours, The Majority." (Laughter)

PRESIDENT GRAYBILL: Very well. Are there other announcements?

Mr. Dahood.

DELEGATE DAHOOD: The Bill of Rights Committee will meet one-half hour after adjournment. And, with respect to "Environmentally yours," I think our committees are going to meet at 1:30 this afternoon on the topic of environment, when the recipient of the beautiful bouquet, I think, has an important statement to make with respect to the environment. So, we look forward to having as many delegates as possible there on that particular contentious topic. Thank you, Mr. President.

PRESIDENT GRAYBILL: Perhaps Mrs. Cross should bring Exhibit A to the hearing this afternoon. (Laughter)

Mr. Rygg.

DELEGATE RYGG: Revenue and Finance, at 10:30 in the regular room.

PRESIDENT GRAYBILL: Revenue and Finance, at 10:30 in your regular room. Other announcements? Very well.

Oh, Mr. Kelleher.

DELEGATE KELLEHER: For the benefit of those delegates who don't read the very fine paper called the Billings Gazette, there was a superb editorial by Dan Foley of the Gazette state bureau in last Sunday's *Gazette,* and I hope that those of you who haven't read it would try to do so. Thank you.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, Rules Committee at 8 o'clock tomorrow morning. I move we adjourn until 9:30 a.m. Wednesday, February the 2nd, 1972.

PRESIDENT GRAYBILL: All in favor of adjourning until 9:30 a.m., Wednesday, February 2nd, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Adjournment at 9:54 a.m.)

February 2, 1972 **Fifteenth Day** **Convention Hall**
9:40 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: I'll have Delegate Harbaugh give the invocation. Will you all please rise.

DELEGATE HARBAUGH: Let us pray. Almighty God, whose help is not far from any one of us and whose mercy is extended to all who will seek it, cause us to maintain a humble perspective of our own ability and encourage us to seek the counsel of your Holy Spirit, that in the work before us this day, we may be at one with your great purpose in the world. Amen.

PRESIDENT GRAYBILL: We'll take the roll call by voting Aye on the voting machines, please. Oscar Anderson is excused.

CLERK HANSON: Brown, Delegate Driscoll, Delegate Drum, Delegate Felt, Delegate Etchart, Delegate Martin, Delegate Monroe.

PRESIDENT GRAYBILL: Very well. Will you take the machine vote.

Aasheim	Present
Anderson,J.	Present
Anderson 0.	Excused
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen.	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe..	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present

Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius.	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President.

PRESIDENT GRAYBILL: Mr. Clerk, before you announce the vote, we'll recognize Mr. Monroe to put himself on the record.

DELEGATE MONROE: Mr. President, please count me present.

PRESIDENT GRAYBILL: Very well. Mr. Monroe is present.

CLERK HANSON: Mr. President, 99 delegates present, 1 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Reports of Standing Committees.

The Chair will recognize Mr. Murray.

DELEGATE MURRAY: Mr. President,

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: We, your Committee on Rules, having had under consideration Resolution Number 3, a resolution to provide that certain citizens' suggestions be forwarded to the Legislative Council, recommend the same be adopted as amended.

Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: This is a short resolution, drafted and introduced by Delegate Roeder, and I would ask that he speak to it at this time, please.

PRESIDENT GRAYBILL: Very well. The motion is on the Rules Committee Resolution Number 2, which you've just heard Mr. Murray read, the substance of which is to give citizens' suggestions to the Legislative Council.

Mr. Roeder.

DELEGATE ROEDER: Mr. President, I wonder if I might be vouchsafed just a moment or two, to explain my resolution. This Convention has bent over backwards to be open and candid with the public. One of the devices we have employed to involve the public is delegate proposals and if I may use an expression that was a favorite one with Governor Nutter, "and this is as it should be". However, I think there's some dangers in the practice of using citizen proposals or soliciting them. I think we, potentially, are setting up some citizens for disappointment. As we have seen, most of these proposals are [of] the legislative nature, some of them with merit and some without merit. I think if wesimplyignore them, we will create the impression that, after soliciting citizen involvement, we turn a blank face. I think, psychologically, this would be a very big mistake. I think it would be a great disappointment. I think the disappointment would be all the greater because, I think, many citizens have, in an open way, turned to us because they know that most of us aren't politicians. So, my proposal is an attempt to assuage or avoid any disappointment by setting up a regularized system of passing those on—those that have potential legislative merit—passing them on to the Legislature through the Legislative Council. Mr. President, there's another thought that has occurred to me in connection with these citizen proposals and that is, I think that in soliciting them, we raise the danger of creating the impression that we can see our role as one of simply responding to the vocal constituents who express their feelings. I think this is wrong. I don't think we can create the impression that we're going to sit back and wait for the wisdom, somehow mysteriously, to well up from the public and then we will write this into a Constitution. I think the public can exercise good judgment. It exercised good judgment in electing most of us, but I think this judgment has to be educated. We have to lead; we have to be the educators; and I think this job is particularly difficult because, if we stick to our role, we are going to deal in abstractions rather than specifics, if we are doing the right thing in writing a Constitution. I'd like to end my remarks with a quote taken from an essay dealing with the Michigan Constitutional Conven-

tion: "A Constitution is a power document. It is a charter of power, but it is harder for people to get excited about the question of power-that is, who shall do it-than about issues and programs—that is, what shall be done. Power has a greater reach into the future. Program is more immediate. It takes more political insight and vision to understand power than program. To enlarge that insight and vision about power requires qualitatively improved political education." And that's our job. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well. Mr. Murray.

DELEGATE MURRAY: Mr. President, by way of explanation, the committee amended the resolution in the fourth line by inserting, after the word "delivery", the words "of a copy", because the rules provide that the original citizens' suggestions be returned from the committee to the Secretary and kept here. And so we ask that a copy of the suggestion be sent to the Legislative Council.

PRESIDENT GRAYBILL: Mr. Murray, the Chair is in doubt or confused.

DELEGATE MURRAY: Well—

PRESIDENT GRAYBILL: Are you talking about Resolution 2 or Resolution 3?

DELEGATE MURRAY: Resolution 3, Mr. President-the short one.

PRESIDENT GRAYBILL: Well, I guess that's what confused me, because I thought you were talking about Resolution 2.

DELEGATE MURRAY: I thought so after you made mention of that fact. Our motion is as to Resolution Number %-the short one.

PRESIDENT GRAYBILL: Very well. Now, does everyone have a copy of Resolution 3 before them? The Chair does not, but I sent for one.

DELEGATE MURRAY: May I read it then?

PRESIDENT GRAYBILL: No—a—

DELEGATE MURRAY: It's very brief.

PRESIDENT GRAYBILL: Let's say the—the main thing--everyone has been given a copy. It would be among your delegate proposals, and I merely want you to have it, if possible, because of a change we want to make in it. So, I call your attention to the fact that we are now talking about Resolution Number 3, to provide that certain citizen suggestions be forwarded to the Legislative Council. Mr. Clerk.

Now, I think everyone's had a chance to find it if they are going to find it. Now, would you explain the amendment you are proposing; and thereason I'm doing this is the Chair is going to ask, this morning, that you amend your Resolution Number 3 by interlineation. The amendment is three words long, and the Chair has decided not to have a separate piece of paper printed with those three words on it for you. So we're going to do it by interlineation.

Now, Mr. Murray, would you explain the amendment.

DELEGATE MURRAY: Mr. President, the amendment is in the fourth line, after the word "delivery''-"shall direct delivery", and then you insert "of a copy".

PRESIDENT GRAYBILL: Very well. So that the last phrase reads: "The Chairman of the committee shall direct delivery of a copy of the suggestion to the Legislative Council for further consideration." Very well. Now, I think we are all talking about Resolution Number 3, amended. Is there further discussion? Is it my understanding, from the standing committee report, that the Rules Committee recommends that Resolution Number 3 be adopted?

DELEGATE MURRAY: That is right, Mr. President.

PRESIDENT GRAYBILL: All right. Is there other discussion on Resolution Number 3? If not, all those in favor of adopting Resolution Number 3, which is a resolution providing that committee chairmen shall suggest that certain citizen suggestions, deemed meritorious, be given to the citizens--a copy of them be given to-the Legislative Council. All in favorofthatresolution, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

CLERK HANSON: "Mr. President. We, your Committee on Rules, having had under

consideration Resolution Number 2, a resolution entitled 'A resolution of the Constitutional Convention of the State of Montana, urging the members and staff of the Legislative Council to give consideration to citizens' suggestions submitted to the Convention', respectfully report as follows: that Resolution Number 2 be not adopted. Signed: Murray, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. Mr. Roeder dropped both resolutions into the hopper, and the Rules Committee decided that, with the amendment, Resolution Number 3 would do the job, and Mr. Roeder concurs. And so we urge that Resolution Number 2 be not adopted.

PRESIDENT GRAYBILL: Is there discussion on Resolution Number 2? You might pull that from your-find it, and you'll see what it amounts to. It's the same thing, only in a much longer form. Very well. All those in favor of adopting Resolution Number 2, which would be another form of sending the-all right-I guess we would go on your report. All those in favor of adopting the committee report not to adopt Resolution Number 2, please signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and the committee report is adopted, which means that Resolution Number 2 is not adopted. Now, may I just parenthetically say, for the benefit of you committee chairmen, I think the way to do this to avoid excessive, additional photostating is to decide which of these you want to give to the Legislative Council and let the clerk's office or the President's office know. We already have one photostat of each of these matters. As the committee Chairman and, I suppose, the whole body is now well aware, many of these are duplicitous; and in the event that we want to give a duplicitous one to the Legislative Council, perhaps we could devise a way to give them a copy of the suggestion and indicate the number of people who had supported it, so we aren't put to the expense of printing a thousand sheets of paper again as we have been so far. So let's figure out which ones you want to send down to the Legislative Council, if any; and after we have figured that out, we'll figure out a way to make onecopyfor the Legislative Council. All right. I think there are no other special committee reports, but this morning, we have a procedure whereby we are going to ask the committee chairmen to give a short summary of their committee work to date, by way of a report. In other words, a report of each committee Chairman--a short report indicating how their committee has fared and where they stand. I think probably the best thing to do would be for me to go down the list of committees, skipping the administrator-skipping the procedural committees, in order; and if anyone is not ready and wants to be passed, I'll pass you; but we'll proceed on that basis. On that basis, I would like to call on the Chairman of the Bill of Rights Committee, Mr. Dahood. You may state your position from where you stand, sir.

DELEGATE DAHOOD: Mr. President and fellow delegates. To this date, our committee has held seven formal-notice public hearings and six committee room hearings. Twenty delegate proposals have been referred to our committee. Some of the proposals add to the Bill of Rights, some tend to modify some of the provisions; none of the proposals, in our judgment, detract substantially from the rights of the Montana citizen under our Bill of Rights. There has been a great deal of debate and, we think misinterpretation, with respect to the right to keep and bear arms; and for the information of our fellow delegates, the committee has asked me to state here and now that there has never been a proposal before the Bill of Rights Committee to change the present Constitutional right to keep and bear arms. We have had one proposal asking that we place within the Bill of Rights a provision that there shall never be registration or taxation of firearms in the State of Montana. However, the National Association to Keep and Bear Arms has contacted us by telegram, with over 500 signatures and an assurance that another 1,000 signatures are forthcoming, that they want the present provision in our Bill of Rights maintained. The consensus of the committee, at this time, seems to be that we will recommend that the present provision be maintained. There are delegate proposals for abolishing capital punishment, proposals for enhancing the right of privacy in the State of Montana, for making sure that electronic surveillance is guarded by the law so it will not infringe upon private rights. We have had a great deal said about the need for revising our religious liberty provision because of its excess wording, as the proponents for revision contend, and adopting in place thereof the provi-

sion contained in the federal First Amendment. The tentative feeling of the committee, to some extent, is that perhaps adopting the federal First Amendment might well be in order, inasmuch as we are bound by the provisions of the Supreme Court of the United States and that First Amendment, and I think, in our judgment, adopting the federal First Amendment is not going to change the status of the law with respect to religious liberty in the State of Montana. There has been a great deal of debate with respect to the need for a constitutional provision protecting the environment in the State of Montana. A great deal has been said before our committee and in the newspapers with relevance to what is called "a public trust theory". There is some discussion in our committee that perhaps a more proper phrase for describing the protection clause is "a public benefit theory". The manner in which such a proposal would be implemented seems to be the focal point of debate. In any event, I think the committee, in sum and substance, is satisfied that there should be a constitutional declaration stating that we expect a lawmaking body in the State of Montana, whether it be, hopefully on my part, unicameral or bicameral, to make sure that that high-quality environment is protected. There has been some discussion already with respect to the rights of young people. We have heard a great deal of testimony in that connection. I think all of us are sympathetic toward some type of constitutional declaration that the rights of the young people must be protected, so that there will not be dissatisfaction on their part with the manner in which the adult population administers the law that affects them in their everyday activity. There is a provision, a proposal, before our committee that all persons of the age of 18 and over shall be adults for all purposes and entitled to hold any elective office in the State of Montana. I think there is sentiment in our committee to refer that proposal to the Committee as a Whole, asking that it be approved for the reason that we think-that once a person is an adult, he should be an adult for all purposes, and as some of us have stated, if he's brilliant enough and able enough to convince the electorate for the State of Montana that, at the age of 18 or 19 or 20, he ought to be the Governor of the State of Montana, any person that magnificent ought to be the Governor of the State of Montana. (Laughter) We are having delegate proposals argued today and tomorrow. We hope that our fellow delegates who have initiated proposals that have been referred to our committee will come forward. We expect to have some of the proponents of some of the more controversial proposals before us. We invite one and all to come to our hearings today and tomorrow and Saturday at 2 o'clock. I can report, at this time, that our committee has not reached any point of agreement or any consensus with respect to any particular proposal. At this point, they even accept the tentative opinions that I have already enunciated simply because all of our hearings are not yet completed and we do not intend to conduct such discussions, with respect to what our tentative draft will be, until such hearings have been concluded. Thank you, Mr. President.

PRESIDENT GRAYBILL: Thank you, Mr. Dahood.

Mr. Aasheim of the Legislative Committee.

DELEGATE AASHEIM: Mr. President, delegates. Our committee has been divided into four subcommittees: bicameral, unicameral, constitutional restrictions, and reapportionment. We have had three public hearings, one on the complete Legislative Article, one on the unicameral-bicameral, and one on reapportionment. Presently, we are reviewing our overview. We went over the Article and found areas in which we were in agreement, and today, we are going to review particularly those in which we were in disagreement. Today, we are going to consult with some legislators to get their opinions on, particularly, the constitutional restrictions that are imposed upon the Legislature. It is the thinking of the committee that we will bring to the floor the bicameral and the unicameral for a proposal, and we shall make recommendations as to whether or not the proposal will be presented to the people for their acceptance or rejection. Of course, you will help us decide that; but we will make the recommendation. I have nothing further to comment as to our progress, except to say that by this Saturday, we shall have our rough draft ready so that the press will have the sense of the committee as to the various areas in which we have discussed the Legislative Article.

PRESIDENT GRAYBILL: Thank you, Mr. Aasheim.

Mr. Joyce.

DELEGATE JOYCE: Mr. President, the Executive Committee has held no public hearings as yet. We have been holding meetings, and we have summoned to our committee, or requested,

the attendance of the present Governor, ex-Governor Babcock, all of the elected officials, the State Examiner, members of the State Board of Equalization, the head of the Revenue and Administration Committees or divisions of state government, the Board of Education representatives, the Reorganization Directors, the Administrator of the Land Board, the Legislative Auditor and the Adjutant General. On our committee, the issues that remain--we have not resolved any of them as we see them. The essence-the question—the big question is which of the-how many of the presently elected officials shall be retained as constitutional offices. The second issue, which is closely allied thereto, is how many of the constitutional boards on which the elected members serve will continue to be constitutional boards, This cuts us across the Education Committee in that the Superintendent of Public Instruction is on that board, and it also cuts us across those committees that are dealing with the Land Board in that four of the present elected officials are on that board. We are going to have a joint meeting today with the Education Committee to hear from the Superintendent of Public Instruction in that connection. And-the next question that is before our committee are the veto powers of the Governor. We hope to confer with the Legislative Committee before we make any resolution in that connection. The fourth major issue before our committee is what to do with the Lieutenant Governor and the powers of succession, and whether we can make the office of Lieutenant Governor more attractive than John Nance Garner inelegantly described the vice-presidency some years ago. Those are our principal areas. We have not-we have deliberately, so far, refrained from making any—arriving at any decisions on any of these issues until such time as we would hear from the people whom we think have something relevant to say. We are planning, this week, to start running our individual ideas around the table. Each member of the committee reserves the right to change his position without notice and several times, if necessary; but we will, we hope, come out with some consensus. We have two delegate proposals before us; one relative to a constitutionally established wage commission, and we are going to get a proposal, I understand, on having a parliamentary system of government from Delegate Kelleher. And so, next Saturday at 1:30 pm., in the Governor's reception room, the Executive Committee will hold its first public hearing, in which we will discuss the present Executive Article, all delegate proposals that have been introduced pertaining to the Executive Article, the parliamentary system of government, the veto power, and any and all matters pertaining to the Executive branch of the state government in the Executive Article of the Constitution. So, all ye who have cause to be heard before the Executive Committee can draw an eye at that time, and the committee will give you its undivided attention. Thank you, Mr. President.

PRESIDENT GRAYBILL: Thank you, Mr. Joyce.

Mr. Holland, Judiciary.

DELEGATE HOLLAND: Mr. President. The Judiciary Committee has held seven public hearings, including 3 days principally devoted to proponents of the Montana Plan, a public hearing in consideration of the Supreme Court, a public hearing principally to the subject of District Courts, one to the subject of Justice of the Peace Courts, and a public hearing principally to the subject of county attorneys. Scheduled for today we have a public hearing on the clerks of District and Supreme Courts, and public hearings have been set for this Thursday and Friday for consideration of opponents of the Montana Plan and all other witnesses. Tentative votes have already been taken in our committee as to the feeling of the various members upon the various facets of the Judicial Article. As of today, I'm going to appoint subcommittees to write drafts, and I will appoint chairmen for each subcommittee to write the drafts. At the present time, it appears that there will be at least two drafts written, possibly three. None of the members are committed to any one thing yet; all reserve the right to change and to go to any one of the various proposals that are put up here. It is expected that the final reports from the chairmen of these committees will be due on February 8th, 1972. The Romney hearing has not yet been held but will be scheduled--actually, heard on the date scheduled, and we have been contacting tentative speakers to present various viewpoints at this meeting. It is expected that we will have our final report ready to be submitted to the Constitutional Convention-on the date set, February 16th.

PRESIDENT GRAYBILL: Thank you, Mr. Holland.

Mrs. Blend, the Local Government Committee Vice-chairman.

DELEGATE BLEND: Mr. President, the Local Government Committee has concluded 5 days of hearings, which were well attended, sometimes to capacity. Testimony came from a wide variety of sources, including the League of Cities and Towns, the County Commissioners Association, and the group representing other elected county officials. Interested citizens, individual city and county officials, political scientists, and the Director of the National Municipal League also have testified before our committee. The committee now is involved in accomplishing hearings of formal delegate proposals and citizens' suggestions. Each delegate who has submitted a proposal that has been referred to the Local Government Committee will be invited to appear before the committee to explain his or her proposal. In addition, several committee members have submitted informal working drafts which should be of considerable assistance. It is hoped that consensus can be reached on several of the major items before the committee by the end of this week. Several matters pertaining to Local Government have been assigned to other committees. Either through informal communication or formal meetings, the Local Government Committee is keeping itself informed of related actions in other committees, including Judiciary, Legislative, Revenue and Finance, and General Government. Nine sections, eight in Article XIV and one in Article XIX, have been assigned to the Local Government Committee. The committee tentatively has agreed to delete two of these sections and to revise and, where possible, combine the others. In that regard, the Local Government Committee may face a somewhat unusual problem. We are all well aware of instances in which the present Constitution is overly detailed. However, in terms of Local Government, some of the greatest problems have arisen over constitutional silence concerning what powers cities and counties should have. In other words, our job extends considerably beyond simply pruning out-of-date provisions from the 1889 Constitution. Committee progress, particularly in the last four meeting days, has been very gratifying. At this point, we fully expect to report out a much-improved Local Government Article well within our time schedule. Thank you, Mr. President.

PRESIDENT GRAYBILL: Thank you, Mrs. Blend.

Revenue and Finance, Mr. Kygg.

DELEGATE RYGG: Mr. President and fellow delegates. I want to report on the Mitchell gang. This gang consists of the notorious nine who are apparently banished from the Capitol Building. Apparently, they were banished because it was rumored that they were going to make the new Constitution read in such a manner that money could be raised-that the legislators could raise enough money to take care of all the needs and wants of the Montanans. Since then, at that time, however, it has been decided that a disinterested party must be named in order to differentiate between the wants and the needs. I can now report that this gang is holed up across the street and completely surrounded by the Montana state revenuers. The revenuers report that they had been in contact with this gang and have now sent in their special team, called the Board of Equalization, to negotiate with this group. At first, there hasn't been much meeting of minds, but now the Board reports that we think progress has been made, as the Board has assured the gang that Montanans really don't mind taxes; they just want to make sure the other guy pays them. (Applause)

Enough of that. The Revenue and Finance Committee has been given Articles XII, XXI and Sections 5 and 6 of Article XI. It is our hope that we can condense these three Articles into about one-third of the original wording. I think there are about 44 sections in all, and I believe we'll probably get them down to about 15 or 16 and will probably suggest one or two Articles. And, of course, that will be up to the drafting to change that; but we're going to reduce them considerably, I'm quite sure. We have subcommittees working on XXI and XIII; and one on XXI is pretty far along, and I expect we'll have a report from them momentarily. And we think that this full Article can possibly be reduced to maybe two sections. The other subcommittee isn't quite as far along, but I think I can assure you that they will provide a tax limit that is not stated in dollars, but rather a ceiling that will fluctuate with either a taxable evaluation or some other criteria. We have another subcommittee working, too, on Sections 5 and 6 of Article XI. This is rather a large committee. It is headed by Rich Champoux, and they plan to give us their findings on February 8th. The general hearings that we had last week were not well attended. In fact, if we hadn't invited people, we would probably have had very few there. I will say though, that the testimony that we have had, and especially from the state officials, has been excellent and

very informative for the committee. About the only issue that seems to require a public hearing is that of the antidiversion amendment, and we have called this hearing for Friday, February 4th, at 1:30, in the Senate chambers. The other issues of any interest at all seems to have been the sections on mining taxation, although it is possible that the section of exempting charitable institutions might have some discussion later. We are now working on a skeleton Article for the Romney hearing, and, of course, we will have it ready on the 10th and we will have our draft completed on February 17th. And while I'm on my feet, I see we aren't listed here, I will tell the committee we do have a meeting at 10:30. And I thank you, Mr. President.

PRESIDENT GRAYBILL: Thank you, Mr. Rygg. The President would only comment that I was surprised to hear that the Mitchell gang had now disclosed its location. We thought your purpose in leaving the Capitol was to keep away from the rest of us so we couldn't get at you. (Laughter) I'll call next on Mr. Champoux for Education.

DELEGATE CHAMPOUX: Mr. President, the Education and Public Lands Committee has held seven public hearings. We have deliberated all aspects of education. We have held a joint meeting on public lands with the Natural Resources Committee. We have received, so far, six delegate proposals. I understand two more are coming in on the Board of Regents. Most of our proposals are on financing, with one on a proposal not to change the section on no state aid to nonpublic schools. While we are on that subject, we held an entire day's meeting, last Saturday, on that. They have-there have been 20 witnesses before the committee on this business of state aid to nonpublic schools. Of those 20 witnesses, 17 have testified that they want no change in the Constitution; 3 of them have testified that they would like a change. Of the 70 citizens' suggestions we have received, 50 of them have been on this subject; 47 of them want no change in the Constitution and 3 would like a change. There have been other interesting little developments that come up here and there. For instance, on this business of the ages in the Constitution--what I am speaking about here is the 6 to 21 limitation. One of the interesting comments that has been made in that area-one would assume that most people would want to get rid of that, but we have had some people that want to keep it-on the lower end, to keep babysitting out of the schools. On the business of public lands, there has been much discussion on access. A lot of people are interested in using these lands. The multiple-use concept has come in for quite a bit of discussion. On the other hand, the opposing arguments have been based on the idea of trust and responsibility-in terms of the State Land Board and the people that are leasing it. In the same area, we have had quite a bit of development on this 2½ percent diversion of the slate school lands money for improvement of the land, and to the satisfaction, I think, of the committee--I can speak, I think, for the committee on this-that we were much impressed with what has been done with this 2½ percent and what has accrued because of it. Mr. Drum will be pleased to hear that. The business of the constitutional status of the county superintendent of schools has been discussed. Lots of people have come in to talk to us about that, principally county superintendents of schools. The State Boards of Education have been discussed in a lot of detail. There is much support, I feel, for a Board of Regents. We are going to be discussing two proposals on that that are tentative, and also the business about the election or appointment of the Superintendent of Public Instruction. We are going to have a full public meeting with the Executive Committee this afternoon at 2 o'clock on that in the Senate Building—rather Senate chambers. The other thing that's taken up quite a bit of our time has been this business of financing public education and the implications of the Serrano versus Priest decision. We are going to be going into that in much more detail next Monday or next Tuesday, but it comes up continuously. The other subject is the business of state and local responsibility for providing and supporting public education, and the word we are hung up on is "support". What does that mean in terms of specifics, and how—exactly how specific should we get on this? As far as decisions on any of these are concerned, deliberations will begin today on a tentative draft. I want to make only one other comment while I'm here. On our daily Convention schedule, you'll notice that we have a hearing this morning on community colleges and vocational rehabilitation. I want to add that, in case Mr. Driscoll is suspicious-he isn't here; well, anyhow-thank you, sir.

PRESIDENT GRAYBILL: Very well. Thank you Mr. Champoux.

Next, Public Health, Mr. Heliker.

DELEGATE HELIKER: Mr. President, the Public Health Committee currently has before it the following major subjects, which are being considered or are in prospect. The first is the virtual deletion of Article XV on corporations other than municipal, with possible proposal of a shorter Article. I may say that if any delegate or member of the public present has knowledge of a reason to retain any section of Article XV, we would appreciate if he or she would come forward. We have some difficulty in securing expressions of opinion from state officers and from representatives of other interested parties on this subject. Second Article before us is Article X on state institutions, Sections 1 and 5. Our disposition at the present time is to simplify considerably Section 1 and to revise Section 5 so as to shift responsibility for welfare funding toward the state, away from the county. Another subject under consideration is inclusion of a section in the Bill of Rights defining the right to basic necessities of life. This is Proposal Number 45, which will be considered jointly with the Bill of Rights Committee. A fifth subject is a proposal to guarantee a state—or establish a state merit system for public employees. A sixth is a proposal for consumer protection section. With regard to Article XVIII, the Labor Article, we have been considering and have held numerous hearings on the following subjects: convict labor, the prohibition of child labor in dangerous occupations, the 8-hour day, the right to work, the right of private employees to bargain collectively, the right of public employees to bargain collectively, the right of public employees to strike. A final subject before the committee is the public utility regulation, Proposal Number 76. The committee has heard testimony on all of the subjects enumerated except for the proposals relative to consumer protection, the merit system, and public utility regulation. The groups represented by testimony before the committee include the Department of Labor and Industry, the Montana AFL-CIO, the Employment Security Commission, the American Federation of State, County and Municipal Employees, Secretary of State's office, Department of Institution, the Cascade County Commissioners, the State Department of Welfare, the Montana State Low-Income Group, the Railroad and Public Service Commission, Department of Revenue, the State Auditor's office and the Anaconda Company. The committee is awaiting recommendations from the Railroad and Public Service Commission, the State Real Estate Commission and members of the University Law Faculty. The commission has discussed Articles on the nonmunicipal corporations and welfare and is currently awaiting subcommittee reports. It is expected that the subcommittees will report this week and that the committee will be able to draft some definite language on those Articles before the end of the week. The committee has scheduled hearings on labor and on public utility regulation on various dates from February 2nd to the 10th. The committee will hold evening meetings during that period to develop proposals for submission to the Committee of the Whole on all four topics. The Romney hearing for the Public Health Committee is scheduled for February 11th and our final committee proposal will be in final form by February 18th. With regard to the hearings scheduled, we have scheduled hearings this week on all topics relating to Labor Article or any subject having to do with labor, including Proposal Number 73 today, tomorrow Proposal Number 71 on the merit system proposal. February 3rd, at 3 o'clock in the afternoon, a joint hearing with the Bill of Rights Committee on Proposal Number 45. Beginning Saturday morning and continuing all day Saturday and in the mornings of the 8th, 9th and 10th of next week, hearings on the public utility regulation, Proposal Number 76. On the morning of the 8th, Proposal Number 70 on consumer protectionism. I am pleased to be able to announce that Senator Lee Metcalf has accepted my invitation to appear and testify before our committee, on the public utility regulation proposal, on February 10th at 1O:OO a.m., which hearing will be held in the Senate chamber. Thank you.

PRESIDENT GRAYBILL: Thank you, Mr. Heliker.

Now, Mrs. Cross, Natural Resources, please.

DELEGATE CROSS: Mr. President and delegates. At the conclusion of the second week of the Constitutional Convention, the Committee on Natural Resources and Agriculture has, I believe, caught up with those committees which had the benefit of informational input from the commission staff. In order to do this and beginning last Wednesday, on January 19th, a series of informal meetings were held daily and covered all aspects of natural resources; namely, water and water rights, wildlife, minerals, air, forests, and timber in public lands. In addition, this committee has reviewed and discussed the assigned Articles in the present Constitution. They include Article III, Section 15, on water use; Article XVII, public

lands; Article XVIII, Section 1, the Department of Agriculture; and Article XIX, Sections 3 and 7, also dealing with public lands. And we also reviewed Article XII, Section 9, which deals with the livestock mill levy. The conclusions reached and the recommendations made on these particular Articles and sections are in Report Number 6, and this was entitled "The Legislative Council Report on the Montana Constitution", and have also been reviewed by this committee. Citizens' suggestions referred to this committee, as well as letters to the individual committee members, have been read and reviewed by the entire group. Delegate Proposals 1, 2, 12, 20, 21 and 48, all of which deal directly or indirectly with the natural resources, have also been studied, and our committee is up-to-date on those. I am also pleased to report that three formal public hearings have been held. On Thursday, January 27th, a joint meeting was held with the Education and Public Lands Committee; on Saturday, January 29th, dealing with public trust in the environment; and February lst, a joint hearing with the Bill of Rights Committee and the Natural Resources and Agricultural Committee. We have hearings scheduled from February 2nd to the 5th, and I would like to mention that the fact remains we have a formal public hearing and I understand that two gentlemen, one representing the Peabody Coal Company and the other the Western Energy Company, will be here to tell us about their reclamation plans. So those delegates who may be interested are invited to attend, and we will meet upon adjournment this morning.

PRESIDENT GRAYBILL: Thank you, Mrs. Cross.

General Government, Mr. Etchart.

DELEGATE ETCHART: Mr. President, fellow delegates. The Committee on General Government and Constitutional Amendment has been meeting each session day, acquainting itself with and hearing testimony on the areas that have been assigned to the committee. The committee has used an informal system to accomplish this end. In the hearings held before last week, the committee went over the assigned areas article by article and discussed the presented background research material. The next week, January 25th to January 28th, was devoted to general hearings, with individual topics scheduled for each day. During its general hearings, the committee would hear testimony from interested parties and discuss the issues in depth. The general areas assigned to the committee are: constitutional revision, which is mainly Article XIX, Sections 8 and 9; the processes of initiative, referendum and recall, which is Article V, Section 1; constitutional establishment of an oath, which is Article XIX, Section 1; state boundaries, which is Article I; suffrage and elections, Article IX; lotteries, Article XIX, Section 2; distribution of powers, Article IV; in some areas of federal-state relations, which is Ordinance I, Sections 5 and 6. In miscellaneous areas, it can best be described as General Government topics. The committee members would discuss each topic and attempt to iron out any points of contention in order to help the individual members of the committee to form a better opinion on each topic. Then, in each area, one or more of the committee members would, with the help of the committee, draft and introduce a delegate proposal. The purpose behind this was to give the committee something concrete with which to work. The proposal also gives both the Convention and the public a better idea of how the subject-matter assigned to the committee might be handled. I would recommend to my fellow delegates that they study the delegate proposals assigned to this committee if they want to get a pretty good idea of what the thinking of the committee is at this point. Let me also stress that the committee did not, on any subject, make an official, binding decision on the disposition of any of these topics. The committee is merely working to establish groundwork for the ultimate disposition of the subjects. This groundwork is often composed of committee consensus on certain subjects, but we've never taken final decisions. Such decisions were deliberately not made, as the committee feels that such action, prior to specific hearings to be held the week of February 1st to 5th. would be premature and improper. We want the committee to retain an open mind on all matters until we have all the information available for us. At this point, it would be appropriate to give a brief discussion on the areas of controversy before the committee. The controversial areas in Constitutional Revision and Amendment are all related to the structuring of these processes. The same, basically, holds true of the areas of initiative and referendum; though in these areas, there is also the question of the scope of the processes. As for recall, a device relatively foreign to Montana, the issues concern its creation, scope and structure. In the area of Suffrage and Election procedures, the constitutional issues fall mainly in the scope of how much structuring of these areas should be included in the Constitu-

tion. General Government is somewhat of a catch-all area in encompassing the issues of oath, lotteries, distribution of powers, some areas of federal-state relations, and miscellaneous subjects. The issues in these areas vary with each individual topic. The committee is scheduled to turn in three reports to the Convention. The first two, Suffrage and Elections and Constitutional Amendment and Revision, are due on February 12th, and the third, General Government, is due February 19th. For the information of the members of the committee, we will be meeting on adjournment, and we will take up Delegate Proposals Number 29 and 47 today. Thank you.

PRESIDENT GRAYBILL: Thank you, Mr. Etchart. The Chair would like to thank all of the committee chairmen for their reports, which I thought were excellent and useful to myself and the delegates. The Chair would also like to express to the entire body my real gratitude for the hard work that's been done. I think it is really amazing how much information we have been able to assemble and assimilate in the past two weeks, and I certainly think it's timely for me to certainly express my view that you've done an excellent job as a group and that we have certainly got a good start on the Convention. Now, I am quite hopeful, in terms of our schedule, because of all the work that's been done. I don't want to mislead anybody, because you'll see in about two minutes that the delegate proposals are beginning to roll in today and there's a lot more work to do. But I think, to date, we have certainly taken hold quickly and done a great deal of work, and I want to congratulate the delegates and the committees on the work they've done. I think that concludes Reports of Standing Committees. Are there any reports of Select Committees'?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Any Communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Introduction and Reference of Delegate Proposals, Order of Business Number 4.

CLERK HANSON: Mr. President, "Delegate Proposal Number 78. A proposal for a new Constitutional section providing for equal opportunity for employment. Be it proposed by Constitutional Convention, State of Montana." Introduced by Studer and others. Delegate Proposal Number 78.

PRESIDENT GRAYBILL: Number 78, to Public Health.

CLERK HANSON: "Delegate Proposal Number 79; introduced by McNeil. A proposal amending Article IV, Section 1, of the Constitution of the State of Montana, providing for distribution of governmental powers to subdivisions of the state. Be it proposed by Constitutional Convention, State of Montana." Delegate Proposal Number 79.

PRESIDENT GRAYBILL: Number 79, to Local Government.

CLERK HANSON: "Delegate Proposal Number 80. A proposal amending Article XII, l[b], of the Constitution, State of Montana, relating to highway fees and license tax. Be it proposed by Constitutional Convention, State of Montana." Introduced by Toole and others. Delegate Proposal Number 80, Mr. President.

PRESIDENT GRAYBILL: Number 80, to Revenue and Finance.

CLERK HANSON: "Delegate Proposal Number 81; introduced by Harrington and others. A proposal for a new Constitutional section providing for religious liberty and repealing Article III, Section 4; Article V, Section 35; and Article XI, Section 8, of the present Constitution. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 81, Mr. President.

PRESIDENT GRAYBILL: Number 81, to Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 82; introduced by Brown. A proposal for five new Constitutional sections concerning the elective process. Be it proposed by the Constitutional Convention of the State of Montana." Delegate Proposal Number 82, Mr. President.

PRESIDENT GRAYBILL: Number 82, to General Government.

CLERK HANSON: "Delegate Proposal Number 83; introduced by Jacobsen. A proposal for a new Constitutional section providing for acquisition of historic sites. Be it proposed by the

Constitutional Convention, State of Montana." Delegate Proposal Number 83, Mr. President.

PRESIDENT GRAYBILL: Number 83, to Natural Resources.

CLERK HANSON: "Delegate Proposal Number 84; introduced by Brown. A proposal repealing Article I, Section 1, of the Constitution of the State of Montana. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 84, Mr. President.

PRESIDENT GRAYBILL: Number 84, to General Government.

CLERK HANSON: "Delegate Proposal Number 85; introduced by Rollins. A proposal for a new Constitutional Article providing for the Montana university system. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 85, Mr. President.

PRESIDENT GRAYBILL: Number 85, to the Education Committee.

CLERK HANSON: "Delegate Proposal Number 86. A proposal repealing the Preamble of the Constitution of the State of Montana and having a new Preamble. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 86, Mr. President.

PRESIDENT GRAYBILL: Number 86, to Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 87; introduced by Foster and Skari. A proposal for a new Constitutional section providing for the rights of those under the age of majority. Be it proposed by the Constitutional Convention of the State of Montana." Delegate Proposal Number 87, Mr. President.

PRESIDENT GRAYBILL: Number 87, to Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 88; introduced by Cate. A proposal amending Article III, Section 18, of the Constitution of the State of Montana, concerning self-discrimination [incrimination]. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 88, Mr. President.

PRESIDENT GRAYBILL: Number 88, to the Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 89; introduced by Anderson and others. A proposal repealing Article XVI, Section 1, 2 and 8, of the Constitution of the State of Montana and combining the intent of those sections in a new section on county boundaries and county seats. Be it proposed by Constitutional Convention, State of Montana." Delegate Proposal Number 89, Mr. President.

PRESIDENT GRAYBILL: Number 89, to Local Government.

CLERK HANSON: "Delegate Proposal Number 90; introduced by Brazier. A proposal for a new Constitutional section permitting the Legislature to provide for disqualification of judges. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number90, Mr. President.

PRESIDENT GRAYBILL: Number 90, to Judiciary.

CLERK HANSON: "Delegate Proposal Number 91; introduced by Cain and others. A proposal for a new Constitutional section providing equal educational opportunity for all students. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal 91, Mr. President.

PRESIDENT GRAYBILL: Number 91, to Education.

CLERK HANSON: "Delegate Proposal Number 92; introduced by Arness and Blend. A proposal for a new Constitutional Article vesting judicial powers in a court of appeals and inferior courts. Be it proposed by the Constitutional Convention of the State of Montana." Delegate Proposal Number 92, Mr. President.

PRESIDENT GRAYBILL: Number 92, to Judiciary.

CLERK HANSON: "Delegate Proposal Number 93; introduced by Siderius. A proposal amending Article III, Section 3 and 11, of the Constitution, the State of Montana, and adding a new section to that Article, the Bill of Rights, to provide for collective bargaining. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 93, Mr. President.

PRESIDENT GRAYBILL: Number 93, to both the Bill of Rights Committee and the Public

Health Committee, jointly. And I call your attention to the fact you have a joint hearing set on another bill, and you better add this one to that hearing.

CLERK HANSON: "Delegate Proposal Number 94; introduced by Habedank. A proposal for four new Constitutional sections providing for constitutional amendment. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 94.

PRESIDENT GRAYBILL: Number 94, to General Government.

CLERK SMITH: "Delegate Proposal Number 95. A proposal for a new Constitutional section providing for creation of auxiliary canvassing boards." Introduced by Erdmann and others.

PRESIDENT GRAYBILL: Number 95, to General Government.

CLERK SMITH: "Delegate ProposalNumber 96. A proposal for a new Constitutional Article on irrigation and water rights." Introduced by Erdmann and others.

PRESIDENT GRAYBILL: Number 96, to Natural Resources.

CLERK SMITH: "Delegate Proposal Number 97. A proposal for a new Constitutional Article providing for local government." Introduced by Ask.

PRESIDENT GRAYBILL: Number 97, to Local Government.

CLERK SMITH: "Delegate ProposalNumber 98. A proposal for two new Constitutional sections protecting the rights of prisoners." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 98, to the Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 99. A proposal for a new Constitutional Article providing for a city-manager form of government." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 99, to Local Government.

CLERK SMITH: "Delegate ProposalNumber 100. A proposal for a new Constitutional section prohibiting involuntary servitude a part of each week, except for necessary and recreational services." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 100, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 101. A proposal for a new Constitutional section limiting campaign spending for the Legislature." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 101, to Legislative.

CLERK SMITH: "Delegate Proposal Number 102. A proposal for a new Constitutional section authorizing financial support for private colleges and universities, provided they can guarantee freedom of thought." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 102, to Education.

CLERK SMITH: "Delegate Proposal Number 103. A proposal for a new Constitutional section guaranteeing the right to be born and a right to die." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 103, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 104. A proposal for a new Constitutional section reserving to the people of Montana all subsurface rights except under school and Indian lands." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 104, to Natural Resources.

CLERK SMITH: "Delegate ProposalNumber 105. A proposal for a new Constitutional section guaranteeing equal pay for equal work for government employees." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 105, to Public Health.

CLERK SMITH: "Delegate Proposal Number 106. A proposal amending Article XIX, Section 8, of the Constitution of the State of Montana, providing for future Constitutional Conventions." Introduced by Arbanas.

PRESIDENT GRAYBILL: Number 106, to General Government.

CLERK SMITH: "Delegate Proposal Number 107. A proposal for a new Constitutional Article providing for joint election of the Governor, Lieutenant Governor and Attorney General." Introduced by Arbanas.

PRESIDENT GRAYBILL: Number 107, to Executive.

CLERK SMITH: "Delegate Proposal Number 108. A proposal for a new Constitutional section providing for county election on alternative forms of government." Introduced by Eck and others.

PRESIDENT GRAYBILL: Number 108, to Local Government.

CLERK SMITH: "Delegate Proposal Number 109. A proposal for a new Constitutional section allowing income-taxpayers to contribute $1 to party of their choice." Introduced by Kelleher.

PRESIDENT GRAYBILL: Number 109, to Revenue and Finance.

CLERK SMITH: "Delegate Proposal Number 110. A proposal for a new Constitutional section limiting the number of times a person may succeed himself in office." Introduced by Geoffrey L. Brazier.

PRESIDENT GRAYBILL: Number 110, to Executive.

CLERK SMITH: "Delegate Proposal Number 111. A proposal amending Article XIX, Section 2, of the Constitution of the State of Montana to prohibit gambling as a means of financing state government and to permit charitable or nonprofit organizations to engage in gift enterprises." Introduced by Harbaugh and others.

PRESIDENT GRAYBILL: Number 111, to General Government.

CLERK SMITH: "Delegate Proposal Number 112. A proposal for a new Constitutional section providing that the state not engage in the wholesale liquor business." Introduced by Jacobsen and others.

PRESIDENT GRAYBILL: Number 112, to General Government.

CLERK SMITH: "Delegate Proposal Number 113. A proposal for a new Constitutional section providing for a Teachers' Salary Equity Board." Introduced by Roeder.

PRESIDENT GRAYBILL: Number 113, to Education. Now, the chair would like to remind the delegates that tomorrow morning is the final day for submission-tomorrow's the final day for submission of delegate proposals. So, if you have other delegate proposals in the works, please get busy on them. Order of Business Number 5, Final Consideration.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitution.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business. The Chair would call on Mr. Champoux.

DELEGATE CHAMPOUX: At the suggestion of a number of people, Mr. President, we've decided to introduce the pages earlier in the week. So, at this time, I would like to introduce the pages; one of them will respond. Jeanne Driscoll from Butte--would you please stand as we call your name-Debbie McCallum from Hot Springs; Nancy Elliott from Havre; Steve Davis from Dillon-and I suspect that's Delegate Carl Davis' son, is that correct?

PRESIDENT GRAYBILL: Yes.

DELEGATE CHAMPOUX: Doug Diehl from Winston; Mary Rygg from Kalispell-and this is the daughter of a fellow delegate, Sterling Rygg. I think we ought to give these young people a good hand. (Applause)

PRESIDENT GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. President, I don't know what the Honorable Chairman has against me, but one of those kids up there happens to be my daughter also. (Applause)

PRESIDENT GRAYBILL: Mr. Champoux, did you have any particular doubt about that matter?

DELEGATE CHAMPOUX: No, but she was so good-looking I just-you know-1 couldn't imagine-(Laughter)

PRESIDENT GRAYBILL: Very well. Go ahead, young lady.

DEBRA McCALLUM: Members of the Convention. The pages of the third week would like to express our appreciation to you for letting us be a part of this, the making of a future Montana. This experience is going to be one of a great educational value for all of us, and we sincerely hope that we can aid you in any way in writing a lasting Constitution for the State of Montana. Thank you. (Applause)

PRESIDENT GRAYBILL: The names of the pages introduced and the fact that they are here with us this week will be entered in the journal and in the proceedings, and copies of the proceedings will be given to these young pages for their own personal use. We are very happy to have you here, and we're looking forward to a good week with you. Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 11, Announcements. The Chair would like to have you note on your daily schedule that the committee chairmen announcement there is incorrect. This is the meeting that we cancelled tonight so that we could hear Mr. Margolis. Now, Larry Margolis, Executive Director of the Commission on Reforming the State Legislature—that's not quite the right name, but anyway-he's going to be with us this afternoon; and there will be a delegate meeting of all delegates, just like now except off the record, in the House chamber here at 7:30 tonight-in the Convention chamber here at 7:30 tonight-to hear Mr. Margolis talk; and he will also be around, we hope, this afternoon to visit with some of you. Rut because of that, the committee chairmen meeting which is shown there should be stricken; and I think the committee chairmen are all aware that that meeting will be held at 7:30 tomorrow night instead and that the format of the committee proposal booklets will be the prime topic of discussion. Are there other announcements that are not shown on the daily Convention schedule?

Mr. Aasheim.

DELEGATE AASHEIM: The Legislative Committee, at 11 o'clock. I'd also like to announce again the meeting Friday night with Mr. Carpenter from Nebraska, who will discuss the Unicameral Article.

PRESIDENT GRAYBILL: On Friday night, it's another meeting here with Mr. Carpenter from Nebraska.

Mr. Holland.

DELEGATE HOLLAND: (Inaudible) 10 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President. Executive, 20 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. Rules and Resolutions, 8:30 in the morning.

PRESIDENT GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. President, Local Government will meet at 11:15 in Room 437.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, five minutes after adjournment, please.

PRESIDENT GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I wish to announce to this Convention that the bicameral legislative proposal is now printed and it will be ready to be submitted, and if there are others that would like to sign it-1 have a number of signatures on it now-but you can do so immediately after this meeting. Thank you.

PRESIDENT GRAYBILL: Very well.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. President. This Sunday, I plan to go to Edmonton. We were going to leave about 1 o'clock in the afternoon. Edmonton, for the benefit of the delegates who are not familiar with our Canadian cousins to the north, is the Riviera of Canada. It is 6 degrees

above zero in Canada-in Edmonton. And WC plan to be up there-1 should say I plan to be up there—all day Monday, which is a nonwork day, visiting with the leadership of the new government. Very fortunately for us, Canada has just changed their leadership. They had elections last October, and they are getting ready for their new Legislature, so we will have an opportunity to discuss with them the problems of transferring of government-of transition of government. We'll be able to be up there Tuesday morning and fly back Tuesday afternoon and get back to Great Falls about 4 o'clock, so we can be back in Helena Tuesday evening for our Tuesday evening committee meetings. So we won't waste any time. We'll only be gone that one workday. The round-trip fare is less than $100. It's a—we wish we could go to Hawaii. We wish they had a parliamentary form of government, but they don't. The fare is less than $100, and I would like to invite anybody--any of the delegates--not just Legislative Committee delegates, but any of the delegates, to come up with me to Edmonton to look into their form of government and to compare what I like to call our limited monarchy form of government here in Montana with a parliamentary form of government that they have in Canada, which vests all of the power in the people. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well, Mr. Kelleher. You've had your commercial. (Laughter) Are there other announcements:'

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until 9:30 Thursday, February the 3rd, 1972.

PRESIDENT GRAYBILL: All in favor of adjourning until 9:30 Thursday, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Adjournment at 9:52 a.m.)

February 3, 1972 **Sixteenth Day** **Convention Hall**
9:40 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: Will you please rise, and Delegate Harper will lead us in an invocation.

DELEGATE HARPER: Let us pray. Our Heavenly Father, we really are thankful that we are having this experience, learning together about the issues of our state government, and we pray now that creeping pride of knowing more than others might not catch us unawares. May every hurt and desire, anguish and joy and need of all of our people be ours, and may we be reminded that we really are the people as we meet. And today, help us to be good stewards of our time and energy and their money. Amen.

PRESIDENT GRAYBILL: We will take the roll by voting Aye on the voting machines. Oscar Anderson and Mr. Ward are excused.

CLERK SMITH: Mrs. Bates, Blaylock, Blend, Bowman, Burkhardt, Etchart, Felt.

PRESIDENT GRAYBILL: Very well, will you take the machine vote.

Aasheim Present
Anderson, J. Present
Anderson, 0. Excused
Arbanas Present
Arness Present
Aronow Present
Artz Present
Ask. Present
Babcock Present
Barnard Present
Bates Present
Belcher Present
Berg Present
Berthelson Present
Blaylock Present
Blend Present
Bowman Present
Brazier Present
Brown Present
Bugbee Present
Burkhardt Present
Cain Present
Campbell Present
Cate Present
Champoux Present
Choate.. Present
Conover Present
Cross.. Present
Dahood Present
Davis Present
Delaney Present
Driscoll Present
Drum.. Present
Eck Present
Erdmann Present
Eskildsen Present
Etchart Present
Felt Present
Foster Present
Furlong,, Present
Garlington Present
Graybill Present
Gysler Present
Habedank Present
Hanson, R.S. Present
Hanson, R. Present
Harbaugh Present
Harlow Present
Harper Present
Harrington Present
Heliker Present
Holland. Present
Jacobsen Present
James Present
Johnson Present
Joyce Present
Kamhoot Present
Kelleher Present
Leuthold Present
Loendorf Present
Lorello Present
Mahoney Present
Mansfield Present
Martin Present
McCarvel Present
McDonough Present
McKeon Present
McNeil Present
Melvin Present
Monroe.. Present
Murray Present
Noble Present
Nutting Present
Payne Present
Pemberton Present
Rebal Present
Reichert Present
Robinson Present

Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius.	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Excused
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 98 present, 2 excused. Quorum, Mr. President.

PRESIDENT GRAYBILL: Very well, the journal may so show. All right, Order of Business Number 1, Report of Standing Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Report of Select Committees.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications. Under communications, the President would like to announce, so that it will appear in the journal, that Larry Margolis, the Executive Secretary of the Citizens' Conference on State Legislature, has been with us yesterday and this morning and that last night at 7:30 p.m. in Convention Hall, he addressed the delegates in another of our distinguished speaker series, and I think all of those who were here last night greatly enjoyed his remarks. Now, he's with us in the chamber this morning, and, Larry, I wish you'd stand up so that those who did not get here last night will see you. (Applause) Mr. Margolis is really putting himself out to be with us this morning. He wants to get over to the Russell Museum, and we're going to send him there as soon as we're through here. He's very anxious to see the pictures. Very well, Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK SMITH: "Delegate ProposalNumber 114. A proposal for a new Constitutional section on public sightliness and good order." Introduced by Bugbee and others. Delegate Proposal 114, Mr. President.

PRESIDENT GRAYBILL: Number 114, to Natural Resources.

CLERK SMITH: "Delegate Proposal Number 115. A proposal for a new Constitutional section providing that this Constitution shall not affect present elective offices before 1977." Introduced by Bugbee and Eck. Mr. President, Delegate Proposal Number 115.

PRESIDENT GRAYBILL: Number 115, to General Government.

CLERK SMITH: "Delegate ProposalNumber 116. A proposal amending Article III, Section 3, of the Constitution of the State of Montana, recognizing the people's obligation to preserve their rights and property." Introduced by Ward and others. Mr. President, Delegate Proposal Number 116.

PRESIDENT GRAYBILL: To Bill of Rights Committee.

CLERK SMITH: "Delegate Proposal Number 117. A proposal for a new section to provide for a Department of Agriculture." Introduced by Bates and others. Mr. President, Delegate Proposal Number 117.

PRESIDENT GRAYBILL: Number 117, to Natural Resources and Agriculture.

CLERK SMITH: "Delegate Proposal Number 118. A proposal for a Preamble to the new Constitution." Introduced by Ward and others. Mr. President, Delegate Proposal Number 118.

PRESIDENT GRAYBILL: Number 118, to Bill of Rights.

CLERK SMITH: "Delegate ProposalNumber 119. A proposal for a new Constitutional section providing for the earmarking of growth-of grass conservation, hail insurance and wheat research funds." Introduced by Aasheim and others. Mr. President, Delegate Proposal Number 119.

PRESIDENT GRAYBILL: Number 119, to Revenue and Finance.

CLERK SMITH: "Delegate Proposal Number 120. A proposal amending Article XIX, Section 2, of the Constitution of the State of Montana to permit bingo games by nonprofit organizations." Introduced by Kamhoot and others. Mr. President, Delegate Proposal Number 120.

PRESIDENT GRAYBILL: 120, to General Government.

CLERK SMITH: "Delegate Proposal Number 121. A proposal for a new Constitutional section providing for public utility corporations." Introduced by Romney and others. Mr. President, Delegate Proposal Number 121.

PRESIDENT GRAYBILL: 121, to Public Health.

CLERK SMITH: Mr. President. "Delegate Proposal Number 122. A proposal amending Article V, Section 31, of the Constitution of the State of Montana, deleting the words "or increase" from the section providing for salary increase for elected public officers during their term of office." Introduced by Ask and Rollins. Mr. President, Delegate Proposal Number 122.

PRESIDENT GRAYBILL: 122, to Local Government and to Executive, jointly.

CLERK SMITH: "Delegate Proposal Number 123. A proposal for a new Constitutional section providing for legislative interim committee." Introduced by Felt and others. Mr. President, Delegate Proposal Number 123.

PRESIDENT GRAYBILL: Number 123, to Legislative.

CLERK SMITH: "Delegate Proposal Number 124. A proposal for a new Constitutional section prohibiting lie-detector tests as a condition of employment." Mr. President-introduced by Cate. Delegate Proposal Number 124.

PRESIDENT GRAYBILL: Number 124, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 125. A proposal amending Article III, Section 14, of the Constitution of the State of Montana, providing that environmental amenities not be taken or damaged without just compensation." Introduced by Cate. Mr. President, Delegate Proposal Number 125.

PRESIDENT GRAYBILL: 125, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 126. A proposal for a new Constitutional Article on local government." Introduced by Speer. Mr. President, Delegate Proposal Number 126.

PRESIDENT GRAYBILL: 126, to Local Government.

CLERK SMITH: "Delegate Proposal Number 127. A proposal for a new Constitutional section providing for water rights." Introduced by Davis and others. Mr. President, Delegate Proposal Number 127.

PRESIDENT GRAYBILL: 127, to Natural Resources.

CLERK SMITH: "Delegate Proposal Number 128. A proposal amending Article XI, Section 11, of the Constitution of the State of Montana, providing that 10 members of the Board of Education be appointed by the Governor and 1 student member be selected as provided by law." Mr. President-introduced by Mae Nan Robinson and others. Delegate Proposal Number 128.

PRESIDENT GRAYBILL: 128, to Education.

CLERK SMITH: "Delegate Proposal Number 129. A proposal amending Article V, Section 1, of the Constitution of the State of Montana, providing for recall of elected officials." Introduced by Harlow. Mr. President, Delegate Proposal Number 129.

PRESIDENT GRAYBILL: Number 129, to General Government.

CLERK SMITH: "Delegate Proposal Number 130. A proposal for a new Constitutional section providing for the establishment of public libraries." Introduced by Mae Nan Robinson and McKeon. Mr. President, Delegate Proposal Number 130.

PRESIDENT GRAYBILL: Number 130, to Education.

CLERK SMITH: "Delegate Proposal Number 131. A proposal for a new Constitutional section providing for polling-place voter

registration." Introduced by Bugbee and others. Mr. President, Delegate Proposal Number 131.

PRESIDENT GRAYBILL: 131, to General Government.

CLERK SMITH: "Delegate Proposal Number 132. A proposal for a new Constitutional section providing for environmental rights." Introduced by Campbell and others. Mr. President, Delegate Proposal Number 132.

PRESIDENT GRAYBILL: Number 132, to the Bill of Rights Committee and the Natural Resources Committee, jointly.

CLERK SMITH: "Delegate Proposal Number 133. A proposal amending Article III, Section 6, of the Montana Constitution of the State of Montana to permit an injured person full remedies against all parties who may be liable for his injury, excepting his fellow employees and his immediate employer, provided such immediate employer provides coverage under the workmen's compensation laws of the State of Montana." Introduced by Campbell and others. Mr. President, Delegate Proposal Number 133.

PRESIDENT GRAYBILL: -133, to Bill of Rights and Judiciary, jointly.

CLERK SMITH: "Delegate Proposal Number 134. A proposal repealing Article XII, Sections 15 and 16, and amending Article XII, Section 17, of the Constitution of the State of Montana." Introduced by Arness and Blaylock.

PRESIDENT GRAYBILL: Number 134, to Local Government.

CLERK SMITH: "Delegate Proposal Number 135. A proposal amending Article XVII, Section 1, and repealing Sections 2 and 3 of that Article of the Constitution of the State of Montana, providing for the exchange of public lands." Introduced by Davis.

PRESIDENT GRAYBILL: Number 135, to Natural Resources.

CLERK SMITH: "Delegate Proposal Number 136. A proposal for a new Constitutional Article providing for a parliament." Introduced by Kelleher and others. Delegate Proposal Number 136, Mr. President.

PRESIDENT GRAYBILL: 136, to Legislative and Executive, jointly.

CLERK SMITH: "Delegate Proposal Number 137. A proposal for a new Constitutional section providing that unemployment and industrial accident benefits be applied consistently, without regard to the type of employment." Introduced by McKeon and Harrington. Mr. President, Delegate Proposal Number 137.

PRESIDENT GRAYBILL: Number 137, to Judiciary.

CLERK SMITH: "Delegate Proposal Number 138. A proposal for a new Constitutional section providing for a mandatory minimum wage law." Introduced by McKeon and Harrington. Delegate Proposal Number 138, Mr. President.

PRESIDENT GRAYBILL: Number 138, to Public Health, Welfare, Labor and Industry.

CLERK SMITH: "Delegate Proposal Number 139. A proposal for a new Constitutional section providing that present state institutions may not be removed from their present locations." Introduced by McKeon. Delegate Proposal Number 139, Mr. President.

PRESIDENT GRAYBILL: Number 139, to General Government.

CLERK SMITH: That is all, sir.

PRESIDENT GRAYBILL: All right. Now, the Chair would like to remind the delegates that the schedule which we provided you last week shows the deadline for filing delegate proposals as 5:00 p.m., today; so if you have any last minute ideas, you may get them in through Mrs. Dowling and get them into the clerk's office by 5:00 p.m., today, so they may be processed; and tomorrow morning we'll handle the rest of the delegate proposals. Order of Business Number 5, Final Consideration.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitution.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. None?

CLERK SMITH: None.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Number 10, General Orders.

CLERK SMITH: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 11, Announcements. The announcements shown on the daily schedule, of course, are there. I would like to point out that the meeting at 7:30 tonight of committee chairmen, at which time you're going to discuss the method of preparing your committee proposals, is also intended for your research analyst, so you committee chairmen should bring your research analyst tonight. And Mr. Schiltz will be in charge of that session-Style and Drafting.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, Legislative Committee, at 10:30.

PRESIDENT GRAYBILL: Legislative Committee, at 10:30.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, Style and Drafting, tomorrow morning at 8:30; and the handball committee will meet at 5 o'clock at the committee room at Carroll College. Probably there will be an exhibition, because Chairman Rebal and I have run out of competition. (Laughter)

PRESIDENT GRAYBILL: Is there any rejoinder from Butte on that?

All right, Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, right after this meeting. Also, we would like to invite, tomorrow morning at 8:30, in the Education Committee Room—436—anyone who is interested in hearing a special report on alternate methods of financing public education. And, one other thing, if I may at this point-on the schedule for today, it indicates that we're going to have the House chamber all afternoon; that's not true. As soon as we're through with the joint committee meeting on the county superintendents, we will vacate for the Indian Education, upstairs in 436. Thank you.

PRESIDENT GRAYBILL: Very well.

Mr. Holland.

DELEGATE HOLLAND: Meeting of Judiciary, 10 minutes after adjournment; and also a meeting of the handball committee to put on a "lip-buttoner" session at 5 o'clock.

PRESIDENT GRAYBILL: Very well.

Mrs. Cross.

DELEGATE CROSS: There will he a meeting of the Natural Resources Committee at 10:30. And I think, on behalf of the ladies in the delegation, we'd like to thank the good person who sent us our corsages today.

PRESIDENT GRAYBILL: Well, since you have brought the matter up, Mrs. Cross, Frank Small is the gentleman who should be thanked for providing the flowers for the lady delegates and for those of us on the rostrum, and we want to thank him very much (Applause) Frank is reported to he in the gallery.

Mr. Joyce.

DELEGATE JOYCE: Executive Committee, at 20 minutes after adjournment this morning.

PRESIDENT GRAYBILL: Executive Committee, 20 minutes after adjournment.

Mr. Rygg.

DELEGATE RYGG: Revenue and Finance at 10:30.

PRESIDENT GRAYBILL: Other committee announcements?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, there will he a 5-minute meeting of all delegates in the rear of Convention Hall immediately, on the back benches, for those who are interested in pushing the parliamentary form of government. Thank you. (Laughter)

PRESIDENT GRAYBILL: Very well. Mrs. Eck, did you want to make an announcement about an intern meeting?

DELEGATE ECK: Yes, the interns will meet at 12:15 in Room 431.

PRESIDENT GRAYBILL: Interns, at 12:15 in Room431. Very well. The Chair would like to announce that anyone who has not made their constituent mailing request that wants to-and I'm not urging it-should complete that duty by 5 p.m. today. Thereafter, we will not entertain proposals for constituent mailing. The Chair would also like to announce that Senator Terry Carpenter from the unicameral Legislature of Nebraska will be the guest of the Legislative Committee on Friday, I think we've told you; and at 7:30 p.m. on Friday night, the Legislative Committee will hold a meeting in this chamber, and you're all invited to come and hear Senator Carpenter discuss both unicameralism and any legislative matter that you care to take up with him. Are there other announcements?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I'd like to tell Mr. Kelleher that we've agreed over here that, if he would run Mae Nan Robinson for queen, that he might get some support for his proposal. (Laughter & Applause)

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn [until] Friday, February the 4th, 9:30 a.m., 1972.

PRESIDENT GRAYBILL: The motion of Mr. Eskildsen is that this Convention adjourn until 9:30 a.m. on Friday morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 10:00 a.m.)

February 4, 1972 **Seventeenth Day** **Convention Hall**
9:35 a.m. **Helena, Montana**

VICE-PRESIDENT TOOLE: Mr. Scanlin the invocation, please.

DELEGATE SCANLIN: Using the words of John Greenleaf Whittier, let us pray. "Dear Lord and Father of mankind, forgive our feverish ways; reclothe us in our rightful mind; in purer lives Thy service find; in deeper reverence, praise. Drop Thy still dews of quietness till all our striving cease; take from our souls the strain and stress, and let our ordered lives confess the beauty of Thy peace. Breathe through the heat of our desire, Thy coolness and Thy bond. Let sense be dumb, let flesh retire; speak through the earthquake, wind and fire, oh still, small voice of calm. Amen."

VICE-PRESIDENT TOOLE: The clerk will call the roll, those present voting Aye.

CLERK HANSON: Delegate Davis, Delegate Delaney, Delegate Driscoll, Delegate Drum, Delegate Felt, Delegate Habedank, Delegate Robert S., Hanson, Delegate Harper, Delegate Kelleher.

VICE-PRESIDENT TOOLE: Delegate Heliker, are you present? Delegate Heliker-Kelleher?

CLERK HANSON: Mr. Vice-President, Oscar Anderson, Delegate Lorello and Delegate Foster, excused. Delegate Kelleher?

DELEGATE LORELLO: That's not for today; it's for tomorrow.

CLERK HANSON: Thank you.

VICE-PRESIDENT TOOLE: **Mr.** Swanberg, will you push my button, please.

DELEGATE KELLEHER: Mr. President-Kelleher. Could I please be reported present?

VICE-PRESIDENT TOOLE: Show that Mr. Kelleher is present.
Mr. Harper.

DELEGATE HARPER: Harper now present, and sorry.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Excused
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
c am	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Excused
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen	Present
James	Present
Johnson	Present

Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. Vice-President, 98 delegates present, 2 excused.

VICE-PRESIDENT TOOLE: Reports of Standing Committees.

CLERK HANSON: None, sir.

VICE-PRESIDENT TOOLE: Reports of Select Committees.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Communications.

CLERK HANSON: "February 3, 1972. To: President Leo Graybill, Jr.; Montana Constitutional Convention. From: Chairman Alex Blewett, Montana Constitutional Convention Commission. Subject: Commission report to Convention under Section 21 of the Enabling Act. On the basis of information now available, I, as Chairman of the commission, should now report to the Convention that there will be no funds appropriated to the commission from the general fund of the State of Montana available to the Constitutional Convention."

"February 3, 1972. To: President Leo Graybill, Jr.; Montana Constitutional Convention. From: Chairman Alex Blewett, Montana Constitutional Convention Commission. Subject: Montana Constitutional Convention Commission inventory report to the Montana Constitutional Convention in compliance with the Enabling Act. In compliance with the Enabling Act, the Montana Constitutional Convention Commission herewith advises the Montana Constitutional Convention that the commission is turning over to you the following: (1) Constitutional Convention Commission Reports-Inventory Report Number 1, attached. (2) The commission herewith tenders to the Convention the following files and materials: (a) typewriters, subject to the appropriate credit for the commission, Inventory Report Number 2, attached: (b) office files-Inventory Report Number 3, attached;(c) office supplies-Inventory Report Number 4, attached. (3) Library-Inventory Report Number 5, attached."

"February 3, 1972. Mr. Dale Harris, Executive Director, Montana Constitutional Convention, State Capitol, Helena, Montana 59601. Dear Dale: This letter is to verify the leave of absence which you requested of me orally this morning. I understand that you are exhausted and would like to get some rest and have talked it over with John Toole, and we hereby extend to you a leave of absence from the Convention duties. The leave of absence is indefinite, but we will review the situation on or about February 15th. I will take this matter before the Administration Committee, and I'm sure that they will approve. You have our best wishes for your speedy return. Sincerely, Leo Graybill, Jr.

VICE-PRESIDENT TOOLE: The Chair would like to make some remarks about Mr. Harris. I think everyone in this room is aware of the job he did in preparing for this Convention. In fact, we wouldn't be in the shape we're in were it not now for the efforts of Dale Harris, who worked night and day to make this-to get this Convention off the ground. Unfortunately, he worked himself into a state of exhaustion. He has taken a few days off. We have every reason to believe that he will be back with us. We think his condition is simply a situation where he needs rest and I'm confidently expecting him-within a week or two to see Dale Harris back on the job in this Convention. Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: Mr. Vice-President, "Delegate Proposal Number 140; introduced by Bates. A proposal for a new Legislative Article. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 140, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Proposal Number 140, the Legislative.

CLERK HANSON: "Delegate Proposal Number 141; introduced by Bates. A proposal amending Article V, Section 5, of the Constitution of the State of Montana, providing for legislative salaries. Be it proposed by the Constitutional Convention of the State of Montana." Delegate Proposal Number 141, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 141, to Education.

CLERK HANSON: "Delegate Proposal Number 142; introduced by Toole. A proposal amending Article XI, Section 11, of the Constitution, the State of Montana, providing that a board of public education supervise the public schools and a separate board of regents govern the Montana university system; that the two boards meeting jointly be called the State Board of Education and elect the state Superintendent of Public Instruction; and that the funds of the university system be invested by the Board of Regents. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 142, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 142, to Education.

CLERK HANSON: "Delegate Proposal Number 143; introduced by Took. A proposal for a new Constitutional section combining Sections 1 and 6 of Article XI of the present Constitution. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 143, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 143, to Education.

CLERK HANSON: "Delegate Proposal Number 144; introduced by Loendorf. A proposal for a new Constitutional section providing for a merit system. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 144, Mr. Vice-President.

VICE-PRESIDENTTOOLE: 144, to General Government.

CLERK HANSON: "Delegate Proposal Number 145; introduced by Loendorf. A proposal for a new Constitutional section providing that membership in employees' retirement system is a contractual relationship. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 145, Mr. Vice-President.

VICE-PRESIDENT TOOLE: 145, to Judiciary.

CLERK HANSON: "Delegate Proposal Number 146. A proposal amending Article XI, Section 11, of the Constitution of the State of Montana providing for a 12-member Board of Regents to be appointed by the Governor from nominees selected by a nominating committee. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 146, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 146, to Education.

CLERK HANSON: "Delegate Proposal Number 147; introduced by Cate and others. A proposal for a new Constitutional section providing that delegates to national nominating conventions be chosen at a presidential primary. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 147, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 147, to General Government.

CLERK HANSON: "Delegate Proposal Number 148; introduced by McCarvel and others. A proposal for a new Constitutional section providing for full employment of able-bodied persons. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 148, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 148, to Public Health.

CLERK HANSON: "Delegate Proposal Number 149; introduced by McKeon. A proposal amending Article XX, Section 4, of the Constitution, the State of Montana, providing for a probate court system. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 149.

VICE-PRESIDENT TOOLE: Number 149, to the Judiciary.

CLERK HANSON: "Delegate Proposal Number 150; introduced by Kelleher. A proposal for a new Constitutional section providing for the office of the people's advocate. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 150, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 150, to the Legislative.

CLERK HANSON: "Delegate Proposal Number 151; introduced by Monroe. A proposal for a new Constitutional section providing for the rights of Indians. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 151.

VICE-PRESIDENT TOOLE: Number 151, to the Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 152; introduced by McKeon. A proposal to repeal Article XIV of the Constitution, the State of Montana. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 152, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 152, to General Government.

CLERK HANSON: "Delegate Proposal Number 153; introduced by Holland. A proposal for a new Constitutional section in the Bill of Rights to provide for free care at state institutions. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 153, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 153, to the Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 155; introduced by Wilson. A proposal for a new Constitutional section providing for a probate administrator in each county. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 155, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 155, to the Judiciary.

CLERK HANSON: "Delegate Proposal Number 156; introduced by Melvin. A proposal amending Article XVI, Section 5, of the Constitution, State of Montana, providing for election of sheriffs. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 156, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 156, to Local Government.

CLERK HANSON: "Delegate Proposal Number 157; introduced by Johnson. A proposal for a new Constitutional section providing that the state shall not engage in competitive businesses so as to create a monopoly and must cease the liquor business by July 1, 1975. Be it proposed by the Constitutional Convention, State of Montana." Delegate Proposal Number 157, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 157, to General Government.

CLERK HANSON: "Delegate Proposal Number 158; introduced by Romney. A proposal for a new Constitutional section providing for a conference committee report rule. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 158, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 158, to Legislative.

CLERK HANSON: "Delegate Proposal

Number 159; introduced by Kelleher. A proposal for a new Constitutional section providing that the Supreme Court cannot declare certain acts of parliament unconstitutional. Beitproposed by the Constitutional Convention of the State of Montana." Delegate Proposal Number 159, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 159, Judiciary.

CLERK HANSON: "Delegate Proposal Number 160; introduced by Monroe. A proposal for a new Constitutional section providing for the rights of employees. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 160, Mr. Vice-President.

VICE-PRESIDENT TOOLE: Number 160, to the Bill of Rights.

CLERK HANSON: "Delegate Proposal Number 161; introduced by Felt. A proposal for a new Constitutional Article on taxation and finance. Be it proposed by the Constitutional Convention, the State of Montana." Delegate Proposal Number 161.

VICE-PRESIDENT TOOLE: Number 161, to Revenue and Finance.

CLERK SMITH: "Delegate Proposal Number 162. A proposal for a new Constitutional Article on the environment." Introduced by Cross and others. Delegate Proposal Number 162.

VICE-PRESIDENT TOOLE: 162, to Natural Resources.

CLERK SMITH: "Delegate Proposal Number 163. A proposal for a new Constitutional section providing for the rights of persons committed to state facilities." Introduced by Sullivan and others. Delegate Proposal Number 163.

VICE-PRESIDENT TOOLE: Number 163, to the Judiciary.

CLERK SMITH: "Delegate ProposalNumber 164. A proposal amending Article XI, Section 8, of the Constitution of the State of Montana to provide that the section may not apply to federal funds for nonpublic education." Introduced by Harbaugh. Delegate Proposal Number 164.

VICE-PRESIDENT TOOLE: Number 164, to Education.

CLERK SMITH: "Delegate Proposal Number 165. A proposal amending Article III, Sections 4 and 27, and repealing Article XI, Section 8, of the Constitution of the State of Montana, providing for equal protection of the law and prohibiting support of religious activities by tax levy or property grant." Introduced by Loendorf. Delegate Proposal Number 165.

VICE-PRESIDENT TOOLE: Number 165, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 166. A proposal for a new Constitutional section providing for local legislative powers for certain counties." Introduced by Payne. Delegate Proposal Number 166.

VICE-PRESIDENT TOOLE: Number 166, to Local Government.

CLERK SMITH: "Delegate Proposal Number 167. A proposal for a new Constitutional section providing for religious freedom and repealing Article III, Section 4, of the Constitution of the State of Montana." Introduced by Monroe and others. Delegate Proposal Number 167.

VICE-PRESIDENT TOOLE: 167, to Bill of Rights.

CLERK SMITH: "Delegate Proposal Number 168. A proposal for a new Constitutional section providing for the rights of convicted felons." Introduced by Kelleher. Delegate Proposal Number 168.

VICE-PRESIDENT TOOLE: Number 168, to Judiciary.

CLERK SMITH: "Delegate ProposalNumber 169. A proposal for a new Constitutional section guaranteeing access to the courts for the redress of a wrong." Introduced by Kelleher. Delegate Proposal Number 169.

VICE-PRESIDENT TOOLE: Number 169, to Judiciary.

CLERK SMITH: "Delegate ProposalNumber 170. A proposal for a new Constitutional Article providing for an executive department." Introduced by Babcock and Wilson. Delegate Proposal Number 170.

VICE-PRESIDENT TOOLE: Number 170, to Executive.

CLERK SMITH: "Delegate Proposal Number 171. A proposal for a new Constitutional section providing for a board of regents and repealing Article XI, Section 11." Introduced by Burkhardt. Delegate Proposal Number 171.

VICE-PRESIDENT TOOLE: Number 171, to Education.

CLERK SMITH: "Delegate Proposal Number 172. A proposal for a new Constitutional section providing for the office of ombudsman." Introduced by Champoux and others. Delegate Proposal Number 172.

VICE-PRESIDENT TOOLE: Number 172, to General Government.

CLERK SMITH: "Delegate Proposal Number 173. A proposal amending Article XII, Section 2, of the Constitution of the State of Montana, providing that totally disabled veterans may be exempt from taxation." Introduced by Loendorf and others. Delegate Proposal Number 173.

VICE-PRESIDENT TOOLE: Number **173,** to Revenue and Finance.

CLERK SMITH: "Delegate Proposal Number 174. A proposal amending Article III, Section 27, of the Constitution of the State of Montana relating to the rights of the people of Montana." Introduced by Habedank. Delegate Proposal Number 174.

VICE-PRESIDENT TOOLE: 174, to Judiciary.

CLERK SMITH: "Delegate Proposal Number 175. A proposal for a new Constitutional section concerning public school lands and repealing Article XVII, Sections 1, 2 and 3, and Article XI, Section 4, of the Constitution of the State of Montana." Delegate Proposal Number 175.

VICE-PRESIDENT TOOLE: Number 175, to Education.

CLERK SMITH: "Delegate Proposal Number 176. A proposal for a new Constitutional section providing that eligible citizens must vote or be guilty of a crime." Introduced by Kelleher. (Laughter) Delegate Proposal Number 176.

VICE-PRESIDENT TOOLE: Number 176, to Judiciary.

CLERK SMITH: "Delegate Proposal Number 177. A proposal for a new Constitutional section providing for a labor-management conciliation court." Introduced by McCarvel and others. Delegate Proposal Number 177.

VICE-PRESIDENT TOOLE: Number 177, to Public Health.

CLERK SMITH: "Delegate Proposal Number 178. A proposal for a new Constitutional section concerning the elective process." Introduced by McKeon. Delegate Proposal Number 178.

VICE-PRESIDENT TOOLE: Number 178. to General Government.

CLERK SMITH: That is all, sir.

VICE-PRESIDENT TOOLE: Order of Business Number 5, Final Consideration of Proposals. We go back to Order of Business Number 3—we're on Order of Business Number 3.

Delegate Graybill.

DELEGATE GRAYBILL: Mr. President, there may be some misunderstanding about Delegate Proposal 141. You had previously told me that that was to be assigned to Legislative. I think you may have read it Education. In any event, the journal should show it's to Legislative. So, if there is an error in the journal-or in the record, would we please correct that.

VICE-PRESIDENT TOOLE: Yes

DELEGATE GRAYBILL: The typed list you have has an error in it—

VICE-PRESIDENT TOOLE: I see.

DELEGATE GRAYBILL: -Mr. President. That's fine.

VICE-PRESIDENT TOOLE: Order of Business Number 5. Final Consideration of Proposals.

CLERK SMITH: None, sir

VICE-PRESIDENT TOOLE: Order of Business Number 6, Adoption of Proposed Constitution and Ballot.

CLERK SMITH: None.

VICE-PRESIDENT TOOLE: Order of Business Number 7, Motions and Resolutions. At

this point, the Chair will recognize Delegate Heliker.

DELEGATE HELIKER: Mr. President, I had a request to make a motion with regard to Proposal Number 91. I haven't had a chance to talk to Leo about that. Leo, I believe that was already assigned to the Education Committee. I would like to raise a question concerning the assignment of Proposal Number 93, which was introduced by Delegate Siderius and relates to—and was referred to the Public Health Committee and the Bill of Rights Committee jointly. We heard Mr. Siderius yesterday; it develops that the intent of his proposal relates to agriculture and such matters as the national farmers' organization, and therefore I move that it be reassigned to the Natural Resources and Agriculture Committee, jointly with the Bill of Rights Committee.

VICE-PRESIDENT TOOLE: The sense of your motion is that Proposal Number 93 be moved to Resources and Agriculture?

DELEGATE HELIKER: Jointly with Bill of Rights, yes.

VICE-PRESIDENT TOOLE: What's that? And Bill of Rights. Do the delegates all understand the motion? (No response) Is there any discussion? (No response) If not, all delegates in favor of the motion proposed by Delegate Heliker, signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENTTOOLE: Motion carried.

DELEGATE HELIKER: Mr. President, I'd also like to raise a question with respect to Delegate Proposal 144, just read, relating to a merit system, which you assigned to General Government. We had previously had assigned to Public Health, Proposal Number 71, which proposes a merit system, and we have held hearings yesterday and have several witnesses scheduled today. In the interest of avoiding duplication, I would suggest that Number 144 also be assigned to our committee; and I so move.

VICE-PRESIDENT TOOLE: Is there any discussion on the motion of Mr. Heliker to transfer that proposal? (No response) If not, all in favor--all delegates in favor of Mr. Heliker's motion, signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENT TOOLE: Motion carried.

Mr. Studer.

DELEGATE STUDER: Mr. President, there's two delegates who have requested to our committee to have their names removed from my bill, Number 78. I wish to make the following motion: "I move that Delegates Mansfield and Wagner be authorized to withdraw their names from Delegate Proposal Number 78 and that the proceedings of this Convention reflect these changes." Mr. President, I'd like to talk on this for about 4 minutes.

VICE-PRESIDENT TOOLE: You may do so, Mr. Studer.

DELEGATE STUDER: Mr. President, to the two delegates who put their names on my Proposal Number 78 and now want them removed, I wish to say that I had no thought of causing you any embarrassment. I sincerely apologize to you for having done so. Believe me, I'm sorry. To the Convention, I wish to say that I did not twist any arms to get these signatures. I think the time has come to think of the many high-minded, idealistic thoughts that were put out by most of the candidates who ran for and are now a part of this Convention. Our mining people, railroad corporations, logging interests, and so forth, were strong enough to protect their interests in the 1889 Convention. Our reason for this Constitutional Convention was to rewrite it and give the Legislature more power to govern. Now we are in the position of saddling our future generations with an organization so strong and so ruthless as to put the 1889 powers to shame. In 1926 and 27, closer to the time of that Constitution than to this one, I was lucky enough to be working in Butte. I worked as a mucker at the Mountain View for less than $5 a day. My wife and I lived on this as well as we could. No one was around to tell us that cornmeal mush and milk for supper might destroy our mental health and cause a mental depression that we might never overcome. At that time I was a gradu-

ate from the University of Minnesota with a mining engineer's degree. This story is to illustrate how tough it was, in those days, to work under the so-called oppressive labor laws of the time. I enjoyed my work and my pay. We are working now under a much more restrictive labor law, administered by a very ruthless power, as is demonstrated in the case of the withdrawal of these two signatures that I have mentioned. These people were submitted to pressure to remove their names. If any delegates here are sincerely against my Proposal 78 for good reasons of their own, then you probably could vote against it even though it will be an alternate proposal and all I want is to get it to the people to decide. However, if any of you are afraid that, by voting for this Number 78, that you will be bringing down the wrath of this all-powerful group on yourselves, then this is one of the best reasons I know of to make a stand to curb this ruthless power by giving it to the people to vote upon. Nebraska had one hard time trying to get a similar law to the voters. When it was finally done, it passed better than two to one. If we want to saddle our future generations with a power over them that all hell or heaven won't remove, just acquiesce to the pressures of this organization. It takes an eagle to battle a storm, but a sparrow can go with the wind. I'm looking for a few eagles. Thank you, Mr. President. (Applause)

DELEGATE MANSFIELD: Mr. President.

VICE-PRESIDENT TOOLE: Mr. Studer, I believe you made a motion that two names be withdrawn from your proposal?

DELEGATE STUDER: That's right.

VICE-PRESIDENT TOOLE: Is there any further discussion on Mr. Studer's motion?

DELEGATE MANSFIELD: Mr. President, I am Delegate Mansfield, who signed Proposal Number 78, and I asked to have my name removed. Since it is the woman's prerogative to change her mind, I wish to have my name remain on Number 78 Delegate Proposal. Thank you. (Laughter & Applause)

VICE-PRESIDENT TOOLE: Mrs. Mansfield, is that in the form of a motion that you want your name to remain on the proposal?

DELEGATE MANSFIELD: Would it be amendment, sir, or-?

VICE-PRESIDENT TOOLE: Is there any further discussion on Mr. Studer's motion?

DELEGATE MANSFIELD: It's what, sir?

VICE-PRESIDENT TOOLE: You've already spoken once, Mrs. Mansfield.

Mr. Wagner.

DELEGATE WAGNER: Mr. President, I'd like my name removed. Thank you.

VICE-PRESIDENT TOOLE: Any further discussion?

(No response)

VICE-PRESIDENT TOOLE: Mrs. Mansfield-

DELEGATE MANSFIELD: Yes?

VICE-PRESIDENT TOOLE: —you will have to make a motion to amend-to leave your name on.

Mr. Murray.

DELEGATE MURRAY: As a substitute motion for Mr. Studer's, I move that Delegate Wagner's name be removed from the delegate proposal under consideration.

VICE-PRESIDENT TOOLE: Is there any discussion on Mr. Murray's motion? (No response) All right, the Chair-then we will take a voice vote on Mr. Murray's motion. All in favor of the motion of Mr. Murray, signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENT TOOLE: Motion's carried. Order of Business Number 8, Unfinished Business. The Chair at this time will call on Delegate Graybill.

DELEGATE GRAYBILL: Mr. President, members of the Convention. The rules require that the President present a budget to the Convention, which we did on the 21st of January, and the rules also require that this budget be reviewed with the Convention every two weeks. We've had placed before you on your desks a sheet called "Constitutional Convention Budget", dated February 4, 1972. I wish you'd all take that and refer to it with

me. All right, the first column, of course, describes the categories of the budget and the first two numerical columns describe the budget, as amended. Notice it says, "budget as amended". Now, the original budget was 504,000 and some-odd dollars and the budget has been amended downward to $499,281, and the budget subcommittee of the Administration Committee has agreed with me that the changes I am about to describe to you should be made to accomplish that amendment. First of all, because of the fact that we had originally anticipated some money from the commission, we allowed our budget categories to creep up so that we actually overbudgeted from the money the Legislature appropriated us. We did this in anticipation that there would be some moneys from the commission. At that time we thought there would be plenty and that we'd actually have an excess. As it now turns out, as you're aware from Mr. Blewett's communication this morning, there is no money from the commission; and so the budget had to be adjusted downward. In doing this, we cut money out of three major categories. Under contracted services, right in the middle of the page, we cut printing to 37,861. Printing had been 40,861, so in other words, we cut 3,000 out of printing. We did this because, although the printing expenses for the first 3 weeks are heavy, they include a deposit of $5,000, so that actually we think that we are within the budget on printing and we feel that that is a-we're going to be able to do that. Secondly, we had budgeted $10,000 originally for court reporter. We'd raised that to $12,000 when we thought we had the extra money. We cut the court reporter back to $10,000, so there's $2,000 out of that budget. Whether or not we'll be able to accomplish that remains to be seen and depends largely on the debates. Third, under special expense, the second category is "consultants"; and originally we had budgeted consultants at $5,000; but, again, we had raised that to 7,000; and in the budget we presented to you on the 21st, it was $7,500. We took 2,000 out of that, and put it back to 5,500. We did that because, although we have spent some money on some of these speakers and although there are some requests for consultants, it does not now appear that we're in any trouble in that category. Now, that amounts to—3, 4, 5, 6, $7,000 that we took out of the budget as presented before. On the other hand, up under the third category, "employee benefits, PERS and FICA" et cetera, it became apparent, after we all got here and signed up, that many more of you, and especially many more of the staff than we had anticipated, would sign up for public employees' retirement, and you oversubscribed that little category to the point that it was seriously behind in the budget, so we have added $1,233 to that budget raising it so that we are now about on schedule with our employee benefits. Now, when you subtract the 1,233 from the 7,000, you'll get a figure of $5,767, and that's the amount we have reduced the total budget. That's the amount of the amendment, and it reaches the 499,281, which is the legislatively appropriated sum. Obviously, we adjusted it up there in employee benefits. We could have put a few more—a few dollars less there. So, that's an explanation of the budget, as amended. The next column shows expenses to date. The expenses for salaries, for wages, and now since we've added the money to the budget for employee benefits, are all right on the button mathematically, and there's no overage or underage for a 9-week session. In stationery and supplies, as is obvious there, we have spent most of-we've certainly spent more than half of the money, but on the other hand, these are largely nonrecurring items. For example, stationery-the $1,100 there-we all have plenty of stationery, and in fact, we're not going to have to buy any more stationery. We've so far had no flat printing, which is extra printing; and our miscellaneous expenses there are as high as they are largely because, as it turned out, some of—they—we assumed the office supplies the commission had and a few things like that; but I think these office supplies will carry us largely through the Convention; and so I don't think that category is in any trouble. In communications, the figure on postage is an even number, not because we have expended an even number of stamps, but because we buy postage-meter money from the post office, and we bought a thousand dollars' worth, and so we've accrued it. I should explain that this whole column is on an accrual basis, and actually it says expenses to date-we have actually accrued through this week-these are the expenses we anticipate through this week, including your salaries and all the expenses. On telephone, I should make an explanation, since this may jump around. The telephone bill is, to put it mildly, fouled up; and that's because there's so much in-and-out and change and there was the change in the December session and then there were changes in the system-that was taken out, then it was put back in. Then the system to the rostrum was put in. And the telephone company asked us if we would be good enough to wait until Monday, when they got a

brand-new bill from Denver, before we tried to adjust this; and the 625 is a December bill, which is unpaid. However, we put it in there to accrue it. We don't actually know what the telephone will be, but we'll know by the next budget period. Delegates' travel there's no problem on. Contracted services-I've already explained that although we have spent 14,000 in printing of our 37,000, that, in fact, 5,000 of that is a deposit and a good deal of that is prepaid paper. So, we're not in bad shape unless the committee reports are a lot longer than we think they're going to be. The Xerox and the equipment rental all seem to be in fairly good shape. The court reporter item does include an item of $680 for the court reporter at the 3-day December session, which was negotiated and settled during the week with the lady that took the testimony at that time. Under special expense, the per diem is automatic and is on schedule. The consultants, as I said, are certainly not overdrawn yet. This represents some expense money for a new staff member, Gardner Cromwell, who is going to be helping Style and Drafting. The university-that is, at Missoula—the university at Missoula is lending us Mr. Cromwell from now on, but we must pay his per diem only, not his salary. The other money in that category was accrued for the purpose of paying a round-trip air ticket for the speaker that was supposed to have spoken tonight and the one we had the other night; and these are perhaps slightly inexact, but I think they're plenty big. Convention expense is a new category-commission expense is a new category. As you're all aware from the papers, the commission was rudely awakened and found it didn't have any extra money. And there are some bills unpaid for books and there are some bills which we actually have paid for books; and this amount is an amount that was discussed between Mr. Blewett and his committee and Mr. Toole and myself yesterday; and these books are books that you people all got, rather than library books; and we think maybe they were their expense but we, in fact, have paid them. And I guess all we really have is an $852 credit on our budget for that amount, but it simply had to be handled that way. On public information, we have not adjusted the first item, MSU film. However, the Public Information Committee has met many times this week, and it does appear that, depending on what we do tomorrow, it's unlikely that that film will proceed as planned. However, some of that money may be spent for other forms of film presentation. The problem is that, if we have an early submission to the voters, it's impossible to produce the film that was originally anticipated. So that budget item will probably be changed before the next biweekly report. As far as the other public information expenses are concerned, they only represent a few minor office supplies and things that became necessary. You will note that we have, so far, maintained the integrity of our $40,000 contingent fund, and we made those other adjustments in other places than the contingent fund. I'm not willing to gamble yet on what you people are going to do when it comes to debate; and after we've heard you for a few days, we might be able to know better whether we have properly planned there. So that shows you that we've now spent a 160,000—or we will have accrued by tomorrow night, a 160,000; and the next column shows what's left, then, of the accounts; and the last column shows the balance, 338,000. At this time, I would like to merely submit this budget unless someone cares to debate it; and if we don't debate it, let's submit it and put it on the journal. And, of course, we'll make another report two weeks from now.

VICE-PRESIDENT TOOLE: Is there any discussion on the budget?

Mr. Simon.

DELEGATE SIMON: Mr. Vice-President, may I address my remarks to our President, just a second?

VICE-PRESIDENT TOOLE: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yield.

DELEGATE SIMON: I believe, Mr. President, that you would want to bring out the fact that we talked about the other day, because we have some mathematicians with us, that the amounts of the 3 weeks against the 9 weeks, or your 36,180—you're 26—. If you'd take twice that, you'd get 72,000, and I'm sure you'd want-you've missed explaining that, because it has a significant-

DELEGATE GRAYBILL: I remember your question. Are you talking about up in the salary, wage—

DELEGATE SIMON: Yes, if you take two times 76 [36] you get 72. I might explain what—myself what I'm trying to get at. This includes the 3 days—

DELEGATE GRAYBILL: Right.

DELEGATE SIMON: -that we were here on November 29th and—

DELEGATE GRAYBILL: Right.

DELEGATE SIMON: -December 1 and 2—

DELEGATE GRAYBILL: Right.

DELEGATE SIMON: -so that we are on target, and it would make an exact on-target percentage if these days were taken out; and these will not be recurring, and I thought you'd want to—

DELEGATE GRAYBILL: Right. If you divide a 179,000 which is the total of the first three categories, by three-which is a third of 9 weeks—you won't come up with a 111. We're not that wrong. What happened is, there's 3 more days of December that are already accrued, too; and they're in there. And if you play around with that, you come out pretty close. Thank you, Mr. Studer, you're correct.

VICE-PRESIDENT TOOLE: Are there any further questions or discussions about the budget'?

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I direct a question to the President?

VICE-PRESIDENT TOOLE: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: I'll yield to Mr. Romney.

DELEGATE ROMNEY: As a collateral matter, I think it would be a good idea to have the report of the commission, at least the financial data therein, spread upon paper and given to each delegate. Is that possible? Or is that contemplated?

DELEGATE GRAYBILL: Mr. President.

VICE-PRESIDENT TOOLE: Yes.

DELEGATE GRAYBILL: First of all, may I explain that there are two "S's" from Billings and you're Mr. Simon and I'm not-I'm just a little muddleheaded. **Excuse me.** I may or may not agree with Mr. Studer. (Laughter) Mr. Romney, Mr. Toole and I have worked at least two days this week trying to work this thing out with the commission. One of the difficulties is that-and I think perhaps we should add this-the fact that the commission ended up with a deficit position bothered Dale Harris greatly, and it was not easy to discuss the matter with him; and it is not perfectly clear exactly where the commission books stand, but the point is, as far as Mr. Toole and I are concerned, we are trying not to takeresponsibility nor make any determinations concerning the commission's budget. Now, I did get Mr. Blewett to put in the memorandum that you heard read this morning, which establishes the fact thatwe're not going to get any money. Now, I've read his press release and know that they are about $14,000 in the red; but their lifetime is not over, since the commission lives as long as the Convention; and I don't think they're prepared to make a detailed financial presentation-at least they haven't given us one, and I think it would be presumptuous of us to try and say what their deficit is or what it amounts to. Now, perhaps the commission will do that eventually, but Mr. Toole and I have scrupulously tried to distinguish ourselves as a Convention from themselves as a commission, because we do not want the public to confuse their budget position with ours; and that's the purpose of both Mr. Blewett's and our press releases. So that's why we haven't attempted to run into the journal here a clear-cut explanation of their financial affairs. Now, I don't know if that's satisfactory to you, but we are definitely trying to distinguish the two rather than mix the two.

DELEGATE ROMNEY: That's satisfactory to me at the present; but I think at the appropriate time, the fiscal data should be available to delegates for their records.

VICE-PRESIDENT TOOLE: Is there any further discussion on this matter?

Mr. Mahoney.

DELEGATE MAHONEY: I would very much object to this Convention's saying one thing about the Constitutional Revision Commission. How they expended their money is their business. We were not appointed under any consideration to be an investigatory body of a former commission. I would like to see this dropped now-as far as the commission part of this one, as far as this Convention is concerned, Mr. President.

VICE-PRESIDENT TOOLE: Is there any further discussion or questions on the budget?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Vice-President, I'd just move for the adoption of the budget.

VICE-PRESIDENT TOOLE: You've heard the motion that the budget be adopted and entered in the journal. Is there any discussion on that motion? (No response) If not, all in favor of Mr. Eskildsen's motion, signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENT TOOLE: The motion's carried, and the budget will be entered in the journal.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I don't like to be critical of facts, but there are four "B's" in many Montana cities; there are four "S's" from District 8, not two. (Laughter)

VICE-PRESIDENT TOOLE: The Chair takes note of that, Mr. Scanlin.

Mr. Graybill.

DELEGATE GRAYBILL: Mr. President, that only shows the depth of my confusion. (Laughter)

VICE-PRESIDENT TOOLE: Mr. Harp%-.

DELEGATE HARPER: Maybe I just don't hear plainly, but is it the letter "S" he's using?

VICE-PRESIDENT TOOLE: I'm not precisely sure, Mr. Harper. (Laughter)

DELEGATE HARPER: Well, I won't push that. (Laughter) If you'll remember what he said-from Billings-I would agree with him, either way. (Laughter)

VICE-PRESIDENT TOOLE: Order-. what's that? Yeah. Order of Business Number 9, Special Order of the Day.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Order of Business Number 10, General Orders of the Day.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: John, I have an announcement there.

CLERK HANSON: Under 9?

VICE-PRESIDENT TOOLE: No, it's not under General Orders, but I'm going to make it anyway. Fellow delegates, we have with us today Miss Elaine Koyama from Hardin, Montana, who is the Governor of Girls' State; and we're very pleased to have her with us, and I know she's in the room-I'm not sure where she is, but I wish she would stand and let us see her so that we can recognize her and give her this welcome.

(Applause)

(Miss Koyama stood to receive the applause of the delegates)

VICE-PRESIDENT TOOLE: Mr. Mahoney.

DELEGATE MAHONEY: I feel this is quite an honor, and it comes very close to home. I might state that the delegate from Lewis and Clark, District Number 12, Mr. Harper, has the honor of being the proud father of the queen of Montana. Now, I happen to be-that my daughter and Elaine Koyama's brother are married, and so I have the honor of being--escorting her around this Capitol Building today, and I want you understood and I feel very proud of this. Here's a family that was interned during World War II, both American citizens. They have eight children, and all eight of them have gone to Boys' State or Girls' State. Thank you. (Applause)

VICE-PRESIDENT TOOLE: Thank you, Mr. Mahoney. Order of Business 11, Committee Announcements and Notices. The Chair wishes, at this time, to announce to you that Senator Terry Carpenter of Nebraska, who was to talk to us on the Legislature, has cancelled his trip here because of illness.

The Chair will recognize Mrs. Eck.

DELEGATE ECK: There will be a meeting of the Administrative Committee on adjournment—

VICE-PRESIDENT TOOLE: In—

DELEGATE ECK: -in 431.

VICE-PRESIDENT TOOLE: -431. I think we have some confusion there. The committee chairmen are meeting in 431. I think, Mrs. Eck,

we're meeting in the Rules Committee meeting room, right here. Committee chairmen are meeting in 431 at 11 o'clock-committeechairmen at 11 o'clock in 431.

Mr. Holland.

DELEGATE HOLLAND: (Inaudible) Judiciary, 10 minutes after adjournment.

VICE-PRESIDENT TOOLE: Mrs. Warden.

DELEGATE WARDEN: Public Information meeting, 10 minutes after adjournment-in 433 unless we're in conflict with some other group, and then we can meet in the Public Information office.

VICE-PRESIDENT TOOLE: Mr. Martin.

DELEGATE MARTIN: I'm wondering, since we have a distinguished Governor of Girls' State, if perhaps we shouldn't give her the opportunity to say a few words to us.

VICE-PRESIDENT TOOLE: I'd be very delighted to have her do so. If you'll just let me finish these committee announcements, I will call on her to do so.

Mr. Joyce.

DELEGATE JOYCE: A correction, for the members of the Executive Committee. We will not meet at 2:00 this afternoon, but rather, we will meet at 2:30 in the committee room.

VICE-PRESIDENT TOOLE: Mr. Heliker.

DELEGATE HELIKER: To fill in the unexplained blank opposite Public Health in the schedule, previously announced hearings today begin at 1:00 p.m. and cover all labor matters, including the merit system-to be held in 428-A. There will be a meeting of the committee immediately after adjournment if there's any time between that time and 11 o'clock, when I have to be at the chairmen's meeting.

VICE-PRESIDENT TOOLE: Mr. Champoux.

DELEGATE CHAMPOUX: Correction on the Convention schedule. Instead of our meeting at 1:30 this afternoon in 436, we're going to meet in Convention Hall. Thank you, sir.

VICE-PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. Vice-President. Meeting of Rules, at 8:30 in the morning; and I'd like to announce to the delegates that the memorandum which I prepared to the President and the Convention officers regarding the June 6th primary date and the recess matter will be distributed to the desks today.

VICE-PRESIDENT TOOLE: Mrs. Blend.

DELEGATE BLEND: Local Government members, please note there will be a meeting 15 minutes after adjournment this morning.

VICE-PRESIDENT TOOLE: Are there further committee announcements?

Mr. Etchart.

DELEGATE ETCHART: General Government will meet at 1:30 this afternoon.

VICE-PRESIDENT TOOLE: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, the Bill of Rights Committee will meet in the Bill of Rights committee room—331—at 1:30 to hear more testimony on Proposal Number 45.

VICE-PRESIDENT TOOLE: Now, Miss Koyama.

UNIDENTIFIED DELEGATE: Kelleher.

VICE-PRESIDENT TOOLE: I beg pardon, we have one more.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. President, I would like to point out that one of the reasons why this Convention is so well run is that-not only that it is unicameral, but that it is organized like a parliament. Thank you, Mr. President. (Laughter)

VICE-PRESIDENT TOOLE: Miss Koyama, we would be very delighted to have you address a few words to the Convention, if you would care to do so. (Applause)

MISS KOYAMA: The last time I was up here was at Girls' State and I was looking at a mass of about a hundred and fifty girls; and this is quite a change, because now I'm looking at the people

who are going to form our state over again; and I must say it is an honor to be here with Mr. Mahoney because, even though he isn't my father-in-law, I feel as though he is like a father to me. And today, I was thinking, because I'm skipping out of a day of school (Laughter)-and it's sort of fun— but I think I'm learning more here today than I could in a whole month of school, because this is the real thing; and it's sort of exciting to be here. I must say, I've been treated royally; and I don't know how royally I feel. Girls' State was about 6 months ago, or more, but it's still hanging right in there and it's exciting and thrilling to be called a Governor here and to be treated as I am from all of you, and I'd like to thank you very much for all that you've given to me today in just the few hours that I've been here, and I hope to be able to go into some of your committees and look around and see what's going on. And thank you very much.

(Applause)

VICE-PRESIDENT TOOLE: Thank you, Miss Koyama. We're delighted to have you here. I believe that concludes committee announcements. I'll call on Mr. Eskildsen.

Mr. Blaylock.

DELEGATE BLAYLOCK: I believe Mr. James had a—

VICE-PRESIDENT TOOLE: I have Mr. James in mind. I'm going to call on Mr. Eskildsen first.

DELEGATE ESKILDSEN: Mr. Vice-President, I move that we stand adjourned until February the 5th, 9:30 a.m., 1972.

VICE-PRESIDENT TOOLE: You've heard the motion that we adjourn until tomorrow at 9:30. Before we vote on that motion, I would like to call on Delegate James, who has some remarks to make with respect to I'm not sure what.

Delegate James.

DELEGATE JAMES: Mr. Vice-President, this may—

VICE-PRESIDENT TOOLE: Just a minute, Mr. James. I'm advised that we must pass the motion for adjournment before you commence your speech. So, all in favor of the adjournment motion as stated by Mr. Eskildsen, signify by saying Aye.

DELEGATES: Aye.

(Convention adjourned at 10:30 a.m.)

February 5, 1972 Eighteenth Day Convention Hall
9:40 a.m. Helena, Montana

PRESIDENT GRAYBILL: Convention will come to order. Delegate Roeder will lead us in an invocation this morning. Shall we rise.

DELEGATE ROEDER: Let us invoke Providential assistance so that our country and state may be blessed with honorable industry, sound learning and pure manners. Let us ask that we be saved from violence, discord and confusion and from pride and arrogancy. Let us beseech that those who exercise the authority of government may be imbued with the spirit of wisdom that there may be justice and peace. In the time of prosperity, let our hearts be filled with thankfulness, and in a day of trouble, let not our trust fail. May this body be guided and blessed to the end that it ordains for our governments only such things as are conducive to the welfare of the people. Amen.

PRESIDENT GRAYBILL: We'll take the roll call today by voting Aye on the voting machines, please. Mrs. Bugbee is excused temporarily. She'll be back. Right. Just don't call her absent.

CLERK HANSON: Delegate Aasheim, Delegate Cate, Delegate James, Delegate Romney, Delegate Swanberg. Mr. President, Delegate Oscar Anderson, Delegate Dahood, Delegate Foster, Delegate Lore110 excused.

PRESIDENT GRAYBILL: Very well. Would you read once more the others that are not here? And see if we can find them.

CLERK HANSON: Delegate Swanberg, Delegate Romney.

PRESIDENT GRAYBILL: There comes Mr. Romney.

CLERK HANSON: Delegate Swanberg.

PRESIDENT GRAYBILL: Very well. Will you take the machine vote?

CLERK HANSON: Mr. President, 92 Senators-or delegates present, 4 excused and 3 absent.

PRESIDENT GRAYBILL: Very well. The journal should show Mr. Romney present. He came in and was not recorded.

CLERK HANSON: Mr. Romney present.

PRESIDENT GRAYBILL: Mrs. Bugbee is just temporarily absent from the chamber and should not be shown as absent. So, that makes 6. And Mr. Swanberg we haven't found yet. Very well. The journal should show 95 present, 1 absent and 4 excused.

(Official recorded roll call)

Aasheim	Present
Anderson, J.	Present
Anderson, O	Excused
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Excused
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Excused
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R. S.	Present

Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland,,	Present
Jacobsen.	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Excused
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray..	Present
Noble	Present
Nutting,	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg.	Absent
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

PRESIDENT GRAYBILL: Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration of Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

The Chair will recognize Mr. Etchart.

DELEGATE ETCHART: Mr. President, I move that Delegate Proposal Number 152 be moved from the Committee on General Government to the Executive Committee. This proposal properly belongs in the executive article and was in our committee by mistake.

PRESIDENT GRAYBILL: Very well. The motion is to move Delegate Proposal 152 from General Government to Executive. Is there any discussion?

(No response)

PRESIDENT GRAYBILL: All in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

CLERK HANSON: (Reading) "Montana Constitutional Convention Resolution Number 10. A Resolution to provide the type and date of the election for ratification or rejection by the electors. Section 1. The revision of, alteration of, or the amendments to the Constitution adopted by the Convention shall be submitted to the electors of this state for ratification or rejection at a special election to be held on June 6th, 1972, in conjunction with the primary election to be held on that day. Introduced by the Committee on Rules. Signed: Marshall Murray, Chairman."

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I move the adoption of Resolution Number 10.

Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: If I may be privileged to speak for a moment in support of the resolution, I think that all of the delegates have, as of this morning, on their desks a memorandum which I submitted to you, as the president of this Convention, and various members because of their role in the Convention. My memorandum concerned the type and date of election for adoption of the proposed Constitution by the voters. It was my opinion that a special election must be held either on June 6th, 1972, with the primary, and that is the recommendation contained in the resolution, or on November 7th, 1972, with thegeneral, and it was my considered opinion that ofthese two dates, June 6th is the best. This matter has been considered by the Rules Committee, and the Rules Committee supported the resolution. The matter was informally submitted to the 14 committee chairmen the other night, as most of you read in the paper. Twelve of the committee chairmen voted in favor of the June 6th date, and two votes were cast against it. I think it only fair to state that the next resolution that we will beconsideringhas to do with the recess and proposes that we not recess for any period of time longer than 2 days until this Convention shall have completed its work under Order of Business Number 6, which is the vote for final adoption. The matters really should be considered together as far as my discussion is concerned because if this Convention should choose the June6 primary date, then I do notthink that we should chance the possibility of a recess. I believe that a special election is required, as I state in my memorandum, because of the particular language within Article XIX, section 8, of the Constitution and particularly because of the language contained in the Enabling Act, which governs us, which makes two references to special elections, as stated in section 17, subsection 9, and section 19. I think that those references are self-explanatory and because of the fortunate or unfortunate use of the language "special elections" really is compelling upon us to follow the use of that language and to consider this matter at a special election. Perhaps another compelling reason for calling a special election is the statistic that nearly 25 percent of all electors voting in an election in which there is a special issue fail to vote on the question of the special issue. Now, this matter is contained and is graphed under our first little appendix-matter in the appendix. In Montana the statistic is 24 percent. Mr. Harris gave me the statistic of 25 percent. And those matters relate to elections where there is a special issue within and a part of the election held on any given date and not considered as a special election. And, of course, if 25 percent of the Montanans voting in the election would not cast their ballots, it appears to me that this matter could be defeated by the failure to vote rather than by a negative vote and I submit that we should avoid that. The matter of holding a special election, I can see that there were three conceivable dates--either in June, as I recommend, or in November, as some of you have recommended to me, or on some date in between. Now, I think we must recognize that in this particular year we are facing two major elections—the primary in June and the general in November. Our elected officials at the county level, as well as our elected officials in the office of the Secretary of State, have already considered that they will be facing those two elections and are pretty much geared for those matters. If you hold a special election, it would mean a third major election within this calendar year, and it seems to be the consensus of the people who have made the investigation for me that this would be a considerable burden. I think even more compelling is the problem of money. It is my opinion that we would be somewhat derelict if we asked the people of Montana to raise additional funds of a substantial nature, whatever they might be-and there is some question as to that, and I'm frank to admit it-to hold a special election for this purpose when perhaps a much lesser sum, as I spell out in my memoran-

dum, could be used for that purpose just as well. As I indicate in my memorandum and as is contained in the letter from the office of the Secretary of State which is attached to my memorandum as an exhibit, in answer to our particular question it would appear if the election were held on another date than the primary or general election (Reading) "this office has estimated that a special statewide election would cost somewhat in excess of $500,000" (End reading). And, of course, there's a breakdown there. Mr. Harris and I informally computed this matter some time ago. It was our opinion, based on-not on the checking with the various county officials or checking with the Secretary of State, but based on an analysis of past elections, the cost of those elections, as such statistics were available to us, that the cost might range somewhere between $240,000 and $350,000. But I--regardless of the exact cost, I do submit that it seems unjustifiable to me that we can ask Montanans to come up with a substantial amount of money, whether it be a quarter of a million dollars or a half a million dollars, to hold a special election at some date other than with the primary or with the general when the cost of conducting such an election, in conjunction with either the primary or the general; would be close to the sum of $25,000. And as you can see, that is a figure much less than a quarter of a million dollars or half a million dollars, depending upon whose advice or whose statistics you might use. It is my opinion that June 6 is the best, proper and most prudent date. I think we have to recognize that, under our rules and under the conduct of this Convention, we are different from any other state convention which has so far been held. At least we are to my knowledge, and I can find no material which tells me that we are in accordance with any other state. We are closer, perhaps, to Hawaii than anybody else because we use citizens suggestions, which involves the people in our process here. We have a Public Information Committee which is deeply involved in this matter. Some states have not taken advantage of that type of committee. We have held hearings in accordance with our rules which provide, when you consider the addition of the Romney Rule, for the best and widest possible notice to the citizens of Montana to allow them to participate with us in this Convention, and, frankly, it is my opinion that because of the steps that we have taken toward citizen involvement that we can hold our election on June 6th—a lesser date than some states have chosen, a lesser time for the election than some states have chosen—and still be successful. There are some problems with delay, as my memorandum suggests. It appears that the delegates sometimes loseinterest and momentum if the delay is too long. The tempo of the public information campaign cannot be sustained and declines. The opposition, if any, organizes best within a longer period of time, and in 1972 the national, state and local elections will be held in November and the interest surrounding these elections might conflict rather substantially with the interest of Montanans about their Constitution. And, frankly, I think the last sentence of that paragraph, as contained in my memorandum, is the most significant one in this respect—certainly the media will be more interested in the paid advertising of political candidates, rather than the public service of educating Montanans about their newly proposed Constitution. It is my opinion that we will not have the funds to conduct a public information campaign without the assistance of the media. As you know, or many of you know, I have the experience of conducting a statewide campaign. I know the problems that a statewide candidate has with respect to the purchase of prime time for advertising purposes. I know how far in advance this time has to be purchased and how dear it really is in terms of dollars and availability, and I submit that the profit motive of our media-and this is as it should be and I do not question it-will be such that the media will be more interested in the paid advertising, as I submit to you here, rather than in public service of educating Montanans about their newly proposed Constitution. Now, as to the mechanics of this matter, I have personally conducted, as has my intern, Jim Ramleau, and others, an investigation with the office of the Secretary of State, the Attorney General, and the purchasing department of the Department of Administration of the State of Montana. We have posed, I think, all of the questions that could be posed to them, and I submit to you that there is-1 have assurance from each of those departments and each of those officers that this election can be held on June 6th. 1972, that we are able to hold it on that date, and I have some guarantees that there will be no difficulty with the mechanical details in this respect. The investigation of the office of the Secretary of State, as is indicated in her letter, went to the level of the clerk and recorders of some of the various counties. She did not call them all, but as her memorandum indicates, she did contact Yellowstone, Cascade, Big Horn, Lewis and Clark and Broadwater, feeling that they probably were

representative of most of the counties. I submit that the election can be held on June 6th, 1972, that we have ample time within which to do this, that if we do not take a recess and if we have a 9-week Convention, that we will have 2½ months within which to take this matter-before we take this matter to the people to vote after adjournment. I think that we risk the possibility of having some difficulty if we take a recess. We have two requirements, as I see them, mechanically. We have to mail the information bulletin which we will be putting out-or which we are suggesting be put out in tabloid form to the people 30 days prior to the election date, and the Enabling Act specifies that within this material must be a report from the Convention to the people, the proposed Constitution, and certain information relating to all of the changes that are contained within this document. There is a day [delay] of 40 days for the close of registration. We will be able to make that because that 40 days is required for the close of registration of the primary anyway. We will be using the same documents in both cases. We would have our printer send the information which would be mailed by the clerk and recorders of each respective county to the voters--well, the printer would send it to the clerk and recorder and the clerk and recorder will mail it to the voters, and 10 days between the 40 days of close of registration and the 30-day requirement are ample to get the job done in the manner that we propose that it be done. We will be printing-we propose that we print one document, as they did in Illinois and Arkansas. This would require only folding by the clerk and recorder, the use of the addressograph, and mailing. It would not require the printing of any special envelopes nor any other type of printing that I can conceive. The question has been raised with respect to whether or not the June 6 date would be proper-a proper date with respect to the college vote. As I analyze the problem, I think that those colleges which still may be open on June 6 would pose no problem. Those colleges which might be closed, I do not think would pose a problem because absentee balloting would be allowed, and the matter could be handled, I think, nicely and perhaps even better in that fashion. Therefore, I submit to you that for the best possible success, within justifiably economic considerations, it is my opinion that June 6th is the best, proper and most prudent date for the calling of a special election on the issue of adoption, and I urge that you support me in this respect. Thank YOU.

PRESIDENT GRAYBILL: Very well. The debate is now open, then, on the proposition of Resolution Number 10, which is to have the Convention determine that the matter would be submitted to the voters on June 6th, 1972.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I rise in opposition to this resolution. When I read the papers the other morning before breakfast, I lost my appetite. Somebody hit the panic button, as far as I'm concerned. In studying the day-by-day progress of this Convention on the items listed in sheet number seven of the kit given to us by the Department of Public Instruction, the four pages of itemized controversial questions, I find more problems have been aggravated than resolved. It would seem to be imperative for delegates to have ample time to mediate, cogitate, discuss, amplify, reflect and consult on every major issue to weigh constitutional implications. I appreciate the fact that the chairman of the Rules Committee gave me a prior report that has now been submitted to you, but I am unable to avoid the confusion of facts. I can't justify personal opinion until it has withstood the test of some public exposure and public reaction. To this end, I plead for time. Let us make no hasty commitment to dollar devotion. Let us find some other way to force decision rather than financial pressure. An additional expense of 50 cents each on the part of Montanans between now and the year 2000 may be not too much to ask to avoid the immediate exerciseinfutility. All that I'm trying to say is, slow it down-cool it. Thank YOU.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President, I want to discuss the matter of the cost of a possible special election. We have been thinking in terms of $250,000 to $300,000, and Mr. Murray has made his investigation with the Secretary of State and come up with $500,000. This was incomprehensible to me, and very hurriedly last night and this morning, I tried to make some investigation as to just what this cost might be. Now, Mr. Murray and I may be comparing apples and oranges. We may not be talking about the same costs. But I checked with 13 county clerk and recorders. These 13 counties have a population of 375,000 people. The total cost of that in those 13 counties is $120,000. This brings it closer down to what we were originally talking about-$250,000 to $300,000. I must admit that I have done this hastily. I think, however, the

figures I got are correct, and we still have to remember that we're going to have extra costs even if we have the election at the time of a primary or a general election. I hate to see a decision made based on an estimate of a $500,000 cost when it is beginning to be apparent to me from my hurried investigation that the cost is considerably less than that. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well. Mr. Martin.

DELEGATE MARTIN: Mr. President, I rise in support of the motion for the reason that I initially was very much opposed when it was suggested that perhaps we have the primary election, but there are some other factors that are concerned, and when this was discussed in our Executive Committee, we happened to have with us Dan Foley of the Lee Newspapers, and the question was asked-1 said, we have an expert here; let's get an opinion from him from a public relations standpoint-and he pointed out that if we were to, say, have the election in November, there would be a lapse of perhaps 3 or 4 months in which the inertia would be out-it wouldn't be news; there would be no news coverage of the thing-and to try to pick it up in October or even a month after that had gone, that we would be in difficulty because we would lose the public value and the value from the media coverage. Now, regardless of what we think, the greatest force that we have for public education is the media, and I think that we should be guided by that factor. Having run some political campaigns and some public relations campaign in the past, I know this factor of what happens when the bottom drops out of it and then to try to build it up again. I would say that-even my belief that, at first, it was much too soon, I think that probably we'd be better if we would go ahead on the June 6th date.

PRESIDENT GRAYBILL: Very well. Is there other discussion?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. President, I move-1 don't know if there's a motion on the floor yet-but I move that the proposed Constitution with any amendments-alternatives be offered to the voters of this state in a special election on the sixth day of June, 1972. My reasons are that right now, we're the darling of Montana. You can pick up any paper in this state, either a daily or a weekly, and you are going to find Con Con articles from the front page to the last page. We are getting very privileged attention in the TV and in the radio. Everybody in the state is talking about the Con Con. We have momentum. We have a full head of steam, and if we get done in time-and I'm sure we will-we can be ready for this special election on June 6th. What's it going to be like between June 6th and the general election this fall? Well, first of all, there's going to be a very, very quiet Republican National Convention. It's going to be even more quiet than the last Republican National Convention, but even as quiet as it was, it got a tremendous amount of publicity. All of you will remember the famous balloons in Miami. Besides the Republican Convention, however, there is that quadrennial circus called the Democratic National Convention, which is [was] a real whinging the last time and promises to be just as interesting this year, with a whole host of United States senators seeking the Democratic nomination for the presidency of the United States. As we move on into the fall, comes the World Series. After the World Series, of course, comes college and then professional football. If this is not enough to push us out of the-not only off the front page of the newspaper, we won't even be on the obituary page come September. (Laughter) And then, right after Labor Day comes election time-campaign season. The Democrats are going to be calling President Nixon all kinds of things, and we're going to be talking about the war in Vietnam. We know we're not going to have all of our troops out. We're going to have air support and so on in there. That's going to be a lively issue. The economy is going to be a big issue, and any number of things are going to be an issue in this very heated presidential campaign. Turning to our state at a local level, our junior United States Senator is up for reelection, and he has always had hot elections in the past—interesting elections and close elections. There are two United States congressmen that are going to be campaigning for reelection, presumably. The governorship is also up for grabs this year, since Mr. Anderson has decided not to run for reelection. For these reasons, Mr. President and my fellow delegates, I strongly urge that, because come next November, people-we will have long since lapsed into history-that we put our Constitution-offer it to the people of this state on the sixth day of June, 1972. Thank you.

PRESIDENT GRAYBILL: Mr. Kelleher, it is my understanding that you made a motion, and

I don't know whether you meant to or not, but if you did, I want you to restate it. (Laughter)

DELEGATE KELLEHER: Yes, and yes, and the restatement is: "I move that this Convention offer to the people of-to the electorate of Montana our proposed Constitution with any alternative provisions to the voters in a special election on June 6th, 1972."

PRESIDENT GRAYBILL: All right. Well now, if that's what it was, it's substantially the same as the resolution, and the resolution has been moved and will be moved by the Rules Committee chairman, so I'll rule your motion out of order but your discussion pertinent.

Mrs. Bowman.

DELEGATE BOWMAN: I wonder if I could ask Mr. Murray a question.

PRESIDENT GRAYBILL: Mr. Murray, would you yield to a question?

DELEGATE MURRAY: Mr. President, I've been waiting for that. (Laughter) You bet. After my inquiry of her some time ago, I expected that she, at some stage, would be asking me a question, and I do submit.

DELEGATE BOWMAN: Unfortunately, I'm in no position to question you in the same manner as you questioned me. I would like to know if adopting the proposal that we have a special election on June 6th automatically means that we will not have a recess, or is that to be discussed separately?

DELEGATE MURRAY: The matter is to be discussed separately by the next resolution.

DELEGATE BOWMAN: Thank you.

DELEGATE MURRAY: It is my recommendation, though—

DELEGATE BOWMAN: Yes, I realize that, but—

DELEGATE MURRAY: (Inaudible) this discussion-that we not have a recess if we use the June date.

DELEGATE BOWMAN: But that will be discussed later.

DELEGATE MURRAY: Yes.

DELEGATE BOWMAN: Thank you.

PRESIDENT GRAYBILL: Very well.

Mr. Rebal.

DELEGATE REBAL: I have something in the form of a question, Mr. President. And I would like to know how the approximately 50 delegates who were planning to run for elective office make out if we do it in that manner.

PRESIDENT GRAYBILL: Can you think of anybody to ask that question of, Mr. Rebal? (Laughter)

Mr. Roeder.

DELEGATE ROEDER: I wonder if Mr. Murray would clarify something for me?

PRESIDENT GRAYBILL: Mr. Murray, will you yield to a question?

DELEGATE MURRAY: Yes, Mr. President.

DELEGATE ROEDER: I'm not clear, Marshall, on the impact of this Section 9-17 of the Enabling Act. If a majority of the electors voting at the special election shall vote-now, does this—how are we going to-can wesegregate thevoteon acceptance or rejection of the Constitution from the vote in the primary for candidates. You see, I'm afraid that your figures that you have here will obtain also in a primary election, or can we segregate them and thereby spike the impact of this nasty clause.

DELEGATE MURRAY: Thank you, Mr. Roeder.

Mr. President, this is perhaps the most difficult question that we have attempted to resolve, and I think that we have it resolved. I envision the submission of this question to the voters in the primary election at a separate election. By this I mean that we will not have this issue on voting machines, whether they be vote-o-matic or the tall, upright kind that we do not have in our county. It would be by paper ballot everywhere. We would have people signing separate pollbooks, and there would be a separate tally book, and we would ask the clerk and recorders to please ask the voters as they go through the line if they desire to vote on the Constitutional issue. If they do not, then they do not take a ballot or sign that book and therefore would not be counted amongst those voters. Does that explain? Does that give you an explanation on that point?

PRESIDENT GRAYBILL: Mr. Studer, are you-Oh, Mrs. Speer.

DELEGATE SPEER: I would like to speak in opposition to—

PRESIDENT GRAYBILL: Hold your mike a little closer.

DELEGATE SPEER: I would like to speak in opposition to the special election or the June election. I have three reasons. First, because I do not think there would be sufficient time for really deliberative action in the Convention, and I don't think the 2 months is time enough for the delegates to go home and fully explain these issues to the people. But the major reason that I wish to speak to-these others have been touched-is that I do not feel that it is giving a fair opportunity to the young people. This Convention has been talking a great deal about writing a Constitution for the next and future generations and yet, if we hold the election on June 6, they are involved in examinations-finals. High school people coming 18 are involved in their graduation. I do not think that they are going to even remember to write for the absentee ballots. Last night I talked with two or three University of Montana students. They were strongly opposed to the June election for our new Constitution. I think it is perhaps time to decide, as Mr. Whitmer suggested, that we purchase our own desks in order to continue the Convention.

PRESIDENT GRAYBILL: Very well. Mr. Hanson, Robert.

DELEGATE ROBERT HANSON: Mr. President. I also rise in opposition to this because I think that we are-just like we get this memorandum. I haven't had a chance to look at it, and I'm sure that Marshall did a very good job on it, but I'd like to read it and have a chance to study it a little bit. And if we're going to submit a document to the people, I think it should be able to stand the light of day and a good examination by everybody, because if we're going to try to run something through in 2 months or something like that, and I don't think anybody in this body at this time knows what we're coming out here with, and I therefore oppose this.

PRESIDENT GRAYBILL: Mr. Simon.

DELEGATE SIMON: May I ask Mr. Murray if he'd yield to a question, please?

PRESIDENT GRAYBILL: Mr. Murray, will you yield to a question?

DELEGATE MURRAY: Yes, Mr. President.

PRESIDENT GRAYBILL: Very well.

DELEGATE SIMON: Mr. Murray, the only thing I wanted to ask--would it make any difference in our vote this morning if we-1 don't know as though I understand whether we're going to vote on recess first--would that make a difference? It seems like we're going to vote on recess after we determine the date, and I wonder if we shouldn't vote on recess first. If we have a recess, would that make a difference?

DELEGATE MURRAY: Well, it is my opinion that the matter of the holding of the election is the paramount issue, and therefore I have asked that this resolution be considered before the other one. I have given the delegates the courtesy of advising them that we're about to take up the other resolution so that they can consider this in the vote in this issue.

DELEGATE SIMON: Mr. Murray, would the recess make a difference in the date? Should we vote on the recess first?

DELEGATE MURRAY: Well, I thinkthatit does. I don't think that we have to vote on it first in order to give consideration to this vote. The answer is no. I think that the matter of a recess is significant. We are under way. We have great momentum. I have great hope in our success, and, frankly, I feel that to take a recess would jeopardize the possibility of getting to the people on June 6th, 1972. I don't like to jeopardize that. We have 2½ months, the way I figure it, to explain this issue to the people, and more than that because we will still be here in Convention for another nearly 2 months.

PRESIDENT GRAYBILL: Mr. Hanson, Rod.

DELEGATE ROD HANSON: Mr. President, would Mr. Murray yield to a question, please?

PRESIDENT GRAYBILL: Mr. Murray, will you yield to some questions from Mr. Hanson?

DELEGATE MURRAY: Yes, Mr. President.

DELEGATE ROD HANSON: Mr. Murray,

I think one question. If we bog down here later—say that we adopt this resolution now, and then as we proceed with our deliberations, we bog down in the so-called "great debate" and find that we cannot then meet the deadlines that we have to meet in order to get this before the people on June 6th—or June 7th, then it would be possible, wouldn't it, to reconsider our action and set the election at another date? Or would we, by taking this action now, start the machinery rolling that would be impossible for us to stop if we find out we can't meet it later?

DELEGATE MURRAY: The answer to your question is that we could reconsider this at any time. I think one of the paramount reasons to consider it at this moment is because many of you have asked to have the issue settled and have come to me and expressed that. Therefore, I conducted my research. The other reason is that in order to get the brochure-the voter information pamphlet properly bid and printed, we have to call for the bids some time during the early part of March. If we do not resolve this question now, we cannot take that action and commence this machinery in operation so that we can arrive at June 6th in proper fashion.

PRESIDENT GRAYBILL: Mrs.-let's see -Mr. Nutting, I think, was next.

DELEGATE NUTTING: Mr. President, would Mr. Murray yield to a question?

PRESIDENT GRAYBILL: Mr. Murray, will you yield to a question?

DELEGATE MURRAY: Yes, Mr. President, I will yield.

DELEGATE NUTTING: If I understood you right, you said that there would be separate polling books and there would be actually separate ballots?

DELEGATE MURRAY: Yes, there will be a separate ballot, the way I envision it.

DELEGATE NUTTING: Would the gentleman yield to another question?

DELEGATE MURRAY: Yes, Mr. President, I will yield.

PRESIDENT GRAYBILL: Very well.

DELEGATE NUTTING: If-would this also entail separate judges for the two elections?

DELEGATE MURRAY: I am advised by the office of the Secretary of State that it would not.

DELEGATE NUTTING: Thank you.

PRESIDENT GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Thank you. I was beginning to wonder if I was being ignored. (Laughter)

PRESIDENT GRAYBILL: Heaven forbid.

DELEGATE WARDEN: I'd just like to say that for many years-25 to 30 years-1 have been involved in civic work. Now, I do live in a larger city, but I am also well aware of the situation in the country because I have done a great deal of work statewide. I would like to say that the average person is not available for meetings-in fact, they stop around the 15th of May. The average person goes on vacation, goes fishing; he goes out of town whenever it's possible in the summer time. I think we would be remiss if we did not use the peak of popularity, which we will have within 2 or 3 months after this Convention adjourns. 1 would strongly advise that we consider the great need to use this information and the time when we come back from the Convention to tell the people, to answer questions, to explain what we've done and how we arrived at these things. It will be fresh in our mind, we will be enthusiastic about it, we will know what we're talking about; but believe me, when so many things can intervene, we will be a little less coherent next fall, a little less interested, because we've had since September-well, whenever you filed-1 think that was about August 4—till March when we've been deeply involved in this Convention. We've been thinking about it. We've been campaigning. We've been doing all sorts of things, and I think the need to do it is now. I think if we want to do it, we can do it now. I think procrastination will not help the problem. It will not get to more people, because if we're enthusiastic we can do that in 2 months. Thank you.

PRESIDENT GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, I think the delegates seem to be pretty well divided on this question. I was wondering if there is any reason why we couldn't entertain a motion to lay it on the table till Tuesday. So, I therefore move that

we lay it on the table till Tuesday at the proper time.

PRESIDENT GRAYBILL: Very well. Mr. Studer has made a motion to lay this matter on the table till Tuesday. Mr. Murray, is that debatable?

DELEGATE MURRAY: Not debatable.

PRESIDENT GRAYBILL: All right. The motion to lay on the table till Tuesday is not debatable.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. Chairman, I'd simply like to have the record show that I am present.

PRESIDENT GRAYBILL: The record may show that Mr. Swanberg is present, and he may vote.

Mrs. Bugbee.

DELEGATE BUGBEE: (Inaudible) have the record show that I am present, too. Thank you.

PRESIDENT GRAYBILL: Right. You were shown present, Mrs. Bugbee.

All right, we'll vote on whether or not to lay Resolution Number 10 on the table until Tuesday. All those in favor of postponing until Tuesday consideration of Resolution Number 10 which is designed to set as June 6th, 1972, the date at which this matter would be put before the public, please signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Those that oppose that, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and we'll continue to debate the matter.

Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. I would like to speak toward holding the election on June 6th. I would like to speak for several reasons. I think the time within this Convention in working toward framing the document has already been determined by the allocation of funds. 1 think that we have been particularly fortunate in having the news media of the State of Montana, and also nationally, zeroed in on our Convention, either pro- or "con-Con." I could care less, just so the interest is kept at this momentum. We couldn't be so lucky for months and months without this effort on the part ofthemedia, and everyone likes to be a star, and I think that we should keep this on the front page of Montana until we're through; and this is our big chance, and people are really reading about it, hearing about it and watching it. Now, while this is going on, I think that Montana is ready, and when they will be ready will be at the earliest time after this Convention recesses. Thank you.

PRESIDENT GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. President, I rise in favor of the June 6th date for the election, not only for the financial reasons that Mr. Murray has stated, but upon consideration, I feel it's the better date. Originally I thought it was too soon, but now I'm convinced that it is the best date. I think as far as the argument about the young people and the students not having enough interest during final week, if my Delegate Proposal Number 13 is on the ballot, which will give full participation within the system to all qualified voters, they will be so excited about the idea that they will probably forget their final examinations that day. (Laughter) And I don't believe that it will need more than 2½ months to consider this. Ninety-nine point nine percent of Montanans presently do not realize that 18-year-olds already have the right to vote for every single office of this nation, and it's been on the books for about 1 year, and most Montanans don't even know that. If there isn't anything more said, they won't realize it, but the momentum is here, the interest is here, the issues are here, and I feel that by June 6th the State of Montana will accept the challenge and adopt this new Constitution. Thank you.

PRESIDENT GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I'd just like to make one comment. We're here to create a document that supposedly will stand the test of time, Yet I find that many of you fear that if we wait more than 2½ months, if we should wait 6 or 7 months, our document will not stand the test of time. I think the document that we write should be able to stand the test of time, and people should have a time to look at it.

PRESIDENT GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I do not rise so much in opposition to Mr. Murray's

motion as to the thinking that perhaps we are a little premature. We, as delegates, don't know what deliberations we're going to take, what the course of our deliberations are going to take in this Convention, and it might be so divided that we, of necessity, would think that we do have to have more time before this is presented to the voters for their consideration. I submit that after we are through, the document will be mailed to the voters and each one, if he is interested, will sit down and study the proposed document. They do need time to do this. But getting back to the fact that perhaps we are a little bit premature, I don't see anything that could hinder us from-if we are in harmony and we come out with a document that we're not too much divided on, we could still put it on the June 6th ballot, and I submit that we are just a little bit premature in making this decision.

PRESIDENT GRAYBILL: Mr. Habedank, you are up.

DELEGATE HABEDANK: I would like to rise in support of the motion. I think most of us, in running for this office, told the people of the State of Montana that we felt that this Constitution could be rewritten in a period of 60 days. I concur with what has been said by Mr. Scanlin as to research, but I feel that if we are going to continue our research, we could keep on for the next 20 years, as this document has been studied for the last 20 by people who have been urging its revision, and we would still be doing more research. We have 100 people here who represent every area of the State of Montana, 100 people who will hear the arguments pro and con. A decision will have to be made sometime, and I feel that we can make it and we can go forward and that the composite decision of this group will be right now and for such a period of time as it would be right if we were to deliberate for a longer time. I feel that if we can do this in 60 days, the people of the State of Montana can also study this thing and come to an intelligent decision in a period of 2½ months. If they have 6 months, it'd be put aside until the last 2 months or the last month, and therefore we might just as well, all of us, address ourself to the subject at hand and come to a conclusion which is best for Montana. I do not subscribe to the theory that it is necessary to do this in order to prevent the opposition from being able to oppose what we do. What I do here and what I feel you do here, you want to stand the scrutiny of opposition as well as those who are in favor of it. We are all trying to do what is best for Montana. And I also do not subscribe to the theory that the newspapers will slight us as we go on throughout the year. I have been a little unhappy with some of the headlines that we have read in the newspapers, but the reporters do not write those headlines. I think we've had tremendous coverage from the newspapers. I think we've had tremendous coverage from the radio, and I feel that with this type of coverage, our people will be ready to make a decision on what we have done by June 6th.

PRESIDENT GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, I move the previous question.

PRESIDENT GRAYBILL: All right. Now, Mr. Murray, it's my understanding that that means that two-thirds would have to support Mr. Conover's motion to cut off debate at this time, and I understand it's not debatable. Am I right?

DELEGATE MURRAY: Yes, Mr. President, but I have, under our rules, the opportunity to close. However, I suppose that should be after the vote.

PRESIDENT GRAYBILL: You'll close after we decide whether we're closed. All those in favor of moving the previous question and voting on this matter now, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair is in doubt. We'll use the voting machines. All those in favor of closing, vote Aye and those opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Do any more delegates wish to change their votes?

(No response)

PRESIDENT GRAYBILL: Very well. We'll close the ballot-59 having voted Aye, 36 having

voted No, we will not cut off debate, that not being two-thirds. Was that 59 to 38? What was that?

CLERK HANSON: 36.

PRESIDENT GRAYBILL: That was 59 to 36. Very well, debate is still open on the motion. Mr. Davis.

DELEGATE DAVIS: Mr. President, I have not spoken and have listened to the very able arguments on both sides of this question this morning. I had originally thought the November date was the best date. I have been persuaded this morning by my fellow delegates that June is the best date, and I rise to support that date. For the reason-1 think that the momentum is here. I subscribe to Mr. Habedank's language 100 percent. When we go home this summer, there may be a few people in this delegation that will devote their summer to discussing the constitutional issues. However, I believe most of the people you discuss them with during the summer months are going to feel more harassed than anything else. The farmers and ranchers in my area are not going to be talking Constitutional Convention this summer. They're going to be working. And the people that are on vacation and holidays, they're going to think about this when it comes time to vote on it, and they won't make any more intelligent decision if they wait till fall, if they do in June-if they want to make an intelligent decision on it-any more than we would make anymoreintelligent decision on whether to elect the superintendent or to have her appointed if we talk about it for 6 months or for 60 days. These are issues that minds can be made up on. We like to procrastinate and take 6 months to do what we can do in 60 days. I'm all for writing this Constitution, submitting it to the people and getting their approval or disapproval of it without any long selling period. Let them decide on the merits as soon as it's out. Thank you.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, I rise in support of the resolution. Originally I was in opposition to it, as you people know in the committee chairmen meetings. But, I've become convinced that this is the right time for this vote, and if the amount of verbiage this morning is an example of what the debate's going to be like, we won't even make the June 6th election. (Laughter)

PRESIDENT GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I would like to rise in support of the resolution also. I think that all of us work under deadlines. Seems to me the thing we're afraid of here is a deadline. Every week I work under a deadline; I think almost everyone does. And it seems to me that one thing that has not been mentioned here is the activity of the delegates themselves. We've been concerned about what the people are going to be doing, but what are we going to be doing during a long recess of, say, 6 months? I know that as I look at my own work, that when I return home, I am going to become involved-very involved-in my own personal work and profession and that I would probably not have the time over a 6-month period to devote to discussing the Constitution anyway, so I would definitely favor the June 6th date.

PRESIDENT GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, I would like to move the question again.

PRESIDENT GRAYBILL: Mr. Murray, can we have another one now? Is that—

DELEGATE MURRAY: I'm sure **we can.**

PRESIDENT GRAYBILL: All right. I take it that you want to do more than like to do that—you want to do it. Very well. We're going to move the previous question again, and that, again, requires two-thirds.

Mr. Felt.

DELEGATE FELT: I ask that a roll call vote be taken and the Ayes and the Noes be spread on the record, and when the opportunity arises, I want to explain my vote.

PRESIDENT GRAYBILL: In other words you want-Mr. Felt has asked that a roll call vote be—

DELEGATE FELT: -four seconds.

PRESIDENT GRAYBILL: Seems to me that I need some seconds. Well, we've got a lot of seconds. Very well. Thank you. We will take a roll call vote on cutting off debate on the issue of whether or not June 6th should be the day that we put this to the public. We will use the voting machines. All those in favor of voting on this, in other words, cutting off debate, please vote Aye. All those opposed to cutting off debate, please vote No. The vote will be a recorded roll call vote.

DELEGATE FELT: Mr. President.

PRESIDENT GRAYBILL: Mr. Felt.

DELEGATE FELT: (Inaudible) my vote?

PRESIDENT GRAYBILL: You may explain your vote for 1 minute.

DELEGATE FELT: Mr. President and members of the Convention, I have never moved for the previous question nor voted for it to my knowledge because I do not like it. Nevertheless, I think if the members would remember that perhaps everything has been said and that Mr. Murray is probably prepared to close, we could get on to a decision without having to use this parliamentary technique of a motion on the previous question in order to do so, and I really do hate to see this motion being made so frequently when we're so early into the real business of the Convention because if it becomes the thing to do, you, yourself, are going to lose the opportunity to express yourself some time when you think it's important and you're not going to like it very well. Thank you.

PRESIDENT GRAYBILL: Has every delegate-

Mr. Mahoney, for what purpose do you arise?

DELEGATE MAHONEY: To explain my vote, **Mr.** President.

PRESIDENT GRAYBILL: You may explain your vote, Mr. Mahoney.

DELEGATE MAHONEY: I feel very much like Mr. Felt. Now, we are going to have a lot of debate and a lot of discussion. If this was 3 o'clock in the afternoon, maybe that-1 would like to see— my mind is made up how I'm going to vote- nobody's going to change it, but I would like to see—

PRESIDENT GRAYBILL: Mr. Mahoney, the Chair would like to remind you that you are recognized only to explain your vote.

DELEGATE MAHONEY: Okay. Allright.

PRESIDENT GRAYBILL: Please keep to the point.

DELEGATE MAHONEY: I will. Now, what you're doing-you're shutting off minorities under this vote. I think minorities should be protected. I agree with Mr. Felt. Let's don't get this a habit. Let's don't do that because you'd hurt yourselves later.

PRESIDENT GRAYBILL: Very well. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegates wish to change their vote?

(No response)

PRESIDENT GRAYBILL: The Chair will close the vote. Take the roll call.

Aasheim	Aye
Anderson, J.	Aye
Anderson, 0	Excused
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates..	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown.	Nay
Bugbee	Aye
Burkhardt	Aye
c am	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Aye
Cross..	Aye
Dahood	Excused
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann..	Aye
Eskildsen	Nay
Etchart	Nay
Felt	Nay
Foster	Excused
Furlong.	Nay
Garlington	Aye
Gysler	Aye

Habedank ..... Nay
Hanson, R. S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lore110 ..... Excused
Mahoney Nay
Mansfield. ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius. ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... No Vote
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye
Mr. President Nay

PRESIDENT GRAYBILL: Mr. Clerk, please announce the vote.

CLERK HANSON: Mr. President, 60 delegates voting Aye, 35 delegates voting No.

PRESIDENT GRAYBILL: That fails two-thirds and debate is still open on the question of whether or not to support Resolution Number 10. Mr. Heliker.

DELEGATE HELIKER: Mr. President, I rise to support the resolution and specifically to respond to comments made by Delegates Speer and Campbell concerning the opportunity of students to vote on this issue in the June 6th election. I'm advised that it is possible to obtain an absentee ballot 45 days ahead of election, so that there should be no difficulty in a student casting his vote even though he may be leaving the campus and away from the state on the date of the election.

PRESIDENT GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President, I rise in support of the resolution, also. I think the tentative date of June 6th is the best date. I think we have to make a judgment, a value judgment, here. There are arguments both ways, but I think the arguments in favor of the June 6th election outweigh the arguments for either a special election in the interim between the primary and the general or the general election. Like Delegate Davis and Delegate Champoux, I earlier favored a later date, but I now favor this date. I do not feel, however, that a recess is precluded by a June election.

PRESIDENT GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President, I rise in support of the resolution. It seems to me that as we think about how we got here, in terms of the electorate voting for modernizing our state government, we are in the position that Victor Hugo used to describe as an idea whose time has come, and I think the Constitution is something our people are interested in and will be interested in and would like to take action on at the June 6th meeting. I also have confidence that we, the 100 delegates, will come up with something that they will be grateful for and we will be proud of. Thank you.

PRESIDENT GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, rise in support of the June 6th election, in support of the motion. I'd like to make a couple of Representative-or Delegate Kelleher type comments, if I may, and address them to the concern of some who only evaluate the efforts of this Convention in the context of whether our product passes the electorate or not. I think we should recognize, as I have come to recognize since arriving in Helena some time ago, that really one of the true benefits that may be derived from our efforts here could be the involvement of the young people who are sharing the activities of the Convention with us. We are seeing some of the bright young people from the next generation who are really getting a splendid education in the educational processes here in Montana. These people are going to be going into city, county, state government areas, and they are going to carry with them knowledge that they have picked up and learned from our activities here. I think another great benefit is going to be the effect that our deliberations are having on the people who are now involved in state government -the many areas of state government--who are coming before our committees, testifying to their beliefs of the content, or what should be contained in the Constitution, and answering questions regarding what their responsibilities are now as to their response to the citizens of this state-reminds me in many ways of resaying or reviewing your matrimonial vows. I've seen many representatives of the different agencies who have come before our committee and have relearned some of the responsibilities that they have to the people of Montana. Many areas have been unresponsive for many reasons and perhaps the Legislature has been unresponsive. Certain other areas-take the Highway Department or some of those-but I feel in the future that these departments are going to be a lot more responsive to the electorate of the State of Montana, and this may be one of the real true benefits. Of course, the greatest benefit in our own mind will be if the electorate accepts our product. Delegate Wilson has a concern that the product may not be acceptable to he [him], and I think we all may have a little of this concern, but I think we have to accept that we 100 delegates represent the will of the people of Montana and really, whatever comes out of this Convention, is the will of those people. They had their chance to vote for us; they selected us; they picked people from both fringes--way out on both sides—and they picked a pretty good mainstream of people throughout that represent the basic thinking of the State of Montana. So, I don't think we should be concerned only whether it's going to pass or not pass, either in June or in November. I think that the 80 cents per person that has been spent by the citizens of Montana is extremely well spent, and I think that, however it comes out, the State of Montana is going to benefit, and all we can do is make our best effort and let the cards fall where they may. And I would like to also share some concern with Delegate Felt as to the continual calling of the previous question. As I looked over the board, the people-most-many of the people who voted No happened to be older legislators-there were a couple of legislators that voted in favor of it, but the previous question really becomes a dangerous thing down the road. It's always reminded me of a fellow who struck out in a ball game—said "I struck out. I'm going to take my bat and my ball and go home. Nobody else is going to get to play this game." It is an expression of impatience, really, and I think if we're going to have due process take place up here, we should be a little more careful and a little bit more patient with the calling of this previous question. Thank you.

PRESIDENT GRAYBILL: Very well. Other discussion on the resolution, please.

Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise neither in opposition nor in favor of the particular motion--more than to point of information. I believe Mr. Murray made an attempt to explain the thing that was bothering me. It is this. The first part of your-in one place, it states "acceptance or rejection at an election," and in the next section it says "at the special election, either approved or rejected." To me a special election would mean something separate and apart, and I'd like to ask Mr. Murray if they have reviewed that subject to convince themselves to be sure that we would not involve ourselves in a legal question if we do hold this election at the same time as some other election.

PRESIDENT GRAYBILL: Mr. Murray, will you yield to a question?

DELEGATE MURRAY: Yes, Mr. President, I will yield. And to that question, may I address this answer. I have in my possession an opinion from Professor Gardner Cromwell, who is working

with the Committee on Style, to the effect that we are not bound by the designation special or general election so as to have a legal entanglement in that respect. We really are bound by the one statement within the Constitutional Enabling Act that we cannot have it sooner than 2 months nor longer than 6. I call it a special election in an advisory matter [manner] so that if we distinguish it and keep it separate from the regular election to avoid the difficulty we anticipate could arise with respect to that 25 percent of the people voting in the election who might not cast a ballot on this issue.

PRESIDENT GRAYBILL: Mr. Barnard. The Chair would like to make a comment at this time, and I'll be glad to relinquish the Chair, but it isn't on either side and, unless there's objection, I'll simply make the comment. It's on this point, which I think is well taken. It seems to me that, hearing the debate here-it's the sense of the debate-that in the event we go for June 6th, the delegates are expecting this to be a special election, separate from the primary, so that we are not in danger of losing the No votes that would be at the primary. That seems to me to be the sense of everyone's understanding, and I have suggested to Mr. Eskildsen that if this resolution passes-and I'm not expressing an opinion, myself, on it-that we should perhaps send it back to the Rules Committee for a further resolution or for further doctoring up to make it clear that this body intends such an entirely separate election so that we are not later faced with a court decision that might say that special is still the same if it's at the same time. I think it would be possible for us to resolve that it be so special that it be completely separate, but I'm not sure we've done that yet. Now, I merely point out that if that's the sense that everybody means this in, then we should be able to make our will known in the resolution so that it would be clear what we intended, and if the resolution passes, I intend to ask Mr. Eskildsen to make a motion that the matter be referred back to the Rules Committee, so that our special intentions can be added to the resolution. Thank you.

Is there other discussion before Mr. Murray closes?

Mr. Furlong.

DELEGATE FURLONG: Mr. President, in keeping with your explanation and because I'm concerned that this hit the press yesterday morning before the delegates had even heard of it, which tends to color at least the decision made here, and because I think that we should wait for some response from the public who heard about it yesterday morning in the paper. If I am in order, I would move to recommit this to the Rules Committee at this time so that they may make some of these decisions that you're talking about, and that would also give the rest of the delegates a chance to at least hear from their constituents.

PRESIDENT GRAYBILL: I take it you've made a motion to recommit the matter to the Rules Committee?

DELEGATE FURLONG: Yes.

PRESIDENT GRAYBILL: Is it thesenseof your motion-I'm not trying to put any words in your mouth-but is that in order to add this matter that I've discussed to it or is it for just their reconsideration?

DELEGATE FURLONG: Both.

PRESIDENT GRAYBILL: Well, I want to know if you're distinguishing your motion from Mr. Studer's motion to lay on the table, which merely waited. Do you want them to do something further with it in Rules?

DELEGATE FURLONG: Yes, I do, and I might also add, Mr. President, that I think that would give us time that we need in order to hear from our constituents.

PRESIDENT GRAYBILL: All right. Now, state your motion, then.

DELEGATE FURLONG: I move to recommit Resolution 10 to the Rules Committee.

PRESIDENT GRAYBILL: Very well. We have a motion to recommit this to the Rules Committee. A motion to recommit is debatable.

Mr. Habedank.

DELEGATE HABEDANK: I would like to move-make an amendment to that motion that we recommit it to the Rules Committee for the purpose of clarifying in the motion the holding of a special election regardless of whether it is held in connection with a primary or general election.

PRESIDENT GRAYBILL: Mr. Furlong, do you want to accede to that amendment to your motion, or shall we handle it separately?

DELEGATE FURLONG: No. I'll accede, thank you.

PRESIDENT GRAYBILL: Very well. Mr. Habedank, he will accede to your amendment so that, at the moment, the Chair considers Mr. Furlong's motion to be to recommit Resolution 10 to the Rules Committee for the purpose of clarifying the special election issue. Very well.

Mr. Davis.

DELEGATE DAVIS: Would Mr. Habedank yield to a question?

PRESIDENT GRAYBILL: Mr. Habedank, will you yield?

DELEGATE HABEDANK: I yield.

DELEGATE DAVIS: Is it the sense of your motion that we would now not dispose of this matter this morning in any event?

DELEGATE HABEDANK: That is correct.

DELEGATE DAVIS: And that we would re-debate it at some future date then?

DELEGATE HABEDANK: I presume further debate would be possible. I was in hopes that maybe everybody had expressed their opinion on Delegate Davis but it would not be debated-voted on today.

DELEGATE DAVIS: Thank you.

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Murray.

DELEGATE MURRAY: Mr. President, I stand in opposition to the motion with the amendment for the reason that the Chairman of the Rules Committee has read the Enabling Act, knows that there are many things which this Convention must further decide with respect to this issue, and is concerned with those problems. The President made reference to these things. I think the resolution, as we have submitted it, speaks to the primary issue. There are other things with which we are charged, and I think, once we make this basic decision, can undertake the development and exploration of those matters to the extent that there will be no indecision, there will benothingunclear about this entire matter. Thus, I suggest that we defeat the motion and get on with the merits of this matter so we don't debate it throughout the entire Convention.

PRESIDENT GRAYBILL: Very well. We'll vote on Mr. Furlong's motion to recommit to the Rules Committee Resolution Number 10, with the further addition that the purpose of the recommittal is to clarify the special election problem. All those in favor of the motion to recommit, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All those opposed, say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and the motion fails. All right, we're back on debate. Are there further persons who have not already spoken who wish to be heard on the main motion: namely, to adopt Resolution Number 10 setting June 6th, 1972, as the date of a special election?

(No response)

PRESIDENT GRAYBILL: If not, Mr. Murray, you may close.

DELEGATE MURRAY: Mr. President, I take this opportunity to close. I appreciate the opinions of my fellow delegates and the concerns that they have. I have heard nothing new that I have not considered and that has not been considered by the members of the Rules Committee and other members or delegates of this Convention. I anticipated that there would be a healthy debate today and that perhaps there might be a little bloodletting, so I wore my pink shirt and plum pants so that I could hide that as best. I appreciate the support of Mr. Kelleher and agree that the convention of his party might truly be a riot. (Laughter)

PRESIDENT GRAYBILL: Mr. Murray, don't put me in the position of having to give Mr. Kelleher time to reply.

DELEGATE MURRAY: Or personal privilege? I traveled Montana. I think that I know Montanans. They have judged me, and I have judged them. I have faith in their insight and their ability to make quick and intelligent decisions. I think that their selection of all of us as delegates was wise. I can see in this group one of the most intellectual groups of people that I have ever had

the pleasure to work with. It is, indeed, the most hard-working group that I have ever had the pleasure to serve with. I have faith in you as I have faith in your constituents, and I believe that the decision that they make in June, if that is your wish, will be wise-as wise, perhaps, or better than it might be in November or any other date. And that is the reason that I ask that you support this resolution. Thank you.

PRESIDENT GRAYBILL: Very well. All those who are in favor of Resolution Number 12, which says: "The revision or alteration of or amendments to the Constitution-Resolution 10— adopted by this Convention shall be submitted to the electors of this state for ratification or rejection at a special election to be held on June 6th, 1972, in conjunction with the primary election to be held on that day." So many as shall be in favor of this Rules Committee Resolution, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so the resolution passes.

CLERK HANSON: Mr. President, Resolution-

PRESIDENT GRAYBILL: Wait a minute. Mr. Eskildsen. Just a moment. Okay, Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that this Convention direct the Rules Committee to prepare a resolution with specific requirements to assure the separation of the vote, and I do this, as you've been told before, so that we can clear it in all matters with the courts and Attorney General and so forth.

PRESIDENT GRAYBILL: I understand Mr. Eskildsen's motion, then, to be that the Convention ask that the Rules Committee prepare another resolution addressing itself to the separateness of these elections so as to clarify for anyone other than this body our position in this matter. Is there discussion on this motion?

Mr. Toole.

DELEGATE TOOLE: I can only emphasize the importance of this with respect to the legal ramifications, and I rise in support of Mr. Eskildsen's motion.

PRESIDENT GRAYBILL: Very well. Is there other discussion?

(No response)

PRESIDENT GRAYBILL: All in favor of Mr. Eskildsen's motion to ask the Rules Committee to prepare another resolution addressing itself to the separateness of these elections, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it and so ordered. We will stand, for 2 or 3 minutes while we change the tape, at ease.

(Convention at ease at 11:05 a.m.)

(Convention called to order at 11:10 a.m.)

PRESIDENT GRAYBILL: The Convention will be in order. Will the Clerk please read Resolution Number 9.

CLERK HANSON: Mr. President. (Reading) "Resolution Number 9. A resolution to provide that the Convention shall not recess for longer than 2 days. Section 1: This Convention shall not interrupt its deliberations and work by recessing for any period of time longer than 2 days until it shall have completed its work under Order of Business Number 6. Introduced by the Committee on Rules and Resolutions. Signed: Marshall Murray, Chairman.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that Resolution Number 9 do pass and be adopted.

Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I think that I have pretty well discussed the content and purpose of Resolution Number 9 in my explanation of Resolution Number 10. The Rules Committee and I and, I think, all 14 votes cast by the 14 chairmen of the 14 committees believe that, upon the acceptance of the June 6th, 1972 date, which we have done, that we run a great risk if we should give further

consideration to any type of lengthy recess, because of the time period that we face with respect to that election date. Therefore, we have prepared Resolution Number 9, and I apologize that it is in negative fashion. I wish that we could have brought it out to set a recess, but it wasn't possible to do so in line with our thinking on Resolution Number 10. I therefore urge that the Convention give consideration to not recessing but to keep its momentum and its deliberations going until they have completed their voting on the proposed Constitution or amendments under Order of Business Number 6, which is the final adoption. I anticipate, and the reason that this resolution is drawn in the fashion that it is, that there may be a necessity for taking more than 2 days in the form of a recess after that votebecause of the enrolling problem which might arise, and I did not think that we should foreclose that possibility in the form of this resolution, although, quite frankly, it could be reconsidered at any time. Thank you.

PRESIDENT GRAYBILL: Very well. Mr. Mahoney.

DELEGATE MAHONEY: Could we have that motion read again? I don't have it on my desk.

PRESIDENT GRAYBILL: Yes. I'll read it, "Section 1: This Convention shall not interrupt its deliberations and work by recessing for any period of time longer than 2 days until it shall have completed its work under Order of Business Number 6." Order of Business Number 6 is adoption of the proposed Constitution. Two days is, of course, the length of our weekend recesses.

DELEGATE MAHONEY: That's all.

PRESIDENT GRAYBILL: Very well. Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, I would like to advise the Convention that if we go to the ballot on June 6th we must have the Constitution signed by April 6th. That means that if we comply with the 9 weeks we're talking about, it will give Style and Drafting 10 days-17 days within which to put the whole thing together. That would be from the 18th of March to the 6th of April. I'm reasonably confident we can do that; however, if the debate this morning on what I consider to be relatively minor items compared with the adoption of the Judicial Article, is any indication, I have no confidence that we're going to finish in 9 weeks. Mr. President sent me a note this morning, saying "What if we get done on the 24th of March; can Style and Drafting finish by April 6th?" I said, "No, but we'll do it." I want to remind you, however, that there is a necessity that we not have any recesses, because we have to get this done so the Style and Drafting can finish its job by the deadline. Thank you.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President. As many of the delegates know, I have been strongly in favor of a recess and have expressed myself publicly on the subject. However, in view of the action that was taken with respect to the June 6th election and Mr. Schiltz's remarks, I now favor the Proposal Number-the Resolution Number 9 of Mr. Murray's.

PRESIDENT GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President. I like to speak in support of Resolution Number 9. When I campaigned, I spoke often of the possibility of a recess during which time we could explain just what we were doing here and so the people would be more aware of our accomplishments. I think now, since we are having Sundays and Mondays off, we can accomplish the same thing each Monday of every week by going home and talking to our people through the news media and through individual contact, so I really support this with great conviction.

PRESIDENT GRAYBILL: Other discussion?

(No response)

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: There being no further discussion, Mr. President, I waive my right to close.

PRESIDENT GRAYBILL: Very well. The issue, then, is on the adoption of Resolution Number 9 proposed by the Rules Committee, the purpose of which is to say that we may not recess for longer than 2 days until we've completed drawing up the Constitution and adopting it under Order of Business Number 6. So many as shall be in favor of that resolution, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: Passed. Very well. We'll pass on to Order of Business Number—

CLERK HANSON: —8.

PRESIDENT GRAYBILL: -8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, on moving these delegate proposals-that has to be done under Order of Business Number 7, doesn't it-from one committee to another?

PRESIDENT GRAYBILL: You-you'd like to be-we'll still be on Order of Business Number **7; yes,** sir.

DELEGATE BLAYLOCK: Thank you. Mr. Chairman, I should like to move, as Vice-Chairman of the Bill of Rights Committee, and I have cleared this with the Chairman of the Judiciary Committee, to move Delegate Proposal Number 163, by Sullivan, to the Bill of Rights Committee.

PRESIDENT GRAYBILL: That's from-?

DELEGATE BLAYLOCK: From the Judiciary to the Bill of Rights Committee. Delegate Proposal Number 163.

PRESIDENT GRAYBILL: And where is it now?

DELEGATE BLAYLOCK: It's in Judiciary.

PRESIDENT GRAYBILL: And you're speaking as an author of that? I'd like to—

DELEGATE BLAYLOCK: No, I'm speaking as Vice-Chairman of the Bill of Rights Committee. The author of this proposal asked me if I could have it moved to the Bill of Rights Committee from Judiciary.

PRESIDENT GRAYBILL: All right. Now, have you discussed this with the Bill of Rights—with the Judiciary Committee?

DELEGATE BLAYLOCK: I discussed it with the Chairman, and he was agreeable.

PRESIDENT GRAYBILL: Mr. Holland, are you here?

UNIDENTIFIED: He just stepped out.

PRESIDENT GRAYBILL: Okay. And Mrs. Pemberton, you don't know about this?

DELEGATE BLAYLOCK: No-Mrs. Sullivan.

PRESIDENT GRAYBILL: The reason I'm raising this point, Mr. Blaylock, is that in each case where we've done this, the Chair has required that the party having it move it, and I'm perfectly happy that you do it if it's all right with Judiciary. I just want to be sure it's all right with Judiciary.

Mrs. Pemberton.

DELEGATE PEMBERTON: It isn't working-yes, it is. If Mr. Blaylock and Mr. Holland talked about this, the Judiciary will accept the proposal.

PRESIDENT GRAYBILL: Very well. Judiciary will agree; and Mr. Blaylock, your motion is to move Delegate Proposal Number 163 from Judiciary to Bill of Rights. Is that correct?

PRESIDENT GRAYBILL: Very well. You've heard the motion of Mr. Blaylock to move Delegate Proposal 163 from Judiciary to Bill of Rights. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?

(No response)

PRESIDENT GRAYBILL: So ordered. Now, we'll go to Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 10, General Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 11, Committee Announcements and Notices. The committee schedule is there before you, and we've

encroached upon some of the time of the morning meetings, but I think we can go ahead as soon as we're through.

Mr. Joyce.

DELEGATE JOYCE: Mr. President, I will not do this as a general rule, but the Executive Committee is holding a public hearing this afternoon at 1:30 on the entire Executive Article. This is the first public hearing we have had. If anybody has any views, please come to that public hearing this afternoon and give us the benefit of them. We've had very few proposals, as such, to our committee. And we want to get the thinking of the delegates, so I urge you to come this afternoon. I'll give no further special commercials for the Executive Committee hereafter, and I would like the committee to meet in the committee room 10 minutes after adjournment so we might prepare for our public hearing this afternoon. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well.

Mr. Aasheim.

DELEGATE AASHEIM: The Legislative Committee immediately on adjournment.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: There is a correction in the Convention schedule. Education and the Bill of Rights Committee will hold a joint hearing in the Senate chamber 5 minutes after adjournment of this meeting. Thank you. On equal educational opportunities.

PRESIDENT GRAYBILL: Very well. A joint hearing with Bill of Rights, is that right?

DELEGATE CHAMPOUX: Right.

PRESIDENT GRAYBILL: Very well. Other committee announcements?

Mr. Murray.

DELEGATE MURRAY: Mr. President, Rules will not be meeting next week unless we have a formal request on the subject that I am about to announce. The President, in his wisdom, has referred certain proposals-and I know them not by number-jointly to two committees or more. The question has arisen as to which committee has the primary responsibility for those proposals relative to the vote thereon and the problem of drafting. Rules Committee met briefly on this question this morning, and we have informally decided-we will decide formally if the matter is pressed further-that each committee to which a matter has been jointly referred has as much responsibility to take action within that committee on that particular proposal as has the other or other committees to which it has been jointly referred. Therefore, each committee should take independent action on that particular proposal.

PRESIDENT GRAYBILL: Mr. Murray, that's your thinking at the time-at the moment. The Chair would like to point out that it's his thinking that the two committees could agree as to what is going to be done and if they can't agree, that, then, is the time to notify the Chair and he will notify the Rules Committee to settle the argument. But it's my purpose that when you have joint hearings, naturally you do thebestyou can to solve where the issue should be handled and on what basis. Doesn't seem to me that it does us much good to insist on each coming up with a separate article if, in fact, we can agree on one article. But if you can't agree, then we'll get it to the Rules Committee and let them help you agree. Is that inconsistent with your thinking, Mr. Murray?

DELEGATE MURRAY: No, it is a further explanation of my thinking. The problem only arises where they cannot agree.

PRESIDENT GRAYBILL: Right. Allright. Other committee announcements?

(No response)

PRESIDENT GRAYBILL: We have only a couple other announcements. First of all, I would like to congratulate all of the delegates who participated in getting information back on what they are doing in their local districts that's on the pink sheet you see. I think many of you have done an excellent job in helping the public information people get the word out and are doing a good job. Some of those-of us-who have not done anything might look at that and take heart and maybe do something. Secondly, at a meeting of the committee chairmen yesterday, it was the sense of the meeting that the Chair call next week's Convention sessions for 9:00 a.m. instead of 9:30, the purpose being to allow you more quickly to get into committee hearings in the morning, since the afternoons will be taken up with the formal hearings. Therefore, this is notice to the entire body that next week we will meet at 9:00 a.m. daily instead of 9:30. Furthermore, I'm sure you're all aware, but I

will remind you, that next week the formal hearings begin-one every afternoon and one every evening. General Government leads off on Tuesday afternoon and Legislature on Tuesday evening. One of the purposes of these meetings is that you delegates will have a chance to hear a summary hearing review of information in other committees. The Chair has asked the committee chairmen not to schedule committee meetings opposed-at the same time or in conflict with these meetings except in cases of emergency, which we're perfectly willing to interpret rather broadly. But, in other words, basically we should all try to attend as many of those hearings as possible to get the sense of what has gone on. Now, thereason for that, in the Chair's opinion, is so that much of the information which may be rather basic can be gathered by delegates in these formal hearings, and we will not have a great deal of extra questions asked and extra bickering about minor matters that are really clearly settled by the committee when we get to debate. So, in other words, if we will attend most of these hearings, I think we may help ourselves at the debate stage. Furthermore, the Chair would like to suggest to the delegates what I have already suggested to your chairmen, but maybe you can help your chairmen. In view, especially, of your action this morning in setting a June 6th date for submission to the public, it becomes-and also in view of your action in not having a recess--I think it becomes critical to get as much public reaction to some of the language which you committees are going to propose. We've asked that drafts of the committee work be prepared and available as early as possible, but at least at the time you hold your formal hearing. The purpose of this is to get some public reaction to your drafts. If we had had a recess, this would have been easily accomplished in the field, but since we're not having a recess, I think it becomes crucial that we get these drafts out--even get the drafts into the papers so people can see what we're talking about, so that you have a chance for a reaction to your absolutely drafted language before you end up with your final committee proposal. So, will the delegates please assist their chairmen and their research associates in accomplishing that purpose. Are there further announcements?

Mr. Clerk.

CLERK HANSON: Mr. President, the auditor's office has advised us again that their office will be open from 10:00 until 2:00 today for the purpose of delegates receiving checks.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I'm at a loss now in listening to your explanation of how these hearings are going to be held. Is this going to be a public forum or is this going to be for information to the committee? I mean, I got a little lost. Could we have-understand how these hearings that are going to be held-how is this going to be done?

PRESIDENT GRAYBILL: Very well. Mr. Mahoney, we did discuss this at, committee meeting yesterday, and I'll be glad to review what I consider the important parts of it, which I shared with the chairmen, and I think many of them agreed. This, of course, is an explanation of how we now conceive the hearings that Rule 38 requires, which Mr. Romney put into therules, and it seems to me we have four purposes of these hearings. One is to allow the other delegates to hear the major issues that have been discussed in a given committee. In other words, it's a summary and a pulling together of the main issues that have been considered by that committee. Secondly, I confess that it's an excuse for the President to require the committee to pull itself together, and that's why I'm asking for these drafts, also; and it gives the committee a chance to determine among itself what the main issues are and to pull them together. Third, it is designed to elicit both committee opinions on both sides of the major issue, plus opinions of past witnesses or additional witnesses that may wish to come in on theseissues. It is the last chance under our rules for the public to make what we call "citizen suggestions"; that is, they may come and approach the committee for the last time at these hearings. And, fourth, it is a means by which this Convention, through its committees, can further publicize the main issues that will be involved in the Constitutional document. So, those four issues are involved and I think the input can be committee member, can be witness—that is, invited witness-could be uninvited but public witnesses that might come. All of those places could be used and the committee is in complete charge of how they structure their hearing, but at least those things could be done.

Mr. Mahoney.

DELEGATE MAHONEY: I'm just wondering, in the amount of time that they will have to go in-now, in the committee that I am on, and there's eight of us, with the labor, welfare, institutions and corporations. Now, this is what's bothering me, Mr. Chairman: how should the com-

mittee-will they give time-1 understand under rules that the committee has part of this, and I'm just wondering if the committee is going to make any discussion, and then we find all of these other people making a discussion-I think we're going to have to have some kind of rules laid down for each committee to operate so that we're all kind of running in the same system in here. Now, maybe I'm wrong, Mr. Chairman.

PRESIDENT GRAYBILL: Well, I think you have an excellent point that it's difficult to put into 3 or 4 hours of hearings everything that your committee has considered, but the fact that it's difficult doesn't seem to me to mean that we shouldn't try and that we don't really have to, and we did discuss it with your chairmen, and why don't you and your committee address yourself to the problem which I think you have properly raised.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, is there going to be a-have you talked about having a format in front of us that we can follow?

PRESIDENT GRAYBILL: At these hearings?

DELEGATE BUGBEE: Yes.

PRESIDENT GRAYBILL: I know of no specific format.

DELEGATE BUGBEE: May—

PRESIDENT GRAYBILL: If the committee chairmen want to, we can have another meeting and try and develop one, but I think it's up to—I think there are differences. Some of these committees have a lot of public witnesses, some of them have hardly any; and I think it would be hard to develop a uniform format, Mrs. Bugbee, but we can try.

DELEGATE BUGBEE: May I suggest that it would be very helpful if we could have the present Constitution in front of us and that the other data on the draft be related to the present Constitution and that we have something to read backwards and forwards so that we know what we're doing in relationship to the present Constitution-why they've taken something out; why they want something new-that there be an explanation there in front of us that we can read in addition to hear. I think we'd learn more faster if this could be done by the committees. Thank you, Mr. President.

PRESIDENT GRAYBILL: Well, I think your point is well taken, but this is the purpose of this draft which should, of course, disclose such a thing, and it'll be different in different committees. Some committees have practically no Constitution to consider, others have great chunks to reenact, and others have great chunks to throw out; and it's kind of a hard thing to formalize. Is there other discussion about the formal hearings which will take place next week in the afternoon and evening?

(No response)

PRESIDENT GRAYBILL: If not, Mr. Eskildsen-oh, wait a minute-Mr. Heliker.

DELEGATE HELIKER: Mr. President, consideration of the hour and the fact that the Public Health Committee has scheduled a hearing for 1 o'clock, I'd like to announce that we will cancel the morning hearings and convene hearing at 1 o'clock and continue until all witnesses wishing to be heard have been heard.

PRESIDENT GRAYBILL: Very well.

Mr. Rygg.

DELEGATE RYGG: Because ofthelateness of the hour, I would like to announce Revenue and Finance for 1 o'clock instead of 1:30.

PRESIDENT GRAYBILL: Revenue and Finance at 1:00 instead of 1:30.

Mrs. Cross.

DELEGATE CROSS: I would like to announce that the hearing for the Natural Resources has been moved to the Judiciary room this afternoon. Also, there will be a very short meeting upon adjournment this morning.

PRESIDENT GRAYBILL: You mean the hearing on the Department of Agriculture will be in the Judiciary room this afternoon?

DELEGATE CROSS: Yes.

PRESIDENT GRAYBILL: 1:00? 2:00?

DELEGATE CROSS: 1:30.

PRESIDENT GRAYBILL: 1:30. Very well,

DELEGATE CROSS: Thank you, Mr. President.

PRESIDENT GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. President, Local Government will meet immediately upon recess.

PRESIDENT GRAYBILL: Okay Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move, pursuant to the general powers vested in Montana Constitutional Convention and accordance with provisions of Section 7(6) of the Enabling Act, Chapter 297 [296], Laws 1971, the Montana Constitution Convention shall recess temporarily until 9:00 a.m., on Tuesday, February the 8th, 1972.

PRESIDENT GRAYBILL: All in favor of recessing the Convention temporarily until Tuesday morning at 9:00, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered

(Convention recessed at 11:32 a.m.)

February 8, 1972 **Nineteenth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: We'll begin today with the Pledge of Allegiance, and I have asked Delegate Bill Artz to lead us. Will you please rise.

DELEGATE ARTZ: (With delegates participating) I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands; one Nation, under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: If you'll remain standing, Delegate Burkhardt will give us the invocation.

DELEGATE BURKHARDT: Let us pray. We would pause in a moment of reverance, 0, God, as we begin another week. We would find the eye of calm at the center of life's storm. Maywereflect on ancient words and the reality behind them. Those who wait upon the Lord shall renew their strength. They shall mount up with wings as eagles. They shall run and not be weary. They shall walk and not faint. Amen.

PRESIDENT GRAYBILL: We'll take the roll this morning by voting Aye on the voting machines.

CLERK HANSON: Delegate Choate, Delegate Conover, Delegate Driscoll, Delegate Drum, Delegate Felt, excused; Delegate Kamhoot, excused; Delegate Kelleher, excused; Delegate Loendorf, Delegate Rebal.

PRESIDENT GRAYBILL: Very well. Will the clerk take the automatic roll?

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask..	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell..	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum.	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R. S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Excused
Kelleher	Excused
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin.	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present

Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.,	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Spew..	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson,,	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 97 delegates present, 3 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show.

Order of Business Number 1, Report of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 2, Report of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "February 7, 1972. Honorable Leo C. Graybill, President, Montana Constitutional Convention, Capitol, Helena, Montana, 59601. Dear Mr. President: In accordance with the provisions ofsection 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary No. 1, Laws of Montana 1971, the licenses of the following lobbyists have been suspended as of February 7, 1972, for failure to file statements of expense within the period specified by law. License No. 27-72, Ellis, Robert A.; License No. 37-72, Mitchell, Carol A.; License No. 38-72, Francis Mitchell; License No. 53-72, Heard, Edward; License No. 56-72, Davis, Kenneth H.; License No. 69-72, McCathy, Maurice; License No. 71-72, Smith, David A.; and License No. 72-72, Ellard, Robert A. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: I am informed that this means that these people haven't filed their financial statements and they must so file them to be reinstated. And we'll post this on the bulletin board, and then you'll all know which lobbyists can't talk to you. (Applause) Are there other communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Introduction and Reference of Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 6, Adoption of Proposed Constitution Ballots.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 7, Motions and Resolutions.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Any motions from the floor? Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 10, General Orders of the Day.

CLERK HANSON: None. sir.

PRESIDENT GRAYBILL: Number 11, Committee Announcements and Notices. First of all, I would like to announce that there will be a special meeting of the Administration Committee immediately upon adjournment in the Rules Committee room. We'd like all the members of the Administration Committee to be at that special meeting immediately upon adjournment in the Rules Committee room. Now, because we are printing today's daily schedule, I don't believe you have it, do you? Oh, well, I guess the Chair is the only one that doesn't have it. Very well. At least you have those announcements. I am sure you're aware that-1 think, General Government's formal hearing is at 1:30. Is that correct, Mr. Etchart? And, I believe, Legislative Committee's formal hearing's at 7 o'clock; is that right, Mr. Aasheim? All right. Those are the two main hearings today, and they show on the daily schedule. Are there other committee announcements?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and delegates, the Legislative Committee has drawn up its temporary draft, and sometime today, you will have a copy on your desks. Now, our procedure this evening at 7 o'clock will be to present a brief summary of this draft to the people who are here, and we will explain it as clearly as we possibly can. People who come from distance will be allowed to testify first, and then we will invite you delegates to give testimony for or against our proposal. We understand this hearing tonight is for our benefit, to draw a final draft, which will be most acceptable to the delegates. By the way, our committee will meet at 10:10 this morning.

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: I'd like the Public Health Committee members to meet right after adjournment in 428-A, where we will hear a couple of witnesses on consumer protection. We will probably then move to the Highway Department auditorium and, to correct the schedule, we are hearing today on consumer protection and on public utility regulation, and we'll also hear the sponsors of the proposals on minimum wage and compulsory arbitration.

PRESIDENT GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Judiciary, 10 minutes after adjournment.

PRESIDENT GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Local Government will meet 15 minutes after adjournment, room 437.

PRESIDENT GRAYBILL: Mr. Joyce,

DELEGATE JOYCE: The Executive Committee-I would like to correct the daily schedule, which shows that the Executive Committee will meet with the Board of Education at 2:00 p.m. The request of the Board of Education, we will meet at 11 o'clock this morning with that Board of Education in the Governor's reception room, and, for the committee members, the committee will meet 15 minutes after adjournment in the committee room.

PRESIDENT GRAYBILL: Mrs. Cross.

DELEGATE CROSS: The Natural Resources Committee will meet 15 minutes after adjournment, and if there are any delegates who will have time to testify on their proposals, who have not already done so, and if you are free, you can do so at this time.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: A little error on the sheet here. The Revenue and Finance is at 10 o'clock, but it'll be in our regular room, and we will be hearing delegate proposals.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, 10 minutes after adjournment, and at that time, if any delegates wish to testify on their proposals, they may do so. Thank you.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: The Bill of Rights will meet in the committee room 15 minutes after adjournment.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I am very happy to announce that our first scheduled tour will take place this afternoon at 3:30. I would also like to take this opportunity to tell the Great Falls delegates that it's a group from your town-Mrs. McCabe with the Junior League of Great Falls. We're certainly happy to have them come. Mr. Aasheim has been assigned to give them a IO-minute talk. Thank you.

PRESIDENT GRAYBILL: Which he will prepare immediately. (Laughter)

Mr. Martin.

DELEGATE MARTIN: Mr. President, the subcommittee of the Public Information Committee would be glad to assist any of the delegates who are sending releases, particularly to the weekly papers. There are two young people—interns Mark Bowlds and Kitty Sullivan--who will be glad to be of any service that they can to any delegate who requests it. If there are some who would like that kind of assistance, if they would come over toward my desk right after recess, I'll see that they get in touch with these people.

PRESIDENT GRAYBILL: Are there other announcements? Very well. The bells are being put around. I've given permission for the bells from the schools to be put around on your desks. We will adjourn; and there's one minor, short matter upon adjournment-off the records-so will you please remain seated for one moment after adjournment.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we stand adjourned until Wednesday, February 9th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: Very well. All in favor of adjourning till Wednesday at 9:00 a.m., please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 9:22 a.m.)

February 9, 1972 — Twentieth Day — Convention Hall
9:05 a.m. — Helena, Montana

PRESIDENT GRAYBILL: Will the Convention be in order, and will the pages stop distributing? If you'll all stand, Delegate Harbaugh will lead us in an invocation.

DELEGATE HARBAUGH: Let us pray. Almighty God, we thank You for the nameless people who, through the centuries, have preserved Your word. Make us mindful this day of those who work behind the scenes and who are hidden from the limelight and, especially, we ask You to guard and care for those on the staff of our Convention today who record and who file and without whose work, we would lose track of ourselves and slip into confusion. Grant to each of us the humble realization that, as we are faithful to our assigned task, we remain faithful to Your holy purpose. Amen.

PRESIDENT GRAYBILL: We'll take the roll today by voting Aye on the voting machines. Mrs. Babcock.

DELEGATE BABCOCK: Mrs. Pemberton asked if she would be excused for a few moments.

PRESIDENT GRAYBILL: Mrs. Pemberton is here and can be excused. Mr. Aronow is here and can be excused. Mr. Artz is coming.

CLERK HANSON: Delegate Dahood, Delegate Leondorf, Delegate Aronow, Delegate Blend, Delegate Felt and Delegate Pemberton, excused.

PRESIDENT GRAYBILL: Very well. We take the automatic roll.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Excused
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend.	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R. S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen,	Present
James	Present
Johnson	Present
Joyce..	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf.	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin,	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present

Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Excused
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 96 delegates present, 4 excused. [Editor's note: The above vote shows 97 present, 3 excused.]

PRESIDENT GRAYBILL: Very well. That's a quorum, and the journal will so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 3, Communications.

CLERK HANSON: "February 9, 1972. Honorable Leo C. Graybill, President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary No. 1, Laws of Montana 1971, the licenses of the following lobbyists have been reinstated as of February 8, 1972: Mitchell, Francis; Mitchell, Carol A.; Smith, David A. Sincerely yours, Frank Murray, Secretary of State." That is all, sir.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. Are you going to read this? All right.

CLERK HANSON: "February 9, 1972. Committee Reassignments. Under Rule No. 34, the President makes the following reassignments: (1) John Toole and Bruce Brown will leave the Public Information Committee. This move is by request from Mr. Toole and Mr. Brown. (2) Bruce Brown is hereby appointed to Administration Committee. (3) Margaret Warden is hereby appointed Chairman of Public Information Committee. (4) Fred Martin is hereby appointed Vice-President of Public Information Committee. These reassignments result from new administration assignments for the vice-presidents. Signed: Leo Graybill, President."

PRESIDENT GRAYBILL: Very well. Because of some reassignments of administrative tasks, we have made these changes, and both the vice-presidents who were on Public Information asked to be taken off of that. Mr. Toole is already the Chairman of Administration, and Mr. Brown went on to Administration, and in their absence, Mrs. Warden is made Chairman of Public Information and Fred Martin is made Vice-Chairman of Public Information. Now, the rules require that this body confirm these committee reassignments-or confirm the committee appointments. Is there any discussion? If not, all in favor of confirming the committee appointments, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Champoux, are you ready?

DELEGATE CHAMPOUX: At this time, I would like to introduce the pages for this week, and, as I call your name, please stand. Kathy McCleary from Hardin; Joan Stark, Kalispell—she'll be right back; Hertha Feldman from Billings; Dare Clubb from Missoula; Lello Galossi from Whitefish; Leslie Fuehrer from Helena; Dave Dwyer from Great Falls; Ann Billy from Box Elder. We want to welcome you to this Assembly, and Dare Clubb will make the remarks.

DARE CLUBB: I would like to take this opportunity to speak for the pages and to thank the delegates for the opportunity to serve at the Constitutional Convention. It is a great learning experience for all of us. I would also, at this time, like to thank Mr. Ray Loman, our Sergeant-at-Arms, for his warm welcome and advice. He is most instrumental in keeping this Convention running smoothly and efficiently. Being very much aware that this government and this new Constitution is going to be handed over to us within the next few years, we are grateful to be a part of this Convention and, indeed, a part of history. Thank you.

(Applause)

PRESIDENT GRAYBILL: On behalf of the Convention, we are very happy to have all of you pages, and we appreciate greatly the work you do for us. And before you girls go, you ought to know that we're going to see that today's proceedings, which includes your name, are printed and given to you so you'll have it as a memento of this Convention. Again, we want to thank you.

Under Unfinished Business, the President is happy to announce-well-Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I didn't realize you were moving off Motions and Resolutions, and I would like to make a motion if1 may.

PRESIDENT GRAYBILL: All right, hearing no objection, we'll be back on Motions and Resolutions, Item Number 7.

DELEGATE BLAYLOCK: Mr. Chairman —or Mr. President, I move that substantive committees, by a majority vote, may schedule meetings during the public hearings that have been scheduled under Rule 38 and I should like to speak—

PRESIDENT GRAYBILL: All right. If we are going to do that, will you prepare that in writing and get it up here to me? Mr. Murray. Mr. Blaylock, the Chair was trying to determine whether this was a motion to suspend therules. In my opinion and the opinion of the Rules Committee, there is no rule prohibiting substantive committees from scheduling hearings under Rule 38. I take it your proposed motion does not make it mandatory that they schedule hearings. It's just voluntary. That's the way it is now, and, if I may be allowed to explain the situation, the President and the committee coordinator, Max Baucus, simply have asked that this only be done in emergency situations so that delegates will have more time to attend these hearings. Now, it's perfectly all right with us if you go ahead and do it, but I think that the Chairman and the commmittee coordinator have only tried to maintain the integrity of the time, if possible. And I have—perfectly willingly debate and discuss this, but I am not sure that it's necessary. Now, if you think it is, just tell me that you want this motion put and we'll debate it.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. My feelings on this-and I don't mean it as any criticism of the President or the committee but, at least in the Bill of Rights, we have many, many delegate proposals to go over. I know some of the people who have put in delegate proposals would like to be heard on their delegate proposals, and at least some of the material that I was listening to yesterday I had heard before. As far as I'm concerned, as a delegate here, we're plowing the same ground. I think it might be interesting or of value to the public, but as a member of a substantive committee, I would rather take the time to get into the material that we must cover if, by a majority vote of that committee—

PRESIDENT GRAYBILL: Very well. Your motion will be put to the House. So the motion is that "I move that substantive committees may schedule meetings during the public hearings that have been scheduled under Rule 38." Is there discussion on the motion?

Mr. Heliker.

DELEGATE HELIKER: Mr. President. By your ruling, the motion doesn't mean much, I take it. I'd just like to say that I was somewhat dubious about Mr. Romney's proposal, initially, but just speaking for myself, I felt that these two hearings yesterday were extremely valuable. I've learned quite a few things that I didn't know before, and I think it would be most unfortunate if committees, barring emergency or very, very good reasons, would force their members to be away from these general hearings which are, after all, intended mainly to inform the delegates of what's going on. And I think that's exactly what they're accomplishing, and I would hope the delegates attempt to attend as many as possible, as long as possible.

Mr. Romney.

DELEGATE ROMNEY: I think that the idea of the hearings were to permit people-delegates to sit in and learn what was transpiring within the other committees and, if possible, get people to come in from around the state to testify. I personally think that, as I did at the outset, that it will afford delegates a wonderful opportunity to learn what is going on in committees other than their own. At the time that the Bill of Rights Committee holds its hearings, I am extremely anxious to be able to come and sit in and learn what is going on in that committee.

PRESIDENT GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President. I would like to speak in opposition to Mr. Blaylock's motion. I feel that the two Romney hearings that were held yesterday were very beneficial to those who attended. I would hate to see other committees scheduling committee meetings that would conflict with this attempt at getting the entire Convention aware of what's going on. One of the initial purposes of these Romney meetings was to allow for this educational process that will probably cut down a lot of debate in questions that will occur in the Committee of the Whole. And I think we should continue in this fashion, and other committees should only meet in emergencies.

PRESIDENT GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Like to rise in opposition to Mr. Blaylock's motion. I think that one of the problems with the two meetings yesterday, perhaps, was that they were, I think, a little dull for a lot of people and a little too formal in some respects. If we could get, perhaps, a little more give-and-take between the committee and some of the delegates so that the delegates could find out more about the thinking behind some of the committee's proposals, they would be beneficial, and I would hope that we wouldn't find too many conflicts with other committees meeting at the same time. I think the main idea behind the Romney hearings is well worth following up and that, perhaps, a little less formality in some of the Romney hearings coming up and a little more give-and-take among the delegates-they could prove even more beneficial.

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. President. The thing I objected to yesterday was the repetition of testimony that had already been given, the recalling of witnesses-and we found out nothing new.

PRESIDENT GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President. Would it be possible to give the delegates first priority in questioning the committees in the Romney hearings and then the public, rather than vice versa?

PRESIDENT GRAYBILL: If I may speak to that a moment, since this issue has arisen, the rule is Rule 38. On the top of page 16 in your rule book: "each substantive committee shall hold a public hearing, at which time citizens of Montana will be invited to appear and testify and file statements containing their testimony and views upon any and all phases of the proposed Constitution being considered by such committee. Such witnesses may be questioned by the committee members to better elucidate their testimony. All delegates to the Convention, not members of the committee conducting the hearing may attend the hearing as auditors to better inform themselves of the committee's progress." Mrs. Bugbee, this issue came up last night and the rule, and I'm not saying it was a good rule but I'm simply saying that the rule says that this gives the public a last free chance to testify, and I think that the committee chairmen surely should let delegates speak also—or delegates question also-but they should probably do so after the public witnesses are taken care of. Now, that's what the rule says; maybe we should change the rule. But the rule makes it clear we're giving the public a last clear chance at the committee process.

Mr. Mahoney was up next.

DELEGATE MAHONEY: Mr. President. I rise in support of the motion of the gentleman from Laurel for the reason yesterday this came up very much in Public Welfare Committee. We were at a meeting. The committee did not recess, and (Inaudible) they said they had to keep in session until we went into session. Now, I don't blame the Chairman; this is the rule. He said we couldn't have any session in the afternoon because we had the other two hearings. Now, I came over and I saw one committee meeting over in the Senate chamber and I wondered what was the deal. In our committee, we have a very top proposal. Everybody should know, it's the Public Utility Bill. We have a lot of witnesses to be heard and more coming all the time. Now, we'd like, in our committee, to get the original witnesses heard, and if this keeps continuing, we're not going to be able to hear all our witnesses. I don't think that Mr. Blaylock has asked anything out of order if a majority of that committee wishes to do it. Then I think the majority of that committee should be allowed— and if it takes the majority of the committee-and I support Mr. Blaylock's motion.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, would Mr. Scanlin yield to a question?

PRESIDENT GRAYBILL: Mr. Scanlin?

DELEGATE SCANLIN: Yes.

DELEGATE AASHEIM: After listening to the testimony last night, would you say the testimony was transparently tautological?

DELEGATE SCANLIN: Amen.

DELEGATE AASHEIM: Now, may I speak on the motion?

PRESIDENT GRAYBILL: The Chair is in doubt, but I think, yes, we'll let you speak on the motion.

DELEGATE AASHEIM: Mr. President. I think when we deny the chairman of a committee the right to call his committee into special session and ask them, "Shall we sit down and forego the pleasure of listening to the Romney hearings?", I don't think we're very democratic if we deny them that right.

PRESIDENT GRAYBILL: Is there other discussion?

Mr. Studer.

DELEGATE STUDER: Mr. Chairman. It isn't very often that I'd get up and support Mr. Blaylock (Laughter), but I do want to say that I think his motion clears this up and will make it so that if a committee does want to have a hearing and is behind and wants to do something, certainly the majority ought to do it. The way it has been, and if we don't adopt this, I think it's up to— the Chairman can even call a meeting any time he wants to and it'll just raise maybe a little rumpus, because maybe half a dozen of the committee would like to go to the Romney hearings but the Chairman, by himself, can call a meeting, the way it now stands. This clarifies the rule. I support his motion.

PRESIDENT GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I don't very often support Mr. Studer, but this time I will. (Laughter)

PRESIDENT GRAYBILL: I didn't realize we had made so many quick alliances here.

Mrs. Bates.

DELEGATE BATES: Again, I don't very often disagree with Charlie Mahoney, but this time I do. I feel that these hearings were set up for the benefit of all of us to have a better understanding of what is taking place within the committees and give us the information. Also, they've been publicized all over the State of Montana. I anticipate witnesses coming from far and near, and I think these people should have the opportunity to be heard in a House of the Whole Committee. Thank you.

PRESIDENT GRAYBILL: Mr. James.

DELEGATE JAMES: Before Mrs. Bates spoke, I was going to say the preceding comments showed there's a little bit of good in all of us.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President. I'm satisfied that the committee chairmen are not going to take advantage of the situation to a point where the members of the committee cannot attend Romney hearings. What we are thinking about is simply this: that perhaps the meeting might be held in abeyance for an hour. We can attend the Romney hearing, receive the report of the committee, and then schedule a meeting of our committee if there is work that requires our attention at that time. Consequently, I do support the motion of Mr. Blaylock (Inaudible).

PRESIDENT GRAYBILL: Is there other discussion?

CLERK HANSON: Mr. President, may the journal show Mrs. Blend present, please?

PRESIDENT GRAYBILL: Mrs. Blend, you may be shown present.

DELEGATE BLEND: (Inaudible)

PRESIDENT GRAYBILL: Well, we are just acknowledging you, Mrs. Blend.

Mr. Joyce.

DELEGATE JOYCE: I'm a little confused in this respect. It seems to me that if the fact is that the rule does not prohibit what Mr. Blaylock wants to do at this time, I can't see what kind of a meaningful vote we can get on the motion. I mean, a yes vote permits intervening committee meetings and a no vote would do the same. I mean— what's the point?

PRESIDENT GRAYBILL: Is there any further discussion? Before we vote, the Chair would ask your indulgence to simply point out again that it is not my idea nor Mr. Baucus' idea to stop any committee chairman from having a meeting if he must have one. We have, I will admit, tried to hold them to a minimum so that we could get a little better attendance and so that we could learn a little more at the Romney hearings, but we'll be guided by whatever you do, in any event. Is there any other discussion? All right, all in favor of the motion-the motion is that "the committee chairmen may schedule substantive committee meetings during the public hearings scheduled under Rule 38." Mr. Aronow, we recognize your presence and you may vote. All in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and we will so order.

Mr. Holland.

DELEGATE HOLLAND: Mr. President. Previously, Delegate Proposal Number 133was referred jointly to the Bill of Rights Committee and Judiciary Committee. I talked to the sponsors of the bill and they desire to have it in Bill of Rights only. I've talked to Mr. Dahood, the Chairman of the committee, he desires to have it in there only. I, therefore, move that this be referred out of the joint committee to the Bill of Rights Committee alone.

PRESIDENT GRAYBILL: You've heard the motion to move Delegate Proposal Number 133 from a joint hearing between Judiciary and Bill of Rights to Bill of Rights alone. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, getting back to this Romney hearing situation, I would first like to commend the General Government Committee on what I think is a splendid job on Article IX. And I think if the entire Constitution shows this kind of craftsmanship, we're going to come out of this set of hearings with a greatly improved State Constitution. At this hearing, however, it became evident, to me anyway, that perhaps some attention in these Romney hearings should be given to the delegate proposals. Most of us are trying to follow the progress of these delegate proposals through committee, and as these Romney hearings come up for discussion, if they would identify the delegate proposals which were assigned to them, and what the disposition of those proposals has been or will probably be, it would probably assist us in following the deliberations of the body as a whole.

PRESIDENT GRAYBILL: Very well. I take it, Mr. Swanberg, that's a suggestion to the committees to identify delegate proposals where possible.

Mr. Joyce. We're still on Motions and Resolutions.

DELEGATE JOYCE: Yes, Mr. President, I move that Delegate Proposal Number 110, which has been referred to the Executive Committee, be also referred jointly to the Judiciary, Legislative and Local Government Committees. May I speak on the motion, Mr. President?

PRESIDENT GRAYBILL: In a moment. Wait till I get it down here. Executive, Judiciary, Legislative—

DELEGATE JOYCE: Local Government.

PRESIDENT GRAYBILL: Can you identify (Inaudible) Delegate Proposal Number 110, Mr. Joyce.

DELEGATE JOYCE: I will. Delegate Proposal 110 is introduced by Delegate Brazier. It is very brief and reads-"that there shall be a new constitutional section to provide as follows: after the effective date of this provision, no person may serve more than three consecutive terms in the same public, elective office." Mr. Brazier has already appeared before our committee in connection with this. It's his intention that this particular proposal, if adopted into the Constitution, would apply to all elective offices. The Legislature being an elective office, the Judiciary, at the present time, being elective, and the Local Government all being elective, it seemed to us that perhaps the other committees ought also to consider Delegate Proposal Number 110 and afford Mr. Brazier the opportunity to appear before them, and, therefore, that is the reason for the motion.

PRESIDENT GRAYBILL: Very well. You've heard the motion, which is to take Delegate Proposal 110, which has been assigned to Executive, and broaden its assignment to Judiciary, Legislative and Local Government because it deals with limiting consecutive terms of public offices. Is there further discussion on the motion? All right, all in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered. Are there other motions or resolutions? Very well, we'll go back on Order of Business Number 8, Unfinished Business. The Chair is-the President is happy to announce that Dale Harris has come back to Helena and is back working with us. Dale is assuming part of his original job immediately, that of Research Coordinator, and he is going to work with the committee chairmen, with the research analysts and with any of theminorities. We are going to try and have all the help we can for you in the next week in putting together your committee proposals. And he will be spending full time on helping committees or minorities or research analysts or anyone that has asubstantiveproblem in putting together the proposals. So please feel free to call upon him. And he's in his regular office. In that conjunction, I would also like to point out that the Administrative Committee last week made Max Baucus acting Executive Director, which title he will retain, temporarily at least and that merely is—I make this announcement so that if you have administrative problems, a good place to start is with Max Baucus and then we'll try and farm them out to wherever they are at themoment.

All right, Order of Business Number 9, Special Orders.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 11, Announcements. First of all, I wish to announce that the flags at the State Capitol complex will be flown at half-staff on Wednesday, February 9th, for First Lieutenant Joseph J. Filka, Jr., husband of Mrs. Cynthia J. Filka of Missoula, Montana. Secondly, I have been asked to announce that the concession stand will be open at night during the so-called Romney hearings, especially if we patronize them somewhat. (Laughter) Third, I think it's clear to everyone that Judiciary is holding its hearing this afternoon—1:30. Is that right, Mr. Holland or Mrs. Pemberton? 1:30?

DELEGATE PEMBERTON: Yes.

PRESIDENT GRAYBILL: And Executive is holding their Romney hearing tonight—7:30. Is that right, Mr. Joyce? 7:30?

DELEGATE JOYCE: 7:O0. (Inaudible)

PRESIDENT GRAYBILL: Well, I think some of them are announced for 7:O0. I noticed that we didn't get started until 7:30 last night. What shall we set it—7:30, Mr. Joyce?

DELEGATE JOYCE: 7:30.

PRESIDENT GRAYBILL: Promptly at 7:30. For the Administration Committee, there will be a short meeting in the Rules Committee room immediately upon adjournment. For the Administration Committee. Now, are there other committee announcements?

Mr. Heliker.

DELEGATE HELIKER: Mr. President. The Public Health Committee's hearings on public utility regulations will reconvene immediately upon adjournment, rather than 10:30 as is in the

schedule; and also, we will hear testimony, preferably brief, from anyone who wishes to give such testimony on Delegate Proposals 138,148 and 177. In speaking to Mr. Vermillion's comment concerning dull hearings, I'd like to assure him that we have some lively hearings today. We're hearing-already heard from Mountain States Telephone. We're also going to hear from Montana-Dakota Utilities, Montana Power Company, and tomorrow from Burlington-Northern and Senator Lee Metcalf.

PRESIDENT GRAYBILL: All right. Mr. Champoux, do you have a commercial? (Laughter)

DELEGATE CHAMPOUX: I was going to check to Mr. Kelleher leaving out Kalispell's Fish Derby Days next summer, but I won't mention that. Education Committee, 10 minutes from now. Thank you.

PRESIDENT GRAYBILL: Very well.
Mrs. Blend.

DELEGATE BLEND: Local Government Committee, 15 minutes after adjournment, please.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Bill of Rights Committee, 15 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Executive Committee, 15 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Revenue and Finance at 10:00, and I would like to invite all who are interested in the 4-mill levy on livestock to be over there. We'd like to talk with you this morning. Thank you.

PRESIDENT GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Natural Resources, 30 minutes after adjournment. We will hear a report on a delegate proposal, and also we are having witnesses this morning at this meeting.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, Legislative Committee at 10:00, and we are having some delegates in at that time to discuss the recall. Any others who would like to come in and make any protests or comments, we'd like to have, at any time, because we are now in the process of drawing up the final document. So, any suggestions that you have, I would like to have you contact our committee. We'll meet at 10:00, and if you have time, I would welcome you in there, to listen to your suggestions.

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Judiciary Committee, immediately after adjournment. Thank you.

PRESIDENT GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, I wish to thank all the gentlemen that sent the lovely roses. I will thank them personally as reading their names might be discriminatory to the rest of the Convention body. (Laughter) Thank YOU.

PRESIDENT GRAYBILL: Very well. Are there other announcements?
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until Thursday, February the 10th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: Very well. The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 9:40 a.m.)

February 10, 1972 **Twenty-First Day** **Convention Hall**
9:00 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: If we'll all stand, Delegate Mae Nan Robinson will give us an invocation this morning.

DELEGATE ROBINSON: Let us pray. Almighty God, You have taught us that to every thing there is a season and a time to every purpose under the Heaven. A time to be born and a time to die; a time to plant and a time to reap; a time to cast away stones and a time to gather stones together; a time to win and a time to lose; a time to keep and a time to cast away; a time to keep silent and a time to speak; a time to love and a time to hate. Help us, 0 God, in this day to remember that now is the time to cast away petty differences and personal motives and work together for the good of all people in our beloved state. Amen.

PRESIDENT GRAYBILL: Very well. We'll take the roll this morning by voting Aye on the voting machines. Delegates Eck, James, Jacobsen and Melvin are excused because they went to Great Falls for the television series. Eck, James, Jacobsen and Melvin. Delegate Felt is excused.

CLERK HANSON: Delegate Blaylock, Delegate Blend, Delegate Campbell, Delegate Dahood, Delegate Foster, Delegate Pemberton, Delegate Rebal, Delegate Studer. Delegate Studer, Delegate Rebal, Delegate Pemberton.

PRESIDENT GRAYBILL: Mr. Clerk, let's send a page to the Bill of Rights hearing and tell them we're in session, please. Do we know where the hearing is? The meeting? In the Senate, I believe. All right; in their Bill of Rights room, then, which is around behind the Senate. We'll stand at ease until the Bill of Rights Committee comes.

Mr. Studer, for what purpose do you rise?

DELEGATE STUDER: Could I be here?

PRESIDENT GRAYBILL: Yes, you're here. (Laughter) We haven't closed the vote yet. We're waiting for the Bill of Rights Committee to join us.

(Convention at ease for 4 minutes)

PRESIDENT GRAYBILL: Very well. We'll complete the roll call. Will all the delegates vote present by voting Aye on the voting machines.

CLERK HANSON: Dahood, Foster and Rebal.

PRESIDENT GRAYBILL: Very well. We'll close the vote. Please take the automatic. Mr. Clerk, before you announce the tally, will you please show Mr. Foster and Mr. Dahood present?

Aasheim	Present
Anderson, J.	Present
Anderson, 0.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock..	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown..	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Excused
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong,,	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R. S.	Present
Hanson, R.	Present
Harbaugh	Present

Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Excused
James	Excused
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lore110	Present
Mahoney	Present
Mansfield.	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Excused
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Absent
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 94 delegates present, 1 absent and 5 excused.

PRESIDENT GRAYBILL: Very well. That's a quorum, and the journal may so show.

PRESIDENT GRAYBILL: Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Yes, there is a communication. Do you want to read the letter?

CLERK HANSON: (Reading) "February 9, 1972. Mr. Dale Harris, Research Coordinator, Constitutional Convention, State Capitol, Helena, Montana 59601. Dear Mr. Harris: This letter confirms your return from leave of absence which you requested last week. You have informed me that you would prefer to be reassigned to substantive areas. Therefore, we are happy to have you back on the Convention staff, and your assignment will be Research Coordinator. We have already discussed the important work remaining to be done in this area. Sincerely, Leo Graybill, Jr., President."

PRESIDENT GRAYBILL: Will you please give the letter to file in the journal. Are there other communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Introduction of Delegate Proposals-None. Final Consideration-None. Adoption of Constitution-None. Motions and Resolutions. Unfinished—oh—
Mr. Monroe.

DELEGATE MONROE: Mr. President, I just rise to make a motion to this effect: that our President be requested to send a congratulatory message to the College of Great Falls, reason being that they're having their 40th anniversary celebration during this week; and I'm an alumni of that college, and I would request that our President send a congratulatory message to the College of Great Falls in celebrating their 40th anniversary. Thank you.

PRESIDENT GRAYBILL: Mr. Monroe, I take it that's a motion. You've all heard the motion. Is there any discussion?

(No response)

PRESIDENT GRAYBILL: All in favor of the motion to send the College of Great Falls a congratulatory message on its 40th anniversary, please signify by saying Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?

(No response)

PRESIDENT GRAYBILL: So ordered, and I'll be happy to do that. Are there other motions or resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -10, General Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -11, Announcements. First of all, Mr. Omholt has asked that I announce to you that warrants are again ready in the auditor's office. However, he wishes you to know that the auditor's office will be closed on Friday and Saturday, so make note of that fact. He's been open Saturdays before, but because of the holiday he will not be. Secondly, I think we should announce--I think everybody is aware—but I think we should announce that the Convention will, of course, continue on with its schedule on Friday as far as the delegates are concerned. The printing shop will be closed that day, but we will go ahead with our program. Third, I've been asked to announce that the interns will have a meeting with the research subcommittee of the Administration Committee on adjournmentin the Rules room to the left of the roster. Now, are there other committee announcements?

Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting, tomorrow morning at 8 o'clock.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Revenue and Finance, at 10:00.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Executive, 5 minutes after adjournment.

PRESIDENT GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Local Government will meet 15 minutes after adjournment.

PRESIDENT GRAYBILL: That's Local Government, 15 minutes after adjournment.

Mrs. Cross.

DELEGATE CROSS: Natural Resources, 15 minutes after adjournment, please.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Legislative Committee, 9:30.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: The Bill of Rights Committee is holding a public hearing at 10 o'clock in the Governor's reception room on two proposals dealing with an expanded concept of eminent domain or compensation for the landowner, and I understand at that particular hearing the "big boys" will make one of their rare appearances. Thank you, Mr. President. (Laughter)

PRESIDENT GRAYBILL: Any other commercials'? (Laughter)

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the subcommittee of the Public Information on the press has a couple of interns who have done an excellent job on getting out the first release and to assist the weekly-those who were interested in getting releases for the weekly newspapers. A copy of that release will be put on the desks of delegates, and anyone who wants some help in getting out their release can get in touch with Mark Bowlds or Kitty Sullivan at the Public Information Office.

PRESIDENT GRAYBILL: Very well. Are there other announcements?

Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. Graybill, the Judiciary has delegate proposals this morning at 11:00 a.m. in Room 413.

PRESIDENT GRAYBILL: Very well. Now, I take it we're all aware that Revenue and Finance will hold forth on their formal hearing at 1:30 in the Convention Hall, and that Natural Resources will hold forth this evening. It's scheduled here at 7:00.

Mrs. Cross, what's your pleasure-is it 7:00 or 7:30?

DELEGATE CROSS: Because I think there are going to be a great many witnesses tonight, I would prefer to begin at 7 o'clock.

PRESIDENT GRAYBILL: Very well. Does everyone understand that the Natural Resources Committee will start at 7 o'clock tonight on their formal hearing? Are there other announcements?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until Friday, February the 11th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: Very well. You've heard the motion to adjourn until Friday at 9:00 a.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered

(Convention adjourned at 9:16 a.m.)

February 11, 1972 **Twenty-Second Day** **Convention Hall**
9:00 a.m. **Helena, Montana**

VICE-PRESIDENT TOOLE: The Convention will come to order.

Mr. Scanlin.

DELEGATE SCANLIN: Let each one of us make this our prayer for today. Give us the courage and the ability, 0 Lord, to change the things we can change and the gracious acceptance, for the time being, of the things that can't be changed. But, above all, grant us the insight and the wisdom necessary to recognize the difference. Amen.

VICE-PRESIDENT TOOLE: Okay. Clerk will call the roll. Signify by saying Aye. Push the Aye button.

CLERK HANSON: Delegate Brown, Delegate Bugbee, Delegate Campbell, Delegate Dahood, Delegate James, Delegate Skari, Delegate Speer.

VICE-PRESIDENT TOOLE: Delegates Loendorf and Delegates Felt are excused.

CLERK HANSON: Delegate Joyce also, please, Mr. President. Delegate Warden, (Inaudible) Delegate Campbell, Delegate Dahood.

Aasheim	Present
Anderson, J.	Present
Anderson, 0.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask.	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman.	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Absent
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross.	Present
Dahood	Absent
Davis.	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R. S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Excused
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin.	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray.	Present
Noble	Present
Nutting.	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present

Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 96 delegates present—

VICE-PRESIDENT TOOLE: Mr. James is present.

DELEGATE JAMES: Mr. President.

VICE-PRESIDENT TOOLE: Mr. James.

DELEGATE JAMES: Delegate James is present.

CLERK HANSON: -2 excused and 2 absent.

VICE-PRESIDENT TOOLE: Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

VICE-PRESIDENT TOOLE: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Order of Business Number 3, Communications.

CLERK HANSON: (Reading) "Secretary of the State, Helena, Montana, February IO, 1972. Honorable Leo C. Graybill, President, Montana Constitutional Convention, Capitol, Helena, Montana 59601. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary No. 1, Laws of Montana 1971, the license of Edward A. Heard, License Number 53-72, has been reinstated as of February 10th, 1972. Sincerely yours, Frank Murray, Secretary of State."

VICE-PRESIDENT TOOLE: Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None, sir.

VICE-PRESIDENT TOOLE: Number 5, Final Consideration of Proposals.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 6, Adoption of Proposed Constitution and Ballot.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 7, Motions and Resolutions.

DELEGATE AASHEIM: Are-are we—

VICE-PRESIDENT TOOLE: Mr. Aasheim.

DELEGATE AASHEIM: Are we making announcements now for the committees?

VICE-PRESIDENT TOOLE: No, not at this moment. Any other motions and resolutions?

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 8, Unfinished Business.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 9, Special Orders of the Day.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: -10, General Orders of the Day.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: -11, Committee Announcements and Notices.
Mr. Aasheim.

DELEGATE AASHEIM: The Legislative Committee will meet at 9:30.

VICE-PRESIDENT TOOLE: Mrs. Blend.

DELEGATE BLEND: Local Government will meet 15 minutes after adjournment. Thank you.

VICE-PRESIDENT TOOLE: Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee-formal committee hearing at 1:30 in this chamber.

VICE-PRESIDENTTOOLE: Mr. Holland.

DELEGATE HOLLAND: The Judiciary will meet 10 minutes after adjournment.

VICE-PRESIDENT TOOLE: Mr. Dahood.

DELEGATE DAHOOD: Bill of Rights will meet at 9:30.

VICE-PRESIDENT TOOLE: Mr. Joyce.

DELEGATE JOYCE: Executive will meet at 930.

VICE-PRESIDENT TOOLE: Mrs. Warden.

DELEGATE WARDEN: Public Information, 10 minutes after adjournment in the Public Information office.

VICE-PRESIDENT TOOLE: The Chair wishes to announce that there will be a meeting of the Administration Committee in the Rules Committee room immediately following adjournment.

Mrs. Cross, excuse me.

DELEGATE CROSS: The Natural Resources Committee will meet ½ hour after adjournment.

VICE-PRESIDENT TOOLE: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I trust the roll will show that I'm present-and also Bob Campbell.

VICE-PRESIDENT TOOLE: Mr. Dahood and Mr. Campbell are present.

Mrs. Babcock.

DELEGATE BABCOCK: Could I have the Helena delegation meet me up here in the corner for a minute afterwards, please'?

VICE-PRESIDENT TOOLE: Any other committee announcements or notices'!

Mr. Kygg.

DELEGATE RYGG: Revenue and Finance at 10 o'clock.

VICE-PRESIDENT TOOLE: Mr. Vermillion.

DELEGATE VERMILLION: Yes. I'd like to make an announcement of interest, I think, to some of the delegates here. First of all, the cable television people, as you know, have been filming-

VICE-PRESIDENT TOOLE: Mr. Vermillion, would you speak a little louder? The Chair can't hear you.

DELEGATE VERMILLION: All right. Yes. As most people know, the cable TV people have been doing a good deal of filming recently, and for those who may be in Helena this weekend, their show will be on cable TV Saturday night. I'd like to let the delegates know something that's coming up Monday night and which may be the beginning of a new series. We've talked a good deal about this open Convention and how the public is free to come to Helena and testify and to take in the hearings. But I think we're starting something Monday night that may go a bit beyond what any other convention has done in the way of open conventions. Monday night, the General Government Committee is going to more or less hold a statewide hearing at 8 o'clock. The General Government Committee is going to be up at the Colonial Motel, and we are going to go on statewide radio through the facilities of the Intermountain Radio Network, and we are going to be accepting calls from around the state from those people who can't get to Helena. It might be somebody in the eastern part of the state-Sidney or Glasgow-or somebody from northern Montana or western Montana who find it impossible to get to Helena. By the simple means of making a telephone call to our committee Monday night, they will be able to give testimony to this Convention—to the General Government Committee. We will have one topic we'll be considering, and that will be the topic of lotteries, gambling and that, and I think we'll get a few comments from around the state on that. And we understand that--and then, next Monday night, the Bill of Rights Committee has agreed to do the same thing, and the tentative subject of a week from Monday night's telephone testimony from around the state will be the right

of 18-year-olds to hold office and other privileges of adulthood. So I think this Convention has been aiming at an open Convention-I think we've gone one step beyond what any other convention has done, and that is, we are going to be taking telephone testimony from around the state from those people who can't make it to Helena, and I hope that all you delegates who have an Intermountain Radio station in your area, you might want to check back with them and let the people know that it is going to be on radio this coming Monday night at 8 o'clock and the following Monday, and there may be other programs to follow.

VICE-PRESIDENT TOOLE: Thank you very much, Mr. Vermillion. Are there further announcements or notices?

Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: May I ask Mr. Vermillion if he knows the telephone number that they would call?

DELEGATE VERMILLION: (Inaudible)

VICE-PRESIDENT TOOLE: Are there further announcements or notices?

Mr. Etchart.

DELEGATE ETCHART: General Government will meet immediately upon adjournment.

VICE-PRESIDENT TOOLE: If there are no further announcements or notices, the Chair will recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Vice-President, I move we adjourn until Saturday, February the 12th, 9:00 a.m., 1972.

VICE-PRESIDENT TOOLE: You've heard Mr. Eskildsen's motion that the Convention adjourn until 9:00 a.m., February 12th, 1972. All in favor say Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, No. (No response)

VICE-PRESIDENT TOOLE: The meeting is adjourned.

(Conventioned adjourned at 9:13 a.m.)

February 12, 1972 **Twenty-Third Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in session. This morning we have with us Sister Jean Michelle from East Helena, and if you'll rise, we'll ask her to give the invocation. Sister Michelle—Jean Michelle.

SISTER JEAN MICHELLE: Father of us all, another day has begun and we gather together again to do our work. In the humility and glory of the human condition, we struggle with each other, with words and with decisions. The decisions we make are larger than any one of us and can be made only by all of us. Let Your truth and word guide us through this day. Amen.

PRESIDENT GRAYBILL: Thank you. We will register our presence by voting Aye on the voting machines. Mr. Clerk, will you show Mr. Champoux as excused and will you show Mr. Bob Hanson as excused?

CLERK HANSON: Mr. President, may Delegates Aronow, Blend, Brown, Jacobsen, Harrington and Holland also be excused please?

PRESIDENT GRAYBILL: Yes, they may.

CLERK HANSON: Delegate Bugbee.

PRESIDENT GRAYBILL: Delegate Felt is excused.

CLERK HANSON: Delegate Bugbee.
(No response)

PRESIDENT GRAYBILL: Very well, take the machine vote.

Aasheim ..... Present
Anderson, J. ..... Present
Anderson, O. ..... Present
Arbanas ..... Present
Arness ..... Present
Aronow ..... Excused
Artz ..... Present
Ask ..... Present
Babcock ..... Present
Barnard ..... Present
Bates ..... Present
Belcher ..... Present
Berg ..... Present
Berthelson ..... Present
Blaylock ..... Present
Blend ..... Excused
Bowman ..... Present
Brazier ..... Present
Brown ..... Excused
Bugbee ..... Absent
Burkhardt ..... Present
Cain ..... Present
Campbell ..... Present
Cate ..... Present
Champoux ..... Excused
Choate ..... Present
Conover ..... Present
Cross ..... Present
Dahood ..... Present
Davis ..... Present
Delaney ..... Present
Driscoll ..... Present
Drum ..... Present
Eck ..... Present
Erdmann ..... Present
Eskildsen ..... Present
Etchart ..... Present
Felt ..... Excused
Foster ..... Present
Furlong ..... Present
Garlington ..... Present
Graybill ..... Present
Gysler ..... Present
Habedank ..... Present
Hanson, R. S. ..... Excused
Hanson, R. ..... Present
Harbaugh ..... Present
Harlow ..... Present
Harper ..... Present
Harrington ..... Excused
Heliker ..... Present
Holland ..... Excused
Jacobsen ..... Excused
James ..... Present
Johnson ..... Present
Joyce ..... Present
Kamhoot ..... Present
Kelleher ..... Present
Leuthold ..... Present
Loendorf ..... Present
Lorello ..... Present
Mahoney ..... Present
Mansfield ..... Present
Martin ..... Present
McCarvel ..... Present
McDonough ..... Present
McKeon ..... Present
McNeil ..... Present
Melvin ..... Present

Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins..	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz..	Present
Siderius..	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President. 9—

PRESIDENT GRAYBILL: Yes, sir.

CLERK HANSON: 90 delegates present; 9 excused; 1 absent.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees.

The Chair will recognize Mr. Etchart.

DELEGATE ETCHART: Mr. President, the General Government and Constitutional Amendment Committee submits herewith the proposed Constitutional Revision article. The proposed article is intended to replace all sections of the present Constitution dealing with constitutional revision. The committee addressed itself to the basic problems concerning constitutional revision. The committee worked with the basic purpose of making a fundamental, yet flexible, document. In doing so, the committee gave careful consideration to several citizen and delegate proposals. Our end product is composed of a majority report. In signing this report, a committee member does not necessarily endorse each and every statement in it. Mr. President, the committee utilized the services of the following people: James Grady, our research analyst; Bobbie Murphy, our secretary; and Robert Skaggs, our intern. Your Committee on General Government and Constitutional Revision recommends that this report be advanced to Committee of the Whole for further consideration by this body.

PRESIDENT GRAYBILL: Mr. Etchart—go ahead, proceed.

DELEGATE ETCHART: In addition, I think it was deleted, but there is also a minority report inherent in this.

PRESIDENT GRAYBILL:That was my inquiry-is there a minority report also?

DELEGATE ETCHART: There is a minority report also.

PRESIDENT GRAYBILL: And it's going to be contained in the proposal booklet?

DELEGATE ETCHART: Yes, sir.

PRESIDENT GRAYBILL: Very well.

DELEGATE ETCHART: And I move the adoption of the committee report.

PRESIDENT GRAYBILL: Well, very well. We'll accept the committee report, and I will ask that the committee report be printed or duplicated, and we will place the committee report on General Orders. It's not necessary for the body to move. The rules require that it automatically goes to General Orders, and the General Government's first committee proposal, then, including the minority report, is now accepted and will be ordered printed and placed upon your desks when printed and will appear on General Orders. This means that 48 hours after it's placed upon your desks, it can be brought up for debate, and this is the procedure we will use with the rest of the committee proposals as they come in. That's all there is to bringing the proposal before you at this time, so we can go on to the next order of business. Before I do that, however, Mrs. Bugbee, we will show you present.

All right. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction of Delegate Proposals. None.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Rules-or Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. None.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8. The Chair will recognize Mrs. Cross. Mrs. Cross, do you want to come forward?

DELEGATE CROSS: Mr. President, on behalf of Jim Osborne of Glendive, Montana, located in the Gate City of the eastern half of the Big Sky Country, where the skies are bluer and the water cleaner, and home of the great and mighty Yellowstone River, and part of the breadbasket of the Nation, I would like to present this gavel to our President. Mr. Osborne made it out of native wood and red cedar. The cedar is from the Badlands in eastern Montana. (Applause)

PRESIDENT GRAYBILL: Well. That's a beautiful piece of work, Mrs. Cross, and we're happy to have been able to accept it on behalf of the Convention. The Convention-I'll lay it out here, and you may all look at it. It's got inlaid, different colors of wood, and it's beautifully turned, and it's really a very nice piece, and it was certainly a novel way for Glendive and that end of the country to tell us about themselves, and I certainly appreciate it on behalf of the Convention and thank you very much for bringing it to us. I'll lay it up here and anyone who wants to look at it can see it after the session. Special Orders of the Day.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: General Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Committee announcements and notices. First of all, this is a very important announcement because many of you don't know about it. There will be a short meeting of committee chairmen in the Rules Committee room, to the left here, immediately upon adjournment. Now, I know many of you have programs set up for this morning. We'll try to keep this short, and if we get out of here very shortly, I think we can be done by 10 o'clock, so I think you can proceed with your other morning business. But we do need to have a short meeting of committee chairmen on adjournment, until 10 o'clock. Secondly, Mr. Vermillion, there have been requests that you disclose the telephone number.

DELEGATE VERMILLION: Mr. President, we have that phone number available, and I also have a list of the stations. I could give them quickly now. The stations that are going to be carrying this phone-in program Monday night at 8 o'clock-it's the General Government Committee to hear phone-in testimony from all around the state concerning gambling, bingo, lotteries and the like, and the Intermountain Radio Network is carrying the program, and the stations are as follows: KSEN in Shelby; KYSS Radio in Missoula; KBLL in Helena; KMON in Great Falls; KGEZ, Kalispell; KLCB, Libby; KDBM in Dillon; KGHL in Billings; KATL Radio in Miles City; KGLE in Glendive; KXLO in Lewistown; KBOW in Butte; KPRK in Livingston; KBMN in Bozeman; KEYZ in Williston, North Dakota; and KLTZ in Glasgow. And I hope that some of you will get a chance, perhaps, to call back home or if you do go back home this weekend and maybe talk to the people at the radio station and a few of your friends in your home community and perhaps urge them not only to listen to the program, but if they do have some comments, to call in. And the phone number that they may use, and they can call collect Monday night-442.9670. And this is posted outside on the main bulletin board and down by the Public Information office, but that number is 442-9670, and they can call collect.

PRESIDENT GRAYBILL: Are you wired for sound, or is that music coming from somewhere else, Mr. Vermillion?

CLERK HANSON: We're wired for sound.

PRESIDENT GRAYBILL: Okay. Well, that's fine. I'm glad to have that program going forward. Now, the Bill of Rights Committee, of course, is holding its formal "Romney" hearing at 1:30 this afternoon in this Convention Hall. Now, are there other announcements?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, the Legislative Committee will meet on adjournment. The Vice-Chairman will be in charge, and he will be informed about your assignment, and we will then reconvene in committee at 10:15, and I hope you have your assignment taken care of by that time.

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Public Health, at 10 o'clock.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Bill of Rights, at 10 o'clock in the committee room.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Executive Committee, on adjournment, with the Vice-Chairman in charge.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Revenue and Finance, at 9:45, with the Vice-Chairman in charge.

PRESIDENT GRAYBILL: Mr. Noble.

DELEGATE NOBLE: (Inaudible) immediately on adjournment-436.

PRESIDENT GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Am I on? I'd just like to say that there will be, from time to time, articles from the Public Information Committee on the desk of every delegate. This is to inform you [of] some of the things that we are doing. This has gone out and is quite self-explanatory: "Hello from a Con Con Delegate's Wife." I hope you will look at these. If you can use them in any way, go ahead. Thank you.

PRESIDENT GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Natural Resources, upon adjournment.

PRESIDENT GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: The Local Government majority and minority report is out, but we haven't been able to have it printed; and if some of you people are going home over the weekend, I think that there are ways for you to get some copies or have some made.

PRESIDENT GRAYBILL: Very well. Other committee announcements?

Mr. Etchart.

DELEGATE ETCHART: Mr. President, could we revert back to Order of Business Number 1 again, please?

PRESIDENT GRAYBILL: Very well. We'll revert back to Order of Business Number 1 unless there's objection from the Floor.

(No response)

PRESIDENT GRAYBILL: There being no objection, go ahead.

DELEGATE ETCHART: Mr. President, I wanted to be sure that the record showed that the report that we're coming out with also includes a section on Suffrage and Elections, and this will be in our report, also.

PRESIDENT GRAYBILL: Very well. If you didn't mention that, we'll certainly add that, and it is on the title page, is it not, of the report?

Very well. All right, back on Order of Business Number 11, if there's no objection. Any other announcements?

(No response)

PRESIDENT GRAYBILL: Very well, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move, pursuant to the general powers vested in Montana Constitutional Convention and in accordance with the provisions of Section 7(6) of the Enabling Act, Chapter 296, Laws 1971, the Montana Constitutional Convention shall recess temporarily until 9:00 a.m. on Tuesday, February the 15th, 1972.

PRESIDENT GRAYBILL: Very well. You've heard the motion that this Convention recess temporarily until 9:00 a.m. on Tuesday, February 15th, 1972. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed temporarily at 9:23 a.m.)

February 15, 1972 **Twenty-Fourth Day** **Convention Hall**
9:oo a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will come to order. If you will all rise, Mrs. Babcock will lead us in the Pledge of Allegiance.

DELEGATES: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands; one Nation, under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: And if you'll remain standing, Reverend Burkhardt will lead us in the invocation this morning.

DELEGATE BURKHARDT: Let us pray. Grant, 0 God, that because we wait in a moment of reverence, we may have some deeper appreciation for our task and for each other, and for the people of our state. Help us to know that though it's easier to accept the worst than to commit ourselves to the best, that it still is worth the effort to try. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Bates, Cate and Toole be excused, please?

PRESIDENT GRAYBILL: Very well.

CLERK HANSON: Delegate Aasheim, Delegate Barnard, Delegate Eck, Delegate Holland, Delegate Kelleher, Delegate Skari. Delegate Aasheim-

PRESIDENT GRAYBILL: Mr. Clerk, Delegate Aasheim is upstairs working on his report, so count him present.

CLERK HANSON: Delegate Holland.

PRESIDENT GRAYBILL: Very well, do you want to take the machine vote?

Aasheim..	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	**Excused**
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman.	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell..	Present
Cate	Excused
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R. S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lore110	Present
Mahoney	Present

Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Absent
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Excused
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 95 delegates present, 3 excused and, 2 absent.

PRESIDENT GRAYBILL: Who's absent besides Holland?

(No audible response)

PRESIDENT GRAYBILL: Very well. All right. That's a quorum; the journal will so show. Reports of Standing Committees, Order of Business Number 1.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: I might comment on that and point out that the Legislative Committee does expect to have its draft done today so that we can debate it Friday, but it can come in tomorrow and still make that deadline. Report of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Communications.

CLERK HANSON: (Reading) "Helena, Montana, February 14th, 1972. Honorable Leo C. Graybill, President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary No. 1, Laws of Montana 1971, the license of Kenneth H. Davis, License Number 56.72, has been reinstated as of February 14th, 1972. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Any other communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: -4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -7, Motions and Resolutions. None.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: -8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -10, General Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: The delegates have on their desks this morning the report of the General Government Committee, so we're beginning now the 24—48-hour period on that, so we have that. That is, technically on General Orders but not debatable for 48 hours.

. ..11, Committee Announcements and Other Announcements. First of all, I'd like to say that we have a subcommittee working, and it is likely that there will be another delegate dinner at the Montana Club a week from tonight on the 22nd of February, and some of you might start keeping that date in mind and remembering it so that we'll have a good attendance. Secondly, I have been asked to announce that you should tell your spouses there is the ladies' luncheon tomorrow noon, February 16th. Are there other announcements?

Mr. Anderson.

DELEGATE OSCAR ANDERSON: I want you all to remember that the "Romney" type hearing on Local Government will take place in this Convention Hall, 7 o'clock this evening. You have the minority and majority reports on your desk. We are ready for you to put us through the grilling on it.

PRESIDENT GRAYBILL: Mr. Anderson, that's going to be at 7 o'clock; is that right?

DELEGATE OSCAR ANDERSON: 7 o'clock. Also, the Local Government will meet 15 minutes after this morning's adjournment-Room **437.**

PRESIDENT GRAYBILL: All right; 7 o'clock tonight for the "Romney" hearing for Local Government.

Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, 10 minutes after adjournment, please,

PRESIDENT GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Public Health, at 11:oo.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Bill of Rights will meet 15 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: The Executive Committee, having completed its work, will not need to meet after adjournment.

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: The Judicial Committee will meet 10 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Revenue and Finance at 9:45, 1:30 this afternoon and 8:30 tonight. That'11 give you an hour and a half to attend the hearing, and then we'll go to work at 8:30.

PRESIDENT GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Could I get all the District 8 delegates to meet over in the corner for about 2 minutes immediately on adjournment, please.

PRESIDENT GRAYBILL: District 8 delegates in this corner on adjournment, please.

Who have I got back there? Mr. Loendorf?

DELEGATE LOENDORF: Loendorf, Mr. President.

PRESIDENT GRAYBILL: Loendorf, pardon me.

DELEGATE LOENDORF: Legislative Committee will meet at 9:30 this morning.

PRESIDENT GRAYBILL: Legislative at 9:30. May the journal show that Carman Skari is excused? Are there other announcements?

(No response)

PRESIDENT GRAYBILL: When we adjourn in 1 minute, would you all remain seated for about 1 more minute while the "Back Bench Barbershoppers" give us their latest problem.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we stand adjourned till Wednesday, February the 16th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: You've heard the motion to adjourn until 9:00 a.m. tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: The Chair is going to interrupt the vote.

Mr. Aasheim.

DELEGATE AASHEIM: Well, I was busy working on the final draft up here, and I didn't realize we were in session. The Committee on Legislation, will you meet at 11 o'clock, please?

PRESIDENT GRAYBILL: Committee on Legislation at 11 o'clock.

Now, I'll put the motion again. All in favor of adjourning till 9:00 a.m. tomorrow morning, say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: That's better, Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: So ordered

(Convention adjourned at 9:16 a.m.)

February 16, 1972 **Twenty-Fifth Day** **Convention Hall**
9:05 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: (Inaudible) in session. If you'll all rise, Reverend Harbaugh will lead us in invocation this morning.

DELEGATE HARBAUGH: Let us pray. God of grace, today, as we enter the first day of Lent, make us mindful of the sacrificial life of your Son. Grant that the new wine of life so evident in Him may also be in us. Empower us to throw off the restraints and the temptations which bind us both individually and collectively that we may become a part of that new order of humanity which You are creating in the world. We ask this for the sake of Christ. Amen.

PRESIDENT GRAYBILL: We'll take the roll by voting Aye on the voting machines. Is there another one'?

CLERK HANSON: Delegate Burkhardt, Delegate Campbell, Delegate Cate, Delegate Erdmann, Delegate Joyce, Delegate Toole. Delegate Burkhardt.

PRESIDENT GRAYBILL: Very well. Will you take the electronic vote? Mr. Clerk, before you announce the vote-Mr. Burkhardt, would you care to-we'll call you present, Mr. Burkhardt.

Aasheim ..... Present
Anderson, J. ..... Present
Anderson, 0. ..... Present
Arbanas ..... Present
Arness ..... Present
Aronow ..... Present
Artz ..... Present
Ask ..... Present
Babcock ..... Present
Barnard ..... Present
Bates ..... Present
Belcher ..... Present
Berg ..... Present
Berthelson ..... Present
Blaylock ..... Present
Blend ..... Present
Bowman. ..... Present
Brazier ..... Present
Brown ..... Present
Bugbee ..... Present
Burkhardt ..... Present
Cain ..... Present
Campbell ..... Present
Cate ..... Present
Champoux ..... Present
Choate ..... Present
Conover ..... Present
Cross ..... Present
Dahood ..... Present
Davis ..... Present
Delaney ..... Present
Driscoll ..... Present
Drum ..... Present
Eck ..... Present
Erdmann ..... Present
Eskildsen ..... Present
Etchart., ... Present
Felt ..... Present
Foster ..... Present
Furlong, ... Present
Garlington ..... Present
Graybill ..... Present
Gysler ..... Present
Habedank ..... Present
Hanson, R. S. ..... Present
Hanson, R. ..... Present
Harbaugh ..... Present
Harlow ..... Present
Harper ..... Present
Harrington ..... Present
Heliker ..... Present
Holland. ..... Present
Jacobsen ..... Present
James ..... Present
Johnson ..... Present
Joyce ..... Present
Kamhoot ..... Present
Kelleher ..... Present
Leuthold ..... Present
Loendorf ..... Present
Lorello ..... Present
Mahoney ..... Present
Mansfield. ..... Present
Martin ..... Present
McCarvel ..... Present
McDonough ..... Present
McKeon ..... Present
McNeil ..... Present
Melvin ..... Present
Monroe ..... Present
Murray ..... Present
Noble ..... Present
Nutting ..... Present
Payne ..... Present
Pemberton ..... Present
Rebal ..... Present

Reichert Present
Robinson Present
Roeder Present
Rollins.. Present
Romney Present
Rygg Present
Scanlin Present
Schiltz Present
Siderius Present
Simon Present
Skari Present
Sparks Present
Speer Present
Studer Present
Sullivan Present
Swanberg.. Present
Toole Present
Van Buskirk Present
Vermillion Present
Wagner,, Present
Ward Present
Warden Present
Wilson Present
Woodmansey Present

CLERK HANSON: Mr. President, 100 delegates present.

PRESIDENT GRAYBILL: Very well; that's a quorum.

(Applause)

PRESIDENT GRAYBILL: I trust that will prevail throughout debate. All right, Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: No-yes, there is.

CLERK HANSON: Oh, sorry.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, members of the Assembly, the Legislative Committee submits herewith a proposed new legislative article which combines Article V and Article VI of the present Constitution. The proposed article is intended to replace all sections of Article V and Article VI of the present Constitution with the exceptions of the procedure for submitting initiative and referendum petitions and the procedures for legislative action in times of emergency which were assigned to the Committee on General Government. Throughout its deliberations, the committee has addressed itself to drawing up, to the best of its ability and judgment, a proposed legislative article containing choices between a bicameral and unicameral legislature. The bicameral and unicameral proposals are both submitted as majority reports. It is the committee's recommendation that the unicameral and bicameral proposals should be presented on the ballot as alternative legislative articles. The proposed revisions in the majority report include major substantive changes, procedural and technical improvements and stylistic changes in the language. Moreover, the Legislative Committee proposes a more coherent and unified organization of the article than the existing one. The unicameral and bicameral reports, for the most part, differ only as to the structure of the legislature. Minority reports express variance with the thinking of the majority of the members. The members of this committee, by signing the majority report, do not necessarily endorse each and every statement contained therein. And minority reports on various sections are also presented in this report. The committee utilized the testimony of many witnesses. A list of the witnesses is contained in this report. The committee wishes to express its thanks to Richard F. Bechtel, its research analyst, and Judith A. Pratt, its secretary, and Steve Jones, its student intern. Magnus Aasheim, Chairman; Jerry Loendorf, Vice-Chairman. The Chairman would like to have you turn to page 11 of your report and note the heading. It says "Comments on Majority Proposal." It should be "Majority Unicameral Proposal." We also have a report on the majority bicameral proposal later on.

PRESIDENT GRAYBILL: Thank you, Mr. Aasheim. The Chair notes that the Legislative Committee's committee proposal has been filed. As you can see, it has been printed. It is laid on your desk. It is now placed on General Orders and will be debatable 48 hours from now.

All right. Reports of Select Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Communications.

CLERK HANSON: (Reading) "Helena, Montana, February 15, 1972. Honorable Leo Gray-

bill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary No. 1, Laws of Montana 1971, the license of Maurice Mulcahy, License Number 69.72, has been reinstated as of February 15, 1972. Sincerely yours, Frank Murray, Secretary of State."

CLERK HANSON: (Reading) "Helena, Montana, February 16, 1972. Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary No. 1, Laws of Montana 1971, the license of Robert A. Ellis, License Number 27.72, has been reinstated as of February 16, 1972. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Very well. At this time, the President wants to take a moment under Communications to talk very briefly with this body. It certainly is not my intention to in any way embarrass this body, and I am very sorry for the publicity which I seem to have brought down upon our head again this morning. I would like to say to you that before the briefing that I get from the clerk and the floor manager every morning—yesterday morning--while I was out of the office, now-the Tribune's reporter went past both the secretaries, unannounced and uninvited, sat down at my desk and put his coffee on my desk and spread his notes there and took over. Now, when I came back, I asked him if he would leave. He said that he was there to take the notes of the meeting. I told him that I did not consider that a meeting of a committee of this body and that I would like him to leave, and he did leave, and that's what happened. It does seem to me that the President, as well as the delegates, must have some place that he can seek some sanctuary and do some thinking without being watched and followed by these-this particular reporter. And I am going to try and insist on that in my office. I am sorry for what has transpired. I have put out a press release explaining my side of the story. I'm sorry that itoccurred. I thinkmostof you would agree with me that all of our sessions—that all of our committee meetings and subcommittee meetings have certainly been "pen. This meeting that I have, or this group that gathers to discuss what goes on the floor, is not a constituted committee. It's just the floor manager and the clerk and occasionally some others to decide how to run this Convention, and it seems to me that it would be most inappropriate for the news media to sit there and listen to how and what we're going to do, so that if some decision was made, the word could be flashed and this house could be put into a bad situation at the time we go into session. So, I'm going to insist on the sanctity of my office, and I hope you'll support me, but in any event, I want to apologize for the embarrassment that this will cause the Convention statewide. (Applause)

PRESIDENT GRAYBILL: All right. Order of Business Number 4, Introduction.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. My pleasure this morning to introduce the pages for this week. As I call your name, would you please stand, and then one of you will come to the first microphone and give an answer to our welcome. The first page is Charlotte Carruthers, Kalispell; Margaret Coldiron, Butte—Margaret has a very unusual name-she's called Jiggs-you may want to ask her why; Myrna Fillner of Billings; Patric Graham of Great Falls; Carl Gysler of Fort Benton—and Carl is the son of our fellow delegate, Erv Gysler; William Watkins of Havre; Kent Saxby of Helena; Sarah McClay of Lolo. Now, have you chosen one of your numbers to-Jiggs.

MISS COLDIRON: Well, it was kind of hard to try and think of something original to say, because we all feel so happy to be here, and we're so proud to be able to serve you, and we hope that we

do a good job, and if you see one of us flying by and you need something, just grab us and we'll stop. And we may not be able to find everything quite yet, but we're working hard, and we'regoing to try to serve you as best we can. We want to thank you for this honor.

(Applause)

PRESIDENT GRAYBILL: Well, on behalf of the Convention, we want to welcome you pages, and we're glad to have you, and we are certainly looking forward to working with you this week. Your names will be in the proceedings for the day, and we'll see that you get a copy of those proceedings to take home with you. Any other unfinished business?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10. The President would simply like to point out to you that the General Government proposal has been on the desks now 24 hours and will have been on the desks 48 hours and will be subject to debate tomorrow morning. We intend to debate that tomorrow morning. In that connection, I would like to point out that major amendments that any of you may have in mind to the General Government proposal should be in writing. The blanks, which are four—quadruplicate in number, are available at the clerk's office for writing up your major amendments, and if your amendment is sufficiently complicated that you feel it ought to be before the delegates, please try to get it done in time so that it can be printed and spread. If your amendments are minor-a matter of one word or a short phrase-the Chair will certainly entertain such amendments without the necessity of printing. But I want to call your attention to the fact that you should be ready with your amendments, and we would rather not type them while we are on the floor here. So, please be prepared for our first exercise in debate tomorrow morning.

Order of Business Number 11, Committee Announcements and Notices. Mr. Toole, you have an announcement.

DELEGATE TOOLE: Mr. President, there will be a meeting with the interns of the research subcommittee of the Committee on Administration in Room 431 at 4 o'clock this afternoon.

PRESIDENT GRAYBILL: And I have an announcement that the delegate party next Tuesday night will include an amateur hour, and Max Baucus and Katie Payne are receptive to those of you who would like to perform in a more formal way than we sometimes allow here in the Convention, so if you'll all get in touch with them, they'll be happy to make the necessary arrangements for your amateur-Mr. Scanlin, are you up already'? (Laughter)

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, you're responsible for this. The "Back Bench Barbershoppers" charter registration closes at noon today. We have received official word from the national headquarters in Wisconsin that we are legitimate. All interested voices, see the back bench. JPB's are on the way. Rehearsals at the Methodist Church chancel every morning at 6:00 a.m. Thank you. (Laughter)

PRESIDENT GRAYBILL: Well, that shows we'd better be careful of what word we get from Wisconsin's Constitution, doesn't it? All right.

Mrs. Blend.

DELEGATE BLEND: Local Government will meet in Room 437 15 minutes after adjournment. I would like to tell all delegates present that Mr. Jim Moore, who spoke last night, will be at our meeting, if they wish to attend. Thank you.

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX. Education Committee, 10 minutes after adjournment, please.

PRESIDENT GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Judiciary, 10 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible)—10 minutes after adjournment.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Revenue and Finance, at 9:45, 1:30 and 7:00 p.m.

PRESIDENT GRAYBILL: Let that sink in a little bit. (Laughter)

Okay. Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President. Scalpel and Disecting, tomorrow morning at 8 o'clock for a dry run on the Suffrage article.

PRESIDENT GRAYBILL: Very well. Are there other announcements?

Mr. Dahood.

DELEGATE DAHOOD: Mr. President, Bill of Rights will meet 15 minutes after adjournment.

PRESIDENT GRAYBILL: Very well.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until Thursday, February 17th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until Thursday morning at 9:00 a.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 9:24 a.m.)

February 17, 1972 **Twenty-Sixth Day** **Convention Hall**
9:05 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all rise, Delegate Harper will lead **us in invocation.**

DELEGATE HARPER: Our Heavenly Father, we pause at the beginning of this day to measure ourselves against the standards that You have for us. Now, perhaps we feel small enough to work in humility, "pen to Your guidance and "pen to each other. May we debate with our best intelligence and vote with the courage of our convictions, taking counsel from our faith more than from our fears; so may the work we produce in humility become a document of which we can all be justly proud. Amen.

PRESIDENT GRAYBILL: We'll vote this morning by voting Aye on the voting machines.

CLERK HANSON: Delegate Artz, Delegate Barnard, Delegate Belcher, Delegate Brown, Delegate Holland, Delegate Jacobsen. Delegate Artz, Delegate Babcock, Delegate Belcher. Delegate Artz, Delegate Belcher. Mr. President, may Delegate Pemberton be excused, please?

PRESIDENT GRAYBILL: Yes, Delegate Pemberton is excused.

CLERK HANSON: Delegate Artz.

PRESIDENT GRAYBILL: Well, we'll close the ballot and take the recorded vote, and we'll count him absent if he comes-or, count him present if he comes.

Aasheim ..... Present
Anderson, J. ..... Present
Anderson, O. ..... Present
Arbanas ..... Present
Arness ..... Present
Aronow ..... Present
Artz ..... Present
Ask ..... Present
Babcock ..... Present
Barnard ..... Present
Bates ..... Present
Belcher ..... Present
Berg ..... Present
Berthelson ..... Present
Blaylock ..... Present
Blend ..... Present
Bowman ..... Present
Brazier ..... Present
Brown. ..... Present
Bugbee ..... Present
Burkhardt ..... Present
Cain ..... Present
Campbell ..... Present
Cate ..... Present
Champoux ..... Present
Choate ..... Present
Conover ..... Present
Cross ..... Present
Dahood ..... Present
Davis ..... Present
Delaney ..... Present
Driscoll ..... Present
Drum ..... Present
Eck ..... Present
Erdmann ..... Present
Eskildsen ..... Present
Etchart ..... Present
Felt ..... Present
Foster ..... Present
Furlong. ..... Present
Garlington ..... Present
Graybill ..... Present
Gysler ..... Present
Habedank ..... Present
Hanson, R.S. ..... Present
Hanson, R. ..... Present
Harbaugh ..... Present
Harlow ..... Present
Harper ..... Present
Harrington ..... Present
Heliker ..... Present
Holland. ..... Present
Jacobsen ..... Present
James ..... Present
Johnson ..... Present
Joyce ..... Present
Kamhoot ..... Present
Kelleher ..... Present
Leuthold ..... Present
Loendorf ..... Present
Lorello ..... Present
Mahoney ..... Present
Mansfield ..... Present
Martin ..... Present
McCarvel ..... Present
McDonough ..... **Present**

McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Excused
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Sarl	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

DELEGATE HANSON: Mr. President, 98 delegates present, 1 excused, 1 absent.

PRESIDENT GRAYBILL: Very well. That's a quorum; the journal will so show. This morning, I'd like to, unless there's objection, go immediately off the order of business to Order of Business Number 11 to make two announcements, since we may not have a chance to make them later. The first announcement is that, after consultation among the printing clerk and others, we have at the moment decided to print enough committee proposals so that everyone gets one committee proposal at their desk. Secondly, the committee who is making the proposal gets a second proposal at their committee office. So you'll get two of the ones you're on. Other than that, all of the people that are on the mailing list get them, the press gets them, and so forth; but besides that, they have to be purchased. So, there have been a lot of requests for extra committee proposals. Will you please save your committee proposals; take care of them; write your names on them. We'll try and do something for you if we have a couple of catastrophies, but we would rather not have to print 200 or 300 extra of these committee proposals, and they are on sale for people that need one for some particular person--at a dollar per committee. But that is the way it is working now, and we'd like to try that; and if you all feel that won't work-why, someone can make a motion; we'll change it. But at the moment, there's only one for you at your desk, two if you're a member of the committee making the report.

All right. The second announcement that I am very happy to make this morning is that on the distinguished speaker series tomorrow morning, we will hear from Charles A. Lindbergh in this chamber. Mr. Lindbergh will visit us tonight and tomorrow morning. He will address the Convention as a meeting, just as the others did in our distinguished speakers series, in this room at 8:30 tomorrow morning. His remarks, which will be directed largely toward environment and animals and things of that nature, which he is now primarily interested in-preservation of animal species and that sort of thing-will be-his remarks will be rather short, and he will then entertain questions and like--would like to talk informally with us tomorrow morning at 8:30. We will proceed with his talk and then recess for maybe a half an hour, and then we'll come back into session--whatever time is necessary-9:30 or 10 o'clock-for our debate tomorrow. Now, this evening, Mr. Lindbergh will meet with anyone who is particularly interested, in the Governor's reception room at 7:30 for an informal discussion. Some of you know about this, and others may wish to attend, but there certainly is no reason for you to attend tonight if you don't want to. He merely wants to informally discuss matters with any of you. He's very interested,, as I've told you, in these subjects we've mentioned. I think that I should say on his behalf that he would prefer to discuss-he's attempting to learn something about us at this Convention, and he would be happy to discuss these fields he's interested in. He would prefer that personal questions about his past be overlooked or skipped. You can read the books.

All right. I wanted to make those announcements before we went on. We're now back on Order of Business Number 1, Reports of Standing Committees.

Mr. Joyce.

DELEGATE JOYCE: Mr. President, fellow delegates. The Executive Committee proposal is ready for presentation to the delegates and to be advanced to the Committee of the Whole for debate. We have a majority and a minority report in the proposal. However, I might say that the minority report does not go to the whole report by a long ways; rather, it is just to a specific number of sections. We have counted-I think-we've eliminated-400 or 500 words at least, and the proposal itself will speak for itself when you receive it. On behalf of the members of the Executive Committee, we are submitting this for-as a proposal to the delegates, and we will graciously abide the decision of the Convention on the merits thereof. Further, I might add that all members who signed the majority report do not necessarily agree with each and every provision therein. I trust that after you look at it, that you will at least see that we have been working on the matter and that it gives some food for thought in the proposed new executive article to the Constitution. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well. The Executive Committee's proposalis filed and is accepted and has been sent to printing and will be placed upon your desks when printed and is now placed upon General Orders.

The Chair'would now recognize Mr. Holland.

DELEGATE HOLLAND: (Inaudible) fellow delegates. The Judiciary Committee has prepared and sent its report to the clerk. **The** recommendations within this report deal with the structure and organization of the Supreme Court, the District Courts and the Justice of the **Peace** Courts. There are two reports--a majority and a minority report. The majority report contains, among other things, provisions for election of judges, tenures of judges and qualification of judges, and further provides for the elections of clerk of the court and the county attorney. Minority of the committee-and this is a five-to-four split on the committee--report contains recommendations for selections of judges on a basis different from the majority report. In the minority report, the provision is for a selection by the judges, confirmation by the Senate-selection of the judges to be provided by the Legislature, confirmation by the Senate, and a contested election on the first election thereafter and an election without an opponent thereafter. The minority report is in itself a complete judicial article and is entirely distinguishable from the majority report. There's been no attempt by the minority and the majority to reconcile the various provisions of the report, and they are entirely different. The recommendations contained in the full report are of great concern to the people. Resolutions by the Convention will have a profound effect upon the administration ofjustice and the nature and philosophy of our government. On behalf of the Vice-Chairlady, Mrs. Catherine Pemberton-myself, we regret that a complete consensus was not possible. We do not report that all members of the committee-we do report that all members of the committee worked diligently, and the majority and minority reports are consensus of the opinions of all persons signing them. While the members of this committee had philosophical differences, particularly about selection of judges, the entire committee, working on a difficult subject, wholeheartedly devoted their time and energy to their respective report. The committee expresses its thanks to its research analyst, Sandra Muck&ton, and secretary, Ellen McCarthy, and to its administrative interns, Dodge Leary and Katherine Sullivan. Thank you very much. Mr. President.

PRESIDENT GRAYBILL: Thank you, Mr. Holland. The report of the Judiciary Committee has been filed and is accepted and has been sent to printing and will be placed upon your desk when printed, and the Judiciary Committee proposal is now placed on General Orders.

Mr. Artz. Yes.

DELEGATE ARTZ: Mr. President, road conditions between here and the Mitchell Building are not the best. The legs are old. I couldn't make it on time. Sorry.

PRESIDENT GRAYBILL: Mr. Artz, you may be shown present, and we're sorry that you didn't get here earlier-to miss the fun.

Very well. Any other reports of Standing Committees?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: All right. Reports of Select Committees-2.

CLERK HANSON: None.

PRESIDENT GRAYBILL: ...3, **Communications.**

CLERK HANSON: None.

PRESIDENT GRAYBILL: ...4, Introduction and Reference of Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: ...5, Further—Final Consideration.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: . ..6. Adoption of Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: . ..7. Motions and Resolutions.

The Chair will recognize Mr. Murray.

DELEGATE MURRAY: Mr. President, I move to suspend the provisions of Rule 74 relating to amendment of these rules. And Mr. President, I make this motion in order to make a motion authorizing a very minor change in Rule 51,—since we are about to enter Committee of the Whole, and I ask the members for their assistance in suspending the provisions of Rule 74 so that we may avoid taking the matter to the Rules Committee and then spread it upon the desks for2 days prior to this consideration.

PRESIDENT GRAYBILL: Very well. The motion is on Mr. Murray's motion that Rule 74 be suspended. Rule 74 calls for a method of amending the rules which requires 2 days' consideration. Mr. Murray would like to suspend that rule so that he can make a one-digit change in Rule 51 this morning. Is there any discussion about suspending Rule 74?

(No response)

PRESIDENT GRAYBILL: All in favor of suspending Rule 74, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All opposed, say No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we amend Rule 51, on page 22, in the third paragraph, under the caption "Committee of the Whole Consideration", by deleting-or, by substituting the digit 10, for the digit 7, as it appears in line 2 of that paragraph 3. The reason is that we do not think we have to go back to Motions and Resolutions in order to hear or vote on the report of the Committee of the Whole but can do it within Order of Business Number 10, and it would save us some time if we can do it in this fashion.

PRESIDENT GRAYBILL: Very well. You've heard the motion of the Chairman of the Committee on Rules, Mr. Murray, to amend Rule 51 on page 22, right in the middle of the page, to provide that the number-that the Order of Business be Number 10 instead of Number 7 that the Committee of the Whole reports to. Is there any discussion?

(No response)

PRESIDENT GRAYBILL: As I understand it, this simply means that instead of-when we come in from the Committee of the Whole, instead of having to go-revert back to Order of Business Number 7, we may stay on Order of Business Number 10 to hear our own report. That's the purpose of this rule. Now, is there any discussion?

(No response)

PRESIDENT GRAYBILL: If not, all those in favor of amending Rule 51 by substituting the numeral 10 for the numeral 7, as indicated by Mr. Murray, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and the rule is amended. Are there other Motions and Resolutions?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. President, I believe today we're supposed to start the debates, is that correct?

PRESIDENT GRAYBILL: Yes, sir.

DELEGATE KELLEHER: In view of the fact, Mr. President, that we've been working very hard in getting our committee reports out and that I personally am very tired-in fact, almost to the point of exhaustion--and, just speaking for myself-I'd like to know how some of the other delegates feel-and in view of the fact that I have not even had an opportunity to read either the majority or minority report on General Govern-

ment, and I personally do not feel that I am qualified to begin debate, I move that we postpone the beginning of the general debate until next Tuesday at 9:00 a.m.

PRESIDENT GRAYBILL: The motion by Mr. Kelleher is to postpone debate on General Government, and I take it the sense of it is to postpone the debate on the rest of the articles, until next Tuesday at 9:00 a.m.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I rise in opposition to this motion. Let's get debate started. If we find that we don't know enough about what we're doing, we can always pass it for the day during the debate and accomplish just what he wants to accomplish. But, let's try it and see how we work out. Let's get this Convention rolling at this time.

PRESIDENT GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President, if we start postponing debate at this stage of the game, this Convention will never finish its business within the budgetary allowance. I rise in opposition to the motion.

PRESIDENT GRAYBILL: Is there other—Mr. Romney.

DELEGATE ROMNEY: I feel, like delegate Eskildsen and Delegate Toole, that we should get the machinery moving. However, all of these—or most all of these various articles from the various substantive committees are going to be on the floor and will have been on the floor for 48 hours in very short order, and it is going to be necessary that after today, or at least after this General Government topic is exhausted, that there he some time devoted ahead of each discussion of each article to permit us to make a study of the article before we debate it; otherwise, we'll he going into it blindfolded.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Since this is Thursday, I've great fears that by Friday, someone might he in China and bring hack by Tuesday another system which we'd have to discuss, so I would suggest we continue as scheduled. (Laughter)

PRESIDENT GRAYBILL: Is there further debate?

(No response)

PRESIDENT GRAYBILL: If not, the question is on the motion of Mr. Kelleher that we defer debate-postpone debate on General Government until Tuesday morning at 9:00 a.m. All those in favor of postponing debate on General Government until Tuesday morning at 9:00 a.m., say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Noes have it, and so ordered. Are there other motions or resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Very well. Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 10, General Orders of the Day.

DELEGATE ESKILDSEN: Mr. President?

PRESIDENT GRAYBILL: Just a moment, Mr. Eskildsen.

Mr. Clerk, will you read the General Orders of the Day.

CLERK HANSON: (Reading) "The following committee proposals are now on General Orders: General Government and Committee proposal; Legislative Committee proposal; Executive Committee proposal; and Judiciary Committee proposal."

PRESIDENT GRAYBILL: Very well. Can you tell us what ones have passed the 48-hour rule.

CLERK HANSON: The General Government Committee Proposal Number 1 and 2 have been duplicated and placed on the delegates' desk

on the 15th day of February, 1972, at 9 o'clock and is now in compliance with Rule 23 of the Montana Constitutional Convention Rules.

PRESIDENT GRAYBILL: Very well.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move this Convention resolveitselfinto the Committee of the Whole for the purpose of handling business under General Orders.

(Committee of the Whole chairmanship assumed by Mr. Graybill.)

CHAIRMAN GRAYBILL: Very well. The members of the Committee of the Whole will please be in order. Members of the committee, you have before you for your consideration Proposal Number 1, which is the Suffrage and Election proposal of the General Government Committee. Will the clerk please read Section 1.

All right, just a moment. Before we do that, we'll recognize Mr. Etchart to-Mr. Etchart, arc there any amendments in Number 1?

DELEGATE ETCHART: No, sir. I have some amendments to Number 2, except—

CHAIRMAN GRAYBILL: Right. Very well. We'll pass that, then.

DELEGATE ETCHART: Number l-it should be pointed out that this is the report on Suffrage and Elections.

CHAIRMAN GRAYBILL: Right.

DELEGATE ETCHART: And the reports as they are on the desks aren't numbered.

CHAIRMAN GRAYBILL: You should number your report on Suffrage and Election, Number 1. You should number the other report on Constitutional Revision, Number 2. We're now on the General Government Committee's Suffrage and Elections report, Number 1.

Now, Mr. Clerk, will you read Section 1?

CLERK HANSON: (Reading) "Section 1. All elections by the people shall be secret ballot."

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 1, Section 1, that it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: The wording in this section differs from the present Article IX, Section 1, only in that it includes the word "secret." The committee feels that the guarantee of secrecy in voting is important enough to warrant inclusion in the Constitution.

CHAIRMAN GRAYBILL: Very well. You have before you Section 1. Are there any amendments?

Mr. Swanberg.

DELEGATE SWANBERG: I was wondering, Mr. Chairman, if it wouldn't be advisable, in view of the fact that there may be something in some other section-I'm sure it doesn't apply in this case, but possibly in some of the other sections-if we couldn't have the whole thingread as a whole first and then go back and take each section one by one. And offered merely as a suggestion, for your consideration.

CHAIRMAN GRAYBILL: Well, Mr. Swanberg, that might be possible on this one, but if we read the others as a whole, it would be rather time-consuming, and that's why they're there for 20—for 48 hours on your desk. If you have your book opened, the whole of the proposal is on that one page. There are five sections to it, and it's very easy to see, and we're on Section 1. Now, if you want to make a motion to that effect, we'll find out, but the rules now call for taking these matters up section by section, and we're on Section 1.

Very well, members of the committee, you now have before you on the motion of the Chairman of the Committee on General Government that when this committee does arise and report after having under consideration Section Number 1, that it recommend the same be adopted. We're now going to vote on Section Number 1. As many as shall be in favor of Section Number 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: As many as are opposed, say No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and Section 1 is passed.

Will the clerk read Section 2?

CLERK **HANSON:** (Reading) "Section 2. Any citizen of the United States who is 18 years of age or older and meets the registration and residence requirements of the state and political subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institution or is judged of unsound mind by court may vote."

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report after having had General Government Proposal Number 1, Section 2, under consideration, that it recommend that Section 2 be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: If the members would turn to the report, page 4, I believe that you could follow the rationale a little easier. The italicized language is what we have in our article, and directly under it is the rationale or the explanation, so on Section 2—I'm reading on line 15—but, this section embodies all of the proposed constitutional qualifications for and disqualifications from voting. In the 1889 Constitution, these qualifications and disqualifications are scattered through six sections of Article IX. The proposed article constitutionally gives the Legislature the major burden for establishing explicit registration and residence requirements. The rationale for individual segments of Section 2 follows, and if you'd look to the italicized language above, this would be the first--about the first statement up there, which says: "Any citizen of the United States who is 18 years of age or older..." Now, 18 is the voting age of all elections as established by the 26th Amendment of the national Constitution. The 1971 Montana Legislature was among the state legislatures that ratified the amendment. Continuing, in our language: "and meets the registration and residence requirements of the state and political subdivision is a qualified elector." I believe this is self-explanatory. And, to finish off that section: "except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a court may vote," The present Constitution automatically disenfranchises felons. This is done in Article IX, Section 2, and extends this disenfranchisement even after the person is released from prison. The convicted felon must apply for often difficult to receive pardons before he may again vote. The committee feels that this system of permanent punishment is contrary to the best interests of society in that it does nothing to aid rehabilitation of a criminal. Indeed, a provision disenfranchising a felon attaches a stigma to the person and hinders rehabilitation. Additionally, a disqualification provision flies in the face of the rationale for prisoner release. The presumption is that when a man comes out of prison, he should be encouraged to resume normal civic relationships. As for the provision disenfranchising those adjudicated as of unsound mind, the committee feels that with the new and ever-expanding developments in mental hygiene, it is unwise to freeze arbitrary mental disqualifications by label into the Constitution. Consequently, the committee has left such decisions for judges to make on an individual case basis.

CHAIRMAN GRAYBILL: Very well. You have before you Section 2 of Proposal 1 for your consideration. What is your pleasure?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Etchart yield to a question?

CHAIRMAN GRAYBILL: Mr. Etchart, will you yield?

DELEGATE ETCHART: I yield.

DELEGATE BLAYLOCK: Mr. Etchart, right after the word "state," you say "and political subdivision." Is it the intent of the committee that political subdivisions would be allowed to set voting qualifications like a town or a county?

DELEGATE ETCHART: No, the intention is to leave it to the Legislature.

DELEGATE BLAYLOCK: Would it be better if we struck that language and just said "of the state is a qualified-"?

DELEGATE ETCHART: Well, the Legislature has set different residency requirements in different political subdivisions, and so our intention is to leave it to the discretion of the Legislature, in that they may have different qualifications-or, different residence requirements, but our intention is to insure that they are-provided they meet these residency requirements-that they are considered qualified electors.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Well, Mr. President, I move to amend this then by striking the words "and political subdivision" and just say, "resident requirements of the state is a qualified elector."

CHAIRMAN GRAYBILL: What line is that?

DELEGATE BLAYLOCK: Line 11. Line 11, right after "state," strike "and political subdivision."

CHAIRMAN GRAYBILL: Very well. The amendment proposed by Mr.-moved by Mr. Blaylock is to strike from line 11 the three words "and political subdivision" and otherwise leave it alone. Is there discussion on Mr. Blaylock's amendment?

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I would resist the amendment because the committee considered this at great depth. There are problems that come up, such as bond elections, and we feel that the political subdivisions might have a different problem in school bond elections-this type thing-that aren't necessarily germane to qualifying an elector. So, for this reason, I would oppose that amendment, and I would like to defer to Mr. Brown if he has some additional thinking.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I rise in opposition to the amendment. We've carefully considered this-and you could be a qualified elector in the State of Montana, but there would be many reasons that if you moved into a city a day ahead of an election, or for many other reasons, that would complicate the electoral process, and I will—

CHAIRMAN GRAYBILL: Mr. Brown, hold the mike a little further away from your mouth.

DELEGATE BROWN: Thank you. But we carefully considered this and we think that the political subdivision-there may be a good reason in the future for having separate resident requirements other than state elections, so I move that the amendment not be adopted.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. Will Delegate Blaylock yield to a question?

CHAIRMAN GRAYBILL: Mr. Blaylock, will you yield?

DELEGATE BLAYLOCK: Yes.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Blaylock, do you realize that your amendment would make it possible for all the people in Billings to come over and vote in your Laurel election?

DELEGATE BLAYLOCK: They do. (Laughter)

CHAIRMAN GRAYBILL: Do **you** have another question, Mr. Harlow?

DELEGATE HARLOW: Mr. Chairman, may I say a few more words about that? So, with this admission of Delegate Blaylock, I feel it is most unwise and unworkable to make it so that anyone in the State of Montana can wander about and vote in any election wherever he may want, wherever he may be, or wherever he may desire to vote. So, I strongly resist the amendment of Delegate Blaylock.

CHAIRMAN GRAYBILL: Is there other discussion on the proposed amendment?

Mr. Kelleher.

DELEGATE KELLEHER: I rise to support Mr. Blaylock's motion. As I read this--and meets "the registration and residence requirements of the state"-so I assume the phrase "of the state"-the prepositional phrase--modifies "registration" as well as "residence requirements" and also that-the phrase "political subdivision", so I would assume that the political subdivision-say, a county or a municipality-could set up registration and residence requirements in addition to those set up by the Legislature of the State of Montana. What if a—the county or municipality were to set up additional restrictive requirements for allowing people to vote-and we know--all of us know about the problems that they've had in the south of the United States, and it may be true that we have some protection—minority groups or any type of group may have some protection under the federal Constitution, but we can use our imaginations to envisage what type of requirements a county or other type of-or other governmental subdivision less than a state might set up for people--authorizing people to

vote in that county or in that subdivision, municipality, or what-have-you. Therefore, I support Mr. Blaylock's motion.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Would Mr. Brown yield to a question?

CHAIRMAN GRAYBILL: Mr. Brown, will you yield?

DELEGATE BROWN: I will yield.

DELEGATE HOLLAND: I have the same trouble that Mr. Blaylock and Mr. Kelleher have. If this clause means-and meets the registration and residence requirements for-established for the State of Montana and for the political subdivision, I can see some sense in keeping it. But if, as Mr. Kelleher points out, if it's registration and residence requirements of the state and political subdivisions, does this mean required by the state and required by the political subdivisions? Thus we come down to, I take it, that your interpretation is that it's a residence required by the Legislature for voting in a political subdivision and not a residence required-established by a-political subdivision. So-what I say is-if you interpret it one way--my question is-if you interpret it one way and Mr. Kelleher interprets it another, isn't it ambiguous?

DELEGATE BROWN: I do not believe it's ambiguous. If you'll refer to Section 3. it says the Legislature will provide your residence and registration requirements. Under this provision, no other body or legislative group could do it except your legislative body, so I think you have to read Section 3 in with Section 2, and it provides that the Legislature will do it and no other body.

DELEGATE HOLLAND: (Inaudible)—entire phrase "of the state and political subdivision?" And just make it read "resident requirement is a qualified voter," because resident requirement would then refer to all of the residence requirements passed by the Legislature.

DELEGATE BROWN: I would disagree. I think we've got to keep this flexible, and I think there may be a time in the future when the residence requirements of the state would not be applicable to a political subdivision, and we've got to give the Legislature the discretion to fix these requirements, so I would want to leave the matter up to the Legislature both for state elections and political subdivisions.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise to propose a substitute motion—

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: -by amending the proposed Proposal Number 1 in line 11, by striking the words "of the state and political subdivision" and substituting in lieu thereof the following words: "as provided by law."

CHAIRMAN GRAYBILL: Very well. I understand it to be the substance of Mr. Joyce's motion that he would strike the words "of the state and political subdivision," but he would add in the words "as provided by law," so that the section would then read: "and meets the registration and residence requirements as provided by law is a qualified elector." Is that the sense of your substitute motion?

DELEGATE JOYCE: Yes, it is. May I speak on it, Mr. Chairman'?

CHAIRMAN GRAYBILL: Very well.

DELEGATE JOYCE: It seems to me this would then accomplish the purpose of the General Government Committee and that if the law requires different residence requirements for voting in political subdivisions than they do in state elections, then, of course, those provisions provided by law would apply, and it seems to me that it, therefore, would clear up the ambiguity, accomplish the intent of the committee, and would make it perfectly clear that in order to be a qualified resident you would have to meet the requirements established by law.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I agree with Mr. Joyce's amendment, and I would so support it.

CHAIRMAN GRAYBILL: Mr. Brown supports your amendment. Is there other discussion of this substitute amendment?

Mr. Blaylock.

DELEGATE BLAYLOCK: I would support it, also.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President, in fairness to the committee, it should be said that several of us were together in the Style Committee at 8 o'clock, and this came up as a matter of discussion. Normally, we'll have time, I think, to go back and forth between committees, but it seemed that this particular phrase was going to be specified in the next section and that it didn't really add anything to this part of the Constitution. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I won't resist this amendment, but I really do think it's unnecessary, and I think that we cover what is amended in here in Section 3, and we're actually more specific with our present language, but I won't resist the amendment.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I think there is some need for clarification of the language, but it's difficult to do on the floor, and I would suggest as a substitute that this matter be passed until this afternoon and allow the Committee and the Style and Drafting to get together and come up with language to submit to us after the noon recess and we go ahead and discuss other parts of the section.

CHAIRMAN GRAYBILL: Mr. Aronow, I won't allow a substitute motion to a substitute motion, but if you want to make a motion to commit this section, you may. That's permitted. But, I can't allow substitutes on substitutes. But a motion to commit is a motion that is in order in the Committee of the Whole, and you could commit this section back, and we'll have to vote on whether we commit it or whether we settle it.

DELEGATE ARONOW: Well, prior to making the motion to commit, there is one other question that I have on this section, and that has to do with the language "except that no person who is in a penal institution may be allowed to vote." Now, does that mean that a person who gets a suspended sentence, for example, or who is given maybe-a month or 2 or 3 months in the county jail and the balance of the sentence suspended, is he to be allowed to vote or is he foreclosed until the end of the sentence? This is a point of information, and I'd like to direct that question to whomsoever on the committee handled this matter.

Mr. Brown?

CHAIRMAN GRAYBILL: Mr. Brown, will you answer that parliamentary inquiry?

DELEGATE BROWN: I think we're getting into a different question, but I will discuss that at this time. Our committee took the position that anyone could vote who was not physically in prison. Our theory is this. If a man is given a 10-year sentence and the court or your institutional body feels that he is ready to come back in society on parole, then he should have every opportunity to rehabilitate himself. Therefore, it is the committee's opinion that a person will not be allowed to vote if he is in prison, but if he's on parole, he'll have the right to vote, and we've discussed this with various witnesses in our committee, and we feel that he should have every right to rehabilitate himself, including the right to vote, if he is on parole.

CHAIRMAN GRAYBILL: Very well. We'll be at ease for a moment while we change the tape.

(Convention at ease)

CHAIRMAN GRAYBILL: The Convention will be in order. The Chair will recognize Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I move as a substitute motion for all motions to pass Section 2 until after the noon recess.

CHAIRMAN GRAYBILL: All right, Mr. Aronow. The Chair is in doubt. There are only certain motions that are allowed here. One is to fix the time, one is to take a recess, one is to reconsider, one is to postpone to a datecertain, the next is to commit, to amend, to arise, and so forth. So, it looks to me like you either have to move to postpone to today at 2 o'clock or something like that, or else you have to commit this back to the committee. That's all that the Chair will recognize.

DELEGATE ARONOW: well, I move to postpone this matter until after the noon recess,

and I've been advised by the Chairman of the Rules Committee that's in order.

CHAIRMAN GRAYBILL: He didn't say that in his notes, my friend. (Laughter) We'll consider that a motion to postpone to a day certain--namely, today after recess-so that we now have before us Mr. Aronow's motion to postpone consideration of Section 2 of the article on Suffrage and Elections until today after the noon recess. All those in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered.

Now we're on Mr. Joyce's substitute motion that the phrase read "meet the registration and residence requirements as provided by law," having stricken therefrom the words "of the state and political subdivision." We're on Mr. Joyce's substitute motion. Is there further discussion?

Mr. Kelleher.

DELEGATE KELLEHER: I support Mr. Joyce's substitute motion.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: All right. We're on the question of Mr. Joyce's substitute motion which says that Section 2 of the Suffrage and Elections shall be amended so that it reads after the first clause: "and meets the registration and residence requirements as provided by law is a qualified elector." And it strikes out the words "of the state and political subdivision." All those or so many as may be in favor of Mr. Joyce's substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and the substitute motion passes. Since it's a substitute motion, it wipes out Mr. Blaylock's initial motion. Is there further discussion on Section 2 of the article on Suffrage Amendment?

Mr. Romney.

DELEGATE ROMNEY: Mr. President, after hearing Delegate Brown's explanation of the penal situation, I wish to move that in line 13, following the word "felony," to insert ''or is under parole from" and then continue "a penal institution," in lieu thereof.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Romney, after you've discussed this, will you write it out so that when-send it to the Chair, but go ahead and discuss it.

DELEGATE ROMNEY: My point is that, while I feel that the committee's views concerning a felon having the right to return to society and take his place after having completed his payment-his restitution is very fine, I don't think that restitution or atonement has been consummated when he is liberated--when he or she is liberated from a penal institution. Normally, they are liberated under a fraction of the time to which they had been originally sentenced. And if they violate their parole during the period of its existence, they may again be taken back into custody and incarcerated until their term as originally fixed by the court has been completed. So, I think that the felon should be-remain in his limbo status until such time as the parole or probation period is exhausted.

CHAIRMAN GRAYBILL: Very well. We're now discussing Mr. Romney's amendment, which is that in line 13 after the word "felon," we add a sentence-add a clause so that it reads: "who is serving a sentence for a felony or is under parole from a penal institution." Now, is there discussion?

Mr. Garlington.

DELEGATE GARLINGTON: I wanted to point out, Mr. President, that Section 27 of the proposed Bill of Rights document includes the words that full rights shall be automatically restored upon termination of state supervision. Mr. Romney's proposal refers only to parole. There is suspension of sentence and there is probation, as well as parole, and there would be an inherent conflict, I feel, between the wording of the proposed amendment and the proposal on the Bill of Rights, and I suggest this for the consideration of the house.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. President. As the author of that Section 27 that you referred to, Mr. Garlington, it was our idea that all rights not previously restored by the time that state supervision is terminated would at that time be automatically given to the individual, including the right to practice any occupation. Now, it was our intent that if such thing as voting was determined to be such a right that would be restored after incarceration but before termination of supervision, we felt that this could be done, but anything that was not done at the time that the supervision would be terminated would automatically be given back. I don't see any inherent conflict on this, and if this is the feeling of the committee that this right to vote should be given to the individual, I would be all for it. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: I think I should amplify on the matter somewhat. I think Delegate Garlington does raise a point that has some validity because our rationale, to add to what committee member Bob Campbell has just stated, was simply this: that we did not think that anyone's civil rights should be restored, which included the right to vote, until the full debt to society was paid. Society does not determine that that debt has been paid in full until state supervision is totally terminated, whether it be by virtue of parole or suspension of sentence as administered by the court that imposes the sentence. So, consequently, I think there is some measure of conflict in the two situations. I was not going to rise to that particular point, since it was my thought that if the Committee on Government thought under Suffrage and Elections they should allow someone that was released from actual incarceration to participate with respect to one of his many rights as a full-fledged citizen, I was not going to stand and object to it, but there is a question I do want the delegates to know-that the rationale behind Section 27 proposed by the Bill of Rights was that no one who is adjudged a felon should be able to participate as a full-fledged citizen until his debt to society was fully paid, and that can only be measured in two ways-by total termination of state supervision when he's on parole or by completion of the term of suspension imposed by the District Court. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I rise in opposition to the amendment. We have carefully considered this provision. We talked to Mr. Watt, representing the Montana Student Association, we talked to Mr. Coldiron, representing the low-income organizations, and we feel the main thing is to rehabilitate all people who are on parole. If a court, a district judge, allow that man to go on parole-I'm speaking particularly about young people-or the parole board, then we want to do everything possible to rehabilitate him and we think the stigma that he cannot vote is wrong; and if these people say he's ready to go back into society on parole, then he should have the right to vote. So, I will resist the motion to amend; and I might also add that we now have deferred sentences, and the simple way to do this is to allow him to vote if he isn't physically incarcerated in prison.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I, too, rise in opposition to the amendment. We did give this full consideration, and it is true that many times a convicted felon does only serve a fraction of the sentence, but his parole has to be determined by proper authority--and he might be on parole for 10 or 15 years or even beyond that— and we don't feel that during this long period of parole he should be refused the right to vote. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I am rather shocked to hear that we are still talking about paying debts to society in this day and age. I think I agree with Mr. Brown that the emphasis should be on rehabilitation, and all of us who are members of the bar in this state know full well that we have two different systems of justice in the State of Montana. We have one system for us whites and the men my age and we have another system for minority groups and for the very young. And for that reason, I side with Mr. Brown in this matter, and oppose the amendment.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. Romney's amendment-proposed amendment to Section 2, in line 13. He wants to add the words "or is under parole from," so that the sentence will read: "except that no person who is serving a sentence for a felony or is

under parole from a penal institution," and so forth, "may vote." Now, that's the question. All in favor of Mr. Romney's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and the amendment fails. We're back on Section 2 in general. Are there further amendments or further discussion?

Mr. Wilson.

DELEGATE WILSON: Mr. Chairman, would Mr. Etchart yield to a question?

CHAIRMAN GRAYBILL: Mr. Etchart, will you yield?

DELEGATE ETCHART: I yield.

DELEGATE WILSON: Is it the intent of your majority suggestion to remove all participation by the Governor's office in whether he should consider the reinstatement of citizens' rights under conditional paroles and conditional sentences?

DELEGATE ETCHART: **Yes,** sir, it is. We have found that the whole philosophy has changed so much. There is more emphasis on deferred sentences. I think maybe when the original Constitution was written, you were either in jail or you were out. Now, you're being paroled. You might have a 10-year sentence and not serve over 6 months. And the Governor's pardon proved to be very cumbersome. In fact, most people didn't bother to go through it. So you have a large group of people that are denied the right to vote. And we felt that, with the changing times, thatifthey'rein the institution or in jail, they shouldn't be able to vote, but if the authorities feel they're qualified to be out and amongst the rest of us, that they should have equal rights with us.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. For the delegates' consideration-1 think they should consider the fact that, while we are being in some instances very lenient with these paroles and sentences, the people are coming out who society is very conscious of the fact that they are on a period of probation, and it is the intent, I think, that these people need some supervision—they need to know that they have, by committing these acts, made an offense against society that does need some atonement for, and I think there should be some discretion on the part of the Governor as to when these citizens' rights should be restored.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, as far as the pardon by the Governor, the only people that will get a pardon are those that are wealthy enough to hire an attorney or have political influence, and I believe we should just forget pardons by the Governor, and I believe we've voted on this already.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, may I ask Mr. Brown a question, please? Will he yield?

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Yield.

DELEGATE DAVIS: Is it the thought of your committee, then, that under your Section 4, which we will get to later, that a person who could be out on parole for murder or any other charge would then be eligible for-hold any office?

DELEGATE BROWN: That would be my opinion. If the people want to vote for him, he could so serve.

DELEGATE DAVIS: Thank you, Mr. Brown.

CHAIRMAN GRAYBILL: Further discussion on Section 2?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have now before you, on the motion of the Chairman of the Committee on General Government, that when this committee does arise and report, after having under consideration Section 2, it recommends the same be adopted. As many as are in favor of Section 2—

Mr. Romney.

DELEGATE ROMNEY: I call for a roll call and ask for seconds.

CHAIRMAN GRAYBILL: Very well. There are sufficient seconds. We will have a roll call vote on the approval of or disapproval of Section 2. It will be Section 2, as amended.

Mr. Felt, do you have a point?

DELEGATE FELT: Of parliamentary procedure, Mr. President, as to whether a roll call vote may be taken during this stage of debate.

CHAIRMAN GRAYBILL: We-The rules adopted provide that in this Committee of the Whole, a roll call vote may be called for and, if five seconds stand, may be had. That was the debate we had, and that is the rule. The votes will be non-roll call unless they're called for. Mr. Romney has called for a roll call vote, five seconds have stood, so the vote will be by roll call on Section 2, as amended. You'll remember that the amendment provides for taking out the word "of the state and political subdivision" and putting in the words "as provided by law," so that Section 2 now contains that amendment.

We'll "pen the voting machines. So many as are in favor will vote Aye on the voting machines-this is of Section 2. So many as are opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: The Chair will suspend the vote for a moment.

Mrs. Pemberton, you were excused. Do you want to stand and announce your presence, and we'll let you vote.

DELEGATE PEMBERTON: Please.

CHAIRMAN GRAYBILL: Very well. Mrs. Pemberton is now present, and Mrs. Pemberton may now vote. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Do **any** delegates wish to change their vote?

(No response)

CHAIRMAN GRAYBILL: Very well. The Chair will close the vote. Will you take the roll call vote, Mr. Clerk?

Aasheim .. .. .. .Aye
Anderson, J. .....Aye
Anderson, 0.. Aye
Arbanas Aye
Arness .....Aye
Aronow .....Aye
Artz ....Aye
Ask .....Aye
Babcock ..... Nay
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock .....Aye
Blend ..... Nay
Bowman .....Aye
Brazier ..... Aye
Brown ....Aye
Bugbee ..... .Aye
Burkhardt ....Aye
cain..... ..Aye
Campbell ....Aye
Cate.. ....Aye
Champoux .....Aye
Choate.....Aye
Conover ....Aye
Cross ....Aye
Dahood ..... .Aye
Davis .....Aye
Delaney ....Aye
Driscoll .....Aye
Drum ..... .Aye
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... .Aye
Felt .....Aye
Foster ....Aye
Furlong .....Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... .Aye
Hanson, R.S..... Nay
Hanson, R. ..... .Aye
Harbaugh ....Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland.....Aye
Jacobsen ..... Aye
James ....Aye
Johnson ..... Nay
Joyce .....Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold .....Aye
Loendorf.....Aye
Lorello .....Aye
Mahoney ..... Nay

Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK HANSON: Mr. President, 74 delegates voting Aye, 26 voting No.

CHAIRMAN GRAYBILL: 74 delegates having voted Aye, 26 having voted No, Section 2 is carried and passed. Will the clerk read Section 3?

CLERK HANSON: (Reading) "Section 3: The Legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections."

CHAIRMAN GRAYBILL: Members of the committee, you have now before you for your consideration Section Number 3. What is your pleasure?

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Genera1 Government Report Number 1, Section 3, that it recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Going to page 6 in the report, the rationale on Section 3: "This section allows the Legislature to determine the voting residency and registration requirements." In a large part this has been done by section 23-2701, Revised Codes of Montana, 1947, which established the residency period for most elections at 30 days. This statute, enacted in 1971, conflicts with the present constitutional requirement of 1 year, though this section has a proposed amendment which would change the time limit to 30 days. Approximately 60 percent of the states include specific residency and registration requirements in their constitutions, but most of the newer state constitutions follow the example of the proposed article and leave these matters to the Legislative Assembly. This section will help avoid conflict with rapidly changing federal laws and court decisions. This section also allows the Legislature to determine the time that all elections are held. The committee closely examined several delegate proposals regarding constitutionally establishing the grouping and scheduling of elections. It is the committee's considered opinion that the Legislature is capable of scheduling and providing administration for all elections. The committee is extremely reluctant to freeze for all time the schedule and administrative process of elections. And we have a minority report on this section, Mr. President.

CHAIRMAN GRAYBILL: The Chair will recognize the minority.

Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, I rise to make a substitute motion. I move that the minority report on Section 3 be adopted, and I would refer the delegates to page 13 in this gray booklet, and the minority report for Section 3 reads as follows: "The Legislature shall provide by law requirements for residence and absentee voting and administration of elections." There is

no change there from the majority report, but here's where the difference comes in the minority report. The minority is asking that voter registration prior to election day shall not be a condition for voting. The Legislature shall provide for a system of poll booth registration and-this last phrase is also very important-"insure the purity of elections and guard against the abuse of the electoral process." If I may comment on that, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Now, basically, the main difference, as I've explained, in the minority proposal centers around the word "registration." Now, it is our contention that the act of voting is not a privilege that the state merely hands out, but it is a basic right-a right that in no way should be infringed unless for very good reasons. Now, the registration laws as we have them now were put on the books for one reason, and that is to prevent fraud, and it is the minority's contention that that no longer holds water. There is no real need for the current registration laws to prevent people from voting. We feel that you can have poll booth registration, which is, in essence, registering at the time and the place of election, and still prevent frauds. In fact, there has been a good deal of success already in North Dakota on this. North Dakota has had poll booth registration now for 21 years, and they've had minimal problems with fraud. In fact, you've probably heard quoted by many delegates that there's been three cases of fraud in those 21 years since North Dakota has had poll booth registration. I've looked into Professor Lloyd Amdahl's study of the matter, and I find that that figure is wrong. According to his study, there has only been one real case of voter fraud taken to the courts and that man was acquitted. So, North Dakota has had this system for some 21 years. Now, I know there may be some who say that with poll booth registration you might have the problems of fraud, but I think that you can get around that. North Dakota-those people who may not already he on the pollhooks as registered voters have been-the voter comes in-the prospective voter goes in to the place of election and there is an election judge, there are party watchers, there are clerks there, and if there is any doubt whatsoever that the prospective voter-might be some doubt-they ask him to sign an oath, an affidavit. And this is under pain of perjury, which could be anywhere from a 1- to 5-year sentence, and they've had no difficulty with frauds in that state. And I maintain, and the minority maintains, that those who want to maintain the present registration system must prove that there is a great chance of fraud in the State of Montana. If the people who want to keep the present registration laws can show that there is a chance of fraud they may have some validity, but it is our contention that the supporters-those who oppose the minority report, rather, must show that there's a voter fraud, and we contend there is no such difficulty. We are assuming that the voters of Montana are innocent until proven guilty, and it is our hope that the minority proposal will he adopted by the committee.

CHAIRMAN GRAYBILL: All right. The question now is on Mr. Vermillion's substitute motion which substitutes the language on page 13, the minority report, Section 3—or Section 3 on page 2.

Mr. Champoux.

DELEGATE CHAMPOUX: (Inaudible)—to talk on Mr. Vermillion's motion at this time? Minority report.

CHAIRMAN GRAYBILL: Yes, you may debate Mr. Vermillion's substitute motion.

DELEGATE CHAMPOUX: I've worked on many registration drives, walking around streets. I spent a whole month one summer, a couple of years ago, and as I went around I thought to myself what a complete waste of time, effort and money this is--not only for the register hut also for the citizen. Not only that-if you look at the many people that are engaged in voter registration at the county courthouses, I think here, again, you have a lot of employee time wasted-and money, also. I've worked also in polling booths, and I've seen many, many people turned away simply because they thought they were registered and weren't. They had missed an election or something of that effect. And for this reason, I stand in support of the minority report. Thank you.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I rise in opposition to the minority report. The majority of our committee wants to keep this Constitution flexible. One state allows poll booth registration. It's North Dakota. I studied their

constitution yesterday in the law library. 'Their constitution does not provide for it. It's provided for by legislative act. It is our opinion-or my opinion-that maybe this is good ormnybeit isn't, but you'll note on their yellow sheet they put out, there were four election inspectors in North Dakota that questioned and had serious concern over this procedure. We have had no election fraud cases in Montana for the past 21 years. I feel this—if the people of Montana do not want registration prior to voting, they can do it by legislative act. If this is bad and it's in the Constitution, it's locked into the Constitution, and I don't want to lock in anything that one state has tried that we aren't sure about, so I request that the majority report he accepted.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of the minority position. It is our contention that the right to vote is so sacred and so important that it does deserve Constitutional treatment. It is also our contention that registration has been the greatest factor in subverting the turnout of the American electorate in the history of our country. 1 submit to you that in 1874, when there were no registration laws in our country, 82 percent of the people eligible to vote did vote. By 1924, when every state in the Union had registration laws, the turnout was 48 percent. As wc all know, the purpose of registration was to prevent the Negro in the South and groups in the North from voting. It has effectively done that, Mr. Chairman. I would submit to you that, in 1960, more people failed to register and failed to vote than elected the President of the United States. Also, Mr. Chairman, in every other Western civilization, the average voter turnout ranges between 85 to 95 percent. As I said, only 60 percent in this country have voted. If we are to have a true participatory democracy. we must insure that as many people as possible vote for the people who represent them in government. The voter registration laws in this country, Mr. Chairman, have effectively prevented so many people from voting that we cannot say that we truly have a participatory democracy. It is for this reason that I submit we reject any requirements of prior registration and allow poll booth registration as the means of enabling all our citizens to vote in all our elections. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Would Delegate Brown yield to a question?

CHAIRMAN GRAYBILL: Mr. Brown, will you yield?

DELEGATE BROWN: I will yield.

DELEGATE SWANBERG: Just to get this straight now, Mr. Brown, your section does not prohibit poll booth registration, does it?

DELEGATE BROWN: Our section leaves it all to the Legislature. We're not trying to constitutionalize it.

DELEGATE SWANBERG: Thank you very much.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, may I ask several questions of Mr. Vermillion, please?

CHAIRMAN GRAYBILL: You may. Mr. Vermillion, will you yield for some questions?

DELEGATE VERMILLION: Yes.

CHAIRMAN GRAYBILL: Very well.

DELEGATE MURRAY: Mr. Vermillion, has this matter of poll booth registration ever been brought to the Legislature in Montana?

DELEGATE VERMILLION: I'm not sure that it has or not.

DELEGATE MURRAY: I'm not sure that I understand exactly how it functions. Will you describe to me how a voter knows where he goes to register and then to vote, and how he goes through the line—or what procedure do you follow—

DELEGATE VERMILLION: In North Dakota?

DELEGATE MURRAY: In North Dakota we don't--because I guess that's the only place we know of it.

DELEGATE VERMILLION: Right. Well, first of all, using the-North Dakota as a base, now they can register, as I say, at the place of polling. In Montana, if we were to adopt this, this does not mean that we would necessarily have to drop the present registration. This would he in addition to it. For those who are not on the poll

lists in North Dakota, they go in, and if they are not on those lists, they are not registered by the sort of permanent registration that we have in Montana-that is, if you voted in one election before, you're still on the lists. Then they are faced with an election judge, you have party watchers there-Democratic and Republican-you also have clerks, and they are free to ask this prospective voter any question they want-ask of them any identification. They may make phone calls. Sometimes there are instances where they may call their employer. They could call anybody they want to check on identification and, further, if they have any question-and this is actually a very rare case in North Dakota-these judges are by law required to be suspicious of these people. If they do have any question, they are asked to sign an affidavit. Now, this is under pain of perjury. In North Dakota that's a 1- to 3-year term, and they have, in these 21 years, had no problems with fraud.

DELEGATE MURRAY: All right, another question. Does it require more help at each polling place?

DELEGATE VERMILLION: Not-apparently not, in North Dakota. They do have provisions for the larger precincts to hire more clerks, up to six clerks in your larger cities, but in only a couple of instances they've hired up to four clerks. They've never seen it necessary to hire up to six.

DELEGATE MURRAY: Does it take additional personnel to do the judging or the inspection?

DELEGATE VERMILLION: They do have these election judges. It would likely, assuming this were adopted in Montana, it would likely-probably take some additional help in that-the first general election. It's just my—

DELEGATE MURRAY: Might it take some additional help in all 1,000 precincts?

DELEGATE VERMILLION: That's a question of speculation. That's hard to say.

DELEGATE MURRAY: Have you checked out what additional cost this might mean to the counties in any respect?

DELEGATE VERMILLION: No, but I took the position that if it's a basic right-and voting is, I think, a basic right-that it shouldn't be a question of worrying about cost. The state should be facilitating the people to vote and not worrying about the question ofdollars and cents. I don't think it would be a major expense. I think it would-could be a minor expense, but even so, I don't think the question of cost, when we're talking about a basic right, should enter.

DELEGATE MURRAY: What comparison can you make with North Dakota and the numbers of voters that they have had compared to Montana since they have adopted this system?

DELEGATE VERMILLION: I don'thave any specific figures on that; I'm sorry.

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I speak in opposition to this program because I do not think we have developed it to the point that we can chance proceeding with it. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I rise in support of the majority proposal. This matter was considered at length by our committee, as pointed out by Mr. Brown; and while we see considerable merit and a lot of interesting things in the minority proposal, it is our feeling that if these things have sufficient merit-if the proposal has sufficient merit-the Legislature is free totakecareofit. Yet, ifwelockit into the Constitution, as is done by the minority proposal, and for some reason or other it does not work out in Montana, we are stuck with it because of the Constitution. And I would call to your attention that in the one state that has adopted it, North Dakota, it has been done by statute, and there is no reason why it cannot be done by statute or, if sufficient people are interested--I mean by act of the Legislature-or if sufficient people are interested, it could be done by initiative measure. It would become a law, still subject to change. On page 3 of the explanation that you received from the minority this morning, you will note, at the end, it says it should be remembered that under present statutory law any city in North Dakota can reinstate registration for elections if they so choose. However, not one city has reinstated registration since 1951. This speaks very well for it, but at the same time, it also shows that North Dakota was not so sure that they wouldn't allow

change. If we put this in the Constitution, we do not have this right; and it is for this reason that the majority put down-or voted for the majority proposal, rather than accepting the minority proposal, even though we found it extremely interesting.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President. I go along with the minority report, too; but.1 can see now that it is a legislative matter. But I would like to point out that in our last election, when they were voting for the delegates, that we had six people, young people, working on the ranch, of whom three were mine, and they had to take time out to go 29 miles to register, and as the courthouse closes at 5 o'clock, it was a real hardship on them, and of course, they wanted to vote for their mother and this was-but I do think that it would encourage people to vote, and we might get away from the apathy. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I rise in support of the minority report. My name may be on the majority, but as it says, I have the right to change my mind, but I did not change my mind. My name got on the majority report in the confusion. (Laughter) I'm honest. Now, inregards to some of the questions that Delegate Murray brought to Mr. Vermillion's attention, the process of registering and voting could be carried on very easily at the voting booth or at the voting place. The present way you do it now-you fill out a little card, here in Montana, and you fill that card out most any place that you can find one, and someone then takes it in and has it notarized, and it goes into the file, and you are a registered voter. What is so dangerous-what is so degrading to allow that privilege as you come to vote? You merely come in to vote. There is a desk there where you get your card, you fill it out and hand it back to the man, and you are a registered-to the person; 1'11 take that word "man" out-you hand it back to the person, and you're a registered voter and can go ahead and vote. Is there any more opportunity for fraud, any more opportunity for confusion, using that method than there is under the present method. And I give to you the thoughts that have been brought out by the few delegates that have spoken so far-why should we deprive a person of the right to vote merely because he was unable to get in at a specified time to fill out a card of registration? I sincerely hope that you support the minority report, and give the people the right to vote.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. President, I rise in support of the majority report. We have instant tea, instant cereal, instant orange juice. To me, if voting is a basic right, there needs to be some preparation-like for marriage-the things that we consider vital to our lives. How can someone who runs in to the voting booth be prepared to vote from a knowledge of the candidates that are available? I see a confusion in cost to the county from the lack of knowledge of how many ballots to prepare. Where we have voting machines, you know, it is necessary to prepare an equal number of paper ballots in the event that the voting machines break down. I think it would be costly. I think it's ill-advised until we have a communication system that enables us to get the background of the individual requesting this privilege well established in Montana.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would Mr. Vermillion rise-or yield to a question?

DELEGATE VERMILLION: Yes.

CHAIRMAN GRAYBILL: Mr. Vermillion will you yield?

DELEGATE BERG: Mr. Vermilllion, have you checked to determine whether the new proposed constitution in North Dakota includes, specifically, under suffrage, poll booth registration'?

DELEGATE VERMILLION: They make -1 checked on that. They make no reference at all to registration.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE VERMILLION: They didn't feel it—

DELEGATE BERG: Mr. Chairman, delegates. It would seem to me that North Dakota is the only state yet to employ the poll booth registration, and they, too-and they do not include it within their constitution, as is proposed in the minority. It ought not, then, to be included in ours -in spite of my personal sympathy-not sympathy, but support for the position for the nature of

the privilege and for the method of poll booth voting. Nevertheless, if it has not been includedin North Dakota's Constitution, where it is the only state to employ it, it seems to me very risky to undertake it in constitutional reform here.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I rise in support of the majority report. I believe that voting is a privilege, and I think that the whole matter of registration rarely comes up with a citizen who is a good citizen, because they're eligible to vote in election after election if they care enough to come out to the polls; but I will admit I hadn't even heard of this proposal in-1 mean, of this method of registering at the polls in North Dakota, and if it has merit, I think we have ample time to study it and weigh both sides and put it in a statute. I'm certainly against going-putting it [in] the Constitution. But I would like to speak, while I have a chance, in regard to another little matter in this Section 3 of the article. It is the intention, and I certainly go along with the committee, that the Legislature should provide by law for all administration of elections. I wonder if they really mean all elections? I'm referring to my Delegate Proposal 29, in which I asked for the deletion of Section 10 of Article XI of the present Constitution. Now that's under education, and in that article in our present Constitution. this directs the Legislative Assembly to provide that all school elections should be separate from other elections. My proposal asked for the combination, where it was possible, with local elections, and I'm just wondering if your committee, Mr. Etchart or Mr. Brown--may I ask a question of them, Mr. Chairman?

CHAIRMAN GRAYBILL: If they'll yield. Mr. Etchart, would you yield to a question?

DELEGATE ETCHART: I yield.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann.

DELEGATE ERDMANN: I go along with you completely in that this whole matter should be left up to the Legislature of scheduling all elections, but did your committee make this possible by the deletion of that one Section-10 of Article XI-which says that the Legislature cannot schedule school elections separately?

DELEGATE ETCHART: Yes. We felt we left it completely flexible so that the Legislature may allow school elections and municipal elections to be held at the same time. We felt this was a legislative matter and there should be no restraints in the Constitution. We felt your idea had a lot of merit but it shouldn't be written into the Constitution.

DELEGATE ERDMANN: I agree wholeheartedly-

CHAIRMAN GRAYBILL: Mrs. Erdmann do you have another--would you like to speak further?

DELEGATE ERDMANN: I would like again...

CHAIRMAN GRAYBILL: Very well.

DELEGATE ERDMANN: ...to ask if they deleted this Section 10, Article XI, from the old Constitution?

CHAIRMAN GRAYBILL: Mr. Etchart, she's asking you another question.

DELEGATE ETCHART: Mr. Brown, would you carry that, please?

CHAIRMAN GRAYBILL: Mrs. Erdmann, we'll let Mr. Brown answer you.

DELEGATE BROWN: Mrs. Erdmann, that section was not in our committee, but it would be our recommendation to the Education Committee that it be deleted and there be no locked-in elections in the Constitution, but I'd have to yield to a member of the Education Committee and hope they have deleted it.

DELEGATE ERDMANN: Thank you. I notice in their proposal that obnoxious paragraph is still there in all its glory, so you'll hear from me again. (Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I rise in support of the majority report, and I do not consider that to be in opposition of the minority report. The minority report contains a very fine idea of poll booth registration. However, this is legislative. The majority report specifically permits the Legislature to adopt this method of registration, so I therefore-I support themajority

report. I will vote against the minority report, but I support its proposition of poll booth registration, which can be accomplished by the Legislature, according to the majority report. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I've been listening very carefully to the arguments, simply because, up until yesterday morning, I did not appreciate that this was going to be an issue on the Convention floor. I'm personally not concerned about North Dakota or any other state, nor am I concerned about whether or not that particular idea has been presented to some other constitutional convention and either passed or rejected. If we can be pathfinders towards a new frontier for greater citizen participation; if that creative idea comes to us; if it appeals to intelligence, to political logic, to the social contract between citizen and state, we should not hesitate to adopt it. I'm not at all impressed with the argument this is legislative. We are here to draft a Constitution that sets forth the fundamental rights of the people of the State of Montana. It is not a privilege to vote. It is a fundamental, basic right inherent in the quality of citizenship in a free society. The minority report is placing a limitation upon government, and that is the function of this state Constitution. The minority report is saying to government, to the Legislature, we consider the right to vote so precious and so cherished that you shall not limit it by the artificial barrier of registration. This is a fundamental right-we are obligated to look upon it as a cherished right of citizenship. I'm not concerned about the question of whether or not there is fraud inherent in the particular system proposed by the minority report. Our law, and the wisdom that formed the basis for our law, provides not only judicial thinking but, by statute in this state, that all citizens are presumed to be honest, and we must deal with all of our citizens on the basis that we presume that when they participate in the functions of citizenship, they shall participate in an honest manner and in an honest endeavor. I'm not concerned about the cost or the expense. The cost or the expense of maintaining the basic right of citizenship in a free society should be, at very best, a secondary consideration. If it is going to cost several thousand dollars more in each county to have one more table, to have several more representatives of the citizens there, to function in preparing people to register and actually conducting that registration, that additional expense should be of very little significance when the biennium budget for running the State of Montana exceeds $200,000,000. We are here, I think, with the first great challenge to this Constitutional Convention. The people of the State of Montana sent us here to make change. Some of the more conservative minds may say that we are here to study this Constitution, perhaps to stand with the old document and make no change whatever. I do not think that was the sense of the votes that were cast in favor of the Constitutional Convention. In this day and age, when government is expanding and people are becoming more dissatisfied with government, it is up to us to try and give them a document that will insure greater participation in all the processes of government and particularly in the process of electing those that represent them. Registration, if we reason it out logically, is nothing more than just an artificial legislative requirement that has nothing to do with the qualification of the citizen to vote. We close the registration list some 40 days before, not because there's some magic to the fact that we raise the barrier at that time, but we close it because there is a clerical requirement that you've got to post a registration list that is accurate so that the election judges may determine who is qualified to vote. There is no magic in that. We can have an election registration list. We can have that posted. There will be preelection registration, but there are a lot of citizens who, for one reason or another, good people and interested, fail to register within that time that's provided by law for clerical purposes. We have an election that does not stop 40 days from election day. We have a campaign that becomes very intense in the last 40 days. Interest is generated in the public forum. People, perhaps that have forgotten to register or perhaps did not have sufficient interest may, during that last 40-day period, find that they want to participate; and if more people can participate in this particular function of citizenship, then that is the hallmark of a progressive society, for the more people that participate, the lesser the dissatisfaction is with the governmental process. We are faced with the first great challenge of this Convention, and I say we should tell the people of the State of Montana that we are going to expand the right of the citizen to participate in government. We are going to reason together. We are going to take away artificial barriers. We are going to make sure that, on election day, the greater number of our citizens are going to speak out, and we're going to have greater representation insofar as our elected officials are concerned. I

support the minority proposition. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I rise in support of the majority report-the majority proposal. As a person who has registered, I think, more people in Gallatin County than—except the clerk and recorder-than anyone else, I, too, would like to see these registration laws and rules made much easier, but I cannot see we can do this by enacting in our Constitution a North Dakota law, and I feel this is statutory and that the original provision would provide for any type of improvement. And also, as far as the registration forms that we have now-the clerk and recorder uses this, and people come to the clerk and recorder to get this information, and they're using it for social security and for many other things. It's a valuable record and I hope in the future they will maintain this, although cutting down the time of registration and many other things, and I rise in support of the original proposal.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. After Mr. Dahood's eloquent speech, I think this might sound like a lone piccolo after the trumpet section has finished (Laughter)-and I mean that as a compliment for what I think is a very eloquent speech and one with which I agree wholeheartedly. I simply rise to add this little addendum. It seems that everybody is in favor of the idea. The issue seems to be whether we ought to write it in the Constitution or not, and several have risen to say that we ought not write anything that restricts the process-that we should leave it up to the Legislature. I may have missed something, but as we voted on Section 1, we wrote in the idea that all the elections by the people should be by secret ballot. We did not leave that to the Legislature. We wrote into Section 2 that you have to be 18 years or older. We also told the Legislature that they couldn't make that restriction now on 21 or some other age-that they had to comply with that particular thing. All through this section, as my eye falls through it, we give directives for the future, and the issue, I think, as Mr. Dahood and others have put it, is squarely whether this is a right fundamental enough to be written into the Constitution. In view of the many comments that have been made about participatory democracy and about our great need to revitalize and regenerate our whole elective process, I personally feel that the minority report is important enough, basic enough and vital enough to be written into our state Constitution.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Thank you, Mr. Chairman. I rise to support the minority report. There is increasing and mounting pressure to facilitate our registration laws. The federal government is pushing this, and the people are pushing for this; but I want to bring up one, perhaps minor, point. It might clarify something that Mr. Murray was talking about. If-any alternative to poll booth registration will not be adequate for two reasons. Number one: if we merely expand the present system, which we obviously will have to as our population expands, we will have to have more part-time deputy registrars. This is a very difficult system to administer, because we already have, by statute, too many untrained people involved. There are two deputy registrars in each precinct chosen by each party, and there are notary publics at large. There has been, and will continue to be under this system, carelessness in filling out and turning in registration forms. But, number two: by contrast, poll booth registration would be much easier to administer, because these elections would involve trained election judges and clerks. Statute now dictates that they must be trained just before elections. As a result, there would be much better provisions for recordkeeping and less chance for irregularities and errors. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. President, fellow delegates. Mr. Harper, I might add to your comment that piccolos do have a right to be heard. There are several things that have been said here that I would like to direct an answer to. First of all, in answer to Mr. Murray's question about additional staff required-in North Dakota, serving on the election staff, are an inspector, two judges-one selected by each of the two major political parties--and two clerks. The inspector is the chief election official at the polling place. In precincts casting over 300 votes, two more clerks may be added to the staff; and in precincts using voting machines, an additional two may be appointed. Even though a maximum of six clerks can be used, all North Dakota cities except Fargo

and Bismarck have been conducting elections with only two clerks. In Yellowstone County, the addition of an inspector for our 80 precincts would cost us $1,200, which isn't very much money to insure the right to vote. I would also like to point out to those people who are concerned about this being a statutory provision that about 12 of the amendments to the Constitution of the United States have been directed to the question of voting and in that sense might also be said to be statutory. I think that sometimes people that are in our positions in society sometimes tend to forget about the people that are below us. Most of the people here are independently wealthy—(Laughter)—well, I don't see too many poor people around here-except myself, of course. (Laughter) In any event, we're employers of people-this type of thing. We can take an hour off from our work, from our business, and go down and register at the courthouse, but the working man who works from 8:00 in the morning until 5:00 at night, 5 days a week, doesn't have that opportunity that we have to register to vote. He has to be on the job. And all that this provision is asking you to do is to eliminate this 40-day requirement. You'll still have registration. Every voter will have to register. You're simply eliminating the 40-day requirement and opening up the gates for those kind of people to go and vote. And that's a significant number of people. In 1968, the Gallup Poll showed that 10,000,000 people—10,000,000 people-did not vote in the 1968 election because they were either turned away from the polls or had not preregistered and could not vote for that reason. And that's 10,000,000 Americans that are being disenfranchised from the right to vote, and I think that is significant, and I think that Montana ought to try and lead the way in this matter and adopt this poll-booth voter-registration method. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. Chairman-or Mr. President. I must confess that I'm also-am intrigued by the minority report, and this 40-day requirement does seem cumbersome in our present society, and Mr. Cate has added some very valuable observations for all of us. I'm wondering, though, how this would work in a bond issue election where an additional requirement is added-and that is, ofcourse, property ownership. What would be required, for instance, if some requirement of that nature were presented?

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I think in regards to Mr. Swanberg's question regarding property ownership for the right to vote in a bond election, that's illegal anymore. You can't do it that way. However, I might add this thought. It's been said, of course, that "don't confuse me with the facts, my mind is made up." Well, I don't look at it that way, and I did sign the majority report, along with five of the other of our committee; and as a first example, probably, of the value of open debate, I've changed my mind, and I would side with the minority, and I do feel that the issue has stature enough to belong in the Constitution. I think it's a good thing, and I rise in support of it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, would Delegate Vermillion yield to a question?

CHAIRMAN GRAYBILL: Mr. Vermillion, will you yield?

DELEGATE VERMILLION: Yes.

DELEGATE ROD HANSON: Bob, I'm concerned with the mobile public that we have. Under your proposal, do you feel that this would give the people that are in the construction business an opportunity to vote-more so than they have under our present laws?

DELEGATE VERMILLION: I think, Mr. Hanson, that this might be a problem of residency. Under the present rules, for instance, we have a residency requirement of 1 year in the State of Montana-with the exception of the President and the Vice-President, where it's a 30-day vote. Again, we get back to the idea of the construction workers. Under the present laws-very likely would be unable to vote if they're moving into the state and have only been here for 3 or 4 months, so I don't think they would be allowed to vote under this system unless you change the residency requirements, which I think is what your question would be more addressed to-the residency, rather than this registration.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman, we keep hearing all the time that-leave it up to

the Legislature. And I find out from my two good friends, Charlie and Paul, that sometimes the Legislature won't do it. (Laughter) I think the word here is "apprehension." I think sometimes we think-we try to read something into an issue that's coming up. This is just another way to register, and that's all. Just another way to register. And if you'll look at it that way, I think that you can accept it. I feel that this is important enough to be put into the Constitution, and I urge you to support the minority report.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Like the other members of the Convention, I've been working on the committees assigned to me and more or less made up my mind that unless there was a rare-an apparent reason, I would support the majority report in these matters. I have great respect for Mr. Etchart and Mr. Brown and the other members of the committee, but it seems to me this is one of those, I hope, rare occasions when I will rise to oppose a majority report. Now, when I came over here, I didn't come over to vote for a stronger Judiciary or a unicameral Legislature or an Executive that has more power. I came over here to preserve the rights of the public. The only way you preserve the rights of the public is to preserve their vote, because that's the only power the public has. Now, I submit that Mr. Brown and Mr. Etchart are quite correct when they say that this should be a legislative matter, but I want to point out to you that, under the existing Constitution, the Legislature for 75 years could have passed a registration act where they could vote in the booth and they didn't do so. And I also suggest that it isn't likely that the Legislature will do so in the future. The idea behind the vote is, it's the power of the people, and when you put a restriction on it, that is, a restriction passed by a Legislature-they must register 40 days before or they do not have that right-then you are depriving, artificially, people of their vote, and when you deprive people of their vote, you deprive them of their rights. And I submit that this is not a directive for poll booth registration. This is a directive to the Legislature that you shall not deprive people of their vote because they cannot register 40 days before. I submit it as a right that should be protected, and it should be in the Constitution.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I rise in support of the minority report. I'm impressed with the arguments for writing this into the Constitution. I think that the cure for the weaknesses of democracy is simply an overdose of democracy, and I think we should clear away all artificial obstacles to the exercise of our most basic democratic right, and that is the right to vote.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, the issue has been raised which we're going to hear from almost perpetually in this Convention-namely, the trust or mistrust that we have in the legislative process. Some things can be handed over to this matter of taking a chance with distrust. The right of franchise is one that should not have to run this risk. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think this Convention will probably last all summer if we take this long to settle each issue, so I am going to limit my appearances quite a bit here, but as I keep hearing this word "right to do this," "right to do that." When are we going to start talking about the duty and the obligation of the citizen? Delegate Erdmann said it was a privilege to vote. I, too, say it's a privilege to vote. That puts a little bit of a duty on a citizen to vote. It's also a duty to find out what they're voting about. Now, we've heard a lot of talk that you must register 40 days before. That is only once, if you just exercise your duty and your right and vote in these elections. You do not have to run back every time and go through this process. Now, I think I'm right in that-been a lot of changes lately, but I don't think that's been changed. I can also see-in our districts, we could go out with a vehicle—probably other inducement. We could round up people on election day. We could run in. We could perhaps change the outcome of any election just by doing this. Now, I'm not for that, either. I can also see that someone comes in and is challenged, perhaps, or not challenged and votes. Sure, there could be a penalty, but what are you going to do about the election after it has been decided? Now, we went through a recount of five counties in our district. We found very, very little wrong. We found no fraud of any kind. There were some mistakes due to the instructions as they were received by the people in the polling places. But I just wonder what would happen in a very close election like we had if someone was challenged—they had voted in two different places or

something was wrong-what are you going to do about that election, the outcome of it? So, I therefore would like to support the majority report and leave this to the Legislature where it rightly belongs. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I'm happy that not only trumpets and piccolos are allowed to sound off, but that even--excuse my frog in the throat-but even echoes have their chance. I subscribe wholeheartedly to everything that Delegate Dahood said so eloquently, and Delegate Harper took the words right out of my mouth. Ninety percent of everything that you have adopted so far in the Committee of the Whole today is legislative. Ninety percent of what you will adopt from here on out will be legislative. If we are going to begin hiding behind the statement that this is legislative and therefore we can't consider it and we can't put it in the Constitution, we may as well wrap this thing up right now and go home, because we won't be able torepresent the people who sent us here to do the job for them.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE HELIKER: (Inaudible) support the minority.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, lest anyone think that I beopposed to doing a little legislating from the floor of this Convention, let me clarify myself. I am not opposed to attempting to circumvent the Legislature or the Supreme Court or other matters-bodies of the State of Montana if I see the interest be compelling and if I have studied the problem and know what I am talking about. My questions of Mr. Vermillion, so that there be no misunderstanding in this respect, were to point out that he and the members of the minority, in making this request of this committee, did not even present what I consider to be the basic and fundamental facts necessary for committee inquiry and decision to that committee, and I submit that if we are going to sit in this session and impeach these committees on the basis of some idea, perhaps swayed by eloquence, without any more research or facts than we have had in this particular matter, that we will be here a long time. Thank you.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President. I think if members of the majority were not changing their minds as we talk, some of the rest of us would go with you on that, Marshall, but it's kind of apparent that it is a persuasive thing, it is emerging as a fundamental thing. I would speak as one who has not always had a professional job. At one time I went working in the hills as a lumberman and left at 7:00 in the morning and came home at 6:00 or after at night, 6 days a week; and a lot of people do that. It might be something to think about.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I rise in support of the minority report, also_ and wish to speak from a little different tack. Before we came to this Convention, I was under the impression that I would be working with elections and did do some investigation. I had supposed that one of the issues we'd be considering would be the 30-day residency requirement, which you know is going to be on the ballot next time, I guess, no matter what we do to amend our old Constitution, next November, with the 30-day residency requirement. I found in talking with county clerks and others dealing with registration that they thought this was utterly impossible, that they could barely get the work done that they had to do in 40 days—all of the bookwork and the printing and so on. I also found that they felt that some kind of a thorough rethinking of our registration was necessary; that a good many of the requirements put upon them now maybe aren't really necessary. They also felt that the kinds of requirements they were faced with were more expensive than they need be. I believe that they said that just printing the precinct rolls for the general election in Gallatin County cost them $1,800. I believe that a total rethinking--and this would be necessary by the Legislature-is really in order anyway. The provision in the minority report, in a sense, is not legislative, because it still requires legislative action. It's really a mandate to the Legislature to reconsider this area, to make room for changes to make it more possible to vote, and I would hope that when they do this, that they would do a rather thorough review of our whole process. Elections are one of the most important aspects of our government, but I don't know that they always need to be as costly as they are by being tied to statutory requirements that maybe don't fill the need that they were established for. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I speak in support of the minority proposal, which appears to be no longer a minority proposal. When we look at the-page 18 of our report, we find that of the eight members of this committee, four are now in support of the minority proposal and four are in support of the majority proposal, which is no longer a majority proposal.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: I rise in support of the minority proposal on some of the same reasons as Dorothy Eck rose. I think that we can certainly save our clerk and recorders of our own counties a lot oftimeandalotofmoney bymaking it possible for them to do probably in 2 or 3 or possibly 7 days what they're now taking at least 40 and, you know, probably 80 days to do; and they've got a lot of other things to do besides register people to vote. I would just like to see that process simplified, and I think we can do it herein the Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. President, I rise in support of the minority position, which has the majority's sympathy-only a question on how it would be implemented. I feel that in the Bill of Rights Committee we have in our rough drafts suggested that certain corresponding responsibilities do exist. 1 think that when we talk about good citizenship, we do have to consider that there are a lot of good citizens who, because of their occupations, cannot now register 40 days in advance. I don't think that the people that can, because of their occupations, take the time off to go down and to do this should be the privileged class in the State of Montana. I think the person that's working 6 days a week certainly is just as privileged and I don't consider this to be a privilege-I consider it to be a basic right; and certainly, I don't think we should deny this basic right because of these artificial barriers that have been placed before our people before. I feel that, if implemented, Montana could accept this challenge. I think they could implement it, and I think it would be a guiding light for the rest of the nation. I think this is an issue whose time has come and I think this is a proper place to begin, so I fully support the minority position, which apparently has the majority support now. Thank you.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: I would just like to report a conversation that I had with our county clerk in Park County just a few minutes ago. I called and told her about this thing, and she said "If this passes, would you endeavor to see if you can reduce the age for retirement for county clerks?"

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, for some 2 decades, I have been registering people to vote in Yellowstone County, especially on the south side of Billings, and every year the clerk and recorder tells me he has to take those cards and put them in a closed file. And in our county it is not uncommon for 40,000 to be registered and only 30,000 to vote, and those 10,000 cards--filing them in the first place and putting a red X over each one and removing them from the active file is quite a—a very time-consuming and costly process, much more costly than the system proposed by Mr. Vermillion. Now, regarding the matter of fraud, I can register to vote in all 56 counties in Montana and vote in all those counties under the present system. I'd just have to move a little fast, or I could do it by absentee balloting, and under the present--under the proposed system, at least a live body comes into the voting booth to sign the registration. My grandpappy has been dead for 40 years. He's buried in a cemetery in south Chicago, and I rather suspect for the last 40 years he's still voting a straight Democratic ticket. (Laughter) Under Mr. Vermillion's proposal, of course, this type of fraud is impossible. I support his proposal. Thank you.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I rise in support of the minority report. I feel this opens the opportunity to our large minority group, the Indians, who, to a great degree, have not participated in the registration process. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. President. I'd like to ask Mr. Vermillion a question.

CHAIRMAN GRAYBILL: Mr. Vermillion, will you yield?

DELEGATE VERMILLION: Yes.

DELEGATE BATES: What would prevent me from going into Dakota on election day and voting?

DELEGATE VERMILLION: You're—Well, if you-first of all, they do require, if they have any suspicion, and I suppose they would ask you a few questions about your residency and whatnot and ask for your affidavit, on pain of perjury. If you are willing to vote-to cast one vote in North Dakota and chance a 3-year term in the North Dakota state penitentiary, then-1 couldn't understand it. I just can't understand people facing a 3-year term for one vote.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Would Mr. Vermillion-Mr. Chairman, would Mr. Vermillion yield to a question?

CHAIRMAN GRAYBILL: Mr. Vermillion?

DELEGATE VERMILLION: Yes.

DELEGATE SCANLIN: Mr. Vermillion, what would be your objection to removing the second sentence from your proposal?

DELEGATE VERMILLION: Well, I'm not-first of all I'm not sure what the reason for removing it is. Now, if there's some question that that sentence in there would prevent prior registration, that is not our intent. We do expect that there will be registration prior to election day, and there's no objection to that. What we say is that it will not be limited only to prior to election day, but that you may register on election day.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. President, may I direct an inquiry to Delegate Vermillion?

CHAIRMAN GRAYBILL: Mr. Vermillion, will you yield?

DELEGATE VERMILLION: Yes.

DELEGATE ROMNEY: As I understand it, then, we would have the same registration process that we do now have, but it would be augmented by a polling booth registration if a person, for one reason or another, was unable to get registered and arrive there on election day.

DELEGATE VERMILLION: That's possible, but actually, I see no reason why the Legislature could not set up any kind of system they want. We give them that freedom. All we say is that you must allow people to register on that final day, but what other system they may decide, that's up to them.

DELEGATE ROMNEY: Well, what I want to know is whether or not we maintain the present system and then make it elastic so that you can have polling booth registration as well?

DELEGATE VERMILLION: I'm all for that. I'm in favor of that.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you now have before you the motion of the minority of the Committee on General Government that when this committee does arise and report, after having under consideration Section Number 3, it recommend that the same-that is, the minority report, be adopted.

All right, Mr. Lorello, I see you up so I'll stop.

DELEGATE LORELLO: Mr. Chairman, I'd like to ask for a recorded roll call vote and ask for the necessary seconds.

(Seconds stood)

CHAIRMAN GRAYBILL: All right. There are the necessary seconds, and we will take a recorded roll call vote on this matter. We are now prepared to vote on Section 3, and it's on the substitute motion of Mr. Vermillion, which appears on page 13 and which provides for-the first sentence being the same as the majority report and the second two sentences adding poll registration and adding that the Legislature shall provide for the system, have been added.

I will open the ballot, and so many as are in favor of the minority report, please indicate by voting Aye and so many as are opposed, please indicate by voting No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Then the Chair will close the ballot.

Will you record the ballot, Mr. Clerk?

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard.	Aye
Bates.	Absent
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross.	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Absent
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Aye
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield.	Aye
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins.	Aye
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Aye
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. President, 52 delegates voting Aye, 46 voting No, 2 not voting. (Applause)

CHAIRMAN GRAYBILL: 52 voting Aye, the substitute amendment-substitute motion does prevail, and Section 3 is as written in the sub-

stitute proposal.

Mr. Clerk, will you read Section 4?

CLERK HANSON: (Reading) "Section 4. Any person qualified to vote at general elections and for state officers in this state is eligible to any public office except as otherwise provided in this Constitution, subject to any additional qualifications provided by the Legislature." Mr. President, Section 4.

CHAIRMAN GRAYBILL: The members of the committee, you now have before you for your consideration Section Number 4. What is your pleasure?

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Report Number 1, Section 4, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: This is on page 6 of the report, and the rationale is that this section enables any Montana voter to participate as an officeholder in the electoral process. It does not prohibit the Legislature from establishing necessary technical qualifications for specialized jobs-say licensed attorney for the office of Attorney General-but it does stop the Legislature from creating arbitrary age qualifications for certain offices.

CHAIRMAN GRAYBILL: Is there discussion of Section 4?

Mrs. Bowman.

DELEGATE BOWMAN: Mr. President, I would like to move that Section 4 be amended in line 20 by inserting the words "to be a candidate for any public office."

CHAIRMAN GRAYBILL: Would you repeat your amendment?

DELEGATE BOWMAN: Yes. On line 20, in Section 4, after the word "to", insert the words "be a candidate for". I'm...

CHAIRMAN GRAYBILL: Very well. I understand that the sense of Mrs. Bowman's amendment is to make the sentence read "that any person" et cetera "is eligible to be a candidate for any public office except as otherwise provided in this Constitution." Is that-Have I correctly stated the sense of your amendment?

All right, that's the proposed amendment. Is there discussion on the amendment?

Mr. Artz.

DELEGATE ARTZ: -Mrs. Bowman yield to a question?

CHAIRMAN GRAYBILL: Mrs. Bowman, will you yield? Reluctantly?

DELEGATE BOWMAN: Right, reluctantly. Yes, I'll yield.

DELEGATE ARTZ: The question's real simple. What about appointive offices? Thank YOU.

DELEGATE BOWMAN: Admittedly, that precludes appointive offices and probably should be included, but now I have to get the words. Possibly, if it's not amended it would be clearer as to appointive. There's something to me about this "to any public office" which is unclear. However, Mr. Artz's point is well taken, and perhaps if we leave it alone it would be more inclusive.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President, would Mrs. Bowman yield to another question?

CHAIRMAN GRAYBILL: Mrs. Bowman, will you yield?

DELEGATE BURKHARDT: With the simple change of the word to "for any office"—would that make it more acceptable?

DELEGATE BOWMAN: Yes, it would.

CHAIRMAN GRAYBILL: Well?

DELEGATE BURKHARDT: Well, if you wish to make the amendment-it's kind of a stylistic thing, but it would seem to me, in place-1 would make a substitute motion, if that's in order-a substitute amendment-in place of the words that she had, simply change "to" to "for".

CHAIRMAN GRAYBILL: Very well. Mr. Burkhardt has made a substitute motion that we change the word "to" at the beginning of line 20 to the word "for", so that it now reads: "Any person

is eligible for any public office."

Mr. Brown.

DELEGATE BROWN: Mr. President, I rise in opposition to the motion. I think this would be restrictive. You might have a person who would be eligible for a public office-at the time he filed his candidacy, he may not be eligible at that time, but at the time of the election he would be eligible by reason of residence or otherwise. This is taken from our present Constitution and has worked, and I don't see, really, the purpose of changing it to candidate, so I rise in opposition.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. President, I would like to ask a question of Mr. Burkhardt, please.

CHAIRMAN GRAYBILL: Mr. Burkhardt, will you yield?

DELEGATE BURKHARDT: Yes.

DELEGATE CAMPBELL: Would your intent be fulfilled if the wording was "is eligible to hold any public office?"

DELEGATE BURKHARDT: I thought I had struck Mrs. Bowman's words "to be a candidate." All I was asking was, "is eligible for any public office-"

DELEGATE CAMPBELL: Would—

DELEGATE BURKHARDT: -dropping the "candidate" words entirely.

DELEGATE CAMPBELL: I see. But would there be less of an ambiguity if it were "to hold any public office," which would include a candidate or an officeholder?

DELEGATE BURKHARDT: We really should have let Mrs. Bowman keep this amendment-1 have a feeling. I would be open to that or to the language "for any public office."

CHAIRMAN GRAYBILL: All right. The Chair will ask you, Mr. Burkhardt, will you withdraw your substitute motion?

DELEGATE BURKHARDT: Yes, I will.

DELEGATE CAMPBELL: May I ask Mrs. Bowman a question: Would she yield, please?

CHAIRMAN GRAYBILL: Wait a minute, Mrs. Bowman, do you want to withdraw or change your original amendment?

DELEGATE BOWMAN: Mr. President, I'm happier with Mr. Burkhardt's substitute amendment than I am with my amendment, so if he's going to withdraw his, then I suppose I would make my amendment to read-strike the word "to" and insert the word "for."

CHAIRMAN GRAYBILL: All right, so you're willing to withdraw your original amendment?

All right. Mrs. Bowman's original amendment is withdrawn, Mr. Burkhardt's is withdrawn, but now, Mrs. Bowman, you're going to make your amendment to change "to" to "for?"

DELEGATE CAMPBELL: Mr. President.

CHAIRMAN GRAYBILL: Now, Mr. Campbell.

DELEGATE CAMPBELL: Would Mrs. Bowman yield to a question. please'?

DELEGATE BOWMAN: Yes.

DELEGATE CAMPBELL: I wonder if you still don't have an ambiguity there when you say "eligible for." Wouldn't the word "hold" between "to" and "any" clear this up?

DELEGATE BOWMAN: -to hold—

DELEGATE CAMPBELL: --eligible to hold any public office."

DELEGATE BOWMAN: And your intent would be to include appointive as well as elective?

DELEGATE CAMPBELL: Yes.

DELEGATE BOWMAN: Holding would—yes, I think possibly it would.

DELEGATE CAMPBELL: Thank you,

CHAIRMAN GRAYBILL: Mr. Campbell, are you going to make a substitute motion for us so we can do what you—

DELEGATE CAMPBELL: Yes, I'll make a substitute motion that we simply insert the word "hold" after "to," which would cover both candidate and officeholder.

CHAIRMAN GRAYBILL: All right. Now we're on Mr. Campbell's substitute motion on line

20, to put in between the word "to" and "any" the word "hold"--so that it reads that "Any person is eligible to hold any public office."

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to remind this Convention, this committee, that we have a perfectly good committee composed of 10 or 11 superb hair-splitters who will be perfectly willing to split all these hairs and take careofit when wesendit back here tomorrow. We have previously put "for" in there--and if you want to put "to hold," why we probably will fool with that, but this is wasting an awful lot of time on something that me can do just as well.

CHAIRMAN GRAYBILL: I think Mr. Schiltz's point is well taken, that some of these style things could be corrected in Style and Drafting if you want to call them to their attention. But, we will go ahead and take care of them if you bring them up. At the moment we are on the substitute motion to add the word "hold."

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I'd like to remind the Convention of one statement that Mr. Brown made, and that is that the language "eligible to any office" is contained in our present Constitution, it has been interpreted by the Supreme Court, and I think we ought not to simply make style changes from our present Constitution to make it sound better. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor, then, of the substitute motion of Mr. Campbell to put the word "hold" between "to" and "any," so that it reads "that any person is eligible to hold any public office"-all in favor of that substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. Is there other discussion of Section 4?

Mr. Barnard.

DELEGATE BARNARD: Mr. President, I just have a couple of questions to anyone who cares to answer them. I noticed the word "as otherwise provided in this Constitution." I'd like to ask what is otherwise provided in the Constitution?

CHAIRMAN GRAYBILL: Does anyone— Mr. Brown.

DELEGATE BROWN: Yes, sir. The reason for that provision-the old Constitution made certain agerequirements and such to holdvarious offices such as Governor, Senator or Representative, and we didn't want to conflict with any-and I don't know what they'll come out with, but if there is another provision in the Constitution, we don't want to conflict with it.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: I think that answers one question. I still have one more. As I understand the interpretation of the language in Section 4, "subject to any additional qualifications provided by the Legislature," these are going to be qualifications as to, say, whether you would be a lawyer or a teacher or so forth. Is that the intent of that language?

CHAIRMAN GRAYBILL: Mr. Brown, will you yield?

DELEGATE BROWN: I yield to the question, and that is correct.

DELEGATE BERNARD: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion of Section 4?

(No response)

CHAIRMAN GRAYBILL: Well, members of the committee, you now have before you the motion of the Chairman of the Committee on General Government that when this committee does arise and report, after having under consideration Section 4, that it recommend the same be adopted. As many as are in favor of the motion, signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 4 is adopted. Mr. Clerk, will you read Section 5.

CLERK HANSON: (Reading) "Section 5. In all elections held by the people under this Constitution, the person or persons receiving the highest number of legal votes is elected." Section 5, Mr. President.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Report Number 1, Section 5, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: This is on—rationale is on page 7 of the report, and this section is identical to Article IX, Section 13, of the present Constitution and merely guarantees the tradition of majority rule. The committee feels its retention is necessary as both a statement of principle and practical directive. As can be seen in Appendix A, the proposed Suffrage and Elections article deletes several provisions contained in the present Constitution of Article IX. These sections—Section 3, 4, 5, 6, 7, 10 and 12—have either been superseded by judicial review or federal action or do not have enough redeeming value to be left in the Constitution. Discussion, by section, of these sections of the present Constitution follows. Section 3, which I will leave the language out-if you have the yellow book you can refer to that—but Section 3, in the discussion, does not limit anyone from establishing residency in Montana if the person is otherwise eligible, if that person can show an honest intent to do so. This section is ineffectual and is covered in the proposed Section 3 of our proposal-the committee proposal. Section 4—I will leave the language out of the present Constitution but comment on Section 4—are—given all of its exceptions, is of little value and can be implemented just as effectively by legislation. There is no comparable section in the proposed committee proposal. Section 5 serves no real function and is probably not enforceable. Consequently, there is no comparable section in the proposed article. Section 6 suffers from the same limitations as Section 3 and is redundant with that section. It, too, has no comparable section in the proposed article, though its basic intent is covered in our proposed Section 3. Sections 7 and 10 are of parallel intent with Section 11 of the present Constitution and as such are revised by Section 4 of the proposed article. Section 12 is nationally unconstitutional on two counts-property qualifications for voting and implied disenfranchisement on a sexual basis. There is no comparable section in our proposed article. All of the other sections of Article IX of the present Constitution have been incorporated or revised in the proposed article.

CHAIRMAN GRAYBILL: Very well. What is your pleasure?

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I don't particularly enjoy playing the role of the devil's advocate, but I would like to make an inquiry of Mr. Etchart, if he will yield to a question or two.

CHAIRMAN GRAYBILL: Mr. Etchart, will you yield to a question?

DELEGATE ETCHART: I yield.

DELEGATE MURRAY: My good friend, Mark, you indicate that Section Number 5, that we have under discussion, is identical to Article IX, Section 13, and I find it is not. The last provision of Section 13 says "shall be declared elected." Do you now say "is elected?" Is there some reason for that change?

DELEGATE ETCHART: Well, my thinking is that-in the form, in the intention-that we intend it to be the same. It was probably a minor change in grammar on the part of the committee, Marshall.

DELEGATE MURRAY: I'm wondering if, since my understanding of the elective process is that there is a board of canvassers that canvasses every election and then makes a declaration that a person is elected, if you are now doing away with the board of canvassers?

DELEGATE ETCHART: I—

CHAIRMAN GRAYBILL: Mr. Etchart, do you want to yield to that second question?

DELEGATE ETCHART: I would refer to our counsel, Mr. Brown.

CHAIRMAN GRAYBILL: Mr. Brown, Mr. Etchart won't yield. Mr. Brown, will you yield for that second question?

DELEGATE BROWN: I will yield, and I would have no objection to changing it according to Mr. Murray's inquiry.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. There-I don't know. I'm inquiring as to what the effect of this change might be, and since the committee has indicated now that perhaps they wouldn't resist such an amendment, I move that Section 5 he amended in line 25 by deleting the word "is" and by inserting the words "shall be declared"--and that's after the word "votes," in Section 25—line 25, Section 5.

CHAIRMAN GRAYBILL: Very well. Mr. Murray's amendment to Section 5 is on line 25, the second to last word-the word "is" is dropped and we put in there "shall he declared," so that the last sentence reads "the highest number of legal votes shall he declared elected." Is there further discussion on Mr. Murray's proposed amendment?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and the amendment is allowed. Is there other discussion on proposed Section 5, as amended?

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I have no further discussion on this section. I only rise to clear the record and make it known that the minority report in all respects is the same as the majority report except for Section 3 as adopted.

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: I don't know just how inclusive this Section 5 is, hut I do have concern about the old Section 4 from the present Constitution. And if I understand right, why—Chairman Etchart, as he explained Section 5 was all-inclusive of all these sections that have been dropped, and if so, I would like to have some consideration of retaining Section 4 of the present Constitution, and if it takes an amendment to do that, why, I'd he prepared to present an amendment and open it for discussion. I feel that we've had considerable discussion on the voting rights and on the necessity of them, and here in one section--why, we're knocking out a section that gives some protection to the individual as he goes to the polls to vote. Now, most of us are quite casual about our voting. We know we'll be permitted to go, and we have lots of protection-but that may not always be true, and I think it is a question as to whether we-at this time, we should make an exception in Section 4. So, Mr. Chairman—

CHAIRMAN GRAYBILL: Mr. Leuthold, may I speak to you a moment? I think the Chair is going to rule you out of order unless you want to add it as part of Section 5. The Chair will, however, recognize you after we've finished with Section 5, if there are no other amendments, to make an amendment to add a Section 6, which would be your point. In other words, it seems to me it should not be a part of Section 5 unless you want to so make it a part of Section 5.

DELEGATE LEUTHOLD: No, I would just as soon make it another Section 6. I—

CHAIRMAN GRAYBILL: All right.

DELEGATE LEUTHOLD: As I stated, I was not sure just how inclusive Section 5 was, but—

CHAIRMAN GRAYBILL: We'll come hack to you and pick this proposed amendment up, and we can use the language that's already in the book, but let's do it after we finish with Section 5 since you don't really propose changing the language in Section 5.

DELEGATE LEUTHOLD: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, since Mr. Murray has already indicated one minor style change from our present Article XIII—Article IX, Section 13, I believe we probably ought to make the entire section to conform precisely with the existing language. I'm referring to the last word in the sentence on line 24—"receiving." The existing Constitution says "who shall receive." Since the comment to the majority report states that it is their intent that it he identical, I move that Section 5 be identical to our present Article IX, Section 13, and I might add that I prefer to refer to it as our present Constitution,

rather than the old one, since the voters have not yet ratified our work.

CHAIRMAN GRAYBILL: Section— What's the section number? Section 13 of Article IX?

Mr. McNeil has moved that Section 5 be made identical with the present Constitution, Article IX, Section 13, which apparently has the effect of changing the word "receiving" to "has received." Is that correct?

DELEGATE MCNEIL: . .."who shall receive".

CHAIRMAN GRAYBILL: Allright, "who shall receive". Is there any discussion on this amendment?

(No response)

CHAIRMAN GRAYBILL: All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll use the voting machines, but we'll not record the vote. All those in favor, say Aye, and those opposed, vote No on the voting machine. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The Chair will now close the vote. The vote is 50 No, 40 Aye. The amendment fails.

CLERK HANSON: 48 Aye.

CHAIRMAN GRAYBILL: All right, 48 Aye-50 to 48. The amendment fails. Is there further discussion of Section 5?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have now before you the motion of the Chairman of the Committee on General Government that when this committee does arise and report after having under consideration Section 5, it recommend the same be adopted. As many as are in favor of the motion, please signify by saying Aye; contrary—

DELEGATES: Aye.

CHAIRMAN GRAYBILL: And the contrary, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and Section 5 is adopted. Now, the Chair will recognize Mr. Leuthold for an amendment.

DELEGATE LEUTHOLD: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration this section on Suffrage and Elections, that they add a new Section-6-and include in this new Section 6, Section 4 from the present Constitution.

CHAIRMAN GRAYBILL: You mean Section 4 of Article IX?

DELEGATE LEUTHOLD: Section 4 of Article IX from the present Constitution.

CHAIRMAN GRAYBILL: Very well. The amendment proposed by Mr. Leuthold is to add, as Section 6, to the General Government Suffrage and Elections Article, a new Section to be known as Section 6, which would be identical with the present Section 4 of Article IX in the present Constitution.

Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. Chairman, as I stated earlier, I feel that this is an important protection to the electors, and while it probably doesn't affect many of us individually at this time, it could have a very important effect in some future time. And since we're presenting this to the Legislature and, while we like to trust the Legislature, it is not absolutely certain what type of legislation they may pass, and I think that this is a good protection to the electors and I think it should be retained.

CHAIRMAN GRAYBILL: The Chair would like to point out that the language of Section 4 is on page 8, about a third of the way down, line 10, in the committee report-committee proposal.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I rise in support of Mr. Leuthold's motion. Last November, I was late getting to that noncaucus

caucus that some of us of Group A had at Jorgenson's, and I was stopped by a member of the local police force for exceeding the speed limit (Laughter), and I thought that I was going to have to call upon my immunity, which I don't think I necessarily had at that time to that noncaucus caucus. (Laughter) And I do think, though, that it is important that the elector, when he's going to and from the voting place, as all of us when we come to this chamber and leave it each day, are immune, except for serious crimes, such as felonies and treason.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Brown.

DELEGATE BROWN: Mr. President, I rise in opposition to the amendment. Our reason for deleting it-the Constitution Revision Subcommittee compared many constitutions. The provision is not in there. The Legislative Council took no action on it. We've compared other constitutions ourselves, it's not in there. It's a legislative matter, and we don't think it's necessary to put these types of matters in the Constitution.

CHAIRMAN GRAYBILL: Further discussion?

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I rise in support of this motion. I can certainly see many cases in a close election, like we have in our counties sometimes, that someone is a little late to get down there to vote, hurrying down there, may be kept from voting. Now, we discussed at quite length earlier people's rights to be able to vote, and I certainly think this right would be violated if someone such as Delegate Kelleher was prevented from getting to his noncaucus caucus. Thank you Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, it may be particularly significant now that we have everyone on parole voting, too. (Laughter)

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I think that this is a vital thing to put in the Constitution, and I support the position of Mr. Leuthold, as a former law enforcement officer.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. President, does Mr.-Delegate Kelleher realize that if this constitutional article remains there, he was still disturbing the peace, speeding down the highway, and he was still subject to arrest?

CHAIRMAN GRAYBILL: Is there other debate?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you now have before you, on the motion of Mr. Leuthold, that when this committee does arise and report, after having under consideration proposed Section 6 of the General Government Article on Suffrage, that it recommend the same be adopted. As many as are in favor of the proposed Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: As many as are opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll use the voting machines without recording the vote. All those delegates in favor of the proposed Section 6, granting immunities to persons on the way—

DELEGATE KELLEHER: (Inaudible) call vote, please?

CHAIRMAN GRAYBILL: Mr. Kelleher has called for a roll call vote. (Inaudible) five seconds.

DELEGATE KELLEHER: And could I have some seconds, please?

(Seconds stood)

CHAIRMAN GRAYBILL: Very well. The vote will be recorded, and the vote is on Mr. Leuthold's proposal that a Section 6 be added, identical to Section 4 of the present Article IX of the Constitution, which gives electors privilege from arrest during attendance and going to and coming from election, except in serious cases. So many of the delegates as are in favor, please vote Aye on the voting machines, and those against, vote NO on the voting machines. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The Chair will now close the ballot. Will you please record the vote?

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Nay
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye
Furlong. ..... Nay
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Nay

CLERK HANSON: Mr. President—

CHAIRMAN GRAYBILL: Will you please announce the vote?

CLERK HANSON: —50 delegates voting Aye, 48 voting No, 2 not voting.

CHAIRMAN GRAYBILL: The proposal has therefore passed, and a Section 6 will be added. For the information of the Chamber, I would like to say that in recording that vote, the voting machine recorded the votes in four spaces above the names, but it's obvious that all of them are there, and I think it's easy to count them. They are not-in sequence, they'renot perfectly across from each other, but it's not difficult to find out, and rather than take an oral vote, I am making the decision that we can understand what the voting machine meant. Now, if anybody wants to challenge that after lunch-or after looking at it, you can let me know, but it's easy to see how you voted. It's just not across from your name.

Very well. Are there other proposed amendments to General Government's Suffrage and Elections Article?

(No response)

CHAIRMAN GRAYBILL: If not, the Chair will recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the committee rise and report and beg leave to sit again.

CHAIRMAN GRAYBILL: Mr. Eskildsen. All right, all in favor of Mr. Eskildsen's motion, which is that the Committee of the Whole will rise and report and then sit again, please indicate by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The motion carries. The Convention will be in order. We are now on Order of Business Number 10, and so you'll understand what happens, the Committee of the Whole report must be prepared, and then the Chairman must sign it, and now the clerk will read it.

CLERK HANSON: (Reading) "Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: That Section 1 be adopted. That Blaylock amend to Section 2, as amended by Joyce, be adopted as follows: strike the following words in line 11, page 2, of the printed committee report: "of the state and political subdivision" and insert in lieu thereof "as provided by law." At this time Delegate Pemberton was recognized as present. Section 2, as amended, be adopted by the following vote: Ayes, 74; Noes, 70—26. Roll call vote requested by Romney with sufficient seconds. That Section 3 of the minority report, on roll call vote requested by Delegate Lore110 with sufficient seconds, be adopted by the following vote: Ayes, 52; Noes, 46; Absent, 2. That Section 4 be adopted. That Section '5 be amended in line 25 by striking the word "is" and inserting in lieu thereof "shall be declared" and as amended be adopted. Amended by Murray. Leuthold amendment, Section 6 be added in the language of Section 4, Article IX of the present Constitution, which reads: "electors shall in all cases, except treason, felony or breach of the peace be privileged from arrest during their attendance at elections and in going to and returning therefrom." On roll call vote requested by Kelleher with sufficient seconds, Section 6 was adopted by the following vote: Ayes, 50; No, 48. That the committee rise and report and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen has moved the adoption of the Committee of the Whole report by the Convention. Now, you've just had the report read, and for your information and for further reference, the journal clerk is printing all of the amendments that passed. She is also printing all the amendments on which roll call votes are taken, whether they pass or fail. She is not printing all of the amendments which do not pass and on which no roll call is requested. Now, that's the nature of the report here, and Mr. Eskildsen has now moved that the report be adopted, and if you do so, you will have adopted the Article on Suffrage and Elections of the General Government Committee. Is there any discusion?

(No response)

PRESIDENT GRAYBILL: Very well. All in favor of the motion—

DELEGATE MAHONEY: (Inaudible) got to be a roll call vote.

PRESIDENT GRAYBILL: I think you're right, Mr. Mahoney, We'll open the ballot. Well, all right, we can't open the ballot; but we will take a roll call vote. The clerk will call the roll. Those in favor, answer Aye. Those opposed, answer Nay. Now, don't start it-a minute until—

CLERK HANSON: (Inaudible) reset up.

PRESIDENT GRAYBILL: Is it all right?

CLERK HANSON: Yes.

PRESIDENT GRAYBILL: Very well. We're now informed that the voting machine is all right, so we will use the voting machine on this recorded roll call vote.

Mr. Murray, do you have a point?

DELEGATE MURRAY: Mr. President, I'd like to ask of Mr. Mahoney what rule provides for a roll call vote in Committee of the Whole?

DELEGATE MAHONEY: My understanding-Mr. President, it's my understanding that anything moved along in this Convention-it was going to be by roll call, and this is certainly it-you have stated on your statement up there that this is adopting of the report that came out in this one part. And this is what you've said, and this is why the roll call; and if you don't want it, I'll ask for it, and I think I can get the seconds on it.

PRESIDENT GRAYBILL: Well, we'll settle it by reading Rule 55. We're back in the Convention as a whole. "The secretary shall call the roll at the opening of each session. Vote by machine may be taken whenever a roll call or a vote by Ayes and Yays [Naes] is directed or is in accordance with these rules." So, I think, perhaps, Mr. Murray is right, Mr. Mahoney, that you have to call for it. Do you wish to call for a roll call vote?

DELEGATE MAHONEY: (Inaudible) call for a roll call.

(Seconds stood)

PRESIDENT GRAYBILL: Very well. Five seconds having stood, we will take a roll call vote, and we'll try to take it on the machine. So the Chair will open the machine, and those in favor of adopting the Suffrage and Elections report—proposal of the General Government commission-that's proposal Number 1, as amended in the Committee of the Whole and as adopted on the Committee of the Whole report here, please indicate by voting Aye. And those that do not want to do that, please vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well. The vote is-does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The vote is now closed. Will you please record the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, 0	Aye
Arbanas..	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates..	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown.	Nay
Bugbee	Aye
Burkhardt	Aye
c am	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross..	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay

Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Nay
warden..... Nay
Wilson Nay
Woodmansey Nay

CLERK HANSON: Mr. President, 82 delegates voting Aye, 18 voting No.

PRESIDENT GRAYBILL: 82 delegates having voted Aye and 18 having voted No, the General Government proposal on Suffrage and Elections, as amended, is passed and is now sent to the Style and Drafting Committee.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that—may we be in business order-Order of Business Number 11?

PRESIDENT GRAYBILL: Order of Business Number 11. Hearing no objection, we're on Order of Business Number 11.

DELEGATE ESKILDSEN: I move that we stand in recess until 1 o'clock this afternoon.

PRESIDENT GRAYBILL: The motion is to recess for 1 hour, until 1 o'clock.

For what purpose do you rise, Mr. Anderson?

DELEGATE OSCAR ANDERSON: Point of order.

PRESIDENTGRAYBILL: Pointoforder. What is it?

DELEGATE OSCAR ANDERSON: Would I be out of order to tell the Local Government Committee to meet in 437 immediately?

PRESIDENT GRAYBILL: Mr. Furlong, for what purpose do you rise?

DELEGATE FURLONG: Mr. President, I hope it's a point of personal privilege.

PRESIDENT GRAYBILL: Very well. What-let's state your point.

DELEGATE FURLONG: It has to do with your announcement this morning concerning the printing and distribution of the reports, which I'm for, because of the savings in money that we'll probably have. But I have before me a report that's short two pages, and I now find that there are no more reports available. I think this is cutting it awfully close, and I would hope (Laughter) that someone would give reconsideration to the number of these that are going to be printed and saved for the use of the delegates.

PRESIDENT GRAYBILL: Which report and which pages, Mr. Furlong, and I'll see that you get them.

DELEGATE FURLONG: General Government on Suffrage and Elections, Report Number 1; and I'm short pages 8 and 9. Thank you, Mr. President.

PRESIDENT GRAYBILL: Very well.

Mrs. Mansfield, for what purpose do you rise?

DELEGATE MANSFIELD: I rise for the same purpose as Mr. Furlong. I do not-someone must have picked my copy of Suffrage and Elections. Don Rebal has the same complaint, Mr. President.

PRESIDENT GRAYBILL: Very well, now, we'll get those to you delegates, but I hope you'll all start writing your names on them and holding them in your hands. We're now on Mr. Eskildsen's motion to adjourn-or to recess, rather, until 1:00 p.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and we're recessed.

(Convention recessed at 12:03 p.m.—reconvened at 1:18 p.m.)

PRESIDENT GRAYBILL: The Convention will be in order, and unless there is objection, we will be on Order of Business Number 8 to finish up a matter-to discuss a matter with you that I want to finish up. Now, the problem has arisen, and I'd like you all to listen carefully to this because you're going to have to make a decision here. The problem has arisen as to whether or not Suffrage and Elections can be reconsidered. Rule Number 26 provides that the Committee of the Whole can rise and report progress, or can rise and report. We didn't do quite either. We arose and reported and begged leave to sit again. Now, whether that means that we rose and reported and since we said beg to leave to sit again, we were only reporting progress; or whether that means that we rose and report on 1 and begged leave to sit again so we consider Number 2 this afternoon is a good question. And, if we arose and reported, then, having signed the report and you having adopted it, Number 1 is long gone to Style and Drafting. But if we should have reported only progress, then Number 1 is here to be reconsidered. Now, upon the advice of the members of the Rules Committee, the Chair is going to rule that when Mr. Eskildsen said rise and report and beg leave to sit again, he in fact meant to sit again this afternoon and not conclude any of the General Government parts, and so Number 1 is still before us and what I did in sending it to Style and Drafting was wrong. Now, having ruled that way, which I'll do, then I invite a challenge of the Chair from anyone on the floor and we can have a vote and you can either sustain me or reject me, and if you sustain me, Number 1 is long gone, and if you reject me, Number 1 is before you and you can then talk about reconsideration. All right, now, so that we understand each other, the Chair now rules--well, I may have stated that wrong, but in any event I'll state it again. The Chair is now going to rule that when we rose and begged leave to sit again, we in fact rose and reported progress and that the action of the Chair in putting the matter finally to you and sending it to Style and Drafting was out of order. Now, I've ruled that. Does anyone care to challenge the Chair, and if you do, we'll then vote as to whether or not to sustain what I did this morning or else to do what I just said. In other words, do you want to challenge that decision of the Chair?

DELEGATE DAHOOD: (Inaudible) that decision because this is a move, of course, to reopen what was voted on this morning.

PRESIDENT GRAYBILL: That's right.

DELEGATE DAHOOD: I understood the Chair to say the matter was closed, and if we're going to establish that precedent now, we may be here through 1973. I challenge the Chair.

PRESIDENT GRAYBILL: Very well. The Chair has been challenged on its ruling, and

we will now vote by majority vote as to whether or not the Chair is correct.

Mr. Felt.

DELEGATE FELT: Mr. President, do you see this as a nondebatable proposition at this time as to the challenge of the Chair, or would some discussion be in order?

PRESIDENT GRAYBILL: My clerk tells me it's debatable, and I think it is. We can look it up in the rules here. Go ahead. We'll debate it.

DELEGATE FELT: Yes, Mr. President. In no way, I'm quite sure, is anyone the least bit critical of any of the rulings that have been made, and certainly if anyone had felt that any mistake was being made, they had the opportunity and would have exercised that opportunity to speak up before we recessed. But upon having opportunities during the recess period to review particularly Rule 26, and in the interest of developing our familiarity with our rules, which we have really not had any opportunity to use previous to today since this is our first period in Committee of the Whole, I would disagree with the challenge which has been made and support the position which the Chair has taken, which he states is upon consultation with members of the Rules Committee. Rule 26, for the members who have their rules available, is on page 11 of this blue-colored book and includes in part the words "and provided further when the Committee of the Whole again sits," the subject under consideration prior to the motion to rise and report progress shall again be resumed. So that, based upon that provision of our rules, I feel that the Chair has now correctly ruled. We also had distributed a brief list of the motions which are in order and motions which are not in order while we are in the Committee of the Whole. Among the motions which are in order is one, Number 5, reading "to rise and finally report." and I believe Number 6, to the one I believe which was essentially made, is to rise and report progress and ask leave to sit again. And that is the motion to which Rule 26 then applies. Now, as regards-if anyone believes that this is some sort of parliamentary ruse in order to obtain the opportunity to reconsider actions taken, I think it is quite possible that a motion to reconsider actions may be made, as will occur under ourrules, I'm quite sure, on a number of things that occur before we're done here. I would like to point out that it is not necessary, however, for anyone desiring to get reconsideration to be sustained or for the ruling of the Chair now to be sustained, because if the proposal of the committee has gone to the Committee on Style and Drafting, any member, no matter how they have voted, has the opportunity to move that that proposal be taken from the Committee on Style and Drafting and be referred again to the Committee of the Whole, and if they're successful, for whatever reasons they give for making that motion, it would then be possible, by motions made by a person who had voted on the prevailing side to move to reconsider-so that, in any event, if the majority of the delegates did, in fact, wish to reconsider any of the actions taken at the morning session, it's still possible-so that it does not depend upon the decision we make right now upon this ruling of the Chair. But I do feel that the ruling of the Chair is in accordance with our rules and that it's a fine thing for us to have had some of this practice and to become conversant with our rules and it is very important that we follow them or else amend them.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and delegates. I, too, concur with the ruling of the Chair. I hope that we'll consider ourselves a unicameral body today, and certainly the action we did this morning was of a unicameral nature. We deliberated quite lengthily and emotionally at times, and I think that this should indicate that maybe some have maybe reconsidered their action, their thinking, and would like to look again at a very controversial and very earthshaking decision that was made. And whether or not that is the purpose of the motion is not here or there. According to our rules, I agree that this was out of order entirely because we should be still in Committee of the Whole according to the motion to recess.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I've conferred with the Chairman of the Rules Committee, whom I hold in highest esteem, and he tells me that the challenge to the Chair under our rules-to the ruling of the Chair—probably is not well founded since apparently the motion should have been stated different this morning, and for that reason, I'm going to withdraw my challenge to the Chair's ruling.

PRESIDENT GRAYBILL: Well, all right, you may withdraw your challenge. The Chair was in error in accepting the motion becauseits nature was ambivalent. That means it could be either

way, I guess, but the Chair still-what the Chair is doing now is deciding it one way, and I am perfectly willing that you challenge me if you want to and change it to the other way. And the way I'm deciding it is that we're not through with Number 1, so if you don't like that, anyone else may challenge it. He's withdrawn his.

Mr. Eskildsen.

DELEGATE ESKILDSEN: In making the motion this morning, I did it with the full intent of saying "progress," and I inadvertently left the word off. To me, theonemotion would be to report final progress-let's see-to beg leave and-to report progress and beg leave to sit again. That's what the motion should have been. And the motion would be to report final progress. Now, had I said "final progress," yes, it would have been all. But I didn't do that, and the reason I didn't do it is because the votes today were very close, and being this was the first session we had, I felt it was important that everybody kind of get in the mood of things and get the feel before we actually started passing them in the final form here, and that was the reason that I begged leave to sit again.

PRESIDENT GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman, if I knew what was going on here (Laughter) before-this is my first experience with something like this-1 would have been another Charley Mahoney. I would have been questioning some of these rules. Now, I wanted to go along with Mr. Dahood's challenge of this thing, and whoever has the right wording for this thing, I wish they'd stand up and challenge your decision, because I really feel that this is just a move to get this part 3 back onto the floor. I've already heard that 52 irresponsible people voted this thing in, and if I could do something to keep this thing from coming back up to discussion again-1 hope someone more learned than me would bring it out and do it.

PRESIDENT GRAYBILL: Well, Mr. Lorcllo, please understand I only rule because I have to rule one way or another and I'm rather sympathetic with you, and the way for you to do it is to say "I challenge the Chair's ruling." Now, if you'll say that, we're back in business.

DELEGATE LORELLO: Thank you, Mr. Challenge (Laughter)-Chairman. I challenge the Chair's ruling.

PRESIDENT GRAYBILL: All right, now. Mr. Lorello has challenged the Chair's ruling, and you may discuss it, but the point is that if you sustain Mr. Lorello, then Number 1 will have been gone to Style and Drafting, but if you sustain the rule I made, then Number 1 will be open for reconsideration.

Now, Mr. Cate.

DELEGATE CATE: Mr. Chairman, I'd like to challenge the record and have read bock to us the exact motion that was made that was voted on by the entire committee.

PRESIDENT GRAYBILL: Very well, we'll be in-the exact motion was that the committee rise and report and beg leave to sit again, and that's ambivalent **in the sense that** it doesn't say rise and report final action and it doesn't say rise and report progress. It says rise and report and beg leave to sit again, and I should not have accepted the motion in that form.

DELEGATE CATE: Mr. Chairman, was that the motion that we voted on?

PRESIDENT GRAYBILL: We voted on that motion and we voted in favor of that motion which put us back-which accepted the work of the Committee of the Whole this morning, that the committee rise and report and beg leave to sit again. It should have said that the committee rise and report progress, or it should have said that the committee rise and report finally.

DELEGATE CATE: My understanding of the intent of that was that we rise and report finally.

PRESIDENT GRAYBILL: Well, that's what I thought this morning but I've been-my memory has been jogged, and I now have ruled the other way; and if you want to vote against that, that's what we're going to give you a chance to do.

DELEGATE CATE: Thank you.

PRESIDENT GRAYBILL: I don't think that's too complicated. Everyone understand now?

Mrs. Eck.

DELEGATE ECK: I think it's true, though, that we also voted to refer it to Style, did we not; or did-was that just a ruling?

PRESIDENT GRAYBILL: No, that's just a ruling.

DELEGATE ECK: That's just a ruling.

PRESIDENT GRAYBILL: If, in fact, we adopted this, then the Chair does refer it automatically under the rules to Style.

DELEGATE ECK: Thank you, Mr. Chairman.

PRESIDENT GRAYBILL: All right, are you ready? If so, the rules require that I say-Rule Number 75 requires that I put the question "Shall the appeal be sustained?"--and I am allowed to explain my vote and I certainly-or my position; I certainly have explained it to you. I just want to get a ruling from you. So, I shall now say, "Shall the appeal be sustained?"-Mr. Lorello's appeal of the Chair's decision. That means, if you sustain his appeal, we'll do what we did this morning. If you sustain me, we will not do what we did this morning. So, I'm going to use the voting machines for an unrecorded vote. All those in favor of sustaining the appeal, vote Aye-that's Mr. Lorello's motion. Who's on the Floor? All those in favor of sustaining the appeal, vote Aye—

And all those in favor-No, on the voting machines, for an unrecorded vote. And all those in favor of not sustaining the appeal, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

DELEGATE BATES: (Inaudible) what we're voting on?

PRESIDENT GRAYBILL: Yes. Mr. Lorello. Let's put it this way. The Chair ruled that the Chair was in error this morning when I accepted Suffrage and Election and finally sent it to Style and Drafting. I ruled I was in error. Therefore, we will not have accepted it, and when we go back into the Committee of the Whole, it will still be open for reconsideration, if you sustain the Chair. To that, Mr. Lore110 objected, and he has appealed from the Chair's ruling. So, if you're in favor of Mr. Lorello's appeal of the Chair's ruling, you vote Yes, and if you're in favor of the Chair's ruling, you vote No. Now, does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, the vote is closed. The vote is 36 Aye, 63 No, and so the Chair is sustained.

Mr. Eskildsen, would you like to take us back into Committee of the Whole? We'll move to Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under general orders.

PRESIDENT GRAYBILL: You've heard the motion to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

(Chair assumed by Mr. Graybill)

CHAIRMAN GRAYBILL: Very well. We're in Committee of the Whole, and we have under consideration Suffrage and Election, Number 1, and we have ready to consider Constitutional Revision, Number 2. Is there a motion on Suffrage and Election, Number 1?

Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise and move that the Committee of the Whole reconsider the Article on Suffrage and Election that was voted on this morning, and in particular, Section 3 thereof.

CHAIRMAN GRAYBILL: Very well. Mr. Ask's motion is to reconsider Section 3 of Proposal 1 on Suffrage and Elections.

DELEGATE ASK: Yeah.

CHAIRMAN GRAYBILL: Mr. Ask, did you vote on the prevailing side this morning?

DELEGATE ASK: On the article, yes; but not on the Section 3. On the entire article, I voted—

CHAIRMAN GRAYBILL: You have to be voting on the prevailing side to make a motion to reconsider.

DELEGATE ASK: For each particular section?

CHAIRMAN GRAYBILL: Where-the article-the whole article is still before us. I have reversed that and we've-

DELEGATE ASK: Have you reversed the vote on the whole article?

CHAIRMAN GRAYBILL: Well, I don't know whether you're trying to-we haven't voted on the whole article. We've voted on it article by article.

DELEGATE ASK: Well, I understood we voted on the entire article when we finished.

CHAIRMAN GRAYBILL: That's what I reversed. That's what I said I was in error in accepting.

DELEGATE ASK: Oh, excuse me then. I was not on the prevailing side on Section 3.

CHAIRMAN GRAYBILL: All right, if you're not on the prevailing side you're not prepared—

Mr. Aasheim.

DELEGATE AASHEIM: Having voted on the prevailing side to accept Report Number 1, I move to reconsider Report Number 1.

CHAIRMAN GRAYBILL: Section 3 or—

DELEGATE AASHEIM: The whole report.

CHAIRMAN GRAYBILL: All right. Well, now, Mr. Aasheim, we didn't vote on the whole report. We voted on it section by section. We don't vote-we voted on the whole report only after the error, and that's been erased. Now, if you voted on the prevailing side on Section 3, you may raise the issue.

DELEGATE AASHEIM: I did not.

CHAIRMAN GRAYBILL: All right.

Mr. Artz.

DELEGATE ARTZ: Mr. President, having voted on the prevailing side, I move to reconsider our action to accept Section 3 of Report Number 1.

CHAIRMAN GRAYBILL: You're talking about the prevailing side on the issue on Section 3?

DELEGATE ARTZ: That is correct.

CHAIRMAN GRAYBILL: Very well. Mr. Artz, having voted on the prevailing side on Section 3 this morning-that's when we adopted the minority report section-he has now moved to reconsider Section 3 of Proposal 1, Suffrage and Elections, of General Government.

Mr. Artz.

DELEGATE ARTZ: The reason I am moving to reconsider: I believe in the spirit of fair play, and apparently there has been some confusion, and I certainly would hate to see the first day start out that we don't give everybody a fair chance, and that's the major reason I'm moving. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I wish to speak on Number 3. The minority report was well thought out, and I agree with it wholeheartedly. I think it's a tremendous move to make democracy more responsible. It's a tremendous move to make people more responsible, and any time we can make our elective process closer to the people, we certainly should do so. I understand Minnesota uses poll booth registration, and I guess we're familiar now with North Dakota. I think it's tremendous, and I think that we should also consider very seriously the matter of absentee voters, particularly as it applies to college students, as it applies to our servicemen abroad or wherever they are. There's so much rigamarole, so much red tape to go through, that they are disenfranchised, and I think we should-someone should-do something to correct these inequities. Maybe it's a matter of lack of education. Maybe our educational system is at fault. I don't know what it is, but I do not believe that this matter belongs in our Constitution. I think it's legislative, and you can criticize this body up and down for passing the buck onto the Legislature, but the Legislature is the people. The Legislature is the people, and if you're going to tie this into the Constitution, if we find it inoperative, if we find it being abused, we're going to be tied down and we're going to have to amend the Constitution again. And no matter what we say about the image, how are you going to explain this to the people that anyone can just go to the polls and vote. I beseech you people to reconsider your thinking here. I'm with you in the idea, but I can--again, let me reiterate, it does not belong in the Constitution.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would like to agree very much with Mr. Aasheim. We have checked with the Cascade County Clerk and Recorder. Special improvement districts, fire districts and irrigation districts still need to have taxpayers vote on them. Is there any way that I, who have been an election clerk for several years,

can determine where people live, whether they should he voting on these things, because I have had people coming in that really don't know where they live or what they are going to he voting on. I don't mean that facetiously. I will say that maybe they registered in Great Falls 15 or 18 years ago, and they do not know if they are registered in a certain precinct, or what. Now, how do you determine that by just coming into the polls'? I feel that I would not he representing the people who sent me here if I were to make a mockery of our election laws by making voting not a privilege hut an emotional right. We are here to do an evaluated job, not an emotional one, and I hope you will reconsider your vote on this question.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. Two things in answer to what has just been said. I presume they have these same districts in a state like North Dakota, and there's no record that they've had any trouble with that particular thing. I would like to see us vote more on the principle of the thing rather than on whether or not it's going to he a little trouble to change some of our particular county procedures or precinct procedures as of now. I rise mostly to say that every one of us, I think, was here this morning. We almost all of us made speeches. I would hate to see us go through all of that again, but if it's going to come to that, I'll be willing to make another speech on it, though I shall not at this time.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. Chairman, I didn't talk this morning. I will only say now I rise in support of the majority proposal.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I did not speak this morning, but I rise in support of this motion to reconsider. I think it was considered too hasty this morning, and even some committee members changed their mind on the floor. And I feel that even with this one item that--we've only covered one article-I feel that we could lose a large segment of the voters hack home in approval of the ultimate document that we come up [with] here, and I think we should reconsider this section again.

CHAIRMAN GRAYBILL: Mr. Monroe:

DELEGATE MONROE: Mr. President, would Catherine Pemherton yield to a question?

CHAIRMAN GRAYBILL: Mrs. Pemberton, will you yield to a question?

DELEGATE PEMBERTON: Yes, sir.

DELEGATE MONROE: In the deliberations this morning, we saw two members of the General Government Committee change their minds as we went through the deliberations, and as I understand it, there really wasn't a majority report-that as it turned up, it was four and four, so I was wondering, what majority report were you referring to?

DELEGATE PEMBERTON: Thank you for your correction. I am referring to Section 3 of whatever you would like to term it, whether it's the past majority report or not, but it's Section 3 on page 2. Thank you.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Okay. Mr. Chairman, I rise in support of Bob Vermillion's what at one time was considered the minority report. And it seems to me, at least my observation is, that I think that there are some sore losers from this morning and that they're trying to hide some time at this time, and in fact they have bided time and have tried to work on some of their people during this time, tried to influence their votes as it was so close, and are trying to make it go in favor of what was at one time the majority report.

CHAIRMAN GRAYBILL: Now the Chair wants to point out that we're debating the motion to reconsider. We're not debating Section 3. I've been fairly liberal on that, hut I think everyone understands we're only debating the motion to reconsider, and when we vote we're going to vote whether to reconsider it or not, not whether to change it or not--whether to reconsider it.

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I am one of the sore winners this morning in changing my vote from the majority report, and I'd like to state that, if allowed to do so through reconsideration, I would rejoin our majority opinion. Thank you. (Applause)

CHAIRMAN GRAYBILL: Now, the Chair will also say in this first day of debate that I'm going to discourage demonstrations. I don't

mind your being happy, but if we start doing this throughout the session, we'll all end up clapping for each other's speeches, and that will only lengthen the journal, so please hold your applause until after we adjourn. Is there other discussion on the motion to reconsider?

(No response)

CHAIRMAN GRAYBILL: Very well. All in favor of Mr. Artz's motion to reconsider Section 3 of Proposal 1 from the General Government Committee, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll use an unrecorded vote. All in favor of reconsidering, vote Aye. All opposed to reconsidering, vote No.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: If not, we'll close the vote. The vote is 58 Aye, 40 No, so we will reconsider it.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move to amend the second sentence of Section 3 to add the following words, immediately after the words "absentee voting," "for servicemen and students only."

CHAIRMAN GRAYBILL: Just a minute. Which line are you on, Mr. Kelleher?

DELEGATE KELLEHER: Second line, Mr. Chairman.

CHAIRMAN GRAYBILL: No.

DELEGATE KELLEHER: The second line of Section 3, or do you want the line number and page number?

CHAIRMAN GRAYBILL: Line 16? Yes.

DELEGATE KELLEHER: Line. Yes, sir. Line 16—the last two words-immediately after the last two words of Section 3, line 16, page2, add the following words: "forservicemen and students only." May I speak to my motion?

CHAIRMAN GRAYBILL: In a moment. Do I understand the sense of your motion to be that the Legislature would provide by law the requirements for residency, registration, absentee voting for servicemen and students only, and administration of elections?

DELEGATE KELLEHER: That is correct.

CHAIRMAN GRAYBILL: Very well, that's your proposed amendment.

DELEGATE KELLEHER: May I speak to the motion?

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: As long as we're going to legislate here-1 am opposed to the wealthy in the County of Yellowstone, Mr. Chairman, moving to the State of Arizona or the State of New Mexico and voting for sales taxes and other types of taxes to be paid by citizens of the State of Montana who live in Montana and they do not even live here any more. Now, as far as servicemen and students, of course, who are away from home, it is all right to vote-to have absentee voting for them. But those wealthy residents who have left the state and gone to warmer climes and who do not even live here and who do not make purchases here, I do not feel that they should have the right to vote in this state. If they've changed their residence, they should vote in the state of their choosing-the state they have decided to retire in. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, may1 ask Mr. Kelleher if he'll yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher, will you yield?

DELEGATE KELLEHER: Yes, sir.

DELEGATE DAVIS: Mr. Kelleher, is it your wish to, in addition to disenfranchising the wealthy, those who might be away working to support that child at school on a construction job. In other words, to throw the baby out with the bath water?

DELEGATE KELLEHER: These people -there is a long time, Mr. Davis, that we have to vote before election day. If you're going to be out of town-if the voting, as we've heard this said before this morning on the floor-if voting is such a dear privilege that we will get ourselves-hie ourselves down to the courthouse to sign up for registration, I think we can get down to the courthouse to vote before election day if we're not going to be in town on election day.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE GYSLER: Mr. Kelleher, is it your intention to disenfranchise the Representatives and the Senators we have representing us in Washington? (Laughter)

DELEGATE KELLEHER: They get back here. They could come back and vote just like anybody else, and they do come back and vote. They always-they have an opportunity to get back here. That's no problem.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. President, would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher yield for a question?

DELEGATE KELLEHER: Yes, sir.

DELEGATE McCARVEL: Bob, would this disenfranchise the sick and infirm?

DELEGATE KELLEHER: We have a provision, Joe, in the statutes now that the clerk and recorder can go to the home of the blind and those that are sick and disabled and vote them in their own home. They're residents. They live in the state, and there's no problem there. They can be voted in their own home by a deputy.

DELEGATE McCARVEL: Well, don't they also consider that in the statutes to take care of the—

CHAIRMAN GRAYBILL: Mr. McCarvel, I'll let you ask another question. Do you want to ask another question?

DELEGATE McCARVEL: Yes.

CHAIRMAN GRAYBILL: Very well, Mr.-

DELEGATE McCARVEL: Doesn't the statutes already take care of soldiers and those that are away?

DELEGATE KELLEHER: By absentee ballot.

DELEGATE McCARVEL: By absentee ballot?

DELEGATE KELLEHER: That's right. You're right.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

Mr. Brown.

DELEGATE BROWN: Mr. President, I believe that a discriminatory addition like this would probably violate the United States Constitution.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, may I ask this question? Do we need, in order to discuss what was themajority this morning-that is, substituting Section 3 from page 13 for Section 3 of the original report-do we now need to move that again?

CHAIRMAN GRAYBILL: Mr. Harper, you've raised a point that's worrying me, but I thought we'd proceed with Mr. Kelleher's amendment, which I really think is to Section 3 of the minority report, but it happens to have the same language in it, but I don't-let's just get rid of this-no, let's just vote on this (Laughter) amendment-then we'll get another--we'll straighten it out. Pardon me, Mr. Kelleher. I did not mean to let my sentiments show. (Laughter) Is there further discussion?

Mr. Simon.

DELEGATE SIMON: Mr. President, I wonder if I may ask Mr. Kelleher a question. Would you—

CHAIRMAN GRAYBILL: Mr. Kelleher, will you yield?

DELEGATE KELLEHER: Yes, sir.

DELEGATE SIMON: At what point would you say in your proposal that you would limit the age of a student. I've found that in my experience, I know of some people who arc still going to school at 39, and you're a student of constitutional government and things of that kind—at what point would you say that we might consider you a student?

DELEGATE KELLEHER: Well, Mr. Wilson, I am 48 years old, and to the day I die, I hope I'll still consider myself a student, because as I get older, I realize I know less and less. In fact, when I was 23 years old, I had moral certitude about the fact that I knew everything, and now that I'm 48 years old, I have moral certitude about only one thing-that I know very, very little.

DELEGATE SIMON: What I was trying to say-1 would like very much—

CHAIRMAN GRAYBILL: Mr. Simon—

DELEGATE SIMON: -1 wonder if there was any possibility that we have any intention of dividing our people as to their way of voting? I doubt whether you could do such a thing with any continuity.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. All those in favor of Mr. Kelleher's amendment, which would say that absentee voting would be for servicemen and students only, please say Aye.

(No response)

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

Now, we're back on the basic proposition, and the Chair will recognize Mr. Vermillion. Mr. Vermillion, there has been a motion to reconsider your section. Do you want to make a motion that your section be sustained, and then we'll debateit?

DELEGATE VERMILLION: Yes, I do, Mr. Chairman. I would urge that the Committee of the Whole accept the minority proposal on Section **3.**

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: As a substitute motion, I move we adopt Section 3 of the majority proposal. Mr. President, may I speak on the subject?

CHAIRMAN GRAYBILL: Just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President.

CHAIRMAN GRAYBILL: The Chair was in doubt as to whether-there is a section that you can't reconsider more than once, and I had thought that it might say we couldn't reconsider the same language, but apparently we can once, so your motion is in order. You may discuss it.

DELEGATE AASHEIM: Just a few brief words, Mr. President and members of the assembly. In regards to that comment that we're soreheads, we're not. We're trying to draw up the best Constitution we possibly can. I'm not sore if I lose. I'm not going to be exuberantly happy if I win. But I would like to start right now, and let's eliminate these things that don't belong in the Constitution. Let's put them as legislative. That's all I'm going to say.

CHAIRMAN GRAYBILL: Mr. Anderson

DELEGATE OSCAR ANDERSON: Will Mr. Vermillion yield to a question?

CHAIRMAN GRAYBILL: Mr. Vermillion?

DELEGATE VERMILLION: Yes.

DELEGATE OSCAR ANDERSON: Since I live just a very few miles from the North Dakota border and I'm unfamiliar with this point, I would like to have you clarify this. North Dakota has just recently concluded a proposed revision of their Constitution. Could you advise me and this body if they have thought that this matter was of such import that it had to be guaranteed in the Constitution, when they originally developed it legislatively, and if their new draft includes this provision in their Constitution?

DELEGATE VERMILLION: Mr. Anderson, I take the approach we're talking about a basic right here, and if you take a look at the Bill of Rights in the federal Constitution and in the old-Constitution now and the proposed new Bill of Rights-when you talk about rights and put them in a Constitution, generally you are putting

them in because of some abuse. People don't put in the Bill of Rights unless they find that there's some abuse, then they react to it. I suggest-the people of North Dakota, the Constitution, they made no mention at all ofregistration, as I pointed out earlier this morning. But that's because their voters were not being abused by being prevented from voting-many of them being prevented from voting, by registration laws that were too restrictive. I think their current registration laws are too restrictive. They are preventing people from their right of franchise; therefore, I think that we, in the Constitution, have an obligation to protect that right.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: Would Mr. Vermillion answer, if it's possible for him to do so, whether North Dakota has included this provision in their new proposed constitution'? That was the point I needed clarification on, Mr. Vermillion.

CHAIRMAN GRAYBILL: Mr. Anderson-he said this morning that it was not in the new Constitution.

DELEGATE VERMILLION: And, I'm sorry if I did not mention that in my comments now. I meant to. That it is not. And then my point was that we are reacting to what I feel is an abuse. We have had a right infringed, and we must react to it in the Constitution much as the other items, in, say, the Bill of Rights, react to prior abuses.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Aasheim yield to a question?

DELEGATE AASHEIM: I yield.

DELEGATE SCANLIN: Mr. Aasheim, what chances do you feel the next session of the Legislature has of adopting poll booth registration?

DELEGATE AASHEIM: Mr. Scanlin, I don't know, but I feel this-if the pressure is great enough, if certain groups that have been operating around here continue their pressure, they will get poll booth voting, and, again, I think this should come from the Legislature because the Legislature is the people, and I think this is where it should come from, and I think that [if] the Legislature gets the pressure, they'll adopt it.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Would Mr. Aasheim yield to another question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I will.

DELEGATE SCANLIN: Mr. Aasheim, will you help put on the pressure?

DELEGATE AASHEIM: I certainly will because I think it's a very good feature.

DELEGATE SCANLIN: Thank you (Inaudible).

DELEGATE AASHEIM: I really do.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'm going to rise to speak in opposition to the amendment. I do not intend to speak again on this issue. I thought it was fully debated this morning. I am somewhat puzzled and confused at how delegates can stand and say that the idea has merit, that it is as highly responsible as some have contended, and when they say that it is merit-is something we should have, and why, nevertheless, in the same breath they insist that the Legislature should take care of it. It seems to me that if the Constitutional delegation decides to chart a course for more government responsibility and greater citizen participation, that we are fulfilling our obligation and our responsibility and our duty here. One delegate made the comment he would hate to see us go back to our constituents with this particular proposal that was passed this morning and lose a large segment of their support for our Constitution. I'm puzzled as to how I could go back to my community and say that I helped provide a greater opportunity for the citizens of my district to participate in the noble exercise ofelecting their governmental officials and lose support for our Constitution. Several have announced that they have called the clerks of court-or the clerk and recorders' offices, and they have promptly responded, after perhaps 2 or 3 minutes' contemplation by long distance telephone, that they don't like the system. I remember more than 10 years ago, and my colleagues at the bar will recall it, when Montana had a rather difficult and long fight to adopt a new Code of Civil Procedure, and the older lawyers, as some of the officeholders have apparently responded here, didn't like any change in the system because they had become

adapted to the old system, and I recall when, finally, the new rules prevailed, the older lawyers walked around the State of Montana to some extent and saying "Well now, they've repealed everything I ever knew about the law." But they adapted, and the system became better, and those that had the courage to push it to the front developed for all of us a better system ofprocedure and a better system of justice in Montana. I think we have a responsibility to try and find a better way for citizen participation, and there is nothing irresponsible about our action. One delegate commented to me along the corridor that we have a lot of laws that may be affected. I don't think that's our concern. We're here to start with a new Constitution and to start with a system of law that we think is more in accord with the demands of Montana in the 1970's and the decades to come, and it certainly seems to me that if the Legislature has the ability and the wisdom that some of the delegates ascribe to it, they'll well be able to make the changes necessary in the election laws within their province to conform with the supreme law of this state-the will of the people expressed through the Constitution, the fundamental law of the state. Thank you very much, and I do oppose the amendment proposed.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I am in a good deal of sympathy with the idea of keeping too much stuff out of the Constitution, but we can go to the opposite extreme. I would simply like to punch one more point which I think needs to be made. Since the opposition to our majority vote of this morning seems to be not to the idea but to the fact that this is legislative rather than constitutional-as I read the whole article on Suffrage and Elections, I do not see a single item that could not be left to the Legislature. In fact, there is no real reason to have an article on Suffrage and Election. I mean, the same thing could be said about any one of these points that is now being said about Section Number 3. In fact, if we took out of the Constitution everything that might be left to the Legislature, we could print the whole Constitution on a postcard.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. As I indicated this morning--a couple of times, I guess-1 don't have any problem with this matter being legislative in nature. I have a problem within my own mind. I have to wrestle with the fact that when I face the responsibility of amending or proposing a new Constitution for the State of Montana, and when I move from a known existing position to another, that I know where I land and the results of the action that I take for that move. And that's the reason that I asked the questions that I did this morning. I wanted to know what had happened in North Dakota. I wanted to know what the costs might be. I wanted to know the laws that we might be affecting by making this change. I don't think anybody here knows those answers. Nobody gave them this morning, and I challenge anybody now to help me with my problem. Personally, I am not going to cast a vote to change from one position to another without knowing why and the ramifications of that move, and I resist any effort by this assembly to do that.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Thank you, Mr. Chairman. I concur with the original motion of the majority report. Just a few minutes ago I called a man that has lived in Dakota for many years. He said it has worked well there, but don't put it in your Constitution; and in looking over this body this morning and thinking of our distrust of the Legislature not doing the will of the people, and I wonder about our own constituents-they have a distrust of this body. We, too, wereelected officials. We are here trying to enact a better Constitution, a fundamental Constitution without statutes. Leave this to the Legislature. In our article on the Legislature, we are also trying to give the legislators more power and more authority and more responsibility and I think-I can and I hope you will concur with the original proposal.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. President. I, too, would like to rise in support of the committee report. And I would like to second some of the comments made by Mr. Murray, some of the concerns. I sat this morning and was quite moved with what were really very good arguments and some very eloquent speeches. I think the discussion that Mr. Dahood presented this morning was one of the finer speeches I've heard in these chambers in several years of coming and going. The fact that the State of Montana would be the first state to lock this wording into our Constitution and the fact that only one other state is now engaged in the use of this wording, the use of this law, give me a good deal of concern that the old

words of the—maybe it was an old Irish philosopher that said "Be not the first on who the new is tried, nor yet the last to cast the old aside"—something in those words. The fact that we are putting it in a Constitution is-it could become a real mistake at some point in the future if the thing just doesn't work. And the second thing that concerns me is that I think, probably, I was elected by more of the conservative-type people than some of you other folks here, and I think tomorrow, when the newspapers come out, the people who read about this are not going to have the henefit of some of these good arguments, and I believe I was somewhat swayed by many of these arguments that philosophically the idea is good, but the people who read the newspapers in this state read about the headlines, and most of them don't get much further than that, and I kind of think that the impression around the state is going to be: on the first issue they voted on, they kind of opened the door and have kind of set a tone for the entire Convention. And this may be right and it may be wrong, and it is undoubtedly something that shouldn't determine your vote, but it is something that I think we all are concerned with is that when we do go home, the first question we are asked is going to be a prejudiced question that people ask who have not had the benefit of some of these discussions that we've heard this morning, and it's going to be something that may be hard to overcome at a point down the road. Now, many other debates are going to take place in this hody and I, for one, am very hopeful that our product does become the new Constitution of the State of Montana; but, again, it does concern me that we may jeopardize the acceptance of the rest of our product by taking what may be considered a radical step at this time in the eyes of many of the people in Montana.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I have one thing to say. I think this morning we discussed—

CHAIRMAN GRAYBILL: Just a moment, Mr. McKeon. Would you start over?

DELEGATE McKEON: Yes, Mr. Chairman. I have one thing to say. I think this morning we discussed the merits of something. I enlighted the question whether it is good for the people, I think. Now we are discussing whether or not something is politically expedient, and I resent that, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I rise in support of the majority report this morning on the Section 3. And my colleague, an attorney, mentioned the lawyers switching from the old Rules of Civil Procedure to the new rules, and I had a little experience under the old rules, and in certain instances, I liked part of the old rules, but the fact is, if we don't like the rules and want a change, we can change them right now without going through an amendment of the Constitution. And we're experimenting here with a new idea, and if we don't like it or the people don't like it, we have to go through the whole processofamending the Constitution to take it out. And I therefore suhmit that the old section-or the Section 3 of the majority report should he adopted; and if they want to experiment, the Legislature can do this, and if they don't like it, they can vote it down at the next session or repeal it. Thank you.

DELEGATE GARLINGTON: Mr. President, I want to suggest that there is a real practical problem presented by this matter. The middle sentence says, "Voter registration prior to election day shall not be a condition for voting." Now, there are 200,000 or more registered voters in Montana. If this is adopted, then there is no need and there is no way the Legislature could ever hereafter compel any registration by any voter in Montana again. And we would, it seems to me, expose ourselves to the prospect that all 200,000 people would show up at the polls to vote to follow whatever procedureis established here at the third sentence, and I suggest that this creates a very large, practical problem that might have the adverse effect of so clogging the polls that many more would be unable to exercise their right to vote.

CHAIRMAN GRAYBILL: We'll stand at ease for about a minute.

(Convention at ease)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, I think that we've lost sight of the forest in looking at all the trees. The basic question is whether we will provide restrictions upon the right of voting, and I think that we all have to weigh this question very heavily. If we want to make voting a right, then we cannot provide restrictions for that right. If we want to make voting a privilege, then we should provide restrictions. It is my feeling that—

in this country and in this state that voting is a right, that it is not a privilege-that from the fact that we live in this state, from the fact that we're residents here, that therefore we have the right to vote. And I submit that in this day and age, with the tools that are available to us, the artificial restrictions of 40 days prior to election are unnecessary restrictions. We've already heard that it's impractical to decrease this number of days from our own county clerks; that, in fact, we either go to a full right of voting at the time of election or we stick with the unnecessary restrictions that we presently have. We're boxed into this particular position. I don't know about the rest of you, but during the course of my campaign, the question that was asked me most often was, "Isn't there something you can do to make it easier so that I can vote'?" A number of people that I talked to in the course of my campaign told me, "I'm very much interested in the Constitutional Convention, I would very much like to vote, but I'm not registered." Now, I think that, whether we realize it or not, in this day and age, politics is not an all-the-time thing, and people are not involved in the decisions, they're not involved in what goes on in politics until there comes something up to be concerned about. And that, generally, is 2 or 3 weeks prior to an election. And the restrictions that we presently have on voting are unnecessary, in my opinion; and I feel that if we're going to look upon self-government as anything more than a "pie in the sky," that we have to give the right of voting to thecitizens. If we don't want to give the right of voting to citizens, fine; but I feel personally--and I want to go on record in favor of giving the citizens and the residents of the State of Montana the right to vote. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Torrey Johnson standing here in support of Mr. Aasheim's motion. I think that the people of Montana who are interested in everyone voting can accept the responsibility to drag their neighbors in 40 days, or whatever it is, ahead of time and see that they vote-or that truckload that Mr. Kamhoot was talking about this morning. Thank you.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: After all is said and done, much has been said and little has been done. I think that we should re-address ourselves to one question-whether or not we are trying to make democracy hard or whether or not we are trying to make it easy. I believe that we should do everything in our power to make it easy for people to become involved in their government-not make it hard. That's the problem today with voter apathy, an inability to participate. We make it too hard. I would support the minority proposal of the General Government Committee in the belief that it makes it easier for the average citizen to participate in government.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I really believe that through all of our deliberations on this subject, that we've already accomplished the intent and purpose of the minority report, because the question is the difference between whether the Legislature shall have the right to adopt something like poll booth registration or whether we direct them to do so, and I think that they'll take enough note of these debates today so that they'll take it as a clear mandate that they better do something about it. I'm sure they will. Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. A confession-I voted on the prevailing side this morning, and I knew during the recess that as a person who purports to know, who's trying to convince people that he knows something about constitutional law, I've already destroyed my credibility because I did that, because, actually, what we're trying to do in the Constitution is set up certain guidelines. We're not supposed to write our own ideas into the Constitution. If this were the Legislature, I'm sure that I voted right. If I ever come back to the Legislature, I'll vote for poll booth registration, but we have to permit flexibility if we're going to have a Constitution, and I think that the majority report, on reflection, is the only way-thing that we should do. It's the right thing to do to get a better Constitution for Montana. I'll be up on the Floor perhaps several times urging this same proposition because I believe in it so thoroughly. That's what happens in constitutions when you write in the idea that seems so great at the moment. It turns out to be a bugaboo later on, and let's avoid that; and I confess my error and if confession is good for the soul, why, you've had it.

CHAIRMAN GRAYBILL: Now, the Chair has a matter that, by prearrangement--I must interrupt, for a moment. We have today a distinguished guest that I want to introduce. He must visit with the Governor in just a moment. At this time I'd ask Mr. Toole to bring David Ben Dov, who is the Counsel General of Israel, from San Francisco, California, forward. (Applause)

(Mr. David Ben Dov escorted to the rostrum by Vice-President Toole)

CHAIRMAN GRAYBILL: Mr. Ben Dov was born in Israel, and he's the Educational Attache of Israel-he has been from 1964 to 1968. He's been in the foreign ministry, and since 1968 he's been the Counsel Genera1 for Israel in San Francisco. How are you today, sir? And we're glad to have you visit us.

MR. BEN DOV: Thank you very much, Mr. Graybill, and thanks for giving me a few moments to talk to your members of the Constitutional Convention of the State of Montana. On behalf of my government and my people, I would like to present you, sir, as the President of this Convention, a small memento, and album of pictures and photographs from my country. Please.

CHAIRMAN GRAYBILL: Thank you very much.

MR. BEN DOV: And may I just say a few words on this occasion before I go on to my other meetings with the Chief Executive. Montana, in size, is, of course, much larger than Israel, although the population of Israel is somewhat larger than Montana. But the American Ambassador to the State of Israel said a few days ago that, even though there is a great disparity, of course, between the dimensions of the United States and its friendly ally, Israel, there is a lot of harmony and unanimity in terms of ideals and values-faith to democracy, to freedom, to open society, to the dignity of man; and this was reflected to some extent in the statement, the world message, of the President of the United States on February 9th when he referred to a great meeting of the minds between the government of the United States of America and the government of Israel on questions of peaceful settlements of conflicts, especially in view of the fact that the Soviet Union has challenged the West in the Mediterranean and in the Middle East. Mr. Graybill, once again, thank you very much for receiving me here in this Convention and for receiving this on behalf of my people. Thank you.

CHAIRMAN GRAYBILL: Thank you very much. (Applause)

CHAIRMAN GRAYBILL: This presentation was prearranged, and so I had to stop so that he could get to the Governor's office on time.

Very well, we'll continue with the debate.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'd like to direct a question to Mr. Joyce.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE ECK: From a fellow purist, you know, who campaigned as one-and I do have problems with some of these things-but would you be satisfied in the minority proposal if the addition were only voter registration prior to election day shall not be a condition for voting?

DELEGATE JOYCE: Well-that's the heart ofthematter, it seems tome-thatifwewrite that into the Constitution that there can't be any registration prior to voting, therefore the Legislature couldn't enact such a law. If they do enact the law that we were advocating here this morning, whereby you could have poll booth voting, and if it turned out that it created many practical problems in the administration of our elections, you couldn't correct it unless you had a constitutional amendment. And so, if you leave it to the Legislature, they can do precisely the very thing that I wanted to do when I voted in favor of it this morning, and if it works well, it'll surely be the law of the land for a long time. But it still gives a little flexibility there to adjust for problems that I personally can't think of right now. And that's the whole thing about constitutions. If you make them too rigid, you can't correct the thing you didn't think about, and that's why I would not vote for the thing even with the proposed amendment, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'd like to go on and speak—

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: -in favor of the minority report. I think that any of you who are opposed to the minority report solely on the grounds that it is a statutory provision could make it non-statutory, really, by just saying "voter registration prior to election day shall not be a condition for voting." That is not statutory. That is really expressing the right of the people. As a matter of

fact, I can see this as a very appropriate kind of a right to be included in the Bill of Rights, and in my reading of constitutional theory, one of the prime purposes of a constitution-and maybe more especially of the Bill of Rights-is really to assure the people that they are afforded their full rights, and most of the statements that are in our Constitution, and especially in the Bill of Rights, are statements which really seek to protect the people from present or possible abuses of the government. For this reason, I believe that this is a very appropriate item. I would be willing to delete the last two and a half lines there, the last sentence. However, I think that the whole proposition is easier to understand with that last sentence included. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I would like to speak in favor of the minority report. I'm just going to say one thing. I think that actually we've told people time and time again that the way to "pen the system, that the way to work within the system is to vote. We've done something here to give them the right to vote and I think we-and now, we're turning around and taking this away, is what I see. Thank you.

CHAIRMAN GRAYBILL: Mr. Belcher.

DELEGATE BELCHER: I have not spoken on this article or anything else, Mr. Chairman, in this house. I'd like at this time to commend Delegate Artz and Choate and Joyce for giving us a chance, as a delegation, to reconsider this. I think this morning many people did vote on impulse which, in my thinking, is exactly what could happen with poll vote registration. I am speaking in behalf of the majority report coming out of committee, because my name is on the bottom of it, and I so wholeheartedly support it.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. A little while back someone in the back of the hall-1 believe it was Mr. Studer-said he needed some eagles. He wanted some eagles. Now, I don't look like an eagle. (Laughter) I look more like a squat little young ugly duckling. But this morning, this duck learned to fly. I'm not yet an eagle, but as long as I vote for the people in this Constitution, by the end, I think I will be an eagle. This morning I voted for the people. This morning the people won. I am still flying. I will still vote for the people. I will still vote for the Vermillion amendment, the minority report as proposed by Mr. Vermillion—and I hope the people will win again.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I decided to run for the office of delegate to this Convention because I felt in my district a rising discontent, even distrust, of state government; and I think that's why the people voted to have this Convention is because they wanted the state government opened up and some of this distrust, the basis for it, removed. When I campaigned for this office, I went out and I talked to hundreds of people in my district. A certain percentage of them informed me, "You needn't talk to me; I can't vote because I forgot to register, or I'm not registered." And they expressed this position of theirs with a good deal of resentment. They felt that they had somehow been fraudulently drprivedoftheirright to exercise their franchise, and I agree with them. And I said to them, "When I go to this Convention, I'll see if there isn't something that can be done in the Constitution," because it seems to me this is a constitutional matter to insure that people have the right to vote. If there is any question more basic than the right to vote, I don't know what it is. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, will Delegate Garlington submit to a question?

CHAIRMAN GRAYBILL: Mr. Garlington, will you yield?

DELEGATE GARLINGTON: I certainly will.

DELEGATE HARLOW: Mr. Garlington, in your remarks opposing the minority report, you brought out very strongly the sentence "Voter registration prior to election shall not be a condition for voting." You objected very strongly to that sentence. If we take that sentenceout, what would be your reaction to the minority report'?

DELEGATE GARLINGTON: It would, I think, eliminate the basic problem with this minority report section because it would do what the-1 mean, it would let the Legislature do what it can do otherwise. It would simply be a waive of

freedom to go ahead and do this, and I think you must all understand that the majority report does not restrict the Legislature in this respect at all. The heart of the whole thing is in this middle sentence, because it says there that voter registration in advance shall not be a condition for voting. This simply means that no registration law would any longer he valid, and we would then have the situation of all 250,000 voters in Montana, as no more registered, showing up at the polls at the last minute, all to get in line and go through the process. And I think it would he absolutely maddening and we would find from experience and practice that it simply was not a workable plan. If it is-if you take that out, so that the Legislature has its flexibility to provide for this, as it would anyway, you cure the evil.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Will Mr. Garlington yield to another question?

CHAIRMAN GRAYBILL: Mr. Garlington?

DELEGATE HARLOW: With that sentence out, then, would you be in support of the minority report?

DELEGATE GARLINGTON: Yes.

DELEGATE HARLOW: Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I would like to-let's see, the last motion on the floor-

CHAIRMAN GRAYBILL: We're on Mr. Aasheim's substitute motion that Number 3, the original Number 3 of the majority, be the proposal.

DELEGATE HARLOW: All right. Well, I would like to move to amend the motion that the majority report on Section 3 be amended by adding the last sentence in the minority report on page 13.

CHAIRMAN GRAYBILL: Very well. Mr. Harlow's amendment to Mr. Aasheim's substitute is to add the last sentence of the Section 3 shown on page 13 so that the section on which we would he voting would then read as follows: "The Legislature shall provide by law requirements for residence, absentee voting and administration of elections. The Legislature shall provide for a system of poll registration, insure the purity of elections and guard against the abuses of the electoral process." Is that correct, Mr. Harlow?

DELEGATE HARLOW: That's correct; yes, sir.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I wish—

CHAIRMAN GRAYBILL: Are you finished, Mr. Harlow?

DELEGATE HARLOW: No. I wish to speak shortly on the-or just briefly on this amendment. The hangup seemed to be, this morning and this afternoon, in regards to that middle sentence. Most everyone said they were in support of the Legislature going for putting on poll booth registration. I do not believe that we have lessened our cause nor lessened our ability to have poll booth registration. I feel here that we are merely directing the Legislature in the same manner that we have directed the Legislature in the first sentence of that section. I hope you will accept this and stand up to what you said in regards to poll booth registration. Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, perhaps I misunderstood Mr. Harlow, hut I thought his motion was to add the last sentence appearing in the minority report on page 13 to the majority Section 3 appearing on page 2.

CHAIRMAN GRAYBILL: That's right, Mr. Aronow.

DELEGATE ARONOW: But then, when you read it, Mr. Chairman, you read the whole article on page-you read the portion on 13. You should read the first two sections of-on page 2, and then add the other sentence.

CHAIRMAN GRAYBILL: Well, Mr. Aronow, the Section 3 on page 2 is identical with the first sentence of Section 3 on page 13.

DELEGATE ARONOW: No, it isn't.

CHAIRMAN GRAYBILL: It is not?

DELEGATE ARONOW: No, it isn't.

CHAIRMAN GRAYBILL: Well, I've just checked it again, and I think it is.

DELEGATE ARONOW: (Inaudible) "registration" is out.

CHAIRMAN GRAYBILL: All right, the Chair will stand corrected. Mr. Harlow, the sentence in the minority Section 3 leaves out the word "registration." So the amendment that we're voting on now, then, and this is the sense of your amendment, Mr. Harlow, unless you change it: "The Legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections" and then add the sentence "The Legislature shall provide for a system of poll booth registration, insure the purity of elections and guard against the abuses of the electoral process." Mr. Aronow, I thank you for calling my error to our attention. Mr. Harlow, is that the intent of your amendment?

DELEGATE HARLOW: That is theintent and I see nothing wrong with it except someofyou might figure that we shouldn't use the word "registration" twice.

CHAIRMAN GRAYBILL: Very well. We're now on Mr. Harlow's amendment, which would put the last sentence of the minority report with the majority report Section 3. Is there further discussion?

Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman. Mr. Harlow is a man of considerable experience in these matters, and I certainly defer to his judgment, and I think that he's on the right track, and I hope he's cleared up some of the difficulties that I apparently had not foreseen, and I will defer to Mr. Harlow on this, and I will certainly support him in this amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I certainly have a lot of respect for the people of greater experience that have told us that we need legislative guidelines. I, too, would like to join in that amendment, and I should think that would be the compromise that's going to satisfy all the arguments, both pro and con. I support the amendment.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE **McKEON:** Mr. Chairman, I, too, support the amendment made by Mr. Harlow.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE **ETCHART:** Mr. Chairman, would Mr. Harlow yield to a question:'

CHAIRMAN GRAYBILL: Mr. Harlow?

DELEGATE HARLOW: I will yield.

DELEGATE **ETCHART:** Mr. Harlow, would you consider changing the word "shall" to "may" in that last sentence?

DELEGATE HARLOW: If you will take the word out-"shall"-in the first sentence.

CHAIRMAN GRAYBILL: Well, now, gentlemen, we're not going to ask each other questions. (Laughter) I think maybe he's answered your question, Mr. Etchart. Have you another matter?

Mr. Holland.

DELEGATE HOLLAND: Yes. Will Mr. Dahood yield, to a question?

CHAIRMAN GRAYBILL: Mr. Dahood, would you yield?

DELEGATE DAHOOD: Yes, I yield.

DELEGATE HOLLAND: Mr. Dahood, in your opinion, would the amendments proposed by Mr. Harlow leave the matter in the hands ofthe Legislature except it would be directive to the Legislature to provide for registration at the polls?

DELEGATE DAHOOD: Yes. They could provide the mechanics and the guidelines that everybody seems to be somewhat fearful about. They would have time to contemplate it, to consider it, and carry out the principle to make sure that everybody does have a full franchise to vote.

DELEGATE HOLLAND: Will Mr. Dahood yield for one more question'?

'DELEGATE DAHOOD: I will yield for one more question, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, go ahead.

DELEGATE HOLLAND: Do you think this would remove the stigmaofmaking this legislation and make it merely a directive to the Legislature to implement the-set forth-the principle set forth by Mr. Harlow.

DELEGATE DAHOOD: Yes, I have faith in the Legislature. I think they will carry out the will of the people to this Convention. They will see to it that we have proper legislative guidelines to carry it forward.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I would like to speak in support of Mr. Harlow's amendment. On our lunch hour I called my 19-year-old son to give him the news of our action this morning. He was elated and surprised, and for awhile I thought I'd have to call him back and tell him that this had been changed. I hope now, with Mr. Harlow's amendment, that our great unicameral body will have reached a satisfactory compromise. (Laughter)

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I Wonder if Mr. Dahood would clarify a question for me-yield to a question:'

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: (Inaudible) will, Mr. Chairman.

DELEGATE BURKHARDT: What if the Legislature were to set up a system by which you registered at the poll but you didn't vote till the next election?

DELEGATE DAHOOD: I should think the Legislature would probably say as long as you haveregistered and that registration card is made out under oath so that you have all the qualifications necessary to vote, that they would place you on the registration list so that you could vote at the next election without an additional registration. I should think they would be that wise.

DELEGATE BURKHARDT: Would you yield to another question?

DELEGATE DAHOOD: I will.

DELEGATE BURKHARDT: Do you feel this accomplishes that as it's now stated?

DELEGATE DAHOOD: Yes, I do feel that.

DELEGATE BURKHARDT: The intent is clear?

DELEGATE DAHOOD: I absolutely feel the intent is clear.

DELEGATE BURKHARDT: Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Members of the assembly. Again let me admonish you-let's not get emotional. Pretty soon we'll drag in some veteran from Vietnam without any legs and without any arms, and his mother weeping by his side, and he will say "I was denied the right to vote because of the processes that we have at present." Let's be reasonable. Let's be logical. We came here to draw up a Constitution which was supposed to be flexible. That was our mandate, and with this implication, you are making it rigid, absolutely against what the people asked. And many people said, "let's not change it too much," and we're sure not listening to that mandate. I oppose this motion to amend.

CHAIRMAN GRAYBILL: (Whispering) Just a minute-Mr. Arness.

DELEGATE ARNESS: Would Mr. Dahood yield to another question?

CHAIRMAN GRAYBILL: Mr. Arness?

DELEGATE ARNESS: Yes, would Mr. Dahood yield to another question?

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield to another question?

DELEGATE DAHOOD: Yes, I will yield to another question.

CHAIRMAN GRAYBILL: Very well.

DELEGATE DAHOOD: I'd like the opportunity to present a question to Mr.—

CHAIRMAN GRAYBILL: Well, it's not your turn, Mr. Dahood, to ask. (Laughter) It's just your turn to answer. Mr. Arness, you may ask.

DELEGATE ARNESS: Thank you, Mr. President. I'm wondering when the Legislature would take this action that we are, I assume, urging upon them. Would it be during this century, do you think?

DELEGATE DAHOOD: I would hope they would do it. I would hope that they would respond to the will of the people, as declared in this

Constitution, and take reasonable steps to do it within a reasonable time.

DELEGATE ARNESS: And then, Mr. President, I wonder if—

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Yes. I wonder if Delegate Harlow would yield to a question?

CHAIRMAN GRAYBILL: Mr. Harlow, will you yield?

DELEGATE HARLOW: I will yield.

DELEGATE ARNESS: Mr. Harlow, would there be any objection to changing the language in your amendments to provide that the Legislature shall provide for this system of poll booth registration by January lst, 1980, otherwise these provisions would become self-executing?

DELEGATE HARLOW: No objection, particularly-only I do not see the necessity for that any more than you would in the first sentence of that section, which stipulates that the Legislature shall make our elections good, and all this second sentence does is continue that requirement.

DELEGATE ARNESS: Aren't we just hoping—

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Excuse me.

CHAIRMAN GRAYBILL: You've got the Floor.

DELEGATE ARNESS: Yes.

CHAIRMAN GRAYBILL: Unless you want to ask a question.

DELEGATE ARNESS: Yes, I would like to ask another question to Delegate Harlow.

CHAIRMAN GRAYBILL: Mr. Harlow, will you yield to another question?

DELEGATE HARLOW: Yes.

DELEGATE ARNESS: Aren't we just asking them if they won't do something, and if they won't do it, we haven't compelled them to do anything here, have we? Do you think this is going to work?

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I think it will, yes. All through the Constitution we will be asking the Legislature to do various things to carry out the ideas and the thoughts put forth in the Constitution, so I see no reason why they shouldn't carry out those thoughts here. I can understand your worry about the Legislature, but it will be much more responsive, I hope, after this Convention.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I believed Delegate Aasheim and his supporters when they said they thought the idea was good and meritorious and it certainly fit within the framework of citizen participation in our government. I'd like to ask if Delegate Aasheim will yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: Yes, I will.

DELEGATE DAHOOD: Now, Mr. Aasheim, do you still submit to us that the idea does have merit and that it is good for the people of the State of Montana?

DELEGATE AASHEIM: I believe that the idea has merit in the legislative process, not in the Constitution.

DELEGATE DAHOOD: Mr. Aasheim-well, pardon me—

CHAIRMAN GRAYBILL: You may ask—

DELEGATE DAHOOD: —I must follow procedure and protocol. Mr. Chairman, will Mr. Aasheim yield to another question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I will.

DELEGATE DAHOOD: Now, Mr. Aasheim, doesn't this leave it up to the Legislature to set down the standards and the guidelines that you seem to think should be set and chartered by the Legislature of the State of Montana?

DELEGATE AASHEIM: I certainly believe that the guidelines set down in the majority proposal is adequate for any Legislature to draw up the kind of voting requirements that you are asking for.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I submit that the stratagem of those that were opposed to the idea is now in danger, is passing over troubled waters, and now they're backing away from their commitment to us that if we made changes that would allow the Legislature to set up an orderly system, that they would go along with it. I submit that they should not be allowed to back away from that commitment, and I submit the compromise is one that should be accepted.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I talk in opposition to this amendment of Delegate Harlow. All this does is make it mandatory that we will have poll booth registration. The Legislature will have no discretion, and if poll booth registration is bad, it's in the Constitution. I honestly don't know if it's good or bad because I haven't had the opportunity to study the matter, and I think it's a legislative matter and this doesn't change the minority one bit as far as I can see.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: (Inaudible) support Delegate Harlow in this, and I would think that we have another vote on this thing that we're going to win by a very large majority if we have a bunch of truthful delegates, because this morning the only objection we had to this thing, that it was going to be a Constitutional item, and now we're saying that the Legislature can handle it. I support Delegate Harlow.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: I don't have a crystal ball where I can look into the future and foresee what is going to happen, but it looks like-1 was in favor of the majority report this morning and I still am this afternoon from the idea that I believe the Constitution should be as flexible as we are able to have it. When the Constitution was written in 1889, some things were written or implied in there, like when the polls are open, the judge clerks have to go out and say "Hear ye, hear ye, the polls are now open." Well, we don't need that in this day and age. And also with posting election notices. I know when I was serving as an election judge, there wasn't any place to post these because we have steel posts now instead of wooden posts; so I would say, in lieu of that-that of putting something into the Constitution that maybe a few years from now that we don't have to worry about, so I am for a flexible Constitution.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. I think, by Mr. Harlow's amendment, we have eliminated one of the real objections to this provision. Under the proposed amendment of Mr. Harlow, the Legislature could really place any limitation on poll booth registration. They could, if they saw fit—if it was not a workable situation—they could see fit to place requirements on it which were impossible for the voter to meet, so the protection that apparently the opponents of this have is provided for by that amendment. Secondly, I'm very impressed by the puritan arguments regarding statutory material being included in the Constitution. And I'm keeping a list of those people who argue that this matter is statutory, because when the 4 percent limitation livestock commission levy comes up and when the highway antidiversion amendment comes up and when the gambling provision comes up, I'm going to ask those people who say that this is statutory, if those items are likewise statutory and if they would be consistent in their presentation and in their voting process here at this Convention. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, members of the assembly. I'm not rising to speak on either side of this. I'd merely like to remind each of you as you're speaking to keep your microphone at the right place. Let's help our neighbor out, because the lady that's taking this down-it's impossible for her to do it if we're going to get it up here and do it like that.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, would Mr. Dahood answer a question-yield to a question?

DELEGATE DAHOOD: I will yield, Mr. Chairman.

DELEGATE ASK: Under this proposed amendment by Mr. Harlow, say a voter appeared at the polling place and was not registered, say, by the statutory requirement the Legislature set up.

Would he just be allowed to register at the polling place or would he register and then vote-your interpretation of that amendment?

DELEGATE DAHOOD: He would register at the polling place. He would fill out a card, as I understand your question, Mr. Ask, and he would sign that card under penalties of perjury, or perhaps there would be a penalty with respect to election fraud that would incarcerate him in the event it turned out to be untrue.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, would he then be entitled to—

CHAIRMAN GRAYBILL: Mr. Ask, do you want to ask another question?

DELEGATE ASK: Yes, Mr. Chairman. Could I ask—

CHAIRMAN GRAYBILL: Of whom?

DELEGATE ASK: Mr. Dahood.

CHAIRMAN GRAYBILL: Oh, very well. Mr. Dahood, would you yield to another question?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ASK: Would this voter then be entitled to vote at that particular election?

DELEGATE DAHOOD: If he is qualified and meets all of the requirements that are set forth in the registration card that he signs, yes, I should think he would be qualified.

DELEGATE ASK: So this would--would you yield to another question'?

DELEGATE DAHOOD: Yes, I do yield.

DELEGATE ASK: So if the-in other words, even if he wasn't registered before or if he came and registered that day, he could then vote at that particular election?

DELEGATE DAHOOD: The idea is to expand the ability of the citizen to participate in the election. For those who have not registered at the clerk and recorder's office, they could register at the poll booth location.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, certainly Mr. Aasheim is concerned about certain areas that should be left to the Legislature. However, in the Bill of Rights, we've been working with a number of areas which WC consider sacred, areas that need definite protection, and certainly freedoms of the press, speech and religion are three of those areas. As been pointed out earlier, the right to vote is certainly the most sacred right of them all, and I feel that protecting this right is just as important as any of the others we considered in the Bill of Rights, and I feel that giving the Legislature the guidelines that we would under the Harlow compromise would be the best for all the people of the State of Montana, and I certainly support him in that very wise move. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. This being amateur day, and I am one of the amateurs, I am mindful of some of the advice that was given to me before I came up here--was that for the first 3 of 4 days, you're going to have a pretty wild scene because there's going to be people that want to change the Constitution completely and do it in the first 3 days. I've been seeing it trying to be done in the past 4 weeks. Now, one of the prior speakers here said that in his district he found many people who didn't like the government of Montana, and he said that he did not like the government of Montana. This was the reason that he ran. This is the reason that I ran, too, because I was afraid of the government that we might have in Montana if some of us that were not too interested in politics and running for office did not get up and say something. Now, I think that this amateur day will probably be over, as Senator Manning and several of the old heads told me when I come up here, so I want to get a little bit said along with the rest of the amateurs now, but I do hope that this amateur day does end in at least the next 2, 3 days and I'm certainly going to not take up as much time as I have today. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: This is my first attempt to stand up and say something. Mr. Harlow made an amendment, and I would like to have something cleared for me. Would Mr. Dahood answer a question for me?

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE CONOVER: Mr. Dahood, in the event of this last question, say if it didn't work out in a year or two, would the Legislature be able to amend in this in some way?

DELEGATE DAHOOD: In answer to that question: the Legislature most certainly would have a right to amend any law that it may have passed to implement this particular directive. They could find different ways to make it work. For example, if they found that perhaps there was a better way to set it up so there wouldn't be congestion at the polls, they could do that. You could have a separate table so they wouldn't interfere with those who've preregistered. I think the vast majority of citizens are always going to preregister, so they don't have to stand in this additional line. This would do nothing more than just expand the right of the citizen to participate, and when you are doing that, it has to be good, it can't be bad.

DELEGATE CONOVER: Thank you, Mr. Dahood. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I had not intended to speak on this matter, but it appears to me that my friend, Delegate Harlow, has led the camel up to the tent and poked its nose under the tent and given it a kick in the rump, and we are right back at the place where we started. This is simply whether you're going to have polling place registration. There are a lotofpeople who are in favor of it. It has merit, I suppose, from pure distilled democracy. But I think there are some other considerations, among which is whether or not a voter who has to be led by a halter to the polling booth where he can register before he votes is the right kind of a voter in the first place. I think anybody who wants to vote has adequate opportunity to register and vote under the present situation. I don't think it's very good idea to register people against their will. It has been my observation, over a good many years watching these registration drives, that people are registered-as one delegate pointed out this morning, a great deal of work is carried out in getting them to sign the registration cards, and then they don't vote. A large number of those people who don't take the-make the effort to vote never do vote, and I think that if you are going to lead people to the polls, get them to sign up there-why, you're not going to accomplish much for the country. Now, as I understood Delegate Vermillion's response to an interrogatory that I made this morning, the present registration laws would continue to prevail. That would mean, I assume, that people would continue to go to the courthouse or to a deputy registrar or a notary public or someone of that character and register; and those who were derelict in their duty would have to be led to the polls, and they would sign a oath that they were a citizen or something, and they would be permitted to vote. If we carry this sort of pampered registration to its logical conclusion, we're going to get to the point where we will send a double postcard to everybody, whether they're voters or not, and say, "Please vote this, and be sure to return it; you don't have to put a postage stamp on it, it's already there," and you could have your elections by mail. I don't think that's the kind of election system that we should have. I remember the Literary Digest and the postcard votes they had in 1936.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I am amazed at my fellow delegate, Miles Romney. As he said, we are generally on the same side of the fence, working for the same thing, but I'm astounded at his idea that if we put this in the Constitution somebody is going to make somebody else come to the polls andregister. I haveread that amendment of mine over and over and over again, and I can't see anywhere in it that it says anyone has to come to the polls or that it allows anyone to vote because he come to the polls and doesn't qualify under the requirements set up by the Legislature. I was not amazed, I was just amused by themanipulation of our legal talent when Delegate Ask maneuvered his questions back and forth and brought out the idea that you came to the polls and you had the right to vote. If any of the great legal minds here, including some of the great legislative minds, can bring forth the thought in that last sentence that anyone is given the right to vote or that the Legislature is required to make it possible for anyone to vote when they come to the polls-all the sentence says is that the Legislature shall make it possible to have voter poll registration. Now this is up to the Legislature, that great body of wisdom that Montana has, to devise the laws which will make that sentence workable.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I do not believe that anyone has mentioned Section 5 of Article III. It has been said several times today that the right to vote is a guaranteed right. Section 5 says that all elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. I maintain that minority report simply opens further the free exercise of the right of suffrage. I support the minority report.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I must take exception with some of the statements that have been made that this is a compromise measure. Without being emotional, Delegate Harlow's amendment is the minority report. It locks into the Constitution poll booth registration. I would like to repeat the same comment I made this morning for the benefit of Delgate Lorello. A vote against this amendment is not a vote against poll booth registration, as the majority report permits the Legislature to enact poll booth registration if it deems advisable. For the list that Mr. Cate is keeping, my objection is not that it is legislative here, but rather that it can be accomplished by legislation if this is advisable. However, if it is mandated, if it's directed in the Constitution that poll booth registration be required and then it turn out to be a bad decision, it would be ill-advised to resort to the suggestion that Mr. Cate made that the Legislature could impose requirements that would make it such a burden that it would beimpractical. So, I therefore still support the majority report. I still support the idea of poll booth registration. However, it ought not to be locked into the Constitution and ought to be left up to the Legislature because it is more flexible.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, we cannot move the previous question in the Committee of the Whole, but I'd like to ask my fellow delegates, can't we vote?

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Kelleher.

DELEGATE KELLEHER: John Adams and other independent monarchists, 200 years ago, that saddled us with the present form of government, wanted people to-voters to own property. In Maryland you had to own 1,000 pounds in order to be able to vote, I believe, for the Senate. In North Carolina you had to own 50 acres in order to be able to vote for a candidate for the state Senate in North Carolina. You had to own 100 acres of land to vote-to be a candidate for the Legislature-the lower house, the House of Representatives. You had to own 300 acres of land to be a candidate for the state Senate. The Supreme Court of the United States and ourselves, various legislatures over the years, have struck down these limitations on the right to vote. The last remaining vestige that some of us are not really born equal is this demand for preregistration before election day, and I say it is high time that we struck it down. I'm with Bob Vermillion.

CHAIRMAN GRAY BILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, I was just going to make one comment here, and that is that if the Committee of the Whole decides to go along with the minority report, there is another decision that could be made later on in this Convention, and that is, this could be put as a separate issue on the ballot to give the people an opportunity to make this decision.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I'm here in opposition to Mr. Harlow's amendment. My endeavors in this body to help write a Constitution for the State of Montana, I have a little prayer that's with me all the time, that I just don't go stumbling blindly into a deadfall. Mr. Harlow has set a trap. Beware. (Laughter)

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. Chairman, I rise in opposition to the amendment of Mr. Harlow. I think the majority provision in Number 3 provides the Legislature with the methods whereby they can set up the most practical, sensible way that people can vote if the majority of the people want it done that way. I have some question about some of the delegates who have said that there was no way they wanted their delegates to come to this Convention and make some change whereby these people could vote easier. I think this Committee on Local Govern. ment has done this. They have made a provision whereby the Legislature can set up any method that is deemed the most feasible, the most

workable and the most practicable for responsible voting of the people. I can see many ramifications in poll booth registration, and I don't think at this time, if we actually assess our own minds, that what we can see many ramifications that could creep into this. And I came up here, sent here by my people, to exercise the best responsibility and the best common sense that I could possibly use. I urge the rest of you fellow delegates to use good common sense in looking at this proposal.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President. I would like to say that in the last election there were 18-year-olds that did not know that they could register and after the polls-the time of registration had closed, they found that they could not vote, and many people are-have been in automobile accidents or they have had serious illnesses that have prevented them from registering and therefore they could not participate. Thank you.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, may I ask Mrs. Mansfield a question, please?

CHAIRMAN GRAYBILL: Mrs. Mansfield, will you yield?

DELEGATE MANSFIELD: Yes, I will.

DELEGATE BABCOCK: If these 18-year-olds didn't know that they could register, I wonder if they knew-if they had of been able to vote, if they would have known who they were voting for.

DELEGATE MANSFIELD: Yes, they did, because you see the Legislature in Montana had made it 19, but because of the federal law superseding it, making it 18, they did not know this applied to them.

DELEGATE BABCOCK: Thank you. I'd just like to ask our fellow delegates that when they decide how everyone should register, I hope they'll still leave enough Constitutional officers in the Constitution for the people to vote for. (Laughter)

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, can we call for the question now?

CHAIRMAN GRAYBILL: Is there any further discussion?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you now have before you the motion by Delegate Harlow on Section 3, as amended by him, which I'll read in a moment, that when this committee does arise and report, after having under consideration the said Section 3, that it recommend that the same be adopted. Now, Section 3, as amended-what you're going to vote on is this-Section 3 of Article on Suffrage and Elections: "The Legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections. The Legislature shall provide for a system of poll booth registration, insure the purity of the election and guard against the abuses of the electoral process." All those in favor of the amendment as proposed by Mr. Harlow, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll have an unrecorded roll call vote,

DELEGATE FOSTER: Mr. President, could we have a roll call vote?

CHAIRMAN GRAYBILL: All right, now. We'll have a roll call, but when I pause like that, that's your key. Don't-you know-don't let us get into the vote next time. The time to call for a roll call is when I put the question, and I don't like to do it after we've halfway done it, but we will this time go ahead and have a roll call vote since five seconds stood. It's Mr. Foster's roll call vote. Right. Very well, the Chair will open the ballot on a roll call vote. Those in favor of Mr. Harlow's amendment to Section 3 as I read it, vote Aye. Those opposed, vote No.

Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The Chair will close the ballot. Will you please take the vote?

Aasheim . . . . . Nay
Anderson, J. Nay

Anderson, 0	Nay
Arbanas, H.	Aye
Arness	Aye
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill-President	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield.	Aye
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting,,	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Aye
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Nay
Toole	Aye
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CHAIRMAN GRAYBILL: Clerk, announce the vote, please.

CLERK HANSON: Mr. Chairman, 49 delegates voting Aye, 51 voting No.

CHAIRMAN GRAYBILL: 51 having voted No and 41 having voted Aye, the amendment fails. We are on Mr. Aasheim's substitute motion. The substitute motion is that Section 3 of Suffrage and Election read as follows: "The Legislature shall provide by law the requirements

for residency, registration, absentee voting and administration of elections."

DELEGATE AASHEIM: Mr. President.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: May I close on the motion?

CHAIRMAN GRAYBILL: No, we're going to have debate on it, if anyone wants to debate it. Anyone care to debate Mr. Aasheim's motion'!

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I'd like to offer an amendment to the language "the Legislature shall provide for a system of poll booth" and so on. Change the word "shall," after "Legislature," to "may" and then insert the word "registration" "and shall insure the purity."

CHAIRMAN GRAYBILL: Now, I under-stand you've changed the word "the Legislature may"—

DELEGATE ARONOW: That is correct.

CHAIRMAN GRAYBILL: And where is the other one:'

DELEGATE ARONOW: And after the word "poll booth registration,"—

CHAIRMAN GRAYBILL: And—

DELEGATE ARONOW: -insert the words "and shall" so it'll read: "and shall insure the purity of elections and guard against abuses" and add the sentence as amended to the majority report.

CHAIRMAN GRAYBILL: All right. Mr. Aronow has proposed an amendment to the substitute amendment of Mr. Aasheim's which would make the section read as the section reads in the majority report, plus the sentence: "The Legislature may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses of the electoral process."

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I take it to be the sense of a great many people at this Convention that we do want to liberalize the registration process, but on the other hand, we don't want to lock in a system into the Constitution and this will give to the Legislature the consensus of this Convention and it will also make it not mandatory for the Legislature. In other words, if the Legislature provides for a system of poll booth registration, they're not locked in, because the word "shall" has been removed to the permissive word "may," but the Legislature is mandated, also, that they shall insure the purity of elections, and I think with that language, we've avoided the objectionable parts of the minority report, still give the people the idea that we are for liberalization of the voting procedure and make it workable.

CHAIRMAN GRAYBILL: Is there debate on Mr. Aronow's amendment?

Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, I think there is a good deal of merit to what Mr. Aronow says. After following the last scores on the board and whatnot, and I think that perhaps with this-this is not a permanent directive but perhaps a very strong suggestion to the Legislature--and since it will be, hopefully, in the new Constitution, I am hopeful that with this language as suggested by Mr. Aronow, that it will lead the Legislature to certainly look into this very strongly and perhaps adopt this poll booth registration, which I do feel very strongly about. And I think it would work in Montana.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, will Mr. Vermillion yield to a question?

CHAIRMAN GRAYBILL: Mr. Vermil-lion, will you yield?

DELEGATE AASHEIM: I think you're very gracious, Bob, in accepting this. Will you explain, Bob, what is meant by "insure the purity of an election?"

DELEGATE VERMILLION: This is very broad language which would leave the Legislature the power to pass whatever statutes it deems necessary, much as it has in the election laws now, to make sure that there are no frauds perpetrated upon the people of Montana in elections. It is purposely kept broad to give the Legislature power to keep the elections free of fraud.

DELEGATE AASHEIM: Mr. President.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I'm glad that we are coming to a meeting of the minds. I believe that this will express the wishes of many of us here in the hall, and except for this verbose last phrase, I think maybe it is all right.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I'm a little bit in the dark. I wonder if you'd answer a question-if the-is it Section 3 of the majority proposal or the minority proposal that Mr. Aronow is amending?

CHAIRMAN GRAYBILL: I'll restate it, but it's the majority proposal with the last sentence of the minority proposal remodeled, and I'll restate it before we vote. Members of the committee, you now have before you the motion of Delegate Aronow that when this committee does arise and report, after having under consideration Section 3, as amended, that it recommend the same be adopted. Now, Section 3, as amended, reads, as the first sentence from the majority report: "The Legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections." The second sentence from the minority report, amended as follows: "The Legislature may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses of the electoral process." We're voting on Mr. Aronow's amendment to Mr. Aasheim's substitute motion.

Mr. Davis, for what purpose do you arise?

DELEGATE DAVIS: A question. Now, what-am I in order to ask a question of Mr. Vermillion on this purity of election?

CHAIRMAN GRAYBILL: Well, I've already put the question. If you want me to open it, I'll reopen it.

DELEGATE DAVIS: All right, I'll withdraw it.

CHAIRMAN GRAYBILL: Mr. McNeil, for what purpose do you rise?

DELEGATE MCNEIL: I ask for a roll call vote and ask for the necessary seconds.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil has asked for a roll call vote and the necessary seconds. Therefore, the Chair will open the ballot. All those in favor of Mr. Aronow's amendment to Mr. Aasheim's substitute motion, which is the first sentence of the majority report, the last sentence of the minority report, as amended to make it "may" instead of "shall," except that the Legislature shall guarantee the purity of elections. All those in favor of that, please vote Aye. And those opposed, please vote NO.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is closed. Will the clerk take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Absent
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Absent
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye

Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill-President ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin. ..... Aye
Monroe.. ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CHAIRMAN GRAYBILL: Mr. Clerk, read the vote, please.

CLERK HANSON: Mr. Chairman, 76 delegates voting Aye, 22 voting No, 2 not voting.

CHAIRMAN GRAYBILL: Very well, the amendment to the substitute motion has prevailed, and Section 3 is as amended, unless there are further amendments. Are there further amendments to Section 3?

Mr. Aasheim.

DELEGATE AASHEIM: May I close on the motion to adopt Section 3?

CHAIRMAN GRAYBILL: All right. No other debate on Section 3?

(No response)

CHAIRMAN GRAYBILL: Very well, we're ready for Mr. Aasheim to close.

DELEGATE AASHEIM: I have closed.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you now have before you the motion of Mr. Aasheim that when the committee does rise and report, after having under consideration Section 3, that it recommend that the same be adopted. Section 3 is now as I read it; that is, the first sentence of the majority report, the last sentence of the minority report, with the word "may" replacing the word "shall" and the words "and shall insure the purity" added in. That's what we're voting on. All those in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, NO.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and the Section 3 is now passed. Are there other amendments to Section 1 on Suffrage and Election?

(No response)

CHAIRMAN GRAYBILL: If not, the Chair would recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move that Committee of the Whole stand in recess until 15 minutes to 4.

CHAIRMAN GRAYBILL: There's a motion that the Committee of the Whole stand in recess till a quarter of 4. Before you vote on that, so you'll understand what's happening, unless there are further complications, at a quarter of 4 we'll take up General Government Proposal Number 2 on constitutional revision. I am asking Mr. Eskildsen to assume the Chair for that, and I'm asking Mr. Toole to assume the Chair for the rest of the afternoon in the event you ever get out of Committee of the Whole. All those in favor of the motion for recess, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: Recess for 15 minutes.

(Recess at 3:30 p.m.)

(Delegate Eskildsen assumes Chairmanship of Committee of the Whole at 3:45 p.m.)

CHAIRMAN ESKILDSEN: Pages, would you notify them that we're now in session. Committee of the Whole House shall please be in order. Members of the committee, it has been brought to my attention that, in handling our mikes, we should use some precaution in how hard we slam them down. Don't let our emotions get us carried away, because they do bang and click and taking them down over here, it-hard on the eardrums. So, if we would give a little consideration, it would help quite a bit. Members of the committee, you have before you for your consideration Committee Proposal Number 2-the General Government Committee. What is your pleasure?

CLERK HANSON: I'll read the title—

CHAIRMAN ESKILDSEN: Clerk will read the title.

CLERK HANSON: (Reading) "General Government and Constitutional Amendment Committee Proposal on Constitutional Revision, Number 2; reported February 12, 1972; Etchart, Chairman. Be it proposed by the General Government and Constitutional Amendment Committee: that there be a new article on constitutional revision to read as follows." Mr. Chairman, title of Proposal Number 2.

CHAIRMAN ESKILDSEN: Clerk will read Section 1. Are there any amendments to the title?

(No response)

CHAIRMAN ESKILDSEN: The clerk will read Section 1. Go ahead and read Section 1. Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would like to ask a question. The fact that you are reading Section 1 of Proposal 2, does that preclude any further reconsideration of any other portion of Proposal 1? Is it your opinion that Number 1 is all through?

CHAIRMAN ESKILDSEN: Well, it isn't all through, no. If you want to do more work on it, why, you can still reconsider it. However, we have reconsidered Section 3.

DELEGATE HABEDANK: There was another section under that that I think our Chairman wished to have reconsidered.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman and members. We have several committee amendments that we would like to have incorporated before we get into consideration of the proposal by sections, and with the permission of the body, we have spread the committee amendments on your desk, and I would like to go through the proposals which you have on your desk so that we may correct those proposals to what the committee decided. Now, on page 2, Section 1, line 9, towards the end of the sentence on line 9, after the word "members", insert the word "thereof' comma, "whether one or more bodies". Now, in subsection 2, line 13, the last word in that line, "request the legislative assembly", delete that language—

CHAIRMAN ESKILDSEN: Mark, are you in subsection 2, or where are you at?

DELEGATE ETCHART: Subsection 2 of Section 1.

CHAIRMAN ESKILDSEN: Okay.

DELEGATE ETCHART: It's line 13, subsection 2, Section 1, page 2. Page 2, line 13, you strike "request the legislative assembly" and insert thereof the words "direct the secretary of state". Now, in subsection 4, on page 3, in line 6, strike the word "continued" and insert thereof the word "to continue". Now, advance to page 5, on line 10, and after the word "of'-the first part of that line-insert the word "all" and then strike the words "of such legislative assembly" on the same line. And after the word "members", insert the word "thereof' comma. Are the members following this? Am I going too fast? Now, on the same page, page 5, on line 12, middle of the line, after the word "unless", insert the words "prior thereto". Now, on page 6, on line 13, following the word "of', strike the word "the" and insert the word "any", and after the word "petitioned", insert the words "provided for in this article". And if you'll stand at ease for just a moment, we have one more amendment here.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: This other amendment didn't apply to Proposal Number 2, so if you would care to go ahead and move it-1 will move Section 1 of Proposal Number 2.

CHAIRMAN ESKILDSEN: All right, Section 1, as amended.

CLERK HANSON: (Reading) "Section 1. Constitutional Convention. (1) The legislature, by affirmative vote of two-thirds of all the members thereof, whether one or more bodies, may at any time submit to theelectors ofthestatethequestion of whether there shall he an unlimited convention to revise, alter, or amend this Constitution. Subsection 2: The people may by initiative petition direct the secretary of state to submit to the voters of the state the question of whether there shall be an unlimited convention to revise, alter, or amend this Constitution. The petition must he signed at least by 10 percent of the legal voters of the state, which shall include at least 10 percent of the legal voters in the two-fifths of the legislative representative districts of the state. The petition shall he filed with the secretary of state, who shall certify the filing thereof to the legislative assembly and cause the question to he submitted to the voters at the general election immediately following the legislative session receiving notice of the filing and of said petition. Subsection 3: If the question of holding a convention is not otherwise submitted to the people at the same time during any period of 20 years, it shall he submitted at the general election in the 20th year following the last submission of such question. Subsection 4: The legislature, prior to the popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on constitutional questions, to assist the voters, and, if a convention is authorized, to continue for the assistance of the delegates. Subsection 5: If a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall he the same as the largest body of the legislative assembly. The legislature may determine whether the delegates shall he elected after nomination by political parties or on a nonpartisan basis, but they shall he elected at the same time, the same places and in the same districts as the legislative body determining the number of delegates. Subsection 6: The legislative assembly shall, in the act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment ofthesame, together with the necessary expenses of the convention. Subsection 7: Before proceeding, the members shall take the oath otherwise provided in this Constitution. The qualifications of members shall he the same as the highest qualifications required for membership in the legislature. Vacancies occurring shall be filled in the manner provided for filling vacancies in thelegislative assembly, or as otherwise provided by law. Subsection 8: The convention shall meet within 3 months after the election of the delegates and prepare for such revisions, alterations or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection as a whole or in separate articles or amendments as determined by the convention and at an election appointed by the convention for that purpose, or at the next general election, but not less than 2 months after adjournment thereof. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect. Subsection 9: Unless otherwise provided, any revision becomes effective on the first day of July after the certification of the election returns by the secretary of state."

Mr. Chairman, Section Number 1.

CHAIRMAN ESKILDSEN: Members of

the committee, you now have before you Section 1. What is your pleasure?

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 1, Section 1, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: If you will turn to Delegate Proposal Number 2, on page 10, starting with line 8, you will have the language which we have in our proposal and which says: "The legislature, by an affirmative vote of two-thirds of all the members thereof, whether one or more bodies, may at any time submit to the electors of the state the question of whether there shall be an unlimited convention torevise, alter, or amend this Constitution." Our rationale here-this subsection is identical in the first part of Article XIX, Section 8, of the present Constitution. The committee feels that, given the additional provisions of the proposed article on constitutional revision, this portion of the proposed article is adequate. Now, on line 20, Section 1, subsection Z-well, let's revert back. Incidentally, in our language we took care of the possibility of a unicameral Legislature, and also we're providing that two-thirds of all of the members of the Legislature may be able to do this. So, this isn't just two-thirds of each body, but it's two-thirds of the total number of Legislators, House and Senate combined. Now, back to line 20, Section 1, subsection 2, the language we have in our proposal is—

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Yes?

CHAIRMAN ESKILDSEN: I wonder if we should take it subsection at a time, in order, of the whole section, because we may get to amending them back and forth. I wonder if we wouldn't be better off to take the first subsection and see if there's any more discussion on it?

DELEGATE ETCHART: This would be fine.

CHAIRMAN ESKILDSEN: Is there any more discussion on subsection 1?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, will the gentleman yield to a question?

Mr. Etchart.

CHAIRMAN ESKILDSEN: Will you yield, Mr. Etchart?

DELEGATE ETCHART: I yield.

DELEGATE SCHILTZ: Mr. Etchart, as I read Section 1, it seems to me that you could get as few as 20 votes, say in the House, if we had a bicameral Legislature, and if you got sufficient number of votes in the Senate say, to make two-thirds of the total of both bodies, you're going to pass this Constitutional Convention. Is that your intent? Or is it your intent that each house must carry by two-thirds?

DELEGATE ETCHART: No, our intention was, that-it is a total of both houses, so your exampleis correct. And the idea there was twofold: one was to cover the eventuality of a unicameral Legislature, and the other was to make it harder for one body to kill the other body's constitutional amendment.

DELEGATE SCHILTZ: I just wanted to be sure that was your intent. Thank you.

CHAIRMAN ESKILDSEN: Any more discussion on Section 1?

CLERK HANSON: Subsection 1.

CHAIRMAN ESKILDSEN: -subsection 1?

(No response)

CHAIRMAN ESKILDSEN: Now, we'll go to subsection 2. Any amendments?

DELEGATE ETCHART: Mr. Chairman, on subsection 2, page 10, line 20, the wording we have in our proposal is: "The people may by initiative petition direct the secretary of state to submit to the voters of the state the question of whether there shall be an unlimited convention to revise, alter, or amend this Constitution. The petition must be signed by at least 10 percent of the legal voters of the state, which shall include at least 10 percent of the legal voters in two-fifths of the legislative representative districts of thestate. The petition shall be filed with the secretary of state, who shall certify the filing thereof to the legislative assembly and cause the question to be submitted to the voters at the general election immediately following the legislative session

receiving notice of the filing of said petition," Now, the rationale is that the people of Montana do not now have the power to call a constitutional convention by the initiative. The committee feels that this is a basic political right of the people under a government like Montana's The committee set the petition qualifications at 10 percent of the legal voters of the state, with the additional qualification that at least 10 percent of the legal voters of the state in two-fifths of the legislative representative districts of the state be included in that percentage, because it feels such a number is high enough to prevent frivolous attempts at constitutional change and yet low enough to insure citizen constitutional control. The division of the percentage of petitioners by legislative representative districts helps insure a somewhat diversified body of petitioners on a successful petition without violating the principle of one man, one vote. It should be noted that this provision, and all subsequent provisions, in its phrase "legislative assembly" allows the provision to keep its intent and internal integrity in either a bicameral or unicameral situation.

CHAIRMAN ESKILDSEN: Are there any amendments to Section 2, subsection 2?

CLERK HANSON: (Reading) "Mr. Chairman. I move to amend Section 1, subsection 2, page 2, lines 22 and 23, of the General Government Committee Proposal Number 2 by deleting the words 'to the legislative assembly' and Section 1, subsection 2, page 2, line 24, by inserting the word 'next' between the words 'the general' and by placing a period after the word 'election' and deleting the remainder of that subsection. Signed: Mae Nan Robinson."

CHAIRMAN ESKILDSEN: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, may I speak to that amendment? The purpose of this amendment is to delete any requirement that the petition calling for a constitutional convention be submitted to the Legislature. My first objection to this article was met by the committee's amendment in Section—in the first sentence of subsection 2 whereby they stated the people may by initiative direct the Secretary of State to submit to the voters. I can see no need for this initiative to have to go through the legislative assembly. Referendum petitions and initiative petitions do not have to go through the legislative assembly, nor should an initiative calling for a constitutional convention. One of my primary concerns is the length of time that would be involved if you had to go through this process. A petition for calling a convention could be initiated over a period of, say, 1971-72, couldn't be presented to the Legislature until 1973. According to this provision, in line 24 and 25, it would be at the general election immediately following the legislative session. Well, if the session is over in '73, there's not a general election till '74, you may have tied up this initiative process for a period of4 years. I can see no point in doing this. The Legislature has no authority to deal with an initiative petition of the people once it's submitted to them. I, therefore--my amendment would cause this section to read as the subsection 2, the first paragraph, was already stated. The second paragraph would read: "The petition shall be filed with the Secretary of State, who shall certify the filing thereof and cause the question to be submitted to the voters at the next general election."

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. Ms. Robinson has a very good point which was called to our attention by a lot of people. However, I would like to explain the rationale of the committee in this. All of these things have to be taken in connection with Section 4, which you will find on page 3, which read: "The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on constitutional questions, to assist the voters, and if a question is authorized, to continue for the assistance of the delegates." It was the feeling of our committee that without the constitutional revision commissions which existed prior to the election on this question, the people of the State of Montana would not have been adequately informed on the need for a constitutional convention. It was not the job of the Constitutional Revision Commission to sell a constitutional convention. It was their job to investigate and determine what methods could be followed to effect constitutional reform, and it was the feeling of the committee that whether the Legislature referred it by referendum to the people, whether it came by initiative petition to the people, or whether it came automatically every 20 years, as is provided in the next section-of great importance to the people of Montana is the appointment of a committee by the Legislature to study this

question and make a report, as provided in subsection 4. And that is the reason why, and the only reason why, the Secretary of State certifies the filing of this petition to the legislative assembly, so that the legislative assembly is then directed by the Constitution to appoint this commission and set it up. And I would, therefore, very strongly oppose the amendment because I feel this revision commission is extremely important to any judgment that the voters might make.

CHAIRMAN ESKILDSEN: Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Mr. Habedank would yield to a question.

It's a matter of language, I think, that bothers me with that same part. I read it as if the legislative assembly is going to authorize-you know, in reaction to the referendum. There seemed to be a great deal of difference between-as you do in the later paragraphs, directing the legislative assembly to prepare for it, than to have them actually authorizing it, and I think that's where the difference comes.

DELEGATE HABEDANK: I—

DELEGATE ARBANAS: Let me say—I'm not asking a question. Do you see that difference, is my problem.

DELEGATE HABEDANK: Yes, but I thought as we changed the section, directing the Secretary of State to submit this to the voters, no further authorization of the Legislative Assembly was provided in there. If it does, I missed the word. In other words, it's merely the time when it's submitted to the people. The Secretary of State receives the petition, he is directed to submit it to the people, but he only submits it to the people following the session of the Legislature, which would allow the Legislature to do what is set forth in Number 4. I don't think the Legislature has any authorization. If it has, I've missed it. Now—

CHAIRMAN ESKILDSEN: Ms. Robinson.

DELEGATE ROBINSON: Would Mr. Habedank yield to a question?

CHAIRMAN ESKILDSEN: Would you yield to another question?

DELEGATE HABEDANK: Yes.

DELEGATE ROBINSON: Mr. Habedank, in not subjecting your proposal to my amendment, are you not at all concerned about the perhaps 3- or 4-year time element that would be involved in getting this before the people if you have to submit it to the legislative body and then they have to offer if for election at the next general election?

DELEGATE HABEDANK: Yes, Miss Robinson, I was very concerned about the time, but I didn't know any other way, nor did the committee know any other way, to have the Revision Commission properly study the matter and allow the people to have the benefit of their observations except through this method. If we went directly into the next election-had this happened following the referendum that the Legislature passed without a Constitutional Revision Commission, I suspect that this Convention would not be here today.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ESKILDSEN: Ms. Robinson.

DELEGATE ROBINSON: Mr. Habedank, will you yield to another question?

CHAIRMAN ESKILDSEN: Will you yield, Mr. Habedank?

DELEGATE HABEDANK: Yes.

DELEGATE ROBINSON: Could not you accomplish your same ends by simply stating in subsection 4 and giving the Legislature the authority to appoint a Revision Commission, without having-1 don't see, you know, that this is a cause and effect thing. I don't see why the petition has to be certified by the Legislative Assembly in order for you, in subsection 4, to give the Legislature the authority that once a petition has been filed with the Secretary of State for the calling of a constitutional convention, that the Legislature at that time may, in fact, appoint a Constitutional Revision Commission.

DELEGATE HABEDANK: If they had the authority, Miss Robinson, I think it would take exactly the same amount of time as is provided herein, because they have to do it at the very first

time they have an opportunity to do it; and, again, we get back to the question we've been debating all day, of legislation. It's my feeling that if the state is going to vote on the question of a constitutional convention, they should have this commission appointed, who should study and who should act and should make recommendations; and without it, it could very well arise under Number 3 and Number 2 without any provision being made whatsoever if the Legislature didn't happen to be in sympathy with the initiative.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ESKILDSEN: Delegate Robinson.

DELEGATE ROBINSON: Mr. Habedank, will you yield to another question?

CHAIRMAN ESKILDSEN: Will you yield to another question, Mr. Habedank?

DELEGATE HABEDANK: I'm happy to yield to Miss Robinson. (Laughter)

DELEGATE ROBINSON: Thank you. Well, now, I don't know what I was going to say. (Laughter) Maybe I'll just sit down and collect my thoughts. (Laughter)

CHAIRMAN ESKILDSEN: Any further discussion?

Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I think it isn't fair for Mr. Hnbedank to take advantage of our fellow delegates. However, I wish to speak to try to clarify-that is, I think I will try to clarify-perhaps I will just have Mrs. Robinson more confused than ever-but in the line which it says "the secretary of state shall certify the filing to the legislature," that doesn't give the Legislature any power to do anything. It merely receives a letter from the Secretary of State, stating that an initiative has been received in his office. That's all. They don't have any opportunity to do anything, and as Mr. Habedank explained, then they will be alerted to the fact that there is a possibility of becoming a-having a constitutional convention and can prepare the physical requirements for a good and productive constitutional convention. The requirement that it stay till the next election after the assembly has been in effect is merely to give the Legislature time to prepare the mechanical operations of the convention. I realize that it may put a year behind, but we are talking of annual sessions of the Legislature, so we'll not have the 'L-year lapse of time. And my feeling is, in conformity with the rest of the commission, or the committee, that this convention is something of vital importance to the people of Montana if they desire to have one, and we shouldn't dash out and call a convention before we've had a chance to sort of prepare for it and be in a receptive mood to amend, to revise the Constitution. I hope that doesn't confuse Mrs. Robinson more but does help alittlein overcoming the situation brought out by Mr. Habedank.

CHAIRMAN ESKILDSEN: Delegate McNeil.

DELEGATE McNEIL: Mr. Chairman. While Delegate Robinson is regaining her composure, I will take this opportunity to rise in support of her amendment. In response to Mr. Harlow's comments that all that requires is a filing with the Legislative Assembly and does not give the Legislature any authority to delay or take any time, if that is the case, it doesn't belong in there. Certainly the records of the Secretary of State are open to the public. I'm quite confident that no petition to amend the Constitution of the State of Montana is going to be kept a secret, and certainly the Legislature will have knowledge of this.

CHAIRMAN ESKILDSEN: Delegate Robinson.

DELEGATE ROBINSON: Just when I thought I had regained my composure, C.B. McNeil spoke in favor of something that I'm in favor of and I lost it again. (Laughter) But getting back to my original amendment and the remarks of Mr. Harlow and Mr. Habedank, my concern here is not that we do not need a Revision Commission. I'm convinced that they perform a very useful service. I am concerned because it seems to me that if the people are convinced enough that they need a constitutional revision—a convention-that they do not need a convention --a commission to tell them whether or not they need a convention. I think the burden ofproofis on the people who initiate the petition. It's still going to be voted on by the majority of the people of the State of Montana. Now, I for one, although as much as I-we have depended upon the Constitutional Revision Commission, do not feel it's the duty of a legislative body to appoint such a commission to tell the people whether or not they

need a convention. Now, I think your subsection 4, in regards to the commission, would apply if subsection 3 is adopted, whereby you automatically put this up for a vote at the end of a 20-year period where no consideration has been given specifically to the issues, but I think in this instance a commission could very well stifle the initiative of a group of people who felt very seriously and very strongly about calling a constitutional convention, and I hope that you might take that into consideration, as well as the need for a commission in, perhaps, subsection 3, but not necessarily in an initiative movement by the people.

CHAIRMAN ESKILDSEN: Delegate Mahoney.

DELEGATE MAHONEY: Would Delegate Harlow answer a question, please?

CHAIRMAN ESKILDSEN: Would you yield to a question, Mr. Harlow?

DELEGATE HARLOW: Yes.

DELEGATE MAHONEY: Mr. Harlow, as I'm reading this, and we had a 90-day session, and all of a sudden the petitions weren't quite finished, and that would be the first of April, then they couldn't get this on the ballot until 2 years later if we had biennial sessions, or 1 year later if we had them. Could that be right?

DELEGATE HARLOW: I'm not hesitating, only I'm trying to figure out exactly the word-1 think that is true.

DELEGATE MAHONEY: In other words, this has to go to the Legislature. If the Legislature isn't in session, it couldn't act on it?

DELEGATE HARLOW: The Legislature does not have to act on it.

DELEGATE MAHONEY: Well, if you submit it to the Legislature and it's not in session, you wouldn't be submitting it to them, would you?

DELEGATE HARLOW: You're not submitting it to the Legislature. You're merely certifying to the Legislature, and if they're not in session, then the leaders would be certified that there has been a petition filed with the Secretary of state.

CHAIRMAN ESKILDSEN: Delegate Mahoney.

DELEGATE MAHONEY: Go down here in line 21, and this is part of the amendment, "the petition shall be filed with the secretary of state, who shall certify the filing thereof to the legislative assembly and cause the question to be submitted to the voters at the general election immediately following the legislative session receiving notice of the filing of said petition." If the Legislature isn't in session, I'm afraid that it wouldn't be holding legal to that.

CHAIRMAN ESKILDSEN: Are you asking a question, Delegate Mahoney?

DELEGATE MAHONEY: Yeah, I'm asking-I'm just trying to get an answer to this. Anybody else that will answer this, I'd be-loveit.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Mahoney, I think your position is correct. If the Legislature did not happen to be in session, it would be delayed to that extent.

CHAIRMAN ESKILDSEN: Mr. Belcher.

DELEGATE BELCHER: I think one thing-one point that needs clearing up, Mr. Chairman, is that-1 think everyone is confused about this general election thing. We were elected by a general election, while it was a special election and, consequently, that would maybe mean a couple of years of time that they're probably concerned with. Just a point of clarification.

CHAIRMAN ESKILDSEN: Any more discussion on subsection 2?

Delegate Romney.

DELEGATE ROMNEY: I favor the Robinson proposal, and I feel that the proposal for the Constitutional Convention could include within the body of the petition, which is now required by the Constitution that we have, the machinery for setting up preparatory commission. There is nothing in the present Constitution which requires it being referred to the Legislature. It's referred to the Secretary of State, and it's independent of the Legislature. That's why we have it-the initiative process-it's to avoid-it's to give the people an opportunity to do something upon their own, rather than upon the initiation of the project by the Legislature. So I think it can be worked out very well just by incorporating it, and

as you all know, the law today requires that the body of-the machinery for the proposal for the constitutional amendment carries the entire subject within this body. Now, I don't think that there's anything wrong with Mrs. Robinson's project excepting that somebody demolished her ratiocination.

CHAIRMAN ESKILDSEN: Any more discussion on subsection 2? Would you care to close—

Delegate Etchart.

DELEGATE ETCHART: Mr. Chairman, I would oppose the amendment of Miss Robinson. The thinking here really was that, if a petition is filed-when this petition is filed, this will give the Legislature a chance to put it [in] proper form, debate it, and then put it to a vote of the people, and a little-an extra year or two in the matter of constitutional amendment and revision isn't that binding, we didn't think, in the committee. So this is the reason we left the language as it was. It may be a little slower-moving, but we thought it would end up in a better constitutional revision process.

CHAIRMAN ESKILDSEN: Are you rising to close? Is there any more discussion?

Delegate Habedank.

DELEGATE HABEDANK: I would suggest to you that the sole question involved in the amendment to Number 2 or the proposal of the committee is whether or not you feel, in the wisdom of this body, it is better for the people to vote on a petition without any published, studied information being made, except a small group of people-10 percent is a relatively small group—who are seeking an election on the initiative. If you feel that a Constitution Revision Commission is unnecessary, then the amendment that Mrs. Robinson proposes would be entirely in order. However, if you feel, as the committee does, that the small amount of expense and the short delay of even up to 2 years--when you consider the fact that we've gone approximately 90 years now without a convention, we're making mandatory a vote on a convention every 20 years-is not such a delay as to justify skipping this very important feature. The present constitutional amendment section did not provide for a Constitutional Revision Commission. Our experience-at least my experience leads me to believe that without this, a constitutional convention could prove to be a waste of money. Not that we are ratifying what they say or what they do, but the studies that they make are of such importance to the people and to those who are elected, if a constitutional convention is held, that without it we're just making a mistake, and I would urge that you follow the committee's recommendation that no vote ever comes up in the State of Montana for a constitutional convention without first a constitutional commission, a preparatory commission being appointed to assemble information on the constitutional questions, to assist the voter and, if a convention is authorized, to continue for the assistance of the delegates.

CHAIRMAN ESKILDSEN: Delegate Nutting.

DELEGATE NUTTING: Mr. Chairman, I rise in support of Mrs. Robinson's petition, or amendment. I think what-Mr. Habedank hit the nail on the head. Do we want a commission before the vote, or after? I think all of us are in complete agreement we want one afterward. But I don't believe that when you have a popular swell of support that would require 10 percent of the voters in the State of Montana to sign a petition, that you need somebody to go out and sell the possibility of having the convention. For that reason, I think that we want-if there's that kind of a ground swell of support, we want to carry it on as quickly as possible.

CHAIRMAN ESKILDSEN: Delegate Harper.

DELEGATE HARPER: Thank you, Mr. Chairman. To further the idea of Mr. Nutting, when we come to subsection 4, it will be easy for us to change the language a little bit to simply say that at the session following an affirmative popular vote on the holding of a convention, the Legislature shall provide for preparation through this kind of committee and so forth, and I think we can have our cake and eat it, too, here.

CHAIRMAN ESKILDSEN: Delegate Spew.

DELEGATE SPEER: I regret to cut off my fellow delegate from Missoula, Mae Nan Robinson. Just a word. I think that if my memory is correct, that the Legislature in 1969 not only provided for the referendum for calling a constitutional convention, but also set up, in independent action, a Constitutional Revision Commis-

sion. This was purely accidental that the two motions were introduced in the 1969 Legislature, and I feel confident that thereferendum would not have carried as it did without that commission. I realize that this is referring to by initiative, rather than by a vote of the Legislature, which perhaps does involve some difference, but I think that people should be informed, need to be informed why they are voting.

CHAIRMAN ESKILDSEN: Delegate Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to support the amendment for just exactly the opposite reason that fellow-Delegate Speer spoke of. Personally, I feel that this Convention, the necessity for it, was sold to the people of the State of Montana. If there's a good, compelling reason, as there would be if this number of people had signed a petition, we don't have to spend any state money selling the idea of this Convention.

CHAIRMAN ESKILDSEN: Delegate Vermillion.

DELEGATE VERMILLION: Mr. Chairman. I would like to point out, if I understand Mrs. Robinson's amendment correctly, that, looking on page 5, Section 3, under constitutional amendment by initiative, that if Mrs. Robinson's amendment is passed here that it would mean that calling a constitutional convention would be easier than getting a constitutional amendment—that is, if, assuming the majority also of this body would go along with the committee's proposal on constitutional amendment by initiative, which we are also providing for. So, if we have-checking back on the constitutional amendment by initiative versus the constitutional convention by initiative-if this amendment were to pass, it would be easier to have a convention than it would be to get an amendment.

CHAIRMAN ESKILDSEN: Do you rise to close?

DELEGATE ROBINSON: No, I just rise. (Laughter)

CHAIRMAN ESKILDSEN: You're recog-nized, Delegate Robinson.

DELEGATE ROBINSON: I would rise to comment on Mr. Vermillion's statement. I had observed this difference in reading this report at the very beginning, and whether my amendment is adopted or not, that very same situation you spoke of is true. It makes no difference whether my amendment is adopted. That's a simplestatement, and if there is no other debate, I may as well go ahead and close simply by saying that there is a difference between initiative and referendum. The 1969 Legislature did propose a referendum on this Constitutional Convention. But, as you will recall, there is no present provision in the Constitution for the people initiating the calling of a constitutional convention. That is the primary difference there. At the same time, they did institute a Constitutional Revision Commission. I would contend that they could also still do that under subsection 1, whereby--and this is in reference to Mr. Etchart's proposal that the Legislature needs time to debate whether or not a convention should be submitted to the people. They are given that power in subsection 1. Subsection 2 should be a clear statement of the power of the people, independent of the Legislative Assembly, to call a constitutional convention. I oppose the statement made by Mr. Habedank that the main difference here is whether or not you are in favor or opposed to a Constitutional Revision Commission, because I am not opposed to that idea at all. I have very grave doubts that this state could afford, for example, a Constitutional Revision Commission that might last 4 years every time 10 percent of the people of the State of Montana might decide to call for a referendum on the constitutional convention question. I simply submit that this does not change whether or not we may have a revision commission. It just puts the horse before the cart.

CHAIRMAN ESKILDSEN: Any more discussion?

(No response)

CHAIRMAN ESKILDSEN: If not, the question rises on the motion made by Delegate Robinson that we amend Section 1, subsection 2. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The Noes have it.

DELEGATES: Division.

CHAIRMAN ESKILDSEN: Division has been called for. We'll use the voting machine.

Those in favor will vote Aye on the machine, and those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN ESKILDSEN: Does any delegate wish to change his vote?

(No response)

CHAIRMAN ESKILDSEN: The clerk will now close the vote. 45 having voted Aye-are you going to read that, Clerk?

CLERK HANSON: 45 delegates voting Aye, 43 delegates voting No.

CHAIRMAN ESKILDSEN: The motion has carried. Are there any more amendments or discussion on Section 2?

(No response)

CHAIRMAN ESKILDSEN: If not, we'll go to subsection 3. Are there any amendments to subsection 3?

CLERK HANSON: (Reading) "Mr. Chairman: I move to amend Section 1, subsection 3, page 2 and line 1 of page 3, of the General Government Majority Proposal by deleting the subsection in its entirety. Signed: Romney."

CHAIRMAN ESKILDSEN: Delegate Romney.

DELEGATE ROMNEY: Mr. Chairman. I feel that with the Legislature being able to provide for a constitutional convention and with also the proposed use of the initiative to propose a constitutional convention-providing for a convention in either manner-that an alternative method whereby the Legislature would decide upon one and pass it and then move it on to the next Legislative Session is superfluous. This provision is unnecessary in my power because there will already be two methods of presenting the constitutional convention to the people to decide whether they want to have one or not. Imposing a periodic plebiscite for a convention every 20 years, whether it is needed or whether there is-a demand exists, is frivolous. If the time and demand is manifested, the citizenry possesses two efficacious tools to cause a convention to be held. Constitutional conventions should never be held unless there's a crying need demonstrated. It occurs to me that it is something like a person taking castor oil every Friday at 9:00 p.m. whether he needs it or not. (Laughter)

CHAIRMAN ESKILDSEN: Is there any more discussion of Section 3?

Delegate Arbanas.

DELEGATE ARBANAS: I would like to speak in opposition to the amendment as proposed by Delegate Romney. I remember-in the campaign, one of the strong selling points that I had before people was the fact that we wouldn't let a condition arise again in Montana when years and years and years go by before we review the need for a constitutional convention. This doesn't-it's not taking castor oil. This is deciding whether you're going to take castor oil, and that's not a bad idea, maybe. It's a matter of having it for review, having it before the people, giving them a chance to continually, in sort of a generation after generation, take a hard, questioning and political look at their Constitution-see ifthereis need for a convention; therefore, I certainly would oppose deleting this from the article.

CHAIRMAN ESKILDSEN: Delegate Harbaugh.

DELEGATE HARBAUGH: I'd like to rise and speak in opposition to this amendment, also. I think that one of the things that many of us faced when we went out to the electorate to be elected, to campaign, was this thing that has been called voter apathy, and I think that one of the things that fosters this is taking a constitution and putting it on the shelffor 90 years. Very few people in the state, I believe, today are aware of what the present Constitution says, and I think that this method of bringing the Constitution before the people will insure that this will not happen again. And I think we want the people of our state to know what's in the Constitution; otherwise, there's not much point in having a constitution.

CHAIRMAN ESKILDSEN: Delegate Etchart.

DELEGATE ETCHART: Mr. Chairman. I would speak in opposition to the deletion, and to go to the rationale of the committee, subsection 3 of Section 1 is a further guarantee that the people will retain a firm hold on the power ofconstituting government. This provision calls for the consideration of a constitutional convention at least once every 20 years. The committee feels periodic consideration strengthens rather than weakens a constitution and a government, as it builds into the Constitution recognition of and a remedy for changing times. While there is no magic number

that precisely delineates the different constitutional periods, the committee feels on the average it would take at least 20 years for political changes and their relationship to the Constitution to be clearer. A shorter period of time may subject the Constitution to changes based more on short-term whimsy than considered need. A longer period may breed dangerous stagnation into the body politic.

CHAIRMAN ESKILDSEN: Delegate Wilson.

DELEGATE WILSON: Mr. Chairman, would Delegate Etchart yield to a question?

CHAIRMAN ESKILDSEN: Delegate Etchart yield to a question?

DELEGATE WILSON: You say in your proposal that it shall be submitted to the voters. It isn't a question of review. In fact, are you not calling a convention by these words?

DELEGATE ETCHART: No, thequestion of calling a convention would be submitted to the people automatically every 20 years.

DELEGATE WILSON: For their rejection or—

DELEGATE ETCHART: Right. So the people would have the chance to decide automatically every 20 years if they want a convention or if they don't want a convention.

CHAIRMAN ESKILDSEN: Delegate Habedank.

DELEGATE HABEDANK: I don't want to contradict our Chairman. I think he stated it correctly. It would be every 20 years, provided it didn't come to the vote of the people some other way. But this-as it's provided, it will be 20 years from the last time the people get a chance to vote on it, automatically.

And, Mr. Chairman, while I'm on my feet—I'm not trying to be a sorehead-1 would just like to rise to a point of order and clarification. The vote on the amendment of Mrs. Robinson, as I understood, carried by 45 to 43, which was not a majority of the delegates elected to this assembly; and in checking Rule 51, I find the Convention shall finally consider individual articles in Order of Business Number 5 section by section by a majority of elected delegates and refer said articles to the Committee on Style for incorporation of proposed Constitution. I'm not particularly complaining about the fact it lost, but I think we should clarify at this stage whether amendments or anything else has to carry by a majority of the delegates, which would require 51.

CHAIRMAN ESKILDSEN: No, what it requires is a majority of the delegates voting on that particular amendment. Any more discussion?

(No response)

CHAIRMAN ESKILDSEN: If not, we'll vote on the motion by Delegate Romney that we delete to amend Section 3 of subsection l--that we delete subsection 3 in its entirety. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The Noes have it. Any more discussion of subsection 3?

(No response)

CHAIRMAN ESKILDSEN: If not, we'll go on to subsection 4. Are there any amendments?

CLERK HANSON: (Reading) "Mr. Chairman, I move to amend Section 1, subsection 4, page 3, line 2, of the General Government Committee Proposal Number 2 by deleting the words and punctuation, quote, "the legislature comma prior to a", end quote, and inserting the following words in lieu thereof, quote, "at the session following an affirmative", end quote. And in line 3 by inserting the words, quote, "the legislature", end quote, between the comma and the word 'shall'. Signed: Mae Nan Robinson."

CHAIRMAN ESKILDSEN: Ms. Robinson.

DELEGATE ROBINSON: This amendment is just further to amplify and clarify what we did in subsection 2, and there is a further amendment that the clerk did not read in the same paragraph, and it would further move to amend on line 5 by placing a period after the word "questions" and deleting the following words and punctuation, quote, "to assist the voters, comma, and, comma, if a convention is authorized", end quote, and insert the following language before the word "continued": quote, "the commission may be", end quote. As amended, this simply

would read: "At the session following an affirmative popular vote on the holding of a convention, the legislature shall provide for a preparatory commission to assemble information on constitutional questions, period. The commission may be continued for the assistance of the delegates, period." This is just simply to clarify the inconsistency with subsection 2, as amended.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The language that Miss Robinson inserted if-on line 6, we amended "the continued" to the words "to continue," so if you want the word "continued" in your amendment, we should amend that back.

CHAIRMAN ESKILDSEN: Delegate Aasheim.

DELEGATE AASHEIM: I'm in orbit. I don't know what we're doing. I'd like to have Mr. Etchart explain something to me here. Are we— how many methods do we have of amending the— of calling a constitutional convention?

DELEGATE ETCHART: We have-this is-we adopted a new way to do it by initiative. We have the present way of doing it by the Legislature, and then we adopted a third way, which is the automatic referral to the people every 20 years.

DELEGATE AASHEIM: Question, Mr. Chairman. You say we have adopted-you mean we have adopted it now?

DELEGATE ETCHART: The committee, as I understood, adopted subsection 3, which was the third way.

CHAIRMAN ESKILDSEN: Well, we haven't adopted anything, Mr. Etchart.

DELEGATE ETCHART: I mean, we've passed this for now, and—

CHAIRMAN ESKILDSEN: What we've done is we've merely discussed subsection 1, subsection 2 and subsection 3 till there was no more discussion on any one of the subsections.

DELEGATE ETCHART: Right.

CHAIRMAN ESKILDSEN: Now, we are on subsection 4—

DELEGATE ETCHART: Right.

CHAIRMAN ESKILDSEN: -and we're discussing that. It's possible maybe we should take a vote on each subsection as we go and we'd know more where we're at, but the rules call for— that we vote on it section by section, so this is the reason that I was conducting in this manner. Now, if you'll go ahead and discuss Section 4 a little more, we'll eventually rise and report and start tomorrow. Yeah, we're on—

Delegate Davis.

DELEGATE DAVIS: Mr. Chairman, may I ask Miss Robinson if she would yield to a question?

CHAIRMAN ESKILDSEN: Would you yield to a question, Miss Robinson?

DELEGATE ROBINSON: Yes.

DELEGATE DAVIS: You'll notice I added "to a question."

DELEGATE ROBINSON: Yes.

DELEGATE DAVIS: Miss Robinson, in this provision as it now stands amended, it directs the Legislature to provide for a preparatory commission to assemble information. I wonder if that is what we really want them to do-just assemble information-or do we want them to go ahead and make preparation for the physical layout and so forth as they've done in-this time. Since it wasn't in the original Constitution when we came into being here, they seemed to have unlimited authority, but this could be interpreted to restrict them to assembling information. What's your thought on that?

DELEGATE ROBINSON: Mr. Davis, I am not wedded to this idea that was submitted by this committee. My amendment was simply to clarify this subsection 4 in regard to subsection 2. I have no feelings one way or the other about whether they should just assembleinformation on constitutional questions or do a great deal more than that. I would defer to the committee in terms of their thinking on exactly what the role of the commission is to be, and I think perhaps some of that should be left up to the Legislature in terms of what the commission should exactly do.

CHAIRMAN ESKILDSEN: Any more discussion on the amendment?

Delegate Arbanas.

DELEGATE ARBANAS: I wonder if Delegate Robinson would yield to a question?

CHAIRMAN ESKILDSEN: Will Delegate Robinson yield to another question?

DELEGATE ROBINSON: Yes.

DELEGATE ARBANAS: This may just be trouble reading my notes but as I-I wonder if you're not getting back into the problem you're trying to alleviate by the language, certainly not by the intent. But as I read it-you were really technical-it said at the session following an affirmative vote. This could mean, could it not, that if there was a-the Legislature was in session, that you took this very technically, that it might wait till the next session of the Legislature? In other-you see, many times in the Constitution there are provisions when the Legislature is in session or when it's out ofsession, and this may be just a little inexact. I'm sure you don't intend it that way. Do you see that inexactness, or do I read it wrong?

DELEGATE ROBINSON: I'm not sure what you're referring to. I think, perhaps, it could be clarified some. Hopefully, we are proposing in the Legislative Article that the Legislature would be able to call itself into special session, perhaps to deal with a problem of this very nature. I'm not sure of the exact wording, and perhaps this section would be one that would be better to be rereferred to the committee for amplification, for additional work on it, whereby we wouldn't have all of these loopholes in it because, at best, my amendment simply parallels 2 and 4, and it really doesn't solve the problems inherent in the original wording.

CHAIRMAN ESKILDSEN: Delegate Habedank.

DELEGATE HABEDANK: I would again like to call to the attention of the assembly that subsection 4 provides in the Constitution for the very thing that the Constitution Revision Commission did by accident, as Mrs. Spew pointed out, in connection with this Convention. By accident, a Constitutional Revision Commission was set up at the same time that the question of whether or not there should be a constitutional convention was held. So, your Constitutional Revision Commission did, in fact, operate for approximately 4 years. This seemed to us, based on past experience, to be a very good provision and one which should not be provided for by accident. In other words, the commission, as envisioned in Section 4, not only will operate during the 2 years or during the period up to the election, but then it will continue on through, doing the preparatory work for the convention itself if the people vote for a convention. If they vote for not having one, the commission would end. And I, for that reason—because the experience having to do with this Convention, I think, has proved invaluable—would very strongly oppose the deletion of Section 4 from-as far as having any commission prior to the election. Mrs. Robinson's proposal would limit the commission to a period after the people vote for a convention.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Delegate Nutting.

DELEGATE NUTTING: Mr. Chairman. I think Mrs Robinson's motion is perfectly clear, and it's the kind of a situation that's necessary since we have accepted her first amendment. In other words, if the popular vote approves a constitutional convention in November, the commission is established at the next Legislative Session which, if under our present rules, would be established in January or February. They-in Section 5 it also states the way that the convention is to be organized and everything, but the vote will probably be taken at the next general election, so the commission has 2 years to make the preparations for the constitutional convention. When the delegates are elected at the general election 2 years later, they are also--under the last line of her amendment, the commission may continue for the assistance of the delegates. This merely provides for a commission to help them, and they have 2 years to assemble the information, and they may continue. I think her motion is very much in order and would be a necessary part of this amendment.

CHAIRMAN ESKILDSEN: Is there any more discussion?

(No response)

CHAIRMAN ESKILDSEN: If not, you have before you the motion made by Delegate Robinson to amend subsection 4 of Section 1. As many of those are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN KSKILDSEN: Motion's carried.

Mr. Murray.

Mr. Blaylock.

DELEGATE BLAYLOCK: Before we vote on these, can't we have thoseread back so that we know exactly how those are, with-when all those amendments go in like that?

CHAIRMAN ESKILDSEN: What we're going to do now is recess, or adjourn--we're going to come out of the Committee of the Whole, and then we'll eventually adjourn for today till tomorrow, and by that time we'll have it straightened out. (Laughter)

Delegate Arness.

DELEGATE ARNESS: I'm sorry, Mr. Chairman, but this point that was brought up earlier by Mr. Habedank, I think that he's correct. Rule 51 provides that a majority of elected delegates, when operating under Order of Business Number 5, must approve a section. Isn't that correct? Aren't we under Order of Business Number 5 now?

CHAIRMAN ESKILDSEN: We're under Number 10 now. We're under General Orders, the majority of only those voting.

DELEGATE ARNESS: I see. Thank you.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: I'm still in orbit, and I'd like to ask Mr. Habedank a question.

CHAIRMAN ESKILDSEN: Would you yield to a question, Mr. Habedank?

DELEGATE AASHEIM: I understand we have three methods ofcalling a constitutional convention. Is that your plan?

DELEGATE HABEDANK: That is correct.

DELEGATE AASHEIM: According—

DELEGATE HABEDANK: Three alternatives.

DELEGATE AASHEIM: Thank you.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr Aasheim.

DELEGATE AASHEIM: If that is the case, WE have--according to the subhead numbering, we have nine ways of calling a constitutional convention. This is what I am getting at. We—you-1 think in order to clarify, to make it simpler for a simple soul to understand what you're doing, I think you should have constitutional convention, in upper caps, by the Legislature-constitutional convention by initiative, as Number 2—and Number 3, an automatic one in 20 years; and then have--well, below that-because I thought you had nine proposals here.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: I would agree with you, Magnus, that probably the headings could be different, but I don't agree with you that we have nine proposals. I see we have three. The Constitution can be amended, one, by the Legislature; two, the people by initiative; three, automatic voting. We have only three methods.

CHAIRMAN ESKILDSEN: Delegates, we are all getting tired, and I'm going to ask Marshall Murray to make the motion.

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Murray.

DELEGATE MURRAY: I'm about to make the motion that the committee arise, report progress and ask leave to sit again, but before doing so, I might make a suggestion to the people submitting delegates to this Convention. I really think that if they have multiple amendments to this Convention, that it would be nice if they can get them printed and out onto the desks so we know what they are. Seems to me that as we go later in the day and get tired, why, I'm not sure that we're being fair to either the committee or the parties that are proposing the amendments. And I might make a suggestion at this time that, at this stage, through subsection 4, that we have the amendments prepared and on our desks for morning. And at this time, because of the hour and the condition of many of the delegates who have requested that we make a motion, I move that the committee rise, report progress and ask leave to sit again.

CHAIRMAN ESKILDSEN: You've heard the motion. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: Motion's carried. Don't leave the Convention. We're just moving out of the Committee of the Whole. We are not through.

(Vice-President Toole assumed the Chair)

VICE-PRESIDENT TOOLE: The Convention will come to order. I beg your indulgence for just one moment while a little paperwork is being done.

CLERK HANSON: (Reading) "February 17, 1972. Mr. President: We, your Committeeofthe Whole, having had under consideration Report Number 1, Suffrage and Elections, and Report Number 2, Constitutional Revision, the Committee of General Government Constitutional Amendment, recommend as follows: Delegate Artz, having voted on the prevailing side, moved that the committee reconsider action taken previously this day in adopting Section 3 of Report Number 1 on Suffrage and Elections. Motion carried. Substitute motion of Delegate Harlow to amend Section 3 of the majority report by adding the following: 'The legislature shall provide for a system of poll booth registration, insure the purity of elections and guard against abuses of the electoral process.' failed to be adopted by the following roll call vote asked for by Foster with sufficient seconds: Ayes - 49; Noes - 51. Substitute motion to Delegate Aronow to amend Section 3 of the majority report by adding the following: 'The legislature may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses of the electoral process' was adopted by the following roll call vote asked for by McNeil with sufficient seconds: Ayes 76; Noes - 22. That Section 3 be adopted as amended. At 3:30 pm., the Committee of the Whole stood at recess until 3:45 p.m.

3:45 pm., Delegate Eskildsen in the Chair. The Chairman of the Constitutional Amendment Committee noted the following corrections approved by the committee in their Report Number 2: That Delegate Robinson's motion to be adopted, which is as follows: Amended Section 1, subsection 2, page 2, lines 22 and 23, of the General Government Committee Proposal Number 2 by deleting the words 'to the legislative assembly' and further amend Section 1, subsection 2, page 2, line 24, by inserting the word 'next' between the words 'the general' and by placing a period after the word 'election' and deleting the remainder of that subsection. That Delegate Robinson's motion be adopted, which is as follows: Amend Section 1, subsection 4, line 2, in the majority proposal by deleting the words and punctuation 'The legislature, prior to a ' and inserting the following words in lieu thereof: 'At the session following an affirmative' and in line 3 by inserting the words 'the legislature' between the comma and the word 'shall,' and amend Section 1, subsection 4, page 3, line 5, by placing a period after the word 'questions' and deleting the following words and punctuation 'to assist the voters, and, if a convention is authorized' and insert the following language before the word 'continued,' 'The commission may be.' That the Committeerise and report progress and beg leave to sit again. Signed: Eskildsen, Chairman."

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole Report.

VICE-PRESIDENT TOOLE: You've heard the motion of Mr. Etchart that the Committee rise and report-that its report be adopted. Is there any discussion?

DELEGATE ESKILDSEN: No, John—

VICE-PRESIDENT TOOLE: Mr. Blaylock.

DELEGATE BLAYLOCK: On that last thing that we adopted, subsection 4, I'm still not clear of all the language that was put in there, and Mr. Eskildsen said this would be straightened out--what were you telling me, Joe?

DELEGATE ESKILDSEN: Yes. What will happen, we'll go right back into debate tomorrow, right where we left off, so we'll go right back on Section 4, and we can straighten it out.We're getting tired today, and none of us are making sense much longer, and it's time to quit for the first day. Just move my motion, John.

VICE-PRESIDENT TOOLE: Are you satisfied, Mr. Blaylock?

DELEGATE BLAYLOCK: Yes, I am.

VICE-PRESIDENT TOOLE: The question arises on whether or not the Committee of the Whole Report be adopted. All in favor, say Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Motion carried.

DELEGATE ESKILDSEN: Mr. President. That's a fast one—

VICE-PRESIDENT TOOLE: Now, under Order of Business Number 11, Committee Announcements and Notices.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President. Style and Drafting, 8 o'clock tomorrow morning, in the new committee room, which is 413, above the Senate.

VICE-PRESIDENT TOOLE: Mrs. Cross.

DELEGATE CROSS: Natural Resources Committee, immediately upon adjournment in the committee room.

VICE-PRESIDENT TOOLE: Mr. Dahood.

DELEGATE DAHOOD: The Bill of Rights Committee, at 8:30 in the morning.

VICE-PRESIDENT TOOLE: Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, 8 o'clock in the morning.

VICE-PRESIDENT TOOLE: Mr. Aasheim.

DELEGATE AASHEIM: Legislative, at 8:30 in the morning.

DELEGATE ESKILDSEN: Mr. President.

VICE-PRESIDENT TOOLE: Just one moment before we adjourn, Mr. Eskildsen. The Chair would like to remind the delegates that Charles A. Lindbergh will be present in the Governor's reception room at 7:30 this evening for an informal discussion on environment; that he will address the delegates at 8:30 in the morning on the same subject before we reconvene.

Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I think I made an error. I did not have in mind that Mr. Lindbergh would address us at 8:30. Bill of Rights will meet at 8 o'clock, in the morning.

VICE-PRESIDENT TOOLE: Thank you.

DELEGATE AASHEIM: Mr. Vice-President.

VICE-PRESIDENT TOOLE: Mr. Aasheim.

DELEGATE AASHEIM: I will change my announcement-8 o'clock in the morning—8:15.

VICE-PRESIDENT TOOLE: Now, Mr. Eskildsen.

DELEGATE ESKILDSEN: Yes. Without objection, may we be on Order of Business Number 10?

VICE-PRESIDENT TOOLE: We may be under Order of Business Number 10. Is there any objection?

(No response)

DELEGATE ESKILDSEN: Before we adjourn, I should like to remind you that we're going to adjourn till 10 o'clock in the morning, but that doesn't mean to get here at 1O:OO. We should all be here at 8:30 to hear Mr. Lindbergh. So, with that, I move we stand adjourned until February 18, 10:00 a.m., 1972.

VICE-PRESIDENT TOOLE: You've heard the motion for adjournment. All in favor, say Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Convention is adjourned.

(Convention adjourned at 5:13 p.m.)

February 18, 1972 **Twenty-Seventh Day** **Convention Hall**
lo:oo a.m. **Helena, Montana**

PRESIDENT GRAYBILL: Convention will be in order. If you'll all rise, Delegate Scanlin will lead us in the invocation.

DELEGATE SCANLIN: Let us pray. Oh, Lord, Thou hast kept us safe and sane through long hours, days and weeks of testimony-some essential; most of it, expository. Now, we face long hours of listening to each other. May we continue to try to separate the essential from the incidental in order to emerge from this great debate in the true and certain knowledge that Thy will has been accomplished. Amen.

PRESIDENT GRAYBILL: We will take attendance today by voting Aye on the voting machines.

CLERK HANSON: Delegate Aronow, Delegate Babcock, Delegate Bates, Delegate Dahood, Delegate Driscoll, Delegate Drum, Delegate Felt, Delegate Kelleher. Delegate Bates.

PRESIDENT GRAYBILL: Delegate Bates will be counted present.

CLERK HANSON: Delegate Kelleher.

PRESIDENT GRAYBILL: Delegate Kelleher will be counted present. He has been here. There he is.

Very well. Take the roll.

Aasheim ,, ,, ,, ,, Present
Anderson ... Present
Anderson, J. Present
Anderson, 0.. Present
Arbanas Present
Arness Present
Aronow P r e s e n t
Artz Present
Ask ... Present
Babcock ,, ,, Present
Barnard ... Present
Bates ... Present
Belcher Present
Berg ... Present
Berthelson Present
Blaylock ,, ,, ,, Present
Blend Present
Bowman ... Present
Brazier ... Present
Brown ... Present
Bugbee ... Present
Burkhardt ... Present
Cain ... Present
Campbell ... Present
Cate ... Present
Champoux ... Present
Choate ... Present
Conover ... Present
Cross ... Present
Dahood ... Present
Davis ... Present
Delaney ... Present
Driscoll ... Present
Drum ... Present
Eck ... Present
Erdmann ... Present
Eskildsen ... Present
Etchart ... Present
Felt ... Present
Foster ... Present
Furlong ... Present
Garlington ... Present
Graybill ... Present
Gysler ... Present
Habedank ... Present
Hanson, R. S. ... Present
Hanson, R. ... Present
Harbaugh ... Present
Harlow ... Present
Harper ... Present
Harrington ... Present
Heliker ... Present
Holland ... Present
Jacobsen ... Present
James ... Present
Johnson ... Present
Joyce ... Present
Kamhoot ... Present
Kelleher ... Present
Leuthold ... Present
Loendorf ... Present
Lorello ... Present
Mahoney ... Present
Mansfield. ... Present
Martin ... Present
McCarvel ... Present
McDonough ... Present
McKeon ... Present
McNeil ... Present
Melvin ... Present
Monroe ... Present
Murray ... Present
Noble ... Present
Nutting ... Present
Payne ... Present

Pemberton .. .. Present
Rebal .. Present
Reichert Present
Robinson ..... Present
Roeder ..... Present
Rollins.. Present
Romney .. .. Present
Rygg ..... Present
Scanlin Present
Schiltz Present
Siderius. Present
Simon ..... Present
Skari .. Present
Sparks ..... Present
Speer ..._....__ Present
Studer ..... Present
Sullivan Present
Swanberg ..... Present
Toole Present
Van Buskirk Present
Vermillion Present
Wagner Present
Ward ..... Present
Warden ..... Present
Wilson.. .. Present
Woodmansey Present

CLERK HANSON: Mr. President, 100 delegates present.

PRESIDENT GRAYBILL: Very well. The journal will so show, and that's a quorum. Without objection, I'll be on Order of Business 11 for one announcement. Unfortunately, some of us are parking on the grass at the Capitol. This has got to be stopped, and we are asking that those of you who are parking on the grass, please get your cars off of there by noon. I have spoken to Mr. Lowe about being more careful about letting other Capitol employees park in our spaces, but, in the event some person has taken the Capitol spaces in front, please do yourself and us the courtesy of parking in the parking lot across the street and walking in. The grass is getting soft now, and we do not want to be on the grass.

Very well. Mrs. Babcock, for what purpose do you rise?

DELEGATE BABCOCK: To add to your announcement, I counted eight cars that took up two parking spaces, and a lot of them weren't delegates' cars, this morning. I was going to register a complaint if you hadn't.

PRESIDENT GRAYBILL: I think you're correct, and I think if you'll all park as carefully as possible that, now that some of the snow is away, it won't be too difficult. We do have a problem there, and please do not park on the grass or we're going to be highly unpopular with the custodians.

Now, this morning we go back on Order of Business Number 10 and I'll recognize Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention resolve itself into Committee of the Whole for a consideration of business under General Orders.

PRESIDENT GRAYBILL: All in favor of the motion to resolve ourselves into Committee of the Whole, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it.

Mr. Eskildsen.

(Committee of the Whole Chairmanship assumed by Mr. Eskildsen)

CLERK HANSON: February 18, 1972. The following committee proposals are now on General Orders: General Government, Legislative, Executive and Judicial.

CHAIRMAN ESKILDSEN: Members of the Committee of the Whole House shall please be in order.

CLERK HANSON: (Reading) "The Legislative Committee Proposal Number 3, having been duplicated and placed on the delegates' desks on the 16th day of February, 1972, at 9 o'clock a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules."

CHAIRMAN ESKILDSEN: Members of the Committee, the rules provide that we shall vote on the proposals section by section in order to alleviate any confusion; where we have subsections, we will also vote on subsection, subsection by subsection. So today, when we start off, we will again start with Proposal Number 2, Section 1, subsection 1. The clerk will read subsection 1, as amended from yesterday.

CLERK HANSON: (Reading) "Subsection 1: The Legislature, by an affirmative vote of two-thirds of all the members thereof, whether one or more bodies, may at any time submit to the

electors of the state the question of whether there shall be an unlimited convention to revise, alter or amend this Constitution."

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 1, subsection 1, they recommend that the same be adopted,

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, we went through that yesterday, and this is essentially identical; there's a little bit of change in terminology, but to Article XIX, Section 8, of the present Constitution, the committee's thinking was to keep the ideas the same as the present Constitution.

CHAIRMAN ESKILDSEN: We discussed this thoroughly yesterday, so, if there's no more discussion, you've heard the motion of Mr. Etchart that when this committee does arise and report, after having had under consideration subsection 1 of Section 1 of Proposal Number 2, that it recommends the same be adopted. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried. Subsection 2-the clerk will read subsection 2. The clerk will read this as amended from yesterday.

CLERK HANSON: (Reading) "Subsection 2: The people, by an initiative petition, may direct the Secretary of State to submit to thevoters of the state the question of whether there shall be an unlimited convention to revise, alter or amend this Constitution. The petition must be signed by at least 10 percent of the legal voters of the state, which shall include at least 10 percent of the legal voters in two-fifths of the legislative representative districts of the state. The petition shall be filed with the Secretary of State, who shall certify the filing thereof and cause the question to be submitted to the voters at the next general election." Subsection 2, Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 1, subsection 2, recommend the same do be adopted.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I think we covered this extensively yesterday. It is amended, and the committee is agreeable to the amendments on subsection 2.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, members of the assembly. As I tried to explain to you yesterday, the way this is sectionalized, when this comes to a vote on third reading, we're going to have to vote for three ways of calling a constitutional convention. We're going to either have to reject or accept the three ways. Consequently, I'm going to move to delete Section 2 and 3, so that when we're talking about calling a constitutional convention, we shall be talking about subsection 1, and then 4, 5, 6, 7, 8 and 9 will apply to subsection 1. Because, if we don't-if we continue the way we are, we're going to be in trouble. So, I'm going to move at this time, Mr. Chairman, that we delete subsection 2, and I do this to expedite our progress.

CHAIRMAN ESKILDSEN: Mr. Harbaugh.

DELEGATE HARBAUGH: Would Mr. Aasheim yield to a question?

CHAIRMAN ESKILDSEN: Would you yield to a question, Mr. Aasheim?

DELEGATE AASHEIM: I will.

DELEGATE HARBAUGH: Mr. Aasheim, by deleting these, would you-are you inferring then that they would not be a part of the article at all, or would they be added later?

DELEGATE AASHEIM: That would be up to the delegates. Later on you could move to reconsider your action now, and then adopt them later.

DELEGATE HARBAUGH: Is your intention to delete the two sections-Section 2 and 3—

entirely? Is that the intention of your motion?

DELEGATE AASHEIM: My intention of the motion-yes, it is to delete 2 now, and it might be well to discuss this-whether we want to delete it right now and find out. Maybe we're just spinning our wheels amending and reamending, and maybe we should decide now whether we want subsection 2 at all.

CHAIRMAN ESKILDSEN: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I would like to speak in opposition to the motion because I don't believe that we have three separate things here which are to be voted on. In the Constitution, it seems to me, that all of this comes under the method by which a constitutional convention can be called, and I think that yesterday we voted to accept Section 2 and Section 3, and I believe that they should be included in the article as a means of amending the Constitution. It's possible that we would want to rearrange the order of the articles and-so that Section 4, 5 and following might apply to Section l-but I would be very much against deleting, in entirety, Sections 2 and 3.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I can appreciate what Mr. Aasheim is getting at, but I can see no problem as far as this Convention is concerned by addressing itself to each of these methods of calling a constitutional convention election. We have only one way in which a constitutional convention can be called, and that is by the vote of the people. However, as set forth in Section 1, there are three methods in which it can reach the people: one, by the Legislature; two, by initiative; and three, an automatic referral. Any one of those three subsections can be stricken at the wish of the convention and the remainder of the article-of Section 1, remains intact. So, to theextent that Mr. Aasheim wishes to put the question directly of whether we wish to allow the people to have a constitutional convention submitted to them by initiative, it would be proper to move the deletion of subsection 2, and if the Convention went along with that thinking, then there would be no reason to work with the words. We did work with the words, and it was my understanding yesterday that the Convention as a whole agreed that, subject to the change in connection with subsection 2 whereby the matter would go directly to the people without the delay of going through the Legislature, these three methods were going to be available to the people of Montana as to how a convention would be called. I would therefore resist the deletion of subsection 2 and subsection 3, but I think it would be entirely proper for the Convention to address itself to the proposition of whether or not these methods should be available.

CHAIRMAN ESKILDSEN: Is there any more discussion on-?

Mr. Arbanas.

DELEGATE ARBANAS: I would like to oppose the amendment. It seems to me that you have one of two philosophies with regard to the Constitutional Convention. One would put the emphasis on the Legislature, and the other would put the emphasis on the people. In my opinion, the Constitutional Convention is a people's function in government, and therefore, any effort in any way to put to some other time or bring up some other way the fact that the basic political right of the people is to call a convention, I would resist very strongly.

CHAIRMAN ESKILDSEN: There is no further discussion?

Madame Bowman. (Laughter)

DELEGATE BOWMAN: Would you like to try again?

CHAIRMAN ESKILDSEN: Delegate Bowman?

DELEGATE BOWMAN: Thank you. (Laughter) I wonder if Mr. Aasheim would yield to a question.

CHAIRMAN ESKILDSEN: Would you yield to a question from Delegate Bowman?

DELEGATE AASHEIM: I yield.

DELEGATE BOWMAN: Mr. Aasheim, do I understand that the reason for your concern is that, by having each one of these subsections in a section, if you are not in favor of certain of the subsections, when it comes time to vote on the entire section, you're going to be torn between whether to vote for it because it has some things that you like in it or against it because it has some things in it that you don't like, and that if these particular subsections were redone and titled in the form of sections, that it would facilitate this job of trying to decide which of the possible ways

for amending the Constitution we could adopt.

DELEGATE AASHEIM: Jean, I'm going to express myself frankly to your question that I'm opposed to subsection 2 because I think it's superfluous. I believe that if we have subsection 1, that is an adequate means of calling a constitutional convention. I don't believe that the people are ever going to feel themselves in a position to call another constitutional convention after they have observed us operating here today and yesterday.

DELEGATE BOWMAN: May I ask Mr. Aasheim one more question?

CHAIRMAN ESKILDSEN: Delegate Bowman, will you yield? (Inaudible) Aasheim?

DELEGATE AASHEIM: Yes, I yield.

DELEGATE BOWMAN: Then, redoing these into having each paragraph become a section would not really solve your problem, is that correct?

DELEGATE AASHEIM: Mrs. Bowman, I shall then move to amend so that it will be more acceptable for the delegates.

DELEGATE BOWMAN: Thank you.

CHAIRMAN ESKILDSEN: There is no further discussion; we'll now vote on the substitute motion by--unless-do you wish to close, Delegate Aasheim?

DELEGATE AASHEIM: I think the delegates should decide this, naturally; but really, why do we need the people to call a convention? If you're going to accept Number 3, which I also oppose-why all these ways to call a constitutional convention when we had a request now in 82 or 83 years--why this sudden desire to have more conventions? I just can't see it. Why clutter up the books with this extra proposal? So, I say, let's seriously consider deleting this.

CHAIRMAN ESKILDSEN: You've heard the motion of Delegate Aasheim to delete subsection 2 of Section 1 of Proposal Number 2. As many as are in favor—

Mr. Habedank.

DELEGATE HABEDANK: (Inaudible) on that. I request a division on that roll call vote and ask for seconds.

CHAIRMAN ESKILDSEN: Sufficient seconds have arisen. We'll have a division. Let's vote on the voting machine.

As many as are in favor of deleting subsection 2, vote Aye; and those opposed will vote No. Has everybody voted? Does anyone wish to change his vote? If not, the clerk will close the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson,0	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Chairman Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay

Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Absent
Jacobsen	Absent
James	Nay
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Nay
Leuthold	Absent
Loendorf.	Nay
Lore110	Nay
Mahoney	Aye
Mansfield.	Aye
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Nay
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Absent
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Nay
Siderius	Aye
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
sú1'ivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Nay

CLERK **HANSON:** Mr. Chairman, 24 delegates voting Aye, 69 voting No, 6 not voting.

CHAIRMAN ESKILDSEN: 24 voting Aye, 69 voting No. The motion has lost. We are now on the motion by Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible) the procedure. Since this passed, I'll want to go back to Section 1 to make a slight amendment.

CHAIRMAN ESKILDSEN: Well, we'll take care of Section 2 first.

DELEGATE AASHEIM: Then, may I amend Section 2?

CHAIRMAN ESKILDSEN: You're in order.

DELEGATE AASHEIM: Let-on Section-1 mean-subsection 2, let's insert, then, "Section 2," in upper caps, and that'11 take care of my problem. This will be Section 2, and then when we get back to Section 1, we'll strike that "sub" one. Do you follow me? So, we can then vote on a section when we come to third reading; understand? My motion is now to amend subsection 2 to strike the ''2'' in italics or-in quotes and insert "Section 2, Constitutional Convention" in upper caps. For lack of any better wording, I want to say Constitutional Convention.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Aasheim.

Mr. Belcher.

DELEGATE BELCHER: Would Mr. Aasheim yield to a question, please?

DELEGATE AASHEIM: I yield.

DELEGATE BELCHER: Mr. Aasheim, don't you feel that we're getting into Style and Drafting when we're making theseminorchanges like this?

DELEGATE AASHEIM: No, I don't, because Style and Drafting is going to say, "What are you doing here?", because we have to have separate sections for each one of these proposals.

DELEGATE BELCHER: Thank you.

CHAIMAN ESKILDSEN: The motion of Mr. Aasheim's is to change the subsection number 2 to "Section 2, Constitution Convention." Any more discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I can see what Mr. Aasheimisgettingat, but

I feel the matter is completely covered by the three subsections. I agree that when-if all three subsections are passed-or all the subsections are passed-then you are stuck in the final reading by accepting all of them in Section 1. But, if each subsection is voted on separately, I think it is proper that whoever is voting on the entire section then be stuck with the wording that the people have accepted. This is a situation the committee faces; subsection 2 as amended-we've accepted it, and I think that everyone is adequately protected by the subsections within the section.

CHAIRMAN ESKILDSEN: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman, I note that Delegate Schiltz is not here. Maybe Delegate Burkhardt, as Vice-Chairman of the Style and Drafting Committee, could speak to this, But I wonder what problems this does raise as far as Style and Drafting is concerned.

CHAIRMAN ESKILDSEN: Mr. Burkhardt.

DELEGATE BURKHARDT: I would be unable to make a clear statement about that. We will be making recommendations for changes in sections and articles, but all of that will come back for stylistic handling by this body. Our consultant in that area will probably be giving us some advice.

CHAIRMAN ESKILDSEN: Any more discussion?

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of the motion of Delegate Aasheim because it seems to me this will clearly identify the issue. Those people who are opposed to an initiative method can then be recorded. If they lose, they lose; but at any rate, they can be recorded on the record. And it seems to me to be a perfectly proper way to isolate the issue, and I support Delegate Aasheim's amendment.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: I would rise to support the motion by Delegate Aasheim for the reasons given by Mr. Joyce. And also, I think because if we do this and if we decide that this is a separate subject-separate enough to justify a separateroll call vote, if a roll call is called for-that we would be determining matters that relate to these questions being asked of Style and Drafting, and I feel, to", that it does have considerable merit to separate separate subjects. The question might be as to whether you want to consider this a separate subject. I feel that because it is separate enough from the other possible ways of calling for a constitutional convention, that it should be given a separate section number.

CHAIRMAN ESKILDSEN: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman. Didn't you rule just a while ago, or whatever you want to call it, that we're going to vote on these subsections separately this morning, or did you not?

CHAIRMAN ESKILDSEN: Yes, we'll vote on each subsection separately.

DELEGATE ROD HANSON: So wouldn't this answer, then, Mr. Felt's statement now, that it would give an opportunity to vote on these separately rather than having to do it by separate sections?

CHAIRMAN ESKILDSEN: What Magnus Aasheim is trying to get at is that when the proposal-the rules say that we shall vote on the proposal section by section, and when we finally vote on Section l-now, what Mr. Aasheim is getting at is that he is going to have Section 1 just the first subsection; the second subsection will be Section 2; and we will vote on each one separately in the whole proposal, and there will not be subsections that we've voted on-just one vote for the whole set of subsections. I hope I have made myself clear on that, but—

DELEGATE ROD HANSON: We're going to have an opportunity to vote on each one of these twice. We're going to be able to do it by subsection and then again in the section.

CHAIRMAN ESKILDSEN: You'll have one final vote which will be to approve or disapprove Section 1, and it will include all of the subsections. We are now just going through Section 1, subsection at a time, and we're voting on each subsection to see if it carries. And when we finally get through with the whole Section 1, we will vote on the complete section-one vote on that one. Is there any more discussion? If not, we will vote on the motion by Mr. Aasheim that we change subsection 2 to be Section 2, Constitutional Convention. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: Motions carry.

Mr. Murray.

DELEGATE MURRAY: Yes, sir.

CHAIRMAN ESKILDSEN: Mr. Murray, because of this amending and that it carried, we have now changed subsection 2 to Section 2. I think it would probably be proper that if we're going to do that, to change all the "subsections" to "Section," too, at one time.

DELEGATE MURRAY: I would suggest that we change them all then from Section 1, Section 2, Section 3 and on, to take a vote at this time.

CHAIRMAN ESKILDSEN: You have heard the motion by Delegate Murray.

DELEGATE MURRAY: I so move.

CHAIRMAN ESKILDSEN: Is there any more discussion? As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried. We now have before us Section 2. Is there any further discussion on Section 2?

Mr. Etchart, would you wish to close?

DELEGATE ETCHART: I close.

CHAIRMAN ESKILDSEN: You now have before you Section 2.

Mr. Mahoney.

DELEGATE MAHONEY: I am at a loss. I thought we put in a lot in this section yesterday. Now, are we rewriting the section? I'm just trying to find out just where we're at on this motion.

CHAIRMAN ESKILDSEN: Yes, Mr. Mahoney. The clerk read the section as it was amended yesterday, in its entirety, and we are now voting on that section as it was amended yesterday.

DELEGATE MURRAY: (Inaudible) yesterday?

CHAIRMAN ESKILDSEN: No, we didn't vote on it yesterday. We merely voted on the amendments, and we passed all the amendments to that section, which is now Section 2. As many as are in favor of Section 2 will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried. We now have before you Section 3. The clerk will read Section 3.

CLERK HANSON: (Reading) "Section 3: If the question of holding a convention is not otherwise submitted to the people at some time during any period of 20 years, it shall be submitted at the general election in the 20th year following the last submission of such question." Mr. Chairman, Section 3.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 3, that the same be adopted.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. We discussed this yesterday, and there was a motion to delete this section. This is the automatic referral back to the people of the question of holding another constitutional convention after a period of 20 years. That's what's incorporated in Section 3.

CHAIRMAN ESKILDSEN: Is there any more discussion on Section 3? If not, you've heard—

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: Call for a roll call and ask for seconds.

CHAIRMAN ESKILDSEN: Having sufficient seconds, there shall be a roll call. As many as are in favor of the motion made by Mr. Etchart that when this committee rise and report, they recommend Section 3 be adopted, will vote Aye, and opposed will vote No. You will use the voting

machine please. (Laughter) Has everyone voted? Does anyone wish to change their vote? If not, the clerk will close the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Aye
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Aye
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown..	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Absent
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Nay
Chairman Eskildsen	Absent
Etchart..	Aye
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Absent
Graybill	Nay
Gysler	Absent
Habedank	Aye
Hanson, R. S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Absent
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Absent
Leuthold	Absent
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield.	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin.	Nay
Monroe	Aye
Murray..	Aye
Noble	Aye
Nutting.	Nay
Payne	Aye
Pemberton	Absent
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Ay.
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. President, 50 delegates voting Aye, 40 voting No, 10 not voting.

CHAIRMAN ESKILUSEN: 50 having voted Aye and 40 having voted No, the motion

is adopted.

We're now on Section 4. The clerk will read Section 4.

CLERK HANSON: (Reading) "Section 4: At the session following an affirmative popular vote on the holding of aconvention, thelegislature shall provide for a preparatory commission to assemble information on constitutional questions. The commission may be continued for the assistance of the delegates." Mr. Chairman, Section 4.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Chairman, I move that when this committee does rise and report, after having had under consideration Genera1 Government Proposal Number 2, Section 4, it recommends the same be adopted as amended.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. This section was amended yesterday, as you recall, and I think that there are some other amendments pending to it; so, at this time, I will simply move the adoption as amended to this point.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: I believe we're going to have to have another Section 4 here with the rest of these subsections to correct it.

CHAIRMAN ESKILDSEN: Mr. Aasheim, we made all the subsections sections through this first section. When we get to the second section of this proposal, we'll have to start over again and make those sections, but while we're on— according to our vote, we're now on Section 4 of Proposal Number 2.

DELEGATE AASHEIM: Mr. Chairman, doesn't subsection, or Section 4, as you have determined it, doesn't that apply to all Section 1, 2 and 3?

CHAIRMAN ESKILDSEN: Mags, would you lower your mike? I can't hear you.

DELEGATE AASHEIM: Would--as you're numbering Number 4 here, doesn't that apply to 1, 2 and 3?

CHAIRMAN ESKILDSEN: Would you state your—

DELEGATE AASHEIM: I'm just wondering, what does Number 4 refer to here? Doesn't it refer to all previous sections? I'll withdraw my opposition.

CHAIRMAN ESKILDSEN: We're now on Section 4.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I move as a substitute amendment for the amendment to what was subsection 4 and is now 4 of Proposal 2 appearing on line 2 of page 3, the following wording: "Section 4: Prior to submitting the question of holding a constitutional convention to a vote as provided in Sections 1 and 3 hereof, the Legislature shall provide for a preparatory commission to assemble and disseminate information on constitutional questions comma to assist the voters comma and commaif a convention is authorized comma to continue for the assistance of the delegates." You have this proposed amendment on your deskin writing. The only change would be referring to sections rather than subsections, and the changed wording is underscored in the printed amendment as it has been submitted to you. It's a sheet that says "Mr. President" at the top.

CLERK HANSON: Mr. Habedank, will you please supply the Chair with the amendment?

DELEGATE HABEDANK: Okay. Will you take that up to the Chair, please?

CHAIRMAN ESKILDSEN: I would suggest that if anyone has [an] amendment that long, that they present it to the Chair before they give it so that I have an opportunity to follow it.

DELEGATE HABEDANK: I apologize. I thought copies had been delivered to the Chair as well as all the delegates.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: As you have altered Section 2, there would no longer be any need for a Constitutional Revision Commission being appointed prior to the election. However, it is the feeling of the committee, and my feeling, that based on the experience of this Convention, that if the question of holding a convention is to be referred to the people as provided now by Sections

1 and 3, that the procedure that was followed in connection with this convention, purely by accident, be continued as a constitutional provision and that a revision commission or a constitutional commission, or whatever you want to call it, be created who will not only serve prior to the election but, if the people vote for a convention, continue for the assistance of the convention itself. I have discussed this with Mrs. Robinson, and I believe she is in accord with this amendment, but I will ask her to reply personally in connection therewith.

CHAIRMAN ESKILDSEN: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. Chairman. Yesterday my amendment, which you have on your desk-the purpose of this amendment was to make subsection 4 in accord with subsection 2, where we no longer went through the Legislature for the initiative petition. My primary concern was that we would not institutionalize a Constitutional Revision Commission every time 10 percent of the people of the State of Montana circulated a petition calling for a constitutional convention. Now, I have no opposition to a Constitutional Revision Commission being formed at the behest of the Legislature in Section 1 or on the 20-year period in Section 3. The question here is not really which of these amendments you want, but the Convention must address itself to whether or not you want to constitutionalize a Constitutional Revision Commission--one that would, in Section 3, be formed every 20 years at least or, in Section 1, one that would be formed any time two-thirds of the Legislative Assembly voted to refer this to the people. And I will not speak on my amendment as such because it just brought in line Section 2 and 4.

CHAIRMAN ESKILDSEN: Mr. Clerk, would you read the amendment in Section 4, as it is, so that everyone understands. Read all of Section 4 with Mr. Habedank's amendments in it and all the amendments were placed in yesterday, as it is in its entirety, so that everyone understands what the whole section would sound like now.

CLERK HANSON: The section, as amended by Mrs. Robinson yesterday, read: "At the session following an affirmative popular vote on the holding of a constitution, the Legislature shall provide for a preparatory commission to assemble information on constitutional questions. The commission may be continued for the assistance of the delegates." In Mr. Habedank's amendment, the section would now read: "Prior to submitting the question of holding a constitutional convention to a vote as provided in Sections 1 and 3 hereof, the Legislature shall provide for a preparatory commission to assemble and disseminate information on constitutional questions to assist the voters and, if a convention is authorized, to continue for the assistance of the delegates."

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Mahoney.

DELEGATE MAHONEY: (Inaudible) one of the committee a question. I suppose I ought to. You're mentioning 1 and 3; what about 2?

DELEGATE HABEDANK: Well, that's what you determined to do away with by approving Mrs. Robinson's amendment ofyesterday, and we agree that as far as 2 is concerned, ifthepeople initiate this thing, that a preparatory commission does not necessarily have to be appointed. Originally, the committee thinking was thatthere should always be one before an election, but we've yielded to the wish of the people-of the Convention. By the way you've changed Number 2, this could come up with no way in which the Legislature could take care of it.

DELEGATE MAHONEY: Thank you. I'm perfectly lost now.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: I'm sorry, I've lost you, Mr. Mahoney; but as was pointed out yesterday, the reason for having the Secretary of State certify the filing of the petitions to the Legislature and then the election occurring after that session of the Legislature was to afford a time-interval in which a preparatory commission could be appointed. This Convention of the delegates, by accepting the amendment to Section 2 whereby the Secretary of State will merely put it on the ballot at the next election, there may not be an intervening session of the Legislature and therefore the Legislature would be unable to take care of what has been provided for in subsection— what is now Section 4. There'd be nothing to stop the Legislature from doing it, if they had time and wanted to, but constitutionally, it would be impractical.

CHAIRMAN ESKILDSEN: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I rise in opposition to the amendment and in support of Delegate Robinson's Section 4 as amended yesterday. The original Section 4, as amended, provides that after the people vote to call a convention, then a commission would be established to gather information, and it further provides that the commission may, permissive, be continued during the deliberations of the Convention. As I read the amendment, it would require, mandatory, every 20 years, in view of the fact that we passed Section 3, that there would have to be a commission prior to any voting and it would be mandatory that this appointive commission continue throughout the deliberations of the Convention. I believe this is a very unhealthy situation. I think everyone is in unanimous agreement that the preparatory commission for this Convention did a magnificent job in assembling information. However, I fear the results that might have occurred had an appointive commission been, by compulsory--must continue throughout the deliberations of the elected officials. It is an unhealthy situation, and I therefore oppose the amendment and support Section 4 as amended by Delegate Robinson yesterday.

CHAIRMAN ESKILDSEN: Delegate Romney.

DELEGATE ROMNEY: Mr. Chairman, will Delegate Habedank yield to a question?

CHAIRMAN ESKILDSEN: Will Delegate Habedank yield to a question?

DELEGATE HABEDANK: I yield.

DELEGATE ROMNEY: Would the gentleman describe just what is entailed in disseminating information, assisting voters, and continuing to assist the delegates. I want to know whether the delegates from the people of Montana are going to be led around by the hand.

DELEGATE HABEDANK: Mr. Romney, I think you've raised a very good point, and it's a matter for determination by this delegation as to philosophy. You have two philosophies given here. You have a clear choice. I think what is meant by dissemination is left to the discretion of the people who are on the commission, but I would anticipate it would be exactly what was done in the-before this Convention by a commission of which I was a member, and there was considerable discussion as to whether this commission had the right, after studying the matters of constitutional questions, to disseminate and spend what money they had in their budget to disseminate this information about the State of Montana. They took it upon themselves to do this, and I must state that there was considerable discussion over whether or not they had legal authority to do it. I think that authority should be cleared up and the Convention either prevent them from disseminating information, which, if they are prevented from doing, would seem to do away with any commission before the holding of an election. If you're going to have a commission before an election is held, it seems to me essential that the information they gather is then disseminated to the people. You may call that leading them by the hand; I call it educating them.

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: I think it's a noble experiment, and I realizethat the gentleman and the people associated with him, not only here but in the instance before, were motivated properly. However, I do not agree. I do not think it's the province of any committee set up by the Legislature to spend public moneys in support of one side of a proposition, and that was what was done in the past, and that is what I am fearful might be--result again. I recognize there are two schools of thought, but I choose to be on the obstinate negative.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Felt.

DELEGATE FELT: I move, as a substitute motion, that Section 4 of Proposal Number 2 of the Committee on General Government be deleted in its entirety.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: I have great sympathy for both of the movers of the two alternatives before us, one that was acted upon yesterday and the substitute, by way of amendment, which is on our desks. And I am certainly very happy with the way that the preparatory commission acted and with the members of it and also with the wisdom of the Legislature in having created such a commission and giving it proper authorizations

and also imposing proper limitations upon that commission. I'm, in this instance again, perfectly willing to trust a legislative body to create such a commission at the time, in the manner and with the means that they then believe would be wise. And I do not feel it is necessary for us to run the risk of choosing some improper wording or saying anything in the Constitution that might, at some time, interfere with that preexercise of their own independent judgment, and I am quite confident that just as they were able to do so under our present Constitution, that a legislative body in the future could create such a commission. I do know that some of the members-incidentially, one of my partners-was a member of that commission, too. Some of the members of this commission were not even in support of the idea of having a Constitutional Convention when they were created. But, as a part of their investigative work, they did come, finally, to a unanimous agreement that the proper method was by a convention. But at some future date, they might decide that the proper way of revising our Constitution is by something less than a total convention, and I think that there is an example of a way that the Legislature could use its judgment and that the commission could then use its judgment too. But I do not feel that we need now to spell out in detail the rules regarding this type of preparatory commission. They are not needed in the Constitution, and they may become a hindrance rather than a help.

CHAIRMAN ESKILDSEN: Is there any more discussion? If not, we'll vote on the motion made by Mr. Felt that we delete Section 4 in its entirety. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried. We now have before us Section 5. The clerk will read Section 5.

CLERK HANSON: (Reading) "Section 5: If the majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the Convention shall be the same as the largest body of the legislative assembly. The Legislature may determine whether the delegates shall be elected after nomination by political parties or on a nonpartisan basis, but they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates." Mr. Chairman, Section 5.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 5, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Subsection 5 — or rather Section 5 mandates the Legislative Assembly to provide for the calling of the Convention and, to some degree, dictates the manner in which the Convention shall be called and initially organized. The committee feels this is necessary as, without some clear directions, the Convention, though scheduled and called, could be bogged down before it ever gets off the ground. The committee heard testimony on several delegate proposals. If you'll see Appendix B, you can see the ones that were involved-called for determination of the political complexion of any future convention. The committee, after careful consideration, feels the present Constitution should not make such a determination. The political climate of Montana, and indeed the whole country, is such that the problems of partisanship and political parties as we know them today could be entirely different tomorrow. So, if the Constitution contains partisan provisions, there is also the danger that future electorates may be vexed and irritated by these provisions, as many of the Montana electorate were at the mandated, partisan nature of this Convention. We have allowed that the election could be on a partisan or a nonpartisan basis.

CHAIRMAN ESKILDSEN: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, would Mr. Etchart yield to a question, please?

CHAIRMAN ESKILDSEN: Would Mr. Etchart yield to a question?

DELEGATE ETCHART: I yield.

DELEGATE ROLLINS: Mr. Etchart, do you feel that if all of that mention of the way in which the Legislature would decide whether or not it was nonpartisan or partisan were deleted, that the Legislature could still do the same thing?

DELEGATE ETCHART: No, I don't think so, because they-that was a big question in calling the present Convention, and we thought it should be spelled out so 'that if the Legislature wanted it nonpartisan, they could have it. But, in this Convention, I think the Legislature would have-feeling at the time would have been to call a nonpartisan convention. However, they could not do so, and this spells out clearly that they may do so.

DELEGATE ROLLINS: Thank you.

CHAIRMAN ESKILDSEN: Delegate Bugbee.

DELEGATE BUGBEE: Mr. Etchart, did you address yourself to—

CHAIRMAN ESKILDSEN: Would you like to address a question to Mr. Etchart?

DELEGATE BUGBEE: Excuse me. Yes, I would.

CHAIRMAN ESKILDSEN: Mr. Etchart, would you yield'?

DELEGATE ETCHART: I yield.

DELEGATE BUGBEE: Did your committee address itself to where the legislators could or could not run'! I can't find it in here, and I wondered what you'd decided.

DELEGATE ETCHART: No, we-that didn't come before the committee. That question did not-is that correct, Mr. Habedank?

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, we didn't have a specific proposal requesting that legislators be allowed to run. I think the committee, as a whole, were quite satisfied after having this Convention with the composition of it, and we just left it out.

CHAIRMAN ESKILDSEN: Any more discussion?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Clerk, are you going to read my proposed amendment?

CLERK HANSON: Right. (Reading) "Mr. Chairman, I move to amend Section 5, lines 12 through 14, page 3, of Committee Proposal Number 2, following the word, in line 12, 'assembly' by striking the words 'the legislature may determine whether the', by capitalizing, in line 13, first word 'delegates' and striking, in the same line, following the word 'elected', striking the following words 'after nomination by political parties comma or' and further amend on line 14 following the word 'basis' comma by striking the word 'but' and inserting in lieu thereof the word 'and'."

CHAIRMAN ESKILDSEN: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, Marshall suggests reading in its entirety, and I will do that, with your leave. "Delegates shall be elected on a nonpartisan basis, and they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates." Mr. Chairman, my proposed amendment merely makes obligatory that delegates for a future Con Con run on a nonpartisan basis. May I speak briefly to my motion?

CHAIRMAN ESKILDSEN: Mr. Kelleher.

DELEGATE KELLEHER: There was only one dangerous reef or iceberg for our ship, Con Con, and that was last November. And to our credit, we avoided crashing on that reef, and since that time, we have had no trouble on partisanship, and I find myself in deep sleeping with what I thought were once strange bedfellows on many, many issues. And I feel that there is-that we should learn from our own experience and pass that advantage on to future constitutional conventions. Party affiliation means absolutely nothing at a Con Con, and I think we're all agreed on that. It has nothing to do with our basic political philosophy. Thank you.

CHAIRMAN ESKILDSEN: Mr. Harrington.

DELEGATE HARRINGTON: I'd like to speak on the original motion. I feel that we should leave it as it is. I feel that it is very important that-leave it up to the Legislature. I think this could be quite a problem if we tried to spell out "nonpartisan" right now. I think it would be much better to leave it as it is. Thank you.

CHAIRMAN ESKILDSEN: Is there any more discussion on Mr. Kelleher's—

Mrs. Babcock.

DELEGATE BABCOCK: May I ask Mr. Kelleher a question, please?

CHAIRMAN ESKILDSEN: Will you yield to a question, Mr. Kelleher?

DELEGATE KELLEHER: Yes, Ma'am—yes, sir.

DELEGATE BABCOCK: Mr. Kelleher, how do you determine that a person is nonpartisan? Do you think that by saying that they're nonpartisan, that they are?

DELEGATE KELLEHER: Many-I'm merely talking about the way we have our names on the ballot. That's all we're talking about here, Betty. I frankly would've felt much freer if I didn't have to put the name of Group A under my name at a Con Con ballot. I felt much freer if I had been listed as an Independent.

CHAIRMAN ESKILDSEN: Mr. Brazier.

DELEGATE BRAZIER: Will the delegate, Mr. Kelleher, yield to a question?

CHAIRMAN ESKILDSEN: Will you yield to a question, Mr. Kelleher?

DELEGATE BRAZIER: Mr. Kelleher. there has been expressed in this part of the room some question how a nomination would be conducted if you don't have partisanship or some other way of distilling down the number of candidates. I assume from the language of your motion that you would leave that detail to the Legislature, but for my own enlightenment and the enlightenment of others, I respectfully request that you give us an example of how the nomination process might work.

DELEGATE KELLEHER: I think those of us that filed as members of Group A or Group B would not-could not be so lazy as we-and we'd have to get out and hustle like the other six members of non-Group C and just get out and work, that's all, and get X number of signatures; I think that's how they got on the ballot, is that right, George?

CHAIRMAN ESKILDSEN: Mr. Brazier.

DELEGATE BRAZIER: Would the delegate, Mr. Kelleher, yield to another question?

CHAIRMAN ESKILDSEN: Will you yield to another question?

DELEGATE KELLEHER: Yes, sir.

DELEGATE BRAZIER: Mr. Kelleher, my concern is how do you distill the number of candidates down to those who would qualify for the general election? For example, in Helena we had 48 candidates and wound up with 18 in the general election. Could you give us some thoughts on that point, please'?

DELEGATE KELLEHER: There's no reason why you couldn't have a primary. Well, it wouldn't do you any good to have a primary. You just have one general election, that's right. If you don't have a partisanship, you just have one election, wouldn't you'?

CHAIRMAN ESKILDSEN: Mr. Harper.

DELEGATE KELLEHER: —or **a** runoff, I suppose. Excuse me.

DELEGATE HARPER: Perhaps I could remind my friend Bob that if this group were to pass single-member districts, we would not have the kind of bind that Geoff is thinking about where you have so many people running in a multiple-member districts, and the likelihood is that the total number of candidates in a single-member district would nowhere near equal the kind of mob running we had, for example, in this county. I just throw that in on the side because I think that does perhaps bear on this case.

CHAIRMAN ESKILDSEN: Mr. Graybill.

DELEGATE GRAYBILL: First of all, Mr. Brazier, the way you do it is likely to work for judges. You'd have double the number to beelected would go through the primary. But, I would like to agree with Mrs. Babcock. It seems to me that we're only fooling the public if we call ourselves nonpartisan. It seems to me we all got elected and partisanship is not bothering us now, and I'd like to oppose the amendment.

CHAIRMAN ESKILDSEN: Is there any more discussion? If not, we'll vote on the amendment by Mr. Kelleher. That--would you read the amendment again, Mr. Clerk?

CLERK HANSON: The last sentence in Section 5, beginning on line 12, will read as follows: "Delegates shall be elected on a nonpartisan basis, and they shall be elected at the same places and in the same districts as the legislative body determining the number of delegates."

CHAIRMAN ESKILDSEN: You've heard the motion of Delegate Kelleher to amend Section 5. As many as—

Delegate Kelleher.

DELEGATE KELLEHER: I'm sorry. Could I have a roll call, please? Could I have some seconds for a roll call?

CHAIRMAN ESKILDSEN: Having sufficient seconds, there shall be a roll call vote. As many as are in favor will vote Aye, and those opposed will vote No.

Has everyone voted? Does anyone wish to change his vote? The clerk will close the vote.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0. ..... Nay
Arbanas ..... .Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... .Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... .Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... .Aye
Cate ....Aye
Champoux ..... Absent
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... .Absent
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Absent
Erdmann ..... .Aye
Chairman Eskildsen ..... .Absent
Etchart ..... Nay
Felt ..... Aye
Foster ....Aye
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R. S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... .Aye
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... .Absent
Jacobsen ....Absent
James ..... Nay
Johnson ..... Nay
Joyce.. ..... Nay
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... .Absent
Loendorf ..... .Aye
Lorello ..... .Absent
Mahoney ....Aye
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... .Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... .Aye
Murray ....Aye
Noble ..... Nay
Nutting ..... .Aye
Payne ..... Aye
Pemberton ..... .Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ....Aye
Roeder ..... .Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ....Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Spew.. ....Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ....Absent
Van Buskirk ..... .Aye
Vermillion .... Nay

Wagner .. .. .. Nay
Ward .. .. Nay
Warden ..... Nay
Wilson . . . . . Nay
Woodmansey .. Nay

CLERK HANSON: Mr. Chairman, 27 delegates voting Aye, 62 voting No, 11 not voting.

CHAIRMAN ESKILDSEN: 27 having voted Aye, 62 having voted No, the motion is lost. We're now on Section 5. Is there any more discussion? We'll now vote on the motion by Delegate Etchart, and when this committee does arise and report, after having had under consideration Section 5, it recommends the same be adopted. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried. You now have before you Section 6. The clerk will read Section 6.

CLERK HANSON: (Reading) "Section 6: The legislative assembly shall, in the act calling the Convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the Convention." Mr. Chairman, Section 6.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Committee Proposal 2, Section 6, it recommends the same be adopted.
Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Section 6 was designed by the committee as a protection device for future constitutional conventions. Throughout history, unresponsive representative bodies have thwarted the will of their constituents by tokenism. The Legislature may call a convention, or it may be confronted with an accomplished fact through initiative, but it could frustrate popular will by withholding the necessary materials and funds, thus destroying the convention's ability to do anything. This was the thinking for Section 6.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I understand there is an amendment to this proposal before the Convention, which Mr. Arbanas has presented and you have on your desk. They present two different philosophies which the committee considered. The present section is very similar to what was provided for in the present Constitution. The Legislature did fix the day and hour and fixed the pay of members and officers, and it has provided expenses for the Convention. We may feel that they are somewhat limited. We may run outofmoney, and this is what would be covered by Mr. Arbanas' motion. However, it was the feeling of the committee that the Legislature acted responsibly once; with the direct mandate of the Constitution, they can be expected to act responsibly in the future. And the way this is worded would alleviate the fear of the public that a convention would get called and do as it did in New York and spend untold sums of money with salaries that the public felt were wholly unnecessary, and it is only through this method that the public could be reasonably assured that there would be some balance wheel between the Convention itself and just giving them a free ride. And for that reason, we took the philosophy that's set forth in Section 6. Which philosophy you want to adopt is up to this Convention, but we feel the public would feel a lot better about the way we have it in Section 6 than the way Mr. Arbanas proposes it in his amendment. Thank you, Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Clerk, will you read the amendment.

CLERK HANSON: (Reading) "Mr. Chairman, I move to amend Section 6, page 3, line 19, of the General Government Committee Proposal by striking the following (this is after thecomma) 'fix the pay of its members andofficers and provide for the payment of the same, together with the necessary expenses of the convention' and inserting in lieu thereof the following words 'the appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury.' Signed: Arbanas."

CHAIRMAN ESKILDSEN: Mr. Arbanas.

DELEGATE ARBANAS: First of all, I'd like to assure the committee that my intentions were to strengthen the intent that I would (Inaudible) I think that we have done a tremendous step forward, both the committee and the delegates to this Convention, in at least tentatively approving of this idea of initiative petition for a constitutional convention. Then, reacting, I'd like to call your attention to page 14 ofthereportofthe committee which says it could frustrate popular will by withholding the necessary materials and funds, thus destroying the Convention's ability to do anything. I submit that if the beginnings of a convention came from, let's say, the vote of the people or the Legislature, it's probably not likely that there would be much problem. But if, in fact, some many years from now, there was a popular move in a direction that the Legislature was resisting, then we would, in fact, have killed the power of this initiative petition. I know that the money must come from the Legislature. The wording that I chose to USC was used by several of the newer constitutions, and I think what it gives us the picture of is once that mandate comes from the people, that we reduce the possibility of interference by some other agency. And that is the reason why I feel that it would strengthen what the committee is, in fact, trying to do, to be responsive to the will of the people.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion of Mr. Arbanas? If not, you've heard the motion of Mr. Arbanas to amend Section 6. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is lost. Do you have any more amendments for Section 6?

CLERK HANSON: (Reading) "Mr. Chairman, I move to amend Section 6, page 3, line 19, General Government and Constitutional Amendments Committee Proposal, by deleting the word, 'officers' and inserting in lieu thereof the word 'staff. Signed: Romney."

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, this is a housekeeping amendment, in my purview. I don't think "officers" is the right word there. I think "staff' is. I submit that the word could be better changed.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I disagree with Mr. Romney. I agree with his next amendment, but I think that the pay of the members and its officers are as far as the Legislature should go. The payment of the staff and what they receive is something that I feel should be taken care of by the officers of the Convention, just as it is now. And I don't think the Legislatureshould be burdened with having to figureoutthepaymentof the staff of this Convention, merely the members and officers.

CHAIRMAN ESKILDSEN: Is there any more discussion? If not, the motion was made by Delegate Romney to amend Section 6. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: And opposed, NO.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is lost.

CLERK HANSON: (Reading) "Mr. Chairman, I further move to amend Section 6, page 3, line 21, of General Government and Constitutional Amendments Committee Proposal by deleting the period after the word 'convention' and inserting in lieu thereof a comma and the following words and punctuation, quote, comma, 'the duration of which shall be determined by the convention membership'."

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. We learn by experience and judge the future by the past. We are currently racing against time to stay within the appropriation, which is grossly inadequate for a studied, careful preparation of the Constitutional Document. It will be strange if some egregious errors do not creep into the document constructed under such pressure. I dare say that with all of the work that is going into this effort to create a new document, that many of us

are not as well prepared as we would like to be. I'm sure that as the constitutional process wears its weary way along, we are going to find that we are unprepared, unless more time is afforded us, to intelligently and constructively discuss the propositions which the remaining nine articles of the Constitution will bring to our attention. Thus, I think that more time is needed, and I feel like if we don't get this time, we will be rushed into a situation similar to that of a 60-day Montana Legislature when the Legislature hurries into adjournment, passing bills nilly-willy without adequate preparation and sometimes without even having pursued the articles involved. If we are going to have constitutional conventions in Montana's future, particularly if we're going to have them every 20 years, let us not be niggardly in investing in them. It is false economy to use our resources in such a fashion as to improperly fund important enterprises of this character. I fear that the funding of this Convention is going to be found to have been an error in that we were inadequately funded. If more funds should become available and were not used, that is all right. They can revert. Rut, if we need the funds and have to close the Convention in the future-I'm talking about future conventions in this context-it's bad business. I think we should learn by this situation and provide for it. Now, I know that the first thing we're going to hear is that it's going to cost a lot of money, you're opening the floodgates for expenditure of tax money; and I agree that there is a danger here, but there is a greater danger, in my estimation, if we don't provide ample funding, because we'll-may do, in the future, an inadequate job. So I think that we should make it possible to be funded. I know that another objection will be made to the effect that it might result in a deficiency. Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: I know that you have sat in legislatures where there have been many deficiencies, and I know that other members of legislatures have done the same thing. I suggest that if a Legislature can engender a deficiency in a biennium or if we have them annually, there is equal rectitude in a constitutional convention held once in 80 years or once in 20 years or at the will of the public; I ask support.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Romney? Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would agree with Mr. Romney's amendment. I do not know about the other members of the committee. We thought that the way it was worded allowed the Convention to do this very thing, but I believe very strongly that if two constructions can come out of one sentence and, by the addition of a few words you can eliminate the conflict of opinion, you should add the words. And I would agree with Mr. Romney's addition.

CHAIRMAN ESKILDSEN: Delegate Bowman.

DELEGATE BOWMAN: Thank you, Mr. Chairman. I wonder if Mr. Romney would yield to a question.

CHAIRMAN ESKILDSEN: Would you yield to a question, Mr. Romney?

DELEGATE ROMNEY: Happily.

DELEGATE BOWMAN: Mr. Romney, I'm wondering if the intent of your amendment would be to put the Legislature in the position of rather than appropriating a specific amount of money, rather to pay the bill for the Convention after it's over?

DELEGATE ROMNEY: Agreed. Either that or make an appropriation based on estimates and past performances which would be this Convention-and then have a deficiency appropriation in the next session; either way.

DELEGATE BOWMAN: Thank you.

CHAIRMAN ESKILDSEN: Mr. Studer.

DELEGATE STUDER: Mr. Chairman, I think Delegate Romney's amendment makes a lot of sense, and I heartily support him.

CHAIRMAN ESKILDSEN: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, I oppose the motion of Delegate Romney. I feel that the Legislature is the one that should appropriate the funds of the State of Montana. I think that they've done a fine job in the past as far as this Convention is concerned, and I think it only points up our job to do the job as we've been given by the Legislature on the amount of funds delegated.

CHAIRMAN ESKILDSEN: Delegate Erdmann.

DELEGATE ERDMANN: I speak in opposition to this proposed amendment, too. Itreminds me of the Parkinson Law. Work expands to fill the amount of time available and I have great apprehension about no limits to the amount of money to be spent.

CHAIRMAN ESKILDSEN: Delegate Joyce.

DELEGATE JOYCE: Mr. Chairman, I raise this question. I do not believe the proposed language accomplishes the purpose. There is no limit on the duration of this Convention. We can stay here for 2 years. The only trouble is, we won't have any money after next month, and I don't think the amendment accomplishes the purpose. Delegate Arbanas came closer to it, and it seems to me that it would need clarification to specifically authorize in the Constitution that the Convention could, in fact, spend money and thereby create a deficiency if the desired purpose of the amendment were as stated by Delegate Romney. I just raise that for the consideration of the delegates.

CHAIRMAN ESKILDSEN: Is there any more discussion? If not, you've heard the motion of Delegate Romney to amend Section 6. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is lost. You now have before you—

CLERK HANSON: -another amendment.

CHAIRMAN ESKILDSEN: -any more amendments?

CLERK HANSON: "Mr. Chairman. I move to amend Section 6, page 3, line 19, of the Constitutional Revision Committee Proposal by deleting the comma following the word 'officers' and inserting the following words and punctuation 'in an amount equivalent to that of the members of the legislative assembly comma'. Signed: Artz."

CHAIRMAN ESKILDSEN: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. There has been concern evidenced here in two different versions. Number one, that the legislative assembly could thwart the intent of the people to have a constitutional convention by not allocating or appropriating proper funds. They could still do this the way it's worded by cuttingthepay down to a penny a day or something which would make it impossible for all people to participate, especially those whose income would not permit them to come over here without being compensated. The other side says that if we leave it too wide open, then the people might worry about how much money is going to be expended and kill it. This is a sort of a compromise between those two aversions and I ask that you adopt it. Thank you, Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I rise in opposition to the motion to amend. There has been some talk about continuous acting legislative bodies withsalaries anywhere from $6,000 a year up. If the Convention only lasted 60 or 90 days, the salaries would be outrageous, and I think we've got to leave it up to the Legislature to determine what is a reasonable pay for the delegates. If they would thwart the will of the people by fixing the salary at 1 cent, I am sure they would lose their office the next time they're up for election, and they wouldn't dare do it. So, I think it's a legislative matter.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Artz? Do you wish to close, Mr. Artz?

DELEGATE ARTZ: I wish to close and answer Delegate Brown. We felt that the amount equivalent would provide for that-that this would insure that if the delegates were only here for 60 days, they would only get 60/360 of the annual pay. That is the intent of the motion. Thank you, Mr. Chairman.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Artz to amend Section 6. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The Noes have it. The motion is lost. Are there any more amendments? You now have before you, in its entirety, Section 6.

Mr. Mahoney.

DELEGATE MAHONEY: (Inaudible) some of the committee answer a question for me, please?

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Mahoney.

DELEGATE MAHONEY: After the amendments that were put in in Section 2-now, this took all the Legislative Assembly out, if I'm correct. Now, I'm wondering if we're going to be able to have Section 6 tied to Section 2 in order to do it. This is a point of information only. I'm just lost right here.

DELEGATE ETCHART: I think so. I think they'll fit.

DELEGATE MAHONEY: Well, it said the Legislative Assembly shall, in the act of calling of the Convention, designate the day, hour and place of its meeting. Now, under the other, you took the Legislative Assembly out entirely. Will it mean, then, that the petitions will have to carry the date and the hour? If the committee would like to work on this, I would gladly move passing of it so that the committee could sit down and work this thing out. I'm not trying to antagonize anything or like this, Mr. Chairman, but I think we should have some point on that.

DELEGATE ETCHART: Well, Mr. Mahoney, I think this is a mechanical thing, and I don't think there is any conflict. I think the Legislative Assembly shall, in the act of calling the Convention-shall designate the day, hour and its place of meeting, fix the day, and so on, but I don't think this is in conflict with Section 2.

DELEGATE MAHONEY: Well, you have two different setups. One is where the Legislature is calling it, and now you have another one where the Legislature is not calling it-where the people are calling it-and I just wonder. At this point, I'm trying to get clear. I think we should clear it up today.

DELEGATE ETCHART: Well-Mr. Mahoney, Section 2 is the initiative section and the purpose of that is to put the question of calling a convention to the people. That is the purpose of that.

CHAIRMAN ESKILDSEN: Mr. Mahoney, you should be recognized if you want to continue.

DELEGATE ETCHART: -and the mechanical parts of it, setting the date, hour, place of meeting of the Convention would be provided by the Legislature.

CHAIRMAN ESKILDSEN: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, if I could address myself to that, Section 2 only applies to the method of election so that-for asking for a convention. If you'll look in Section 5, then it says after amajority vote-on thequestion; this would apply whether the vote came about by initiative, by legislative action or by the 20-year period. Then, it says that the Legislative Assembly shall, at its next session, provide for the calling thereof, and Number 6 merely illustrates the way it would be called. So I think the sections work as well after amended as they could have.

CHAIRMAN ESKILDSEN: Is there any more discussion? If not, Mr. Etchart.

DELEGATE ETCHART: I close.

CHAIRMAN ESKILDSEN: If not, the question arises on the motion by Mr. Etchart, that we adopt-when this committee does arise and report, after having had under consideration, it recommend the same be adopted, Section 6. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried. You now have before you Section 7. The clerk will read Section 7.

CLERK HANSON: (Reading) "Section 7: Before proceeding, the members shall take the oath otherwise provided in this Constitution. The qualifications of members shall be the same as the highest qualification required for membership in the Legislature. Vacancies occurring shall be filled in the manner provided for filling vacancies in the Legislative Assembly or as otherwise provided by law." Mr. Chairman, Section 7.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 7, it recommend the same be adopted.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. Section 7 was designed by the committee to help insure continuity of the Convention itself. Again, the committee feels such measures are necessary to assist future conventions in their tasks and that such assistance should be provided in the Constitution.

CHAIRMAN ESKILDSEN: Is there any more discussion on Section 7?

Delegate Martin.

DELEGATE MARTIN: As a substitute motion, I move that we delete the section.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Delegate Martin?

Delegate Martin.

DELEGATE MARTIN: I do so that we're here to write a convention, not to legislate.

CHAIRMAN ESKILDSEN: Delegate Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would just call to your attention that Section 7 is almostverbatim thepresent readingofthesection under which we had this Convention. We thought having it been construed by the Supreme Court and the Convention having gone through one session, it would be better than try to strike out new paths. I will read to you from the present Constitution so you can compare it. "Before proceeding, the members shall take an oath to support the Constitution of the United States and the state of Montana and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly." I think, except for meeting the situation of unicameral, bicameral, and so forth, Section 7 carries out the intention of the Legislature, and then we've added "or as otherwise provided by law".

CHAIRMAN ESKILDSEN: Mr. Blaylock.

DELEGATE BLAYLOCK: I support Mr. Martin's motion. I think we could take it out.

CHAIRMAN ESKILDSEN: Is there any more discussion? Do you care to close, Mr. Martin?

DELEGATE MARTIN: Mr. Chairman. It seems to me that once we decide on something, that we should leave something up to the Legislature, because they're going to do the appropriating, they're going to set forth the conditions and one thing [or] another; and as far as I'm concerned, why, we should be fundamental in our determinations-not try to legislate as well.

CHAIRMAN ESKILDSEN: You now have before you the substitute motion by Mr. Martin that we delete Section 7 in its entirety. All those in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: Division having been called for, you'll use your voting machine. All those in favor will vote Aye. Those opposed will vote No. Has everybody voted? Does any member wish to change his vote? If not, the clerk will close the vote.

CLERK HANSON: Mr. Chairman, 39 delegates voting Aye, 41 voting No.

CHAIRMAN ESKILDSEN: 39 having voted Aye, 41 having voted No, the motion is lost. You now have before you the original motion by Delegate Etchart that when this committee does arise and report, that it recommend Section 7 be adopted. All those in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried. You now have before you Section 8. The clerk will read Section 8.

CLERK HANSON: (Reading) "Section 8: The convention shall meet within 3 months after the election of the delegates and prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electorates for their ratification or rejection as a whole or in separate articles or amendments as determined by the convention and at an election appointed by theconvention for that purpose or at the next general election, but not less than 2 months after the adjournment

thereof, Unless so submitted and approved by the majority of the electors voting thereon, no such revision, alteration or amendment shall take effect." Mr. Chairman, Section 8.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 8, recommend the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: This section was also designed to help structure futureconventions, but as with other sections, the structuring is flexible enough to allow for changing conditions. One thing I would point out is the inclusion of the word "thereon"; and this would define a dilemma that might be facing adoption of this Constitutional Convention, in that the voters actually voting on the question of adopting the Constitution, a majority of those voters would be what would be required to adopt the Constitution. And I think under our present language--maybe I'm getting out of my field here-but under our present language, it's a majority of the people voting, and there might be people voting that aren't voting on the question of the Constitutional Convention. So, the word "thereon" narrows it to the people actually voting on the question of the Convention.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I would also like to call to the attention of the delegation the change that was made not only there on "voting thereon", but also the present Constitution provides it shall be submitted for voting not less than 2 nor more than 6 months after the adjournment thereof. We have eliminated "after not more than 6 months"; it should be not less than 2 months to take care of the situation where you could have a primary election or a general election and you may have a slight interval, and we've just provided for the next general election.

CHAIRMAN ESKILDSEN: Is there any more discussion on Section 8? Are there any amendments? If not, you have before you Section 8, in its entirety. It has been moved by Delegate Etchart that when this committee does rise and report, after having had under consideration Section 8, it recommend the same be adopted. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried. You now have before you Section 9. The clerk will read Section 9.

CLERK HANSON: (Reading) "Section 9: Unless otherwise provided, any revision becomes effective on the first day of July after the certification of the election returns by the secretary of state." Mr. Chairman, Section 9.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: After having had under consideration General Government Proposal Number 2, Section 9, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Section 9 allows the Convention to provide for its own adoption schedule, and it also provides a general guideline and a schedule, should somerevision not be scheduled by the Convention. I think it's fairly self-explanatory.

CHAIRMAN ESKILDSEN: Is there any more discussion on Section 9?

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, may I inquire of Mr. Etchart, please?

CHAIRMAN ESKILDSEN: Mr. Etchart, do you yield to a question?

DELEGATE ETCHART: I yield.

DELEGATE MURRAY: Mr. Etchart, it says, unless otherwise provided-provided by whom? The Legislature or the Convention or both? And is there any problem with that that you can see?

DELEGATE ETCHART: I would refer to my legal counsels over there. Maybe they could answer that.

DELEGATE MURRAY: Maybe-Mr. Chairman, perhaps Mr. Habedank could answer that for me.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. Mr. Murray, it was our thought that it would be provided by the Convention, but if the Legislature is going to provide it, I don't think it makes any particular difference. The thinking of the committee was that in case somewhere something wasn't provided, there'd be an effective date for anything that's missed. And I think it's possible that something might be missed.

CHAIRMAN ESKILDSEN: Mr. Foster. No, Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I rise in opposition to 9. I think it's very dangerous. I'd like to hear something from the Committee on Transitional Documents. I think if we were to remain silent on the problem, it would take care of itself because the Convention could make that determination while they were in Convention. I think it's unnecessary and probably dangerous.

CHAIRMAN ESKILDSEN: Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman, I think this wording, "unless otherwise provided" takes care of all of these things. I think that was put in there-and it was the thinking of the committee, I'm sure-that if it was scheduled by Style and Drafting or scheduled by any part of the Convention, that those things would be taken care of that way. But, where they're not provided, then, of course, it goes into this July first thing.

CHAIRMAN ESKILDSEN: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I think I can see where this is potentially very dangerous, because if they missed the date to provide the effectiveness or however this committee goes -they put these things into effect-and if they missed one and the voting was the same as we have this year, I think it could be real dangerous, because they would only have about 25 days to get in there and get something done to put it into effect.

CHAIRMAN ESKILDSEN: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. Believing that this may not be as important as we first thought it was, I move we delete Section 9.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Harper? If not, you have the motion of Mr. Harper to delete Section 9 in its entirety. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: Motion is carried.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the Committee of the Whole recess until the hour of 1 o'clock a.m. this day.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr.-

DELEGATE MURRAY: -p.m. this day—

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Murray to recess until 1:00 p.m. this day. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

(No response)

CHAIRMAN ESKILDSEN: We stand in Recess.

(Recess-reconvened at 1:00 p.m.)

CHAIRMAN ESKILDSEN: Members of the Committee, you will please be in order. (Inaudible)

Mr. Etchart.

DELEGATE ETCHART: Do you want me to restate the motion?

CHAIRMAN ESKILDSEN: Yes. I might mention this-that we could go right on with the Section 9 and start with Section 10, call Section 2 Section 10 and start from there and go on. Style and Drafting will correct all the numbers that are missing anyway. So, if you just withdraw your motion, we could merely start with Section 2 and call that subsection 1 of-Section 2 would be Section 10.

DELEGATE ETCHART: Well, I'll withdraw my motion and then move that Section 2 be considered Section 10 and the subsequent subsections be numbered in order.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: This is in line with what we did earlier in Section 1 so that we may vote on each section in order.

CHAIRMAN ESKILDSEN: Mr. Clerk, will you read Section 10?

CLERK HANSON: (Reading) "Section 10: Constitutional amendment by the legislature. Amendments to this Constitution may be proposed by any member of the legislative assembly. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be a part of the Constitution when approved by either of the following procedures."

CHAIRMAN ESKILDSEN: Would you read-

CLERK HANSON: Subsection 1.

DELEGATE ETCHART: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee does rise and report, after having had under consideration Section 10, which is the same as Section 2 in the Proposal Number 2, that it recommend the same be adopted.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The introductory paragraph of this section establishes one method by which constitutional amending may be commenced. It is important to note that two-thirds of the members of the total membership of the legislative assembly is required to begin the amending process. Now, this is different than we have, where it requires two-thirds of each house. This means that in a bipartisan situation with 20 members in the upper house and 40 members in the lower house, a vote of the lower house would be sufficient to begin, on the vote of 20 members of the upper house and 10 members of the lower house or any two-thirds mixture of this membership. The committee feels such a measure is restrictive enough to prevent frivolous legislative action, it is open enough to overcome stringent opposition of a few well-placed members of one bicameral house. If the provision were two-thirds of the member of both houses in our hypothetical legislature, 7 members of the upper house could thwart the wishes of their 53 fellow legislators. In that situation, the plurality of elected officials necessary to achieve a legislatively originated constitutional amendment is 90 percent or nine-tenths rather than two-thirds.

CHAIRMAN ESKILDSEN: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, having voted with the prevailing side on Delegate Martin's motion this morning, I would—

CHAIRMAN ESKILDSEN: **You're** out of order, Mr. Kelleher. We're on Section 10 right now. You have to waituntilweresolvethemotion that's been made by Mr. Etchart before we can go on to another motion. Is there any more discussion on Mr. Etchart's motion on Section 10 that when this committee does arise and report after having had—

DELEGATE ETCHART: No.

DELEGATE FELT: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: It may seem a little more ridiculous than it is, but would Mr. Etchart yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Etchart yield to a question?

DELEGATE ETCHART: Yes.

DELEGATE FELT: He's actually been too busy with his work, so I wasn't able to ask him the question. As the proposal is before us allowing for a proposed amendment to be—to reach the ballot, at least, by a roll—affirmative vote of two-thirds of all the members thereof, whether one or more bodies-would this-if we had, for instance, a House of 80 and a Senate of 40, total of 120, could they get-their necessary two-thirds, I guess, would be 80—and get all of the votes in the House then that would beneedediftheywereunanimous, and the Senate wouldn't need to cast a single vote for it?

CHAIRMAN ESKILDSEN: Would you please use the microphone to answer? (Laughter)

DELEGATE ETCHART: Mr. Felt, your assumption is correct. Any two-thirds of a combination of the houses would accomplish this. So, all of the-if the membership of the House could accomplish this without the vote of any senators.

DELEGATE FELT: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: I will not only therefore rise in opposition to the proposal, but I will offer an amendment to the proposal. I don't have this written out, but it's fairly simple. In line 17, delete the word "all" and in line 17, delete the words "thereof whether one or more bodies" and in lieu of those words, insert the words "elected to each house". I will move as a substitute motion that the Section 10, as amended, do be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: I believe the point of the amendment is quite obvious. I do not know whether we are going to end up with a bicameral or unicameral Legislature, and no matter what we ended up with at this time, it's quite possible at least that 10 or 20 years from now, a different body might exist, and I would like this portion of the Constitution, which deals with methods of submitting proposed constitutional amendments to the people, to not need change. And I feel that the use of a bicameral legislative body, if we do go to it, does not mean that we will really have only one body but have them meet in two separate rooms and that the votes of one can, in effect, take the place of votes to be cast in the other body. I do lean toward a unicameral Legislature, myself, but I can also see if we're going to go to a bicameral legislative body, that each house should have its own dignity, should have its own integrity, and should be able to vote as a separate body. Ifwe'regoingto accept that concept of check and balances by splitting the Legislative Assembly into two bodies, then I think we should certainly require something, at least a majority vote in each house. To permit one body to outvote the other completely would negate the whole principle, and I am afraid that I wasn't paying much attention when we coursed through Section 1 here. If my proposal here did meet with favor, I would want to take another look, at the appropriate time, at Section 1, which does deal with a different subject, of course, so it might not need to necessarily correspond to what I am proposing here now. But I'm calling that to your attention because I think somewhat the same problem would existin the actionwetook earlier in regard to the question of what kind of vote is needed in order to submit to the electors the question of calling a constitutional convention. That, of course, is different from proposing an amendment to the Constitution, but somewhat the same question does lie to both matters. In any event, I'm very seriously in opposition to the proposal as it appears before us in the committee report and which could have the result that a house with one large membership could completely dominate on a question such as this. Thank you.

CHAIRMAN ESKILDSEN: Delegate Erdmann.

DELEGATE ERDMANN: I rise to support the amendment of Mr. Felt for the same reason. I have been a strong supporter of unicameral. I may say I'm wavering a little since the performance yesterday morning. However, may I now make an observation just on the philosophy that we have seen undergo such a complete change since our founding fathers wrote our first Constitution. I mean, in regard to the whole matter of constitutional revision. As you remember, they made constitutional revision deliberately difficult but possible. My question now-it really makes me wonder at our constant effort to make it so very simple, both in the convention process and now in the amendments. I'm wondering one of two things: whether we, as an assembly, are already so lacking in self-confidence that we're questioning our own ability to write an enduring document, or the second point might be, that we are so carried away with our own self-importance as delegates, that we want to be sure we may have a chance to come back here every 20 years to have another crack at it. Thank you, Mr. Chairman.

CHAIRMAN ESKILDSEN: Delegate Aasheim.

DELEGATE AASHEIM: Mr. Chairman, would Mr. Felt yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Felt yield to a question?

DELEGATE FELT: I yield.

DELEGATE AASHEIM: Mr. Felt, the way the section reads now, we have to have two-thirds of all the members of the assembly. Ten people could be absent from the assembly when the vote is being taken and practically kill the possibilities

of making an amendment. Would you consider adding to your amendment "present and voting"?

DELEGATE FELT: Yes, indeed, I would. I believe it would improve my amendment, and I'm very glad you called it to my attention. The wording that I used is drawn from our present Constitution, and I do think it would be better to say "members present and elected". It was only because this came to my attention recently that I did not think to include the words suggested by Delegate Aasheim, and I would very much like you to make that as an amendment to my substitute motion, and I would support your amendment and the motion together.

CHAIRMAN ESKILDSEN: Mr. Felt, would you make the motion?

DELEGATE FELT: Give me a moment or two to write it, perhaps, Mr. Chairman, so I won't make any mistake in that, and then I can propose it unless Mr. Aasheim is already prepared to do so.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I believe it's quite simple. On line 17, write "include two-thirds of the members of each house present and voting" and strike "thereof'. Wouldn't that take care of it, Mr. Felt?

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Felt yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Felt yield to a question?

DELEGATE FELT: I yield.

DELEGATE AASHEIM: Wouldn't that take care of it? After (Inaudible).

DELEGATE FELT: I think it would, Mr. Aasheim. If you're going to make it as an amendment to my substitute motion, I had already stricken the word "thereof', for instance, so I think if you just inserted the words "present and voting" after the word "members"-

CHAIRMAN ESKILDSEN: Mr. Felt, will you and Mr. Aasheim get together and write this up?

DELEGATE FELT: Yes, indeed, Mr. Chairman.

CHAIRMAN ESKILDSEN: Thank you.

Mr. Marshall-Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, thank you. I have a problem with two first names and two last names. I move that we pass consideration of Section 10 and go to what would be Number 11 because I can foresee the possibility of a deletion of Sections 11 or 12 and require an additional amendment to Section 10.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Murray. Is there any more discussion?

Mr. Felt.

DELEGATE FELT: In view of that comment, I would support Mr. Murray's motion. We are prepared, when the time is right, now, with our amendment.

CHAIRMAN ESKILDSEN: Thank you. Any more discussion? As many as are in favor of the motion made by Mr. Murray, say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

(No response)

CHAIRMAN ESKILDSEN: The motion is carried. You now have before you Section 11. The clerk will read Section 11.

CLERK HANSON: (Reading) "Section 11: The legislative assembly may refer the proposed amendment to the voters of the state of Montana to be voted on in the next general election held in the state. In such event, thesecretary ofstateshall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published, twice each month for the 2 months previous to the next general election for members to the legislative assembly. If approved by a majority oftheelectors voting thereon, the amendment shall become a part of the constitution on the first day of July after certification of the election returns unless the amendment otherwise provides."

CHAIRMAN ESKILDSEN: Mr. Etchart, would you move that subsection 1 become Section 11?

DELEGATE ETCHART: Mr. Chairman, I believe I moved that in my previous motion that Section 2 be numbered Section 10 and then that all of the succeeding subsections be numbered in

order, but if you would like, I'll move subsection 1 be considered Section 11.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Etchart. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: Motion's carry.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 11, it recommend the same be proposed.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I think that this section as read by the clerk is self-explanatory. The Legislative Assembly may refer the proposed amendment to the voters of the State of Montana to be voted on in the next general election held in the state, and then it sets the procedure; in such event, the Secretary of State shall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published. There was some fear that perhaps some of the counties don't have a newspaper or wouldn't have a newspaper in the future. However, this language states it would only have to be published in the counties in which there is a newspaper published. Then it says, "twice each month for the 2 months previous to the next general election for members of the legislative assembly"-and this is to give a written notice that the amendment is going to be proposed and submitted-"If approved by a majority of the electors voting thereon"-the word "thereon" again covers the language I mentioned earlier; it would be the voters voting on the amendment, not the voters voting in the election itself, but only a majority of the voters who actually are voting on the amendment would be able to carry— "the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment otherwise provides."

CHAIRMAN ESKILDSEN: Mr. Harper.

DELEGATE HARPER: I would move to amend this Section 11. In the first line, which is line 21, by striking the word "may" and inserting the word "shall" so that it reads, "The legislative assembly shall refer the proposed amendment to the voters of the state." And I call your attention to the fact that, in moving this one innocent-looking little word, I am really speaking to the idea of cutting out the idea of the following Section Number 12 in which the Legislative Assembly, by a simple majority roll call vote, may elect not to refer the amendment to the vote of the electors; instead, pass it over to the next Legislature. Indeed, it has to go past another general election to do that, deliberately bypassing the electorate in order to give the possibility of an amendment-keep it in the Legislature only. I just-1 think it's only fair to point that out. So, the amendment would read, in line 21, "The legislative assembly shall" instead of "may".

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would oppose the amendment of the brilliant Dr. Harper by virtue of what he said. If you are going to strike out 12, then his amendment would be appropriate. But I consider 12 as the greatest step forward that this Constitutional Convention can make for orderly amendments to the Constitution. I feel that when we have to spend the time that we spend here debating and learning the pros and cons of an amendment to this Constitution, which is what would be done by the Legislature, we are expecting a miracle of the people when we expect them to read this amendment in the paper once, possibly, during the 2 months preceding the election and to make up their mind, without the benefit of discussion, on as considered a basis as the Legislature can do. When I vote for someone to represent me in the Legislature, I vote for someone who has my political philosophy, who has intelligence and in whose judgment I am willing to abide, believing that, if I had the same facts presented to me that he has presented to him, my decision, in large measure, would be the same as his. This man who represents me in the Legislature can choose whether the issue is one of such controversy as the people should decide, on an emotional basis if they want to, or whether the particular constitutional amendment that is needed is one which is of such technical nature as to make it so difficult to explain to the average

voter as not to make this a practical method of referral. I am aware of the fact that it is very easy and popular to say that the public should have the right to vote on everything, and for that reason, in Section 12, which we haven't reached, the public has been given that right through a referendum. And I would urge you, at least for the present, not to strike Number 12 'without hearing a full argument in connection therewith by adopting Reverend Harper's amendment to Section 1 1.

CHAIRMAN ESKILDSEN: Delegate Harper.

DELEGATE HARPER: A brief' response to my esteemed colleague, Mr. Habcdank. I understand that line of reasoning. I think that line of reasoning could've been followed by saying that the Constitutional Convention of which we now comprise could decide that certain things could go to the people and certain things were of such technical nature or hard to understand that perhaps they should not vote on them, because if we are allowing a" amendment process which may stay in the Legislature only, while he is thinking in terms of technical issues or complex issues, there is nothing in the writing of this that does say you couldn't start with page 1, Section 1, of the Constitution and in successive legislatures amend the whole thing, with the people never having a right to vote on it unless they just get mad enough by initiative to propose a new convention or to some way bypass the Legislature. I don't think it's unnecessary. I think it's really a sort of a vital point that we're talking about with the shifting of this little word.

CHAIRMAN ESKILDSEN: Any more discussion'? If not—

Mr. Loendorf.

DELEGATE LOENDORF: That's close; Loendorf. (Laughter) Mr. Chairman, I rise in support of the amendment proposed by Mr. Harper and in opposition to my good friend, Mr. Habedank. First of all, I think a constitutional amendment should always be referred to the people. I agree with Mr. Habedank as to what he said as it relates to legislative matters, but this provision, it seems to me, puts the burden on the people of finding out what the Legislature has done regarding their Constitution. If we require the Legislature to submit this matter to the people, the legislator must the" go home and explain to the people why they should vote for this particular provision. If we simply allow the people a veto power-that is, a referendum to veto what the Legislature has accomplished—then they must not only find out what the Legislature has done in regard to their Constitution, but they, who have not been here and involved in the discussion, must then attempt to explain it to the other people in their area. And I believe we should keep the burden on the Legislature as to informing the people as to what they're doing to their Constitution.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I rise to support Mr. Harper's amendment. If we're going to submit this entire Constitution to the people of Montana for their adoption or rejection and we don't consider it too complicated for them to make a decision, certainly we should be able to submit one amendment or more at a time to them later on. So, I support the amendment.

CHAIRMAN ESKILDSEN: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairma", I rise in support of Mr. Habedank's original motion. I think that all of us realize that over the years we've had many, many more amendments defeated by the people than we've had passed. And probably a good many of those were very worthwhile amendments, but the people didn't get the opportunity to learn what. they were. When we had the Constitutional Convention proposal put to the people, we had a lot of money that was appropriated, and we had a commission that was set up to sell the people on the fact that we needed this Convention. And I am not arguing here whether or not we needed it. I'm just stating the fact that I think this is the reason the people voted so overwhelmingly to have the Convention. I do believe that, with the provision that the committee has proposed in their original proposal, that it only takes 5 percent of the people, and if the Legislature, in their wisdom, with two-thirds vote in two successive sessions, decides that something in the Constitution should be changed, probably they're going to have a very good reason for doing that. But if they don't do what the people want, the people, by a mere 5 percent of the people, can change it. So I think that it would be for more orderly amendment of the Constitution for those things that are probably real critical and should be amended.

CHAIRMAN ESKILDSEN: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman. I think we should place a little emphasis on lines 13 and 14, to note that there is a petition that can be signed by 5 percent of the legal voters of the state, and there is no mention that this need be spread over two-fifths of the counties or districts of the state. In the entire Constitution, this will be the easiest petition to reach and get the number of signatures for that there is anywhere in the Constitution, and that the people do want to review the Legislature's action. I think that this will be the easiest petition of all in this Constitution. In fact, it could be merely one city, one large city in the state would be all it would take to get that particular petition without having it spread over two-fifths or one-third of the counties.

CHAIRMAN ESKILDSEN: There any more discussion?

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I rise in support of the committee proposal. We may have a lot of housecleaning after this Constitution is adopted, if it is, and I also think of this Suffrage Act-that we've had to amend it twice in the past few years to comply with federal law. I think this is a good method to clean up things in the Constitution that are noncontroversial and take care of it with a minimum of expense—if anything is very controversial that it will not pass by two-thirds of two consecutive legislative sessions: and I believe it is a good housecleaning measure and is a modern thing that should be in our Constitution.

CHAIRMAN ESKILDSEN: Mr. Skari.

DELEGATE SKARI: I rise in support of the committee proposal also. I think that two-thirds majority in each house is a safe margin. I don't think this is an easy vote to get. I think also that the 5 percent petition allowance here is an adequate safety valve. I can think of little technicalities that, probably could have been taken out. bothersome things such as the word "printing" in the legislative article that has cost the state considerable money over the past years. It could've been taken out right here in the Legislature. For that reason, I support the majority committee proposal.

CHAIRMAN ESKILDSEN: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I rise in a point of order. I thought we were to debate these sections, section by section. The motion before the house is whether we should change the word "may" to "shall". Let's not get off on another section.

CHAIRMAN ESKILDSEN: You're probably right, Mr. Harlow, but they do tie into one another, and the "shall" does have bearings on another section.

Is there any more discussion on the motion made by Mr. Harper? If not, would you like to close?

Mr. Harper.

DELEGATE HARPER: Yes, 1 would. I see an issue, I guess, that maybe I'm disturbed about --something that the rest of you aren't disturbed about. It seems to me it's a fundamental premise upon which we've operated. that the Constitution is the Constitution of the people, every word of it is voted upon by the people. There is no way, and has never been any way, for the Constitution to be changed without a vote of' the people, and now we are saying that that is no longer necessary to amend the Constitution. The Legislature may amend the Constitution, and we have said the reason for it is there is some housecleaning to be done or there's some technical things to he done. It's apparent. when we come to an issue like this, that this changing of one word may be just a little housecleaning affair, and it may seem so to this Body and it may not seem so to somebody else. I think we ought to keep our fundamental law intact. And our fundamental law, as I understand it, is that the Constitution must be ratified by the people and cannot be changed except by the people. To me, the issue is whether we will turn over any part of Constitution-writing to the Legislature alone without allowing the people the final vote upon it.

CHAIRMAN ESKILDSEN: You've heard the motion by Delegate Harper to amend Section 11 As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried. Are there any more amendments?

CLERK HANSON: Mr. Chairman.

DELEGATE HABEDANK: (Inaudible) a roll call vote and ask for seconds—

CHAIRMAN ESKILDSEN: I'm sorry we already had the vote, but if you wish. WC can do it.

DELEGATE HABEDANK: -for a division.

CHAIRMAN ESKILDSEN: A division has been called for. All those in favor will vote Aye and those opposed will vote No on your voting machine.

(Unidentified person asks an inaudible question)

CHAIRMAN ESKILDSEN: Huh'! No, he never asked for a roll call on that; he just asked for a division.

DELEGATE HABEDANK: I wish a division and roll call vote. Ask for seconds.

CHAIRMAN ESKILDSEN: Sufficient seconds having been asked, we'll have a roll call vote. The clerk will (Inaudible). As many as in favor, vote Aye and opposed, vote No. Any of those wish to change your vote? Has everyone voted? The clerk will close the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Nay
Barnard	Aye
Bates	Aye
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown.	Nay
Bugbee	Absent
Burkhardt	Absent
Cain	Aye
Campbell	Aye
Cate	Absent
Champoux	Absent
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Nay
Graybill	Absent
Gysler	Absent
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Nay
Harper	Aye
Harrington	Absent
Heliker	Nay
Holland	Nay
Jacobsen.	Aye
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Absent
Loendorf	Aye
Lorello	Nay
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Absent
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Nay
Simon	Aye

Skari ... ... Nay
Sparks ..... Nay
Speer . . Aye
Studer ..... Aye
Sullivan ..... Ayr
Swanberg ..... Nay
Toole Nay
Van Buskirk .. . Absent
Vermillion Nay
wagner Absent
Ward .. .. Nay
Warden . Absent
Wilson Nay
Wood mansey . . Absent

CLERK **HANSON:** Mr. Chairman, 51 delegates voting Aye, 35 voting No.

CHAIRMAN ESKILDSEN: 51 having voted Aye, 35 having-voting No, the motion carries. Are there any more amendments to Section 11?

CLERK HANSON: (Reading) "Mr. Chairman, I move to amend Section 11, line 21, page 4—excuse me—to amend Section 11, by inserting before the word 'the', line 21, the words 'ifadopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies,'. Signed: Nutting."

CHAIRMAN ESKILDSEN: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, since we're backing into this, why, it's kind of hard to figure out what this amendment is. But, this amendment is progressing in the same—taking the same action that Mr. Harper has already taken, so I would move to pass this amendment till we discuss Section 10.

CHAIRMAN ESKILDSEN: There any more amendments?

Mrs. Blend.

DELEGATE BLEND: I move to amend General Government Section 11 at line 26: after the word "county", insert "(if such there be) or other news media."

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mrs. Blend.

DELEGATE BLEND: I would hope that the day never comes when there will not be county newspapers. Twenty years or any other period of time alters a lot ofthings. I would like, at that time, for all the people in the State of Montana to be well informed of the probability of a Constitutional Convention, and for that reason, in this day and age, I would like to have included the actuality that other communications media could be used to supplement or be used in place of newspapers. Thank you.

CHAIRMAN ESKILDSEN: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, would a substitute motion be in order?

Okay. I don't have it written out, but it's fairly simple. Beginning on line 24, "in such event", down through 29 where it ends "legislative assembly"; I would move to strike that entire bit of language. I think that Mrs. Blend's comments lead in that direction. I think we should leave the Legislature the discretion of deciding the most effective means of advertising amendments. We can't foresee what that might be, but the Secretary of State might someday be asked to advertise them after Sesame street.

CHAIRMAN ESKILDSEN: Is there any more discussion on Mr. Roeder's substitute amendment? If not, as many of those that are in favor of Delegate Roeder's substitute amendment will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Those opposed will say No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried. Are there any more amendments to Section 1 1?

Delegate Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise to ask a question. Could we have the clerk read the words which Mr. Roeder deleted, please?

CHAIRMAN ESKILDSEN: Would the clerk please read the words-of substitute motion?

CLERK HANSON: (Reading) "Beginning on line 24 of Section 11, delete 'in such event the secretary of state shall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published, twice each month for the 2 months previous to the general election for members to the legislative assembly.' Ending on line 29."

CHAIRMAN ESKILDSEN: Are there any more amendments to Section 11?

Mr. Nutting.

DELEGATE NUTTING: I'll withdraw this one too till we take the section.

CHAIRMAN ESKILDSEN: Thank you. Is there any more discussion on Section 11? If not, the question now arises on the motion by Delegate Etchart that when this committee does arise and report, after having had under consideration Sec. tion 11, the same be adopted. As many as are in favor will say Aye-as amended.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Those opposed will say No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried.

You now have before you Section 12. The clerk will read Section 12.

CLERK HANSON: (Reading) "Section 12: The legislative assembly by a majority roll call vote may elect not to refer the amendment to the vote of the electors of Montana as provided in the preceding subsection 1, in which event, the amendment shall be presented to the next succeeding legislative assembly after a general election. If adopted by a two-thirds vote of all the members thereto, the amendment shall become a part of this Constitution on the first day of July following its approval unless, prior thereof, a petition is filed with the secretary of state signed by 5 percent of the legal voters of the state requesting such amendment be referred to a vote of the people as provided in this Constitution for referendum, in which event, the amendment shall not become effective until the secretary of state certifies its approval by a majority of those voting thereon." Mr. Chairman, Section 12.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 12, the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: We've already had considerable discussion on Section 12. It provides for a new method of constitutional amendment. After the Legislature has once passed a proposed amendment by the required two-thirds vote, it's referred to the next Legislative Assembly. If the proposed amendment again passes the assembly by the necessary two-thirds vote, the amendment takes effect on a specified day. The people have a check on the process, as they can, with a petition from only 5 percent of the voters, cause such an amendment to be directly voted on by the people. The small percentage of required petitioners makes this check on legislative abuse extremely viable. One of the bigger assets of this new method of constitutional amendment is economy. Legislative action is much, much cheaper than popular action when the cost of an election is compared with the cost of' a fairly routine legislative function, the passage of a bill. Yet, the state does not lose careful consideration to economic benefit. The people, in addition to the explicit check of petition previously discussed, have the check of making their views known in the timespan between legislative sessions. They also have the opportunity to choose those who make the final decision after the substance of the decision has been stated.

CHAIRMAN ESKILDSEN: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I move that we amend this section by deleting Section 12—

CHAIRMAN ESKILDSEN: Mr. Harper.

DELEGATE HARPER: -the reason being that I think the three ways we have of amending or changing a constitution now are sufficient. And all the things that I said on discussion of changing "may" to "shall" would, I think, apply here, so I will forego the pleasure of speaking on it again.

CHAIRMAN ESKILDSEN: Is there **any** more discussion on Delegate Harper's—

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I concur with Delegate Harper's deletion here. I would also like to ask a question of Mr. Etchart.

CHAIRMAN ESKILDSEN: Would Mr. Etchart yield?

DELEGATE ETCHART: I yield.

DELEGATE BATES: Is it not, true. Mr. Etchart, that there is an election for the new legis-

lators and it would cost very little more to include an amendment at that election, to the people, rather than waiting to give it to the Legislature again?

DELEGATE ETCHART: Well, this is true; but this, as I explained, would be one method where you could amend-take care of housekeeping amendments to the Constitution by the legislative process. If it were controversial, only 5 percent of the people, by petition, could stop the action and place it on a vote of the people. But, of course, you are right that there are the other methods of amendment.

CHAIRMAN ESKILDSEN: Mr. Simon.

DELEGATE SIMON: I rise in support of Delegate Harper's, I would like to call your attention to the second line, and if I had no other reason than that, I would say that beginning with "may elect not to refer" would be all I would need. Thank you.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, thank you. I am not going to reargue Section 2—or Section 12. I considered it a great step forward. Apparently, the delegate assembly does not agree with me in their vote on the word "shall" instead of "may" in Number 11, because if "shall" is in there, Number 12 would be ineffective. However, I would hope that the Convention would exercise this one last chance they have to take this step forward and not delete Section 2 and then go back and amend Section 11.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: I rise in opposition to the substitute motion. I'm going to support Mr. Habedank on this proposition because it's practically a foregone conclusion that if two-thirds of the assemblies, meeting concurrently in 4 years, that if these people-they meet one session and they propose this constitutional amendment. They will then go home and run again for reelection, and very likely, the people will ask them, "How do you stand on this constitutional amendment?"—which the people should if they are aware of this proposition. So, aren't the people then speaking when they come back--when they convene again-2 years later. And I can see where we're going to have to have an easy means of amending this Constitution, if it is adopted.

CHAIRMAN ESKILDSEN: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. I rise in behalf of the position of the General Government Committee. I can't feel that two legislatures and a mere 5 percent of the voters of Montana would be asleep. And we heard plenty before we came to this Convention about not trusting the Legislature in 1889. I would hope that we would exercise more trust than that then has been shown. And I would hope that we would also invite citizen participation by allowing this particular procedure.

CHAIRMAN ESKILDSEN: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. I am still opposed to having this section in here. I don't believe that there is any guarantee or that anybody can give any guarantee that these will always be just household-keeping arrangements and that we might very well have a fundamental thing come before the Legislature and be adopted without being voted on by the people. And there is a possibility, after this Constitutional Convention, that we may have only one house, and for that reason, I still would very much like to vote on any amendments to our Constitution.

CHAIRMAN ESKILDSEN: Delegate Bowman.

DELEGATE BOWMAN: Mr. Chairman, I would like to rise in support of Mr. Harper's motion to delete this section because I do not believe that it's the job of the Legislature to make constitutional amendments, but rather the job of the Legislature to propose the amendments. It's the job of the electorate to pass on them.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Delegate Romney.

DELEGATE ROMNEY: Mr. Chairman. I wish to support the amendment of Delegate Harper. The section under consideration, Section 12, I believe, takes a fundamental power away from the people. The method of doing this in the present Constitution places the power with the people after the Legislature has submitted it. The initiative method places the power with the people. This great leap forward and slip back does not do so, excepting in a left-handed, sinister method. It provides, as an afterthought, that 5 percent of the people can sign petitions and get a vote two sessions later. If there was so much careful solicitude

for the people, why did we not open it up for the people in signing the initiative proceedings—petitions'! There, we have much more stringent regulations. Here, we let the tail go with the hide. 1 insist that this is a monstrosity, a filching of the peoples' rights. I can perceive that it could be used as a subterfuge by the Legislature to stall a decision into some remote future. The passage of this-by two legislatures, and possibly via the electorate-is a clumsy and unnecessary method when two other efficacious methods are in the hands of the people of Montana. I urge the support for the Harper amendment.

CHAIRMAN ESKILDSEN: Any more (Inaudible)?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think we're violating a very basic principle of the type of constitutional government that we have in this state and in this nation, and I support Delegate Harper. The Constitution of the United States is almost 200 years old, does not allow amendment by anyone, save and except those people, those factors, those states that created it. And as a consequence, by the proposal that we have now before us from the committee, we will allow the government that we create to have additional control that the people did not intend. I submit that violates a basic principle. We were sent here by the people to make sure that their rights were expanded, that governments stayed responsible to them, and I think if we do not adopt Delegate Harper's proposal, we are going to be in a position where we have violated that trust and taken some of the rights of the people away from them and reposed it in Helena. I support the amendment.

CHAIRMAN ESKILDSEN: Delegate Berg.

DELEGATE BERG: Mr. Chairman. I also support Delegate Harper's amendment, and I would remind you that this is, after all, a people's Constitution; that it is a Constitution that is answerable only to the people, not to the Legislature. This, with me, is a very fundamental issue, and you cannot violate that by adopting a constitution that is amendable hy one department of the government.

CHAIRMAN ESKILDSEN: Delegate Aasheim.

DELEGATE AASHEIM: Will Mr. Dahood yield to a question?

CHAIRMAN ESKILDSEN: Mr. Dahood yield to it question?

DELEGATE DAHOOD: I yield to a question, Mr. Chairman.

DELEGATE AASHEIM: You said that the Constitution is 200 years old. How old is England's Constitution?

DELEGATE DAHOOD: I'm not concerned about England's Constitution, Mr. Aasheim. I'm concerned about the American Republic and the states that live within it and the states that created the American Republic. I'm now concerned about the people that created our state, and I understand as a former Representative, you can appreciate that the people have apathy and there are things that can happen in both the Legislature and the Senate that are not brought to the attention of the people. And I think a matter that deals with the very basic, fundamental law that governs our state should always be referred to the people that created the state.

DELEGATE AASHEIM: Since I didn't get an answer, could I ask Mr. Habedank the same question?

CHAIRMAN ESKILDSEN: Would Mr. Habedank yield to a question?

DELEGATE HABEDANK: I yield.

DELEGATE AASHEIM: How old is England's Constitution, do you know?

DELEGATE HABEDANK: I don't believe England has a constitution.

DELEGATE AASHEIM: Thank you. (Laughter)

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by-Mr. Harper, will you wish to close?

DELEGATE HARPER: One other comment I think worth noting-Mr. Aashcim said, and it does look at first glance, that since this goes over an election, people will have an opportunity to vote for an incumbent on the basis of whether or not he supports having this constitutional amendment or not. The thought, though, occurs to me that if this were the only issue in an election, people might arrive at an intelligent vote that way. But I daresay, that many of us vote for our legislators on the basis of the kind of people they

are and not on the basis of specific stands on certain issues alone. If I may use a good-1 think this would be a good illustration-if my friend, Mr. Mahoney, runs for the Legislature from our district, then I probably will support him. I would do this because I support Charley Mahoney even if I oppose him on most of the particular votes. (Laughter) No, I mean this seriously. I think we vote-most people vote-for the kind of man they want as legislator. I would not want to make an entire election of a legislator--a Senator or Representative if we have two houses-dependent upon his vote yayed or nayed on one particular constitutional amendment.

CHAIRMAN ESKILDSEN: You now have before you the motion of Mr. Harper to delete Section 12 in its entirety. As many as those—

For what reason do you rise, Mr. Romney?

DELEGATE ROMNEY: I call for a roll call vote and ask for seconds.

CHAIRMAN ESKILDSEN: Having sufficient seconds, we shall have a roll call vote. As many as are in favor will vote Aye, and opposed will vote No.

Has everyone voted? Does anyone wish to change their vote? If not, the clerk will close the vote.

Aasheim Nay
Anderson, J. Nay
Anderson, 0. Aye
Arbanas Aye
Arness Aye
Aronow Aye
Artz Aye
Ask Aye
Babcock Aye
Barnard Aye
Bates Aye
Belcher Nay
Berg Aye
Berthelson Nay
Blaylock Aye
Blend Aye
Bowman Aye
Brazier Aye
Brown Nay
Bugbee Aye
Burkhardt Absent
Cain Aye
Campbell Absent
Cate Aye
Champoux Absent
Choate Nay
Conover Aye
Cross Aye
Dahood Aye
Davis Absent
Delaney Aye
Driscoll Aye
Drum Absent
Eck Aye
Erdmann Aye
Eskildsen Absent
Etchart Nay
Felt Aye
Foster Aye
Furlong Aye
Garlington Aye
Graybill Absent
Gysler Aye
Habedank Nay
Hanson, R.S. Nay
Hanson, R. Nay
Harbaugh Aye
Harlow Aye
Harper Aye
Harrington Absent
Heliker Nay
Holland Nay
Jacobsen Aye
James Aye
Johnson Aye
Joyce Nay
Kamhoot Nay
Kelleher Nay
Leuthold Absent
Loendorf Aye
Lore110 Nay
Mahoney Aye
Mansfield, Aye
Martin Aye
McCarvel Nay
McDonough Nay
McKeon Absent
McNeil Aye
Melvin Nay
Monroe Absent
Murray Aye
Noble Aye
Nutting Aye
Payne Aye
Pemberton Aye
Rebal Aye
Reichert Aye
Robinson Aye
Roeder Aye
Rollins Aye

Romney.....Aye
Rygg.....Aye
Scanlin.....Aye
Schiltz Aye
Siderius.....Aye
Simon.....Aye
Skari.....Nay
Sparks..... Nay
Speer.....Absent
Studer.....Aye
Sullivan.....Aye
Swanberg.....Aye
Toole .Absent
Van Buskirk .Aye
Vermillion Aye
wagner ..... Nay
Ward.....Aye
Warden.....Aye
Wilson .....Absent
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 64 delegates voting Aye, 22 voting No, 14 not voting.

CHAIRMAN ESKILDSEN: 64 have voted Aye, 22 have voted No. The motion carries. Section 2 has been deleted. You now have—

Delegate Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move that Sections 10 and 11 be recommitted to the committee so that it can be rewritten to avoid the confusion that now results from the deletions that have been made to that.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: I don't know whether I can recommit it or not, but in Section 10, you have wording which should be eliminated now that you have Section 11 left. We should change-or make so many amendments that, to me, it would be dilatory procedures on the floor. I'm referring to page 4 of the proposal. By reason of the elimination--or deletion-of subsection 2 and the changes you've made in subsection l-or subsection 11, subsection 10 should berewritten so 10 and 11 become one section with plausible wording.

CHAIRMAN ESKILDSEN: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I resist Mr. Habedank's motion for the reason that I believe that Mr. Nutting had proposed an amendment which would accomplish this purpose, and so, as a substitute motion, I move that we proceed to Section 13 and pass, for the moment, the question of Section 10, which is still unsettled.

CHAIRMAN ESKILDSEN: You've heard the motion of Delegate Murray. As many as in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried.

You now have before you for your consideration Section 13. The clerk will read Section 13.

CLERK HANSON: (Reading) "Section 13: Constitutional amendment by initiative. The people of Montana may also propose constitutional amendments by initiative process. Petitions shall include the full text of the proposed amendment and shall be signed by not less than 15 percent of the legal voters of Montana, which shall include at least 15 percent of the legal voters from two-fifths of the legislative representative districts of Montana. The petition shall be filed with the secretary of state, who shall cause the same to be checked and certified as to the validity of the signatures thereon and, if found to be signed by the required number of voters, cause the same to be published in full in at least one newspaper in each county, if such there be, twice each month for 2 months previous to the next regular statewide election, at which time the proposed amendment shall be voted on. At said election, the proposed amendment shall be submitted to the qualified electorates of the state for their approval or rejection. If approval by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval unless otherwise provided in the amendment." Mr. Chairman, Section 13.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee rise and report, after having had General Government Proposal Number 2, Section 13, recommend it be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Section 13 of the proposed article creates a new power for the people of Montana, the right to initiate constitutional

amendments. The committee feels this is an inherent right in a body politic whose constitution is to be the embodiment of the will of the people. Committee's proposal sets up the exact machinery for expressing this will through establishment of the petition requirements and the administration process. The 15 percent petition requirement and the geographical requirement are high, but the committee feels it is not unreasonable to demand strict standards when dealing with something as fundamental and important as constitutional change. Although the standard is high, the committee does not feel it is so high that pressing popular and needed constitutional reforms could not be initiated by the people. Standard, the committee feels, will operate to check any erratic whimsy.

CHAIRMAN ESKILDSEN: Mr. Mahoney-oh, are there any amendments?

CLERK HANSON: "Mr. Chairman, I move to amend Section 13, page 5, line 24, by striking the figure '15' and inserting in lieu thereof the figure '10' and to further amend, in line 25, by striking the figure '15' and inserting in lieu thereof the figure '10'. Signed: Mahoney."

CHAIRMAN ESKILDSEN: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I move adoption of the amendment.

CHAIRMAN ESKILDSEN: Mr. Mahoney.

DELEGATE MAHONEY: I think that all this does is brings in line with the other, of which they allowed the people, by petition, to sign and get a Constitutional Convention. I don't think it should be any greater to get just a little amendment on the ballot than it should be for an entire Constitutional Convention. I think every one of you have heard all this constitution discussed, and that's all I'm going to say on it.

CHAIRMAN ESKILDSEN: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman. I rise in opposition to the amendment, because if we bring this figure down to 10 percent, it is going to he so near that of a regular initiative petition for a statute, that those who may be in favor of some particular position and might want to have it locked into the Constitution, rather than as a statute, would initiate a petition for a constitutional amendment rather than a statute, and we might be in danger of flooding the Montana Constitution with amendment after amendment that would be better put in the statutes, and we'll have a Constitution that looks like California and Louisiana. So, I oppose the amendment.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Mahoney?
Mr. Rlaylock.

DELEGATE BLAYLOCK: Mr. Chairman, would Mr. Vermillion yield to a question:'

CHAIRMAN ESKILDSEN: Would Mr. Vermillion yield?

DELEGATE VERMILLION: Yes.

DELEGATE BLAYLOCK: Mr. Vermillion, have you ever tried to organize an initiative petition drive across the State of Montana?

DELEGATE VERMILLION: No, I have not. I'm suggesting that the figures are so close that those who are going to start a petition—they'll say, "Let's go for the amendment rather than the statute". And this is my concern.

DELEGATE BLAYLOCK: Well, Mr. Chairman, I rise to support Mr. Mahoney's amendment. I think if we put the figure "15" in there, that would require almost 30,000, and if we're going to require that, we might as well strike this whole section, because I don't think it could ever he done.

CHAIRMAN ESKILDSEN: Is there any more discussion?
Mr. Aasheim.

DELEGATE AASHEIM: I rise in support of Mr. Mahoney's motion. Ten percent of the voters of Montana is about 35,000 signatures, 15 would add a half more; and I believe that that's a difficult figure to reach, and anyone who can get 35,000 signatures is entitled to have the motion presented on the ballot. Let's not forget that the people still are going to vote on this proposition, and if they want that in the Constitution, so be it.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Mahoney:)
Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. I rise also in support of Mr. Mahoney's amendment. We've had a great deal of discussion in the Legislative Committee concerning this and quite a little research — and I think that 8 percent would be very difficult to get; 10 percent is much more difficult to get. It's making it hard enough. I'm sure this is a difficult thing to do and it will not be used very often. Therefore, again, I support Mr. Mahoney's amendment.

CHAIRMAN ESKILDSEN: Mr. Belchrr.

DELEGATE BELCHER: Mr. Chairman. I wish to advise these people that they're putting in a brand new way ofamending the Constitution, by initiative, that we haven't had previous to this.

CHAIRMAN ESKILDSEN: Is there any more discussion on Mr. —

Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman, I just might note that maybe it would have been easier to amend the Constitution via the legislative route that the committee proposed than we're doing now-the members' opportunity to do it.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. At the time this particular proposal was drawn and the figure of 15 were used, it represented a difference of 5 percent between the amount needed for an initiative petition than the amount needed for a constitutional amendment. If the initiative procedure is reduced to 8, which I believe it is, then I believe a proper figure would be 13. But I cannot overemphasize to you what Mr. Vermillion has called to your attention and that is, if you make the percentage almost identical to that required for initiative legislation, the temptation of any group who wants something done will be to legislate into our Constitution and-at least, it was true in our committee, and I think it probably was true of yours-a great many people who appeared before our Constitutional Committee wished matters in the Constitution because they had attempted to get the Legislature to do something and the Legislature wouldn't act, so they wanted legislation in the Constitution. And that will continue to he the case, and, within-if you adopt this as Mr. Mahoney has it amended, I think in 20 years, you'll really need a new Constitutional Convention.

CHAIRMAN ESKILDSEN: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I take this opportunity to support Mr. Mahoney's amendment because this is probably the one and only time I'll have to support something of his that I understand. Thank you. (Laughter)

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I haven't supported this committee too many times, but I do on this one because this is something that we haven't tried before, and we don't know where it's going--and the whole shebang—and when I get in that kind of position, I get just a little bit more cautious, and I'm in favor of leaving the committee report.

CHAIRMAN ESKILDSEN: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. It may look, at first glance, as though thecommittee took two different lines of thought in regarding the provision to allow two sessions of the Legislature to make an amendment. And then, in this case, we're establishing a 15 percent figure for the people to use as a-on a petition proposition. Actually, we gave both these things real serious and long thought, and there was good thinking behind both of them. In the-it was the intent of the committee, in regards to the issue of two sessions considering a hill, that this would take care of housekeeping measures. We felt that, in the matter of amending, there would be more attempts made to raid the Constitution if the figure were low enough that it was a simple matter to do. I realize that it does take a lot of work to acquire even 10 percent of the voters' signatures on a petition, but this is the reasoning behind it, and we did feel that it would be better protection to the document if we write a good one than it will if we allow it to be amended too readily. And I support the position of the committee.

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I am happy to support the position of Delegate Mahoney. In doing so, I wish to direct attention of the delegates to the fact that we are here asked to have 15 percent of the legal voters in at least-in a portion of the legal voters of the State of Montana-I can't read the rest of it from here-in two-fifths, I'm advised--whereas in the late-

lamented Section 12, I believe which just went to the graveyard, they put a 5 percent figure in there with no counties. We became very, very concerned about it in one place, and in the other place we weren't concerned about it at all. So, I think Mr. Mahoney is doing a good service to the people of Montana by permitting them to have a hand in their government in the days ahead, providing he is successful. And I am happy to note that the preceding section has now an "RIP" upon it, calling attention to the words of the immortal Algernon Charles Swinhurne, who said "From too much love of living, from hope and fears set free, we thank with brief thanksgiving whatever God there he, that no life lives forever, that dead men rise up never, that even the weariest river winds somewhere safe to sea."

CHAIRMAN ESKILDSEN: Is there any more discussion?

Would you care to hold-close, Mr. Mahoney? Oh, excuse me—

Mrs. Bates.

DELEGATE BATES: Yes. I riseinsupport of the motion, and I would like to say that anyone that has tried to get a petition-and even 8 percent of the voters-finds it's a mighty big job. And I'd like to ask Delegate Gysler a question.

CHAIRMAN ESKILDSEN: Will Delegate Gysler yield?

DELEGATE GYSLER: I yield, Mr. Chairman.

DELEGATE BATES: I was wondering, have you ever passed a petition, even for 8 percent of the voters?

DELEGATE GYSLER: No.

DELEGATE BATES: It's pretty hard to do.

DELEGATE GYSLER: But I have been asked to sign a lot of petitions, and I do it just because (Inaudible).

CHAIRMAN ESKILDSEN: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise to support Delegate Mahoney's motion particularly--not because I have any arguments to add to those already stated, hut because this will prohahly he one of the few times that Charley and I will he on the same side of the issue.

CHAIRMAN ESKILDSEN: Any more discussion?

Mrs. Bugsbee.

DELEGATE BUGBEE: No "s". (Laughter) I rise to oppose Mr. Mahoney's motion, and my reason is that I think we have to look at the whole skein of the way we're opening up this process to the people; and we haven't gotten to the legislative article yet, but I think that we have done, in my opinion, a very good job of opening up legislative change to the people. And I agree with Mr. Habedank in his argument that we should not open up this kind of legislative change within the Constitution itself. Thank you.

CHAIRMAN ESKILDSEN: Mr. Mahoney, are you closing?

DELEGATE MAHONEY: I would like to close. I want to thank you for the time you've given, and we'll just vote.

CHAIRMAN ESKILDSEN: You now have before you the motion by Delegate Mahoney that we amend Section 13. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The Ayes have it, and the motion's carried.

Is there any more amendments to Section 13?

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman. I move to amend General Government Section 13, line 1. After the word "in", delete the words "at least one newspaper in each county" and insert the words "the communications media". The section then would read, starting with line 1, "in full in the communications media in each county twice each month for 2 months previous to the", et cetera.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mrs. Blend.

DELEGATE BLEND: As I spoke previously, I believe that there should he wider coverage given to the notice and intent of this information in connection with the initiative. And

I feel that it would give a wider range of coverage in this day and age. Thank you.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I would oppose the amendment for the reason-not that I object to radio or TV-but I do not believe there is a single county in the State of Montana that does not have a newspaper, that has a radio or TV station, and it seems a little impossible to me for a constitutional amendment to be read over the radio and understood. So, the areas that do not have a newspaper would undoubtedly be served by an adjoining county that has one, and I feel that we have gone as far as we can go in requiring it to be published twice each month. There are those who feel that there should be no publication and that the mailing ofcirculars or the posting of notices on a bulletin board should be adequate. We have not felt that we were ready to go that far yet, but to require just in full in the communications media in each county would be a little illogical.

CHAIRMAN ESKILDSEN: We'll stand at ease while we change tapes.

(Convention at ease while tape changed)

CHAIRMAN ESKILDSEN: Convention will please be in order. Committee of the Whole, we now are on a substitute motion by Delegate Blend. Is there any more discussion?

Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman. First of all, I'd like to disclose that my wife owns a radio station. (Laughter) I think, Mr. Habedank, that putting in the words "a communication media" does not keep us, or anybody in the future, from publishing it in a newspaper, which generally is a communications media. I do think that 50 years from now there may be methods of disseminating information electronically which are not even conceived of now, such as cable into your kitchen, et cetera, and it seems to me that it would be very narrow-minded of us to adopt the only communications media which was useful in 1889 again in 1972. So, I support the amendment.

CHAIRMAN ESKILDSEN: Delegate Robinson.

DELEGATE ROBINSON: In line with what the committee voted to do in Section 11, I think we should attempt to be a little consistent in these two areas. We voted to delete those things in Section 11 that we considered statutory in regards to how the Secretary of State may publish this information. I would offer a substitute for all motions pending which would-beginning on line 29, on page '5, after the word "thereon", beginning with the word "if' on 29, deleting that, line 30, line 1, 2, 3 and 4 on the next page. Now, I realize that there is a difference in this section and in Section 11, where the Legislature is involved in 11 and not in Section 13. So, by deleting those sentences, I would offer in place of those sentences the words "and the secretary of state shall advertise said petition as provided by law."

CHAIRMAN ESKILDSEN: Delegate Robinson.

DELEGATE ROBINSON: Yes. I'll just briefly speak on this motion. I think it was covered quite adequately in Section 11, and the comments of Delegate Blend and Graybill have indicated the problems that we have in trying to write a flexible document that will be amenable to-50 years from now. And I think that any strictures that we have proposed on how these things may be advertised are not in the best instance-interests of the longevity of a constitution.

CHAIRMAN ESKILDSEN: Delegate Habedank.

DELEGATE HABEDANK: Will Mrs. Robinson yield to a question?

I'm not sure I understood your amendment. Did you start — did you strike out the words "if found to be signed by the required number of voters"? Did you intend to eliminate that as well?

DELEGATE ROBINSON: Yes. I think that it's pretty self-explanatory if you have-in line 27, it says, "the secretary of state, who shall cause the same to be checked and certified as to the validity of the signatures thereon". I can't understand why a Secretary of the State would go ahead and organize this to be put on the ballot if he found that there weren't valid signatures. I just can't visualize that happening. I think its very unnecessary.

CHAIRMAN ESKILDSEN: Mr. Martin.

DELEGATE MARTIN: Mr. President. I might say, on behalf of my colleague from the Bitterroot Valley and myself, that we are newspaper men, and the newspaper fraternity hasn't died and isn't going to die.

CHAIRMAN ESKILDSEN: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman. I appreciate the thoughts about flexibility of this Constitution. And I should point out I am a radio announcer, and I certainly don't want to be put in the position of a Benedict Arnold to the broadcasting industry; however, I could foresee some problems here in the way of-if somebody should decide, for whatever reason-the Legislature-when-that they would prefer to have something publicized only in the broadcasting industry. And I can foresee an instance where they would take a look at a given community and see which station has the highest rating. In many instances, that is going to be the local rock 'n' roll station, and I'm not sure if that would be the very best place to advertise areas of constitutional revision. I would like to see the Legislature free to advertise these things in the broadcasting media, but I would suggest that perhaps it might be wise to consider that they be specified to get it in at least one newspaper and leave them the freedom to disseminate the word of constitutional revision in other media. But I do foresee some difficulties in the placement of time in certain broadcasts; you could put constitutional revision after the roller derby or something like that on TV, and you might be aiming it at certain audiences, and as I say, I don't want to be against the broadcasting industry, but I foresee potential dangers in this flexibility.

CHAIRMAN ESKILDSEN: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I can't resist rising to support President Graybill, because my husband, too, has a radio station.

CHAIRMAN ESKILDSEN: Mr. Swanberg.

DELEGATE SWANBERG: (Inaudible) opposition to Delegate Blend's proposal and would like to point out that the constitutional amendment presumably, and by many people, is something that they want to study. (I'm sorry) If it's broadcast over the radio, being oral, it's gone as soon as it's stated, and there's no chance for anyone to sit down and really study the proposal. So, in those cases where it was broadcast over the radio and not in any newspaper, the people that were interested in the proposal would have no way of getting a copy of the proposal to study. Whereas, under the present system, when it is published in a newspaper, those that are interested in it can study it at their leisure and come to a rational conclusion, which I don't think they could otherwise have done if it had simply been broadcast.

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I find myself in a very bad situation. Like my friend, Delegate Martin, both of us are getting rich (Laughter) publishing constitutional amendments (Laughter), and I don't know what the fates will have in store for us if we have this taken away from us. But I will, and I realize that in strict conformity with the rule, perhaps Delegate Martin and Delegate Romney should not vote upon this, So, as I did in the previous one, I will abstain. However, I feel that there's something to be said for newspapers, as Delegate Martin indicated. They give-provide an opportunity for people to read and study and digest that which is in the cold print and the newsprint. It is not something that is fleeting, transient and gone with the wind, as on the radio or television.

CHAIRMAN ESKILDSEN: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. Since I'm a member of the Bill of Rights, I wouldn't like to have any discriminatory remarks according to the newspaper publishers.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I rise in opposition to both of the amendments. I'd like to just read you the language in our present Constitution: "said amendment or amendments to be published in full in at least one newspaper in each county, if such there be, for 3 months previous to the next general election for members of the legislative assembly." So, the committee is not proposing a new idea. We're incorporating language that's in our Constitution. We feel that it should be printed, that the electors should have a chance to study this proposal. We feel that every thinking voter and citizen will have a newspaper, and if there isn't a newspaper in the county in which it's-they're voting in, they'll get a newspaper from the adjoining county. We don't think that the loose language proposed in the amendment would be satisfactory. So, I oppose the amendments.

CHAIRMAN ESKILDSEN: Any more discussion?

Would you wish to close, Delegate Robinson?

DELEGATE ROBINSON: Yes. Mr. Chairman, will Mr. Etchart yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Etchart yield?

DELEGATE ETCHART: I yield.

DELEGATE ROBINSON: I think that the very point you mentioned in relation to our present Constitution is one that both Mrs. Blend and myself are trying to get at. You're really not proposing anything new. In 1889, there were only newspapers. The problem: in 1889, there were not radios and television and all sorts of other things; and that is the problem that we are trying to get at. Would you-1 can't see that your point is that well taken on that particular issue.

DELEGATE ETCHART: Mrs. Robinson, before we adopt any amendments on the Floor, we try to have them printed and placed on our desks in printed form; and this philosophy follows good legislative procedure, it follows our procedures here. And we could, perhaps, broadcast these amendments over the radio or TV or something, but until we have them before us in printed form, it's a little hard to comprehend them. And this is the thinking of the committee, that this is a serious matter; these things should be printed so people will have a chance to study them.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ESKILDSEN: Delegate Robinson.

DELEGATE ROBINSON: Will Mr. Etchart yield to another question?

CHAIRMAN ESKILDSEN: Will you yield to another question?

DELEGATE ETCHART: I yield.

DELEGATE ROBINSON: My proposed amendment was to bring in accord what we did this morning--what the entire Convention—Committee of the Whole voted to do-nothing else-so that we might go on record as being consistent. My proposal was simply that we delete those four sentences and add the words "and the secretary of state shall advertise said petition as provided by law." My question for you is, what is loose about this amendment'?

DELEGATE ETCHART: If you'll look in-on page 5, line 29, you also struck out the words "if found to be signed by the required number of voters", and we think that this is important that the voters be counted by the Secretary of State so that there are enough voters there.

CHAIRMAN ESKILDSEN: Delegate Robinson.

DELEGATE ROBINSON: Mr. Chairman. In all due respect to the Secretary of State, who might not recognize that when he checked and certified the validity of the signatures, that he should also count them, I would concede in my amendment that sentence so that we might not avoid any problem and include that clause "and if found to be signed by the required number of voters" and add the proposed amendment to get rid of what we determined about 2 hours ago was statutory material.

CHAIRMAN ESKILDSEN: Delegate Robinson, did you amend that some more now? Did you amend this section some more:'

DELEGATE ROBINSON: Yes, I did.

CHAIRMAN ESKILDSEN: Would you have your amendment ready please'?

DELEGATE ROBINSON: Yes.

CHAIRMAN ESKILDSEN: Delegate Melvin.

DELEGATE MELVIN: Would Delegate Robinson yield to a question?

CHAIRMAN ESKILDSEN: Would you yield to a question, Delegate Robinson?

DELEGATE ROBINSON: Yes.

DELEGATE MELVIN: Mrs. Robinson, suppose that on line 29 that phrase were kept in that states "if found to be signed by the required number of voters and cause the same to be published by the-as provided by law". NOW, publishing includes, does it not, newspapers, radio, television, any of the known media?

DELEGATE ROBINSON: I don't know if publishing encompasses all of those things. I would not be opposed to that, if you would so care to offer a substitute amendment. I'm not really concerned about my own particular language. I'm just trying to clarify the section.

DELEGATE MELVIN: Thank you. Is such a suggestion in order, Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Melvin, I don't know just where you're going to try to amend that, but we have a substitute motion to amend-for all motions pending--and I think we should take care of that motion first before we start amending it.

DELEGATE MELVIN: Thank you.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ESKILDSEN: And a motion to that motion too, we also have--a substitute motion to that motion. So, we'll take care of those in order and then you can make any motions you wish. Would you read your motion?

DELEGATE ROBINSON: Mr. Chairman. I would withdraw my substitute motion if that would clarify things and enable Mr. Melvin to offer his.

CHAIRMAN ESKILDSEN: If there are no objections, it will be withdrawn.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. I offer, as a substitute motion, line 29 of page 5—rather, at the end of line 30, "cause the same to be published as provided by law", and delete the rest of that paragraph on page 6.

CHAIRMAN ESKILDSEN: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. I submit, Mr. Chairman, that this is probably a compromise between what Delegate Etchart and Delegate Robinson has in mind. Thank you.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I-Will Mr. Melvin yield to a question?

CHAIRMAN ESKILDSEN: Will Mr. Melvin yield?

DELEGATE MELVIN: I yield.

DELEGATE ARONOW: Mr. Melvin, as I get your amendment, you strike the rest of the paragraph at the top of page 6 after the words "as provided by law". May I-was it your intention to strike the words "2 months prior to the next regular statewide election, at which time the proposed election shall be voted on"?

DELEGATE MELVIN: Yes, sir.

DELEGATE ARONOW: You're not going to have anything about the vote?

DELEGATE MELVIN: No, I feel that that is a legislative matter, Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Aronow.

DELEGATE ARONOW: In view of the answer I must oppose the amendment. I'd be willing to go along with the amendment if the provision for the vote was left in, but here we have no assurance that there'll be any legislation passed. There isn't anything on the books, and these things have to be self-executing; that is, you have to provide for an election. So, thank you.

CHAIRMAN ESKILDSEN: Mr. Johnson,

DELEGATE JOHNSON: Mr. Chairman. I rise in opposition to the amendment and the substitute motion on these grounds. Each refers a little more authority to the Legislature and, to make my position clear, I'm in favor-you'll find out through our legislative article, et cetera-to give the Legislature a little more leeway and more work and more power than it has had. However, I think that we can give the Legislature too much to do and too much power. Ladies and gentlemen, this is a-the original motion or the original proposal here states, simply, I think, and directly, the procedure that's to be carried out. And I see no argument with it at all. Thank you very much, Mr. Chairman.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Melvin?

If not, would you care to close, Mr. Melvin?

DELEGATE MELVIN: I think enough has been said. Let's vote.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Melvin to amend Section 13. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is lost.

We're now on-Delegate Robinson, I understood that you made two motions, your original motion and another motion.

DELEGATE ROBINSON: No, I did not. Mrs. Blend made the first motion; I offered a substitute motion to that motion.

CHAIRMAN ESKILDSEN: And then you made one more motion which you withdrew. Did you withdraw both motions?

DELEGATE ROBINSON: I withdrew my substitute motion to Mrs. Blend's motion.

CHAIRMAN ESKILDSEN: Thank you. We are now on Mrs. Blend's substitute motion.

CLERK HANSON: The amendment by Mrs. Blend is on page 6, line 1, Section 13, following the word "in", by striking the words "at least one newspaper" and inserting in lieu thereof the words "the communications media".

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I move a substitute motion. I move that on line 1, page 6, the words "in full in at least one newspaper in each county if such there be" be stricken and that there be substituted therefor the words "in such manner as shall be provided by law". This meets Mr. Aronow's-may I speak on that? This meets Mr. Aronow's objection and I think should satisfy everyone concerned with this problem. I think that we should be concerned with the problem raised by Mrs. Blend, because in the next 20 years or 40 years or whatever, there may be a revolution in communications technology which we cannot now even imagine, and to include a provision in a constitution that the publication be in a newspaper seems, to me, to be the maximum of inflexibility.

CHAIRMAN ESKILDSEN: Is there any more discussion on Delegate Heliker's motion?

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I appreciate Mr. Heliker's support of my motion, and I am glad he agrees with me, because I agree with him. However, "by law" indicates to me that the Legislature, with the renewed faith I have gained in them after being here in this Convention, that they can well choose not to publish it at all as well as to set up an arrangement to do so. I would therefore oppose his amendment.

CHAIRMAN ESKILDSEN: Is there any more discussion on Mr. Heliker's motion? Mr. Heliker, would you care to close?

DELEGATE HELIKER: Well, I just want to respond to Mrs. Blend. I don't want to close, particularly, but the language as it reads with my rewording says "and cause the same to be published." There's no option to the Legislature there.

CHAIRMAN ESKILDSEN: Is there any more discussion on Mr. Heliker's motion?

If not, Mr. Heliker moved to amend Section 13. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: The motion is carried.

Are there any more amendments to Section 13? Is there any more discussion on Section 13? Do you wish to close, Mr. Etchart?

DELEGATE ETCHART: I close.

CHAIRMAN ESKILDSEN: The question now arises on the motion raised by Mr. Etchart: when this committee does arise and report, after having had under consideration Section 13, it recommend the same be adopted as amended. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I hope everybody knew what they were voting on. With Mr. Heliker's motion, was "twice each month for 2 months previous" left in? I hear both ways; I'm just wondering.

CLERK HANSON: The amendment reads beginning on page 6, line 1, beginning with the word "in", striking the word "in" and the following material "in full in at least one newspaper in each county, if such there be" and inserting in lieu thereof the following words: "in such manners as shall be prescribed by law."

CHAIRMAN ESKILDSEN: As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: As many are opposed will say No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: Motion is carried. You now have before you Section 14. Clerk will read Section 14.

CLERK HANSON: (Reading) "Section 14: Legal voters. The number of votes cast for the office of governor in the general election immediately preceding the filing of any petition provided for in this article shall determine the number of legal voters." Mr. Chairman, Section 14.

CHAIRMAN ESKILDSEN: Mr. Etchnrt.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 14, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Section 14 of the article is merely an administrative and technical section in that it defines the number of legal voters for computation of the petition requirements. It does not, and cannot, be used to infringe and inhibit the initiative and referendum processes through technical circumvention. Indeed, this section, by setting up such a standard, guards against such abuses.

CHAIRMAN ESKILDSEN: Is there any more discussion on Section 14? If not, the motion now arises on Section 14, as made by Delegate Etchart, that when this committee does arise and report, after having had under consideration Section 14, it recommends the same be adopted. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried.

CLERK HANSON: (Reading) "Section 15, Submission. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted upon separately." Mr. Chairman, Section 15.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 2, Section 15, recommend the same be adopted.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, Section 15 is designed to aid voters in casting their votes on constitutional issues and a check on the possible action of grouping several issues under one innocuous title. This is to insure that each issue is presented separately.

CHAIRMAN ESKILDSEN: Is there any more discussion on—

Mr. Nutting.

DELEGATE NUTTING: Would the gentleman, Mr. Etchart, yield to a question, please?

CHAIRMAN ESKILDSEN: Would Mr. Etchart yield?

DELEGATE ETCHART: I yield.

DELEGATE NUTTING: I see we're down to the end and there is no limit. Is that the committee intention, that there be no limit to the number of amendments that could be offered?

DELEGATE ETCHART: This is correct, sir. The committee felt that the limit of amendments should be allowed to the discretion of the Legislature.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: In line with the point just raised by Delegate Nutting, I move to amend Section 15 by inserting on line 15 of page 6, and after the word "submission", the words "not more than five amendments to this Constitution shall be submitted at the same election". That is the end

of the offered amendment, and Mr. Chairman, 1 would like to move then that the Section 15, as amended, be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: I will not take much time of the Convention. I think it's quite clear that the purpose of this is to avoid a problem which could arise of having an extremely long list, of possible amendments proposed at any one election. From the experience that I have had, I can make a guess as to how legislators might react if there is no limitation and if this is left up to their discretion. I'll scratch your back if you'll scratch mine, and we could end up with 15 or 20 proposed amendments to the Constitution, to the detriment of all. Now I'm sure that legislators would realize that, by going to that extreme, they would be jeopardizing the amendment they were in favor of because there would be a strong likelihood that all amendments would be lost. But yet, if your choice is to get yours on in a pack or not get it on at all, you may go for putting it on. And I feel that, from those who are scientists in the matter of government and from the experience of people in states such as California, it has been found to actually be detrimental in preventing the people of the state from actually participating in the operation of their government when they are, potentially and actually, flooded by so many questions on a ballot that they are unable, and become unwilling therefore, to give full consideration to them. I find nothing magically correct in the figure of five and am perfectly willing to consider anywhere, certainly, from three to six as a reasonable number. But I chose five as a possible reasonable number that the people could handle without unduly burdening them with too many amendments at any one time. Thank you.

CHAIRMAN ESKILDSEN: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, may I inquire of Mr. Felt, please?

CHAIRMAN ESKILDSEN: Mr. Felt, would you yield to a question?

DELEGATE FELT: I yield.

DELEGATE MURRAY: Jim, I follow your thinking; if we remain under the present constitutional amendment processes, the Legislature would have all of the say, and so it could determine its number. But, where we have today determined to submit to the public for adoption several methods by which this can be determined, who makes the question? Who arrives at the decision to determine which five, if more than five, are submitted to the public? Shall we have the public doing it by initiative now? Now, you follow me? The—

DELEGATE FELT: Yes.

DELEGATE MURRAY: -Legislature has five; how can the public then submit any? I think that's the reason—

DELEGATE FELT: Perhaps there would have to be a-the language that I proposed, I took from the present Constitution, and we could add a clause there so that it would read "not more than five amendments to this Constitution shall be submitted at the same election by the legislative assembly under"-or say "under Section 12" or whatever the final number it comes out to be for -that one that permits the Legislature itself. What I'm really trying to do is just limit the number that the Legislature itself can put on the ballot. If the people want to add more, by some other process, why, that would be all right with me. Does that answer the question you had?

DELEGATE MURRAY: Yes, Mr. Chairman, that answers my question, and without further amendment, I would resist Mr. Felt's amendment.

CHAIRMAN ESKILDSEN: Any more discussion?

Mr. Romney.

DELEGATE ROMNEY: I yield to Mr. Felt to let him conclude, and then I will speak.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: To my previous wording, add the words "by action of the legislative assembly".

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. Delegate Murray put his finger on a very sore spot here, and Delegate Felt has indicated an effort to cure it. However, I want to call your attention to the procedure in the Legislature. In a bicameral session, you have two committees on constitution elections, one in the House and one in the Senate. The practice-I sat on those committees in two

sessions-and the practice is that many, many, many constitutional amendments are proposed in each house and then the two committees try to get together to select three under the present Constitution. There's a great deal of pride of authorship in these constitutional amendments, and everybody thinks that their constitutional amendment proposal is the best. And that's a natural, human attribute, but it leads to a lot of difficulty and there's a collision ofinterests. In the past, too often there have been-the better amendments have been discarded and three rather innocuous amendments have been selected for submission. That has not always been the case, but it sometimes has. And that was why we needed more than three. Delegate Felt has put his finger on five, and the situation has been cured by discussion between Delegates Felt and Murray concerning the proposals that come from the citizenry direct. So perhaps the matter is resolved, but even five is not going to be too easy. However, I'm willing to accept it. I think it'd probably be better a little more.

CHAIRMAN ESKILDSEN: Any more discussion'?

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Felt yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Felt yield?

DELEGATE FELT: I yield.

DELEGATE REICHERT: Mr. Felt. In Hawaii, I understand, they presented 21 amendments at one time to the voters. They didn't have the problem of submitting an entire constitution. And I understand all 21 of those amendments were passed. Do you know about this?

DELEGATE FELT: No, I'm not particularly familiar with what they did in Hawaii. I know that-1 understood that they did revise their Constitution extensively, but I don't know whether one example--no matter what it was, whether it was a question of the ratio of success of the three amendments that we've presented from times to time in Montana, or anything else, would really give us much of a guide. I think we have to base this decision on our own general judgment of what would work best and whether-1 think what we're trying to do here is through the constitutional amendment process-is give the people in the state an opportunity to revise something if it seems to be supported strongly enough, so that it would either be presented through this initiative process or by obtaining a two-thirds vote of the legislative assembly. But I do think, myself, that it would lead to a deterioration of that if we don't place some limitation on it. I'm certainly not going to take a lot of your time, though, discussing it because I suppose it could work without a limitation. I think it's a pretty serious question, and I think we should give it some time and consideration here.

CHAIRMAN ESKILDSEN: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of Mr. Felt's amendment. I had an amendment very similar; I had the figure of four. I have no argument with five. I don't think there's any magic in numbers, but I think we should limit it if we're going to have an orderly and meaningful amendment process of this Constitution. If it's unlimited, I think it could get to the state where I don't think the people would understand what they were voting on. They may vote against all of them or for all of them. In fact, we see a lot of confusion here the last few days on what we're saying and what we're amending. And I think this would pass on to the voters. If we do a good job in revising this Constitution, I see no reason to have a lot of amendments each year. If you have five in an election every 2 years, my goodness, you could amend every article in the Constitution in about 10 years, and I would see no problem with this figure of five. So I would, therefore, support him.

CHAIRMAN ESKILDSEN: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. If my memory serves me right, I think the people turned down an amendment to the present Constitution allowing to have submitted to them twice as many amendments as the present three. And therefore, in view of that action by the electorate, I am inclined to support the motion of Delegate Felt. It's less than what they turned down. It's one less, at least.

CHAIRMAN ESKILDSEN: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would suggest that if the membership of the either bicameral or unicameral house in the future find that 5 amendments is not enough, that they-one of those 5 amendments could be an amendment which would permit 21 amendments at some

future time, and they can solve that problem in the future.

CHAIRMAN ESKILDSEN: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise to a point of information. As I understand this situation now-maybe I'm a bit confused--we have an initiative process by which we can initiate changes in the Montana Constitution. Now, we also have, as I understand it, a proposal that we can-that the Legislature can do the same thing. Supposing the Legislature puts some on the ballot and the people themselves,through initiative, put some on the ballot? If I'm not mixed up, how many might we wind up with on the ballot at one time? I'd like to have somebody answer the question.

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: Mr. Chairman, Mr. Barnard. It is my opinion, Mr. Barnard, and I may be mistaken too, that there would actually be no limitation to the total number, because the people, by the initiative process, could place any number that they chose. As Mr. Marshall called my attention to the fact that needed-Mr. Murray—it's better than Mrs. Murray-(Laughter) that the-and I had then attempted by a few words to clarify the point. I might say that if it should develop that any part of this proposal is referred to the Standing Substantive Committee that dealt with it, I'd be glad to have them, after taking into consideration whatever feelings seemed to be predominant here, to pick the wordingthemselves that would make that clear. I don't like to be offering these amendments here in a few moments; and if I had the opportunity, I would—perhaps I do have the opportunity-that my amendment that I tacked on, I would now use slightly different words to be "other than those placed thereon by the initiative" in lieu of the words I said-"by action of the legislative assembly". And so, Mr. Chairman, I'd like to withdraw the amendment that I made to my motion and make instead this additional amendment to my motion, inserting the words "other than those placed thereon by the initiative". And, as I said, if any part of this does get referred to a standing committee, I'd be glad to have them review that.

CHAIRMAN ESKILDSEN: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, do we have a motion before the house?

CHAIRMAN ESKILDSEN: Yes, we have a motion before the house.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to ask Delegate Felt a question.

CHAIRMAN ESKILDSEN: Would Delegate Felt yield to a question?

DELEGATE FELT: I yield.

DELEGATE BATES: Mr. Felt, if the Legislature does pass several amendments and the Governor no longer has the right to veto constitutional amendments, what's going to happen if we hold to a specific number?

DELEGATE FELT: Of course, the Legislature can only propose constitutional amendments, so I suppose that's what you meant. What's going to happen to what? (Laughter) Well, the Governor—

DELEGATE BATES: If the next section is passed, that the Governor cannot veto, then what happens with a specific number?

DELEGATE FELT: To the specific number of proposals that can be presented to the voters?

DELEGATE BATES: Yes.

DELEGATE FELT: Well, what's going to happen to them depends on what we do.

DELEGATE BATES: That's right.

DELEGATE FELT: The proposal that I'm suggesting is that the Legislative Assembly be permitted to propose five amendments at any one election and that the voters will decide, by approval or rejection, each of those five separately. The next section does say that the Governor should not have the power to veto one which has passed by a two-thirds vote in both houses, but that's a question in itself, of course, and I don't know what's going to happen to that.

CHAIRMAN ESKILDSEN: Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, the rules provide that the President or any delegate can require that a rule be submitted in writing. I'm sorry, but I don't understand the sense of Mr. Felt's motion any more, because I don't know what it says. I would like to ask that

Mr. Felt put his motion in writing, that during the time he's putting it in writing we take a recess. We have a matter that we're going to take care of on recess. This would give him a chance to write it down and us a chance to see what we're voting on.

CHAIRMAN ESKILDSEN: You have a motion before you to recess. You will all stay in your seats. All those in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Those opposed, No.

(No response)

CHAIRMAN ESKILDSEN: The motion is carried.

(Convention recessed — reconvened at 3:30 p.m.)

CLERK HANSON: (Reading) "Mr. Chairman, I move to amend Section 15, in line 15, by adding after the word 'submission' the following: 'not more than five (5) amendments to this constitution shall be submitted at the same election, other than those placed thereon by initiative'. Signed: Felt."

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: Mr. Chairman. My motion is to amend, and as amended, that the article or-Section 15 be adopted. I will say only a few words because I-to make sure that it's understood. There's no limitation here as to the number of amendments that might be proposed by the petition-initiative process, but a limit of five as to the number that could be placed on the ballot for any one given election by action of the Legislative Assembly. I feel that five is a reasonable number. If it gets much larger than that, I think that you might as well say there wouldn't be any limitation at all; and I will close.

CHAIRMAN ESKILDSEN: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, a point of inquiry. How now does Section 5 read with the amendment of Mr. Felt added?

CHAIRMAN ESKILDSEN: Would you read the amendment again? Read the whole thing. Mr. Felt.

DELEGATE FELT: (Inaudible) the section is intact. This is just an additional sentence which would become the first sentence. The present section would continue and would be the second sentence of the section.

CHAIRMAN ESKILDSEN: We'll have the clerk read the whole amendment and the section.

CLERK HANSON: (Reading) "Section 15: Submission." This is the amendment: "Not more than five (5) amendments to this Constitution shall be submitted at the same election, other than those placed thereon by initiative." End of amendment. "Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted upon separately."

CHAIRMAN ESKILDSEN: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I would like to hear some more discussion on this from the committee. For example, did the committee-I'm sure the committee considered this idea, because it is the kind of idea we have in our present Constitution-did they check into what other state constitutions embody? Do other states have similar restrictions? If there are states that have had for several years no restriction on the number of amendments, do they find an inordinate number being proposed in each election, and so forth? I see Mr. Felt's line of reasoning, I think quite clearly; if the committee has anything to offer in favor of its original proposal, I'd like very much to hear it.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Harper, I'm sorry I don't have the book with me right now, so the figure I give you will be inaccurate, but the great majority of the states who provide for constitutional amendments do not contain a limitation on the number, and we, in studying those as reported to us by our research analysts, found that they did not have an inordinate number of amendments. And by virtue thereof, we felt the thing would take care of itself. There may be a situation arise when, in some year, for very good reasons, you need seven, and that most of the time you won't even have five. And we felt that not to provide a limitation left it up to the discretion of the Legislature and their wisdom. We still feel-at least, I still feel-that is sound reasoning.

CHAIRMAN ESKILDSEN: Mr. Loendorf.

DELEGATE LOENDORF: Loendorf, Mr. Chairman.

CHAIRMAN ESKILDSEN: Loendorf.

DELEGATE LOENDORF: Closer than Lorello, though. (Laughter) Would Mr. Felt yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Felt yield?

DELEGATE FELT: I yield.

DELEGATE LOENDORF: Jim, I'm curious. I don't recall, and perhaps you do. You limit-your proposed amendment would impose a five amendment limitation on the present Constitution. Could an amendment include an amendment to an entire article? It seems to me there's some court decisions on that.

DELEGATE FELT: Yes. I don't think you are asking me to remember something so much, Jerry, as you are to discuss some rather difficult legal questions. The present Constitution-I didn't say the old one-has a provision which says that an amendment can only embrace one subject. I do not know how that provision of the present Constitution is faring, so any answer I gave would be totally qualified by depending upon what might have been done with that. All I can say is that, under our present Constitution, you can only deal with one subject and exactly what that means has been the subject of several court interpretations. I would not pretend that I carry that around in my memory box, nor that I could find the words to explain it even if I had it all photographically memorized. So I'm afraid my answer isn't very much help to you. I would think of this, myself, as saying that the five amendments, if they are authorized, would permit five separate subjects to be taken up by the amendment process at any one election time.

CHAIRMAN ESKILDSEN: Any more discussion?

DELEGATE AASHEIM: Chairman.

CHAIRMAN ESKILDSEN: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and members of the assembly. I have talked on this sometime in the past-1 forget now when—but I have a kind of a kinship to this proposition, because when I was in the Legislature, I tried to have a constitutional amendment that would provide 10 amendments, and I can recall the Chairman of the Finance Committee standing up in the balcony and saying, "Will you settle for 7?"; and I said I'd settle for anything that's better than 3. We did get it through the House, and the inconsiderate Senate killed it at that time. Later, the Senate, in its wisdom, passed this proposal and the people, as someone has remarked, rejected it-to have, I guess it was six. However, let me again remind you: suppose we are in a unicameral body or a bicameral, and we had 30 amendments to make. I have 1 and 29 others, and we have a restriction on those amendments. I'm going to be concerned about mine, and I don't care how good yours is. I'm going to vote against it because I want mine on the-to be adopted; and you will find, as you look back over the number of proposals that have been submitted that very seldom have we had three, and there have been some good ones rejected becauseofthis very thing. Good ones have been killed because of the restriction. Now, someone asked a minute ago and -when I give you this information, George, it's against my proposal. California doesn't have—didn't have-any restrictions. At one time, they had 24 proposals before them in one year, and they objected, naturally. That was too many. But I think this is something that's going to level off, and I believe that if we had had no restrictions, there would have been no need for a constitutional convention. I think the Legislature would have found, in its wisdom, the areas that needed correction and would have presented them to the people. So I am sorry to object-to be opposed to your amendment, Mr. Felt-but I really believe that we should not have this restriction.

CHAIRMAN ESKILDSEN: Mr. Rygg.

DELEGATE RYGG: I, too, have sat on the Committee on Constitutional and Federal Relations, and I see the same problem. We often knew we had only three--and we didn't know which ones to take; and as a result, many good amendments were lost because of this. I don't feel that the Legislature would have too many, but I think the threat of having a certain number does restrict one. I'm not a member of the committee you referred to, but I think the last list I saw was 46 states had no restrictions, three ofthem had three, and we were one of them, and one other one had

two. I frankly believe that we would be all right if we just let it go the way the committee has written it.

CHAIRMAN ESKILDSEN: Mr. James.

DELEGATE JAMES: Mr. Chairman. When I campaigned, I said we were going to give the state a more flexible government. I think this is what the committee report is trying to do. Let's help them out, for once, and make this government more flexible by adopting this section.

CHAIRMAN ESKILDSEN: Mr. Lorello.

DELEGATE LORELLO: I wonder if we remember a couple of years ago when people now do not have bingo and we have executive organization. In my hometown, we'd rather have bingo, and it happened because of this three-amendment ruling. I'd like you to stay with the committee report.

CHAIRMAN ESKILDSEN: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I rise in opposition to the amendment. I would like to support subsection 15 as given in the report of the committee. In the arguments that have been presented the last 2 days on just about everything, I detect a reverence of the past, a fear of the future, a distrust of the Legislature and a doubt of the people. (Laughter)

CHAIRMAN ESKILDSEN: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I rise in support of Delegate Felt's motion. Since 1889, over 500 amendments have been submitted in the Legislature; 62 of them have come out, which means that they haven't averaged 3, their limit. 57 of those were voted on, because thecourts ruled on the other 5; 40 of them were approved and 37 were put into effect. And I don't see that this limit would necessarily curtail the Legislature.

CHAIRMAN ESKILDSEN: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I think it's all a matter of interpretation. In our study, we looked into many of the other states' systems that have been used. We learned that a number of years ago in Georgia, where they needed major revision to the Constitution, their Supreme Court ruled that one amendment could affect the entire constitution. So, the Legislature did a complete revision, submitted it as one amendment, and the people adopted it. So, really, we come into a matter of court interpretation. I think that a limit has some merit, rather than to permit a major number to be submitted so that people don't understand what they're all about. But it doesn't necessarily mean that a limit would prevent a major revision through a court interpretation. But I don't think it makes very much difference. If we have no restriction on the number that can be placed before the people, we have to assume that the Legislature has some wisdom, and certainly the people should not be limited to a number of petitions if the Legislature is not. We felt that it was wise to try it at least. Thank you.

CHAIRMAN ESKILDSEN: Any more discussion on the motion by Mr. Felt? If not, the question now arises on the motion of Mr. Felt that when this committee does arise and report, after having had under consideration Section 15, it recommend the same be adopted as amended. As many are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Mr. Ask.

DELEGATE ASK: -have a roll call vote? And have seconds.

CHAIRMAN ESKILDSEN: Being there's sufficient seconds, there will be a roll call vote. You'll use your voting machine. As many as are in favor will vote Aye, opposed will vote No. Has everyone voted? Does anyone wish to change their vote?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I have a question here on our procedure. Have we— we haven't voted on the amendment yet, have we?

CHAIRMAN ESKILDSEN: Mr. McNeil, the motion was by Mr. Felt that when we adopted his amendment, it include the whole section, and he also said that when we rise to report, so we are voting on the complete section as amended. The clerk will close the vote.

Aasheim Nay
Anderson, J. ..... Nay
Anderson, 0.. Nay
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye

Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Nay
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Absent
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Chairman Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Absent
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Absent
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 23 delegates voting Aye, 69 voting No.

CHAIRMAN ESKILDSEN: 23 having voted Aye, 69 having-voting No, the motion fails.

We now have before us the motion by Mr. Etchart. Is there any more discussion? The motion by Mr. Etchart is that when this committee does arise and report, after having had under consideration Section 15, that it recommend the same be adopted. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried.

You now have before you Section 16. The clerk will read Section 16.

CLERK HANSON: (Reading) "Section 16: Gubernatorial veto. The veto power of the governor shall not extend to proposed constitutional revisions or amendments." Mr. Chairman, Section 16.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 2, Section 16, that it recommend that Section 16 be deleted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move deletion of Section 16 because the same matter will be dealt with in the executive article on page 8, line 15, and also in the legislative article, page 6, line 24. And in order to-I'm sure this will have plenty of debate in these other two articles — and in order to move our business along today, I move deletion of this article--or of this Section 16.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Etchart that Section 16 be deleted. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: Motion's carried.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move we revert to Section 10.

CHAIRMAN ESKILDSEN: No objection, we'll be on Section 10. The clerk will read Section 10.

CLERK HANSON: (Reading) "Section 10: Constitutional amendment by the legislature. Amendments to this Constitution may be proposed by any member of the legislative assembly. if adopted by an affirmative roll call vote of two-thirds of all the members thereof elected to each house, the proposed amendment shall become a part of the Constitution when approved by either of the following procedures."

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I do not believe the wording thereof is correct; "elected to each house", that wasn't carried, was it?

CHAIRMAN ESKILDSEN: No, it wasn't. We have to start all over again. John, if you would.

CLERK HANSON: (Reading) "Section 10: Constitutional amendment by the legislature. Amendments to this Constitution may be proposed by any member of the legislative assembly. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall become a part of the Constitution when approved by either of the following procedures."

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee does arise and report, after having had under consideration General Government Article Number 2, Section 10, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Etchart.

DELEGATE ETCHART: I move this so that we can get along with the amendment of this section and the next section. I believe there's some language that has been prepared to incorporate the thinking of the Committee of the Whole.

CHAIRMAN ESKILDSEN: Any more discussion on Section 10?

CLERK HANSON: (Reading) "Mr. Chairman. I move to amend Section 10 of Proposal 2, on lines 17 and 18 of page 4 of the printed proposal, as follows: delete the word 'all' and the words 'thereof, whether one or more bodies', in line 17 and 18, and insert after the word 'members', in line 17, the words 'elected, present and voting in each house,'. Signed: Felt."

CHAIRMAN ESKILDSEN: Mr. Felt.

DELEGATE FELT: Mr. Chairman. This is actually the joint proposal of Mr. Aasheim and

myself-now, with perhaps his support or perhaps, at least, I hope he has a good day and succeeds in this. The matter has been discussed thoroughly enough. There will be some language problems due to the other changes which were made in Section 11. I'm sure that this can be clarified and dealt with totally by our committee on Style and Drafting, so unless someone has questions about this matter, I won't take the time of the Convention to discuss it further. The idea was to maintain the separate importance and integrity of two houses if we do have a bicameral legislative assembly.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Habedank.

DELEGATE HABEDANK: I just want to call to your attention, so that you definitely know what you're doing, that the way the committee has this worded, it means that if two-thirds of your elected representatives, in whether one or more houses, vote for a proposed amendment, it's referred back to the people. The way Mr. Felt's amendment reads, you would have to have a two-thirds vote of each body if there are more than two bodies, and it was the thought of the committee that this was too stringent a requirement. The two-thirds vote of all members is really more than two-thirds of those present and voting, but it does give some leeway so that one body cannot completely stifle another.

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Romney.

DELEGATE ROMNEY: Would Delegate Habedank respond to a question:'

CHAIRMAN ESKILDSEN: Would Delegate Habedank yield to a question?

DELEGATE HABEDANK: I yield.

DELEGATE ROMNEY: Previously, it was brought out that all of the two-thirds could be secured in one house, right?

DELEGATE HABEDANK: This is a possibility, not a probability.

DELEGATE ROMNEY: But, it's possible?

DELEGATE HABEDANK: It would be possible, yes. You'd have to admit that — depending on the composition of the two houses. If you had a house 80 and 40, that would be correct.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Romney.

DELEGATE ROMNEY: In such a contingency, one house in a bicameral system could be playing the entire orchestra and the other would there play nothing.

CHAIRMAN ESKILDSEN: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. You are worried about the effect of the proposal put in by the committee. Did you ever figure out the possibilities under the amendment put in by Mr. Felt? He says two-thirds of the elected members present and voting. Does that mean if we have a very poor day and we've got less than a majority in each house-? It doesn't say that you have to have a majority in order to vote, it merely says you have to have a majority-that is, in the rules of the house and so forth-that you have to have a majority to call the session or quorum to call the session in session. Then, after that, half the members-two-thirds of the members-may be gone, and you come up and get two-thirds of those voting. You can get five or six in the House and five or six in the Senate and pass an amendment. I think this is a very--using the word dangerous—amendment, a very uncontrolled amendment; I stand in full support of the report of the committee as it is. Let's not go into this ambiguous, uncertain, unthought-out type of amendments.

CHAIRMAN ESKILDSEN: Mr. Scanlin.

DELEGATE SCLANLIN: Mr. Chairman, will Mr. Felt yield to a question?

Mr. Felt, would you explain to me how members could get in the legislative assembly, to be present and vote, if they weren't elected. In other words, why do we have to have that tautological word "elected" in there'?

DELEGATE FELT: I don't think we need it, Mr. Scanlin. But I don't think it does any harm, either. It's a word that's in our present Constitution, and it didn't seem necessary to take it out, but it could, certainly — if they're a member, I'm sure they got there by election, and I'm sure you would include the appointment of a member as a member too.

CHAIRMAN ESKILDSEN: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, could I make a substitute motion to-I'm assured by the Chairman of another committee that it will be taken care of. Thank you very much.

CHAIRMAN ESKILDSEN: Is there any more —

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. We're getting down, I think, to a lot of things that we'd better watch. Two-thirds--on this it says— of the entire membership. We will certainly, I'd think--would then have to show a roll call. If we use Mr. Felt's, I don't think we'd have to even show a roll call. This is-you're taking out the old roll call which was in the old Constitution. You took this out; how the members voted. You've also taken out of this so that it has to be spread on the journal. Now, I think, that two-thirds of the entire membership is a good item, because I've seen the time when one-third of that Senate, having a lot over in the House-this happened in the Annual Session Bill-the House was practically over; we got over two-thirds of the membership, but we couldn't get two-thirds of each body. At one time, under the old system where each county had a Senator, it was a little different. But, today, we now are all being elected on one member, one vote; and I think it's well to go along with this two-thirds. I'm convinced if we'd had some of these things in the Constitution, we wouldn't have been sitting here today. We could have had some of the amendments that the people were demanding, and I think the present thing, as the committee has stated-this I certainly agree with.

DELEGATE AASHEIM: Mr. Chairman. I'm just a little confused again. Here-it sounds like three or four people can be in the Senate and make an amendment to the Constitution. Well, I certainly disagree with this, because according to the rules, you got to have a majority of the people present before you can do any business. A majority isn't three or four or five or six, and I would like to ask you people-that this is the present reading of what Mr. Felt hasintroduced in this amendment, and I don't believe we have abused it; I don't believe any amendments have been proposed to the people which have been very far out. Would Mr. Felt yield to a question?

CHAIRMAN ESKILDSEN: Would Mr. Felt yield?

DELEGATE FELT: I yield.

DELEGATE AASHEIM: Isn't it your understanding that the amendment you have proposed will make it comparable to the present Constitution?

DELEGATE FELT: In general, yes. The addition of the words "present and voting" is not in the present Constitution and will make it easier for a proposed amendment to get the necessary number of votes than is the case under our present Constitution. But otherwise, yes, it's —

DELEGATE AASHEIM: Would Mr. Felt yield to another question?

CHAIRMAN ESKILDSEN: Will Mr. Felt yield to another question?

DELEGATE FELT: I yield.

DELEGATE AASHEIM: Isn't it true that you have to-[have a] majority in a House or Senate to do business?

DELEGATE FELT: Oh, yes, that's true; and of course, the language is that "if adopted by an affirmative roll call vote of two-thirds of the members present and voting".

CHAIRMAN ESKILDSEN: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, one more comment, I think, is that, at the present time, any one member can require the rest of the members to come, so there is really no danger in the Legislature that you can slip something through if you have one member there who asks for a call of the House. All the members have to be there to vote on this issue. So—

CHAIRMAN ESKILDSEN: Is there any more discussion?

Mr. Skari.

DELEGATE SKARI: I think in the defense of bicameralism, I don't think we should — I don't think it's fair to create a unicameral house here in this one particular area of voting. I think that if this state does adopt a bicameral system, that it should apply to all areas of voting and this one area shouldn't be set aside.

CHAIRMAN ESKILDSEN: Is there any more discussion? If not, Mr. Felt, would you care to close?

DELEGATE FELT: I close, Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Felt closes. We now vote on the motion of Mr. Felt's that, when this committee does arise and report, that recommend Section 10 be adopted as amended. As many-we're voting on Mr. Felt's amendment to Section 10. As many—

Mr. Habedank.

DELEGATE HABEDANK: I request a roll call vote division.

CHAIRMAN ESKILDSEN: Having sufficient seconds, there will be a roll call vote. As many as are in favor will vote Aye. Those opposed will vote No.

Has everyone voted? Does anyone wish to change their vote? The clerk will close the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Absent
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berth&on ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Chairman Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Absent
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Absent
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye

Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner.. ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 32 delegates voting Aye, 50 voting No, 9 not voting.

CHAIRMAN ESKILDSEN: 32 having voted Aye, 59 have voted No, the motion is lost. We now have before us Section 10.

Mr. Habedank.

DELEGATE HABEDANK: I would move the amendment of Section 10 as it presently reads by striking, in line 19, the words following "by", striking "either of" and then changing "procedures" to "procedure". In other words, it will read, "the proposed amendment shall become a part of the Constitution when approved by the following procedure."

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Habedank. Is there any discussion? If not, all those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: Motion's carried.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Having voted on the prevailing side in the action taken by the committee this day in adopting General Government Proposal Number 2, Section 8, I move that the committee reconsider—

CHAIRMAN ESKILDSEN: Mr. Schiltz, we haven't taken the vote on Section 10 yet.

DELEGATE SCHILTZ: I thought you just took it.

CHAIRMAN ESKILDSEN: No, we just voted on the amendment.

DELEGATE SCHILTZ: All right.

CHAIRMAN ESKILDSEN: We're now ready to vote on the motion of Mr. Etchart's that when this committee does arise — did you make —

DELEGATE ETCHART: Mr. Chairman, I believe that we should vote on Mr. Habedank's amendment.

CHAIRMAN ESKILDSEN: We just did.

DELEGATE ETCHART: Oh, all right. Well, I would restate my motion, then, that when this committee does arise and report, after having had under consideration Section 10 of Proposal Number 2 of the General Government Committee, as amended, that it report the same be adopted.

CHAIRMAN ESKILDSEN: You've heard the motion of Delegate Etchart that Section 10 be adopted as amended. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried.

Mr. Schiltz.

DELEGATE SCHILTZ: I'm overly alert this afternoon because I was asleep this morning, Mr. Chairman. Having voted on the prevailing side in the action taken by the Committee of the Whole this day in adopting General Government Proposal Number 2, Section 8, I move that the committee reconsider that action.

Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Schiltz.

DELEGATE SCHILTZ: I should confess in the beginning, in all candor, that I have no consciousness recollection of having voted one way or another this morning, but I checked up on the rostrum and I found out that nobody can prove that I didn't vote on the prevailing side, so I am now making this motion. (Laughter) I want the committee to know, however, that I wouldn't take an oath on the question. In looking at Section 8 this afternoon, I found, to my utter astonishment, that the Convention shall meet within 3 months after the election of the delegates, and then it goes on and says what the Convention shall do.

CHAIRMAN ESKILDSEN: Mr. Schiltz, what we need to know is exactly which section we are—

DELEGATE SCHILTZ: We're talking about Section 8.

CHAIRMAN ESKILDSEN: Okay, Section 8. Is that page 3, line 29?

DELEGATE SCHILTZ: Page 3, line 29. I'm only moving to reconsider at this time, but I will discuss the motion that I will eventually make.

CHAIRMAN ESKILDSEN: The reason I ask for this is because the ladies were having trouble finding it for the journal, the right spot. Okay, continue.

DELEGATE SCHILTZ: Are we all squared away up on the rostrum?

CHAIRMAN ESKILDSEN: Fine. Go ahead.

DELEGATE SCHILTZ: All right. I've found after I got back from lunch that what I had voted for was a provision that required the Convention to meet within 3 months after the election of the delegates and then go ahead and do whatever we're doing now. If the election is on November 7th, which is the latest date it can ever be, that means that the only time a convention can be held would be commencing no later than February 7th. If we go ahead and have annual legislative sessions, the greatest probability is that the Legislature will be in session when the Convention is supposed to be in session. Now, to me, this particular provision is a classic example of the danger of legislating in the Constitution. If we go up to Section 5, you will find that the entire matter could be taken care of by the Legislature, everything that is provided in Section 8. If a majority of those voting on the question shall declare in favor of a Convention, the Legislative Assembly shall, at its next session, provide for the calling thereof, and I assume that the legislative assembly could provide for all the ground rules that are laid out in Section 8. And therefore, if this motion to reconsider prevails, I will make a simple motion, with no further speeches, to the effect that Section 8 be deleted in its entirety. Thank you.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Schiltz? If not, the question now arises on the motion by Mr. Schiltz that-to reconsider our action of this day and consider Section 8 of Proposal Number 2. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: The motion is carried. We now have before us Section 8.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN ESKILDSEN: Mr. Schiltz.

DELEGATE SCHILTZ: I move that Section 8 be deleted in its entirety.

CHAIRMAN ESKILDSEN: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, thank you. I would ask Mr. Schiltz if he has considered the matter of the last part of Section 8, which has nothing to do with the Convention meeting within a specified time but does have to do with the fact that the amendments shall not be made unless ratified or rejected--allows for the ratification or rejection, either in whole or in separate articles, and that no revision, alteration or amendment should take effect unless it's passed by the people. And, if that were deleted, I don't know where in the Constitution we have protected the people in this respect.

CHAIRMAN ESKILDSEN: Mr. Schiltz.

DELEGATE SCHILTZ: I assume that that's an inquiry, and if it is, I will respond. I don't see any reason why the Legislature couldn't, under Section 5, put all the language that follows, and to which you referred, into its authorizing program for the holding of a Constitutional Convention. My biggest problem, however,-if you have some better answer than this, is that I don't see how we can possibly have a Constitutional Convention when the Legislature is on unless we go build another hall around here somewhere.

CHAIRMAN ESKILDSEN: Mr. James.

DELEGATE JAMES: Mr. Schiltz lead-- or yield? (Laughter)

CHAIRMAN ESKILDSEN: Will Mr. Schiltz yield to a question?

DELEGATE SCHILTZ: **You** lead and I'll follow, and I'll yield. (Laughter) Yes.

DELEGATE JAMES: Is there anything in the present-or in the proposed Constitution, maybe I'll be enlightened by some of the other

members, that says that we have to meet in Helena? Can we meet in Libby, for instance?

DELEGATE SCHILTZ: Well, if you've got a hall up there, I assume you could get it through the Legislature somehow.

CHAIRMAN ESKILDSEN: Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman. I think Mr. Schiltz is somewhat confused, too. On the bottom line on page 29-or line 29 of page 3—the Convention shall meet within 3 months after the election of the delegates. We were elected in June, if I remember correctly-or November-but it can be anytime.

CHAIRMAN ESKILDSEN: Is there any more discussion on the motion by Mr. Schiltz.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I'm concerned about taking hasty action here without having had very much opportunity to examine the effect of it. My concern arises from just leaving it to the Legislature to call the Convention. I'm a bit apprehensive that the Legislature might call a Convention and limit its purpose, limit its scope; and if the sole concern is the time limit, we could simply strike "within 3 months", so that it would read: "The Convention shall meet after the election of the delegates and prepare"-so forth—especially-"revisions, alterations and amendments". And I'm quite concerned that, if that language is taken out, that a Legislature could, such as in the extraordinary sessions of the Legislature now, the Governor can restrict the scope and the purposes that can be accomplished. Mr. Chairman, I propose a substitute motion for Mr. Schiltz's motion to delete from line29 the three words "within 3 months".

CHAIRMAN ESKILDSEN: Mr. McNeil, his motion is to kill it. We can go ahead and delete it, but —

DELEGATE McNEIL: Mr. Chairman, I believe Mr. Schiltz's motion was to delete the entire section. I propose a substitute motion. The substitute motion is to delete the three words "within 3 months" from Section 8.

CHAIRMAN ESKILDSEN: Fine. Any more discussion?

You now have before you the substitute motion by Delegate McNeil to amend Section 8. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No

CHAIRMAN ESKILDSEN: Motion is carried.

You now have before you in its entirety Section 8, as amended. As many as are in favor of adopting Section 8 as amended will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No.

DELEGATES: No.

CHAIRMAN ESKILDSEN: Motion's carried.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, a point of information. Have we taken care of Section 1 1?

CHAIRMAN ESKILDSEN: Yes, we have -we've passed Section 11. We adopted Section 11.

DELEGATE ETCHART: And I believe this completes our Delegate Proposal Number 2.

CHAIRMAN ESKILDSEN: It does.

DELEGATE ETCHART: Then, Mr. Chairman, I would like to-having voted on the prevailing side, I move that the Committee of the Whole reconsider its action in adopting General Government Proposal Number 1, Section 4. Now, this is Proposal Number 1, Section 4. And the reason that I do this is so that we may open this section up for further improvement, and Delegate Davis has an amendment which I think would improve this section. So I ask your support in reconsidering our action in adopting Section 4 of Proposal Number 1.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Etchart to reconsider our action in adopting Section 4 of Proposal 1. As many as are in favor will say Aye.

DELEGATES: Aye

CHAIRMAN ESKILDSEN: Opposed, No.

(No response)

CHAIRMAN ESKILDSEN: Motion is carried.

You now have before you Section 4 of Proposal Number 1. What is your pleasure?

Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. The clerk has a copy of my proposed amendment. Perhaps he could read it.

CLERK HANSON: (Reading) "Mr. President. I move to amend Section 4, line 18, page 2, of the majority proposal by inserting after the word 'vote'—"

CHAIRMAN ESKILDSEN: Mr. Davis.

DELEGATE DAVIS: I beg your pardon. There's some more to it than that. Do you want to go with the whole thing?

CLERK HANSON: Mr. Davis, it reads "vote", "for state officers".

DELEGATE DAVIS: All right. If you'd like, I will explain my amendment and give it, if I may, please. Starting in Section 4 reading "any person qualified to vote" in-following "vote", I put "for state offices-or officers rather at general elections" and striking out "and for state officers in this state" and leaving in the rest of the sentence, followed with a semicolon "provided, however, that no person convicted of a felony shall be qualified to hold office except upon his final discharge from state supervision". May I speak to that please, Mr. Chairman?

CHAIRMAN ESKILDSEN: Mr. Davis.

DELEGATE DAVIS: In our efforts at our first opportunity for statesmanship yesterday and followed with televised statesmanship today and in our good government efforts, it seemedlike that when you analyzed the two sections we handled yesterday, we really lowered the voting age to 18 and provided — which is contrary to our present Constitution — that you could vote if you were convicted of a felony as long as you were not physically confined within the limits of the penitentiary. That meant that if you got a 10-year sentence and did 5, during the next year-8 years or 5, you could still serve; you could vote. Well, then we came to 4-the only requirement for high office or any office in our state then was if you were eligible to vote, which meant that anyone convicted of a felony as long as he was not in prison, was eligible to hold office. Now, I don't know how we could call that responsible improvement of our government. I mean, we have all these things about improving our government, but how we're going to explain that at the local level, particularly-it leaves the door open to say, well, we've now legalized the crooks to get in. An attempt was made-and this was left out inadvertently, I think-attempt was made in the amendment to Section 3 above by Mr. Aronow, but with a different purpose. It says "to insure the purity of elections and guard against abuses of electoral process" right after we've allowed someone who may have been convicted from any crime to hold office. I'm sure none of us really want to go home and try to explain that, so that's why I propose this amendment today. The Bill of Rights provides that as soon as a person's sentence is over with, he is restored all rights. So as soon as a sentence, by commutation of sentence or otherwise-he could hold office. He can vote even though he isn't physically imprisoned, but I don't think that he should have-we should open up our offices, in the guise of improving our government, to convicted felons. Thank you.

CHAIRMAN ESKILDSEN: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, I resist this motion. I was oftheunderstanding that the motion by Mr. Etchart was to improve some wording, and I see that we're going to be involved in the whole review of the whole proposal of the committee. I think that we discussed this belaboredly yesterday. We've discussed this proposal belaboredly today, and I feel that if we go through the whole procedure of redebating and requestioning the entire proposal, all sections in it, that we may be here forever. I felt that this was a motion to make some minor wording change, and I see that, in fact, it's a major substantive change, and I resist the motion.

CHAIRMAN ESKILDSEN: Mr. Davis.

DELEGATE DAVIS: May I ask-will you yield for a question, Mr. Foster?

CHAIRMAN ESKILDSEN: Will you yield, Mr. Foster?

DELEGATE FOSTER: No, I will not yield. (Laughter)

CHAIRMAN ESKILDSEN: Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I am a member of the General Government Committee and helped prepare the majority report. We did discuss the qualification for voting

— I don't believe we discussed the qualification for holding public office. I am frank to say that that was an oversight, and I concur with Mr. Davis, and I believe the majority of our committee believes that this is a good amendment, and they should not be able to hold public office while on parole. So I will support Mr. Davis' motion.

CHAIRMAN ESKILDSEN: Is there any more discussion on Mr. Davis' motion?

Mr. Studer.

DELEGATE STUDER: Mr. Chairman. I think Mr. Davis has a very vital point there. We skipped over this a little bit too fast yesterday or else we overlooked it entirely, for one reason or another. We first qualify a man to vote and then after he's qualified to vote by just being out of prison, we now let him run for office. And you're really opening up something there that is very dangerous, to my way of looking at it. Here's a fellow that just gets out and released from prison on parole for some reason or another and 4 or 5 years to serve and probably been in for fraud for 3 or 4 times, and on this particular time he's let out, and now he can run for county treasurer the next morning. Just looks kind of rough to me to qualify a man to vote and then say he can hold office right afterwards on a flimsy deal like this. I go along with Mr. Davis.

CHAIRMAN ESKILDSEN: Mr. Artz.

DELEGATE ARTZ: I support the motion. I think it might be a little bit awkward if the parole regulations were that the Governor couldn't leave the state. I think it would be a little bit awkward for a Governor reporting to a parole officer. Thank you. (Laughter)

CHAIRMAN ESKILDSEN: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. I rise to speak against the amendment. I think that those people who have paid their so-called debt to society should be able to enjoy the right of running for and holding any public office. I don't think this measure of this amendment really would prevent any crooks from getting in office. I think they're already there. (Laughter)

CHAIRMAN ESKILDSEN: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I don't think that the problem that Mr. Artz poses really amounts to much, because the Governor could issue himself a pardon, and then he could leave the state if he wants to, so there's no problem there. But I join the rest of our committee in supporting the amendment, because we did overlook it during our deliberations, and I think that it should be included. Thank you.

CHAIRMAN ESKILDSEN: Mr. Dahood.

DELEGATE DAHOOD: I think this would then conform with the idea that we had in the Bill of Rights Committee, because when we discussed the rights of theconvicted, we wanted to make sure that there would be no civil rights restored until that individual absolutely established that he was fit to return to society and be an active citizen. We provided in that that he would not have these civil rights restored until state supervision had been terminated. And I think Delegate Davis' amendment and the consensus of the committee now would place their report in line with the provision that we gave considerable consideration to. Thank you, Mr. Chairman.

CHAIRMAN ESKILDSEN: Any more discussion? Would you care to close, Mr. Davis?

Mr. Romney.

DELEGATE ROMNEY: When this matter is presented, I'm going to ask for a roll call and want five supporters, please.

(Supporters stand)

CHAIRMAN ESKILDSEN: Mr. Davis, would you wish to close?

DELEGATE DAVIS: Thank you, Mr. Chairman, and thank you for my fellow delegates. We don't want--we're-I hope we can correct, if we do pass over anything, and try to rise-bring our level of inexperienced statesmanship up a little higher as we go along. To clear up any misunderstanding by Mr. Monroe or Mr. Foster, a person has not necessarily paid any debt to society when he's sentenced. The sentencing theory now is to keep people out of prison, so a person can very easily be convicted of a serious crime and get a 10-year deferred sentence, a lo-year suspended sentence or do 2 years and be out on parole 8. That's the principal thing; and another thing, when you go home and when you try to explain one of these situations, you debate on these other articles that nobody knows anything about. But when you go home and tell the people that we have now publicly endorsed the right of someone-of Henry Plumber to stay on as sheriff, for instance; or the county treasurer could be convicted of stealing but can continue to stay in office; it's just

beyond responsible government, as far as I'm concerned. Thank you very much.

CHAIRMAN ESKILDSEN: You now have before you the motion by Delegate Davis to amend Section 4. All those in favor—

Mr. Blaylock.

DELEGATE BLAYLOCK: Could we have it read again to make sure exactly how it is now?

CHAIRMAN ESKILDSEN: Would the clerk read the amendment. Would the clerk read the whole section as amended.

CLERK HANSON: (Reading) "Section 4: Any person qualified to vote for state officers at general elections is eligible to any public office except as otherwise provided in this Constitution, subject to any additional qualifications provided by the legislature."

CHAIRMAN ESKILDSEN: Now, there has been a roll call vote asked for.

Mr. Davis.

DELEGATE DAVIS: Do you wish me to read it?

CHAIRMAN ESKILDSEN: Would you read the amendment, the whole section?

DELEGATE DAVIS: "Section 4: Any person qualified to vote for state officers is eligible to any public office except as otherwise provided in this Constitution, subject to any additional qualifications provided by the legislature; provided, however, that no person convicted of a felony shall be qualified to hold office except upon his final discharge from state supervision."

CHAIRMAN ESKILDSEN: Having had sufficient seconds, we'll now have a roll call vote. All those in favor of Delegate Davis' motion to amend Section 4 will vote Aye, and those opposed will vote No.

Anyone wish to change their vote? Has everyone voted? The clerk will close the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Absent
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Absent
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye

Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Absent

CLERK HANSON: Mr. President, 86 delegates voting Aye, 6 voting No, 8 not voting.

CHAIRMAN ESKILDSEN: 86 having voted Aye, 6 having voted No, the motion carries. YOU now have before you Section 4.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 4 as amended, that it do adopt the same.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Murray. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, No. (No response)

CHAIRMAN ESKILDSEN: Motion is carried.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that the committee rise and finally report.

CHAIRMAN ESKILDSEN: You've heard the motion of Mr. Murray to rise and finally report. All those in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN ESKILDSEN: Opposed, NO.

(No response)

CHAIRMAN ESKILDSEN: The motion is carried.

(Chair assumed by Mr. Toole)

CLERK HANSON: Mr. President. Oh—

VICE-PRESIDENT TOOLE: The Convention will be in order.

CLERK HANSON: "Mr. President, we your Committee of the Whole, having had under consideration Report Number 1, Suffrage and Elections, of the Committee on General Government and Constitutional Amendment, recommend as follows: 'that Section 1 be adopted; that Blaylock amend Section 2, as amended by Joyce, be adopted as follows: strike the following word in line 11, page 2, of the printed committee report, 'of the state and political subdivision' and insert in lieu thereof 'as provided by law'. At this time Delegate Pemberton was recognized as present. That Section 2, as amended, be adopted by the following vote: Ayes 74, Noes 26; roll call vote requested by Romney with sufficient seconds; that Section 3 of minority report on roll call vote requested by Delegate Lore110 with sufficient seconds be adopted by the vote following: Ayes 52, Noes 46, Absent 2; that Section 4 be adopted; that Section 5 be amended on line 25 by striking the word 'is' and inserting in lieu thereof 'shall be declared' and as amended be adopted. Amended by Murray. Leuthold amendment Section 6 be added in the language of Section 4, Article IX, of the present Constitution, which reads 'electors shall in all cases except treason, felony, or breach

of peace be privileged from arrest during their attendance at election and in going to and returning therefrom'; on roll call vote requested by Kelleher with sufficient seconds, Section 6 was added with the following vote: Ayes 50, Noes 48; that the committee rise and report and beg leave to sit again. Leo Graybill, Chairman.

February 17, 1972. Mr. President, we your Committee of the Whole, having had under consideration Report Number 1, Suffrage and Election, Report 2, Constitutional Revision, on the Committee of the General Government and Constitutional Amendment recommend as follows: Delegate Artz, having voted on the prevailing side, moved that the committee consider action taken previously this day in adopting Section 3 of Report 1 in Suffrage and Election-motion carried; substitute motion of Delegate Harlow to amend Section 3 of the majority report by adding the following: 'the legislature shall provide for a system of poll booth registration, insure the purity of elections and guard against abuses of the electoral process'-failed to be adopted by the following roll call vote asked for by Foster with sufficient seconds: Ayes 49, Noes 51; substitute motion of Delegate Aronow to amend Section 3 of the majority report by adding the following: 'the legislature may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses in the electoral process' was adopted by the following roll call vote asked for by McNeil with sufficient seconds: Ayes 76, Noes 22; that Section 3 be adopted as amended; at 3:30 p.m., the Committee of the Whole stood at recess until 3:45 p.m.

3:45 p.m. Delegate Eskildsen in Chair. Chairman of the Constitutional Amendment Committee noted the following corrections approved by the committee in their report: that Delegate Robinson's motion be adopted as follows: 'amend Section 1, subsection 2, page 2, line 22 and 23, of the General Government Committee Proposal Number 2 by deleting the words 'to the legislative assembly' and further amend Section 1, subsection 2, page 2, line 24, by inserting the word 'next' between the words 'the general' and placing a period after the word 'election' and deleting the remainder of the subsection; that Delegate Robinson's motion be adopted, which is as follows: amend Section 1, subsection 4, line 2, in the majority proposal by deleting the words and punctuations 'the legislature prior to a' and inserting the following words in lieu thereof, 'at the session' insert 'and following an affirmative' and in line 3 by inserting the words 'the legislature' between the comma and the word 'shall'; and amend Section 1, subsection 4, page 3, line 5, by placing a period after the word 'question' and deleting the following words and punctuations; 'to assist the voters and if a convention is authorized', andinsert thefollowing language before the word 'continued': 'the commission may be'; that the committee rise and report progress and beg leave to sit again. Signed: Eskildsen, Chairman.

February 18, 1972. Mr. President, we your Committee of the Whole, having had under consideration business under General Orders, Report Number 2, Constitutional Revision on the Committee of General Government and Constitutional Amendment recommend as follows: the Chairman announced that according to the rules, the committee must consider and vote on each section and subsection separately; therefore, we will start with Section 1, subsection 1, of Proposal Number 2; that Section 1, subsection 1, beadopted on roll call vote asked for by Habedank with sufficient seconds; Aasheim's motion to delete subsection 2 in its entirety was not adopted by the following vote: Ayes 24, Noes 69, Absent 6; that subsection 2 be changed to read 'Section 2, Constitutional Convention'-adopted as amended; that remaining subsection be changed to read Section 3, et cetera; Section 3, formerly subsection 3, be adopted; roll call vote was asked by Romney with sufficient seconds and the subsection adopted by the following vote: Ayes 50, Noes 40, Absent 10; that Section 4, formerly subsection 4, be deleted in its entirety; that Section 5, formerly subsection 5, be amended by striking the last sentence thereof and inserting in lieu thereof the following: 'delegates shall be elected on a nonpartisan basis and they shall be elected at the same time and in the same districts as the legislative body determining the number of delegates'; on roll call vote by Kelleher with sufficient seconds, the amendment failed to be adopted by the following votes: Ayes 27, Noes 62, Absent or not voting 11; that Section 5 be adopted. Signed: Eskildsen, Chairman. That Section 6, formerly subsection 6, be adopted; that Section 7, formerly subsection 7, be adopted; that Section 8. formerly subsection 8, be adopted; that Section 9, formerly subsection 9, be deleted; that the committee recess until 1 o'clock p.m. this day; that Section 2 of the original proposal be called Section 10 for the purpose of debate; that consideration of Section 10 be passed; that Section 11, formerly subsection 1 of Section 2, be amended in line 21 by deleting the word 'may' and insert in lieu thereof

the word 'shall'; motion by Harper; on roll call vote requested by Delegate Habedank with sufficient seconds, the amendment was adopted by the following vote: Ayes 51, Noes 35, Absent-not voting 14; that Section 11 be amended by striking the following: 'in such event the secretary of state shall cause the amendment or amendments to be published in full in at least one newspaper in each county in which a newspaper is published, twice each month for the 2 months previous to the next general election for members to the legislative assembly'; that Section 11 be adopted as amended; that Section 12, formerly Section 2, subsection 2, be amended by deleting Section 12 in its entirety; this amendment by Harper on roll call vote requested by Romney with sufficient seconds was adopted by the following vote: Ayes 64, Noes 22, Absent or not voting 14; that Section 13, formerly Section 3, be amended in lines 23 and 24 by changing the figure '15' in each instance to '10'; that Section 13 be further amended in line 1, page 6, by striking the following: 'in full in at least one newspaper in each county, if such there be', and inserting in lieu thereof the following: 'in such manner as provided by law'; that Section 13 as amended be adopted; that Section 14 be adopted; that Section 15, formerly Section 5, be amended in line 15 by adding, after the word 'submission', the following 'not more than five amendments to this Constitution shall be submitted at the same election other than those placed thereon by initiative' and, as amended, Section 15 be adopted as amended; this motion of Felt's was now adopted and roll call vote requested by Ask with sufficient seconds by the following vote: Ayes 23, Noes 69, Absent or not voting 8; that Section 15 be adopted; that Section 16, formerly Section 6, be deleted; without objection on motion by Murray, the Chair reverted to Section 10 for reconsideration; that Section 10 be amended on lines 17 and 18 of page 4 of the printed proposal as follows: delete the word 'all' and the words 'thereof, whether one or more bodies' in line 17 and 18 and inserting after the word 'members' in line 17 the words 'elected present and voting in each house'; on requesting of roll call vote requested by Habedank with sufficient seconds, the amendment made by Felt failed to be adopted in the following vote: Ayes 32, Noes 59, Absent or not voting 9: that Section 10 be amended in line 19 by deleting the words 'either of and by striking the 's' on procedures in line 20; that Section 10 as amended be adopted; having voted on the prevailing side, Delegate Schiltz moved that the committee reconsider action on Section 8 beginning on line 29 of page 3; motion carried that Section 8 be amended by striking the words 'within 3 months' in line 29 and, as amended, Section 8 be adopted; having voted on the prevailing side in adoption of Section 4 of Proposal 1 of the General Government and Constitutional Amendment Committee, Etchart moved to reconsider--motion carried; that Proposal Number 1, Section 4, be amended in line 18, page 2, of the majority proposal by inserting, after the word 'vote', the words 'for state officers'; and further amend in line 19, page 2, by deleting, after the word 'elections', the following: 'and for state officers in the state'; and further amend in line 22, page 2, by deleting the period and inserting in lieu thereof a semicolon; and further amend line 22, page 2, by inserting the following new material after the semicolon: 'provided, however, that no person convicted of a felony shall be qualified to hold office except upon his final discharge from state supervision'; Romney requested a roll call vote and sufficient seconds arose; the amendment of Delegate Davis was adopted by the following vote: Ayes 86, Noes 6, Absent or not voting 8; that Section 4 of Proposal Number 1 be adopted; that the committee rise and finally report. Signed: Eskildsen, Chairman."

VICE-PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: I move that the report of the Committee of the Whole be adopted as read and Proposal Number 1 and 2 from the Committee on General Government be referred to the Committee on Style.

VICE-PRESIDENT TOOLE: The question now arises on the adoption of the Committee of the Whole report. All those in favor signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Those opposed, No.

(No response)

VICE-PRESIDENT TOOLE: The Ayes have it, and so ordered.

Members of the Convention, I would now like to move to Order of Business Number 1. There's a method in my madness, which you will see shortly. The auditor's office will be open until 6:00 to pick upyourchecks. Now, withyourindulgence, I would like to move to Order of Business Number

1, Reports of Standing Committees.

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. We, the Committee on Natural Resources and Agriculture respectfully report as follows: that the Natural Resources and Agriculture Committee majority proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration and that the Natural Resources and Agriculture Committee minority proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

VICE-PRESIDENT TOOLE: Thank you, Mrs. Cross. Your report is accepted and referred to Committee of the Whole.

Mr. Rygg.

DELEGATE RYGG: Mr. Vice-President. We, the Committee on Revenue and Finance respectfully report as follows: that the Report [Revenue] and Finance Committee majority proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration; that the Revenue and Finance Committee minority proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration. I want to say that the fact that all members have signed the majority report doesn't mean that they're all in full accord with what is in it, and, of course, out of the 14 sections, we do have 2 on the minority report. I don't have the transmittal letter because it's down at the printer, but I would want to say that this committee has worked on this proposal with a very progressive spirit. We believe this document can open the door to a prosperous future for Montana. We have removed the restrictions which have prevented past legislatures from passing laws which have been badly needed to insure progress, and we have really not locked many things in the proposal that should maybe have been of legislative nature. We've had an exceptional committee and very talented assistance from our research analysts, economists and interns. We would especially ask the Convention to read our rationale, as the report itself is quite short in most instances. So, we feel our rationale is very important. And I suppose I should also say that-tell this group that the Mitchell gang has now moved out of its headquarters across the street, and for the time being, at least, we will be right here in the Capitol building.

VICE-PRESIDENT TOOLE: Thank you, Mr. Rygg. Your report is accepted and referred to General Orders.

Order of Business Number 2, Reports of Select Committees.

Mr. Champoux.

DELEGATE CHAMPOUX: Is this out of place? The Education Committee, 5 minutes after this is over. That all right?

VICE-PRESIDENT TOOLE: Yes.

DELEGATE CHAMPOUX: Thank you.

VICE-PRESIDENT TOOLE: Order 01 Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Order of Business Number 3, Communications.

CLERK HANSON: "February 17, 1972. Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, The Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15 (2), Extraordinary Senate Kill Number 6, Chapter Extraordinary Number 1, Laws of Montana, 1971, the license of Robert A. Ellard, License Number 72-72, has been reinstated as of February 17, 1972. Sincerely yours, Frank Murray, Secretary of State."

VICE-PRESIDENT TOOLE: Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 5, Final Consideration of Proposals.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 6, Adoption of Proposed Constitution and Ballot.

CLERK HANSON: None.

VICE-PRESIDENT TOOLE: Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

VICE-PRESIDENT TOOLE: Number 8, Unfinished Business.

President Graybill.

DELEGATE GRAYBILL: Mr. President. Today is Friday and 2 weeks from the time I last spoke to you about the budget, and under the rules, it's my privilege to again discuss with you the budget. If you'll take the budgets that have been

laid on your desks early this morning, we'll talk about it for a minute. First of all, as I think you all know, the budget is accrued through the weekend, and the first two columns are the budget as amended because it's necessary for us to constantly amend the budget but we are staying within the $499,281. Now, for your information, the budget before you differs in the first two columns from the one that we gave you 2 weeks ago in the following particulars: under contracted services. about halfway down, the last item, court reporter, has been adjusted upward to $15,000 from $10,000 where it was 2 weeks ago. This is because we got into a situation where we found we did not have a firm contract or, at least, a firm total contract with the court reporter and thanks to Vice-President Brown, we have now worked out an arrangement with the court reporter which substantially reduces the per-page that we're paying for the transcript. On the other hand, it recognizes that we were not anywhere within the budget based on either the new or the old per-page allowances. Whether or not we can stay within $15,000 depends on how long we debate, and I'm not too hopeful this afternoon, but I do see that we might get along better next week. And if we can finish up somewhere in the week of the 20th of March, we'll be within that figure. So, we have adjusted the budget to $15,000, hoping that we can get by for about that. We will keep our eye on that account and let you know again next time we report. In order to cover the $5,000 that we've raised the court reporter item, we have lowered the public information item, that was $11,000, to $6,000. That's down fourth to the bottom there. Now we had originally $11,000 under public information for a film that MSU was going to do for us at Bozeman, and you'll remember we told you-and many of you, of course, know by now—that because of the June 6th submission date that we have chosen, it became impossible to accomplish the film the way that we had originally planned. And so, in place of the film, which was going to cost as our share, $11,000, we are now doing some video taping which we hope to have available for public information, and the cost of this will be substantially less than the $11,000, and although we still have the $6,000 in the budget, I think that will certainly cover it. And that allowed us to move $5,000 from that item up to court reporter. This fortuitous or unfortuitous event, depending on your point of view, allows us to balance the budget again in the first two columns. Now, if you'll look with me for a moment at the third column, expenses to date, I can tell you that most of those items are within the proportional share that they should be of our total moneys, except the following. Wages for staff are somewhat over their proportionate share of what they should be on a Y-week convention; however, I think most of us are aware now that there will be some lessening of the staff as functions phase out as we debate various committee proposals, and it is anticipated that, although we're over now, we will not be over by the end of the 9 weeks if this phasing out continues to take place. On communications, under telephone, you will notice an item there accrued only of $3,500. The telephone is causing me and Mr. Toole grave concern. We worked on it yesterday, and we will work on it again, I think, next Monday with the telephone company, but allow me to tell you, that as of the moment, we have a telephone bill of $4,400 for the first month and a half. This will make it impossible for us to stay anywhere within the $6,000 budget, and so we are doing two things. First of all, we're going to make drastic changes in the telephone system, as I'll mention in a moment. Secondly, we are negotiating with the telephone company on some of the changes that were made already. I think the problem is that we-that our staff arranged for what they considered to be the necessary telephones without ascertaining from the telephone company exactly what those necessary telephones were going to cost. Now that we've ascertained what they're going to cost-we just got the bill the day before yesterday-we are going to reassess what is necessary. Now, the first thing we're going to do, unless you instruct the staff otherwise-officers otherwise--we're going to cut out the two WATS lines which are now in the state system. We're going to put in one WATS line which will be independent of the state system and which will have three main outlets, one in the President's office complex, one in public information and one in the clerk's office. Now, that doesn't mean that you can't use the WATS line; you can wherever you can get ahold of it and when you can, but we are simply going to have to cut down on the two WATS lines, which were costing us 2,400 bucks so far, and this will save us, we think, substantial moneys. It's a little over $600 a month for one. The second thing that we are going to do is that we are going to review, as soon as the telephone company gives us an accurate list of what the other lines are, and we're going to cut out some unnecessary telephone lines. We're going to cut a couple of lines out of the President's office and the complex that it involves, because we have too many in there; we have about four, not just to

my office but to those three or four offices there. There are four separate lines, and WC don't need that many. Secondly, in the telephone service that's available here in the hallways for you, we're going to cut out some of those phones. We've got about six of one kind and three or four of another; we've got somewhere in the neighborhood of 9 or 10 available lines there. While I'm sure we all use them, I'm sure we might be able to get by with three or four available lines there. Third, some of your committees have had two phones per committee because of room separations; we're going to cut that to one. We're going to hope that upstairs we can get by with one phone in the middle room. We're going to eliminate a few other phones here and there where we think it's possible. Now, if we hurt, you really bad, let us know; but I do think it's necessary to cut back somewhat. These phones alone for local service are costing us somewhere in the neighborhood of $1,000 to $1,100 a month, and we must cut that back to some more-realistic figure if we expect to go on until the last week of March without being in desperate shape telephonewise. So much for the telephone situation.

The other item I want to comment on in the expenses-to-date column is the commission expense, which jumped from about $700 or $800 last time to $1,763. The reason for that is that the $700 or $800 we had there previously was a group of small expenses which we picked up for the commission which I explained to you last time, mostly books and some miscellaneous expenses in connection with all of our affairs since last December. We have now accrued on the printing downstairs $1,033 that it cost to print the three books that were not printed by January 17th. And so, adding that $1,033 is what brings that up to $1,763. So there's that much additional expense of the commission which, at the moment, we're carrying unless it can be adjusted or arranged with the printing department in some other manner. Now, except for those items, the other items are within or approximately at the correct proportional share, and so if you'll bear with us and continue not to spend money unless you really need it, I think we may get by. Thank you very much. I'll move that this be placed in the journal unless someone has a question.

VICE-PRESIDENT TOOLE: Any questions on the budget? Therefore—if not, they will be placed in the budget. President Graybill, do you wish to make your remarks now on scheduling?

DELEGATE GRAYBILL: Let's take a vote on my motion to place it in the budget so everybody is with me here.

VICE-PRESIDENT TOOLE: All right. All in favor of approval of the budget--acceptance of the budget will signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENT TOOLE: Motion carried.

DELEGATE GRAYBILL: Mr. Toole, I'd handle the other matter on announcements.

VICE-PRESIDENT TOOLE: Yes. Do you wish to speak on your other matter now'! Or would you

DELEGATE GKAYBILL: May I handle the other matter on announcements?

VICE-PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. Vice-President. I move that we pass consideration of any Orders of Business under Orders of Business 9 and 10 and advance to Order of Business Number 11.

VICE-PRESIDENT TOOLE: The Convention heard Mr. Murray's motion. All in favor signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENT TOOLE: Motion carried.

Mr. Graybill.

DELEGATE GRAYBILL: Very well. On announcements, it was our intention, of course, to start the legislative article debate today. And after consulting with the Rules Committee and some others, we've decided not to start the legislative article today and not to have a night session, although we had considered that. So, we will start the legislative article tomorrow morning.

Now, if you will allow me to indulge myself for a minute, I'dliketomakeafew suggestions, which you can either take or ignore. But it seems to me, in listening to debate yesterday and in listening

today, that we should all examine carefully what we are going to do from now on on these other proposals. Many times we speak and we only echo what someone has already said. It seems to me we must avoid that. Secondly, many times we make remarks which are really terribly funny, but they are only time-consuming unless we're ahead of schedule. When we get ahead of schedule, we'd like to have that. Many times we have collectively been guilty of making amendments which quite clearly fall on Style and Drafting's prerogative, and Style and Drafting is an excellent committee -well staffed-and intends to go over these proposals with a fine-tooth comb and make lots of stylistic changes. Now, when they make those changes, they must bring their report back to this body, and if I may use a nasty phrase, we may nit-pick them again then, but let's try not to do it until Mr. Schiltz and his excellent crew has had a chance to do it. Now, that means that we should concern ourselves with major issues that we can determine or discover in the articles that we're debating. So let's-let me ask you to do the next thing; that is to study the material. We're not going to meet tonight. Let's read the yellow book tonight, and then tomorrow we'll all know what we're talking about, and as you read the yellow book, let's pick out major areas of concern that are real issues in terms of constitutional matters. Let's not worry about how the clause reads or how—where the comma is-or what minor areas you might like to change. If you have that kind of change in mind, I'm sure Jack Schiltz would at least accept a piece of paper from you, and you can, you know, try to make it in his committee. Then, when it comes back, if he has really failed miserably to catch some terrible blunder in English, then we'll catch him up and do it, But, let's not do it twice. Now, before you do study tonight's proposal, I must confess that when I studied it, it was somewhat confusing, and I'd like to spend one minute with you on tomorrow's proposal. If you happen to have it before you, fine; if not, just listen and I think you'll get the sense of it. On page 3, you'll find the majority proposal, which happens to be couched in unicameral language, and on page, I believe it's 22—well, it's earlier than that, I guess, or later-here it is, on page 32, you'll find another majority proposal which happens to be couched in bicameral language. So this committee is coming in with a proposal both on page 3 and on page 32 which are quite obviously inconsistent or duplicitous, and the purpose, as I think all of us understand, is to place with the Style and Drafting Committee this dual proposal, leaving with them the problem of how to place this dual matter on the ballot for the public. Now, the first three sections of both of these majority proposals are greatly different; one calls for unicameral, the other calls for bicameral, but after that, Sections 4, 5, 6, 7, and so on, are identical. So the committee is going to propose tomorrow that we start with Section 4, and if we deal with the ones where the committee is in complete agreement first, and that we deal with the first three sections, which are the distinction between unicameral and bicameral, second or last. Now, furthermore, and this is where it gets a little hairy, you'll find that Sections 4, 5 and 6—which the majority agrees on in both proposals—nevertheless have minority reports to them. So we will be debating a majority and minority position on Sections 4, 5 and 6. Furthermore, when we finished all of those sections-that's Section 4 clear through the end of the proposals, the majority proposal, that's through 16-and come back to Section 1, you'll find that Mr. Kelleher has a parliamentary alternative to the unicameral Section 1. And when the unicameral Section 1 is debated, he tells me, it's his intention to move a minority report, and that's when we'll get to the parliamentary matter. And then, after that, we can go through the Section 1, 2 and 3 of the unicameral and the Section 1, 2, 3 of the bicameral and change them as we please. But, at that point, we will have then adopted the whole thing. You see, the first three sections are going to be both unicameral and bicameral, supported by the majority; the Section 4 through 15, or whatever it is, will be only one section, but there will be three amendments proposed to it, and Mr. Kelleher has an amendment to Section 1 on the unicameral side only. Now, with that little explanation, let's all study tonight and find out what it is they've done wrong. Thank you very much.

VICE-PRESIDENT TOOLE: Thank you, Mr. Graybill. Are there other announcements? Mrs. Eck.

DELEGATE ECK: Yes, Mr. Chairman. As long as you are intending to go home and do your homework, we have another little bit that will be covered in Section 16 of the legislative article, There has been a study done on the Ombudsman, or Citizens' Advocate. Our intern, Kayle Jackson, did this; I believe the Legislative Committee and General Government Committee have five or six copies each. There are five copies that have been placed in the Legislature, and I think Mr. Foster

and Mr. Kelleher and a number of others who have been interested in this have copies. And this might also be a good item to study in case you have doubts about this proposal.

VICE-PRESIDENT TOOLE: Are there other announcements?

Mr. McNeil.

DELEGATE McNEIL: Mr. Vice-President. I note by the fact that most of the delegates are topless that they are as bothered by the heat as I. The temperature in this room was 82° the last time I checked it; I urge our officers to do whatever they can with the maintenance department of the Capitol to control the temperature in this room. Thank you.

VICE-PRESIDENT TOOLE: As Chairman of Administration Committee, I'll attempt to do something about that Mr. McNeil.

Mr. Joyce.

DELEGATE JOYCE: Executive Committee will meet tomorrow morning at 8:30 o'clock in the committee room.

VICE-PRESIDENT TOOLE: Mr. Rygg.

DELEGATE RYGG: Revenue and Finance immediately on adjournment; and I don't know the number of that room over there, but I think it's referred to as Marshall Murray's community room.

VICE-PRESIDENT TOOLE: Any other announcements'?

Mrs. Warden.

DELEGATE WARDEN: The Public Information Committee will meet at 8 o'clock sharp in the morning. Please be there on time.

VICE-PRSIDENT TOOLE: Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, 5 minutes after adjournment. Please be on time.

VICE-PRESIDENT TOOLE: Mr. Etchart.

DELEGATE ETCHART: General Government, 8:30 in the morning, Room 410.

VICE-PRESIDENT TOOLE: Any further announcements? If not, Mr. Murray.

DELEGATE MURRAY: Mr. Vice-President, I move that the Convention adjourn until the hour of 9:00 a.m., February 19, 1972.

VICE-PRESIDENT TOOLE: Convention has heard the motion for adjournment. All in favor, signify by saying Aye.

DELEGATES: Aye.

VICE-PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE-PRESIDENT TOOLE: Motion carried.

(Adjournment 5:12 p.m.)

February 19, 1972 **Twenty-Eighth Day** **Convention Hall**
9:00 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. If we will all rise, Father Arbanas will lead us in an invocation this morning.

FATHER ARBANAS: This past week I received the following letter. It said, I'm alobbyist and I pray this prayer for you every day and then I thought that you might want to use it when you pray for the Montana Constitutional Convention. It is a meditation on brotherhood from John XXIII: "May everyone be able to say of me that I have never sowed dissention or mistrust; that I have never grieved any single soul by engendering suspicion or fear; that I've been frank, loyal, trusting; that I've looked into the eyes of others with brotherly sympathy, even into those person's who do not share my ideas, so as not to hinder the realization of the Great Commandment that they may be one." Amen.

PRESIDENT GRAYBILL: We'll take roll this morning by voting Aye on the voting machines.

CLERK HANSON: Delegate Aronow, Delegate Artz, Delegate Burkhardt, Delegate Driscoll, Delegate Drum, Delegate Kelleher, Delegate Melvin, Delegate Toole, Delegate Spew. Mr. President, may Delegates Dahood and Delaney be excused, please?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Burkhardt, Delegate Melvin.

PRESIDENT GRAYBILL: All right, we'll close the ballot. Will you take the recorded vote?

Aasheim	Present
Anderson, J.	Present
Anderson, 0.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Absent
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Excused
Davis	Present
Delaney	Excused
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Absent
Leuthold	Present
Loendorf	Present
Lore110	Present
Mahoney	Present
Mansfield.	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present

McNeil	Present
Melvin.	Absent
Monroe..	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present
Mr. President	Present

CLERK **HANSON:** Mr. President.

PRESIDENT GRAYBILL: Yes?

CLERK HANSON: 95 Delegates present, 2 excused, and 3 absent.

PRESIDENT GRAYBILL: Would you tell me the absentees so I can watch for them?

CLERK HANSON: Delegate Burkhardt, Delegate Melvin, Delegate Kelleher.

PRESIDENT GRAYBILL: Very well, that's a quorum. The journal will so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications. On Communications, I would like to say to the Convention for the journal, as a record of it, that we had Charles A. Lindbergh here yesterday morning, who spoke to the delegates at a meeting of the delegates, and who met with various members of the delegates on Thursday evening and discussed topics involving the environment and ecology. Mr. Kelleher, we'll now recognize your presence and call you present. Order of Business Number 4, Introduction of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. The Chair will recognize Mr. Murray.

DELEGATE MURRAY: Mr. President, I move to suspend the provisions of Rule 44 for the specific purpose of asking the Convention to ratify the receipt of some committee proposals, particularly those from Natural Resources and Agriculture and Revenue and Finance which were received on the 18th, and proposals from the Executive and Judiciary committees, which were received on the 17th, and asking for authorization to receive the proposal from the Bill of Rights and from the Education Committee and from Public Health, Welfare and Labor, which will be received on the 22nd and for the purpose of authorizing the receipt of proposals from Local Government and General Government which will be received on the 23rd. Actually, my motion at this time is to suspend the provisions of Rule 44 and the rest of my comments relate to the motions that I will make if those provisions are suspended.

PRESIDENT GRAYBILL: Very well, It's the understanding of the Chair that Mr. Murray's motion is to suspend Rule 44 because the Executive and Judicial committees actually reported on the 17th instead of the 16th. Natural

Resources and Revenue and Finance actually reported on the 18th instead of the 17th, and to allow Bill of Rights, Public Health and Education to report on the 22nd, and to allow Local Government and General Government to then report on the 23rd. The reason for this is that the schedule was set up with these other dates in it but enough of the early committees have reported so there's absolutely no danger of not having enough matter on your desk to debate, and we would like to suspend Rule 44 to allow for this leeway. Is there debate on this motion?

(No response)

PRESIDENT GRAYBILL: All those in favor of suspending Rule 44 as set forth, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it and so carried.

DELEGATE BURKHARDT: Mr. President.

PRESIDENT GRAYBILL: Mr. Burkhardt, your presenceis now noted and you may be excused.

DELEGATE BURKHARDT: Thank you.

PRESIDENT GRAYBILL: **I've** just been informed that Mr. Melvin is here and will be here shortly. He had to go to the airport. I forgot to report yesterday-I guess I didn't have an opportunity-and I'd like to report today that we all know that Mr. Harrington was able to have a child while he was here. Mr. Melvin hasn't done quite that well, but he's had a grandchild while he was here, and so we should be happy about that (Applause) Very well, are there other motions or resolutions?

(No response)

PRESIDENT GRAYBILL: **Mr.** Murray, the journal would like to point out that you made a motion to suspend Rule 44. Now, would you like to move the ratification of the matters that we discussed?

DELEGATE MURRAY: **Yes.**

PRESIDENT GRAYBILL: Let's make a motion to that effect.

DELEGATE MURRAY: Mr. President, I felt that I probably should do that; however, I thought that you might have cured it by your remarks. At this time, I move to ratify theaction of the Convention in Committee of the Whole in receiving committee proposals from the Executive and Judiciary committees on the 17th, one day in violation of the rules; and to ratify the action of the Convention in Committee of the Whole in receiving proposals from the committees on Natural Resources and Revenue and Finance on the 18th, one day in violation of the rules; and to authorize the receipt of committee proposals from the Committee on Bill of Rights, Committee on Education and Public Lands and the Committee on Public Health, Welfare and Labor which will be received on the 22nd, in violation of the rules, and authorizing the receipt of the committee reports from Local Government, the last report—well—the committee report from Local Government and the last report from General Government to be received on the 23rd, which will also be in violation of the rules.

PRESIDENT GRAYBILL: All those in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: **Now, we're** correct. Thank you. Are there other motions and resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Unfinished Business, Order of Business 8.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders, Order of Business 9.

CLERK HANSON: The following proposals are on General Orders as of February 19, 1972: Legislative, Executive, Judiciary, Natural Resources, Revenue and Finance.

PRESIDENT GRAYBILL: Very well, any other special orders?

(No response)

PRESIDENT GRAYBILL: No. All right,

General Orders, Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolves itself into Committee of the Whole for the purpose of handling business-General Orders-business under General Orders.

PRESIDENT GRAYBILL: You've heard the motion to move the Convention into Committee of the Whole. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Mr. Graybill in Chair of Committee of the Whole)

CHAIRMAN GRAYBILL: Members of the Committee of the Whole, please be in order. Members of the committee, you have before you for your consideration Proposal Number 3 from the Legislature. If you don't have your book marked, it might help you to mark it now. Proposal Number 3 from the Legislative Committee. Chair will recognize Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and delegates. I have a few corrections to make that I think we should make now. If you'll turn to page 13 in your legislative book and line 14, strike "93" and insert in lieu thereof, "90". And the same page 13, line 14 strike "are",-strike "are" and insert "killed were". I'll repeat. On page 13, line 14, strike "93" and insert in lieu, "90". Page 13, line 14, strike "are" and insert "killed were". Page 13, line 15, following origin, strike "period" and insert this phrase: "in the 1971 session." I'll read it again. Page 13, line 15, following the word, "origin", strike "period" and insert the phrase, "in the '71 session." Page 53, line 5, strike "bicameral",

CHAIRMAN GRAYBILL: Page 53?

DELEGATE AASHEIM: Yes. Page 53, line 5, strike "bicameral" and add an "s" to "proposal". In page 53, line 5, strike the word, "bicameral", and to "proposal", add "s", so it'd be "proposals". Page 55, line 5, strike "bicameral" and add an "s" to "proposal", so it would be "proposals". Page 55, line 5, strike "bicameral" and add "s" to "proposal". Page 56, line 5, strike "bicameral" and add an "s" to "proposal". Page 56, line 5, strike "bicameral" and add an "s" to "proposal". Page 57, line 5, strike "bicameral" and add an "s" to "proposal". Page 57, line 5, strike "bicameral" and add an "s" to "proposal".

CHAIRMAN GRAYBILL: Mr. Aasheim, may I ask at this time-that's all your corrections, right?

DELEGATE AASHEIM: No, I have one that I'm going to pass out.

CHAIRMAN GRAYBILL: All right.

DELEGATE AASHEIM: The pages will come and do this. This is an insert. There were several corrections and thismatter ofclarification that the present is being passed out to you and you can just insert it on page 36. We probably won't have it today but there isn't much change. It's a matter of clarification. One to each one, thank you.

CHAIRMAN GRAYBILL: It goes on page 36? Page 36?

DELEGATE AASHEIM: Yes, it's on the sheet. Before we go into the discussion of the Legislative Article, I have a few comments to make. We were wondering how to present the Legislative Article to you in this assembly. There was a majority of people who felt the unicameral was the way to correct the ills of our legislative process, and there was a minority who favored the bicameral. And inasmuch as the unicameral structure is quite a revolution in the State of Montana, we felt that the two proposals should be worked out to the best of our ability because we do not know today, we did not know the past 4 weeks, which would be accepted. So we have, to the best of our ability--and I assure you we have not agreed-there are many compromises here in both the unicameral and bicameral proposals--and someone has said, let's just accept this so we can go home for the weekend. You would disappoint us very much if you were to do that and I'm quite positive you're not going to do it. However, in lieu of this fact that we are giving you two major proposals, worked out to the best of our ability, we are going to debate the two proposals and we are asking thatyou-thecommitteeisaskingthatyou debate these two proposals in the same light-in the light that we are going to have to live with one or the other. And I am going to ask that you will go

along with the committee in this respect, and I am going to move that we do this in just a minute—that we place-both proposals on the ballot. Now, this does not preclude that after we have drawn up the two proposals, it does not preclude your right to reconsider your action and we'll take it at that time as you wish. Hut today, I'd like to move that the matter of a bicameral and unicameral structure be sent to Style and Drafting as a dual proposal. I guess the matter is open for debate.

CHAIRMAN GRAYBILL: Very well, I understand it to be the sense of Mr. Aasheim's remarks that he moves this Convention that the proposal of style-of the Legislative Committee be sent to Style and Drafting as a dual proposal, including hoth bicameral and unicameral provisions. The Chair would entertain debate on this subject with the view that if this passes, then Style and Drafting will decide the form in which it should go on the ballot, if any.

Mr. Felt.

DELEGATE FELT: Mr. President, your last comment may have answered the question I was going to ask Mr. Aasheim, if he would yield, but I think it could be clearer for my information so I'll ask if Mr.-if the gentleman, Mr. Aasheim. would yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: Yes.

DELEGATE FELT: In placing them both on the ballot, does this particularly specify that both would be separate from the body of the document that we propose, or could one of them conceivably be in, let's say as a preference choice, and the other as an alternate, or is that just left open for future decision?

DELEGATE AASHEIM: That is to be left open for future decision because we have several alternatives and I think that when we have drawn up the two proposals we'll be in a better position then to decide which way we want to put it on the ballot, if we do decide to put both on the ballot.

DELEGATE FELT: Yes, well, with that explanation, it helps me know how I might wish to vote. Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I rise in support of Chairman Aasheim's motion. Our committee has unanimously supported the idea that we place both proposals on the ballot, and it seems to me it would be very difficult now to choose between one or the other. After both of our proposals have gone through the floor amendment process, either one of them could come out substantially different than they are right now, so it seems to me this question should logically be determined last by a motion for reconsideration. Plus I understand that the Rules Committee has under consideration the method in which some of these questions may be placed on the ballot, which we do not know yet. And therefore, I would urge the members of the Committee of the Whole to support the motion at this time, and if you wish to oppose it, do so by motion for reconsideration.

CHAIRMAN GRAYBILL: The Chair will merely interject that it's the Style Committee that will eventually make a recommendation on the form of the ballot, but other than that, that's correct. Is there other discussion'?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on the motion of Mr. Aasheim that the Legislative Committee's proposal here be sent to Style and Drafting as a dual proposal for Style and Drafting, to then recommend in its report the nature of the way it would be put on the ballot. So many as are in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: May I continue my remarks, preparatory to the discussion on Article-Legislative Article? I wish you would turn to page 13—no, page 11 of your books. We-the committee has decided that going through the article with the comments will give you an opportunity to read the comments as we go through the discussion of the sections. We have also, as Mr. Graybill mentioned to you yesterday, decided to ask to pass consideration of Sections 1, 2 and 3. So, at this time, if the motion is in order, Mr.

Chairman, I am going to move to pass consideration of Sections 1, 2 and 3.

CHAIRMAN GRAYBILL: Well, unless there's objection from someone on the floor, the Chair will rule that we are going to start with Section 4.

(No response)

CHAIRMAN GRAYBILL: Very well, we're ready to go to Section 4. Now, do you want to start or should I ask for Mr. Cate?

DELEGATE AASHEIM: Just a minute. I'll have some comments, please. We will then start with Section 4 and we shall, to the best of our ability, draw up a Legislative Article for the unicameral. Now, the Chair has done most of the talking in the committee and he has decided to let the committee have its chance to voice its opinions, particularly in presenting the different sections. So, the committee members have been given an assignment on sections and they will vocalize now since they haven't had an opportunity to do so before. So, with that, I will turn it back to you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, will the clerk read Section 4?

CLERK HANSON: "Section 4, page 3. Qualifications. A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least 1 year, and a resident of the district from which he seeks election for at least 6 months preceding the general election."

CHAIRMAN GRAYBILL: Members of the committee, you now have before you for your consideration Section 4. What is your pleasure?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I move that when this committee does rise and report, after having under consideration Section 4 of the Legislative proposal, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Section 4 of our proposal, which would be the same—

CHAIRMAN GRAYBILL: Mr. Cate, hold that down about a carrot's length from your chin.

DELEGATE CATE: -which would be the same for both bicameral and unicameral articles, is a replacement for Section 3 of original Article V of the present Constitution, which requires that a representative be 21 years of age and a senator at least 24. The committee proposal requires a legislator to be a qualified voter. This follows the line of reasoning in the Bill of Rights Committee recommendation that 18 year olds be considered adults for all purposes. This would allow, the committee felt, the young to participate in elections as candidates as well as voters. The committee also believes that state and district residence requirements are needed to prevent candidates from moving into a district shortly before the election to run for a legislative seat, thereby defeating one of the main purposes for single member districts, which is representation of a district by a true representative of that district. The-majority proposal provides for residency in the State of Montana for at least 1 year preceding the general election, and residency in the district from which the individual would seek election at least 6 months preceding the general election. There is a minority proposal, Minority Proposal Number 3, is essentially the same except for the fact that it requires that the candidate be a resident of the district for 60 days prior to the primary election. The majority report-the majority felt that general election was a more stable date than the primary, the primary having been moved in the past to September and then back to June, and so forth, and therefore elected the general election date as the date for filing rather than the primary.

CHAIRMAN GRAYBILL: Very well.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to substitute at this time the minority proposal on page 55. This gives the qualifications of 1 year in the state and 60 days prior to the primary election to be a resident of the district. My reasoning here is that, 6 months before a general election, you could come in the day you filed, move into the district, under the 6-months proposal, and file the day that you moved into the district, and your 6 months would be up by the date of the general election. If we took the 60 days prior to the primary election, this then would guarantee a 30-day residency in the district before you filed and, Mr. Chairman, I move for the—

CHAIRMAN GRAYBILL: Substitute motion. Very well, Mrs. Bates' substitute motion is

that Proposal Number 3, Minority Proposal Number 3 on page 55, replace Section 4, the sense of which is-that it's identical or very similar to Section 4 except that it requires residence before you can run for the Legislature 60 days before the primary instead of 6 months before the general.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I rise in opposition to any residency requirements in any district. We can see the possible henefits from districting, but residency requirements should not be included. It is possible that in an urban area a person may be-not be able to win in his own district hut he ahle to win in any other district in which he is located. I can state this from personal thing. I would run fourth or fifth in my own district and first in the county.

CHAIRMAN GRAYBILL: Mr. Scanlin. (Laughter)

DELEGATE SCANLIN: Mr. President, there seems to he an obvious omission in this matter of qualifying for election. The problem that is omitted in either one of the proposals seems to he of continuing qualification and I ask if Delegate Rollins would yield to a question?

CHAIRMAN GRAYBILL: Mr. Rollins, will you yield?

DELEGATE ROLLINS: I yield.

DELEGATE SCANLIN: Mr. President, Mr. Rollins, what seems to he the problem in Yellowstone County right now'!

(Laughter)

DELEGATE ROLLINS: Mr. Scanlin, I'll speak in general terms. The problem could arise in any district when a person elected to the Legislature subsequently moves during the term of office. As it is now, he could continue to represent that district from which he had been elected in spite of the fact that he no longer resides therein.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: I—at the appropriate time, wish to make a further amendment to Section 4 but I am at a loss to know just when is the proper time to move that amendment.

CHAIRMAN GRAYBILL: Well, if you want to wait until we've disposed of the suhstitute motion so we know which one you're amending, it might be helpful.

DELEGATE ROLLINS: Thank you, sir.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: I rise to support the minority amendment. I don't believe that it's unreasonable to ask somebody filing who wants to serve a district to have at least lived within that district for 60 days beforefilingforthe primary election.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Romney.

DELEGATE ROMNEY: I also support the minority amendment-proposition. I cannot feel that-it is wise to have people in a position to move from one district to another. I think it's a good idea to have people who are candidates for the Legislature reside within the district at least long enough to become familiar with the problems and even the geography of the district. If you carried this proposition to its logical conclusion, it would he possible for people living with--residents of Montana living without the various districts-to elect enough people to control a small-sized Legislature. I realize this is not likely, hut it's a possibility and I think that we should take care of this by adequate length of residence within the district. I am wondering if Delegate Driscoll was going to buttress his remarks with another amendment to supersede the other two propositions which are before us, but he did not do so, so I assume there's no use addressing myself to that matter.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes. Will Mrs. Bates yield to a question?

CHAIRMAN GRAYBILL: Mrs. Bates, will you yield?

DELEGATE BATES: Yes.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes. Mrs. Bates, is it your intent in Minority Proposal Number 3 to lengthen the residency requirement?

DELEGATE BATES: Yes.

DELEGATE ROBINSON: It is? Well— the district residency requirement? That's your purpose, to lengthen that period of time?

DELEGATE BATES: Yes. There isn't any the way it's stated now, under 6 months.

DELEGATE ROBINSON: The majority report shows a 6-months residency requirement prior to the general election. My question is, do you know time certain for the next year or 10 years after when the primary election is going to be? I can see if this-if your proposal were in effect, just for our election the primary was September 14th; the general was November. Under the majority report you would have had to have been aresident in May. Under your minority report you would have to have been a resident only by the end of July. I think that your intent may be very good but I don't think that in very many cases you will have accomplished your purpose. We do know that general elections fall on November-in November. If we establish a (i-month time limit prior to that, we have establish a time certain. If we say 60 days prior to a primary election, there is no time certain in Montana for a primary election.

DELEGATE BATES: Thank you, Mae Nan. I would like to answer that.

CHAIRMAN GRAYBILL: All right, just a minute, Mrs. Bates. Do you want the floor now?

DELEGATE BATES: Yes, please.

CHAIRMAN GRAYBILL: Very well. Mrs. Bates, let's see if there's any other discussion. Then I'm going to let you close. Is there other discussion on this? All right, Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, would Delegate Schiltz yield to a question?

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE ARTZ: The question is real simple. There apparently is difference in the qualifications required here in this article and the ones we passed yesterday. Could Style and Drafting correct that difference or would it require motion from the floor?

DELEGATE SCHILTZ: Well, if it's substantive, there isn't much we can do about it under the rules. I think we can point out that there is a conflict and hope that somebody will take care of it. I don't see exactly what you have in mind though, Mr. Artz.

CHAIRMAN GRAYBILL: Why don't you take that up with Style and Drafting on the side unless it's-you're out of order. It doesn't pertain to the matter being discussed, Mr. Artz.

Mr. Driscoll.

DELEGATE DRISCOLL: Is an amendment in order?

CHAIRMAN GRAYBILL: Depends what the amendment is.

DELEGATE DRISCOLL: Amendment to Section 4.

CHAIRMAN GRAYBILL: Well, now, I'm going to give Mr. Rollins a chance to amend on the matter of residency-1 think that's what he's talking about. And you're talking about-I'd like to decide whether we're going to have the majority or the minority report first, so—

DELEGATE DRISCOLL: I wouldn't like this section to go out onto the floor without a chance of amending it, Mr. President.

CHAIRMAN GRAYBILL: All right, I'll certainly see that you have a chance to amend it.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, there may be a question here in the minority report. May I direct a question to Mrs. Bates?

CHAIRMAN GRAYBILL: Mrs. Bates, will you yield?

DELEGATE BATES: Yes.

DELEGATE CHAMPOUX: If, Mrs. Bates -do you notice Mr. Cate's, or the majority— it specifies from the election, from thedistrict from which the person comes and there could be some confusion, I think, about yours where it says residence of the district. What district?

DELEGATE BATES: The district from which he runs. Mr. Chairman, could I—

CHAIRMAN GRAYBILL: You've answered his question, Mrs. Bates. Is there any other discussion?

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I'd like to point out one thought in support of the minority proposal that we had. If the primary election date is set up to August or even

September, 60 days prior to that would still show responsible intention of the candidate filing and it still would be-that would probably he less than even the 6 months required in the majority proposal.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, there is one defect, I think, in both the majority and minority reports. Under qualification, a legislative candidate should he [a] qualified voter. Now, in-yesterday we amended part 1, Section 4, "fthe General Government Committee report, stating no one serving a sentence in an institution or under state supervision shall not he qualified to hold state office. And I would like to call this attention to both the sponsors of the majority and minority report. I think it's a substantive matter that Style and Drafting cannot take care of and it ought to he called to the attention of this Convention. Thank you.

CHAIRMAN GRAYBILL: I think your point is well taken. We'll take it up as we come—Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, first of all, I see no problem with the question Mr. Aronow has raised in either the majority or the minority report. If he looks at Section 2 of Report Number 1, which we adopted 2 days ago, this defines what a qualified voter is and only this person may vote. Secondly, regarding whether we should have a residency requirement or not, I feel the 6 months prior to the general election proposed by the committee is very reasonable. It's a short term and some terms that may he shorter than that proposed hy the minority report-other times it may be longer. Let me give you an example—make one comparison. Suppose a primary election is set hack to April or March, 60 days prior to that time would then be January. We know in years when we have a reapportionment that sometimes it takes the court a considerable time to determine just where the district lines will he. For example, this past reapportionment moved East Missoula into the district with Anaconda. Assuming there was an elected representative in East Missoula-now, if—by the time the court had come down with its decision, if that was less than 60 days prior to the primary election, this person couldn't even move into his community, which is actually Missoula and run for office. He would have to run in Anaconda if he chose to run. So, looking at it from that side, I think you see that our proposal is reasonable.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I'd like to speak on opposition to the minority report. What we're talking about here is 30 days under the present system-a difference of 30 days. I think that's nit-picking. Under the minority proposal you would have to file in April for a legislative seat. Under the majority proposal you would have to file in May. It's a difference of30 days. Now, you recall a few years ago that the primary in Montana was in September. Under the minority proposal there would have been a residency requirement of 4 months. Under our proposal there would still have been a residency requirement of 6 months. I think thegeneral election date is more stable and that's why we recommended it as a majority and that's why I'm supporting it. Thank you.

CHAIRMAN GRAYBILL: Now, we'll just stand in recess for one moment. Just a moment.

(Convention recessed at 9:47 a.m.—reconvened at 9:49 a.m.)

CHAIRMAN GRAYBILL: Convention will be in order. Mrs. Bates, would you like to close on your motion?

DELEGATE BATES: Yes. Mr. Chairman, fellow delegates, my motion is to require 30 days within the district, regardless, because filing deadline is from-is usually 40 days. This could be changed-the filing deadline before the election. But this would guarantee almost 30 days before even filing, but at least 60 days before the primary election. We don't know when the date of the primary will he, so it is true that the 6 months could he that you could come in today and file for that office even though you have not resided in the district. Now, it's do we want district residency or do we not. Even if you wanted to up this to 3 months, this would be fine, but I think 60 days is a fair time and I ask you to accept this. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on the substitute motion of Mrs. Bates which is contained on page 55, the substance of which is to say that thelegislativecandidatemust be a resident of the district for 60 days before the primary election, instead of for 6 months before the general election. So many as shall be in favor of the substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

DELEGATES: Division.

CHAIRMAN GRAYBILL: All right, division without--we'll open the ballot without recording. Vote Aye if you are in favor of the substitute amendment; vote No if you're against it. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is closed. 56 Noes, 35 Ayes. It fails. Mr. Rollins. Mr. Rollins has an amendment. Will the clerk read Mr. Rollins' amendment?

CLERK HANSON: "Mr. President, I move to amend Section 4 of the Legislative Committee Proposal Number 3, on page 3, and on page 3, line 25—"

CHAIRMAN GRAYBILL: Line 23.

CLERK HANSON: Line 23. Okay.

DELEGATE AASHEIM: Point of order.

CHAIRMAN GRAYBILL: Just a moment. Mr. Aasheim?

DELEGATE AASHEIM: It should be on page 14.

CHAIRMAN GRAYBILL: Well, he's amending the language that appears in Section 4 of Article V and it also appears on page 3.

DELEGATE AASHEIM: But we're talking-the committee has asked that we stay on page 14, if WC could-to be together, otherwise we won't be able to follow him.

CHAIRMAN GRAYBILL: Well, it makes no difference. All right, you can find it on page3 or page 14. Go ahead, read his amendment. Read just the text of his amendment.

CLERK **HANSON:** The following words, "the office shall be vacant when any elected member of the legislature ceases to reside in thr district from which elected."

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President, I'm reminded a little of a debate that Jack Benny and Fred Allen once had. Jack Benny finally concluded by telling Fred, "You wouldn't do so well if I had my writers here." I consulted Mr. Schiltz on the wording of this and I feel that it will clear a problem that arises when an elected legislator, during his term of office, moves from one district to the other. At the present time there is nothing to prevent that person from continuing in the Legislature in spite of the fact that he no longer resides in the district from which he is elected. I hope that this is stated in such a way that that problem might be solved.

CHAIRMAN GRAYBILL: Is there debate on the motion?

(No response)

CHAIRMAN GRAYBILL: Are you through, Mr. Rollins?

DELEGATE ROLLINS: Thank you.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, it seems to me that the sense of that motion is to declare a vacancy, and if I understand it right, it would better appear in Section 7 than in Section 4, and so I resist the amendment.

CHAIRMAN GRAYBILL: Very well. Is there other discussion'?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I would concur with Mr. Murray. Section 7 is intended to cover vacancies and if such a change should be made it should probably be made there.

CHAIRMAN GRAYBILL: Very well. Mr. Rollins, you may close.

DELEGATE ROLLINS: Mr. President, I may have consulted the wrong writer. (Laughter) I would not object to the change suggested by Mr. Murray and would support that change.

CHAIRMAN GRAYBILL: You'regoingto have to withdraw your motion or be defeated or win before you can get it into 7.

DELEGATE ROLLINS: I shall withdraw my motion.

CHAIRMAN GRAYBILL: Mr. Rollins' motion is withdrawn unless there is objection.
Mr. Rollins.

DELEGATE ROLLINS: After having withdrawn that motion, I now wish to make the same motion pertaining to Section 7.

CHAIRMAN GRAYBILL: Well you're out of order, Mr. Rollins. We're discussing 4.
Mr. Driscoll.

DELEGATE DRISCOLL: Mr. President, I propose that Section 4 be amended as follows: after the word-on line 21, strike all the words on line 21, 22 and 23, and after the word "year", add "that in cities or districts of over 15,000 population, the representatives may run at large." Styling and Drafting will have to takecareofthat. At least half the representatives can run at large. Style and Drafting could take care of the details, but this is my amendment.

CHAIRMAN GRAYBILL: All right, the motion is that in cities and districts over 15,000 the candidates can run at large?

DELEGATE DRISCOLL: Can run at large.

CHAIRMAN GRAYBILL: Well, I just want to ask how we determine which 50 percent?

DELEGATE DRISCOLL: I don't know.

CHAIRMAN GRAYBILL: Well, the Chair is not-the Chair can't accept a motion unless he can understand it. Now-(Laughter) can't you say that the candidates shall run at large? Let's try that one.

DELEGATE DRISCOLL: Let's try candidates shall run at large.

CHAIRMAN GRAYBILL: I realize that that's a great burden for all of you. All right, it's my understanding that Mr. Driscoll's amendment would change the residency requirements and it would say that a resident-that in cities and districts of over 15,000 the candidates shall run at large.
Mr. Aasheim.

DELEGATE AASHEIM: I rise in opposition to this motion of Mr. Driscoll's. I think Mr. Driscoll would like to have that when we come to single districts, rather than at this time, and if you would put it in now it would ruin the concept of single districts.

CHAIRMAN GRAYBILL: Mr. Driscoll, would you like to take that up when we take up single districts?

DELEGATE DRISCOLL: No, I think this is the proper time to take it up. We're determining the qualifications of the legislative candidates and the-he shall be residential requirements. I think this is the proper time to take it up.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, if Mr.-Delegate Driscoll will yield to a question?

CHAIRMAN GRAYBILL: Mr. Driscoll, will you yield?

DELEGATE DRISCOLL: I yield.

DELEGATE BATES: Mr. Driscoll, then would this be all right for me to come to Butte and file and run for office there under this—

DELEGATE DRISCOLL: Perfect-perfectly all right. (Laughter)

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. President, I would like to rise in support of the intent of Mr. Driscoll's motion and I would like to remind the Body that Franklin Roosevelt never carried Hyde Park and I think these are-this may be part of the thinking behind some of the folks that live in the cities. Really, when you consider the concentration-and I shouldn't say of talent—but of the concentration sometimes of the people who desire to serve Montana as a legislator, you find in a fairly restricted area people who really should be representatives of the people. Now, these people are not just going to represent the block or the neighborhood in which they live-they are people who have a good deal of knowledge, not only of the county, the county problems or the city government problems, but of the state. And if we make this so restrictive that only those that live on Block A or Block B are going to be able to serve the people of Montana in this house, we are certainly going to leave a good deal of talent at home that should be up here representing the people. Now, I exclude-I certainly exclude myself from this particular

category of talent, but in my case1 happen to have property several places scattered around and some different business addresses and it-1 don't feel I represent the block in which I live because I don't spend much time there. But I certainly feel that I represent a lot of the farmers who I do business with, scattered throughout the county, and I would think that the people who are voting for representation in this house would feel much more comfortable if they could pick out the people who they wanted to represent them. And if they wished a person to run in their district, or if a person had the courage to go into a district and thought that he could he successful in an effort to represent those people, I think that should be a decision of those people when they come to the ballot box and make that decision. Now, the people that seem to be most in support of this measure were the ones who believed in open poll-booth registration. I'm surprised that we don't have open poll candidacy because I think there's a somewhat of a similarity there. Now, if we're going to ask for and try to seek the best representation of the people, I think that we certainly are restricting, or very restrictive in this language and in its intent. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, with Mr. Driscoll and Mr. Drum speaking in tandem, I would suggest that that's an unholy alliance of the two parties of the State of Montana. And I would further suggest that Poly Drive in Billings, Montana, has misrepresented Laurel long enough. (Laughter)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. Mr. Driscoll, would you yield to a question?

DELEGATE DRISCOLL: No. (Laughter)

CHAIRMAN GRAYBILL: Mr. Driscoll. Mr. Foster.

DELEGATE FOSTER: Mr. Driscoll, was there any reason you wished to discriminate against the towns less than 15,000?

DELEGATE DRISCOLL: No, Mr. Foster, I have no reason to discriminate against towns of 15,000 population. I would have everybody elected at large. I would eliminate your single member districts; however, I know that is impossible.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, would Mr. Driscoll yield to another question?

CHAIRMAN GRAYBILL: Mr. Driscoll?

DELEGATE DRISCOLL: I yield.

DELEGATE FOSTER: Mr. Driscoll. would you be in agreement to striking the entire portion that you've stricken and put in no substitute, just strike the residency requirements?

DELEGATE: DRISCOLL: I certainly would. I would say that somehow or another I achieved a victory if that would occur.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, it would be my intent and my personal feeling that the residency requirements in the districts are really not wise or really not necessary, and in many cases will prove to be a real difficult problem. I cite the instance in our district where individuals live in one district at the present time, do business, they ranch in another. This brings a question of where do they really reside? The situation is going to increase where the districts become smaller under the single member district concept, and I submit that the basic idea that we're trying to attain in single member districts is that the residents of that district voting for a representative have the right to choose the best representative that they may. I fully concur with the state requirements, but I feel that if the people of that district want to elect an individual to represent them, they should not be limited in their choice of candidates to the people that actually reside in that particular district. I think we should have faith in the voters to select the representative that they feel can represent them, and if someone can come from outside the district and represent that district to the satisfaction of those voters—and I don't think that the situation that Mr. Blaylock pointed to is really appropriate. If the people in Laurel elect someone from Billings, knowing full well that he comes from Billings, I say more power to them. But, I think to restrict as candidates members that actually live in that particular single member district is going to limit the availability of representation for that district, and I feel that it's basically unwise. I think that the voters-the basic concept of what we're

working on is enlarging the representation and enlarging the ability for the voters to express themselves. And when we say that the voters cannot vote for someone just because they're not in that district, I think we're limiting their right of voting-the right of suffrage-and I feel that the residency requirements in the districts are unwise.

CHAIRMAN GRAYBILL: Mr. Foster, is it your intention to make a substitute motion for Mr. Driscoll's to eliminate the residency requirements in lines 21, 2 and 3?

DELEGATE FOSTER: I would prefer that Mr. Driscoll would yield to that and amend it himself.

CHAIRMAN GRAYBILL: Mr. Driscoll?

DELEGATE DRISCOLL: I so amend.

CHAIRMAN GRAYBILL: All right, we've changed Mr. Driscoll's amendment now, unless there's objection. You're withdrawing your first one and changing it so that he is now eliminating the residency requirements after the comma in line 21 on page 3. Is that correct, Mr. Driscoll?

DELEGATE DRISCOLL: (Nodding yes)

CHAIRMAN GRAYBILL: That's okay. All right. So that the point that we are now debating is Mr. Driscoll's amendment, which would eliminate the last two clauses of Section 4. Section 4 would say: "A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least 1 year." And it eliminates the residency requirements in the district entirely. All right, that's what we're debating.

Mr. Aasheim:

DELEGATE AASHEIM: I might expound a little on how the discussion went in the committee on this matter. There were some who felt there should be no residency requirements, particularly when you think about the large metropolitan areas. We might find three candidates, as Mr. Drum said, who might feel-have a civic pride and a desire to run and they might find themselves limited, restricted, because of residency in one district. And of course, you have in the minority report the expression that we should have a definite restriction because of the fact that we might have, as one man said, a carpetbagger coming in. I am not going to belabor you any further. My personal feeling is there should be no local residence requirement, but my people say you'd better put it in there, or else. And I go along with Mr. Drum and those of you people who say there should not be because of this single member district proposition coming up and the restrictive nature of the single member district as far as residency is concerned, but I find considerable opposition to this concept.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of my distinguished colleague from Silver Bow. It seems to me that this precise thing will solve this problem that keeps going back and forth about single member districts and multi-districts. And I see nothing wrong with anybody filing in any particular district even if they don't live there. After all, filing doesn't get you elected. The people in the district are the ones who vote on you. If they don't want you, if you're a carpetbagger, presumably they won't vote for you. On the other hand, if they do want you, it is absolutely the American privilege for them to vote for you. It seems to me this will solve this problem in one amendment. We can still have single member districts, anyone can run in those districts, the voters will choose the best man, they will choose their representative, and it will solve the city versus rural problem. If I want to go over to my distinguished colleague, Mr. Kamhoot's district and run for the Legislature, I won't win, I'll have no chance of winning, the people won't want me, but if they do, I will be the representative of those people. So, therefore, I think that this is a-the precise way to handle it and I think we should strike the residency requirements and I urge the assembly to solve this problem very simply by adopting the amendment of Delegate Driscoll.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to rise and first of all recognize the very cogent reasons that have been given for doing away with the residency requirements, but there is a problem that no one has mentioned that occurs to me, and that is whether or not the abolition of this part of the section would not be discriminatory toward some of our lower social economic sections of cities. We have to face the fact that by and large, taking a larger city, that the people who come to a Legislature or to a body like this are upper middle class people. And if you analyze those poorer sections that every city has and wonder why they

don't have the representation, I think it is because WC have somehow allowed-not opened it up in such away that they can run or get the majority of a smaller district where they actually live than represent the people. And-I feel that to leave this in the article would guarantee a representation from some of our unrepresented people in the cities.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Thank you, Mr. President. I would like to ask Delegate Joyce a question.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I yield.

DELEGATE BATES: Thank you. Do you realize that if you were filing in an outlying district that you would not even be able to vote for yourself or your neighbors to vote for you?

DELEGATE JOYCE: Certainly, and I'd have to take that chance. If I-I'm just answering the question--amplifying on that, I can file in a district where I can't vote for myself. I can purport to represent the poor people and I am rich—(Laughter)-but still, the poor people have the choice. Maybe they want to send some radical liberal like me up to represent them in the assembly and--after all, it's their choice. If I don't get a single vote in the district because I can't vote for myself, that's my tough luck. I should assess the situation beforehand and this will absolutely solve this problem, so that Laurel can have a representative and at the same time the people from Poly Drive can still run for office, and it seems to me it's the only sensible way to solve the problem.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I would like to speak against the proposal, Mr. Chairman. I think WC ought to be aware that this type of representation would certainly make for an intensification of special interest groups within the Legislature.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think perhaps I should rise and speak. My esteemed seatmate and colleague has indicated that he may like to run in my district. I am sure he has much more charisma, and I may even vote for him myself but if we extended this on a little further, why have any residency in the State of Montana? Now, we had a very capable man up here speaking before the house the other day from California. If we extended this out, perhaps this gentleman could file in Montana and be elected, if we wanted to go for this concept. I don't think I would be representing eastern Montana very well if I voted for something like this, because I don't believe that someone that can come in and make a real fine TV appearance, has a lot of this charisma--a very fine fellow-people may vote for him. But I don't think that he could represent that district very well because he certainly wouldn't know the problems of that district. Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise in opposition to the motion of Delegate Driscoll. I wouldn't want to go home and tell the people in my district that I voted for a motion that would permit anyone outside of their district to come in and run in their district. The people there want single member districts and they want their delegates to be from those single member districts.

CHAIRMAN GRAYBILL: Mr. Johnson. Oh, no-Mr. Jacobsen.

DELEGATE JACOBSEN: I rise in opposition to Mr. Driscoll's amendment. We are in a one man-one vote era. I had a proposal in for even county districting where the county commissioners would be elected from and voted on just from their district. A good example of that is my being here as a Constitutional Convention candidate. We had 26, 25 people running in our county-5 from Columbia Falls, myself from Whitefish. We had from Lakeside, Bigfork. We had the entire county, people running for this office. I am the only one elected from outside of Kalispell and the reason for this is that Kalispell can predominate, as it can in many other areas, and really vote in the candidate of their choice, not the choice of the people in the single member districts as I would like to see it. Thank you.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise in favor of Mr. Driscoll's motion. When I first came to this Convention, I opposed quite

harshly any single member districts. Now I feel that they are the only answer, but I do feel we cannot limit ourselves, especially in bigger cities, to the fact that we cannot run in other areas, and I think this is very important. I don't think there's a question of actually crossing over into another district. If the people--as was said before-if the people want to elect anyone from another district, I think it's up to the people. I don't think this Convention should limit this. Thank you.

CHAIRMAN CRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I have always wanted to run for the state house from Silver Bow County. (Laughter) I want to support Morris'-Mr. Driscoll's motion, and this is a reversal for me. I agree with our revered Chairman, Mr. Aasheim, and I want to apologize for bringing up the word carpetbagger. I was the one who brought it up in our committee and I'm sorry I brought it up. There are a handful of us—and this is the first time I've ever been elected, of course-but from our area where Dave Drum and I live, up and down Rimrock Road, that have been representing Yellowstone County. But I would never, under this single member--under our single member district, there is no way that I could go over into Laurel and ever beat Chet Blaylock. It's impossible. Now, two problems bother me. One is, under our present law an elector can register at the place of his residence and with wealthy lawyers like they have over in Silver Bow County, what is a person's residence'! He may have a summer home and a fishing cabin, and as Dave Drum says, where is my residence? Is it where I spend all my working hours? All you do is sleep someplace, is where your residence is. But we do allow under present law that you can vote in the precinct where you have your so-called legal residence or else you can vote where you are registered-where you—your place of employment if it is more convenient for you. Another problem on residency is, is it really a residence? We have a man that runs down in our county-it wasn't one that Delegate Rollins and Delegate Scanlin were talking about-but another man, I believe, who owns a ranch up near Absarokee, and he spends most of his time and surely that's where his economic interest is, and he has been running successfully for office in Yellowstone county for many years. so as a practical matter, I suggest that we strike this because it's almost going to be, I think, unenforceable. If I rent a room in--what's the old hotel in Butte that they are-the Finlen Hotel, permanently, and I come over there and visit with my friend Morris, once a month-1 mean, that--and I declare that my residence-s" I support the-Mr. Driscoll's motion.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President, I support Mr. Driscoll's motion for the same reasons that Mr. Arbanas did not support it. He was speaking in terms of some people on the lower socio-economic spectrum "four society and I was thinking of a case, maybe, of where a person was born and reared in the lower south side of Billings, Montana, or my home community in Great Falls, Montana, and they were able to raise themselves up economically and socially over the years and have to move to a different part of the community, but they felt they could best represent the people that they grew up with that happened to be on the other end of the spectrum. And I wouldn't like to see them be limited to just running in their own particular district. I think that they should be able to run someplace else. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I am again amazed at the concepts that have developed here this morning. We have all been elected on a residency requirement that we live within the district from which we were elected. It's in our present Constitution. Just because we change the size of our districts, why should wc change the residence requirements that have worked so effectively, so well, throughout the many years that Montana has been a state'! We want better representation. We want the person to live or have residence where he is serving. The gentleman from Billings who has his ranch up in the Absarokee mountains and yet continually represents Billings, he has declared his residency in Billings. Of course I realize that it's a difficult situation to declare your residency or to define it. according to the various lawyers on what residency is, but you declare that this is your residence and that is where you can vote. Disallowing this promiscuous running of various legislators from any part of the state I think is destroying and defeating the thought and the purpose of a single member district. Although Delegate Driscoll and I worked hand in hand many years ago to achieve our common aim of adult education, I am sorry I cannot support him today in his desire to have promiscuity in legislators all over Montana. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I believe that one of the problems we are going to face in single member districts, and I think that we are pretty well all committed to them, is the fact that districts will not necessarily he natural districts and we're going to find that every 10 years the houndaries are changed. Now this can make a real difference within a city where boundary changes are likely to rule a person out of a district which he has been representing, and I think that within the cities you do have natural areas. I can think of one splendid example in our district where Dorothy Bradley would not be in the same district as the university, and these are very much-you know—this is very much the group that she does represent in our district. I think it could happen just as well in rural areas where, when you haveadistrictthat is bounded primarily for population reasons, without taking into consideration what the natural social-economic area is, that you could very well have a person who really represents a rural area, too, and who by change in the district line is ruled out of it. I think that the question that Mr. Rollins brought out about moving from one district to another makes a difference, too, and here again the university district is a good example, because a student who would be running as a legislator and then have to move out of university housing--and they do have to move out, you know, when they're not students any more--would really be cut out of his representation, possibly half way through his term of office. As a matter of fact, he would be cut out of his housing as soon as he came to Helena, I guess, unless he wanted to pay extra rent in the dorm and I don't think they'd let him do it. I just think that we're asking for a lot of trouble. I don't think that this is going to be misused. I don't think people are going to elect people who don't really represent them. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I think that it should he recognized that the proposal that's been made is essentially in derogation of the citizen Legislature concept and that it's best adapted to a parliamentary system where the legislators are not paid anything, so that's the wealthy and the educated and the beautiful can run for office and, of course, he recognized by their constituents as the best class and best suited for that type of thing. Certainly, if we're going to have representation according to interest groups, this type of thing would be best suited for that. If we're going to have a citizen Legislature, it won't work at all.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, Mr. President, I apologize for getting up twice in the same morning; however, I'm speaking to Mr. Foster's motion. I would like to point up a possible happening in some of the larger areas. In Yellowstone County there are approximately 18 people at the present time that come over to Helena to represent the people. There could be the situation where one of these districts has no one that wishes to run or who may not be qualified. Mr. Harlow, would you like to speak or may I have the floor, please'! This is not a likelihood, hut it certainly is a possibility that for some reason one district may not have a candidate who wishes or is economically able or for some reason is not going to file. So we may be faced with the situation where one district does not have representation here in Helena because of the residence requirement. Now I would like, if I may, to go back to the impassioned speech that was given hy Mr. Dahood 2 days ago regarding the 18-year old vote. And, it-again, I hope they put that on tapebecause I think it would be one that legislators of the future should witness. It was a fine speech. Hut in hisspeech, if I can recall your memory to the comments he made regarding an 18 year old, if he is outstanding enough, if he is capable enough, if he has a winning personality. if he has all these other qualities to become elected Governor as an 18 year old, he said, I for one am in favor of this man being Governor of the State of Montana. Well, I think we should give the voters of a district that same privilege. If a person can come into a district and file as a candidate for this house, if he is able to convince those people--and it appears that the TV situation, the charisma that has been mentioned. is something that we're going to have to live with in the future, and the people are going to be able to make that choice if they want him to represent them, they may. And I think that rather than take the chance of having empty chairs in this assembly in years to come, that we've got to rectify this situation that is being placed among us here this morning.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Delegate Driscoll yield to a question?

CHAIRMAN GRAYBILL: Mr. Driscoll?

DELEGATE DRISCOLL: With pleasure.

DELEGATE SCANLIN: Mr. Driscoll, what effect do you see your amendment having on the basic concept of single member districts?

DELEGATE DRISCOLL: I see it enhancing the single member districts, Mr. Scanlin, giving the people in those districts the chance to select the person whom they would like to represent them-the best possible person, regardless of his residency.

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: I'd like to speak against the substitute motion in favor of the section in our proposal. First, I must disagree with my gentleman on my left here in his example that was given and which apparently you're using as a basis for your thinking. The gentleman is not here to defend himself so I wish to at least try to defend him. He did have a dual interest in two different counties, but in defense of his residency, he maintained his residency in Yellowstone County for at least 30 years. He voted there for at least 30 years, his children grew up there and they went to school, and it is true that he did own a ranch in our county, and we're happy to have him as an owner of a ranch, but he still has dual interests. And he has interests in Yellowstone County and justifies his candidacy in that county. I think we're losing sight of the fact that we're here to prepare the best possible Constitution for the State of Montana and I think we should keep in mind that in proposing single member districts, we're trying to get a cross section of the people of Montana. And the only way that we can get a good cross section of the people of Montana is to have residents from each of these districts. And I disagree with Delegate Drum that you won't find candidates. I'm sure there'll be candidates out of some 7,000 people in each district, and we'll find good candidates. And I think we should stick to the original recommendation of our committee.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, fellow delegates, I think I'm going to have to point out to you at this time that you have on your desk a Legislative Committee proposal and, I wasn't going to bring this up till later, but I think now it looks like an opportune time. It would divide Montana into approximately 50 senatorial districts and you'd have threerepresentatives, a multiple of three. This would solve some of these problems that you're worrying about, moving back and forth from one district to another. Would you think about that a little while because that's going to come up later. Mr. President, may I make a substitute motion on Article IV-or, Section 4?

CHAIRMAN GRAYBILL: Yes, I suppose you can. Let's hear it.

DELEGATE JOHNSON: I'd like to have in Section 4 on line 21, I guess it is-they're a little off-set there--where it says, "for at least 6 months"-delete "6 months" and put in "1 year", so it would read, "resident of the district from which he seeks election for at least 1 year preceding the genera1 election." You'd have—

CHAIRMAN GRAYBILL: All right, Mr. Johnson, it seems to me that that substitute motion doesn't go to the issue that we are trying to debate here. Now, I'll be glad to come back to you, but the issue we're trying to debate here is whether you have to be a resident or not and now you're back to a time matter. And I'll be glad to let you do that later but it seems to me that we should solve the problem that we're debating-we've had a lot of debate on this—

DELEGATE JOHNSON: Thank you.

CHAIRMAN GRAYBILL: -and I'm going to rule you out of order at the moment and 1'11 make a note that you want to be talked to.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, it appears to me that Delegate Driscoll's motion to eliminate this sentence has considerable merit. In the first place, it does not say, or would not say that a long-time resident in a particular district was disqualified from running in that district, but it does allow a stranger to come in and file for office against him, and if he can get enough support in that district, he's going to get elected. This would cover that situation where you might perhaps-well, it wouldn't apply to that—strike that. I'm also thinking in terms of a situation where there was no delegate in a district. A person could simply file in that area and seek office from it. You have the third situation where a person's constituents live in a certain area-he doesn't happen to be a resident in that area-he could run in that area and represent those people in the Legislature. As the situation now stands,

you'd have situations, I fear, where a person would live in a certain district but who might be philosophically antagonistic to the residents of it and therefore could never run for the Legislature for that reason. And for these reasons, I support Delegate Driscoll's proposal to eliminate that last sentence.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to oppose Delegate Driscoll's amendment. One thing that hasn't been mentioned here, and I think we'd all better start thinking about it pretty seriously, is the fact that someone else votes on this after we do, and I know what the sentiment is in the districts I represent and that is why I rise to oppose.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'm going to try to compromise this some way. We—according to Mr. Driscoll's suggestion--and I'm not opposed to the idea at all-but I can see that if we have no further restrictions, a man might file in three-districts. He might play tic-tac-toe. So we have complications with single member districts if we are specific in the Constitution about what we are to do or what we are not to do. We may run into serious complications later on because these boundaries are going to change. And is a man going to jump from one district to another to change his place of residence just to he able to be eligible for the Legislature? Consequently, Mr. Driscoll, I'm going to ask--would you yield to a question?

CHAIRMAN GRAYBILL: Mr. Driscoll?

DELEGATE DRISCOLL: I yield.

DELEGATE AASHEIM: Would you be amenable to adopting a slight change in your proposal? If you were to look on line 20—"he shall be a resident of the state for 1 year, period. Other qualifications may be provided by law." We are then leaving this matter up to the Legislature to take care of any complications that may arise.

DELEGATE DRISCOLL: Mr. Aasheim, would you repeat that, please?

DELEGATE AASHEIM: On line **20,** period after year.

DELEGATE DRISCOLL: On line 20?

DELEGATE AASHEIM: On page 14.

DELEGATE DRISCOLL: On page 14-I was looking here-okay.

DELEGATE AASHEIM: On page 14—

DELEGATE DRISCOLL: All right.

DELEGATE AASHEIM: —on line 20, after "year", and then, "other qualifications may be provided by law."

DELEGATE DRISCOLL: I would accept that.

CHAIRMAN GRAYBILL: Do I understand you want to incorporate that into your amendment?

DELEGATE DRISCOLL: I would accept it, Mr. President-or Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, it's the sense of the amendment we are now debating to eliminate the residency requirement language but to add the sentence, "other qualifications may be provided by law."

Mr. Martin.

DELEGATE MARTIN: Are we voting on Driscoll's amendment or Foster's amendment?

CHAIRMAN GRAYBILL: No, Mr. Foster did not make an amendment. It's Mr. Driscoll's amendment and it is the same as Mr. Foster's, and the sense of it is to make the Section 4 read as follows: "A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least 1 year, period." Now we've just added, "other qualifications may be provided by law." That's the sense of what we're voting on.

Mr. Cate.

DELEGATE CATE: (No response)

CHAIRMAN GRAYBILL: All right, Mr. Driscoll.

DELEGATE DRISCOLL: I can't go with Mr. Aasheim's proposal. I'd rather go right down the line—

CHAIRMAN GRAYBILL: All right, let's—

DELEGATE DRISCOLL: -1 would accept something like withdrawing the word,

"district", and inserting the word, "county"— something of that nature.

CHAIRMAN GRAYRILL: Well, let's go ahead and vote on Mr. Driscoll's motion and we'll see where we stand and we can go ahead.
Mr. Cate.

DELEGATE CATE: Mr. —

CHAIRMAN GRAYBILL: So that everybody understands, Mr. Aasheim's language is in abeyance. Okay, Mr. Cate.

DELEGATE CATE: Mr. Chairman. there are a few things that haven't been brought up here that should be brought up regarding single member districts. Our committee, of course, heard all the arguments. In fact, for 17 days we listened to arguments. We studied single member districts, single member district, British system, multi-member district, combination single member-multi-member districts, proportional representation, all kinds of districts. And the consensus of our committee was that the real answer to the problem, to open up the Legislature to the people, was the single member district. Now, the federal courts-part of what we tried to take into consideration in our decision was what is happening on the national scene. And our committee felt that single member districts were going to be imposed eventually by the federal courts. They have been imposed in Alabama. They have been imposed in Minnesota. And I would remind the Convention that our present plan is on appeal in the Ninth Circuit District Court with the request that single member districts be mandated for the State of Montana. And the reason for that is the reason that Chet Blaylock brought out, and I'd like to quote for you some comments from the court hrief in that case. The exhibits that were introduced in that case show that five legislators have been elected from Laurel in this century. Now, Laurel is the 17th largest city in Montana. No senator has been elected from Laurel in the history of Yellowstone County, and no senator or representative has been elected from the south side of Billings since 1907. In essence, the people of Laurel and the people from the south side of Billings are not represented by our present multi-member district system. And that's the argument that is being used in the federalcourt. Our committee arrived at at least seven arguments for single member districts and I would like to read them for you. Number one: The district is relatively small in area and population. This fosters personal identification between constituent and Legislature from campaign through legislative service. By the intimacy of the constituent-legislator relationship, the legislator is kept more responsible. People know to whom they should address their desires and can watch voting performance. Secondly, lower campaign costs in the smaller district opens the candidacy to people who would be precluded by the cost and rigorous running in the larger constituency. It opens public offices to the poor. In the last legislative rare one candidate on the Democratic Party, of the two who were elected to the House of Representatives, had to spend around $4,500 to get elected. That's an awful lot of money for an office hut it's the only way that a Democrat can get elected in Yellowstone County. Number three: Localized minorities within a larger community gain representation that would be denied them bydominantmajorities of the larger constituency, and that's the situation we have in Yellowstone County with the south side. Number four: A smaller list of candidates on the ballot gains the voter a more rational choice than where he has to choose from a dozen or more candidates, and encourages voter participation on the entire ballot. In Yellowstone County for this election and for our last legislative election we had 24 candidates for the people to choose from, and that's an impossihle thing for anybody, including intelligent voters, to do. Number five: A smaller district to campaign in a large state in which some districts presently include several counties is another advantage. With single member districts you're not going to have these hig seven or eight county districts for people to run in. Recognition of natural barriers, such as mountain ranges, rivers and highway access is more easily accomplished by single member districts. And lastly, but probably most importantly, the rural interests are represented by single member districts in that the cities-the rural areas on the fringe of cities and elsewhere can he assured some representation. And when the Towe-Gunderson Bill was prepared, for instance, they had prepared with that bill a 94-member house, single member district plan, and that plan showed, for instance, in Yellowstone County that the rural people would he entitled to at least three representatives, while under the present system, if the city wished to exercise its power of vote, they would have none. In short, I think that this matter has been adequately considered by our committee. We've heard a lot of testimony on the subject. We arrived at the decision to support single member districts as a majority and we would ask the Convention to

support us in that decision. It was not without deliberation and thought. **Thank** you.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I believe that before we vote on Mr. Driscoll's amendment that we ought to consider retaining the last four words that he has deleted. Without those four words it would be possible for a person to be horn in Montana, live here 1 year, leave the state for 20 years and then come back and file for election immediately. If those last four words are retained, I believe Mr. Driscotl's intent would be met, and it would then read: "He shall be a resident of the state for at least **1** year preceding the general election." While I'm on my feet, after having made that observation, I oppose his amendment and support the majority committee report.

CHAIRMAN GRAYBILL: Mr. Driscott, do you see the point and do you wish to accede to it?

DELEGATE DRISCOLL: Mr. Chairman, 1 do not accede to the proposal.

CHAIRMAN GRAYBILL: Very welt. Mr. Burkhardt.

DELEGATE BURKHARDT: (Inaudible)...like to ask Mr. Cate a question, if he will yield, Mr. President.

DELEGATE CATE: Certainly.

DELEGATE BURKHARDT: You spent 17 days with this and some of us are tiring in an hour or so, and I am wondering, is the weakness of the district-the single district system--really inherent in the gerrymandering process which comes about as you try to be sure that those who have had positions of power maintain it? Are you going to assure us that as lines are drawn for a district that we won't have the same situation that Mr. Driscoll's amendment would put us into?

DELEGATE CATE: In answer to that, Mr. Burkhardt, part of our proposal includes a reapportionment commission which would be made up, as proposed, of nonlegislative members and we would ask you and the citizens of Montana to have faith in those people that they would not exercise the gerrymandering that could be possible in single member districts. I would like to point out, however, that gerrymandering is very possible today with multi-member districts, and the classic example is the Anaconda district that shoots all the way over to Missoula, and gerrymandering can be done either way. And-single member districts do create more opportunity for it but we feel that the commission would protect the people against that.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I would oppose Mr. Driscotl's amendment. It seems to me the committee has given careful thought to this and there are some major problems inherent in what he describes and would speak in opposition to it.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I don't believe-Mr. Chairman, I don't believe my distinguished colleague, Mr. Driscoll, understood Mr. McNeil's motion, so I make a substitute motion that Section 4 be amended in line **21,** striking out the comma after the word, "year", and continuing to strike out the following words: "and a resident ofthedistrict from which he seeks election for at least 6 months." And leaving in the section the words, "preceding the general election", so that the sentence would now read: "He shalt be a resident of the state for at least 1 year preceding the general election."

CHAIRMAN GRAYBILL: Very welt, we'll accept your substitute motion.
Mr. Driscoll.

DELEGATE DRISCOLL: My apologies to Mr. McNeil. At that time I was engaged in something. I would accept that, Mr. McNeil. Thank you.

CHAIRMAN GRAYBILL: Very well. All right, now that's the issue we're debating on—whether or not to eliminate the residence in the district but to leave the residence in the state for a year preceding the election. Let's see, Mr. Felt hasn't been up for quite a while.

DELEGATE FELT: Mr. Chairman, as a matter of fact, I haven't spoken on this, on any of the motions, and I believe that we now have before us a substitute motion of Mr. Joyce. I wish to rise in support of that motion. The essential issue which has been touched upon occasionally in this debate which has quite often consisted of explain-

ing a vote rather than debate, is whether or not we are going to trust the voters when they are selecting the person who will represent them. They have expanded the eligibility of the voters and yet seem to feel that we cannot give them freedom of choice. The matter of single member districts is related to this, although I'm sure--I'm quite sure that when we really get to the matter of single member districts some of the speeches have already been made that might otherwise have been made then. We have had experience in Montana with single member districts and it worked quite well. At least, I noticed that some of the senators who were elected from the 56 single member districts that we had were highly qualified people and they were well known by the people in their district and were returned to office regardless of political clearance. They did represent, I'm sure, the large majority of the people in their district but they were not entirely regional in their point of view. That is the only thing about single member districts that has disturhed me. And-if anything, I am losing my interest in single member districts as some of the comments are made around here. It is true, anyway, that we had single member districts in the election of our state senators for quite a long while. I can recall-1 think this might be of interest as an example. Certainly the number of times this would occur will expand if we have 100 or more districts. Rut, a Senator James Shaw was chosen by theelectorate of Dawson County to be their state senator. His ranch lay on the border of Wihaux and Dawson Counties. A careful survey showed thatthe county line ran between the main house and what was a type of hired man's house. Mr. Shaw's parents lived in the larger home, he lived in the hired man's house, and it was after the state Senate spent a fair amount of its valuable time deciding whether or not he was qualified to hold office, they decided that he was qualified; that the hunk in which he spent most of his time lay in the county which had chosen him to be its state senator. And the same question, of course, was debated to some extent when Senator Robert Kennedy chose to become a candidate from the State of New York. Other persons have recently become candidates for United States Senate from a state where there was some question as to their residence. We will eliminate questions of that nature if we adopt the amendment proposed. I'm very glad that there is no limitation on 25 years of age, or 30 years of age, or any other agerequirement. I would wish that we could end up here with a constitutional provision which gives the people the freedom to choose the person who will represent them and that in the guise of what we call qualifications we are not, in fact, limiting this. Examples have been mentioned of people who ran from Yellowstone County. I know, for instance, that this can come up in many other counties. In the Colstrip area they have a high school, a large number of people maintain a type of residence in Colstrip so that their children can attend that school, hut they do not live nearby the rest of the year. And I think you would find that the rural areas would actually benefit substantially if they go along with this type of proposal because there they choose people to represent them that they know, and they will not be choosing a carpetbagger from outside of there district. They will get someone that they have known for a long while and they know how he thinks. Thank you.

CHAIRMAN GRAYBILL: Please keep your remarks brief, Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I rise in opposition to this amendment on the grounds that we are not here to write privileges for politicians to run around any place they please. We are here to support the will and the rights of the people in the districts. I think they're entitled to positive representation in their own districts.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I arise in opposition to the motion, and I intend to be very brief. I want to say that I do not agree with what Mr. Felt said to the effect that the essential question is whether we are going to trust the voters. I think the essential question in this debate is whether or not everyone is going to he represented. Thank you.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I would like to report myself present in the event we get to a vote.

CHAIRMAN GRAYBILL: Very well, you're present.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Please keep your remarks brief, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I assume that I, as a delegate, haverighttospeak to the length that I desire.

CHAIRMAN GRAYBILL: You do, sir.

DELEGATE ROMNEY: A little while ago, Delegate Arbanas spoke about the possible inequity of representation in some places and I think he placed a finger upon a matter which is of great importance. There has been considerable talk about the representation from Laurel and from the south side of the tracks in Billings, for example. Delegate Cate mentioned that there has never been, since 1907, a representative from the south side of the tracks in Billings in the Montana Legislature and I believe very few have represented the area of Laurel in the House and none in the Senate. However, I point out that there is already representation in Laurel and in the south side district in Billings in some cases because of districting and because of residence, and I refer to the city councils of Laurel and the membership in the city council of Billings from the south side of the tracks. There residents and districting, which is single districting, does show and the people of Laurel and the people south of the tracks have had representatives on the city councils of those respective communities. I think it shows that single member districts does work and I think it provides representation. Now, of course, in cosmopolitan Silver Bow where Butte is the entire city and where everybody-practically-and where everybody knows everybody else, it's a little bit difference, so there ought, perhaps, to be a different law for Butte and the rest of us should get along with single member districts.

CHAIRMAN GRAYBILL: Mr. Swanberg. Please keep your remarks brief.

DELEGATE SWANBERG: Thank you, Mr. President. I would simply like to point out that the proposal offered by Mr. Driscoll does not eliminate the single member district. It merely eliminates the residence requirement for the single member district. Secondly, if an alien, so to speak, moves into one of these single member districts and succeeds in getting elected by the people at a vote, he is no longer a carpetbagger. He has been chosen by the people to represent him— to represent them at the Legislature, and for these reasons, I submit that the amendment is proper.

CHAIRMAN GRAYBILL: Mr. Martin, please keep your remarks brief.

DELEGATE MARTIN: Mr. Chairman, I've been getting exercise getting up and down, but let me say that I have a little kinshp with Chet Blaylock. I think we're both political accidents. In our district, which is District 11, Gallatin County has two and a half times the population of Park County. That's how I happened to say that I think it was purely a political accident that I came here and for that reason, I would oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Foster, please keep your remarks brief.

DELEGATE FOSTER: Thank you, Mr. Chairman. I realize in some way I was somewhat responsible for kicking this lengthy debate off, but I would like to speak directly to the rural representatives of Montana. I do more business with Petroleum County than any other county and there's no county that is much more rural than Petroleum County, and I think that the rural people are extremely interested in single member districts. They want to be represented. And I submit that the question of single member districts has not been totally settled in this Convention, and you that represent rural Montana should keep in mind that in a way this is somewhat of a compromise. You of rural Montana should realize that this is somewhat of a compromise in the question of single member districts because it does not insure you that someone in that district is going to be elected. But I also submit to you that the residents of rural Montana will never elect someone that does not live in rural Montana. I know Montana rural people very well and they're not about to elect somebody who comes in from the city to be running in their district, and I think you're overlooking the fundamental point. You may very well lose single member districts on a few words that would allow someone to run in your district who would never be elected, and if you lose your representation because you're so concerned about allowing someone else in some other area of Montana where there is a need for someone to run in that district, you would be sorry indeed, in my opinion, in representing the people of rural Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari, keep your remarks brief, please.

DELEGATE SKARI: Thank you, Mr. President. I think Mr. Foster's remarks are well taken. I can see some difficulties here, and I'm sure

we all can. There are some disadvantages to hoth systems. I don't know, Mr. President, if a substitute amendment is in order?

CHAIRMAN GRAYBILL: It is not **now.** We have two substitutes. We're going to vote.

DELEGATE SKARI: I see. I would just like to discuss a possibility without making a formal amendment, Mr. President.

CHAIRMAN GRAYBILL: Yes sir, **you** may discuss the possibility of another amendment.

DELEGATE SKARI: I see some real problems with redrawing these reapportionment lines every 10 years. I think that in many cases this could be unfair to a district. They might lose seniority in their representation. I see the possihlity of a senator or representative living a mile or a block outside his own district and I think the people of his district would be happy to have him represent them. I would like to suggest that we might possibly consider that, a candidate for an office be a resident of that district or a resident of an adjoining district. Thank you.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Joyce's substitute motion, the substance of which is to eliminate residency requirements in the district but retain residency requirements in the State of Montana for a period of 1 year preceding the election. So many as shall be—

Mr. Foster.

DELEGATE FOSTER: (Inaudible)...for a roll call vote.

CHAIRMAN GRAYBILL: Roll call vote'? Five seconds having stood, we'll have a roll call vote. All in favor of this motion will vote Aye and all opposed will vote Nay.

UNIDENTIFIED VOICE: Mr. Chairman, could we have the motion read again?

CHAIRMAN GRAYBILL: All right, the motion is to eliminate the residency requirements in the district but to retain 1 year residency requirement in the state for the year preceding the general election. Section 4 would then read: "A legislative candidate shall he a qualified voter. He shall be a resident of the state for at least 1 year preceding the general election." Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the vote,

Aasheim	Absent
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Absent
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Excused
Davis	Absent
Delaney	Excused
Driscoll	Aye
Drum..	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye

Heliker	Aye
Holland	Absent
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Aye
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Absent
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Aye
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Absent
Sparks	Aye
Spew	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

UNIDENTIFIED VOICE: Could we ask for a call of the house'?

CHAIRMAN CRAYBILL: You can't ask for a call of the house in Committee of the Whole. Will the Clerk please announce the vote'!

CLERK HANSON: Mr. Chairman, 30 delegates voting Aye, 61 voting No, 9 not voting.

CHAIRMAN GRAYBILL: Mr. Joyce's motion is defeated. Mr. Joyce's was a substitute for Mr. Driscoll's which is considered defeated. Mr. Aronow, did you have a matter you wanted to bring up? If not, just say so.

DELEGATE ARONOW: No.

CHAIRMAN GRAYBILL: No? Mr. Johnson, you had a matter you wanted to bring up.

DELEGATE JOHNSON: Thank you, Mr. President. In Section 4, I would like to amend by striking out the 2 words, "6 months", on line 21 and substituting "1 year". So it shall read: "He shall be a resident of the state for at least 1 year, and a resident of the district from which he seeks election for at least 1 year preceding the general election." Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Johnson's motion is to make thr residency 1 year in **hoth** the district and the state. Is there any discussion'?

(No response)

CHAIRMAN GRAYBILL: If not, on Mr. Johnson's motion that we amend Section 4 by making the residency 1 year in the districts, all those in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and the motion fails. Mr. Aasheim, you had a matter you wanted to discuss. Do you still have it? If not, don't worry about it.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I move to-on line 20, page 14-insert after "year", period; strike the balance of the sentence; insert in lieu thereof, "other qualifications may be provided by law, period". I won't discuss it any further.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim's motion is to the effect that Section 4 be amended by putting a period at the end of 1 year. In other words, "he should be a resident of the state for 1 year"; then adding, "other qualifications may be provided by law." Is there discussion?

Mr. Swanberg.

DELEGATE SWANBERG: I heartily concur in Delegate Aasheim's amendment here. It's evident from the debate we've had here for the last hour or so that we are dealing with a fairly controversial subject that has never been tried in our state. Under the amendment as proposed, the residency requirements could be set by the Legislature and if it turns out that the period of residency was not workable, they could establish a law that says no residency at all was needed. In any event the problem is sufficiently controversial, I think, and experimental, that legislative action would be preferable over constitutional action.

CHAIRMAN GRAYBILL: Does everyone understand the sense of the amendment which would be to leave to the Legislature the matter of setting residence requirements? If so, I will certainly--will entertain debate on it as long as I don't feel you are repetitious. If I feel you are repetitious of what we have already talked about, I'm going to gavel you down.

Mr. Arbanas.

DELEGATE ARBANAS: Thank you, Mr. Chairman. I notice in the-from the committee, when the time came to discuss apportionment, it was decided that you had to have a commission because it was pretty well recognized the Legislature couldn't do this itself. I wonder if the sense of the motion is not to ask the same thing be done—that the Legislature decide this themselves, which I don't think they can do.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would gentleman, Mr. Aasheim, yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim, will you yield to a question?

DELEGATE AASHEIM: No.

CHAIRMAN GRAYBILL: No, he won't.

DELEGATE NUTTING: Mr. Chairman, my only concern is the way this is worded. I also believe that it's worded such that the legislative candidate shall be a qualified voter-that also could be changed by law. In other words, we could have 24-year-old, 21-year-old requirements and I would not wish to see that in there.

CHAIRMAN GRAYBILL: Mr. Nutting, we're going to entertain an amendment on that problem in a minute. Mr. Brown's got one ready.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, my same suggestion, I believe-the last four words of that sentence should be retained.

CHAIRMAN GRAYBILL: Mr. Aasheim, will you retain the words, "preceding the general election", in order to make the fact that he has to be a resident for 1 year preceding the election, not for 1 year some time in the past?

DELEGATE AASHEIM: Mr. Chairman, for the moment I believe I will resist that amendment. Otherwise, we might as well leave it as it is.

CHAIRMAN GRAYBILL: You're going to have to call on Dave Drum to straighten you out here. You want to resist that? Mr. Aasheim, let me explain. The point is, if you don't put the last four lines in, then a man could have been a resident of Montana 30 years ago and move into thestateand file without any prior notice. Now, if that's what you mean, why that's fine, but Mr. McNeil's point is to make it 1 year before the election. So, if you just tack on the last four words, it does that.

DELEGATE AASHEIM: Mr. Chairman, doesn't it say that he shall be a resident of the state for at least 1 year?

CHAIRMAN GRAYBILL: Yes, but it doesn't say when, and Mr. McNeil's point is that his brother who has moved to California may have been a resident of the State of Montana for 1 year, now can he come back and run without filing-that's the whole point.

DELEGATE AASHEIM: May I hear what the amendment goes, please?

CHAIRMAN GRAYBILL: It would be: "He shall be a resident of the State of Montana for at least 1 year preceding the general election."

DELEGATE AASHEIM: That's fine

CHAIRMAN GRAYBILL: Very well, Mr. McNeil, I think we got your point across that time. Is there any other discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, I would support that motion. To me, it gives some flexibility to take care of the changing population-we're looking, maybe, 50 years or a long time. It doesn't lock in a rule. When you're shifting population, your Supreme Court decisions-many, many things can happen in the next 50 years, and give enough flexibility so we can write this in the Constitution without fixing a firm, unworkable rule we may not be able to live with. Thank you.

CHAIRMAN GRAYBILL: Very well. Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I rise to resist the amendment. I believe we should leave it as it is in the majority report. I should just like to say to Mr. Drum, whom I consider to be one of the finest businessmen in the State of Montana, that if he wants to represent Laurel, I'd like to have him move to Laurel and do it.

CHAIRMAN GRAYBILL: All right, that's repetitious. Now, is there other debate'?

Mr. Champoux.

DELEGATE CHAMPOUX: I will be very brief, Mr. President. I believe that this is an attempt-I'm against the amendment. I believe this is an attempt, the purpose of which is to achieve what we just defeated.

CHAIRMAN GRAYBILL: Very well, is there other discussion?

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President, I would just like to point out that the language in the original proposal says, "he shall be a resident", and you cannot be a resident legally unless you are a resident.

CHAIRMAN GRAYBILL: Well, I think that's something we'll let Style and Drafting take care of. Is there any other discussion?

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would you have the clerk read the motion as it is right now? I don't understand it.

CHAIRMAN GRAYBILL: All right, I'll read it. "A legislative candidate shall be a qualified voter. He shall be a resident of the state for at least 1 year preceding the general election. Other qualifications may be provided by law." Is there any further discussion'?

Mr. Choate.

DELEGATE CHOATE: I would resist the motion, Mr. Chairman, on the basis that, when you say "otherqualifications" it would leave to the Legislature to set any kind of a qualification they wanted, regardless of whether or not it had to do with residence or any of that sort.

CHAIRMAN GRAYBILL: Is there any other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the question—

Mr. Burkhardt.

DELEGATE BURKHARDT: Well, I think—it took a minute for this to dawn, but I wanted to say what Mr. Choate has just said, Mr. President. It does seem to me this opens the whole area up for reexamination. We're not delineating residence requirements in this. We're opening the entire thing up and I would oppose it.

CHAIRMAN GRAYBILL: All right, the question is—

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, would Mr. Aasheim yield to a question?

CHAIRMAN GRAYBILL: Mr. Aashcim?

DELEGATE AASHEIM: Yes.

DELEGATE ECK: Mr. Aasheim, would you he willing to add on your amendment that "other residency requirements may be required by law"?

DELEGATE AASHEIM: I would be happy to add that.

DELEGATE ECK: Is it in order to—I mean, can he just do it, or-

CHAIRMAN GRAYBILL: I've already done it, Mrs. Eck.

DELEGATE ECK: Very good. Thank you.

CHAIRMAN GRAYBILL: All right, I understand, Mr. Aasheim, for it to be the sense of your answer that you will allow your amendment to be amended to say, "other residency qualifications may be provided by law." Is there further discussion?

Mrs. Robinson.

DELEGATE ROBINSON: I would like to voice opposition to the motion. I do not feel that the Legislature should be able to determine its own qualifications, just as the judiciary doesn't determine their qualifications, nor does the executive branch determine their qualifications. We should determine them in this Constitution.

CHAIRMAN GRAYBILL: Is there other debate?

(No response)

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Aasheim's amendment, the sense of which would be to change the second sentence of Section 4 by putting a period after "year", so that it read: "He shall be a resident of the state for at least 1 year preceding the general election, period. Other residency qualifications may be provided by law."

UNIDENTIFIED VOICE: Mr. Chairman, may we have a roll call vote?

CHAIRMAN GRAYBILL: All right--roll call vote. So many as shall be in favor of the amendment please vote Aye; so many as are opposed, vote Nay. Have all the delegates voted?

(No response)

CHAIRMAN GRAY BILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is closed.

Aasheim	Aye
Anderson, J.	Nay
Anderson, 0..	Nay
Arbanas	Nay
AImess	Nay
Aronow	Aye
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown.	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross..	Nay
Dahood	Excused
Davis	Aye
Delaney	Excused
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong.	Nay
Garlington	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce..	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay

Melvin	Nay
Monroe..	..Aye
Murray..	..Aye
Noble	.Aye
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	..Aye
Rygg	Nay
Scanlin	.Aye
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	.Aye
Toole	..Absent
Van Buskirk	Nay
Vermillion	Nay
Wagner,,	Nay
Ward	Nay
Warden..	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	.Aye

CLERK HANSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Please announce the vote.

CLERK HANSON: 28 delegates voting Aye; 68 voting No; 4 not voting.

CHAIRMAN GRAYBILL: Very well, 28 having voted Aye, 68 Nay, the amendment fails. We're back on Section 4, unamended.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I would now like to offer an amendment to Section 4. Referring to page 14 of the report, line 19, I move to delete the following language: "shall be a qualified voter. He." It will then read: "A legislative candidate shall be a resident." And I'd like to be heard. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, I understand it to be the sense of your amendment that you would take out the words, "shall be a qualified voter. He"-leaving the sentence to read: "A legislative candidate shall be a resident of the state for at least 1 year."

DELEGATE BROWN: Yes, sir. My reason for doing that is, yesterday we passed the Suffrage Article and it provides you must be a qualified voter to hold public office, gave the additional limitation that a felon who is under state supervision cannot hold public office. This would be in conflict and if this amendment is approved, then it would clear up the conflict and we would have clear qualifications for office.

CHAIRMAN GRAYBILL: Very well, is there discussion'?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I would not resist the amendment and would support the amendment because it is in line with what we debated and decided yesterday.

CHAIRMAN GRAYBILL: Very well, the committee supports theamendment. Is thereother discussion?

(No response)

CHAIRMAN GRAYBILL: If not, the question's on the proposed amendment by Mr. Brown, which would take out the words, "shall be a qualified voter. He," so that the sentence reads: "A legislative candidate shall be a resident of the state for at least 1 year", and a resident, and so forth. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Are there further amendments to Section 4?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move that the word, "district", be changed to the word, "county".

CHAIRMAN GRAYBILL: Mr. Kelleher moves that in line 21 on page 3, the word, "district", be changed to "county".

Mr. Kelleher.

DELEGATE KELLEHER: This should meet the objections of both the rural people and the urban people and I think otherwise the matter's been pretty well discussed.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Am I on? Mr. Chairman, I am wondering what effect this would have in districts that go into other counties? In other words, we very well could have a district that would extend, Mr. Kelleher, into more than one county, even as much as four counties, perhaps.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Cate was talking to me and I didn't hear-was it a question, or—?

CHAIRMAN GRAYBILL: Mr. Kelleher, his question is, what is theeffect ofthisin districts that are bigger than one county?

DELEGATE KELLEHER: Oh, a district that had-yeah, say like Petroleum-it's so small population-wise. He would merely have to be a resident of any county inside that district, that's all. Say you had a district composed of Fergus and Petroleum County, which I think is one of the districts we have now, that would mean that a resident of Petroleum County or resident of Fergus County could run from that district. So.

DELEGATE ROD HANSON: Mr. President, would Mr. Kelleher yield to one more question, please?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes, sir.

DELEGATE ROD HANSON: How about in the case-for instance, we could have a district that had a part of Teton, a part of Lewis and Clark and a part of Cascade County in one district. I think this is a very good possibility. What would be the case there?

DELEGATE KELLEHER: He'd be a resident of-he'd have to be a resident of one of those counties inside that district, that's all.

DELEGATE ROD HANSON: I see.

CHAIRMAN GRAYBILL: Is there further discussion? Mr. Cate, are you on your feet?

DELEGATE CATE: I am, Mr. Chairman. This is the same thing we voted on twice before. Let's vote on it again.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, I do not feel it is the same question. Essentially, it's broadened the issue. It has pointed up that the need in the rural areas-it's pointed up-it's defended against the problem of someone coming completely across state. You have to be a member of the county. It's brought you closer to home. It solves the problem of changing districts with time where you are going to have people that are going to be cut off from the district that they've been representing. It solves the problem essentially, except where a person lives on two sides of two different counties, which of course, we still have and would continue to have. I feel that it meets all of the objections that I had to the requirement for residency in the district, and at the same time it should meet the questions that the people in rural Montana might have about a person coming in from outside of rural Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, how does the proposed amendment read?

CHAIRMAN GRAYBILL: The proposed amendment reads, "he shall be a resident of the state for at least 1 year and a resident of the county from which he seeks election for at least 6 months prior-preceding the general election."

DELEGATE HELIKER: Will Delegate Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes, sir.

DELEGATE HELIKER: Would you be willing to accept a revision to your amendment to make the section read in this regard, "a resident of the county or the district", which would take care of this problem of districts overlapping counties?

DELEGATE KELLEHER: Yes, I'd submit to that. That would be very fine.

CHAIRMAN GRAYBILL: I wonder, Mr. Kelleher and Mr. Heliker, would "county or counties" be better, or are we splitting hairs over

whether there's a half a county here-"county or counties which he seeks to represent"?

DELEGATE KELLEHER: I think that would solve Mr. Hanson's problem, to spell it out.

CHAIRMAN GRAYBILL: Would that solve your problem, Mr. Heliker?

DELEGATE HELIKER: (No audible response)

CHAIRMAN GRAYBILL: Let's assume that the amendment is to change the word, "district", to "county or counties" from which he may seek election.

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I just don't want to indicate that by his acceptance of that, that I am in favor of his amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, would someone explain-would Mr. Heliker or the Chair explain to me the difference between saying from the "county or counties of which he is a resident" and of saying "a resident "fthedistrict from which he seeks election"?

CHAIRMAN GRAYBILL: I can explain that from the Chair and save a little time. In Great Falls, for example, there are going to be all kinds of districts, there are going to be 12 districts in the county, and it would let the people in Great Falls, Billings, Butte, Helena, et cetera, run at large but they would not run at large in the county of Petroleum and the rural areas.

DELEGATE HARPER: Thank you, Mr. Chairman, Then, what this motion seeks to do is to say that they do not have to be a member of the district, the single member district-that's obvious, that this is one aim of it, and then the second seeks to deliniate the territory from which they-t" use your expression-a carpetbagger may come to a county or counties involved in that district rather than from the whole state.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I rise just for a point of clarification. Mr. Heliker merely asked Delegate Kelleher if he thought that was a good idea. Delegate Kelleher thought it was a good idea. I wished if they was [were] going to make a motion and we're going to vote on this that they'd put it in a form of a motion so we'd know exactly what we're voting on-how much. If Delegate Kelleher would amend his motion so it would state, entail the whole article as it's supposed to be.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: In answer to our floor leader, I would like to say that I thought that I had concurred to take Mr. Heliker's thoughts and put 'em into my motion. My motion now rends that we accept Section 4 as follows: "A legislative candidate shall be a resident of the state for at least 1 year and aresident of the county or counties of the district from which he seeks election for at least 6 months-" and I'm going to add the word, "next", which is not in the majority report-"next preceding the general election."

DELEGATE BLAYLOCK: Mr. President.

CHAIRMAN GRAYBILL: Mr. Blaylock?

DELEGATE BLAYLOCK: Very quickly, this is essentially the same thing we voted on before. I am against it.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I've talked to a number of members of the committee that reported this article, and from the comments of the committee on the floor, including the Chairman, it is fairly obvious that the committee did not carefully consider this. There are manifold problems with this matter of residency and if we take action and freeze this into the Constitution as it's now written, we're going to be buying a lot of trouble. I therefore move to recommit Section 4 to the committee.

CHAIRMAN GRAYBILL: The issue will be the motion of Mr. Heliker's to recommit to the committee.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I resist the motion and I also resent the implication that the committee did not thoroughly study this. As you understand here the discussion on the floor, there are many facets here and we also went through all these facets in the committee. And I resist the motion to recommit. I think we can settle it here very easily and it will certainly be very

logical no matter which way we go, it'll be workable.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise in opposition to the motion. I think we have overlooked one thing there that might happen. We've heard of controlled Legislatures in the past and lack of faith in the Legislature. I think if we adopt this motion that we'll create a situation like you have never heard of before.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'm still not satisfied with the clarity of this motion, although I agree with the intent—

CHAIRMAN GRAYBILL: Mrs. Eck, the motion is very clear. It's to recommit the whole section to the committee.

DELEGATE ECK: Oh, excuse me.

CHAIRMAN GRAYBILL: Okay, is there discussion on the motion to recommit?

(No response)

CHAIRMAN GRAYBILL: All those in favor of recommitting this section to the committee say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion failed. We're back on Mr. Kelleher's motion to suhstitute for the word, "district", the word, "county or counties in the district from which he seeks election", and add the word, "next", before "next preceding general election". Is there further discussion?

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I believe that this amendment takes care of the problem I had, although I-in your statement on this you said the people, well--like in Great Falls, could run at large. I believe if they're single member districts, as long as they lived in the county they could file for any district and you still wouldn't have that conglomeration on the ballot.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I'd like to point out that the district we're from is about 300 miles long, has four full counties and two partial counties, including the eastern end of Yellowstone County, and if this goes through, someone from Yellowstone County, the urban area or the one square mile that elects all the representatives, can run in our district, and I therefore oppose this particular motion. Thank you.

CHAIRMAN GRAYBILL: Very well, the question arises—

Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I would like to propose a suhstitute motion to Mr. Kelleher's motion. Is that in order'!

CHAIRMAN GRAYBILL: I suppose so.

DELEGATE SKARI: I would like to state that "a legislative candidate should he a resident of a district from which he seeks election, or a resident of an adjoining district." May I speak on that, Mr. President?

CHAIRMAN GRAYBILL: Mr. Skari's amendment would state-substitute amendment-would state that the--"he shall be a resident"-or, let's say, "and a resident of the district from which he seeks election or an adjoining district."

Mr. Sknri.

DELEGATE SKARI: I am trying to overcome the problem here with reapportionment, which has to be done on a fairly regular basis. Wc are going to end up with lines in which we preclude people with seniority in the Legislature from running again because they may be a block or a mile outside of this line. If the people of the district which they previously represented wish them to continue to represent them, I think that they would be entitled to that. This would, however, preclude people with some stature in the state from running anywhere within the state.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, we're on the substitute amendment of Mr. Skari to state that the candidate must he a resident of the district from which he seeks election or the adjoining district. All in favor of Mr. Skari's motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Take it easy. (Laughter)

CHAIRMAN GRAYBILL: The motion fails. All right, we're back on Mr. Kelleher's motion. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Kellcher's motion which would amend Section 4 so that it said: "He shall be a resident of the state for at least 1 year, and a resident of the county or counties in the district from which he seeks election for at least 6 months"--and add the word, "next preceding the general election". Mr. Monroe, for what purpose do you rise?

DELEGATE MONROE: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as are in favor of the proposal-of the proposed amendment—shall vote Aye. So many as are opposed shall vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. Will you please take the ballot?

Aasheim..	Nay
Anderson, J.	Nay
Anderson, 0..	Nay
Arbanas	Nay
Arness..	Nay
Aronow..	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	**Nay**
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain.	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Excused
Davis	Nay
Delaney	Excused
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Nay
Hanson. R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Aye
Holland.	Absent
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Aye
Kamhoot	Aye
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe..	Aye
Murray..	Aye
Noble	Nay

Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 27 delegates voting Aye; 68 voting No.

CHAIRMAN GRAYBILL: 27 delegates having voted Aye; 68 No, the motion fails. We're back on Section 4 as amended by Mr. Brown's amendment. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, Mr. Cate you may close.

DELEGATE CATE: I close.

CHAIRMAN GRAYBILL: Very well, members of the committee you now have before you on the motion of Delegate Cate that when this committee does arise and report, after having under consideration Section 4 of Article V, of the Legislative Committee Proposal Number 3, that the same shall be adopted. So many as shall be in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

DELEGATE CATE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: As a parliamentary maneuver at this time, and to prevent this matter coming up again for reconsideration, I would move to reconsider the question.

CHAIRMAN GRAYBILL: Chair is going to rule you out of order.

DELEGATE CATE: I challenge the Chair.

CHAIRMAN GRAYBILL: All right, challenge the Chair. Now, the point has been raised whether he can move to reconsider immediately so that the matter can't be reconsidered later and I have ruled him out of order and he has the right to challenge my vote, or my ruling. You're going to vote now on whether to sustain my ruling, which would allow the matter to simply stay until we finish the whole article. The reason I do that is that I think we should always keep "pen the right to reconsider in the Committee of the Whole until the end. I have a right, under the rules, to explain my reason. He wants to freeze this thing so that nobody can change it under any circumstances from now on. Now, so many as shall wish to sustain the Chair, vote Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as wish not to sustain the Chair, vote No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is sustained. Mr. Clerk will you read Section 5.

CLERK HANSON: "Section 5. Compensation. (1) Each member of the legislature shall receive an annual salary and such allowances as may be prescribed by law; provided that no legislature shall fix its own compensation."

CHAIRMAN GRAYBILL: Go ahead and read subsection 2.

CLERK HANSON: "Subsection 2. A salary commission shall be created by the legislature to recommend legislative compensation."

CHAIRMAN GRAYBILL: For the information of the body, the Chair will consider Section 1 and Section 2 separately. You may vote on each section; then we'll vote on the whole section as a whole at the end. Members of the committee, you now have before you for consideration Section 5. What is your pleasure? The Chair will recognize Mr. Skari.

DELEGATE SKARI: I move that when this committee does arise and report, after having had under consideration Section 5, subsection 1, of the Legislative Article, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: I would like to make one comment on this Legislative Committee Proposal. It is not signed by myself and Mr. Cate. This is simply because we were absent, not because we do not disapprove. The question here is how we are going to pay our legislators. Right now we are simply considering subsection 1, annual salary. I am going to read a quote from the *Sometime Governments,* by John Burns: "The size of a legislator's salary is generally demeaning enough. It should at least be based upon an annual rate." We do not mention a minimum salary in here. We do not set any salary because of the danger of a salary floor being placed in effect. The last salary remained in there for 50 years and we do not mention it for that purpose. I think the committee feels generally that a legislator is a legislator all year long whether he is in session or not; that they-there is a good chance, I think, of this Convention adopting annual sessions, a continuous body. This is a good possibility. Legislators have to attend interim sessions. They are always doing independent study, or quite often. They are always meeting with groups and individuals, hearing their problems. We feel that compensation should be relevant to the total demands of a legislator's time. I think a good point that can be made also, that the salary is also relevant to the dignity of the office. Another point is that a salary-an annual salary-will help to discourage a legislative body from procrastinating. They realize that they are paid on an annual basis; they are not going to run overtime; they are going to deliberate carefully but they are not going to take undue time. We do, however, recommend that they may get expenses as to defer out-of-pocket costs, as approved by law. In other words, no citizen can say that a Legislature is meeting just to draw its own pay. Thirty-seven states now use an annual salary. I think there is a growing realization that the complex problems of state governments in this age demand considerable time from a legislator and it is on a year around basis, whether they are in session or not. Thank YOU.

CHAIRMAN GRAYBILL: Very well, is there discussion of Section 5, part 1?

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, as a substitute motion, I move that minority report on page 56 be accepted, and really, there is not the difference of opinion here in this minority report that might be considered. The minority report merely replaces Section 1 and 2, and we do not tie in that there will be annual salaries; whether there are annual salaries or are not will be left to the opinion of the legislators. It does not require a wage commission. However, under the minority report a wage commission could be established. In other words, we feel that we are opening up the situation and leaving it to legislative decision as to how the salaries should be paid, and whether they should be annual, whether they should be by the day. And we feel this is, for the long pull, this would be a much better article than to tie any particular things in such as annual salaries or requiring a wage commission. I move the adoption of the minority report.

CHAIRMAN GRAYBILL: Mr. Nutting, do I understand that the only difference between the minority and the majority report is Section 2? Or is there a difference in Section 1 ofthemajority report?

DELEGATE NUTTING: The minority report does not require annual salaries, and it does not preclude them. It merely states that compensation and allowances as may be prescribed by law. Therefore, it leaves it open for the Legislature to go either way.

CHAIRMAN GRAYBILL: Very well, the question is on the substitute motion of Delegate Nutting, which is the minority proposal on page 56: "Each member of the legislature shall receive compensation for his services and allowances as may be prescribed by law. No legislature may fix its own compensation." The principal differences between that and the majority are, the majority provides for an annual salary; and second, the

majority provides in subsection 2, which we aren t on yet, for a salary commission. Is there discussion of the suhstitute amendment? Substitute motion?

Mr. Arbanas.

DELEGATE ARBANAS: Would Delegate Nutting yield to a question?

CHAIRMAN GRAYBILL: Delegate Nutting?

DELEGATE NUTTING: Yes.

DELEGATE ARBANAS: My first question is, how different is this from what we have now?

DELEGATE NUTTING: The only thing is--well, there really is no difference as far as the salary is not set.

DELEGATE ARBANAS: Will Delegate Nutting yield to another question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: I will.

DELEGATE ARBANAS: I have been given to understand that one of the reason our legislators' salaries are so low and why they're always behind things is the fact that they have a rather public embarrassment of voting a raise and their fear of the voters in this matter. I would speak against the motion-or, how do you react to that problem? Is that a true fact or not?

DELEGATE NUTTING: I think when you elect legislators you should elect legislators with integrity. If they feel that they are right, they have the right to vote an increase in their salaries. If they feel that a commission is the proper way to go to establish salaries, they should have that right to estahlish a commission. If they do not feel that is the way, then it should not. I think the voters-the only way they have to control the conditions are by their vote. If we place it into a wage commission, then they would probably not have that right.

CHAIRMAN GRAYBILL: Mr. Arhanas.

DELEGATE ARBANAS: I'd like to speak against the motion. It seems to me that it leaves them in that limbo they are in now and that the original motion provides a guarantee of improvement.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think if you'll note what subsection 2 here says-it says a salary commission shall be created by the Legislature to recommend legislative compensation. The recommendation comes hack to the Legislature. The Legislature establishes legislative compensation. The commission is in no way granted the full responsibility and privilege of setting exact figures here. It's to be an impartial citizens' help to the Legislature so that when this commission of citizens comes out and says, this is what we think our legislators ought to be getting, the Legislature, in enacting some more sensible salary scale, can say this was recommended by people who took a look at the situation from an objective, impartial view. The idea of putting the annual salary, instead of leaving what we have now, as a mandate, is not only to help get a little bit of the monkey off the Legislature's back, in terms of setting their own salaries, but is also to suggest that the citizens of the State of Montana want their Legislature to consider themselves as being the Legislature full time during their term of election, that we consider that a man's work back home, when he's finding out what the rest of us believe and what we want, is fully as important in a sense as his work of actually voting for us during the days of his session here. And an annual salary will enable a person to do just this, and it would also free them from the stigma of having to extend legislative sessions day by day in order to increase their own compensation. I am thoroughly in accord with the majority committee report.

CHAIRMAN GRAYBILL: Is there other discussion'?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I suggest that we separate the two subjects of annual salaries and a commission? Annual salaries are really tied into the subject of sessions and they are a related subject and the salary commission is another subject. I'm afraid that, again, we're going to complicate our thinking.

CHAIRMAN GRAYBILL: I think, Mrs. Bugbee, if you adopt the minority report here you will not have an annual salary. If you don't adopt it, then you will have an opportunity to consider the commission as a separate matter when we consider the majority report. So this first vote on

whether or not to-whether or not to sustain Mr. Nutting on his substitute amendment really is on the issue of whether the salaries shall be annual or not annual. Is there other discussion?

Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman, I would like to pass Section 5 by and go to Number 6 in order to determine whether we have an annual session or whether we don't. I think this would make a difference in determining our action on the minority report or the majority report.

CHAIRMAN GRAYBILL: Now, Mr. Belcher, I don't know what-1 know what you'd like to do. What are you going to do? Are you going to make a motion, or aren't you?

DELEGATE BELCHER: I move that we pass Section 5 and act on Number 6 and come back.

CHAIRMAN GRAYBILL: The motion is to pass Section 5 and go on to Number 6. Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All those in favor of the motion to pass Section 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and the motion fails. We're on Mr. Nutting's substitute proposal on page 56. Is there further discussion?

Mr. Blaylock.

DELEGATE BLAYLOCK: I have a question, Mr. President. Now is it Mr. Nutting's intention that his substitute motion will simply replace subsection 1?

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: The proposal is to consider-the minority report is that-this will be the entire Section 5. It could be amended if its— to put more in or less, but the minority report is that that would be the entire Section 5.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. President, may I ask-will Mr. Nutting yield?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: I yield.

DELEGATE ARONOW: Mr. Nutting, I believe in one of the other Constitutional articles from one of the other committees there is a wage commission provided to set the salaries or to recommend the salaries of the Governor, and Judiciary and other officers. Do you know if Legislature is included in that general provision'?

DELEGATE NUTTING: I'm not aware of it if they are or aren't.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I rise in support of the substitute motion. I fear that this could lead to a professional Legislature that would be hired yearly from now on. I can remember when these legislators got $10 a day up here. Granted, that probably wasn't enough, but I think the quality of the Legislature that we had in Montana at that time was every bit as good as the quality has been when they were receiving a total of $45 a day. I'm not questioning whether the men are worth that, or whether worth more than that, or less. I think this is a duty and an obligation to the people of Montana, if they're interested in their state, and I certainly think this should be left as it is to the Legislature and I support the minority proposal.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I move to amend the minority report, as moved by Mr. Nutting, to attach subsection 2 of the majority report, which will then read: "A salary commission shall be created in the legislature to recommend legislative compensation."

CHAIRMAN GRAYBILL: Mr. Blaylock's motion is to attach subsection 2 of the majority report to the minority report.

Mr. Aasheim.

DELEGATE AASHEIM: I must resist that motion of Mr. Blaylock's. I think we have in subsection 1 of Section 5 a concept that we should settle first. If we adopt the minority report on 56, Mr. Blaylock can then make the motion to add subsection 2, which I think would be more amenable; I think since we have these two concepts here together.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Very well, I withdraw.

CHAIRMAN GRAYBILL: Mr. Blaylock withdraws. Very well, we are on Mr. Nutting's proposal that the substitute amendment or motion that the minority proposal on page 56 be adopted in place of the minority-or majority proposal. The text of it is: "Each member of the legislature shall receive compensation for his services and allowances may be prescribed by law." The Legislature may fix its own compensation. The difference is that it provides for no annual compensation. So many as are in favor of Mr. Nutting's substitute amendment say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Chair is in doubt. We'll have a nonrecorded vote. So many as are in favor say Aye and those opposed say No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. 47 having voted Aye and 40 having voted No, the substitute motion of Mr. Nutting's prevails. Very well, the substitute motion having prevailed for the majority proposal for Section 5, the Chair would now entertain a motion, if anyone cares to make one about the salary commission.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I move to amend the adopted minority report to add what was subsection 2 of the majority report: "A salary commission shall be created by the legislature to recommend legislative compensation."

CHAIRMAN GRAYBILL: Very well, Mr. Blaylock's amendment is to add a subsection 2 to what is now the Convention's Section 5, which was the minority proposal. The purpose will be to add a salary commission to recommend legislative salaries.

Mr. Blaylock.

DELEGATE BLAYLOCK: I should like to speak very briefly to that. I was down in the Governor's conference room when Governor Anderson spoke to the Executive Committee and one of the statements that he made was, what was wrong with the Legislature at the present time is that the members do have some timidity in increasing their own salaries. And I know that if they do do that and when they come home, that they face a great deal of criticism, and I think this type of arrangement has worked very well for Congress, where a salary commission recommends a salary, and then if it is not turned down by Congress, it becomes the law, and I think that in order to get good legislators for our government here in Montana, that this would be a good idea.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Blaylock, would you yield to a question?

CHAIRMAN GRAYBILL: Mr. Blaylock?

DELEGATE BLAYLOCK: Yes.

DELEGATE CATE: Would you be willing to amend your amendment to provide-to recommend legislative, executive and judicial compensation'?

DELEGATE BLAYLOCK: Can I think on that a while?

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: This is a question of the--whichever member of the committee is representing this article--was it Mr. Skari?

CHAIRMAN GRAYBILL: It's Mr. Nutting. Well, it was Mr. Nutting and Mr. Skari.

DELEGATE ARBANAS: I'd like to ask Mr. Skari a question, if I might, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari, will you yield for a question?

DELEGATE SKARI: Yes, Mr. President.

DELEGATE ARBANAS: I'd like to call your attention to the explanation of the Section 2 on page 16, in which the committee states that the proposal provides for compensation commission to either set or recommend legislative salaries, and I'd like to know the reason why you didn't go the stronger way, rather than just-just plain

recommend, which I fear still puts the Legislature maybe in an embarrassing position.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Arbanas, I believe that we used the word, "recommend", here because we felt it was the Legislature's job to settle the matter of salaries. However, we felt that there was a real problem here because legislators in general are quite afraid of paying themselves an adequate compensation. We felt that a commission of responsible citizens that was created, would study the problem, do this research, take into consideration many factors, such as the amount of work and all, the type of people we wanted to attract to the Legislature and, in other words, a very broad representation of people, not limited to those of private means. We felt that they would make a fair appraisal of what would be needed and that the Legislature, in all likelihood then, would go by their recommendation, but we did leave the final appropriation of that money up to the Legislature. They would have to, in the final analysis, pass on it.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: I would like to point out that the salary commission is not precluded by the fact that it is not included in the Constitution and perhaps it would be the feeling of legislators in the future that a salary commission should be set up and the salaries should be made compulsory, and I would prefer to leave it out rather than put it in because it would then give the Legislature more leeway if they did decide that way, then it could be changed.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think we ought to note what we're doing right here and what we have just done, I think, in part, and to put this word of warning in because it'll come up again and again if we are not careful. We said, for example, we wanted everyone to run from single member districts because we want, for example, the people of a poor economic area to have a chance to run. And then in line with that, the committee thought, well, let's make it possible to have a citizens' Legislature instead of a Legislature which can be composed only of those of independent means enough to come here. And now we seem to be tending toward keeping the very people out that we wanted in the first place to vote in. I think at least in keeping part of the loaf here, namely the salary commission, will enable a fair appraisal of this situation to be taken because, you see, what we have, as Mr. Nutting said in answer to Mr. Arbanas' question previously, we are now writing into the Constitution exactly what we have in the present Constitution. It's a fair assumption that we will have tomorrow and the next day the same kind of situation we have had yesterday and the day before and for all the past few years, with the Legislature faced with the question of running again under the burden of having to raise their own salaries and having had to do it entirely on their own. At least let's give them a commission which we have mandated them to set up to recommend salaries to them, so that this whole area of adequate compensation can be dealt with in a way that will allow us to have a citizens' Legislature, instead of one that has to be predicted only on the basis of a person's being able, in terms of his own independent wealth or support from someone, to come here to represent citizens.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I move that in line 6 of the minority proposal that the "shall" be changed to the word, "must".

CHAIRMAN GRAYBILL: Your motion is out of order. We're discussing the motion to add a salary commission, and your motion is not germane to the subject that's being discussed and therefore it's out of order. You may bring it up later, Mr. Romney. All right, we're still on Mr. Blaylock's proposed amendment to Section 5 as now adopted of the minority which would add a salary commission. That's what we're discussing.

DELEGATE BLAYLOCK: Mr. President.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, would it be in order if I added two words to my amendment?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BLAYLOCK: After the word, "legislative", on line 15 on page 15, to add the words, "executive and judicial", so it would read: "to recommend legislative, executive and judicial compensation".

CHAIRMAN GRAYBILL: Mr. Blaylock, before I accept that amendment, have you checked with the chairmen of the Executive and Judicial Committees?

DELEGATE BLAYLOCK: No, I have not.

CHAIRMAN GRAYBILL: Well, it seems to me that this is the sort of thing that Style and Drafting will straighten out if we adopt the same thing in three different committees. That's what Style and Drafting's supposed to do, to straighten it out, and for you to presume that the legislative and the judicial are all going to come in with this, seems to me to put us in a position of debating today the Judicial and the Executive article. Now, let's just do what we're going to do in the Legislature and let's let Style and Drafting straighten it out. Is that permissible? Is that agreeable with you? If it isn't, you make your motion and we'll put it, but it seems to me that you're—

DELEGATE BLAYLOCK: Well, I don't wish to be disagreeable, Mr. President, but if—

CHAIRMAN GRAYBILL: This is a matter that Style and Drafting is supposed to check. If we adopt two conflicting or two things in different sections, then Style and Drafting is supposed to bring that to our attention and decide where it ought to be best put. So, I'm going to rule it out of order. Now, if you want to challenge my ruling—

DELEGATE BLAYLOCK: No, I'm very agreeable, Mr. President.

CHAIRMAN GRAYBILL: All right. Mr. Schiltz.

DELEGATE SCHILTZ: As a matter of fact, Mr. Chairman, the Judicial article does not have this provision. It was considered and thought it would hefoundin General Government. I've just checked with Mr. Joyce and the Executive article doesn't have any commission coverage—salary commission coverage.

CHAIRMAN GRAYBILL: All right, therefore in view of that knowledge, I'll now reentertain your motion, Mr. Blaylock.

DELEGATE BLAYLOCK: Thank you, Mr. President. Then I shall ask to put in after "legislative" then, the words, "executive and judicial compensation". And if there's no objection, I assume that that can go in just that way.

CHAIRMAN GRAYBILL: Very well, Mr. Blaylock's amendment now is to add to Section 5, of subsection 2, that would say "a salary commission shall he created by the legislature to recommend legislative, executive and judicial compensation".

Mr. Cate.

DELEGATE CATE: Mr. Joyce, would you concede to a question?

DELEGATE JOYCE: I yield.

DELEGATE CATE: Was the wage commission proposal discussed before your committee and was there any support on your committee for that proposition as such'?

DELEGATE JOYCE: Well, the comments in the Executive Committee indicate that it was discussed in our committee and only had the support of myself, the other members feeling it was a legislative matter, but that's no-that's the fact.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, Mr. Joyce, would you concede to another question?

DELEGATE JOYCE: Yes, I will.

DELEGATE CATE: As I understand what you said, you felt that to provide for the substance of the commission should he a legislative matter.

DELEGATE JOYCE: That was the consensus of the committee, as I understood it.

DELEGATE CATE: But was the committee in support of the proposition of a commission as a means of setting executive salaries?

DELEGATE JOYCE: Well, I think some of them were. Maybe they could speak for themselves in that connection. I can't represent that across the hoard, sir.

CHAIRMAN GRAYBILL: Mr. Cate, hold the mike a little lower, sir.

DELEGATE CATE: Mr. Aronow.

CHAIRMAN GRAYBILL: Mr. Aronow, do you want to yield?

DELEGATE CATE: Would you yield to a question?

DELEGATE ARONOW: I'll yield.

DELEGATE CATE: You're on the Judiciary Committee, correct?

DELEGATE ARONOW: Yes.

DELEGATE CATE: Did you find in your studies that there was any support for the wage commission type method of determining salaries for judges?

DELEGATE ARONOW: Yes, there was considerable support and we had hoped in our discussion, we were led to believe, I think, that there was going to be a commission appointed or provided for in one of the other articles and rather than duplicate it in the judiciary, we thought we'd just go along with it.

DELEGATE CATE: Thank you.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Blavlock's motion to attach subsection 2 to Section 5 to read as follows: "A salary commission shall be created by the legislature to recommend legislative, executive and judicial compensation." So many as shall be in favor of the proposed amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Members of the committee, you now have before you, on the motion of Mr. Nutting, the minority vice-chairman, subsection 5 containing the minority proposal, plus an additional subsection on a salary commission. Mr. Nutting, do you want to make a motion that they adopt the whole thing with subsections 1 and 2 and then we'll put that question?

DELEGATE NUTTING: Mr. Chairman, I move that when this committee does arise and report after having under consideration the minority report of Section 5, Legislative Committee Proposal, that it recommend the same do pass, as amended.

CHAIRMAN GRAYBILL: Very well, members of the committee, you now have before you, on the motion of Mr. Nutting, that when this committee does arise and report, after having under consideration Section 5, as amended, it recommend the same be adopted. So many as are in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Five is adopted.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Committee of the Whole stand in recess until 1 o'clock p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1 o'clock. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 12:02 p.m.—reconvened at 1:10 p.m.)

CHAIRMAN GRAYBILL: The Convention will be in order. The clerk will read Section 6.

CLERK HANSON: "Section 6 Sessions. The Legislature shall be a continuous body for 2-year periods beginning on the date newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any further session of the Legislature during the biennium. The Legislature shall meet at least once a year in regular sessions of 90 legislative days or less. Any legislature may increase the limit on the length of any subsequent session. The Legislature may be convened in special session by the Governor or at written request of a majority of the members." Section 6.

CHAIRMAN GRAYBILL: Members of the committee, you now have before you Section 6. What is your pleasure?

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 6 of the Legislative Article, it recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Members of the Convention, although this appears to be a short section and it is very concisely written, I think it contains four distinct issues. And those are: First: the length of sessions; how long should we allow our Legislature to remain in session; two: frequency of session; how often our Legislature should meet; three: special sessions who should call them and for what purpose; four: should the Legislature be a continuous body, and what does this mean. Addressing myself to the first question first and, I believe this is the most important decision this body will make regarding the Legislative Article and perhaps in this Convention, and that is, should we continue to impose a limit of 60 continuous days every 2 years on our Legislature. Now, this restriction was perhaps reasonable back in 1890. At that time, Montana had only 16 counties, 38 state agencies, and our Legislature appropriated only $200,000 on an annual basis. Today, we have 56 counties, our government has expanded into a 161 state agencies, which are now being incorporated into 19 departments under Executive Reorganization, and last year our Legislature appropriated almost $280,000,000. Now, the expansion in population and the increased demand for services has caused the Legislature's work load to be increased to such an extent that in the past sessions it's been considering over 1,000 bills. And this increase in work load is not quantitative only. The complexity of bills today is much greater. For example, last session our Legislature considered the Executive Reorganization Bill, a bill which concerned the structure of the entire Executive branch of our government, and we might compare for a minute our work with the work of the Legislatures. We have 178 delegate proposals plus our present Constitution to consider and our time limit appears to be about 60 days or in that area, the same the Legislature is confronted with. First of all, I'dliketo display to you Senate Bill Number 1, which was introduced and passed in the last session. It contains 404 pages, and I'd like you to consider for a minute just how long it would take you to consider whether you would be willing to support the main proposition in each section of this bill and how much time it would take you to approve each phrase and each punctuation mark therein. And then, when you get to the last two pages, how long it would take you to consider the 694 statutes this bill casually repeals. Also, the Executive Reorganization Bill was not only complex, it was lengthy-a 110 pages-and I display these, not because they are unusual. If you-and the legislators know from recent sessions, they've considered these type of catalog bills in the past. The Uniform Commercial Code is an example; the Truth-in-Lending Bill, our new Code of Criminal Procedure, the Code of Civil Procedure-just to name a few. And next session, the Legislature will have at least one of these bills to consider again, the Substantive Criminal Code. And I think it should be obvious that our Legislature does not have enough time; but to further illustrate that, consider the fact that since 1911, only 6 sessions of the Legislature have completed their work in the last 60 days-within the 60-day limitation. In the last 24 years, no Legislature has completed its work within the 60-day limitation. And in recent sessions, they have gone well beyond that 60-day period. As we should expect, working under this time limit the Legislature cannot give time to citizens to testify. Citizens who came to Helena during the last Legislature found for the most part that they had from 6 to 10 minutes to testify on a bill. That's not 6 to 10 minutes apiece. If there were 10 citizens there and the bill was given a 10-minute consideration, you each got 1. And an example of that which I'd like to share with you is this. A gentleman flew here from San Francisco to testify on the No-fault Insurance Bill, a bill which would have substantially changed liability insurance law in the State of Montana. He had previously testified on this bill in California, where it was given a 2-day hearing, in Alaska, where it was given an 8-hour hearing. When it came his turn to testify in Montana, the Chairman said, "You have 2 minutes." He said, "What can I say in 2 minutes?" And he flew back to San Francisco. The entire bill was given a lo-minute hearing. Montanans who drive to Helena in midwinter, stay overnight, and get 2 minutes to testify obviously do not come back again. At least it would be rare. Another example of the time limit is the work the Appropriations Committee must do. If you observe the Legislature in session you'll note the Appropriations Committee never listens to debate on second reading. They adjourn to the room, right over in the right-lefthand corner of the building, there, and work on appropriations. The next day they come back in, without the benefit of

debate, and vote on the bills. A comparable situation, I presume, would be if we had not heard the debate on General Government yesterday, for example we were gone all day, came in at the end of the session yesterday, and voted to either approve or not approve what was done. Would we really be making an intelligent vote? Now, I think these examples and history shows that we cannot estimate how much time it's going to take for future legislatures to complete their work. We cannot sit here today and say how much time it will take the Legislature of 1984 or the Legislature of 1997 to complete their work, and this is the reason the committee has set no arbitrary time limit on the length of sessions. Our committee has provided in Section 6 that the Legislature shall meet in regular sessions of 90 legislative days or less, but it allows Legislature to increase the time limit on subsequent sessions should this be necessary. In other words, it would allow a Legislature in 1998, for example, to increase the time for the 1999 session. It simply allows the amount of work to be done determine how long a session should last, rather than for us to take some guess today. Okay, moving on to the second question, then, how often should our Legislature meet'? The committee debate centered chiefly on the annual-biennial issue. Should it meet every year or every 2 years? We concluded the Legislature should meet annually and for these reasons. Today, change is much more rapid and continuous than it was in the 1890's. Annual sessions would allow the Legislature to act to resolve problems rather than to react when the problems have reached a crisis stage. The problems of education, land use, law enforcement, do not adjourn when the Legislature adjourns and we believe 2 years is just too long to leave these problems unattended. Annual sessions would allow a quicker repeal of bad laws. Any legislator knows that when you're enacting complex legislation, even though you may feel you've adequately studied it, some bugs may appear. It's just like making a car, and this would allow the Legislature to bring theory and practice into harmony sooner. In the matter of budgeting, we know the further we have to project something into the future, the greater the possibility of error, and annual sessions would obviously, I think, promote more accurate and more control of the budget on the part of the Legislature. Federal programs today, especially with revenue sharing apparently coming, we have many federal programs which require matching funds and they require legislation. Annual sessions permit us to get ahold of those federal funds a year early. Perhaps we will gain more money here than the annual sessions will cost. And finally, 33 states now have annual sessions. Your comment points this out. Do we want to be 50th? Okay, going on to the issue of special sessions. Under our present Constitution, special sessions may only be called by the Governor and when so called, they are limited to the scope of his call. Now if you observed the last legislative session, during the first 60 days the Legislature was in a frenzy. They had more work than they can handle, but during the special sessions, especially the spring session, the legislators were on the golf course. Reason? They could only consider the one or two items the Governor allowed them to consider, so you only have a couple committees working. There's nothing for the other legislators to do. Under the current Constitution the Governor, in effect, controls the Legislature for all but 60 days of each Z-year period. In other words, the only time the Legislature can come into special session is when the Governor tells them to and it can only consider what he tells them to do. Is the Legislature, in this type of situation, a real check on the Executive? We submit it's illusory. Our provision allowing both the Governor and the Legislature to call special sessions we think solves both problems. The final issue-should the Legislature be a continuous body? First, let me point out, this doesn't mean the Legislature will be in continuous session. What it would allow is, that the Legislature may carry bills over from session to session with the same status during the term for which its members are elected. How this would have helped during the last legislative session is, when the Governor called the special session for the fiscal matters, bills at that time-or the bills which were stalled or over in the Senate, or wherever they were at that time, were considered dead. The Legislature had to reprint those bills, run them back through the House over into the Senate. Now, if they could have simply carried those bills over, they could have started at the point they left off, saving time, which saves money. They would not have to reprint them, which would also save money. We think it's a very simple thing which would be an aid to the Legislature. And, finally, this provision is one of the two provisions in this Legislative Article which would insure the Legislature authority to act through interim committees. As you probably are aware, the first time the bill creating the Legislative Council was enacted, the Supreme Court declared it unconstitutional. One of the reasons was, it said, if the Legislature is only

allowed to meet for 60 days a year it cannot operate through an interim committee or a council during any other period of the year. When the Legislature did enact another bill at a later time creating a Legislative Council which was approved by the Supreme Court, but only by a three to two decision. So by adopting this provision, you may help remove the danger that the Legislature may not be able to act during the interim. I urge the adoption of Section 6 in total. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: I move that when this committee does arise and report, after having under consideration Section 6 of the Legislative Committee proposal, that it recommend the minority report be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Our committee, the Legislative Committee, was unanimous in that the Legislature needed more time and we vary only in the two reports on the method of establishing the time. If you'll turn to page 57 you will find the minority report that I'm speaking on. Witnesses that contacted us were nearly unanimous that they needed more time and that they also needed some sort of a deadline to work against, but they also needed a variable length of session. Our witnesses were not so unanimous that at this time we needed annual sessions, which the majority report calls for. Now, I hope when we discuss this section, that we do not call for continuous sessions; however, another section of this article does allow for interim committees and I sincerely hope that if you review this proposal, you will look with favor upon that other section which asks that interim committees he allowed. To go over the minority report, we felt that there should be a deadline. Any Governor, when he is elected, has a Legislature coming in. He has a right to expect that it will meet shortly after he comes into office and consider his program. We moved the date back to March 1st but it can be moved up as provided by law. The purpose of that is, that we want it to be held before March 1st but we do not want it later than that. The regular session shall not exceed 80 legislative days. Now, at the present time we were operating under 60 days, legislative days. They would he allowed to count off weekends, so this would involve a full 16 weeks if they wanted to go 5 days a week. Now, if you'll look at the last session-the last sentence, excuse me—regular and special sessions may be extended by a majority vote of each house. So consequently, we have the 80 legislative days but by a majority vote, they can extend these sessions. Now that gives them the variable which could continue-they could extend them as long as necessary hut they would still he working under a deadline, Any business hill or any resolution pending at adjournment of a session shall carry over with the same status to any future special sessions. This gives us the same principle as the continuous session that Mr. Loendorf spoke of, but it does it in a biennial period. Special sessions may he called, not to exceed 30 days, by a majority vote. Now what we mean there is that, if annual sessions are found to be necessary, they can he called by the Legislature. They can he called by a majority so therefore it is not too hard to call a special session. It allows us a flexibility. We may have annual sessions by calling-merely calling a special session, or we may have biennial sessions if they, if the Legislature deems that that is enough now. I believe this allows for enough flexibility and yet gives the voter at home an idea of what is expected of their legislators. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I am very troubled that we may not discharge our duties in this Convention hy giving adequate thought to the complex issues that we have yet to resolve. I think we should make every effort to benefit today from the lessons that we should have learned from the last 2 days. We're falling very badly behind. And now that we've entered the crucial stage of debate and vote and the time pressure manifests itself, my conscience drives me to establish some quick but firm safeguard against my surrender to personal preferences and prejudices. In representing the 50,000 people of District 18, I askmyself, how can I be sure that I vote their best interest and not just my own. And, how can I do this without absorbing the precious hours of this Convention. Over the years, I have learned that adherence to principle is one of the safest guides through a maze of conflicting facts or persuasions, and essentially, this is how the law resolves disputes. So I have been seeking, during this past month, to establish some principles hy which my voting during this coming

month could be guided. And in the hope that what I have concluded may assist some of you in reaching your own decision, I ask leave to outline my thoughts briefly. I startwith therecognition of the political fact that the liberal, as contrasted with the conservative, view is in the ascendancy. In accepting that, I ask myself, what is liberal? And to me it is that which allows the most freedom-freedom of each of us to live, to work, and to believe as we may think right for ourselves, and I want to vote for a Constitution that will do this. Now, what would it be? I think it would have to assure to the individuals in Montana three freedoms. First, his personal freedoms as we see them in the time-honored Bill of Rights. And second is political freedom, meaning his right to vote, to be a candidate, to express his opinions and to know what his government is doing to him and with him. And, third, hisfuturefreedoms which, to me, mean his right to try a new system, to expell a bad system, to meet a new problem with a new solution, and to explore constantly the ways and means of living better with government. Now, how can we write a Constitution that is liberal by that definition? I think the answer is to write in simple terms the broad, fundamental structure of government, coupled with basic assurance of essential personal freedoms, and leave the future to be faced as it unfolds. The profusion of delegate proposals that we have had shows that temporarily, in our enthusiasms, we forgot the good advice of our fellow citizens elsewhere who've preceded us through this constitutional ordeal. Keep it simple, they said, and so also have said some of our own people. Editorialized the ***Billings*** Gazette this month, "Let the Montana Constitution be one of principles, not of specifics". Resolved the AFL-CIO, "We ask other groups to join with us in asking the Convention to so draft the new document that it will lay down the fundamental law of our state, leaving wherever possible the implementation to thelegislature." Declared the League of Women Voters, "The Constitution should be limited to fundamental law, outlining the framework of government, and delegating powers." Now, this is sound advice and I shall heed it and however moral or appealing or helpful or humanitarian some proposal may seem, if it does not fairly fit within these principles, I shall vote against it. If it does, I shall support it, and I shall not consume the precious time of this Convention espousing my opposition or support to each individual issue. I guess this means that, basically, I have faith in our citizens and their legislative process, and also that I have trust in our young people and their coming generations. So in any went, this is how I propose to conduct myself in this Convention and to form my judgments as we work through our task. I think it is the only way that I can fully and fairly discharge my responsibilities to the people, born and unborn, of District 18. Referring now to the majority report of this Legislative Committee, it seems to me that it meets all of the tests that I think I have defined for myself and I support il wholeheartedly. (Applause)

CHAIRMAN GRAYBILL: Thank you, Mr. Garlington. All right, we're debating the minority substitute motion. Mr. Harper.

DELEGATE HARPER: I thinkifyou will, Mr. Chairman and group, I think if you take a look at the minority report, it looks as if it might even be a little bit more flexible than the majority because the majority does use the concept of sessions each year, or annual sessions, while the other does not. However, if you read it as the way, say, an agency preparing an appropriation must read it, then you must read it as a biennial session. Only a biennial session, beginning on March the lst, after the biennium begins, or before, is mandated here and then any subsequent sessions have to be called as special sessions with noted time limitations on it all through the rest of that biennium. Now, an agency cannot assume that a Legislature may call itself into session next year to study appropriations, so we're going to continue this one single big issue of biennial appropriations about which Mr. Loendorf spoke so-1 started to say eloquently--not so much that as I think logically and cogently-and for this, if for no other reason, and there are several others, I hope we will take another look and see the wisdom of writing in the people's idea that their Legislature should work full time. Meaning by that, beready to beon the job all the time, and that at least once a year they must meet to take care of this big item of appropriating $200,000,000 annually, or biennially now, of our money, for all the reasons that Mr. Loendorf described.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman? I rise to speak in opposition to the minority proposal. In keeping with Mr. Garlington's remarks for a flexible document, a fundamental

document, I call to your attention in the minority proposal, line 8, there is a stipulation, "shall not exceed 80 legislative days". Line 12, "special sessions not to exceed 30 days". I have before me the Senate and House Journals of the last session and I read that the regular session was restricted to 60 days. The first special session was 27 days. The third session, 19 days, for a total of 106 days. I think if we restrict future legislators to 110 days, we'll be inflicting the same kind of punishment on future legislators that our past legislators have felt.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, fellow delegates, if it's flexibility we are looking for, it's in the minority plan. The minority asked for SO-approximately 80 days. Legislative days, this is 110, approximately. This can be in 1 or 2 years if they so decided. If they wanted to go, say, 60 days in 1 year and complete the session in the next, this would be at the discretion of the Legislature. I recently saw an article on Idaho. Idaho now is reconsidering-they have an amendment to their Constitution. They have had annual sessions and apparently they feel they do not need them, and they are asking to go back to biennial sessions, And this would provide the flexibility. Another thing that's listed in the minority report is the 30-day special session. In the majority report there's no limit to a special session. Both can be extended by a majority of the body voting to do so. I support the minority report and if you're really looking for flexibility, you will, too. Thank you.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. President, would Delegate Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE McCARVEL: On lines 6 and 7 of the minority report it says that "legislature shall meet in regular session before March 1st." Does this mean that they will start before March 1st or complete their work by March lst?

DELEGATE NUTTING: It means-I'll have to apologize for this language. It got—between the committee work and the printing—it-this portion of it, "before March 1st or earlier", was changed and the-it was "on March 1st or earlier as provided by law", is the way it went to the printers and this is the way it came back. But that would not be a substantive change, I wouldn't think. It would be merely a style change.

CHAIRMAN GRAYBILL: Very well, the—

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I spoke at length this morning and I'm going to restrain myself in the future, but I just want to say, I think that the single, most important issue that faces this Constitutional Convention is now before us. The minority report, with the use of the words, "not less than 80 days", is restrictive and I think that unless the majority report passes, I think it would be the greatest thing this Convention can adopt, and I urge the majority report to be passed en toto.

CHAIRMAN GRAYBILL: Members of the Convention-or the Committee, you have now before you—

Mr. Aasheim.

DELEGATE AASHEIM: I would like to speak on this. This is quite an important issue. It's much more important than what we spent 2 hours on this morning. I wish that before you pass your judgment, keep in mind that we have here a very flexible proposal. We have set 80 legislative days and let me remind you that the present Constitution says 60 days and that includes Saturdays and Sundays, and if you were to takeoffthe Saturdays and Sundays, the present Constitution allows somewhere between 44 and 50 days. Sometimes they met on Saturdays, sometimes they didn't. Sometimes they even met on Sundays but most generally they did not. So it would be 80 legislative days. You have now nearly double the amount of time that the Legislature does meet. And they very likely will not think about meeting on Saturday and Sunday. They'll have time then to think this matter over, these problems over. They won't be pushed into Saturday and Sunday meetings, which they are at present under 60-day limitation. So, 80 legislative days is a lot of days, it's a lot of time added, and also I want to remind you that for the most part, legislators want a deadline. Just look at yourselves. If we didn't have a deadline we would still be fiddling around, wondering what to do. But since we had a deadline, we got down to work and we're in pretty good shape. We're making a lot of errors, sure, but we're correcting

them, too. But this is a tremendous operation we're under now and there is really no comparison between this and the Legislature. So, when we give them 80 legislative days with the stipulation that they can call themselves back into session if they need to, then they have to go home and tell their people that they had to-they had to call themselves back into session because of the press of business before them-and they will explain to the people that they had to have extra time. And believe you me, they're going to justify that, and they're not going to dawdle if they have this pressure behind them to meet for 80 legislative days. They're asking for it. If they ask for it, why should we give them more time? And they then will be accused, if they have more time than they need, they will be accused of wasting the taxpayers' money. So I hope you will consider this very conscientiously and seriously because if they can call themselves back into session for 30 days more-and here's something else-the matter of the budget here enters in, and the budget is a very complex matter to understand. It's a book that thick sometimes. Now, with the power, if we vote it to them, to call themselves-to have an interim committee, they can delegate, say, 12 people to sit on the budget and work this budget out, and then call themselves back into session to act upon it. Wouldn't it be ridiculous for 100 people to sit and talk about the budget? Can't 12 sit down and argue it out and think it out? In fact, 5 could do it. And then, when they have done this, they can call themselves back into session if they need to. Remember, all the time that this pay is going on if they're in session; whereas, if they can delegate this authority to 5 people and analyze the budget, then they have this limitation on the amount of pay that is put out. And this is an important item when you think of $50 a day for 100 or 150 people. So, when you consider this minority report, consider the flexibility of it because, as was mentioned, the federal government might say, "We have a $100,000 available for Montana if you can match it." The Legislature is meeting in January. This appropriation comes in July. The Legislature can call itself back in session in November and act upon this appropriation. They have this flexibility. Then, if they meet in December and November, they can then decide whether or not they have to meet the following year without having to go back, as Proposal Number 1, or the majority proposal says. The majority proposal says they've got to come back the next year. This one says they may if they want to.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I'd like to direct a question to Delegate Nutting.

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: I yield.

DELEGATE RYGG: Mr. Nutting, as I read this, it says special sessions not to exclude 30 days. Does that mean there can be more than one special session during the 2-year period then?

DELEGATE NUTTING: Yes, it does.

DELEGATE RYGG: Thank you. I would like to speak in favor of the minority proposal. As was indicated a little while ago, I thought, it said that with the 80 days and the 30 days it could only be 110 days. As I read it, this could be any number of 30-day special sessions. I would think perhaps the thinking would be that they'd have a regular 80-day session in the 1 year and then maybe have a 30-day session in the odd year to work on fiscal matters, but even so, it wouldn't be restricted to that. I frankly feel that if you take the majority proposal and have it in continuous session, you're going to be flooded with a great number of bills. I think we have found that for years there's the same bills that come in every session. I'm afraid if you had it annually or continuously, you'd have them all the time. I do believe that the minority session will give all the flexibility it needs. I am in favor of having an 80-day limit to try to work on, and I would hope that you'd support the minority.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I agree with the principles of Mr. Garlington but I don't approve of his application of those principles. I support the minority. This provides for 90 working days and a 5-day week, the majority does. This Legislature would be in session 4½ months out of every year. The minority gives the flexibility to meet the changing times for future generations.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Will Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE BERG: Under the minority report can you and do you provide for interim legislative committees?

DELEGATE NUTTING: I think I stated in my remarks, we do not provide for a continuous session; however, in another provision of the proposal we do apply for them and I said I would hope you would recognize that proposal at that time.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: I rise in opposition to the minority report and the only reason why is this 80-day limitation. I think if there's a reason why we're here, it's because the people were fed up with the Legislature and the problems that the Legislature had, and one of the problems that the Legislature had was the 60-day limitation. Now, Mr. Garlington talked about principles that he applies. I also have a principle that I have tried to apply throughout this Constitutional Convention and that is that I do not impose contemporary ideas on the future. The majority allows the sessions to be extended beyond 90 days if necessary. The only way it could be done under the minority report would be by a constitutional amendment which would cost the State of Montana at the current rate $275,000. So I would urge you to support Section 6 of the majority report. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I rise in support of the majority report and for one—just picking out one reason-the minority report says-1 am for the majority report. The minority report says that it has complete flexibility. I would like to point out to you on line 21, it in no way includes this one sentence which says, in the majority report, "Any legislature may increase the limit on the length of any subsequent session", and I submit to you that this is a basic-this provides a basic flexibility that is much needed.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I rise to support the minority report, and I would like to call to the memory of the delegates the story that was in the newspapers about 2 weeks ago where the Senate Majority Leader of the United States Senate, Mike Mansfield, in that body which has open-ended sessions, was furious because the Senators of the United States Senate were not in attendance and they could not attend to business. And I recall in this body the other day when we had a little ovation because every member was present, and I suggest that if you had open-ended sessions and no time limit and no pressure, that this would drag on endlessly. I support the minority report.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, would the gentleman, Mr. Cate, Delegate Cate, respond to a question?

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: I would.

DELEGATE ROMNEY: Would you please calm my fears about this constitutional amendment and $275,000 that you speak of?

DELEGATE CATE: Calm your fears? Well, it could be calmed by amending Minority Proposal Number 5 to include a provision that any Legislature may increase the limit on thelength of any subsequent session.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: (No response)

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think we're getting a little smoke screen here. If you'll pardon me, Mr. Blaylock, the fact that-1 wasn't referring to Drum's cigar, either—(Laughter) Mr. Mansfield called the members of the Senate down because they were absent and that is now interpreted as being a favorable comment on the minority proposal because it has a time limit, and then the argument is against open-ended sessions that are unlimited, and no where do I find in my book that the majority proposal calls for open, unlimited sessions. Let me just review for you some things here-that both of these documents still are included-both of these sections are still included in the document that calls for interim committee work so that is not an issue. Both of these allow the Legislature to call itself into special session, so that is not an issue. Both of these allow for bills to be continued from one session during the biennium to the next without having to be reintroduced with the flood of bills being brought back over again, so that is not an issue. Both of them have a time limit, though the time limits differ. The majority, looking

farther into the future and just facing what we know to be facts of our time and of our state operation, have said 90 days or less. The Legislature does not have to meet those 90 days. It may meet less. If the business can be done in 60, it can meet less. The other says 80. I submit to you that giving the proposal the ax for the 10 days there is not the thing. What is the thing? The thing is, annual sessions or not. I submit to you that the rest of this is pretty much a smoke screen around that. The annual session issue is the one we ought to decide. Do we want to have our state Legislature meet annually to take care of the business they need to take care of? Now if we listen carefully to Mr. Loendorfs opening statement, I think you would have to conclude that his logic was pretty fair. And if you talk with many of the legislators in the past, particularly on this budget issue, they tell you that time and time again we have lost this state lots of money, perhaps millions of dollars, by not being able to meet annually and deal with this matter of budget. It's a lot easier to think in terms of an annual budget than it is to prepare a budget for what must be now about 30 months into the future. We are talking about a big business. We are talking about people's business. Now if we get a little emotional about this, it's because I am. The one thing that the people have to control, the one place where we get into the act, is through our Legislature. As one of our speakers said, the Legislature is the people. What we ought to want to do is to enable our Legislature to do its business in the maximum, the maximum way. Now, if it takes more days, let's have more days. Let's take off as many restrictions as we can and allow them to work. We don't expect the Governor and his staff to work only a few days of the year and then pay them only for the few days they happen to come into the office. We don't expect the Highway Department and other bureaus to only work part time designing roads, and yet we seem to want always to be niggardly in this matter of allowing our Legislature to work, and I think if we'll keep our minds we can get a fair vote if we'll vote as to whether or not we are really for annual sessions, allowing them to work annually, or to force them to continue to work under the biennial system which is now posing as being a most flexible document.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of the minority proposal, and I think there's a factor here that hasn't been mentioned that I would like to bring up. I won't go into the other reasons, but annual sessions bother me, and I think if we're going to have annual sessions that we're going to have professional politicians running for the Legislature. I think many of us here today of the 100, if we knew that we were elected—going to be here 90 days this year and 90 days next year--would never have run for the office, and I submit that I like the cross section that we have here in this assembly. I like their ideas, their thinking. I think they're right down at the grass roots level, and I think that's the way we should keep it. If we go to annual sessions, we're going to get the professional politician that he has time to come up here and this is all he wants to do is just a part time job and he can afford it. We're going to miss a lot of the people that are here today that would be very important in our Legislature in the future. Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, one of the things I was encouraged to talk about by my people was this. My people feel at the present time that we cannot afford annual sessions, as such, but we should provide the flexibility in the Constitution that would allow the Legislature to reconvene itself if it thought it was necessary. I submit to you delegates that when you are talking about annual sessions, you are talking about expense. We all know that Montana has a terrific problem in trying to raise money to support its state and support the actions of government at this time. The things that Mr. Ask brought out I think are very appropriate. If each one of us did have to serve at least 90 days each year, we would be concerned about whether we wanted to be here or not. I think the flexibility that is provided in the minority proposal is adequate. I think it makes sense. I think it is what the people want. And the legislators that I have talked to this met what they wanted. They did want an extension of time. I think you've provided that. You have also provided that if there is an emergency they can extend their time limit; they can reconvene. I submit to you that this is a practical proposal and I support the minority position.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, I'd like to direct a question to Mr. Ask, please, if I may.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Yes.

DELEGATE CHAMPOUX: Mr. Ask, how do you define a professional politician sir?

DELEGATE ASK: Well, I think we-each would probably have our own definition, but I think it's someone that holds himself out just for public office. This is part of a way to make a living. He doesn't necessarily give you a good cross-section of the State of Montana, I don't think.

DELEGATE CHAMPOUX: May I ask another question, please?

CHAIRMAN GRAYBILL: You may.

DELEGATE CHAMPOUX: Do you think 90 days would satisfy this to make a professional politician?

DELEGATE ASK: I think so. You have 90 days annual session and with even the salary now, or I assume it will be more, it will be quite worthwhile to them, I think. It'd be a good part-time job.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Is it the salary thing that you're worried about? Is it the salary thing that makes the professional politician? Is that what you—

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Not necessarily. I think it's the people that we'd like to see run that will say, I can't take that much time away from my business each year, and they're going to decline from running. I'm not saying that the professional politician is anything bad but I think if we took our body here today, and if we knew we were going to be here 90 days now and 90 days next year to write this Constitution, I think about 75 percent of us wouldn't be here. We wouldn't even run. Who would we have, then? The people say, "Well, I have the time and I'm going to run."

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes. Will Delegate Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson?

DELEGATE WILSON: I yield.

DELEGATE ROBINSON: Mr. Wilson, your main concern about providing for annual sessions, or your concern of your constituency, is the expense. I am wondering if you know what part of the biennial budget of the State of Montana is devoted to the Legislature?

DELEGATE WILSON: Right off the top of my head, I couldn't name the exact figure, but it is substantial.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, for the past session, the total of the biennial budget devoted to the entire legislative process was three tenths of 1 percent of the total biennial budget. I would submit that Montana can afford a little bit more than that for an annual legislative session.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: I'd like to ask Mr. Nutting if he'd yield to a question.

CHAIRMAN GRAYBILL: Mr. Nutting, will you yield?

DELEGATE NUTTING: Yes.

DELEGATE ROD HANSON: Dick, is it the intent in the last line of the minority report, on line 14, page 57, that the proviso there where by a majority vote of each house they can extend their sessions, could a regular session be extended until the next year without meeting during that period of time so that you could reconsider the budget annually?

DELEGATE NUTTING: It is my opinion that under that particular section the Legislature could meet 365 days a year if they could justify it to their constituency at home.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Would Mr. Nutting yield to another question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes, I would.

DELEGATE ROD HANSON: Dick, my

intent was to find out, could you recess from 1 year to the next year to reconsider the budget? And I'm thinking strictly of just coming back in so you can compute the budget on an annual basis.

DELEGATE NUTTING: No, you could not.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, I would just like to say, as one who has been over here for the last 6 sessions of the Legislature, that I feel that there is a definite lack of time. I think many things are not decided. They're not passed, or they are passed over hastily because there hasn't been time enough to make the judgment. I am against the minority report and very much in favor of the majority. Thank you.

CHAIRMAN GRAYBILL: We will stand at ease for 1 minute.

(Convention at ease while tape was changed.)

CHAIRMAN GRAYBILL: The Convention will be in session. We are debating the minority report, substitute Section 6 of Article V. Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I, too, after some deliberation here, favor the majority report. We had testimony this morning that legislators felt embarrassed about fixing their own salary. And I'm wondering if we get into this business of their own discretion of fixing further sessions, where they wouldn't feel just as embarrassed about fixing a session some period ahead, and for that reason I think there should be annual sessions for the reasons adequately covered by Mrs. Warden. Thank you.

CHAIRMAN GRAYBILL: Mr. Bashor—Barnard, I mean-excuse me.

DELEGATE BARNARD: Mr. President, I rise in support of the majority report. Having served in the Legislature for some 16 years, beginning with the time when we appropriated approximately $32,000,000 up to about $115,000,000, I must say that I never went home from a session of this Legislature feeling that I had had time to do the job right or had done the job right. There was always a shortage of time, no matter how hard I worked at it or how long, and I certainly support the majority report.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I rise again in support of the majority report. I would like to read briefly to you this article about a citizen Legislature: "Opponents of the present 60-day limitation question whether it really allows a citizen legislature. They maintain that if a legislature is a citizen legislature, it should be representative of all the people, but under the present Montana system it can be contended that only a few classes of people can afford to be legislators-retired people, insurance salesmen, ranchers and farmers who are not busy during the winter months, and professional people who have partners to carry on the business while they are away. Meanwhile, many small businessmen, teachers, white collar workers and laborers cannot afford to run for the legislature." James Miller wrote in the *National Civic Review,* quote, By conservative estimate at least 75 percent of our population that would otherwise be qualified to serve cannot possibly afford to. Unquote.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I wish to draw attention to this body something that hasn't been brought up here-that the minority report calls for a specific time to hold a session, and it must be held before the 1st of March. The majority report does not call for a time to meet. Did you ever consider what could happen if you had a continuous body, a Legislature, that never met and if it was not called into session by the Governor because the both houses or even one house were in an opposite party? This could happen. It's a possibility, and the minority report calls for a time to go into session.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I have-Mr. Chairman, I have several comments to make. I guess maybe a bit in rebuttal. I am in favor of the majority report. First, in regard to professional legislators, I think that a good many people are going to be deterred from running for office if they know that, what with an annual session that almost surely, and special sessions would be called and they would have no way of knowing when those special sessions will be. I know that with our own legislators it caused real hardship to them this last year when a couple of ranchers that we had, had to come back in June, right in the middle of their most busy season, and I think that they'll think twice-in fact, I know they're thinking twice about running again. In regard to

financing, this always really gravels me-the fact that we are so niggardly about the Legislature. You know, we have 165 employees year around in the Department of Education. We don't complain about these employees and yet I think when you balance their function against the function of the Legislature we certainly must feel that our Legislature really deserves more time than it gets. The final matter is that of budgeting. Mr. Rygg mentioned that the sessions could be called back on the odd years to handle budgetary matters and yet, unless you have annual sessions, you can't count on that. In other words, you can't really count on having a special session every other year to handle budgetary matters. It really has to be something that is written in and you know is going to happen. Thank you.

CHAIRMAN GRAYBILL: Mrs. Spew.

DELEGATE SPEER: Mr. Chairman, I think it was said just a little bit ago by Delegate Bates that there was no guarantee, nothing in Section 6 of the majority report, that requires the Legislature to convene. I call attention to the section-let's see, line 6-"The legislature shall meet at least once a year in regular session." Thank you.

CHAIRMAN GRAYBILL: Mr. Nutting, do you want to close?

DELEGATE NUTTING: I will'if no one else wants to speak. But I did want to just mention that, in answering Mr. Hanson's question, there is a proposal in the bicameral section which would possibly limit this; however, it limited-it would be necessary for both houses to agree to a recess but they could if both houses would agree. In the unicameral, there is no such proposal so they could have a recess any time and extend it for any length of time under unicameral and it would require permission of both houses to do it under the bicameral, to answer your question.

CHAIRMAN GRAYBILL: Do you have anything else to close, Mr. Nutting?

DELEGATE NUTTING: No.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, may I make just a few brief remarks as perhaps I will not be able to close after Mr. Nutting's motion is voted on? I think when we speak of an 80-day session, talking only about the present, it was just a few years ago our legislators determined themselves that legislative sessions should be extended to at least 80 days when they asked for that privilege by constitutional amendment. It was not granted, ofcourse, but a Constitutional Convention being called for, I think we are again faced with this question. Now we can argue, well, this 80-day session can be extended so what does it matter what the time limit is. I think it is this-special sessions or extensions of regular sessions make legislators appear incompetent. People assume that if the legislators do not get their regular work accomplished during the regular session, they have been goofing off, and why should the Governor have to call them into special session at additional expense. And it seems to me that the majority report is superior in this respect. It allows an extension of the deadline for regular work, so in the future the amount of regular work can be taken care of in a regular session. One further remark regarding annual sessions and perhaps this has been mentioned, but you can't take care of a regular session with a special session. A regular session is something that has to be planned in advance when you're talking about matters of budget. You don't just call a special session and jump into the budget. That has to be planned at least, I would guess, 6 months in advance and I think I am being conservative there. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the motion of Mr. Nutting, substitute motion of Mr. Nutting, Section 7 of the minority report. The text is on page 57. The question now arises, when you arise and report and considered substitute Section 6, whether to recommend that the same be adopted. Now, so that we understand each other-Mr. Nutting, do you want to speak again?

DELEGATE NUTTING: I would like to close on my motion, Mr. Chairman.

CHAIRMAN GRAYBILL: All, right close on your motion.

DELEGATE NUTTING: The only-1 have only several points-two points to close. One is, that I repeat, there is no time limit on this—these type of sessions-except that the legislators themselves would have to justify. If they extend, they would have to justify calling back a special session. There is no-at no time-not by anything that's said in here does not say that they have to meet 80 days. It says, "not to exceed". That point

was brought out. Another problem that was mentioned was budget, and I would presume thatifthe Legislature felt it necessary to have a budget meeting the next year, the special sessions could certainly be called before adjournment and for the following year the budget session would-the arrangements would be made a year ahead of time. So, with that, I close.

CHAIRMAN GRAYBILL: Very well. Now, so that we all understand each other-Mr. Loendorf moved the majority report, Mr. Nutting moved the minority substitute Section 6, and members of the committee, you have now before you on the motion of Mr. Nutting that when this committee does arise and report, after having under consideration Section 6, it recommend that this minority report be adopted. So many as are in favor of that—

Mrs. Bugbee.

DELEGATE BUGBEE: Roll call.

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote. So many as are in favor vote Aye. So many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will you please tally the vote?

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. .. Nay
Arbanas ..... Nay
Arness Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier Aye
Brown ..... Aye
Bugbee Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Excused
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Nay

Reichert Nay
Robinson Nay
Roeder Nay
Rollins Nay
Romney Aye
Rygg Aye
Scanlin Nay
Schiltz Aye
Si' denus Nay
Simon Aye
Skari Nay
Sparks. Nay
Spew Nay
Studer Aye
Sullivan Nay
Swanberg Nay
Toole Nay
Van Buskirk Nay
Vermillion Aye
Wagner Aye
Ward Nay
Warden Nay
Wilson Aye
Woodmansey Absent
Mr. Chairman Nay

CHAIRMAN GRAYBILL: Will the clerk please read the tally.

CLERK HANSON: Mr. Chairman, 35 delegates voting Aye, 60 voting No, 2 excused and 3 not voting.

CHAIRMAN GRAYBILL: 60 delegates having voted No and 35 having voted Aye, the minority report has failed. We are now considering Section 6 of the majority report. Mr. Loendorf, do you want to close?

DELEGATE LOENDORF: Mr. Chairman, I close.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you now have before you, on the motion of Chairman Loendorf that when this committee does arise and report, after having had under consideration Section 6 of Section 5 of the Legislative Proposal Number 3, it recommend that the same be adopted. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: All right. We'll vote by roll call. So many as shall be in favor of the majority report, please vote Aye. So many as are opposed vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will you please tally the vote?

Aasheim Nay
Anderson, J. Nay
Anderson, O. Aye
Arbanas Absent
Arness Absent
Aronow Nay
Artz Nay
Ask Nay
Babcock Nay
Barnard Aye
Bates. Nay
Belcher Nay
Berg Aye
Berthelson Aye
Blaylock Nay
Blend Nay
Bowman Aye
Brazier Aye
Brown. Nay
Bugbee Aye
Burkhardt Aye
Cain Aye
Campbell Aye
Cate Aye
Champoux Aye
Choate Aye
Conover Aye
Cross. Aye
Dahood Excused
Davis Aye
Delaney Excused
Driscoll Aye
Drum Aye
Eck Aye
Erdmann Absent
Eskildsen. Absent
Etchart Nay
Felt Aye
Foster Aye
Furlong Aye
Garlington Aye
Gysler Nay
Habedank Aye
Hanson, R.S. Nay
Hanson, R. Aye

Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer.. ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 70 delegates voting Aye, 24 voting No, 2 excused and 4 not voting.

CHAIRMAN GRAYBILL: 70 delegates having voted Aye and 24 No, the motion prevails and Section 6 is adopted. Mr. Clerk, will you read Section 7.

CLERK HANSON: "Section 7. Vacancies: A vacancy in the legislature shall be filled by the special election for the unexpired term unless otherwise provided by law."

Mr. Chairman, Section 7.

CHAIRMAN GRAYBILL: Members of the committee, you now have before you for your consideration Section 7. What is your pleasure? The Chair recognizes Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 7 of Proposal Number 3, that it do recommend the same be approved. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: The committee has provided for legislative vacancies to be filled by special elections for the unexpired term, unless otherwise provided by law. The present Montana Constitution does not provide for the filling of legislative vacancies. It is left to law. The 1889 Constitution provided for vacancies to be filled by elections but the people amended the Constitution in 1931 to allow the county commissioners to fill appointment vacancies caused by death. Legislative vacancies caused by other reasons were still filled by election. In 1966 the people repealed the entire section by amendment. The committee felt that, while this could very well still be left to the legislative enactment, we felt so strongly that the true element of democracy and people being represented in government was that people elect who represents them in the Legislature and not be appointed. We feel that the cost of election, which has been the primary argument against having special elections, will be much decreased if we have single member districts. Therefore, the cost of a special election for the election of one representative would not be substantial enough to justify not having a special election. We also felt that with annual sessions this would be necessary to have a special election because, otherwise, if you

waited until the next general election, a district may go for 2 years without having their own elected representative.

CHAIRMAN GRAYBILL: Mr. Rollins.

CLERK HANSON: "Mr. Chairman, I move to amend Section 7 of the Legislative Committee proposal, page 18, after line 22, by adding the following new material at the end of the section: quote, The office shall be vacant when any elected member of the legislature ceases to reside in the district from which elected. End quote. Signed, Rollins."

CHAIRMAN GRAYBILL: Very well, Mr. Rollins has proposed an amendment to Section 7, the sense of which is to say that whenever a member moves out of the district for which he is elected, the office shall be declared vacant.

Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I believe that this amendment is consonant with other decisions we have made concerning the right of citizens to qualify for office and to provide adequate representation for the people. This amendment would help assure that an elected representative would continue to represent that district from which he was elected. Unless we have in the Constitution some reasonable deliniation of residency requirements for attaining and retaining office we might well approach the idea of virtual representation in which it could be claimed that every blade of grass in Montana is represented in the state Legislature regardless of the areas from which its members might be chosen. Representatives should represent people. I recommend this amendment for the approval of this body. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on the amendment of Mr. Rollins that would add to Section 7 the following language: "The office shall be vacant when any elected members of the legislature cease to reside in the district from which elected." All right.

Mr. McDonough.

DELEGATE McDONOUGH: I would like to pass this section until we consider the single member district section and possibly reconsider Section 4, and I so move.

CHAIRMAN GRAYBILL: All right. Mr. McDonough has moved that we pass this amendment until we can come to single member districts and a possible reconsideration of Section 4. All those in favor of the motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and the amendment's passed. Very well, the issue is on Section 7. Is there any-Mr. McDonough, it was the Chair's understanding that your motion was directed to the amendment. Was it directed to the section?

DELEGATE McDONOUGH: It was directed to section, Mr. President.

CHAIRMAN GRAYBILL: To the section?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: And not to the amendment?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: I see. Now, in case there's any question about that, let's put the motion again. All those in favor of passing the section until we get to single member districts and/or until we reconsider Section 4, and that will mean passing also the amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: So ordered. Clerk read Section 8, please?

CLERK HANSON: "Section 8. Immunity. The members of the legislature shall, in all cases except felony and breach of peace, be privileged from arrest during their attendance at the sessions of the legislature, and in going to and returning from the same; and for any speech or debate in the legislature, they shall not be questioned in any other place." Mr. Chairman, Section 8.

CHAIRMAN GRAYBILL: Members of the committee, you now have before you for your consideration Section 8. What is your pleasure?

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chair. man, I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal Number 3, that the committee do approve as read. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Section 8 is almost exactly like Section 15 in Article V of our present Constitution. The only changes are, we left out the word, "treason", which is a felony so it's included in "except felony and breach of peace." We also left out "violation of their oath of office". We did not feel that members of the Legislature should be exempt from arrest for violation of their oath of office because, for example, if they're violating their oath of office by not being in attendance, that they maybe should have to be arrested to get them here. So we left out treason and violation of their oath of office, and otherwise, it's the same as it is in the old Constitution. The committee felt pretty much that this could be left to statute but Charley Mahoney warned us that if we took Section 15 out of the Constitution, that our Constitution would fail at his hands so we decided to put it in. (Laughter)

CHAIRMAN GRAYBILL: Very well, is there any discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. Members of the committee, you now have before you the motion by Mrs. Robinson that when this committee does arise and report, after having under consideration Section 8, it recommend the same be adopted. All those in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it and 8 is adopted. Will the clerk please read 9?

CLERK HANSON: "Section 9. Disqualification. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the state of Montana created during such time." Mr. Chairman, Section 9.

CHAIRMAN GRAYBILL: Members of the committee, you now have under consideration Section 9. What is your pleasure?

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 9 of Proposal Number 3, that it recommend the same be adopted. Section 9 gave us a great deal of problem in committee, perhaps because of all the research that we could uncover, most constitutional authorities felt that this should be left up to statute. Going back to 1833 and Chief Justice Storey, down to the most recent constitutional authority, Frank Grad, said that these kind of provisions simply do not guarantee the kind of thing that you are trying to eliminate—that is, swapping of votes for offices and that type of thing. The majority of the committee felt, however, that there was a great deal of pressure to include some kind of provision which would prohibit the Legislature from creating offices or jobs and having one of the members appointed to that job. What we did in this section is, we took the language of the federal Constitution and put it in lieu of what we had in the present Constitution, and our provision simply says that no legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time. We felt that this would allow the greatest amount of flexibility, yet also enable future sessions of the Legislature to adopt more stringent requirements if necessary. We felt it essential to get rid of the present provision that we had in your present Section 7 of Article V. This has been open to so much Supreme Court interpretation that I'm sure what the intentional framers in 1889 intended was never fully realized through all of the Supreme Court decisions. They've had a hard time establishing what constitutes an appointive office and they have ended up including elected officials. They've had a hard time discovering what constitutes a civil office-is that everything from county superintendent of schools on up to Supreme Court Justice? We've decided there is no way you can write an air-tight provision that would ever encompass all of the little things that might creep in in terms of dual office holding. We felt we should keep this one as brief as possible and leave it to the Legislature to establish other dual office holding prohibitions.

CHAIRMAN GRAYBILL: Is Mr. Arness in?

Mrs. Warden.

DELEGATE WARDEN: Mr. President. I move to delete the section.

CHAIRMAN GRAYBILL: Mrs. Warden has made a motion to delete Section 9 from the draft Constitution.

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I would like to support the motion to delete, and add an amendment that we accept—

CHAIRMAN GRAYBILL: Just a minute. Are you going to make an amendment, too? Are you going to add an amendment, Mr. Johnson?

DELEGATE JOHNSON: I would like to make an amendment to the deletion. (Laughter)

CHAIRMAN GRAYBILL: Chair is going to rule that you can't amend a deletion, but if you want to make an amendment, you can, but I will require it to be in writing.

DELEGATE JOHNSON: It's already written in the old Constitution.

CHAIRMAN GRAYBILL: Well, we're not amending the old Constitution. Now, if you want to make an amendment, fine. Just write it down so we've got it up here in front of us. At the moment we're talking about a deletion. I don't see how you can amend a deletion except by adding something to it, and if so I want it in writing.

DELEGATE JOHNSON: Very good. Thank you.

CHAIRMAN GRAYBILL: The Chair might announce that Rule 58 allows the Chair or any member to require amendments to be in writing and I think, after the experience the Chair has had so far, I'm going to require that amendments be in writing. So get your amendments ready and send them up if you want to make them. Now, we're on--we're discussing Mrs. Warden's motion to delete.

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, I would like to speak in opposition to Mrs. Warden's amendment to delete. I would like to ask a question of Mr. Loendorf. Would Mr. Loendorf yield to a question?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I'll yield.

DELEGATE REICHERT: Mr. Loendorf, was it under this Section 7 of our old Constitution that legislators were ruled not to be able to serve in the Constitutional Convention?

DELEGATE LOENDORF: Mr. Chairman, as I recall, it was.

DELEGATE REICHERT: That is why I am in opposition to Mrs. Warden's amendment. I think we should have a provision that in the future legislators should not be able to serve in Constitutional Conventions.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I think that ifthatis the intent they should say so in the majority report-say exactly what they are doing. I don't think we're here to deceive the people on what we're voting on.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, in further answer to that question, I didn't know she was getting at that but Section 7 was the section under which legislators were prohibited from running for this Convention, but as it's been amended, I would not necessarily agree that it would do so now.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: I might say that I moved to delete it because I think that this is statutory and I think that since you can't build in any guarantees on anything that it's superfluous. And this is why I made the motion to delete.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. President, I rise in resistance to the motion to delete because I think that legislatures, judges, and executive departments must be kept separate and I do not believe-I believe that it is essential in any constitution that there be a provision prohibiting legislators from holding any other civil office during the term of their office, and I think that's perfectly consistent with the fundamental principle of a separation of powers.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, may I speak on that briefly? What Mr. Berg attempts to do would be what is done in Section 7, or what could be done. But this merely points out the problem that we've had with Section 7 in a delineation of whether or not we want a professional Legislature. Now if we have people who are serving in the Montana Legislature, for example, as school teachers, and they are coming to serve for 90 days—if a vacancy arises or-in their home county to be appointed superintendent of the county-county superintendent of schools, Section 7 would prohibit that type of thing. I'm not so sure that we need to be that strict unless we really want a professional Legislature. The federal government allows the very thing that we have done in Section 9. You see that when people are members of the U.S. House of Representatives they can be appointed to the Cabinet of the United States, or to an ambassadorship. They simply resign. By the present language in Section 7, the Supreme Court has battered it about for 70 years and they've back-tracked and they say, on some instances, a public official can't resign his present position to run for another. Now you know in the last session of the Legislature there were a city council person serving and also a mayor. Present Section 7 simply isn't being applied as it would read to be intended. We cannot write in the Constitution the kind of provision that would guarantee all of these little nuances of what might happen. That's why we chose to do what they did in the federal Constitution and allow the Legislature to set up guidelines as they have on the city and county level of what types of offices prohibit serving in other capacities.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Will Delegate Robinson yield?

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: Yes.

DELEGATE SPEER: In our Local Government Committee we made provision for intergovernmental cooperation between local units and between local units and the state and federal agencies. I have asked about this of the research analyst and I am told that it does not preclude a legislator from serving on an intergovernmental commission. I would just like to ask if this was the intent of the committee in writing it this way, that it would not in any way interfere with a legislator's serving on an intergovernmental body?

DELEGATE ROBINSON: That was the intent of the committee in drafting this very unrestrictive type provision, to allow for the greatest amount of flexibility and cooperation. The present section would prohibit that type of intergovernmental cooperation-Section 7 in the present Constitution.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I rise in opposition of the motion to delete Section 9 for this reason, that I look at this thing as a matter of morals and principles and separation of powers. I think it's one of the most corrupt things that can be done to the Legislature and to the people of the State of Montana to allow a member of the Legislature to accept an appointment to another office while he's a member of the Legislature. Suppose the Governor came to Joe Blow who is in the Legislature and said, "There's a vacancy on the Supreme Court, or on the District Court, but I want this program put through the Legislature and when you've accomplished this job, you'll get this appointment." And under the present language of Section 9 that could be done. I don't want to delete Section 9. I want to amend it to put back in the language of the present Constitution, which has been interpreted by the Supreme Court, which forbids that type of an evil. That thing can be carried on to all types of things and pressures, and the principles of good government and morals doesn't change with changing times or liberalism. Those basic things remain basic and I want to keep them that way in this Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President.

CHAIRMAN GRAYBILL: Do you now want to make your amendment?

DELEGATE JOHNSON: Yes, sir, if you please. I would like to make a substitute motion—is that the proper thing to call it?

CHAIRMAN GRAYBILL: Are you making a substitute to Mrs. Warden's motion to delete or do you want to make it to the language of the amendment here?

DELEGATE JOHNSON: I want to make it to the language amended there, if you please.

CHAIRMAN GRAYBILL: All right, well, we'll have to wait then, until we've ruled on Mrs. -when-the issue is now Mrs. Warden's motion to delete. So we'll make it when the time comes.

DELEGATE JOHNSON: Thank you.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Will Mrs. Robinson yield to a question?

CHAIRMAN GRAYBILL: Mrs. Rohinson?

DELEGATE ROBINSON: Yes.

DELEGATE TOOLE: Mrs. Robinson, would this section prevent an individual from serving in the Legislature and on the City Council at the same time?

DELEGATE ROBINSON: No, as it is stated, it would not.

CHAIRMAN GRAYBILL: Mrs. Rohinson.

DELEGATE ROBINSON: Would Mr. Aronow yield to a question'?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I yield.

DELEGATE ROBINSON: Mr. Aronow, do you feel that this tightly worded language in the present Constitution, of Section 7, merely because it is in the Constitution, is going to prohibit the type of immoral vote trading that you foresee?

DELEGATE ARONOW: Mrs. Robinson, it is not a question of vote trading. It's a question of possible bribery. It is a question of holding out an inducement to a legislator to change his position in turn for the appointment to some position of profit.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Would Mr. Aronow yield to a further question?

DELEGATE ARONOW: I'll yield.

DELEGATE ROBINSON: I see what you are getting at. My point is, just because it's in the Constitution, is it going to prohibit that type of thing occurring? I cannot see merely by it being in the Constitution that there is any way-if you have this theory of how people react in political situations, it doesn't seem to me, having a prohibition against it in the Constitution has in the past lessened that happening.

DELEGATE ARONOW: Is this a question?

DELEGATE ROBINSON: Yes.

DELEGATE ARONOW: Yes, I believe it has because it sets a moral tone. It sets a principle which the Constitution is supposed to do. It's a guideline. Then the Legislature must implement it with statutes that say that you go to jail for so many years or this, that, or the other thing. But it is the guideline and it's a direction to the Legislature to implement and it shows the direction of the thought and the principles under which we operate.

CHAIRMAN GRAYBILL: Mrs. Rohinson, you still have the floor.

DELEGATE ROBINSON: Yes. Mr. Aronow, would you yield to just one more question?

DELEGATE ARONOW: I'll yield.

DELEGATE ROBINSON: You mentioned that one of the major reasons for adopting the present Constitution's Section 7 is that it has been subject already to Supreme Court interpretation. I was wondering if you had, at any length, considered their interpretation of this article and exactly how much it has varied in terms of what they have decided what it has meant over the years since it was adopted?

DELEGATE ARONOW: Well, Mrs. Rohinson, I don't have a brief on it offhand, hut one of the answers is that the Supreme Court held that the member-that to be a member of this Convention-or rather, no member of the Legislature could be a member of this Convention. There's a number of cases annotated under the section and I don't have the books here-they are in the law library—hut they could he obtained and read and all the fine distinctions, hut at least when this question arises we do have some guidelines to go by.

CHAIRMAN GRAYBILL: The question is on Mrs. Warden's motion to delete. Is there other discussion?

Mr. Johnson.

DELEGATE JOHNSON: I would like to propose a substitute motion to all substitute motions pending. (Laughter)

CHAIRMAN GRAYBILL: Very well. (Laughter)

DELEGATE JOHNSON: Thank you, Mr. President.

CHAIRMAN GRAYBILL: Do you want it to be the one you sent up here?

DELEGATE JOHNSON: Yes, sir.

CHAIRMAN GRAYBILL: All right, Mr. Johnson makes a substitute motion that Section 7 of Article V of the Montana Constitution be adopted. Now, I'll read that to you. Section 7 of the present Constitution says, Article V: "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state, and no member of congress or other person holding an office, except notary public or in the militia, under the United States or this state, shall be a member of either house during his continuance in office." The issue now is on Mr. Johnson's substitute motion to adopt the old section-the old Constitution's, or the present Constitution's Section 7 in place of the motion to delete and in place of the language in the majority report. Is there discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, all those in favor of adopting Section 7 of the present Constitution, which I just read you, in place of deleting or in place of the majority report, please signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Mrs. Blend, for what purpose do you arise?

DELEGATE BLEND: A matter of personal privilege.

CHAIRMAN GRAYBILL: Yes?

DELEGATE BLEND: I would like to move that we have a 1'5 minute recess at this time.

CHAIRMAN GRAYBILL: Well, Mrs. Blend, we'll take a recess at 3 o'clock, but I would rather you let the floor leader move recesses. You certainly are free to leave.

DELEGATE BLEND: Thank you. (Laughter)

CHAIRMAN GRAYBILL: Will the clerk read Section 10?

CLERK HANSON: "Section 10. Organization and Procedure. Subsection 1. The legislature shall judge the election and qualifications of its members and may by law vest in the courts the trial and determination of contested elections of its members; it shall choose its officers from among its members; keep a journal; make rules for its proceedings; and may expel or punish a member with the concurrence of two-thirds of all its members."

CHAIRMAN GRAYBILL: We'll stop with subsection 10-l and debate it, and then we'll take subsection 10-2.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I move that when this committee does arise and report, after having under consideration Section 10 of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Section 1 is self-explanatory and combines Section 9, 11 and 12 of Article V of the present Constitution. The present Constitution requires that certain officers be chosen; for instance, the President pro tem and the House speaker. This new section will provide additional flexibility for the Legislature.

CHAIRMAN GRAYBILL: Is there any discussion?

Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Mrs. Bugbee would yield for a question?

CHAIRMAN GRAYBILL: Mrs. Bugbee?

DELEGATE BUGBEE: Yes.

DELEGATE ARBANAS: Is the matter of the-1 guess we're involved here in the uni-cameral-bicameral, but I wonder in passing this if we are maybe taking up the whole problem of the Lieutenant Governor's headship of the Senate problem and just scuffing that over and going on, and I would like to have us at least handle that a little more seriously, that part of it, because it's a very important question. Now, is that involved here?

DELEGATE BUGBEE: No, we're not scuffing it over. The Lieutenant Governor is not mentioned in this section.

DELEGATE ARBANAS: His fact of not being mentioned means then that he is not eligible to be the head of the Senate?

DELEGATE BUGBEE: Right.

DELEGATE ARBANAS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I am in favor of the Lieutenant Governor not being the head of the Senate, but I would just like to call the attention of the membership that that is involved in the question here.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Arbanas, it's my understanding that the Lieutenant Governor-that question will be taken up under the Executive Article.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: So it's clear to the members of the Convention, it was our intention to eliminate the Lieutenant Governor as the presiding officer of the Senate and we did consider that under this section, and he is eliminated under this section as the presiding officer of the Senate.

CHAIRMAN GRAYBILL: Very well, members of the committee, you now have before you, the motion of Mrs. Bugbee, Chairman, who is handling this section of the report-that when this committee does arise and report, after having had under consideration Section 10(1), that it recommend the same be adopted. So many as are in favor of subsections 1 to Section 10—

UNIDENTIFIED VOICE: Could we have a roll call vote on this, please?

CHAIRMAN GRAYBILL: Very well, a roll call vote. So many as shall be in favor of Section 10(1), please vote Aye, and so many as opposed vote No on the voting machines. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please cast the vote?

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Absent
Cross.. ..... Aye
Dahood ..... Excused
Davis ..... Absent
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye

Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield, ... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil. ..... Absent
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Absent
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye
Mr. Chairman Aye

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN GRAYBILL: Wait until we've finished the vote. Mr. Eskildsen, for what purpose do you arise?

DELEGATE ESKILDSEN: Eskildsen votes Aye.

CLERK HANSON: Mr. Chairman, 89 delegates voting Aye, 3 voting No.

CHAIRMAN GRAYBILL: Mr. Clerk, do you have Mr. Eskildsen voting?

CLERK HANSON: Yes, sir.

CHAIRMAN GRAYBILL: 89 delegates having voted Aye, and 3 voting No, the section passes. Will the clerk read 10(2)?

CLERK HANSON: "Section 10, subsection 2: A majority of the membership of the legislature constitutes a quorum to do business. A smaller number may adjourn from day to day and compel attendance of absent members." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Members of the committee, you have before you for your consideration Section 10(2). What is your pleasure? Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I move that when this committee does arise and report, after having under consideration Section 10, subsection 2, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bug-bee.

DELEGATE BUGBEE: Yes, sir. Subsection 2 is self-explanatory and is contained in the substance of Section 10, Article V, of the present Constitution. The committee felt this section was quite adequate and kept it substantially the same as in the present Constitution.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. President,1 move to delete all of Section 10, subparagraph 2.

CHAIRMAN GRAYBILL: Mr. Berg has moved that we delete subsection 2 of Section 10 in its entirety.

Mr. Berg.

DELEGATE BERG: It is my purpose in moving this deletion to be more concise, shorter in this Constitution and I believe that the rule-making provisions in subparagraph 1 of Section 10 are more than adequate to take care of the rather rule-making provisions of Section 10, paragraph 2.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I rise in opposition to the substitute motion of Mr. Berg. I think this provision is very essential to our Constitution. It provides how many members are necessary to constitute a quorum to do business. If we delete this provision. assume 25 members of the Legislative Assembly are present some day. They simply have to change the rule that a quorum is 25 and do business. This is important, I think, so we have at least half the membership present at the time any law is enacted. And of course the second sentence is important and compliments the first. If we're going to require that a majority be present then we have to have a way for a smaller number to get a majority there so they can operate.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Berg's motion that subsection 2 of Section 10 be deleted. That's the subsection that deals with calling for a majority as a quorum and adjourning from day to day. Mr. Berg, do you want to close?

DELEGATE BERG: I would like to close. It is my position that this is clearly and simply and only rulemaking authority. In almost any business organization quorums and what constitutes or does not constitute amajorityis considered to be a part of the rule of that organization. It is no different with the Legislature, nor with this Convention. We make our rules here within the Convention. It was not necessary for the organization of this Convention that the Enabling Act provide as to what should or should not constitute a quorum. I believe that the Legislature is perfectly competent to do that. I have every confidence that they'll not violate their own rules in that regard, and I would leave it exclusively to them.

CHAIRMAN GRAYBILL: Therefore, the question is on the motion of Mr. Berg to delete subsection 2 of paragraph 10. So many as shall be in favor of the motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll use the voting machines. So many as are in favor vote Aye, and those opposed vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 32 having voted Aye, 59 voting No, themotion fails. We're on the proposition, then, of the majority report subsection 2 of Section 10. Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you now have before you, on the motion of Mrs. Bugbee, that when this committee does arise and report, after having had under consideration Section 10, subsection 2, it. recommend the same be adopted. So many as are in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Subsection 2 is adopted.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Committee of the Whole stand in recess for 1.5 minutes.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

(Committee in recess from 3:00 to 3:18 p.m.)

CHAIRMAN GRAYBILL: The Convention will be in session. Will the clerk read Section 10(3)?

CLERK HANSON: "Section 10, subsection 3: All proceedings of the legislature, including committee meetings, shall be "pen to the public." Mr. Chairman, subsection 3.

CHAIRMAN GRAY BILL: Members of the committee, you now have before you Section 10, subsection 3. What is your pleasure?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 3, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Subsection 3 was a section that concerned the Legislative Committee deeply. It is self-explanatory. This subsection changes the present Constitution which allowed the Legislature to conduct secret proceedings when it determines secrecy is required. The committee believes that the benefits to be derived from an "pen and visible Legislature far outweigh any need for the people's representatives to discuss the people's needs and problems behind closed doors, and I would first of all like to say that I think that the Constitutional Convention has, in this respect of having "pen meetings, has been eminently successful and I hope that we have set an example for the state from now on. The Legislature passes laws that affects every person in Montana. There is really no justification for keeping this process secret from the people. The people need to know and have a right to know the reasons for committee votes. Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Well--would Delegate Bugbee answer a question, please?

CHAIRMAN GRAYBILL: Mrs. Bugbee?

DELEGATE BUGBEE: (Laughter) I cringe, Mr. Mahoney.

(Laughter)

DELEGATE MAHONEY: I'm not that vicious. You know, there might become a time when maybe-and I'm probably the only person that ever sat in an Executive session of the Senate-I don't ever remember there was only one-and I think it was highly probable-and this was on a resolution to Congress. Now this was— and this is going to happen-this was a very highly emotional resolution **that** had got into the Legislature. Now, I was opposed to it but they thought, in their wisdom, that it should be handled in secrecy and we did go into secrecy. Now, I hate to say to the Legislature, in its wisdom, that it can't, at some time-please let them at some time have this privilege. And I think it's a necessary thing. I honestly do, now. What do you think of that?

DELEGATE BUGBEE: I disagree with you. I disagree with you right across the board. It has been said in our committee meeting, well, if they have something secret to say, if they don't do it here at the Legislature, they'll go down to Jorgenson's, and my answer is, let them go down to Jorgenson's. The people of this state pay for this building, they pay for the heat, they pay for the salaries and they have the right to have the process open.

CHAIRMAN GRAYBILL: Mr. Mahoney, do you wish to ask another question?

DELEGATE MAHONEY: If I could ask another question, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bugbee, will you yield to another question?

DELEGATE BUGBEE: Yes, sir.

CHAIRMAN GRAYBILL: Very well.

DELEGATE MAHONEY: Then how would you get any recording done down at the Jorgenson's, which isn't the official place for the meeting of the Legislature?

DELEGATE BUGBEE: Just mean—excuse me, Mr. President.

CHAIRMAN GRAYBILL: Go ahead.

DELEGATE BUGBEE: I mean, if they want to go down to Jorgenson's and do unofficial business, then it's unofficial. The people have a right to these "pen hearings when they're being held.

DELEGATE MAHONEY: That's all the questions I have Mr. President.

CHAIRMAN GRAYBILL: That's fine. Mrs. Babcock.

DELEGATE BABCOCK: Mr. President—

CHAIRMAN GRAYBILL: Oh, wait a minute. Do you want the floor, Mr. Mahoney?

DELEGATE MAHONEY: I would like to have the floor, Mr. President.

CHAIRMAN GRAYBILL: Very well, you have the floor.

DELEGATE MAHONEY: This is-it's nice to talk and I've always opposed any secrecy in all of my time. In fact, I even didn't vote for that session in '41, so my record is clear. But I would hate to see us tie into this Constitution that at a time you go into impeachment proceedings or some of these other things that might happen, that they might like to go into conference in a closed door. I think this is something that this whole Convention should think about, as we get into the Convention-problems, which I hope we never have, is an impeachment. Montana, I think, has only had one or two. And I would like to see it not locked into the Constitution that that body, either one or two, couldn't have the privilege of going into an Executive session. That's all I have to say.

CHAIRMAN GRAYBILL: Members of the committee, you now have before you the motion-oh, Mr. Etchart, excuse me.

DELEGATE ETCHART: Mr. Chairman, I move to amend Section 10, subsection 3, by deleting this subsection. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: I think the matter covered here, rulemaking powers, is already covered in Section 10, in line 17, which says, quote, make rules for its proceedings." I agree with the public meetings, and they have worked beautifully in this Convention. They've worked fine in my committees, but I don't think it's proper to freeze this part of the rulemaking procedures into the Constitution.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, for once I have to—

CHAIRMAN GRAYBILL: Wait a minute, Mr. Martin. Would you hit Mr. Martin's button, Rosemary? Hit the next-there you are.

Mr. Martin.

DELEGATE MARTIN: **I'm sorry** to disagree with my colleague in the triumverate over here but he made reference to, for instance, an impeachment proceedings that was held in this chamber--or consideration that was held in this chamber in 1933, in which I happened to be a reporter at the time. There was more harm to the individuals concerned because of the secrecy of the meetings than if they had been out in the open. There were more rumors flying around about what was happening, what this person did and what he didn't do, and they finally dropped the proceedings but the harm was done. I think it's-better to have it right out in the open.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I rise in opposition to Mr. Etchart's amendment to delete Section 10. I think it's critical that all proceedings of our Legislature, particularly committee meetings, be open to the public. I've seen committeemeetingsin session and after the public hearings people are ushered out and the votes are taken in secret. I think that if we left this to statutory law, we would continue having secret votes in committee meetings. I think it is imperative that we retain this section.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to resist the motion to delete. I agree, of course, that the Legislature should have its own rulemaking powers but with a strong historic tradition to the contrary and the fact that after these many years it hasn't done it, I really believe it would be the wisdom of this Constitution to guarantee that openness.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I resist the amendment of Delegate Etchart. I suggest that it's easier to find the carpet tack in the floor in the light than in the dark. (Laughter)

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I support Mr. Etchart's amendment. We are

moving from statutory law to rules--not even statutory law. We are establishing the rules under which our Legislature must operate. This, I believe, is inconceivable.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I rise to support the substitute motion. Perhaps this comes as a-or, the amendment of Mr. Etchart. Perhaps this comes as somewhat of a surprise since my personal philosophy is espoused in the rules of this Convention, which require an open Convention and open meetings. But we are a non. partisan or a bipartisan Convention. We are not having caucuses and the concern that I have, other than the fact that I believe the Legislature should set its own rules, is that I feel that Section 10, subsection 3, is so poorly stated that I have grave doubts as to what is meant, particularly by the word, "proceedings". Now does that-maybe somebody can answer this. Does this include party caucuses? I'd like to have an answer to that. I don't know. It doesn't say. It doesn't say proceedings of the Legislature as defined by the Legislature or as by the courts of this state. It doesn't give me very much to work with and as it stands, on principle alone, I suppose, I must support Mr. Etchart's motion.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: May I ask Mr. Murray to yield, please?

CHAIRMAN GRAYBILL: Mr. Murray, will you yield?

DELEGATE MURRAY: With pleasure.

DELEGATE BUGBEE: It is my understanding, Mr. Murray, that proceedings of the Legislature could not possibly include a caucus. A caucus is not a part of the proceedings of a Legislature. It may be an unofficial part of it, but not an official part of it.

DELEGATE MURRAY: Mr. Chairman, the only answer that I have to that—

CHAIRMAN GRAYBILL: You may answer the question.

DELEGATE MURRAY: -is, if it is a question, is that this does not say official or unofficial proceedings of the Legislature. It leaves the matter to doubt and it is my suggestion-and the reason that I resist it-is that I think it shouldn't leave anything to doubt.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: May I speak to Mr. Murray again, Mr. President?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: Yes.

DELEGATE BUGBEE: Mr. Murray, may I suggest that we establish a principle when we vote, and that's all we do. We vote for or against a principle and leave the rest up to Style and Drafting.

CHAIRMAN GRAYBILL: I guess she would like you to answer that, Mr. Murray. (Laughter)

CHAIRMAN GRAYBILL: But you don't have to if you want to sit down.

DELEGATE MURRAY: No, I can't let that pass without an answer. I would be pleased at this stage of this Convention to leave it all up to Style and Drafting. (Laughter)

DELEGATE MURRAY: But since this is an early moment in the debates, I feel that we must be as definitive as we can, not legislate where we should not legislate, and most importantly, not establish rules where rules shouldn't be made. I don't think that we are defining how the Governor shall conduct his office, or how other people within the Executive Department of our state should conduct their offices. I don't think that we are advising the Supreme Court or setting its rules, nor are we advising or setting rules in this respect for any other part of our government, and I think that if each part of the government is to maintain its check and balance system, that we should not set rules and legislate in this fashion.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I asked Mr. Blaylock, who's Vice-Chairman of the Bill of Rights Committee, and their proposal will contain a section on right to know, which will read-if I may, Mr. Blaylock?

DELEGATE BLAYLOCK: Yes.

DELEGATE ARONOW: It will read: "No person shall be deprived of the right to examine public documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the

demand of individual privacy exceeds the merits of public disclosure." And having this type of material in the Bill of Rights to be presented to us, I rise in support of Mr. Etchart's motion.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, in the event that I would rise in opposition to the deletion of this section, impending upon what we decide to do on the Bill of Rights report--I'm not in any way going to say we're going to delete this now and then watch the Bill of Rights thing go down the drain. (Laughter)

DELEGATE ROBINSON: I would like to further point out to Mr. Murray that the rules of the Montana Legislative Assembly, which encompasses all proceedings of the Legislature, say nothing about political parties, political party caucuses as such. I can foresee no problem there. Political party caucuses are simply not a part of the proceeding of the Legislature-of the legislative body.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I think that Mrs. Robinson expressed what I was going to say, that this is our provision in the Bill of Rights and I think that if it should happen that both of these should pass, that perhaps Style and Drafting might want to delete this one; on the other hand, they might want to leave it as it is. They do state thematter in somewhat different ways. Thank you.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, I'd like to support Mr. Etchart's amendment. I think when we were sent up here in this Convention, it was to take out a lot of the stuff that was restricting our Legislature up to then, and now we are going about taking a lot of time to restrict them. I think this is a rules affair and I support Mr. Etchart's amendment.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, after having 4 weeks of experience of what happens in a committee room, I would hate to see this deleted.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I rise for the purpose of pointing out to the delegates that there is a substantial difference between Section 10-3 and that matter as proposed by the Bill of Rights Committee. The matter as proposed by the Bill of Rights Committee is almost in essence the same thing as old-as Section 13 of our present Constitution. "The sessions of each house and the committees of the whole shall be open unless the business is such as requires secrecy." You have that little safeguard there, but you don't have any safeguard in this section and if you make it-put it in the Constitution, you make it a living fact forever and I really think that it would not be a responsibility of the Committee on Style, should both sections pass, to be able to make an adjustment between them because they are substantially different.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President-Mr. Chairman, I don't suppose that anyone has had more experience in the last 2 months than I, as Chairman of two procedural committees which have caused considerable press comment and have made us adjust to conditions that we were not prepared to adjust to. They were very difficult, something brand new in Montana, but I still support Mrs. Bugbee's proposal.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, just before-during the recess, my wife told me that somebody was going to support something that I was in favor of-(Laughter)-and I says, "Why is that so-what's so surprising that this delegate was going to support open proceedings?" I says, "Everybody in the Convention"—I says "Nobody is going to oppose that." And how wrong can you be? (Laughs) I'm just a little more wrong today than ordinarily. I can see where the federal Congress could have some justification for Executive sessions-that we did not want to know-we did not want a possible potential enemy know whether we're going to build 40 pulsadyne [sic]—40 Polaris submarines or nuclear submarines, and so on. But at the state level I can just see no justification whatsoever. As far as my learned brother's comment that all proceedings of the Legislature is not clear, I think to a Yellowstone County lawyer, that's pretty clear. All proceedings of the Legislature. Now, if we think that we're going to write a Constitution that is not open to attack before the Supreme Court of this state, I

think we've got a big surprise in store for us because if you will look at the old Constitution, under almost every article, except the one that says that Fort Assiniboine shall he a cavalry post, or what-have-you, you will find some Supreme Court interpretations. In any event, that's what a Supreme Court is for. If something-that it is not clear, they can interpret it. Finally one of the things that we've been trying to urge the people of this state-trying to sell to the people of this state -is to trust our Legislature. And if we don't trust it, I don't see how we're--excuse me-if we are going to get people to trust the Legislature, all proceedings, whether they're in committee or on the floor, are going to have to be open to the public. And the Legislature is concerned with only one thing-the public business-and the public business is my business as a private citizen. When I go hack to Billings, I want to know what's going on up here. And even if I'm not here—and I can't he here, obviously, and tend to my affairs down in Billings-I want to know that my representatives on the floor-are-everything that they do-and in committee is open to my representatives in the press, in the news media. These are my eyes and my ears that let me know what's going on up here in Helena, and if they can go into Executive session any time they please and cast secret ballots, then there's no way that I can know what my Legislature is doing and therefore there is no way that I can trust my Legislature.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I wish to point out that if we should delete this section, this subsection, the members of the news media-press, radio, TV--would not he able, unless the committee Chairman and members of the committee opened up the doors to them, to attend committee hearings and meetings. What kind of a reception is this sort of a thing going to receive out over the breadth of Montana if the press reports that we're closing the doors upon their ability to report on the proceedings of the Legislature? I think it would he very had, and I think whether the reception would he had-1 think it's bad from the standpoint of we, as citizens, any of us. I think that if someone gets into a mess that requires impeachment or the secrecy in the Senate or a House, so that they have-a committee has to go into Executive session so it can he considered without being the property of the press so that the public can know what's going on. I think that their difficulties are richly merited and I think that this is something that should not even he discussed soberly.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman, I'm more afraid of the ladies than I am of Charley and Mr. Marshall. I think Mae Nan's point was very well taken. We can't exclude something like this so that we wait later on to have some other article or some other section take care of it. I wasn't offended by any reporters or people that were sitting in watching us during this Convention, and I would certainly like to support the committee and Mrs. Bugbee on this.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President, will Mr. Murray yield to a question?

DELEGATE MURRAY: Yes, ma'am.

DELEGATE REICHERT: In Section 13, which you mentioned, of our present Constitution it states "the sessions of each house and committees of the whole shall be open unless the business is such as requires secrecy." Who determines what business requires secrecy?

DELEGATE MURRAY: Mr. Chairman, the response is I believe that the legislative session itself does. Each house determines that and I don't resist the language of Section 13 in the present Constitution. I think thatitcould he better and we would all he better off were an amendment proposed to that section which would provide that the committee meetings and hearings should he open to the public because you would then have the safeguard that I think should he there. I just feel that your language, as simply stated as it is—and once again, brevity seems to he ruling over clarity-can cause a problem. One of the most serious problems that we had in the commencement of this particular Convention was determining just what proceedings were. Who defines that? So I submit that I am in favor of deleting this section and if it is deleted, then I would offer an amendment to the present Section 13.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Would Mr. Murray yield to another question?

CHAIRMAN GRAYBILL: Mr. Murray, do you want to yield?

DELEGATE MURRAY: If you turn the mike on, I'll say yes.

DELEGATE REICHERT: Would you agree that perhaps the inclusion of the word, "official"-"all official proceedings of the legislature, including committee meetings, shall be open to the public", would be acceptable?

DELEGATE MURRAY: My answer, Mr. Chairman, is that I do not know what the word, "proceedings", means. I would much prefer "sessions" and I prefer the language of the present Constitution with the inclusion in that language of committee meetings and hearings.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I get the impression, Mr. Chairman, that our discussion of this matter this afternoon is rather casual discussion. I might be exaggerating it, but I get some inclination in our modern society that we are on several brinks and one of these is disillusionment of government. And I think what we are discussing here is of supreme importance. This disillusionment with government is especially with state government. The words that our coming generations talk about is the right to know, involvement and honesty. These are key values and I don't think we can maybe smoke-screen it by saying our language needs to be worked out. I'd like to see this body this afternoon go on record on a principle that is of extreme importance.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I am not willing to vote to delete the proposed section on the hope that Mr. Murray will present a more acceptable one. I think that, my humble opinion, there are rather few things we can do here which will guarantee that our work will be futile. And if the word goes out from this Convention today in the public press that Con-Con supports secrecy in the proceedings of the Legislature, that we might as well have our parties and relax for the next 4 weeks because whatever we produce won't be adopted.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, will Mr. Murray yield to a question?

DELEGATE MURRAY: Yes, sir.

DELEGATE ROBINSON: In Section 10, subsection 1, which was adopted a little bit earlier by a vote of 88 to 3, in line 17, it says, "makesrules for its proceedings." At the time of adopting that section, did you have the same trouble in understanding what "proceedings" means? (Laughter)

CHAIRMAN GRAYBILL: Please be brief, Mr. Murray. (Laughter)

DELEGATE MURRAY: Should I spell it? (Laughter) I had the same trouble. The answer is yes.

CHAIRMAN GRAYBILL: Mr. Murray, do you want the floor?

DELEGATE MURRAY: Yes. As a substitute motion for all motions pending, I move that Section 10, subsection 3, be amended to read: "the sessions of the legislature, committee of the whole, committee meetings-all committee meetings and-"

CHAIRMAN GRAYBILL: Mr. Murray, just a minute. The Chair is troubled by your substitute motion for all motions pending. I realize that's a beautiful legislative or legal phrase. It's been the Chair's position, and we talked about this when you were at the meeting and you advised me that I would take an amendment and I would take a substitute but that I wouldn't take any substitutes to substitutes. Now, I've got a substitute motion to delete—

DELEGATE MURRAY: No, no, I don't think you have. I challenge that, Mr. Chairman. I believe you have a motion to amend by deleting. At least, that's the way I heard him state it.

CHAIRMAN GRAYBILL: Substitute motion to delete by Mr. Etchart, the journal tells me. Now, I think we ought to rule on that and then if you want to make-if it's deleted you can still put another one in.

DELEGATE MURRAY: Mr. Chairman, may I-will Mr. Etchart yield?

DELEGATE ETCHART: I yield.

DELEGATE MURRAY: Will you withdraw your motion? (Laughter)

DELEGATE ETCHART: Mr. Chairman, I'll withdraw my motion.

CHAIRMAN GRAYBILL: All right, Etchart's motion's withdrawn.

DELEGATE MURRAY: Mr. Chairman, I move-

CHAIRMAN GRAYBILL: Mr. Murray, let me make this clear. What I like to do is we'd like to have two amendments, that's fine. and we don't mind a substitute and if the original one's a substitute, we'll take an amendment to the substitute, but we don't like to have substitutes on substitutes. whatever that means.

DELEGATE MURRAY: Well, I understand you but I disagree that that's what we had. I guess—

CHAIRMAN GRAYBILL: All right. Well, anyway, we've withdrawn Mr. Etchart's motion and we are now back on the motion to adopt subsection 3 and you may have the floor.

DELEGATE MURRAY: I move, as a substitute motion, that 10—Section 10. subsection 3, read as follows: "the sessions of the legislature, committee of the whole-"

CHAIRMAN GRAYBILL: Mr. Murray, I'm troubled and so is the clerk. Will you write it down for us?

DELEGATE MURRAY: I have it written. Shall I bring it forward?

CHAIRMAN GRAYBILL: Yes, will you send it up for us?

DELEGATE MURRAY: Fine.

CHAIRMAN GRAYBILL: Will the clerk read the proposed amendment?

CLERK HANSON: "Mr. Chairman. I move to amend Section 10, subsection 3, by deleting it in its entirety and adding in its place, 'the sessions of the legislature, committee of the whole, and all committee meetings and hearings shall be open unless the business is such as requires secrecy.' Signed, Murray."

CHAIRMAN GRAYBILL: Very well, you have heard the motion of Mr. Murray that the sessions of the Legislature, the Committee of the Whole, and all committee meetings and hearings shall be open unless the business is such as to require secrecy.

Mr. Heliker.

DELEGATE HELIKER: Will Mr. Murray yield to a question'?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I yield.

DELEGATE HELIKER: Does the phrase, "all committees", include the conference committee?

DELEGATE MURRAY: I presume so, yes.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: I move to amend the substitute motion.

CHAIRMAN GRAYBILL: What is it? Or write it down. You may come up here and write it down if you want to see what he wrote.

CLERK HANSON: (Reading) "Mr. Chairman, I move to amend the substitute motion made by Delegate Murray by deleting the words, 'unless the business is such as requires secrecy', and insert in lieu thereof the words, 'to the public'."

CHAIRMAN GRAYBILL: Very well, you've heard the substitute amendment of Mr. Heliker, the purpose of which is to take out the words, "unless the business is such as to require secrecy", and to add the words, "open to the public--make it open to the public." Now, we'll debate that issue.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, may I ask Mr. Murray a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: Yes.

DELEGATE BUGBEE: Mr. Murray, I fail to understand the basic difference why you would need this and why we can get along in the Constitutional Convention without a provision like this.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Well it's a little hard to answer Mrs. Bugbee, and I'm a little torn in my thinking, and I suppose that the reason that I'm torn is that I came here with the idea and philosophy in mind of reducing our present Constitution to something which was a broad

structure, flexible, and would last. I believe in the open meetings. I don't resist that premise at all or I'm sure that you would not have found it in the rules which I drafted preliminarily and gave to this Convention and which they so wisely adopted and which I think, incidentally, we are operating under beautifully. However I do not think, as a matter of practice that we should be telling the Legislature how it should run its affairs; and I think that each time we take a step toward doing so, we build in more resistance to the adoption of this Constitution.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: May I speak to Mr. Murray? Mr. Murray, it seems to me that what we are talking about is change and a changing time. The Constitutional Convention, it has been said before, belongs to the people. It's the people's business. It's the people's document. And it seems to be, by the very same token, that the Legislature is the people's representative. I fail to understand why what belongs to them should be kept from them, and who can make an arbitrary-I mean— to me it is absolutely an arbitrary decision to keep government's business from the people. That government belongs to them.

CHAIRMAN GRAYBILL: I don't think that was a question, Mr. Murray. (Laughter)

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN GRAYBILL: I'll let you have the floor again Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I think it requires a response for I think that I am being misinterpreted. I have never espoused any ideas in resistance or opposition to the matter of secrecy. I think that we should have open meetings. I simply rose to point out that I thought there was difficulty in the drafting of Section 10, subsection 3. I am now pleased with the amendment to my substitute motion, as proposed by Mr. Heliker, and I support it. And I think with that statement we should say hurrah.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: I rise in support of Mr. Murray's motion, as amended by Mr. Heliker. I think it's better than Section 10, as proposed by the committee, and I would ask the delegates to support it.

CHAIRMAN GRAYBILL: All right, the question is on-Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I oppose Mr. Heliker's amendment because it simply puts us back where we started and completely negates the idea. I think that in Section 10 we were wise in adopting the language which says that the Legislature may make rules for its proceedings, and I think this body was very fortunate in being able to make rules for our proceedings. I am very happy with the open hearings and meetings. They've worked fine, but I don't think we should hamstring the Legislature with this language.

CHAIRMAN GRAYBILL: Mr. Heliker, do you want to close?

DELEGATE HELIKER: Yes, Mr. Chairman. We've had many arguments—

CHAIRMAN GRAYBILL: Wait a minute. Mr. Mahoney wants to speak, Mr. Heliker.
Mr. Mahoney.

DELEGATE MAHONEY: I am wondering if you're going to go out and open up the court of the State of Montana to when those judges get in their conference, this becomes public. I wonder if you'd like to go out here and open up the jury room, and this is what you'll do with this thing here if you go through with it. As far as impeachment's concerned, you're going into the jury room and you're going to put the press right in there. I just wonder how far you're going and I hope this Convention realize-I want to be fair to the Legislature and this is another branch of government, just as much as the court is; and if we're going to have open meetings, when we ever get to an impeachment-this is the thing. And in answer to my distinguished colleague over here, he was only talking about the setting up the procedure. This never got to the Senate. It was right on this body is where it stopped because they did not vote impeachment. But when you try the people, this is what I think you must have an exception in here for trying in the impeachment proceedings and before that Senate or the one house Legislature. That's all I have to say. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I rise to support Mr. Heliker's motion, or amendment to Mr. Murray's motion. Mr. Murray said that one word, "proceedings", troubled him and I

think he did an excellent job in clearing that up. He then used a word-the word, "secrecy"--and the whole phrase, "unless the business is such as to require secrecy", that makes me wonder just exactly who determines that, and when. Now let's pose a question. Let's say Mr. Miles Romney comes up here from his newspaper, goes to a committee seeking admittance on the assumption that all meetings are "pen. He starts to walk in and they say, "We're going to have a secret meeting." Now then Mr. Romney, as a good reporter, says "What is the secret meeting about?" Now, do they have to explain what the secret thing is that they don't want to be made public in order to make their case, or how does he know what the secrecy is? If they do not say what it is, then his agile mind can run rampant and all kinds of things may come out of it. If they tell him what the secret meeting is about, then it's no longer secret. (Laughter).

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Would Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I yield.

DELEGATE CHOATE: Mr. Heliker, since the only subject that seems to be very controversial here regarding the matter of secrecy appears to be impeachment, wouldn't it be in order for you to include in your amendment to Mr. Murray's motion that except as may be required during impeachment proceedings?

DELEGATE HELIKER: Have we—let me ask the Chair-have we covered impeachment yet? This is down the road, isn't it?

CHAIRMAN GRAYBILL: We haven't covered it yet, no.

DELEGATE HELIKER: I should suggest that if there is a real problem here, that we can take care of it when we get to the section on impeachment.

CHAIRMAN GRAYBILL: Mr. Heliker, do you have anything else to close?

DELEGATE HELIKER: Mr. Chairman, I would like to say that we've had many arguments already and we'll have many more before this Convention is over, about what is a constitutional provision, what is properly in the Constitution and what is not. And that's part of the argument before us now. But I don't think that anyone has ever questioned that it is a function of a Constitutional Convention to lay reasonable, in its opinion, restrictions upon the Legislature, and that is exactly what we are doing here. We are saying to the Legislature, "You shall not conduct the people's business behind closed doors. You shall not keep from the people the secrets that belong to the people. You shall let the people in and the people shall know." And that is what should come out of this Convention in my opinion.

CHAIRMAN GRAYBILL: Very well, the issue is on the amendment by Mr. Heliker to Mr. Murray's substitute motion which now reads as follows:

Mr. Romney.

DELEGATE ROMNEY: I call for a roll call vote.

CHAIRMAN GRAYBILL: Right, we'll have a roll call vote. "The sessions of the legislature, committees of the whole-committee of the whole, and all committee meetings and hearings shall be "pen to the public." That's the way it now reads. "The sessions of the legislature, committee of the whole, and all committee meetings and hearings shall be "pen to the public." All those in favor of that motion vote Aye on the voting machines. Opposed, vote No. I guess we're voting on Mr. Heliker's amendment, which is to strike out the words, "unless the business is such as requires secrecy", and add the words, "to the public." I guess we're properly voting on that so strike my first-my other sentence and let's put it this way-the question, then, is on Mr. Heliker's amendment to Mr. Murray's motion, which I just read. Mr. Heliker would strike out the words, "unless the business is such as requires secrecy", and would add the words, "to the public", to the sentence making it "pen to the public. Now, all in favor vote Aye on the voting machines and all opposed, vote Nay. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 75 having voted Aye and 14-oh, we have a roll call. All right, take the machine.

Mr. Martin, for what purpose do you rise?

DELEGATE MARTIN: On the board, my vote isn't registered-on this board over here.

CHAIRMAN GRAYBILL: All right, we'll see if it's registering over here, Mr. Martin. Did Mr. Martin register? You voted Aye on the machine, Mr. Martin.

(The Reporter notes herein that the print-out on the vote tabulation was misaligned and Delegate Martin actually is shown as absent.)

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Nay
Bates .. .. Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Absent
cross .. .. Aye
Dahood ..... Excused
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Nay
Drum .. .. Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce .. .. Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield, ... Aye
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius. ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden .. .. Aye
Wilson ..... Absent

Woodmansey .. .. Aye
Mr. Chairman .Aye

CHAIRMAN GRAYBILL: Will the clerk read the vote?

CLERK HANSON: Mr. Chairman, 75 delegates voting Aye, 14 voting No.

DELEGATE REICHERT: (Inaudible. Microphone not turned on.)

CHAIRMAN GRAYBILL: Is Mrs. Reichert recorded as voting Aye?

CLERK HANSON: Reichert is recorded as Aye.

CHAIRMAN GRAYBILL: Mrs. Reichert's recorded as Aye. Very well, 75 having voted Aye, and 14 voting No, the amendment passes. Question is now on Mr. Murray's substitute motion.

Mr. Heliker.

DELEGATE HELIKER: I want to call for a roll call.

CHAIRMAN GRAYBILL: **You want a** roll call vote. Very well. Mr. Murray, we've got plenty of seconds. All right, the question then is on Mr. Murray's substitute motion "that the sessions of the Legislature"--or as amended-"that the sessions of the legislature, committees of the whole, and all committee meetings and hearings shall be open to the public." All-so many as shall be in favor please vote Aye on the voting machines and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: **Does any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, please record the vote.

Aasheim ....Aye
Anderson, J. ....Aye
Anderson, O. ....Aye
Arbanas ....Aye
Arness ....Aye
Aronow ....Aye
Artz ....Aye
Ask, .Aye
Babcock ....Aye
Barnard ....Aye
Bates ....Absent
Belcher .... Aye
Berg ....Aye
Berthelson .... Aye
Blaylock .... Aye
Blend ....Aye
Bowman ....Aye
Brazier .... ..Aye
Brown .... ..Aye
Bugbee .... ..Aye
Burkhardt .... ..Aye
Cain ....Aye
Campbell .... .Aye
Cate .... .Aye
Champoux .... Aye
Choate ....Aye
Conover ....Absent
Cross.. .... ..Aye
Dahood .... Excused
Davis ....Aye
Delaney .... Excused
Driscoll .... Aye
Drum ....Aye
Eck ....Aye
Erdmann .... Aye
Eskildsen .... .Absent
Etchart .... Nay
Felt ....Aye
Foster .... ..Aye
Furlong ....Aye
Garlington ....Aye
Gysler .... ..Aye
Habedank .... Nay
Hanson, R.S. .... .Aye
Hanson, R. .... ..Aye
Harbaugh ....Absent
Harlow .... .Absent
Harper .... Aye
Harrington .... .Absent
Heliker .... Aye
Holland .... .Absent
Jacobsen .... Aye
James .... ..Aye
Johnson .... .Aye
Joyce.. .... ..Aye
Kamhoot .... ..Aye
Kelleher .... ..Aye
Leuthold ....Aye
Loendorf ....Aye
Lorello ....Aye
Mahoney .... Nay
Mansfield .... Aye
Martin ....Aye
McCarvel ....Aye
McDonough .... Aye

McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK **HANSON: Mr.** Chairman, 81 delegates voting Aye, 9 voting No, 2 excused, and 8 not voting.

CHAIRMAN GRAYBILL: Very well, 81 delegates voting Aye and 9 voting No, the substitute motion of Mr. Murray has prevailed as amended. Very well, Mrs. Bugbee, will you-may I use you to make a motion that when this committee arises, the substitute motion of Mr. Murray shall be adopted?

DELEGATE BUGBEE: I so move.

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you the motion of Mrs. Bugbee that when this committee does arise and report, after having had under consideration subsection 3 of Section 10, that the substitute section as stated by Mr. Murray do-be adopted as amended. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: Will the clerk read Section 4?

CLERK HANSON: "Subsection 4: Adequate public notice of committee hearings must be given." Mr. Chairman, subsection 4.

CHAIRMAN GRAYBILL: You have before you, members of the committee, subsection 4. What is your pleasure?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 4, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman, this won't be quite so hard. This was modified from what the committee had considered. I just want to say that adequate would mean the type of public notice. It would mean TV or newspaper or posting and the amount of time—it would include both the type and the time that the Legislature would consider sufficient for public notice. In other words, it would be up to the public-to the Legislature, excuse me.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Brown.

DELEGATE BROWN: Mr. President, I move to delete all of Section 10, subdivision 4. It's ambiguous, it's legislative and it's part of their rules.

CHAIRMAN GRAYBILL: Mr. Brown has made a motion to delete subsection 4. Mr. Brown, do you want to speak any further?

DELEGATE BROWN: (Inaudible response)

CHAIRMAN GRAYBILL: Very well, is there discussion'? Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, part of us in the committee felt that this would henceforth be known as the lawyers' reliefportion of the Constitution, if it's left in as it is. I can foresee all--untold suits brought as to what is

adequate and what is not adequate. I appreciate the intent but we simply worked on it for a long time and we could not come up with a conclusion that would put a brief statement in the Constitution that would not furnish untold law suits in the future.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I rise to support Mr. Brown's motion for the same reasons stated by him and for the same reasons stated by my colleague, Mr. Nutting. The question that pops into my mind is to who determines what is adequate public notice. I think the matter is so serious that I think that were a Constitution adopted with this particular language, as indefinitive as it is, it might cast suspicion upon the validity of any legislation adopted by the Legislature. I think that it fails in two major respects: one, to define who determines the adequate notice; and two, to determine if no challenge is made to that notice, when the law automatically would become effective or, in other words, when the statute of limitations as to its challenge would take effect. Arid therefore I think the simple solution lo the problem is to keep it much like we've had it in the present Constitution, and not have any such stricture placed herein.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, members of the Convention, I would like to point out that it doesn't do any good to have open meetings if people don't have notice of them, and so I think that this section goes right along with the other section. However, I agree with Dick Nutting that "adequate" is a lawyer's word and that "adequate" ought to be taken out of there. And when the opportunity presents itself after the other motions have been dealt with, I will move to have that word stricken from that section. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue now rises-Mr. Harper.

DELEGATE HARPER: Mr. Chairman, may I move a substitute?

CHAIRMAN GRAYBILL: Well, I'll hear it.

DELEGATE HARPER: That we say "at least"-instead of the word "adequate"-"at least 3 days' public notice of committee hearings must be given."

CHAIRMAN GRAYBILL: No, if you're going to make a motion like this, you're going to write it down. And if you want to write it down, bring it up here, we'll take it.

DELEGATE HARPER: But don't forget what I said while I'm coming up. (Laughter)

CHAIRMAN GRAYBILL: Give that to Mr. Harper.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, this is—

CHAIRMAN GRAYBILL: Now, just a minute, Mr. Harper. We have a problem. The Chair wants these motions in writing and the motion at present is Mr. Brown's motion to delete. Now, is this-you can't strike the word "adequate" from a motion to delete.

DELEGATE HARPER: I was moving to substitute this entire—

CHAIRMAN GRAYBILL: All right, in other words, you're moving a substitute motion whose language is the same as the present motion with some different words in it, is that right?

DELEGATE HARPER: Right.

CHAIRMAN GRAYBILL: All right, but that isn't what you wrote out.

DELEGATE HARPER: Well, that was my haste. I did not have it written out previously, Mr. Chairman, because at one time earlier in the session you stated that minor changes of words would not be required to be written out in detail.

CHAIRMAN GRAYBILL: Right, and I've changed that now and may I suggest to you, Mr. Harper-Well, the Chair has a right under Rule58 to require a motion to be in writing and it's because these things get so complicated. And may I suggest to you a way out of this, Mr. Harper, and see what you think. The motion is to delete. The motion is not final and when the motion to delete is made, if it prevails, then you may bring in another motion for new language for Section 4. But in order-but to try and do it in the face of his motion to delete, we don't find out the sense of the body on the motion to delete and we get the sense of the body only on a half motion on another side. So, if you'll allow me, I'll rule you out of order and you may come back-if Mr. Brown's motion wins,

you may come back and make another attempt at it. Okay?

DELEGATE HARPER. Yes.

CHAIRMAN GRAYBILL: And that attempt should be written up.

DELEGATE HARPER: My thought in doing this before the motion to delete was carried was that we not be deleting on one thing and have something else in mind.

CHAIRMAN GRAYBILL: And you may also, of course, do what you've done, and that is you may also explain any motion you want to make. The point is, it gets very complicated and so the Chair is going to rule that since your motion, which amends a motion to delete, does not make sense as it is, we'll move-we'll rule it out of order and we'll go ahead on the motion to delete and then you may come back with another motion if you want to.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: What is the motion before the assembly?

CHAIRMAN GRAYBILL: The motion before the assembly is Mr. Brown's motion to delete subsection 4.

DELEGATE AASHEIM: If that carries we have killed Section 10, subsection 4. There will be no opportunity for Mr. Harper to bring in his substitute motion.

CHAIRMAN GRAYBILL: Well, I'll ask the Rules Committee. It's not my understanding until we have finally voted on as and agreed that that's what the committee would do when it would rise, Mr. Aasheim. Mr. Murray, would you like to help me?

DELEGATE MURRAY: Yes, sir.

CHAIRMAN GRAYBILL: The motion is to delete Section 4. Then I have a possible motion to substitute another motion for that. If the motion to delete Section 4 prevails, isn't it possible to still have other language suggested for Section 4 until this committee votes on what it's going to do when it rises?

DELEGATE MURRAY: Yes.

CHAIRMAN GRAYBILL: Well, if the Rules Committee's right, Mr. Aasheim, you're wrong.

Mr. Aasheim.

DELEGATE AASHEIM: That is true later on.

CHAIRMAN GRAYBILL: No, he can do it right after this. In other words, we have not placed this motion in the language, the magic language, that makes it final and the motion is simply to delete. And having deleted, then we could take other amendments to subsection 4.

DELEGATE AASHEIM: I stand corrected. May I speak on the motion?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE AASHEIM: I concur with the motion to delete. I wonder-we're trying to make an assembly-I mean a legislative body that is democratic. We are trying to have public hearings and we know the value of public hearings but if we put in this restriction that there must be adequate notice or any kind of notice, might the committee Chairman say, "Well, we won't bother with a public hearing if we're going to be restricted", so we're defeating our own purpose. I concur with the motion to delete. Let's not give these chairmen of these committees another handicap to overcome because we have had that in this session here. It has been very difficult to get adequate public notice because of change of schedules, so I would concur with the motion to delete.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I just want to say, Mr. Chairman, that in the course of the hearings by the Executive Committee, where we had over 50 people off and on, we frequently found that when we needed something from an officer of the state who was otherwise engaged and then was free, we got him on short notice. The insertion of this 3-day idea or adequate or some other limitation is simply going to confound the whole process and delay it all. I think it would create such inefficiency and confusion that it would substantially destroy the real, true function of a group committee hearing. What it would be is, the Chairman or somebody would go privately and do this and report back and in effect the public function and the public information would be more

hampered than developed. And I think, therefore, that we would be better off not to put this kind of humiliating handcuff on the legislative proceeding. Here's a case where we should have faith in our representatives we vote for every 2 years.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, insomuch as I am a lawyer and probably will clandestinely support many lawyer relief bills on this floor, I support the motion to delete that in this case. It is a legal principle that for every wrong there is a remedy; and in this case if someone is aggrieved and feels that he has been wronged by not receiving adequate public notice, I question what his remedy would be. In the sublime, it might perhaps be a petition to declare unconstitutional the bill on which he feels he did not haveadequate hearing. For this and many other legal reasons, I would support the motion to delete.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, does not Delegate Harper have the privilege of moving a substitute motion?

CHAIRMAN GRAYBILL: Mr. Romney, he has the privilege of moving a substitute motion.

DELEGATE ROMNEY: Well, why doesn't he do it? (Laughter)

CHAIRMAN GRAYBILL: Well, let's put it this way. He hasn't done it right yet. I asked that it be in writing. And the motion before the house is one to delete, and the motion he sent up said substitute the word something else. Now you can't substitute a word in a deletion, and I will give him a chance to make his motion but he can't do it the way he did it. So help him out if you want to.

DELEGATE ROMNEY: (Inaudible)-but I think that he should be afforded the opportunity to write it in conformity to the rules and that it should take precedence over the pending motion to delete because it is a substitute.

CHAIRMAN GRAYBILL: I have a feeling he's writing it.

Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I didn't realize that we were waiting for Mr. Harper. I put my own substitute motion up there in the form of an amendment

CHAIRMAN GRAYBILL: All right, let's have Mr. Roeder's-may I see Mr. Roeder's substitute motion?

DELEGATE ROEDER: I don't know, inexperienced as I am in these matters, I don't know if I did it properly.

CHAIRMAN GRAYBILL: You have now by getting the floor and calling it to my attention. Let's see it. Well, let's stop and understand what we're doing here. We have a motion to adopt Section 4 by the committee member. Then we have a motion by Mr. Brown to delete Section 4. Now, the motion that's being considered then is the deletion motion and when you send me an amendment saying to add the word, "notice", after line 8 of page 5, there's nothing to add or subtract to in the motion to delete. Now, if you want to come up with some different language that substitutes for Mr. Brown's position of deleting, I'll be glad to take it. But there's no point in taking language which adds or subtracts words to lines in something that he's moved to delete, That's my only point.

Mr. Roeder.

DELEGATE ROEDER: Is it now impossible for me to ask you to regard the language and the punctuation I sent up there as a substitute motion for what Mr. Brown moved?

CHAIRMAN GRAYBILL: No, I can regard it that way but I am going to ask you to write it down and I have explained to Mr. Harper, as I'll explain to you, that no matter how this motion comes out you'll be given a chance to amend further. If it comes out that it wins, you may suggest language. If it comes out that it loses, you may amend the existing Section 4. But I will not let you amend something that says to delete because the deletion takes everything away. So you have to come in by substitute motion that's written out in full form in order to handle anything that's deleted. It's just the only simple way to handle it. You will not lose your right to make an amendment, Mr. Roeder.

DELEGATE ROEDER: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, has Mr. Harper got some new language?

(No response)

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: We're just deleting the language in Section 4, aren't we?

CHAIRMAN GRAYBILL: That's right. Well, maybe Mr. Brown thinks we're deleting Section 4 but in any event, we're not through with Section 4 when we delete what's in there now, as far as you people are concerned in making other motions.

Mr. Brown.

DELEGATE BROWN: Mr. President, since there's going to be several other motions made, I wonder if I could now close?

CHAIRMAN GRAYBILL: All right. Mr. Champoux, do you want the floor?

DELEGATE CHAMPOUX: Yes, before he closes, if I may just interject a few comments. First of all, in reaction to Mr. Aasheim's comments, if I understood them right when he said that public notice would keep committee's chairmen from having a public hearing. Well, I think if this reasoning is to be followed then this is all the more reason why, at least as far as I can see, to indicate why we need adequate public notice. I'm not quite satisfied with that word "adequate" in terms of what it means. Secondly, in reacting to Mr. Garlington's comments-insofar as the Education and Public Lands Committee was concerned, governmental agency heads told us that they were very pleased with the fact that they had been given adequate notice. By that, I mean 2 to 3 days. And that they weren't told in just 2 minutes to come down and give a yearly review of their budget and so forth. So I'm against the deletion.

CHAIRMAN GRAYBILL: Mr. Brown, do you want to close?

DELEGATE BROWN: I now close.

CHAIRMAN GRAYBILL: Mr. Harper, I'm going to put your motion next no matter what happens. All right, the motion is on Mr. Brown's motion to strike the words: "Adequate public notice of committee hearings must be given". All those in favor of striking those words from Section 4 please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and the words are stricken.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I move that Section 10, subsection 4, of the Legislative Article read as follows: "At least 3-day public notice of committee hearings must be given." May I speak to it?

CHAIRMAN GRAYBILL: Very well, Mr. Harper has now moved that subsection 4 of Section 10 read: "At least 3 days—3-day public notice of committee hearings must be given."

Mr. Harper.

DELEGATE HARPER: When this idea first came up in our committee, there was a good deal of enthusiasm for the idea of putting in some definite statement like this. Those who were for putting in something definite like 3 days' or 5 days' public notice were talked out of the idea because, it was said, that we do not want to restrict the Legislature to a particular number of days. And so we sought to come up with some kind of wording that would insist that adequate public notice of committee hearings be given and we came up with what now seems to be an unfortunate term. Perhaps we should have stayed with the idea of a definite number. Now, this is exactly what we did in Rule 38 of the Constitution Convention. Rule38 mandates that we give 3 days' notice of public hearings. These are the rules under which we are operating this Convention and everybody says this has been a wonderful thing. People have had adequate public notice, people have been able to get here, they know what the hearing's going to be about, and they've been well advised. If a person lives in Glendive, he still is a part of the State of Montana even though he's a long way from here, and he ought to have adequate public notice. Three days in our kind of transportation and communication probably is adequate. I would like to call attention of this body to the fact that several other states put day limits into their constitutions. Nebraska, for example, has 5 days before public hearings. This, of course, a part of the whole movement to free up the Legislature in terms of time limits to hear the public and to do its legislating with the public involved. With the idea that better legislation in which the public has been involved all along will be the end of the process. This is why I move now this definite term, "3

days", so that we can clearly establish whether or not we want to have anything at all.

CHAIRMAN GRAYBILL: Mr. Roeder, now that there's language on the floor, do you want to amend it by putting in the words-by changing it?

DELEGATE ROEDER: Yes, sir, but I'm dumbfounded as to how to go through the procedures of writing it out. (Laughter) May I just explain my position, Mr. Chairman?

CHAIRMAN GRAYBILL: Certainly.

DELEGATE ROEDER: Thank you, sir, and may I comment on what Mr. Harper has just said because what language I wish to propose is in response to his. Is that permissible, sir?

CHAIRMAN GRAYBILL: Yes, what you want to say is that "Adequate public notice as defined by the legislature" replace the words, "3-day public notice."

DELEGATE ROEDER: Yes, sir

CHAIRMAN GRAYBILL: And you just amend his and now we've got language to amend; but when we're deleting, there's no language to amend.

DELEGATE ROEDER: Well, may I make my amendment now?

CHAIRMAN GRAYBILL: Yes, sir, you may. Do you want to?

DELEGATE ROEDER: Okay, I should like to amend Mr. Harper's proposal by deleting any reference of "3 days" and having the entire subsection 4 read as follows: "Adequate public notice, as defined by the rules of the Legislature comma, of committee hearings must be given period".

CHAIRMAN GRAYBILL: Very well, Mr. Roeder has made an amendment to Mr. Harper's amendment that "Adequate public notice as defined by the rules of the legislature-"

DELEGATE ROEDER: Mr. Chairman

CHAIRMAN GRAYBILL: "-of committee hearings must be given."
Mr. Roeder.

DELEGATE ROEDER: May I just comment to that briefly? If I understand Mr. McKeon properly, he's disturbed about the legal sideofthis and I think this was some of the comment over here about this being a lawyer's relief bill, and I don't wish to support anything that would do that. I don't think the bar needs relief. (Laughter) But, I think by putting this clause in we would, to borrow one of Mr. Aronow's principles, be indicating to the Legislature in the future our moral position; that we should like to have them do the best they can in the way of making these things public, and at the same time avoiding the legal situation that Mr. McKeon referred to by making it a self-enforcing thing for the Legislature. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, it just seems to me the vice of trying to write anything into the Constitution is apparent because if you write something in, it has to mean something. And if it gives you a legal right, you have a right to enforce it. And just let me give you one illustration. Two committees here have been run differently. Inferentially, Mr. Champoux has disapproved of the way I ran the Executive Committee. I know he didn't mean to. I didn't give any notice. I just got up and said the committee would meet after the session. I interpreted the rule to mean public hearing when we were going to ask the public to come in. We had a lot of investigatory work to do. The meeting was open up there. Everyone could have come in. Everybody did from time to time. Now, would it not be an anomalous situation for someone to come into court and to say, because you had a boob like Joyce as the Chairman of the Executive Committee, that House Bill 1'3 is unconstitutional. Now, you're just pressing too far, if I might suggest. When the evil doesn't balance the good, why not leave it out. Why not trust the Legislature that they will give notice, and why compound difficulties. What if I'm even more devious than that. What if, for example, I am against House Bill 13 and all of my committee is for it, and 99 people in the Legislature are for it. But because I am a know-it-all I just don't give adequate public notice of a committee hearing, and the bill passes the House. And Cedor Aronow comes down and said he didn't get adequate public notice when we met on adjournment on Tuesday when we considered this matter, and therefore the bill is unconstitutional. I've already agreed with Cedor that we're going to do this. Just can't you see the vice and the viciousness and the harrass-

ment that will enter into the realm. Let's leave well enough alone. Let's trust the Legislature. Let's be reasonable people. We've adopted that the committees must be open, and if they are open let us trust the Legislature that they will give these people an opportunity [to] be heard, and let's not do more harm than good.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I, too, feel that this could be too binding. We set up a legislative hearing right here in this body even though it was a 3-day notice. It was changed from the evening to the afternoon. Many people came to testify. There was no meeting when they came. This could happen and it will happen in a Legislature. There's no doubt about it. If this is something that should he left out, again I say, when in doubt leave it out.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise in opposition to the amendment which states in effect that adequate public notice will he given as determined by the Legislature. I think that this is, in essence, meaningless. I think that when you do put something in here, and I appreciate the intent that we do want to give adequate public notice. I think everyone feels that the notices given by this Convention were more than adequate. I think that when you do put something like this in a Constitution you are running a real risk that if you state a certain day at some further point in time someone may question whether or not the entire legislation was constitutional or not. I don't feel that the Legislature should be bound by this. I have complete faith that the new Legislature will give adequate public notice, that they will go into this area, and I don't feel this should be placed in this Constitution now. I would favor deletion of the entire amendment. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I would like to reassure Mr. Joyce he would have to give adequate notice. But no place in the Constitution does it say he'd have to have a hearing, so he's all right.

CHAIRMAN GRAYBILL: All right, the issue is on Mr. Roeder's amendment that subsection 4 read: "Adequate public notice, as defined by the rules of the legislature, of committee hearings must be given." All in favor of Mr. Roeder's-yes, Mr. Martin.

DELEGATE MARTIN: Roll call, please.

CHAIRMAN GRAYBILL: Roll call'? All in favor of Mr. Roeder's amendment that adequate public notice, as defined by the rules of the Legislature must he given, please indicate by voting Aye on the voting machine; those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Nay
Bughee	Aye
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Absent
Cross	Nay
Dahood	Excused
Davis	Nay
Delaney	Excused
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Absent

Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ....Absent
Harper..... Aye
Harrington ..... .Absent
Heliker ..... Nay
Holland .....Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield. ..... Nay
Martin .....Aye
McCarvel ..... Nay
McDonough..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ....Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder .....Aye
Rollins,, ... Aye
Romney ....Aye
Rygg ..... Nay
Scanlin.. ....Absent
Schiltz ..... Nay
Siderius.....Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Spew.. ....Aye
Studer ..... Nay
sullivan ..... Nay
Swanberg.....Aye
Toole Nay
Van Buskirk .....Aye
Vermillion .. Nay
Wagner,. .. Nay
Ward ..... Nay
Warden..... Nay
Wilson..... Nay
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 19 delegates voting Aye, 71 voting No.

CHAIRMAN GRAYBILL: 71 delegates having voted No, the motion fails. We're back on Mr. Harper's motion that at least 3 days' public notice of committee hearings must be given.

Mr. Cate.

DELEGATE CATE: I have a motion before the Chair that I would like to move at this time which I think will resolve the entire situation. The problem seems to be with two things: the word, "adequate"-what does it mean'? Nobody knows what it means, and thatwould be subjectto judicial interpretation on every bill. Secondly,—

CHAIRMAN GRAYBILL: Let **me** read your motion, Mr. Cate, so they know what you're talking about. Mr. Cate proposes a substitute motion for Mr. Harper's motion. The substitute motion shall-states: "Public notice of committee hearings must be given."

DELEGATE CATE: Secondly, I think the 3-day limitation is unreasonable. That would prohibit a Chairman, if some expert came into town, from having a hearing from that expert. He would have to give 3 days' notice. I think it's unworkable and unrealistic. By simply stating that public notice of' committee hearings must be given, we've established the principle that we're trying to establish. And that is that the public be informed of committee hearings; and I would trust the Legislature to give them sufficient time and opportunity to testify. And I would so move that Section 10, subsection 4 be amended to provide-to strike the word, "adequate", so it reads: "Public notice of committee hearings must be given."

CHAIRMAN GRAYBILL: Mr. Cate's substitute motion is: "Public notice of committee hearings must be given."

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, could I ask Mr. Cate a question, please?

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: Certainly.

DELEGATE BABCOCK: Is posting a notice out here on the bulletin board a public notice?

DELEGATE CATE: It could be, yes. Announcing a committee hearing from the floor would be public notice.

DELEGATE BABCOCK: Is that adequate public notice?

DELEGATE CATE: Well, that's the word we're trying to get away from.

DELEGATE BABCOCK: Well I mean, would that be sufficient?

DELEGATE CATE: I think the Legislature would have the right under this provision, as I've moved to amend it, to make rules for public notice but I don't-and I think that's where it ought to be, with the Legislature.

CHAIRMAN GRAYBILL: Mr. McDonough—oh, pardon me, Mrs. Babcock, are you through?

DELEGATE BABCOCK: May I ask another question? Would there be a difference between a meeting and a hearing?

DELEGATE CATE: Yes, there would be.

DELEGATE BABCOCK: And only the hearings would be noticed?

DELEGATE CATE: That's correct.

CHAIRMAN GRAYBILL: Mr. McDon-"ugh.

DELEGATE McDONOUGH: Mr. President, I resist the amendment on the grounds that, even though we have "adequate" out of there, we're back in the position of defining the word, "public", and we're defining the word, "notice". And once again you get back to the point that it's much better to leave this, as to what notice the committees shall give, to the rules of the Legislature itself and not try to define these words. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Well I would like to close.

CHAIRMAN GRAYBILL: Well, we're on Mr. Cate's motion at the moment. Your motion has been substituted for and unless Cate fails, we're not on yours yet, but you may speak.

DELEGATE HARPER: Thank you, Mr. Chairman. Lest you think that I just got a hair-brained idea from somewhere and I'm stubbornly holding onto it, may I call your attention to the fact that I'm sorry we don't have a roll call on what we did with the rules because as I remember it, we unanimously passed Rule 38 at this Convention. Now, I would just ask you to read that if you want to. I won't take time to read the whole thing but it says, "which may not be less than 3 days before the time of the hearing." We have been operating this entire Constitutional Convention under this limitation. Now, then, if—I would like seriously to ask these lawyers a question. Since so many committee chairmen have risen to say that they just couldn't possibly abide by this 3-day rule if they were in the Legislature, and that they have constantly gone against it during this Convention. In my interpretation I don't think they have. Is somebody going to be able to go to the Supreme Court with the idea that this Constitution that we are proposing is illegal, because we have violated this same rule, we have heard again and again. Now, I don't think we have. I think WC have given 3 days' notice, public notice, for our public hearings, Now, I realize that Mr. Romney said one time in our committee meeting that a committee meeting may at any time degenerate into a hearing. And this is true because we talk to people or we have people to come in and visit about it and so forth. This is at the point of public meetings that the committee calls, announcing what they are going to deal with, inviting the public to come in. Two things are apparent. One thing is the committee is not forced to have this kind of hearing, but this is saying that if they do announce a public hearing, they can't get away with the business as I have often seen it in the legislatures in the past few years, of getting a notice or being aware at 7 "'clock in the morning that a meeting was going to be-a public hearing was going to be held at 9:00 or 12:00 that noon; or having a call from somebody in Glendive saying, "We heard this was going to happen, could you go up and represent us on such-and-such a cause". We are talking about a real vital part of our whole legislative process when we're talking about public hearings, and so I don't think this is something that's a little wayside matter. It's something that we ought to give this real

serious consideration and I'm glad to see that we are.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, we must have two separate legislatures we're talking about. One we just gave unlimited power to in Section 6 to meet continually for 2 years if they want, to call themselves back into session without prescribing whether it took a majority, two-thirds, or what it was. And another Legislature now that we don't trust, on the next page, to even be able to make their own rules, like they permitted us. We must also have two groups of voters-that intelligent group of voters that elected us to come up here and legislate and occasionally do something constitutional-(Laughter)-and the set of voters that arc going to vote the legislators in that we can't trust. It's almost unbelievable.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Will Mr. Harper yield to a question?

CHAIRMAN GRAYBILL: Delegate Harp-?

DELEGATE HARPER: I will.

DELEGATE BROWN: Delegate Harper, you want to lock into the Constitution that the Legislature for the 50 or 60 years must give a 3-day notice. You say our rules are adequate. Do you realize that Rule 74, we can suspend all rules as to notice, under our rules, but you would not give that to the Legislature?

DELEGATE HARPER: The Legislature will be here doing people's business. Every bill they pass will become a public law. I think this is part of the whole process of making the process "pen so the people have a right to know. Not only have a right to know what's going on, have a right to express their opinion, and I think as a part of good legislative process somewhere in there ought to be this process of finding out. And public hearings is a good way to do this, particularly on controversial issues. A good many of the state constitutions have locked in day limits and I am suggesting that we should here.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Cate's amendment-substitute amendment-that public notice of committee hearings must be given. All those are in favor of Mr. Cate's substitute amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. We're now back on Mr. Harper's amendment about whether or not 3-day public notice of committee hearings must be given. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Harper, do you want to close?

DELEGATE HARPER: I'd like to call for a roll call vote.

CHAIRMAN GRAYBILL: Very well, we will have a roll call vote on the proposition of whether 3-day public notice of committee hearings must be given. That's the text that would prevail if the motion prevails—3-day public notice of committee hearings must be given for subsection 4 of Section 10. So many as are in favor of that, please vote Aye. So many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the votes.

Aasheim .. .. Nay
Anderson, J. Nay
Anderson, O.. Nay
Arbanas ..... Aye
Arness .. .. Nay
Aronow Nay
Artz ..... Nay
Ask.. .. .. Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher Nay
Berg..... Nay
Berth&on Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Aye
Brown . . . . Nay

Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Aye
Chonte ..... Nay
Conover ..... Absent
Cross ..... Aye
Dahood ..... Excused
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Absent
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nag
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 21 delegates voting Aye, 67 voting No.

CHAIRMAN GRAYBILL: 67 delegates having voted No and 21 Aye, the motion fails. At the moment, then, we are without a subsection 4. Is there any further amendments to consider?

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I wonder if it wouldn't be in order to make a motion that when this committee does rise and report, after having had under consideration Section 10, subsection 3, that it recommend the same be not adopted.

CHAIRMAN GRAYBILL: If you'll change that to subsection 4, I'll go along with you.

DELEGATE MURRAY: Four, excuse me.

CHAIRMAN GRAYBILL: Very well, the motion is on the motion of Mr. Murray that when this committee does arise and report that it shall report that there shall be no subsection 10(4). All in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Mr. Clerk, will you read subsection 5?

CLERK HANSON: "Subsection 5: The legislature may establish interim committees which may meet and exercise all legislative authority delegated to them." Subsection 5, Mr. Chairman.

CHAIRMAN GRAYBILL: You now have before you, members of the committee, subsection 5 of Section 10.
Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 5, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: I'm going to read the comments to this. The committee believes that the Legislature has the power to establish interim committees under this proposed article, especially under Section 6 which makes the Legislature a continuous body, which we have already done today. This section is included, however, because of the problem past Montana legislatures have had in establishing the Legislative Council. The committee wishes to include this section to remove any doubt about legislative authority in this area. Mr. Chairman, this section simply allows the Legislature to operate as they do now.

CHAIRMAN GRAYBILL: Very well, is there discussion?
Mr. Mahoney.

DELEGATE MAHONEY: Would Delegate Bugbee answer a question?

CHAIRMAN GRAYBILL: Mrs. Bugbee?

DELEGATE BUGBEE: Yes.

DELEGATE MAHONEY: I might be a little worried. In line 11, I believe it is, "all legislative authority delegated to them." Now, do you want to go quite that far in this delegation of authority? Legislative authority is getting quite strong there.

DELEGATE BUGBEE: I'm really boggled by the lawyers by now. Mr. Loendorf, would you answer that, please?

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: I was going to say, sometimes known as "Loendorf'.
(Laughter)

DELEGATE LOENDORF: Mr. Chairman-

CHAIRMAN GRAYBILL: But always spelled "LO-E-N-D-O-R-F". (Laughter)

DELEGATE LOENDORF: Right. I believe if we take a look at the Supreme Court cases which involved the Legislative Council, we find legislative authority to mean not only the ability to pass laws, but the ability to investigate, do research, et cetera. At least the Supreme Court interpreted this to be such. I do not believe that by this section we delegate or could delegate the ability to pass laws to an interim committee, if that was the question.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Might I ask him another question?

DELEGATE LOENDORF: I yield.

DELEGATE MAHONEY: I'm botheredin this point that they might decide to let a small group appropriate money and I wonder-this is legislative authority.

DELEGATE LOENDORF: Am I on?

CHAIRMAN GRAYBILL: Mr. Mahoney, you have the floor. Are you asking a question or making—

DELEGATE MAHONEY: Yes, I asked a question.

CHAIRMAN GRAYBILL: -of Mr. Loendorf—Loendorf—Lindbergh—
(Laughter)

DELEGATE LOENDORF: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: I would not interpret the language here, although I admit it's open to interpretation, that this would allow an

interim committee to exercise any law-passing ability, whether it be for appropriations or otherwise.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: As a substitute motion, and this is not for killing, I would like to pass consideration until we could get an interpretation of that point. I'm just asking to pass consideration of it at this time, and I'm sure that we will be meeting again Tuesday on this section and I'd like to have this cleared.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I have an interest in this matter, and I do not particularly oppose the motion to pass consideration, but it's just possible that we could proceed. The matter of the wording was called to my attention, also, by the committee and at their request some further legal research was done on the meaning of those words. Certainly the Constitution in other sections provides the methods by which bills may be enacted into laws, and the methods by which moneys can be appropriated, and those provisions of the Constitution would control. So it would be impossible to interpret these words "a delegation of legislative authority", to counteract and override those specific rules in the Constitution dealing with those specific matters. Furthermore, it would be impossible for the Legislature to delegate to any individual or group of individuals outside of legislators themselves the authority to exercise any legislative authority, because it's implicit in the entire Constitution and in the wording that we have under consideration, that it is only the legislative body which may legislate. So that, while I do not oppose this motion, if Delegate Mahoney and others wish that more time be given and a more detailed report, perhaps a legal brief be written and presented, we can do this. But if you are possibly satisfied that the words do not create a danger that some unknown group of individuals could suddenly become a subrosalegislative body, or that the legislators themselves would delegate to a smaller number than their entire number the authority to do what the Legislature must and only Legislature can do, then I think we're on safe ground. The purpose for the provision is to protect the use of legislative interim committees. As you perhaps may or may not know, there have been three test cases in our Montana Supreme Court on this question. In two of them the Supreme Court held that the interim committees were invalid, unconstitutional, and they violated several different sections of the present Constitution. And then in the third case it was held that the present type of Legislative Council was a constitutionally created body and could function as it does. There has been no test cases yet about the postaudit committee which the Legislature has since then created, and perhaps there never will be a test case on it. But committees of that type and anything similar to them are in danger of being challenged. And there is a possibility, with a change of memberships on the courts, and without a clear statement in the Constitution that such committees may function, that they would again be held to be unconstitutional.

CHAIRMAN GRAYBILL: Now the Chair is taking the position, Mr. Mahoney, that your substitute motion to pass 10-5 is made, but we're discussing it.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'd like to have Mr. Mahoney-and I share his concern-but I want-this is in answer to it-look on page 20, Section 10. It says, "a majority of the membership of the legislature constitutes a quorum to do business." Then, if we turn to Section 11, page 23, it says, "a bill shall become law upon a majority vote of the members present." I wonder if that doesn't answer your question?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, all that I am bothered about is the word, "legislature", in there. This is the word that is worrying me. Maybe I'm wrong. I'd liked to have had the time to investigate. I'm not going to belabor a point. If the committee wants to go on, well and good; but I understand that I have a delegate that is offering to amend it and I will withdraw my motion, Mr. Chairman, in that-in this—

CHAIRMAN GRAYBILL: Well, just a minute. You may withdraw your motion if you want, but Mr. Berg's next.

Mr. Berg.

DELEGATE BERG: Mr. Chairman, I'll renew the motion to withdraw; that is, to pass.

CHAIRMAN GRAYBILL: To pass.

DELEGATE BERG: And my purpose in that is this. I have perhaps the misfortune to have written the Legislative Council Article that we

now work with. I also defended that case in the Supreme Court. I am somewhat familiar, I think, with some of the problems that the other interim committees encountered in the court, and I am most apprehensive about the word, "all legislative authority". I think that word, "all", coupled with the word, "legislative", is a very impressive delegation or possible delegation of legislative power. I do think the committee should seriously reconsider this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'd like to rise to a point of order. I did send an amendment to the Chair, and I'm a little confused as to the procedure here which takes precedence.

CHAIRMAN GRAYBILL: Well, at the moment, we have-the substitute motion of Mr. Mahoney was withdrawn, but then Mr. Berg renewed the substitute motion to pass 10(5). Now, do you want to make a motion'?

DELEGATE HARBAUGH: Well, I believe that my motion to amend could have, or should have intervened between the withdrawal of Mr. Mahoney's motion and the other substitute.

CHAIRMAN GRAYBILL: Perhaps it should have. I didn't get your eye and I had already gotten his eye and so I recognized him next. Now-why don't you explain what you would do if—

DELEGATE HARBAUGH: If I was in order, I have a—

CHAIRMAN GRAYBILL: —you had a chance and then we'll vote.

DELEGATE HARBAUGH: If I was in order, I have an amendment which I think would clarify the language that is of concern.

CHAIRMAN GRAYBILL: Why don't you explain your proposal?

DELEGATE HARBAUGH: Would the Chair please read the amendment?

CHAIRMAN GRAYBILL: Mr. Harbaugh's amendment would have the section read: "The legislature may establish interim committees which may meet and exercise all legislative--"

DELEGATE HARBAUGH: No, strike "all legislative".

CHAIRMAN GRAYBILL: "--may exercise-"

DELEGATE HARBAUGH: "--authority delegated to them".

CHAIRMAN GRAYBILL: "--authority delegated to them by the legislature."

DELEGATE HARBAUGH: Yes. I'd like to move that.

CHAIRMAN GRAYBILL: "May exercise authority delegated to them by the legislature."

DELEGATE HARBAUGH: I would move that if it is in order.

CHAIRMAN GRAYBILL: I think it will simplify matters if we decide whether we're going to pass it or not. There's not much point in doing it if we are going to pass it anyway, so we'll continue with Mr. Berg's motion to pass. Is there any further discussion?

(No response)

CHAIRMAN GRAYBILL: All right, so many as are in favor of Mr. Berg's motion to pass subsection 5 of 10, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Will you please use the voting machines. All those in favor of passing it, vote Aye. Those against passing it vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I rise to explain my vote. The hour is late and I'm about to move that the committee rise, report progress, and ask leave to sit again. So I think that if we pass this for the day we will get to that quicker.

CHAIRMAN GRAYBILL: Well, the Chair's already closed the vote and 40 having

voted Aye and 42 having voted No, the motion fails. Now, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh wants to make his amendment. His amendment is that the section now read: "The legislature may establish interim committees which may meet and exercise authority delegated to them by the legislature."

Mr. Harbaugh.

DELEGATE HARBAUGH: Well, I believc the motion has been discussed quite thoroughly, or the item has; and it seems to me that this language makes it clear that the interim committee only has the authority delegated to it by the Legislature and that it is not authorized to legislate, which seems to be the primary concern.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I would support the amendment.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I am still apprehensive as to exactly what this means and I am unwilling to accept Mr. Harbaugh's conclusions and opinions on this. I should like the time to at least reread the cases that were involved in the other interim committees, because I would not want to see these interim committees demolished by the courts because of the failure to use adequate language at this time. I am only asking for precaution, not in any sense to kill this because, well, I'm the author of one of them.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Would the gentleman, Mr. Berg, yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE SCHILTZ: Mr. Berg, it impresses me that if we had this new provision in the Constitution it would take precedence over the bases for which the old decisions-or, I'm going to say old decisions were written, would it not?

DELEGATE BERG: I'm only concerned primarily with the extent of the delegation. You'll recall that the first section of the Legislative Article vests all legislative power in the Legislature. Now I think we have improved it when we have, in a sense, said we're not going to delegate that legislative power; but whether by saying we delegate such authority as the Legislature may deem appropriate, I'm still wondering whether that may or may not be considered an invalid delegation of power that the Supreme Court might strike down.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I may have gotten tired sitting here and missed something, but in Section 6 we passed that this is a continuous body for 2 years. Now, I have a couple of questions I wish that somebody would answer for me. Number one, if this is true, aren't the committees that are appointed by that Legislature in functioning, or able to function, all during that period? And the second one is, if this is true, why do we need interim committees? Personally, the reason that I ask these questions is that in over the years I've seen many legislative interim committees set up that were between the House and the Senate and these kind of things, and they agreed on very many beautiful solutions to our problems, but the next time that the Legislature met, they threw all of that in the wastebasket and started out anew, and I'd like to get this clarified.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, as a member of the Legislative Committee, Mr. Berg and Erv, here, have raised some serious questions that I think ought to be considered by our committee in more detail. And if it is in order, I would like to move at this time to recommit this section to our committee for further consideration. Is that in order?

CHAIRMAN GRAYBILL: That's in order.

DELEGATE CATE: To pass it for the day? I would then move to pass it for the day.

CHAIRMAN GRAYBILL: Now, wait a minute. Are you going to let them rule, or are you going to let me rule?

DELEGATE CATE: I'll let the Chair rule. The Chair's the boss.

CHAIRMAN GRAYBILL: Your motion to recommit is in order.

DELEGATE CATE: Could I have a-point of order?

CHAIRMAN GRAYBILL: We're getting it written down, Mr. Cate. All right, the issue now is on Mr. Cate's motion to recommit subsection 5 of Section 10 to the Legislative Committee. Is there discussion?

Mr. Cate.

DELEGATE CATE: Point of order. If we recommit it can we bring it back Monday or Tuesday or do we have to let it lay on the table?

CHAIRMAN GRAYBILL: Now, that's going to be up to you and your Chairman when you're going to meet, but if you recommit it, you will bring it back sometime, I hope. The motion need not say when, Mr. Cate.

DELEGATE CATE: All right, I'll leave the motion stand as it is then.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I resist the motion to recommit. If it passes, I shall call a meeting tomorrow at 9 o'clock.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, if the recommit passes, doesn't it then require that whatever subsequent action is taken will require 48 hours' notification before it can be redetermined?

CHAIRMAN GRAYBILL: It does unless we, as a body, wish to waive that rule as to that part that comes back.

DELEGATE FURLONG: Then I would stand opposed to the recommit motion.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: As a substitute motion, I'll ask-or I'll move that we pass Section 10-5 for the day.

CHAIRMAN GRAYBILL: Well, the Chair takes the position that we just had a vote on that and I think we ought to let these people's motions be decided so I'm going to rule that motion out of order. Mr. Cate, we're still on your motion to recommit.

DELEGATE CATE: In light of Mr. Berg's motion, I withdraw my motion.

CHAIRMAN GRAYBILL: All right, that's withdrawn. All right, now we're on Mr. Harbaugh's amendment that "the legislature may establish interim committees which may meet and exercise authority delegated to them by the legislature."

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I've been trying to say something intelligent all day and haven't had much luck. I'd like to try it now, and I would move to amend Mr. Harbaugh's motion by striking the last three words, "by the legislature". I think the first part of the sentence already gives the Legislature that power. It would then read: "The legislature may establish interim committees which may meet and exercise authority delegated to them."

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Furlong's motion to strike three words, "by the legislature", from the end of Mr. Harbaugh's amendment.

Mr. Joyce.

DELEGATE JOYCE: May I ask Mr. Furlong a question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE JOYCE: Mr. Furlong, would you mind withdrawing your motion and we'll take this thing up on Monday so that we don't have to haggle this thing tonight, and you could still make it on Monday-Tuesday?

DELEGATE FURLONG: I'm glad you changed it Tuesday. Yes, I'll withdraw. I just want to get it settled.

DELEGATE JOYCE: Mr. Harbaugh, would you mind withdrawing your motion subject to the right to renew it on Tuesday?

DELEGATE HARBAUGH: I would withdraw my motion.

CHAIRMAN GRAYBILL: Mr. Joyce, do you want to make a motion?

DELEGATE JOYCE: I make a motion that we pass Section...Well-I move that the committee rise and report progress.

CHAIRMAN GRAYBILL: Mr. Joyce, your motion is in order. Mr. Murray.

DELEGATE JOYCE: (Inaudible)...now withdraw my motion and defer to Mr. Murray. I don't know what.

(Laughter)

CHAIRMAN GRAYBILL: Now the Chair will recognize Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, at last. I move the committee rise and report progress and ask leave to sit again.

CHAIRMAN GRAYBILL: Very well. Now the motion to rise and report progress takes precedence and does effectively solve Mr. Joyce's problem of cutting off the debate on this matter tonight. And Mr. Murray you beg leave to sit again, and do you beg leave to sit again on Tuesday morning? Is that what you mean?

DELEGATE MURRAY: That is right.

CHAIRMAN GRAYBILL: Very well. you've heard Mr. Murray's motion that this body rise and report progress and beg leave to sit again on Tuesday morning. So many as shall be in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: So ordered. Now, we'll be in-just a moment, we'll do that.

PRESIDENT GRAYBILL: The Convention will be in order. Now we're going back on Order of Business 10 but-Mr. Swanberg, for what purpose do you rise?

DELEGATE SWANBERG: I was wondering if it would be in order at this time, Mr. President, to leave a thought with the Legislative Committee on an item that we may have overlooked in subsection 3 of Section 10.

PRESIDENT GRAYBILL: Well, Mr. Swanberg, let us report to the body here and then after we've reported I'll recognize you. Mr. Clerk, would you please read the committee's report.

CLERK HANSON: "February 19, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 3 of the Committee on Legislative, recommend as follows: Delegate Aasheim as Chairman of the Legislative Committee noted minor corrections in his committee report. That the bicameral and unicameral proposals be sent to Style and Drafting as a dual proposal for submission to the electorate. That Section 4 be amended in lines 21 and 2.2, page 3, by deleting the following: (quote) comma, and a resident of the district from which he seeks election for at least 6 months (end quote) period. Amendment failed 30 to 61 on roll call vote requested by Foster, with sufficient seconds. That on roll call vote requested by Cate with sufficient seconds, Aasheim's amendment as follows: (quote) insert a period after (quote word) year (end quote) on line 21, page 3 and add the following (quote) other residency qualifications may be provided by law (end quote) failed to carry by the following vote: Ayes: 28; Noes: 68; absent or not voting: 4. That Section 4 be amended on line 20 after the words, 'shall be a', delete the following: 'qualified voter. He shall be a'. That Kelleher's amendment on roll call vote requested by Foster with sufficient seconds failed by [the] following vote: Ayes, 27; Noes, 68; absent or not voting, 5. Kelleher's amendment was as follows: In line 21, page 3, insert after the word, 'resident', the following: 'of the county or counties'. And in line 22, page 3, by striking between the words, 'month' and 'preceding', the word, 'next'. That Section 4 be adopted as amended. Cate moved that Section 4 be reconsidered. Chairman Graybill ruled Delegate Cate out of order. Cate challenged the rulingofthe Chairman. By vote the Chair's rule was sustained. That Section 5 of the minority report, page 56, be adopted. That subsection 2 of the majority proposal on Section 5 be retained with this amendment: (quote) after the word, 'legislative', insert 'executive and judicial' (end quote). That the minority report of Section 5 as amended be adopted. At 12:00 noon the committee recessed until 1:00 p.m. Afternoon session-on roll call vote requested by Delegate Bugbee with sufficient seconds, Section 6 of the minority proposal failed to be adopted by the following votes: Ayes, 35; Noes, 60; excused, 2; absent or not voting, 3. On roll call vote requested by Delegate Harper with sufficient seconds, Section 6 of the majority proposal of the Legislative Committee was adopted by the following vote: Ayes, 70; Noes, 24; excused, 2; absent or not voting, 4. That further consideration of Section 7 be passed at this time. That Section 8 be adopted. That Section 7, Article V, of the present Constitution be adopted to replace the wording of the proposed Section 9. On roll call vote requested by Harper with sufficient seconds, Section 10. subsection 1, was adopted by

the following vote: Ayes, 89; Noes, 3; excused, 2; absent, 6. That Section 10, subsection 2, be adopted. Section 10, subsection 3, Heliker's motion that the words, 'unless the business is such that requires secrecy', be stricken from Murray's substitute motion, add the words, 'to the public'. On roll call motion requested by Romney with sufficient seconds, the amendment was adopted by the following vote: Ayes, 75; Noes, 14; absent, 9; excused, 2. Murray's motion as amended by Heliker: delete subsection 3 and insert the following: 'The sessions of the legislature, committee of the whole, and all committee meetings and hearings shall be open to the public', was adopted on roll call vote requested by Heliker with sufficient seconds, by the following vote: Ayes, 81; Noes, 9; absent, 8; excused, 2. That Section 10, subsection 3, be adopted as amended. That Section 10, subsection 4, be deleted. That the following words replace the deleted subsection 4: 'Adequate public notice as defined by the rules of the legislature of committee hearings must be given.' On roll call vote requested by Delegate Martin with sufficient seconds, the motion failed by the following vote: Ayes, 19; Noes, 71. On roll call vote requested by Delegate Harper with sufficient seconds, Harper's motion: 'At least 3 days' public notice of committee hearings must be given'-failed by the following vote: Ayes, 21; Noes, 67; excused, 2; absent, 10. That Section 10, subsection 4 be not adopted. That the committee rise and report progress and beg leave to sit again. Signed, Leo Graybill, Chairman."

PRESIDENT GRAYBILL: You've heard the motion of the Committee of the Whole. All those in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Swanberg.

DELEGATE SWANBERG: Going back briefly to Section 3, Mr. Chairman, or Mr. President, I wish to thank you first for your courtesy in allowing me to speak just a few words here. I voted against that proposal and I did so at the very last moment because it occurred to me all of a sudden that while we had adequately protected the public from the Legislature, it occurred to me that perhaps we hadn't protected the Legislature from the public. We live in an age of mass demonstrations and riots. As the situation now stands, there is nothing in this section that would allow the President of a legislative body to clear the room. There is nothing in this section that would allow a committee Chairman to clear a room in case of disorder. I realize that they could call the police. We'd have 50 or 60 people up here on some kind of a mass demonstration, the police could be called, they could be hauled off and arrested. But I submit that's a very cumbersome and sticky process in view of the fact that if something were placed in here that allowed the Chair or the committee chairmen to clear the room to preserve the public order and orderly legislative process, it would solve the problem. I leave that as a thought with the Legislative Committee.

PRESIDENT GRAYBILL: Very well, thank you, Mr. Swanberg. We'll now be on Order of Business Number 11, Announcements. All Constitutional Convention Delegates are invited to the Helena Symphony winter concert Saturday, the 19th, at St. John's Lutheran Church-that's tonight at 8 o'clock. Adults, $2; students, $1. You are aware that you should sign up for the party on Tuesday night, if you haven't. Are there other announcements?

Mr. Champoux.

DELEGATE CHAMPOUX: The Education Committee will meet at 8 o'clock Monday night in the committee room. And I have another announcement. The Helena chapter of the Boston Marching and Chowder Society will meet at the Montana Club at 7 o'clock, Monday. Now, in case you get suspicious about that group and where they're meeting, actually it's a drama group that you'll hear from Tuesday. And, also, Mr. Scanlin would like the Back Bench's Barbershop group to meet at the same time-7 o'clock, Monday, the Montana Club. Thank you.

PRESIDENT GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. President, all delegates in the vicinity of Great Falls on Monday night are invited to the City Council chambers. Forward Great Falls there will conduct a forum, and they stress that not just Cascade County delegates-any delegates in the area who are able to come.

PRESIDENT GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, the Bill of Rights Committee will meet Monday night at the Colonial Inn at 7:30 for the radio program, and they'll meet Tuesday morning at 8:30—oh, pardon me, 8 o'clock in the Governor's conference room for a picture taking.

PRESIDENT GRAYBILL: Are there other pictures we know of on Monday morning-on Tuesday morning? There's supposed to be three of those a day next week-three or four committee pictures a day between 8:00 and 9:00 in the Governor's conference room. Is the schedule out on your desks? Yes, Mr. Blaylock, would you read the others for Monday morning?

DELEGATE BLAYLOCK: Yes, Legislative is at 8:15; Executive is at 8:30; and General Government is 8:45. All in the Governor's reception room.

PRESIDENT GRAYBILL: Right. Please be prompt because if we're going to get these done in the 15 minutes and still be here at 9 o'clock, we're going to have to really work hard. I think that announcement also points out that the group picture will be taken on what? Friday? Next Friday? A week from yesterday. All right, you'll all have notice of that then. Are there other announcements? Very well, Mr. Murray.

DELEGATE MURRAY: Mr. President, I move, pursuant to the general powers vested in the Montana Constitutional Convention, and in accordance with the provisions of Section 7(6) of the Enabling Act [Chapter 296, Laws 1971] that the Montana Constitutional Convention shall recess temporarily until 9:30 a.m., on Tuesday, February 22nd, 1972.

PRESIDENT GRAYBILL: Mr. Murray, that's an error. It's until 9 o'clock on Tuesday. Do you want to change your copy?

DELEGATE MURRAY: I'll change the script. We'll make the motion 9 o'clock a.m., Tuesday, February 22nd.

PRESIDENT GRAYBILL: Very well, you've heard the motion to recess temporarily until 9 o'clock on Tuesday morning. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: The Ayes have it and so ordered.

(Convention recessed at 5:23 p.m.)

February 22.1972 **Twenty-Ninth Day** **Convention Hall**
9:00 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: Good morning ladies and gentlemen. If you'll all stand, John Anderson will lead us in the Pledge of Allegiance.

DELEGATES: I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: Reverend Burkhardt, will you lead us in the invocation?

REVEREND BURKHARDT: Let us Pray. Help us, 0 God, to know in a time of rapid change and proliferating facts and knowledge, to know that to wait quietly with reverence for life is a valid form of prayer. So, may we find the deeper current running beneath the tide which will allow us to move toward greater opportunity and dignity for all people. Amen.

PRESIDENT GRAYBILL: We'll take roll by voting Aye on the voting machines.

CLERK HANSON: Delegate Brown, Delegate Robinson, Delegate Pemberton. Mr. President, may Delegate Woodmansey be excused, please?

PRESIDENT GRAYBILL: Yes, Woodmansey's excused.

CLERK HANSON: Delegate Harper, Delegate Heliker, Delegate Pemberton, Delegate Robinson.

PRESIDENT GRAYBILL: Very well, let's take the recorded roll call.

CLERK HANSON: Delegates Blaylock, Bowman, Schiltz and Simon are present.

Aasheim	Present
Anderson, J.	Present
Anderson, 0.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong.	Present
Garlington	Present
Graybill	Absent
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Absent
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present

McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Absent
Rebal	Present
Reichert	Present
Robinson	Absent
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Excused

CLERK HANSON: Mr. President, 96 delegates present, 1 excused and 3 absent.

PRESIDENT GRAYBILL: Very well, that's a quorum and the journal will so show. We ended up the business on Saturday on Order of Business Number 10 so we'll proceed on to Order of Business Number 11 which is Announcements because there are a couple of announcements to make. First of all, the Judge for Governor Club is going to have a banquet on February 29th at 6:30 at Jorgensons. Tickets are $10 a ticket and Jerome Cate has tickets for sale in case any of you want them. Secondly, as you'll probably all remember, there is a party at the Montana Club for all delegates and people connected with the Convention tonight-$5 per person including two drinks and dinner. About 60 people have signed up. We would like everyone who wants to come to sign up because we want to call the Montana Club. So will those of you who intend to come but have not signed up, just take an opportunity here as soon as practicable and step to the rear and tell Melba McGuinn in the glass cage that you're coming, so we have a good count. I might add that I understand from Mrs. Payne that we have a lot of good skits and a lot of good entertainment, tonight so I hope that most of you will attend. Mr. Toole, did you have an announcement about the Administration Committee?

DELEGATE TOOLE: Mr. President, there will be a meeting of the Administration Committee tomorrow morning at 8 o'clock in the Rules Committee room.

PRESIDENT GRAYBILL: Very well. Are there other announcements?

Mr. Joyce.

DELEGATE JOYCE: Executive Committee will meet this evening on adjournment.

PRESIDENT GRAYBILL: Very well. Unless there is objection, we'll then move to Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: The Chair would like to point out to the delegates that the two standing committees that are to report today still intend to report but will do that later today as I understand it. Reports of Select Committees?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Communications?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Introduction and Reference of Delegate Proposals?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Final Consideration of Proposals?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Adoption of Proposed Constitution?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Motions and Resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Unfinished Business?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders?

CLERK HANSON: None.

PRESIDENT GRAYBILL: General Orders? The Chair will recognize Mr. Eskildsen.

DELEGATE ESKILDSEN: I move we resolve ourselves in Committee of the Whole for the purpose of handling business under General Orders.

(Committee of the Whole chairmanship assumed by Mr. Graybill.)

CHAIRMAN GRAYBILL: Very well. Members of the Committee of the Whole you'll please come to order. Oh yes, excuse me, all those in favor of the motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CLERK HANSON: The following committee proposals are now on General Orders: Legislative, Executive, Judiciary, Natural Resources, Revenue and Finance. The Executive Committee Proposal Number 4 having been duplicated and placed on delegates' desks on the 17th day of February, 1972, 9 o'clock a.m., is now in compliance with Rule 23, Montana Constitutional Convention Rules. The Judicial Committee Proposal Number 5, having been placed on the— duplicated on the delegates' desks on the 17th day of February, 9 o'clock a.m., is hereby in compliance with Rule 23, Montana Constitutional Convention Rules. The Revenue and Finance Committee Proposal Number 7, having been duplicated and placed on the delegates' desks on the 19th day of February, 1972, a 9 o'clock a.m., is now in compliance with Rule 23, Montana Constitutional Convention Rules.

CHAIRMAN GRAYBILL: Very well. Ladies and gentlemen of the Convention, we adjourned on Saturday while we were considering Article XII-no Section 12—subsection 5 of the Legislative Article-Section 10, subsection 5, excuse me-Section 10, subsection 5 of the Legislative Article. Mr. Clerk, will you again read subsection 5?

CLERK HANSON: "Section 10, subsection 5: The Legislature may establish interim committees which may meet and exercise all legislative authority delegated to them." Mr. Chairman, subsection 5.

CHAIRMAN GRAYBILL: All motions had been withdrawn on subsection 5 on Saturday. Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 5 of the Legislative Committee Report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President. This essentially was Mr. Felt's proposal, and I would like him to take up from where we left off Saturday afternoon, if he would.

CHAIRMAN GRAYBILL: The Chair would recognize Mr. Felt.

DELEGATE FELT: Mr. Chairman. Perhaps it doesn't matter particularly but I hadn't expected this either and, as I recall my amendments that had been proposed--I'm looking on page 5 of the committee report, line 1 l-we're to strike the words, "all legislative", and another proposal to add on line 12 the words, "by the legislature", at the end of the section. And there were those who were expressing questions, not in the nature of opposition to the principle of the paragraph, but who sought some time to review the precise words as they appeared in the original article, and as they would appear with those possible amendments. And so, in this game of musical chairs that seems to be the style this morning, I would rather pass this on to those who had questions about the wording and hear from them.

CHAIRMAN GRAYBILL: The Chair will recognize Delegate Berg.

DELEGATE BERG: Mr. Chairman, I move as a substitute motion that Section 10-5, be read as follows: "There shall be a legislative council and the legislature may establish other interim committees."

CHAIRMAN GRAYBILL: Very well. Mr. Berg has made the following substitute amendment for subsection 5: "There shall be a legislative council and the legislature may establish other interim committees."

Mr. Berg.

DELEGATE BERG: As you probably all know, in 1957 the Legislature did create a Legislative Council. It was their fourth attempt. That particular council survived the Supreme Court on a three-two decision and has, since that time, functioned primarily as an investigatory body. It also has been a fact-accumulating body, and it has had the power to recommend to the Legislature various legislative proposals. It also includes a hill drafting function. These functions of the Legislative Council have been pretty well established since 1957 and, it seems to me, that they should be recognized. It may he possible that, whether we have a continuous body Legislature or whether we have some other particular system, that nevertheless, other interim committees of a more specialized nature will be created or at least the Legislature will want to create them. In view of the fact that historically they do not exercise any real legislative functions such as the enactment of law or the appropriation of money or the passage of tax revenue law, it seems to me that they should be recognized in the Constitution for the real function that they actually serve. And to do this, I suggest that the amendment that I have just proposed will best accomplish the purpose.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Berg's proposed amendment?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, perhaps just a word of what the committee thought about that. We did consider the possihility of writing the Legislative Council into the Constitution. No one, as far as I know, was opposed to the Legislative Council and was glad that it is, at present, at work. But we have been careful all through the majority of the reports that have come to you, to try not to use specific language. For example, to name particular officers, we simply say that the Legislature shall elect their officers rather than to lock in names and specific terms into the Constitution. This is what we felt about the Legislative Council. Right now, it seems to be the way the Legislature is approaching its interim work hut it just might be that in the future, another set of committee--or another approach to committee operation--might he evolved by the Legislature. And we would then he faced with the problem of having the words, "legislative council", set into the Constitution. Not in opposition to the idea, but on this general term, we worded this particular paragraph as we did.

CHAIRMAN GRAYBILL: The Chair will recognize the presence of Mrs. Robinson, Mr. Hcliker and Mrs. Pemberton and you may vote.

Mr. Aasheim.

DELEGATE AASHEIM: In view of the comments made by Mr. Harper, I wonder if we shouldn't strike the word, "shall", to "may", so we don't tie this thing into the Constitution. If they want to eliminate the Legislative Council, it would prohahly be just as well if we had "may"; otherwise, I think the amendment is fine.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I concur and so move.

CHAIRMAN GRAYBILL: In other words, you're going to change your substitute amendment to read, "There may be a legislative council".

DELEGATE BERG: "-and the legislature may create interim committees."

CHAIRMAN GRAYBILL: Right. All right. We'll accept that amendment from the floor.

Mrs. Bugbee.

DELEGATE BUGBEE: I'd just like to remind the assembly that Mr. Unruh, when he was here said, that in his opinion he felt that interim committees were more successful than a Legislative Council. So there's this back and forthness, and I concur that it would he better not to tie either one of them into the Constitution.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Berg's substitute amendment? If not, members of the committee, the question then is on Mr. Berg's substitute amendment to Section 10, subsection 5, which reads as follows: "There may he a legislative council and the legislature may establish other interim committees." "There may he a legislative council and the legislature

may establish other interim committees." So many as are in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, Now, Mrs. Bugbee, since that's a substitute motion, I think we had best perhaps put it again in this form. Members of the committee, you now have before you the motion of Mr. Berg that when this committee does arise and report, after having under consideration Section 10, subsection 5, it recommend the same be adopted. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: Nay.

CHAIRMAN GRAYBILL: Ayes have it and so ordered. Mr. Clerk, would you read-well now let me ask a point of information here. Mr. Aasheim, it's my understanding that we're going straight through the unicameral proposal here, and so we would not go to subsection 6 and 7 of the bicameral, or would you prefer that we go to subsection 6 and 7 of the bicameral?

DELEGATE AASHEIM: No, the plan was to continue with the unicameral.

CHAIRMAN GRAYBILL: Very well, then we'll go straight on down page 5 and read Section 11 please, Mr. Clerk.

CLERK HANSON: "Section 11, Bills, subsection 1: A law shall be passed by bill. Any bills shall not be so altered or amended on its passage to the legislature as to change its original purpose." Mr. Chairman, subsection 1, Section 11.

CHAIRMAN GRAYBILL: Members of the Committee of the Whole, you now have before you Section 11 of the Legislative proposal. The Chair will recognize Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 11, subsection 1, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting, you're correct. We'll take Section 11, subsection by subsection, so on Section 1, go ahead.

DELEGATE NUTTING: Mr. Chairman. When the committee-the Legislative Committee-considered these, which could be considered procedural matters, there are 19 sections in the present Constitution which refer to procedural matters. We attempted to cut them out, as many of them as possible, and just leave those in that we felt were important; that the people would have a true picture of the Legislature. We arrived at retaining 5 sections of the 19 and added 1 new one. Section 1 provides that no law shall be passed except by bill and that a bill should not be so altered or amended as to change its original purpose. We felt that this was important in that it established the method of passing a law, that it had to be by bill and that the bill should not be changed because, definitely a bill is a proposal by a citizen, and therefore he had the right to have a voice in that his particular opinion should be considered-it should be voted on. It should not be changed so that when he finishes up, he does not have a true picture of exactly what his proposal was. And we felt that this was an important enough procedural question to be a constitutional matter. Thank you.

CHAIRMAN GRAYBILL: Is there discussion? Very well, members of the committee, you have before you for your consideration, subsection 1 of Section 11. So many as shall be in favor of subsection 1, Section 11, as proposed by the majority, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: The Ayes have it and the motion has passed. Mr. Clerk, will you read Section 11, subsection 2?

CLERK HANSON: "Section 11, subsection 2: On any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Subsection 2 is before you.

Mr. Nutting.

DELEGATE NUTTING: I move that when this committee does arise and report after

having had under consideration Section 11, subsection 2, that it recommend the same be adopted. Mr. Chairman, this is the new section-that subsection that we added, and it's to insure that the people actually have an opportunity to see how their representatives voted. It reads that any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded. In this way, it's possible for every change, regardless of how it amends or changes a bill, resolution or rule, the record will be obvious to anyone of the electorate that wants to go and look. So we felt that this was a necessary thing to give visihility to the Legislature.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I move to amend Section 11, subparagraph 2, on the explanatory notes page 22, line 17, at the end of the proposal, by striking the period at the end of line 17 and adding the following words, "and entered on the journal." The reason I'm offering this amendment is that apparently from the comments, it's the intent of the proponents of this section that there be a recorded vote made and, I submit to you, that when you use the voting machine, there is a recorded vote taken; but if you're off the record and out of the journal, or out of the journal, it does not go into the journal, and the journal is a permanentrecord of the legislative body. And I'm merely offering this amendment to assist the committee in carrying out the apparent intent of this article.

CHAIRMAN GRAYBILL: Very well. Mr. Aronow's amendment is accepted by the Chair and it simply adds the word, "and entered on the journal", to subsection 2 for the purposes he has stated. Is there discussion of the amendment? Mr. Aronow's amendment. If not, all in favor of amending subsection 2 by adding the words, "and entered on the journal", please indicate so by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Now, on the principle subsection, is there further discussion?

Mr. Etchart.

DELEGATE ETCHART: Would Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE ETCHART: Would-as I read this, if a bill changed the status in a committee, would this have to be entered in the journal then?

DELEGATE NUTTING: According to this amendment, yes it would.

DELEGATE ETCHART: Mr. Chairman. Every action of a bill then in a committee going to a subcommittee would have to be entered in the journal?

DELEGATE NUTTING: I really can't answer that. If you went from committee to subcommittee, I would not think that that would change the status. If it was amended in subcommittee, that amendment acceptance would have to be entered in the journal, yes.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Would Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE ESKILDSEN: As I read this and we're changing the substance of a hill-like on the Committee of the Whole here-sometimes just one little word which isn't too important hut, as I see it, every one of those would he a roll call vote. And if we was doing that in this body, you'd have a pile of recordings this high. I'm wondering if we're going to force this same thing onto the Legislature, that every time they take a vote, by this, pretty near every vote will be recorded.

DELEGATE NUTTING: I would say you're correct, that they would have to berecorded if you-every amendment and every-according to this provision, every amendment and anything that would change the substance would definitely have to be a recorded vote and entered in the journal under this provision.

DELEGATE ESKILDSEN: Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I know what we're trying to get at. We want to be sure that the public knows exactly what's going on in the Legislature, especially in the Committee of the Whole. I would ask each of you to think pretty carefully what we're doing here. I can think of when we started this Convention, that wasn't quite a majority that wanted a roll call vote on everything, but can you imagine what we'd been going through by now had we taken a roll call vote on pretty near everything we did; on all the amendments that was offered; as we went through the days here-the last few days-we saw vote after vote answered by Ayes and Noes. What in the world-what are we going to do to that Legislature if we put this in the Constitution and force them to do this on every vote? I can see nothing but chaos from this, and I become quite concerned about this body causing the next body to do something that we're not doing ourselves. I don't think this is something we should just pass over real lightly; I think we should give it some deep thought and consideration. And we talk about cost; I don't know what it costs to run one of those off, but if we took a roll call vote on everything we did, we'd double our cost every day, I can bet you, running it through that machine. And we're not even giving the Legislature a chance to change this without bringing it back to the people. I would surely want each of you to think about what we're doing here if you vote for this.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. We have violated the very rule that we're trying to put on the Legislature in the last votes this morning. Every one of them had been substantive; every one of them have been changes to the Constitution and every one we've done--and violated every one of them this morning that we're asking the Legislature can't violate. And I think we should realize the amount of roll calls that you're going to have on these divisions and, right now, unless somebody asks for roll call, it won't be got on this question. I think that you better stop to think how many roll calls we'd have taken this morning and put in the journal and I just received this here. I wonder how thick that will be. And you're asking a Legislature to do this from now on? I think you better do a lot of thinking around here.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. May I move an amendment?

CHAIRMAN GRAYBILL: Have you got it in writing for us?

DELEGATE HARPER: No, but it will just substitute a phrase for the first word when I get it to you. It says "upon the request of any member" and then go on. "any vote". (Inaudible)—write it and bring it.

CHAIRMAN GRAYBILL: Do you want to prepare it for us please? Very well, the amendment of Mr. Harper is to Section 11, subsection 2, amend by the deletion of the first word, "On", and substituting therefor the words, "upon the request of any member". So that the section reads, "Upon the request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered on the journal."

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think the little amendment is self-explanatory and I won't comment on it.

CHAIRMAN GRAYBILL: Very well. Is there discussion?

Mr. Choate.

DELEGATE CHOATE: Would Mr. Harper yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes.

DELEGATE CHOATE: I just wonder what purpose this would serve since, under present rules, a request for roll call by any member if he gets five seconds, will automatically be afforded to him.

DELEGATE HARPER: This particular Section 11, Number 2, extends this matter to any committee, including the Committee on the Whole, all readings of bills in the Legislature, and this is not presently true as i understand it. This would allow—my amendment would allow-a committee to pass by procedural matters and even where there is complete agreement on the changing of words, and so forth, as we have done here at times on the floor, it would not make it necessary for the vote to be recorded in the journal. But, if any person-for example, in a minority--wanted to make sure that

this change, which he thinks to be substantive or enough to warrant it, then one member could ask that this be done.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I move a substitute motion that the section be deleted and the reason I do, the joint rules of the House of Representatives for the State of Montana at the present time, provide a roll call shall be taken on the request of two members. So it seems to me we already have it in the joint rules which are probably-and I don't think it's necessary to write this into the Constitution. The rules can always take care of it.

CHAIRMAN GRAYBILL: Mr. Romney, the Chair is in doubt. Are you moving that we delete subsection 2, the whole section, or only delete Mr. Harper's amendment?

DELEGATE ROMNEY: I'm moving to delete the entire section, subsection 2.

CHAIRMAN GRAYBILL: Very well, your substitute motion to delete subsection 2 will he accepted by the Chair. The debate is now on Mr. Romney's motion to delete subsection 2.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. Will Mr. Romney yield to a question?

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Certainly.

DELEGATE REICHERT: In your experience as a legislator-and I'd like to ask this question of the other legislators present-have they ever had recorded votes on second reading? That was our primary interest in including this section in our Legislative Article; the fact that the citizen does not know how the legislator votes in second reading.

DELEGATE ROMNEY: This is full of them.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Felt.

DELEGATE FELT: Mr. Chairman. I think a somewhat more complete answer to the question is that in the legislative bodies, we cannot have roll call during Committee of the Whole, but we have available a motion to segregate as the committee comes out of Committee of the Whole, and that a roll call vote can he obtained at that time on any question, if a member requests it. so that the principle purpose of functioning in Committee of the Whole is to permit members to speak and do as they think is right, without being forced to a roll call vote, and there's a lot of importance in that, as well as the importance of being able to give the public knowledge so that legislators must account for the way they've acted in a legislative body. And of course, I think as Mr. Romney and others have indicated, that it is a very improper thing for the Constitution to include anything as restrictive as the proposal that came in the majority report here. I think that I would immediately start looking for at least twice as many lawyers in our firm as we have now, because there'd be every opportunity to find a statute unconstitutional. I know you can't avoid making some work for lawyers, hut I really hate to see you cause us to double our workload just by one little thing like this. And it's, in my opinion, vital that we do have something in the Constitution such as is in our present Constitution. And I would wish that someone might move that we continue the present Constitutional rule, which does require a roll call vote before final passage of a b-ill, and that the names be mentioned as well, which I imagine, is implied or might even be inherent, in the proposal that's before us as it came from committee, although names of members is not mentioned. And it could simply be that the total Ayes and total Noes would be considered as sufficient compliance with the language of the committee proposal. But I would very much dislike seeing that restrictive a proposal made. How in the world you can require these roll call votes and expect that there will be complete compliance with it is beyond me. We're giving away the power to suspend rules in cases of emergency if this is done and, while I would very much like to see the public know how every legislator acts, and I am very much in favor of using roll call votes-many, many times that were it may not have been used as frequently as it should have been in the past and I certainly want it done in final passage and approval. But I certainly don't like the committee proposal and I'm not quite satisfied yet with the proposal before us, because I think it leaves it too much to the discretion of the Legislature. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: (Inaudible) I'm a little disturbed over the remarks being made here that a person should not be required to be responsible for the way he votes in the Legislature. I think we had this same argument 3, 4 weeks ago when we were adopting our own rules here in the Convention. It started out with requiring all votes to be recorded and we saw that that was not really too good, and we adopted this rule in which a recorded roll call vote, on any matter on the agenda of a committee and on which a vote is to be taken, shall be taken on demand of any member of the committee. I think as this subsection is amended in which if it is matters it is of not great importance, it need not be recorded. But I, too, have served in this Legislature over a various span of years and I have been thwarted continually by in committee, committee members knowing that they were not on view to the public and that their actions were not written down on a recorded vote, would vote one way—perhaps to kill the bill—and when they were approached by someone outside "Well, what happened to this particular bill in committee?" They would very graciously say, "I don't know; there was just too many of them voted against it and it lost in committee". And you ask them, "Well, how did it vote, who voted for or against?" "That's a secret; we're not supposed to divulge how the committee voted." But I think that's a dastardly way to run a Legislature and to develop laws here in the State of Montana. And this thought that the many recorded votes would break the State of Montana, would delay the action of good legislation, is a little bit absurd. We had that same thought brought up when we made the rules for this Convention right here. We solved that by putting in this little statement that a member could call for a vote if he thought it was important; if not, on these smaller things, it could go through without being recorded. So let's look at this motion very carefully to delete this whole section. The Legislature, sure, sets up the rules but the rules that was used in the last session of the Legislature are not the rules of the next session of the Legislature. Each session of the Legislature makes and adopts its own rules. So let's not get carried away by a little expense or the fact that a person doesn't have to be responsible for his actions when he is a legislator; and let's get this section in the Constitution where we will protect the rights of the people to know. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I am proud to hear our ex-legislator Paul Harlow speak. I wish maybe a few more of our ex-legislators had the good opportunity to sit between two preachers. It might do something similar for them. (Laughter) I speak on this issue as a citizen who has watched the Legislature in action, and I think that one of the most frustrating parts of this procedure is watching second reading, where there is no way, really, of knowing who killed the bill. True, if it gets by second reading, you get a recorded vote on third reading, and you have practically nothing killed in third reading. I don't think that the argument that it takes too much time to go through recorded roll call votes really holds, especially with Mr. Harper's amendment because you find almost every time when something—maybe not frequently enough but at least quite frequently, when something comes out of second reading—as Mr. Romney explained, it is segregated and segregation takes a good deal of time. In fact, sometimes it means debating the whole thing over again. So, I can't see that time is a matter and I can't see that Mr. Felt's argument, that this is going to cause lawsuits, is going to be a factor to contend with because we will have it on a record when a roll call is called for, and since roll calls aren't necessary unless they are called for, I can't see how this is any more of a problem than what we have now. I think that if we are going to go to the voters as an open—or supporting an open system—that recorded votes are surely a very necessary part of the system. And they should be imposed right from the beginning of action and not just on the very last bit of the action. Thank you.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman. I would like to make a substitute motion to all motions pending.

CHAIRMAN GRAYBILL: Just a minute, Mr. Hanson. Mr. Murray, were we going to have only one substitute motion or were we going to have two substitute motions?

DELEGATE MURRAY: (Inaudible reply)

CHAIRMAN GRAYBILL: All right. You can't do that Mr. Hanson yet, but I'll give you a chance before we finish. We already have a substitute motion pending. We're having two amendments and one substitute but we'll come back to you. All right, the issue is still on Mr.

Romney's motion to delete subsection 2. So many as shall be in favor of Mr. Romney's motion to delete-Mrs. Keichert, I beg your pardon.

DELEGATE REICHERT: Mr. Chairman. I would like to speak in opposition to Mr. Romney's amendment. I have the House Journal here and since he mentioned the fact that many second—(Inaudible)...on second reading many bills do come up for a recorded vote, I checked. And in checking 100 bills under second reading, I found one that came up for a recorded vote. Thank you.

CHAIRMAN GRAYBILL: All right.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I rise, too, in opposition to Mr. Romney's motion. I do so because I think that we should have a way to record our votes. I don't feel, however, if there was 100 preachers sitting around me it would change my mind any. No disrespect to the preachers but I don't think that the will of God has anything to do with this vote. I would just prefer this post and my little mare here to anything else that there is in this assembly, I'll tell you. (Laughter)

CHAIRMAN GRAYBILL: Are you on the subject, Mr. Eskildsen? (Laughter)

DELEGATE ESKILDSEN: Yes, I'm going to get on the subject in a minute. (Laughter) but as I stated before, it was insinuated that I might do better had I had a couple preachers around me. I got one in back of me and one in front of me. That ought to be sufficient, but I'm not in favor of Mr. Romney's motion to delete that section. I think we need it. Well what I am concerned with, is having it written in such a way that we accomplish what we set out to do. In other words, when we're taking a vote on something of importance, we can have a roll call vote. When it's not important, let's don't force the Legislature to do something that we're not doing ourselves. And we know why we're not doing it; we're not doing it because it would be too time consuming for one thing; it would be disturbing for another thing; so, let's get the vote on important things-give the opportunity for the important vote—and forget all the minor votes and not record them; they're not necessary. That's my feeling.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Romney's substitute motion to delete subsection 2 in its entirety. So many as shall be in favor of that motion say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and the motion fails. All right, we're now debating Mr. Harper's amendment which says that "on request of any member. any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered in the journal".
Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman. I'd like to make a substitute motion.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROD HANSON: I would like to make a substitute motion to delete the section as it is now written and insert therein in place of what is there now this language: "All votes taken on final action of a hill, either in committee or in Committee of the Whole and on final passage, must he recorded and entered on the journal." Mr. President.

CHAIRMAN GRAYBILL: Have you got that in writing?

DELEGATE ROD HANSON: I do have.

CHAIRMAN GRAYBILL: Would you go get that from Mr. Hanson, please? Can you give it to us now, Bob-or Rod? Mr. Eskildsen, for what purpose do you rise? Mr. Hanson has the floor.

DELEGATE ESKILDSEN: Excuse me.

DELEGATE ROD HANSON: Yes, Mr. President. I finished writing it a little better so you'd have it there. I think that this does the thing that we're trying to do here and gets away from having recorded votes on every little amendment or change that's made in a bill. It would give you a recorded vote on the final vote that is taken in the committee when it's reported out to either the House or the Senate, whatever it might happen to be. It gives you a vote when it is acted upon finally in the Committee of the Whole, and wouldn't be necessary to have votes on any amendments, but on the final vote in Committee of the Whole. And then, I don't know whether the language is correct on this, and on final passage, so that when it was passed by the assembly and sent to the other

assembly or finally passed and sent to the Governor; and this may need some cleaning up by the Style and Drafting Committee to get the right language there but I think the intent, at least, is there.

CHAIRMAN GRAYBILL: Very well. Mr. Hanson's motion, which would delete the present language of subsection 2 and would add this: "All votes taken on final action of a bill either in committee, in Committee of the Whole, or on final passage, must be recorded and entered on the journal." Is there discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President. I rise in opposition to that substitute motion. Surely from the fact that much important material—as a matter of fact, the most important sometimes to certain people, that is—is struck out in votes, not necessarily the final one. So therefore, I think that this would not be acceptable. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President. Could you read that over more slowly please so we could get it down?

CHAIRMAN GRAYBILL: All right. "All votes taken on final action of a bill either in committee, in Committee of the Whole, or on final passage must be recorded and entered on the journal."

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise in opposition to this. I think that this would be practically the same as deleting the provision. For one thing, quite frequently, a bill is killed for all practical purposes, by sending it back to committee; quite frequently, an amendment to the bill, in essence, destroys the intent of the bill. And neither of these, under this provision, would be recorded votes.

CHAIRMAN GRAYBILL: All right. The issue is on whether or not to adopt Mr. Rod Hanson's substitute amendment—substitute motion—on Section 10, subsection 2. The sense of the motion is to delete the present language and to add there in place thereof, "All votes taken on final action of a bill either in committee, in Committee of the Whole, or in final passage, must be recorded and entered on the journal." All in favor please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

UNIDENTIFIED DELEGATES: Division.

CHAIRMAN GRAYBILL: All right. We'll use the voting machines. All in favor say Aye. All opposed, No. Have all the delegates voted? Any delegate wish to change his vote? 65 delegates having voted No and 24 having voted Aye, the motion fails. We're now debating Mr. Harper's substitute language. The substance of Mr. Harper's substitute language was to put the following phrase, "Upon the request of any member," in front of subsection 2 so that it reads: "Upon the request of any member, any vote which advances," and so forth, "must be recorded." Any further discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President. I would like to propose a substitute motion. Actually, it's simply to delete two words from Mr. Harper's amendment, if he would accept it, and I am for the idea of having the vote public; I see no reason why any legislator wouldn't be acceptable to the fact that the public know how he votes in the public's business. However, I do accept the fact also that this complete recording of all kinds of votes can be expensive, time consuming, and so forth, so, I would like, if Mr. Harper would accept it, to strike "resolution or rule" from the amendment. Could I direct that question at Mr. Harper or shall I put it in the form of a substitute motion? I'm trying to save time.

CHAIRMAN GRAYBILL: Whichever you want to do.

DELEGATE CHAMPOUX: I'd like to direct it to Mr. Harper, if you may. Would you accept that?

DELEGATE HARPER: Mr. Chairman. Since that is a section that comes out of committee, I would rather not take it upon myself to change the committee action on that. Perhaps Chairman Aasheim would speak to it.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and members of the assembly. I would leave "resolution or rule" in there as long as-because a resolution can be quite significant also. I would leave it in there. I see no reason why you shouldn't.

CHAIRMAN GRAYBILL: Now Mr. Champoux, do you wish to make that a substitute motion?

DELEGATE CHAMPOUX: Yes, I would like to make it a substitute motion that we strike, "resolution or rule."

CHAIRMAN GRAYBILL: All right, I've done that on the paper Mr. Harper sent up so you don't need to send it up separately. The issue then is on Mr. Champoux's substitute motion to delete "resolution or rule" from the language which would have to be recorded on the request of any member. Any further discussion? If not, all in favor of Mr. Champoux's proposed substitute motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, NO.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and it fails. We're back on Mr. Harper's motion which is, "Upon the request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered on the journal."

Mrs. Eck.

DELEGATE ECK: I'd like a roll call vote.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. I would oppose the amendment by Mr. Harper because it would not require that any vote be recorded, and I don't think that was the intent of his motion.

CHAIRMAN GRAYBILL: Is there other discussion? We will have a roll call. I trust there are five people that will second Mrs. Eck. (Seconds rise) All right, that's fine. The motion then is on Mr. Harper's

Mr. Eskildsen. Excuse me.

DELEGATE ESKILDSEN: I just wanted you to state that again-what we was going to be voting on for sure.

CHAIRMAN GRAYBILL: Right. Mr. Harper's amendment to the language in subsection 2 of Section 11. Now, it would read as follows: "Upon the request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered on the journal." We'll open the voting machines.

Mr. Aasheim.

DELEGATE AASHEIM: I must arise to oppose this amendment because it's-any member-that's too liberal. You're going to have to— because anyone who wants to disrupt the proceedings can just get up and say we want a recorded vote. And I would say we should amend that to five to make it more safe-any five members call for a recorded vote-because surely, we need five members if we're going to make any substance to it at all. Otherwise, we might as well delete the amendment. I move that in place of "any", we put "five members".

CHAIRMAN GRAYBILL: You'll move a substitute motion which is identical, except it changes the word...

DELEGATE AASHEIM: "Any" to "five".

CHAIRMAN GRAYBILL: "Any" to "five". It would add the word "five". The substitute motion of Mr. Aasheim is that "Upon the request of any five members, any vote which advances and changes," and so forth.

Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. President. I think we're losing sight of another thing on Mr. Aasheim's motion there, that five members could still block a final vote and I think we do-we probably all agree that all final votes should be recorded. But in that case, I think maybe we should add to the section Rod Hanson's recommendation here, that we do have a roll call vote on all final action. Perhaps the two of them together would make an acceptable section. I'm just offering it as a suggestion here.

CHAIRMAN GRAYBILL: Very well. If this motion prevails and we do have the language, we can then decide whether to do that.

Mr. Heliker.

DELEGATE HELIKER: Mr. Aasheim, will you yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I will,

DELEGATE HELIKER: Mr. Aasheim, what would this amendment do to the recorded vote in committees?

DELEGATE AASHEIM: Well I don't believe, Mr. Heliker, we have any language here that applies to committees, and I think we probably should have had it.

DELEGATE HELIKER: My understanding was that this did apply to all committees.

DELEGATE AASHEIM: Well, I didn't hear the comment, Mr. Chairman.

CHAIRMAN GRAYBILL: He said that he understood it, Mr. Aasheim, to apply to committees and I don't think the language is restricted so that it says, that any vote which advances or changes the status or substance of a hill-so I presume it would apply to committees. Isn't that-1 think that was stated as the committee intent when they put that language in there.

DELEGATE HELIKER: Yes, I think that was clearly stated.

DELEGATE AASHEIM: Well, Mr. Chairman, in that case I want to speak on the whole motion then because I don't believe that this applies to a vote in the committee, and I think it should apply to votes in the committee because that's where all the subterfuge takes place is in the committee. And I don't believe this language implies committee. It just says the "status of a hill", and I think we're talking about status of a hill-and I'm not an attorney-but I think the court would rule that we're talking about the status of a hill in the assembly here, not in the committee.

CHAIRMAN GRAYBILL: Mr. Champ-""X.

DELEGATE CHAMPOUX: Would Mr. Aasheim yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I will.

DELEGATE CHAMPOUX: Mr. Aasheim, how many people are there in the typical Legislative Committee, sir?

DELEGATE AASHEIM: Oh, I'd say 10 to 15.

DELEGATE CHAMPOUX: And do you think we can get 50 percent of them to accept this?

DELEGATE AASHEIM: I didn't understand the question.

DELEGATE CHAMPOUX: Is that the intent then? You say 50 percent of the committee then would have to accept it to get a roll call, is that right?

DELEGATE AASHEIM: Well my, Mr. Chairman, I don't believe that this applies to committee at all, and I think it should, but I don't believe this would apply to the committee and I don't think-I'm talking about five on this floor here when I'm talking about five. So, maybe I'm misleading you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Well, it was my understanding by his last statement, that he thought that this did apply and, if it does, he's talking about 50 percent of the committee, and I submit that would he rather tough to get.

CHAIRMAN GRAYBILL: Very well. Is there further discussion?
All right, Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I just want to say that we discussed this particular section, I believe, when our Chairman, Magnus Aasheim, was away on other business and it was our intent to include committee votes too.

CHAIRMAN GRAYBILL: Very well. Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. I hate to disagree with my colleague from District 23, Mr. Harlow, but speaking as one who has been thwarted in this body a number of times. I would hate to see the Convention continue in the rulemaking business the way we're going here. I'm sure that the frustration which I have felt, and which a number of us have experienced, would not in any way he affected by a rule like this, except possibly that it would hecompounded. It's obvious

from the trouble that we're having rewording or rewriting this rule, that it is just a rule. It was my understanding that we were supposed to be dealing with fundamental constitutional principles here, and not writing the rules for the Legislature. What we're doing is just writing the rule for the Legislature. I think we should get over this thing, get rid of it and get on.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Well, I'd just like to point out that in our Executive Committee, there's times that you can change your vote. I voted on some things in the Executive Committee that later came out in the majority proposal that I was for, and yet we had to change it in order to be on the minority report. So I think we ought to leave the rulemaking to the Legislature.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I speak to this issue as I spoke to the issue on Saturday concerning the secrecy matter. I think there is nothing more important that this Convention can do than open up the Legislature so that the people can know what's going on and can consult the records to see what went on. And, Mr. Arness, I think we may have to work a little bit to get this thing written so that it is workable, but it seems to me that it is one of our prime functions of being here, to see to it that this legislative process is made accountable and responsive to the people.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I am just wondering—I want to make a suggestion now—that in order to overcome the weakness that seems to be apparent in the subsection 2, that we accept subsection 2 as it is and then insert another subsection, which will be identical with the Section 24 in the present Constitution, that states that on the final passage, the vote be taken by Ayes and Nays and the names of those voting be entered on the journal. That would take care of the third reading and this section, as it has been amended, would take care of the votes in the various committees. This thought that we here in the Constitution should not be writing the rules for the Legislature is a rather undependable sort of a thought. We cannot allow the Legislature to write its fundamental rules because, if we do, then it would have the power to write any kind of a rule that it wanted to, make itself a closed body, and perform its functions in complete secrecy from the public. That has been some of the troubles with the Congress at the present time. They have the power to write their own rules, and they write them so that the people don't know how the Congressmen are voting. So I do not think we should harbor the thought that this is not the place to write the rules for the Legislature. The Legislature can write the rules for the operation for the rest of the state, but they should not be allowed to write the rules for themselves. I put this suggestion to you. I do not make it in the form of a motion. I want you to think about it and see if we can't solve this dilemma that we're in, in regards to requiring votes on final passage to be recorded.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. In view of thr fact that there seems to he considerable question about what the wording of this should be, I move that we pass consideration of this until after lunch or sometime so the people can get together and figure out what they'd like to have in it and not take up the time on the Convention floor. I think we would do a lot better in this manner.

CHAIRMAN GRAYBILL: I don't think your motion is in order as you've stated it. There's no such thing as a motion to pass.

DELEGATE GYSLEK: Okay. a motion to table?

CHAIRMAN GRAYBILL: No. I suppose. if I could help you, the thing you'd have to do is move that this matter be postponed to a day certain, that to be today at 1 or 2 o'clock, or something of that nature. You'd have to postpone it to a time certain.

DELEGATE GYSLER: I so move then to this afternoon when we convene-1 o'clock, if that's the time.

CHAIRMAN GRAYBILL: All right. The motion of' Mr. Gysler is to postpone this matter to 1 o'clock today. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All in favor vote Aye and all opposed vote Nay. 60 delegates having voted Aye and 20 delegates having voted No, the motion passes. All right, 68 to 20. Will the clerk please read subsection 3 of Section 11.

CLERK HANSON: "Subsection 3, Section 11: A bill shall become a law upon a majority vote of the members present." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. Since we passed consideration of subsection 2, it seems to me that subsection 3 ties into it very closely. So for that reason, I would move that we pass consideration of subsection 3 until 1 o'clock this afternoon.

CHAIRMAN GRAYBILL: The motion has been made that we pass consideration of subsection 3 until 1 o'clock. All in favor say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Will the clerk please read subsection 4?

CLERK HANSON: "Subsection 4: Each bill, except general appropriation bills and bills for the codification and general revision of laws, shall contain only one subject. A law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period." Mr. Chairman, subsection 4.

CHAIRMAN GRAYBILL: Members of the committee, you have before you subsection 4. Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 11, subsection 4, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: This subsection is essentially the same material as contained in Section 23 of our present Constitution. It provides that each bill, except general appropriation bills, bills for the codification and general revision of laws, shall contain only one subject. The purpose of the one subject matter is, ofcourse, to make sure that you are-that everyone is aware of what an appropriation bill is for and not have riders attached and things like that that would completely change the aspect of the entire bill. If an appropriation bill starts through as one subject, then it remains as one subject, and there's no way that additional material can be slipped in and into a large appropriation bill and change it. Now, we did investigate the-in Section 23, it also contains a title-a matter that the title must contain all the changes. That is now a Legislative rule and we feel that it would want to remain as a Legislative rule. In looking over court cases, we found that in most instances where bills were contested in court, it was because of the title provision. Therefore, we felt that this would be taken care of by Legislative rule and it would not be necessary to place it in the Constitution. So, we did remove that portion of it. In addition, we added the last sentence which says that a law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period. In other words, we figured that a law should not be contested after it has been on the books; it should not be contested on the fact that it contained more than one subject. If everyone had a year to look it over, that should be ample time and after that time, it should not be contested on that particular provision. I think this is a good measure and should be adopted. Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow.

CLERK HANSON: "Mr. Chairman. I move to amend Section 11, subsection—

CHAIRMAN GRAYBILL: Just a moment. Okay. Go ahead.

CLERK HANSON: -4, page 23, line 11 of the Legislative Committee Proposal by changing the 'period' after the word, 'subject'—changing the 'period' to a 'comma' and insert after the comma, the words, 'which shall be clearly expressed in its title semicolon, but if any subject shall be embraced in any act which shall not be expressed in the title comma, such act shall be void only as to so much thereof as shall not be so expressed.' Signed, Aronow."

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. This is the language out of the existing article of the present Constitution and I may quote from the Supreme Court of Montana which will give my reasons much better, perhaps, than in my own words. And 1 quote now from some decision: "the purpose of requiring singleness of subject is to prevent the practice, which is common in all legislative bodies where no such restriction existed, of embracing in the same bill, incongruous matters having no relation to each other or to the subject specified in the title by which measures were often adopted without attracting attention." Then, the Supreme Court also said, "The purposes of this section are to restrict the legislature to the enactment of laws, the objects of which legislators and the public as well may be advised of to the end that any who are interested, whether as representatives or those represented, may bc intelligently watchful of' the course of the pending bill. The limitation is likewise desiring toprevent legislators and the people from being mislead by false or deceptive titles, and a guard against fraud in legislation by way of incorporation into a law provisions concerning which neither legislators nor the public have any intimation through the title read or published." And Mr. Chairman, I submit to this body that most of us have watched legislation going through the Legislature depend upon the newspapers. Now, I don't know what the practice is in the Billings Gazette or the Miles City *Star* or the Missoula paper, but I know in the *Great Falls Tribune,* which I rely upon for my information and a good many of us along the Hi-Line and in Great Falls also, that the only way that you know what is pending in the Legislature is that the newspaper runs in very fine print thr titles to the hilts. And if there's no provision in this Constitution that every subject matter that's contained in a bill is expressed in that title and the title is the only thing we have to alert us, there can be terrific fraud and deception, as I read to you from the decisions of our Montana Supreme Court. And as laudable as the purpose of' the people who are sponsoring the deletion of the title from the Constitution may be, it is not always good bills that get killed either. It's much like the provision that WE have that everyone is presumed to be innocent until proven guilty beyond a reasonable doubt. True enough, there's a few guilty people get turned loose but it's far better to turn loose 10 or 100 guilty people than to convict and sentence to the penitentiary one innocent person. And likewise, with this provision, the only thing that we, the public, have to alert us as to what is going on in the Legislature, is the title of the bills that are introduced, and we must keep the purity of the titles. The system has worked. Sure, once in a while, there is a goof and a bill is held unconstitutional because the title is defective, but this provision provides that only those things that are not expressed in the title are held invalid, and those that are in the title are perfectly valid. The Legislature has a staff of young lawyers to help them: they have the Legislative Council; they have some experts on drafting bills and I submit, that this is not a onerous requirement but it is a provision that keeps the moral tone. keeps honesty in legislation. It keeps someone from slipping in a provision which is hidden, and that I know from my experience in the Legislature, the first thing you do is read the title to a bill to see whether there's anything of interest, anything dangerous in it. and then you may glance through the body. But, if it's something that seems all right from the title, you probably don't devote the time to the body of the bill that you might on some other bill which is of greater interest. And I offer this amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: MY. President, a point of clarification—does this amendment now include the last line in the majority proposal'?

CHAIRMAN GRAYBILL: Yes, it does.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: I'll read the amendment again. The amendment would add after the first sentence of subsection 4, the following clause as part of the sentence, "which shall be clearly expessed in its title." In other words, "contain at least one subject which shall be clearly expressed in its title. Rut if any subject to be embraced shall be embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

DELEGATE DAVIS: Mr. President. would Mr. Aronow yield to a question?

DELEGATE ARONOW: (Inaudible)... yield.

DELEGATE DAVIS: Then, as I understand the President's reading of this amendment,

the sentence, "A law may be challenged on the grounds of noncompliance with this section within 1 year from its effective date but not after that period". you intended to delete that?

DELEGATE ARONOW: Not in this amendment. I have another amendment, if this one passes, which I'll offer to delete that last sentence.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYRILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman. After hearing Delegate Aronow's magniloquent address on this provision, I rise with some trepidation, but on this particular issue. I feel constrained to speak. We've heard Saturday and today some predictions about what's going to happen to the law office business if such and such happens. Well, here there is no if'; there's history. This particular section, and what we're trying to do here now, is recreate Section 23, Article V, as it currently exists in the Constitution. The original purpose, I admit, is very noble—to prevent riders. to prevent omnibus bills, and so forth-but in actual practice, this section has become very pernicious. What you're dealing with is a monster, a hydra. This particular section of the Constitution is the most adjudicated section of the Constitution hut to what purpose? Are the purposes genera lly noble? I suspect they are not. Now, whether a title clearly expresses a subject or whether one or more subjects is contained in a bill, is a question over which reasonable men will differ. I think to argue these things, to have legislation destroyed on the grounds that the title is not clear, or the bill contains more than one subject, is pettifoggery of the worst sort. It is not like me" differing over what due process means. That's important; that's vital. Our notions of due process evolve, they grow, they change as our consciousness as a community changes. But I submit, if you retain this section, you're going to retain it as the most adjudicated section of the Constitution in the future. At any time you don't like something the Legislature has done, you have this opening; you can always find someone who'll argue that the bill title wasn't clear or it contained more than one subject. And I know that this is very difficult having worked in a" office where drafting was done on legislation; I know that the drafters were so beset by this monster in this section that they were sometimes inclined to make the title identical to the hody of the bill. Thank you, Mr. Chairman.

CHAIRMAN GRAYHILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I rise in support of Delegate Aronow's proposed amendment and for an additional reason. He recited, and I think correctly, that the only way any of us who are interested in the Legislature can follow the progress is through the newspaper article reporting of the titles of the bills. However, there's another very important reason why I think it is absolutely essential that the title of the bill reflect the contents of the body of that bill, and that is that our Revised Codes of Montana are frequently indexed only according to the title of that bill. If the body of the bill should happen to contain a subject matter or an item that is not reflected in the title of the bill, it simply will not be indexed and there won't be any way in which any attorney or other interested person could ever discover the contents of that bill. In response to Delegate Roeder's comment that this section is one of the most adjudicated parts of our present Constitution, I submit that's a very good reason to retain it with precisely the same language so that we won't throw 82 years of Supreme Court decisions out the window. Thank you.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in support of Delegate Aronow's motion and I rise in support of it from the point of the legislator. They have numerous bills in this Legislature and no member of the Legislature has time to read all of them. He does take a glance at the title of the bill to see what it contains. If you have a title that doesn't reflect the body of the bill, many legislators are misled because they simply don't have the time to go over all of thr bills.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. would Mr. McNeil yield to a question?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE FOSTER: Mr. McNeil, do you not feel that the Legislature is capable of determining how the title shall be written?

DELEGATE McNEIL: I'm confident they are quite capable of that when they have a

directive in the Constitution that requires them to do so.

DELEGATE FOSTER: Will Mr. McNeil yield to another question'?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE FOSTER: Is it your opinion, then, that the Legislature would not, in fact, require that the title include the subject of the bill clearly so that the people would know what the bill was about?

DELEGATE McNEIL: Mr. Chairman. In response to that question, if the Constitution requires the Legislature to state a title for a bill which clearly reflects the contents, then there is no doubt that they will do so.

DELEGATE FOSTER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Well I fail to see the need for directing the Legislature to do this. It seems to me that in the process of the response to the people that they represent, and in response to their charge of following the legislative process, that they should, in fact, writs titles in bills in such a form that they're easily understood, easily codified and all the arguments that have been given; but I fail to see the need for declaring bills unconstitutional simply because the title was written wrong. It's beyond my comprehension that a bill should be unconstitutional just because the title is wrong. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. President. I rise in support of Mr. Aronow's motion. A good deal has been written into this that I personally don't support, and I'm speaking of rules for the Legislature and open meetings and things like that, because I think the public has a right to enforce that upon the Legislature themselves by their vote. However, this is something which I think should absolutely be in. Two of the largest corporations--and I'm sure most of these members already know this--maintain large staffs over here, part of whose staffs' duties are particularly assigned to read bills as they express it, just to catch sleepers that they miss-that are in the bills that they missed because they're not in the titles. It's a very serious defect in the system WC have when large corporations and other lobbyists have to maintain a staff over here to go over the bill to make sure that a so-called sleeper isn't going through. Now, part of the usual legislative process is on first reading-if my memory serves me correct--on first reading, the bill is read by title only and I'm sure these legislators get just as large a volume of literature, of bills to read as we have, and there's just no possibility that any Legislature can keep up with the content of every bill in every committee over here. And they have to rely upon the titles the same as we interested observers rely upon the newspapers for the titles and pick up only the bills that look interesting to us. The sense of the previous constitutional amendment was that if someone did put something through that wasn't in the title, then the aggrieved party can go to the courts and have the bill stricken. Now, Mr. Foster's raised the point, well "Couldn't the Legislative rule provide that it should beexpressed in the title?" Of course they can but if there's a violation, there is no enforcement. The court has no jurisdiction then to rule the bill unconstitutional. The bill has gone through in violation of the committee rules or of the Legislative rules but it is now a law and no one can attack it upon that grounds. But if it's a violation of the Constitution-and I appreciate Mr. Roeder having worked within that system-he says, "Well, it makes it hard to draft a bill; we have to be extra careful." Well, that's the idea; be extra careful so these sleepers don't get by and are used-in other words, legislation's going through that nobody has knowledge of; nobody has a right to come in and very often, important things are changed when the legislators who can't spend the time to read all of the bills are relying upon the title. The fact that so consistently, these matters have been brought to the attention of the courts and as Mr. Roeder says, in a large measure the courts have had to declare certain measures unconstitutional, shows just how important this safeguard is. To follow Mr. Roeder's sense, we will throw out the consititutional safeguard because it has worked so well. And the general idea is to see that the public is informed, and that's what the idea is for expressing the contents of the law within the title. I submit that Mr. Aronow is perfectly correct. This is a safeguard you shouldn't throw out the window just because it is inconvenient to someone not to express all the thoughts within the title.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, I speak in opposition to Mr. Aronow's motion on the basis that this really is a lawyers' relief bill-one of those that we've been talking about for the last few days. If you will look at the decisions that have been rendered on this in the Montana Supreme Court, the court once stated that the question of sufficiency of the title of various acts of the Legislature has been before this court many times. Each case has been decided on its own particular set of facts. This must, of necessity, be the case. No single rule can be laid down which will control all cases where this attack is made. If you will check the different Supreme Court decisions, you will find blatant errors in titles that have been upheld in the Supreme Court. You'll find very minor ones that have been declared unconstitutional by the Supreme Court. For example, last year in 1971, the court found an act entitled "Dredge Mining Regulation and Land Preservation Act" unconstitutional because the body of the act discussed sluice washing plants which the court ruled were distinct from dredge mining. You have the court going into very, very nuances of what these bills actually encompass. There's several bills just in the last couple of years that have been declared unconsititutional on these very, very medium points. I would submit that since we have given the legislative session 90 days each year, that they can start taking the time to read these bills and, if not, they can make their own rule concerning the title. It has been found in a study of the bills declared unconstitutional in Montana on the title provision, that most of these cases are filed at 5 years after the enactment of these bills because someone aggrieved by this bill went back and found this little loophole. I submit to you that this is the Supreme Court determining the validity of legislation in Montana and it has not worked; and if it has worked, I'd like to know who it has worked to the benefit of; certainly not the people in all instances.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: (Inaudible) . ..I wonder if Mr. Roeder would yield to a question.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Yes sir, I yield.

DELEGATE BURKHARDT: Mr. Chairman, I would like to ask Mr. Roeder if this subsection as written were simply amended with this set of words, "which shall be clearly expressed in its title" period, and then continue the sentence with, "a law may be challenged on the grounds of noncompliance", and so forth, whether this would accomplish what Mr. Aronow is concerned about and still leave some limits on the number of years that go by before these things are challenged or does that still make a kind of keg of worms to be dealing with there?

DELEGATE ROEDER: Well, Delegate Burkhardt, you're asking me about whether something would satisfy Delegate Aronow.

DELEGATE BURKHARDT: You teach a course; I thought maybe you had some background in this.

DELEGATE ROEDER: I don't know what you're after. If you're asking my own feeling, no, I would like to see the whole section deleted. I think as it has come from committee, it attacks one head of the hydra, leaving plenty of room for the other one to grow and assume the dimensions that the one that they're slaying has assumed.

DELEGATE BURKHARDT: Well, Mr. Chairman, could I ask another question of Mr. Roeder?

CHAIRMAN GRAYBILL: Yes, you may.

DELEGATE BURKHARDT: Is it your feeling then that if a bill contains one subject, the titles will take care of themselves?

DELEGATE ROEDER: Again, Mr. Burkhardt, I'm not sure I understand the question. I recognize that there are real problems here. I think that we should have single subjects and the title should reflect those subjects. My point, I think is this: the Supreme Court of Montanais not the only agency or the only group of people passing judgment on the singleness of subject or clarity of title. I think we go through a lot of hocus-pocus with this thing, that these people when they put their robes on in their chambers, acquire some kind of mystical power, some kind of judicial transubstantiation power (Laughter) that gives them the exclusive knowledge and wherewithal to determine the singleness of the subject and the clarity of the title. And I submit that their judgment is no better than the Legislature's.

DELEGATE BURKHARDT: All right, Mr. Chairman, I know that when a professor gets on his feet, 50 minutes is the standard time (Laughter) but, you know, as a person—

CHAIRMAN GRAYBILL: You have the floor, Pastor Burkhardt.

DELEGATE BURKHARDT: Fine. (Laughter) A pastor normally gets 20 to 25 minutes. Let me say that there is a bit of scripture that says, "Beware of those who go about in long robes", and I wear a robe myself once in a while. It seems to me that if our intent is to deal fairly and not simply hide the truth in rhetoric, that a provision which calls for a bill to contain one subject probably is going to be helpful. If we're hung up with a monster, and I believe Dick Roeder; I think he's probably got a point there. I would speak in opposition to the amendment simply because common sensesays that a bill that has one subject can be understood. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: During the course of this long debate, I've had a chance to peruse this document on new state constitutions and, among other things, I've found that with I think one exception, every constitution contained in this book includes an article very similar to the one that is being opposed by Mr. Aronow, and I personally feel that this is a very much needed type of amendment to our section here, and I would support Mr. Aronow's proposal. And as the debate goes on, maybe I can finish the rest of this book. (Laughter)

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. I think there's another aspect of Mr. Aronow's amendment that should be given some consideration, and that's the portion of it that says that "if the subject shall not be embraced in any act which shall not be expressed in the title, such an act shall be void only as to so much thereof as shall not be so expressed." That really is a savings clause to save the good legislation in the subject set forth in the title. Now, in the majority proposal, it says it shall contain only one subject. As far as litigation is concerned, there is no limitation on the amount of litigation that can take place if an additional subject is contained in the law whether it is expressed in the title or not. So, there's a lot of merit in the savings portion. If it should contain more than one subject inadvertently, or be so construed, the principle subject will not be declared void. And in all those Supreme Court decisions that you refer to, you have to remember that that also is the peoples' court. It is people, citizens, that are going there; it's not the lawyers going there for a relief although we are used to being maligned on that question. But when Mrs. Robinson or one of the others of you come to a lawyer with a grievance, just like your right to vote or anything else, you're going-that's your court; it's the peoples' court; it's not the lawyers' court. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I rise to resist Mr. Aronow's amendment or substitute motion or whatever it is. Really, I think the wording of this amendment actually makes the Supreme Court the third body of the Legislature or, in lieu thereof, the Governor of the State of Montana because of the wording clearly stated, and so forth. The Supreme Court can use this section, and has in the past, to thwart the will of the Legislature in passing legislation for the good of Montana. The Legislature is the body that's elected by the people of the state and any restriction on their right to pass legislation should be removed; and especially if the Supreme Court in the future happens to be appointed. They should not have such appellatejurisdiction or jurisdiction to declare a law unconstitutional on that vague language. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I'd like to speak in opposition to Mr. Aronow's amendment. Surely we don't have to tell the Legislature that they should establish a rule whereby all bills must have titles. I'm certain that that will be taken care of by the Legislature and I feel that it's the single subject portion of this section that prevents riders and sleepers, not the titles. I have the Revised Codes of Montana 1947, and in it, the single, most annotated item is this business with the titles. I feel that when experts like Mr. Freund writes in his book on standards of American legislation something to the effect that "if interests are prejudiced by precipited [sic] haste, surprise or log-rolling, a reasonable chance should be given them to attack the law." I agree that when it's based on constitutionality, we have a right to challenge. After that chance has been

given and no one has availed himself of it, the violated constitutional provision becomes merely a technical loophole of escape from the law; and the Constitution, when it has this title provision, makes it possible not to protect legitimate interests, but to defeat the legislative will. And I further contend that Mr. Sutherland in his three volume work on statutory construction advises states to get rid of the title provision in their Constitution.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President. I'd like to point out that our federal Constitution has no such provision. By the way, I rise in opposition to the amendment. I think Mrs. Robinson made a good point when she said that we would give the Legislature time to read the entire bill in the future, not just the title; I think it goes without saying they should read the entire bill. We don't follow any such rule here. I'm sure we read everything through here. I think this provision-we had studied this quite a little in the Legislative Committee-I think we were quite agreed that this provision is simply used as a loophole to invalidate good legislation.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. President. I'm very concerned with the-to thank the delegates that are taking away the lawyers' relief act. I've been practicing law I think 22 years, and I've had only one case involving the constitutionality of a title. But, (Inaudible)...when they take it, they also give it. Has this body ever stopped to sit down and consider that if any provision in the Constitution is violated by a legislative act, the Supreme Court has this power that they want to take away. We start talking about 5 days' notice on hearings, but say the Supreme Court finds the 5-day notice wasn't given on this hearing and this—these rules you want to write in. Then that law is unconstitutional for your information, and if you're going to put in that there has to be a public hearing, if the Supreme Court looks over what the Legislature has done and it has found that there is no public hearing, then that law can be declared unconstitutional 1 year, 10 years, 20 years, 50 years later. When you come to getting a recorded vote in a committee, a recorded vote on each motion that moves it along, that's a violation of the Constitution and then go back 100 years and declare that law unconstitutional. Now, because you have one law, the appropriation-the title bill which many times has come up, in which legislation has gone through that wasn't expressed in the title, that's the lawyers' relief bill. And now you're going to pass-put things in the Constitution that the courts will be finding things unconstitutional for the next 100 years on the most flimsy kind of pretexts, and you're telling us you're going to take out the lawyers' relief bill. You better get down and start looking at this stuff with some sense. You're putting in all of this stuff about recorded votes, 5 days' notice, public hearings, any one of which can be used as a gimmick to declare a law unconstitutional, and then you tell us we've got to throw out this lawyer's relief bill. Everything's got to be present in the act. This is something that lawyers use to put it over all the time. Well, I'll tell you, you're putting things in here that lawyers will get rich on for the next 100 years if you just keep on going the way you're going. (Applause)

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: If I may, Mr. Chairman, with a little less emotion, approach the issue that's before us in the Convention. Although many of the things that Delegate Holland has said, I'd agree with, I'm not sure which way you approach the amendment. I feel that certainly there are things we want to avoid putting in the Constitution that will be a loophole, a basis for eliminating good legislation. I think that many of the objections raised are valid. I don't believe that this amendment should be in the Constitution. I think that the provision that one title would be covered certainly is enough protection, and I think the Legislature-one subject--will in the future take the time to go over this. I'm certainly not threatened as a lawyer or as someone who does read the newspaper accounts of what the Legislature is considering. Certainly, because corporations can hire people to sit here and look for loopholes that might be coming through, certainly is no real incentive, I think, to consider putting this in. I would say that we didn't put a 5-day notice in because we felt that this would be an undue restriction later for someone to say there was only 4% days' notice given and then, at a later date, this should be unconstitutional. I would agree that this would be no threat to the lawyers to leave this out, and I certainly believe it has no place, and I would appose the amendment. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I would like to point out a fact which may not have come to Mr. Holland's attention since he was absent on Saturday, that we did indeed delete proposed subsection 4 of Section 10 for exactly the reason that we were afraid of the trouble that it would create if it were put in the Constitution. (Inaudible)...we agreed with the principle.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. A few days ago one of the delegates observed that it's sometimes difficult in this body to tell whether we're talking about the same Legislature, and we consider one section and we give it a great deal of power; and then we consider the next section and we tie it up entirely. It kind of reminds me of when we were kids; we used to divide up pieces of candy, and we'd go one for you and one for me. I think that's what we're doing here. The last section that we passed over was the one for us and I guess this is the one for them. It's been about 5 days now since we've started this debate and so far as I can tell, we haven't considered a single constitutional question. What we're doing here is legislating. If that's what we've decided that we ought to do, that's fine. I've got some more legislation I'd like to drag up and we can put that in there. But it seems to me that we're not considering constitutional questions. We're considering matters which are almost entirely legislative. We've adopted the Enabling Act for this Constitution. We spent a day doing that. We spent a day on Suffrage and Elections, which are matters almost entirely of legislative concern. When we came to the constitutional question, whether we should have one house or two and whether we should put it squarely to the people or not, we ducked that one and went around and we started back on the legislation dealing with the Legislature. I submit to you that we ought to dispose of these questions and get to the real questions. What kind of Legislature are we going to have here?

CHAIRMAN GRAYBILL: Very well. The issue before you is Mr. Aronow's amendment to Section 4 which places a new sentence—or new clause—in the section so that line 24 on page 5 reads, "shall contain only one subject" and then the new amendment, "which shall be clearly expressed in its title but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed."

DELEGATE ROBINSON: Mr. Chairman, may we have a roll call vote?

CHAIRMAN GRAYBILL: We'll have a roll call vote on this issue. So many as shall be in favor of the amendment, please indicate by saying Aye. So many as shall be opposed, please indicate by voting No. Have all of the delegates voted? Does any delegate wish to change his vote? The vote will be closed. Please tabulate the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Absent
Choate ..... Nay
Conover ..... Absent
Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Chairman Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye

Hanson, R.S. ..... Aye
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce .. .. Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Nay
Murray .. .. Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Absent
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Absent
Spew .. .. Nay
Studer .. .. Absent
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner. ..... Nay
Ward .. .. Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Excused

CLERK HANSON: Mr. Chairman, 52 delegates voting Aye, 37 voting No.

CHAIRMAN GRAYBILL: 52 delegates having voted Aye, this amendment passes. We're now considering subsection 4 as amended.

CLERK HANSON: "Mr. Chairman. I move to amend—"

CHAIRMAN GRAYBILL: This is another amendment by Mr. Aronow. Go ahead.

CLERK HANSON: "-Section 11, subsection 4, page 23, line 11 of the Legislative Committee Proposal by striking and deleting the last sentence commencing with the words 'a law may be', through lines 12, 13 and 14". Signed, Aronow."

CHAIRMAN GRAYBILL: The purpose of the amendment proposed by Mr. Aronow is to strike the last sentence of proposed subsection 4 as amended. In other words, it would strike the language, "a law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period." Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. The reason for offering this amendment is that the--well, as an example-this last Legislature that met, I guess in three sessions, we didn't get at the pocket parts or the codes from the Legislature until, I believe, it was in September. And that Legislature met in early January and no lawyer, no person, had the work of that Legislature on their desk until sometime in September. Well, how does one know whether an act of the Legislature affects their rights? It may not only-it isn't only corporations and big interests, but it's a lot of the common people too that have some problem insofar as acts of the Legislature are concerned. It may be a right to a small homeowner; it may be a right to the wage earner; it may be a right to the disadvantage of the minority groups and they don't have a staff. They're unable to determine until the need arises. Now, our court has held that periodically when the laws of the State of Montana are codified, that any defects in title or other defects in the passage of the bill through the Legislature are cured so that you have a bill in statute of limitations anyway. And the codification of the

law takes place periodically about every 5 years or so, as a legislative act that codifies the statutes of Montana and that's the end of the time within which you can bring any litigation, or a" aggrieved party can appeal to the courts for relief. I submit that the period of 1 year, with annual sessions of 90 days or longer, is not ample time to the average ma" or woman to make application for relief from a" unfair or a" unjust act of the Legislature. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE **HABEDANK:** Mr. Chairman. 1 rise in opposition to Mr. Aronow's present amendment. I had first called to your attention that the 1 year starts after the effective date, and usually the effective date on most of these laws is July 1. If it's effective prior to that, you have notice of the prior effective date. 1 would never have considered voting for the first amendment had 1 been of the opinion that the last sentence would have been eliminated. 1 think this answers the questions which were raised from the floor about objections being made 100 years or 10 years after. If you're going to object about the fact that it was not in the title where you have said it shall have one subject, it shall be in the title, then 1 think 1 year is a good time to do it. If you don't do it in that time, I think the Supreme Court should not be required to consider the matter further. I consider this last sentence our protective clause for the atrocities that Dick Roeder would contend would occur by reason of having to put the subject into the title.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Would the delegate, Mr. Loendorf, yield to a question?

CHAIRMAN GRAYBILL: Mr. Loendorf, would you yield?

DELEGATE LOENDORF: I yield, Mr. Chairman.

DELEGATE BRAZIER: Mr. Loendorf, did your committee, in deliberating upon this proposal, consider whether the Legislature would have authority to enact a statute of limitations on the subject matter? And if so, would you please tell us your impressions of their deliberations?

DELEGATE LOENDORF: Our committee did not deliberate on that, Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Would the delegate, Mr. Loendorf, yield to another question?

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Yes, 1'11 yield.

DELEGATE BRAZIER: Mr. Loendorf, did your committee, in considering the merits of this proposal, consider what impact this provision would have upon the right of a citizen to raise the constitutional issues as a defense at a later time in an enforcement action brought by a" agency of the government? And if so, would you tell us your impressions of the committee deliberations?

DELEGATE LOENDORF: Right. 1 think our committee felt this way. We enact this provision: WC provided a statute of limitations, 1 think, for the exact reasons Mr. Habedank has stated, that after a law is published for a definite period of time, certainly nobody should be able to say after the law has been in effect for a certain period of time, no one should be able to say, "Well, we're unaware of it." Chances are they are aware of it and the odds are that they are. And we felt that this was really a compromise, I think, adding this last sentence between those who wanted to delete the section entirely, and those who felt it should be retained. And we felt by adding the last sentence, we really got away from the problem created by this section of having suits challenged-or laws challenged years later when we felt the party had very reasonable notice that they were in effect.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Would the delegate, Mr. Loendorf, yield to another question?

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: I yield.

DELEGATE BRAZIER: Mr. Loendorf, then do I understand correctly, that it is the intention and thrust of the proposed provision to foreclose any defenses based upon the constitutional merits of any statute?

DELEGATE LOENDORF: No.

DELEGATE BRAZIER: Constitutional merits of any statute.

DELEGATE LOENDORF: Could you explain?

DELEGATE BRAZIER: Well, constitutional procedural defects in the enactment of the statutes.

DELEGATE LOENDORF: Yes, it is after a year period.

DELEGATE BRAZIER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: In view of Mr. Loendorf's responses, I rise in support of Mr. Aronow's proposed amendment on the grounds and for the reasons, among others, that it's been my experience that as a matter of fact, the great number of the citizens of Montana are not, in fact, aware of the contents of legislative enactments and that most of them make a horrifying discovery some many years down thr road when "big brother" moves in. And I personally feel that the right of a citizen to any defense should not be foreclosed because of any ignorance, either by virtue of inaction or diversion or distraction. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President. I find words being used here in a way that I find hard to understand or clear up and maybe someone can help me. It seems to me that when it's a matter on title of a bill or on words, there's a limitation. It also seems to me at the same time, when it's a question of unjustice or injustice or constitutional defects, that could happen anytime. And for those that put this together, I think they muddy our thinking. I get the impression that it's on poor title or on words that the l-year limitation comes. I submit that's a good idea. As a matter of constitutional defects or injustice, that's anytime; that's what the courts are for.

CHAIRMAN GRAYBILL: Very well. The issue before you is on Mr. Aronow's second amendment to subsection 4. The text, the thrust of which would be to eliminate the last sentence from Section 4. The language eliminated is, "a law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period."

Mr. Romney.

DELEGATE ROMNEY: (Inaudible)...and ask for seconds. (Seconds stand)

CHAIRMAN GRAYBILL: We'll have a roll call vote with plenty of seconds. So many as shall be in favor of Mr. Aronow's amendment eliminating the last sentence, please vote Aye. So many as are opposed, please vote No. Have all the delegates voted? Does any delegate wish to change his vote? Will the clerk take the ballot?

Aasheim	Nay
Anderson, J.	Aye
Anderson, 0	Nay
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Absent
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Absent
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Nay
Foster	Nay
Furlong	Aye
Garlington	Aye
Chairman Graybill	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, K.	Nay

Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Absent
Jacobsen	Nay
James	Absent
Johnson	Nay
Joyce	Nay
Kamhoot	Absent
Kelleher	Absent
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Absent
Romney	Nay
Rygg	Nay
Scanlin	Absent
Schiltz	Aye
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Aye
Speer	Nay
Studer	Absent
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Absent
Woodmansey	Absent

CHAIRMAN GRAYBILL: Mr. Clerk, has Mr. Felt voted on the machine'! He says he votes No.

CLERK HANSON: Mr. Felt voting No. 33 Aye; 54 No.

CHAIRMAN GRAYBILL: 54 people having voted No, the amendment fails. Therefore, we're not considering subsection 4 as amended. The subsection now reads: "Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, which shall be clearly expressed in its title. But if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. A law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period." That's the way the section reads now. Is there further discussion?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I move to amend Section 11, subsection 4, in line 13 to change the word, "one", to the word, "two", and add "s" to make "year" plural.

CHAIRMAN GRAYBILL: Chair will accept that amendment without writing. Is there discussion on that proposal? If not, the issue will be on Mr. McNeil's amendment to the last sentence of' Section 4, which has the effect of saying that a law may be challenged within 2 years instead of within 1 year after its effective date, but not after that period. So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Very well. We're on subsection 4 again as amended. We have the Aronow language in about the title. We have the last sentencein, but now it says "within 2 years." Is there further discussion? Very well, members of the committee, you have before you, on the recommendation of Mr. Nutting, that when this committee does arise, subsection 4 of Section 11, be adopted as amended. All in favor of that motion say Aye.

DELEGATES: Aye.

CHAIKMAN GRAYBILL: Opposed, No. (No response)

CHAIKMAN GRAYBILL: Subsection 4 is adopted as amended. Will the clerk read subsection 5 please?

CLERK HANSON: "Subsection 5: General appropriation bills shall contain only appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each containing but one subject." Mr. Chairman, subsection 5.

CHAIRMAN GRAYBILL: Members of the committee, you have before you subsection 5. Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I move that when this committee does arise and report after having under consideration Section 11, subsection 5, that it recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Subsection 5 is identical to Section 33 of our present Constitution. I shouldn't say identical. It was the wisdom of some of the attorneys that we put it in a positive fashion rather than anegative. So, the words have been changed to make it a positive statement rather than a negative one, and the word in line 4 has been changed to "containing", rather than "embracing". But essentially, it is the same section. It provides that general appropriation bills shall contain only appropriations for Legislative, Executive and Judicial Departments of the state, interest on the public debt and for public schools. All other appropriations shall he made for it by separate bills and contain only one subject. It's purpose of this provision that an appropriation should not be slipped into a general appropriation bill, and that if it is for a specific purpose, it should be so stated, and that ii. should be in a separate bill and contain only that particular subject. Thank you.

CHAIRMAN GRAYBILL: Members of the committee, you have before you for your consideration on the motion of Mr. Nutting, subsection 5. His motion is that when this body arise and report, that subsection 5 be adopted. So many as shall be in favor of that motion. say Aye.

DELEGATES: Aye.

CHAIKMAN GRAYBILL: Opposed, Nay. (No response)

CHAIHMAN GKAYBILL: The Ayes have it. Will the clerk read subsection 6?

CLERK HANSON: "Subsection 6: No appropriation shall be made for religious, charitable. industrial, educational or benevolent purposes to any private individual, private association, or private corporation not under control of the state." Mr. Chairman, subsection 6.

CHAIRMAN GRAYBILL: Members of the committee, you have before you for your consideration, subsection 6.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I move that when this committee does arise and report after having under consideration Section 11, subsection 6, that it recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: This section is essentially the same as Section 35 in our present Constitution. At the request of the Local Government Committee, the word, "community", has been removed and the last phrase, "nor to any denominational or sectarian institution or association", we felt would be corrected by adding the word, "religious", on line 10, so that it would read, "No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes". Now, this next portion reads, "purposes to any individual-private individual, private association, or private corporation not under control of the state." It was the feeling of the committee that it could conceivably be that we could run into problems in that as the old section read "corporation" and, if we're talking about municipal corporations, it would--we would possibly get into trouble there, where we would be reappropriating federal money to a city or town. And the same thinking was followed in relation to community. And so, we-that portion of it was stricken from the proposal as is. We feel that it essentially rules-brings in the things that we want in this particular section and yet has the flexibility to allow for the things that have probably been done in the last few years but not contested. Thank you.

CHAIRMAN GRAYBILL: Members of the committee.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I move that this section be deleted.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. It is my view that the legislative body of this state must be responsible for the distribution and taxation of funds. And I feel it's entirely inappropriate to state in the Constitution, in this particular case, how these funds shall be distributed. I feel that with the changing times, the Legislature should have the opportunity of stating how the taxes shall be spent. And if we, as a body here, try to delineate where the funds will be spent and where they will not be spent, we are in a sense tying the hands of the Legislature in a way that we should not tie them, in my opinion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. You have before you the motion of Delegate Foster to amend [sub] Section 6 by deleting it. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, please say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and so ordered. We're now back on the basic subsection 6.

Mr. Arbanas.

DELEGATE ARBANAS: Would Delegate Nutting yield for a question, please?

CHAIRMAN GRAYBILL: Delegate Nutting.

DELEGATE NUTTING: Yes.

DELEGATE ARBANAS: I found in your explanation some of the information that I wanted kind of unsaid. Would you kind of give me a list of the things that are implied by the deletion of "community"? What's opened up by this exclusion?

DELEGATE NUTTING: The problem here is that we were feeling mainly about cities, and it was also involved unincorporated towns; and that was our main reason for removing the "community" in that we find that numerous instances where funds bypass the Legislature. Actually, they have to go through and be reappropriated, but essentially the money is from federal direct to communities. And we feel that there is definite trend in this manner and that it would, in effect, rule out the fact that the Legislature could (Inaudible) merely pass these funds through by appropriation, which could become necessary in the future; and for that reason, this "community" word was taken out. Does that answer your question?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would Delegate Nutting yield to a question?

DELEGATE NUTTING: Yes.

DELEGATE BERG: I note that you have inserted the word "private", with reference to individuals, corporations and associations, and although I think you made some explanation of that in your early remarks, I should like further explanation as to why you distinguish between a public and a private corporation or a public association and a private association.

CHAIRMAN GRAYBILL: Mr. Berg, hold your mike down and we'll hear you better.

DELEGATE BERG: I would like you to distinguish, if you can, between why you do distinguish between public and private corporations by this addition.

DELEGATE NUTTING: The feeling is that we were thinking more of city charters and that sort of thing as public corporations. While we do not feel that a Legislature-that an appropriation rather-should be made for the definite benefit of a private sector--of the-citizenry, whether it be individual, an association or a corporation. We felt that that was a justifiable distinction.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would you yield to a further question?

DELEGATE NUTTING: Yes.

DELEGATE BERG: Perhaps this is just dealing with words, but I don't understand the

distinction between an individual and a private individual,

DELEGATE NUTTING: They're really—those are not my words but that was the decision as it came out of the majority-the committee report.

DELEGATE BERG: One more.

DELEGATE NUTTING: I would defer to, I believe, Mr. Harper-I think. I can't really remember just whose words those are but I would...

DELEGATE BERG: Is it the purpose of the committee to permit expenditures or to permit appropriations for, for instance, a religious, quasi-public corporation?

CHAIRMAN GRAYBILL: Hold that mike down, Mr. Berg.

DELEGATE BERG: A religious, quasi-corporation. Public corporation.

DELEGATE NUTTING: It is not the intent of the committee to allow that, no.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Would Delegate Nutting please yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Yes, I would.

DELEGATE JOYCE: Did your committee consider that maybe this section is making unconstitutional our present welfare laws? And I'll get to the point. Say, we read the section this way: "No appropriation shall be made for benevolent purposes to any private individual." Was it the intent that if that were construed as violating the welfare laws that we have on the books-would that be the intent of the committee?

DELEGATE NUTTING: No, it was not the intent. The Section 35 is, under the wording, is much more stringent. And we had hoped that we could accomplish by this section-let's say, for instance, the foster home situation, in which the payments actually go to the welfare; they finish up with the welfare beneficiate. And it was ourintent to try to write this section so that it would not preclude that sort of situation.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. Would Delegate Nutting yield to a question?

CHAIRMAN GRAYBILL: Delegate Nutting.

DELEGATE NUTTING: Yes.

DELEGATE MONROE: I'm wondering if you could help me on this. During our last Legislative Session in 1971, I understand that there was a bill having to do with group homes, that they might be set up; but no appropriations were made at that time. Now, I'm not under the understanding that those were under the control of the state. Let's say a group home was set up in a particular community; it was done as a receiving home or a foster home or what have you but they call it a group home. But it was just maybe a city or a county or what have you, but it really wasn't under the control of the state. Would your provision here prohibit any funds-let's say the Legislature, in the future, might want to fund a group home in that particular area; would this prohibit that?

DELEGATE NUTTING: We had hoped that we had so worded it in the new subsection that it would not be as restrictive in that-on those particular measures as Section 35 of the old Constitution. We hoped that the wording, as it would now be interpreted, would allow that, yes.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: As the old Constitution is worded, would you declare that action by the 1971 Legislature unconstitutional in setting up-or if they had appropriated funds, I should say--would you, since that was not under the control of the state-a group home in a community, for example--would you consider that unconstitutional, if they had appropriated some funds?

DELEGATE NUTTING: We had considerable difference of opinion in the committee, as some of us assumed that as long as the appropriation was under the control of the state, that then you had the...then you were within the conditions of our old measures. Some said that it was not and that by changing it to our present wording, that we would arrive at that conclusion. However, we did not have unanimity in the committee on that interpretation.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. Chairman. I would like to point out to Mr. Monroe the 1971 act passed by the Legislature, the youth guidance home. These homes were not under direct control of the state. but money was not appropriated to them directly. Money was appropriated to the Department of Institutions, which is under direct control of the state, and then the Department of Institutions can do with the money as they see fit.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I would like to amend Section 11, subsection 6, to read at the end, after the complete wording, "without a two-thirds vote of the members of each house of the legislative assembly." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum. You'll have to send that in writing to the rostrum.

DELEGATE DRUM: The reason I suggest this amendment is that the State Lands Department is now cataloging all of the state lands which have a recreational value. As time goes on, this department is going to locate the areas that really have a recreation potential to, not only the people in this state, but to people who wish to visit our state as tourists. Now, the State of Kentucky some years ago has taken a posture or a position as a state, where they will build such things, such recreational areas, such as campgrounds, such as ski area-anything that is on the state-owned land that has a recreation potential: the state will go ahead, appropriate money, put a facility on it, and then they will turn around and lease it to someone in private enterprise who wishes to develop-further develop the potential and manage the thing. The state then receives a rental or a percentage of the income of this facility. Now, I'm not suggesting today that we should move in this area immediately, but I think at some point down the road, the state may find itself in the position of being able to capitalize on some of these state lands that are owned by the people of the state, and may bring some tax relief to the taxpayer of the state by creating a greater income to the school trust fund in this manner. So I think if we could leave it in the hands of the Legislature, but make it a pretty firm vote, two-thirds vote, it may give more permissiveness and more latitude of movement for the development of our state in the years ahead. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I wondered if Delegate Drum would yield to a question.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Yes.

DELEGATE BATES: Mr. Drum, in this regard of this type of development, would it not be under the control of the state and under the Legislature, and could this be done under the present situation?

DELEGATE DRUM: Well, this is the thing that bothered me a little bit, Miss Bates, that under the control if it were to be leased-assume, for a minute that the Big Sky development is going to be of benefit to Montana; make that assumption-second, make the assumption that all of the land that is going to be used over there would be state land. Then the third assumption I would like you to make is that if the state were to come up with a certain amount of money, that there may bc some federal matching money that would make it real desirable to develop that entire area. Now the state probably is not going to want to manage this thing, not going to want to run it, but they're going to want to know that they're going to get a million dollars a year income from that property on some basis. But the control of that is not going to be in the hands of the state; it may be in the hands of professionals who lease it and manage it on some long-term basis. And I foresee this type of thing happening down the road. I don't think-I may not live long enough or be around long enough to see it happen, but at some point in the future, Montana--and I think you all will agree with me—has such a potential, a huge potential that at some point in the future may be tapped for summertime use by people in other parts of the country. And it may be one of the real forms of tax relief that we someday get by bringing this money in, and not bringing the school children or the old folks along with them. But I would say, to answer your question, Mrs. Bates. that the control as is stated in this-the control of management would not be in the hands of the state. And it might be kind of a cumbersome word, and I think the two-thirds vote may eliminate the cumbersomeness of that phrase.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I would appreciate having that amendment read. I'm not quite following all the conversation.

CHAIRMAN GRAYBILL: Very well, subsection 6 reads: "No appropriation shall be made for", and then it lists all these things that it can't ho made for, "not under the control of the state" and then Mr. Drum has added, "except upon a two-thirds vote of the members of each house of thr legislative assembly." So that, in other words, it would have the effect of an exception to subsection 6 that if two-thirds of the members did, then they could appropriate money for those other purposes.

Mr. Habedank.

DELEGATE HAREDANK: Mr. Chairman. I thought that was what I heard. First place, we're dealing with a unicameral measure, which wouldn't leave two houses; and in the second place, it could go bark to the thing we've eliminated as far as constitutional amendments is concerned. If this is to be added, I think it should be upon a vote of two-thirds of the members of thr Legislative Assembly whether one or more bodies, so it's in line with what we've previously done. And I would move that a substitute to Mr. Drum's amendment to that effect.

CHAIRMAN GRAYBILL: Mr. Habedank has moved that the language be changed from two-thirds of the members of each of the houses of the Legislature to two-thirds of the Legislative Assembly. Is there discussion of that issue?

Mr. Leuthold.

DELEGATE LEUTHOLD: I just rise to oppose the amendment. We recognize that this is a restrictive section but I think it's very important that we do have it in there. and to accept this amendment in any form, would weaken it so that it would be almost meaningless. Therefore, I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: In speaking to his amendment, Mr. Drum was using the illustration of recreational use of our land. There already is the authority for that kind of management of state lands. We spent quite a bit of time discussing this in our public lands section of the Education.

CHAIRMAN GRAYBILL: Mr. Burkhardt, just a minute, maybe you misunderstood me. I think we must put Mr. Habedank's amendment unless there is objection. You're not speaking to the two-thirds of the—

DELEGATE BURKHARDT: Well, it seems to me that the force of the argument for the amendment and the correction of the amendment—or rather the reamendment—is related to the material that Mr. Drum presented. I wanted that clarified before we made some kind of a vote on the wrong issue.

CHAIRMAN GRAYBILL: All right. Proceed.

DELEGATE BURKHARDT: It seems to me that we already have this kind of authority in the state lands board and they're using a multiple use theory based on the principle that the best income may be derived by the development of the resource. And that I submit to you that this motion that he makes may still be desirable, though I would not support it personally, but it has nothing to do with freeing us up for recreational use of our resource.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. The authority I think that Mr. Burkhardt refers to is a bill which I was one of the authors of in the 1967 Legislature, which permits 2½ percent of the income from the school trust fund to be used by the land board to assist in funding the development of these state lands. And i t has been pretty well agreed that this has been good legislation: it is working well and I think your committee heard considerable testimony on it. However, I don't believe it attacks the principle of the situation wc have here. The previous legislation allows the state to act as a good landlord of its lands. Ii' a person is leasing state land and says, "I want to drill a well on state lands which will increase the value of that land", will the state participate? The state can go participate in the drilling of the well. Hut I think the thing that I am addressing my comments to, is the possibility in the future, that there may be such things as ski runs or big recreation areas which people would come in and lease on a very satisfactory return basis to the school fund program. and the state would not necessarily be involved in the actual control or management. Hut I think it refers itself to the amount of funds available and the principle of releasing that control and funding it without the control.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. Chairman. Would Mr. Drum yield to a question'!

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Wilson.

DELEGATE WILSON: I take it you are assuming that the present Section 11 precludes what you're talking about?

DELEGATE DRUM: Mr. Wilson, I feel that it does, yes, it says unless it were amended by the people or unless the Constitution were amended. It says, "No appropriation shall be made", and when you say "No", that's pretty all-inclusive.

DELEGATE WILSON: Mr. Drum. Mr. Chairman, would Mr. Drum yield to another question'!

DELEGATE DRUM: Yes, Mr. Wilson.

DELEGATE WILSON: Under your amendment, don't you think that you'rechanging the intent of the Section 1 1?

DELEGATE DRUM: I think, Mr. Chairman, Mr. Wilson, the intent of Section 11 that the state will never, ever become involved in the development of any private investment, even if it is on state-owned property or on government property; and I think that if we can leave this judgment to the Legislature with a good affirmative two-thirds vote, I think we are giving a little latitude to the legislatures of the future. But I think if Mr. Huntley or the Big Sky people had come out in our hypothetical case, whether you agree with it or not, there will be more people of that type who may offer an opportunity for Montana to get tax relief through this type of money. If it is left the way it is, the Supreme Court, the state Legislature and everything else is just going to say, "Sorry, we can't work with you," and the state land board is liable to say, "We sure would like to work with you, but there's no possible way we can do it." And what I'm saying is have faith in the Legislature, at least two-thirds of them, make the right decision.

CHAIRMAN GRAYBILL: Mr. Wilson, will you use Mr. Skari's mike please. Just come around the desk there. Your mike picks up the radio station. Let's just-(Laughter)

Mr. Wilson.

DELEGATE WILSON: Mr. Chairman. Fellow delegates. I think the intent of this thing is pretty well spelled out, and that if Mr. Drum wants to include this in another section, then I think this would probably be appropriate. But I think that we as delegates, should take a pretty good look at what we're doing here and the intent of this section that we're talking about, give it due consideration.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I would like to explain the effect of my amendment. I am not in favor of Mr. Drum's amendment in the first place, but if it does pass, I think it should refer to the Legislative Assembly in a unicameral measure rather than in both houses. I would call to your attention that if his amendment goes through, one of the colleges in which I'm very much in sympathy, Rocky Mountain College, could receive an appropriation upon a vote of two-thirds of the Legislature; Carroll College could receive an appropriation upon a two-thirds vote of the Legislature; and I really don't think that this is what we have in mind in enacting a two-thirds vote of the Legislative Assembly. So for that reason, I oppose the entire proposition. But if we do accept that item, then I think my amendment is in order.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President. I rise in favor of Mr. Drum's motion. I don't know what-1 don't have a crystal ball and I can't read what's going to happen in the future-but I notice the relationship that the federal government has with the State of Montana, and the State of Montana has with a number of private corporations. For example, OEO funds nationally come to the State of Montana, let's say in a block grant and then, in turn, this money is contracted out to different private corporations in many of the different communities around the State of Montana, and those are federal funds, of course. But who's to say if something like this isn't going to happen in maybe other areas, rehabilitative other than social service, recreational or what have you, in the future? And I would hate to see something restrictive like this where it says no appropriation can be made. I'm in favor of Mr. Drum's amendment that says upon two-thirds vote of the Legislative Assembly. I would hate to see anything restrictive where some very positive things might

come about in the future of Montana with state-appropriated funds.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I think the committee had one thing in mind, that was, WE were writing this section on bills. We're now dealing with the section on appropriation bills. We have just completed writing the section that tells how general appropriation bills must be set up and that no other appropriation bill should contain more than one subject, and so forth. We are now continuing in a separate paragraph on appropriations. I think this is the point we want to stress. Now, the issue is, should any appropriation be made by the state Legislature to any private person or agency of any type not under the control of the state. That was the issue as we saw it. We tried to use words that would pretty well hedge that in but that's the issue. Should an appropriation be made by the state Legislature out of tax moneys to any agency or person not under the control of the state'! In other words, that appropriation ought to go for state agencies. It may be very commendable, for example, it may be a very worthwhile person, a very worthwhile private corporation with a good deal that might even make something for the state. but should the state. should the Legislature, ever be in the business of making appropriations to anything other than public agencies'? That's the question as we saw it.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. Would Mr. Harper yield to a question'!

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes, 1'11 yield.

DELEGATE ARONOW: Mr. Harper, if this is what you had in mind, why did you change the language of existing Section 35 of the present Constitution which has been interpreted by the courts and apparently these matching funds have been utilized and all these things have been done:'

DELEGATE HARPER: Mr. Aronow, Mr. Chairman. Mr. Aronow, the committee, as Mr. Nutting said, did discuss that. The Local Government Committee came and said as they read this, there might in the future be some misunderstanding of the word "community," also the word "corporation." in the sense that it may be a municipal corporation or some kind of local community that was, in fact, government; and therefore state might find this interpretation. Though you are correct as we discovered that that kind of misinterpretation had never been applied in the past. And so, it was on this basis that we were trying to find some kind of suitable wording to retain the original intent of Section 35 of Article V and then to meet one other objection which perhaps we have not met, that actually the way present Section 35 reads, it almost implies that an appropriation has to go to some person or corporation or community under absolute control of the state. You notice we took out the word "absolute". We could not imagine what person or corporation might fit in that term, although legally, maybe we did not improve it. This was our line of reasoning, Mr. Aronow, and other members of the committee might want to comment further.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Harper. I notice that under the annotations to Section 35, that a great deal of leeway has been made by the courts, like seed grain contracts, other things, and when you change the language of the section, then you leave it wide open for additional interpretations to be made by the Supreme Court. If you adopt the existing language, you also adopt the existing body of law interpreting that section, and I would think it would be the part of wisdom and safety to utilize the language that's been interpreted, that we know what it means, that we've been able to live with, we've been able to accomplish the things that we want to accomplish and change for changes' sake doesn't appeal to me. In other words, I don't like to take off in the bright blue yonder without a compass and not know where I'm going or where I've been. And if it's just-if this is all that the committee tried, I recommend and I think I'll make a motion in substitution of all other motions, to substitute the language of the existing Constitution in Section 35 for the language appearing in the section under discussion.

CHAIRMAN GRAYBILL: Subsection 35 of what article? Mr. Aronow.

DELEGATE ARONOW: Article V.

CHAIRMAN GRAYBILL: All right. The issue is now on the substitute motion of Mr. Aronow that we substitute for the language in subsection 6, the existing Section 35 of Article V of

the Constitution.

Mr. Brown.

DELEGATE BROWN: Mr. President. I rise in support of Mr. Drum's amendment. I wasn't for Mr. Foster's move to delete this article. I've sat here for several days now and might as well give my philosophy. I think that this body has turned into a legislative and rulemaking convention. We're showing our distrust of the Legislature like they did in 1899. I can see where future generations may want to appropriate money to private hospitals or join in with funds like the Ford Foundation for private research, for education or other purposes. As far as aid to parochial schools, that can be covered under the Kill of Rights or under the educational provision. This is completely restrictive. We're trying to legislate for the future. It should be deleted, but Mr. Drum's amendment is better than nothing, so I rise in support thereof.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. President. I was out of the room and this may have been mentioned, maybe not, but under the Section 4—Section 6—such events as the Olympic Games and similar events could not be held in Montana, the way they're now being financed.

CHAIRMAN GRAYBILL: Very well. The issue before you is Mr. Aronow's substitute motion that existing-that the majority reports subsection 6 to Section 11 be deleted—and that Section 35 of Article V of the present Constitution be placed there in place of it. For what purpose do you rise, Mr. McNeil'!

DELEGATE McNEIL: To ask for a roll call vote and ask for the necessary seconds. (Seconds rise)

CHAIRMAN GRAYBILL: All right. We'll have a roll call vote. So many as are in favor of Mr. Aronow's substitute motion, please indicate Aye on the voting machines and so many as are opposed, indicate No. All the delegates voted? Any delegate wish to change his vote? Please take the roll call.

Aasheim..	Nay
Anderson, J.	Aye
Anderson, 0..	Nay
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
c am	Aye
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis.	Aye
Delaney	Aye
Driscoll	Absent
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Aye
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Aye
Garlington	Aye
Chairman Graybill.	Nay
Gysler	Absent
Habedank	Nay
Hanson, R.S	Aye
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland.	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Nay
Lorello	Nay

Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Nay
Nutting	Aye
Payne	Aye
Pemberton	Nay
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Aye
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Aye
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Excused

CLERK HANSON: Mr. Chairman. 40 delegates voting Aye, 54 voting No.

CHAIRMAN GRAYBILL: 54 delegates having voted No and only 40 voting Aye, the motion fails. We're now on Mr. Habedank's motion that the language be changed to say "two-thirds of the legislative assembly" instead of "two-thirds of each house of the legislative assembly." Is there further discussion on that subamendment?

Mr. Ask.

DELEGATE ASK: Mr. Chairman. I was on a Local Government Committee and we went to the Legislative Committee and requested that the word "community", be stricken from the old section. And the reason for that was that we were concerned about revenue.

CHAIRMAN GRAYBILL: Mr. Ask, I don't mind you discussing that but we're only discussing whether it should say "two-thirds of the legislative assembly" or "two-thirds of each house of the legislative assembly." Now. if your discussion is germane to that, okay, but I'm going to dispose of that motion next if I can.

DELEGATE ASK: I was going to go into that but I will pass the other.

CHAIRMAN GRAYBILL: All right.

DELEGATE ASK: I'm opposed to thr amendment to allow two-thirds of the Legislature to allow appropriations for this item. I think, by doing that, we're opening up this entire section to appropriations for religious, charitable, industrial development. I don't think that was thr intent of the members of the original Constitution, and it's certainly not the intent of the committee. And I don't think it's the intent of this body here to open this. If we're going to do anything, we ought to leave it out. But I don't think we should leave it to two-thirds vote of the Legislature, because you're saying you can't do it yet you can do it. And I don't think this should be done in this particular case.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: I would like to address some comments to Mr. Habedank's amendment. I believe, really, we would do the right thing if wc would give permissive language to this section. I think we should make it very difficult for it to happen and I think if we say two-thirds of the Legislative Assembly that, we are-if there are two houses, then a total vote, it could be construed, as one house being all for it and they may override the other house. I think it should be two-thirds vote of each assembly and it makes it that much more difficult. But to Mr. Ask, I would say that Mr. Brown I believe has satisfied me that the Bill of Rights and the Educational Article is going to contain adequate protection that this is not going to be used by Rocky Mountain College. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Habedank's amendment that the language be two-thirds of the Legislative Assembly instead of two-thirds of each house of the

Legislative Assembly. So many as are in favor of that amendment say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and Mr. Habedank's amendment is defeated. Now, we're on the basic Section 4 as amended by Mr. Drum-subsection 6 of 11 as amended by Mr. Drum--and his language would add the following clause after the subsection, "without a two-thirds vote of each house of the legislative assembly," the purpose being to allow you to make these appropriations if two-thirds of each assembly approve.

Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. President, may we have a roll call vote on that vote?

CHAIRMAN GRAYBILL: We will but I don't know if we're ready to vote yet.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I want to speak a few words upon this offering of Delegate Drum. First of all, I don't think public lands are appropriation. There's no reason why the lands cannot be leased. They are leased all the time. Secondly, we have now a proposition where the land could be leased or handled some way by a two-thirds vote of the Legislature. In other words, we have the constitutional provision and then we let the Legislature legislate upon a constitutional provision, when all of us are well aware that the only people who are empowered to legislate is the Supreme Court. (Laughter)

CHAIRMAN GRAYBILL: Mr. Drum, do you want to close?

DELEGATE DRUM: (Inaudible)...on my amendment, and I would like to say to Mr. Romney, as you get into the finance section or the proposal from the Finance Committee, you will see that some of this permissiveness is allowed as a result of the unanimous vote of our committee. However, to write something in stone which looks like it may be such a good opportunity for the State of Montana to achieve some tax relief and more usage of our lands, I hope that you would give a little more latitude to your wisdom. The fact that the state owns the land does not make it overly attractive to some folks who may wish to invest. There are federal funds; there are foundation funds; and if money can be matched by the state to develop some of these projects, it could make it much more attractive to the development program. Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Drum's amendment to subsection 6 of Section 11. The amendment would add "that no appropriation could be made for these purposes not under the control of the state without a two-thirds vote of each house of the legislative assembly." We're going to have a roll call vote. So many as are in favor please vote Aye on the voting machine. So many as are opposed please vote No. Has every delegate voted? Does any delegate wish to change his vote? Please take the roll call.

Aasheim	Nay
Anderson, J	Nay
Anderson, 0.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates..	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Nay
Delaney	Nay

Driscoll ..... Absent
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Nay
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Absent
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner.. ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Absent

CLERK HANSON: Mr. President, 26 delegates voting Aye, 66 voting No.

CHAIRMAN GRAYBILL: 66 delegates having voted No, the amendment fails. We're now on subsection 6 of Section 11 which reads as the majority report shows on page 6. Very well. Members of the committee, you have before you subsection 6 of Section 11 on the motion of Mr. Nutting that when this committee does arise and report, this same shall have been adopted. We'll use the voting machines, a roll call having been called for. All those in favor of the majority report subsection 6, vote Aye-and opposed vote No. Use the voting machines. There was a roll call called for. The roll call was called for by Mr. Leuthold. (Inaudible) Have all the delegates voted? Anybody wish to change their vote? Very well, take the roll call.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye

Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Absent
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson. R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks. ..... Absent
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Absent
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Absent

CLERK HANSON: Mr. Chairman, 76 delegates voting Aye, 18 voting No.

CHAIRMAN GRAYBILL: 76 delegates having voted Aye and 18 voting No, subsection 6 is approved. We will recess at this time, but I wanted to point out that when we start this afternoon, we will start on 11(2), which was passed until 1:00 p.m. Section 11, subsection 2.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Committee of the Whole stand in recess until 1:00 p.m. this day.

CHAIRMAN GRAYBILL: (Inaudible) that the Committee of the Whole stand in recess until 1:00 p.m. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:00 noon—reconvened at 1:05 p.m.)

CHAIRMAN GRAYBILL: The Convention will be in session. Very well, the committee will be in order. We will proceed with subsection 2 of Section 11. Will the clerk please read subsection 2, as amended?

CLERK HANSON: "Subsection 2: On any vote which advances or changes the status or substance of a bill, resolution, or rule the vote of each member must be recorded and entered upon the journal."

CHAIRMAN GRAYBILL: Now, to that subsection with the amendment, which was Mr. Aronow's amendment to say, "and entered upon the journal"-to that subsection we have Mr. Harper's amendment "that on the request of' any member", and we have Mr. Aasheim's amendment "on the request of any five members." Now, Mr. Aasheim isn't here; Mr. Harper isn't here.

CLERK HANSON: Mr. Harper is here.

CHAIRMAN GRAYBILL: Harper is here, yes. Mr. Aasheim isn't here. I think the Chair will rule that the amendment-you correct me if I'm wrong, Mr. Murray-the Chair is going to rule that the amendment of Mr. Aasheim, which was adopted, pertains, but that the other two substitute, or the other two amendments which were not considered are wiped out, and I will call on Mr. Harper to remake his amendment, if he cares to.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, did you say Mr. Aronow's or Mr. Aasheim's had been adopted?

CHAIRMAN GRAYBILL: Mr. Aasheim's has not been-no, Mr. Aronow's amendment has been adopted. It added the words. "and entered on the journal." and Mr. Aasheim's and your amendments I am ruling have been wiped out.

DELEGATE HARPER: Mr. Aasheim and I and several members of the Legislative Committee met over lunch time and if the Chair will allow, Mr. Loendorf has suggested wording for a new amendment and I would like to withdraw mine in favor of it.

CHAIRMAN GRAYBILL: All right, your amendment is withdrawn. Mr. Aasheim, I wiped your amendment out but would you like to withdraw it?

DELEGATE AASHEIM: (Inaudible)

CHAIRMAN GRAYBILL: All right, his is withdrawn. Both of those amendments may be shown in the journal as withdrawn, and I'll call on Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Are there any motions pending::'

CHAIRMAN GRAYBILL: There are no motions pending.

DELEGATE LOENDORF: Mr. Chairman, I would move at this time that Section 11, subsection 2, page 23, lines 9 through 14 of the Legislative Committee proposal be amended by deleting the entire section and substituting in lieu thereof the following words and punctuation: "The vote of each member of the legislature and its committees on any substantive question shall be recorded and made public." Mr. Chairman, shall I deliver a copy of this to the rostrum?

CHAIRMAN GRAYBILL: Please. Page, the man in the-did you give it-oh, all right, never mind-thank you. All right, Mr. Loendorf's amendment to subsection 2 of 11 is to strike all the language in the majority report and place therein the language: "The vote of each member of thr legislature and its committees on any substantive question shall be recorded and made public."

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, may I speak on the motion'!

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE LOENDORF: Mr. Chairman, this motion is offered in an attempt to maybe alleviate some of the problems which arose regarding the present Section 11, subsection 2. It does not require that the recorded votes be entered in the journal. It leaves that entirely to the discretion of the Legislature. It does require that they be recorded in some manner and made public, and it is limited to substantive questions—does not include procedural questions. And I think we are all aware that substantive questions are those that refer to subject matter only, not the procedure as to how something's accomplished. The reason I support such a proposal are these. Under the present system about 40 percent of the votes, and

that's a rough estimate, are recorded in the Legislature. A citizen who has an interest in a bill has no way of knowing how his particular legislator voted on that bill. And for people who have observed the Legislature know that many legislators vote differently on second reading than they do when the vote is being recorded. And it makes me wonder when a legislator votes one way when his vote is not recorded and another way when his vote is recorded and the people hack home know how he's voting, just who he is representing. If he chooses to vote against their wishes, that's fine, but I think they should know that so they can take any action they might desire at a subsequent election. Thank you. Mr. Chairman.

CHAIKMAN GRAYBILL: Is there discussion?

(No response)

CHAIRMAN GRAYBILL: If there is no discussion, Mr. Loendorf, I think I will ask that you change your motion to be that when the committee does arise and report, after having under consideration your proposed subsection, that the same be adopted. Is that all right?

DELEGATE LOENDORF: I so move, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you a new proposal on subsection 2 of Section 11 by Mr. Loendorf, and his motion that when this committee does arise and report after having it under consideration that the same shall be adopted. So many as shall be in favor of the motion say Aye.

DELEGATES: Aye.

CHAIRMAN GKAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: The Ayes have it and it is adopted. Mr. Clerk, will you read subsection 3?

CLERK HANSON: "Subsection 3: A bill shall become law upon a majority vote of the members present." Mr. Chairman, subsection 3.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 11, subsection 3, that it recommend the same do pass. By changing Section 2, we have presented somewhat of a problem in Section 3, and so as a substitute motion, I would like to amend Section 3 to read as follows, deleting the entire subsection 3 and, in essence, we are putting back in the same language as is contained in our present Constitution, and it would read: "No bill shall become law except by a vote of the majority of all members present, and on final passage the vote to be taken by the Ayes and the Noes and the names entered on the journal." I think this means that the final vote would have to be entered in the journal and the other votes would be taken care of under Mr. Loendorf's amendment.

CHAIRMAN GRAYBILL: Mr. Nutting, can you tell mu the section of the Constitution you're quoting from?

DELEGATE NUTTING: Section 24.

CHAIRMAN GRAYBILL: Of Article V?

DELEGATE NUTTING: Of Article V, yes, sir.

CHAIRMAN GRAYBILL: All right, Mr. Nutting's proposal is the substitute motion of the committee is to delete Section 11, subsection 3, in its entirety and insert in lieu thereofthefollowing: "No bill shall become law except by a vote of the majority of the members present, and on final passage the vote be taken by Ayes and Noes and the names entered on the journal." Is there discussion'?

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I rise in opposition to this section for the reason that at this time we do not know whether our next Legislature will be unicameral or bicameral. By this language, I think it would be possible for any bill to be passed with only 26 or 27 members of a unicameral legislative body and I don't consider that enough. This wording would say "a majority of those present and voting" and under unicameral, you only need a majority, which would be 51 to be a quorum, and then technically, a majority of 51 is only about 26 or so members and I do not consider that enough people under the unicameral system to pass a law.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, exactly-just to follow up-I'm not commenting on whether it's right or not, Mrs. Erdmann's suggestion-the same thing would be true in a bicameral with a Senate of 50 or with either house with the 50.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I think it is necessary to put in "the members present" so that a vote could not be prevented by members merely staying away. That they must be present.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I'd like to add to that. I agree with Mr. Nutting. The provision, "members present", is absolutely necessary. If you allow people to stay away and give them credit for a No vote-in other words, if you required a majority of all the members, you require 51 members to approve something. Assuming only 51 members are there, 2 vote against it. You have a vote of 49 in favor, 2 against, yet the measure fails.

CHAIRMAN GRAYBILL: The Chair would like to call to the attention of the body that the amendment proposed-thelangungeoutofthe old Constitution-does say "a majority of all members present". Is there further discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: For the sake of expediency, Mr. President, perhaps it would be wise--and by this statement I don't mean to indicate my support either way at this point for either type, a unicameral or a bicameral-that we pose our proposals in the bicameral sense and then if there is some problem, then leave it to Style and Drafting to change it if we go to unicameral later on. What I'm thinking about is, what are we going to go to in terms of the vote if we go both ways?

CHAIRMAN GRAYBILL: Well, I don't know if you're posing a question for the Chair, but the language proposed and on which you are now voting doesn't apply to either bicameral or unicameral. It simply says, and I'll read it again, "No bill shall become law except by a vote of the majority of all members present, and on final passage the vote be taken by Ayes and Noes and the names entered on the journal." Now, if that was in the old Constitution, it must work for a bicameral system. Is there other discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, we already have a precedent on this subject from Proposal Number 1 where I inquired specifically of Mr. Etchart whether it was his intention that the two-thirds or three-fourths, or whatever the number was, should apply to the total number of members in two houses. and this is something that Style and Drafting isn't going to get involved in with that precedent unless it's pretty closely spelled out. so we'd better be careful about it here now.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, this proposal-we are now working on the unicameral section and this proposal is presented as a portion of the unicameral. I presume that it will be under discussion again, whether it will be each house or whether it would be of total members, but right now we are discussing unicameral so it is presented with that idea in mind.

CHAIRMAN GRAYBILL: Members of the committee, you now have before you on the motion of Mr. Nutting that when this subsection 3 of Section 1 l-and his recommendation that when this committee does arise and report, after having it under consideration, that we recommend that it he adopted. Now, so many as are in favor of adopting subsection 3 of Section 11 as proposed in the amendment made by Mr. Nutting:, namely that it be the same as in Section 24, Article V, of the present Constitution. please indicate so by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Now members of the body, before we proceed, the Chair would like to. with your indulgence, make a short statement. We have now, by our actions since noon, passed two more subsections, making the total six subsections that we've passed today. I would like to suggest to you that it is probably becoming obvious to all of us now that the Legislature may not be nearly as

dilatory as some of us sometimes think, and that maybe they do a pretty good job to get out of here in 60 or 65 days. I think that we have been accomplishing much more this morning, but I would still like to call to your attention that so far today, in a half a day, we have adopted 6 subsections of 1 section; that the legislative proposal has 16 sections; and that we have a long way to go. We are technically behind the schedule we have set for ourselves. I would like to pleasantly suggest to you that, in listening to the discussion, I think it is important that we still attempt, as individual members, to keep our discussion germane. And perhaps more importantly, I think we should look once again to the basic committee structure under which we're operating. When a committee brings in a report, please consider carefully before amending the committee's report or changing the committee's report. That's the purpose of the committee system. You are certainly free to change it, but please do so after thought. The point is that that particular committee has spent at least as much time on their issue as you have spent on yours, and I do feel that at times wc have made amendments from the floor with a flick of a pen that could well have been avoided. Now, on the other hand, if you see something in a committee report that you really are concerned about, and if you see it ahead of time, you might take it up with the committee, or a member of the committee separately and find out the purpose for that, rather than debating it with six or eight of your colleagues for quite a while before we find out the purpose. So, with thatslight suggestion and the admonition that we've only covered 6 subsections this afternoon--or today—the Chair is going to ask the clerk to read Section 13—no, 12, I beg your pardon. Section 12.

CLERK HANSON: "Section 12, Local and Special Legislation: The legislature may not pass a special or local act when a general act is, or can be made, applicable."

CHAIRMAN GRAYBILL: Members of the committee, you have before you Section 12 of the Legislative Committee proposal.

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I propose that when this committee does rise to report they will consider Section 12 and move for its adoption. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: This proposed section is replacement for Article V of the Constitution of Montana. It's a very-1 mean, Article V, Section 26, excuse me. Section 26 is probably the longest section in our Constitution and I'm not going to read it. It's on page 10 of the yellow bound copy of our Constitution. I will say it has a long list of prohibitions. It's simply a restatement of the—our Section 12 that we're under consideration-it's simply a statement of the last sentence of Section 26. Our committee believes that this statement adequately covers the prohibitions set at length in the original section. The committee wishes to remove the long, long list of prohibitions and partly because all these prohibitions are becoming obsolete. You'll find in the U.S. Constitution, Sections 8, 9 and 10 of Article I, probably in one way or another covers all these prohibitions. In addition, this prohibition against special and local laws is well established in Montana and the United States jurisprudence. As the cowboys down in Powder River say, "inclusio unias, exlusio ulterius." (Laughter) I've been asked for a translation. It's a good thing I have it. "inclusion of the one means the exclusion of the other." Mr. President, I move for the adoption of this resolution.

CHAIRMAN GRAYBILL: Is there debate on Section 1%:'

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you on the motion of Mr. Johnson that when this committee does arise and report, after having under consideration Section 12 of the Legislative Article, it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk please read Section 13, subsection 1?

CLERK HANSON: "Section 13, Veto: (1) Every bill passed by the legislature shall be presented to the governor for his approval and shall become law if he neither approves nor vetoes it within 5 days while the legislature is in session or within 25 days after the legislature has

adjourned." Mr. Chairman, Section 13, subsection 1.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, instead of making the usual motion for adoption, I will make another motion, but before I do that, it is necessary that I make a brief explanation. In the present Constitution the veto power is embodied in both the Legislative and the Executive sections. You find a very short section in Article V, Section 40, in the Legislative section, pertaining to the veto; whereas, it is covered in Article 12 of Section 7 at much greater length in the present Constitution. It so happens that both the Executive and the Legislative Committees considered that they were to handle this section and both of them have prepared provisions for it. However, because it was unwise to debate it twice, an understanding has been reached between the chairmen of the two committees to the effect that the Executive Committee has greater reliance upon the section— or the yes, the section-it has been decided that if it is satisfactory with the Convention membership, that we should pass this and go on to the-and take it up when the Executive Article is being considered. However, there is one correction which should be made in this section. In the unicameral section it provides in subsection 5, "The governor shall not have the veto power over resolutions, initiative, referendum, or constitutional amendments, and appropriations for the legislature." Inadvertently, the last phrase, quote, and appropriations for the legislature unquote, was omitted from the language in the bicameral section which you will find in page 48. That phrase should be added after the word, "amendments", period, on line 22. I could go along and describethe differences between the Executive and Legislative sections as they have been prepared but I doubt that it would be a part of wisdom if the Convention decides to pass this over to the Executive Committee. So I move, in order to determine whether I should proceed or whether it will be changed, I move that the veto sections of the bicameral and unicameral Section V, Article XIII, be transferred to the Executive Committee's proposal.

CHAIRMAN GRAYBILL: Very well, Mr. Romney has moved that Section 13 of the Legislative Article pertaining to the veto be passed so that the matter can be taken up as part of the Executive Committee proposal. Any discussion?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Romney's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and it's so ordered. Will the clerk now read Section 14(1)?

CLERK SMITH: "The governor, executive officers, heads of state departments, judicial officers and such other officers as may be made subject to impeachment by law may be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law."

CHAIRMAN GRAYBILL: Members of the committee, you have before you Section 14(1). Mrs. Bates.

DELEGATE BATES: Mr. President, I move that when this committee does rise and report they have taken under consideration Section 14, that they will-1 recommend do pass. This proposal is almost identical to the original proposal as far as impeachment is concerned. In reading through the comments, this proposed section of Article V, Sections 16, 17 and 18 in an amended form. The proposed section allows the Legislature to establish impeachment procedures. The committee believes that the same body which brings the charges shall not hear the case. For this reason, the proposed section allows the Legislature to bring the charges and provides that it should select some other body to serve as the tribunal. The proposed section also requires a two-thirds vote to bring the charges and a two-thirds vote to convict. This two-thirds vote for charges is different than the original in the present Constitution. There it required a majority vote. The proposed article also allows the Legislature to establish other procedures for the removal of officers from public office for cause. In the present Constitution the Senate sits as the tribunal. In this case it would be up to the Legislature to provide for a tribunal body. And otherwise, it's identical.

CHAIRMAN GRAYBILL: Is there discussion on subsection 1 of Section 14?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you. on the motion of Mrs. Hates, that when this committee does arise and report, after having under consideration subsection 1 of Section 14, that it recommend the same be adopted. So many as are in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk please read subsection 2 of Section 14?

CLERK SMITH: "The legislature shall provide for the manner, procedure and causes for removal by impeachment and shall provide for a tribunal."

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I went on to explain the whole article before and this is the difference here is where, from the old law—

CHAIRMAN GRAYBILL: Is there discussion of subsection 2?
Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I am concerned by an apparent difference between the comments and the actual language of subsection 2. The comment says that the Legislature shali bring the charges and provides it should select some other body to serve as the tribunal. Section 2 provides that the Legislature shall provide for a tribunal but does not say that the same body which brings the charges can not also hear them. So, I'm wondering if some member of the committee would commenton that. The way I read 2, it doesn't exclude the same body that brings the charges from also hearing them. from also trying them, which I believe would be a violation of our separation of powers.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I suppose I didn't clarify that. This is true. It is anticipated that it will be another body, that they will appoint another body.

CHAIRMAN GRAYBILL: Yes, I think his question is, if that's the case, where does it say that in the language? Is that right, Mr. McNeil'!

DELEGATE McNEIL: (No audible response)

DELEGATE BATES: (Inaudible)...excuse me-the Legislature shall provide for the manner, procedure and causes and provide for the tribunal. They will set it up. It would be by law.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, but as I read Section 2, the Legislature could provide that itself would serve as the tribunal and does not require, as your comments suggest, that another body serve as a tribunal.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman.

CHAIRMAN GRAYBILL: Hold the mike down, Mr. Cate. Thank you.

DELEGATE CATE: Mr. Chairman, Mr. McNeil, the present method of impeachment in our present Constitution provides that the House will bring the impeachment charges and the Senate will act as the judge. And we tried to write this article so it would fit both bicameral and unicameral proposal, and we felt that simply leaving it to the Legislature would permit, for instance, the unicameral system to appoint perhaps the Supreme Court to hear the impeachment charges, and it would still leave in a bicameral system the power of the Legislature to put the Senate in as the tribunal. And that's the way it's written the way it is so it would fit both the bicameral and unicameral provision, and leave it up to the Legislature to determine who the tribunal would he.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I believe if you read the comments like Mr. McNeil has done, that these comments have practically the force of law when it comes to interpreting what we have done in the Constitution. So any court would read these comments and read the intent of our section on impeachment.

CHAIRMAN GRAYBILL: Is there further discussion?
Mr. McNeil.

DELEGATE McNEIL: I move to amend subsection 2, Section 14, by adding the following language: "different from the tribunal bringing the charges."

CHAIRMAN GRAYBILL: Will you send that up to the Chair? I take it, if I wrote it down correctly here, that it is the sense of Mr. McNeil's amendment to add to the end of subsection 2 a clause; so it would read: "and shall provide for a tribunal comma, different from the tribunal bringing the charges". Is there discussion of Mr. McNeil's proposed amendment?

Mr. Lynch-Joyce, excuse me.

DELEGATE JOYCE: Neil Lynch wouldn't like that, Mr. President. Mr. President, I move as a substitute motion that the amendment not-or I speak-1 rise in opposition to the proposed amendment on this ground and suggest that perhaps, even though the comments may not be part of the law, that we vote on the section on the basis as though the comments were part of the law, and leave it to Style and Drafting to come up with the language that will accomplish what the comments say the committee wanted to do. Therefore, [I] oppose the amendment on that ground only.

CHAIRMAN GRAYBILL: Very well, I take it the amendment is on Mr. McNeil's amendment. Mr. McNeil would amend subsection 2 of Section 14 so it reads as follows: "The legislature shall provide for the manner, procedure and causes for removal by impeachment and shall provide for a tribunal--" that's already in there. Then he would add, "different from the tribunal bringing the charges."

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I think that Mr. McNeil is hunting for the right target, but I don't believe he's found it. It seems to me that it's inadequate to have the House that brings the charges appoint the tribunal. I think that somewhere it should be spelled out. Under the present Constitution, of course, the Senate-it is spelled out and the Senate hears the case and if we have a bicameral Legislature, that could be followed with a bicameral situation. But if it is going to be a unicameral house, certainly the accusing house should neither be the judge, nor should it appoint the judge. It should be spelled out in this article right now. I am not prepared to say who should be handling the impeachment proceedings-perhaps the Supreme Court, perhaps a group of judges, or somebody that we would name now, but certainly not somebody that the accuser would appoint.

CHAIRMAN GRAYBILL: All right, the question still arises on Mr. McNeil's amendment which would say-he would add to this clause, to this subsection, a clause which would say that "the legislature shall provide for a tribunal different from the tribunal bringing the charges." So many as shall be in favor of Mr. McNeil's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The **Noes** have it, and so ordered. Is there further discussion on the language of the committee'!

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you now have before you on the motion of Mrs. Bates that when the committee arises and reports, after having under consideration Section 14, subsection 2, that the same shall be adopted. All those in favor of that motion, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and it's adopted. All right, will the clerk please read subsection 3?

CLERK SMITH: "Subsection 3: Impeachment can be brought only by two-thirds vote of the senate and no conviction for impeachment shall be made except by a vote of two-thirds or more of the members of the tribunal hearing the charges."

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I move that when this committee does rise and report, after having under consideration subsection 3 of Section 4, that I recommend do pass and this—Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: This is where the two-thirds vote is required of the Senate, it says "for conviction", and this is where it differs from the original passage.

CHAIRMAN GRAYBILL: I take it to be the sense of the body that Style and Drafting can deal with the word "senate", if it becomes necessary. Is there other discussion of the subsection?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you on the motion of Mrs. Bates that when this committee does arise and report, after having under consideration subsection 3 of Section 14 of the Legislative Article, that the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: The Ayes have it and it's adopted. Will the clerk read subsection 4?

CLERK SMITH: "Subsection 4: Such conviction shall only extend to removal from office and disqualification to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law." Mr. Chairman, subsection 4.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I move that when this committee does rise and report, after having under consideration subsection 4 of Section 14, they do pass.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I think we have a problem here, something I think our committee overlooked. When we drafted this article, we were proposing to call the unicameral body a "senate" and it was supposed to have been written to apply to both the bicameral and unicameral system but, of course, vote of the Senate would limit it to a bicameral system, so I would move that Section 3 be amended to provide on line 16, "vote of the impeaching body, or the body"-1'11 sit down and write this down (Inaudible).

CHAIRMAN GRAYBILL: Do I take it you relinquish the floor?

Mr. Davis.

DELEGATE DAVIS: Mr. President. Mrs. Bates, would you yield to a question, please?

DELEGATE BATES: Yes, Mr. Davis.

DELEGATE DAVIS: I am not certain of the language in Section 4 where you provide for the removal from office, any disqualification to hold or enjoy any office under the state. I don't know how far that would be in conflict with the proposed article that will be in the Bill of Rights, that after you have served your sentence that you are then reinstated to all your rights; and in the Election and Suffrage matter we passed, unless you are under sentence for a felony you're able to hold office. So, you are running head-on into an article we have already passed, perhaps. Would you please give us the benefit of your committee's thinking?

DELEGATE BATES: Floyd, you know, many things happened after this was written and I'll have to turn this over to some of the attorneys here. Somebody else want to take this?

CHAIRMAN GRAYBILL: Mr. Loendorf stood up.

DELEGATE LOENDORF: Mr. Chairman, I'll take a crack at it. Of course, this article was drafted at a time when we didn't know what would be in the General Government Article, but it seems to me there's really no conflict. Since both provisions are in the Constitution they must be interpreted together, and here we're dealing not necessarily with a crime, but with removal or disqualification to hold an office; while as I recall in the General Government provision, we're providing that conviction of a crime is an automatic disqualification to hold office during the term the man is under state supervision.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, would Mr. Loendorf yield?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I yield.

DELEGATE ARONOW: (Inaudible)...the proposed article says, "and disqualification to hold and enjoy any office under the state." Does that mean forever? Or until what time does that disqualification cease'!

DELEGATE LOENDORF: Okay. Mr. Aronow, we have to read the entire provision, or Section 14, as a unit. And subsection 2, I think, provides that the Legislature shall provide for the manner, procedure and causes for removal by impeachment. And I would think the Legislature would have discretion in this area. In this article we're not providing any particular reason for impeachment. We're leaving that open.

DELEGATE ARONOW: But the question is, Mr. Loendorf, how long does that disqualification from holding office continue? Is that forever'! For the length of the man's lifetime'! Or woman's?

DELEGATE LOENDORF: That will depend on whatever the statute implementing this provision provides.

DELEGATE ARONOW: It doesn't say as provided by law.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I would move that subsection 4 be amended by deleting the language, "and disqualification to hold and enjoy any office under the state". Mr. President, it would seem that...

CHAIRMAN GRAYBILL: Mr. Davis, I trust you'll write that up and send it up here, and go ahead and discuss it.

DELEGATE DAVIS: It would seem that you might have many more rights in this state if you were a convicted felon than upon the termination of your sentence than if you were impeached for any malfeasance or nonfeasance in office. And by deleting this I think you do, then, leave it to the statutes to implement it without making a permanent disqualification which will conflict with your other sections of our Constitution and won't hold up anyway.

CHAIRMAN GRAYBILL: Mr. Joyce

DELEGATE JOYCE: I rise in opposition to the amendment for it doesn't seem to me it follows necessarily that we are in conflict. It's simply if a man is impeached, why, then he can't hold any public office from then on out. That's what our current Constitution, as I understand it, reads. I would think that anybody who actually gets impeached is not apt to ever get elected to any office and maybe that's the way it ought to be.

CHAIRMAN GRAYBILL: Is there further discussion'? Mr. Cate, do you want us to wait a minute? Are you writing an amendment'!

DELEGATE CATE: I'll pass.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I believe the problem could be solved if I could propose an amendment to subsection 3 to delete the word "senate", in line 16 and substitute therefor the two words, quote, impeaching body end quote; and then in line 18, insert the word "different", prior to "tribunal", and if such a motion is not out of order, I will so move.

CHAIRMAN GRAYBILL: Well, it is out of order because we are on subsection 4 and we are dealing with Mr. Davis' amendment which was to drop the phrase "and disqualified-disqualification to hold and enjoy any office under the state." I think the only way we can do what you say is to reach it on reconsideration at some later time, Mr. McNeil. Is there further discussion'!

(No response)

CHAIRMAN GRAYBILL: If not, the issue is on Mr. Davis' amendment which would make subsection 4 read as follows: "Such conviction shall only extend to removal from office"—then he deletes a phrase-"but the party, whether convicted or acquitted shall also be liable to prosecution according to law." HE has deleted the phrase "and disqualification to hold and enjoy any office under the state." All those in favor of Mr. Davis' amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it unless you want a division.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it and the motion is adopted. The question now is

on subsection 4, as amended. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you on the motion of Mrs. Bates that when this committee does arise and report. after having under consideration subsection 4, as amended, of Section 14 that the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: Subsection 4 is adopted as amended. (Inaudible)...will the clerk read Section 15 of the Legislative Article? Just a moment. Please read Section 15, sub. 1, of the article.

CLERK SMITH: "Section 15, subsection 1. For the purpose of electing members of the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each legislative district shall consist of compact and contiguous territory and be so nearly equal in population as it is practicable."

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: (No audible response)

CHAIRMAN GRAYBILL: The Chair will ask Mr. Aasheim, the Chairman of the committee, to explain Section 15. There is an amendment proposed to Section 15 which goes to all of the section. So Mr. Aasheim, perhaps you should explain all of the section first and then we'll come back and take it section by section.

DELEGATE AASHEIM: Mr. Chairman, Mr. Skari will take care of this one.

CHAIRMAN GRAYBILL: All right, Mr. Skari.

DELEGATE SKARI: Mr. President, I move that when this committee does arise and report, after having had under consideration Section 15, subsection 1, of the Legislative proposal, I recommend that the same do pass. Mr. President.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: The Legislative Committee recommends single member legislative districts for both the bicameral and the unicameral Legislature. Under a bicameral system we recommend the two representative districts for one senatorial district. Our reasoning here is to justify a bicameral legislative structure. Senators and representatives should have different constituencies. In other words, the senator should present the broader view. Under the unicameral article, we recommend single member districts completely. Our rationale for single member districts is somewhat as follows.

CHAIRMAN GRAYBILL: Mr. Skari, I wonder if you'd step forward and use a mike in the row ahead of you. Mr. Rebal's mike's available there.

DELEGATE SKARI: The committee's reasoning for single member districts is as follows: it fosters personal identification between the legislator and his constituency. I think we're all aware of the problems inherent in such large multimember districts, such as Yellowstone and Cascade Counties, the long ballots, especially the primary ballots. It becomes more like an exercise in throwing darts, I think, for the voters-looking at it from the point of view of the voters. In the rural areas we have our problems also. Multimember districts lead to serious geographical representation problems. The multimember districts comprise many large counties, and this involves thousands and thousands of square miles. Also, there is no guarantee that all the representation will not be from one part of the district. Campaign expenses would bereduced. We believe that voters would be much more aware, and it would open the Legislature to those who are now barred by a lack of campaign funds. People could campaign on a person-to-person basis rather than through expensive-than an expensive campaign through the media. We feel that the person-to-person campaign is the most effective. It is the least deceptive. Also, candidates would be somewhat less dependent on party support. We feel that, also, the constituents would follow the legislative performance and voting record of one legislator far better than that of many legislators. They know exactly to whom they should address a complaint or who they should contact. It greatly reduces the burden on the voter. We feel that the most accurate method of representation is by single member districts. Minorities are not submerged and their voice drowned out. Block

voting is somewhat discouraged by this method. You vote for a candidate rather than strictly upon party lines. The committee realizes that single member districting requires the establishment of more boundary lines, but we feel that the great improvement in democratic representation is certainly worth this. In subsection 2 we will have some recommendations on how this should be done. The committee also feels that single member districts are the most desirable method of representation and that they should be constitutionally provided for. Legislators who have won reelection from multimember districts are probably not inclined to vote for smaller districts. For this reason, the committee recommends writing single member districting right into the new Constitution. Multimember districts may be declared unconstitutional, also. The federal court case in Alabama is something that we must pay some attention to. Multimember districts must therefore be considered to be on rather shaky legal ground in the future. In closing, I'd like to point out that Montana has had, from territorial days until 1965, has elected most of its Legislature, both the House and the Senate, on a single member basis. For these reasons, I move that we adopt Section 15, subsection 1.

CHAIRMAN GRAYBILL: Very well. So that everyone will understand what we are doing here, it seems to me that subsection 1 deals with single member districts as a principle. The amendment that's coming in deals with the rest of the subsections so we should debate and discuss and pass or not pass subsection 1 now. Is there discussion on subsection 1?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you, on the recommendation of Mr. Skari, that when this committee does arise, after having under consideration Section 15, subsection 1, that it recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and it's so adopted. Now, will the clerk please read-will the clerk please read subsection 2?

CLERK SMITH: "Subsection 2: Immediately upon enactment of this section and in the session preceding each census made by the authority of the United States, a committee of four citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each designate two commissioners. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Am I on? Mr. President, I move that when this committee does arise and report, after having had under consideration Section 15, subsection 2, of the Legislative proposal, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: This is the majority proposal on the establishment of a method of reapportionment. We have had considerable fun with the reapportionment article, and we spent considerable time on it. We realize that reapportionment needs to take place about every 10 years because the effects of reapportionment can greatly affect local and state political structure for a decade. Mr. President, because these sections are somewhat intermixed here-they are part of a plan-and I beg your indulgence here if I possibly go over into the other sections a bit.

CHAIRMAN GRAYBILL: Mr. Skari, do you wish the clerk to read 2, 3, 4, 5 and 6 now?

DELEGATE SKARI: Yes.

CHAIRMAN GRAYBILL: Very well, the clerk please read 3, 4, 5 and 6.

CLERK SMITH: "Subsection 3: No later than 90 days after appointment of the chairman, or following the official reporting of each federal census, whichever is later in time, the commission shall file a plan with the secretary of state." Subsection 3. "Subsection 4: Any person aggrieved by the preliminary plan shall have 30 days to file exceptions with the commission in which case the commission shall have 30 days

after the date the exceptions were filed to prepare and file a revised plan. If not exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law." Subsection 4. "Subsection 5: Any aggrieved person may file an appeal from the plan directly to the supreme court within 30 days after filing. If the appellant establishes that the final plan is contrary to law, the supreme court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict in a manner not inconsistent with such order." Subsection 5. "Subsection 6: When the supreme court has finally decided an appeal taken, the reapportionment plan shall have the force of law and districts shall be used thereafter in elections to the legislature until the next reap portionment is required." Mr. Chairman, subsection 6.

CHAIRMAN GRAYBILL: NOW, Mr. Skari, why don't you explain all of the subsections, 2, 3, 4, 5 and 6?

DELEGATE SKARI: Thank you, Mr. President. As I mentioned, the effects of reapportionment can greatly affect local and political structure for at least a decade. We feel that some consideration has to be paid to this area and how this is to be accomplished. The majority report recommends the establishment of a commission on reapportionment and redistricting which would initiate a reapportionment and redistricting plan which would essentially-which would be appointed by the legislative leadership but would be somewhat independent and autonomous. It would, in effect, bypass the Legislature from this point on. It is our aim to provide for the creation of a commission reasonably free of legislative pressure. To do this, we recommend that the Convention constitutionally delegate this power to this commission. Our reason for this is as follows: we are not infatuated with the creation of special commissions to accomplish what some people consider to be a legislative function. We question, however, whether this is entirely a legislative function. There is a definite conflict of interest here. I would point out that England, under its parliamentary system, uses apermanent boundary commission, and the only member of the Parliament on this is the somewhat depolitized speaker of the House of Commons. The redistricting and reapportioning in the sixties did place a great strain under the methods we had worked under before. The Montana experience was that in 1965 the Legislature was unable to reapportion. About a dozen bills were introduced, and not a single one was accepted. Consequently, it fell to the federal District Court to reapportion the state. In 1971 the Legislature drew up one plan which was invalid because of a 37 percent variance. After working through the regular session, one special session, the Legislature finally came up with the present plan in the second special session, which the court allowed to stand for the election of this Convention. Utah recently met in a special session soley for the purpose of reapportionment. Other states have had similar experiences in the past 15 years and among revisions in the past 15 years in new Constitutions, only two leave the traditional legislative reapportionment undisturbed. Reasons-there are several reasons why reapportionment is difficult for the Legislature. Each legislator tends to create his own district first. I think this is just a natural human trait. It's not meant as criticism. There is a great difficulty in being objective here, because one man's gerrymander can be other one's logical district. There is a certain pressure from legislators not on the committee. Legislators themselves do not particularly enjoy this job, either. Also, it takes a great deal of the Legislature's time. I would point out also that single member districts and residence requirements will greatly increase legislative difficulties in this area. Some of the features of the majority plan are as follows: there is a choice of four members by legislative leadership. The Chairman is chosen from this number and would be acceptable to them. We state that no public officials would be serving on this commission. Under this plan, the legislators and private citizens would have the same privilege of filing objections or exceptions to the commission. They could do this without expensive litigation. This could be done without going to court in a 30-day period. I would say that interest in redistricting should not be confined only to legislators, and I would suggest that we avoid a long period of wasted time. I think that experience has shown that reapportionment tends to fall ultimately to the backstop agency. In this case we are asking the commission to initiate and to carry it out completely. We suggest that this wastage of legislative time be avoided. Among states which have adopted specialized reapportioning agencies in recent years, the great majority require single member districts in both houses of the Legislature. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: In backup to the presentation, I know you were given considerable material here and we are going to have a minority report, but I want to explain again this program, as Mr. Skari has explained it so very thoroughly and very ably. You'll note that the committee-or, I want to explain to you the committee was unanimous in the matter of creating single member districts. The plan for reapportionment and districting was a little different matter. We did agree on one plan, but not in total. And there is basically two different ideas here, and this one is quite stringent in that it gives the commission pretty near autonomous power. Now, maybe you don't want that. We are amendable to any suggestion you might have, but if you'll note again what Mr. Skari told you, that this commission is created by the majority and minority floor leaders of the two houses, or they would select four. Or if there was one house, they would select four-the majority and minority floor leader-and they in turn would select a Chairman. If they couldn't the Supreme Court would select a Chairman. Then, this committee would present a plan and they could gerrymander whatever you please, but they would do it, and then any member of the Legislature could go to the commission and say, "We don't like this because you have left me out" or, "You have done something wrong over here." And we feel that the Legislature, theindividuals, probably know as much about how this state should be apportioned as maybe a commission. So, they have this right to go to the commission and say, "We don't like this," but all they can do is recommend. So this commission is pretty powerful. They can say, "We're going to adopt this no matterwhatyou say." Then, of course, in 30 days, if the Legislature doesn't make any recommendation, any aggrieved person--a citizen-can bring action in the court to say, "This is not proper. Now, that's all I wanted to say-to explain this majority proposal.

CHAIRMAN GRAYBILL: The Chair is interested in recognizing whomever wants to handle the minority report before we debate this. Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want to make that now, or do you want to hold that?

DELEGATE NUTTING: Mr. Chairman, I will mention-well, let's see--as a substitute motion, I move we adopt the minority report, and you have it on your desk. It says Plan 2 at the top. It's a single sheet. It has printed, written large letters, Plan 2. If you have it in front of you, the essential difference is not that we vary in the selection of the commission, not that we-the method that the commission is selected. In Plan 2, it merely assumes that the-where could you get a more representative body to represent you than the Legislature? So, what we do in Plan 2, we give the Legislature an opportunity to reapportion themselves. If the Legislature fails to do so, then a commission's plan would go into effect. That's essentially the only difference between the two plans. One leaves it with the commission with no recourse other than any citizen has a right to complain, but the commission's plan itself goes into effect if they do not choose to consider the recommendations. This proposal, it acts more as a backstop commission in that it's there. There are several different aspects of this which could be changed. The commission could possibly introduce their plan first, and the Legislature would have the right to offer a plan or not. But essentially the difference between the plan as you see it in the book and Plan 2 is that the Legislature does have an opportunity to examine the plan and rewrite it-write one of their own if they so choose, and the commission would be a backstop under Plan 2; under the plan as it is in the book they would write the reapportionment law.

CHAIRMAN GRAYBILL: Mr. Nutting, for the Chair's information, are you proposing Plan 2, which is Section 15, Districting and Apportionment, as a substitute for Sections 2, 3, 4, 5 and 6? or just Section 2?

DELEGATE NUTTING: Mr. Chairman, I guess my motion should be that Sections 2, 3 and 4 be stricken in their entirety and be replaced with Section 2 of the minority report, and that the other sections be renumbered consecutively. Under this condition, it still keeps the single member districts. It still gives the right of appeal to the Supreme Court and it-the commission still stays in effect in case the Supreme Court rules that it is unconstitutional-the state Supreme Court.

CHAIRMAN GRAYBILL: All right, now the Chair-Mr. Davis I am going to recognize you, but the Chair is going to have the clerkread Plan 2 so the delegates will have it read for them once. All right, I'll read it. "Section 15, Districting and Apportionment, subsection 2. In a session preceding each federal decennial census, a

reapportionment commission shall be established. The majority and minority leaders of the legislature shall each designate two commissioners. The four commissioners, within 20 days after their designation, shall select a fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman. The commission shall have the power to reapportion if the legislature fails to do so within 60 days of the first day of the first session after the census enumeration. The commission's apportionment plan shall be filed with the secretary of state. After enactment of the final plan, this commission shall be dissolved." Now, Mr. Davis.

DELEGATE DAVIS: Would Mr. Nutting yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE DAVIS: Under your plan, Mr. Nutting, there would not be a reapportionment until after the next federal census, is that correct?

DELEGATE NUTTING: Yes.

DELEGATE DAVIS: Would you yield to another question, Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE DAVIS: Is it the sense of your committee that under the majority proposal, we likewise would not have another apportionment until after the next federal census?

DELEGATE NUTTING: That is correct.

DELEGATE DAVIS: And just to be sure that I know what I'm voting on, in other words, then the size that we select here in this body or the size that the Legislature fixes themselves, will determine the size of the body and the districts. Is that correct?

DELEGATE NUTTING: I'm afraid I don't really follow you. If the commission-if the-whatever size is settled on in the Constitution would be-it would have to be reapportioned to that size, if that's what you-or if each 10 years as the census comes out, it would then be reapportioned under these rules. Am I answering your question?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: Yes, I believe so. In other words, the districts we now have are going to remain in effect until the next census, is really my question. I didn't ask it very well, but I think it's important we be clear on that.

DELEGATE NUTTING: Oh-of course, we will be changing from multimember districts to single member districts if we accept this proposal; therefore, there would have to be a reapportionment to get to the single member districts.

CHAIRMAN GRAYBILL: Now, so that everyone may understand this, if the Chair understands it, subsections 15-2, 3 and 4 of the majority report set forth a method whereby acommissionis appointed, and in subsection 4 it says, the commission shall have 30 days after the date the exceptions were filed. In other words, the commission's filed its thing with the Secretary of State, then there shall be 30 days after that within which exceptions are filed, and then the commission shall consider the exceptions, and may file a revised plan. But the point is, on line 12, on page 8, if the commission does not revise it, then the commission plan-or in any event, whatever the commission does, the commission plan shall be final and have the force of law. Now, Plan 2 sets up a commission in a similar fashion which reports, I believe, to the Secretary of State, but in any event the commission will have the power to reapportion if the Legislature fails to do so within 60 days of the first day of the session following the census enumeration. So, the point is, that if the Legislature wants to reapportion, it can during the first 60 days of its first session after the census. And if it doesn't, then the commission's plan is automatic. The question is whether or not to let the commission reapportion or whether to let the commission reapportion only if the Legislature fails to reapportion. Now, Mr. Nutting and Mr. Skari, if I haven't fairly stated your positions, please correct me, but I think it's important that we get this straight. They both seem to benodding yes. Is that right, Mr. Skari?

Mr. Skari.

DELEGATE SKARI: I want to point out there on line 7 of the majority proposal, we do allow for reapportionment following the adoption of this Constitution.

CHAIRMAN GRAYBILL: I see. All right, that's another further refinement. **Now,** is there

debate or discussion on the reapportionment problem?

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, if I understand it correctly then, under the minority proposal there'd be a redistricting in 1980. And under the majority proposal there'd be a redistricting, assuming that the Constitution is approved, in 1973. Is that right?

CHAIRMAN GRAYBILL: Except that Mr. Nutting already explained that even under theirs, if you go to single member districts, there'll be one in 1973 to accomplish that. Isn't that right, Mr. Nutting?

DELEGATE NUTTING: Sorry, Mr. Chairman, I missed the...

CHAIRMAN GRAYBILL: In other words, even under the minority proposal, if we go to single member districts, there'll be a reapportionment to accomplish that in 1973?

DELEGATE NUTTING: That is correct.

CHAIRMAN GRAYBILL: So there's going to be one in 1973 under either plan, Mr. Arness.

Mr. Garlington.

DELEGATE GARLINGTON: In looking at Plan 2 here, I am puzzled by what would occur if the Legislature makes some kind of redistricting and reapportionment plan within 60 days, but if it is not any more successful than the one was that was attacked in the federal court, it would derail the commission and leave the whole thing up to the federal court. And I suggest this as a delinquency in the plan.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in support of the majority subsection. As Mr. Nutting pointed out, the Legislature has a great and vast knowledge of apportionment and redistricting. I feel that this can be informally handed on very well to the commission, who would accomplish this act. I do not think that the Legislature is psychologically fitted to reapportion itself. I think it's too lengthy a program for them to undertake for something that should be accomplished by a nonpartisan, or at least impartial group.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I have a proposed amendment to Section 2. I see two things wrong with both the amended-both the majority and minority reports. First of all, the majority report does not take into consideration the possibility of the existence in the future of minority parties or independents. My amendment, which would provide that the party leadership of any political party holding at least 20 percent of the seats in the Legislature shall appoint two members to the commission, would give recognition to independents and to the possibility of minority parties existing in the future. Secondly, the majority and minority proposals tie us into the terms, "majority leader" and "minority leader." In other words. we're mandating by the Constitution that there should be such officers in the Legislature and I think that's something that is appropriately left up to the Legislature, to determine the titles and them&hods ofleadership. Thirdly, in the minority plan, Tom Harrison, who is the majority leader of the House, said this-he said, "If you give us that type of a plan, I just won't bring the reapportionment plan up for 60 days and then I'll go pick—I'll go with the minority leader and go pick the guy that I want to sit on the plan so that he does what I want him to do." and so I think that the minority plan has that weakness. And so I would move to amend Section 2 to provide as follows:

CHAIRMAN GRAYBILL: All right. now just a minute, Mr. Cate. Let me understand what you're doing. I have it here. but at the moment the situation is that the majority report has been moved, Mr. Nutting hns proposed a substitute, motion which is Plan 2, and do you want to amend the substitute motion, is that right'!

DELEGATE CATE: I'll move to amend thr substitute motion.

CHAIRMAN GRAYBILL: By striking everything after the section and putting in yours, is that right?

DELEGATE CATE: Right.

CHAIRMAN GRAYBILL: Okay.

DELEGATE CATE: And would you like to have the clerk read it, or do you want me to read it?

CHAIRMAN GRAYBILL: The clerk can

read it, I think. It's this-it's-I have it-just a minute until I make a note on it here.

DELEGATE CATE: I might also add that I have additional copies here.

CHAIRMAN GRAYBILL: Have you got enough to put out?

DELEGATE CATE: I've got about 25 of them.

CHAIRMAN GRAYBILL: Well, let's pass them out for some of them. Now, Mr. Clerk. The clerk will read Mr. Cate's amendment to the substitute motion of Mr. Nutting.

CLERK SMITH: "Mr. President, I move to amend substitute Section 15, subsection 2 through and including 6—page 28-subsection 6—page 28 and 29 of the Legislative Committee proposal by deleting these subsections and inserting in lieu thereof the following language: "subsection 2: Immediately upon enactment of this section and following each decennial census there shall be a reapportionment commission established by the legislature in the following manner. The party leadership of any political party holding at least 20 percent of the seats in the legislature shall each appoint two members to this commission. These members shall choose an additional member who shall act as chairman. If the members are unable to agree on a chairman, a majority of the supreme court shall appoint the same. No member of the commission shall be an elected official of the state of Montana. The commission shall draw up a plan for reapportioning and redistricting legislative and congressional districts and submit this plan to the legislature at the next session after the decennial census figures are available. Within 30 days after submission to it, the legislature shall return the plan to the commission with its recommendations for change and the commission shall, within 30 days thereafter, file with the secretary of state its final plan and the same shall become law. The supreme court of Montana shall have original jurisdiction to review commission plans. An action to review a plan must be brought within 60 days after it is filed with the secretary of state. After enactment of a valid plan this commission shall be dissolved until the next decennial census.' Signed, Cate."

CHAIRMAN GRAYBILL: Very well, if the Chair may summarize-as I understand it, we are now debating Mr. Cate's amendment to the substitute motion. Now, the point of Mr. Cate's amendment is that part of the reapportionment commission will be made up of persons nominated by any political party that holds at least 20 percent of the seats, so that it gives minority parties some representation. This commission then submits its plan to the Legislature; the Legislature has 30 days to make suggestions and thereafter the commission shall file its final plan after it's considered the legislators subject— Legislature's suggestions. So, again, the commission files the final plan here. Now, we're debating Mr. Cate's amendment. Is there discussion?

Mr. Joyce.

DELEGATE JOYCE: I don't know if this confuses the issue, but I just raise this one point. Under all three of the amendments that are under discussion there is this procedure about giving the Supreme Court original jurisdiction in the matter, and I submit to the Convention that that just will not work, and for this reason. After any plan, whether it's adopted by a commission or the Legislature and has the force and effect of law, that plan must meet the test of the 14th Amendment to the federal Constitution. Therefore, at any time we cannot put any statute of limitations on anybody challenging that particular plan. So, therefore, you cannot divest the federal courts ofjurisdiction and the United States Supreme Court has set up this procedure that whenever there is a challenge to a particular apportionment plan that it's referred to a three judge federal court. So, therefore, I think inherent in all these plans is this idea of referring it to the Supreme Court. It is superfluous and unnecessary and, as a matter of fact, a waste of time. Because assuming, for example, whichever plan may be adopted either by the Legislature or by a commission, and it's then sent over to the Supreme Court and the Supreme Court unanimously approves the thing, there's nothing to stop anyone from the very next week bringing an action in the federal court and saying, "Notwithstanding the learned members of the Montana Supreme Court having approved this, I still believe that it violates the 14th Amendment to the federal Constitution." And the federal court will then take jurisdiction in the matter; and so involving the Supreme Court in it is not meritorious at all. And I just point that out so that if we were to pass Mr. Cate's motion as written, that that particular portion of it ought to come out, but I'm not prepared to make an amendment at this time. I just want to point that out to the assembly.

CHAIRMAN GKAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman from Yellowstone, Mr. Cate, yield to a question?

DELEGATE CATE: (No audible response)

DELEGATE SCHILTZ: Mr. Cate, **if' I** understand your proposal, the census would be, in say, 1980. The appointment of the commission by the Legislature would be the next year, 1981. The enactment by the Legislature would be the third year, 1982; and the reapportionment would go into effect in 1984. Is that correct?

DELEGATE CATE: That's not correct. That's not the intent of the plan.

DELEGATE SCHILTZ: Would you explain why that isn't so?

DELEGATE CATE: If you'd tell me what station you're listening to. (Laughter)

DELEGATE SCHILTZ: It's KBBL—is that yours, Betty? (Laughter)

DELEGATE CATE: Okay

CHAIRMAN GRAYBILL: The problem on the noise is that when certain of the mikes are picked up, they pick up a radio station, and that would be all right, but it's the wrong one. (Laughter) But we're going to continue to work on it, so just talk loud.

Mr. Cate.

DELEGATE CATE: Mr. Schiltz, it is the intent of this amendment that after a decennial census that this commission would be appointed and would, at the next session of the Legislature, submit to them a plan for their consideration and suggestion, anti that plan. within 30 days thereafter, would be filed with the Secretary of State and become law, and it would take place in the year 1981 —or 1981 (Inaudible)...it would take place in that year—all in that year. With regards to the comments that Mr. Joyce made about the Supreme Court of Montana having original jurisdiction, there were several thoughts on this. Wc thought it appropriate perhaps to specifically provide for a place of review for the Montana citizen. Under the present system there is a race to the courthouse. Tom Towe, who is one of the attorneys on the present case which is in the ninth circuit, indicated that he was racing with another group to see who could get to court first-be to federal court or the other group to state court; because if it's in the state court, the federal court won't look at it until after the state court has had the opportunity to review it. And it's thought that perhaps with our Supreme Court of Montana reviewing it, we might avoid the federal court coming in and dictating the terms of our reapportionment here in Montana. And we thought by providing for original jurisdiction in the Supreme Court that we might be preventing the interference of federal courts; and if our Supreme Court found it was unconstitutional and sent it back to the commission, this would be less expensive than having to go to San Francisco, or having a three-man court hearing the situation and having outside interests—by that I mean three federal courts outside of Montana—three federal judges—deciding how our reapportionment should be. But there is some validity to the statement that it is superfluous because utlimately the question could be reviewed by a three-man federal court, and might well in any case be. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I have a question which I think is relative to each of the three proposals that we now have and I don't know who to ask. Who—which person should I ask?

CHAIRMAN GRAYBILL: Well, you ask your question and I'll have a better idea, Mrs. Bowman. (Laughter)

DELEGATE BOWMAN: Okay, my question is that the other day when we were discussing the General Government Article we agreed that political parties might not be in existence in 80 years, and therefore, we deleted reference to them. Now, it appears to me that all three of these proposals make reference to minority and majority party in the Legislature and my question is, is this contradictory to what we did the other day?

CHAIRMAN GRAYBILL: Mr. Cate, have you—could you speak to that?

DELEGATE CATE: Mr. Chairman, I didn't hear.

CHAIRMAN GRAYBILL: Mr. Cate, she's concerned that we may not have political parties or we may have different political situation in the future, and your recommendation discusses political parties. Have you anything to say about that?

DELEGATE BOWMAN: Party leadership, I guess, is what it says. No, it says—

CHAIRMAN GRAYHILL: Mr. Cate.

DELEGATE CATE: Certainly, I think that this amendment—Plan 3, we'll call it—does provide more flexibility in that area. It doesn't tie it down to the majority and minority leadership of just two parties. It allows the party leadership of any political party, and I don't foresee or anticipate the disappearance of political parties. I think they're—even though this has turned out to be a rather nonpartisan body here, I do believe that the parties are still alive and very viable. But I did feel, Mrs. Bowman, that it was necessary to recognize the possibility of third or fourth parties, and I haven't answered your question—

DELEGATE BOWMAN: No, you haven't. (Laughter)

DELEGATE CATE: —which is typical lawyer talk—but I would probably answer it in this way. I don't foresee the disappearance of political parties. I think you are going to have political parties for the foreseeable future and that those political parties are going to be organized and have leadership.

CHAIRMAN GRAYBILL: Mr. Nutting:. do you care to comment?

DELEGATE NUTTING: Mr. Chairman. I think the only thing-problem with all of usis that we feel that there-in any reapportionment there's real problems with possibly gerrymandering of districts and that if we can keep the membership of the commission as relatively nonpartisan as we can, and we have a lot of problems trying to arrive at how to do that. Most any other suggestion that we came up with we were unable to arrive at a conclusion as to how to do it and this was the method accepted by most of' us in all plans.

CHAIRMAN GRAYBILL: Mr. Skari, do you care to comment'?

DELEGATE SKARI: Mr. President. Well, Mrs. Bowman, wc have to anchor the choice of' an appointing authority to someone or something. We did look at a lot of plans and we felt this was the best choice. This was the least vague and the least fuzzy. We realize there are problems when we look that far into the future, but we specified thr majority and minority leaders to achieve a certain partisanship on the commission to get this effect. The impartiality, we hope to get out of the Chairman whose vote would be the key vote here, but we felt we had to anchor this appointing authority to something.

CHAIRMAN GRAYHILL: Mr. James.

DELEGATE JAMES: Will Mr. Cate yield, Mr. Chairman?

CHAIRMAN GRAYHILL: Mr. Cate?

DELEGATE CATE: I would.

DELEGATE JAMES: Yes, under your plan here, would it not be possible, should we have a third party, for two minority parties to control the commission by having slightly over 20 percent. They'd have four votes and the majority party would have two votes, isn't that right?

DELEGATE CATE: The majority party—if there were three political parties, you feel that two minorities could control?

DELEGATE JAMES: Yes.

DELEGATE CATE: They could appoint two members apiece but the problem with this, Mr. James, was this—and the reason that we felt we had to include and make provision for party leadership or recognition of parties was that Mr. Taylor, who is the present geographical redistricter in Montana from the university—the guy that's been doing it-said that he could gerrymander either political party out of office. He said he could change the whole complexure [sic] of the Legislature just by gerrymandering unless we provided some method of representation of political parties.

DELEGATE JAMES: Yes, but isn't it unrealistic to have the two minority parties control the redistricting if the majority is, say, 55 percent, 45 percent could change the entire complexion, couldn't they?

DELEGATE CATE: There is that possibility. Maybe that figure should be changed to 30 percent.

DELEGATE JAMES: Well. isn't this all the more reason why we should go back to the committee's recommendation?

DELEGATE CATE: That just the majority and minority leaders do it?

DELEGATE JAMES: Yes.

DELEGATE CATE: I don't think so because that does not—(Inaudible).

DELEGATE JAMES: Well, I do think so. I think we're running around talking about parliament and everything else here, rather than the realities of the situation.

DELEGATE CATE: Well, I feel that even in this body that there is a third party and that is the Independents, and that if we were redistricting here that they ought to have a voice in what's being done, and that's all I'm asking for is a voice.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Cate another question, please?

CHAIRMAN GRAYHILL: Mr. Cate, will you yield?

DELEGATE CATE: Certainly.

DELEGATE BOWMAN: Mr. Cate, suppose for fun we pretend like we are the Legislature in session now, a nonpartisan body about to appoint the reapportionment commission. How would you suggest that wc go about it?

DELEGATE CATE: How would I suggest we go about it if we were the Legislature? Us Democrats would take over. (Laughter)

DELEGATE BOWMAN: (Inaudible).... nonpartisan.

DELEGATE CATE: Well, that's hypothetical. I would suggest that [there] be party caucuses of the Independents, if they had 20 percent representation here, the Republican party and the Democratic party and that the party leadership of that caucus select two people, probably former legislators who had some knowledge of apportionment problems—two people to represent their party on this commission.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I feel that we are wasting a lot of time on nonoperative alternate proposals. Under Mr. Cate's plan, one party could dominate all of the members on the commission; he says you got to have at least 20 percent. I have seen the-or I have read about the Legislature when they were less than 2 0 percent members of one political party, so then you would have the majority and if you had three or four different political parties, each of them containing 10 percent or even 15 percent of the vote, they would have no say-so, as I understand Mr. Cate's proposal. They would have no say-x whatsoever in appointing the commission. The other proposal. the minority proposal, doesn't allow any reapportionment till after 1980, so we'd have no reapportionment regardless of what they wad into it. That is, unless they put in something [but] what's on the printed page. It says, "In the session preceding each federal decennial census the reapportionment commission shall be established." Starting as now, it'll be 1980 under the present rule of census-taking before any reapportionment commission will be established. So it is not workable and the majority report has it that immediately after this we will have a reapportionment commission set up and then after each census-taking after that. we will set up one. It allows the various different ways to get the people participation in the reapportionment, and it does not allow this dilatory method as in Plan Number 2. So. I think it's about time to start voting and use that quality that Representative Garlington proposed here the other day: and let's get some voting done and settle down to a little sort of reasonable thinking.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, Mr. Harlow brought up one of my points and I agree, I don't think that in the minority report we would have reapportionment until after the decennial with the language we have here. And then I'd like to point out in Mr. Cate's second proposal that he has provided for this being done in the first paragraph after the enactment of' this section-in other words. the reapportionment—but then in setting up his commission and making it active, he left that part out. And I'm sure Mr. Cate intended that he would have something in there, maybe between lines three and four, that would say something to thr effect that after the enactment of this section and at the next session after the decennial census figures are available. Would Mr. Cate yield to a question on that?

DELEGATE CATE: I would so amend it. I think you're right. It probably should provide—I was trying to cut down on the language, and in the second paragraph in the fourth line. after thr words "the decennial census figures are avail-

able," should be added the words "or upon enactment of this-or upon enactment of this section period". Those four words, or five words should be added-"upon enactment of this section", and I think that would then read right. I think that Style and Drafting could probably take care of that little problem, with those words attached on there to show the true intent.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think Style and Drafting can take care of it right now by defeating this proposed amendment. My problem with this amendment is that no matter what Mr. Cate's personal intent is, I cannot read this amendment without it requiring at least 3 years to put a reapportionment into effect and more, if we should have something other than annual sessions. Besides that, in the last line, I fail to see in both this and Plan Number 2 how a committee can enact any kind of a plan that must be done by the Legislature.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'd like to speak in opposition to Mr. Cate's plan. Later, I would like to submit another plan if it comes to that. But, for one thing we are putting far too much statutory measures into this, and I feel that by deleting the parts that call for a specific structure, perhaps by saying, "in the session preceding each federal decennial census a reapportionment commission shall be established by law", would be far better. And after we vote on this one, this-1 hope that you will vote-do not pass.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, there was a time when I thought that I was a flaming liberal, but now I've found that I am quite conservative. I still believe in representative government. I think that the tendency in this Convention to delegate authority to commissions and boards and one thing and another, is sapping a+ the roots of representative government and I dislike it. I think that the closest thing we have to democracy is a representative government and our legislators, whether you have them in a bicameral or a unicameral government, are elected by the people. They are the closest force in government to the mass of the electorate that exists. I think that they should be the first, the initial force in providing forreapportionment. I do not think under any of these plans, including the minority program that I signed for, that delegating-delegation by the two majority and minority parties or in Mr. Cate's plan, all-a kettleful of parties, each one of 'em delegating authority to two members of a commission, is going to get away from partisanship or gerrymandering. People who are elected or named to commissions by political leaders are likely tc have the same connection and faith and direction as the leaders who appointed them. So you are not getting away from it. I think that Mr. Cate's plan suffers from the points that were brought out by various speakers. I think that the minority plan suffers from the fact that no provision is made in verbiage for the next reapportionment. Now that next reapportionment is going to take place after this Convention concludes its deliberations and settles upon districts, be it either bicameral or unicameral. You're going to have to have reapportionment. You're-in the material that we find in these proposals there's a number of senators or a number of representatives are listed and a number of delegates or a number of representatives of one type or another. Some say 30 and 40, or 40 and 80; some say 50 and 100, and so forth, soit'sinevitable that we're going to have some redistricting right after this Convention is completed and the next Legislature comes along. Who's going to do that? The next Legislature is going to have to set the groundwork for it. And as far as gerrymandering is concerned, you're going to have gerrymandering anyway unless you keep the focus of publicity upon it all the time, whoever is doing it. I submit that if you follow the majority program through to its conclusion and everything--every maneuver and the mechanism afforded is followed to its logical conclusion that you could have 200 days in the preparation of the apportionment, and you count them-just read through it. You can dig it out. What's wrong with giving the Legislature 60 days to try to apportion, and then if you can't, why, then it would go to the commission. Our gentleman, Mr. Garlington from Missoula, he says, "No". He says, "There's no way to do that; it will have to go to court." I submit that no matter what happens you are going to end up in the court unless somebody is able to prepare a plan of apportionment nonpareil, and I am a little bit dubious about the ability of people to accomplish that. I call your attention to the recent situation in Minnesota, where we have a nonpartisan bicameral Legislature. They failed in apportionment, unlike in Montana this last time. The court stepped in, just like the court steps in in Montana. They said, "It's okay, you met our

plans", no matter how grudgingly that was made. But in Minnesota the federal court stepped in and they said, "No, your plan is no good. It won't conform to the dictates of the 14th Amendment and the Supreme Court U. case", so what are we going to do? We will set up a Legislature for you. So they apportioned Minnesota 35 senators and 105 representatives in the Legislature. The court did it, just like the court okayed the plan of the Montana Legislature in '71. But, do you know what happens then? The court deal is still unfinished. The Minnesota Senate has appealed the decision to the United States Supreme Court. So, you're probably going to have to end up in the Supreme Court of the United States. I submit that the minority plan, with a little bit of axle grease, is something that can be made to work.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I am a member of the committee who supports the majority proposal that as given by Mr. Skari. We argued this matter off and on for 17 or 18 days up there in the fourth floor behind this chamber, and subcommittees met until late, very late at night. I have one objection I would like to point out to the two minority reports. Both of them refer to a decennial census. We have been advised that there is a strong possibility that the Bureau of Census will go to a quintennial census. If this is true, both minority reports will be illegal, perhaps before they have even been adopted by the people next June. Paragraph 2 of the majority report, which says, "immediately upon enactment of this section and in the session preceding each census"—this fatal error is missing from the majority report. Finally, I subscribe to the views of Mr. Garlington, Delegate J.C. Garlington. I find myself, Mr. Chairman, surrounded, except on my left, by Republicans. My friend, Otto Habedank, before me; my learned brother, Marshall, behind me; my dear friend and committeemate, John Leuthold, to my right. There is no way, as a member of a legislative body, that I could ever, ever redistrict these people out of a job. Therefore, I support the majority proposal.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole stand in recess for 15 minutes.

CHAIRMAN GRAYBILL: Motion is to recess until 3:15 p.m. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: Carried.

(Committee recessed at 3:00 p.m.—reconvened at 3:20 p.m.)

CHAIRMAN GRAYBILL: The Convention will be in session. We're considering Mr. Cate's amendment to substitute amendment of Mr. Nutting to Sections 2, 3 and 4 of Article XV.

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, during this recess, I have composed a revised paragraph for Section 2, which I would think could be substituted for the present 2, 3, 4, 5 and 6 paragraphs in the majority proposal, the—

CHAIRMAN GRAYBILL: Well, Mr. Garlington, you're behind Mr. Mahoney, Mrs. Bates, and one other, but I'll be glad to put you on the list. (Laughter) In other words, we've got the amendment and we've got the substitute and we're full up until we dispose of one or two of the present plans. Mr. Cate, do you want to close?

DELEGATE CATE: I'm going to move to withdraw my amendment. I'm a little bit disappointed in the attitude of some delegates. All I'm trying to do is do what's best for my people and it's fine to criticize someone else's work but I think when you do that, you ought to make suggestions for its improvement, rather than just criticize it, and I've tried—I worked for 2 weeks on the reapportionment subcommittee—and tried to put together something that I thought would be the best thing to work under the system that we have in Montana with our Legislature and without cluttering up the Constitution with a lot of detail. But, apparently, it's not acceptable to a great majority here and I think that some of the other motions that some of the other delegates desire to make might have more acceptability and therefore I would withdraw my motion, Plan Number 3.

CHAIRMAN GRAYBILL: I understand, that Mr. Cate, you have withdrawn your proposal. Is that right?

DELEGATE CATE: (Inaudible response)

CHAIRMAN GRAYBILL: Very well, then I'll recognize Mrs. Bates, who's next on the list.

DELEGATE BATES: Mr. Chairman, I move for a substitute motion, and it will read—I think you have it up there—would you prefer reading it, or do you want me to?

CHAIRMAN GRAYRILL: The clerk will read your substitute motion.

CLERK SMITH: "Subsection 2. Immediately upon enactment of the section and in the session preceding each federal decennial census, a reapportionment commission shall be established by law. The commission will have the power to reapportion and must present a plan to the legislature within 60 days of the first day of the first session"—and—excuse me—"and must present a plan to the legislature, if the legislature fails to act within 60 days of the first day of the first session after the census enumeration. The commission's apportionment plan shall be filed with the secretary of state and become law. After enactment of the final plan, this commission shall be dissolved."

DELEGATE HATES: Thank you.

CHAIRMAN GRAYKILL: May I have the plan, Mr. Clerk? Mrs. Bates, before you discuss it, may I put it in reference to the other two? Mrs. Bates' plan takes the central section-the central sentence out of Plan 2 and simply says that the commission will be established by law and that then the commission will reapportion and present the plan to the Legislature, and if the Legislature fails to act within 60 days, then the commission's plan will go into effect. But she has eliminated the central section of Plan 2—central sentence of Plan 2. Plan 2, you'll remember, calls upon the commission to present its plan to the Legislature and if the Legislature acts within 60 days, the" its plan becomes effective. And Plan 1, or the majority proposal. simply sets up a commission which reapportions. Mrs. Bates.

DELEGATE BATES: Thank you, Mr. President. you did a very good job of explaining. I'll sit down.

CHAIRMAN GRAYBILL: Is there any more discussion?

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I would like to move to amend all of Section 15—and I have it written out. I'll be glad to send it up to the clerk if you'd like to have it.

CHAIRMAN GRAYBILL: Well, Mr. Nutting—or—Mr. Choate, let's see. Mr. Nutting has moved a substitute motion and Mrs. Bates has amended the substitute motion. So, you're in the same position you were—or Mrs. Bates was with Mr. Cate. Until we get rid of' one of the motions. there's no room for another amendment. You certainly may tell what you will do, however.

DELEGATE: CHOATE: All right. I'd be glad to read it. This is patterned after the new article that was—or new section that was written into the North Dakota new Constitution. It reads as follows: "A legislative reapportionment commission, consisting of electors appointed by the district judges in a number and manner as shall be established by the district judges, shall fix the number of legislators and divide the state into legislative districts of compact and contiguous territory. The commission shall guarantee as nearly as practical that every voter is equal to every other voter in the state in the casting of ballots for legislative candidates. The commission shall prescribe its own procedures. Upon agreement by a majority of its members, the commission shall file its reapportionment plan with the secretary of' state and it shall become effective 60 days after the date of filing; provided, the supreme court in its exercise of original jurisdiction may review any plan adopted by thecommission. If the plan fails to meet state or federal constitutional requirements, the court shall direct the commission to revise the plan within a stated time." In other words, it would leave it up to the courts to determine the commission, and it could be reviewed by the Supreme Court, and it would take it out of legislative hands and the matter of partisanship and all that. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, would Mr. Garlington yield to a question'?

CHAIRMAN GRAYBILL: Mr. Garlington?

DELEGATE GARLINGTON: Yes. I would.

DELEGATE HARPER: Mr. Garlington, in view of the fact that we need to have all kinds of information before us before we can vote intelligently on whether to adopt the amendment before us now, without putting your proposal in the form of amendment, would you enlighten us as

to what kind of thing you would propose were you to propose it later on? (Laughter)

DELEGATE GARLINGTON: I would be very glad to. My proposal is to delete Sections 3, 4, 5 and 6 entirely; to rewrite Section 2 to say in substance that, upon enactment of the new Constitution, and at the time of the succeeding census, the legislative districts should be reapportioned and adjusted as necessary to conform with the requirement of Section 1, which we have already passed, which provides that each district shall consist of compact and contiguous territory and be so nearly equal in population as is practical. And then just to say that the means of so doing should be by an impartial commission established and functioning as provided by law, and leave all of this material to be worked out as the future unfolds.

DELEGATE HARPER: Mr. Garlington, I appreciate your doing that.

CHAIRMAN GRAYBILL: The Chair is summarizing these so we can understand what we're doing. Mr. Schiltz, would you care to outline your plan now?

DELEGATE SCHILTZ: Mr Chairman, I was just tidying up. It was my impression that on Plan 2, and so far as I could tell from what I heard of Mrs. Bates' proposal, that there was no provision made for the reapportionment immediately following the adoption of this section, if it were adopted, and so I was merely saying that, in the sessions following the adoption of this section of the Constitution and preceding each decennial census; it only obtains if one of these proposals gets through, I guess. I don't want to propose it for everyone's proposal, is about the size of it.

CHAIRMAN GRAYBILL: Mr. Mahoney, do you want to—is Mr. Mahoney—do you want to explain yours?

DELEGATE MAHONEY: Well, Mr. President, I am going to try and move to amend the majority report on page 8, and all I'm trying to do is to take the word, "90", and reduce to "60"; then go down, after the word, "shall", in line 6, strike the rest of that section—or, that line—and insert the following: "The commission shall draw up a plan to reapportion the legislature which shall be submitted to the legislature no later than the 10th day of the session. The legislature may apportion itself or, if it should fail, then the commission shall study and apportion the legislature." In other words, I'm leaving—letting us—first let the Legislature try it after they've got all the facts from the apportionment commission and if they should not do it, then that commission shall apportion the Legislature. I'm just trying to let the Legislature have a chance.

CHAIRMAN GRAYBILL: Very well. Now, it appears to the Chair that we have three possibilities only—three main possibilities—and then we can clean up the language. One is the majority report which sets up a commission and the commission reapportions, and it tells how. The second is the minority report, which sets up a commission and the commission reapportions and files its plan but the Legislature has, during its first 60 days, the right to reapportion and if it can do so, the Legislature reapportions. And then, Number 3, Mrs. Bates' plan, is very similar to that. It simply sets up a commission—it simply lets the Legislature set up the commission by law. In other words, it does away with the complicated method of choosing the commission in Plan 2, and it says again that the Legislature must be presented with a plan and if it fails to act, why it becomes law. So, really, what we're trying to decide is between letting the commission alone apportion, or let the commission apportion, turn it over to the Legislature and give the Legislature a chance to apportion, and if it fails, then the commission apportion. Now, that's the upshot of what we're up against here. We're on Mrs. Bates' motion which really has the effect of simplifying Plan 2, but not greatly changing the substance of it. If there's—

Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. President, I would like to speak in opposition to the amendment offered by Mrs. Bates. First of all, it does say that a commission may be established as provided by law. Of the 20 states that now have reapportionment commissions, not one of them say "as may be provided by law." The Constitution establishes how the commission is to be formulated. I think we, too, should do this. First of all, if you leave it up to the Legislature, in the proposal offered by Mrs. Bates, they may decide that they may have a commission of 10 legislators to do it. So, in fact, you have not created a commission; you have left the reapportioning to the Legislature which is not what it was specifically stated in the intent and purpose of creating a commission. Second of all, I do not believe that if the Legislature cannot agree on the methods of

apportioning:. they're probably not going to be able to agree on the method of appointing a reapportioning committee. Of 20 states that have them, there are 15 different ways to appoint an apportioning committee. You can have the judges do it; you can have the Governor do it; you can have the leaders of the party do it. This isn't the question. It's whether or not you're going to have a commission and whether or not you're going to pass the buck back to the Legislature to set up this commission. I am a bit confused because all of these proposals. in essence, have good points. I am in agreement that probably the majority report as it is here could he amended to where it would all fit in one section and where you might give the Legislature a bit of a chance to participate. I submit that if you do not have a commission, if you leave it to the Legislature, you will in essence have a commission which consists of the Supreme Court. This is what happened in Minnesota because they did not have a commission. Of the 20 states that have commissions now, 19 of them have submitted plans for reapportionment to the Supreme Court. Only one of these has not-has been unconstitutional. Of 14 states that have Legislatures that have submitted their own proposals since 1965, 12 of them have not failed to meet the one man, one vote requirement. I think the commission is necessary, the point being now, I think we should decide whether we want a commission to initiate or whether we want the commission to be a backstop agency. In the majority report you have the commission initiating the plan; in the minority report you have it as the backstop agency. I have another plan and if we get rid of any of these other plans, then I will offer my other plan (Laughter) and hopefully we will be able to proceed from there.

CHAIRMAN GRAYBILL: Very well, the issue, I think, is on Mrs. Bates' substitute-or amendment to Plan 2. The purpose now ot deciding on Mrs. Bates' plan is to decide whether or not you want the commission appointed by law, or whether or not you want to go back to Plan 2 which has the commission appointed in the manner set forth in Plan 2. So, Mrs. Bates, do you want to close?

DELEGATE HATES: I would like to, Mr. Chairman. Thank you. In regards to deleting the part where the commission is structured. many—in looking over the constitutions of other states, each state seems to do this differently-some with judges, some with elected officials, some with the Executive Department, and so there is no set means. As far as giving the Legislature an opportunity to reapportion themselves, the majority—the states within the United States-the majority of them did reapportion themselves between the years of 1963 and 1970, and most of these have not been overturned. And I think the Legislature would have a little bit better understanding perhaps than even a commission, but by having this backstop commission to do the job if they fail to do so, I'm sure would simplify it. In regards to a question that was asked, the opening statement says that "upon enactment of this section and in the sessions preceding each decennial census", so it would take care of now and later. Thank you.

CHAIRMAN GRAYBILL: Very well, the question is on Mrs. Rates' amendment to the substitute motion. It reads: "Upon the enactment of this section and in the session preceding each federal decennial census, a reapportionment commission shall be established hy law." That's the main point of her motion-it's to be established by law. Then, it goes on and says-it strikes the next two sentences of Plan 2 and it says: "The commission will have the power to reapportion and must present a plan to the legislature. If the legislature fails to act within 60 days after the first day of the first session after census enumeration, the commission's apportionment plan will be filed with the secretary of state and become law. After enactment of the final plan, this commission will be dissolved." So many as shall be in favor of Mrs. Bates' amendment. please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYHILL: The Noes have it and the amendment fails. All right, now we're considering the minority report, Plan 2, which provides-and now the issue is clearly drawn between the majority and minority reports and the main issue, although there's a lot of difference in language. is that in the minority report, the commission will have the power to reapportion if the Legislature fails to do so within 60 days, so that the Legislature may, within the first 60 days that it's in session after the census, the Legislature may, in fact, itself reapportion. Underthemajority plan, the commission reapportions. So the issue is now on the minority plan of Mr. Nutting that Section 15 be amended and so, Mr. Nutting. would you like to close?

DELEGATE **NUTTING:** Mr. Chairman, I don't plan on closing. I would like to say that this Plan 2 has done exactly what we hoped it would do. In that it has brought this issue squarely before the house and there certainly is no shortage of plans, so I will withdraw Plan 2 from consideration.

CHAIRMAN GRAYBILL: Very well, Plan 2 is withdrawn. Now we're back on Plan 1. Plan 1 is the majority report.

Mr. Garlington.

DELEGATE GARLINGTON: I would like to make a motion to amend Plan 1 by substituting therefor the amendment which I wrote out and which has now been placed upon your desk there.

CHAIRMAN GRAYBILL: Very well, Mr. Garlington will amend Plan 1. Just a minute here. This amendment would strike from Section 16—15, Sections 2, 3, 4, 5 and 6. So it strikes everything after Section 1. Section 2 would read-Subsection 2 would read: "Immediately upon enactment of this section and in the session next preceding each United States census, the legislative districts shall be reapportioned and adjusted as necessary to conform to the requirement of Section 1, the means of so doing to be by an impartial commission established and functioning as provided by law." So the purpose of Mr. Garlington's amendment is to replace all the machinery in 2, 3, 4 and 5 by a sentence that says "that after each sentence and immediately after this section", which means after the Constitution is adopted, if it is, then we will reapportion by an impartial commission established and functioning as provided by law. Mr. Garlington, any other-do you wish to debate it further or do you wish to discuss it further?

DELEGATE GARLINGTON: No, Mr. Graybill, I think we had better just proceed with this.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I rise in opposition to the proposed amendment for the simple reason that I believe that that is-this contravenes Article IV, Section 4 of the United States Constitution which guarantees a republican form of government. This to me means that we ought to at least afford the opportunity to our elected representatives to cause the reapportionment to be had following a census, or preceding the census. I very much like Mr. Mahoney's suggestion. I agree 100 percent that we must have a commission where the Legislature fails to doits job. However, I believe the commission ought to first submit its proposed plan to the Legislature, and with a deadline, so that if the Legislature which, remember, are the elected representatives of the people as distinguished from an appointive commission, to at least afford them one opportunity with a deadline to effect a reapportionment. If they don't act, then let the commission go ahead. But I think it's very important that we try to preserve the reapportionment by the elected representativesrather than by an appointive commission. I like very much the majority's proposal in its entirety if it would simply, instead of first have this report of the commission filed with the Secretary of State, file it first with the Legislature with a deadline to either adopt that plan or come up with its own plan, and then if they don't act, put it back in the commission and have theirs take the force of law.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, we've been discussing this now for some time and it's the kind of discussion I like to listen to. Now, I will take it upon myself, as Chairman of the committee, to ask that you give us time overnight to present some clarification on the majority plan. For example, I had some sheets passed out to you yesterday-or Saturday morning-which would have amended the introduction of paragraph, or subsection 2, which I have not presented to you, but it says: "In the legislative session following ratification of this Constitution and in the session preceding"-that would put the Legislature to work next in 1973. However, after Mr. McNeil's proposal there, would you give us the authority to work on this overnight and rework this Proposal Number 1, and we can incorporate this idea of Mr. Mahoney's like Mr. McNeil liked, and then you can talk about the two proposals with those two changes. So I would move that we postpone further action on Article-Section 15, subsections 2, 3, 4, 5 and 6 today.

CHAIRMAN GRAYBILL: Until-you can't—

DELEGATE AASHEIM: Until tomorrow morning.

CHAIRMAN GRAYBILL: Until tomorrow morning at 9 o'clock? All right, the motion of

Mr. Aasheim is that we postpone consideration of subsections 2, 3, 4, 5 and 6 of Section 15 until February 23rd at 9:00 a.m.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I'd like to resist that motion. We argued long and hard in committee on this. We passed it. It was submitted by one of the committee members and I don't see why we just can't go ahead and finish now.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of Mr. Aasheim's motion to postpone consideration until 9 o'clock tomorrow morning, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll use the voting machines. Vote Aye or No. Vote Aye if you want to wait until tomorrow; vote No if you want to go ahead now. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 67 delegates having voted Aye and 19 voting No, it's now passed until tomorrow morning at 9 o'clock. Will the clerk please read Section 16 of the Legislative Article?

CLERK SMITH: "Section 16. The People's Advocate, subsection 1: The majority and minority leaders of the legislature shall together appoint the people's advocate." Subsection 1 of Section 16, Mr. President.

CHAIRMAN GRAYBILL: Mr. Aasheim, who is supposed to take Section 16? Oh, all right, Mr. Leuthold.

DELEGATE LEUTHOLD: (Inaudible)... after having under consideration Section 16 of Proposal Number 3, that it recommend the same do pass. Mr. President.

CHAIKMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: Section 16 adds a new section to our Constitution known as the people's advocate. I'd like to just speak on both sections together. I think it all kind of goes together here.

CHAIRMAN GKAYBILL: Very well, shall I have the clerk read Section 2, Mr. Leuthold?

DELEGATE LEUTHOLD: Yes, I believe it'd be best to consider them together.

CHAIRMAN GRAYBILL: Very well.

CLERK SMITH: "Subsection 2. The people's advocate shall have the duty to provide information to any person upon request relating to government; and shall have subpoena power and authority to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action. The legislature shall provide for this office and its operation."

DELEGATE LEUTHOLD: Mr. President.

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: The people's advocate is a better term for the two proposals that were presented to the Convention, known as ombudsman; and since most of us can't say that. we thought that people's advocate was a little nicer term to use and a little more descriptive of the position that we're trying to present. Now. the section itself explains quite well the people's advocate and the comments are quite-they explain quite well. But I would like to add to both the comments and the section with a few remarks of my own. Now, generally, the people's advocate has been characterized as a public officer whose job involves investigating complaints by citizens who feel they have been treated unjustly by some government agency. The people's advocate's duty is to investigate these complaints, decide whether the complaints are justified and use as prestige knowledge gained through objective study and. when necessary, publicity to have the situation speedily remedied at no cost to the complainant. Usually he is empowered to initiate investigation on his own, based upon news media and other sources of information. He may or may not be given the power to either instigate or advise prosecution of officials alleged to have broken laws. Normally. the people's advocate would not

have the power to overturn a bureaucratic decision. In reality, bureaucrats tend to accept his judgment. This power generally depends on his prestige and as such his pay, tenure status and so forth are usually comparable to a circuit judge. His power and influence, are therefore, somewhat dependent upon the amount of respect a particular people's advocate is able to generate. I'd like to deal a little bit on the history of it. It's quite new in America but a people's advocate has been in existence for a century and a half in Sweden and is strongly used and considered in Denmark, Ireland, Austria, West Germany, Australia, Singapore, India and many Latin American countries. The State of Hawaii was the first to establish a people's advocate in 1962. We have a number of cities who have a people's advocate. It is that the present agency systems are not adequate to handle complaints, as their objective is often to shed the best light on the agency. It is also felt that a people's advocate position is not a substitute for existing complaint channels, but rather is a method of increasing their scope, flexibility and their objectiveness. Finally, it is felt advocates assert that the mere presence of such an office increases governmental fairness and efficiency, as agencies will be less prone towards arbitrariness and injustice when they realize that their actions may be reported in a complaint to the people's advocate. It is felt that this not only helps the individual complainant, but also aids in governmental-citizens relations. I submit this plan and appeal for its adoption.

CHAIRMAN GRAYBILL: Very well, the committee proposal is to submit Section 16, the people's advocate.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, as a substitute motion, I move to amend Section 16, subsections 1 and 2, on pages 8 and 9 of the article—Legislative Article—by deleting the entire section, "and the people's advocate." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Etchart.

DELEGATE ETCHART: The people's advocate proposal was also considered by the General Government Committee and we were very fascinated with it. We thought it had a lot of merit, but we didn't feel that it belonged in the Constitution. It's presently in three states—Nebraska, Hawaii and Oregon—but in no state have they included it in their Constitution. We didn't know the cost. We thought that if it was a good idea, it could be done by legislation. And our philosophy has been in the committee to leave legislative matters out of the Constitution as much as possible. There was a lot of support for the idea, but we felt that inasmuch as it is an experimental thing—only three states have it—there's possibly some duplication with other agencies working in this same field, that it wasn't constitutional, and I would submit that it doesn't belong in our Constitution either.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I resist—I rise to resist Mr. Etchart's movement to delete this motion. I see the office of ombudsman—and I rather hate to omit the word because it took me a long time to learn to say it—but I agree that "people's advocate" maybe is a better term. But I see this as a provision which is in keeping with our interest increasing the ability of citizens to participate in the process of government. Such an office would be a boon to the people who frequently become bogged down in trying to wade through a mire of bureaucracy. The people's advocate, or ombudsman, can help the citizen understand and work through the system. We all know that this is needed. The office, too, is somewhat of a boon to government officials who are frequently under fire from unjustified attacks. History of similar offices has shown that about 90 percent of the complaints received by such an office have been unjustified. Certainly an independent office that shows a complaint to be unjustified can only increase a citizen's respect for his government and the bureaucrats' respect for themselves. I do agree that this could be more appropriately a statutory measure. However, as you recall when Mr. Unruh talked to us about the ombudsman, he suggested that if we really wanted this kind of an office in Montana, it should be written into a Constitution, because the function of the ombudsman, or at least some of it, is at the present time taken care of quite frequently by legislators. We would remove from them, to an extent, the ability to step into the bureaucracy on behalf of their constituents. However, I believe that it is only a relatively few of the constituents who will go to their legislator. It's probably the minority groups, the low-income people, those who don't really understand the system, will have access to a people's advocate where they wouldn't have the same kind of access through the legislators. I recommend that this

body do resist the motion of Mr. Etchart's and support the majority proposal.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I support Mr. Etchart's motion. I think it's well taken. The ombudsman, as I understand it, is an office that exists primarily in parliamentary countries. Assuming for the moment that we do not adopt Mr. Kelleher's proposal for a parliament, then the office of ombudsman is inconsistent with our system of checks and balances. We have a provision in our present Constitution, which I'm sure will be in the next one, that says that the three branches of government shall be—shall remain distinct and that they shall act, none of them, within the sphere of the other branch. The ombudsman is designed for a type of government where we don't have that sort of division. And the ombudsman operates to keep a bureaucracy, such as exists under the Fourth Republic in France, from taking over functions which ordinarily would be exercised by the parliament. If we had that type of situation or if we had a parliament, then the office would be justifiable. Under our arrangement what we would have would be some sort of glorified public relations man, and I don't think that the Legislature needs that.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, I would like to point out in conjunction with the remarks made by Delegate Arness that the ombudsman is not developed primarily or only for parliamentary systems of government. The states of Hawaii, Nebraska and Iowa all have the office of ombudsman, and they certainly do not have a parliamentary form of government.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, would Mrs. Eck yield to a question?

CHAIRMAN GRAYBILL: Mrs. Eck, will you yield?

DELEGATE ECK: Yes, I will.

DELEGATE TOOLE: Mrs. Eck, how would you plan to have this individual "take appropriate action"-as these words read here?

DELEGATE ECK: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck

DELEGATE ECK: I think that the action that he would take would depend upon what kind of a situation there was. Lots of times-in fact I think the studies have indicated that a great deal of his action is in providing information to the person, in other words, indicating to the person what the proper channels are and maybe assisting him in going through these channels. Sometime the appropriate action might be investigating a procedure of a department of government and suggesting changes. Sometimes the action might be really to redress an official. I think that this has happened in states where an ombudsman is used. But appropriate action could mean a great-you know-a great number of different kinds of action in different situations. But for the most part he does, to begin with, speak for the individual complaining. If he finds the complaint unjustified, which he does in, they say, as many as 90 percent of the cases, he then speaks for the governmental agency in protecting the agency against unjustifiable criticism. So, I think that the office is really pretty much free-flowing, and I don't think appropriate action in any two cases might be really the same thing.

CHAIRMAN GRAYBILL: Mr. McNeil

DELEGATE McNEIL: Mr. Chairman, I'm most concerned as a response, or as a result of Delegate Eck's response to this question, about a serious violation of our separation of powers doctrine. I first read this to be just investigate and at that stage it would be clearly an exercise of the executive power of our government. However, in response to the question, Mrs. Eck also said, "make recommendations". This is a legislative function. If any single person is going to make recommendations to a governmental agency, this is invading the province of our Legislature. Mrs. Eck also used the word, "redress". This frightens me. This is a judicial function. If some governmental board is doing something wrong, then an action ought to be initiated in our separate branch of government in our Judiciary. If "take appropriate action" includes legislative and judicial functions in addition to the obvious power to investigate, I would strongly oppose it. If the position of people's advocate is truly to provide just information and investigation, perhaps I could find room to support it. But in view of the response to the question, I think it's a violation of our separation of powers.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I would support Delegate Etchart. I don't knowifit was a motion, a substitute motion or a" amendment.

CHAIRMAN GRAYBILL: It was a motion to delete.

DELEGATE ERDMANN: Motion to delete. I would support this and I would say that this position of ombudsman has been used widely in the various large cities of America, and it's nothing but a fancy name for a complaint department when it's used within a city government. And the mayors and councils like this position because it relieves them of all of thr routine of complaints. And we all know that citizens often get the feeling that they're being pushed around by the various offices, probably either in Helena or in their city government, and this is a position that has worked very well in city government just as a complaint department. It keeps the voters happy. And I would be for it. as provided by the Legislature, but not proposed and placed in our Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: -Chairman, I would like to oppose the substitute motion of Mr. Etchart and support the original motion of the majority for two reasons. One, almost the same reason as Delegate Erdmann has related, except in reverse. I feel that we need a function in government on the state level for this purpose, somewhere where the citizens can go, somewhere where they can get response from government and not get turned away as many citizens feel in the dealings with some of our major departments. be they Highway Department, Fish and Game, or what. I feel that there's a need for this office. In answer to some of the points, or questions, that Delegate McNeil raised, this is clearly a" informational investigative-type office in the area of providing information to the citizens. The appropriate action clause which may have caused some question. in practicein other states, has been clearly a question of providing information to the Legislature, if legislative action is necessary; providing information to the Attorney General if judicial action is necessary: and, in fact, providing information to the public so that they may be aware of what is going on in state government. I submit that these functions are all extremely necessary as the bureaucracy, or whatever you want to call it, as the size of state government enlarges. I think there is in fact a need that the citizen has somewhere they can go, somewhere that they feel they will be received and not turned away summarily, to hear their complaints. And as Delegate Eck has indicated, I feel that there is a need for government to have some protection, also. And one of the greatest accomplishments of the office in states where they've had it has been that in fact there has been greater confidence in the government once this office was established, because where you have 90 percent of the complaints that have been submitted found to be unjustified, this gives greater confidence to the public-at-large in your government; and at the same time, those 10 percent of justified complaints have been dealt with and corrections have been made. The greatest effort and the greatest power of this office is strictly bringing public attention to the problem. It isn't a legislative function. It isn't a judicial function, and it's not an executive function. It's simply bringing the focus of the public spotlight to bear on the official who may be performing his office in a way which is not desirable for state government. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I don't like to get up after we spent 3 or 4 hours on apportionment and then had to pass it over, but I would like to say a few things. And 1'11 try to be as brief as possible. Four states. you now know, have it-not three—Nebraska, Hawaii, Oregon and Iowa. In Nebraska and Oregon and Iowa, the Legislature refused to pass the legislation for obvious reasons. In Hawaii it was passed merely by accident on a vote swap. Now, why doesn't a Legislature like this bill? And why do we lawyers not like it? And I'm going to speak for myself only, as a lawyer. First of all, the ombudsman or the people's advocate takes away the casework from the incumbent legislator. Instead of going to the ombudsman you go to the legislator, and he gets things done for you. And how many of you know how many congressmen have stayed in the United States Congress solely by doing their casework'! We have congressmen and senators that have one clerk that does nothing but send out obituary letters. That's all she does is read obituary pages and send those

letters out and take care of these little things, like getting people into the V.A. hospital. And at the state Legislature level they could do similar things for their constituents and they keep getting reelected and reelected, and they do not get re-elected on their record. And this is, I suspect, is why Nebraska, Hawaii, Oregon and Iowa—all the four states that now have it—did not pass it except in the case of Hawaii in a vote swap deal. Now, what happens to us attorneys? I have read up—our sister—I mean, a province to the north of Alberta and New Brunswick, the only two Canadian provinces to have one—they just enacted it in 1967, and the first year in Alberta they had 32 complaints; in 1968 they had 535 complaints; and for the first 10 months of 1969, which is the only last year I have any record, they had 627 complaints. Roughly one-third of the complaints are rejected, as he doesn't have any jurisdiction, either because of matters still pending in court, an appeal hasn't been run out, and so on. One-third of the cases he actually gets results. He gets the job done for these people. And then, what does this mean? In 1969, he only had to refer two cases to the Cabinet—that meant to the Premier and his ministers. And one was a teacher who wanted his retirement pay back with interest, and they gave this teacher the old razzmatazz and the run-around and finally he kept after them and kept after them, and they decided to pass a special bylaw—this is the way, I guess, they save face. But they did pay the teacher his retirement fund back—apparently he left the teaching profession—and with interest. Now why, as a lawyer, would I be opposed to this? Because you're going to cheat me out of a lot of fees at $30 an hour. Remember, $30 an hour, as I told you before, is for widows and orphans. This is work that we lawyers now handle for a fee. Now, if you want it to keep that way, that's fine but I don't see where we lawyers, in conscience, could really justify a fee and I should say in all honesty, in defense of my own profession, that very often we will not charge a fee for this type of thing. But, on the other hand we may charge a fee and at the minimum rate. It's up to you. If you want to go by the history of the four states that have it in the United States, they all refused—the Legislature refused to pass it. All this does is mandate the Legislature to appropriate the funds for the office. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, members of the assembly. Today, so far, we have almost but not quite established three new boards. We just about established—well, we did establish a new board to figure out the pay for the Legislature and the Judiciary and the Executive. Then. we just about established a board to figure out how we was going to reapportion ourselves if the Legislature couldn't do it, and so forth. Now, we're just about ready to establish another department, and 1 have a question I want to ask. It says here, "The people's advocate shall have the duty to provide information to any person upon request relating to the government." Thank goodness, we're not a very big state-we only got 700,000 of us. But my question is. and I'm sure the committee has researched this quite thoroughly, how much is this going to cost?

DELEGATE KELLEHER: Is that a question?

DELEGATE ESKILDSEN: To whoever would answer it. It's information 1 want.

CHAIRMAN GRAYRILL: Mr. Kelleher.

DELEGATE KELLEHER: In the State of Hawaii-the State of Alberta-no, the Province of Alberta, they still, as of 1969, 2 years-3 years after it was in force—1967, 1968, 1969—had a four-ma" office and they were handling complaints at the rate approximately 900 to 1,000 a year. The State of Hawaii, the first year it was in effect, that I think 1,062 complaints, but I don't know the size of their office. Hut assuming that they're as efficient as our neighbors to the north, Alberta, they too have a one-ma" office. We proposed—regarding cost, we proposed—I don't know if it's in the comments—originally that this man have the salary and prestige of a district judge. and a district judge in Montana now makes about nine-tee" or nineteen five-1 forget-nineteen thousand a year—a district judge....(Inaudible). All right?

DELEGATE ESKILDSEN: Mr. Chairman. Thank you, Mr. Kelleher. I've been given this by Delegate Eck and it provides 103,000 for the first fiscal year. Nebraska provided 113,000 for 18 months. 1 only have this to say is-is this body, we're different from the Legislature in that we don't have to worry about what it's going to cost anybody. All WE got to do is figure out a good Constitution. But, I submit to you it's time to take a little look at what we're going to cause the Legislature to have to do. And the next legislative session will be faced with all these extra boards

and bureaus and men anti that we're causing them in the Constitution to establish. Right here, we've got $200,000 in this one little board it' they just do the same kind of a job that other state's done. So, I submit to you it's time to think about this a little bit.

CHAIRMAN **GRAYBILL:** Mr. Champoux.

DELEGATE: CHAMPOUX: Mr. President, fellow delegates, I rise in opposition to the substitute motion and urge you to support the majority motion. I was one of the delegates that submitted a proposal on this, and when I came over here, I came over here with a large fistful of letters, complaints of' people in my district, that asked me if I would look into them for them. They ranged all the way from social security problems to labor problems—all kinds of problems. I submit that the problem is the problem of a" unresponsive government. The government that we're hoping to make here, I hope and foresee, will be more responsive What we're talking about here is the people's bureaucrat. Now. in response to Mr. McNeil's comments, if the Legislature had done its job, supposedly, we wouldn't have any need for this, but what happens to a common citizen out there that doesn't know the legislative procedures, that doesn't know the rules, and we sitting in here the first few days certainly went through this process. didn't we? Now, how is that individual going to get to the Legislature? What happens if his legislator from his own district is not responsive? And many of them aren't. If the judicial had done their job, we say, there would be no need for this perhaps. But what about the many rules? What are the procedures that the common citizen doesn't know in terms of approaching the bench, or even being afraid on the one hand to even approach certain lawyers when they charge $30 an hour, as Mr. Kelleher has proposed. Well, when legislators come over here, they also come with a lot of complaints. I think that if we give this to a" ombudsman or a people's advocate, if you will, this will be kind of a legislative relief bill in a way in that it will allow them more time perhaps to get down to what they really should be working at; and that is working with laws and attempting to improve the governmental structures. I also think that this people's advocate in many ways is a" educational process. Many citizens will come to this individual or his office and attempt to get redress of some kind and find out for the first time, perhaps, how a governmental agency works, and in the process maybe his complaint will be satisfied. We talk to Mr. Eskildsen's point, if I may. You talk about if it's needed. What about the person? We have had a session—the biennial session in this state—what about the person that can't get anything done between the sessions? Is it only going to be done during the session? Will this legislator come over here from Two Dot or Ekalaka, or where-have-you, and take care of his business? But if he can send a letter to this man that's right in the Capitol, I'm sure that he can get something done. I'm for the majority proposal.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: I rise in support of the people's advocate for this-one of the reasons I support it is for this reason. So many times, agencies and boards and officeholders have little small procedures that are "ever voted upon by the Legislature, or small little rules that they go by in their particular office or agency that we don't have anything to say about. and sometimes they really infringe upon our rights. And if we had someone that we could go to and tell them that we don't think the procedure in that particular office is helping us and for the common good, I think it would be beneficial to have someone as our advocate protecting our rights.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I rise in support of Mr. Etchart's motion to delete this. I've just looked through the Helena phone directory here, and I didn't look under any of the federal agencies, although there are a good many of those, but under thestatelistings there are some that I'll enumerate: Aging Commission, Employment Commission, Unemployment Insurance, Public Information Office, Child Health Service, Public Information Office under the Highway Department, Public Employees' Retirement Service, of course, Veterans' Welfare, the Welfare Department, Blind Services, Family Services, Medical Assistance, Vocational Rehabilitation. Then there are several listings under the county besides their County Welfare Office; and under the City of Helena, they have a" Animal Shelter, Director of Public Service, Information and Special Services, and one more that I'll mention briefly in just a minute; that, it seems to me that out of all of these, to add another one doesn'treally make very much sense. There is information available to people if they know where to find it, and if

they don't, they can use the phone book. Helena also has a sewage disposal service, and maybe that's where we ought to put this proposal. (Laughter) Thank you.

CHAIRMAN GRAYBILL: The Convention will stand at ease for about 3 minutes while we change the tape. Please...(Inaudible).

(Recess for 3 minutes)

CHAIRMAN GRAYBILL: Convention will be in session.
Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I rise in support of the majority report. I think one of the single-most things that caught the people's imagination in discussing this Constitutional Convention and in running for a position here, was the idea that the people had somewhere to go for their grievance. I think that Delegate Choate's remark is a perfect example of why we need one place. The very fact that we have such a profusion of places to go now to get an answer—I think it's called "passing-the-buck." I think the typical person of Montana would like to have one place where he could put his finger and get his answer to whatever his problem is. Whether he is ultimately satisfied with the answer or not, I think he will more than appreciate the fact that he knows where to go and where to find out.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, I rise in support of the majority report. To cite a" example of this, a short time ago a gentleman up in Whitefish bought a piece of land. It was—evidently came down since the time the State of Montana was making homesteads. This party tried to get a clear title through both title companies and he still doesn't have his refund of his $200 back, and this is a good case of where an ombudsman could step in and get to the land titles, or do something maybe to straighten out the Legislature. There are a lot of lands around that sometimes are clouded by state ownership or ownership that cannot be arrived at. I support it wholeheartedly.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I speak in opposition to Mr. Etchart's motion to delete the majority proposal. I was interested in noting that he stated that he felt that this was a good office, that possibly it should be established by the Legislature. In the journal, the Senate Journal of the last Legislative Assembly, there was such a bill introduced--Senate Bill 137. When you consult the pages enumerated you find that that bill didn't last very long in the last session of the Legislature. In fact, it was recommended do not pass by the State Administration Committee and that report was adopted and that was the end of that issue. I contend that that same thing would happen over and over again in future legislative sessions. 1 think it's interesting, a note that of the 14 members of our Legislative Committee, this is one area in which we had complete agreement, complete unanimity. There was not one dissenting vote.

CHAIRMAN GKAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, (Laughter) that is not the voice of God. (Laughter) Mr. Chairman.

CHAIRMAN GRAYBILL: If you may speak over the top of the radio, go ahead.

DELEGATE SCANLIN: I rise in favor of a public advocate, but in support of Mr. Delegate Etchart's amendment. The reason being that up to this point I see that we have created more problems for the Legislature to solve than we have in relieving their problems.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I rise in support of the majority proposal. I believe that the list of agencies that Mr. Choate read to us are a perfect example of the people who may go there and not get any information that will help them to any degree. And if there were such a person as a people's advocate who knew the ropes of government and to whom the people could turn for advice, that it would be a very worthwhile addition to our government. And I support the majority proposal.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I'd like to call attention to one more agency that's paid for by the federal government that is very active in the state, and that's the EOE legal service—OEO, yes. I'm on the committee at home and we have helped a great many people. We hire a lawyer. There's one in Helena, a very active office. They helped a great many of the low income and

minority group people in this state who don't know where to turn or what to do, and this is one agency that has helped them out of their problems. Now, if my good friend Noel Furlong and Chet Blaylock would guarantee me if we establish this office of public advocate we could save enough money by doing away with all these other agencies so as to fund the public advocate's office, I could see some sense to it. But, I can't see too much sense to impose another agency upon the myriad of agencies that we now have. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, quite often people come to me with questions. They don't know where to go, what agency to turn to. Now, maybe I'm making a confession that the rest of you wouldn't have to make. Most often, I don't know where to turn. It's just simple little things about where to start in on job opportunities or one thing or another. One of the members of our committee had a perfect illustration. I believe it was Mr. Romney-that one of his constituents asked a question as to whether a female hair stylist could cut men's hair. She understood there was a law saying that she could not. She didn't know where to go to get that information. Mr. Romney, after many visits and letters here and there, and being knowledgeable about the fact that there is a department of cosmetology or something like that under the Board of Health, was able to get that kind of information. This kind of thing the average one of us would not be able really to track down, but there's something worse than that. Once you have a grievance against a certain bureau or agency or office in the state government, how do you get action by appealing to the agency that refuses to give you action? This allows a citizen to go somewhere with a little redress-to get a little redress in terms of his complaint. I think the committee did discuss seriously the thing that Mr. Aronow suggested, and that it might actually cut down on the proliferation of other agencies in various communities around the state and thereby save money in the total operation.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I wonder if Delegate Blaylock would yield to a question?

CHAIRMAN GRAYBILL: Mr. Blaylock?

DELEGATE BLAYLOCK: I yield.

DELEGATE KAMHOOT: Chet, where would you plan this office to be? In Helena?

DELEGATE BLAYLOCK: Yes, I think it would most naturally he here.

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: I just don't see how the people from all over the state are going to be able to run into Helena or contact the central office when they have a little problem. If they don't contact their local offices now, this doesn't seem to me to be very practical. And a little further, I note in the comments here that they recommend this be a 6-year term, that he be paid the equivalent of a district judge. Now I think a district judge gets 20,500, plus quite a substantial retirement. And I can also see with this 6-year appointment, if this turns out to be true, this could be one of the greatest whitewashes of government that we could think of. They could appoint a man to this and appoint a man that they selected. He'd be in there for 6 years and I just don't see where this would be very practical in Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I merely wanted to point out, Mr. President, in reference to Mr. Aronow's remarks about the services that the OEO performs in the State of Montana. You cannot-your total income cannot exceed $4,000 a year to apply for aid through OEO. I would submit that there are a great number of people between **$4,000** a year and, say, $8,000 or $9,000 a year who cannot afford the services of an attorney and who would not qualify for help through OEO.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'd like to answer the questions of Mr. Kamhoot. Of course, it's going to be up to the Legislature how to put this office into effect, hut in states that use this now, what they generally have is a-well I don't know what they call it-it's a hot line going in so that there's a number that you can call collect at any time to get this information, and the number is widely circulated. I also think, in regard to your other comment, and also to Mr. McNeil's, because this is something that when we were discussing this proposal-you know, you can think of it, one proposal was to have it in the judicial department;

some suggestions have been to have it as something the Governor would set up. But, I think that really it becomes-I don't think you would get a whitewashing if it were under the Legislature because here you have a man who is named by representatives of both parties, so that he is not really beholden to either party. I also think that being under the Legislature it is most appropriate. You could almost look at it as an office similar to our legislative post-audit, where the Legislature provides the office to assure that the executive departments they set up and fund are doing an adequate job, and really being fair to the people that they represent. I think that it could he established in a number of other ways, but I think that this probably is the best way of explaining it within the separation of' powers idea. In other words. they're carrying out--this office is carrying out the functions of the Legislature in assuring that the executive offices are doing the job in the way that the Legislature, I would suppose, hopes it will be done. Thank you.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, it seems to me that in addition to the things that Joe—Delegate Eskildsen-talked about, WE must remember the fact that we have decided that the Legislature will have an annual session. Now, in all of' the time that I've been familiar with government, the best ombudsman or the best people's advocate that I knew from our county and throughout the state were the legislators. They're going to be here an extra—every year and I'm sure they can do a pretty good job of watchdog without forming a new bureau.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President, I just want to respond to Mr. Aronow who spoke of the OEO. For the past 15 months I've been employed with Opportunities, Incorporated, a branch of the OEO here in Montana, and I was on the same floor as the Legal Services, on the third floor in Great Falls there. And I noticed, that Legal Services, of course, was being used quite extensively, and it was a great thing for those people under the economic guidelines, you see, that Mrs. Robinson mentioned for them to have. And I think it's a fantastic thing. I'm glad it's there. The problem is, that can we always have OEO around'! You know, there's a lot of indications nationally that say, including our President, you know, OEO is not going to survive, and Legal Services has been one of the most effective branches of the Office of Economic Opportunity. So, what happens when that's not around for that group of people, let alone the rest of us?

CHAIRMAN GRAYBILL: Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman. there's been a lot of discussion about this people's advocate and WE had a lot of discussion in our General Government Committee about the merits of it, and I don't think there's any doubt about the merits of the office. The question at hand is whether it should be locked into the Constitution or done by legislative action. And I don't feel there'd be any doubt about the legislative action ii you'd turn Kyle Jackson loose with the Legislature for I hour.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Mr. Chairman. I'd just like to add one word. That I think the Legislature has more work to do to legislate. They should not be taking care of wl.at has been called by some delegates. casework.

CHAIRMAN GRAYBILL: Very well, I take it the proposition is on Mr. Etchart's motion to delete Section 16, subsections 1 and 2, in its entirety.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, I move for a roll call vote.

CHAIRMAN GRAYBILL: Right. we'll have a roll call vote. So many as are in favor of Mr. Etchart's motion to eliminate Section 16, please vote Aye. And so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: If not, we'll close the vote. Will you please tally the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye

Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Chairman Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Absent
Hanson, R.S. ..... Absent
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil. ..... Absent
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Excused

CLERK SMITH: Mr. President. 48 voting Aye, 43 voting No.

CHAIRMAN GRAYBILL: 48 votes having been cast in favor of the motion, 43 No, the motion carries and Section 16, subs. 1 and 2, is eliminated from the proposal.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the committee arise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: Very well, the motion's been made that the Committee of the Whole rise and report progress and beg leave to sit again tomorrow. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: So ordered.

(Out of Committee of the Whole at 4:40 p.m.)

PRESIDENT GRAYBILL: Convention will be in order. The clerk will read the title to the committee report.

CLERK HANSON: "February 22, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number 3 on the Committee on Legislative, recommend as follows:"

PRESIDENT GRAYBILL: Now, unless I hear someone from the floor request that we do otherwise, I would like to suspend reading of the report at this time. It's incomplete; takes a long time. Is there anyone that wants it read?

(No response)

PRESIDENT GRAYBILL: Very well, we'll suspend the rest of the reading of the Committee of the Whole's report.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The Committee of the Whole's report-the adoption of the Committee of the Whole's report has been moved. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: So ordered. We're on Order of Business Number 10. Unless I hear objection, Chair would like to revert to Order of Business Number 1, Reports of Standing Committees.

(No response)

PRESIDENT GRAYBILL: If there is no objection, the Chair would call upon Mr. Dahood.

DELEGATE DAHOOD: Mr. President, we, the Committee on Bill of Rights, respectfully report as follows: That the Hill of Rights Committee proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

PRESIDENT GRAYBILL: Very well, the Bill of Rights proposal will be printed and will be referred to the Committee of the Whole. The Chair will now recognize Mr. Heliker.

DELEGATE HELIKER: Mt. Chairman, I understood, according to the schedule, that my committee report's after Education.

PRESIDENT GRAYBILL: Well, your committee report was to come in today. that's when we moved it until, but if you're not ready, that's fine. Just say so.

DELEGATE HELIKER: I'm not ready.

PRESIDENT GRAYBILL: Very well. Are there other reports of standing committees ready? No. Reports of Select Committees, none. Communications-is there another communication, Mr. Clerk?

CLERK HANSON: Yes, sir. "Helena, Montana, February 22, 1972. Honorable Leo Graybill, Jr., President, Montana Constitution Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the licenses of the following lobbyists have been suspended, as of February 22, 1972, for failure to file statements of expense within the period specified by law: License Number 39-72, Gerald L. McCurdy; License Number 44-72, A. W. Scribner. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Are there other communications'!

CLERK HANSON: None, sir

PRESIDENT GRAYBILL: Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Motions and Resolutions. The Chair will recognize Ralph Studer.

DELEGATE STUDER: Mr. President.

PRESIDENT GRAYBILL: Mr. Studer.

DELEGATE STUDER: I move the following be resolved by our Constitutional Convention: "WHEREAS, it is fitting and proper that the outstanding records and accomplishments of our great Presidents, whose birthdays we recently have celebrated, be noted on record of this Constitutional Convention. We hereby express our esteem and respect to the memory of the beloved and revered George Washington and Abraham Lincoln, in the hopes their achievements in good government will guide us accordingly; in hopes their exemplary patience will guide us along the arduous paths of lawmaking: and in the hopes their commitments to the freedom of the individual will be reflected in our finished product."

PRESIDENT GRAYBILL: You've heard the resolution proposed by Mr. Studer. Is there any discussion on the resolution?

(No response)

PRESIDENT GRAYBILL: If not, all in favor of the resolution, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

PRESIDENT GRAYBILL: The Ayes have it, and the resolution will be spread upon the records. Unfinished Business?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Before we adjourn, I'd like to move to Order of Business Number 11, Announcements, again and just remind you that tomorrow morning, Wednesday, at 8:00 a.m., Local Government Committee picture in the Governor's reception room; 8:15, Revenue and Finance; 8:30, Education; 8:45, Natural Resources. Those four pictures tomorrow morning. Please be prompt. Furthermore, remember that the party tonight starts at 6:30 with a cocktail hour at the Montana Club.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, Style and Drafting tomorrow morning at 8 o'clock.

PRESIDENT GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Executive on adjournment.

PRESIDENT GRAYBILL: And I think you will recall, that Administration Committee meets tomorrow morning at 8 o'clock.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we stand adjourned until Wednesday, February 23rd, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until Wednesday at 9:00 a.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 4:47 p.m.)

February 23, 1972 **Thirtieth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all stand, Carl Davis will lead us in the invocation this morning.

DELEGATE DAVIS: Let us pray. Lord Jesus, as we pray for the members of this Convention, its officers and all those who share its labors, we remember that Thou never lost Thine inner peace, even under pressure greater than we shall ever know, but we are only human. We will grow tired, we will feel the strain of meeting deadlines, and we will chafe under frustration. We will need poise and peace of mind and only Thou can supply the deepest needs of tired bodies, jaded spirits and frayed nerves. Give us the courage not to see things as they are and ask why, but to dream of things that are not, and ask why not. Give us Thy peace and refresh us in our weariness that this may ho a good day, with much done and done well, that WE may say with Thy servant, Paul, "I can do all things through Christ, who gives me strength." Amen.

PRESIDENT GRAYBILL: We will take the roll today by voting Aye on the voting machines.

CLERK SMITH: Delegate **Aasheim,** Delegate Anderson, Delegate Hurkhardt, Delegate Cain; Delegate Graybill--oh, excuse me—Delegate Holland, Delegate Kamhoot, Delegate Schiltz. Delegate Holland.

PRESIDENT GRAYBILL: Very well, **do** you want to take the vote?

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	**Present**
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Absent
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin.,	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present

Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present
Mr President	Present

CLERK SMITH: Mr. President, 99 present, 1 absent.

PRESIDENT GRAYBILL: Very well. Who's absent?

CLERK **SMITH:** Delegate Holland.

PRESIDENT GRAYBILL: Holland? All right, Order of Business Number 1, Reports of Standing Committees.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Yes, there are some, sir. Education Committee, Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates, we, the Committee on Education—

PRESIDENT GRAYBILL: Just a moment. Will you turn on Mr. Champoux's light? Thank you.

DELEGATE CHAMPOUX: Mr. President, fellow delegates, we, the Committee on Education and Public Lands respectfully report as follows: That the Education and Public Lands Committee majority proposal is ready to be duplicated and submitted to the Committeepf the Whole for consideration; and that the Education and Public Lands Committee minority proposal is ready to be duplicated and suhmitted to the Committee of the Whole for consideration.

PRESIDENT GRAYBILL: Very well, the Education report is filed and will be sent to printing and will be put on General Orders. Next, the Chair would call on Mr. Heliker.

DELEGATE HELIKER: Mr. President, fellow students, we, the Committee on Public Health, Welfare, Labor and Industry respectfully report as follows: That the Public Health, Welfare, Labor and Industry Committee majority proposals are ready to he duplicated and suhmitted to the Committee of the Whole for consideration; and that the Public Health, Welfare, Labor and Industry Committee minority proposals are ready to be duplicated and submitted to the Committee of the Whole for consideration.

PRESIDENT GRAYBILL: Very well, the Public Health, Welfare, Labor and Industry Committee report is filed and will he sent to printing-or has been sent to printing and put upon your desks and it will be placed on General Orders. Chair will now recognize Mr. Oscar Anderson.

DELEGATE OSCAR ANDERSON: Mr. President, we, the Committee on Local Government, respectfully report as follows: That the Local Government Committee proposal is ready to he duplicated and suhmitted to the Committee of the Whole for consideration. Thank you.

PRESIDENT GRAYBILL: Very well, the Local Government Committee report is filed, will he printed, placed upon your desks and is now placed upon General Orders. Now, Reports of Select Committees.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Communications.

CLERK SMITH: None.

PRESIDENT GRAYBILL: This is not a communication. but I would like to inform the body that we did work with the janitorial staff yesterday and we've changed thethermostats, and

we've put new wafers in the radiators to keep them from leaking, and we've lowered the temperature of the air that's being blown in in the gallcries, and WE hope to keep things a little cooler. Now, it may take a little while to work that out and if the windows need to be opened, we'll open them. And if' the persons sitting on the floor, but not delegates, don't like the windows open, they'll have to move. Okay. Order of Business Number 4, Introduction.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Number 6, Adoption of Proposed Constitution.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions-1 think there are none. Order of Business Number 8, Unfinished Business. Mr. Champoux, would you introduce the pages this morning.

DELEGATE CHAMPOUX: Mr. President, fellow delegates, it is my pleasure this morning to introduce the pages, wherever they're at. (Laughter) They're supposed to be up the front at this point,.

PRESIDENT GRAYBILL: Have a call—have call of the house for the pages.

DELEGATE CHAMPOUX: Could WC have all the pages up front, please? The pages for this week are Carl Ammons, Missoula; Michele Brown, Helena—

PRESIDENT GRAYBILL: Wait a minute now, Rick, we've got to know who they are, so where is Carl? Is he here? Okay, there's Carl.

DELEGATE CHAMPOUX: Michele Brown, I believe, was just sent to printing—of Helena; Sarah Gackle of Rapelje; Tom Glover—Rapelje, I'm sorry-; Tom Glover of Kalispell; David Kelleher of Billings, who is the son of that famous Shakespearean actor, Robert Kelleher, over there-(Laughter) Andrea Easter of Missoula; Carina McQuillan of Helena; and Joe Rattler of Browning. David Kelleher will make the response.

MR. DAVID KELLEHER: Mr. President and delegates, I have been chosen to represent the pages today because I also deal with the majority of representation in the delegates. And I am a lawyer's son. (Laughter) I'm going to find it very difficult to speak here today because I was at the little party last night and I heard Mr. Dahood speak. And I find it very difficult to follow anything as gracious as that. (Laughter) We are all very proud to have been chosen to serve before you and with you and we hope that you can write a long-standing Constitution that will work with us when we grow up. The pages--and I'm sure I speak for all of us-have, I'm sure we feel, have a hard time realizing that we're still servants. WE would like to press the Aye and the Nay buttons and yet up and give the speeches, and I thank you.

(Applause)

PRESIDENT GRAYBILL: Well, we want to thank all of you pages and hope that you'll have a good week with us. I'm sorry that our planning slipped up and you were allowed to watch Mr. Dahood perform last night, because that's liable to change your outlook.

(Laughter)

PRESIDENT GRAYBILL: But. **anyway,** we're glad to have you and thank you very much. Your names will be spread upon the record and you will be given a copy of today's proceedings to take home with you. Order of Business Number 9, Special Orders.

CLERK HANSON: None

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders of the Day.

CLERK HANSON: February 23, 1972. The following committee proposals are now on General Orders: Legislative, Executive, Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health and Local Government.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we resolve ourselves into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well, all those in favor of moving this Convention into Committee of the Whole, say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention resolved into Committee of the Whole with Delegate Graybill as Chairman.)

CHAIRMAN GRAYBILL: Now, before we start this morning, I think it might be helpful if we all saw where we are, and on the status board up here we have printed where we are, but some of you might not be able to see it. We'll start out with Section 15 of the Legislative Article, which was postponed until this morning. When we've completed that, we'll go to Section 7, which was also passed. Then, that line in there indicates that something else has to be put in there after Section 7. After that, we will go to the bicameral proposals on page 32, I believe it is, which are duplicated—which duplicate proposals 4 through 16 of the unicameral proposal. That shouldn't be too difficult since it'll be merely a matter of noting where they're the same and amending them to be the same, with a couple of exceptions. After that, we will go back to Sections 1 to 3, which we passed, which is the point at which we'll debate unicameral-bicameral, and on the unicameral proposal under Number 1, we will have the minority report on parliamentary form. After we have finished that, we will put in-there are four new sections that people have put in proposals on that we will consider, and after we have considered that, there are, I understand, motions to reconsider on Section 4 and Section 16. Now, that's all we have to do this morning. Mr. Habedank, for what purpose do you rise?

DELEGATE HABEDANK: I rise to secure some information. I have a addition, which would be Section 17, following Section 16, which apparently was stricken, and I just wanted to know where that would come up.

CHAIRMAN GRAYBILL: Well, I thought we'd put that under the four new sections.

DELEGATE HABEDANK: Very well.

CHAIRMAN GRAYBILL: All right. Mr. Aasheim, 1 understand we have a new Section 15.

DELEGATE AASHEIM: Mr. President, and members of the assembly, you now have before you two new proposals-they're not new entirely-but I wish now you would look on majority proposal Section 15, based on Pennsylvania. It's got the three holes punched in your sheets. Now, there is no basic change from what you have on page 28 and 29. There is some clarification-or there are some clarifications made and I want to go through them with you, and after that I'm going to move that they be adopted. On Section 2 you'll note that "immediately upon enactment of this section" has been stricken and inserted is, "in the legislative session following ratification of this Constitution," has been inserted. Then, if you go to line 18 of your book, on page 28, the prefixes, "re—" and "re—", have been stricken. That's a matter-it would be okay to leave it as it is, but it isn't proper to say "redistricting" because there might not be any "redoing": it might remain as it is. On line 20 in your book, on page 28, there is included on-this will be on line 8 of the sheet I gave you, it says in parenthesis, "bicameral: the majority and minority leaders of each house shall designate a commissioner." That's because of the fact that we have the two proposals. We've got to clarify for the two potential bodies that we shall have. That is the sum and substance of the changes in subsection 2. Now, in subsection 3, this is something where we have had to do a little arbitrating. I always did think that 90 days was too long, and I still think 90 days-or, 45 days is too long. Rut this is a matter of compromise so we put in 45 days after the appointment of a Chairman. In line 26, subsection 3, "No later than 45 days after the appointment of a chairman". And then after "or", on line 27 in your book, "No later than 45 days following the official reporting of each federal census, whichever is later in time, the commission shall"-on page 29, again-"file a preliminary"-"preliminary plans" on line 29. Because there are two plans, really-the congressional districting and the legislative districting, so we had to refine our wording to say "plans" instead of "plan" because the congressional district also has to be done. And, then, after "preliminary", we strike "with the secretary of state" and add, "for legislative and congressional districts with the secretary of state." You'll find that wording on 19 of the sheet you received. On 4, subsection 4, in the book, "plans" instead of "plan", and on line 1 on page 29, we have stricken "which case" and added a period after "commission", so "the commission shall"-after "commission" put in "shall''-"have 30 days after the date-" insert "shall" in place of "should". And on line 3 in your book, after "file", put in "to consider", and strike "prepare". And "file''-after "file, any revisions to the preliminary plans". And you'll find that on page 23 of the sheet I gave you. Then,

at the end of line 6, "for the next ensuing legislative and congressional elections." And that's all on Section 4. Section 5 is pretty much as it was and Section 6—just a matter ofrewording. You'll find that in the sheets that you have-that have been given to you. Now, I hope this hasn't confused you too much. Basically, the plan is this again-and let me say-no matter which plan you adopt, it isn't going to be accepted by the Legislature or the people without a lot of criticism. There is no perfect plan, but both of these have been tried and used and have found workable. This Pennsylvania plan, as I said yesterday, is quite restrictive. It says the commission shall be appointed by the leaders of the Legislature and they shall select another man. Now, someone asked a question this morning that kind of—I wonder if you're a little bit confused. We have already voted single member districts and this commission is going to draw up these districts. I hope this is clear that this commission-and that's a powerful commission—they're going to draw up these districts because we have felt it has proved that the Legislature cannot do it. So, this plan is quite restrictive. However, after this commission has drawn up a plan they have 30 days-the Legislature has 30 days to file complaints as individuals. They can file complaints and they can go talk to the commission and say, "This is not right." And I feel that the legislators are in a better position to explain what problems there are in their particular area. Then, after that 30-day period-and anybody can file a complaint, any citizen can file a complaint with the court. And that, in substance is this Pennsylvania plan. I'm sorry for the corrections but with this unicameral thing coming in, we had to make corrections. But you'll have the corrections pretty much as you have on-as it should be-and I move adoption of these corrections, Mr. Chairman.

CHAIRMAN GRAYBILL: Will the Clerk read-let's start by reading subsection 2, Mr. Aasheim, and then we'll go through. Clerk read subsection 2.

CLERK HANSON: "Subsection 2: In the legislative session following ratification of this Constitution and in the session preceding each census made by the authority of the United States, a committee of four citizens, none of whom may be public officials, shall be designated to draft plans for districting and apportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each designate two commissioners, parenthesis, Bicameral: the majority and minority leaders of each house shall designate a commissioner, end of parenthesis. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I move this committee does arise and report, after having had under consideration subsection 2 of Section 15, the same be adopted. Mr. Chairman, I will not add any more comments.

CHAIRMAN GRAYBILL: Very well. Is there discussion?

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, as a substitute motion, I move the adoption of the minority committee report, which I think all of you have on your desks. The basic difference between the minority report and the majority report is that the minority report feels that anyone with an elementary knowledge of arithmetic and a set of statistics can reapportion the state, but it should be done on a sociological and ecological basis that you should be able to-and where can you arrive at a committee which would be more cognizant of the problems involved in each district than the Legislature? For that reason, the Section 1 is essentially the same--or, Section 2, excuse me, oftheminority report is essentially the same as Section 2 of the majority report. In Section 3 it varies in that the commission is set up; it presents a plan to the Legislature. The Legislature has 30 days in which they can either accept the plan or come up with a plan of their own. If they do not come up with a plan, then the commission's plan shall be-shall become law and the final plan of the commission shall become law. What we're doing here is giving the Legislature an opportunity to come up with a plan. That I feel would be a good idea to have them as a committee who knows the problems all over the state, to have the first opportunity. If they cannot come up with a plan, such as some people think they can't, then the commission would be available and they would draw up the plan. The Section 4 and 5 of the minority report merely give the Supreme Court the original jurisdiction, and they in no way change the fact that it could still be taken to federal court. I

think that's basically the difference between the two plans, and I've already moved for adoption of the minority plan.

CHAIRMAN GRAYBILL: Mr. Nutting, the Chair is confused. Is Plan 2, yesterday, the minority report?

DELEGATE NUTTING: No, I don'tknow whether the Chair got a copy. I had them distributed by the pages, but—

CHAIRMAN GRAYBILL: All right, well, the Chair didn't get a copy. There might be one on desk 42 there. You've got two? Fine.

DELEGATE NUTTING: It has a number 2 on the top of it and it says, "based on the Maryland section," is what-the revised minority proposal for Section 15, based on the Maryland section.

CHAIRMAN GRAYBILL: All right, Mr. Nutting, I have one more question. Where it says Section 15, is that supposed to have a small 2 there? You don't have a 2 or a 1. You start with-y"" follow me?

DELEGATE NUTTING: Yes, that would be a small 2 there.

CHAIRMAN GRAYBILL: Small 2. Mr. Aasheim and Mr. Nutting, are we going to debate section by section or proposal by proposal? Should we read the rest of the majority proposal and then the rest of the minority proposal'? Is it more logical to put the whole proposal in, one way or the other?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, I would recommend that you go ahead now with this minority proposal and let's analyze it.

CHAIRMAN GRAYBILL: In other words, 2, 3, 4 and 5. All right, I think we'd best have the clerk read the minority proposal in its entirety so that we have a chance to digest it.

CLERK HANSON: "Minority proposal for Section 15, based on Maryland section. Section 15. subsection 2: In the legislative session following ratification of this Constitution and in the session preceding each census made by the authority of the United States, a redistricting commission shall be established. The majority and minority leaders of the legislature shall each designate two commissioners. Parenthesis, Bicameral: The majority and minority leaders of each house shall designate a commissioner, end parenthesis. The four commissioners, within 10 days after the designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman. Subsection 3: The commission on legislative redistricting shall by the first day of the regular session in the year in which redistricting is to be effective, submit a plan to the legislature. If the legislature approves the plan it shall become law. If the legislature does not approve the plan within 30 days, or submit a plan of its own, the commission plan shall be sent back to the commission with recommendations of the legislature. The commission shall consider the recommendations and its final plan shall become law. Subsection 4: The supreme court shall have original jurisidiction, upon petition of any qualified voters to review the commission plan and the legislative plan. If the supreme court finds a redistricting plan enacted by the legislature invalid, the commission plan shall become law. If the supreme court finds the commission plan invalid, the supreme court shall issue an order remanding the plan to the commission directing the commission to redistrict in a manner not inconsistent with its order. When a plan becomes final, the commission shall be dissolved. Subsection 5: The state shall be divided into congressional districts for the election of members of the United States House of Representatives. These districts shall be redrawn after each federal decennial census. The commission hy redistricting shall submit a congressional redistricting plan to the legislature by the fifth day of the regular session in the year in which the congressional redistricting is to be effective. The legislature shall enact either the commission plan or the congressional redistricting plan of its own." Mr. Chairman, the minority proposal for Section 15.

CHAIRMAN GRAYBILL: All right. Now, I think before we can understand this intelligently we've got to know the other parts of the majority proposal, so would you read Sections 3, 4, 5 and 6 of that.

CLERK HANSON: "Majority proposal, subsection 3: No later than 45 days after appointment of the chairman, or no later than 45 days following the official reporting of each federal census, whichever is later in time, the commission shall file preliminary plans for

legislative and congressional districts with the secretary of state. Subsection 4: Any person aggrieved by the preliminary plans shall have 30 days to file exceptions with the commission. The commission shall have 30 days after the date the exceptions were filed to consider and file any revisions to the preliminary plans. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law for the next ensuing legislative and congressional election. Subsection 5: Any aggrieved person may file an appeal from commission plan directly to the Supreme Court within 30 days after the filing. If the appellant establishes that the final plans are contrary to law, the Supreme Court shall issue an order remanding the plans to the commission and directing the commission to district and apportion in a manner not inconsistent with it's order. Subsection 6: When the Supreme Court has finally decided an appeal taken, the apportionment plan, as approved by court, shall be used thereafter in elections to the legislature and to the congress until the next apportionment is required." Mr. Chairman, majority proposal for Section 15.

CHAIRMAN GRAYBILL: All- right, before we debate this, if I understand it correctly, the majority proposal allows the commission to make the plan and file its plan and then people can file exceptions; but the commission rules on those exceptions, and revises the plan if it wishes to, subject to an appeal of the Supreme Court. The minority report, however, provides that the commission provides I plan and submits it to the Legislature, and the Legislature can approve it. If it doesn't approve it, it can submit a plan of its own; but in any event, the commission then has to look at that plan and the commission gets the right to make the final plan unless the Legislature approves the commission's plan. And, again, there's Supreme Court review. Now, have I fairly stated the difference, Mr. Nutting and Mr. Aasheim?

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, maybe I misunderstood you that the commission presents a plan to the Legislature. The Legislature can either accept that plan or draw a plan of its own. If it does draw up a plan of its own, then that plan is the one that goes into effect unless it is found to be unconstitutional. And if it is, then the commission plan would come into effect, but in effect it puts the legislative plan ahead of the commission plan.

CHAIRMAN GRAYBILL: In other words, the Legislature can make a different plan and can adopt it and then it becomes the plan unless the Supreme Court overturns it.

DELEGATE NUTTING: That is correct.

CHAIRMAN GRAYBILL: All right, so the major difference then is whether the plan is to be--whether the Legislature is to be given a hand in making the plan, or whether the Legislature is not and it's going to be done by the commission. I think that's the basic difference. Now, let's discuss that, if we have further discussion.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, just before that explanation was made, I was having an awful lot of trouble in reading this in determining that that was what their intent was, and I submit that if that is their intent, they'd better say it much better than it's said in there right now because when it gets to Style and Drafting, we're going to sit around and quibble and have to come back and ask Mr. Nutting just exactly what his intent was. I can't find it in there.

CHAIRMAN GRAYBILL: On line 16 of the minority report it says that the commission shall submit a plan to the Legislature. If the Legislature approves the plan it shall becomelaw. If the Legislature does not approve the plan within 30 days, or submit a plan of its own, the commission plan shall be sent back to the commission with recommendations of the Legislature. So if they submit a plan of its own, I take it that ends the matter. I agree with you, Mr. Schiltz, it's not very clear. Rut if they submit a plan of its own, that ends the matter. Otherwise, the commission plan goes back to the commission with the recommendations of the Legislature, and then the commission can consider the recommendations and make its final plan. Now, that's the minority idea and the majority idea is the other way.

Mr. Aasheim.

DELEGATE AASHEIM: -Chairman, I believe I had the same impression that Mr. Schiltz had, that it wasn't clear but I think it is. If you look at the last sentenceit says, "Thecommission shall consider the recommendations and its final plan shall become law." So I think that leaves it up to the commission, very definitely.

CHAIRMAN GRAYBILL: Well, it doesn't leave it up to the commission if the Legislature approves a plan of its own or—on line 19, or submit

a plan of its own. Well, I think you're right. I think they're right, Mr. Nutting. When they say, "submit a plan of its own", does that mean submit it to the commission'!

DELEGATE NUTTING: Mr. Chairman. I would move to amend so that that sentence would read: "If' the legislature does not approve the plan within 30 days, or submit a plan of its own which shall become law. the commission plan shall he sent beck to the commission with recommendations of the legislature." Would that make it mow clear? Could I ask Mr. Schiltz a question, please'!

DELEGATE SCHILTZ: I would still have some difficulty with it because then you make the words, "The commission shall consider the recommendations and its final plan shall become law." YOU make that phrase totally meaningless then because if the Legislature's plan becomes law previous to that, why send anything to a commission that's going to consider the recommendations. They aren't recommendations. It's already law. And then you say "its final plan shall become law", and I have a conflict between which final plan is going to become law.

CHAIRMAN GRAYBILL: Mr. Nutting, if you'll add the words after your sentence, "which shall become law"-if you'll say, "if not, the commission plan shall be sent back." So just add the words, "if not". Now I think we've got it clear. If not-that is, if it doesn't become law, the commission plan shall be sent back to the commission with recommendations of the Legislature. I think that at least gives the Style and Drafting something to work from, substantively. On line 19, the proposal by Mr. Nutting is to amend it by adding, after the words, "or submit a plan of its own", this phrase: "which shall become law." And if you add right there, "if not, the commission plan shall be sent back to the commission." Then I think you're in good shape to at least go to Style and Drafting. Mr. Nutting, would you accept that proposed amendment?

DELEGATE NUTTING: I would.

CHAIRMAN GRAYBILL: All right, we'll accept that amendment so that we can discuss the minority report intelligently.

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I'm concerned with that language now as you have suggested it. If you do this, and this has to go to the Supreme Court to determine whether or not it becomes law, then by that time certainly the Legislature is going to have adjourned and went home. So, unless they do two things at once, unless they send their own plan and put it in the route through whatever legal procedures it may have to go and then also make recommendations to the commission plan and send it back to the commission while they're still in session, it seems to me that you'd have a problem.

CHAIRMAN GRAYBILL: Well, Mr.Hanson, I don't wish to argue the minority report but if you turn to the next page, the top line, if the Supreme Court holds the plan wrong then it directs the commission how to correct it. So in that case, I guess it's the Supreme Court that makes the plan, in effect.

Mr. Skari.

DELEGATE SKARI: Mr. President, I think there's an inconsistency here and I think it's possibly on both proposals. It's a very minor matter. I believe it was the sense of the committee-the entire Legislative Committee-that reapportioning he done only every 10 years unless the federal Supreme Court mandated it oftener than this. On line 3 of the minority proposal, I propose to amend it as follows: following the word "each", I would substitute, "federal decennial", between the words "each", and the word "census" and then I would cross out the words, "made by the authority of the United States." This, then, would be consistent with line 7 on the other side where it says on congressional districts: "These districts shall be redrawn after each federal decennial census." I think the committee felt that reapportioning was necessary approximately every 10 years after the federal decennial census. There is a possibility that the federal census may go to every 5 years. This is a distinct possibility now. With this wording we would have to reapportion every 5 years and just about the time people became accustomed to boundary lines, legislative boundary lines, they would evaporate again. I don't think the committee intended this. I move—

CHAIRMAN GRAYBILL: All right, Mr.-

DELEGATE SKARI: (Inaudible)...excuse me.

CHAIRMAN GRAYBILL: Pardon me. I was going to ask Mr. Nutting-I want to make it

possible to debate this easily and so I'm going to allow these amendments, hut I want Mr. Nutting to know-to answer to that. What do you think of that, Mr. Nutting?

DELEGATE NUTTING: That would be a satisfactory amendment as far as the minority is concerned.

CHAIRMAN GRAYBILL: All right, on line 3 of the minority report, then, the words—it should read, "preceding each"-then put in your caret-"federal decennial"-then back to "census"--and strike out the words, "made by the authority of the United States." All right.

Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible).... the same for the majority report.

CHAIRMAN GRAYBILL: All right, we'll make the same amendment in the majority report. It's on line 2—"preceding each federal decennial census"--and strike out the words, "made hy the authority of the United States." Now we have both the majority and the minority report the same in that effect. Is there—

Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Delegate Nutting would yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE ARBANAS: I notice in paragraph 4 in both the minority and majority report where it said "the Supreme Court stage of review", that the majority report has a time limit for that process, whereas the minority report doesn't. Is that an oversight or is there no need for it there'!

DELEGATE NUTTING: We feel there really is no need because you are always subject to court review on these matters, so a time limit wouldn't really have any effect on the courts.

CHAIRMAN GRAYBILL: Mr. Arhanas.

DELEGATE ARBANAS: Rut isn't it true that if the Supreme Court sort "flet the matter sit that you might never know what happened to it, if there's no first decision is to he reached hy the Supreme Court, you know, approving the plan or disapproving the plan?

DELEGATE NUTTING: I fail to **see on** the majority report that there is a time limit as far as the-there is a time limit on the time an aggrieved person may file an appeal, hut there is no limit on how long it takes the court to decide.

CHAIRMAN GRAYBILL: Are you through, Mr. Arhanas'?

DELEGATE ARBANAS: Well, maybe if Delegate Nutting would yield to another question—

CHAIRMAN GRAYBILL: One more question'?

DELEGATE NUTTING: (No audible response)

DELEGATE ARBANAS: I still kind of feel that isn't there a-just trying to understand it-a time there when their appeal should he heard before action is taken'? I mean, I don't get that feeling that there's room in your plan for that to take place. Somehow or other, while there may he appeals at any time, somebody has to wait a certain amount of time before they enact the law, don't they?

DELEGATE NUTTING: We're operating on two different principles in the two reports. In the majority report there is a provision for citizens to appeal the decision of the commission. The decision of the commission in the majority report-or the minority report, excuse me, there is no appeal provision as such. The only appeal would be through the courts to either the legislative plan or the commission plan, whichever is accepted in Section 2. So, consequently, there really is a different process here. There is no limit to the amount of time in either plan that an aggrieved person would have to go to court. You have that right.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I am happy to announce that Plan 3, the workable, realistic, acceptable and best planned to replace all other plans, is back. Several things disturb me about the other two plans. First of all, I think that it's important that we allow the Legislature to have some part in this procedure so that the gerrymandering, which we all fear and all legislators fear, will not take place. And you have on your desk, distributed this morning, a proposed amendment dated February 23rd, 1972. The first paragraph of that should be stricken and the following language inserted in lieu thereof: "Immediately upon enactment of this section and

following each census made by the authority of the United States, a committee of citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The Legislature shall designate the membership of the commission which shall be balanced geographically and politically." Then the second paragraph would be tho same as that on the proposal that's on your desk. Now. the first sentence says "after each census made by the authority of the United States." There has been some talk about the federal census going to a 5-year census. I feel to designate every decennial census, every IO-year census, would result in a law suit being filed after every federal census. If the federal census is every 5 years, that's when we ought to reapportion because if we don't reapportion and there's any significant difference in districts, somebody's going to bring a lawsuit. So I think we ought to face that, that we ought to reapportion after every federal census whether it's 5 years or 10 years. Secondly, this gives the Legislature, in the last paragraph, or last sentence of the first paragraph, it gives the Legislature the right to set up the membership of this committee, and it directs them to do it on a geographical and political basis, balanced geographically and politically. That kind of takes one of the problems off our back. And I had a phone call this morning from a couple legislators who were concerned about this proposition of the majority leaders appointing the membership on this commission, and this was a suggestion of theirs. So, take that for what it's worth. But, I think that it does give the Legislature a means of directing this commission. Then the last paragraph, I made some changes in the language there to clear up Jack Schiltz's problem with it, putting "first" in, instead of the word, "next". And under this, the commission would submit to the Legislature a plan for its consideration and recommendation. The Legislature would then return it to the commission with its recommendations and it would be filed with the Secretary of State. And then it provides that after enactment of a valid plan the commission shall be dissolved, so that it isn't a commission that's existing for the full 10-year period. I've taken out the provisions relating to citizens' right of appeal because a citizen has that right anyhow. I don't think we have to set it forth in the Constitution. It's already in the Bill of Rights. And I've taken out the provision with regards to review by the Supreme Court because the citizen has a right to have it reviewed by the Supreme Court anyhow, and it's redundant to put that into a Constitutional article. And, secondly, in any event, these reapportionment problems are going to end up in federal court in any event, and there's nothing we can do about that. So, with that explanation, I would move that Plan 3, that Section 15, subsection 2 through and including 6, page 28 and 29 of the Legislative Committee proposal be amended by deleting those subsections and inserting in lieu thereof the language which I have read to you.

CHAIRMAN GRAYBILL: Mr. Cate, very well, we'll accept it-1 think we'll have to accept it as an amendment to Mr. Nutting's substitute because the substitute came in first.

DELEGATE CATE: That's fine. Thank YOU.

CHAIRMAN GRAYBILL: But we'll amend it-accept it as a substitute amendment, striking out everything after the Section 15 and putting yours in the place of it in the minority report. Now, may I ask a question of you? I have your new proposal here before me. Do the members of the body have it or do they only have yesterday's?

DELEGATE CATE: They only have yesterday's, They do not have that first paragraph.

CHAIRMAN GRAYBILL: All right then, I think that the first thing we should do is have the clerk read Mr. Cate's proposal in its entirety again.

CLERK HANSON: "Subsection 2: Immediately upon enactment of this section and following each census made by the authority of the United States, a committee of citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The legislature shall designate the membership of the commission which shall be balanced geographically and politically. The commission shall draw up a plan for reapportioning and redistricting legislative and congressional districts and submit this plan to the legislature at the first session after the decennial census figures are available. Within 30 days after the submission to it, the legislature shall return the plan to the commission with its recommendations for change and the commission shall within 30 days thereafter file with the secretary of state

its final plan and the same shall become law. After enactment of a valid plan this commission shall be dissolved until the next decennial census."

CHAIRMAN GRAYBILL: Very well, so that the body may understand, it appears to the Chair that there are two major differences between Mr. Cate's proposal and the others. One is that the commission, on which the other-the majority and the minority are fairly much in agreement, the commission under Mr. Cate's proposal would be a committee of citizens which shall be balanced geographically and politically and be appointed by the Legislature. Secondly, it provides that the commission plan goes to the Legislature and the Legislature may recommend to the commission, but that's all. And then the commission plan becomes final. Is that correct, Mr. Cate?

DELEGATE CATE: That is correct, Mr. Chairman, with one additional item. The words, "decennial", in the fourth sentence and in the fourth line—

CHAIRMAN GRAYBILL: Yes.

DELEGATE CATE: -of the second paragraph and the last line should be stricken out.

CHAIRMAN GRAYBILL: All right. Now, so that we all understand each other, the majority report involves a commission appointed by the majority and minority leaders of the Legislature, whether there are one or two houses; and the minority report provides for the same thing. The majority report provides for reapportionment by commission; the minority report provides for reapportionment by a commission but the Legislature may override and put it's own plan into effect if it wants to. And Mr. Cate's provides for reapportionment by a commission and the Legislature may recommend only. So, it's a commission, commission plus Legislature, or commission plus legislative recommendation only. That's the three choices.

Mr. Drum.

DELEGATE DRUM: Mr. Chairman, would Mr. Aasheim yield for a question, please?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I will.

DELEGATE DRUM: Mr. Aasheim, I wonder in your committee deliberations on this topic, did you consider a method of compensating the commission or funding the cost of the commission? Did that come up, or not?

DELEGATE AASHEIM: We did not discuss that. But that would be up to the Legislature and in our plan we have no proposal or suggestion for discontinue it. I have an idea the Legislature will say, "You have this much money," and that'11 be it, and that might be very niggardly.

CHAIRMAN GRAYBILL: Mr. Drum

DELEGATE DRUM: I don't care to make an amendment but I would think that one of the problems of all three of these proposals is that if the Legislature does not care to fund the thing, if there is no fiscal note on it so we have an idea of what the cost is going to be, that it could certainly change the complexion of the commission. There's going to have to be some professional staff or some help there in making these evaluations, and I would think that a one-line amendment, maybe Section 6, that it will be funded by the Legislature or something of that nature, may be in order. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum, the Chair is going to try now to get the body to rule on which of these three ways they want to go. Once we've done that, then I think you may have a point that some other amendment should be made and whichever way we go, depending on what you want to do.

Mr. Garlington.

DELEGATE GARLINGTON: (Inaudible)...just want to say, Mr. Chairman, that I withdraw the amendment that I proposed yesterday because I think that Mr. Cate's plan here really is the simple,workable, flexible kind of thing that we ought to put in the Constitution, and I am very happy with it.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: (Inaudible)...I would like to know if Mr. Nutting would agree to an amendment on line 19 and striking the word "30 days", and put in the word "60 days"?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Mr. Chairman. I would not object, Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I would then submit to strike out in line 19 of the

minority proposal and insert in lieu the words, "60 days", instead of "30 days".

CHAIRMAN GRAYBILL: The mover having agreed, we will do that, so it now reads "60 days".

DELEGATE MAHONEY: Mr. President, the reason for this is that I think the Legislature—and it looks like for sure we're going to have at least a 60-day Legislative Session after a decennial census-it may be 90. And I'd like to give them that much time to decide whether they wanted to apportion themselves or not. And while I have the floor, Mr. Chairman, I wish to apologize to the body that I caused so much trouble. I think I have about 40 words in my amendment that I submitted here yesterday, and we get a page and a half. I wonder if we couldn't get this down simpler and a little shorter in the Constitution-then all we're trying to put in here to try and apportion the Legislature where we got by beautifully before without anything in the Constitution. And I'd like to answer Mr. Aasheim when he stated the Legislature won't do it. The Legislature did do it last session of the Legislature. It did apportion itself and it has stood the first court test.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I suppose it's improper for the majority to start amending the minority, but I would say 60 days is more than they need to draw up a reapportionment plan. It'll just be 30 days more than they need because the commission will have presented them with a plan and it certainly shouldn't take60 days ofhaggling to decide whether or not to accept it. And I resist the motion to amend this "30" to "60". I'm resisting because it's very possible the minority plan might be adopted and put in that light, I am resisting this amendment.

CHAIRMAN GRAYBILL: Well, Mr. Aasheim, the Chair has ruled that ii' Mr. Nutting wants to get his in good form, he would allow the amendment, so the amendment's allowed. Now you can vote against it but, unless you want to challenge us, I don't see why we should put these minor little things to the floor. That's the way the minority now wants it. Is that all right to leave it that way? You certainly may speak against it.

DELEGATE AASHEIM: Well, I move that it remain as it is, at 30 days.

CHAIRMAN GRAYBILL: All right, Mr. Nutting, an objection having come from the floor to the amendment of your minority from "30" to "60", and there already being more amendments before the body than the Chair will accept, we'll have to decide first and you can amend later if you want to. So the amendment will have to be withdrawn, Mr. Nutting. We've got a substitute and a couple of amendments here, so I think we'll just limit it to that until we've decided. Now, once we've decided on which plan we're going, you may then discuss it and amend it again if you want to.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I rise in support of the minority report Number 2, the Maryland section, and which of course means in opposition to Number 1 and 3. The fundamental issue is whether we're going to have our apportionment and districting accomplished by the elected representatives of the people or by an appointive commission, and I submit to you that it is fundamentally wrong to take away from the elected representatives the right to apportion and district. This is one of the crucial elements in our form of democracy. It ought to be accomplished by the elected representatives and not by an appointive commission. Both the majority report, Number 1, and Mr. Cate's report, Number 3, leave the final decision with an appointive commission. This is fundamentally wrong. It belongs in the hands of the Legislature, and I submit that the Maryland plan, which is the minority report, Number 2, is the only one which accomplishes that. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I am in support of Mr. Cate's plan; however, I find a weakness in all three of them which I'm not going to try to amend. I'm merely going to bring it before this body, knowing that there are much more capable minds than mine that can solve the dilemma. They-all of them start out, that it says, "Immediately upon enactment of this section" and following various other things, "there will be a reapportionment committee formed." And then, down in the second paragraph, it states that "the plan"-that the commission will draw up a plan and submit it to the next Legislature that meet on the year or close to the year when the census has been taken. Well, if no corrections are made, then we will have no way to redistrict Montana until 1980, or thereabouts. We will have to continue to operate under the redistricting plan or the reapportionment plan that we have now. And if we adopt

the single member district and it's adopted in the Constitution, and no corrections have been made on any of these three plans, then we will have no way to divide the state into single member districts until along in 1980. I bring thatbeforeyou because I think something should be done before the final 'adoption. I completely agree with our Chairman that we should depend--should decide an which of these three plans we should adopt and then go ahead and make this correction. I do not feel that we should try to solve this thing right now. I merely bring it to your attention.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I would like to have you look on Plan 1, if that's in order, to counteract Mr. Harlow's criticism, which I think is justified. On line 24, on the sheet that you have been given, it says if no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law for the next ensuing legislative and congressional election.

CHAIRMAN GRAYBILL: Is there further debate or discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: I would only like to say that I support Mr. Cate's plan for all of the same reasons as Mr. Garlington supported it. I think he's got a nice, tidy section here and in my opinion, the Legislature is totally unable to reapportion itself. It has too many interests that are not necessarily in accord with the broad interests of the state, and this kind of a commission would do it.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, in regards to Paul Harlow's statement that there wasn't provision for ratification and redistricting before 1980—the first line clarifies that in Proposal Number 2, which I support, by saying that in the Legislative Session following ratification of this Constitution and in the sessions preceding each census. I support Number 2, Plan Number 2 here, the minority report. I feel that legislators have been elected. They understand the districting perhaps better than anyone else and they should have an opportunity. In looking over the record, as I mentioned yesterday, from 1963 to 1970, most of the redistricting throughout all the states in the United States was accomplished through the legislative process and through the Legislature themselves. Thank you.

CHAIRMAN GRAYBILL: Mr. Kelleher

DELEGATE KELLEHER: Shortly after the one man, one vote decisions in 1964-I think it was 1966 or 1967, the Illinois Legislature, which was controlled by the Republican party, and both houses issued-put forth a plan. A Democratic Governor vetoed the plan. Thereafter, they appointed a 10-man commission, 5 Republicans and 5 Democrats. They could not agree. The statute provided that all the members of the Legislature for the entire State of Illinois had to run at large—177 Republicans and 177 Democrats were on the ballot that every voter in the State of Illinois had to use. I support Mr. Cate's plan.

CHAIRMAN GRAYBILL: Mrs. Cain.

DELEGATE CAIN: With regard to the ability of the Legislature to redistrict, I wish our delegation from District 23 would stand. Mr. Arness, Mr. Harlow, would you stand? We have three representatives here who live within a mile of each other. Two counties that are represented by one. This is a good example.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to comment on the statements of Mr. McNeil in regard to the fact that the elected representatives are-you know, should be given that right. That's the fundamental principle of democracy and I would agree with that, of course. But I also would say that it's probably a fundamental principle of democracy that no one should be judge in their own case; and that's the problem we have here, it seems to me.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President, I wonder, if I'm going to consider seriously Mr. Cate's plan, I'd have to look at it, and I don't have a copy of that opening paragraph. Is there any way that we could see it'?

CHAIRMAN GRAYBILL: It's somewhat similar to his yesterday one hut it's going to he pretty hard to see. Why don't I read it again slowly?

DELEGATE BURKHARDT: Does he still have this 30 percent of the seats of the Legislature and all that?

CHAIRMAN GRAYBILL: No.

DELEGATE BURKHARDT: See, I don't have that and I just can't think very clearly without having it.

CHAIRMAN GRAYBILL: All right, let me read it for you slowly. "Immediately upon enactment of this section and following each census made by the authority of the United States"—now. at this point he is very similar to the other two except he hasn't made that little amendment that Mr. Skari made about the federal decennial census, which I presume we could do if we wanted to. "Immediately upon enactment of this section and following each census made by the authority of the United States. a committee of citizens, none of whom may be public officials; shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts." So a committee has to be designated to draft a plan into legislative and congressional districts. "The legislature shall designate the membership of the commission which shall be balanced geographically and politically." He has no numerical limit on his committee. It's up to the Legislature to come up with a committee which is balanced geographically and politically. Now, that's all paragraph 1 says. It's the same as the other except the committee is chosen by the Legislature without any specific number, but it must be balanced geographically and politically. The other two plans both call for a commission appointed by the majority and minority leaders of the Legislature, and then if they can't agree on the fifth member, they go to the Supreme Court. So there's a difference in the method by which the commissions are chosen, but that's about all. Is there further discussion of the plans'!

(No response)

CHAIRMAN GRAYBILL: It' not, members of the committee, let's vote on Mr. Cate's amendment.

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN GRAYKILL: Mr. McNeil.

DELEGATE McNEIL: I ask for a roll call vote.

CHAIRMAN GRAYRILL: Yes, we'll have a roll call vote. Now. so that we all understand each other, I just read paragraph 1 of Mr. Cate's proposal. Paragraph 2 of his proposal says: "The commission shall draw up a plan for reapportioning and redistricting legislative and congressional districts and submit this plan to the legislature at the first session after the census figures are available. Within 30 days after the submission to the legislature"-after the submission to it-"the legislature shall return the plan to the commission with its recommendations for change and the commission shall within 30 days thereafter file with the secretary of state its final plan and it shall become law. After an enactment of a valid plan the commission shall be dissolved until the next census." So, the point of this plan is that the commission draws the plan, it submits it to the Legislature and within 30 days the Legislature must come back with its recommendations and then the commission files a final plan. So it's a commission plan plus a legislative recommendation, plus the provisions on the selection of the committee.

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Could I ask a question of Mr. Cate? Would Mr. Cate yield?

CHAIRMAN GRAYBILL: All right. Mr. Cate?

DELEGATE CATE: (No audible response)

DELEGATE KELLEHER: Jerome, does this provide for an odd-numbered commission or an even-numbered commission?

DELEGATE CATE: Well, yeah, it doesn't specify any number but I think the Legislature is smart enough to know that they're going to have to have an odd-numbered commission. I don't think we....(Inaudible).

DELEGATE KELLEHER: That would ho your intention if we did pass this that it would be your intention that the Legislature appoint an odd-numbered commission?

DELEGATE CATE: Certainly, certainly-so that the vote wouldn't be tied.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Would Mr. Cate yield to a question'!

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: (No audible response)

CHAIKMAN GKAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Cate, how is this going to be appointed if it happens to be a major-we decide on a bicameral Legislature?

DELEGATE CATE: How is it going to be what?

DELEGATE MAHONEY: Appointed.

DELEGATE CATE: By the Legislature.

DELEGATE MAHONEY: How are you going to do it? Two bodies'?

DELEGATE: CATE: It' we have a bicameral, let the Legislature decide. Under any of these plans the Legislature is going to have to set up the committee. They're going to have to provide for appropriations for it. They're going to have to provide for the term of' office. They're going to have to provide for other things. There's going to have to be some legislation introduced under any of these plans to implement this provision of the Constitution, and my position is that the Legislature ought to be given the authority to determine the number, the area representations. North Dakota, for instance, has-every judicial district has a member on the commission. Maybe that's the best way to do it. I think this is a question that we can leave to the Legislature whether it's a bicameral or a unicameral house, Mr. Mahoney.

DELEGATE MAHONEY: May I ask another question, Mr. President-Mr. Cate?

CHAIKMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: This is going to have to be done 2 years, or 1 year, I suppose, if you have an annual session, prior to the census. Is that right?

DELEGATE CATE: In the year preceding the census the commission would be set up and then when the census figures become available they would then submit to the Legislature immediately a plan.

DELEGATE MAHONEY: (Inaudible)... Mr. President, might I ask another question? I want a clarification of this question.

CHAIRMAN GRAYBILL: Mr. Mahoney, you may.

DELEGATE MAHONEY: It'll have to be set up at least 1 year in advance if it's an annual session, won't it?

DELEGATE CATE: I presume yes, but it's no different than any of the other plans in that regard.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Another question. What are you going to do, Mr. Cate, as of now-after the new Constitution? What provision have you made for the new Constitution?

DELEGATE CATE: Immediately upon enactment of this section, as it states, this commission shall be formed by the Legislature and then shall submit a plan to the next session or to that session of the Legislature. That's the problem that Paul Harlow was outlining that's inherent in these plans that will have to be worked out. There is one problem, and I think maybe this is what you're trying to get at, Mr. Mahoney. And the problem is this, and I see it in all the plans essentially, that the majority party, if the Democratic party controlled both the House and the Senate in a bicameral system, the method of setting it up might have some inherent danger in it because they might try and load it, but that's a danger that's inherent in all these plans in a sense, and it's one of those things that Mr. Aasheim so adequately pointed out this morning. None of these plans are perfect but I do feel that it's important that the Legislature participate in some way, other than doing their own reapportioning, in setting up a plan and in having the plan enacted.

DELEGATE MAHONEY: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Now, in your plan, do you allow the Legislature to apportion itself?

DELEGATE CATE: (No audible response)

DELEGATE **MAHONEY:** In the intervening timr. Mr. President, there will be an

election held, won't there—from the intervening time between the commission's set up and the new Legislature?

DELEGATE CATE: There could well be.

DELEGATE MAHONEY: Don't you think that it would be well to let the new Legislature have a chance at reapportionment instead of the last Legislature setting the commission only?

DELEGATE CATE: Mr. Mahoney, the experience of' Montana and 20 other states have been that the Legislatures cannot reapportion themselves, as much as they might try to do so. And I disagree with you when you state that the Legislature this time reapportioned itself. The first plan went to federal court and was thrown out, period, and they were directed by that court to make certain changes which would make the plan acceptable which then, after they had the force of a court directing them to do so, they did. And the process doesn't work, and from a" idealistic standpoint I would like to see the Legislature be able to do it. I don't like to take things away from the Legislature. I believe in the Legislature, but I also believe that there are certain things. like paying themselves a" adequate salary and reapportioning themselves, that they cannot inherently do. because I'm not going to sit here and cut my friend, Charley Mahoney, out of a seat. I just won't do it. And that's what it pets down to.

DELEGATE MAHONEY: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Mahoney, you may speak a minute.

DELEGATE MAHONEY: For the benefit of the members, last year the House of Representatives submitted an apportionment plan which took three districts-census districts-out of Glacier County and submitted and put these clear over west of the Continental Divide in with Flathead County-no connection or nothing—a range of the United States—the great Rocky Mountains between it. The Legislature, in its wisdom, cut it out and says it isn't going to be done. Everybody hollering to high heaven, it can't be done. The Supreme Court won't stand for it. but they did stand for it. All I'm trying to do is to get something down so the Legislature has a little something to say, instead of it being divided up by a computer. And this is what we're going to in this state is. go on. feed it to the computer and this becomes the apportionment, not caring about trade territories, not trade—or caring about anything, only the one member, one vote, and this is what's bothering me; why I'm trying to get back and let the Legislature at least have something to say about apportioning itself. I think this should be taken very seriously—to take away the power of the people that you have elected—and I don't care where they're elected from, they're elected by the people. And I hope, Mr. President, that this does not prevail.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in support of Mr. Cate's proposal. I sat through many sessions of the Legislature. Many, many Mondays I spent hearing them discuss this reapportionment business. On my 10th program, March 2nd, 1971, I reported: "I sat in the Senate Monday and listened to the senators discuss reapportionment. Although both chambers realize they must reapportion themselves according to the 1970 census or the courts will do it, again, many senators want to increase their number and the House does not agree. A decision must be made soon because candidates for the Constitutional Convention have to file by April 22nd." We know we could not file by that date. We know we had to wait and run in the primary in September because of the failure of the Legislature to apportion itself. I agree with Mr. Cate. It's like removing your own appendix. The Legislature will never do it to itself.

CHAIRMAN GRAYBILL: Very well. Now, the Chair feels that we have three different proposals here and I'd like to get the sense of the body on which one we want and then we can decide whether we want to change some minor language. So, I'd like now to place Mr. Cate's proposal before you. You understand that the majority report reapportions by commission. The minority report reapportions by commission but it allows the Legislature an absolute right to change the plan and come up with its own. And Mr. Cate's proposal reapportions by commission and the Legislature may recommend changes only. Now, we'll vote on the voting machines, and so many as shall be in favor of Mr. Cate's recommendation, please vote Aye; and so many as are opposed, please vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot is closed Wilt you please take the roll call'?

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O..... Ayr
Arbanas ..... Aye
Arness ..... .Aye
Aronow ..... .Absent
Artz ....Absent
Ask. ..... .Aye
Babcock ....Absent
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... .Aye
Blaylock ..... Nay
Blend .....Absent
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ....Aye
Burkhardt ..... .Aye
Cain ..... Aye
Campbell ..... .Absent
Cate ..... .Aye
Champoux ..... .Aye
Choate..... .Aye
Conover ..... .Absent
Cross..... Aye
Dahood ..... .Aye
Davis.....Aye
Delaney ..... Nay
Driscoll ..... Nay
Drum ....Aye
Eck ..... .Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt.....Aye
Foster ..... Aye
Furlong..... .Aye
Garlington ..... Aye
Graybill-Chairman..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, K. ..... Nay
Harbaugh, ...Aye
Harlow ..... Aye
Harper.....Absent
Harrington ....Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold..... Nay
Loendorf..... .Aye
Lorello..... .Aye
Mahoney ..... Nay
Mansfield..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough..... .Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin..... Nay
Monroe ..... .Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... .Aye
Pemberton ..... Nay
Rebal.....Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder..... Aye
Kottins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ....Nay
Schiltz .... Aye
Siderius..... .....Aye
Simon .... Nay
Skari..... ..... .Aye
Sparks..... . .Aye
Speer ....Aye
stutter ....Nay
Sullivan ....Aye
Swanberg .... Aye
Toole .... Aye
Van Buskirk... . . ... Nay
Vermillion .... Aye
Wagner .... Nay
Ward .... Nay
Walden ....Aye
Wilson ....Aye
Woodmansey... .... Nay

CLERK HANSON: Mr. Chairman. 55 delegates voting Aye; 36 voting No.

CHAIRMAN GRAYBILL: 55 delegates having voted Aye and 36 No, Mr. Cate's proposal prevails. Now it seems to me that that's an

indication that this body wants to reapportion on Mr. Cate's basis. I would like to ask leave that we suspend consideration of this matter and go to Number 7 while Mr. Cate has this printed, so that we can then look at it carefully. And if you want to change some of the language at the beginning, or some of the minor things, you can. Is there objection to that plan?

(No response)

CHAIRMAN GRAYBILL: If not, Mr. Cate, would you approach the rostrum and in the meantime, let's turn to Section 7 of the Legislative proposal which was passed over.

CHAIRMAN GRAYBILL: Very well. The Convention will be in session. Will the clerk please read Section 7.

CLERK HANSON: "Section 7: Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law." Mr. Chairman. Section 7.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President. I move that when this committee does rise and report, after having under consideration Section 7. that it do recommend be approved.

CHAIRMAN GRAYBILL: Mrs. Robinso".

DELEGATE ROBINSON: Mr. President, I move that when this committee does rise and report after having under consideration Section 7, that it do recommend be approved.

PRESIDENT GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, we discussed this at length the other day. I really have nothing more to add We discussed why we put in having the vacancies filled by a special election. We've moved to pass consideration on this to consider an amendment offered by Mr. Rollins. His amendment would not, in any way, change what we have proposed in the sentence in Section 7.

CHAIRMAN GRAYBILL: Mr. Rollins, do you want to make your amendment? The clerk will read it if you want to make it. Yes. Will the clerk read Mr. Rollins' amendment'!

CLERK HANSON: "Mr. Chairman, 1 move t o amend Section 7 of the Legislative Committee proposal. page 18, line 22, by adding the following new material: quote, The officeshall be vacant when any elected member of the legislature ceases to reside in the district from which elected. end quote. Signed, Rollins."

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: -President, this is my third attempt at introducing this amendment. I was told once that I was in the wrong place, and the second time, the wrong time. I hope I now have that happy coincidence of time and place (Laughter) where we can consider this. My concern here is that case in which an elected representative, after the election and during the time when he is still in office, moves from one district to another. I feel that we should have some provision in the Constitution to cover such a case as this. Mr. Romney used the context a little differently, but perhaps this is one case in which we can see the carpet tack before we step on it. I urge consideration of this amendment.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in opposition to this proposed amendment because I'm hoping later on today to get some modification on residency out of Section 4. But my point is, where you live really doesn't make any difference. If you're elected by the people, the people apparently elected you and had trust that you will represent them in that particular session. And, if your house burns down and you have to find a new house on the other side of town, then you have to give up your seat in the Legislature. And it just seems to me that that is trivia in the "nth" degree. And while I just don't see particularly in the city where residency has any relevency to the whole matter, but further than that, to write this into the Constitution that the office becomes vacant when you move, just seems to me, to be pushing it way too far and I speak in opposition to the amendment.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. in answer to Mr. Joyce, this is not a case of moving from one ward or precinct in the city, it's a case of moving to a totally different area in the state.

CHAIRMAN GRAYBILL: Oh, Mr. Vermillion-excuse me.

DELEGATE VERMILLION: Would Mr. Kollins yield to 'I question, please?

CHAIRMAN GRAYBILL: Mr. Kollins'?

DELEGATE ROLLINS: I yield.

DELEGATE VERMILLION: Mr. Rollins, if this Convention should decide later on that they would adopt a recall provision, would that satisfy you.

DELEGATE ROLLINS: 1 don't think so. Who would recall him'! The district from which he departed or the one from whence--or from where-which he came. I don't think that would handle it too well.

CHAIRMAN GRAYRILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think maybe Mr. Scanlin overlooked the idea that we now have single member districts, and in a city like Billings, for example, or Butte or Great Falls or even Helena, there will be several single member districts. And in fact what Mr. Joyce said is literally true, that to move across town would be to remove yourself from your district.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, would Mr. Rollins yield to a question?

CHAIKMAN GKAYBILL: Mr. Kollins?

DELEGATE ROLLINS: I yield.

DELEGATE ECK: Mr. Rollins, would you accept wording—instead of "district" say "of the district", or "of the county in which his district is situated", which would take care of the situation? In other words, he could move a few blocks away to another district and he would still be within the same general area in which he was elected.

DELEGA'I'E ROLLINS: County and district", might be all right.

DELEGATE ECK: Well, I don't think that that would add anything. I think that what we're trying to get at—excuse me, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I think that what we're trying to get at here is that a person might move, and as I indicated the other day, that this could be especially true in a college situation where he might be forced to move, really, out of the district in which he waselected. Hut if he still lived within the county, this way he could maintain his office.

DELEGATE ROLLINS: Would you state your original—

CHAIRMAN GRAYBILL: Just a moment. Mrs. Eck, did you have a question? Mrs. Eck has the floor.

DELEGATE ECK: I will yield to Mr. Kollins' question.

CHAIRMAN GRAYBILL: Very well. Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I would like Mrs. Eck to state her question again, please.

DELEGATE ECK: I wondered if you would accept the wording: "A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law." Going on to say: "The office shall be declared vacant whenever a member moves out of the county in which his district is situated."

DELEGATE ROLLINS: I think that would be acceptable. Thank you.

DELEGATE ECK: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, Mrs. Eck, I heard your suggestion. Have you made a motion or, Mr. Rollins, are you asking leave of' the body to amend your amendment?

DELEGATE ROLLINS: (No audible response)

CHAIRMAN GRAYBILL: Mr. Kollins is asking leave of the body to amend his amendment so that it reads: "The office shall be vacant when any elected member of the legislature ceases to reside in the county in which his district is situated." Unless I hear objection from the floor, we'll allow this amendment in his amendment. Mrs. Hates. do you object?

DELEGATE BATES: Mr. Chairman

CHAIRMAN GRAYBILL: Do you object'!

DELEGATE BATES: No.

CHAIKMAN GRAYBILL: All right, there being no objection, we'll allow the amendment. All right, Mrs. Bates.

DELEGATE **BATES:** Mr. Chairman, in view of the fact that we had a county commissioner that was elected from a district and then he moved into town, he did complete his term there, I don't know-1 feel that this should not be in the Constitution. It is legislative matters and is statutory. Again, what constitutes a vacancy? If you take a trip to Arizona for 6 or 8 months of the year, should that be declared vacant-that district? There are many things involved here and I think it is a legislative matter. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIKMAN GRAYBILL: If' not, the question is on Mr. Rollins' amendment which would add to subsection-or to Section 7 of the Legislative Article the following sentence: "The office shall be vacant when any elected member of the legislature ceases to reside in the county in which his district is situated." So many as shall be in favor of Mr. Rollins' amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

DELEGATES: Division.

CHAIRMAN GRAYBILL: Very well. we'll have the-we'll use the voting machines. So many as are in favor of Mr. Rollins' added sentence in Section 7, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Does any other delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 49 having voted No, 37 having voted Aye, the motion fails. Very well, we're back on the proposition of Section 7. Is there further discussion of Section 7?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee you have before you on the motion of Mrs. Robinson, that when this committee does arise and report, after having under consideration Section 7 of the Legislative Article, that the same shall be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Section 7 is adopted. If you'll now turn to page 32, you'll find the majority bicameral proposals. The Chair presumes that since the majority and the minority expect their proposals to be nearly identical—that we can consider these by simply pointing out that they are identical as amended. Now, we'll skip 1, 2 and 3, which we're going to debate later, and starting with Section 4—Mr. Cate, Section 4 was passed as modified, as I recall. Section 4 of the majority unicameral proposal was passed as modified. Mr. Cate, can you speak to that?

DELEGATE CATE: That's correct. Did you want me to move?

CHAIRMAN GRAYBILL: If you'll move that the minority—or that the bicameral report be passed as modified in the unicameral proposal, we'll take—put that motion.

DELEGATE CATE: Mr. Chairman, I move that the—when this committee does rise and report that it accept as Section 4 of the bicameral article, Section 4 as amended by the Committee of the Whole.

CHAIRMAN GRAYBILL: Very well, you've heard Mr. Cate's motion. So many as are in favor of it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well. Section 5.

Mrs. Bates.

DELEGATE BATES: (Inaudible)...have these read as they were amended, please.

CHAIRMAN GRAYBILL: Well, I'm not sure you can. I don't think I can read it. Does anybody—I suppose we can send out for the language but I'm hopeful that we will not redebate them now. That would amount to reconsideration of them.

DELEGATE BATES: Well, I feel we should give some reconsideration on some of these matters.

CHAIRMAN GRAYBILL: Mrs. Bates, you certainly may move for reconsideration at any time. What I'm trying to do is get the bicameral and unicameral majority proposals disposed of.

DELEGATE BATES: I would recommend reconsideration and I so move for this qualification. Mr. Chairman, could I speak on this?

CHAIRMAN GRAYBILL: All right. Wait a minute until I think this through. Mr. Clerk, do we have a copy of the text as amended?

CLERK HANSON: (No audible response)

CHAIRMAN GRAYBILL: You're seeing about it'! Very well, we'll stand in recess for 5 minutes while we try to get the text of what we've passed up until this time.

(Convention in recess from 10:50 until I 1:00 a.m.)

CHAIRMAN GRAYBILL: The Convention will he in session. Very well, the Chair would like to announce that during the recess we met with the Rules Committee and with the majority. with the Chairman and Vice-chairman of the Legislative Committee, and we are going to suggest the following procedure. All but two sections of the bicameral majority report were initially-or, let's say, are now the same as the unicameral majority report. There are a couple of them that are still to be considered, such as the veto which has been left out, and such as 15, which of course is Mr. Cate's proposal we worked on this morning. But other than that, there are only two that there's any minor differences in between bicameral and unicameral. So the Chairman of the Legislative Committee is going to move that we adopt as the bicameral majority report the same language as amended of all of these sections that are similar. Then we will debate the two that are different, and then we will go on to the next matter. And if there arc sections which any of you wish to reconsider you certainly shall have an opportunity to reconsider them. I'm asking that reconsideration be the last thing on the Legislative docket. So. we're going to simply adopt the majority bicameral as the same as the majority unicameral amended.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, I move that we adopt Sections 4, page 14; Section 5 on page 15; Section 6 on page 16 and 17 and 18; Section 7 on page 18: Section 8 on page 19; Section 9 on page 19 and 20; Section 10, subsections 1, 2, 3, 4 and 5—except subsection 4 which was killed; Section 11 on page 22: Section 12—oh, 11 is on 23, also: Section—

CHAIRMAN GRAYBILL: 12.

DELEGATE AASHEIM: -12 on page 24; we passed Section 13 on page 25 and 26 and 27; we take Section 14 on page 27; we adopt subsection 1, 3 and 4. I move we adopt these as amended in the unicameral proposal. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Now. I hope we're not-you get the impression that we're trying to railroad something here. You have a chance now to think about any one of these and talk about them and make any further amendments that you feel should fit into the bicameral proposal. Remember this is going to be debated further, whether we want the bicameral or unicameral or both on the ballot; and if there are sections in the bicameral that you feel are-should be different from the unicameral, that this is the time to consider, reconsider your action even after adopting my motion. I move the adoption of my motion.

CHAIRMAN GRAYBILL: Very well. It's the Chair's understanding that, if you want to reconsider you may reconsider any of them when WE reach the reconsideration stage on the calendar. Now, with that explanation that we're adopting the bicameral majority report, the amended unicameral majority reports, so many as are in favor of Mr. Aasheim's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Mr. Champoux, do you want to state—I didn't see you—do you want to state for what purpose you arose?

DELEGATE CHAMPOUX: I rise for a point of information before the vote, but you didn't, recognize me. My question was, why do we need a vote of this kind at this time?

CHAIRMAN GRAYBILL: Why do we need what?

DELEGATE CHAMPOUX: -vote of this kind at this time. Why is—

CHAIRMAN GRAYBILL: Because the majority bicameral and majority unicameral, and because the Legislative Committee came in with a majority both bicameral and unicameral and we adopted a motion to send them both to Style and Drafting to figure out a way to put this issue on the ballot. Therefore, there have to be subsidiary bicameral and unicameral proposals for all of these neutral points and we've now covered all the neutral points from 3 to 16 in the unicameral proposal and we're simply picking up the ones that are identical in the bicameral. That's the reason for it, so Style and Drafting will have the language available so that they can figure out how to put it on the ballot. Now, if there are any of them, however, that you want to reconsider later, you certainly may reconsider them at the reconsideration time. Does that Mr. Champoux, does that help you?

DELEGATE CHAMPOUX: Well. you know it's-1 thought we were-the procedure was, when we get through with one of these committee proposals, we just vote it in toto, and if the problem is the question of time to get it to the printers, well then, what about the reconsiderations? I don't really see the need of this vote at this time.

CHAIRMAN GRAYBILL: Well, the point is, that the majority of the committee came in with both a bicameral and a unicameral proposal. Now, we've gone clear through the unicameral proposal and it's taken us two and a half days. Now, rather than go back through the identical language on bicameral, we've adopted the ones that are the same. There are two that we're going to debate that are slightly different, as you'll see in a moment. Then we'll go back and debate 1, 2 and 3, which is the basic issue of bicameral-unicameral. Okay.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I understood when we began on this that we had not yet voted on the question of whether or not we would put these two proposals as alternatives on the ballot, and according to my notes, we haven't made that decision. Would, by this vote, we have—have we now decided that this will go on the ballot?

CHAIRMAN GRAYBILL: No. Perhaps I overstated in saying on the ballot. We have sent it—we have voted to send it to Style and Drafting as a dual proposal so that Style and Drafting may consider whether or not it should be put on the ballot, and we'll consider that when Style and Drafting comes back. All we've done now is adopt the identical language that we've already adopted for unicameral for the bicameral majority proposal.

Mrs. Bates.

DELEGATE BATES: Mr. President, in talking to some of the delegates, they felt—they gave me the impression that they felt that the bicameral would be debated section by section, and that it perhaps would be a great deal different than the unicameral. And I'm sure this can still be done under reconsideration, but I think that some of the delegates had the wrong impression as to now.

CHAIRMAN GRAYBILL: Very well, the point is that the majority bicameral and the majority unicameral proposals on all of the matters that we just voted on there were identical. Where they were not identical, we are still going to discuss them. There are only two of them left since we knocked out two that had differences in them. Now, having changed that language, or worked that language over in the last two and a half days in unicameral, we simply have adopted that same language for the bicameral to keep them identical. Now, there's still plenty of time to reconsider them, but that's where we are.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, as I understand it, any of these sections which appear to be identical at this stage of the game can be handled by reconsideration after we have completed our survey of the bicameral section, but is it reconsideration if we do not touch upon them in

the bicameral discussion? Take, for example, Section 4 . Qualifications. It has been decided in the unicameral section. We have not considered it in the bicameral and I think it was one of those that was suggested we pass over at this time. Now—

CHAIRMAN GRAYBILL: Well, Mr. Romney, may I explain to you? We have considered it in the bicameral because that's what we just now did. We just now considered about 10 sections at once and—

DELEGATE ROMNEY: So that would constitute—

CHAIRMAN GRAYBILL: That will constitute our consideration of them for bicameral and they may be taken up on reconsideration later. Rut, the reason I want to reconsider later is after we've debated 1, 2 and 3, we may only have either unicameral or bicameral left. I don't know.

DELEGATE ROMNEY: Very well.

CHAIRMAN GRAYBILL: And at that point we can reconsider to our heart's content but I think it's foolish to reconsider them and then go ahead and change the system, if we do. No, the primary consideration of them-the point of Mr. Aasheim's motion-was to give the bicameral sections that are identical the same treatment that we've now given the unicameral sections. We have avoided reading them section by section only for the reason that we are almost-it's almost impossible, without taking a long recess, to be able to read them to you section by section as amended because they have not been retyped since we did them yesterday.

DELEGATE ROMNEY: That being the case, when will the decision be made whether to place them both on the ballot or not?

CHAIRMAN GRAYBILL: Well, that consideration has-will be made at two times. First of all when we debate 1 and 3—1, 2 and 3. If this body should decide to not follow therecommendation of the Legislative Committee, which is that they both go to Style and Drafting, if you should vote not to do that by various amendments and so forth, then of course, we'd only have one. On the other hand, if you do vote to do what they suggested, both the majority proposals-both bicameral and unicameral--would go to Style and Drafting and then Style and Drafting would have the job of deciding what to do with the dual proposal. Presumably their solution would be to put it on the ballot.

DELEGATE ROMNEY: As they did in North Dakota?

CHAIRMAN GRAYBILL: Well, in some form which will then come back and be debated when the Style and Drafting report comes back to this Convention. I trust that everyone understands that when we finish a section, as we did General Government the other day, and as I hope we'll do Legislative today, it goes to Style and Drafting. Style and Drafting then considers the whole thing with the new language, cleans it up if they think there's any differences, and makes a report of the Style and Drafting Committee on the Legislative Article, at which time we have to approve their report. If we do approve it, then it lays aside until we're through and then it's considered a third time as the Constitution as a whole. Okay. Well, now we're down-we've considered 4, 5, 6, 7, 8, 9, 10, 1, 2, 3 and 5; 11, 12, 14 sub. 1, 3 and 4. Those have all been considered by-on the bicameral. Now, Section 10 of the bicameral proposal, which you'll find on about page 33, Section 10 has a sub. 6 and a sub. 7 that the unicameral did not have. And at this time, I'll ask the clerk to read Section 10, sub. 6, of the bicameral proposal on page 34.

CLERK HANSON: "Section 10, subsection 6, page 34: Neither house shall, without the consent of the other, adjourn or recess for more than 3 days, nor to any other place than that in which the two houses shall be sitting." Mr. Chairman, subsection 6.

CHAIRMAN GRAYBILL: Mrs. Bugbee

DELEGATE BUGBEE: Mr. Chairman, I move that when this committee does arise and report. after having had under consideration Section 10, subsection 6, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bugbee

DELEGATE BUGBEE: In this section which pertains only to the bicameral, the committee was concerned that one house could pass its bills and then simply adjourn if this provision was not kept. Also, they felt that it could be used as a delaying tactic if it were not kept.

CHAIKMAN GRAYBILL: Very well. is there discussion of Section 10, sub. 6 of the bicameral majority report?

(No response)

CHAIRMAN GRAYBILL: It' not, members of the Committee, you have before you on the motion of Mrs. Bugbee that subsection 6 of Section 10 of the bicameral report, and her motion is that when this body does arise and report that the same shall be adopted. So many as are in favor of her motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GKAYBILL: Opposed, No. and the Ayes have it. Will the clerk read subsection 7?

CLERK HANSON: "Section 10, subsection 7: The legislature shall adopt and use joint rules. One rule shall require that, except on final session day. each report of a conference committee contain a" explanation of the committee recommendations and be duplicated and distributed to each legislator 24 hours before action may be taken on a" affirmative vote." Mr. Chairman, subsection 7.

CHAIKMAN GKAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 7, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GKAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: In addition to the comments. I'm reading page 46. Mr. Chairman. But this should have been added to the committee proposal explanation. in addition to what's already there, and I quote: The purpose of this section is to make known to the legislature the reasons for the actions of the conference committee, unquote. It would provide adequate time for consideration of conference committee recommendations. And of Section 7, the first sentence is new and will require coordination between the two houses. Thank you.

CHAIRMAN GRAYBILL: Mr. Holland, would you stand and announce your presence so you can vote?

DELEGATE HOLLAND: Yes, will you please mark me present, Mr. Chairman?

CHAIRMAN GRAYBILL: Very well. Is there discussion of subsection 7?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, on line 3 on page 46, after the word "rules", retain the period and delete the balance of the paragraph. I move-1 so move. There are-or there has been considerable said about the conference committee and the unicameral proponents are very concerned about this conference committee. And I suppose there's reason for concern, but they have the impression that there's no conference committee needed in the unicameral. Now, yesterday afternoon we had a conference committee. Mrs. Robinson and I sat over there in a conference and talked things over, didn't we? We had a conference committee. And to suppose that you don't need a conference committee in the unicameral is erroneous. When you get in a deadlock, you may send some people into conference to settle the deadlock. Now, why I oppose this last language in the conference committee-24 hours. We're again legislating. Why tic the Legislature down with material like this? They're in the last throes of finishing up and they've had to have a conference committee. and they can't act on it for 24 hours because of this rule in the Constitution. I can think of nothing more ridiculous. I think this conference committee is a big bugaboo to some people. It is necessary to reconcile differences which happen in any body, but why tie it down to expecting a 24-hour report when it may cause a disruption in the normal process of closing a session. For that reason, I move that we delete the last sentence beginning with "one rule".

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, your motion is accepted.

Mr. Romney.

DELEGATE ROMNEY: (No audible response)

CHAIRMAN GKAYBILL: Mr. Romney defers.

Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, I would first of all rise in opposition to the motion of Chairman Aasheim. First of all, we did not have a conference committee because we did not take a vote; we did not dispose of any legislation; we merely had a consultation on the sofa. (Laughter)

CHAIRMAN GRAYBILL: Would you care to be more specific, Mrs. Robinson?
(Laughter)

DELEGATE ROBINSON: And it was open to the public (Laughter)—as most conference committees are not. It is my opinion, and your consideration of whether or not to delete this section, should be revolved around two things. It's fine with me to omit this section, particularly if you're in favor of a unicameral Legislature. Because to me, in my opposition to a bicameral Legislature, half of my opposition is based on whathappensin the conference committee; that most of the reports are received from conference committees and they're appointed in the last 5 or 10 days of the entire legislative process. Rarely, if ever, are conference committee decisions overturned and the people in the legislative body do not really know what has gone on in the conference committee. I would say that, by deleting this, you areobviously giving unicameralists quite a bit more leverage in dealing with the bicameral system because this has been pointed out to be one of the most blatant violations of democratic government in the eonference committee, and I would strongly urge you not to delete this section.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I apologize for the delay. The seating capacity and the books and one thing and another are not quite adequate. I rise to resist the motion of my friend, Mr. Aasheim, and I do it because I think that the conference committee has been one of the central reasons why the Legislature fails to function best in the interests of the people. I recall that the autobiography of Senator George Norris, the father of the Nebraska unicameral program, in his autobiography Senator Norris wrote a chapter concerning the unicameral system and one of the-or, wrote a chapter concerning the conference committee, and he pointed out that it was one of the most vicious characteristics of the bicameral system, and that it was one of the reasons why unicameral&n should be adopted. He cited case after case in support of his view. Now, those of you who have read the journal of the House of Representatives or the Senate of the State of Montana have no doubt read reports of select committees, such as conference committees. I am going to take the time to read one to you: "April 1st, 1971: That the house recede from paragraphs 1, 2 and 3 of the March 20, 1971, house committee on reapportionment amendments to Extraordinary Session Senate Bill Number 1. Amend Section 3, page 3, line 22, following the word, 'such', by striking the word, 'in'; amend Section 2, page 3, line 10, by striking the sentence starting with the word 'the', in quotes, and ending with the word 'years', in quotes, on line 14 and inserting in lieu thereof the following words, figures, and punctuation: 'The new senator in district 15 and 20 shall serve for a 2-year term upon his or her first election of 1972', and that the Senate accede to the remaining house amendments except as noted above, and as so amended be adopted." And then it has the signatures of the House of Representatives and of the Senate Representatives. Now, I submit that that is very intelligible (Laughs) and that represrntatives or senators in whichever body the report comes before, know all about it. I picture for you the final days of a Legislative Session when there are half a dozen such conference committee reports bouncing from the rostrum into the house here and they're all worded similarly, and the explanation made by weary legislators who are managers for the House or for the Senate, if it is in the other body, are not very explanatory. I think that before voting on conference reports, and you obviously in a bicameral system must have conference committees in order to compose the differences between the two houses, I think it is manifestly essential that the representatives or the senators know what they're voting about. And this would provide a vehicle for such knowledge. Now we do not need such a section in a unicameral house because, obviously, there are no conference committees: so this is for the bicameral section alone. The gentleman from Antelope advises that 24 hours is too much time to be exhausted at that stage of the game, and I realize that 24 hours is considerable time in the busy and hard schedule of the Legislature, especially in its closing days. So, when this was first submitted there was a final proviso in this section which provided that, except for the final day. This left a hiatus when there would be no such protection for legislators. It was suggested in the hearing by Senator Groff, and I think it was good and I accepted it. But it has disappeared and I would like to offer an amendment providing that there be added after the word "report", "except for the final day of the session", which gives protection. Now, we have decided, apparently, that we're going to have 90-day sessions and there is going to be an opportunity for the Legislature to provide additional time if it so desires and if it is required. So I think that giving the legislators all of the tools provided by an

explanation in the conference report is not only worthy but I think it's essential, and I think that the time that would be used is very desirable. I urge that this section be retained with the amendment.

CHAIRMAN GRAYBILL: Now, Mr. Romney, your amendment is out of order until we get rid of Mr. Aasheim's amendment because you've amended a deleted section.

DELEGATE ROMNEY: 1 serve notice that if my amendment-ii' this survives Mr. Aasheim's attack, that 1 will offer an amendment.

CHAIRMAN GRAYBILL: Right. Very well. All right. is there other discussion of Mr. Aasheim's amendment to delete the second section of subsection 7?

Mrs. Bates.

DELEGATE BATES: Mr. President, I rise in opposition to deleting this section. I feel it is one of the problems that we have had with the Legislature, the lack of visibility and responsibility for a more effective Legislature. In the past this conference committee was questionable and I think this would-is very important to retain in and to pass on. Yesterday a proposal was sent back to our committee for reconsideration. 1 wondered what happened. A few minutes ago 1 found out. This is the first time I've ever heard of a conference committee in a unicameral body. Thank you.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I rise in support of Mr. Aasheim's motion. 1 would say that we could take any place in that recording that we're just taking now and it would sound just as garbled up as what Mr. Romney's little speech give. When a conference committee reports, you usually are reporting on some specific subject that you wasn't able to agree on and the amendments that are put in there, though they may sound kind of strange to the outsider, are very plain to the people that are setting on the floor of the House or the Senate. You're deciding to do some certain thing. One or two words one way or another makes a difference what you do there. They know what those words mean and then they debate it on the floor to accept this conference committee report. When they accept it, they debate it. Also like to say that if you put this 24 hours on, suppose you come in with a conference report today-the conference committee reports. You wait 24 hours. You take a vote on it; you reject it: you have another conference committee. They come in the next day with another report. You lay it on the desk another 24 hours. This thing could go on and on and you finally, with this 24-hour limitation that you have here, or requirement, you'd be putting the Legislature in a position where they would accept something they might not like because they'd never end the thing. You never know when the last day is. I'd like to ask that question-how do you know when the last day is until you finally adjourn sine die'? 1 haven't figured this one out. You would always be on this 24-hour penalty, restriction, that you'd have to wait for. No way, no way can-1 can see that you could determine that you-that the last day was there. Therefore, I submit that24 hours would have to wait on every conference committee report. Now, in the final days of the Legislative Session you talk about having five or six conference committee reports coming in all at once. That's all you have to do because you have all the rest of the legislation taken care of. The reason you have the conference committee is there's something that you couldn't resolve between the two houses. 1 think this would be real foolish to put this-add all that language and cause the Legislature to live under a set of rules that we're passing here that puts them in a position where they have no place to move to and operate except underthis rule. I say that they should make their own rules and operate under them.

CHAIRMAN GRAYBILL: Very well, the issue before us is—

Mr. Aasheim.

DELEGATE AASHEIM: May 1 close?

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE AASHEIM: Mr. Romney. my good friend, Mr. Romney, said that when these conference committee reports are brought on the desks, you don't know what you're voting about. Well, 1 would like to ask Mr. Romney a question. but 1 won't. I'll just make a statement. I'm sure he has voted many times in the Legislature about matters he didn't know very much about. That's par for the course. 1 think Mr. Romney made that statement himself the other day. It's impossible to know what's in these bills-all of it. It's just impossible. You have faith in your fellow man when you're sitting in this body. When a committee makes a report, you have faith in that committee report because you have friends on that commit-

tee. You know them; you respect their judgment. If they let you down, you won't use their judgment again. And when these people go into a conference committee it's because they are tied up—the two houses are tied in thinking. But you know. basically, in what areas that you are in agreement. Now Mr. Romney gave a very lucid explanation of one particular bill, and I suppose that's true-there had to be corrections. But, if you are a responsible legislator you're going to check those corrections before you vote on them and you're going to vote-you're going to check them immediately. You're not going to wait because you know you're pressed for time, like Mr. Eskildsen said. You have nothing else to do but look at these conference reports on the last days of the session. Because-1 think someone said the other day, the last days of the session, most the legislators were out playing golf because there was nothing to do but wait for these conference committee reports, because that's the thing that's pending-these conference committee reports. And when they come on the desk, you have nothing else to do but look at them. And I again say, why tie the Legislature down? Why don't you get after the Legislature to reform their rules so that they are what you call democratic, but let them do it. Let's not do it here.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's amendment which would delete the second sentence of subsection 7 so that the subsection would just have the first sentence: "The legislature shall adopt and use joint rules." Then the whole sentence about the conference committee and when it shall report would be dropped. So many as are in favor of Mr. Aasheim's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

UNIDENTIFIED VOICE: Division.

CHAIRMAN GRAYBILL: Someone care to stand and make a motion for a division? There wasn't much question about that.

(Delegate Kelleher arose but his remarks were inaudible since he did not speak into the microphone.)

CHAIRMAN GRAYBILL: Do you want a motion for a division? We'll have a division but no roll call. Please use the voting machine. Those in favor of the amendment to delete that sentence. say Aye. Those opposed, say No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 64 Ayes, 31 NOES. The motion carries. Now. Mr. Loendorf, we're still on Section 7. We haven't adopted it finally. Is that where you want to be?

DELEGATE LOENDORF: (Inaudible response)

CHAIRMAN GRAYBILL: Very well, Section 7.

DELEGATE LOENDORF: Mr. Chairman. since we've deleted the final section, I would now move that we delete the first section of Section 10, subsection 7. The present Constitution does not require the Legislature to adopt rules-joint rules-1 know of no reason why we should do so in this Constitution. Perhaps someone can tell me a reason. If they will. I'll vote to retain it: if not. I think WC should delete it.

CHAIRMAN GRAYBILL: Very well, Mr. Loendorf has moved that we delete the first sentence so that would mean that we would delete subsection 7 in its entirety. Is there any discussion'!

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. the Legislature will do this ordinarily and since we so many times refer to advice from California, that the former speaker of the house when he sat here beside mu, said that you should have this stipulation in for protection. But I would have no objection to deleting it since it was in the present Constitution.

CHAIRMAN GRAYBILL: Is there any other discussion'?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue then is on Mr. Loendorf's motion that we delete subsection 7 of Section 10. So many as shall be in favor of deleting it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, **No.**

DELEGATES: No.

CHAIRMAN GRAYBILL: Well, the Chair is in doubt because not everybody voted. Will everybody use the voting machines. So many as are in favor of deleting it, say Aye and-vote Aye, and those that are not, vote No. Has every delegate voted?

(No response)

CHAIRMAN CRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 66 Ayes, 27 Noes, it's deleted. Will the clerk now read-let's now turn to Section 14, which is on page 36. This is the section on impeachment. Now, subsections 1, 3 and 5 were substantially identical but subsection 2 has a slight difference so will the clerk please read Section 14, Subsection 2?

CLERK HANSON: "Section 14, subsection 2: The legislature shall provide for the manner, procedure and causes for removal by impeachment and may select the senate as tribunal." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: 1 move that when this body does rise and consider that after having under consideration subsection 2 of Section 14, I recommend do pass.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, this is identical to what wc have in the present Constitution, that the Senate may sit as a tribunal. It could not be in the unicameral section and so therefore we must now vote on this. Thank you.

CHAIRMAN GRAYBILL: Is there discussion about this subsection?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you Mrs. Bates' proposal that when this committee does arise and report that subsection 2 of Section 14 of the bicameral majority report be adopted. All those in favor. say Aye.

DELEGATES: Aye.

CHAIKMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: So ordered. The revised, or the printed Section 15 that Mr. Cate had printed is now available and the pages will pass it out. Well, thr Chair didn't get it. All right, 1 guess you all have before you Mr. Cate's proposed amendment to Section 15, subsection 2 to replace subsection 2 through 6, and Mr. Cate, I suppose it might be correct to point out that in retyping this Mr. Cate put in the first sentence, the words that were in the majority and minority report, namely, "in the legislative session following ratification of this Constitution." He made that change. Other than that. it's as we read it to you before. Mr. Cate, do you care to begin the debate on this subject and we'll discuss this?

DELEGATE CATE: Mr. Chairman, one other change that was made, the last sentence, we took off the words that-the last four or five words of that sentence so that it would be clear that this commission would be dissolved and not stand by to serve as the same-the same commission stand by to serve for the next reapportionment.

CHAIRMAN GRAYBILL: Very well, would you move that we adopt this in the Committee of the Whole'!

DELEGATE CATE: I'll move that when this committee does rise and report that it accept Section 15, subsection 2, the language set forth on this proposed amendment which the members of the committee have before them.

CHAIRMAN GRAYBILL: Very well, now you all have it before you. Is there further discussion'? Or are there further amendments'.'

Mr. Habedank.

DELEGATE HABEDANK: Would Mr. Cate yield to a question?

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: Yes. Otto.

DELEGATE HABEDANK: Is it your intention that this shall occur each census, if there are 5-year census, or each decennial census?

DELEGATE CATE: Mr. Habedank, it is our intention that it occur at each census and the reason for this is primarily this, that it is our belief that if there is a census and it shows a change in

population. that if we don't provide for reapportionment, somebody's going to go to federal court and get it done; and so, let's face the reality of' it. Everytime there's a census, if there's a change in population, somebody's going to have it reapportioned and so that's why that decennial was taken out-was not included.

CHAIRMAN GRAYBILL: Mr. Cate—or, Mr. Kelleher.

DELEGATE KELLEHER: Would Mr. Cate yield to a question'!

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: YES.

DELEGATE KELLEHER: Jerome, would you object to adding the words, "an odd-numbered", on line 3 after the words, "United States", and before the words, "committee of citizens", so that line 3 would read: "the authority of the United States and odd-numbered committee of citizens"? O-D-D dash N-U-M-R-E-R-E-D.

DELEGATE CATE: It's a-1 don't think the language is necessary but I have no objection to that amendment.

DELEGATE KELLEHER: Well, I'm going to move that it be-the words, "a" odd-numbered", be inserted after "United States", and before the words, "committee of citizens". May I speak to that Mr.—

CHAIRMAN GRAYBILL: Very welt, Mr. Kelleher has made a" amendment to line 2-no, line 3—so that it says: "by the authority of the United States a" odd-numbered committee of citizens, none of whom shall be public officials." He added the words, "an odd-numbered".

Mr. Kelleher.

DELEGATE KELLEHER: I'd just like to restate my observation regarding what happened in Illinois. They had a 10-member committee and they ended up everybody running at large—never did get to redistrict. The courts redistricted.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes, sir.

DELEGATE DAVIS: Mr. Kelleher, how did Illinois handle the odd-number Legislature of which you'll have a membership balanced geographically and politically?

DELEGATE KELLEHER: I don't understand your question.

DELEGATE DAVIS: Well, part of this provision provides we're going to have a committee balanced geographically and politically, and I wondered what you had in mind as far as having a balanced committee.

DELEGATE KELLEHER: A stalemate. These--as was on the majorityreport, if they want a-the members of the committee can select another member just to get it a" odd-numbered. I don't want to happen what happened in Illinois with five Democrats and five Republicans and they never-they couldn't agree, so they all ran at large-177 from each party.

DELEGATE DAVIS: Would Mr. Kelleher yield to another question'?

DELEGATE KELLEHER: Yes.

DELEGATE DAVIS: Is it your feeling the" that that would not be inconsistent with the last sentence in the first paragraph about the balancing politically?

DELEGATE KELLEHER: It could be. Nothing's perfect. I just don't want a tie like we've had in the past where we've spent innumerable days and thousands of dollars of money

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Would the gentlema", Mr. Cate, yield to another question'!

CHAIRMAN GRAYBILL: Mr. Gate-Mr. Kelleh—oh, Mr. Cate, excuse me.

DELEGATE CATE: Certainly.

DELEGATE SCHILTZ: Which word do you prefer, "committee" or "commission"'! You've used both and I assume they're the same thing. Are they'!

DELEGATE CATE: Well, I think the proper word to be used is "commission" and that is the word that should be used in line 3, and I think that your committee is capable of taking care of that.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: (Not audible)

CHAIRMAN GRAYBILL: Mr. Cate, will you yield?

DELEGATE CATE: Certainly, Mr. Chairman.

DELEGATE NUTTING: Mr. Cate, will you say "each census made by the authority of the United States"? We now have what they call an agricultural census which does not change the population figures in 1975, wouldn't under these conditions-still it's a census under the authority of the United States--wouldn't it require reapportionment although you have no new figures to work with?

DELEGATE CATE: Well, I don't think the agricultural census includes the cities and certainly that's not our intent. And I don't think that a court would interpret it that way. The-we all-perhaps the addition of the words, "population census", "population census", might cover that situation. That's a good question, Dick. I don't—

CHAIRMAN GRAYBILL: Mr. Cate, do you want to add the word "general population" in front of "census"?

DELEGATE CATE: I so amend.

CHAIRMAN GRAYBILL: All right, now the sentence reads: "In the legislative session following the ratification of this Constitution and in the session preceding each general population census". Now, we'll allow Mr. Cate to make that amendment unless we hear objection from the floor.

(No response)

CHAIRMAN GRAYBILL: Hearing none, it's so ordered. Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Cate, do you need to close?

DELEGATE CATE: I close.

CHAIRMAN GRAYBILL: Wait a minute. Mr. Aasheim, do you want to discuss it?

DELEGATE AASHEIM: Yes, please. I think this matter that was brought up here about the commission being geographically and politically balanced, I think it does pose a question here-a problem-because if they have five of each party, you've certainly got a deadlock, and I wonder—

CHAIRMAN GRAYBILL: Mr. Aasheim, I should point out that I forgot about Mr. Kelleher's amendment. We still are voting on Mr. Kelleher's amendment. We haven't decided that issue yet.

Mr. Davis.

DELEGATE DAVIS: It would seem to me—I'm most anxious to vote on this and get it concluded and I know that everybody's worked a lot on it, but I think by adding this language, if you have a committee that's balanced politically they [then] you must have an even number, so anything you would appoint other than that would be unconstitutional, wouldn't it, by this next paragraph?

CHAIRMAN GRAYBILL: Mr. Davis, you've directed your parenthetical question to the Chair. Could I answer that?

DELEGATE DAVIS: Yes, sir. I wish you would.

CHAIRMAN GRAYBILL: It **seems** to me that when it says "balanced politically", it means balanced proportionally politically. Does it mean balanced equally? In other words, if we-or what does it mean? Maybe I don't understand.

DELEGATE DAVIS: I don't know. That's a good thing to write in the Constitution, something we don't know what we mean, so I oppose his amendment.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: I would probably oppose Bob's amendment but I would point out that there is a third party in Montana. The Legislature might take that into consideration. I'm not sure of the name of it but it's the New Reform Party, I believe. Some of the Missoula people would know more about that than I do. And there's also Independents, a few of whom are around here, that might be appointed by the Legislature to the commission to make it an odd-numbered committee if that's what they desire to do.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, the wordage, "balanced geographically and politically", bothers me, too. I think it is a little too vague. We don't like to put in detail and yet in a case like this I think some detail is necessary. I think we could give an undue advantage here to a majority party every 10 years, or possibly even earlier than that. I think that wc do have to provide for an odd number of commissioners. I think the even number of these commissioners should be chosen on the basis of majority and minority party leadership and that they choose a Chairman who is acceptable to them. I think the other states, reapportionment has-the experience of other states has proven this out, that where they had an even number this was a very serious defect, and I think that we should look into that. For that reason, I would move that we adopt the— in regard to the selection of the commission-I would move that we adopt the language of the majority proposal, reading as follows, from line 6—

CHAIRMAN GRAYBILL: Mr. Skari, just a minute. Now, is this-we're debating Mr. Kelleher's amendment which has the words, "an odd-numbered". **Are** you going to make a substitute motion for "an odd-numbered" that figures another way'? You certainly may do that. I just want to know what you're doing.

DELEGATE SKARI: Mr. President, this would provide for an odd number of commissioners, yes, but it would be more detailed.

CHAIRMAN GRAYBILL: So you're going to make a suhstitute motion:'

DELEGATE SKARI: A substitute motion to Mr. Kelleher's motion.

CHAIRMAN GRAYBILL: All right, and what will it provide?

DELEGATE SKARI: I would insert this language. On line 6 of the majority proposal, after the period there at the end of that sentence: "The majority and minority leaders of the legislature shall designate two commissioners." And then the bicameral alternative: "The majority and minority leaders of each house shall designate a commissioner. The four commissioners within 20 days after their designation shall elect a fifth member who shall serve as chairman of the committee. If the four members fail to select the fifth member within the time prescribed, a majority of the Supreme Court shall appoint the chairman."

CHAIRMAN GRAYBILL: I understand what you put in. Where does it start? After the sentence, made by the authority of the United States? You put a period, is that it? And then say-

DELEGATE SKARI: Mr. Chairman, after the period on line 6 where it says, "The legislature shall designate the membership of the commission which shall he balanced geographically and politically." I would strike that sentence and insert this wordage.

CHAIRMAN GRAYBILL: All right, for the information of the body, Mr. Skari's substitute amendment is to strike out the words that Mr. Kelleher proposed, use the first sentence as Mr. Cate left it, and then insert in place of the sentence that begins on line 6 language from the majority report, lines 6 to 14, which tells how the majority report, which happens also to coincide with the minority report, proposed solving the committee selection. In other words, to have the majority and minority leaders of the Legislature designate either one or two commissioners, and then these four designate a fifth. Now, he's proposing then as his substitute that that language in the minority and majority report substitute for the language on line 6 and 8 in Mr. Cate's proposal. That's a substitute amendment and would strike out Mr. Kelleher's words, "an odd-number". Is there dehate on Mr. Skari's substitute?

Mr. Arbanas.

DELEGATE ARBANAS: I would like to oppose the amendment. It seems to me that we're getting right hack into that sort of hide-bound legislative-of tying this down for all generations. Looking at the language of Mr. Cate's proposal, I think it can be solved very, very simply hyputting after the words, "which shall he balanced geographically and politically"-"they shall select their own chairman"--which would take care of the odd number; it would take care of the problem that balancing which is the Legislature appoint. ing these people geographically and politically balanced and then they would select their own Chairman agreed by whatever members. But the amendment as proposed seems to be to lock in a system that, you know, in many years to come may hold hack the process.

CHAIRMAN GRAYBILL: All right, the issue arises—

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, perhaps to clarify that, on line 8, by adding, "by a majority of one". This would be politically and geographically by a majority of one.

CHAIRMAN GRAYBILL: All right, that might do it and that might be in order later, or are you making an amendment to Mr. Skari's-

DELEGATE BATES: I will make an amendment.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE BATES: I move to amend.

CHAIRMAN GRAYBILL: All right, we can have one amendment to the substitute amendment. Now the issue arises on Mrs. Rates' amendment. Mrs. Bates' amendment would add— Mrs. Rates, are you adding that to Mr. Cate's language?

DELEGATE BATES: On the end of line 8.

CHAIRMAN GRAYBILL: Yes. well you can't do that since the issue now is Mr. Skari's language which is in the majority proposal, so I'll rule your motion out of order at the present time, Mrs. Rates. The issue arises then on Mr. Skari's motion that we take out the second sentence of the first paragraph of Mr. Cate's proposal the sentence that says: "The legislature shall designate the membership of the commission and shall be balanced geographically and politically." We strike that and put in place of it the language out of the majority and minority proposals as follows: "The majority and minority leaders of the legislature shall each designate two commissioners." Then a sentence about bicameral, which would stay in. And then, "The four commissioners within 20 days after their designation shall select the fifth member who shall serve as the chairman. If the four members fail to select the fifth, then the Supreme Court shall appoint the chairman." Now. so-Mr. Blaylock, for what purpose do you arise?

DELEGATE BLAYLOCK: I was—

CHAIRMAN GRAYBILL: Do you want to debate it again?

DELEGATE BLAYLOCK: Yes. Well, I just want to say that I want to support Mr. Skari's amendment. I think that we all have to remember here that we're dealing with the most fundamental thing that can happen to this Legislature when, if this Constitution is adopted, and if we appoint two and two, that very easily those people could sit there and never be able to come up with that fifth person. This because-it's fundamental to the State of Montana how this-with the power that we've given this commission-that they be able to set up some kind of a commission that will work. And it may very well have to go to a body like the Supreme Court to appoint that fifth member. I support Mr. Skari's amendment.

CHAIRMAN GRAYBILL: Is there any need for the Chair to restate the motion?

(No response)

CHAIRMAN GRAYBILL: All right. So many as shall be in favor of Mr. Skari's substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Now that wipes out Mr. Kelleher's amendment and we're back on the basic proposition of Section 15. Is there—

Mrs. Rates.

DELEGATE BATES: Mr. Chairman, I move to add to line 14, after "shall",-let's see— "within 30 days after submission to thelegislature shall enact a plan or return the plan to the commission." Just those three words, "enact a plan or"-it's four words actually.

CHAIRMAN GRAYBILL: (Inaudible)... would you please repeat where that goes?

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: You're on Mr. Cate's proposal now, on line 14.

DELEGATE BATES: On line 14.

CHAIRMAN GRAYBILL: All right, and what do you want to do?

DELEGATE BATES: After "shall", include the words, "enact a plan or", and then go on with "return the plan to the commission for its recommendation."

CHAIRMAN GRAYBILL: All right, that has the effect--now so that you understand what Mrs. Rates is doing-Mrs. Bates has made a pro-

posal here that we amend Mr. Cate's line 14—or15, Mrs. Bates?

DELEGATE BATES: 14.

CHAIRMAN GRAYBILL: Well, read it to me again. I've got it in the wrong place, I guess.

DELEGATE BATES: On line 13.

CHAIRMAN GRAYBILL: I see. All right, I have it.

DELEGATE BATES: "Within 30 days after the submission to the legislature shall return the plan"-oh, wait a minute, I've got that—

CHAIRMAN GRAYBILL: "-shall enact a plan-"

DELEGATE BATES: "-shall enact a plan or return the plan to the commission."

CHAIRMAN GRAYBILL: Now, do I understand it to be the sense of your motion that if we put in the words, "shall enact a plan", that they have the power to enact the plan?

DELEGATE BATES: (No audible response. Mike not on.)

CHAIRMAN GRAYBILL: All right, Mrs. Bates' amendment then would have the effect, in line 14, of changing Mr. Cate's proposal back to Proposal Number 2 by Mr. Nutting. I just want you to know-(Laughter) Well, I just want you to know what it does. I think she has the right to make that amendment. It has the effect of giving the Legislature an absolute right to enact a plan, which was the substance of the minority report. Now, with that understanding, we'll debate Mrs. Bates' amendment. All right, members of the committee, the issue then-pardon:' I see. Mrs. Robinson, excuse me, I didn't see you.

DELEGATE ROBINSON: I would like to rise in opposition to this amendment. She mentioned just putting in three little words. These three little words opens up the minority report that we put down before we took a recess this morning. I would urge you--we have gone over this and gone over this and these three words has the full impact of opening the thing right back to where we started, and I strongly urge you to resist this amendment.

CHAIRMAN GRAYBILL: Mrs. Bates, do you really need to close:'

DELEGATE BATES: No, but I just wanted to point out the point that we have already gone back to the majority plan in enacting the structure so therefore I feel that we could also amend this to include the voice of the legislators. Thank you.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue arises on Mrs. Bates' amendment to line 14 of Mr. Cate's Section 15, subsection 2, so that it would read-Well, we'll get to that. "Within 30 days after the submission to it the legislature shall-" and then she adds the words, "enact a plan or return the plan to the commission with its recommendations for change." We'll have a roll call vote. So many as shall be in favor of the amendment, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: We'll close the vote. Will you please take the vote?

Aasheim	Nay
Anderson, J.	Aye
Anderson, 0	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock..	Absent
Barnard	Nay
Bates..	Aye
Belcher	Nay
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown..	Absent
Bugbee	Nay
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay

Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Graybill-Chairman ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Nay
James ..... Absent
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Absent
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CHAIRMAN GRAYBILL: Would the clerk please announce the vote?

CLERK SMITH: Mr. President, 66 voting **No; 26** voting Aye.

CHAIRMAN GRAYBILL: **66** having voted No, Mrs. Bates' amendment fails. Is there other discussion on Rule 15, on Mr. Cate's proposal Number 15-Section 15?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you Section 15 of the Legislative proposal as amended, and Mr. Cate's recommendation that when this body rise and report, the same shall be adopted. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and 15 is adopted.'

Mr. Eskildsen.

DELEGATE ESKILDSEN: For the members, we'll start again at 1:30 sharp today. I move we recess until 1:30 this day.

CHAIRMAN GRAYBILL: The motion is made to recess until 1:30 sharp. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Ayes have it.

(Convention recessed at 12:05 p.m.—reconvened at 1:41 p.m.)

CHAIRMAN GRAYBILL: Just before lunch, ladies and gentlemen, we finished up Article XV which came from the unicameral majority proposal. Mr. Johnson had an amendment to Article XV of the bicameral majority proposal. Mr. Johnson, is it your intention now to attempt to amend or do you want to amend Mr. Cate's majority proposal that's been adopted for unicameral?

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. Thank you, yes, that's what I would like to do. You'll find—

CHAIRMAN GRAYBILL: All right, would you like the clerk to read your amendment?

DELEGATE JOHNSON: If you please.

CHAIRMAN GRAYBILL: Will the clerk please read the amendment?

CLERK SMITH: "Mr. President, I move to amend Section 15, subsection 1, page 36, line 30, Legislative Committee proposal by striking line 30 on page 37, lines 1, 2, 3 and line 4 through the word, 'senator', and inserting in lieu thereof the following words and punctuation: 'the state shall be divided into as many senatorial districts as there shall be members of the Senate and each district shall elect one senator'. 'Each senate district shall also serve as a house district for the election of two members of the house of representatives; each district may be divided into single member house districts as prescribed by law.' Signed, Johnson."

CHAIRMAN GRAYBILL: All right. It's the understanding of the Chair that Mr. Johnson's amendment would apply-Mr. Johnson, you could make that apply to Mr. Cate's proposal by putting it at the end of subsection 2 or else at the end of subsection 1.

UNIDENTIFIED DELEGATE: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute. Do you intend that to be at the end of subsection 1, is that right?

DELEGATE JOHNSON: (Inaudible) sir.

CHAIRMAN GRAYBILL: Very well. Subsection 1 was adopted for the unicameral and applies to Mr. Cate's amendment. Mr. Cate's was subsection 2; so, going back to subsection 1, we would add these sentences right to the end of it and it—

DELEGATE JOHNSON: Mr. Chairman, I think it would practically be a substitution for subsection 1, wouldn't it?

CHAIRMAN GRAYBILL: It would be a substitution for all of subsection 15-1, is that right?

DELEGATE JOHNSON: Yes, I think that would be it.

CHAIRMAN GRAYBILL: Right. Section 15-1, I think was the same in the majority and the minority proposals, or the two majority proposals. No, it was slightly different in the other. So, the point is to turn to page 36 and in place of Section 15.1, we would put in Mr. Johnson's language in the bicameral majority proposal if we adopt it. Otherwise, we'll have to consider Section 15-l. (Inaudible discussion) All right, I think I have the sense of Mr. Johnson's motion now. It would be to-now Mr. Johnson, I think the problem is that we're probably out of sequence. Mr. Cate, do you want to move Section 15-1, at the bottom of page 36 as the bicameral majority proposal on Section 15-1, and having done that, we'll let Mr. Johnson amend it.

DELEGATE CATE: (Inaudible)...move.

CHAIRMAN GRAYBILL: All right. On page 36, Section 15, districting and apportionment subsection 1, has now been moved by the majority. And now Mr. Johnson comes in with his amendment the substance of which is to strike everything from the beginning down to the last sentence and in place of the last sentence-so that the section would read: "The state shall be divided into as many districts as there arerepresentatives of the house and each district shall elect one representative. Each senate district shall be comprised of two representative districts for the election of one senator. Every legislative district

shall consist of compact and contiguous territories and be so nearly equal in population as is practical." That's the majority proposal. Now, Mr. Johnson's proposal is: "The state shall be divided into as many senatorial districts as there are members of the Senate and each district shall elect one senator. Each senate district shall also serve as a house district for the election of two members of the house of representatives. Each district may be divided into single member housedistricts as prescribed by law. Every legislative district shall consist of compact and contiguous territories." So now, we're ready to debate Mr. Johnson's amendment.

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. In support of this amendment, I would like to point out that Dr. Taylor from Montana State University, when he appeared before our committee one time, showed us that Montana was geographically and population-wise very nicely situated to divide into approximately 50 districts--would be the easiest way, the easiest number to use; either maybe two less or maybe two more. I'd like to use the number 50 and 100, if I may, for clarification. He showed that-well, the rest of this will be my argument, I guess. If you divide into 50 senatorial districts, which is much easier than 100, and have one senator from each district and then there will be two house members from each district. This will give you a multimember district of two. If the people, or the Legislature, wish to divide, it is much easier to divide a small district, like a senatorial district, into two other districts into an intricate line drawn through there whether it divides a city or a small town or a geographical or natural barrier. It's a local problem that's much easier solved. There'd be 50 individual problems instead of one great big problem of dividing the whole state into 100 single member districts. So, since this is a much easier method to approach our division, I move that you adopt this amendment.

CHAIRMAN GRAYBILL: Mr. Johnson, may I ask you one question? You say in the second paragraph, "each district may be divided into single member districts." Now, we've already passed the single member district proposal so shouldn't we change "may" to "shall"?

DELEGATE JOHNSON: Yes, Mr. President, I think that that's in order.

CHAIRMAN GRAYBILL: Unless I hear objection from the floor, we'll allow Mr. Johnson to amend that word. Is there objection? Mr. Cate.

DELEGATE CATE: Chairman, that's not his intent. That's not Mr. Johnson's intent.

CHAIRMAN GRAYBILL: Well. I—

DELEGATE CATE: What he's saying there, Mr. Chairman, is-what he proposes is this-that the state be divided into 50 senatorial districts.

CHAIRMAN GRAYBILL: Right.

DELEGATE CATE: And then there be two representatives from each of those districts. They would run at large within that senatorial district and then he's adding that if the Legislature wants to provide a method, that each one of those senatorial districts can be divided into two separate house districts.

CHAIRMAN GRAYBILL: I see and I understand. Now, maybe I could explain it this way. Is this correct, Mr. Johnson? Section 15-1, which we adopted yesterday for single member districts applies to the unicameral situation. Now, in a bicameral situation, Mr. Johnson is saying that we would set up single member senatorial districts and we could either run the legislators two up in a district or one up in a district as we decided. And that's why you used the word "may", is that right, Mr. Johnson?

DELEGATE JOHNSON: Yes.

CHAIRMAN GRAYBILL: Very well. I understand the sense of your proposal now. All right, now, is there further debate on Mr. Johnson's amendment?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, members of the Committee. I think that the issue of single member districts has been pretty well resolved and accepted by this Convention and I'm sorry to see the issue come up again. In any event, I would like to point out to you that there was no minority committee report in favor of this proposition; that in effect what you're doing here is making single districts 50 percent. You're cutting it in half. You're cutting all the things that favor single member districts in half and then there is a question about the locality. One man, one vote, means what it says. And in the last sentence where he has, "each district may be divided into

single member districts as prescribed by law", if a county-or let's say one district decided to do that and there were 5,000 citizens or voters in that district and they divided it in half, each representative from that district then would represent 2,500 people rather than 5,000, and he would be out of proportion with the rest of the state because in all the other districts in the state, the representative would represent 5,000. And if you follow that line of reasoning, you would have a unconstitutional provision because it would not apply to one man, one vote. And if I haven't adequately explained that, I would be willing to attempt to do so in more detail. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. In looking over the North Dakota Constitution, they are submitting a proposal in their new constitution for one senator and at least two representatives who can be elected at large. Also, they go on to add later that no more than fourrepresentatives can be elected from one district. In looking at other constitutions, several of them state not more than two to come from any one district or not more than three from any one district. And I'm certain, in talking to several people, that this would be constitutional. I support this amendment because I feel that this body is looking for some flexibility. One of the things that will be coming up later is the qualifications. Must they live in a district or can they live outside of the district? By having two representatives running in a senatorial district—now, in a large district, this could be divided into all single member representative districts; but in cities and towns, I can see where this would provide some flexibility for people that are just living across the street, and I think it probably also would be an aid to future legislators. If they see that at some time single member districts are not the solution to all the problems that we have, and perhaps two-member districts would be a better situation, it would be possible for them to do this. So, I recommend this do pass.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: I wish to resist this motion. I think one particular instance we can call here-call to attention is that Mr. Ask and Mr. B&her-they cams from a large district; they live in the city of Roundup right across the street from each other. I think that you're defeating the purposes of the single member district if you take this proposal or this amendment. I very strongly resist it.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Would Mr. Johnson yield to a question?

CHAIRMAN GRAYBILL: Mr. Johnson

DELEGATE JOHNSON: I yield.

DELEGATE HARBAUGH: Did you accept the proposed change of "may" to "shall"?

DELEGATE JOHNSON: Yes,

CHAIRMAN GRAYBILL: No. Well, Mr. Johnson, I didn't change that because I didn't understand it. Though we still may.

DELEGATE JOHNSON: No, I guess I didn't either.

DELEGATE HARBAUGH: One more question then, it stands as "may" then?

CHAIRMAN GRAYBILL: Yes, it stands as "may".

DELEGATE HARBAUGH: Are you presuming that there would be twice the number of representatives in the House as the Senate in your proposal?

DELEGATE JOHNSON: Exactly.

DELEGATE HARBAUGH: Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. As I understand it, it's expected by the committee that the two proposals, the one for the one house and one for the two house Legislature, are going to be submitted to the electors on a ballot if this house approves of that type of thing. If we give two proposals here which have got different aspects contained in them besides the number of the houses, it seems to me that we're loading the question so far as the voters are concerned. The voters are then going to be given a chance by voting for the two house proposal to vote against single member districts. We're not going to be able to find out whether the voters want one house or two house Legislature; we're going to find out whether they're willing to go along with the one man, one vote rule in this state or not. And it seems

to me that it would be a mistake for us to let a question like this go to them.

CHAIRMAN GRAYBILL: Is there further discussion?
Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I move that we strike the word "may", and insert the word "shall".

CHAIRMAN GRAYBILL: Very well. It's been proposed that we strike the word "may", and insert the word "shall", as amendment by Mr. Blaylock in Mr. Johnson's amendment. This has the effect of saying that each district shall be divided into single member districts as prescribed by law. So many as shall be in favor of Mr. Blaylock's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: I'll put the question again, So many as shall be in favor of Mr. Blaylock's amendment, which has the effect of writing single member districts into this bicameral part, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Okay, the Ayes have it. Is there further discussion on Mr. Johnson's amendment?
Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. I would like to close if there's no more discussion.

CHAIRMAN GRAYBILL: Very well.

DELEGATE JOHNSON: Since the delegation just now voted to change the word from "may" to "shall", then we necessarily would have single member districts. I can live with this, too, very easily, and still maintain that this is a more efficient way of reapportioning-redistricting our state. I'm under the impression that the people who have used their computers and done a lot of research and work in this area in the last few years, are of the opinion that approximately 50 districts is the easiest way to redistrict Montana. As I said a while ago, and I must repeat, that to divide each senatorial district into two single member districts would be handled very easily and this is just about all I have to say on the area. Thank you.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Members of the committee and Mr. Chairman, I'd like to point out that now with that amendment, you have essentially the same thing. I think we ought to stay with the majority language. Thank you.

CHAIRMAN GRAYBILL: Very well. The question will be on Mr. Johnson's amendment. Now, so that everybody understands this situation, Mr. Cate's proposal--we have three alternatives really again. Mr. Cate's proposal this morning, Section 15, sub. 2, in conjunction with—now, just a minute until I finish talking-I may be wrong; I'm going to check it out here. Section 15, sub. 1, of the unicameral proposal sets forth a way in which-it says, "for the purpose of electing members to the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each legislative district shall consist of compact and contiguous territory and shall be so nearly equal in proportion as practicable." Then-so we shouldn't consider the Cate's. We have two possibilities. And the one of them is that the bicameral majority proposal starts with the representative districts and works up to senatorial districts by combining two representative districts whereas the Johnson amendment starts with senatorial districts and divides them in half to get representative districts. As near as I can see, that's all the difference between them now that we have "single member" written into both of them. So the question is whether you want to start with the senatorial or start with the representative. Does anyone have a question on that?
Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm not certain which "shall" and which "may" we were talking about because there are two in that last paragraph of his amendment that was passed out.

CHAIRMAN GRAYBILL: No, Mr. Johnson's amendment-let me read Mr. Johnson's amendment since that's what we're going to vote on. For Section 15, sub. 1, he would say: "Thestate shall be divided into as many senatorial districts

as there shall be members of the Senate. Each district shall elect one senator." Then in the second paragraph, "each senate district shall also serve as a house district for the election of two members of the house of representatives. Each district shall be divided into single member districts as prescribed by law."

DELEGATE BATES: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I had changed the one in the first line of that and that's why I was wondering what was going on.

CHAIRMAN GRAYBILL: I don't see any "mays" in the first line, but maybe I don't read it right. We have now voted, Mrs. Bates, to have single member districts in Mr. Johnson's proposal as I understand it.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. When we start to vote on this, now we have adopted Mr. Cate's proposal for the unicameral this morning, is that right?

CHAIRMAN GRAYBILL: Right.

DELEGATE BLAYLOCK: All right. Now in voting on Mr. Johnson's this is what we're going to put into the bicameral, is that right?

CHAIRMAN GRAYBILL: It's the first paragraph of the bicameral, right.

DELEGATE BLAYLOCK: All right.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. Chairman, delegates. I would like to speak in opposition to Mr. Johnson's amendment and in favor of the majority proposal. And I'll try very clearly to tell you the difference here. After talking to Dr. Waldron and several others who have worked on reapportioning this state, while it may be in some instances easier to divide the state into 50 districts rather than 100, superficially that's true; but he indicated that when you try to break those 50 districts down into two, it's harder to get within a variance. It was 3 percent this last time. If you can only deal with two boundaries, it's harder to get within the variance. He indicated it's much easier if you startwith 100 districts and then you can combine any two of those to get your senatorial district. That way, you are dealing with four boundary lines rather than two as you would have to be dealing with under Mr. Johnson's proposal.

CHAIRMAN GRAYBILL: Is there other discussion? Very well. We're voting on Mr. Johnson's amendment that we divide the state into senatorial districts which would then be broken down into representative, single member districts. So many as shall be in favor of Mr. Johnson's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, say No.

DELEGATES: No

CHAIRMAN GRAYBILL: The Noes have it and it's defeated. All right, the consideration is now on Section 15, sub. 1, in the majority bicameral proposal on page 36 which provides for dividing the state into representative districts and doubling them up for senatorial districts. Is there further discussion? If not, so many as are in favor of the majority proposal in the bicameral side for Section 15-1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: As many as are opposed, say No.

(No response)

CHAIRMAN GRAYBILL: That's adopted. Now this morning when we adopted Mr. Cate's amendment, we adopted certain language for section-subsection-out of subsection 2 that says, "the majority and minority leaders of the legislature shall designate two commissioners". Then we adopted this language, "(bicameral, the majority and minority leaders of each house shall designate a commissioner.)" So, it would seem to me that we could adopt Mr. Cate's proposal as amended this morning as the balance of Section 15 in the bicameral section. Mrs. Bates, would you move that or Mr. Aasheim would you move that?

DELEGATE AASHEIM: I think Mr. Cate should probably move it but since-1 move-I'm on page 50.

CHAIRMAN GRAYBILL: All right.

DELEGATE AASHEIM: That I move to delete Section 2, 3, 4, 5 and 6 from the majority

bicameral report and insert in lieu thereof the proposal or the wording as given by Mr. Cate and as amended this morning.

CHAIRMAN GRAYBILL: That's right. And you do, I suppose, say that if when we arise that we shall—

DELEGATE AASHEIM: I move that when we arise and report after having had under consideration this section, the same do pass.

CHAIRMAN GRAYBILL: Very well. Now, the proposal has been made to write the Cate subsection 2 that we passed this morning in as the subsection 2 for the bicameral districting and apportionment section. Is there any further discussion? If not, all in favor of the motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's passed. Now with that, the Chair thinks that we have completed the bicameral sections because Section 13, which is the veto, has been dropped and moved to executive and Section 16, which was the ombudsman, has been deleted in its entirety. Therefore, I think we're ready to go back on the unicameral majority report, Section 1. Originally, it's on page 3 of the booklet, the comments on page 11. And the Chair will ask the clerk to read Section 1 of the unicameral Legislative article on page 3.

CLERK SMITH: "Section 1: Power and Structure. The legislative power of the state is vested in the legislature, consisting of one chamber whose members are designated senators. The people reserve to themselves the power of initiative and referendum." Section 1, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I move when this committee does arise and report after having had under consideration Section 1 of Proposal Number 3, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: As our Chairman of the Legislative Committee, Magnus Aasheim, told us when we started working on our Legislative article, it was the feeling of the members of this committee that both unicameral and an improved bicameral proposal be submitted to the voters of the state. Now, the majority of the members of the committee do support a unicameral, but we agree completely that this matter should be settled by the voters. Now before I get into the justification of the unicameral, I would mention that in both the unicameral and bicameral proposal, the people reserved to themselves the power of initiative and referendum. And I feel that this is a needed check whether we have unicameral or bicameral. It's interesting to note that only 14 other states have this initiative and referendum, and I feel that in addition to judicial review and the executive veto, that is this is a check that the people of Montana want. Another area that I think is not too controversial-we selected the term senators for the members of a unicameral body. If you ask me why, I don't know; maybe because it has a certain dignity. We think that it's a little easier to use than assemblymen or legislators and one of the members on my committee said that he thought we used the term senators so we could influence a few of the current senators to support unicameralism. Now, to get into the reasons for our unicameral support; that is the majority of the committee support. On behalf of the committee, I would like to list a few of the reasons. There are many more but I want to take about 5 minutes of your valuable time. We, the majority of the committee, believe a unicameral Legislature would insure accountability. Each legislator would be more accountable to his constituents because there is no buck-passing, bills cannot be introduced and passed in one house on the assumption that they will be killed in the other. Each legislator must carefully consider his actions because there is no other house to blame. Nebraska ranked number one in accountability in the impartial survey conducted by the citizens' committee on state Legislatures. We believe a one house Legislature would fix responsibility. We need a Legislature that is responsive to the needs of a modern society. We need a Legislature that is able to more effectively use the resources available to us, such as federal programs. We need a Legislature that is not paralyzed by political bickering. In the last seven sessions of the Legislature, Montana had a House of one political party and a Senate of another, resulting in repeated political deadlock. We need a Legislature that can deal with legislation in a straightforward fashion and will not allow the duplication of bills either inad-

vertently, because of confusion or lack of communication, or deliberate duplication for the express purpose of killing a bill or altering it beyond recognition. I have several examples where that happened in recent sessions but I will not go into them now. We believe a one house Legislature would increase efficiency. A unicameral body improves the consideration that each bill receives. There is less confusion. Dual committees are eliminated and it is unnecessary to have two public hearings on a bill. People who wish to testify will travel to Helena just once instead of on two different occasions. In one chamber, a sponsor can follow a bill through with information and support without losing track of it in the other house. We believe a one house Legislature would assure better rural representation. Within a unicameral body with single member districts which we just decided upon, each legislator will be more responsive to his rural constituents. Each legislator in a 100 member body would now represent 7,000 individuals. The rural representation in one house would not be diluted by larger Senate districts that are weighted in favor of urban centers. We believe a unicameral would reduce costs. Money is saved simply through the reduction in number of members with the attendant elimination of duplication in staff, printing and other operating expenses. The money saved could be used for research, the single most important factor in insuring intellectual independence so legislators will depend less on lobbyists for help. We believe a unicameral will reduce the power of special interest lobbys. In a unicameral body of 100, 51 legislators would constitute a majority for control. In a Senate of 50, as we now have, only 26 senators mean control. In the all-powerful conference committee, which we discussed at some length this morning, which consists of three members from each house to settle differences between them, only three individuals can mean control. The current bicameral structure is generally preferred by lobbyists for accessibility. Finally, we believe that the conference committee should be eliminated. Now this morning, we won one convert in our committee to unicameralism simply because the proposal that he made to improve the conference committee structure went down, and so now we have more members of the Legislative Committee who are definitely in support of unicameral. I didn't vote on that issue because my conscience got me. Under no other circumstances in government is so much power invested in so few individuals. That is that notorious conference committee. In 1969, the six-man conference committee had ultimate control over 51 important bills. In the unicameral, as we said this morning, there is no need for any conference committee. Consequently, responsibility is spread among all the legislators. I will agree with Chairman Aasheim that there will be consultations, there will be agreements, but there will not be conference committees. The most commonly asked question concerning a unicameral Legislature is, why haven't more states adopted it, if it's so effective? Tradition is difficult to shake; innovations are difficult to introduce. The last Montana Constitutional Convention in 1889 thought women should not have the right to vote. I wonder how that would go over today here. (Applause and Laughter) Yet, today l&year olds are voting citizens; which attests to the fact that perhaps we are ready for change. Another factor—the unicameral idea has not been pushed in most other states and yet, today, we all have copies of the North Dakota Constitutional Proposal, and you'll notice that their first alternative on their ballot is the bicameral-unicameral issue. However, in many other recent constitutional conventions, this was not considered because legislators served as delegates. And I feel that if legislators had been allowed to serve in this body, we would not now be discussing unicameralism as a serious issue. The most--now-I feel that since the historic one man, one vote decision in 1964, which ordered both houses of state legislatures to be based on population, the rationale for maintaining two houses no longer exists. However, as I said before, we can't expect the legislators themselves to eliminate one of their houses and at least 50 of their seats. If—now, when Nebraska obtained unicameral in 1934, it was the result of a constitutional amendment. The depression and economic factors in that state influenced the voters to listen to Senator Norris, who barnstormed the state for unicameralism. I understand 400 of the state's papers at that time were against the issue, and yet the people voted it in. When they tried to change it, the people have voted to retain it. I don't feel, though, that Nebraska's unicameral system is perfect-far from it; I feel we could improve it greatly. For one thing, with our strong two party system in Montana, we must have a partisan Legislature. This Constitutional Convention should give the voters of Montana a choice. It's time that we stopped partitioning our legislative needs between two houses as a device for advocating our responsibility. We, the entire Legislative Committee, believe it is our obligation, our responsibility,

and our duty at this Convention to allow every citizen of Montana the choice of a unicameral or a bicameral Legislature. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Section I of the unicameral proposal of Article V is before you.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. I moved to substitute for Section 1, just given by Mrs. Reichert, Sections 1, 2, 3, 4 and 5 of the proposal that I distributed last week, and I believe the clerk has a copy. I wonder if the clerk would be so kind as to read those five sections.

CHAIRMAN GRAYBILL: Yes, the clerk will read this and this is Mr. Kelleher's parliamentary system, if you can find it on your desks so you can follow. The clerk will read Sections 1 through 5 of the substitute motion.

CLERK SMITH: Section 1—

CHAIRMAN GRAYBILL: Just the italicized part, Mr. Clerk.

CLERK SMITH: "The legislative power of the state is vested in the assembly, consisting of one chamber whose members are designated senators. The people reserve to themselves the power of initiative and referendum. Section 1. Section 2: Executive. The leader of the party which has the greatest number of seats in the assembly shall be declared governor. The assistant leader of that party shall be declared lieutenant governor. Section 2. Section 3: Selection of Leaders. The leaders and assistant leader of any political party shall be chosen by a direct primary election or by convention or as otherwise provided by law. Section 3. Section 4: Cabinet. The Governor shall assume the executive authority and shall provide for the proper administration of the laws of the state. He shall appoint a cabinet who shall assist him. Section 4. Section 5: Dissolution. Subsection A: At any time during an assembly session, the governor may call for the dissolution of the assembly. Upon a majority vote pursuant to this call, the legislature shall be dissolved and new elections shall he held according to the law. Subsection B: At any time during an assembly session, a majority of the members of the assembly may call for his dissolution. Upon a two-thirds vote pursuant to this call, the assembly shall be dissolved and new elections shall he held according to law."

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move that when this committee does arise and report after having had under consideration the sections just read by the clerk, that they recommend the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: On the first. section, my fellow delegates, you will note in the first minority report that I used the word "parliament". I've now substituted the word, "assembly". One of the principal reasons for that was that I had made so many changes in the original parliamentary system to wit, very frequent elections. Under the British and Canadian system, they originally had elections every 7 years; now they have them every 5 years. Under my proposal, we would have elections every 2 years. This is nothing novel with me. It was-you'll note that on page 14 of the majority report, I merely absorbed their Section 3. Senators shall he elected for a term of 4 years. One-half of the senators shall be elected every 2 years. In this way, every 2 years, if half of the assembly would be up for reelection, and if the people of the state did not like the way the direction of ship of state was moving, they could change it. The checks and balances, those hell words from our friend Mr. Montesquieu, in his spirit of the laws in 1748, are now., instead of being between the Governor and the Legislature, they're between the Legislature and the people. Every 2 years, by voting, the people could change their government. If the people like the way the ship of state is moving, all they do is reelect the encumbent senators that are up for reelection every 2 years. If they don't like the way the ship of state is moving, they defeat them and put the opposition party into office. At that time, the opposition party would assume the position of the chief executive and they would-by the people by their action would change the chief executive. This is highly democratic, very responsive democracy. For instance, we recently have seen here in the Capitol, dispute between the State Board of Health and the Governor on matter of pollution controls. The State Board of Health enacted pollution controls which were much higher, as you know, than those enacted by the federal government. The Governor

disagreed with the State Board of Health. Now, as a delegate, I'm not going to take an official position on this dispute. All I'm concerned about is the machinery of' government, which is what we're concerned about, of course, in writing this Constitution. If this had been a parliamentary body or a body as I proposed where the executive is the leader of the majority in this chamber, the Governor could be called into this chamber during a question-and-answer period. He'd have 2 or 3 days' notice in writing of the questions that would be put to him; together with his ministers or cabinet heads or department heads, whatever you wish to call them, that were in anywise connected with the matter of pollution controls. And every member of this chamber-we are now, if you will, imagine yourself as members of the Legislature rather than of the Con Con. Every member in this chamber could ask each one of those ministers or department heads and the Governor, any questions that they wished. Now, if the Governor satisfied all of your questions and objections, then you would just let the matter stand as it was. If, however. a minister or the Governor did not come up with the right answers—let's take the case of the minister of the department head; the minister is the department head, you know-ii' you did not like the answers of the department head—a majority of you-you could vote to censure him. And down he would come, and he would come back into this chamber whence he came to head a job as a department head, and you would put him back in his seat and then the Governor would have to get himself a new department head. And then, you would go on to the Governor, and if the Governor did not come up with the right answers. ladies and gentlemen, you could ask for a vote of confidence. And if you wanted to bring him down, you could get yourself a new Governor. Now, I submit that this is real democracy. This is very responsive democracy. This is, if you will, instant democracy. Now, let's go one step further. Before you bring the Governor down, you realize, of course, that he is the head of your party, and you realize that when you go back to the elections-to the people, that the Governor does not go alone. That's the name of this little game; you go back with him. So, it better be something that's very, very serious, something of the utmost importance, before you would go that far. I merely give this as an example to let you know the power that would be in this body; and that is all we are talking about at this Convention is the power of the people. You'll remember when Larry Margolis was here, the executive secretary of the Citizens' Conference on State Legislatures-he said that this body is not representative of the people, but that this body is the people. Now, think about that for a moment. If you accede to that thesis that this body is the people of Montana, then I submit that before you put any control on this body, that you better have a pretty good reason for doing so. When Ramsey McDonald took office in 1923, he was defining the program of his new ministry, of his new government, and he discussed this matter of how-on what type of a matter you would vote on a vote of no confidence. I have a lively recollection of all sorts of ingenuities practiced by oppositions in order to bring a snap division upon the government so that it might be turned out on a defeat. I have known bathrooms downstairs utilized not for legitimate purposes, whatever those are, but for the illegitimate purpose of packing as many members surreptitiously inside their doors as their physical limitations would allow. I have known an adjourning [adjoining] building where there happens to be a convenient division bell used for similar purposes. I have seen this house practically empty when the bells began to ring, and then turned into a riotous sort of marketplace by the inrush of members for the purpose of finding the government napping and turning it out upon a stupid issue. I am not going out upon any such issue, so have no fear that we're going to be having elections every 2 years. A person who's a member of this Legislature under my proposal, would not be in any particular hurry unless it was a matter of great import to himself return to the voters. He said later, "Nowadays, a memberofthe majority party in the house will hesitate long before voting against his party leaders. He has no desire to turn out his own party and so bring in the opposition, perhaps thereby losing his seat and the salary attaching thereto. Nor does he wish to incur the expense and undergo the labor of an election. Also at stake are the interests of the 22 members of the cabinet, with 30 or more other party officials dependent for status and salary on the continued existence of the cabinet. They have strong motive to exert all the influence they can to stave off dissolution." I quote those sentences only to show you that dissolution is not something that comes on very suddenly. And lest anybody fear that we would be changing governments rather rapidly, I ask you to look to our Canadian cousins to the north in Alberta; I just found out last week that one of the reasons why the labor party-1 mean the conservative party-which just won the elections last fall was so apprehensive about taking over power was that this is the first time in

36 years that they've been in power in Alberta. Apparently. the party that was in power was doing a satisfactory job for some 36 years. So. the fact that you do have A very responsive type of government, responsive to the wishes and desires of the people, does not mean that you're going to he changing your government every other day. If you were Governor, which would you rather have? A guaranteed working majority, or the veto power? Think about that. You've got to make some decisions during this week and next about the power of the Governor. The veto power is like a string that you can pull at but you cannot push. Mrs. Reichert pointed out that in the last-what was it-last seven sessions, there's been a disparity between the House and the Senate as to political affiliation. I believe-it's my personal opinion that very likely our state is going to become unicameral, at least from what I hear in my own county of Yellowstone. What if the new, very powerful Legislature-I want it to have the utmost power because it is the people-is unicameral and it is of a party opposite the Governor's party? Since we came into the Union, 71 percent of the time the Governor of this state has been of a party other than at least one member of the Legislature. Looking at it from the Governor's standpoint, to take an instant-a current example, let's go to Washington for a moment. There are at least a half-dozen United States senators, all of my party and all great and honorable men, who are seeking the office of the presidency of the United States. During this, an election year, what are the possibilities, or at least, what are the pressures upon these men to give President Nixon a program that will be of benefit to the people? These great senators, first of all you must remember are partisan politicians and their job as partisan politicians. when the occupant at 1600 Pennsylvania Avenue is of the opposite political party. is to first bring him down and then we'll start worrying about the people's business. I think it is time that we Americans stop playing this childish game of who is the leader and begin to take care of the people's business. And the best way to do that is by guaranteeing that the chief executive of the State of Montana will always have a working majority in this body-in this hall. David Patrick Moynihan, former assistant to President Nixon, said that "The federal government is very expert at collecting revenues and very poor at dispersing services." Charles Schultze was director of the Bureau of the Budget under President Johnson said that "Only the federal government can take care of national defense and put a man on the moon. As far as education, pollution, manpower, poverty, welfare, health and urban renewal are concerned, only the states can handle these problems." And I publicly admit that as a liberal democrat, that not all the answers are in Washington; in fact, as I get older I realize more and more that very few of the solutions to our problems are to be found in the nation's Capitol. Someone has said that if we did not have the states as administrative divisions, we would have to create them. Our Legislature cannot handle a budget of several hundred million dollars a year with the shackles of the present Constitution. My proposal would provide a modern, streamlined and efficient form of government for Montana. Because it is different, it has been called by the editor of one daily newspaper, "a return to Toryism." Another editorial writer has defined it as a "alien political culture". This form of government that is so alien to our shores was responsible in 1215 for the Magna Carta. I have here in my hand part one, volume one—all of you lawyers know what it is,—the Revised Codes of Montana. The first document in this book is not the Constitution of the United States or even the Declaration of Independence; rather the first document in that volume of our laws starts out, "John, by the grace of God, King of England, Lord of Ireland" and goes on to say, "we also have granted to all of the free men of our kingdom, for us and for our heirs forever, all the underwritten liberties to be had and holden by them and their heirs, of us and our heirs forever." The Declaration of Independence is the next document in our laws. And the first three reasons why we went to war with Great Britain almost two centuries ago, was because the king had the veto power over our Legislatures. Each province of our Canadian cousins on our northern border has never used any other form of government. President Wilson favored it. Seventy-five percent of the presidents of the American Political Science Association since that time have also favored it. So did the conservative, William Howard Taft. This "return to Toryism" is exactly the form of government we are using in this great hall. This "alien" form of government is the type of government we are using to write a new Constitution for Montana. Moreover, if the counties had revolted only some 10 years later, we would now have this type of government in the Congress of the United States, and the President of the United States would always be of the majority party in the Congress. Professor Walgren in his article on the Legislature, which I'm sure all of you read, you will recall, said

that "lobbyists and incumbent senators favored a present bicameral or two house legislature." Elimination of one house will reduce the effectiveness of lobbyists, who would only have two chances to kill a bill rather than one. However, my proposal would do away-mind you--would do away with the greatest weapon ofthelobbyist, the gubernatorial veto. We have elected our own President and our own leadership, and our President cannot hide out in a Governor's palace. He is responsive to us; he is part of us. Imagine for a moment, if after we finished our document, that we would take it over to that other chamber, across the hall, and they would tear it apart with scissors and pastepot, hold hearings and rewrite the whole thing. That is abhorrent to us, but imagine further with me if you will, that not only after we wrote it, that our President could veto it and we had to pass every provision with two-thirds majority; the way we've been voting, we'd be here for a long time—try to get those two-thirds majority. The eyes of our state are on you now and you are governing yourselves with the best possible form of government. You are rightfully proud of the job you are doing. Our Con Con system is the best form of government. I urge you not to be selfish; share our system with the people of Montana. To the yeah-buts, those who agree with me but say, "Yes, it's a good system Kelleher but...," to the yeah-buts, I can only say, "Have confidence in the people of Montana." Our people come from the best school system in the United States. Our children are so bright that in national tests, our scores go off the top of the charts. Ourpeoplewant a change. In 1968, by a vote of over 40,000, they said they did not like the present system; they refused to give the present bicameral chambers an extension from 60 days to 80 days. When the Legislature went back to the people and said, "All right people, do you want to rewrite the whole business and start a whole new ball game?" the people of this state by a two-to-one majority said, "Yes, we want a whole new ball game." A one house Legislature is a baby's step in the right direction and I support it. It will save money; it will give better representation to rural areas; it will reduce the influence of lobbyists; it will be more accountable and more representative of the will of the people. However, it will not stop the feuding and the buck-passing between the Legislature and the Governor. And 1 year, Mr. Babcock, you will recall, vetoed 20 bills. I'm not going into the merits of whether he was right or wrong; and that's none [of] my business as a delegate, but could you imagine the inumerable hours of time in committee, of research, of government heads of the State of Montana that came over here to testify, and all of that time was wasted. Finally, if you give the Governor a majority, you will have taken a giant step: and I ask you to take that giant step. And, in conclusion, I say that our Legislature would be so powerful that we'll be able to annex the State of North Dakota. Thank you, Mr. Chairman. (Laughter and Applause)

CHAIRMAN GRAYBILL: Discussion is on Mr. Kelleher's substitute amendment.

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. I rise in support of my friend, Mr. Kelleher. I think he gave a marvelous presentation of the parliament. I am very much in favorofthe part where he said we could be governed by Toryism. (Laughter)

CHAIRMAN GRAYBILL: Mr. Davis

DELEGATE DAVIS: Mr. President. I make a motion to a substitute motion to delete Sections 1, 2, 3, 4 and 5 of the parliamentary proposal that is now before you.

CHAIRMAN GRAYBILL: Do I understand you want to make such a substitutemotion?

DELEGATE DAVIS: I want to move to delete it.

CHAIRMAN GRAYBILL: You want to move to delete it. It would seem to me that it would be useless to make a motion to delete it. You'd just have to just reverse the vote. Is there a reason you want to do that? In other words, we have before us Mr. Kelleher's proposal and if you don't like it, vote against it; and if you do, vote for it.

Mr. Loendorf.

DELEGATE LOENDORF: A point of order, Mr. Chairman. I'm confused. Mr. Kelleher's proposed amendment is not part of the report and I wonder what we'd be deleting it from.

CHAIRMAN GRAYBILL: Oh, let's review the situation, Mr. Loendorf. Mrs. Reichert moved Section 1 of the unicameral majority report; Mr. Aasheim made a substitute motion that in place of Section 1, you place his Sections 1, 2, 3, 4 and 5. Mr. Davis proposed deleting Section 1, 2, 3, 4 and 5. My point was, that there's no point in making a motion to delete everything. You might just as well vote against it. It's a useless extra

motion. Do you understand me, Mr. Loendorf? Are you with me?

DELEGATE LOENDORF: I believe so. I think I agree with you.

CHAIRMAN GRAYBILL: Okay, thank you. So, we're ready to continue debate. Mr. Romney would like to debate.

DELEGATE ROMNEY: Mr. Chairman. I first want to say that I congratulate Delegate Kelleher upon his moving statement concerning the parliamentary venture. I don't know but what the majority of the people in this body probably agree in their hearts with him. They're like the exponents of a recent candidate for the presidency of the United States-and I don't mean Mc-Closky-in their-in your hearts, you know he's right. However, there-he has presented a choice to the people of Montana and I think that that is why we're seated here in this Convention. When we were elected to these-our seats in this Convention, we were elected to do the best that we could to present a parliamentary, a bicameral, or a unicameral, or such other type of government as would best serve the interest and uses of the people of Montana. For a number of days now, we have been discussing the unicameral and the bicameral systems. Delegate Kelleher has provided an excellent exposition of the reasons why we should now have a parliamentary system. I know that there are squawkers who will reject this philosophy but those squawkers fail to recognize that most of the nations of the world do use this type of government-of the provinces of Canada to the north, all excepting Quebec, use this system. The Dominion uses it, Great Britain uses it, New Zealand uses it, the Australian provinces use it and most of the nations on the continent in Europe use it. The fact that other nations use it is no more prime reason why we should accept it than the fact that Nebraska has a unicameral and no other state in the union has a unicameral system. Those sort of things do not provide answers. But as Delegate Kelleher has said, it provides-the parliamentary system will provide a system whereby many advantages not now available to the people of Montana, could be garnered. For example, if we had the parliamentary system, we would not have this Constitutional Convention. We would not now be engaged in this debate about whether we should have a bicameral or a unicameral system in Montana. We would not now be turning to anything that we ran up against that seemed difficult of obtaining an answer to. We would not be handing it over as to be handled by a commission or a committee, or being turned over as provided by law to the next session of the Legislature. Ifyau had a parliamentary system, you'd have to grapple with the situation that faced you, and you'd have to decide it. We would not be deciding about all of these things that are now facing this group, and which we must somehow or other determine. It would be determined on the floor of your House of Parliament, which would probably be right here. For example, there would be no Constitution; it would be an unwritten Constitution which is part of the laws of the State of Montana just as the Constitution of the United Kingdom is a group of unwritten laws-of written laws of the United Kingdom. So, there are many things to consider here and I know that you will all weigh your votes carefully before you cast them on this.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. In looking at these two proposals, there is a great deal of merit in Mr. Kelleher's proposal. I prefer a two-body system, however, but 1 can see the parliamentary procedure proposal as being more responsive to the people, because I think it could control the king-makers of a one-body. We here are in a one-body system. I feel we would've come out with a better Constitution had we had a two-body system. This morning I called the Secretary of State in the State of Nebraska. I got quite a lot of material. Their system, as far as the unicameral is, is far from perfect. They will have 16 constitutional amendments on their ballot at the primary election. They will have 10 or 12 in the general election this fall. They met for 165 days in the 1969 session at a cost of $614,289.00. In 1969, they had 1440 bills submitted. Of these, 858 were passed. This is one of the reasons I have heard for a unicameral system; we wouldn't have as many bills. They also have the referendum and the initiative. They have 49 legislators which they call senators. Two will not be running again; therefore, they are reapportioning according-their entire state--because these two will not be running again. So, there is much gerrymandering going there too. They met in 1941 for 99 days. Each year, they've extended until they were running 165 days. This year-or last year, for the first time-it was in 1968 that they had a constitutional amendment for annual sessions. They will meet 90 legislative days in the odd year and now they are meeting 60 days. They receive a salary of $4,800 annually. I

really don't believe this is the type ofsystem, but I would prefer the parliamentary system because I think it's more responsive than a unicameral hotly.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: (Inaudible)... like-1 would just like to say, Mr. Chairman, that several countries in Europe have a parliamentary system and they do have written Constitutions. We could have a written Constitution. It's not a condicio sine qua nomen. You could have a written Constitution with our parliamentary system. I wonder whether Delegate Felt would yield to a question.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I yield.

DELEGATE KELLEHER: Mr. Felt, I understand you've been in England. I wonder if you could tell us a few words how the question-and-answer period works in parliament over there.

DELEGATE FELT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Delegate Kelleher and other delegates. It did occur in 1959 through the American Embassy. I was able to get tickets to attend on this-what they call their question-and-answer day. It's rather difficult to get in there because it's a very popular day. Somehow they became confused and thought that Representative Felt was a Congressman of the United States so he ended up with a ticket. And these are samples of the questions. I thought they might be of interest and I dug them out of my old records. There were 60 questions in all prepared in writing. They're screened by a government agency so that they can't deal with something that might endanger the national security. But they lead on then to impromptu questions. All parliamentary procedure as we know it and as they know it, is thrown out the window on that day. You know how the thing is shaped with the two sides facing each other in the well, a narrow table with the leaders sitting oppositeeach other. And when they become aroused, I'll guarantee you, their noses come right together across that table. But, here are some samples. There was a question by Sir Robert Camel to ask the Secretary of State for the home department if, in order to avoid undesirable exhibitionism and demonstration by a minority of the public on the occasion of the hanging of a murderer, he will insure that in future all hanging shall be done in secret and if he will make a statement. And a Mr. Dennis Healy to ask the Prime Minister if he will propose a meeting with the heads of the government of the United States of America and the Union of Soviet Socialist Republics to discuss the conclusion of a treaty banning nuclear test explosions. Mr. Arthur Lewis to ask the Prime Minister why he will not appoint an independent committee to investigate and report on all matters leading up to the cause of and matters connected with the reasons for Great Britain's sudden withdrawal from the Suez campaign. Perhaps the question that aroused the most interest and the reason why a lot of the people were there, was one asked by a Mr. Hector Hughes to ask the Prime Minister if he is yetin the position to announce the result of his consideration of the bequest of the late Sir Hugh Lane of pictures now housed in London galleries, and to make a statement of the government's present policy with regard to their destination. Some American millionaires were trying to buy the paintings and there was moreinterest in that than there was in the nuclear tests or anything else. (Laughter) The fact that the leaders ofgovernment must appear in this manner, I'm sure, has a bearing upon who will be candidates of their respective parties or groups for the positions of head of state; and it has intrigued me at times to consider what would happen in Montana or in our national Congress, if a similar procedure was developed and used, regardless of how we selected the head of our state or national government. And I would like to say that I would like to join in the sentiments expressed by Delegate Romney that it's a very commendable thing that this subject has been brought up before us, and that it has been handled in a very proper manner, and that it does merit the consideration of this body and of the people of Montana.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman I have a little good news and I have a little bad news. The good news is that we're about to recess until 3:15 p.m. The bad news is that if we don't finish today, we're going to be here tonight. I move we recess until 3:15 p.m.

CHAIRMAN GRAYBILL: Motion is to recess until 3:15 p.m. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed'?
(No response)

(Convention recessed at 3:00 p.m.—reconvened at 3:20 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. Please take your seats. The issue is on Mr. Kelleher's substitute motion to substitute Sections 1, 2, 3, 4 and 5 of his parliamentary proposal for Section 1 of the unicameral proposal. Is there further discussion? Mr. Kelleher do you want to close'?
Mr. Rygg.

DELEGATE RYGG: I find myself in some kind of an odd situation. I thought Kelleher's proposal was just a lot of nonsense hut after he's spoken so eloquently about it, I think I would prefer the parliamentary system to the unicameral, and I think I'm going to vote for it.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, I think we "we Mr. Kelleher a vote of thanks for bringing this topic to this Convention's attention because, of course, we are given the responsibility to consider the possibility of a different form of government of some kind for the State of Montana, certainly to review all the possibilities. And I think one of the things about Mr. Kelleher's proposal that has not been emphasized, I think, enough, but one that we should direct our attention to, is the business of the selection of leaders. Now of course, under our present system in this state and in the nation, the selection of leaders is on a once-every-l-year basis and once a man has been defeated, he more or less sits on the sidelines and his ability to contribute is somewhat lessened. And I think over the period of history, there may have been occasions when we have lost some very ahle men who might have been ahle to contribute again. And I think of names. Perhaps you've seen the little badge I've been wearing the last couple of weeks. It might have been under a form of government which Mr. Kelleher proposes, that William Jennings Bryan might have had an opportunity to lead our government at some time or another, not merely following the loss of an election. Maybe a man like Wendel Wilkie might have had another opportunity, or somebody like Adlai Stevenson. Maybe you have somebody in mind who you were very much in favor of at one time and who you may feel the electorate was mistaken in defeating at the polls, either in the state or national scene. And I think under Mr. Kelleher's proposal, some of these very able people who were not given the opportunity to serve their country or their state, might have had another opportunity, and I think we should consider very carefully this proposal. It might give an opportunity for some very able people to further serve their state and their country.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. Chairman or Mr. President. I wish to speak for a minute on the parliamentary type of government as proposed hy Kelleher. It's possibly the most economical and efficient. It's really the most responsive to the people. My next oldest brother was a member of the Parliament in Canada for 8 years at Ottawa as a member from Saskatchewan. And I had occasion to discuss his being a member up there for years, and we were comparing the type of government they had as compared to ours. His only comment was that they certainly liked their form of government. He couldn't see how he could improve on it and he didn't know very much about ours. But, I'm very much impressed with Kelleher's talk to us this morning, and I'm for his type of government.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. Since nobody has arisen to raise any objections to the parliamentary type of government, I would like to suggest one or two that occurs to me. For one thing, I do not think we ought to equate parliament with unicameral--or one-house Legislature under our system-because it embraces a complete change in regard to the matter of checks and balances between three branches as we now have it. Really amalgamating the executive and the legislative into one, setting the judiciary off on the side of being an agency that functions only in terms of court cases that clearly do not involve any political ramifications. Let's take another look at it, just as a matter of argument since we insist on debating this. In our Legislature, we do have one majority party at present and one minority party, hut there are many instances where they work together. A legislator can come here from either party and still consider himself to be a legislator for the State of Montana and a functioning part of it. Let's put the

case-51 percent Republicans and 49 percent Democrats. The parliamentary procedure or the parliamentary type government automatically disenfranchises the 49 percent of the elected representatives of the people. Their only business here in this house, as has been stated, is to find ways to bring the other 51 percent down. They cannot cross over the line to vote with the majority without strengthening the hand of the majority that they're dedicated to oppose, nor can the majority ever cross over to join with minority in a vote against their leader without the possibility of bringing their whole house of cards down upon themselves. In a very real sense, the minority for the period of time until a new election-in a sense, they're not really effective legislators at all. A second point that maybe we ought to consider. A man might be elected from his single-member district as a legislator and he may be a good one. He may be the leader of his party, in a sense, when they get into the legislative hall. He may not necessarily be a good Governor. We have an opportunity, under our system, to vote for a man to be Governor, and we vote for him particularly for that job. We do not leave it to chance that the majority group, the 51 percent, choose one of their members who then becomes what they hope to be an effective Governor. Furthermore, the ministers under this system come from the house. They are members of the house. They have been elected as legislators. Now they end up being Secretary of Agriculture, Secretary of Labor, ministers for various functional departments of the bureaucracy of the state, and they may not necessarily be the best persons. All of these people having to stand together sounds as if it makes one responsible unit; that's true. But in a good many places, you do not come up with an efficient-type government, nor even a responsible one. In some cases, you either stand for a period of years with delicately balanced party positions, that is in terms of numbers of voters in each party, and a rather unstable situation. Or, as happened in Alberta, go into an entrenched position with one party who stay for so long that it's almost impossible, and takes an almost traumatic experience for a province or a state to get them out. There is something to be said for the checks and balances set up by the framers of our original Constitution in the United States. There were some reasons for setting up our kind of government, and since we are giving this other a full airing, I think possibly a word ought to be said for the kind of system that we have. Now as a supporter of the original motion which happens to he on unicameral, I would support it also in terms of bicameral, but particularly unicameral now. We get some of this responsiveness without having to take all the rest of what I think of as not too desirable elements of this parliamentary procedure along with it.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I listened with a great deal of awe at the speech made by the distinguished delegate from Billings. He made a splendid talk, but I just wonder how many of us would be here today if we'd have gone out, outside the distinguished gentleman from Billings, and campaigned that we were going to throw out our entire type of government in this Constitutional Convention. I just wonder how many would've been here today.

CHAIRMAN GRAYBILL: Very well. The issue—

Mr. Nutting.

DELEGATE NUTTING: (Inaudible). I have just one comment to make. Montana has a very strong two party system, and our system naturally operates under the very close vote, a very close margin between the two parties. Now, past history has demonstrated that a split between the two houses and the Governor is very common. Now, there's no reason to expect that this won't continue in the future. Now, consider if you will, that under a unicameral system that does not have a two-thirds majority in the single house, there is really no place to negotiate. They cannot override; neither can they negotiate unless they allow the Governor into their negotiations at all times. This is not too different from the situation as it was in 1965, when as has been stated, 21 bills were vetoed. There was no place for negotiation. That's also the same situation in our national Congress now. I believe that definitely the Parliament does have an advantage in this situation where you have the Governor and the body of the same political party, over the unicameral where you do not have anyplace to negotiate differences with a difference in situations.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. President. I think we're all proud of Kelleher but if I may paraphrase, "We did not come to bury Kelleher, only to bury his proposal with vocal tributes." (Laughter)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Kelleher's proposal that we substitute his Section 1, 2, 3, 4 and 5 for Section 1 of the proposal. Mr. Kelleher, do you really feel you need to close?

DELEGATE KELLEHER: Mr. Chairman, just a few items, if I may. I know we want to get on, but it might pass, Leo, you never know. (Laughter) If you give me a little more time, I have-we'll get the votes. Seriously, could I comment on what Delegate Harper has raised?

CHAIRMAN GRAYBILL: You may close, Mr. Kelleher.

DELEGATE KELLEHER: That's what I was going to do. Thank you, Mr. Chairman. (Laughter) First of all, because the nominee does not run for Governor, you know in advance who the Governor is going to be; you know in advance who the Lieutenant Governor is going to be because they're all picked the way the Legislature wants to, either by primary or by convention or a mixture. That's in the provision here; there's no problem. The people know in advance. The thing is instead of voting for a fellow because he has blue eyes or he's a good speaker or, say, because she's a beautiful lady, they vote for the platform, for a certain tax, against a certain tax, for new roads or to repairing the old roads. Now, regarding the matter of checks and balances, I've spoken here about that before. Checks and balances came to us from Alexander Hamilton and John Adams, mostly Adams, and God, I'd like to bury him. And he got them from Montesquieu in 1748. Now, Montesquieu said there were three forms of government: the despotic form of government, the republican form of government and a monarchial form of government. Now, which form of government did Montesquieu like and prefer? We all know that he preferred the monarchy and we all know what the Baron De Montesquieu said about a republic, which is the kind of government we got here. He said "It's a body without a head", because Montesquieu didn't feel that common men-and that's what I submit that we are, is common men—that we were incapable of governing ourselves. That's where checks and balances came from and division of powers. And under my proposal, the checks and balances are with the people. How democratic can you get. Now, this veto power that we have; where did it come from? It came from a guy named Elbridge Gerry. Did you every hear of "gerrymandering"? He's the guy that gave gerrymandering its name. He was at the Convention in 1787; he later became Governor of the State of Massachusetts-the Commonwealth of Massachusetts. In 1806, March 18th or something, is where we get the word "gerrymandering", after he signed the bill regarding the way the general court-that's the general assembly in Massachusetts-was set up. And you know how many votes he carried it by in the federal convention? Four to three, out of thirteen. Four to three that the President should have a veto power. Now, as far as all the opposition not having any say-so, those of you who were legislators in this chamber there's some 14 or so-you know what it was like when you were the opposition. It's no different in the parliamentary form. You probably have more say-so because you don't need to worry about a veto. Mr. Heath just lost 15 votes on a recent vote, I believe, on the EEC. His majority was down to 308 to 301. Well, he's getting kind of close but that just proves that the opposition can have something to say. They have a lot more to say in a parliamentary form of government than they do here with the Governor. The king is elected for 4 years and you can't get him out except by impeachment. Ministers, we know in advance who the ministers are-who's going to be Superintendent of Public Instruction, who's going to be Attorney General. Mr. Chairman, I want to thank you and all my fellow delegates for your patience. In conclusion, the people who sent you here, sent us here to write the best possible document. The people trusted you. June 6th, I ask you to trust the people. We have bright people; we have an intelligent people; we have instant means of communication and you don't need to be a PhD in political science to understand this system. All it says is that the Governor has to be of the same political party as the majority party. And our people will buy it; just give them the chance. Thank you.

CHAIRMAN GRAYBILL: We'll have a recorded roll call vote on this issue. All those in favor of Mr. Kelleher's parliamentary system, please vote Aye. All opposed, please vote No. Have all the delegates voted? Does any delegate wish to change his vote? Does any delegate wish to change his vote? Please record the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0..	Nay
Arbanas " "	Nay
Amess.....	Nay
Aronow " " " "	Nay
Artz	Nay

Ask ..... Nay
Babcock ..... Absent
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Absent
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Absent
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kellcher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CHAIRMAN GRAYBILL: Mrs. Warden?

DELEGATE WARDEN: (Inaudible)...no.

CHAIRMAN GRAYBILL: You want to vote **No?**

DELEGATE WARDEN: Please.

CHAIRMAN GRAYBILL: Is Mrs. Warden recorded as No?

CLERK SMITH: Yes.

CHAIRMAN GRAYBILL: You're recorded as No, Mrs. Warden. Would the clerk please announce the vote?

CLERK SMITH: Mr. President, 19 voting Aye, 74 voting No.

CHAIRMAN GRAYBILL: 19 having voted Aye, 74 having voted No, the parliamentary system is defeated. Now, the Chair has been requested to explain where we are before we proceed. If you'll alllisten carefully, I think we can get this straight. The first day we debated Legislative, we voted to put a dual proposal to the Style and Drafting Committee who will consider it, and perhaps will recommend a ballot form. Therefore, it behooves us to have the best unicameral and the best bicameral system possible. Therefore, we set aside Sections 1, 2 and 3 to debate at the end and we are now on Section 1 of the unicameral and the point is, we should all choose the best unicameral system we can and the best bicameral. Therefore, we will consider Sections 1, 2 and 3 of the unicameral. We will then consider Sections 1, 2 and 3 of the bicameral and we will send them all to Style and Drafting. Since we voted to send this as a dual proposal to the Style and Drafting Committee, the Chair will not entertain motions to delete either the unicameral or the bicameral system. So, if you have amendments, they will have to be-the Chair will rule them out of order unless they are simply changes, and if you try to eliminate one of the systems, then you're going to be ruled out of order. Now, we're on Mrs. Reichert's motion that we adopt Section 1 of the unicameral.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and members of the assembly. I know we are short of time but the bicameral people have not had their day in court and since we had such an excellent presentation by Mrs. Reichert on the unicameral, I'm not going to oppose her suggestions. I just want to present some friendly reasons...(Inaudible).

CHAIRMAN GRAYBILL: Mr. Aasheim, the Chair is going to rule that when we get to Bicameral Proposal Number 1, you may present the reasons for the bicameral proposal. I don't think they should be presented now. We're debating whether or not Section 1 is a proper unicameral proposal. As soon as we've finish 1, 2 and 3, we'll go to bicameral 1, 2 and 3 and I'll ask you, or whomever you designate, to give all the reasons for the bicameral. Is that clear?

DELEGATE AASHEIM: Well I will accede to your request, Mr. President, but I was going to challenge some of the statements she made. But, since you request it, I will accede.

CHAIRMAN GRAYBILL: You certainly are free to challenge her statements and make any statement in favor of the bicameral system you want to at the time we discuss the bicameral articles. We're now discussing the unicameral articles. Is there any further discussion on Section 1?

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, would Mrs. Reichert yield to a question?

CHAIRMAN GRAYBILL: Mrs. Reichert?

DELEGATE REICHERT: I shall.

DELEGATE ERDMANN: My only reservation about the unicameral system has not really been explained to me. Is there any safeguard that would prevent hasty, ill-conceived legislation from being rushed through under the unicameral system?

DELEGATE REICHERT: Thank you for that question, Mrs. Erdmann. I'll try to take as little time as possible. A bill is run through much the same process that we now use in our house the first time. After a 5-day period, the bill is then run through the same process again. This gives the citizens a chance to study a bill during this period, and if they want to change it or kill it, they can. After this, of course, it is subject to approval or veto by the Governor. I do have 13 explicit steps spelled out. Another member of our Legislative Committee and I called the clerk of the Nebraska Legislature and we asked him just what provision they use to safeguard legislation. And he said that there were several factors: Number one, the wide distribution of bills. Every time a bill is printed, it's distributed not only within the chamber, not only within the Capitol, but throughout the state. And I've found through my experience in viewing the Legislature, the mistakes are found not by the legislators by themselves, but by the people who are concerned with the specific legislation. And two, they have something that we do not have and that is a bill drafter. Since 1937, an average of562 bills have been introduced in each session and every bill had to pass the standards of a bill drafter. And this bill drafter takes care of so many technicalities that we've overlooked in our bicameral system over the years. They check not only for

constitutionality, hut this business we discussed yesterday, the title provision, the subject provision. And they haven't had nearly the trouble we have with hasty legislation; and if we have a chance to get into it, I'm armed with all sorts of statistics about specific legislation that really suffered at the hands of our bicameral system.

CHAIRMAN GRAYBILL: Members of the committee, you have before you on the recommendation of—

Mrs. Speer.

DELEGATE SPEER: Mr. President. I wish to speak in support of the majority proposal, Section Number 1. I believe that it is a more efficient system. The figures quoted hy Delegate Grace Bates, I think represent 1 year, and a rather unusual year probably, because as Delegate Reichert has said, since 19337, the average number of bills has been 562 introduced in each annual session. A study of the Nebraska Legislature in 1957 found that the number of bills introduced in the Nebraska unicameral Legislature was 40 percent less than the average number introduced in the bicameral Legislature. And of those introduced, 20 percent more reached final passage. Furthermore, the study found that in the last week, there were only two or three hills, major bills, that were left for consideration. I think this is evidence of efficiency under the unicameral system.Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. Aren't we getting off the path a little? I thought we were going to debate the merits of the sections rather than the systems.

CHAIRMAN GRAYBILL: I'm trying to limit debate to that hut I've hesitated to overrule anyone that wanted to speak. Members of the committee, you have before you for your consideration on the motion of Mrs. Reichert, that when this committee does arise and report after having under consideration Section 1 of the unicameral portion of Article V of the Legislative proposal, that it recommend the same he adopted. So many as are in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Will the clerk read Section 2?

CLERK SMITH: "Section 2. Size. The number of senators shall he prescribed by law but there shall he no less than 75 and no more than 100 members." Section 2, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, this is not my section.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. When this committee does arise and report after having had under consideration Section 2 of the majority unicameral proposal, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Two issues-and we're talking practical matters now when we talk about the size of a legislative body-our committee sees two issues. One is how to make a body of an effective, efficient size and, on the other hand, how to make a body that is really representative of the people hack home. There's no question in anybody's mind that size helps to determine the effectiveness and the efficiency of any deliberative hody. And our contention is that Montana's 150 is needlessly large today. Fewer members guarantee more individual participation, more thorough deliberation and communication. Fewer members in the Legislature means we may have stronger staffing, better compensation and better working facilities for the same or less price. In terms of efficiency of operation, I think there is no doubt in anyone's mind that a smaller body can work better. The real question today is the matter of representation. Several facts came to our attention. One is that since 1889, there have been some changes made in communication and transportation. Today, the Capitol is as close to your house and your county as the telephone; closer by transportation actually, than the county seat was 50 years ago. There's another fact. The people of Montana are represented by the whole Legislature. Most of the matters the Legislature deals with effect the entire state, not just single localities. Only by an efficient Legislature, can any one area he well represented. An overly large, inefficient Legislature represents any area poorly even if you chose people in that local area a representative for every square mile. Now, we've decided on single member districts. With single

member districts, we have districts small enough to be very representative and still have a legislative body small enough to be efficient and economical. The committee looked at the size of Legislatures in other western states. Let me simply review some of them. Arizona has a total of 90: has 60 in the House, 30 in their Senate; New Mexico has 112: 70 in the House, 42in the Senate; Colorado has a total of 100: 65, 35; California has a total of 120: 80 in the House, 40 in the Senate; Oregon has a total of 90: divided 60 and 30; Alaska, the newest state and much larger in terms of area than ours, has a total of 60: 40 in the House, 20 in the Senate. Average all the western states, these and others I did not read, and the average is 60½ members in the House and 30% members in the Senate. Now, think in terms of the number of people each representative represents. In New Mexico, the ratio is 1 to every 9,187 voters. In California, in 1960, it's worse now, 1 for every 155,041 people. The average in the United States, incidentally, taking in all Legislatures, large and small, is 1 to every 25,000 persons. In Montana, if you have 100 people in a legislative, unicameral body, you would have roughly 1 to 7,000. So, the smaller body still gives a much better representation than any of these other states that we've named. Nebraska's unicameral body has been mentioned; they have 49 and they like it very much. Now, a large question for Montana and a practical one, how can we have adequate representation for our rural areas? And sometimes people mean by this, how can we have enough rural votes to be sure that the urban votes don't outweigh us? And an honest answer is, with unicameral or bicameral, we can't. A Legislature of 50 or 100 or 150 or 500 will carry exactly the same proportion, But districting does affect the urban-rural proportion. As of now, for example, we have 23 large multiple districts, Rural areas are lumped together with each other in enormous areas or else with some urban center in order to get a sufficient body count. For example, Broadwater and Jefferson County thrown in with Helena and you can go to the people of Broadwater and Jefferson Counties and say, "Look, you guys get to vote for four representatives and two senators-much better represented." They're smart enough to look at the situation and say, "Yes, but they maybe all come from Helena." They'd rather have one person who lives among us than the six who really represent an urban situation. And city folks, now that we have single member districts, can have each of their districts too more representative. So our committee believes that the unicameral body of 75 to 100-75 the minimum, 100 maximum-from single member districts would be adequate and representative. Seven thousand people in each district represents actually less than 2,000 family units, and any legislator will have an excellent chance to get to know personally his constituents and they personally will get to know him. Why put a minimum and why put a maximum? Well, if you'll look at a map-not the present map, but a single member district map of 100 in your mind-then you will see what kind of advantages for representation this will give. We think 75 should be put in as a minimum figure simply becausein the future, we don't want it to go below that figure of representation. We put 100 in as maximum because we think that's a maximum number in terms of efficiency, still retaining representation. Onelastissue, but it is an issue, and I would say we in the Constitutional Convention ought not to forget that it's a real issue, this issue of economy. Now we say that such a small percentage of the total state budget goes into the Legislature that a few hundred thousand dollars doesn't make much difference, but when you're talking to the guy who's running the filling station or standing by her kitchen sink, three-quarters of a million dollars is a lot of money. You contrast 100 people as against 150 people-for example, for 110 days in a biennium as we have just had-and you take that 50 difference between 100 and 150, multiply the per diem and salary even at a low figure of say $2,750 a year, and almost a half million dollars is automatically saved. Mrs. Bates said that the last session 165 days in Nebraska, cost over $600,000. For 106 days, the last session in Montana, cost $1,562,101.29. Senator Norris campaigned on the idea of save time, talk, and money and the people of Montana, will understand that as well as the people of Nebraska did.

CHAIRMAN GRAYBILL: Mr. Foster has an amendment. Will the clerk please read it?

CLERK SMITH: "Mr. President, I move to amend Section 2, page 3, lines 13 and 14 of the Legislative Committee proposal by striking the following words and figures, '75 and no more than 100', and inserting in lieu thereof the following words and figures, '90 and no more than 104.' Signed, Foster."

CHAIRMAN GRAYBILL: Mr. Foster's amendment changes the figures from 75 to 100 to 90 to 104. Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. In drafting my amendment, I have attempted to bring the positions of the minority report for the bicameral of the Legislative proposal together with the majority report of the unicameral. The arguments that I will make are essentially the same arguments that have been made in the body of the proposal by the Legislative Committee. I do not take issue with them, but rather I draw them to your attention. In the majority report, on page 12, line 28, I quote, "in a unicameral body of 100, 51 legislators would constitute a majority to pass a bill." It's indicated that this would make it difficult for lobbyists to control. I submit that in the amendment I have proposed; in fact, this magic number of 100 is essentially the midpoint of my amendment. Also, in the majority report, on page 11, line 15, I quote, "in a unicameral legislature, unlike a bicameral legislature, rural district representation is not counterbalanced by larger senate districts that are stacked in favor of urban centers. In large districts, rural areas are thrown into districts with urban areas." I submit that this is also a very good argument for retaining the number essentially at 100. The minority proposal 2, page 54, line 8 states the same numbers in reverse and the house of not more than 104 nor less than 90 members. This is essentially the source from which I drew the magic numbers of 90 and 104, drawing upon the wisdom of the members of the minority and the Legislative Committee. I have no personal infatuation with 90 and 104, but I do feel that it should be in the area of 100 and not in the area of 75. I continue to quote from the minority report on page 54. "If Montana is to maintain a citizen legislature, it must have an adequate number of members to insure a broad base of experience and expertise in all of the fields of state government. A small legislature with large staff becomes a bureaucracy where the staff governs the legislature and the people have lost the last vintage of control over their government. Size is a compromise with existing facilities. While it is our feeling that perhaps no limit should be placed on size by the Constitution, this is a figure 45, 52 and 90 and 104 which could be reasonably adjusted to give adequate representation to the sparsely populated rural areas. An elected, informed citizen legislature is much more reflective of the will of the people than a small, bureaucratic, staff-dominated assembly. True representation should never be sacrified for the sake of efficiency and expedience." I concur completely in these comments and again feel that the average size of 100 is necessary to meet these objectives. Finally, in the majority report, page 13, line 27, I quote, "Montana is a large state with scattered population." The committee believes that a unicameral Legislature needs 75 to 100 members to allow the state's rural areas to retain a feeling of representation. The committee also believes that a unicameral Legislature of this size allows Montana to preserve its traditional low ratio between a representative and his constituents. The provision provides a range to give the reapportionment commission some flexibility in redistricting and reapportioning the state. I submit that this argument directs itself primarily to the upper edge of the proposal, the 100 members, and I feel very strongly that Montana, in relating itself to the other states in western United States as George Harper has indicated, in the area of roughly 100 representatives, can certainly do no wrong by retaining the size of the legislative body in the area of 90 to 104. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion of Mr. Foster's amendment'?

Mr. Davis.

DELEGATE DAVIS: Mr. President. I would like to make a substitute motion for the motions that are now pending as follows: "Section 2, Size. The number of senators shall be prescribed by law but there shall be not less than 100 members."

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. First, I know of nothing in the rules that state that statements of the delegates should be limited to criticism of our mutual activities. And I should, at this time, like to compliment the Legislative Committee for their very thorough complete report and, further commend them that putting both reports out in a majority form rather than trying to force one view or the other, or persuade one view or another, and trying to submit this to place it on the ballot.

CHAIRMAN GRAYBILL: Mr. Davis, the Chair has the duty to try and get this thing discussed so I will hear discussion on your amendment, but I don't think I want to hear discussion on the criticism of the committee one way or the other. So, if you want to discuss your amendment. you're in order.

DELEGATE **DAVIS:** Mr. President. You permitted a gentleman behind me to speak for about an hour. This probably concerns our area and 47 of the counties of this state which have a minority of the population, more than anything that has come up yet on this floor. May I proceed, Mr. President.

CHAIRMAN GRAYBILL: If you're going to discuss your amendment you may, yes, sir.

DELEGATE DAVIS: Now, we've accomplished a lot in these articles today. We've given an expanded right to vote; we've expanded the eligibility to hold office; we've freed the Legislature from the 60-day continuous session; we've adopted a single member district to make elected representatives more responsive to the electorate, and now we've crossed the very important question of how you're going to apportion, but none of these are going to be very meaningful to the rural areas unless they have someone that they can vote for that comes from that area. And I submit that 100 is a very minimum that we should strive for in a bicameral Senate or in a unicameral Senate or bicameral House in order to try to bring the greatest amount of harmony between the cities and the rural areas. It is a political fact of life that six or seven cities in this state have the vote and they have the power, and it won't change regardless of how your figures are except the more you reduce your numbers, the less opportunity the rural areas have to berepresented. And that is true if you do not put a minimum floor. The next house or any other house can reduce to a lower number, expand the rural areas, lump them onto a city and cut down the vote in the rural areas. The one man, one vote premise, as you all know, has quite a few fallacies in it at the best. If you have an important issue in Great Falls and go to your delegation there, you have 1 man, 12 votes or in Billings l-12, or in Butte 1-4 or 6, or with Anaconda 8. In the small rural areas, you're lucky to have 1. However, I believe we all desire to allow the rural areas more than a feeling of representation, as is set forth in the comments to the committee's proposal on page 13. And I feel certain that the committee did not mean that it merely wanted to give the rural areas a feeling of representation; we must give them real representation and any number less than 100 will fail to achieve the goal that we've strived for throughout. This chain reaction--we're now to the place where we determine the numbers. Now, Mrs. Erdmann yesterday in speaking of the unicameral, referred to Article V, Section 3 spoke a majority of 51, Mrs. Reichert in her excellent article in Sunday's Great Falls Tribune, stated it's more difficult for lobbyists to control a unicameral body of 100 because 51 individuals constitute a majority passing a bill. We have been thinking in the terms of 51 and of 100 rather, as appeared here on the floor and in the press. The flexibility is allowed by your reapportioning the districts; however, they want to reapportion them, and with an increase in numbers on the upward side. As you probably remember, both Billings and Missoula had less than 1,000 people when the last Constitution was adopted. And finally, it would appear that a very compelling reason for taking the 100 figure is that three federal judges in that famous case where Delegate Blaylock was one of the plaintiffs and the Governor and Secretary of State were defendants, has ruled that this present body of 100 is constitutionally permissible. Now yesterday we heard, and today, how many Legislatures had failed to pass the court test when they reapportioned themselves. But this decision holds that we have now in this body 100 and it is constitutionally permissible. We've passed the important thing of single member districts which was one of the reasons for appeal on that and the federal court judges of Browning, Smith, and Jamison said regarding single member districts. This was a decision that should be made by the Legislative Assembly or the forthcoming Constitutional Convention. We have accomplished the single member district and I think the real test of this whole Convention. And how it's going to work and how fairly you want it to work is how fairly we're going to work in harmony between the cities and between the rural areas; between the 7 counties that control the population; between the other 47 counties that are in a minority; they're going to continue to become in more of a minority. But this is where we nerd to really give some serious thought to harmony and I suggest a minimum of 100 will achieve that goal. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Discussion will be on Mr. Davis' substitute amendment that not less than 100 members be the size of the unicameral.

Mr. Champoux.

DELEGATE CHAMPOUX: The only thing I rise for, sir, and I think it refers also to his number too, is that I notice in the first proposal they have what-75 and 100 which provides for an uneven split at the bottom but it doesn't provide

for an uneven split at the top. I submit that Mr. Foster's proposal also has this problem and if we leave it at 100, you still have this problem. I wonder why they haven't provided for an uneven split here.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I rise in support of Mr. Davis' motion to set a minimum of 100. He stated the reasons very well and I will be very brief. I think you've heard Mr. Kamhoot, Mr. Wilson, myself, Mr. Belcher mention that-1 think the four of us represent 11 counties or parts of 11 counties--and if you go for the 75 to 100, if it was 75, out of the four, you're going to cut one out there would only be three. And this is a very large area and I think this is a very important facet of our Constitution to the rural areas. They're very concerned about this and I think this minimum of 100 establishes that it can't go below that and it could fluctuate above that; it'd be up to the Legislature and I think this figure of a minimum of 100 should be adopted by this body. Thank you.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I rise to support the motion of Carl Davis. As the state grows, I feel that we will result in a loss of representation if we do not set a minimum; but if we set a maximum amount, it will cause a loss in representation. I support Carl's motion.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I rise in support of the amendment of Delegate Davis. It seems to me that it's very important that we do this thing, that the people from the city who are represented in this Convention should say to rural Montana that we are not going to oppress you; we want your representation in the Legislature. And with a minimum figure of 100, they will have that representation, they will support the Constitution. I think it would be the most statesmanlike, charitable and the right thing to do and I support it wholeheartedly.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I, likewise, support the amendment of the gentleman from Beaverhead. I call attention to the fact that the 100 is the irreducible minimum that 20 years, 40 years, 30 years from now, it may be necessary for the Legislature or the apportionment commission-whoever is going to apportion it-to have more than 100 and I think that if you have a set figure of 75 to 100 or any other figures that are set with a maximum and a minimum, that we're going to get into a trap in the years to come.

CHAIRMAN GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. Chairman. Coming from the largest city in the State of Montana, as you all know, I heartily support the fact that we should have in both unicameral and bicameral, no less than 100. I get around into the areas outside of Billings quite a little, especially in Carbon and Stillwater County-they still allow me to go up there. I believe that we would do a disservice to the State of Montana, and to the rural people, and certainly coming from a little town in Bridger, Montana before I moved to Billings, I have a great feeling for the rural people in the State of Montana. And I would like to go on record emphatically for 100 in each house. Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, would Mr. Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis, will you yield?

DELEGATE DAVIS: Yes, I yield.

DELEGATE LOENDORF: Mr. Davis, in view of the fact that legislators as they reapportion tend to only increase in size, would you object to putting a maximum number of legislators into the Constitution?

DELEGATE DAVIS: I would stick with my proposal of a minimum to provide flexibility. That way, if they needed to increase or lose-or one or two-but, really, no, I don't think 100, if it once passes the test, would be satisfactory.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. Perhaps I didn't phrase my question very well, Mr. Davis. Would you consent to perhaps a minimum of 100 and a maximum of 105 is what I really meant to ask, I guess.

DELEGATE DAVIS: Yes, I would consent to that.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: May I ask Mr. Davis another question? Would you so amend your motion, Mr. Davis?

DELEGATE DAVIS: Yes, I would so amend my motion to read, if the Chair will permit, "to not less than 100 members nor more than 105."

CHAIRMAN GRAYBILL: Unless the Chair hears objection to this, the Chair will allow Mr. Davis to amend his motion. Do either of the gentlemen standing wish to object?

Mr. Siderius.

DELEGATE SIDERIUS: I object to that— to amendment. I feel that thereshould beprobably a minimum but no maximum.

CHAIRMAN GRAYBILL: All right, objection having been raised, Mr. Davis, do you want to withdraw your motion and make a new one'!

DELEGATE DAVIS: I'll withdraw it and leave it as it originally was, Mr. President, if it's permissible, "that there shall be not less than 100."

CHAIRMAN GRAYBILL: All right, we'll leave it at "not less than 100."

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I'm pleased to see that this body feels that we need adequate representation. I, too, feel this way. And if we must live with a unicameral Legislature in the future, I support a large number of legislators. However, when we started this, when we first came to Helena-we heard the figures of 40 to 60 in a unicameral body would be adequate. We hear how efficient Nebraska works with its 49. It's very interesting to see the changes of minds.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. Would Mr. Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis, do you yield?

DELEGATE DAVIS: Yes, sir, I yield.

DELEGATE SCANLIN: Mr. Davis, if the original point of the original proposal as made by Mr. Harper removed the 100 at the top, would that make any difference in your motion? That is, to have the minimum 75 and no top limit.

DELEGATE DAVIS: In answer to your question, Mr. Scanlin, no it would not. I feel the minimum should be 100. It has been approved by the court at this time and I think it's a minimum that would give the type of representation we all want the area to have-therural and cities to work together in harmony. Thank you.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: I rise in support of Mr. Davis' amendment and I want to point out that we're talking about rural people; but I think we should aim that into all minorities, not just rural people, but perhaps low income and other groups. For instance, if you had a district of 7,000 people and let's say there were 3500 of that were a member of a minority group-low income if you will-and that district, though its people have a 50 percent representation in their vote, has a weight and it has an effect. Once you start reducing the number in the Legislature and get the size of the districts larger, say you would lower the number and you had a district with representing people numbering 10,000, then those 3500 people would only be 35 percent of that district; their vote would be proportionally less; they would have less effect-they would have less political effect and would have less effect in the Legislature. So, I certainly support Mr. Davis' amendment.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: I would like to say that I think it is an enormous mistake not to have an upper limit as well as a lower limit. I'd just like to ask the people in this room to look at the size of the room; this is probably the only room that's going to be here for the next 40 to 50 years, and where would everyone go if you have a sliding and escalating number of people?

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. President, fellow delegates. I agree with Mrs. Bugbee that we're sort of getting stampeded here, and I hesitate to oppose Delegate Davis' proposal because I, too, come from a rural area. But I think we should consider the room that we have and anytime you get over 100, why, it does get crowded in here. I believe the original proposal of75 to 100 gives a lot of room for flexibility in reapportioning. I think it's a much better figure especially when we-since we've approved of single member districts. I think most of these rural areas are going to be

much better represented with the single member districts than what they have been in the multi-member districts, and we should keep that in mind. Any time that you raise the number of legislators, you also raise the cost. I think it'd be better to have a little smaller--and I don't believe in a small Legislature-but I think it's better to have a little smaller Legislature and save some of your money for research groups. And I personally would favor the original proposal in the section as it was proposed by Representative Harper--or Delegate Harper.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of Delegate Davis' proposal. We seem to have, as I've heard mentioned here on other days, two kinds or three kinds of legislators. We want to give them flexibility, we want to give them power and then we talk about their lack of judgment. I'm sure that they're just as capable of appraising the size of this room as we are who are here today, and I'm quite sure that if we give the Legislature this authority, we set the minimum so that the rural areas have their representation and feel good about this matter, that we can trust the Legislature not to put another 100 people-or try to put another 100 people-into this room. If need arises to increase it 4 or 5, there's no great harm done and I just don't believe that Legislature is going to be so stupid, if I may use that word, as to try to crowd another 50 people or what have you into this room. And I think we should support Delegate Davis' amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman. I'm Jerry Cate from the Little Beaver Creek, a rural area south of Baker. I'm currently residing in the biggest and the best city, Yellowstone-Billings, Montana. I'm in favor of the amendment of Mr. Davis because I do believethat as Montana grows, our rural interests which are so important to our economy, have to have some type of protection. The-I would like to point out that we do have now, and hopefully will retain in this article, a reapportionment commission, and I feel that that commission can act in a responsible manner and limit the size appropriately of any unicameral system. And secondly, I think it's a mistake for the unicameralists to insist on a small unicameral system because I think ifthere's one thing that would defeat unicameralism, which I tend to think is a very good system, it would be to limit the size to something like 75. The rural people aren't going to buy that, but I think the rural people will buy a Legislature of 100. And I would further point out that a unicameral system, if it's adopted, will be cutting the representation from what it presently is of 150 down to 100, so part of the economies that the unicameralists are attempting to achieve by limiting the size would be accomplished. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. I would like to speak in opposition to the amendment as presently proposed. I suggest that this is a trap. Don't forget that the voters have to vote on this proposal and with no limit on the size of the body, there will be those who will say to the electorate, "This is a proposal to provide a Legislature of ZOO", and there's no way to adequately counteract that argument. I certainly would agree with the amendment-one point of Mr. Davis-in which he put a limit of 105, but I submit that to present a question to the voters in which they, in effect, are voting to give the Legislature unlimited powers to increase their size, is very ill-advised. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman. I support the majority proposal, the size of 75 to 100. I, like Mr. Leuthold, also come from a rural area. I think size is a constitutional question. I think with annual sessions, possibly annual salaries. I think we should consider the budget here a little bit too. I think that we should not allow a Legislature to increase beyond a certain size. It has been pointed out that Nebraska has 49 legislators for one and a half million people. I am sure that our Legislature will remain in the vicinity of the 100 legislators at the top of the limit. We will have twice as many legislators per 700,000 people. I think that is adequate to represent the rural areas.

DELEGATE AASHEIM: -Chairman

CHAIRMAN GRAYBILL: Mr Aasheim

DELEGATE AASHEIM: I, too, come from a rural area. I know some of you haven't been to God's country, but that's something you can look forward to. But, we are rural; the county has about 6,000 people and we feel 100 representatives would satisfy Montana. We would be satisfied with that

proportion. Someone has said, "Well if the population increases, we should be able to take this lid off." Well, California has several times as many people as we have and they have a 40-80 proportion, so I don't think we need to worry about that. But I would resist this motion to have a minimum of 100 because the reapportioned commission should have some leeway. And we had the 75 as a bottom, hut you can he very sure the Legislature isn't going to use that bottom figure unless it has a good reason to. They'regoingto make recommendations to the committee-the commission, the reapportionment commission— as close to 100 as they possibly can. I recognize that you people are trying to pet representation, hut I feel that Montana is pretty well represented here today and I would resist the motion by-the last motion.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, is an amendment in order'?

CHAIRMAN GRAYBILL: An amendment is in order to the substitute amendment.

DELEGATE HELIKER: Mr. Chairman, I move to amend the suhstitute motion to place a maximum of 120.

CHAIRMAN GRAYBILL: Mr. Heliker's amendment would make Mr. Davis' motion read, "not less than 100 nor more than 120 members." We'll now debate Mr. Heliker's amendment.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I feel that it's necessary to resist the amendment of Delegate Heliker from Missoula. One of the reasons that I do this is because if we have a small number of representatives in the House, whether it he unicameral or bicameral, Ravalli County is going to have to have one of its single member districts merge at least in part with Missoula, and I don't want to see that happen. I want to try to preserve, as long as I possibly can, our own areas as areas for two representatives. Secondly, I feel that we'll never need 120 in the foreseeable future; this house has had as many as 110 in it and was able to accommodate that number. In the two sessions that I served, we had 104 and nobody was trampled as far as I could see, and representation was good. I feel that perhaps in years to come that it may be that we'll have to have more than 100, but if you have an open-no ceiling on it, why the Legislature or the commission, which may be doing the job of apportioning, will he able to go up to 102,104, or even 105, or even 110. But you'll have a ceiling-no ceiling which will inhibit raising it some.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, nevertheless, I think that Mr. Foster has put his finger upon a very real problem, that when we take this to the people we'd better have a maximum on it. Now, I don't care whether it's 105 or 110 to 120. I think 120 will give reasonable leeway, and I suppose the commission will keep it under control. And perhaps it won't go anywhere near the maximum hut there should be, it seems to me, a maximum.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Heliker's amendment to Mr. Davis' suhstitute amendment, namely that there be not more than 120 members. So many as are in favor of Mr. Heliker's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and the motion fails. We're now debating Mr. Davis' motion.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. I move to amend Mr. Davis' motion to read, "not less than 100 nor more than 105."

CHAIRMAN GRAYBILL: Very well. Mr. Foster has moved to amend Mr. Davis amendment so that it reads, "not less than 100 nor more than 105 members."

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I rise in support of the substitute motion presented by Delegate Foster and I want to alert all those who support the unicameral system to seriously consider the amendment that places a maximum upon the number that may be determined as necessary for that type of unicameral Legislature. If we do not have a maximum limit upon it, then the arguments that have been used throughout the campaign-that will be used throughout the campaign, to convince people that the unicameral

system should be adopted for Montana, may be turned against us. Then there will be no limit; we may end up with the same size of legislative body that we have now. We do not expect that to happen, but those arguments can be used against us. I submit that Delegate Davis is right, We should have a body of 100 to insurerural representation. But on the other hand, we should guard against anyone using the thought behind it as an argument against the unicameral system. I support the amendment of Delegate Foster.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I would concur in that amendment and support it as well.

CHAIRMAN GRAYBILL: Mr. Davis is going to support the amendment also. We still have to vote on it because there was objection to incorporating it in yours. Very well. The issue is now on Mr. Foster's substitute that there be not more than 105 members, that that limit be placed on it.

Mr. Foster.

DELEGATE FOSTER: Can we have a roll call, Mr. Chairman?

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote. So many as are in favor of Mr. Foster's amendment which places a limit of 105 on Mr. Davis' substitute motion of 100, vote Aye and so many as are opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Very well. Will the clerk record the vote?

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Absent
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Absent
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill Chairman ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Absent
Monroe ..... Nay
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye

Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Absent
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Absent
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye

CHAIRMAN GRAYBILL: Please announce the vote.

CLERK SMITH: Mr. President, 71 voting Aye; 15 voting Nay.

CHAIRMAN GRAYBILL: 71 having voted Aye, 15 having voted Nay, Mr. Foster's motion is carried. We're now on Mr. Davis' substitute motion that subsection 2-or Section 2 rather-of Article V of the unicameral Legislative proposal reads, "The number of senators shall be prescribed by law but there shall be not less than 100 nor more than 105 members". So many as shall be in favor of Mr. Davis' substitute, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

Mr. Scanlin.

DELEGATE SCANLIN: I call for a roll call vote on that please.

CHAIRMAN GRAYBILL: Well, we're going back and we now have adopted it, but we're going back and adopt Section 2, as amended. Mr. Harper, members of the committee, you now have before you the motion of Mr. Harper that when this committee does arise and report after having under consideration Section 2, as amended by Mr. Davis, that when the committee shall arise and report after having under consideration Section 2, as amended, it recommend the same be adopted. We'll have a roll call vote on that. All in favor vote Aye, opposed, No. (Inaudible)

DELEGATE AASHEIM: May I explain my vote?

CHAIRMAN GRAYBILL: The voting is open. You may explain your vote.

DELEGATE AASHEIM: I object to the minimum *of* 100 because it might put the reapportionment committee in a bind, and I don't know why we have to have a minimum of 100 because no Legislature will use that minimum anyway.

CHAIRMAN GRAYBILL: Does any other delegate wish to explain their vote?

Mr. Scanlin.

DELEGATE SCANLIN: I wish to take the same stand as Delegate Aasheim.

CHAIRMAN GRAYBILL: Very well. You may still vote. Can't you vote? It's still open. Now, have all the delegates voted?

Mrs. Bates.

DELEGATE BATES: What are we voting on? I'm just entered again.

CHAIRMAN GRAYBILL: We're voting on Section 2 as amended, 100 to 105, and we're voting that when this committee arises and reports that that be what we arise and report. Now you-are there any other delegates want to change their vote? Very well. The vote is closed. Will you please tally the vote?

Aasheim Nay
Anderson, J. ..... Aye
Anderson, O. Aye
Arbanas ..... Aye
Arness Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Absent

Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Absent
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill-Chairman ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Absent
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Absent
Kamhoot ..... Absent
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield, ... Aye
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Absent
Monroe.. ..... Nay
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Absent
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye

CLERK SMITH: Mr. President, 71 voting Aye, 17 voting Nay.

CHAIRMAN GRAYBILL: 71 having voted Aye, and 17 having voted Nay, Section 2 as amended has been carried. Will the clerk read Section 3?

CLERK SMITH: "Section 3. Election and Terms of Members. A senator shall be elected for a term of 4 years; one-half of the senators shall be elected every 2 years. A senator's term shall begin on a date provided by law." Mr. President, Section 3.

CHAIRMAN GRAYBILL: Who's in charge of Section 3?

Mr. Cate.

DELEGATE CATE: Mr. Kelleher's in charge of it, but I would move that when this committee **does** arise and **report that** it adopt Section 3 of the majority report as its recommendation for unicameralism proposal.

CHAIRMAN GRAYBILL: I trust you all got that. All right, Mr. Cate has moved for Mr. Kelleher that Section 3 be adopted when this committee arises and reports. Is there discussion on Section 3? Now, we have an amendment proposed by Mr. Champoux. Mr. Champoux, may we read the amendment?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: -clerk read the amendment? Do you have it?

CLERK SMITH: Yes, I have it here. "Elections and Terms of Members."

CHAIRMAN GRAYBILL: Well, let me read it. "Election and Terms of Members. Senators shall be elected for a term of 4 years. These elections must be of a partisan nature." Mr. Champoux suggests that that language be placed in Section 3 instead of the language there. "Senators shall be elected for a term of 4 years" is the same. He then strikes out the rest, "one-half of the senators be elected every 2 years and to begin as provided by law", all that's out and in place of that he puts, "This election must be of a partisan nature".

Mr. Champoux.

DELEGATE CHAMPOUX: Maybe I wasn't clear on that. I don't want to strike the rest of it. I simply want to add the sentence, "These elections must be of a partisan nature" after "The senators shall be elected for a term of 4 years." I didn't mean to strike the rest of it.

CHAIRMAN GRAYBILL: All right, I'll repeat the amendment. The amendment is to add in line 16 on page 3 after the words, "4 years", a sentence so that the section will read, "A senator shall be elected for a term of 4 years. These elections must be of a partisan nature." Then he leaves in the rest of the section. So, he merely adds the phrase, "These elections must be of a partisan nature."

DELEGATE CHAMPOUX: May I speak to that sir?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I know many of you perhaps would think, and probably do think, that this is of a statutory nature. However, I bring it up at this point simply to get it on the floor to discuss it. I feel that in the future there could be an attempt to get nonpartisan elections-a very good possibility. We have them in a number of other states, a lot of counties and so forth, have them. I believe that our political parties stand for certain principles and these could be hidden in a nonpartisan election; not so in a partisan election, however. I also feel that those with the most projection in a district, and I don't mean to insult anybody here when I say this, that is, automobile dealers, store owners, and so forth, would have a better chance for election, generally speaking. Or at least, their chances would be enhanced because of the projection, and generally speaking, I feel that this group has been and probably remain so, one party. If you get a nonpartisan election system in the State of Montana, I also submit that this may, very likely, kill the party structure at the county level. This means the party with the most money has a better chance statewide. I would like to hear it discussed. Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, I wholeheartedly agree with Mr. Champoux. I believe we need the partisan politics. We do not want to weaken the party structure. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Will Mr. Champoux yield to a question?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: (Inaudible) yield.

DELEGATE BERG: Would your amendment preclude an Independent from filing for, and being elected to, the Legislative Assembly?

DELEGATE CHAMPOUX: No, sir, it wouldn't. For the record, I would include any party, whatever it be named.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, will Mr. Champoux yield to another question?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Yes, I will yield.

DELEGATE ROBINSON: If it's an election of a partisan nature and Independents are not a party, but they are merely Independents, would they be precluded from running?

DELEGATE CHAMPOUX: No, I wouldn't, if we want to add something to it-if you want to call it partisan or Independents, I'd go for that.

DELEGATE ROBINSON: Well, as you had it stated, if you say of a partisan nature, I think that it would be interpreted in the court that unless they are, indeed, members of parties, they could not run.

DELEGATE CHAMPOUX: Well, if you want to rewrite the sentence to include the Independents, I would accept it. Do you have an amendment in mind?

DELEGATE ROBINSON: No. Mr. President.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Champoux yield to another question?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I yield.

DELEGATE ROBINSON: Do you feel that the party system in Montana is working well-is a very strong two-party system?

DELEGATE CHAMPOUX: That's a loaded question.

DELEGATE ROBINSON: Well, will you answer it? (Laughter)

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I believe, historically, the two-party system has worked. Whether it's working at present, it depends upon what you mean by that specifically. It may be in a period where it's not working as well as it has in the past, but I have faith in the two-party system or in a multiparty system for that matter.

DELEGATE ROBINSON: Yes, I do too. My question is, in the present Constitution, parties are not mentioned at all. The two-party system has worked very well, it seems to me, very strong in Montana, and it was not mentioned in the Constitution of 1889; and if we do not mention it in the Constitution of 1972, I don't think that the party system is going to suffer by its exclusion.

CHAIRMAN GRAYBILL: Mr. Champoux, I don't think that was a question. (Laughter) Is there further discussion of Mr. Champoux's amendment?

Mr. Anderson.

DELEGATE 0. ANDERSON: I'm sorry taking time here but I ran as an Independent because I did not want to be shackled by any party restrictions; and if I should want to run as a candidate again as an Independent, and commit myself for parts of either party's program or planks, I think that the opportunity should exist. We've been talking about the denial of many, many rights here in the giving of rights. And I think this is a fundamental right that would be denied by the adoption of this, and I urge its defeat.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, may I add the words then, "or independent nature"?

UNIDENTIFIED DELEGATE: No, that wouldn't work.

CHAIRMAN GRAYBILL: Mr. Habedank, could you explain the difference between a partisan and nonpartisan to these people?

DELEGATE HABEDANK: No, Mr. President, I'm not sure I could; but I feel, as Mrs. Robinson has pointed out, that this is completely unessential, The Constitution has given us the right to have parties and I'm very much in favor of parties; when you start trying to clarify it, you get back into the stage where nobody knows what we mean. And I recommend sticking with the majority proposal.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, in view of the fact that in discussing this in the committee, we felt that if there was a unicameral body, that it should be a partisan basis. And I was wondering, could we move that this be in the explanation, that this is the intent? I would like to so move.

CHAIRMAN GRAYBILL: Well, I don't think your amendment is timely, Mrs. Bates. It might be timely if we get this to Style and Drafting and you wanted to say that in the final thing, but we're not to that stage yet. However, the debate's recorded and we've had-what we've said here will be in the transcript.

Mr. James.

DELEGATE JAMES: Mr. Chairman. I would like to speak against the amendment. As a member of the Bill of Rights Committee, I think we should regard the rights of the candidate to run any way he wishes, and the rights of the voter to choose anyone he wishes. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Champoux's amendment.

Mr. Choate.

DELEGATE CHOATE: Well, if an amendment to his amendment is in order, I would like to suggest or amend the amendment to say "may", instead of "shall", which would permit partisan election or Independent.

CHAIRMAN GRAYBILL: All right. Mr. Choate has amended the amendment of Mr. Champoux to say "may", instead of "must"; these elections may be of a partisan nature. So many as shall be in favor of Mr. Choate's amendment say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and it failed. We're back on Mr. Champoux's amendment. His amendment is, these elections must be of a partisan nature. So many as shall be in favor of Mr. Champoux's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion—the amendment failed. We're back on Mr. Cate's proposal that Section 3 of Article V unicameral Legislative proposal be adopted. Is there further discussion?

Mr. Romney.

DELEGATE ROMNEY: I wish to make an amendment but I do not have it written out. I was called to a phone, I couldn't get to it. Can I have a page get me a sheet or shall I state it?

CHAIRMAN GRAYBILL: Isitlongorisit short?

DELEGATE ROMNEY: No, it's very short.

CHAIRMAN GRAYBILL: All right, let's try it.

DELEGATE ROMNEY: In two places, I want to offer a substitute in lieu of "4 years", "2 years" and delete the "one-half of the senators shall be elected every 2 years." So, that thesection would read: "Section 3. Elections and Terms of Members. A senator shall be elected for a term of 2 years. A senator's term shall begin on a date provided by law."

CHAIRMAN GRAYBILL: Very well. Mr. Romney's proposed amendment to Section 3 would change the term of the senators from "4" to "2" years. Therefore, he would not need the middle sentence which says that half of them have to be elected every 2 years.

DELEGATE ROMNEY: Mr. Chairman, I'll be very brief. I think it makes a representative more responsive to his electors and I think that holding over half of the body for 2 years is an anachronism. That's all I have to say.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I rise in objection to resist Mr. Romney's amendment on the basis of it would destroy continuity in the legislative process.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Romney's amendment that Section 3 be amended, so that the term of the senator

would be 2 years in the center section asking for half of them be elected each year be dropped. Mr. Romney, do you want a roll call vote?

DELEGATE ROMNEY: Right. I asked for seconds. (Seconds rise)

CHAIRMAN GRAYBILL: All those in favor, please vote Aye on the voting machines, and those opposed, vote No. Have all the delegates voted? Does any other delegate wish to change his vote'? Please record the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Absent
Barnard	Absent
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Aye
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Aye
Garlington	Nay
Graybill-Chairman	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Absent
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland.	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lore110	Nay
Mahoney	Nay
Mansfield.	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Absent
Murray	Absent
Noble	Aye
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Absent
Robinson	Absent
Roeder	Absent
Rollins.	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Aye

Warden ..... Nay
Wilson ..... Absent
Woodmansey ..... Nay

CLERK **SMITH:** Mr. President, 23 voting Aye, 68 voting No.

CHAIRMAN GRAYBILL: 68 having voted No and 23 Aye, the amendment fails. Members of the committee, you now have before you on the motion of Mr. Cate, that when this committee does arise and report after having under consideration Section 3 of Article V of the unicameral Legislative proposal, the same shall be adopted. So many as shall be in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk read on page 32, Section 1 of the Legislative article for the bicameral system?

CLERK HANSON: "Section 1, page 32: Powers and Structure. The legislative power of the state is vested in legislative assembly consisting of a senate and a house of representatives. The people reserve to themselves the power of initiative and referendum." Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President. I move that when this committee does arise and report after having had under consideration Section 1 of the bicameral proposal, it recommend the same be adopted. Mr. President.

CHAIRMAN GRAYBILL: Mr. Aasheim. Mr. Aasheim, please discuss the Legislative bicameral article.

DELEGATE AASHEIM: I shall do that, Mr. President, with enthusiasm. Members of the assembly, we have today three proposals for a Montana government and I assure you, they have all been good proposals. They are good proposals. The parliamentary system has been proven. I can't say that the unicameral has been proven, but it works in Nebraska apparently. The bicameral system has been in operation for many years. It has many faults and it is probably tragic that we are meeting at this time because of the stigma attached to the last Legislative Session; and I think it's probably well that we should analyze that Legislative Session before we become unduly critical of the bicameral system. Because that Legislative Session was faced with apportioning itself which is, in itself, a mammoth task. They were forced with a sales tax which proved to be an imponderable task. Consequently, they were accused of bickering; they were accused of being irresponsible and I think now you people, who have come here as delegates to make improvements, have come to realize more and more that maybe there was justification for some of that irresponsibility which you accused that Legislative Assembly of. I have yet-I'm not going to criticize the unicameral because, really, we don't have anything to criticize because we don't know how it would operate. I think it would operate in Montana. We can live with that kind of a system but I'm reminded of the time Khrushchev was here in America. He traveled throughout America and had seen our economy and our political system and one of the Americans asked him, "You have seen how well ours works; would you adopt our system," and Khrushchev turned to him and he said, "If the reverse were true, would you adopt ours?" And with that in mind, it's pretty difficult to change a system. It's a matter of making it work. And in our deliberations so far, I think we have made great strides in making our system, the bicameral system, work better. Now, we have given them more time and this has been the big criticism in the past. They have been rushed, there's no question about it. We have been rushed in our deliberations; we would liked to have had more time but they have not had the time. In fact, they have had less time for what they have had to do. Now, there were some matters said about the unicameral system, which I would like to not criticize too much, but they were made with the idea that the bicameral was not accountable. I think if we were to look back over the years, the bicameral has been quite accountable. They have accomplished much. They have been criticized much. But the bicameral system is a democratic system. The people don't want quick action; they want deliberate action. They want legislation considered carefully. Yes, individuals, groups, want action, but the masses are very conservative and I have said at one time that because of that fact, the unicameral people will not last long. And I am certain that the first two sessions of the unicameral, you will find a big change in the membership because the people don't want that quick a change. And what's going to happen?

You're going to get a group who are afraid to move for change. They're going to be afraid to be innovative, and that is an important facet of the bicameral system. This chamber, the house chamber, can dare to be innovative, because they know that the next chamber will take a second, long look at it. And this is probably the greatest criticism that I might present to you about the unicameral system. The members are going to be cognizant ofthisconservativefeelingofthepeople and the unicameral, instead of being progressive and innovative, is going to be conservative. They don't dare to be innovative. In fact, it's not going to do what the unicameral people think it's going to do. It was said that Norris barnstormed through Nebraska in 19—somewhere in '30, '35, '37 it was adopted-and he sold it because it was economical and it is economical; there's no doubt about it. It'll be-cost less to operate the unicameral system but I ask you, can we be penny-wise and pound-foolish? The other day we were talking about the amount of money that's lying around for the State of Montana to be investing--some $350,000,000. That's a lot of money, and if the bicameral structure might help protect because it has time to think, because it has time to watch these matters, whereas the unicameral probably would not. I maintain it's better to have two eyes than one in any matter and I think we've found that in our deliberations. Now I don't know about this statement that a unicameral makes better representation for the rural people. I don't believe it really does; I can't see where it does because, in our proposal, we have more people in the bicameral system, so I would challenge that statement. As a matter of the lobbyists, I really can't answer that. Will the lobby have more influence in a unicameral or a bicameral? I really don't know. I really don't know. Like we've said before, if you want to pass something, you want a unicameral. If you want to keep something on the books, you want a bicameral, but I don't think that that's a very good argument. But I want to make just one more comment and this probably you people have seen here in this-in operating here, that you have friends already, and when you can see how you vote or how your friends vote and your friend has a proposition, you sometimes hesitate to vote because of that friend's position. Now, this isn't so apparent right now but suppose you had spent say a year or 2 years, 4 years, 6 years-1 don't care whether you're Republican or Democratic—eventually, you'd develop a fraternity. This is what I am afraid of-really afraid of. I've seen it operate and if you have a second house, you have a safety valve. Now, the unicamerals say this is what we're talking about; you've got to be accountable. I agree but, just the same, you also have to be a human being. You've got to be a human being no matter where you are and there are times you're going to weaken even if you're representing the people back home. Now, I'm not going to spend any more time. Someone else probably has a few more words to add.

CHAIRMAN GRAYBILL: It is the Chair's intention to recess at 5 o'clock unless someone wants to add something to this. But we are going to come back tonight, so we can discuss the Legislative article further tonight. I think I'll call on Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Thereason that we're coming back tonight is that it would be impossible to get done here in any reasonable length of time. We have four new sections. We have under reconsideration Section 4 and Section 16 and possibly others, and we're not through with Mag's motion now, so it would be late in the evening before we'd ever have a chance to get through. For that reason, I move that the Committee of the Whole stand in recess until 8:00 p.m. this evening.

CHAIRMAN GRAYBILL: Motion is to recess until 8:00 p.m. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered.

(Convention recessed at 5:00 p.m.—reconvened at 8:05 p.m.)

CHAIRMAN GRAYBILL: The Convention will be in session. The committee will be in session. Mr. Aasheim, we're on Section 1 of Article V of the bicameral Legislative proposal and you had just had the floor, and if you want the floor to summarize what you said before, you may have it, or we can go ahead and debate. Section 1 of Article V on page 32.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think I took all the time I had coming and I'll let someone else talk if they want the floor.

CHAIRMAN GRAYBILL: Very well, the question is on Section 1 of Article V on page 32, the bicameral proposal. Is there discussion'?
Mrs. Robinson.

DELEGATE ROBINSON: Yes. Will the other part of my conference committee of yesterday yield to some questions? (Laughter)

CHAIRMAN GRAYBILL: Mr. Aasheim, will you yield?

DELEGATE AASHEIM: I yield.

DELEGATE ROBINSON: Going back to some of your remarks that you made earlier concerning the bicameral Legislature and the unicameral. You made the comment that a unicameral body would tend to be more conservative, would tend not to be innovative. I wonder if you have any information or statistics to back that up, or is that just a personal feeling that you might have?

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: This is my personal feeling and I'm concerned about it because I think it is a possibility, I really do, that the first approach to this will be to have a liberal group and the people, I feel, don't want-1 mean, that this is democracy. Democracy is a slow moving process. People may demand something on the spur of the moment but really they're conservative and I think that the body will tend to become conservative by public demand.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I don't understand. You were talking against unicameral today, saying that it would tend to become conservative, and now you're saying that a unicameral will become conservative because that's what the people want. I don't understand your reasoning.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I feel that the purpose of unicameralism is to express the immediate feeling of the people, and I think that's what you're trying to embody here in unicameralism because you have-1 am under the impression that the two bodies are too conservative and have been holding back good legislation, which they have. I can recall back in 1958 and 1959 we were trying to get vo-tech instituted into Montana, and we tried and we tried and we tried, and finally now we have a pretty fair vo-tech program. I can mention many things which finally became adopted but it took a long time, whereas, I thinkifprobably unicameral to start out and they would flare right in and people aren't ready for it.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. Chairman. I would like to just comment briefly on his remarks. I think he has proven a very good point in favor of unicameral, indeed. We are not interested in a system that does stop the will of the people. I have done some research on Nebraska's unicameral and it has not become conservative. I would dare say that they have done a few things that this unicameral body ought to do. One is they have adopted an ombudsman, or people's advocate. They also have consumer protection, some thing that failed to pass in this last session of the Legislature. If you will look back at what happened on consumer protection, a very good consumer protection bill was introduced in the House. It passed 73 to 25. A similar consumer protection proposal was introduced in the Senate. Passed 52 to 3. What happened to these bills when they got to the other committee in the other house? They died. They were never even reported out of committee. Here were two houses that were both very much in favor of consumer protection, but the people of Montana did not get any consumer protection. I would simply submit that the notion that unicameral bodies tend to become too conservative simply is not proven.

CHAIRMAN GRAYBILL: Now, the Chair would like to remind the delegates that we're debating Section 1 of Article V of the bicameral Legislative proposal in an effort to make it the best bicameral Section 1 we can get.
Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President, you've said very clearly what my point was going to be. I think we've been exposed this afternoon, and the appearance is we might be exposed this evening to an educational process that we may not need. I have a feeling that consultations

one by one would be far more interesting and educational than perhaps the kind ofspeeches that we may be tempted to give here on the floor. I think that your point is one that I wanted to simply ask a question about. Are we not designing the best possible bicameral system, rather than debating its merits in general?

CHAIRMAN GRAYBILL: Is there other discussion of Section 1?

Mr. Kelleher.

DELEGATE KELLEHER: I have this question, Mr. Chairman. It was obvious to me in the Legislative Committee upstairs that we agreed to pass the decision on bicameralism versus unicameralism to the people. If we're agreed on that, then what are we debating? What is the issue?

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, as far as I know we're not agreed on that. Maybe that question should be brought up to the body tonight. I think there isn't an agreement as to this question.

CHAIRMAN GRAYBILL: Well, this matter has been brought up to the Chair and we might as well have it out. Now, we did vote the first day to submit a dual proposal, including both bicameral and unicameral to the Style and Drafting Committee so the Chair takes the position that we must go through the bicameral and through the unicameral both, and submit the best possible draft of each to the Style and Drafting Committee. This body voted to do that. Secondly, this body voted to do that after the Legislative Committee chose to conduct its entire committee operations on that basis. It was not an adversary operation in the committee. Now, I think it's a little late to change that, except if you want to vote on it, you'll have a chance to vote on it when Style and Drafting suggests a ballot, if it does. Is there further discussion on Section 1 of Article V?

Mr. Aasheim.

DELEGATE AASHEIM: For a point of clarification, I didn't tell the group about this but we had the television cameras on this afternoon, and part of the plan was to present a few arguments for both sides for the viewing public because the viewing public would like to know-the listening public would like to know the pros and cons, and that's why I arose to answer the arguments for the unicameral when the unicameral proposal was presented. And it was just for a matter of information because, oh, I have been asked time and time again, "When are the bicameralists going to speak up for their side?" And I still stand by my original motion that this be put on the ballot. However, I understand from the Style and Drafting and the powers that be that we will have an opportunity to decide this when it comes from Style and Drafting. And I think, Mr. Chairman, the group would like to know--will we then, when it comes back from Style and Drafting, will we have a chance to reconsider our motion?

CHAIRMAN GRAYBILL: Well, first-let me answer your first question first. I certainly agree with you, Mr. Aasheim. I think it's unfortunate that the television cameras did not get both parts. I was not aware of the fact that that was the purpose for which you arose this afternoon or we might have made amends and let you get on television to explain that. I have tried not to vary the program here based on what the television people cared to film. I've tried to go right ahead without worrying about what they film, but I think your point is well taken. Now, as-I'll tell you how the Chair sees it, which may certainly not be the final result, but you conducted your committee not as an adversary thing, but as an attempt to find a good bicameral and good unicameral proposal. The first thing we did when the Legislative proposal was up was to adopt a motion, which we adopted, I think, unanimously or nearly unanimously that we would send this to Style and Drafting as a dual proposal. Style and Drafting preferred that language and so, I believe, did the committee; so that Style and Drafting's hands were not tied. But Style and Drafting must deal with two separate proposals if we send them there and the first thing they will do is come in with a report which will clean up the language, similar to the one that's going to be laid on your desks for General Government tonight. But then another thing that Style and Drafting must do the next time we send these dual proposals back to them is propose a ballot. Now, at that time, Style and Drafting has to decide either to put this matter on as an alternative matter, A and B, or to put one of them in the Constitution and the other one off to the side, or devise another of several possible ways ofputting this on the ballot. At that point, when they come in with that ballot proposal, this will be debated before this group, and if anyone doesn't like the proposal, he can propose to do it differently. And if he wins, then unicameral or bicameral or parliamentary—

well, I guess parliamentary is out now-but anyway those two could vie for the top spot or for the only spot on the ballot. So, at that time, we can debate if necessary this issue. The Chair is going to resist if it can any attempt to determine this issue tonight. I think it would be catastrophic in more than one way, because if one side or the other got a very great upper hand, I think it might mean that the other side would be out, and I'm not sure how the votes are right now. So, I'd just as soon go ahead and let Style and Drafting come in with their ballot proposal after we've given them good language on both sides. Now, with that explanation, does anyone want to do anything other than debate Section 1?

DELEGATE AASHEIM: Mr. Chairman, I do.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I will close on Section 1 if no one else wants to say anything.

CHAIRMAN GRAYBILL: Mr. Brazier, have you got a-for what purpose do you arise?

DELEGATE BRAZIER: I rise to call to the attention of the Chair the fact that if this Convention did agree to send both the bicameral and the unicameral proposals to Style and Drafting, then we'd better correct our minutes of February 19th, 1972, because they do not show any vote taken by this Convention, only a report by the committee on legislation.

CHAIRMAN GRAYBILL: Very well, we should correct them then because there was a vote taken. Well, I'll discuss that with the journal, but I distinctly remember it was an oral vote, it was not a roll call vote, and it was taken by the Ayes and the Noes, and the Ayes had it and I didn't hear any Noes. So if the journal isn't right, we should correct it, and I'm glad you brought that to our attention, Mr. Braizer. Let's talk about it later, Rosemary. Now, members of the committee, you have before you, on the motion of Mr. Aasheim, the Chairman of the Committee on Legislative, that when this committee does arise and report after having under consideration Section 1 of Article V of the bicameral majority proposal that it recommend that the same be adopted. So many as be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk please read Section 2.

CLERK HANSON: "Section 2, Size: The size of the legislature shall be prescribed by law, but the Senate shall consist of not more than 40 nor less than 30 members and the House of not more than 80 nor less than 60 members."

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, when this committee does arise and report, after having under consideration Section 2 of the majority bicameral report, I recommend that the same do pass. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I won't make a long speech on that. I think everything that was said about size in terms of the unicameral issue can be said here once again. I simply call your attention once again to the fact that of the other bicameral Legislatures in the western states, if you averaged them all out, you have a House of 60½ members and a Senate of 30½. They vary in population from as small as ours, or almost so, or in case of Wyoming to even smaller, I guess, to California. They vary in size from smaller than Montana to Alaska, and that might be something of a guide for us as we are thinking in terms of the size of a Legislature that is both efficient as possible and representative as possible. And then the second thing, toremindyou once again, that any time we reduce the size of the Legislature we reduce the size of the budget, and any time we increase the size of the Legislature, we increase the size of the budget.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: (Inaudible)...the Clerk has my amendment.

CLERK HANSON: "Mr. Chairman, I move to amend Section 2 of the bicameral committee proposal, page 32 in line 13 by striking the figure '40', and inserting in lieu thereof the figure '50'; and to further amend in line 13 by striking the figure '30', and inserting in lieu thereof the figure '50', so that the end of line 12 and 13 will read: 'The Senate shall consist of not more than 40 nor less than'-excuse me-'not more than 50 nor less than 53 members.' Signed, Davis."

CHAIRMAN GRAYBILL: Now, you've got that hackwards. It's 53 and 50 members, Mr. Clerk. The sentence should read so that the Senate "will consist of not more than 53 nor less than 50 members of the House." Okay? That right, Mr. Davis?

DELEGATE DAVIS: Yes, Mr. President. Would you want to finish the rest of it at one time on the House'? Would that he permissible?

CHAIRMAN GRAYBILL: Yes, I think we should finish it, but I don't see where it goes.

CLERK HANSON: "And further amend on line 14 by striking the figure '80', and inserting in lieu thereof the figure '106'; and further amend in line 14 by striking the figure '60', and inserting in lieu thereof the figure '100', so that the last will read: 'the House ofnot more than 106 members nor less than 100 members."'

CHAIRMAN GRAYBILL: Very well, Mr. Davis' amendment has the effect of changing the bracketed figures in the Senate from 40 to 30 and making them 53 to 50, and in the House that are now 80 and 60, and making it 106 and 100.

Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates, it is the proposal here to have the House of Representatives the same as this bodv is here. That's the present law in the State of Montana that has been approved by the court, although presently on appeal, and the Senate 50 members. Now, we've douhled the 50 to be 100 and we've doubled the not more than 53 in the Senate to he 106 in the House. I will not repeat the comments of this afternoon other than to say this has been judicially approved. I would be hopeful that the State of Montana could continue until afterthe 1980 census to work on this basis, unless there's something that's inherently wrong with it or unless the court repeals it. Also, I think we have a unicameral system of 100. I think the House in a bicameral system should he 100. If it goes to the vote of the people of the State of Montana, let it go on its merits not on less in one or more than another. Let it be represented. Let's get a truereaction of the people as to whether they want this or not. I think it relieves the Legislature of a great burden. I'm hopeful we won't have a vote on it in this chamber. I think when we are so presumptuous in this chamber to feel that if a hill didn't pass it was because the Legislatures did not know the will of the people in their respective communities, could be a grave error. They may have been reading the mail exactly right when they turn down these many proposals that you or I may think that've been good at that time, that they were not what the people wanted. So let's suhmit this to the people on its merits on the ballot and let them decide as a fair shake all the way around. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion on Mr. Davis' amendment'? Make the Senate 53-50, and make the House 106-100. Very well—

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I'm not going to repeat my talk of this afternoon, hut as a substitute motion, on line 14, I move to amend "53" to "50"; and "50" to "45"; so we'd have a possibility of 50 and 45 the lower limits. And in line 15, amend that to "90" and "90" and the last number "100". No, that isn't right. One hundred. Yes, the first number would he 100 and the second one 90.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim's substitute motion is to make the Senate bracket 50 and 45 and the House bracket 100 and 90. So the brackets in the Senate would he 50 as a maximum, 45 as a minimum; in the House it would be 100 as a maximum and 90 as a minimum. Those limits are higher than the limits in the majority proposal, but they're lower than Mr. Davis' limits.

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I rise in support of Mr. Aasheim's motion. The cowboys down in Powder River will like that.

CHAIRMAN GRAYBILL: Mr. Harhaugh.

DELEGATE HARBAUGH. I would like to ask Mr. Aasheim if he would yield to a question.

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I yield

DELEGATE HARBAUGH: Mags, in considering both of these proposals in your committee, I wonder if one of the factors involved was that of reducing the total size of the legislative body, and what is your feeling? Do you feel that,

generally, the committee felt that a reduced size was favored over all?

CHAIRMAN GRAYBILL: Mr. Aashoim —you...(Inaudible)

DELEGATE AASHEIM: I think we had mixed feelings about this. We had a minority report which wanted more and I was happy with 40 and 80-80 would hi: the top for the House and 40 the top for the Senate, and I think maybe, counting, I think we prohably had 3 for my proposal and maybe 3 for the minority and then some (Inaudible) in between. So this is really a compromise in this area.

CHAIRMAN GRAYBILL: Mr. Harhaugh.

DELEGATE HARBAUGH: I'm concerned that possibly by raising these figures to a limit that is quite a lot above, at least with Mr. Davis amendment, quite above-a lot above the figures that the committee reported out, that perhaps we are weakening the appeal of the bicameral proposal, and I think that we ought to consider that.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I, too, had a minority report here. I didn't intend to get up and talk at all because I usually get shot down on everything today. But these figures that are in the proposal are there because the unicameral people outvoted us in the committee and this is what it amounts to, and that is thereason for the minority report. Both the proposals were written mainly by the unicameral people in the committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Well, Mr. Chairman, I'm somewhat concerned about the proposal that I have before me. I look to it for guidance and I assume that a considerable amount of study went into its preparation. I'm looking at page 41, and I would ask at this point if Mr. Aasheim will yield for a question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I will.

DELEGATE DAHOOD: Mr. Aasheim, I am informed through your committee report on page 41, and I'm reading from it: "A lesser number of 60 to 80 in the House and 30 to 40 in the Senate will make for a more dedicated and more qualified membership. Responsibility can he more easily pinpointed in the smaller body. The smaller body will decrease the amount of legislation introduced, and will also make a more functional lawmaking body." Those reasons appeal to me. May I ask why the change at this time?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, in my opinion it is not changing and I'll assume the full responsibility for those words. Those are my-that's an expression of my feeling and I think maybe that I was alone amongst the bicameralists in recommending the smaller number, because I told my constitutents that I felt the body was too large at 104, at 100. I thought 80 would be adequate. They didn't argue with me and I'll go back home and I'll still defend my position, but right now, I can see where 40 and 80 is not satisfactory to this body, and I'm willing to compromise to recommend the 45 to 50 for the Senate and 90 to 100 for the House. I have been in this House when it was 92 or 94 and I felt at that time that Montana was well represented in the House, and I think that 90 would certainly give good representation. And you may ask again, how come we aren't agreed. There were 14 people in that committee and they were sincere in their opinions like I'm sure you people are tonight. You are sincere and you have your convictions and this is a matter ofconviction. You can't look in the books and find what the right answer is. You're just going to have to use your good judgment, and I think 45 to 90 would be a good compromise.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I urge retention of the figures in the majority proposal. I understand the problems of the rural people; however, I don't think by additions we're going to solve the fact of life in the State of Montana, that the cities grow and the population ofthe rural areas diminish. Also, Mr. Chairman, I campaigned on the platform of bicameralism with the condition that I would come to the Convention and urge that the size of the Senate and the size of the House be reduced greatly. I am satisfied with the majority proposal and for thereasons espoused by Mr. Dahood and the other reasons are shown by the statistics that the smaller bodies are much more effective. I do urge retention of the majority proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROBERT HANSON: (Inaudible)...Mr. Aasheim yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I will.

DELEGATE ROBERT HANSON: Mr. Aasheim, I notice these figures are all in round numbers and I know, during the last election in the House we had of the 104 members that was divided 55-49. And if it had been 3 different, it would have been 52 to 52. Now which party would have been the party that was in charge of the operation of the House, which could go to the Senate if it were bicameral or this would apply to a unicameral body. Don't you think it would be wise if we're going to do all of this, that you should end up somewhere with an odd number or some provision in the Constitution, because we came within 3 of having a 52-52 break in the House this last time?

DELEGATE AASHEIM: Mr.-

CHAIRMAN GRAYBILL: Hanson.

DELEGATE AASHEIM: -Hanson, I don't believe you could have an odd number in both cases, You'd have to have an even in one and odd the other. You see, it would be45 in theoneand 50 in the other, half and half, and I don't think you could have an odd number in both of them.

DELEGATE ROBERT HANSON: Then as our present situation the Lieutenant Governor votes in case of a tie, but under the new proposal he will not be a member of the Senate, I think, and so you could have a problem there, too.

DELEGATE AASHEIM: Mr. President, may I answer that'?

CHAIRMAN GRAYBILL: Mr. Garlington was up next, Mr. Aasheim.

DELEGATE GARLINGTON: Mr. Chairman, I am getting very troubled about the course that this is taking, and I fear we're prejudicing our entire constitutional operation by this affair. I'm a perfect guinea pig for this business ofchoosing between uni- and bi-. I came here with my mind completely open and I wanted to hear what the people had to say on the one side and on the other.

CHAIRMAN GRAYBILL: All right, now Mr. Garlington, the Chair would like to ask you if you're discussing Mr. Aasheim's substitute amendment?

DELEGATE GARLINGTON: Well, this relates to the matter of size—

CHAIRMAN GRAYBILL: Very well.

DELEGATE GARLINGTON: -because this is where it cuts, it seems to me. Size relates to efficiency, and it has been pointed out here that with a reduced size there are economies affected which make for moreresearch and more efficiency in the production. And I think we all know, the larger the group the tougher it is to get something hammered out and accomplished. We must remember now we have taken off the shackles as far as the duration of these sessions are concerned. They now meet every year, they can meet for 80 to 90 legislative days, they can extend sessions on their own. The cost is doubled over what it has been before. Now, we suddenly have put ourselves in the position of where, on a unicameral basis the limit is 100 to 105, and now we're saying that on the bicameral basis it will be substantially 150, which is a third higher—50 percent higher than the other. And when you try to justify that to the public, I think we're going to have area1 hard time doing it. Now, I came here with the idea that we could either have the choice of a unicameral body of about 100, which would acknowledge the need of the rural areas for representation, or if we thought it was more efficient to have the double size, we would reduce this hundred into two houses of 66 and 33 or thereabouts, and that was the complexion of the report as it came in. Now, suddenly we're changing it and I want to sound the alarm that if we do it on this basis, then we all of a sudden boost the cost by 50 percent. We are committing ourselves to a very dangerous course and I want to call the alarm while there is yet time.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, in regard to my good friend Mags' amendment, we were going to have in either one under this plan 100 districts and in the unicameral you have 100 districts, in the bicameral you have 100 districts—they elect one from each district. In the bicameral then, you have two districts for the Senate like we have now. If you reduce your bicameral, you're going to have to have smaller districts. The only way a smaller number-you have to have a greater area district and that way you have to incorporate larger numbers and increase-put more rural area

in with the populated centers. As I said this afternoon, this is to strike some balance of harmony between the city, the populated city, and the rural areas. I agree it's a fact of life that you can't change the numbers, but under a single member district all of Montana will be represented in this manner. The efficiency argument just cannot be denied. Russia has a very much more efficient way and so has China. We're trying to give all these people the right to be represented when they do come here in whatever form that we do elect.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I agree with Delegate Garlington that the numbers chosen here may chart a dangerous course. I submit that it will be extremely dangerous if the people of Montana are not given the opportunity of retaining the present government that they know, and I'm speaking of a bicameral, two-house system with precisely the same size that they have now which has been apportioned and districted by our Legislature, has withstood its first federal court case. I submit that the majority report, if those numbers are adopted, would give the people of Montana a choice of a unicameral with a reduced size, or a bicameral with a reduced size, and no option to select from the present form of government with the present size. For that reason, I would support either of the amendments and oppose the majority report.

CHAIRMAN GRAYBILL: Mr. Rlaylock.

DELEGATE BLAYLOCK: Mr. President, I rise to support Mr. Aasheim's substitute motion -for the figures 50 and 45, and 100 and 90. And so far as any increased costs are concerned, it won't be increased over what it has been. We have had those figures operating here in our state Legislature, and as Mrs. Robinson pointed out the other day, that's less than 1 percent of the cost of state government, so I don't think cost is any argument in this matter, and I believe that if WC leave those figures there that the bicameral then has the best chance, so far as their proponents are concerned, in trying to sell or to get the people of the State of Montana to adopt the bicameral system, if both go out for people's consideration.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's substitute amendment.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I wish to say a few words about this. First of all, we're endeavoring to get the best program WC can for both unicameral and the bicameral on the ballot. What are the people who vote on this proposition going to say when they see two sets offigures for the House, one that we adopted this afternoon considerably larger than the other? They're going to say, "Well, this is a loaded game," and they're not going to like it; and one or the other of the programs is going to suffer. As was adopted this afternoon, a larger number of representatives for the unicameral was adopted. Now we're talking about, in the proposition offered by Delegate Aasheim, of reducing it so that it would be lower in the bicameral than in the unicameral. This would get the people who are penny conscious among the voters more likely to vote for the bicameral than for the unicameral, and perhaps that is the carrot that is being offered. Now, let us consider a minute the money. Mrs. Robinson, this afternoon I believe put a figure of one and a half million, roughly, on the cost of the last Legislature which ran into extra time. Now, that is a lot of money, and it's the most that we ever had, but everything is costing more. I have the last budget book in my hand. Let us see, for example, the Judicial branch of the government. I think the Supreme Court of 5 and the judges numbering 26, in the 1969 biennium, there was expended for that judiciary $720,097 in 1968, and in 1969, 721,219. In the 1971 biennium, the expended amounted to for 1970, 881,564. And at the time the book was printed, the anticipated was 897,100. The 1973 biennium anticipated-or recommended, pardon me—was $941,480 for 1972, and 910,875 for 1973. Now here in one branch of government, the important judiciary, they have recommended 1,800,000 odd, for the next biennium. Now it seems to me, this goes through-1 just picked the judiciary becauseit was handy and of small number-31 people as compared to 150, odd, in the last Legislature when they spent 150,000,000—1,500,000 in round figures. Now, I don't think that we should be frightened by this money business, because it's going to be more and more all the time as long as this inflationary trend is continued. Rut the people who vote on this are not handling 1,500,000 or 1,800,000. They are thinking about the cost of beef steak and potatoes and one thing another, and they are going to be motivated perhaps by this carrot that is offered to help one side as against the other in the voting on June 6th. I think that, based upon a principle of equity, we should have approximately the same number of people in the House of a bicameral as

you have in the House of a unicameral, and that was decided this afternoon. Now, the bicameral proposition, which we want to have just as fair as the other, is going to suffer unless we do something to equalize it, and I object to-the substitute motion of Delegate Aasheim, and trust that the original motion of Delegate Davis prevails.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I agree with Carl Davis' motion and oppose Mag Aasheim's because I think that we should have some consistency; and if we don't agree to the figures that Mr. Davis has put in, then I think we should reconsider the action we took this afternoon in increasing the unicameral Legislature to the point that we did.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, it appears to me as though we are actually giving the voters three choices. You have the choice of the present system in the old Constitution. You've got the choice of a bicameral system, meeting annually with at least 90-day sessions. And you have the choice of a unicameral system of perhaps 100 members or more meeting also 90 days annually. If you accept Mr. Romney's figures and you apply them to the bicameral system with a membership of approximately 100 in the House and 50 in the Senate, you will double the cost of the legislative sessions in the foreseeable future. In other words, instead of costing one and a half million dollars for the Legislature under the present system if it's biennial, it will cost in the vicinity of three million dollars. Now, these costs are getting excessive and these costs in my mind will be very relevant in the minds of the voters when they come to compare these three systems. If those of you who would retain the bicameral system want it retained on an annual session basis, then it would seem to me only logical that you're going to simply have to cut down the number of members in that session. If you don't, I think the voters will cut it down for you, and you may also cut down every reform that you anticipate in this new Constitution.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I rise to a point of order. In the report that I have, there's a minority proposal and a minority report which, as far as I know, we haven't considered. Hasn't it been customary in our proceedings here that after the majority proposal is made that a—that the minority proposal is then considered first?

CHAIRMAN GRAYBILL: Mr. Arness, you may be entirely right, but I only recognize the people that rise. And if the minority wants their proposal considered, they'd better rise and make it.

DELEGATE ARNESS: Mr. Chairman, as I understood Mrs. Bates' remarks earlier, that was what was intended. Maybe I didn't exactly comprehend that, but her remarks seemed to me to be an author of their minority proposal Number 2 that appears on page 54.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, we have Mr. Davis' report now or his substitute motion which is almost the same, and in regards to the size of the Legislature, in talking to the people at home, many people did say we want less people up here, we want a smaller Legislature. But when you ask them, do you want less representatives, and immediately "No." It's just like taxes. It's fine as long as the other fellow pays them, but when we lose our representation we don't want this to happen to us. That's all right for the person in town. And I support a large body.

CHAIRMAN GRAYBILL: Members of the committee, you have before you Mr. Aasheim's substitute motion that Section 2 of Article V of the bicameral Legislative proposal beamendedso that the Senate limits are 50 as a maximum and 45 as a minimum; 100 maximum in the House and 90 minimum. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and that motion fails.

UNIDENTIFIED VOICE: Division

CHAIRMAN GRAYBILL: All right, we'll have a division, but no roll call. So many as are in favor, say Aye; opposed, No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: 68 having voted No and 28 having voted Aye, it's defeated. Now, we're back considering Mr. Davis' amendment. His limits are for the Senate 53 at the top and 50 at the bottom; for the House, 106 at the top and 100 at the bottom. So many as shall be in favor of Mr. Davis' amendment please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Chair is in doubt. We'll use the voting machine. If you're in favor, vote Aye. If you're against, vote No, on Mr. Davis' amendment. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: 55 having voted Aye and 40 having voted No, the motion carries. We're now on Mr. Harper's motion that when this committee does arise and report, after having under consideration Section 2, as amended, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk, please read Section 3 of the bicameral Legislative Article V?

CLERK HANSON: "Section 3, Election and Terms of Members: A member of the House of Representatives shall be elected for a term of 2 years and a member of the Senate for a term of 4 years. One-half of the senators shall be elected every 2 years. The term of the members shall begin on a date provided by law." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mrs. Bates

DELEGATE BATES: Mr. Chairman, when this committee does rise and report, after taking under consideration Section 3, I recommend do pass. Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: This section is almost identical to the present structure of four-term senators with one-half being elected in each general election.

CHAIRMAN GRAYBILL: Members of the committee, you have before you on the motion of Mrs. Bates that when this committee does arise and report, after having under consideration Section 3 of Article V of the Legislative bicameral proposal, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it. Very well, we've finished with the unicameral-bicameral. Now, there are several people who have indicated to the Chair they want to propose new Legislative sections. The first is Mr. Habedank. Mr. Habedank, may the clerk read your proposal?

DELEGATE HABEDANK: (Inaudible)

CLERK HANSON: "Mr. Chairman, I move to amend the majority unicameral proposal of the Legislative article by the addition of the following section on page 9, line 6 of the proposal: 'Section 17: Referendum of Unicameral Legislature, subparagraph 1: Six years after the provisions of this article shall go into effect, the secretary of state shall place upon the ballot at the next following general election the question, quote, Shall the unicameral legislature form be continued? end quote. Subparagraph 2: If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be on no further effect. Subparagraph 3: If a majority of the qualified electors voting on the question answer in the negative, the provisions of Section 1, Power and Structure; Section 2, Size; Section 3, Election and Term of Members; Section 10, Organization and Procedure; Section 14, Impeachment; and Section 15, Districting and Apportionment, as set forth in the bicameral legislative proposal shall be substituted for Sections 1, 2, 3, 10, 14 and 15 of this unicameral article and be controlling upon the composition of future legis-

lative assemblies. Subparagraph 4: The members of the unicameral legislature shall remain in office and their authority to act continue until their successors to a bicameral body can be elected and qualified. Subparagraph 5: The present Senate chamber shall remain intact until such election has determined whether the unicameral legislature is continued."'

CHAIRMAN GRAYBILL: Very well—

CLERK HANSON: Signed by Habedank.

CHAIRMAN GRAYBILL: Purpose of Mr. Habedank's amendment is to add a Section 17 dealing with a referendum on the unicameral system 6 years after the adoption of the unicameral system if that's what's adopted by the people.

Mr. Habedank.

DELEGATE HABEDANK: Thank you, Mr. Chairman. You've all had this amendment on your desk for a couple of days and I'm not going to extend this matter by a long speech. I have been going back and forth like a yo-yo as between unicameral and bicameral. Before I came here, I discussed this matter at length with legislators in whom I have the highest regard. Almost universally, they favor a bicameral system because of what they claim is the checks and balances. The legislators, by and large, who have served previously in the Legislature and who are members of this Constitutional Convention I feel, still feel this way. However, the arguments in favor of unicameralism are cogent and I feel that the people of the State of Montana may well be disposed to adopt a unicameral Legislature, or this body could, by its action, if the people would ratify it, adopt a unicameral Legislature. We heard a very excellent talk this afternoon by Magnus Aasheim about something we have not tried. I think the people of Montana should be given an automatic referral so that if they do try this, they can see how it works for 6 years, and then without any petitions being circulated or anything else being done, they will have a chance to analyze what they have done on the basis of performance and either continue it or discontinue it. And that is the reason for my amendment. I think the thing should be considered in its entirety because I feel anything in here that isn't exactly in accord with the two measures as they've been written up-or are to be written up by Style and Drafting-can be corrected. I have added, as you have noted in its being read, Sections 10, 14 and 15 which, as far as I can see, are the only sections of the bicameral measure which would have to be picked up. Section 2, if the majority accepts this measure, accepts the unicameral form that ends it. If they don't, then we go back to the bicameral. Section 4 is put in there so that we will not end up without having a Legislature that's not in office before their successors can take effect in the event we go back to a bicameral measure. Section 5 is put in there to prevent anything happening to the present Senate chambers during the 6 years that this is being tried out, so that we have it intact if we want to go back to the bicameral system. And if WE don't go back to it, of course, then they can do as they please in the future. I would urge your support of this amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I move to amend by saying-when I get far enough away-1 can't read it-instead of 6 years, in the beginning of Section 17, subsection 1, in 1980. This is a-I'll speak to what-either that or-1 started to say 8 years, but then I realize that wouldn't be 1980. The census will be coming up in 1980. It'd be a time when we would face reapportionment. We have voted to have, if we go to unicameral, 4-year terms and this would give two legislators two full legislative terms and maybe a good chance to see it, rather than one and a half and then have a sort of-almost a lame duck affair, maybe, in the end of the second term.

CHAIRMAN GRAYBILL: Is there discussion of Mr. Harper's proposed amendment, "1980"?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of Mr. Harper's amendment changing it from "6 years" to the year "1980", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No. (Laughter)

CHAIRMAN GRAYBILL: All in favor say-vote Aye and opposed vote No on the voting machines. We're changing it from "6 years" to "1980", which makes it about 8 years. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the vote. It's 48 to 46, Aye, so it is adopted. So, we've now amended Section 17, sub. 1, to read "1980". Is there further discussion of Mr. Habedank's proposed Section 17?

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I rise in support of the motion made by Mr. Habedank. After we finished with these two proposals, I still believe as I did before; that you can't support a bicameral Legislature in this country anymore, and the reasons, I think, are these. One, a bicameral Legislature costs considerably more; two, there's no justification for that cost. Addressing myself to the latter question first, it seems to me, to justify the bicameral Legislature, you have to be able to show that it in some way checks the other house, and I don't think you can point to any facts which show that it does. As pointed out in the comment, 90 percent of the bills killed in the last Legislative Session were killed in the house of origin. Now, what about these other 10 percent? Were they killed because they were bad bills, and are there any facts that can show that they were? I think legislators generally admit thatthereis a lot of buck-passing that goes on. In other words, they'll pass a bill from one house to another, just to have it taken care of. We heard testimony to that effect in the committee. One of the legislators who testified last time, he said, "We were lucky the House was there to kill that one bill you passed over." One of the house members replied to that—he said, "Yeah, when that bill arrived in our house one of our men commented, 'The audacity of you guys to send that over here'. And we immediately breathed life into a bill that was dead in our house and sent it back over to your house." I think the bills Mrs. Robinson introduced tonight are good examples of that. Here's two consumer protection bills essentially the same. They passed the initial house in both instances and the initial house being the Senate and the House of Representatives; but when it got to the final house it was killed. When it comes time to bite the bullet, they vote differently than if they can pass it onto somebody else. Another reason I think bills are killed in the second house sometimes is the sponsor in the first house has done all the research. He knows what the merits of the bills are, what the merits of his bill are, and he's prepared to discuss it. I've seen in my observations as a lobbyist a gentleman who had to carry a bill in the second house know nothing about it. Someone gets up and asked him a couple of questions about if, he can't answer them, it's killed. And, I know as a lobbyist, you can use the time limit here to kill bills in the second house. The first year I lobbied, I was asked by a client to attempt to kill a bill. I went up to the committee hearing in the house of origin and pointed out what I thought were the inequities in the bill and thought it would be killed. To my surprise, it came out greatly amended and eventually passed. In following years, I've learned if I think the bill has merit but has inequities in it, you wait until the bill gets to the second house when there isn't time to bring it back; you point out the inequities at that time and the bill is killed. Finally, who's to say the bills that are killed in the second house are bad bills? As has been pointed out many times here, the legislative audit is an example of a good bill that was killed many times getting through this Legislature, and assuming a second house is some type of a check on the first house, is it really needed, when you have the checks of executive veto, judicial review and the peoples' right of referendum? I submit it is not. An example that was used in testimony to us was that, assuming we had a one-house Legislature and a Republican Governor, the sales tax would've passed last time. Anybody with any sense knows that it's the people with their right of referendum would have vetoed that. I think the argument that lobbyists control a one-house Legislature easier than a two-house has been adequately answered, and I won't comment on that. But one other thing I heard here this afternoon was, does a one-house Legislature pass hasty legislation? I'll submit the one-house Legislature of the type we propose won't pass any legislation any more hasty than what goes through—or what has gone through this house during past sessions. Whether legislation is hasty or not is determined by the time you give legislators to consider. For example, the bills that went through this house last time had to be cleared through here in about, say, 45 days on the average if the Senate was even going to take a look at them. Consider our situation here, how much faster we would have to work if we had another body sitting over there that was going to review our bills and for what period of time. Finally, then, there being no real argument, I don't think, that a second house checks a first will, by deleting the second house where you savemoney. I think that should be obvious. By not having to run bills through two houses you save time, you should save money. You definitely, and no argument can logically be made against this, you do eliminate the end-of-a-session logjams. And, finally, you can reduce the size in a one-house Legislature without reducing represen-

tation. I think, comparing the two proposals we adopted here today, rural representation is still protected in a one-house Legislature. Proportionally, it will be the same. Then, I had a fiscal note prepared by the budget director downstairs and had him compare a bicameral Legislature meeting for 90 days at the current cost to the last Legislature of 150 members, and compare that to a unicameral Legislature of 100 members. The cost in the case of the bicameral Legislature would be $1,430,000, using round figures; the cost of a unicameral Legislature would be $900,000, using a round figure. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank, would you look at your amendment?

DELEGATE HABEDANK: Yes, Mr. President.

CHAIRMAN GRAYBILL: In the second line where you say "this article will go into effect", I think you must mean "this section will go into effect". May we make that amendment?

DELEGATE HABEDANK: Yes, you may. I would appreciate it-maybe everybody else got—

CHAIRMAN GRAYBILL: The way I have it now it reads, "In 1980 this section should go into effect and the secretary of state should place on the ballot." Now, if there is no objection, we'll make that interlineation. He calls it an article but that would take care of the whole Article V and I don't think you meant that. You just want this section to go into effect for the election purposes in 1980, right?

DELEGATE HABEDANK: This is correct.

CHAIRMAN GRAYBILL: Is there any objection to that?

(No response)

CHAIRMAN GRAYBILL: Hearing none, we'll make that amendment. All right.

Mr. Felt.

DELEGATE FELT: Mr. Chairman, regardless of the respective merits of bicameral versus unicameral, I feel very strongly that the proposal by Delegate Habedank is of great importance to the possible acceptance of the entire Constitution that we propose by the people. No doubt that argument will be made and can be made regarding many different individual parts of this document that we are preparing, but it's an escape hatch for a lot of the people that I feel close to in my area and throughout the state. They, generally speaking, are not as much interested in government or in what we're doing as I might wish they were, but they seem to be interested in this question of unicameral versus bicameral; and while intrigued at least by unicameralism, they tend to accept the status quo. They don't receive much of anything from government, or don't believe that they do, and they're not wealthy enough to be able to afford to pay what it costs without it hurting, so they take a look at the economical aspects perhaps to a greater degree than I think might really be warranted, too. And if they are inclined to go for this, and if they think there's a chance that unicameralism will be tried out, they will feel much better if they know that after some trial period everybody can take another look at it. And those who think, "All right, it may work but I'm not sure," are likely to go along if we include a provision like this. It does no harm, certainly, if bicameralism is accepted and I (Inaudible)...very strongly urge your serious consideration of this proposal.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President, I just want you to read Mr. Habedank's motion again, please.

CHAIRMAN GRAYBILL: I'll read it before we vote.

Mr. Blaylock, if you want to say something.

DELEGATE BLAYLOCK: Yes, I wanted to ask if Mr. Loendorf would yield to a question.

DELEGATE LOENDORF: I yield.

DELEGATE BLAYLOCK: Jerry, you feel very strongly for a unicameral and feel that it has a great many advantages. If you're that positive, then, I would take it we should vote against Mr. Habedank's motion.

DELEGATE LOENDORF: Let me say that to this. I feel I can find no justification for the bicameral system any more, but when we're talking about something like that in the future I can't say as an absolute certainty it will result as the best system. That's why I support his motion. If we try it we might like it.

CHAIRMAN GRAYBILL: Mr. Habedank's motion reads like this: "There shall be a Section 17 on the unicameral Legislative Article, which reads as follows: 'Subsection 1: In 1980 this section shall go into effect and the secretary of state shall place upon the ballot at the next following general election the question: Shall the unicameral legislative form be continued? 2: If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect. Section 3: If a majority of the qualified electors voting on the question answer in the negative, the provisions of Section 1'—and then he names them—'2, 3, 10, 14 and 15, as set forth in the bicameral legislative proposal shall be substituted for Section 1, 2, 3, 10, 14 and 15 of the unicameral article and be controlling upon the composition of future legislative assemblies.' In other words, if the people vote No, then we switch to the bicameral that's been proposed here. Then subsection 4 says: 'The members of the unicameral legislature shall remain in office and their authority to act shall continue until their successors to a bicameral body can be elected and qualified.' And Number 5 says: 'The present Senate chamber shall remain intact until such election has determined whether the unicameral legislature is to continue."

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I don't particularly care to argue with you, but on that first subsection I would like to make it read: "In 1980 the secretary of state shall place upon the ballot the question." I think it would make more sense.

CHAIRMAN GRAYBILL: Very well, in 1980—leave the section and all out?

DELEGATE HABEDANK: Yes.

CHAIRMAN GRAYBILL: "In 1980, the secretary of state shall place upon the ballot at the next following general election the question: 'Shall the unicameral legislature form be continued?'"

DELEGATE HABEDANK: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, now, so many as are in favor of Mr. Habedank's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and the section passes. The Chair will recognize Mr. Arness, who has an amendment. Mr. Arness, may we read your amendment?

DELEGATE ARNESS: (Inaudible)

CHAIRMAN GRAYBILL: And is it Section 17? Is that it?

DELEGATE ARNESS: Yes, it would be Section 17 then.

CHAIRMAN GRAYBILL: And did you tell me that Section 8 we can ignore?

DELEGATE ARNESS: Yes, it'd be the first paragraph on the sheet.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ARNESS: It starts out, "Conflicts of interest."

CHAIRMAN GRAYBILL: Very well. Mr. Clerk.

CLERK HANSON: "Mr. Chairman, I move to amend the Legislative proposal on page 9 by adding the following new paragraph: 'Section 17: Conflicts of Intent [Interest]. The legislator-"'

CHAIRMAN GRAYBILL: Mr. Clerk, let's make that Section 18 since we just adopted 17.

CLERK HANSON: "Section 18."

CHAIRMAN GRAYBILL: Very well.

CLERK HANSON: "Conflicts of Intent [Interest]. A legislator who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly shall disclose the fact to the house of which he is a member and shall not vote thereon. No legislator, nor anyone associated in a partnership or business association with a legislator, nor anyone related to any legislator by-"

CHAIRMAN GRAYBILL: "Consanguinity."

CLERK HANSON: "-consanguinity or affinity to the first degree may practice before any regulatory agency of the state, nor enter into a contract for the payment of money with the state, nor register to lobby the legislature of the state."

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, the first sentence of the proposal is the existing Section 44, Article V, of the present Constitution which provides, of course, that legislators may not profit by their votes in the Legislative Assembly. The remarks that Delegate Aronow made earlier in regard to the disqualification of legislators, of course, would apply with equal force to this section. It seems to me that it would be a mistake, especially since we have made the Legislative Assembly now a longer and more powerful body, regardless which way the vote goes on thenumber of houses, that we should not require them to be at least as ethical as the members of our existing Legislature. The second sentence, of course, is a good deal more stringent than the existing language or the existing provisions so far as conflicts of interests are concerned. It seemed to me, again, that since we have so strengthened the Legislature and made it into obviously a more powerful and very possibly a continuous body, that the more stringent regulations should not work any hardship on the legislators and it would be a necessary protection so far as the public is concerned. The matters that are dealt with here are matters of an ethical nature. They could not be dealt with-certainly should not bedealtwith by astatute. I think that it is proper that the Constitution should set out a moral imperative so far as the Legislature is concerned and that is the intent of this proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion of proposed Section 18?

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I'd just like to point out the reason the committee omitted these provisions, or deleted them from the present Constitution. Or I should say recommended that, is because they are encompassed in Title 94, Chapter 29, and in that particular provision of the Revised Codes of Montana, their violation is made crimes. The present provision in the Constitution, Section 44, its violation is made a misdemeanor. Sections 41, 42 and 3, the violation of those provisions is made a felony with the punishment of 1 to 10 years in thestateprison. I just point that out. I don't necessarily oppose the motion.

CHAIRMAN GRAYBILL: Is there further discussion of the proposed Section 18?

(No response)

CHAIRMAN GRAYBILL: If not, so many as shall be in favor of' the proposed Section 18, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and so ordered. Mr. Mahoney has a proposed amendment. Mr. Mahoney, may we read your proposed amendment?

DELEGATE MAHONEY: (Inaudible)

CHAIRMAN GRAYBILL: -clerk please read Mr. Mahoney's amendment?

CLERK HANSON: "Mr. Chairman, I move to amend the Legislative proposal on page 9 by adding the following new paragraph: 'Section 18' Insert the present Section 34-quote, No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt, unquote. Signed, Mahoney."

CHAIRMAN GRAYBILL: Mr. Clerk, I don't have that on my copy. Where does it go? Read the first part.

CLERK HANSON: It would be an amendment to the Legislative proposal on page 9 by adding the following new section.

CHAIRMAN GRAYBILL: So it would be a Section 18. We'll make this a Section 18. As I understand it then, Mr. Mahoney, you want a Section 18 added to the Legislative proposal that would say: "No money shall be paid out of the treasury except upon appropriations made by law, and on warrants drawn by the proper officers in pursuance thereof, except interest on the public debt." Is that correct?

DELEGATE MAHONEY: That's correct, Mr. President.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I think that this is a good precaution to be sure that the Legislature handles the purse strings of this state, and they make all appropriations where WC don't know what could happen. I just don't like to let this little article get out of the Constitution so that every appropriation that's expended must be made by the Legislature. That's all I have to say on it.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I'd again like to explain the committee's reasoning in deleting this particular provision. First of all, no state agency can act without authority from law and appropriate money. Secondly, I'd like to point out that Section 9, or Section 79-202, of the Revised Codes of Montana, provides: "Except as herein provided, no money received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the state controller in accordance with laws, et cetera."

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: (Inaudible)...I didn't quite hear that amendment, but I wanted to mention that in our proposed article we have one that reads like this: "The legislative assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof." I don't know if that'd do the same thing or not.

CHAIRMAN GRAYBILL: Is that in your proposal, Mr. Rygg?

DELEGATE RYGG: It's in our proposal, yes.

CHAIRMAN GRAYBILL: In the Revenue and Finance proposal'?

DELEGATE RYGG: In the Revenue and Finance proposal.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: All I'd like to do is to see that it's going to be in the Constitution and I don't want this statute. This is one thing. The Legislature can come in and all of a sudden can change the law. Now, all I'm trying to do is get the people protected that the Legislature must appropriate the money out for the running of this state. And I don't want a Legislature to come along and all of a sudden decide that all of a sudden we're going to let somebody else appropriate money. All I'm trying to do is just hold that little section; and it's a very short and it's not so big that we can't print it in the Constitution. I don't think it would break the State of Montana to put this little article, safeguard back in.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to support Delegate Mahoney on his amendment from the standpoint of I think that this is something that's very necessary to be in the Constitution, whether it is in a section like this or a section that comes out of Revenue and Finance. If it is put in some other place in some other section, when we come around on final reading and we know what's going to be there, then we can delete. But I think it's something that should be there.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Mahoney's—

DELEGATE MAHONEY: Roll call.

CHAIRMAN GRAYBILL: Roll call, all right. Section 18—the proposed Section 18 says: "No money shall be paid out of the treasury except upon appropriations by law and on warrant drawn by the proper officer-in pursuance thereof, except interest on the public debt." We'll have a roll call vote. So many as shall be in favor of this proposed Section 18, vote Aye, and as many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the vote. Will you please take the roll call?

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye

Babcock ..... Absent
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Absent
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Chairman Grnybill.. ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Spew ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 77 delegates voting Aye; 14 voting No.

CHAIRMAN GRAYBILL: 77 delegates having voted Aye and 14 voting No, the proposed Section 18 is adopted. Mr. Aronow, did you have an amendment to propose?

DELEGATE ARONOW: (Inaudible)

CHAIRMAN GRAYBILL: May the clerk read your amendment?

DELEGATE ARONOW: (Inaudible)

CLERK HANSON: "Mr. Chairman, I move to add a new section to Article V, the new sec-

tion to be inserted in its proper place in Article V. 'No member or officer of any department of the government shall be in any way interested in any contract with the state or any of its agencies or departments.' Signed, Aronow."

CHAIRMAN GRAYBILL: Let's number this Section 19 for purposes of debate.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. The proposed Section 19 I have paraphrased from Section 30 of Article V of the present Constitution. That section deals with stationery, printing, paper, fuel, lights, and remodeling of the Capitol legislative chambers, and that sort of thing. And I have broadened it and I've used the last sentence of the present article-"No member or officer of any department of the government shall in any way be interested in any such contract", and so on. This is another one of these items that I feel very strongly should go into the Constitution. In answer to Mr. Loendorf's last two arguments, I'd like to call to your attention that the reason there are statutes on these matters is because there was, or is, constitutional provisions. If there was no constitutional provision, there may or may not have been statutes. By having it in the Constitution-this is short, and again, it's only three lines, and it does establish a policy and a standard of honesty and fair dealing on the part of officers and employees of state government. May I remind the members of this assembly that only a week or 10 days ago I read about some flap in the paper about some member of some commission having sold two snow plows to the State of Montana. I'm not passing on whether it's proper or improper or what the merits of that situation may be, but I submit to you that this type of a provision in the Constitution may stop that sort of thing, if it's the belief of this assembly that no employee or official of the state should deal with the State of Montana to his own benefit and advantage. I move the adoption of this proposal, Section 19.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Rygg.

DELEGATE RYGG: Would Delegate Aronow yield to a question?

DELEGATE ARONOW: I yield, Mr. Rygg.

DELEGATE RYGG: I just had a hypothetical question. If I were a member of the House and if I owned a car dealership, could I bid on a highway patrol car if this new law were passed?

DELEGATE ARONOW: (Inaudible)... take it you probably couldn't but this has not been determined by the courts, and I suppose if it was a bid and you were the low bidder, I don't know why, as long as it was a competitive bid.

DELEGATE RYGG: Mr. President, would Mr. Aronow yield again?

DELEGATE ARONOW: Yes, sir.

DELEGATE RYGG: I didn't quite get the answer. You said I could not, is that what you said?

DELEGATE ARONOW: Well, that's what I said originally. But it was a matter of a bid and you were the low bidder, the state isn't harmed any. In other words, I take it that the sense of this amendment would be that you couldn't deal with the state to your own advantage from the position of advantage that you might have as a member of the Legislature.

DELEGATE RYGG: Thank you.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: -Mr. Aronow yield to another question?

DELEGATE ARONOW: Yes, Mr. Toole.

DELEGATE TOOLE: This is similar in nature to Mr. Rygg's question. Could a member of the highway commission sell equipment to the State of Montana?

DELEGATE ARONOW: Not if he passed on the question of whether or not that equipment should be bought.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: May I direct a question to Delegate Aronow?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I'll yield, Mr. Romney.

DELEGATE ROMNEY: I wonder if a newspaper publisher, such as our friend from Livingston, was to receive an order from the State of Montana for legal publications without bids, be-

cause they're not ordinarily handled with bids, could he accept it or would he be in dutch?

DELEGATE **ARONOW:** Well, I don't think that is any contract. If he's the only newspaper in the county and it's a ordinary legal route advertising in the routine manner, I don't see where he'd be hurt by this.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. Chairman, would Delegate Aronow yield to another question?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: Yes, Mr. Studer.

DELEGATE STUDER: As regarding highway contracts again, as a highway contractor I would not be stopped from bidding on highway work, would I'?

DELEGATE ARONOW: You mean if you're in the Legislature?

DELEGATE STUDER: Yes, if I was interested in a construction company in any way, and our firm was only bidding on highway work— same as Mr. Rygg's question. Where we were low bidder, would we be able to do a highway job?

DELEGATE ARONOW: Well, it would depend on whether-if you appropriated funds as a legislator for this particular highway project, then bid on the project and used your position of strength as a legislator, position of influence, I'd say no.

DELEGATE STUDER: Well, influence doesn't have a thing to do with it when you're bidding, that I know of.

DELEGATE ARONOW: Well, I—

DELEGATE STUDER: If you're the low bidder, the same as Delegate Rygg was talking about, and you submitted a bid to the Highway Department, which of course is pretty near all federal money, you would be—

DELEGATE ARONOW: Well, if it's a secondary road contract, it may not be all federal money. It may not be a contract with the Bureau of Public Roads. It may be a state project.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Would Mr. Aronow yield to another question?

DELEGATE ARONOW: Mr. Martin, I'll always yield to you.

DELEGATE MARTIN: If a lawyer had a contract with the Highway Department to defend, or to represent the state in a highway condemnation case, would he be subject to this rule?

DELEGATE ARONOW: Well, do you mean if he was a member of the Legislature? I don't think if he's a member of the Legislature he should be employed by a state agency.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, the Legislative Council study in 1961 and 1962, and again in 1968, recommended that this section be deleted. It is obsolete. Out of 50 constitutions only 8 constitutions have any provision of this sort. It's obsolete, unnecessary, and the Constitutional Revision Subcommittee also recommended its deletion.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I'm afraid this brings up another question I'd like to ask Mr. Aronow if he would yield.

CHAIRMAN GRAYBILL: Mr. Aronow, will you yield?

DELEGATE ARONOW: I'll yield.

DELEGATE RYGG: Mr. President, Mr. Aronow, I don't know if I'm nit-picking now or not, but the thought occurs to me that most garages have a sort of a contract with the Highway De. partment in that they agree to sell their parts at a discount. Now, the same hypothetical thing, could I then not sell parts to their shops which would probably be more of a detriment to them than me, as far as that's concerned?

DELEGATE ARONOW: Well, I would perhaps amend my proposal after the words, "in any way interested in any contract", and insert there, "other than bid contracts", which might clarify the thing and be of assistance to matters of your car bid to the Highway Patrol or some other state agency.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Aronow, would you yield?

DELEGATE ARONOW: Yes, Mr. Gysler.

DELEGATE GYSLER: Could the Governor sell a right-of-way to the state for a highway through his ranch or some of the property he owns?

DELEGATE ARONOW: Well, you get into a real conflict of interest there, I can assure you. He can sell it; I suppose if the highway wanted it, they could condemn it as anybody else, but I don't know how to handle the realistic appraisal and that sort of thing.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, could we have the proposed amendmentread again?

CHAIRMAN GRAYBILL: "No member or officer of any department of the government shall be in any way interested in any contract with the state or with any of its agencies or departments." Now, do you want it amended to say other than bids?

DELEGATE ARONOW: (No audible response)

CHAIRMAN GRAYBILL: All right— "shall be interested-in any way interested in any contract other than bids with the state or any of its agencies or departments." If no one objects to the addition of the words, "other than bids", we'll let Mr. Aronow put it in. Any objection?

(No response)

CHAIRMAN GRAYBILL: Very well. Mrs. Bugbee.

DELEGATE BUGBEE: May I ask Mr. Aronow a question'?

DELEGATE ARONOW: (Inaudible)...try and answer.

DELEGATE BUGBEE: If you take the bids out, then what value does the article have?

DELEGATE ARONOW: If you take the bids out? What do you mean? I don't understand.

DELEGATE BUGBEE: If you take that clause out, if you eliminate other than-as you said--"except for bids". Doesn't that completely weaken it?

DELEGATE ARONOW: It does weaken it but I can also see from the discussion that there are some instances where perhaps a real injustice and a loss to the state might occur. If there is a low bidder, an actual bona fide low bidder, on the sale of a car or that type of thing, I'd rather not have other than bid contracts in it. I agree with you, but I do want to get this into the Constitution.

CHAIRMAN GRAYBILL: Mr. Loendorf:

DELEGATE LOENDORF: Mr. Aronow, I hate to get you back up again, but would you, please? Just one thing that really bothers me about that, when you say "any person interested in a contract". Do you know whether or not that would be interpreted to include me if I owned stock in a corporation and that corporation all of a sudden contracts with the state?

DELEGATE ARONOW: Well, if you were a minority stockholder, I don't think it would. Now, I did take the time-1 have a new American Heritage Dictionary I got first of the year and we have it here in Helena at the motel and "interested", there are three definitions. Number one is casual-casual interest, which would not apply; and number two is possessing a right, claim or share; and three is desirous of personal gain, self-seeking. Now, if you're just a minority and not a controlling stockholder, I don't think that would interfere. If you were a controlling stockholder to an officer, sure. I mean, I think the court would look through the sham and say, who's the real person in interest?

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, would a substitute motion for anew amendment be in order at this time?

CHAIRMAN GRAYBILL: Yes. Do you want this one that you sent. up to be read as a substitute?

DELEGATE VERMILLION: Yes.

CHAIRMAN GRAYBILL: All right, the clerk may read Mr. Vermillion's substitutemotion to Section 19, proposed.

CLERK HANSON: Okay. "I move to add as a substitute motion to the motion by Mr. Aronow to add a new section, the substitute motion to read as follows: 'A code of ethics for all state officials, officers, legislators and state employees prohibiting conflict between public duty and private interest shall be described by law.' Signed, Vermillion."

DELEGATE VERMILLION: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: I think Mr. Aronow has brought up a very important area here, the conflict of interest; but as you can see from the questions that have been raised tonight that it is a difficult area to deal with in a constitution. The amendment that I propose roughly corresponds to a section in the new North Dakota proposed Constitution. It also corresponds to a section in the Constitution of the State of Florida, which has apparently had a good deal of success. Because with this new section that I propose, which reads, "A code of ethics for all state officials, et cetera, shall be provided by law." In the State of Florida they have that in their Constitution and they have followed it up with a series of conflict of interest laws which have come to be known in some areas as "Sunshine Laws". Now, again, the area dealing with conflict of interest in the Constitution is difficult. The 1889 Constitution has several sections on it and I think perhaps this broad area in the proposed section might mandate the Legislature to have conflict of interest laws but that for us to spell them out here might prove to be a difficult task. But if we do mandate, we do ask the Legislature to have conflict of interest laws, as in the case of Florida, I think that the Legislature would see fit to follow up on this and give us some good, workable laws to take care of some of the problems that Mr. Aronow has pointed out, and some of the other delegates here have pointed out. Conflict of interest is an important area; it's a problem that has been developed and I think with this section that I propose, we would not find ourselves getting into an area of problem, but instead leave it up to the Legislature.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I didn't understand whether the proposal by Bob Vermillion included units of local government, and I certainly agree that there's a great need to have them included with this code of ethics.

CHAIRMAN GRAYBILL: It says "all state officials, officers, legislators and state employees."

DELEGATE ERDMANN: I would like to have "local government units" included.

CHAIRMAN GRAYBILL: Mr. Vermillion?

DELEGATE VERMILLION: I would be agreeable to that.

CHAIRMAN GRAYBILL: Should we make it "all state and local officials"? Is that all right, Mr. Vermillion-"state and local officials, officers, legislators and state and local employees"? Now, does anyone have any objection to adding "local employees"?

(No response)

CHAIRMAN GRAYBILL: If not, it will be considered in Mr. Vermillion's amendment. Very well, the question is on Mr. Vermillion's proposed substitute amendment-"that a code of ethics for all state and local officials, officers, legislators, and state and local employees prohibiting conflict between public duty and private interest shall be described by law." So many as shall he in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and the proposed amendment is adopted. Since that was a substitute amendment, Mr. Aronow, yours is off unless you want to raise it again.

DELEGATE ARONOW: (Inaudible)

CHAIRMAN GRAYBILL: Are thereother proposed additional amendments to the Constitution?

Mr. Furlong.

DELEGATE FURLONG: I wish to propose an amendment to Section 6 of the bicameral proposal. If the amendment is ultimately accepted, I presume it would actually involve Section 6 of the unicameral proposal as well. I don't haveit

written out, but it's only a couple of words. Would you be willing to accept it by voice?

CHAIRMAN **GRAYBILL:** Well, let's hear it.

DELEGATE FURLONG: On page 33—

CHAIRMAN GRAYBILL: Wait a minute. Is this a-it's an amendment to adopted Section 6?

DELEGATE FURLONG: That's right.

CHAIRMAN GRAYBILL: Then you'll have to do that by reconsideration, which you can do in a minute; but I'd like to take it in order, so I'll put it down here.

DELEGATE FURLONG: Thank you.

CHAIRMAN GRAYBILL: Now, Mr. Murray, the problem arises--we are now going to move to reconsideration and we can reconsider only once, as you know. We have two proposed motions to reconsider Section 4, one which changes the language the way it is and one which changes the sense, I trust we can take them up one at a time and still be within the reconsideration rule without considering it being done twice if we get a motion to reconsider for, is that correct?

DELEGATE MURRAY: Mr. Chairman, the motion to reconsider is to undo what has been done. If the motion prevails, then there must be another motion relative to whatever action is proposed.

CHAIRMAN GRAYBILL: All right, Mr. Joyce has a motion to reconsider Section 4 and Mrs. Bates also has a motion to reconsider Section 4. Mr. Joyce, do you want to make the motion?

DELEGATE JOYCE: Well, Mr. Chairman, in order to comply with the rules I'd prefer if Mr. Eskildsen made the motion, because I did not vote on the prevailing side

CHAIRMAN GRAYBILL: All right. Very well, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, having voted on the prevailing side, I move that the Committee of the Whole reconsider its actions taken on Section 4.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce, do you care to discuss it? Now, I might point out that the first vote will be whether or not to reconsider it, and then we'll debate what to do with it if we pass the motion to reconsider.

DELEGATE McNEIL: Mr. Chairman, I rise to a point of order.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I believe that technically we have adopted Section 17, 18 and 19 at page9 ofthereportwhichisjust to the unicameral and I believe technically we ought to adopt these three sections to our bicameral before we proceed to another order of business.

CHAIRMAN GRAYBILL: Mr. McNeil, I believe your point is well taken. Do you want to so move?

DELEGATE McNEIL: I'll so move.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: You would not want to adopt Section 17 for the bicameral.

CHAIRMAN GRAYBILL: Right. May we make it just 18 and 19?

DELEGATE McNEIL: (No audible response)

CHAIRMAN GRAYBILL: Very well, Mr. McNeil's motion is to adopt Section 18 and 19 for the bicameral article. Section 17 applies to the referendum on unicameral and we wouldn't need that. So many as shall be in favor of Mr. McNeil's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it and it's done. Now, excuse me, we're back and Mr. Eskildsen, we'll consider your motion to reconsider Section 4 as having been made.

Mr. Joyce.

DELEGATE JOYCE: Well, all I can say is I'd very much appreciate if the assembly would vote to reconsider and give me an opportunity to make this proposed amendment. Is it proper for me to say what it is before we do reconsider it?

CHAIRMAN GRAYBILL: You can or **you** can't. There's one on both sides, so it doesn't make much difference.

DELEGATE JOYCE: Well, I'll say what it is then. In effect, I propose to amend theresidency qualifications, striking Section 4 as adopted before and substitute in lieu thereof a proposal which would read: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election." That's exactly the same as it is. I would then substitute this new sentence: "For 6 months prior to the general election he must be a resident of the county which contains one or more districts, and where a district consists of more than one county, he must reside within that district."

CHAIRMAN GRAYBILL: Very well, you've heard the motion of Mr. Eskildsen. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of the motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Mr. Joyce, do you want the clerk to read your proposal again?

DELEGATE JOYCE: (Inaudible)

CHAIRMAN GRAYBILL: Very well.

CLERK HANSON: "Proposed amendment to Section 4 of the Legislative article on reconsideration: 'A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election. For 6 months prior to the general election he must be a resident of the county which contains one or more districts, and where a district contains of more than one county, he must reside within that district.' Signed, Joyce."

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, ladies and delegates, I don't have on my form the precise language that did pass as Section 4 after it was amended, and so I guess I'm hreeding some confusion in that respect. Just how did the Section 4 pass the House before? Well, Mr. Chairman, maybe I can correct it this way.

CHAIRMAN GRAYBILL: Icanreaditfor you. Section 4, as adopted, read: "Qualifications. A legislative candidate shall be a resident of the state for at least 1 year and a resident of the district from which he seeks election for at least 6 months preceding the general election." The phrase that was taken out is "a qualified voter". There's a phrase in there on line 20, "shall be a qualified voter". That was taken out.

DELEGATE JOYCE: Well, I would want it to continue to be out then. So I'm in order in that I propose to amend Section 4 by deleting the first sentence which reads, "a legislative candidate shall be a qualified voter." I would want to have that deleted, as it already has been deleted. Let me put it this way-let me take another try at it. I move to amend Section 4, as adopted by the Convention, to read as follows: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election. For 6 months prior to the general election he must be a resident of the county which contains one or more districts, and where a district consists of more than one county, he must reside within that district." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce, that is the way we read it and that's the sense of your proposal.

DELEGATE JOYCE: Mr. Chairman, may I speak on it?

CHAIRMAN GRAYBILL: Yes.

DELEGATE JOYCE: What I propose to do here-1 lost very badly the other day, you know, when I was trying to take all residency in the districts out of the Constitution and so I accept that defeat. I thought all over the weekend all of the different arguments that I should've used and how I blew the job and how this assembly did not really mean to do what they did, but I'm not going into that. This is, admittedly, a compromise to satisfy, I think, everybody. Now, if each one of you delegates would mind taking a piece of paper and just draw a block on the paper, I'm going to talk first about rural Montana. And I'm going to assume, just for the purposes of illustrating what I'm talking about, that we're talking about that particular district that we now have that is represented by my distinguished seatmate and my fellow member of the Executive Committee that has five counties, as you recall. Now, on the way we've proceeded here, we assume further that those five counties on single member districts are going to be divided in

half some way, so we're going to have two districts down there. My--under the proposal that I've-as written, you would have to live in one of those districts or the other for 6 months in order to run for the Legislature. You couldn't live in any other district and run for the Legislature, so that ought to satisfy the rural people. Now, the second situation is a situation that my colleague, Tom Ask, finds. He lives in Roundup, which is in Muss&hell County and he's currently-is in a district that's got four or five counties but he's attached to the city of Billings, because they had to just make this one man, one vote, work. And so they've got a portion of the city of Billings that's in Mr. Ask's district as present. So when it's reapportioned on a one man, one vote single member district it will follow that it may very well happen that some rural county, maybe Muss&hell County, will still be attached to that very same section of Billings. In that situation, then, a man who lives in the section of Billings that is not in Ask's district will not be able to run. He will have to live in that particular section of Billings that's within the district. So I should have-it seems to me the amendment then satisfies those rural people that do get tied up with the city people that they don't want to have anything to do with. So, if I satisfy those people, I pray you, can we not satisfy the city people once? And this doesn't just apply to Butte. It will apply to Billings, Great Falls, all the other cities of Montana, if you please. Now, in my proposal as drawn, where you are a resident of a county and it contains only one district-now, you see, in the cities when you go the single member district, you obviously are going to have to be just very arbitrary and go up one street and down the other and make up about 7,000 people, say. And that's all in the city, and you're going to exclude people who don't-you're going to have six districts, say, in my county, so all this proposal would do would be to permit a man who lives in one district to run in another district. Now, it seems to me-I'm not suggesting that the single member district won't vote for him; for example, let me illustrate it still further. I live out in the south side of Butte and every town is north and south and east and west, we all agree to that, and I'm just going to use myself as an example just to illustrate the point. But I want to tell you that I really don't ever intend to run for the Legislature. But, what if I did? I live on the south side of Butte and so I will be within a single member district and, of course, as the law-as the section passed here, I can run in that district providing I live there for 6 months. And all I want to do is have the option to take a chance and go up and run in a district on the north side and see if I can win. It seems to me that it ought to be my constitutional right as a politician to make a horse's tail out of myself and to go up there and lose. But, I ought to have the chance to go up and run, and the people up there ought to have a chance to vote for me. And, if they do vote for me, then presumably they want me to represent them in the Legislature, and who can quarrel with that? Isn't that democracy? That's the people's choice. They've chosen a boob, but you can't protect the people all the time. You've got to allow them some freedom of choice. So, on this situation, it seems to me that this will satisfy, it should satisfy, the single member district as it operates in the city because we're all in the city. Presumably we have interests that are common to the whole city and just because we happen to live on one side of the street or the other really doesn't separate us all that much like it does maybe out in the rural areas. Therefore, under the proposal, as long as all of the districts are within one county, anybody can run in any district even though he doesn't live there. And, of course, he won't be able to vote for himself, but then he has to spot his opponent that vote. But I think that those are the risks of the game. He ought to be able to get in there and work that much harder, being one vote behind, and it seems to me this is a reasonable proposal and I would very much like to see it incorporated into the Constitution in lieu of what the Committee of the Whole did the other day. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates, I know you have an amendment. I don't know whether it's helpful at this time or later. Do you want to make it now, or do you want to make it-?

DELEGATE BATES: At this time, yes, Mr. President. I would like to make a substitute motion. And in reconsidering this Section 4 on qualifications as we now have it, I would like to, on line 21 of page 3, put a period behind "year", add "a qualified voter and a resident of the district from which he seeks election for at least 6 months preceding the general election". Mr. President.

CHAIRMAN GRAYBILL: All right, Mrs. Bates, let me state that. As passed the other day, Section 4 said: "A legislative candidate shall be a resident of the state for at least 1 year, a resident of the district from which he seeks election for at

least 6 months preceding the general election." The only change we made in the majority proposal there was to strike out on line 20 the words, "shall be a qualified voter". Now, Mrs. Bates' amendment will read: "A legislative candidate shall he a resident of the state for at least 1 year, a qualified voter—"

DELEGATE BATES: Period.

CHAIRMAN GRAYBILL: "-and a resident of the district from which he seeks election for at least 6 months preceding the general election." Is that correct?

DELEGATE BATES: That's right. I would like to have our candidate an elector in the district from which he runs. In noting the Constitution of North Dakota, I find that they, too, require this, as do most other states. Each person elected to the Legislative Assembly must be, on the day of his election, an elector in the district from which he is chosen, and I so move.

CHAIRMAN GRAYBILL: Very well, the debate then is on Mrs. Bates' substitute motion to add the qualified voter classification back into Section 4.

Mr. Hnbednnk.

DELEGATE HABEDANK: You answered my question. She is putting "a qualified voter" back in?

CHAIRMAN GRAYBILL: She's putting it in in a different place than it came out of, though.

DELEGATE HABEDANK: Yes, but we didn't have it before. It was stricken out completely, was it not'?

CHAIRMAN GRAYBILL: It was stricken out in our debate the other day. It was in the—

DELEGATE HABEDANK: Mrs. Bates, will you yield to a question?

DELEGATE BATES: (Inaudible)

DELEGATE HABEDANK: Did you take into consideration the possible conflict with the section passed by the General Government proposal where if you were a qualified elector you might be eligible for office even though you were under penalty of a felony conviction? I think that was the reason that was taken out.

DELEGATE BATES: No, but I still think they should be a qualified elector and residents of the district. I think that other proposal was taken care of, the way I understand.

DELEGATE HABEDANK: Are you sure it was?

DELEGATE BATES: I think so. That they couldn't be a candidate.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: I don't have the other one before me, but I think we should check that quite carefully to make sure that we are not permitting a felon to run for this office.

CHAIRMAN GRAYBILL: Mr. Mason-or Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, would Mr. Habedank yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank, will you yield?

DELEGATE HABEDANK: Yes, I will.

DELEGATE MELVIN: Mr. Habedank, if we leave out the qualified voter part, aren't we leaving it wide open for an alien or a noncitizen to run for the office unless we specify otherwise'?

DELEGATE HABEDANK: I can't answer that, Mr. Melvin.

DELEGATE MELVIN: Thank you.

CHAIRMAN GRAYBILL: Mr. Melvin and Mr. Habedank, perhaps the Chair can help you. When we adopted the Suffrage and Election section of General Government, we adopted Section 4 which says: "Any person qualified to vote at a general election and for state officers of this state is eligible to any public office except as otherwise provided", and we amended that to exclude felons. So a felon is not eligible to any public office. I can't tell you exactly how we amended it to exclude felons but we did amend it to exclude felons. So a felon is not eligible to any public office, whether he's a qualified voter or not.

Mr. Habedank.

DELEGATE HABEDANK: That is the part that worried me, Mr. President. Thank— (Inaudible)

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I lo not rise either for or against the substitute ımendment, but I would like to make a point of :larification. I'm in sympathy with Mr. Joyce's ntent, but the illustration that he used between Districts 7 and 8, or between 8 and 9, district in vhich Mr. Ask is in is not a part of the city of Billings. It's a rural area in Yellowstone County. 'd just like to make that clear. It is not a part; I can see how it might be, but the illustration was in-valid.

CHAIRMAN GRAYBILL: Mr. Joyce, I'll ct you respond to that, but it isn't germane to Mrs. Bates' substitute amendment.

DELEGATE JOYCE: Well, may I have :he floor then to speak against Mrs. Bates' amend-ment?

CHAIRMAN GRAYBILL: Yes.

DELEGATE JOYCE: I really don't like to lo this, but Mrs. Bates and I just have a different philosophy about how importantresidencyis and, of course, if she wins in the Convention, I lose. And I might say then, parenthetically, and just slightly off the subject of Mrs. Bates' motion, I didn't realize whether it was a rural area or the city of Billings. The point was the same. If you get tied up where there is a portion of what might be a city or another county, where two counties are involved, then you must live in the district. If you want to run in a district that does cut across two counties, then you must actually live right there in the district. That ought to satisfy those people, I think; but where there's the district and the county and the district within the county, each district is absolutely within the county, then I just want the option to be able to run from another district. I'm not going to say another word except I'll try to clear up if I've confused anybody. I think the language does say that, if-you don't have it before you, of course, but it says that for6 months prior to the general election. So, you have to live 6 months -that's the key word—6—not 5, nor 8, nor 10½, but 6. He must be a resident of the county which contains more than one district. That would take care of the city, and where the district consists of more than one county, then he must live in the district.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I rise to support Mrs. Bates' amendment. It seems to me that if you believe in the single district theory, then you are trying to pinpoint responsibility, and I dislike the idea of the people in the rural part of our county having to run within their single district and yet in the County of Cascade, we would he allowing all of the city candidates to run at large which I certainly oppose. It is unfair to the people in Black Eagle and Cascade and Belt. And maybe I misunderstand Mr. Joyce's motion, but I believe he's saying that the candidates within a city like Great Falls would be running at large. Is this correct?

CHAIRMAN GRAYBILL: Mr. Joyce'?

DELEGATE JOYCE: It is not. That is—

DELEGATE ERDMANN: All right.

DELEGATE JOYCE: --absolutely incorrect. You would not run at large. You would have to run within the district. So, if you lived in Great Falls and Black Eagle is in a given district, and Black Eagle is in Cascade County, and that particular district isn't in any other county, all I say is that the people of Black Eagle have the right to vote for whoever is running from that district; but they could vote for Mrs. Erdmann, who doesn't live there, if she wants to go down and file there. And I can't see how you're picking on the people of Black Eagle-they have the right to vote and they don't have to vote for you, but on the other hand, they have the right to vote for you if they want to, and why should you arbitrarily deny them the right to vote for you? You may be the absolutely—the best representative they could send to the state Legislature in the history of Montana, and I'm inclined to think that you would.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, I rise in opposition to the amendment offered by Mrs. Bates and in support of the amendment offered by Mr. Joyce. I would like to point out that while North Dakota in their proposed Constitution did retain a residency requirement, they did not go for single member districts, and also at the same time their residency requirement in the district is limited to 1 day. That is, they must only be a resident on the day in which they are elected.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I want to have some information. I don't have the General Government books before me, but if my recollection serves me correctly, when WC passed Section 3, I believe it was, concerning the qualifications of a voter, we permitted a person who is still under supervision while on parole, probation, to be a qualified voter. Yes, we did.

CHAIRMAN GRAYBILL: Now, Mr. Romney, you're correct that the person on probation can be a qualified voter but we amended it out of Section 4 which says that he's eligible to hold office. He may be a qualified voter but he is not eligible to hold office.

DELEGATE ROMNEY: That's what I was going to say and in lieu thereof, we placed language to the effect that the residency would bc as provided by law in Section 4. Right?

CHAIRMAN GRAYBILL: No. "Section 3. The legislature shall provide by law the requirements for residency, registration, absentee ballots, voting and administration of elections."

DELEGATE ROMNEY: But there's nothing in Section 4 as we adopted it concerning a qualified voter.

CHAIRMAN GRAYBILL: Section 4 says: "Any person qualified to vote at the general election and for state officers is eligible for any public office, except", it goes on to exclude felons.

DELEGATE ROMNEY: Right. And that's why I don't see how the amendment by Delegate Bates could prevail in this case because it says "qualified voter". Right?

CHAIRMAN GRAYBILL: I'm sorry, Mr. Romney, I didn't hear the last, if you're asking me.

DELEGATE ROMNEY: I don't see how the amendment of Delegate Bates can prevail, how we can accept it, when it provides that a qualified voter can take part in this election.

CHAIRMAN GRAYBILL: Mrs. Bates' amendment, Mr. Romney, merely would make a qualified voter one of the tests for a legislative candidate, but it would also, ofcourse, not mean that a qualified voter felon could be, because the other one provides that the felon can't be.

DELEGATE ROMNEY: (Inaudible)...as a substitute, why, the felon would be allowed toifit's a qualified voter. It follows that if you have th definition in one place when you use it in the nex section, that it would be included, and there's n stipulation taking it out.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, wonder if we could avoid all of this confusion b having Mrs. Bates amend her amendment to leav the section as is and add the separate sentence "He shall also be registered to vote in the distric from which he runs." I'm not speaking for this amendment. I'm trying to clarify it.

CHAIRMAN GRAYBILL: Well, the wa Mrs. Bates' amendment now reads, Mr. Brown, h does at the moment have to be a resident of the dis trict in which he runs. Her question-her point i that she added the qualification of a qualifie voter. Now, we've already said in the Genera Government thing that a qualified voter can' hold office if he's also a felon, so I don't agree wit Mr. Romney. I think the class is mutually exclu sive but Mr. Romney doesn't agree with me. Ver well, are you ready to vote on Mrs. Bates' motio which would add to subsection 4, "A legislativ candidate shall be a resident of the state for a least 1 year", and then she adds, "a qualified vote and a resident of the district from which he seek election for at least 6 months preceding the gen eral election."

Mr. Ask.

DELEGATE ASK: Just a few words. I ris in opposition to Mrs. Bates' motion and woul support Mr. Joyce's I voted the other way th other day but in reviewing this, when the district are all in one county, I can see the problems; and can see nothing wrong in allowing them, as lon as they live in the county, to be allowed to run ir any district in that particular county. So I woul therefore support Mr. Joyce's motion,

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President I am like Mr. Ask. I've had a number of secon thoughts about this whole thing and I speak fro a background in Yellowstone County, being ver active in Democratic politics in that county, an through the years going out urging people to ge on the Democratic ticket to run for the state Legis lature. And if we adopt Mrs. Bates' substitut motion or leave it the way it was, it automatically as far as I can see, we're going to knock out—an

'm speaking from my party's position, now—we vill knock out some of the best Democratic candidates we have in Yellowstone County, because here are people who live--and I mentioned this in ny speech the other day-on Poly Drive who could iever win in that district. I'm speaking of Democratic candidates. If we have the single member districts they'll have to file in Democraticdistricts n Yellowstone County if they hope to win. There's)ne other thing that's going to come out of this if ve adopt this plan. I think that we'll probably iave a number of districts-and, again, I'm con-ining this to Yellowstone County--where you will)robably not have opposition to the candidates in he general election because there are some areas n Yellowstone County that are so heavily Republican that Democrats will not file, and there are ;ome areas that are so heavily Democrat that the Republicans won't file. So, we'll have that as a iew factor in Montana politics. I think that same hing would he true in Silver Bow County. But, I do)elieve with Mr. Joyce that if a well-qualified candidate files in another district other than the one n which he lives, and he can convince the people hat he should he elected to the state Legislature, hen that's good enough.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: (Noresponse)

CHAIRMAN GRAYBILL: Oh, excuse ne-Mr. Kamhoot. I got across the aisle from you here. Excuse me.

DELEGATE KAMHOOT: Mr. Chairman, was one of those that opposed my seatmate the)ther day. I was one of those that won so, of course, had a lot of fun out of it. Now, I don't really care oo much whether Delegate Blaylock's party is ;trong in one place or another either. But, my seatnate didn't bribe me; hut. he has a very reasonable ;olution here and it appears to me that this would :ertainly clear up just about everyone's problem if hey will just examineit and understand what he's loing. And it certainly clears it up for me and I'm ;ery happy to support my seatmate, here, Delegate Joyce. I like Mrs. Bates' proposal, too, hut I hink this is prohahly a more reasonable one that vill suit everybody's needs. Thank you, Mr. Chairnan.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I wondered if Delegate Joyce would clarify a situation in District 11?

CHAIRMAN GRAYBILL: Delegate Joyce, do you know anything about District 11?

DELEGATE JOYCE: I'll try. Now, as my proposal reads, and if we assume for example that Park County gets tied up with the east end of Bozeman, for example-the last 20 blocks, say, or the last 10 blocks. Then, under my proposal, in order to run in that district in Park County, which may he District Number 11, the candidate would-if he's from Bozeman, Gallatin County, he would have to live in that section of Gallatin County that comprises the district. If he lived up in the other end of town he would not he able to run. But then, as far as Bozeman is concerned, if they had four other districts that were altogether within Gallatin County, then you wouldn't have to live in the district. You could run wherever you wanted to and the people would still have the right to vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I assume we're on Mrs. Bates' amendment and if that's what we're on, I must agree with the gentleman from Ravalli on adding this thing hack in about being a qualified voter. 1 think we will have created a constitutional problem where this section may supersede the one we passed the other day. I may not he right on it, hut I don't think it's worth taking a chance on.

CHAIRMAN GRAYBILL: Mr. Wilson, I think you were up.

DELEGATE WILSON: Mr. Chairman, I rise in support of Mr. Joyce's motion. I am one of the candidates from a five-county area and I see no problems as long as we're going to have to file in the district; and I do see where it will alleviate some of the problems in the towns and the gerrymandering that you may have in setting up districts within a large town. And it does qualify people to be able to file as long as they're living within the county and in the district. Therefore, I support Mr. Joyce's motion.

CHAIRMAN GRAYBILL: Mrs. Bates, do you want to close? Oh, Mr. Siderius, you want to talk?

DELEGATE SIDERIUS: Mr. Chairman, I support Mr. Joyce's amendment. All it does, is

gives the candidates in the county their choice of the district they wish to run in.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I still believe that the candidate should live in the district and be a resident of that district if it would clarify the registered voter and say he shall also be registered to vote in the district from which he runs, rather than saying qualified voter. In regards to Mr. Joyce's plan, the District 11 there's overlapping into two counties and the way I read it, anyone from Gallatin can go into Park and run in that area even though they are single member districts. Today we defeated a two-representative, one-senatorial district which would've given a little more flexibility; but if we're going to go into the single district, this is what I believe, then, we should have candidates from that single district. Thank you.

CHAIRMAN GRAYBILL: Very well, the question is on Mrs. Bates' amendment. Section 4 would read, under her amendment: "A legislative candidate shall be a resident of the state for at least 1 year, a qualified voter, and a resident of the district from which he seeks election for at least 6 months preceding the general election." So many as shall be in favor of Mrs. Bates' proposed amendment-substitute amendment-say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and so ordered. Now the issue is on Mr. Joyce's amendment, or Mr. Joyce's proposal for Section 4, the text of which is: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election; for 6 months prior to the general election he must be a resident of the county which containsoneormoredistricts; and where a district consists of more than one county, he must reside within that district." All those in favor of Mr.—

DELEGATE CHAMPOUX: Roll call please.

CHAIRMAN GRAYBILL: All right, Mr. Champoux called for a roll call; I have enough seconds. So many as shall favor—

DELEGATE MAHONEY: (Inaudible)... Mr. Chairman, I've got the floor. I want to know few things here. One of these is—

CHAIRMAN GRAYBILL: Well, wai until I give it to you, Mr. Mahoney. Will you pleas give Mr. Mahoney the floor?

DELEGATE MAHONEY: One of thes things I want to know, if a guy can be a foreigne and be elected to Legislature? If you're going t have no qualifications except what you've got i here, he can be a citizen of Canada and be in thi Legislature. I think we'd better get down here an see that he's (Inaudible)...to this-and I don't car what you do in the other sections, this is wha you've said in the Legislative section. Let's ge some qualifications in here that he's at least got t be a citizen of the State of Montana and be a citi zen of the United States.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I have no objectio to that but the committeedidn't do it. I presumed i would be done somewhere else. All I was address ing myself to was the section as it did apply, but i you want to add another sentence on afterwards, i we see if my motion passes, with reference to citi zenship, I'll be glad to so move or you can so move

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I think, Mr. Mahor ey, under the Suffrage and Election thing, to be voter you have to be a citizen, 18 years of age, an meet the registration and residence requirement as provided by law; and that no person serving sentence for a felony in a penal institution or wh is adjudged of unsound mind. Then, next, to hol any public office-this applies to each and ever office in the state, as I understand it, so we don have to spell it out with each office-the secon thing is, any person--now this is an officeholde -be qualified to vote for state offices at genera elections is eligible to a public office except a otherwise provided in this Constitution, subjec only to additional qualifications provided by Leg islature. Provided however, that no person cor victed of a felony shall be qualified to hold offic except upon his final discharge from state supe vision. I think this particular point-1 can appr ciate everyone's concern-but I think our Electio and Suffrage governs each and every office. An the reason weeliminated, on the first go-around o this, to be a qualified voter of that section, if understood it correctly, was that for any stat

office you have to have the qualifications of being a voter and the additional qualifications. Do you follow me on that? In other words, I think these are the basic qualifications that you have to have for any office in addition to such other qualifications as may he provided.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I might state that on your section, if anybody picked it up and he's been very close and it says, this is the qualifications to he a legislator, and I agree with Mr. Schiltz down here when he was even questioning it just a little while ago--would this supersede? Now, you're doing specifically and saying a legislator has certain things right here and I think you've got to have it in here that at least he's got to he a citizen or something and including-because you made specific reference to that. That's my answer to it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: The only thing I think we should-thing--would we have to go through the Constitution though and spell out that basic requirement on each office as we come to it. It seemed like in the Election and Suffrage in our old Constitution, as well as this one, that covered all officers in our state, so that that was a basic requirement before anyone could hold any state office. I'm not arguing the point; I'm just trying to clarify it if I could he helpful.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HAREDANK: Mr. President, I would attempt to clarify this by an amendment. I move as a substitute to Mr. Joyce's amendment the following words: "A candidate for the legislature shall"-this is the amendment-"be a legal voter qualified to hold public office, a resident of the state for at least 1 year", and then it reads as it does. It will read: "A candidate for the legislature shall be a legal voter, qualified to hold public office, a resident of the state" and then go on.

CHAIRMAN GRAYBILL: Now, Mr. Habedank, the Chair will accept your amendment; but the Chair would like to point out that in Section 4 of the article on Suffrage, we said that only qualified voters could hold office and we defined qualified voters as citizens of the United covered. But if you want to cover it again, okay.

DELEGATE HABEDANK: I am aware of what the Chair has pointed out but when two people like Mr. Schiltz and Mr. Mahoney and another like Mr. Romney can argue about it, I think it's possible someone else can. And if one way is certain and the other is uncertain, I'd rather take the certain way.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I must disagree with Mr. Habedank. We've defined this in Number 4, or Sections 2, 3 and 4 of the General Government Proposal Number 1. Now, if in that proposal we say, "unless otherwise provided in this Constitution"-if we have to go through every section of this Constitution on every officer, then we're going to have to do this. We're going to have to say a qualified voter is a citizen, a citizen can he a candidate or a qualified voter. We must do it all over again. It's been done once. That's enough. Just so long as we don't start tampering with it, as Mrs. Bates did, because then you have another provision in the Constitution that starts to define and it refers back to what we were talking about in Suffrage. Just don't tamper with it. We've got candidate defined, who may be a candidate, let's leave it alone. We start fooling with it, then we start to get in trouble.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to clear this up with Delegate Schiltz. My motion was to make a qualified elector in the district in which he was running and not just a qualified voter of the State of Montana. Thank YOU.

DELEGATE ROEDER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I move we adjourn. This is goofy, to use one of Mr. Joyce's favorite words. I will have been here, by the time I get home, I will have left the home 13 hours ago this morning. I'm tired. We're going to have along day tomorrow.

CHAIRMAN GRAYBILL: Mr. Roeder, your motion will be in order, hut the Chair will announce that the Chair is sorry that you made it without letting the floor leader make it. And the

sists it. The Chair is just as tired as you, and we're trying to get through these and we have a motion that we've been discussing, so I trust-1 hope, at least, that the body will not sustain your motion. However, I'll put it. All those in favor of adjourning, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. Now we're back on Mr. Habedank's amendment. Very well, all those in favor of Mr. Habedank's amendment which adds the words, "shall be a legal voter qualified to hold office", into the proposed Section 4, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and Mr. Habedank's motion fails. Now, we're back on Mr. Joyce's proposal for Section 4 of Article V of the Legislative Article. All those-all right, we want a roll call vote on that. The vote is "pen and all those in favor of Mr. Joyce's proposal which is-all right, excuse me-

Mr. Burkhardt.

DELEGATE BURKHARDT: I realize the pressure that you are under as Chairman. I rise because I feel I am being coerced at this point. I have no copy of this motion in front of me. I have not drawn my little block of continuous lines-contiguous lines. I'm not sure I fully understand the sense of the motion. I have a feeling that we are moving hastily on something that a night's consideration might be valuable to have. I know your problem, I know we just had this motion to adjourn. But I would like to give our floor leader a chance to use his good judgment. And think maybe it's time to adjourn, too.

CHAIRMAN GRAYBILL: Mr. Burkhardt, please understand, I want you to understand it, too, and so I'll state the motion very clearly for you.

DELEGATE BURKHARDT: (Inaudible)...Mr. Joyce please come to the blackboard and draw his contiguous lines so that I can see them, or yield to a question and perhaps give us an illustration of this?

CHAIRMAN GRAYBILL: Mr. Joyce, wil you draw him a picture?

(Delegate Joyce approached the blackboard

DELEGATE JOYCE: Mr. President, can erase this now?

CHAIRMAN GRAYBILL: Certainly.

DELEGATE JOYCE: Mr. Chairman would you turn on-Mr. Chairman—

CHAIRMAN GRAYBILL: Mr. Burkhardt

DELEGATE BURKHARDT: (No response)

CHAIRMAN GRAYBILL: Very well, Mr Joyce has the floor.

DELEGATE JOYCE: Illustration Number 1. (Drawing on blackboard) This is a rural area, now. It's divided into-there are 3 counties and there is only 2 districts, right? You have to live within the district, under my proposal, to run. You get out here, (illustrating) you've got a portion of the city attached to a rural area, but it's all on single member district. If you live in the city out here, (illustrating) out of the district, you cannot run. You must live within the district. In the city that's all within 1 county you've got 5 separate single member districts. If you live in this district (illustrating) you can still file over here. (illustrating) If you live in this district (illustrating you can file over here. (illustrating) Any questions?

DELEGATE BURKHARDT: Would you please read the language of your motion then, and point to it as you're rending it?

CHAIRMAN GRAYBILL: Mr. Burkhardt, 1'11 read the language for you: "A candidate for the legislature shall be a resident of the state for at least 1 year preceding the election." That' practically identical to the old one. Now, "For months prior to the general election, he must be resident of the county which contains 1 or more districts and where a district consists of more than 1 county, he must reside within the district." "For months prior to the genera1 election he must be resident of the county which contains 1 or more districts, and where a district consists of more than 1 county, he must reside within that district.

Mr. Burkhardt.

DELEGATE BURKHARDT: I'm sorry that I'm just not able to take it in at this hour of the night, Mr. Chairman, and I'll have to vote in the dark. I'm sorry.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I would like to ask Mr. Joyce a question'?

CHAIRMAN GRAYBILL: Mr. Joyce, would you yield'?

DELEGATE JOYCE: (Inaudible) (Laughter)

DELEGATE BLEND: Mr. Joyce, would I gather from your diagrams, then, that one could file to vote in the district in which they lived and in mother district—

DELEGATE JOYCE: Nope.

DELEGATE BLEND: -or all the districts if he paid the filing fee?

DELEGATE JOYCE: **No,** absolutely not. You can only file once. You could only run for office once, that's in one district.

DELEGATE BLEND: Even though he was registered and lived in one district, if he filed in another?

DELEGATE JOYCE: Yes. Under my system, you'd be registered where you live and you'd have to vote where you live, hut you could run where you don't live. But you couldn't run several times. It's very similar to the United States Constitution. I can, right now, I live in Silver Bow County, I'm registered to vote there, I have to vote there, hut under the United States Constitution I can go over to the eastern district and file against John Melcher for Congress next time if I want to be a fool. (Laughter)

DELEGATE BLEND: Thank you. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Joyce's amendment to Section 5. His proposed amendment says: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election. For 6 months prior to the general election he must he a resident of the county which contains 1 or more districts, and where a district consists of more than 1 county he must reside within that district." We'll take a roll call vote. So many as shall be in favor of that Section 4, please indicate by voting Aye. So many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will you please tally the vote? Mr. Studer, do you wish to explain your vote?

DELEGATE STUDER: How to get a vote in? (Laughter)

CHAIRMAN GRAYBILL: How do you wish to vote?

DELEGATE STUDER: (Inaudible)...button was on for a while, then went off.

CHAIRMAN GRAYBILL: How do you wish to vote, Mr. Studer?

DELEGATE STUDER: Green. (Laughter)

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arhanas ..... Aye
Amess..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask. ..... Aye
Babcock ..... Absent
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Absent
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman..... Aye
Brazier ..... Absent
Brown ..... Aye
Bugbee ..... Aye
Burkhardt..... Absent
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye

Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Chairman Graybill., ... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Ayt
Studer ..... Aye
Sullivan ..... Ayt
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner. ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 74 delegates voting Aye, 18 voting No.

CHAIRMAN GRAYBILL: Do you have Mr. Studer voting Aye.

CLERK HANSON: Yes, I do.

CHAIRMAN GRAYBILL: Mr. Studer you're registered as voting Aye. 74 delegates having voted Aye and 18 voting No, the proposed amendment to Section 4 passes. Now, ladies and gentlemen, the hour is late and I'm sorry to have kept you here this long, and I want to assure Mr Burkhardt that my purpose is not to have him vote if he doesn't understand, but on theotherhand, we haven't yet finished the Legislative article. We still have Section 16 to reconsider and Section 6 to reconsider. However, I don't believe we should try to do that tonight, but I would simply call to everyone's attention how difficult it is to work after you've worked as long as we've worked today. So perhaps tomorrow morning we'll be able to make more progress on the Legislative article and get on to the Executive article. Mr. Eskildsen do you have a motion?

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: Mr. Eskildsen has moved that this committee rise and report progress and beg leave to sit again tomorrow morning. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (Inaudible)

CHAIRMAN GRAYBILL: That motion carries. We're not adjourned. Convention will be in order. Will the clerk please read the title of the committee report?

CLERK HANSON: "February 23, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number 3 of the Committee on Legislation, recommend as Follows: 'That the Committee rise and report progress and beg leave to sit again."'

PRESIDENT GRAYBILL: I would beg— Mr. Eskildsen, will you please make a motion to adopt the report without reading it?

DELEGATE ESKILDSEN: I so move.

PRESIDENT GRAYBILL: We're moving, then, that this report be adopted without the necessity of reading the several pages that it consists of since we're going to rise and report again. All in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: The Ayes have it. Mr. Eskildsen, before you adjourn, are there announcements?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, with great reluctance I announce a meeting of the Style and Drafting Committee tomorrow morning at 8 o'clock.

PRESIDENT GRAYBILL: Are there other announcements?

(No response)

PRESIDENT GRAYBILL: Very well, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until Thursday, February the 24th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: The motion is that we adjourn until 9:00 a.m., tomorrow morning. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: Thank you very much. The motion carries.

(Convention adjourned at 10:47 p.m.)

February 24.1972 **Thirty-First Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: Convention will be in order. If you'll all rise, we have a visiting minister this morning, Franklin Elliott from the Mayflower Congregational Church, who will give us the invocation.

REVEREND ELLIOTT: Eternal Creator, God of our Fathers in the infinitely far off, ancient beginnings. God of our sons and daughters and eve" their unimaginable future. You are also God of our here and now. We pause here at the beginning of this day to remember that you are present in this here and now. You have made this a holy time and a sacred place. Not all times are the same. Your creativity, 0, God, has invaded these days so that they may become more than here and now. They encompass the heritage of our ancestors and the destiny of our childrens' childrens' children. This is a time when the iron is hot, hammering it between the anvil of circumstance and the sledge of our will. We can shape it into the form of our vision and then the time of tempering comes and the season of creativity has passed. That we pause in the midst of this season to remember that this is a holy time. Not all places are the same. Your judgment, 0, God, has invaded this place. By the decisions we make, we disclose the values we serve, the interest to which we are loyal. We are always being judged by the way we make up our minds. Our decisions reveal whether we worship You and Your eternal creativity or the static idols of our own sculpturing. This is a place of decision so we pause here to remember that this is a sacred place. In this sacred place at this holy time, we do not, 0, God, ask for anything. We know what we must do for ourselves. Instead, we make a" offering of our deep concerns, our imaginative thoughts, our productive conflicts and our expansive hopes. God of our Fathers, God of our childrens' children, be to us likewise, the God of our here and now, Amen.

PRESIDENT GRAYBILL: I should've announced and I will announce now that Reverend Elliott is the guest of Mr. Scanlin and I trust Mr. Scanlin will tell Reverend Elliott that last night-Reverend Elliott's from Poly Drive in Billings, Last night, we made it possible for you to run for the Legislature from Laurel. (Laughter) We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Arness, Blaylock, Campbell and Erdmann be excused, please? Mr. Blaylock is here.

PRESIDENT GRAYBILL: Very well.

CLERK HANSON: Delegate Oscar Anderso", Delegate Babcock, Delegate Pemberton, Delegate Anderson, Oscar.

PRESIDENT GRAYBILL: Very well.

Aasheim	Present
Anderson, J.	Present
Anderson, 0.	Present
Arbanas	Present
Arness	Excused
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
c ain.	Present
Campbell..	Excused
Cate	Present
Champoux	Present
Choate.	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Excused
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present

Habedank	Present
Hanson, R.S	Present
Hanson, Ii.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin.	Present
Monroe..	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Spew..	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 96 delegates present, 3 excused, 1 absent.

PRESIDENT GRAYBILL: The journal may so show. Order of Business Number 1, Reports of Standing Committees. Chair will recognize Mr. Etchart.

DELEGATE ETCHART: Mr. President. We, the Committee on General Government, respectfully report as follows: that the General Government Committee Proposal on general government is ready to he duplicated and suhmitted to the Committee of the Whole for consideration. 1 move the adoption of the committee report.

PRESIDENT GRAYBILL: We don't need to adopt the report. It will be considered filed and it has been sent to printing and will be placed upon your desks, and I hereby put it on General Orders. Will the clerk read the report of the Style and Drafting Committee? Do you have it?

CLERK HANSON: "Montana Constitutional Convention, Committee on Style Drafting, Transition and Submission to the Montana Constitutional Convention; subject: Suffrage and Elections. Ladies and Gentlemen: The Committee on Style, Drafting, Transition and Submission, transmits revisions of the above article for consideration of the Convention. Immediately following this letter, you will find the above article as revised by the committee including by underlining, words we have added, and by crossing out, words we have deleted from the article as approved. Finally, there is an explanation on-of the changes we have made. Sincerely yours, John M. Schiltz, Chairman of the Committee on Style, Drafting, Transition, Submission. William A. Burkhardt, Vice-chairman."

PRESIDENT GRAYBILL: The Committee on Style and Drafting's Suffrage and Elections report will be referred to General Orders. All right, I think that's all the Standing Committee Reports. Number 2, Reports of Select Committees'?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: None. Number 3, Communications?

CLERK HANSON: "Helena, Montana, February 23, 1972, Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15 (2) Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of A.W. Schribner, license number 44-72 has been reinstated as of February 23, 1972. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Are there any other communications? Order of Business Number 4, Introduction and Reference of Delegate Proposals?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Proposed Constitutional Proposals"

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions? The Chair will recognize Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President. I move the Convention send a letter to President James Short of the Western Montana College, as they celebrated their 79th anniversary February 23, 1893. Montana's third Legislative Assembly made into law establishing the State Normal School at Dillon. This came about through the United States Enabling Act approved by Congress in 1881. Seventy-two sections of public domain for Dillon and the other three schools were established. In 1893, the Legislature neglected to provide appropriations for the Normal School at Dillon. The oversight was not remedied until 1895 and it was completed and furnished in 1896 for $50,000 for the administration building and its furnishings. It was established for the instruction and teacher training of all teachers in the public schools of the state inclusive of all grades and departments. It first had a l-year and 2-year certificate, later established Bachelors and Masters Degrees. In the first year, it was changed to the name of State Normal School, later State Normal College, later Western Normal College of Education and Western Montana College. Our delegat Carl Davis of Dillon, is presently a director at th: school at this time. Thank you.

PRESIDENT GRAYBILL: You've hear the motion of Mrs. Mansfield. All in favor of send ing a letter of congratulations to Western Colleg please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No (No response)

PRESIDENT GRAYBILL: The Aye have it. Mrs. Mansfield, if you'll get that letter t us, we'll see that it's properly transmitted. Ar there other Motions and Resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Unfinishe Business?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special 01 ders of the Day'?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Bus ness Number 10, General Orders of the Day.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Pres: dent. I move the Convention resolve itself int Committee of the Whole for the purpose o handling business under General Orders.

PRESIDENT GRAYBILL: The motion o Mr. Eskildsen is to move the Convention int Committee of the Whole. So many as are in favo say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No (No response)

PRESIDENT GRAYBILL: The Aye: have it and so ordered.

CLERK HANSON: "The following com mittee proposals are now on General Orders as o February 24, 1972: Legislative, Executive, Judi cial, Natural Resources, Revenue and Finance Bill of Rights, Public Health, Education, Loca Government, General Government. The Natura Resources Committee Proposal Number 6 having

)een duplicated and placed on the delegates' desks)n the 22nd day of February, 1972 at 9 o'clock a.m., s now in compliance with Rule 23 of the Montana Constitutional Convention Rules."

(Committee of the Whole chairmanship as-sumed by Mr. Graybill).

CHAIRMAN GRAYBILL: Very well. We have before us this morning, ladies and gentlemen, two motions to reconsider. The first one concerns Section 6 of both the bicameral and unicameral articles. Mr. Furlong, the Chair will recognize you to explain your motion, and then we'll vote on the motion to reconsider. and if we reconsider, we'll vote on your proposal.

DELEGATE FURLONG: Thank you, Mr. Chairman. If I understand you correctly, you want me to explain the reason for reconsidering first and I'd prefer to do that.

CHAIRMAN GRAYBILL: Well, you-you can do it either way but the body might like to know what it is, yes.

DELEGATE FURLONG: My concern-I would refer you to the Legislative Article V, Section 6 on page 33, although it appears in several other places in the article and I suspect that if the committee sustains my motion, that it would apply to the unicameral as well as to the bicameral proposal. I am concerned that on line 9, page 33, it reads as follows: "The legislature shall meet at least once a year in regular sessions of 90 legislative days or less." I came here firmly convinced that the Legislature had to have more time to do the business of the state and I haven't changed my opinion on that. But I feel that we have, in fact, given them a blank check by using the term, "90 legislative days or less." Actually, it multiplies the present amount of time by some factor of 3% or 4 times or more. My proposal, if you sustain it, would be to change the number, "90", in line 9 back to, "60 legislative days or less." This, in fact, would more than double the amount of time that is now allowed. Besides that, if the Constitution is adopted, we will have allowed the Legislature to extend that at any time by a simple majority vote of the Legislature. Now, I am not trying to cut the amount of time. I want them to have all the time that is needed, but I am trying to change the procedure. I believe that if they need more than double the amount of time that they now have, it would be very easy for them under our proposal, to submit to the people the need, and to make a simple minority vote and have it. I think that actually the 3½ to 4 times is multiplied by the fact that if we go to the annual session, we will have eliminated much of the fuss and confusion over the old biennial session so that the 60 days, in itself, could be much better put to use than it now is. So I don't want to spend all your time and make you go into a night session. I do believe, however, that changing the "90" to "60" days, does not take away any of the rights the Legislature has to the length of term. It does change the procedure. It does give them a deadline that they'll have to work against. It also gives them an easy method of extending the Legislature by the majority vote. And if you sustain my motion to reconsider, I will move to change it from "90" to "60". Thank you.

CHAIRMAN GRAYBILL: Very well. The debate is on Mr. Furlong's motion to reconsider.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I rise in support of the motion to reconsider. I had wanted to ask that this section be reconsidered on the bicameral side, and if it is reconsidered, I would attempt to make the motion to reconsider the minority report for the bicameral side. Now, I don't claim to be an expert or even very knowledgeable about a unicameral Legislature. I have heard a great many words about it such as visibility, accountability, and efficiency, economy, and so forth, but after 5 weeks of testimony, I'm still not completely convinced. Bicameralism, I understand. I've seen it work. I know what I like about it and what I don't like about it. In Montana, we have a real wealth of talent on bicameralism, and I think we should draw on that talent in determining any rules for procedure that we write into the bicameral section. When the majority of legislators that I talked to tell me what they want and need, I'm inclined to agree with them and take their word as honorable men that they know what they need. Now, what do they want? They want more time. They want a deadline to work for. They do not want annual sessions where the flood of trash bills comes in every year, each requiring a hearing and action. To give you an instance, there are a large number of resolutions come into the Legislature. I became quite disturbed about these resolutions in 1967 so the next one that was introduced, I followed through as best I could. This resolution happened to be one on the import quotas asking the Secretary of Agriculture to reduce the import quotas on beef. Now, as a beef producer, I should have been vitally interested in

that resolution. One copy went to the Secretary of Agriculture, one to Senator Mansfield, one to Senator Metcalf. I doubt if any of the copies got by the first secretary's trash can. But anyway, by the time we figured it out, as close as I could figure, by the time it got through the House, it cost $850 and it still had to go through the Senate. These are the kind of things that I think you open up when you require annual sessions. Now, also, they want an opportunity to meet annually to discuss the budget, what the Senate Finance and Claims Chairman stated; what he thought was really necessary was that the interim committees-the Senate Finance and Claims Committee and the House Appropriations Committee could work full time. They could have the budget ready. He considered that it would he very possible that merely 5 days would be required to come in, explain the budget and act on it in the off-year but he felt that was necessary. They wanted flexibility in which they could meet or they could not meet as they desired. When the Chairman of the Senate Finance and Claims and the Chairman of the House Appropriations Committee say that the minority report on bicameralism is what they need and want, I'm inclined to agree with them. Now, we discussed this at some length the other day. I'm not going to go into it all. I think there was one misunderstanding as to how it would work. Now, I'll give you an example; this is on page 57 of the Legislative article, under the situation as it is stated in the minority report, the Legislature could meet for 70 legislative days. They could adjourn. They could meet again the following January for an additional 10 days. If the 10 days was not adequate, by a simple majority vote, they could extend the session for another 5, 10 days, whatever was required. That's one example. Another example of what they could do-they could meet for 20 days, introduce the bills, adjourn for 20 days, meet, discuss bills, possibly pass them in another 40 days which would involve 60 days, They could then adjourn, meet the first of September for 10 days, would be 70; they could then adjourn, meet the following January for another 10. I submit that that's real flexibility and I would ask your serious consideration that we reconsider Article Number VI of the Legislative article.

CHAIRMAN GRAYBILL: Mr. Furlong, the Chair would like to know, did you vote on the prevailing side originally?

DELEGATE FURLONG: Mr. Chairman, I have to he honest. I'm sure I did hut I don't know as I could prove it or not.

CHAIRMAN GRAYRILL: Well, we'll pre sume you did, if you are sure you did. We have t put it in the journal. All right.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, oppose the motion to reconsider for two reasons First, I think we have to recognize that the citizen who are elected to represent us are going to hav sufficient integrity not to abuse any particula right or privilege they may have with respect t sessions. If there are a great number of bills intro duced, I think it's the right of the people throug their representatives to have that done. It's th responsibility of those who serve us to determin which bills have merit, which do not. Rut mor than that, I think the committee report that w have before us was in the making for some 3½ to weeks and I think we ought to ascribe some ir tegrity to the report of that committee. If each tim someone should question some particular facet o it, after it has been debated and decided, and we'r going to submit a motion toreconsider, the work o this Convention will never finish. And I say her and now, it's time to stop reconsidering matter that have been under study and discussion by th committees, unless there is some unusual fact 0 some gross inconsistency that would not serve th interests of the people. I oppose the motion to re consider.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible) members of the assembly, I favor the motion tort consider. I think that this is a very important par of our Legislative article and I think it may deter mine whether or not our Constitution is going to b adopted. Because I have talked to my constituent and I think I expressed to you yesterday, that my constituents are quite liberal; they have had n criticism of what we had done until they read thi where we had given 90 days each year to the Legis lature and they said, you guys are crazy over there You're going from one extreme to the other and think that is exactly what we've done. I think tha the request to reconsider is very much in order.

CHAIRMAN GRAYBILL: The House wil be at ease for a minute while we change the tape

(Tape Changed)

Committee will be in order.

Mr. Hanson.

DELEGATE HANSON: Mr. President, rise in support of Delegate Furlong's motion to re

consider Section 6. I was home over the weekend and I attended a meeting of my constituents in Teton County, and they were vitally concerned about extending the Legislative Session for 90 days every year. I am more concerned, I would say, about this than anything else that we talked about, and I am sure that if we pass what we have already passed—if we do not reconsider our action—that we're going to meet with a lot of' opposition in the rural areas; I don't know about the urban areas, but our rural people are vitally concerned with this. I support Furlong's motion to reconsider.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I also support this motion to reconsider because I think it is the only way we can salvage what I think is the dreadful error made last night in extending the present size of the Legislature into the future. I want to pause a moment to redo this. It seems to me that most of us were elected on the platform of doing something about our state government, which mainly was to reform the Legislature. The people, I think, wanted the Legislature reformed. They wanted the expense of government reduced by making it more efficient, and they generally thought maybe annual sessions were a means of doing this. Now, look at what we have done up to this moment. We've eliminated the 60-day limit; we've eliminated the 2-year limit; we have eliminated the per diem limit and, in effect, on the basis of how it is up to the moment, we have quadrupled the expense of the Legislative Session. The alternative is either--as we will present it to the voters now-is either to keep this monster that we have created at 4 times its former cost, or to submit to the people the untried unicameral alternative. And I think that thegeneral reaction of the voters will be that if that's how these people think that they are going to treat the voters and improve government, down with it and we will have succeeded in eliminating the hope of having our Constitution approved by the people. I feel this very deeply. I think we just about have lost the war. The reconsideration by limiting the time for these sessions is some comfort in this direction, and this is why I support it. Mr. Dahood mentioned the respect we should have for the committee's recommendations. I call to the attention of the House that the committee did not recommend any 150 member monster to this body with completely unlimited blank check expense account for the future, and if we arc going to respect the committee's recommendation, we better do it in that respect also.

CHAIRMAN GRAYBILL: Mrs. Payne.

DELEGATE PAYNE: I would like to have a clarification of what do you mean by 90 days? Is this 18 weeks or is this 90 days'? Well, what is a legislative day'? Is that a 7-day week or a 5-day week?

CHAIRMAN GRAYBILL: Mr. Cate, do you want to attempt to answer Mrs. Payne?

DELEGATE CATE: My understanding of the difference between calendar and legislative days, it is this—

CHAIRMAN GRAYBILL: Mr. Cate, hold that mike down by your tie. That a boy, thank you.

DELEGATE CATE: Yes, Mrs. Reichert's daughter told me how to hold this. (Laughter) And this is the right way. My understanding of the difference between calendar and legislative days is this, that February has 29 days. Those are called calendar days. Legislative days are the days that the Legislature actually works out of that 29 days. So, if you had a 5-day week in February, there would be about 28 legislative days in the month of February. So, legislative days are the days they actually work; calendar days are the actual days on the calendar. And the present system is 60 calendar days. That's the present system is 60 calendar days. We have changed that to 90 legislative days.

DELEGATE PAYNE: So, you really have changed it to 18 weeks. I don't think John Schiltz—

DELEGATE CATE: We've extended it.

DELEGATE PAYNE: Yes. Thank you.

CHAIRMAN GRAYBILL: The issue is—Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. I, too, support the motion to reconsider this.

CHAIRMAN GRAYBILL: The issue is on Mr. Furlong's motion to reconsider Section 6 of both the Legislative and bicameral proposals. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Mr. Furlong, do you want to make a motion now?

DELEGATE FURLONG: Yes, thank you, Mr. Chairman. I move to amend by substitution on page 33 of the Legislative article, line 9, the number "60" for the number "90". Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I would like to take this opportunity to thank the assembly for the support. I'd also like to say that I also am concerned about challenging-if that's the right word-the majority report. And I do not do so lightly. I think I understand the amount of work that went into it. I am not trying to take away the time from the Legislative Assembly. That would be the last wish that I have. I am trying to change the procedure. I do believe that the Legislature ought to work against a deadline. We have made it easy for them to change that deadline by a majority vote of the group. As I understand the legislative days, and Mr. Cate certainly helped me out, we're not talking about 60 calendar days; we're talking about probably 5-day weeks. And a 90-day session would extend that to 4½ months. Not only would it extend it to 4% months, but in other provisions we have allowed the Legislative Assembly to adjourn and reconvene. If you take those 4½ months and take an Easter week out plus 1 or 2 weeks of recess for work or study, we're talking in terms from 5 to 6 or more months for each Legislative Session. I would repeat again. This is not to change the amount of time they can have or need. It is to change the procedure for them getting it. I do believe that it would make them more responsible to the people of the state. I do not think it hurts the Legislature to have to justify an extended session by a majority vote of the membership. I would appreciate your support of this motion.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. I think I mentioned this before, but I would like to make the suggestion that the minority report include-now I'm on page 16, line 20—it seems to me that this is a crucial thing that the minority report has left out, and whatever we decide to do this morning, I'd like to make sure that this is in there. And I quote, any legislature may increase the limit on the length of any subsequent session end quote. The minority report does not have thi in there and I believe it should be in there.

UNIDENTIFIED DELEGATE: Mr Chairman.

CHAIRMAN GRAYBILL: Just a mo ment. Well, Mrs. Bugbee, just to clear that matte up, I'm not sure I agree with you. On page 3 which is the majority report, we have the two ma jority reports adopted now, and both of those hav that sentence in it on page 33 and on page 4. Nov the minority report was referred to but the mino ity report has not been adopted. At the moment, w have reconsidered Section 6-on page 3 and 4 an Section 6 on page 33. And each of the ones we'v reconsidered has that sentence in it, and the issu that Mr. Furlong raises is a different issue; changes "90" to "60". So, I think if we do no mor than Mr. Furlong says, you're perfectly protecte

DELEGATE BUGBEE: Well, I'm jus talking to Mr. Nutting's proposal.

CHAIRMAN GRAYBILL: All right. Wel Mr. Nutting has not yet moved the minority r port. Mr. Nutting, I see you up.

DELEGATE NUTTING: Mr. Chairma As a substitute motion, I would like to move in th bicameral section, that the minority report b adopted in place of the majority report. I think I'v spent plenty of time on this. I believe we all unde stand it. I hope-1 had to do it-1 had to present m arguments in asking that you reconsider. I woul be happy to answer any questions that you migt have but I think we've discussed this long enoug and I merely make that motion.

CHAIRMAN GRAYBILL: Do I unde stand you, Mr. Nutting, to have moved the mino ity report as it appears in italics on page 57?

DELEGATE NUTTING: That is correct- that it be adopted for the bicameral section.

CHAIRMAN GRAYBILL: Very well. Fc the bicameral section only, Mr. Nutting ha moved a substitute motion which reads as fo lows-it's on page 57. "Following the general ele tion, the legislature shall meet in regular sessio before March 1st or earlier as provided by lav The regular session shall not exceed 80 legislativ days. Any business, bill or resolution pending a adjournment of the session shall carry over wit the same status to any future special sessions a

biennium. Special sessions not to exceed 30 days may be convened by the governor or a majority vote of the membership of each House. Regular and special sessions may be extended by a majority vote of each House." That's the issue before us now on the substitute motion of Mr. Nutting.

Mr. Cate.

DELEGATE CATE: I move to amend Mr. Nutting's motion. On line 7, page 57, to insert after the word, "session",-when it says in regular session-the word "annually", between "session" and "before". So that it would read, "in regular sessions annually before March 1st or earlier as provided by law." I offer that as a substitute motion to his.

CHAIRMAN GRAYBILL: Very well. Mr. Cate has made an amendment to the substitute motion to add the word "annually", to line 7 so that the first sentence would read, "Following the general election, the legislature shall meet in regular session annually before March 1st or earlier as provided by law." We're discussing Mr. Cate's amendment.

Mr. James.

DELEGATE JAMES: Will Mr. Nutting yield to a question?

DELEGATE NUTTING: I yield.

DELEGATE JAMES: Doesn't Mr. Cate's proposal destroy the whole sense of this minority proposal?

DELEGATE NUTTING: It's essentially the same as the majority proposal, except that it cuts the time limit down 10 days, yes.

DELEGATE JAMES: Well, isn't it your idea on this, Dick, that we have a choice here between the majority proposal in the unicameral and the minority proposal in the bicameral? I would resist the motion because I feel that it destroys the purpose of the substitute motion.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President. To clarify our position-now we're talking about the minority report on page 57 which Mr. Nutting has just moved, and this applies to page 43 of the majority bicameral proposal.

CHAIRMAN GRAYBILL: That's right. It applies to the bicameral only.

DELEGATE AASHEIM: Yes, and I resist the motion to make this an annual session because this is the purpose of the minority report, to give the Legislature some flexibility. Assumingthatthe Legislature will meet in January as it has in the past, and they get their work done in 60 days, they still have 20 days to use any time they wish. Now, as I-today, we have appropriations by Congress, which usually come the latter part of the year. Maybe there's need for the Legislature to meet again in November or December to consider that appropriation hy Congress. And maybe, if our Legislature does meet at that time, they can then take care of any necessary matters that should be taken care of the following year, which precludes the necessity for coming back the next year. So I would resist the motion to change this to annual sessions. This is flexible in the minority report and I think the bicameral section wants this very much.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. Let me see if I can go one thing and make plain to you about our committee because I think maybe you might not understand how we worked. (Laughter) No, I'm really serious about this. The majority-the people on the majority side from our committee have not spoken to many issues. For one reason, we go with the majority report and we have it here before you. As is the case on almost everything, a majority report of a committee gets presented and then we get to debating upon any and every minority report with amendments and substitutions. And seldom, if ever, get hack to a discussion of the majority report and this happens again and again; and this may he a good moment to say that our committee worked on the **hest** bicameral proposal we could discover. Now, when we come here, people infer that those of us who happen to prefer a unicameral are not interested in the bicamera1 report and, therefore, if you will adopt a minority bicameral report, you will really be going with what the quote, bicameralists, unquote, want. All I'm saying is that I am as much interested, though I favor a unicameral system, I am as much interested in having a good bicameral Legislature as I am in unicameral and consistently here, I have voted for what I thought was the best bicameral section. I realize, and some of my friends have said, "Let's vote for the-let's let them get the very worst bicameral report they can get," following Mr. Garlington's line of reasoning, I mean his analysis is correct. That you can put together here

a bicameral proposal that looks just exactly like what we have now and thisseems to be thegeneral tendency. We listened to testimony--all of us—when we ran-1 think every one of us, if we'll just stop and think, realize the people of this state do not want exactly what we've got. To infer that the people will oppose change in the legislative system is to make an inference that's unwarranted. To suggest that legislators formerly do not want annual sessions, but prefer biennial sessions, is to fly in the face of polls that were made of legislators for about 3 or 4 sessions before this. We absolutely know that legislators and people prefer freeing the legislative process. Now, on the matter of Mr. Furlong's motion which is clear, sensible, and has some real point to it, I could see, as a member of that committee, acceding and saying that that's a sensible kind of a change to make. I'm a little hesitant to go through all the business of why we need annual sessions, of thebusiness of annual appropriations and all the rest, so I simply will underscore things that were said before, if you will remember them, and remind us that we voted 70 to **24** on this issue once before. Let's not be stampeded into doing something exactly opposite. If there arc, as Mr. Furlong's motion is I think, some constructive changes to make to our majority opinion, then let's proceed to make them.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Nutting, would you yield?

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Yes.

DELEGATE BROWN: Dick, I am for your minority report as to both unicameral and bicameral. Now, is there some reason that we can't have this on unicameral too?

DELEGATE NUTTING: No, I merely made the motion for bicameralism because I am accepting the word of the bicameralists who I've talked to-those two chairmen that I mentioned. And although I'm not familiar enough with the unicameral to really say whether that is what they want, what would be required; if the motion would be made to accept it on both, I would not resist it.

DELEGATE BROWN: Well, Mr. President, my worry is this. If we adopt Mr. Nutting's minority report, which I am for, and don't on unicameral, we're going to have a ballot that's going to be confusing; you'd be voting for unicameral and annual sessions or bicameral with your flex ible provision. And we're going to confuse th voters; and I think we should have either one re port to include the unicameral too, so I can vote m conscience.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, support Mr. Nutting's proposal on these grounds If you purport to have 80 or 90 day sessions, yo are going to preclude a great many people fron being able or having the desire to serve in you Legislature. People in agriculture, if you're goin to take 80 or 90 days out of their most productiv time, they're just simply not going to be availabl to serve in your Legislature. Businessmen wh have a business, if they're going to have to take 9 days, 80 days annually away from their business you're going to very severely limit the type c people that is going to serve on the Legislature. feel, further, that to people whom I have talked to and I have traveled quite widely over the state are not of a necessity interested in annual session at this time. They wish to provide the vehicle tha may be used if it is necessary to have annual ses sions, but to lock it into the Constitution provide a very costly method that the people of Montana at this time, are just plain simply not ready to buy They did want to provide your Legislature with th flexibility that they could call themselves int annual sessions if they saw the necessity. And suggest that this is exactly what your minorit proposal does propose, and I suggest that thi would be one of the qualifications for a bicamera Legislative Session. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: (Inaudible)...resis the motion by Mr. Cate but, frankly, I don't believ that the state needs annual sessions right now. may later on. I think Mr. Furlong's motion is step in the right direction and certainly 60 legi lative days is a great plenty. I hesitate to spea because I know ex-legislators don't have too goo of standing in this group, probably, but I'v always felt that the problem in the bicameral sy tem is that we have too many bills, rather than n enough time. I think the minority report does giv the flexibility that it needs. I think it's importar that you have the in-between session for fisca matters, and I think that could be handled ver nicely with the minority report as now, but you're going to lock yourself into an annual se sion, you're going to be flooded with the san

number of bills every year, I'm sure. If you can use this minority report, which has the flexibility of having all the bills you need one session, limit it to fiscal affairs that second year, which you could do under this situation, I frankly feel that this would be the better way to go, the most economical way to go; I think it would serve our people better and I believe that the people are more interested in having as short of legislative days as possible. In fact, I wouldn't even object if this minority report said 60 days instead of 80 legislative days.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, will Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Yes.

DELEGATE HELIKER: Mr. Nutting, I feel very much as Mr. Brown does, that whatever we do in regard to the frequency and duration of the Legislative Sessions, that it ought to be the same for both the unicameral and bicameral proposals. Now you said you would not oppose such an amendment. Would you make the change in your own motion so that it will apply to both?

DELEGATE NUTTING: Mr. Heliker, I would prefer that the two motions were made separately, but if someone else would be willing to make the motion, why I would not oppose it if it was made for both.

DELEGATE HELIKER: Well Mr. Chairman, then I will so move.

CHAIRMAN GRAYBILL: No, no motion is in order now. We have an amendment and a substitute and an amendment to the substitute and until we get rid of the amendment, there are no other motions in order. You may make it later, Mr. Heliker.

DELEGATE HELIKER: After Mr. Cate's motion is taken care of?

CHAIRMAN GRAYBILL: Well, we've got to have some room on the docket. We can only handle these three matters at once, but you may make it later.

Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. Chairman, members of the Convention, I would like for you to take a look at what you're doing to this Legislative Article and what you're doing to the Legislature in this state. If there was one clear issue in the campaign for this Constitutional Convention, it was a mandate for changing the Legislative branch of government. Now, yesterday, you amended the majority report; we're back up to 159 members of the legislative body, 5 more than we have had at times. Now, here we are again at session. The minority report calls for a biennial 80-day session. Now, what have you done? You've increased that number by 20 days. The Legislative Sessions in the past few years have not even completed their business within the primary 60 days that were allotted to them; last time, it took 106. You say that the people of Montana aren't ready for an annual session. Well, why don't you give them a chance to decide that? You are not making any changes in the Legislative branch at all if you go for this minority report. I think that the bicameralists are very much in favor of this because they realize it's going to be very hard to sell a 159 member Legislature to meet every year for 90 days. I agree. Think if you don't want to reconsider, you ought to reconsider the size and not the session because the state's business needs to be carried on whether you have 159 or 100 members. The minority proposal provides flexibility. Mr. Wilson made the point that if you have to meet every year, the people of the state-certain businessmen-are not going to run if they have to meet every year. With the flexibility under the minority report is based on special sessions. They may call themselves in the special session. Well, I submit to you that if the businessmen that do run for a biennial session because they don't want annual sessions, because it's too inconvenient, they're not going to find it any more convenient to call themselves into special session when the business of the state requires it. I think you'll be making a drastic mistake if you completely revert back to the present Legislative system. I would encourage you, if you do not like the majority report as was approved on Thursday, that you would at least consider Mr. Furlong's amendment which would be 60 legislative days each year.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I've listened to the motions, the substitute motions, the argument and the debate ever since the majority report came to the floor. And insofar as the bicameral&s are concerned, apparently as far as they're concerned, they're alma mater right or wrong. This is the system they know and this is

the system they love, and this is the system they want to keep for the rest of Montana's history. I think that's entirely up to them, but they're here jousting with windmills. They come out with a majority report with respect to a bicameral system and they can't agree among themselves as to what particular option ought to be given to the people of the State of Montana. We can stay in Convention Hall for days and days with respect to these variances that one prefers over the other. I think they owe a responsibility to the 100 delegates here and they owe a responsibility to the people of the State of Montana to come out with a committee report, with respect to bicameralism, that can be accepted and can be submitted. My opinion, at this point, is that perhaps the work hasn't been done with the type of diligence and intelligence that we're entitled to expect of a committee report. I therefore move that, with respect to the bicameral section of the majority--or the committee report, that the matter be recommitted.

CHAIRMAN GRAYBILL: You may move that after we handle one of these articles, but you can't move it now because we got too many motions on the table or, at least, you can't move it now. I don't know whether you can move it then; it'd be a matter of reconsidering the whole thing. Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. In this discussion WC have been saying originally 90 legislative days. Even my seatmate said 60 legislative days when referring to Mr. Furlong's motion. I call to your attention that on line 9 of page 33, it is now recommended that we have 60 legislative days or less annually. I contend that we must have annual sessions. I have several bills I was going to discuss, in the event of a unicameral-bicameral discussion in that area, but I think that I will use these bills as examples of the need for annual sessions because, in all honesty, I think it is the time that is so critical in our society for a good Legislature. In 1969, House Bill 99 was passed. I wonder if you remember what that did to our state. This allowed the deduction of the fed. eral income tax in addition to the standard deduction. This little boo-boo cost us an estimated $3,000,000. This, I think, would not have happened if the legislators had had ample time to look this bill over. Special session House Bill 15 in 1969—the purpose of this section was to have monthly payment of withholding agents in place of quarterly. Now, when the bill was amended, our Legislature, under pressure, inadvertently had the out-of-state employers listed, and missed the resi dent employers. In effect, this bill applied to only! percent of withholding transmittals. This littl error cost the state $5.2 million and I have this in formation from a very reliable source which I'l give to you if you come to me. Do you remember i 1969, the $7,000,000 error that came from the Sen ate'! It was headline news for days. I contend this too, is an example of inadequate time. And ther last session, I happened to be here on the last day the 106th day. If you could've been in the Senat chamber and seen the furor-even Tom Judge wa flustered. A page was lost from a very importan bill. The House had already gone home. They scur ried around looking for this missing page. I con tend this would not have happened if there hac been adequate time; and I feel that, even mor important than the unicameral body, is an annua session. And I say, it's 60 days or less, it's con ceivable they may meet 60 days one year, mayb just 20 the next, but it's 60 days or less.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I want to forgiv the Chairman of the Bill of Rights Committee be cause I'm sure when his report comes out, we'r going to think the same thing, they didn't hav their work done. (Laughter) But, just in cas there's a doubt in your mind-and I think if Mr Dahood can settle an argument, I'd like to hav him go to North Ireland. (Laughter) You can sen this back to committee if you want and it'll com out the same way, because we have nine dedicate unicameralists and we have five dedicated bicam eralists, and we're pretty much sold on what w presented to you. And I suppose maybe when yo got this report, where we all signed it and, by th way, there were a couple who didn't sign this re port; it's because they weren't here that day. I'n sure that they would have signed it if they were here. But, understand, this is-these nine unicam eralists were dedicated people. They had a sincere concern about doing something better for the Legislature. As you all did, you came here with a dedicated purpose and you have your own opin ions, and maybe we are old foggies, maybe we d have a liking for tradition, but we have seen i work and we believein it and we think, maybe tha your considerations probably a little hasty be cause you thought it was a majority report when i first came out. And this is the danger of unicam eralism. And we're asking you to reconsider you

action today about this very important proposition, about the bicameral report which was-or the minority report of the bicameral. We're asking you to reconsider. If you've made the right judgment the first time, we'll abide by it.

CHAIRMAN GRAYBILL: Mr. Anderson, do you want to announce your presence so you can vote?

DELEGATE OSCAR ANDERSON: Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. There seems to be complete polarity on this thing. We know how the unicameralists feel; we know now the bicameralists feel. The unicameralists want one thing and all the proponents have spoke for that. Also, the hicameralists; they want this proposal on page 57. So, why don't we get down to business? And if we're going to put this on the ballot, we can submit this to the voters. This seems to be the feeling of each party, so let's get on with the show.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I would like to ask Mr. Aasheim a question, Mr. Chairman, if he'd yield to a question.

CHAIRMAN GRAYBILL: Mr. Aasheim, will you yield?

DELEGATE AASHEIM: I will.

DELEGATE HARRINGTON: Mags, do you feel that in the past four or five Legislative Sessions that, without annual sessions, that it's been successful? In other words, the way it's been run every other year; do you think this has been successful, this type of a Legislature? You said, the old system has worked. Now I just point a question. Has it worked?

DELEGATE AASHEIM: (Inaudible)... ast two sessions?

DELEGATE HARRINGTON: In the last three or four sessions. Have they completed their business on time and has it caused a lot of trouble throughout the state because they haven't been able to do this?

DELEGATE AASHEIM: Mr. Harrington, I'm glad you asked that question. The last session, as I have said before, had the sales tax to argue; they had reapportionment to argue; they had a matter of reorganization of state government and they had multiple, major problems which gave them a black eye. The previous one was not as difficult as the last one, and the further you go back, you'd find that they went 9 days, 8 days overtime so let's get back to normal. Let's get back to normal times and we're allowing 80 days. We're just about allowing twice as much time in this minority report. Let's give it a trial because we have the flexibility here, Dan. If they need more time, they can have it and I say "Let's", it doesn't make any difference what system you have. We're not going to be happy with it. You can go to Russia, you can go to China, you can go to Canada, you can go to Great Britain, you can go to Ireland. They're criticizing their government. Let's try to work this one over so it'll work better than we have in the past.

DELEGATE HARRINGTON: Thank you for your answer but basically, I feel that one of the reasons we were sent here was because we have a regressive Constitution, and to write a Constitution that would update. I think one of the things to update the Constitution is annual sessions and I feel this is the answer. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I want to echo the sentiment of Delegate Harper. I think we're here to be statesmen and to be Montanans. Frankly, I've enjoyed the last 7 or 8 hours of debate. It's been gamesmanship as far as I've been concerned. I've watched the bicameralists destroy their position with respect to the public forum but I think it's time to perhaps come to their assistance. I think comments have been made that by increasing the size, they've taken away whatever appeal they might have insofar as the public is concerned. Now, they're engaged in warfare with respect to another section that certainly cannot help their cause, and I think we should all be dedicated to the proposition that we're going to put forth the two best legislative plans that we can so that the people will have an informed choice. I move at this time, for the benefit of all of us, that this Convention, this Committee as a Whole, recommit Section 2 of Article V on page 32 with respect to the size, and Section 6 with respect to the length of the sessions, to the committee for further study, debate and discussion and report to the Committee as a Whole.

CHAIRMAN GRAYBILL: All right, a motion to recommit does take precedence. I've checked this with the Rules Committee. It would take precedence over the motions pending, so the issue is on whether to recommit to the legislative Committee the bicameral Sections 2 and Section 6.

Mr. Davis.

DELEGATE DAVIS: Mr. President. Much as I hate to disagree with my good friend and neighbor, Mr. Dahood, we spent-we're on our 4th day on this article. We've got some other very important articles and who's going to have time to work anything out. Let's wrestle this thing out and settle it here and now and then go on to the next because, as they stated, they go back-they all know in their own hearts and in their own committee, their positions. And I don't think if you recommit it for a month or a year, it's going to change. It's going to be up to this 100 people today or next week to decide, and I would prefer just settling the thing right now and going on with our work.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I would like to support Mr. Dahood. I think that both of those subsections need attention. I am inclined to think that the size is much too large. I'm also inclined to think that the length of the session-annually also has to be determined. I support Mr. Dahood.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. Like Mr. Davis, Mr. Dahood is an old friend and a close neighbor, but we've got to get down to work. And we cannot afford to be sending things back to committee at this stage. We've got roughly 3 weeks and, I think, 3 days left, and then we're out of money. We've got to get down and settle and get a vote on this thing and get the Convention moving. And I Seriously urge this Convention to get down and vote on these matters and get the issue decided.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. Chairman. I would just like to point out that we didn't arrive at Section 2 and 6 by pulling them outofthe air. I mean, we spent a great deal of time on these already. I have a feeling that if this Convention floor has not been willing to accept the committee's recommendations now, they're not going to be willing to accept the committee's recommenda tions next week. I mean, we spent time on these These aren't things that we didn't consider. You just-if you want these changes then you're going to have to make them on the floor. Or you're going to have to go with the report because I doubt very much if the committee would come back with any thing very different than what we came out with in the first place.

CHAIRMAN GRAYBILL: Mr. Berg, I'm going to recognize you next but the Chair has been advised by the Rules Committee that perhaps I'm in error. Section 6 has been reconsidered and is before you. Section 2 has not been reconsidered and is not before you and apparently, I can only allow recommittal on Section 6 unless someone makes motion to reconsider 2, and then we'd have to consider that. So, I think, we'll-Mr. Dahood, I'll allow your motion as to 6 but not as to 2 at this time. Very well. Mr. Dahood accepts that.

Mr. Berg.

DELEGATE BERG: I will move that we now reconsider Section 2. Mr. Chairman—

CHAIRMAN GRAYBILL: Just a sec—

DELEGATE BERG: I came to this Convention with the idea that we were going to write a Constitution that I could go back home with, that would represent reform and that would give the people at least an even choice between the unicameral and the bicameral Legislature. Now with the situation as it is before this floor, so far as I am concerned, I cannot conscientiously go back to the people and fairly discuss either unicameral or bicameral systems, unless this measure is amended so that the people are given a choice of bicameral Legislature meeting biennually or unicameral Legislature meeting annually. I don't think that the people will have much choice except between a unicameral system meeting annually and the old Constitution. And very frankly, I am unwilling to see all of the rest of the reform that I'm sure this new Constitution will have beset upon that sort of a choice. I want the people on this-one unicameral and bicameral systems to have choice, a real full choice. Therefore, I ask you to reconsider what-the mistakes we made last night with regard to the size of that bicameral system and I agree that if you do give it reconsideration, would join with Mr. Dahood in sending both Section 2 and Section 6 back to the committee for redrafting in such a manner that you will give the people of Montana a real, legitimate, fair choic

between not only a unicameral and a bicameral system, but between annual sessions or biennial sessions. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg, the Chair wants to inquire. I understand your motion to reconsider is the Section 2 in the bicameral article, is that right?

DELEGATE BERG: Yes, of the bicameral.

CHAIRMAN GRAYBILL: All right. For the information of the body, the motion to reconsider also takes precedence, and it is above the motion to recommit and it is proper to consider Mr. Berg's motion ahead of considering the motion to recommit by Mr. Dahood. So, the issue is Mr. Berg's motion to reconsider Section 2. Is there discussion on that?

Mr. Berg.

DELEGATE BERG: Mr. Aasheim tells me it's page 41 where Section 2 is.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to point out, I don't challenge Mr. Berg nor do I question him, but there is a procedure under the rules here for making a motion to reconsider. And absolutely necessary to making such a rule is that you at least state that you voted on the prevailing side the last time that issue was decided. Now, neither Mr. Furlong nor Mr. Berg this morning asserted that he had voted on the prevailing side, and I think he should make that assertion.

CHAIRMAN GRAYBILL: Mr. Schiltz, you're absolutely right and the Chair is wrong not to have challenged them, but I really didn't have a chance to break in. Mr. Berg, did you vote on the prevailing side?

DELEGATE BERG: To the very best of my knowledge, I did vote on the prevailing side when Section 2 was first taken under consideration. I did not vote on the prevailing side when it was amended last night.

CHAIRMAN GRAYBILL: What does that mean, Mr. Murray?

DELEGATE MURRAY: He's out of order.

CHAIRMAN GRAYBILL: All right, he's out of order.

Mr. Harrington.

DELEGATE HARRINGTON: Having voted on the prevailing side on the amendment last night, I move to recommit Section 2.

CHAIRMAN GRAYBILL: You mean to reconsider Section 2?

DELEGATE HARRINGTON: Yes.

CHAIRMAN GRAYBILL: Reconsider Section 2 of the bicameral session. All right, we'll ascribe the motion to reconsider to Mr. Harrington, Mr. Berg. Now, we'll discuss the motion to reconsider Section 2.

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman. I don't think I'm alone but I am at loss. I can understand that a motion to recommit might take precedence, but I don't see how a motion to reconsider can take precedence over a motion for reconsideration that's already before the floor.

CHAIRMAN GRAYBILL: Well, the Chair will consider this a parliamentary inquiry and we'll try to point it out to you, Mr. Furlong. All right, in your rule books if you care to look with us, on Rule 60, privileged motions, when a question is under debate, no motion shall be received except— then you go on down and you get to Number 4 as a motion to reconsider. Now, we did have a motion from you, Mr. Furlong, to reconsider Section 6 and we took it up, and we passed the motion to reconsider and then we debated it under the normal debate procedures, and when we got down through Mr. Nutting's substitute motion and Mr. Cate's amendment to the substitute motion, Mr. Dahood made a motion to reconsider-or I mean to recommit. It's actually a motion Number 10 on page 27 of the rules to commit. The motions listed in this rule shall take precedence in the order in which they stand arranged. Now, we were then debating Mr. Cate's motion to amend and a motion to commit takes precedence over Mr. Cate's motion to amend. Now, at that point, we had Mr. Dahood on Section 2 and Section 6 to recommit. The Rules Committee correctly pointed out to me that we did not have 2 under reconsideration. I pointed that out at that point and Mr. Berg arose and now Mr. Harrington. They're back up on Number 4 which has precedence over recommit. So, they have a right to move reconsideration of 2. If they're successful, I presume Mr. Dahood will renew his motion as to both 2 and 6. So, the issue before us is Mr. Harrington's motion to reconsider Section 2 of the bicameral article, which deals with the size of the

bicameral article.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I rise in support of the motion to recommit for this reason-to reconsider first, and I also support re-committing it for one more last chance to work out a reasonable system for both sides to give a small committee a chance to work the thing up and I think it's worth even taking a whole day, because this is the key section in the whole Constitution, and we've got to have it right, and we can't do it with 100 of us thinking here. If they'll go back and "pen their minds again and see just what can be done, then it seems to me, maybe we can get more informative debate, because I don't think there really is that much difference on what we'redoing here. We're talking about limiting the session and annual sessions, and those two things are very important, but some system ought to be able to be worked out whereby we can give the Legislature more time under either system. Or something might be worked out about the size and let them go back and think it over in the quietness of the committee room (Laughter) and maybe we can get some-we can settle this matter to satisfy everyone if it's just words; and if we can't, then we can at least fight it off tomorrow or the next day. And I suggest if we do that, then we could get on with the business of the Convention and we could start in on the Executive Article maybe; but this issue is so important I think that it needs another look at and see if everybody can't pull together and get some language that really will settle the issue so that we can intelligently vote. So I think we ought to at this time, unanimously, reconsider. That will then get the procedure right; then I think we ought to unanimously recommit.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: (Inaudible)...oppose the motion to recommit. I think what we're proposing to do is to send back to committee to undo what we did here on the floor last night. I think the original reports were very good. I think what we're also doing is trying to accommodate the Nutting-Aasheim axis on this issue, and I think that the animus behind the Nutting-Aasheim axis has not been brought out candidly in this body. What is it that motivates this axis? It is an unwillingness to accept change. That's what it is. It's a very old issue too because the change they wish to try to frustrate are the implications of Baker versus Carr. That's what they're trying to do. This is an old issue in our society. It goes back to Putney in 1647 when we started debating whether we're going to represent people or turf and they proposed to represent turf. Mr. Chairman, I oppose.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I think we've gone this long and maybe we're closer to a vote than you think. I've got a simple little plan. If we'll vote against Mr. Harrington's motion, vote against Mr. Dahood's motion, vote against Mr. Cate's motion, vote against Mr. Nutting's motion and pass Mr. Furlong's motion, I think we'll be where we ought to be. (Laughter and applause)

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman I wish to speak in opposition to recommitting and I call to your attention that on page 13 of our Legislative proposal, regarding size, the majority report was never voted upon. We never had an "pportunity to vote on whether we wanted less than 75 nor more than 100 in our unicameral body. That reason we did not have an opportunity to vote, the amendment was made and I really believe that perhaps when some people voted for the amendment on not less than 100 nor more than 105, they were voting to get that 105 ceiling more than to get the 100 to 105. And here we want to recommit and we've never even paid attention to the majority proposal on unicameral, the initial 75 to 100 figure; we've never voted on it. I do not want to recommit.

CHAIRMAN GRAYBILL: (Inaudible).. just to clear the record, Mrs. Reichert, we did vote the 1st day on Section 2's size and it was adopted 71 to 17, as amended.

DELEGATE REICHERT: (Inaudible).. Mr. Chairman, as amended, was 100 to 105.

CHAIRMAN GRAYBILL: Right.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman As a member of the Legislative Committee, I attended all of the various meetings, I think every one, and there was a difference of opinion in the committee which I don't think is going to be changed by receiving this material back for another go-through. Personally, I'm satisfied with the way we're moving along here. I don't wir

everything that I want and I don't think everybody in here should be expecting to win everything that they, as individual delegates, want. This is essentially a matter of compromise and I think we ought to acknowledge that. So, I am against any motion to recommit. I feel that we have taken action in this body, which I don't approve of all the way, but it has certainly been debated thoroughly, and it's a matter of taking one step forward and two or three slip backs if we're going to go on this way. I came here to get longer sessions because I felt, from experience, that we needed them and I still think that, and we can get them by annual sessions or we can get them by the minority Nutting report where you'll have one session and being able to call yourself back into session. So, I think that has been achieved. Personally, I also think thatthenumber in the Legislature, as in both unicameral and bicameral, is adequate around 100 and I don't think if you cut it back, you're going to gain anything. We took a vote on both of them in the last few days and we arrived at a number that I think is satisfactory. I think we ought to proceed with our work.

CHAIRMAN GRAYBILL: No, Mr. Mahoney was up, Mr. Joyce.

DELEGATE MAHONEY: Mr. President. I think that Reverend Harper gave us the best thing here. Let's dispose of it. Now, I know and I think that committee's worked hard, and I think they did a beautiful job. Having been on committees a long time and seeing compromises and I think they tried very hard. I think we've listened to the debate around here that I believe the census of this body is in annual session. I introduced the first annual session that was ever introduced in the Legislature. I believe very keenly on it. Now, under this proposition if we don't know you're going to have it, then appropriations are only going to be worked every 2 years, and I want appropriations worked every year. I hate to waste the time. Reverend Harper, I think you had it right. We get down here and get to the meat of the issue as far as the annual sessions is concerned on this proposition. I'd like the 60 days. That doubles the amount of time that they have now. This doubles and I think doubles is enough at this time. If it proves out, later time we can amend the Constitution but you also have a provision to extend the sessions. Secondly, as regard to size, I'm sorry, Mr. President, I'm debating something that shouldn't be debated, but I'd like to get the whole statement out. That as relating to size, this is another issue and I'm not going to take any part in that except I don't see any sense in sending back to committee, Maybe we better fight her out on this line right here. Who was that famous gentleman who says, "We'll fight her on the line"? Let's fight her here.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: May I explain my position why I wanted to recommit it to the committee? I agree. I think Reverend Harper knows precisely what he's doing. My thinking was, if it went back to the committee, Reverend Harper and Mags Aasheim could have one more go at their respective contention and maybe they could compromise it between the two of them there and then bring it back. But if Reverend Harper has it all-if Furlong's motion will satisfy the whole thing, then I'm in favor of that. And I just thought maybe that would be a solution to solve the thing because it is going to boil down, no matter how you cut it, to whether you want an annual session or you don't. And I think that Reverend Harper could actually bring it back here, after talking it over with Aasheim et al, and we could decide the issue. That's why I wanted to recommit it. But if we can solve it-1 think that what a good thing to do would be to withdraw all motions and let Mr. Harperpointout how he can live with Mr. Furlong's motion. If all the unicameral&s can live with it, fine; if all the bicameralists can live with it, fine. Then we can vote the precise issue whether or not we want annual sessions and get on with it.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President. Yesterday, we voted for the unicameralists. Today, we are on the bicameral part of the proposal. We are going to have a choice of the bicameral and the unicameral on the ballot. I am opposed to recommitting; I'm also opposed to the suggestion a while ago that there be an addition to our minority proposal here of the unicameral part which would go back to what we did yesterday. Let's give a clear-cut choice and see if we can come to a decision here on the bicameral minority proposal and, if you pass it, the proponents of this minority proposal, which includes me, are stuck with it and so are the people, but they do have a clear-cut choice. Please look at it in that light.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. We expect the parties and judicial controversy to

compromise; we expect labor and management to compromise. Inasmuch as I'm assured by several of the learned members of the Legislative Committee that for them, the star of compromise is unreachable, I hereby withdraw my motion to commit.

CHAIRMAN GRAYBILL: Well, the issue is on Mr. Harrington's motion to reconsider Section 2.

Mr. Harrington.

DELEGATE HARRINGTON: Well, I feel that I would withdraw this motion. However, I do feel that this should be-at this time I will withdraw it though--my motion.

CHAIRMAN GRAYBILL: All right. The motion to reconsider Section 2 is withdrawn. The motion to recommit to the Legislative Committee the bicameral Section 6 is withdrawn. And the issue is on Mr. Cate's motion to amend on page 57 by adding in line 7 the word "annually", so that the first section oftheminority report, which is the substitute motion of Mr. Nutting would read: "Following the general election, the legislature shall meet in regular session annually before March 1st."

Mr. Cate.

DELEGATE CATE: Mr. Chairman. In order to expedite the process, I would withdraw my amendment. I would ask, however, this committee to support the hard work of the Legislative Committee. We worked awful hard. We compromised. We compromised everywhere on this thing. Both sides gave and this is what we came up with. And I like to compare the committee to a cream separator where you put all the cow's milk in and the cream comes out on top. And that's what we did. We put the cow's milk in from 14 different sources and took the cream off the top. That's what werecommended to you and I ask your support for that. I think that annual sessions is the most important thing that we can do in this Legislative article and I want you to know that I intend to vote for Mr. Furlong's amendment to limit it to 60 days annually, but I ask you to keep the annual sessions. Thank you.

CHAIRMAN GRAYBILL: I understand Mr. Cate to have withdrawn his motion. Mr. Nutting, is the motion-the substitute motion of Mr. Nutting, which is the minority report on page 57, is now before you.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman As the junior member of Benito and Adolf why (Laughter), I presume I'm the junior member; look more like Benito than I do like Adolf (Laughter) but, anyway, I think we've now reached the crux of the matter so let's get the vote on it. Than1 you.

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Nutting's substitute motion tha the minority report on page 57, be substituted fo Section 6 of the Legislative bicameral article ir place of Section 6 as it appears on page 33 for example. The majority Legislative proposal is ar annual session, at the moment with 90 days, with Mr. Furlong's motion pending. The minority position on page 57 says, "following the general election, the legislature shall meet in regular sessior before March 1st or earlier as provided by law. The regular session shall not exceed 80 legislative days. Any business, bills or resolution pending a adjournment of the session shall carry over with the same status to any future special sessior during the biennium. Special sessions not to exceed 30 days may be convened by the governor o by a majority vote of the membership of each House. Regular and special sessions may be extended by a majority vote of each House." Doe: everyone understand the proposition? Mrs. Robinson, for what purpose do you rise?

DELEGATE ROBINSON: May we have a roll call on this? (Seconds rise)

CHAIRMAN GRAYBILL: We'll have a roll call vote. All those in favor of the minority proposal in place of themajority proposal, please vot Aye. All opposed, please vote No. Have all the delegates voted? Does any delegate wish to change hi vote? Will you please record the roll call.

Aasheim ..... Ay
Anderson, J. Ay
Anderson, 0.. Na
Arbanas .. .. Na
Arness ..... Absen
Aronow .. Ay
Artz ..... Ay
Ask ..... Ay
Babcock ..... Ay
Barnard ..... Ay
Bates ..... Ay
Belcher .Absen
Berg ..... Ay
Berthelson Ay
Blaylock ..... Ay

Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Aye
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Absent
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Nay
Driscoll	Nay
Drum	Aye
Eck	Nay
Erdmann	Absent
Eskildsen	Aye
Etchart	Aye
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Chairman Graybill	Nay
Gysler	Aye
Habtdank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Aye
Ward	Absent
Warden	Nay
Wilson	Aye
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 35 delegates voting Aye; 60 voting No.

CHAIRMAN GRAYHILL: 60 delegates having voted No and only 35 Aye, the motion of Mr. Nutting, the substitute motion, is defeated. The issue is now Mr. Furlong's motion to amend on page 33 for one place, Section 6 of the bicameral article, by changing in line 9 the number "90" to "60".

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. There's an old New England joke that has the tag line that you can't get there from here; and in the last 2 hours, I've kind ofwondered how I got from there to here. I would like to say for the group that I have no feelings one way or the other about the majority or the minority. My motion had nothing to do with it. I want the 60-day limit in either case. I will let therestofyoufightout the uni versus bicameral proposal. I would like to reiterate that 1 am not trying to cut the sessions. I'm only changing the procedure. I think it gives a responsibility to the Legislature to convince the

people that they, in fact, need more time. I would appreciate your support. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong. I think the Chair incorrectly stated Mr. Furlong's motion a moment ago. His motion was to reconsider Section 6 in both the bicameral and unicameral side and that's what we did. And I have it marked in both sides. So, it's also on page 4 in Section 6 of the unicameral section. So, both the unicameral and bicameral are now at 90 and Mr. Furlong proposes that they both go to 60.

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I meant to ask for a roll call vote. May I?

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Has he closed, Mr. Chairman? I just am unclear on that one.

CHAIRMAN GRAYBILL: I think he's closed but I want you-I-

DELEGATE BURKHARDT: Could I—no—no.

CHAIRMAN GRAYBILL: -certainly don't want to cut off any amendments or debate if somebody doesn't like them both.

DELEGATE BURKHARDT: Well perhaps just as an-explaining a vote, I don't consider my vote in favor of this to be a wild-eyed kind of leap into the blue. It seems to me that a group that met 106 days last year is simply thinking about maybe meeting 120 in the next couple of years.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. Furlong's motion, vote Aye on the voting machines. So many as shall be opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Please take the roll call.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Absent
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Chairman Graybill. ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye

Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 91 delegates voting Aye, 5 voting No.

CHAIRMAN GRAYBILL: 91 delegates having voted Aye and 5 having voted No, the motion to change it from "90" to "60" passes. Very well. We have another proposal to reconsider a section. Mr. McKeon, are you or Mr. Helikerhandling that?

DELEGATE McKEON: (Inaudible) I think we'll probably both handle it. Mr. Chairman, having voted on the prevailing side I move that we reconsider Section 16. Mr. Chairman. I—

CHAIRMAN GRAYBILL: May we have the clerk read your proposal?

DELEGATE McKEON: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Oh, this is just a motion. I beg your pardon; we don't need to do that now. Go ahead.

DELEGATE McKEON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: A couple days ago, I voted against the peoples' advocate proposal. I did so because I felt that the proposal as it was submitted to this body gave this side—peoples' advocate-plenary powers. I have since met with the Delegate Heliker and others, and we have amended the proposal and have copied the North Dakota proposal concerning the peoples' advocate. We have eliminated the subpoena power and granted the Legislature much more control over the peoples' advocate. One thing, Mr. Chairman, I failed to realize at the time I voted against the peoples' advocate, was that we are not all in this state blessed with the knowledge that the people in this body would have of state government. Many here are well versed in the ins and outs of state government but there are so many, Mr. Chairman, who don't know where to go when they have a grievance. And, for this reason, Mr. Chairman, I think that a peoples' advocate is an excellent addition to thefunction of state government. I think that inevitable centralization of government has led to a Kafka-like labyrinth and I think that the peoples' advocate will go very far to eliminating much of the red tape which the bureaucracy has created. For this reason, Mr. Chairman, I urge this body to accept and move affirmably on my motion to reconsider so we can, again, raise the issue of the peoples' advocate on the floor of this Convention. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue is on Mr. McKeon's motion to reconsider Section 16. In both the-Section 16 is the same for both bicameral and unicameral.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I, too, am a little tired of all of the discussion that goes on in these matters, both to get a matter reconsidered, and then for the question on themerits of the proposed amendment to save what has been killed. And so on behalf of those who resist this motion and who are not in favor of a peoples' advocate, I suggest that we simply remain silent and vote No on this motion. Ifit should prevail, then let us debate it.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I rise in support of Mr. McKeon's motion. I think that there are a number of things that were not brought out. the other day and after time for reconsidering—thinking it over, I'm sure there are many people in this chamber that are interested in rediscussing it. I don't think that, at any time, if we feel that we have enough interest in a subject that we should simply remain silent on it and pass it over. And I call for a roll call vote.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. If the evil that we're trying to correct by making another bureau in state government is the fact that state government has become too cumbersome and too bureaucratic, may I suggest to you that the remedy perhaps lies in adding another section to the Constitution requiring that Legislature to make the state government less bureaucratic, and do away with a lot of the bureaucracy concerning which we apparently arecomplaining, and which justifies the addition of yet another bureau on top of everything that we have. I'm opposed to the motion to reconsider.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. If Mr. Aronow's comments were in the form of a motion, I support them. I think that what he's saying is that-he's raising a very sore issue in the state and in all the states and in federal government too, that we've just become extremely centralized and naturally extremely cumbersome. I'm afraid we can't eliminate that unless we reverse everything we've done probably since the New Deal, and I'm not attempting to do that by any means. However, I think that the peoples' advocate will allow the uneducated and the poor to somehow cut through the red tape and more quickly find their remedy. Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I voted initially in favor of the peoples' advocate. I stand now in opposition to the motion to reconsider. We have approximately 1,000 peoples' advocates in the State of Montana at the present time. They're all members of the Montana bar, members of the legal profession. We also have peoples' advocates under the OEO program. We also have peoples' advocates that run for the Legislature. We also have peoples' advocates in every elective office in the State of Montana. I've had time to r consider my vote. I have read and reread the pr posal with respect to a peoples' advocate and I fa to visualize how it could have any real, salutar healthy effect for the citizens of the State of Mor tana. The peoples advocate does not have an particular power. It does not chart for him an guideline by which he may take the complaint the citizen and put it into some type of effectiv channel so that some particular result will b reached. It provides that the peoples' advocate is legislative preacher. He is to represent the Legi lature. I submit, if ever-it is true-that we ar dealing with a legislative matter, this is it. If th Legislature thinks that they ought to have a pe ples' complaint department, let them decide it, l them construct it. And I oppose the motion to r consider.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairma As an experienced peoples' advocate over the pas 40-odd years, I object to this motion of Mr. Mu ray's to cut off debate. I think this is a matter tha deserves reconsideration and I support the motio of Mr. McKeon to reconsider. Thank you.

CHAIRMAN GRAYBILL: Mr. Harring ton.

DELEGATE HARRINGTON: Mr. Chai man. I rise to support the motion to reconsider b Mr. McKeon. Former President Harry Truma once said that he felt that he was the peoples' 101 byist. He felt that many corporations and othe best interest groups spent millions of dollars ever year to lobby the Legislatures throughout the cour try, and he felt that he was the only one the actually was considering the people other than th Legislatures themselves, but he felt that he was th peoples' lobbyist. I feel that the people need mor support and I feel the peoples' advocate fills thi bill. Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg

DELEGATE SWANBERG: Mr. Presiden I, too, rise in opposition to this motion, and I woul simply like to point out a couple of facts. In th first place, we have a County Attorney's office i every county in the state and this office has lon, been notorious for handling complaints of jus this nature. Any of the members here who've eve worked in such an office know that there's steady stream of people coming into this offic

aily asking questions about state government nd where to go find the answer. Many, many imes—most of the time, I should say-the County ttorney, as a matter of service, figures it out for im and if he can't find out the answer, he finds omeone that can. I should also like to point, out hat when we go to the single member legislative istrict, there will he one legislator serving a rela-ively small area and this legislator, hopefully, vill be meeting annually. He will be in a position o serve a relatively small body of people to handle heir inquiries. And finally, what's the matter with he Governor's office? Is he not the Chief Execu-ive? Isn't this part of his duty to keep his con-tituents informed? I submit that it is. And if perhaps the people who want a peoples' advocate ystem, perhaps some arm of the executive in his ffice might be established--a secretary, perhaps. One final point. By going from semiannual to an-ual sessions, according to my rough estimates, ve have increased the cost of the legislative body done without considering stenographic help, et etera, by some $250,000. This is not a small mount of money. It's the kind of money that would be rather hard to find in the Legislature when they get into the problem of figuring out the budget. It was established here the other day that a peoples' advocate would cost in the neighborhood of $100,000 per year. So, we can see that the cost of this would not he inconsiderable and I think in view of the light of what we've done here, making annual sessions, a district system, that we've accomplished the job pretty well.

CHAIRMAN GRAYBILL: Mr. Furlong:.

DELEGATE FURLONG: Mr. Chairman. I support the motion to recommit and I support the doctrine or the idea of a peoples'-I'm sorry, not re-commit, to reconsider--and I support the peoples' advocate. It seems to me that regardless of what we do here, government is going to remain large or maybe larger, complex and impersonal; and it's this impersonal part of the government that bothers me. I think of the peoples' advocate as being one of the people. I'm not concerned about their problem. In answer to Mr. Dahood, I under-stand and recognize that we have advocates in the form of lawyers. Sometimes the people never get to them because they just don'tknow how, they don't know what their rights are. I want the peoples' advocate to be of the people and for the people and I certainly urge the reconsideration and the sup-port of the idea.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. President.. I join with Delegate Dahood with this addition that the best peoples' advocate and the best way of pre-sentation is the press of Montana, and the letters to the editor column are as good an advocate as anything that you can buy.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I know that the rules say that you only have the privilege of speaking once on a subject, but if the argument of Mr. Swanberg is going to be sus-tained, I have a very short statement that I'd like to read.

CHAIRMAN GRAYBILL: Mr. Scanlin. You can speak twice on a subject in the Committee of the Whole, as has become apparent the last few days. (Laughter)

DELEGATE SCANLIN: Would the Chair allow me?

CHAIRMAN GRAYBILL: Go ahead, speak up.

DELEGATE SCANLIN: Thank you. I rise to speak in behalf of those who are unable to speak for themselves. Government in a democracy is supposed to be the servant of all the people, not just the educated, the people that read the news-papers, the higher income, or the sophisticated. We are here to create a foundation for this type of responsive, democratic government. In our in-creasingly complex society, many difficulties could be alleviated merely by providing readily available communication between government agencies and the citizenry. To me, creating a peoples' advocate is directly in line with this goal. We will be providing a simple way in which every person in Montana can insure that his govern-ment is serving him fairly and judiciously. We would not be creating just another bureaucracy. To quote a statement from Sweden, "I believe that by creating a peoples' advocate, we would be ex-pressing a democracy for all the people, not just the privileged." It is true that there is the Legisla-ture and the courts to handle complaints. A peo-ples' advocate would not replace these. He would, rather, supplement them with the objectivity a legislator cannot have as an elected official and at a price the judicial system cannot match. In line with this reasoning, I agree with one supporter who has said, "It doesn't make any sense to spend $500 to win something you should've had for nothing in the first place." A peoples' advocate

would be able to make preliminary examination of this citizen's complaint and perhaps the problem could he solved, or at least greatly alleviated, by a clear display and disclosure of the decisions and actions taken by each side. To insure the individual always has easy access to government, I feel it is necessary and desirable for Montana to have such an advocate. It seems to me that when we talk about one or two hundred thousand dollars, that an intelligent telephone operator could handle the duties of this office. And I speak from experience of 2 days out there on the switchboard handling citizens' questions relative to the conduct of this Convention. Thank you, Mr. Chairman.

CHAIRMAN GRAYRILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I don't like to take a lot of time on this Convention floor and I don't believe that I do, but this certainly disturbs me. It seemed like there's many, many people here that don't have any idea of where this money is going to come from. They just want to keep voting in more expenses, more costs, annual sessions, longer sessions, anythingwecan do to spend more money. Now, this has been advocated that we would probably spend one to two hundred thousand dollars and this is supposed to be a small amount. It was said the other day that the Legislature, the cost of it was so minimal that we shouldn't worry about spending a little more. But I worry about this and I'll tell you why. We haven't been able to finance our school foundation program now for several years, adequately. We can't finance our Boulder school. We can't finance Warm Springs. We just can't pay these people enough to live on over there. Now, if we can't do that, how in the world are we going to keep creating new offices, constitutional offices and even at a cost they say of 100,000, 200,000, this would pay for one office in the city of Helena. Now, how are these people down in the eastern end of the state, way over in the western end of the state, how are they going to know about this office in Helena? So, you're going to have to have branch offices-all of the towns-you'll probably wind up with 15 or 20 of them. You must have qualified people. Otherwise, you're not going to do what you're wanting to do. So, this cost of 100 or 200,000 is simply going to be wasted if that's all you're going to spend because you're not going to reach these people. I certainly can sympathize with Delegate Scanlin. He wants to do something for these people; he's worked in it and he knows there's a need; but you're not going to arrive at thi answer just hy creating another layer of bureau racy in Montana, even if you had the money, And submit to you that you certainly do not have th money to he going Off in all directions spending fc this, spending for that just because each one isn very much to add to the whole burden. I thank yo Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce would you like to speak?

DELEGATE JOYCE: Yes, I would, Mr Chairman. I would like to try and bring the Con vention-the thinking maybe-back to what w all claim is fundamental. The peoples' advocat may be a great idea. The place to decide that is ir the Legislature. If you can get it through the Legis lature, try it, if it's good, keep it going; if you can' get it, if you try it and you don't like it, you ca change it. But why write into the Constitution a new office? We're dealing with constitutional prin ciples. This section is clearly a statutory matter. I has no place in the Constitution. All the argu ments in favor of it can be made to the Legislature Then they can argue money and everything els but, even as written, it doesn't mean a thing. If w put it in the Constitution, the next session of th Legislature can very effectively destroy the job by just not funding it, so why fight all these battle: here today? We're not legislators. We didn't com up here to legislate. Let's let all the legislatio pend for the future. Fight all those battles anothe day. Let's just write fundamentals into the Con stitution. Therefore, if we stay here all day, I'n going to vote against putting the peoples' advo cate in the Constitution, not because I'm agains the people but simply because it's not a constitu tional question. If I lose, I lose; I don't care he cause even if you put it in, it doesn't mean any thing. The Legislature is still going to he able t control it by not funding it, so let's not put legisla tion into the Constitution; let's not win everythin for the people today; let's just afford the oppor tunity for the people to win another day. That': what we're doing. Let's write a fundamental Con stitution. Let's let us fight all of our other battles o taxation and right to work and social security an peoples' advocate and sales tax and income tax let's let the people fight that another day. Let's jus write a Constitution. Keep all the legislative mat ter out of the Constitution and let's give a systen where the battles can he fought fairly another day But let's not put the peoples' advocate into th Constitution because it doesn't mean anythin

ven as it's written, and so let's just keep it out of he Constitution.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Would you yield to a uestion?

DELEGATE JOYCE: (Inaudible)...will.

DELEGATE CATE: You're Chairman of he Executive Committee proposal, are you not?

DELEGATE JOYCE: Yes.

DELEGATE CATE: I find in here provi- ions for the Secretary of State, Attorney General nd Superintendent of Public Instruction. Why vrite them into the Constitution?

DELEGATE JOYCE: Well, we can debate hat. I'll tell you why when we come to it. The rea- on for writing them in is because the Attorney eneral has been an elected official. The majority f the opinion feel that the Legislature should be estricted that they shouldn't be able to abolish hat office. The Secretary of State has been an lected official. We're always going to have a Sec- etary of State, it's necessary in government. The najority believe that he should be retained. As to he Superintendent of Public Instruction, we're lways going to need someone to run education in Montana. The majority is giving the option of naking that office elected or selected. We are herefore limiting the Legislature in abolishing the Attorney General and the Secretary of State. That's a constitutional issue but we are not cre- ating any new offices in the executive office. That loesn't mean that the Legislature can't elect 2,000 people in the future if they want to. We're afford- ng the opportunity that they can do that. So, my answer to your question is, that's why we put those n the Constitution.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Joyce yield to a urther question?

DELEGATE JOYCE: Yes.

DELEGATE CATE: Would not you agree that the Secretary of State, Attorney General and Superintendent of Public Instruction could also be aken care of by statutory law?

DELEGATE JOYCE: Yes, they could.

DELEGATE CATE: And that they do not have to be written into the Constitution?

DELEGATE JOYCE: That's right.

DELEGATE CATE: Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: May I ask what will we do if we decide not to reconsider? No, I mean we're reconsidering it. Now, I think Mr. Mur- ray had a perfectly sensible idea that once a person has risen to ask to reconsider and has given his reasons for reconsideration, then let's vote on whether or not we ought to reconsider. And if we vote not to reconsider, then we don't have to do all the reconsideration that's now being done previous to the motion passing to reconsider. And I'm just rising to express alittlesympathy for you, Mr. Chairman. In this kind of process, I don't think we're being fair. I think we all understand once what the issue is, that we should vote whether to reconsider or not.

CHAIRMAN GRAYBILL: I think your point is very well taken. The Chair is not, how- ever, going to cut off debate. So, if you people insist on debating it before, that's fine. You're going to sit here with me. Or, in fact, you're going to sit longer than I am today.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Presi- dent, fellow delegates. When I first rose here to give my support to Mr. McKeon's proposal, I felt like Mr. Harper felt and that is that we were just simply going to hear from this gentleman and we're going to vote on it or not. But, since many people have come up and decided to throw their input in, I'd like to throw mine in at this point, if I may. Now, some of you, I'm sure, feel that this is too advanced an idea. And I think this is part of the problem. But I have to remind you, I think, that we're writing a Constitution that's going to last at least 20 years or perhaps longer. Now, North Dako- ta, if you look at the new Constitution, has pro- vided for an ombudsman. We even canned that idea yesterday-or the other day because we thought the people of the state wouldn't understand what it is. Maybe they have more Swedes over there so they would understand it but I don't know. Anyway, if you look at Article XI, Section 4 in the new North Dakota Constitution, they have an ombudsman or a peoples' advocate. Mr. Aronow and Mr. Dahood mentioned something about the OEO. Now, I

talked to Mr. Aronow about this and he says there is one in Kalispell. I've never heard of the man. I think the less-knowledgeable in terms of government and law in the city of Kalispell perhaps would know even less about it. Now if we get a peoples' advocate in the statehouse, that person will be focused as I see it. All will know where hc is and where to find him. Now, what about the OEO? I understand, first of all, that this federal office is about to go defunct for lack of funds. The legal aid part of it, the one we're specifically referring to, has come under continual attack and nearly lost its funding the last time around. These legal sources, also under OEO, are funded with the idea that states and localities eventually will fund them themself. Now, OEO thinks so much about the ombudsman program that they've funded two of them themselves, one in Iowa and one in Nebraska, both of which are still in operation. The University of California at Santa Barbara has a program to evaluate the ombudsman program throughout the United States. The director of this program, a Mr. Stanley Anderson, has categorically stated with minor exceptions, they work. They are successful in forcing the government to act in the citizens' behalf mainly due to their ability to publicize omissions or acts that it deemed improper. Let's take up this business about cost. Where have we ever substantiated that this office is going to cost 100,000 or 200,000. I don't see any facts or haven't seen any presented to substantiate that. Last year, the city of Seattle and King County have adopted the peoples' advocate program and it's working-it's in operation. Someone said a person would have to come to Helena to see this person or else would have to have one in every city and town. I think that's not true. I think that they can write a letter or call. And in most of the instances of the ombudsman program, 80 to 90 percent of the complaints have been taken care of simply hy telephone or letters. This is from the Santa Barbara study. Now, this does not mean though, that the local lawyers, the local legislators or the Mr. Scanlins or the Mr. Champouxs that have been peoples' advocates all of our lives, are not going to continue in this position. Now a lot of proposals are going to be accepted here, hut I feel this is one of the little peoples' proposals. This is the little guy. This is for the little guy, the guy that can't afford a lawyer, is afraid to approach a lawyer and doesn't know about the OEO. This will be one of the things that will help to sell this Constitution to those little guys out there, many of whom are bigger than I am physically. He won't read this Constitution, hut he will grab a hold of the idea that there's someone in there, someone a the statehouse that he can always get on the phon or write to and they'll listen to him. Many of yo said you favored the idea hut voted against it wit: the idea that the Legislature will implement i This will not happen and hasn't happened. This i an idea whose time has come in North Dakota. submit that the people of Montana are no less ir tolligent progressive. I urge that you support th motion to reconsider and I urge that you suppor the unanimous recommendation of the Legis lative Committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fe low delegates. Obviously, this has become a d bate of the peoples' advocate and I don't think need to reiterate the speech I gave yesterday cor cerning the way I feel about the need for people advocate. But I do want to make a few fairly bri points. This will probably he one of the very fe times that I will disagree with my esteemed con mittee Chairman, Delegate Dahood, but I d appeal to his first consideration when he su ported the peoples' advocate rather than h second when he opposed the peoples' advocate. feel that this is a constitutional consideration fc one very basic reason, and that is it cuts across a three branches of government. It cuts across th Executive, the Judicial and the Legislative. And submit that the Legislature is not in a position t cut across the Executive and Judicial branches And this is why there needs to he something in th Constitution concerning the peoples' advocate you're going to have it at all. The intent of the pr posal is not to provide simply an arm for the Legi lature. It's to provide a arm to the people tha cuts across all branches of government so tha they can get information; they can get answers t questions that they have directly and not have t go through another branch, through the politic; structure or through any intermediary sourc And to Mr. Martin's comment, I suggest that th press, the news media is the primary mechanis by which the peoples' advocate functions. Their dividual citizen approaches the peoples' advocat Where the peoples' advocate finds that there is problem, he then elicits the consciousness of th state through the news media to bring about som action because the peoples' advocate, in and c himself, has ahsolutcly no power. His powe comes through the news media focusing attentio on a problem. And I submit that the peoples' adv cate function is, in most instances, to alleviat

problems simply by bringing attention to them so that they can be solved promptly. I feel very strongly about this proposal. The thing that captured the most attention in the time that I was in central Montana was the concept of the people having someone that they could go to with their problems directly, not having to go through political structure, not having to go through legislative structure, not having to go through a lawyerifyou will. This will not take away the need for the other elements of investigation that we have, but it will provide confidence in government and it will provide a place where the people of Montana can turn n times oftrouble. Thank you, Mr. Chairman, fellow delegates.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I just wanted to say what Mr. McKeon has already pointed out, and that is that ifthecommitteevotes for reconsideration, that they will have before them a substitute motion which I've prepared which is based upon the North Dakota proposal. It does not copy it exactly. I think it will answer satisfactorily most of the objections that were raised to the committee's proposal the other day when we debated this, and I voted for that proposal; and afterwards, I had considerable doubts about the wisdom of certain of the ambiguous language in it. I think that the proposal that I have drafted will take care of most of those legitimate objections.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: I rise in support of Mr. McKeon's motion to reconsider. I do have some valid arguments in favor of the peoples' advocate, but I'm not going to express them at this point, in hopes that the reconsideration motion does pass, and that I would have an opportunity after it does pass, to put them forth at that time.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I was going to remain silent and follow Delegate Murray's advice which, contrary to Delegate Scanlin's advice, I did not construe to be an attempt to limit debate, but rather an expression of the futility of continual reconsideration. This morning, we spent an hour and 40 minutes redebating the minority proposal on the bicameral structure, which was killed 35 to 60, which was precisely the same vote that it was killed by a couple of days ago. However, I do want, because the vote on reconsideration on this peoples' advocate will undoubtedly be the determination of the outcome of this proposal, I want the journal to reflect my reason for opposing it. It is precisely the reason which Delegate Foster is advocating the peoples' advocate for, a position that can cut across all three branches of our government. I submit that this is a fundamental violation of our American democratic form of government, which is based upon completely separate and distinct Executive, Legislative and Judicial powers. I have examined a copy of the proposed amendment. It gives the peoples' advocate the power to investigate, which is an executive function. It gives them the opportunity to determine whether the complaints are justified, which means that this peoples' advocate is going to sit as the judge and jury and to offer recommendations, which is a legislative function. The scoreboard and I'm sure the press, will record my vote as a vote against the people. This is not true. I am trying to preserve our fundamental form of government. I will oppose any proposal introduced into this Convention which violates that principle. And as an addition, I would like to add that the proposed powers to be given to this one peoples' advocate exceed those given to the Governor of the State of Montana, the Chief Justice of our Supreme Court and whomever the leadership of our Legislative branch of government should be. And that is fundamentally wrong and I oppose it.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Yes, I'm, tired too, Mr. Chairman, and I hate to rise again but there are a couple of points. One, the Montana Legislature has submitted to it an ombudsman. What did the Montana Legislature do to it? What did Mrs. Reichert say yesterday? She said they killed it. I don't know how many people were listening to her. Now, the OEO lawyer takes care of the guy that's only making 4,000 bucks a year and has 20 kids. The wealthy ranchers-I'm not worried about them. They're taking care of themselves; they've shown their ability to take care of themselves on the floor of this chamber. But, what about-they can hire a lawyer. And I'm a country lawyer. I'm way out in west Billings. I'm the poor class lawyer. I only charge $30 an hour. The boys downtown charge 40 and 50. And another thing that I didn't mention to you, Tuesday I told you about the school teacher in Alberta that the om-

budsman got his retirement pay back to him without an attorney fee. For the benefit of the non-lawyers, I'll tell you what the fee schedule is on contingent claims. Through the Administrative Board-say this man got $6,000 back plus the interest-the lawyer, through the Administrative Board would have gotten a third. He would have gotten $2,000 and he would've taken a third of the interest, whatever it was, assuming that he had a recovery of $6,000. That's just the beginning, Let's say it's appealed. (Inaudible)...in Montana, it would be appealed, say to the District Court. The fee goes up to 40 percent. Then let's say that it's appealed across the hall here to the Supreme Court of Montana, the fee goes up to 50 percent. Now, whatever's left over-and then you take the court costs, of course, out of that, and the attorney's out-of-pocket expenses. As far as I'm concerned, to kill this ombudsman bill-it would be great for my profession. As far as costing $100,000 or 200,000 of funded, we agreed in the original proposal anyway would be the salary of a district judge, of which I believe is about 20,500—the latest raise or 19, but anyway, about 20,500. In Alberta, they have four people so let's say this man has three secretaries. Now, they must be paying secretaries in Helena a heck of a lot more money then we are down in Billings to get up to $100,000. And all he needs is a little hole in the wall, and a telephone, and a desk and a chair and this long distance collect WATS line, or whatever we call it. That's all he needs. And if you figure $15,000 for secretaries, that's 5,000 a year per girl and $20,000, I come up with $35,500, and plus the cost of the telephone and the gas and light. Thank you.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman. I had hoped to save my observations to a more cogent time. But Mr. Kelleher's remarks underscore what is concerning me. Now, assuming that this ombudsman is going to pass in North Dakota and assuming that he's going to get relief, what we're being asked to do here is to overrule the Montana Legislature. We're being asked to be a super Legislature, and I submit to you that that is the quickest way to defeat our constitutional effort. Every legislator has had a lot of time to consider these issues. His votes reflect, in some way, how public opinion lies on the issues and certainly he's going to take offense if he thinks he's got a bunch of hot shots up here just trying to make him look silly. I strenuously urge you to reconsider what you're doing. The Legislature has had this issue before i before, which proves that it's a legislative-typ issue, which proves it should not be in the Const tution, and your defeat of Mr. McKeon's motio will in no way jeopardize the right or privilege c any person to bring this issue up at a more favo able time before the Montana Legislature. Than you.

CHAIRMAN GRAYBILL: Mr. Helike did you want to speak?

DELEGATE HELIKER: Well, I jus wanted to say, Mr. Chairman, that I've beer avoiding discussing my particular proposal, bu Mr. McNeil has now taken upon himself to do so Now, not all of the delegates have this before then and I wonder if it might not be since, in my opin ion, his statements concerning it were erroneous it might not be in order at this time to read it.

CHAIRMAN GRAYBILL: No, the Chai is not going to read it until we've had the motion Now, when you're all through, then the Chair wil make a statement.

Mr. Champoux. You want to be next?

DELEGATE CHAMPOUX: I'd like t take up two points if I may. In the North Dakot section that we haven't had before as yet, they were going to propose that Mr. McNeil referred to and I would like to direct a question to Mr. McNei if I may please.

CHAIRMAN GRAYBILL: Does the ques tion concern whether or not we should have motion to reconsider?

DELEGATE CHAMPOUX: The questio concerns remarks that he made.

CHAIRMAN GRAYBILL: Then I will rul it out of order.

DELEGATE CHAMPOUX: All right. I reference, then, to Mr. Brazier's comments. I we're to take that line of reasoning, then are we– also the Legislature's had 60-day sessions, annua sessions, before them. We just passed that thi morning. Or do we say then that this Convention was in opposition to that point that the Legisla ture also refused to do?

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman may I close?

CHAIRMAN GRAYBILL: You want to close?

DELEGATE McKEON: Mr. Chairman, I think that we prohahly got off the track, and the vote on reconsideration I'm certain will be a vote on the merits of the question of whether or not we should have a peoples'advocate. So, in conclusion, I would like to answer a few of the remarks made. Mr. Martin made the statement that the newspapers are the peoples' advocate and certainly, Mr. Chairman, the newspapers are the peoples' advocate; but unfortunately, they only handle the big questions. Our peoples' advocate will handle the little questions. He will handle the problems that aren't spectacular and aren't covered on the front pages. I think this is important. Mr. Chairman, the city of Butte within the last year, has hired a consumer protector; and it might he indicative to note that the people from the city of Butte have been the ones most adamant in theirrequest for a peoples' advocate. They are certainly pleased with the job the consumer protector has done in the city of Butte. Also, Mr. Chairman, I think the peoples' advocate will free the other arms of state government to handle the jobs that they have been delegated to do hy statute. In conclusion, Mr. Chairman, I would say that the peoples' advocate is a fundamental question and does deserve constitutional recognition. Thank you, Mr. Chairman. (Inaudible)...I call for seconds?

CHAIRMAN GRAYBILL: Just a minute, Mr. Clerk, will you sit down? Ladies and gentlemen, the Chair would like to make a statement at this time. This issue is on a motion for reconsideration. The issue is not a substantive issue. Now, I have let you go on because it is obvious that once me of you undisciplines yourself enough to get deeply into the issue, it becomes impossible for the other side to cease or stop fighting back the issue, because then you begin to cloud the issue of whether or not there should he reconsideration. Now, it should also he obvious that on any motion which has as much sentiment on it as this, we should simply find out if there's 51 percent want to reconsider it and then if there is, we should let them have their day in court. But because of the way some of you proceeded in debate, and I must point out that it is only some of you, because quite obviously all of you haven't spoken, and many of you have disciplined yourselves, but these things are going to happen again and again. Now, the Chair has, up until this point, tried very hard to let everyone have as much debate as he can. I don't like to hammer you down and to insist that you he relevant to every point. I like to give you quite a bit of leeway, hut I think it's obvious by now that the Chair is going to end up asking the Rules Committee for some serious restrictions on all debate in this chamber unless we discipline ourselves. This has been a good example of an undisciplined body continually debating something that is not yet relevant. The relevant point here is whether or not these people should be given a hearing this morninp. Now, the Chair has not spoken on it. Before you vote, you should know that if the vote to reconsider passes, the Chair intends to relinquish the Chair and I will speak on the issue. All those in favor, please vote Aye, and opposed No. All the delegates have not voted. The motion is whether or not to reconsider Section 16.

Mrs. Babcock.

DELEGATE BABCOCK: May I explain my vote?

CHAIRMAN GRAYBILL: You may explain your vote.

DELEGATE BABCOCK: I'd like it in the journal that I'm voting because I believe we have a right to reconsider, hut I think it should be done after the 51 percent is taken.

CHAIRMAN GRAYBILL: Very well. Has every delegate voted? Does any delegate wish to change his vote? The Chair will close the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, 0..	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Aye
Cain	Aye

Campbell ..... Absent
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Chairman Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Nay
Mansfield,, ... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz .. ,, ,, ,, ... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk .. ,, ... Aye
vermilion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay

CHAIRMAN GRAYBILL: Will you please announce the vote?

CLEKK HANSON: Mr. Chairman, 48 delegates voting Aye; 48 voting No.

CHAIRMAN GRAYBILL: 48 having voted Aye, 48 having voted No, the proponents o reconsidering Section 16 will not now be given a chance to have it reconsidered. Very well. The Chair will call on Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I move the Committee of the Whole rise ir final report and refer Legislative proposal to Style and Drafting.

CHAIRMAN GRAYBILL: The motion is for the committee to rise and report finally the Legislative article to Style and Drafting. All ir favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes hav it, so ordered.

PRESIDENT GRAYBILL: We will re main in session and take the report. Convention will be in session. Before we read the committe

report, the Chair will suggest that we read only today's committee report. We have read and adopted the others individually, but since this is the end of the Legislative article, if anyone objects, we will read the entire report. Does anyone so object? Very well, Mr. Clerk, please read today's report only.

CLERK HANSON: "February 24, 1972. Mr. President, we your Committee of the Whole, having had under consideration report Number 3 of the Committee on Legislative, recommend as follows: Delegate Furlong having voted on the prevailing side in adopting Section 6 of the Legislative proposal on General Orders moved that Section 6 be reconsidered, motion carried; that Delegate Nutting's motion to adopt, the minority proposal for Section 6 be not adopted; roll call vote was requested by Robinson and with sufficient seconds the following vote was recorded, Ayes 35, Noes 60; that the following amendment to Section 6 by Delegate Furlong be adopted in both bicameral and unicameral proposals amended by striking the figure '90'. and inserting in lieu thereof the figure '60', in line 6, page 4 of the unicameral proposal and line 9, page 33 of the bicameral proposal; roll call vote was requested by Delegate Furlong with sufficient seconds and thefollowingvote was recorded, Ayes 91, Noes 5; that the motion to reconsider Section 16 of the Legislative proposal failed; roll call vote was requested by Delegate Champoux with sufficient seconds and the following vote recorded, Ayes 48, Noes 48; that the committee rise and finally report and the Legislative report be referred to Style and Drafting. Signed, Leo Graybill, Chairman."

DELEGATE FELT: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Felt.

DELEGATE FELT: I am not objecting to this procedure but there was a question raised yesterday, and the Chair seemed to express some doubt himself as to the very first motion that was acted upon when we entered Committee of the Whole several days ago on this Legislative article. I believe that the Chair had it entirely correctbut if there is any question, I wondered if the Chair might have that one original motion read so we'd be certain on that.

PRESIDENT GRAYBILL: The original motion was-well, I'll read you the first two paragraphs. Delegate Aasheim as Chairman of the Legislative Committee noted minor corrections in his committee report. I should also start by saying, "We, your Committee of the Whole, having had under consideration report Number 3 of the Committee on the Legislature, recommend as follows", which means we did it. Number 2 paragraph is that the bicameral and unicameral proposals be sent to Style and Drafting as a dual proposal for recommendation to the voters. Very well. You've heard the report of the Committee of the Whole.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report on the Legislative article. So many as are in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it and so ordered. Without objection, the Chair will go off of Order of Business Number 10 to Order of Business Number 11.

Mr. Martin.

DELEGATE MARTIN: For those of the delegates who send the press release to the weekly newspapers, I would hope that before you mail them, you would correct an error in-which is called to my attention by Delegate Artz. We say in that release, the poll booth registration allowing citizens to (Inaudible)...register up to and including the day of election was defeated by a vote of 49 to 51. The poll booth registration was left optional with the Legislature and that should be corrected. And if anybody has plans to send those out, if they'll go to the public information office, why, we'll correct it. Thank you.

PRESIDENT GRAYBILL: Very well. The Chair also wishes to announce that payroll checks for the attaches and staff are ready. Mr. Eskildsen, wait a minute. Mr. Furlong, for what purpose do you rise?

DELEGATE FURLONG: A point of information, Mr. Chairman.

PRESIDENT GRAYBILL: Yes, sir?

DELEGATE FURLONG: I'm somewhat concerned about our action of just adopting the Committee of the Whole report and I have a question or two that I'd like to address to someone, anyone for help. Will this Committee of the Whole or will this assembly be given the chance or option at some later time to actually cast a ballot either in favor of or against the unicameral or bicameral proposals? I'd like to know if that's right and, if so, when that would be proper.

PRESIDENT GRAYBILL: Very well. For the purpose of the journal, let's go back on Order of Business Number 10 without objection.

(Committee of the Whole)

CHAIRMAN GRAYBILL: First of all, I don't know whether I said it or not, but the committee report that we adopted is hereby referred to Style, and Drafting. Now, it goes to Style and Drafting. Style and Drafting will work it over as they have the one you received this morning concerning the text of both the bicameral and unicameral proposals. Eventually, we'll get it back from Style and Drafting in this form. Style and Drafting actually has a 13-step process that this goes through in terms-that each piece goes through--and one of those steps later on, Mr. Furlong, is for Style and Drafting to propose to this body in one of its reports, a ballot. Since Style and Drafting has been given both a bicameral and a unicameral proposal, which are obviously inconsistent, Style and Drafting must devise a way on the ballot to overcome that. The presumption is that they will come up with an alternative form of voting on the ballot. Now, when Style and Drafting brings its report on ballot to this Convention, if you don't like the way it is or if anyone doesn't like the way it is, they may then move to change it. Suppose, for example, that they put bicameral in the Constitution and unicameral on the side. I presume the first motion would be to put unicameral in and bicameral on the side, and the second motion would be a substitute motion to make it a joint vote and, at that point, we will consider whether we want unicameral or bicameral on the ballot and, if so, why. And I suppose we can end up voting to have the ballot any way we want and, at that point, we will get an expression of opinion from this body as to whether they're for the unicameral or bicameral.

DELEGATE FURLONG: Thank you. I have one other question. I supported the decision to bypass the-1 suppose you would call them the minutes or the official journal; they have not been read in the past; we simply adopted it. I'm wondering now that this is to be published as I understand it, but then there will be no real chance to see it until sometime considerably later than right now. Is it—

CHAIRMAN GRAYBILL: Well, I think the minutes of the journal-the minutes come out in the daily proceedings, isn't that right, Mrs. Acher? So, if you'll watch your daily proceedings which are out for all but the last day or so, you'll find the motion that I signed in which we adopted in the daily proceedings and it should be available for today's debate, for example, tomorrow. Yes, Mr. Furlong?

DELEGATE FURLONG: But so that I'm perfectly clear, those minutes are not the official proceedings of the Convention, just a summary of them, is that correct?

CHAIRMAN GRAYBILL: The daily proceedings are a summary and they do-or they are going to contain, however, this motion that we made. Isn't that right, Rosemary? The motion that we just adopted your-the motion of the Committee of the Whole to the body-is contained every day in the proceedings. Now, the proceedings do not contain all the things that the journal contains. It's a summary of the journal. But, the journal contains all of the things that are in the proceedings, plus some further explanation and backing that is the transcript.

DELEGATE FURLONG: I'd like to make one following suggestion for whatever it's worth. You can already tell that I have a suspicious mind and we have from Style and—

CHAIRMAN GRAYBILL: No, I think you're just an inquiring person, Mr. Furlong. (Laughter)

DELEGATE FURLONG: Thank you, Mr. Chairman. We have before us a Style and Drafting report which I consider excellent, Suffrage and Elections Number 1. But I think in order to really do justice to the study of that as recommended by them, it would almost be necessary to have the official proceedings to compare. I don't know if it's practical or possible but I'd like to have somebody give it some consideration. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong, let me discuss that with you a minute. First of all

we've asked Style and Drafting and in their future reports, they are going to contain a text that is not marked up. In other words, they're going to contain a text of what they've proposed back to us clear so we can read it more intelligently. However, I would like to point out to the body that there is no text except that marked up one of what we have done and the changes we make here except your notes, my notes and the journal. Now, we have thought about it and for the moment, we are not typing up the motions as passed before it goes to Style and Drafting. Style and Drafting puts it through the MTST machines and it comes out in the form you find it there, and then they discuss it. Perhaps that's a flaw that we should cover, I don't know. But, it's a rather difficult process. You can find out what happened by reading the proceedings which, as I say, are about a day behind always. I don't know if that helps you but, in the future, we are going to get the text of what they propose as the amendment, and if you didn't think that was what we did here, you should of course make that point when we debate their recommendations. Are there other questions about Style and Drafting's reports?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we recess till 1:00 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1:00 p.m. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it.

(Convention recessed at 11:45 a.m.—reconvened at 1:15 p.m.)

PRESIDENT GRAYBILL: The Convention will be in Order of Business Number 10.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, Delegate Arness present.

PRESIDENT GRAYBILL: Are there other delegates who were absent this morning that want to announce their presence?

DELEGATE CAMPBELL: Yes, Mr. Chairman. Delegate Campbell also present.

PRESIDENT GRAYBILL: Mr. Campbell. Mrs. Erdmann.

DELEGATE ERDMANN: Delegate Erdmann present.

PRESIDENT GRAYBILL: Mr. Kelleher, for what purpose do you arise?

DELEGATE KELLEHER: I'd like to know whether this motion is in order, Mr. Chairman. For the rest of today only, I would like to move that the person who makes a motion, the proponent of a motion, may speak twice on that motion and that any other person—

PRESIDENT GRAYBILL: No. Mr. Kelleher, that motion is not in order. Now, the Chair wishes to announce for the benefit of the Convention that I want everyone to be aware so that no one is offended, the Chair intends to hold people strictly accountable to the subject being discussed. And if the Chair feels you are wandering from that. I'm going to gavel you down and ask that you stay on the subject. And by that I mean the strict subject that we're debating, the amendment or the proposal that we're debating. And I'm going to ask that you not wander around and not discuss in general, and discuss pertinent matters only. And I don't want to single anyone out, so I'm going to do it as nearly as I can to everyone. Once in a while my attention lags. So, with that little premonition, maybe we can all stick to the issue.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion has been made to dissolve this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: The Ayes have it and so ordered.

(Convention in Committee of the Whole with President Graybill presiding.)

CHAIRMAN GRAYBILL: The Chair will recognize Mr. Joyce of the Executive Committee.

DELEGATE JOYCE: Mr. Chairman, before I make any motion, may I make a few preliminary remarks about the Executive article?

CHAIRMAN GRAYBILL: Please do so.

DELEGATE JOYCE: Mr. Chairman, fellow delegates, in the Executive Committee article, I believe we have drawn an improved Executive article. That remains for your decision. First of all, let me say what we've done and how we've done it. We submit here a proposed new Executive article which will replace Article II, Article VII and Article V of the present Constitution. Article II we just simply deleted from the Constitution as obsolete. That's the one about the reservations-the military reservations-that no longer exist anyway. Article XIV, we really haven't deleted it. We've just worked it into the Executive article, so we're still going to have a militia if the majority report and the minority report passes, but we're not going to have any separate Article XIV. In summary, what we've done in the proposed new Article II, we've made these changes. We've eliminated from the Constitution-and let me emphasize this next phrase very, very strongly-but do not abolish the State Treasurer and the State Auditor, the State Examiner, the Board of Pardons, the Board of Examiners and the Board of Prison Commissioners. We've eliminated all those things from the Constitution in our proposed article, but we have not abolished them. They are still on the books as statutes and it's up to the Legislature whether to abolish them or not in the future, but we have not abolished them here. We have just permitted that they may be abolished. We've made these changes from the present Executive article to the new Executive article, that the Lieutenant Governor and the Governor must run as a team in the primary election. Why we did that, we'll explain when we get to that section. We've permitted in the new Executive article that the Lieutenant Governor can be a full-time job. And the way we've done that is, we've said that he can have duties that are prescribed by law or that may be delegated to him by the Legislature. It will be up to the Legislature, however, whether or not to fund to pay him a sufficient salary as to whether it will be worthwhile being a full-time job; but at any rata, we've permitted him to be a full-time job and we have restricted the Lieutenant Governor's present power in that he will not be the Governor automatically every time the Governor leaves the state. He will only be the Governor after the Governor is out of the state 45 consecutive days. Then he will, on the 46th day, he will automatically becom the Governor. In the interim, however, in the firs 45 days, if the Governor wants him to be the actin Governor, according to the way we've drawn th article, he can permit the Lieutenant Governor t do that. The next change we've made is that we'v continued to provide that there will be a consti tutional officer of public instruction, but we hav allowed this office to be either elective, as it is now or made appointive in the future by the Legisla ture; but we have not at this time made it abso lutely necessary that it be an appointive office And, we have made, I think, a great improvemen in the next thing we've done. We have provide that the salaries of elected officials may b increased during their term, but not decreased dur ing their term. And that is exactly the reverse o what the present Executive article provides. Righ now, as the present Executive article provides tha the salaries may not be increased during the tern but that they may be decreased. So we've reverse that around. We've given the Executive budge constitutional recognition. We've modified th Governor's veto power in this respect--we hav taken away the pocket veto, which means that an time the Governor vetoes a bill he must state hir reasons. We've given the Governor what's calle the amendatory veto power in that he can send a bill back to the Legislature and say, "I'll sign thit if you'll agree with my amendment." The Legisla ture then does amend it, it'll go back to the Gover nor, and he can either veto it or not at that time but presumably he won't veto it once they concu in his amendment. We've established a compre hensive disability procedure upon the disability o the Governor, and we've patterned it after wha the 25th Amendment of the United States Consti tution has done with reference to the President We've clarified how vacancies are to be filled wher elected officials either (Inaudible)...die or resign We've clarified that a man holding a elective pub lic office may file for any other office he wants during his term. That's been the time-honored practice anyway and we've made it perfectly clea that that will be constitutionally permissible. We have also retained intact, without changing a comma, the recent section that was passed with reference to reorganization. That's generally what we've done and as we go through it section by section, we'll show-we'll try to say why we've done it; but further than that, let me tell you how the committee broke down. There's a minority report and the minority report is essentially directed at Section 1, subparagraph 1. And in the

minority report are in favor of continuing to make constitutional officers the State Treasurer and the State Auditor. Now on this particular issue the committee broke down as follows: two members of the committee wanted to keep all seven constitutional officers-that's what the minority report shows; four members of the committee were in favor of only keeping as constitutional officer the Governor and the Lieutenant Governor; the other two members of the committee, Mr. Garlington and myself, to identify us, would not go with the other four and we would not go with the other two. We, therefore, got the other four to come over to the majority position as being better than the minority position, so that now we have six people who have signed the majority report. They do not necessarily agree with it, but they've signed it and they think it's better than the minority. But, it's up to the Convention to see how manyoftheseelected constitutional officers shall be retained. At the appropriate time, when I am speaking on-in favor of the majority report, I'll tell you why I think the majority report did what it did. And you can then disagree and we'll abide by the decision of the Convention graciously. So, with that in mind, Mr. President, I move that when this committee does rise and report, after having had under consideration the proposed Executive article, Section 1, subsection 1, that the same be adopted.

CHAIRMAN GRAYBILL: Will the clerk please read Section 1, subsection 1 of the Executive Article?

CLERK SMITH: "Section 1, subsection 1: The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction." Subsection 1 of Section 1, Mr. President.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: (Inaudible)...fellow delegates, under the comments which begin on page 12, I am going to go through them which—explain exactly what was done and why. I've given you a little preliminary indication of what was done, but I'm going to go through the comments and explain to you what was done. The first section of Section 1, that's what we're talking about now, reveals the decision of the majority of the Executive committee as to the length of the ballot. It is neither short nor long. By a minority report, the long ballot is favored, and by an amendment that may be presented on the floor the short ballot will be proposed. Thus, the Convention will consider in all aspects the structure of the state Executive Department. The majority decision is to remove from the Constitution the officers of State Treasurer and State Auditor, and to place in optional elective or appointive status the Superintendent of Public Instruction. In addition, the committee is unanimous in removing from the Constitution the officer of State Examiner. (Inaudible)...in reaching this decision, the committee emphasizes to the Convention that removal from the Constitution does not automatically delete or terminate the office affected. They remain statutory offices until changed by the Legislature, and all the argument advanced to this committee for retaining them as elective officers are equally applicable to the Legislature. The principal reason for the committee decision is that the functions of the State Treasurer, State Auditor and State Examiner are changing materially under the reorganization plan, and we believe their future position should therefore not be frozen in their present form. Similar considerations apply to the Superintendent of Public Instruction, as will be explained later. Having stated the essence of our decision on these subjects, we will describe briefly our procedure in making them. We interviewed practically all of the principal officers of the Executive Department, so as to learn how their functions have been affected by reorganization under the amendment approved by the voters in 1970, and how their function may serve as forms of checks and balances on other functions. From this information, analyzed and compared with the modern trends in other states where applicable to conditions in Montana, we concluded with respect to the several offices as follows. The Governor: the people having decisively voted to implement a well-ordered Executive Department of government in place of the 100 or more boards, bureaus, commissions, et cetera, it is clear that a strong and responsive Chief Executive is desired. We have clarified his duties and his powers accordingly. The Lieutenant Governor: consistent with the above, we have authorized an effective, full-time Lieutenant Governor to serve with the Governor, and to become a trained, responsible successor to the Governor should that become necessary. It is clear that the Governor's increasing duties and responsibilities require more adequate staff support, and the Lieutenant Governor's position is an appropriate part of it. To obtain the maximum of effective cooperation between these two offices, we have provided that they shall be nominated and elected together. The Attorney General: he is now the

chief legal officer of the state. He prosecutes or defends all litigation in which the state is a party. He supervises many of the functions of the various county attorneys, and through them the county officers and agencies. In addition to this, he is the legal adviser to the Governor and there arises divergence of opinion as to whether he should be appointed by the Governor, so as to be fully compatible with his client, so to speak, or be elected by the people, so as to be primarily responsible to them. The majority of the committee believes he should be in an independent status as an elective officer, charged with enforcement of all the laws for all the people. Since the Governor already has much authority, through the appointing power particularly, the majority favor an independent Attorney General free to inquire into the faithful performance of the duties by any state official or employee. We believe the Governor should have the right and the opportunity to choose his own legal counsel, but such counsel should be a part of his official staff rather than the Attorney General. The Secretary of State: this office has a long and historical significance, and we think it is-there are valid reasons to retain it for practical purposes as well as tradition. An official custodian of the state's most important Legislative and Executive documents, we believe he should also have the clear safeguard of a independent election and constitutional basis. His principal functions are ministerial, not policy-forming, and by removing certain constitutional boards to which he has served, there is little basis to fear that his position might in the future hamper the executive function of the Governor; and in that connection we have eliminated the State Board of Examiners. If the Legislature then repeals the State Board of Examiners, the Secretary of State will never serve on that. If they don't, he can, of course, be put back into the State Board of Examiners, but we are retaining him as a constitutional officer because we're always going to have to have a Secretary of State and the majority of the committee believes that he should be elected. The State Treasurer and the State Auditor: these offices are primarily charged with duties in the financial area. With the advent of reorganization, the entire accounting and bookkeeping procedures of all state and local agencies is being converted into a uniform pattern. Also, the Legislature has developed the process of legislative post-audit, and there is a growing pre-audit system. The committee believes it unwise to retain in constitutional status two officers whose principal services is in this very fluctuating field, and that efficient auditing anc recordkeeping should be allowed to develop flexi bly through legislation as technology and expe rience permit. The Superintendent of Public Instruction: this office is a part of the Executive Department and yet it affects solely the educa tional function, as established under Article XI We fully explored the duties of this office, and itr relation to the State Board of Education in order to determine whether it should be included, excluded or modified. It performs practically no function exclusively referable to the university system, ant the board performs practically no function refera ble to elementary and secondary education. Thus the board is, in net effect, a lay board charged witt complex responsibilities in a professional field and is without full-time professional counsel and assistance. There is much public support for obtaining by appointment instead of election a professional educator to fill the gap which exists by virtue of the present Constitution. There is also support for retaining the present status of the superintendent's office, namely as an elective office. There is a clear need to resolve the doubt and ambiguity which currently exists as to tht respective duties and authorities of the board and the superintendent, now resolved by mutual for. bearance. There is a clear prophecy of vast change in the educational field, due to the constitutional problem as to property tax equality now being litigated in California, Texas and Minnesota. Therefore, the committee believes the whole structure of Montana's one hundred million dollar-pep year educational system should not be frozen in any form in the Constitution, and proposes to handle the superintendent's office by an optional method which allows the Legislature to make the office elective or appointive, as in its current judgment it finds advantageous. The Board of Examiners: composed of the Governor, the Attorney General and the Secretary of State in the present Constitution, this board was once very powerful. It is no longer so, meeting once a month for a few minutes to consider the unliquidated claims, if any, against the state. This change has occurred through the reorganization. Being no longer useful, the committee believes it should be deleted from the Constitution and to be revived by the Legislature if necessary, if the necessity for it should arise again. The State Examiner: most con. stitutions do not create an office of State Examiner, but Montana did in 1889. While he once examined the accounts of some state offices, he has become the examiner only of county and local

gencies now. The Legislative Audit has greatly hanged his function and many more changes are nticipated. It has not yet been determined how Montana's ultimate modernized accounting and ecord system, on a uniform basis, will be audited, s this must await its completion. In any event, his is a statutory matter which should be free for djustment by the Legislature as changing condiions may require. The State Examiner himself oncurs in this view that that office should be liminated from the Constitution. Mr. President, hat concludes the presentation of the majority eport.

CHAIRMAN GRAYBILL: Very well, Chair will recognize Mr. Wilson.

DELEGATE WILSON: Mr. President, I nove from a minority report to amend Section 1 of he majority report. My minority proposal is identical to the majority proposal except for amendnents in Section 1, 2, 3, 4, 6 and 12.

CHAIRMAN GRAYBILL: Mr. Wilson, et's tell them that's on page 37.

DELEGATE WILSON: Right. Page 37. We nave designed to make the Executive branch of government more responsible to the citizens of the state by providing for the election of the present elected executive officers. Mr. President, do you vish to have the minority proposal of Section 1 read?

CHAIRMAN GRAYBILL: Yes. May the clerk read Section 1(1), of the minority proposal?

DELEGATE WILSON: Yes.

CHAIRMAN GRAYBILL: Very well, Mr. Clerk.

CLERK SMITH: "Section 1, subsection 1 of the minority report. The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction and state auditor." Section 1, subsection 1 of the minority report, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, the ninority of' the Executive Committee favor the election of the major state executive offices because government needs to be responsive and responsible to the people that it represents. The people must retain their right to elect their officials. By elimination of their present power to choose the major state offices we do not want to disenfranchise the people of Montana of their sacred privilege, their right to exercise the freedom of choice in the elective process. The people deserve the right to choose who shall represent them in government. Montana. by constitutional amendment and legislative act. is reorganizing its governmental process under what is known as Executive Reorganization. This is placing all Montana's governmental administration and control directly under the Governor and the appointed department heads. 'his program is promoted in the name of efficiency and economy. Government needs to he more to its constituents than efficient and economical. It needs to be responsive and responsible to the people it represents. Its responsibilities includes not only the matter of protecting the public trust. it includes having the trust of the public. Public trust does not come from just a matter of confidence in the integrity of public officers, hut rather it comes from knowing that public affairs arc placed in the public eye. This can only occur when the activities of government are visible and when there are ways of checking on what our public officials are doing. The State Treasurer and Auditor are the major state financial officers. One receives all state money, the other disburses all state funds. One major concern relates to-regarding reorganization to the financial affairs of the state. This concern should be included in our proposed Constitution in such ii way that we give the public the best chance to view critically its public officers. and to avoid open invitation to corruption. This should include a public official. elected and responsible only to the people, and who is not subservient to the varying political desires of some Chief Executive who perhaps will only be concerned with a" approving look from the public at his administration. We know that no Governor will have continuous opportunity to observe all the actions of his administrative officers. To place all physical affairs in one administrative office, such as a controller's office, not only jeopardizes the Chief Executive, it is one open invitation to unviewed corruption. We ask then this Convention include separate physical officers as elected officers in this proposed Constitution in the offices of State Auditor and State Treasurer. The state Superintendent of Public Instruction is the major educational officer and as such should be elected by the people. The election of the superintendent should be protected from undue political influence by making her directly responsible to the people. WC arc with the majority committee proposal's comments on the election of the Attor-

ney General. We provide further qualification in Section 3. At this time, Mr. President, I would move that when the Convention arises to consider Section 1 of the Executive report, that they adopt the minority proposal.

CHAIRMAN GRAYBILL: The substance of the minority report is to add the office of State Auditor to subsection 1. Is that correct, Mr. Wilson?

DELEGATE WILSON: And State Treasurer.

CHAIRMAN GRAYBILL: And what—treasurer?

DELEGATE WILSON: (Inaudible)

CHAIRMAN GRAYBILL: Yes. On page 37, that doesn't appear. That's my question.

DELEGATE WILSON: I'm sorry. Mr. President, there must be a mistake in the printing. 1 didn't catch that quick enough

CHAIRMAN GRAYBILL: Right, I think there is, so I think that (Inaudible).

DELEGATE WILSON: If you go over to page 45—

CHAIRMAN GRAYBILL: Right.

DELEGATE WILSON: —you'll find it

CHAIRMAN GRAYBILL: On page 45, under sub. 1 of 1, you'll see the State Treasurer; so you should all go in your books to page 37 and after "attorney general" you should add in "state treasurer". The purpose being to add both the State Treasurer and the State Auditor under the proposal of the minority on page 37.

DELEGATE WILSON: And the Superintendent of Public Instruction.

CHAIRMAN GRAYBILL: Right. Superintendent of Public Instruction is there. Very well, that's the situation.

Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I really hesitate to rise in view of the admonitions that the Chair has given us about prattling on. I also hesitate to rise because I sit so close to my friend here the William Jennings Bryan ofthr Bitterroot, and Mr. Kelleher is establishing himself as the Demosthenes of the Yellowstone; but I am one of the four that Chairman Joyce referred to a having signed the majority report on the ground that I thought it was the best we could do. I therefore feel constrained to support the majority report, again, not because I think it's what we ought to do, because I think it's the mostpolitically practicable thing to do. Therefore, I would wish to support the majority report by speaking against this movement, or this motion to adopt, the minority report. In speaking against the minority report what we have to try to deal with is a system of belief. It reminds me of the fairy talc of the emperor's clothes. Perhaps some of you will remember that very poignant story of the two shysters who come into the kingdom with a capacity to weave this gossamer cloth and how the whole community went along with the pretense, and how these two shysters wove clothes for the emperor and so forth and so on, until the emperor paraded naked down the street and one little boy said, "The emperor has no clothes on." Incidentally, I think that story never ended right. I think the people murdered that little boy instead of agreeing with him. The pretense in this case is the idea or the belief, in what it is, that because people vote for certain officers, these officers necessarily represent them. I think this is a myth. I think this is a pretense. The idea that voting for officers other than the Governor and Lieutenant Governor is a source of protection to the people is completely false because what you do is diffuse power; and by the way, that's what we're supposed to be talking about here, you diffuse power and therefore make the exercise of irresponsible. Now, Mr. Wilson, in his remarks implied that we of the majority of the committee was proposing to disenfranchise the people. Curse the thought. We're not proposing to do that at all. I wouldn't want to tamper with what he calls the sacred privilege of the people. He also implies that we wish to deny them the privilege to vote for those who represent them. What I think we're trying to do in the majority is make the vote the people do have more effective. Now, maybe I can use an analogy to illustrate this point. I am an incurable flock shooter when I go out hunting birds, and my hunting companion keeps telling me. "Rich, you've got to choose your bird," and then to use the language of this beloved friend, "you've got to shoot him in the face." Well, I propose that keeping the executive system that exists in our 1889 Constitution is like flock shooting. The voter goes in and pushes a lot of things, scatter gun fashion, and doesn't really understand what he's doing. There is a lot of confusion. Does this make for accountability'? I don't think so. That is all I had to say at this time Mr. President.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, iembers of the committee, when this Convention ecided to be nonpartisan, I didn't really believe , hut I'll have to admit that when a Democrat 'om Butte gets up to support Mrs. Babcock, the 'ife of the ex-Republican Governor, and Mr. Wil- on, the dyed-in-the-wool conservative Republican 'om his area and goes against his good friend, Ir. Joyce. it's getting to be kind of bipartisan any- ow. (Laughter) I speak on this only because I feel) strongly. I wholeheartedly agree with the com- iittee and particularly Mr. Roeder and his excel- ent work. We have to have a strong Executive; that 'xecutive must be the Governor; he must run the tate; he must be responsible to the voters. If he oesn't do a job, out he goes: if he does a good job, eep him. However, there is no need to disenfran- hise these other offices. He doesn't talk about the State Treasurer; he can't run again. But we'll talk bout Mr. Omholt who I happen to think, even hough he is a Republican. is a fine. outstanding ublic servant. Now, when he does a good job, I 'ant to be able to go in there and vote for him; and 'hen he does a poor job, I want to go in there and ote against him. And I think that's the right, you now (Inaudible)...I don't know if I should tell you, ut I'm Irish, and when my forebearers came over rom this country they didn't have any vote. And if ny father. who's in his grave, and my grandfather. vho's in his grave, knew that I had anything to do vith taking away the people's vote in any particu- ar, they'd roll over in those graves; and I'm not bout to do so. And 1 urge you not to do so. Now, if I iad the advantage of Mr. Murray and had that hone of his and was in the party that he's in, I'd traighten this whole thing out. I'd call the White House and I'd get Dick on the phone and I'd say, 'Dick, we're having a little trouble with people ver here. They don't think it's important whether ve retain our vote with these public officials." low about getting everyone down for about a 10- ninute check down at the Bureau of Internal Reve- ue, because you go down to that Bureau of In- ernal Revenue and have to deal with these en- renched bureaucrats and you'd come back here, nd you not only would retain the constitutional offices we have, but you would put the janitors in he Constitution. Because this vote is a precious hing, and once we start appointing these offices lown here, you're going to get ignored because hey're not going to get fired. All we can do is go to he Governor to complain about getting inaction nd he's too busy. I don't want these people in power and I don't want them to have big jobs, but they're going to have ministerial jobs and I want them kept in there so we can vote. Now, there's one more thing that I would alot sooner say in execu- tive session or in a caucus, but we're not going to have an executive session and we're not going to have a caucus, so I think it's germane to the sub- ject and I think it's got to be said. I've heard dele- gates say that we've been brought here to write a pure Constitution; I hear delegates say we've been brought here to write ii brief Constitution. This is no good because it's brief. Now, I had been under the impression that I was brought here to write a better Constitution. But the second thing is real important. was we came here to write a better Con- stitution that must be accepted by the voters. and WE cannot continually throw away votes. Now, Mr. Roeder—fine student of government—I appre- ciate his feelings on this matter, but I'm also a student of government on the practical level, and I know what officeholders can do when their jobs are in danger. Now, Mr. Joyce makes the proposi- tion that we're not abolishing these offices. No, we're not abolishing anything but we take out the State Auditor, we take out the State Treasurer, we take out the Superintendent of Schools; eve" though it's still in there it's going to be appointed if the Legislature so decides. We take those out. What do you think those officeholders feel about it? What does the State Treasurer think about it? What does the State Auditor? And, particularly, what do their friends think about it? Now, the principal people on this committee-that is, as Chairman and Vice-chairman-one is a Democrat, the Chair- ma"; one is a Republican, the Vice-chairman-and I know their motives are for a better Executive branch. But what does it look like? We're going to knock out the State Treasurer-he's a Republican; we're going to knock out the State Auditor-he's a Republican. I'm not going to be able to talk to all these Republicans and explain we're just writing a better form of government. Hut there's going to be a lot of Republicans in this state that are going to feel, by gosh. those Democrats—58 Democrats— got together and they're wiping out all the Republican offices. Now. this can cost us a lot of votes and don't you kid yourself. And if Mr. Roeder were to think that this is an idle threat about these things, I want to remind this Convention, there were 2400 citizen suggestions—2400 citizen sug- gestions come in here against the abolition of cer- tain offices. Now. I was on the Judicial Committee --we got a ton of them about the J.P.: we got a ton of them about the Clerk of the Court. And those are popular people and don't think they won't go out to

kill this Convention if they can. And don't think they're not going to be effective because those 2400 people, if they've just got 10 friends, and most of them have that many relatives-but (Laughter) if they just got 10 friends, that's 24,000 votes. I had the Legislative Assistant look up the other day. As near as I can see so far, this Convention has cost the voters of Montana over 1,300,000 votes. Everyone talks about the big margin the Convention won on. It did win by a big margin. There was 133,482 for; 71,683 against, making a majority of 61,839. But we only have to lose 31,000 votes and this is gone. We can come back with the best Convention in the world and I don't know if you people have been going home on weekends-most of you, I suppose, aren't as close as I am. But I'll tell you what I'm getting when I'm home, and I'm getting, "What's going on over there?" And I'm telling you, WC come out with the best document in the world, I have great fears we're not going to be able to sell this to the voters, and it isn't only having a better Constitution, it's having a better Constitution that people will accept. And that's our job and we've got to do it; and I sincerely suggest this Executive Department isn't going to be affected one way oranotherifweputthescpeoplebackin, but it is going to be seriously hurt in the vote if we take them out. And I seriously urge that this isn't a matter of going against the committee, this is a matter of practical politics. Let's not make any unnecessary enemies. Let's not cost ourself any votes by unnecessarily throwing people out of jobs, because that's the way they're going to treat it. I join with Mr. Wilson and Mrs. Babcock in urging you to put these offices back in and make them all elective.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I would like to ask for some clarification. We are now discussing Article I, Section 1 of the minority report, correct?

CHAIRMAN GRAYBILL: Right.

DELEGATE HARBAUGH: And the only difference between this article and the majority article is the addition of the two officers, State Auditor and State Treasurer.

CHAIRMAN GRAYBILL: Right.

DELEGATE HARBAUGH: Now, I would assume that the discussion ought to center then on those two officials at this point. I have an amendment that I would like to offer but it does not pertain to either of those offices, and m question is at what point should—

CHAIRMAN GRAYBILL: Well, Mr. Harbaugh, if the minority report prevails then you'l have a chance to amend it again by taking out th one you want to take out, so I would think it's no particularly germane now.

DELEGATE HARBAUGH: Right. Thanl you.

CHAIRMAN GRAYBILL: I'd like t decide whether or not we want to put those two in Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman I rise to support the minority report. Each time i this Convention, I'm going to vote to retain th existing offices listed in the Constitution for on reason and one reason only. I believe we're here t strengthen government, to bring it closer to th people, and every time you abolish their right o don't protect it in the Constitution to continue thi voting classification, I believe you are takin democracy just one step away from the people. I'v known a lot of politicians, and personally I hav more faith in the electorate than the appointin system. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, would just like to say that I did campaign on short ballot. When I went back to Great Falls thi last weekend I talked to a number of people an this was still their opinion, that this was a goo idea. I would just like to say that most of th duties of the two officials, the Auditor and Treas urer, that are mentioned in the Constitutio are prescribed by statute. The Auditor does nc audit, and the Treasurer doesn't really hold th treasures in his hand. I feel that just because the have been in the Constitution since 1889, thatthi is not necessarily a reason to continue their exi tence. We have had a great number of people com before us and I would say that the-1 cannot fe like some of my colleagues do about the appointe officials. Those that I have seen coming before us have been very much impressed with. I feel tha they are doing quite a masterful job in th different places that they are. Their knowledge c the scope of their jobs is quite great. They do nc fear for their jobs. They do not make rubber stam decisions. They're qualified and they're dedicate to doing the best job that they can; and I feel tha there are some cases-granted, there is politic:

expediency that is important and I am not one to not recognize that-hut I do feel that I should have my say at this time and I feel that the two offices should be deleted from the Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, I'm also a member of one of those four people who fought in the committee for the short ballot, and since most of you were not in that committee room for those long weeks of interviewing, I think I'd like to share with you just a bit of some of the things we saw. I realize the position of' Delegate Erdmann or Delegate Hollandin this matter of the vote, and that's why I think maybe our argument has changed from when we left the Legislative article. We talked about the Legislature. There were some emotional moments, but it was just a matter pretty much of the organization. Here we get to a matter of philosophy really, the vote, and the opposition is on that subject, and I think Mr. Wilson probably summarized it very well when he said that we were defranchising the electorate. Those who spoke to us I think basically, in talking about the vote, said that it removed these people from politics. I found that hard to see. It also made them responsible to the people. I found that hard to see, too, because of the fact that many of these jobs were not in the light of day, so you could never really tell whether they did their job. I could vote for a lifetime and not know whether the Auditor did a good job or not unless there was some big public scandal. So my judgment in that matter was pretty much hearsay and I got the distinct impression when he said, "responsible to the people," that that got so diffused out there that he really had no boss, and that was able to operate on his own. I wondered if that vote really makes people responsible like they say. We got the other impression that there are various organizational models that we have to deal with. Our state government, the original Constitution, was put forward at a time when the county commissioner model was pretty much in vogue. That if, because of distances and because of the removal from government, you got three or four people who you elected and who were there to watch each other, you could go back to the ranch and pretty well make sure that nothing too much happened, tricky or dishonest, and therefore you could be sure that your government was under control. But we have some new models today. Certainly business gives us a model where you have a President who hires people, who serve at the pleasure of the President; and business gives us some very direct executive models that we don't find in state government. You also find on the national level the cabinet model where the President is elected by the people and then chooses the very best people he can find to serve the various positions and they're directly responsible to him. I think we have a choice here, of whether we're going to stay with the county commissioner model or look real honestly at some of the new models that our modern times give us. I remember one of the high points in the interviews with the state officials. I'd kind of like to describe it to you. It's one of our well known and a man that's been elected for many, many terms-a very popular figure-and I must say he does a good job at the job he does. The question came out someplace as it went around the table, "How would you like to-or what would you do to improve your department?" And he said, "If you gave me free reins to improve my department", he said, "I would go out and find the very hest people I could to come into my office and serve in the very best way possible and to he responsible directly to me." And yet it was the very method he didn't want to work under himself. He wanted, as he said, to be voted upon and to be directly responsible to the people. I got the distinct impression many times in our interviews that when you say that, when you're responsible to everybody, it ends up by being responsible to nobody. Without going too long here, I think there's another impression I had that you should be aware of, for what it's worth, maybe in this question or some other question. Since Executive Reorganization and the 20 department model that has been mandated by the people, to see that organization stand right alongside state-elected officials, I got the distinct impression that we now have in the State of Montana two governments: one of appointed officials or hired officials or whatever you want to call them. who are single department heads of various departments of the state government, who I got the distinct impression were doing excellent jobs, were responsible to the person who hired them, and there was a definite professional expertise in what they were doing:. In interviewing the elected officials, by and large, I had a very opposite impression and that is that most of these through the years have been relegated to ministerial tasks. Who are elected but have, by what they're doing, have no real way to be responsive to the voters and are put in pretty much year after year on a record of a good job done, but a record of a job that doesn't have to be elected to be responsive to the people. There are some, I guess some terms used in talking about

this executive unity that should be important for us. There is. first of all. the words. "multiheaded." Well. sec. when you elect people, you make them separate heads of things and you've a multi-headed Executive Department; and I wonder who ends up being the head. I mea", do you really have a Governor who is the head of the state executive. You also have the other word, and all these are explosive words, "the watchdog." We need watchdogs in government. I wonder if we need 8 or 9 or 10 watchdogs, all watching each other. to run a state government. And finally you have the word "buck-passing", and that can happen so easily when you have multiheaded business. We talked about the people's advocate this morning, that whole difficulty to finding who really is responsible. I am very impressed by the words of Governor Joseph Dixon some 50 years ago and it just summarizes, I think, the position that may not be the most popular, it may have the problem of how the voters will feel about defranchised. But Governor Dixon said, "Let us nominate and elect the chief executive of the state, then give him full power to name his assistants in administering the various departments of the state government, and we will know exactly where to place our finger in locating blame or praise."

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I rise in support of the minority report and I'll have to agree with Delegate Holland completely. He expressed all of this much better than I could. Now. he comes from an area and he represents a segment of Montana completely different from what I do, but I find that the reaction in my part of Montana from the people is exactly the same that Delegate Holland has: that they do want to elect these people. And therefore, I must support the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. President, my little granddaughter sent me for Christmas this "Love America," and I gave it to Charley Mahoney and it did him a lot of good, I'm sure. And I wish that I could've had one for every delegate because Charley looks at this and he turns it-keeps it up or else he turns it down when he gets mad. Hut I was one of the four, and feel constrained to speak at this time and I'll try to make it brief in-according with your usual admonition. But I want to tell you one thing about our committee report and that is, there's a togetherness about it, even with the minority. We have achieved, I think, for the executive power real executive responsibility. We have placed-we haven't done it alone, it was done by the people when they adopted the reorganization amendment and the last Legislature implemented it and have it in the 20 department program. But, we do have what I would call a hodgepodge of executive confusion in the article, and some of us were of the opinion that the Executive article should just list the Governor and the Lieutenant Governor. We did make a practical compromise in arriving at our report when we left the Secretary of State and the Attorney General in there, but we haven't, by any means, abolished the office of Auditor and State Treasurer, or with regard to the state Superintendent of Public Instruction. But I think that I, in the course of the time that I've been newspapering and in Montana, that I've had a chance to know every Governor and talked with him and have interviewed him in the last 50 years. And one of the frustrating things about Governors has been that they had the executive power as written into the Constitution, that the Governor shall be the Chief Executive officer of the state, but they couldn't execute that power by reason of some hamstring situations that developed. As a result of the work of the Legislative Councils down through the gears and the reorganization program. much of that now has been concentrated in the Governor's hands, and I think that this article will implement that to a great extent.

CHAIRMAN GRAYBILL: Mr. Woodmansey—oh, excuse me.
Mr. Martin.

DELEGATE MARTIN: I'll get my breath and start all over again. (Laughter)

CHAIRMAN GRAYBILL: Okay.

DELEGATE MARTIN: I think that the committee has done its level best to come up with a proper solution on this program, but we did recognize the right of anyone who had a division of opinion of it to express themselves in the minority report. At one time it looked like that they needed three for a minority report, and I at that time had indicated that eve" though I disagreed with the minority, I would sign the report in order that they would have a" opportunity to present their view to the 100 delegates. We have only a few differences of opinion and I think that most of the conversation that we will have will come in this first article, and that's the

reason why all of us wanted to have a little hit of our say. We'll have some other ideas as some of these other sections come up. but I do think that, regardless of what happens, we have developed an Executive article which will be a good improvement. And at the same time, if we can provide a strong Executive and a strong Legislature to be a check and balance, I think we will have achieved a great deal for a better Constitution for all of Montana.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: We've heard some comments about power that needed to be in the Executive branch of government, and with state reorganization we've placed tremendous power here. And there've been comments about how well this has worked, and I think it's easy to say it's worked well, and it's worked only less than a year, or a little-or about that. I think we have maintained the offices that we've had over a long period of time. I believe they're necessary and I would hate to go back and try to convince the people I represent that a change is necessary. I have had no talk from the people that I work with and live with that they want a change, and I will find it very difficult to convince them to vote for a change such as this. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I'd like to make a few comments in response here. It is very easy to wave the flag of "let the voters vote" and I think other things being equal, no doubt anyone would say. "Yes, I'd rather vote, than no, I would rather not." Hut the voters are also people who arc taxpayers and everyday citizens of this state, and there are some more fundamental feelings that I think they also have which have already been manifested. And the purposeof my few remarks here is to remind the delegates to think of those. as well as the more flamboyant issue of "Shall we let a voter vote." The reorganization amendment was voted on by the people 2 years ago and I see no way to interpret the significance of that favorable vote except that it means the people desire efficiency and economy in their government, that reorganization was a way to get it out of the fragmented constitutional establishment that we had, and that therefore the Constitution had better he amended so that we could have efficiency anti economy in reorganization. Now, that is a very loud, clear voice from the voter, I think. If you are wondering whether the voter is worrying about his tax expense, just look at the fate of school bond issues and other kinds of governmental bond issues around the state in the last 2 or 3 years. Are the people concerned about economy and expense and the rising taxes? Indeed. They're perfectly willing to cut down the school, or the special levy, or the new improvement of some kind, just because it costs too much. Now, translate that to the problem we had in the state government. I suspect that if you said to some of these voters that these people are describing:, now, do you want to have a vote or do you want to have a more economical government that maybe can reduce these rising taxes for you a little, then I suspect they'd say, we'd rather not have it quite so expensive. Now, the Executive Committee undertook to keep these considerations in mind as well as the simple matter of popularity in voting for names. And I want to point out that the trends around the land are not in favor of more and more voting for mow and more officials. but arc in the opposite direction. We were all, during the campaign, furnished with the attitude and the opinions formed by the League of Women Voters by their researches in this field. They referred us to quite a few authorities from elsewhere, showing that, in fact and in truth, the trend across the land is toward centralization and reducing the fragmentation of the old fashioned state governments rather than otherwise. The model state Constitution provided an example of this but we have a couple of examples that are fairly close at home that I think should be ofinterest to the group. One of' them is the fact that in January of 1972, the Montana YMCA youth and government group met, I think. in Lewistown and formulated a state Constitution. And I was really both satisfied and happy to find that its Executive article corresponds exactly to the one that is in the majority report here. So. ii' we're talking about the popularity of this at the polls, the younger generation which would not be much beyond those who composed this thing, might say, "Well, they did an efficient job, they were on the hall." I notice also that the North Dakota Constitution has exactly the same as we have proposed here, save and except that they include three public service commissioners which have been a statutory office in Montana for a great many years. So, it seems very clear that we, in this majority proposal, are not swimming against the trend. And, then, I just do have to say a word about Mr. Holland's uncle. I'm quite sure that he doesn't need to experience any neces-

sity for turning over in his grave because we have not eliminated the offices, and if the people want the people's vote in all the years to come, then the people's representatives only have to do the one simple thing of not repealing the statutory office of State Treasurer and State Auditor. That's all that is involved, and all these flag waving arguments made now can be made every 2 years at the Legislature with equal effectiveness; and those offices will retain in office and the people can vote for them as much as they want.. The point about the mutter is that in the fluidity of this field of finance and recordkeeping and what-not, as it is now, we just think it isn't smart constitutional draftsmanship to lock those positions into the Constitution so that they, for the next 80 years, will remain as they have for the last 80, during most of which time they did very little of the duties that are supposedly to be performed by those offices. The State Auditor, more than anything else, is the commissioner of insurance. He's not an auditor at all. 1 think that's sufficient. I was going to make a little suggestion about our concern over the popularity of this Constitution back home. I appreciate very much Mr. Holland's concern on that subject. I shared it last night and did this morning and do now, but I think it is more applicable to what we did to the Legislature then as what we may do to the Executive Article.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: (Inaudible)...the word now seems to be a point. It seems that we're told almost daily that we're really not qualified to vote. Wc tell people this all the time--we're not qualified. Maybe some of them weren't when they look at some that they sent. I don't know. (Laughter) I would like to assure Delegate Arbanas and the lady from Great Falls, Mrs. Warden, that not everybody from Great Falls share your feelings. Several weeks ago we had an executive public hearing and this lady brought up the fact that she would never vote to give up her right to vote. I feel the same way. I'll never give up my right, to vote today, or I won't give it up to vote in June when I vote on this thing. I would like to say that I'd like to support the minority report. Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I, too, rise in support of the minority proposal, and I do so on the principle that unless a change in our present Constitution will work a substantial benefit, I will vote against it; and I would do so on the premise that every change we make here is going to cost us some votes unless it does work a substantial improvement. And 1 fail to see how appointing a Treasurer and appointing an Auditor is going to strengthen the Executive. Both of these are ministerial positions. They have absolutely nothing to do with executive decisions. If we were to appoint the Attorney General, of course, that would be a different proposition entirely. There is an office that does have considerable executive swing; and if he and the Governor-or, rather, if he were appointed by the Governor then you would, indeed, increase the executive power of our Governor. But under the present situation, we would run a considerable danger and work no appreciable advantage in our present system. There's going to be a lot of people that look at just these two offices and I refer to the many, many insurance men around the state. They want to see an elected Auditor. And if this Constitution goes to the people in a block on most of these provisions. with a few of them set aside for separate vote, we're going to keep accumulating "No" votes on things that are very minor in nature. I submit the best way to do this is to suggest that perhaps we've done the majority of our work in strengthening the Legislature. There will be future amendments to our Constitution and these minor things can be fed to the people from time to time, one at a time. The matter of the appointment or the election, for example, of the Treasurer or the Auditor. And over the next decade, these minor little things that might cost us votes when viewed as a whole, can be considered separately by the people and the Constitution strengthened thereby.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, we're all concerned about making some change or not making some change with respect to the rights of the people, and I wonder if everyone fully understands the service that the State Auditor is providing the citizens of the State of Montana. We want a peoples' advocate, we want a consumers' protector. With respect to the largest industry that has effect upon the State of Montana, the insurance industry, the State Auditor is doing precisely that. He is the commissioner of insurance and his title may well be misleading, but when a citizen has a complaint with respect to the public policy of this state as it affects the insurance industry, the State Auditor, as the commissioner of insurance, is the protector of the people. And he does that job and he does it well, and he does it because he knows that he must

satisfy the citizen, and that if he continues to satisfy the citizen in watching over that particular industry, that he's going Lo be returned to office. He's very responsible to the people now and he's responsible because he's selected by the people. And I submit that we should maintain that high degree of responsibility by making sure that the people continue to select their protector in that most important area of everyday life. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman, members of the Convention. I am a member of the Executive Committee and was unavoidably absent at the time the committees prepared the two reports, so my signature does not appear on either one. I rise now to support the minority report. I could very well have signed either committee report, certainly, with the qualifying language that both contain. And I could have, from a theoretical point of view, joined with those who preferred a very short ballot. In what we call political expediency, as though it were a dirty word, I feel that I would have and I do now support the election as constitutional officers of all the members named in the present Constitution. I regret, frankly, that this includes particularly, the State Treasurer, because I do believe that that should certainly not be a constitutionally elective office. And, I will not go into all of the ramifications of the lines of thought. I'm sure we've all become very fully aware again that things are not black and white for us and they're not black and white individually or collectively. But we have to finally make a decision here. The office of Auditor is one in which I am particularly interested, and hopefully you all have on your desks and may have had a chance to see a proposed amendment which I will discuss later which would strengthen the office of Auditor. I want to call your attention to it just that much now so that in your deliberations as to whether or not to retain the office you will realize that it could become somewhat different from what it has been and is today. But, in all events, somewhat in the line of what Mr. Garlington spoke the other day of trying to keep some principles in mind, I would like to offer this for your contemplation now because I feel it bears on the decision we're going to make. Delegate Roeder pointed out that WC may be diffusing--was the word he used-the executive power, and he feels that this is an error. Yet. in the name of expediency, I feel, he did not try to eliminate some of the offices that he perhaps would've preferred to see eliminated as elective constitutional offices. And in that same general light, I go along with that portion of the majority report and I still support the minority. But, I wish to point out, we do diffuse the legislative power if we use two houses. We do diffuse the executive power if WC have the people elect many different individuals to carry out certain functions of government. But this is a question for the people to decide. I do not feel we should deprive them of' that opportunity and even though I might feel differently than a majority of the people in the state on this, I would support their opportunity to operate the democracy based upon the beliefs that they have. I believe that the Executive and Legislative branches of government are no longer as much of a check and balance upon themselves as they were intended to he. I think this is a very important thing. They have now become much entwined and they both actually make laws now. Even the Judiciary makes laws now, in a sense. This has occurred due to the general fact that government now is active in meeting new needs and demands of its citizens and as a result, the Legislative branch is now primarily a review board. It merely reacts to Executive proposals, and it can do little more over the long haul. This leads to this melding of the Executive and Legislative branches. The role of the federal government and of local government also has been pushing us into this direction of a type of partnership with the state Executive and the state Legislative branches, and I can assure you that the Executive is the senior partner. The consolidation of our agencies into "super agencies" is going to speed this along further, and the Legislative branches and the Executive branches are going to be removed farther and farther from the people. In discussing this, I am, in a sense, laying the groundwork for the expansion of the office of Auditor which I believe is an essential, I believe just as essential as the office of Governor. We are abolishing in the majority report the State Board of Examiners, the office of State Examiner and the State Auditor. What is left? Nothing in the Executive branch of government or in our Constitution which would deal with the question of examining, auditing. I do not believe that the people in Montana are going to be favorably impressed by the elimination of the safeguards of having some of that material actually in the Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. President, I rise in opposition to the majority report on one condi-

tion, and I support the minority report for this reason. If the committee-and they've done a good job, I want you to know that, in my opinion-had they wanted to strengthen the government-the Governor's office and the hands of the Governor in the Executive branch, it seems to me that in the two proposals all we're doing is pulling a couple of feathers out of the chicken. Now, when-if you were going-1 would have gone along with the majority report had there been an effort to go beyond-not go beyond putting the Governor and the Lieutenant Governor on one ticket. But as long as the committee saw fit to include the Secretary of State, the Attorney General, the Superintendent of Public Instruction, I have my doubts that we have strengthened the government at any great degree. Now, when it comes to the State Auditor, I'm in full accord that the State Auditor is going to be a much more important office than it has been in the past and I would strongly urge that we leave the State Auditor and the State Treasurer in the Constitution if we are going to leave the other major areas of state government as in the majority report. Now, if you're going to really strengthen the hand of the Governor, it seems to me that the only quarrels that I've seen in any accounts of government has been where the Attorney General has had some differences. The Secretary of State has had very little differences. I cannot see in any part of this where you have done anything in my opinon that strengthens the hand of the Governor; if you go that far, I would have supported wholeheartedly if you had stopped when the Executive Department with the Governor and the Lieutenant Governor running as a team. From there on, I cannot see that the proposal does much for strengthening the hand of the Governor. These other two offices are not something that has any particular influence on the Governor's decisions. They are the two offices that I, as an individual in the State of Montana as a voter-they are the two offices, especially the Auditor, that I am concerned looking out for me. I would support the minority report.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, I stand in favor of the minority report and in opposition to the majority report. At this point, I'd like to make a few comments, if I may, about one specific aspect of the majority report that needs a little bit looking into, I think, and it concerns the election or appointment of the state superintendent.

CHAIRMAN GRAYBILL: You will be out of order on that until we get to the section that talks about her appointment. This is just whether or not she's a constitutional officer, or he.

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, I rise in opposition to the minority report. It seems that most of the statements that have been made in support of the minority report have indicated that while the office of Auditor and the office of Treasurer really do not do anything, we really ought to keep them to give people a chance to vote on them. I suggest that what you're really doing by trying to give people the opportunity to vote on people that really don't do anything, you're really pulling the wool over the eyes of the people. Just to admit to yourselves that the people of Montana want to vote for someone that we have decided-the committee has decided in the majority report and the research booklet on the Executive branch clearly goes through the activities of the Auditor and the Treasurer, indicates that they do not perform any constitutional function; indicates that the functions that they were given have been usurped by the Legislative Council and the legislative post-audit, I think is really in essence a defeat of your argument. The people should have the right to vote, yet they should have the right to vote for people that don't really do anything. Give the people of Montana credit for having enough sense to realize that they don't really want to vote for someone that you've decided doesn't really perform an essential service.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise in support of the minority plank and also to make two statements. I think that maybe we should make a little something clear here. Mr. Garlington stated, number one, that the taxpayers would of course feel grateful to us if we eliminate these two jobs. But in fact, even if we do eliminate them as elective jobs, the jobs are still going to be there. Second of all, Mrs. Robinson makes the statement that these two positions, the Auditor and the Secretary of Treasury--or the Treasurer of the State of Montana, absolutely do nothing. Well, they do have functional processes. Actually many of the elected people do not always fill a constitutional role but in a way they are, and where you can divide the line between a constitu-

tional proficiency of their jobs or something else is beyond me, but I'd just like to make this clear. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Is this on? I'd just like to say that because some of these offices would not be in the Constitution doesn't mean that they will not be elected office. Not the fact that we're trying to take away the people to vote for these people, it's merely to take them out of the Constitution. It was not our purpose to make them appointive offices. It was not our idea to take the people's right to vote for them away. And I would like to say one other thing. Sometimes we can get emotionally involved in incumbents, but I would rather think that this would be several years off if this were to pass and who knows who's going to be running for these offices. It may be the incumbent but it may not be, because some of them can't succeed themselves. Thank you.

CHAIRMAN GRAYBILL: Now, the issue is on Mr. Wilson's minority report which adds the Auditor and the Treasurer to the first section of the Executive Article. If someone has something to say that hasn't been said, please rise and say it.

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I think the taxpayers are vitally interested in these two offices. They're handling the taxpayers' money and they should be directly responsible to the taxpayers. And how are they going to be that unless they have a constitutional office so you can continually vote for them?

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: I'd like to ask Delegate Robinson a question, please.

CHAIRMAN GRAYBILL: Mrs. Robinson, will you yield?

DELEGATE ROBINSON: Yes.

DELEGATE ARTZ: In your report, or arguments, you were downgrading the functions of the Auditor and that they didn't amount to much. I was wondering, have you read Delegate Felt's proposal for later that does make this a different proposition?

DELEGATE ROBINSON: Yes, I certainly did, but I was speaking in opposition to the minority report. The minority report in its original essence does not encompass the remarks of Mr. Felt. There is a distinct difference there.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, I would just like to express my appreciation to those of you who have supported the minority report. I believe in doing so that you're going to be doing what's right for Montana. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on the minority report which adds the State Auditor and the State Treasurer to Article I, Section 1, of the Executive branch.

Mr. Joyce.

DELEGATE JOYCE: I just thought that perhaps, being that I am on the majority report, I ought to be able to make a few remarks before we vote on Mr. Wilson's proposal. And because I'm a practical politician and a lawyer, I know the minority report's going to pass. It's obvious here. But let me make this point. It seems to me that most of the things that have been said on the floor today are completely beside the point. I know that makes a lot of people mad and I don't mean it personally at all. The point is simply this. We are not abolishing these offices in the Executive Article. I said that and emphasized it to begin with, but nobody believed me. Everybody says, "You are abolishing them." Even my fellow supporters on the majority report think that we should abolish them and that WC are abolishing them. We are not abolishing them. What we're talking about here, as I see it, is just an elementary rule of law which you can't convince anybody it's true but it is, and that is this-the Legislature, when we enacted Section 1 of the Legislative Article, has plenary power to enact any conceivable law that comes to their mind that can get enough votes and get through whatever houses and signed by the Governor. So, giving the Executive Article-the Legislature complete control, now what we're doing is we're limiting them and we are limiting them in the majority report to say that you can't abolish these offices that we've constitutionally required. We are saying, you may abolish these other two offices but you don't have to. Now, the point is simply this, I think. The State Auditor is all upset because he thinks he's going to lose his job and all the insurance people are all upset, but I submit that at the next session of the Legislature, the Legislature can repeal all of the duties that the

State Auditor now has. They can take away his power to be the insurance commissioner because those come to him by the virtue of the statutes. They can be taken away from him hy virtue of the statutes. The same can be said for the State Treasurer. So, all the majority report is really doing is permitting some time in the future that the Legislature may recognize the facts of life that these two offices really aren't very important anti could be done away with. Hut they don't have to and I don't think they ever probably will. But the fact of the matter is, is that all the majority report is doing is saying that it may be done and nobody wants to do it, and we aren't going to be able to, that the 20 amendments section is also a limitation on the power of the Legislature. They cannot restrict—they cannot create more than 20 bureaus under the current Constitution, but-anti it also says "The heads of those bureaus will be appointed", but it also says this-"unless otherwise provided by law", so that the Legislatureunderthe present Constitution can create 23 new elected officials if they want to and maybe it'll be desirable in the future to do so. All we're saying in the majority report is that they don't have to do so. We're leaving it up to the Legislature, and all the majority report really is doing is recognizing that we aren't abolishing the offices but we're permitting that they may be abolished in the future. So that, in adopting the minority report. we're just tying the hands, saying they can't abolish this office forever. and maybe that's the way the people want it.

CHAIRMAN GRAYBILL: Very well, the issue is on-Mr. Wilson, do you want to close?

DELEGATE WILSON: I'd like to make a few comments, Mr. President, since our esteemed Chairman had the privilege. I suggest to you delegates that we have been considering for the last few days the right of the people to vote. We've gone at great length to protect this right to see that they did have the right and the qualifications to vote. Now, who are we going to provide them to vote for'? Are we saying that we're going to give you these rights but you may only vote for two or three people who will run your state government? Again, let me say, that the elected official is responsible to the people who elected him and they can take a look at him every 2 years, every 4 years, or whatever the term is, and remove him from office or keep him there if they see fit. I think Mr. Martin emphasized more than anything the need of the people to have the right to vote for who represents them in government. The reorganizational act has placed great power in the hands of the Governor and in the future Governors that we may have. While Mr. Joyce has indicated that this could go on being elected offices. still it would be subjected to the whims and fancies of politics. By putting it in the Constitution we are protecting the right of the people that we have talked about for the last few days who have the ability to vote for the people who shall represent them in government.

CHAIRMAN GRAYBILL: The issue is on Mr. Wilson's minority report, adding "the state auditor and the state treasurer" to Section 1 of Article I, of the Executive branch.

(Delegate Roeder requested a roll call vote.)

CHAIRMAN GRAYBILL: The ballot is open. So many as are in favor, vote Aye; opposed, vote No Has every delegate voted'?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, 0.	Aye
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Absent
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown..	Nay
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Nay
Cate..	Nay
Champoux	Aye
Choate	Aye
Conover	Aye

Cross ..... Nay
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill-Chairman ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK SMITH: Mr. Chairman, 53 voting Aye, 44 voting No.

CHAIRMAN GRAYBILL: 53 votes having been cast in favor of the minority report, it has been passed. Mr. Harbaugh, do you have an amendment?

DELEGATE HARBAUGH: The Chairman has the—

CHAIRMAN GRAYBILL: Do **you** want us to read the amendment'!

DELEGATE HARBAUGH: Yes.

CHAIRMAN GRAYBILL: Mr. Harbaugh's amendment would delete "the superintendent of public instruction" from Section 1, Article I.

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I am in sympathy with what Mr. Kelleher said when we began this debate, and so I will try to present my reasons for this change as succinctly as I can. I'm not objecting to having the Superintendent of Public Instruction mentioned, per se, in the Constitution, but I would not like to see this office mentioned in conjuction with the Executive article because I don't believe this is where it belongs. I think that many of the arguments that we've heard this afternoon as we've discussed the long and the short ballot do not apply to this particular office. I think that we have pretty much agreed that education is a unique department in the State of Montana, and so for these reasons, I would like to have the Superintendent of Public

Instruction deleted. First of all, I think that certain qualifications are very essential for a person to hold this office. There is no mention at all of any qualifications other than that of a voter in the Executive article for holding the office of Superintendent of Public Instruction. I believe that if the Superintendent of Public Instruction were appointed by a board, that they could set qualifications for this office and could conduct a search for a person who was highly qualified to hold this office. If the Convention adopts the two-board proposal which is being proposed by the majority report of the Education Committee, the Superintendent of Public Instruction will serve as an administrative officer to carry out the policy of a lower board of education. Now, an elected official is responsible to the electorate and not to a policy making board; and I submit that to put the Department of Education in this sort of bind could cause all kinds of problems. Mr. Joyce stated earlier that, in reference to this office, that the relationship is unclear and I think he used the words, "mutual forebearance," is the way they have gotten along in the past. And this is because a very small portion of the time of our present Board of Education was devoted to matters of lower education over which the superintendent has supervision. So, I think that in the interest of some clarity in this situation, that it behooves us to take this office out of the Executive Department and put it in the Education article where it belongs. At the local level we elect school board trustees and they in turn select a superintendent to run our local schools and no one presumes, I'm sure, that we should elect within our local communities superintendents to run our local schools; why should we presume that we should elect a state superintendent. Election to the office of the Superintendent of Public Instruction is a very expensive proposition, and I think that it precludes the person from that office who does not have considerable financial resources or who does not have substantial backing from a political party. I took the time to do a little investigation about the expenses of running for this office. Currently, we can expect that in the next election a person who runs for this office will spend somewhere between $15,000 and $20,000 if that person expects to be elected. And judging by the trends over the past 16 years, I came to two conclusions after looking at what has happened. The first conclusion is this—that an incumbent in this office has been unseated by an opponent only by spending three times the amount of money which theincumbent spent. And the second conclusion is that there seems to be a very definite correlation between the amount of money spent and the success of a candidate. In only one instance in 16 years did a candidate lose when he spent more than his opponent and in that case the opponent was an incumbent. It's objected that the appointment of a superintendent removes the administration of education from the electorate. I wonder how closely we do want to tie this office to the electorate? The truth is that the function of the superintendent is primarily an administrative position rather than one which is of a discretionary nature. Statutes provide for almost all of the functions which the superintendent presently performs. In order for the electorate to exercise a responsible voice, I feel it should ballot only for those officers who exercise a discretionary voice rather than an administrative voice in affairs. Throughout the United States there has been a trend toward the appointment of the chief educational officer. The new Constitution which we just received on our desks a few days ago from North Dakota does not mention the superintendent in the Executive article, and has left that under the Education article. In checking the trend of the states over the past 25 years, there's been a significant change in this direction. In 1947, 31 states elected their superintendent; by 1969, only 21 states have elected superintendents. 1947, 11 states appointed the superintendent by a board; in 1972, 27 states appoint the superintendent through the board. Four of the states appoint the superintendent through the Governor. Reorganization has been mentioned. Reorganization, let's remember, was adopted by the people. The people voted on this and it seems to me that they expressed their will, that they do not want a proliferation of state government which is encouraged by the proliferation of elective offices. The superintendent's office was not included in the executive reorganization but yet we have a department of 165 staff in this, under the supervision of the Superintendent of Public Instruction. We don't elect the head of the Highway Department. We don't elect the head of many other departments, and I fail to see why this should be an elective office. Since 1947, studies authorized in this state, lest you think it is meaningless, the trend that has taken place in other states, since 1947 in this state there have been numerous studies which indicate that what we need in this state is an appointive office of education. The joint committee on state government organization in 1947 suggested that the office be omitted from the elective process. The

Peabody Report in 1958 pointed in this same direction. The Durham Report in 1958 urged appointment by the board. In 1960 a biennial report of the office of the Superintendent of Public Instruction itself warned against the hazards of election, and urged the removal of the office from partisan politics. In 1962 the Legislative Council Report urged elimination of the state superintendent as an elective office. In 1969, the constitutional revision subcommittee urged removal of the superintendent from the elective office. We say on the one hand that we don't want education to be involved, and enmeshed in politics, and on the other hand we run scared of an electorate. Let's dare to take a courageous stand when we write this Constitution and let's dare to draft our articles in accord with what we think is right, and let's not be stampeded by attempts which may be invalid to second-guess the electorate. I urge that you support this amendment.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move we stand in recess until 3:20.

CHAIRMAN GRAYBILL: Three, what?

DELEGATE ESKILDSEN: (Inaudible)

CHAIRMAN GRAYBILL: The motion's been made that we stand in recess until 3:20. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No response)

(Convention recessed at 3:05 p.m.--reconvened at 3:20 p.m.)

(Delegate Aasheim assumed Chairmanship of the Committee of the Whole.)

CHAIRMAN AASHEIM: The Convention will now be in order. The Convention is in order. The Chair recognizes Eskildsen.

DELEGATE ESKILDSEN: Mr. 'Chairman, members of the delegation. I rise at this time to inform you what we plan on doing. If we show real progress between now and 5:00—between now and 6:00, I should say, then we will adjourn. If we get bogged down, we will probably recess at 5:00 and come back at 7:30. So that'11 let you have time to make your plans for your evening meal.

CHAIRMAN AASHEIM: The Chair recognizes Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, Mr. Chairman, being that I am the Chairman of the Executive Committee and therefore the floor leader of this article, if that's proper, I resist Delegate Harbaugh's amendment for this, because I think the issue could properly be brought up squarely under Section 2. So, first of all I would request that if he would, he would withdraw the amendment and bring it up under Section 2, and I would also like to move that if he will do that, that we would pass Section 1 and take up Section 2. Then, once the Convention decides on this issue which he raises, which as I understand it is quite clearly this-he wants to have the Constitution provide that the Superintendent of Public Instruction shall be appointed. Is that correct, Delegate Harbaugh?

CHAIRMAN AASHEIM: Does Delegate Harbaugh yield?

DELEGATE HARBAUGH: Yes.

DELEGATE JOYCE: That's what you would like to see the Constitution read, is that correct, sir?

DELEGATE HARBAUGH: I would like to see-Mr. Chairman, I would like to see the superintendent appointed by the Board of Education, but I will not withdraw my motion because I believe that there's no point in it. I do not think that the superintendent should be mentioned in the Executive article.

CHAIRMAN AASHEIM: Will you please answer the question and confine yourself to the answer?

DELEGATE JOYCE: All right, well, I move then, Mr. Chairman, that we pass consideration of Section 1 with the right to go back to it and that we take up Section 2, (Inaudible)...motion for Mr. Harbaugh's motion.

CHAIRMAN AASHEIM: You have a substitute motion by Mr. Joyce to pass consideration of Section 1. As many as are in favor of the motion—

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I really don't see any point in delaying this process. I think that regardless of whether you

work through this issue on Section 1 or Section 2 makes very little difference. I would urge you to defeat this amendment so that we can-or, this motion-so that we can go ahead and discuss the issue that is before us. The same issue will be before us as we consider Section 2, and I see no point in delaying the debate on this until then.

CHAIRMAN AASHEIM: The discussion centers on the motion of Mr. Joyce to pass consideration of Section 1. Any further discussion on that motion?

Mr. Heliker.

DELEGATE HELIKER: Point of order. I don't believe that a motion to pass is a proper motion.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: (Inaudible) Chairman, the vote that we took before we recessed was on the motion by Mr. Wilson. Just exactly what was that vote for? Was that to pass— was that to adopt Section 1 under the minority report?

CLERK HANSON: It was to amend Section 1, subsection 1 so that it now reads as the minority report reads. Mr. Harbaugh then made a motion to strike the language, "superintendent of public instruction", from that and that's now the pending motion.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: Then we still are on Section 1, subsection 1, of the minority report.

DELEGATE JOYCE: (Inaudible)...Delegate Harbaugh go ahead, I'm sorry. I'll withdraw it.

CHAIRMAN AASHEIM: Mr. Joyce has withdrawn his motion so the discussion will continue on the motion by Mr. Harbaugh to delete "the superintendent of public instruction" from section 1.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I rise in opposition to Mr. Harbaugh's motion. In 15 or 20 years of school administration in the State of Montana, and successfully, I hope, I have dealt with a number of elected chief school officers, both Democrat and Republican, I have found them highly responsive to the public will, highly responsive to the public need, and all in all very capable persons. As to policy determination, this whole assembly is well aware that roughly twenty-five to thirty million dollars in federal funds come into our state each year for distribution to educational purposes and for most of these our chief school officer has jurisdiction. She has done this job remarkably well, remarkably fair, in the best interests of the people. I would also like to remind the women's lib people in our gathering that our chief school officer is the only woman in that position in the United States.

CHAIRMAN AASHEIM: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, I rise at this point in opposition to Mr. Harbaugh's amendment. The Superintendent of Public Instruction has greatresponsibilities in the management of the largest single state activity, education. This includes serving as policymaker, administrator, researcher, planner, decision-maker, evaluator, advisor, interpreter, regulator, coordinator, and leader in the innumerable matters relating to contemporary public education, She administers more than 65 state and federal programs, with a budget of over fifty million dollars annually. Approximately 165 people are employed in this office. As secretary of the Board of Education and member of the Land Board-and I want you to note that-and member and coordinator of a large number of local. state and federal programs, the superintendent plays a vital role in coordinating many levels of educational activity in the state. This office is the primary representative of education in. Montana to the Legislature. This office coordinates regional and national programs through such things as Department of HEW, BIA, OEO, and so forth. This office therefore needs the contact and mandate of the people in carrying out these very important tasks. Let's look at the elective process. Twenty states haveelected superintendents. Eleven haveelected state boards. The majority, then, of the states see the elective process as an important part of educational administration. The trend, as Mr. Harbaugh noted, is towards appointment but the situation in Montana is unique and the elective superintendent has served this state very well. The education committee voted 8 to 1 for the election of the state superintendent. Education is not a normal state function. The unique status of education and the visibility which has been accorded it clearly dictates to me the continuance

of an elective office. That status is prerequisite to the typical procedural functions of government. It provides leadership, growth, service, imagination—all of these are encouraged by the elective process: whereas, appointment tends to stifle these. The election of the superintendent means that education will continue to hold a top priority in the minds of the people. Appointment would mean that accountability for education would shift to the appointing official, rather than the superintendent, and I daresay this probably would be the Governor. The Governor could not realistically be held responsible for all the appointments he is to make, thus responsibility tends to disappear. The Governor and superintendent at the present and the proposed articles we're going to bring up in education, tend to balance one another in educational decision-making. Now, what about the candidates we've had in this state running for this office in the past and have been elected'? They have done a very good job. We have one of the best educational systems in the United States. In 1968, for example, the candidates were a legislator, a high school teacher. an associate professor at the University of Montana, an experienced public educator, and a former teacher who later returned to the University of Montana. We have had extremely well-qualified people who have served as superintendents. The residency requirement insures that superintendents that are elected will be a person—they will be first, people intimately acquainted with Montana's unique educational, social, cultural and economic conditions, and who share the aspirations of its citizens. Now, let's look at this business about politics playing a part of the process. I submit that politics plays as much or more a part in appointment as it does in election. Now, look at this business about the appointed superintendent. More than likely, she's going to be appointed by a board. Now, what's this board going to be made up of! Appointed people? Are you going to eliminate the political process there? Or, is she going to be appointed by a board that's elective? Or will she be appointed by the Governor, the most political animal in this state-I'm not referring to the present Governor--all Governors. Got to watch that one. (Laughter) I submit if it is by an elective board, this is the worst possible thing we could have, because who is going to run for that elected board'? Think of it--without pay. a statewide campaign. You're going to get people that are going to run because they're out to get someone. Or, are they being financed by someone or have enough money to finance it for themselves? But I don't think that's going to he the best way to get a superintendent. Whereas, the elective process of the state superintendent insures that the superintendent will have to keep in close contact with the people's educational desires. This is a positive aspect of the campaign process. A competent, superintendent who is elected will have an office staff. capable of running things during the superintendent's absence in a campaign. We forget about that. All right, what about her working with the Legislature? She has to do this—or he, as the case may be. An elected superintendent can approach each other-that is to say, legislators-on equal grounds, all elected officials for that matter, to represent the educational interests of the state from a position of strength. Election adds stature to the office and thus to education. Election encourages accessibility. Election encourages imagination and leadership over caution. Election removes the superintendent from the bureaucratic syndrome of excessive caution and subservience to superiors. Election has worked well in Montana. Montana has special unique needs and it has a history of successful elected superintendents and the elected superintendent is the best way for Montana. Thank you.

CHAIRMAN AASHEIM: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I rise to oppose Mr. Harbaugh's amendment, and for many of the same reasons that Mr. Champoux has given. I believe that we should maintain the state Superintendent of Public Instruction as an elected office. I think all of us in this room ran remember through the years. the 1950's and the 1960's, when we have had very difficult battles between the executive leadership of the State of Montana and the state Superintendent of Public Instruction, largely over how much money was going to go to education. And I submit that if the state Superintendent of Public Instruction had been an appointed official, those battles would never have been made because they would not have lasted in those positions: they would have been subservient either to an appointed board or to the elected Governor of the State of Montana. I think that an elected official, or an elected state Superintendent of Public Instruction is a highly visible person who must answer to the people. There's no other job in the State of Montana, in state government, I think, that handles a more important task for our state than the state superintendent in the instruction of our children and in the laying down the guidelines, the

handling of all the enormous amounts of money that goes through the state superintendent's office, and setting the kind of education that we want in this state. And I've heard it already said in this assembly many times that we do have a fine educational system in the State of Montana. I believe that. And this has happened under elected state Superintendents of Public Instruction. I think also-1 have an amendment I want to make myself a little later in case Mr. Harbaugh's motion is deleted, so I shall say no more at this time. But I strongly oppose Mr. Harbaugh's amendment to delete the state superintendent as an elected official.

CHAIRMAN AASHEIM: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, and fellow delegates, after three educators, I think it's time that a noneducator arise. First of all, I'd like to rise in support of Mr. Harbaugh's motion. Secondly, I would like to ask the Chairman of the Education Committee, who has reported that their committee report has been completed to this assembly, a couple of questions which I think relate to this question of an elected superintendent. Mr. Champoux, would you yield to a question'?

DELEGATE CHAMPOUX: I will yield, Mr. Foster.

CHAIRMAN AASHEIM: Mr. Champoux, will you yield to a question?

DELEGATE CHAMPOUX: I will yield.

DELEGATE FOSTER: Mr. Champoux, in your committee report, are you going to report to this body that we retain "boards"-"board or boards"-in the Constitution for education?

DELEGATE CHAMPOUX: Mr. Foster.

CHAIRMAN AASHEIM: Mr. Champoux, will you yield to that question?

DELEGATE CHAMPOUX: Yes, I will. Is your question, now, whether we're going to have "boards"—"boards"—or is it something relative to the elective versus the appointive process? What's...(Inaudible).

CHAIRMAN AASHEIM: Mr. Foster, may I ask, does this pertain to the motion before the assembly?

DELEGATE FOSTER: Yes, it does, Mr. Chairman. The reason it pertains is because if in fact this is the only office that the Education Committee is going to recommend, it has some bearing as to whether the office is going to be elective or not.

CHAIRMAN AASHEIM: All right, you may answer if you so wish.

DELEGATE CHAMPOUX: Insofar as the Education Committee is concerned it voted 8 to 1 for the elective process. In the committee report proposal which is just coming out-it will be on your desk some time this afternoon--there will be a board, a state Board of Education with two subboards, a Board of Regents and a Board of Public Education, and the elective official is provided in there. However, it also states that the committee reserves the right to go back and rcdiscuss this if you should go for either an appointive position or the other proposal that was submitted by the Executive Committee which is an appointive-elective up to the Legislature.

DELEGATE FOSTER: Thank you, Mr. Champoux. Mr. Chairman, my point is that it's very difficult for me to see the reason for an elective state Superintendent of Public Instruction, and also constitutional board or hoards of education. When I was campaigning there was a strong sentiment in my area for nonpolitical education, if you will. People felt that the partisan issue should not enter into education. The consensus of the electorate in my area was that, in fact, we should have a large hoard or boards, whether it he one or divided into two portions, which would, in fact, have long terms and be relatively free from the political winds of Montana over short periods of time; and that, in fact, the superintendent should serve at the pleasure of that long-standing hoard. It's difficult for me to see how an elective official can work effectively, harmoniously and responsibly to a board if that board, in fact, has constitutional status. Now, I personally am not necessarily opposed to an elective superintendent but I feel that if you're going that direction then, essentially, you're making it a political office. And that superintendent should then be able to set the policies of education for the state and not be responsible to a board to override them. If you're going to have a board which is going to set the policies of education for the state, it seems inconceivable that we should elect an official who is supposed to be then responsible to the people to meet the same

need. In short, it seems to me that the basic concept of elective offices is such that if we're going to have an elected superintendent, then we're going to have conflict with boards, and I personally feel that we would be much better to leave the superintendent to serve at the pleasure of the Board of Education and, in fact, that this superintendent should be selected by that board. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. James.

DELEGATE JAMES: Mr. Chairman. we voted down a people's advocate yesterday, I believe, but wc do have a people's advocate in the state Superintendent of Education on the highest plane and sense. 'Therefore, I vote to keep this office electiveand in opposition to Mr. Harbaugh's amendment.

CHAIRMAN AASHEIM: Mr. Harrington.

DELEGATE HARRINGTON: (Inaudible)...amendment. I feel we talk about taking the state superintendent out of politics by making her appointive. I say we're going to make a political football out of her, and the past. I think, can justify this. At times when the state superintendent had to stand up for education, she did, against other outside pressures and, of course, as Mr. Blaylock has already stated, I won't go into this any further. I do feel the one way that we can preserve the education system in Montana is to elect a superintendent, and I could also like to come back to the point of Mr. Foster saying that there will be conflict between the board and the superintendent. There is a Board of Education today. There is an elected superintendent. There does not seem to be any conflict. There is not-the conflict has not come out, so I'll let my statement stand on that. Thank you.

CHAIRMAN AASHEIM: Mr. Burkhardt.

DELEGATE BURKHARDT: (Inaudible)...a member of the Education Committee, Mr. Chairman, I would rise in opposition to Mr. Harbaugh's amendment. I would support our Chairman, Rick Champoux, in much that he said. It seems to me that as we listen day after day to issues that are related to this particular matter, there were arguments that were presented on both sides of it. And it seemed that the principles involved could be argued right down to the last conclusion almost identically; and then you made a kind of an emotional leap and went with what your emotional commitment may or might not be. This is not necessarily bad. I think efficiency is one goal; I think freedom is another goal and sometimes the two come into a bit of conflict, and you need to make a judgment, a value judgment in that area. The committee chose for independence in freedom, in consistent kind of accountability, too. There's a story about a taxi driver in St. Louis who reported, as one learns much wisdom from taxi drivers, but in a conversation he said, "Sometimes you have to put aside your principles and do the right thing." Thank you. (Laughter)

CHAIRMAN AASHEIM: Mr. Noble.

DELEGATE NOBLE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Noble.

DELEGATE NOBLE: I rise in opposition to Mr. Harbaugh's motion. The committee went on record 8 to 1 against it.

CHAIRMAN AASHEIM: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman.

CHAIRMAN AASHEIM: Mrs. Cross.

DELEGATE CROSS: The Superintendent of Public Instruction has a very important post as a member of the Land Board. Now, the Land Board, as I understand it, determines what is done with the school trust lands and a great deal of money is realized from these. I would like to ask Mr. Harbaugh a question, if I may, concerningthis.

CHAIRMAN AASHEIM: Will Mr. Harbaugh yield?

DELEGATE HARBAUGH: I yield.

DELEGATE CROSS: Mr. Harbaugh, have you considered the position of the state Superintendent of Public Instruction and what it will do to her independence in making decisions on this board, and how the land would be managed under an appointive official?

DELEGATE HARBAUGH: Yes. (Laughter)

CHAIRMAN AASHEIM: Mr. Conover.

DELEGATE CONOVER: As a member of the Education Committee, I rise in opposition to Mr. Harbaugh's motion. Mr. Chairman, I would like to ask Mr. Harbaugh another question.

CHAIRMAN **AASHEIM:** Mr. Harbaugh, will you yield?

DELEGATE HARBAUGH: Yes.

DELEGATE CONOVER: Mr. Harbaugh, wouldn't—if she is appointive, wouldn't this give the power to the Governor of two votes on that Land Board?

DELEGATE HARBAUGH: No.

DELEGATE CONOVER: How do you arrive at that?

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Conover.

DELEGATE HARBAUGH: In the first place, I would not propose to have the superintendent appointed by the Governor. I would propose that the superintendent be appointed by the Board of Education. That would be taken care of under the Education Article. The Land Board at present is made up of four persons, three of those persons would be elective and the superintendent would be appointed.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Conover.

DELEGATE CONOVER: We went in some lengthy discussion on our Land Board. Actually, we took one off, then we put him back on, and I want to say to you that our school lands, as I call them, and you call them public-private lands, is very sacred to our state. We are one of the two states left in the nation who has reserved all of our school lands and I think we better take a look at this, and I'm proud that we have reserved them. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I want to ask you guys to case up on my friend, Gene Harbaugh. I think it's perfectly apparent that his is the only voice raised in his own behalf and it's like sending in the dive bombers and the tanks and everything, when a fly swatter would do it. (Laughter) No offense, Gene. Let's just vote on this issue. I think it's pretty apparent how the house feels.

CHAIRMAN AASHEIM: Mr. Barnard, do you want the floor'? Mr. Barnard?

DELEGATE BARNARD: Mr. President-

CHAIRMAN AASHEIM: Mr.—Mr.—

DELEGATE BARNARD: I would just like to rise in opposition to Mr. Harbaugh's motion. I have been in this-in education affairs in some form or another since 1945, and even before that and I've worked with various state superintendents in educational affairs through all of that time, and I have never saw one state superintendent set aside the welfare of the school children of the State of Montana for-hecause of political issues.

CHAIRMAN AASHEIM: Miss Speer.

UNIDENTIFIED DELEGATE: Mr. Chairman.

DELEGATE SPEER: Thank you.

CHAIRMAN AASHEIM: Miss Speer has the floor.

DELEGATE SPEER: Thank you. Mr. Chairman, may I-will Mr. Champoux yield to another—

CHAIRMAN AASHEIM: Will Mr. Champoux yield?

DELEGATE CHAMPOUX: It's **always** dangerous to yield to the females in that end of the floor, but I will. (Laughter)

DELEGATE SPEER: Mr. Champoux has said that the Education Committee has in mind to bring out a proposal for a Board of Public Education and a Board of Higher Education. My question is, Mr. Champoux, what is the function as you see it then, of the Board of Public Education'? If the Superintendent of Public Instruction is elected as the chief school officer of the state of public education, what role does the board play? Does it have any function?

DELEGATE CHAMPOUX: Mr. Chairman. I don't think that's germane to the discussion at this point as whether she's to be kept in Article I.

CHAIRMAN AASHEIM: Well. the Chair will have to say he did not hear the question. But, if he does not want to answer, I guess that's his privilege, Miss Speer. But I would recommend,

Miss Speer, that you get a flag back there so we can see you. I'm sorry.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, what I would like to do is resolve this issue orderly and I want to just speak in this situation. It seems to me that there are three possibilities. Number one, to require the appointment of the superintendent; number two, to require her election; number three, to leave it to the Legislature in the future to decide between one and two. So, the question is, how are we going to meet this issue? Now, I'm disposed to vote against Mr. Harbaugh's motion to take it out and meet the question under Section 2, but he doesn't want to do it that way, so I just don't know how we can get to the issue because a vote against Mr. Harbaugh may still be for leaving it to the Legislature. So I don't know how we can vote on this thing-that'smyproblem.

CHAIRMAN AASHEIM: I believe, Mr. Joyce, we can settle it by voting.

Mr. Davis.

DELEGATE DAVIS: All I want to do is vote, too, unless someone wants to keep talking. But. I want to appeal to my fellow delegates. We've been here since noon on Section 1. You all know exactly how you're going to vote. They're going to elect the Superintendent of Schools, whether you do it tonight at 11:00 or we vote on it right now, so let's do it.

CHAIRMAN AASHEIM: The question now arises-Mr. Harbaugh, do you want to close? You may close.

DELEGATE HARBAUGH: (Inaudible) Thank you, Mr. Chairman. I guess you know how the Education Committee feels about this. I think, though, that it's important to know what the body of the Convention feels, and I'd like to make some response to some of the arguments that have been raised. First of all, it's been said that-it's been pointed out that the superintendent handles in the excess of 50 million-50 thousand dollars annually. Now, I think this is exactly one reason why we should not vest this in an official-in one official. I think that to remove this office from politics is in the best interests of the administration of those funds. Mr. Champoux admits that education is a unique function in the state. As to the question regarding the Land Board, it seems to me that that's not really an issue, whether the superintendent is elected or appointed. You will have three elected officials on the Land Board anyway. I cast no dispersion on the present superintendent. I think she has done a fine job, and I would not want this to be construed in that way. I think perhaps we are very fortunate in having had good superintendents, but there is no guarantee that we will continue to be fortunate. The point was brought out that there is no conflict at present between the superintendent and the Board of Education. There's a very obvious reason for that. They spend only about 5 percent of their time on matters of lower education, with the result that, really, the board is just a rubber stamp. And I submit to you that if you elect the superintendent, there is no point at all in having a lower Board of Education. The elective process insures that the superintendent will be in touch with the people, it is said. That's true, but I wonder. Whenever that official spends in excess of fifteen to twenty thousand dollars to be elected for the office, what sort of contact that is-if perhaps that contact might be called strings. I urge you to strike this office from the Executive Article and allow it to be written in the article on Education, under the management of education, where I think it properly belongs.

CHAIRMAN AASHEIM: The question now arises on the motion of Mr. Harbaugh to amend Section 1, subsection 1-tostrikethe words "superintendent of public instruction" from Section 1, subsection 1. As many as are in favor of the motion will say Aye.

DELEGATES: Aye.

UNIDENTIFIED DELEGATES: Roll call.

CLERK HANSON: Roll call, Mr. Chairman.

CHAIRMAN AASHEIM: I haven't seen five people stand yet.

(Delegates stood)

CHAIRMAN AASHEIM: All right, a roll call vote has been called. As many as are in favor of the motion will vote Aye on the board. As many as are opposed will vote No. Has every member voted?

(No response)

CHAIRMAN AASHEIM: Does anyone want to change his vote?

(No response)

CHAIRMAN AASHEIM: The clerk will close the ballot.

Aasheim-Chairman ..... Absent
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf. ..... Nay
Lore110 ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Absent
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Nay
Swanberg. ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay

CLERK SMITH: Mr. President, 22 voting Aye, 72 voting No.

CHAIRMAN AASHEIM: 22 having voted Aye, 72 voting No, the motion is lost. Are there any further amendments to Section 1?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, members of the Convention. For the last 3 years up until last month, our present Attorney General has been advocating appointment of the Attorney General, and during that period of time, I couldn't help but agree with him in that regard. The present situation regarding representation ofthestate legally is in a state of chaos. Many of you will recall the articles which were written earlier this year by Mr. Daniel Foley for the Gazette State Bureau, which outlined some of the many problems inherent in this situation. It is my firm belief that the Governor, as the Chief Executive officer of the State of Montana, has the right to his own legal counsel. And not only should the Attorney General be of the same political party as the Governor, but every attorney representing every agency in the state should also be of the same political party as the Governor so that the Governor can be an effective Governor. By denying the Governor this right, you deny him the right to be an effective Governor, because everywhere he turns where there is an attorney of the opposing party representing the board or agency, he is cut down. All right. The present situation is approximately this. Last year the State of Montana, in addition to the appropriation for the Attorney General's office, spent $223,000 for outside counsel to represent the Governor personally and to represent the Governor on boards. That's a lot of money. Secondly, 38 state agencies had separate counsel outside the Attorney General's office. There's no need for that. We ought to have in Montana an Attorney General that's appointed by the Governor and a staff that is adequate to serve every agency of the state government, that is responsive to that Attorney General and to the Governor. That's all the speech I'm going to make. I have a Committee of the Whole amendment which you all have on your desk which would take care of this situation. It would eliminate the Attorney General from the Executive Article, and in Section 4, subsection 4, it would provide that an Attorney General should be appointed by the Governor—

CHAIRMAN AASHEIM: Mr. Cate, would you care to make that-enter the motion now?

DELEGATE CATE: I'll enter the entire motion at this time, Mr. Chairman, but rather than myself read it, I would have the clerk read it. All right.

CHAIRMAN AASHEIM: (Inaudible).

DELEGATE CATE: I would like to finish my comment and then have him read it. All right. Section 4, subsection 4, would be amended to provide that an Attorney General should be appointed by the Governor and shall be the legal officer of the state, and he shall have such qualifications, duties and powers as may be provided by law. Mr. Chairman, I would ask that you have the clerk read the proposed amendment. Thank you.

CHAIRMAN AASHEIM: Clerk will read the amendment.

CLERK HANSON: "Mr. Chairman, I move to amend Section 1, subsection 1, page 4, of the Executive Committee proposal by deleting the following words and punctuation after the word 'state comma', 'attorney general comma'. Signed: Cate."

CHAIRMAN AASHEIM: Mr. Cate, do you want to talk on that subsection amendment, or do you want the whole thing-the whole proposal read?

DELEGATE CATE: Mr. Chairman, I think the delegates have before them the entire printed Committee of the Whole amendment. I think they can refer to it themselves. Section 1 is the first section to be dealt with by the amendment, and I do not wish to speak further on it. I would just urge this Convention to do this for the good of the people of the State of Montana. It is something that really needs to be done, and every lawyer will tell you that, if he'll tell you that in honesty. And just about every lawyer here has a conflict of interest here, including myself, because I have one law partner that represents one state agency appointed by the Governor and I have one law partner representing another state agency appointed by the Attorney General. But this is something that really needs to be done. The Governor should have his own attorney, and it ought to be the Attorney General. And we have a chance here to do something that we haven't had a chance to do in 83 years, and we ought to do it for the good of the people and the good of the legal profession in the State of Montana. Thank you.

CHAIRMAN AASHEIM: We're now talking about the amendment to subsection 1, page 4, line 9. Any further discussion?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Kelleher.

DELEGATE KELLEHER: I just call to the attention of the delegates a past political history in the state when Governor Babcock had the present Governor as Attorney General, and I ask you: if you were Governor of this state, how would you like to have as your chief legal officer a man whose primary job was to try to get your job? (Laughter) I mean, these are the realities of life. I mean, how could you accept advice from him? And now the situation is a little bit reversed. We have a Republican Attorney General and a Democratic Governor. And if we're going to be electing all these people that we really should be appointing—all the experts of political science tell us we should be appointing them. I ask you, why don't we have a state coroner? Why don't we elect the chief janitor-put him on the ballot? I mean, if you want democracy, if voting makes people-gives you kicks or something-or you'd think it does-let's elect everybody. All it's going to do is cost money and you're not getting democracy. In conclusion—I can't pass this up—if we did have the parliamentary form of government, this would be no problem. The Governor would be the Chief Executive officer, the leader of this party—

CHAIRMAN AASHEIM: Are you on—(Inaudible)-Mr. Kelleher, are you talking about subsection 1?

DELEGATE KELLEHER: I'm on the Attorney General, Mr. Chairman. He would be appointed out of this body, and that's why I support Mr. Cate's motion.

CHAIRMAN AASHEIM: Any further discussion on subsection 1, page 4?

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I'm sure Jerry would be disappointed if I didn't oppose this. I would like to not comment on the obvious inconsistency on the incumbent who has changed his position from recommending an appointed Attorney General to one elective as the field of candidates for the governorship narrow. I agree 100 percent with Mr. Cate that the Governor should have legal counsel. He should have a complete and adequate staff, including his legal counsel. However, we're talking here about the chief legal officer of the State of Montana. As a matter of principle, I cannot support changing an elective office to an appointive office. In addition, I'd like to just briefly refer to two situations in the recent past history of Montana where it has been very healthy to have had an elected Attorney General rather than an appointive one. I'm referring to a situation involving school land in the vicinity of Lincoln where the environmentalists, including myself, became quite concerned. Without discussing the merits of that controversy, I submit it would have been very unhealthy to have had an appointive Attorney General whose first allegiance was solely to the Governor, rather than anklective one who represented the interests of the people. In addition, I'll briefly refer to a situation where there was some unsalable liquor in the State of Montana that disappeared from the state warehouse. I submit that, in a situation such as that, the results might not have been quite the same had the Attorney General owed his allegiance solely to his appointor, the Governor, rather than the people of Montana. I therefore oppose the amendment and am in favor of retaining the Attorney General as an elective office.

CHAIRMAN AASHEIM: Any more discussion?

Mr. Swanberg.

DELEGATE SWANBERG: I rise in support of Delegate Cate's proposal. I do so on the basis that I believe it would greatly strengthen the Executive Department. Our present Constitution states that our Governor is the Chief Executive officer, and I submit for your consideration that that's only a half-truth. The Attorney General is also an executive officer under our practice, and we know the many times he's engaged, for example, in gambling activities and their suppression. This is an executive function. He files lawsuits that have to do with executive matters. Can you imagine a situation more uncomfortable than to have the Governor seek the advice of a Attorney General who is not friendly to his cause? I think that if these two were together, you'd see a much greatly improved Executive Department. And I wholeheartedly support this proposal.

CHAIRMAN AASHEIM: Mr. Garlington.

DELEGATE GARLINGTON: I would like, Mr. Chairman, to reiterate the views of the committee on this subject. We start out with recognition of the basic fact that the reorganization amendment already vests a great deal of concentrated executive power in the Governor. Under the 20 departments whose heads he is privileged to appoint and remove, he does have a

large concentration of that power. If he also had a personal Attorney General, the opportunity-now note this, I say opportunity-some time amongst some people-not referring to the present administration at all-the opportunity for some connivance between the Governor's office and the Attorney General's office, working in concert with this vast appointive power, seemed to us to be, from the viewpoint of theory and political science, an unhealthy condition to create. We felt, therefore, that if the Attorney General's office were in an independent position so that if someone were to find that somewhere up and down the line of the Executive branch some deviation from the faithful performance of duty was occurring, there would be a ready and available source of relief to them, and this we regard as being a proper function of the office of Attorney General, and I would want you all to consider that very closely before you've concluded to make this an appointive office. And then, as a postscript, I am amazed that there are not all these people getting up to wave the flag of allowing the voters to have their choice that we heard all the rest of the day. (Laughter)

CHAIRMAN AASHEIM: Mr. Berg.

DELEGATE BERG: Mr. Chairman, will Mr. Garlington yield to a question?

CHAIRMAN AASHEIM: -Mr. Garlington yield to a question?

DELEGATE GARLINGTON: Certainly.

DELEGATE BERG: Would you have the Governor or the Attorney General appoint counsel for the various boards of the 20 departments of government?

DELEGATE GARLINGTON: I think the law permits the Executive to do that. This would be the Governor and those boards, bureaus and commissions that are part of the Executive Department. I would not have, if I were constructing it, the Attorney General doing that. Does that answer the question?

DELEGATE BERG: Would you yield to another question?

DELEGATE GARLINGTON: Certainly will.

DELEGATE BERG: Does this eliminate the evil that Mr. Cate referred to in the present system of using private counsel for various boards?

DELEGATE GARLINGTON: No. There are-1 don't think we ought to get to" far afield on this. Ben says "the present evil." So the press has described it in some occasion, and yet I think, as a practical matter, there are many boards who get continuing service at a very relatively low cost with increasing familiarity by the lawyer they have with their affairs and better service through that system than if you had a large pool of assistant Attorney Generals from whom you picked somebody or other to serve the particular board at any time. I suspect it turns out to be a more economical form of legal service, but I don't think we ought to get into that here because, basically, what we're talking about is creating the relationship between the two most important offices in the whole Executive branch, and in theory and, I think, in practice, they should be kept apart.

CHAIRMAN AASHEIM: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I rise to oppose Mr. Cate's amendment for the main and simple reason that the Attorney General also sits on the State Land Board, and I think he should be elected.

CHAIRMAN AASHEIM: Mr. Holland,

DELEGATE HOLLAND: (Inaudible). Members of the Committee. I want to assure you that even though Mr. Woodahl is in the newspapers, when he was thinking of running for Governor, decided he'd sooner have an appointive Attorney General. And my grandfather feels the same way about the Attorney General's office, and we should elect-(Laughter)

CHAIRMAN AASHEIM: Mr. Gate-Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: I have to rise in opposition to Mr. Cate's proposal. I would submit to the rest of the delegates that we deliberated a long time in our consideraton of this matter, and we came to the conclusion that, inasmuch as the Attorney General was, under reorganization, being delegated a lot more power and we can foresee in the future where he is going to be even delegated more, we thought, in our deliberations and our examination of all the testimony that was presented to us, that he should be an elected official who is responsible to the people and not

subservient to some Governor who has appointed him and could appoint him in the future. There are a great many reasons why the Attorney General is the people's advocate that you talked about. He can and will explore any corruption or any illegal manner that is taking place in the State of Montana, both in the Executive, in the county, or in the local government. Therefore, it is the opinion-and it was the unanimous opinion-of the committee that the Attorney General be an elected official.

CHAIRMAN AASHEIM: The Chair will sit here till midnight, or stand here till midnight, if you want to belabor this any farther.

Mr. Cate, do you want to close?

DELEGATE CATE: Mr. Chairman, I'd like to point out to the committee that in their comments to the Executive Article, they state that the Attorney General prosecutes and defends all litigation in which the state is a party, that he is legal counsel to all state officers and agencies and that, in addition to being-to this, he is the legal adviser of the Governor. All of those statements are false, and everyone here knows it. That's not the truth. The system that we have now is a nice patronage system for the Attorney General, who appoints part of the attorneys representing boards, and a nice patronage system for the Governor, who appoints the rest of them. But it doesn't represent good government and it doesn't result in good government, and we have an opportunity here to do something about it. We're talking about streamlining government, making the Governor more responsible and more effective. And we can do that by giving him his true legal counsel, the Attorney General, as it is in most states, and giving him the power to appoint the staff of the Attorney General and having that staff take care of all the state agencies instead of having 38 different state agencies represented by different counsel—private counsel. That's all I have to say. Thank you.

CHAIRMAN AASHEIM: The question now arises on the motion of Mr. Cate that Section 1, subsection 1, of the Executive Committee proposal-by deleting the following words and punctuation after the word "state": "attorney general". As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The Noes have it.

Mr. Cate, do you want us to continue with the rest of it? Will you withdraw your motion?

Mr. Cate has withdrawn the rest of the motion. Are there any further amendments to Section 1 of the Executive proposal?

(No response)

CHAIRMAN AASHEIM: The question now arises on the motion of Mr. Wilson that, when this committee does arise and report, that Section 1, subsection 1, be adopted as amended. As many as are in favor of the motion will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed"

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Subsection 2-the clerk will read subsection 2.

CLERK HANSON: "Section 1, subsection 2: The superintendent of public instruction shall be the chief educational officer of the state and shall have such qualifications, duties, salary, term of office and manner of election or selection as is provided by law." Mr. Chairman, subsection 2.

CHAIRMAN AASHEIM: Mr. Blaylock.

DELEGATE RLAYLOCK: Mr. Chairman, first I'd like to ask, as a matter of parliamentary inquiry-I want to move this amendment—

CHAIRMAN AASHEIM: Mr. Blaylock, as a matter of courtesy--I didn't see Mr. Joyce standing. Would you accede to Mr. Joyce?

DELEGATE RLAYLOCK: Oh, yes.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: I move that when this committee does arise and report, after having under consideration the Executive Article, subsection 2 of Section 1, that it recommend that the same be adopted.

May I speak, Mr. Chairman?

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: I have already read what the committee had to say about the Superintendent of Public Instruction on page 15—the majority of the committee, that is. I will not read it again; I simply call that to the attention of the body, and so I move the adoption of the majority report.

CHAIRMAN AASHEIM: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, as a matter of parliamentary inquiry, would it be permissible at this time then to amend this by striking it and going ahead to make the rest of this section meet the same standards-that is, so it all goes-fits together?

CHAIRMAN AASHEIM: Will you explain what you mean by—

DELEGATE BLAYLOCK: Well, I wish to-what the intent of my move to amend is to make the state Superintendent of Public Instruction a constitutional officer that will be elected, and not leave it as it is in Section 2, where it can be as provided by law.

CHAIRMAN AASHEIM: Will you read Mr. Blaylock's motion—

DELEGATE BLAYLOCK: This is on your desks.

CHAIRMAN AASHEIM: -Mr. Clerk?

DELEGATE BLAYLOCK: It's called "amendment to the executive article."

CLERK HANSON: "Mr. Chairman, I move to amend Section 1, subsection 2, by deleting it in its entirety."

CHAIRMAN AASHEIM: All right, Mr. Clerk.

Mr. Blaylock, you will now have the floor, and maybe at this time it'd be well for you to explain more thoroughly what you're going to do if this is deleted.

DELEGATE BLAYLOCK: The intent of my motion to delete is to go ahead then through the rest of the section, removing those parts of the section which have relegated the office of state superintendent to less than an elective office-t" take those out and to reinsert words which will make it an elective constitutional office and also, at the appropriate place, to put in the words which will give the state Superintendent of Public Instruction the-to add qualifications which on— if you have this sheet, in addition to the foregoing qualifications any person to be eligible to the office of Superintendent of Public Instruction shall possess a valid Montana professional teaching certificate. So, it is my intent to—

CHAIRMAN AASHEIM: The motion now arises, then, on your motion to (Inaudible).

DELEGATE BLAYLOCK: Should I— should be the entire-all of these amendments be put in at the same time, since it is just one purpose, to make the state Superintendent of Public Instruction a constitutional officer who is elected?

CHAIRMAN AASHEIM: I believe, Mr. Blaylock, that the proper procedure will be for the discussion to center on your deletion of subsection 2, and if your motion is carried, I think they'll understand the consequences of your motion.

DELEGATE BLAYLOCK: Very well, Mr. Chairman. Then I move to delete subsection 2 of Section 1, and I'm not going to give a big speech on each one of these things. Much of what I had planned to say has already been said, and I'm well aware that the mind can endure-or the mind can absorb only what the seat can endureth, so with that, I'll close.

CHAIRMAN AASHEIM: The motion then arises on Mr. Blaylock's motion to delete subsection 2.

Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to speak against the motion. I think that it leaves us with a rather--an inflexible approach to this thing if we wanted to change in the future. I'll not belabor the point, but I would like to record my objection to what happened when I was closing on my motion previously, that there was distributed on the desk something from the AFL-CIO which was in the form of a lobby, which I think is prohibited, and I will not challenge the vote, although I think perhaps I could on that basis.

CHAIRMAN AASHEIM: Well, I think your point is well taken, Mr. Harbaugh. I think this should be cleared with the Sergeant-at-Arms, and I agree, it is in the form of a lobby, but since it's there, I guess there's nothing we can do about it.

Mr. Wilson.

DELEGATE WILSON: Mr. Chairman, I'd like to point out to Mr. Blaylock that in the minority report, I think what he is trying to cover is pretty well taken care of, outside of qualifications. If he'll turn to page 37 and read Section 2, it pretty well covers the point that Mr. Blaylock is talking about.

CHAIRMAN AASHEIM: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I ask for a point of personal privilege or parliamentary inquiry. I think it has to do with what Mr. Wilson was talking about. According to my notes, we adopted the minority report on page 37, as amended, and I have adopted on roll call by a vote of 53 to 44, and I'm wondering now if actually we aren't discussing the minority report rather than the majority report in which Mr. Blaylock's motion has reference to.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, members. The motion was made for Section 1, subsection 1, by the majority report first and then a substitute motion was offered by Mr. Wilson for Section 1, subsection 1. So, we voted on subsection 1 of the minority report. Now, we have moved on to subsection 2, and it was moved by the Chairman of the committee that we adopt subsection 2, and now we are talking about Mr. Blaylock's motion here to amend subsection 2 of the majority report at this time.

CHAIRMAN AASHEIM: Does that satisfy your opposition, Mr. Furlong?

DELEGATE FURLONG: Mr. Chairman, may I ask Mr. Wilson a question? Will he yield?

CHAIRMAN AASHEIM: Will Mr. Wilson yield?

DELEGATE WILSON: I yield.

DELEGATE FURLONG: Delegate Wilson, was that your intent, to discussjust Section 1, subsection 1, or did you move to adopt the whole minority report:'

DELEGATE WILSON: We were talking about Section 1.

DELEGATE FURLONG: Thank you.

DELEGATE WILSON: We adopted Section 1. I just want-

DELEGATE FURLONG: Mr. Chairman, I'm satisfied. Thank you.

CHAIRMAN AASHEIM: For your information, the motion was Section 1, subsection 1. The transcript says so, so the motion is now in order to continue the debate on subsection 2 and Blaylock's motion is in order.

Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, will Mr. Blaylock yield to a question?

CHAIRMAN AASHEIM: (Inaudible) yield, Mr. Blaylock?

DELEGATE BLAYLOCK: Yes.

DELEGATE DAVIS: Mr. Blaylock, if you were to withdraw your motion to delete and I were to make a substitute motion to adopt Section 2 of the minority, wouldn't we be getting the same place and be moving along better?

DELEGATE BLAYLOCK: Just a minute, Carl.

CHAIRMAN AASHEIM: Restate your question, Mr. Davis.

DELEGATE DAVIS: My question were: If he were to withdraw his motion to delete Section 2 of the majority and I were to make a substitute motion to adopt Section 2 of the minority, wouldn't we be proceeding in line with our thinking? Would you do so, please.

DELEGATE BLAYLOCK: I think so, Carl. Yes, I think we'll have to make some other amend—

CHAIRMAN AASHEIM: Let's ask questions through the Chair and—

DELEGATE BLAYLOCK: Excuse me, Mr.—

CHAIRMAN AASHEIM: Now, are we talking about subsection 2, Mr. Davis, or are you talking about Section 2?

DELEGATE DAVIS: Subsection 2 of Section 1.

CHAIRMAN AASHEIM: You're asking him to withdraw subsection 2 of Section 1—

DELEGATE BLAYLOCK: Of the majority report, Mr. Chairman.

CHAIRMAN AASHEIM: Was that—

DELEGATE BLAYLOCK: He is asking me to withdraw subsection 2 of Section 1 of the majority report, and I withdraw it. I withdraw my motion.

CHAIRMAN AASHEIM: The motion is then withdrawn.

Mr. Davis.

DELEGATE DAVIS: Mr. Blaylock having withdrawn his motion to delete subsection 2 of Section 1 of the majority report, I make a substitute motion that we adopt subsection 2 of the minority report at this time.

CHAIRMAN AASHEIM: The motion then arises on Mr. Davis' motion to adopt subsection 2 of Section 1 of the minority report.

Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson

DELEGATE WILSON: I move, as a substitute motion, that to be inclusive of Section 2, 3 and 4 of Article I on the minority report. I do this to—

CHAIRMAN AASHEIM: Will you restate that, Mr. Wilson?

DELEGATE WILSON: Pardon?

CHAIRMAN AASHEIM: Will you restate that motion, please.

DELEGATE WILSON: A substitute motion to Mr. Davis' motion that we include Section 3, Section 4 in this motion of the minority report and that we adopt the same.

CHAIRMAN AASHEIM: The motion by Mr. Wilson has the effect of amending Mr. Davis' report by adding subsections 3 and 4. Is that correct, Mr. Wilson?

DELEGATE WILSON: This is right

CHAIRMAN AASHEIM: Mr. Wilson

DELEGATE WILSON: I think this would simplify matters, avoid time-consuming debate and move us further along in our deliberations.

CHAIRMAN AASHEIM: Mr. Davis

DELEGATE DAVIS: Mr. Chairman, I would support that motion, since they are identical to the majority report, and think we could expedite the matter by voting on subsection 2, 3 and 4 and adopting them, of the minority, at this time.

CHAIRMAN AASHEIM: You know, the audio is very poor here. I don't know if it's the noise, but will you restate your motion, Mr. Davis?

DELEGATE DAVIS: I'm sorry, Mr. Chairman. I just merely said I would support Mr. Wilson's amendment to my motion that we adopt subsection 2, 3 and 4 of the minority, as they are the same as the majority.

CHAIRMAN AASHEIM: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I feel I am obliged to explain to the Convention the significance in subdivision 2 of the majority report, which would be deleted by this motion on the floor. Mrs. Colburg having run-won reelection, it probably is moot in some ways to do this, but this Constitution is supposed to live for a long time, and the majority report, under Section 1, subdivision 2, contains a flexible plan for the long-range future, and I would hope that we would not simply bypass it because of reelecting Mrs. Colburg. The fact is that the educational situation in Montana is in somewhat of a morass. We have not yet seen the report of the Education Committee, and our informal conversations with that committee indicate that it has had considerable difficulty in formulating a plan. This is because the whole educational structure has not been well set up in the past. The Board of Regents or Education, so-called, does not have very good counsel and guidance. There is considerabledoubt and ambiguity as to whether the Board rules the roost or whether the superintendent rules the roost. And that is why we reported frankly that they settle it by a system of mutual forebearance. She goes to the high school in the elementary function; the Board of Regents goes to the other: and they kind of don't-conflict. In the ongoing future it seemed to us that there might well come a time when the educational pattern in Montana ought to be under one concentrated source of authority, and that raises the question of how an appointed board and an elected official can function together. The solution that we found to it we drew from the new Constitution in the State of Illinois, and it provides that the chief educational officer can be either elected or selected by the Legis-

lature, with qualifications defined by the Legislature, and this makes it possible over the next 50 years for Montana to keep its educational pattern consistent with the current demands upon it as the years unfold. And I simply want all of you to be aware of the fact that in deleting subsection 2 of paragraph 1 of the majority report, you are destroying the element of future flexibility that it represents. And if this is what you want to do, because you're determined to elect Mrs. Colburg, then that's all right, but I would not be happy in my conscience if I did not bring this out-that here is a means of adjusting to the future that we think ought to have considerable constitutional appeal.

CHAIRMAN AASHEIM: (Inaudible).

DELEGATE FELT: Mr. Chairman, the motion to adopt subsection 2, 3 and 4 of the minority report is before us, and I rise in support. It is my recollection of our rules that we are to take these things up subsection by subsection, so that if any one member objected to dealing with subsections 2, 3 and 4 together, they could prevent it. But, unless someone does object, we treat it as a suspension of the rules, and so I will so treat it since no one has raised any objection. I believe that the question of how to handle this office, while it did not happen to meet with my own personal views, has been pretty well settled, and in the interests of moving along, I think we should accept the three subsections of the minority report, and I therefore support the motion before us.

DELEGATE CHAMPOUX: Mr. Chairman, fellow delegates. I rise in opposition to the majority report, and I'm in favor of the minority report. I stand at this point not as a dive-bomber, but as a duck. Now, we haven't had, as Mr. Garlington has-that's, I think, a personal observation-had difficulty in forming our report, as I see it. Now, leaving the election or selection process to the Legislature to provide by law, I believe, is inconsistent with the constitutional provisions accorded otherstateexecutiveofficials. Why single out this one official, with perhaps the most important job in the state. Now, the method proposed would result in enormous instability, and this is what I see as the key weak point to this whole proposition in the leadership provided for a vital state function, education. The method of selection could be altered at any time by the Legislature. Perhaps the office would be dependent on the majority one political party or another possessed in the Legislative Assembly at a given time. And I submit, in the future, if we accept this majority plan, that we're going to see time and again this office changed from elective to appointive. Can you just imagine, if you have a Republican Governor-and I'm not picking out any particular party here-if you have a Republican Governor pretty much appointing all the boards and directors with a majority of Republicans in the unicameral Legislature, and then he decides that he doesn't like the Democratic state Superintendent of Public Instruction. He goes to the Legislature, gets the appointive process, and she's out. The next time we get in, we have perhaps the opposite of that. This eventuality could be very harmful, I believe, to Montana education. Any method of selection could be provided also, if you note this majority report. We could have appointment by the Governor. Now, if we get appointment by the Governor, does she still sit in the Land Board? And somebody mentioned earlier that the Governor wouldn't have two votes. That would provide him with two votes in the Land Board. If she's appointed by the appointed state Board of Education, I submit the Governor still has two votes in that Land Board. Or is she going to be appointed by the Board of Public Education, by the Board of Higher Education, by the Legislature itself? Is that removing it from politics? What we have here, then, is a multitude of undesirable possible alternatives. Such a proposal, therefore, would place an important state function in jeopardy. It would deny education priority as an important responsibility of the state and put any elected or appointed chief state school officer in an untenable position. The proposed method would strip away certain important basic protections now provided for the people, in their interest. For instance, the state Land Board. The proposed constitutional provision does not prescribe any definite term of office either for the superintendent. At any time, then, the Legislative Assembly could change the law, thus either shortening or lengthening the term of office or providing for election or appointment. I submit that this is not flexibility for the future for the State of Montana insofar as education is concerned, but chaos.

CHAIRMAN AASHEIM: Mr. Martin.

DELEGATE MARTIN: I support the position taken by Delegate Garlington, and I would say that if we're thinking about education, the fundamental thing that we should think about is what's best for the child, not what's best for the teachers and not what's best for those in power in

the educational system, and I want to tell you that the power structure around in the Legislature in Montana not too many years ago was in the big corporations, but today the power structure rests with the educational organizations and, as indicated by this, by the AFL and CIO. I have nothing against labor and its power. nothing against the Montana Education and its power, but I would think that the time might come when WC would want to think in terms of what's best for the child and what's best for the student, rather what's best for some power organization.

CHAIRMAN AASHEIM: Anyone else want to talk on the—Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson

DELEGATE WILSON: I do not want to question the thinking of our distinguished committee members, Mr. Garlington or Mr. Martin, but if my memory serves me correct, we voted on Mr. Harbaugh's question as to whether this would be a constitutional office or not, and I think it was decided at that time that it would be a constitutional office. Therefore, I move you, Mr. President, that we should expedite things and move along and adopt the items that we have suggested in the minority report--sections.

CHAIRMAN AASHEIM: The question then arises--now you may challenge the Chair on this-but Mr. Davis made the motion to adopt subsection 2 of Section 1, amended by Mr. Wilson to adopt subsection 3 and 4. Do you wish to vote on all at the same time? Mr. Davis, is that all right with you?

DELEGATE DAVIS: Yes.

CHAIRMAN AASHEIM: The motion then arises on the original motion to adopt subsection 2, 3, 4 of Section 1 of the minority report of the Executive Committee proposal. As many as are in favor, say Aye.

DELEGATES: Aye.

DELEGATE HARLOW: Roll call

CHAIRMAN AASHEIM: A roll call vote has been requested. As many as are in favor of the motion, vote Aye on your boards. As many as are opposed will vote No.

Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone want to change his vote'!

(No response)

CHAIRMAN AASHEIM: The clerk will record the vote.

Aasheim-Chairman	Absent
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Ayr
Bates	Aye
Belcher	Aye
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Absent
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Absent
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Aye
Foster	Absent
Furlong	Aye
Garlington	Nay
Graybill	Absent
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay

Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield.	Aye
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Absent
McNeil	Aye
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Nay
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Absent
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman, 61 delegates voting Aye, 31 voting No."'

*[Voting machine record shows 32 voting No. Ed.]

CHAIRMAN AASHEIM: 61 having voted Aye. 31 having voted No, the motion has carried. Mr. Kelleher.

DELEGATE KELLEHER: I accidentally pushed Mrs. Eck's button. I did not vote on my own button, so where Mrs. Eck is on that printout would you please write in Kelleher and show Mrs. Eck as absent? (Laughter)

CHAIRMAN AASHEIM: I believe that's a penitentiary offense. (Laughter)

DELEGATE KELLEHER: Thank you.

CHAIRMAN AASHEIM: I think that this is something that we must guard against-this sort of practice. Now, I'm serious. This is absolutely forbidden in the rules. It may not be a penitentiary offense, but it's an offense against the body.

I am ready for a motion that subsection 2, 3, 4 of the minority report be adopted—

CLERK HANSON: That when this committee does arise and report.

CHAIRMAN AASHEIM: When this committee rise and report, yes.

DELEGATE BABCOCK: As a point of order, could we just take that vote over so that Mr. Kelleher could vote in his own chair?

CHAIRMAN AASHEIM: The request has been made that we cast our votes again, and I think the request shall be granted. Will you please vote from your own chair? I shall restate the motion. The motion is to adopt subsection 2, 3 and 4 of Section 1 of the minority report of the Executive Committee proposal. As many as are in favor will vote Aye on the board. and those who are opposed will vote No.

Has everyone—does anyone want to change his vote'!

(No response)

CHAIRMAN AASHEIM: The clerk will tally the vote.

Aasheim-Chairman	Absent
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Aye

Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Absent
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Absent
Furlong ..... Aye
Garlington ..... Nay
Graybill ..... Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson. R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 61 delegates voting Aye, 32 voting No.

CHAIRMAN AASHEIM: 61 having voted Aye, 32 having voted No, the motion is carried. The motion will now be accepted by the Chair that when this committee does arise and report.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I move that when this body rises to report, that it adopt the minority report of Section 1, 2, 3 and 4.

CHAIRMAN AASHEIM: You mean subsection 1, 2, 3 and 4 of' Section 1.

DELEGATE WILSON: Right.

CHAIKMAN AASHEIM: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: Motion is cm-ried. Motion is carried. The clerk will now read Section 2.

CLERK HANSON: "Section 2, Election: subsection 1: The governor, lieutenant governor, secretary of state, attorney general and the superintendent of public instruction, if his election is provided by law, shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law." Mr. Chairman, subsection 1, Section 2.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, in view of the action of the committee, I'm going to propose—what page is the minority?

CHAIRMAN AASHEIM: Page 17, Mr. Joyce.

DELEGATE JOYCE: I'm going to move that, instead of the majority report, that subsection 2 of the minority report that appears on page 37 be adopted and withdraw the majority report to subsection l-Section 2, I should say. We're on Section 2, is that right, Mr. President?

CHAIRMAN AASHEIM: That's right, you're on Section 2.

DELEGATE JOYCE: And we've read the majority report, and I therefore move to withdraw the majority report to Section 2.

CHAIRMAN AASHEIM: It has been withdrawn. And your motion then is to adopt Section 2 of the minority report'! Subsection 1 of the minority report:'

DELEGATE JOYCE: (Inaudible) 1, right.

CHAIRMAN AASHEIM: Do you want to discuss that, Mr. Joyce'! Mr. Joyce, the floor is yours.

DELEGATE JOYCE: Well, I think there should be no question on this, but there's a typo in there. What I'm talking about is that Section 2, subsection 1 of the minority report as it's written on page 37, so maybe if the clerk would read that section-instead of the majority report, if they'd read—

CHAIRMAN AASHEIM: Will the clerk wad the minority report'?

CLERK HANSON: "Section 2, Election; Sub. 1: The governor, lieutenant governor, secretary of state, attorney general, state treasurer, the superintendent of public instruction and the state auditor shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law."

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: I move that the section just read be adopted when this committee does arise and report after having it under consideration.

CHAIRMAN AASHEIM: Any discussion?
Mr. Martin.

DELEGATE: MARTIN: In order to expedite matters, would it be all right to suggest that we add subsection 2 of Section 2 and consider it at one time?

CHAIRMAN AASHEIM: Well, do you want to make the motion, Mr. Martin?

DELEGATE MARTIN: I'll so move.

CHAIRMAN AASHEIM: The motion has been made that we pass-is that in order, Mr. Murray?

DELEGATE MURRAY: (Inaudible).

CHAIRMAN AASHEIM: Well, the motion is before the house.

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: We're all ready to take the vote on Section 1. Let's take it. and then we can move right on to Section 2. We'll save time.

CHAIRMAN AASHEIM: Mr. Eskildsen,

are we—we have adopted Section 1. No? Mr. Eskildsen has the floor.

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: We are ready to vote on subsection 1 of Section 2. Now, if you just call for the vote, we'll be all set.

CHAIRMAN AASHEIM: Will you state that again?

DELEGATE ESKILDSEN: We are ready tc vote on subsection 1 of Section 2—

CHAIRMAN AASHEIM: Yes.

DELEGATE ESKILDSEN: -of the minority report.

CHAIRMAN AASHEIM: Who made the motion'!

CLERK HANSON: Mr. Joyce.

CHAIRMAN AASHEIM: Mr. Joyce has made the motion to adopt subsection 1 of Section 2 of the minority report. Ifthere's no further discussion, as many as are in favor of the motion will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Subsection 2, Mr. Clerk.

CLERK HANSON: "Subsection 2: Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or otherwise comply with nomination procedures, so that the office of governor and lieutenant governor shall be voted upon together in the primary and general elections, as provided by law." Mr. Chairman, subsection 2, Section 2.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 2. subsection 2, of the Executive Article, that the report of the-that that section as just read be adopted.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: May I speak on—there's no minority report on this. This is unanimous out of the committee. Speaking in connection with this, may I make this first observation. What we're attempting to do in subsection 2 is we're requiring the Governor and the Lieutenant Governor to run together as a team. That means that they will have to file together in the primary elections and there will be only one vote cast for the team. Then, the one who is nominated in the primary election will again run in the general election as a team, and only one vote will be permitted for the team. And we've added in there this-these words "nominating procedures", just to take care of people who file as Independents, the idea being that if somebody wants to run for Governor and Lieutenant Governor by means of an Independent, that he will also have to do the same thing. He will not have to run in the primary, of course-or they will not-but they'll have to pick up their sides when they file their petition to run as Independents. Now, the purpose of doing this, as I've explained before, is that we think by this section, this subsection, that we are permitting the Legislature to make the Lieutenant Governor a fulltime job. We're not requiring it, but we're permitting it. And we are doing this—we are allowing and requiring the people who run for this job to get together on—as a team in the primary, run in the primary, run in the general-so that we will always have a Governor and a Lieutenant Governor of the same political party. Presumably, also, we will have two who are compatible with one another and who can work together; and then later on in the article, wc provide that when that Lieutenant Governor has been elected, he will have such duties as may be prescribed by law or delegated to him by the Governor. And I urge that the majority-unanimous majority report on Section 2 be adopted.

CHAIRMAN AASHEIM: Mr. Joyce, is this correct-the minority and majority reports are identical'? Isn't that correct?

Mr. Wilson.

DELEGATE WILSON: This is correct, Mr. President. We didn't make—

CHAIRMAN AASHEIM: Do you want to speak on this, Mr. Wilson?

DELEGATE WILSON: Mr. President, we explored this pretty thoroughly in our committee,

and we felt that this wits the proper way to go. A aspirant for the Governor's office, if he chooses to select his running mate, run with him and run as a team, then we feel that the Governor-elect would then try to use this Lieutenant Governor more effectively in the office of the Governor. There was a question came up in our committee as to whether he should be pro tem of the Senate, President pro tem of the Senate. We bowed to the wishes of the Legislative Committee and did not include this in our article. I have heard considerable talk about it since. This is entirely up to the delegates here; if they wanted to make some change at this time, perhaps this would be the place to make it. We feel that two people running together-in the event that something happens to the Governor, he has in all probability picked a man who would be qualified to follow him and do-exercise the duties of the Governor. There are many things to think about when you are talking about the Lieutenant Governor. We were very fortunate in the tragedy that befell Governor Nutter, that Governor Babcock had run with the-Governor Nutter as a team—in that election. Therefore, he was more able to step into the shoes of Governor Nutter. Looking ahead into the future, these are the things that we thought might enhance the position of the Lieutenant Governor if we're required to file as a team and run together.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE: ROMNEY: Mr. Chairman, I'd like to direct a question to either Delegate Wilson or Delegate Joyce.

CHAIRMAN AASHEIM: Mr. Joyce. will you yield'!

DELEGATE ROMNEY: The question is—

DELEGATE JOYCE: I yield.

DELEGATE ROMNEY: -in case a candidate for Governor or a candidate for Lieutenant Governor did not choose to have a running mate, would he be precluded from filing as a candidate for Governor or for Lieutenant Governor? What if he couldn't get a running mate? Heorshe. (Laughter)

DELEGATE JOYCE: Well, the intent of the section is, if he can't get a running mate, that he really can't file.

DELEGATE ROMNEY: In other **words** (Inaudible). You have to have a running mate.

DELEGATE JOYCE: You have to have a running mate, yes.

DELEGATE AASHEIM: Will you please direct your questions to the Chair'!

Mr. Harper.

DELEGATE HARPER: Will Mr. Joyce yield to another question'!

CHAIRMAN AASHEIM: Will you yield, Mr. Joyce?

DELEGATE JOYCE: Yes, I will.

DELEGATE HARPER: Did the committee consider-1 started to say, doing away with the Lieutenant Governor, but that's not what I mean—with this office or the Lieutenant Governor? We've talked about the possibility of doing away with other elected offices, partly on the ground that they had work to do that wasn't really prescribed in the Constitution. It seems to me that, of all the officers we have thought about, that the Lieutenant Governor has the least to do, and we seem to be in a quandary to find a way to occupy him, whether to make him a full-time person or part-time. Did you consider leaving off the office altogether'?

DELEGATE JOYCE: We did not.

DELEGATE HARPER: That's a brief, concise answer, and I appreciate it. (Laughter)

CHAIRMAN AASHEIM: Mr. Joyce, have you answered?

DELEGATE JOYCE: Yes.

CHAIRMAN AASHEIM: All right, Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, could I ask a question of Mr. Joyce, please?

CHAIRMAN AASHEIM: Will Mr. Joyce yield?

DELEGATE JOYCE: I yield, Mr. Chairman.

DELEGATE DRISCOLL: Mr. Joyce, what happens if, between the nomination and the election, one of the team members dies'? Another catastrophy occurs"

DELEGATE JOYCE: I suppose that what would happen is that we'd have to provide by law some way to have that-one of [or] the other—

of course, if the Governor-let mestrikethat. Ifthe candidate for Governor dies, well, it's the same situation that does now. He won't be elected. (Laughter)

The second situation is, if the candidate for Lieutenant Governor dies-Mr. Chairman, if the candidate for Lieutenant Governor dies, we're going to have to provide some method to having the candidate for Governor substitute another teammate, and that may be a deficiency in the system, but it can be corrected if you just will vote whether or not you want to do it this way.

CHAIRMAN AASHEIM: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I don't see why it's necessary for the Governor and the Lieutenant Governor to run as a team in thr primary. And, in any event, after the primary. there will have been in each party a Governor and a Lieutenant Governor elected--or nominated. I should say. and from that time onward they run as a team, no matter who they are. Now, what's the matter with that?

CHAIRMAN AASHEIM: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Kamhoot.

DELEGATE KAMHOOT: I would see no need in putting them together at a later date if they didn't start out together in the primary. You would defeat the purpose of the whole act here. The purpose of it is, is to have two people that are compatible to hold these two offices as Lieutenant Governor and Governor. Now, if you went through the primary and then selected someone to put with the Governor candidate, why, of course, you wouldn't achieve this purpose at all. So, the only way it can be achieved is to have them run in the primary and then the winning pair here carry on through to general election. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Felt, did you want to speak on this?

DELEGATE FELT: No.

CHAIRMAN AASHEIM: Anyone else?
(No response)

CHAIRMAN AASHEIM: Did Mr. Joyce want to close on your motion'!

DELEGATE JOYCE: (Inaudible) Mr. Chairman, I-the idea is there before you and it's up to the delegates to decide on it. I'm not going to speak any further at length on it, other than to say that we did consider how we could make the Lieutenant Governor really a full-time job, but we couldn't have come up with any acceptable way, so that it's being left up to the Legislature; but we submit that this is-we're hopeful that the Legislature will make it a full-time job in the sense that they'll pay an adequate salary, and we're leaving that to the Legislature, and there's nothing further to be said on it, and I close.

CHAIRMAN AASHEIM: The question then arises—for what purpose do you arise, Mr. Romney.

DELEGATE: ROMNEY: I ask for a roll call and seconds, for posterity.

CHAIRMAN AASHEIM: A roll call vote has been requested. The motion then arises on the motion of Mr. Joyce. Mr. Joyce, do you want this to be the minority report or the majority report? Do you care? Adopt the sub—

DELEGATE ROMNEY: —well, I'd like it to be the majority report because I'd like to at least have a vote on the majority one time, being that it's identical to the minority. (Laughter)

CHAIRMAN AASHEIM: The motion then arises on-the question—

DELEGATE BABCOCK: I don't object to giving this to the majority. except that I think we already moved that wc were acting on the minority report.

CHAIRMAN AASHEIM: I didn't hear for sure. It's very difficult to hear up here. It really is. The question then arises on the motion of Mr. Joyce that when this committee does arise and report, after having had under consideration subsection 2 of Section 2 of the minority report of the Executive report-we'll vote Aye on the voting machine. Those opposed will vote No.

Has everyone voted?
(No response)

CHAIRMAN AASHEIM: Has everyone voted?
(No response)

CHAIRMAN AASHEIM: Does **anyone** want to change his vote?
(No response)

CHAIRMAN AASHEIM: The clerk will tally the vote.

Aasheim-Chairman ..... Absent
Anderson, J. ..... Absent
Anderson, O ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Absent
James ..... Absent
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Absent
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CHAIRMAN AASHEIM: Mr. Joyce, yes, you may explain your vote.

DELEGATE JOYCE: If you will check in the appendix, you will see that I voted No in the committee on it, but still I signed the majority

report. And I just reserve the right to be consistent. I'm glad it passed, however.

CLERK HANSON: Mr. Chairman, 70 delegates voting Aye, 15 voting No.

CHAIRMAN AASHEIM: 70 having voted Aye, 15 having voted No, the motion carries.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, members of the delegation. I move that we recess until 7:30 this day.

CHAIRMAN AASHEIM: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I'd like to rise to a point of personal privilege for just a minute. I should like to offer my apologies to this body. It was I who had distributed, upon request, this AF of L-CIO letter that went to your desks while we were voting on this matter of the state Superintendent of Public Instruction. I don't particularly apologize for the letter. I think the letter is fine. We've had lots of other things on our desks, too; but the timing was bad, and I admit it. I apologize to you, Mr. Harbaugh, and I apologize to some other people in here who have expressed their resentment to me and for whom I have a great deal of respect. Sorry.

CHAIRMAN AASHEIM: The motion now arises on Mr. Eskildsen's motion that we recess till 7:30. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?
(No response)

CHAIRMAN AASHEIM: Motion is carried.

(Committee recessed at 5:10 p.m.—reconvened at 7:40 p.m.)

CHAIRMAN AASHEIM: The Convention will be in order. We are now on Section 3, and the Chair is on page 18 of the majority report. The clerk will read Section 3.

CLERK HANSON: "Section 3, subsection 1: Any person shall be eligible to the office of governor, lieutenant governor or secretary of state if he or she is a citizen of the United States, a resident of Montana for 2 years next preceding the election, and is otherwise a qualified voter." Mr. Chairman, subsection 1.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Mr. Clerk, would you please read what I—the Section 3 that I wrote for you up there instead of that one?

CHAIRMAN AASHEIM: Will you read it, Mr. Clerk?

CLERK HANSON: "Section 3, Qualifications; sub 1: Any person shall be eligible to the office of governor, lieutenant governor, secretary of state, state treasurer and state auditor if he or she is a citizen of the United States, a resident of Montana for 2 years next preceding the election, and is otherwise eligible to hold public office."

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Could you also add in there "superintendent of public instruction"? Didn't I write that in?

CLERK HANSON: No.

DELEGATE JOYCE: Oh. Ladies and gentlemen, what I've done here in Section 3 under qualifications, I've conformed to the action of the Convention this afternoon by inserting in the majority report now "the superintendent of public instruction, the treasurer and auditor." So, if you'll turn to page 18 and simply write that in on your—under Section 3. You will see that we are being consistent, and I also have stricken the last three words on page 19, line 3, which says, "a qualified voter". Is everyone following me now? And insert in lieu thereof these words—do you want to write them?—"eligible to hold public office".

CHAIRMAN AASHEIM: Mr. Joyce, again. Will you repeat the three offices you've filled there on page 18?

DELEGATE JOYCE: Yes. "Superintendent of public instruction, state treasurer and state auditor."

CHAIRMAN AASHEIM: Mr. Joyce, you have the floor.

DELEGATE JOYCE: Now, with these amendments, we conform to what was done this afternoon by the Convention and we conform to what was done in the Election and Suffrage, and

we're making it perfectly clear that you don't have to just be a qualified voter, you have to be eligible to hold public office, and Style and Drafting can consolidate this, but by doing this now, we have drawn the issue between the majority and the minority report.

CHAIRMAN AASHEIM: Mr. Joyce, have you moved to adopt this subsection? You (Inaudible).

DELEGATE JOYCE: No. I'm going to move right now, but I'm trying to explain what we've done.

CHAIRMAN AASHEIM: All right.

DELEGATE JOYCE: We've drawn the issue between the **majority** and the minority report because the difference between the two is that the majority report requires no age qualifications and the minority does. Now, lest you think that we've deliberately omitted the Attorney General out of this section, we haven't. He's in subsection 2, so we'll come to him. So, if-1 therefore, Mr. Chairman—

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: —move that when this committee does arise and report, after having under consideration Section 3, subsection 1, of the Executive Article, as read by the clerk, that the same be adopted.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: I have—it's self-explanatory what we've done. we've eliminated any age requirement. I might say the minority report requires ages, and I think at this time they should move the minority report, and we can then debate the issue of ages.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: I move amendment to the majority report, the minority's report on qualification, found on page 38, Section 3. Would the clerk read that section please?

CLERK HANSON: "Section 3, Qualifications; sub 1 of the minority report, page 38: N" person shall be eligible to the office of governor, lieutenant governor, attorney general or superintendent of public instruction unless he has attained the age of 30 at the time of his election, nor to the office of secretary of state, state auditor. or state treasurer unless he has attained the age of 25 years. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States and have resided within the state 2 years next preceding his election." Mr. Chairman, subsection 1, Section 3, of the minority.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: Mr. President, we realize that it is unlikely that the electorate would elect an 18-year-old to these offices, but we feel strongly that the Constitution must guarantee a certain maturity as qualification for office holders. We are conscious of the increased intelligence and ability of our young people but feel confident that the majority, those with mature attitudes, would want us to require such qualifications for their own protection, to insure the dignity of the office and to provide a goal for them to strive for. In comparing Montana's present Constitution with six others, we found the states of Alaska, Michigan and New Jersey require a Governor to be at least 30 years of age; Hawaii and Puerto Rico. 35 years. They also require longer residency requirements and virtually all state constitutions require higher age qualifications for state officers than for the right to vote.

Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: I move that when this body arises to consider the minority report, that they adopt the same.

CHAIRMAN AASHEIM: Any comments? (No response)

CHAIRMAN AASHEIM: You now, members of the—

DELEGATE CAMPBELL: I'd like a roll call vote.

CHAIRMAN AASHEIM: A roll call has been requested.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would just like to say a couple of words in opposition to the minority report. As you know. in

our general qualifications, we did put a qualified voter, eligible to hold office. As you know, in the Legislative Article, we did go to a qualified voter, qualified to hold office. I think now that putting back in these artificial age barriers, which really do not guarantee any particular qualifications in the Constitution. would be highly unfair. I don't feel that the age 30 shows any particular wisdom any more than the age 60 or 18. I think we should have faith in the electorate that they will elect by the majority vote the person they feel best qualified. We have found from our Bill of Rights Committee hearings that young people have shown responsibility, enthusiasm towards the prospect of political equality. I think we in Montana have a rare opportunity in that we're one of only two states to have a Constitutional Convention after the 26th Amendment has given political equality and the right to vote to all citizens of this nation 18 years of age. I've noticed that in North Dakota they do not rquire any 25 or age 30, just going now to the age 21. I think it's highly unfair for someone who is qualified to vote and have to wait an additional 1% years to run for an office that he's voting for. I have found that this has instilled a great feeling of responsibility in young people. It's not something that they have taken lightly, and I really feel that political equality is the first plank in bridging the generation gap. and I feel that Montana can take its place along with Wyoming, who first gave women the right to vote some 45 years before the State of Montana took that step. I would oppose the minority report on the age qualifications. I think that our hearings that we've had that were called in would show that 39 out of 46 calls that we received favored allowing 18-year-olds full participation within the system indicates that the state is ready for this, so I would oppose the minority report and stand in favor of the majority report. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I rise in support of the minority report. When 1 became 21 years of age I waited quite a while before I could file for Governor, and I haven't made it yet. I don't think it's going to hurt a person to wait the 3 additional years that result from lowering the voting age from 21 to 18. I have a very high regard for the ability and dedication of the young voter. However, when it comes to occupying the position of Governor and the positions that are referred to in the minority report, I think that person needs the maturity that he will have and the education his elders will receive as he reaches it. I think we're making a very serious mistake in trying to hand everything to youth on a silver platter. I would support an 18-year-old having the opportunity to serve in the Legislature. I think their judgment and their abilities are fine when they're one of a collective body, but I would hate to think of an 18-year-old, through some fluke of appointment or otherwise, being Governor of the State of Montana without the maturity that goes with the ability he has. And for that reason, and that reason alone, I support the minority report.

CHAIRMAN AASHEIM: Mr. Arbanas. did you want to speak?

DELEGATE ARBANAS: I wanted to ask a question; maybe of you, Mr. Chairman.

CHAIRMAN AASHEIM: Yes, Mr. Arbanas.

DELEGATE ARBANAS: With regard to the vote on this, if I were to vote for this minority report, would I be overturning the action we took the other day in Section 4 of the Suffrage and Election where we-is it in contradiction to it or not?

CHAIRMAN AASHEIM: Mr. Davis, will you answer that"

DELEGATE DAVIS: Mr. Chairman. No, you would not, because that section provides under--as provided by law, subject to other qualifications as provided by law. So additional qualifications for any office can be added to those minimum qualifications under Section 4, Election and Suffrages.
Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Arbanas, did you want to continue?

DELEGATE ARBANAS: (Inaudible)

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: I would move to amend the minority report on line 4, where it says "age of 30 years", to "age of 25 years" to keep the age qualifications consistent for all of the higher elective offices.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. I think that would keep the age qualifications, if the minority is adopted, the same for these other offices. I strongly favored higher age qualifications when I came here; but as a result of the last 5 weeks, I think that they haven't seemed to make too much difference. Rut I would like to reduce them in this area so they'd all be the same, at 2.5 in the event they do adopt the minority.

CHAIRMAN AASHEIM: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the last couple of days we've had a delegation from Park County High School here, and one of the questions that we asked them were if they were registered to vote, and a good many of them were registered to vote. And one of the other questions that we asked them were if they thought that they could be elected Governor at 18, 19 or 20, and the answer was that they didn't think that they were old enough and that they had the maturity enough to do it. We also had an opportunity to talk with some students of Montana State University and asked them the same question, and they themselves said that by their own judgment they didn't think that they had the maturity and the age bracket. Then I asked the question, what about some of us oldsters; if we were to restrict the young people, would they in turn restrict the old people. That's something to think about. I support the majority proposal.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I support the majority proposal also. I'm wondering about the age qualifications. taking off from where Mr. Martin just was. These kids rightly understand that at 18 or 19 they probably are not ready to be Governor of the State of Montana. It would be fairly presumptive for an 18-year-old to feel that, he would be elected just because he thinks maybe he is. As I understand the election procedure, a person in our state has to have the party decide that he is to be their gubernatorial candidate. Then he has to carry the election. I go along with what Mr. Dahood said the other day, that if a person can do this he must ho a remarkable person as a young person. I don't know what 30 has to do with anything. I would rather have a good man at 29 than a poor one at 60. (Laughter) If Alexander thr Great had had this restriction. he would not have been able to put together his empire. At 33 he died, with no more worlds to conquer. He evidently was one of the most able generals around for his time. And you can go into our own United States history. including some of the people who wrote our Declaration of Independence, and they would not have been able to qualify under this kind of restrictive ruling to run for Governor of the State of Montana. The one thing we're telling the kids all the time now, and I mean by that our young people and young adults, is that they ought to work within the Establishment. And a thing like this may not seem to those of us who arc older and don't have to bother about this age limit to mean anything. but though there will not be any young person in his early 20's elected Governor, I'm sure, the fact that his state does not absolutely make him wait until an age like 25 or 30 is a sort of a symbol, at least, the Establishment is open to their participation. and this means a good deal. And the other point I had already noted down. Mr. Martin, to comment on was, I think you could go to the other side and sag that a person over 65 or 60, or where is that age of effectiveness that—we say it begins at 30, where does it cut off?

CHAIRMAN AASHEIM: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Choate.

DELEGATE CHOATE: You know, it's probably of little consequence, but I think that probably this is the first time I've risen in support of something that has been said by Mr. Harper, but I agree in principle with what the man said. I think that the office of Governor and some of the other high elective offices of the state require a certain stature that perhaps kids of 18 or 19 or 20 might well acquire; it's very doubtful, though. I agree with Mr. Dahood that if we have such a guy that really comes on strong. we ought to really consider him. but I don't see anything in the offing. I said one time to my oldest daughter, now who is 27 and at that time was about 18, I said. "You know, Honey, you're a pretty good kid." And she said, "Yeah; but you know Dad, there ain't no market for them no more." (Laughter) And so, it's kind of like that. I think the office deserves some stature. I think that it requires a little aging to get to that point, and I think that the person who'd aspire to the office must need a little aging to get to that point, so I would support the idea that an age of probably 25, or something more than 18, is certainly in order for the top people in our Executive branch of government. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. James.

DELEGATE JAMES: I'd like to support the majority proposal. I'd say if he or she has got what it takes. let's take what he or she has got. (Laughter)

CHAIRMAN AASHEIM: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I rise in support of the minority proposal, and from the conversations I've heard as others have spoken on this, they don't think that a person—

CHAIRMAN AASHEIM: Let's have it quiet.

DELEGATE SWANBERG: Does that apply to me, too? (Laughter)

CHAIRMAN AASHEIM: I should say not, Mr. Swanberg.

DELEGATE SWANBERG: I'm sorry. They did not seem to think that a person 18 years of age could get to be Governor. Let's reflect for a moment what we did this afternoon. We required that the Governor and the Lieutenant Governor run as a team, and I submit that the first thing that a candidate for Governor would do would line himself up with a young candidate, the purpose being to get the young vote. Now then, suppose he gets into office and dies. You'll certainly have yourself an 18-year-old Governor, and I think the possibility is very real, and so, let's not go along here saying that it's not very likely that an 18-year-old can get to be Governor, so let's put it in. I say it's very, very likely, so let's watch it.

CHAIRMAN AASHEIM: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I'd like to speak in opposition to the minority report, in favor of the majority proposal, simply because I have a young lady sitting next to me who happens to be 24 and who happens to be, I think. one of the most knowledgeable delegates we have at this Convention. I think that we should support young people.

CHAIRMAN AASHEIM: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman-

CHAIRMAN AASHEIM: Mr.—

DELEGATE CHAMPOUX: —I haven't supported anything that the majority brought out today, even though I really care a lot for my good friend, Mr. Joyce and Mr. Garlington, but I rise at this point to support the majority proposal. and I suggest maybe the minority blew it when they chose the age 30.

CHAIRMAN AASHEIM: Mr. Berg.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Berg.

DELEGATE BERG: As the father of foul from 23 to 20 to 17 and down to 12, it hasn't been so many gears ago—a very few, really—that the oldest of the children was-in quiz sections that we had at home, we would ask, well. who was the Rough Rider'? And it was the oldest, that one that's 23 now. not-when she was about IX-that said, after all the history and after all the education that we're so proud of, told us it was Paul Revere. Now, if you're going to talk about age and maturity, you've got to take into consideration that most kids at that age simply have no background, no maturity, to handle the fundamental functions of government. I wouldn't-my 17-year-old, I'm sure, would be very happy to come in here and push these buttons just as I do, and you'd be surprised how different they would be. And yet I believe that when she becomes at least 25, she will push those buttons similarly to what I do. In the course of administering estates, you get into this serious problem of the maturity of children, and in almost every instance you find that most parents--and I think this is typical of most people throughout Montana-do not want to trust their children, at least with the administration of their estates, until they have achieved the age of 25. Now, that's talking about just simple administration of their own personal affairs. And if their parent themselves feel that they want to—they want to restrict that age-limit to 25, I think the State of Montana has a problem in restricting at least the major offices of this state to the age of 25. I'm not so sure that 30 is the great age. I might say this-that, conservative as I'm sure I am now, when I was 25, I can remember my father discussing with me the rights of man, and, of course, I was a great advocate of the so-called socialistic rights of men at that time. I'm not saying that I'm not now, but in that time, my father, who was then some 60-odd years old, looked upon me as a great radical. a real Communist: almost threw me out of the house. Now, it is a question of maturity. Twenty to twenty-five is an age of maturity. It's

recognized everywhere, and if we don't recognize that in the principles of office. particularly the most fundamental offices here in this state, we are missing a very important factor in society. I support the minority, except this-1 would limit the age to 25.

CHAIRMAN AASHEIM: Mr. Lorello.

DELEGATE **LORELLO:** I feel that we have some delegates here who enjoy this numbers game. We had an argument like this when we were going to give the young people the right to drink when they were 19. And I have a bar and restaurant, and I have some customers 65 who are not mature enough to drink. (Laughter) I support the majority proposal.

CHAIRMAN AASHEIM: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I came to this Convention committed to the idea that there had to be a definite age limit relevantto what I, in my judgment, considered to be sufficient maturity for political achievement in political office. As Chairman of the Bill of Rights Committee, I listened to many witnesses testify on this point and, of course, in connection with it, was exposed to literature on the subject. As a result, a great deal of thought had to be given to the problem. I think when the problem is analyzed, I think we will all have to agree that the age limit is an artificial harrier that in many respects insults the intelligence of the adult voter of the State of Montana. If we are going to say to someone of the age of 18 that you have the right to vote and you have the right to die for your country, and we want you to be fully responsible and, within the area of our legal system, follow the line that the law lays down, then I think they ought to be given all of the privileges, even though, in reality, those privileges are not attainable. There is no one of the age of 18, 19, 20, or perhaps 22 or 23 that will ever he Governor of the State of Montana. I daresay that, within our lifetime, it is highly unlikely that we will see anyone of a tender age under 25 that will ever succeed in gaining high state office. But if somewhere such a person appears on the horizon, has enough intelligence to convince the electorate-an intelligent electorate-the most intelligent electorate now that the State of Montana has ever had because of educational quality, qualification and exposure to the world about them-hut if some individual can convince that type of electorate, then he must have some real ability. He must he a highly precocious individual, a genius in his own right. If he has that ahility, regardless of age, should we, the people of the State of Montana, be deprived of that type of service to our state? Let us think about it. Let us ask ourselves—is it logical, really, truly, realistically, to place an age limit with respect to holding office when a vast majority of the voters are above the age of 25 or above the age or 30? And I wonder, too, how many of the young contemporaries would vote for someone simply because he or she is young as they are young? I think we've got to show more confidence in our young people. We've got to show them that we want whatever resistance that they have to our system to fall within the law, that we repose faith and confidence in them; we have all the faith and confidence in them that we want them to have in us. And we can show it here and now by taking away an artificial barrier. I support the majority proposal.

CHAIRMAN AASHEIM: Mr. Rollins. Will you hold just a minute, Mr. Rollins'? We're going to change the tape. You'll have the floor when we get ready to go.

(Recess for 2 minutes to change tape)

CHAIRMAN AASHEIM: We'll come back to session. Mr. Rollins has the floor.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: I'm not sure whether or not the pause for the new tape is going to help me any. While we're playing this numbers game; Mr. Berg talks about his four children, let me talk about my eight. Now, by our figuring, I should know twice as much about children as Mr. Berg. Probably it's geometrical rather than merely arithmetic because eight--when you have eight children, you have much more than twice as many as four, I assure you. But what are we talking about? What kind of an age are we talking about? Are we talking about the mere chronological age that these children have, that these young people have? That can vary greatly. Eighteen-year-olds can vary greatly in ability. I'm sure we all realize that. We know that even two identical eighteen-year-old twins would not be the same, that there would be variations. Mr. Chairman, I oppose the minority report. I favor the majority report. Let's let these young people make what they can out of their lives.

CHAIRMAN AASHEIM: I'd like to remind you we're speaking on the motion to amend from 30 to 25, and we're going to vote on that as soon as you are through talking about it.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I trust that at this time of night and at this stage of proceedings that the delegates here will consider the following speech as entitled to equal dignity. I oppose the amendment. I oppose the minority report and enthusiastically support the majority report.

CHAIRMAN AASHEIM: Any more discussion on the motion to amend line 4?

Mr. Davis.

DELEGATE DAVIS: May I close?

CHAIRMAN AASHEIM: You may close.

DELEGATE DAVIS: In closing, I would only like to know if the Chair would permit this amendment to he known as the Mae Nan Amendment. Thank you.

CHAIRMAN AASHEIM: Members of the assembly, you now have before you the motion of Mr. Davis that we amend in line 4 of the minority report by striking the number "30" and inserting in lieu thereof "umber "25". As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

DELEGATE McNEIL: Roll call.

CHAIRMAN AASHEIM: A roll call vote has **been** requested. Sufficient seconds?

(Delegates arose)

CHAIRMAN AASHEIM: A roll call vote has bee" asked for. Those who want to vote Aye will do so on the board. Those who want to vote No, do so.

Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does **anyone** want to change his vote?

(No response)

CHAIRMAN AASHEIM: If not, the clerk will tally the vote.

Aasheim-Chairman ..... .Absent
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... .Aye
Berg ..... Aye
Berthelson ..... .Aye
Rlaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... .Aye
Conover ..... Absent
Cross ..... Aye
Dahood ..... Nay
Davis ..... .Aye
Delaney ..... .Aye
Driscoll ..... .Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... .Absent
Garlington ..... Aye
Graybill ..... .Absent
Gysler ..... .Aye
Hahedank ..... .Aye
Hanson, R.S. ..... .Aye
Hanson, R. ..... .Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... .Absent
Heliker ..... Aye
Holland,, ... Absent
Jacobsen ..... .Aye
James ..... Aye
Johnson ..... Aye
Joyce. ..... Nay
Kamhoot ..... Aye

Kelleher ..... Nay
Leuthold ..... .Aye
Loendorf ..... .Absent
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... .Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... .Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ....Absent
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Nay
Skari ....Aye
Sparks ..... Nay
Speer ....Absent
Studer ....Aye
Sullivan ..... .Aye
Swanberg ..... Aye
Toole ..... .Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ....Absent
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 48 delegates voting Aye, 37 voting No.

CHAIKMAN AASHEIM: **48** having voted Aye, 37—37?

CLERK HANSON: 37.

CHAIRMAN AASHEIM: 37 voting No, the motion has carried.
Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, Loendorf votes No.

CHAIRMAN AASHEIM: Mr. Ward.

DELEGATE WARD: Ward votes No.

CHAIRMAN AASHEIM: The vote has already been announced, so you're too late; I'm sorry. We now are back to the motion by Mr. Wilson to amend the majority report on page 38, Section 3, subsection 1, of the minority report and the motion reads that when this committee does arise and report that it adopt Section 1, subsection 1, of the minority report on the Executive Committee proposal, as amended. There weren't any amendments, were there'? Were there any amendments, Mr. —John?

CLERK HANSON: Yes—(Inaudible).

CHAIRMAN AASHEIM: Oh, yes, you're right-as amended.
Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, I support the majority proposal.

CHAIRMAN AASHEIM: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I also support this. I would also like to say that I can personally attest that being Governor is not as easy as it looks, and I would venture to say, in all due respect to Mae Nan Robinson, there would be a few problems she might have if she were Governor.

CHAIRMAN AASHEIM: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, there are a few problems I'm having being a member of the Constitutional Convention—(Laughter)-hut I'm not sure it's because my ape is 24. I would certainly rise in support of the majority report. I have not been convinced as yet that man is that much like wine in that man necessarily improves with age. (Laughter)

CHAIRMAN AASHEIM: The question—any further discussion? The question then—
Mr. Wilson.
Mr. McNeil, unless you want—

DELEGATE MCNEIL: I want to have a roll call vote and ask for the necessary seconds on the minority report.

CHAIRMAN AASHEIM: Mr. Wilson, you have the floor.

DELEGATE WILSON: Mr. President.

CHAIRMAN **AASHEIM:** Mr. Wilson.

DELEGATE WILSON: I'd like to close on—

CHAIRMAN AASHEIM: You may close.

DELEGATE WILSON: -on the minority report. It was not our intent that we would disenfranchise young people from becoming Governor, but we feel that this office is one of the highest offices in the state. And we also feel that the young people themselves would feel that we were doing them a disservice if we allowed this office to be eligible to an 18-year-old vote. We feel that we are providing a goal for these young people to shoot at. You just stop and think a minute. We gave the young people practically everything. We've provided them cars. We've provided them all the educational facilities. Wc allow them to get married younger. Some cases, we're even saying they don't have to get married. (laughter) We are also saying that you have everything on a golden platter. What is there left'? What goals are left for these young people to shoot at. I feel quite confident that my grandchildren would support me in the position I have taken on this, that they will look back when they become 30 years of age, 25 years of age, and they will say. "I wonder why you didn't leave some goals for us as young people to strive for. to attain." I move the adoption of the minority report, Mr. President.

CHAIRMAN AASHEIM: The question now arises on the motion of Mr. Wilson that when this committee does arise and report, that it adopt Section 1—It has been requested. That it adopt Section 1, subsection 1, of the minority report on the Executive Committee proposal, as amended. A roll call vote has been requested.

Mr. Delaney, for what purpose do you arise?

DELEGATE DELANEY: Section 3, subsection 1.

CHAIRMAN AASHEIM: Thank you for the correction. Mr. Delaney. That's Section 3, subsection 1. We'll vote by roll call. Those in favor-

Mr. Berg.

DELEGATE BERG: Arc we voting on the age of 25 or 30 for eligibility to the office of Governor or Lieutenant Governor?

CHAIRMAN AASHEIM: We're voting on Section 3, as amended-as amended, Section 3 of the minority report.

DELEGATE BERG: And the age will be what; 25, or 30?

CHAIRMAN AASHEIM: 25, 25 as amended, yes. Is that clear'? You're on page 38. You're voting on the minority report, as amended. Those —as many as are in favor will vote Aye on the voting machine; those opposed will vote No.

Has every member voted'!

(No response)

CHAIRMAN AASHEIM: Does **anyone** desire to change his vote'!

Mr. James, for what purpose do you arise?

DELEGATE JAMES: Mr. Chairman, there seems to be some confusion. Are we voting the majority versus the minority report, or what'!

CHAIRMAN AASHEIM: We are-Mr. James, if you vote for this motion, it will read "25 years" as the age. We're voting on the minority report on page 38. If you reject this, we'll go back to the majority motion of Mr. Joyce. Do you understand this, Mr. James'!

DELEGATE JAMES: Yes, sir.

CHAIRMAN AASHEIM: Anyone else'? I want to make this clear. I want you to feel free to be clear on what you're voting on.

Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does **anyone** desire to change his vote?

(No response)

CHAIRMAN AASHEIM: The clerk will tally the vote.

Aasheim-Chairman .Absent
Anderson, J. . .Aye
Anderson, 0. . Nag
Arbanas . . . Nay
Arness .....Absent
Aronow .. .. Nay
Artz .....Aye
Ask .....Aye
Babcock .....Aye
Barnard .....Aye
Bates .....Aye
Belcher .Aye

Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Absent
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Absent
Gysler	Aye
Habedank	Aye
Hanson, R.S	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland,,	Absent
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Nay
Payne	Aye
Pemberton	Aye
Rebal	Absent
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Absent
Schiltz	Absent
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman, 31 delegates voting Aye, 59 voting No.

CHAIRMAN AASHEIM: 59 having voted No, 31 having voted Yes, the motion is lost. We are then on the motion of Mr. Joyce on page 18 of the majority report, Section 3—isn't that right—Section 3, subsection 1, of the majority report of the Executive Committee report.

Mr. Joyce.

DELEGATE JOYCE: I close

CHAIRMAN AASHEIM: Members of the assembly, you now have before you Section 3. The question now arises on the original motion by Mr. Joyce that when this committee arise and report, that it adopt Section 3, subsection 1, of the majority Executive Committee proposal. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Subsection 2.

CLERK HANSON: "Section 3, subsection 2: In addition to the foregoing qualifications, any person to be eligible to the office of attorney general shall be an attorney in good standing admitted to practice law in the State of Montana and have engaged in the active practice thereof for 5 years before election." Mr. Chairman, subsection 2.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 3, subsection 2, of the Executive Article—

CHAIRMAN AASHEIM: Let's have it quiet.

DELEGATE JOYCE: -that it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Section 3, subsection 2, of the majority and minority reports are identical. They're self-explanatory; what we've done is require the Attorney General to have 5 years to be admitted-that the Attorney Genera1 shall be an attorney in good standing, admitted to practice in the State of Montana for 5 years. We did this to conform with the Judicial Article. It is self-explanatory.

CHAIRMAN AASHEIM: Any discussion?

(No response)

CHAIRMAN AASHEIM: If not, the question arises—

Mr. Heliker.

DELEGATE HELIKER: Would Mr. Joyce yield to a question?

DELEGATE JOYCE: Mr. Chairman, I will yield.

DELEGATE HELIKER: What is the purpose of the 5-year residency requirement?

DELEGATE JOYCE: Not 5 years' residency. 5 years admitted to practice law.

DELEGATE HELIKER: In Montana?

DELEGATE JOYCE: Yes.

DELEGATE HELIKER: It's the same thing, isn't it?

CHAIRMAN AASHEIM: Will you direct, each question to the Chair?

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Helikcr.

DELEGATE HELIKER: Will Mr. Joyce yield to a question?

CHAIRMAN AASHEIM: Mr. Joyce, will you answer the question?

DELEGATE JOYCE: Mr. Chairman, I will.

DELEGATE HELIKER: Now, as I understand this-as I read it, you're requiring that he be an attorney in good standing, admitted to practice law in the State of Montana and having engaged in the active practice thereof for 5 years. By 5—by "thereof' you mean in the State of Montana, don't YOU?

DELEGATE JOYCE: Yes.

DELEGATE HELIKER: So you are **re**quiring residency in the State of Montana, aren't you?

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Yes, I guess we are-by indirection, yes.

CHAIRMAN AASHEIM: Mr. Helikcr.

DELEGATE HELIKER: Will Mr. Joyce yield to another question?

CHAIRMAN AASHEIM: Will you yield?

DELEGATE JOYCE: Mr. Chairman, I'll yield.

DELEGATE HELIKER: Mr. Joyce, why should the Attorney General have to he a resident for 5 years when the Governor is required to be a resident for only 2 years?

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Mr. Heliker, the reason that the committee-the unanimous committee chose was that the Judiciary Committee is recommending that anyone to be a judge must be admitted to practice and actively practice for 5 years so that he'll have some experience in his profession. And, so, WC have done exactly the same thing in the Executive Article.

CHAIRMAN AASHEIM: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I note that the proposed North Dakota Constitution contains no such requirement. It says merely that the Attorney General must be licensed to practice law in this state. I, therefore, and for the reason that it seems unreasonable to me that 5 years be required, that that provision be stricken. That would mean-am I on page 5, is that right? That's where I'm wading from, at any rate.

CHAIRMAN AASHEIM: Would you be on page 19, Mr. Heliker? I think we're--most of us—on that page.

DELEGATE HELIKER: Page 19?

CHAIRMAN AASHEIM: Yes.

DELEGATE HELIKER: Line 8.

CHAIRMAN AASHKIM: Line 8, isn't it?

DELEGATE HELIKER: I would move a" amendment to strike the words on line 9.

CHAIRMAN AASHEIM: Wouldn't you want to stop after "Montana", Mr. Heliker?

DELEGATE HELIKER: Yes. Yes, I think it's going to be all right there. Yeah, on line 8—a period after "Montana" and strike the remainder of the sentence.

CHAIRMAN AASHEIM: Do you want to comment any further, Mr. Heliker?

DELEGATE HELIKER: (Inaudible)

CHAIRMAN AASHEIM: The motion is to amend line 8 by striking from the-on line 8— "and have engaged in the active practice thereof for 5 years before election", and a period after "Montana" on line 8. Any discussion?

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I concur in Mr. Hclikcr's amendment for the very good reason that I wouldn't care to have my good friend, Mickey McKeon, deprived of his chance to become Attorney General of the State of Montana.

DELEGATE McKEON: Mr. Chairman, I accept. (Laughter)

CHAIRMAN AASHEIM: Mrs. Babcock.

DELEGATE BABCOCK: I would like to point out that we are going to let a young person drive our state and he can't get driver's insurance until he's 25, so I would certainly urge that we vote to have a 26-year-old Attorney General to watch over him.

CHAIRMAN AASHEIM: Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman, as an insurance agent-you can get driver's insurance before 25, but you have to pay a premium for it.

CHAIRMAN AASHEIM: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairma", I might point out that under the present statutes of Montana, you can be an insurance agent at age of 18, which are considered adults. I might just rise in support of Mr. Heliker's motion. As you know, to have a law practice, you have to go 4 years to undergraduate school, 3 years to law school, now, which is a total of 7 years of college. It isn't possible to get through those 7 years being much less than 25 years of age. I feel that North Dakota--again looking at their article-put that the Attorney General must be licensed to practice in the state with no other qualification. I would certainly support this. I don't feel that there will be any rush towards this office either, and I feel that adopting it in the original form would again put it up to approximately 30 years of age. I would support Mr. Heliker's motion.

CHAIRMAN AASHEIM: Mr. Studer.

DELEGATE STUDER: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Studer.

DELEGATE STUDER: Would Mr. Joyce rise to a question?

CHAIRMAN AASHEIM: Will Mr. Joyce yield?

DELEGATE JOYCE: Mr. Chairman, I will.

DELEGATE STUDER: The way I read that Section 2, I don't think that he'd have to be engaged in 5 years preceding. Wouldn't 5 years of law practice outside of the state and then if he went back and was elected, as Section 1 says, and is otherwise a qualified voter—if he were back here for 2 years after he practiced law for 5 years, wouldn't he he eligible'? Under your—

DELEGATE JOYCE: Yes. **Yes,** he would, so I guess I gave the wrong—
Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Yes, I guess that's right. If he had engaged in 5 years' active practice and then left the state and then came back, he'd have to reside 2 years immediately preceding his election. So it isn't really the same as residency. You're correct, sir.

DELEGATE STUDER: Would you yield to another question, Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I will.

DELEGATE STUDER: Then if he had practiced, we'll say, 3 years and was out and practiced somewhere else for a couple of years and was back in here, would he still be qualified if he was in here for 2 years previous to the time he was elected? That would be a total of 5 years of active practice.

DELEGATE JOYCE: I guess he would, yes, Mr.—

DELEGATE STUDER: Thank you.

CHAIRMAN AASHEIM: Mr. McCarvel, did you want the floor'?

DELEGATE McCARVEL: Yes, Mr. Chairman. I think what we're talking about is deleting that portion that would require the 5 years.

CHAIRMAN AASHEIM: That is what we're discussing now.

DELEGATE McCARVEL: That's what we're discussing, and I move-1 rise to support Mr. Heliker in his amendment. I feel that if we have 18-year-olds that are able to run the state, we can always give them a chauffeur-we don't have to let them drive. (Laughter) Highway patrol can take them around. If we have them that bright that they can take it at 18, well, we can also have bright young lawyers coming out of law school and let them be Attorney Generals also.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: May I ask Delegate Aronow a question?

CHAIRMAN AASHEIM: Mr. Aronow, will you yield?

DELEGATE ARONOW: I yield.

DELEGATE JOYCE: What have you provided in the majority judicial report with reference to the 5 years' actual practice?

DELEGATE ARONOW: On district judges, 5 years of active practice of law in Montana, for the reason that district judges are the trial court and it's important that they have experience in the actual trial practice. Supreme Court judges, who are not trial judges but appellate judges, have to have 5 years' experience and knowledgeable in the law of Montana: that they can be law school teachers; they can he working with some agency of government. But we felt that it was necessary for them to have that much experience.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Thank you, Mr. Aronow. The intention of the majority of the Executive Committee was to put the Attorney General on the same status as the district judge, that he'd have to practice law in Montana for 5 years, learn the procedure of Montana so, therefore-so that he could then be a good, qualified, experienced lawyer when he became Attorney General, and so the issue is clear. If you vote for the majority report, you will be voting that way. If you vote for the amendment, you will be doing the opposite. I don't think that there's any more can be said on thr subject.

CHAIRMAN AASHEIM: Mr. Heliker. Are you closing...

DELEGATE HELIKER: I think Mr. Joyce has now clarified the point that became confused in his conversation with Mr. Studer—that he does mean practice law for 5 years in the State of Montana, which imposes a 5-year residency requirement and, in effect, an age

requirement of' about 30 years, which is considerably more stringent than imposed on the Governor, and I think this is unreasonable.

CHAIRMAN AASHEIM: Mr. Cate.

DELEGATE CATE: Mr. Chairman. Mr. **Joyce,** would you yield to a question, please?

CHAIRMAN AASHEIM: Will Mr. Joyce yield?

DELEGATE JOYCE: Yes, I will.

DELEGATE CATE: I've always wondered what the term "active practice" meant. Does that mean working for the bank as a probatelawyer, or does it mean working for an insurance company as an insurance lawyer, or does it mean trying lawsuits-criminal law, civil law, personal injury'? What does active practice mean? Could you (Inaudible) term for us?

DELEGATE JOYCE: Well, we intended it to mean whatever Mr. Aronow meant in the Judiciary Article. (Laughter)

CHAIRMAN AASHEIM: Mr. Cate, did you want to ask another question?

DELEGATE CATE: Mr. Chairman. Mr. Joyce, would you yield to another question?

DELEGATE JOYCE: Yes.

DELEGATE CATE: How many trial cases has our present Attorney General tried?

DELEGATE JOYCE: No idea, sir.

CHAIRMAN AASHEIM: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. Well, I feel that we're being a little bit capricious in our thinking on this thing. I didn't vote on the prevailing side on the matter of the age requirement for Governor, but I think that since this is the direction we're going, I see no reason to fail to support Mr. Heliker's motion to change the ground rules for Lieutenant Governor. As far as the argument about the requirement in North Dakota, it doesn't really mean much to me. I am reminded of the story about the fellow that said, "Do you know how you can tell when a North Dakota pilot landed with his wheels up?" And the guy said, "No, how?" And he said, "Well, because it takes full power to taxi." And that's kind of the way we are here. It's a deal where, I think if we're going to allow a Governor to be elected at 18, I don't see why you put a 5-year restriction for practice of law on the matter of the Attorney General. So, I would support Mr. Heliker's motion. Thank you.

CHAIRMAN AASHEIM: Any more discussion on Mr. Heliker's motion?

Mrs. Babcock.

DELEGATE BABCOCK: May I ask Mr. Choate a question?

CHAIRMAN AASHEIM: Will Mr. Choate yield to a question? Mr. Choate, will you yield to a question? Did you say Choate?

DELEGATE BABCOCK: Mr. Choate-over here. Do you feel the Attorney General should be a lawyer?

DELEGATE CHOATE: Yes, I think he should be a lawyer, but if he's admitted to practice law in Montana, he probably should be allowed to serve in that capacity. If-provided he is 18 years old, he ought to be allowed to be Governor.

DELEGATE BABCOCK: May I ask Mr Choate another question?

CHAIRMAN AASHEIM: Will you yield to another question, Mr. Choate?

DELEGATE BABCOCK: Do you think it is possible for him to be a lawyer before that age?

DELEGATE CHOATE: I didn't understand the question.

DELEGATE BABCOCK: Do you think it is possible for him to be a lawyer before that age?

DELEGATE CHOATE: No, I do not.

DELEGATE BABCOCK: Well, then, don't you think that they should both have good qualifications to hold those high offices?

DELEGATE CHOATE: Yes, ma'am, I surely do.

CHAIRMAN AASHEIM: Any more discussion?

Mrs. Hates.

DELEGATE BATES: Mr. Chairman

CHAIRMAN AASHEIM: Mrs. Bates

DELEGATE BATES: This is the first time I got up on my feet today, and I thought maybe this way I could get something passed. But, this, to me, is rather ridiculous. If we are going to turn over the top offices of our state to 18-year-olds or 19-year-olds—right now our 18-year-olds can't even sign a contract, and right here we are asking for qualifications for the Attorney General but nothing for the Governor. They can just come out of high school and run. And, to me—I think this is very poor, and I think it will do just what some of our people are looking for-to put the frosting on the cake of defeating this Constitution.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Will Mr. Joyce yield to a question?

CHAIRMAN AASHEIM: Will Mr. Joyce yield?

DELEGATE JOYCE: Yes, I will, Mr. Chairman.

DELEGATE HARPER: What is the limitation on qualifications for Attorney General in the present state Constitution?

DELEGATE JOYCE: None other than he has to be, I think, 25 and admitted to practice law.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: I submit that we haven't really been bothered by this problem in the past, and I don't think we will be bothered, really, by it in the future and so don't see why we should necessarily change the present Constitution in the regard of forcing 5 years resident requirement as a practicing lawyer in the State of Montana when we don't now presently do that.

DELEGATE JOYCE: Ask me the question. (Laughter)

DELEGATE HARPER: Mr. Joyce—

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN AASHEIM: For what purpose do you-what is it?

DELEGATE HARPER: May I ask Mr. Joyce another question?

CHAIRMAN AASHEIM: Mr. Joyce, will you yield to another question?

DELEGATE JOYCE: Yes, I will.

DELEGATE HARPER: Mr. Joyce, what was the other question you wanted me to ask you? (Laughter)

DELEGATE JOYCE: I was incorrect in the answer to the last question. Right now, you have to be 30. If you'll turn to Article VII, Section 3, of the current Constitution-it says, "the office of the attorney general unless he shall have attained the age of 30 years and have been admitted to practice in the Supreme Court of the state or territory of Montana and be in good standing at the time of his election." So I was in error when I said 25. And what we did on the Executive Committee, we just tried to parallel the Judiciary Committee. I don't-do what you want.

CHAIRMAN AASHEIM: Any more discussion on the substitute motion of Mr. Heliker?

Mr. Swanberg.

DELEGATE SWANBERG: I would just rise to support Mr. Heliker's motion. We've pretty much eliminated all judgment qualifications for Governor, so I don't see why we shouldn't eliminate all judgment qualifications for the Attorney General and allow him to be a candidate for Attorney General immediately upon his graduate from law school when, as every lawyer and every-probably every layman here will tell you, there's no one that knows more than a young lawyer just out of law school. (Laughter)

CHAIRMAN AASHEIM: Mr. Ward.

DELEGATE WARD: I rise to support Mr. Heliker's motion. It's probably one of the few times during Convention that I'll be able to. Thank you.

CHAIRMAN AASHEIM: The question—Mr. Heliker, do you want to close?

The motion then arises-or, the question arises on the motion of Mr. Heliker to amend subsection 2 of Section 3 in the majority report in line 8 to insert a period after "Montana" and strike the balance of line 8 and line 9.

Mr. Campbell, for what—

DELEGATE CAMPBELL: Mr. Chairman, I would ask for a roll call vote, please.

CHAIRMAN AASHEIM: A roll call vote has been requested. You have the motion. We will vote by the machine. As many as are in favor will vote Aye. As many as are opposed will vote No.

Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone wish to change his vote?

(No response)

CHAIRMAN AASHEIM: The clerk will then record the vote.

DELEGATE BABCOCK: (Inaudible).

CHAIRMAN AASHEIM: For what purpose do you arise, Mrs. Babcock?

DELEGATE BABCOCK: Well, I wanted to vote but I was not in my chair.

CHAIRMAN AASHEIM: Well, the vote has been called for. What is that? Do you want to announce your vote, Mrs. Babcock?

DELEGATE BABCOCK: What are we voting on?

CHAIRMAN AASHEIM: On Mr. Heliker's amendment.

DELEGATE BABCOCK: I vote No.

CHAIRMAN AASHEIM: Vote No. Mr. Mahoney wants to be recorded as voting No. Mr. Mahoney. Mr. Mahoney votes No.

Aasheim-Chairman .Absent
Anderson, J. Nay
Anderson, 0. Aye
Arbanas .....Aye
Arness . Absent
Aronow Nay
Artz . ..... N a y
Ask..... Nay
Babcock ..... Nay
Barnard .....Absent
Bates ..... Nay
Belcher Nay
Berg..... Nay
Berthelson Nay
Blaylock .....Absent
Blend..... Nay
Bowman .....Aye
Brazier Nay
Brown .....Aye
Bugbee.....Aye
Burkhardt ....Absent
Cain .....Aye
Campbell .....Aye
Cate ....Aye
Champoux .....Aye
Choate.....Aye
Conover ..... Nay
Cross .....Aye
Dahood ..... .Absent
Davis .....Absent
Delaney ..... Nay
Driscoll .....Aye
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ....Aye
Furlong.....Aye
Garlington ..... Nay
Graybill ..... Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S.....Aye
Hanson, R. ..... Nay
Harbaugh ....Aye
Harlow ..... .Absent
Harper.....Aye
Harrington ..... Absent
Heliker ....Aye
Holland ..... .Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello .....Absent
Mahoney ..... Nay
Mansfield. ..... Nay
Martin ..... Nay
McCarvel .....Aye
McDonough ..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin ..... Nay
Monroe .. ..Aye
Murray ..... Nay
Noble ..... Nay
Nutting,, ... Nay
Payne ..... Nay
Pemberton ..... Aye

Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Absent
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, Delegates Babcock and Mahoney voting No; 38 delegates voting Aye, 45 voting No.

CHAIRMAN AASHEIM: 45 voting No, 38 voting Yes, the amendment is lost. We are then on the original motion of Mr. Joyce.
Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I close.

CHAIRMAN AASHEIM: Members of the assembly, you now have before you the motion by Mr. Joyce that we adopt subsection 2 of Section 3 of the majority report. As many as are in favor will vote Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Section 4, page 19.
Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee arise and report, after having under consideration Section 4 of subsection 1 of the Executive Article, that the minority report be adopted.

CHAIRMAN AASHEIM: On what page again, Mr. Joyce?

DELEGATE JOYCE: The minority report begins on page 38, line 16.

CHAIRMAN AASHEIM: Page 38, line 16, the minority report.
Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: Subsections 1, 2, 3, 4 of the majority and minority reports are identical with reference to duties. The minority report has also added the duties for the Auditor, which begin on pages 39, line 2, and read as follows: "that the auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer of all state warrants, with all-with other duties and powers provided by law." The minority did not add any specific duties for the State Treasurer, but if they wish to do so, why, maybe they can do that. But, at any rate, I would move that-to save time, that since the majority and the minority reports are-if we're going to do it subsection by subsection, we could do just subsection 1, which are identical in the majority and the minority report. But—

CHAIRMAN AASHEIM: Mr. Joyce, I believe we should take subsection 1 and 2, one at a time.

DELEGATE JOYCE: One at **a** time?

CHAIRMAN AASHEIM: I think we should.

DELEGATE JOYCE: Allright. I therefore move that we adopt Section 4, subsection 1, of the minority report.

CHAIRMAN AASHEIM: Which is on page 38.

DELEGATE JOYCE: On page 38, which is identical with the majority report.

CHAIRMAN AASHEIM: Any discussion?
Mr. Kelleher.

DELEGATE KELLEHER: (Inaudible) Joyce yield to a question?

CHAIRMAN AASHEIM: Mr. Joyce, will you yield to a question?

DELEGATE JOYCE: Yes, I will, Mr. Kelleher—or, Mr. Chairman.

DELEGATE KELLEHER: If the treasurer apparently doesn't have any duties, why are we-why do we have one?

DELEGATE JOYCE: Because the Convention has voted that they want one and—

DELEGATE KELLEHER: That's a good enough reason.

CHAIRMAN AASHEIM: The question then arises on the motion—
Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: We are on Section 1 of Section 4, are we not?

CHAIRMAN AASHEIM: Subsection 1 of Section 4, on page 38.

DELEGATE WILSON: We haven't came to any other offices or any other duties of any other officers at this time. I move the adoption of subsection 1.

CHAIRMAN AASHEIM: It has been moved, Mr. Wilson. The question then arises on the motion of Mr. Joyce that we adopt subsection 1 of Section 4 of the minority Executive report as indicated on page 38. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Mr. Joyce, subsection 2.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee arise and report, after having had under consideration Section 4, subsection 2, that it recommend the same be adopted.

CHAIRMAN AASHEIM: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. The Lieutenant Governor has never really had much to do but sit in the Senate and preside over it. He didn't even have a vote in that body except in case of a tie. And, we took that duty away from him in the Legislative Article. The Executive Article does not delegate any duties to him except those that the Governor might assign. The-yet, they make him a full-time Lieutenant Governor and he will necessarily have an office and a staff, but as Mr. Joyce said earlier, he doesn't have anything to do. Well, I suggest that we give him something to do. And I have an amendment to that section, which I would ask the Chair to read at this time.

CHAIRMAN AASHEIM: The clerk will read the amendment, please.

CLERK HANSON: "Executive Committee proposal: Mr. Chairman, I move to amend Section 4, subsection 2, page-"

CHAIRMAN AASHEIM: 38.

CLERK HANSON: "—39—"

CHAIRMAN AASHEIM: 38.

CLERK HANSON: "-38, lines 20 through 24, of the Executive Committee proposal by deleting in its entirety and inserting in lieu thereof the following language: 'The lieutenant governor shall have the duty to provide information to any person upon request relative to government, to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action as provided by law, and to perform such other duties as may be provided by law or as may be delegated to him by the governor. But no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner.' Mr. Chairman, the—

DELEGATE CATE: Mr.-

CLERK HANSON: --amendment by Mr. Cate."

DELEGATE CATE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Cate.

DELEGATE CATE: This afternoon when we talked about the people's advocate, which, as you can see, is back again. somebody said, "Let's leave it to the Governor; let's leave it in the Executive Department." All right. That's what we're

doing. We're just telling the Governor what to do here. He's going to appoint a people's advocate; it's going to be the Lieutenant Governor, and he's going to have something to do. People objected to the people's advocate because it would be writing in another statutory office into the Constitution. We've taken care of that. We're not writing in a new office. The Lieutenant Governor is already in our Constitution and recognized as a statutory officer. People were opposed to the people's advocate because it would cost more money. All right, you've got a Lieutenant Governor here that's going to have an office and he's going to have a staff and nothing to do. This isn't going to cost any more money for him to be a people's advocate, and that argument is taken care of. Now, I think we've taken care of about three or four things-the Lieutenant Governor has got something to do. I think this is a legitimate place for a Lieutenant Governor to serve. It does give him something to do. It's something worthwhile. I think we've all recognized that the people's advocate does mean something. Now, I heard in the arguments on the people's advocate--and I have not spoken on the people's advocate previously-that the OEO was the answer. Well, the OEO is not the answer. Legal Services is a farce. Legal Services in Montana is nothing but a divorce mill. That's all it is. Legal Services does not represent the poor and does not help people in these type of cases, and ask anybody that's ever been to Legal Services if you do know any poor people. Secondly, it was said that the County Attorney's office was notorious for helping people with problems. The County Attorney offices in Montana are notorious for passing the buck. That's what they're notorious for. There isn't any place for the poor people to go. There isn't any place for the uneducated people to go, there-and the only place that people can go if they want to go to get some relief against government is to their legislator or to a lawyer. Now, the legislators are going to love this office. They're going to love this office, and I tell you why. Somebody comes to them and he says, "How do I get this grazing district started?" And the smart legislator is going to say, "Well, I know just the guy to call. I'm going to call him and I'll let you know tomorrow", and he gets in the phone booth and calls the people's advocate, the Lieutenant Governor of the State of Montana, and he finds out how to put up the grazing district, and then he goes back to his constituent and he says, "Well, here's how you do it." This has been the history of the people's advocate in other jurisdictions. The legislators havelearned to love it. It's also a way to pass the buck. If somebody comes to you with a problem that you don't want to take 'care of, you can say, "Well, call the Lieutenant Governor, the people's advocate." Fellow delegates, I think that we've finally found a place for the people's advocate, and I would ask you to support it. Thank you. (Laughter)

CHAIRMAN AASHEIM: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Monroe.

DELEGATE MONROE: I rise in favor of Mr. Cate's motion. I made a mistake earlier in the day when I deferred my talk in regard to the people's advocate, or my reasons for people's advocate, hoping that the people's advocate proposal would be reconsidered, but it was not. But I would like to speak in favor of such a position and in the form of Lieutenant Governorship, if that be the case. Before the Convention, I had an opportunity to travel around the State of Montana for a couple of weeks, and during that time, I talked to some 800 people. I was in communities—my own, speaking to a few hundred people-and I went to Havre and Plentywood and Glendive and Forsyth, Billings, Lewistown-many of these communities. As I mentioned, I talked to over800 people. And the people of Montana were very frustrated. They've got a lot of problems, and they don't know where the heck to go. They need a person to whom they can bring their complaints, to-who they can seek remedies from. Right now they have a lot of people but the things are not centralized. They don't get remedies; they don't get answers to their questions. Up in Glasgow, Montana, I ran into three farmers that wanted to know how to set up a herd district. They said, "Why do cows have more rights than the people around here?" and I've tried to remedy some of those situations by being on the Bill of Rights Committee, but I could not refer them to a person that could solve some of their problems, and I did not know where to seek the answers myself. And I would hope that this body might support this idea that is being proposed before us. I would like to see the Lieutenant Governor be a potent person instead of an impotent person.

CHAIRMAN AASHEIM: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. McNeil.

DELEGATE McNEIL: I would very much like to see the written language in Delegate Cate's proposal. If he has strictly Executive powers and does not have a-does not have Legislative or Judicial powers, I will enthusiastically support his amendment.

CHAIRMAN AASHEIM: Mr. Arbanas.

DELEGATE ARBANAS: I have to say, first of all, that I'm very much in favor of the people's advocate and I hate to be opposing Mr. Cate's motion, but I would like to take a moment to explain to the group why the duties of Lieutenant Governor were left unspecific by the committee. If you have the picture of Lieutenant Governor as—remember, now, running right from the beginning, from the first primary, with the Governor, and he is, because his job is unspecific, able to be truly the assistant Governor. If he's able to be the executive partner, if he's able to be the chief team member of the Governor, then this movement to make him something else will mean that we'll have a people's advocate but we won't have a Lieutenant Governor. It's just too bad that the assembly can't resolve in having both, because the Governor does need that partner, and so that we've solved maybe one problem, we've created another. I think the Executive Committeefeltthat one of the most constructive, long-reaching, healthy things that they had done was to relieve the job of Lieutenant Governor of specifics so he could be truly that assistant Governor, which we feel was needed.

CHAIRMAN AASHEIM: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, as an advocate of the people's advocate, I rise in opposition to Mr. Cate's motion because what he is proposing is merely a P.R. man for the Governor. I would hope that in some sense both the Governor and the Lieutenant Governor will always be people's advocates, but this is not what people's advocate, as proposed under that term, under that phrase, in this Convention heretofore, has meant. And I would rather take my chances with the Legislature.

CHAIRMAN AASHEIM: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Kamhoot.

DELEGATE KAMHOOT: I think perhaps my question I can direct to you Now, this is an overtime session tonight. Is this costing the taxpayers of Montana anything?

CHAIRMAN AASHEIM: Mr. Kamhoot, I would say that the lights are here till midnight, and you're paid whether you're here or not, and I don't think the janitors are here. I would say it isn't costing very much more, so keep on talking.

DELEGATE KAMHOOT: Well, I'm certainly happy for that. Thank you. (Laughter)

CHAIRMAN AASHEIM: Any more discussion on Mr. Cate's proposal?

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I would rise in support of Mr. Cate's amendment. Since we seem to be making half-measure movements tonight, I think it would he good from other viewpoints to have the Lieutenant Governor serve as the people's advocate. I feel that for a Lieutenant Governor-and I well see the possibility of a Governor choosing a minimum-aged youth to serve with him to cinch a duplicate voting possibility in the election-that it would be a tremendous implant training program for him to produce a better and more mature Governor. I think perhaps, too, that even though it is a half measure for an advocate of the people, that perhaps the Governor would be aware of the importance of this office due to the load that the Lieutenant Governor was carrying, and in this event, it might be better for Mr. Heliker's proposition that the Governor, being aware, would arrange to have one established more quickly. I support the amendment.

CHAIRMAN AASHEIM: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Harbaugh.

DELEGATE HARBAUGH: I move we adjourn.

CHAIRMAN AASHEIM: The question now arises on the motion to adjourn. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: Motion is lost. I think maybe that's a message, a very subtle one—or maybe not so subtle-but it's a message. Let's get on with our work. Any more discussion on Mr. Cate's proposal?

(No response)

CHAIRMAN AASHEIM: Are you going to close, Mr. Cate?

DELEGATE CATE: I close.

CHAIRMAN AASHEIM: The question then arises on the motion of Mr. Cate that—

DELEGATE CATE: (Inaudible) -48-48 last time. I'd like to have a roll call. Thank YOU.

CHAIRMAN AASHEIM: A roll call vote has been required, and the motion is on-what is that? But I've got to read the motion. The motion reads: "I move to amend Section 4, subsection 2, page 5, lines 21 through 25, Executive proposal, by deleting in its entirety and inserting in lieu thereof the following language: 'The lieutenant governor shall have the duty to provide information to any person upon request relative to government, to investigate on complaint or on his own initiative any act or "mission of any agency of government, and take appropriate action as provided by law, and to perform and-such other duties as may be provided by law or as may be delegated to him by the governor. But no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner."' A roll call vote has been requested. As many as are in favor will vote Aye; opposed will vote No. Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone want to change his vote?

(No response)

CHAIRMAN AASHEIM: The clerk will tally the vote?

Aasheim-Chairman ..... Absent
Anderson, J. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman. ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Absent
cross.. ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll Absent
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Graybill ..... Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Nay
Holland. ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lore110 ..... Absent
Mahoney ..... Aye
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Aye

McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin. ..... Aye
Monroe.. ..... Aye
Murray.. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Absent
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 24 delegates voting Aye, 62 voting No.

CHAIRMAN AASHEIM: 62 havingvoted **No, 24** voting Yes, the motion is lost. The question then arises on the motion of Mr. Joyce that subsection Z-isn't it-subsection 2 of Section 4 of the minority report, page 38, of the Executive Article be adopted. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?
(No response)

CHAIRMAN AASHEIM: The motion is carried. I might remind you folks that Chair is going to listen to amendments as long as they're in order, but it's going to have to be up to your discretion how much talking you want to do. If you want to talk, you go right ahead and talk. That's the function of this session. But I hope you use your own discretion. The clerk will read subsection-

CLERK HANSON: —3.

CHAIRMAN AASHEIM: —3. Mr. Joyce, did you have to—

DELEGATE JOYCE: Yeah, I'd like to make a-to renew the motion to adjourn. I think we could run through the Executive office tomorrow-the rest of it-there's very little controversy that I can anticipate. Famous last words. But I personally am getting a little weary, and I'm the Chairman and I'd be pleased if we could adjourn.

CHAIRMAN AASHEIM: Mr. Joyce, could we finish Section 4?
Mr. Joyce.

DELEGATE JOYCE: I can do it. I mean, it's just-if the-yeah, okay. We'll go down through 4. Is that the plan of the leadership?

CHAIRMAN AASHEIM: Well, we're going to-1 just had word that we're going to go another half hour if we possibly could. Could we finish Section 4? We're on subsection 3 of Section 4.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 4, subsection 3, that the minority report on page 38 be adopted.
Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: The majority and the minority are exactly the same on Sections 3 and 4, but I'm only moving at this time that we—that Section 3 be adopted. The section is self-explanatory. It says "The secretary of state will keep the official acts and records of the legislative assembly and of the executive department as provided by law. He shall keep the great seal of the state of Montana and perform any other duties prescribed by law." I move the adoption of the report again.

CHAIRMAN AASHEIM: Any discussion?
(No response)

CHAIRMAN AASHEIM: You have before you the motion by Mr. Joyce that we adopt subsection 3 of Section 4 of the minority report, page 38 of the Executive report. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?
(No response)

CHAIRMAN AASHEIM: The motion is carried. Subsection 4, please.

DELEGATE JOYCE: I move that when this committee does arise and report, after having had under consideration Section 4, subsection 4, of the Executive Article that it recommend that the same be adopted.
Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: This section of the minority and majority reports are identical. It's self-explanatory. It says that the Attorney General shall be the legal officer of the state, with duties and powers provided by law. And what that means is that hewillbethelegalofficerofthestate and the Legislature can give him any other duties that they so desire. Right now, they have given him the additional duties of being the head of the Department of Law Enforcement, but we didn't write that into the Constitution. They can repeal that if they want, but this just gives--makes the Attorney General the chief legal officer and such other duties as shall be prescribed by law, and it's self-explanatory.

CHAIRMAN AASHEIM: The clerk has an amendment.

CLERK HANSON: "Mr. Chairman, I move to amend subsection 4 of Section 4, on page 39 of the Executive Committee proposal, by adding the following language at the end of the subsection: 'He must be of the same political party as the governor'. Signed: Kelleher."

CHAIRMAN AASHEIM: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, this—

CHAIRMAN AASHEIM: Mr. Kelleher.

DELEGATE KELLEHER: -this amendment would merely provide that the Attorney General would be of the same political party as the Governor and in the same way that the Lieutenant Governor must now be a member of the same political party. The purpose of my amendment is to stop the feuding between the Attorney General and the Governor and the partisan bickering when they are of different political parties. That's all I have to say.

CHAIRMAN AASHEIM: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I resist the amendment. I think we solved this problem earlier in the day, and I suggest we vote on it and proceed.

CHAIRMAN AASHEIM: Any further discussion?

DELEGATE KELLEHER: May I have a roll call vote and ask for seconds?

CHAIRMAN AASHEIM: A roll call has been asked for. The question then arises on the amendment by Mr. Kelleher that on Section 4, subsection 4, following the word "law" on line 1, page 39, to amend by adding say-"the same political party." As many as are in favor will vote Aye, since this is a recorded vote; those opposed will vote No.
Has everyone voted'? (No response)

CHAIRMAN AASHEIM: Does anyone want to change his vote? (No response)

CHAIRMAN AASHEIM: The clerk will record the vote.

Aasheim-Chairman .Absent
Anderson, J. ..... Nay
Anderson, O.. Nay
Arbanas Nay
Amess..... Absent
Aronow Nay
Artz Nay
Ask.. Nay
Babcock Nay
Barnard ..... Nay
Bates.....Absent
Belcher Nay
Berg..... Nay
Berthelson Nay
Blaylock Nay
Blend.. Nay
Bowman..... Nay
Brazier . . . . . Nay

Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting, ... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Absent
Robinson ..... Nay
Roeder ..... Nay
Rollins.. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Absent
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 4 delegates voting Aye, 82 voting No.

CHAIRMAN AASHEIM: 82 having voted **No, 4** having voted Aye, the motion is lost. The— Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: Inadvertently we left out in the hurried preparation of the minority article on the Executive Department describing the duties of the State Treasurer. I would like to insert here "the state treasurer shall keep"—

CHAIRMAN AASHEIM: Mr. Wilson, we will-I'll accept your motion when we get through with subsection 4 because we're now talking about the Attorney General, and then I'll accept your motion. Isn't that correct? The question then arises on the motion of Mr. Joyce that subsection 4 of Section 4 of the minority report, being page 38 and 39 of the Executive report, be adopted. Those in favor—

For what purpose do you arise, Mr. Choate?

DELEGATE CHOATE: Mr. Chairman, I would-in looking at my copy of this, I would say that Mr. Joyce failed to read the last part of sub. 4 where it has to do with the office of the Auditor. I think that's still in part of sub. 4 and should probably be read and considered with it...

CHAIRMAN AASHEIM: Mr. Choate, I believe that's subsection 5. It should be, I believe.

DELEGATE CHOATE: **No,** it doesn't say so in my book. It's part of sub. 4.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: I think it's intended to be subsection 5, and I'll move to amend page 39, line 2, to put the word "5" before it so we will make it perfectly clear for everybody. Just a typo.

CHAIRMAN AASHEIM: The motion—let's see—

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, you're going to have to change some of the rest, because Section 5 starts with "compensation" on line 6.

CHAIRMAN AASHEIM: Mr. Choate-

DELEGATE CHOATE: Section 5—Oh, I'm sorry-okay.

CHAIRMAN AASHEIM: Mr. Choate-

DELEGATE CHOATE: I stand corrected.

CHAIRMAN AASHEIM: Mr. Joyce, this is a technical error. We'll just make that correction, I believe, without any necessary motion. Without objection, we'll do that. On line 2 would be-following line 2 on page 39 will be a number 5, sub. 5. Now, we're back to our original motion by Mr. Joyce that when-that we adopt subsection 4 of Section 4 of the minority report of the Executive Article. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

(No response)

CHAIRMAN AASHEIM: The motion is carried. And now, Mr. Wilson, do you want to wait and make that a subsection 6?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, let us just finish with subsection 5, and then we will move out of the Committee of the Whole—

CHAIRMAN AASHEIM: All right.

DELEGATE ESKILDSEN: -before we go any farther.

CHAIRMAN AASHEIM: Without objection, we will continue with subsection 5.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Joyce.

DELEGATE JOYCE: **Now, we're** coming to subsection 5, and this is going to be controversial because Mr. Felt is going to move to amend subsection 5, I'm understood, and it's very important. I want to be heard on it myself, and so I think that this is a good place to stop for the evening. We'll start fresh in the morning-if you would indulge the Executive Committee that courtesy, I'd be very appreciative.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I apologize. I thought that you wanted to go through that one and it was the one that Mr. Wilson was talking about that you wanted to take tomorrow. So, with that in mind, I might mention one other thing, that while you're in the Committee of the Whole, you can't adjourn; so keep that in mind, please. I move the Commitee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN AASHEIM: Members of the committee, if a comment is in order, I must say that you've been a very patient crowd. I want to compliment you. The motion is now to recess-to rise and report and report progress and meet again-and beg leave to sit again. As many as are in favor will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

(No response)

CHAIRMAN AASHEIM: Motion is carried.

(Vice President Toole presiding over Convention)

VICE PRESIDENTTOOLE: Convention will come to order. The clerk will read the report. Several delegates have asked that the report be read, so we will do so. Clerk will read the report.

CLERK HANSON: "February 24th 1972. Mr. President, we, the Committee of the Whole, having had under consideration Report Number 4 of the Committee on Executive recommend as follows: That Section 1, subsection 1, of the majority proposal be amended by inserting the minority report on that section in lieu thereof. Amendment made by Delegate Wilson and adopted. Roll call vote was requested by Delegate Roeder, with sufficient seconds, and the following vote was recorded: Ayes 53, Noes 44. At 3:05 p.m., the Committee recessed until 3:20 p.m. Delegate Aasheim in Chair. That the amendment by Foster to amend Section 1, subsection 1, be not adopted: Amend by striking 'superintendent of public instruction'. Roll call vote was requested by Delegate Foster, with sufficient seconds, and that the following-"

DELEGATE ARONOW: Mr. President, I move that we dispense with the reading of the report this evening.

VICE PRESIDENT TOOLE: You've heard the motion of Mr. Aronow that we move with the dispensing of the reading of the report. All in favor say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion carried.

CLERK HANSON: "That the Committee rise and report progress and beg leave to sit again. Signed: Aasheim, Chairman."

VICE PRESIDENT TOOLE: We will move to Order of Business Number 11, Committee Announcements and Notices.

UNIDENTIFIED DELEGATE: Move the adoption—

VICE PRESIDENT TOOLE: —you move the adoption, Mr. Chairman?

CHAIRMAN AASHEIM: Mr. Chairman, I move the adoption of the report.

VICE PRESIDENTTOOLE: Now, you've heard the motion for the adoption ofthereport. All in favor say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion carried. We'll be under Order of Business Number 11, Committee Announcements and Notices.

There being none, I'll call on Mr. Eskildsen.

DELEGATE ESKILDSEN: I move **we** adjourn until February 25th, Friday, 9:00 a.m., 1972.

VICE PRESIDENT TOOLE: You've heard the motion for adjournment. All in favor say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion carried.

VICE PRESIDENT TOOLE: I beg your pardon, Mr. Jacobsen.

DELEGATE JACOBSEN: I just wanted to call your attention to the fact that we're supposed to all have our pictures taken in Convention Hall tomorrow morning at 9:00 a.m.

VICE PRESIDENT TOOLE: Pictures tomorrow morning at 9:00 a.m.

(Convention adjourned at 9:20 p.m.)

February 25, 1972 **Thirty-Second Day** **Convention Hall**
9:10 a.m. **Helena. Montana**

PRESIDENT **GRAYBILL:** The Convention will come to order. Ladies and gentlemen, this morning we will take a picture before we convene the session. The Sergeant-at-Arms will stand at the back door and keep people from coming in and out from now on. We would like the side benches cleared, as I guess they are. The pages and-we would like on the back row there. You people on the front desk can be here, but you're not allowed to move about. Please, if you have cameras in the gallery, do not take pictures. Okay, they will take the picture in two segments, a segment on that side and a segment on this side. And smile when your segment is being taken. I'll leave the mike on for you. The Convention will be in session. If you'll please rise, Reverend Harper will lead us in an invocation.

DELEGATE HARPER: If you'll close your eyes and picture in your mind the beauties of our state, it might lead you to pray like this with me this morning. Lord God of shining mountain and flashing stream, whose hand has planted with double portion the treasure of nature in this, our state, fashion now a community of people whose character can match the greatness of their land. Lord God of stately fir and large, full pine, who has nested the eagle among the towering peaks, make your children here to grow so straight and tall that their spirits will make their home only in the high places. Lord God of the creative spirit, whose never-ending plan of building spreads onward before us, who planted the will to adventure in the hearts of the pioneers, open our eyes to see this great crowd of witnesses that surrounds us and wake us to the frontier which calls for astillin Montana. Break us loose from the mold of any tradition which would hinder the growth of your community in the hearts of your people. Set our hands and hearts again to the pioneer dream of a brotherhood state and deliver us from the temptation to rest halfway up any mountain, in the name of Him who climbed all the way up Calvary for our sakes. Amen.

PRESIDENT GRAYBILL: Now, we can take the roll by voting Aye on the voting machines, please.

CLERK SMITH: Delegate Barnard, Delegate Blaylock, Delegate Burkhardt, Delegate Cain, Delegate Cross, Delegate Harper, Delegate Harrington, Delegate Holland, Delegate Scanlin is excused.

PRESIDENT GRAYBILL: Who's absent?

CLERK SMITH: Delegate Holland, Delegate McKeon.

PRESIDENT GRAYBILL: Very well. Take the vote. Mr. Clerk, please show Mr. Holland present.

Aasheim	Present
Anderson, J.	Present
Anderson, 0	Present
Arbanas	Present
Arness	Present
Aronow.	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates..	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong.	Present

Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lore110	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Absent
McNeil	Present
Melvin	Present
Monroe..	Present
Murray	Present
Noble.,	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Excused
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 98 present, 1 excused, 1 absent.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees. There's a report from Style and Drafting, Mr. Clerk.

CLERK SMITH: "Mr. President. The Committee on Style and Drafting, Transition and Submission, transmits revision of the above Constitutional Revision Article for consideration of the Convention. Signed: Schiltz, Chairman."

PRESIDENT GRAYBILL: And which article is it?

CLERK SMITH: The Constitutional Revision Article.

PRESIDENT GRAYBILL: Constitutional Revision Article of General Government has been received back from Style and Drafting. It'll be placed on General Orders, printed and placed on your desks.

Number 2, Reports of Select Committees.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Number 3, Communications. There are no foreign communications. I want to make a couple of announcements during the communications period. First of all, some of you may have noticed that we waged pleasant war on the rest of the Capitol yesterday, and we gave everybody in the parking spaces notice not to park there again and posted their names. So try and capture back your parking positions, and we'll try and hold them for you. There were about 30 cars parked in our parking spaces, and I wouldn't mind if they filled in after you, but some of you don't get here before they do and that makes it hard. Second, I think you should understand now, or might like to understand now, that there will be no night session tonight, and there will be no night session Saturday night, but we will have night sessions again next week if we are not making better progress. Some delegates

have suggested that I mention to you that you might spend some time reading the books ahead of time. I don't know that you need to read them ahead of time, but I think you shouldn't amend them until you've read them. (Laughter)

Very well. We'll go on to Order of Business Number 4, Introduction.

CLERK SMITH: None

PRESIDENT GRAYBILL: None. Order of Business Number 5, Final Consideration of Proposals.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption of Constitution.

CLERK SMITH: None

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. None.

Order of Business Number 8, Unfinished Business.

CLERK SMITH: None.

PRESIDENT GRAYBILL: None. Order of Business Number 9, Special Orders.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself in Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves into Committee of the Whole to consider the Executive proposal. All in favor, say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So orderd

(Committee of the Whole)

CLERK SMITH: Mr. President. The following committee proposals are now on General Orders: Executive, Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Public Health, Education, Local Government and General Government. Mr. President.

CHAIRMAN GRAYBILL: Very well. It's my understanding that we are on subparagraph 5 of Section 4. Since there was no subparagraph 5 in the majority report, we're in theminority report, and the Chair would call on Mr. Wilson. Do you want us to read it from the rostrum, Mr. Wilson'?

DELEGATE WILSON: Mr. President. Due to an inadvertency in the printing of the minority report, we left out the duties of the Treasurer. And I have an amendment to put in for subsection 5 of Section 4. I don't know whether you have a copy of it up there or not.

CHAIRMAN GRAYBILL: I have subsection 5. The one on auditors is in.

DELEGATE WILSON: This is pertaining to the State Treasurer.

CHAIRMAN GRAYBILL: Right. I don't have it yet.

DELEGATE WILSON: I will read it from here or bring it up to you, whichever—

CHAIRMAN GRAYBILL: Mr. Wilson. Do I understand that subsection 5 you want to be on the Treasurer?

DELEGATE WILSON: Right.

CHAIRMAN GRAYBILL: And then subsection 6 on the Auditor:'

DELEGATE WILSON: Right.

CHAIRMAN GRAYBILL: All right. Will the clerk please read the proposal.

CLERK SMITH: "Section 5. The state treasurer shall keep a separate account of each fund, and the legislative assembly may provide further duties by law. Signed: Wilson."

CHAIRMAN GRAYBILL: Just a moment, Mr. Wilson. I doubt if all the delegates got that message, because they were not all in their seats. Now, ladies and gentlemen, you're going to have a Section 5, the text of which you do not have because it's not in the booklet. I'll read it once more for you, and then Mr. Wilson will discuss it. "The state treasurer shall keep a separate account of each fund, and the legislative assembly may provide further duties by law."

Mr. Wilson.

DELEGATE WILSON: Mr. President. I move that when the Committee as a Whole does rise that they adopt Section 5 of the minority report.

CHAIRMAN GRAYBILL: Very well. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President. I hadn't seen that, so I had no chance to prepare an amendment. I'd like to amend that to provide the State Treasurer shall not be eligible to his office for the succeeding term.

CHAIRMAN GRAYBILL: Will you write that out, and I'll do it from here, but will you write that out?

DELEGATE BOWMAN: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bowman, just a moment. I understand it to be the sense of Mr. Davis' amendment that he would add a sentence to the proposed Section 5 saying "the state treasurer will not be eligible to his office for the succeeding term."

Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise to ask a question. Are we going to discuss the State Treasurer before we discuss the Auditor, which in my book comes first?

CHAIRMAN GRAYBILL: Well, Mr. Wilson, who is the head of the Minority Report Committee, has informed the Chair that he wishes the Treasurer to be Section 5 and the Auditor to be Section 6.

DELEGATE BOWMAN: The Auditor— Thank you.

CHAIRMAN GRAYBILL: "The state treasurer shall not be eligible to his office for the succeeding term." That's Mr. Davis' amendment.

Mr. Davis.

DELEGATE DAVIS: Mr. President. That's thesameas thelastsentencein theexisting Constitution. I think if we have this reluctance to take them out or change the present Constitution, let's leave it like it is all the way then.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I resist the amendment. I think it's our cake, and the modern age says there's no reason why the Treasurer should not succeed himself.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Arbanas.

DELEGATE ARBANAS: I'd like to resist the motion also. During our interviews with the State Treasurer, we tried to investigate that very carefully, and I think the committee as a group could find no good reason for it, especially since there was some hint, at least, that the very best people professionally qualified for that kind of a job simply can't go in for one term-give up a private endeavor, go into public office and then go back to something else. I don't think you'd get the best people.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I would rise in opposition to Mr. Davis' motion. Of all the discussion, of talking with county commissioners and people who are interested in the office of State Treasurer and County Treasurer, this is one thing that they've felt-that the Treasurer should be able to succeed himself. In this modern day of accounting, computer systems, and so on, they felt that the experience that was acquired by the person in the office should be continued if the voters felt that he was doing a good job. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Davis' amendment to the minority report on the Treasurer. The sense of Mr. Davis' amendment is to be-is to add a sentence that says, "The state treasurer shall not be eligible to his office for the succeeding term." So many as are in favor of that motion, say Aye.

(No response)

CHAIRMAN GRAYBILL: So many as are opposed, say Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. We're now discussing, again, the proposed Section 5. "The state treasurer shall keep a separate account of each fund, and the legislative assembly may provide further duties by law."

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. This amendment says that the Treasurer

shall keep separate accounts of each fund, and I observe that in the definition of the duties of the Auditor, which is in the very next succeeding little paragraph we are to consider, it says, "The auditor shall be the custodian of all fiscal records." And I suggest that here is a fatal conflict in thehandling of accounts and records, and I do not know how the minority proposes to resolve it, but it seems to me that we have here something that has to be clarified.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman. One—the thought of the minority to resolve it is that the following sentences--I think they're lines 2 through 5—will be deleted and that other material will be offered in substitution. If that should fail, then some other means of clearing up that problem could be developed when we get to those succeeding lines.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move, as a substitute motion for the minority report, that the subsection 5 read that "The state treasurer shall have such duties as are provided by law."

CHAIRMAN GRAYBILL: Will you write that out and send it up. Mr. Joyce has moved a substitute motion, the text of which is: "The state treasurer shall have such duties as are provided by law." Is there discussion?

Mr. Harper.

Oh, pardon me. Mr. Joyce, do you want to proceed--and then I'll call you, Mr. Harper.

DELEGATE JOYCE: Mr. Chairman. The reason I offer this substitute motion is that the Convention has decided to retain the State Treasurer as an elected, constitutional office. I graciously accept the will of the Convention. the current constitution does not give the State Treasurer any specific duties whatever. It simply says there will be a State Treasurer, and it says also that he-all of these officers will have such duties as are prescribed by law. It seems to me that we should continue the same system, rather than trying to give him any specific duties in the Constitution with reference to keeping accounts, and let the Legislature prescribe what the State Treasurer is to do in the future. And the reason for this is that we'll then enable the Legislature to amalgamate the State Treasurer into the reorganization plan that the people havealready approved and which are on the books and can make the State Treasurer do what will reasonably fit into the established system.

CHAIRMAN GRAYBILL: Now, Mr. Harper. No?

Very well. The question is on Mr. Joyce's substitute motion that the State Treasurer shall have such duties as are prescribed by law, substituting that in place of the language supported by the minority report. All those in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Is there further discussion of what is now the tentative Section 4, subsection 5; namely, "The state treasurer shall have such duties as are prescribed by law." If not, Mr. Joyce, remake your motion that when this committee does arise and report.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, subsection 5, of the Executive Article, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: So many as are in favor of Mr. Joyce's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so orderd.

Mr. Wilson, shall I call on you or Mr. Felt for subsection 6?

DELEGATE WILSON: Mr. Chairman. Mr. Felt has requested permission to present the Auditor's functions.

CHAIRMAN GRAYBILL: Very well. The Chair will recognize Mr. Felt for subsection 6 of Section 4.

DELEGATE FELT: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection or-lines 2 through 5 on page 9-39 of

the Executive Committee Minority Proposal— that it recommend the same be adopted and numbered subsection 6.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: As a substitute motion, I move to amend subsection 6 being of Section 4, being lines 2 through 5 on page 39 of the Executive Committee Minority Proposal, by deleting it in its entirety and inserting in lieu thereof the following language and numbering it as subsection 6, Auditor. Would the clerk read it now, please?

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK SMITH: "Section 4, subsection 6, Auditor: Subsection 1. There shall be an auditor, who shall be responsible only to the people. He shall audit financial records on behalf of the people of Montana. He shall also make an analysis for the purpose of determining and reporting to the public whether, in his opinion, public funds have been effectively, economically and efficiently administered and expended. These shall cover the executive, legislative and judicial branches of state government, including all administrative offices, boards, branches of state government, including all administrative offices, boards, bureaus, commissions, agencies and instrumentalities of state government. He may be given such other duties as may be prescribed by law. Subsection 2. The qualifications, terms of office and manner ofselection shall be the same as for the governor. Signed: Felt."

DELEGATE FELT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Members of the assembly. I requested the permission of Mr. Aasheim and of the Chairman of the committee if I could speak on this from this position, and if no one else objects, neither of them did. I did this partly because it was about 15 years ago that I— the only other time I did this and that was when I spoke on behalf of the first proposal to call a Constitutional Convention. The other reason is that, from where I sit, I must be facing only half of the members of the Convention and have my back largely to the other half. This proposal may be a bit of change of pace. I know that it gets rather wearisome here when we debate all day long, and I, myself, will try to be brief, and the persons who have indicated a desire to support me-some of them have agreed not to discuss the matter and some who will and should will also be brief. This matter did not come out as a part of the Minority Committee Proposal that was in your booklet, due to the fact, as I mentioned the other day, that I was unable to be present at that time; but I can assure you that the members of the Minority Committee Proposal do endorse this in lieu of the language that they had in their committee report. This, essentially, is an effort to expand the office of State Auditor and, particularly, to place in the Constitution a general description of the duties of the office. That is self-evident. The framers of our present Constitution, perhaps, thought it was self-evident, when they designated an official as State Auditor, that he would do some auditing, and in the early days of the state, he did. The first book of the reports of our State Auditor show that he caught one of the early Governors with his hand in the jar, to the tune of $500, and made his report on that. It wasn't long until the Auditor no longer did any auditing, and we have reached a point where, for a period of years, really, the state government did not have what would be considered a complete set of books as were used by businesses that would be, perhaps, three- to five-man size operations or larger, nor did it have proper accounting methods; interbureau or within a department, the accounting methods were reasonably adequate, but there was no correlation between them. And, in regard to budgeting, it was really very sad-or not budgeting is only a part of it. In regard to auditing, I should say, of which budgeting is a part, it was essentially nonexistent. And that is one of the main reasons why I, and others, did feel that we needed to revise our state Constitution. Back at that time, 1957, we did not have an Executive budget, we did not have a Legislative post-auditor, we did not have a functioning Legislative Council, and so on. These things were all either prevented or shaky because of restrictions in our present Constitution. And we would creep out into the legislative halls with a proposal to try to obtain some of the things that we felt were needed to give the people of the state the information they desired and needed to play their role and to give legislators the information that they desired and needed to fulfill their functions. And we did, gradually, obtain first the Legislative Council and, through its recommendations, finally, a Governor's budget from which the Executive Branch becomes responsible. We have now had, for about

4 years, a Legislative post-auditor, who has done a fine job. And if, as you'll recall, we have language in our Legislative Article which authorized the continuation of the interim committees of the legislative body, which would include the committee which deals with this Legislative post-audit and which hires, for a 2-year term, our Legislative post-auditor. In addition, we have wanted to have a fiscal analyst, and it is now my proposal-or our Minority Committee Report Proposal-that we expand the office of Auditor, which is a natural place to place this function. We do not eliminate, by no means should we eliminate, the use of the Legislative post-auditor, but that, in itself, is not everything that we need, and there is no way to guarantee that we will even continue to have what we have today, because the legislative body could, in several ways, trim back the functions of this Legislative post-auditor. This could be done by an appropriation reduction, or it could be done by changes in statutory language which would trim back the scope of the audit reports that he is now able to make. There has been some thought given to the fact that there may be some duplication. This has concerned me. In some instances, there may be duplication of effort by this new functioning Auditor and the Legislative post-auditor. I feel that this is one of the many instances where, if need be, we should sacrifice pure efficiency for the safeguard of the auditing function, and I do not believe that we would actually have duplication in the ordinary situation. I feel that these men—there would actually be four individuals--now functioning much as a team, but each independent of the other. This would be the budget director, the Legislative post-auditor, the director of our Department of Administration and the State Auditor. But we emphasize, in this proposal, that the State Auditor represents the people, because even if the legislators for any reason-perhaps because of a strong Governor or pressure exerted from any direction-might not choose to force out into the open all of the information that they might. Yet, we would have here, an Auditor for the people elected by the people and responsible to the people, and we believe that he would see to it that the people in the state and, therefore all legislators also, did receive whatever information they felt was proper. I could go on at more length, but I feel that the essential element here-the first point is, there must be external auditing. It is not sufficient to have internal auditing. It is not sufficient to have a good set of books, which we are now obtaining, and I'm very grateful to the many people, including the accounting profession in Montana, which has labored long to produce for us a correlated system of double-entry bookkeeping systems for state government. And we do have a good budget department, and we have a fine Legislative post-audit. But we need this type of external auditing to supplement and complete the picture. An example which might be used-it's in today's paper, so I refer to it, but there are thousands of possible examples. There is apparently to be some type of investigation of moneys spent on a building on a campus at the university. This is the type of thing which may be done now. There might be a question of who should do it and whether it's being doneexactly in the right manner. An operation like that-an investigation like that-could be handled very readily, I feel, by the office of State Auditor if it is expanded into the size of a job that we contemplate with this proposal. There have not been serious scandals in Montana. There have been a few. The size has not been large, and the number of instances has been very few. At least we hope it hasn't existed and that we just simply don't know about it. But that has not been the case in other states, and these other states, such as Illinois, had the same kind of system that we have today, and that did not prevent improper acts, stealing of state funds, which were not uncovered until long past the time when that should have been uncovered. One of the reasons why is that, because they thought they had machinery set up, they went to sleep, and it didn't function and therefore these things happened. This is why, if we need to err, I say err on the side of overinsurance rather than no insurance. This little hearing that's coming up that I mentioned, too, I understand is going to be taken before the State Board of Examiners. We're going to abolish the State Board of Examiners, and I would question whether that is a proper place to deal with a question like that. But, for lack of anything else, perhaps it's all there is. I could philosophize at some length about the need for this, whether to call it a fourth power, whether we need a fourth power, whether we have a fourth power, because many people claim to be a fourth power-the press sometimes does, and with justification; lobbyists sometimes do, and with some justification; lawyers even claim, and I've heard them, that they can handle this sort of thing, but I contend that if we are serious drafters of a Constitution, we should look at something like this. I would like to call it a responsible innovation, but I'm sure everybody considers their ideas respons-

ible innovations. They're innovations because it's something different from what we have; it's responsible because they think it's needed. But this, while it's as new as tomorrow, is as old as certainly the Republics of Rome and Greece, almost as old as our mountains. We do feel that public officials should be accountable, that this accountability extends to the financial matters, the funds that they handle in trust. We believe that we have this in Montana, but, I can assure you, we do not. And you cannot find anything in our Constitution that guarantees that we will have this type of auditing. It is important, it is needed; and I hope that it meets with your approval.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I sent up-1 don't know whether it would be a substitute motion for Mr. Felt's motion or not.

CHAIRMAN GRAYBILL: Mr. Martin, I just wrote you a note on that, but I haven't delivered it. It looks to me like you need a motion to amend. We have a substitute motion you can amend by deleting Mr. Felt's language and putting yours in if you want to.

DELEGATE MARTIN: Can you handle it from there for me.

CHAIRMAN GRAYBILL: Yes, for awhile.

DELEGATE MARTIN: I'm a neophyte on this.

CHAIRMAN GRAYBILL: Mr. Martin wishes to make an amendment to Mr. Felt's substitute motion. The amendment would strike the language of Mr. Felt's substitute motion-substitute amendment-substitute section and say, "The auditor shall have such duties as provided by law." So, Mr. Martin's amendment to Mr. Felt's motion-substitute motion-will be to delete the substitute motion's language and add the sentence, "The auditor shall have such duties as provided by law."

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. It seems to me that the basic thing that we're here for is to put some fundamentals into the Constitution and to make it flexible, not to go backwards. And I'm sorry that this issue couldn't have been debated more and discussed more within our committee, but, unfortunately, Mr. Felt was unable to be present during the time that we took the deliberations, and this comes as new material, I have endeavored, as much as I could, to get some information relative to the existing status of the various departments of state government, as well as the legislative officers-or audit-and the Legislative Audit Committee. I think that the State of Montana Executive and Legislative branches might be compared to a President and a Board of Directors, with the Legislature as the Board of Directors; and, in this capacity, through my studies and my experience, the Legislature has been the innovative tool for good government in Montana. This goes back to the time of when the first committee was organized to reorganize the government under Sam Ford. Prior to that, Governor Dixon had made some efforts and Governor Stuart had made some efforts to innovate some improvements in the relationship and—between the Legislative and the Executive branches of government. But I think the greatest inroad--or the greatest progress was made probably starting in the 1950's, when a group of senators, of which one was in the hall yesterday and is still a senator, Senator James, initiated some research and some studies and some investigative reports which led to the establishment, eventually, of the Legislative Council. The Legislative Council has been responsible for the improvements and the development of an improved state government, and those of us who had a chance to talk to the Executive heads, as well as the elective officer, had an opportunity to see and know what they could or couldn't do. Presently, the Montana Legislative Audit Act was enacted in 19-I think in 1967—and it provides—because the Legislative Assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the Legislative Assembly should also be responsible for the audit of fiscal accounts and records, so that it may be assured that the directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the Legislative Assembly with factual information vital to the discharge of its legislative duties. We have had some of the most dedicated public servants in the Legislature, who have served as members of the Legislative Audit Committee. Presently, we have Senator Bill McKay, Senator William Mathers, Senator Thiessen, Senator Bertsche, Representative

Gerke, Representative Nichols, Representative Zimmer and Representative Warden, and I would say that there are eight people who are certainly dedicated Montanans and dedicated to the task of insuring that we do get responsible government. And I'm sure that the record of the 32 or more audits that they've made would indicate how important it is that that be continued. Now, to get back to one other thing, the central accounting office was established in Washington, D.C., in 1921, and it has been an arm of the Congress. When the Hawaii Constitution Convention met in 1950, only four states in the Union had Auditors clearly responsible to the Legislature in the performance of the post-audit function. But in 1967, Montana was the 32nd state which established the independent post-audit function within the Legislative branch. Since that time, Maryland, Kansas, Idaho, Wyoming and perhaps one or two more states have added a Legislative Auditor, and that is the function of the Legislative Auditor. Post-auditing is a legislative function, and the auditing authority who performs this duty should be selected by the lawmaking branch. And contemporary literature on the subject indicates that Legislative post-auditing is a trend. There are 35 Legislative audits in the United States; there are 12 elective auditors and, I think, 3 appointed auditors. The State of Michigan had an Auditor for 115 years, and they discontinued the Auditor. This Convention didn't see fit to do that, but I would say that no state--and this is significant-no state in this country has turned to an elected state audit program, in recent years, as the best means of obtaining the independent post-audit. No state has made any organizational change in the location of its post-audit program other than to place it under the responsibility of a Legislative post-auditor. What accounts for this trend, and why is it so completely in one direction? It is because, when you really get down to the relative advantages and disadvantages of electing a State Auditor, the disadvantages far outweigh the advantages, and no state has yet been ready to sacrifice the promises of the Legislative audit program for the uncertainty of the elected auditor system. For instance, the State of Colorado, a certified public accountant was elected to be State Auditor, and he was elected on the promise that if he were elected, he would encourage the abolition of his office. And subsequently, he was made the head-Legislative Auditor and has done a remarkable record. This quotations that I'm giving you are from a Doctor Knighton, who is head of the government department at Brigham University and is regarded as the authority in the United States on the subject. And he said, "Over the past 6 years, I have searched through the records of Constitutional Conventions, state reorganization studies, special research reports, publications by authoratative groups and the writings of numerous authorities, and I have been overwhelmingly impressed with their unanimity of thinking on this subject in favor of a Legislative post-audit program. Auditing is as much a part of an integrated control system in a state as is budgeting. It cannot be separated from the basic pattern of responsibility inherent in the American system of state government." There was intimation that there was all kinds of possibilities and potentials of law violations and-that could be resolved on this, but when you talk to the newly created Department of Administration, when you talk to the newly created-or investment officer of the State Land Board, you begin to find that they have developed their own controls. Mr. Saxby of the Department of Administration has initiated, and has working, a pre-audit program. I asked him, with respect to one report which is now in the hands of the Attorney General, as to how that happened. He says, "Well, it happened because the audit control should have been by the head of the department-or that department." But these things and the kind of people whom we have employed now under the reorganization program are people with integrity, with a reputation and a desire, not to hold a job. Their job is held at the pleasure of the Governor. They can be hired and fired, but most of them will tell you that they can get a job anywhere, under the circumstance, and some of them have been employed from previous administrations. Now, if we look at some of the things that have been happening, and I'll go into that, maybe, a little later, some of the things that have been happening in some of the elective offices, I think you would agree with me that certainly we should not destroy a tool of the Legislature. And I regret that, if we had known that this would come up, that we couldn't have had the benefit of testimony before our committee of Senators McKay, Mathers, Thiessen and Bertsche and Representatives Gerke, Nichols, Zimmer and Warden. I think that they would certainly have been able to give us an insight into it; but, in my opinion, the present Legislative Audit system is the best means if we're going to strengthen the responsibility and the check and balance of government. Today, that is the thing that we're trying to do. We have strengthened the Legislature by providing annual sessions. They're going to be here more often:

they're going to be able to make a better check on the government process and the Executive; and I think that the answer still lies in the Legislative Audit. I hope for the adoption of my motion.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. I oppose Delegate Martin's substitute motion, support Delegate Felt's. Delegate Aronow has told me not to jump up; if you wait long enough, somebody will say it for you. But I feel, on this occasion, that I should speak. As far as I know, I'm the only certified public accountant who is a delegate. Also, I'm 50 miles from home, and I have my briefcase, so that should make me an expert, I hope. Mr. Felt's proposal does not suggest that we abolish the post-legislative-audit post. It merely will supplement it. The accounting profession in the State of Montana is well satisfied with the work that the post-legislative-auditor has done, but there is no provision that this would be a permanent thing for Montana. It is a legislative act; it could be rescinded. Mr. Felt's proposal gives permanency to the audit function. Delegate Martin compared auditing with stockholders and corporations. Corporations, the large ones, send out proxies. On your proxy, the stockholders elect the auditor, not the board of directors, which is comparable to the legislative body. The board of directors have their own auditors in corporations, who check up on management and give them reports. But the auditor that the stockholders elect checks on both the board of directors and management. We feel that this does that very well. We feel that this post, by expanding the authority and the-explaining what shall be clone by the Auditor, will protect the rights of the people. The old section said that a Auditor was a custodian. We have custodians for buildings also. There's quite a bit of difference between a custodian of records and an auditor. The scope of the Auditor is to check the financial accuracy of the records, see that there was adequate control there, see that the assets have not been dissipated, they have been accounted for, see that the laws have been complied with, and on and on and on. I feel that the State of Montana has taken several great steps forward in the past few years. A uniform accounting system has been established. The post-legislative-auditor has been developed, has been inaugurated, rather. We also have the 20 sections of the Executive Department. We are getting some organization in government, hut we still do not have an outside source, an independent source, guaranteed by the Constitution, that will see that these things are done correctly, somebody to protect the people. One of the main things in auditing in corporations is that the auditor, the accountant, must have independence. He cannot be under the control of either the board of directors or management. He must bc able to go in, and if he finds that there's a carload ofwhiskeymissiny, he tells the people, because possibly it would get somebody in dutch that had hired him. If we have him reporting to the people, have this necessary independence, I think it's good. The last point, the necessity of auditing state funds, was discussed very thoroughly in Revenue and Finance Committee. The committee as a whole felt that this was essential, and this proposal of Delegate Felt goes along with what we've proposed, and I will read that and close. "An audit of the investment program shall be conducted at least annually and submitted to the governor, legislative assembly, and chief justice of the Supreme Court." I certainly hope that you support Delegate Felt's proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson. No. Mr. Jacobsen, excuse me.

DELEGATE JACOBSEN: Mr. President, fellow delegates. I agree wholeheartedly with Mr. Felt's proposal. The Auditor, I believe, is one of the most important elective offices in the state. I was an insurance agent for a number of years in Whitefish. That office, then, was very important; and, of course, what is not really well known is the fact that the Auditor is the ex officio Insurance Commissioner. The only change I would like to make in Mr. Felt's recommendation is that it should he, possibly, Auditor and Insurance Commissioner. People by the hundreds have called me, or I've told them by the hundreds where they can get their insurance problems straightened out. And the Auditor has been the one that I have sent them to. I hope that you will consider carefully what Mr. Artz has also said. It is important that the Auditor be accountable to the people, we the people. Thank you.

CHAIRMAN GRAYBILL: Therefore, the issue is now still on Mr. Martin's substitute motion to give the Auditor such duties as shall he prescribed by law.

Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would just like to rise in support of Fred Martin's motion to delete and say "as prescribed by law."

We know that the Auditor is the ex officio Insurance Commissioner. That is in the statutes. That has been provided for by the Legislature. I would like to say that-are we creating here another monster? We have a wonderful Legislative post-audit. There is provision, by law, for a fiscal analyst, which would be a preaudit sort of thing. I think the Legislature could handle this. I think they should handle it. I think to create another department of government to be a watchdog watching another watchdog watchdog that dog is a rather difficult situation. I think we have what is provided for here. I have talked to Francis Bardanouve, who is one of the people that was interested in this and who started the Legislative post-audit. He agrees with me. He said this is a Legislative Department function. It should not be creating another department in the State of Montana in government, and I would urge you very strongly to consider this before you determine that you are going to have another auditor watching an auditor watching somebody else audit. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I believe what we're doing now is really trying to justify what we did yesterday in creating an office of Auditor, when it has been well publicized that it has been a long time since the Auditor audits. Now, I agree with Mr. Jacobsen, and I think almost everyone does, that the Auditor appears to be performing a really useful function as the Commissioner of Insurance. But somehow, we can't justify putting a Commissioner of Insurance on the ballot as an elective office unless we are going to also elect all kinds of other commissioners. We couldn't justify putting him on the ballot as a paymaster. I am somewhat sympathetic with Mr. Felt's idea of assigning to the Auditor, if we're going to keep him named an officer, an Auditor, and keep him as an elected official, something that indicates that auditing is really his function. However, I am also a little skeptical about providing an office that could come to duplicate what is being done by the Legislative post-audit. Incidentally, I understand that of all the officials that were interviewed about their particular office, the Legislative post-audit Auditor was the one who was not at all concerned about keeping his office constitutional. His office is doing a real job, and there's no concern on his part for having it assured in the Constitution. I think that the place of the Legislative post-audit in Montana government is really assured, it has been really well accepted. This was one of the first, one of the really old positions of the League of Women Voters. We supported a Legislative post-audit for a long, long time. We dropped it a couple of years ago because it had been so well established that we didn't think that it was necessary to keep it on our list of support positions. I really think that, under Fred Martin's proposed amendment, we could, maybe, add some reference to an auditing function, but I think that, also, the Legislature could do that. With the Treasurer, we haven't said that he's going to necessarily treasure anything; and I also think that if Revenue and Finance thinks that some kind of an investment function is necessary in this office, that this is one that the Legislature could assign to this office. I'd hate to see anything really locked in, and I think that the interpretation of Mr. Felt's amendment might be interrupted--might come this way. Thank you.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I'm really loath to rise, but I feel I must speak to this-in support of Fred Martin and in opposition to my good friend, Jim Felt. Please look before you leap on this thing. Yesterday, after lunch, this Convention decided the shape of the Executive branch of government on the basis of 90 minutes of debate. Two-thirds of that debate was devoted to Mr. Harbaugh's heroic efforts on his own behalf in dealing with the Superintendent of Public Instruction's office. Therefore, the major Executive offices really have received no debate. Now, that may have been a foregone conclusion, and certainly I'm willing to live with the results of that decision that we made yesterday. But, please, please, do not be stampeded lemming-fashion into creating an office of sniper-soup—super-snoop that we have never considered. If we're going to try to create and innovate, as I think this proposal asks us to do, we had better put it back in committee, we had better open up hearings. Certainly, certainly, this proposal should have witnesses to testify on it. We have had one brief ad hoc committee meeting where this proposal was introduced. It would seem to me the essence of conservatism not to leap into the unknown without careful consideration. Please do not be stampeded on the basis of emotional language into buying something, we know not what.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I think we can all appreciate the fact that we've been nervous about voting in a title that does not describe a position. I think there are good reasons for having the State Auditor's position. It's been adequately demonstrated that he does many things for the state and does them well. For one thing, he holds the records. Vouchers and warrants go through his office, and in addition to being this Insurance Commissioner, in fact, and so forth; but because we use the term "Auditor", we're nervous, apparently, about getting him auditing functions, rather than trying to find where the best place to put the auditing function in our whole system may be. I simply rise as a person who doesn't know many things technically about finance, except to say that it seems to me strange that the man who holds the books should audit them. In Illinois, the reference was made to the kind of idea they have, and it was said that this is what WE are now proposing-Mr. Felt is now proposing. May I simply remind you that, if my memory serves me correct, recently it was the Illinois Auditor who was caught with 2 million dollars. And I submit to you that simply because a man is elected by the people, his honesty as a politician is not necessarily guaranteed.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I first came to this chamber here in 1951 as a legislator, and I've been following the legislative process rather closely ever since. I've gotten to know an awful lot of the legislators, and I think I can say that Jim Felt is one of the authorities on the fiscal matters of this state. There may be one or two others, one of whom would be my partner, John Shcchy, and one Groff from over in Ravalli County. I think he knows what he's talking&out, and I think his position is well taken. And I therefore resist the motion of Mr. Martin. Yesterday I voted against the retention of the Auditor as a constitutional officer on the ground that the Auditor formed no policy, had no reason to be responsible to the people and was a totally unnecessary constitutional officer. I would urge the position taken by Mr. Felt for the reason that this would give the man something to do and would insure his responsibility to the people. However, I think the most chilling point that Mr. Felt made--we're all agreed that some sort of audit is necessary-and his most chilling point was that WC cannot, in any way, be assured that the post-legislative-audit will continue in its present form or that it will not be diluted in the future. Accordingly, I support Mr. Felt's position.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I want to point out a few facts to this assembly about this situation, although I'm not altogether persuaded that we're as hungry for facts as we are to conserve our initial opinions. I think everybody agrees that an audit function is required, and it appears to have been impressed upon the Legislative branch, the people's representatives, quite a while ago and seems to be functioning. The problem now before the house is: how many layers of audit shall we have? There—facts are that there does exist the Legislative preaudit. There exists the Legislative post-audit, and in addition to that, any state agency that receives federal funds receives also a federal audit, by the federal people. HUD, HEW, et cetera, conduct their own audit of the functions of the state whenever federal funds come here, so the likelihood of embezzlement and defalcation seems to be pretty well safeguarded. The comment is made that it is necessary to put this in the Constitution in order to protect the people. I just cannot follow that, because we have worshipped at the shrine of the legislators as being those that the people elect and who represent them, and we're making them very visible and responsible to the people, and it is inconceivable to me that those we vote for every 2 years should suddenly become some kind of alien force whom we can no longer trust and whom we may think will abandon any concern for fiscal responsibility. I think that's just a misconception. But the thing I really want to call the attention of the house to is something that was not presented in the original discussion at all and was only mentioned rather in passing by Dr. Roeder, who was urging us not to jump too hastily. If you will look at thesecond half-thesecond two-thirds of this proposal, you will find that it ceases to discuss the matter of auditing and goes on into the business of requiring this officer to analyze, for the purpose of reporting to the public, whether in his opinion public funds have been effectively, economically and efficiently administered and expended. Economically and efficiently, effectively-this makes this man, it seems to me, a sort of political overlord in Montana. His functions cross over those of the Executive branch, of the Legislative branch, of the Judicial branch, via the precise wording of the thing here. It seems to me that this

creates a sort of rival Governor, so to speak, and I think it is very easy to imagine that such a person, with the tremendous fund of information which would funnel in to him by virtue of the auditing function, would find a way either to serve as the great supporter of the Governor or the great supporter of the Governor's opponent or, perhaps, of becoming a political giant in his own right in some time in the future. And in this respect, it is truly an innovation. It is not duplicated in any other Constitution in America, as far as I'm concerned. And I am just very anxious, when we're treading on the borderline between winning or losing this Constitution, that we not now do something here, by creating a political overlord, that would so frighten some more people that they would conclude we had forgotten what we came here for. Now, as far as constitutional provision is concerned, assuring to the public the security of its funds, I find in the Revenue and Finance Committee Proposal, Section 12, some very precise and comforting language that applies to the whole range of the public funds, that are the subject of this proposed amendment. It just says, "The legislative assembly shall enact the necessary laws"-shall enact, mandatory-"to insure strict accountability of all revenues received and moneys spent by the state, subdivisions and districts thereof." So here is a constant mandate upon the Legislature to be true to the public trust, and it seems to me, that this is the kind of constitutional drafting that is adequate to take care of this matter.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I think Mr. Felt's proposal has merit. The testimony we received in our committee relative to the investment fund showed that we're going to have to have more audits than the Legislative post-audit Committee can do. We felt that with having about 300 million dollars, we should certainly have at least an annual audit; some of them thought even oftener than that. The Supreme Court-the judge who—justice who testified there, was very-he felt very strongly that an elected official would really be more responsible than an outside agency. I suppose this would satisfy his requirements because he did feel that an elected official had more integrity than anyone else, but we will have to have outside audits. We're going to have to spend more money one way or the other, because if the Legislative post-audit can't do it, they're going to have to hire firms of outside accountants to do it. So, I don't exactly know how this would work out in the future. I don't know if I can tell exactly how it's spelled from this proposal. but I do believe that there is room for an outside audit and, in fact, an outside auditor is really going to be necessary as far as that large investment fund is concerned. So I do believe this has merit.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I agree with Delegate Martin. I see some good points to Representative Felt's idea, but I think you have to realize that the Legislature, in the end, is going to control whatever happens because all appropriations must be made by the Legislature. Now, I remember at times when Johnny Holmes was Auditor and he wasn't getting along with a few friends of mine up here in this House of Representatives and they just cut him to ribbons. We'd try and resurrect him over in the other body. Now, I think that it would be very well to leave this to the Legislature. Now, the Legislaturemay, in its wisdom at some later time, decide that they want the Auditor to be the Legislative Auditor. I can't see it, but this could happen. I hate to tie the hands of the Legislature down so tight as this. You're forcing them to do things, maybe. that in 1990 or the year 2000 wouldn't be right. I think it would be well if we just left this to the Legislature to determine the duties of the Auditor. Now he is an Insurance Commissioner. This is put in by the Legislature; I want it left there-very keenly want it left there. I think it would be well if we looked at it that way and just remember the Legislature, through the power of control of appropriation, can either go out here and make the Auditor stronger or weaker. And, as to the answer of that the Legislature might not get the appropriations, having been a legislator, I am sure that the Legislature can tell the Governor "You won't get your appropriations until we get ours signed." Now, that's another little prerogative that this Legislature has, so I think it should be left to the Legislature.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I feel compelled to speak in opposition to this very strongly because I have been the Chairman of the Executive Committee, and while what I have to say has been said before, I've jotted down here nine reasons I think this should not be done. First, of all, it's creating a new office on the spur of the

moment, and if there's anything more foolish than doing that, I don't know what it is. If we're going to create a new office, we ought to think about it; we ought to study it; and we just don't have the time to do it. And I submit this body doesn't have the confidence to do it. And I don't mean that offensively to any of you, but it just is that none of us arc thoroughly expert in state government to that extent, and I think that it should be studied for many years, or months at any rate, and left to the Legislature. Secondly, it could very well disrupt the whole reorganization program that has been recently put in, and which the Executive Committee did not touch, and we could then be doing more harm than good. We could be setting back the efforts of all these people through the years to actually reorganize the Executive Department and to bring it into state government. If it is a good idea, I submit that the Legislature will do it. As Mr. Mahoney so ably pointed out, if it is a bad idea, they will not do it. Even if we think it is a good idea, the legislature can still kill it by not funding it. Number four, I think it is themostradical thing we have yet proposed in the Convention, and while I might be labeled a radical by some, I think that if this were to come out in the Executive Article, and even though I'm the Chairman of the Executive Committee, it would be to my personal dishonor for the rest of my life to do this sort of thing. Number five, as Mr. Roeder has pointed out, we have given no opportunity to the state officials to oppose this plan; it would be the most flagrant violation of due process [not] to allow people who know something to offer what they do know. Number six, it would be a duplication, and we would be creating a duplication on the spur of the moment without knowing what the cost of it might be, and cost is important. Again, if it's worth the cost, it ought to be studied and see if it's worth the cost, and the Legislature can do that. I come back, number eight, to the fundamental principle of constitutional law the world over, that the Legislature is the will of the people. Whether they don't do what I like, it's because thepeopledon'twantto do what I like. If I lose in one session of the Legislature, I can keep coming back until I get my way. If it's a good ides, I may eventually persuade the peoples' representatives to pass it. If, after it's in effect, it's found out to be a bad idea, the peoples' representative can repeal it. That is the inherent flexibility that must exist. It is the American way of life to the extreme. For many years it took to get legislation through Congress. They keep fighting. They put it in. When it's bad, they repeal it. Just doesn't mean that it's bad. The Legislature is the will of the people. You've got to trust the Legislature. That is fundamental. What we've done here is so far, is to enable the Legislature to discharge its function more efficiently. I think that's the greatest step thatwe've taken in the Convention, and I think it would be terrible to reverse that trend and to, in effect, destroy the good we've done so far. Number nine, I think that it's perfectly clear that we voted yesterday to keep this-the state auditor in the Constitution, because, very frankly, he is an Insurance Commissioner. The insurance agents of the state are satisfied with him, and we did it because we were afraid we might turn all those insurance agents against the Constitution. But the fundamental point is: let us keep doing exactly what we are doing as long as we're retaining him as a constitutional officer. In the present Constitution, he has no constitutional duties at all. He just has duties prescribed by law, and I think that it should be retained that way, being that we have decided to retain it as a constitutional officer. Now, if I have been hard on my idea of my friend, Mr. Felt, I respect him; he is an able legislator, and I just submit it's unfortunate that he was absent and couldn't have put this into the mill beforehand so people could have had a chance to think about it. And it isn't that maybe it isn't a good idea; it may very well be a good idea; and I think that maybe Mr. Felt can present it at the next session of the Legislature and see if it is a good idea. If the Legislature thinks it's a good idea, they will adopt it; if they think it is a bad idea or if they think the benefits to be gained are not worth the cost, they may reject it; they can study it. It is the most sensible thing, I submit, to let this matter to the Legislature and to retain our current Constitution. Thank you, Mr. Chairman.

DELEGATE SKARI: Mr. President. I think, too, that it is unfortunate that this was not presented earlier in the committee. It does seem to have some merit. However, I think it does make substantial changesin the entire committee report and it can change other factors in the report. I think a coherent, overall plan is necessary. For that reason, I support Mr. Martin's amendment to allow the Legislature to determine these duties by law. I think Mr. Mahoney stated that the Legislature can strengthen the Auditor's office. I would rather not make a decision in an hour which can send repercussions all through the state government. I think I'm becoming more and more

hour or two's notice, and for that reason, I support Mr. Martin.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I also support the position of Delegate Martin. I do not see any necessity of this matter being placed in the Constitution, and if it is, Delegate Garlington has also pointed to a way in the direction given to the Legislature in the Revenue and Finance report. I'm also impressed with Delegate Garlington placing his finger upon the possibilities of building up a political power in this office of the Auditor. Presently, we have--everyone recognizes the need for this audit. We-the Legislature recognized it several years ago, I believe in 1967, when we established the office of the Legislative post-audit. Since then, everyone seems to agree that it has been working splendidly, the only criticism being that it has not been able to make audits often enough. This can be cured by adequate appropriations being made by the Legislature for this purpose. The Legislature has a committee, which is composed of bipartisan members of both the House and the Senate, who watch over the operations. Thus it is a bipartisan direction of the matter. If you create another office of audit, which is an elective office, sometime someone who has unscrupulous political aspirations may decide to use the office as a club. This was indicated also by Delegate Garlington, and I think his criticism possesses great merit. I support the substitute of Delegate Martin.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: I want to say—state my position in six words. I support Mr. Martin's substitute motion. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Martin's substitute motion for subsection 6 of Article IV.

Mr. Felt.

DELEGATE FELT: Mr. Chairman. I hesitate to take any time, but it could be that this is the most appropriate time for me to endeavor to answer some of the comments that have been made contrary to this proposal. Naturally, I respect the opinion of all of the delegates who disagree, as well as those who agree with me on this. On the matter of time, I'm sure that we all regret that our time is limited, but that we were given a job and a period of time in which to do it. We are asked to present an improved state Constitution to be considered by the people of the state, and we have to get at it. I am somewhat bemused by reference to this as the most radical proposal. Perhaps that takes the heat off some other people who might have been fearful that their ideas were going to receive such a tag. I can assure you that the Legislative post-audit was considered extremely radical when it was proposed and that it did not have smooth sailing through the Legislature and that it still has sleeping resistance within the Legislature and that it could run into troubles. But I do not feel it is radical. There is some elements of innovation in this. One of the most important ones I will simply mention because it has been dealt with about sufficiently. This places it in the Constitution where it belongs. In addition, this is good business; simple; that is, generally not thought to be too radical. It is only considered radical, I think, in the sense that there will be resistance from those who are going to he audited. They may think that it is a radical thing to do. As to disrupting Executive Reorganization, I doubt that it will disrupt it. Why would good auditing--complete auditing disrupt it? If it needs to be disrupted, then let it be. Is this a new office? We are told the Legislative post-auditor is a great thing. We are told that this will be a duplication, and then we are told this is a new office. What kind of paradox is that? Essentially, I would say for the consideration of all the delegates, this is primarily needed in the Constitution because it is good business. Secondly, it is needed there because the people themselves will feel safer it they know, first, that we thought about good auditing and requiring it in the Constitution and, second, that we did something about it. When we delete the state examiner-the State Board of Examiners and we continue the office of State Auditor but, apparently with the supposition on the part of a few that this is simply a sop to continue the administrative duties that he now performs, I say the people are going to wonder why we did not, in fact. make an auditor out of the State Auditor. This, I am sure, was not considered too radical when our Constitution was adopted 90 years ago and that they did intend that the Auditor would do some audit&. I do not believe it too radical for the people or for us

today, nor do I think that we should kill this idea simply because there is a time limitation. I can assure you that this was considered. It was discussed considerably at our committee meetings. This is a part of the minority proposal which has been given rather favorable consideration by this Convention, and it has been considered by many individuals over many years. I will not say more, although I would wish too that there was time to discuss this in greater depth, to discuss such things as performance auditing. I feel it is necessary to say that the provision now resting in a proposal of the Revenue Committee is admirable. It does not go as far. It uses the phrase "strict accountability." This, in auditing terms, is a limiting feature, and while it would do part of what we are talking about here and while I do not care whether this is placed finally in the Executive Article, in the Legislative Article, or in the article dealing with Revenue and Finance, let's get it in. We do not know what will happen with our proposal on Revenue and Finance, and we can let the Style and Drafting Committee or the body decide where best to place this. But by all means, I hope that the Convention will guarantee to the people, and to ourselves as part of the people, that we have required that the manner of auditing—external auditing, I don't-I will not go into a fine definition of the differences between preauditing, post-auditing and performance auditing, but external auditing is a term I will use. And that is what we need and that is what this will give us in a permanent form.

DELEGATE KELLEHER: Mr. Chairman. I am torn between the arguments of Delegate Martin and my learned brother Felt, and I cannot make an intelligent decision at this time. And I move, therefore, that this matter be passed over until the time that we consider, in the Committee of the Whole, Mr. Rygg's proposal on Revenue and Finance.

CHAIRMAN GRAYBILL: Your proposal is to pass this on to Revenue and Finance, is that right?

DELEGATE KELLEHER: Yes, sir.

CHAIRMAN GRAYBILL: All right, Mr. Kelleher's motion is to pass Section 4, subsection 6, to Revenue and Finance. It's apparently a-1 would consider it a motion to w-refer but we've re-referred it to Revenue and Finance instead of to Mr. Wilson, do you really want to debate this? All right.

Mr. Wilson.

DELEGATE WILSON: Mr. Chairman. I would resist Mr. Kelleher's motion. I think at this time that we are discussing the Executive branch. We have some comments on the Auditor in the minority report, and if Mr. Kelleher's motion is resisted, I will present them at that time.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Kelleher's motion to pass Section 4, subsection 6, on the Auditor, to the Revenue and Finance Committee, to re-refer it to the Revenue and Finance Committee, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. We're not debating Mr. Martin's amendment that the duties of the Auditor be prescribed by law.

Mr. Simon.

DELEGATE SIMON: Mr. Chairman. I have to go to the dentist in about 5 minutes, and I want to make a long speech. I support Martin.

CHAIRMAN GRAYBILL: All right. So many—

Mr. Wilson.

DELEGATE WILSON: Mr. President. I would like to read, at this time, comments on the minority report, page 50. We say, in addition to the language of Section 4 proposed by the majority in subsection 5, we have provided for the duties of the Auditor so that its office may be strengthened and our citizens may be assured that there will always be a completely independent elected Auditor, free of political pressure and responsible to the electorate to protect their fiscal affairs. The creation of a gubernatorial-appointed department head as a complete repository of all the state fiscal and audit functions is an overcentralization of power and an open invitation to corruption. Montana, even under its present system, has recently experienced two separate embezzlement-type situations. One was uncovered by the Bank Examiner's office; the other by the State Auditor's office. Neither were in existence for a particularly

before their discovery. Due to the relatively fast discovery of these transgressions, full restitution was made possible. Therefore, it is obviously—therefore, it is very necessary to retain control. Obviously, any system ofcontrol which vests total control in one person or department is not a good system of control and, in fact, would invite misuse. I would like to quote from a book that I was presented with yesterday, and it says, in fact, this—

CHAIRMAN GRAYBILL: Mr. Wilson, may I interrupt you? How much do you expect to read from the book; just a sentence or two'!

DELEGATE WILSON: Just a few sentences.

CHAIRMAN GRAY&ILL: All right.

DELEGATE WILSON: "...state auditor must obviously be free from the influence of those whose accounts they audit, but their independence from the legislature is also considered to be justified on the grounds that political parties might otherwise bring pressure to bear on them." Mr. Chairman, I move that this body consider the minority report.

CHAIRMAN GRAYBILL: YOU can't move it, but we're on Mr. Martin's amendment to the substitute motion and the Chair would like to put the question-No. Now, wait a minute; that's Mr. Felt's.

Mr. Martin, are you ready to vote?

Very well. The question is on Mr. Martin's amendment to the substitute motion which has the effect of making Section 4, subsection 6, on the Auditor, read as follows: "The auditor shall have such duties as provided by law." So many as shall be in favor of that proposed wording, say Aye and-vote Aye on the voting machines, and so many as shall be opposed, vote No.

Mr. Martin, for what purpose do you rise?

DELEGATE MARTIN: I am not ready to vote

CHAIRMAN GRAYBILL: Mr. Martin, I asked if you were ready to vote and I thought you said yes, but I'll cancel the vote and we'll start over again.

Mr. Martin, you may close.

DELEGATE MARTIN: I agree with the reference in the Revenue and Taxation article, that it should be left to the Legislative Assembly. The State Auditor tells me that the cost to initiate this would be from three hundred thousand to five hundred thousand at a minimum. The Auditor, as presently Commissioner of Insurance, doesn't use CPA's to make the audits of the various insurance companies. There is passed around here a little item, "Blessed is the man who, having nothing to say, abstains from giving in words evidence to the fact." Thank you.

CHAIRMAN GRAYBILL: For what purpose do you rise, Mr. McKeon?

DELEGATE McKEON: To be recorded as present, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you're present and may vote.

The voting machine is now open to vote on this for opposition. All those that are in favor of Mr. Martin's proposal to make the Auditor's duties as provided by law, please vote Aye, and those opposed, vote Nay. Have all the delegates voted? Does any delegate wish to change his vote? Please record the vote.

Aasheim	Absent
Anderson, J.	Nay
Anderson, 0	Aye
Arbanas	Aye
Arness	Aye
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Nay
Conover	Aye
Cross	Aye
Dahood	Absent

Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Graybill-Chairman ..... Aye
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Absent
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Nay
Siderius. Aye
Simon ..... Absent
Sah ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner Nay
Ward ..... Aye
Warden ..... Aye
Wilson . . . . . Nay
Woodmansey ..... Aye

CHAIRMAN GRAYBILL: Mr. Woodmansey, for what purpose to you rise Mr. Woodmansey?

DELEGATE WOODMANSEY: Mr. President. Due to the change in seating, I've voted and it shows in Mr. Scanlin's spot. I just wasn't thinking and I want—

CHAIRMAN GRAYBILL: I understand. We'll change your vote.

DELEGATE WOODMANSEY: I'm sorry about it. I'll try to go back to the other seat until the board is changed.

CHAIRMAN GRAYBILL: Mr. Clerk, strike Scanlin's name, he's absent today anyway, and put Woodmansey there; and we're all right until we correct it at noon. Will the clerk announce the vote.

CLERK SMITH: Mr. President, 62 voting Aye, 31 voting No.

CHAIRMAN GRAYBILL: 62 having voted Aye and 31 No, themotion carries. Members of the committee, you have before you then, on the motion of Mr. Martin that when this committee does arise and report, after having under consideration Section 4, subsection 6, that it recommend that this language be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Mr. Habedank has a proposed

amendment for Section 7. May I read it. Mr. Habedank!

DELEGATE HABEDANK: Please.

CHAIRMAN GRAYBILL: Mr. Habedank proposes that Section 7 read: "The superintendent of public instruction shall have such duties as are provided by law."

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. That's subsection 7 of the—

CHAIRMAN GRAYBILL: Right.

DELEGATE HABEDANK: -section we're on. The purpose of this amendment is that we, in our wisdom, determined that the Superintendent of Public Instruction should be an elected officer specified in the Constitution. If we're going to spend that space on it, I think we should also give it the dignity of having those duties which are prescribed by law. At the present time, it's ignored in the Constitution.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Habedank's amendment that we add a subsection 7 to say "The superintendent of public instruction shall have such duties as are prescribed by law", please signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Mr. Habedank-No, I'll put it myself. Members of the committee, you now have before you, on the motion of Mr. Habedank that when the committee arise and report, after having under consideration Section 7, that they recommend it do pass. All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. The Chair is now on Section 5 of the majority report, on page 6. Will the clerk please read Section 5, sub. 1.

CLERK SMITH: "Section 5, sub. 1, Compensation. Officers of the executive department shall receive salaries provided by law, which may be increased but not decreased during their term of office." Section 5, subsection 1, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report. after having under consideration Section 5, subsection 1, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. This section amends the present Constitution to provide that the salaries of the elected officials may be increased during their term of office, but not decreased, which is exactly the reverse in the present Constitution. It's self-evident what we're doing. The comments in the first two paragraphs of the majority report cover the thinking of the committee. I will not read them into the record, and I will not speak further on it unless there is opposition.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I move to amend Section 5, subsection 1, page 6, by placing a period after the word "law" in line 5 and deleting the remainder of subsection 1.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting's amendment is to put a period after the word "law" on line 5 and delete the language "which may be increased but not decreased during the term of office."

Mr. Nutting.

DELEGATE NUTTING: My comments will be very brief. If there has been an injustice for the past 80 years that's penalized the officeholder, I see no reason why we should compound the issue by doing an injustice to the taxpayer for the next 80 years. Let's put both on an equal basis, both shares the ups and downs. Thank you.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Nutting's amendment to put a period after the word "law" and strike the words "which may be increased but not decreased during the term of office". signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. So ordered. The issue is on Section 5, subsection 1, which now reads: "Officers of the executive department shall receive salaries as provided by law."

Mr. Joyce. Is there further discussion'?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. In view of the action which was just taken, I am wondering what the result of this next vote would be. Could you explain it? We would have salaries provided by law (Inaudible)—

CHAIRMAN GRAYBILL: It means that the Constitution would say that the Legislature would set the salaries.

DELEGATE HABEDANK: It's too late to argue about the other, so I guess I'll sit clown.

CHAIRMAN GRAYBILL: All right. Members of the committee, you have before you, on the motion of Mr. Joyce that when this committee does arise and report, after having under consideration Section 5, subsection 1, as amended, that it recommend the same beadopted. So many as are in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. Will the clerk read subsection 2?

CLERK SMITH: "Section 5, subsection 2. No elected officer of the executive department may, during his term, hold any other public office or receive compensation for his services from any governmental agency. He may be a candidate for any public office during his term." Subsection 2 of Section 5, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 5, subsection 2, that it recommend the same he adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I have to confess that I thought that first section would go through without any problem, being that the committee was unanimous, both minority and majority, but it hasn't, so now we're on line 21 of page 22. The second paragraph, which is what we're now considering, the committee says as follows: It makes it clear an elected official cannot hold two public offices at the same time, nor can he be on two government payrolls or receive compensation from the federal and state government for performing governmental duties. It also clears any ambiguity that arises from the last sentence of the present Article VII, Section 4, and makes it clear the officers of the executive department can seek another office without resigning. Upon election, of course, because of the first sentence, he must resign or decline one or the other.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. Of course, this should go through without any problem except we have placed the Legislature in a position of fixing anyone's salary; if they don't like them, they can now cut it down to a dollar. They may need another public officer. I support the majority, but I think our last action was ill-advised.

CHAIRMAN GRAYBILL: Members of the committee, you have before you subsection 2, on the motion of Mr. Joyce that when this committee does arise and report, after having it under consideration, that it recommend the same do pass.

For what purpose do you rise, Mr. Kelleher?

DELEGATE KELLEHER: I'd like to ask a question of Mr. Joyce, if I could, please.

CHAIRMAN GRAYBILL: Very well. Please try to get up before I try to put the—

DELEGATE KELLEHER: I tried.

CHAIRMAN GRAYBILL: -question next time.

DELEGATE KELLEHER: I tried to, but—

CHAIRMAN GRAYBILL: All right. That's fine. Mr. Kelleher, go ahead

DELEGATE KELLEHER: —you swing a fast gavel, Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE JOYCE: I yield

DELEGATE KELLEHER: Mr. Joyce, no elected officer may receive compensation for his services from any governmental agency. I'm just concerned with National Guard Officers. For instance, my brother Pete, down the row here, is a National Guard officer. Could he be Governor and still hold his commission? Or say, Auditor, or something--a governmental agency, would that be—

DELEGATE JOYCE: He could be Governor and he would then be, maybe-statutorily, he'd be the Commander of the National Guard, but he couldn't get any extra salary other than his Governor's salary for being the Commander of the National Guard.

DELEGATE KELLEHER: What if he were State Treasurer?

DELEGATE JOYCE: He couldn't either, under this section.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Would Mr. Joyce yield to a question?

DELEGATE JOYCE: Mr. Chairman, I will.

DELEGATE McCARVEL: Does this remove attorneys that are holding office, such as legislator, from being retained by any of the agencies of the state government?

DELEGATE JOYCE: Well, the section says, Mr. McCarvel, "no elected officer of the executive department", so it doesn't pertain to the Legislative Department,

DELEGATE McCARVEL: Thank you, Mr. Joyce.

CHAIRMAN GRAYBILL: Members of the committee, you have before you subsection 2 of Section 5, on the recommendation of Mr. Joyce that when this committee does arise and report, the same shall be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk read subsection 1 of Section 6.

CLERK SMITH: "Section 6, subsection 1, Vacancy in Office. If the office of lieutenant governor becomes vacant by his succession to the office of governor or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for the remainder of its term." Section 6, subsection 1, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, subsection 1, of the Executive Article, that it recommend that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. This section presupposes that the Governor and the Lieutenant Governor will run as a team. It was therefore thought desirable to allow the Governor to appoint his own teammate for the remainder of the term when a vacancy exists in the office of Lieutenant Governor. However, with the other officers, we followed the established pattern of requiring election if the vacancies occurs in the first half of the term. Now, in this connection, I may as well-no one is paying any attention; they're just voting everything up and down. This has been called to my attention; this creates some problem. Under the current Constitution, we elect a Lieutenant Governor independently of the Governor. So the current Constitution provides that if, in the first 2 years of the term, the Governor dies, that elected Lieutenant Governor then becomes the Governor. Since we are changing the system-now we are going to have the Lieutenant Governor and the Governor run as a team. A vote for both of them is-you're only allowed one vote; you must take the ticket as arranged, and, ofcourse, presumably, the people, if they don't like the Lieutenant Governor nominee, they may vote against the Governor on that account. But, at any rate, they are voting for the two as a team, and so, the people have elected them. However, if the Lieutenant Governor dies, then we thought it consistent to say that he should pick another teammate because he picked the teammate to begin with. And we are following the present system that allows him to serve the remainder of the term. It was discussed

in committee; the theory-the consensus of the committee was that, since he was a teammate, that the Governor would pick a man, if the Lieutenant Governor died, who had his same political philosophy; since they had just been recently elected at the polls that this man would then carry on the program that the Governor had adopted in the event the Governor should die immediately after appointing a new Lieutenant Governor. That's the thinking of the committee, and that's the way the section reads, and I submit it for your consideration.

(Committee of the Whole Chairmanship assumed by Mr. Aasheim)

CHAIRMAN **AASHEIM:** Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, members of the Convention. I've asked Mr. Aasheim to take the Chair so that I might make an amendment here. I'm one of the persons, at least who spoke to Mr. Judge about this, and I'm concerned about one thing in this language, and that is that it says that if the Lieutenant Governor becomes the Governor, he may appoint someone to replace him as Lieutenant Governor. I think we should-I will move to amend that by adding, at line 15, an amendment to Section 6, sub. 1, after the word "office" to read as follows-strike the rest and read as follows: "until the next succeeding general election, when a replacement shall be elected to serve the balance of the term"-"until the next succeeding general election, when a replacement shall be elected to serve the balance of the term."

Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill.

DELEGATE GRAYBILL: What concerns me is that, if the Governor died or resigned or for any reason didn't take office early in his first term, the Lieutenant Governor would then appoint a replacement. If, then, a senator died or a congressman died-as we are all aware, the Governor often likes to move up-he could resign again, have the Lieutenant Governor, who is now an appointed man, become the Governor, and he go on to Washington. At this point, we have, for a long period of time-over 2 years--an officer as Chief Executive of this state who was not elected by the people. It's true, they run as a team; I'm in favor of the team idea, but it does not seem to me right that we should let someone be the Chief Executive of this state who has been appointed rather than elected past a general election. That's all I have to say.

CHAIRMAN AASHEIM: Any discussion on the motion of Mr. Graybill?

Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. Would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will Mr. Gray bill yield?

DELEGATE GRAYBILL: Yes, I'll yield.

DELEGATE McCARVEL: What would happen if a Republican was in power and he took the job as senator and the Lieutenant Governor was moved up? Then who would run for election, just Republicans?

DELEGATE GRAYBILL: No, I think that—

DELEGATE McCARVEL: Well, you'd have to keep the team, the political team together.

DELEGATE GRAYBILL: May I answer your question now?

DELEGATE McCARVEL: Yes.

DELEGATE GRAYBILL: Okay. No, I think that if the Lieutenant Governor has now moved up and he has appointed a man-that's my situation--and the Lieutenant Governor has now gone on to Washington and the appointed Lieutenant Governor is Governor. Then, at the next general election, they should have to run. If it was less than 2 years, at the next general election, they'd run as a team; but if it was-if the Governor's term wasn't up, it's the Lieutenant Governor we're replacing. Then, we would just have a Lieutenant Governor on the ballot for that second-year election. I just don't like to go past a general election with an appointed-No, I'm sorry; I've explained that wrong. The Governor would then run, right. The Governor would then run-or should then run and not go past the general election. Now, I don't know if my amendment does it; maybe I haven't thought it through, and perhaps we should think about that. But my point is that I don't like to see a situation which would allow an appointed official to govern this state past a general election, because that seems to me to be antidemocratic, with a small "d".

DELEGATE McCARVEL: Mr. Chairman. Would Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield to another question Mr. Graybill?

DELEGATE GRAYBILL: Yes, sir

DELEGATE McCARVEL: Would, then, when the next—we'll say that it became vacated in 2 years, and then at that time, would the office be declared vacant and a new election held, so that there would be Republicans and Democrats or Independents running for the office?

DELEGATE GRAYBILL: It would seem to me that if we got past-if the vacancy occurred in the second half of the Governor's term, that it automatically corrects itself at the next general election.

DELEGATE McCARVEL: Right.

DELEGATE GRAYBILL: It's only when the vacancy occurs in the first half of the Governor's term, that I'm concerned. If that happened, this appointed man-1 don't mind him being appointed and serving out some part of a Governor's term; that might be necessary-but I don't like to see him serve for 2 full years after a general election where he didn't have to run.

DELEGATE McCARVEL: Thank you

CHAIRMAN AASHEIM: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Graybill yield to a question, or probably, you could answer it. I am not certain whether we're talking about line 15 on page 39 or line 15 on page 6. Or which one of these reports are we talking about when we're starting the amendment?

CHAIRMAN AASHEIM: On page 6, I believe, Mr. Habedank.

DELEGATE HABEDANK: Thank you. And would you please, then, read the amendment over slowly so we could get it.

CHAIRMAN AASHEIM: I will do that. "Amend Section 6, subsection 1, line 15 and 16 on page 6. After the word 'office' insert 'until the next succeeding general election, when a replacement shall be elected to serve the balance of the term'-'until the next succeeding general election, when a replacement shall be elected to serve the balance of the term'." Any further discussion?

Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman. I'm going to withdraw my motion because I don't think it does what I want it to do. It does get the Lieutenant Governor situation cleared up, but it doesn't get the Governor situation cleared up. And somehow, language should be devised to do that. I'll think about it, and I'll withdraw my motion.

CHAIRMAN AASHEIM: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I think it does solve the problem, because when the appointed Lieutenant Governor assumes the Governorship, then he, in turn, will have a right to reappoint a Lieutenant Governor. And in that instance, then, they probably should both run at the next general election. Wouldn't it follow that he would appoint a man to serve as Lieutenant Governor when he assumed the Governorship? And in this instance, they'd both run at the next general election.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. In view of the difficulty and in order to save time, I move we pass consideration of subsection 1, Section 6, until the afternoon session.

CHAIRMAN AASHEIM: The motion has been made, and I think the motion is in order, to pass consideration of subsection 1 of Section 6 until immediately after convening this afternoon. As many--any discussion? As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed.

(No response)

CHAIRMAN AASHEIM: Motion is carried.

(Committee of the Whole Chairmanship assumed by Mr. Graybill)

CHAIRMAN GRAYBILL: Will the clerk read subsection 2 of Section 6?

CLERK SMITH: "Subsection 2 of Section 6. If the office of secretary of state or attorney general becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected." Subsection 2 of Section 6, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. As a substitute motion, I move that when this committee does arise and report, after having under-that it adopt subsection 2 of the minority report.

CHAIRMAN GRAYBILL: What page is that, Mr. Joyce?

DELEGATE JOYCE: Page 39. The reason I do this is because they are identical in all respects except that the minority report has added the three officers that the majority report originally dropped. Therefore, I move consideration of-that subsection 2 of the minority report he adopted.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce, do you care to discuss it?

DELEGATE JOYCE: Yes, Mr. Chairman. This section, in effect, continues exactly the same system provided in present Article V. If any of the offices become vacant in the first half of a I-year term-that's the way it works-then the Governor appoints someone to serve until the next general election. At that time, the law provides that nominations are open to run for that office, and anyhody who wishes to run for any of these offices may do so, and it simply retains the current constitutional provision.

CHAIRMAN GRAYBILL: Mr. Hahedank.

DELEGATE HABEDANK: Mr. Chairman. Will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Yeah.

DELEGATE HABEDANK: Did your committee give any consideration to requiring the Governor to appoint the successor of the deceased from the same political party as the deceased?

DELEGATE JOYCE: No, we did not.

CHAIRMAN GRAYBILL: Is there further discussion? Members of the committee, you have before you on the motion of Mr. Joyce—

Oh, Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. Will Mr. Joyce yield to a question?

DELEGATE JOYCE: I will.

DELEGATE LOENDORF: Mr. Joyce, on line 26, after the word "person", shouldn't the following word he "appointed" rather than "elected"?

DELEGATE JOYCE: What page are you reading on Mr.--?

DELEGATE LOENDORF: Page 39.

DELEGATE JOYCE: All right, and line what?

DELEGATE LOENDORF: Line 26; the sentence there heginning "the person"-shouldn't that be "appointed" rather than "elected"?

DELEGATE JOYCE: No. What this has reference to is, assuming the Secretary of State dies in the first half of the term, the Governor appoints someone to serve till the next succeeding--next general election. That's at midterm. They have an election, somebody wins. We tried to make it perfectly clear that he doesn't get a 4-year term at that time. He just fills out the balance of the 2-year term, which is the present system.

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on themotion of Mr. Joyce that when the committee does arise and report, after having under consideration Section 5—no, Section 6, subsection 2, that that report, as presented by the minority on page39, be adopted.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I would like to make an amendment to subsection 2, hut I haven't time to write it that rapidly I will tell you what it is.

CHAIRMAN GRAYBILL: Okay.

DELEGATE HABEDANK: On line 24, following the word "qualified person", I would like to insert these words: "from the same political party as the former occupant". In other words, the purpose of this amendment would be that if the Governor was a Democrat, Treasurer was a Republican, the Democrat would appoint a Republican successor, rather than a Democrat successor, or else the other way around.

CHAIRMAN GRAYBILL: Mr. Habedank's amendment is on line 24 on page 39 of 6, sub. 2, after the words "a qualified person" to add "a qualified person from the same political party as the former occupant to hold and serve in that office until the next general election."

Mr. Aasheim.

DELEGATE AASHEIM: In regards to Mr. Habedank's proposal there, if I were Governor and-there are many good Republicans, I'll have to grant you, Mr. Habedank. But, in this case, I wouldn't select a very good one. because I wouldn't want him reelected.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I rise in opposition to the amendment, because the current Constitution provides this exact system, and it doesn't seem to me it has worked too badly. Itprohibits the Governor from appointing some Independent, who isn't a political party. As I recall, in the discussion of the General Government Article, that-where Mr. Habedank pointed out to us that, in the future, we may not have any political parties. Maybe we'll all be true nonpartisans, and it seems to me that it just is--would be a game anyway. Say, the Democrat Governor-he'll find some Republican that is really a Democrat, or vice versa-and I don't see any sense in writing this into the Constitution.

CHAIRMAN GRAYBILL: The issue before us is Mr. Habedank's amendment to line 24 of subsection 2 of Section 6, to add the phrase "that the qualified person must be"-"the qualified person from the same political party as the former occupant to hold and serve until" and so forth. So many as shall be in favor of Mr. Habedank's amendment, please say Aye.

(No response)

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No. (Laughter)

CHAIRMAN GRAYBILL: That was two for it. All right, the issue is on Mr. Joyce's substitute amendment to use the language on page 39 from the minority report for subsection 2. Members of the committee, you now have before you Mr. Joyce's substitute motion that when this committee does arise and report, after having under consideration Section 6, subsection 2, that the minority report be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: The Ayes have it.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move to delete Section 6, subparagraph 3, of the majority report as it appears on page 23in lines 15 through 19.

CHAIRMAN GRAYBILL: Mr. Joyce's motion is now to delete Section 3 of the majority report. Mr. Joyce, I don't know that that motion is necessary. Unless you want to move the adoption of it, I don't think it's in there. Why don't you give notice that you're deleting it, and ifanybody cares to put it back in, we'll vote on it.

DELEGATE JOYCE: All right. The reason for it, Mr. President, is this was put in there when the previous articles provided for the optional method of electing the superintendent. That has now been deleted and-so the Superintendent of Public Instruction will be covered under subsection 2 with all the other elected officers, and it's unnecessary, in my opinion, at any rate, to have paragraph 3 in, so--unless somebody wants to move it.

CHAIRMAN GRAYBILL: Very well. Seeing no onerising on that point, we'll move on to Section 7. Will the clerk please read Section 7 of the majority report on page 6— Section 7.

CLERK SMITH: "Section 7. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department ofstategovernment and their respective functions powers, and duties,

except for the office of governor, lieutenant governor, secretary of state, attorney general and superintendent of public instruction, shall be allocated by law among and within not more than 20 departments. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections or units, in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department." Section 7, Mr. Chairman.

CHAIRMAN GRAYBILL: Section 7. Mr. Joyce.

DELEGATE JOYCE: I move to amend the proposed section to add "the treasurer and the auditor". May we have agreement, Mr. Chairman? I mean-1 keep referring to page 24 because the comments follow thereafter, and the Chair, apparently, is using Section 6—page 6. Since they're both the same, which do you prefer?

CHAIRMAN GRAYBILL: Well, you go ahead and use 24; I'll follow it, too. I just lost page 7 in your proposal here, so I was panicked for a moment, but I've got another one now.

DELEGATE JOYCE: All right, Mr. Chairman. I move that Section 7, the Executive Committee Report--as it appears on page 24 of the Executive Committee proposal, be amended by inserting in line 7, after the word "instruction", the following words: "state auditor and state treasurer."

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. Joyce's motion to add "state auditor and state treasurer" into Section 7 on line 7 on page 24, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Do you want to read the section, then, as amended or—

CHAIRMAN GRAYBILL: Well, we've read it once;

DELEGATE JOYCE: All right.

CHAIRMAN GRAYBILL: I think we can work with it until we get a little further along.

DELEGATE JOYCE: All right. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 7 of the Executive proposal, that it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: This Section 7 is the identical--word for word, in both the minority and the majority reports, it's identical with the current constitutional provision. It is the amendment that the people recently added to the Constitution at the last general election, with the exception that the amendment gave a day certain when the Executive Reorganization must have been accomplished. We have deleted that, because if the Constitution passes, that date will have been passed also, and-so that we thought no sense carrying it forward for the future. It is the identical section. And our comments thereon are that the 1889 Constitution's inherent contradiction-the delegation of executive power to the Governor, it restricting the power due to a diffusion of constitutional boards, has been clarified by the adoption of the Executive Reorganization amendment and the proposed corollary changes in the Executive Article. Previously, the divided powers of boards of elected officers, such as the Board of Examiners, made a mockery of Section 5 of the present Constitution. That's the section that says that the Chief Executive power is--supreme executive power is vested in the Governor, who shall see that the laws are faithfully executed. The Governor, under reorganization and in this article, has the responsibility and the accountability to the electorate and the Legislature. This fundamental principle of delegation of power is an important breakthrough in the continuing effort for effective, responsible, viable and efficient government. The state's Chief Executive will be chief in fact, not in rhetoric. The majority of the committee deleted as constitutional-well, I'll strike that.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman. I'd like to move an amendment of Section 7. I have the amendment up there. Could the clerk read it, please.

CHAIRMAN GRAYBILL: Yes-the clerk please read Mr. Roeder's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 7 of the majority report, page 7, following line 12, of the following: 'the governor may make'-"

CHAIRMAN GRAYBILL: Just a moment, Mr. Clerk. So that everybody understands, this means that you add it onto the end of the section. So it's nothing being stricken out or put in; it's just added onto the end. Okay, go ahead.

CLERK SMITH: "The governor may make changes in the organization of the executive branch or in the assignment of functions among its units, which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. Such orders shall be submitted to the legislature, which shall have 60 days of a regular session, or a full session of shorter duration, to express its disapproval. Unless modified or disapproved by resolution concurred in by a majority of the members of both houses, the orders shall become effective at a date thereafter to be designated by the governor. Signed: Roeder."

DELEGATE ROEDER: Mr. Chairman. May—

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I address a few very brief remarks to my proposed amendment?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE ROEDER: This is taken from my Proposal 77, and this particular portion of the proposal I did not push in committee because we were very hard-pressed for time and, also, I have reservations about it because I feel that it probably is statutory in nature and I'm not sure it belongs in the Constitution. Only one state, Alaska, I think, has such a provision in its Constitution. And since I'm supporting it, I feel safe in rising that you will not pass it because I'm supporting it. But I bring it up for two reasons. I think the idea needs attention because it is a very necessary concomitant of the kind of Executive Reorganization that we have passed in our Legislature. I wasn't going to bring it up, but 2 weeks ago when the delegates of District 11 were down in Bozeman attending a town meeting--when we delegates of District 11 were playing, indeed, a role of peoples' advocate-this was brought to my attention by a gentleman there who was a public employee of the State of Montana, and he thinks some assignments of Executive functions were badly misplaced in the legislation, and he urged that I call this idea to your attention. Now, I realize that the idea will seem novel and radical. Well, it's not really new. The President of the United States has had such Executive Reorganization powers for a long time, and as to the radicalness of the idea, I will submit this: the idea is not original with me; I stole it from Herbert Hoover.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President. I move that we pass Section 7 and that this amendment be placed on our desks before we give it any further consideration.

CHAIRMAN GRAYBILL: Is this amendment not on anyone's desk? Very well. Themotion of Mrs. Babcock is that we pass Section 7 until this has been placed on our desks.

Mr. Siderius.

DELEGATE SIDERIUS: Mr. President. Will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Is this a question on Mrs. Babcock's amendment-proposed motion to pass? Mrs. Babcock has made a motion to pass consideration of Section 7 until Mr. Roeder's amendment has been placed before us.

DELEGATE SIDERIUS: I don't know whether it would or not, right direct to it, but I would just like to ask, just for information, how many departments has the state got now?

DELEGATE JOYCE: As I understand, it's—

DELEGATE SIDERIUS: Under this—

DELEGATE JOYCE: -20 is the maximum. I think around 17 have been implemented or-and then the constitutional officers are on top of that. Although-some of the constitutional officers are in the 17 and some are not, like the Superintendent of Public Instruction is not within the Executive Reorganization, as I understand it.

DELEGATE SIDERIUS: Well, there's rumors that there's already 20-our--we're advocating a new Department of Agriculture. Now, would this eliminate that?

CHAIRMAN GRAYBILL: Mr. Siderius, I'm going to rule that out of order. I think we've got to get the sense of the body on whether we'regoing to debate this after we get it on or whether we're going to debate it now. So the issue is now on Mrs. Babcock's motion to pass Section 7 until Mr. Roeder's proposal has been placed before you. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk please read Section 8, sub. 1.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Due to the hour, I move we recess until 1 o'clock this day.

CHAIRMAN GRAYBILL: Well, Mr. Eskildsen, I'm glad you called my attention to the clock. A motion has been made to recess until 1 o'clock. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.
Mr. Rygg.

DELEGATE RYGG: I'd like to announce a meeting of Revenue and Finance Committee at 12:15 in Room 215 of the Mitchell Building.

CHAIRMAN GRAYBILL: Revenue and Finance at 12:15 in the Mitchell Building.

(Convention recessed at 11:50 a.m.—reconvened at 1:08 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. Please close the rear doors. Ladies and gentlemen, when the committee adjourned before lunch, we were to bring up 6, subsection 1, on which I had an amendment after lunch. That will be done as soon as it's up from printing. But, in the meantime, we also passed 7 on Mr. Roeder's amendment, so that it could be placed upon your desks. It's my understanding that everyone now has on their desks a copy of Mr. Roeder's addition to Section 7 of the Executive Article. Mr. Roeder's amendment has the effect of adding the language shown on his amendment at the end of Section 7. Is there further discussion?
Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, regretfully I assure you, I rise to oppose the amendment, because I feel I should tell to the assembly the thinking of the committee. When Mr. Roeder proposed that this section be incorporated in Section 7 in his Proposal Number 77, the committee rejected it on the ground and for the reason that it was properly a statutory matter. In effect, what it does is it lets the Governor reorganize and then submit his proposed plan to the Legislature, and it becomes law in 60 days if the Legislature doesn't act on it, but if it does act on it, then it does not become law. And we felt that if the Legislature doesn't approve of it, of course, they will change it. So that there wouldn't be any difference between the Governor submitting his proposed reorganization to the Legislature and letting them approve it. The only thing it might do is that it speeds matters up if they don't even bother to consider it for 60 days. But-they could also provide, by statute, that this would be the situation, and so we disapproved it in the committee, on the ground that it was statutory.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I rise in opposition to Mr. Roeder's proposal on the same grounds that Mr. Joyce just spoke on. I do this kind of regretfully; we got along real good in the committee, and I have a great deal of respect for Mr. Roeder. However, the whole Reorganizational Act is a statutory law that was passed by the Legislature, and I feel that to further infringe on the Legislature by enacting something that is statutory and putting it into the Constitution is contrary to good government.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to reflect a different point of view in the fact that I don't believe this is just statutory. I think if you look at the article quite carefully, you'll find that it's a rather challenging definition of Executive power. Can the Governor run his own house, or can't he? If he has to wait for every order upon the Legislature, then, of course he, in fact, is cut down in size rather dramatically. It seems to me that you have the safeguard of the Legislature approving an action once they're in session, once they see what the Executive orders are; but I think that it's a freeing of the Governor to really do the job that a

Governor should be doing, running his own house.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Roeder yield to a question?

CHAIRMAN GRAYBILL: Mr. Roeder?

DELEGATE ROEDER: Mr. Chairman, I yield.

DELEGATE BLAYLOCK: Mr. Roeder, according to the first two sentences-or three sentences-it says the Governor may make changes in the organization of the Executive branch or in the assignment of functions among its units, which he considers necessary for efficient administration. As far as you could see, would this allow the Governor to go into all branches of the Executive Department, including, say, the State Auditor's office or the State Superintendent of Public Instruction's office or any of these offices and say, "You will hire these personnel from this list?" Would he have that power?

DELEGATE ROEDER: Well, Mr. Blaylock, that was not my intention, and I think you've raised an important point, that-No, my intention was--let's use this example, Chet. The Department of Agriculture, now, is a very big organization, and it's got lots of divisions in it. I can't even think of a specific example, but let's say you have a chicken and egg problem, which has been put in division A, and it turns out that it doesn't work well that way, that the chicken and egg problem should be over in division B; it was my intention that the Governor, under this, has authority to move it from one division to another. It was not my intention to give him the power to move it, say, from Agriculture to Highways, or it certainly wasn't my intention to give the Governor power over anybody but the department heads.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: In answer to Mr. Blaylock's question, if I might take a stab at it. The present Reorganization Act is identical with the proposed Section 7, and it excludes all these elective officers from the Governor's control. So the Governor, now, cannot interfere in the operation of any of the elected officers under the present Constitution, and, hopefully, the new Constitution, if it contains this same Section 7, it will be exactly the same way. If you will read it, it says-- in the first part of Section 7, it says, in effect, that the government can be reorganized into 20 departments, except for the offices of Governor, Lieutenant Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, State Auditor and State Treasurer. So they're excepted out of the Reorganization Act.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Yes, I will.

DELEGATE HABEDANK: As I interpret Section 7, which is a continuation of the present amendment to the Constitution, these powers are allocated among 20 departments by law. The next Governor doesn't like the way it's allocated; is he under your present Section 7, without the addition of Mr. Roeder's amendment, able to make a reallocation without first having the Legislature pass a law authorizing him to do so?

DELEGATE JOYCE: It's **my** understanding that he is not. He must go to the Legislature.

DELEGATE HABEDANK: In other words, unless the-Mr. Chairman, may I ask another question?

CHAIRMAN GRAYBILL: Yes. sir.

DELEGATE HABEDANK: Mr. Joyce, with Mr. Roeder's amendment, if we adopted it then, the future Governors could do as the President of the United States now does. He could change the division and, if the Legislature did not act to stop him, it would become effective. So it puts the burden on the Legislature to stop him, rather than the burden on the Legislature to make the change in the first, place, is that correct?

DELEGATE JOYCE: That's my understanding that-of the intent of-of the purpose "f Mr. Roeder's amendment, yes.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, this is striking--we've just reversed the team around here. This is what I've never liked about the Federal Reorganization Act. You put the veto power in the Legislature, instead of the initiative

power in the Legislature. You gave the initiative power-the right to introduce-the right to propose is taken away from the Legislature and is given to the Governor. Now, this is a lot of difference. If this last reorganization thing-the Governor then-they come up in the House and Senate--made a lot of changes in which was originally started. Now, if we have it coming from the top down, or the bottom up, this is the change in the thing. And there's nobody I hate to get up against more than Mr. Roeder. There's no person I respect more in this body than I do him. He is doing a beautiful job of this, but I think this concept of letting the Governor-there's no compromises, they can either take or leave. Now, under the other proposition, the Governor has to take or leave, except we do let him veto some item or appropriations. And I object-in my mind-to changing the order of the style of government. This is what bothers with this. I don't like the federal either, so it isn't just for this.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I submit that in strengthening the office of the Executive, that if it was necessary to use the Executive to do this now, which it is-which was necessary, that future Executives should have the power to delineate the powers, duties and functions of the various departments, and I submit that the Legislature, in having the veto power, have sufficient control to protect the people. The place where Executive administration occurs should be in the office of the Governor. He is best informed, he knows how things are working, and he is the best place to vest the power to make these changes. I agree that the Legislature should have the power of veto, and this is contained in Mr. Roeder's amendment. I support Mr. Roeder's amendment.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. As everybody in this Convention knows, I want a strong, very powerful Legislature. However, I do feel that the Governor should be master in his own household. And this method--at the "Little Hoover Commission" has worked very well for the federal government, and I'm sure it would work very well for the State of Montana.

CHAIRMAN GRAYBILL: The issue is on Mr. Roeder's amendment, which would add to Section 7 of the Executive Article the following language: "The governor may make changes in the organization of the executive branch or in the assignment of the functions among its units, which he considers necessary for efficient administration. Where these changes require the force of law, they shall he set forth in executive orders. Such orders shall be submitted to the legislature, which shall have 60 days of regular session, or a full session of a shorter duration, to express its disapproval. Unless modified or disapproved by resolution concurred in by the majority of the members of the legislature, the orders shall become effective at a date thereafter to be designated by the governor."

Mr. Arbanas.

DELEGATE ARBANAS: I'd like to call for a roll call vote, please.

CHAIRMAN GRAYBILL: Very well. Roll call vote. So many as shall he in favor of Mr. Roeder's proposed amendment, say Aye; and so many as shall be opposed, say No-vote Aye and No on the voting machines.

Have all the delegates voted? Does any delegate wish to change his vote? Please record the vote.

Aasheim		Nay
Anderson,	J.	Nay
Anderson,	O..	Nay
Arbanas		Aye
Arness		Aye
Aronow		Aye
Artz		Nay
Ask		Nay
Babcock		Nay
Barnard		Absent
Bates		Aye
Belcher		Nay
Berg		Absent
Berthelson		Nay
Blaylock		Aye
Blend		Aye
Bowman		Absent
Brazier		Nay
Brown		Nay
Bugbee		Aye
Burkhardt		Absent
Cain		Nay
Campbell		Absent
Cate		Nay
Champoux		Aye
Choate		Nay
Conover		Aye
Cross		Aye

Dahood ..... .Aye
Davis .....Aye
Delaney ..... Nay
Driscoll ..... Nay
Drum.. ..... Nay
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ....Aye
Furlong ..... .Aye
Garlington ..... Nay
Graybill-Cha'irman..... Nay
Gysler ..... Nay
Habedank ....Aye
Hanson, R.S..... .Aye
Hanson, R. ..... Nay
Harbaugh ..... .Aye
Harlow ..... Nay
Harper.....Aye
Harrington ....Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher .....Aye
Leuthold .....Absent
Loendorf .....Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin .....Aye
McCarvel .....Aye
McDonough ..... Absent
McKeon ....Aye
McNeil ..... Nay
Melvin .....Aye
Monroe..... ..Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton .....Absent
Rebal .....Absent
Reichert ..... Aye
Robinson ..... .Absent
Roeder ..... Aye
Rollins. ..... Aye
Romney ....Aye
Rygg ..... Nay
Scanlin .Absent
Schiltz .. .Aye
Siderius.. .Aye
Simon ..... Nay
Skari .....Ayc
Sparks .....Aye
Speer .....Aye
Studer .....Aye
Sullivan .. Nay
Swanberg . .. .Aye
Toole .....Absent
Van Buskirk .Aye
Vermillion .Aye
Wagner .....Absent
Ward ... Nay
Warden .Aye
Wilson Nay
Woodmansey Nay

CLERK HANSON: Mr. Chairman, 43 delegates voting Aye, 44 voting No.

CHAIRMAN GRAYBILL: 44 delegates having voted No, Mr. Roeder's amendment fails. The issue is now on Section 7 of the Executive Article. Is there any further discussion? Members of the committee, you now have before you, on the motion of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 7 of the Executive Article, it recommend that the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. May the Chair inquire if what's being put on the desk is the amendment to Section 6? It is. Very well. If that's the case, Mr. Aasheim, would you take the Chair.

(Committee of the Whole Chairmanship assumed by Mr. Aasheim)

CHAIRMAN AASHEIM: Members of the Assembly, we're now on Section 6, subsection 1. The clerk will read subsection 1.

CLERK HANSON: "Section 6, subsection 1. If the office of lieutenant governor becomes vacant by his succession to the office of governor or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for

the remainder of his term." Mr. Chairman, subsection 1.

CHAIRMAN AASHEIM: Mr. Graybill. Will you move the adoption?

DELEGATE GRAYBILL: Oh, no-Mr. Joyce, you want to move the adoption?

DELEGATE JOYCE: Yes. Mr. Chairman, I move that when this committee arise and report, after having had under consideration Section 6 of the Executive Article, subsection 1, that the same be adopted.

DELEGATE GRAY&ILL: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill.

DELEGATE GRAYBILL: I would like to move to amend Section 6, subparagraph 1. The amendment appears on line 15, page 6, if you read the original report, and on line 5, page 23, after the word "and", and the amendment would read as follows: "The governor shall appoint a qualified person to hold and to serve in that office for the remainder of the term, provided further, however, that no person thus appointed may succeed to the office of governor. If both the elected governor or the elected lieutenant governor shall become unable to serve in the office of governor, succession to their respective offices shall be as provided by law for the period until the next general election, when both the governor and the lieutenant governor shall be elected again for any balance of the original term remaining."

Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill.

DELEGATE GRAYBILL: I think that— I've checked this with Mr. Garlington, Mr. Joyce, and with Mr. Mahoney. We think this may solve the problem of allowing an elected-or allowing an appointed Lieutenant Governor to become Governor of the state. The elected Lieutenant Governor may succeed, then he may appoint another Lieutenant Governor who could take over the functions of Lieutenant Governor: but in the event the new Governor died or resigns, this man could not take the office, because he wasn't elected. At that point, the Legislature can decide how to handle that; that is, whether to have it the Speaker of the House or somebody from the Senate, or some other way; but in any event, at the first general election, both the Governor and the Lieutenant Governor would again have to run and give the people a chance. But they would run for only the balance of any term remaining. Now, if the vacancy occurred in the second half of the Governor's term, there would be no problem.

CHAIRMAN AASHEIM: Just a moment, please. For what purpose does Mr. Habedankrise'?

DELEGATE HABEDANK: I wish to ask Mr. Graybill a question.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: I'll yield after this next sentence. If it happens in the first half of the Governor's term, then this procedure here would apply.

Mr. Habedank, I yield.

DELEGATE HABEDANK: Mr. Graybill, is it your intention that, if the person appointed to Governor is appointed, he could not run to succeed—

CHAIRMAN AASHEIM: Mr. Habedank, are you questioning the discussion, or what's the purpose for your rising'?

DELEGATE HABEDANK: I'm questioning the meaning and intent of the amendment.

CHAIRMAN AASHEIM: Well, will you let him finish?

DELEGATE HABEDANK: I thought he finished.

DELEGATE GRAYBILL: I've finished.

CHAIRMAN AASHEIM: All right.

DELEGATE HAREDANK: As I read this, that no person thus appointed may succeed to the office of Governor, it would mean thatwhoever is appointed could not be elected Governor without going out of that office. Is that your intention?

DELEGATE GRAYBILL: My intentionis that no person thus appointed may succeed to the office of Governor by the-Yes, he may not succeed to the office of Governor unless he runs for it. I'm not stopping him from running, but I think the word "succeed" means move into the office automatically when the Governor leaves.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Habedank.

DELEGATE HABEDANK: Mr. Graybill, I would agree with you, if Style and Drafting agrees, that at the end of the term of his appointment, he could then be a candidate which the people could elect or not. But, if it's to be interpreted that he cannot be a candidate to succeed himself in that office, then I would question the wording.

CHAIRMAN AASHEIM: Mr. Graybill, will you clarify the question'! Will you indicate where your amendment begins on page 6?

DELEGATE GRAYBILL: Yes, sir, Mr. Chairman. On page 6, it begins on line 15 on page 6, after the word "and"—so that the sentence reads, "a person to hold and to serve in that office."

CHAIRMAN AASHEIM: Line 15?

DELEGATE GRAYBILL: Right.

CHAIRMAN AASHEIM: Thank you.

DELEGATE GRAYBILL: And on page 23, it's on line 5.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Holland.

DELEGATE HOLLAND: Will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield'?

DELEGATE GRAYBILL: (Inaudible)

DELEGATE HOLLAND: Leaving out the first portion of the sentence there, from "to" down to "governor", would give you practically the same effect without having the worry, wouldn't it?

DELEGATE GRAYBILL: Would you say that again, Mr.—

DELEGATE HOLLAND: Well, if you were to eliminate that portion of the sentence that is incomplete-what would constitute the first sentence if the whole sentence were there-if that were left out, wouldn't this give you the same effect and not have the question that Mr. Habedank has raised? I'm thinking particularly, Mr. Graybill, if the Legislature were to decide that they wanted to-the appointed Lieutenant Governor to succeed.

DELEGATE GRAYBILL: As near as I can see, Mr. Holland, you're correct; we could leave out that half sentence and start with the words "If both the elected governor or the elected lieutenant governor should then become unable to serve in the office of governor, succession of their respective offices should be as provided by law for the period until the next general election, when both the governor and the lieutenant governor shall again be elected for any balance of the original term." I think that that gives you the same effect.

CHAIRMAN AASHEIM: Do **you** want to amend that, Mr. Graybill?

DELEGATE GRAYBILL: I would ask leave to amend my motion by striking the half sentence at the beginning of it, and starting with the word "If both the governor".

CHAIRMAN AASHEIM: You would strike, then, the material from beginning "to serve" and strike the two and a half lines—

DELEGATE GRAYBILL: Right.

CHAIRMAN AASHEIM: --unto "governor".

DELEGATE GRAYBILL: Yes, sir.

CHAIRMAN AASHEIM: Strike, if there are no objections, this material: "to serve in that office for the remainder of the term, provided further, however, that no person thus appointed may succeed to the office of governor." Without objection, that will be stricken.

Mr. Graybill.

DELEGATE GRAYBILL: It should now be apparent that what remains "fit is tacked on the end, and we got to leave the rest of the part in that was there before. I think that's what. Mr. Holland meant.

CHAIRMAN AASHEIM: Mr. Garlington.

DELEGATE GARLINGTON: Well, it was our thought in the first instance that if the team effect were to be continued, the appointed Lieutenant Governor should serve in the position of Lieutenant Governor for the entire remainder of the term. I'm not clear whether the present amendment deletes that concept or not. Perhaps Mr. Graybill would yield to a question to explain.

CHAIRMAN AASHEIM: Will you yield. Mr. Graybill?

DELEGATE GRAYBILL: Yes, I yield. It would seem to me, Mr. Garlington, that the way we now have it fixed, it would not; that they again would run as a team. At the minute that anybody other than an elected Lieutenant Governor became Governor, the Legislature would have to provide, you see, what would happen in the meantime. This still leaves to the Legislature the job of saying where the succession goes in the event both the elected Governor and Lieutenant Governor are gone. But at that point, if it's in the first 2 years, you've got to have another election, at which time both of them run. All we're doing is telling the Legislature that, at least at the next general election, we've got to have a team run again. So, I think we've actually preserved the team concept for another half term here.

CHAIRMAN AASHEIM: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, would Mr. Graybill yield to a question, please?

DELEGATE GRAYBILL: Yes.

CHAIRMAN AASHEIM: (Inaudible) yield?

DELEGATE BOWMAN: Mr. Graybill, is it your intention that another team could not file and oppose the team in office in this midelection—term election?

DELEGATE GRAYBILL: No. There would be no team in office at the midterm election. The term would end there. The Legislature must let it end there. The point is to have an entire new election at the election, so that one-for one term, the term would be 2 years instead of 4 years till we were back on the cycle.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Graybill another question?

CHAIRMAN AASHEIM: Will you yield to another question, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE BOWMAN: If that's the case, then shouldn't the word "elected" in the last line be changed to "candidate"-"shall then be candidates for any balance of the original term remaining"?

DELEGATE GRAYBILL: Well, I'm talking about the office, and you're talking about the men. I'm saying that the office must be again elected to, and you're talking about the two people that happen to be there. I don't think that's misleading, but perhaps it is.

CHAIRMAN AASHEIM: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, will Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield?

DELEGATE GRAYBILL: Yes.

DELEGATE HABEDANK: Mr. Graybill, looking at your page 6, line 15, or the top line of your proposed amendment, as I read it, it would read, "to serve in that office for the remainder of the term". And then, you struck out "provided, however, that no person thus appointed may succeed to the office of governor." Is that correct?

DELEGATE GRAYBILL: Yes, sir-or we left it in the original language, either way you look at it.

DELEGATE HAREDANK: All right. Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Habedank.

DELEGATE HABEDANK: Mr. Graybill, the point I was trying to reach, and I apparently didn't-if it would read, "to serve in that office until the next general election", he would have to come up for election at the 2-year period, and as I read your amendment, he could die in his first year of office and then he would be appointed and he would serve out 4 years-the remainder of the 4 years. Was that your intention?

DELEGATE GRAYBILL: I think the language is all right the way it is. I see-1 think you're struggling with the problem I was struggling with this morning, and that is, you see-the original Lieutenant Governor is elected, so he can become the Governor. We have no problem there. It's when this original Lieutenant Governor vacates the office that we have a problem. And so, the language is right here that if the office of Lieutenant Governor becomes vacant, then, you see, the Governor may appoint a qualified person to hold the office of Lieutenant Governor for the remainder of-1 suppose your point is that if it was in the first 2 years, we've got a fellow holding it for 2—No, but the problem doesn't arise till the death of the man that is then in. So I think the language is right.

DELEGATE HAREDANK: Right. Thank you.

CHAIRMAN AASHEIM: Any further discussion on the amendment?
Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, would Mr. Graybill yield to one more question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: (Inaudible).

DELEGATE MCNEIL: Mr. Graybill, I'm not certain that I understood your answer to Mr. McCarvel's question this morning, that if this situation arises in the first 2 years and we now have an appointive Lieutenant Governor who accedes to the Governorship, and then he must, at the next general election, run for election. He doesn't have to run for election.

DELEGATE GRAYBILL: No, if-let's take it through again, Mr. McNeil. If the Governor dies or resigns and the elected Lieutenant Governor becomes Governor—

DELEGATE MCNEIL: Uh huh.

DELEGATE GRAYBILL: -he can appoint a Lieutenant Governor and everything sails along perfectly for 3 years. He can serve the full term: he's elected. All this does is say that if both the elected Governor and the elected Lieutenant Governor becomes unable to serve, then you've got to have an election at the next coming-up general election.

DELEGATE MCNEIL: Now, Mr. Chairman, at that point comes my question. Against whom does this appointive man run? Is it just on his own parties for a new pair for the balance of the 2 years, or is it an open election in which there will be both parties--or as many parties as want to-to seek election for the balance of the 2 years?

DELEGATE GRAYBILL: Mr. Chairman. It's an open election, anybody can run then. The man who's the appointed man or anybody that's in-you see, we don't know for sure who's going to be in, because if the double death or the double resignation occurs in the first 2 years, we're leaving it to the Legislature whether they are going to designate the Speaker of the House or the Speaker of the Senate or some other constitutional officer to succeed. We're not trying to tell them how to do that. We're trying to say they can't-they really get to fix up the succession is what it amounts to, which is what Mr. Mahoney wants to do. And they get to fix up that succession but not past the next general election, at which time it's a brand-new election with teams on both sides, even independent teams, but this new election would be for a short 2-year term to get everything back on cycle again, because there may be some good reason to leave it on cycle.

CHAIRMAN AASHEIM: Any more discussion? If not, are you ready for the question? The question then arises on the motion by Mr. Graybill to amend subsection 1, Section 6—to amend by adding after-now, is this correct, Mr. Graybill?—after the word "term", in line 6, page 23, the following words: "If both the elected governor or the elected lieutenant governor should become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election, when both the governor and lieutenant governor shall be again elected for any balance of thr original term remaining." As many as arc in favor of the motion will say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?
(No response)

CHAIRMAN AASHEIM: The motion is carried.
Mr. Graybill will be back in the Chair.

(Committee of the Whole Chairmanship assumed by Mr. Graybill.)

CHAIRMAN GRAYBILL: Well, we've handled 6, sub. 1, and we've handled 7. I believe it's time for the clerk to read Section 8. Oh, I understand we have to adopt Mr. Joyce's original motion on 6, sub. 1. Mr. Joyce, would you like to move on 6, sub. 1, as amended?

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 6 of the Executive Article, that the same be approved and adopted as amended.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE BLAYLOCK: Mr. Joyce, it's just a point of interest for me-When your committee was discussing this-now when the Governor and the Lieutenant Governor run as a team, both those men are voted upon by all the people.

DELEGATE JOYCE: Yes, sir.

DELEGATE BLAYLOCK: Okay. Now, if the Lieutenant Governor dies or resigns or anything like that, then the Governor has the power to elect a new one, is that right?

DELEGATE JOYCE: To appoint a new one, yes.

DELEGATE BLAYLOCK: To appoint a new one. Why was it, in your committee, that you decided you didn't want the confirmation of the Senate, because in this case, it is just purely the Governor; the people don't have even any judgment on it at all.

DELEGATE JOYCE: Well, I suppose because, right now, in the current Constitution, if the Secretary of State or one of those people dies, the Senate doesn't have anyrightto confirm them. He just fills the appointment till the next general election, and so we thought that it was unnecessary to require that in the case of this new Lieutenant Governor and it might not bedesirable to bring the Legislature back into special session for that reason. Presumably, the Governor picked this teammate when he started out to run to begin with, and so the people-having elected the Governor, the people would have confidence in the Governor, and they should therefore have confidence in his election-appointment as the Lieutenant Governor as his new teammate.

CHAIRMAN GRAYBILL: Very well. The motion is on Mr. Joyce's motion that, when this committee does arise and report, that it suggests that Section 6, sub. 1, be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Now, Mr. Clerk, would you read 8, sub. 1.

CLERK HANSON: "Section 8, Appointing power, subsection 1. The principal departments provided for in Section 7 shall be under the supervision of the governor and, except as otherwise provided herein or by law, shall be headed by a single executive appointed by the governor and subject to confirmation by the legislature. Such executive shall hold office until the end of the term of the governor, unless sooner removed by the governor." Mr. Chairman, subsection 1, Section 8.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I move that when this committee does arise and report, after having had under consideration Section 8, subsection 1— please insert the l-of the Executive Article, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. To explain this section, the fundamental concept of checks and balances by the separate branches of government is the key part of Section 8. The Governor has been delegated supervisory powers in this article in accord to his constitutional designation of executive power in the reorganization amendment and the statutes that are already approved. This section is keeping with the legislative implementation, dating back to the 1920's, of such a program. However, the Legislature had to reverse the trend whereby executive power had been whittled away to insignificance by creation of more than 160 state agencies with little executive or legislative supervision. Now, in this article, the Governor has been delegated the power as well as the right to appoint and remove the heads of the principal departments. However, the Legislature has been given the power to confirm such appointments, with the added safeguard to protect against reappointment of rejected nominees. In effect, what Section 1 does is say that the principal heads of these departments-of course, that's where they're not elected-shall be of single executives appointed by the Governor unless otherwise provided by law. The Legislature, of course, can put a board a head of any of these departments or the Legislature can provide for an

elected official to be a head of any of these boards, but if they don't do that, then they'll be a single executive. A single executive will have to be confirmed by the Senate. We mean the Senate, if it's bicameral; if it's unicameral, the Legislature. And if the Senate or the Legislature confirms this man, then he takes the office as the head of this department and he serves at the pleasure of the Governor and his term must end when the Governor's term ends. On the other hand, if the Senate or the Legislature refuses to confirm this man, then the Governor must find a new man. He can't-1 guess this section doesn't do that. But I'll continue with the sentence even though it isn't applicable, being I had the thought going, and if anybody is following me-that when the Governor sends an appointment up to the Senate and the Senate rejects him, then the Governor must find a new appointee and keep doing that until he gets one through the Senate. And he cannot wait until the Legislature goes home and put that man back in. Once the man is rejected by the Senate, then he is ineligible to hold the appointment until the next session of the Legislature, at which time, of course, he could be then again submitted. If I've made that perfectly clear, we're back on Section 1, and I move the adoption of Section 1 again.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, would the gentleman, Mr. Joyce, yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE SCHILTZ: Mr. Joyce, as I understand this, if it's a bicameral Legislature, requires the confirmation of both houses of the Legislature?

DELEGATE JOYCE: No. What we intended in the Executive Committee, and we didn't know whether we were going to have unicameral or bicameral or how it was going to be handled in the Convention-the idea was that, if it's bicameral, that it would be the Senate, the traditional way of doing it. We thought that Style and Drafting would eventually put that idea together when these decisions are, in fact, made in the Convention.

DELEGATE SCHILTZ: Another question.

DELEGATE JOYCE: I will.

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE SCHILTZ: I think we're going to call the unicameral body the Senate; couldn't we just say the Senate, and that would cover both situations?

DELEGATE JOYCE: (Inaudible) fine with me, if that's what we're going to do. Mr. Chairman, I therefore ask leave to strike "legislature" and say "senate."

CHAIRMAN GRAYBILL: Is that on line 14?

DELEGATE JOYCE: Line 14—

CHAIRMAN GRAYBILL: On page 25?

DELEGATE JOYCE: --on page 25.

CHAIRMAN GRAYBILL: All those in favor of changing the word "legislature" to "senate", on page 25, line 14, and the comparable place in the other copies, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE JOYCE: Mr. Chairman, then I therefore move that when this committee does arise and report, after having had under consideration Section 6 of—

CHAIRMAN GRAYBILL: —8.

DELEGATE JOYCE: Section 8, subsection 1 of the Executive Article, as amended, that the same be recommended for adoption.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Joyce's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk please read sub. 2.

CLERK HANSON: "Subsection 2. The governor shall appoint, subject to confirmation by the legislature, all officers provided for by this Constitution or hy law and whose appointment or election or term is not otherwise provided for. They shall hold office until the end of the term of the governor unless sooner removed by the governor." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. Could the clerk reread that to say "senate", rather than "legislature", and presume that he just misread it the first time?

CHAIRMAN GRAYBILL: Yes, we'll amend it on line 18 to say "senate" instead of "legislature". Mr. Eskildsen likes me to make a record on that. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 8, subsection 2, as amended, that it recommend the same he adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I think I've already explained this section. This says, in effect, that the Governor shall make the appointment of the heads of the departments, subject to confirmation by the Senate-that is, if their appointment or election or their term is not otherwise provided for by law. So the Legislature, of course, could still create an office or a board, make it elective, and could give it a definite term. And if they do do that, well then, that man has thr office for that term. And anyone so appointed shall hold office until the end of the term of the Governor unless sooner removed by the Governor. So the idea is that the Governor can remove the man unless the Legislature bars him from removing the man. In effect, it's the way that it's being done now, as I understand it.

CHAIRMAN GRAYBILL: Is there other discussion? Very well. You've heard the motion of Mr. Joyce that when this committee does arise and report on Section 8, subsection 2, that the same shall be reported as adopted. All those in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: -clerk read, at this time, Section 3 as though "the legislature" said "senate" in line 24?

CHAIRMAN GRAYBILL: Well, I was just going to ask Mr. Schiltz to take the phone and tell me whether to change it in the rest of the paragraph. Do you want it "senate" or "legislature" in 3?

DELEGATE SCHILTZ: I haven't had a chance to look at it yet.

CHAIRMAN GRAYBILL: You've got to read ahead there.

DELEGATE SCHILTZ: I was busy trying to find out if you wanted to talk to me on the phone. (Laughter)

DELEGATE JOYCE: Mr. Chairman, I'll withdraw it. Let him read it as is.

CHAIRMAN GRAYBILL: Very well. Read the subsection 3 as is.

CLERK HANSON: "Subsection 3. If vacancy in any such office occurs during a recess of the legislature, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the legislature, when the office shall be filled by appointment and confirmation." Mr. Chairman, subsection 3.

CHAIRMAN GRAYBILL: Mr. Joyce

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 8, subsection 3, that it recommend the same he adopted.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you have an opinion?

DELEGATE SCHILTZ: Yes. I don't have any problem with Legislature in that case.

CHAIRMAN GRAYBILL: Very well. Is there other dicussion of subsection 3?

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: What this section says is, if a vacancy occurs while the Legislature is in recess, then the Governor appoints a new person to discharge the duties until the next meeting of the Legislature-since we've freed the Legislature that they may come back at any time; once they come back, the Governor must send this appointment up for confirmation and go through the same procedure again.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Joyce's motion that subsection 3 be adopted, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's approved. Will the clerk read subsection 4?

CLERK HANSON: "Subsection 4. No person not confirmed by the legislature for an office shall, except at its request, be nominated again for that office at the same session or be appointed to that office during a recess of the legislature." Mr. Chairman, subsection 4.

CHAIRMAN GRAYBILL: Mr. Joyce

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, subsection 4, of the Executive Article, that it recommend that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce

DELEGATE JOYCE: Mr. Chairman. I move that, in line 28 of page 25, the word "legislature" be stricken and the word "senate" added.

CHAIRMAN GRAYBILL: So, that's the first time the word "legislature" appears in that subparagraph 4, and you're changing that to "senate."

DELEGATE JOYCE: Uh huh-Yes, sir.

CHAIRMAN GRAYBILL: All in favor of that amendment-changing "legislature" to "senate" in subsection 4, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Subsection 4 does what I previously said was being done. If a person is not confirmed by the Senate, he shall not again be nominated at that time-and his name cannot be submitted at that same session of the Legislature unless the Legislature itself requests it. What we had in mind there is they may refuse to confirm some man and then they may get second thoughts about it and send down to the Governor that, well, we request that you submit his name again, in which case he could be resubmitted. But if the Legislature, once having rejected him, does not request that his name be put up, then he cannot serve until there is a new session of the Legislature.

CHAIRMAN GRAYBILL: Very well. You've heard the motion of Mr. Joyce that, when this committee does arise and report, that subsection 4 of Section 8 shall be adopted. All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk please read Section 9.

CLERK HANSON: "Section 9. Budget and Messages. The governor shall at the beginning of each legislative session and may at other times give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature, at a time fixed by law, a budget for the ensuing fiscal period, setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state." Mr. Chairman, Section 9.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I

move that when this committee does arise and report, after having had under consideration Section 9 of the Executive Article, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. In this section, we've adopted the proposal of the Constitutional Revision Subcommittee, which they made in 1969, and it's in accordance with the prior recommendation of the Legislative Council. That is, prior to 1969, the Legislative Council recommended this. The present statutory responsibility of the Governor to submit an executive budget to the Legislature is made mandatory by this section of the Constitution. The present Constitution does require the Governor to send a message showing the needs of the state and the means of collecting revenue. And so this, in effect, adopts the procedure that we now have and puts it in the Constitution. It revises Section 10 of the present Article VII and, in that connection, we think eliminates some of the excess verbiage, and that the other requirements that are presently in Section 10 of the present Constitution the committee believes can be governed by statute or administrative procedure and is unnecessary detail in the Constitution.

CHAIRMAN GRAYBILL: Very well. You have before you the motion of Mr. Joyce, that when this committee does arise and report, after having had under consideration Section 9, that the same shall have been adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Now, ladies and gentlemen, I'm going to ask the clerk to read all the subsections, 1 through 5, of Section 10 at once because of some amendments that are going to be made here. I would ask you to pay close attention, because if we're going to debate this veto matter, we might as well listen to it once and understand it as it's read. Mr. Clerk, will you please read Section 10, subsection 1 to 5.

CLERK HANSON: "Section 10, Veto Power; subsection 1: All bills passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor, who shall sign or veto every bill within 5 days after its delivery to him, if the legislature is in session, or within 25 days, if the legislature is adjourned. The governor shall return vetoed bills to the legislature with a statement of his objections. Subsection 2: The governor may return any bill to thelegislature with his objections and with a recommendation for an amendment or amendments to it. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for a second time for amendment. Subsection 3: Upon receipt of a veto message. the legislature shall reconsider passage of the vetoed bill. A two-thirds vote of the members present overrides the veto, and the bill shall becomelaw. Subsection 4: Ifthelegislatureis not in session when the governor vetoes a bill, he shall return the bill, with his objections, to the legislature in a manner authorized by law. The legislature,as provided in Section 11, may reconvene itself to consider any bill so vetoed by the governor. Subsection 5: The governor may veto items in appropriation bills, and in such instances, the procedures shall be the same as upon veto of an entire bill." Mr. Chairman, Section 10.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 1, 2, 3, 4 and 5, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. In the veto power, what the committee tried to do is retain it essentially as it is now, with the addition of the amendatory veto and the elimination of the pocket veto. And our committee did not choose to adopt the recommendation of the Legislative Committee that we prohibit the Governor from vetoing appropriations for the Legislature. However, we did concur with the Legislative Committee that the Governor would have no power to veto constitutional amendments proposed to the United States, proposed constitutional amendments to the State of Montana, and any initiative or referendum measures. Our discussion of it follows in thecomment which says that it removes

the Governor from the process of amending the state and federal Constitution. Constitutional amendments, initially, must be approved by two-thirds in each house, if it's a bicameral, which is the same majority required to override a gubernatorial veto. Therefore, there's no reason to involve the Governor in the process. Similarly, the signature of the Governor is not required for resolutions because resolutions do not have the effect of law. Consistent with Section 1 of Article V of the present Constitution, the Governor has no veto power over initiative or referendum measures. By the requirement of subsection 1 that the Governor sign every veto bill presented to him, the pocket veto is eliminated. Furthermore, subsection 4 authorizes the Legislature to reconvene to consider postsession vetoes. I take it, in this connection, we have a little different than the Legislative Article aboutreconvening. We've got a two-thirds and they've already adopted a majority, I think, but we didn't know that at the time. Furthermore, Section 4 authorizes--or the time period for gubernatorial consideration of bills after adjournment of the Legislature has been lengthened from 15 to 25 days to give the Governor sufficient time to adequately study bills and in recognition of the logjam of legislation frequently passed in the closing days of the Legislature. The committee considered and rejected the so-called reduction veto, which is the power to reduce items in appropriation bills, because the members believed such a veto could result in irresponsibility on the part of the Governor. The reduction veto encourages the Legislature to appropriate large sums of money to popular causes, shifting the onus of reducing the appropriation to the Governor, while it also enables the Governor to thwart an activity or program without the stigma of killing it. The committee, however, did authorize the amendatory veto in subsection 2, which permits the Governor to return a bill to the Legislature with recommendations for changes that would make the bill acceptable to him. If the Legislature, by majority vote of the members present, accepts the Governor's recommendations, the bill is returned to the Governor for reconsideration. The Governor is prohibited from returning a bill a second time for an amendment. The amendatory veto accommodates the situation where the Governor objects to only parts of bills and recognizes its general merit. In the states which authorize amendatory veto, it is utilized more than the regular veto. The power of amendatory veto is intended to extend to appropriation bills. In addition, the item veto that we currently have in the Constitution is retained in subsection 5.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Yes, sir.

CHAIRMAN GRAYBILL: Mr. Kelleher, you have an amendment. Do you care to have it read at this time?

DELEGATE KELLEHER: Yes, sir.

CLERK HANSON: "Mr. Chairman. I move to amend Section 10, Veto Power, by deleting the subsections 1, 2, 3, 4 and 5, beginningatline 14 through 30 on page 8 of the Executive Committee Proposal and lines 1 through 18 on page 9, and inserting in lieu thereof the following language: 'The governor may veto items in the appropriation bill for his office.' Signed: Kelleher."

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: The effect of Mr. Kelleher's proposed amendment is to delete the veto power except for the Governor's right to veto items in the appropriation bill for his office.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman and fellow delegates. The veto power, in the early days of our constitutional history in the United States, was given to the President to be used to veto bills which were unconstitutional. We still have this power, of course, in the Supreme Court, and we have it in the state Supreme Court. The veto power goes way back to the Romans, and we got it from Baron des Montesquieu, who got it from the British, and as I told you the other day, he was a great admirer of the Monarchial system. He did not care for the Republican system (Inaudible) —government—

CHAIRMAN GRAYBILL: Stay on the subject now, Mr. Kellehcr.

DELEGATE KELLEHER: I'm staying on veto power, and I want to get rid of the veto power—

CHAIRMAN GRAYBILL: All right.

DELEGATE KELLEHER: -and I want to show what's wrong with the veto power, Mr.

Chairman. I want to show where the veto power came from.

CHAIRMAN GRAYBILL: Okay.

DELEGATE KELLEHER: And I cannot show what's wrong with the veto power unless I show where it came from, Mr. Chairman. Montesquieu, as you know, said that a Republican form of government, which is the form of government that we have under Article IV-paragraph 4—of the federal Constitution, is like to a body without a head. The last time it was used in Britain was in 1707 by Queen Anne, and it has not been used since 1707 by the British. At the time of our Revolution, only Massachusetts and New York had the veto power. And Massachusetts had a single veto power and New York had a veto power combining the power of the Governor and the Justice of Supreme Court, and the reason for that was a document was to be cut down only if it were unconstitutional. Now, then, Thomas Jefferson never used the veto power, and Thomas Jefferson said it should only he used when a document is unconstitutional. I submit we do that through our Supreme Court. John Quincy Adams never used the veto power. It was only with the time of that wild Democrat, Andy Jackson, that they started to use it for reasons of expediency, rather than when a law was unconstitutional. North Carolina today, ladies and gentlemen, does not have a veto power and is one of the most progressive states in the southern part of the United States. I would like to read, if I may, a very short paragraph from Robert Lewis, who was former congressman-he's deceased now--written in 1935—former congressman for the State of Massachusetts and a scholar on state legislatures. "There can he no doubt that, where the governor and a majority of the legislature are of opposite parties, hills are sometimes passed with the deliberate purpose of embarrassment, compelling the governor to choose between signing, say, and extravagant appropriation in which he does not believe and losing some measure of popularity. On the other hand, governors unhampered by scruples, without fine sense of duty, have used the veto with the deliberate purpose of making political capital by the appeal to popular sympathy. When one man sets up his opinion against that of two or three hundred in the legislature, the masses are almost sure to approve his position because he is the underdog. The sort of message that kind of a governor finds it easy to write gets wide reading and hasty applause. The arguments of the authors of the hill, who may know a hundred times more about it than the governor knows and who may be the men of the soundest judgment and loftiest purpose, are ignored. The legislature is a sure loser in the unequal contest. The honors go to the virile, aggressive man of dominating personality who was willing to climb at the expense of fair play in the public welfare." The veto power, Mr. Chairman and fellow delegates, is a vicious, powerful weapon. It is the most powerful weapon in the arsenal of the lobhyist. Charles the First lost his head, literally, over the veto power at the time of the long parliament. Now, I'm no Oliver Cromwell, and I'm not suggesting that we do away with the Governor's head; I just want to get rid of his veto power. That isn't asking too much. Lastly, remember when Larry Margolis was here and spoke to us from that podium? He said two sentences that I'll never forget. "The legislature is not representative of the people, the legislature is the people. And before you put any limit in this Constitution on the authority of the people of this state, you hetter have a very, very serious reason for doing so." There's no veto power on us. It's our own wise judgment. That's the only veto power on us. And this body is very, very-in my opinion, being very conservative and very mature in its judgment and in its deliberations. I ask, "What right does an uncrowned king have to thwart the will of the people?" and I ask you to eliminate the veto power of the Governor except for control over his own appropriations. And this may not he necessary, I admit, because he may-if the money is appropriated for him, he doesn't necessarily have to spend it. But otherwise, I would urge you very—most strongly to exclude completely the veto power of the Governor. And I would like to have a roll call vote on my motion when it's voted and like to have five seconds please.

(Seconds rise)

CHAIRMAN GRAYBILL: The question now arises on Mr. Kelleher's motion to amend Section 10.

Mr. Melvin, for what purpose do you arise?

DELEGATE MELVIN: A point of clarification to the amendment, Mr. Chairman. It describes it as including lines 1 through 18 on page 9—

CHAIRMAN GRAYBILL: Yes, that's right. Mr. Kelleher, your description is a little all-inclusive. You threw out special sessions at the same time. (Laughter) So we have amended your

preface--not the language, but your preface-to include lines 1 through 12 on page 9. Since that's all it encompasses, the veto power, I trust that's all right with you.

DELEGATE KELLEHER: The typist added that, and I'm sorry for that error.

CHAIRMAN GRAYBILL: That's okay. All right, the question now arises on Mr. Kelleher's motion to delete the veto power in its entirety except for the sentence "The governor may veto items in the appropriation bill for his office." We'll vote by roll call. The ballot is open. All those in favor of the proposal to delete the veto power, please vote Aye; opposed, please vote No.

Have all the delegates voted? Does any delegate wish to change his vote:' The ballot is closed. Please take the roll.

Aasheim ..... Absent
Anderson, J. ..... Absent
Anderson, 0..... Nay
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Absent
Burkhardt ..... Absent
Cain ..... Absent
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Nay
Choatc ..... Nay
Conover ..... Absent
Cross ..... Nay
Dahood.. ..... Absent
Davis ..... Nay
Delaney. ..... Absent
Driscoll ..... Absent
Drum ..... Absent
Eck ..... Absent
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill-Chairman ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Absent
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Absent
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye

Sullivan .. .. .. Nay
Swanberg.. .. Nay
Toole.....Absent
Van Buskirk .....Absent
Vermillion .Absent
Wagner .. .. Nay
Ward .....Absent
Warden..... Nay
Wilson Nay
Woodmansey .. .. Nay

CLERK HANSON: Mr. Chairman, 10 delegates voting Aye, 64 voting No.

CHAIRMAN GRAYBILL: 64 delegates having voted No and only 10 voting Aye, the motion of Mr. Kelleher fails. We're now on the veto power, Section 10, and there are some other amendments to subsection 1, so we'll consider it section by section now. Section 10, sub. 1.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. You have before you an—

CHAIRMAN GRAYBILL: Yes. Do you want us to read it here, Mr. Romney?

DELEGATE ROMNEY: Yes, please,

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Romney's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 10, Veto Power, subsection 1, page 8, line 15, of the Executive Committee Proposal, by adding the following words after the word 'except'; 'appropriations for the legislature.' Signed: Romney."

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: When thestudies were made in the various committees concerning the various problems that were confronting the Convention, the matter of the veto was found to be of concern to both the Legislative Committee and the Executive Committee. It was-this difficulty was resolved by the chairmen of the two committees, Delegate Aasheim and Delegate Joyce, conferring and determining that the Executive Committee would handle the veto section. However, the Legislative Committee had already considered the matter, and it so happened that the determinations of the two committees was much alike, but they did have certain dissimilarities. Chief among them is the matter which I am handling at this time. You will find in Section 10 and second line, as indicated by the amendment, that we seek to include in the section the words "appropriations for the legislature" following the word "except", in line 15 on page 41 of the Executive booklet. This would mean that the Governor would have no power of veto over the operations of the-the appropriations made by the Legislature to carry on its work. If we're going to have a strong Legislature and a strong Governor, we must not provide the Governor, whoever he may be, with the power to clip the wings of the Legislature in a fiscal manner. And this could be done were he empowered to veto legislative appropriations. Now, we say, appropriations for the Legislature. That means distinctly for the Legislature and its various appendages. This would include the direct appropriations for the operation of the Legislature. It would also concern the Legislative post-audit, concerning which we talked this morning. It would also include a fiscal review office, Legislative Auditor. It would include the Legislative Council and Legislative interim committees. Now, it's quite patent that if the Legislature was unable to use its own--unable to appropriate adequately for its own operation, it cannot function properly. We see that in our own Convention here where some of us, at least, think that there was an inadequate appropriation for this Convention. There's also the interim committees. Presently, the best-noted interim committee is the Highway Committee. known as the "watchdog committee", I think it's been in operation now for three bienniums, possibly more, and I believe it is quite well established that it has well paid for itself. There's the Legislative Council, which is growing in popularity, It is a source of writing of most of the numerous bills introduced into the Legislature. It is, likewise, the source of such research and study as most legislators have available to them. It carries on a number of studies which the Legislature, by resolution, directs to it each session of the Legislature; and it's a bipartisan proposition, with three senators of each party and three representatives of each party composing its membership. Various studies on all sorts of subjects are made by the Legislative Council through subcommittees which draw upon the membership of the Legislature for membership, also on a bipartisan basis. All of these various legislative appendages are nourished by appropriations made by the Legislature. As Delegate Kelleher says, the Legislature is the people. It speaks for the people. It makes investigations and

writes the laws for the citizenry. And it should be able to take care of its own purse. Now, we give the Legislature the power to make appropriations for all sorts of other state agencies and departments—including that of the Governor--and it would be shackled in its operation if it were hampered by veto measures in the hands of a Governor who might, for one reason or another, become hostile. I thank you.

CHAIRMAN GRAYBILL: Mr. Romney, if you'll allow the Chair a slight amount of editorship, I'd like to add a comma, without objection, after your thing, so that it makes more sense. Very well.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I certainly am reluctant to take on the gentleman from Ravalli County, and I don't do it other than to explain the thinking of the Executive Committee. The whole theory of the veto, of course, has been gone into at some length, and, of course, the idea behind the veto is that you require two-thirds of the people's representatives to put some bills through over the objection of the Governor. That gives a better majority, but we thought that it was unnecessary to add this to the veto power for these reasons. It is notrelevant in view of the action that we've taken here in allowing the Legislature to extend its sessions, to come back at their own motion, and so that whatever vice may have occurred before, when the Legislature was absolutely locked in to 60 days, does not exist if the new Constitution goes through as proposed, Therefore, we thought that there was no particular reason for excluding this on that basis. Secondly, we figured that if it was a virtual unanimous agreement of the Legislature-as I understand the Legislative Council and those things work-that the Legislature can handle this matter by sending the appropriation bill down to the Governor while they're still in session, and in accordance with the wisdom that Delegate Mahoney passed on today, they can wait until that is signed into law before they send down any other of the Governor's bills. And thirdly, the reason we thought it unwise to exclude it is, assuming for the purposes of argument that the Legislature does make an appropriation that passes the House by only one vote, then, for example, say the Legislature decides to appropriate a substantial sum of money to build a new chamber for itself. Now, of course, they should have that right, I suppose, but if it only passes by one vote, it shows that there is a sufficient division among the people's representatives and the Governor may veto it in that case on the theory that it really costs too much money and that the Legislature hasn't adequately funded the new building, or for whatever reason. So we thought, taking one consideration with another, that the amendment was not really necessary in view of the action of this Convention in freeing the Legislature so it can do its work.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I always believe in protecting the Legislature, but I still think that the Governor should have the powers-to give him-to keep the Legislature in line. Now that we're giving all this time to the Legislature, call themselves into session, continuous bodies, all of this, it might be well that he had to get at least a clearance of the Legislature-or, I mean, the Legislature should get his clearance unless by a two-thirds vote, and this is a little difficult to get. I can see them delving into great, enormous things. That we have empire-builders get into the Legislature the same as the others, and I think we should definitely leave the power of veto with the Governor on appropriations. I think that all of it-he is responsible. And partly-he has to sign the revenue measures or they won't get through. So I'd like to see the Legislature still brought back under the Executive, at least so one—just a majority can't run rampant. If you've got two-thirds, well and good, but I'd like to see it left the way it is.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Romney's amendment to subsection 1 of Section 10 of the Executive Article. He has made an amendment which makes the first line read, "All bills passed by the legislature except appropriations for the legislature, bills proposing amendments to the Montana Constitution", and so forth. So he has accepted appropriation for the Legislature. So many as shall be in favor of Mr. Romney's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. We're now debating Section 10, sub. 1, again and we have another proposed

amendment. Mrs. Rohinson, may we read your amendment?

Will the clerk read the amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 10, subsection 1, page 8, line 19, of the Executive Committee Proposal hy deleting the following words 'who shall sign or veto every hill' and insert in lieu thereof the following words and punctuation after the word 'governor': 'and shall become law, if he neither approves nor vetoes the hill.' Signed: Robinson."

CHAIRMAN GRAYBILL: Mrs. Robinson's amendment has the effect, on page 8 at line 19 in Section 10, sub. 1, of striking out the—presently, it says, "shall he submitted to the governor, who shall sign or veto"-she takes out "who shall sign or veto every bill" and she adds "which shall become law if he neither approves nor vetoes the hill."

Mrs. Robinson.

DELEGATE ROBINSON: Yes. Mr. Chairman, I'd like to make it clear that it does not delete the words after that. The next four lines are still included in my amendment. It would read—subsection 1 would read: "All hills passed by the legislature, except hills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall he submitted to the governor and shall become law if he neither approves nor vetoes such hill within 5 days", and the rest of the language is exactly the same. The Legislative Committee was in complete agreement with the Executive Committee that we would eliminate the pocket veto. We did not feel, however, that the proposed language by the Executive Committee did that as explicitly as we had done it in our original proposal. We checked the constitutions of other states that had eliminated the pocket veto, and they clearly indicate what happens to the hill if it is neither signed nor vetoed. And we merely make that provision that if he does not sign it or if he does not veto it, it becomes law. We are demanding that he cannot simply let it die.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I'm not going to take on the delegate from Missoula in any verbal battle. And I agree that her's is better, and I have the permission of at least a portion of my committee that we accede to Miss Robinson's amendment. She's a better draftsman, and we thank you very kindly.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, just a point of clarification—or order, I guess you might call it, but it's very difficult sometimes to know just where we are--whether we're on the majority or minority proposal. And if there were some way that we could stay on one or the other, it would help, I think.

CHAIRMAN GRAYBILL: We stay on the majority first, and we only go on the minority if it's moved. So we're on the majority report, on page 8, at line 19. I realize that there's two places you can find it. I use the first one, and some of you use the other one. But anyway, this amendment is on page 8, line 19, after the words "the governor" strike "who shall sign or veto every bill" and add in "and shall become law if he neither approves nor vetoes the bill within 5 days." Very well. The question is on Mrs. Robinson's amendment, which would have the effect of saying that if the Governor does nothing, then it becomes law, whereas the original text said that he either had to sign or veto it within 5 days. All those in favor of Mrs. Robinson's amendment, please say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

Mr. Joyce.

DELEGATE JOYCE: I move that when this committee does arise and report, after having had under consideration Section 10, subsection 1, as amended of the Executive proposal, that the same be recommended for adoption.

CHAIRMAN GRAYBILL: Very well. You've heard the motion of Mr. Joyce that this subsection 1 of Section 10 now be adopted. All in favor, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. Now, subsection 2, on page 8, at the bottom--Does

anyone wish it read again?

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 2, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. Subsection 2 says that the Governor may return any bill to the Legislature with his recommendations for an amendment. This is the amendatory veto. And if the Legislature passes the bill in accordance with the Governor's recommendation, it sends the bill back to the Governor for his recommendation. The Governor may not, however, return the bill a second time for an amendment. And the theory here is that this is apparently the amendatory veto; we've taken it out of another state. Our discussion indicates that it works well in the other states in that it enables the Governor to pick up some errors that may have inadvertently been overlooked by the Legislature, and they simply concur in his amendments, send it back, and he signs it without any fuss. In not requiring two-thirds to override it, they just make the amendment by a simple majority. It seems sensible. It seems to encourage cooperation between the Governor and the Lieutenant Governor-the Governor and the Legislature-and maybe is a device to save the Governor's head.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you subsection 2 of Section 10, on the recommendation of the Chairman of the Executive Committee that when this body arises and reports, that the same shall be approved.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, may I ask a question—

CHAIRMAN GRAYBILL: Yes.

DELEGATE ESKILDSEN: -of Chairman Joyce?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Yes, I yield, Mr. Chairman.

DELEGATE ESKILDSEN: In reading this, if the Legislature passes a bill in accordance with the Governor's recommendation, it shall again return the bill. Now, if the Legislature fails to pass it, then it merely dies. Is that your understanding?

DELEGATE JOYCE: Well, if the Legislature fails to concur, in effect, in the Governor's amendment, then the motion would have to be made to override the Governor's amendment, or they could just send it back up to him, I suppose, (Inaudible) telling him that they refuse to concur in his amendment, and then he can formally veto it or not. And I'd-I would think that would be the procedure; and then if he does formally veto it, it comes back down, then they have to override him by two-thirds.

CHAIRMAN GRAYBILL: Is there any further discussion? Very well. You've heard Mr. Joyce's motion that this subsection 2 of Section 10 be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Do we need to-anybody want us to reread subsection 3?

If not, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 3, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. This section is the current law. It simply says that upon receipt of a veto message, the Legislature shall reconsider passage of the vetoed bill; and two-thirds vote of its members overrides the veto and the bill becomes law. It carries with it the implication that if two-thirds don't, it doesn't become law.

CHAIRMAN GRAYBILL: Very well. You've heard the recommendation of Chairman Joyce that, when this committee arises and reports, that subsection 3 of Section 10 shall be considered adopted. All those in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 4, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 4, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. In this section, the committee tries to meet the problem that if the Legislature is not in session and the Governor vetoes a bill, that he will return his objections to the Legislature in a manner authorized by law. Now, what we had in mind there is that he probably would send it to the Secretary of State, and that the Legislature would set up—pass-some law that would then direct the Secretary of State to advise all the legislators, who were not in session, of what had happened. We didn't really see-think we had the wisdom to work out the details of that procedure, but at any rate, we thought the Legislature would surely do it. And then, once they've gone home and he's vetoed the bill, he must veto it-he can't just let it die by the pocket veto anymore-and then we provided that the Legislature may reconvene itself, in accordance with Section 11 of our article, to consider the vetoed bill. And, of course, Section 11 requires a two-thirds request of all the members before the presiding officers can reconvene the Legislature. I thought, if my memory serves me correctly, in the Legislative Article, the Legislature can come back into these special sessions on a simple majority vote, and so I would like to ask Delegate Harper if he would yield to a question to clarify that point. Delegate Harper, will you yield?

DELEGATE HARPER: Yes, I will.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE JOYCE: Mr. Harper, does the Legislative Article authorize the Legislature to come back in on a simple majority? I've forgotten.

DELEGATE HARPER: So have I, but we'll look it up.

DELEGATE JOYCE: Well, I've just been informed that Section 6 of the Legislative report—majority report-reads as follows: "The legislature may be convened in special session by the governor or at the written request of a majority of the members." So, if my memory was correct--and so I would, therefore--when we get to Section 11, I'll move to make that a majority. But with that understanding, I would still like the Committee of the Whole to approve subsection 4 in accordance with my previous motion, Mr. Chairman.

CHAIRMAN GRAYBILL: Members of the committee, you have before you the motion of Mr. Joyce that when this committeedoes arise and report, after having under consideration Section 10, subsection 4, that the same be approved. So many as are in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Subsection 4 is adopted. Subsection 5, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 5, of the Executive Article, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce

DELEGATE JOYCE: This section preserves the current line-item veto that's in the Montana Constitution, the idea being that general appropriations bills go through with more than one item in there. There may be a hundred different appropriations. He doesn't have to veto the entire appropriation bill if he is displeased with only one item. He can veto that one item. And when he does so, the procedure on this is the same as on any other bill that he vetoes. It requires the two-thirds vote to override him.

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration subsection 5 of Section 10, that the same shall be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE BLAYLOCK: Mr. President.

CHAIRMAN GRAYBILL: Mr. Blaylock, for what purpose do you arise?

DELEGATE BLAYLOCK: I wish to make an amendment.

CHAIRMAN GRAYBILL: Well, we have nothing before us at this time. What do you want to—

DELEGATE BLAYLOCK: I wish to offer a subsection 6.

CHAIRMAN GRAYBILL: Does it concern the veto power?

DELEGATE BLAYLOCK: **Yes,** it does.

CHAIRMAN GRAYBILL: I had ruled that all new matter would be at the end, but I think if it's on the veto power, let's go ahead. Do we have a copy of it'?

DELEGATE BLAYLOCK: I'll give you a copy if—

CHAIRMAN GRAYBILL: All right.

DELEGATE BLAYLOCK: This is the proposed amendment, which would be subsection 6 of Section 10. It would read like this: "If the legislature is not in session when the governor vetoes a bill, copies of the bill, together with the reasons for the veto, may be deliveredin amanner authorized by the legislature to all legislators. If two-thirds ofthe members ofthelegislaturereturn the bill with an affirmative vote, attested by a notary public, within 10 days, the bill shall become law." And I'll bring this up to you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Blaylock has proposed adding a subsection 6, the purpose of which is to allow two-thirds of the members of the Legislature to override the Governor's veto by a mail ballot. The source of this is the Legislative Article, isn't that right? Wasn't this in the Legislative proposal?

DELEGATE BLAYLOCK: **No.**

CHAIRMAN GRAYBILL: All right. Well-

DELEGATE BLAYLOCK: I had proposed it to the Legislative group, and they had considered it, and it had gone into the Executive. And neither of them included it, so I wish to include it this time.

CHAIRMAN GRAYBILL: All right. I think I'd better read it again—

DELEGATE BLAYLOCK: All right.

CHAIRMAN GRAYBILL: -since you don't have it printed. "If the legislature is not in session when the governor vetoes a bill, copies of the bill, together with the reasons for the veto, may be delivered in a manner authorized by the legislature to all legislators. If two-thirds of the members of the legislature return the bill with an affirmative vote, attested by a notary public, within 10 days, the bill shall become law."

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. The reason for this is that often the-as has been already stated here, and I shall speak very briefly to this-at the end of the session, there is a rush of bills which hit the Governor's desk. And we have had as many as 19 bills vetoed after the sessions. And it seems to me that bills having gone through the legislative process, especially when you'rein a bicameral Legislature, that these bills have been considered, and if the Governor vetoes, well and good. But the legislators should be able to take another look at that. And-but if they have gone home, there's not much they can do. This would allow these bills to be sent to the legislators, and if two-thirds vote again for that bill, it will come back in and it will become law. I suspect that it would be very, very seldom that this should happen, but there have been times when there have been exceedingly fine bills that have been vetoed after the Legislature has gone home, and then we had to wait for another year and a half before the bills could be considered again. This would also— if this were adopted, it would avoid the cost of calling the legislators back into session. It would be, I think, a very economical way for the legislators to take one last look and make their final decision. And that's all I have to say.

DELEGATE JOYCE: I'll certainly hesitate, also, to oppose the distinguished gentleman from Yellowstone County, and all I rise to do is to explain to the Convention the position that was taken by the Executive Committee, and that was this: that the Legislature, whether it's unicameral or bicameral, is a deliberative body. And if bills are passed in the last session in a hurry and they get down to the Governor's desk and the Governor is displeased with them so that he feels constrained to veto them, we have provided already that they will set up a procedure where he will veto

it; send it to the Secretary of State, presumably; they will get the word out to the Legislature. But if it is a bill that is of sufficient importance that it should be reconsidered by the Legislature, then we felt it reasonable to require them to come back and deliberate with one another. Now, of course, the argument is that they've already deliberated enough and their mind's made up. But it's possible that the Governor would think of some reason for vetoing this bill that the Legislature, while they were in session, had never considered, and so that we thought the whole theory of government and of legislating is that the Legislature is a deliberative body, that you gain ideas from your fellow legislators, and it is only when you are acting in session and in concert, as a body, that you can effectively legislate. And therefore, we thought that if the bill is an outrageous exercise of executive power that the Legislature feels is of great importance, then they can, of course, by a simple majority, call the session back into session and override the Governor's veto. So that is why we reluctantly did not accept Mr. Blaylock's proposal, although we did include part of it in that we provided that the legislators will be advised as to why the Governor vetoed it after they go home.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I rise in support of Mr. Blaylock's amendment. I was in the Legislative Committee, and when we discussed this proposal, initially, we were very receptive to the idea. It was after we confer with the Executive Committee that some of the members of our committee felt that, perhaps, they were right. And I do concur with Delegate Joyce's remarks. The Legislature is a deliberative body, and I think that this provision would not be used very frequently. But, on the rare occasions when it could be used, when the legislators had deliberated fully on the matter, and if the Governor vetoed it and if it could be overridden by mail, I think it would save the state a great deal of money. They would not have to call themselves into special session, and in a very simple manner, they could override the veto. Therefore, I support Mr. Blaylock's amendment.

CHAIRMAN GRAYBILL: The issue is on Mr. Blaylock's amendment which would add a subsection 6 to Section 10 of the Executive Article as follows: "If the legislature is not in session when the governor vetoes a bill, copies of the bill, together with the reasons for the veto, may be delivered in a manner authorized by the legislature to all legislators. If two-thirds of the members of the legislature return the bill with an affirmative vote, attested by a notary public, within 10 days, the bill shall become law." So many as shall be in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: As many as are opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please use the voting machines for an unrecorded roll call vote.

Have all the delegates voted? Does any delegate wish to change his vote? The vote is closed. Will you please take the roll call.

CLERK HANSON: Mr. Chairman. 42 voting Aye, 46 voting No.

CHAIRMAN GRAYBILL: 46 having voted No and only 42 having voted Aye, the amendment fails. Will the clerk please read Section 11.

CLERK HANSON: "Section 11. Special Session. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in the joint session. At the written request of two-thirds of the members of each house, the presiding officers of both houses shall convene the legislature in special session." Mr. Chairman, Section 11.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move as an amendment to Section 11, as written, that the last sentence be deleted or, no-it has-a —no, strike that. I move that the last sentence be amended in line 26 of page 29 by striking the words "two-thirds" and inserting in lieu thereof "a majority of'.

CHAIRMAN GRAYBILL: Just "a majority" is enough. "a majority of the members of each house"?

DELEGATE JOYCE: Right; yes, sir.

CHAIRMAN GRAYBILL: Mr. Clerk, when you read that, you didn't read of each house. What did you read?

CLERK HANSON: Yes, I did

CHAIRMAN GRAYBILL: You did? Very well. The amendment proposed by Mr. <Joyce is to strike out the words "two-thirds" in the middle of Section 11—and, if you're on page 9, that's on line 16—and add in place thereof "a majority". So many as shall be in favor of that—

Excuse me, Mr. Loendorf, do you care to speak to that?

DELEGATE LOENDORF: Yes. Mr. Chairman, would Mr. Joyce yield?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. President, I yield.

DELEGATE LOENDORF: Mr. Joyce, why don't we simply delete the entire section, since it's covered by the Legislative Article?

DELEGATE JOYCE: Well, I was going to do that, Mr. Loendorf, but then, if you recall-that we made a reference to it in Section 10, subsection 4. Now if, Style and Drafting will just pick that up and transfer it back to whatever section that is of the Legislative, it would be all right. But it seemed to me that, maybe, so the delegates can vote intelligently on this thing, that there's no particular harm in just writing "a majority" in there, being that I've already made the motion and taken up the time already.

CHAIRMAN GRAYBILL: Very well. The motion is on Mr. Joyce's amendment to replace the words "two-thirds" by the words "a majority". All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Joyce.

DELEGATE JOYCE: I move that when this committee does arise and report, after having had under consideration Section 11 of the Legislative Article, as amended, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. What we have done here is we've revised the existing Montana Constitution in that we have provided-still retained the power of the Governor to call the Legislature, in the public interest, back into special session. We have deleted, however, from the Governor's power the power he now has to limit the consideration of bills or subject matter. And the reason, of course, we have done that is that since the Legislature-once it's called back into special session by a simple majority vote—can resolve themselves into a special session of their own, that there's no point in providing for a futile act. And so the Governor can call them back into special session, and he can say, "Here's what I would like you gentlemen to consider, but, of course, if you wish, you can consider anything else." And in the second paragraph we've been—second sentence, what we've done there is provided that--what the Legislative Committee has already suggested and which has been approved by the Convention.

CHAIRMAN GRAYBILL: Mr. Harper, the Chair is aware that you want to amend this by deleting the last sentence.

DELEGATE HARPER: No, Mr. Chairman, I pass that by; I think that's been cared for.

CHAIRMAN GRAYBILL: All right. So we'll pass that by. Very well.

DELEGATE HARPER: I'd like to ask Mr. Joyce aquestionon the first part of this. Mr. Joyce, I assume from your last remark that you wrote this sentence with the intent that it would apply to either a unicameral or a bicameral Legislature. The—

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. Yes, we did. Didn't we do a very good job?

DELEGATE HARPER: I'm afraid not. (Laughter) You say, whenever the Governor considered it in the public interest, "he may convene the legislature, either house, or the two houses in joint session." I see now what you mean. I was all prepared to attack that on the basis that in the majority bicameral report, Section 10, subsection 6, we had already decided that the two houses must always meet together, that we would not have a meeting of one house. In other words, he couldn't call the House without the Senate or vice versa, and now that I see your intent, perhaps a simple redrafting of it would be sufficient.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: That was our intention, I think. That--course, the present Constitution, if you'll note, is somewhat ambiguous in this connection in that it says that he can call either house into special session. I thought that perhaps what the current Constitution means is that, if it's just a question of confirming somebody, they would just want to call the Senate. But I think that what it really means is that when there's bicameral, you shouldn't really have to call both houses. But—

CHAIRMAN GRAYBILL: Mr. Joyce. Since Mr. Harper is correct that we already did say that they had to meet together, if you-you could just strike everything after the word "legislature" and say, "he may convene the legislature". Then you're going to have it right.

DELEGATE HARPER: Period.

CHAIRMAN GRAYBILL: Now, Style and Drafting can also do that. I don't care how— where we do it.

DELEGATE JOYCE: I'm willing to accede to that suggestion, and the amendment then would be to strike all of line 25, page 29, after the word "legislature"—

CHAIRMAN GRAYBILL: Right.

DELEGATE JOYCE: -and substitute for the comma, I guess, a period.

CHAIRMAN GRAYBILL: Right.

DELEGATE JOYCE: I move that amendment.

CHAIRMAN GRAYBILL: All right. So many as are in favor of amending the first sentence in Section 11 to read, "Whenever the governor considers it in thepublicinterest, he may convene the legislature." So many as are in favor of making it read that way instead of the way it reads, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce still has the floor, but I'll come back to you, Mr. Aasheim.

Mr. Joyce.

DELEGATE JOYCE: I now move that when this committee does rise and report, after having had under consideration Section 11 of the Executive Article, as amended. that the same be adopted.

DELEGATE AASHEIM: Mr. Chairman. Question.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: In the Legislative Article, we say this: "The legislature may be convened in special sessions by the governor, or at the written request of a majority of the members." We don't say "a majority of each house", so we're going to be in conflict.

CHAIRMAN GRAYBILL: Mr. Joyce, do you care to straighten this out so that you don't have a substantive issue for Style and Drafting? You could do that by striking the words "of each house".

DELEGATE JOYCE: Also amend.

CHAIRMAN GRAYBILL: All right, in line 17 on page 9—and, anyway, it's in the second sentence of Section 11-it should then read: "At the written request of a majority of the members, the presiding officers of both houses may convene the legislature." So many as shall be in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now, it seems to me that we've given Style and Drafting only a Style and Drafting problem.

Mr. Joyce.

DELEGATE JOYCE: Well, Mr. Chairman, then I again move that when this committee does arise and report, after having had under consideration Section 11 of the Executive Article, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: You've heard the motion of Mr. Joyce that when this committee

does arise and report, after having under consideration Section 11 of the Executive Article, that it recommend that the same do pass. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Roeder, for what purpose do you rise?

DELEGATE ROEDER: I think you may have been wrong on your statement that we're left with just a Style and Drafting problem, because the way that thing reads in the Legislative Articles that came off the magic typewriters is that the Legislature may be convened in special sessions or at the written request of a majority of the members. So, they're not, in substance, the same.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I think that if I made a motion torecess, that the people involved in this could straighten it out; and when we come back from recess, it would be much easier to present it for the whole floor. So, I move we stand in recess until 3:15 today.

CHAIRMAN GRAYBILL: All right. The motion is to stand in-wait a minute. The motion is to stand in recess. I'd like to ask those on the rostrum here to remain in their places for a purpose and the rest of us to recess if the motion passes. All in favor of the motion to recess, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 3:04 p.m.—reconvened at 3:27 p.m.)

CHAIRMAN GRAYBILL: Convention will be in session. The Convention is in session. Ladies and gentlemen of the committee, we were considering Section 11, Special Session. We had amended it to read, "Whenever the governor considers it in the public interest, he may convene the legislature. At the written request of a majority of the members, the presiding officer of both houses shall convene the legislature in special session." When we stopped, Mr. Roeder and Mr. Joyce were discussing some language. Mr. Joyce, have you any changes or is it all right as amended?

DELEGATE JOYCE: Will Delegate Roeder yield?

CHAIRMAN GRAYBILL: Mr. Roeder?

DELEGATE ROEDER: I'll yield.

DELEGATE JOYCE: Dick—

DELEGATE ROEDER: Yes.

DELEGATE JOYCE: Once you picked up that we did change "two-thirds" to "majority", did you have any further changes?

DELEGATE ROEDER: No, the only problem was that the Chairman read it wrong when he read the thing. That's the only thing that-the only problem.

CHAIRMAN GRAYBILL: Originally or now?

DELEGATE JOYCE: Originally, I think. Just a slip of the tongue.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROEDER: (Inaudible) we adopt the votes, you had misread it. You had read the unamended version. There's really no problem.

CHAIRMAN GRAYBILL: All right, are we ready to adopt Section 11? Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 11, that the same be adopted. The language is, "he may convene the legislature." And the other language: "At the written request of a majority of the members, the presiding officer of both houses shall convene the legislature in special session." So many as are in favor of Section 11, as amended, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Mr. Clerk, will you read Section 12.

CLERK HANSON: "Section 12, Pardons. The governor shall have the power to grant reprieves, commutations and pardons after conviction, reinstate citizenship, and may suspend and remit fines and forfeitures subject to procedures prescribed by law." Mr. Chairman, Section 12.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12 of the Executive Article, that it recommend that the majority report, as read by the clerk, he adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: On this section, the minority report-there is a difference between the two, and perhaps it is then in order for you to recognize Mr. Wilson to move the minority report.

CHAIRMAN GRAYBILL: Do you want to make any explanation of the majority report?

DELEGATE JOYCE: Yes, I would like to.

CHAIRMAN GRAYBILL: Why don't you explain it, and then we'll take his.

DELEGATE JOYCE: All right. What the majority of the committee has done on Section 12 is undertaken to amend Section 9 of the current Montana Constitution, which is on page 21 of the blue hook, if anyone wants to get it. It's Section 9 of Article VII, the Executive Article. As currently written, this is an amendment that was put through by a vote of the people in December, 1954. Prior thereto, under the original Constitution, the Board of Pardons consisted of the Governor and the Attorney General and the State Auditor. In 1954, on our constitutional amendment, that was changed to provide that there would be a Board of Pardons appointed by the Governor, and in this particular section the majority report is adopting the language of the first four lines of the current Constitution and is striking the proviso thereafterwards. We did this after-on recommendation of the reorganization director and with the concurrence of the present Chairman of the Board of Pardons-that is, what I mean to say there is, they didn't tell us to do that, but they had no objection to doing that. And the reason we did it is we believe that the present section-deleting after the proviso--or the revised section, in which WE delete everything in the current Constitution after the proviso with reference to the Board of Pardons—is proper in that we believe that the Governor should have the power to grant reprieves, commutations and pardons. Then we say, it shall- his power in that connection is made subject to procedures prescribed by law, and the Legislature has now appointed-provided for an appointive hoard of lay pardons, and it, no doubt, will continue to do so. And yet it seemed to a majority of the committee unnecessary to require it, and the Executive Reorganization director and the present Chairman of the Board of Pardons recommended the deletion. The historical power of the Chief Executive to show mercy should be retained, and the majority believe that there is no constitutional need for a buffer hoard appointed by the Governor. And the key word there is "constitutional", the idea being that the Legislature can and may set up a board, and further than that, the Governor can request the Board of Pardons to make recommendations before he does commute sentences or exercise his executive clemency. But all we were doing in the majority, here, is we are not requiring him to get the prior approval of the Board of Pardons. The Board of Pardons is a constitutional office by virtue of being contained in the present Article VII, Section 9. And, we-the majority submits it's unnecessary to have this hoard as a constitutional office. When it got down to being enacted on by the Legislature, they combined this constitutional Board of Pardons with the legislative Board of Parole, and they call it the Board of Pardons and Parole. And, of course, 98 percent of their work is in connection with paroles. But, under the present situation, the point at issue is this-if a prisoner is in the state prison, he cannot be pardoned by the Governor unless he gets the prior approval of this Board of Pardons, and we submit that any Governor can still use that Board of Pardons and make-or the Legislature can require that prior approval by the Board of Pardons, hut it's not necessary to continue on this Board of Pardons in the Constitution. I might further add that, by making no reference to the Board of Prison Commissioners in Section 20 of the majority committee report-I'll correct that-by making no reference to the Board of Prison Commissioners, which is presently provided for in Section 20 of Article VII, we are in effect repealing that, and the reason why we are repealing it is that for many years now, the Board of Prison Commissioners set up in the Constitution, which also consisted of the Governor and the Attorney General and the State

Auditor, has not, in fact, been functioning; rather, the prison is being controlled under the Department of Institutions; and so we are in effect making constitutional what the state has been doing all these years and relieving these three people from violating the present Constitution, and we recommend repeal to conform to the facts as they really are.

CHAIRMAN GKAYBILL: The Chair would recognize Mr. Wilson.

DELEGATE WILSON: Mr. President, I move an amendment to Section 12 of the majority article to include-to adopt the minority proposal. You'll find that on page 51. Would you have the— have it read, please.

CHAIRMAN GRAYBILL: Or page 42. Very well. Mr. Wilson, your amendment to provide for the minority report for Section 12 is accepted. Do you wish to discuss it?

DELEGATE WILSON: Would the clerk read it, please.

CHAIRMAN GRAYBILL: Oh, all right, excuse me. Mr. Clerk, would you read it. Mr. Wilson, the first paragraphs are identical, isn't that correct?

DELEGATE WILSON: Yes.

CHAIRMAN GRAYBILL: So the clerk will read the second section, the second paragraph, which is an addition in the minority report.

CLERK HANSON: Second paragraph, minority report, page 42. "This action by the governor shall be upon the recommendation of a hoard of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said hoard of pardons, its powers and duties; and regulate the proceedings thereof." Mr. Chairman, second paragraph to Section 12, minority report.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: We agree with the majority of the Executive Committee, except that we feel it is appropriate to establish constitutionally the Board of Pardons. The pardon power of the Governor is of such importance that it should not be exercised without the prior advice and consultation of a hoard of lay and professional persons responsible for the state correctional program. Mr. President, in talking with some of the former Governors and different people, they felt that this was a necessity that this he provided for in the Constitution, that they would have these people for the Governor to consult with. It is an important decision that he would have to make, and without some consultation and advice, he would be at a loss to know how to proceed. So it is with the thought in mind that we would provide the board for the Governor, to assist him in making these decisions. Mr. President, I move the adoption of the minority report.

CHAIRMAN GRAYBILL: Very well. The issue is on the substitute-or the amendment by Mr. Wilson to add the second section of the minority report to the existing section of the majority report, which is identical to the first paragraph of the minority report.

Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I rise in opposition to Mr. Wilson's attempts to preserve the Board of Pardons, and I wonder if Mr. Dahood would yield to a question.

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROEDER: Mr. Dahood, you're a prominent lawyer, and I wonder if— [you] would give us your opinion on this issue. Do you think that if we removed the Board of Pardons, the Governor would suddenly release upon society all the cons from Deer Lodge?

DELEGATE DAHOOD: I don't think there's any such chance that that could happen under any circumstance, and I think the Governor, if he's going to he a strong executive, should have the type of power that we're talking about; and so, consequently, I would submit that I would agree with the majority report.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I believe Mr. Dahood did a little more than answer the question, but that's all right. It just saved him getting on the floor again. (Laughter) I can't help but recall last night, when we battled around in this chamber and we finally decided that an 18-year-old could hold the office of Governor. Now, are we really serious when we say that anybody 18 years old-1 don't care how smart they are-not belittling anyone 18 years old at all-I've talked to

many of them and they say, "Why, we don't even care too much about taking the responsibility to vote, let alone being Governor."--now, are we actually serious when we're talking about an 18-year-old making decisions of releasing someone from prison, commuting death sentences, if we retain that, without a Board of Pardons for advice. I think we'd better get back on the ground here and kind of get a little realistic about these things. I thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce, will you yield?

DELEGATE JOYCE: I yield.

DELEGATE HARPER: I'd just like to be clear on this. If we take the reference to the Board of Pardons out of the Constitution, does that mean that we automatically do away with the Board of Pardons?

DELEGATE JOYCE: No, it's still on the statute books.

DELEGATE HARPER: And until the Legislature--excuse me, may I ask another question, Mr. Chairman?

CHAIRMAN GRAYBILL: You may.

DELEGATE HARPER: Until, then, the Legislature strikes that, then the Board of Pardons will remain in effect with pretty much its same composition and way of working?

DELEGATE JOYCE: Yes, and this constitutional provision provides that the Legislature may set up procedures for the Governor to exercise his pardon powers so that the Legislature can, in effect, limit the Governor's power by law, and it's simply, I guess, a quibble over whether or not it should be in the Constitution or whether we should trust the Legislature to continue to have a Board of Pardons or-and to give the Legislature some flexibility of how many would be on or how they would do this in the future. That's the substance of the dispute, as I understand it.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Wilson's amendment, which adds the second sentence to Section 12 on Pardons. The language added is: "This action by the governor shall be upon recommendation of a board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof." So many as shall be in favor ofthemotion to add that sentence as an amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. Very well. The issue, then, is on the basic Section 12. Members of the committee, you have before you the recommendation of Mr. Joyce that when this committee does arise and report, after having under consideration Section 12 on Pardons, that the same shall be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so adopted. Will the clerk read subsection 1 of Section 13.

CLERK HANSON: "Section 13, Militia; subsection 1. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of laws, to suppress insurrection or to repeal invasion."

CHAIRMAN GRAYBILL: "Repel invasion."

CLERK HANSON: "Repel."

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 13 of the proposed Executive Article, that it recommend the same be adopted,

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: The Article XIV of the current Constitution, which is on page 39 of the blue book, for anyone who is using it, has five sections pertaining to military affairs and the militia, and if you will turn there, you will note that the militia that's now currently provided for in the Constitution consists of all able-bodied male citizens of the state between the ages of 18 and 45 except those that are exempted by laws of the State of Montana or the United States. It also provides that the Legislative Assembly may provide by law for the organization, equipment and discipline of the militia and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of armies of the United States. In Section 3, the Legislative Assembly shall provide by law for maintaining the militia by appropriate appropriations from the state. Section 4 says that the Legislative Assembly shall provide by law for the safekeeping of the public arms, military records, relics and banners of the state, Section 5 says the Governor, with the consent of the Legislature-that when the Governor, with the consent of the legislature, should be out of the state in time of war at the head of our military forces, he shall continue to be Commander-in-Chief of all military forces of the state. And we've just modernized this. We've never really had a militia in that sense. All this provides is that the new amendment, which is unanimous on the committee, is that the Governor will be the commander-in-chief of the militia forces of the state except when they are in the actual forces of the United States, and then he shall have the power to call out all the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion. We did strike the word "male" out of there as the comments show. We did that out of deference to the two charming ladies who were on our committee who volunteered all the women of the State of Montana for militia duty-(Laughter) and we struck all the age requirements out of there just so that anybody, as provided by law, can be summoned into the militia, and we think that we have boiled down five sections into one section and have made an improvement of the present Article XIV.

CHAIRMAN GRAYBILL: Ladies and gentlemen, we are considering Section 13, sub. 1, only at the moment. Mr. Joyce discussed sub. 2, but we are considering sub. 1 only.

Mr. Lorello, you have an amendment. Would you like it read?

DELEGATE LORELLO: Yes.

CHAIRMAN GRAYBILL: Will the clerk please read it.

CLERK HANSON: Mr. Chairman. I move to amend section 13, page 31, or page 9, line 15, or line 30 on page 9 of the Executive committee majority report by striking the period after the word 'invasion' and add a comma and the following words: 'or to protect life and property in natural disasters.' Signed: Lorello."

CHAIRMAN GRAYBILL: The substance of Mr. Lorello's amendment is to say that the Governor shall have the power to call out the militia to do the things that are listed there, including repel invasion or to protect life and property in natural disasters. It has the effect of adding natural disasters to his power to call them out.

Mr. Lorello.

DELEGATE LORELLO: Yes, Mr. Chairman, this is probably our most important area. I would-statewide, at least. All we're trying to do is add this one sentence that we could also be used to protect life and property in natural disasters. I think we all realize that probably we'll use more throughout the state on forest fires, floods, riots, rescue work and that type of thing. These are functions that we're prepared to do that we can assist in, and I hope that you'll give it your consideration. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: The committee does not resist the amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE HARPER: I am not necessarily opposing this, but suppose some person in Helena, whom I am supposed to represent, asked me, "Why did you keep that?"-what would be the answer? Why do we keep this section in here at all?

DELEGATE JOYCE: Well, I suppose the answer I'd give is, it's in the current Constitution,

and it has relevance in that in the event there ever were an invasion or there were an insurrection, that it's the duty of the State of Montana to protect its people and, while we have police forces, if it ever got that bad, and I can't conceive that it ever would, that the Governor would have the power to call out the militia to protect the citizens.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Joyce yield to another question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Yes, I will.

DELEGATE HARPER: Does this include the National Guard?

DELEGATE JOYCE: No, the National Guard, as I understand, is provided for in state law, but it really is also a part of the federal army, and so if, for example, the National Guard were at war-had all the members thereof having been called, say, to fight in some foreign land, so that they wouldn't be around here, why, the Governor would have the power to summon each of us for the militia to protect the public welfare; and it seems to me that it's never going to happen, but it's absolutely essential that we do provide for that unlikely contingency.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Lorello's motion to add the paragraph-or the sentence "or to protect life and property in natural disasters" to Section 13, sub. 1. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It is adopted. The issue is now on Section 13, as amended. Members of the committee, you have before you the motion of Mr. Joyce that when this committee does rise and report, after having under consideration Section 13, sub. 1, of the Executive Article, that the same shall be reported as having been adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk read Section 13, sub. 2.

Mr. Joyce, do you need this before we read it?

DELEGATE JOYCE: No.

CHAIRMAN GRAYBILL: No. Section 13, sub. 2.

CLERK HANSON: "Section 13, sub. 2. The militia forces shall consist of all able-bodied citizens of the state except such persons as are exempted by law." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Joyce explained that. If he wishes to explain it further, he may.

DELEGATE JOYCE: I do not. I move that when this committee shall arise and report, after having had under consideration Section 13, subsection 2, of the Executive Article proposed, that it recommend that the same be adopted.

CHAIRMAN GRAYBILL: YOU have heard the motion of Mr. Joyce. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it is adopted. Mr. Clerk, will you rend Section 14, sub. 1.

CLERK HANSON: "Section 14, subsection 1. If the governor-elect is disqualified or dies, the lieutenant-governor elect, upon qualifying for the office, shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant-governor-elect, upon qualifying as such, shall serve as acting governor until the governor-elect qualifies for office or until the office becomes vacant." Mr. Chairman, Section 14, subsection 1.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I move that when this committee arise and report, after having had

under consideration Section 14, subsection 1, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: This is the last article in the Executive proposal. The majority and the minority are in agreement on it, and what we've tried to do is provide for all of the contingencies we could think of about succession. In subparagraph 1, we are providing for this provision-this period after, for illustration purposes, the November election and before the Governor takes office in January, or whenever he takes office. And we are saying, if the Governor-elect is disqualified--may be disqualified for some reason, in that it may be discovered that he is a—has been convicted of a felony or some such thing-that would be a typical disqualification. Or if he dies, which is the more likely contingency, that the Lieutenant-Governor-elect, upon qualifying for the office, he then qualifies in January as Lieutenant Governor-he then becomes Governor for the full term. But if the Governor-elect fails to assume office for any other reason—he may be sick on Inauguration Day, may be out of-for some reason or other can't appear on Inauguration Day—the Lieutenant-Governor-elect, upon qualifying for such, shall serve as acting Governor until the Governor-elect qualifies for office or until theoffice becomes vacant. And so we felt, then, when the Governor-elect is able to come to be sworn in as Governor, then he will become Governor, and in that intervening period the Lieutenant Governor would serve as acting Governor, and the reason that we do this is, it has been pointed out that in some states it's been held that when the Governor-elect for some reason or other doesn't take office, that the former Governor continues to hold office, and in accordance with our team concept that the Lieutenant-Governor-elect, having been elected by the people on the same team, that that Lieutenant Governor should become Governor after he is sworn in as Lieutenant Governor. That's the purpose of Section 1.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Joyce, would you yield to a question here?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield

DELEGATE CATE: Does this cover the situation where a Governor resigns from office, or is that—

DELEGATE JOYCE: Well, this subsection does not. This is before the governor-elect ever actually takes the oath so therefore never does become Governor. Resignations and so forth are provided on further in the article.

DELEGATE CATE: Okay. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Joyce, yield to another question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE SCHILTZ: Mr. Joyce, I have considerable difficulty knowing what "or until the office becomes vacant" means in there. As I would read this, it says, "If the governor-elect fails to assume office for any other reason, the lieutenant governor, upon qualifying, shall serve"--and then skip all the rest of that-"or until the office becomes vacant." I don't quarrel with it much, I just don't know what it means.

DELEGATE JOYCE: Well, may I answer Mr. Schiltz's question by saying that I would prefer that he ask Delegate Garlington in that connection because my mind's kind of gone blank here briefly, but it'll be back. (Laughter)

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: In Section 6 and Section 7, there are references to vacancy. Just as a little further explanation for why this is so involved. We, not only thinking of the customary conditions of death or resignation but the same kind of problem that beset the federal government when President Eisenhower had his heart attack and the question of serious physical disability first existed and then when it would be relieved and he could return to function, and we were thinking of all the things where a man who is in the Governor's office can have a heart attack, he can have a stroke, he can have a serious accident, and we were trying to cope in various ways with the necessities of the case; and in those instances where nothing is final, like death orresignation or

disqualification or impeachment, you get into a kind of a vague, blurred area of when is he on and when is he off. And if he should fall victim to drugs or alcohol--and you even have a dispute as to whether he's qualified or not. All these things are wrapped up in the considerations that are in this plan.

DELEGATE **SCHILTZ:** Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think that what gave occasion to my problem, Mr. Garlington, is that, as I read that, he would serve as acting Governor until the office becomes vacant, but I can read it also that he would be acting Governor if the office did become vacant, you see.

CHAIRMAN GRAYBILL: Mr. Schiltz, may the Chair interpose here that thetroublemay be that he's in a capacity of acting Governor, and if the office became vacant-what they mean, I suppose, is if the Governor died-then he would cease being acting Governor and become regular Governor. Is that right, Mr. Garlington?

Now, if that isn't styled and drafted right, fix it up. (Laughter)

Is there any further discussion of subsection 1 of Section 14?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee you have heard-you now have before you upon the motion of the Chairman of the Committee on Executive that when this committee does rise and report, after having had under consideration Section 14, sub. 1, that it recommend the same be adopted. So many as are in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk please read 14, sub. 2.

CLERK HANSON: "Section 14, subsection 2. The lieutenant governor shall serve as acting governor when requested in writing by the governor to do so. He shall serve as acting governor during the absence from the state of the governor for any period in excess of 45 days." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee shall arise and report, after having had under consideration Section 14, subsection 2, that the Executive proposed article-that the same be adopted.

CHAIRMAN GRAYBILL: Is there any discussion of 14, sub. 2?

Mr. Davis.

DELEGATE DAVIS: Most regretfully do I—

CHAIRMAN GRAYBILL: Oh, Mr. Joyce, I'm sorry. I thought you'd sat down.

DELEGATE JOYCE: I did, but I didn't mean to. However-

CHAIRMAN GRAYBILL: Mr. Davis, I'll come back to you.

Mr. Joyce.

DELEGATE JOYCE: What we've done in this section is we've provided that the Lieutenant Governor shall serve as acting Governor when requested in writing by the Governor to do so, and he shall serve as acting Governor during the absence from the state of the Governor for any period in excess of 45 days. Let me explain what we attempted to do here. We attempted to change the current system, the current provision in the Montana Constitution, which in effect, savs, when the Governor leaves the State of Montana he loses all his powers as Governor, and we thought in this modern day and age that that was not necessary; that the Governor should still be Governor if he goes over to Spokane or even if he goes back to Washington, because he can get in touch with his office. However, we thought that the situation may arise where the business has to be done, and there are certain things to be done if the Governor is going to be out of the state or even if he's just home sick, that he could designate his Lieutenant Governor teammate to be acting Governor by doing so in writing. And this would eliminate the problems that keep recurring about when the Governor is out of the state and he loses all his powers, and some Lieutenant Governors then undertake to make appointments and so forth and to actually exercise some of the more important functions of the Governor. But we did also attempt to provide for that remote contingency where a Governor would just take off and

leave the state in excess of 45 days, and after the 46th day-we picked 45 after wrestling between 30 and 60 and arrived at the average, purely arbitrary, but sufficiently long that the Governor-if the Governor is gone that length of time, then we provided that, in effect, on the 46th day the Lieutenant Governor becomes the Governor, or the acting Governor, notwithstanding the wishes of the Governor. So that is the whole purpose of subsection 2.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, for the record, perhaps Mr. Joyce could yield to a question.

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I yield, Mr. Davis—or Mr. Chairman.

DELEGATE DAVIS: **You mean 45** days—consecutive or successive days, rather than 45 days during his term of office; or in any year, and so forth?

DELEGATE JOYCE: Yes, we did. Doesn't it say that?

DELEGATE DAVIS: It just says "excess"-"any period in excess." It isn't clear, for the record.

DELEGATE JOYCE: "During the absence from the state in excess of 45 days"-in excess of 45 continuous days. I guess maybe Style and Drafting can pick that up. At any rate, that's our intent.

CHAIRMAN GRAYBILL: If it's you're intent, all those in favor of adding 45 consecutive days, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right. Now it says "45 consecutive days." Members of the committee, you have before you, on the recommendation of Mr. Joyce—

Oh, Mr. Ask, do you have some discussion?

DELEGATE ASK: Will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Yes, I yield, Mr. Chairman.

DELEGATE ASK: Mr. Joyce, what happens if the Governor leaves the state and he doesn't request the Lieutenant Governor to act for him and he's gone for a period of time, what happens to the daily work, such as extradition papers that the Governor must sign, other duties that are day-to-day affairs-if he fails to do it or doesn't do it?

DELEGATE JOYCE: Well, I presume that they would just pile up if the Governor just arbitrarily refused to do so, but we've provided a method here where all he has to do is authorize the Lieutenant Governor in writing to become acting Governor and sign those extradition papers.

CHAIRMAN GRAYBILL: Members of the committee, you have before you on the recommendation of Mr. Joyce that when this committee does arise and report, having had under consideration Section 14, subparagraph 2, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read subsection 3 of 14.

CLERK HANSON: "Subsection 3. He shall also serve as acting governor when the governor is disabled and by reason of that disability is unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor in such event shall continue to serve as acting governor until the governor resumes the duties of his office." Mr. Chairman, subsection 3.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee shall arise and report, after having had under consideration Section 14, subsection 3, of the proposed Executive Article, that it recommend the same be adopted,

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, in this section we undertake to provide for that contingency about which Mr. Garlington spoke a few minutes ago; namely, where the Governor is just disabled and he can't communicate with the

Lieutenant Governor-he's had a stroke or a heart attack and he can't write anything to the Lieutenant Governor to take over-we have in that connection authorized the Lieutenant Governor, in effect, to assume the powers of acting Governor. Now, we don't see that this will create any problem at all, because if the Governor is able to function, why, he will resume his duties. And, of course, in the remote contingency that the Lieutenant Governor doesn't want to give up, why, the fact is that it can be adjudicated that the Governor, once he is on his feet and has his faculties about him, is the Governor.

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having under consideration Section 14, sub. 3, that it recommend the same do pass. So many as shall be in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk please read sub. 4.

CLERK HANSON: "Subsection 4, Section 14. Whenever the lieutenant governor and attorney general transmit to the presiding officer of the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene." Mr. Chairman, subsection 4.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee shall arise and report, after having under consideration Section 12, subsection 4, of the proposed Executive Article, that it recommend that the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: In subsection 4, we provided that when the Lieutenant Governor and the Attorney General transmit to the presiding officers of the Legislature their written declaration that the Governor is unable to discharge the powers and duties of his office, that the Legislature shall then convene. Now, we're drawing a parallel here between-the recently adopted 25th Amendment to the federal Constitution. That amendment provides that when the Vice President and the principal cabinet officers certify in writing to the majority leaders of the Senate and the Speaker of the House that the President is unable to perform his duties, why, then that in effect vests the Congress of the United States with jurisdiction to look into this matter. And so, this would be the--would cover the case where the Governor became insane and-so, rather than having any principal cabinet officers, we have provided that the Lieutenant Governor and the Attorney General both would transmit this to the presidingofficerof the Legislature and that the Legislature would then immediately convene. And the thinking there was that the Lieutenant Governor, being a teammate, would not do it unless the Governor really was insane, but by adding the Attorney General on with him, then they both have to concur, why, that would then take care of the case where, in fact, he was insane. So that is the purpose of subsection 4, and we're--at this point the Legislature just convenes and then we will go on and tell what the Legislature does in the next subsections.

DELEGATE ESKILDSEN: Would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. President, I yield.

DELEGATE ESKILDSEN: When, in a bicameral Legislature, who would be the presiding officer of the Legislature?

DELEGATE JOYCE: In a bicameral, I presume that the Speaker of the House and whoever the Senate may elect as its presiding officer, since in the Legislative Article we have removed the Lieutenant Governor as the presiding officer of the Senate. So I don't know what they would call-in a bicameral Legislature, they'd probably call him President of the Senate or whatever name they may pick out for him.

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: One other question. To the presiding officer of the Legisla-

ture—and I can see that we have two presiding officers. We have a Speaker of the House and we have something else in the Senate. You'd have to pick one to be the presiding officer, where it would be officers if it was a bicameral. I just want to get this straight as to who they're going to send it to.

DELEGATE JOYCE: Well, the intention of the committee is that they would send it—if it's a bicameral, that they would communicate to both the Speaker of the House and whoever the top officer of the Senate was, and if it was unicameral, that it would be to whoever then was the top senator or whatever they called him in the unicameral system; and we thought that perhaps Style and Drafting could adjust that, depending on what happens to the unicameral and bicameral proposals after it goes through Style and Drafting.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 14, sub. 5, that it recommend the same do pass. All in favor of that. say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will the clerk read subsection 5.

CLERK HANSON: "Subsection 5. If the legislature, within 20 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall enter upon the discharge the same as acting governor; thereafter, when the governor transmits to the presiding officer ofthelegislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to discharge the powers and duties of the office as acting governor." Mr. Chairman, subsection 5.

DELEGATE JOYCE: I move that when this committee does arise and report, after having had under consideration Section 14, subsection 5, that it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: In this section, we provide that if the Legislature--and, again, it's bicameral or unicameral--within 21 days after convening determine by two-thirds vote of its members present that the Governor is unable to discharge his duties, then the Lieutenant Governor shall enter upon and discharge those duties as acting Governor. This is the case where the Governor presumably is insane, and the Legislature would have 21 days to convene-to decide that, and then it would take a two-thirds vote of the Legislature to adjudicate in effect that the Governor was unable to discharge his duties and the Governor--and then the Lieutenant Governor would become the acting Governor only, however. Thereafter, when the Governor sends a-transmits to the presiding officer of the Legislature his written declaration that the-no inability exists, he resumes the powers and duties of his office within 15 days unless the Legislature determine otherwise by a two-thirds vote. This takes care of that contingency where the Governor thinks he's sane and the Legislature thinks he isn't and-prior to this it's been initiated by both the Lieutenant Governor and the Attorney General and it's before the Legislature and they have determined by two-thirds vote that he's not fit to discharge his duties, then the Lieutenant Governor becomes acting Governor. But then, all he has to do after that, then, is send a written request to the Legislature that he's been cured and that he can resume the powers and duties of his office. And if there is some dispute as to whether or not he might be cured, the Legislature would have 15 days to adjudicate that matter. Presumably he would, in fact, be cured and the Legislature wouldn't really meet; and this parallels the 25th Amendment, and it allows the President who is just temporarily mentally or otherwise physically deranged some way and to—when he recovers, to claim his office, and it makes it very difficult for anyone to actually railroad the Governor out of office. Then, the last sentence is, if the Legislature does determine, however, that he's still disabled, notwithstanding his protestations to the contrary, that the Lieutenant Governor shall continue to discharge the powers and duties of the office as acting Governor.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you, on the recommendation of Mr. Joyce, that when this body does arise and report, after having under

consideration Section 14, subsection 5, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it. Would clerk read subsection 6.

CLERK HANSON: "Subsection 6. If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term." Mr. Chairman, subsection 6.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 14, subsection 6, of the Executive Article, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: In this section we now provide that when the Governor-the office of Governor becomes vacant by reason of death—'course it will be pretty clearly vacant in that contingency-or resignation or disqualification, then the Lieutenant Governor shall become Governor for the remainder of the term. Now, of course, the fact that we've got resignation in there doesn't conflict with President Graybill's amendment, I don't think, because if the Lieutenant Governor--maybe it does-but the Lieutenant Governor becomes Governor for the remainder of the term. I suppose I should ask Delegate-Mr. President, in his capacity as Delegate Graybill, if he thinks it does conflict with this previous amendment.

CHAIRMAN GRAYBILL: I thought you could correct that by putting a comma after "term" and say, "except as otherwise provided herein" or "elsewhere provided herein"-"except as otherwise provided herein."

DELEGATE JOYCE: That would be satisfactory with me, I think. I'll so move that it be amended.

CHAIRMAN GRAYBILL: If we put that in, that might be enough to get it to Style and Drafting. The motion is to add to line 12 on page 11, if you're following on that page, to subsection **6,** the words: "comma except as otherwise provided herein"—the idea being to encompass the amendment we made right after lunch about the Lieutenant Governor not being able to succeed if he's appointed. Is there discussion?
(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, the question is on subsection 6 itself, as amended. Members of the committee you have before you, on the recommendation of Mr. Joyce that when this committee does rise and report, after having under consideration Section 14, subsection 6, that it recommend the same shall be adopted. All those in favor, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended. The Ayes have it. Will the clerk read subsection 7.

CLERK HANSON: "Subsection 7. Additional succession to such vacancies shall be as provided by law." Mr. Chairman, subsection 7.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 14, subsection 7, of the Executive Article, that it recommend that the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: In Section 7, we attempted to provide for additional succession to such vacancies shall be as provided by law, and in that connection we had in mind that the Legislature would provide for these additional

vacancies-if both of them got killed in a common disaster-that it provide by law who might do it. I suspect that maybe, in view of our amendment, we ought to say "as provided herein or by law."

CHAIRMAN GRAYBILL: Let's leave that one to Style and Drafting, Mr. Joyce.

DELEGATE JOYCE: All right. I'll move it adopt-as is, then. I move the adoption.

CHAIRMAN GRAYBILL: Is there discussion on subsection 7?

(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Joyce's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read subsection 8.

CLERK HANSON: "Subsection 8. When there is a vacancy in the office of the governor, the successor shall have the title, powers, duties and emoluments of that office and shall be governor. When the successor serves as acting governor for a temporary period, he shall have only the powers and duties of the office for the period during which he serves as such." Mr. Chairman, subsection 8.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee shall arise and report, after having had under consideration Section 14, subsection 8, of the Executive proposal, that it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: In this last paragraph, paralleling again the 25th Amendment, we provide that wherever there is a vacancy in the office of Governor, it has become and declared vacant, either because of his death or it's just any other contingency, his successor then will have the title, powers, duties and emoluments of that office and shall be the Governor. And this settles the problem as to whether or not he's really Lieutenant Governor acting as Governor. When the office is, in fact, vacant, the new man is the Governor. In Section 2-or second sentence, I should say, when the successor serves as an acting Governor for a temporary period, as we're provided for herein, he shall have only the powers and the duties of the office for the period which he serves as such acting Governor. And this would clear up the ambiguity that currently exists about the current Constitution of when the Governor dies, what is that Lieutenant Governor then during the remainder of the term.

CHAIRMAN GRAYBILL: Is there discussion of subsection 8?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the motion of Mr. Joyce that when this committee does arise and report, that it recommend that subsection 8 of Section 14 be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Mr. Mahoney has a new section to add. Mr. Mahoney, may the clerk read your proposed Section 15?

DELEGATE MAHONEY: Please, Mr. President.

CLERK HANSON: "Proposed Section 16 from Article VII, Section 10, of the present Constitution, on page 17—"

CHAIRMAN GRAYBILL: Now the reference is to the old Constitution, right-or the present Constitution.

CLERK HANSON: Right.

CHAIRMAN GRAYBILL: Mr. Clerk, I think this will be Number 15, since 14 is the last one we had.

CLERK HANSON: Okay. "Section 15. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required. He may also require information in writing at any time, under oath, from all officers and managers of state institutions upon any subject relating to the condition, management and expenses of their respective offices and institutions and may, at any time he

deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office of the state institution-" Mr. Chairman—

CHAIRMAN GRAYBILL: "-office or state institution."

CLERK HANSON: "...office or state institution." Mr. Chairman, proposed Section 15.

CHAIRMAN GRAYBILL: Very well. Mr. Mahoney has an amendment which will add a new section which amounts to adding Article-or adding Section 10 from Article VII of the existing Constitution.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, all I'm doing is taking--as you stated, this is on page 17 of your yellow books-and I'm just taking the top part out, allowing the Governor to have a committee to investigate or to request information, and I think this should be in the Constitution. Sometimes when these people get confirmed and they think they're on their own, I like to let the Governor have a little chance to call the boys in or to talk to them or send a report to him, and this is what I'm trying to add back in the Constitution.

CHAIRMAN GRAYBILL: Is there discussion? I'll be glad to read it again: "The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required. He may also require information in writing at any time, under oath, from all officers and managers of state institutions upon any subject relating to the condition, management and expenses of their respective offices and institutions and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution." This is part of the present Constitution. Is there discussion?

DELEGATE REICHERT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce'!

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE REICHERT: Mr. Joyce, during the deliberation of your Executive Committee, did you discuss this, and would you please give us your reasons for the deletion:'

DELEGATE JOYCE: Well, I think, Mrs. Reichert, the reason we did think that we had covered the Executive Article and we thought this was covered in the executive power that we gave to the Governor and his powers under the reorganization that all these people are appointed by him, but I suspect on reflection here that perhaps Mr. Mahoney is correct. If the Legislature does set up some head of one of these executive boards and gives him a firm term where the Governor can't get rid of him, that he perhaps should have this authority, and so, on the off chance that we haven't adequately covered it, I'm going to accede to Mr. Mahoney's amendment unless I hear some objection from other members of the Executive Committee.

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the motion of Mr. Mahoney that when this committee does arise and report, after having had under consideration proposed Section 15, a new section added by his amendment, that it recommend the same shall be adopted. So many as are in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Mr. Felt has a proposed additional amendment, which we'll style Section 16. Mr. Felt, may we read the proposal from the rostrum?

DELEGATE FELT: Please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Felt's proposal.

CLERK HANSON: "Mr. Chairman. I move to amend the Executive Committee proposal by adding an additional section thereto as follows: 'Section 16. The legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts for the state and of all branches, departments, offices,

boards, commissions, agencies, authorities, and institutions of the state, established by this Constitution or by law, and performance post-audits thereof. The appointment may be made through a legislative audit committee as provided by the legislature.' Signed: Felt."

CHAIRMAN GRAYBILL: Mr. Felt, the Chair is in doubt as to whether or not to allow this, the Legislative Committee having been—report having been completed and this not being a part of it, it seems to the Chair that it's a part-it should normally be a part of the Legislative Article.

DELEGATE FELT: Mr. Chairman—

CHAIRMAN GRAYBILL: Is it your purpose—would you explain your purpose in making it, at this time, to the Chair.

DELEGATE FELT: That was my intention, Mr. Chairman, to begin by dealing with that question because it is a legitimate question and I believe the answer rests in the discussion we had this morning on the matter of external auditing, which did come up as a part of our Executive proposal and was not accepted. And that the-1 would agree that this matter does probably belong in the Legislative Article, although there were some who spoke, saying that it belonged in the Article on Revenue and Taxation, and if this matter is acceptable in principle to the members of the Convention, I am assured by our Committee on Style and Drafting, or by the Chairman of the committee, that it would be possible for them to deal with the matter of placing it in the proper place as selected by the Convention and after consideration of that matter by that committee. The general sense of the comments made by those who arose in opposition to having an elected Auditor who would do our external auditing was that it is being so admirably handled now by the Legislative post-auditor, that it would be better to continue with this that we have. And while I do not fully agree, I can see the point that they make, and at a minimum, I urge that we do constitutionalize the function of an external audit. As I attempted to point out-but, of course, we are told here that we can't be too hasty-but remember that we don't have time, so hurry along-1 perhaps did not make things entirely clear. I have also been informed now that some of the members have not received the written copy of the proposal, although it was supposed to have been on your desks yesterday. At any event the—

CHAIRMAN GRAYBILL: Mr. Felt, whenever you can, stop a minute. I want to discuss the matter.

DELEGATE FELT: Yes.

CHAIRMAN GRAYBILL: May I stop you now?

DELEGATE FELT: I believe this is as good a time as any, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. Now, your proposal puts the Chair in a position where he does not know precisely what to do. The proposal is clearly Legislative in nature; it's talking about a Legislative post-audit-the Legislature shall do this and the appointment shall be made through a Legislative Committee. I'm aware that we discussed the audit function this morning, and I'm aware that the Legislative post-auditor might be a good thing to add to the Legislative Committee. The problem that the Chair has, for the benefit of the body, is that the other way to do this is to move this body to reconsider the Legislative Article. If we allow Mr. Felt to interpose his amendment as an Executive amendment and place in the hands of Style and Drafting-the problem of moving it to the Legislative if we want to-we have then allowed Mr. Felt to amend the Legislative Article without reconsideration. Now, I don't mind doing that, but I think that then opens the door for anybody to reconsider anything from any other article by tacking it on Local Government, if necessary, at the end, or General Government, and amending. Now, I don't know whether we want to do that or not. Therefore, the Chair is going to put to this body the question of whether we should allow this amendment as an Executive matter or whether we should ask Mr. Felt to prepare a motion to reconsider the Legislative Article, which he could do and he could get it considered tomorrow or any time, and then you'd have an opportunity to decide whether to reconsider. Therefore, the Chair will rule that this is-well, let's see, the Chair would ask the floor manager to make a motion that-one way or the other--and then we'll have the sense of the body.

DELEGATE ESKILDSEN: Before I make any motion, I think that this matter should--I think that Mr. Felt, on another day should move that the Legislative proposal be taken from Style and Drafting and rereferred to the Committee of the Whole and, at that time, add this on the Committee of the Whole to the Legislative

Article, and if it passes, send it back. If the delegation doesn't want to do that, then you'd naturally just lose it there, but I don't think that it should be added to the Executive Article at this time. Now, that's my feeling.

CHAIRMAN GRAYBILL: Therefore, the Chair is going to adopt as the Chair's motion Mr. Eskildsen's statement. Now, if you sustain the motion, then we'll have him do it the other way; if you vote against the motion, we'll let him do it now. So many as shall be in favor of—

All right, Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, before you do that, would you reread Mr. Felt's proposal?

CHAIRMAN GRAYBILL: Right, I'll reread it. "Section 16. The legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts for the state and of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state, established by this Constitution or by law, and perform post-audits thereof. The appointment may be made through a legislative audit committee as provided by the legislature." Now, the question, then, is whether to ask Mr. Felt to come in tomorrow with a motion to bring the Legislative Article back from Style and Drafting to consider this-in other words, to reconsider the Legislative Article-or whether to let it go on as a part of Executive, and we can certainly do that and let Style and Drafting place it. The point is that we then open the door, more widely at least, for anyone to amend.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would have to question whether a motion to reconsider can be brought or made after the committee has finally risen and reported. Now, according to Rule 27, a motion to reconsider shall be in order in the Committee of the Whole by a majority vote of those present and voting before the committee shall rise and finally report.

CHAIRMAN GRAYBILL: That's right in Committee of the Whole, but it is possible, I think, to have a motion to reconsider in the Convention. Isn't that right, Mr. Eskildsen?

DELEGATE ESKILDSEN: Well, you don't reconsider it, you just make the motion to take it from Style and Drafting and refer it to the Committee of the Whole. Mr. Felt, at another setting and the proper time when motions and resolutions, can move that we take the Article on Legislative, the proposal on legislation from Style and Drafting and refer it to the Committee of the Whole. And if we adopt that motion at that time, why, then it'll be on Committee of the Whole; and when we go into the Committee of the Whole, then Mr. Felt can add this to the Committee of the Whole proposal. And this is the way1 feelitshould be done properly. Now, you can do it any way you want to.

DELEGATE CHAMPOUX: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

I'll get back to you, Mr. Felt.

DELEGATE CHAMPOUX: Just on a point of information, if I may, sir, is it within the province of this body to limit the reconsideration just to this one particular item, if we do decide to reconsider?

CHAIRMAN GRAYBILL: I would think that would depend on Mr. Felt's motion, but if he wanted to bring back some part of it, I suppose it could be done.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I notice on my desk is a report of the General Government Committee and the note on the report-the scope of an area such as General Government is broad and somewhat nebulous, and I'm wondering, this article that's on my desk-1 just glanced at it-it hasn't been heard yet. It's the report of that committee. It takes up the separation of powers, it takes up quite a number of other items, and that might be a good place for the motion to be made, and we don't have to reconsider anything, or we wouldn't have to worry about it being in its improper place. and I'm offering this just as a suggestion to the management of the Convention.

CHAIRMAN GRAYBILL: I think that's a good possibility, Mr. Aronow. The Chair would have some problem in General Government. too. The proposal is quite closely connected with the Legislature, and all I'm suggesting is that if we don't follow the usual procedures, then anything can be put into any article and then the Style and Drafting can move it around and that would mean

that we could, you know, put anything anywhere, which would open up the thing pretty wide for amendments on new material. And I'm afraid if we do that, we'll be getting new material on the Legislative and the Executive and the Judicial all through Natural Resources and Public Health.

Mr. Schiltz.

DELEGATE **SCHILTZ:** Mr. Chairman, as a point of order, I refer you to Rule 66 which says, "On reconsideration any delegate who voted on the prevailing side may move for a reconsideration at the same session day of the Convention or may give notice that he will make such a motion not later than the next succeeding session day. I don't think Mr. Felt would be allowed, under the rules, to move for reconsideration.

CHAIRMAN GRAYBILL: I think you're probahly right. I think my initial idea of a motion to reconsider is out, but I don't think Mr. Eskildsen's method is out, which I think this Convention has a right at any time to take things from committees and put them on or off General Orders, and I think there's a rule to that effect which I haven't looked up.

Mr. Champoux.

DELEGATE CHAMPOUX: I don't think I've really satisfied myself in asking-in getting the information I want. Now, what's bothering me is this. If we bring this back for reconsideration—see this is-how this question is answered will determine how I'm going to vote on this-if we bring this hack for consideration and we're going to be allowed to open up that whole article for reconsideration just to go-discuss Mr. Felt's proposition, this may create dangers. I see this as a kind of a ploy in the future. I may want to use it myself. But at least, I want to know the ground rules. Rut if-what I'm asking is, if we-when we reconsider, Mr. Eskildsen, can we limit it to one item only? That's my question.

DELEGATE ESKILDSEN: Well, when we bring the article back, when you take it from Style and Drafting and refer it back to the Committee of the Whole, at that time we'll have the whole Legislative Article before us. Now, what we do then is up to this body.

CHAIRMAN GRAYBILL: Mr. Felt's been on his feet quite awhile, Mr. Berg.

DELEGATE FELT: Mr. Chairman, I do not feel that the Chair is in error in taking the position it has taken of referring this to the Convention or by motion of Mr. Eskildsen or in any other way. I did this method originally because I thought it might save time, hut if we're going to discuss all of our rules of parliamentary procedure at the same time, then we aren't going to save time. I can assure you I had offers of motions to reconsider, which I felt would take up so much additional time and would be unnecessary since the sense of the present proposal is to depart from the original position but yet remain on the subject, which is germane of external auditing, and I felt, while the question was properly raised by the Chair, that if a matter is germane to the subject already discussed within the article as it was originally proposed, and which I probably could handle by amendments, but it would-you'd end up with the same problem, then I was not using this, then, as a subterfuge to bring up something which I could not bring up in some other way. I realize there are alternative methods. I tried to find the one that I thought went most directly, immediately to the question, and particularly because there seemed to he such overwhelming support for this idea, and I thought it might save time. But I'm content with the ruling of the Chair and would abide by the decision of the body if they choose not to handle it in this manner; I certainly don't want to waste time. I'm trying to save time by using it.

CHAIRMAN GRAYBILL: Mr. Felt, I find no difficulty with the-1 think it's possibly a good thing to debate and discuss, and that isn't what bothers me. It bothers me that it seems to be purely Legislative, and the only thing that really bothers me is that if we allow this to happen very often, I think we have opened up every article to amendment of new matter for other articles. The Chair is going to withdraw the motion I made, and I'm going to replace it with a motion that's been-that I believe should be put because of some of the questions that have been asked from the floor. I'd like to ask the body to refer this matter to Rules Committee-let them come up with a solution. Is there discussion of that motion?

(No response)

CHAIRMAN GRAYBILL: Very well. All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well, the matter is referred to the Rules Committee, Mr. Felt, and the Rules Committee can meet on it as soon as practicable and come up with a solution. Now. ladies and gentlemen, WE have before us no other new material and WC have before us two motions to reconsider, but they're hoth to reconsider the same section. At least, they're both to reconsider Section 3, although they may be to reconsider different subsections of 3. Section 3 on qualifications has two subsections, 1 and 2. Mr. Davis, your motion only goes to 1. And Mr. Habedank, your motion goes to adding a third subsection. The Chair would entertain a motion from Mr. Davis to reconsider subsection 3. Would you mind opening the whole of Section 3, and then we won't have to do it twice, Mr. Davis?

DELEGATE DAVIS: Yes. Mr. President. having voted on the prevailing side on Section 3, subsection l-well, then, the whole section-I move that we reconsider the action we took yesterday and move this body to reconsider the same.

CHAIRMAN GRAYBILL: Now, Mr. Davis, in your motion to the Chair you put very briefly the reasons that you did this. I'd like to read those and I'd like to read the reasons that Mr. Habedank moves, and then I'd like to ask the body to consider the reasons and avoid debating them if possible. Mr. Davis' reasons are: qualifications of Governor, Lieutenant Governor, Superintendent of Public Instruction, State Treasurer, State Auditor and Secretary of State. In other words, qualifications. Mr. Hahedank's reason is to add a subparagraph concerning qualifications of the Superintendent of Public Instruction. Now, 'hey want to reconsider Section 3 so that they may bring up matter concerning qualifications of those various officers. The Chair has entertained Mr. Davis' motion.

Mr. Davis.

DELEGATE DAVIS: Mr. President, may I speak to it very briefly? Specifically, I am moving to amend the qualification as to ape that I voted on, the age of 18, and move it to 25, the minority proposal. Last evening the hour got late. a lot of empty chairs were present. We wanted to support the majority who--on the majority was the most able representatives, Mr. Garlington. Mr. Martin, Mr. Joyce, Mr. Roeder and many others-and I think that in considering that, in wanting to support Mr. Garlington, after reviewing his article last night and on what hc thought should be the way you approach these subjects and consider them, I took his heed and must oppose that majority today and think it should he reconsidered. I'm afraid we're--may lose a lot of very important articles and very important amendments we've made in this Constitution by lowering this age limit. I amended it last night as a compromise from 30 to 25; I moved over to prevailing side so I could reconsider it today when we're not near as tired, although I'm sorry it is at the end of the day this question's coming up again. So, I most respectfully request your support that we can reconsider this matter to help our overall constitutional document that we're going to put out here. Thank you.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Are we open to debate on this'.)

CHAIRMAN GRAYBILL: You're not open to debate the issue. You're open to debate whether or not to reconsider, and I'm holding a heavy gavel.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. would it be possible to pass this until tomorrow in the Committee of the Whole?

CHAIRMAN GRAYBILL: I am going to try and finish the Executive Article tonight. I'm not going to try to work tonight; I'm going to try and finish it tonight. That means in the next half hour. Very well. All in favor of the motion to reconsider, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

UNIDENTIFIED DELEGATE: Division.

CHAIRMAN GRAYBILL: Well, if you want to stand and make a motion for a division, do so; otherwise, the Chair is not at all in doubt. Okay, Mr.-do you want a motion for division? It's not a roll call vote, however.

All those in favor, vote Aye; those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 69 having voted Aye, 17 No, the Chair is sustained.

The Chair will recognize Mr. Davis to discuss his proposal.

DELEGATE DAVIS: Mr. Chairman, I would move this body to reconsider their action taken on the majority report, Section 3, subsection 1, and to adopt the minority report, Section 3, subsection 1, wherein these officers should be 25 years of age. In other words, the whole—as the 25-year ape matter was amended last evening.

CHAIRMAN GRAYBILL: Mr. Davis, does that include 25 for the Governor, too, there?

DELEGATE DAVIS: Yes, sir, 25-a substitution of 25 for 30, and then the rest would be identical.

CHAIRMAN GRAYBILL: Very well, Mr. Davis.

DELEGATE DAVIS: I won't pursue this very long. We discussed it at some length yesterday, but it seems to me, in trying to look at this overall document, some people want a shot in Education, some in Legislative, some in many other fields, and to get any of these things we've pot to be responsible in this area. It adds a little dignity to the office. I'm not concerned that anyone is going to be elected under that age. What I am concerned with-it's going to be so misunderstood anti misleading that it's going to hurt the things that you're really concerned with in this Constitution. In reviewing what we've done to date, it seems like we've been very responsible, despite what you read in the press. This Constitution that's been written to date is very acceptable and very credible and a great improvement, and the Legislative Article is the breakthrough of the whole thing and I think we need to keep it a good article and follow up with our qualifications here. Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, I concur with Mr. Davis. I talked to several young people at the motel last evening and this morning and asked them what they thought about 18-year-olds—the possibility of them becoming Governor. Just supposing I decided to run for Governor and picked out a young genius at 18, 19 years old, whose father had a lot of money, as a running mate and he ran us for Governor and I had a heart attack and this youngster of 19 became our Governor. Now, I don't think we want this to happen. And I think that age 25 is low enough age, and I don't think the young people arc going to respect us if we don't put this age in here. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I listened with awe at the eloquent appeals last evening as to why 18-year-olds should be allowed to run for the office of Governor, because if they were good enough to be elected they were good enough to serve. At the same time, it was pointed out very capably that there is practically no likelihood an 18-year-old can run for Governor. Since this was passed last night, I have been in communication with different study groups in the eastern end of Montana, and without contradiction they are opposed and appalled at the fact that we were willing to allow an 18-year-old to be Governor, even though there was little likelihood of it. I would call to your attention that, in trying to placate the 18-year-olds, if they are against this new Constitution, their alternative is to vote for the old one, when they would not have any opportunity to be Governor. But in the process of being so generous and allowing the 18-year-olds to be Governor when there is little likelihood of it, we secure votes of a great many people who are antagonistic to this; we have lost a vote for the Constitution from a group that will be able to vote on the question, and at this time the 18-year-olds probably wouldn't be able to vote for it. I urge you to reconsider and to accept the compromise of 25 years.

DELEGATE HARPER: Mr. Chairman, I think WC discussed this adequately. There always is a tendency to say when we-those who oppose a majority decision that, of course, it was done in a fit of emotion. Several times today-and this has bothered me-people have made little remarks, now we've made it possible for 18-year-olds to become Governor. Why don't we say, now we have made it possible for a 99-year-old man to be Governor? We have, you know. We've set no limits at all. It's much more possible that the man with money is going to be95 than 18, and we haven't set any kind of upper limits. Now, let's be honest and fair about it. We are not really thinking about

qualifications for the office of Governor. We are not dealing with an upper limit. We have much more to fear from a man being too old and decrepit, man or woman, and not able really to handle this office than we do from a person 18. I still think that we're just hung up on this idea and we're just showing our age.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of Mr. Davis' motion on the age qualifications for Governor and the other offices. To me, not putting an age in here-1 think we downgraded these offices from our previous Constitution, and here we are passing Executive Article today giving the Governor and these offices more powers, and I think we've downgraded it by lowering the ape. Now, I agree that age is not the magic thing and that there are many that arc probably 21 that have far more mature ideas and ability than someone that's much older. But, at least, by the time they get to 25 they have proven that they have the ability and the maturity and responsibility to take that office. At 18 there's no proof of it. They have never done anything. They're just out of high school. So I submit that by the age 25, in lower levels of government, they have proven their fitness, and I think this qualification-if they met this qualification of age and proven their ability, I'm sure they'll get elected. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I am, as Charley Mahoney says, worried that we are, if we reverse our action of last night, insulting the intelligence of the Montana electorate by telling them that overnight we have decided that they are so stupid that we can't trust them and therefore we've got to stick a 25-year limit on this, because otherwise they're going to go out and elect an 18-year-old Governor. Another thing that worries me is that we are going to appear sort of foolish to the people of Montana, like a flock of chickens that have seen the shadow of a hawk pass over and suddenly run for cover. Now, I don't like to be in that position myself.

CHAIRMAN GRAYBILL: Now, if you have something to add that wasn't said last night and you think it's important, I want you to stand and talk on it. But if you don't, if you're just going to talk about it again, let's remember what we said last night.

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I think I do have one extra new thought. I agree with Delegate Harper. I believe we are showing our age, and it's that uncertain age of middle age who are-where they are so desperately trying to identify with youth. We live in a country of youth worshipers, and we aren't fooling these young people at all. We are simply cheapening the top offices of our state, I believe, and these youngsters know that they can't use this 18-year-old privilege of running for Governor, but they're smart enough to know that they're going to be used both by the politicians and by the lobbyists, and I think we would win the support--not only the support of the 18-year-olds but also their respect if we go ahead and act our age and try to write a responsible Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, fellow delegates. I oppose very much the motion to reconsider our action of last night which, on a vote of 59 to 31, would give Montana the first state to recognize the challenge of the younger generation. I think we should consider the Constitutional Convention of 1889, in which the challenge of their day was whether or not to give the Legislature the right to give women the right to vote in the future. Now, this was a challenge presented to them. The arguments were the same in their day--women are not intelligent enough, they're not experienced enough, they're not qualified enough to vote. They argued this from all counties of the state in many of the same areas that you represent today. The delegate from Lewistown said that the ballot would be an effective way for women to protect their home or children and their person because it would allow her to say, "I can vote, and I will cast my vote for an officer that will enforce the laws that protect me." Now, young people today do have the right to vote with the 26th Amendment. We are one of the two constitutional conventions meeting after that historic 26th Amendment to the United States Constitution. The Deer Lodge delegate opposed giving women the right to vote because it would, in his words, be the entering wedge which would bring about their downfall. A man would not be eager to lead his wife to the polls if he knew that she would vote a different ballot. As long as a

woman obeys the man and votes as he does, he is glad to take her to the polls, but the instant she refuses to be governed in that vote, there will be dissention that will cause diversion and that will cause downfall of woman instead of her elevation. They pointed out that, only recently, in 1889, had the first college allowed coeducation, and here's how they described it in 1889 in this same Convention: "A howl of indignation and horror went up from one end of the land to the other at the shocking spectacle of a young lady sitting side-by-side with a young man, trying to gain a liberal education." Humorous to us now. And the man from Silver Bow County, who said, "I believe that women have the best of the question as it is, and I'm thoroughly satisfied that I am not occupying an ungallant position when I say that I am willing to let them have the better of the question and I am not willing to impose upon them the responsibilities of suffrage." Many of the same arguments; we're not willing to impose upon young people the responsibilities. It was argued last night, we've given young people everything; what more can we give them? We can give them one thing-we can give them responsibility; and responsibility is what's going to produce the best of our younger generation. Our Bill of Rights Committee has unanimously endorsed a provision which would allow 18-year-olds full adult privileges, including the right to hold any public office in the state. As I said in my opening statement, the objections in the past to women having the right to vote and to enter into the system, much like the objections of today, reflect a basic lack of confidence by those who fear that the democratic process is not capable of accepting a new group of responsible citizens. There is no basis for the doubts of the past, nor is there any basis for the doubts of today. I honestly feel that last night's decision was an overwhelming support and a vote of confidence towards the young people of this state. I think now, if we are to panic in the face of some lobbyists who have stated in the press that their pet projects are not receiving the attention that they perceive-that they feel some wave of indignation around the state, which I don't feel exist, I don't feel that we should lose the intestinal fortitude to stand by what we feel is right for this state. We won't have to worry about selling something, because this proposed Constitution is not for sale to the people of Montana: it's going to be put up for adoption. This is our child. We must do the very best we can with it. I think that this is not going to be such a revolutionary thing to upset the people of Montana. I think the more they think about it, the more they'll accept it. I think we made the right decision, and I strongly oppose the attempt to change our decision of last night. Thank you.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, is an amendment to Mr. Davis' motion in order at this time?

CHAIRMAN GRAYBILL: Yes.

DELEGATE ROBINSON: I do not have it written down but it isn't very long. On page--I'm on page 48, line 10, after "his"--after the words "his election", insert the phrase "nor more than 55 years at the time of his election."

CHAIRMAN GRAYBILL: The Chair is encouraged that you'd put that motion to me. (Laughter) Mrs. Robinson wants to amend line 10 to say that they can be-have to be 25 and not more than 55.

Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, members of this Convention. I'm a little bit concerned of exactly what we are trying to do in setting up these qualifications. If we decide at age 25 someone is automatically anointed and is able to serve as Governor of the state, then there must be a similar time when somebody is unanointed. There must be a time, a chronological time, that a person loses his effectiveness or loses touch with reality. Now, I will submit that the majority of the people of the United States are under the age 55. This is, I think, by limiting it at 55, you probably see how ridiculous it is to limit it at age 25, but nevertheless, if there are these chronological differences, I think we'd better decide what kind of people we want serving in Montana. It seems to me if we were limited to the age 55 in this Convention, that there would be several people that would not be here. (Laughter) At least, I think many of these people would be very qualified individuals, but it seems to me that by the proposed amendment of Mr. Davis, we are no longer considering individuals, we're not considering anything on individual qualification nor merit. What we are considering on is some arbitrary age that you have decided to impose upon everyone. I suggest that if we're going to have a lower limit, we'd better have a higher limit. It seems to me that if you are really interested in getting qualified

people to these offices, you should think about imposing some other qualifications. I would suggest that if you want someone really qualified for Governor, you might write in that they shall have a college education or a minimum I.Q. of 150 or 5 years' experience in public administration. I mean, isn't this what you're talking about—experience, qualifications? You're not talking about age.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mrs. Robinson's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it: however, WC will take a division, but we will not take a roll call. Have all the delegates voted'?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 68 having sustained the Chair and 25 having voted Aye, the motion did not pass. All right, we're back on Mr. Davis' amendment, which is to put in the minority report.

Mr. Harper-Oh, Mr. Harbaugh, pardon me.

DELEGATE HARBAUGH: I didn't speak on this issue last night. I constrained myself, but I think that the amendment which we just defeated helped to pinpoint the problem. And the real question is not the question of age, and I think both sides agree to this, that the real question is fear of the electorate. We are afraid of what people will think about this. And I will say again, as 1 said yesterday, let's dare to be courageous; let's dare to do what is right; and let's defeat this proposed amendment.

CHAIRMAN GRAYBILL: Mr. Belcher.

DELEGATE BELCHER: One little thing, Mr. Chairman, that I would like to add to this. The majority of the insurance companies of the United States, in driving autos. feel that the responsible people--not necessarily responsible, I shouldn't word it that way-but people mature at age 25 as far as driving is concerned. If we are going to let people under 25 run our government, I think we are making a big mistake.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, in the essence of keeping this short, I would like to say that I think this is a disgrace and a mockery of this Convention, and I believe that the people that sent me here wanted me to use a little common sense. Therefore, I support Mr. Davis' motion.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President. I'd like to use a little common sense and involve a lot of our—a lot of Montana's valuable resource, as our President referred to them, the young people of our state, in our democratic process here in the State of Montana. I notice they got hung up on this same issue over in the State of North Dakota, and they're putting that as a side issue on their April 28th possible adoption of the Constitution. I think we can do better here in Montana. We might be number two. I think we're just going to have to try a little bit harder to become number one.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. There has been some reference to hasty action last night, and I wish to remind you that the Hill of Rights Committee has been considering this issue for a good length of this Convention and we considered it very carefully and. I feel, ably. And WE came to the conclusion that age is not the primary qualification for holding the office of Governor, or Justice of the Peace, if you will. The primary consideration is the will of the electorate. And since some arbitrary age has to be chosen, then, in fact. the age which has been chosen by our federal government for voting. 18, is the logical arbitrary age to choose. At some point you have to draw the line, and since we, as part of the United States, have drawn the line at 18 for voting, that is the logical point to draw the line. There is no other good reason for drawing it at 18 or 19, 17, 21, 25, 30, 40, 45, 55. Hut our committee considered it very carefully, and we discussed it thoroughly in our committee, and we came to a unanimous decision. I do not consider this hasty. We conducted a hearing in which the people of Montana called in and overwhelmingly, three to one, something of that nature, favored the 18-year-old arbitrary limit. So I suggest WE have not been hasty in

recommending to this Convention that we draw 1X as the arbitrary age, and I suggest that the people of Montana are wise enough to understand that it is an arbitrary age and we do not intend that this mean that they shall vote for an 18-year-old Governor. But I suggest that we sustain the decision we made last night and defeat this substitute motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil

DELEGATE McNEIL: Mr. Chairman, I would like to remind the delegation that we are not permitting 18-year-olds to run for Governor, but, rather, we are simply removing an arbitrary age restriction as a requirement for holding this office. I'd like to refer to the comment that Delegate Ask made, indicating that the age of 25 would demonstrate some proven maturity which ought to be a prerequisite for holding this office. Last evening, 59 of the mature delegates in this Convention voted in favor of the mature recommendation of the mature majority of the Executive Committee that had recommended deleting any arbitrary age classification, and I, for that reason, oppose my good friend Carl Davis' amendment, and I favor confirming the mature judgment of this mature body reached last evening.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I was here last night and I didn't speak on this issue, but I think perhaps I should. Now, there are several people here that are going to run for office. This is quite obvious. I'm not. I'm not going to run for office, so I'm not worried about the 18-year-old vote. But I would like to remind them that if this is what they're worried about, they'd better take another look at it, because we're not fooling these 18-year-olds one bit on this issue. I've talked to many of them. Now, one delegate over here made a very eloquent speech on this, and he referred to our Constitution as the child that we want to put out for adoption. Now, I would like to have a very healthy child when we put this out for adoption. I don't want some child that's been crippled, all mixed up. I would rather have a healthy one. When we were discussing a while back here about the Governor and Lieutenant Governor, I was tempted to say something to my seatmate here, but it was rather ridiculous. I was going to suggest that while the Governor was going home to attend graduation exercises from high school, who would be the Governor of Montana? That's all I'm going to say, Mr. Chairman. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, in the hope that we will not extend this debate unduly, let me state that during the weeks that our Bill of Rights Committee held hearings, not one logical reason was ever advanced as to why the artificial barrier of age should not be removed. And I think the real consideration here, rather than go into all the arguments, is what effect is our action going to have in the public forum of the State of Montana. I think it's been brought out that we have to have confidence in the intelligence of our electorate. It's been well brought forth our electorate is not going to elect someone that's immature and incapable of holding the office, and that isn't the reason that should really concern us in this situation. My friend, Otto Habedank, my friend Carl Davis, I think have an overriding consideration for the action that they have taken by way of motion and for the argument they have presented. Otto and I were on the Constitution Revision Commission. There has been a lot of effort and several years of work that has been expended to bring this to this Convention Hall. And they're concerned about whether or not, when we're through here, this document is going to be accepted. And we can't go into every hamlet, village and town throughout the State of Montana and prove to them that their logic is wrong when they say that we have taken away dignity from the office, whether a person of this particular age is incapable. We can't take the time out to show them that their arguments are wrong and that there is no basis in fact or in reason for them. So, consequently, we've got to be concerned here about whether or not our action is going to help the constitutional document or hinder it. And I think that should be the basis upon which we vote here this afternoon. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. President, I used to shake in my shoes when I had to get up behind Delegate Dahood, but no longer do I do so. (Laughter) Two very logical reasons why our 18-year-olds shouldn't be allowed to be candidates for executive offices, the highest offices in the state, are primarily because they themselves do not want this responsibility. I have talked to them, to many of them, both here in Helena and at home, and

they do not want this responsibility. The other very logical reason is, how much experience and practical knowledge does an 18-year-old have? Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson was up last time, and he's up again.

DELEGATE WILSON: Mr. Chairman, I believe we're kind of beating around a point that we should really be taking a close look at here. It's not to the effect that we want to deprive the young people of their right to vote or their right to attain office. But what we're really talking about here is the prestige, the image, of the number one position in the State of Montana, the Governorship. And I think this is what we should be thinking about in our deliberations. I think the young people are asking us to use good common sense and preserve the image of the number one, highest elective office in the State of Montana. Further, upon adjournment of this committee last night, I ran into several young people, and they said that they were really shocked at the action and the deliberations that this committee had taken last night and that they were going home and talk to the young people in their schools and they were going to write letters, telling just how they felt about the unpractical thinking that we exhibited to them last night. I think, ladies and gentlemen, we're talking about image; we're talking about prestige; and I think we really should take a good reconsideration of this.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Thank you, Mr. Chairman. I rise to support Mr. Davis' motion. I took a shortcut through the south senate sun lobby over there today, and I heard a group of students who were questioning the speaker, who happened to be one of our members. And one of the questions that he answered was this: "Mr. Speaker, do we have to be a high school graduate to run for governor?" And his answer, I believe, was, "No, you just have to be 18 years old." A little bit later I joined a conversation where the conversation went something like this: "Remember when we ran the campus pooch as homecoming queen and won?" Wouldn't it be pretty easy for a bunch of wild, frivolous, fun-thinking young people to think what a great joke it would be to put one of their mates into office, and when you start counting the number of students around that are interested in having fun, it may be a pretty easy thing for them to do. And, again, my mind reflected back to a time when I saw a boy look at his father, who was striving desperately to be his buddy, and the boy said to his father, he said, "Dad, I don't want a buddy, I want a father." Well, I think that we are demeaning the office of Governor, and I address our comments and our interest to the office of Governor. I think we've got to preserve some dignity there, and I think that if we support Mr. Davis' motion, we will preserve that dignity. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I rise in opposition for all of the obvious reasons given, but I would like to mention one other. I have before me the youth constitutional convention final report by the Montana YMCA youth in government. I have heardseveral delegates express a great deal of admiration for the work of these kids, and I wouldn't argue that they may not be a little bit over 18, but I would assume that many ot them are 18 and younger. I'd like to quote, for the benefit of the delegates, what it says about the eligibility for the position of Governor and Lieutenant Governor: "No person shall be eligible to the position of governor, lieutenant governor, secretary of state, et cetera, et cetera, unless he shall have attained the voting age." This is by the youth. I think this should destroy some of the talk about the youth not wanting the responsibility. I oppose it. I do have one other reflection before I sit down. I think perhaps we should be reconsidering what we did about the Attorney General which, in fact, tends to make an additional age requirement for him because of the experience that we have required. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise to respond to a number of remarks that have been made. First of all, Delegate Babcock's remark concerning common sense as the issue; I think she's exactly right. The issue is whether we trust the common sense of the electorate of Montana, and the people, I think, of Montana have enough common sense that they don't have to have this artificial restriction imposed upon them. We don't have to worry about them going out and electing some hot-redder to the office of Governor. Now, secondly, a number of people have said that they have been in contact with certain of the younger people of the citizenry of Montana. So have I. I have been in contact with a repre-

sentative of 20,000 of them who is paid, to come here and lobby, some four or five thousand dollars for this session, and I want to tell you that if his—he represents his constituency, then the 20,000 college students in Montana who are paying for his services must want the action that we took last night. And, finally, I want to say again that if this Convention wants to make itself look ridiculous, then have the word go out that we reversed a two-to-one vote on an issue of this sort, expressing a lack of confidence in the voters of Montana.

UNIDENTIFIED DELEGATE: Ques-tion.

CHAIRMAN GRAYBILL: Very well. Mr. Davis.

DELEGATE DAVIS: May I close just briefly? I think it's this important. Two of those children that are in the University of Montana are mine. They would feel very disappointed if I didn't vote my convictions here, would lay any blame on the youth for this thing failing. I am now, and will continue as long as this Convention is here, to try to make the most palatable Constitution with the best changes that I think we can get accepted by the people. I think your labors are going to be in vain if you say that 18-year-old is an adult for all purposes, if we never get to that point, or if you want the unicameral system, but you lose it on issues like this. You could vote between the ages—you couldn't run when you were 21 before, until you're 30—it's no change except it's been reduced to 25 and the age 18. Last night we had two ministers taking opposite sides of the issue. That would confuse anybody. But we had two chairmen from Butte even taking opposite sides. That's how confusing things were, so let's vote.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Davis' motion—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: All right, we'll have a roll call. The issue is on Mr. Davis' motion to adopt the minority report, which is contained on page 38 and says: "No person shall he eligible to the office of governor, lieutenant governor, attorney general or superintendent of public instruction unless he has attained the age of 25 years at the time of his election, nor to the office of secretary of state, state auditor, state treasurer, unless he has attained the age of 25 years. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States and shall have resided within the state 2 years next preceding his election." So many as are in favor of that subsection, vote Aye on the voting machine. So many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: If not. please count the votes.

Aasheim	Aye
Anderson, J.	Aye
Anderson 0.	Aye
Arhanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard..	Aye
Bates..	Aye
Belchcr	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Aye
Foster	Nay
Furlong	Nay

Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Absent
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Absent
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Graybill-Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 56 delegates voting Aye, 38 voting No.

CHAIRMAN GRAYBILL: 56 delegates having voted Aye and 38 having voted No, subsection 3 from the minority report on qualifications is now substituted in place of Section 3 in the majority. Now, ladies and gentlemen, we have one other amendment to subsection 3, which is now open. It's from Mr. Habedank.

Mr. Habedank, may 1 read your amendment?

DELEGATE HABEDANK: Please

CHAIRMAN GRAYBILL: Section 3 now has subsection 1 and 2, and he says, add subsection 3: "In addition to the foregoing qualifications, the superintendent of public instruction shall possess such educational qualifications as are prescribed by law."

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I think the purport of this amendment is obvious. I think when people read through this Constitution and find that we have made the Superintendent an elective office and we have placed qualifications in there for the Attorney General, those people who are interested in education would feel that the office of Superintendent should also be protected, and it can be done adequately by law. There is nothing further to say.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: As a member of the Education Committee, even though Mr. Habedank didn't discuss this with me, I see no objection.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Didn't we do that'! Didn't we say the Superintendent have such-oh, just duties, I see. I don't care.

CHAIRMAN CRAYBILL: This one—what we did was, we did not change the qualifications. This says. "In addition to the foregoing qualifications, the superintendent of public instruction shall possess such educational qualifications as are prescribed by law."

Very well. You've beard the motion of Mr. Habedank's. As many as-that when this committee shall arise and report, after having under consideration his proposed amendment to Section 3, by adding subsection 3 thereof, that it recommend that the same be adopted. All in favorofthis motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Does anyone want to rise and state their name and ask for a division?

(No response)

CHAIRMAN GRAYBILL: Very well, the Ayes have it. and it's adopted. Now, the Chair has other motions to amend, or to reconsider, that are going to be asked for-at least two—and it does nut seem that we could accomplish that before the dinner hour. Therefore, the Chair is going to suggest that we recess until tomorrow morning.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Committee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is that the Committee of the Report rise and report progress and beg leave to sit again tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAY BILL: Opposed'!

(No response)

CHAIRMAN GRAYBILL: So ordered.

(President Graybill in Chair of Convention)

PRESIDENT GRAYBILL: Now, we're not in recess.

Mr. Lorello.

The Convention will be in order. The clerk—would you read the title of the motion.

CLERK HANSON: "February 25th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Executive, recommend as follows: That the committee rise and report progress and beg leave to sit again. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: The report is 4 pages long. Is there anyone who wishes it read?

DELEGATES: No.

PRESIDENT GRAYBILL: Mr. Eskildsen, will you make a motion—

DELEGATE ESKILDSEN: Mr. President, I move thr adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All those in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: Do you want a recorded vote on that? (Laughter) Very well.

Mr. Eskildsen, will you make a motion to adjourn?

DELEGATE ESKILDSEN: A Rules Committee meeting at 8:30 in the morning. Rules Committee at 8:30 in the morning. Is anyone on your Committee on Rules? I move we adjourn until Saturday, February the 26th, 9 o'clock, a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until—

Oh, pardon me, Mr. Berg.

DELEGATE BERG: Mr. President. In the absence of Mr. Holland, I have been asked to make this announcement. on behalf of the Judiciary Committee. It's anticipated that the Judiciary Article will come up for argument tomorrow. We urge you all to examine the Judiciary Article, both majority and minority report, and we arc going to ask, and I believe Mr. Holland has made arrangements, for relaxation of the rules in regard to the consideration of the Judicial Article in this—that both the majority and the minority will be argued on their basic issues, then gnu will be

asked, I believe, to take a tentative vote as to which of the two reports you prefer. Thereafter, the one that prevails, that one we'll go down section by section. Further, if you have amendments that you'd like to propose to either majority or minority, we would appreciate it if you would see both Mr. Holland, who will handle the majority, and myself, who will handle the minority end, so that we can present them in an orderly fashion. Thank you.

DELEGATE AASHEIM: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Legislative Committee pictures in the morning at 8:15 in the Governor's reception room.

PRESIDENT GRAYBILL: Mr. Berg, I think you and Mr. Holland should attend the meeting in the morning to straighten the Chair and the Rules Committee out on how we are going to do this, at 8:30.

DELEGATE BERG: I'm sorry. I thought that Mr. Holland had taken care of that, but I'll be here at 8:30.

PRESIDENT GRAYBILL: Very well. The motion is to adjourn—

Oh, Mr. Vermillion, excuse me.

DELEGATE VERMILLION: Yes, I'd like to remind everybody here that there's going to be one final radio program on a call-in basis this coming Monday night-Natural Resources--and it will generally be on environment, possibly get it down to the public trust document, and I would urge everyone here, if you have some people back home who are interested in this, one way or the other, that you let them know about this and ask them, if they would like to, to call in and to get their comments heard. That's Monday night 8 o'clock, same time and place.

PRESIDENT GRAYBILL: Very well. The motion is to adjourn until tomorrow morning at 9:00 a.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 5:40 p.m.)

February 26, 1972 **Thirty-Third Day** **Convention Hall**
9:26 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. This morning, our invocation will be given by Sarah Gackel, one of our pages, from Rapelje. Will you all please rise. Sarah.

SARAH GACKEL: Shall we bow our heads? Dear Heavenly Father, we come to you today with humble hearts, thanking you for this brand-new day that we can make plans for a new constitution. Dear Lord, we thank you, too, that you brought us each safely here-each of the delegates, too, Lord. We pray that as they go through this day and the problems that they face in making a constitution, that they'll let you be their guide. We pray for President Nixon and his wife, Pat, and their staff, Lord, as they're in China. You know that--what they're facing, Lord. We pray that you might let him just be an instrument in Thy hand for peace. We pray for the POW's, Lord, and for peace-not only peace between two countries, Lord, but peace between two people, peace in the hearts of individuals, Lord, that only you can give. We pray that through this day and throughout the rest of the Con Con, that you might be their leader and their guide, and that they might look to you for everything. And we also pray, Lord, that you'll let the meditation of our hearts and the words of our mouth be acceptable to you, 0 Lord. In Thy name, we ask it. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK SMITH: Delegate Bates, Delegate Cate, Delegate Toole.

PRESIDENT GRAYBILL: Who's absent?

CLERK SMITH: Delegate Toole.

PRESIDENT GRAYBILL: Toole was here. You can mark him present. Please take the vote.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg..	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate..	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Excused
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt,	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce.	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present

Lorello	Present
Mahoney	Present
Mansfield.	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Kollins	Present
Romney	Present
Rygg	Present
Scanlin	Excused
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK SMITH: Mr. President, 98 present, 2 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees.

CLERK SMITH: None, Sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Report of Select Committees.

CLERK SMITH: None.

PRESIDENT GRAYBILL: Number 3, Communications.

CLERK SMITH: None.

PRESIDENT GRAYBILL: 4, Introduction of Delegate Proposals.

CLERK SMITH: None.

PRESIDENT GRAYBILL: 5, Final Consideration.

CLERK SMITH: None.

PRESIDENT GRAYBILL: 6, Adoption

CLERK SMITH: None.

PRESIDENT GRAYBILL: 7, Motions and Resolutions.

8, Unfinished Business.

CLERK SMITH: None

PRESIDENT GRAYBILL: 9, Special Orders.

CLERK SMITH: None.

PRESIDENT GRAYBILL: 10, General Orders of the Day.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to move the Convention into General Orders to consider the Executive proposal. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK SMITH: Mr. President, the following announcement will be-the following committee proposals are now on General Orders: Executive, Judiciary, Natural Resources, Revenue

and Finance, Bill of Rights, Public Health, Education, Local Government, General Government. Style and Drafting Report Number 1 and Style and Drafting Report Number 2. The Bill of Rights Committee Proposal Number 8, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. The Public Health Committee Proposal Number 9, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. The Style and Drafting Committee Proposal Number 1, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules.

CHAIRMAN GRAYBILL: Very well. We have this morning-before us, I believe, at least three matters for reconsideration of the Executive Article. The first is Mr. Nutting's, Mr. Nutting, may I read your proposal?

Mr. Nutting's proposal is: "Mr. Chairman. Having voted on the prevailing side on the adoption of the amendment to Section 5, subsection 1, I move the Committee of the Whole to reconsider its action on adoption of Section 5, subsection 1, as adopted." Mr. Nutting, where is Section 5, subsection 1, as adopted? 22 and 39?

DELEGATE NUTTING: Page 6 at the top of the page would be one place that it—

CHAIRMAN GRAYBILL: All right. Section 5, subsection 1, as adopted, reads, "Officers of the executive department, shall receive salaries provided by law." We struck out, in our original consideration, the phrase, "which may be increased but not decreased during the term of office".

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. I ask for reconsideration because several members requested it. This, if you'll remember, went through without a dissenting word. The members who wanted to speak on it and did not ask that I reconsider it. It does not mean that I have changed my mind. I am-firmly believe that it should remain as it is. I've talked to the Chairman of the Executive Committee. He does not have any objection to it, but as a matter of courtesy, I have asked that it be reconsidered so these members can be heard. Thank you.

CHAIRMAN GRAYBILL: Very well. Is there debate, not on the issue, but on the matter of reconsideration? If not, all in favor of reconsideration, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMANGRAYBILL: The Chair is in doubt. All those in favor, please vote Aye on the voting machines, and those against reconsidering 5, sub. 1, vote No. Have all the delegates voted? Any delegate wish to change his vote? 53 having voted Aye, 35 voting No, we will reconsider it.

Mr. Nutting, may I read your proposal, or do you want to make this amendment?

DELEGATE NUTTING: I wish to have the amendment remain just like it is, but if someone wishes to object-and which two people did—then I would prefer they take it from here. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Thank you, Mr. Chairman, and thank you, Mr. Nutting. I didn't talk about this when it came up. I didn't think that it would go through, and I was surprised. The only thing that I'd like to point out to the assembly, in this connection, is that what we've done here, of course, is remove a restraint which otherwise would have been on the Legislature, preventing it from retaliating against either the Executive or the Judiciary. I think that the Executive is probably strong enough to resist the threat of a diminution in salary during the term of the Governor, for example, by a Legislature of the opposite party. However, the Judiciary is not in the same position as the Executive. And I submit to the assembly that it is possible that a stubborn Legislature, when faced with the prospect that the Supreme Court is about to overturn a piece of legislation which the Legislature favored and which the Legislature passed, could and possibly would reduce the salaries of the justices out of a spirit of retaliation. There has been some difficulty between the Legislature and the Judiciary, anyway, so far as the matter of salaries are concerned. And it appears that there is some justification for

the feeling of resentment that the judges have expressed toward the Legislature about the manner in which their salaries have been treated. I submit to you that this should be considered, because it does open up the possibility that the Legislature can, through the salaries of the justices, attempt to intimidate them or actually intimidate them in the performance of their duties as judges.

CHAIRMAN GRAYBILL: Mr. Arness, we have no motion before us now. Do you want to make a motion to put it back in the way it was?

DELEGATE ARNESS: Yes. I move that the section be restored to its original condition so that it reads that the salaries provided by law, which may be increased but not decreased during the term of office. And I have already stated the reasons for my motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. We'll consider, then, Mr. Arness' motion, which would restore the last clause, the words, "which may be increased but not decreased during the term of office". That's the issue we're debating.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I glossed over this in my discussion of this section—the other day, and I want to tell the Convention why the committee put in the original subsection I. In our current Constitution, or in the Constitution as it was originally enactedin 1889, there was a provision in it that for all the-both the Executive, Legislative and Judicial, that the salaries could not be increased during the term of office. And we've all seen the foolishness of doing that, because of the inflation that has gone through, and as we've lengthened the terms of office, why, people come in and get elected; and they get a certain-there's a raise given and they can't get it for 4 years; and so in that interim period, why, the inflation has eaten up that raise and they're always behind; and it has been a mess. So what happened was that the Judiciary Article was amended by the people to provide that the Judicial salaries could be increased during the term of office but that they could not be decreased. And, so, we thought that was consistent to make that same provision in the Executive Article. As a matter of fact, the Executive Article was more restrictive in that it provided in the original Constitution, that they could be decreased, but that they could not be increased. And I think Mr. Arness' comments are valid, except that as I read the Judicial Article, it's going to come out to say just exactly what the majority of the--unanimous majority--unanimous feeling of the Executive Committee was. Their article is going to come out that it maybe increased but not decreased. And we already took action in the Convention to authorize a commission to study these, and I think-I got the impression that it was the unanimous view of the Convention, that everybody realized that they should be able to be increased. And in the comments which I wrote, I thought that I was being a little sarcastic, but I said that our history has shown that the Legislature has not been overgenerous in giving raises to any elected offices, and the reason for that is because they've been—always had money problems. But at any rate, the reason the Executive Committee reversed it and said that they may be increased, and the amendment does not prohibit that now, and all that would be done if you put the provision back in is that you would prohibit the Legislature from decreasing it. And I, frankly, am not too worried that they ever will, arbitrarily, decrease anybody's salary just to punish him. And, of course, we have the king who can always veto his salary decrease, but it just seemed to me that, as originally drafted, we were being consistent with the present Judiciary Article, and that's why we drafted it as such.

DELEGA.TE GARLINGTON: Mr. Chairman. At our Style and Drafting meeting this morning, I was reminded of another action that the Convention has taken, which bears on this subject. I simply would like to remind all hands what Section 5 of the Legislative Article contains. That deals with compensation of legislators, and sub. section 2 of Section 5 was amended on the floor to read as follows: "(2) A salary commission shall be created by the Legislature to recommend legislative"-and then it was amended on the floor—"executive, and judicial compensation". And I want to suggest to all hands present that if we do not restore the flexibility in the original Section 5 of the Executive Article, we will simply blunt the function of the salary commission, because there really will be no point in it iftherecommendations they make to keep current with the financial and economic trends of life are obliterated by prevention of adjustments for increase as they find to be justified.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: One of the very impressive thoughts that's been brought out over and over again at this Convention is the fact that, no matter what board we set up or what commission that we inaugurate, that the Legislature is really going to decide, by the amount of money they give it, whether it's going to operate or not. I'd hate to think that we'd put our Executive Department, or the state officers that we talked about yesterday as being so important, in the same category, that in every respect they would become like employees of the Legislature. I think they need a guarantee a little bit stronger than that.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Arness' amendment to restore to Section 5, subsection 1, the language, "which may be increased but not decreased during the term of office".

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. That-if you will just see what the amendment does, it does not prevent increases; it does not prevent decreases. As far as the amendment is concerned, we have been operating under the principle for the past 80 years that the Legislature could decrease it, and there has been no mention of any case where it has been accomplished. I'm merely leaving the point that it could be done either way. I'm looking forward to a situation that could conceivably happen, like in the early 30's, when, with the Governor's salary where it is now, it could be conceivable that we would not be able to reduce the Governor's salary, in case of a crash, for 4 years. We'd have to dig up the tax money to pay that kind of a salary, and under those conditions, I think people would want the salary decreased-the general population would. I don't think there has been any abuse of this for the past 80 years, and I see no reason why we should tie it into the Constitution that there cannot be a decrease in the future. Under my amendment, increases are allowed; decreases are allowed, That's all I suggest.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: I think that I should point out that, for the last 80 years, it has not been possible to decrease the salary of a judge in the state. The amendment that I've proposed here is aimed only at insuring that we attempt, so far as is possible, to maintain the independence of the Judiciary. In order to do that, I think that we must safeguard their salaries. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE HANSON: Mr. President. Unless I read this wrong, we are only considering here the Executive Department; I don't believe it would have any effect, Mr. Arness, on the Judiciary Department.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I think that the people of Montana are well aware that the Judiciary has never had a decrease. The last three sessions of the Legislature has each increased the salaries of the Judiciary.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. Chairman. I was thinking that we could get a pretty liberal group in here and they'd give a[n] increase, and the next one give another big increase, and they know it's more than they should have, and you'd have no power to decrease it. I'd like to see it so you can go either way.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and delegates. I can go either way on this, but since we had a commission, I wonderifthey might have their hands tied if we keep this last sentence. For example, they might think about a compensation which might include, say, a compensation over a period of years after retirement. There might be an income tax loophole that they might want to use, and maybe they might settle for a decrease in salary if they could get their compensation extended over a period of years after retirement. So I kind of feel that we shouldn't tie our legislative hands or the commission's hands by retaining the last sentence. I would reject the motion to amend it.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Arness' motion to add this half sentence to subsection 1 of Section 5. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. Are there other amendments to Section 5? If not, members of the committee, you have before you-let's see-I guess, Mr. Joyce, I need you to make a motion that Section 5 be re-enacted.

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, after having had under reconsideration Section 5, subsection 1, of the Executive Article, that the same be recommended for adoption as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. All right, next we have a proposal--I take it, Mr. Ward and Mr. Roeder, that you do not want to reopen Section 7 now.

DELEGATE ROEDER: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. Then, the next one-Mr. Vermillion, you wanted to reopen Section 1, subsection 1, is that correct?

DELEGATE VERMILLION: That's correct, Mr. President. Having voted on the prevailing side, I'd like to have the committee reconsider Section 1, subsection 1, of the minority proposal. This would be on page 45. I've been asked to do this. I don't really think that I will change my vote, but I've been asked to do this because it was pointed out to me that we did not actually have the opportunity to vote on each officeindividually. We have been voting on-as we go through this subsection by subsection, and there are those who feel that it would be better if we had an opportunity to vote on each individual office in order that we could be recorded as how we stand on not only the Governor, but also the Lieutenant Governor, Secretary of State, and the State Treasurer, and the like. So I move to have Section 1, subsection 1, of the minority proposal, page 45, reconsidered.

CHAIRMAN GRAYBILL: Is there debate on the motion to reconsider?

Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I would like to just say a word or two in support of Mr. Vermillion's motion. I was one of the persons who asked him to make the motion to reconsider because I knew he was on the prevailing side. I think you ought to take into consideration, when you vote on this motion to reconsideration, this thought. We voted on this section with very little discussion. We did not vote on individual offices, and I think a lot of people voted as they did in order to protect the office of Superintendent of Public Instruction. I think if that office had been segregated in our discussion and we had isolated some of these other offices to talk about, I think the outcome might have been quite a bit different. One final comment-I'm going to be very hard-pressed when I go home. I promised the people of District Number 11 that one thing I would do was make myself available to the full extent of my physical capacities to report to the people, by talking to service clubs and so forth. And I'm going to be very embarrassed when they ask me, "Well, what was the vote to retain Treasurer?" and I'm going to have to say, "We never really voted on it— What was the vote to retain the Auditor?" and I'm going to say, "We never really segregated it and voted on it." Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on the motion of Mr. Vermillion to reconsider Section 1, subsection 1, of the minority report which was adopted. All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and we will not reconsider it.

UNIDENTIFIED DELEGATE: May we have a roll call vote?

CHAIRMAN GRAYBILL: You may vote, but we won't record it. All those in favor, vote Aye, and opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? 43 having voted Aye, 45 having voted No, themotion was defeated. I didn't realize I could call them that close.

Mr. Kelleher.

DELEGATE KELLEHER: (Inaudible) for the World Series.

CHAIRMAN GRAYBILL: Mr. Felt, do I understand that the one you put up here is not complete and you want to add a sentence? Do you want to use Mr. Murray's mike there?

DELEGATE FELT: Mr. Chairman. I discovered a typing error that's being corrected right now. I think it's all done, very simple.

CHAIRMAN GRAYBILL: Very well. Mr. Felt has a motion to reconsider Section 4, subsection 6, which is the qualifications of the-wait a minute--which is the State Auditor's office. Mr. Felt, do you wish to speak on the motion to make the reconsideration?

DELEGATE FELT: Mr. Chairman, I'll be glad to speak on it, but I would be ineligible to make the motion myself. Would you prefer to have the motion put first, before I speak?

CHAIRMAN GRAYBILL: Right. Who's to make the motion?

DELEGATE FELT: Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Murray, will you make the motion.

DELEGATE MURRAY: Mr. Chairman. Having voted on the prevailing side, I move to reconsider—

CHAIRMAN GRAYBILL: That's Section 4, subsection 6.

DELEGATE MURRAY: -Section 4, subsection 6, and defer to Mr. Felt for the reasoning.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman and members. We will come forward with a big retreat-that's the best way to move forward sometimes-and accepting the sense that we felt existed here in the body, and after discussion with a number of persons, our present proposal would be to incorporate exactly the lines 2 through 5 on page 39 of the minority report and then to add words dealing with the legislative post-auditor for the purpose of constitutionalizing that office, making it immune from being found to be an unconstitutional act of the Legislature to create its own legislative post-audit committee, which then selects the legislative post-auditor. The exact language used in that is very much similar to the language used in our present statutes, but it does include, also, some additional words taken from the recent Michigan State Constitution which, along with practically all other new constitutions, do contain provisions of this type. And I won't speak any further, because I think I'm getting too close to the merits; but I wanted the Convention to realize that, in reconsidering, I'm not going to just ask you to vote again on the same proposal that was defeated. It's a completely different approach to this problem of external auditing.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: I rise to resist the motion. We debated it yesterday. We had a decision. What's being brought up is statutory. It's— can be handled by the Legislature, and I see no point in reconsideration.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Murray's motion to reconsider Section 4, subsection 6, the State Auditor. A roll call has been called for. All those in favor of reconsidering Section 4, subsection 6, on the State Auditor, please indicate by voting Aye; and those opposed, by voting No.

Have all the delegates voted? Does any delegate wish to change his vote? Will you please close the vote. Take the vote.

Aasheim	Nay
Anderson, J	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg..	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Nay
Brown..	Aye
Bugbee	Aye
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Nay

Cross ..... Nay
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Abs
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Absent
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Absent
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK SMITH: Mr. President, 50 delegates voting Aye, 39 voting No.

CHAIRMAN GRAYBILL: 50 delegates having voted Aye and 39 No, we will reconsider Section 4, subsection 6. Now, you'll find that on page 39-it's line 2 to 5, and you should have put a small bracketed 6 in there to indicate that it's subparagraph 6. The text was incorrect.

Mr. Joyce.

DELEGATE JOYCE: The printed material on page 39 of the minority report did not pass. It was amended on the floor.

CHAIRMAN GRAYBILL: Oh, so it did.

DELEGATE JOYCE: And as I recall it, it says that "the Auditor shall have such duties as are provided by law", or words to that effect,

CHAIRMAN GRAYBILL: All right, I'll find that language.

Mr. Felt, you may now make your motion.

DELEGATE FELT: Thank you, Mr. Chairman, and thank you, fellow delegates, for the opportunity. I realize our time problem, and even though we have many serious matters, we have to budget that time. So I will be brief. As I've already stated, this continues, in effect, the present elected State Auditor's duties as they exist today. It also continues, but now places into the Constitution, the duties and functions of our present legislative post-auditor. The legislative post-auditor is the thing that I am particularly

interested in seeing constitutionalized. I do know that, in addition to considerable opposition-and you always find opposition when someone talks about having departments of government audited externally by independent people-that it was very difficult and took several sessions to establish this type of external auditing, and, therefore, I have some fear that another group of individuals might, at some future time, feeling the same pressures that have been felt by other legislative bodies, decide that this is an unnecessary expense-like deciding you're not going to carry insurance, you hope that you won't need it, so maybe you'll do away with it-and the states that have adopted constitutions recently-six of the eight that have proposed recent constitutions, and six of the eight were approved by the people-it contained in their constitutions language such as this, calling for a legislative post-auditor. I know that practically all of the comments made yesterday were to the effect that they're very pleased with the way the legislative post-audit program has been functioning for these 4 years. And I think this is true of the people in general, and I think they would approve of our now placing this in the Constitution so that they know, and we know, it will be permanent. The proposal-I'11 read it. It could cause subsection 6 of Section 4 to read as follows: "The State Auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer for all state warrants, with other duties and powers provided by law. In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, established by this Constitution or by law, and performance post-audits thereof. The appointment may be made through a legislative audit committee or as otherwise provided by the Legislature." I want to clear up a little confusion, because I have found, not only in the last 24 hours but in the preceding years, that there seems to develop some confusion about auditing. First, I want to make it clear we are talking about only external auditing. This has nothing to do with preauditing or any kind of internal auditing that is done on behalf of departments for their own information and to make sure that they are complying with the law as best they can. This is the checkup, you'll see, by an external audit. That's what we're talking about. Now, I also want to be sure that you realize there are three ways of selecting these external auditors that are used by the 50 states. Some are appointed by the Governor. Now, no one, today, I think, encourages that. If there's any one thing that would cause me to have to oppose this whole Constitution, it would be if we had attempted to select this external auditor by having him appointed by the Governor or from within what would be considered the Executive branch of government, as it is commonly considered. And I feel sure, for instance, that Mr. Bardanouve and others with whom I've worked on this for a long time-we fought that battle a long time ago and established the fact that it was improper to have this appointment made by the Governor--and I feel sure that he would feel that way today. And I attempted to contact him but found that he's very sensibly been in Hawaii for the last 2 weeks and is not available. The second method of selecting an external auditor is to have them elected by the people, but where this method has been used, as in Montana, it has generally worked out that the Legislature gradually takes away any powers of auditing. So you have someone called the State Auditor, but he doesn't do any auditing. So this has not, in recent years, been considered a very successful way of obtaining auditing. And the final way is to have them selected by the Legislature. This is the way that has been in vogue, particularly the last 15 or 20 years, in which Montana joined 4 years ago and which other states are joining, and which I am very anxious to see firmed up by this constitutional language. I will shorten what I would like to say on some other possible confusion. We did have committee hearings, and I have been in contact with the legislative post-auditor and obtained invaluable information from him. The State Auditor was also before us. The head of the Department of Administration--all of them-appeared before our committee discussing, at length, these problems of auditing. On the matter of costs, just so there won't be any confusion, the figures that you heard yesterday were unintentionally given as though they represented what the additional cost would be. In checking with the State Auditor myself, I find he had looked up the cost of the present auditing programs as they exist, and that was the figure that you heard, rather than of any additional. Of course, the proposal thatisincluded in this proposed amendment now does not call for any additional auditing beyond what we are having now, but it does make certain that we do not lose what we are having now. I will not take any further time. I would be willing to answer ques-

tions if this is desired or if there's anything else I could do.

CHAIRMAN GRAYBILL: Just a moment, Mr. Joyce, before we answer questions-so that everyone understands, the language that we adopted yesterday on an amendment put in by Mr. Martin was: "The Auditor shall have such duties as provided by law". That's the present article. Now, the proposal by Mr. Felt this morning is to go back to the language that was in the minority report: "The Auditor shall be the custodian of all fiscal records. He shall be the issuing officer for state warrants, with other duties and powers provided by law." Then he adds several lines which, in effect, add: "In addition to State Auditor, the Legislature shall appoint a legislative post-auditor", and it goes on and explains the post-audit. All right, that's what we're considering.

Mr. Joyce.

DELEGATE JOYCE: Will Delegate Felt yield to a question?

DELEGATE FELT: I yield.

DELEGATE JOYCE: What is the purpose of including the words that "the State Auditor shall be the custodian of all fiscal records of the state"?

DELEGATE FELT: These were the words in the proposal of the minority of the committee, and their purpose is to continue the present policy of having those records safe in the office of the State Auditor as the custodian of the records.

DELEGATE JOYCE: Will you yield to another question, Delegate Felt?

CHAIRMAN GRAYBILL: Mr. Felt?

DELEGATE FELT: Yes, I'll yield.

DELEGATE JOYCE: When the amendment was made on the floor yesterday, do you believe that that particular issue was lost by the minority report?

DELEGATE FELT: No, I did not feel that it had even been dealt with, Mr. Joyce. My original motion had been to adopt the minority report, and then I had immediately made a substitute motion to delete all of the minority report, substituting all new language. We never got to my original motion which dealt with those two sentences, because Mr. Martin's intervened and replaced both of my motions.

DELEGATE JOYCE: Will you yield to another question, Delegate Felt?

CHAIRMAN GRAYBILL: Mr. Felt?

DELEGATE FELT: I will yield.

DELEGATE JOYCE: Well, when Mr. Martin's motion passed then, did that not, in effect, defeat the language that was included not only in your motion, but in the minority report?

DELEGATE FELT: In a sense, Mr. Joyce, it had the final effect of that. I thought, when you asked the other question, you meant did we discuss these particular two sentences, which had appeared in the minority report. And to my knowledge, there was never any discussion of either sentence.

DELEGATE JOYCE: Mr. Chairman, may I speak?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Well, may I review for the Convention what's involved here? If you will recall, number one, the majority of the committee came out deleting the State Auditor from the State Constitution, so that his duties could—thereafter, the office could still be retained and duties assigned, new name assigned to it or anything else. But we were defeated on that. So, I accept the defeat. Then the minority report came up, and the minority report, as originally moved, wanted to require for all time that the State Auditor would be the custodian of all fiscal records of the state and be the issuing officer of all warrants. And Mr. Martin rose to amend that to not require that he do that for all time because he isn't doing it now. He only has part of the fiscal records. And the issue was debated on the basis of Mr. Felt's motion and Mr. Martin's substitute motion, and it had the effect, I think, of defeating the minority report in that connection. So, therefore, now, actually, Mr. Felt's current motion brings two issues before the Convention. Number one, should the State Auditor be the custodian of all fiscal records and the issuing officer of all state warrants from now until the Constitution is again amended? That's issue number one. Issue number two is that it could be that the State Auditor would have duties prescribed by law and that the legislative post-audit would be permissible and not unconstitutional in conflict with the word "Auditor" used in the Constitution. So, I submit, there are two issues. I am violent-I shouldn't say violently

(Laughter)-I'm philosophically opposed to issue number one. I am not opposed to issue number two, because--and I can't help say this to get a little needle in at the Convention-this whole matter wouldn't have come up at all if you'd have followed the majority report, but then, that's the way it goes. So, I think I am going to make a substitute motion, and I'm going to move to strike from Mr. Felt's proposal the words "The State Auditor shall be the custodian of all fiscal records of the state."-and, continuing to strike, "He shall be the issuing officer of all state warrants"--and after having done that, the first sentence of the section would then read what the Convention has already adopted, namely, that the State Auditor will have such duties and powers provided bylaw, plus Mr. Felt's amendment. And so, I so move, Mr. Chairman.

DELEGATE FELT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I would accept the amendment and, if agreeable with the Chair, just incorporate it; and I believe we're reaching the very thing that we really desired, because my principal concern is what Mr. Joyce referred to as issue number two. If they like the language that he proposed, that would be quite satisfactory with me. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, doesn't this bring up the question thatyoureferred to the Rules Committee yesterday? And what was the ruling of the committee on this point? And this is something that I think was never announced, and I think we're back where we were again, aren't we?

CHAIRMAN GRAYBILL: With the exception of a couple of words, we are. Let me explain that the Rules Committee met, but Mr. Felt withdrew his motion of yesterday and decided to reconsider this Executive Article in this other form, and therefore the issue of how he should do it was not finally dealt with by the Rules Committee. Now, having amended it in this manner so that it's tantamount to adding a legislative post-audit, at this point, the Chair is back in the spot that you mentioned, Mr. Arness. Now, whether the addition of the phrase "in addition to the State Auditor" will save us or not remains to be seen.

Mr. Felt.

DELEGATE FELT: Yesterday, I had proposed adding an additional section at the end of the article, without any motion to reconsider. That's the fundamental difference, I think, as far as rules or their interpretation are concerned. Today, since it seemed like we weren't saving any time by doing it the other way, we did make the motion to reconsider and it was approved by the floor of the Convention-so that the section is open, in my opinion.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Mr. Garlington and one of the members of the Committee on Style and Drafting has suggested, quite properly, to me the possibility that Style and Drafting would have to do something with this section when it was finally approved, if it is. What station am I getting this morning, Betty? I would question-I would think we'd have a serious problem in Style and Drafting of moving this to the Legislative Department, where it would belong, without at least the tacit approval--or this information to the committee that that's what we were going to do, and that's what I think we would do if this is approved.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I think we're right back where we were yesterday. We're in the Legislative Article, and I don't think there's any doubt about this. Now, if this Convention is going to adopt the procedure of going back to amend this article and some other that belongs someplace else, it's going to be a long way down the line, because I think we've got eight left to go. And I think we (Inaudible) would happen. Now the Legislative Article-I know what Mr. Felt is getting at; he's trying to get legality of something; he's trying to get around 'a Supreme Court decision; but I think under the Legislative Article, as I interpret it, is that the interim committees will now be made legal. We will have that point out of the Constitution. And I think they have ample consideration, then, to have the legislative audit if the Legislature, in its wisdom, continues it. And I think there's plenty of power to get at the Governor to continue to get the appropriations, because I'm sure there will be just as smart a legislators as I ever was. And if I started worrying about the Governor and whether he's going to sign it or not, he'd get the legislative appropriation along about the 15th day of the session, and he'd have to veto

it, and I'd have her back down, and you don't get yours, Mr. Governor, until we get ours. Now, I know how the legislative process operates. So I think that this thing had better be left alone and not touched, because now it is strictly legislative, only using this word, as the President has stated, under the State Auditor, and I don't want to contact anything with the Legislature over in the Executive branch of government.

CHAIRMAN GRAYBILL: The issue is on Mr. Joyce's motion to strike the first two sentences and to use the first sentence, which we had in Section 6 before, that the Legislature-that "The Auditor shall have such duties as are prescribed by law" and then add the last part of Mr. Felt's motion. So, if you want to debate that issue-that is, Mr. Joyce's substitute motion-please rise. If not, we'll quit that issue.

Mr. Wilson.

DELEGATE WILSON: Mr. President. I am a little bit concerned, and I would like to call it to the attention of this body, that at the present time, the State Auditor is the custodian of all the warrants of the State of Montana. He has them under his jurisdiction, and in fact, you have to about get a court order to get one of those warrants or get a photostatic copy thereof. It was called to my attention by both the State Auditor and the Attorney General that this is really an important legal function, that these warrants should be kept someplace where no one can disturb them or maliciously remove one from the records. This disturbs me just a little bit. I wish the body would think about maybe retaining those words in the article to the effect that the Stats Auditor would be the custodian of all state warrants, and then, "he shall have such other duties as may be provided by law".

CHAIRMAN GRAYBILL: All right. We're debating Mr. Joyce's substitute motion.

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. We have provided the two parts necessary for good internal control. We have a Treasurer that takes care of the money; we've got an Auditor that takes care of the books. We've got one step left to go; we've got to have somebody to come in and see that they've both done their job correctly.

CHAIRMAN GRAYBILL: Now, Mr. Artz, I really am going to stop you. That's arguing the second half of the issue. I want to know whether this body wants to strike the first two sentences, which have nothing to do with the legislative auditor so—

DELEGATE ARTZ: I thought that he had added the rest of it on Mr. Joyce's—

CHAIRMAN GRAYBILL: He does, but his-the point that we're trying to get atis the first part. Then we'll debate the legislative auditor thing after we've got that out of the way.

DELEGATE ARTZ: Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I would like to inform the Convention what those words "all fiscal records" include. I was concerned about this before the thing came up on the floor yesterday, and I went down to the second floor here to inquire what "all fiscal records" would include. I was told that these would include all the books and accounts of all the state offices, including the court, the Governor's office, the Secretary of State, et cetera; it would include all the books and accounts of all state agencies; it would include, probably, even the records of the Budget Bureau. The term "all fiscal records" is about as broad and sweeping as it can get and far exceeds Mr. Wilson's concern about warrants. The definition of "fiscal records" means, I was told, any record pertaining to the receipt of or expenditure of public funds. The effect of this would be to put in single custody all the records for which preauditing, disbursement, accounting and post-auditing would be done, and this violates one of the basic rules that the disbursing officer should not also be the custody of all the financial records. So I feel that the Convention ought to know that these words "all fiscal records" would substantially change the functions of the Department of Administration and the entire bookkeeping and accounting records which have now been established under the reorganization plan, and I doubt that this is what is intended.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I rise in support of Chairman Joyce's substitute motion. I don't know if I can add to the substance of the discussion here, because Mr. Garlington has covered it with his customary thoroughness, but I would like to point out to the Convention that if you do not

sustain Mr. Joyce, you are not supporting the status quo. You will be introducing radical change in the practices of maintaining records in this government-radical change. Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Would Mr. Garlington yield to a question?

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Be glad to.

DELEGATE WILSON: Mr. Garlington. I have one thing that is bothering me. We have stricken the offices of State Examiner. In our local area, we have serious problems with a certain school district in funds. This worries me a little bit now. Who is going to be available to check on any deficiencies or discrepancies that might creep into such school boards or school districts or counties?

DELEGATE GARLINGTON: Our committee was informed by a Mr. Saxby, Director of the Department of Administration, that that department is in the process of developing and installing a new system of bookkeeping and accounting for all of the state and local agencies. He said that when it got done, which would be in another year or two, Montana would have one of the more modern and progressive and efficient systems of this kind. At the present time, the state examiner does the auditing of school districts, cities, counties, et cetera, and the State Examiner told the committee that he felt his office should be not a constitutional function, because of this very subject of fluidity and change in the whole accounting, auditing and recordkeeping area. And I would say to Mr. Wilson that the State Examiner or some other similar officer, under the State Department of Administration, will certainly continue to do the auditing function to cities, counties, school districts, and agencies of that kind.

DELEGATE WILSON: Mr. President. These are just some of the things that bother me about what we're doing here. Are we providing adequate safeguard for the peoples' protection in the different functions of state government?

CHAIRMAN GRAYBILL: Mr. Martin was next.

DELEGATE MARTIN: I'll yield—

CHAIRMAN GRAYBILL: Mr. Martin yields to you, Mr. Garlington.

DELEGATE GARLINGTON: I just want to remind the Convention again that Section 12 of the Revenue Article contains quite a clear mandate of protection for all this. It reads: "The Legislative Assembly shall enact the necessary laws to insure strict accountability of all revenue received and moneys spent by the state, subdivisions, and districts thereof.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I went up to the roster and tried to interpret what the present amendment, as it reads, says. I wonder if we could-for the benefit of all of the delegates, if it could be read.

PRESIDENT GRAYBILL: Mr. Joyce's substitute motion is to strike the first two sentences, effectively, of Mr. Felt's motion and insert the sentence that we adopted yesterday. That sentence is, "The Auditor shall have such duties as are prescribed by law." Then the next sentence would be, "In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor" and so forth. That's the rest of Mr. Felt's amendment. So, what we're debating now is whether to eliminate the first two sentences. The first two sentences of the Felt amendment say: "The State Auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer of all state warrants, with other duties and powers provided by law." Now, Mr. Joyce wants to remove those two sentences and replace it with a sentence that says: "The State Auditor shall have such duties as are prescribed by law." Then we would consider, after we've done that, whether or not to add on-or whether or not to include in the thing-we would still be debating Mr. Felt's basic motion on the legislative post-audit.

Very well, a question-Mrs. Babcock.

DELEGATE BABCOCK: Would Mr. Garlington yield to a question, please?

PRESIDENT GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I sure will,

DELEGATE BABCOCK: In the matter of compromise, would you consider amending the

section to read like this: "The Auditor shall be the issuing officer for all state warrants, with other duties and powers provided by law"?

DELEGATE GARLINGTON: Well, Mrs. Babcock, this is not for me to say on my own. I inquired how warrants are handled now. All the state warrants, including the ones that we all get, are made up on a computer which is down in the Department of Administration. And the computer somehow delivers these warrants to the Auditor, and all in the world the Auditor does with warrants is either to mail them out or hold them there for personal delivery. So, really, you can say, maybe, that he is the issuing officer for all warrants, but, in fact, there is a sort of a use of electronic computer function in state government now, and warrants are simply a part of it. It seems to me, to answer your question specifically, that if the Constitution says that the Auditor shall be the issuing officer of all warrants, then we probably got to buy him a computer in order that he can carry out the constitutional mandate. This is only a part of the reason why our committee thought that this whole area does not belong in the Constitution.

DELEGATE BABCOCK: May I ask Mr. Garlington another question?

PRESIDENT GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Fine.

DELEGATE BABCOCK: Mr. Garlington, doesn't each warrant have a number on it, and isn't the Auditor responsible for seeing that each number is accounted for? Also, would it be possible for you to go down and get a warrant, the warrant itself, after it has been cashed, from the Auditor? Could you go down now and get one?

DELEGATE GARLINGTON: My dear, I don't have the foggiest idea.

DELEGATE BABCOCK: Well, I'm certain that you couldn't without a court order.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I urge everyone to vote against both Mr. Joyce's motion and Mr. Felt's motion. As Mr. Garlington has pointed out, the matters covered by the proposed Section 12 of the Revenue and Finance sections-it's also mentioned in proposed Section 13 of Revenue and Finance, relative to an audit of the investment program. And I think the proper place to debate it is when those sections come up and not under-now, where we're going to have some problems of what article it should be in the Constitution. It should be debated at this time when the accountability comes up and when the audit of the investment program comes up.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Joyce's substitute motion to strike the first two sentences and add a sentence like the one we adopted the other day, which says, "The Auditor shall have such duties as prescribed by law."--and then tack that onto Mr. Felt's amendment. All in favor of Mr. Joyce's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in favor, vote Aye; and all against, vote NO.

DELEGATE ARONOW: (Inaudible) vote on two parts on this matter?

CHAIRMAN GRAYBILL: Yes. We're going to still consider Mr. Felt's motion after this is finished.

Mr. Habedank.

DELEGATE HABEDANK: I wish to be sure on what I'm voting. In voting on this, I am not voting to adopt Mr. Felt's motion. We can go back to what—

CHAIRMAN GRAYBILL: No, you're voting to amend it by taking the first two sentences out and putting another one in, and then debate it again.

Have all the delegates voted? Any delegate wish to change his vote? All right, we'll close the vote. 53 having voted Aye, 34 having voted No, Mr. Joyce's motion prevails and Mr. Felt's amendment is now amended in that manner, 58 to 34. Very well. Debate is now open on Mr. Felt's basic motion again.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, may we now have a ruling from the Chair on the question that was put to the Chair yesterday?

CHAIRMAN GRAYBILL: Well, the Chair is going to rule, subject to your right to overrule, that since Mr. Felt has included this language, that in addition to the State Auditor the Legislature shall appoint another Auditor, that perhaps since we're dealing with the topic of Auditor in the Executive branch, it's fair for the Constitution, at that point, to point out that there shall be another Auditor somewhere else. So I'm going to rule that we can debate it and decide it today. Now—

DELEGATE ARNESS: (Inaudible) the Chair.

CHAIRMAN GRAYBILL: Very well, Mr. Arness has appealed the ruling of the Chair. That's debatable. But let's not debate it too long.

Mr. Felt.

DELEGATE FELT: (Inaudible) Executive Article or the Article on Taxation and Revenue; I can see reasons for it coming up in any of them. If the Legislative Article had not already passed through the body, why, I think that I would have proposed this to that article. I feel that revenue and taxation could conceivably handle it but that they would have no greater claim on it than would be the case of the Executive Article, where we do, as the Chair has already pointed out, have other matters dealing with the same subject matter.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I feel this Chair should be sustained. I know that throughout our current Constitution, and I know in our new Constitution, there'll be references to what the Legislature shall do. I call to your attention Article XVIII, Labor. The Legislative Assembly shall provide for department of— Legislature--under the Executive Section 17, the Legislative Assembly shall provide a seal for the state. I think it's perfectly legitimate to consider this area under the Executive Article, and I think Style and Drafting should be able to place it wherever it belongs in the Constitution.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd just like to add a very practical thing. I hope you will be sustained in this, simply because I'm tired of talking about it. I mean by that--not-I don't think the issue is important, but I think we've talked about it under this guise, and I would hate to see us pass this thing over with no decision now and bring up the whole thing again I don't care where else. Let us decide it now.

CHAIRMAN GRAYBILL: Very well. Under the rules, the Chair is allowed to explain his position. My position is similar to the arguments you've made that-it seems to me that it could be construed as a part of the Executive Article and that it would be best to decide it now. And that, then, in my view, Style and Drafting has a free hand to put it wherever it ought to go. So many as shall be in favor of sustaining the Chair, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Well, the Ayes have it. Very well. We're now debating again Mr. Felt's proposal for amending Section 4, subsection 6, by adding what is now the first sentence, "The Auditor shall be given such duties as shall be prescribed by law."-plus this other language. Is this other language on the desks?

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, I'll read it again. "In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, established by this Constitution or by law, and performance post-audits thereof. The appoint [appointment] may be made through a legislative audit committee or as otherwise provided by the Legislature." The language has the effect of establishing a legislative post-auditor in the Constitution.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I am inclined to favor this motion, but I object to being asked to vote on something which I cannot look at, which I cannot study. I write shorthand. I am capable of writing probably about 100 to 120 words a minute. Anymore, my speed isn't what it used to be, but I couldn't keep up with the Chair, and I think that if we are asked to vote on anything, and when something is read that has not been given to us, it should be read at a

speed that a person can write in longhand. It may delay things, but I think that we're entitled to this.

CHAIRMAN GRAYBILL: I might point out to you, Mr. Habedank, I think the language was placed on your desk in very similar form yesterday. If you have yesterday's-isn't that right, Mr. Felt? No?

DELEGATE FELT: I believe that there were at least four words that would be considered different, and they-it wouldn't be quite enough perhaps for somebody who wanted to check out exactly. I can assure the Chair and the members of the Convention that the essential meaning of this language is the same. This language here is taken primarily from the Michigan Constitution.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: May I ask Mr. Felt to yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I yield.

CHAIRMAN GRAYBILL: Mr. Felt-Mr. Garlington.

DELEGATE GARLINGTON: Would you tell us, Mr. Felt, how much of a change would be effected, by the mandatory effect of the language you are putting into this amendment, on the present post-audit functions, both as to volume and the offices and records that are being handled?

DELEGATE FELT: Mr. Garlington, there would be no change in the matters that you referred to. The only change is to make it a constitutional requirement that such a function be continued. They are unable to audit all of them as often as they would like to because of a budgetary problem, but all of them are available to be audited. And that-1 have the present statute here. I'd be glad to deliver it to Mr. Garlington for his examination. It's—

DELEGATE GARLINGTON: I'm asking whether this would substantially increase the burden on the legislative post-audit function.

DELEGATE FELT: No, it does not increase the burden. The only thing that could increase the burden would be a larger budget, and **then** they might have to have a larger staff and, in that sense, a larger burden.

CHAIRMAN GRAYBILL: Ladies and gentlemen, the Chair is bothered by Mr. Habedank's request, because I think it's a legitimate one. And Mr. Habedank, I'd have it printed. In fact, I thought about having it printed, but the print shop is closed, this being Saturday. So let's take our pencils and let's write it out. "In addition to the State Auditor"--now, I'm skipping the first sentence, which is what we passed yesterday-the first sentence says that the Auditor shall have such duties as prescribed by law. The second sentence would read: "In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institution:; of the state, established by this Constitution or by law, and performance post-audits thereof." I think that may mean "and perform post-audits thereof"—no, "and performance post-audits thereof." All right. I guess he conducts post-audits and performance post-audits thereof, period. "The appointment may be made through a legislative audit committee or as otherwise provided by the Legislature."

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move as a substitute motion that all of—if you'll follow along with me; we all have it written out. I'll put it in language after I've-telling you what I'll do. I propose to leave in the words "in addition to the State Auditor, the Legislature". Where it now says "shall", I propose to amend to "may". I propose to leave in "appoint a legislative post-auditor". I propose to strike all of the remaining language and insert in lieu thereof the words "who shall perform such post-auditing duties as are prescribed by law".

CHAIRMAN GRAYBILL: Very well. We'll be in-we'll stand for a moment while we change the tape.

(Tape changed)

CHAIRMAN GRAYBILL: The committee will be in order.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, may I speak in support of my amendment?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE JOYCE: In my humble opinion, we have the issue narrowed down precisely to what I understood Mr. Felt was trying to do. That is, namely, make it perfectly clear, as people are willing to say from time to time, that just because we have a State Auditor, we can still have the legislative post-audit and it can't be declared unconstitutional by the Supreme Court. And I am in favor of that. And so I am going to vote in favor of the amendment, but I am opposed to writing all the rest of the stuff into the Constitution, because it then makes the legislative post-auditor into a way bigger job than it is now. And I prefer to allow the Legislature to expand, as conditions warrant in the future, this legislative post-auditing process. But it will accomplish at least one of Mr. Felt's purposes, which I think is praiseworthy, that the Supreme Court may not knock out the legislative post-audit because of the ill-considered action of this Convention of keeping a State Auditor in the Constitution.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, I'd like to offer a substitute motion to the substitute.

CHAIRMAN GRAYBILL: No, you may amend the substitute motion, but you can't offer another substitute. So you might state it, and we'll decide whether—

DELEGATE BABCOCK: Well, I'd like the words to read, "The Auditor shall be the issuing officer for all state warrants, with other duties and powers provided by law."

CHAIRMAN GRAYBILL: I think, Mrs. Babcock, after we've-that's not an amendment to the Joyce language, and so, the rule is we don't have two substitute motions. But when we finish adopting or throwing out Mr. Joyce's language, I'll get you back and you can take that up. All right. We're on Mr. Joyce's language, which changes the "shall" to "may". "In addition to the State Auditor, the Legislature may appoint a legislative auditor, who shall perform such post-auditing duties as shall be prescribed by law." So many as shall—

Mr. Felt.

DELEGATE FELT: I would support the amendment offered by Mr. Joyce. It does do as he said-make it certain that the Supreme Court at least cannot declare unconstitutional the effort of the Legislature to have post-auditing. If the Legislature, for some reason, did not appropriate funds to carry it out or if they failed to act on it—I guess this is a problem we have to leave to the Legislature itself. I am satisfied with the essential elements that are still retained, and I hope-1 know that if we ever get back to my motion, I'm not going to make any speech at all on that. I hope we can move it along.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: May I ask Mr. Joyce a question, please?

CHAIRMAN GRAYBILL: Mr. Joyce, will you yield?

DELEGATE JOYCE: Yes, very gladly.

DELEGATE BABCOCK: If your motion prevails, would that prevent the Auditor from taking care of these warrants as he does now?

DELEGATE JOYCE: It wouldn't prevent him, but it wouldn't require him. We've already beaten that motion, as I understand, Mrs. Babcock. But the Legislature can let the Auditor continue to take care of the warrants for time immemorial, just as he has in the past, whatever care he does take of them. But, it wouldn't require it.

DELEGATE BABCOCK: Thank you.

CHAIRMAN GRAYBILL: All right. The—

Mr. Martin.

DELEGATE MARTIN: Just a point of inquiry. If there's a vote on the Joyce amendment, does that carry the Felt amendment, or do we get back to that?

CHAIRMAN GRAYBILL: No, we're still going to give you a chance to consider it. We never cut off debate if we can help it.

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. I think, at long last, we're on the right track. We do have the Legislature empowered to set up some nice, internal controls. We have a Treasurer. The Legislature may let him take care of the money; they don't have to. We have an auditor. The Legislature may make him responsible for the books and the records. At this point, if we pass the Joyce

amendment, we will have an outsider who will come in and see that the Treasurer has taken care of the money properly, the Auditor has taken care of the books and records, that the assets are still here; and I don't think it's too much of a step forward that it will upset the voters, because the Legislature may still do it. I support Mr. Joyce's motion. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I will.

DELEGATE BLAYLOCK: Mr. Joyce, I'm not a lawyer, so I can't-1 don't know what the answer to this question is and I have to ask you. You state the fear that the Supreme Court of the State of Montana may declare a legislative post-auditor unconstitutional. I can't understand why they would do that. Are you saying that the members of the legal profession-that we have to protect ourselves from the Supreme Court?

DELEGATE JOYCE: No. What I'm saying is that the argument can be made, and with some plausibility, that because the present State Constitution says that we shall have a State Auditor, the Supreme Court could say, "Well, the Constitutional Convention-the Constitution means that he is the Auditor of the State." And thenifyou have-the Legislature undertakes to appoint another auditor, that's in violation of the Constitution. I want to make it perfectly clear that we're giving the State Auditor duties prescribed by law. We're using a bad word for what he's currently doing, but we're doing it; and I've lost, and there's no use rehashing it; but we are saying that we're going to have a State Auditor, who will have duties prescribed by law. And then we're making it perfectly clear that we can have a legislative post-auditor, so there'd be no possibility of anyone—even the most ingenious lawyer-of arguing that the legislative post-auditor function is unconstitutional. I further think, in answer to your question, if my amendment prevails, that the rest of Mr. Felt's proposal will go down the drain in that we won't get back to it. Isn't that correct?

CHAIRMAN GRAYBILL: Are we ready to vote? All those in favor of Mr. Joyce's substitute motion, which is that the second sentence would read: "In addition to the State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such post-audit duties as shall be prescribed by law." All in favor, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now we're on Mr. Joyce's amendment, which I just read, that the Legislature-that "In addition to the State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such duties as shall be prescribed by law." Does anybody care to amend that? Why don't you move that when this body arises, and then we'll debate that.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 4, subsection 6, that it recommend the same be adopted as amended.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I have nothing further to say. I hope no one else does either. (Laughter)

CHAIRMAN GRAYBILL: Never mind those commercials. Now, who else wants to—

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I would like for Delegate Harper to answer--read a section of the Legislative Article, if he would, please.

CHAIRMAN GRAYBILL: Delegate Harper.

DELEGATE HARPER: I know which section he means, since I've been prompted. I think Delegate Martin wants us reminded that in the Legislative Section 10, subsection 5-I don't think you need to turn to it-"the Legislature may establish interim committees which may meet and exercise all legislative authority delegated to them."

DELEGATE MARTIN: I wonder if Mr. Joyce would answer to a question.

CHAIRMAN GRAYBILL: Mr. Joyce

DELEGATE JOYCE: I yield

DELEGATE MARTIN: Don't you think, under that article, that the constitutional provision is made in the new Constitution which would accomplish the same thing as your motion?

DELEGATE JOYCE: Not necessarily, no. That authorizes legislative interim committees. And that makes it perfectly clear that they're now constitutional. And the post-auditor isn't really a legislative interim committee at all. He's an employee of the Legislature. And I don't think that necessarily accomplishes it. That's my opinion, yes.

DELEGATE MARTIN: I rather hate to disagree or to take issue with my Chairman on this matter, but I opposed reconsideration a couple of times this morning. I think once we debate something, we ought to let it go. In my opinion, this thing is statutory and not constitutional, and I hope the motion is defeated.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I hope that somebody don't come back in here and decide we got to put in the Constitution the Legislative Council is constitutional. You start opening this thing up, and you start to wonder just where we're going to stop. Now, say that the Legislature, in its wisdom, and the Governor decided to have some other department do the auditing, and they would abolish this department. Well, they can't do it. I just question whetherwe want to go in here and single out one thing in the Constitution and says, you shall have a legislative auditor. Now, if there-and it's good, they'll have it. Then I think that we'd be opening up a gate here.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: May I ask Mr. Mahoney a question?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: Yes.

DELEGATE JOYCE: Doesn't my amendment say that the Legislature may establish a post-auditor?

DELEGATE MAHONEY: I'm afraid, and I've always been afraid, of "may" and "must" and "shall", because it all depends on who writes the opinion. And I've seen some terribleopinions written on "may" around here.

DELEGATE JOYCE: But at any rate, you do concede—

CHAIRMAN GRAYBILL: Mr. Joyce—

DELEGATE JOYCE: -that it does say "may"?

DELEGATE MAHONEY: (Inaudible)- Yes.

CHAIRMAN GRAYBILL: All right. Mr. Leuthold.

DELEGATE LEUTHOLD: Would you read the whole section again, so we can fully understand it?

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Joyce's substitute motion as amended: "The State Auditor shall have such duties as are provided by law. In addition to the State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such post-auditing duties as shall be prescribed by law." So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. And that takes care of Section 4, subsection 6. Are there other—

Mrs. Warden.

DELEGATE WARDEN: Mr. President. I don't know whether I'm in order making this or not, but could there be a motion to suspend rules and reconsider Section 1?

CHAIRMAN GRAYBILL: There could be a motion to suspend the rules and reconsider Section 1, yes.

DELEGATE WARDEN: May I make it?

CHAIRMAN GRAYBILL: Let me think a minute. Let's see what happened here. Mr. Vermillion moved to reconsider Section 1, sub. 1, and it was defeated. You want to make a motion to reconsider Section 1, sub. 1?

DELEGATE WARDEN: Yes. I voted on the prevailing side.

CHAIRMAN GRAYBILL: All right. Now, to do that, you have to make a motion to suspend the rule.

DELEGATE WARDEN: May I do so?

CHAIRMAN GRAYBILL: Yes.

DELEGATE WARDEN: Rule 27.

CHAIRMAN GRAYBILL: Mrs. Warden wishes to make a motion to suspend the rules in order that she might reconsider, a second time, Section 1, subsection 1. So many as are in favor of her motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right. Mr. Mahoney, you have an objection?

DELEGATE MAHONEY: I think-and I want this issue cleared up. I don't care how the vote goes. But if we're going under the rules and it says you can't reconsider reconsideration-if you're going to turn around and suspend rules—and the same thing, I think we're going to get into a lot of trouble around here, Mr. President, in the future. And, while I don't know anything about—more than that-but I think we must establish a principle here that, if we're going to, by suspending the rule, get around a rule-and I think this is what we'd be doing-I would question it. I think we ought to be careful of this.

CHAIRMAN GRAYBILL: I think you're right, and I think we did sustain the fact that we're not going to suspend the rules easily. All right. Are there other motions to reconsider? The Chair has none. The Chair has held up, based on the stare decisis—that's a word that the cowboys down in Power River use-(Laughter)-based on stare decisis of that little problem Mr. Blaylock had the other day, the Chair held up a notice from the Auditor's office that they'd be open from 10:00 until 2:00 for pay purposes, while we were debating that matter.(Laughter)

Mr. Joyce.

DELEGATE JOYCE: Do I take it, Mr. Chairman, we are now completely through with the Executive Article, Section 1 to 14, as amended?

CHAIRMAN GRAYBILL: Yes. Would you like to move that when this body does arise and report, that we should adopt that?

DELEGATE JOYCE: Yes, I would. I just want to make one final-I'm going to be quiet. I would like to thank-on behalf of the Executive Committee, we appreciate the wisdoni of the Convention in the conduct in what the article has been. I think it appropriate at this time, however, that I make this observation. I think the record should show that the committee and the Convention are obligated to Delegate Garlington and Roeder for the fine draftsmanship, which I think it was. They're also-and I'm-as the Chairman, want to say that I enjoyed working with theentire committee, and that while the minority wasn't more than the majority, I congratulate them for it. I think that we conducted ourselves honorably and sociably, and I just wanted the record to so show. And with that, Mr. Chairman, I move that when-

CHAIRMAN GRAYBILL: Mr. Joyce, you don't need to move that. Mr. Eskildsen is going to move.

Just a minute. Mrs. Van Buskirk, for what purpose do you rise?

DELEGATE VAN BUSKIRK: Mr. Chairman. I wonder if this-if I would bein order now to speak on my vote last night.

CHAIRMAN GRAYBILL: Yes, Mrs. Van Buskirk, explain your position, and the Rules Committee can listen. I think we're in order, before we go on the journal-before we come out of the committee. Go ahead.

DELEGATE VAN BUSKIRK: I would like to say that I voted Aye and I wanted to vote Nay on the Davis amendment. I was called out of the room on the telephone, and when I came back in, I was misinformed on what we were voting on, and I voted Aye, and I would like to say that my intent was to vote Nay.

CHAIRMAN GRAYBILL: On the basis of mistake, rather than on the basis of a change in mind. This is on Mr. Davis' motion on what? Eighteen-year-old vote?

DELEGATE VAN BUSKIRK: Yes, that the age limit be changed to 25.

CHAIRMAN GRAYBILL: Right. She voted Aye and she wished to vote No. Can she amend the journal to show that? All in favor of

letting the journal be amended to show Mrs. Van Buskirk's No vote—

Mr. Mahoney.

DELEGATE MAHONEY: I think the rules say once it has been announced, we can't change it. Now, if she wants for the record to just let the record show that she just voted wrong, that's all right. But to ask you to go back and change the vote, I think we would be in serious trouble, Mr. President.

CHAIRMAN GRAYBILL: Yes, I think you're right, Mr. Mahoney. The Chair is going to accept your help here. Mrs. Van Buskirk, let's say, for the record, that you make a mistake and you voted wrong. And we'll put it in the record, but if we let you change your vote, then anybody could go back and change a vote, and the first thing you know, one of these votes would be overturned, like that 48 to 48 one. So, the record will so show, Mrs. Van Buskirk. Now Mr. Eskild-

Mrs. Babcock.

DELEGATE BABCOCK: I'm sorry. Mr. President. I'd like, on behalf of the minority report, to thank our Chairman, Mr. Joyce, and the rest of the members. I think that it was a true example of democracy and nonpartisanship in action. We certainly appreciated all the courtesies they showed to us throughout this Executive report.

CHAIRMAN GRAYBILL: And the Chair would like to point out that Executive got through in 2 days, if you watch the clock and if we hurry.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I move the Committee of the Whole rise and finally report and refer the Executive proposal to Style and Drafting.

CHAIRMAN GRAYBILL: All those in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No Response)

So ordered. We will sign the report and go into Convention.

(Out of Committee of the Whole)

PRESIDENT GRAYBILL: The Convention will be in order. Mr. Clerk, will you read the report of the Committee of the Whole? Unless objection is made, we'll read today's Committee of the Whole report only.

CLERK SMITH: "Mr. Chairman. We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Executive, recommend as follows: Delegate Nutting, having voted on the prevailing side in adopting Section 5, subsection 1, as amended in the Committee of the Whole on the previous day, moved that the committee reconsider its action. Motion carried. Motion of Delegate Arness to restore the language in Section 5, subsection 1, as proposed in the majority, be not adopted. That Section 5, subsection 1, as amended in Committee of the Whole on the previous day be adopted. Delegate Vermillion, having voted on the prevailing side in adopting Section 1, subsection 1, in the Committee of the Whole on the previous day, moved that the committee reconsider its action. Motion failed. Murray, having voted on the prevailing side in adopting Section 4, subsection 6, in the Committee of the Whole on the previous day, moved for reconsideration. Felt requested a roll call vote. With sufficient seconds, the motion to reconsider passed by the following recorded roll call votes: Ayes 50, Nays 39. Joyce's substitute motion to amend Delegate Felt's amendment to subsection 4 of Section 6 carried as follows: Delete the first two sentences of proposed amendment and replace with the words adopted yesterday which are, 'the Auditor shall have such duties as prescribed by law'. Delegate Arness asked for a ruling of the Rules Committee requested yesterday as to whether Delegate Felt's amendment may be considered. The Chair ruled that it could be discussed at this time. Delegate Arness challenged the ruling. The Chair's ruling was sustained. That Delegate Joyce's substitute motion to amend further Felt's proposal as follows: that the remainder of Felt's amendment after the first sentence read as follows: 'In addition to State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such post-auditing duties as shall be prescribed by law.' be adopted. That Section 4, subsection 6, be adopted as amended. Delegate Warden moved to suspend Rule 27 so that Section 1, subsection 1, could be reconsidered. Motion failed to carry. That the committee rise and report and refer the Executive proposal to Style and Drafting. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: All those in favor of adopting the Committee of the Whole report, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair will take a division on that. All in favor, say Aye-vote Aye on the voting machines; and all opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Very well. The Chair will close the vote. 66 having voted Aye and 2 voting No, the Committee of the Whole report will be adopted, and the Chair will refer it to Style and Drafting.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: You've heard the motion to move the Convention back into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Very well. The motion is adopted. We'll be in General Orders in Committee of the Whole on the Legislative Article. Mr. Brown will take the Chair.

(Committee of the Whole chairmanship assumed by Mr. Brown)

CHAIRMAN BROWN: Delegates, the next order is the consideration of the Judiciary. We've talked to the minority and the majority people on their proposals, and they are five to four on this. If we'd start on the majority proposal, it would become very involved, because the two proposals are very different. So, with the consent of the delegates, we'll have the majority give their reasons for the majority in a short discussion of the same. Then we'll hear the minority, and they will discuss them. And then we would like to have an informal consensus of the delegates as to whether they'd rather go down formally the majority report or the minority report. Ifthere's no objection, we'll have an informal discussion along those lines.

There being no objections, we'll recognize Mr. Holland-we'll recognize Mr. Graybill.

DELEGATE GRAYBILL: Mr. Brown, it's been pointed out to me that the rules require that we take up Style and Drafting reports when they are available. And there is a Style and Drafting report available on General Government. I'd like to move that we postpone it until after we've considered the Judiciary.

CHAIRMAN BROWN: You've heard the motion of Mr. Graybill. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN BROWN: Opposed, No. (No response)

CHAIRMAN BROWN: Motion carried.

DELEGATE GRAYBILL: Thank you.

CHAIRMAN BROWN: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. At this time-I'm not quite sure what the effect of your ruling was. At this time I'll move to suspend Rule 51 at page 22, wherein in Committee of the Whole consideration, committee proposals will be considered, debated and amended by the Committee of the Whole in order of reference and placed on General Orders of the Day. The Committee of the Whole shall debate and adopt, by section, the committee proposal. As Mr. Brown has indicated earlier, there's a majority report here and a minority report. The majority report, I think, is 33 sections, if I remember correctly. The minority report is 13 sections. And these sections aren't comparable. It would be impossible to amend it back and forth. With the consent of all of the Judiciary Committee, it's our desire to debate generally the-not debate but to inform generally the delegates of the nature of the plans and then ask the delegates to give us a tentative vote and then roll section by section, with either the majority or minority. With that in mind, I'll move that that rule be suspended for this debate.

CHAIRMAN BROWN: You've heard the motion of Mr. Holland. With no further discussion, will all in favor say Aye.

DELEGATES: Aye.

CHAIRMAN BROWN: Opposed, No.
(No response)

CHAIRMAN BROWN: The Ayes have it. Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. The committee was a nine-man-and-woman committee. The majority plan was adopted by five people, including me as Chairman. The minority-The other movers on the majority side are Mr. Aronow, Mr. Schiltz, Mr. Eskildsen and Mr. Hanson. Minority plan was, in large part, written by Mr. Berg. He, with the other delegates, I expect, will discuss his plan. He was joined in the minority by Mrs. Bowman, Mrs. Pemberton and Mr. Melvin. Basically, what the majority has done is take the Judicial Article as it now is in the present Constitution, largely readopted it, except in such places as we felt there was a need for a change. The minority, on the other hand, have completely rewritten--made a brand-new Judicial Article. While it contains some things that are in the present article, it's an entirely new language and new sections. Before we get into debate-I've taken certain positions in this Convention. I've voted against some people's pet proposals, and I want you to know that I've been thinking it over, and I was dead wrong. And if you can bring your motions up on a reconsideration, I'll vote with you the next time. (Laughter) I think I'm going to have to pay through the nose for some of the things I've done. Many of the delegates here have spoken to me about the-and I think it's covered in the minority plan, in their comments. They have a very short, brief plan. It has 13 sections, which I hope is unlucky, but without any question, is quite brief and quite concise. In page 46 of the comments-Mr. Berg and the other members of the committee make this statement. "Every delegate in this Convention was requested by some of the electorate to assure brevity and simplicity in any constitutional revision, so that all could understand." Now, I didn't run over in Bozeman, but I didn't have-one of my constituents said, "Dave, when you go over there, be brief." Some of them told me to keep my mouth shut, but they didn't say anything about being brief. And maybe it is a good thing and maybe it isn't, but there's no question that theirs are brief. I suppose the model for brief constitutions is the United States Constitution, which is about as brief as you can get. And I know the United States Constitution has always been ranked up there with motherhood and apple pie, as one of the untouchables. But I'm going to say something critical about it. It's too brief, and it's too short. It's the type of constitution that, in 1890, nine judges got together and decided that separate and equal facilities satisfied the same constitution, and in 1950, in the Brown case, they got together and decided that separate and equal facilities aren't good. And in the early days of the New Deal, when we had a conservative court, as the measures were cranked out by the Democrats, time after time they were ruled unconstitutional. And although President Roosevelt was accused of trying to pack it, he never got to. But as the resignations and deaths changed the complexion of the court, practically the same laws would come back and would be found constitutional under the same old constitution. Now, there's one thing about being brief-you just don't do the job, in my estimation. When you have a constitutional provision, the reservoir of powers are with the people and, naturally, to have a functioning society, you're going to have to give some powers to the Legislature and some to the court and some to the Executive. But you only want to give them so much power as you need to function, to keep our society running. In my estimation, we've got to be very careful of our reservoir of powers. And when we do give a power, I think we should fence it in. I think we should make it very clear what it is, and make it very clear we don't want to give up any more power to these bodies than we intend to. And if we have to use a double negative to let these people know that the people are retaining the power, I don't see anything the matter with it. So I don't think brevity is quite as important as some other delegates. I'd way sooner say "No" in clear and distinguished long sentences than to leave any doubt about whether I was saying them. Now, I want to come to the basic differences between the two plans. In the majority, as I say, we took the old constitution, heard our testimony, decided there were some places that needed some revision, and made some revision. The minority has written an entirely new constitution. Now, the problem with writing an entirely new constitution-that is in the Judicial Article-I think was dramatically shown to us in the Montana Plan. I don't know if all of you have ever read this, but it was distributed to everyone early in the game. This was written-the Montana Citizens Conference for Court Improvement Plan-but it was written by the law school professors. And three of them came up and spoke to us. Dean Sullivan, a fine student of the law; Professor Mason, who I've always respected as having the finest

legal mind in the state and I still respect him; Mr. Crowley, who is a very excellent man-and in collaboration, they wrote this. And when we got up here and asked them the questions about this plan, there were so many holes in it, so many loopholes, so many things that nobody in the committee wanted, that to this day, there isn't one supporter for the Montana Plan who's supporting it. The supporters of Montana Plan have all gone over with Mr. Berg's plan. Now, the problem is that when you write a constitution, you're not like that man that's in that commercial that went into the restaurant, and he said to the waiter, "What is that?" "Try it, you'll like it." "But, what is it first?" "Try it, you'll like it." "But, what is it?" "Try it, you'll like it." And, he said, "I ate it and I thought I was going to die. So I took two Alka Seltzers." The problem with adopting the minority plan, they don't have any Alka Seltzers. Now-you know, my candidate for the fool of the year was the man who proved that the parachute was a safe invention, because he took an awful chance. And when you take a brand-new Judiciary Article that has never been tried in any state, that has been written by Mr. Berg, and I have great respect for Mr. Berg-he's written this plan; he's said, "All right, here it is"-but you don't have any Alka Seltzers, we don't know for sure if the parachuteis going to open, but try it out because it's free and it's concise and it must be better. Now, I say to you, for 73 years we've had the Judicial Article that the majority is submitting to you. This has been tried; it has been found wanting in certain respects. We have-as I've stated, we've made certain changes in this, but they are changes that were brought to our attention by all of the witnesses we heard and which we tried to correct. Now, get down to the basic differences. The majority plan-we provide for the election of the judges, both District and Supreme Court. Minority plan provides for the appointment of judges. In the majority plan, we retained the justice of the peace. The minority plan does not do so. In the majority plan, we continue to elect the clerk of the Supreme Court. The minority appoints it. In the majority plan, we do not give the court any rulemaking power. The minority plan does something, and I'm not quite clear what it is, but I'm sure Mr. Berg will be able to explain to you what he means by the rulemaking plan that is incorporated in there. In the majority plan, we provide nothing about this qualification of judges, and the minority plan does. Now first, and I think of primary importance here, is this matter of the election of judges. Mrs. Babcock said it far better than I could about all of the various ramifications about taking these people out of the Constitution, but, you know, the commission did an outstanding job in preparing for us. There's only one thing. They went out and researched and prepared so much material that I personally haven't been able to read it all. Number 11, which is Suffrage and Elections, is an excellently written article, and I do wish that everybody had had the time, and I hope they have read it, because it has some excellent material in it. It traces the history of elections in not only the State of Montana, but the United States and even going back to the days of ancient Greece. Everybody didn't always have the right to vote. Back in the time shortly after the Revolution, some of these states had requirements. A man had to own land; a man had to have so much money; we had the poll tax; of course, women couldn't vote; we had disqualifications of Negroes, in effect, and Indians. All of this has been now fought down. First, a man now doesn't have to own property. That was one of the first to go. The second thing that went was, of course, the Nineteenth Amendment. Women had the privilege. Then we had the amendments for color being a bar, and, of course, artificial barriers were put there and it's just been within the last few years that that has gone. And just within the last year, I think, the age for voting has now come down to 18. We're coming to the point where actually all of the people can now speak by vote, but now we meet in Convention. We've given all these people their vote and we start out by saying, "all right, you've got the vote, but we're going to take away the offices you're going to vote for." And I think this is basically wrong. I think it's a step backwards. I think I've made myself clear right along, that I consider this vote an extremely important constitutional weapon. It's the only one the average citizen has. So-I very, very much feel that the election of judges are something which is vital to this Constitution. Back in the days after the Revolution, most of the judges-as a matter of fact, I think in nearly every state the judges were appointed in some manner, many times for life. Back about 1820 or thereabouts, every time a Legislature would do anything that was liberal, the courts would find some precedence to throw it out on. And they speak of it, I think, as the Jacksonian Revolution, where the people got so sick of the courts being reactionary, they went out and provided for election of judges. And most of the states, from then on in and right now, have provided for the election of judges. North Dakota, I

saw the other day, resisted the effort for the appointment of judges. But, within the last few years, there's been a rash of attempts to take the election of the judges away from the people and go to the appointive system. Now, so you get a little background on this. This is being pushed in large measure by what they call the American Judicature Society, which one of the officers came out and testified before our committee. Now, the American Judicature Society, in case some of you people aren't familiar with it, is a-bears the same relationship to the American Bar Association as the Anaconda Building Supply Company does to the Anaconda Company in this state. They are one and the same, just a different branch. Now, they have been going around to the various state constitutions and to the various organizations, attempting to convince the people of the United States that they're not smart enough to vote for judges. And it's only us lawyers that are smart enough to have this power. Now, I don't really agree with the American Judicature Society. I think, without any question, that, when we do get down to elect, we pick a superior judge. The minority, I think felt--originally, in the Montana Plan, it was just a straight selection of judges with a confirmation election without an opponent. They just felt that would be too bitter a pill for this Convention to swallow. So they made some vital changes in it. They say when there is a vacancy, there will be merit selection. That's the appointment. But the next term, the man can have a contested election and that thereafter he will have a uncontested election. Besides that, it provides for confirmation of that judge by the Senate. Now, what have they done? They've provided for confirmation; they've provided for elections and elections. Why, in God's green earth, don't they just provide for an election? Because the key issue is, the minority wants the appointment of judges by a select committee. It comes down to that. Now that pill, as I say, was too bitter to swallow. So now, they sugarcoat the pill so you don't taste it. They provide for confirmation by the Senate. That is one layer of signature. They provide for a contested election afterwards. That's another layer of signature. Then they provide for an election every four years. That's another layer. The only trouble with the sugarcoated pill, now, is that it's too big to swallow. It's as big as a baseball, because--why would you do all of this if you really thought that the important thing wasn't to convince this body that they should vote for a constitution with an appointed judge? This is the wholeidea behind the thing. I submit to you that the people of this state want to elect their judges and, if we come out of here with an appointive system, that this thing alone, in my estimation, could bring down the whole Constitution. In the slip which was distributed yesterday, I believe, about the various news items-distributed on February 25th—on the third page-and I'll tell you, I had nothing to do with this poll-on the third page, "University Class Polls People on Con Con Issues." It states this: "Between February 7th and February 22nd, students in a political science class at the University of Montana, under the supervision of Dr. Robert E. Engle, surveyed 189 registered voters in Missoula to determine their attitudes toward certain Constitutional Convention issues. And among the things was this: Should judges for the Supreme Court and district courts be appointed by the Governor, rather than by election as at present? Yes, 43; No, 125. If this poll were accurately conducted, and I certainly have no reason to think it wasn't, you're flying in the face of a three-to-one majority. Now, that's what the people think. Now, let's get down to what the lawyers think about it, because the Montana Bar Association President came up here and testified in its behalf. And while he didn't poll his organizations, his Executive Committee was in favor of the Montana Plan. And yesterday, there was a letter addressed to Mr. David Holland, Chairman, Judiciary Committee, from the Montana Student Bar Association, February 24, 1972. Now, that letter wasn't sent to me; it was sent to Catherine Pemberton. But at the request of some of the minority, this was printed and placed on your desks. And they found out down there that the law students at the University were for the majority plan-that would be the one I'm on, 16—and for the minority, 67. All of which, I suppose, is to convince you that-overwhelmingly that somebody's in favor of the minority plan, anyhow. I didn't give that all the big weight that evidently some of the minority did, because we run into these law students all the time. And when they go to work in our office, we know they really know the law, but we don't send them up to the Supreme Court of the United States to argue that first day. Generally, we send them up to file some papers. And about the first five or six times we send them to file papers, we send a stenographer with them so they don't get lost. (Laughter) And it's only about four or five years later that they start going up and telling the Supreme Court their business. Now, let's get to what the lawyers of the State of Montana think. At

the request of the full committee, the lawyers were polled. We used the law school list. And the lawyers of the State of Montana-this would include both practicing and nonpracticing lawyers, by the way-voted for the election of Supreme Court judges by a margin of 256 to 241. They voted for the election of District Court judges 253 to 237. Now then, another organization was polled—that's called the Montana Trial Lawyers, and I'm a member of that organization so, of course, I think it's more significant because I'm a member of it-but there's one thing about the Montana Trial Lawyers: they all make their living in what we lawyers romantically call "the pit". That is, they're in court constantly. That is the way they make their living, trying cases in court. And you better believe that when you do that, you know all about judges. All the judges in the state always sit up like Mr. Brown does, right up there on an elevated platform; and whenever my head goes back, because I'm always looking at judges, it's "yes, sir" and "yes, your 'honor", because I'm telling you, I want a good judge up there because this is where, together with many of the lawyers here in the Convention, I make my living and I'm real interested in getting a good lawyer to be judge. And I'll tell you what the lawyers that make their living in the pit think; they voted for the election of the Supreme Court justices 78 to 34 and for the election of District Court judges-and those are the judges they see every day-82 to 29. So we got the law students for the minority plan; we got the general lawyers, whether they make their living in court or not, are for the election of judges; and we got the trial lawyers nearly two to one for the election of judges. And more important than any of those three, we've got the citizens of the State of Montana, who don't want to be put down as not being intelligent enough to pick their own judges. They want to vote for them. And I suggest to you that, with everyone but the law students, we should go ahead with the elections. Now, the second main difference is in the JP. Everybody who testified or who was polled were near unanimous for the abolition of the justice of the peace from the Constitution. When I came over here, I had considered the matter a good deal. As a matter of fact, I served on the Montana Bar Committee involved in the matter for many years. And I was more or less inclined to think they should come out. But as we begin to get some testimony from some of these lawyers from the small towns-and some of the JPs from the small towns -1 begin to appreciate more and more thatthere's just no way that this system of ours in the state can work out without a JP or the equivalent of him. Whether you call him a magistrate or whether you call him Chief Justice of the Supreme Court, we still got to have somebody out there in each county to take care of the JP function. So we left him in, but not left him in the way he is now. The present law, as it is interpreted, requires that there be at least *two* townships in each county and that there must be-there must be a minimum -there must be two judges for each township. Now, in a small-I'm speaking small in area—county like Silver Bow County, that means we got four judges. And frankly speaking, that's too many, because I don't think they have that much workload, but the Constitution says that we shall have them. So that's the first thing we changed was the requirement on JPs. Now we require only one in each county. There can be more if circumstances dictate, but we still make that basic requirement. The second thing we have done is we removed the limits from his jurisdiction. It used to be, in the old Constitution, (Inaudible)-used to be that he had a limit of $300 on the cases. This prohibited the JP from conducting what we call the small claims court, where the limit might be raised to a 1,000 or even $3,000 and which citizens without lawyers can go in and get the smaller matters litigated. So, we've taken those jurisdictional limits off, so even though we still call them JPs, he can actually be a small claims court. We've also made it clear in the Constitution that we expect that lawyers can fulfill the position and practice in other levels of court. This way, we think the qualifications can be brought up. Now, in your small counties, there just aren't that many lawyers, and we have provided that. We haven't limited it just to lawyers occupying the position, but we have included and upgraded position by requiring training. So, while we've kept the JPs, they are so modified that I don't think that they're going to be the same court, and we hope we've taken the abuses out of the system. The third major difference between the clerk of the Supreme Court-between the two plans--are we provide for the election of the clerk of the Supreme Court, which is consistent with our whole article. They provide for the appointment. Now, for some reason, and I never have had it explained to me, but for some reason, they provide for the appointment of the clerk of the Supreme Court but provide for the election of the clerk of the District Court. We provide for the election of both. I think it's important we continue to elect them. The

third thing is on the problem of r&making power, which is covered in the minority article. Now, when you start talking about a rulemaking power, you start talking about a court making rules, a court making law. Now, when a Legislaturemakes law, as you well know, we have the Executive to veto it. And if the Executive doesn't veto it, we have the courts, then, to look it over and say, "You made a law here which is unconstitutional. It shall not be enforced." So, when the Legislature makes law, it has those safeguards. When the courts make law, there's no Executive to veto it. The courts decide whether it's constitutional, and we're back to the old system where the court is throwing the pitch and then running back behind the plate and saying, "Strike one." It just doesn't belong in there. I'm not familiar with the system at all. Now, I'm not against the Supreme Court having some r&making power, but I want it the way it is now under the present Constitution. The way it is under the present Constitution, the Legislature passes a law delegating to the courts the right to make rules. The Legislatureretains the right to take that power back or to say to the court, "You've gone too far; this rule will not be enforced." So now, we have the safeguard. The Legislature has the power to let the court do the work, but they supervise it and can, in effect, veto it. This is the rule the majority likes, and this is the way it is in the present Constitution and it works out just fine. I really don't know about this, because part of the problem I have with the minority plan is they've written it up, and I'm not real clear what they mean by it. This is what I mean about fooling around--not fooling around--about taking on the task of writing a whole new Judicial Article, because it has never been interpreted, and what is it going to mean? This is what they say in Section 1 on page 40. "The Supreme Court shall have such power to make rules of procedure as may be provided by law." Now, what does that mean? I'm not sure. Is the court--and they're the ones that are going to interpret it; the Legislature is not going to interpret it, and the Executive's not going to interpret it-does that mean that they have absolute authority to make rules? Or does that mean that they can make the rules that the Legislature tells them they can make? Now, there's no question under the present Constitution; no doubt about the fact at all, that the Legislature can and has delegated that power to the court. If this is a good rule, why not leave it like the present Constitution? But why put this in, that I think raises a very difficult question of interpretation? And as they say in the game, "Why open this can of worms?" And then, we go to the previous sentence above there. "The Supreme Court may make rules for the practice of law." Now, what are rules for practice of law? Does that mean that they will have the authority to discipline lawyers, to decide which men shall be allowed to practice law? Or does that mean that they will have the supervision of lawyers, tell them what fees they will get? Well, I don't know what it means, but it certainly has me extremely concerned, because I like to know exactly what somebody means when they put it in there. We have the matter of disqualification of judges. Now, to fill you in on disqualification of judges, there's nothing in the original Constitution about disqualification of judges. There's no need to be. Back in timeofthewarofthe copper kings, the Anaconda Company shut down the State of Montana until such time as the Legislature came over and passed a law. They had to call a special session. They came over here and passed a law so they could disqualify Judge Clancy. They shut down Butte, 10,000 men out of work. And the Governor held out for a month, but the pressure got too big, and he called the Legislature over. They went right through the hoop, they passed the law for the Anaconda Company. And that law was declared constitutional. In other words, this is an authority the Legislature has. So, I say to you, if the Legislature already has this power, then why are we going to write a Judicial Article including the disqualification of judges? Because we have a disqualification of judges. The statute's clear. It has been interpreted many times, and why fool with it? Well, I just don't know, but in Section 9, and I'll read this to you-"The Legislature shall provide for disqualification of judges at any one or all of the inferior trial and appellate court levels." Now, that's mandatory; they have to provide for it. Now, what do they mean by that? Let's go to their comments and let's see what they mean by it. They say this. "It is our intention that the basic right of a litigant to be assured an impartial trial at all levels of the court. It is noted that although disqualification procedures for lower courts is provided for in the statutes, the Supreme Court has remained exempt. By this provision, the Supreme Court judges will also be subject to similar requirements." Now, does this mean that the Legislature must now bring in a statute that all of the judges that you feel are-should be disqualified? In other words, the entire Supreme Court could be disqualified? Does it mean that every District Court judge can be disqualified? I

don't know what it means, and this is what I protest about writing a new Judicial Article. Because, if this is passed, it'll be a subject of fruitful litigation for the next 50 years till we finally find out where we're at. Now, on the majority side, we had some real problems about this. Go over and take a look at our District Court jurisdiction, our Number 9. It's a long, windy, full paged—over a page article. And we got in there, and we've got some purists on our side, and they said, "Oh, let's get rid of all that junk." I don't like to get rid of all that junk, because it has been working real well for 73 years. We've heard testimony from so many witnesses that I lost count, and not one person came in and said there was anything wrong with the District Court jurisdiction. But I'm willing to go along. All right. So, we took the Montana Plan. They have something in there about justiciable benches. They got a nice short one like this. And I said, "Well, let's call the professors down at the law school and find out if we're safe, because I sure don't want to be facing a whole new battle on whether a court has jurisdiction of this or court has jurisdiction of that." So, we called Professor Mason. He said, "Don't worry; Dave, don't worry-fully defined legal term-keep things just the same way-and it's nice and short." Fine, we're going to incorporate it in. And then, you know, the first thing, Mr. Berg went out and did a little research, which I should have done-the first thing, Mr. Berg went out, did a little bit of research and, by gosh, here's two state courts that have held that this thing-nobody knows what it means and it's not a well-defined legal term, and we darn well were liable to get things mixed up if we went ahead and fought it out. Now, I say to you, if none of the witnesses want things changed on a particular article, then even though it is long, decide to leave it alone. And I'm saying to you that if the minority proposal is finally adopted by this body, you're taking a whole new keg of nails on. I don't know how the court's going to interpret it, and I know that Mr. Berg thinks he does, but, by gosh, I've seen courts do odd things. And I say you're way better off to stick with the old tried and true. There's just one more thing I want to cover about this. We had a good many protesting delegates who thought that the courts weren't all they should be, and the majority contains several members who think that. And their kicks were that out of 28 district judges in this state, 19 have been appointed by the Governor-unfettered appointment, he didn't have it confirmed by anyone-and those people have been continued in office. In otherwords, even if we have an election, it's pretty tough to beat a judge. The same thing is true out of four out of five of the Supreme Court judges. And another evil-I don't know if it's an evil; maybe it's a good thing, I don't know-but, in any event, we had one situation one time where a man died or resigned. A Supreme Court justice was appointed. He'd failed at the previous election, but, of course, he was in and he wasn't going to get beat, and he was reelected a couple of times. But he wanted to retire, but he didn't retire. He didn't say, "Step aside and let's have an election." He ran, and then about a year or so later, he had a Governor from his own party-although he's a nonpartisan and the Governor was of a different party-but anyhow, the Governor from his own party-and then he resigned and then the Governor got to put somebody else in there, and that man has been kept in office. And it was a real evil. And as a matter of fact, some of the majority said, "Well, we agree with elections, but the courts just aren't up to standard." What are you going to do about it? Well, we thought about a lot of methods. But finally, we came down to this. It's covered in a little different language, but what we've done is said, "Fine. If there's a vacant seat, the Governor can fill it, but he can't fill it permanently." Any man who takes the job can't be a candidate to succeed himself. Now, we had some protest about that. They said, "Where will you ever get anyone?" Well, I know of two circumstances where that happened and they didn't have any trouble getting anyone at all. And if they got a vacant seat in the Supreme Court, I'll guarantee to have 8 or 10 lawyers from Butte over here any time, even if it's only for a few months, for the honor of filling a position on the Supreme Court. The same thing on the District Court level. They're going to say it's a big hurdle, and I'll guarantee you, it's not. And, yes, they will have a weak man, somebody who goes in there just to fill out the term, but they won't have an appointive court system, and this is what-this is what we were worried about. Because, the election of judges-generally, you'll get somebody who is a politician. This is a big kick with a lot of people. But the basic attributes of a politician are actually pretty good for a judge. Generally, they have to like people, and I like judges that like people. Generally, they have to be courteous, and I like judges that are courteous. Generally, what the trial lawyers do, they go in to those judges, and they've got an important case-or they have a case-all cases are

important, of course. They're going to look up the law. They're going to see that that law is de. livered by a method, by what we call the trial brief, to the judge. When we go to the Supreme Court-that's what we do-we write briefs up, we argue the case. Basically, what you want is a fair man who can comprehend what the law is and hope he has enough human understanding to get by. Because they talk about this federal court system, but when you see some of the tyrants that get on the bench under that system-fortunately, under our system here in Montana, we don't have them now-but we did have them. We had them that levied the $1,000 fine. We had one one time who appointed a lawyer to serve without fee to represent a defendant in a criminal case. The case was to start Monday. The lawyer came down with acute attack of appendicitis, was in the hospital, and was operated on Saturday. He was in the hospital, he didn't show up for trial. That Monday morning, he got fined for contempt of court. And I'll tell you, if that judge had ever come up for a vote, he wouldn't have been there very long. But he was under the federal system and was appointed. And we submit to you that we have made important changes in the Judicial Articlein the majority report. But we've made them with the spirit-these people have come to us and said, "This is wrong", and then we have gone after the specific cause that they're wrong. We think this is the way the Constitution should be handled. The minority report--and these people are all good, sincere, hard-working people. They honestly feel and believe in their position. They take a different path. They rewrite the Judicial Article, we feel, eliminating many important safeguards. But please don't turn down the majority report because it has more sections than the other. Read it, examine it, determine between these two plans, upon the merits. Thank you very much.

CHAIRMAN BROWN: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Brown. I move we recess until 1:15.

CHAIRMAN BROWN: All in favor, Aye.

DELEGATES: Aye.

CHAIRMAN BROWN: Opposed, No.
(No response)

CHAIRMAN BROWN: Carried.

(Convention recessed at 11:55 a.m.—reconvened at 1:25 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in session. Before recess, we were discussing the two Judiciary proposals with the idea that we would take a tentative vote after the discussion. I believe Mr. Holland had finished and Mr. Berg—

Mr. Holland, are you finished?

DELEGATE HOLLAND: I am, Mr. President, except for one thing. Both the majority and the minority are quite willing to answer questions about their plan. We think it would be better if, in orderly presentation, if the minority proposal is fully presented and then invite what questions the delegates may have.

CHAIRMAN GRAYBILL: Right. Ladies and gentlemen, after Mr. Berg finishes his presentation, we'll have questions and discussion and debate if necessary before this motion. Very well.

Mr. Berg.

DELEGATE BERG: All right. Mr. President, I have asked Mrs. Pemberton to give us a just short statement, and I would yield for that purpose.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President. Thank you, Mr. Berg. This is a day that I've looked forward to for quite a long time. Is this coming through okay up there? Good. I don't want you to miss a word. (Laughter) In the first place, it's a very great pleasure to share Mr. Holland with you. (Laughter) He hasn't exactly been under cover since January the 16th. I started to take notes this morning, and then I realized there was nothing new that we hadn't heard for the past few weeks. So, evidently, however, my friend over here hasn't had time to read the papers, and on the morning of February 24th, last Thursday, in the headlines of the Great Falls *Tribune, in a* several-column, well-written news story, was this story which was: "Court Improvement Possible Besides Death of the Montana Plan." He referred to it for quite some time this morning, and I presume he had not had time to see this. In a few minutes, I'll have it put on his desk with my compliments. The way this came about, I think that the delegation deserves a little explanation and I would be happy to give it. The Montana Citizens for Court Improvement with-the Third Citizens' Conference that was held in Missoula in October as an information seminar because of the Constitutional

Convention was sponsored by Montana Citizens for Court Improvement. It was not looking toward anything at that time except the Montana Constitutional Convention, and people wereinvited to do this at that time. There were rather baseless remarks and out of order, I felt, this morning in referring to this group of dedicated people looking toward court improvement in Montana as, in their plans, when they were referred to as the Sullivan Plan. I thought it was a vindictive attack on a fine gentleman. I had not ever had the pleasure of meeting this man until last March at the National Conference of the Judiciary in Williamsburg, Virginia, and this-at that time, this Convention was planned and everyone was making plans toward presenting different things for the information of the delegates. And this plan was-this conference was planned at that time, and the people who planned it had been working toward court improvement since 1966 at the invitation of the American Bar Association, the Montana Judges Association, the Montana Bar Association, the School of Law at the University of Montana, and the American Judicature Society. We had picked this up at their invitation, 100 citizens such as these laymen, across the State of Montana, and looked toward court improvement from that time on. When we picked up a challenge that the profession felt that they could not do from within. This was presented to us in a 3-day conference at the expense of the delegates, who were invited to be there. It was a courteous thing to do. We looked at it, and after looking at it for five years, studying it, and going into different states, comparing it with different plans, such as you've had the opportunity to do here, we came up with a comprehensive plan which we felt looked toward court improvement. If this did not please this delegation, that is up to you. I, personally, am committed not toward anything specific except court improvement. With that, as I looked and sat on the ringside seat of a Judicial Committee within this Convention and could look toward two groups planning the Judiciary Article of this Constitution, I found which way I could go, which way would point toward court improvement. I do not have to get permission from anyone; however, I have consulted many, many authorities. I felt they were very authoritative in their field, with great background. I came out of this not as an attorney, and I never will be. I am a layman, and I am very pleased to have worked for court improvement, and I still feel I am when I looked at the plan of the minority group and the report that they are going to give to this Convention in a few minutes. It has a number of things that you must give very serious attention to. I do not feel that the majority has gone forward or has court improvement within its article. One of the members at one time said, "We will write an article for Montana. We will not take it from other states"-we will not do this and we will not do that with it. I feel that the minority group has written a very good article, and it is written for Montana. There are things in it that are not written for any other state. It is written for Montana, and you will not find them-some of them-to make a comparison, and they are good and they will last. And they look forward; they do not look backwards. And I would recommend them. I would like to describe the American Judicature Society, for just a moment, as long as it was referred to this morning. This is a group of a number of lawyers, judges and laymen in 50 states, in Canada and 43 other countries of the world. It was founded in 1913 to promote the efficient administration of justice. There are thousands of members who belong to this. I am not a member, but they have given us great help and great assistance in looking toward court improvement and the mechanics of putting on these different conferences which have always been open to the press and supported by many people across the State of Montana. We have been directed by a gentleman who lives in this 26-mile area of Montana and keeps telling me that this is different than any other place in Montana. I would like to believe that. I know some very fine people who live there also. I live on a 10,000-I represent a 10,000. square-mile area of Montana. As compared with some of the other areas of 57,000 voters, we probably represent around 6,000. I believemyother delegate from District 1 would say that's about right. This is not necessarily a question of land versus people, of cities versus ranches. I think it's a question of all Montana, civic leaders representing the state as a whole, and1 wouldliketo also think that this is opportunity time for Montana, which I have stated it before, and that you look toward court improvement with me. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. President, members of the delegation, Mr. Holland. You know when you start the trial of a lawsuit and you're arguing to the jury, you always start it out by saying, "May it please the court, counsel for the plaintiff, counsel for the defendant", and then "Ladies and gentlemen." The way that we are pre-

senting this Judicial Article today is something in the measure of a final argument as it would be conducted in court, and that's altogether appropriate when you're discussing the Judiciary and the Judicial Article in Montana. But I am reminded now, in the beginning, of an admonition my mother gave me years ago. She used to say, "I wonder if that boy will ever learn to talk." And then later, and forever, she said, "Will he ever learn to say anything?" (Laughter) Now, as I listened to Mr. Holland this morning, I was reminded of my mother's admonition, much as he thinks of his father or grandfather, and I was impressed with this thought, that he spent so much time on the minority viewpoint of the Judicial Article that it must, for that simple reason, have some merit. And it's that merit that I want to discuss with you as briefly and as concisely as I can. But I also want to make this observation. There was considerable criticism this morning of the brevity and perhaps the so-called novelty of the minority plan. I take credit, if credit is due, for the brevity, and I would remind you that I was astonished this morning to hear the United States Constitution, and particularly the judicial portion, the Judicial Article of that Constitution, also accused of brevity, which I have always thought was the mark of fundamental, good constitutional writing. And if the minority article suffers from brevity, so be it. I'm proud of it. Let's start now with Section 1, and I'm going to be looking at page 46 of the minority report. It begins with the judicial power. It vests the judicial power in the Supreme Court and in the district courts and then, just like the United States Constitution, and in such other courts as may be provided by law. It differs from the majority report in this significant manner: it does not mention justices of the peace. Why? Before our committee, Judge Gardner Brownlee of Missoula spoke as the spokesman for all justices of the peace, and in the course of his comments, he said that insofar as the justices of the peace of the State of Montana are concerned, they do not care whether they are or are not mentioned in the Constitution and, in particular, in Article I. Let me say this to you, that I have examined, as apparently Mr. Holland has not, this volume, Volume XIV, on the Judiciary. And I'll call your attention to pages 70 to 75, which deals and sets forth all of the states of the United States which, within the last five years, like us, are considering the elimination of the justice of the peace as a constitutional court. If you will examine that, there are approximately 30 states listed, and I count 25 of them who, within the last 5 to 10 years, have done one of two things: they have either specifically abolished justice courts or they have eliminated them from the Constitution. Now. I think that's pretty reasonable authority to look to in the drafting of our Constitution. But we're not alone in looking to other states for precedent in this regard. Every poll taken that I know of overwhelmingly suggest that we eliminate justices of the peace from the Constitution. For example, the same poll that Mr. Holland referred to this morning with regard to the justices of the peace, which he overlooked in his argument-the same poll conducted of all lawyers by the Judicial Committee of this Convention-the report came back 66 lawyers in favor of retaining justice courts as constitutional courts, 415 opposed. Mr. Holland takes great pride in his membership in the Trial Lawyers Association, and the poll which they took posed the question just a little more differently. Instead of asking whether they should be simply continued as a constitutional court, the poll said, "Should justices of the court be abolished?" Now, these are the so-called lawyers in the pit, of which I take pride in being one, and they say: 73, should abolish; 38, continue. Now, if you are on the Judiciary Committee in this Convention and you're confronted with that sort of polls, taken by lawyers, people who work in these courts all of the time, what would your conclusion be as to whether they should be or should not be listed as a constitutional court? I take it that you would agree with the minority and that you would not include them as a constitutional court in Section 1 of your Constitution. The minority has not done so; the majority has in spite of all of this disapproval that was before the committee. All right, let's go on then. Well, let's not go on to Section 2. Let's talk also about the treatment given to the justice courts by other provisions in this minority and compare it with the majority. Take a look, if you please, at Section 4. It's on page 56. This has reference with regard to the jurisdiction and the powers of district courts. Let me read it to you. I'm sorry, mine's 58-I have a little obliteration on it-it's page 50-50-Section 4. With regard to the power of district courts, it says: "Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vested in the District Court"—now, take note of the next clause-"but distribution of concurrent jurisdiction with other courts may be provided by law." Now, throughout the rest of the minority, we have referred to the

methods of qualifications, the terms of judges, the pay of judges in the lower court system. In every instance, it's been left to the Legislature. Now, let's go back and take a look at how the majority so magnificently treats justices ofthepeace. You will recall that in Article I, they have mentioned them as a constitutional court. Let's take a look, however, at Section 9, on page 20, which has reference with the majority report. Let's take a look at the first sentence in regard to the jurisdiction of the District Court. What does it say? "The District Court shall have original jurisdiction in all cases"—I emphasize the word "all'-"at law and in equity." And then it goes down and it includes all of these various types of actions that are classified as being within that all-inclusive jurisdiction of the District Court. All right, let's go on back here and take a look at what they did to the justice of the peace court, and that's at Section 16, at page 26. What did they do? Go down to line 21. It says, "Justice courts shall have such original jurisdiction within their respective counties as may be prescribed by law." Think about that a minute. In the majority report, all jurisdiction for all cases in law or in equity is exclusively, practically exclusively, vested in the District Court. What's the Legislature got left to give to the Justice Court under that kind of a constitutional provision? Nothing. Very little or nothing. It is a colossal mistake in the writing of a Judicial Article. Now, I'll say this: I've been a little harsh on the majority. They have given to the Justice Court, apparently inferentially only, jurisdiction up to $300 in civil cases. They have done it in a negative way. They have said in their Judicial Article that the District Court has jurisdiction in such actions in controversies which exceed $300. So, presumably, there is room left-and only this much room left—for the Justice Court. Now, we're not talking about the situation as it is today; we're talking about tomorrow; and I suggest to you that you can't find in the majority report, so far as the lower court system is concerned, any room for tomorrow. There's no place left for a small claims court, as I'm sure we would someday like to see in some parts, perhaps all parts, of Montana. No room for that left today in the majority report. But look at the minority report. There is more room there than you can ever imagine in this term that the Legislature may provide concurrent jurisdiction with the District Court in any lower inferior court, and so the Legislature may at any time give to small courts, lower courts, unlimited jurisdiction within, but there is this safeguard at all times and that is that jurisdiction is concurrent. In this, that there is a constitutional court established, a District Court, in which all jurisdiction is vested, and the Legislature may give concurrent jurisdiction to a lower court but not necessarily take it away from the District Court. A more elastic, more flexible system cannot be designed. Under that system, in the minority, so far as jurisdiction is concerned, you may improve and create-you may not only improve the justices of the peace, you may create other courts if you want to; you may have a small claims court, you may have a municipal court, you may have a police court, you may have any kind of a court the Legislature finds necessary in the future. Furthermore, because the justices of the peace are not specifically named in Section 1 ofthe minority report, that does not mean at all that they have been abolished. To the contrary. Their jurisdiction stays as it is today, but the Legislature may in the future, under our article, do with those courts as time and events require. In my own mind, I think there is great room for improvement in the justice of the peace court. I want to see those courts elevated. I'd like to see them given dignity. I would like to see them trained. Indeed, if I were in the Legislature, operating under such broad powers as we give them in the minority, I would suggest that an academy be established at one of the universities, much similar to what we now do in the case of law enforcement officers, and I would arrange for those justices of the peace to go to that academy annually and be trained and educated in the matters that they deal with, so that when people come before those courts, thelawis beinginterpreted and meted out as it is intended to be by the Legislature. This is improvement. This is the sort of thing that should be done in Montana, and it should not be hamstrung. Dollar limits should not be placed upon it, because the time may come when in Billings or in Great Falls, indeed, even in my hometown of Bozeman, for [when] a municipal court of much broader jurisdiction may very well be required. It may very well enhance the development ofjustice, and we ought to allow foritherein this Constitution. If you accept the minority report, as I have explained to you from a jurisdictional viewpoint, the power is there. It's in the Legislature; it can be accommodated. Now, one other feature of the minority plan which Mr. Holland overlooked and which I think is of considerable value to the administration of justice in the years to come, and that is the administration of courts. Today, in Montana, we have no system whatever for any kind of administration within

the judicial system; and do you know, we're 1 of 13 states-only 13 states left are in such a deplorable condition, from an administrative viewpoint, of judicial affairs. In the majority report there is no mention, none whatever, of administration of the judicial system. But the minority report does accord it, and here again, let me refer to the minority report. I have a little trouble picking my time out. With reference to Section Z-now, I'm looking at page 40. I guess you could look at page 52, or something like that, and find the same thing. Maybe I'd better stick with the comment area on Section 2 of the Supreme Court. It's on page 47—yes, Section 2. Note this-the second sentence—"The Supreme Court may make rules for the practice of law and judicial administration in all courts." Judicial administration in all courts, as I say, has been accommodated in all states but 13, and Montana is 1 of the 13. And of those 13, 2-I think it's Indiana and-1 can't offhand-I think, Indiana and Maryland are also considering in constitutional revision to include judicial administration and the centralization of it in the highest court. If they adopt it and we don't, we'll be 1 of 11 left. If we do adopt it, there will only be 10 states left yet not to adopt it. It is an advantage that every state has recognized, apparently from the beginning. It is not even considered in the majority report. I don't expect this judicial administration of the judicial system, centered, as I say, in the Supreme Court, to become a vast bogus [focus] of power. I don't anticipate that there is going to be suddenly employed by the court a court administrator with an elaborate staff. Not at all. I anticipate that this will grow, and grow gradually, and I think that the clerk of the Supreme Court is an adequate arm of the Supreme Court to accommodate this function. You know, when we started to look down and find out how many justices of the peace there are, how many kinds of cases they handle, whether they're civil, whether they're criminal, what results have been obtained in these various courts, we had no place to go except, if you please, to the Highway Patrol office. And, of course, they could only tell us about Highway Patrol cases. Now, that's a deplorable situation in the administration of justice in this state. This is the kind of a problem that needs attention. The minority report accommodates that. It is not going to set up an elaborate court administrator, but it will, through the clerk of the court, if his duties can be prescribed by the clerk of the court, be facilitated, and that's all a constitution should do. We shouldn't spell it out to them, and we haven't. We have enabled it. Now, this is one good reason why we did not elect the clerk of the Supreme Court of Montana; rather, we provide for his appointment. But we also, if you'll note, permit the court to fix his duties, and we have in mind there that among those duties may be administrative centralization of the administration of the court system. And if you are going to have the court system administered by a clerk, it seems to me that clerk should be the court's clerk. Therefore, we provide for his appointment. Moreover, we did not feel that the clerk of the Supreme Court was such a vital office in, particularly-certainly not--excuse me-a policymaking office, but, rather, such a vital policymaking office in this state that it required the electorate to designate him. Let me point this out to you. So far, in this Convention, I have yet to—I have not failed to vote for the election of every state official. I personally believe in the sovereignty of the people. I believe in extending the franchise, but when I get down to the court system and I come to the clerk of the court, I say, "Why?" Who knows anything about the qualifications, much less the duties, of the clerk of the court in the electorate out over the state? I do not think that office is essential in the elective system. For that reason, I have gone along with his appointment by the court, because I believe it will achieve a better administrative system within the court system. That's why we differ from themajority on the method of selection of the clerk of the court. Now, we come to the rulemaking power. Much discussion went on in the committee, much testimony came to us from lawyers regarding this rulemaking power in the Supreme Court. It was significant to us, I'm sure to both majority and minority, that when this poll came back regarding r&making power, that many lawyers who felt there should be rulemaking power scratched out rulemaking power insofar as the rules of evidence were concerned. Both the majority and the minority agree that rulemaking power in the field of evidence ought to remain in the Legislature. We felt that there is such a gray line of distinction between substantive and procedural--or perhaps a better word is adjective law-that if that rule-if that field of law is to be changed, it ought to be done by the lawmaking body, the Legislature. So the minority report does not include the power in. the court to make rules of evidence. But the minority report does permit the Supreme Court to make rules of procedure. Here, too, however, we guarded that power and said, "as provided by law". Now, this morning, Mr. Holland was inquisitive about

that, I don't really mean inquisitive-critical. He doesn't know what the term "as provided by law" means. I do. I know-1 know and you know and everyone knows that that means "as provided by the Legislature". We have that provision in this Constitution in practically every article that's been written, and we all understand that that means-"as provided by law" means "as made by the Legislature". And so it is intended by the minority in the rulemaking power. In other words, the rulemaking power, as it is set forth in the minority, is circumscribed by legislative control. The Supreme Court, even in rules of procedure, has no power except as it is given to them by law-by the Legislature-and there's nothing new about that. Today, all our Rules of Civil Procedure that we operate under have been promulgated by the Supreme Court under legislation given to it where it was empowered by the Legislature. We change nothing. We leave it as is except we recognize that the court may do it if-and only if-the Legislature so provides. We come now to another issue. I want to get to the election of judges and the manner of selection of judges, but I'd rather take that up at the end. We come to another issue which Mr. Holland also discussed, and by the way, when I refer to Mr. Holland's discussion, bear this in mind: before we argued on this floor, we mutually agreed on what we thought were the major issues within the Judicial Article, so the fact that he discusses it and I discuss it is because we understand each other. We understand these to be the major issues, and we want you to understand them that way, and one of them is the disqualification of judges. Now, it is inherent in the judicial system of the right of disqualification at all levels. No cases tried before a jury without the right of each side to disqualify jurors, with or without cause-you're entitled in a civil case, each side, to four disqualifications of the lay people who sit on juries. This is as old as the judicial system in this country and older, too, because it comes from England. It's with us today. Lord help us if it's not with us tomorrow. Likewise, in the history of the State of Montana, we have always been able to disqualify a justice of the peace in the lower court. We exercise that right so far as the district judge is concerned--always have--and, I predict, always will. The only innovation suggested in the minority report in that regard is that that same right be carried upstairs to the Supreme Court. Why have this right of disqualification? Why do we use that in the judicial system? Why should it be there in any reform or improvement in our court system? Why? I'll tell you why. You, or anyone else, as a litigant are entitled--absolutely entitled-to be assured that you've got an impartial judge sitting up there in judgment of your rights. And if-if you have doubt or you have belief that there is partisanship in the mind of that judicial officer sitting in judgment of your rights, are you-could you ever be satisfied, especially if you lose, that you had the impartial trial the law guarantees? This is the essential reason for the right of disqualification. And I suggest to you-let me put it this way—I have been practicing law, that is, I have been admitted to practice for 30 years. I've been actually practicing something like 25, because of World War II. Now, in all the course of my history, and I think I try as many lawsuits in my area as any lawyer there; I believe I've as much experience in the Supreme Court as any lawyer in this room; and yet in all that time, I have never, ever, filed an affidavit of disqualification on any judge. I hope the day never comes when I feel I will have to. But if I do, I want the right. I want it not for myself, but for my client, who I represent, and for his cause and, most of all, for the cause ofjustice. Now, these are the reasons why that section is included in the minority report. I have a suggestion about it. If you'll look at it-1 can't remember, I think it's Section 9 or 10, relating to the disqualification of judges, and it says "the Legislature shall"-I'm inclined to think that that should be changed to the word "may", but no further, because if this principle of justice as I have just mentioned to you is to be carried out to its logic, then it ought to be included in all courts at all levels. Then, incidentally, this particular section was not of the making of the minority. Indeed, it was suggested to us and brought to us by a lawyer as a proposal, and we in the minority accepted it. I don't know why under the sun the majority didn't do it. Now, let's talk about the real tough, vital issue in the Judiciary, and that's the selection ofjudges. Today, as you all know, we elect our judges on a nonpartisan ballot. Now, I think I can talk about this issue with some authority, because my father was a district judge for 28 years. He was on the partisan and the nonpartisan ballot, and he stood competitive elections on a number of different occasions. I'm proud, as I'm sure he was, that he survived. But let me tell you, from a judge's viewpoint, that is not an easy ordeal. But, we're not really concerned especially about what the judge's viewpoint necessarily is on this. What we're really concerned about is, what are the people's concern in this method of the selection of judiciary? Now, there are about five sys-

terns recognized in the United States. There is the pure appointive system whereby the President or the Governor appoints, with the advice and consent of his Senate or his Legislature. That's employed, I think, in about nine states. There is the election of judges on a partisan ballot, and I can't recall the number of states, but it's approximately 12. There is the election ofjudges, as we do it in Montana, on a nonpartisan ballot; that's about 17. There is another appointive system used, and that is used, I think, in five states; and in those five, the judges are appointed not by the Governor hut by the Legislature. And the final one is the so-called merit system, and that's employed in about nine states. It is the most recent development in judicial history, and it has had, perhaps of all renovations and changes made, it has been to that system that states have most recently turned. The minority-let me say this-I'm sure that in the mind of every majority member, no other consideration other than the election of judges was even thought about. Theminority did. And we had before us what's called-and it's dead now-the Montana Plan. And under the Montana Plan it provided for this: it provided that there would be a committee or a commission, if you please, created in the Montana Plan by the Constitution, its composition to he determined by the Legislature, and this committee would select nominees from which the Governor must make an appointment, and the appointee would then become judge, subject only to acceptance or rejection at every general election at the end-and termination of each term ofoffice. This was the Montana Plan. It is taken, basically, from what is known as the "Missouri Plan of Selection". It is used in other states, hut in Montana, we, at least in the minority, did not feel that we should ever divorce the Judiciary from the electorate. We feel some kind of elective process is essential in the selection of the Judiciary, as well as the selection of other officers. And the majority said to us, "Well, if you can draw a blue-ribbon committee, a perfect committee, that will assure to us purity in the nomination of these judges, we'd even go along, I think, with the Montana Plan." We tried. We agree with majority that we, as a Constitutional Convention, or at least as a Judiciary Committee, can't draw that blue-ribbon, perfect, pure committee. We weren't struck with that divine providence that it takes to make humans perfect, and so we said to ourselves, "We don't dare lock into this Constitution the exact composition, method of operation, of this so-called nominating commission." Under these circumstances, we said, the better course of wisdom is to let it go to the Legislature. Now, we're not really passing the buck, and I'll tell you why. Because, if errors are made and it develops in the operation of this nominating commission that mistakes have been made and imperfections are developing, it can be corrected without destroying theentire system. And so we left it to the Legislature and in our comments-I think it's Section 7—we gave some observations to the Legislature as to how we thought it might conceivably he done. Number 1, we said, "It should he a widely geographically distributed committee. It must he nonpartisan in character. No member may hold public office, either public office under the government or a political office in a political party." The object here was to insure as nearly as possible that this committee will not he dominated by one party or the other. Likewise, we were concerned about this committee being dominated by some vested interest, so we enlarged it. Now, these are suggestions, and you'll find them in the comments, and we thought the best possible arrangement would be that they be geographically distributed in the 18 Judicial Districts of the state, not only for the purpose of getting--by dispersement we lose concentration-but also we felt that there should he some member from each Judicial District in the event of vacancy in the office of a judge in that district, somebody who knows the local situation personally. That's why we made that suggestion. Now, this isn't to he written into the Constitution, as I say, hut they are guidelines given to the Legislature should you adopt the minority plan. But we weren't satisfied, the minority wasn't, with just a nominating commission. We weren't satisfied that thereby we erased all politics or we erased all vested interests in the selection of judges, so we took it one step further. We seized and accepted the idea of the federal government that appointments of judges will he confirmed by the Senate. So we made one more hurdle, one more step in the gamut for this appointee to go through. Now he is-he's been selected by a nominating committee, the Governor has taken one of at least two or three names and he's nominated that man. He's come before the Senate and he's been confirmed, but he's not yet an elected judge. He's only an appointed judge. And so, in the minority report, we take it one more step and we say, "At the first primary election following your appointment, your name will go on the ballot", and any lawyer, in the case of a district judge, residing in that district can run against that appointee. And in the

case of the Supreme Court, at that first primary election, any lawyer living in the state can run against that appointee. And the one who gets the highest vote in the general election-now maybe the appointee loses out. If there were three or four in the primary, the appointeeis out. The ones—the two having the highest vote in the primary go into the general election, and there we get an elected judge. Now, at that point, the competitive, elective system in the minority plan stops. From that time forward, this elected judge goes onto the ballot for acceptance or rejection by the electorate at every election-at the end of every term of office, when there is an election. And if he is rejected, this process of nomination, confirmation, appointment, election is repeated. Now, we took a look at some statistics in Montana, and we find that since 1952 there have been 66 elections of district judges, of which-No, of 84, excuse me, 84 elections, of which, I think it is, 16 or 18 that have been contested. It leaves 66 elections of district judges since 1952 for which there has been no choice in the electorate whatsoever. It means this, that in 66 elections, the incumbent judge went onto that ballot's name with just a place for an "X", a place for a complimentary vote. It means this, that if that judge got one vote and there was no other write-in, one vote elected him. Compare that, if you please, with the minority plan on approval or rejection at a general election. Here the judge-the voter goes in and he says, "I" either "approve" or "I disapprove, I want him rejected." If more than 50 percent of the votes cast for the judgeship are rejection, that judge is through. But, more than that, if a large percentage or an ever-increasing percentage ofrejection votes come along, how does that impress the attitude of this judge? Will it make him, as Mr. Holland suggests under the federal system, a tyrant? Or will it give him recognition that there is a very powerful electorate outside his door every four years. Now, what about this system? What happens when the elector goes in behind those black curtains and makes up his mind about the activities of that judge during the last 4 or 6 years? How does he really react? I ask you that. This is the kind of a choice that the minority plan gives you. Now, let's talk about the selection of judges and what we really are trying to achieve here. It's like Dave Holland says, "We want good judges." We want, I say, the best judges. Let me ask you this. If you are sued or you sue, where do you go for counsel? Don't you go to the best lawyer you know of that you can find to represent you? And don't you anticipate that your opponent will do likewise? All right. If you have a choice of the best lawyer, as does your opponent, how do you get that choice? You know it [is] either because of a personal acquaintance with that lawyer or you know it by reputation or you know it by inquiry. So does your opponent. And so you come into the courtroom, and there you are, down in the pit, and up there on the bench is sitting this man in a black robe. Now, this man in that black robe is going to judge the work of your lawyer and your opponent's lawyer, and I would think you would want to have a judge capable of understanding and judging their work. He should be at least as learned in the law and as experienced as these two good lawyers down there in that pit. Otherwise, you are not going to get the kind of justice you expect when you get into that courtroom. In other words, you've got to select a judge who is, number 1, an impartial judge. You've got to select a judge who is learned, who is skilled, who knows his business. He doesn't have to be-and I don't think he really should be-the most popular lawyer in the community, but he's got to be a man who has the courage of his convictions. He's got to be a man who is free from the onslaught of prejudice. This is the kind of a judge that will insure the administration of justice. Now, let me ask you this. If you're talking about the Supreme Court, how much of the electorate, how many of the electorate, of the average voter even knows who's on that Supreme Court?-the court of last resort; as we say in the minority report, the court of final appellate jurisdiction. Who knows these men? And if they can name them, if they're that much advised about the legal system, who also knows their background, their experience? How can the average voter be informed on the selection, especially, of Supreme Court justices? Not under the present system. How would they campaign today? They go along, they go out into the state, they meet a few people. Sometimes they trail along with either the Democratic or the Republican caravan, and they have nothing they can or will say, so the public is utterly uninformed about them in any way. How can you compare that elective system under those circumstances, if you agree with me, with the minority approach? At least this you know-insofar as the Supreme Court justices are concerned, that one of the candidates for that position has been through a screening, a good, thorough screening, a screening, perhaps, by 18 men. He has had to be confirmed by the Senate of this body, and then he comes to an election. He is at least endorsed to that extent, and to that extent his qualifications for

that job are recognized, and the voters do have an opportunity to make an informed selection of judges. Now, this is the criterion of the minority report. I should like to go back now and take up one other detail, and that is with regard, again, to the rules of court. Mr. Holland indicated that the Supreme Court would have the power to make rules of practice-"Whatever that may mean", he says, Well, for his information, and I think every lawyer in this room agrees with me, the Supreme Court has been exercising the power to control the practice of law for, lo, these many years. No one becomes a lawyer in this state except that they are admitted to the practice by the Supreme Court. Moreover, as we all know-that is, of the lawyers know-that the Supreme Court has created what is known as the commission on practice, and that commission on practice-its duty is to look into the censure, to the discipline of lawyers. This relates to the practice of law. It is the application of rules in that regard that we have in mind and that all lawyers clearly understand when we talk about rules controlling the practice of law. It's that simple. It's been used, it's inherent, it's been with us for, lo, these many, many years. Now, I have not talked about the Judicial Commission or the Judicial Standards Commission. Neither did Mr. Holland. Mr. Holland's-both of us agree that there should be a Judicial Standard Commission. All the judges that appeared before us recommend it, and there is serious reason why we should have it; and that is, if you have a judge who is disqualified by reason of senility, maybe alcoholism, maybe repeated failure to perform his duty, today there is no method by which that judge can either be censured or removed or retired, short of impeachment. And I believe impeachment proceedings have only been used on two occasions in the history of the Constitution. It is really not a procedure that should be used, so far as Judiciary is concerned, except in cases where it really is applicable, and as I say, it's been used twice and perhaps not really applicable then. But the real hard-core problem and the real place for improvement in court-in justice andcourtreform-comes through the creation of a Judicial Standards Commission. I want to thank the Convention for permitting the Judiciary to more or less avoid the rules of presenting this in any other manner. I hope sincerely that what we have said clarifies the issues, clarifies the difference between the minority and majority report and that you are therefore better able to have an informed decision on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I feel, before I begin, that I should tell you something about what kind of practice I have so you'll have some way of knowing whether or not I have an ax to grind. I belong to a law firm of three partners. We have a retainer from the Security Trust and Savings Bank, the Security Savings and Loan, and the Great Western Sugar Company. Otherwise, we have the same kind of practice that almost all the smaller lawyers, at least, in Montana have. We do a small amount of defense workininsurancecases, but for the most part we do plaintiffs' work. I've spent the better part of 10 or 15 years working on Indian claims cases, and I've been fortunate in winning for four or five Indian tribes some $30 million. That's my background--my practice. I'm a little torn at this moment on whether or not to give the speech I gave at the cocktail party last night or the one I've been scratching down here today, and I think wisdom dictates that I give the one I gave today-No, that I scratched down today. I have no present ideas of running for any judicial office, although I have in the past, and if John Harrison is in the gallery somewhere-I can't see him for all those lights-I want to assure him that, at this moment, I don't have any ideas about running for the court. However, this morning I got a communique from one of the places in this house, saying that there are three or four people who were interested in my running for the court, and that's three or four more than were interested when I ran for it the last time-(Laughter)-so, if somebody can scare up one or two more, I'll consider it a ground swell. In the absence of John Harrison from the galleries, I don't think there's anyone in this hall who knows nearly so much as I do about running for a judicial office. And, so far as I'm concerned, the question here between these two, the minority and majority reports, is whether we elect judges or whether we select them on some other basis, and the minority calls its basis the merit plan. Now, let me be the first to say, from first-hand experience, that the system we are operating under now for the election of judges is a rather terrible and terrifying system. Let me give you an idea of what it's like. If you do as I did and you run for the Supreme Court with the announced intention of not accepting any money from lawyers, you're in serious trouble right from the beginning. Now, I did make that announcement and I did hold to it, although I'll admit that one place and another I found in the neighborhood of $1,100 that was given to me a-

nonymously. I can tell you honestly that I don't know where it came from, but I suspect very strongly it came from interested lawyers who respected my request that I not get money from lawyers. (Laughter) But this is your sole source of campaign funds when you're running for the Supreme Court. You either have lawyers who give it to you in case you'd win or you have lawyers who are afraid not to give it to you or you get it from lawyers who are genuinely interested in your philosophy of what a court ought to be. But, as I envision this terrifying prospect, if I were to be sitting on the court, I didn't trust myself not to give a little edge to the fellow who had given me $500 over the fellow who hadn't given me $500. Or I didn't trust myself to say that guy who gave me that $500 isn't going to get away with it; I will now hold for the other fellow. The thinking is this-it's basically bad-the American Bar Association recognizes it's bad, and it's-Canons of Judicial Ethics [of] the American Bar Association says something to the effect that we recognize that this is a bad system, but, nevertheless, it is the only source of money for the judges. However, they do frown on it. They are now working on a system for elected judges to be able to get money anonymously so they don't know where it comes from. But, on top of that, if you're running with-on short rations-you then must decide just how you're going to go about running for this job. Now, I don't know where Mr. Berg was or Mr. Kelleher was, who voices the same sentiment, when I was running for the court. I suspect that Mr. Kelleher was somewhere reading about the Baron deMontesquieu, and Mr. Berg, I don't know where he was-(Laughter) But, in any case-in any case, when I ran for the court, I did not have billboard number one, and that wasn't entirely because I couldn't afford it. I did not have one inch of space on the television nor on the radio. I set out to say what I thought was wrong with the court, and I started out-before I did that, I filed in the primary, and I got 25,000 votes. Those were either automatic votes or they're accidental votes or they're votes against the other fellow-1 don't know where they came from. And that wasn't many. So I set out to say what I thought was wrong with that court, what was wrong with its philosophy, and I picked 15 or 16 significant cases, and for those of you-probably the lawyers only—who read those ads, they will agree with me that they did represent the philosophy of the court that we have now, as presided over by my opponent. And I went from 25,000 votes to 80,000 votes. Now, I got beat, and I have no recriminations about having been defeated. I let the judges know what1 thought was wrong with them, and for an hour or two, I may have improved that court, from my standpoint. But, in any case, I did it, and I didn't run the way Mr. Kelleher and Mr. Berg indicated is the only way it can be done. I ran on an issue, and I didn't plaster my face all over the State of Montana, saying I am or am not better-looking than the other fellow. I tried to frame issues, and I ran on them, and I got next to them a little bit. They got nervous. Now, on top of that, to talk about our system now, a nonpolitical Supreme Court candidate is exactly like the illegitimate kid at the family picnic. The Democrats don't want them, the Republicans don't want them, he has nowhere to go. He has no base from which to operate. I went 400 miles one night to go to Bozeman, where there was a major dinner, and some of you delegates from that area may remember-400 miles, and the Chairman that night conveniently forgot to introduce me. This is what a Supreme Court candidate is faced with. As I say, it's not a good system as we have it, but I submit to you that in this State of Montana, where we have different problems from the problems they have in Missouri or any other state; where we have strong corporate influences; where, if I can elect a Governor and, through that office, nominate and appoint the district and the Supreme Court judges, I can run this state. I can run this state. I can own it. And Mr. Berg's system doesn't answer that problem. He's going to have an election right after you get that man in there, and next time he comes up, but after that election and he survives that election, either he or his opponent-and if he's not compatible with the powers-that-be in this state, his opponent is going to be-and he is going to win that election and he's going to be locked in there for the rest of his life, because, believe me, the Missouri Plan, the so-called review where a man runs against his record-in Missouri in some 30 years, they have yet-well, no, they have removed one judge. The people don't know any more about it than they did until I ran, when I told them what it was all about. That's the plain fact of the matter. Now, there's no way in this state that anybody can pick a committee that can pick a committee who, in turn, can pick judges that is free from some kind of influence. In our committee hearings, some youth from the law school came over and said, "Why don't you pick them the way this Constitutional Convention Commission was picked?" And, fortunately, I was loaded for that kid. We had-the House picked four

people, two from each party; the Senate picked four people, two from each party; the Governor picked *four, two* from each party; and the Supreme Court picked four, two from each party. Do you know what we wound up with? We wound up with four attorneys on that Constitutional Convention Commission who were attorneys for the Montana Power Company, and one of them became Chairman of the commission. Now, it is impossible in this state-and I didn't check their other qualifications, like railroads and the Anaconda Company and that sort of thing-but you cannot, and I challenged Mr. Berg many times and I challenged the rest of the minority, you cannot pick a committee in the State of Montana that will be totally free of that kind of influence. And I'm afraid of it, and if I have to choose between one or the other, I'm going to the electorate every time, because I had a chance-1 had a chance to be elected. With another few bucks, I might have made it. I'll always think so, but even if I didn't, those people in the other end of this building became aware that it's possible for somebody out here to be watching them, and I think they may be better people for it. But, at least, I had a chance. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I'm rising in support of the minority report. I must confess that when I read this report last night—the two, both majority and minority reports, I felt disappointed and frustrated, because I did not feel that they responded to the needs of justice in Montana, and this morning I have been making—writing speech after speech. I have torn them all up. I rise in support of the minority report as being the lesser of two evils. I may have more to say on this later. Mr. Cate may have taken me off the hook. I am very much disappointed in these two reports, after all the work that has gone into planning the Judicial system for Montana, but between the two, the minority report is the best. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Ladies and gentlemen, the Chair intends to let you to inquire of either Mr. Holland or Mr. Berg or to discuss it further. We do have some proposed amendments, but before we move into the amendment field, I want to take the tentative vote that these people have asked for. So I don't mind discussion, but I don't want you to make your amendments until we find what we're going to amend. So, is there other discussion involving either Mr. Berg or Mr. Holland or yourselves?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, could I have an opportunity to submit the third plan and have it participate in this discussion from here on out?

CHAIRMANGRAYBILL: Is that the article that you have proposed here?

DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Has this been placed around on the desks?

DELEGATE CATE: Yes, it has, Mr. Chairman.

CHAIRMAN GRAYBILL: Does anyone have any objection to Mr. Cate speaking briefly on his third plan? (No reponse) Very well. Mr. Cate, go ahead and explain your proposed Judiciary Article.

DELEGATE CATE: Thank you, Mr. Chairman. Mr. Chairman, fellow delegates. I have examined the majority plan and the minority plan, and I think that they are nice pieces of legislation, but that's exactly what they are. They are legislation. We were sent here to write a Constitution, not to legislate, and both of those plans are simply legislation. I blame it on two things-first of all, the fact that the committee used the old article as the source of their beginning; and, secondly, I blame it on the Montana Plan. The Montana Plan came on the scene, and everybody here thought, "Gee, we have to write a plan like that and put it in the Constitution." Well, that kind of a plan, and the minority and the majority plan, do not belong in the Constitution. I think that the greatest judicial system that the world has yet devised is the federal system, and I think that we ought to stop for a moment and think about what we're doing here and compare what we do with our federal Constitution. The Article on the Judiciary in the federal Constitution is one page-one single page-and, in fact, the important parts that actually deal with the jurisdiction, the essential parts, are one-half page-two paragraphs for the greatest judicial system that the world has ever devised. The People's Plan--we've heard of the Montana Plan and the Moses Plan and the Holland Plan and the Berg Plan-well, you have on your desk what I'll call the People's

Plan. It's three short paragraphs, taken almost word for word from the federal Constitution, and that's all that we need to do here in order to perform our duty as writers of the Constitution. This proposal would not change the present system in any way. It would, however, require the Legislature to consider the matter after the adoption of this Constitution and to adopt an appropriate judicial system for the State of Montana, so the work, and the hard work, that this committee has done would not be wasted. it could be utilized by the Legislature, which is the place that it should be utilized. Furthermore, this plan provides all the flexibility that will ever be necessary for the future. This People's Plan, if adopted, will remain the provision in our Constitution, I would venture, until the end of time, because it's all that will ever be needed. The Legislature can change the judicial system in any way that they see fit to meet the changing times. Furthermore, if you adopt the People's Plan, it's not going to wreck the Constitution. Now, one of the biggest issues that you heard Mr. Berg talking about and Mr. Holland talking about was eliminating the JPs. You'll recall we had a referendum to eliminate the JPs a few years back, and it was defeated about three to one, or two to one-in any event, it was defeated. And, the point I'm trying to make is that, if we legislate here, we're building up that opposition that you people have expressed such great concern about. You're going to defeat the Constitution if you legislate a Judicial Article. And I submit there's no need to do that. The People's Plan, of course, would deprive you of the great debates that are going to take place here in the next day or two. It would eliminate the bloodbath that's about to be made here on this floor, but I would submit this and I would ask this consideration: that we go ahead and we discuss the majority plan and the minority plan, but when the time comes, I will submit the People's Plan to you, and I would like to have you keep that in mind throughout all these debates, and when the time comes, to vote on not just the two-the majority and the minority plan-but the People's Plan as well. I think that is all I have to say, and I would ask that this plan, which is taken directly from the federal Constitution, be considered by this Convention. Thank you.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I feel that Mr. Cate's plan probably has a great deal of merit. I wouldn't want to give a final opinion on it at this time, but as a practicing attorney, I'm certainly going to give it serious consideration, and it is the type of plan, or at least the goal, I would try to reach. But we are now going to discuss the minority and the majority plan, and I would like to endorse the minority plan. Mr. Schiltz talked to you about elections. I am not going to get into the merits of each plan or whether we should elect or appoint our judges at this time. But, there is a great deal of merit to the minority, outside of the elective or appointive provisions of the plan, so I would ask you: don't vote against it because you're against appointing judges. We can always adopt this plan and then amend at the proper time. So, as an attorney-that's probably a death wish on Ben's plan-but I certainly endorse it.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I wanted to ask Mr. Berg a question.

CHAIRMAN GRAYBILL: Mr. Berg, will you yield?

DELEGATE BERG: I yield.

DELEGATE HARBAUGH: Mr. Schiltz raised a question, when he spoke, that concerned me as you were talking about your plan, and my question is: would judges, after the first election in which they are opposed, would it be possible under your plan for them ever again to be opposed, or would they only run against their record? Would opposition be absolutely precluded?

DELEGATE BERG: Under the plan as it is written in the minority, after the first election, opposition as a competitive race would be eliminated. The judge would run on his record for approval or rejection.

DELEGATE HARBAUGH: Thank you.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I'd like to make a couple of observations so that we can reach some kind of intelligent decision as to which of these plans to start with. As I view them, there are three principal differences between the majority and the minority. The majority puts complete emphasis on election of judges at all levels and contested at all times. The minority would have an appointive judge run contested only once and thereafter run uncontested on a Yes/No. I

submit that we ought to remember that we have just finished adopting an Executive Article. We didn't permit our **Governor** or **any** of the other executive officers to run unopposed. We've adopted a Legislative Article. I submit that we remember we didn't let our senators or our representatives run unopposed. Another principal difference is that the clerk of the Supreme Court in the majority is elective, which I strongly endorse; in the minority it is appointive. And the third, and I think the principal reason that I am speaking in behalf of the majority plan, and I share John Toole's concern about its length, and that is the justice of the peace level of courts. I share the same concern of my good friend, Catherine Pemberton, that the basic motivation behind the Montana Plan and all the rest of the plans are to upgrade this level of justice in Montana. I think it's the sincere wish of everyone here, of everyone in the State of Montana, to upgrade the level, so the question now in determining whether we want to start on the minority plan here or the majority is, what would be the best approach. The minority's approach is: be silent, don't say anything about it, leave it to the Legislature. To me, that would permit the Legislature to retain two JPs per township, to retain the fee system, and to, in effect, leave it the way it is. The majority proposal here at least eliminated the requirement that there be two per JP-kept at least one elected JP per county and leaves it to the Legislature to set some qualifications, some standards, and a monthly salary to eliminate the monstrous sharing of the fee. As I mentioned, I share John Toole's concern about the length, but I would submit that we ought to make the decision as to which we are going to proceed with, on whether we want basically an elective Judiciary or appointive, and the best method of upgrading our JP system. I submit that the best method for us to proceed would be to take the majority report and take a scalpel to it and cut it down to where it should be, rather than to take the well-drafted and brief minority report and add a transfusion to it. And I, too, will seriously keep under consideration Jerry's proposal. Thank you.

DELEGATE ARONOW: Mr. Chairman, in the discussion there was no mention made of Section 19 in the majority report, which is the Commission for Judicial Standards. This is something that's new, that is much more workable than the provision in the minority report. This commission was created, basically, from the New Mexico Constitution, which was adopted-or, this provision of the New Mexico Constitution was adopted by the people of that state at an election in 1967. The composition of the commission was changed somewhat to meet what we thought were the needs of Montana. This commission will be composed of three judges, selected by the justices and judges of the Supreme and District Court of the State of Montana, and not more than one of the commissioners of the three judicial ones should be a member of the Supreme Court-therefore the Supreme Court would not have an undue influence in this matter-and then there are lay people, two lay people, who are citizens of the State of Montana, appointed by the Governor, who are not members of any of the branches of the government of the State of Montana. And these five individuals shall have the power in this commission to examine complaints against judges, and in the event a judge is accused of neglect of duty or a loss of mentality because of illness, excessive drinking, or drug addiction or illness, they may recommend to that judge that he voluntarily retire, or upon investigation, if they find the charges are true, they can call it to the attention of the Supreme Court, who will then look into it and, if it's true, hold a hearing-or if it looks like there's probable cause, I should say, hold a hearing on the matter publicly and have the right to remove. This is a method short of impeachment in order to take care of situations where a judge, because of age, may become not as mentally alert as he should be or because of protracted illness or injuries that may be of a permanent nature, he is incapacitated from performing his work. This is a real important provision. It's brand-new in Montana. We examined in our effort not only the New Mexico Constitution, but we looked into the provisions of the Alaska, Puerto Rico, Hawaii, California, Colorado, Idaho, Virginia and Kansas, and the New Mexico one seemed, with the changes, to fit Montana's needs, better than any of the rest of them. And I think you ought to look at this. This is applying only to judges, and the only way presently to remove a judge is through impeachment. We have tried to provide in the majority article for all of the things that we knew. Now, when the complaint has been made by Mr. Berg on the length of the article in relation to the jurisdiction of the District Courts, we, as Mr. Holland mentioned, we looked at some shortcut language. There are three pages in the Revised Codes of Montana of 1947—there's a little over three pages of headnotes of cases decided by the Supreme Court of Montana interpreting the provisions as to the jurisdiction and authority of

the District Courts, and wefeltthatthose decisions should not be thrown out the window, that they are encompassed, that they do show the way, and when we adopt the same language in the present Constitution, we also adopt all of the interpretations by the court of this language. When we have new language and change it, then we don't know what we may get in the way of interpretation. There is an uncertainty in the affairs of men and women-you are never sure. I suppose you think you may have a good lawsuit against somebody. With this new language, if the Supreme Court could, without ever deciding the merits of your lawsuit, could say that you brought your lawsuit in the wrong court or that the District Court does not have jurisdiction to hear the case or hear the matter. Those are real important matters, in my mind. Now, as to the matter that Mr. Berg brought up as to the jurisdiction of the District Court and the Justice Court, we also have hopes that the Legislature will implement the Justice Court, and in our notes and comments, we have laid down some guidelines, hopefully that we may have a system of justice courts that will, in effect, be small claims courts. And in the more populated areas, they will be staffed or the justice of the peace will be a qualified lawyer. We did have to start the jurisdiction of the District Court at $300. This is a technical matter, because the present statutes and the-only give the Justice Court jurisdiction up to $300. If we started the district courts out with 1,000 or $3,000, which we discussed in the committee, then there would be a hiatus between the-and it might be a year-if this Constitution is adopted and goes into effect, it may be a year before the Legislature meets and gets around to raising the jurisdiction of the Justice Court, and you would have a hiatus of a few hundred dollars or a thousand dollars, where you'd have no court in which to bring your action. So we had to do this in order to not leave that vacant spot. I see it's about 3 o'clock, and it's about the recess time, and I have a great deal more that I would like to say, but I am going-but I think it's a bad thing to talk after recess time. Thank you.

CHAIRMAN GRAYBILL: The Chair would like to decide before recess, if possible, which of these plans we're going to follow. Now, I would like a show of hands of all the people that still expect to talk on whether we should go one way or the other on this first motion. One, two, three, four, five-well, all right, in that case we won't attempt it. Now, what we're going to do is, when we are all through talking, we're going to have the Chairman of the committee make a motion to consider the majority plan, and then you can either adopt or not adopt that, and if you vote against that, I will presume that you want to work on the minority plan. We will not do that, however, until you're through debating, but I do hope you will keep your debate cogent to the issue of which plan and not to the specifics of the plan. I think we've had a lot of discussion now about the specifics, and let's not discuss the specifics too detailed now, because we'll be discussing that after we get on one plan or the other.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I have the floor now, so I'll say a couple of words first. (Laughter) That was kind of tricky on my part, but I wanted to express my pleasure in having had the opportunity to serve on the Judiciary Committee. I picked that committee for a specific reason, because if you don't trust them particularly, get there where you can watch them, so that's what I did. (Laughter) And, in watching them, I sat for many days and for many hours listening to what you have listened to today, and all very interesting, but my mind finally got kind of confused. And, so, I finally decided that somewhere along the line I'd have to sort out the things that were going on, so I took the first thing first. And it's this simple: in either plan you can amend or adopt, change or alter it as you see fit, so we can pretty near do anything with either plan. But I picked the majority plan for one reason, and that was because we *elect.* If you pick the minority plan, in a left-hand way you get to do it, but to me it's an appointive plan. It's that simple. I move we recess until 3:15.

CHAIRMAN GRAYBILL: All those in favor of recessing, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

(Committee in recess until 3:25 p.m.1

CHAIRMAN GRAYBILL: The Committee will be in order. Please close the rear doors, Mr. Monroe, or someone. Very well. Is there further discussion on the issue of the majority or the minority report?

Mrs. Speer.

DELEGATE SPEER: I would say that I reject the majority report. I think the first criteria which we are to apply to the provisions of the new Constitution was whether it was flexible, and it seems to me that this majority plan for the Judiciary completely lacks flexibility. In fact, it freezes into the Constitution the present system. I think there is no reason, because we made, perhaps, a mistake in retaining all of the elected officials in the Executive branch, that we should repeat the same error in this.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE REICHERT: Mr. Berg, if we vote in support of the minority proposal, would it be possible to have the judges run for election instead of running against their record?

DELEGATE BERG: Well, I would anticipate amendments with regard to the selection of judges if the minority report, as it is written, is not accepted on the selection of judges. We do have, in the minority, an alternate plan which we will present if the present plan-1 think it's Section 7-is unacceptable to the Convention.

DELEGATE REICHERT: Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise in support of the minority plan for many reasons. One of them is that I am a member of the minority-(Laughter)

CHAIRMAN GRAYBILL: Always, Mrs. Bowman?

DELEGATE BOWMAN: Always, Mr. Chairman. Thus far. (Laughter) However, at this time, there are two compelling reasons why I hope that the body will decide to discuss the minority report. I agree with Miss Speer that the majority report is totally inflexible. Concerning the justices of the peace, by putting the justices of the peace into the Constitution, as the minority report has done, is going to make any reform which is done in that area completely piecemeal and complicated, whereas, reform, which we all agree is necessary, will be much easier if we go with the minority plan. I feel that in writing a constitution, we are doing our job poorly if we go into detail in setting up a court system. I feel it is unnecessary, because the Legislature can create courts when they are needed and if they are needed in special areas. I think that the majority makes this-if not impossible, it certainly makes it difficult. I feel that the majority has shown a decided lack ofimagination in writing their report. I must take issue with my friend, Mr. Schiltz. I feel that, under our plan he can, indeed, run for the Supreme Court if that is his desire. I feel that in the majority plan, history has proven that we do not elect judges-they are appointed-and we, more or less like sheep, go and reappoint them. Therefore I urge you to accept the minority proposal.

CHAIRMAN GRAYBILL: Now that everyone is here, the Chair would like to once again clarify the issue. The issue is whether or not to proceed down the majority or the minority report. Some mentioned to me at the recess that they thought that they would not then have the language of the opposite report available. That is not the case. You may amend as freely as you want to, but the point is that we are not going to proceed down both of them as we did before, and we may want, in fact, to proceed down the minority report first, So it's not going to forestall any debate, any discussion. So the issue is really only whether to start with the majority or the minority report and proceed down it. That's what the committee has asked.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I think they've been-that the issue of which of the two reports to go down has been fully discussed, unless somebody else had something on the matter. This is not which plan you're adopting, but just which plan you want to have presented to you for your amendment and your vote, and at this time, I will move the Committee of the Whole start to consider the majority report of the Judicial Article section by section, and I'll ask for a roll call vote on that measure.

CHAIRMAN GRAYBILL: Very well. Mr. Holland's motion is that we consider the majority report. I would like to say that if you sustain that motion, we'll consider the majority report. If you defeat that motion, we'll go to Mr. Berg and the minority report.

Mr. Berg.

DELEGATE BERG: Mr. Chairman, as a substitute motion, I move that we consider the minority report. (Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Berg has made a substitute motion that we consider the minority report, and I would also make that a roll call.

Mr. Swanberg, for what purpose do you rise?

DELEGATE SWANBERG: I merely wanted to inquire, Mr. President, whether, as we consider either of the reports, we'll be able to switch back and forth?

CHAIRMAN GRAYBILL: I don't know if you'd call it switching back and forth, but all of the language is available, and anything may be amended as we go through. So, in a sense, the answer is yes.

Mr. Ward.

DELEGATE WARD: Mr. Chairman, I have risen about three times, and I was cut off before recess. I would like to say a few words, if possible.

CHAIRMAN GRAYBILL: Very well.

DELEGATE WARD: Muchdiscussion has come about on the Judicial Article, as such. I am a doctor. I have performed surgery and transfusions both. I have also had surgery and had transfusions. I'd much rather give a transfusion than do surgery, either one. Secondly, there's been a lot of talk about elective process-election of officials. As I see it, at the present, if we adopt the majority report, we will not give our voters any selection. This is what I call a "railroad".

CHAIRMAN GRAYBILL: Very well. The issue is on the substitute motion of Mr. Berg that we begin and proceed down the minority report.

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, before recess, I understood that there were some seven or eight who still had comments to make relative to this, and, quite frankly, I'd like to hear those comments before I make up my mind.

CHAIRMAN GRAYBILL: I haven't cut anyone off yet, but if they don't stand up and take the floor, I'm going to put the vote.

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I guess what I have to say has a bearing on which one of these to start on. I wouldn't take the time of the Convention to do this except that this is the field to which I have devoted my life, and I feel more at home in discussing the problems of the legal profession than any other. There is clear agreement on the part of all that we do need good judges. It would be obvious that they have to come from the practicing bar in the area in--where they are to serve. The question is how to recruit them. They cannot be recruited by the attractions of high pay, because the judges don't receive high pay-nor by great prestige, because the judges do not have that-not by exciting work, because the work of the judge is anything but exciting. I think the real attraction for it to a lawyer is that it fills his sense of willingness to render a good public service. Now, what is involved in the decision of a lawyer who is considering whether to go on the bench? This is the thing that I would like all of the lay people here to consider quite closely, becauseit is one of the root problems in getting any man to be willing to get on the bench. I have known of this problem for many years in our community. In the first place, anyone, any lawyer in private practice, is required to give up all of his private practice and his connections of every kind. He must sever himself totally from the private practice of law, which has provided the support for him and his family. In the four years that he serves on the bench, of course, all of his clients go to other lawyers, make other connections, and they aren't instantly available to him should he return to active practice four years later. He must face, during the years he is on the bench, the fact that he must undergo the type of ordeal that Mr. Schiltz very feelingly described, and I have the utmost sympathy for anyone who has to try to conduct a nonpartisan campaign with such funds as he can save on his judicial salary. If he loses at the end of four years, you want to remember that he then begins at absolute rock bottom. He has no clients, no office, no library, no nothing. And if he's a man with a family and commitments for a mortgage on his home and other obligations, this is a pretty frightening thing to face. So the fact of life is-the simple, brute fact of life-that there are not very many lawyers who have any kind of a stable, private practice and family obligations depending upon them who are willing to give up all those things, to risk all of this for the purpose of going on the bench. And I suggest to you that this is primarily the reason why 66 out of 84, if those be the figures, of the contests for judge were not contested. It

simply has not been a very attractive position to get into. Now, the major issue seems to be that you dare not risk the appointment plan, and I just want to say that if these figures are right, then in the last 20 years in Montana when we have had the open election plan readily available to us, only 18 out of 84 election opportunities were even sought by the voters. And even though the appointment plan we have involves no screening and is utterly and thoroughly political in its function, it seems not to have worked too badly, because there has not been any feeling on the part of the public that there should be any contest most of the time with whoever has been the incumbent judge. This would teach me that if you have a plan that does involve some careful screening, does involve confirmation by the Senate, and does involve a more secure future in rendering the public service on the bench, then it would help us to obtain a better quality of judicial candidate to begin with, and by this I mean, primarily, someone in the younger phases of his life who is willing to dedicate himself to a career of public service on the bench. And I think we all would find that those who have served on the bench for a substantial period of time learned to be, and do become, the careful, impartial judicial officers that it-is the real target of all of us. And for that reason, I feel, like Mr. Toole, that the minority plan offers us greater advantages in this direction than does the majority plan.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, the question before us is whether we are going to consider the minority plan or the majority plan which has been offered to us. Thus far in the Convention, it has been the practice of this body to base our considerations upon what are essentially restatements of existing articles in the Constitution. The majority plan is essentially a restatement of existing articles in the present Constitution. The minority plan is a new article which has been proposed by a minority of this committee. I suggest to you that if we now, at this stage of the Convention, abandon the mode of operation which we have adopted thus far, we are entering onto dangerous ground. The Convention, up to this point, has taken the position that it is the function of this body to proceed with caution and to make amendments to the existing Constitution and to improve it where we may, so that when we submit this finally to the voters, they will be faced with a document which is relatively known to them and which has little change but some improvement. If we now strike off onto new territory, after having already basically adopted the form of the two branches of government which we have considered, I suggest to you that we may create a Judiciary which is entirely out of proportion to the Executive and to the Legislative branches which we have considered. If we are now, at this point, going to change and instead of restating or amending the existing Constitution, strike off and write a new Constitution, which in my opinion is what we should have done, then there is no question that we should, at this point, adopt, by voice vote, Mr. Cate's proposal and proceed to the next section.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, when a professor of economics arises to speak on a subject like this, I suppose the tendency is to dismiss him as simply a temporary refugee from the ivory tower. So I will begin by qualifying myself. Over the past eight years or so, I have had considerable experience with the courts of Montana and of surrounding states. I have testified as an expert witness in 12 of the 18 judicial districts of Montana. I have worked with lawyers in all of them. I have also testified in the courts of Alaska, Washington, Utah, Wyoming, South and North Dakota. So, I've had, I think, whatmightbecalled a "worm's eye view" of the operation of the courts, and I suggest to this body that this question of the selection of judges is a very serious matter, one which we should approach with a good deal of conservatism and a good deal of thought. Now, I do not agree with everything that Mr. Holland said. I would like to enter what might be called a concurring opinion. I concur with the results. I think we should adopt, with certain changes, perhaps, the majority plan. I came here prepared, I must say, to vote for the Montana Plan. I listened with-in great detail, great length, the presentation made by the citizens' committee in Missoula, and I said, if certain obvious defects in that plan could be patched up, if they could be fixed by the Judiciary Committee of this Convention, then I would go with them. But what Mr. Berg has said here today on the floor is, essentially, that they found it impossible to fix up that plan and therefore they intend to pass it on to the Legislature, Now, I don't think the Legislature is going to be able to patch it up if they couldn't patch it up. Now, in my view, the Montana Plan has not been made viable by the minority and their plan is no better—

not as good, as a matter of fact-because of the minority's acceptance of two false principles: one, the Constitution must be as brief and as succinct as possible; and, secondly, that everything possible should be left to the Legislature. We should not legislate in the Constitution. These two principles have been used before, will be used again in this Convention, I think, to defeat the interests of the people. I believe that the majority proposal is a substantial improvement on the past and the present Constitution and contains the seeds of possible future improvement, and I therefore favor the majority proposal.

CHAIRMAN GRAYBILL: Mr. Heliker-I mean, Mr. Kelleher.

DELEGATE KELLEHER: I never thought, Mr. Chairman, that I would ever disagree with my very learned brother, George Heliker. I only want to speak once today, and I have a motion for an amendment that has been placed on all the desks, and I would like to know whether it would be in order to do it-to submit this amendment to the minority report at this time, andifnot, I'll just sit down.

CHAIRMAN GRAYBILL: It isn't in order at this time as far as I can see, but I can'treally tell because this is one desk thatit didn'tgetplaced on.

DELEGATE KELLEHER: Would a page come up here, please, and I'll give them my copy.

CHAIRMAN GRAYBILL: Well, by nature, it's an amendment to Section 7.

DELEGATE KELLEHER: Of the minority report, yes, sir. It resurrects the Montana Plan in part.

CHAIRMAN GRAYBILL: All right, well-No, it's not in order.

DELEGATE KELLEHER: Thank you.

CHAIRMAN GRAYBILL: That does count, Mr. Kelleher, as once. (Laughter) I'm sure the body will sustain me in holding you to your word, Mr. Kelleher. (Laughter)

All right. I see no one else up for debate, and the issue is the substitute motion of Mr. Berg that we begin consideration with the minority report. Now, once again, the purpose of this is that the minority and the majority reports are quite different in direction and scope. This is not like the Legislative Article, where they were fairly similar, and since they're quite different, both the majority and the minority sides of the Judiciary Committee want to consider one or the other. That does not mean that you cannot amend anything they put in, and if you want to amend it out of the other report, that's fine; I guess you'll just have to make sense out of what you're doing. So, all we're doing is deciding where to start. And if you consider-if you sustain Mr. Berg's motion, why, he will be the leader of the discussion. And if you sustain Mr. Holland's motion or if you vote against Mr. Berg's motion, Mr. Holland will be the leader, but you have free rein to amend. Now, the Chair does feel that you've had-and the Chair would like to express its judgment that this body has had the benefit of a great deal of legal talent this morning, and it seems to me that the Chair would be perfectly in order to rule very tightly on the fact that you're on the subject from now on. And we don't need to discuss broad generalities, but only the language. So, from now on, when we get going, we'll try and stay right on the point. Now, so many as are in favor of Mr. Berg's substitute motion that we begin proceeding on the Judiciary Article by using the minority report, please use the voting machines and vote Aye; so many as are opposed, vote No. A No vote is for the majority report. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Will you tally the vote.

Aasheim , Nay
Anderson, J. Nay
Anderson, O.. Nay
Arbanas ..... Aye
Amess ..... Nay
Aronow N a y
Artz ..... N a y
Ask ..... Absent
Babcock ..... Absent
Barnard ..... Absent
Bates ..... Aye
Belcher ..... Absent
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend . . Aye
Bowman ..... Aye
Brazier Nay

Brown.. ..Aye
Bugbee ..Aye
Burkhardt Aye
Cain ..Aye
Campbell ..Aye
Cate ..Aye
Champoux ..Absent
Choate ..Aye
Conover Aye
Cross.. ..Aye
Dahood Nay
Davis Nay
Delaney Nay
Driscoll Nay
Drum Excused
Eck ..Aye
Erdmann Nay
Eskildsen Nay
Etchart Nay
Felt ..Absent
Foster ..Aye
Furlong, Aye
Garlington ..Aye
Gysler ..Aye
Habedank ..Absent
Hanson, R.S. Nay
Hanson, R. Nay
Harbaugh Aye
Harlow ..Aye
Harper ..Aye
Harrington Nay
Heliker Nay
Holland. Nay
Jacobsen .Absent
James ..Absent
Johnson ..Aye
Joyce Nay
Kamhoot Nay
Kelleher Aye
Leuthold ..Absent
Loendorf ..Aye
Lorello ..Absent
Mahoney Nay
Mansfield Aye
Martin ..Aye
McCarvel Nay
McDonough .Aye
McKeon Nay
McNeil Nay
Melvin ..Aye
Monroe.. ..Aye
Murray Nay
Noble Nay
Nutting Nay
Payne ..Aye
Pemberton ..Aye
Rebal Nay
Reichert ..Aye
Robinson Aye
Roeder ..Aye
Rollins, Aye
Romney Nay
Rygg ..Aye
Scanlin Excused
Schiltz Nay
Siderius Nay
Simon Aye
Skari ..Aye
Sparks ..Aye
Speer ..Aye
Studer ..Aye
Sullivan Nay
Swanberg Aye
Toole .Aye
Van Buskirk Aye
Vermillion Nay
Wagner Nay
Ward ..Aye
Warden ..Aye
Wilson Absent
Woodmansey Nay
Mr. Chairman Nay

CLERK SMITH: Mr. President, 49 voting Aye, 37 voting No.

CHAIRMAN GRAYBILL: 49 having voted Aye, 37 having voted No, Mr. Berg's substitute motion prevails, and we will proceed with the minority proposal, the text of which is on page 40 in the booklets and the comments at which start on page 46 in the booklets. Will the clerk please read Section 1 of the Judiciary minority proposal. Page 40. Will you please read Section 1, Mr. Clerk, on page 40.

CLERK SMITH: "Section 1, Judicial power. The judicial power of the state is vested in a Supreme Court and District Courts and such other courts as may be provided by law."

CHAIRMAN GRAYBILL: Very well. Now, for what purpose do you arise, Mr. Habedank?

DELEGATE HABEDANK: Mr. President, I wish to explain my failure to vote. I am not wishy-washy. I am willing to take a stand. But Mr. Tom Ask, who is in favor of the majority proposal, had to leave, and he requested that I abstain

because pairing was not allowed, and I therefore did.

CHAIRMAN GRAYBILL: Very well. Your explanation will show on the journal.

Mr. Berg.

DELEGATE BERG: I move the adoption of Section 1 of the minority report. The minority report on Section 1 is as brief, is as intelligible as the Section 1 of the proposed article of Mr. Cate. In fact, it's nearly identical, except this-that it vest judicial power not only in the Supreme Court but also in the District Court. It recognizes, then, two constitutional courts, being the Supreme Court, which as you will note is a court of final appellate jurisdiction, and in the District Court, which is the principal, single trial court. Now, I should like to observe this, and I would like you to observe this in considering Section 1. It is nearly identical with Section 1 of the majority report, with the exception, of course, that it does not mention the justices of the peace as a constitutional court. It is the belief of the minority that justices of the peace should be left as a legislative court so that they are a flexible court, so that over the years they may be adjusted for the complexities of rural and urban situations. In other words, in rural areas, justices of the peace will have to be an entirely different court than they may eventually be within the cities or the urban areas, and for this reason, if we lock them in the Constitution and we set their jurisdiction in the Constitution, we render them that much more inflexible. That was the reason that the minority omitted them. You will note that, in the minority report, only two courts are considered constitutional courts, which will not be, as far as jurisdiction or power is concerned, interfered with by the Legislature or the Executive, and this, the minority believes, is consistent with the separation of powers. In other words, the judicial power will be vested by the Constitution in the Judiciary and in the Supreme Court arid in the District Court. The additional judicial power will, so far as the justice courts are concerned, be left for the Legislature to delegate. But only to that extent does the Legislature delegate powers, and not to either the Supreme Court or the District Court.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Berg's motion that Section 1 of the Judiciary Article, minority report, page 40, be adopted. The proposal is: "The judicial power of the state is vested in a Supreme Court and District Courts and such other courts as may be provided by law." So many as shall be in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, Mr. Berg, since you didn't move that that be reported, I wonder if you'd put it over again?

DELEGATE BERG: I now move that his committee, after having had consideration of Section 1 of the minority report, when it does rise and report, adopt Section 1 of the minority report.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Will the clerk read Section 2.

CLERK SMITH: "Section 2, Supreme Court powers. The Supreme Court shall have final appellate jurisdiction and general supervisory and administrative control over all courts. The Supreme Court may make rules for the practice of law and judicial administration in all courts. The Supreme Court shall have such power to make rules of procedure as may be provided by law. The Supreme Court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of jurisdiction, including the writ of habeas corpus." Section 2, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I move that when this committee does arise and report that it adopt, after having under consideration Section 2 of the minority report, that it adopt the same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Section 2 deals with the appellate power of the Supreme Court. It defines the appellate court power as final appellate power. We used the word "final appellate power" with specific reference to the Supreme Court and with the idea that, by vesting final

power in the Supreme Court, it not only indicated a place where litigation would finally come to rest, but that it would permit the creation in the future, if it became necessary, of intermediate appellate courts, and the word "final" would be so construed. With regard to therulemakingpowerof the Supreme Court, we have categorized or classified that into two parts: that which relates to. the internal function of the judicial system and, as I indicated in my earlier remarks, relates to the rules of practice, the conduct of lawyers before the court, their admission to practice and their control of practice. It would-insofar as administration of all courts are concerned, it will permit the centralized administration of the judicial system and vest it in the highest court, the Supreme Court. As I indicated to you, we are one of 13 states that do not have it; we are now one of three considering whether we should have it. Insofar as the rules of procedure are concerned, we have very carefully circumscribed and limited the power of the Supreme Court to make rules. Indeed, in effect, we have left the rulemaking power to the Legislature but, in effect, permitted the Legislature, as it has in the past, to give to the Supreme Court rulemaking power, but we have limited to the rules of procedure because of our fear of what might occur if we gave them rulemaking power in the field of evidence. Again, the last paragraph relates to the original jurisdiction of the court to issue writs. Now, we have said that they may issue and hear and determine all writs appropriate to the exercise of its jurisdiction. Note that we have specifically included the writ of habeas corpus. About all we've done insofar as the old Constitution is concerned is this, that we have eliminated the enumeration of the various writs of certiorari, mandamus, prohibition, and so forth. We do not think that's necessary, because we believe that all writs necessary to the exercise of its jurisdiction is adequate. Indeed, as we examine constitutions of other states, that is almost consistently the language used for appellate jurisdiction insofar as original or remedial writs are concerned. However, with regard to the writ of habeas corpus, because we do think that that is a writ that is so essential to the preservation of the liberty of an individual, that it ought to be emphasized by including-and specified within the power of the Supreme Court to issue such a writ. We, however, did not think it necessary to legislate on that and provide for the procedure of the issuance of the writ, as does the old Constitution. We therefore eliminated the procedural provisions, but we kept the writ intact. We felt that, in spite of the fact that within the Bill of Rights it is said that the writ of habeas corpus may not be suspended except in case of invasion, that, nevertheless, it ought to be reemphasized in the Judicial Article that it ought to be a writ that not only the District Court but also the Supreme Court can on occasions issue if necessary.

CHAIRMAN GRAYBILL: Mr. Berg, the Chair does not wish to debate, but I would like to inquire of you about this section, and without objection, I'd like to ask you a question. Will you yield?

DELEGATE BERG: I yield.

CHAIRMAN GRAYBILL: In line 11, page 40, you use the word "final", which I heard you explain. I have checked the Judicial Article of the present Constitution, and it does not use the word "final"; and I have checked the United States Constitution, Article III, and it does not use the word "final"; and I am aware of what you say about inferior court-or about intermediate courts. My question is this: Are we likely to confuse people that we have somehow done away with the right to appeal from the Montana Supreme Court to the U.S. Supreme Court cases which involve federal questions?

DELEGATE BERG: Oh, I would not think so, because that would be controlled entirely by the United States Constitution, which I think at all points would be superior.

CHAIRMAN GRAYBILL: May I ask you another question?

DELEGATE BERG: Yes, I yield.

CHAIRMAN GRAYBILL: Granting that it wouldn't do away with the federal jurisdiction, which I am sure you and I would agree to, do you believe that it's not misleading to the public to say that it's final?

DELEGATE BERG: No. In fact, I think it better specifies insofar as jurisdiction within the State of Montana is concerned that this is a court of last resort.

CHAIRMAN GRAYBILL: Very well. Mr. Cate.

DELEGATE CATE: Mr. Chairman, I'm on page 47, which is the comments on the minority proposal, and I would move to strike, from Section

2 of the minority proposal, lines 23, 24, 25 and 26, which provide that the Supreme Court may make rules for the practice of law and judicial administration in all courts and that the Supreme Court shall have the power to make rules of procedure as may be provided by law. The Supreme Court at this time does presently have this power, but it is legislative power. It's subject to change by the Legislature, and what these two paragraphs mean is that whoever controls the Supreme Court of Montana controls the entirelegal profession of the State of Montana, and I think that's a dangerous thing to do. Lawyers have traditionally fought for independence and have maintained independence. Over the years, there has been a movement in the State of Montana to, what they call, "integrate the bar". In other words, make all lawyers members of the bar. By mandate, you would have to be a member of the bar association in order to practice law in Montana, and it's a method of controlling the lawyer who doesn't agree with the establishment-this type of thing. And it's a dangerous thing to do. And I think it's unnecessary to place this type of power in our court without having the right of the Legislature to regulate it, and I make that amendment for that purpose. Thank you very much.

CHAIRMAN GRAYBILL: Very well. Mr. Cate's amendment deletes lines 23 to 26 on page 47, or it deletes lines 13 through 16 on page 40, and has the effect of taking the rulemaking power out of Section 2. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, would you give consideration to the fact of whether we should see if the minority would mind subdividing these different matters as we go along so we could treat them-1 think it may be even more important as we get further down. We're covering an awful lot of ground in each sentence here, which really are different subject matters. It just—

CHAIRMAN GRAYBILL: Well, Mr. Davis—

DELEGATE DAVIS: Would you consider that, Mr. Berg?

CHAIRMAN GRAYBILL: Mr. Davis, the rules say "section by section". Now the way, it seems to me, to get at your problem is-Mr. Cate has taken two sentences out; if you want only one, make a substitute motion to delete only one and I'll recognize it.

DELEGATE DAVIS: Oh, I mean if they will subsectionize the first paragraph-this deals with different subject matter as a subsection, is all. I don't-I'm not moving that. I just wonder if you think it would be advisable.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Insofar as I'm concerned, as a matter of style, if you want to call it subsection 1, subsection 2, and subsection 3, I have no objection. And I really believe that when and if this gets to Style, some of those form changes will be made, but I do believe that each sentence contained within the paragraph relate to the general subject matter as relating to the power of the Supreme Court.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't have any strong hope that this expression of mine is going to receive a favorable ear. However, I have the feeling that we're getting at this a little bit faster than I had hoped we would. Mr. Holland has been off the floor for the last few minutes, and he's in effect the floor leader for the majority, attempting to draft an amendment that's quite aways down the road. In the meantime, I think there are some rather important things that are going by that we aren't-that are rathertechnical, and I think we should have until our next session on Tuesday to start on the rest of this debate.

CHAIRMAN GRAYBILL: The Chair is going to rule you out of order at this time. We're considering an amendment to delete lines 23 to26.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move as a substitute motion that Section 2, Supreme Court powers, be amended after the word "powers", in line 20, by inserting the word "I"-or maybe we can have "(1)". And I insert-1 further move that in line 23, that we insert before the word "the" "(2)". And I further move that on line 25 we insert the "(3)". And on line 27 that we insert the word-or, insert the number (4) before the first word "the".

CHAIRMAN GRAYBILL: Very well. Your substitute amendment is accepted, and the issue is now on the substitute amendment to number the paragraphs of Section 2. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, say NO.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Very well, since that was a substitute motion, Mr. Cate, that wipes off your amendment and we are now discussing Section 2, sub. 1: "The Supreme Court shall have final appellate jurisdiction and general supervision and administrative control over all courts."

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman,- I'm using line 40-m page 40, which happens to be my habit, I guess, and on line 11 of page 40 and line 12, I move that Section 2 of the Judicial Article be amended by striking the words "and general supervisory".

CHAIRMAN GRAYBILL: Mr. Schiltz. your motion is well taken and you may discuss it. You have stricken the words "and general supervisory"-in your amendment.

DELEGATE SCHILTZ: Yes. May I speak to it?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: This is an old hangover from the 1889 Constitution, and it looks like just general words, but as a result of those three magic words, the Supreme Court in 1892, in a case that might have been the Boston-Montana Copper Company case-1 think that's it—invented a writ, an extraordinary writ, called the writ of supervisory control, whereby they controlled a judge and his court in the city of Butte—this was part of the War of the Copper Kings. Since then, the writ of supervisory control has been used very sparingly, and every time the Supreme Court of Montana used it, up until about the last 20 years, it said, "This writ must be used very carefully and only under unusual circumstances." In the last 16 or 17 years, this writ has been used with great frequency when an appeal would have lain just as well or when some other appropriate writ would have served the same purpose. I think that you will find that the district judges find themselves universally insulted by the use of the writ of supervisory control. It isn't used as carefully and sparingly as it used to be, and that writ can be eliminated by the simple expedient of striking the words "and general supervisory".

CHAIRMAN GRAYBILL: Is there discussion of Mr. Schiltz' amendment to eliminate the words "and general supervisory"?

Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible) Mr. President.

CHAIRMAN GRAYBILL: All right, what's your point?

DELEGATE AASHEIM: I think we're getting confused by jumping back and forth here. Why don't we stay on either one area or the other? We have the comments on page-what?-47, and I would like to move, if it's in order, that we stay on the minority proposal and stay with the comments beginning on page 46.

CHAIRMAN GRAYBILL: You may make your point, Mr. Aasheim. I don't feel it's in order. The Chair has a reason for using the other one. You may use whichever you like, and I'll try and keep both references, but it's not in order. We have a motion before us.

Mr. Berg.

DELEGATE BERG: In answer to Mr. Schiltz, I asked the intern to determine how many times the writ of supervisory control has been employed by the Supreme Court. Since 1900, it has been used 21 times. That is, it has been applied for 21 times. It has been issued 15 times; it has been denied 6 times. And the case to which Mr. Schiltz had reference with regard to the so-called War of the Copper Kings was Hinsey versus the District Court, and in that case the writ was refused but the court laid down the principles under which it will be issued, and they are these: "the writ of supervisory control is one to be seldom issued and then only when other writs may not issue and other remedies are inadequate, and when the acts of the court complained of'-complained of as threatened-"will be arbitrary, unlawful, and so farunjust as to be tyrannical." Now, it seems to me that the employment of such a writ, whether it's unique in Montana or not, has a fitting place within our jurisprudence. It is carefully circumscribed by the court. It has not been used flagrantly; it has not been abused. Moreover, the words "general supervisory control" are not limited, in spite of the use of the writ of supervisory control, to the use of that as a method of simply controlling litigation in the lower courts. The words "supervisory control", when coupled with "administration"--meaning

general supervisory control and administration—include the vital need for supervision of administration of the entire Judicial system, and as I think I have emphasized, we are one of the very few states that does not employ it, and if we fail to encourage its use or at least to enable it here now in our court system, we will have taken a step backward. We'll not be in keeping with any other Judicial system in the country.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. I rise in opposition to Mr. Schiltz's motion to do away with the fundamental writ of supervisory control. Of those 21 times that the writ has been asked for in our court, I think I have had something to do with about five of them, and we've got it once out of the five times that we've asked for it. And, I'll tell you why you need the writ of supervisory control and why it's good for the people to retain the writ of supervisory control and why I favor the minority report in this regard. If you run into a situation in a lawsuit where a judge, a district judge or a JP, absolutely ignores the law, if you did not have the writ of supervisory control, you would have to go all the way through the trial and then appeal it to the Montana Supreme Court. With the writ of supervisory control you can say, "Judge, you're wrong and I'm going upstairs and get a writ of supervisory control to make you right", and you don't have to go through all the expense of having a trial. Now, if you're a big company, you don't want the writ of supervisory control. If you've got a lot of money-and money has a lot to do with lawsuits, you know-if you've got a lot of money, you don't want the writ of supervisory control. But for the people, the little people, they need the writ of supervisory control because it's a way to keep the judges honest and it's a way to avoid having to go all the way through a trial and all the expenses of an appeal in order to get an issue decided. And I think that—I've tried to explain here what a writ of supervisory control-what it does and what it's used for-and I think it's something that is fundamental to our system and that it's effective, that it's something that ought to be retained, and I commend the minority report for recognizing that and retaining it and would ask you to do likewise, Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE HABEDANK: If your substitute-or your amendment was adopted, what power would the Supreme Court have to meet those situations that Mr. Cate was referring to?

DELEGATE SCHILTZ: Well, 49 other states manage to get by with a writ of prohibition. That's the short answer.

DELEGATE HABEDANK: Thank you, Mr. Schiltz.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: I would like to state that Mr. Cate told you that when the judge makes a mistake, you say, "Judge, I'm going upstairs to get a writ to make you right." I would like to say you may say, "Judge, I'm going upstairs to get a writ"-that you'll just try to get it; you may not get it.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I wonder if those figures are right. I've asked for it, that I can think of, I think three times and gotten it once; it seems that Mr. Cate and I account for one-third of all the writs that have ever been granted. It's hard for me to believe that. I suppose it may be. Maybe we're hyperactive. (Laughter)

CHAIRMAN GRAYBILL: Stick to the subject, Mr. Arness. (Laughter)

DELEGATE ARNESS: Excuse me, Mr. Chairman. I support Mr. Schiltz's comments. The writ is used in cases where the draftsman is caught between the question whether he should use certiorari or prohibition. I submit to the Convention that the other states are able to get by and the lawyers there able to make up their minds; we ought to be able to make up our minds just as well here and get along without this thing.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I would like to close on my amendment, if I can.

CHAIRMAN GRAYBILL: If you think you need to; you may.

DELEGATE SCHILTZ: Well, quite frankly, Mr. Chairman, I'm looking for anything I can find in Section 1, 2 or 3 to stall for a little time. This—

CHAIRMAN GRAYBILL: Then close quickly, Mr. Schiltz. (Laughter)

DELEGATE SCHILTZ: This I consider to be a well-taken motion, however, because I have been offended by the writ of supervisory control ever since I was in law school. I hope we strike it.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Schiltz's motion, which is to take out the words "and general supervisory"— which has the effect of taking out the writ of supervisory control-so many shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], will Mr. Berg yield to a question, please?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, in the sentence it says, "and administrative control over all courts." Does that mean that the Supreme Court, then, would take the administrative control from each of the district courts, or how extensive did you have in mind on this?

DELEGATE BERG: It is-1 would sayitis broad enough to include administration in all courts. It is the terminology generally employed by other states in the creation of centralized administration of the judicial system.

DELEGATE DAVIS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would Mr. Berg yield to another question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Would this deprive the local district judge, then, of the right to call in a judge, or would the Supreme Court take over the calling in of judges in all the districts in our state?

DELEGATE BERG: No, that would not result in that, because we have other provisions within the minority article specifically covering the disqualification and calling in of other judges.

DELEGATE DAVIS: What administrative-

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr. Berg yield to another question?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Would you amplify-this is very important, it seems to me, to the judges, and I want to explain, when I get home, to my judge exactly what administrative control you want the Supreme Court to take over that he now has.

DELEGATE BERG: Well, I can't specify in particular what exact administrative control they may exercise, but I do know this: I am more concerned about the lower courts that have for so many years been left as sort of a sick cousin of the judicial administration system. I visualize that the Supreme Court can assist them in their training; they can assist them *in* providing methods of keeping their dockets, methods of proceeding on arrest. I think the Supreme Court, through administration, can do a great deal towards improving theadministrationofjusticeonthelowerlevel. I don't contemplate that the Supreme Court will ever find it necessary to do very much in the way of administration so far as the general jurisdiction of the district courts are concerned.

DELEGATE DAVIS: Thank you, Mr. Berg.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I move to amend subsection 1, Section 2-I'm on page 47 at line 22-by striking the two words "and administrative".

CHAIRMAN GRAYBILL: Very well.

DELEGATE MCNEIL: Mr. Chairman.

CHAIRMAN GRAYBILL: That's on line 12 on page 40, and that's on line 22 on page 47. Go ahead.

DELEGATE MCNEIL: Mr. Chairman, these two words that have caused concern to Delegate Davis were an integral part of the Montana Plan. I listened to several persons testify, and they all agreed that part of this administrative control over district courts was intended to give the Montana Supreme Court the power to take a judge from Ekalaka and assign him to Wisdom and then up to Libby and down to Two Dot. This power, although it sounds as though it is just buying the paper and pencils, because it's labeled administrative-this power could be abused by a Supreme Court to, in effect, get rid of any district judge they wanted to get rid of by simply assigning him anywhere in the state that they wanted to. And I submit this is a very dangerous control over our District Courts that should not be given to our Supreme Court.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Would Delegate Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE JOYCE: Mr. Berg, did Chief Justice Harrison testify before your committee?

DELEGATE BERG: Yes, he did.

DELEGATE JOYCE: And—

CHAIRMAN GRAYBILL: You may ask a series of questions.

DELEGATE JOYCE: All right. (Laughter) What did Chief Justice Harrison have to say about whether or not he, being the present incumbent in that-as Chief Justice of that court, whether he wanted to have administrative control over the District Courts?

DELEGATE BERG: Well, as I recall, the Chief Justice liked the Montana Plan and would have preferred to create an administrative office, an independent office, for the administration of the courts. I am sure he wanted the power, however, for the appointment of that administrator, and the control of him, left with the court.

DELEGATE JOYCE: I see. Was it his position that he didn't want-that it was an integral part of giving him, the Supreme Court, administrative control-then the sine qua non would be that they appoint the man that they were going to delegate that to, is that correct?

DELEGATE BERG: That would be correct.

DELEGATE JOYCE: And if they didn't get the election of the clerk of the Supreme Court, then they didn't want the administrative control; did that also follow?

DELEGATE BERG: No, that did not follow. As a matter of fact, the Supreme Court, as I understood the Chief Justice when he testified, didn't really care whether the clerk was appointed or elected. He felt that most any clerk they had he could work with in administration of the court system.

DELEGATE JOYCE: Would Mr. Berg yield to another question?

DELEGATE BERG: Happy to.

DELEGATE JOYCE: Would youinterpret this power, then, to control the administration of the Supreme Court, the power to control the clerks of the District Court?

DELEGATE BERG: No, I would not interpret it to mean that, because I believe that, as the article is written, the duties of the clerk of the District Court are as provided bylaw orprescribed by the district judge, so I would not expect the Supreme Court to exercise power there.

DELEGATE JOYCE: But-you wouldn't expect them to—

DELEGATE BERG: Well, I don't think they could. I'll answer it that way.

DELEGATE JOYCE: Do you think you've guarded against that they can?

DELEGATE BERG: I think that providing that the duties of the clerk of the District Court will be as provided by law and as prescribed by the district judge, yes, that's the limit of the power in regard to the clerk of court.

DELEGATE JOYCE: Will you yield to another question?

DELEGATE BERG: Yes.

DELEGATE JOYCE: Does the-the United States Supreme Court does undertake, through the administrative office of the courts, to administer the local federal courts around the nation, don't they?

DELEGATE BERG: Yes, they do.

DELEGATE JOYCE: And that power to do that is not given to them, though, by the United States Constitution, is it?

DELEGATE BERG: No, very few powers that the federal courts exercise come from the Constitution.

DELEGATE JOYCE: Is that administrative office of the courts set up by the laws of Congress or by the court on its own motion, or do you know?

DELEGATE BERG: I do not know. I rather think it's by the court on its own motion, but I don't know.

DELEGATE JOYCE: Well, wouldn't it be better to have it set up by the laws of Congress, or what is your opinion on that?

CHAIRMAN GRAYBILL: I'll rule that out of order.

DELEGATE JOYCE: I strike. May I speak, then, in support of the substitute motion to strike?

CHAIRMAN GRAYBILL: Very well, Mr. Joyce.

DELEGATE JOYCE: It seems to me that this is a dangerous thing to write into the Constitution. I think that the Legislature, if the time comes that it's necessary to administer all the courts of the state out of the Supreme Court, that the people speaking through the Legislature ought to make that decision. And I think further than that, that it really is impractical to expect the Supreme Court justices to administer all the courts. I don't-doubt very much if they want to. They don't have the time to do it. The Chief Justice is busy enough just managing the docket of the court itself. He's primarily elected to write opinions and to study the cases, and it just seems to me not only unwise, constitutionally, to write it in, but it's impractical to impose that duty upon them at this present state of-and in the foreseeable future, and that therefore it should be left to the statute, and I support the amendment to delete.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. McNeil's amendment to strike the words "and administrative" on line 12 of page 40, to have the effect in subsection 1 of taking out administrative control over the courts. So many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

UNIDENTIFIED DELEGATE: Division.

CHAIRMAN GRAYBILL: Division—very well. So many as are in favor, say Aye-or vote Aye on the voting machine; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 51 having voted Aye, 31 having voted No, themotion passes. The section now reads: "The Supreme Court shall have final appellate jurisdiction and general supervisory control over all courts."

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President and members of the assembly. It looks to me like we're giving the court powers before we know how they are to be selected. Now, later on, we are going to determine whether they are going to be elected by the people or by some body, and I think-in my judgment, it would make a difference how much power we are going to delegate to them, so I'm going to move that we pass consideration of Section 2 until our next day, which will be Tuesday.

CHAIRMAN GRAYBILL: Two, sub. 1, 2, **3** and 4?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Mr. Aasheim's motion is to pass consideration of Section 2, sub. 1, 2, 3 and 4—until when?

DELEGATE AASHEIM: Until Tuesday.

CHAIRMAN GRAYBILL: Until Tuesday at 9:00 a.m.? It has to be at a time certain.

DELEGATE AASHEIM: 9:00 a.m.

CHAIRMAN GRAYBILL: Tuesday at 9:00 a.m. Very well. The issue is on Mr. Aasheim's motion to pass consideration of Section 2, sub. 1 to 4, until Tuesday at 9:00 a.m. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please use the voting machines. Vote Aye on the voting machines if you're in favor of it; vote No if you're against it. All the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Vote's closed. 47 having voted Aye, 35 having voted No, we will pass consideration. Mr. Clerk, will you read Section 3 of the minority report?

CLERK SMITH: "Section 3, Supreme Court organization. The Supreme Court shall consist of one Chief Justice and four justices, a majority of whom will be necessary to pronounce the decision, which must be in writing and signed by the majority. The Legislative Assembly may increase the number of justices from five to seven. District judges shall be substituted for the Chief Justice or the justices in the event of disqualification or disability, in any cause, and the opinion of the district judge sitting with the Supreme Court shall have the same effect in an opinion of a justice of the Supreme Court." Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 3 of the minority report, that it adopt the same.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Section 3 relates, as you will note, to the composition and the organization of the Supreme Court. It provides for one Chief Justice and four associate justices. It provides that, in order to pronounce a decision, a majority of those justices must not only agree, but they must put their decision in writing and they must sign it. Here, I should like to pause and say that this is a slight change from the present Constitution, and it is designed to prevent what has been-become a rather prevalent practice of what are known as per curiam decisions, that is, decisions handed down by the court unsigned by any member and presumably, but not necessarily, one agreed to by all of the justices. This will provide that at least a majority of those pronouncing a decision will put it in writing and sign it. The second provision is simply a permission for the Legislature, if it finds it necessary in the future, to increase the number ofjustices from five to seven. The last paragraph is essentially the same as our present Constitution and simply provides that in the event of the disqualification or the inability of a Supreme Court justice to hear a matter, a district judge may be called in and sit in his place and that his position on that court will be as effective as though he were an elected member.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I'd like-move to strike lines 25 and 26 on page 40 of this proposal.

CHAIRMAN GRAYBILL: Mr. Mahoney has made a-has proposed an amendment, the effect of which is to strike the sentence that says: "The Legislative Assembly may increase the number of justices from five to seven."

Mr. Mahoney.

DELEGATE MAHONEY: All we're doing here is-it won't be but one session of the Legislature till they be in here to go up to seven, and we just as well hold the line now, and five can get by, and if we ever get to a population of a million and a half or two, then we'll reamend the Constitution, but let's don't put it out there now, because they'll be in the next session trying to get it.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I I rise to support the amendment of Delegate Mahoney, by striking that sentence, for a different reason. My reason to wanting to strike this is to take away from the Legislature the power to pack the court and to influence it with the political philosophy of a Legislature. If we have a three-to-two split on some particular philosophy, any Legislature could, by the creation of two more justices, impose its philosophy on the court.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I think that the committee's proposal to increase the number of judges from five to seven is a reasonable one, especially in view of the oftentimes advanced ages of the judges. This would give flexibility for cases where a judge is temporarily disabled or sick or unable to sit, and also opens up the possibility that the court may at some time be organized into a court of appeals, or there may be some other functions for some of these judges to serve. In the event that we do give these judges our administrative powers and other things, we're going to have to have a whole gang of these fellows in order to do their job and still write some opinions. I think that seven is a reasonable number.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would like to submit a substitute motion at this time, starting on line 21, reading as follows: "The Supreme Court shall consist of one Chief Justice and six justices"--raising the Supreme Court now by constitutional mandate to seven members of the court.

Mr. Chairman.

CHAIRMAN GRAYBILL: In other words, you are going to change the "four" to "six''-and are you then going to still eliminate the sentence, "The Legislature may increase it from five to seven"? Right?

DELEGATE DAHOOD: Yes, and eliminate that sentence.

CHAIRMAN GRAYBILL: Very well. Mr. Dahood has proposed a substitute motion which changes the number "four" to "six" in line 22 on page 40, and a comparable change on page 50, and it would still strike the second sentence, that the Legislative Assembly may increase the number from five to seven, since that would no longer be necessary.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, there is a very valid reason as to why the Citizens' Conference and the Montana Plan had in mind that the Legislature should have authority to increase the court to seven. The appellate load of our Supreme Court is increasing by large measures with each passing year. The increase has been such that each justice has been compelled to have on the payroll of the Montana Supreme Court a law clerk, a graduate law student. It is very true that our Supreme Court has been able to release reports and to state with some degree of pride that the court is on a current basis. But there are also many lawyers throughout the State of Montana that will submit to you that quantity of decision has been used in place of quality in decision simply because the five justices of our Supreme Court do not have sufficient time to judge the matters before them in a true, solemn, judge-like fashion. And if we increase the court to seven now, recognizing that they have this huge appellate responsibility each year, we are going to increase the quality of justice in Montana and increase the quality of our appellate process. I would think that perhaps the proponents of the majority report and the minority report can provide us with statistics, facts and figures as to the appellate burden upon the court at this time, and I would certainly appreciate their comment as to whether or not we would increase the ability of our Supreme Court to render a better quality ofjustice in their appellate matters if they had additional justices that could work on the appellate matters brought before them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue is on Mr. Dahood's amendment.

Mr. Davis.

DELEGATE DAVIS: Mr. President, would Mr. Berg yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, under your disqualification, would an additional judge then have to be called in to sit on a case?

DELEGATE BERG: Well, you would call in a district judge, yes. If you-you're talking about now the Supreme Court?

DELEGATE DAVIS: Yes, the Supreme Court.

DELEGATE BERG: Yes, it would be a district judge who would be called in.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Dahood's substitute amendment, which has the effect of replacing the word "four" with the word "six", so we would have a Supreme Court of seven, and therefore leaving out the second sentence in Section 3. So many as are—

Oh, Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I-would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ARONOW: Mr. Dahood, did you contemplate doing away with the law clerks that the Supreme Court justices now have, in order to kind of make up in cost for having the extra two justices, and having the Supreme Court justices do their own work?

DELEGATE DAHOOD: No, it is not my contemplation that the law clerks should be eliminated, but I think there ought to be enough justices so that all of the opinions rendered represent the considered work of a particular judge and, consequently, the judicial opinion of our Supreme court.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I resist the amendment of Delegate Dahood. I do not believe that the State of Montana needs or can afford additional justices of the Supreme Court at the present time. My recollection that the estimated cost of the Supreme Court and the district courts of the State of Montana for the next biennium will be $1,800,000, in round numbers, and this would increase it materially, and I trust that--and I ask that when this vote is taken that there be a roll call. I ask for seconds.

CHAIRMAN GRAYBILL: Mr. Eskildsen, you were up.

DELEGATE ESKILDSEN: Mr. Chairman, I rise in opposition to this motion. Whichever plan we accept, I am sure it's been pointed out to you very plainly that we are going to upgrade the courts. As we upgrade the courts, there is no doubt in my mind that the Chief Justice and the four justices will be able to do a lot more work than they have been doing before. That's whatwe're going to get paid-that's what we're paying them for. And I feel very strongly that if we want a good court, all we've got to do is give them some good helpers, and where in the world else are young attorneys going to learn how to be good judges if they don't have a chance to work in the courts to find out how? This is the reason I resist increasing it to seven, along with the money part of it.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I do not think the money argument is valid when we're determining whether or not we can increase the quality of justice. You never ration justice in a free society simply to show that you have saved something from an economic standpoint. You are concerned first of all with whether or not you are giving maximum protection to the rights of the individual. I think something should be explained to the nonlawyer delegates. The appellate system in Montana is different than the appellate system of the federal Judiciary. When you proceed to the court of last resort in the nation's capital, you do not have automatic appeal. You file what is called a writ of certiorare, and those judges will then determine whether or not, in their judgment, the issue that you present warrants their consideration on appeal. This is not true in the State of Montana. Before the Montana Supreme Court, the appeal is automatic; and in our trial courts anymore, it just seems that with the lack of certainty that's developed at the appellate level, every time there is a losing party, which is in every case, in almost every instance, if there is any substance involved, the matter is being appealed. And I would submit that if we're going to consider this matter properly, perhaps we ought to have some statistics from the office of the clerk of the Supreme Court, and perhaps we ought to have some statistics from the court itself as to what the workload is at the moment. I don't have those statistics at hand, but I do know their workload is too much, and I do know that we are getting a great deal of quantity, in many instances without quality, and consequently we don't have the certainty that the law requires, and our appellate system is breaking down at the moment because

everybody is appealing the adverse decision to the Supreme Court. And I call upon the Chairman of the Judiciary Committee and I call upon the proponents of the minority plan to tell us whether or not we ought to have some statistics on this particular point and, if they have them, to give them to us now, and if they don't have them, perhaps to conduct that particular survey so that our decision on this motion can be an informed one. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, first I must tell you that, so far as the minority is concerned, we do not have the statistics as to what the workload in the Supreme Court is at the present time, but, like Mr. Dahood, having been there many times in the last year or so, I recognize that the workload in the Supreme Court is rapidly increasing. On the other hand, I disagree with Mr. Dahood as to the necessity of now in this constitutional document fixing the number of Supreme Court justices at seven. I do not believe that is necessarily justified at this time. Moreover, I am conscious of the cost, and I think the cost is properly left to the Legislature. Accordingly, the minority report leaves the increase of these justices to the Legislature because of this question of cost. Now, I agree with Mr. Dahood, cost ought not to be the price of justice, but nevertheless, as a practical fact, it is. And I disagree with Mr. Mahoney that the Legislature is going to quickly and certainly increase the number of judges from five to seven. I think that is especially true if men like Mr. Mahoney are there as a watchdog of these costs. (Laughter)

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I rise in support of Mr. Dahood's motion. I also support what Mr. McNeil said about a Legislature perhaps having the opportunity under the minority report to pack the court, and I think maybe the best thing for us to do is make a decision right now as to whether or not we ought to have five or seven. And on page 31 of the Judicial Report-this blue and white book-you'll find a comparison of courts in other states. I find that Alabama has nine on their Supreme Court; Arkansas has seven; California has seven; Colorado has seven; Connecticut has six; Florida has seven; Georgia, seven; Illinois, seven; Iowa, nine; Kansas, seven; Kentucky, seven. Some30 states have more than five justices. Some of the states that have only five justices on their court also have a lower court that's known as an appellate court, which is also above the trial court level. So it appears from comparing Montana to other states, that our court does have fewer members than the majority by far of the courts of other jurisdictions. And I think that we have to be aware of this. Anyone who has read broadly knows that our courts are in trouble, not just here in Montana but throughout the entire nation. You've heard about-you've seen on television where people have stayed in jail for months and months and months and never gotten into the courthouse, never gotten a hearing. There are cases where people have satin jails in the cities for two years because they couldn't get bailed out before they could be brought before a court for a hearing. There are cases that have laid around for four or five or six years. And in either case, whether you represent the plaintiff or the defendant in a case, justice delayed is justicedenied. And we're writing a Constitution for the future. We're writing a Constitution for the next 50 or 100 years, hopefully, and I think that we ought to take into consideration that the volume of work of the courts is increasing and that decisions of the Supreme Court of Montana ought to be written by judges, not by law clerks, and we ought to, at this time, make a decision, and I would hope that it would be in favor of increasing the number of the court so that it might more adequately represent the people in the future. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I don't know how the other members of this body feel, but as far as I'm concerned, unless we have some facts and figures to base our vote on, there is only one way I can vote at the present time, and that's against the amendment.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I think the 76 of the delegates who are not lawyers must feel the same position that I'm in right now. I really think that there is one vital statistic that surely one of you 24 lawyers should be able to give us, and that is, how many opinions were rendered by the Supreme Court last year?

CHAIRMAN GRAYBILL: Mr. Schiltz, can you answer that question?

DELEGATE SCHILTZ: I can't answer that, but I can say that the Style and Drafting Committee met in the back of the Supreme Court library from about the 18th to the 9th of February, and the lights were out in there all that three weeks, which isn't to say that the Supreme Court isn't busy. The Supreme Court is busy. They just happened to hit a little slack period in there. No, I agree with Mr. Dahood. I think that court should be increased. And I think if we can get the statistics, and I don't think we can get them on Saturday, but if we can get the statistics, they would establish, according to thereport the Chief Justice makes once a year to the Montana Bar Association, I think they would show that their workload goes up substantially each year. I also agree with Mr. Dahood, that, even if this would cost a considerable amount of money more, in the interests of justice it's certainly worth it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: I kind of question as to how busy the court is, myself, because all the time I've been here I've noticed them holding court about two days while I've been here, and that's about five weeks now. Now, I don't knowthere's probably a lot of other procedures along with that. I'd like to have one of these lawyers explain some of that to me.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'd like to explain that, but first I want to say that I agree with the 76 nonlawyer members that we do need facts, figures and statistics. It's rather deceptive to sit back and determine whether or not the court is loaded or underloaded (Laughter)-with respect to work, simply because I don't think the nonlawyer members understand precisely how a Supreme Court functions. Now, they might have, say, 100 or 200 cases in the course of a year. That does not tell you just exactly how much burden is upon them. One case may have a 400-page transcript. That represents all the testimony that has been produced in the lower courts. They will have all the pleadings with it; they will have all the briefs. And if you have 200 or 300 appeals during the course of the year, just how much time will those five justices have actually to go over every transcript, go over all the testimony, go over all the briefs, and to do all the work that is required to have an informed type of decision? Now, Mr. Holland has placed before me an indication of the appeals that were filed in 1971. Now, appeals filed totaled 198, and I-and that does not tell us exactly the full content and the full extent of that work, because we don't know the type of appeals that they have had. But I can think of several appeals that we're involved in where the transcripts do exceed 400 pages. And it takes a great deal of work to go over all that testimony, to conduct hearings, to go over the briefs, to reason it out and come forward with the type of decision that gives the type of quality and certainty that's required to make the law the type of living thing that's required to allow society to progress so that lawyers can predict what the Supreme Court would do in a particular case and in that fashion, quite frankly, reduce the number of appeals. But I would think that probably this matter ought to be passed over until we can have some additional statistics on it and determine just precisely what the attitude of the court might be with respect to whether or not there should be additional help that we can have the best type of appellate process. And I would like to move at this time that this matter be continued until Tuesday and be brought up at the appropriate time when the supporters of this motion and the mover of this motion can present facts and figures to this body.

CHAIRMAN GRAYBILL: Mr. Dahood, are you trying now to postpone your own motion?

DELEGATE DAHOOD: Mr. Chairman, I think in fairness I should move to postpone my own motion. I think we do have to have facts and figures. Perhaps they will sustain my position, perhaps they will not. I know, as a matter of integrity, they should sustain my motion. I know that our appellate court requires more time to do a better job. I hope those statistics are going to sustain the belief that I have and that's shared by many of my colleagues before the bar of this state.

CHAIRMAN GRAYBILL: All right, let's make a motion to pass consideration until 10:30 a.m., on Tuesday. That all right?

DELEGATE DAHOOD: That is satisfactory. Mr. Chairman, I move at this time that the matter be passed until 10:30 on Tuesday, next week.

CHAIRMAN GRAYBILL: Mr. Foster, for what purpose do you arise? Do you want to debate that motion to postpone?

DELEGATE FOSTER: Mr. Chairman.

CHAIRMAN GRAYBILL: All right.

DELEGATE FOSTER: Mr. Chairman, I think we have a perfectly good solution before us. The solution is the report of the minority committee. I think they have considered this. I think they have considered the need for the Legislature to investigate the whole area of whether we need more justices in the Supreme Court, and I submit that we're not here to legislate. They have given us the logical conclusion. They have given us the opening for the Legislature in the future to provide for additional justices if needed, and I submit that for us to increase the number of Supreme Court justices—

CHAIRMAN GRAYBILL: Just discuss the issue, not how many we ought to have.

DELEGATE FOSTER: Well, I feel that the solution is that we should leave it to the Legislature as provided by the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Dahood's motion to pass consideration of Section 3 until 10:30 a.m. on Tuesday, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be against, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Vote Aye if you're in favor of passing; No if you're in favor of not passing. Have all of the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 61 having voted to pass and 19 having voted not to pass, the motion's adopted. Now, ladies and gentlemen, I think you should have the philosophy of the Chair. It is that we should finish the Judiciary Article by Tuesday night. We have now adopted one section and passed two. The Chair does not intend to work you Monday, does not intend to work you tonight, but I do intend to continue for awhile, so will you please read Section 4.

CLERK SMITH: "Section 4, District Court Powers. Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vested in the district courts, but distribution of concurrent jurisdiction with other courts may be provided by law. Until otherwise provided by law, appeals from inferior courts must be tried anew in District Court. District Court shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana. The Supreme Court and District Court process shall extend to all parts of the state." Section 4, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that this committee, after having under consideration Section 4 of the minority article, when it does arise and report, adopt the same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: We are concerned here now with the jurisdiction of our principal trial court, the District Court. Now, this particular section has been whittled down by the minority considerably, but it's not an innovative or fooling around with the jurisdiction of the District Court. To the contrary, it is an effort to reduce it, to make it concise and make it broad. Now, the District Court jurisdiction, as it reads today, is essentially the same in the first paragraph. It gives to the District Court jurisdiction in all cases in law and equity and it uses, as we do, "in all cases." Now, the word "all" is an all-inclusive term, and the purpose of using that word "all" is to be certain that this principal trial court does have a jurisdiction, an exclusive jurisdiction, of all litigation at the trial level. We have deleted from the existing Constitution the reference to all of the various types of cases that are enumerated there, because it doesn't add anything and, if anything, it may be limiting. It may be confusing. What the existing Constitution says and what the majority report says is, it has jurisdiction in all cases in law and equity, including--and then it goes down and it specifies all of the various types of cases that may be included. But we're looking to the future now. We don't know and we can't say, no lawyer here can assure you that the various types of cases enumerated within the old Constitution and still

contained in the majority report will be adequate for full adjudication of all rights, and what a shame and a colossal mistake it would be for a person to have a wrong and no remedy because the remedies have been so categorized and specified and this particular wrong is not included. This would be a colossal error. To avoid that possibility, we have done just like almost all other states, just like the United States Constitution, we've said it has original jurisdiction in all cases, both civil and criminal. Then we add, so that there's no question, about the authority of the District Court to issue original and remedial writs. That covers the waterfront. It covers every conceivable known writ today. If, in the future, it becomes necessary to recognize-perhaps through the Legislature--a new writ that will accomplish purposes unknown today, the jurisdiction is there to do it. Now, with respect to the appellate jurisdiction of the District Court, we were concerned that there might be some hiatus here, so we said that, until otherwise provided by law, appeals from inferior courts must be tried anew in the District Court. Now, the language that we're employing here is not new at all. It's contained within the statute. It pertains to appeals from the Justice Court to the District Court, and it does this-it permits an appeal from the Justice Court to the District Court without cost of transcript where the case will be tried anew. It is-this situation can often occur where you try a case in the Justice Court, you think you're going to win, and then you lose. Now, if you were required to have a transcript, if the Justice Court was a court of record and you had to prepare a transcript and go on up to the District Court, you are involved with immediate, extravagant expense immediately. This provision, which permits a trial de novo—or as the wording is, "tried anew"-avoids that. The District Court is also given the jurisdiction to review decisions of administrative boards and commissions. This is becoming more and more a problem in modern society and will become more complex as time goes on. There ought to be some judicial-some place for judicial review of actions of boards, because, most frequently, the arbitrary-this in actions of boards of administrative agencies, this is frequently where you get arbitrary and capricious results, and it is essential that there be some power of review by the Judiciary to avoid the hardship of an arbitrary decision. Finally, we have broadened the jurisdiction insofar as it may be delegated by the United States. Our present Constitution says that district courts shall have jurisdiction for naturalization purposes, as delegated by the laws of the United States. We contemplate that in the future there may be other areas of jurisdiction delegated by Congress. We want the District Court to be in a position to handle that kind of a case. Finally, we have provided that district courts and the Supreme Court-that their processes will extend to all of the State of Montana. In other words, we didn't want any possible construction that a subpoena or a summons issued out of the District Court might be limited just to the district that it occupies, but rather, that it extend throughout the entire state. That is not new or novel.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. President, I wonder if Mr. Berg would yield for a series of questions relative to this.

DELEGATE BERG: I yield.

DELEGATE HOLLAND: Specifically, Ben, what I'm worried about is this phrase "district courts shall also have jurisdiction to review decisions of administrative boards and commissions". Specifically, what type of review do you have in mind?

DELEGATE BERG: Well, Dave, I think you and I both agree that there are many instances in the present-day practice where you appear before boards, where sometimes there is or is not a transcript. where, if there is a transcript, by the time it gets ready to go to the District Court, it's been sadly depleted. These are problems that arise in review of administrative actions which I think are going to become more complex as the time goes on. I want Judicial review.

DELEGATE HOLLAND: You want Judicial review, but on a de novo basis?

DELEGATE BERG: Yes. I would actually prefer it oftentimes on a de novo basis, but I haven't limited it that way. If there is an adequate transcript and the Legislature so provides, it can go up on a transcript basis.

DELEGATE HOLLAND: It seems to **me** that we're going to have a review, and I certainly agree with you we need review on these things, that we should either specify it's de novo—that is, the court looks at the question anew-or else that it's a simple review, as they sometimes do, and I would like to-I'm going to make an amendment—

as soon as we get finished, I'm going to make an amendment that it be one or the other so that we know specifically what it means.

DELEGATE BERG: Well, I would say in that regard, I would rather have the broad jurisdiction so that the right of review is unquestioned and unlimited.

DELEGATE HOLLAND: I have one more question—

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Do you know of any other constitution that has a similar provision?

DELEGATE BERG: To be very honest with you, Dave, I cannot find any constitutions that have this exact language, but there are many and I can refer them to you, which do give jurisdiction to review boards and commissions, and they generally, they spell it out a little more clearly than I have. I have purposely made it broad and flexible, but I can give you those that do, if you like.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Berg, yield to a question, please?

DELEGATE BERG: I yield.

DELEGATE SCHILTZ: Mr. Berg, is it your intention, by the language about which Mr. Holland was just questioning you-"district court shall also have jurisdiction to review decisions of administrative boards and commissions"-is it your intent with that language to have an automatic review on all district-on all administrative decisions?

DELEGATE BERG: 1 may put it this way. Initially, when I drafted this, I added the clause "as provided by law", then I felt that that was giving to the Legislature a power over the jurisdiction of the District Court, and I basically am opposed to that because I believe that all justiciable—all matters of controversy, whether they be before boards or commissions, ought to be reviewable in courts. I'll put it that way—

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE BERG: -therefore I did not limit it.

DELEGATE SCHILTZ: I just want to be sure, from the standpoint of Style and Drafting, that you don't intend-"and additional jurisdiction as may be delegated by the laws" et cetera-to qualify that statement.

DELEGATE BERG: I did not, because I specifically left out at that point "as provided by law".

DELEGATE SCHILTZ: Now, will the gentleman yield to another question:'

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE SCHILTZ: You don't provide the court of jurisdiction for this appeal, and I would assume that, most boards sitting in Helena, that we're going to overload the First Judicial District. Have you thought of that?

DELEGATE BERG: Well, I consider that District Courts have original jurisdiction throughout the state, and if it's overloaded in Helena, we'll be happy to have them in Bozeman. That is possible. It is altogether-no question about the jurisdiction of the District Court in Bozeman or Great Falls or Helena hearing any one of these matters, because they all have original jurisdiction with process that extends throughout the state.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I move at this time an amendment to Section 4, line 11, following the word "commissions" and before the word "and" to insert the following language: "and the issue will be tried anew in the District Court."

CHAIRMAN GRAYBILL: Very well. Mr. Holland has proposed an amendment on line 11, after the word "commission", by adding "and the issue will be tried anew in the District Court", the purpose of which is to say for sure that the administrative board or commission hearing will be tried anew in court.

Mr. Holland.

DELEGATE HOLLAND: Did you want me to yield—

CHAIRMAN GRAYBILL: Mr. Berg, do you want the floor?

DELEGATE BERG: I rose for the purpose of a question. Will you yield, Mr.—

DELEGATE HOLLAND: I yield, yes.

DELEGATE BERG: Would you substitute the word "may" for "will"? And that then will give you the alternative of a trial anew or a trial by transcript with record if it's available.

DELEGATE HOLLAND: Well, I want to decide it one way or another, whether it's a trial de novo or a trial anew or else if it's going to be a review one way or the other, and I think we-the sense of my amendment will be that it will be a new trial in the District Court, and for that purpose I will not substitute the word "will", because I-as a matter of fact, I will substitute the word "will" to "shall" and change my amendment to read: "and the issue shall be tried anew in the District Court".

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: This language in the minority statement has bothered me right from the start. I have discussed this matter with Mr. Berg, who is the principal author of the minority position, and it seemed to me that this will put the whole Judicial Article regarding the power of the District Court in jeopardy, because I don't think anyone will know exactly what it-at least, I don't know exactly what it means, unless there is some clarifying language. Many of these boards, as Mr. Berg has indicated, many of these boards receive evidence in a haphazard manner. Many do not transcribe records. Many, many times a person goes before these boards without an attorney. The hearings are put on without the aid of counsel, and many times valuable rights, such as the right to a license to practice a profession-perhaps plumbing, perhaps beauty operator, perhaps many other things, all of which I don't know-and then when these people are aggrieved, they go to an attorney, there's no transcript, no one was there to protect their record, and then when it comes time to getting the review in the District Court, you find you're limited to going back to the record and finding some error in the record and there is no record. There being no record, it's presumed that the record is sufficient. And I feel strongly that many people are deprived of valuable legal rights in this process and that-as with appeals from inferior courts, I presume by that they mean Justice Courts-many times when they go to have the matter thrashed out, it's just too late. And so I urge this amendment for review of the administrative boards and commissions—shall be tried anew, the evidence will be reheard by the District Court and a decision based upon the evidence received at that level if the person feels he is aggrieved. And I feel that very often these administrative boards and commissions are, because of their nature-the people are deprived of their rights without due process.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I would like to make a substitute motion that the entire sentence be deleted. I feel that this is a glaring example of legislative detail. I hope it is realized that we are expecting the District Courts to try all zoning matters, weed control matters, every other kind of silly thing that comes up under any board, bureau or commission, and the result would be to clog the courts and create a first-class administrative and legal disaster. Now, it seems to me that it is perfectly clear that the courts have whatever jurisdiction the Legislature, the law, puts upon them, provides for them from time to time as the need arises, and let us not try to build the whole thing in the Constitution. Here's where I want to stick to my fundamental detail. Let's not get all this spinach in the Constitution.

CHAIRMAN GRAYBILL: Mr. Garlington has made an amendment that strikes the sentence beginning on line 9 on page 41: "District Courts shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana."

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise with enthusiasm to support my fellow delegate from District 18 on this. I think he's absolutely right. If Mr. Berg believes what he said in his original statement, he ought to support it, too.

CHAIRMAN GRAYBILL: Mr. Berg. You have the floor, Mr. Berg.

DELEGATE BERG: Mr. Heliker must misunderstand and must misinterpret what I say. Now, with all due regard to Mr. Garlington, in Bozeman we frequently do try decisions from zon-

ing boards. We have that problem prevalent right now, and I simply want to assure that the District Court has the unquestioned power to hear and review those disputes before boards, where I feel people often do not get what I would call "due process" in the course of presenting it. Now, it is true that the Legislature frequently does provide for review of those boards. In the case of zoning, an appeal from the board of appeals is done by a writ of certiorari. That's done by statute. The Legislature has extended that authority to the courts. But my point is this: that all disputed matters of a judicial character ought to be decided in the Judicial Branch of the government and not exclusively and finally before boards or commissions of the administrative branch. And for that reason, I include it here, because I think it's appropriate.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Holland, will you yield?

DELEGATE HOLLAND: I'm glad somebody asked me a question. Yes, I'll yield, Mr. Brown.

DELEGATE BROWN: In making that amendment, would you now take a rate hearing before the Public Service Commission that might go on two or three months and then appeal that to the District Court and have a complete new hearing (Inaudible).

DELEGATE HOLLAND: You bet, you bet. I think those rates have been raised disgracefully time and time again, and I'd like very much to have a full review in the District Court, Mr. Brown.

DELEGATE BROWN: I don't want you to—

DELEGATE HOLLAND: I don't even think that rate commission should be deciding the matter. I go beyond—

CHAIRMAN GRAYBILL: Mr. Brown, your question is out of order. It's not on the amendment, the substitute motion of Mr. Garlington to delete the sentence.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I hesitate to get up here and get embroiled amongst the lawyers, but I'm a little bit apprehensive, having served on administrative boards and commissions, to just what this would entail. I see a lot of problems developing with the clogging of the court system on this type of issue, and I would like to ask Mr. Schiltz if he would yield to a question, to explain this for me.

DELEGATE SCHILTZ: I yield.

DELEGATE WILSON: Would you explain what would be involved here, Mr. Schiltz?

DELEGATE SCHILTZ: Well, on the motion of Mr. Garlington, the entire sentence starting with "District Courts shall also have" would be deleted, so there would be no problem such as you speak of, Mr. Wilson.

DELEGATE WILSON: Mr. President, I support Mr. Garlington's motion.

CHAIRMAN GRAYBILL: Mr. Wilson, the court feels constrained to point out that the first paragraph of Section 4 still gives the Legislature the power to make any administrative matter remedied in the courts.

Mr. Cate.

Very well. The issue is on Mr. Garlington's substitute motion to delete the sentence that says: "District Courts shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana." So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please vote on the voting machines. So many as in favor, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 42 delegates having voted Aye, 32 delegates having voted No, the motion to delete the sentence carries. Very well. The issue is on Section 4, as amended. Is there other discussion?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I think that the action we just took was kind of rash, because we knocked out naturalization in district courts, as well as, perhaps, the question as to whether or not courts can even review administrative-

CHAIRMAN GRAYBILL: Mr. Cate, I can't hear you. That's better. Try again.

DELEGATE CATE: And I think that at a later time we ought to move to reconsider. But at this time, I would like to discuss another sleeper in here, and that's on page 41, line 8, the first five words: "Until otherwise provided by law". One of the things that I didn't like about the Montana Plan was that the decisions of the courts below the District Court were not entitled to trial de novo in the District Court. You would have had to appeal those decisions to the Supreme Court of Montana in order to get a reversal of them, and under the present system-let's take the police court, and by police court I mean the police's court. In the police court, if you get a ticket, if you get a ticket and you go to court and you're found guilty by the police judge, you have the right today to appeal to the District Court which covers that particular police court. You don't have to go to the Supreme Court of Montana in order to get a new trial. These five words would permit the Legislature to change that system so that if you got a ticket in police court and you didn't think it was right, you would have to go all the way to the Montana Supreme Court with an appeal in order to get a new trial. Now, I think that that's a pretty dangerous thing to play around with. I think we-1 don't mean to be a stick-in-the-mud and I'm not a stick-in-the-mud--I don't think there are many people who would classify me as conservative-but I'm a little bit afraid of this, because what it could mean is that these police courts, for instance, could have this type of power that you-and I think police courts are notoriously unjust--and not because I lose most of the time in there-but the system is built against the citizen in those courts, and usually the word of the policeman is taken over the individual without question, and I think anybody that's had experience in police courts would agree with that. And I hate to see that right of appeal to the District Court, with trial de novo in the District Court, taken away. And although this doesn't do it, it provides the method by which it might be done, and I think we ought to preserve that fundamental right. And so I would move to strike from Section 4, line 8 on page 41, the five words "Until otherwise provided by law". Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Cate, your motion to strike the words "Until otherwise provided by law" is accepted.

Mr. Holland, first.

DELEGATE HOLLAND: Mr. Chairman, I rise in support of Mr. Cate and also my brother, Garlington, as we lawyers refer to ourselves. This morning when I gave my great speech about the fact that we had something that worked pretty well for 72 years and we had no complaints about it, why fool around with it, why, evidently Brother Garlington and Brother Cate paid very little attention. They are beginning to take a pretty hard look at the minority definition of courts and beginning to realize that they may have well run into something that might cause some future trouble, and I can see it's going to cause a lot of trouble. But that's neither here nor there. I think Mr. Cate is absolutely right, that we have to be very careful that this language is preserved and the rights of appeal in the police court is preserved, and I rise in support of him and urge you to vote to make sure that this is continued.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: We have just now eliminated naturalization powers from the District Courts, which have been there since 1889, courtesy of the surgery that is going on here. Now, this language, "Until otherwise provided by law", was put in there for a very specific reason. It gives flexibility to this judicialsystem. Now, if you want to lock it in and make it forever impossible to do anything about the appellate procedure from the lower court to the District Court, go right ahead and do it, but let me tell you this-this language was put in there so that if in the future it becomes desirable, for instance, to use the magistrate system, somewhat similar to what was used in the Montana Plan, not advocated now by the minority, but if in the future the Legislature wants to make this a two-tier system as it is employed in many other states, this kind of language opens it up. But if you take it out, the only way you're ever going to do that is by amendment. Now take your choice. Do you want a flexible system, or do you want it locked up so it can't be changed? You're getting down into some rather vital places.

DELEGATE AASHEIM: Mr. President, could a simple citizen ask a question? (Laughter)

CHAIRMAN GRAYBILL: Mr. Berg-you don't have the floor yet, Mr. Aasheim. Mr. Berg, would you yield to a question from the Chair?

DELEGATE BERG: I yield.

CHAIRMAN GRAYBILL: The Chair is concerned about your statement that we have eliminated naturalization, because, as a lawyer, I don't understand that. Do you mean to say that unless we write in here that we have-1 understand we have eliminated thelanguageyou had in to cover it, but do you mean to say that if we don't write language into this Constitution, that we can't accept jurisdiction from the United States Congress in the District Courts?

DELEGATE BERG: Well, I call your attention to Section 11 of the old Constitution and-see if I can read it, since I've written over it so many times. I've written it out so many times I can't read my writing, but-let me see yours. It says now in the old Constitution "and said court shall have the power of naturalization and to issue papers therefor in all case where they are authorized so to do by the laws of the United States." I felt that if the Constitution felt that such language had to be there to enable acceptance of the jurisdiction, it ought to be retained. And I take it now that since--and I tried to broaden that to cover any other kind of jurisdiction that Congress might want to delegate in that last sentence. I didn't limit it just to naturalization.

CHAIRMAN GRAYBILL: But--would you yield to another question?

DELEGATE BERG: Yes, sir.

CHAIRMAN GRAYBILL: Is it your interpretation that unless we give them that power, after you've given them the power in the first part of that section, that they simply could not accept jurisdiction from the United States Congress?

DELEGATE BERG: Well, I feel that since the old Constitution starts out with the same broad language, I didn't want to be too surgical here, because I felt that if it was necessary in the old Constitution to do that, there must be good reason. Not knowing reasons otherwise, I left it in.

CHAIRMAN GRAYBILL: Is it your interpretation that Mr. Cate's proposal, for example, would make it impossible to handle naturalization in the District Courts?

DELEGATE BERG: It was Mr. Garlington's motion that was so destructive. (Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim had something.

DELEGATE AASHEIM: Mr. President, I'm going to wait until the legal fraternity gets their arguments settled, and then I'm going to ask mine.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman. Mr. Berg, I would disagree with you that by taking out this section we would lock this system forever. As I read it, you could still create as many courts inferior to the District Court as you might want to, but the principle that you would have the right of trial de novo in District Court from those lower courts would still be there. Now, if we're going to establish someday a magistrate plan, where the magistrate does not have to be a lawyer, which is like the JP system today and the Police Court system today, I think that we ought to protect thatright to trial de novo in District Court before a man who is a lawyer, who knows what the law is, and that's a district judge. And so, I would disagree with you that we are locking this system in by taking those words out. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I am not sure that this little legal debate is getting across to the lay people in this group, and I would like to say very briefly that what Mr. Cate is proposing is that you, as citizens, have an automatic appeal from a Police Court or a Justice of the Peace Court to the District Court. If you are aggrieved there, you have a right to an appeal. Now, the way it is written, you only have that right-the way it has been written in the minority report, you only have that right to appeal until otherwise provided by law, which amounts to an invitation to the Legislature to take away that automatic right, I really think you ought to know that.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Cate's motion to strike from line 8 in Section 4 the language "until otherwise provided by law". So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so adopted. Very well. The issue is on Section 4, as amended. Is there further discussion? Mr. Arness.

DELEGATE ARNESS: Is a motion to amend in order?

CHAIRMAN GRAYBILL: Certainly.

DELEGATE ARNESS: I move to amend Section 4, beginning at line 5, by deleting the word "but" and continuing deleting the words through line 6, through line 7, ending with the word "law". And, further, to delete at line 14 of Section 4 the words "and District Court" appearing after the word "Court" at line 15, so that the last sentence now in that paragraph would read: "The Supreme Court process shall extend to all parts of the state." And, above, the sentence reading: "but distribution of concurrent jurisdiction with other courts may be provided by law" is deleted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness, are these two amendments related?

DELEGATE ARNESS: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Arness has an amendment that takes out the last clause of the first paragraph of Section 4-"but distribution of concurrent jurisdiction with other courts may be provided by law". And it takes out the words "and District Court" in line 14. It's allowed. Go ahead.

DELEGATE ARNESS: I presumethatthe other courts that are referred to by Section 4 are the Justice Courts. At the present time, these are township courts and have a very limited jurisdiction. It's also very easy to come into these courts. As this section is now written, it would be very possible for a litigant to harass someone all the way across the state with a 50 or $60 suit in Justice Court by having the summons issued out of Justice Court in Libby, for example, to be served in Ekalaka. I'm sure that that can't be intended by the authors of this proposal, but it appears to me that that is presently the effect. By deleting these provisions, the results could no longer be obtained. I'm sure that, at least in the Constitution, we don't want to authorize the Justice Courts to have jurisdiction all the way across the state, and that's the purpose of this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Arness would yield for a question?

DELEGATE ARNESS: Yes.

DELEGATE HOLLAND: It would seem to me that, if your amendment is granted, that the exclusive jurisdiction of all trials would be in the—restricted to the District Court and no other court-Justice Court, Magistrate or Police Court—would have any jurisdiction at all, and of course, I'm-one other question; I don't know what the minority court [report] means by "process", but if "process" in your definition includes subpoena, you're limiting the power of the District Court to subpoena only within their own district, if you consider that process.

DELEGATE ARNESS: That would be the effect of the amendment. That's right. That's what this would do. Otherwise, the way it's written, the Justice Court would have jurisdiction throughout the state, and I think that, although the amendment may restrict the District Courts, it would be worse to have the Justice Courts in their present condition have powers which would ordinarily be ascribed to the Supreme Court.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Arness, yield to a question?

CHAIRMAN GRAYBILL: Mr. Arness?

DELEGATE ARNESS: Yes, sir.

DELEGATE SCHILTZ: As I understand it, Mr. Arness, you are deleting "and District Court" from line 14, and it seems to me-and correct me if I'm wrong-1 don't know what its connection is with our other deletion-but it seems to me that a summons would not-you'd take away the effect of a District Court summons anywhere but in its own county, I assume.

DELEGATE ARNESS: Yes, that's the way that I've amended it. It would seem to me,

otherwise, that a Justice Court would have jurisdiction that would be coequal with the boundaries of the state. Now, maybe there's some other way to approach this, but it seems to me that it would be more important that we prevent the Justice Courts from having such a high-or such powerful jurisdiction, rather than-that we limit the District Courts. Possibly this should be corrected in some other way; I don't see exactly how that should be done.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Gate-or Mr. Schiltz.

DELEGATE SCHILTZ: I move that we pass any further consideration of Section 4 until 2 o'clock on Tuesday. This-Mr. Chairman, this is much too complicated a problem. I just can't conceive that Mr. Arness is serious that he wants to take away the service of process for the District Courts beyond the limits of the county. And I think we're all just a little too rummy to find out what he's talking about.

CHAIRMAN GRAYBILL: The motion to pass consideration until Tuesday at, what? 11:00?

DELEGATE SCHILTZ: 2 o'clock.

CHAIRMAN GRAYBILL: Oh, at 2:00? Well, let's make it 1:OO. At 1:00—is that all right, Mr.--will you accept that? 1:00?

DELEGATE SCHILTZ: I thought we had—

CHAIRMAN GRAYBILL: No, we've got 9:00, 10:30 and now l:OO. (Laughter) All in—

Mr. Harper, do you want to argue'?

DELEGATE HARPER: No. This may not be germane here. But would somebody raise a flag when you get onto anything that has to do with Small Claims Court? (Laughter) Well, that's where-

CHAIRMAN GRAYBILL: Mr. Harper, we're there now. All right.

DELEGATE HARPER: I'm wholeheartedly for passing this thing over then, because I've got to get with somebody and find out if a citizen can get his licks in here anywhere. (Laughter)

CHAIRMAN GRAYBILL: Mr. McNeil, would you like to debate the motion'?

DELEGATE McNEIL: Mr. Chairman, for both Mr. Arness and Mr. Harper, your concerns are premature as, by voice vote on Section 1, we've abolished Justice Courts.

CHAIRMAN GRAYBILL: All right. Well, I think that was not particularly germane, so I take it we're ready to vote on Mr. Schiltz's motion to pass consideration of Section 4. All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. No. (No response)

CHAIRMAN GRAYBILL: Now, the Chair would like to observe that this is. of course, a complicated area and you must either choose to become educated or you must choose to follow one of the two leads, the majority or the minority report, and I think we have now demonstrated, by passing the first three major sections that we tried to debate, that we could be here all next week or next two weeks. So, either make up your mind to become educated or find some bellwether to follow, and we'll try and get through this on Tuesday rather rapidly. Now, the Chair is about to entertain a motion to recess, but if there's other business, please bring it up.

Mrs. Bugbee, for what purpose do you rise?

DELEGATE BUGBEE: Mr. Chairman, would it be possible for someone-one of the lawyers-to be assigned to interpret what the other lawyers have been saying after they've said it. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Bugbee, the Chair will rule that that would be an impossible task. (Laughter)

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I don't want you people to forget the People's Plan, because I think that—

CHAIRMAN GRAYBILL: Mr. Cate, you're out of order now. I'm not going to take any more. If you have any purpose-We'll get to the People's Plan.

All right, Mr. Eskildsen, will you explain the way we're going to do this.

DELEGATE ESKILDSEN: (Inaudible)

CHAIRMAN GRAYBILL: We've just changed the way we're going to do this. (Laughter) Mr. Eskildsen, would you proceed?

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is to rise and report progress. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Kelleher.

DELEGATE KELLEHER: (Inaudible)

(Convention in session-President Graybill presiding)

PRESIDENT GRAYBILL: The clerk will read the title of the committee report.

CLERK SMITH: "February 26th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Judiciary, recommend as follows: On motion of Delegate Graybill, duly carried, the committee postponed considering Style and Drafting report on General Government. On Holland's motion, duly carried, Rule 51 was suspended so that the majority and minority reports could be presented and a vote then taken on which one committee wishes to consider section by section. At 11:55 a.m., committee stood in recess until 1:15 p.m.-"

PRESIDENT GRAYBILL: Mr. Clerk, is that the title of the report'!

CLERK SMITH: No.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen, will you make a motion. Unless there's objection, we won't read the entire report.

DELEGATE ESKILDSEN: Mr. Clerk. would you read the "rise and report" part'!

PRESIDENT GRAYBILL: Just read the title.

CLERK SMITH: "That the committee rise and report progress and beg leave to sit again. Signed: Graybill."

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: Is there some trouble, Mr. Monroe'!

DELEGATE MONROE: No.

PRESIDENT GRAYBILL: Would you please get your seat, then. Order of Business Number 11, Announcements. The Chair wishes to announce, so that you may tell your wives if they're here, that the Wednesday luncheon for women has been postponed until Thursday. They may need to know that to make plans. The Chair also wishes to announce that the Chair has checked with Mr. Justice Castles. The court heard 240 matters last year. You may want to write this down. They issued 160 opinions. This was an increase of one-third over the volume of business the year before. Are there other announcements'? Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman [President], I'd like to announce a meeting of the Committee on Style and Drafting at 8 o'clock on Tuesday. We've been losing about half our time because so many people arrive late that we can't achieve a quorum. I urge you to get there on time.

PRESIDENT GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, in case some of you might have had this invitation lost in the shuffle ofpapers, I would like to read: "If you aren't afraid of a Madison Avenue image, we would like very much to have you and your wife or husband come to our home at 720 Madison on March 1st at 6:30 for a cocktail supper." The house was built hy Governor Hauser in the territorial days, and we bought it from Carroll College about a year and a half ago to revise, alter or amend. Please let me know if you can come. We'd be delighted to have all of you.

PRESIDENT GRAYBILL: Other announcements'!

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. Pursuant to the general powers vested in Montana Constitutional Convention, and in accordance with the provisions of Section 7-6 of the Enabling Act (Chapter 296, Laws of 1971), the Montana Constitutional Convention shall recess temporarily until 9:00 a.m. on Tuesday, February 29, 1972.

PRESIDENT GRAYBILL: The motion is to recess until 9:00 a.m. on Tuesday morning. All in favor. please say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed. Nay.

(No response)

PRESIDENT GRAYBILL: We stand in recess.

(Convention in recess at 5:42 p.m.)

February 29, 1972 Thirty-Fourth Day Convention Hall
9:oo a.m. Helena, Montana

PRESIDENT GRAYBILL: If you'll all rise, we'll have the Pledge of Allegiance led by Mr. Blaylock.

(Delegates give pledge, with Delegate Blay lock leading) I pledge allegiance to the Flag of the United States of America, and to the republic for which it stands; one nation, under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: Delegate Burkhardt will lead us in an invocation.

DELEGATE BURKHARDT: Let us pray. At this particular time, Oh God, we're grateful that Jesus had both a sense of humor and good judgment. He looked the lawyers of his time in the eye and said, "You strain out the gnat and swallow the camel." Somehow, may we have good humor and good judgment for the work of this day. Amen.

PRESIDENT GRAYBILL: We'll take roll this morning by voting Aye on the voting machines. Please vote Aye on the voting machines.

CLERK HANSON: Delegate Anderson, Oscar 0.; Delegate Barnard; Delegate Berg; Delepate Blaylock; Delegate Blend; Delegate Brown; Delegate Bugbee; Delegate Etchart; Delegate Felt; Delegate Harrington; Delegate Nutting; Delegate Etchart; Delegate Felt; Delegate Nutting.

PRESIDENT GRAYBILL: Would you repeat the absentees?

CLERK HANSON: Delegate Etchart, Delegate Felt, Delegate Nutting, Delegate Harrington.

PRESIDENT GRAYBILL: Very well, take the vote.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Absent
Brazier	Present
Brown..	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Absent
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Absent
Foster	Present
Furlong.	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Absent
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present

Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Absent
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.,	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius.	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner,,	Present
Ward	Absent
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK **HANSON:** Mr. President, 96 delegates present, 4 absent. [Editor's note: Theofficial roll call on file with the Historical Society shows 99 present and 1 absent. There appears to be some confusion. See Page 1063, line 41 and Page 1071, line 42.]

PRESIDENT GRAYBILL: Very well. The roll will so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: None. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications. This morning, under communications, the Chair wishes to take the opportunity to address a few remarks to you. I think they've been passed out to you, but I will go over them. In the last few weeks, I have had to do battle on various occasions to accomplish the administrative needs of the Convention. And I speak today at the risk of having to do battle again. But Iperceiveitto bemydutytnspeakoutif this Convention is in any danger of failing in its objectives. In my judgment, there is such a danger today. As delegates, we have two vital duties about which I wish to speak briefly this morning. We must assume these duties firmly, even boldly, or we will fail. First of all, we must draw up a Constitution which changes our system of government for the better. The need for governmental change is, I believe, evident. The present Constitution, 82 years old, hampers and confines us in a day much different from the late 19th Century frontier days when it was adopted. We need not change all of it, but surely it is evident that we need not reenact it either. The voters have authorized this Convention, and the taxpayers are funding it. They expect us to accomplish important changes. In my judgment. our efforts must be innovative. We must make the system work better. The new Constitution must be an advance. It must be simpler, shorter, and designed to work in the future. This much our presence here attests to. Not change for change's sake, but change for a new and better way to improve and safeguard Montana's future. But we are delegates, not representatives. In my judgment, we are sent here to use our abilities and to reason out a new document. It is our solemn duty to do as we think best-to use our heads, to study, to hold hearings, to debate, compromise, and to write a new Constitution. Yet, I constantly hear here in the chamber that the people back home won't accept this or that; that someone back home objects; that WE have had to call the county clerk; or that the newspapers have discovered the truth from the people. The plain fact is that we should write the Constitution, and it should be the best one that we can arrive at together. The people expect leadership from this body. We are the ones they've sent here to study, to hear, to consider, to draft, to debate and to reason out the Constitution. When we've done our best and explained it to the voters, they will support us if we have done our work well. But we must assume ourresponsibility. We must write the Constitution based on our knowledge, our reasoning together and our work. It seems to me obvious that the

people that we continually depend on and lean on in debate have not thought through all of these problems nor heard the witnesses nor seen the documents nor studied the blue books. And it seems to me a poor excuse for us to blame our votes on the people, after we have studied the situation. We must draw up a Constitution, then, which changes our system for the better. Now, second, we must make this Convention work. We must accomplish our purpose here, within our means. It is no answer to insist on the unlimited right to discuss issues. We have that right, but we do not have the time or the money. Perhaps we should have, but the Legislature did not so provide. And I believe that they were not wrong. I think we can accomplish our purpose within their limitations, but we must work very hard to do it. In candor, we sometimes act like a group of politicians preparing for the election, not like leaders drawing a blueprint for Montana's future. We must tend strictly to the business at hand, the business of compromising on a better Constitution. Only when that is accomplished, when the new Constitution has been clearly and fully explained to the voters, should any of us become politicians again. To finish our job here successfully-to make the Convention work-we must depend upon our committee system. Each of you have been on a committee. Each of you has worked hard on that committee. No committee here has failed to work hard. Wc should support either the majority or the minority position. We should realize that the committee members have thought and struggled with the problems in their area, as we have in our areas. Let's follow them. Wc are not free, each of us, to write the Constitution as we, individually, might like. It would be impossible to have a Constitution which 100 of us, individually, liked. We must compromise. We must advance through the articles by choosing between the committee alternatives, not by inventing new amendments in the heat of the debate. There will, of course, be exceptions. We must hope that they'll be few, or we cannot, complete our task in a timely and reasonable fashion. In summary, we must draft the Constitution for Montana's future, not for the election. The people will support us when we have shown intelligent leadership. And, secondly, we must make the Convention work. We must proceed faster and surer, and we must share the responsibility and compromise gracefully. (Applause) Now, to help implement this, you'll find attached to these little remarks some guidelines for debate, which I'd like to go over with you. And these are my suggestions only. I want them taken in that spirit, but I think they might help. Now, the Convention has available only 23 days for debate in the 9-week session, which, as most of you are aware, is all that the appropriated funds will properly finance if we're to have any left to explain the Constitution to the people. We have used 8 days of debate and we have only 15 days of debate left. Yet, we must still debate eight articles and cover all the Style and Drafting reports thereon in these 15 remaining days. This will be difficult, but not impossible, if the delegates do this: One, debate only the major basic issues. Two, depend on the committees-follow the majority or minority, do not become amateur draftsman in areas you have not studied. Three, discipline your own debate--arise only with significant, additional comment--use your vote to record your opinion. The truth of the matter is that about 96 of us at all times disciplineourdebate beautifully; but the last four get us started again, and then we all go off the deep end. Four, compromise—understand that there are many ways to do most things. The Constitution must be better; it need not be perfect. Five, listen and decide. This, rather than drafting changes, is your duty, in my judgment, unless your committee is presenting its article. Six, avoid long speeches and statements for the record and the folks back home. Seven, speak only once unless you are presenting and explaining your article. Now, once again, these are not rules. In Committee of the Whole, you may speak as often as you want, and there's no limit yet. But if we can't live within these guidelines, then we are going to have to have rules, and by the time we get to them, they're going to have to be stringent. Now, on the last page of the four pages put out is a schedule. This schedule-there's no magic to it, any of you could have done it. But if you take the days between now and the 18th of March and divide them up, you'll find that no committee gets more than two days and that the Judiciary Article must be completed today and that the General Government remaining article must be completed in a day or we just can't get done. Now, it's all right there, and in addition to the things in the right-hand column under debate, we must consider 10 reports on style, plus 1 on ballot, which I didn't even put on here yet. So, I think you can appreciate the problem. Now, I'll add one more thought and that is thatyesterday a good manyofthemembers of the Judiciary Committee and some lawyers did work quite hard. And they are going to try and boil down and get themselves together and try and get

the delegates to support either one or the other group of lawyers' viewpoints and try and get the Judicial Article accomplished today. Now, it can be accomplished today if we will follow one of the two or three main streams of argument that these lawyers have. But if we insist on each individually becoming lawyers today, it's going to be difficult to educate us all to that level, if1 may rebut, in that short time. I thank you very much for your tolerance in letting me say these things. On the other hand, I think it's absolutely essential that we all understand these things and that we proceed on this basis.

4, Introduction and Reference of Delegate Proposals.

CLERK **HANSON:** None.

PRESIDENT **GRAYBILL:** 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: 10, General Orders.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders,

PRESIDENT GRAYBILL: You've heard the motion that we resolve ourselves—

Mr. Harrington, do you want to be present'? Very well, Mr. Harrington's present. Mr. Etchart, your presence can be noted. Mr. Felt and Mr. Nutting are not here.

Okay. The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: "February 29, 1972. The following committee proposals are now on General Orders: Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting 1 and 2. That the Education Article Proposal Number 10, Local Government Proposal Number 11, General Government Proposal Number 12, Style and Drafting Proposal Number 2, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., are now in compliance with Rule 23 of the Montana Constitutional Convention rules." Mr. President [Chairman].

CHAIRMAN GRAYBILL: Very well. We're on the Judicial Article, and it's my understanding--so that everyone will know where we are—we adopted Section 1. Section 1 may be amended if anyone wants to, but it should be done at the end when we take up reconsiderations. We passed Section 2 until this time. We passed Section 3 and Section 4. It's my understanding, then, that we will start on Section 2 anew, and I believe, Mr. Schiltz, you have that.

Mr. Schiltz.

DELEGATE SCHILTZ: I think it's being distributed at the moment. Wc have developed one small addition that some of the lawyers interested have agreed upon, but have not agreed upon the language. With your permission, I would prefer that we go to 3 until we can resolve this problem of language. There's no problem with 3 or 4, so far as I know.

CHAIRMAN GRAYBILL: Very well. Mr. Berg, will you start on Section 3—would you like to reread?

Mr. Berg.

DELEGATE BERG: Mr. President [Chairman]. I move that when this committee has considered Section 3 of the minority proposal, with an

amendment which I shall suggest, that it do pass the same. Addressing myself to the proposed amendment, may I say that in the weekendrecess, as Mr. Schiltz suggested, we did have a conference of several lawyers-some on the majority, some on the minority-in an effort to resolve our differences, and we believe we have done that in a satisfactory manner. And it will be in thatmanner that it is presented to you today. With regard to Section 3, in line 24 on page 40, I move to delete the word "signed" and to substitute therefor the words "joined in".

CHAIRMAN GRAYBILL: Very well. Mr. Berg's amendment is to Section 3 of the minority report on page 40, on line 24, to strike the word "signed" and put in the words "joined in", so that the sentence reads-the last clause reads: "which must be in writing and joined in by the majority". Mr. Berg.

DELEGATE BERG: In this respect, I yield the floor to Mr. Schiltz to discuss this particular change.

CHAIRMAN GRAYBILL: All right. Mr. Berg.

DELEGATE BERG: The substance of this change was this-that this particular sentence was designed to prevent the court from issuing what are known as per curiam decisions, but there are many instances where the court, in expediency, does issue decisions that are not always signed by the justices, but they are always joined in by a majority of the justices before it is promulgated. And as a matter of simply permitting court expediency, we changed the language to the words "joined in" rather than "signed". Furthermore, we discovered that every justice, on every opinion, whether it is actually-indicates his signature on the publication, in the minutes of the court, they are signed and they do register, whether they are on majority or minority, whether they are dissenting or writing the majority. And this is the reason for this amendment.

CHAIRMAN GRAYBILL: Very well. Is there discussion of Section 3, as amended. Is there a discussion of Mr. Berg's amendment, "joined in"?

DELEGATE BLAYLOCK: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Will Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Yes.

DELEGATE BLAYLOCK: Mr. Berg, why would it make any difference--and I'm speaking as the layman-if all the justices signed it? Is that--why is that so hard?

DELEGATE BERG: It is not a difficult thing except that they say-and we talked with members of the Supreme Court about this-there are occasions when a justice is on vacation; he has approved of the opinion; he is perhaps away for 20, 30 days. If you require him to sign it at the time it comes out and is ready for publication, it's held up for at least a period of 20 to 30 days. These are the reasons that were given to us by the court members.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, will Mr. Berg yield to another question?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE ECK: This is touching rather close to something I think we've been concerned with right through. Now, you did indicate that, somehow, they would be on record, either favoring or opposing the particular judgment and that—

DELEGATE BERG: We are assured from the judges that they sign the minutes of the court and that indicates their position, whether it's on a per curiam decision or not. They do sign that, and there is a public record available to determine how they voted and how they considered any measure. They also assure us that on these per curiam decisions, there's seldom a dissent.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. Berg, will you yield to a ques-Mr. President [Chairman], may I talk to Mr. Berg?

CHAIRMAN GRAYBILL: Mr. Berg, will you yield?

DELEGATE BERG: Yes.

DELEGATE PEMBERTON: Thank you. Mr. Berg, is this for just your change or is this-is the whole article-is all of Section 3 the same as it is in the book, or arc WE discussing just your change in the word right now?

DELEGATE BERG: I made a motion after I-in moving the passage of Section 3. I moved it, as amended, by striking the word "signed" and substituting the words "joined in". So, you are-I suppose-the Chair may correct me-actually considering the amendment at this time. Thereafter, I would understand you would consider the section as a whole.

CHAIRMAN GRAYBILL: That's right, Mrs. Pemberton, just the words "joined in".

DELEGATE PEMBERTON: Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I ask a question of Delegate Berg?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE ROMNEY: Mr. Berg, would you please describe how accessible this decision is to the public? Is it open and available, and how is it available?

DELEGATE BERG: Well, of course, all decisions of the Supreme Court are published. They are printed and published and, of course, as you know, put into a bound book. There are occasions when the court, instead of issuing a majority-minority opinion, especially on what they call the so-called "cell-block appeals"-if you've seen the list of the workload of the court, you'll find that there are so many appeals and then so many cell-block appeals. Many of those cell-block appeals are per curiam decisions. They are usually about a page long. They arc almost always a unanimous decision, but they are sometimes issued without any particular justice actually signing it. However, as I understand it, on their journal, on their minutes, it is indicated which of the justices approved that particular opinion.

DELEGATE ROMNEY: Mr. Chairman, another question.

CHAIRMAN GRAYBILL: Yes, but it should be germane to the subject of the amendment.

DELEGATE BERG: Yes. I yield.

DELEGATE ROMNEY: I think it is.

CHAIRMAN GRAYBILL: Okay.

DELEGATE ROMNEY: These opinions are available in the office of the clerk of the Supreme Court?

DELEGATE BERG: Oh, yes. I might tell you that when a court decision is handed down, it is first in a sort of a mimeographed copy, and almost always it's signed. There are, as I say, these rare exceptions-not so rare, but I would say infrequently used-per curiam decisions. Those opinions, as soon as they are handed down, are in the clerk's office, and the attorneys of record are immediately-they are immediately forwarded to them. They are then published, not only in what we call the *Montana* Reports. they are published in what we call the Stale *Reporter*. That's a mimeographed sheet that comes out within a matter of a week. You can subscribe to that. And they are finally printed in the *Pacific Reporter* all over the western states.

CHAIRMAN GRAYBILL: Very well. All in favor of the motion to amend line 24 of Section 3, page 40, by strikingthe word "signed" and putting in the words "joined in", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. Mr. Berg, Section 3. We're now open for other amendments on Section 3. Mr. Berg, would you move—

DELEGATE BERG: Mr. Chairman. I move that this committee, when it does arise and report, having had under consideration Section 3 on page 40 of the minority report, as amended, recommend it do pass.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Whatever happened to that amendment on Section 3 increasing the number of judges from 4 to 6?

CHAIRMAN GRAYBILL: All amendments are wiped out when we passed it, and we're discussing it as is here.

DELEGATE ROMNEY: Very well.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Wc have discussed only the-have read only the first paragraph of Section 3. Have we divided that into subsections'?

CHAIRMAN GRAYBILL: No, we have not.

DELEGATE HARLOW: The motion was to take all of Section 3.

CHAIRMAN GRAYBILL: That's right. I'll be glad to read it for you or have it read. Will the clerk please read Section 3 in its entirety, including the amendment?

CLERK HANSON: "Section 3, Supreme Court organization. The Supreme Court shall consist of one Chief Justice and four justices, a majority of whom will be necessary to pronounce the decision, which must be in writing and joined in by the majority. The Legislative Assembly may increase the numberofjustices from five to seven. District judges shall be substituted for the Chief Justice-or the justices in the event of disqualification or disability. In any cause, the opinion of the district judge sitting with the Supreme Court shall have the same effect as an opinion of a justice of the Supreme Court." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I renew my motion to strike out lines 25 and 26 of this amendment, which takes it away from the Legislature.

CHAIRMAN GRAYBILL: Mr. Mahoney has made a motion that the sentence "The Legislative Assembly may increase the number ofjustices from five to seven" be stricken.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. In discussing this with the justices of the Supreme Court, they indicated that at the present time, no additional justices are needed. However, I resist this motion because it was indicated that in 1900, the original 1889 Constitution was changed to allow the Legislature to increase the Supreme Court to five from its original three. In 1919, the Legislature took action and increased it to five. And I think we can trust our Legislature to provide the same option when the increase is needed.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I also rise in opposition to the Mahoney amendment. And as an explanation of this, I discussed this section with some justices of the Supreme Court, and they agreed with Mr. Dahood that seven justices would greatly increase the capacity of the court to take care of their work. They informed me that this probably was a need that would arise in the future, and they explained how seven could increase their capacity as against five. The question I presented to them is one that, I'm sure, that runs through the mind of practically everyone. If seven justices have to listen to one argument, instead of five, how does that increase their capacity? They explained that with seven justices, they could operate in banks. They could parcel the writing of the opinions out, and thus increase their load. However, at the present time, their problem is not that pressing, and they feel the Legislature could be depended upon, at such time as it becomes so pressing, as to increase the number when that need became that evident. At the present time, they are operating with only three law clerks, instead of five, which has been authorized. And if they had their full five law clerks, which they would have had they-could they have hired them-the salary schedule that they are authorized to offer has caused them to lose some of their law clerks, some to this Convention and other places, so that they are constantly looking for law clerks. But this would assist them. They advised me that the plans for a new Supreme Court facility, if they ever come about, will provide for seven justices--a place for them--and they felt that before Montana would reach the point where we needed an intermediate appellate court as some states have, in the years to come, they could then increase their capacity by going to seven and operate at that time until the load became so great it was necessary to have an intermediate appellate system. I give this as an explanation for those who wonder why this about-face has been made. The recommendation of both the majority and minority was that the Legislative Assembly may increase the number ofjustices from five to seven, and as Mr. Melvin pointed out, that authorization remained before the Legislature from 1900 to 1919.

Before the Legislature increased it from three to five, the Supreme Court got so behind in their work that they had to operate on a commission basis for awhile.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I merely want to supplement the arguments presented by the previous delegates. I indicated that I would stand at 1030 this morning and support a motion to have the court increased, by this Constitutional Convention, from five to seven. I am not going to stand in support of that motion this morning, but I do want to provide some statistics to support the position adverse to the motion before this body by Delegate Mahoney. The court presently is operating on a case basis on some 200 cases per year. In the last decade. the increase has been more than 50 percent. And as a consequence, the increase upon each judge with respect to deliberation and decision, has been an increase of more than 50 percent. Approximately three months out of the year are spent in the Supreme Court hearing-chamber for the purpose of listening to argument. Nine months are left, then, for deliberation, for study and for decision. As I indicated on Saturday, this appellate system in Montana is a system of right to each litigant who desires to appeal, and, consequently, the court does not have any power to restrict its case work. A most recent transcript that has been in the public spotlight is the Warwick case out of Bozeman. That transcript was over 1,100 pages. When we talk about 200 cases, we are talking about complex cases for the most part; some very extended with respect to transcript and testimony, some not so extended. But, in any event, 200 cases for a five-judge appellate court is a considerable amount of work. The court has indicated to me that, certainly within the next decade, in all probability, it will be necessary to increase the court from five to seven. I submit that although there may not be a pressing need at the moment, we are here to draft a Constitution, not for tomorrow, but for the decades. Both the majority and the minority, after study and after hearing witnesses, recommended that the Legislature have the power to increase the court from five to seven. I submit the motion to strike lines 25 and 26 should be rejected. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's motion to strike from lines 25 and 26 on page 40, Section 3 of the minority report, the sentence: "The Legislative Assembly may increase the number of justices from five to seven."

Mr. Mahoney.

DELEGATE MAHONEY: May I close, Mr. Chairman'!

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: This is the same way-1 sure feel-up here this morning-I feel like a story I one time heard, where he said he felt like a lion in a den of Daniels, and that's the way I feel amongst all these lawyers this morning defending the Supreme Court. We sue in Mr.--I don't know, I believe it was in Mr. Dahood's statement-that they were talking, or it was either that or Mr. Habedank said-that they were now thinking about the new building and they were going to get seven fixed in the new building. So it's already underway. Now, I just think we'd better start and go back here and look at the boy that's paying taxes. And this is one of the costs now. If they have two vacancies in the attorneys over there now-and I think that they lost one just lately; in fact, I heard, I think, they lost him in the last week. So they have had them-the court is current. Now, if this thing should ever get serious enough, I am sure that we could amend the Constitution and could put in the seven if it's necessary. Rut I have watched the power of the Judiciary up here a good long time, and they have got more special privileges than any other person. They got the special retirement, which they said was not going to cost the taxpayers a cent; all they were doing was doubling the court fees. Now, if that isn't something, I don't know what it is. We saw last session of the Legislature, when the Governor-pressure was brought on him to even ask in a special session of the Legislature to raise the judges' salaries. Now, I just wonder how far-and I think if these judges are so overworked, we can, I'm sure--can find plenty that will take the job. We won't have any trouble, and I'm-think we can continue at five in place of the seven. And thank you for the time, Mr. President [Chairman].

CHAIRMAN GRAYBILL: So many as shall—

Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: I ask for a roll call and ask for seconds.

(Seconds arise)

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as shall favor Mr. Mahoney's amendment, please vote Aye on the voting machines; so many as shall oppose it, vote No.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. Will you take the roll please.

Aasheim ..... Nay
Anderson, J..... Nay
Anderson, 0. ..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... .Aye
Rates.. ....Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... .Absent
Brazier ..... Nay
Brown.. ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ....Aye
Dahood ..... Nay
Davis .....Absent
Delaney ..... Nay
Driscoll ..... Nay
Drum.. ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen.. ....Aye
Etchart ..... Nay
Felt .....Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gyslcr ..... Nay
Habedank ..... Nay
Hanson, R.S..... .Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... .Absent
Heliker ..... Nay
Holland., ... Nay
Jacobsen ..... Nay
James ....Aye
Johnson ....Aye
Joyce ..... Nay
Kamhoot ..... .Aye
Kelleher ..... Nay
Leuthold .....Aye
Loendorf ..... Nay
Lorello .....Aye
Mahoney ..... .Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough..... .Aye
McKeon ....Absent
McNeil ....Aye
Melvin ..... Nay
Monroe.. ..... Nay
Murray ..... Nay
Noble .....Aye
Nutting .....Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins., ... Nay
Romney ....Aye
Rygg ....Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks, ... Nay
Speer ..... Nay
Studer ....Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... .Aye

Vermillion Nay
Wagner ..... Aye
Ward ..... Absent
Warden Nay
Wilson ..... Aye
Woodmansey Nay

CLERK HANSON: Mr. Chairman, 24 delegates voting Aye, 69 voting No.

CHAIRMAN GRAYBILL: Mrs. Babcock, your presence is here. Did you vote? You wore not counted absent so you're all right.

CLERK HANSON: Mrs. Babcock voting No; 70 voting No, 24 voting Aye.

CHAIRMAN GRAYBILL: Very well. 70 delegates having voted No and 24 Aye, the motion fails.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman and ladies and gentlemen of the Convention. As it was indicated to you by Mr. Berg, there was a lot of work done over the weekend. I know I spent about five hours in the law library on Sunday. Yesterday afternoon, there was a meeting of Mr. Berg, Jack Schiltz, Jim Garlington very kindly offered to help. I was present and we met for about 4½-5 hours yesterday afternoon and hammered out these amendments which are now on your desks. These amendments constitute a compromise in language and in thought on the part of the majority and the minority reports that are in the book before you. We are indeed deeply grateful to Jim Garlington, who acted as somewhat of a referee and helped us tremendously. He volunteered for that important job. We have some differences, and I might mention those to you. And those differences are not in language, they're not in draftsmanship, they're not in technical matters; but they are in principles involved in this matter. One of the differences is whether the clerk of the Supreme Court should be elected or appointed. The basic difference is in the method of selection or election of the judges of the District Court and the Supreme Court. We, as the ad hoc committee that met yesterday afternoon, could not get together on those items. So the principles involved will have to be divided-will have to be decided-by the Convention. And we think we have drafts, or can supply drafts rather rapidly, to cover whatever this body may decide that they want involved. There is another difference, which is not perhaps so major, but it does involve the county attorneys—the difference between the majority and the minority report, whether they should be called district attorneys and elected as provided by law or we should provide in the Constitution for the method of electing the duties of county attorneys, We have not mentioned Justices of the Peace Courts in the Constitution, but we have provided, I think, adequately for a lower court of some type or form to be determined by the Legislature. In the first section, we have given broad power to the Legislature to provide for such lower courts as they may deem proper. Then, in some of the amendments--as we go through them, you will notice that we have provided, indirectly, for lower courts by providing that misdemeanors are to be tried in other courts, which shall be provided for by the Legislature. So, in two or three places, we have given a pretty strong mandate to the Legislature to provide some form of a lower court. Now, those are about, I think, a fair resume of the differences. There will be a difference also, perhaps, on the rulemaking power of the Supreme Court. And that, again, is in principal; it's not in mechanics of language or anything of that sort. So we should be able to get away from most of the wrangling that we started on Saturday afternoon. I would like to point out to you some general observations on the importance of the courts; and I would like to call to your attention that no matter what broad powers or rights you provide for people in the Bill of Rights, the value of those rights are dependent entirely on how the court interprets them. In other words, the average individual who feels that his rights are being impugned upon, whether it be by the Executive branch, and that includes the bureaus and administrative agencies; whether it be by an invalid act of the Legislature; whether it be by some overzealous law enforcement officer of some type or another; whether he's wrongfully imprisoned. Having those rights be meaningful is dependent entirely upon the courts. And if the courts are ineffective, if they're not independent, if they're subject to pressure by the other two branches of government, those rights might become meaningless. Therefore, I point out to you, that it is dreadfully important, in my view, at least, that the courts be made independent, be made strong, be made unafraid to act for fear of reprisal from one of the other branches of the government. And it is only in that manner that we can guarantee to our people the liberties that we wish them to have. The Constitution is, true enough, the framework of government, but on the other hand, it is a last bulwark and protection that the people have. The court should also be made

strong enough and independent enough that they have no fear of striking down an unconstitutional legislative act. They should have no fear of saying to the Executive branch of government, "You've gone too far; you've impugned upon the rights of individuals." I understand there's a strong Natural Resources Article coming out. There's going to be some strong statements made as to ecology. Those statements are meaningless unless you have an independent Judiciary that's willing and able to enforce those rights guaranteed to you. I just wanted to make these observations. I'm sure that you are well aware of them, but it doesn't hurt to call them to the attention of the delegates. And I hope that we can keep the argument down to the basic principles involved. And I think I have fairly stated the differences that do exist, and differences will have to be decided by this Convention. Thank you.

CHAIRMAN GRAYBILL: Members of the committee, the Chair is aware that Mr. Aronow got up after we got started and in the middle of this, but we heard his remarks anyway because I think they were necessary. Now, members of the committee, you now have before you, on the motion of Mr. Berg, that when this committee does arise and report, after having under consideration Section 3 of the minority report, it recommend that the same be adopted. So many as—

Mr. Eskildsen.

DELEGATE ESKILDSEN: A roll call vote, please.

CHAIRMAN GRAYBILL: Very well. So many as are in favor of that, vote Aye on the voting machines; so many as opposed, vote No. Section 3 in its entirety, as amended. So many as are in favor, vote Aye; so many as are opposed, vote No.

Has every delegate voted? (No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote? (No response)

CHAIRMAN GRAYBILL: Very well. Take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O.. ..... **Aye**
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Absent
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland. ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye

Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield. ..... .Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Aye
McKeon ....Aye
McNeil ..... Nay
Melvin.....Aye
Monroe.. ....Aye
Murray ..... Aye
Noble .....Absent
Nutting .....Aye
Payne ..... .Aye
Pemberton ..... Aye
Rebal ....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins.....Aye
Romney ..... Nay
Rygg ....Absent
Scanlin ..... Aye
Schiltz .....Aye
Siderius ....Aye
Simon ....Aye
Skan..... Aye
Sparks ..... Aye
Speer ....Aye
Studer ....Aye
Sullivan ....Aye
Swanberg.....Aye
Toole ..... Aye
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner ..... .Aye
Ward ....Aye
Warden .....Aye
Wilson ..... .Aye
Woodmansey ..... Aye

CHAIRMAN GRAYBILL: Mr. Nutting, your presence is noted.

CLERK HANSON: Mr. President, 90 delegates voting Aye, 5 voting No.

CHAIRMAN GRAYBILL: 90 having voted Aye and 5 having voted No, Section 3 is adopted. Will the clerk please read Section 2 in its entirety, as it originally appeared in the minority report on page 40.

CLERK HANSON: "Section 2, Supreme Court powers. The Supreme Court shall have final appellate jurisdiction and general supervisory and administrative control over all courts. The Supreme Court may make rules for the practice of law and judicial administration in all courts. The Supreme Court shall have such power to make rules of procedure as may be provided by law. The Supreme Court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of its jurisdiction. including the writ of habeas corpus." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz, do you have an amendment?

DELEGATE SCHILTZ: Yes, will you have the clerk read it, please.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read Mr. Schiltz's amendment?

CLERK HANSON: "Mr. Chairman. I move to amend Section 2, page 40, lines 10 through 20, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following language: 'Section 2, Supreme Court powers. The Supreme Court shall have appellate jurisdiction, including jurisdiction to issue, hear and determine writs appropriate to its appellate jurisdiction, and original jurisdiction to issue, hear and determine writs of habeas corpus. It has general supervisory control over all of the courts. It may make rules governing appellate procedure, rules of practice and procedure for all the other courts, and rules of admission to the bar and conduct of its members'." Mr. Chairman, amendment by Schiltz.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: 1 apologize. 1 have some additional material on there. And it isn't very long, hut it was just resolved on the floor here. If everybody would take the copy of my amendment he has and put the following language after the word "members": "Rules of procedure shall be subject to approval or disapproval" —so far you should have "Rules of procedure shall he subject to approval or disapproval by the Legislature in either of the two sessions following their promulgation."

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In connection with the amendment of Section 2, I should like to say that this is a consensus restatement of the minority Section 2, which in turn is a completely revised Section 2 and 3 of the old Constitution. Anticipating the Chairman's admonition this morning, we have produced something new, reducing about a page and a half of printed language down to this paragraph. It takes care of the objections and difficulties we were having on Saturday. The clerk did misread the word in the first line "the Supreme Court shall have"; it reads "has". I don't think there should be any difficulty with this, except possibly a comment on the new material which I have just dictated. There's some fear among lawyers that the Supreme Court will take its authority to make rules governing procedure as authority to make substantive rules of evidence. Mr. Berg has agreed to this amendment, and I'm sure most of the other lawyers would agree with it, if not all of them. I move the adoption of the amendment.

CHAIRMAN GRAYBILL: Very well. Is there discussion?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. Again, speaking as a layman, when each one of these amendments is made, I want to know precisely why the amendment is made. For instance, why is this language necessary, rather than what's in the present minority report'? What does it do that the language in the minority report right now does not do'?

CHAIRMAN GRAYBILL: Mr. Schiltz, do you care to speak to that?

DELEGATE SCHILTZ: Yes. I didn't make underlines. "The Supreme Court has appellate jurisdiction, including jurisdiction to issue, hear and determine writs appropriate to its appellate jurisdiction"-that's substantially the same as is in the present record-"and original jurisdiction to issue, hear and determine writs of habeas corpus", which is also in the minority report. "It has general supervisory control"--which is in the minority report. "It may make rules governing appellate procedure,"--we may have changed that; that's additional, although I thinkwewill, as a result, delete some other material that may be in the minority report-"rules of practice and procedure for all other courts,"-instead of the material in the minority report, which, I think, gave the court--wait till I find it—

CHAIRMAN GRAYRILL: Line 12, administrative control.

DELEGATE SCHILTZ: Yeah, which gave the court administrative control; it spelled out what we consider administrative control to be and limited it to that amount--and, of course, "rules of admission to the bar and **conduct of its** members"—I don't know if that's in there or not. No, that's additional. Does that answer you, Mr. Blaylock?

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Then, Jack— then also, you add this down there "the rules of procedure". That's new--what you put on just after you got through.

DELEGATE SCHILTZ: That's brand-new, but it's-let me explain that. In my own mind, if the rules of procedure were in there just as it is written without the additional material, I would consider that the Supreme Court had only authority to say how the procedures in thevarious courts should be handled. But, as I said in the explanation, the Supreme Court has shown an inclination, under rules of procedure, to get into the area of substantive rules of evidence. And lawyers are extremely jealous on that subject. So, that, in turn, was a delegation from the Legislature, and we want to keep it in the Legislature's hands by adding this additional material.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Schiltz a question, please?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE BOWMAN: Mr. Schiltz, it says "to-hear and determine writs of habeas coypus" in your amendment, and in the minority report, it says that they'll have the power to hear and determine all writs appropriate to the exercise of its jurisdiction. By cutting out those words, are you severely limiting the right of the court to hear all writs'!

DELEGATE SCHILTZ: Really, that was kind of a Style and Drafting change, Mrs. Bowman. In the amendment, it has authority to hear and issue all writs appropriate to its appellate jurisdiction, and then we carefully guarded the right to original jurisdiction for habeas corpus.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Would the delegate, Mr. Schiltz, yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes.

DELEGATE BRAZIER: I am concerned that the record reflect just what the intention of this proposed amendment is, with respect to the scope of general supervisory control. Therefore, would you please tell me whether it is the intention of the drafters of this proposed amendment that the scope of that general supervisory control be limited to a certain remedial writ, where if it goes beyond that; and if it does go beyond that, would you please tell us for the record what is intended by the phrase.

DELEGATE SCHILTZ: Mr. Brazier. This was a compromise on my own part. I was defeated on my motion Saturday to try to take the writ of supervisory control away, and I conceded that I was defeated, and so I put it in. I can see that the Supreme Court can and will continue to use the writ of supervisory control under this wording.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Would Mr. Schiltz yield to a second question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE BRAZIER: Mr. Schiltz, I merely want to pin down whether it's the thought of the draftsmen of the proposed amendment that the language goes beyond the use of a writ and into other administrative matters.

DELEGATE SCHILTZ: You will notice that some of Mr. Berg's language having to do with administrative control has been deleted. In other words, we did not want to put into the Constitution that the Supreme Court could set up a bureau of administration. Mr. Berg agreed to that. I would expect that the Supreme Court, under general supervisory, could order a judge to go to another place, could call in a judge to sit on the Supreme Court in the absence or vacancy of a Supreme Court member, that sort of thing.

CHAIRMAN GRAYBILL: Mr. Holland—Mr. Berg.

DELEGATE BERG: I don't want to take very much time on this. My construction of general supervisory control is broader than the mere issuance of the writ of supervisory control. I anticipate that perhaps, in time, the words "general supervisory control" may include administrative control of the judicial system. I don't want to be misunderstood on that. The question as to whether administrative control--whether the word "and administrative control" added to that or detracted from it-within the group that we were working with, we deleted the word "administrative control". I, in my own mind, think that general supervisory control is just as broad, and I would not want the delegate to misinterpret, at least, my understanding of that feature.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Mr. Berg is absolutely right. That was the sense of the ad hoc committee in taking out "and administrative".

CHAIRMAN GRAYBILL: Members of the committee, you now have before you, on the motion of Mr. Schiltz that when this committee does arise and report after having had under consideration Section 2, including the whole of the section as amended by him, that the same be recommended for adoption. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Very well. It's adopted as amended. Will the clerk read Section 4.

CLERK HANSON: "Section 4, District court powers. Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear, and determine original and remedial writs, is vested in the District Courts, but the distribution of concurrent jurisdiction with other courts may be provided by law. Until otherwise provided by law, appeals from inferior courts must be tried anew and in the District Court. District Courts shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such judicial jurisdiction as may be delegated by the laws of the United States and the State of Montana. The Supreme Court and the District Court process shall extend to all parts of the state." Mr. Chairman, Section 4.

CHAIRMAN GRAYBILL: The Chair would like to call to the attention of the delegates that we're considering Section 4 as it was originally, on page 41 of the minority proposal, Since we passed it and since we had not finally adopted it, the motions and amendments we made the other day are wiped out, and we're considering it as it was originally.

Mr. Schiltz.

DELEGATE SCHILTZ: May I have my amendment read?

CHAIRMAN GRAYBILL: Very well.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4, page 41, lines 2 through 15, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following paragraph: 'Section 4, District Court jurisdiction, subparagraph 1. The District Court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States. Subparagraph 2. The District Court shall hear appeals from inferior courts as trials anew. Subparagraph 3. The Legislature may provide for direct review by the District Court of decisions of administrative agencies, for jurisdiction of criminal cases not amounting to felony in other courts, and for concurrent jurisdiction with other courts.'" Mr. Chairman, the Schiltz amendment to Section 4.

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz's amendment to Section 4 is allowed and open for discussion.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration the amendment to Section 4 of Judicial Article, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This again is a consensus statement of Section 4, by the ad hoc committee to which Mr. Aronow referred. In response to the inquiry that Mr. Blaylock wanted, I'll try to pick out the differences between this and the minority report. We added that the District Court shall have jurisdiction in criminal cases amounting to a felony. The minority report did not do that. And we added the words "at law and in equity for all civil matters". The idea there was that possibly we would lose our jurisdiction for divorce cases in the District Court, which are equitable matters. It was added in an abundance of caution. We added naturalization. I didn't personally think it was necessary, but, again in an abundance of caution, we said that the District Court shall have naturalization powers and such other jurisdiction, similar to naturalization, that the United States might give to our District Court. We provided that the District Court should have the absolute duty to hear appeals from inferior courts and that those would be tried anew. And then, finally, we provided that the Legislature may provide for direct review by the District Court of decisions of administrative agencies. And we added the material for criminal cases not amounting to a felony and concurrent jurisdiction with other courts, in case at some time in the future there may be created other courts with which the District Court could have concurrent jurisdiction. Otherwise, it's substantially the same section-a little bit briefer, stated a little bit differently.

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: Would Delegate Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I yield.

DELEGATE LEUTHOLD: In thissection (Inaudible).

CHAIRMAN GRAYBILL: Mr. Leuthold, you'll have to speak a little louder. I can't hear you.

DELEGATE LEUTHOLD: Mr. Schiltz, is this the only reference that'11 be made in the Judiciary section in regard to Justice Courts and Small Claims Courts?

DELEGATE SCHILTZ: I don't know that-Well, there's a reference by inference here, I might say, but the matter of Justice Courts and Small Claims Courts was taken out in Section 1. when it set up what the judicial power of the State of Montana is. If you'll look at Section 1, it says that the judicial power is vested in a Supreme Court and District Courts and such other courts as the Legislature may provide. That's where your

Justice Court power will have to come from, if we have it.

DELEGATE LEUTHOLD: Mr. President, one more question. I'm wondering why it can't be spelled out a little clearer so that we can--assure us that we'll have Justice Courts and Small Claims Courts.

DELEGATE SCHILTZ: I think, as a practical matter, the Legislature will do that, but I can't assure you that it's going to. I happen to be a justice-court man, and I think that we ought to have it. Now, in the present Constitution, we have a separate section in the Constitution saying what the Justice Court's jurisdiction is. And in the article-or in the section comparable to Section 1, we also have Justice Courts included there.

DELEGATE LEUTHOLD: Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. In the amendment proposed by Mr. Schiltz, I'm going to move to amend it in subsection 2 thereof, by changing the period after the word "anew" to a comma and adding the words "unless otherwise provided by law."

CHAIRMAN GRAYBILL: That's in subsection 2?

DELEGATE LOENDORF: Yes, Mr. Chairman. I had provided a written amendment to the original subsection 4. I didn't know these amendments were coming, so I'll have to change it to read as I've read it to you now.

CHAIRMAN GRAYBILL: Very well. Mr. Loendorf proposes an amendment to Mr. Schiltz's amendment, in subsection 2 thereof, so that it would read: "The District Court shall hear appeals from inferior courts as trials anew comma, unless otherwise provided by law." He wants to add the phrase "unless otherwise provided by law" to subsection 2. Is that correct, Mr. Loendorf?

DELEGATE LOENDORF: That's correct, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well

DELEGATE LOENDORF: May I speak to the amendment?

CHAIRMAN GRAYBILL: You may speak to it.

DELEGATE LOENDORF: There's no doubt in my mind that, by Section 1, the Legislature can provide for whatever courts-Small Claims Court, Justice Courts, whatever we might wish to call them-as they may find necessary to provide in the future. However, I'm worried that subsection 2 of the proposed Section 4 here would seriously hamper, say, a Small Claims Court, if we require that all appeals from the lower courts be tried anew. And-I might best explain that by an example. Suppose Delegate Leuthold has a claim for me for $75, and we have a Small Claims Court set up in Montana. He goes to this Small Claims Court and, assuming it's one like they have in other states where they help him prepare the complaint so he doesn't have to hire a lawyer-it's a $75 claim-he has it processed, and he wins the case there. Now, if I simply say, "I appeal", then the whole thing has to be tried anew in District Court. That means Mr. Leuthold, after winning the case in this Small Claims Court, has to go hire a lawyer, who has to prepare the complaint, summons, have them issued. Even if I default and do not appear, he has to get an application for entry of default, an affidavit of amount due, an entry of default, a judgment and execution. And no lawyer is going to do that for $75. So, by providing this type of appeal, it seems to me the effectiveness of a Small Claims Court may be defeated. I recognize that trial de novo is needed in certain instances, and I think if we adopt this amendment, we have the flexibility where the Legislature can provide for the type of appeal which will provide for the most effective types of inferior courts. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Loendorfs amendment to add the words "unless otherwise provided by law".

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in opposition, because this sword cuts both ways. Number one, I don't like to disagree with Mr. Loendorf, but when you take an appeal from the Justice Court to the District Court, you take it upon the files and the complaint that's already in the Justice Court. There's no need to draft a new complaint in the District Court. The other thing is that in all of the counties of the state, you aren't going to be able to have a lawyer, justice of the peace or magistrate or whatever you may call him. In a lot of the rural counties where collection agencies are extremely active, people live 'way out in the country or some distance from the county seat.

They may not be able to get in or may forget or not get in in time, so there has to be some safeguard. And most of these minor claim courts are not courts of record, where you have a court reporter, where you have a transcript, and I submit to you that having a transcript typed up by a court reporter would be extremely expensive, and it would be expensive to the taxpayers to provide a court reporter. So the only practical way is to provide for a trial anew upon appeal.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise in support of the proposed amendment. I want to speak not only on the proposed amendment, but its effect upon the entire article, or the entire section. In that regard, I want to first call your attention to the last sentence in subparagraph 3, which provides for concurrent jurisdiction with other courts. This language is inserted in this section for the sole purpose of giving great flexibility to the entire inferior court system. Pursuant to this language, the Legislature will be able not only to enlarge, if they desire, the jurisdiction of the Justice of the Peace Courts. It may also, if it desires, create Small Claims Courts. It may also, if it finds it necessary in the future, provide for domestic relations courts. It may provide, if necessary, for separate probate courts. It gives great flexibility to the entire inferior court system. Now, there is prevalent throughout the United States what is known as the two-tier system. This is a more modern approach to a judicial system. The two-tier system would say that there are basically two courts, the Supreme Court and the District Court level. And the District Court level would, as for an example in the Montana Plan, appoint magistrates. Those magistrates would be exercising exclusively original jurisdiction of the Supreme Court. And, like Mr. Aronow suggests, were that ever to occur, then the appeal is from the District Court to the Supreme Court, and transcripts and rather expensive appeals are required. It is my judgment and, I think, the judgment of most of the committee that that kind of procedure Montana is not yet ready for, perhaps never will come to recognize. But it ought not to be entirely excluded from possible consideration in the future. I believe that Mr. Loendorf s amendment accomplishes this-1 believe it also accomplishes and facilitates possible future renovation. Now, insofar as Small Claims Courts are concerned-generally speaking, a Small Claims Court is one of very limited jurisdiction, oftentimes not in excess of $100. Those types of claims, which are always civil in nature, are not really of the character that justify appeal from a decision of the Small Claims Court. The Small Claims Courtreally has a place already in Montana. If the Legislature thought it necessary to provide for appeal by trial anew in the District Court from a Small Claims Court decision, it can do so, but it is not absolutely obliged to do it under Mr. Loendorfs amendment. It seems to me Mr. Loendorfs amendment increases the flexibility of this jurisdictional problem. I therefore support it.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I'd like to speak in support of Mr. Loendorfs amendment. I have a copy of a speech here by William Burnett, who is presiding judge of the Denver County Court. And in it, when he discusses the de novo trial, he says: "Take, for instance, the matter of appeals. As lower court proceedings are traditionally not of record, appeals must involve a trial de novo in a higher court. Thus, the person involved in a minor case becomes entitled to two complete trials at public expense. The convicted felon or loser of the million-dollar lawsuit has no such right. This new trial appeal, which may be had irrespective of error at the original trial, is not only costly but breeds contempt and disrespect for the lower court. It favors the rich over the poor, the affluent over the ignorant, the dishonest over the honest. An interesting object lesson may be drawn from our Colorado experience. When de novo was eliminated by making the lower courts of record, appeals from our court were cut in half. Thus, the one trial, one appeal rule is not only good justice, it is also good economy." Therefore I support Mr. Loendorf.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I rise in opposition to the amendment and in favor of the committee's report as drafted. My reason for opposing the amendment is that this would open the door to permit the Legislature to adopt one of the very real evils of the Montana Plan. And that is: appointive magistrates, from which the only appeal is to the Supreme Court of the State of Montana. If Mr. Leuthold lost his $75 claim in the Magistrate Court as adopted by the Montana Plan-if that were to be adopted by the Legislature-his only appeal would be to the Supreme Court of the State of Montana, and I submit that

that would be grossly more expensive than to the District Court. Adding this magic language "unless otherwise provided by law" could permit the Legislature to circumvent our District Courts as appellate courts from our people's court level. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: As I said in this connection on Saturday, I oppose the amendment, but I want everybody to know what he's doing. If you follow this amendment-and I'm speaking specifically with reference to criminal appeals—you will run the risk of losing your protection from an aggressive JP or an aggressive Police Court and you won't have an automatic right of appeal no matter how wronged you feel.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. I think it should be pointed out, without saying one way or another whether it's good or bad, that this would open up the possibility that there would be no appeal, and these smaller-or lower courts could be courts that would be finally hearing a case for the first time and that would be the only time you'd be in court. I think that it opens that up.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I rise to speak against the amendment. You've got to realize that there's been no provision that the lower courts would be courts of record. If the Legislature passes a law that these shall not be trials de novo, this means that you must appeal on the record. And of all the testimony we heard, that was consistent, the evils in the present lower court system is that the law enforcement officers will consistently bring the case to one out of several JPs-the one that always give them the conviction-and they tell them all about the case in advance and get the decision in advance, before the poor man ever gets into court. Very often, they go in without a lawyer, think that the most they can get is a fine, wind up with a jail sentence. And this is when the trial de now-you then go before the jury and have the jury consider it. I might give as an outstanding example what could happen-was an instance up in Great Falls around 10 years ago, where a police judge was appointed. He was a hard law enforcement man. One of his first actions when he got on there was to take a mother of two children well under school age and for a minor traffic offense give her 10 days in the city jail. Now, if there had been no trial de novo, there would have been no appeal from that decision. That woman would have served the 10 days. Ever since the history of Justice Courts and Police Courts in the State of Montana, there have been unreasonable decisions by judges in lower courts, and the protection has been, at that time, that the person goes out after they've been aggrieved-go out and hire an attorney and then go up and have a proper trial of the matter and let there be a decision. I submit that where we have no adequate means of having a record made in the lower court-must be at least by a tape recorder, it would be up to that person who is being tried to make sure a record is being made, that this could lead to multiple evils, and the amendment should be rejected.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I rise in support of the amendment. I realize the lawyers are all jumping up here, very much disturbed by allowing the Legislature to have anything to do with their own little courts. But without the amendment, this thing is contradictory and does not allow the people any flexibility in the future in regards to forming the kind of courts that they want. You're freezing in the inferiorness of the inferior courts when you do not allow the Legislature to improve them by law. I heartily support the amendment, and I feel all of us should if we are concerned with court improvement.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. I can recognize the need for flexibility in the future, but I was in opposition to this the other day, and I would be in opposition to Mr. Loendorf s amendment, because I think by putting that language in there, you can possibly remove one of the few limitations, one of the few protections, that the consumer has. Let's take the case that Mr. Loendorf was talking about. He owed Mr. Leuthold $75. Well, Mr. Leuthold had sold him a vacuum cleaner that didn't work, and he took it back to Mr. Leuthold and Mr. Leuthold said, "Too bad. I got your money, and I'm not going to fix it." So Mr. Loendorf said, "Well, I'm not going to pay you." And Mr. Leuthold said, "Well, I'm going to take you to Small Claims Court." And he does, and under the law, under the contract, he would probably get a judgment. The only recourse that Mr. Loendorf would have, if the Legislature so provided, would

be to appeal to the Montana Supreme Court. And I've done a lot of work in the Justice Courts—I've probably done as much work in Justice Courts as anybody here-and I've seen poor people dinged on these things-not just poor people; rich people, too-dinged with furnaces that don't work; dinged with carpet that they don't want; dinged with siding that isn't siding. And one of the few protections you have is to refuse to pay. And if they can go into Justice Court and get a judgment against you and then you have to pay 2 or $3,000 to appeal to the Montana Supreme Court, you're just stuck with it. And I think you are opening the door to removing one of the few protections that the consumer has, in addition to the other things that have been outlined. And I would ask you to resist this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Will Mr. Schiltz yield to a question'?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I yield.

DELEGATE BLAYLOCK: Mr. Schiltz. Now, under this phrase that Mr. Loendorf wants to add, it doesn't necessarily mean, does it, that if the Legislature took this that they would fix it so you had to go to the Supreme Court? They could also fix it so you could go to the District Court, couldn't they, from those inferior courts?

DELEGATE SCHILTZ: Certainly, if we want to trust the Legislature to act, but it also would allow the Legislature to deny such an appeal, which is my worry.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Loendorfs amendment to Mr. Schiltz's amendment—subsection 2 of Section 4, as amended. Mr. Loendorf would add—

DELEGATE LOENDORF: May I close?

CHAIRMAN GRAYBILL: If you need to.

DELEGATE LOENDORF: I'm not sure that I need to, but I would like to say this. If we assume that our inferior courts now are always going to remain as they are and never be improved, I would be against my own motion. However, in appeals from the District Court now—which no one doubts their ability to try a case-we simply appeal to the Supreme Court. Procedures can be provided in the future by which you could have appeals other than trial de novo from a Small Claims Court or any other inferior court to a District Court. This is not a limiting factor. It's something that allows for flexibility, and it does allow for trust in the Legislature. We've trusted them, I think, in many areas and should trust them in this area.

CHAIRMAN GRAYBILL: Mr. Loendorfs amendment would add the words "unless otherwise provided by law" to subsection 2 of Section 4 so that it reads: "The District Court shall hear appeals from inferior courts as trials anew unless otherwise provided by law." So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Please indicate in the voting machines. So many as are in favor, vote Aye; and opposed, vote No.

All the delegates voted? Any delegate wish to change his vote? 62 delegates having voted Aye, 32 having voted No, it's adopted. Very well.

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I would move to amend Section 1 of Mr. Schiltz's amendment by adding at the end of the paragraph-striking the period and putting in "or the State of Montana".

CHAIRMAN GRAYBILL: After the word "United States"?

DELEGATE DAVIS: Yes. Strike the period and put in "or the State of Montana".

CHAIRMAN GRAYBILL: Very well. Mr. Davis proposes to amend Section 1 of Mr. Schiltz's amendment by adding the words "or the State of Montana", so that the last sentence reads: "It shall have the power to naturalize and such additional jurisdiction as may be delegated by the laws of the United States or the State of Montana."

Mr. Davis.

DELEGATE DAVIS: Mr. President. The minority proposal includes that they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana. And in speaking to that the other day,

Mr. Berg shows in the comments on page 51 or page 52-stated on—I'll go a step further-page 53—"We have also accommodated future delegation of judicial power by the United States government or the State of Montana." In going back to the cowboy rule, they cite the Powder River rule on page 51—said: "We are apprehensive as to how limited that jurisdiction may prove." Now, the original majority proposal also includes in it, and our present Constitution, for all such special actions and proceedings as are not otherwise provided for. It seems to me this is very proper to have such further jurisdiction as a state will want to vest in the District Courts in the years to come and not to take any chance that it's limited. Thank you.

CHAIRMAN GRAYBILL: Mr. Felt, the journal may show your presence now, so you can vote.

Very well. The issue is on Mr. Davis' amendment to add the words "or the State of Montana" to subsection 1 of Mr. Schiltz's amendment so that it reads that the courts shall have the power of naturalization and such other additional jurisdiction as may be designated by the laws of the United States or the State of Montana. So many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. Will Mr. Berg yield to a question, please'?

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE MURRAY: Mr. Berg. Section 1 of the Schiltz amendment provides the District Court has original jurisdiction in all criminal cases amounting to felony. We seem to be removing any reference to the Justice Courts from the Constitution. Does this language mean that inferior courts would not have the examining powers that they now have'!

DELEGATE BERG: No. We believe that the Legislature, as it does today, provides for examining power in the Justice Courts. And you will note that we have given them concurrent jurisdiction with the District Courts. So that power would exist simply by legislation.

DELEGATE MURRAY: Where is the concurrent jurisdiction reference?

DELEGATE BERG: The last sentence in paragraph 3—"and for concurrent jurisdiction with other courts."

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, may I inquire further, please?

CHAIRMAN GRAYBILL: Yes.

DELEGATE MURRAY: Mr. Berg, the language of the last sentence disturbs me, because it says "for jurisdiction of criminal cases not amounting to felony in other courts and for concurrent jurisdiction with other courts." Is the intent of the amendment, then, that inferior courts of whatever type might be set up by the Legislature would have the power to examine-is that right'?

DELEGATE BERG: That is our intention, and we so discussed it.

DELEGATE MURRAY: Right. I raised that because I see in the existing Constitution reference to the Justice Courts having that power. And since it would be eliminated, I am sure that our records should contain your intent. Thank you.

DELEGATE BERG: The intent of not only the minority but the ad hoc committee-that that arraignment power would still be left with the JP court by statute.

DELEGATE MURRAY: I'm delighted so, because I think it would be chaos without it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr. Berg yield to a question, please'?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, I was very favorably impressed by your use of the word "all causes" in your minority Saturday. And now, the word "cases" appears instead. Is it your opinion that this means the same thing, or was there a reason for this change?

DELEGATE BERG: Well, the word "all cases" was used, as I recall, in the California Constitution with reference to what they call the "superior courts". When I wrote the minority, I preferred the word "causes" because, to me, it has a little more legalistic background. But we added to that, as you will note "and matters", so that we felt we covered every possible kind of litigation.

CHAIRMAN GRAYBILL: Very well. Members of the Committee, you have before you, on the motion of Mr. Schiltz that when this committee does arise and report, after having had under consideration Section 4, as amended, thatit recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: And it's so adopted. Will the clerk please read Section 5 as it appeared in the original minority report.

CLERK HANSON: "Section 5, Judicial districts. The Legislative Assembly shall divide the state into judicial districts and provide for the number of judges in each district. The Legislative Assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in each district. However, each district shall be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of the districts shall work a removal of any judge from office during the term for which he has been elected or appointed. The Chief Justice may assign the district judge and any other judges for temporary service from one district to another and from one county to another." Mr. Chairman, Section 5.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I propose an amendment to Section 5. These are simple, almost stylish form amendments, but I should like to-and I think they can be handled quite readily here on the floor. On line 24, page 41, strike the words "or boundary" and substitute the following: at the beginning of the sentence, the word "or" and then in the middle ofthe sentence between the word[s] "districts" and "shall", substitute the words "or judges therein" and at the end of line 23, after the word "changes", include by substitution the words "in the boundaries". So that the sentence will read: "The Legislative Assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in such districts. However, each district shall be formed of compact territory and be bounded by county lines, but no changes in the boundaries or in the number of districts or judges therein shall work a removal of any judge from office during the term for which he has been elected or appointed."

CHAIRMAN GRAYBILL: So many as shall be in favor of that style amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Okay, it's adopted.

DELEGATE BERG: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 5 of the minority report as it appears and amended on page 41, adopt the same.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: The language contained in this section is essentially the same as it was in what I should call the 1889 Constitution. It has had some minor amendment-some minor change in language, but essentially says the same thing. It leaves to the Legislature exclusively the power to change judicial districts and to add judges withindistricts, butitspecificallyprohibits the Legislature from making such a change as would eliminate a judge during his term of office. Mr. Chairman, I did overlook one other amendment that was done in our ad hoc committee.

CHAIRMAN GRAYBILL: All right. Go ahead and make it.

DELEGATE BERG: Again on page27 and with reference to the third sentence—

CHAIRMAN GRAYBILL: Page what?

DELEGATE BERG: Page 41, line 27—

CHAIRMAN GRAYBILL: Very well.

DELEGATE BERG: After the word "may", insert "upon request"-so that the sentence reads: "The Chief Justice may, upon request, assign the district judge and other judges for temporary service from one district to another and from one county to another."

Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment-so many as shall be in favor of allowing the committee to make that change, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. It's adopted.

DELEGATE BERG: I should only comment upon that change that it was felt that the Chief Justice ought not to be able to assign district judges, in effect, willy-nilly around the state; that it could be open to possible abuse; that the real need arises when there is heavy congestion in one District Court; and, therefore, upon the request of that district judge, the Supreme Court Chief Justice may assign any other judge in there to assist him in the cleanup of his work. That is the reason for this ad hoc amendment.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President.

CHAIRMAN GRAYBILL: You wish to make your amendment, and if so, do you want the clerk to read it?

DELEGATE SWANBERG: Yes, if you please.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read Mr. Swanberg's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 5 in the minority report of the Judicial Article by deleting same and substituting the following language: 'Section 5, Judicial districts. The state shall be divided into judicial districts, [in] each of which there shall be elected by the electors thereof one or more judges of the District Court, as provided by law, whose term of office shall be 4 years. The Legislative Assembly may increase or decrease the number of judges in any judicial district, provided that there shall be at least one judge in any district established by law, and may divide the state or any part thereof into new districts, provided that each be formed of compact territory and be bounded by county lines. But no change in the number of boundaries of the district shall work a removal of any judge from office during the term for which he has been elected or appointed. Any judge of the District Court may hold court for any other district judge and shall do so when required by law.'"

CHAIRMAN GRAYBILL: Mr. Swanberg, would you explain the differences between that and the minority report.

DELEGATE SWANBERG: The text of the proposed amendment, Mr. President [Chairman] and fellow delegates, is the text of the majority report on page 21. It's a little difficult to talk on this subject at the present, because we are not now discussing the election of judges. Hut the intent of it is simply to provide that the judges of the District Court shall be elected as they are at the present time and that this body of judges so elected shall form a commission who shall appoint the membership on the Supreme Court.

CHAIRMAN GRAYBILL: Well, in other words, Section 5, which is all you've moved, at the present time provides for the election of district judges, right? The point is that the minority report Section 5 does not say yet how those judges will be selected. And you have said in your Section 5 that they will be elected, is that right?

DELEGATE SWANBERG: Mr. President.

CHAIRMAN GRAYBILL: Very well.

DELEGATE SWANBERG: It could be the amendment which I propose probably should be considered in the minority report, when the method of selection of judges comes up. And at that time, the amendment which I propose could be shortened to simply provide that the judges of the District Court shall be elected as they are at the present time.

CHAIRMAN GRAYBILL: Well, we're discussing the minority report, Section 5, and you've made this as an amendment. Do you want to continue it as an amendment and vote on it, or do you want to not?

DELEGATE SWANBERG: If we did that, Mr. President, it would require, at this time, that we start talking about the selection ofjudges. And I question whether the Chair wants to do that.

CHAIRMAN GRAYBILL: I'd rather not do that. Then do you want to withhold your Sec. tion 5 amendment?

DELEGATE SWANBERG: If the Chair would be agreeable to that, I would be also agree- & k .

CHAIRMAN GRAYBILL: Well, as I see it, the minority report simply talks about judicial districts and does not speak to the issue ofhow the judges are elected.

DELEGATE SWANBERG: That is correct.

CHAIRMAN GRAYBILL: Therefore, it would seem to me that it might be proper to withhold this and that you might be able to put it in at some other time. Rut I don't want to say that if we adopt Section 5, that we won't have adopted it. It doesn't seem to me that the Section 5 judicial districts language is very different in your proposal than it is in the minority.

DELEGATE SWANBERG: That is correct.

CHAIRMAN GRAYBILL: Very well. Let's withdraw your amendment and hold it.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I am concerned that Delegate Berg said that there was no substantial change in language from our present Constitution, yet the two words "and magistrates" are inserted on line 21, which do not appear in our present Constitution. I'm concerned that this might, by the back door, be adopting the Montana Plan. So I move to strike from line 21, at page 41, the two words "and magistrates". That change does not in any way change the fact that judges could be construed to include whatever lower court level is evolved.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil has proposed an amendment to strike the words "and magistrates" on line 21, so that it just says "the number of judges in each district"—

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I suspect that Mr. Berg will accede to it as having just been an oversight.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I do accede it, because it is an oversight.

CHAIRMAN GRAYBILL: It's **an over-**sight that they didn't change that. Is there any other discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I was discussing Section 5 yesterday with Justice Castles, who was just completing some time in connection with the criminal code discussion. And he called to my attention that in the wording that they had adopted in connection with the proposed criminal code, the word "magistrates" was used in this and that he hoped it would be continued in the new Constitution. And his reasoning was this: that in different areas of the State of Montana, it is possible that it would be necessary to have a magistrate appointed who would have no other duty whatsoever except to receive bail, inform a person of his rights, or do the things that a United States commissioner now does. And for that reason, he hoped that WC would see fit to continue the word "magistrates". I give this to you for your consideration in striking a word out, of this kind. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. McNeil's amendment to strike the words "and magistrates" from line 21 of Section 5 on page 41, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, NO

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

Mr. McNeil.

DELEGATE McNEIL: Would Delegate Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE McNEIL: Mr. Chairman. Mr. Berg, the additional language that you've inserted

in the last paragraph that the Chief Justice may, upon request--my question is, upon request of whom?

DELEGATE BERG: We thought the amendment was quite clear that it was upon the request of the district judge or the judge that may be asking for assistance. That was the opinion of the ad hoc committee.

DELEGATE McNEIL: Is that upon the request of the judge to be assigned or upon the request of the judge desiring assistance?

DELEGATE BERG: The one desiring assistance. We thought that would be clear from the nature of the language.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, will Mr. Berg yield, please, to a question'!

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg. The lost paragraph provides a "chief justice may, upon request, assign" and et cetera. Do you thereby intend to exclude the present system, where the judge of a District Court may hold court for any other district judge between themselves?

DELEGATE BERG: No, we purposely left this with a permissive "may". We did not intend to in any way affect the present system, which is statutory, on the method of calling in other judges upon disqualification.

DELEGATE DAVIS: And for the sake of the journal we're making and the record now, they can still do it as they are presently doing it, if they wish'!

DELEGATE BERG: Yes, we consider the present voluntary system to he very adequate, hut we felt that there may he situations arise where a judge in one city or another may he overwhelmed, and he could request appointment by the Supreme court.

DELEGATE DAVIS: Thank you, Mr. Berg.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: For the information of Delegate Davis and the lay people, the court indicated that this was entirely proper and that the present system was working very well.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you now have before you on the motion of Mr. Berg that when this committee does arise and report, after having had under consideration Section 5, as amended, that the same be recommended for adoption. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk please read Section 6 of the minority report.

CLERK HANSON: "Section 6, Terms and pay of judges. Justice of the Supreme Court, District Court judges and other judges shall he paid as provided by law, hut their salaries shall not be diminished during their term of office. Terms of office for Supreme Court justices shall be six years. Terms of office for District Court judges shall he four years. Terms of office for other judges shall he provided by law." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I move that when this committee does arise and report, after having under consideration Section 6 of the minority report as is found on pages 41 and 42 of the minority report, that it do pass the same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: The first sentence of this section relates to the method of pay of all judges, and it leaves their salaries to the discretion of the Legislature, except that the Legislature may not diminish the salaries of any judge during his term of office. Now, this provision that it may not he so diminished has been contained in our present Constitution. It was done by amendment, and the committee felt that it should certainly be continued in the new Constitution. Insofar as the terms of offices are concerned, those relating to the Supreme Court now are six years, those relating to District Courts now are four years; terms of offices of other judges-since we are leaving the lower court system up to the Legislature, we felt their

terms of office, of course, ought to also be left to legislative discretion. I might remark that when we do get into the question of the selection of judges, there may be a motion to reconsider the term of office of the judge of the District Court, depending entirely upon the method of selection which this Convention adopts. And I may remark in that regard, as I think Mr. Aronow has already indicated, that we expect the selection of judges—the next section-to be open to many amendments, to many different methods of selection. and depending upon which one may be selected, it's possible that a motion would be made to reconsider only the term of office for the district judge.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: MY. Chairman. Mr. Kelleher has passed out to the delegates a proposed amendment removing from the proposed Section 6 the terms of office. I presume he's going to move that in due time. Now, Mr. Kelleher has also passed out a proposed amendment to Section 7 on the selection of judges, which goes back to the proposed Montana Plan. I suggest we can make no intelligent vote on Section 6 at this time, until we know whether we're going to have selection under the Montana Plan, under the minority plan, or election of judges. And I suggest we delay consideration of Section 6 until 2 o'clock or such other time as we finally arrive at the final vote on Section 7. Because Section 6 is dependent upon Section 7. I therefore move that we delay consideration of Section 6, at this time, until 2 o'clock or until such time as Section 7 is finally voted upon.

CHAIRMAN GRAYBILL: Just a moment. Mr. Berg, I take it the sense of Mr. Holland's motion is to consider Section 7 before Section 6. Does the minority have any objection to that'?

DELEGATE BERG: No, I would accede to that, especially in regard to my comments regarding the term of office of the district judge. It may be dependent upon the method of selection used.

CHAIRMAN GRAYBILL: All right. Is there objection from anyone in the body to considering Section 7 before we consider Section 6?

Mr. Blaylock, what is your plan'?

DELEGATE BLAYLOCK: I want, to ask Mr. Berg aquestioninregard tothatsection. Since we've already provided in the Legislative Article that a salary commission shall be established by the Legislature to set the salaries of the Executive, Legislative and Judicial elected officials, is this section even necessary?

DELEGATE BERG: Well, I think it is insofar as the power to diminish the salary is concerned. I think it'sconsistentwith thecommission setup in the Legislative Article, in that their salary will be as provided by law. So I think it's consistent.

CHAIRMAN GRAYBILL: Is there any objection to considering Section 7 before Section 6? Hearing none, the Chair will accede to the motion of Mr. Holland, and we will leave Section 6 until later, and we will have the clerk read Section 7.

CLERK HANSON: "Section 7, Selection of judges. In all vacancies in the office of Supreme Court justices and District Court judges caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration of candidacy for his succeeding term ofoffice, the Governor of the state shall nominate a Supreme Court or a District Court judge from nominees selected in the manner provided by law. If the Governor fails to nominate within 30 days after receipt of the names of the nominees, the Chief Justice or acting Chief Justice shall make the nomination. Each nomination shall be confirmed by the Senate, but a nomination made while the Senate is not assembled shall be effective as an appointment until the end of the next session of the Senate. If the nomination is not confirmed by the Senate, the office shall be vacant and another selection and nomination shall be made. Before the close of filing for nominations in the first primary election after Senate confirmation, the name of the appointed judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for the election to that office. If there is no primary election contest for the office, the name of the appointed judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection. Thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office. In the event of a rejection of a judge, another selection and nomination shall be made in a like manner." Mr. Chairman, Section 7.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I move that when this committee does arise and report, after having under consideration Section 7 on pages 42 and 43 of the minority report, that it approve and do pass the same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I want to explain to the Convention that the minority has proposed this particular method of selection and that we also have an alternate method of' selection. And I would like, briefly, to discuss the two concurrently. I understand Mr. Mason now has, or shortly will have, his proposed amendment to this section. Yesterday, I spent, in my discussion of the minority report, considerable time on the method of—I want to just briefly review the method as it is in Section 7 before you now. It provides for a-what we call "merit selection" in this, that it would create a committee-that is, a committee would be created by the Legislature--which would submit nominees, and that means more than one, to the Governor, and the Governor would then nominate that one from those names. The successful nominee is, nevertheless, subjected to Senate confirmation. After Senate confirmation, at the first primary election, any lawyer or other qualified candidate may run against this appointed judge, and the successful candidate at that election becomes the elected judge. Thereafter, under the plan as it is before you now, the elected judge will stand only on approval or rejection. If he is rejected, the same process will be repeated. That is, there will be, initially, merit selection, Senate confirmation, election and thereafter what is known as "merit retention", or the right of the electorate to approve or reject the elected judge, whether he has a competitor or not. Now, I want to briefly tell you what the proposed amendment is, as I'm sure Mr. Mason will give it to you, as it relates to this one. It simply does this: it opens up the *elective* process at all primaries. Under this system, as is before you on pages 41 and 42, the appointed judge-that is, the nominated and appointed judge-stands only one competitive election until he's otherwise rejected. Under the amendment, which Mr. Mason, I'm sure, will have before you, he would stand competitive election at all times when anyone filed against him. Whether-if he was not filed against, he nevertheless would still come on the ballot for approval or rejection, Now these two, what I might call alternate, methods of selection are basically the minority proposal. And I'll not speak any further on it. I think from here on out, this is a job not for the lawyers especially, but for the other 76 delegates here to really seriously consider and decide, individually and for yourself, so I say to you, "Have at it."

CHAIRMAN GRAYBILL: I see you up. Mr. Melvin. Mr. Holland, my point is, apparently, that Mr. Melvin should move his amendment to the majority report before your amendments, is that *right?*

DELEGATE HOLLAND: Yes, I think so.

CHAIRMAN GRAYBILL: Very well. Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. The amendment I proposed has been distributed to the various desks. And it provides an amendment to Section 7 on pages 42 and 43—starting on page 42 with line 26. Would the clerk like to read the amendment, please.

CHAIRMAN GRAYBILL: -Clerk, will you please read the amendment? Mr. Melvin's amendment. No, he just asked you to read it.

DELEGATE MELVIN: Okay, I'll go ahead.

CHAIRMAN GRAYBILL: No, the clerk will read it. I'll read it-Go ahead.

CLERK HANSON: "Mr. Chairman. I move to amend Section 7, Selection of judges, being pages 42, lines 26 through 30, and page 43, lines 1 through 8, to read as follows: 'Before the close of filing for nominations in the first primary election after Senate confirmation', and this is inserted, 'and at the primary election prior to each succeeding term of office', end of insert, 'the name of the appointed'--striking 'appointed' and inserting in lieu thereof 'incumbent'-'judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of'—strike the word 'appointed' and insert in lieu thereof the word 'incumbent'--'judge shall nevertheless be placed on a ballot in the general election, allowing powers of the state or district the choice of his approval or rejection'—striking the following language: 'thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office', end of the strike. And to further read,

that "In the event of rejection of a judge, another selection and nomination shall be made in like manner'. Signed: Melvin."

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. In substance, ladies and gentlemen of the Convention, what this does is open up all primary elections. Not only that, but it's going to widen the horizon for the voters. It gives them an opportunity to vote in primary elections on the persons who have filed for the district judge, and then in the fall, if you read this amendment in connection with the rest of the section, you'll see that it provides the voters a choice--either between two candidates or, if there's only one candidate running, then rejection or approval of that incumbent candidate. Now, we noted in our statistics that since 1952, there have been 84 elections for district judges. In those elections, there were 18 incumbents. Only one of the incumbents, incidentally, was turned out of office. But this means that since 1952, there have been 66 elections where the voters had no choice. The incumbent was assured of election by receiving a mere vote. And this particular feature. I think, will overcome that area. Not only that, hut I think that this affords the voters an opportunity to select in all primary elections. Let us assume, for instance, that a lawyer who has practiced in a community for 12 years now decides to run for the office of district judge. With the primaries open at each election time, anyone—any qualified candidate can file for the office. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. I have a substitute motion. Substitute motion is in the Judiciary Committee Proposal dated February **26, 1972,** and the substance is in the second paragraph thereof. The clerk has it. I move that-will the clerk please read the second paragraph of the proposed amendment I have up there.

CLERK HANSON: "Mr. Chairman. I move to amend Section 7 of the Judiciary Committee minority proposal, being page 42, lines 10 through 30, and page 43, lines 1 through 8, by deleting the section in its entirety and inserting in lieu thereof the following material: 'The justices of the Supreme Court shall be elected by the electors of the state at large, and the term of the office of the judges of the Supreme Court, except as in this Constitution otherwise provided, shall be six years. There they shall be elected by the electors of each judicial district one or more judges of the District Court, as provided by law, whose term of office shall be four years'. Signed: Holland."

DELEGATE HOLLAND: On the second line of that amendment, I think you made a mistake. You read "judges of the Supreme Court", rather than "justices of Supreme Court". The record so indicate'?

CHAIRMAN GRAYBILL: It says "justices", yes.

DELEGATE HOLLAND: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Like Mr. Berg, I spoke about the majority proposal the other day. This is the majority proposal for the election of the Supreme Court judges and the election of the District Court judges. I'm not going to speak at length about this. I do wish to point out that, historically, the State of Montana-the people of the State of Montana-have had control of their Judiciary through the election of the judicial officers. But, there is no-The testimony before the committee was to the effect that the present Judiciary is superior; its courts are current, and it's working fine. I believe that, overwhelmingly, the people of the State of Montana want to retain their right to vote for judges. I sincerely urge this committee not to give up this valuable right and to retain the full election of your Supreme Court and your District Court judges.

CHAIRMAN GRAYBILL: Where is Mr. Kelleher? Is Mr. Kelleher in the chamber? Very well.

Mr. Schiltz. Just a moment.

Mr. Kelleher, the situation now is that we have a minority report moved hy Mr. Berg. We have an amendment to the minority report by Mr. Melvin, giving a second alternative. We have a substitute motion by Mr. Holland for the election of judges. Now, Mr. Kelleher, you are-it is not in order for you to add another amendment. However, if you wish to explain the amendment you will make if the time ever arises, then I will let you **do so,** and then we'll have the four plans before the body.

Mr. Kelleher.

DELEGATE KELLEHER: I'll speak on my proposal to appoint judges rather than elect judges whenever the Chair deems it appropriate.

CHAIRMAN GRAYBILL: I think it would be appropriate for you to explain that alternative now, so that the body will have all four items in mind when they go to decide.

DELEGATE KELLEHER: Is it the Chair's desire merely that I explain how it operates, rather than argue for it'?

CHAIRMAN GRAYBILL: Yes, the motion is not in order, but you may explain the motion you would make if a motion were in order.

DELEGATE KELLEHER: But I will be allowed to argue later on in support of my motion?

CHAIRMAN GRAYBILL: If' we ever get to that point. The point is, we really have four plans. We have two minority plans. We have the majority or the-at least, Mr. Holland's plan to elect, and I take it you want to move the Montana Plan of appointive judges. Now, I don't know whether you want to move it, but I want to get all of those ideas before the body, and then the body will act. Whether or not you have an opportunity to amend or not will depend on how they act.

DELEGATE KELLEHER: Well then, I better say-make my comments now. They're vary little.

CHAIRMAN GRAYBILL: Keep them brief, please, as the others have—

DELEGATE KELLEHER: Yes, sir, I plan to. Fellow delegates. In short, my proposal that you have before you would provide that the Governor of Montana would get two or four names-say from a commission as it appears later in the minority plan-and appoint one of those four lawyers, or two lawyers, as a judge. And this judge would serve during good behavior. Now, this is nothing new: it's nothing but the federal plan, really. And the federal Judiciary has used it for—well, close to 200 years, since the days of [the] Revolution. Our Supreme Court judges and our District Court judges are appointed according to that plan. Now, this plan that I have here has—Professor, can I have your attention please? You're now in my class-has two advantages over the federal system. It catches the nominees coming in-it screens them coming in, which we don't have under the federal plan, right? And it screens them or gets rid of them on going out, right? Both ways. Now, under the federal system, Harry Truman could appoint one of his own cronies from the Pendergast machine down in Kansas City as a federal judge. He might or might not ask the American Bar. You know what trouble Mr. Nixon had with the American Bar Association. I don't know whether he's going to ask their opinion anymore. After these people have been screened, their names would go to the Governor. The Governor [would] appoint one and then they would go to the Senate for approval, for additional screening. How long would they serve? They would serve during good behavior. Now, there were two proposals that I talked to a lay delegate here about it. I asked him about two other matters, and that was the age limitation. I was going to put in an age limitation of 65, and I decided not to. He's thought it should be there. I'm going to still leave that out. And one district judge told me that he thought age 60 for a trial judge was a good cut-off date, and I'm not so sure he's wrong. Because those of you-most of you are trial lawyers-know that the strain on trial judges to make decisions like that is very hard and very difficult, especially in the larger communities. Another change I would have-plan to make if you accept my proposal when we get to the commission, I do not want any lawyers on the commission-just lay people. In that way, it would not be suspect. Let's face it, the lay people in this Convention Hall are no different than the lay people on the outside. You distrust lawyers. That's a fact of life. You distrust us as a profession. And I see the professor nodding concurrence. (Laughter) Now, as far as appointing judges rather than electing-Oh, I told you how we would screen them going out. We'll have the minority's report for screening them, to get rid of them at the tail end.

CHAIRMAN GRAYBILL: That's repetitious, Mr. Kelleher. Keep going.

DELEGATE KELLEHER: All right, thank you. Now, what is the difference between electing judges and electing legislative candidates? A legislative candidate is a partisan politician. He's concerned with taxes, the type of taxes, where revenue is coming from. He is concerned with spending, and this is a very important matter. What are you going to do with your money after you've collected it? Whether it goes for schools or roads. he's concerned with spending money for environment or not spending it, and so on. A judicial candidate--I have run for Congress twice. I think there's only one other member in this chamber that can say that. We're both losers. (Laughter)

CHAIRMAN GRAYBILL: You're out of order, Mr. Kelleher. You're badly out of order. Now, come on.

DELEGATE KELLEHER: -Supreme Court justices and candidates for Supreme Court justice, and I've always felt so sorry for them. At least, we had something to say. We might not have got elected, but we had something to say. But the judicial candidate, what can he say to you? "I'm going to give you Republican justice." "I'm going to give you Democratic justice." Is he going to say, "I'm going to rule for Montana Power if you have a suit against them"? Is he going to say, "I'm always going to rule for widows and orphans"? What can he say? So, this nonsense about electing judges, I say we're just trying to kid ourselves. The people know that they don't elect judges. My clients call me, your clients call you and say, "Who should I vote for, Judge X or Judge Y"? They don't know. Finances-or a proposal has been made that we appropriate money for these judges to run, so we don't need to worry about "bi" judges--a very real concern and worry. You will recall, the members of the Finance Committee and the Legislative Committee, that I put in two proposals to appropriate-to allow taxpayers to adopt a new federal plan, where they could—

CHAIRMAN GRAYBILL: Now, Mr. Kelleher, I do want you to stick to the issue of appointing judges. I'm not interested in your other proposals. I'm going to give you time to make your speech, but I'm not going to have an hour speech. You're either going to limit yourself to that, or you're going to be out of order.

DELEGATE KELLEHER: I just want to talk about—

CHAIRMAN GRAYBILL: You can talk about appointing judges or else sit down. Your motion is out of order. You may explain the motion you would make if you had the chance. That's all you may do. Now, we're going to get this decision decided this morning, and you're not going to talk about everything else. So, either decide to talk on the issue or please sit down.

DELEGATE KELLEHER: The judge who is elected is going to he the popular judge. He not necessarily will be the best judge, hut he will be the most popular judge. There are many examples of that, and in view of the Chair's ruling, I'm not going to go through those. Under the present system, a senile judge may be elected, and I think even the lay people know of senile judges who have been returned to the bench because they were popular judges. A judge very often must make an unpopular decision. Every time a judge makes a decision, you must understand that there must be a loser. That's the nature of the judging business. If he makes an unpopular decision in connection with a criminal case, this may cost him election. Judge Bottomley, in 1954, almost was defeated—lost many votes over an unpopular decision. In Oklahoma, they elect judges, and they had a very unfortunate situation down there with two associate justices and, I believe, the Chief Justice, involving bribery. If you elect judges that don't-1 mean, appoint judges that don't need to run for re-election every four years or six years or worry about [where] their money's coming from, you've got a true independent Judiciary that you don't need to worry about. And we talk about humbling judges-there's a lot of difference between humbling a man and humiliating him and requiring him to go down and to beg for money. And I think when you do require a candidate for a judicial office to beg for money, that you're opening up the door to many abuses. Finally, the last argument is that the lay people do not want elected judges. I say that we should have the courage to make a decision and then let the people in June decide whether they want elected judges or appointed judges, when they accept or reject the Constitution. It is time that we had the courage to make a decision on the floor of this chamber. Our people do not necessarily want elected or appointed judges. What they want are the b&judges and the most competent judges, and the only way we're going to get them is by appointing them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Ladies and gentlemen of the body, you may wish to take your pencils and jot down some notes on where we stand. Mr. Berg moved a minority report on page 43-42, rather, and 43 of Section 7. The purpose of the minority report is to have a commission set up by the Legislature that would give the Governor nominees, and the Governor would nominate from the commission, or from whatever method the Legislature has determined, I should say. Now, at the first primary, there would be a contested, nonpartisan election. Later on, if that judge passed that test, he would only have to stand for approval or rejection. And until he was rejected, he would continue to serve. And if he was rejected, we'd go hack through and the Governor would appoint somebody else and we'd have

another contested, nonpartisan election-the point being that once he passes his first contested, nonpartisan election, he only runs on approval or rejection. Now, Mr. Melvin moved an amendment. That's number two plan. The purpose of the amendment is to say that at each succeeding election, this man that's been appointed in the manner we've just said and has run must always run at a contested, nonpartisan election. At each succeeding primary, we go right back through and his name is automatically on, but others can come on if they want to. Mr. Melvin's plan amounts to changing considerably the method of selection; that is, it uses the minority plan's method of selecting but it does require regular elections. Then, Mr. Holland moved a substitute motion, which is essentially the majority report boiled down, and it requires theelection of judges—the Supreme Court for six years and the District Court for four years. So, we have those three plans before us. Now, because of the rules where we only allow one substitute and two amendments, Mr. Kelleher did not have a motion available. I had him explain to you that if a motion were available, he might make the motion to have judges appointed to serve on good behavior. That alternative might become available, depending on what you do with the upper three. Now, the argument is on Mr. Holland's motion for the election of judges. That's the last substitute amendment. So the debate will be on Mr. Holland's substitute motion that judges be elected, instead of the manner provided by the minority or Mr. Melvin's amendment. Is there discussion?

Mr. Swanberg.

DELEGATE SWANBERG: Is another motion in order at this time?

CHAIRMAN GRAYBILL: No motion's in order. You may explain another position if you want to.

DELEGATE SWANBERG: Mr. President and fellow delegates. I think we have arrived at one of those other major turning points in this whole Convention. Certainly, the problems in the Legislature have been met and dealt with, I think, very adequately by this body. I now submit that the time has come to deal with this other major problem, and that has to do with the election of the membership of our Supreme Court. We heard last Saturday the rather moving and half-comic description by Delegate Schiltz of the travail and turmoil that he went through in the process of running for office on the Supreme Court. And I think we can all agree that it's a rather pointless process. The electors at large do not really know the qualifications of the man they're voting for. The candidate runs nonpartisan. He's compelled to rely on his own resources unless he wants to take money from some, no doubt, interested donor. The process has to be changed. The thrust of the minority proposal is to change this by a commission elected by the Governor. The thrust of the majority proposal is to leave it as it is. You have been given these two choices, in essence. And I submit that there is a third alternative, which is simple and quite workable. When Delegate Schiltz spoke about his problems of election to the Supreme Court, we did not hear any comment at all from Delegate Berg, who is a district judge in Bozeman, about any difficulties that he had had. We can only assume, and I think it's common knowledge, that the public at large is generally satisfied with the method of the election of the District Court judges. Some attempts have been made here by the fact that, in many instances, these District Court judges run unopposed. And I would submit, for your consideration, that this applies in many other offices. And the reason is not because of a lack of interest in the job. The reason is simply because the man in office is doing a good job, and no one will run against him. This is pretty much the case in our county, not only in the case of the district judges, but I'm happy to be able to say, in the case of our sheriff. He's held office, I believe, for something like 20 years, and at no time, to my recollection, has he ever been opposed. Is that because he's inefficient or no one is interested in the office'? No, it's because he's doing an outstanding job. I would submit. then, that we leave the election of our District Court judges as they are. The system is working admirably. We're getting generally good people, with an occasional person who may not be quite as qualified as someone else. But as a general proposition and taking the elective process for what it is, we get pretty good district judges in our District Courts. I don't think anybody here in the body would disagree with that. Now then, having gone that far, having provided in the Constitution for the election of our District Court judges, I submit that, having done this, we will have also created a very admirable commission for the selection of our Supreme Court justices. The District Court judges, as a body, 28 of them, would themselves be a commission for the selection of the membership of the Supreme Court. Where else could you find a commission as able as

this one? All of them judges, all of them as free from politics as you could possibly yet it, all of them elected by the people-none of this appointment by the Governor bit-and you would, at one stroke, have eliminated the problem of the election of the Supreme Court justices by the people in an inadequate manner and also have provided a very good commission for the handling of the Supreme Court personnel. I have submitted a substitute motion to all of these motions, which would provide that the District Court judges be elected as they are now and that this group, acting as a body, under such terms as may he prescribed by the Legislature, would appoint and fill vacancies in the Supreme Court. Third, there is precedent for this. I don't know of any other state that has the system, but we get into some other fields. I would like to point out that the Pope of the Catholic Church is elected in this manner. I would rather suspect that the heads of all the other churches are probably elected in the same manner. The system has worked for centuries, and I think it would make a very admirable solution to our difficulties here. It lies in between both proposals.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg has explained another proposal, which you could add as a fifth point; namely, that the Supreme Court would be appointed by District Court judges, hut the District Court judges would be elected. Now, ladies and gentlemen, the discussion is on Mr. Holland's substitute motion that "the justices of the Supreme Court shall he elected by the electors of the state at large, and the terms of the office of the justices of the Supreme Court, except as in this Constitution otherwise provided, shall be six years. There shall be elected by the electors of each judicial district one or more judges of the judicial district-of the District Court--as provided by law, whose terms shall be four years." That's the issue before us.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to speak in behalf of Mr. Holland's amendment. I said most of what I had to say the other day. I didn't intend it to be all that comic, but I was very serious about it. I would like to make a couple responses that hear answering. Mr. Garlington talked the other day about the problem of 33 judges and how we get them and what an imposition it is upon them to require them to run for reelection and possibly he defeated and have lost their practice in the meantime. I believe, for those judges--and I know it's an imperfection in the system. However, I'm more concerned about 700,000 people than I am 33 judges. I think Montana is unique. I think we can't adopt the plan or program that we find in Missouri or some other state, because Montana has more corporate influences than any of those states. I inquired specifically of the President of the American Judicature Society, who responded about the State of Wyoming. He said, "Well, they have a railroad." They have a railroad that has an influence. We have a railroad plus. As to Mr. Swanberg's comments, I think, personally, that it's more important to elect the Supreme Court judges than it is the District Court judges. The District Court judges aren't making policy. And it's the policy that the Supreme Court makes that should be rejected or adopted by the electorate. I think also that-l can't resist throwing in something every now and then, Bill-hut, your thing about the Pope in Rome being elected in this fashion. The fallacy in that is the Pope doesn't have a bunch of Baptists helping in on the election either. (Laughter) So far as Mr. Berg's proposition is concerned, it has the terrible fault that always we start with an incumbent, and the same is true with Mr. Melvin's, The incumbent system in the State of Montana has been the real problem. It has insured the election of anybody who was appointed hy the Governor. But, finally, I must urge you that we have, with Mr. Holland's plan, absolutely the best screening process in the world, and that is the electorate. Thank you.

CHAIRMAN GRAYBILL: Mr. Rod Hanson.

DELEGATE ROD HANSON: Mr. President. I rise in support of Mr. Holland's motion. I served on the Judiciary Committee, as you probably, most of you at least, know, and I was divided--I had mixed emotions between the two plans, because I was dissatisfied with the present court system. And we worked long and hard to try and devise a method of appointing a committee that would he a nonpartial committee or a committee that would not be controlled by some special interest or interests. And the Committee agreed, I think, that we could not do this, because we decided that we would not determine how to arrive at the proposition of this committee ourselves, hut pass it on to the Legislature. And if this committee, in our group, with the witnesses and the testimony that we had, couldn't compose a committee that would not be controlled, then I don't know how the Legislature is going to do that. It was said

that the reason that our judges are always re-elected is because they must be good judges, and if they made an unpopular decision, you can be assured that they would be tossed out of office. I can assure you that there have been several unpopular decisions, in my mind, and they were re-elected. So I think that with Mr. Holland's proposal, and then his proposal later on, which says, in effect, that a person who is appointed to the justice position cannot run for reelection for at least a year, would take care of this. Mr. Schiltz pointed out Saturday that in the selection of the commission that handled the works for this Convention, they picked 16 people-4 from the House, 4 from the Senate, 4 from the Supreme Court, and 4 from the Governor, and each body selected 2 from each political party. And with this wide diversion of selection, Delegate Schiltz pointed out that we had four representatives on the commission that were representatives of the Montana Power Company. If this is the case, then I am sure that we are going to have a tough time, whether we devise the method of selecting the committee or whether the Legislature, in its wisdom, finally is allowed to devise the means of selecting this committee, that we're going to have a hard time coming up with a committee that does not have at least some semblance of control by some special interests. And I submit that after struggling with this decision for the several weeks that the committee has worked, I have decided that it's best to leave it with the people, because I think that in the long run, the people are going to make the best decision. We are, at least, not going to have to worry about some particular group of people controlling the people unless they can do it the hard way, and that is to get out and get to all of them that vote. So I think that we do stand the best chance by continuing the election and, I would hope, later on adopting the provision that a person appointed cannot seek re-election for at least a year, because I think therein will take care of the problems that we have under the present system, where anybody that is appointed to a judgeship gets reelected for at least one or two reasons that are pretty evident--and one is that it's pretty tough for a lawyer who has to appear before the court to run against the man that he has to appear before. And so, for that reason, I think you don't get too many people that challenge an incumbent judge. And the second reason is that, of course, we all know that once your name is well known and you are an incumbent, unless there is something pretty wrong, that your chance of getting reelected is much greater than it is if you're a newcomer on the political scene, Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I rise in support of Mr. Mason's amendment and opposition to Mr. Holland's substitute motion. I think that this body is agreed that we need to have an independent Judiciary. I think where we're hung up is our definition of how we get an independent Judiciary. I do not believe that the system which we have now really provides for election of judges. I feel that we go to the polls by rote-we vote for the person who has been nominated by the Governor, without consultation with anybody. I think that if we offer this to the public to vote on in June, we have actually given them no choice at all. If they're happy with what we have now, they can vote against what we're going to offer them. If we offer them exactly what we have now, they have not been given a choice. I agree with Mr. Hanson that people are going to make the decision, or at least I think they ought to be given the chance to make the decision. We did, in fact, discuss for a long time how we were going to select a committee that was going to be pure enough to select a candidate for judge, and it's impossible to select a committee that's going to be that pure. I don't think that any of us are that pure. For this very reason, I think it's extremely important that we do not spell out the mechanics of the composition of such a committee. If we spell the mechanics out wrong, then we're stuck with it. If we leave it to the Legislature and they make a mistake, it's much easier to rectify the mistake. I do not believe that there's any more justification for the supposition or suspicion of universal venality in human nature than there is for the supposition of universal rectitude. Some good judges will be obtained under almost any system that we decide to go with. I'm merely saying that under the minority proposal, we have a much better chance of getting better judges.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. President. I rise in opposition to the majority plan-or Mr. Holland's plan and in support of Mr. Melvin's plan. I oppose Mr. Holland's plan on the basis that it is working poorly now. We have no control over whom the Governor appoints. It has been proven by history, the appointee of the Governor tends to succeed himself. This is not the time to talk strongly or discuss Mr. Melvin's plan, but it

encompasses all of the good things that we need in the selection of judges, all the good things that we need and have in giving the choice to the people, and I think it is time now to turn down Mr. Holland's plan and come to the discussion of the good points and the fine points in Mr. Melvin's plan.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. Is an amendment to the proposal now under discussion in order?

CHAIRMAN GRAYBILL: No.

DELEGATE DAVIS: It is not in order?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Delegate Holland yield to two questions, please?

CHAIRMAN GRAYBILL: Mr. Holland?

DELEGATE HOLLAND: I yield.

DELEGATE REICHERT: Mr. Holland. Under Mr. Melvin's plan, is it not true that, despite the fact that there would be one nominee who would have gone through this commission and been appointed by the Governor and been confirmed by the Senate, in addition to this nominee, there could be other nominees? It says something to the effect that a contested, nonpartisan ballot— Is it not true that this would be election in the true sense, except one of the candidates would have been nominated?

DELEGATE HOLLAND: The problem with Mr. Melvin's plan is: initially, someone is picked by a commission. The names are submitted to the Governor, and that person then fills the office. Later on, there are contested elections. In other words, that person can be defeated. But, under the majority plan, there would be no one appointed when there was a vacancy occurring or when the judge didn't intend to run. No one would be appointed. Those desiring to run would run on their own merits. Now, the basic objection I have is that we just feel that we couldn't get an unbiased commission, that the commission would pick the first candidate. If a special interest group dominated the commission, then WE would have that person in as an incumbent, and the other candidates wouldn't have an equal chance for the office. Under majority plan, all candidates for the office--and generally, when there is a vacancy, there are more than two--run, and the electorate has a full choice of everyone who wishes to run.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: My second question is, at the Romney hearing where we discussed the Judicial Article, Mr. Melvin had his tentative alternate to the minority report, and it was essentially what we have now. My question is-at that time, I have in my notes that Mr. Holland could support this. How do you feel now?

DELEGATE HOLLAND: I told Mr. Melvin I could live with it. I find it greatly superior to the minority plan as advanced by Mr. Berg. Basically-I might as well say this now-Mr. Berg the other day stated that the majority had not considered merit selection, as they call it. We did. We asked all the proponents of the Montana Plan, "How can we guarantee that this commission— the ones that name the candidates-won't be dominated by some special interest group?" And they told us, fairly, there is no way they can do so. Mrs. Bowman-if I understood the sense of what she just told us-it's the same thing. I have honestly tried to figure out how we could do it. And I came to this conclusion: that if the Legislature, who is going to implement this thing, if the Legislature were to delegate to the Secretary General of the United Nations-that he'd say, "All right, pick a country, any country in the world, but just don't tell us who it is." Let's say nobody in Montana would know, and they picked, let's say, Germany. They pick the five best legal minds in Germany, then when a vacancy occurred-they wouldn't know they were picking for Montana-the choice would be sent over to Montana, and then they would pick the right man. The reason I worry, even about an elaborate scheme like that, is because I know a man in Butte, Montana. He's got an office over there. If such a commission were picked in Germany on Monday, he'd have that commission out to dinner by Wednesday, and by Friday they'd be checking every decision with him. I mean this sincerely. This—

CHAIRMAN GRAYBILL: All right. But I think you've answered the question. (Laughter) Now, the Chair has been-it's been called to my attention that I may be wrong on my last ruling, and that is, that we have the minority report which was moved. Then, we have Mr. Melvin's one amendment and the substitute motion, and I guess I am in error in that I should allow amend-

ments to the substitute motion if they're on the subject of the substitute motions. So Mr. Davis, I think I was wrong in ruling you out of order.

DELEGATE DAVIS: That's quite all right. At this time, if it please the Chair, I would like to amend-and I haven't had time to have it typed and placed on the desks, so I'll give it to you as soon as I read it, if I may-to add a second paragraph to the majority proposal which, in effect, is the last sentence of Mr. Melvin's, which would read as follows: "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection. In the event of rejection of a judge, his office will be declared vacant and filled as herein provided for filling of vacancies."

CHAIRMAN GRAYBILL: Now, I don't see that as the last sentence of Mr. Melvin's,

DELEGATE DAVIS: It's not-it's a little departure from the last sentence but—

CHAIRMAN GRAYBILL: This sentence, "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection." Is that it?

DELEGATE DAVIS: Yes, sir, and in addition, "to provide in some manner"--and my language may not be quite proper-but, in the event of rejection of a judge, another-the vacancy will be filled as provided under the title on vacancies, however we come up with that.

CHAIRMAN GRAYBILL: Well, I think if you left it out, you'd still have it covered, because there would be a vacancy.

DELEGATE DAVIS: That's probably correct.

CHAIRMAN GRAYBILL: All right. Mr. Davis' amendment has the effect of adding language which you have on your desks. It's the middle sentence of Mr. Melvin's proposal, and it would add that to Mr. Holland's language. Mr. Holland says that the judges shall be elected and then sets up the term of the Supreme Court and the District Court. And Mr. Davis' amendment would add this sentence: "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state and district the choice of his approval or rejection". Very well. The issue is on your amendment, Mr. Davis.

DELEGATE DAVIS: Mr. President. I think perhaps we can accomplish some of the things we're trying to do by this amendment in the form of a more or less compromise. There's really not this big a difference between any of these. They're first appointed, but at themoment, they're appointed by the Governor. There's no reason that I can think of why the Governor won't make the best appointment of the best person available, or any Governor at any time. And I am sure that the committee is not going to change this too much. But there's another thing that concerns me, and that is the right to run for public office. We've got a lot of rights going to come under the Bill of Rights. Who's going to have the right to run for public office? Can anyone in the United States still be able to run, or are we going to have a select committee tell us who has the right to run? That concerns me very much and has throughout this discussion. You can say whatyou want, any select committee's going to be a committee of the establishment. There's just no other way to get around it, or else you're not select in the eyes ofthepeople. So if I want to run for office, I probably would not be qualified, because I probably wouldn't meet some of the blue-ribbon standards—blood-test-wise or otherwise, whether it was blue enough. But you should have the right to run. In our county, we had elected a judge who recently passed away-an outstanding judge, Judge Phillip Duncan. He had a doctor's degree from Stanford, when a doctor's degree required a lot of extra study. He was re-elected by the people. No one ran against him. Now that statistic, when you put it in the statistics you folks are using, is bad. He was kept in. No one ran against him. But he's the best-qualified man, I think, not only in our county, but I would say in the State of Montana-a great judge, and he died in a courtroom at 5 o'clock on a Saturday afternoon, when he was doing extra work, which he did all the time. On his death, a fine Democratic friend of mine was appointed to fill his spot. He was the incumbent then, after election came. But there was a gentleman from Virginia City, Montana—his name was Frank Blair. He had practiced there for 80 years, and he thought, "Well, I think I'll run for this job." Now, Judge Blair wouldn't have been qualified under anyone's conceivable standards by any standard commission you could put up. But

Judge Blair said, "I think I'll run for this", and everyone kind of laughed. He's 80, he had practiced law, he had practiced water law, mining law, plaintiffs law, defense law, for all his life. He's a man of great strength of character and also of great physical ability, because he wears all the rest of us lawyers into the ground. So, what's he do? He gets in his car and he goes all over the three counties in that big district of Beaverhead, Madison and Jefferson. And the people were amazed at his tenacity and his ability, and they thought, why shouldn't Judge Blair have the right to run? And they elected him. Well, my Democratic friend was-is still in a state of shock, (Laughter) but the gentleman got elected. He took the bench. He's probably tried as many jury cases as anybody in this state in the last year. He's held court in the three counties, he stays up until midnight to wait until-the jury to come in, and he goes back to Virginia City and he's in Boulder the next morning. Whether that's good or bad is immaterial. He had the right to seek that office after he spent a lifetime in Montana. He had a right to do it. This plan permits the election, like we're doing now. Under vacancies, you'll still fill them by appointment; but Mr. Melvin's plan, which I heartily endorse, whether it is attached to the minority or to Mr. Holland's majority, gives everybody the right to run, but it fills a second qualification: that if nobody does run-isn't that what you're really getting at? You're concerned when someone doesn't file for the office. All right. Under this one, if nobody files for the office, then you can say, "We'll keep him" or "We won't keep him" and go back to another method. I think this amendment, perhaps, would be a compromise, assuming that the right to elect judges is going to pass. I can't conceive how this delegation can say we're all for the right and have great confidence in the voters on electing State Auditors, State Treasurers, Governors, everyone in the Executive and everybody in the Legislative, that the same rules would not apply to the Judiciary. It's inconceivable to me that those same voters that are going to elect a good Governor and good legislators and a good superintendent of schools won't elect good judges. And I submit that the plan that we're working under is working quite satisfactorily. It's like all plans-there are imperfections in it; but I don't think anything this Constitutional Convention will do will really change the basic problems that you criticize. Therefore, I submit this as an amendment to the majority proposal, which I think will come nearest to solving everyone's thinking in this chamber. Thank you.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. As mover of the substitute motion, I have no objections to Mr. Davis' amendment.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise to speak in opposition to this amendment. I recognize it as a compromise, but it's only half a compromise. What it does, in my mind, is add to the elective process what is generally referred to as merit retention. That is, if there is no competitive election, the judge nevertheless runs on his record. It overlooks the value of merit selection. It depends entirely on the fulfillment of a vacancy by a gubernatorial-and I may suggest to you, pure political-appointment. Now, there's been a good deal of criticism about the so-called blue ribbon committee that would be created by the Legislature. I suggest to you that that committee, committing two to three or four names to the Governor, is going to give the Governor a fairly wide selection of nominees, and he can select what he wants—whom he wants-from that committee. But, at least, you have the assurance that that nominee has been screened, that he does meet the qualifications of what you want in a good judge. This is a feature you do not have now, and I must recall to you that this proposition will be used not only on the selection of district judges, but, more importantly, on the selection of Supreme Court judges. That is, nominees, candidates for the Supreme Court judge-or the Supreme Court justice will have been screened for their qualifications to sit on that bench, This is an assurance that the electorate does not have now, and I think you would all agree that few of us and certainly few of the general voting public are all acquainted with the qualifications, especially of the Supreme Court candidates. Now, under Mr. Mason's plan, this does not at all prevent anyone from running against that selected candidate, but it does tell the electorate this: that one of the candidates on that ballot has, in one manner or another, met some screening activities, that he is in some respect qualified. He bears the endorsement-bear this in mind-of not only the screening committee but also, under Mr. Mason's plan, the endorsement of the Senate. He goes through exactly the same confirmation process, with regard to the Senate, as any other department head that this Constitution

now proposes. If you accept Mr. Davis' amend. ment, you are retaining the feature of what we call merit retention. You are ignoring merit selection. If you accept Mr. Mason's plan, you have the combination of merit selection, you have open election and you have what Mr. Davis is proposing in merit retention. I want the people here to clearly understand these distinctions between these proposals. Now, I should like to say, if I'm not out of order, that with regard to the minority plan, it only opens up elections the first time. That is, only on the first primary will anyone be permitted to run against that judge until he is rejected. This is a limitation. It is designed to attract lawyers who might not otherwise run for the bench. These are the differences.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President. I rise in support of Delegate Melvin's plan. I've had mixed emotions on this. I don't like a permanent appointment with no chance to ever run for judge-or have a chance to vote for an alternate. However, Mr. Berg expressed my point, but I'd like to carry it one point farther. Under the present system, we have one man-namely, the Governor-appointing judges. When Governor Babcock was Governor, he had a committee-and I don't remember how it was selected, but it was from the bar association or our attorneys from the local area. Two judges were appointed in our area. And I believe one probably wouldn't have been the Governor's personal choice, but he took this selection committee and used them, and I think we get better appointments than we would with the Governor alone making selection. So, I support Delegate Melvin.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I submit that under the Davis plan, we do have merit selection. I support it. The Governor is not an irresponsible individual. Like Delegate Brown, I know of certain instances where appointments were made. He does discuss those appointments with qualified people throughout the State of Montana. He's very concerned about two things: one, selecting someone competent for the job; and two, selecting someone that can dispense justice in that particular district that will satisfy the people of the State of Montana. Without that blue-ribbon system that Delegate Berg is talking about, we have the type of merit selection that I think commends itself to Montana. I support the Davis amendment.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. The matter having come up, I can offer a little testimony on the subject of this bar association plan. I was on it. The selection of the lawyers from the Montana Bar Association to form this committee was by having election of the lawyers in each of the eight districts from which the lawyers who are on the practice commission are selected. And I was elected by the lawyers in the northwest end of the state. There were seven others. So the eight of us served as members of this committee. Without going into the detail of it, we tried to communicate with all the lawyers and size up the situation and offer some factual information to the appointing power. This committee functioned during Governor Babcock's regime. We volunteered to continue it during the present administration, and were rejected, and it has not functioned since Governor Anderson was elected.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in support of Mr. Holland's motion and also rise in support of whatever his uncle stands for. I think that if we are to look, perhaps at the federal Judiciary and look to see what can be done by the President and his appointments in varying the tenor and tone of the Supreme Court, I think that alone might convince us that perhaps the people are best qualified to determine the way in which the court should go. I might say, Mr. Chairman, that as a law student, I felt very strongly in favor of the Montana Plan or the appointment ofjudges. Later, when I graduated from law school and had an opportunity to practice law for a few months, I switched 90 degrees and felt very strongly that all judges should be elected. I'm reminded of an older attorney in my district who came to me after the elections and asked how I felt on appointedversus election of judges, and I said I felt strongly for the election of judges. He told me a story-a personal experience of his-when he was a young attorney who had come to my district. He was practicing under a tyrannical judge, as he called him, and got together with the other attorneys of the district and they picked him as a candidate to perhaps usurp this judge's throne--and I use the word "throne" literally in some cases. He did usurp him,

and I think the lawyers were unanimous in feeling that with the defeat of this judge, they got a better system of justice with the other judge who was elected. Also, Mr. Chairman, I think the merit system is just another word for the patronage system, and we all know where there is patronage, there is a responsibility to our patron. I am afraid, Mr. Chairman, that any committee, whether it be select, blue-ribbon or whatnot, will not be a committee whose interests are the interests of the people. I'm certain that the little guy will not be on the committee but feel very certain that the big guy will be on the committee. And I don't feel the big guy will be in the interests of the people. So, for all these reasons and also the reason that I think we are very arrogant if we take the right of election away from the people, I support Mr. Holland's motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Davis' amendment to the substitute motion, which would add the fact that the incumbent would have to run for approval or rejection to Mr. Holland's election of judges system. Are we ready for Mr. Davis to close?

Pardon me, Mr. Scanlin. All right, Mr. Scanlin waives.

Mr. Davis.

DELEGATE DAVIS: In closing, I am concerned about the-the use of the word "screening" always bothers me as to who has the screen. I also want to say in closing that, as far as I'm concerned, the merit system is thevoters. I don't think there's a system that has greater merit; if it applies to all the other systems from the President of the United States on down without screening, I don't know why it should apply to the Judiciary. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Davis' amendment. Now, Mr. Holland's system is elected judges, and to the elected judges system, Mr. Davis would add this sentence: "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection." Please vote by using the voting machines. All those in favor of Mr. Davis' addition, say Aye. All those opposed, say No. Isn't that right? Haven't I stated your motion right, Mr. Davis?

DELEGATE DAVIS: Except for the last sentence, which you concluded we could leave off, which is all right with me.

CHAIRMAN GRAYBILL: The amendment you're voting on is just that sentence that I read. It allows the approval or rejection of the voters of an incumbent that's not contested.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will you please record the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, 0	Aye
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Absent
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Nay
Foster	Nay

Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe.. ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 61 delegates voting Aye, 37 voting No.

CHAIRMAN GRAYBILL: Very well. 61 delegates having voted Aye, Mr. Davis' amendment prevails and is added to Mr. Holland's amendment. You may reset the machine.

The discussion then is on the substitute motion of Mr. Holland that the justice of the Supreme Court be elected, thejusticeof the District Court be elected, the terms be six years and four years, respectively, with the addition that if, in the primary election, there is no contest, the incumbent judge shall nevertheless be placed on the ballot and the voters shall have the right to approve or reject him.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President. Having nothing but respect and fear of the legal profession, I rise to resist Mr. Holland's substitute motion, in support of Mr. Melvin's amendment. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue before you then is on Mr. Holland's substitute motion.

UNIDENTIFIED DELEGATE: Roll call vote.

CHAIRMAN GRAYBILL: We'll have a roll call vote. The motion is that "the justices of the Supreme Court shall be elected by the electors of the state at large, and the terms of office of the justices of the Supreme Court, except as in this Constitution otherwise provided, shall be six years. There shall be elected by the electors from each judicial district one or more judges of the District Court, and their term shall be four years," And it now has this addition, that if there's no primary election contest, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection, So many as shall be in favor of Mr. Holland's substitute motion, please vote Aye; and so many

as are opposed, vote No.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, count the vote.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman. ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Nay
Cross. ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Nay
Erdmann.. ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington. ..... Nay
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin. ..... Nay
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay

Wilson ..... Nay
Woodmansey .. Nay

CLERK HANSON: Mr. Chairman, 47 delegates voting Aye, 51 voting No.

CHAIRMAN GRAYBILL: 51 delegates having voted No, and 47 having voted Aye, the amendment fails. We are now on consideration of Mr. Melvin's amendment to the minority report. Mr. Melvin's amendment would add, at line 26 on page 42—it would have the first part of the minority report from line 10 to 25, but then it would add in place of the language on lines 26 on through the rest, the following: "Before the close of filing for nominations in the first primary election after the Senate confirmation and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for that office." Now, if there is no primary election contest, then the incumbent nevertheless has to run and the voters get a right to reject or approve him. And the last sentence-"In the event of rejection of a judge, another selection and nomination shall be made in like manner."

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I think I have an amendment.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE SCHILTZ: I think I have an amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Oh, you have an amendment. Do you have Schiltz's amendment? Does the clerk have Mr. Schiltz's amendment?

CLERK HANSON: No, sir.

CHAIRMAN GRAYBILL: Neither does the Chair, Mr. Schiltz.

CLERK HANSON: "Mr. Chairman. I move to amend Section 7, page 42, line 10, of the minority report Judiciary Committee Proposal by adding, after the word 'judges', the following: 'Thirty days after adjournment of the first legislative session-"'

CHAIRMAN GRAYBILL: Just a minute. Mr. Schiltz, we don't see where to amend. The word "judges" on what line? The word "judges" is not on-Oh, in other words, it's to go in as a sentence ahead of the rest, is that right?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Very well. Now we understand. Go ahead.

CLERK HANSON: "Thirty days after adjournment of the first legislative session following adoption of this article, the offices of all Supreme Court and District Court judges shall become vacant."

CHAIRMAN GRAYBILL: All right. The sense of Mr. Schiltz's amendment is to add a new sentence at the beginning of Section 7 of the minority report. The new sentence would read: "Thirty days after adjournment of the first legislative session following the adoption of this article, the offices of all Supreme Court and District Court judges shall become vacant." And by further amending line 12, following the word "by" by adding the words "this declaration of vacancy."

UNIDENTIFIED DELEGATE: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment. The Chair presumes it to be the sense of your amendment, Mr. Schiltz, that if we're going to have the minority report, you want it to start with a clean slate 30 days after the legislative session, is that right?

DELEGATE SCHILTZ: That's precisely correct.

CHAIRMAN GRAYBILL: Very well. You may speak.

DELEGATE SCHILTZ: The purpose of this amendment is as stated by the Chair. It seems to me, and I think it's unassailable, that the only reason for changing from the elected Judiciary as we have it now is because there is something wrong with the system we have now. And if there's something wrong with the system we have now, it's inevitable that we've got some bad judges. And if we have some bad judges now, it's only fair that we start all over with a screening committee and start from the beginning. Now-I see no reason to lock into our present system, for the next 17 or 18 years, the potential of several bad judges. And I think this is a very simple thing to do. We start all over again. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: A point of order--are we on Mr. Melvin's amendment?

CHAIRMAN GRAYBILL: We are now considering Mr. Melvin's amendment, and Mr. Schiltz has amended it by adding a sentence, the sense of which is to start all over again 30 days after the next legislative session and have, if we adopt the minority report-then the Governor would nominate, and so forth, all the judges anew.

DELEGATE AASHEIM: Mr. Chairman. May I ask Mr. Melvin a question?

CHAIRMAN GRAYBILL: Mr. Melvin, will you yield?

DELEGATE AASHEIM: Mr. Melvin. You say, in the primary election, if no one contests the judge, he shall still run in the general election. Would he then have a contest? Would he have anyone contesting his position in the general election that he didn't have in the primary?

DELEGATE MELVIN: Yes, Mr. Aasheim. That was the intent, that if there was opposition in the primary election, then there would be two go from the primary to the general election, and then the winner would come out of the general election.

DELEGATE AASHEIM: Will he yield to another question? He didn't clarify the—

CHAIRMAN GRAYBILL: Mr. Aasheim, perhaps I can clear that up for you. What it says is that if anybody wants to run against this man, they can at any primary election. If nobody runs against him, so that he's unopposed, then he nevertheless has to go on the ballot, and thevoters then vote whether to accept him or reject him.

DELEGATE AASHEIM: Mr. Chairman, will he yield to another question, then?

CHAIRMAN GRAYBILL: Mr. Melvin?

DELEGATE MELVIN: I yield.

DELEGATE AASHEIM: Well, if he has no contest, how could the voters do anything but accept him?

DELEGATE MELVIN: If he has no contest in the general election, Mr. Aasheim-or in the primary election, then at the general election, the voters have a choice of approval or rejection.

CHAIRMAN GRAYBILL: And if the voters reject him, Mr. Aasheim, then the Governor would appoint somebody-and the next election, he'd have to run again? In other words, it creates a vacancy when he's rejected.

DELEGATE AASHEIM: Mr. Chairman, will he yield to another question?

DELEGATE MELVIN: I yield.

DELEGATE AASHEIM: Will the question on the ballot be, then, do you approve of Judge so and so's position?

CHAIRMAN GRAYBILL: Yes.

DELEGATE AASHEIM: I see, thank you.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Schiltz's amendment? Mr. Schiltz-therefore, the issue will be on Mr. Schiltz's amendment, the purpose of which is to start all over again 30 days after the legislative session. "Thirty days after adjournment of the first legislative session following the adoption of this article, the offices of all the Supreme Court and District Court judges shall become vacant." And then one other minor amendment to make that makes sense in the next sentence. So many as are in favor of Mr. Schiltz's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and the amendment fails. Now, we're on Mr. Melvin's proposal.

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I move my original motion.

CHAIRMAN GRAYBILL: Very well. Will the clerk read Mr. Kelleher's motion.

CLERK HANSON: "Mr. Chairman. I move to amend Section 7, page 42, lines 10 through 25, to read as follows: 'Section 7, Selection of judges. In all vacancies in the offices of Supreme Court justices and District Court judges caused by death, resignation, removal'-inserting 'or retirement', striking 'or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office'. end of the strike--'the Governor of

the state shall nominate'-and insert the words 'to serve during good behavior"'. Are there any additional changes, Mr. Kelleher?

DELEGATE KELLEHER: No.

CHAIRMAN GRAYBILL: Very well. The sense of Mr. Kelleher's amendment is to change Section 7 to read: "In all vacancies in the offices of the Supreme Court justices and District Court judges caused by death, resignation, removal or retirement, the Governor of the state shall nominate, to serve during good behavior, a Supreme Court or District Court judge from nominees selected in the manner provided by law." Then, it goes on to say, "If the Governor fails to nominate within 30 days after receipt of the names" and so forth, and the rest of that is the same as the rest of Section 7 in the minority proposal. And it deletes everything after line 26 in the minority proposal. So, the upshot of it is that Mr. Kelleher's proposal would allow the Governor to nominate judges for the Supreme Court and District Court to serve during good behavior.

DELEGATE KELLEHER: May we have a roll call vote?

(Seconds rise)

CHAIRMAN GRAYBILL: Roll call vote having been called for, all those in favor of Mr. Kelleher's amendment, say Aye-or vote Aye— and all opposed, vote No.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot.

Aasheim .. .. Nay
Anderson, J. Nay
Anderson, 0.. .. .. Nay
Arbanas Nay
Arness.. Nay
Aronow .. .. .. Nay
Artz ..... Nay
Ask..... Nay
Babcock ..... Nay
Barnard Nay
Bates ..... Nay
Belcher Nay
Berg..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman. ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ....Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ....Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt..... Aye
Foster ....Aye
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ....Absent
Holland., ... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf..... Nay
Lorello ..... Nay
Mahoney ..... .Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay

McNeil ..... Nay
Melvin.. .. .. Nay
Monroe Nay
Murray . . . . . Nay
Noble..... Nay
Nutting..... Nay
Payne Aye
Pemberton Aye
Rebal..... Nay
Reichert . . . Nay
Robinson .....Aye
Roeder Aye
Rollins. .. .. Nay
Romney .....Aye
Rygg ..... Nay
Scanlin .....Aye
Schiltz.. .. .. Nay
Siderius..... Nay
Simon . ..... Nay
Skari ..... Nay
Sparks..... Nay
Speer ..... Nay
Studer .Absent
Sullivan Nay
Swanberg.. .. .. Nay
Took .....Aye
Van Buskirk Nay
Vermillion Nay
Wagner.. .. .. Nay
Ward .. .. Nay
Warden..... Nay
Wilson Nay
Woodmansey .. .. Nay

CLERK HANSON: Mr. Chairman, 13 delegates voting Aye, 83 voting No.

CHAIRMAN GRAYBILL: 83 delegates having voted No and only 13 Aye, that motion fails. We're back on Mr. Melvin's amendment to the majority report. The sense of Mr. Melvin's amendment is to say that the first paragraph of the minority report is accepted. The second paragraph, he substitutes the situation under which, at each primary election following appointment, the judge has to run, and if he does not have a contested election, he nevertheless has to put his name on the ballot and the voters get to decide whether to approve him or reject him. If he's rejected, then the Governor has to appoint anew.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that Section 7 of the Judicial Article appearing on page 42 be amended in the following particulars: On line 16, after the word "judge" inserting a period and striking all of the remaining words appearing in the first paragraph of Section 7.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce moves an amendment to Section 7 of the minority report, which simply would allow the Governor to appoint without the commission. Now, Mr. Joyce, I'm going to rule you out of order, the reason being that your amendment does not touch Mr. Melvin's amendment, which is under consideration. If Mr. Melvin's amendment passes, then the minority report, including the language you want to strike, will be before the body and you can remake your motion.

DELEGATE JOYCE: (Inaudible) ruled out of order. (Laughter)

CHAIRMAN GRAYBILL: You've managed to have both happen to you now. (Laughter) My point simply is that that issue will be perfectly preserved for consideration after we've disposed of whether or not to adopt Mr. Melvin's amendment. Very well. The issue is on Mr. Melvin's amendment which, as I stated before, says—after line 26, strikes the minority report and puts in language which says that the appointed judge must run at each primary election thereafter and, if he is not opposed, he must nevertheless go on the ballot for approval or rejection. And if he's rejected, the Governor then reappoints. So many as shall—

Mr. Foster.

DELEGATE FOSTER: Roll call, Mr. Chairman.

(Seconds rise)

CHAIRMAN GRAYBILL: Very well. We'll use the voting machines. So many as shall favor Mr. Melvin's amendment, please vote Aye; and so many as shall oppose, please vote No.

Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote? Anyone else wish to vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed.

Aasheim .Aye
Anderson, J. Aye
Anderson, O.....Aye
Arbanas .....Aye
Arness..... Nay

Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Absent
Hanson, R.S ..... Aye
Hanson R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 92 delegates voting Aye, 2 voting No.

CHAIRMAN GRAYBILL: 92 delegates having voted Aye, Mr. Melvin's amendment prevails and the minority report is now amended to include Section 7 down to line 26, as it appears on page 42, and from line 26 on, it includes Mr. Melvin's amendment.

Now, I promised to recognize Mr. Joyce. Mr. Aasheim, for what purpose do you rise?

DELEGATE AASHEIM: Mr. Chairman, I want to amend Section 7.

CHAIRMAN GRAYBILL: Well, you may, but I've got to let Mr. Joyce be first.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move to amend Section 7 of the Judicial Article, on page 42, on line 16, by inserting after the word "judge" a period and striking all of the words in paragraph form-from the word "from" in line 16 down to the word "may" in line 25.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's amendment has the effect of eliminating the language in the minority report, as amended, which allows nomination in a manner provided by law and would authorize the commission system. In other words, it will retain only language which would let the Governor nominate, and after the Governor nominates, the provisions of Mr. Melvin's amendment would take over.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. Getting to the heart of the matter on the commission system, may I submit to the delegates this consideration. In the first place, no matter how astute or how brilliant or how able or how fairly the Legislative Assembly may set up a commission to select these nominees, you cannot take the human element out of the situation. To illustrate-assume that the first row of this Convention is a commission that ultimately is selected in the manner prescribed by law and there's a vacancy on the Supreme Court. And assume, for illustration purposes, that Mr. Davis and I are both vying for the job. Well, elementary, and the first thing that will happen is I will try and call up Cedor Aronow and see if he won't go for me, and Mr. Davis will call up Mr. Anderson and see if he won't go for him. And so you'll get interpolitics on this commission trying to see who's going to get the nod of the commission. Now the theory of the commission is that the commission's going to screen everybody and only select three people for the Governor to pick. Well, that's fine. The only trouble with commissions is they naturally take themselves seriously, and so of those three people that they pick, why, they always have one favorite. And if the Governor doesn't go for their favorite, then their nose gets out of joint and they figure that the Governor, in effect, made a political appointment. And so, after all--assuming that this commission then both recommends Mr. Davis and I and, say, Mr. Murray, who's also after the job, and the commission passes on the three of us and says, "Yes, all three of those would be great Supreme Court justices. They're able and talented and blah, blah, blah." Okay, what's going to happen then? It comes up to the Governor, and the Governor, at the current time, say, is a Democrat. Well, it seems to me that in the real world, it narrows down between Davis and I and that Murray is out. Not necessarily, but that's just the way the world is. Conversely, if we have a Repubican Governor and the three of us are vying the same way, it just follows as the night the day that Davis and I are out. But, of course, we have got an able judge. That's fine. But the Governor still has the right to finally pick him. Now, I submit that if we get away from the commission system in the Constitution, that any Governor can do like Governor Babcock does and, as I understood, Governor Anderson started to do, to have a select committee pass on people who are looking for vacancies. And as I understand, why Governor Anderson abandoned that system is just for that very reason, that the commission didn't approve of who he picked. They passed all these people-or they passed various people for a couple of jobs as though they were qualified and the Governor, notwithstanding, picked his man, which did not meet with the favor of the majority of the commission. So it seems to me that, ultimately, it comes down that on these vacancies—you've got to fill them; they're vacant-and that the Governor, having been elected by the people, you should assume that he's a responsible and honorable person and that he will pick who he thinks is the best man. And it doesn't mean that the Governor is corrupt because he picks one of his party over another party at all. It's simply that he believes the best judge will be one who has his political philosophy. And that's perfectly agreeable. President Nixon has just recently done that. And it seems to me that we're just beating around the bush by having a commission and we ought to leave it up to the discretion of whoever is Governor to pick who he wants to fill that vacancy. He can appoint any number of commissions, consult with the bar, consult with anybody he wants as to who he wants to select. And, of course, we are always limited as to who wants the job. And so it will, inevitably, narrow down to some people vying for the job. And I think we can trust the Governor to pick whom he thinks is the best man. Now, the quarrel-if there is a quarrel--with the present system is that the Governor has the right, under

this system, to make an appointment overnight and that nobody knows about it. So if I could devise some system that would give-the Governor would have to give some reasonable notice before he made this appointment to see if there wouldn't be a great hullabaloo go up around the state, why, maybe that would be all right. But I don't see this committee-no matter how it's selected, and I'm not so much afraid that it'll be dominated by any particular interest; it could very well be dominated by so-called liberal interests, which would be just as bad-it seems to me that the committee system doesn't add anything at all to it and that the Governor, if we elect capable, honest, sincere governors, will make a choice of who he thinks will be a good judge on the bench of either the District or the Supreme Court.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Yes, sir.

DELEGATE HARPER: Mr. Joyce, thanks for your comments on the Governor's nomination. Now, would you amplify your comments a little more to the second section of this amendment, because it also deletes the Senate's confirmation of the Governor's nomination. What's your word on that?

DELEGATE JOYCE: The only question on the Senate's confirmation of the Governor, it seems to me, is that under our system the Senate is not apt to be in session. And the question is whether or not the Senate should be called back to confirm the appointment. The only problem I have with that system is that the Montana Senate might adopt the unwritten law of the United States Senate which, in effect-they have what they call "senatorial courtesy"-so that, if the vacancy is in, say, Silver Bow County, the Senator from Silver Bow County then--under the senatorial courtesy system, he has it understood that if the nominee of the Governor is personally obnoxious to him for whatever reason, that all of his fellow senators will then turn down the confirmation. And that, of course, is the way that the United States Senators have developed for, in effect, getting their people-they make the appointments to the lower federal courts, particularly if their party happens to be in power. And so I really don't see requiring Senate confirmation as any particular safeguard, and it may allow into the realm, if I may use Mr. Kelleher's phrase, another vice where we would be as bad off as we are at the present time. And that's why I moved to strike the Senate confirmation as well.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I rise to resist Mr. Joyce's substitute motion, I think is what it is. I hope that everyone realizes that what this does, in effect, is completely put us back to where we were when we were about to vote on the majority proposal. I think it's worded a little better than the majority proposal, but it says exactly the same thing-mainly, that the Governor will appoint judges.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I merely rise in opposition to the amendment. I love the way the lawyers, a little while ago, were praising the selective committee that was selected by the lawyers to help Governor Babcock select his judges. Now it's bad. Every 15 minutes the lawyers can change their minds and be on the other side of the question.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Joyce's motion to amend Section 7 by eliminating the language in line 16 to 25, which has the effect of eliminating—

UNIDENTIFIED DELEGATE: Roll call vote.

CHAIRMAN GRAYBILL: Yeah, we'll have a roll call vote-which has the effect of eliminating the commission system and eliminating the Senate confirmation. We will have a roll call vote. So many as are in favor of his amendment, please vote Aye, and those opposed, please vote NO.

Any delegate-have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Pleasetake the ballot.

Aasheim.. .. .. Nay
Anderson, J. .. .. .. Nay
Anderson, 0.. Aye

Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman. ..... Nay
Brazier ..... Aye
Brown. ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
c am ..... Nay
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross. ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Pelt ..... Nay
Foster ..... Nay
Furlong,, ... Nay
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen .... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf. ..... Nay
Lorello ..... Absent
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough .... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 26 delegates voting Aye, 69 voting No.

CHAIRMAN GRAYBILL: 69 having voted No and 26 having voted Aye, the amendment fails.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. I move to amend Section 7, page 42, by deleting in line 11 and line 12, after the word "justices" on line

11, striking the words "and District Court judges". I'll just make one brief comment. I believe that the people are in a better position to select their District Court judges than they are the Supreme Court judges. And I believe that we should retain this in the elective process.

CHAIRMAN GRAYBILL: Mr. Aasheim's amendment strikes the words "and District Court judges" from lines 11 and 12 on page 42. It would have the effect of not allowing the Governor to appoint District Court judges. If it were passed, it seems to me it would require another sentence, Mr. Aasheim, where we would somehow tell how District Court judges would be handled. Do you want to add that now?

DELEGATE AASHEIM: No, Mr. Chairman. I would also amend line 15 and 16 to strike "or District Court judges" there. If this passes, then we will amend Section 7 somehow.

CHAIRMAN GRAYBILL: All right. In other words, this amendment would have the effect of eliminating the Governor's right to appoint District Court judges, and if it passed, we would than have to consider what to do about that.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. Is a substitute motion in order?

CHAIRMAN GRAYBILL: Yes.

DELEGATE ARNESS: I then move the following substitute motion as a substitute for all motions pending.

CHAIRMAN GRAYBILL: No, you can't -just make a substitute motion for Mr. Aasheim's --unless--are you going to make a substitute motion to eliminate Mr. Berg's motion that we adopt Section 7 of the minority report?

DELEGATE ARNESS: Yes, Mr. Chairman. I am.

CHAIRMAN GRAYBILL: You are, huh? Okay. (Laughter) Is it in writing?

DELEGATE ARNESS: Yes, it is.

CHAIRMAN GRAYBILL: Well, send it up to the Chair, please.

DELEGATE ARNESS: The motion-or the proposal would then read as follows.

CHAIRMAN GRAYBILL: Now, just a minute. Send it up to the Chair. Mr. Arness does not have the floor, but he'll have it again after I've read his amendment. Very well. Mr. Arness makes a substitute motion. May we read it from here?

DELEGATE ARNESS: Yes, please.

CHAIRMAN GRAYBILL: "The Legislature shall provide for the selection, pay and terms of judges."

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. It seems to me that the difficulty that we've gotten into again is the one that we've been in for some time here. We're really legislating. And, the matters that are before us here-it's obvious from the detail into which we've descended that these are matters for the Legislature to deal with. This proposal would do that. We could have either election or selection, according to whatever was best for us and for the state, according to what the people decided. And if the Legislature made a mistake, which it seems to me that we are about to do here, they would at least be in a position thereafter-or their successors would be in a position thereafter-to correct it. I submit to you that the question of what the judges' election or selection should be is as minute and as statutory in detail as to what their pay should be. One of the district judges has-felt that the matter of pay was of sufficient importance that he should tell us, or ask us, to put something about that in the Constitution. We might as well put these fellows' pay, in terms of dollars and cents, in the Constitution as to put how they are going to be elected, who the committee is going to be, and the rest of it. It may be that the organized bar has failed and that it has not properly informed the electorate, during the times when judges have come up for election, about the qualities and the capabilities of the judges. I do not think that, because the bar has failed to properly inform the public, that we should now penalize the public by freezing forever into the Constitution our opinion of the failure of the bar to inform us. Now, that's what we're about to do. We can avoid that problem, and I think properly, and adhere to what we ought to be doing here by leaving this to the Legislature, where it should be done. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Arness' amendment. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The amendment fails. Mr. Aasheim, do you want to change your amendment now? Want to restate your amendment?

DELEGATE AASHEIM: (Inaudible) restate it?

CHAIRMAN GRAYBILL: Well, you want to delete the words "and District Court judges" in lines 11 and 12 and in lines 15 and 16. And I take it to be the sense of your motion that if that passes, then we would have to figure out, somehow, how to take care of the district judges later; is that right?

DELEGATE AASHEIM: That is correct.

CHAIRMAN GRAYBILL: Very well. All those—

Mr. Hanson.

DELEGATE ROD HANSON: Would Mr. Aasheim yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible)

DELEGATE ROD HANSON: Mags, do you propose later-and I know you're talking about making some more amendments if this one carries-would you propose anything that would prohibit somebody appointed to fill a vacancy from running for reelection in the District Courts if this carries?

DELEGATE AASHEIM: I would favor that proposal, yes, because I see the danger of this appointment as being a blank check for reelection.

CHAIRMAN GRAYBILL: All in favor of Mr. Aasheim's motion to delete the words "and District Court judges", so that the Governor could not appoint District Court judges, all in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. Now, the Chair would like to call to the attention of the body the second of my guidelines for debate this morning: "Depend on the committees; follow the majority or the minority; do not become amateur draftsmen in areas you have not studied." Now, we're considering the minority report. Mr. Melvin's amendment was adopted, so it controls after line 26 and Section 7 from line 10 to 25 is in effect.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, in all-1 would like to ask Mr. Melvin if he would yield to a question.

DELEGATE MELVIN: I yield.

DELEGATE SCHILTZ: In all fairness to Mr. Melvin, he pointed this out to me and asked me to inquire about it. If you would look at lines 13—all of line 13 and a portion of 14-it says, "or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office". It impresses me, Mr. Melvin, that there's a possibility in this procedure where an incumbent judge would have somebody file against him and then the incumbent judge would decide that he was not going to be a candidate, in which case the opponent would not have been screened by the committee; either that or, if he must be screened by the committee, he would not have the opportunity to run, as your provision provides. Do you have an answer to that?

DELEGATE MELVIN: Yes, I have, Mr. Schiltz. For those that were in attendance at the Romney hearings concerning the Judicial Article, you will recall that this is the place where I deviated from the minority report. Because it just seems to me that, if we're consistent in wanting to provide the voters the maximum options, that we should consider all vacancies, for instance, in the offices of Supreme Court judges and District Court judges--and then skip that and go down to "the Governor of the state shall nominate". This is then covering appointments. The election procedure is left up to the voters at that point. Does that answer your question?

CHAIRMAN GRAYBILL: Do I-go ahead, Mr. Schiltz.

DELEGATE SCHILTZ: Well, it really doesn't answer my question, and I'm not enamored enough with this proposal to take on the drafting job. But I think something ought to be done to protect the fellow who files and then has

the incumbent withdraw. And if there's any great magic in having everybody go through a screening committee, it seems to me that in the event that the incumbent withdraws, somebody ought to screen this fellow who wants to run against him.

CHAIRMAN GRAYBILL: Mr. Melvin, do you have an amendment to propose that would cure that?

DELEGATE MELVIN: Yes, I have one prepared, Mr. Chairman, if I may sign it.

CHAIRMAN GRAYBILL: Very well. The sense of Mr. Melvin's amendment is to delete, on lines 12, 13 and 14, the clause "caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration ofcandidacy for a succeeding term of office". In other words, he would strike those words from the minority proposal, so that it would read: "In all vacancies in the office of Supreme Court justices and District Court judges, the Governor of the state shall nominate a Supreme Court or District Court judge from nominees selected", et cetera. This has the effect of changing Section 7 into a clause that deals with vacancies.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. I think that you've covered it quite thoroughly. It has the effect of simply covering the vacancies as we know them-as the common vacancies. And I think it answers Mr. Schiltz's question, that if somebody wants to file for the office, he can, without going through this other procedure that regular appointees must undergo. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Melvin, I have a question. Would you yield?

DELEGATE MELVIN: Yes.

DELEGATE HOLLAND: As I indicated, there is much about your plan that I find desirous. Is it the sense of your amendment that-if-Let's say, that Mr. Joyce is the incumbent judge. He decides not to run for reelection. Will, then, anybody who wants to file be able to file and then go through the elective process? In other words, this would apply just to the vacancies-resignations or death or things like that?

DELEGATE MELVIN: That's correct.

DELEGATE HOLLAND: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I am not sure that the amendment as proposed by Mr. Melvin would fit the bill. However, I am very much in favor of the amendment in the sense in which he says, "I think this is a reasonable compromise for both sides." In the event of a vacancy caused by other than a man desiring not to run for office, as I understand Mr. Melvin's proposal, he would say, rather than the Governor filling the appointment by, just on his own, picking some lawyer to be the judge, rather than that, the commission would then recommend to the Governor. The Governor would appoint from the selections of the commission; this would be confirmed by the Senate; and then the man, thereafter, would be subject to election. I would submit that this matter be passed upon until the whole Judiciary Committee can go over Section 7 and make sure that it says exactly what Mr. Melvin wishes it to say and then resubmit it to the floor.

CHAIRMAN GRAYBILL: Mr. Holland, that part of your sentence is out of order. The Chair will consider Mr. Melvin's present amendment. And before we close on Section 7, we'll recess for lunch, but I want to get as far along as we can on Section 7, because if we can get over Section 7. we might get Judiciary out of the way today. So the issue now is on Mr. Melvin's motion to strike the language "caused by the death, resignation, removal, retirement, or the failure of an incumbent judge to file." And it has the effect of saying that in all vacancies in the office of Supreme Court or District Court judges, the Governor of the state shall nominate from nominees selected in the manner provided by law, et cetera. All in favor of Mr. Melvin's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's been adopted.

Mr. Eskildsen.

Mr. Swanberg, for what purpose do you rise?

DELEGATE SWANBERG: I was wondering, Mr. President, if it would be possible to revive my prior suggestion, or if it would be timely at this time?

CHAIRMAN GRAYBILL: Revive your plan?

DELEGATE SWANBERG: Yes.

CHAIRMAN GRAYBILL: Yeah. We might just as well vote on your plan before lunch, Mr. Swanberg. Go ahead.

DELEGATE SWANBERG: All right. The reason I asked that, Mr. President, was because we've already voted in the negative twice on the election of the District Courtjudges. I submit, however, and will so submit again, that this is not where the problem lies. I think the public at large is pretty well satisfied with the method of selection of our District Court judges. The problem does lie in the Supreme Court. We have before us a proposal that would call for the appointment of both bodies, and I would like to submit, as a substitute to this, a proposal which I fear may not receive very much support here because it's too simple. The minority proposal as presented is very grandly complicated. And for that reason, I suppose, it will receive the support. However, I've written it out, and my proposal would simply state that the District Court judges shall be elected by the electors of the judicial districts in the manner provided by law. And the Supreme Court justices shall be selected by a commission, which shall consist of the district judges, in the manner provided by law. I have heard much talk this morning, and I've gathered from most of these talks, that there was a considerable distrust of this commission. I, too, share that distrust. The proposal which we are submitting here eliminates that insofar as it can be eliminated. You would have a body selected by the people at large, the entire membership of the district judges in the state. They would not be subject to-or be subject to very little-control by any pressure group or any person. And I submit that they would bequalified, by their obvious occupation, to be fully competent to select the membership of the Supreme Court judges. These selections would be for a term of six years and be reviewed from time to time as they came up. And I so move, Mr. President.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg's amendment has the effect of picking up the language from what you have on the desk before you, so that it would say that the state shall be divided in judicial districts, in each of which there shall be elected by the electors one or more district judges for the District Court, whose term shall be four years. And then the second part would be his second paragraph there. "The justices of the Supreme Court shall be appointed by a commission, which shall consist of the judges of the District Court of the State of Montana. The term of office for judges of the Supreme Court, except as provided, shall be six years." Well, the point of Mr. Swanberg's proposal is to have District Court judges elected and the Supreme Court judges appointed by a commission consisting of the District Court judges. So many as shall be in favor of Mr. Swanberg's proposal, please say Aye,

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Very well, it's defeated.

Now, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I move we recess until 2 o'clock p.m. this afternoon.

CHAIRMAN GRAYBILL: The motion is to recess until 2 o'clock p.m. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:58 p.m.-reconvened at 2:00 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. Ladies and gentlemen of the committee, placed upon your desk before you is a—we have rewritten Section 7 as it is amended to date, with the exception of the part below the stars at the bottom. The way the two paragraphs at the top read is the current status of Section 7, as amended. It includes both Mr. Melvin's amendments and part of the minority report. We are proceeding now to debate Section 7, as amended.

Mr. Melvin, I understand you have an addition.

DELEGATE MELVIN: Mr. Chairman, I move an amendment to Section 7, as indicated on the bottom of the sheets that have been passed out, which reads as follows: "If an incumbent judge

does not run, there shall be a contested, nonpartisan election for the office."

CHAIRMAN GRAYBILL: Very well. Mr. Melvin has moved an amendment to the existing amended language that we're discussing of Section 7. That amendment is found on that sheet in your page-m your desks at the bottom of the page. It has the effect of saying that, in the event an incumbent judge ceases to run, then there is an election; otherwise, in all the other events, even if a judge is rejected at an election, we go back through the selection of judge process whereby the Governor appoints, based on the commission.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, the language in the amendment was suggested in response to Mr. Holland's question this morning to clarify a possible question with regard to the election. It has been suggested, Mr. Chairman and fellow delegates, that this particular sentence might better be inserted immediately after the title, Selection of judges. I think that this would be a matter for Style and Drafting. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion of the proposed amendment?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would move to strike the word "nonpartisan", both from the added amendment and about seven lines up where it says "contested, nonpartisan ballot".

Mr. Chairman.

CHAIRMAN GRAYBILL: I understandit to be the sense of your amendment to strike the word "nonpartisan" from the last line. We're working now from the sheet that has been put on your desk-from the last line-and also to strike the word "nonpartisan" about 10 lines from the bottom at the end of the line. Is that correct?

DELEGATE SCHILTZ: That's correct.

CHAIRMAN GRAYBILL: All right.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I don't have a— well, I do have a strong feeling about it-what I mean to say is, I don't think that it's been thoroughly thought of. As the present Constitution provides, it says nothing about whether elections shall be partisan or nonpartisan. It's a matter of statute that we now have nonpartisan election for judges, and whether he says nonpartisan or not, as the statutes now stand, it will be a nonpartisan election, and I think it ought to be left that way against the day when the Legislature might want to change it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Schiltz's amendment to strike the word "nonpartisan" from the constitutional part of the article. So many as shall be in favor of Mr. Schiltz's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. So, if on the sheet you have, you'll strike "nonpartisan" at the bottom line and strike it at the end of the line 10 lines from the bottom, Now, the issue is on Mr. Melvin's amendment to add the last line, "If an incumbent judge does not run, there shall be a contested election for the office." Is there discussion? (No response) So many as shall be in favor of Mr. Melvin's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Very well. Are there other amendments to Section **7,** as amended, as you have it before you?

Mr. Joyce.

DELEGATE JOYCE: May I ask Delegate Melvin a question? Will he yield?

CHAIRMAN GRAYBILL: Mr. Melvin?

DELEGATE MELVIN: I yield.

DELEGATE JOYCE: What happens, Mr. Melvin, if the incumbent judge does decide to run?

DELEGATE MELVIN: I think, Mr. Joyce, in the second paragraph it says "Before the close of filings for nomination in the first primary election after Senate confirmation" and so forth-I think that this covers that eventuality.

CHAIRMAN GRAYBILL: It also covers, Mr. Joyce, "and at every primary election prior to each succeeding term ofoffice". So, in other words, at every primary election when his term is up, the incumbent has to put his name on the ballot and let others come on with him or else he has to stand alone to be approved or rejected, under the second paragraph.

Mr. Joyce.

DELEGATE JOYCE: Will Delegate Melvin yield to another question?

CHAIRMAN GRAYBILL: Mr. Melvin?

DELEGATE MELVIN: I yield.

DELEGATE JOYCE: My problem is that the first paragraph talks about when there are vacancies in the office, and it seems-the second paragraph seems to tie into vacancies--well--and so I don't see that it is covered when the incumbent judge does decide to run.

CHAIRMAN GRAYBILL: Mr. Joyce, if the Chair may help you, the second clause "and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot". Is that satisfactory to you?

Is there other discussion of the Section 7, as amended, before you on the desks?

Mr. Swanberg.

DELEGATE SWANBERG: Would Delegate Melvin yield to a question?

DELEGATE MELVIN: I yield.

DELEGATE SWANBERG: Perhaps you could summarize for us, Mason, the difference between this proposal and the present Constitution. In what way is our present situation, under our present Constitution, different from what you propose?

DELEGATE MELVIN: Actually, the proposal before you would accommodate times when there are vacancies in the office of District Court judges or Supreme Court judges by putting into effect the nomination by the committee, then the appointment by the Governor, confirmation by the Senate. The present system, of course, has been pretty well covered this morning. Now, in addition, I think that we should note in the last sentence of the second paragraph, "In the event of rejection of a judge, another selection and nomination shall bemadein likemanner." In other words, if a judge is running for approval or rejection at the general election, if he is rejected, then the nomination procedure would go into effect and then he'd have to run at the next primary election coming up. Does that answer your question, Mr. Swanberg?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Well, I must have been out late last night, because I'm not quite able to understand why we start filling vacancies before we decide how the judges are to be elected. Now, is the election determined-beginning line 26 on 42. Will Mr. Berg yield to that question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE AASHEIM: Where do we talk about election of judges?

DELEGATE BERG: The proposal is—combines appointments and elections. If a judge is-if a vacancy occurs, for example, by deat. or resignation or retirement, then--and the Governor is required to make an appointment to fill that vacancy, in that event a system of, call it merit selection, is used. Now, any judge who is in office will be required to be retained in office for approval or rejection. At any election he must stand a competitive election if anyone wants to file against him. Now, that's clearly expressed in paragraph two of this Section 7 as you have it before you. There is the amendment that Mr. Melvin is proposing which fills in a possible gap, and that provides that if an incumbent judge does not run, there shall nevertheless be a contested election for his office, so that in the event of rejection of a judge or in the event the judge does not seek to succeed himself, then, nevertheless, there is a contested election, and in the event that he does not care to succeed himself, the merit selection feature-the appointment feature--would not obtain. Do I answer your question?

DELEGATE AASHEIM: Mr. President, I still feel that we're putting the cart before the horse here, and I think you have explained it to me what you have done, but I think the important process is the primary election of judges; and then if there's a vacancy, then it should be-then it should follow.

DELEGATE BERG: The only way I can answer you is to say that these two paragraphs take care of both problems completely.

CHAIRMAN GRAYBILL: Mr. Aasheim, as was said awhile ago, whether or not this last sentence should be first or whether it should be last is a matter that Style and Drafting could decide on, but the last sentence does take care of it.

Mr. Swanberg.

DELEGATE SWANBERG: Would Delegate Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE SWANBERG: Mr. Berg, I don't wish to seem dense about this, but I fail to find anyplace in here where there's a merit system mentioned.

DELEGATE BERG: Well, in all vacancies-if you'll read the first paragraph-in all vacancies in the offices of Supreme Court justices and District Court judges, the Governor of the state shall nominate a Supreme Court or District Court judge from nominees selected in the manner provided by law. Now, that means that he must make his selection from nominees in the manner provided by law. It is contemplated that the Legislature will create a committee to select and name those nominees. That's where merit selection comes in.

DELEGATE SWANBERG: But it's not so stated in our Constitution?

DELEGATE BERG: No, because it was not stated for the very reason that if we locked it into the Constitution and the composition of the committee needed changing, it's difficult to do it by amendment. If you leave it to the Legislature and it needs changing, it can readily be done year by year.

DELEGATE SWANBERG: Under the situation that we have in the Constitution, though, if the Legislature decided not to form this commission, then we'd have the same situation we have now, do we not, where the Governor would simply appoint the judge?

DELEGATE BERG: Yes, but I think this is a pretty clear direction to the Legislature of the intent of this Convention.

CHAIRMAN GRAYBILL: Mr. Swanberg, do you have any further questions?

Very well, question arises on Section 7, as amended. Section 7, as amended, now includes part of the minority report on page 42, and it's best seen by looking at the sheet which is placed on your desk. The first paragraph, under Selection of judges: "In all vacancies in the offices of Supreme Court justices and District Court judges, the Governor of the state shall nominate a Supreme Court or District Court judge from nominees selected in the manner provided by law. If the Governor fails to nominate within 30 days after receipt of the names of the nominees, the Chief Justice or acting Chief Justice shall make the nomination. Each nomination shall be confirmed by the Senate, but a nomination made while the *Senate is not* assembled shall be effective as an appointment until the end of the next session of the Senate. If the nomination is not confirmed by the Senate, the office shall be vacant and another selection and nomination shall be made." That paragraph is from the minority report with one clause deleted. Then, Mr. Melvin's first amendment was: "Before the close of filings for nominations in the first primary election after Senate confirmation and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of the incumbent judge shall be nevertheless placed on a ballot in the general election, allowing the voters of the state or district the choice of his approval or rejection. In the event of rejection of a judge, another selection and nomination shall be made in like manner." Namely, the Governor would appoint up in the first paragraph. Now, we've also added Mr. Melvin's third amendment: "If an incumbent judge does not run, there shall be a contested election for the office." The vote on this, I trust, will be by roll call. The ballot is open. So many as favor the minority-Melvin proposal, as amended, to Section 7 of the Judicial Article, please vote Aye. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed. Please tally the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Absent
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman. ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Absent
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong. ..... Absent
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 88 delegates voting Aye, no delegates voting No.

CHAIRMAN GRAYBILL: 88 delegates having voted Aye, the Section 7 is adopted. Now the clerk will again read Section 6, which we passed.

CLERK HANSON: "Section 6, Terms and pay of judges. Justices of the Supreme Court, District Court judges and other judges shall be paid as provided by law, but their salary shall not be diminished during their term of office. Terms of office for Supreme Court justices shall be six years. Terms of office for District Court judges shall be four years. Terms of office for other judges shall be provided by law." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I believe I have already moved and explained this section. I'll have no more comments.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I would like to propose an amendment to paragraph 6 to the effect of increasing the term of Supreme Court justice from six years to eight and District judges from four years to six.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Garlington, I understand you want to increase the Supreme Court from six to eight and the District Court from Four to six, is that right?

DELEGATE GARLINGTON: Thatis correct.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Ladies and gentlemen of the Convention, as you review Section 7, which we have just voted upon here, you realize that we have really not made any very great change or improvement in the situation of those who might aspire to serve in judicial office, and I get concerned again with the fact that it really is difficult to get people to give up their private practice, forsake all of their connections, in order to ascend to the bench, and then face the uncertainties of a political confrontation thereafter, In order to determine whether I was right about this, I got to looking through the book on the Judiciary, Number 14, which you all were given, and especially I was looking at the tables which appear on page 193 and 199 in that volume. From this, I find that Montana is really at the bottom of the barrel in the way that it treats its judges, and I feel that this information ought to be called to the attention of the delegates in order to complete our handling of this Judicial Article. For example, in the table number 16 on page 192 and 193, it appears that there are 17 out of the 50 states who have Supreme Court justice terms limited to six years. All 33 of the other states have them from 8 years up to 15 years or for life. So we are one of 17 who have the six-year limited term. Turning to the District Court, I find that 13 out of the 50 states have trial court judge terms fixed at the minimum of four years, and all 37 have longer terms, running from 6 to 15 years and on up to life. Then, I thought to myself, well, maybe we pay our judges well enough that it is worthwhile to give them only a short term, so looking at table 17 on page 199, I checked the pay provided for the judges against the terms thatmatched the terms in Montana, and I find in conclusion that the only state in the nation that has a lesser salary than we have for our Supreme Court justices on the same term as we have is South Dakota, and it either--well, anyway, it's $500 below Montana. So the result is that Montana, at the present time, has a combination of the shortest term and the lowest salary, except in one instance, of all the states in the nation for its Supreme Court justices. And I think this is something that we ought consider, because if we ask these men to give up their private practice and go into judicial service, we either ought to make it attractive to them in some respect by the salary they receive or by the term of office they have in which to establish their judicial competence. For this reason, I suggest that if we increase the terms of both District Court justices and Supreme Court judges by two years, we will still be on the under half of the American average standard and we will take one step-will not cost anybody any thing to see to it that those who aspire to judicial service will have a fair term within which to serve without the necessity of preparing to finance for their political campaigns.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Garlington, yield, please?

DELEGATE GARLINGTON: I yield.

DELEGATE SCHILTZ: Mr. Garlington, do you think it's necessary here-at least I would like the sense of this committee to know when these terms would start if your amendment were approved.

DELEGATE GARLINGTON: Well, Mr.

Schiltz, I haven't given any consideration to that. I assume that in our transition from the old to the new, assuming that we are cleared by the voters, that the new terms would commence as the old terms expire.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I rise in support of Mr. Garlington's amendment. I believe that if we are going to ask these men to run, and as he has pointed out, this business of giving up their law practice, that if we extend the terms to six years for the District judges and eight years for the Supreme Court justices, that this would not be unreasonable. I would have one small comment on the pay for judges. I understand they draw $20,500 a year, and this seems to be-they seem to think this is a very small amount. I would like to say that, as a school teacher, I would like to go through the pain of adjusting to a $20,500.a-year salary.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I'll be brief. I, too, rise in support of Mr. Garlington's motion. I feel that what our real endeavor here is, is to make an effort such as we can to improve the course of justice in Montana, and I think the one great stride that may be made in that effort is to seek better judges, to try to get at least the best of our bar interested and induced to become judges. One way to do that is, of course, to extend their term and to extend it so that it is at least equal or on par with the surrounding states and generally with the states within the Union.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I support Delegate Garlington's motion for the reason that I think it will improve the quality of justice. I think the longer the term, the more stable the term, the more stable the performance; the chance of external influence is lessened; so, consequently, I support that in the hope that in this manner we will improve the quality of justice in Montana.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I've come to the conclusion the best way to get action in the Judicial Article is to resist the other attorneys, so I'm going to do so. I suggest that now we've gone from direct election to merit selection, at least in part. An integral part of merit selection is the review-that is, that-the man running uncontested, even if he doesn't have an opponent, is going to come up here and the voters are going to vote whether he's doing a good job or not, and I would suspect that a good deal of our elections in the future are going to be that way. Now, lowering these terms means that the public won't even be able to say to these judges that you're not doing a good job except every eight years and every six years in terms of the District Court, six years; in terms of the Supreme Court, eight years. And I suggest that as long as we've gone to this system, and we might as well be good sports because this is what the majority evidently wants, we're going to have this system, that we should at least call these men to the mark as often as we have been doing it-call the Supreme Court up every six years and the District Court every four years.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Garlington's amendment. He would amend Section 6 on page 42 on lines 5 and lines 7 to provide the Supreme Court judges with eight-year terms and District Court judges six-year terms. So many as shall be—

Mr. Heliker.

DELEGATE HELIKER: Roll call.

CHAIRMAN GRAYBILL: Roll call? Very well, so many-We'll use the voting machine. So many as shall be in favor of the amendment, vote Aye; and so many as shall be opposed will vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot. Please take the ballot.

Aasheim .. .. Nay
Anderson, J. ..... Nay
Anderson, 0.. .Absent
Arbanas .....Aye
Arness .....Absent
Aronow ..... Nay
Artz ..... Nay
Ask.. .. .. Nay
Babcock . . . . . Nay
Barnard . . . . . Nay
Bates..... Nay

Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain ....Aye
Campbell ....Aye
Cate ....Absent
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross.. ....Aye
Dahood ..... .Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ....Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ....Aye
Johnson ....Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ....Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ....Aye
Roeder ..... Absent
Rollins ..... .Aye
Romney ..... Nay
Rygg ....Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye
Skari ....Aye
Sparks ..... Aye
Speer ....Aye
Studer ....Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ....Absent
Van Buskirk ..... .Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ....Aye
Warden.. ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. President, 46 voting Aye, 46 voting Nay.

CHAIRMAN GRAYBILL: 46 having voted on each side of the proposition, the proposition fails. We are now debating Section 6 as it appears in the minority report. Very well, members of the committee, you now have before you on the motion of Mr. Berg, that when this committee does arise and report after having under consideration Section 6, it recommend the same be adopted.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Do I not have an amendment up there?

CHAIRMAN GRAYBILL: I beg your pardon. You do, yes, sir. Do you want it read?

DELEGATE ROMNEY: Please.

CHAIRMAN GRAYBILL: Very well.

CLERK SMITH: "Mr. Chairman. I move to amend Section 6, page 42, line 3, of the Judiciary Committee minority report by adding the following language: 'No justice of the Supreme Court nor judge of the District Court shall accept or receive any compensation, fee, allowance, mileage, perquisite, or-'

CHAIRMAN GRAYBILL: "Emolument."

CLERK SMITH: '--emolument for or on account of his office in any form whatever except as provided by law.' Signed: Romney."

CHAIRMAN GRAYBILL: The sense of Mr. Romney's amendment would be to add, at the end of the sentence that ends on line 3, page 42, the following sentence: "No justice of the Supreme Court nor judge of the District Court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office in any form whatever except as provided by law."

Mr. Romney.

DELEGATE ROMNEY: (Inaudible)

CHAIRMAN GRAYBILL: We can't hear you, Mr. Romney. Hold it a little closer.

DELEGATE ROMNEY: It is practically the same as Section 30 in the contemporary Constitution. The only difference is in the last line, where it reads "except" in the old Constitution-in the present Constitution where it reads "except the salary provided by law". My amendment is, "except as provided by law". The purpose of this amendment, of course, is perfectly plain. It's to forestall any additional perquisites or emoluments accruing to a member of the Judiciary for things other than his salary. The reason I did not include the word "salary" is because I conceive that it is included in "except as provided by law", because the salary is provided by law by the Legislature. So are items other than the salary, which might include, for example, mileage. Now, it's correct that a man should--a judge who must travel from Hamilton to Thompson Falls or from Kalispell to Miles City or wherever it might be should be compensated for the money that he expends for mileage and his hotel and things like that. That could and would be taken care of by the Legislature, except as provided by law, in the same way that the Legislature cares for similar contingencies of other employees of the state. For example, the members of this Convention receive per diem in addition to their salaries and they receive a certain amount of mileage. So do legislators. Employees of the various departments of the state likewise are compensated for their travel, and that could all be handled by the Legislature. Now, I think that's the way it should be. I don't see any reason why the Judiciary should be treated in a different manner than the other employees of the people of the State of Montana. If you do otherwise, it is tantamount to an increase in salary, and the Legislature has already taken care of the salary increase, so I just want the Judiciary to be in the same standing as the rest of the employees of the State of Montana. I thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, would Mr. Romney yield to a question?

CHAIRMAN GRAYBILL: Mr. Romney, will you yield?

DELEGATE ROMNEY: Certainly.

DELEGATE LOENDORF: Mr. Romney, your amendment was only read, but I am wondering if it's really different from the second paragraph in Section 8, which reads: "No Supreme Court justice or District Courtjudgeshall solicit or receive any compensation on account of his office in any form whatever except salary and actual necessary travel expenses as provided by law."

DELEGATE ROMNEY: That's quite true, but it's in the wrong place, I think.

CHAIRMAN GRAYBILL: Where is that, Mr. Loendorf?

DELEGATE LOENDORF: Mr. President, that's in the second paragraph of Section 8.

CHAIRMAN GRAYBILL: Very well, Mr. Romney, we're coming to that. Do you want to amend it here, or do you want to—

DELEGATE ROMNEY: Well, Mr. Chairman, I submit that this is where the rest of the qualifications are spelled out. I don't care, as long as it gets in.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, the committee, both in the Judiciary Committee and I think in both the majority and the minority, gave serious consideration to this problem. And we used the term "actual necessary travel expense" for very good reason, and that is that we found that District judges in various communities have an entirely different expense than they do in others. Some travel more, some have more expense because motel rates and hotel rates in some communities are higher, and we felt that we should try to equalize this out as nearly as we could, and we therefore specifically used and agreed upon the language "and actual, necessary travel expense". Now, I would call-as long as we are into Section 8, I would call your attention to the next paragraph, which relates to this-to similar limitations on judges, and that is this: " Except as otherwise provided in this Constitution, no Supreme Court justice or District Court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party." Now, it is the feeling of at least the minority, and I believe the majority, too, joins with us in that we did not want judges to receive any fee, any salary, any compensation from any other employment except as a judge. This is different than the Constitution, and this is why we inserted it. Now, it seemed to us thatthese two paragraphs related more to limitations and qualifications, and we therefore included them under Section 8 rather than under the salary and term.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: It is satisfactory to me, and I withdraw my amendment.

CHAIRMAN GRAYBILL: All right, Mr. Romney withdraws his amendment. Very well, members of the committee, you have now before you, on the motion-1 should perhaps mention that Mr. Kelleher had an amendment to eliminate the terms of all three of the officers, all three of those things, but he's not here to put his motion, so I'm not going to put it. Members of the committee, you now have before you the motion of the Chairman of the committee or the subchairman of the Committee on Judiciary thatwhen this committee does arise and report, after having under consideration Section 6, that it recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: 6 is adopted. Will the clerk please read Section 8.

CLERK SMITH: "Section 8, Qualifications and limitations ofjudges. No person shall be eligible to the offices of justice of the Supreme Court or judge of the District Court unless he or she shall have been admitted to the practice of law in Montana for at least five years prior to the date of appointment or election, is a citizen of the United States, and has resided in the State ofMontana two years immediately before taking office. Qualifications and methods of selection of judges of other courts shall be provided by law. No Supreme Court justice or District Court judge shall solicit or recieve any compensation on account of his office, in any form whatever, except salary and actual necessary travel expenses as provided by law. Except as otherwise provided in this Constitution, no Supreme Court justice or District Court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party. Filing for another elective public office results in forfeiture ofjudicial position. A district judge must reside in his district during his term of office." Section 8, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 8 of the minority report, as it appears on page 43 and 44, that it approve and give it-do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: We have changed the 1889 Constitution in some particulars with regards to the qualifications of judges. First of all, we eliminated the age requirement, but, secondly, we required five years practice of law for either a District Court judge or a Supreme Court judge, and by that we mean that he must be admitted to the practice of law in the State of Montana for at least five years before he's qualified to hold that office. It was the belief of the committee, and I'm sure I'm speaking now on behalf of both majority and minority, that it takes experience in the court-

room, it takes experience in the actual practice in Montana in order to understand the procedures that we use, and that it would be harmful to the carrying out of justice in our courts if we had people on the bench who were not intimately familiar not only with Montana substantive law, but more especially with procedural law, and we felt very strongly that one of the most significant qualifications would be actual trial practice in court. We did not feel, however, that we should specify that in particular, but we feel that these are the kind of qualifications that do lend to the making of good judges. We did not make any qualifications insofar as inferior court judges were concerned but left that entirely to the Legislature. I have already discussed the paragraphs 2 and 3. The Constitution does not now have a provision which prohibits a justice of the Supreme Court or judge of the District Court from filing for any other office during his term of office. This was inserted in the minority report to prevent what we think is political ambition and using the courts as stepping-stones in fulfillment of a political ambition. We provided that the district judge must reside within his district during his term of office. That is exactly the same as the old— as the 1889 Constitution.

CHAIRMAN GRAYBILL: Mr. Berg, the Chair is in doubt. The other day there was a proposal here that the Judiciary Committee wanted to add, on page 44 at the end of the article-language about if a judicial officer absented himself from the state for60 consecutive days. Do you want that in or not?

DELEGATE BERG: (Inaudible) propose that as an amendment, because that is, I think, Section 37 of the existing Constitution, and I recall Judge Fall, in particular, before our committee emphasizing the importance of that. We would like it included.

CHAIRMAN GRAYBILL: You want that in?

DELEGATE BERG: Yes, and I so move.

CHAIRMAN GRAYBILL: All right. First of all, then, on page 44, at the top of the line where it says "one, for his term of office"-that's the end of Section R-the committee wishes to add this language; and you have had this language on your desk for some days; it may be lost by now. "Any judicial officer who may absent himself from the state for more than 60 consecutive days shall be deemed to have forfeited his office." All in favor of the Judiciary Committee's motion that that be added, please say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted Now, Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, WC have another amendment that the committee agreed upon yesterday afternoon.

CHAIRMAN GRAYBILL: Mr. Aronow, would you like the Chair to read-or the clerk to read that amendment?

DELEGATE ARONOW: Yes, I would, except there is one error that has to be added to this amendment, and that's to strike line-at the bottom of page 43-line 30 and line 1 at the top of page 44, because the amendment takes care of that.

CHAIRMAN GRAYBILL: Very well, will the clerk please read the amendment?

CLERK SMITH: "Mr. Chairman. I move to amend Section 8, page 44, line-"

CHAIRMAN GRAYBILL: "Line 1."

CLERK SMITH: "-line 1, by adding the following language to that section: 'All judges, except justices of the Supreme Court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town in which they may be elected or appointed.' Signed: Aronow."

CHAIRMAN GRAYBILL: Very well, Mr. Aronow's amendment has the effect of changing the language there. We strike out the phrase: "A district judge may reside in his district during his term of office-or, must reside in his district during a term of office"-and put it in in this more comprehensive language, that all of the judges, except the Supreme Court judges, who reside in the state, shall respectively reside during the term of office in the district, county, and so forth, from which they may be elected or appointed.

Mr. Aronow.

DELEGATE ARONOW: I move the adoption of this amendment. And this is nothing new;

it's been in the 1889 Constitution; it's always been the law in Montana. We've boiled it down, shortened it, and submit it herewith.

CHAIRMAN GRAYBILL: Purpose, Mr. Berg?

DELEGATE BERG: Mr. Chairman, I simply want to point out that this amendment does cover, for example, Police Court judges and justices of the peace or any other inferior court judge, and it was the thinking of our committee that if a Police Court judge is either elected or, in the case of a commission-management form of government, appointed, he ought at least to live within the area where the taxpayers are paying his salary.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Aronow's amendment to the effect that judges, except Supreme Court judges, shall reside within the state and the district in which they serve. All in favor of Mr. Aronow's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Blaylock.

DELEGATE BLAYLOCK: Will Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: (Inaudible)

DELEGATE BLAYLOCK: Mr. Berg, just the second paragraph up from the bottom of page 43, at line 28, it says: "Filing for another elective public office results in forfeiture of judicial position." Now, it says "public office" there. I just want to raise a question. If a district judge were to file for a Supreme Court position, would he forfeit his district judge position?

DELEGATE BERG: He would, under this provision, yes.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE ARONOW: [Would] Mr. Berg yield?

DELEGATE BERG: Yes.

DELEGATE ARONOW: Suppose the Chief Justice, as an example, term expired and he didn't even file. I'll just make it real easy. So one of the associate justices, whose term has not expired, filed for the position—

DELEGATE BERG: He would forfeit his office and take his chances in the election.

DELEGATE ARONOW: Thank you.

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the motion of Mr. Berg, that when this committee does arise and report, after having under consideration Section 8, it recommend the same be adopted. All in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Will the clerk please read Section 9.

CLERK SMITH: "Section 9, Disqualification of judges. The Legislature shall provide for disqualification of judges at any one or all of the inferior, trial and appellate court levels." Section 9, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you have Section 9?

DELEGATE SCHILTZ: I don't have it, but I'll take a shot at it.

CHAIRMAN GRAYBILL: Mr. Berg will take it, Mr. Schiltz.
Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 9, that it repeal the same. Now, yesterday, at our so-called ad hoc committee meeting, we discussed this at length, particularly as it related to the Supreme Court, and we had the benefit of, in our committee-in this so-called ad hoc committee—members who had been in discussion with the Supreme Court and the possible effect it might have on the operation of the Supreme Court, and it was felt that it should be left entirely to the Legislature and not referred to in the Constitution; that if you permit unlimited, at least, disqualifications in the Supreme Court, you might very well disrupt

or almost completely dismantle the court at times. So it was suggested that, by the Supreme Court itself, as I understood it, that if there were disqualifications of Supreme Court members, it should be at least for cause. And because of these problems, the committee that met yesterday, which was composed of both minority and majority lawyers, felt that this should be deleted, and I understood Mr. Schiltz would move it, but I'm happy to do it if he doesn't.

CHAIRMAN GRAYBILL: Very well. Now, the sense-for the information of the body, the sense of Mr. Berg's motion is to delete Section 9. In other words, strike it out, do away with it. Is there debate? (No response) Very well. Members of the committee, you have before you the motion of Mr. Berg that when this committee does arise and report, after having had under consideration Section 9, that it be deleted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 9 is deleted. Will the clerk read Section 10.

CLERK SMITH: "Section 10, Removal and discipline of judges and lawyers. There is created a Judicial Standards Commission consisting of three judges, selected by the district judges, of which not more than one can be a member of the Supreme Court, two members of the Montana Bar, and two citizens who do not hold any public office of the State of Montana or any office of a political party, appointed by the Governor. Each vacancy on the commission shall be filled in the same manner as the original appointment was made, and the appointee shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as Chairman. Its proceedings shall be confidential. The commission shall have the power to investigate, including power to subpoena witnesses and documents, upon complaint by any citizen or on its own motion, charges which could be the basis for retirement, censure or removal of any justice or judge or for the discipline, censure, suspension or disbarment of any practicing lawyer in the State of Montana. Upon finding charges to be well founded, the commission shall file a formal complaint before the Supreme Court. The Supreme Court shall hear such complaint and, if it be sustained, may retire, censure or remove any justice or judge or discipline, censure, or suspend or disbar any practicing lawyer. If the complaint be against a justice, the court shall call in a district judge as provided in Section 3 of this article." Section 10, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. Well, the clerk has an amendment to Section 10 which, in effect, has deleted and completely rewritten it.

CHAIRMAN GRAYBILL: I'll have the clerk please read the amendment proposed by Mr. Aronow's Section 10.

CLERK SMITH: "Mr. Chairman. I move to amend Section 10, page 44, lines 5 through 30, and page 45, lines 1 and 2, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following language: 'Section 10, Removal and discipline of judges. Subsection 1: The Legislature shall create a Judicial Standards Commission and provide for theappointment of three district judges, one attorney, and one citizen who is neither a judge nor an attorney. Subsection 2: The commission shall investigate complaints, subpoena witnesses and documents, and make rules implementing this section and providing for confidentiality of proceedings. Subsection 3: Upon recommendation of the commission, the Supreme Court may: (a) retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or (b) censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.' Signed: Aronow."

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I move that when this committee does arise to report, that it adopt this amendment. The reason we determined to rewrite this: there were some defects, we felt, in the Section 10 of the minority proposal. It was a little too broad in scope. It attempted to cover the discipline of lawyers, which was not theintent of this article, and thediscipline of lawyers and the standards for their conduct is handled by the Supreme Court. This is a committee which we created in the majority part of the

committee report, modeled somewhat after New Mexico. It's been revised; some things have been taken out of California. It's shortened, and in effect, this article provides for three district judges, one lawyer and one layman, a committee of five, to investigate and look into any complaints that are made or any information that comes to the attention of the commission that a judge, either because of old age, other disability, is not attending to duties properly and provide for his retirement or removal from office. The present time, the only procedure provided in the Constitution is impeachment, which is a cumbersome and difficult method. We feel that this will help upgrade and strengthen the Judiciary and take care of those situations where, perhaps because of injuries or other disability, a judge may not realize that he's incapacitated, and this can be handled quietly in many instances and without undue embarrassment to anyone or the system. If the judge or justice refuses to cooperate and wants a hearing, there's a form provided. We didn't feel that, as long as the Supreme Court was to finally pass on this matter, that any member of the Supreme Court should be on the committee to investigate the charges. Thank you.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I rise to make a substitute motion.

CHAIRMAN GRAYBILL: All right, what is your substitute motion?

DELEGATE MCNEIL: The language has basically been spread upon the desks, although it was drafted in the form of an amendment to the section as proposed by the minority committee report. My substitute motion will read exactly as Section 10, as read by Delegate Aronow, excepting in the title, following the word "judges", insert the following: "architects-"

CHAIRMAN GRAYBILL: Now, just a minute, Mr. McNeil. Does the Chair understand that you are now intending--rather than what you said-you're now intending to amend Mr. Aronow's amendment?

DELEGATE MCNEIL: No, sir. Since an amendment to the second amendment, I believe, would be out of order, I am offering a substitute motion.

CHAIRMAN GRAYBILL: No, an amendment to amendment is not out of order, but my point is, do you want to graft it on Mr. Aronow's or the minority report?

DELEGATE MCNEIL: At this time, Mr. Chairman, I would-if amendment is in order, I will amend Delegate Aronow's amendment.

CHAIRMAN GRAYBILL: All right, will the clerk read the substance of Mr. McNeil's amendment--not what it amends, but just the substance of it. Just the first paragraph.

CLERK SMITH: "--architects, bankers, priests, governors, legislators, certified public accountants, insurance agents, doctors, dentists, teachers, ministers, professors, pilots, educators, businessmen, engineers, social service workers, journalists, veterinarians, and all other professions."

CHAIRMAN GRAYBILL: All right, now. The sense of Mr. McNeil's motion is to amend the title of Mr. Aronow's proposal here to include all of the groups that you heard mentioned. I take it that he would then have this Judicial Standards Commission, consisting of three district judges, an attorney and one citizen who is not a judge nor an attorney, investigate complaints, and upon recommendation, he'd have the Supreme Court do away with all of the incompetent people in these different capacities. Is that correct, Mr. McNeil?

DELEGATE MCNEIL: Mr. Chairman, that is substantially correct. I trust that the delegates will recognize the list, since it was taken from the membership of this Convention, with the governors and legislators thrown in. I would also have included housewives and ranchers had I known how they could have been removed. (Laughter) I did not intend this to be humorous, although, rather obviously, it is. The legal profession has been singled out for censure. I do not believe this belongs in the Constitution. If each of you will think of your own profession, I think you can find a small percentage, perhaps the same percentage as that of the legal profession, that needs cleaning up and attention. I made this motion to draw your attention to that fact and to request that you give serious consideration to removing this kind of thing from the Constitution. For that reason, I will withdraw my motion and make the following substitute motion. I move to delete Section 10 in its entirety, as a substitute motion.

CHAIRMAN GRAYBILL: Very well, the motion is to delete Section 10.

DELEGATE MCNEIL: Mr. Chairman, I will speak just for one minute on this subject.

CHAIRMAN GRAYBILL: All right.

DELEGATE MCNEIL: Our present Constitution, and I trust the format which all of the delegates are contemplating for the one which we are drafting now, contemplates three equal, distinct, separate branches of government. We have adopted an Executive Article which does not have any appointive commission overseeing our Executive officers. We have adopted a Legislative Article which does not have any appointive commission overseeing our legislators. I submit that the Judiciary of this state, which is as fine as there is anywhere, does not need an appointive commission overseeing it. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue—
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, in response to Mr. McNeil's motion, I resist it, partially because and mostly because we have had two or three judges in the State of Montana, who, themselves, were not aware that they were over the hill, and the judges who testified at our committee themselves, speaking for the entire judges' association, said that they were for something like this. They catch the burden of a judge who is too old and has possibly become senile-once in a while we have one who's alcoholic-and then they catch that extra burden of work and the Judiciary also is criticized considerably when that situation obtains. For that reason, I resist the motion.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, Mr. McNeil put in his first motion, which he then withdrew, and he included teachers and I would like to make one point in regard to that, that—

CHAIRMAN GRAYBILL: All right, now, it's out of order unless it has to do—

DELEGATE BLAYLOCK: It does—

CHAIRMAN GRAYBILL: -with deleting the paragraph—

DELEGATE BLAYLOCK: -it does, Mr. President.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE BLAYLOCK: It does have something to do with it-that if, in removing people, that teachers must go before a board if they are going to remove their teacher's certificate, which, in effect, would be the same as disbarring an attorney or removing a judge--and we don't even have, on such a committee as that, a teacher sitting there as this present amendment which they want to delete, where we have judges and lawyers sitting, and I would resist Mr. McNeil's motion to delete this. I think we need this in our Constitution in case that we may very well have to judge a judge.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I rise in support of Delegate Aronow's proposal and resist Mr. McNeil's proposal to eliminate that particular sentence, and I would like to quote briefly from a comment that was made in one of the letters that an attorney wrote to the committee: "Recall the case of judge in blank and blank and blank counties some time ago. He refused to hold jury trials, and the Governor and the Supreme Court were powerless to do anything about it." Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McNeil's substitute motion to delete Section 10 in its entirety. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails.
Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I have sensed that a lot of laymen in this Convention feel that nothing is done, practically, in regard to lawyers, and before they vote on Mr. Aronow's amendment, which I support, I wonder if Mr. Davis would yield to a question.

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: I'll yield.

DELEGATE HABEDANK: Mr. Davis, you are a member of the Supreme Court Commis-

sion on Practice. Would you explain what this does?

DELEGATE DAVIS: Well, I was hoping the amendment would pass. It's a little difficult to explain without taking a little bit of time. The Supreme Court Commission on Practice is made up of eight members of the bar, who are elected in each of eight districts. The junior judge-junior by length of service, not age, because our 80-year-old judge happens to be the junior judge in our eight-county district now for this purpose-holds the election. They submit, as I understand it, the two highest candidates to the Supreme Court, the ones getting the most votes. The Supreme Court then nominates or appoints one of them to the Commission on Practice. At the present time there are eight attorneys on the commission. Mr. Ask is on it from Roundup, I'm on it from southwestern Montana. There's one from Great Falls, Missoula, Glasgow and Sidney, and Mr. Hooks from Townsend. Complaints against any attorney in the State of Montana are referred to this commission. Local grievance committees are appointed in each district, in each county. They are then referred to the local grievance committee. That committee makes a recommendation. They investigate: they see whether it's a dilatory matter, whether it's a breach of ethics, or whether it's a violation of the law. Then it's referred back to the commission on practice. The commission on practice then has to make a determination ofwhatfurtherproceedings should be held; whether there should be a public censure, a private censure; whether they should just get ahold of the fellow and tell him to get his work done; or whether it's a case for disbarment or removal or suspension. In the eight years I've been on this, we've done each and every one of those things. It's one of the most unpopular type jobs you can get. It's nonpaying. And, I'm hopeful that you'll adopt the minority and eliminate the commission on practice, but then the Supreme Court will have to go back through and figure out some other way to handle the same thing. Does that answer your question?

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. McNeil's—

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I think we all realize that a provision of this kind is something that will seldom be used. It's something that will not very often be invoked against the judge; but I think it's essential that something along this line be done, and I believe that Mr. Aronow's amendment to Section 10 is a sensible, reasonable approach to it, and I support it.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I simply want to rise and support Mr. Aronow's amendment. We've reviewed this, as I say, in this ad hoc committee. I've discussed it with members of the minority and members of the majority. We all think that it does what we want it to do. We are particularly interested in seeing to it that District judges and Supreme Court justices have some protection, not only of themselves in the case of senility or alcoholism, but frequently charges are made against judges which, of course, they are almost powerless to answer. If there is a commission before whom those charges can be filed, the judge has an opportunity to defend himself. This also is a factor and the use of which can be made of this commission.

CHAIRMAN GRAYBILL: The issue is on Mr. McNeil's substitute motion to delete Section 10 in its entirety. All in favor say—

DELEGATE ARONOW: That motion was voted down.

CHAIRMAN GRAYBILL: Oh, that's defeated.

DELEGATE ARONOW: Yes.

CHAIRMAN GRAYBILL: I beg your pardon.

DELEGATE ARONOW: It's on my motion.

CHAIRMAN GRAYBILL: Right. I beg your pardon. Well, we would have defeated it twice, Mr. Aronow. (Laughter)

Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Aronow yield to a question?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I yield, Mr. Aasheim.

DELEGATE AASHEIM: Now, your commission here is going to be set up to judge judges, and you have there three judges on that commission. Now, why do you select judges to judge judges?

DELEGATE ARONOW: Mr. Aasheim, the reason-this is not the group to judge. This is the group to investigate and look into the matter and make recommendations, and we felt, also, that some of these things can be handled quietly without the need of going to a hearing before the Supreme Court-that in the instance where a judge is getting old and lost part of his marbles, if I may use that expression, maybe a group of judges can go to him and persuade him to voluntarily retire. Or, if he has habitual alcoholism, maybe they can get him to go get boiled out and on the wagon again. And if that doesn't work, then, of course, they bring to the attention of the Supreme Court the results of the investigation. Or perhaps a judge has been injured in an accident, has had a serious illness which is apt to become permanent in nature, maybe that they can then convince him that he should step down voluntarily without going to the need of trial and all that type of thing.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, I recognize your deep concern about this, and I think you've thoroughly studied it, and I think that this is the root of most of our problem or problems. I think very few of us recognize the position of an attorney when he is placed before a judge, no matter what his position is, whether he's a trial attorney or just any attorney in probate. And, sometimes I have found out about a judge after he has passed away-how rotten he was— and an attorney would tell me what he had done to make himself unpopularwith the attorney, but the attorney, during the time of this man's term of office, would not dare to speak out. And I think our whole judicial system is in danger because of this position we have placed our judges in now. It looks to me like they're in here for life, because attorneys don't dare to speak out against them and the public doesn't know. So, I say, why should a judge judge a judge. I would rather see more attorneys on this commission, myself. I know we have a good deal of criticism of attorneys, but I think in this area I would surely respect their judgment, but maybe you have reasons why you think a judge would do a better job than an attorney.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In response to Mr. Aasheim, I think what our fear is, Mr. Aasheim, is that an attorney on this commission who probably thought he got a bad decision-we all think about that every time we lose one-could bring charges against that judge, and we'd rather avoid that and let the judges do their own judging of each other.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I might also explain to Mr. Aasheim that we've never had a commission of this type to which a practicing lawyer could go. The only way that you can get rid of a judge was through impeachment or wait until the next election and try to get somebody to run against him. This is a procedure where a letter can be written or a charge filed with this commission and ask them to look into it, investigate it, and, if the facts were found to be true, then to take such action as might deem appropriate.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I rise for the purpose of making an amendment, then. I respect your judgment, Mr. Aronow, and I realize the predicament of the attorneys in relation to the judges, and I wonder, then, if we shouldn't give a little more consideration to a lay person. Let him stand as a sort of a liaison between the judges and the attorneys. So I move to amend, to strike in Mr. Aronow's motion, the word "three" to "two"; and in lieu of "one" before citizens, put "two". Then we'll have "two citizens, two judges and one attorney". And I move the amendment.

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim's amendment has the effect of reducing the number of judges on the commission from three to two and the number of citizens on the commission from one to two, so that it would be two judges, one attorney and two citizens, neither a judge nor an attorney. Is there further discussion? (No response) All in favor of Mr. Aasheim's amendment say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Are there further amendments? (No response) Members of the committee, you have before you for your consideration, upon the motion of Mr. Aronow, when the committee does arise and report, after having had under consideration Section 10, as amended, it recommend that the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk please read 11.

CLERK SMITH: "Section 11, Clerk of the Supreme Court. The Chief Justice shall appoint a clerk of the Supreme Court, who shall hold office at the pleasure of the Supreme Court. The salary and qualifications shall be fixed by law, and the duties of the office shall be prescribed by the Supreme Court." Section 11, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee, after having consideration of Section 11, does rise to report, that it approve and recommend passage of Section 11.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: This particular section would appoint the clerk of the Supreme Court. His term would be for whatever the Supreme Court-so long as he served at their pleasure; his salaries would be fixed by law; and his duties prescribed by the Supreme Court. Now, this is in keeping, generally, with the idea that if the Supreme Court is to exercise any general supervisory control of the other courts, the clerk-the office of the clerk of the Supreme Court will admirably serve in that respect. It seemed to us that an appointed clerk might be, in the long run, a better facility for that purpose. So far as the minority is concerned, we like the idea of the appointment. The majority has always insisted on election. We think that this question of election, and probably term of office, should be left here on this Convention floor, much like the selection of the judges. Have at it.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I have an amendment which I have proposed. It was dated February 26, 1972, and I think it's on all the delegates' desk. This is in the hands of the clerk and consists of the first paragraph of the two-part amendment I sent up to the Chair. Would the clerk read the proposed amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 11 of the Judiciary Committee minority proposal, being page 45, lines 3, 4 and 5, by deleting it in its entirety and inserting in lieu thereof the following material: 'There shall be a clerk of the Supreme Court, who shall hold his office for the term of six years. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law and his duties prescribed by law and by the rules of the Supreme Court.' Signed: Holland."

DELEGATE HOLLAND: Mr. Chairman, this is substantially the same as-1 think identical with, the proposed majority amendment. The purpose of this amendment is to make the clerk of the Supreme Court elective. The minority report, which has been-the delegates have chosen to enroll section by section, provides for the election of the clerks of the District Courts. This merely—this doesn't change that regard. It merely provides for-that the article will be consistent and that the clerk of the Supreme Court will be elected along with the clerks of the District Court. Now, the other day I spoke about the election of the State Auditor and the State Treasurer and the State Superintendent of Schools. I feel the same way about the clerk of the Supreme Court. He should be elected, too, in accordance with what we've done. I would urge this Convention to keep these offices elective so that the people can have a choice and so that we can get better service.

CHAIRMAN GRAYBILL: The sense of Mr. Holland's amendment is to make the clerk of the Supreme Court elective. The sense of Section 11, as proposed in the minority report, is to leave that up to the Supreme Court--who would hold office at the pleasure of the Supreme Court.

Mr. Brown.

DELEGATE BROWN: Mr. President, I offer a substitute motion. I now move to delete all of Section 11.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: It is my opinion that this is a legislative matter. The more offices we lock into the Constitution--we do not give the people more freedom to elect their public officials, we lock future generations into the officials we think they should have. Therefore, to keep flexibility, this type of legislation should be kept out of the Constitution.

CHAIRMAN GRAYBILL: Very well. The sense of Mr. Brown's amendment-substitute-is to delete Section 11 in its entirety. We'll discuss that.

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I think this Convention should get rid of at least one elective office. I think this is an antiquated anachronism. I think it's an imposition on the court, and I support Mr. Brown and oppose Mr. Holland.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Brown's substitute motion to delete Section 11. I take it you want a roll call vote.

Mrs. Warden, did you have—

DELEGATE WARDEN: Mr. President, I just wanted to rise in support of Mr. Brown's motion. I think, as far as we lay people are concerned, that this is something that is very remote from us.

CHAIRMAN GRAYBILL: Will the clerk reset the machine? Very well. The issue now arises on Mr. Brown's motion. We'll have a roll call vote. So many as shall be in favor of deleting Section 11 in its entirety, please vote Aye on the voting machines; so many as are opposed, vote No.

Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is closed. Will you please tally the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Absent
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Absent
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Absent
Campbell ..... Absent
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Absent
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye

Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK SMITH: Mr. President, 57 voting Aye, 31 voting No.

CHAIRMAN GRAYBILL: 57 delegates having voted Aye to delete Section 11, Section 11 is deleted. Will the clerk please read Section 12.

CLERK SMITH: "Section 12, Clerk of the District Court. There shall be a clerk of each judicial District Court in each county, who shall be elected by the voters therein and who may appoint such deputies as provided by law. The term of office, qualifications, and compensation of the District Court. There shall be a clerk of each Judi- by law. The duties of the clerk and deputies shall be prescribed by the District Court judge and as provided by law." Section 12, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland—or, I mean, Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that, after this committee has had under consideration Section 12 on page 45 of the minor ity report, that when it does rise to report, it recommend the deletion of paragraphs 1 and paragraph 2 and the retention of paragraph 3 in the minority report.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Again we come to something of a controversial matter with regard to the clerk of the court. The Local Government Committee also deals with the clerk of the court, as it does with all county officers, and it appears, at least to the minority, that the clerk of the court should be continued and kept in the Local Government Article just as all other county officers are. There is in our mind a good reason to suppose that in many counties the functions of the clerk of the court can be combined with other offices at considerable savings. We believe that, by simply providing for the duties as provided by law and as prescribed by the judge, that is all that is really necessary in the Judicial Article. We believe that flexibility and perhaps economy can be achieved more readily if the clerk of the court is left with the local government.

CHAIRMAN GRAYBILL: The Chair understands it to be the sense of Mr. Berg's motion that the first two paragraphs of Section 12, which is lines 9 to 15 on page 45, will be deleted under his motion, and the last sentence on lines 16 and 17 would be retained, which says: "The duties of the clerk and deputies shall be prescribed by the District Court judge and as provided by law."

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I should like to amend that so that it reads "The duties of the clerk of the District Court-" deleting the word "deputies" and adding "clerk of the District Court".

CHAIRMAN GRAYBILL: Very well, we'll delete the words "and deputies". The sentence now in his motion shall read: "The duties of the clerk of the District Court shall be prescribed by the District Court judge and as provided by law."

Mr. Brown.

DELEGATE BROWN: Mr. President, I again move a substitute motion that Section 12 be deleted, for the same reasons that I previously argued and for the additional reason this section as written was in direct conflict with the Local Government report, and by leaving the last para-

graph in here we, by implication, say there must be such an office, and I think it's going to be a problem for Style and Drafting, and county offices should not be in the Constitution.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I rise to support Mr. Brown's motion that this be deleted, for the county clerk. I feel if we would take the state Supreme Court clerk-we delete him. I feel we should do this likewise in the county. I feel this is a move-1 oppose the move to delete the Supreme Court clerk, and I think if we leave these in as elected people, I think we're going to have a problem. Thank you.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: As a member of the Local Government Committee, I would like to point out that the county officials that are elected are kept in a form of government that is to be extended for a four-year period, then put on the ballot and voted by the people for acceptance of another form of government, which could delete the county officers or retain them.

CHAIRMAN GRAYBILL: Very well. The motion is on the substitute motion of Mr. Brown to delete Section 12 in its entirety.
Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, would Mr. Brown yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Brown?

DELEGATE BROWN: I will yield.

DELEGATE ROD HANSON: Mr. Brown, how is this handled in Local Government?

DELEGATE BROWN: Local Government-I'm not on that committee and I hate to speak on it. It's my impression from reading their report that this will be one alternate form of government, to have your county offices-county attorney, clerk of court, county treasurer, so on. Then, at county option, they may eliminate this type of office and go into another form of government.

DELEGATE ROD HANSON: I misunderstood. I thought you said that it was handled as a county office under the Local Government report. It isn't then?

DELEGATE BROWN: Yes, yes it is. I'll defer to Mr. Ask.

DELEGATE ROD HANSON: Okay.

CHAIRMAN GRAYBILL: Mr. Hanson, Mrs. Blend just explained that. Now, perhaps you didn't get it, but in the Local Government report—proposal--of course, we haven't adopted that yet-they establish what's known as a form of government which retains the existing county officers for a period offouryears, afterwhich there shall be an election, and then whether or not they were retained would depend on what the public did at the election.

DELEGATE ROD HANSON: This was my question. Is the clerk of court then contained in that list of county officers in Local Government that—

CHAIRMAN GRAYBILL: The clerk, is contained in the list of local government officers which they put in the form of government that will be retained for four years and then put on the ballot. That's the present majority proposal on Local Government. Is there further discussion? (No response) If not, the issue is on Mr. Brown's substitute motion to delete Section 12 in its entirety. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. We'll use the voting machines without a roll call. All in favor, say Aye; all opposed, vote No on the voting machines.
Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, 58 delegates having voted Aye, 29 No, the Section 12 is deleted in its entirety. Will the clerk please read Section 13.

CLERK SMITH: "Section 13, District attorneys. There shall be elected district attorneys whose jurisdictional area, qualifications, term of office, salaries and duties shall be provided by law." Section 13. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that when this committee, after having consideration of Section 13 of the minority report, does arise and report, that it recommend the passage of the same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: In this article, we have referred to what we now know as county attorneys as district attorneys, and we did that with this in mind: that, in time, we contemplate that perhaps the jurisdictional area of the prosecuting attorney will be enlarged. It may comprise more than one county; it may comprise more than two counties and even part of a third in some parts of the state. And, therefore, we left the jurisdictional area of the district attorney to the Legislature. Again, we were looking towards flexibility even in this office. Now, we understand that at the present time and for the near future, at least, a district attorney will, in fact, still be the county attorney and his jurisdictional area will be the county in which he is elected, but we have tried to make this flexible enough to accommodate any changes, for example, that local government may make. Now, I imagine that Mr. Brown will consider that the district attorney, like the clerks of the court, are really not appropriate in the Judicial Article and move to delete them. I would caution you, however, with regard to the county or district attorney, that he really is the chief prosecuting officer in the area that he represents-that he is, actually, an officer of the court and, therefore, in my mind, properly belongs in the Judicial Article. Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move to delete Section 13 in its entirety.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce's motion is to delete Section 13 in its entirety.

Mr. Joyce.

DELEGATE JOYCE: It seems to me this is-Mr. Brown's point is perfectly applicable to the district attorneys. This is a matter that should be left to the Legislature. Surely the Legislature is never going to abolish district attorneys. They are going to have to have attorneys to prosecute crimes in the name of the state. And let me point out to the Convention as what happens by putting the clerks of the court and the county attorneys in the Judicial Article in the 1889 Convention. There came-they were elected for two years for years and years and years-all the county officials were. So they had a constitutional amendment, and they only amended the one article, though, where-the Local Government Article--and raised it to four. For years then the county attorney was stuck with the two-year term. Everyone in the courthouse had a four-year term. Similarly, the clerk of the court was stuck the same way. Then, under the old Constitution, where they had the raise and you couldn't get a raise in salary during your term, why, they'd raise-they'd move it beyond where most of the county officials were to raise the salary just before their election, so the county attorney--or all the officers that took office then at the next election, [would] get the raise, but the clerk of the court and the clerk of the Supreme Court, being out of phase with them, were always two years behind, and this shows the futility and the silliness of writing this stuff into the Constitution and that the Legislature ought to be able to provide for district attorneys or whatever methods of attorneys they need to prosecute, so that instead of doing the clerks of court and the county attorneys a favor in the 1889 Constitution, it seems to me over the years they cost the holders of those respective offices thousands of dollars, willy-nilly and unwittingly.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would Mr. Ask yield to a question?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes, I'll yield.

DELEGATE BERG: Did you include county attorneys in the local county government as an enumerated office?

DELEGATE ASK: Yes, the county attorneys are listed similar to the clerks of the District Court. They are one of the alternative forms of government.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Joyce's motion to delete Section 13 in its entirety. All in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, ladies and gentlemen, there are some additional sections proposed. Mr. Wilson, you proposed an additional section. I think the language is on the desks of the delegates. May we read your proposal, Mr. Wilson?

DELEGATE WILSON: (Inaudible)

CHAIRMAN GRAYBILL: Very well, the clerk will read Mr. Wilson's proposal.

CLERK SMITH: "Mr. Chairman. I move to amend the Judiciary Article, being page 45, by adding a new section to read as follows: 'Section 14. Probate attorney. The district judge shall appoint in each county or judicial district a probate attorney who has been admitted to practice law in Montana. The probate attorney shall assist county or judicial district citizens in probating or administering estates. The Legislature shall set the salary of the probate attorney.' Signed: Wilson."

DELEGATE WILSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I move that when this committee does arise, after having under consideration Section 14, an amendment to the Judicial Article, that they report in favor of same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I received more people's complaints in this particular field than any other area what would-that was to be considered in the Constitution. They felt that there was such a great variation in the handling of different estates in the different areas of the state and the abuses that was occurring in some areas warranted some consideration of this type of a proposal. The fees allowed attorneys in probating estates are described in the following statute: "The executor and the administrator shall be allowed all necessary expenses in the care, management and settlement of the estate, including a reasonable fee paid to attorneys for conducting the necessary proceedings and for conducting necessary actions in courts or incurred therefor, the amount of which attorney fees shall be in all cases in the absence of agreement fixed and determined by the court having jurisdiction in the settlement of the estate, and for his services such fees as provided in this chapter." Revised Codes of Montana, 1947. This statute allows a reasonable fee to be paid attorneys for probate, which is fixed by the court. The fee an attorney charges for probating an estate is usually based on the minimum fee schedule for the Montana Bar Association. The minimum fee for probate set out in this schedule is a fee equal to one and a half times the statutory fee allowed to executors and administrators--will be charged in all probate proceedings. Where there is a change of attorneys during the course of administration, but one fee will be allowed. Thus, probatefeesofattorneys are one and a half the fee allowed for executors of estates. The statute setting fees of executors and administrators states: "Compensation of executors and administrators, when no compensation is provided by the will or the executor renounces all claims thereto, he must be allowed commissions upon the amount of the estate accounted for as follows: For the first $1,000 at the rate of 7 percent; for all above that sum, not exceeding $10,000, at the rate of 5 percent; for all above $10,000, not exceeding $20,000, at the rate of 4 percent; and for all above $20,000 at the rate of 2 percent." If there be no more than one executor, only one commission must be allowed. The same commissions must be allowed to administrators. In all such cases, further allowances may be made as the court or judge may deem just and reasonable for any extraordinary services. The total amount of such extra allowance must not exceed the total amount of commission allowed by this section." Thus, on a $100,000 estate, the minimum fee charged by an attorney for probate would be $3,780. A higher fee may be charged on work in law. However, the fee must be approved by the court. The minimum fee schedule notes that many judicial districts in Montana, there are court rules which set attorneys' probate fees. However, several courts were contacted by phone, and most court rules follow the minimum fee schedule. Since courts are free to fix whatever they determine to be reasonable probate fees, there are no set uniform fees based on the size of estates. The complaint is that probate fees are too high. Establishment of a public probate attorney paid on a salary basis would eliminate exorbitant estate probate fees. Some states have set up procedures whereby solvent estates can be probated without court inter-

vention. However, legal forms must be filed, which means the attorney still must be consulted. The only solution for reducing high probate fees for attorneys, then, is a public probate attorney. In our discussion of this amendment, I hope we arrive at a more equalization of estate costs. Some method must be found that will provide a solution for the many people who are complaining about the present system. The adoption of this amendment would make available services for those who wanted to use them. Mr. Chairman, I urge the adoption of this amendment.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE DAVIS: Mr. Chairman, I'll take the bait for the legal profession, now that it's been put forth, and only say this is a statutory thing. If we reach the place where you've abandoned all hope of writing a Constitution, then we can start playing with such things as fixing what-we set up an ombudsman for the wealthy rancher who's worried about the fee, and I don't think we should inject ourselves into either fixing attorneys' fees or the price of grazing fees on state lands oranythingelseofthatnaturethat's strictly statutory, and I think we should vote on it, and I guess we'll determine how we're going to progress with a Constitutional Convention after that.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I hesitate a little bit to rise on this one. You know, I've been getting along pretty good with my seatmate here all day, but Delegate Wilson is right. This is probably one of the things that more people talked to us about in our district than any other one item, and that was that, when there's a reasonably small estate-say, 40-$50,000—I'm not talking about wealthy ranchers. I don't know whether Delegate Wilson is one or not, but he may be. I don't think so. But when one of the older-say it's an older couple--one of them dies, before the widow gets out of it, why, she'll have anywhere from 1,000 to $2,000 in an attorney fee. Now, most of the work will be done, perhaps, by the secretary, because generally these estates are in pretty good shape. There isn't very much to look at, and it's just too much money for what you get. Now, I think personally this is something the legal profession could probably straighten out, but apparently they have not straightened it out, so maybe something like this will bring it out to where that they will. And, to finish this off, I don't know of any other service that you buy that you're required by law that you must buy this service and then the fee for that service is determined by the amount of money that you have. Now, there may be other businesses that you pay this way, but I certainly don't know of any, and I would support Proposal Number 155—it was in the original. I think the Judiciary Committeerejected it and that's why it's being brought back here. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I don't see eye-to-eye with Mr. Wilson too often, but I do on this issue. I think he has-this proposal has merit, and I'll support it a hundred percent.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates. 1 haven't been on my feet, but this was one of the topics that was brought to my attention and the attention of others quite firmly. A Mr. McConvil up there had a small estate to settle, and he had to pay out more than 50 percent of that to settle the estate, and others that have had just a lot of problems in getting estates settled. I remember when my father-in-law passed away about 15 years ago in Butte, there were two deeds to property. When he passed away, all my mother-in-law had to do was sign the other deed and file it. Now, this is a thing of the past, but it was a simple way for our parents to settle small estates. Thank you.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. President, would Mr. Wilson yield to several questions?

CHAIRMAN GRAYBILL: Mr. Wilson, do you want to yield?

DELEGATE WILSON: I yield.

DELEGATE LOENDORF: Mr. Wilson, have you estimated how many attorneys the government would have to employ to perform this function?

DELEGATE WILSON: Well, Mr. Furlong-is that the name? (Laughter) Loendorf-Loendorf, excuse me.

DELEGATE LOENDORF: That's closer than some. (Laughter)

DELEGATE WILSON: You both have yellow shirts on today, you got me a little bit confused. I think we say in our proposal that there would be one in each judicial district. Now, this would be available for whoever wanted to use them in that capacity.

DELEGATE LOENDORF: And in the Judicial District of Yellowstone, how many attorneys do you think it would be necessary to employ there?

DELEGATE WILSON: This would be determined on the amount of use you wanted to make of this particular person. If everybody wanted to use him, why, perhaps you would need several.

DELEGATE LOENDORF: 1'11 summarize my final question, then. Have you made an estimate, in addition to the cost of the attorneys' salaries, the cost for libraries, office space, and secretaries?

DELEGATE WILSON: We have made no estimate on this particular area, and we see that this is something that would have to be determined as the thing was tried and used.

DELEGATE LOENDORF: That's all the questions I have. Mr. Chairman, could I speak to the merits?

CHAIRMAN GRAYBILL: Yes.

DELEGATE LOENDORF: First of all, as Mr. Davis ably pointed out, I think this is not a constitutional matter and I think locking this in the Constitution would be a grave mistake in lieu of the answers Mr. Wilson gives to the questions. What will it cost the taxpayer? I submit it will cost the taxpayer more than the total amount of attorney's fees now being paid in the State of Montana each year. Each attorney now furnishes his own office, his own secretary, and his own library--all, of course, is a part of the fee he charges you. But also look at who benefits from this. The average taxpayer is going to have to pay the bill. If you're wealthy and have a big estate, you can avoid a large fee by employing a government attorney, but if you're not, you're going to have to pay for everybody else's estate.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, along the line of what Mr. Loendorf was talking about, in Yellowstone County I would guess our firm-a small firm, a three-man firm-probably does in the neighborhood of 20 to 25 probates a year. That's on a good year. Many of them are small, and one or two of them are of some size. I would guess that it would require-if one of us was working full-time, it would require the services of that one partner to do all the probates our office does in a given year. Now, we are three lawyers out of a 110 or 115 in Yellowstone County, and all the other lawyers are doing probably about the same amount of probate we're doing. I would guess, in Yellowstone County alone, the proposal that Mr. Wilson and Mr. Kamhoot and the others have made would require 25 lawyers to handle the probate work in Yellowstone County on this basis.

UNIDENTIFIED DELEGATE: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment. Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I presume that, after the manner in which we disposed of the county attorney and the clerks of the District Court and the clerks of the Supreme Court by turning them over to the tender mercies of the Legislature, that certainly the probate attorney would likewise be statutory in character rather than constitutional. However, I want to say this: the handwriting's on the wall on this matter. Everywhere that I go I run into complaints about it, and they even come into my office, hunting me down to complain about it, and I have nothing to do with it. I find that in the State of Washington, to the west of us, they have to a degree solved the matter--not in the large estates, but in the small ones-not by establishing an office such as the probate attorney, as is envisioned by Delegate Wilson, but they have provided a means by statute whereby certain estates, especially the smaller ones where only the decedent and his spouse are concerned-his or her spouse are concerned-can handle it by filing an affidavit with very little cost, very little procedure in the court, and that obviates the necessity of carrying out a complete probate. Now this agitated the people of the State of Washington for a considerable time, and they tried to get action in the Legislature-I don't believe they ever tried to through constitutional means-but they got nowhere in the Legislature, and the matter was resolved by use of initiative and referendum, and the people of the Evergreen State voted overwhelmingly in favor of the propo-

sition, and it's been in force for several years, and the attorneys who I've contacted there for senior citizens who are interested, aver that it has been very satisfactory.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, now that this matter has been brought up, I remember I have three or four letters here that I received that were very adamant on somebody doing something on these probate matters, and some of them seem to be-have some pretty good complaints. I don't happen to have them with me, but I do know that Colorado, some time ago, had a law put in in which they handled small probate matters at a very small fee. I don't think the cost to the state would be too much, because, as Delegate Schiltz said, they handle probably 25. If you gave them all to one man, it would keep him busy-an average price of 1,000 or so on those and for the average probate cost, it would make some lawyer a good living. I don't see where the small cost attached to this probate deal would be too bad. That's all.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman, I have managed to refrain throughout the day from commenting on anything dealing with the Judicial Article. I suppose I could say I am still refraining from discussing anything dealing with the Judicial Article. But we are talking about something of importance, and it is something that I know something about. I do quite a lot of this type of work, and there's a lot of justice in what is being said here that there are many occasions, I think, where the attorneys are rather grossly overpaid, and it isn't just that they're overpaid, this has to come in cash when cash may be hard to find. It comes at a time where many adjustments to be made often within a family, and it's really a very sad situation. There is one other thing that is considerably worse that happens at the same time. It's the fee paid to the executors and administrators for doing nothing. So don't neglect that if you're going to muck out here a messy situation. Let's get to the bottom of it. There's one other thing you might keep in mind. You know, the State of Montana doesn't have clean hands in this matter. They rap that widow for a pretty juicy chunk of dough and stick it in our general fund. So, let's get atthatone, too. Those inheritance taxes we pay in the State of Montana often exceed what's paid to the federal government. This is something that you may not realize, but there's a $60,000 exemption in all federal estates, and the amount of tax paid there, added to these executors' or administrators' fees and this attorney fees, they're pretty rough, and I think there must be-1 think Mr. Romney is right-the handwriting's on the wall, and I think it's time we did something about it. I doubt very much that it belongs in our state Constitution, nor that we should decide it here on the floor of this Convention in these minutes, but if we are going to stop here and take the time to deal with a problem, I'd like to do it, but I'd want to doitright. We would need quite an army, all right, of people, because there's a lot of this work to be done and it rolls around to all of us, one time or another, that our estate is going to be probated, so you can count on the fact that it's going to be continuing forever, and the sad part about it here, I think, is that in connection with this there's a slap at the legal profession. Maybe the trouble with lawyers is they're picked out of the general populace, so there's bound to be some rotten apples creep into that profession as they do into everything else. But, aside from that, somehow the amount of the legal fees is justly subject to criticism, and if you will approach this in a way that deals with all of the evils attendant upon the cost charged to the estate of a deceased person at the very time when it's the hardest to pay, then I say, well, let's go at it.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates. I would just offer for your information prior to vote a couple of additional observations. In addition to the sometimes detailed method in which we are obliged to indulge in arriving at taxes due as a result of the death of somebody, we also find ourselves involved in trying to unravel a very complex status of title to real estate, which is the result of some laws that have evolved over something like 400 years. This is another evil which takes a lot of time, and it takes, at this state in history, expert legal training and knowledge. This is something else that has to be unraveled. Now, with respect to handling of small estates, it may be of interest to you to know that there is on the books now a statute, 91-5301, which provides for the setting aside of an estate to a widow or her children or a surviving husband when the estate totals $10,000 or less. So, Montana, by legislation, is keeping in step with the states of Colorado and Washington. In addition, there is another procedure which, if you go to a lawyer, you'll learn

about-sometimes it's advisable to indulge in-1 should say there are two. You can establish or accumulate a sizable estate in real estate--excuse me, in life insurance which is the subject of a $50,000 inheritance tax exemption in the State of Montana, in addition to which, if you want to shorten up your taxes and your cost, you can consider putting your estate in joint tenancy with your wife, if you trust her, and the result of that will be that when one of you dies, the survivor will accrue to only one-half of the estate, and there has been an abbreviated procedure established by the Legislature for handling that, and it usually generates a much smaller fee and a much smaller inheritance tax. I hope you'll bear those things in mind when you deliberate on this motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Felt yield to a question?

CHAIRMAN GRAYBILL: Mr. Felt?

DELEGATE FELT: Indeed.

DELEGATE SCANLIN: Mr. Felt, would it be possible for you to draw a statement that we could submit to this Constitutional Convention, addressed to the Legislative Council, urging our attention on the matter of this question of probate to the next session of the Legislature?

DELEGATE FELT: Yes, Mr. Scanlin, it would be possible for me to draft something, which I would like, and if the body here in some appropriate manner made such a request, I'm sure there are many others besides myself who could do so, but I would be glad to help with any such thing as that if called upon.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Wilson's motion that a Section 14 be added to this section-to this—

Mr. Wilson, do you want to close?

DELEGATE WILSON: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Surely.

DELEGATE WILSON: I realized that when I introduced this motion that I was going to get a lot of opposition from the legal profession. I realize the many complications that are inured in the handling of probate matters. I, myself, doubt very much that I would ever want to use this person who was appointed, but I do visualize many people, which have been pointed out here today, that would want to use this type of a service, and I think that we should give it all the consideration that we possibly can here in this body. I realize that attempts have been made in the past sessions of the Legislature to try to correct some of these situations, and I talked with members of the Judiciary Committee, many of whom, after giving it due consideration, agreed with me that something needed to be done. I talked with Mr. Aronow, and he also agrees that if some method could be arrived at by this Convention whereby small estates-or some system could be set up to handle smaller estates and make it available to the people to use, that it would be a service that would be greatly appreciated by these people. Now, if we can also point out, the main thing that we are-1 am interested in is getting some equalization across the State of Montana for these fees that the lawyers charge for the handling of different estates. Now this varies very greatly from court district to court district. It varies with the judge who is handling the estate, and if we could, if nothing else, accomplish an equalization of these fees, we would be doing a great service to the people of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue now arises on Mr. Wilson's motion that we add a Section 14 to the Judicial Article, calling for a probate attorney. "The district judge shall appoint in each judicial district a probate attorney who has been admitted to practice law in Montana. The probate attorney shall assist county or judicial district citizens in probating or administrating estates. The Legislature shall set the salary of the probate attorney." So many as shall be in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be—

UNIDENTIFIED DELEGATE: Roll call,

CHAIRMAN GRAYBILL: No, it's too late now. So many as shall be opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails. Now, I paused and I waited and I don't think, if you didn't get up, that I should reverse myself

and put everyone on record on that. It's defeated. Now, Mr. Schiltz has a proposal that's known as the separate majority proposal on campaign expenses. It appears on page 38 of your book.

Mr. Schiltz.

DELEGATE SCHILTZ: May we have it read, Mr. Chairman?

CHAIRMAN GRAYBILL: Will the clerk please read what will now be styled Section 15. We're going to continue right up the numbers here-Section 15 on page 38.

CLERK SMITH: "Section 15, Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justice of the Supreme Court and District Court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court or District Court judge, nor any person or persons in his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly." Section 15, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 15 of the Judicial Article, that it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman and members of the Convention. You've heard all day long about the maintenance of purity of elections of the Judiciary. I view this particular section as possibly the most progressive thing I've seen in this Convention yet. It has the effect of putting all candidates on an equal basis from the standpoint of money, which is really the name of the game. It eliminates the possibility of a man with less ability and more money from getting the judicial office. If you're going to have a judge run nonpartisan, I think it's only fair that the Legislature supply the money. Now, when you consider the amount of money involved in this and the benefits to be gained, I think you'll see the worthwhileness of it. If all 28 District Court judge elections were contested in the general campaign and if all five of the Supreme Court justice campaigns were contested, it would cost-and if you assume that $10,000 would cover a Supreme Court campaign race and $2,000 a District Court race, it would cost the state $48,000 a year, and I think that's a pittance in view of the benefits to be gained by it. You would assure yourself of an independent Judiciary. You would assure yourself that one man was not buying the job. Now, it seems to me that we must maintain the purity of our judges, and it seems to me that this is possibly a way of the future. I read the other day that if Mr. Muskie is able to go through all the campaigns and finally be elected President of the United States, it's going to cost him or somebody $40 million. I think it's in the future that this is going to come to Montana, and I can think of no other, better place to start as an experiment for a very small amount of money than on the Judiciary. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you have before you on page 38 the separate majority proposal on campaign expenses.

Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise to oppose this proposed section on several counts. It is, indeed, an experiment and for that reason should certainly not belockedinto the Constitution. If it is felt that this is necessary for judges to run, then I suggest that the Legislature be approached. Secondly, Mr. Schiltz mentioned that if we were going to have our candidates for judicial office run on a nonpartisan basis, this was necessary. I believe that earlier in the afternoon we did not specify that they had to run on a nonpartisan basis. Presumably, then, the Legislature can make it possible for them to run on a partisan basis, in which case they can apply to the party of their choice for campaign funds. As a taxpayer, I really do not wish to have part of my taxes go to someone's campaign expenses.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Schiltz's proposal-it's Section 15, being the separate majority proposal on campaign expenses on page 38-be adopted. This provides that the Legislative Assembly would appropriate funds in contested general election campaign expenses for candidates for offices of justices of the Supreme Court and District Court judges, and nobody could spend any money on their behalf except the money appropriated by the Legislature.

Mr. Eskildsen.

DELEGATEESKILDSEN: I askforaroll call vote and sufficient seconds.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. All those in favor of the motion, please vote Aye on the voting machines; all those opposed, please vote No.

Mr. Felt.

DELEGATE FELT: (Inaudible) terminating the opportunity to discuss this by the request for the roll call, perhaps wasn't as loud as I could have been.

CHAIRMAN GRAYBILL: All right, we'll cancel the vote, and we'll start all over again.

DELEGATE FELT: And I had anticipated that at least Mr. Schiltz might close. I wish to rise, very quickly, but to support the motion of Delegate Schiltz. If this is going to be defeated because it's an experiment, keep in mind that the federal Constitution was-contained a whole series of experiments, and they were thought to be quite suitable for use in a constitution, so I don't think anything should be ruled out completely simply because it's new, any more than it should be accepted for that reason. Here we do have an opportunity, I feel, as Mr. Schiltz has expressed, to do something important. I don't know how many of you have ever been asked to contribute to a judicial campaign. I haven't, and as a consequence I have never contributed to one. Makes me feel a little uneasy, to tell you the truth. Somebody's doing it, because they can't wage that campaign without it, and I'd rest easier knowing that there wasn't somebody in there ahead of me who might have gotten a little influence. We pay for all things, of course, some way or other, so the objection, I think, that as a taxpayer we're not going to pay for this isn'treally valid. We are going to pay for it. Somehow they get it around to us, and I feel this should be taken as a very serious possible reform and that in the wisdom of the Legislature they can decide how far to implement it with the provision of funds, but that this is something we really ought to take a good look at, and I'm certainly hopeful that it will get support.

CHAIRMAN GRAYBILL: Very well, the issue now arises on Mr. Schiltz's motion that a Section 16 be added concerning campaign expenses, the same as is shown on page 38 as separate majority proposal on campaign expenses. I have explained it to you. We'll use the voting machine. So many as are in favor, please vote Aye; and so many as are opposed, please vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Close the ballot. Take the ballot, please.

Aasheim	Nay
Anderson, J.	Nay
Anderson.0	Nay
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg.	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman,	Nay
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
c am.	Nay
Campbell	Aye
Cate	Absent
Champoux	Nay
Choate	Absent
Conover	Nay
Cross	Absent
Dahood	Aye
Davis	Absent
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Absent
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Nay

Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey Nay
Mr. Chairman Aye

CLERK SMITH: Mr. President, 46 voting Aye, 45 voting No.

CHAIRMAN GRAYBILL: 46 delegates having voted Aye, 45 delegates voting No, Section 15 is adopted. Now, ladies and gentlemen of the committee, we have only one more matter that's been brought up to us, and that concerns the justice of the peace. Therefore, I'm going to propose that we go right ahead, rather than have a recess. Mr. Harrington, may we read your amendment to provide for a Section 16?

Mr. Harrington's amendment—

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, we do have two other sections here. They are in the Constitution as we now have it. Will we be doing anything with those, or will they just be considered because they're in the old Constitution that we are adopting them?

CHAIRMAN GRAYBILL: I don't think that—

DELEGATE ESKILDSEN: There's the exemption law and another section besides that—I can remember-in the Judiciary Committee. We had them before us.

CHAIRMAN GRAYBILL: Well, just a moment. Mr. Eskildsen, we voted to go down the minority report; and we've gone down the minority report; and we've picked up everything we've passed; and so, unless somebody makes an amendment, we're all through, as far as I can see.

Mr. Holland, isn't that correct?

DELEGATE HOLLAND: No, there are two unanimous proposals at page 65.

CHAIRMAN GRAYBILL: Oh. Well, let's see. Wait a minute then. I see. Well, I still think we ought not to have a recess. I think we'll be through here in a few minutes. Mr. Harrington, your pro-

posal is to have-add a Section 16, which would be the same as on page 45, is that right?

DELEGATE HARRINGTON: (Inaudible) Mr. Chairman.

CHAIRMAN GRAYBILL: No. It's the same as the majority's Section 16 on page 8, and it happens to be proposed Section 16. May the clerk read it?

DELEGATE HARRINGTON: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, clerk, page 8, Section 16, of the majority report, beginning at line 26. Will you please read.

CLERK SMITH: "Section 16, Justices of the peace-election, qualifications, compensation, jurisdiction. There shall be elected in each county at least one justice of the peace, with qualifications, training, and monthly compensation as provided by law, who shall hold office for the term of four years. There shall be provided facilities for such justices so that their duties may be performed in dignified surroundings. Justice Courts shall have such original jurisdiction within their respective counties as may be prescribed by law. They shall not have trial jurisdiction in any criminal case designated a felony, except as examining courts. The Legislature may provide for additional justices of the peace in each county or other types of courts below the District Court level as is deemed necessary." Section 16, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Harrington has proposed an amendment to add a Section 16 to the Judicial Article, the same as Section 16 on page 8 of the majority report.

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I move that when the committee does rise and report, after having under consideration the new Section 16 of the Judicial Committee Article, that the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Saturday afternoon, it took us about, I'd say, five minutes to completely wipe the Justice of the Peace Courts off the books as far as the Constitution is concerned. I feel, as many Montanans feel, that the Justice of the Peace Court--or the poor man's court is another name for it, or the people's court-is one court that should be maintained in the Constitution. Now, the article-Section 16 in the majority report does set forth that there shall be qualifications, and I believe that there should be reform in these courts, but I do believe that these courts should remain. These are the only courts in Montana that a citizen can appear before them without the benefit of lawyer, and I feel that it's very important that these be maintained. And I feel as we go through the procedure this afternoon, we have wiped out quite a few jobs-1 don't mean jobs, I mean quite a few constitutional positions—and I feel that this particular section should be passed and maintained. However, I do feel that the qualifications should be set and reforms should set into these courts, but I feel they are important. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. George Harper, you asked someone to wave a flag when we started talking about the people's court. Here it is. The majority report, which is now the amendment proposed by Delegate Harrington, would put in the Constitution an elected people's court. What is the difference between that and the minority report? The minority report simply says, leave it up to the Legislature. I don't want to leave it up to the Legislature. I want elected people's courts in this Constitution. Now, this majority report does many things that the citizens council wanted. It abolishes this fee-sharing system. It requires that they be on a monthly compensation. It directs the Legislature to establish minimum training and qualifications. Now, how does this work under the present system-and the amendment here would upgrade them. But under the present system, for $3.50 you can file a complaint. That's all it costs you and you don't need a lawyer, which means that if your neighbor backs across your lawn and crushes your bike, you can sit down without an attorney and draw a complaint and he's in court. You can serve the summons yourself. If you think the JP might not believe that it was validly served, you can pay the sheriff $1 and his mileage and have him served, and that's all that's necessary. And the reason I cite this example, I want to show you what the difference can be between keeping them elected in this Constitution and letting the Legislature, perhaps, adopt a plan such as the Montana Plan where a committee appoints a magistrate. When you have your trial,

let's assume this justice of the peace, or whatever you want to call him, says he's going to throw you out of court because he didn't like the color of your bicycle to begin with. What do you do if you have an elected JP? You can run against him. Or you can get your neighbor on the other side, Fanny Belle Nickleberry, who is an honest, uprighteous citizen, and you can campaign up and down the street-Fanny Bell for JP—and get her elected and defeat this incumbent who is arbitrary. What can you do if it's an appointive system? I suppose you can go searching for the committee or council that appointed him. And what can you do when you get there? Presumably he's a friend of theirs or they wouldn't have appointed him in the first place, and what if you don't get satisfaction from the committee that appointed this magistrate? There's no way you can get rid of the committee. I submit that this is a very serious constitutional question. The majority plan meets head-on all the criticisms of the present system and in addition requires that they be elected so they're responsive to the delegates, to the citizens of Montana, and not to the committee that appointed them. In addition, there's a practical reason. We are all assuming, under the minority plan, that there is going to be some level of people's court. We just as well call them justices of the peace so we don't have 200 incumbent judges around the state saying, "They've abolished me." Lord only knows what's going to happen. In addition, it preserves the right of appeal to the District Court. I know you couldn't get Bob Kelleher from Billings to take care of your appeal from JP Court to District Court, but in Polson we can get it done for the price of a good bicycle. Under the Montana Plan, if you had to appeal from the appointed magistrate's decision, it would be straight to the Supreme Court of Montana, and even in Polson we couldn't get that done without you getting into the bicycle business. I urgently support the amendment and urge the delegates to consider this.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, I would just like to say that just because they don't happen to be in the Constitution doesn't mean that they don't have to be elected. I personally think that they could very well beelected, that the Legislature could so decide, and I think that to put them in the Constitution would be not doing a very good service to Montana.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I have a question. Are we talking about Mr. Harrington's proposal or are we talking about the majority proposal? I'd like to ask him if he'd yield to a question.

CHAIRMAN GRAYBILL: All right, he may yield, but the answer to your question is, Mr. Furlong--or, Mr. Harrington proposed an amendment, the text of which is Section 16 of the majority report, on page 8, Justices of the peace—election, qualification, compensation and jurisdiction. If you want to find the text of what he proposed, it's on page 8 and 9 of the booklet, in the majority report.

Mr. Harrington, will you yield?

DELEGATE HARRINGTON: Yes, I will yield, Mr. Chairman. Yes, what I was doing is taking this exactly from Section 16, on page 8 and 9 of the majority report.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise to a point of order. I read the proceedings of Saturday, which says that Section 1 of the majority report be adopted as the first action of the Committee of the Whole which was reported to the Convention, and this is an amendment to Section 1. Are we talking about reconsideration?

CHAIRMAN GRAYBILL: No, sir. Section 1 was adopted. It may or may not be amended on reconsideration, I don't know; but in any event, Mr. Harrington has proposed adding another section concerning justices of the peace.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of Mr. Harrington's motion to adopt Section 16 of the majority report. I concur on what's been said by the other persons speaking on this matter, and I'll just add one more thought to this. We covered the Supreme Court today-that we have indicated that they consider approximately 200 cases-1 think that was the figure. We have28 district judges in the State of Montana; I don't know the number of cases that they consider. And now we're coming to the courts of Montana that handle far the majority of all of the cases filed in Montana, and by the minority report we're going to completely ignore them. Here's a court that the people can go to in every community and the number of cases-the highway cases, all types of cases-and I don't think we should ignore them in

the Constitution, and I think this particular section, reducing it down to one instead of two in every township, providing for compensation—monthly compensation-and training and qualifications certainly improves the old Constitution, and I think that's what we were sent here to do-to improve it. This section certainly improves the Justice Court system. Also, you will note this section provides that the Legislature can also provide for other courts below the District Court level if it's deemed necessary, so we are not necessarily locking in the Justice Court as the only lower court. But I think they're important enough to the people of Montana that we should retain this particular section in this wording. Thank vou.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I rise in opposition to this amendment and to this proposed section; I think it's 18—16. I thought yesterday and this morning we had very ably taken care of the inferior court system. We gave it flexibility, the likes of which it's never had before. We tried to set up a system that will grow, that will go on for future generations and adapt to their problems with facilities the likes of which our Constitution has never given us before. I don't believe that we should lock in any lower court into the Constitution. I am a confirmed believer in two constitutional courts, that being the Supreme Court and the District Court. I believe that courts on the lower level should be flexible, should be adjustable, and I do not believe in designating them also as constitutional courts, regardless of what you call them. Now, we, this morning, discussed all kinds of possibilities that may be handled under the minority article as it was adopted pursuant to the concurrent jurisdiction theory. If we adhere to that, we have given to this judicial system great flexibility. We can provide from here on out for any number of kinds of courts, for any number of methods of selection on the lower level. We leave it to the Legislature, and it can be done over the years--not just for ourselves, but for our children; and I am opposed to imposing any particular lower court system on them at all.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I realize the sense of this Convention is that they don't seem to care what the citizens want, and I think they're going to find out when they put this thing up to a vote. But for the information of the delegates, in citizen suggestions-those are suggestions referred by the Chair to the Judicial Committee-if my memory serves me correct, 117 citizen suggestions were for the retention of the Justice Court within the Constitution, 6 were against.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I talked with a group of people in my community yesterday in a telephone conversation, and the master of ceremonies at the other end of the line polled the entire adult group, and they were all in favor of disposing of the justices of peace. We have no need to redebate this question on Justice Courts. We decided it once this morning, and I think it is unnecessary to bring it up and try to add it into the Constitution. We have been deleting these legislative proposals all along, and I hope we continue to delete this one.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wish to speak in opposition to Mr. Harrington's amendment. I think there is no need to mention justices of the peace in our Constitution. The very fact that 31 out of the 50 state Constitutions do not mention justices of the peace-1 think there is meaning to this. And I want to say that in 1962, when there was an amendment on the ballot—there was an amendment to remove mention of justice of the peace from our Constitution-and at that time, this failed by only 1,173 votes, and I think now that the people in the state are ready to dispose of names. I'm sure that we're going to have a justice of the peace system, whatever it's called. We're going to have Small Claims Courts. I'm certain the Legislature is going to handle this well, but I think, as Mr. Berg said, there's no need to lock in the term "justice of the peace" in our new Constitution.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I am opposed to the justice of the peace system as we have it now, but I favor the amendment of Delegate Harrington. I think when the majority proposal, which represents the basis for Delegate Harrington's proposal, is examined, it is giving us precisely what we want in the State of Montana. It has given us the Small Claims Court that is going to affect more citizens than any other branch of our judicial system. If we are going to set forth in

our Constitution a Supreme Court and a District Court and we are going to outline the type of structure that we want in that particular area of judicial concern, then why don't we complete the task? And if we're going to be judicial architects, let's finish the job. Let's make sure the temple ofjustice has all of its pillars, and the one pillar that's going to be missing now is the one with respect to the Small Claims Court. That's the one where the citizen wants to take his 500-dollar case or his 1,000. dollar case. That's the type of case the lawyer doesn't want in his office. He wants that in a Small Claims Court. He wants the citizen to be able to take care of that matter without having to spend money to retain an attorney. What bothers everybody here, I think, that is bothered is the fact that we're using the term "justice of the peace". I see no magic in that term. It's as good a term as any that can be evolved at the moment, whether you use the term "magistrate", "small claims judge", or any other particular synonym that you might come up with. I say that if we look at that particular proposal that Delegate Harrington has brought forth before us now, we have a proposal that gets away from the reason for the critique that's been leveled against the Justice Court in the past, and I say it's up to us here, as delegates of the people, to make sure that we have provided a total system of justice for the citizens of the State of Montana, and we must complete it by enacting some type of provision for the Small Claims Court. And this delegate proposal now fills that particular task. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. Chairman. I come from probably one of the smallest counties in the State of Montana, probably the-one ofthe most remote. We are a hundred miles from public transportation; we would be a hundred miles from a district judge. There is no way that I would possibly not have the people of these rural areas taken care of. In the now past Montana Plan, every place that it said except for rural Montana, grass roots, jackrabbits, sagebrush-it doesn't matter; that's it, that's what I represent. These specifications were put into the plan so that in case there was an attorney had to be there and was not available, a responsible person from the community could be appointed to fill this place. By eliminating or not using these in the Constitution, I feel that the Legislature will very well take care of the people of Montana the same that everyone here in this delegation would feel about it. Mr. Holland referred to a poll that he had, a few minutes ago. I have the results of a poll here that he sent out and wrote and devised to all the attorneys in-Montana, and of the 532 who answered the polls and the figures came back, 434 of them said that Justice Courts should not continue to be a constitutional court; 67 said they thought they should. I think this is a very goad time of the season-it's a very good time in this Convention, possibly, to say "draw near with faith". I have

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise in support of Delegate Harrington's motion. At home, I think 90 percent of the people are in favor of retaining the Justice Courtsin the Constitution; and I can tell you people this much: if you want to retain any kind of local court, small courts, in your areas, this is the place to put it. Don't leave it to the Legislature.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I move an amendment to Delegate Harrington's motion in the following words: "In establishing any inferior court system, the Legislature shall require the judges thereof be elected by the people."

CHAIRMAN GRAYBILL: Will you writs that down. Do I understand that's a substitute motion for the entire Section 16 as he proposed it?

DELEGATE JOYCE: Yes, Mr. President. May I be heard?

CHAIRMAN GRAYBILL: Just a moment. Mr. Joyce has proposed a substitute motion for Mr. Harrington's motion, which was Section 16 on page 8. The substance of the substitute motion is: "In establishing any inferior court system, the Legislature shall require that the judges thereof be elected by the people."

Mr. Joyce.

DELEGATE JOYCE: Mr. President, in support of this motion-this proposed amendment which I just drew off the top of my head-listening to the arguments here, it seems to me that the problem is this: the justices of the peace around the state, apparently, and the people in the rural areas

are concerned that there may be abolished justices of peace as we presently know them. And, of course, no one in their right mind can do that, because in the rural areas you must have magistrates and they can't always be-magistrates, judges, whatever you want to call them-someone to administer the petty criminal offenses and the small claims and to arraign people who are picked up on criminal offenses. But it seems to me that using the word "justice of the peace" doesn't add anything to it. It ties into the Legislature a particular term, and the principle that it seems to me we established here this morning in the Supreme Court and in the District Court is that these judges should be elected, and it seems to me my amendment should satisfy everybody in that it simply provides that the Legislature can set up any inferior court system that it wishes. It may have two or three Small Claims Courts, criminal-small criminal courts, arraigning courts-whatever you want to call them. I would think that in some counties the Legislature might want to have four or five, if it's a large area where people have to travel, but that the principle we're trying to establish is that whatever kind of inferior court system the Legislature set up, and I'm perfectly willing to let the Legislature set up any kind of a system that the people want as time goes on-1 think that if we establish the principle that whoever mans these courts be elected by the people, why, then, we should have satisfied everybody.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to oppose Mr. Joyce's motion. I feel Section 16, Justice of the Peace-election, qualification, compensation and jurisdiction, is satisfactory. I feel this is-1 would stand on this particular-as it is written in Section 16. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I shall.

DELEGATE ECK: Mr. Joyce, would this apply to municipal Police Courts?

DELEGATE JOYCE: Well, I think that the jurisdiction to establish-this particular section-Mr. Harrington doesn't address himself to the so-called municipal Police Courts. I think that the Legislature, having plenary powers, can set up Police Courts-as they call them, municipal courts--with the municipalities and so that-1 wouldn't think that either Mr. Harrington's proposal or mine would necessarily apply to that, but mine would come closer to it in that any inferior court system that's set up below the level of the District Court, I simply provide that the judges thereof shall be elected. So, I don't know if I've answered your question-it seems to me that what the--we're in the Judicial Article, and Delegate Harrington's proposal pertains to Justice Courts, which are county courts, as we currently know them; and I take it that's what he intends to maintain, so that you'd have one justice of the peace in each county, and it neither-his proposal does not address itself to the so-called Police Court.

CHAIRMAN GRAYBILL: Mr. Joyce, your answer does not seem to be an answer; and, Mrs. Eck, the plain language here would seem to imply an answer of "yes". (Laughter)

DELEGATE ECK: Mr. Chairman, that's what I was afraid of, and I would certainly oppose breaking down our system of Police Courts now and requiring municipalities to elect their Police Courts.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Joyce's motion to substitute. in place of the Section 16 that Mr. Harrington has proposed, a section which would say: "In establishing any inferior court systems, the Legislature shall require the judges thereof be elected by the people."

Mr. Wilson.

DELEGATE WILSON: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. So many as shall be in favor of that, please vote Aye on the voting machine; so many as are opposed, please vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. Please tally it.

Aasheim ..... Nay
Anderson, J..... Nay
Anderson, 0..... .Absent
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask., ... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates.. ....Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain .....Aye
Campbell ..... .Absent
Cate ....Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross .....Absent
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... .Absent
Felt ..... Nay
Foster ..... Nay
Furlong ..... .Absent
Garlington.....Aye
Gysler .....Aye
Habedank ..... .Absent
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland.....Aye
Jacobsen ....Aye
James ....Absent
Johnson ..... Aye
Joyce .....Aye
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ....Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ....Absent
Skari ..... Aye
Sparks.....Aye
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk .....Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson .....Aye
Woodmansey ..... Aye
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 16 delegates voting Aye, 73 voting No.

CHAIRMAN GRAYBILL: 73 delegates having voted No and only 16 Aye, that motion fails. We're now considering again Mr. Harrington's addition of a Section 16, the text of which is on page 8 and 9.

Mr. Harrington, do you want to close?

DELEGATE HARRINGTON: Yes, Mr. Chairman. Fellow delegates, I think this is awry, very important point we've come to in this Convention. We have worked on a people's representative. We have worked for probate lawyers, and I think now-we've called these "progressive". Many of the people that have called these progressive now find that the Justice of the Peace Courts or courts of this kind are not progressive. I say these are progressive, and I say this is the last place that the people will have their voice, and I hope the delegates will vote in favor of this, Thank you; and I'd ask for a roll call vote on this, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many delegates as shall be in favor of adding a Section 16 to the Judicial Article, calling for justices of the peace— elections, qualifications, compensation and jurisdiction, as shown on page 8 and 9, vote Yes on the voting machine; so many as opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Absent
Arbanas ..... Nay
Amess ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Absent
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Aye
Cross ..... Absent
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Absent
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye

Noble ..... Aye
Nutting ..... Aye
Payne Nay
Pemberton Nay
Rebal ..... Aye
Reichert Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins.. Nay
Romney ..... Aye
Rygg Nay
Scanlin ..... Nay
Schiltz Aye
Siderius ..... Aye
Simon ..... Absent
Skari Nay
Sparks.. Nay
Speer ..... Nay
Studer Aye
Sullivan Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion Nay
Wagner ..... Aye
Ward ..... Aye
Warden .. .. Nay
Wilson ..... Nay
Woodmansey Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 47 delegates voting Aye, 45 voting No.

CHAIRMAN GRAYBILL: 47 delegates having voted Aye and 45 having voted No, Section 16, as shown on page 8 and 9, is adopted.

Mr. Leuthold, for what purpose do you arise?

DELEGATE LEUTHOLD: I'd like to make a motion.

CHAIRMAN GRAYBILL: What's the nature of your motion? I have some other motions up here to consider and yours isn't here in writing, but go ahead. What's the nature of your motion?

DELEGATE LEUTHOLD: I'd like to move to reconsider our action on killing proposed Section 14 on probate attorneys and—

CHAIRMAN GRAYBILL: Mr. Leuthold, you're out of order. We're not ready to proceed with reconsiderations. Now, if the delegates will turn to page-what's the page, Mr.-55-65, there are two unanimous proposals on separate matters presented by the Judiciary Committee.

Mr. Holland. Well, it would be Section 17 and 18, Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section Number 17 and 18-did you say?-Section Number 17, that the same-that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: This was assigned by the Chair to the Judiciary Committee. It is adopted unanimously in the same language as the previous Constitution, the entire committee having voted that there was no need for any changes.

CHAIRMAN GRAYBILL: All right, let's take Section 17, which is Exemption laws. "The Legislative Assembly shall enact liberal homestead and exemption laws." Is there any discussion? (No response) All those in favor of Mr. Holland's motion that when this committee does rise and report, it shall recommend that the same be adopted, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, we'll take Section 18 separately. "Perpetuities. No perpetuities shall be allowed, except for charitable purposes." Is there any discussion of Section 18? (No response) All in favor of Section 18—of Mr. Holland's motion that when thie committee does arise and report, that it shall recommend that Section 18 be adopted, please say Aye.

DELEGATES: Aye.

DELEGATE ESKILDSEN: He didn't make it for 18. He only made it for 17.

CHAIRMAN GRAYBILL: I see.

DELEGATE ESKILDSEN: I move that when this committee does arise and report, after having had under consideration Section 18, that the same be adopted.

CHAIRMAN GRAYBILL: Very well-on Mr. Eskildsen's motion that perpetuities be adopted when the committee does arise and report, all in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Excuse me. Now, the Chair has before it a motion by Mr. Harrington to amend Section 1 and a motion by Mr. Blaylock—or to reconsider Section l-to reconsider Section 8. If there are other motions to reconsider, get them in writing and send them up to the Chair.

Mr. Harrington, do you think it's necesary now to reconsider Section 1?

DELEGATE HARRINGTON: Mr. Chairman, I feel that I can withdraw this at this time, due to the other—

CHAIRMAN GRAYBILL: Yours is withdrawn.

Mr. Blaylock, you have a motion to reconsider Section 8?

DELEGATE BLAYLOCK: Yes, Mr. Chairman, at line 29.

CHAIRMAN GRAYBILL: Page 43 at line 29.

DELEGATE BLAYLOCK: Page 43 at line 29.

CHAIRMAN GRAYBILL: Mr. Blaylock, do you want to make your motion?

DELEGATE BLAYLOCK: Yes. After the word "position"—

CHAIRMAN GRAYBILL: No, I want you to make your motion.

DELEGATE BLAYLOCK: Oh, I see. I move to reconsider Section 8 at line 29.

CHAIRMAN GRAYBILL: Mr. Blaylock, did you vote on the prevailing side?

DELEGATE BLAYLOCK: Yes, I did.

CHAIRMAN GRAYBILL: All right, having voted on the prevailing side, Mr. Blaylock wishes to amend Section 8, on page 43. And Mr. Blaylock, explain briefly your purpose.

DELEGATE BLAYLOCK: My purpose is to allow judges to run for other judicial positions. As it is now-and if you remember, I asked Mr. Berg if they were precluded from doing that, and he said yes. So, on line 29, after the word "position", strike the period and put in a comma and add this language: "but"-have you got it?—"but a judge may file for another judicial position without forfeiture of the judicial position he holds". I'll read the whole thing again: "A judge may file for another judicial position without forfeiture of the judicial position he holds."

CHAIRMAN GRAYBILL: I take it, Mr. Blaylock, that it's your position in this proposal that he may not run for a different judicial office than a judicial one, but he may run for a judicial one without forfeit.

DELEGATE BLAYLOCK: Yes.

CHAIRMAN GRAYBILL: All right, Mr. Blaylock, you've explained that. Do you feel it's necessary to explain it further before we vote on your motion to reconsider?

DELEGATE BLAYLOCK: No. I'm perfectly willing to vote on it.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) Very well, the motion is whether or not to reconsider Section 8, and particularly the language on lines 28 and 29 on page 43 of Section 8, to allow an amendment such as that outlined by Mr. Blaylock. All those in favor of such motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

Mr. Blaylock.

DELEGATE BLAYLOCK: I'll be very brief. My feeling on this is that people who have been elected to the State Legislature up here-say they've been elected for four years-if they're in midterm and an election comes up, then they're free to file for another position-say, Congress or for a position in the Executive--and if they lose, they don't forfeit their position, say, as senator, if we're in the bicameral or if we're in the unicameral; position is for four years, they don't forfeit

that. Then, if we-in the judicial area, if a judge—a district judge sitting and there's an opening comes up on the Supreme Court and that district judge wishes to try for that position and he's a good judge, why should we preclude him from running if he wants to? So I have voted consistently to allow judges to run to be elected, and I don't think that we should preclude our district judges from their desire to serve on the Montana State Supreme Court.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, would Mr. Blaylock yield to a question?

DELEGATE BLAYLOCK: Yes.

DELEGATE DAVIS: Mr. Blaylock, now that we have justice of the peace in the Constitution, we are hopeful that they will be attorneys, too. Would your amendment exclude them from trying to move up in a like manner to the position of District Court judge?

DELEGATE BLAYLOCK: No, my—

DELEGATE DAVIS: Would they be judge, or would you have to put justice ofthepeace in there?

DELEGATE BLAYLOCK: Well, I would think if they were qualified to serve on the Supreme Court and they hold a judicial position, my language says they would not forfeit the judicial position that they hold.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would you yield to another question?

DELEGATE BLAYLOCK: Yes.

DELEGATE DAVIS: I mean a justice of the peace wanting to run for the District Court job, would he have to surrender his position?

DELEGATE BLAYLOCK: I wouldn't think so, no.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I can see some difficulty with this. I can see the possibility of what we call the Hugh Adair syndrome. A few years ago, when he was Chief Justice, the job of associate justice became open at a higher rate of pay than what he was getting as Chief Justice, so he even resigned as Chief Justice and ran for associate justice to get the higher pay and eliminated Jimmy Freebourne as a result of it, which may have been good or bad-1 take no stand on that. But it seems to me you could get some vendettas going on in that Supreme Court, and the more popular man would wipe out the one he didn't like. I'm not so sure I like it.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President, I support Mr. Blaylock on this. I was a little uneasy this morning when we passed over it, and I thought perhaps I didn't fully understand it, but it seems to me that the District judges-the District Court should serve as a training ground for the high court, and it would seem to me to be of great advantage and I support Mr. Blaylock on this.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I rise in support of Mr. Blaylock's motion. I think there is-we should leave an opening for a good judge, a trial judge, to move into the Supreme Court, or if there's a lawyer justice of the peace that has the qualifications, he should be able to move on up to the District Court or even the Supreme Court if he thinks he has a chance to win the election and has the qualifications.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I don't want to prolong this, but I did work with Chet about--with this amendment. He asked me about it. After the vote had been taken. We were both concerned; we both feel that judges should be able-that is, district judges should be able to, if they're capable, be elevated on up to the bench. They probably are the best-qualified timber for the Supreme Court, and it would be a shame to prevent them from doing that.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Blaylock's motion to amend Section 8, on page 43, by adding to the sentence in line 28 and 29 the following words-the sentence now reads: "Filing for another elective public office results in forfeiture of a judicial position." He wants to put a comma, "but a judge may file for another judicial position without forfeiture of the judicial position he holds." So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's approved. Mr. Berg, will you make a motion that when this committee does arise and report, after having under consideration Section 8 as amended, that the same be recommended for adoption.

DELEGATE BERG: I so move.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Now, Mrs. Mansfield, you have a request up here concerning Section 6, and your request says you move to reconsider our action in killing the amendment of Section 6, page 42. Now, my notes show that Section 6, which begins in the bottom of 41-"terms and pay of judges"--was adopted as is. There was a motion this morning to amend it from "6" to "8" and from "4" to "6" years, and that failed, so I see nothing in Section 6 that isn't adopted. Now, what is your pleasure?

Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, this is the section on the terms that was killed this morning, and I voted on the prevailing side and I want-wish to reconsider this.

CHAIRMAN GRAYBILL: Well, I don't believe Section 6 was killed. Now, somebody can correct me if I'm wrong. What section is it that you're after? I don't see any language—

DELEGATE MANSFIELD: It's under—

CHAIRMAN GRAYBILL: -the first nine lines of page 42. That was adopted as is this morning.

DELEGATE MANSFIELD: Yes, it's line 4, 5, 6 and 7 that we-Mr. Garlington's amendment.

CHAIRMAN GRAYBILL: All right, what's the-you want to open Section 6 so that we can consider lines 4, 5, 6 and 7-that's Mr. Garlington's amendment concerning making the Supreme Court "6" to "8" and the District Court "4" to "6". Is that right?

DELEGATE MANSFIELD: Yes, Mr. President.

CHAIRMAN GRAYBILL: And having voted on the prevailing side, you wish the body to open consideration of Section 6, is that right?

DELEGATE MANSFIELD: Yes, Mr. President.

CHAIRMAN GRAYBILL: And your purpose is to amend those four lines again?

DELEGATE MANSFIELD: Yes, sir

CHAIRMAN GRAYBILL: Does anyone have any question about Mrs. Mansfield's motion to reconsider Section 6? Any debates? (No response) All in favor of reconsidering Section 6, please say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No

CHAIRMAN GRAYBILL: The Noes have it, and the motion fails.

DELEGATE HARPER: Mr. Chairman, I call for a division of the house.

CHAIRMAN GRAYBILL: All right, we'll use the voting machines. All those in favor, vote Aye; and all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The Chair appears to have been in error, 56 having voted to reconsider and 41 having voted No, it will be reconsidered.

Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, I'd like to turn it over to Mr. Garlington.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I feel we acted hastily this afternoon in considering this matter, and because it has such deep and long-range significance in the judicial structure that we are forging here, I just feel that we should look in our hearts and see whether, really, we are building a sound Judiciary by keeping it under these completely minimum limitations which have been clearly pointed out. And I earnestly request that we take this step, because I think it is completely compatible with our basic goal, which is to construct for the people of Montana for the long-range future, as Mr. Aronow so well pointed out, a court which is really the salvation of the people's rights which we are endeavoring to construct in the rest of this Constitution.

CHAIRMAN GRAYBILL: The Chair will ascribe to you, Mr. Garlington, a motion to amend Section 6 by changing the number "6" to "8" on line 5 and by changing number "4" to "6" on line 7 on page 42. That's what we did this afternoon. You will be-1 ascribe that motion to you. The sense of the motion is to raise the term of the Supreme Court from 6 to 8 years and the District Court from 4 to 6 years. Is there discussion?

Mrs. Blend.

DELEGATE BLEND: I would like to point out to you some cold, hard facts about 8- and 6-year terms in view of the fact that we also voted to pay the campaign expenses of the judges, and I urge you to vote for this amendment to reduce the cost to the citizens on the campaign levels. Thank you.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, having voted on the prevailing side this morning, I feel that this needed a little more debate; and Mrs. Blend took the words out of my mouth before I got up, because I feel the taxpayer needs a break on this also, so I support the 8 and 6.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, could I offer a substitute motion?

CHAIRMAN GRAYBILL: You could.

DELEGATE SCANLIN: Eliminate lines **4,** 5, 6 and 7, leave lines 8 and 9 to read: "Terms of office for judges shall be provided by law."

CHAIRMAN GRAYBILL: Mr. Scanlin's substitute motion is to take the terms of the Supreme Court and District Court judges out of the article and leave the sentence in that says: "Terms of office for other judges shall be provided by law." Do you want to take out the word "other" and say, "Terms of office for judges shall be provided by law"?

DELEGATE SCANLIN: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: In other words, Mr. Scanlin's substitute motion would let the Legislature set the terms of office for the Supreme Court, District Court and other judges. Is there discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, could I ask Mr. Scanlin a question?

CHAIRMAN GRAYBILL: Mr. Scanlin, will you yield?

DELEGATE SCANLIN: I yield, Mr. Chairman.

DELEGATE ROD HANSON: Mr. Scanlin, is your purpose here to cut the cost for the taxpayer even further by having the judges elected for life?

DELEGATE SCANLIN: I trust the Legislature.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, for a long time during this session, I have been noticing a predilection on the part of the membership to pass the buck along all the way. We are going to have a commission do this, a committee do that, and we are washing our hands of it just like Pontius Pilate washed his hands of everything that came before him. I want to say that if you push these judges of the Supreme Court into a place where they are going to sit for 8 years and the district judges for 6 years, some of us are not even going to live out their first term, and the rest of the people are not going to know even who the judges are by the time they come around for election the next time. I think that we're doing the people of Montana a disservice by taking these people away from their control. You elect a man

who's on the Supreme Court now-any of them—to another 8-year term and he's had it. (Laughter) I want to tell you, he's not only had it, but the people of Montana have had it. (Laughter) I think that Mr. Scanlin is doing a service to the people of Montana if he can turn this over to the Legislature, just as we're turning almost everything else over to them.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman] and delegates, I don't want to talk on Mr. Scanlin's proposal, but if a man is elected judge when he's 60-50-69 years old, in 8 years he'd be 77.

CHAIRMAN GRAYBILL: Mr. Eskildsen, you have the mike.

DELEGATE ESKILDSEN: Mr. Chairman, members. I'd just like to point out that when we finally get to voting on Order of Business Number 5, that-and I'm referring to what Mrs. Blend has said-that in order to save a little money, maybe we should pass this for 8 years. I'd just like to point out to you, when we get to Order of Business Number 5, it's very possible, very possible that one particular section that we're going to pour the old money into the campaign fund, might die in this body. It was a pretty close vote. And I imagine that the newspapers will pick this up quite readily, and we'll be getting some little response from home pretty soon about supporting the campaign fund for the poor old judges. So I wouldn't let that be an item that would make my vote change one way or the other. I'd just look at the fact that 8 years is too long as far as I'm concerned.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: I also think 8 years is a little too long. For instance, if we do not like the judges or if they do—

CHAIRMAN GRAYBILL: A little louder.

DELEGATE SIDERIUS: -if they do not do what we think they should do, why, we can get rid of them at the end of 6 years.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in opposition to this amendment and I would certainly-I did not vote on the prevailing side for the campaign funds, but I would certainly urge that we reconsider that, also, and not use this as an influence on our vote in this issue. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, in connection with Mr. Scanlin's suggestion that we turn this over to the Legislature, I refer to Volume V of our production, which has a number of comparable constitutions, and I find that the ones of Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, and the model, which were the ones that were provided by the preparatory commission as an example for us, all do contain a term proviso for the justices of the Supreme Court. So, it is not the common pattern to buck it over to the Legislature, but to reach a decision on the subject. With respect to the comment that 8 years is too long, I just want to remind the delegates that, based on the experience of the rest of the states around the United States, which I think are not altogether different than Montana, they do not seem to have problems over going to terms that run from 8 on up to 15 years to life. If we timidly reach as far as 8, we will really have not gone too far.

CHAIRMAN GRAYBILL: Mr. Choate

DELEGATE CHOATE: Not that it has a lot to do with our Convention, what's being done in North Dakota, but I find in their newly written document they provide 10 years for a Supreme Court justice and 6 on their District Court. I really do think it has some bearing in this Convention, though, that it would give us a better quality of judges, when you consider that he has to seriously consider giving up a practice to run for a term that may be considered, in his opinion, a little short at6 years, or 4 in the case of a District Judge. Now, I do favor 6 and 8 years on these terms. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis

DELEGATE DAVIS: Mr. President [Chairman], I would like to point out that in the North Dakota proposal, they are elected by the people. Here you have a committee that's going to recommend who's going to be judge and then the Governor is going to appoint him and you're not going to get another look at him, as far as you wanting your right to vote, for 8 years or 6 years, as the case may be.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, whatever number we adopt, the question is whether the Legislature ought to do it or the Constitution ought to do it, and I think the Constitution ought to do it and I think we ought to get on with that question.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Scanlin's motion to delete lines 4 through 7, which means deleting the terms of the Supreme Court justice and the District Court justice and saying the terms of office for judges will be as provided by law. So many as are in favor of Mr. Scanlin's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails. Now, we're discussing Mr. Garlington's motion to raise Supreme Court judges from "6" to "8" and District Court judges from "4" to "6". Is there further discussion?

Mr. Martin-are you standing, Mr. Martin?

DELEGATE MARTIN: No, I'm sorry.

CHAIRMAN GRAYBILL: Mr. Eskildsen, were you standing?

DELEGATE ESKILDSEN: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well. So many as are in favor of raising the term of the Supreme Court justices to "8" and the district court justices to "6" in Section 6, please vote Aye; and those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask, ... Nay
Babcock ..... Nay
Barnard ..... Absent
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Nay
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay

Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray.. ....Aye
Noble ..... Nay
Nutting ..... Nay
Payne ....Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ....Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ....Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ....Absent
Skari ....Aye
Sparks ..... Aye
Speer ....Aye
Studer ....Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ....Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ....Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 49 delegates voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 49 delegates having voted Aye and 48 having voted No, the terms of the Supreme Court judges are now 8 and the District Court judges now 6. Mr. Berg, will you make a motion-or Mr. Holland-will one of you make a motion that we readopt Section 6?

Mr. Berg.

DELEGATE BERG: Mr. Chairman, I move that this committee, having had under consideration Section 6 of the minority report, as amended, that when it does rise and report, that it pass and adopt and approve the same.

CHAIRMAN GRAYBILL: So many as shall be in favor of adopting Section 6, as amended, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it.

DELEGATE AASHEIM: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Aasheim, for what purpose do you arise?

DELEGATE AASHEIM: I'm rising to reconsider our action in adopting Section 8.

CHAIRMAN GRAYBILL: Well, you've got to send it up here in writing to me so that you can get in line. Mr. Conover, would you like to explain what you want to do with Section 16? Section 16 is the justices of the peace, adopted 47 to 45.

Mr. Conover, do you want to make a motion to reconsider Section 16; is that right?

DELEGATE CONOVER: Mr. President, having voted on the prevailing side, I would like to make a motion to reconsider Section 16. Thank you, Mr. President.

CHAIRMAN GRAYBILL: And what is your purpose in-you may state your purpose for the body, shortly.

DELEGATE CONOVER: I voted for this, but my purpose for this was that I feel that, in the general government, that this article come up under this Local Government-that will take care of this.

CHAIRMAN GRAYBILL: In other words, if your motion prevails, you will make a motion to delete Section 16; is that right?

DELEGATE CONOVER: Yes, sir

CHAIRMAN GRAYBILL: Very well, is there further discussion? (No response) The question arises on the motion of Mr. Conover that we

reconsider Section 16, concerning justices of the peace.

DELEGATE HARRINGTON: May we have a roll call on that, please?

CHAIRMAN GRAYBILL: So many as are in favor of that, please vote Aye on the voting machine; so many as are opposed, vote No.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute. Do you want to discuss it?

DELEGATE BERG: I want to-1 would like to ask Mr. Ask to yield to a question.

CHAIRMAN GRAYBILL: All right, we'll cancel the vote. Mr. Clerk, cancel the vote.

DELEGATE BERG: Have you included Justices of the Peace in your proposed Local Government section?

DELEGATE ASK: No, we have not. We considered that as part of the Judiciary Article, and we never even considered it as I can recall.

DELEGATE BERG: But you've considered every other county office?

DELEGATE ASK: Yes, including Clerk of the District Court and County Attorneys; we included them.

DELEGATE BERG: And would you be willing, then, to include the Justices of the Peace as a county office with the other county offices?

DELEGATE ASK: Well, I don't know if I can speak for the committee, but I assume we could consider it at that time.

DELEGATE BERG: Thank you.

CHAIRMAN GRAYBILL: Very well, the question now arises on a roll call vote on whether or not to reconsider Section 16-Mr. Conover's motion to reconsider Section 16. All those in favor, vote Aye; opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate, wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, record the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson.0	Nay
Arbanas	Aye
Arness	Aye
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Absent
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown..	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross..	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum..	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Aye

Holland	Nay
Jacobsen	Nay
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Absent
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Aye
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Nay
Rygg	Aye
Scanlin	Aye
Schiltz	Nay
Siderius	Nay
Simon	Absent
Skari	Aye
Sparks	Aye
Spew	Aye
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 55 delegates voting Aye, 41 voting No.

CHAIRMAN GRAYBILL: 55 delegates having voted Aye, we will reconsider Section 16. Mr. Conover.

DELEGATE CONOVER: Mr. President, my purpose with this is like-has been mentioned, and if it's possible, I'm for electing a justice of the peace. And if it's possible, I'd like to have it brought up in the Local Government if that can be done, Mr. Ask.

CHAIRMAN GRAYBILL: Well, are you making a motion to delete Section 16 as we adopted it?

DELEGATE CONOVER: Yes, I want to delete Section 16—all of Section 16.

CHAIRMAN GRAYBILL: Very well, the motion is on the deletion of Section 16. Have you got anything—

All right, Mr. Harrington.

DELEGATE HARRINGTON: As I see it now, we're going around and around and around; and every vote that we have two or three votes difference, we're going to reconsider. Now, maybe if we come back about an hour or two from now, maybe we can reconsider again. In other words, this last vote was fairly close, so maybe we could come back in another hour for the third time. Now, the only problem we're running into here with this Convention, it seems, is if you pass something the first time and if it's fairly close, the next time we can reverse it. So it's better to lose it the first time and come back and try it for the second time, it seems like. In other words, this seems to be the game plan by some of the delegates here. Now, I oppose the motion by Delegate Conover. I feel that we are putting something off that could be done right now and should be done now. It's part of the judicial system and should be remained part of the judicial system, and I just can't imagine how people on the outside looking at this type of a Convention-we vote for something, then we reject it, then we turn around and vote for it again. Now, we should start making up our minds one way or another--either we're going to accept something or reject it-but this idea of bringing things up over and over and over again-1 can't see how we're possibly going to get anywhere with this—not here or outside the Convention when we leave. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I think if you put the Justice of the Peace in with the other county offices, you will be treating him, then, equally with every other designated county office. Now, we recognize him as a county officer. We recognize that they are going to be a community officer. We-in the Local Government provisions, there is provisions for options within each community as to how they want to treat or continue these offices. I think the people that live with the Justice of the Peace in their individual areas ought to be able to deal with them there, and I do know that there will be a considerable difference of attitude in an urban community as compared to a rural community. I think this would be simply giving to the people the same right in the treatment of the Justice of the Peace as it would be with any other county office. I think we ought to seriously consider this. I don't know of any reason why we should segregate and designate this purely county, local office from any other office that is contained in Local Government, Now, I recognize that, of course, Justices of the Peace have always been considered judicial offices, and I think they should be, and I think their dignity should be achieved, but I do not believe in making them constitutional offices as we have already done. I recognize now the sense of the Convention to do this, but I think you should put them in the communities where they really belong, just like any other office.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I oppose the motion for the reason that I think the type of magistrate that we now designate Justice of the Peace should stay within the Judiciary. His court is going to represent the lowest level, the most accessible level to the general public. We are going to elevate that particular judge, Justice of the Peace, or magistrate to a level of competency never before experienced in the State of Montana. His jurisdiction is going to be expanded, and the problems that he will solve are going to be problems that have not been presented in Justice Courts in the past. He is going to be part of the judicial system. He is going to be immediately below the District Judge. I assume that, in his wisdom, on occasion, he will seek advice and guidance from the District Court. He is part of that arm of government, and that's where he belongs, and he should stay within the Judiciary system as it's outlined and constructed by this Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE HOLLAND: The statement by Mr. Ask that the Local Government would consider putting them in, of course, is-as Mr. Ask well knows-1 don't think he intended-this late in the Convention at all. The committee report of Local Government has been completed and forwarded to the Committee of the Whole and now, if I remember correctly, on General Orders. That committee no longer has any power to do anything. There's no Justice of the Peace mentioned in there. I want to speak about Section 16, which this-1 can't remember the name, I think it was Section 16, which has been adopted already by this. What we attempted to do is to upgrade the office of JP. We had testimony these JPs were holding court in railroad cars, in their automobiles, on their tractors, anywhere they could find it-someone would be taken before them by a peace officer, and the justice would be dispensed right then and there. We had testimony that these men weren't trained, that they didn't have the proper qualifications for the office. We considered eliminating them completely and decided to upgrade the office. First, to restrict-to make-to lower the number from a minimum of four to a minimum of one but provide that, with qualifications, training-he would have to have such qualifications and training as would be provided by law, by the Legislature, and have a monthly compensation rather than a fee system. And he also would hold his office for four years, and it also in there is-this is provided, that there shall be provided facilities for such justice so that their duties may be performed in a dignified surroundings. We also provide they shall have such original jurisdiction. We also provide that they will not have trial jurisdiction in criminal cases. We provide everything that should be provided in a Judicial Article. Now, I don't know who convinced the delegates here to change their mind, and we're going to suddenly spring over to Oscar Anderson's—take it out of the Judicial Article-take a court out of the Judicial Article; suddenly spring over there-but it's obviously people who don't want a Justice Court, because once we get over to Oscar Anderson where they don't have the proper procedure, someone's going to make an amendment that we add that to county government. It's not a county office; it's a judicial office. You're going to eliminate all the good things this committee has done just because the vote was close and, as Mr. Harrington once says, someone has come up here and decided it was a close vote, and now we're

going to get you to change your mind based on what-the question asked of Mr. Ask, could you include it into the Local Government. If this is all the thinking this Convention is going to do, if this is all the qualifications they're going to provide for a JP, then I suggest that they'd better forget about anything about the Judicial Article and just put it all over in Local Government and let the county commissioners set up the whole thing for them. I urge you resist the motion to reconsider.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes, Mr. President, I rise in support of the motion by Mr. Conover to delete Section 16. It's amazing to me how anyone, if you've read the Judiciary report, Number 14, could arrive at the conclusion that you should lock into a constitution the JP system, It, in detail, goes into what has happened in 31 states and how they have either had to amend their constitution, have a constitutional convention or something so they can get this locked-in JP system out. Since 1945 the Legislature in Montana has been trying to update and revamp the JP system. They have failed thus far. I submit if the JP system is as good as a great many of you think it is, it doesn't need to be locked into the Constitution because the Legislature will continue it. If it's not, leave them free to do something else. In Section 16 we are mandating that there shall be a JP elected in each county. In Section 1 we provided that there shall be a Supreme Court and District Court and any other courts that the Legislature may decide to establish. Okay, look at what you have done. They may establish a system of JP Courts, a system of Small Claims Courts, a system of Magistrate Courts, but they have to have a JP system. Now, if they do not like the JP system, they can create another system. You have left it to the Legislature to establish the qualifications, the jurisdiction, the salary, et cetera, of the JP Courts. If they do not like the JP Courts, we may have a JP elected in each county of the State of Montana receiving $2 a year salary. The qualifications—they may have to be Ph.D.s. I mean, this is unreasonable. You are mandating that they do something, yet you're trying to give them flexibility. The North Dakota Constitution was referred to awhile ago. Their Judicial Article makes no mention of the JP system. It's just inconceivable to me that we should embark on this path that we have been embarking on—no change at all, but keep the status quo. It's just-1 just can't believe it.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to support Delegate Conover's motion to delete Section 16. As you may know, I am a practicing attorney in Missoula, and I practice before Judge E. Gardner Brownlee, who is a close friend of mine and who has workedmore than any judge, any justice, in the state with the justices of the peace. He has had more seminars, and he has written a book that is used by all the justices of the peace, and he certainly has their respect. He, more than any man, has supported the Justices of the Peace, and I have been in close contact with him ever since the Montana Plan was first proposed. He opposed the Montana Plan. I discussed it with him in detail, and I discussed what he felt about deleting references to the Justices of the Peace in the new proposed Constitution. He said that it was his personal opinion that he would favor and that the associations of the Justices of the Peace would, with his strong recommendation, would favor deletion of reference to them in the Constitution without abolishing the office, and letting the Legislature set their qualifications and their continuance. I feel that if this man, who has their respect, can say this-that he believes that this is the right thing to do in the new Constitution-I certainly support him, and I think we should back him up, and I think that anyone who feels this in itself is going to abolish the Justice of the Peace system does not have the faith that E. Gardner Brownlee has in our Legislature, so I strongly urge that we accept Delegate Conover's proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: There is only one statistic. I don't care whether you leave the justices in or out of the Constitution, but I think in all fairness that all of our statistic people forget the fact that in 1961 the people voted on this and left the Justice of the Peace in. So you may ignore them if you want, but they'll let you know how they feel.

CHAIRMAN GRAYBILL: Very well. Mr. Harrington, do you wish to close? Wait a minute. Mrs. Reichert.

DELEGATE REICHERT: I'd like to reiterate again, it was lost by only 1,178 votes.

But as far as this, I am in favor of deletion, and the reason that reconsideration was made was that eight people were absent from this chamber, and in a vote as close as 47 to 45, I think those who are not here deserve a right to vote.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I avoided discussing this when the question was first before us, but I rise in opposition to the proposal of Delegate Conover. During the earlier debates, someone said no one in their right mind would think that the inferior court system would be abolished, so let's leave it up to the Legislature. Now, there might be some people who would find a flaw in the combination of those two statements, and particularly people from perhaps the jackrabbit counties, where they're not going to have many legislators to represent them. They might say, "That's not exactly the crowd we want to leave this to." And they might think, as has been recently mentioned as an argument supposedly in support of this proposition-we're told the Legislature has wrestled with this problem for years and years and years, trying to bring it up to better standards, and they can't get it done. But now we're saying, "Leave it up to them." Members of the committee-or of the Convention, I say, take a good look at the language that we are particularly voting on and think about our committee system. This came from the majority report of the Committee on the Judiciary. It was given great consideration. It is drafted in a way that I had not thought anyone could propose a modernization of the justice of the peace system in Montana, which lays down a framework and yet leaves sufficient flexibility for the Legislature so that it can use it to the extent that is proper and can substitute something else to the extent that they may need it. I have had the unfortunate experience, too, of try ing in the Legislature to improve upon our justice of the peace system and failed, and I tell you, they can bring a lot of heat to bear, sure, on the electorate. They can bring more heat to bear, I'll guarantee you, on the members of the legislative body. They've got them pinned down in one spot where they can cinderize their fire on them, and they can bring it in from all sides. And these things seem to be going pretty good in the Legislature battles, and then all of a sudden the support falls away and you don't get any improvement. If you don't go for this, I can just about tell you that the best hope you'll get will be that either the law school or the bar association will come up with some kind of a proposal, and it probably will not involve the election of the justice of the peace. One to a county? My goodness, I think we're doggone lucky that we had a committee that labored and produced something this admirable and that we now have a chance to reaffirm the decision we made and leave it in the Constitution. It certainly improves our chances of success, and it's a small price to pay if you think it violates something. I earnestly ask you, exercise this openness that we talk about and open your minds now. Look at what's before you and decide whether it's meritorious or not.

CHAIRMAN GRAYBILL: Mr. Harrington, do you want to close?

DELEGATE HARRINGTON: We've heard that the North Dakotans did something—matter of fact, I think since we've been in this Convention I've heard more about North Dakota than, I think, what we've done ourselves, and I have all the admiration in the world for Judge Brownlee and he feels that this is not the thing to do, but I think it basically comes down to the point that we are writing this Constitution for the people, and I think it all-as we go around the horn on this, you're going to find that the majority of the people throughout the state feel that we should have these Justices of the Peace Courts, and I think that any delegate here will find it through communication with the people back home-they'll find the words "the people's court", "the poor man's court"-all of these names are used. And again I plead the case of the Justice of the Peace Courts, that they remain. We have set up a new type of court. We have put qualifications on them. I can't see why this Convention will turn this down. If we do turn them down, I think we're going to have a little problem with it. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Conover's motion to reconsider Section 16, which passed, and then upon his motion to delete Section 16 as adopted.

DELEGATE McNEIL: I would like to ask for a roll call.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of deleting Section 16, please vote Aye; so many as shall be opposed, please vote No.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: We are in the middle of a vote, Mr.-for what purpose do you arise?

DELEGATE AASHEIM: I'd like to have you explain the motion. I'm not clear.

CHAIRMAN GRAYBILL: All right, the motion is that Mr. Conover moves that we delete Section 16. Now, we passed, awhile ago, Section 16, which puts justices of the peace in the Constitution. The motion is to delete that out of the Constitution. If you're in favor of the motion, vote Yes, to delete. If you're against the motion, vote No, to retain it in the Constitution.

DELEGATE AASHEIM: You said the motion was also reconsidered, and I thought we had passed on the reconsideration.

CHAIRMAN GRAYBILL: We passed the motion to reconsider; and now if you want to vote to delete Section 16, you vote Aye; if you want to vote to leave it in, you vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, tally the vote.

Aasheim Nay
Anderson, J. Nay
Anderson, 0.. Nay
Arbanas Aye
Arness Aye
Aronow Nay
Artz Nay
Ask Nay
Babcock Nay
Barnard Nay
Bates Nay
Belcher Nay
Berg Aye
Berthelson Aye
Blaylock Aye
Blend Aye
Bowman Aye
Brazier Nay
Brown Aye
Bugbee Aye
Burkhardt Aye
Cain Aye
Campbell Aye
Cate Nay
Champoux Aye
Choate Aye
Conover Aye
Cross.. Aye
Dahood Nay
Davis Nay
Delaney Nay
Driscoll Nay
Drum.. Nay
Eck Aye
Erdmann Nay
Eskildsen.. Nay
Etchart Nay
Felt Nay
Foster Aye
Furlong Aye
Garlington Aye
Gysler Nay
Habedank Aye
Hanson, R.S. Nay
Hanson, R. Nay
Harbaugh Nay
Harlow Aye
Harper Nay
Harrington Nay
Heliker Aye
Holland. Nay
Jacobsen Nay
James Nay
Johnson.. Nay
Joyce Nay
Kamhoot Nay
Kelleher Absent
Leuthold Nay
Loendorf Aye
Lorello Nay
Mahoney Nay
Mansfield. Nay
Martin Aye
McCarvel Nay
McDonough Aye
McKeon Nay
McNeil Nay
Melvin Aye
Monroe Aye
Murray.. Nay
Noble Nay
Nutting Nay
Payne Aye
Pemberton Aye
Rebal Nay
Reichert Aye

Robinson Aye
Roeder Aye
Rollins Aye
Romney Nay
Rygg Aye
Scanlin Aye
Schiltz Nay
Siderius Nay
Simon Absent
Skari Aye
Sparks.. Aye
Speer Aye
Studer Nay
Sullivan Nay
Swanberg. Nay
Toole Aye
Van Buskirk Nay
Vermillion Aye
Wagner.. Nay
Ward Nay
Warden Aye
Wilson Aye
Woodmansey Aye
Mr. Chairman Aye

CLERK HANSON: Mr. Chairman,45 delegates voting Aye, 53 voting No.

CHAIRMAN GRAYBILL: 45 delegates having voted Aye, 53 having voted No, the motion fails and Section 16 is retained. Mr. Harrington, do you want to make a motion that when this committee rises and reports, after having under consideration Section 16, the same shall be recommended for adoption?

DELEGATE HARRINGTON: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.
Now, Mr. Scanlin, you have a motion here to reconsider Section 14. Do you wish to make that motion?

DELEGATE SCANLIN: Mr. Chairman, in courtesy to my good friend and new roommate here, having voted on the prevailing side, I wish to reconsider Section 14-Mr. Archie Wilson's proposal on the probate attorney--and I'll just simply call for a roll call vote. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the motion is by Mr. Scanlin to reconsider Section 14. Now, Section 14 is the probate attorney, which was defeated awhile ago, and Mr. Scanlin, having voted on the prevailing side, wants to reconsider Section 14. He wants a roll call vote. All those in favor of reconsidering Section 14, vote Aye; all those opposed, vote No. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim Aye
Anderson, J. Aye
Anderson, 0 Nay
Arbanas Nay
Arness Nay
Aronow Nay
Artz Nay
Ask Nay
Babcock Nay
Barnard Aye
Bates.. Aye
Belcher Aye
Berg Nay
Berthelson Aye
Blaylock Nay
Blend Aye
Bowman Nay
Brazier Nay
Brown.. Nay
Bugbee Nay
Burkhardt Nay
Cain Nay
Campbell Nay
Cate Nay
Champoux Nay
Choate Absent
Conover Nay
Cross Nay
Dahood Nay
Davis Nay
Delaney Aye
Driscoll Nay
Drum Nay
Eck Aye
Erdmann Aye

Eskildsen ..... Aye
Etchart ..... Nay
Felt. ..... Nay
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Absent
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland. ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf. ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Absent
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Absent
Skari ..... Aye
Sparks ..... Nay
Spew.. ..... Absent
Studer ..... Aye
Sullivan ..... Nay
Swanberg .. .. Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 28 delegates voting Aye; 66 voting No.

CHAIRMAN GRAYBILL: 66 delegates having voted No and only 28 Aye, the motion to reconsider Section 14 is defeated.

Mr. Brazier, you have a motion to reconsider Section 2 of-Section 2 we passed this morning, and I'll read it here in a minute, but Mr. Brazier, do you wish to reconsider Section 2?

DELEGATE BRAZIER: I do, Mr. President [Chairman]. May I speak on the reasons for my motion?

CHAIRMAN GRAYBILL: Well, make your motion first.

DELEGATE BRAZIER: Mr. Chairman, having voted on the prevailing side upon the motion to adopt Section 2 of the Judicial Article, as proposed by Mr. Melvin-or was it Mr. Schiltz?—

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE BRAZIER: -1 now move that we reconsider the same.

CHAIRMAN GRAYBILL: Very well. Before you speak on it, let me read it to the body, because this is the Judicial Committee proposal that you got-it was the first thing we did this morning. If you'll look in your papers, you'll find it. It says: "Section 2, Supreme Court powers. The Supreme Court has appellate jurisdiction, including jurisdiction to hear and determine writs appropriate to its appellate jurisdiction and original jurisdiction to issue, hear and determine writs of habeas corpus. It has general supervisory control over all other courts. It may make rules governing appellate procedure, rules of practice and procedure for all other courts, and rules of admission to the bar and conduct of its members," Then we added: "Rules of procedure shall be sub-

ject to approval or disapproval by the Legislature in either of the two sessions following their promulgation." Mr. Brazier, do you want to explain your purpose in moving to reconsider?

DELEGATE BRAZIER: I do, Mr. Chairman. Mr. Chairman and fellow delegates, for your information; if you see merit in my motion to reconsider, I will move that we strike from the provision as adopted that sentence contained on line thereof which reads as follows: "It has general supervisory control over all other courts." Now, the reason that I propose to make this motion is that there have been a number of actions taken by this body in the interim since the adoption of the proposal. To put you back in perspective, you will recall that I quizzed Mr. Schiltz about the intention of the sentence, and Mr. Berg candidly volunteered that it was entirely likely under that sentence that the Supreme Court would exert some function other than the use of a remedial writ. Now, since we have adopted that proposal, and in the adoption of that proposal we have provided for the following functions of the Supreme Court: the use of remedial writs without limitation; and by that I take it to mean that all remedial writs presently recognized by Montana jurisprudence, including the writ of supervisory control, would continue to have viability. We have provided for the creation and administration and modification of judicial districts. We have provided for the temporary assignment of judges within those districts. We have provided for rules governing appellate procedure. We have provided for rules of practice and procedure before courts. We have provided rules of admission to practice, and we have provided for removal and discipline of judges. To complicate the matter somewhat, we have also deleted any mention of clerks of the Supreme Court. Now, I will put it to you: if this court is supposed to have a function under this general supervisory control, the better practice would be to spell it out. If there is to be no function, then the better practice would be to delete that sentence, because there's no reason to have it in there. Thank you, Mr. Chairman. That concludes my remarks.

CHAIRMAN GRAYBILL: Very well, Mr. Brazier has made a motion to reconsider Section 2, the purpose being to take out of it the language concerning general supervisory control over other courts by the Supreme Court. So many as shall be in favor of Mr. Brazier's motion to reconsider Section 2, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, please say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The reconsideration is defeated. Very well, Mr. Harper and Mr. Burkhardt, you have both moved to reconsider Section 15, which is contained on page 38. That's the campaign expenses bit. Section 15 is on page 38. Mr. Burkhardt and Mr. Harper, which one of you cares to make the motion?

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President [Chairman], having voted with the prevailing side and in fairness, because of the closeness of the issue, I move that we reconsider this section, and I'll so move.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Just a minute until I make my note here.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. President-

CHAIRMAN GRAYBILL: Mr. Burkhardt has moved to reconsider Section 15 on page 38, which is the campaign expenditures section, and has voted on the prevailing side. Mr. Burkhardt, do you wish to explain your motion to reconsider?

DELEGATE BURKHARDT: I think I perhaps did in the earlier statement. I'll wait for the vote and then would like to speak to it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: When this issue was up before, I made a very gross misstatement of fact, saying that you wouldn't get a shot at these people for six or eight years. I'm very sorry. I didn't vote on it. But I think this is one of the more serious things we've done since we've gathered here, when we're providing campaign expenses to run. I'm sure these offices are attractive enough—we haven't had campaign expenses before, and we've always had plenty of candidates. And I think it would be a mistake to put this in.

DELEGATE AASHEIM: Roll call vote.

CHAIRMAN GRAYBILL: So many as—there's been a request for a roll call vote on reconsideration of Section 15. So many as are in favor of reconsidering Section 15, please indicate by voting Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas.. ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate. ..... Absent
Conover ..... Absent
Cross.. ..... Nay
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Absent
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye

Wagner ..... Aye
Ward ..... Nay
Warden .Absent
Wilson ..... Aye
Woodmansey A y e
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 61 delegates voting Aye, 32 voting No.

CHAIRMAN GRAYBILL: 61 delegates having voted Aye and only 32 No, the motion to reconsider carries, and we are now reconsidering Section 15 on page 38.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and fellow delegates, as a way of preparing for going through this Judicial Article, I had a friend—

CHAIRMAN GRAYBILL: Mr. Burkhardt, do you want to make a motion?

DELEGATE BURKHARDT: Fine. I guess that at this point I would make a motion that we delete this article as it's now contained.

CHAIRMAN GRAYBILL: Mr. Burkhardt makes a motion that we delete Section 15. Very well, Mr.--go ahead.

DELEGATE BURKHARDT: As a way of preparing for the article as we've been going through it, and recognizing that much of the time I've been over my head in terms of what has been discussed, I had a friend who's had considerable legal experience go through this article and make notes in the margin, and one of his-most of his notes have been very helpful. All of the critical areas we've spent time on he hit pretty much on target, and it was helpful to have his ideas. This particular one, he writes, "It's a good idea. I hope it's well debated before its death." And I submit that if it is a good idea, it can stand the light of day, and this is the time to give it the light of day. I would feel very badly if we nailed the lid down on a coffin of a living possibility; and personally, I don't know if I'm bound to vote as I moved, but I'm going to listen to it debated, if I may, and make that decision after I have heard some further conversation on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I've been in politics long enough to know when the handwriting is on the wall, and I just saw it a minute ago. I want to say very briefly that we have given a great deal of lipservice here today about attracting people to the Judiciary. We're going to get these great fellows who are going to run, and I'll tell you what we're going to get to run. We're going to get nobody, because we're going to lock in a bunch of blue-ribbon committee appointed people, and when the contest comes up, which it won't, those same people who got appointed by the blue-ribbon committee are going to get the money. And the poor devil who's down there and says, "I would like to be a judge", and probably has as many or more qualifications than the other fellow, is not going to be able to match him dollar for dollar, and he's going to get whipped. And after about one turn at that, you're not going to have any more candidates on this beautiful plan of Mason Melvin's You're just not going to have any more candidates. Now, if you want to go back to the same old shoddy system that we've had for years, and I can give you book, chapter and verse on that shoddy system, then you vote to reconsider this thing and kill it, which I think you're going to do anyway; but I'm going to get on record as saying that this shoddy system has incorporated in it such things as candidates who list contributions that have not, in fact, been made by the people to whom they're listed, and I can prove it if I need to. This is the most-1 started out by saying this is the most progressive thing that's been in this body to date, and it's going to come some day, and it ought to be in here right now. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President [Chairman], I rise to oppose the motion to delete this section, and I'll just say briefly that I would just as soon pay a few dollars in my tax bill for this purpose than to pay it in my utility bill and have 22 percent added.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'm here for judicial reform. I think we've taken steps in that direction. I think we've improved the **Judiciary.** I think the people are going to respect us for it, and they are going to appreciate the changes that have been made. One of the great critiques that's been made about the judicial system of Montana, and the one issue that's caused the tremen-

dous debate that's been reflected here to some degree, has been the fact that we've had a locked-in Judiciary by virtue of the fact that they have to spend so much to campaign from one end of the state to the other that only the so-called "big boys" can afford to support them with enough campaign funds so that they can be successful; and as a consequence, being the imperfect human beings that they are, just like the rest of us, subconsciously, at least, it has an effect upon their decision and upon their work in our behalf as part of the highest tribunal of this state. The real answer, now that we have the system that we have adopted, is to follow Delegate Schiltz and make sure that they don't have to go out like traditional beggars and have the people with the deep pocket give them the funds necessary to stay in office, and that way we're all going to get a better quality of justice and get the type of decision that we're entitled to have in the temple of justice. I do have one question for Jack Schiltz, however, that does bother me, and I would ask at this time if Delegate Schiltz will yield for that question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHITZ: I yield.

DELEGATE DAHOOD: Jack, I like the idea, of course. What does concern me-does this proposal providethat anyone that wants to run for judge qualifies for use of the state fund for campaign purposes?

DELEGATE SCHILTZ: Only in the general election.

DELEGATE DAHOOD: Thank you very much.

(Delegate Aasheim in Chair of Committee of the Whole)

CHAIRMAN AASHEIM: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in opposition to the authorization of campaign funds. Under the guise of using the type of assumption that my friends and fellow lawyers here today have used, I would like to point out that, to me, as a lay person, it opens the door for the citizens to finance the campaign expenditures of the elected Executive officials and of the Legislature, which is something that I do not believe we can overlook. Now that we have taken the word "nonpartisan" out of the Judicial proposal, I think that we are now enabling the judges to circulate among the people to act as campaign candidates and to operate within the party system, and I object to the proposition of providing campaign funds.

CHAIRMAN AASHEIM: Mr. Harlow, you wanted to rise?

DELEGATE HARLOW: Mr. Chairman, I support the proposal to delete this. We have heard a lot about assorted relief measures for assorted people-if this isn't a relief measure for lawyers, I never saw one. Why don't we, as Delegate Blend said, allow campaign funds for everyone? This is entirely wrong.

CHAIRMAN AASHEIM Mr. Johnson

DELEGATE JOHNSON: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: I propose a substitute motion for all motions pending. On page 39 on this section-let's see, on line 3, mark--well, it's page 39, on line 3, cross out "appropriate", the third word, and put in "set amount of'. And then on line 10, at the end, cross out the word "appropriated"; on line 11, delete the word "and".

CHAIRMAN AASHIEM: Mr. Johnson—

DELEGATE JOHNSON: Then this section will read: "Campaign expenses. The Legislative Assembly shall set amount of funds for the contested general election campaign expenses of candidates for the offices of justices of the Supreme Court and District Court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court or District Court judge, nor any person or persons in his or her behalf, shall expend money in a campaign for the office in excess of the amount authorized by the Legislative Assembly." This would equalize the poor man and the rich man and the rich clubs and the poor clubs and, I think, is a start toward the proper type of campaign expenditure in the State of Montana.

CHAIRMAN AASHEIM: Mr. Johnson, will you send up your amendments. Any discussion on the amendment of Mr. Johnson?

Mr. Graybill.

DELEGATE GRAYBILL: Mr. President [Chairman], the amendment of Mr. Johnson goes halfway, but I would like to speak to you seriously about what I think is the true import of Section 15. Now, you people are worried about the public treasury having to pay the expenses of some candidates. In the first place, the amount that the public treasury would pay would be set by the Legislature, and while it might err on the side of setting it too low, I don't think it would spend too much of our money. The truth of the matter is that in campaigns for judge and for chief-and for justice of the Supreme Court, great sums of money are expended every time there is a contest. These sums of money come from interested clients. Now, a judge-a person who's running for office-does not go around--a judge that's running for office does not go around and get a dollar here and a dollar there like someone running for the Legislature. The people that run for justice of this Supreme Court get large sums of money paid to them, and they get it paid to them by people who have important cases commonly before the courts. Now, you figure out who that is; and these people put up large sums of money. I don't want to interrogate Mr. Schiltz, but I can tell you that Mr. Schiltz didn't spend 5,000 or 10,000. I can tell you that in his behalf, moneys that he collected, probably closer to 50,000 was spent; and on behalf of his opponents, I can tell you that probably more than that was spent. I know what a statewide campaign costs, and you don't buy those kind of offices or run for them for that small amount of money. Now, the whole issue is are we going to let the Judiciary continue to get its money to run for contested Supreme Court offices by getting it from big court corporations and concerns who have a lot of litigation in the Supreme Court? If we are, then kill Section 15. But if you're concerned, as **Mr.** Schiltz is and as several of us are, that the Supreme Court ought to be a place where the few clients whouseit a lot ought not to be able to contribute large sums to a Supreme Court candidate, then you'd better vote for this or you'd better vote at least for Mr. Johnson's amendment, because that's the only way and the last chance, probably, you're ever going to have to straighten that situation out. The idea that this is a lawyers' relief bill is nonsense. The people that it's going to relieve is the common people who have to go to that Supreme Court occasionally against some major interest who is there constantly. If you have to do that, this is your last chance to contribute to somebody's campaign and make it pay, because if you don't do it now, you're just not going to be able to contribute enough to ever overcome the money that's going to be put up against you by those who do go often enough and who do have the wherewithal to pay. So you decide what you want to do, but here's a chance to reform our judicial system at the Supreme Court level in a major way.

CHAIRMAN AASHEIM: Any further discussion on Johnson's proposal?

Mrs. Payne.

DELEGATE PAYNE: May I ask Mr. Johnson a question?

DELEGATE JOHNSON: I yield.

DELEGATE PAYNE: I'm wondering how-you know, what kind of a law will you pass to see that they don't spend more than the set amount? You know, right now, when people run for the Legislature, they can spend what-a $150? And then they can have as many clubs as they need to. What would you-you know, what else would you put in here to see that they only spent the set amount?

DELEGATE JOHNSON: Well, that takes a little research, I'm sure, but I do not have a set amount at the moment. I think that in answer to that question, that—

DELEGATE PAYNE: Yes, but how much—

DELEGATE JOHNSON: ---any amount set would be okay because they'd all have an equal chance—

CHAIRMAN AASHEIM: Please direct your questions to the Chair, please.

DELEGATE PAYNE: Well, he hasn't answered my question. What I wanted to find out is, what could you put in here so that whoever was running for office would only spend that amount of money?

CHAIRMAN AASHEIM: Will you yield, Mr. Johnson?

DELEGATE JOHNSON: Yes, I yield, Mr. Chairman. I would have that just put "as prescribed by law": that's whatever the amount the Legislature would set up. It would have to be a

reasonable amount. It would be equal for everybody.

DELEGATE PAYNE: Mr. Chairman, I think Mr. Schiltz wants to say something. Did you want to answer that question?

DELEGATE SCHILTZ: I can answer it very simply. Obviously, Mr. Johnson hasn't taken a look at it. It says, "No candidate for the Supreme Court or District Court, nor any person or persons on his or her behalf, shall expend money on a campaign for the office in excess of the amount"— and, as Mr. Johnson has it, in excess of the amount authorized by the Legislature.

CHAIRMAN AASHEIM: Any further discussion on Mr. Johnson's proposal?

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman. As a matter of information, is a motion to amend in order at this time?

CHAIRMAN AASHEIM: What did you want to amend, Mr. Brazier?

DELEGATE BRAZIER: In substance, I wanted to amend by striking out the reference to District Court judges. It seems that all of our attention is directed at the Supreme Court judge race, and by deleting District Court judges, we might make it more palatable to those who might otherwise be opposed.

CHAIRMAN AASHEIM: Mr. Brazier, I believe you should amend Mr. Johnson's amendment at this time.

DELEGATE BRAZIER: All right. Then, accordingly, I move to amend Mr. Johnson's motion by striking from line 5 on page 39, after the word "Supreme Court", the three words "and District Court"; and, further, by striking from line 8 on page 39, after the words "Supreme Court", the words "or District Court judge comma".

CHAIRMAN AASHEIM: All right, Mr. Brazier.

DELEGATE BRAZIER: I submit my motion without argument. I think my previous comments speak for themselves.

CHAIRMAN AASHEIM: Any further discussion on Mr. Brazier's amendments?

Mrs. Babcock.

DELEGATE BABCOCK: Would a motion to pass for the day be in order?

CHAIRMAN AASHEIM: Yes, it would.

DELEGATE BABCOCK: I'd like to pass this for the day and give this Convention a chance to think about this overnight.

CHAIRMAN AASHEIM: I believe you should pass until 9 o'clock tomorrow—

DELEGATE BABCOCK: Until 9 o'clock tomorrow morning.

CHAIRMAN AASHEIM: The motion has been made to pass consideration of this-amendment, was it, Mrs. Babcock?

DELEGATE BABCOCK: Amendment, whatever is in order.

CHAIRMAN AASHEIM: I believe the motion would be, then, to pass consideration until 9 o'clock-the reconsideration and amendments to Section 15. As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is lost. We are now back to Mr. Brazier's amendment. As many as are in favor of—

Mr. Schiltz.

DELEGATE SCHILTZ: I resist Mr. Brazier's amendment. I think what applies to one court applies to another. What we're after is to get the best possible candidates we can get for any judicial office.

CHAIRMAN AASHEIM: Mrs. Bates, are you talking on Mr. Brazier's amendment?

DELEGATE BATES: Yes, Mr. President [Chairman].

CHAIRMAN AASHEIM: All right.

DELEGATE BATES: As far as District Courts or Supreme Courts, I can't see any difference. I feel that this is something that should be— the entire section should be deleted. It is a statutory matter. What if the Legislature fails to appropriate one cent? It is absolutely verbiage,

and I think it should not be in the Constitution. If we can't do it for all the candidates, including the Governor and all the rest of the candidates, why, I don't feel we should do it just for Supreme Court. Thank you.

CHAIRMAN AASHEIM: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Schiltz yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Schiltz?

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE SCANLIN: Now that-Mr. Schiltz. Mr. Chairman, now that we have the poor JPs in, who is going to pay for their campaign?

DELEGATE SCHILTZ: That is covered—

CHAIRMAN AASHEIM: Mr. Schiltz, will you answer that?

DELEGATE SCHILTZ: That isn't covered by Section 15.

CHAIRMAN AASHEIM: Are you ready to vote on Mr. Brazier's—

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, when I came over here, I thought there was three parts of government. I thought there was the Legislative, the Executive, and also the Judiciary. But I'm beginning to believe thatweonly havethe Judiciary. If we haven'tputevery emphasis on the Judiciary since I've been here, I'm mistaken in what I've learned. I think it's very important, if we're going to set up a fund like this to take care of the judges, for the simple reason that we give-we can get "hone&r" judges or judges that are not obligated to anybody, I say we ought to do this for the Governor especially. If there's another branch of government we need to have independent so that he can be absolutely honest and not be obligated to anybody, then I think the Governor should have a fund, too. Now, then, we come to the other branch of government, the Legislature. What about the poor legislator? Why not give him a few dollars to campaign on, too? Do the judges receive such poor salaries and such a poor retirement plan that they're not able to go out and campaign? I doubt that. I think they can campaign just like every other candidate does. When you go into politics, when you look for political office, then you got to expect to find your own campaign funds and to finance it yourself. That's the way I always did. I don't think we should do anything for the Judiciary that we don't do for the Legislature and, especially, that we don't do for the Governor.

CHAIRMAN AASHEIM: Mr. Brazier, do you want to-Mr. Johnson, do you want to talk on Mr. Brazier's motion to amend?

DELEGATE JOHNSON: I close.

CHAIRMAN AASHEIM: Mr. Brazier, do you want to close?

DELEGATE BRAZIER: I do, Mr. Chairman.

CHAIRMAN AASHEIM: You may close.

DELEGATE BRAZIER: In response to Mr. Eskildsen's comments, I would merely point out that there is a distinction between those candidates for judicial offices and the others he mentioned and that is that, at least by custom and practice, those running for judicial office run in a nonpartisan capacity, and I think we've gone into that in sufficient depth. With respect to my motion, I was merely trying to be helpful, and it's made in recognition of the fact, as you have been enlightened, that in a good number of contests for the District Court--or elections for the District Court, there are no contests; and when the voters back home start contemplating what kind of a package we're handing them so far as expense is concerned, they're going to give thought to 30 or 40 District Court judges, and it may seem a little too much to swallow in one chunk, one bite; whereas, if we limit it to the office that is critical and does set the policy and does set the precedent, it might be a little more acceptable. Mr. Chairman, I would ask for a roll call vote and ask for seconds.

CHAIRMAN AASHEIM: Mr. Berthelson, for what purpose do you rise?

DELEGATE BERTHELSON: Would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: Yes, I'll yield.

DELEGATE BERTHELSON: Mr. Graybill, does Section 15, as amended, solve the problem you so eloquently laid out for us up here, as amended on page 39 by Mr. Johnson? Will that accomplish the same thing you had in mind?

DELEGATE GRAYBILL: I think that as far as I'm concerned, if we pass 38—or, if we pass Section 15 in any form, it will be an improvement. As far as I'm concerned, we don't need the District Courts in there, but it would certainly be well-it would be fine if they were in there. I would prefer not to have the Legislature set the amount. That still allows whatever-suppose the Legislature set a hundred thousand dollars, that still allows the judge to get his hundred thousand dollars, and that makes it awful hard for the man that's running against him to get his hundred thousand. So I would prefer it to be appropriated and limited to the Supreme Court, as Mr. Brazier says, to make it less expensive: but I think if we pass it in any of the three forms, we will have accomplished a reform.

DELEGATE BERTHELSON: Thank YOU.

CHAIRMAN AASHEIM: We have-Mr. Brazier closed on his motion.

For what purpose do you arise, Mrs. Babcock?

DELEGATE BABCOCK: To ask Mr. Brazier a question.

CHAIRMAN AASHEIM: Mr. Brazier, do you want to answer a question?

DELEGATE BRAZIER: I may but not necessarily shall.

DELEGATE BABCOCK: As I recall, they deleted the part in the article causing judges to be partisan. Didn't we decide that they'd be-that they should be partisan?

DELEGATE BRAZIER: No, we decided not to lock that in, and my comments, my choice of words, that this has been the custom in practice and tradition were in recognition of the fact that that's the way it has been and presumably that's the way it will be in the foreseeable future.

CHAIRMAN AASHEIM: For what purpose do you arise, Mr. Johnson?

DELEGATE JOHNSON: Mr. Chairman, for a point of clarification.

CHAIRMAN AASHEIM: All right, what is it? What is your question?

DELEGATE JOHNSON: Well, I don't have a question; but I'm going to have to clarify something here, because I understand from-the remarks here to my amendment lead me to believe you do not understand it. You see, I moved-and it would have a bearing on Mr. Brazier's motion, I'm sure. I had no intentions of having appropriations made for these people. It was to delete the part about the appropriation, that the Legislature was to name the amount that they were allowed, so there's no appropriation by the government. This won't cost the taxpayers anything. This is set and controlled by the Legislature, setting a precedent for the amount of money spent on candidate campaigns, et cetera. Is that clear now, please? Yes, it's to limit the amount of money they're going to spend, and those words I put in there would do that, and it puts it equal for everybody, rich and poor alike.

CHAIRMAN AASHEIM: Mr. Cate.

DELEGATE CATE: A point of clarification. Now, if I understand our procedure correctly, if I vote for Mr. Brazier's amendment, which is an amendment to Mr. Johnson's, that I am voting for eliminating appropriations and simply having the matter set by the Legislature as to the amount that you can spend for Supreme Court campaign; is that correct?

CHAIRMAN AASHEIM: Mr. Brazier, will you again state your amendment? On page 39, is it?

DELEGATE BRAZIER: Well, after being advised by Mr. Johnson on what the substance of his motion was, I think I'drathermakemymotion to amend apply if his motion is defeated. I would renew it. I'll withdraw it at this time and renew it at a more appropriate time.

CHAIRMAN AASHEIM: Well, Mr. Brazier has asked to withdraw his motion--or to amend. Without objection, that will be withdrawn, so we are then back to Mr. Johnson's amendment. And does anyone want it read again to clarify it?

Mrs. Babcock.

DELEGATE BABCOCK: I'd like to have it printed and spread upon the desks so we can study it tomorrow morning at 9 o'clock.

CHAIRMAN AASHEIM: You'd better make a motion then, Mrs. Babcock, that we pass consideration again.

DELEGATE BABCOCK: I so move.

CHAIRMAN AASHEIM: A motion has been made that we pass consideration of the amendment to Section 15 until 9 o'clock tomorrow morning. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is lost. All right, we're on Mr. Johnson's motion to amend Section 15, and the way I understand this motion is, on page 19, line 3, to delete "appropriate" and insert "amount of'. Is that correct? And in line 10, delete "appropriated"; and in line 11, delete "and".

Is that correct, Mr. Johnson?

DELEGATE JOHNSON: That is correct.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I want to be very clear, because there seems to be just a little bit of misunderstanding-that Mr. Graybill put his finger on it. The Legislature can set that figure high enough so that we're back in the same old soup. I think Mr. Johnson anticipates that the Legislature will set it very low, but we can't be sure that they will. So, if the Legislature picked a figure of $50,000, which is not unrealistic, then we're right back where we were.

CHAIRMAN AASHEIM: Mr. Heliker, did you want to comment? Did you stand?

DELEGATE HELIKER: (Inaudible)

CHAIRMAN AASHEIM: Mr. Champoux.

DELEGATE CHAMPOUX: I'd like to direct a question, if I may, at Mr. Johnson, if he will yield, please.

CHAIRMAN AASHEIM: Mr. Johnson, will you yield?

DELEGATE JOHNSON: Yes, I'll yield.

DELEGATE CHAMPOUX: Mr. Johnson, if we set the amount, what do we do when we regulate the amount? You see, you've left in the word "regulate the amount" and I-you know,- I'm just wondering-is there a difference?

DELEGATE JOHNSON: Well, I presume-well, I hadn't thought about that, to tell you the truth; no. What I'm trying to do here is set [an] amount that is fair and equitable in a campaign.

DELEGATE CHAMPOUX: Well, I think if you want to clarify it, maybe you should delete that. If you'd-you know, whatever you'd want.

DELEGATE JOHNSON: Yes, I would agree to—

CHAIRMAN AASHEIM: Mr. Johnson, do you care to comment on that?

DELEGATE JOHNSON: Well, I would agree to, Mr. Chairman-to delete that word "regulate".

CHAIRMAN AASHEIM: To delete what word, did you say, Mr. Johnson?

DELEGATE JOHNSON: Well, he said there's the word "regulate" in there-1 haven't found it yet (Laughter), but I'd sure be happy to delete it. It's on line 6.

CHAIRMAN AASHEIM: The words "regulating", on line 6. Do you want to move to amend that, Mr. Johnson?

DELEGATE JOHNSON: Well, Mr. Chairman, I just-1 don't know just how much I would have to delete in order to make any sense to it,

CHAIRMAN AASHEIM: Well, I would recommend that you maybe think about it a minute and-while we continue the discussion.

DELEGATE JOHNSON: Thank you.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I wish to direct an inquiry to Delegate Johnson, so I don't want to interrupt him; so I'll hold up a minute while he does that and then come back, if I may.

CHAIRMAN AASHEIM: Any other discussion on Mr. Johnson's amendment?

Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would like to rise to oppose Mr. Johnson's amendment to support the deletion of Section 15; and I'd like to make a couple of points, ratherreluctantly, that have not come up as yet. I think one point that I'd like to make is that it looks like we're moving rather rapidly into an area that there is some need, for relief. However, the relief looks like it may become kind of complicated down the road. Now, the wording here is-"nor any person or persons on his or her behalf". We haven't considered what effect a club would have. Is a club a person? Say we appropriate so much money for the expenditure of a person running for this position. Perhaps a club would be away from the law, and he could go ahead and raise any other amount thathe'd like to and spend more than his opponent. Another point that I'd like to make is that running for the office of Supreme Court could be considered pretty good advertising for a member of the legal profession. It may have some side benefits that offset the cost of seeking that office. And the third thought that I have, that runs through my mind, there may be a set of circumstances where a person may say to himself, "I think I would like to run for Governor two years hence or perhaps at a later time. I don't have a very good chance of becoming the Supreme Court associate justice or even the Chief Justice, however the case may be; but I think I'll run for that job, because it's going to give me some good statewide exposure and maybe there'll be some carryover effect at a later time." Well, thisreallyis subsidizing a lawyer's effort to become Governor, and I think we are giving him an unfair advantage which we are not giving a farmer, a rancher, a fertilizer salesman, or whoever may wish to run for Governor at a later time. So, even though I sympathize with the thought that was presented by Delegate Graybill and I certainly sympathize with Mr. Schiltz, I feel that at this time we may be acting rather hastily and creating some problems that we don't recognize at this point.

CHAIRMAN AASHEIM: Discussion is certainly in order-any discussion on this main section is in order. However, I would like to dispose of this motion to amend, and you will still have an opportunity to talk on the original motion.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I'd like to direct a question to Delegate Johnson.

CHAIRMAN AASHEIM: Mr. Johnson, will you yield?

DELEGATE JOHNSON: I'll yield.

DELEGATE ROMNEY: Torrey, on line 10 there, where you took out the word "appropriated", and the next line, the word "and" and left "authorized"--what do you understand by authorizes? What does it mean to you? Does it mean that they can go ahead and do that much, but there's no money involved?

DELEGATE JOHNSON: Well, that word "authorized" there, Mr. Romney, I take to mean that's an amount sanctioned or agreed upon as a fair amount. It's—

DELEGATE ROMNEY: You said that—

DELEGATE JOHNSON: It's not an appropriation. I see what you mean, that authorized could be construed to mean that the Legislature might appropriate it.

DELEGATE ROMNEY: Mr. Chairman, I—

DELEGATE JOHNSON: I didn't mean that.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: That is what I meant. You said that-1 believe in your previous discussion, that there would be no money involved, it wouldn't cost the state anything. Is that correct?

CHAIRMAN AASHEIM: Will you yield, Mr. Johnson?

DELEGATE JOHNSON: Yes, I yield, and that is correct.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: That being the case, this section has no gas.

CHAIRMAN AASHEIM: What are you-1 don't understand what you said, Mr. Romney.

DELEGATE ROMNEY: Mr. Johnson's reply indicates that this section has no power or effect. It cannot-the candidates for the justices of the Supreme Court or the District Court, if they are included, will get no money. They get an authorization. Well, we already have an authorization in the statutes, in the corrupt practices act. They only allow a certain amount, so I don't see that this is getting anywhere unless the state appropriates some money.

CHAIRMAN AASHEIM: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I would like to suggest that there is a large difficulty in these words saying that no person or persons on his or her behalf shall expend money. There are citizens groups-like, for example, the League of Women Voters-who have very estimable political concern over candidates for public office. There are other groups of one kind or another who feel that they are very interested in the candidacy of some given judicial office, and I only am asking now if consideration shouldn't be given to the fact that we may be reaching this prohibition out so far in its hard constitutional language and reach, that we will inhibit the rights of citizen groups to take an interest in this sort of thing.

CHAIRMAN AASHEIM: The Chair would like to say that, if you vote for or against the original motion, you're going to do exactly what you are trying to do with the amendment, so I would recommend that we vote on Mr. Johnson's amendment and continue on and take care of the original motion.

Mrs. Bugbee.

DELEGATE BUGBEE: May I make a remark to Mr. Garlington? Mr. Garlington, the League of Women Voters doesn't support candidates, and we have absolutely not one red dime.

CHAIRMAN AASHEIM: Are you ready for the motion by Mr. Johnson to amend? Was there a roll call vote asked for on this? A roll call vote has been requested. As many as are in favor of the motion by Mr. Johnson to amend will vote Aye, and thoseapposed will voteNo. Haseveryone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone wish to change his vote?

(No response)

CHAIRMAN AASHEIM: The clerk will close the vote.

Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard..	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Absent
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay

Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Absent
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Absent

CLERK HANSON: Mr. Chairman, 6 delegates voting Aye, 87 voting No.

CHAIRMAN AASHEIM: 87 having voted No, 6 having voted Aye, the motion is lost.

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, I would now reassert my motion to amend, directed at page 38—I believe it's Section 15 of the Judicial Article as presently adopted. Is it necessary for me to give the page—or, I mean, the line number?

CHAIRMAN AASHEIM: If you're going to make a motion to amend, I'd like to have—

DELEGATE BRAZIER: All right.

CHAIRMAN AASHEIM: —the page and the lines.

DELEGATE BRAZIER: All right, page 38, line 8; following the words "Supreme Court", I move to strike the three words "and District Court". And, in addition, on page 38 at line 11, following the words "Supreme Court", I move to strike the words "or District Court".

Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Brazier.

DELEGATE BRAZIER: I waive further argument. I think what I've already said covers the situation. I retain my right to close, however.

CHAIRMAN AASHEIM: Yes. It's entirely up to you people. I can sit here all night if you want to discuss this thing very far.

Mr. Cate.

DELEGATE CATE: I sold about 40 tickets to the Judge banquet tonight, which starts at 6:30, and under Loendorf's amendment, I could be sued and taken to the Supreme Court—

CHAIRMAN AASHEIM: Right now you're going to be out of order if you aren't going to talk on the amendment.

DELEGATE CATE: I'm going to make a nondebatable motion that we recess until 8:30 this evening.

CHAIRMAN AASHEIM: All right, as many as are in favor of the motion to recess—until 9:30, did you say?

DELEGATE CATE: 8:30.

CHAIRMAN AASHEIM: Until 8:30 tonight—as many as are in favor of the motion to recess until 8:30, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Opposed?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is lost?.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: I'd like to ask-is the motion before us right now to delete Section 15 in its entirety?

CHAIRMAN AASHEIM: No, it's not. It's to amend Section 15.

DELEGATE ESKILDSEN: Well, let me ask you, was the first motion to delete it?

CHAIRMAN AASHEIM: Yes.

DELEGATE ESKILDSEN: Well then, I don't see how we can amend a section we're deleting. I think we have to vote on whether we're going to delete the whole section or not; and if we don't delete it, then we can go ahead to amend it; but I don't think you can amend a section that you're deleting.

CHAIRMAN AASHEIM: I'm doing okay. (Laughter) The Chair has been in error. We have been discussing and amending when we are out of order. The motion was to delete Section 15, and we shall now move-or vote on the motion to delete or not to delete.

Mr. Brazier, for what purpose do you arise?

DELEGATE BRAZIER: I just had the help of a parliamentary expert, I guess, Mr. Chairman. This will put it into focus, and I think we can dispose of the whole thing with maybe one more vote or two-not more than two. But I offer a substitute motion that we adopt Section 15 in the form in which I have described it-that is, with the deletion of the references to the District Court judges.

CHAIRMAN AASHEIM: Wait a minute, now. What's your substitute motion? (Laughter)

DELEGATE BRAZIER: All right- that we retain Section 15 as I amend it. I'll read it for you if you want me to burden the record.

CHAIRMAN AASHEIM: Well, will you restate your substitute motion, Mr. Brazier? Will you restate the substitute motion?

DELEGATE BRAZIER: I move, as a substitute motion, that we adopt as a provision of the Judicial Article a proposed Section 15, entitled "campaign expenses", which contains the following language: "The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly."

CHAIRMAN AASHEIM: Your motion is out of order. (Laughter) For what purpose do you arise, Mr. Martin?

DELEGATE MARTIN: A point of order.

CHAIRMAN AASHEIM: Point of order. State it.

DELEGATE MARTIN: As I understand it, we took the roll call vote on an amendment to Mr. Johnson's motion—

CHAIRMAN AASHEIM: Which was out of order.

DELEGATE MARTIN: -and we—

CHAIRMAN AASHEIM: The amendment was out of order, Mr. Martin.

DELEGATE MARTIN: Well, don't we have to dispose of Mr. Johnson's?

CHAIRMAN AASHEIM: We did, but it was out of order. (Laughter) We voted practically-6 to 87 but we were out of order discussing Mr. Johnson's amendment and Mr. Brazier's amendment, and now we're back to the motion by Mr. Burkhardt that we delete Section 15.

For what purpose do you arise, Mr. Harper?

DELEGATE HARPER: I rise to concur with you that we are right and that we are, right now, only a couple of minutes away from getting ready to adjourn. All we have to do, it seems to me, right now, as I understand it, is vote whether or not to delete Section 15.

CHAIRMAN AASHEIM: That's right.

DELEGATE HARPER: And if we delete Section 15, it's done; and if it isn't, then there, might be another amendment or two; but I was one of those who, with Mr. Burkhardt-

CHAIRMAN AASHEIM: For what purpose are you--what are you talking about now, Mr. Harper?

DELEGATE HARPER: I'm going to—

CHAIRMAN AASHEIM: We're on the motion to delete.

DELEGATE HARPER: That's exactly what I'm on. (Laughter)

CHAIRMAN AASHEIM: Okay—

DELEGATE HARPER: I was one of the two who arose to suggest that, since the vote was very close—46-45—and both Mr. Burkhardt and I voted for the prevailing side, we moved to reconsider. Mr. Burkhardt's had the time—

CHAIRMAN AASHEIM: Mr. Harper, you are out of order.

DELEGATE HARPER: No, I'm not. I haven't gotten to the end of my sentence.

CHAIRMAN AASHEIM: You are out of order.

DELEGATE HARPER: Mr. Chairman, I—

CHAIRMAN AASHEIM: If you want to appeal it, fine.

DELEGATE HARPER: I do appeal it. I'm trying to tell you what my conclusion is and why I think we ought to defeat it. Now, you tell me what I should say, and I'll say it.

CHAIRMAN AASHEIM: The Chair has ruled that you are out of order, and he has appealed the judgment. I ask the assembly to—

DELEGATE HARPER: Tell me why I'm out of order.

CHAIRMAN AASHEIM: Because we are on the motion to delete.

DELEGATE HARPER: And that is what I am speaking on.

CHAIRMAN AASHEIM: The Chair wants to know if you are going to recognize his motion.

UNIDENTIFIED DELEGATE: He doesn't have a motion.

CHAIRMAN AASHEIM: Mr. Harper, I guess you can talk. (Laughter)

DELEGATE HARPER: Mr. Burkhardt said, and he spoke for both of us, that we would like to hear more discussion on it. I think I probably speak for Mr. Burkhardt. I think we have heard all the discussion we are going to hear on it on either side, and I think we should now get along with the vote. My conclusion, after the discussion, is that I shall again vote to retain this, because I think it's a good section.

CHAIRMAN AASHEIM: For what purpose do you arise, Mr. Habedank?

DELEGATE HABEDANK: I desire to speak on this motion to delete, Mr. Chairman.

CHAIRMAN AASHEIM: All right

DELEGATE HABEDANK: I'm sorry that Reverend Harper thinks he's heard all the discussion there is on this. I haven't had a chance to be recognized. I would like to call to your attention, in deleting this motion-in deleting this section or leaving it in-that if you leave it in, the evils you are trying to cure may be worse than the pain that you're having. The situation here is, as you read this section, if you leave it in, is that the Legislative Assembly shall appropriate funds for the contested general election. And then you go on to say that "nor any person or persons on his behalf shall spend any money" and so forth. So what does this leave you if you follow this section? You have an appointed Supreme Court justice or district judge. Concededly, there are many people who think they have been put in office by some power that is trying to control them. All right. If they get in office, the only one who can receive money from the Legislature is the person who survives the primary, as I read this section-and the primary election-anyone can run for that job and there is no restriction on the amount of money that can be spent for the person to become successful in

the primary against the one who is incumbent and is going into the general election, so that you have placed no restrictions on that. The incumbent has publicity in regard to his office throughout the year or years that he's been in office. He has had his name before the public, and the next step you have put into this is you say to the Legislature, they shall appropriate funds. There is no amount in there. If the Legislature in its wisdom says there shall be $10,000 spent for each candidate-and I submit that this may be well what they shall say—how far would an opponent of an incumbent get in getting his name before the public with an appropriation of this kind? I therefore submit that, as worded, this section is worse than having none, even though we recognize the problem, and I feel that the best that we could do would be to say that the Legislative Assembly may appropriate funds for an election of this sort, but, to put it as we have it, with the restriction that we have, we are creating more problems than we have now.

CHAIRMAN AASHEIM: The Chair will advise you now if you vote to retain Section 15, you can then amend it as you see fit, but if it is rejected-that is, if you want to delete Section 15, of course, that kills it.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I think we're straying pretty far afield here, and I think that we've left a lot of things up to the Legislature to handle, and I think this is surely a Legislative Article and it should be deleted and left up to the Legislature.

CHAIRMAN AASHEIM: Are you ready to vote on the motion?

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman].

CHAIRMAN AASHEIM: Mr. Swanberg.

DELEGATE SWANBERG: No doubt, some time in the long-distant past, this same question was debated at length about candidates in general. There must have been, at some time in the past, a general dissatisfaction with large amounts of money being funneled in to one or two candidates for some office, and so the state Legislature passed a law that said they could only spend a certain percentage of their salary to run for this office. What happened? Immediately the club concept came into being. What I'm simply trying to point out here is that this proposal, well-intentioned though it may be, will probably be got around somehow, and the state will be on the hock for the basic campaign expenses, and some candidate will find some way of getting around it. Take the case of a person who, perhaps, wanted to see a certain judge elected and just went ahead on his own. How would you stop him from putting ads in the newspaper? There isn't any way that I can see, under this proposal, that it would stop him from doing that. Or how would you prevent him from hiring a very good public relations expert who, instead of using advertising, used it for getting newspaper articles in the newspaper all over the state? And how would you be able to prove that that was paid for? I submit that the proposal, well-intentioned though it might be, just as Mr. Habedank has stated, is going to create more problems than it will solve.

CHAIRMAN AASHEIM: Mr. Eskildsen.

DELEGATE ESKILDSEN: I have one more question that I would like to ask of the delegation. Suppose we set this-it should be set at $10,000 or some other figure for a justice, and suppose that a little country attorney decides that he wants to run for this office and he gets his $10,000 and the fellow who is really serious gets his $10,000, and the little justice spends a couple of thousand of that and pockets the $8,000. What's to keep this from happening?

CHAIRMAN AASHEIM: Mr. Schiltz, do you want to answer that?

DELEGATE SCHILTZ: Well, I'll tell you what will keep this from happening-and that's the Legislature is going to provide the rules, and it's provided in there that the Legislature will provide the rules. In response to your previous arguments about why don't we give some money to the Legislature-the candidates--I hope someday we will, and the Governor and everyone else, and we're going to come to it sooner or later, but in the meantime they have the advantage of running on a partisan ticket. I think we've really--we've said just about all that could be said on this subject. I'm eager for a vote.

CHAIRMAN AASHEIM: Mr. James.

DELEGATE JAMES: Will Mr. Schiltz yield, Mr. Chairman?

CHAIRMAN AASHEIM: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, indeed.

DELEGATE JAMES: Yes, has this been tried in any other state? I'm not familiar. I've heard it proposed, but I-is it in existence anywhere?

DELEGATE SCHILTZ: Not to my knowledge.

CHAIRMAN AASHEIM: Mr. Burkhardt, do you want to close?

DELEGATE BURKHARDT: Mr. Chairman, I wish that I was more informed with the long history of participation in our court system, because I feel that my concern in doing this was to be sure a fair test had been made of the real sense of the group. And I may just say that it seems to me that, as it stands, Section 15 may deserve some reworking, and for that reason I may vote for it—not because I like it in its current nature, but because maybe it deserves a chance to be worked over in some detail as it stands. Therefore, in fairness, we have a test and I close.

CHAIRMAN AASHEIM: I believe a roll call vote was asked for. Is that right?
Mrs. Babcock.

DELEGATE BABCOCK: May I ask how it will be worked over if a vote for this is—

CHAIRMAN AASHEIM: He closed, Mrs. Babcock. I think you're—

DELEGATE BABCOCK: Well, I just want you to explain to me what I'm voting for.

DELEGATE BURKHARDT: If you vote against deletion, there may be an opportunity to rework it. If you vote for deletion, then there will not be. And I don't feel that I'm required to vote for deletion, even though I moved in that way.

DELEGATE BABCOCK: Well, when would the chance be to work it over?

CHAIRMAN AASHEIM: If the motion, Mrs. Babcock, fails to delete, then you'll have an opportunity to amend it. That will depend.
Mr. Eskildsen.

DELEGATE ESKILDSEN: I was just going to say that, unless we do it right now, depending on how we rise and report makes a difference on what will happen to this article. If we rise and report and we finally report, then it will go to Style and Drafting. If we rise and report and beg leave to sit again, we can talk about it tomorrow, but it depends upon what motion is made there. And, if we delete this now, why, that will be the end of it. If we leave it in, why-but if we rise and finally report, why, that's the last we see of it till we get it back from Style and Drafting m-someone makes a motion to put it back on General Orders.

CHAIRMAN AASHEIM: Is that clear, Mrs. Babcock? Is that clear now?

DELEGATE BABCOCK: (Inaudible)

CHAIRMAN AASHEIM: As many as are in favor of the motion to delete will vote Aye, and those opposed will vote No. Has everyone voted?
(No response)

CHAIRMAN AASHEIM: Does anyone wish to change his vote?
(No response)

CHAIRMAN AASHEIM: The clerk will record the vote.

Anderson, J.	Aye
Anderson, 0	Aye
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock..	Aye
Barnard	Nay
Bates..	Aye
Belcher	Aye
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown..	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Nay
Cate	Nay
Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Aye

Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Absent
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

(President Graybill resumes chairmanship of the Committee of the Whole)

CLERK HANSON: Mr. Chairman, 49 delegates voting Aye, 47 voting No.

CHAIRMAN GRAYBILL: 49 delegates having voted Aye and 47 No, the section is deleted. Now, ladies and gentlemen-so there's no point in debating it further, I take it. Ladies and gentlemen, we have before us one more motion to reconsider. It's Mr. Aasheim's, on Section 8, page 43.

Mr. Aasheim.

DELEGATE AASHEIM: I'm going to withdraw my motion. (Applause)

CHAIRMAN GRAYBILL: Very well, are there other motions to delete-other motions to reconsider, rather? (No response) If not, Mr. Eskildsen, will you move that we rise and report?

DELEGATE ESKILDSEN: Mr. Chairman-and before I move to rise and report, I don't think there's any section left to reconsider, so we may as well rise and finally report.

CHAIRMAN GRAYBILL: Well, let's rise and finally report.

DELEGATE ESKILDSEN: So, I move that the committee rise and finally report and refer the Judiciary proposal to Style and Drafting.

CHAIRMAN GRAYBILL: The motion is to rise and finally report and refer the Judiciary proposal to Style and Drafting. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The motion carries. Now, if you'll wait just a minute while the typist types this up, we'll go into the Convention and we'll do that; and then if you'll wait just a minute, we'll all adjourn and we'll all have an equal chance at dinner.

Mr. Martin, for what purpose do you rise?

DELEGATE MARTIN: I apologize, Mr. President [Chairman]. I wonder, while we're waiting for this, if I may-might relate something about a telephone call that I had to Washington, D.C., today?

CHAIRMAN GRAYBILL: Yes, you can. Go ahead.

DELEGATE MARTIN: It was the pleasure of John Toole, the Vice-President, and myself to talk with Senator Burton K. Wheeler who, Sunday, observed his 90th birthday; and we expressed our congratulations to him; and he went on to say that for his 100th birthday, he hoped there would be no Constitutional Convention and perhaps he might have his 100th birthday celebration in Montana. I think it would be appropriate if the President would write him a letter of congratulations, and I so move.

CHAIRMAN GRAYBILL: The motion has been made that the Chairman write a letter to Burton K. Wheeler, congratulating him on his birthday. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Mr. Martin, you'll have to help me get that done tomorrow. Now, will the clerk please read the title of the committee report.

CLERK HANSON: "February 29, 1972. Mr. President, we your Committee of the Whole, having had under consideration Report Number 5, minority report of the Committee on Judiciary, recommend as follows:-"

CHAIRMAN GRAYBILL: Mr. Eskildsen—First of all, the Chair would like to know if anyone wants the Committee of the Whole report read in its entirety?

DELEGATES: No.

CHAIRMAN GRAYBILL: If so, stand and make yourself known; otherwise we will defer reading the Committee of the Whole report. (Laughter)

Mr. Eskildsen, will you make a motion?

DELEGATE ESKILDSEN: I move the committee-I move we adopt the Committeeofthe Whole report.

CHAIRMAN GRAYBILL: The motion is that we adopt the report of the Committee of the Whole. All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: The Ayes have it.

(President Graybill in Chair of Convention)

PRESIDENT GRAYBILL: On Order of Business Number 11, the Chair would like to call to your attention that you got some yellow sheets-you ought to take them home for your wives, since it affects tomorrow's agenda; that is, they're not going to have a meeting tomorrow, and you ought to let her know that. Secondly, Mrs. Babcock, I think it would not be out of order, would it, if I announced that you're still going to have dinner for us tomorrow night? Third, the Chair would like to announce that my faith in the democratic process is restored. We finished the Judiciary Article in one day. We can start in on the schedule tomorrow morning.

Mr. Eskildsen, do you want to make a motion to adjourn?

DELEGATE ESKILDSEN: Mr. President-

PRESIDENT GRAYBILL: Just a moment, Mr. Champoux wants to make a motion.

DELEGATE CHAMPOUX: May I make an announcement, please, sir?

PRESIDENT GRAYBILL: You may make an announcement, yes.

DELEGATE CHAMPOUX: Education Committee, in the committee room at 8:30 tomorrow morning, please.

PRESIDENT GRAYBILL: Education, at 8:30 **tomorrow.**

Mr. Schiltz.

DELEGATE SCHILTZ: Cut and shoot committee, at 8 o'clock tomorrow morning, as usual.

PRESIDENT GRAYBILL: Are there other announcements? (No response)

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that we adjourn until Wednesday, March lst, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Thank you.

(Convention adjourned at 6:50 p.m.1

March. 1, 1972 **Thirty-Fifth Day** **Convention Hall**
9:02 a.m. **Helena, Montana**

VICE-PRESIDENT BROWN: The Convention will come to order. If the Convention will come to order and please rise, Mr. Champoux will say the invocation.

DELEGATE CHAMPOUX: Lord God of Heaven, who hath so lavishly blessed this land, make us, thy people, to be humble. Keep us ever aware that the good things we enjoy have come from Thee, that Thou didst lend them to us. Impress upon us the knowledge that we are not owners, but stewards. Remind us, lest we become filled with conceit, that one day areckoning will be required of us. Sanctify our love of country, that our boasting may be turned into humility and our pride into a ministry to men everywhere. Help us to make this God's own country by living like God's own people. Amen.

VICE-PRESIDENT BROWN: Can we have the roll? All those present will vote Aye on the voting machine.

CLERK HANSON: Mr. President, May Delegates Mahoney and Toole be excused, please?

VICE-PRESIDENT BROWN: Let the record show they're excused.

CLERK HANSON: Delegate Anderson, John; Delegate Aronow; Delegate Babcock; Delegate Berg; Delegate Blaylock; Delegate Bugbee; Delegate Dahood; Delegate Drum; Delegate Foster; Delegate Hanson, Robert S.; Delegate Hanson, Rod; Delegate James; Delegate Kelleher; Delegate Loendorf; Delegate Mansfield; Delegate Roeder; Delegate Speer; Delegate Sullivan.

VICE-PRESIDENT BROWN: The record will show that Burkhardt, Berg, Blaylock, Garlington, Loendorf, Roeder and Speer are present. They're in Style and Drafting.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Absent
Artz	Present
Ask	Present
Babcock	Absent
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Absent
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Absent
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Absent
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Absent
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen	Present
James	Absent
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Absent
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Excused
Mansfield	Absent

Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Absent
Murray	Present
Noble	Absent
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Absent
Swanberg	Present
Toole	Excused
Van Buskirk	Present
Vermillion	Present
Wagner	Absent
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

[Editor's note: The official Roll Call on file with the Historical Society shows 97 present, 2 excused and 1 absent (Kelleher)]

CLERK HANSON: Mr. President, quorum is present.

VICE-PRESIDENT BROWN: Report of Standing Committees.

CLERK HANSON: None, sir.

VICE-PRESIDENT BROWN: Report of Select Committees.

CLERK HANSON: None.

VICE-PRESIDENT BROWN: Communications.

CLERK HANSON: None.

VICE-PRESIDENT BROWN: Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

VICE-PRESIDENT BROWN: Final Consideration of Proposals.

CLERK HANSON: None, sir.

VICE-PRESIDENT BROWN: Adoption of Proposed Constitution and Ballot.

CLERK HANSON: None.

VICE-PRESIDENT BROWN: Motions and Resolutions.

CLERK HANSON: None.

VICE-PRESIDENT BROWN: Unfinished Business.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, fellow delegates. It's my pleasure this morning to introduce to you the pages for this week. Where are the pages? Would they all come forward, please, at this time. Are we on? Okay. All pages up to the front, please. Why don't you all sit down, and then as I call your name, you can stand. Who's going to make the response this morning? Okay, very good. Barry Annala of Great Falls; Clark Christian of Helena; Gail Downey of Kalispell; Sandy Halverson, Kalispell; Margo Hickman of Harlowton; Marcia Holland of Butte; Chris Miller (commonly called Tiff) of Butte; Becky Reber of Helena: Mike Trudeau of Butte; and Tom Zuelke of Miles City. One of the gentlemen there will make the response. Welcome to the Convention.

UNIDENTIFIED PAGE: Mr. President and delegates. I'd like to first say that, on behalf of myself and all the other pages--very honored to be here. And that any way we can help, just call us. We'll do anything we can. Thank you.

(Applause)

VICE-PRESIDENT BROWN: I'd like to thank the pages for being here. You'll all receive copies of the journal with your names therein.

Thank you again.

Number 9, Special Orders of the Day.

CLERK HANSON: None.

VICE-PRESIDENT BROWN: Number 10, General Orders of the Day.

DELEGATE ARONOW: Mr. Chairman, I am present.

VICE-PRESIDENT BROWN: Will the record show Mr. Aronow present? Rod Hanson present. Dave Drum present. We'll show you present, then. Mrs. Mansfield is shown present.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman [Vice-President]. I move that the Convention resolve itself into Committee of the Whole.

VICE-PRESIDENT BROWN: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE-PRESIDENT BROWN: Opposed, NO.

(No response)

VICE-PRESIDENT BROWN: The Ayes have it. Mr. Felt will now take the Chair.

(Committee of the Whole chairmanship assumed by Mr. Felt)

CLERK HANSON: "March 1, 1972. The following committee proposals are now on General Orders: Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 1, Style and Drafting Number 2."

CHAIRMAN FELT: Members of the committee will please be in order. We have, for our consideration, reports of the Committee on Style and Drafting. The first one deals with suffrage and elections. We'll give you a moment, perhaps, to locate those, in case you don't have them on your desks in a usable form. And I have had no opportunity to review this with the Chairman of the committee, but I'm sure we can get along fine. And if you would like, Mr. Chairman, we could have the clerk read Section 1, or did you wish to make some opening statement, perhaps, since we haven't gone through this?

DELEGATE SCHILTZ: Why don't I make the usual motion, and then let's proceed from there?

CHAIRMAN FELT: Go ahead.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Style and Drafting Committee Report Number 1, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Would you express yourself as to just how much of the proposed article you are embracing within that motion?

DELEGATE SCHILTZ: I think, inasmuch as this is the first report of the Style and Drafting Committee, that possibly we can establish a format for this purpose. I think it would— The rules, of course, require that we go through things section by section, but what I would like to do is go through the entire thing and make my comments as we go along. And then, if anybody wants to revert back to one section, we can do it.

CHAIRMAN FELT: All right. Let the-1 think we'll just have you make your comments, and then you can restate your motion specifically as to what you're embracing within the motion after you have completed your comments.

DELEGATE SCHILTZ: All right. Now, if you will all take the report marked "Number 1", on Suffrage and Elections-and it's labelled "addendum". Now, the addendum reads as the proposed article will read when the Convention finally adopts that article. That's without any additions or deletions; that's after all the additions and deletions have been made. Now, then, you won't need to worry about that now because we'll work from the one that's entitled "Number 1", on Suffrage and Elections. If you'll turn to the second page of that, you'll see that the way the material came to Style and Drafting Committee is exactly as it is on this page, except for the strikeouts and the underlines. So, you can tell, if you look at Section 1, that we made no changes whatever. Where we struck out words, we struck through them; and where we supplied new material, we underlined. So, on Section Number 1, "Ballot. All elections by the people shall be by secret ballot", there are no changes. Now, also, when we made any changes-at the back, the last item in this thing will be our com-

ments, which will explain the changes we made. Now, Mr. Chairman, I've got that point. We can either move to adopt Section 1 or we can go through the entire thing.

CHAIRMAN FELT: We'll take it section by section, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Style and Drafting Report Number 1, Section 1, that it recommend the same be adopted.

CHAIRMAN FELT: Mr. Schiltz, are your comments that you've already made sufficient for this one?

DELEGATE SCHILTZ: We didn't make any changes in Section 1.

CHAIRMAN FELT: The question now arises on the motion of Delegate Schiltz that when this committee does arise and report, after having had under consideration Section 1, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 2.

DELEGATE SCHILTZ: Mr. Chairman. Section 2-you will note that we struck out various words, and if you'll look at the comment, you'll see why. We made only grammatical changes, in the interest of brevity and style and without altering any substance whatever in the section.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 2 of the Style and Drafting Report Number 1, it recommend the same be adopted.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 2, that the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 3. Let's have the clerk read Section 3, Mr. Schiltz.

CLERK HANSON: "Section 3, Elections. The Legislature shall provide, by law, the requirements for residents' registration, absentee voting and administration of elections. It may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses of the general electoral process." Mr. Chairman, Section 3.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 3 of Style and Drafting Report Number 1, that, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: There are no substantive changes, only language changes.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 3, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 4.

CLERK HANSON: "Section 4, Eligibility for public office. Any qualified elector is eligible to any public office, except as otherwise provided in this Constitution. The Legislature may provide additional qualifications, but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision." Mr. Chairman, Section 4.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 4 of Style and Drafting Report Number 1, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: You'll note, in the comments as to Section 4, that we deleted language from lines 22 and 23 and only repeated the qualifications set forth in Section 2. The form of lines 25 through 28 was changed to avoid the presence of "except", "subject to", and "provided however" in the same sentence. That's all, Mr. Chairman.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 4, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.

CLERK HANSON: "Section 5, Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected." Mr. Chairman, Section 5.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 5 of Style and Drafting Report Number 1, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: You'll note from the comments there that we deleted some material that was superfluous. The words "by the people", in line 29, we left in to assure certainty that elections were political, as opposed to corporate elections, for example. We changed "the highest number of legal votes" to "the largest number", and we struck the word "legal", because a vote is either legal or it's illegal and it isn't a vote if it's illegal. That's all, Mr. Chairman.

CHAIRMAN FELT: The question arises on the motion that when this committee does arise and report, after having had under consideration Section 5, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 6.

CLERK HANSON: "Section 6, Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning from, unless apprehended in the commission of a felony or a breach of the peace." Mr. Chairman, Section 6.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 6 of the Style and Drafting Report Number 1, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Now, here's a point where I want to alert the Convention and the committee. We struck out the language completely which had been incorporated on the motion of Mr. Leuthold, from the present Constitution. We had considerable debate in the Style and Drafting Committee as to what exactly was intended. That particular section of the present Constitution has never been interpreted, probably never will be, but in any case, we thought that the intent of that old section was to protect people from overzealous mayors and sheriffs and national guards and that sort of thing on the day of election. So, if you'll consider the old one, you'll see that somebody who was at large, having committed a felony at some time in the past, was exempt from arrest at the time of the election or near the polling place. So we changed that to read: "A qualified elector is privileged from arrest, unless apprehended in the commission of a felony or a breach of the peace, at the

polling place or in going to or returning therefrom." That's the extent of the comment, but I wanted to point out to you that we made a substantial change. We, ourselves, interpreted the meaning.

CHAIRMAN FELT: Any discussion? If not, the question arises on the motion that when this committee does arise and report, after having had under consideration Section 6, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Members of the committee, we will now proceed immediately to Report Number 2 of the Committee on Style and Drafting, dealing with Constitutional Revision. Mr. Schiltz, if you're prepared now, I believe you can again make a general statement, if you wish to do that, and then we will hear motions.

DELEGATE SCHILTZ: All right, Mr. Chairman. You'll see that in this second section, we now have the format that we're going to use from now on. The first part of the report, we print the way the article will read, without having to read over deletions and additions of material. For the purposes of this committee report, we will work, starting at page 5, where we have the material supplied us by the Convention. Will you have the clerk read Section 1.

CLERK HANSON: "Section 1, Constitutional Convention. The Legislature, by an affirmative vote of two-thirds of all the members. whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be a convention to revise, alter or amend this Constitution." Mr. Chairman, Section 1.

CHAIRMAN FELT: Mr. Schiltz

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I expect here, for a little while, we're going to have some changes that we've made that possibly the committee does not accede to. We attempted to find out what the committee really intended and, in one or more cases, got memoranda from one or more members of the committee. So at this point, be prepared to get some objections from the committee members or the authors. In Section 1, instead of "the voters", we put in "the qualified electors", to conform with what the committee had done on suffrage and elections. We added titles where they were necessary; used "qualified elector" instead of "legal voter". I think that's the only major change. Let me see; oh, here we are. We struck the words "of the state", because we couldn't figure out anywhere else it might apply. Then we had some problem with whether there shall be an unlimited convention. According to the way the committee interpreted it, a convention is an unlimited convention. If you say "unlimited convention", you then raise the specter of the possibility of a limited convention, which is nowhere defined so far as we could tell. Now, I think I cleared that with Mr. Habedank, and our comments cover that.

CHAIRMAN FELT: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The General Government Committee had a meeting this morning, and we're in agreement on everything in Section 1 except the word "unlimited". And the reason that Style and Drafting deleted the word "limited" was the reason that the committee had put it in in the first place. The committee felt that there should be no power to call a limited convention; that if a convention is called, it should be an unlimited one. But to go further into the thinking of the committee, I'd like to defer to Delegate Habedank at this time.

CHAIRMAN FELT: The gentleman, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. Mr. Etchart has set forth succinctly the thinking of the committee. It was our feeling that any time the Legislature and the people of the State of Montana spent the money and had people come in for a convention, that then there should be no question arise but what the Convention itself had the power to change or recommend changes as to any part of the Convention.

CHAIRMAN FELT: Mr. Habedank. Could you-if you intend to make a motion, could you

make it and then speak on your motion? If you do not wish to, you do not have to, but—

DELEGATE HABEDANK: I will. Mr. Chairman, I move that the words-the letter "n" and the word "unlimited"-be reinserted into Section 1 as it appears on line 12, page 5, and on line-1 can't find it. Well, that would be a separate motion. I'm referring to Section 1, and it would be in the corresponding section on the corrected copy without the deletions.

CHAIRMAN FELT: We'll work from page 5.

DELEGATE HABEDANK: All right, fine. The section, as I would have it amended, would read: "The Legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter or amend this Constitution." As Mr. Schiltz has pointed out—

Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: As Mr. Schiltz has pointed out, by their own interpretation, the fact that the word "unlimited" is in there may prevent the calling of a limited convention. That was the exact intent of the committee, that there should be no limited convention. It is our feeling that the amendment procedures which have been adopted by this Convention take care of any need for limited conventions. You can submit amendments as to a given subject. There is no limit as to the amount on amendments and that any time in the future a convention is called, it should be unlimited and that no one should ever be able to challenge the right of the Convention to tackle any portion of it. Therefore, we recommend that the words "an unlimited" be reinserted.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. The committee only wants to know what the Convention wants in that connection, and that will be the committee's policy throughout. I do want to say, however, that the committee works from what we hear and see on the floor and from the reports we get. We got led down the primrose path on this one because the committee's comments said that "unlimited" was in the Constitution we're now working with, and we got thrown off the track for a little while. Then we decided that they didn't intend what they meant. But in any case—

Mr. Chairman.

CHAIRMAN FELT: Yes, Mr. Schiltz

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 1 of Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted as amended.

CHAIRMAN FELT: We have not adopted the amendment as yet, Mr. Schiltz. The question arises on the motion of Delegate Habedank to amend Section 1, line 12, page 5, of our report by inserting--reinserting-the words "an unlimited", which are crossed out on the report which is on your desks. Does anybody feel they need any further explanation of the question? If not, the question now arises on the motion to make this amendment. All those in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 2.

Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 1, as amended, that it recommend the same be adopted.

CHAIRMAN FELT: Yes. The question now arises on the motion of Delegate Schiltz that when the committee does arise and report, after having had under consideration Section 1, as amended, it recommend the same be adopted.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: I move that this same amendment be made on line—

CHAIRMAN FELT: Mr. Habedank, if

you're getting out of Section 1, we'll act on it and then we'll proceed to Section 2.

DELEGATE HABEDANK: I thought we had completed Section 1.

CHAIRMAN FELT: No. I did act that way, but we have not actually done so. The question now arises on the motion to accept Section 1, as amended. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 2.

CLERK HANSON: "Section 2, Initiative for constitutional convention, subparagraph 1. The people may, by initiative petition, direct the Secretary of State to submit to the qualified electors the question of whether there shall be a convention to revise, alter or amend this Constitution. The petition shall be signed by at least 10 percent of the qualified electors of the state. The numbers shall include at least 10 percent of the qualified electors, each two-fifths of the legislative districts. Subparagraph 2. The Secretary of State shall certify the filing of the petition in his office and then cause the question to be submitted at the next general election." Mr. Chairman, Section 2.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 2 of Report Number 2 of the Style and Drafting Committee, it recommend the same do pass. Before Mr. Habedank makes his motion to amend, I would like to say that we took up with Mr. Habedank the problem at the bottom of that section, of where that two-thirds shall come. We spelled it out so that there can be no question that-or two-fifths, I guess it is, must come from each of those districts. Otherwise, we only made style and drafting changes. We used the words "qualified electors" instead of "voters of the state", and we changed "must" to "shall", which will run throughout the Constitution. And I think that's all.

CHAIRMAN FELT: Members of the committee. Before we proceed, we are in this instance taking up old subsections 1 and 2 at one time here in Section 2. Hereafter, we will be dealing with subsection by subsection. If anyone has any objection now to dealing with both 1 and 2 at the same time, he may say so-change it.

The gentleman, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move that on line 18, page 5, the words "an unlimited" be reinserted.

CHAIRMAN FELT: The question now arises on the motion that when this committee— on the motion to amend Section 2, on page 5, line 18, by reinserting the words "an unlimited". All those in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Report Number 2 of the Style and Drafting Committee, that it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the committee, the question now arises on the motion that when this committee does arise and report, after having had under consideration Section 2, as amended, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 3.

CLERK HANSON: "Section 3, Periodic session submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the 20th year following the last submission." Mr. Chairman, Section 3.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 3 of Report

Number 2 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Except for some stylistic changes, we made a significant change here that we took upon ourselves, and it should be explained to the Convention. We added "as provided by law". The problem of the committee was by whom this should be submitted. The section was silent on the subject, and we thought that there should be some provision in there how it should be submitted, so we put "as provided by law", so that the Legislature can take care of that. Otherwise, we conceived that this thing could never be capable of execution. This is a substantive change.

CHAIRMAN FELT: Any discussion? If not, the question arises on the motion that when this committee does arise and report, after having had under consideration Section 3, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. Section 4.

CLERK HANSON: "Section 4, Call a convention. If a majority of those voting on the question answer in the affirmative, the Legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger body of the Legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the Legislature. The Legislature shall determine whether delegates may be nominated on a partisan or nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates." Mr. Chairman, Section 4.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4 of Report Number 2 the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: These are all stylistic changes and working changes, in order to make the thing read better. I don't think of any problem we may have-that should be called to your attention, other than what you can see, except if you will look at-starting at line 14. At that point, we said "The Legislature shall" instead of "The Legislature may", and then, in the next subclause, we changed "shall" to "may". In fact, you can see we reversed them now. As we got it, it said, "The Legislature may determine whether the delegates shall be elected after nomination". We changed it to, "The Legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan-". We considered that to be something significant that ought to be done, and if there's any objection the committee should know it and debate it. Otherwise, there are no major changes.

CHAIRMAN FELT: Members of the Convention, is there any discussion on Section 4?

Mr. Brazier.

DELEGATE BRAZIER: Would the gentleman, Mr. Schiltz, yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE BRAZIER: Directing your attention, Mr. Schiltz, to line 19 on page 6 of your report, where-well, the whole sentence reads: "They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates." Perhaps you could clarify some confusion which arises in my mind, with respect to the language determining the number of delegates.

DELEGATE SCHILTZ: Mr. Brazier, we aren't fooling with that, because that's the way we got it. The only thing we did; as that read before, we added "are the members". It said, "They shall be elected at the same place and in the same districts as the legislative body determining the number of delegates." We added, "as are the members of the legislative body". If you had a problem on that, you should have debated it in the Committee of the Whole when this proposition was before the house.

CHAIRMAN FELT: Mr. Brazier.

DELEGATE BRAZIER: I hate to burden the proceedings of the Convention. Perhaps you could answer the question. I am not sure I heard Mr. Schiltz's last remark. Did he say that it's too late?

CHAIRMAN FELT: That was the general tenor of his comments. We're not dealing with matters of substance here.

DELEGATE BRAZIER: All right. Thank you, your honor.

CHAIRMAN FELT: You can speak again. (Laughter) Members of the Committee, you now have before you the question-the motion-that when this committee does arise and report, after having had under consideration Section 4, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 5.

CLERK HANSON: "Section 5, Convention expenses. The Legislature shall, in the act calling the Convention, designate the day, hour and place of its meeting and fix and provide for the pay of its members and officers and the necessary expenses of the Convention." Mr. Chairman, Section 5.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5 of Style and Drafting Proposal Number 2, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: There are no changes here that need to be noted. We just changed "Legislative Assembly" to "Legislature", which is going to be the rule throughout; and otherwise, just stylistic changes.

CHAIRMAN FELT: Members of the committee, the question now arises on the motion that when this committee does arise and report, after having had under consideration Section 5 of Report Number 2 of the Committee on Style and Drafting it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 6.

CLERK HANSON: "Section 6, Oath—vacancies. Before proceeding, the delegates shall take the oath provided in this Constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the Legislature, if not otherwise provided by law." Mr. Chairman, Section 6.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of Style and Drafting Proposal Number 2, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I don't pick up any significant changes here that need to be discussed. I think it's just mostly stylistic.

CHAIRMAN FELT: Members of the committee, you now have before you the question on the motion that when this committee does arise and report, after having had under consideration Section 6 of the Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 7.

CLERK HANSON: "Section 7, Convention duties. The Convention shall meet after the election of the delegates and prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary. They shall be

submitted to the qualified electors for ratification or rejection, as a whole or in a separate article for amendments, as determined by the Convention, at an election appointed by the Convention for that purpose, not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect." Mr. Chairman, Section 7.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 7 of Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, no changes. Nothing that should be noted; merely style changes.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 7 of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Section 8.

CLERK HANSON: "Section 8, Amendment by legislative referendum. Amendments to this Constitution may be proposed by any member of the Legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns, unless the amendment provides otherwise." Mr. Chairman, Section 8.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 8 of the Style and Drafting Report Number 2, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: What we did here, really, was to combine two sections, Sections 8 and 9. We considered that they were the same subject. We changed the heading from "Constitutional amendment by the Legislature" to read "Amendment by legislative referendum". Otherwise, only style changes.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 8 of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read subsection 1 of Section 9.

CLERK HANSON: "Section 9, Amendment by initiative, subsection 1. The people may also propose constitutional amendments by initiative. Petitions, including the full text of the proposed amendment, shall be signed by at least 10 percent of the qualified electors of the state. The numbers shall include at least 10 percent of the qualified electors in each of the two-fifths of the legislative districts." Mr. Chairman, subsection 1, Section 9.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration subsection 1 of renumbered Section 9 [of] the Committee on Style and

Drafting Committee Report Number 2, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: You'll note I said this was renumbered 9. In the last one, we combined 8 and 9. The only change we made here of any significance is that the number of signers—we spelled out because of what we had done in Section 2 of this same article.

CHAIRMAN FELT: The question arises on the motion that when this committee does arise and report, after having had under consideration subsection 1 of renumbered Section 9, Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read subsection 2.

CLERK HANSON: "Subsection 2. The petition shall be filed with the Secretary of State, who shall check and certify the validity of the signatures thereon. If the petitions are found to have been signed by the required number of electors, the Secretary of State shall cause the amendment to be published, as provided by law, twice each month for two months previous to the next regular statewide election." Mr. Chairman, subsection 2.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having bad under consideration subsection 2 of Section 9, Committee Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: We made a change here that we're going to have some trouble with. In the interest of tight styling, we struck the words, on line 12, "caused the same to be checked" and wrote in just "checked". Now, Mr. Habedank advises me that the Secretary of State has no facilities to do that checking, and he may want that language restored.

CHAIRMAN FELT: The gentleman, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move that subsection 2 of Section 9 be amended by putting a period after the word "state" in line 12 and striking all the remaining words, so that the next sentence will read, beginning on line 14, "If the petitions are found".

Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: First, before I proceed to explain what we've done, I want to commend the Style and Drafting Committee for what I consider one of the finest jobs of revamping English I've seen. If they are as thorough and as consistent in the rest of the Constitution as they've been in the first two articles, I think we will have a model that other states will be copying for years. The change they have made in Section 2 can, in our opinion, cause considerable trouble. The Secretary of State's office has no facilities for checking and certifying petitions. As a practical matter, these are done by the clerks and recorders throughout the state, and then they're filed with the Secretary of State. We feel the amendment will meet this situation and make the words read similarly to what they will read in the petitions on initiative and other matters which are to be filed. We think that this will be adequate and will meet the approval, we hope, of Style and Drafting as they attempt to take words out of the Constitution.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting, I'm sure, has no problem on this. On behalf of the committee, I thank Mr. Habedank for his encomium. After I lost my ewe lamb yesterday, this may be all I'm going to get out of this place. (Laughter)

CHAIRMAN FELT: Mr. Clerk, would you read the motion before the Convention now.

CLERK HANSON: "Mr. Chairman. I move to amend on page 8, subsection 2, of Section 9, beginning on line 12, by placing a period after the word "state" and deleting the remainder of language in line 12, 13, and the first two words in line 14, so that it would read: 'The petition shall be filed with the Secretary of State. If the petitions are found to have been signed by the required number of electors-"'

CHAIRMAN FELT: Does everyone feel satisfied that they have the substance of the motion before them? The question now arises on the motion to amend subsection 2 as stated. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection 2 of Section 9, Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the committee. The question arises on the motion that when this committee does arise and report, after having had under consideration subsection 2 of Section 9, Report Number 2, Committee on Style and Drafting, as amended, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read subsection 3.

CLERK HANSON: "Subsection 3. At the election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise." Mr. Chairman, subsection 3.

CHAIRMAN FELT: Mr. Schiltz

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration subsection 3 of Section 9 of the Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: There are no significant changes there--only for style.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration subsection 3 of Section 9 of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 10.

CLERK HANSON: "Section 10, Petition signers. The number of qualified electors required for the filing of any petition provided for in this article shall be determined by the number of votes cast for the Governor in the preceding general election." Mr. Chairman, Section 10.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 10 of Report Number 2 of the Style and Drafting Committee, recommend the same be adopted.
Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: As you will see, we completely rewrote this particular section, and there may be a problem here so far as the committee is concerned. As it reads now, there's no problem with the language; I think that's approved to some extent. As it reads now, the number of votes in this entire article are necessary to make up two-fifths or, wherever it's required, shall be determined by the number of votes cast for Governor in

the preceding general election. I don't know if Otto has any trouble with that or not, or if it's all the votes cast for two candidates, or if it's all the votes cast for one candidate. It possibly should be spelled out.

CHAIRMAN FELT: A motion would be in order. You moved the adoption, did you not, Mr. Schiltz? Yes, then a substitute motion would be in order.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN FELT: Mr. Habedank.

DELEGATE HABEDANK: I move that Section 10 be amended, on line 4 of page 9, by adding, between the words "for" and the word "Governor", the words "the office of', so that line 4 would read: "for the office of Governor in the preceding general election".

Mr. Chairman.

CHAIRMAN FELT: Yes, Mr. Habedank.

DELEGATE HABEDANK: The committee approves of the rewording of Section 10 as it has been done by the Style and Drafting Committee. However, we feel that if the word just "for Governor" is left in, the comments should show that it is the intention of this Convention that it should be the votes cast for "the office of Governor", rather than just for "Governor". And we feel that in the interest of clarity and to prevent any further questions arising in the future, the three additional words should be in there. We have inserted them elsewhere in like wording in initiative and referendum petitions, so that wherever we have drawn sections for the Constitution, in all instances, it reads "for the office of' rather than just for the position.

CHAIRMAN FELT: Is there any further discussion? We have before us the motion to amend--substitute motion-1 believe-way it was put, wasn't it, Mr. Habedank? Yours was a substitute motion?

DELEGATE HABEDANK: Just a motion to amend.

CHAIRMAN FELT: A motion to amend, all right. If there's no further discussion, the question now arises on the motion to amend. We'll have the clerk read the amendment.

CLERK HANSON: "Mr. Chairman. I move to amend, on page 9, Section 10, of the Style and Drafting Report Number 2, in line 4, by inserting the words 'the office of between the words 'Governor' and 'for'."

CHAIRMAN FELT: You've heard the amendment. All those in favor of the motion to amend will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Members of the committee, the question now arises-No.

Mr. Schiltz, perhaps you should restate your motion to adopt, as amended.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of the Style and Drafting Report Number 2, that it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the committee, you now have before you the question that when this committee does arise and report, after having had under consideration Section 10, as amended, of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 11.

CLERK HANSON: "Section 11, Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted on separately." Mr. Chairman, Section 11.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having

had under consideration Section 11 of Style and Drafting Report Number 2, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN FELT: Mr. Schiltz.

DELEGATE SCHILTZ: We've only made style changes here. I don't see anything that needs to be called to the attention of the committee.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 11, Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Report Number 2 of the Style and Drafting Committee, that it recommend the same be adopted as amended.

CHAIRMAN FELT: Members of the committee, you now have before you the question that when this committee does arise and report, after having had under consideration Report Number 2 of the Committee on Style and Drafting, as amended, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.
The gentleman, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. For the information of the members of the Committee of the Whole, we'll be going in and out of the Committee of the Whole this morning, and because we have other business under the business of the Committee of the Whole, such as the Natural Resource Proposal, today, we'll ask leave of the committee and I'll make the motion now so that you understand. I so move that we pass consideration at this sitting of any further business under Committee of the Whole, Mr. Chairman.

CHAIRMAN FELT: Mr. Eskildsen. Are you-your explanation sufficient for your purposes?

DELEGATE ESKILDSEN: I think so.

CHAIRMAN FELT: The question before the committee is to pass consideration, at this time, of any further business to come up in Committee of the Whole. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.
Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Committee of the Whole rise in final report.

CHAIRMAN FELT: Without objection, members of the committee, we will revert to the end of Report Number 1 of the Committee on Style and Drafting.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I think I neglected to offer the entire Report Number 1. So, at this time, I move that when this committee does arise and report, after having had under consideration Report Number 1 of the Style and Drafting Committee, it recommend the same be adopted.

CHAIRMAN FELT: Mr. Schiltz. Would it satisfy you and parliamentary procedure if we combined in one motion to adopt Reports 1 and 2, as amended?

DELEGATE SCHILTZ: Fine.

CHAIRMAN FELT: We can take it at this time. Members of the committee, the question arises on the motion that when this committee does arise and report, after having had under consideration Reports Numbers 1 and 2, as amended, of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that we rise in final report and refer Constitutional Revision Number 2 and Suffrage and Election Number 1 proposals to Style and Drafting.

CHAIRMAN FELT: Do what, Mr. Eskildsen? Reports Numbers 1 and 2—

DELEGATE ESKILDSEN: **Excuse me,** to Order of Business Number 5.

CHAIRMAN FELT: Final Consideration of Proposals. Does everyone understand? Mr. Schiltz, where are you? Perhaps--would you like to just make a brief statement as to the effect of this motion, because it's the first time the motion has come before the Convention.

DELEGATE SCHILTZ: I thought I was all through, Mr. Chairman.

CHAIRMAN FELT: Well, I could have called on someone else. I didn't notice you were busy. Mr. Murray, would you like to discuss this, as you're Chairman of the Committee on Rules.

DELEGATE MURRAY: Mr. Chairman. The explanation is that, after we have completed the work in the Committee of the Whole on the reports from Style and Drafting and the reports have been adopted section by section, the articles will be referred to Order of Business Number 5 and voted on finally there without debate. And that will be, for those who are experienced with legislative action, a third-reading Order of Business. And Mr. Eskildsen's motion is to that effect. Now, today, because we have not announced that we have any business under Order of Business Number 5, we will not be going to that Order of Business. We will be going to Order of Business Number 1 and advancing directly to Order of Business Number 10 again, so we will not be casting this. And you should know a day in advance that you will be required to be here to vote under Order of Business Number 5, because that's the roll call stage and everybody will want to cast their votes at that time, I'm sure.

CHAIRMAN FELT: The clerk will now reread the motion that is before us, which, in essence, is to have the committee rise and finally report and to refer these two reports to Order of Business Number 5, Final Consideration of Proposals. I believe, with that explanation, I won't have to ask the clerk to reread it. Does anyone have any questions about what you're about to vote on? If not, all those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.

(Committee of the Whole Chairmanship assumed by Mr. Brown)

CLERK HANSON: "March 1, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 1 on Suffrage and Elections of the Committee on Style and Drafting, recommend as follows: That Section 1 be adopted; Section 2 be adopted; Section 3 be adopted; Section 4 be adopted; Section 5, Section 6 be adopted. On the Report Number 2 on Constitutional Revision, Committee on Style and Drafting recommends as follows: Section 1 be amended, line 12, page 5, of the Style and Drafting Report on Constitutional Revision by reinserting the words 'an unlimited'; that Section 1 be adopted as amended; that Section 2 be amended in line 18, page 5, of the Style and Drafting Report on Constitutional Revision by inserting the words 'an unlimited'; that Section 2 be adopted as amended; that Section 3 be adopted; Section 4 be adopted; Section 5 be adopted; Section 6 be adopted; Section 7 be adopted; that Section 8 be adopted; Section 9, subsection 1, be adopted; that Section 9, subsection 2, be amended by placing a period after the word 'state' on line 12, page 8, and strike the remaining language on lines 12, 13 and the first two words on line 14; that Section 9, subsection 2, be adopted as amended; that Section 9, subsection 3, be adopted; that Section 10 be amended on line 4, page 9, by inserting the words 'the office of before the words 'for governor'; that Section 10 as amended be adopted; that Section 11 be adopted; that Report Number 2 of Style and Drafting on Constitutional Revision be adopted as amended; that the Report on Suffrage and Elections be adopted; that the Committee pass consideration at this sitting of other business on General Orders;

that the Committee rise and report and that Suffrage and Election and Constitutional Revision Proposals be placed on Order of Business Number 5. Signed: Felt, Chairman."

DELEGATE FELT: I move the adoption of the Committee reports.

VICE-PRESIDENT BROWN: Members of the Committee, you've heard the motion of Mr. Felt. All those in favor, say Aye.

DELEGATES: Aye.

VICE-PRESIDENT BROWN: Opposed.
(No response)

VICE-PRESIDENT BROWN: So ordered. Now, be on Order of Business Number 10.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

VICE-PRESIDENT BROWN: You've heard the motion of Mr. Eskildsen. All in favor, say Aye.

DELEGATES: Aye.

VICE-PRESIDENT BROWN: Opposed, NO.
(No response)

VICE-PRESIDENT BROWN: So ordered.

(Committee of the Whole Chairmanship assumed by Mr. Felt)

CHAIRMAN FELT: Mr. James.

DELEGATE JAMES: I would like to report myself present.

CHAIRMAN FELT: Mr. James is present. Committee of the Whole will please be in order. I wish to personally congratulate the members of the committee. And perhaps a few words now might be in order. I think that we might acknowledge that we're moving along faster and that this is to be expected as we all become accustomed to the handling of business in Committee of the Whole. And that we have a rare opportunity, I believe, today, due to the fact that our Committee on Natural Resources has done an excellent job, both by being reasonably brief and by being accurate, that we can complete this work today. And we will give everyone full opportunity, certainly, to discuss this matter, which is of such great importance to all of us and to all the people in Montana. I might just mention that yesterday, since we dealt with an article on Judiciary, the lawyers necessarily were quite active, and I'm sure that they probably have tired tonsils today; and that my glasses aren't going to function very well when the lawyers stand up today. And to commend those who may be thinking of being candidates for higher office, if they can make their political statements elsewhere rather than on the floor. And we will follow the following procedure which, I believe, has been agreed upon: that after the clerk has read the history and title of the article, we will call upon the Chairman of the committee to make a general statement reviewing the report before any motions are before the body and then we will explain the remaining procedure when we have completed that. But I think it's important that we realize the assumptions under which we do operate here. One is that everyone present can not only read and write, but can think, and that they have read the report. Second, that our committee system functions; that the members of this committee have given the detailed thought to this consideration that each of us gave to the matters that came before our substantive committees; that there is some sort of presumption that they have given it due consideration and are now presenting it to us. So we'll now have the clerk read the history and title of the article.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972, Natural Resources and Agricultural Committee Proposal-"

CHAIRMAN FELT: Mr. Clerk, have you completed—

CLERK HANSON: "Natural Resources and Agricultural Committee Proposal Number 2; date reported, February 18, 1972. Louise Cross, Chairman; Gysler, Vice-chairman. Be it proposed by the Natural Resources and Agricultural Committee that there be a new article on environment and agriculture to read as follows:" Mr. Chairman, title and history.

CHAIRMAN FELT: The delegate, Mrs. Cross.

DELEGATE CROSS: Mr. Chairman.

CHAIRMAN FELT: Mrs. Cross.

DELEGATE CROSS: I move that when this committee does arise and report, after having under consideration the new Article on Natural Resources and Agricultural Proposal Number 6, that it recommend that the same be adopted.

CHAIRMAN FELT: Mrs. Cross. I had understood-did you wish to make a general statement before presenting your motion? Your motion that you made then went, then, to Section 1—subsection 1, was it?

DELEGATE CROSS: No, I still wish to make a statement.

CHAIRMAN FELT: Well, what was the motion again, then? Do you wish to make any motion at all before you make your statement?

DELEGATE CROSS: No, I don't think so.

CHAIRMAN FELT: All right: we'll hear your statement then, Mrs. Cross.

DELEGATE CROSS: Thank you, Mr. Chairman. Also, thank you for considering a novice at this parliamentary procedure. Fellow delegates, of the 10 reports which have come out of the substantive committees of this Constitutional Convention, the shortest is that of the Natural Resources and Agriculture Committee. Most of the 29 pages in the report are concerned with the contents, the letter of transmittal, explanatory notes and appendixes. The articles themselves are relatively short. One is entitled "Environment and Natural Resources" and the other, "Agriculture". Both of these deal with areas of vital concern to us Montanans. The first is divided into four sections: protection and enhancement, reclamation, water rights and cultural resources. The second is divided into two parts: the Department of Agriculture and the right to special levies. After many hours and days of deliberations and listening to witnesses and trying to digest all sorts of information and testimony, the committee was able to agree on all but one section of the articles. That one was the one on the environment, itself. The committee split on this, seven to two; and those two of us were outvoted as to the content of the statement and the explanation [is] in the notes in this report. I also have the dubious distinction of being the only committee Chairman who was not able to get out a minority report of my own wording. I disagree with the statement on page 6, that we are recommending the strongest constitutional environmental section of any existing state constitution. It is chiefly to this issue that I speak today. I consider Sections 2 and 3 not only weak, but possibly restrictive in a direction which is not readily apparent. When the committee dealt with the section on water and water rights and the Department of Agriculture, they needed no convincing of their importance. Water is at a crucial point in Montana history. Use it or lose it. Agriculture is in a tenuous position because it is rapidly losing its voice and its representation in legislative halls. On these two points, the common danger was recognized. But the issue of the environment is an issue of recent vintage. Constitutionally speaking, it is a new concept, and we must begin at point zero. After a month of trying to come to grips with the issue, I began to feel that environment must be like the proverbial weather: we all talk about it, but doing something about it is a horse of a different color. It is the important issue of our time. In this area, we can look ahead; and if we put our minds to it, we can really do something great and good for those future generations to which we give lipservice. There probably isn't a person in this room who would deny that taking care of our environment isn't good sense. How we ultimately deal with the issue will be the measure of our sincerity. I have spoken twice on this issue before committee hearings, and I have urged the adoption of a strong article. The fact that the language I proposed was not adopted by the majority of the committee is not what is important. What is important is that we face up to this responsibility here on Convention Floor and adopt language that will do the job. Yesterday, our President reminded us that this Constitution is not for today or even for tomorrow, but must stand the test of time. He reminded us that we must be leaders. Project yourselves 50 years into the future, if you will, and from that vantage point look back at us here in Convention Hall. Ask yourselves if we are seizing our moment in history to do something that makes us great. Pollution in any form is an expensive business. A year ago, it was estimated that water pollution is costing the United States 12.8 billion dollars per year in damages. The United States Environmental Protection Agency estimates that air pollution costs the nation some 16.1 billion dollars a year in material losses. I have not seen figures that tell us what air and water pollution costs the State of Montana, but it must be a

considerable sum. The sad part of this is that we recognize the problem, but so far, we have seemed unable to do anything about it. We even seem unable to learn the bitter lessons other states have had to learn. If you were listening to the news last night, you would have heard that West Virginia has stopped issuing permits for strip mining. It took a tragedy of a broken dam, the death of many, and the wiping out of a town, to bring the issue to a head. One of our fellow delegates remarked that we are a crisis-oriented people. Rarely do we do anything until we are forced to do so. Coal underlines [underlies] the eastern third of this state. Do we have to wait until we have the equivalent of 20 great walls of China marching north and south from border to border, and just as useless, before we realize that we've destroyed the precious resource of a productive land? Many of our natural resources are nonrenewable; and when they are gone, the treasure of the Treasure State will also be gone. When you begin deliberations on this article and when we begin with the inevitable amendments to it, ask yourselves some questions. Why do people come to visit this state, anyway? Are our streams and rivers worth anything to us? Does the air we breathe contribute to our health and general welfare? Do we have to leave everything up to the Legislature and hope that they will do the job? Do we, as individuals, have anything at all to say about how we can protect ourselves from pollution? Can we construct a framework within which the means and rights are provided to protect these rights? Let us exercise prudent judgment. Thank you, Mr. Chairman.

CHAIRMAN FELT: Thank you, Mrs. Cross. The next procedure we're going to file is to have the clerk read all of Section 1, all three subsections. There will be no motion made at this time; but we're having it read, not only for the benefit of the delegates, but particularly for those persons interested enough to come here and observe the proceedings, so that they will know just exactly what it is that's before us. After that, we will go back and take them up subsection by subsection. The clerk will now read all of Section 1.

CLERK HANSON: "Section 1, Protection and enhancement. The State of Montana and each person must maintain and enhance the environment of the state for present and future generations. Subsection 2. The Legislature must provide for the administration and enforcement of this duty. Subsection 3. The Legislature is directed to provide adequate remedies for the protection of the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources." Section 1, Mr. Chairman.

CHAIRMAN FELT: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN FELT: Mr. McNeil.

DELEGATE McNEIL: Your committee presents and recommends, in its proposal, the strongest constitutional environmental section of any existing state constitution. Subsection 1 requires the state and each person, which, of course, includes corporations and all legal entities as well as individuals, to maintain and enhance the Montana environment for present and future generations. Although our committee Chairwoman does not agree that this is the strongest, no one has yet shown me a state constitution that is stronger. There is no state constitution anywhere that requires the affirmative duty to enhance the environment. In addition, the provision drafted by the majority requires that we, at least at a minimum, maintain the present Montana environment. Your committee considered, at length, an exhaustive list of descriptive adjectives to precede the word environment, such as healthful, pleasing, quality, high-quality, unsoiled, and, finally, my very own, unique, and concluded that no descriptive adjective was adequate or necessary. This was not considered by the majority to be a compromise, but rather an acknowledgement of the present Montana environment as encompassing all of those descriptive adjectives. Constitutional provisions of other states were studied, but none were considered adequate, as no other state has Montana's environment. And therefore your committee felt that the best recommendation is to require that all must maintain and enhance the Montana environment. Subsection 2 mandates the Legislature to administer and enforce the duty to maintain and enhance the Montana environment. Your committee was urged by many to detail the manner of accomplishing this duty, but the temptation to legislate in the Constitution was resisted and confidence reposed in the Legislature. To those who may lack such confidence in the elected representatives of the people, the clear and concise duty to maintain and enhance the environment cannot be contravened. Your committee considered two delegate proposals, and

these were the only two that were presented that were other than the strong statement which the majority is now submitting to you, which declared in substance that the State of Montana hold in public trust the environment for the benefit of all the people. The majority felt it unnecessary to have the state hold in trust all land, including, of course, privately owned real property, for the benefit of all the people of the state in order to accomplish the protection of our environment. In addition, the majority felt it unwise to experiment by incorporating into the Constitution, a "public trust" which was not clearly defined to the committee—and of all of the persons who testified before our committee, there were not two who used the same definition for that phrase; and which phrase is not contained in the Constitution of any other state; and which exists, in its infancy, in only two states by legislation. Subsection 3 mandates the Legislature to provide adequate remedies to protect the environmental life-support system from degradation. The committee intentionally avoided definitions, to preclude being restrictive. And the term "environmental life-support system" is all-encompassing, including but not limited to air, water and land; and whatever interpretation is afforded this phrase by the Legislature and courts, there is no question that it cannot be degraded. I might further add that that phrase, "environmental life-support system", was an essential part of both of the delegate proposals referring to the public trust and has been incorporated in the majority proposal. Subsection 3 further mandates the Legislature to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Although it is recognized that some nonrenewable natural resources are to be consumed, this provision permits the Legislature to determine whether the resources [are] being unreasonably depleted and requires preventive remedies. The committee considered proposals which would give individuals a right to sue without the necessity of showing some damage. The majority concluded that Montana's present law providing for class action, under which litigation is presently pending involving multitudes of claimants against a single alleged polluter, is adequate. However, the majority feels that this is not a compromise, because the majority feels—the majority proposal—requires the Legislature to provide whatever remedies are necessary to prevent degradation and to prevent unreasonable depletion. The majority of the committee believes that this is the best article for the protection of the Montana environment for its people. I might also add, parenthetically, that there was distributed to our desks this morning an example of a right to sue as incorporated in North Dakota, and it says: "Any person has a right to a healthful environment." The majority felt that the use of the word "healthful" would permit those who would pollute our environment to parade in some doctors who could say that if a person can walk around with 4 pounds of arsenic in his lungs or SO_2 gas in his lungs and wasn't dead, that that would be a healthful environment. We strongly believe—the majority does—that our provision—or proposal is stronger than using the word "healthful". And this proposal, further, would provide the right to sue anybody, through appropriate legal proceedings, and then modify it by saying "subject to reasonable limitation as the Legislative Assembly may provide". The majority feels that our subparagraph 3 does precisely this. It requires the Legislature to provide adequate remedies and leaves it, from that point, to the Legislature. Thank you.

CHAIRMAN FELT: The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 1, subsection 1, of Proposal Number 6, that it recommend the same be adopted.

CHAIRMAN FELT: Mr. Murray is making these perfunctory motions in order to relieve the members of the committee of that extra chore, and not for the purpose of speaking on these motions. So the matter before the committee at this time is subsection 1 of Section 1, and a motion has been made that we adopt it as it appears in the committee report. This is now open for discussion. I might just say—before I recognize you, Mr. James, I'd like to call upon Delegate Scanlin to undertake a small chore on behalf of the Chair. I would like you to keep a scoresheet, please, of the number of times that lawyers are recognized and rise. And for those purposes, today, we will not count either Mr. McNeil or Mr. Brazier as attorneys, since they will be speaking as members of the committee. In the event any of them speak longer than 5 minutes, put an asterisk after their names please, Mr. Scanlin.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I feel that an apology is due for any untoward thoughts I had toward my fellow delegates who may be members of the legal profession, and I apologize.

CHAIRMAN FELT: The apology is certainly accepted, if you feel it's necessary. I might say that the "Traveling Martin Trophy" might be presented to Delegate Foster. I believe he remained totally silent yesterday, and I believe now that Delegate Harper might be putting in his bid to achieve it for today.

Delegate Harper.

DELEGATE HARPER: Mr. Chairman. I just want to say I know, or least I hope, this is being done in fun, about the lawyers. I think we all recognize that we are dealing, under the Constitution, with a legal document-basic law. I just simply rise to say that I have appreciated very much a good many of the comments that the lawyers have made. I am not familiar with law. The first thing I do in a law case is go to a lawyer, and I think most of the rest of us feel that way. So, I would like to just say that I don't share in the idea that the lawyers are any less members of this group and should be restricted in any way in their speaking, any more than any of the rest of us. I just felt constrained to say that. I'm not running for any office, that I want any lawyers' vote. (Laughter)

CHAIRMAN FELT: Thank you for the defense of the attorneys. They can, perhaps, take care of that, too. (Laughter) The point is that there's a course given in law school on water law, and I don't think we need the whole course today. (Laughter)

Mr. James.

DELEGATE JAMES: Yes, Mr. Chairman. I only spoke once yesterday, and one sentence. I am not a lawyer. I have nothing against lawyers: and I have no daughters, so I have no worries. (Laughter) I was just kidding, Jim, really.

CHAIRMAN FELT: That's a relief.

DELEGATE JAMES: I would like to amend line 10 of Section 1. And despite Mr. McNeil's statement there-1 hadn't heard it before I proposed this amendment-I would like to remove "the" and insert "a clean and healthful"; delete "of the state" and insert "for the protection and enjoyment of present and future generations". To me, on reading the first section there, it seemed rather bland. I felt as though these adjectives perhaps would strengthen the article. I would like to read a couple of lines from a poem in the *Saturday Review.* "Man has kicked away his birthright; now we find, to our despair, we have fouled our lakes and rivers, we have fouled our very air. It is time to face the music; it is time to be aware." These words from a poem by Francis Hadge, "Warning from Main Rivers." I've been to all parts of the United States, and having visited most of these sister states, I am glad that Montana still has relative virginity, if one can have such a thing.

CHAIRMAN FELT: The gentleman, Mr. James, has moved to amend subsection 1. And we will have the clerk reread the amendment, and then we'll permit further discussion if anyone wishes.

CLERK SMITH: "Section 1, Protection and enhancement, subsection 1. The State of Montana and each person must maintain-"

CHAIRMAN FELT: Mr. Clerk, I think you can just read the motion as it was presented to us. Do you have a copy of it there?

CLERK SMITH: Yes. "Mr. Chairman. I move to amend Section 1, subsection 1, page 3, line 10, by striking the word 'the' following the word 'enhance' and the words 'of the state for'-"

CHAIRMAN FELT: Now, just pause a minute while I get that down. Anybody want that reviewed?

DELEGATES: Yes.

CHAIRMAN FELT: Review that again please.

CLERK SMITH: "-page 3, line 10, by striking the word 'the' following the word 'enhance' and the words 'of the state'-"

CHAIRMAN FELT: This is another strike-out?

CLERK SMITH: Yes.

CHAIRMAN FELT: Strike the word "the", which is the first word on line 10; then he also strikes the words "of the state for" following the word "environment". Proceed, Mr. Clerk.

CLERK SMITH: "-following the word 'environment' and inserting in lieu thereof the following words: 'a clean and healthful' following the word 'enhance' and inserting 'for the protection and enjoyment of following the word 'environment'."

CHAIRMAN FELT: Now, that was a little bit difficult to catch, so we'll do it again if anybody would like. Oh, they're giving out copies now? Fine.

The gentleman, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. As Vice-chairman and one of the seven who approved this report, I resist the motion to amend, and the reasons were stated by Mr. McNeil when he went through the comments on our section. I would certainly hope that, before people amend things, that they take time and look to see what they're amending and if there's any committee comments in regard to it. We feel that-or I feel, anyway, that this amendment weakens, not strengthens, this article.

CHAIRMAN FELT: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. They said they were handing this out, but what's being handed out is not—

CHAIRMAN FELT: Yes.

DELEGATE BLAYLOCK: —so I'd like to have that read in its entirety as it's amended. Forget the striking out, just read the thing.

CHAIRMAN FELT: I think that's fine, I thought they were handing out the same one; it turns out it's a different one that's being distributed. There is another amendment which has been submitted. Well, perhaps they're both being handed out, Mr. Blaylock, then. Another amendment has been offered to subsection 1 of Section I. The author did not include his name, so we do not know who it is. Possibly he will feel that the proposal that is before us now from Mr. James covers his point too, but if not, would he please let his identity be known so that we'll be prepared for it,

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I am a member of the Natural Resources Committee, one of the seven on the majority report here; and I, too, resist any change in Section 1. Now, we had more than 95 separate witnesses before us, over 165 appearances. Many, many times, members of the committee, including myself, asked people what "healthful" meant. No one could define it. This was one of the reasons, as Delegate McNeil said, that we took it out-because no one knows what it is. The question came up many times, of course, about this social security for lawyers. That was used many, many times in our committee by using words that no one could define. I think that after four weeks of extensive work, night sessions, hundreds of witnesses before us, I'm sure that we have heard every argument that can be proposed to have changed this article from what we came out with. I believe it is the best; it's the strongest. There's no state that has as strong a one as this. For those that would like it stronger, I think they should think about this a little, because they may come out with one that's not as strong as this one. I thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, would Mr. Kamhoot yield to a couple of questions, please?

DELEGATE KAMHOOT: Yes, I'll yield.

DELEGATE CAMPBELL: You are familiar, Mr. Kamhoot, with the Illinois provisions?

DELEGATE KAMHOOT: Some.

DELEGATE CAMPBELL: And you feel those are weaker than the provisions that you have recommended in your committee?

DELEGATE KAMHOOT: Well, I think so.

DELEGATE CAMPBELL: Then, would you be for adopting the weaker provisions that would give the citizens the right to sue as regulated by the Legislature?

DELEGATE KAMHOOT: Repeat that, would you, Bob?

DELEGATE CAMPBELL: Section 2 of the Illinois provision provides a citizen shall have the right to sue as defined by the Legislature. Would you be in favor of adopting this weaker provision?

DELEGATE KAMHOOT: Now, Bob, I don't have Section 2 of the Illinois Constitution before me.

DELEGATE CAMPBELL: I see.

DELEGATE KAMHOOT: I've read volumes and volumes of other state constitutions, so I don't know exactly what it says.

DELEGATE CAMPBELL: All right. I will read you, then, Section 2.

CHAIRMAN FELT: Mr. Campbell, do you wish to speak?

DELEGATE CAMPBELL: Yes, I do.

CHAIRMAN FELT: Yes, let's do that if you have something to add.

DELEGATE CAMPBELL: Okay. Thank you, Mr. Chairman. I rise in support of Mr. James' motion to amend the Section 1. I feel that the present section, as presented by the committee, stating that the State of Montana will maintain an environment is absolutely worthless. What this says, in effect, instead of being the strongest in the nation, is that there is no type of standard whatsoever to define this environment. "A clean and healthful environment" is not defined. It would be defined by the Montana Supreme Court and the Legislature that we are hoping will initiate effective controls. All of this says that they will enhance the environment. It does not describe whether it is good environment, bad environment, polluted environment, or anything. I think all it means is that the Legislature, in the future, will not prohibit the citizens' right to breathe, regardless if it's clean air, bad air, or anything else. I think that "clean and healthful" is a positive step forward. I think that the Supreme Court and the Legislature can work towards this goal, which is in the Illinois Constitution, which is recommended for the North Dakota Constitution. I think the enjoyment and protection of this also is a meaningful addition to this Section 1. I don't feel that this is the strongest in the nation, and certainly, if adopted without the amendment, I feel that it would be an insult to the people that did want something effective in this Constitution. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Anderson.

DELEGATE JOHN ANDERSON: I am also a member of the committee and one of the seven who recommends the article that is before us, and I believe that Section 1 of the article points it out very clearly to us. I think that we have a most unique situation here in our great State of Montana. We, presently, I think, have one of the best environments-perhaps of any state in the Union. I feel that subsection 1 of Section 1 spells it out very clearly that we must maintain this quality environment that we have-and not only maintain it, but improving it; as the article says, to enhance it. I personally object to the amendment of this section.

CHAIRMAN FELT: The delegate, Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman. I will probably be up many times today, because I believe that the Environmental Article is probably the most important thing we will be dealing with in this Constitutional Convention. I rise in support of Mr. James' amendment simply because in the presence-the proposed Section 1, there is no qualifying adjective used for the environment. Mr. Kamhoot brought up the question of what is healthful and what is quality or what is clean. These two adjectives have been used in most of the Environmental Article and environmental law throughout the United States. I refer you to the ***Revised Codes*** of Montana, Title 69, which uses the words, "healthful". The Federal Environmental Protection Act also uses the words "clean and healthful". There will be no question about what these words mean, because these words will be subject to a great deal of litigation. I think it's clear that we do not want to maintain the present environment, for example, in Missoula or Columbia Falls or other places, since the rate of death by cancer is twice as high in Butte and Anaconda as it is anywhere else in the State of Montana. I think we need these qualifying adjectives to enable the Supreme Court to interpret what kind of environment we want. Withoutthese qualifying adjectives, the court is going to have a very hard time.

CHAIRMAN FELT: The delegate, Mr. Rebal.

DELEGATE REBAL: Mr. Chairman. I resist Mr. James' amendment. I believe "clean" and "healthful" to be comparative in nature. Cleaner than what, or more healthful than what? Thank you.

CHAIRMAN FELT: The delegate, Mr. James. Do you wish to close?

The delegate, Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to ask a question here of Delegate James.

CHAIRMAN FELT: Will the gentleman yield?

DELEGATE JAMES: Yes, I will, Mrs. Bates.

DELEGATE BATES: Mr. James, when you mention "to protect and improve", does this mean that in future years that perhaps a building or a business that might go up would not improve the environment to many people. Could it stop future building and things of this type?

DELEGATE JAMES: My amendment does not say "improve"; it says "for the protection and enjoyment".

DELEGATE BATES: Oh, "enjoyment". I beg your pardon; I thought it was "improvement".

DELEGATE JAMES: You know what enjoy means, don't you? (Laughter)

CHAIRMAN FELT: The gentleman, Delegate Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and delegates. I rise in support of Mr. James' amendment. It seems to me that, when Charles Lindbergh was with us the other day, he was saying some very timely things. When I was introduced, thinking maybe he would dwell on his past solo performances. I was very moved by his future orientation. Nothing is as important that we will do here as guarantee the future of our citizens, and those who come from all over this country and the world, to enjoy the sense of cleanliness and the health of our environment in Montana. I think it does strengthen it to put these words in. I am for his amendment.

CHAIRMAN FELT: The delegate, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, It seems to me that Delegate James is on the right track in this matter. If we take the words "maintain and enhance"-maintain means to keep it the same or at least not to have it lessened; enhanceis to augment or increase. But we then are— according to the language in subsection 1, we are to maintain or improve environment of the State of Montana for future generations. But if you have no qualifying adjectives to describe what the objective is, it seems to me that you're just uttering a few meaningless generalities. So I support the amendment of Delegate James.

CHAIRMAN FELT: The delegate, Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I think we are all searching for exactly the same thing; it's just a matter of what language to use. I would like to direct your attention to the fact that Delegate James' amendment deletes the language "of the state". The majority felt very strongly that the environment of this state describes what we have in Montana. It's the clear, unpolluted air near Bdb Marshall wilderness; it's the clear water and the clear air in the Bull Mountains; and it is the stench in Missonia. But that is the Montana environment. Delegate Campbell said there is no standard. There is a standard. It is the present environment of this state. You take out the words "of the state", and we take out what is our present environment and substitute "clean and healthful"-the majority felt this would permit degradation of the present Montana environment to a level as defined in Illinois, which may be clean and healthful. And our intention was to permit no degradation from the present environment of Montana and affirmatively require enhancement of what we have now.

CHAIRMAN FELT: The delegate, Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. It looks like one day was as long as I could stay seated. I wish to only point out two things. One, Delegate Anderson in his statement used the words "quality environment" in stating that he supported the majority position. I wish you to note that there is no such modifier to "environment". Delegate McNeil used "present environment", which is certainly not in the majority proposal. I submit that the arguments that are being used in support of the majority proposal, in fact, are not in that proposal. Thank you, Mr. Chairman.

CHAIRMAN FELT: Does the gentleman, Mr. James, wish to close?

The delegate, Mr. Brazier.

DELEGATE BRAZIER: Before you vote on this, fellow delegates, I would call to your attention a couple of circumstances which I think you ought to be aware of. Although we all seem to know and be aware that we're drafting a Constitution, I think we sometimes overlook the implications. Now, the reason that the majority of your committee, in its wisdom, saw fit not to put qualifying adjectives in the Constitution is that this provision is destined to be interpreted by the Montana Supreme Court. The Supreme Court is going to decide what this Constitution means; and if it decides wrong, if it decides something conservative that you don't like, it's locked in. You can't change the Constitution. Whereas, if you put the qualifying adjectives in the legislation, which subsection 3 of this proposal contemplates, if the Supreme Court, in your opinion, abuses its discretion and makes a conservative interpretation, it is subject to the checks and balances of being overruled by the Legislature. But if you put it in this Constitution, you lock it in-there's no chance to correct it. We've had one Constitutional Convention in 80 years-modify [modified] the present Constitution 37 times in 80 years. And I would point out, as you may have noticed in the discussions, that certain other statutes were called to our attention by Mrs. Robinson. All I would point out is they are just that, statutes. They are subject to interpretation by the courts, and the courts are subject to the checks and balances of the legislative action of Congress or of those states. Please bear that circumstance in mind during your deliberations. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. The environment, of course, I think, is one of the most important things facing us here at this Convention. And throughout the land, young people are asking us to do something about the environment, because they're the ones that are going to have to live with it. And apparently, the public trust doctrine which was first advocated—

CHAIRMAN FELT: Mr. Cate, try to stay on these adjectives that we're debating.

DELEGATE CATE: Right.-has been rejected. And therefore I feel it's imperative that we have a-what we do adopt-be as strong as possible. And speaking as a lawyer, I think that it adds something to Section 1 to say "clean and healthful". I can envision going into court to prove that something is not healthful, but I can't envision going into court to prove "maintain and enhance the environment". I can prove that the sulphur that's being emitted from the steam plant in Billings, which is-there's an article on that in today's Gazette, I can prove that that's not healthful. And I can prove that that's not clean, in a court of law. But I don't know how you would approach this thing otherwise if you don't have some type of adjective to hang your legal proceeding on. And I know that those people who were on this committee are as concerned as I am to have an effective provision. And I really feel that it is necessary to have these adjectives "clean and healthful", and I would support Mr. James' amendment. Thank you.

CHAIRMAN FELT: The delegate, Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I submit to the majority of the delegates here, who are not lawyers, that when we nonlawyers have to make up our mind about language which is very crucial in terms of how it will be interpreted by the courts, that we had better consult experts in whom we have confidence. I, therefore, asked Professor John McCrory, who teaches administrative law at the University of Montana Law School, for this opinion on the language of Section 1. I'd like to read you his response. He said, and I quote: "Contrary to the view of the committee majority, I believe that descriptive adjectives are necessary for guidance for interpreting the Constitution, to insure that present problems are not perpetuated. The words 'clean and healthful' have common usage and meaning which would furnish such guidance." Thank you.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I would just like to say to Delegate McNeil that the people in Missoula are not satisfied with maintaining the present stench; that in the past, they have had the benefit of being able to afford to buy property on your Flathead Lake, to sit there free of pollution. This is rapidly changing. The pollution that they had in Missoula that they did not have in Polson is slowly creeping into the Flathead Valley, as you well know. If you know, in the Bob Marshall wilderness area, if you've flown in, there aren't many canyons left in this state

that are not slowly filling up with the haze of industrial filth. And I think that "clean and healthful" is a minimum standard to put [in]. Mr. Brazier mentioned this would go before the Supreme Court. Certainly, I know it will, regardless of the language we use. Certainly, the strongest language we could use in this provision is "a clean and healthful environment". As I understand, Mr. McNeil, this was your original thought in the committee before you changed your mind on it. And I would say that your first thought was the best thought, and support Mr. James. Thank you.

CHAIRMAN FELT: Delegates, I would—we are going to have to switch tapes in a moment. I think we've had a pretty thorough discussion on the meaning of these words. If someone has something new to add, why, let's get it down and do it in a minute or two, and then we can switch tapes.

The gentleman, Mr. Loendorf.

DELEGATE LOENDORF: I have no specific comment, but when I heard the statutes cited, I sent a page to get the book; and I would just like to share with the Convention what it says. It seems to go far beyond either the majority proposal or Mr. James' amendment. It makes it the responsibility of the State of Montana to use all practical means to assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risks to health or safety, or other undesirable and attendant consequences. And the final paragraph states, "The Legislative Assembly recognizes that each person shall be entitled to a healthful environment and each person has a responsibility to contribute to the preservation and enhancement of the environment."

CHAIRMAN FELT: Does the gentleman, Mr. James, wish to close?

The delegate, Mr. McCarvel.

DELEGATE McCARVEL: I wonder if Mr. James would yield to a question.

CHAIRMAN FELT: Does the delegate, Mr. James, yield?

DELEGATE JAMES: I'll yield, Joe.

DELEGATE McCARVEL: Just how broad is this "clean and healthful"? What does it enhance?

DELEGATE JAMES: Well, I think I should let Mr. Loendorf answer you there, or I think he has answered you. I think perhaps my statement was not inclusive enough, although I will settle for that if the delegates will. I think Jerry made a very good argument, and I think Delegate Heliker's statement there—McCrory took care of this very well.

DELEGATE McCARVEL: Thank you. Mr. Chairman.

CHAIRMAN FELT: Mr. McCarvel.

DELEGATE McCARVEL: Just before we convened this Constitutional Convention, there was an article in the *Montana Standard* which stated that a doctor had come up with his findings that smoking of cigarettes or cigars was just as detrimental to those that inhaled the expended smoke as the ones that smoked them themselves. So, I'm just wondering if I, as a nonsmoker, could take someone who is a smoker and charge him with polluting the environment under this clean and healthful air. That is all, Mr. Chairman.

CHAIRMAN FELT: The Convention will stand at ease while we change tapes.

CHAIRMAN FELT: Please be in order. We are continuing the discussion of the amendment of Mr. James.

The delegate Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. Will Mr. James yield to a question?

CHAIRMAN FELT: Will the gentleman, Mr. James, yield to a question?

DELEGATE JAMES: Yes, I will, Mr. Conover.

DELEGATE CONOVER: Mr. James, on this "clean and healthful", I like the words real well; what concerns me is this zoning of the cities, where they're spreading out into our rural areas and buying, say, different plots of land, and they'd get a home there. And if I happen to be located pretty close and 1 have cattle, the first thing, he takes in a suit to me for the smell. Then I'm in trouble, am I?

DELEGATE JAMES: I really don't know. I suppose if you had a feedlot in an area that was adjacent to a community and became so objection-

able, I think perhaps some action could be taken. I think at present, we take action against public nuisances if such arise, and I'm sure they do.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN FELT: Mr. Conover, do you wish to speak on the amendment?

DELEGATE CONOVER: Will Mr. George James yield to another question?

CHAIRMAN FELT: Do you yield to another question?

DELEGATE JAMES: Yes, I will, Mr. Chairman.

DELEGATE CONOVER: Mr. James. What I'm referring to is that a lot of our city folks want to get away from a congested area, so they move out **3** or **4** miles, where we have been located-us ranchers-for, you might say, generations. And this is what's happening in some areas, and I'm wondering what this clean air will do to our agriculture.

CHAIRMAN FELT: Does the gentleman, Mr. James, wish to respond to that question?

DELEGATE JAMES: Yes, I thinkthatthe courts will take these things into consideration. I don't think the courts have ever been unrealistic or, by their nature, should they be unjust. So I think that all these things-we do try to consider balance when setting up these things. I, as one, wouldn't want to go overboard on environment, nor would I want to go overboard the other way. But I do think that it's time-we know what's happened in other states from coast to coast, in other countries--and I think we have to consider the future generations. We have to consider the people now, and we are doing that. Surely, you're aware that actions have been taken in many cases where there have been health hazards and pollutants. I am sure that all the attorneys in the body, and anyone that's read the papers, know that actions have been taken. This is just a statement of principles, a guideline, and I agree with Mr. McNeil that we have a common cause here and it's just a matter of how we state it. Perhaps under the majority proposal here of the committee, you could ask Mr. McNeil the same question.

CHAIRMAN FELT: Does the gentleman, Mr. James feel that he has closed?

DELEGATE JAMES: I was just trying to satisfy Mr. Conover. I didn't know I was closing.

CHAIRMAN FELT: No, I wasn't sure either, but I thought perhaps you had.

And the gentleman, Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, would Mr. Loendorf yield to a question, please?

CHAIRMAN FELT: Will Mr. Loendorf yield?

DELEGATE LOENDORF: Yes.

DELEGATE ROD HANSON: Jerry, the language you read from the statute is the present statute, as I understand it. How long has that been on the books?

DELEGATE LOENDORF: Since 1971.

DELEGATE ROD HANSON: Do you know-has that been interpreted by the courts?

DELEGATE LOENDORF: No, it has not.

DELEGATE ROD HANSON: In your opinion, is that language stronger than either of what is being proposed here by the majority or the minority?

DELEGATE LOENDORF: It appears to be to me. I just point this out. I'm not an expert in this area, and I wasn't on this committee, but they seem to use the same words that are being proposed by Mr. James plus many others. When you say stronger-it seems to me it's more defining, anyway.

DELEGATE ROD HANSON: Mr. Chairman.

CHAIRMAN FELT: Mr. Hanson.

DELEGATE ROD HANSON: Would Mr. McNeil yield to a question please?

CHAIRMAN FELT: Will Mr. McNeil yield?

DELEGATE McNEIL: I yield.

DELEGATE ROD HANSON: Mr. McNeil. No doubt your committee looked at this during your deliberations. What is your opinion of the statute that we have now as compared to the wording in the Constitution?

DELEGATE McNEIL: I have no opinion on the statute, Mr. Hanson. The opinion of the majority of the committee is that maintaining and enhancing the environment of this state is the strongest constitutional statement we can make.

CHAIRMAN FELT: The gentleman, Mr. James. Do you wish to close?

DELEGATE JAMES: If there are no other speakers, I think I've said my piece, and so everyone knows how I feel. It's a matter not of objective here, because I'm sure that we all have the same objective, the same concern, the same love of our state; and I think we want to do right by our state. And so, it's just a matter of wording. And if you feel that my adjectives will help in some measure and make this law stronger, well then, adopt them. If you feel that Mr. McNeil's-in the majority proposal there-is the best thing, adopt them. What we're looking for is what's best for our state. Thank you.

CHAIRMAN FELT: The question now arises on the motion to amend—

DELEGATE HARLOW: Could we have a roll call vote? (Seconds rise)

CHAIRMAN FELT: A roll call vote is asked for. There are sufficient seconds. The question now arises on the motion to amend subsection 1 of Section 1. I believe you all know the words that are included in the amendment.

For what purpose does the gentleman, Mr. McNeil, rise?

DELEGATE McNEIL: Mr. Chairman, I rise to ask for one minute to explain my vote. I want the record to clearly reflect that I am not voting against Mr. James' amendment, but rather voting for what I believe to be the stronger statement. And I believe the entire delegation will agree that, whichever we adopt, thatitis the intention of this Convention to adopt the stronger of the two. Thank you.

CHAIRMAN FELT: It is the Chair's understanding that the rules are that any member may explain his vote and that-unless some member objects. And the purpose of the rule, I think, is to prevent everyone from explaining their vote in case they have already talked on the motion.

For what purpose does the delegate, Mrs. Bugbee, rise?

DELEGATE BUGBEE: I rise to explain my vote. I think, unquestionably, that the amendment of Mr. James is the stronger Environmental Article. And that's why I'm voting for it.

CHAIRMAN FELT: For what purpose does the gentleman, Mr. Brazier, rise?

DELEGATE BRAZIER: I rise to explain my vote. I feel that, although the language of Mr. James' amendment is stronger, it properly belongs in the Legislature. And there's going to come a time when there's a big case against a big industry, and they're going to bring in some doctors from Pittsburgh to testify that it's a healthy environment back there, and our Supreme Court is going to set us back instead of forward. In other words, we'll make more progress by leaving it out.

CHAIRMAN FELT: For what purpose does the gentleman, Mr. Berg, rise?

DELEGATE BERG: I rise to explain my vote.

UNIDENTIFIED DELEGATE: I object.

CHAIRMAN FELT: An objection has been made. The question now arises on the-Did you hear an objection, Mr. Berg?

DELEGATE BERG: Yes, I did.

CHAIRMAN FELT: I thought I did. The question now arises on the motion to amend. All those in favor will vote Aye; opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim .Absent
Anderson, J. Nay
Anderson, O. Nay
Arbanas .Absent
Arness .Absent
Aronow Nay
Artz .Absent
Ask .Aye
Babcock Nay
Barnard .Absent
Bates .Absent

Belcher ..... Nay
Berg.. ..... Nay
Berthelson Nay
Blaylock .....Aye
Blend ..... Nay
Bowman .....Aye
Brazier ..... Nay
Brown ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ....Aye
Cate .. ..Aye
Champoux ..... Aye
Choate.....Aye
Conover ..... Nay
Cross.. ....Aye
Dahood ..... Nay
Davis .....Absent
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck .....Aye
Erdmann ..... .Absent
Eskildsen ..... .Absent
Etchart ..... Nay
Felt. ..... Nay
Foster ....Aye
Furlong. .....Aye
Garlington ..... Nay
Graybill ..... .Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... .Absent
Harlow ....Aye
Harper.....Aye
Harrington ..... Aye
Heliker ....Aye
Holland., ...Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce.. ....Absent
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Nay
Loendorf.....Aye
Lorello ..... Nay
Mahoney ..... .Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... .Aye
McKeon ....Aye
McNeil ..... Nay
Melvin.....Aye
Monroe.. ....Aye
Murray.. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins.....Aye
Romney ....Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz.....Aye
Siderius.....Aye
Simon ..... Nay
Skari ....Aye
Sparks ..... Nay
Speer ....Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ....Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner.....Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Aye

CLERK SMITH: Mr. President, 40 voting Aye, 44 voting No.

CHAIRMAN FELT: The motion is lost. There was, as I said, another motion presented. If the member who wished to present it would make themselves known, why, we'd hear it. If they do not why, we'll assume that they feel the subject was fully dealt with because it was quite similar. The question then arises on the motion to adopt subsection 1 of Section 1. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it, A division has been called for.

The gentleman, Mr. Brazier, for what purpose do you rise?

DELEGATE BRAZIER: Mr. Chairman. I had submitted to the clerk this morning a proposed amendment to subsection 1. Apparently, it didn't come to your attention.

CHAIRMAN FELT: Well, I've called for your identity two or three times. It must have been you, then. If you wish that acted upon---Is that the one that inserts the word "physical"?

DELEGATE BRAZIER: I do, your Honor-Mr. Chairman, yeah.

CHAIRMAN FELT: All right. Without objection, we will eliminate the action of attempting to vote for which a division has been called, and we are back at a point at which further amendments may be offered to subsection 1 of Section 1. Hearing no objection, the clerk will read the amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 1, subsection 1, page 3, line 10, of the Natural Resources and Agriculture Committee majority proposal by inserting, after the word 'the' and before the word 'environment', the word 'physical'. Signed: Brazier."

CHAIRMAN FELT: The gentleman, Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. This is nothing sinister. It's simply a housecleaning, housekeeping type amendment; and it arises at this time because, in the rush of business towards the deadline for preparing committee reports, we didn't get the communication by some people that deal in the environmental areas. Since that time, it has been called to my attention that there are, in various fields of study and administration, a number of usages of the term "environment", including such things as physical environment, cultural environment, economic environment, political environment, and so forth. And this has been borne out; I've seen some provisions in other statutes which use the word "physical environment". I merely suggest it to make sure that anybody in the future knows what we're talking about here, and that is physical environment. It is in no way limiting, in no way intended to detract from the strength of the provision. I just consider it good draftsmanship and a means of clarifying what this Constitution intends.

CHAIRMAN FELT: The gentleman, Mr. Cate.

DELEGATE CATE: Mr. Chairman. I move as a substitute amendment to strike Section 1—

CHAIRMAN FELT: Mr. Cate, don't use the word "substitute amendment". Either make a substitute motion or amend his motion; but if you're amending, it better relate to his motion.

DELEGATE CATE: I'll make a motion to amend Section 1 of the Environmental and Natural Resources provision by striking therefrom on line 8, page 3—

CHAIRMAN FELT: Move slowly now.

DELEGATE CATE: --after the words "Section 1 period", the following language: "protection and enhancement period"-through line 9, through line 10, through line 11. In other words, strike out the entire provision except the words "Section 1" and insert in its place the following language: "The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust, and the right to protect and enforce it by appropriate legal proceedings against the trustee." I'll read that again.

CHAIRMAN FELT: Mr. Cate, before you do, we'll certainly permit you to offer it, if you're sure you wish to offer it at this—

DELEGATE CATE: I do.

CHAIRMAN FELT: --as an amendment to the subsection 1. Do you have it in writing?

DELEGATE CATE: I do.

CHAIRMAN FELT: Why don't you-Has it been brought forward?

DELEGATE CATE: It has not.

CHAIRMAN FELT: Why don't you do that. And would you be agreeable if we do recog-

nize you, in a moment, to make this as a substitute motion and proceed to deal with the less far-reaching matter and—

DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN FELT: -perhaps it'll be disposed of. And if we find, however, that this other one takes a great deal of time, why, we'llrecognize Mr. Cate, because, of course, if his motion did prevail, your other one would be wiped out completely. Does anyone wish to discuss further the insertion of the word "physical", as proposed by Mr. Brazier?

The delegate, Mrs. Cross.

DELEGATE CROSS: Would Mr. Brazier yield to a question, please?

DELEGATE BRAZIER: I will.

CHAIRMAN FELT: The gentleman yields.

DELEGATE CROSS: A few minutes ago, Jeff, we had some questions about the use of qualifying language, and you now propose to insert the word "physical". Doesn't that fall into the same category as the other qualifying language?

DELEGATE BRAZIER: I don't believe so, because I don't think it's subject to interpretation. This is merely limiting to the subject matter that we're talking about, which is our physical environment. And I don't want to leave the door open for somebody to go tearing off into our economic environment or some other place under this little wedge that they might use.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I ask Delegate Brazier a question?

CHAIRMAN FELT: Does Mr. Brazier yield to a question?

DELEGATE BRAZIER: I yield.

DELEGATE ROMNEY: Jeff, would you define "physical" as you envision it in this case? Natural, artificial-just what do you envision in the definition of physical as you use it here?

DELEGATE BRAZIER: Well, for the most part, it's anything that can be communicated with or identified by our six physical senses-what we breathe, what we touch, what we see.

CHAIRMAN FELT: All right. Is there any further discussion on the amendment?

The delegate, Mr. Heliker.

DELEGATE HELIKER: Would Delegate Brazier yield?

CHAIRMAN FELT: Will you yield?

DELEGATE BRAZIER: Yes.

CHAIRMAN FELT: The gentleman yields.

DELEGATE HELIKER: In your opinion, Mr. Brazier, what is excluded by the term "physical"?

DELEGATE BRAZIER: It ventures into other areas of government, such as politics. We're here to improve our political environment anyhow, but this has just been called to my attention, Professor Heliker, by people who deal in the area. They said they've met with confusion, and people that they've met with have tried to expand their interests and their administration beyond the physical environment, which everybody understands to be what we're after here. And they think it's a better practice to make good and certain that we don't permit that.

CHAIRMAN FELT: Does the gentleman, Mr. Heliker, wish to speak on the motion to amend?

DELEGATE HELIKER: I'd like to ask Mr. Brazier another question.

CHAIRMAN FELT: Will you yield to another question?

DELEGATE BRAZIER: Yes.

DELEGATE HELIKER: You've mentioned specifically, I believe, politics. I couldn't quite hear, because you didn't have your mike close enough to your mouth.

CHAIRMAN FELT: Could you restate the other matters, Mr. Brazier?

DELEGATE BRAZIER: All I can do is give you some examples that have been called to my attention. I don't claim to be an expert in these other fields myself, but there is a usage of the

term-"political environment", "social environment", "economic environment", and so forth. And I just want to make certain that nobody makes an excursion into those areas as a result of what we draft on our Environmental Article here today.

CHAIRMAN FELT: The gentleman, Mr. Heliker.

DELEGATE HELIKER: May I continue my question?

CHAIRMAN FELT: Yes. If you wish to use questions, go ahead.

DELEGATE HELIKER: Well, I would ask if you couldn't be a little bit more specific in listing examples of these things. If you say social, economic, cultural environment, I'd like to know exactly what you have in mind.

DELEGATE BRAZIER: Anything that is not clearly identifiable or subject to categorization under physical environment. I mean to exclude everything else.

DELEGATE HELIKER: All right.

CHAIRMAN FELT: The gentleman, Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. As I'm listening to the discussion, it seems that a member of the committee-maybe you weren't on that committee. Were you on that committee, Jeff?-Excuse me—A member of the committee has somewhat weakened the position of the committee in their statement about not needing any qualifying words at all. And I'm thinking maybe, at some point, we'll want a chance to amend other language on this article in order to make it the strongest it can be. Thank you.

CHAIRMAN FELT: If there's no further discussion—

The gentleman, Mr. Harlow.

DELEGATE HARLOW: I am slightly bewildered by this word "physical", too, when it applies to environment. If we read the thing as the majority has maintained-that it is so elegant in its wording, that we're going to maintain a physical environment. All right, we're going to maintain a physical stench in Missoula; if we're going to maintain the blemished and eroded hillsides in western Montana, as well as eastern Montana; if we're going to maintain the erupted and corrupted land in eastern Montana as they dig up the coal-1 think this word is a bad word. I think we should delete it andmaintain the idea thatsomebody said was good and not put any extra words in here. Let's not go back on what we just said was all right.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: I wish to speak briefly against the amendment offered by Delegate Brazier. I think that the use of "environment", rather than qualifying "physical environment", is better, if we're going to choose. If we have physical environment in there, it may, according to my understanding of Delegate Brazier's replies mean that cultural environment and political environment and one thing or another of that character are not included in his purview. Well, I maintain that there are ramifications of environment that are not physical, that are concerned in the matter before us. These ramifications include political environment; they include cultural environment. If I smell the stench of the Waldorf-Hoerner mill in Missoula 47 miles away in Hamilton under proper atmospheric conditions, that is a cultural environment which I am affected with, and adversely so in my opinion. Of course, I realize that we must try to reach a happy medium here so that-and I think all of us have this intention. I realize that if you kill the cow, you can't have any milk; and I don't think any of us wish to do that. But I think that we should not accept this word "physical". Another reason is that, if we can't understand what physical is here, how is the Supreme Court, when it hears a case involving it at some time in the future, going to be able to determine what we meant.

CHAIRMAN FELT: The question now arises on the motion to amend offered by Mr. Brazier. All those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. The gentleman, Mr. Cate.

DELEGATE CATE: Mr. Chairman. At this time, I would move to amend Section 1 by inserting the language which the clerk now has and would ask it be read.

CHAIRMAN FELT: Will the clerk please read the proposed amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, subsection 1, by striking it in its entirety and insert the following: 'Section 1, subsection 1. The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust and the right to protect and enforce it by appropriate legal proceedings against the trustees.' Signed: Cate."

DELEGATE CATE: Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Cate.

DELEGATE CATE: This is a modified public trust concept that I would like to ask you to consider at this time. From the language, you will note that it states that the State of Montana has the duty to maintain a clean and healthful environment, but it makes it a public trust. In other words, it makes it the duty of the state as a trust— the state acting as a trustee-to enhance this environment. And this has the effect of giving beneficiaries the right to enforce the trust. The next sentence says, "The sole beneficiary of the trust shall be the citizens of Montana". In other words, you would have to be a citizen of Montana in order to enforce the trust. This would take care of the comment that I've heard about hippies passing through Montana that might try and sue everybody. The rest of the paragraph says who shall have the duty to maintain and enhance the trust, which is not very different from the present language, and the right to protect and enforce it by appropriate legal proceedings against the trustee. This would give the citizen the right to sue the state to enforce the trust, not private individuals. In other words, if pollution such as is occurring in Billings, killing the life on the south rims, was occurring, a citizen would have the right not to sue the power company, but it would have the right to sue the state agency, the Board of Health, to require that they take appropriate action to protect the environment and make it clean and healthful. It takes away the argument against the public trust concept that private citizens will be harassing private individuals. Everybody here seems to agree that we need a strong environmental provision, and I think that this is the most effective and the strongest environmental provision that we could put in our Constitution at this time, considering the stage of enlightenment of some of the citizens of Montana. The public trust doctrine is nothing new. The public trust doctrine has been recognized by the United States Supreme Court since 1842. The public trust doctrine has been in our Constitution for 83 years. All the state lands are in public trust; navigable streams are in public trust; the air is in public trust; the shorelands are in public trust. It's existed in England for 800 years. The public trust is not a new concept. It is not consistent to taking a private property, as has been alleged. It is not a socialistic system-that has been alleged. It's simply an effective means of protecting the environment and is probably the only true and effective means of protecting the environment. Thank you, Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I rise to be against Mr. Cate's proposed amendment; and in doing so, first I would like to read to you a couple of paragraphs from a letter sent to Delegate Cate by George Darrell, which I had printed and spread upon your desks approximately February 18th, I believe. "In attempting to apply these fundamental concepts of ecological understanding to a draft of an Environmental Article, we devised"-and this was Mr. Darrell and Mr. Cate, I presume-"an unorthodox concept of the public trust. I am now convinced that the prevailing, narrowly legalistic construction of public trust 'in conventional past usage' has effectively usurped the opportunity to employ the public trust concept in this different, innovative sense. Since conventional usage of the public trust concept has applied only to circumstances of actual public ownership, a different application in a new context may be subject to valid doubt as to its unintended implications to the private ownership of land. In the prevailing legal usage, then, the application of the public trust concept to achieve protection for the environment does, inadvertently, impinge upon the equally valid need to protect and reaffirm private property rights." This was not intended, and he goes on to say that the overwhelming majority

of private property owners-probably 99 percent plus--are offended against by the environmental consequences of the actions, and that private property rights must be protected. I really cannot see anything good coming from this proposed amendment, and I can see an awful lot of things that could be very bad. So I request that, when the vote comes on this, that you vote against it.

CHAIRMAN FELT: The gentleman, Mr. Foster.

DELEGATE FOSTER: Thank you, Mr. Chairman. Would Mr. Gysler yield to a question?

CHAIRMAN FELT: Will the gentleman, Mr. Gysler, yield?

DELEGATE GYSLER: Yes.

DELEGATE FOSTER: Mr. Gysler, do you consider the article on water to be a public trust of water?

DELEGATE GYSLER: Mr. Foster, perhaps it could be determined that that is a public trust of water. The implications between private land and water are considerably different, and anytime you use the words "public trust"--and I would like anyone who would like to argue with the definition of a trust to go and talk to somebody in a bank or some attorney or something like this, who knows the meaning of the word "trust".

DELEGATE FOSTER: Thank you, Mr. Gysler.

Mr. Chairman.

CHAIRMAN FELT: Mr. Foster.

DELEGATE FOSTER: I would quote from the committee report: "All surface, underground, flood and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state." Now, my point in bringing this up is that, actually, we've proposed something in this same article which goes beyond the concept of public trust and have, in fact, declared it to be state property. There's a great deal of concern about the concept of public trust, but I feel that it should be understood that when you say "the environment", you're not stating the private property rights; you're not stating the water rights; you're not stating any of the things that we own-the buildings and this. It's strictly related to the environmental system. And the concern about the public trust in this area, I think, is unwarranted when, in fact, we realize the need for protecting water carefully. And I support the majority's proposal on water. When we realize the need for really protecting something, we come to the concept of public trust. And the real question before this Convention is whether we really believe in the concept of protecting the environment or not; because if we really want to protect the environment significantly, then we must subscribe to the concept that the public good, the public benefit, public trust--whatever you want to use for those words--must be incorporated in order to protect the environment. If we really don't want to protect the environment all that much, fine-well and good. But I think that if we really want to protect the environment, honestly and totally, well then, the only way we can do it is subscribe to a system which will allow us to protect it. And I suggest that the public trust, as proposed by Delegate Cate, which requires a person to be a citizen, is the only way to really protect the environment. So let's not kid ourselves about whether we really want to protect the environment or not. If we really want to protect the environment, this is the only way to really do it effectively; and if we don't, fine and good. Thank you, Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, would Mr. Foster yield to a question, please?

CHAIRMAN FELT: Will the gentleman yield?

DELEGATE FOSTER: Gladly, Mr. Chairman.

DELEGATE REBAL: Mr. Foster. Is [Does] your interpretation of a public trust mean that a landowner will turn his private property over to the state, to be held by the State of Montana, for the public?

DELEGATE FOSTER: Absolutely not, Mr. Rebal.

CHAIRMAN FELT: The gentleman, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. We do not have this amendment, I believe, before us in writing.

CHAIRMAN FELT: Yes. Would you like it read again?

DELEGATE HARBAUGH: Would it be possible to read it slowly enough so that we could get it down?

CHAIRMAN FELT: It deletes the entire section, including the words in capital letters. Then, "subsection 1. The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust, and the right to protect and enforce it by appropriate legal proceedings against the trustee." Anyone wish it read again?

The gentleman, Mr. Harbaugh, wish to speak?

Does the gentleman, Mr. Cate, wish to close?

The gentleman, Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I didn't think we were approaching the closing stage. I would like to make a few comments which the majority of the committee thoroughly considered.

CHAIRMAN FELT: These will be on the matter of the public trust doctrine?

DELEGATE MCNEIL: Yes, Mr. Chairman. The committee had before it two written proposals, one submitted by Delegate Cate, number 12, and one submitted by our Chairman, Delegate Cross, number 162. Both had language comparable to this expressed provision-"The State of Montana shall maintain a clean and healthful environment"-the word "environment" must include land as well as air, water, everything else—"as a public trust for the benefit of all the citizens." The intent is clear, to protect the environment. No one is questioning that. The expressed language speaks for itself: the state shall hold all land in trust for the benefit of all citizens. This is a departure from our traditional notions of private property. It goes beyond the air, the sea, the navigable waters, and strikes right to the heart of private property ownership. I would like to refresh the memory of those delegates who attended the presentation by Mr. Charles Lindbergh. He was brought to this Convention at the request of some of the delegates. At the evening informal session in the Governor's room, he expressed his concern for maximum personal freedom, with government regulation--and I emphasize the word "regulation"—of all property, including private property. At that public meeting, several advocates of the public trust theory asked Mr. Lindbergh several questions, trying to get him to say in his answer, public trust-the magic language-is the solution. He carefully avoided recommending that doctrine. After the meeting and alone for about 15 minutes with Mr. Lindbergh, I showed him the expressed language of both delegate proposal 12 and 162. The following morning when he addressed this Convention as a whole, he used the same language recommending maximum personal freedom. However, he changed the word "government regulation" and said "with government monitoring". And I submit that there is a distinct difference. The majority proposal before you now does recommend, as did Mr. Lindbergh, government monitoring. It goes further than that and directs the Legislature to provide remedies to prevent degradation. This is anticipatory. I submit that the only difference--and refer you to the express language of this proposal, "The State of Montana shall hold the environment"-including land-"as a public trust for the benefit of all the citizens." I submit that this is a substantial change in our body of law and urge you to vote against it. Thank you.

CHAIRMAN FELT: I would like to ask Mr. Cate a little question for clarification. Did you intend to delete subsections 1, 2 and 3 entirely?

DELEGATE CATE: Yes. Mr. Chairman, I believe that this one section, as proposed, would take care of the entire environmental situation.

CHAIRMAN FELT: Fine. The language before us didn't make it entirely clear, but that is clear enough now.

The delegate, Mr. Arbanas.

DELEGATE ARBANAS: Mr. President, fellow delegates. Very often the words that you use about something are filled with emotion. And we have two very emotional words here-"the private property" and "public trust". Mr. McNeil said it strikes right at the heart of the issue, because these are opposed to each other. And I submit, ofcourse, that this is the way it would appear. Maybe we're using the wrong words. It seems to me that there are other words that get at the heart of the matter better than either of these two. I'd rather use something like "common stewardship" or "shared responsibility". I don't think anyone would say that the right to private property is unlimited and

that there is not a shared responsibility or a joint living on this earth with other people that I have to worry about. The second item I'd like to talk about--and it's sort of a rebuttal to Mr. McNeil-if I could. He talked about these two words, "government regulation" and "government monitoring". This is very fine, and I hope to support that in the proposal; but it leaves out the problem of how do I, as an average citizen, get at that? And I think that the proposal before us guarantees that I can get at it.

CHAIRMAN FELT: The delegate, Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen of the delegation. I rise in opposition to Mr. Cate's proposal. I think if you want socialism to step in the door, just vote for what he proposed.

CHAIRMAN FELT: The gentleman, Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. Chairman, fellow delegates. I rise in opposition, definitely, to Mr. Cate's proposal. It has often been said that a little bit of knowledge on any subject can be a dangerous thing. I am sure that Mr. Cate's proposal is that very thing; it is a dangerous thing. It is setting our very life-support system, including private property, in the hands of the state as a trustee. I do not think that this is what we want. Especially in pertaining to private property, I think Mr. George Darrell has finally come to the conclusion that setting property up as a private trust does infringe and encroach upon the private property rights of the individual. And I submit to you, in my opinion, that it does infringe and encroach upon the property rights as in Section 5 of our federal Constitution and also infringes upon our civil rights as set forth in Section 14 of our federal Constitution. So I urge the delegates to vote against Mr. Cate's proposal. Thank you.

CHAIRMAN FELT: The delegate, Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, will Mr. Johnson yield to a question?

CHAIRMAN FELT: Will Mr. Johnson yield to a question?

DELEGATE JOHNSON: I yield.

DELEGATE SIDERIUS: Will you define "socialism"?

CHAIRMAN FELT: We will permit this, but in debate. Let's refrain from anything that encroaches upon anybody's personal privileges. And that applies to you, too, Mr. Johnson. You go ahead and define "socialism", if you wish to.

DELEGATE JOHNSON: I think enough of a definition would be censure of government and control of all private industry, and so on. Everything that that would contain-your personal integrity-control of the private person. I just don't like central government, that's all there is to it.

CHAIRMAN FELT: Let's keep our remarks on the merits of the question.

The gentleman, Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I am one who happens to believe that all of the people who are talking about our environment being in trouble are absolutely correct. I do not believe that we are in a time when business as usual will get the job done. I do not subscribe to the theory that everything is going along just fine and if we do not change any present laws or present attitudes or present actions, that everything is going to turn out all right. No environmentalist who knows anything about what's going on in the world today is subscribing to this theory anymore. I submit to you that every intelligent citizen is alarmed, and duly alarmed, at what is happening to the environmental life system in this world today. Now then, I'm concerned that somewhere in here, however we do it-it just may be this is the place to take the stand on it—Mr. Cate's proposal-that the people be given achance to join in this battle. I do not see the Constitution as a place where we parcel out partial rights to the people, but it's the peoples' documentfor parceling out duties to agencies which will work in their behalf. The citizen is capable of fighting his own battles, if he's given the tools. We don't need bureaucratic middlemen; and when the citizen understands he has direct stakes in the outcome, he always fights best. Now, private and class actions by citizens only help those agencies of government which are trying to protect and enhance the environment of our country. Let me use an illustration. Citizens' suits complement the enforcement power of government agencies in the fields of antitrust and security frauds, for

example. We have good examples of how this complimentary action works. In both of these areas, Congress and the courts have relied on private suits to aid enforcement. The Department of Justice and the Securities Exchange Commission are understaffed and unable to bring all the suits necessary for enforcing regulatory laws. The enforcement of antipollution laws will benefit in the same manner if private citizen action is allowed. This fight for life-1 want to use that word again-this fight for life, literally, is our fight; and we must have the equipment to wage the battle as people. Now, what about use of suits overturning private property rights and so forth? Won't court dockets be crowded with environmental suits? Well, in practice, this hasn't occurred in other states which allow such suits; and, of course, the courts will decide what is nuisance in a suit. Your suit against my pollution of your well may be a nuisance to me but a vital matter to you as you drink your water. Now, Connecticut has a statute of public trust, and they're having no trouble with so-called "nuisance suits". The Connecticut Deputy Attorney General writes that the safeguards provided by bonding, by high costs of litigation, plus the redress a defendant has from a wrongful suit, are adequate. And I'm sure all these protections will be written into the Montana law. The Constitutional Convention executive secretary in North Dakota wrote in a similar fashion, echoing the same opinions as those expressed by Connecticut. And so the word of experience comes from New York, Minnesota, Washington, Florida, Indiana, Michigan, Illinois-all of which recently wrote good constitutional provisions allowing-or the last two, constitutional provisions, even, allowing for adequate legal proceedings. Now, all of these states have preceded Montana in allowing their citizens to join their own battle for a clean and healthful environment for their children, and not a one of these states has more to protect than the treasure of the Treasure State. I submit to you that, here or somewhere, this Convention-we as delegates-need to take a stand to make sure the people have some teeth in an environmental law.

CHAIRMAN FELT: I intend to recognize at least one person who may be in opposition to Mr. Cate's motion and certainly will permit him to close. If more feel it's necessary to speak, that's all right.

The gentleman, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I would like to pose one question to Delegate Harper.

CHAIRMAN FELT: Does the gentleman, Mr. Harper, yield?

DELEGATE HARPER: Yes, I will.

DELEGATE KAMHOOT: Delegate Harper, did you say that Michigan had a public trust concept?

DELEGATE HARPER: It is statutory, yes.

DELEGATE KAMHOOT: Thank you. Mr. Chairman.

CHAIRMAN FELT: Mr. Kamhoot.

DELEGATE KAMHOOT: I have an editorial here from the State of Michigan, from a newspaper. If the delegates would just bear with me for just a little bit, 1'11 be as brief as I can. I've deleted a good deal of it, but I think that we should give a lot of thought to this-how far it can go when your government is going to come in and, mandatorily, tell people what they could do. Here's the editorial from the State of Michigan: The state water resources commission has ordered Lampair City [Lapeer?] and the townships of Elba and Mayfield to build a regional sewer project, which will cost around $14 million. They are polluting the Flint River and must stop, the WRC says. Also, the WRC says, by making it a regional project, the three communities become eligible for huge gobs of state and federal aid, all of which sounds just dandy. These days the ecology ranks right up with apple pie. Not even the worst villain will defend pollution, and not even the most conservative communities refuse money from Washington and Lansing. But is that federal and state money really available? It petered out this year, and there's absolutely no guarantees if it will materialize next year, or any other year. In the meantime, the two townships and the city face, in 1973, construction deadline without the slightest assurance of how they could ever pay for such a project. What are their alternatives? Could the pollution be cured on an individual basis, community by community, or even polluter by polluter? Just who are the polluters? What power does the state have to enforce its order? What happens to communities that don't comply? Is the township board arrested? There are many interesting and unanswered questions. We do not raise them

idly. We raise them, in fact, on the prompting of Eugene Black, who is a justice of the Michigan State Supreme Court. He is also a former Attorney General of Michigan. It is with great interest that we read a letter from Justice Black published in the February 7th *Port Huron Times-Herald.* He objected to the highhanded way the WRC is giving orders, and he objected to the meek way his township was falling in line. Here are a few quotes from Justice Black's letter. Justice Black: "The only propered [proffered] excuse for WRC's dictatorial crowding of the township board is that there will be no state or federal aid for the proposed quandary mania unless the township joins in such a regional plan. For the present, I confine to one fact my objections to WRC's threatened imposition upon the townships. It is that the township board seems to think that its taxpayers are absolutely defenseless and have no choice but that of surrender to another Lansing bureau-a bureau that cares less than a tinker's damn about the deplorable consequences of confiscatory taxation. In a word, the board hasn't even bothered to obtain the advice of its attorney as regards the specific cost to the taxpayers of the proposed regional project; the legal alternatives that are available to the township by identity of the places in the township of the alleged pollution; the cost of proper correction of the latter's specific within-the-township project; the actual, if any, extent on availability of state and federal aid; the constitutional validity of WRC's imposition upon the township of its will. The board simply doesn't seem to realize that eligibility of state or federal aid never guarantees any such aid and that once the township signs the big mortgage, the taxpayers must pay, whether aid comes through or not." Justice Black said he was writing as a taxpayer only, but there's no question that his fellow residents felt the weight of his position and experience behind his words. The day after the letter was published, the Port Huron township board voted to ignore the WRC's recent order and to correct the pollution itself, Previously, the WRC had declared that this would be totally unacceptable to the state. "They may be dictators, but I'm not afraid of the WRC and I don't believe they are that powerful. People have taken up arms for less", said Robert Lowendowski, township treasurer. Now, their-the State of Michigan has been held up to us many, many times in the committee. This has been quoted, oh, dozens of times; how well it works. Only 35 lawsuits have been instigated, so it proves that it's real good. Here's an editorial right out of one of the Michigan papers. Here's a statement by a Supreme Court justice, speaking as a taxpayer. So I submit to you, delegates, you better give this public trust concept a big, long look before we adopt it in Montana, because it is not necessary in this state. Thank you, Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, would Mr. Cate yield to a question, please?

CHAIRMAN FELT: Will Mr. Cate yield to a question?

DELEGATE CATE: I certainly would.

DELEGATE VERMILLION: Mr. Cate, as you know, there's been a good deal of concern, when you hear the words "public trust", that there's going to be a good many frivolous suits used on it. I wonder if you could expand on this business of frivolous suits under your proposal.

CHAIRMAN FELT: Would the gentleman, Mr. Cate, be able to do that in his closing, do you think?

DELEGATE CATE: I could do it in my closing, I suppose.

CHAIRMAN FELT: The gentleman, Mr. Scanlin. Do you wish to be recognized?

DELEGATE SCANLIN: Mr. Chairman. In the words of Delegate Mahoney, who is absent today, "I'm worried about our environment." But the tremendous steps that the last session of the Montana Legislature took to face these problems renewed my confidence in what a Legislature can do. And I rise in objection to this amendment.

CHAIRMAN FELT: The gentleman, Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. It's odd that 100 years ago today, there was a small handful of people in Helena who were celebrating what perhaps has been one of thegreatest things that could happen to the West. On that date-on March lst, 1872-100 years ago, President Grant signed the measure establishing Yellowstone Park and dedicated and set apart, as a public park or pleasuring ground, for the benefit and enjoyment of the people and for the preserva-

tion from injury or spoilation of all timber, mineral deposits, natural curiosities or wonders and their retention in their natural condition. It was a little band of Helena people, Montana residents, that wanted to see whether the stories and the tall tales that were told by the Indians and Jim Bridger were a reality that led to the trip of this small band of people from Helena in 1870 to see the Yellowstone National Park country. And as they went there, they went there with an idea that they were going to divide it up, take on concessions of their own, and preserve it. But at the campfire on the last night that they were in the park, they came to the conclusion that it would be a crime if this were not to be set aside for the benefit and enjoyment of the people. They initiated this effort, and the result has been something which has not only spread throughout the United States but has also spread throughout the world, and that has been the development of the national park idea.

CHAIRMAN FELT: Mr. Martin, we're very close to 12:00, so if you can complete the dedication of the park.

DELEGATE MARTIN: Well, I think, Mr. Chairman, that this is important enough so that I should be given a little time on it.

CHAIRMAN FELT: You are.

DELEGATE MARTIN: The establishment of Yellowstone Park, in my opinion, has paid far greater dividends than did the founding or the discovery of gold in Last Chance Gulch or in Bannack or in Alder Gulch or anything else, because it's preserved a continuing resource--one that has been continued. But let me tell you about some things that are happening with regard to this-in which I would suggest that we think in terms of a little flexibility in providing for the future, and that is not to tie something down which can't be changed. Today, in celebration of the Yellowstone Park 100th anniversary, there is to be a dinner in Washington, D.C., tonight. And one of the things that's most obvious is the fact that they've rewritten history and give no credit to the people from Helena and the people from Montana who founded it. There has been a time, and still is today, where Yellowstone Park is being used and a sales tax is being collected from business in Yellowstone Park, as well as gasoline, for the benefit of the State of Wyoming. I don't think that we want that sort of thing. Another thing thathas happened is that, under the program that a study team that has been developed in Yellowstone Park adopted, they have turned around and brought in a bunch of bureaucrats from Washington and other places, without regard to the people in the tristate area, and they adopt a master study plan in which they are now going to permit the public generally to use only the blue corridor for visiting Yellowstone Park. They likely, shortly, will be abandoning automobiles; they'll be doing a lot of other things. The trouble is, with all of this, the people in the area do not have an opportunity to present an opposition to this. Even in the planning of this 100th anniversary celebration, because Congress initiated it, we do have a senator from Wyoming and a representative, John Melcher, from Montana, who is on the committee. But the committee acts only after the bureaucrats get through, and the result is that we have a situation, which I think is a pitiful situation, without regard to what's happening to the adjoining area. For instance, now as they begin to tighten up, they're going to eliminate lodging, they're going to eliminate camping, they're going to do this—they're even going to require that the waste and the pollution and the-garbage of Yellowstone Park probably will have to be hauled out into the adjoining areas. These are some things that you've got to think about. We need some flexibility. We should put a fundamental article in there with regard to protection of the environment, but we certainly shouldn't tie ourselves down. I oppose the Cate amendment.

CHAIRMAN FELT: The gentleman, Mr. Simon.

DELEGATE SIMON: Mr. Chairman. It's noontime and I know we're going to recess, but during that time, I wonder if it would be in order that I ask that this be printed. It's a very vital proposal, and we have a form that's supposed to be on our desks. It's a long one for most of us that are not stenographers. I wish it could be printed and on the desks before we go. Thank you very much.

CHAIRMAN FELT: Mr. Simon, the request will be noted. For your information and that of the members of the committee, there are before us up here at least-possibly they've been distributed-at least two more very far-reaching proposals. And so that-if we were going to duplicate one of these for distribution, we'll have to duplicate three of them. They go, each of them, into the matter of appropriate legal proceedings, both

against government and against private individuals. So we will probably be recessing for lunch in about six minutes and go back to this matter when we are completed with that recess. It doesn't look as though we'll be able to get to a vote before that time, but we might.

For what purpose does the gentleman, Mr. McNeil rise?

DELEGATE MCNEIL: One minute, Mr. Chairman, to clarify the problem that Delegate Harper was having.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE MCNEIL: Delegate Harper's concern dealt with the issue of the citizen right to participate and the citizen right to sue. The committee recognized the controversial nature of this section and has set it forth as a separate proposal. It is on page 16 of the committee report. The right to sue, the right of the citizen to participate, whether he can sue anyone or just the state, we felt was a separate proposal and did not feel with the specific subject of the public trust, which is before the committee now. I would like to make one comment to Delegate Arbanas. Delegate Arbanas, the majority committee did not exclude private property. Don't misunderstand that. Read subsection 3 very carefully. The proposal mandates the Legislature to prevent degradation and to prevent unreasonable depletion. Now, that includes private property. It was not our intent to exclude it. The only question to be determined is the method and whether, under Delegate Cate's proposal, the environment, including land, ought to be held by the state in trust for the benefit of all the people. And that is the real issue in that amendment.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise in support of Delegate Cate's proposal. I think the question again comes down whether or not we want effective environmental provisions in this Constitution. If we do, we should vote for it; if we don't, we'll vote on it and our children and grandchildren will live with the results of our decision today. I don't think we should delude ourselves by thinking that if we put in the provision in Section 1 as it was, that the state shall maintain an environment which we all say we want to be clean and healthful but we're too timid to say we want clean and healthful in there because it may cause some problems later. I think that it was a tragic mistake to vote that down. I think this is the greatest example of seeing the emperor's clothing, for people to say that it was stronger not to use the positive language describing what type of environment we all say we're for, but no one wants to be explicit in the Constitution. I would support the proposal of Mr. Cate. Thank you.

CHAIRMAN FELT: Does the gentleman, Mr. Cate, wish to close?

Mr. Brazier, do you wish to speak on this?

DELEGATE BRAZIER: Yes, Mr. Chairman. For your information, I want to comment at length and read a little scripture. And I thought I ought to call that to your attention in your organizing the work of the day.

CHAIRMAN FELT: Yes. (Laughter) Does anyone else feel they have something to say that is not going to take so long?

The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I was really sorry, I guess, when public trust came up this morning, because I thought that we had decided against it. But since it is on the floor, I feel compelled to get up and speak in its defense. I think that it has been greatly maligned-and greatly misunderstood. Before the Convention opened, this concept was explained in what I thought was a relatively simple way of looking at a situation which we already have, which was really put into effect last year by the Environmental Quality Act, which has been cited before. It states simply that the quality of our environment is held in trust and that our government is responsible for maintaining the quality of this environment. They already, really, have that responsibility. They maintain it for the benefit of the people, and I don't see anything really that startling in it. I think the red herring came in when we got in the idea that, because they were holding the environment in trust,-really the quality of the environment-that meant they were going to take over all of the land in Montana. And this is really-it's really ridiculous, I think. I don't think it was anyone's intent. I don't think it's implied in this, but I do feel that because it has been so widely discussed and there has been so much feeling engendered on it, that it has become-pretty much become a useless concept to us. I think a good example of this was the radio hearing we had on

Monday night. I counted 12 calls from the Hamilton area. And those of us who have been sitting in committee pretty much knows the source of this thinking. None of them really directed themselves to the subject of the broadcast, which was the Natural Resources proposal. They had been told that-1 think-several times I heard the statement, "This is interfering with the basic rights of Montana, and we ought to let the Legislature do that." I also kept hearing the statement that we are making stool pigeons of the people by asking them to report on their neighbors. I don't think anything like that has even been mentioned, but I do feel that there are so many groups out working to malign the idea of public trust that, even if this body could come to a good understanding of what at least my understanding of its intent was from the beginning, that we would have a very difficult time selling this--and I say selling-to the people of Montana. And I think that we're far better off in stating our purpose and our policy for the state in different languages and in different words. I think we've all been balled up on words, and the latest one-if you want something to think about during lunch-I've talked to four lawyers in the last hour who assure me that the word "enhance" means to enlarge. And we might find that when we're saying we're going to enhance a polluted air, that we are really dedicated to increasing the pollution. Now, give that one a thought. Thank you.

CHAIRMAN FELT: The next person I'm going to recognize will be Mr. Eskildsen; but since Delegate Cross and Delegate Robinson may not know, in detail, what each is working on, they might contact each other during this recess period.

The gentleman, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Before I move to recess, I would like to remind the delegates that when you have an amendment placed on the desks, if you'd put your name on it, it gives the delegates a chance to find it-especially where we're getting a half a dozen of them all at once. Just your name on it-really help a lot. I move we stand in recess until 1:30 this day.

CHAIRMAN FELT: All those in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

(No response)

CHAIRMAN FELT: The Ayes have it.

(Convention recessed at 12:11 p.m.—reconvened at 1:42 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Mr. Vermillion, will you please close the back doors. For the journal, Mrs. Acher, will you please show Mr. Kelleher excused. Mr. Kelleher is ill today. Very well, the Chair understands that we're still debating Section 1, sub. 1; that the initial section was moved; that Mr. Cate has an amendment to the effect that "the State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The beneficiaries of the trust shall be the citizens of Montana who shall have the right to protect and enforce it by appropriate legal proceedings against the trustee." Is there further discussion on Mr. Cate's amendment?

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates, I speak to you as a member of the Committee on Natural Resources and Agriculture, and I want to assure all of you that everybody in that committee was most vitally concerned about what we can do to make progress towards the protection of our physical environment. I do think it unfair to suggest or imply that, because some people viewed one approach as more favorable to another, that they were opposed to enhancing the environment. For what it's worth, my great-granddad was the person Fred Martin referred to as having suggested that we make Yellowstone Park a national park. For what it's worth, I knew what the word "ecology" meant 10 years ago, and I don't think many of you in here can say the same thing. For what it's worth, I pledged to the Montana League of Conservation Voters that I would support an environment proposal that they suggested and set forth. I think most of you did, too. In my own mind and conscience, I think I have gone far beyond that pledge in proposing to this delegation something that I think is an action—constitutional proposal which will stand attacks under the federal Constitution, which I doubt whether the Illinois proposal will do under certain circumstances. Now, we had a choice of two ways to approach this, if I may distill it down. We had a choice of the public trust, which I will comment on in more detail, and we had a choice of the police power concept, which is the way our government has worked since its inception. Now, to the distress of some people, I have to favor the police

power concept. I have to favor a type of government that passed nine major ecology and environmental bills just one year ago in this house, when nobody knew what the meaning of the word "ecology" was, 10 years ago, and when the coalfields were being reexploited as recently as 6 years ago. I have to go for a police power approach, which does, and did in the last Legislature, create citizens' rights by the Uniform Administrative Procedures Act. Now, what the majority proposal does for you-it may be a little hard to grasp for some laymen-it takes out anything that leaves to the Supreme Court interpretation, as much as we possibly could do it. Now, I think each one of us on that committee tried his hand at at least 20 different proposals, and none of them worked; and what we're involved [in] here now is just an enlarged replay of the same frustrating attempts. Keep that right to interpret out of the hands of the Supreme Court, where it can be locked in forever without being overturned by the Legislature. Secondly, what we did is mandate the Legislature to take immediate, forceful action, What they did isn't enough. We want more. And, finally, what we did is tell the Legislature, "You create remedies for the state agencies and for the persons against state agencies and against persons." And all this, I assure you, will withstand attacks under the federal Constitution, and I think will also withstand attacks when we go to the polls on June 6th. To some people this is not enough. This trust proposal has been forwarded. I think it's grasping at straws, under emotional circumstances. And we're all emotional; but I don't think you draft good statutes, you certainly don't draft good constitutional provisions, when you are emotional. Although a trust concept has been employed, as Mr. Cate represents, at various times and various places, it does not bring with it the body of jurisprudence that the police power concept does. We have been favored and had called to our attention six or seven cases decided by courts of record in the last hundred years, and most of those are dealing with shorelands. So we are asked to embrace this concept in a constitution and expand its use, although we have had no real inspection of how it applies, either in the statutes or in other constitutions. And I submit to you that if you were buying a used car, you would certainly want to inspect that commodity a lot more than what you're being asked to do with a trust concept in this case. One thing that we got some of the witnesses to admit was their intention-was that a private citizen, a stranger to the property, if you will, could walk in and try to superimpose his subjective opinion of what a better use or a better environmental application of the property was than the actual landowner. Consider that. That exalts to a higher station the right of a stranger to dictate the use of the land than the person who has had the land and, [in] many cases, had it in his family for several generations. It also permits a stranger to sue and possibly harass, maybe justified, but at any rate to anticipate what the landowner might do to the property without any real manifestation of usage. And I submit also there is no restriction on use of property in these proposals. It applies to snowmobiles, guns, pipes, cigars, how you paint your house, and any other application that the mind can conjure up. Many of these proposals have asked that we include in the Constitution the right of a citizen to enforce. Now, as I take that, it means that all a citizen has to do is file suit, and the court has no discretion. He's got to enforce that citizen's opinion. I submit that that's going too far and what it creates is a government of men and not a government of laws. And, as several of the delegates have pointed out, the actual, practical effect is you're going to socialize property-let me backtrack a little bit. One of the witnesses, a college professor, said what he had in mind was that a citizen could not only sue the property owner, but the citizen could sue the State of Montana to force the State of Montana to condemn the property if he didn't like the use of the property. He didn't know where the money was coming from, but he had that in mind as one of the usages of the trust concept. Now, I submit to you that that is going to be a form of socialism, if not anarchy, and it's certainly going to depreciate the value of any land that a property owner has in the State of Montana, because he'll never feel safe. I don't think he could get insurance on it, and it's going to undermine the tax base of the State of Montana, and it's going to deprive us of the revenues to run our government-and including the policemen that these people want us to provide to protect their environment. So I ask you to think again about the implications of what is proposed here, bearing in mind that what the draftsman tells you he thinks this means is not necessarily what the Supreme Court of the United States or the Supreme Court of the State of Montana is going to think it means once it has a chance to look at the subject. Now, just so there's no mistake, I'd like to call to your attention something that we on the committee were favored with by a strong

environmentalist-and, believe me, I'm sympathetic with them. The only problem I have is a solution to the problem. This man wrote us, urged us to take action. We're trying to take action. He submitted some literature for our edification, and I'd like to share some of it with you. I quote from a column that was printed in the *Missoulian* on February 13, 1972. It is taken from a New ***York Times*** service column by Anthony Lewis. The following extracts are in this enclosure, and this is submitted by a person who is very concerned about enhancing our environment. It says, "Leading ecologists say that we must adopt a policy of no net increase in capital investment from now on. Only matched depreciation of capital. But if the United States has such a policy, how could the manufacturers compete in the traditional way of more productive machinery? Would it not follow that new forms of social control would have to be imposed on production, on marketing, on advertising? And how would we be squared with the ideas of our freedom? Merely to state such problems is to make one thing evident, the complete irrelevance to most of today's political concerns." I submit to you, ladies and gentlemen, that this man is very candidly stating the implication of what the trust concept is. It is a form of socialism, and I want to call it to your attention because I don't want anybody to walk out of here, after having voted on these provisions, and say, "I didn't understand the implications of what was said." Don't let that happen. Now, we're all trying to look ahead, and I agree that it is possible in the foreseeable future that maybe all property in the world will be socialized. A hundred years from now, 50 years from now-1 don't know. But I submit to you that that can evolve in the orderly course of events through out present form of governmental structure and without the necessity of exalting strangers' rights to a higher station than those rights of existing property owners. I'd like to state the proposition in another way. Maybe you've noticed I've followed somewhat along with Mr. Holland's position-for better, for worse. I agree that I am trying to be a practical politician about getting this Constitution through. Now, I know some of the younger people will recognize when I say I'd like to paraphrase the words of Darrell Royal. You recognize Darrell Royal is the highly successful football coach of the University of Texas, who has probably won more games in the last 10 years than any other coach, and he is probably the dean and the chief exponent of what we call "ground attack football", as opposed of throwing the forward pass. Now, Darrell Royal says, three things can happen when you throw a forward pass—

CHAIRMAN GRAYBILL: Mr. Brazier, let's not teach them football, let's stay on Natural Resources.

DELEGATE BRAZIER: -Mr. Chairman -two of those things are bad. Now, four things can happen if you adopt the trust concept, Mr. Chairman, and three of those things are bad and none of them are progress. Number one, if you adopt a trust concept here, I think you've driven the last nail in the coffin and you're not going to get any progress out of this Constitutional Convention, and that's bad. That isn't enhancing our environment one iota. Bad thing number two, you're going to get a case involving a big company, and you can bet it's going to the U.S. Supreme Court, and I'll bet you whatever resources I've got and my pure physical environment that that U.S. Supreme Court is going to hold this concept in violation of the federal Constitution, thereby rendering it a nullity, and that's bad and that's no progress. Thirdly, you can get the wrong case before our present Supreme Court--and remember, we got it locked in the Constitution now, the Legislature doesn't get a shot to overrule the Supreme Court if we're wrong, and they can interpret it in an unfortunate way; and you have made no progress and that's bad and that's not what you want either. Now, some of us throughout this Convention have tried to tell you, rightly or wrongly, in our opinion, how we think we can make progress on all matters. You cannot cram your theories down the public's throat; they won't buy it. Lawyers have commented on this, legislators, farmers. We had Mr. Metcalf come forward; he wouldn't buy the trust concept. We had Mr. Lindbergh come forward; he wouldn't buy the trust concept. Mr. Darrow, who is probably the foremost champion of environmental controls in Montana, backed off of the trust concept, but everybody keeps hanging on. And up in our committee room, we had a sinister-looking book setting on the table and everybody said, "But Professor Sachs says this", and "Professor Sachs says that". Now, I didn't have time during the rush of our deliberations, but I finally did get a chance to look at what Professor Sachs says; and I want to share that with you, if you will. And this is the scripture reading that I was talking about, and I'm going to read a scripture-this is a scripture reading by a heathen, I guess you would call it.

Now, I must confess that I opened this book expecting to find some firebrand socialism, how we got to turn the government over to the people right now and don't let anybody operate property any more, and I must confess that I did not find that. I found a friend that I think I understand and can communicate with, and I think he takes a reasonable approach. Contained as an appendix in this book is this much bandied-about Michigan statute, which was drafted under a constitution like we got now and not as strong as the one your committee is suggesting to you. This went into effect 14 months ago, and we've had 35 cases in Michigan, none of which have been adjudicated by the Supreme Court, two of which have been decided as frivolous. And maybe that's right, but I'm going to turn this book over to Mrs. Jean Bowman, the watchdog of the attorneys here and a friend of the League of Women Voters, as soon as I'm through with it, and I want her to check me and see if I've misrepresented anything to you. Now, what Professor Sachs says, and he's a law professor at the University of Michigan, is: we're having a lot of red tape in bureaucracies, and we ought to do something about thatif we are going to move ahead effectively to protect our rights in the environment. He's mostly concerned about these real estate developers moving into a slough and putting up a high-rise or something. But it's within the scope of what we're talking about, and his point is well taken, and what he says is: here's this trust concept that's been kind of laying dormant, not used enough, and what we've got to do is get into court and argue this as a theory. This is a legal theory, a hook to hang your hat on. And when you go to court, Mr. Lawyer, you tell that judge that we've got a trust here that we've got to protect. And then he says, "One way to motivate and activate everybody is, let's get a statute that gives people the right to get in and tackle these agencies." Now, there's a friend. I go for that, and I go for the trust concept in its place, which is in court, and I'm going to grab it if I ever get a case. Okay, I want to tell you some of the features of the statute.

CHAIRMAN GRAYBILL: Mr. Brazier, the Chair would like to inform you you've spoken 15 minutes. I will not cut you off, but I want you to realize what you've done.

DELEGATE BRAZIER: Mr. Chairman, I have sat here with great restraint through two weeks of debate, and I think I'm overdue on this one.

CHAIRMAN GRAYBILL: You go right ahead. I just want you to realize you've used 15 minutes so far.

DELEGATE BRAZIER: All right. Thank you. I'm not going to burden you with the statute. It only uses the word "trust" three times, which is less than our environmental policy statute in Montana does now. It gives a citizen the right to sue for a declaratory or injunctive relief. It imposes upon him a bond for the protection of the party sued. It raises as a defense that there is no feasible or prudent alternative to the use that the property owner is making of the property. It creates other defenses. It lets the court review the validity of the administrative ruling under which the action is brought. Now, that's reasonable standards and controls, and that's imposed by the Legislature, and that's where it ought to be. And we can do that in Montana, whether we adopt the majority plan or don't adopt any at all. Now, finally, we get to the scriptures, and then I will sit down, Mr. Chairman, thanking you for your time. Saint Sachs, the pied piper of the trust doctrine, in his book entitled *Defending the Environment,* did have a few comments upon the applicability of the trust doctrine in constitutions. If you bear with me, I will attempt to enlighten you. "A final word about environmental declarations of rights in the Constitution is needed before leaving this subject. There is an important and insufficiently understood distinction between a declaration of the right to a decent environment appearing in a statute and one appearing in a constitution. A right with constitutional status does indeed create the opportunity for its enforcement in the courts, but it also-and herein lies the danger", says the author-"gives courts ultimate authority. That is, an environmental right declared by the courts as a matter of constitutional law cannot be overruled by the Legislature. By contrast, a court enforcing a statutory right, even though it may have the same wording as a constitutional provision, can always be overruled by subsequent legislation." A court enforcing a statutory right can always be overruled by subsequent legislation. Now, you may think that this is a lawyer's trick and a little bit of sophistry and chicanery, but that isn't all he says; and if you'll bear with me, I'll go on to finish out his thoughts on the subject. He says, "This distinction has great implications, particularly in the light of American legal history. It is worth recalling here that in the pre-New Deal era, a reactionary Supreme Court invalidated a good deal of important and needed legislation, thus provok-

ing a grave constitutional crisis that abated only when one member of the court finally changed his position. It was this event that produced the bon mot, 'a switch in time saved nine.' We ought not to create the potential for such crises, remote as they may seem today. A court, even with the best motive, should not be authorized to function as an environmental czar against the clear wishes of the public and its elected representatives. It is not necessary to take such risks. Today, both state and federal legislatures have the authority they need to protect the environment. Except in rare instances, legislatures need no additional constitutional authority to enact environmental protection laws. A statutory declaration of rights can open environmental matters fully to judicial attention but still leave ultimate decisionmaking power in the hands of the elected representatives of the public. While the theme of this book has been a plea for greater judicial intervention, it should be eminently clear that our goal is to create additional leverage for the citizen; to add to, not diminish the opportunities for redress; to improve and provoke the democratic process, not to constrain it. Courts are powerful enough so long as they are unable to build a common law for the environment, remand dubious proposals to the Legislature, and declare moratoriums. Moreover, there is a fundamental difference between almost all environmental problems and the issues to which the Bill of Rights so often used as an analogy is addressed. Essentially the Bill of Rights deals with the problems of permanent minorities and with government oppression of unpopular individual groups. For such problems, where the danger is tyranny by the majority, some foil is needed to the majoritarian rule that governs the legislative process. Givingultimateconstitutional authority to the courts in the matter of free speech and the rights of the criminal defendant or the religious dissenter is most appropriate, but environmental questions are preeminently problems caused by powerful and well-organized minorities who have managed to manipulate governmental agencies to their own ends. For such issues, the need is for a forum that can help to even the political and administrative leverage of the adversaries. If the equalization, per se, can be accomplished judicially, the courts may then properly withdraw and then leave the ultimate decision to a truly democratized, democratic process." So sayeth Saint Sachs, chapter 11, page 237. Mr. Chairman, fellow delegates, I ask you to heed the words of your own prophet. Don't let a bad interpretation get locked into a future constitution. Let the Legislature do it. Thank you very much.

CHAIRMAN GRAYBILL: The issue, then, is on Mr. Cate's motion to put the public trust doctrine, as he states it, into Section 1, Article 1, of Environment. Is there further discussion? (No response)

Mr. Cate, are you ready to close?

DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: All right.

DELEGATE CATE: I wish to thank Mr. Brazier for stating the company position. First of all, let's talk about the two words "public trust". Apparently a lot of people don't understand what those two words mean, and I don't know whether I'm going to change any minds here-and I'm not the most eloquent speaker in the world, but there's not a man here that can say that I am not sincere. The words "public trust"-"public" means the people. It means you and I; that's what the word "public" means. Now, "trust" is a well-defined term in legal terminology, and essentially it means that something is held by another entity for the benefit of others. For instance, by your will, you can create a trust. You can put money into a bank; the bank becomes a trustee, and the bank holds that money for the benefit of those people that you name as beneficiaries. That's a trust. In this case, the state is the bank; it's the trustee. The beneficiaries of the trust are the people, the citizens of the State of Montana. The term is that simple. It's that simple. Now, there has been some talk about taking private property. This does not take private property any more than the exercise of the police power takes private property. You can't burn a bunch of garbage on your land, even though that's your private property. You can't run a whorehouse on your land, even though it's private property. There's a lot of things you can't do with your private land, your private property, because they infringe upon the social good of the people; and that's been traditional throughout the history of this country-that we have the right to regulate this so-called "sacred" thing called private property. Well, you old people had better wake up, because the times are changing and if you don't get in step with the times, there's not going to be any time. We haven't got that much time to save our environment, and you'd better realize it; and if you don't realize it, you'd better start reading what the experts are saying about the environment. I

don't mean to get emotional, because that's playing into the arms of the others, but I resent deeply the allegation that this is an attempt to take private property, private land, from the people and give it to the state, and I resent the accusation that this is socialism. Our system of consumption in this country has got to change. We've got the Beartooth Mountains over there, they're the highest mountains in Montana, and I think they're the most beautiful mountains in Montana, and I've been in those Beartooth Mountains many times. We've got five mining companies that want to go in there, and they want to take those mountains, they want to rip them wide open. They want to dig a pit 5 miles long and 3 miles wide. And once they've dug that pit and taken that soil and that land out of there and polluted the rivers down below it, it's not going to be there any more, and you can't put it back. You can't put it back once it's gone. You can't put it back. Yet there are tons and tons and tons of wrecked cars laying in junkyards all over and the company says, "Well, it's too expensive to reprocess those junk cars. It's too expensive to reprocess these reams and reams of paper." Well, let's make it more expensive to go into those mountains and tear them down forever. Let's make it more expensive so that those things can be preserved for my children and their children. Man has lived on this earth for 2 million years. In the last hundred years we've done more detriment to our world than was done in 2 million years. Now, how is man going to survive if we continue on the present course? How is he going to survive? Do any of you people fly? You know, you get up there at 12,000 feet, you get up to 12,000 feet, and you've got to have oxygen. There isn't miles and miles and miles and miles of air up there. There's just a thin layer of air, and you fly over these mountains from the west and you see this rim of pollution laying below the mountains, just waiting to come over into our state and to pollute our air forever. Something has got to be done, and this Convention has got to do it. We've got to respond to the people. The people want this; and if you put it to the vote of the people, they'll vote for it. I've sat here the last few days and watched, one by one, you people being taken out into the outer chambers and lobbied by the interests that are against the environment, and I can name you that have been lobbied. Well, it's time for us to decide who's running the State of Montana-the people who elected us here or the companies. It's that simple. Now, this provision that I've introduced here is a compromise provision. It takes away the right of a citizen to sue the private individual. It's moderated; it's watered down. But at least it's something that means something, rather than this majority proposal that means nothing. I think that I've said enough, and I apologize for getting carried away, but I really believe that we came here to do something for the environment. I really believe it, and I think that we have to rise above our selfish interests and vote for the environment to save it for future generations. We've got one of the last vestiges in our country, one of the last places that can be saved; and we shouldn't be satisfied with the standard that Illinois has or the standard that Michigan has, because they're already ruined. They're already ruined. They're never going to come back. But we can save Montana. We can make Montana a paradise in this country, and that's what we ought to act to do. And I urge you to support the public trust concept, which is nothing new-it's been around since 1842. Thank you.

(Applause)

CHAIRMAN GRAYBILL: Very well. Now, for the benefit of the galleries, we do not have demonstrations in the chamber, so please refrain from future demonstrations. The issue is on whether or not Section 1, as proposed by Mr. Cate, his amendment, shall become the statute-the Constitution or not. His amendment says: "The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The beneficiary of the trust shall be the citizens of Montana, who shall have the right to protect and enforce it by appropriate legal proceedings against the trustee." I trust we want a recorded vote on that; therefore I will open the vote. Those in favor of Mr. Cate's proposed amendment, please vote Aye on the voting machines; and those opposed, please vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the vote is closed. Please cast the ballot.

Aasheim		Nay
Anderson,	J.	Nay
Anderson,	O..	Nay

Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Nay
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Absent
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Excused
Leuthold ..... Nay
Loendorf ..... Aye
Lore110 ..... Nay
Mahoney ..... Excused
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Absent
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Excused
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner,, ... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK SMITH: Mr. Chairman, 34 voting Aye; 58 voting No.

CHAIRMAN GRAYBILL: 34 having voted Aye, 58 having voted No, Mr. Cate's amendment fails. The issue is now on Section 1, subsection 1, as proposed by the majority.

Mrs. Robinson, do you have an admendment?

DELEGATE ROBINSON: Yes, Mr. President, I have an amendment, and if the clerk will read it—

CHAIRMAN GRAYBILL: Very well. Mr. Clerk, will you please read Mrs. Robinson's amendment which is before you on your desks.

CLERK SMITH: "Section 1. Environment. The public policy of the State of Montana is to achieve and maintain a high-quality environment which is clean, healthful and pleasant, for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have the right to a high-quality environment which is clean, healthful and pleasant, and the duty is to act in accordance with this public policy. Each person may enforce such right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as may be provided by law. Signed: Robinson."

CHAIRMAN GRAYBILL: Very well. Mrs. Robinson's amendment, which is to replace, as I understand it, Sections 1, sub. 1, 2 and 3, is before you; and, Mrs. Robinson, you may discuss it.

DELEGATE ROBINSON: Yes, Mr. Chairman, members of the Committee of the Whole. The purpose of this proposal, all in one section, which will delete the present subsection 1, 2 and 3, has three major purposes. One, it gives you a statement of basic public policy, which is broad and flexible so that it will cover presently recognized forms of pollution as well as forms of pollution which are yet unknown or as yet unrecognized. Secondly, it gives you a statement of the rights and duty as individuals with respect to the environment. And, thirdly, it gives you an expressed right for citizens to protect the environment through appropriate legal action where the Legislature fails to act effectively. This last provision, I believe, is of critical importance. Although I would agree that the Legislature should act in this area, past experience clearly shows that our Legislature, other state legislatures, and Congress have not always done so. The present problems we have with our environment are the product of the inability or unwillingness of legislatures to recognize environmental problems and to take proper corrective action. The problems that this section deals with, and I do not feel the majority report deals with, are these. We have discussed subsection 1. We have stated that the State of Montana will maintain the environment. What does that mean? Of course, we will maintain the environment. We will maintain some kind of environment. There's no other way to go. Section 2, we provide the Legislature must provide for the administration and enforcement of this duty. Well, I think this is unnecessary. The Legislature already has inherent power to act in regard to the environment. We do not mention the court in this proposal-in the majority report, so if the Legislature does not provide for this, what access do we have? There is no way to enforce such actions, for no one can require the Legislature to act in a certain way in regards to the environment or any other matter. Section 2 also can be construed by the Supreme Court or by anyone to delegate exclusively to the Legislature the power to deal with the environment, to the exclusion of the courts. We would be in a much worse position than we are now. Subsection 3 provides that the Legislature must provide adequate remedies for the protection. I talked to Mr. McNeil, and his intent in this was to allow the Legislature to set up access to the courts to sue, but it does not say that. It says "adequate remedies". The Legislature could conceivably, and perhaps they would, say that they have created an environmental quality council and the adequate remedy to protect your environment is to file a complaint with that. That may be an adequate remedy. This further puts the realm of environmental control in terms of the Legislature, to the exclusion of the court. It seems to me that what we are dealing with here is something that is not a new thing. The League of Conservation Voters sent out a questionnaire in November —or end of October, when we were all running for Constitutional Convention. At that time, a majority of the members of this body clearly indicated that they would support an environmental provision similar to the Illinois Constitution. This provides, as does my proposal, a statement of the policy of the state and the right of the individual to appropriate legal proceedings to enforce that right. This is all that the section that I have proposed to you does. I think the big objection to this, and to the whole concept of citizens being able to sue, has been the fact that, in Montana, you already have standing to sue in terms of the environment. In many instances this is true. We have the traditional common law concepts of the three ways whereby we can sue-negligence, nuisance and trespass. These were not imple-

mented in regards to the environment but have been used in that regard. But they do not really effectively deal with the problem, because to be able to sue under these three, you have to have been able to prove that there were actual damages, either monetary or physical. I contend that if you're really trying to protect the environment, you'd better have something whereby you can sue or seek injunctive relief before the environmental damage has been done; it does very little good to pay someone monetary damages because the air has been polluted or because the stream has been polluted if you can't change the condition of the environment once it has been destroyed. One of the problems has been frivolous lawsuits. The case-the States of Michigan and Illinois; you've heard them millions of times-1 hate to bring it up again, but the claim of frivolous lawsuits has simply not been justified. I think the last sentence of my proposal-"subject to reasonable limitation and regulation as may be provided by law"-is a clear guarantee and a safeguard against these frivolous lawsuits. What Illinois did to implement this section in their Constitution, they enacted the Environmental Protection Act, which set up standards by which the citizens could legally sue another person or a governmental agency. It seems to me that this should be probably the least consideration, because it simply has not worked out that way. I would submit to you the other problem and concerns with the private property aspect of it. It seems to me that if a few frivolous lawsuits do occur and that a few frivolous lawsuits is the price that we must pay for adequately protecting our environment for ourselves and future generations, the choice should be clear. The citizens should not be helpless to protect themselves and the environment.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mrs. Robinson's amendment? Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I support Mrs. Robinson's amendment. I think we're spending quite a little time on this, and yet I think it's very important that we do spend some time on this. I think we should try to imagine here that we could look down upon this earth as if through the eye of a camera, the kind of a camera that is equipped to take a series of time exposures over a long period of time. I think that this would give us a dramatic example of the changes which can take place, given enough time-say, 50 years. It doesn't happen suddenly; it happens rather slowly. It's sort of like a thief in the night. I think Mr. Lindbergh sort of pointed this out with his view from the air. He pointed out he had been flying for 50 years and he had visited Montana several times. He noticed the changes that were taking place. I'm sure this is much more dramatic in other areas. Fifteen years ago, I visited the Santa Clara Valley in California, and I visited this valley again about a year ago and I saw the dramatic change. And it was not for the better. I think we're going to have to look ahead to the same sort of problems, the same population growth in this state. I think we could consider the Gallatin or the Bitterroot and the Flathead-some of these beautiful valleys we have-and what would happen to them if we do not take some action. I would like to point out to you that today is the first of March. It's a-to me it seems more than the 21st when the first of March rolls around. It's getting towards spring. I suppose they're probably calving down around the Powder River now. The grass on the lawn is starting to green up a little bit, and it's beginning to look like spring. This is the time when the earth renews itself. I suppose we take it for granted, but we should say, really, my God, it's happened! We should be extremely grateful for it. But I would submit to you that it doesn't happen all over this earth, even at this present time. Mr. Lindbergh pointed out the island of Java. What has happened there, it looks like as if a giant hoard of locusts had crept over the island. I think we are facing a problem here that man has not faced before, that we simply have the technical ability to destroy ourselves. I think, then, we have to face up to this problem, and possibly we can do something here constitutionally. I think we should combine two basic rights-the right to private property and the legal right to protect what is most valuable to us, and I say to you that this is not incompatible. I think this delegation is inclined to protect our environment. I think this is the general feeling. I think I support Mrs. Robinson's proposal because it is very clear and simple and, I think, the best way to do this. It does three things, which she outlined. It sets the tone of public policy; it defines the rights of citizens; and it provides for the enforcement of this. Yet it allows the Legislature to set certain guidelines and procedures. For these reasons, I strongly support the amendment by Mrs. Robinson. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Mr. President, I wish to support Mrs. Robinson's motion. She has given the reasons for this proposal very well., and I won't repeat them. I simply want to add that I feel, as she has said, that the real heart of this proposal is the last sentence, which calls for the right to sue. If there were not the right to sue persons or parties, I think there is no guarantee that the public policy or the individual right to a good environment is to be preserved. I came to this Constitution with a deep concern about many of the core areas of the Constitution, and I still have thesegreat concerns. I am very much interested in improving local government. I am serving on that committee. But I had come to feel that this is the one great issue before this Convention. I think probably thatlocal government can muddle along for 25 or 30 more years, much as I would hate to see it do so without reform, but I do not think we have many years in which to remedy our-and save our environment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I rise in support of Mrs. Robinson's substitute motion. Mrs. Robinson, in her speech, referred to filling out of the questionnaire when we were all running for the Constitutional Convention. I, too, filled out one, and when I came to that question about what we would do-or how I stood on the environment-putting something into the Constitution-as closely as I remember, I said something like this-that I was not in favor of putting an environmental protection clause into the Constitution which had no meaning, which would be used to simply lull the people that they had some protection when they really didn't. And I believe that Mrs. Robinson's substitute motion gives the people the right to do something about their environment, and I support it.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President [Chairman], fellow delegates. I stand in support of Mrs. Robinson's proposal. Maybe you haven't noticed, but I have a funny accent. I come from Massachusetts, and I remember some of the greatest times of my life were spent on the banks of Walden Pond. It was a great joy to hitchhike out there and spend time sitting beside Walden's cottage-it's no longer there, some of the bricks, the foundation are there--and dreaming. Well, I was back there this summer, and Walden Pond is no more. It is completely polluted, and there's only about half the water left. I love Montana; this is why I'm here. And I hope it remains the way it is today, because I want it to be like this for my children. And I think if you think of the best parts of Montana that you have known and hope that it remains the way it is, then there is only one way you can vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I support Mrs. Robinson's substitute motion. I, some time ago-quite a few years ago--adopted the test for what is proper for the government to do and what not, and that boils down to somebody else's philosophy-I'm sure I borrowed it-that the government exists for the sole purpose of doing necessary things for people that they can't do for themselves. Mrs. Robinson's amendment fits that bill. I think the members of this committee had better heed that spontaneous applause we heard a few minutes ago after Mr. Cate's spirited speech, and I'm happy and I thank God that my arteries aren't so constricted that an idea like this can't get up there. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President [Chairman], I'd like to submit that I think that as a society we have a weak sense of history and a weak sense of the future, an inadequate sense of the past and an inadequate sense of the future. And I'd just like each of you to question yourselves about your own children, your own grandchildren, and your own great-grandchildren, and I submit to you that we are using something right now that belongs to them. We're using their land, and we're using their air, and we're using their water; and we have no right to do this. We have no right to take it away from them, and I think that this amendment would help deter the course that we are now taking and will give us-will insure for them something that they have every right to.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President [Chairman], fellow delegates. First of all, I'd like to observe that, sometimes in the course of this debate, it may have seemed that we were against each other. Really, I get the impression, and I should say it, that all of us are looking for a strong article. Our differences, I think, come from just how to do it. I feel that the-Delegate Robinson's

proposal is a fine compromise that should be looked at very carefully by those who have been on one side or the other. It has some very distinct advantages. First of all, the first advantage I liked, that I think that in the last sentence the safeguards that many people worry about are much clearer than any article I have seen so far. The safeguards are there, and they're well put. The second advantage of the amendment, it seems to me, is the fact that it spells out very clearly that each person has a duty. Other articles that we've seen perhaps concentrate on the government or some agency, whereas this talks about each person having a duty, and that's very important. And, lastly, for my own self, anyway, I like the fact that it goes beyond just the clean, healthful and protection area. That's pretty utilitarian. The thing I like about Montana is more than just "clean". I like the beauty of Montana, and I like it to be pleasant. And I think those things take us, perhaps, into some philosophical issues but more beyond just the clean and the safe.

CHAIRMAN GRAYBILL: Mrs. Reichart.

DELEGATE REICHERT: Mr. Chairman, would my seatmate, Mrs. Robinson, yield to a question?

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: Yes, I will.

DELEGATE REICHERT: My question relates to the standing to sue. Do you feel an individual should suffer actual damage before being permitted to sue?

DELEGATE ROBINSON: No, I don't, because-Mr. Chairman. I don't, because I feel you are not doing anything to protect the environment. I know a lot of attorneys are very worried about this, and I did some research to see what court decisions had been rendered on this very problem of standing to sue without proving actual monetary or physical damages, and I can give you about 10 cites, both from the Supreme Court-the U.S. Supreme Court reports--and from the federal reports, indicating that both federal court and the Supreme Court have held that a person does not have to be monetarily or physically injured on behalf of environmental degradation to sue; they simply may have an interestin theenvironmental degradation. I think that this is certainly the trend that the federal courts are taking. I can see no reason for us to wait for Godeau on this and linger behind, too. There is-on all of the federal cases, there's a definite trend that you do not have to be injured or have monetary damages to be able to sue.

DELEGATE REICHERT: Thank you. May I speak now, Mr. Chairman?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I wish to speak in support of Mrs. Robinson's proposal. During the last session of the Legislature, there was a bill introduced-House Bill 33—and if you read the House Journal of the last session, you will find that this bill did not get very far. These people who say the Legislature can take care of this adequately, I feel, are wrong. I think that our Constitution must contain a provision to protect our environment. I receive more mail in this area than any other, and it's really a very, very touching situation when you receive so much mail from children. I have some mail here from some doctors in Great Falls, and they state: "Consider thoughtfully the future of Montana and specifically the hopes we have for a quality environment for our children and grandchildren." I think we'd be remiss in our duty at this Convention if we at least did not do what Illinois did and our friends, the North Dakotans. I'd like to read you their section-part of their section on environment: "Each person has the right to a healthful environment and may enforce this right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitations as the Legislative Assembly may provide by law." This is very similar to the proposal Mrs. Robinson has submitted. I really contend that we're just as good as the people of North Dakota, and I think that, all jokes notwithstanding, that the least we can do is come up with a provision as good as that of the North Dakota Constitution. I really plead with my fellow delegates to support this proposal of Mrs. Robinson.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I wonder how many delegates have read-well, in one page-it appears on page 17—which is the minority proposal on the right to sue. It kind of seems increasingly apparent to me that a lot of people have not read what is contained in the report. The reason that the majority did not sup-

port a separate section saying "the right to sue", the paragraph 3 of our report states, "The Legislature is directed to provide adequate remedies for the protection of the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources." Now, to those of us that studied what we were doing for a long time before we did it, we felt that this, in itself, is a lot stronger than, certainly, the proposal we're looking at right now. If all you are wanting to add is a difference in wording on the right to sue, I would suggest that you would do it when we get along to the minority report number 4, and I notice Mrs. Cross has a slightly reworded one. I ask you to look at Mrs. Robinson's proposal and look at the three sections of the majority proposal by the committee and read it, without paying too much attention to how beautiful the words sound but whattheir meaning actually is, and then vote your conscience.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, will Delegate Robinson yield to a question--or several questions?

I have been, for some time now, reviewing the Environment Article of the State of Illinois and also that from the State of North Utopia-or, I guess, North Dakota-it seems as though it must be Utopia, the way we are quoting--and I ask you why you have added the language, which does not appear in either of those two provisions, "and the duty to act in accordance with this public policy"?

DELEGATE ROBINSON: I added that language because I feel that it is a valuable addition, that people do-it's not only a right of the citizens of Montana to have a clean environment, it is also their duty to try to maintain that environment. And I submit that where rights exist, corresponding duties also exist; and I think that it was just an attempt to recognize that fact.

DELEGATE MURRAY: Mr. Chairman, if I may inquire further. Mrs. Robinson, did you find any precedent for that type of duty anywhere else?

DELEGATE ROBINSON: No, I did not find any precedent for this type of duty in terms of a constitutional provision.

DELEGATE MURRAY: Did you find any reference to duty, as you have described it herein, in any legislative enactment?

DELEGATE ROBINSON: Yes.

DELEGATE MURRAY: Where?

DELEGATE ROBINSON: There are several. Just a minute. The Environmental Protection Act that substantiated Illinois' constitutional provision clearly delineates also the duty as well.

DELEGATE MURRAY: Any other states?

DELEGATE ROBINSON: That's the only one I have right now.

DELEGATE MURRAY: Is it in the same language that you have it here?

DELEGATE ROBINSON: I don't know, Mr. Murray, if it's in the very exact same language. I think the word "duty", regardless of how it's construed, has a pretty definite meaning, and I don't know if it's the exact same wording or not.

DELEGATE MURRAY: The reason I'm asking you these questions, Mrs. Robinson, is so that the record will show your intent relative to them, and I would-I'm real concerned about your reference to duty. I can see the establishment of a right, but I'm concerned about the establishment of a duty; and I would appreciate it, since you seem to have done considerable legal research on this matter--and being a lawyer myself, I like to take the benefit of other people's research if I can-if you would please tell me what you think the impact of the addition of that clause in this statement means.

DELEGATE ROBINSON: I certainly think that the impact of it is kind of precedent to the last sentence of that clause, where I mention that each person may enforce such right against party. I think it amplifies the right to sue as perhaps also being a part of that duty. That duty is in protecting or causing the State of Montana, which we have established as a public policy, the right—the duty of each individual to see that the public policy of the State of Montana is protecting the environment, and perhaps the only way that a citizen may fulfill that duty is by bringing appropriate legal action in a court of law.

DELEGATE MURRAY: Now, then, let me ask you this. I think your reference to duty is well. Should I fail to sue somebody for a pollution problem, could you sue me because in the Constitution I had a duty to act?

DELEGATE ROBINSON: I can find no precedent for that type of litigation. I can find precedent for-on federal statutes and federal decisions whereby, if you were remiss in your duty to sue, I could also sue the person that you should have probably sued.

DELEGATE MURRAY: No, no; that's not my question, Mrs. Robinson.

DELEGATE ROBINSON: I understand your question. I said that I could not find precedent for that type of action. I do not know.

DELEGATE MURRAY: Then, is it fair to assume that we do not know what we are doing if we adopt this language?

DELEGATE ROBINSON: No, sir, I don't think it's fair to assume that. I think it might be fair to assume that you don't know what you're doing (Laughter) if you adopt this, but I don't think that it's fair to assume that I don't. I refer you specifically to Delegate Proposals 20 and 21 by Mr. C. B. McNeil, who also deals with the public policy of the State of Montana and the duty of each person to provide, maintain and enhance a quality environment for the benefit of the people. I would like to say, Mr. Murray, that if you are satisfied with this whole article without the duty business, the fact that you're satisfied with it would certainly-you know, I wouldn't get all that upset about leaving the duty out if I could get you to agree with that much. (Laughter)

DELEGATE MURRAY: Well, Mrs. Robinson, you probably aren't going to get me to agree to it anyway, but I am concerned about-Mr. Chairman, if I might address my remarks to the delegates and not Mrs. Robinson. You may beseated, ma'am. I am concerned about the establishment in the Constitution of a second level of duty, which this particular language causes me some concern about. I feel, through talking with Mrs. Robinson-1 state this for the record-that her language, "subject to reasonable limitation and regulation as may be provided by law"-and she may object if this is not her interpretation and the intention-her intention with respect to the addition of that language-that that clearly means that there shall then be no litigation brought by or under this particular provision of the Constitution, should it be enacted, without the Legislature having provided the implementation for such litigation.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I feel that I must speak now to further clarify the point Mr. Murray just raised, because, as far as I can determine by speaking to the Attorney General in Illinois, who adopted a similar provision in their constitution as what I'm proposing here, his statement does not really merit much consideration. *The* Attorney General in Illinois-their provision stated not that a person would not have the right to sue unless the Legislature took action. On the contrary, a person has the right to sue, therightto enforce his clean and quality environment and can do so without limitation unless the Legislature acts to limit it. This is a self-enforcing provision; and if the Legislature wants to limit it and restrict it, which they have already done in this state by the-in Title 69 of our present codes-then this would be appropriate. But it is not as Mr. Murray indicated, Mr. President [Chairman]. And while I have the floor, and I won't get up again, in reference to Mr. Gysler's remarks concerning the minority report and concerning the right to sue, I have read it. I have read it very carefully. I have concluded that it is probably-adds nothing and could be more harmful than good. First of all, you will recognize that citizens already have the right to legal recourse against governmental agencies that fail to carry out duties delegated by the Legislature. This right of judicial review is presumed even in the absence of express constitutional or statutory provisions. The State of Montana's Administrative Procedure Act specifically permits judicial review of administrative actions. The danger I see in that minority section was that it would seem to restrict the right to sue, as a constitutional matter, to actions against state agencies. This, taken in connection with the entire majority proposal, could well be a final nail in the coffin against the citizen's right to protect the environment.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: This is from the constitution of North Dakota, and I'd like to read: "Environment. The public policy of the state and the duty of each person is to conserve, develop and utilize natural resources-" and then it goes on. It has the word in there exactly.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I took a great deal of time on this subject this morning, and I'll not do so again. I know for sure that everyone here wants to protect the environment of Montana in the best way they can figure out. I am very appreciative of the fact that many of the delegates came to Montana because they like it better here than where they came from. Now, I'm a third generation here, and I still like it here. My grandfather had a pack string that he ran out of Helena, right where we are now-in 1868. And I plan to stay here. But you know, in Mrs. Robinson's proposal here, there's a lot of words that we battled for four weeks in committee, and I would like to ask Mrs. Robinson if she can define what these words mean: healthful, high-quality, pleasant and reasonable. She used healthful twice, high-quality twice, pleasant twice, and reasonable once. I hope, Mae Nan, that you can clear me up on this, because no one else has been able to in five or six weeks of debate up here.

CHAIRMAN GRAYBILL: Will you yield, Mrs. Robinson?

DELEGATE KAMHOOT: May I ask Mrs. Robinson a question, Mr. Chairman?

CHAIRMAN GRAYBILL: Will you yield, Mrs. Robinson?

DELEGATE ROBINSON: Yes, Mr. Chairman, I will yield.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROBINSON: I would first like to point out that these words were chosen for those very considerations: the fact that, in the majority report on subsection 1, you did not care to use any qualifying environmental phrases. As I pointed out earlier, these words have been used in other states' environmental protection acts and other state constitutions, as well as in the federal Environmental Protection Act. Now, I'm not going to stand here and define the words to you, because as you well know, these are subject to court interpretation. What we are asking the Legislature to do, and what they did in Illinois, when we say that people can sue on behalf of the right to protect the environment within reasonable limitations as prescribed by law, what happens is that the Legislature decides what ramifications are involved in a clean, healthy, high-quality environment-whatever you choose. If you will look at the majority proposal on page 3, you provide for unreasonable depletion of natural resources; you provide for adequate remedies. Now, you cannot tell me that the words "adequate" or the words "unreasonable" are any clearer in your proposal on page 3 than the words "quality" or "healthful" or "clean" are covered in my proposal. I will submit to you that litigation has been done on these words "clean" and "healthful". There are guidelines and there are standards to use; and I'm not going to attempt to tell you, you know, what these things mean; but I can guarantee to you that the Supreme Court will certainly be able to tell you.

DELEGATE KAMHOOT: Thank you, Mae Nan. Well, I still haven't found out what they meant, but I'm sure the Supreme Court will advise me if I contact them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the question is on Mrs. Robinson's amendment to Section 1. Is there further discussion?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I submit to you that, as a Montanan, I know what my duty is in helping to preserve the environment; but unless we pass something like this, I will not have the right. Now, the issue is not so much on the duty as on the right, as Mae Nan has said. This, I think-finally, after all day'sdebate, we've gotten down to the issue. Here we have a clear statement of the rights of the individual, the right to have a high-quality environment. Secondly, the right to have the right to enforce the right to a high-quality environment. Now, we don't argue about having a treasure in this Treasure State. We've got a treasure in this Treasure State, as Mr. Cate said, that 2 billion people in this world would give almost anything to have; and1 wanttheright to fight to protect this right for children like this little one upstairs here, for the young people, and for all these generations to come; and this is the only document we have before us that will give the individual this right.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I rise in support of Mae Nan's proposal. I felt I could not vote for Mr. Cats's proposal because of the emotional connotations which it had already received in the press and in our state, but I feel that this

proposal does carry, as has been stated well by many people, the things that we need to protect our environment and to assure that it will be adequately safeguarded. I feel that so much has been said already, but I would simply join in the statement that Rick Champoux made a moment ago—and I've always wanted to call him Breck Shampoo ever since the night of our happy time—but I am in Montana by choice, as are many other people. I could live on the east coast or the west coast. We have chosen, the last 14 years, to make this our home and hope to make it our home for the rest of our lives. I lived in Big Horn County in eastern Montana for five years, enjoyed watching the sunset on the coulees and thecountry thatrolls down there with sagebrush and yucca. That's a very fragile environment, as has been pointed out before; when you tear it up to find the coal, something has to be done to make it a valuable resource afterward. It seems to me that much of what we are trying to achieve here is more definitely guaranteed by Mae Nan's proposal than by those that we've had before us. I would see it as a compromise move and yet a move that intelligent people of Montana could get behind and support. By the way, the people down there in the sagebrush country, where I lived for a number of years, are not without intelligence. Most of them married the school teacher, you know, after they homesteaded, and they know the issues and they're deeply concerned. Our Western Montana that we cherish so much and enjoy backpacking-I even complained to Charles Lindbergh when he was here that I didn't like him flying over it, once I got up there in that high country-that it really is a beautiful resource, and we don't want to see it destroyed. Too much would be said if I continued the conversation. It seems to me that this gives us the means. Let's enact it if at all possible. I support this motion.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates. I lost my book, so I'm forced to be brief. I rise to speak just so you don't get the impression that I have compromised the basic principles of constitution drafting that I have been trying to brand on your minds. The exchanges between Mrs. Robinson, Mr. Murray and Mrs. Robinson and Mr. Kamhoot point out the problem. They have asked her to define words, and, of course, that may be an unfair question; but, you know, somewhere down the line, the Supreme Court is going to interpret those words, and then they're going to be locked into a constitution where nobody can get them out. And what that Supreme Court's going to do at that time, it's going to say, "Well, we're going to have to give effect to all provisions of our Constitution, including private rights and other citizens' rights that have been recognized over the years," and I'll bet you—I'll give you odds that they come up with an interpretation that sets you back, and then you have no remedy short of another constitutional amendment. This is all I'm trying to tell you. Don't leave it to interpretation. If you want citizens' rights, fine. I imagine that I'll be one of the beneficiaries to that particular result, but what you're doing here is you're playing Russian roulette to solve a problem and you've got three bullets in the chamber. Now, if you'll analyze this thing without emotion, I think you'll see that you have a better chance to make progress if you don't let somebody else lock it in.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of Mrs. Robinson's proposal. One salient fact forces me-compels me to go for the strongest environmental protection we can. My area, the Anaconda-Butte area, has a rate of lung cancer and emphysema which is twice that of the national average. These people who work in the mines and who work in the smelter cannot endure, Mr. Chairman, unless their environment-the working environment is cleaned up for them. For this reason, I will support Mrs. Robinson's environmental proposal and will also support any environmental proposal which I feel will give some aid to these poor working men who have spent their lives in the mines and the smelter.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I hesitate very much to get up and raise any question about this article, because it will be immediately interpreted that I am speaking on behalf of a client of our office, which is the Hoerner Waldorf Company of Missoula. Well, I am not, because, fortunately that company is in the process of spending many million dollars to clean up its environment. It will match their health standards of the Air Purity Act of Montana, and it doesn't care less about what we do in this respect. But I have been impressed by the

rather ready acceptance of all hands with the language that is contained in this proposed amendment, and I really wish that, simply for your own personal judgments, you would examine it more closely. The Illinois Constitution does contain the words "healthful", does contain "the right to sue". So, also, does the North Dakota document refer to "a healthful environment", and, of course, we all know that health is a very significant personal interest that we all have. This is what prompts Mr. McKeon's remarks. But incorporated in this proposal here, for the first time as I know of in any document in the country, are the terms "pleasant", "enjoyment", "protection of beauty", and "protection of wildlife". And I suggest to you—now, in addition to that, it says that each person has the right to a pleasant environment of this nature and each person may enforce that right against any party, governmental or private. The thing that prompts me to rise here is to caution all of you in your own personal considerations of protecting the environment--and it is in the same category as peace and war; I don't know anybody who really advocates war, and I don't know anybody who advocates a poor environment. I have a whole host of grandchildren whose future welfare in the environment I have just as much interest in as anybody else. But I am troubled here that we may be erecting in the Constitution a very fertile source of litigation for the benefit of lawyers and others, and these are the examples that trouble me; and if maybe this can be cleared up in this discussion, I would be very happy to hear them cleared. But I visualize that there are people who do not like to see logging going on in the forests, and I think that their right to have a pleasant enjoyment of the natural beauty of the forest, including vegetation, includes the right to stop logging. I think that those who like to see a lovely river valley or stream flowing in its natural state would have the right to attack any proposed residential subdivision or development, however well planned, that would somehow cover the land in that area with homes for people to live in, who, themselves, might like that area in order that they might get closer to a pleasant environment. In the course of our--well, after we got over here, I got a letter from a lady who lives down in the Nine-Mile country near Missoula, and I assume that the other delegates got the same-a Mrs. Bondurant, 1 think her name was. She was very aggrieved about the decimation of the wildlife in the Nine-Mile country, the disappearance of the deer and the other animals in the forest; and if she feels this way, she has a personal right against the State of Montana and the Fish and Game Department, I should think, to protest or to prevent the fish and game season which would allow the taking of fish or game in the Nine-Mile area where she lives. Now, I am not manufacturing wild things. I hope, in bringing up these things, because this language, as Mrs. Robinson very carefully tooled and it is very carefully all-inclusive and it very carefully gives an individual right to any person to enjoy and to have all these things and to enforce it; and I think I would be compelled to advise Mrs. Bondurant, for example, that this would give her a right that she would be able to enforce; and I think the qualifier in the last sentence there, about what the Legislature is going to limit or regulate, could never be interpreted by any responsible court as granting the right in the first instance, in the first two sentences of the Constitution, and then withdrawing it or qualifying it or limiting it in such a manner in the third sentence that it would, in fact, become meaningless and unreasonable. In other words, I think these rights as granted are, in effect, self-executing, as she pointed out; and all I want to do in this discussion is to point out to you that this is the most sweeping kind of statement that could be drafted and that it is pregnant with all kinds of possibilities for the future in Montana that are not found in any precedent. Of course, there is no precedent for this because the other constitutions do not go this far; and I feel that, as a responsible body, we should deliberate here on the extent to which we wish to enlarge the periphery of the environmental protection, because you can see here that we are creating rights by one citizen against another, crisscrossing all through the whole panorama of human activity. And I think we should be very careful before we get carried away with enthusiasm for doing the right thing and overdo it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I shall be very brief, but I do want to respond to Mr. Garlington. If I understand-the burden of his song is that this is untested and untried, there's no precedent for it. As you all know, Montana was the first state ever to have a war conducted underground over in Butte. We were the first state to have a senator who was not seated in the United States Senate. Just once before I die, I would like to see Montana be the first state that did something good.

CHAIRMAN GRAYBILL: Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, I resist Mrs. Robinson's proposal but not on the basis that I'm not interested in a strong environmental doctrine. As a member of the Natural Resources Committee, I would like to say that all of us worked very hard toward a strong environmental article. After hearing many hours of testimony, we were faced with many questions. For example, when it came to such things as the definitions of "clean", "healthful", "pleasant", "enjoyment"--and also, when it comes to "the protection of its natural beauty and natural resources, including wildlife and vegetation". We were asked such questions as: "Does it mean that, if you protect your wildlife, that you can't shoot a duck?" "Does it mean that, if you're going to protect your vegetation, that you can't mow down a blade of grass?" Now, these are the things that1 see in this; and, believe me, I'd like to see a very strong environmental article, but I do resist Mrs. Robinson's, Thank you.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. President [Chairman], I'll take a chance on cutting hay under this proposition and also take a chance on cutting grain under this proposal, but I think as a whole we have all been very, very neglectful. Now, I was born and raised in the Flathead; and we just took things for granted until all of a sudden, in 1963, I happened to be at a creek that was known as Ashley Creek and here come down-1 have a picture of it-a fish, a dead fish come floating down the creek; and that's when I became concerned about this environment. And I think we're doing a disservice to our children and our grandchildren if we don't do something about this environment, and I would be for a stronger-I was one of those that was for public trust, but I will compromise and I will go along with Mae Nan's proposal. I think that will do what we think should be done. I thank you.

CHAIRMAN GRAYBILL: **Now,** the issue is on Mrs. Robinson's amendment to the environmental section, Section 1.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I was hoping to join the parade of saints, but there have been many intervene since that--some of the enemy. I rise in opposition to Mrs. Robinson's amendment for the simple reason that for every hour we shall spend here discussing these issues, the committee has spent days. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg, you were up. Did you wish to speak?

DELEGATE SWANBERG: It seems to me there's a basic flaw in Mrs. Robinson's approach when she says that we all have a right to a high-quality environment. I submit that for, lo, these last 25 or 30 years, we have been participating willy-nilly in the destruction of this environment. It is we who have allowed these cars to pile up in wrecked-car junkyards. It is we who have polluted our streams with sewage, without having sewage disposal plants. It is we who have allowed industry to dump offal into the streams, such as coming from meat-packing plants. And all this has been done while we sat idly by and did nothing. Then, suddenly, we wake up and discover, to our horror and astonishment, that our environment is not what it should be. It is we who have littered our streets. It is we who have littered our campgrounds. There was a time here in Montana when it was considered almost a crime to go into a campground and fail to clean it up when you left. I regret to state that things have changed since those days. It used to be almost a crime for a person to go through another man's gate and not close that gate behind him when he went through. I now submit that times have changed, and this, too, is done willy-nilly, without regard to that man's cattle. Do we have a right to a healthful environment in view of our past actions? I submit that probably we do not. I submit that what we have instead is an unholy mess that's going to have to be cured by legislative action, and it's going to have to be done feelingly and gropingly to contend with this mess that we have created. And for these reasons, I would resist Mrs. Robinson's proposal, Now, for the edification of the rest of the body, our state Legislature has not been exactly remiss in this matter. In 1971, they passed a law, section 65.601 is where it begins and it's a seven-page law, and I think we'd save a lot of time if the delegates here would take a look at this law and see what's already been done. I'm not going to read at length, Mr. President [Chairman], but I would like to quote a few lines from it. They say that "The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate

damage to environment and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an Environmental Quality Control Council. The Legislative Assembly, recognizing the profound impact of man's activity on the interrelation of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy-" Well, I could read on and on, Mr. President [Chairman], but 1'11 refrain. At any rate, I would very seriously urge the rest of the delegates to get hold of this and study it. It will aid us greatly and, I think, shorten the time for the consideration of this proposal. And thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, during this debate there has been a lot of discussion of fear which is rampant in this body and elsewhere, according to my reading of frivolous suits in the private area of our state should this program be written into the Constitution. It is in the private sector where people are evidencing fear. I have heard very little concerning the fear that would come from people who injure federal or state lands. That seems to be all right. And it's the little fellow that is being used as a-being frightened by this ghost that is beingraised; I think that the little fellow who gets into a nuisance suit is going to get into the nuisance suit anyway. It's already a danger for him. If he has a stock-feeding yard and the odor is bad, his neighbor may bring a nuisance suit against him or may even sue for damages. This has happened. All sorts of things of that character are possible, but we don't hear about the things that might transpire as a result of some large organization eroding the country or wrecking the landscape or polluting the streams or one thing and another. I'm afraid that it's a case of the hand of Esau but the voice of Jacob. I think that we're trying to-somebody is trying to muddy the water and frighten all the little people in Montana, of whom there are many more than there are large corporations, with the consequence that the delegates will be chased back into their holes and refuse to vote.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman], I rise in support of Delegate Robinson's amendment here. I know during the course of our deliberations here, the argument has been used many times that if we put such-and-such into the Constitution, the people are going to vote it down; and I would like to use some of the same reasoning, I guess, but maybe in reverse. It's that, if we in this body don't take a strong stand in regard to the environment, that maybe the people will think that we have not done a good job and say, "Well, we're just going to have to send it back to them and have them do a better job next time." So I would encourage you to support Delegate Robinson's amendment. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Thank you, Mr. President [Chairman]. I speak in opposition to Mrs. Robinson's amendment because I feel that the article itself, in the first section, will cover this. Much of it is statutory, and the Legislature can enact these same provisions. In thinking of this at this time, I doubt that there's a neighbor that I couldn't sue right now. I think that I have been aware of clean air and clean water perhaps many years before Mae Nan was born. I've been interested in health and welfare, and I still am, but I cannot go along with this because I can see all types of jury suits. Also, in my area there are areas where the water level raises from time to time; the sewers and the wells intermingle. Who's going to sue who? Its real interesting.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's proposal to amend Section 1 of the environmental part of the Natural Resources proposal.

Mrs. Robinson, are you ready to close?

DELEGATE ROBINSON: Mr. President, I would like to just briefly reiterate some of the comments that have been made since I last spoke. Mr. Garlington brought up the usage of some of these words. It reminds me of the last hearing that the Natural Resources Committee had; and if you'll remember, for those of you who were there, an attorney from Helena, Mr. Picotte, who represented North Dakota Utilities, was also concerned about the words "clean", "healthful", "quality", because they were too metaphysical-if you will remember that terminology. Mr. Garlington's objections seemed to be very similar to me. We are

worried about someone being able to interpret these words. When we were on the majority proposal, as I indicated to you awhile ago, no one mentioned the problem we would have in determining "adequate" or "unreasonable" or any of the words used there. Further, I'd like to indicate to you that in the Bill of Rights, in the present and the proposed, we have certain metaphysical terms such as "inalienable rights", which include "the right of pursuing life's basic necessities" or "of enjoying or defending their lives and liberty", "of acquiring, possessing and protecting property", and "of seeking their safety, health, happiness in all lawful ways". These are pretty metaphysical terms, too, it seems to me. But it seems that, judging by contemporary community standards, we've had no trouble in determining what "liberty" means, what "freedom", what "inalienable rights" mean. I submit that we are not going to have any trouble in determining what "clean" and "healthful" and "high-quality" means. Secondly, in terms of Mr. Rebal's comments about would you be able to shoot a duck because you're not protecting the natural resources or the wildlife and vegetation. It seems to me that if you read this carefully and just look at the last sentence, where it says "through appropriate legal proceedings, subjectto reasonable limitation and regulation as may be provided for [by] law", there's your answer. We're not going to have these ridiculous things happening; I mean, the Legislature is reasonable. We can at least expect reasonable guidelines from them. Thirdly, Mr. Swanberg's comments-do we really have the right? Have we utilized this right? Perhaps we have been remiss in our right; and that's why I think it's important to include the section, as I have, dealing with duty. We have had this right and perhaps we haven't been very careful to uphold it, and that's why I think we-to insure adequate enforcement of this right, let's put the duty in there, too, to make it meaningful. In terms of Mr. Scanlin's objections, he's right in a way. The Legislature hasn't really been remiss. As a matter of fact, they have done some very good things in terms of the environment. The thing that really bothers me is that we, as a Constitutional Convention-trying to look ahead in a hundred years, we're not even willing to approach the subject with the same aggressiveness that the Legislature has done so in the past. I think that if you were really concerned with living up to any of your campaign commitments, if you want something reasonable, if you want something that's meaningful in terms of the environment of Montana, you should support my proposed amendment.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's proposal to amend Section 1 by adding the words: "The public policy of the State of Montana is to achieve and maintain a high-quality environment which is clean, healthful and pleasant, for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have the right to a high-quality environment which is clean, healthful and pleasant, and the duty to act in accordance with this public policy. Each person may enforce such right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitations and regulations as may be provided by law." I presume you want a roll call vote; we'll have one. All in favor of the motion to put this in as Section 1 of the Environmental Article, vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim ,, ,, Nay
Anderson, J. Nay
Anderson, 0.. ,, Nay
Arbanas ,, .Aye
Arness .....Absent
Aronow Nay
Artz .....Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ,,,,,,,,,,,,,, Nay
Bates ..... Nay
Belcher Nay
Berg ..... Nay
Berthelson Nay
Blaylock .....Aye
Blend Nay
Bowman.. ,, ,, .Aye
Brazier Nay
Brown .....Aye
Bugbee .....Aye
Burkhardt .....Aye
Cain .....Aye

Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt. ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Excused
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Nay
Mahoney ..... Excused
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Ayr
Roeder ..... Aye
Rollins.. ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Nay
Swanberg .. .. Nay
Toole ..... Excused
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK SMITH: Mr. President, 43 voting Aye; 51 voting No.

CHAIRMAN GRAYBILL: 51 delegates having voted No, 43 having voted Aye, the proposed amendment is defeated.

The Chair will recognize Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wish to offer a substitute motion.

CHAIRMAN GRAYBILL: Yes, Mrs. Reichert; proceed.

DELEGATE REICHERT: This is being printed. I think it is being distributed now.

CHAIRMAN GRAYBILL: Do **you** want the Chair to read it? Do you want the clerk to read it?

DELEGATE REICHERT: Yes, would you please read it.

CHAIRMAN GRAYBILL: All right, will the clerk please read Mrs. Reichert's substitute motion.

CLERK SMITH: "Section 1, Public policy-legislative responsibility. The public policy of the state and the duty of each person is to provide and maintain a healthful environment for

the benefit of this and future generations. The general assembly shall provide by law for the implementation and enforcement of this public policy. Section 2, Rights of individuals. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings, subjecttoreasonablelimitation and regulation as the general assembly may provide by law. Signed: Reichcrt."

CHAIRMAN GRAYBILL: Very well, Mrs. Reichert's amendment has two sections. I take it to be your intent to substitute it in place of Section 1, sub. 1, 2 and 3, if it passes. Is that right, Mrs. Reichert?

DELEGATE REICHERT: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you may speak on your motion.

DELEGATE REICHERT: I'm sure that most of the delegates will recognize this as the Illinois provision, verbatim. I had hoped I would not have to submit this motion. I had hoped that the last one would have passed; but since we want something that's tried and true, something that's been included in a constitution before, I had this ready. Now, I want to remind the delegates again that, last fall, when a questionnaire was sent to us, many of us felt that the Illinois provision would be fine for the State of Montana. I am very much afraid of the majority proposal for several reasons. I consulted with a lawyer, and he said Section 2 and Section 3 of the majority proposal would do more harm than good. I'd like to read you his comments about Section 2 of the majority proposal. I'll read the section first, the subsection of Section 1. "The Legislature must provide for the administration and enforcement of this duty"— and that's the duty to maintain the clean environment. Now, "the direction to the Legislature to act in this section adds nothing positive in terms of environmental protection and may be extremely detrimental. The Legislature has the inherent power to act regarding environmental matters. In addition, there is no way to enforce such a direction, for no one, including the courts, can require the Legislature to act in a certain way with regard to environmental or any other matters. In other words, if this section of the majority proposal were included in our Constitution, it would be harmful to future generations of this state." Section 3— that, too, is considered to be harmful. "This section would add further credence to the position that matters relating to the environment are exclusively within the control of the Legislature. With such an interpretation, if the Legislature did not act, there would be no remedy. As has already been noted, the Legislature cannot be forced to provide any particular type of remedy or remedies. The majority appears to believe that standing to sue should not exist without actual provable money damages. If we wait until then, ofcourse, it is too late, for the degradation to the environment will have already occurred." I hope that the delegates will realize that the Illinois provision is our last hope to have something meaningful in our Constitution, and I'll rest at this point.

CHAIRMAN GRAYBILL: Is there further discussion of Mrs. Rcichert's proposal? Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, there seems to be some people who may think that we're suggesting-there is a suggestion here of something pretty radical, and we just got through talking about one proposal that was somewhat similar to what North Dakota had introduced. I point out this little news article that we've had on our desks. The North Dakota Constitution has been released for the citizens to take a view of it, and they have something similar to this new proposal about environmental protection; and according to this one news article, they say in North Dakota, initial observations of North Dakotans about their new proposed Constitution is that it's pretty much a middle-of-the-road document that doesn't wander very far to the left or right. For people who want a constitution that takes off on a lot of unexplored trails, this one isn't it. So I think what we're doing here is not suggesting anything radically new or far out, but something I really think the people expect us to do. It's something that is middle of the road, if you will, and I think this assembly should adopt it.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, will Mrs. Reichert yield to one question, please?

CHAIRMAN GRAYBILL: Mrs. Reichert?

DELEGATE REICHERT: I'm glad there's just one. Yes, Mr. Murray.

DELEGATE MURRAY: Is our Legislature to he called the "general assembly" now?

DELEGATE REICHERT: I beg your pardon? Oh—

DELEGATE MURRAY: Well, you used the same language, and that means you used "general assembly".

DELEGATE REICHERT: Oh, I guess I should substitute. Thank you.

DELEGATE MURRAY: You believe that's a stylistic change?

DELEGATE REICHERT: Yes, very stylistic.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: May I ask Mrs. Reichert a question, please?

CHAIRMAN GRAYBILL: Will you yield'?

DELEGATE REICHERT: Yes, Mr. Gysler.

DELEGATE GYSLER: Mrs. Reichert, you mentioned that you consulted an attorney. Would you mind telling us who the attorney was?

DELEGATE REICHERT: McCrory of the law school.

DELEGATE GYSLER: Thank you. Really, from my own personal viewpoint, I think, again, that we're getting into another article simply because there is a right to sue provision; and I would like to say what I did a little while ago, that I believe this should come up when the minority proposal comes up. As far as the rest of it, I again ask you, take and read it. Don't look at the beautiful words, hut look at the meaning, because it's the meaning what is interpreted and not the beautiful words. You can write things and have them sound wonderful; hut if they're going to have any meaning, you have to have meaning in them; and I believe the majority proposal has done this, so I resist this amendment.

CHAIRMAN GRAYBILL: Is there any further discussion of Mrs. Reichert's proposal?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. Just briefly, I must remind the delegates that the majority took the word "healthful" out to strengthen the majority proposal. We did not want the Supreme Court of this state or the Legislature to he able to say that the environment in Montana, as we know right now, can he degraded to a healthful environment. So our purpose in leaving that word out was to strengthen it. I would like also to remind the delegates that the Illinois provision does not contain subparagraph 3 of the majority proposal, which speaks precisely to the point that concerned Jerry Cate so much, and that is there is no provision by which the Legislature can prevent-and this is anticipatory-can prevent unreasonable depletion of the natural resources. I submit if you will read that majority proposal again and again, you will find that it is the strongest of any constitution and the issue to which George Harper is still concerned is not foreclosed. That issue will be put before this Convention in the form of an amendment from our Chairwoman, Louise Cross. It will speak specifically to the issue of the citizen's right to sue anybody as a separate issue and to he added as subparagraph 4 of this proposal if it passes. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I did not get a copy of this amendment, for some reason, and so was at a little hit of a disadvantage. However, I want to address my remarks to just two words, "healthful environment". And it's my understanding that the amendment we have before us simply modifies "environment" by the word "healthful", and it also includes the provision of standing to sue, if you will. I oppose this amendment on that very basis because I feel that if we, as a Constitutional Convention of Montana, use our line of defense on the environment on the basis of healthful, then we, in fact, might as well forget it, because what I'm concerned about in Montana is not a healthful environment. This country is going to have to address itself to the question of a healthful environment. What I'm concerned about is an environment that is better than healthful. If all we have is a survivable environment, then we've lost the battle. We have nothing left of importance. The federal government will see to it one way or another, if it's in its power, that we have an environment in which we can manage to crawl around or to survive or to in some way stay "alive". But the environment that I'm concerned about is that stage of quality of the environment which is above healthful; and if we put in the Constitution that

the only line of defense is a healthful environment and that I have to show, in fact, that my health is being damaged in order to find some relief, then we've lost the battle; so I oppose this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: May I ask Mr. Foster a question'?

CHAIRMAN GRAYBILL: Mr. Foster, will you yield'?

DELEGATE FOSTER: Certainly, Mr. Chairman.

DELEGATE REICHERT: Would you like the word "clean" inserted?

DELEGATE FOSTER: Well, I supported the original amendment this morning, which had a clean and healthful environment and certainly would approve of including clean.

DELEGATE REICHERT: I'd be glad to include the word "clean". We'd be a little different from Illinois' Constitution. We'd have an additional word, but I would-1 don't know how to do that parliamentarily, to include the word "clean" in the second section-"each person has the right to a clean and healthful environment". If I can get Mr. Foster's vote with that addition, I'd be glad to. And I think it is a point well taken. This business with words really confuses me, and I know that we were talking about the word "adequate" before. I know what happened to public hearings because of the word "adequate", and yet the majority uses the word "adequate", and nobody yet has explained what "adequate remedies" are. I think that there is difficulty with words, but I think we're going to have to face this problem. And I think, as I said, the least we can do is have the Illinois provision in our Constitution with the addition of the word "clean".

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I must point out one additional omission, and this was the principal reason I opposed Delegate Robinson's-it deleted from the majority proposal the affirmative duty to improve our environment. And if we ever get back to the majority proposal, subsection 1, I will move to change that word "enhance" to "improve" so there will remove any doubt as to what that word is intended to mean.

CHAIRMAN GRAYBILL: Mrs. Reichert, are you ready to close?

DELEGATE REICHERT: I am, I believe, and I think that perhaps Mr. McNeil is right. I would like Section 1 in addition to the Illinois provision, so perhaps we can move for acceptance of the Illinois provision and then we can get Section 1 of the majority proposal, and I think then we'll have a fine section on environmental protection for the state. I talked to Mr. McNeil during the lunch hour, and I said, "Mr. McNeil, you are one of those who, in answering the questionnaire sent last fall, said he could approve of the Illinois provision." And I'll remind all of you others-who said they could approve the Illinois provision-1 have the list right here-but Mr. McNeil was one of them, and at lunchtime he thought he could; so if we could do this and have his first section of the majority proposal, we'd have a better provision than Illinois.

CHAIRMAN GRAYBILL: Very well-do you want to close, too, Mr. McNeil? Okay.

DELEGATE MCNEIL: Mr. Chairman, I'd like the privilege of responding to that. I did not say I would support the Illinois provision in response to that inquiry. I said I would advocate a stronger provision. The delegate proposal which I submitted to this committee substituted the word "quality" for the word "healthful". My thinking, hopefully, was that we want something stronger than healthful. I support our majority position here, now, that to maintain and improve the environment of this state is much stronger than Illinois.

DELEGATE REICHERT: Mr. Chairman, may I close again?

CHAIRMAN GRAYBILL: If you think you need to.

DELEGATE REICHERT: I want to thank Mr. McNeil, because I think he's perfectly right. We'll have the Illinois provision and the majority proposal Section 1, and we'll have a strong section on the environment.

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor of-d" you want a roll call vote?

UNIDENTIFIED DELEGATES: Yes.

CHAIRMAN GRAYBILL: All right. So many as shall be in favor of Mrs. Reichert's proposal on environment, which is the Illinois provision, please vote Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the ballot. Please take the vote.

DELEGATE CATE: Cate votes Aye.

CHAIRMAN GRAYBILL: Very well, we'll check it. Will the clerk please add Mr. Cate's Aye vote.

Aasheim ..... Nay
Anderson, J ..... Nay
Anderson, 0 ..... Absent
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Excused
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Nay
Mahoney ..... Excused
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Kebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye

Studer	Nay
Sullivan	Nay
Swanberg.	Nay
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: With Mr. Cate voting Aye, 43 voting Aye, Mr. President; 47 voting No.

CHAIRMAN GRAYBILL: 47 having voted **No, 43** having voted Aye, the motion is defeated.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, if I may, at this time, I would move to amend Section 1, subsection 1, as has been placed on the desks of all the delegates.

CHAIRMAN GRAYBILL: Very well, will the clerk please read Mr. Campbell's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 1, subsection 1, page 3, by deleting and amending as follows: "The State of Montana and each person must maintain and enhance a clean and healthful environment in the state for the enjoyment and protection of present and future generations. Signed: Campbell."

CHAIRMAN GRAYBILL: Mr. Campbell, I take it that adds the words "clean and healthful" and it adds the words "the enjoyment and protection of' the present environment, is that correct?

DELEGATE CAMPBELL: It does.

CHAIRMAN GRAYBILL: Very well.
Mr. Campbell.

DELEGATE CAMPBELL: Thank you, Mr. Chairman. I think we're back at the original premise again. If I may have your attention, please. We are back to the original position again. Do we—as the citizens of the State of Montana have overwhelmingly said in every poll and indication, they want some provision on the environment. Are we now going to say that we do want a clean and healthful environment, or are we going to duck the responsibility that we've been talking about all day today? Now, I do not buy the theory that not describing the type of environment that we want for the State of Montana makes it a stronger environmental provision. I think since the environment is the number one issue, it's incumbent upon this Convention to live up to their responsibilities. A clean and healthful environment, as you will notice, as Mr. Swanberg said, is something less than the Legislature has already stated in their description of what they want for the State of Montana. I do not feel we can accept anything less than a clean and a healthful environment. If you'll check the codes, you'll see that the last Legislature, which we all commend for doing such a good job-and who had the courage to put into this state the strongest environmental provision yet that this state has ever adopted, and they had the courage to go home to their electorate and they got from that electorate the satisfaction and, really, the commendation of the people of the State of Montana. Now, they describe as a safe, healthful, productive, aesthetically and culturally pleasing surroundings. Now, has anyone suggested such a far-reaching proposal like that for the Constitution? No. Now, certainly, we have to at least live up to the present statutes of the State of Montana, and I do not think that you can go home and walk down the streets of your hometown between the time that this Convention adjourns and the time this is voted on-May I have your attention? Your honor-Mr. Chairman, I don't feel half the delegates are listening, and I would call for their attention.

CHAIRMAN GRAYBILL: I'm watching, and I'm rapping them down when there's not attention. You have their attention. Go ahead, Mr. Campbell.

DELEGATE CAMPBELL: If I may proceed. I sincerely do not feel that you can go to your hometown and walk down the street and someone will come up to you and say, "What did you do about the environment, finally, in the Constitutional Convention?" Under themajorityproposal, you will have to look them in the eye, knowing that you spent all the money to come over here to do something they were interested in, and say, "Yes, we the people in Montana at the Convention decided to have one." Now, what is he going to say? You decided to have an environment. Well, isn't that wonderful! We've already got an

environment. What did you decide that you wanted the environment to be? Well, some radical proposals were made about public trusts--were thrown out; other things-pleasant environment. And someone suggested "clean and healthful". Now, we're all for that, but we certainly don't want to use the words. Now, what is this average citizen going to say? He's going to say, "You went all the way over there for something that you agreed in and said you were too timid to put it in the Constitution like we all wanted to have it?" This certainly is the emperor's clothing again. If you can all convince yourself that not describing the type of environment you want is so strong and so important and going to give you this extra protection, then I submit to you that when you get home, some voter is going to ask you what it is and they're going to see right through it, that there's no description on the type of environment that you put on here at all. And there won't be any more North Dakota jokes, because the joke will be on Montana. So, I submit this is a basic minimum. If we're going to do anything, this is the place to do it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, is there discussion on this?

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman—oh, you turned the volume up. I rise to offer a substitute motion for Mr. Campbell's amendment. It will read basically as the majority proposal does, page 3, line 9—change the word "enhance" to "improve"; line 10, delete the words "of the state"; insert, before the word "environment", "Montana''-so that the substitute motion will have subsection 1 of Section 1 read as follows: "The State of Montana and each person must maintain and improve the Montana environment for present and future generations."

CHAIRMAN GRAYBILL: Very well, Mr. McNeil's substitute motion would have Section 1, sub. 1, read: "The State of Montana and each person must maintain and improve the Montana environment for the present and future generations."

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, this is basically the majority proposal rephrased and deletes the words "clean" and "healthful". Our intent is not to permit the Legislature or the courts to permit our present environment to be degraded to what they might interpret "a clean environment" or "a healthful environment" to mean.

CHAIRMAN GRAYBILL: Very well, is there further discussion on Mr. McNeil's motion?

Mr. Campbell.

DELEGATE CAMPBELL: I oppose Delegate McNeil's proposal. What this does is, in effect, lock into the Constitution the present level of pollution in those areas which it is already too much; and Missoula is not going to be satisfied to say that your air will remain as polluted as it is now, forever in the future. We sincerely want to improve the quality of our air. I do not believe—and I believe you stated it sincerely when you said this was the intent of your majority report, to insure that the present level of pollution, or lack thereof, will be maintained by the State of Montana. I feel that this should be defeated, that you should improve and try for a clean and healthful environment and that this is worse than nothing. It would absolutely take away the incentive that the Legislature has had. Who knows, it may even put their acts unconstitutional. I would strongly oppose this amendment.

CHAIRMAN GRAYBILL: The Chair would only point out to you, Mr. Campbell, that it does use the word "improve". I don't know what that may mean. Is there other discussion?

Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, as a member of the Natural Resources Committee, I support Mr. McNeil on this motion.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, as a member of the Natural Resources Committee that worked for about five weeks on this and heard every argument that could possibly be presented, I think-I've heard all of them that's been made here today--we're being worn down. I've been keeping track of it here, it looks like the proposals-there are several of them yet-they're probably for the purpose of just getting a few votes away each time, because people are getting tired of it; but I'm going to stay right here. I'm going to vote for Mr. McNeil's proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates. I, too, am with Mr. Scanlin and these others that have talked about the majority report. We know they spent weeks in working this out. They have used the wording, and I believe our committees should have a little bit more consideration than we have been giving them. Thank YOU.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, the committee may feel, after hearing the long list of witnesses they heard, that they have come up with the strongest statement that they can come up with on environment for Montana, but I've been hearing from environmental groups around the state, from students who have looked at this, and I have not yet found one who thought that this was a satisfactory article. In fact, they've ridiculed it, and I think they will ridicule us if we go home with an article like this for the environment.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: I feel that Mr. McNeil's motion should take away any doubts about the committee's desire that we improve and that the environment, and especially in places like Missoula-I don't know, to me there is absolutely nothing magic with words "clean and healthful" that can be interpreted by courts to mean different things. What the committee really wants to do, and what we felt we have done in our wording, is to make sure that there is no judicial interpretation that can come along that can say that the environment, as we have it at the present time or when our Constitution is accepted or rejected, but hopefully accepted, that can say that our environment can go downhill from time to time. The only way that it can go is uphill, is get better, and this is why we have stayed away from all the adjectives. I endorse Mr. McNeil's amendment.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. McNeil's amendment to add the word "improve" in place of the word "enhance", in line 9 of Section 1 on page 3, and to add the word "Montana" before the word "environment", so that it says "the Montana environment", and strike the words "of the state". So many as shall be in favor of Mr. McNeil's proposal, please-d" you want a roll call?

DELEGATE KAMHOOT: Roll call.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. McNeil's proposal, please vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: If not, the vote is closed. Please take it.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berth&on ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Absent
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Aye
Choate ..... Absent
Conover ..... Aye
cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay

Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper..... Nay
Harrington..... Aye
Helikcr ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Excused
Leuthold ..... Aye
Loendorf..... Aye
Lorello..... Aye
Mahoney ..... Excused
Mansfield ..... Aye
Martin..... Aye
McCarvel ..... Aye
McDonough..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin..... Aye
Monroe ..... Nay
Murray..... Aye
Noble..... Aye
Nutting..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder..... Aye
Rollins ..... Absent
Romney ..... Nay
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg..... Absent
Toole ..... Excused
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye
Mr. Chairman Aye

CLERK HANSON: Mr. Chairman, 68 delegates voting Aye, 19 voting No.

CHAIRMAN GRAYBILL: 68 delegates having voted Aye, 19 having voted No, Mr. McNeil's substitute motion amending the Section 1, subsection 1, to read: "The State of Montana and each person must maintain and improve the Montana environment for present and future generations" has passed.

The Chair will recognize Mr. Campbell.

DELEGATE CAMPBELL: I move to amend the motion by inserting the words, after "improve", "a clean and healthful environment for Montana for present and future generations".

CHAIRMAN GRAYBILL: You want to put in the words, after "improve", "a clean and healthful Montana environment"!

DELEGATE CAMPBELL: Yes.

CHAIRMAN GRAYBILL: That's the way it is; and leave out "in the state". "For the enjoyment and protection of'-are you putting that in again?

DELEGATE CAMPBELL: No.

CHAIRMAN GRAYBILL: You're leaving that out this time. Okay. Very well, Mr. Campbell's motion has the effect of adding the words "a clean and healthful Montana environment" to the status of the motion-or, status of the section as it now stands, so that the thing would read: "The State of Montana and each person must maintain and improve a clean and healthful Montana environment." Is there further discussion on Mr. Campbell's amendment? (No response) Do you want a roll call vote? Very well. All those in favor, please vote Aye on the voting machines; all opposed, please vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Absent
Anderson, J ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Absent
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
c ain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Absent
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Nay
Hahedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Excused
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Excused
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Excused
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 49 delegates voting Aye, 38 voting No.

CHAIRMAN GRAYBILL: 49 delegates having voted Aye and 38 delegates having voted

No, Mr. Campbell's motion passes. Therefore the section now reads: "The State of Montana and each person must maintain and improve a clean and healthful Montana environment for the present and future generations." Are there further amendments? (No response) If not, Mrs. Cross, do you want to move that Section I as amended-Mr. Murray, do you want to make the motion?

DELEGATE MURRAY: I move that when this committee does arise and report, after having had under consideration Section 1, subsection 1, of Committee Proposal Number 6, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well, all in favor of the motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: We have Section 1 adopted. Will the clerk please read subsection 2.

CLERK HANSON: "Section 1, subsection 2. The Legislature must provide for the administration and enforcement of this duty." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 1, subsection 2, of Proposal Number 6, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well. The issue, then, is on subsection 2 of Section 1 of the Natural Resources proposal.

The Chair recognizes Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, at this time I would like to make a substitute motion. On your desks you have a section with my name on it. I would like to strike the language in subsection 2 and also in subsection 3 and replace both with this amendment. And will you change the words in the first line to read as follows: "To meet the obligation set forth in Section 1, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the Legislative Assembly may provide by law."

CHAIRMAN GRAYBILL: Very well. The Chair understands it to be Mrs. Cross' amendment-substitute motion that we would delete subsections 2 and 3, on lines 12 through 18, and in place put the language: "To meet these obligations set forth in Section 1, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the Legislative Assembly may provide by law."

Mrs. Cross.

DELEGATE CROSS: I would like to explain this action. We discussed the pros and cons for the better part of the day. I think that leaving the two sections in, as in the majority report, greatly weakened the stand of the original statement in Section 1. Section 2 does not add anything positive in terms of environmental protection. In fact, it may be detrimental. The Legislature does have inherent power to act regarding environmental matters. In addition, there is no way to force such a direction, and no one,including the courts, can require the Legislature to act in any particular way with regard to the environment. or anything else. The danger in Section 2 is that it can be construed to exclusively delegate such authority to the Legislature, and this would even exclude the courts. Section 3 also gives further credence to the position that matters relating to the environment are exclusively within the control of the Legislature. If there is such an interpretation and if the Legislature did not act, there would be no remedy. As I've mentioned before, the Legislature cannot be forced to do any particular type of thing in regard to environmental remedies. Therefore I submit this motion, and I hope that you will support it.

CHAIRMAN GRAYBILL: Very well, the sum and substance of Mrs. Cross' subsection 2 is to give a right to sue. Is there debate on this issue'! Incidentally, I might say that the Chairhastaken the liberty, Mrs. Cross, of amending the first line to say: "To meet these obligations set forth in subsection 1"—which is what I think you mean.

Very well, Mr. Gysler.

DELEGATE GYSLER: Would Mrs. Cross yield to about two questions, please?

CHAIRMAN GRAYBILL: Mrs. Cross, will you yield?

DELEGATE CROSS: Yes, I will.

DELEGATE GYSLER: Mrs. Cross, is it your intent that there be nothing said in this article to set up any-to direct the Legislature-and when this article says "must", that's as strong as you can get with the Legislature-to set up the administration and enforcement to be sure that these things are done as far as we can go? Is it your intent to delete this?

DELEGATE CROSS: I think, Mr. Gysler, that the Legislature can do this anyway, whether we direct them or not, so I don't see that that Section 2 has much place in the article.

DELEGATE GYSLER: Thank you, Mrs. Cross. I won't ask the other question. I would just like to say that, very seriously, I feel that this should come as an Article IV to be placed in here if it is, because I feel very strongly that this article should say to the Legislature that you must provide administration and the enforcement. We can say, "Well, yeah, they're going to do it anyway", but I think we should tell them that they must.

CHAIRMAN GRAYBILL: Mr. Gysler, the Chair sees your point, and if, when we finish this, it's been amended out, the Chair will give you an opportunity to make it as an amendment to put it back in. Is there further discussion of Mrs. Cross' motion:'

Mrs. Robinson.

DELEGATE ROBINSON: Yes, will Mr. Gysler yield to a question?

CHAIRMAN GRAYBILL: Mr. Gysler?

DELEGATE GYSLER: Certainly.

DELEGATE ROBINSON: In subsection 2, where you feel it important to say the Legislature must provide for the administration and enforcement of this duty; what if they don't?

DELEGATE GYSLER: Bring on-if you don't have that much faith in the Legislature, bring on an article later on that allow.? you to sue the Legislature or do anything you want, but have something in there to say that they must provide these kind of things. If you don't have it and you want to sue, I think you're in worse position to enforce it.

DELEGATE ROBINSON: Mr. Chairman, will Mr. Gysler yield to just one more question?

CHAIRMAN GRAYBILL: Once more'?

DELEGATE GYSLER: Certainly.

DELEGATE ROBINSON: Yes. Does-is it not within the inherent prerogative of the Legislature anyway to effectively implement subsection 1?

DELEGATE GYSLER: It's within their prerogative, Mrs. Robinson. The thing that we want to be sure of as a committee is that they are directed to. It only takes about one and half lines, and in doing this we direct them to do it and gives anybody that wants to take any action more force for the action.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Cross' motion to add a right to-a legal right to sue.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I'd like to answer Delegate Robinson's question. What do you do if the Legislature fails to perform what the Constitution directs them to do?-you vote the scoundrels out of office and elect a new bunch.

CHAIRMAN GRAYBILL: Very well.

Mr. Heliker.

DELEGATE HELIKER: Did I understand the Chair to say that we'd have a chance to put that back in?

CHAIRMAN GRAYBILL: Certainly, you will have a chance to.

DELEGATE HELIKER: So, we're simply voting on—

CHAIRMAN GRAYBILL: You're voting on Mrs. Cross' amendment-

DELEGATE HELIKER: It's not necessarily-

CHAIRMAN GRAYBILL: She does take it out, but I think we could then move to put it in as the next section or another section.

DELEGATE HELIKER: Yeah, okay.

CHAIRMAN GRAYBILL: We aren't through with Section 1 yet. Very well, the issue is on Mrs. Cross' motion to add as subsection 2, in place of present subsection 2 and 3, a subsection that reads: "To meet these obligations set forth in

subsection 1, each Montana resident may take appropriate legal proceedings against any person, governmental or private, subject to reasonable limitation and regulation by the Legislative Assembly as may be provided by law." Do you want a vote on the machine? (No response) Recorded vote. Very well. So many as are in favor, please vote Aye on the machine; and so many as are opposed, vote No. Has every delegate voted? (No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas..	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock..	Absent
Barnard	Absent
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Absent
Brazier	Nay
Brown..	Aye
Bugbee	Aye
Burkhardt	Aye
Cain.	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross..	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Absent
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Excused
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Spew..	Aye
Studer	Nay
Sullivan	Nay

Swanberg..... Absent
Toole .. .. .. Excused
Van Buskirk .Aye
Vermillion Aye
Wagner Nay
Ward .....Aye
Warden .....Aye
Wilson ..... Nay
Woodmansey .. .. .. Nay
Mr. Chairman .Aye

CLERK HANSON: Mr. Chairman, 44 delegates voting Aye, 46 voting No.

CHAIRMAN GRAYBILL: 46 delegates having voted No and only 44 having voted Aye, the motion is defeated. We're back on subsection 2 of Section 1. Is there any further discussion of subsection 2? (No response) Very well, so many as shall be in favor-let's see--upon the motion of Mr. Murray having been made that when this committee does rise and report, after having had under consideration subsection 2 of Section 1 of Article VI, the Natural Resources Article, that the same be recommended for adoption-please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: 2 is adopted. Will the clerk please read subsection 3.

CLERK HANSON: "Subsection 3. The Legislature is directed to provide adequate remedies for the protection of the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources." Mr. Chairman, subsection 3.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Excuse me, Mr. Chairman, I defer to Mr. McNeil for making the motion. There's a typographical error—

DELEGATE MCNEIL: Mr. Chairman, there's a typographical omission on line 17: following the word "depletion" should appear "and degradation".

CHAIRMAN GRAYBILL: What does that word mean, Mr. McNeil? Strike that, Mr. McNeil.

DELEGATE MCNEIL: Without answering the Chair's question, those two words were in the proposal as passed by the committee—

CHAIRMAN GRAYBILL: Right, okay.

DELEGATE MCNEIL: -and should be included before the motion—

CHAIRMAN GRAYBILL: I shouldn't have commented; I was overcome, Mr. McNeil. (Laughter)

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 1, subsection 3, of Proposal Number 6, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well, the motion is on Mr. Murray's motion that we discuss subsection 3.

Mr. Cate.

DELEGATE CATE: Mr. Chairman, I support this language, this provision. I think it means something, with a little cleaning up, and I would move to amend it as follows: by striking the words "is directed to provide" and placing therein the word "shall", so that it reads "the Legislature shall provide adequate remedies"; and striking "for the protection" and putting in the words "to protect the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources"--whatever that means. But this would make it mandatory rather than permissive and would be a directive to the Legislature to provide adequate remedies to protect the environmental life-support system. The language, again, as amended, would read: "The Legislature shall provide adequate remedies to protect the environmental support system", et cetera, and I would move to amend Section 3 in that regard.

CHAIRMAN GRAYBILL: Mr. Cate, the Chair fails to see how you've added or detracted one whit from the section. I don't see that you've made it any different. Now, Style and Drafting might have wanted to do that to shorten it up or something, but how does saying "shall" make it any moremandatory than "is directed to"? I'm not against letting you amend something, but I'd like you to be making some clear distinction that we

can vote on. I don't see that you've added anything.

DELEGATE CATE: Maybe I haven't. Maybe it's an old lawyer's hangup about the word "shall". Maybe it's a Style and Drafting amendment.

CHAIRMAN GRAYBILL: The Chair would rule you out of order until you've thought about it a minute—

DELEGATE CATE: All right.

CHAIRMAN GRAYBILL: -and if you really think it has to be in there, try again; but it looks to me like you haven't added anything that Style and Drafting couldn't take care of. You might make your suggestions to them.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, just in case there is some distinction between "directed to" and "shall", I would like to be assured that we can use the word "shall".

CHAIRMAN GRAYBILL: Anybody object to the word "shall" as against Style and Drafting? I think you've got plenty of backing, Mr. Schiltz. Is there other discussion of subsection 3? (NO response) Very well, members of the committee, you have before you, on the motion of Mr. Murray that when this committee does arise and report, after having under consideration subsection **3** of Section 1 of the Natural Resources Proposal on environment, the same shall be recommended for adoption. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and subsection 3 is adopted.

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I don't know if I'm out of order, but I'm going to try anyway. I would like to add a fourth section to Section 1, and it will be the same one that you have on your desk, only this time it will just read as it was printed: "To meet this obligation, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the Legislative Assembly may provide by law." This is basically what is in the minority report, there is a little difference in language. I have talked about it previously and others have talked about it previously, and I think that there is no necessity to discuss it again.

CHAIRMAN GRAYBILL: Just a moment. The Chair has read both the language that you had before and the language you have now, and the Chair is going to rule your amendment in order because your previous motion said that it applied to the obligations set forth in subparagraph 1, but this one appears to apply to the obligations set forth in subparagraphs 1, 2 and 3. In other words, whatever the Legislature does, you are now giving the private party a right to enforce by legal-through a private legal remedy. Therefore it seems to me your second one is different than your first one. The Chair will allow the amendment. Do you wish to discuss it further, Mrs. Cross? You do not.

Mr. Gysler.

Mrs. Cross.

DELEGATE CROSS: This is to clarify the situation. It is being submitted as the majority report.

CHAIRMAN GRAYBILL: As the minority or majority?

DELEGATE CROSS: No, it was the minority report, basically; and this is what it goes in as.

CHAIRMAN GRAYBILL: So you want this submitted as the minority report?

DELEGATE CROSS: And that page number is 16.

CHAIRMAN GRAYBILL: So you want this to be in place of the minority report, shown on page 16. Do Mr. McNeil or Mr. Siderius object?

DELEGATE MCNEIL: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: I joined in that minority report as a courtesy to my Chairwoman. I believe the motion that has been made now includes the right to sue individuals as well as the governmental agencies. I will join with Louise in urging that this section. be passed, primarily because of the language added at the end—and regulate-"subject to reasonable limitation and

regulation as the Legislative Assembly may provide by law."

CHAIRMAN GRAYBILL: Very well, the record may show that this is the minority report.

DELEGATE McNEIL: Mr. Chairman, may I speak briefly to this?

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I know the majority feels, and I feel, that this is included in subparagraph 3 in the mandate to the Legislature to provide adequate remedies. Since it has been modified now to read "subject to limitations as imposed by the Legislature", I don't believe there's any substantial change, but I do recommend its adoption. Thank you.

CHAIRMAN GRAYBILL: Very well.
Mr. Harper.

DELEGATE HARPER: Yes. Mr. McNeil, I want to say, thanks. Several times today, during the previous discussion, various ones of you have looked this direction and said, "Wait until number 4 comes up". And I sat here each time waiting and seeing if you would do what you said you would do when number 4 comes up, and you are doing it, and I thank you. I think this is finally down to it—there's nowhere else to go now; can't go any farther than this. This is the end, and I hope we will pass it.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, this may be Style and Drafting. I suppose I better ask Mrs. Cross--or. Mr. McNeil, I guess I'd better ask you. Shouldn't the—

CHAIRMAN GRAYBILL: Do you yield?

DELEGATE McNEIL: I yield.

DELEGATE ARONOW: Shouldn't the clause, the last--after that last comma--"subject to reasonable limitation" and so on-shouldn't that go in after, in the first line--"each Montana resident, subject to reasonable limitation and regulation" and so on "may take appropriate"-'? Do you have any objection?

CHAIRMAN GRAYBILL: Is this a matter of order of the sentence, Mr. Aronow?

DELEGATE ARONOW: Yes, it is.

CHAIRMAN GRAYBILL: Well, why don't you call that to the attention of Style and Drafting, if this passes, and maybe they can change the order of the sentence.
Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, I'd like to direct a question either to you or Mrs. Cross. Some of the exchange kind of confused me. I thought I heard you say that the language of proposed subsection 4 would be to meet the obligations set forth in subsections 1, 2 and 3.

CHAIRMAN GRAYBILL: Well, what you heard me say was that the amendment she offered a while ago as subsection 2 specifically referred to meet the obligations set forth in subsection 1. Now, the one she offers now simply says "to meet this obligation", so I presume it could apply to any obligation that was found to arise either from subsection 1 or from some action of the Legislature under subsections 2 or 3. I merely distinguished the two motions and held that this would be a valid motion to debate, based on the fact that it now modified a different set of subsections.

DELEGATE BRAZIER: I beg your indulgence. I would just call to the attention of whoever is drafting this that I don't think we want to give any citizen the right to sue the Legislature. I think you're going to create a few enemies when you show up on June 6th. If that's what-if we don't intend that, I think we ought to refer to subsection 1 only, then, and make it more precise.

CHAIRMAN GRAYBILL: I don't-at the moment it doesn't read to me like you can sue the Legislature, but maybe you could read it that way.
Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, will Delegate Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross, will you yield to a close question?

DELEGATE CROSS: I'm not sure that I want to, but I shall.

DELEGATE DAHOOD: Now, Mrs. Cross, does your proposal provide that someone from the eastern part of the State of Montana may come to the western part of Montana and file a lawsuit contending that, the high-quality environment

that's discussed in the first three sections has in some way been endangered?

DELEGATE CROSS: I would say that the phrase-or the part of the sentence that says "subject to reasonable limitation and regulation" would take care of that.

DELEGATE DAHOOD: Will Mrs. Cross yield to one more question?

CHAIRMAN GRAYBILL: Probably, yes.

DELEGATE CROSS: Yes.

DELEGATE DAHOOD: Now, are you not intending by this provision to provide that every citizen in the State of Montana has a right as a party litigant to start litigation anywhere in the state if they think the environment might be endangered, in their opinion?

DELEGATE CROSS: I think I could give you the same answer. I would like to remind you that, not too many days ago, you referred to the wisdom of the courts; and I presume that wisdom would be there also.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Thank you, Delegate Cross. Mr. Chairman, it is the wisdom of the courts that I want to talk about. This is nothing more than the public trust theory. I tried to keep my vow not to speak during the course of this discussion, but I think we're reaching a point now where, by the process of attrition, those who support the private property right of a free society may be very close to casting a shadow upon those rights in the State of Montana. I've been in the pollution litigation field for almost a decade. I've been for the defendant, alleged polluter; I have been for the property owner; I have been in litigation before the District Courts, before the Supreme Court of the State of Montana, before the Environmental Agency from the capital of these United States, before the State Board of Health, and at public meetings. I have listened to experts from the east coast and the west coast, from north and south--experts who have written numerous articles, some self-appointed experts. I've listened to doctors and chemists, engineers, pollution-control geniuses. I've listened to arguments with respect to what a healthy environment is and what is not; and let me tell you here and now, there is no one that come forward and tell you what a healthy environment is. I have listened to doctors who have tried to define what a healthy environment is, and not one has yet succeeded. I listened to the foremost industrial medicine expert in the United States, by reputation--more than 40 years in industrial medicine, a professor of toxicology from a large medical school in the southeastern part of the United States. His testimony was given in a court in the State of Montana, under oath. I regret that that testimony could not be transcribed for your edification here. You're all talking about a threat in Montana that is more fiction than fact. We have to raise a barrier against pollution, and everybody wants to do it, and we have raised a barrier against pollution in the State of Montana. And the environment that we have now is not going to become worse by any degree. It is going to improve. Why? Because the fight has started, and the fight has already been won, and there are agencies and there are citizens and there are scientists and there are engineers and there are cap tains of industry and there are leaders of labor who are fighting this problem and rolling back the tide of pollution because everyone with any sense wants pollution controlled in the State of Montana and wants a quality environment. We have a form of government that we cherish. The individual citizen bands together, organizes together, decrees government so that his rights will be better protected; and how does he do it? First, he provides through a Bill of Rights that there are certain basic principles and privileges and rights that he is entitled to have in a free society. And then, with respect to the larger areas of concern, where he needs the assistance ofgovernmentforprotection, he provides for that government and that government provides for him a Legislature and a State Board of Health and whatever other agency he may need so that he can be protected with respect to those matters that concern the common and general welfare. We have a State Board of Health and we have a Legislature and we have officials who are here to make sure that throughout the State of Montana we can do and will do whatever can be done within reason to maintain a high-quality environment and roll back the threat of pollution that may endanger a healthy environment. This provision that is before you now that states a private citizen, anywhere in the State of Montana, has the right to sue any other private party is an absolute imposition upon the private right to hold and enjoy property in the State of Montana; and if you want to go ahead and pass something like that, then you're going to inscribe

upon the history of this state that one day in March of 1972, in Convention Hall, when you were sent here by the people to protect their rights to life, liberty and property, you took away part of that right with respect to property. You can't say that there can be reasonable regulation that's going to stop every frivolous lawsuit or that's going to stop some crusader from eastern Montana that might not like the environment in western Montana from starting that lawsuit. You can say the courts have wisdom; yes, the courts do have wisdom, and they will protect us to the best of their ability; but you give someone a constitutional right to start that lawsuit without that individual being affected with respect to his person or to his property, then how do you stop that type of litigation? There are people that like that publicity. There are people that like to be crusaders. We've watched them over the immediate decade, and they take a certain measure of satisfaction out of bringing these matters to issue. When someone is injured in person or in property, if their health is being affected, there is a nuisance that concerns them, we have all the law that is necessary now in the State of Montana to protect those rights; and I challenge any lawyer that's a delegate to this Convention to stand up and tell me, and to tell us, that a person does not have a law in the State of Montana now that will protect his right to the full enjoyment of his private property and his right to his personal good health. And I submit to you that many times you start towards a socialistic trend by well-meaning and well-intentioned legislation, by well-meaning, well-intentioned constitutional provisions. You can say, "Yes, we're going to increase the protection that you have here by doing this"; and at first impression, perhaps that is your impression; but think about it. Think about the power that it's going to give individuals to control you in the free exercise of your property right. Is that the type of restriction you want upon that particular concept that's part of everything that the American dream means to us? Let me ask-let me ask some of the delegates that support this particular provision-to point out to you how giving a private party the right to sue another private party when that person starting the lawsuit is not affected personally as to health and property is going to help the general situation. I want them to tell us, here and now, how they're going to accomplish more for a good and healthy and quality environment by allowing that type of lawsuit by an individual who is not concerned personally with respect to health and property. I say this-think very carefully. We came here to expand the rights of the individual citizen in the State of Montana with respect to those concepts of right and precious liberty that are part of the American heritage. We are here not only to make sure that the citizens of the State of Montana retain those rights, but to make sure that those rights will be protected in the future and that there will be an expansion of those rights where necessary to protect the citizen with respect to expanding government. I submit to you, today, that the proposition that's placed before you does nothing to enhance or protect the individual right with respect to life, liberty, happiness and property and, in the final analysis, takes away the free expression that citizenship is entitled to have with respect to the right to be an American citizen. I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, Mr. Dahood is the Chairman of a committee that will report to us later on. It's entitled the Bill of Rights Committee. I have read through some of their proposals. A good many of them need not be in there, because they are already our rights, and yet we will take the time to state them and state them in some detail. This is in this same category. He says, at first, we have rights. First of all, the people do. And then we provide for government to protect the common welfare. We do. Let's assume a case of law, for example. We have the right not to be libeled; but if someone libels you, then you have redress as a person. That person has to prove that statement of libel, and ifhecannot, you have some redress against him. This does not allow for any person to sue you for your private property or in some way to take away your right to private property if he cannot show the court, a sensible court, the same courts that deal with libel and all the other laws, that he has some right on his side. Now, I haven't talked to all of these emperors, kings, judges, scientists, and the rest of them—and laws-that Mr. Dahood says cannot tell the difference, really, what a healthful environment is. But I have stood at the head of the Missouri River and drunk water out of it, and I have gone in the Missouri River down below Great Falls, and I would not drink the damnable stuff, if you'll pardon a Great Falls phrase, and I know the difference. Somewhere between the start and Great Falls, something's happened to that stream, and I've got a sneaking suspicion when I stand near

where a sewer empties into the stream that I know at least one of the causes. Now, I am simply saying I don't know all the legal words. I can't make the big speech about that. But somewhere in this document, I, as a citizen, should have the right to try to protect my environment and to protect that stream, and I think we're on the point right now,- and as I said a moment ago, we can't go any farther--where we ought to take our stand.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I think that we're in an area here wherethereisn't a lot of history to base our decisions on, but I've done a little research into the area and I'd like to make it available to our fellow delegates. The frivolous lawsuit is the first thing we should direct ourselves to, I think. Michigan's experience with this has been that, according to the information I have, 31 lawsuits filed since 1970—it might now be 35. Four of those were dismissed as being frivolous. A number of them were brought by private citizens; not very many. Most of them were brought by the State of Michigan or some agency thereof against some private entity that was polluting. And, certainly, I don't feel that this is a flood of frivolous lawsuits. In that regard, the Attorney General's office of the department of Attorney General in the State of Michigan writes: "Passage of this act in Michigan received a great deal of publicity all over the country and, in fact, we had letters from outside the U.S. There has not been a significant increase in the number of suits. In fact, the so-called 'flood of litigation' has failed to materialize in approximately 30 cases since the bill went into effect on October 1st of 1970. We consider Act 127 a useful tool in that it will serve to keep state agencies on their toes", et cetera. Now, in the State of Illinois they have a somewhat similar environmental provision, and the Attorney General of the State of Illinois writes: "This letter is in response to your telephone call of February 9th, 1972. The records of the Pollution Control Board of the State of Illinois show that during the period from July lst, 1970, to January 21st, 1972,102 enforcement cases were filed with the board. Of that total, 18 were cases filed by citizens or other private parties. The remainder of them were by governmental entities." Now, Illinois has a population of 10,977,000 people. They also have pollution problems that we haven't heard of out in this country. Michigan has a population of about 8½ million—8,778,000—over 10 times the people that we have—and they have pollution problems that we haven't heard of. So, I think the argument that there's going to be millions of lawsuits filed against all kinds of people is really, when you look at what facts we have available to base our judgment on, unrealistic. Now, if Mr. Dahood's eastern Montanan, which I am and proud of, is such a danger, the Legislature can properly limit the right to sue to the county or area in which the individual is a resident. And in this regard, I think we ought to look at what Michigan has done. First of all, Michigan does give a right to sue, but only for equitable and declaratory relief. And as I read that and as I look through some of the cases that have been filed, it appears that you really don't have the right to sue for damages. You have the right to get injunctions, writs of prohibition, writs of mandate, and so forth-the equitable remedies-or declaratory relief, but not damages. And, secondly, they have required that anyone who is going to bring a lawsuit, if they are not capable of paying the damages, has to post a bond. In this case it's $500. And there's another very practical and realistic part of this thing that has to be considered, and that's the cost of bringing litigation. Now, Mr. Dahood can tell you that to hire an expert can cost you thousands of dollars—thousands of dollars. It's going to cost you money to hire a lawyer. It's going to cost you money for filing fees, for depositions, for travel. You get into one of these environmental suits, you're up against the big boys and you'd better have 5 or 10 grand to spend, and as a practical matter, people aren't going to be bringingfrivolouslawsuits. So, I submit, on the basis of what evidence we have and trusting again in the Legislature, that if we want to put in an effective environmental provision, that we should support Mrs. Cross' amendment. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Arbanas

DELEGATE ARBANAS: Mr. President [Chairman], fellow delegates. I couldn't help thinking, when Mr. Dahood was speaking this afternoon, that if you'd put the word "liberty" in the place of "clean environment", that practically everything he said would have rung true-that the same kind of talk could be given with regard to the great American ideal of liberty-you know, that

we can't define it and there'd be all sorts of litigation. What does liberty mean? You could go on, you know; if I wanted to have you-give a right for you to sue, if I took away your liberty, we could have days and days saying what that means; and yet, these are the things that have been the ideal of our country. They have been the goal. They have been-defined the quality of our life. They've been things we've fought for and have-our sons and daughters have died for. Liberty. And yet, we're saying the same kind of thing. We talk about the goal of a healthy environment. The second big point, it seems to me, as I listened, was the fact that there was, you know-the point that the Legislature and agencies are doing this kind of thing. I couldn't help asking myself, can we do less? Can we help but confirm and support what is happening by the very special stamp of approval that goes into a constitution. Lastly, I don't think I saw it until I heard the talk, and I think it's really the point of the whole discussion today. There was a talk about can you, you know, go and sue when I haven't been affected? I think that's the point. Environment is different than anything else because we are all affected. It's different than any other type of litigation, and we know this now better than we have ever known it before, so that when you talk about environment, I think you have to talk about like we're on this spaceship and we're all in it together and the survival is something that we'll do or don't do together, and so it is different than any other type of litigation we've known in the past because we are all affected.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I would like to move a substitute motion. The substitute motion is contained on page 17 of the Natural Resources Committee report, and it is the minority's proposal, When Mrs. Cross made her previous motion, she said it was in substance the minority proposal, but I have some of the same problems with the motion that she made that Mr. Dahood has. Seems to me that we are getting way out on a limb when we give one party and one end of the state the right to sue an individual party on the other end of the state for something for which he has, in fact, not been damaged in any way. I feel that the proper way to proceed on this thing, if we are going to put this kind of provision in the Constitution, is to direct the legal process through the appropriate governmental agency, and I think this is what the minority proposal does. It omits any reference to the private or individual party and would direct these suits through the appropriate governmental agencies, and I would move the adoption of the minority proposal.

CHAIRMAN GRAYBILL: We'll allow Mr. Harbaugh's substitute motion. Is there discussion on it?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would like to stand and support the substitute motion, and I want to make it clear that my concern for the environment is the same as that of anyone else, and I want the environment protected, but I want it protected by our government, and I want it protected by our public servants in whom we have placed our public trust. I think that this particular provision should give us the protection that we seek, promote the type of environment that we need, and at the same time maintain private property rights in the State of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President [Chairman], it doesn't surprise me that Mr. Dahood supports theminorityproposal, becauseit doesn't do anything. As I tried to indicate earlier, people in the State of Montana already have legal recourse against governmental agencies that fail to properly carry out the duties prescribed to them by the Legislature. I tried to indicate earlier that the Administrative Procedure Act of Montana specifically permits judicial review of such administrative actions. I would simply like to direct your attention one more time to what we discussed earlier in regard to standing to sue. As you know, now there is a controversy in Montana concerning the E.P.A. and the air standards. It's very likely that we are going to be living under federal air standards-not state air standards, but federal ones. As I tried to indicate earlier, in reviewing some cases of the Supreme Court, the second circuit court of appeals, and other federal District Courts, they havemaintained time and time again that you do not have to show-this is a quote from one of the cases-Scenic Hudson Preservation Conference versus the Federal Power Commission -their holding in that case was that a person does not require-or a case or a controversy does not require that an aggrieved or adversely affected

party have a personal economic interest. A later case, Udall versus the Federal Power Commission, substantiated that decision. A decision last year, the second circuit court ruled in the Citizens Committee for Hudson Valley versus Volpe that any time a statute of any state or the federal government is involved with the protection of natural resources, that a group has standing to sue if they are just interested that those protections are not being properly carried out by the agency. Mr. Dahood has attempted to put a smokescreen on this very issue. Like it or not, if the State of Montana doesn't take a stand, as it has so far failed to do in terms of air protection, the federal government's going to do it, and they already have in some states.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates, I just want to clarify the record on one of Mrs. Robinson's comments. In that Hudson River case, the action was brought under a federal statute-I repeat, statute--authorizing suits against federal agencies. A similar statute could be enacted in Montana under our present Constitution, and it could be enacted in Montana under the majority proposal, subsection 1.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I oppose this substitute motion. I had talked to a number of lawyers in this Convention about just such language as that, and everyone that I talked to, every lawyer that1 talked to said, "That doesn't mean anything. You have that right now." So, as far as I'm concerned, there's no use putting meaningless language into the Constitution. I urge you to defeat this, and let's take a vote on Mrs. Cross'. You either want that or you don't, but let's not put meaningless language into the Constitution.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to oppose the amendment of Mr. Harbaugh. I feel allowing a citizen to sue a governmental agency again is not adding anything new. I feel that Mrs. Cross' motion and proposal can be amended to be acceptable by Mr. Dahood, and I intend to do that after this vote, but I would oppose the implementation of this because it does not add anything new. And I think we could agree on amendment to Mrs. Cross', so I urge that the amendment now before us be denied-defeated.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: In reference to Delegate Blaylock's comments, I'm not aware that we already have the type of right that we're talking about in the minority proposal, and I think this type of direction to the Legislature is going to give us precisely what we want. I want to refer to the bible, *Defending the Environment*, by Joseph L. Sachs, who, of course, is the foremost proponent of the public trust theory, which is precisely what the proposal of Delegate Cross represents. And, at page 174—

CHAIRMAN GRAYBILL: Now, Mr. Dahood, I want to know if you are talking about—

DELEGATE DAHOOD: This is very brief. I am talking.

CHAIRMAN GRAYBILL: I don't care how brief it is, is it on Mr. Harbaugh's amendment?

DELEGATE DAHOOD: Yes, it is.

CHAIRMAN GRAYBILL: You just said Mrs. Cross' amendment, so—

DELEGATE DAHOOD: Well, it pertains to the amendment that we're trying to submit to the Convention at this time, Mr. Chairman, and it will point out a reason why the amendment that—

CHAIRMAN GRAYBILL: Very well, I'll listen to it; and if it's on Section 4 in the minority report, on page 16, I'll allow it; and if it isn't, I'll cut you off.

DELEGATE DAHOOD: Very well. Let me make this preparatory statement before I read it. The amendment that's before the body at this time is an amendment that will allow for legal action within the framework of the type of system of government that we have. The proposal of Delegate Cross does not do that. As Professor Sachs says in his book: "What, if any, specific benefits to the public are being provided to compensate for the losses that the proposed activity will engender"-talking about public trust. His answer: "Only when we are ready to ask such questions and to recognize the legitimacy of public rights as equivalent to traditional private property interest will we truly be on the way toward creating an effective body of environmental law." If we want to take the private property rights that have been so cherished in this country and place

them at a different level than the level that they occupy now, then you will pass the type of a proposal that we are objecting to and a proposal which will not solve the problem that can best be solved by the amendment that's before this body now. I'd like to ask, at this time, if Delegate Robinson will yield to a question.

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: I will.

DELEGATE DAHOOD: Delegate Robinson, may I ask how you, as a private citizen, in the event that you wanted to file a lawsuit for the protection of the environment, would proceed to file that lawsuit, hire a lawyer, secure the necessary expert testimony and the scientific data that's required to be successful?

DELEGATE ROBINSON: Well, Mr.-I certainly wouldn't come to you. (Applause)

CHAIRMAN GRAYBILL: Mrs. Robinson, is there more to your answer'?

DELEGATE ROBINSON: Yes. Mr. Dahood, first of all, I'm not sure what you're driving at. I think you have to recognize, first of all, that the Legislature will enact certain standards and limitations, as the Illinois Legislature did, after the enactment of that constitutional provision. I would, naturally-if I felt that I was aggrieved, I would go to an attorney and explain my case; and if he is competent, I think that he would be able to advise me whether or not, within those guidelines established by the Legislature, I would be able to proceed, or whether or not I actually had standing to sue.

DELEGATE DAHOOD: With all due respect to Delegate Robinson's answer, that answer probably represents one of the strong arguments for the motion that's before the body now. Unless you're involved with some injury to your individual health or your property, you are in no position to seek damages, and as a consequence, a lawsuit for the protection of the environment, when you are not personally affected with respect to health or property, is going to require considerable expense and considerable expertise. This is one of the practical factors. Let me submit to this delegation that we should be practical. There's no reason to get lost in theoretical clouds that seem so promising and yet, when we're down to earth, we can't make thatparticularproposition work. It is much better to depend upon the government that we create, upon the people that we appoint and elect to those particular positions of trust and responsibility. We have to assume that they're going to do their duty, that they're going to carry out our instructions, that they're going to carry out our constitutional command to protect the environment. We have no right to presume that they will not do that. We need the power of the state. We need the power and the material of organized society to get the job done right. It's nice to have high-sounding platitudes or even sermon&es in the Constitution, but ifyoudon'thave the power and the material to implement that particular protection as is required under the system of law that we have, then we are really giving to the citizens of Montana nothing but an empty hope. I submit to you, we all want the same objective, we all want the same result. Let's be practical citizens and reasonable citizens and intelligent citizens, and let's get it done in a way where it's going to work for the benefit of all of us and for the progress of the State of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, we have the matter before us, we've had it all afternoon and all morning, and we're gradually getting to a point where we might be able to decide something. I cannot see why we should accept this substitute offered, because it does not provide us any relief. It's just saying "boo". I think that the thing we should do is to vote it down and accept the Cross one-the original motion. We have matters besides this to go on in this proposition, and I think it's time that we got ahead with it and voted.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman], in our deliberations today, there was one question that I had in mind, especially in regard to Mr. Dahood's testimony. And, in fact, if you will allow me-if I am not out of order, I would like to ask him a series ofquestions; but before I do, I want to let you know what I am going to ask him questions in regard to, and that is, in Rule 20 of our rules to the Convention, it says "Any delegate who has significant personal or private interest, economic or otherwise, in a matter before the Convention shall disclose this interest to the Con-

vention." Now, that is the sense of what I am going to ask Mr. Dahood. Am I out of order?

CHAIRMAN GRAYBILL: Right. Well, the Chair will rule that Mr. Dahood has already disclosed that issue. He pointed out that he had represented numerous clients on both sides of the environmental issue, which the Chair happens to know is true, and I think he's declared his interest. Therefore, I'll rule you out—No, you don't have the floor, Mr. Dahood-Therefore, I'll rule you out of order, Mr. Monroe, unless you want to discuss Mr. Harbaugh's substitute motion. He has disclosed his interest as an attorney that handles these kinds of cases-this type of case.

DELEGATE DAHOOD: (Inaudible)

CHAIRMAN GRAYBILL: You can if you are going to talk on Mr. Harbnugh's substitute motion.

DELEGATE DAHOOD: I just wanted to point out-(Inaudible) has to do with the private property owner against a large corporation. I represent the private property owner.

CHAIRMAN GRAYBILL: Very well. All right, now, are we ready to vote on Mr. Harbaugh's motion or not? Is there other discussion?

Mrs. Babcock.

DELEGATE BABCOCK: May I please know which amendment it is?

CHAIRMAN GRAYBILL: Yeah, I'll read it before we vote. It's on page 15, Mrs. Babcock. Is there other discussion?

Mr. Campbell, I see you up. Do you want to discuss?

DELEGATE CAMPBELL: Just a question, Mr. Chairman. Would a substitute motion be in order at this time'!

CHAIRMAN GRAYBILL: No, we have one substitute motion.

DELEGATE CAMPBELL: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh, you may close. Oh, wait a minute.

Mr. Barnard, did you want to say something?

DELEGATE BARNARD: Mr. President [Chairman], I rise on a point of information. Supposing we adopt Section 4 of the minority proposal and some individual citizen wants to bring an action against some division of the federal--or of the local—the state government, will they have to bring that on their own, pay their own way; or is there some provision where they can file objection with some of the authorities?

CHAIRMAN GRAYBILL: Well, the law presently is they'd have to pay their own way, and the law would probably be they'd have to pay their own way here, unless the Legislature put in a different subrule. But this provision would certainly leave it having them paying their own way.

DELEGATE BARNARD: That's what I thought.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Harbaugh, do you want to close?

DELEGATE HARBAUGH: Yes, I'llclose. I'd just like to point out that this provision of the minority proposal is signed by three members of the committee, and I think that several times throughout this discussion it's been pointed out that the committee has done a great deal of work on its proposal, and I think we ought to respect that. It seems to me that this is a much more well-thought proposal than the previous motion, and I would urge that it be adopted.

CHAIRMAN GRAYBILL: Very well, I take it you want a roll call vote. Very well, all those in favor of Mr. Harbaugh's-well, first of all, I want to explain, Mrs. Babcock, it's the minority proposal on page 16, subsection 4, there, that we're voting on. Those in favor of this minority proposal giving any Montana resident the right to appropriate legal proceedings against any governmental agency charged by law with the implementation or enforcement of any provision of the article —those in favor, please vote Aye; and those against, please vote No. Mr. Kelleher, you may be recognized and you may vote. Mr. Kelleher's presence is recognized in the journal.

Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Absent
Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Absent
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Excused
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Excused
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 37 delegates voting Aye, 55 voting No.

CHAIRMAN GRAYBILL: 55 having voted No, and 37 having voted Yes, that motion fails, and we're back on Mrs. Cross' amendment. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move that the committee rise and report progress and beg leave to sit again.

UNIDENTIFIED DELEGATES: No

CHAIRMAN GRAYBILL: Very well, we'll take a vote on that. There is a social activity tonight, and I don't know whether we can finish this issue or not. But if you care to, we'll start here again tomorrow morning; or we'll complete. All those in favor of rising and reporting, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All those in favor of rising and reporting, vote Aye; opposed, No. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, 47 having voted No, 4'5 having voted Aye, we will not rise and report. Mr. Etchart, would you take the Chair?

(Delegate Etchart in Chair of Committee of the Whole)

CHAIRMAN ETCHART: The Committee of the Whole will please be in order.
Delegate Graybill.

DELEGATE GRAYBILL: Mr. Chairman, I understand that we are debating Mrs. Cross' motion, and I would like to discuss this briefly since I have some views on it that are rather strong. First of all, I have listened carefully to my learned brother, Mr. Dahood, and I am impressed by what he says, because I think what he says is correct; but I would like to point out to you that his result might not necessarily be the best. I think the issue is, as he has stated it, whether or not we wish to sustain property rights in our Constitution for its term or whether we want to enlarge human rights in our Constitution by this amendment. Now, the issue is-let's get the issue clearly out—the issue is, do we want to give people the right to sue for environmental damage to the entire environment. Now, Mr. Dahood is absolutely right that at the present time, people cannot sue unless they can show damage. People cannot sue unless they can show damage. The people whose trees are hurt at Columbia Falls can sue. The people whose cows are hurt, in the case Mr. Dahood had, can sue. But the rest of the people cannot sue because they cannot show damage. Now, the issueis-and this is a national issue-the issue is, should we enlarge the people's right to sue in the environmental case. The argument in favor of it is that the environment is, in fact, all of our environment and the damage, because it is slow-1 could use the nasty legal word "insidious"-but in any event, the damage is slow and rising slowly, and no one individual, except those right in the immediate vicinity, can show an immediate damage, but clearly everyone can show a damage in the long run. Awhile ago, Mr. Dahood said, "Can someone come from eastern Montana and sue in western Montana because they're despoiling the mountains or lumbering wrong or doing something else?", and he thinks that would be a terrible thing. First of all, it wouldn't necessarily happen. It would depend on the Legislature. But the point is that, once the mountains in western Montana have been despoiled, it's just as despoiled for someone that lives in Glendive as it is for someone that lives in Missoula; and that's the point of enlarging the right. Now, the purpose here is not to enlarge the right in all cases, not to say that you can sue in automobile accidents unless you have damage, not to say you can sue in otherprivatecases unless you have damage, but to say that in the environmental case only, the question is, "Should we enlarge the right and let private citizens help enforce it?" Now, Mr. Dahood is also absolutely right when he says that we have good agencies that try to enforce these rights. The trouble is that sometimes the good agencies get thwarted. The trouble is that sometimes the good agencies get lazy or turn out to be not-so-good agencies. Then the question is whether you'regoing to enlarge the right of the people to come in and sue individually. Now, of course, Mr. Dahood is again right when he says it's terribly expensive and it requires experts and it requires competent lawyers and it requires months of testimony. He's absolutely right; and if the neighbors are poor and don't want to do it and if the environmental agency doesn't do it for some reason-it's already overextended, its appropriation is gone, or something else-then no one will do it unless you enlarge the right of the individual

to sue. So, that's your issue. I know how I'm going to vote. You all know how I'm going to vote, and I know how many of you are going to vote. But the issue is, "Are we going to enlarge this right in the environmental area only?" Now, there's one other thing that I want to deal with. Mr. Dahood is only wrong, if he's wrong at all, in one little area, and that is that some parade of horribles is going to happen if we enlarge this right. He's wrong because, in the first place, it isn't necessarily wrong for a man in eastern Montana not to want the air quality or the mountains or the streams of western Montana to be despoiled. The fact of the matter is that he may have just as much of an interest in the mountains and the streams as the man that is right close. So it isn't necessarily wrong. Secondly, the provision that we're debating here says that the Legislature may enact suitable legislation to carry this out and the Legislature may prescribe, in any manner that it sees fit, that's reasonable, this right. Now, one manner that it might see fit would be to limit the people who could bring an environmental case to the county or the area involved. Mr. Dahood and all the lawyers here know that it's possible-not always done, but it's possible for the Legislature to limit the area in which you can bring a suit. Sometimes you can only bring a suit in the county where the incident occurs, and that could be done by the Legislature if, in fact, the Legislature found that it was a terrible thing to let people from eastern Montana defend western Montana. Thirdly, just this last year, the Legislature did something quite interesting. It passed a law that in certain lawsuits, if the court finds that the lawsuit is-it doesn't even have to be frivolous-if the court just finds that the defendant was really wronged by having this suit brought against it, then the court may assess all the court costs and, in fact, attorney fees against the plaintiff. This little old law that the Legislature could pass would clear all these bad situations up, because then the environmental plaintiff would have to be sure he was right or he'd pay all of Mr. Dahood's and my attorney fees, if we're on both-if we're on opposite sides. So there are plenty of ways to avoid the parade of horribles, all in the hands of the Legislature, all in the hands of the people. The problem is not the parade of horribles. The problem is whether you want to, here in Montana, because of our environment, grant a right to plaintiffs that is greater than we have granted before. And when you vote on this--whether you do it today or tomorrow—that's what you are going to decide. Thank you.

CHAIRMAN ETCHART: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, until Mr. Graybill spoke, I wasn't sure I knew what Mr. Dahood said (Laughter) except that I knew he said it very well. I got a few notes down and would like to amplify for just a minute, if I may. Mr. Dahood says that Mrs. Cross' amendment is an imposition on private right to hold private property. I do not believe that this is the case. I think that none of us is intending to impose [upon] the private right to hold private property. What we're trying to do is to decide what we're going to do with the private property. I believe that that's our concern. I think that we in eastern Montana are just as affected by what goes on in western Montana as the people in western Montana. This environment is a chain reaction. Again, if you're that worried about it, the Legislature, according to Mrs. Cross' amendment, can make provisions which will keep us from going into western Montana. Nowhere in this do I see any implication of the right to sue for damages. I think that Mr. Dahood said that the governmental agencies are doing their duty. Perhaps they are. I think that if they do do their duty, the necessity for suits diminishes greatly. I do not believe that the environment is going to improve under the situation that we have now. I think the fight has started, but I don't think it's anywhere nearly been won. In fact, I think we have recently suffered a very great defeat as far as our air-quality standards are concerned. I would like to urge this committee to adopt Mrs. Cross' amendment. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, the various lawyers and other individuals-I'll include a lot of you-have been waving a red herring around here all day, and you've been waving it so long it's beginning to smell bad. Now, that red herring has been the thought and the implication that an individual, myself, can come over here and sue Mr. Dahood and appropriate his law practice and his home. I can't find anything in any of the words in Mrs. Cross' amendment that allows any individual to take the private property away from any other individual. That has been shouted from the mountaintops and from the prairies—that this public trust, if you want to use that word, or that this amendment of Mrs. Cross' allows someone to go and take the property, private property, away from the other person. Now, if I'm

wrong, I want some of the learned legal profession to come up and tell me so; but that is not true. All you can do is sue. You can't take the man's property away from him. If he's polluting, you can sue to have him stop polluting. When you sue the company that is polluting-the suits against the Anaconda Company at Columbia Falls, the suits against Hoerner Waldorf in Missoula, or the suits against the company in Garrison doesn't in any way bring-allow the people to take over the property of the Anaconda Company in Columbia Falls, nor any other property, so why are you continually waving this red herring around that this will allow people to take over other people's private property? It does not. All it does is allow you to protect yourself from the pollution that is being created by some other private individual. So I am hoping that now you have reached your senses and will support Mrs. Cross' amendment.

CHAIRMAN ETCHART: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, awhile back I thought I heard one of our younger delegates say that he wanted to make a suggestion on this. Will Mr. Campbell yield to a question?

CHAIRMAN ETCHART: Mr. Campbell, would you yield to a question?

DELEGATE CAMPBELL: I will yield.

DELEGATE SCANLIN: Was there some suggestion that you wanted to make for clarification on this, Delegate Campbell?

DELEGATE CAMPBELL: No.

DELEGATE SCANLIN: Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I've been a little hesitant to speak a great deal about this measure here. I feel very strongly about it because I live in a community where we have one of those problems such as Missoula has, although it does not affect my home or my city, but certainly, as a Montanan enjoying the splendor and majesty of Glacier National Park, I am concerned about the aluminum plant at Anaconda--or at Columbia Falls-the Anaconda aluminum plant. I'm concerned also for those approximately 1,000 people who are working there. I am concerned because some man who could post a $500 bond and could hire a lawyer could bring an action which might enjoin the operation of that plant and which might put those 1,000 people out of work for a period of three years while the litigation was being settled and concluded. Now, that man might not have the money to pay the wages of those working people for those three years. That man might not have the money or the ability to pick up the mortgages on the homes of those people. He might not have the money to retrain them and place them elsewhere. He might not have the means to restore to that community what he will have taken from it by the payment of an attorney's fee and a bond. And, so, my position in this matter is that Sections 1, 2 and 3 are as strong or stronger than any that I have seen and that we should not proceed with the allowing of private lawsuits, because I think it is to the detriment of the workingman in Montana if we do so. Now, let us think about this for a moment, too. Industry in Montana now is regulated by our Legislature. Industry in Montana now is making progress to solve the pollution problems that exist, and I agree that they exist. Industry now is pouring most of its profit in the efforts to control and to improve the environment-to control the pollution problem. If industry cannot make money, it shall close. Industry, if it is not making money, has no reason to stay in existence. It is the workingman who ultimately loses when industry closes, and so, I stand in support of the workingman in my community and I resist Mrs. Cross' motion.

CHAIRMAN ETCHART: Mr. Graybill.

DELEGATE GRAYBILL: Now, Marshall, you know as well as I do that no court in the country is going to close the plant until after the case is over.

CHAIRMAN ETCHART: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I merely want to respond to Delegate Harlow's statement. I don't think any of my comments or arguments were intended to indicate to anyone here that some private citizen, through a private lawsuit, is going to take private property in the sense that there will be an actual physical possession of that property. No one has, within the State of Montana. That can only be done with respect to public purpose under the eminent domain provision of the Constitution of this state. But when you restrict the right of an individual to use his private

property, that is contrary to the tradition in this state and in this nation; and sometimes there can be enough restriction so that there is an actual taking of the right to enjoy that property, and that does conflict with the basic constitutional guarantees that we have. If a private individual can go to a private property owner and say, "I don't like the way you're using that property because, in my judgment, that is injuring the environment and in the years to come, because environment is the total concept-it's part of a total life-sustaining system, it's going to injure me", that is going to restrict the use of that property. If the Legislature says from this constitutional command, "We shall set up some administrative body" that requires that whenever I want to add to my property or improve it or do something to it, that I have to have some administrative license to do it so that the environment is going to be protected in the judgment of this constitutional command, then I am taking the right to use that property as a free citizen and I am destroying a basic right of citizenship in a free society. Thank you.

CHAIRMAN ETCHART: Mr. Robinson.

DELEGATE ROBINSON: Yes. Will Mr. Murray yield to a question?

CHAIRMAN ETCHART: Will you yield?

DELEGATE MURRAY: I'm shaking, Mr. Chairman, but I will. (Laughter)

DLEGATE ROBINSON: Mr. Murray, I was wondering if you knew Illinois has the same provision that we are trying now to get in [the] Montana Constitution. Do you know how many companies or how many industries have been closed in Illinois because of this?

DELEGATE MURRAY: I can't answer your question, Mrs. Robinson. I don't know.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ETCHART: Mrs. Robinson.

DELEGATE ROBINSON: I know— (Laughter)-none. And nobody has been unemployed because of this-not one person. Also, I do know that the State of Montana, the State of Illinois, also, grant variances in which time any polluting company has time to comply with these things. I would merely like to suggest here that one man's rights end where someone else's begins, and this is the question we have to deal with here.

CHAIRMAN ETCHART: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I've refrained all day from arising regarding this problem, because in most respects it's really not my problem, but it does now appear to me that it is becoming, and will become in my community, a very serious problem. I want to call your attention to the next sections with regard to water rights and to the last sentence of subparagraph 5 on page 4. "No appropriation shall be denied except when such denial is demanded by public interests." Now, Gallatin County depends upon irrigation. When water is taken from the Gallatin—

CHAIRMAN ETCHART: Now, Mr. Berg, would you stick with subsection 4, please?

DELEGATE BERG: I'm with it. I'm with it, really. When water is taken from the Gallatin River for irrigation and it's put back into the stream, as the law necessarily requires it to be put back, it's not clean water. It's dirty water, and there are times when people-this interferes unquestionably with the recreational use of that stream, and here you have on our local level the very problem Mr. Dahood is talking about on an individual basis. The question will arise under this situation whether an individual-take a fisherman, can stop the irrigation of that stream on that land because it interferes with a recreational right for which he can show no damage but which, if he does, is certainly going to affect the economy of Gallatin County. This is a very important factor to me when you consider the question of whether one citizen may sue another or prevent another from an activity that is of economic interest. What is the public interest here, in Gallatin County--recreation or agriculture and irrigation? This is fundamental.

CHAIRMAN ETCHART: Mrs. Cross.

DELEGATE CROSS: I was just going to request if I could close, Mr. Chairman.

CHAIRMAN ETCHART: Mrs. Eck.

DELEGATE ECK: I'd just like to make one remark before she closes, and that is that we, without hardly a murmur, passed subsection 3 which indicates that the Legislature will provide reme-

dies. It seems now that a lot of you who passed subsection 3 and approved it didn't really intend for the Legislature to provide these remedies. I think that this section of Mrs. Cross' allows the Legislature to limit the power and yet it does guarantee the citizen that he does have this right, and I think that under this kind of provision, the Legislature is pretty sure to enact the necessary limitations. Thank you.

CHAIRMAN ETCHART: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, it was the consensus of the majority of the committee that a section like this was not necessary when a section like number 3is written in, arid this is the reason that the majority did not go along with the right to sue provision, because we felt that there were so many open ends to it. In regard to the statement that Mr. Cate read-the letter that Mr. Cate read from Illinois-I have also got that statement. He did not read the bottom of the page, where you get into the other-towards the end of the letter, Jerry--where you get into the other court cases which are starting--which are increasing, but they didn't say to what extent. They snid that they had not as yet reached the flood stage. The thing is that, any time a provision is enacted, it takes awhile for the people to find out that it's there and how it works. If this provision is, as that letter from the Attorney General of the State of Illinois said, that this is an-the cases are increasing, then it leaves very serious doubts in my mind us to just whnt we ate doing. Just one more point I want to make-or maybe two. First, I'd like to tell Delegate Harper that if it hadn't have been for the city of Fort Benton about 10 or 15 years ago going to court and requiring the city of Great Falls, at that time, to put in a sewage treatment plant, that water probably wouldn't be that pure; and unless something happens, we'll probably do it again. Now, this proposed amendment-everybody says, "Well, the Legislature is going to do it; the Legislature is going to provide the guidelines." It is the contention of the majority that subsection 3 has already directed the Legislature to provide the guidelines on this. If the Legislature so desires to enact, along with the restrictions--which most of you people who advocate the right to sue seem to advocate, that there is restrictions in there; they want to put the right to sue in and put all of the legislative wording in that it takes to guarantee one right and then guarantee the other right, fine. It is the majority's view that this is a legislative problem and the Legislature should handle it all the way through.

CHAIRMAN ETCHART: Mr. Conover.

DELEGATE CONOVER: Will Mr. Dahood yield to a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE CONOVER: Mr. Dahood, I am a farmer, as you know. For example, we do strip farming and block farming; and you know what these winds are in Montana; and if you come through my area and the dust is so thick that you can't see in front of you, what are you going to do about it?

DELEGATE DAHOOD: I probably would be very understanding, but I know people in the State of Montana that would not be sufficiently understanding. and you'd probably have a lawsuit because you're affecting the high-quality environment, Mr. Conover.

CHAIRMAN ETCHART: Mrs. Cross, would you care to close? Will you close?

DELEGATE CROSS: I would like to close this on a little bit of philosophical thought, if I may, and I will quote from a statement I made—oh, I suppose it's about 10 days ago: "Between the knowledge that our economy must proceed and that man must rise above his own immediate gain, the delegates to this Convention must decide what they shall do. I have been aware of the pressures that will come, indeed are coming, pressures from those who must return money to their investors, pressures from those who must promote employment, pressures from those who must maintain a tax base, and pressures from those who fear the loss of a livelihood. Somehow, your elected delegates must exercise prudent judgment without yielding to pressures not commensurate to the cause that we all must serve. If beasts and birds abound no more and fish grow scarce on every shore, what chance have you and I, my friend, to meet a different, gladder end?" Thank you.

CHAIRMAN ETCHART: Members of the committee, you have before you for your consideration the proposed subsection 4 as outlined by Delegate Cross, and you will have a roll call vote. As many as are in favor will vote Aye; as many as are opposed will vote No. Has every

member voted?
(No response)

CHAIRMAN ETCHART: Does any member wish to change his vote?
(No response)

CHAIRMAN ETCHART: If not, the clerk will record the vote.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Excused
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Spew ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Excused
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay

Woodmansey ..... Nay
Chairman Etchart Nay

CHAIRMAN ETCHART: 44 having voted Aye, 54 having voted No, the motion has failed.

(President Graybill resumes chairmanship of the Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I'll try it one more time. I didn't make that motion to stop the debate. I made that motion for a reason, and that was for one of our delegates who is giving a party tonight and so that all of us would have a chance to attend on time. That was the only reason, no other. So with that, I move that when this committee--I move this committee rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is that this committee rise and report progress and beg leave to sit again. We are not adjourned. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: Very well, as soon as the journal clerk gets the report ready, we'll be ready to move on.

(President Graybill in Chair of Convention)

PRESIDENT GRAYBILL: The Convention will be in order. Will the clerk please read the title of the report of the Committee of the Whole.

CLERK HANSON: "March lst, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 6 of the Committee on Natural Resources and Agriculture, recommend as follows:"

PRESIDENT GRAYBILL: Does anyone care to have the Committee of the Whole report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen, will you make a motion for its adoption?
Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: The motion to rise and report progress is passed, and we'll-1 take it we all know that Mrs. Babcock has invited us to dinner, and I think I'll make that announcement once more.
Mr. Eskildsen, have you another motion?

DELEGATE ESKILDSEN: I move we stand adjourned until 9:00 a.m., Thursday, March 2nd, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m., tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 5:35 p.m.)

March 2, 1972 **Thirty-Sixth Day** **Convention Hall**
9:20 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all please stand, Reverend Harper will lead us in the invocation this morning.

DELEGATE HARPER: Our Father, we do believe that you guided our fathers to build in this land a nation of the people, by the people and for the people. You gave them the faith to believe that they may become one in spirit, bound by the ties of liberty and justice for all. Now, give us that faith again. Remove from our minds all bitterness and contempt for one another and replace, this morning, a renewed dedication to serve the least, last and lost, that will bind us not only again to each other in harmony, but will link us again in heart with your Son who said, "Inasmuch as you've done it to one of the least of these, my brothers, you've done it to me." Amen.

PRESIDENT GRAYBILL: We'll take attendance by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Campbell and Payne be excused?

PRESIDENT GRAYBILL: Campbell and Payne, yes. Mr. Kelleher is excused.

CLERK HANSON: Delegate Robinson, Delegate Toole, Delegate Robinson, Delegate Toole.

PRESIDENT GRAYBILL: Very well, please take attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend.,	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong,,	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland,	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Excused
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe..	Present
Murray	Present
Noble	Present

Nutting	Present
Payne	Excused
Pemberton	Present
Kebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Kollins.	Present
Romney	Present
Kygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 97 delegates present, 3 excused. [Editor's note: The official record shows 98 present, 2 excused.]

PRESIDENT GRAYBILL: Very well. Mrs. Robinson, your attendance is noted. Mr. Campbell, you were excused, but you're here.

DELEGATE CAMPBELL: As of 10 o'clock, Mr. Chairman.

PRESIDENT GRAYBILL: I see, after 10:00. Very well. The journal may show the attendance and a quorum. Order of Business Number 1. Mr. Clerk, have you a report from Style and Drafting?

CLERK HANSON: The Committee on Style and Drafting submits to the Convention Style and Drafting Report Number 3 on the Legislative Committee.

PRESIDENT GRAYBILL: The Style and Drafting report on the Legislature has been submitted and is hereby placed on General Orders. I understand it's been printed and will-or being printed and will be put on your desks in the next hour. Without objection, the Chair would like to move to Order of Business Number 8, Unfinished Business. I would like to explain to you a little bit about the story in the paper this morning on the HUD funds, because I think it's important that you all understand the situation. The story in the paper results from an open meeting that the Planning Board had yesterday and is essentially correct, but not, perhaps, entirely correct. As you know, we have been applying for federal funds for some time, and Mr. Baucus has been handling the application and it has been progressing. We had a major meeting about a week ago with a number of the people, both here in town and some of them from Denver. And we were told that we would probably get some funds. Yesterday, the Planning Board was-which is the conduit for our funds from HUD-Housing/Urban Development-the Planning Board got oral verification from Denver, after our application had been put in, that it was likely we would get the funds, and that is the source of the story in the paper. The problem is that the Convention management does not like to say we have the funds, because we really haven't got the funds yet and there are still some problems to be worked out. Without boring you with all the details, one of the problems is that HUD funds generally arrive 60 to 90 days after you begin to ask for them by showing your chits. Obviously, that puts us into the summer and it's not going to be too meaningful to us immediately. So the problems that we're working out, are ways that we can get some of the money advanced from the state on a payback basis. All of these sort of things have to be worked out, and Mr. Roys in the Planning Office has to be satisfied that this can be done. And Mr. Baucus and I met with him last night, and we are still negotiating and working on these problems. And I would say that it is likely that we will have the funds available, but they are certainly not in our budget or payroll yet. So, I just wanted everybody to understand that. My present plans--unless we get written confirmation from Denver, our present plans are to report the budget this week to you in the same manner-thatis, with the same total moneys--as last time. But I would hope that by the next budget report, we would have official written confirmation, and then we would adjust the budget to show the federal funcls. But I want you to know what's happening, because-and we're not too concerned. I think the article in the paper will solidify everyone's thinking on the matter. But the reason it has not been announced by us is because we don't have the money yet. Very well. Before we go into Order of Business Number 10, I think it might be proper for

me to-on behalf of those of us who were able to attend, to personally thank Mrs. Babcock and Mr. Babcock for the very fine social function that we enjoyed at their home last night. And, Mrs. Babcock, we thank you. (Applause) If I may be allowed a personal joke, I now understand why Betty sometimes comes late. I said, "If you do the housework in this house before you come, I can see why you'd be late." We'll move to Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well. The motion is to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it.

(Committee of the Whole)

CLERK HANSON: The following committee proposals are now on General Orders: Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 3. Mr. President.

CHAIRMAN GRAYBILL: Very well. We're on Natural Resources report-Proposal Number 6 this morning. And my understanding is that we had adopted subsection 1, subsection 2 and subsection 3 of Section 1 yesterday, as amended; we had defeated subsection 4. Before we wrap up subsection 1, are there any other subsection 1 amendments?

Mrs. Bates.

DELEGATE BATES: Mr. President, fellow delegates. I would like to move that we add one more section here. I think our Chairman has a copy. Would you like to read it?

CHAIRMAN GRAYBILL: Will the clerk please read it.

CLERK HANSON: "Subsection 5—"

CHAIRMAN GRAYBILL: It could be subsection 4.

CLERK HANSON: -4, yes. "In order to maintain a more healthful environment, smoking shall be prohibited in public buildings. The Legislature shall enact laws for the enforcement of this clean air provision. Signed: Bates."

DELEGATE BATES: Mr. President

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: In all sincerity, I truly believe that this could be done and should be done. I understand that the Health, Education and Welfare in Washington, D.C. has now prohibited smoking within that building and many other buildings in the state-in the Capitol proper. Why should people who do not smoke have to be subjected to this pollution? Not only that, maybe this should be in Finance and Revenue, because I feel that maintaining an upkeep of our buildings is a terrific cost. Anyone that cleans up after a smoker knows that cleaning must be much more frequent-scrubbing and cleaning. The pollution in Los Angeles, even though the smog is thick, washes up easier than a room that has had constant smoking in it for a year. It takes industrial cleanser to remove the brown off the white buildings. This is not only for our benefit, your benefit as well. And look at our painting up here. Do you recall how much it cost to renew that into-so that we could protect it and keep it for awhile longer? If you look at our ceilings here, you can tell the effects of the smoke. It hasn't been too long since it was renewed. Mr. Chairman, I move for this.

CHAIRMAN GRAYBILL: Very well. Is there any discussion?

Mr. Harlow.

DELEGATE HARLOW: I heartily support Mrs. Bates' motion. I have suffered from the smoker ever since I was a small boy. I used to have to ride on the streetcars back in the olden days. And I realize that a number of you feel that this is an infringement on your public rights or your private rights. I feel that it is an infringement upon my good health, as well as my private rights, to have to indulge in secondhand smoke in vast quantities. There's a great deal of sincere thinking on the part of nonsmokers to be able to-or try to protect themselves from this curse, let us say.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. I think this is also a step toward clean politics. This would eliminate the smoke-filled room.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to dwell on this too much, but maybe some of you noticed that I was voting with Cate all the way on this pollution thing. Well, if you had to sit beside all these guys around here-old Berg smoking rat root, Conover smoking something called "down on the farm" (Laughter)-and if you could see the mess around this desk, you'll know why I'm voting for pollution--or against it. (Laughter)

CHAIRMAN GRAYBILL: Mr. Schiltz was next.

DELEGATE SCHILTZ: Mr. Chairman. I'm really just stalling for time so I can get this last one in. (Laughter)

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: I rise to support Mrs. Bates in this venture, because I understand the Legislature here a couple of sessions ago were thinking of removing that painting back there because the smoke in the room was getting too thick and it was going to ruin the painting. Then they even thought of glassing it in and making it air-conditioned. So, maybe she has something-some merit to her proposal.

CHAIRMAN GRAYBILL: Mr. Drum, would you like to join the argument?

DELEGATE DRUM: Mr. Chairman. I rise in support of the smokers. It seems to me-it appears that those who smoke most, talk less. (Laughter) So, I think in deference to those of us who are subject to all kinds of pollution, I think we should give that some consideration.

CHAIRMAN GRAYBILL: Mr. Drum, are you a smoker?

DELEGATE DRUM: I don't inhale. (Laughter)

CHAIRMAN GRAYBILL: Mr. Romney

DELEGATE ROMNEY: Mr. Chairman. I know that Mrs. Bates' motion is not facetious in any sense, but I want to remind you all of the famous English writer's statement that a woman is only a woman, but a good cigar is a smoke. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Bates, I'm going to allow you to close, but Mrs. Blend, would you like to—

DELEGATE BLEND: Naturally, I rise in opposition. And I would like to point out that if you pass this motion, that you will have to find some other way of promoting the building programs on the campuses of the University of Montana.

CHAIRMAN GRAYBILL: Mrs. Bates, would you like to close?

DELEGATE BATES: Mr. Chairman. In all due respects to this, this is a statutory measure. And I do think that maybe, in the future, the Legislature may provide such a provision. I have a little more trust in the Legislature, and therefore I do not want to put statutory measure in this Constitution-and-or to try to prevent as much statutory measure-therefore I would like to withdraw my motion.

CHAIRMAN GRAYBILL: Do you want a roll call on your withdrawal, Mrs. Bates'? All right. Mrs. Bates' amendment is withdrawn. Mr. Murray, since I have no more amendments to Section 1, would you again move the adoption of Section 1?

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 1, subsections 1, 2 and 3, of Proposal Number 6, recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Clerk, will you read Section 2—or the first—no-all of Section 2 please.

CLERK HANSON: "Section 2. Reclamation. All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. Thecondition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 2 of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Does anyone wish to speak for Section 2 before Mr. Delaney makes his amendment?

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I'd like to make a statement on Section 2. This section on land reclamation deals with another element of life, and that is the land itself. Again, I reiterate as I did yesterday and a number of times before, that Montana has reached a point of decision. Do we or do we not act to protect our land so that it isn't destroyed for a thousand years to come? On my desk, and you can all see it here, is a file of clippings relating to strip mining. Ninety-five percent of them deal with strip mining in Montana and the activities of strip-mining companies in this state. They go back to the year 1968, about the time that strip mining was being revived in Montana. This method of coal mining was negligible in that year. Now, we have coal trains going out of this state at the rate of three a day. There are at least 100 cars in each train, and each of these trains contain 10,000 tons of coal. I know that this is so, because I have watched them go through Glendive and I've also taken the time to count them. At night, I can tell when a coal trains goes by because of the sound of the rails. The weight is so heavy there is a zing to them. And you can tell these trains are going through just by listening. Anybody who lives three blocks away from that train can also feel the reverberations which have been, at times, equivalent to the earthquake tremors that have happened in Helena, and the shades on the windows shake. In this file which I have before me are two studies which have been made by the United States Department of the Interior. This one is called *Surface Mining and Our Environment* and was printed in 1967. This one is called *The Study of Strip and Surface Mining in Appalachia,* and that was printed in 1965. If you were to look at these, you would find them of intense interest, because this is what Montana is going to look like if the strip miners have their way. These studies were made at a time when the poverty in Appalachia was so intense that they decided to find out why. It was also at a time when a great deal of federal money was being poured into Appalachia to counteract this poverty, and they found that no matter how much money they poured into that section, it didn't do very much good. The process of strip mining, which was supposed to be such a great economic boon, happened to turn out to be an economic bust in Appalachia, and Appalachia includes the State of West Virginia, which we've heard so much about in the last few days. The geography in Montana is admittedly different, but without land reclamation, the results can be just as disastrous. When we get to dehating this article on reclamation, I hope that you will consider it seriously. I'd like to remind you, too, that when we get to the article on water and agriculture, you are already going to hear what you know, and that is that agriculture is Montana's number one industry and that it leads our economy by a wide margin, with number two and number three, mining and tourism, a good way down the economic ladder. And, lest you have forgotten in these carpeted and marble halls what good topsoil looks like and what it feels like, here is a jar for you to come and look at. Now, I wish that I could tell you that I had sent back to eastern Montana for approximately five inches of good topsoil to let you know what our farming land looks like, but I can't lie to you. I went out this morning and I picked it up under one of the trees at the place that I stay. And because I have so much respect for the soil, I'm going to go and put it back when I'm through here this morning. Also, I would like to remind you that it takes nature 1,000 years to produce one inch of topsoil. Earth gets its price for what earth gives us. And believe me, you destroy the land and we topple our number one industry. It's as simple as that, Now, I don't know how many of you have actually seen the spoilbanks in the strip-mining areas. As feats of engineering, they are awesome indeed. And if you're lucky enough to get past the areas where the tours are conducted and where some experiments in the revegetation of the area goes, you'll come back with a feeling of complete desolation. Those spoilbanks are as lifeless as the moon. I know that there are some efforts being made to restore these areas, and I commend those companies for making the attempt. This is long overdue, but their efforts are infinitesimal in comparison to the amount of land disrupted. By the estimates of the United States Bureau of Mines, it has been stated that 10,276 square miles of land will be disrupted by this method in the United States, and that is an area twice the size of Connecticut. If you do not do something about land reclamation, you might as well forget about the sections on water and water rights and thesection

on the Department of Agriculture because, believe me, you won't need either one. Now, I'm very serious about this. I am not a newcomer to this; I've been studying it for a long time. When I first hegan studying, it was because I was interested in the possibilities of coal development. As the years went by, I became alarmed. And I think if we really mean what we say, we're going to do something in this Constitution to protect what's so important to Montana, and that is the land itself.

CHAIRMAN GRAYBILL: Mr. Delaney, do you want to be next?

All right. Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. May I ask Mrs. Cross a question, please'!

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes.

DELEGATE DRISCOLL: Mrs. Cross, what would be the effect of your Section 2 on the mining operations in Silver Bow County?

DELEGATE CROSS: You know, I was hoping somebody was going to ask me that. Personally, I don't think that the Berkeley pit is going to he affected. It has been there for decades, and I presume it's going to be there for a few decades longer. They have, by their very position in time, probably the prerogative to continue its operation, and I would be the last one to say they shouldn't. It is part of the life system of a large city in our state. Man happens to be a very adaptable creature, and the people of Butte have adapted themselves to the Berkeley pit. If the time ever comes when this pit will no longer be used, I predict that it will become one of the most interesting, historical sights in the State of Montana, geologically as well as depicting the history of the mining industry. And I don't think that's incompatible with what we have in mind. I understand that water has to be pumped out of that pit in its present operation. Well, let's carry the step a little bit further. Let's let it fill up, if the time ever comes when we no longer need it to mine copper, and then Butte can boast of having one of the in-earth lakes of the state. I suspect it would be quite a prize to be able to have a home on the lakeshore. (Laughter) Further, I would like to say that, no matter when and what happens as far as the pit is concerned, if the time ever comes when it is no longer useful to the company, that company will leave and any people who are left will have to readjust themselves to the absence and we, as a state, will pay for whatever conversion may happen.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I'd like to thank Mrs. Cross, but I'd like to ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield'?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DRISCOLL: Mr. Dahood, what is your opinion of Section 2 on reclamation and the effects on the mining industry in Butte?

DELEGATE DAHOOD: Well, Mr. Driscoll, I'd like to answer it this way. I think there certainly is a need for a Section 2, but I think the manner in which it is worded could have a very disastrous effect upon the operation in Butte. Although I want to say this-that I agree with Delegate Cross that the intention behind it is certainly good for the State of Montana, hut something should be done to protect the industry that we have in our immediate area.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I, too, agree with Mrs. Cross that mining companies should have to do something about the land they disturb. Coal mining-and I'm not that much an expert on mines just because I live by them-hut coal mining-strip mining-is a good deal different than a pit operation. If I understand coal strip mining, the surface is disturbed the same as pit mining, hut they don't go into a deep operation. That is, they strip off the coal, which might be 20, 30 feet in depth. And then, the idea behind these reclamation projects, as I understand it, is to put topsoil hack where it was and replant the area. Now, with the pit, I just have no conception of how that would be reclaimed. Mrs. Cross' statement that they make a lake out of it-probably there is going to he water in it someday when it is finally abandoned. But all of that-all of the ground that has been taken out there just isn't in the immediate area. A good deal of it has been hauled down to Anaconda and processed in the mining industry. To fill in the pit, you'd have to disturb other topsoil. There is just no practical way that this could he done that1 can see. Maybe Mrs. Cross has some solution to it, hut it certainly isn't in a natural development for a lake. The water would be mine wastewater, which

would be very corrosive. It certainly couldn't be termed a lake. It would be the worst type of a water. As it accumulates in there, it would be highly mineral in nature. The copper water that they take out of the mines, that I'm sure Mrs. Cross is talking about, is of such a nature that they dissolve iron into it just by leaving it there. I just don't know; I realize that Mrs. Cross doesn't intend that the mining operation will be disturbed, but that's not the way the section reads. The section reads, "All lands disturbed by the taking of natural resources must be reclaimed to so good a condition or use as prior to the disturbance." Now, you certainly can't say that the Butte mining operation in the pit doesn't disturb the earth. That's particularly what it does. And in all practicality, there's no way that the Anaconda Company or any other mining company can ever reclaim that. When they get finished with the thing, presumptively the Anaconda Company won't be there any more, and who's going to enforce it? And I just don't-there's no practical sense that we start passing a constitutional provision that Mrs. Cross-As I understood her excellent speech, she said, "Well, I can't tell you what to do about Butte", but yet this applies to Butte. And I just don't see how we can pass it and realistically expect that it's going to be enforced. There's nothing in here which says that-all lands disturbed in the future", it applies retrospectively. And there's just no practicality to it, that I can see, in applying it to the operation of the pit in Butte.

CHAIRMAN GRAYBILL: Mr. Delaney, are you going to-All right, whenever you're ready, I want to make your motion; but if you're not going to stand, I'll give it to somebody else.

DELEGATE DELANEY: I would like to have it read.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney has-what do you want this to be, an amendment or a substitute motion?

DELEGATE DELANEY: Substitute motion.

CHAIRMAN GRAYBILL: Substitute motion, Very well. Will you read this as a substitute motion.

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion, on Section 2, page 3, lines 19 through 24 of the Natural Resources and Agriculture Committee proposal, by deleting it in its entirety. Signed: Delaney."

CHAIRMAN GRAYBILL: Very well. Mr. Delaney has made, as a substitute motion, the deletion of Section 2 in its entirety. So, the motion-the argument-the discussion is on Mr. Delaney's motion to delete in its entirety Section 2.

Mr. Delaney.

DELEGATE DELANEY: I believe that this reclamation is covered entirely or satisfactorily in subsection 3 of Section 1: "unreasonable depletion of natural resources." I believe this covers the reclamation and leaves it to the Legislature, where they can put some sense into the restoration as it would apply to each particular instance. Section 2 on reclamation does not just state "strip mining". It states "any land that is disturbed", and I definitely read it that it means a small gravel pit that I might have on my ranch that I get a load of gravel out of to patch a mudhole in my road. I read it to include the Berkeley Pit. To my mind, possibly they could fill that Berkeley Pit with water and maybe test submarines in it or something.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman. I rise in opposition to Mr. Delaney and, in principle, support Mrs. Cross. I hadn't read the reports she referred to. Maybe I don't have to, because I grew up in Appalachia. I don't often think about material goods in this life, but there's one time I wished I were wealthy. And that's when the Legislature meets and when I knew this body was going to meet, because I'd like to have the money to take you all back and show you communities that would make Butte look like a garden spot.

CHAIRMAN GRAYBILL: Mr. Joyce is next.

DELEGATE JOYCE: Mr. Chairman and fellow delegates. I rise in support of Mr. Delaney's motion to delete, for this reason. It illustrates, at any rate, where-the philosophy of Mrs. Cross, as she puts forth so eloquently in the editorial that she wrote as the Committee Chairman and which the Chairman incorporated into his speech to this Convention, and at the same time, he also incorporated into his speech the philosophy that I came to this Convention with. And my philosophy is this: that this body is not a legislature, notwithstanding that a good many of the delegates think that it is. It seems to me that what this Constitutional Convention should do is to write a constitution that will structure the government, that will

allow the people of Montana to meet the problems that arise in the future, and that we are not met here to solve any current problems and to impose our will or our pet ideas on generations yet unborn. Let the people of Montana solve their problems in the future. And I think we've made a giant stride in that connection by enlarging the ability of the Legislature--who, after all, do represent the people-to meet the problems as they arise. If you say, "Well, the Legislature won't do it", as we've heard a hundred times here, I submit to you that when the Legislature won't do it, it's because the people of Montana don't want it done. And I submit, if you think the Legislature is controlled and is corrupt, then the place to fight these battles is in the public forum, to run for office, to get elected, to come up to the Legislature and put your ideas into force. But it seems to me that it is the height of foolishness to write into a constitution that all lands must be reclaimed. Now, lands should be reclaimed, but it ought to be worked out on a balancing of the various interests as times change. The Legislature should be able to enact laws to require reasonable reclamation of the land. And if they pass a law in one session that is too restrictive— that actually doesn't work out in practice-then the next session, it can be changed. And so on through history, the people of Montana can balance the various economic interests; the interests of whether or not it's better to mine or whether or not it's better to prohibit mining in some other interest. But it's-to write into the Constitution a provision that imposes for all time the ideas of the people in this Convention seems to me to be an improper way to draw a constitution. We have a Legislature. We have freed the Legislature to act more responsibly and effectively for the people. Let us leave all the solution to all the problems to the future, to be worked out by reasonable men.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman and fellow delegates. I rise in support of Delegate Delaney's motion to delete this section. And first, I'd like to say that I'm glad the smokers are catching hob this morning rather than the lawyers. Maybe we can keep that going all day here. I am very concerned about this section, and I don't say this because I'm against reclamation. I feel the way this section is worded, that is going to stop the removal of a lot of natural resources in the State of Montana. And it says "natural resources"; it just doesn't say "mining". Natural resources would cover timber; it would cover a lot of agricultural activity; it would cover hard-rock mining and strip mining. And I submit that's very broad. I think all of us feel that we have to have good reclamation laws, but we also have to remove our natural resources. We cannot get along without coal. They say our gas and oil supply is being depleted; it'll be practically gone in a few years. We're going to have to rely on coal. We need our other ores or we'll be unable to live. I submit that with this section, this would stop a lot of mining and a lot of natural resource work in Montana, such as timbering. And when this stops, the employees have to leave. What are we going to have in Montana? Are we going to have a playground here? Are we going to live on the east or west coast and come back here in the summer to play? I submit that we have to be realistic about this. Now, if you'll read that first section, it says, "the taking of natural resources--of all lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance." To me, that means that there are certain areas that probably could meet these requirements, but I submit there are a lot of areas that could not. The only way I can get this example across is use an example from my own home area. As you know, Roundup and Muss&hell County has a lot of good-quality coal. It's probably a better quality coal than much of the areas of eastern Montana. And it's been mining-a coal mining town for-that's why it was started there in 1908. Milwaukee Railroad went through; the first big mine was opened for the railroad. Now, the two big mines closed 8 or 10 years ago because of-the costs of underground mining became prohibitive and they couldn't compete in the open market for the price of the coal, so they just closed. But there were four, five or six small family or partnership mines that kept running. They still sell a lot of coal in eastern Montana and some in western, clear into the Dakotas, for home use, for heat. It's a good-quality coal, and the sulphur content is very low, and-the emissions-it meets all the emission standards of even eastern states, if you burn this coal. So, it's a good-quality coal. Now, we had four or five of these small mines operating, and about two years ago, the federal [government] passed the Mines Safety Act. And incidentally, these mines were-had a very good safety record, but under the new safety record act-the requirements of that-these small mines could not meet the requirements to redo their underground tunnelings to meet these standards, and they're starting to close. They are-some of them have already closed. There's one or two of

them that are running this winter, but they are being subject to fines. And they'll have to pay their fines, but they'll-when they get to the end of—they have customers to service, and they're going to close. Now, one of the partnership mines employed 8 or 10 men-felt that there was a need, and the people were after them to continue to mine coal. Well, they can't go underground. They just don't-you can't afford it. So, they had an area there where they could--right close to where their mine was located-to strip. So, they went into this--and, incidentally, we have very good reclamation laws, that were passed by the last Legislature, on the books; maybe they're not the best; maybe we can improve them-but under these new laws, they had to go to the state here for a permit for strip mining. They spent half the summer-the managers--meeting all the requirements of the state. As to-They have to submit a plan and a bond-this is how we're going to do our strip. The engineer has to draw what it's going to look like when they're mining and when they get done. And this is submitted to the Land Board for their approval. And I think two or three plans were submitted till they finally got one that was approved. And the tremendous cost, when this coal is 40, 50 feet under the ground-this is the closest we have in our area-tremendous cost to move that top dirt and to get to where you can start mining one acre of coal; and they feel that two or three acres of coal a year is all they will need; it's five feet thick. So, they've done all this and they couldn't afford to buy the machinery, so they contracted out the removal of the dirt. They had to go into hock clear up to their necks to get enough money to-for the contractor to remove this topsoil where they get down to mining. All right, they reached there and they started mining, and everything's working out fairly good. It's a real costly process, but they think they're gradually getting it to the point it'll be the same cost as it was underground, so the price of coal won't go up, so they can meet the needs of all their customers. Well, you know our Citizens' Corps. We sent all these proposals to them, and one of the Citizens' Corps in Roundup gave this natural resources one on reclamation to these mines there just to see what they thought of it. Well, I got phone calls when I was home over the weekend, and they had read this provision and they feel that they are meeting the reclamation standards-or this one mine-of the state at the present time. But they feel with this provision in there, that they would have to stop; they couldn't meet these requirements. Now, they've spent a lot of money and they're mining the coal for the sale to their customers as the coal is needed. And the other mine that's going to-one of the other mines that's going to close were ready to start this project. They can also strip mine close to--adjacent to their mine. And if-they feel if this particular provision is in the Constitution, they feel that they won't even attempt it. And I think we're closing down a little industry in our area because of one section in our Constitution. Now, this is-we can say, "Well, what's 40, 50 men's jobs, or a small business? What difference does that make? Let them go work somewhere else." Well, that's not the idea. Number one, we're losing the business; but number two, we're losing our natural resource. We need this coal. And, ofcourse, this thing is going to apply to the big operators also. But I don't think we want to close down-we need this coal and we're going to need it in the future. But let's pass good reclamation laws that they can meet. The reclamation standards on these pits are-so far, they've been three-to-one pitch and they're going to plant grass and trees again. But no one knows whether they'll be exactly to the same condition. They're also working with the State Agricultural Department at Bozeman to find grasses and other conservation methods to restore these pits. And I think they're working real hard on it, and I think they're going to accomplish the same purpose with our reclamation laws, rather than have something in the Constitution that's going to close down all mining. And Mr. Kamhoot, I think, lives in an area where the land is a little flatter. Maybe they could meet these standards, but we just don't know. I don't think we can put anything in here that's going to close down mining. And I think this covers timbering and, like I said, agriculture. If we want a playground in Montana, that's whatwe're going to get. But I think if we leave it to the Legislature, let them pass reasonable reclamation laws, we're going to get where we want to go without closing everyone down. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I move that, as a substitute to the motion now before the Convention, that in line 21, page 8, the line—the words after "as", "prior to the disturbance period", be deleted and in lieu thereof be substituted the words "is possible". So that the line would read, "condition or use [as] is possible period, The condition". And then the language resumes.

CHAIRMAN GRAYBILL: Allright. Now, Mr. Romney, the difficulty is that we have a substitute motion to delete, and so you're again amending a motion to delete. So I will make a note of your motion and allow your motion after we've disposed, one way or the -other, of the motion to delete.

DELEGATE ROMNEY: May I speak?

CHAIRMAN GRAYBILL: You may speak, but not on this motion at this time, unless you're going to speak on the motion to delete. Yes, you may speak.

DELEGATE ROMNEY: Well, I can-the subject is quite general.

CHAIRMAN GRAYBILL: Well, all right. My point is that if we can dispose of whether we're going to delete it or not, then we can amend it or we can come in with other amendments. I happen to have on my desk before me other people's amendments, in the event Mr. Delaney either wins or loses, and I'll be glad to put you in the line. The point is that you can't amend a motion to delete by adding in some more words. But go ahead.

DELEGATE ROMNEY: Therefore, I'll direct my remarks to Mr. Delaney's motion, with mine held in limbo.

CHAIRMAN GRAYBILL: Right.

DELEGATE ROMNEY: I think, as Delegate Joyce indicated in his remarks, thatthis matter is distinctly statutory in nature and should be handled by the Legislature. Indeed, it has been handled by the Legislature for a number of years; and indeed, it has been handled by the Legislature very inadequately, in my opinion. However, I think that is a natural field for it. There arepeople who say that is whereit should beentirely, but I do not concur in that view. I think that the Constitution should have some phraseology such as is contained in Section 2, as I hope to amend it, so that there would be a backstop for legislation concerning the matter that we have under discussion. The reason that I feel this way is that, for a long time, I've been viewing this coal disturbance over in eastern Montana. I've been over there and looked at it. I introduced and worked for legislation in the Legislature. We currently have a tax on coal, which is partially used for reclamation of the lands that are molested by the industry which is removing the coal. Now, I think it's a splendid thing to have an industry there removing the coal and providing the low sulphur content coal which is used by the electrical energy industry, in large part, in generating electricity to be used by the American people. Unfortunately, to a large extent, this coal is being taken out and transported from-out-of-state in these trains that Mrs. Cross referred to-in huge trains and carrying millions of tons to Minnesota, Illinois and other places, where the generating industry turns the coal into electricity. It was my view, in trying to raise taxes on this, that this resource is a natural resource which, once removed from the earth in Montana, becomes lost to us forever. There are those who say that it provides a lot of employment and money, but the trouble is the employment is very meager and the money that is realized by the state is almost nonexistent. I think thatthecoalshouldbe more highly taxed; and, consequently, the state could then receive considerable money from it for our treasury; and we need that. I would rather that the coal slumber under earth forever than have that natural resource taken from the earth and transport it out of the state for use in Minnesota and Illinois and other places and the state not realize anything from it. Remarks have been made by Delegate Ask and, I believe, Mrs. Cross about the efforts to reclaim. The reclamation, as Delegate Ask explained, was rather-it's in an experimental stage. Whether or not the grass and trees will grow upon this-these restored areas is a matter that we do not know now, but there are being efforts made to take care of it. The trouble is that the money realized from the present tax may not be enough, although experts on the matter seem to concur that it will be adequate. So that is something that the experiments have got to develop. But I feel that we should leave it to the Legislature to determine just what the tax is going to be and— how that tax-what portion of that tax is going to be used for reclamation. But we ought to have something in the Constitution as a backstop for this tax legislation, which is really reclamation legislation. Now, it is not only the coal, as Delegate Ask said, that is involved in this; there are other things. For example, there is the timber in western Montana. Now, I come from an area which was heavily timbered. It has been cut for years, and it has recently come to the attention of the public that it has been overcut. This is-those of us who have been crying about this in the wilderness for a long time were 'considered oddballs for a long time, but now there is a general realization that the timber has been overcut, that the selective cutting process has been overdone, and clearcutting has taken a heavy toll, much

heavier than the natural resource can sustain. The immense tracts, sometimes as high as a thousand acres, are sheared off just like you would run a lawnmower over your lawn until all the grass has been taken off. Trees 50 and 75—25 years, of good size, which one day might make a mature, merchantable piece of timber, have been removed in the clearcutting, along with the mature timber, which they can use for turning into lumber. There are many of us who decried this method and desired that the multiple-use, sustained-yield, selective cutting method be used. This has finally become so apparent that the Forest Service has restricted sales of timber in order that it be handled this way. They also-if you go into these areas, you'll find that many of them are absolutely deserts, as far as use is concerned. Too, the Forest Service is engaged in a replanting program, but that is not keeping step with the cutting program. And as a consequence, we are falling behind. There-here is another place where reclamation must be taken care of. The trouble is most of it is on federal lands and it's difficult to reach through legislation. The point is, if we have a backstop for reclamation in the Constitution and people are aware of this situation, we are making some strides in the right direction. While I think that the verbiage in the Section 2 is inadequate as I would amend it, if I have an opportunity, I think it is too stringent as it is now, before the Delaney motion. For example, "must be reclaimed to as good a condition or use as prior to the disturbance". Now, all you have to do to realize that this is an impossible situation is to go and gaze into the Berkeley Pit, is to go and look over some of these devastated areas in our forests where clearcutting has exacted its toll. All you have to do is go into the area up in eastern Montana where the Knife River Company has been extracting coal through the open-through the strip-mining process, or down in Rosebud County, where the Western Energy Company has been doing the same thing. There's-you can't get it back to the same condition it was before, and there's no use placing idle verbiage in the Constitution saying that we will. But there is a use in placing verbiage in the Constitution which expresses the necessity of trying to reclaim it to as good a condition as is possible. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. Chairman, members of the assembly. I speak on this somewhat reluctantly. I have a lot of-am very sympathetic with Louise Cross' remarks in regard to this, and I'm sure that we must have something in regard to reclamation as one of the most-one of the more important things, as far as the future of our state. I will have to hold with Mr. Delaney in regard to this deleting it. I like to be consistent. I've upheld in committee that this is purely a statutory matter, and I feel that as far as the Constitution is concerned, as Mr. Delaney has pointed out, that the Section 1 and Section 3 of the article that was adopted yesterday, I believe, takes care of it as far as the Constitution is concerned. And when it comes to reclamation, I think it has to be set up statutorily because it covers such a wide area. For instance, I'd like to call to your attention that mining is not the only thing that is disturbing our land. I'd like to point out that-the figures that I have here that-to date, that mining has disturbed approximately 29,000 acres of land in the State of Montana, whereas the interstate system of roads has disturbed 40,000 acres already. So, I merely point this out-that it would be impossible, as I see, to put anything in regard to reclamation, except to direct the Legislature to do something in this direction. And I feel that the Legislature has already made a real fine start in the last session of the Legislature as it has in many things in regard to our environment. I note that they have passed legislation in regard to strip mining and they also have passed an act requiring the license of persons engaged in strip mining, which Mr. Ask called to your attention, too. So I will have to support Mr. Delaney's motion to delete. Thank you.

CHAIRMAN GRAYBILL: Mr. Lore110 was next.

DELEGATE LORELLO: Mr. Chairman, would Mrs. Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross?

DELEGATE CROSS: Yes.

DELEGATE LORELLO: Mrs. Cross. I attended the Romney hearings plus some of the other public hearings that you had, and I heard statements in there that reclamation and the environment and the lunch bucket are compatible. Would you comment on that, please?

DELEGATE CROSS: Yes, I'd be happy to. And these will also be comments which will be directed to what Delegate Ask also made. First, I would like to say that this is-1 don't consider this a pet idea. I think every one of us in this room are affected by it, either presently or will be. Secondly, I don't think that requiring reclamation of land is

going to stop anything. I think it will just require some responsibility on the people-on the part of the people who undertake it. Secondly, I would-to tell you that if the cost of doing any other type of mining is so great, then perhaps we should wait until we can come up with a method that is less costly, both in taking out the natural resources and restoring the land; because in the long run, Montana won't lose a thing. The natural resource will still be there. Instead of passing on the bill for reclamation to a future generation, we'll be able to pay some of the costs ourselves. The next comment I'd like to make is-perhaps you're not aware of it, but there is quite a strong movement in the United States to prohibit this type of mining, altogether. And unless something feasible can be done to make the destruction less obvious, I predict that this will happen. If you'll recall, yesterday I mentioned the fact that no permits wereissued in West Virginia after this breaking of the dam for more strip mining. This doesn't mean that the previous damage will be obliterated. The people of that state are going to have to face it and probably pay for it. Economically, you might be interested in knowing that this strip mining is done by extremely large, efficient machines. The men that run those machines are highly skilled and highly trained, and I don't think that there are very many employed for the mining that is done. That means not very many Montanans get the job. The big amount of money is made at the point of delivery where the coal is taken and used, and we are not delivering that coal to Montanans; it's going out of state. It's going to the west coast. It's going to Minnesota. It's going to the ports in Chicago. I also understand that from there, it is taken overseas. Now, if that provides jobs for Montanans, I'd like to know how.

DELEGATE LORELLO: Thank you, Mrs. Cross. I would like to remind Mrs. Cross and some of the others that in some areas, we can live with some smoke and some dust and, yes, even with some large holes like the Berkeley pit, and we can't survive without them. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I have here before me, on my desk, the report from this committee. It is signed by every person on that committee. There is no minority report attached with it. I have heard from Mr. Delaney, who signed the report, who moves now to delete it-Mr. Anderson. I would like to ask if Mr. Brazier would yield to a question.

CHAIRMAN GRAYBILL: Mr. Brazier?

DELEGATE BRAZIER: Yes.

DELEGATE HARPER: As a committee member, Mr. Brazier, would you answer Yes or No? Do you support this majority proposal?

DELEGATE BRAZIER: I'm glad you asked that question, Mr. Harper, because I was going to clarify the record. I support Mr. Delaney's position, and I would call to your attention a misprint in the report. You will notice under proposal number 2, on the total it says 6 Ayes and 3 Nays. But when it starts specifying who was an Aye and who was a Nay, it makes a mistake. I was a Nay.

DELEGATE HARPER: You do not support it. Thank you. Mr. Siderius, would he yield to a question?

DELEGATE SIDERIUS: Yes.

DELEGATE HARPER: Mr. Siderius, do you support the majority proposal?

DELEGATE SIDERIUS: I do.

DELEGATE HARPER: Thank you. Mr. Kamhoot would yield to a question?

CHAIRMAN GRAYBILL: Mr. Kamhoot, will you yield?

DELEGATE KAMHOOT: Yes, I'll yield.

DELEGATE HARPER: Mr. Kamhoot, do you support this majority proposal being offered to us?

DELEGATE KAMHOOT: My name is on the majority proposal. We need some type, I think-something down the road-of guidelines that are a little more than laws made by men, as we go from year to year. But this section we're talking about is entirely too broad. We can just not apply the same practice to reclaiming coal land as we can to reclaiming hard-rock mining. And I just don't like the section. I was never well satisfied with it, but we definitely should do something to indicate the consensus of this body that we don't want to destroy 500,000 acres of Montana land for the purpose of delivering natural resources, which we should deliver. The people of the United States are entitled to a little better life by having electricity and appliances and things that are the product of this, but not at the expense of completely destroying Montana. So, therefore, I signed the

report; but I'm not satisfied with that one section. And I hope we can get on here and see some more versions "fit, and maybe there will be something that I can support.

DELEGATE HARPER: Thank you. Mr. Gysler, would you yield to the same question'! Do you support it?

DELEGATE GYSLER: Yes, I yield. I feel that those of us who voted for this language in our committee had a couple of things in mind. Number one, we had a feeling that if our Environmental Article went through in good shape, probably this would not be necessary and maybe we could delete it. However, if it didn't go through with the wording we had, particularly in subsection 3, then we very definitely had to havesomething. I wanted to amend this article in committee to make it possible for my friend, Henry Siderius, to keep his gravel pit on the farm, but I couldn't figure out the wording, and so on. If you will recall-or, I don't know if you were at the meeting that Charles Lindbergh had with the delegates the evening before he spoke to us here. This article was read to him, and he said, "I think you've gone too far". And basically, this is my stand. I think probably we ended up with something that we can't live with. I'm for a reclamation article, but I kind of doubt that WE can live with that one.

DELEGATE HARPER: You're not for this. Thank you. Mr. McNeil, would you yield to a question? Do you favor this majority proposal?

DELEGATE MCNEIL: I wrote it and I support it, although I recognize it's probably too strong.

DELEGATE HARPER: Mr. Rebal. Mr. Rebal? He's not here.

CHAIRMAN GRAYBILL: Not here.

DELEGATE HARPER: Mr. Rebal, would you just nod Yes or No whether you will vote for—whether you support this majority proposal which you signed?

CHAIRMAN GRAYBILL: Mr. Rebal is getting a little ammunition for you.

DELEGATE REBAL: Thank you. I think I'm going to support the majority like the majority is going now. (Laughter)

DELEGATE HARPER: Thank you. That's a good answer. Mr. Chairman, I really am concerned. All day long yesterday, we heard this same committee stand and support each other and say "leave it to the majority". We worked long and hard, and not even one word should be changed. You would never realize that for every hour we spent here talking, the committee has spent days perfecting this language. Everything is important. We must leave it exactly as it is. I suhmit to you that this committee did not act in good faith with this group. We now have before us a proposal which only two people out of the entire committee have unqualifiedly said that they support, and yet, we have no minority proposal here. Now, I don't know what committee acts are supposed to mean in this conference, if it isn't supposed to be an act of good faith on the part of the committee that brings it in. Now, if the Constitution doesn't state principles, what's it supposed to do? If land and water aren't basic issues that we ought to deal with in the State of Montana, I don't know what we ought to deal with. And if the people of Montana didn't send us here to protect their basic rights, what did they want us to do? As a citizen—and ever since we moved to Montana years ago, I heard that this was the issue—the State versus the Company. I never thought I'd be part of a group where we came right up against it, as apparently we are right now. I hope we will leave this as some kind of a properly worded article in here on reclamation, because I am certain that they will say exactly the same thing on water rights. If we shouldn't say anything about land, we probably shouldn't mention anything about water.

CHAIRMAN GRAYBILL: Mr. McDonough was up next.

DELEGATE McDONOUGH: Mr. President. I really think we should consider in this article as to who actually owns the coal in place in eastern Montana. Most of the coal over there is owned by the Northern Pacific Railway Company and the federal government. The railroad preserved quite a bit of it, especially in the south, along their right-of-way. Even under the "Id reservation before 1913, they reserved coal and iron. After 1913, they reserved other metals and coal. The federal government, starting in patents issued after 1905, reserved the coal. I just venture a guess that at least 70, 80 percent of the coal in place is owned-in the southeastern part of Montana is either owned by the railroad company or the federal government. Now, what do these reservations say when the railroad conveyed it out, or the government patented it out? And I think this is

quite important to Mrs. Cross' motion. The rail. road reservations say that they will only pay you for the surface so used. So if they take a hundred acres out of your ranch, or 640 acres, they're going to pay you the market value of that surface which they used. They don't pay the depreciation to the rest of the ranch for digging this coal, and you get no royalty relative to the coal. Now. the federal government in the Stock Grazing Homestead Act of about 1917 says essentially the same. The clear reservations made by the government under the acts of 1903 and 1906 say nothing about payment for the surface. They do, however, say payment for the improvements. So, actually, I think the people in Montana actually have a very valid interest in putting this in their Constitution, that the land will be restored to the condition provided in Section 3, because that might be the only thing they can get out of this land. They possibly could get no royalty. They could gut some damage payment for the land actually taken, and the individual cannot get any damage payment for the damage to the balance of his property. And I think we all should support this Section 2 for that reason. In addition, one acre of coal-one acre of ground with a 27-foot vein will produce, if my calculation is correct, about 45,000 square yards of coal. The selling price for coal is about $2 a ton. They have costs in producing this, certainly, but the cost of reclamation, even at a thousand dollars an acre, would be very small compared to the eventual loss of Montana for the loss of all this acreage for any taxable use we could make. In addition, most coal leases, if they are owned by private individuals, have a royalty payment of 5,10 and 15 cents a ton. And, as you know-we all know, inflation; and most coal contracts have an open end on the thing that they can renegotiate the price for coal. But most royalty contracts don't. So, if you sign up for 15 cents a ton now, in 30 years, the 15 cents may only be worth the same as 5. So, there's no question about it; the coal companies can put, in their price the proper reclamation of the surface of the land when they're digging it up. Thank you.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. Reclamation of land is needed, hut the laws regarding the reclamation should be carefully thought out before writing them. Construction industry could be adversely affected if these laws were enforced strictly as this article has them written. Many gravel pits are needed for road construction. It's nearly impossible to restore them into their-to their original condition. But the Highway Department has, for a long time, been aware of this, and their environment problems are being solved and have been solved for the last few years. They do require sloping and shaping and beautification of those pits, but they cannot restore them into the same condition as this article requires. Many pits are now made into very nice camping areas. The deepest part of the pits are made into fishing and swimming pools in many places, with the help of the Game and Fish Commission. Quarrying in some areas requires the taking of thousands of yards of hard rock, usually from ledges. Naturally, these ledges are being pushed back, but the shape of the quarry is practically the same as when you started. But you cannot restore it to its original condition, because of the taking of the rock from its original place. The face of the ledge could not possibly hcputin "as good condition", to quote, as the article requires. Rut it is required to be left in a safe and not unsightly condition under the conditions we're working today. Many acres of strip-mining ground can easily he sloped or shaped into better condition, as far as the use is concerned, than the rough areas are now. I believe that this article should be deleted and left to-the matter left to the Legislature.

CHAIRMAN GRAYBILL: Mr. Blaylock was up before, Mr. Kamhoot.

DELEGATE BLAYLOCK: Mr. President, I resist this motion to delete. I have a great deal of sympathy for the viewpoints put forth hy Delegate Ask, as far as working people are concerned making a living. But I don't think that we have to delete this whole section for those reasons. I think that if we defeat this motion to delete and if this language is too broad, and as reasoning people we can amend this to where we can live with it and where it is reasonable for the State of Montana. And I don't think we should delete it in toto.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think perhaps I should respond mainly to Delegate Harper. To start out with, as the cowboys say in Powder River County, "touche'" may be the proper word here. I don't blame Delegate Harper forthinkingthatthoseofusthatheincludcdinthe majority, who are switching sides here-1 think we have more information; it's a different situation than it was. I will point out to him that, to start out with, we had, we felt, the strongest environmental hill of any state in the United States. We didn't know how that would survive. If Dele-

gate Harper had his way, it wouldn't have survived. But now, it has survived by very close votes, so this lessens the need, perhaps, for the section we're talking about. Another thing is that regardless of what we do here, we cannot apply it to federal land. Most of our coal is either on BLM land or Indian Department land. Our thinking was that if we could come out with a pretty good guideline, if you please, perhaps the Indians would accept this. They would write their own. This would be fine. Since that time, I have had word from Congressman Melcher's office. John Melcher is a fellow townsman of mine, a neighbor and a friend. He is on the Natural Resources Committee of the United States Congress, and that committee is attempting to draft some federal regulation that will cover the strip mining of coal land. Now, it's certainly in this area that any reclamation should be-is with a federal bill. Then it will cover all states. One won't have an advantage over the other on account of cost on this coal. It'll be distributed properly, the way it should be. It'll also cover the federal land. It will cover the Indian land. It will cover the state land and cover the private land. So, in view of that is, I think, the reason-1 am not speaking for the other members-but this is my primary reason of feeling that the-perhaps this section isn't what we need, because it's too inclusive, as I said before. You cannot reclaim hard-rock mining land the same as you do coal land. And I will reiterate again that I certainly want to set some guidelines, not depend on men to protect this Montana land. I can remember when the present Colstrip pits-the old ones that the Northern Pacific left in such a bad way-through some of those years, that land wasn't worth 50 cents an acre. Why should we spend money to reclaim it'? Get the coal out, sell it, forget about the land. Well, as we all know, that isn't the situation now. There's a great move on now. The land is very valuable; let's reclaim it. This is fine; we should. But what's going to happen 25, 50 years down the road? Maybe we go into another one of those drought periods. The land becomes valueless again in the minds of those people. Maybe these people sitting over here in Helena that are making the decisions on these contracts probably would be forced by the people, through the Legislature, to again say this land is valueless; let's get the coal out and sell it and forget about the land. Now, these are the things that bothers me. I would like to see something locked in so that we're not governed by men, but by laws, when we're talking about probably 500,000 acres of Montana land which has coal under it. I'm not talking about hard-rock mining. But I think that the federal bill will be the proper one. I would rather leave it to the Legislature at this time and see if the Congress of the United States does not come out with a federal bill. I think Senator Metcalf also mentioned that somewhere when he was here, and that will cover all of the land, and not piecemeal. Thank you, Mr. Chairman and Mr. Harper.

CHAIRMAN GRAYBILL: The Chair intends to recognize the rest of you, but we're debating the issue of Mr. Delaney's motion to delete. After we've had a vote on that, regardless of how it goes, we can either amend or add, but—

Mr. Swanberg, you were up next.

DELEGATE SWANBERG: Mr. President. It appears that the Legislature has anticipated this in this matter. And I refer the body to Section 50.1019 of the *Revised* ***Codes*** *of Montana,* which was passed in 1971. This is the beginning of a long law on opencut and strip-mine land reclamation. I will read Section 50-1019. "It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut or strip mining and thereby to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites and-subjected to or which may be affected by opencut or strip mining, to protect and perpetuate the taxable value of the property, and to protect and promote the health, safety and general welfare of the people of this state." There follows after this a number of sections which would implement and make this law effective. We have another law on the books, passed in 1971, which has to do with dredge mining-Section 50-1101: "It is hereby declared to be the policy of the State of Montana to protect its lands, streams and watercourses from destruction by dredge mining and preserve the same for the enjoyment, use and benefit of all the people, and the clear and unpolluted water in the streams, rivers and lakes of Montana suitable for recreational, domestic, industrial, commercial and agricultural purposes is in the public interest." This section also precedes five or six pages of law concerning the implementation of that purpose. It would seem to me, therefore, fellow delegates, that the Legislature has already taken action on the matter. And I question whether we, at this time, with the limited amount of time here which we will have at our disposal, should second-guess them. And I support Mr. Delaney's motion for deletion.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. For your information and for Mr. Harper's information, the minority position on this question was, let's rely on subsection 1; it fully covers the matter, particularly--excuse me, Section Number 1; it fully covers the subject matter in subsection number 3, and let's delete proposed Section Number 2. This was a minority position, and we drafted a proposed comment for our report, and we were ruled out of order by our Chairman. And that explains why you don't have any comments. Now, one other thing. I think most everything I wanted to talk about has been covered, but for your information, during our deliberations we were addressing ourselves to the matter of coal. And it came to our attention that if we did that and confined ourselves to coal, we would find ourselves in direct violation of the 14th Amendment to the United States Constitution. So that explains why we expanded the subject matter. And we got into difficulty, because now we take in everything relating to the exploitation of resources. And what we're doing in this act is making a lot of innocent people pay for the assumed future sins of a few, which is unfair; and I can readily see that in individual cases, the proposal before you is going to run afoul of the 5th Amendment to the federal Constitution. To repeat the comments of Mr. Swanberg and others and what I've said earlier in this Convention, one way to tell whether it's legislative in subject matter or not is whether the Legislature has acted on the subject matter. It has done this regularly in the immediately preceding sessions, and I am confident it will do more in future sessions as it gains knowledge. Let's don't try to be a "super legislature". Let's leave it to the Legislature to do those things which are properly within its province. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President. and fellow delegates. About 25 years ago in the south fork of the Flathead, a forest fire wiped out several hundred acres of very fine trees. Today they call it the "scorched-earth experimental forest". Across the road from this forest, it has grown back as nature would allow it. About 10 years after the fire, the Forest Service went in and thinned these trees to where the trees could grow. The larches that came up after the fire, grew about as thick as the hair on a dog's back. And after the thinning, the trees have grown. Today, 10 to 15 years later, those trees are growing at the rate of about five or six hundred board feet per acre. In a natural growth-a natural forest, they grow about 60 board feet per acre. In our Flathead area, the private industry—and when they're logging, even on government lands. there have been a lot of clearcuts—a few of them maybe not so good-but they've tried to clear these areas in a manner in which the trees would replant themselves. In many areas they do selective cutting, but the Forest Service in the Flathead, our private timber people up there, are doing a wonderful job and have been for many years practicing good forest habits. With the laws that have been passed recently on the burning of things and the air pollution, even our State Board of Health has a man up there, Jack Dodd, who tells the private landowners and wherever there has been cutting, when they can burn, the proper time for burning. It's nature's way, as most of you know, and was before man came here, to burn tremendous areas of land--uncontrolled forest fires. We've had them go through the Whitefish area, that whole area, in the-1909, 1914, 1919; and the whole thing was wiped out. Now, in order to create stands of timber, and especially where you see the lodgepole growing so very, very thick, (Inaudible) it requires a scorched-earth policy, you might say, or a scorched earth-a very hot fire to germinate the seeds that sometimes lay there for 50, a hundred years or more. And of course, in the clearcuts again, they have used the terrain-the natural terrain, and in some places they have made mistakes. But for many years we've been practicing these things. You may recall a few years ago where they had 60 experimental fires up in the north Flathead country, where they took 10-acre patches of timber, and after logging was completed, they had these fires at different times of the year to find out just how the earth would replenish and reseed itself. Now, I believe that our Legislature has made a good start toward doing these things. I don't think we have to be controlled by a lot more laws and things. I think that industry itself is doing a good job. We should leave this to the Legislature. Therefore, I support Mr. Delaney's motion to delete this Article II. It can make too much damage for our future generations. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Fellow delegates. I can't believe it; I really can't believe it. I know I came here as an idealist, but I didn't expect to see what happened--what is happening now. If you

delegates ran on the platform of supporting the company, I wonder how many of you would have been elected. I ran as an Independent, and I had many people ask mc, "Well, do you support the company, or don't you?" But, to those of you who ran as Democrats, I can't believe the number of you who are supporting the company position. And I refer back to Delegate McDonough's remarks, because they're right to the point. This is strictly a company issue. And dragging in the gravel pits is almost absurd; and dragging in the Berkeley pit is almost as bad, too. Because all of you know that there's not going to be anything that's going to close the Berkeley pit in this section. And you good Democrats in Butte that support, the people and you vote for the company, I guess that's the way of life or something. But I just can't understand it. And as a good Independent, I've certainly been educated on what happens in the course of politics. I rise to oppose the motion of my fellow delegate from Fergus County, because I know the people from Fergus County don't support the company. And I rise to explain my vote, because my good friend, Jim Felt, had to leave and we'll both be absent on the vote. But I strongly oppose the motion to delete. Thank you, Mr. Chair-. man.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President. While Mr. Brazier and Mr. Swanberg and Jacobsen were quite eager to praise the works of the Legislature, I'd like to point out to you the problem that I have contending all along. This act passed by the last session of the Legislature, the Dredge Mining Regulation and Land Preservation Act, was declared unconstitutional. On the very basis that we discussed another day, the same people that voted to keep that, title provision in-the one-subject title provision--are the ones voting to delete this section. This good bill passed the last Legislative Session, was declared unconstitutional because it mentioned only dredge mining and didn't mention sluice mining. The whole intent. was wiped out. We have made this possible in our Legislative Article to do this same thing again. It's time to take a stand now and decide what we're going to do in terms of the environment and quit passing the buck and hoping that the Legislature will do something that, in other areas, we've prohibited it from doing.

CHAIRMAN GRAYBILL: Mr. Scanlin was up quite a while ago.

DELEGATE SCANLIN: Mr. Chairman. You're damned if you do, and you're damned if you don't. Yesterday, I made the wrong move. I tried to restore some semblance ofintegrity to our committee system of operation. I got a telegram this morning, quote: "Your environmental speaking action and voting record Wednesday were poor. Please remember who you represent." Perhaps I chose the wrong proposal to restore some confidence in each other, but we've gone a long ways down the road now, ladies and gentlemen, to disrupt the system to which we are pledged. I support the article as it now stands.

CHAIRMAN GRAYRILL: Now, Mr. Siderius, you're next.

DELEGATE SIDERIUS: Mr. President. First of all, I want to thank Mr. Gysler for having so much concern over my gravel pit. I think he has more concern over my gravel pit than he does me—or myself-has more concern over my gravel pit than I do myself. I would like to read to you what has happened to our timber industry. This was taken from *The Industry and Commercial Geography* written by Russell Smith and Ogden Phillips. It is estimated that the original forests of the United States covered 822 million acres and contained 5,200 billion board feet of lumber. In 1938, our commercial forests occupied about 462 million acres, but only 213 million acres were covered with timber of saw-log size, of which is less-which half was virgin timber. For some years, we have been using timber at least twice as fast as it grows. No people, past or present, have used or abused their forest resources as the people of the United States. More than three-fourths of our present timber is located in the Pacific Coast States. The first great shift from the center of lumber production occurred in 1870's, when the output of Michigan, Wisconsin and Minnesota surpassed that of the Northeastern States. In the closing years of the century, leadership of lumber production passed from the three Great Lake States to the South. And again, in 1927, it shifted to the Pacific Coast. Of the nation's total production of twenty-eight and nine-tenths billion board feet of lumber in 1941, about 41 percent was cut in Oregon, Washington and California. No other people in the world use so much paper as do the people of the United States, which amounts to over 500 pounds per capita. The newsspread [newsprint] paper supply in the United States presents a serious problem. We imported, in 1944, from Canada 2,500,000 tons of newsprint paper, 1,100,000

tons of woodpulp and 1,600,000 cords of pulpwood. And I think it would be terrible if we supported Mr. Delaney's amendment, and I think we should support this Section 2 wholeheartedly. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

VICE-PRESIDENT BKOWN: Mr. President. I think my position in this Convention has been clear, that I am very much against putting legislation into this Constitution. However, there are times when it becomes so important that I think we cannot ignore it, and I think this is one of the times. The people of eastern Montana are extremely concerned about their strip mining. And I hope you'll take Mr. Blaylock's position and vote against this deletion; and if we can't live with the present article, at least amend it. But we need a strong mandate on reclamation in this Constitution. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman and delegates. I come from the area in eastern Montana where there's going to be a big coal strip-mining boom. I don't think it will be personally affected as far as the economic part of it is concerned. A lot of our grazing land and land that we lease is-has been test core drilled, and there's quite a lot of coal in there. When they'll move in, I don't know. However--and you can see that I'm really concerned-our country is a beautiful country. I've been fortunate enough to live in one of the rare spots in Montana, as the few people who have been down in that area will certainly tell you. I and my neighbors are very concerned about reclamation or devastation, but I feel that the Legislature, in its efforts last time and in the future, the agreements that the private owners have had with the contracts that have been made, look okay to me, and I think we're progressing in this area. Now, the cowboys down in that country have been telephoning to me and writing letters. They're very concerned, but they say, "Don't tie these things up that we can't live with. Let the Legislature take care of it." I am opposed-I rise in support of the move to delete.

CHAIRMAN GRAYBILL: Now, I'm go-ing to let Mr. Delaney finish. And we've debated this a long time, and I'm going to-it seems to me that it's going to be difficult not to be repetitious, but I don't want to cut anybody off. But if you're not repetitious and if you can be brief, go ahead.

I think Mr. Gysler, you were next.

DELEGATE GYSLER: Thank you Mr. Chairman. Would Mr. Foster yield to a question? Oh, he isn't here.

CHAIRMAN GRAYBILL: Mr. Foster. Mr. Foster, we want to ask a question of you.

DELEGATE GYSLER: I just wanted to ask Mr. Foster if he considered Charles Lindbergh a company man.

DELEGATE FOSTER: No, sir, Mr. Gysler.

DELEGATE GYSLER: Thank you, Mr. Foster. I just wanted to make that point, because as I said before--and I want it amply understood on the floor-As I said before, he was the one, after this article had been written and sent in, that said to us that this article is to" strong. As far as I was concerned, we weren't only trying to write this article to cover coal mining and things that most of you think about; we were trying to write this article to cover the sump pits that the oil company-that's left in the oil fields when they drill a dry hole, or a good one. We were trying to make it all-encompassing, but I do realize that we need one that can be lived with. I am not one who believes that just because, with today's price of coal, we should sell the coal for anything WC can get for it, whether we can reclaim the land or not. I am one who happens to believe that if the price of coal won't support the reclamation of that land today, then we wait for the day that it will and then we sell it. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow. Well, Mr.--I'm going to recognize you, but these people were up also with you, Mr. Delaney. Mr. Delaney, you may withdraw it, but we're going to have the debate.

Mr. Harlow, it's your turn. Do you want to take it or not?

DELEGATE HARLOW: I have a few new things, Mr. Chairman—

CHAIRMAN GRAYBILL: All right,

DELEGATE HARLOW: -to add to this group here. I will not be repetitious. You have all commented-the retainer fee people and the lobbied people that leave this up to the Legislature. Let me recall to you retainer fee people, and you research people, to look under the laws of the 1921 Legislature. They passed a law in 1921 prohibiting the damming of water-they prohibited the build-

ing of a dam outside of Montana and backing water into Montana without due, just compensation for Montana and without the continued compensation to Montana for the destroying of land by this water backed up into Montana from a dam built outside of Montana. The Legislature, in '21, thought that was a real good law and it would protect the water and the land of Montana from then on. Look in the Session Laws of 1951. An outside company that had no holdings in Montana whatsoever, the Washington Water Power Company, wanted to build a dam in Idaho to back water into Montana to produce hydroelectric power to be used in Idaho and Washington. But the statute that was passed in 1921 said they couldn't do it without paying money to Montana for the use of Montana's land and Montana's water. The company didn't like that. The retainer fee people said, "That's bad. We can't afford to charge Washington Water Power for the use of Montana water and Montana land." So, what happened? In 1951, if you will look up in the journal and look up in the records, you will find that Senate Bill Number 9 was introduced repealing the law passed in 1921. And that law passed through this check and balance Legislature ahead of the "Feed Bill". There you had a sample of your check and balance. So, I am thoroughly opposed to leaving this up to the Legislature. If we want to protect our land, and protect it the way we want to protect it, let's not leave it up to the Legislature or to the retainer and the lobbied individual.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney.

DELEGATE DELANEY: As when I made the motion, I still feel that this Section 3 is not necessary, but I did not intend to embroil this body into the lengthy debate that it has been encompassed in. I would like to withdraw my substitute resolution and ask that the Chair might recognize Mr. Dahood for an amendment that makes this section acceptable to me.

CHAIRMAN GRAYBILL: Well, now, do you—are you going to withdraw it, or are you going to only withdraw it conditionally?

DELEGATE DELANEY: I will withdraw it completely.

CHAIRMAN GRAYBILL: All right, now, you've withdrawn it. Now, the problem with Mr. Dahood—I certainly will recognize him. I have had nothing up here from him that I know of, and I got three other amendments on this article ahead of yours. So, if you want to put yours in writing, Mr. Dahood, and send it up, I'll be glad to take it into consideration.

DELEGATE DAHOOD: Very well, Mr. Chairman. I will do that. I—

CHAIRMAN GRAYBILL: Mr. Dahood does not have the floor. You don't have the floor, no. I'm explaining to Mr. Delaney. He's withdrawn his motion. Now, there are a lot of people that have a lot of motions on this section. And I am taking them in order, or putting them in some semblance of order. Soifyou want an amendment, print it and send it up. I'll be glad to discuss it with you, and if it conflicts with somebody else's, 1'11 discuss it with them; but I am not going to allow a conditional withdrawal. If you want to withdraw it, you can withdraw it; if you want to vote on it, you can vote on it. But I'm not going to be bound at the Chair as to who's next, because other people have rights too.

Now, Mr. Delaney, do you want to withdraw?

DELEGATE DELANEY: No, I don't believe I do.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Delaney's motion. Is there further pertinent debate? If not, Mr. Delaney, you may close.

DELEGATE DELANEY: I don't believe there's any necessity of saying anything more. I think everybody has had a say here. I think we've heard it very adequately discussed. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay. Now, the issue is on Mr. Delaney's motion that we delete Section 2 of the Natural Resources report on Environment, lines 19 to 24. I presume you want a roll call vote. So many as are in favor of deleting it, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Pleasetake the vote.

Aasheim Nay
Anderson, J. ..... Aye
Anderson, 0.. .. .. Nay

Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Absent
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Absent
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Absent
Furlong	Nay
Garlington	Aye
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Absent
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin,	Aye
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Nay
Payne	Absent
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Took	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner,,	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CHAIRMAN GRAYBILL: Now, while the vote is being taken, I would like to explain that.1 do have an obligation to other people who take their turn, and I just have to let them have their chance. If you want to make an amendment, everybody can have his chance; but you'll have to get it to me in writing unless it's so minor that we don't need it in writing.

CLERK SMITH: Mr. Chairman, 33 voting Aye, 68-60 voting No.

CHAIRMAN GRAYBILL: 60 having

voted No, 33 voting Aye, the motion to delete fails.

Mr. Belcher, for what purpose did you rise?

DELEGATE BELCHER: Mr. Chairman, I was asked to pair my vote with Mr. Campbell, but as long as it's defeated, that's all right.

CHAIRMAN GRAYBILL: Very well.

Now, Mr. Ask, you had an amendment. Do you wish to make it next'?

DELEGATE ASK: Mr. Chairman. I sent this up, but I would like to add one sentence in, if I could.

CHAIRMAN GRAYBILL: Very well. Can you rend it to us.

DELEGATE ASK: I would take the first sentence of Section 2, "All lands disturbed by the taking of natural resources must be reclaimed", and then go on from the one I've submitted to the Chair.

CHAIRMAN GRAYBILL: Your amendment then is, "All lands disturbed by the taking of natural resources must be reclaimed, period." Right?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Then, the sentence, "The Legislature shall provide effective requirements and standards for reclamation of lands disturbed by the taking of natural resources"-is that correct?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Very well. I don't know if you have this. This is not out, is it?

DELEGATE ASK: No, it is not out.

CHAIRMAN GRAYBILL: All right. Now, so that everybody understands the nature of the amendment. We're discussing Section 2. The first sentence would be: "All lands disturbed by the taking of natural resources must be reclaimed." Then put a period, on line 20, after "reclaimed". Then add this sentence: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Therefore, Mr. Ask has an amendment which would make Section 2 read: "All lands disturbed by the taking of natural resources must be reclaimed. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources."

Mr. Ask.

DELEGATE ASK: Mr. Chairman. I feel that this wording of this section, now, that's just being submitted to you should cover everyone's requirements. It says, to start with, "All lands disturbed by the taking of natural resources must be reclaimed"--must be. Then it goes on: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." I think this is what we're after. Like I said before, I'm not against reclamation; but if you read the other section, it said, "to as good a condition or use", which is an impossibility. You'd just stop mining, you'd stop timbering, you'd stop a lot of agricultural activity. But we're getting at what we want here. It must be reclaimed, but the Legislature sets the effective standards. Every area of the state is different. You can't put one rule down for the entire State of Montana. And think this reaches it, and I think it's real strong and effective. I want to be brief so we can get on with the voting. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I support the motion that's before the Convention at this time. Frankly, Delegate Delaney and I had basically the same idea in mind-that this would solve the problem; the broad language is necessary. It declares the policy of the people of the State of Montana; provides a guideline to the Legislature; allows them, from year to year, to survey the situation and make whatever change in the law might be necessary to carry out the public policy of the people of this state for reclamation that's going to serve the general welfare. I support the motion that's before the floor.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise, also, to support this motion. I talked this morning with Ted Schwinden and--about this section, because I had talked with a number of environmentalists who had been confused by the wording. This is basically the language he suggested to me. And I think it will do the job for us. Thank you.

CHAIRMAN GRAYBILL: Mr. Rlaylock.

DELEGATE BLAYLOCK: Mr. President. I also support this language. I think it's good; I think it's strong. And I agree with Delegate Ask.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: I support this motion, as it is virtually the same wording as Mr. Dahood and I had agreed upon. This is virtually the same wording that I'd wanted to withdraw my other motion for. I support it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I rise to support this motion. I feel theremust be something in the Constitution, something that definitely states the reclamation of land. Thank you.

CHAIRMAN GRAYBILL: Now, the Chair doesn't want to cut anybody off, but does anybody oppose this? I'd like to recognize somebody on the other side.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I support this amendment.

CHAIRMAN GRAYBILL: One of my guidelines yesterday was that if you want to register your support, do it with your vote. Does anybody have any other-anybody oppose it?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I oppose this motion for the reason that it leaves to the Legislature how to define the word "reclaimed" and to what extent it should be reclaimed. At least, the original one put some guidelines in as to how it is to be restored and to what extent.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Would it be in order, Mr. Chairman, to ask what the other amendments to this were going to be? It seems to me if we had a choice, it would be interesting.

CHAIRMAN GRAYBILL: Well, the Chair can tell you that Mrs. Eck had one, which she has pointed out is similar to this. Mr. Romney, of course, had one in which he was going to use the second half of the first sentence but make it to "as good a condition or use as is possible". I haven't seen Mr. Dahood's.

DELEGATE BURKHARDT: Would Mrs. Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes.

DELEGATE BURKHARDT: Louise, you've lived with this for weeks and have had much difficulty in getting yourconcern expressed. How do you feel about this amendment?

DELEGATE CROSS: I'm going to be real honest here. When it was first proposed, I thought it would be fine. I have consulted someone whom I think is a remarkable man for analysis, and that is Mr. McDonough, and he tells me that it doesn't say anything.

DELEGATE BURKHARDT: That's what I thought. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I rise in opposition to this amendment. As has been said, it doesn't do anything. What do we mean by "reclaim"? And I use the same argument that you've just heard: the Legislature can-may set up some real good standards right now, and some other bigger companies-some outside company-wants to come in and deplete some resources that we do not know about, that we have in Montana now; they can't live with the law that's on the books and so they bring the dear old lobby and pressure to bear and the Legislature change the law and we go back to nothing in the Constitution. We must-in defining the method in which we want to maintain our environment here in Montana, we must put something in the Constitution that cannot be changed overnight. I resist this amendment.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President-or Chairman, would Mr. Ask yield to a question?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes, I'll yield.

DELEGATE MAHONEY: You, I believe, stated that this would be flexible and pliable. Would this allow one thing for the Roundup coun-

try and **another thing for down in the** Decker **country?**

DELEGATE ASK: Yes. I think this gives flexibility. I don't think there's an acre of land in Montana that's the same. And I think you're going to have to have different standards to put it into force. But this section says they must reclaim it and sets the standards. I think this meets our needs here.

DELEGATE MAHONEY: Now, another question. Then, if you were just over the hill and a new mining company come in, and one was already operating, and they says, "Now, we will come in if you'll give us this special law for this area." Could this happen?

DELEGATE ASK: Well, I supposeit could, but I can't feature the Legislature going along with it.

DELEGATE MAHONEY: Oh, listen now. The Legislature can do anything. (Laughter)

DELEGATE ASK: Mr. Mahoney. If the Legislature sets up effective requirements and standards, I think it applies all over the state, no matter who-some old or some new company coming in. If they change the standards, they're going to have to change it for everyone through the entire state.

DELEGATE MAHONEY: This is not the way you answered when you said they could be different at Roundup and different at Decker.

CHAIRMAN GRAYBILL: Mr. Mahoney, you asked your question. Now, do you want the floor?

DELEGATE MAHONEY: Whenever he gets through. I—

CHAIRMAN GRAYBILL: Are you through with your answer, Mr. Ask'?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Very well. Mr. Mahoney.

DELEGATE MAHONEY: This is what can happen under this thing where you turn it over to the Legislature-that they can come in and decide that a new industry-Now, we saw what the Legislature did when they gave the Anaconda Company the right of eminent domain. No other company had this right to go out and mine and take people's property on the right of eminent domain. And this was put through the Legislature. So, this can be done special for an individual thing; and I think when you put this in, you're legalizing special things in the Constitution. This is my opinion of this amendment. I'm sorry, Mr. Chairman. I don't have a copy of it on my desk to study. It's a very critical thing. It's too bad that we're asked to operate upon this important a thing with being read by-and I think you've done a nice job of reading it-but we certainly should be-a little time to study it.

CHAIRMAN GRAYBILL: Mr. Mahoney. Since it probably isn't going to be printed, I might read it again for you, and it might help. "Section 2. Reclamation. All lands disturbed by the taking of natural resources must be reclaimed." You put a period after reclaimed. Now, that much of the language is before you. Then the second sentence says: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources."

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. In order to bring this to a head, I offer the following amendment to the Ask amendment. After the word "reclaimed", add "to as good a condition or use as is possible", period. And then continue and then retain the rest of the section, or subsection. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. I understand it to be the sense of your motion that you add, after the word "reclaimed", the sense of your prior proposed amendment, which is "to as good a condition or use as is possible", retaining the rest of Mr. Ask's language.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I think it-that would be a qualifying statement expressing how it is to be reclaimed, meeting, at least to a meager extent, the objections of Delegate McDonough, in which I concur, and I think that the rest of this matter has been thoroughly debated and I don't need to go over it again.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. It just impressed me, as I got to listening to all these things, that all of a sudden I find that no where in

here does it say who's going to do the reclaiming. As far as I can read that thing and everything that's been in there so far, it could require the state to do the reclaiming. I wonder if Mr. Romney would just add something like "by the disturber" in there. Really, I mean it. For Mr. Harlow, I'll do this for the $20 fee I'm getting paid for this 15-hour day I'm putting in.

DELEGATE ROMNEY: Mr. Chairman, do I-may I reply?

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I would have no objection. Of course, that is already handled by statute.

CHAIRMAN GRAYBILL: Mr. Romney, is it your purpose to add Mr. Schiltz's words to your amendment or not? He wants it to say "to as good a condition as possible by the disturber".

DELEGATE ROMNEY: I think not so, sir, because that would require considerable action by the—

CHAIRMAN GRAYBILL: You don't have to explain why. I just want to know if it's in or out. All right. The issue is on Mr. Romney's motion to add "to as good a condition or use as is possible".

Mr. Davis.

DELEGATE DAVIS: I must oppose this amendment. That's much stronger language than it says-"to as good a condition or use as prior to the disturbance." It's possible toimprove theland, particularly where a lot of the mining is in our area, where it's rocky-stoney. I don't know where you'd get the rocks to put back on it, and so forth; where Mother Naturehas slide areas, and so forth. I wanted to support the other one and appeal to my fellow delegates to go ahead and vote on this. Everyone got a good day in yesterday of talking. I think we should follow our President's guide-line today. If everyone felt that they picked the lawyers out and made a few statements against them and everyone. Let's go ahead and vote on this--we're not going to change a lot of minds-and go and try to finish our work here. On this particular amendment, it's not any-it's making it more difficult to pass as possible. You can make grazing land irrigated land; that's possible, even if you have to import the water. Or you can put flowers on land; that's possible. When you say "as good a condition as possible", you're going the other way from trying to reach a compromise, which I think we're all trying to do here. I'm hopeful we can reach a sensible compromise, because, actually, we all want the land reclaimed. But when you get right down to it, it's still going to be the Legislature that's meeting 20 years from now, instead of what we write in here today, that's going to have to implement this in a practical manner in this state. So I submit that the substitute-or amendment of Mr. Romney's is creating more of an impasse. And if we defeat that, then we can pass the other one and get on with the rest.

CHAIRMAN GRAYBILL: Very well, the—

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I-would Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: I yield.

DELEGATE BLAYLOCK: Mr. McDonough, would you give us your feeling of what this addition by Mr. Romney-is this too far; is it adequate?

DELEGATE McDONOUGH: I think it's too far and too strenuous.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. I want to make one point with you, and then I'm going to quit trying to put my finger in the dike.

CHAIRMAN GRAYBILL: Okay, let's hear it.

DELEGATE BRAZIER: I promise for you, Mr. Chairman, not to speak unless spoken to again. But I would like to get this point across once and for all.

CHAIRMAN GRAYBILL: I just want you all to speak quickly. I want to do this before noon.

DELEGATE BRAZIER: The only dealing that I've had with the Anaconda Company was a case about eight years ago in the Supreme Court, where I represented a widow. The Anaconda Company showed up at the last minute, spoke to the court and said, "If you rule in favor of Mr. Brazier's widow, we're going to lose a hundred thou-

sand dollars." Now, I think you all know who won and who lost that case.

CHAIRMAN GRAYBILL: Now, Mr. Brazier, how is that pertinent to Mr. Romney's amendment?

DELEGATE BRAZIER: If you'll indulge me for about two more sentences, I can get right on it.

CHAIRMAN GRAYBILL: Okay, get with it.

DELEGATE BRAZIER: Okay. Now, the point is that bad law was made. We took it to the Legislature and corrected it. Now, the point I'm trying to make here is, we've got a proposal that we're going to restore this land to as good a use as possible. Somewhere in the future, there's going to be a lawsuit brought by the state or by an individual against one of these coal mining companies for not restoring to as good a use as possible. That company is going to put in evidence that that rotten terrain left out there is as good as they could possibly put it. The District Court is going to rule against the company, and it's going to come up here to the Supreme Court. The Supreme Court is going to rule that, as a matter of law, that sloppy reclamation is as good as possible. You will not be able to go to the Legislature to overrule the Supreme Court, because it's in the Constitution. You will not be able to go to the federal courts, because it's a state matter. You will not be able to vote out your Supreme Court Judge, because you gave him eight years, and if you do remember, after eight years, that he's the guy that did it, he's going to be replaced by a candidate who is proposed by a committee made up of the same people whoputthatjudgeintobeginwith. What I've been trying to tell you is, this is legislative. Let's let the Legislature fight the battles. Don't let the big companies lock you into a bad position. Mr. Chairman, I resist Mr. Romney's amendment.

CHAIRMAN GRAYBILL: Mr. Romney-Mr. Rebal, do you want to speak, please?

DELEGATE REBAL: I certainly do. Mr. President and fellow delegates. According to *Webster's* New World *Dictionary,* the definition of "reclaim" is "to make unproductiveland useful". I believe your committee's thoughts are to make certain that provisions would be made to restore the land to a beneficial use-that beneficial use to be determined prior to the disturbance of the land. This effort has the best of intentions, but the far-reaching effects that may occur will not affect just the company; it may be an infringement on individual rights also. I still think an amendment could possibly be made to do what may berequired to accomplish our mutual objective. But I do not have the words, and I hope to hear them yet. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney, you may close.

DELEGATE ROMNEY: Mr. Chairman, delegates. I think that the definition just read by Delegate Rebal is a demonstration of the adequacy of the phraseology that is in this amendment. I also point out that in refuting Delegate Brazier's statement that-the final sentence of the subsection, "The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." So I think that establishes that his fears are groundless, and I think it shows a qualification of the word "possible". And I think that everything is hunky-dory.

CHAIRMAN GRAYBILL: Do you want a roll call vote'? Very well. All in favor of Mr. Romney's motion, which is to add the phrase "reclaim to as good a condition or use as is possible"--all in favor of that, vote Aye; all opposed, vote No.

For what purpose do you rise, Mr. Habedenk?

DELEGATE HABEDANK: Mr. Chairman. As I understood Mr. Romney's motion, it was to the Ask amendment.

CHAIRMAN GRAYBILL: It is.

DELEGATE HAREDANK: Mr. Romney just spoke to an entirely different matter. And I agree with his latter comments, but we cannot vote intelligently to the one if he meant to—

CHAIRMAN GRAYBILL: I understand your point. Mr. Romney read the last half of the sentence here. Mr. Ask has substituted a different form of legislative referral to that in the book, However, Mr. Romney made his amendment to the sentence Mr. Ask fashioned by putting a period after "reclaimed". The first sentence under Mr. Romney would read: "All land disturbed by the taking of natural resources must be reclaimed to as good a condition or use as is possible." Now, that's all you really need to know. It's going to—we're not through with the sentence. It still is going to have this legislative thing. "The Legislature shall provide effective requirements", and so

forth, goes on it. He's amending Mr. Ask's amendment. All in favor of Mr. Romney's motion, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Nay
Anderson, J ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Nay
Berg ..... Absent
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Nay
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Absent
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Ave
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin. ..... Absent
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin. ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble. ..... Nay
Nutting ..... Nay
Payne ..... Absent
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay

Woodmansey .. Nay
Mr. President Nay

CLERK SMITH: Mr. President, 29 voting Aye, 64 voting No.

CHAIRMAN GRAYBILL: 64 having voted No and 29 having voted Aye, Mr. Romney's motion is defeated. We're back on Mr. Ask's amendment. Mr. Ask's amendment says: "All lands disturbed by the taking of natural resources must be reclaimed. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Is there further debate?

Mr. Schiltz, do you want to amend it?

DELEGATE SCHILTZ: No.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. Chairman. I sat back and listened with a great deal of interest to the debate about the reclamation of land in eastern Montana. I happen to live right in this area and own quite a little land that will be affected by the mining of coal-strip mining of coal. I have no objection to Mr. Ask's motion. I do agree with Mr. Schiltz. It has bothered me quite a long time that the State of Montana is in the reclamation business. And I feel that some definition should be added here that would provide that the industry that is mining the coal should pay for the reclamation of the land, and I submit this for the delegates' consideration.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Ask's amendment to Section 2? Very well. The question is on Mr. Ask's amendment, which would put a period after the word "reclaimed" in line 20 on page 3, so that Section 2 would read: "All lands disturbed by the taking of natural resources must be reclaimed." It would then add the following sentence in place of the rest of the section. "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." We'll have a roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates .. .. Aye
Belcher ..... Aye
Berg .. .. Absent
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross .. .. Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Absent
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye

James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin. ..... Absent
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Absent
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Could I explain my vote? I oppose-I voted for this, but I really oppose it because I think it says nothing.

CHAIRMAN GRAYBILL: Very well. Will you please announce the vote?

CLERK SMITH: Mr. Chairman, 63 voting Aye, 29 voting No.

CHAIRMAN GRAYBILL: 63 having voted Aye, 29 having voted No, the amendment of Mr. Ask is adopted. The section now reads: "All lands disturbed by the taking of natural resources must be reclaimed. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Is there further discussion?

Mr. Cate.

DELEGATE CATE: I move to amend Section 2 as amended by adding, after the words "reclaimed", "to a beneficial and productive use". The remainder of the paragraph would read as amended by Mr. Ask.

CHAIRMAN GRAYBILL: Mr. Cate has proposed an amendment to add, after the word "reclaimed", "to a beneficial and productive use". We'll have a roll call vote on it. All in favor of Mr. Cate's proposal to add, after the first word "reclaimed", that phrase, so that the first sentence would read: "All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use." All in favor, vote Aye on the voting machines; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim Nay
Anderson, J. Nay
Anderson, 0. Nay
Arbanas Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Aye
Ask.. .. .. Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Absent
Belcher .. Absent
Berg ..... Absent
Berthelson Nay
Blaylock ..... Aye
Blend Aye

Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Absent
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK SMITH: Mr. Chairman, 63 voting Aye, 27 voting No.

CHAIRMAN GRAYBILL: 63 having voted Aye, 27 voting No, Mr. Cate's amendment passes. The sentence now reads: "All land disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use." The second sentence reads: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Is there further discussion? Very well.

Mr. Ask, will you move that your-that when this committee does arise and report, after having had under consideration Section 2 as amended, that the same be recommended for adoption? Will you so do?

DELEGATE ASK: Mr. Chairman, I so move.

CHAIRMAN GRAYBILL: Very well. Ail in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 2 is adopted as amended. Will the clerk read Section 3, sub. 1?

CLERK SMITH: "Section 3. Water rights, sub. 1. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed." Subsection 1, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 3, subsection 1, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. In presenting the committee's comments, I would like to beg your indulgence and present the comments for all six subsections at the same time. They are all related to each other. Your committee feels that water and water rights are of crucial importance to the past history and future development of the State of Montana. For this reason, the committee feels justified in expanding the present constitutional section, which relates solely to the use of water, to include provisions for the protection of the waters of the state for use by its people. Subsection 1, as read by the clerk, guarantees all existing rights to the use of water and includes all adjudicated rights and nonadjudicated rights, including water rights for which notice of appropriation has been filed, as well as rights by use for which no filing is of record. Subsection 2 is a verbatim duplication of Article III, subsection 15, of our present Constitution and has been retained in its entirety to preserve the substantial number of court decisions interpreting and incorporating the language of this section. Subsection 3 is a new provision to establish ownership of all water in the state subject to use by the people. This does not, in any way, affect the past, present or future right to appropriate water for beneficial uses and is intended to recognize Montana Supreme Court decisions and guarantee the State of Montana's standing to claim all of its waters for use by the people of Montana in matters involving other states and the United States government. Subsection 4 is a new provision to permit recreation and stock watering to acquire a waterright without the necessity of a diversion. This applies only to future rights and, of course, only to waters for which there are no present water rights. This subsection further provides that future agricultural and industrial water development will not be foreclosed by recreation, as it is left up to the Legislature to determine the method of establishing a future water right without a diversion; and the Legislature is further authorized to establish priorities of water uses, where the Legislature determines priorities necessary. Subsection 5 acknowledges a continuance of our present water law principle that the first appropriation in time is the better right and provides that no future appropriation shall be denied except in the public interest. Subsection 6 mandates the Legislature to administer, control and regulate water rights. This does not in any way change the present legislatively established system of local control of adjudicated waters by water commissioners appointed by the District Court having jurisdiction. A new requirement is added to establish a system of centralized records of all water rights, in addition to the present statutory system of local filing of records. The centralized records are intended to provide a single location for water rights information and a complete record of all water rights. I ask that, as we take these subsection by subsection, please keep all of them in consideration and please don't be careless in style and drafting type amendments. This is a very technical area. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I think that this matter of water rights for the State of Montana is undoubtedly the single one-single most important item that is going to come before our Convention. I think perhaps I think this because1 grew up in the Dark Ages up on the Hi-Line, where we had to haul water from reservoirs and store it in cisterns. Our 1889 Constitution failed to declare Montana water the property of the State of Montana and its citizens. All other Western States have done this. We are presently laboring under a great disadvantage in negotiating and coming into water pacts with all of our neighboring states and protecting ourselves against their needs in the future and against the federal agencies. Water is not like land. It just--water runs on and on. The bulk of our water that flows into the Missouri,

Mississippi and the Columbia River basins all originate up in the Montana Rockies. Yet, as a state, we are absolutely powerless in protecting our future needs for both irrigation and expansion against ambitious federal agencies and thirsty downstream neighbors. They will have all of their water needs documented very well by the time that the present moratorium ends. We have only six years in which to do this, and I don't anticipate another Constitutional Convention in six years. We have to do this right now. If we don't clean up this water mess that we have now, our state will—our water can be diverted into downstream watersheds. The federal agencies, of course, always say they don't come in and divide the water until the states have failed to do this. As I say, we have only six years left to do this. Our-my concern, therefore, concentrates itself right on subsection 3, where we declare it to be-the water to be the property of the state for the use of the people in Montana, and subsection 6. Now, this may not seem to be very important to you to set up a central filing agency, but it's tremendously important. Our water rights mean absolutely nothing. They say 75 percent of our water rights that are now filed are absolutely meaningless for this one reason. All we've ever had to do-we've just existed by the old mining law, "first in time, first in right". And anybody-in order to file for a water right, all you have to do is go down to your courthouse. Now, when I was mayor of Great Falls, I found, to my utter dismay, no one had ever appropriated for a drop of the water for the state. At that time, we had been-we were processing our city water, selling it to two communities, Malmstrom Air Force Base, also we were selling it to the Anaconda Company, who, in turn, sold that same water to the town of Black Eagle. We sold it to the refinery, and we sold it to the brewery. And not a drop of this had been ever appropriated. So, when I went down, I had the attorney draw up the appropriation papers, and he said, "Well, you know, Marian, this really doesn't mean anything. We'll file them." And we did, and I don't know how many cities in Montana have even done that. But we went down there and found that most of these streams in the-that come into the Missouri and the Sun, and particularly the Missouri about—around Great Falls, had already been filed on for all the water that did flow or ever would flow. And I do know that you would recognize the lights of a city, but at the time that the city bought their water from the old private water works, the city's uses were very, very small and would certainly not accommodate the use that the City of Great Falls is now using. And besides this, we don't want to cripple our state in the future without being sure that we can reserve enough water right here in the state to take care of all of our future industrial and irrigation needs. And so, I want you to watch paragraphs 3 and 6. And I thank you, Mr. President.

CHAIRMAN GRAYBILL: All right. Now, the Chair has had read Section l-subsection 1 of Section 3. And I have before me some amendments to subsections 4 and 5. I have no amendments proposed to subsections 1, 2 or 3. If anyone cares to stand and speak about or in opposition to subsection l of Section 3, I wish they would do so. Otherwise, I will expect you to stay on subsection 1, and we'll get that disposed of.

Mr. Davis.

DELEGATE DAVIS: I first should disclose that I have an interest in the subject. I'm attorney for a water company, where we build a dam and irrigate many thousand acres of land. I also have clients who float on the water, fish in the water, and drink the water occasionally. So, I have a great interest in it. The whole purpose, just for the purpose of the journal, is to establish, in this first sentence, that all existing water rights are recognized and confirmed-so no one will get any idea that we're trying to take away any vested or existing rights. And I make that statement merely for the journal. And if there is any dissent or difference of opinion on it-1 think it should be expressed, if there's other thinking.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I come from a county where there's a great deal of irrigation. However, we are dryland wheat ranchers. But I know this is of great interest to our area, and so I took this to Judge Lessley and to several others within the valley, and they all feel it is a workable plan. Later, when we get into-a little further into our articles, I may have a slight amendment. But, however, I feel it protects the appropriated and adjudicated water rights that our district is so interested in. Thank you.

CHAIRMAN GRAYBILL: Very well. The question arises on the motion of Mr. Murray that when this committee does arise and report, after having under consideration subsection 1 of Section 3, that it recommend the same do pass. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Please read subsection 2, Mr. Clerk.

CLERK SMITH: "Subsection 2. The use of all water now appropriated or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use and the right-of-way over the lands of others for all ditches, drains, flumes, canals, aqueducts, necessarily used in connection therewith, as well as the sites for the reservoirs necessary for collecting and storing the same, shall be held to be a public use." Subsection 2, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray,

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 3, subsection 2, of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I would like to briefly remind the Convention that this is verbatim, word for word, from our present Constitution. The committee takes no pride in the style and drafting of this, but we felt it very important to preserve 80 years or more of water law litigation, that it be retained in its exact language.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you on the motion of Mr. Murray that when this committee does arise and report, after having had under consideration subsection 2 of Section 3, that it recommend the same be adopted. So many as shall be in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Please read subsection 3.

CLERK SMITH: "Subsection 3. All surface, underground, flood, and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state for the use of its people and subject to appropriation for beneficial uses as provided by law." Subsection 3 of Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 3, subsection 3, of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I ask Mr. McNeil a question?

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE MCNEIL: I yield.

DELEGATE ARONOW: Mr. McNeil, was there any intent by your committee or of the drafters of this article-subsection 3 to provide for access over private lands to the general public in order to get to streams or reservoirs or waters?

DELEGATE MCNEIL: Absolutely not. Mr. Aronow, if I may expand on that a bit further. A delegate proposal, which was introduced by Delegate Berth&on, did specifically contain such a provision which provided recreational access to the high-water mark. The committee deleted that.

DELEGATE ARONOW: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I move to amend, on page 9, line 17 and into line 18, the words "for the use of its people and".

CHAIRMAN GRAYBILL: Are you deleting that?

DELEGATE ARONOW: Yes, those words, so that the subsection will read: "Waters within the boundaries of the State of Montana are declared to be the property of the state and subject to appropriation for beneficial uses as provided by law." And-Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I received a great many letters and some long-distance phone calls on this matter from ranchers along the mountain front in my district, who were extremely fearful of this provision. One rancher told me that they have some friends in Oklahoma-the State of Oklahoma has a provision similar to this; I have not

looked it up-but these ranchers told my friends that because of this, the public runs over their ranches to get to a river or stream, leave gates open, kill purebred cattle, drive the cattle away from the water when they come to drink; and when the ranchers remonstrate with the public, the reply to them is that the water belongs to the people and therefore they can't be kept away from it. I feel that ranching is one of the great industries of the State of Montana. It's part of the agricultural picture, and I know that theseranchers are having a difficult enough time with economics, without having their hay meadows ruined, without having their cattle run around so that they lose weight, having some of their livestock killed by trespassers, and also having their livestock get out by people who will not close gates. These ranchers down in Oklahoma had to build cattle passes—three cattle passes at their own expense because of the gate problem. And I think by eliminating these words, we will cause no problem. Now, I understand also that the State of Colorado merely states that unappropriated waters belong to the state, and they leave out the words "to the people of the state". And I ask your support for this amendment, as a large segment of the people, the cattle ranchers in Montana, desire it.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I concur in Delegate Aronow's proposal. The State of Wyoming has what is considered to be the model water clause in their Constitution, and they simply say, water is state property. "The water of all natural streams, springs, lakes or other collections of water within the boundaries of the state are hereby declared the property of the state, period."

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I would accede to that amendment. And the source of that language we considered carefully-Wyoming's Constitution, which said the water belongs to the state. We carefully considered Colorado's, which has been upheld by the U.S. Supreme Court, and it said the water belongs to the people. We had four delegate proposals introduced-two of them said it belonged to the state, two said it belonged to the people. So, I said it belonged to the state for the use of the people. But I think it doesn't, in any way, change the intent or the meaning of the section, which is to establish the ownership of the water so that the state will have standing to claim the water in litigation with the other states or with the US. government. So I think the-if this would clarify the apprehension of some of the water users, why, I think it's a good amendment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Aronow yield to a question?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I yield, Mr. Chairman.

DELEGATE BLAYLOCK: Cedor, all the reasons that you give for taking this out, I am in sympathy with. But on the other hand, I also have a worry about our people in our towns here in Montana-Billings, Great Falls, all the other towns-who may want to get to our water for recreation but are precluded from doing so because wealthy Californians and wealthy Easterners have come in here and bought up huge chunks of our Montana land along our rivers and then say to our citizens, "You can't use it." Now, do you have any solution to that problem?

DELEGATE ARONOW: Mr. Blaylock, the people that called me are second- and third-generation ranchers and Montanans. There weren't any Californians or Johnny-come-latelies. I think that there is some provision--well, no, there isn't. The Fish and Game Department is—does have a program, as I understand, to buy up land for access to rivers and fishing grounds. I am also sympathetic, but I have found no rancher that I have gone to and talked to-where I wanted to go on his land to fish-that I didn't ask him if I couldn't go to fish or hunt or whatever, that didn't give me access. And he told me-if he had some bull pasture, he told me where it was; and I always assured him that I wouldn't dump any beer cans or pop cans, or what-have-you or strew any lunch around on his land or do any damage or drive my car or vehicle over his hay meadows. And I think if we all deported ourselves in that fashion and style, there wouldn't be any problem.

CHAIRMAN GRAYBILL: Mr. Aronow, I wonder if you'd yield to one question from the Chair.

DELEGATE ARONOW: Yes, Mr. President.

CHAIRMAN GRAYBILL: Do I under.

stand it to be the sense of your remarks, which are, of course, in the record here, that a rancher could fence a fishing stream or river, so that I couldn't fish or boat or go up and down that river?

DELEGATE ARONOW: No, that is not the sense of my remarks. My-you can go up and down that stream all you want to. But the only thing is, you can't drive across therancher's lands willy-nilly in order to get to it. You can go along the county roads or wherever there's access. And you certainly may boat. You may hike up and down that stream.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I think this is probably a good time to tell the delegates why I had printed and spread on their desks this sheet of paper which went out just as we started discussing the water bill. That—

CHAIRMAN GRAYBILL: Mr. Gysler, could you supply the Chair with one?

DELEGATE GYSLER: Certainly. The dark line on there, starting up in North Dakota, as you will recognize, is the Missouri River, which comes from this state. As it comes down, you will find that on the border of South Dakota and Nebraska, there are some-those impoundments that go to the west-there are dams. Now, this is one thing that your committee is very concerned about and has taken a lot of time on this article to try to figure out how we can assure that when this moratorium goes off in 1978, that we can keep as much water for the people of Montana for posterity as we possibly can. And, I'll be brief, but, very basically, inside of this book-and what the plans are. There are approximately 53 million acres of land in the High Plains area between the hundredth and hundred and fifth meridians reasonably adaptable to irrigation-12,000-or 12 million in Nebraska, 12 million in Kansas, about 300,000 in Oklahoma, almost 16 million in Colorado, 133,000 in New Mexico and twelve and a half million in Texas. This is the reason that we tried to write as strong a position in Number 3 here as we possibly could. As Mr. McNeil said, the Constitution of the State of Colorado says that the water belongs to the people; the State of Wyoming's says the water belongs to the state; and this is why we incorporated both of them in there. The Eagle County case in Colorado was one where the Forest Service said, "All water that belongs on a-that comes off the US. Forest Service lands here is ours." This is what the Eagle County case was all about. If Colorado had not said that this water belongs to the people, as they did in their Constitution, they would have lost that case, just as the Rock Creek Canal Company in Valley County folded up before the Bureau of Land Management on the case that they had when they delved so deeply into it. So I-before we broke for lunch, I wanted you to take a look at this sheet so you have some idea of at least one of the plans that will be proposed for the use of Montana water when this moratorium ends in 1978.

CHAIRMAN GRAYBILL: Mr. Davis, it's now 12 o'clock, and Mr. Driscoll has asked for the floor for a moment. And then, I think we should recess for lunch.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I would reserve my point of personal privilege until Mr. Foster is present. He is not present at the present time.

CHAIRMAN GRAYBILL: Very well.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move that we stand in recess until 1:00 p.m. this day.

CHAIRMAN GRAYBILL: All in favor of the motion to recess until 1:00 p.m., please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:02 p.m.—reconvened at 1:13 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. At the beginning of the recess, we were discussing Section 3, subsection 3, and Mr. Aronow has an amendment before us to strike from lines 8 and 9 on page 4 the words "for the use of its people and", so as to make it read that the water would be-the State of Montana-declared to be the property of the state subject to appropriation for beneficial uses.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I believe I might be able to save the Convention

some time on the debate of this subparagraph. Delegate Aronow's comments and Delegate Blaylock's comments both were directed toward access problems, the question of access and trespass. This section does not deal with that question. The section deals with the ownership of the water, subject to appropriation for beneficial uses. It is not the intent and the language does not grant access rights or trespass rights. That specific question was considered in a separate proposal of Delegate Berth&on's; that is, the recreational use to the high-water mark. That proposal has been introduced in the last several Legislatures, is highly controversial, and for that matter and for that reason, it was not included here. So this section deals just with the ownership of the water and not with any access rights.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, during the noon hour I contemplated the effect of my friend Delegate Aronow's amendment to delete "for the use of its people". I was shocked out of several pounds of weight, which I can't afford. I want to discuss it, because it's a subject that's dear to my heart and is of great interest to the people of Ravalli County and Missoula County, thousands of whom use our watercourses in ponds and lakes. I share my friend Aronow's friends' feeling about the dangers of livestock. There are people who will shoot and kill livestock and leave gates open and one thing and another. As a member of the Ravalli County Fish and Wildlife Association for many years, I recall that this problem confronted us and we placed a hundred dollar reward for anyone who would turn in anybody who shot at any livestock, and in about 15 years there has been one case. I know that there are many more, but I think that they are singularly scarce; and I think that we have laws that protect us against such things as much as we can. Anyone who is going to shoot a stockman's critter is going to do it whether we have it in the Constitution or statutes or don't have it. There are that kind of people in this world. Now, at the present time there-stock watering and recreation are not considered as beneficial uses in Montana. That will be remedied-that's one of the good things that this committee has done in this report. It's in the next section, unless it's deleted-and I hope that it won't be deleted. I'd like to see the stockmen have a right to water their stock, and I'd like to see people who wish to fish and boat use our streams. I think that the water is the water of the people. I don't think that you can say that it belongs to the state and doesn't belong to the people. And, my goodness, if the people can't use what belongs to their state, this is a mockery, a travesty. It's something that we should correct. It is an astounding situation when one considers that stockgrowing and recreation are not considered beneficial uses at present. I favor incorporating them under the law. I submit that there are many instances where farmers, landowners, have locked up their land to prohibit people from using-securing access to streams. I know in the Bitterroot Valley there are miles of the Bitterroot River which are unaccessible unless one trespasses. That is the reason why we endeavored to change the law and secure cooperation between the landowner and the Fish and Game Department in providing access strips, so that people could get access to their fishing waters. Now, the fisherman is in a different-and a boater and the water skier and the rest of them who abuse these streams and ponds and lakes are in a different position with respect to the water than some other people. We all concede that the man who has a first, second or third waterright have the privilege of using that water in such priority as their rights stand. We all concede that beneficial use of water for domestic and industrial purposes is mandatory because we've got to have drinking water and something, and water to perform our ablutions, and we've got to have water for irrigation on the farms, and things of that character. But the landowner and the sportsman and the person who comes in from outside, lured by extravagant advertising of our remarkable fishing potential or hunting potential, they are lured in here and spend their money for licenses. It's one of the biggest industries we have in the State of Montana, and we're going to slap them down if we do not provide access. I think that we should go farther than that; I think we should see that the fisherman enjoys riparian rights-and maybe that is considered in the next section. Now, if the Montana Power Company or the Dakota-Montana Utility or telephone company or any other utility seeks to go across a stockman's land, whether he has pureblood bulls or poor-blood bulls, it doesn't make much difference. They can go across because they possess eminent domain. They pay, perhaps, a little bit of money to the landowner in order to get their easement, but after they pay for that easement, their maintenance crews can go across in taking care of the line as they please. Now, I think if we prohibit the use of the streams and the water and the lakes and the ponds, if we prohibit the fisherman or the hunter or the

camper or the picnicker who wishes to use the banks of those rivers and streams and lakes and ponds, if we prohibit them from using them, we are doing a disservice to the majority of the people of Montana, the vast majority. And I think that they will react in a manner in which we would regret, because their wrath will fall upon all stockmen and all farmers who lock up their lands or who have their lands locked up by virtue of adverse legislation. I think that water is for the use of the people, whether it be stockgrowing, industrial uses, domestic uses, recreation, or what-not; and I point out that there are thousands and thousands of people in Montana and visitors from without the state who come in here annually to use our recreational potential who will be very much upset. I call to your attention a splendid book of which you are all familiar, and I quote from Daniel 5:25, 26 and 27: "Mene, mene, tekel, upharsin", meaning God has marked thy kingdom and finished it; "tekel"-thou art weighed in the balance and found wanting-and I am quite certain that we are going to fit that description and fit that warning if we don't heed a little bit of sound judgment.

DELEGATE-SCHILTZ: Mr. Chairman, I would like to ask Mr. Romney a question, but I'm not going to because I already know the answer. I just wanted to show off and say that was the handwriting on the wall, wasn't it?

DELEGATE ROMNEY: You are right.

DELEGATE SCHILTZ: Would the gentleman, Mr. McNeil, respond to a question, please?

DELEGATE McNEIL: I yield.

DELEGATE SCHILTZ: Mr. McNeil, I must read Section 3, which we are now debating, with Section 4; and I would like to ask you if this is about the way this thing is designed. As I understand it, we're reserving all this water to the State of Montana in the interests of keeping some downstream state from claiming a better right to it and that then we say what beneficial uses are and then we provide that the-that anybody who wants to appropriate that water or claim it can file some kind of a claim and thereby establish a first claim to it as against somebody downstream, is that correct?

DELEGATE McNEIL: I don't think I can give you a Yes or No answer to that, Jack. The subparagraph 3 speaks of the ownership. For the benefit of the delegates, the right to use water is a property right. This is independent of who owns the water. The ownership really has no value in terms of being able to use the water. The value we foresee is that, if the state can say it owns the water, at least it can stand in court and in an adjudication with a downstream state or with the federal government and say, "We own it, so therefore we've got a right to talk about it and defend it." But it's still subject--and this doesn't affect in any way, now, the right of an irrigator to use the water. That's the valuable property right, and it can be sold separate from the land or with the land.

DELEGATE SCHILTZ: Will the gentleman yield to another question?

DELEGATE McNEIL: I yield.

DELEGATE SCHILTZ: Well, again I say, I'm considering what action I'm going to take in sub. 3 by what I read in sub. 4, and back-starting with line 16, I see that a diversion can be made-let me see-"a diversion or development work is not required for future acquisition for the forego. ing uses." Now, as I read that, it will mean that somebody can go into the courthouse and say, "I appropriate a hundred inches out of Yellowstone River for recreation purposes", and will that then reserve that hundred inches for somebody in-or for the State of Montana and that person?

DELEGATE McNEIL: Mr. Chairman, that is correct except you have to read that next sentence with it. "The Legislature must establish how a water right is to be established without a diversion and may establish priorities."

DELEGATE SCHILTZ: All right. Thank you.

DELEGATE McNEIL: So that you can't pick out any one single part and read it independently, or it just-it won't make sense. And while I'm on my feet, I might say that I failed to say that because subparagraph 3 does not speak to the problem that concerns Delegate Aronow, I would oppose his amendment and support the article as drafted.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I rise in opposition to Mr. Aronow's amendment for reasons different than what have been expressed by Mr. McNeil. As I understand the water law and the principle of the use of water in Montana, it is this

-that the State of Montana does not actually own the water. The State of Montana owns the water for the use and for the benefit of the people of this state. Now, there's a vast difference. If the State of Montana, as this amendment would then have this provision read-if it owns the water, it can, with impunity, negotiate for its sale. But if the State of Montana is, as I've always understood it to be, a trustee of the water in Montana for the use and benefit of the people, it may not enter into the negotiations and sale of the water of the State of Montana without the consent and approval of its beneficiary, the people. Now, water rights are never owned; nobody owns water. All that you ever acquire is the right to the use of water. And if you'll look at this sentence-at this subsection 3, you will note that the language to be struck is "for the use of its people", and I have objection to that because I think when you add the terminology "for the use of its people", you are reinstating the theory under which water has always been administered in this state and you are also preventing any bargaining of the water of Montana for sale outside. Now, secondly, insofar as this problem of trespass is concerned, the language that we're talking about is not language that has any application whatsoever to trespass, one way or another. And to ease your minds on this, let me tell you that I have had some rather personal and sometimes disagreeable experiences in the Supreme Court on this very problem of access to the public domain. For many, many years it was the unquestioned rule in Montana, and I can even give you the name of the case—Herrin versus Sieben-that gave recognition to what is known as the implied easement theory; and the theory of that was that any man had a right to get to the public domain. And the court said, "We'll recognize that right even to theextentofpermittingyou to cross private property if necessary to get to that public domain, but we will put this limitation on it. You must go to the owner and you must say to him, 'Mr. A., I want to cross your land to get to the public domain'." And, if Mr. A. says, "You may not cross", then you may say-or, Mr. A. can say one of two things. He can say, "You may cross, and here's the route you will take." He may designate the route. If he says, "You may not cross", then you, under the rule in Montana, have the right to designate your own route to get to the public domain. Now, what are we talking about when we talk about public domain? We're talking, at least, about navigable streams, and, in general, you're talking about the area between the high-water and the low-water mark, which is considered to be, on a navigable stream, public domain. So that, insofar as a fisherman's right is concerned, if you follow the law in Montana as it is today, you have thatright if you request it. Even if it's denied, you may still cross. That, at least, is the theory of implied easement as the rule is laid down today in Montana. So that this language which Mr. Aronow would have struck has no relationship whatever to the right to get to the eminent domain-the right to get to the public domain. It does have a great deal to say about the ownership and the character of the ownership of water in Montana, and I urge you not to accept the amendment.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I have a substitute amendment ofthree words that I believe will solve our problem. After the word-in line 8 on page 4, after the word "state" insert these three words: "and its people". So the paragraph would read: "All surface, underground, flood, and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state and its people period". Delete everything else. Thank you.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann has proposed an amendment which would put the words "property of the state and its people period." Do you intend to take out the phrase "and subject to appropriation for beneficial use as provided by law"?

DELEGATE ERDMANN: Yes, Mr. President. I don't think it's at all necessary. Beneficial use is paragraph 4, and priority of appropriation is covered very well in Section 5.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I would resist Mrs. Erdmann's motion there because--and speak for keeping the language as is in Section 3. I think it's important to keep that language, "subject to appropriation for beneficial uses as provided by law", because this will spell out that the Legislature may be able to act in that area in the future. The words that Mr. Aronow wanted to delete-"for the use of its people"--are very important. They were taken out of the Colorado Constitution and have been tested in the U.S. Supreme Court-this is my understanding--and have been very beneficial to the people of the State of Colorado in water battles where the state was

arguing with the federal government over water that arose on federal lands. So I would recommend to the committee that we not adopt either one of these amendments and stick to the original language in Section 3-subsection 3.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. My Delegate Proposal 127 is the language that appears in Section 3, except for the language "for the use of its people", and that was not left out intentionally. My thinking at the time of the drafting of this was that the state and the people would be synonymous. If it's beneficial to have it in there, I think it's important we leave it in. I very reluctantly argue against Mrs. Erdmann's amendment to strike out "subject to appropriation for beneficial uses as provided by law" because Section 5 really doesn't say that. It says, "priority of appropriation for beneficial use shall give better right". It doesn't say that the Legislature can make the additional beneficial use. I think the sense of this whole article is to protect Montana water, to make a strong statement that we own our water, and protect it for the future use of our state and our people from downstream appropriation. They started using their water a long time before we had our opportunity. It, perhaps, is our greatest resource. We don't deplete it. We have it again and again. So, there's nothing in this article intended to have anything to do with the question of relationship between landowner and fishermen or sportsmen. And I don't think, properly, the Constitution should get involved in that. You really can't, anyway. The deed you have to your ranch lands has certain restrictions and certain easements in it, and anything that's put in this Constitution isn't going to change your existing property rights. The question-this whole thing is not aimed at access or it's not aimed at anything to do except to say, "we in Montana". It's a broad, fundamental concept that this is Montana water, we want to keep it for Montana. And as water gets more scarce-when someone downstream wants to make an appropriation, it may at least give us a leg to stand on to say, "We reserve this to the use of our people as long as it's within our borders." As soon as it leaves the state, of course, it's gone anyway. I don't think we want to get into the recreation access situation in a constitution. It's too-there's no flexibility provided, and it just has no place in here, and it simply would be unworkable. So, I would have to argue against both of my good friends' substitute motions and think the way the language is right now will accomplish the purpose that was intended, if that's what you want to intend in this.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I think maybe it would help clear a little air if we actually knew what the Colorado Constitution says, so I will read to you from Article XVI, Section 5: "Water streams public property. The water of every natural stream not heretofore appropriated within the State of Colorado is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided. Colorado statute section 148-21-Z Declaration of public policy. It is hereby declared to be the policy of the State of Colorado that all waters originating in or flowing into this state, whether found on the surface or underground, have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with law." I think that the article that our committee came out on this does the best job of anything that I've heard so far, and I very strenuously resist both motions to amend.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I'm convinced. I will withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann's motion is withdrawn. Mr.—All right, the issue—

Oh, Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, I rise in support of the original proposal. I-in sympathy with Mr. Aronow, I have had the problem that he's been talking about. And I want to say to you, I have never refused any fisherman or hunter on my land. But I want to say to you that up until this year, for the past, maybe 10 or 15 years, I have lost from two to five critters a year. But I still stood my ground and I figured maybe someday that the hunters would respect me and so would the fishermen. And I went through a lot when we had fishing there. They left my gates open, they tore my fences down; and I still never got mad at them. So, I don't think that we can put in the Constitution to regulate our hunters and our fishermen, because I think that's going to have to

be done between the people and the hunters and the landowners themselves, and just like I say, it only takes one apple-bad apple-to ruin a whole good box. Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, perhaps I could offer something that might put this body at ease and satisfy Mr. Aronow and everyone concerned. If we could add onto Section 3: "This subsection is not intended to authorize trespass over private property except as provided by law." Mr. Chairman, I think this would probably resolve some of the fears that these ranchers have in respect to this subsection 3. I respectfully move its adoption.

CHAIRMAN GRAYBILL: Very well, you're proposing an amendment to--let's see, just a minute now-that would have to be a substitute motion, Now, is your substitute motion going to be in place of Mr. Aronow's and leave the section as is and add this phrase: "This subsection is not intended"-is that what you said?

DELEGATE WILSON: "This subsection is not intended to authorize trespass over private property except as provided by law."

CHAIRMAN GRAYBILL: All right, that will be a substitute motion by Mr. Wilson, which would be added at line 10, page 4. To add the language: "This subsection is not intended to authorize trespass over private property except as provided by law." Mr. Aronow-or, wait a minute-Mr. Wilson, do you want to speak on that any more?

DELEGATE WILSON: I think enough has been said, and I think that this perhaps will resolve the differences that has arisen here.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I think Mr. Wilson has found a solution for the problem which I have and it will serve the purpose very well, and I recommend the passage of Mr. Wilson's substitute motion.

CHAIRMAN GRAYBILL: Mr. Toole was up first.

DELEGATE TOOLE: I'm just curious. How can the Legislature authorize a trespass? I'm not an attorney; perhaps this is a style and drafting problem-is it? Well, how can the Legislature authorize a trespass?

CHAIRMAN GRAYBILL: Mr. Toole's parenthetical question has been asked. And, Mr. Schiltz, do you want to answer it?

DELEGATE SCHILTZ: We'll take a shot at it in Style and Drafting, but I think Mr. Toole is absolutely right.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I oppose the amendment. I think the committee's got the sense of what we're trying to do-is make a strong statement of Montana water belongs to Montana and its people. It has nothing to do with trespass. There's no such a thing as trespass authorized bylaw, and I think we defeat the sense of it, and I oppose Mr. Wilson's amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Wilson's substitute motion that the subsection 3 be left intact and the following sentence added onto it: "This subsection is not intended to authorize trespass over private property except as provided by law." So many as shall be in favor of that substitute motion, say Aye,

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's dead. Now, we're back on Mr. Aronow's motion. Mr. Aronow's motion is to strike the words "for the use of its people." Is there further discussion? (No response) Very well, the issue arises on Mr. Aronow's motion to amend subsection 3 by striking the words "for the use of its people", so the sentence reads: "All surface, underground, flood, and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state, subject to appropriation for beneficial uses as provided by law." So many as shall be in favor of Mr. Aronow's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Mr. Aronow's amendment fails. We're back on the principal Sec-

tion 3. Is there further discussion or amendment? Mr. Mahoney.

DELEGATE MAHONEY: Might Mr. McNeil-would he ask-answer a question for me, please?

DELEGATE McNEIL: I yield.

DELEGATE MAHONEY: Here on line 6 you say, "All surface, underground, flood and atmospheric water within the boundaries of the State of Montana are declared to be the property of the state." Now, what are you going to do if somebody wants to drill a well'? Is he going to have to get the permission from the State of Montana to drill a well on his own land?

DELEGATE McNEIL: Absolutely not, Charley. That has-this statement of ownership, as explained by Mr. Berg and myself, has nothing to do with the right to use it. Even though the state owns it, it is still subject to appropriation as provided by law. You can drill your well and file your water rights, and you've appropriated the water.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Last session of the Legislature, this thing was tried in the Legislature to get just this kind of a thing so that everything would be handled out of Helena. You couldn't get a-drill a well unless you got permission from Helena-and this was killed in the last session of the Legislature. Now, are we coming in here at this session and trying to do the very thing that was killed in the last session of the Legislature? This is what I'd like to know.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this section does not speak to that question at all. Subparagraph 6 does, and it retains our present system of water right control at the local level, which is established by the Legislature. But subparagraph 3, that we're talking aboutnow, speaks of the ownership and not centralized control, which I think is your concern.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Just a short comment that I think has not been mentioned. I sat in on—as a spectator on the committee as they discussed this problem, and it came out at that time that in 1978 the federal government has plans to appropriate all water in Montana to federal ownership. And I believe, as I recall, the conversation was that this wording would forestall that effort by the federal government. Now, it is my understanding--at the present time, the federal government has laid claim to all water that drains into the Canyon Ferry Dam, and ranchers who do any diversion now are expected to pay Uncle Sam for the water that they are diverting. The consideration, I think, that lies behind this subsection 3 is that in North Dakota there is now a very large irrigation project. I think it encompasses something like 500,000 acres, and I believe their eventual plan over there is something in the 5- to R-million acre range. Those people are going to have to look to Montana water if they're going to get that land wet over there, and it is this thinking or this recognition that the federal government has in mind when they say, "In 1978 we are going to appropriate all unappropriated water in Montana." So if the state, through this wording, can lay claim in the name of the people to this water and if we can fight the legal action by the United States government for a period of 10, 15, 20 or 50 years, it will give the people of our state more opportunity to develop the use of this water and establish a just and legitimate claim. Because that, really, in the eyes of the federal government, now is the only way that you can actually claim water out of a running stream.

CHAIRMAN GRAYBILL: Mr. Berg, are you up?

DELEGATE BERG: Yes, I am. Mr. Chairman, I should like to comment on the safety of the water rights in Montana, particularly if they are clearly enunciated in the Constitution. And I want to refer you to Article IV, Section 1, of the United States Constitution, which says, first sentence: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." Now, this is the section upon which we will rely for the protection of our water rights against federal interference.

CHAIRMAN GRAYBILL: Very well, the question arises on the issue of subsection 3 of Section 3 of the Natural Resources Report. I've forgotten who moved it.

UNIDENTIFIED DELEGATE: Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Murray.

Members of the committee, you have before you for your consideration subsection 3 of Section 3, upon the motion of Mr. Murray that when this committee does rise and report, after having had under its consideration, that it recommend the same do pass. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Will the clerk please read subsection 4.

CLERK SMITH: "Subsection 4. Beneficial uses include but are not limited to domestic, municipal, agriculture, stockwatering, industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by the law, together with future beneficial uses as determined by the Legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The Legislature shall determine the method of establishing those future water rights which do not require a diversion and may designate priorities for those future rights if necessary." Subsection 4 of Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this subsection is the real heart of the proposed change to the water rights. For the benefit of those who may not be familiar with Montana water law, presently there must be a beneficial use; contrary to what Delegate Romney said, stock watering presently is a beneficial use. However, in order to obtain a valid water right, there must be a diversion of the water from its natural stream. This section is intended to change that, and I urge you to recall that in subparagraph 1 we've protected all existing rights, so this applies only to future appropriations and only to waters that are not now subject to a valid water right. It is intended to permit recreation, as well as stock watering, to acquire a water right without the necessity of digging a parallel channel and making a diversion. To insure that recreation does not, the day after this might be passed, immediately file upon all the water in the state and foreclose future industrial or agricultural development, we have provided that the Legislature shall determine the method of establishing rights which don't require a diversion and, further, indicate that the Legislature may designate priorities if they determine that to be necessary. The purpose for that is to now permit Montana to claim a use for all of its water that's presently flowing out of the state. Yet, at the same time, leave it up to the Legislature so that they can devise some system, stream by stream or river by river, so that future development of agriculture and industry will not be foreclosed by this recreational right. To those who are concerned that to permit this will foreclose future development, I draw your attention to this water resource plan which Delegate Gysler had photocopied and put onto your desks. The minute this kind of a plan ripens into reality, a downstream state or the federal government will be entitled to claim any water which is not now subject to a water right in Montana. And I submit to those who are concerned that recreation is going to be a stumbling block to your agricultural or industrial development in the future, that you are going to have a better chance arguing with the Legislature of Montana than you will going down to Austin, Texas, and fighting 20 million Texans. We have provided that the Legislature can protect and can establish priorities if necessary, and we submit that this is in the best interests of the people of Montana. In our committee hearings we had witnesses testifying representing farmers unions, water companies. They all conceded that we must recognize recreation. There is concern as to how to do it. We have left the details of that to the Legislature so that recreation and the traditional water users can live together for our future water rights. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart. Let's see-wait a minute-Mr. Wilson. You're second, Mr. Etchart.

Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN GRAYBILL: Do you want us to read your amendment?

DELEGATE WILSON: Please.

CHAIRMAN GRAYBILL: Very well, will the clerk please read the amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 4, page 4, of the Natural Resources Report Number 6 as follows: At line 18, page 4, substitute the word

'may' for the word 'shall': and further amend at line 20, page 4, add the word 'use' between the words 'designate' and 'priorities'; and further amend at line 21, page 4, by adding the following sentence after the word and punctuation necessary: 'Those rights which may be established without a diversion shall be wholly or in part junior in right to those appropriations for which a diversion is made, regardless of the date of the appropriation.' Signed: Wilson."

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I think perhaps it would be appropriate to add after "diversion", "or development".

CHAIRMAN GRAYBILL: What was that, now?

DELEGATE WILSON: After the word "diversion", simply add on "or development".

CHAIRMAN GRAYBILL: "Those rights which may be established without a diversion or development"?

DELEGATE WILSON: Right.

CHAIRMAN GRAYBILL: That's on the printed material that Mr. Wilson has had passed around. The first line of the bottom four lines, add the word "or development"; then it reads: "Those rights which may be established without a diversion or development".

Mr. Wilson.

DELEGATE WILSON: Mr. President. Appropriations for recreation, scenic wildlife uses require no investment, so they could promptly cover all unappropriated water in the state. The appropriations for economic uses, which require planning and investment, would then be permanently stopped. This would leave Montana water in the streams for use in downstream states. We believe that recreation, scenic, wildlife appropriations should be wholly or in part junior in right to domestic, municipal, agricultural, stock water and industrial appropriations. Mr. President, I move the adoption of this amendment.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mr. Wilson's amendment?

Mr. Gysler.

DELEGATE GYSLER: Would Mr. Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson, will you yield?

DELEGATE WILSON: I yield.

DELEGATE GYSLER: Mr. Wilson, we haven't really gotten together as a committee to discuss this because of time, but basically what you're saying is, I think, more or less the feeling of the committee, so there's probably not too much objection. But I think that the first "shall" that you struck and made "may"-it would seem to me as though that should be a directive and not a prerogative, and I think probably the majority of the committee would feel that way; that the Legislature should go ahead and do this and prevent future haggling that might arise over these things. So would you consent to changing that word back to "shall", like it was, because we figured it should get done.

DELEGATE WILSON: Mr. Gysler, I wouldn't have to much objection. I spent all one day in court trying to determine what the difference was between "may" and "shall", and the court determined that they both meant the same thing.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I have a substitute motion, if the clerk will read it, please.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 4, page 4, lines 11 through 21, inclusive thereof of the Natural Resources and Agriculture Committee majority proposal by deleting the same in its entirety. Signed: Etchart."

DELEGATE ETCHART: Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Etchart has moved, by substitute motion, to delete Section 4.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, members of the committee. I have a vested interest or a vital interest in this question I want to disclose to the body. I'm a rancher. I'm greatly dependent on future water development, and I'm a member of the Glasgow Board of Directors of the Glasgow Irrigation District. I am vitally interested in the water rights that are in this section of this article. Last Monday, I was privileged to visit

Dave Drum and Leon Miller's feedlot at Shepherd, Montana, near Billings, where I viewed 35,000 beef cattle in a brand-new, shiny feedlot which has all of its wiring underground and has the latest environmental safeguards imaginable. I feel this sort of development is a wave of the future for the economic development of our state, and a great share-Dave, he's too modest over there-but a great share of the development of this type is dependent upon corn silage and forage production from irrigation developments. If we want economic development in Montana, we must also provide for water development. I move to delete Section-subsection 4 because this material contained therein is statutory and is highly controversial. It has failed enactment by the Legislature the last few sessions, and it would certainly be a millstone around the neck of this new Constitution in the form as it is printed in the committee report. Subsection 3, which we just passed, does all that we actually need to do in writing this Constitution. It provides the legislative machinery to enact the material which is presented in subsection 4. Subsection 4 is legislative in content. It contains highly controversial proposals which have failed the test at the last few Legislative Assemblies, as 1 mentioned before. This has no place in the basic document we are writing for the State of Montana. Consider what the State of North Dakota has proposed in its new Constitution. Just 24 words is all they needed. The language that North Dakota is proposing reads as follows: "All surface and subsurface water shall remain forever the property of the people and subject to appropriation for beneficial uses as provided by law." Simply stated, North Dakota reserves all their water for the use of their people and as the Legislature decides by law. This is flexible, as our subsection 3 is flexible. It will meet the needs of the future water developments of the state, and yet it will protect the water of the state for the people of Montana and for our children and grandchildren. Compare that with the legal pitfalls proposed in subsection 4. Subsection 4 makes recreation, scenic waterways and habitat for wildlife a beneficial use of Montana water. It further provides, in line 16 and 17, a diversion or development work is not required for future acquisition of a water right for the foregoing use. In addition, Section 5 provides for priority of appropriation. This means all beneficial uses are thus in competition to lay claim to Montana's water. The users other than recreation, scenic waterways and habitat for wildlife, who are, incidentally, the future water developers in the state, are at an immediate disadvantage, because any of their uses require the expenditure of considerable sums of money and it would take a great many years for these things to happen. Development takes time, and it takes money. Now, how much time and money does it take to appropriate all the unappropriated waters in the state for recreation, scenic waterways and habitat for wildlife? Since the water does not have to be impounded or diverted, there would be no cost to the Fish and Game people except the legal cost of filing on the water. This would guarantee that the Fish and Game would be able to beat most other potential water users and developers to the unappropriated water in our state. I had a telegram spread on your desks; I think if you will look--about a day ago-you can find it. This telegram is from Mr. Harold Aldrich, who is Regional Director of the Bureau of Reclamation. He covers about a four-state area-and, incidentally, he's in command over in North Dakota, where a lot of our water is going, and is planning the developments that Mr. Drum mentioned. But I would call your attention to his analysis of this water article as it refers tosubsection 4. He says, "I believe subsection 4 of Section 3, in its present form, should be omitted because it will halt future economic development in Montana. Under Section 3, subsection 4, appropriations for recreation, scenic, wildlife uses require no investment, so they could promptly cover all unappropriated water in the state. Appropriations for economic uses, which require planning and investment, would then be permanently stopped. This would leave Montana water in the streams for use in downstream states, thus stopping development." Members of the committee, I feel that we should delete subsection 4. I feel that this is statutory, that--something the Legislature should do, and I ask you to support in this.

DELEGATE McNEIL: Mr. Chairman. I, of course, rise to oppose Delegate Etchart's motion to delete. I agree with him that it is legislative and statutory in nature, but I submit, so is everything else in this Constitution that goes beyond the Ten Commandments. It has been put in here because the Legislature of Montana has refused to act. They have refused to recognize the interest of recreation in our waters. The-I submit that this is an ostrich approach to the problem-or refusal to approach the problem--and as a result of the nonaction of the Legislature, substantial quantities of Montana water are leaving this state every day,

and our own law does not provide any claim by anybody to that water. Mark referred to the fact that there is no economic expense necessary to appropriate water for recreation. I submit that there will be no economic expenditure necessary for a downstream state or the United States government to claim this same water that's departing the state. If we are to save the water for the state, we must provide that we have a valid claim to the use of the water or we'll lose it. I strongly oppose the motion to delete. I also would like to mention that the telegram to which Delegate Etchart referred contained another paragraph: "If it is to be retained, believe we should stipulate that recreation, scenic, wildlife appropriations should be wholly or in part junior in right to other rights." I trust that you will recognize that language in Delegate Wilson's proposed amendment.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I'd like to ask Mr. McNeil a question.

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE MCNEIL: I yield.

DELEGATE RYGG: Mr. McNeil, first of all I want to say I know nothing about water rights, but I had a phone call yesterday regarding this particular section. And the man's question went something like this-that "Right now", he said, "I understand that anyone who wants to put in an appropriation for water for something, for whether it be fishing or recreation of some kind, could do so. Then, if this man later on wanted to buy that land or rent that land and wanted to use it for irrigation purposes, then he could not." Is that correct?

DELEGATE MCNEIL: No, that is not correct unless the Legislature would so provide. Now, the way the majority proposal is drafted, the Legislature must determine the method of establishing a water right without a diversion and may establish priorities. So, the question you've posed me, I suppose, would be true if the Legislature would say-and I doubt that they would do this—but if they would say a fisherman could file a water right in Farmer Brown's field and have a prior right. If they would, if the Legislature enacted such a provision, I suppose that question would have to be answered Yes; but it's up to the Legislature, and I can't believe that they would ever go that far.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Would Mr. McNeil yield to a question, please, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE MCNEIL: I yield.

DELEGATE NUTTING: Mr. McNeil, is it your opinion-the committee researched this considerably-is it your opinion that if we do not have actual filings on these, on the water of Montana, that we could lose it to downstream interests? We must have actual individual filings?

DELEGATE MCNEIL: Mr. Chairman. Absolutely, and that's the real heart of this, Dick. Right now, our own law-our Constitution and our statutory law and our own case law does not anywhere provide that recreation, except with the blue-ribbon trout stream bill, which applies just to a few blue-ribbon trout streams--with that single exception, we have no claim of any kind to the water that's flowing out the Missouri River, for example. In litigation or negotiations with the downstream states or the federal government-if I were representing the federal government, I would quite simply say, "I'm going to take all the water that's leaving the state; drain it dry", and you, representing the State of Montana, could not even say, "But look at our law." We're at least claiming it ourselves. We don't have anything right now that even says we have a right to use it. I should go one step further in explaining that. Now, by subparagraph 3 we have provided the state has ownership for the use of the people, but in litigation or negotiation with a downstream state, the federal court would look not only to the ownership but also to the use, and say, "If you're not"-"Even though you're claiming you own it, if you're not using it, it's subject to appropriation", and we could lose it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr.-Mr. President, will Mr. McNeil yield to a question?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE MCNEIL: I yield.

DELEGATE DAVIS: In this section, Mr. McNeil, assume that you-it would pass and that you would declare all the unappropriated water now appropriated for scenic, wildlife, recreational and habitat, so forth, what then will prevent it from going on out through the state? I mean, I don't follow your argument that this will prevent it from running downstream to the neighboring state. Are you going to impound it?

DELEGATE McNEIL: Mr. Chairman, nothing would prevent it from running on out of the state. Water is going to flow that way anyway. The point is that if a downstream state makes an appropriation, they can then drain it dry, they can divert it, they can do anything they want with it, and they would have a prior right. They would have the absolute right to pick it up and take it away.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I rise in opposition to Mr. Etchart's motion to delete. At first I thought that this section on beneficial uses was unnecessary, but as I sit here, I realize the main point is rivalry now between states for this water that originates here. And if all of the water that is not appropriated they can file for downstream--we are a state with a very sparse population, and so it's going to be hard to project ahead very accurately our industrial or irrigation needs-but certainly if we throw in here the area of recreation uses, we are going to be able to document and prove need for a greater sum of water when we all get together at the end of that moratorium. And I would hate to see us not have this area of recreational use that we could document, so I support the paragraph as drafted by the committee. But I think it's very important to add Archie Wilson's paragraph.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I rise in support of the majority proposal. I am in complete concurrence with Mr. McNeil today, and I would like to say that when I attended water meetings in 1965 before this moratorium was imposed, I attended meetings at which representatives of California and Arizona and New Mexico looked to this area and looked to it, I think, justifiably, because they are going to be in big trouble. I have-I attended a meeting in Salt Lake and they talked about desalting and they talked about weather modification. They are searching every area for water, but the obvious way to go is to divert water from the Columbia Basin, from the Missouri Basin to these dry areas. Now, I have before me the most recent study. Now, this Colorado River Basins Act included many factors besides this moratorium that Scoop Jackson had imposed that expires September 30th, 1978; it also had the factor that an inventory must be conducted in the 11 states involved. Now, we've reached the point in Montana where this inventory will be complete by late '72, possibly early '73. Now, after all the water in the state is inventoried and classified, we start estimating our needs. According to the current law, here is what we have. We estimate our population, which we all know is not very high, and our per capita water needs. Next we estimate our industrial water requirements, and that means we try to provide for future industrial growth. That's difficult to estimate, we know. Then we determine our agricultural productivity and irrigation potential. Then we evaluate the water project sites, costs and benefits. Then there's the projection of the state's overall water requirements, the adequacy of supply, and suggested actions to augment supply and solve problems. I talked to experts in this field and they say that when all these are taken care of, that we really will not have justifiable reason for keeping water in this state other than in those areas unless we have recreation stipulated as a beneficial use. And I have here in my hand the projected progress report for the Western U.S. Water Plan. Now, this is the important one, because this projects to the year 2020. And even though this moratorium exists, the studies-the reconnaissance studies are going on, and already plans are being made on how this water can economically and feasibly be diverted to the dry Southwest. And it will be economical and it will be feasible and they will do it; and I think we have to have recreation as a beneficial use. I've heard people say, "Well, why not treat water as a commodity like oil? Why not sell it?" We can become rich this way. But, if we sell it, then they have right in the future. Maybe we won't need it for a few years. They'll have the right, in the future, to this water which we sell. And then if we develop the right, that's it. When I attended these meetings years ago, I'd hear people in the drier—in the areas of the Southwest say, "Well, it doesn't make sense. We need the water and you don't." Yet the representatives from Washington and Oregon and Montana would say, "Well, we have the water here. Why not come to us where the water is, rather than have the water diverted down there?" It just

doesn't make sense not to take advantage of this beautiful resource and to establish recreation as a beneficial use. I completely support you today, Mr. McNeil, and your majority report.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, I would like to ask Mr. McNeil if he'd answer a question.

DELEGATE MCNEIL: I yield.

DELEGATE STUDER: Under Section 3, under the wording "use of its people", could not recreation and wildlife get an appropriation for water?

DELEGATE MCNEIL: If the Legislature so provided, yes.

DELEGATE STUDER: That's all. Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I have wires from three ditch company officers and phonecalls from a fourth, asking that this Section 4 should be deleted as dangerous and unnecessary. Now, these ditch companies represent probably hundreds of people and many ranchers in the vicinity of Yellowstone, Big Horn Counties, Custer County there, so I would heartily support Etchart's amendment.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, if I may, I would like to take a trip to North Dakota with Mrs. Reichert. (Laughter) I feel, sometimes, we've been conquered by North Dakota and they really never fired a shot.

CHAIRMAN GRAYBILL: You've got to show the relevance of your proposal—

DELEGATE DRUM: The relevance will emerge, Mr. Chairman.

CHAIRMAN GRAYBILL: -to debate here. (Laughter)

DELEGATE DRUM: It's a genuine relevance, sir. The facts of the matter are these, and let's look at the facts. The people in North Dakota, as they develop their irrigation projects overthere, are establishing very valid rights to the water that flows through Montana. Now, this water is always gqing to flow through Montana at some level and the fish and the game-and I'm a fisherman and I'm a hunter, and I love that fresh, clear water out there. But, as the acres of irrigated land are developed in North Dakota-and we are very slow about it in Montana, but we have as much potential as they have over there-but as they establish rights to that water, from that point on, once they are using all of the water that comes out of Montana on their irrigation projects, we will have no legal right to do anything with that water except go fishing in it, to go boating on it. And it's going to be here, true; but the thing this body should recognize is that-the words of Mr. Aldrich-"You are closing out any further development of irrigated land in the State of Montana." From the point that the North Dakotans-You have a question mark on your face, Mrs. Reichert, and I would like to say this as clearly as I can. Once they claim the water that is running through Montana, at that point, we will never be able to develop a single irrigation project in the State of Montana. Now, to go back to Mr. Etchart's few words of-complimentary words about the cattle-feeding business in Montana, and I would like to spread it out to all of the agricultural potential in Montana and I would even like to go back one step further to the Finance Committee that we have been sitting in, a group of us, trying to come up with a article. We've listened to witness after witness that has said, "We need a bigger piece of the pie. We need more money." And no one, no one talked in terms of making a bigger pie. The solution to most of Montana's problems are to bring agricultural development, some type of beneficial and desirable industrial development, and it will make a better, happier place for all of these people to live. So if we can adopt Mr. Wilson's amendment to this section, I am sure that we will give a junior right to the beneficial uses, such as the sporting, the visual, the boating and that type of use of the water. But we will preserve, because of the previous paragraph, some of the rights we hope to preserve that Montana can lay claim to this water, and as we develop it we can continue to use it here in Montana rather than in North Dakota. And thank you for your attention, Mrs. Reichert.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I would like to echo. I live just a few miles away from the North Dakota border, and 11 years ago I made a survey-1 think it took us seven days-of the

new Garrison Diversion Project they were thinking of at that time. And I spent this whole seven days looking over all the area that they intended to irrigate with water that was flowing out of Montana. Now this Garrison Diversion Project was cut back somewhat because some of the lands couldn't take the water without waterlogging, but it's still a mammoth project, and I want to call attention to the fact that we'd better make sure that we keep this use of this water of Montana to the extent that we're able to do so.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I certainly join in Mr. Wilson's amendment if we are to adopt subsection 4, which, in effect, of course, would give wildlife and recreational uses a junior right over other needs for the water here. The fact-now, we spent a lot of time this morning on the matter of the coal reserves here. We have the last big coal reserves in the United States right in this area, and you can be sure that industry is going to come here. Now, Oak Ridge, Tennessee-I've spent some time there. The only reason that the Atomic Energy Commission developed that plant at that location is because they had, at that time, large reserves of coal and a lot of water. We have tremendously greater resources of both of those than they had in that area, and this morning on the radio, it was-there was some discussion on a news broadcast that I heard that the Atomic Energy Commission is considering developing a large, billion-dollar atomic energy power generating plant somewhere in eastern Montana. It's only talked of, certainly no fully developed plan, but I think that it might come. The uses of water and coal for those things are a natural. We have ample reserves of them, and they certainly should have prior rights over recreational uses. So, I would join Mr. Wilson's comments if we are to adopt Section **4,** sub. 4.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I'd like to try and ask and get answers to a couple of questions. I think Delegate McNeil, if he would yield.

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE MCNEIL: Yes, I yield.

DELEGATE FURLONG: My question has reference to the-it would be lines 18, 19, 20 and 21 on page 4. Let's assume, for the purpose of my question, that I live on a stream now and I have some right of diversion and there is existing diversion left; in other words, all of the streamflow has been diverted by prior right. Are you with me so far?

DELEGATE MCNEIL: Yes.

DELEGATE FURLONG: Now, under this proposal, then, it is possible that the remainder of the water not at this time appropriated could then be appropriated under this blanket procedure that you have.

DELEGATE MCNEIL: Yes, although the way you've phrased that question, there's—that's-there's no change from our present water law. The water that's in your creek now that isn't appropriated, I can appropriate it; if I put it to a beneficial use, I have acquired a valid water right to your unappropriated creek.

DELEGATE FURLONG: Right, but I want to be sure, in my own mind, that it could then be appropriated in its entirety.

DELEGATE MCNEIL: Yes

DELEGATE FURLONG: All right. Now, my second question--may I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE FURLONG: Mr. McNeil. If, because of that question-you made reference to the telegram-I forget the man's name-Harold Aldrich. You made reference to his suggestion on 3-4 that if the majority proposal is to be retained, that the junior rights should be given to these appropriations. My question is, does the majority-I understood Mr. Gysler to indicate that-but does the majority proposal or does the majority group support Mr. Wilson's proposed amendment, which would, in fact, make it a junior right'?

DELEGATE MCNEIL: Mr. Chairman. In answering that question, the majority proposal, as drafted, contemplated that the Legislature would do just that. However, we heard testimony from many experts in water law, primarily Professor Stone at the University, and he suggested, don't lock priorities into the Constitution because they may change; in addition, they may be different on one stream than another. They quite certainly would be. As far as Delegate Wilson's

proposed amendment is concerned, this is what we contemplated the Legislature would do. I still think that's theproperapproach. However, I could live with it and would certainly not oppose it if this will satisfy the ditch companies and the irrigators. We did not-there was no intention that any fish would ever stop development of irrigation. That is not the intent. However. if we ignore recreation, we're going to lose our water. It's that simple. We felt-or the majority felt, in drafting that, that the question of priorities should be left to the Legislature to be applied to each specific stream or water district or so forth; but if there is great concern about this, I think the proposed amendment of Delegate Wilson would assuage the fears of those who think that recreation would foreclose development. And because of the language "shall be wholly or in part junior", I think that would still leave the Legislature enough flexibility as was suggested by one of the ditch companies to permit a minimum streamflow in some areas where they're present. This couldn't, of course, affect any present waterrights, but where there are unappropriated waters, I think this would be broad enough language to still permit the Legislature some flexibility. So I would-although I think we should pass the majority report as written, I would not oppose Delegate Wilson's amendment.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I think this is probably one of the most important things that will come before this entire Convention this whole time, is water. And we're sitting around here and quarreling and arguing about our-amongstourselves, and I want to answer Mr. Etchart in regard to North Dakota. That is a water-importer state, and the Missouri system, 83 percent of the water of the Missouri system comes out of the states of Wyoming and Montana. Montana puts it in through the Yellowstone and a lit& bit down-it isn't too much-comes out of the Little Missouri. The rest of it comes out of this great State of Montana, east of the Continental Divide. Now, what they're trying to do as fast as possible downstream, both in North Dakota and South Dakota, are trying to lay claim to this water. North Dakota originally; the Garrison Diversion Conservancy District, 250,000 acres of land. Now, down in South Dakota they have a new proposal with a hundred and fifty thousand acres of land, all coming out of this great state; 83 percent of it is coming out of these two states. Now, if we sit here and argue amongst ourselves, we're going to just make it so much better for them. Now, I happen to know personally the man that drew this plan that you're looking at. I know him personally. He's a very good friend of mine. This takes out, in western Nebraska-going to take out of this system clear down below to the great State of New Mexico, and it isn't in Arizona but it's in New Mexico. They are not crossing the Divide in west Texas. When he talked to me about this, I says, "Okay, then, you go out and get the Moapa project, which starts in Alaska, and for every acre-foot of water you take out of the State of Montana, you put one in. This is what I want; I've stood on it a long time. I've been-Arlyne Reichert-I have attended a many of these hearings on water, and to me it's the state secret of this state to-now if we don't lay some claim to this situation, WE can stop the coal production in eastern Montana but to one thing, shipping it out on rail. We'll have no way to get-because we won't have water to develop the necessary steam for the cooling that's necessary. I see a great future down there. Now, as soon as the dry years come again, and they will, you're going to find a clamor for irrigation, because, as to-Mr. Drum and Mr. Etchart both stated--feeding of cattle in this state is a new industry, and I certainly would like to keep the dollars here. There's a great asset in keeping that livestock, that steer here until he's a yearling. We'll get taxes off him. We don't get a cent of taxes off of it as a calf if it's shipped out of this great state. Let's go on a little further with this. If we have to come out and have this-these real free-flowing streams, we're going to have them. We have already given the downstream states Y-foot channel from the-from Sioux City down. Great Governor Sam Ford, back in 1944, testified in Washington against the Y-foot channel from downstream there. He says, what you're going to do is taking Montana's water. Now this is the first development was that you took the stream and says you must let this much water downstream. We have an awful time when we go down in eastern Montana when the droughts come. Whenever at Glendive-and I think both Mrs. Cross and Mr. McDonough will recognize—when the rocks started showing in the river, then they've got to slow up irrigation down in the number 2 project on the Yellowstone, and that is the project at Sidney. First call is Huntley; second becomes the other. Now we're finding these people trying to delve in, and I think it's time for us to quit fighting amongst ourselves. Let's unite to save the water for this great state, and I certainly agree that this can work if we can get Mr. Wilson's proposal to come some balance in here. Now, you may

not agree with it, but I think it's a problem thing that maybe we can satisfy because all the telegrams I havereceived has says, "Get rid ofSection 4". I want Section 4, and I think possibly the amendment of Mr. Wilson's would make it correct, and I certainly hope substitute motion does not prevail.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I am rising here mostly in a point of information for myself. I didn't miss very much of the deliberations of our committee, but occasionally I did have to be gone. This term "junior" bothers me. According to the dictionary, it says "lower in standing or rank and inferior or subordinate". I wonder how this affects this claim to water if Montana ever has to go in court with the U.S. federal government. C.B., could you clarify that for me? I'm just not sure what this does if we add this to Section 4.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I'm not sure, Louise. I do not know, and I don't have a crystal ball to predict what some federal judge would do. Delegate McDonough just mentioned a-made a-asked me a question that I think goes right to the heart of this. If we put in our own Constitution that recreation is junior, rather than leaving it up to the Legislature for specific waters, that at least a downstream state could claim all right because recreation is junior in your state; our claim for irrigation is senior to your own claim for recreation--and get around our whole purpose here anyway. I would have that concern.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I hate to speak on this issue, but it's so important. I would like to speak to the junior right. Assuming that all the water is appropriated for recreation, that means you have to leave it in the stream. We constructed a dam in Beaverhead County, which works for Beaverhead and Madison County, where we appropriated water and stored 200,000 acre-feet, which makes a great recreational area without any concern for access; the people can come and go. We've stabilized the streamflow for miles where the fish used to die. Now, recreation, the water has to stay in the stream. We could not have constructed this dam if recreation had appropriated and say, "We want the water down here for recreation." It would have flown the creek and on out of the state. So if you have a junior right, that means we can still have small watershed storage projects. They store it and release it. It gets back in the stream. Or major storage projects without our state. But if you take the position that your recreation right is equal or superior, if you appropriate all the water in Montana streams that's unappropriated and say "This is recreational water", then we cannot appropriate it upstream subsequently for watershed storage projects which subsequently gets back in and makes a beautiful recreational situation. That's the thing that concerned my question when I asked Mr. McNeil, "How are you going to keep it from going out of the state?" Incidentally, the Clark Canyon Dam in southwestern Montana would have never been constructed. The Fish and Game Department opposed it. They came to the Legislature and said, "We want to appropriate all the unappropriated water." The only water that's unappropriated is the high water. Their theory was, we'll save the fish from dying when the water is low. Well, all thatwateris already appropriated, so it's only the high water; and, of course, that high water is all the way, well on its way outside the border of the State of Montana when it's needed when the water is down. So they would not have approved this dam. You would have had to go through them to see whether they approved of it. Now, their philosophy has changed entirely since that time. They've seen the benefit of a stabilized flow of water all summer long downstream. It has made tremendous difference on the fish and wildlife. There's access, there's flow all the way down for many, many miles. And you've got a great deal of recreational thing that would not have come into being if all this water were tied up in a recreational lock-in. That's one reason why I'm not going to object to Section 4 if we can get an amendment, because I realize so many people think that they are the only ones for recreation—it's a new idea in their heart. If you don't vote the way they do, you're a company man and all the other insinuations that have been made on this floor here in the last few days. But there's a lot more to these very important projects and this is one that I speak to at length because it is so important to the water. It's made both recreation and it's made both economy in southwestern Montana very harmonious. It's improved both, and we have a great recreational area there. We wouldn't have had it if the recreationalists had had their way, or the environmentalists that are opposed to dams, at that time. So there's some harmony that you have to strike in these things. It has worked in

Montana and will continue to work. That's why any right, I think, you're going to have to put down; it has to be junior if you want to be able to have upstream projects. That water gets in the stream, fine. It's for recreation and it's always been for recreation and wildlife habitat or anything-as long as it's rolling by there, it's going anyway-if it's a valid appropriation for federal purposes. So I did feel I should put this in the record, because it's that important. It's one of the most important issues in our Convention, I think, when you think of future Montana. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Etchart's motion to delete Section 4 in its entirety. And I don't wish to cut off debate, but let's start narrowing it down and hold to it.

Mr. Arbanas, did you wish to speak?

DELEGATE ARBANAS: I'll wait till after this vote.

CHAIRMAN GRAYBILL: Very well. Mrs. Erdmann was next.

DELEGATE ERDMANN: Mr. Chairman, the man who sent the telegram and asked for the deletion of Section 4 is Harold Aldrich of the Bureau of Reclamation, and for the record, I think we should be reminded that the Bureau of Reclamation did not even record a water right filing when they completed their Canyon Ferry project in 1954. And a year or so later, that same bureau claimed all the surplus water above Canyon Ferry Dam as storage in that reservoir. The bureau further stated that any person, from that date, appropriating water in that entire drainage area above Canyon Ferry would hereafter have to pay the bureau for it, as the water had already been consigned as storage in their reservoir. And I want you to think about that when we consider deletion of Section 4.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman, members of the Convention. I think another example of the word "junior" which might have some bearing here would be that junior is the status Montana seems to have often in the federal system ofstates. And in connection with water, it's the position we could have if we do not maintain the strongest possible position in our Constitution. I would urge support of the provision of the majority report as originally drafted by them.

CHAIRMAN GRAYBILL: Very well, is there—

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, in view of the fact that nearly all water in Montana, other than floodwater; is already appropriated, most of the water that we'll get hereafter is going to be impounded water. All of the—contrary to what my friend from Dillon said, all of the environmentalists have not always been against dams. I recognize Delegate Harlow over there, who worked hard for Paradise Dam. I did the same thing. I think we're both environmentalists, and I feel that most of the water that we are going to get for recreation is going to be similar to the water that the delegate from Beaverhead County spoke about and the Clark Dam. It's going to be impounded water which releases water all of the time, as it does up in the west fork of the Bitterroot from the Painted Rocks Dam. And I think we've got to have that water, and if we're going to have it, we're going to have to get it from impoundments. And I think recreation is a multiple-use and we enjoy it now and we should accelerate it.

CHAIRMAN GRAYBILL: Mrs. Bates was up; and then you may close, Mr. Etchart.

DELEGATE BATES: Mr. Chairman, fellow delegates. I feel that if-first, I want to say that in noting the-in Section 4 it says, "a diversion or a development work is not required for future acquisition". Now, in Mr. Wilson's amendment, which I feel must go with this section, it mentions the junior right of appropriation for diversion of water. Diversion is taking the water out of the canal. I'm wondering how, forrecreation, we are really going to hold this water when it flows by and goes into Dakota or the other states? And how can we get the right to this water and the appropriation? My understanding of water is, you use it or you lose it; and it will take actual diversion, really, to hold it because we may lay claim to it in recreation. How effective this really will be is hard to say [in] the future. Will they really call it our water because we call it recreational water? But when we divert water, we are using it and we are not apt to lose it, and I recommend retaining both the amendment and the section. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart, you may close.

DELEGATE ETCHART: Mr. Chairman, there seems to be so much interest in the amendment, with your approval, could I withdraw my motion with the privilege of, if the amendment fails, to reinsert it, Mr. Chairman?

CHAIRMAN GRAYBILL: You may withdraw it, and I certainly will be glad to let you have another chance.

DELEGATE ETCHART: I'll withdraw my motion, then.

CHAIRMAN GRAYBILL: All right, the motion is withdrawn then, and the issue-Mr. Etchart's motion is withdrawn, and the issue then becomes on Mr. Wilson's substitute-or Mr. Wilson's amendment. Now, Mr. Wilson's amendment, if you'll take your books and look at page 4 again, on line 18 he would change-the first 10 lines or so are the same-8 lines-and then it says "The Legislature may", instead of "shall", "The Legislature may determine the method of establishing these future water rights which do not require a diversion and may designate use"-he has added the word "use"-"use priorities for these future rights if necessary". And then he adds this sentence: "These rights"-pardon me-"Those rights which may be established without a diversion or development shall be wholly or in part junior in right to those appropriations for which a diversion is made, regardless of the date of the appropriation."

Mr. Hanson.

DELEGATE ROD HANSON: I rise in support of Mr. Wilson's motion. I have a number of telegrams and letters from my area, which has several irrigation projects, and they were in favor of deleting Section 4. However, I feel that Mr. Wilson's motion-or amendment will take care of the objections that they had in such a way that they would go along with that rather than deleting the entire section. So I support Mr. Wilson's motion.

CHAIRMAN GRAYBILL: Mr. Davis, you have an amendment. Do you want to make it now?

DELEGATE DAVIS: Yes, sir. I think it would save a double discussion of it. I would move to substitute motion to the following effect—

CHAIRMAN GRAYBILL: Actually, Mr. Davis, as I understand it, you are adding it to Mr. Wilson's amendment?

DELEGATE DAVIS: No, I want to substitute the language in his for this.

CHAIRMAN GRAYBILL: You're substituting your language for his?

DELEGATE DAVIS: Substitute my language for his.

CHAIRMAN GRAYBILL: Very well, then, it's a substitute motion. Go ahead. Do you want me to read it?

DELEGATE DAVIS: Mr. President. In other words, at the end of this last sentence in Section 4, if necessary, change the period to a comma and put "provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife, without diversion, shall be junior and subordinate in right to other beneficial uses, regardless of the date of appropriation."

CHAIRMAN GRAYBILL: I take it, Mr. Davis, that your purpose is to limit Mr. Wilson's last paragraph to the three cases of recreation, scenic waterways and wildlife habitat. Is that correct?

DELEGATE DAVIS: It's partially correct, Mr. President, and actually thelanguage that he has incorporated in his language, which I agree with the intent and purpose, but he has taken from the telegrams saying we should "wholly or in part"-they should be "junior and wholly or in part". "Junior" doesn't really mean much in a constitution, that I can see; and it was a suggestion in the telegram that we're trying to make constitutional language, and I think we should take a position. If we're going to make them junior, they should be junior. If this body doesn't want them junior, then they shouldn't be. But to adopt the language in the telegram really doesn't accomplish, I think, what Mr. Wilson really wants-or myself, either one.

CHAIRMAN GRAYBILL: All right, now, I think I had better read this slowly enough so you may write it down if you want to see it. Mr. Davis would have a substitute motion. I take it you have no objection to the word "may" and the word "use", so he has the first little changes in line 18 and 20, "may" and "use". But the second part of it, the sentence that begins on line 21 would be: "Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses, regardless of

the date of appropriation." "Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses, regardless of the date of appropriation." And it has the effect of listing the three types of uses specifically, and it has the effect of doing away with the language "wholly or in part junior". Now, is there discussion?

Mr. Davis.

DELEGATE DAVIS: I'd like, if I could, to put "other beneficial uses" after "uses in the State of Montana"-to get that in.

CHAIRMAN GRAYBILL: In the last line'?

DELEGATE DAVIS: Yes, sir.

CHAIRMAN GRAYBILL: All right, it says: "subordinate in right to other beneficial uses in the State of Montana."

DELEGATE DAVIS: Yes, sir. Could I speak to it briefly?

CHAIRMAN GRAYBILL: Yes, you may.

DELEGATE DAVIS: I go along with Mr. Wilson's idea, but where they refer to "without diversion or development work", it's a little uncertain. So I have provided-or attempted to provide language that if we have recreation, scenic waterways or habitat without a diversion-in other words, if you're simply appropriating water and letting it flow down the stream and on out the border-then municipalities, industry, agriculture, anyone else, can still make appropriation for use of that water. It is all going to return to the stream. If you have a right with diversion, if we find a habitat for wildlife, for recreation, where you impound for that specific purpose, you would not have a junior right because you would be retaining the water instead of just letting it go out in its natural flow. That's the intent of this language. It's no attempt to really make a change except to be specific for Mr. Wilson's,

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman—and I'm not going to ask Mr. Davis a question because I think I now understand, but I'll ask him to respond if he likes. It seems to me that we're now putting ourselves in the position where, if somebody says "this is a first-class water skiing area" and we now appropriate it for that purpose and are water skiing on it and it develops at some future time that somebody might want to drink that water or use it for irrigation or use it for industry, that it, once having been diverted and appropriated and used for that water skiing purpose, it takes seniority if we reverse the terminology. It takes seniority over what might very possibly be, if not a better right, at least a more important right.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: If that's the way this reads, it certainly is not the intention of it, and I would appreciate any assistance I can get to clarify it. In other words, my concern is, we must—if recreation-if there's a diversion for recreation, it would have a priority. If it's just in the lake or in the river for water skiing and you're not making any impoundment or diversion, then it would be junior to a municipality, say, a city that needs the water, junior to irrigation and junior to other recreational things that were going on. Say you had a recreational thing you wanted to impound and make a lake but you had it appropriated downstream for recreation, it would still be junior where it was not diverted to where you were going to impound it and save it.

CHAIRMAN GRAYBILL: Now, the Chair senses that there is some sentiment for the section as it was originally submitted by the committee, and there is some sentiment for providing a junior status for some rights. And the Chair thinks we ought to get some sense of where we stand on that without, perhaps, giving up the whole section before we recess. I will certainly let you all speak, but I'd like to get a vote on those two issues so we know where we stand before long. Who wants to be next?

Mr. Brown.

DELEGATE BROWN: Mr. President, this matter is a great concern to me because this water is so important. We are now amending from the words of a telegram, we're taking oral amendments. No one, I think, right now is capable of discussing it. It's a technical field and it must be done right and it's no way to write a constitution; and I think it shows how we are getting into legislative matters. So, I'm going to make an unpopular motion that we pass Section 4 until 9:00 a.m. tomorrow morning and let the committee work on this.

CHAIRMAN GRAYBILL: A motion has been made to pass Section 4.

Mr. Kelleher.

DELEGATE KELLEHER: I'd like to amend Mr. Brown's motion to make it till 2:00 p.m. tomorrow, and I'd like to speak to my motion, if I may. Is it possible to speak on a motion to—

CHAIRMAN GRAYBILL: Well—

DELEGATE KELLEHER: I'll be very brief.

CHAIRMAN GRAYBILL: Well, at this point the Chair—

DELEGATE KELLEHER: I'll be brief.

CHAIRMAN GRAYBILL: I don't think you can. I don't know whether the motion to pass is debatable or not. I suppose it is, hut the Chair would certainly like to announce that we intend to finish Natural Resources tonight. And if we don't, we're going to work long. And I certainly don't want to pass it until 2:OO; hut you may certainly make your motion. I hope to have another article half discussed by 2:00 tomorrow.

DELEGATE KELLEHER: The only question that-problem that bothers me, Mr. Chairman, is the question that Mr. McNeil has, and Mr. McDonough. We have 24 lawyers here and nobody can answer this problem about junior rights versus senior rights in the State of North Dakota and downstream users; and I've just called the Field Solicitor's office in Billings, and the Field Solicitor is out. He'll be hack in his office tomorrow morning. The Assistant Field Solicitor's office said—officer said that, frankly, he did not have the answer to that question; and I am very, very disturbed about that matter. If we make something junior by our Constitution, then certainly North Dakota and Nebraska and all the other downstream users will he able to use it. That's why I'd like to get an answer to my question, that's all.

CHAIRMAN GRAYBILL: All right. The Chair's point is, we have no idea whether the sense of the body is not to even worry about the junior problem; and if that's the sense of the body, we don't need to wait till 2:00 tomorrow to find out the answer to it. But-so I'd like some motion-hut I guess we now have a motion to pass until morning. And did you make a substitute motion to pass until **200;** is that your point, Mr. Kelleher?

DELEGATE KELLEHER: (Inaudible)

CHAIRMAN GRAYBILL: All right, Mr. Davis, what's your motion? I mean Mr. Brown, excuse me.

DELEGATE BROWN: Since this is not debatable, I will withdraw my motion until you get the sense of the body and then renew it, if that's what you'd prefer.

CHAIRMAN GRAYBILL: I'm not sure that it's not debatable. I think maybe it is debatable.

DELEGATE BROWN: I have no objection to getting the sense of the body. And if they aren't going to adopt Mr. Wilson's amendment, which I'm strongly for, then it would he a waste of time to pass. But if we are going to get something in here that's right, then I'll renew it after you get the sense of the body.

CHAIRMAN GRAYBILL: Right. We haven't had any amendments on-haven't had any votes on this subsection 4.

Mr. Kelleher.

DELEGATE KELLEHER: If Mr. Wilson's amendment does not pass, then I'll withdraw my motion.

CHAIRMAN GRAYBILL: Well, I take it by your phraseology that it's all right to put these motions. The first motion before us is Mr. Davis' motion to substitute his language for Mr. Wilson's language. His language is: "Provided, however, that water rights appropriated for recreational, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses in the State of Montana, regardless of the date of appropriation.

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, a point of clarification. On line 18 in Mr. Wilson's original motion, he changed the word "shall" to "may". At one point, if I remember correctly, Mr. Gysler obtained permission from Mr. Wilson to eliminate "may" and go hack to "shall", and I notice we've been reading Mr. Wilson's—

CHAIRMAN GRAYBILL: Well, Mr. Gysler did that, hut he didn't bother to-I'm not criticizing him, hut the Chair was not involved in that; and if somebody wants to amend it, that's fine.

DELEGATE BLEND: It still is "may", not "shall", then?

CHAIRMAN GRAYBILL: Well, Mr. Wilson's amendment is "may", and the language of the committee is "shall".

DELEGATE BLEND: Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I do some water rights law. I think Mr. Berg does, and I know Mr. Davis does; and I think that if Mr. Berg and Mr. Davis and I and Mr. Wilson went in the Rules Committee room, we could come out of here in 15 minutes with something that would resolve our problems.

CHAIRMAN GRAYBILL: Very well, I think you could, too. Are you suggesting that you do it before we take any votes?

Mr. Berg.

DELEGATE BERG: If the-Mr. Chairman, I should like the delegation to at least know my viewpoint on this. I am very much in favor of seeing recreational rights junior to appropriation rights made by diversion, and I want to assist in writing a provision into this that will accomplish that purpose. Now, you should understand my viewpoint on this before you send us into any committee.

CHAIRMAN GRAYBILL: Very well, the Chair will suggest that we take a 25-minute recess and suggest that anyone interested in this go into the Rules Committee room and try to help write it, and maybe we'll come up with something that you can all accept. Mr.-Now, wait a minute.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move we recess until 3:30 this day.

CHAIRMAN GRAYBILL: The motion has been made that we recess until 3:30. Is there—all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: Very well.

(Convention recessed at 3:05 p.m.--reconvened at 3:43 p.m.)

(Delegate Felt assumes chairmanship of Committee of the Whole)

CHAIRMAN FELT: The committee will please be in order. Before we proceed with the matters that need to be dealt with, I would like to read tlie following message from the Sergeant-at-Arms: "At the request of several delegates, I have learned that there are a few tickets available for Friday and Saturday, March 9th and 10th, at the tournament in Bozeman. If the delegates would like a ticket, they should see the Sergeant-at-Arms as soon as possible. He will reserve them at the will-call window in Bozeman." In addition to that matter, I'd like, now, to call upon Delegate Scanlin for a brief report.

DELEGATE SCANLIN: Mr. Chairman. In response to the Chair's request for a daily tally, your committee submits this report on yesterday's activity. In one hour of style and drafting, we had a report of the "holy trinity"-Felt, Schiltz and Habedank; unanimous acceptance. The report on Natural Resources: first place goes to Delegate Brown for a 20 minute exegesis of ecological bible; second prize goes to Delegate Cate for a 20-minute impassionate plea. Consolation prize awarded to Delegate Dahood for 12 minutes of organized confusion. (Laughter) Runners-up included McNeil, 12 minutes; Murray, 6; Graybill, 6; Garlington, 4; Berg, 3; Swanberg, 2; Schiltz, 2; Loendorf and McKeon, 1. Arness, Aronow, Brown, Davis, Habedank, Holland, Joyce, Kelleher: "goose eggs" for the day. A special award to Delegate Campbell for 10 minutes of tenacious on-and-off victory for a clean and healthful environment. The committee would take a special privilege in making an honorary degree of M.J.P., which is master of jurisprudence, to Delegate Robinson for rejection of all legal counsel. (Laughter) Signed: Scanlin, Sparks-ad hoc committee. Mr. Chairman, I move that this committee be resolved of any further duty. Thank you. (Laughter)

CHAIRMAN FELT: The question arises on the motion to adopt the committee report. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No. The Ayes have it and so ordered. (Laughter) The expense warrants for all delegates are now ready at the Auditor's office. So, now we have taken care of our funnybone and our pocketbook. and we'll get to work. The motion before the committee is the

motion by Mr. Davis, which is asubstitutemotion. Behind that, there is an amendment by Mr. Wilson to the main motion, which was to adopt subsection 4 of Section 3. Any questions about the position we're in at the moment?

Mr. Davis.

DELEGATE DAVIS: I believe, Mr. Chairman, that Mr. Wilson's motion was first and that I now stand on my substitute motion.

CHAIRMAN FELT: You stand on it?

DELEGATE DAVIS: Yes, I believe that's before us now.

CHAIRMAN FELT: That's correct. That's what I stated. Your motion is a substitute motion which is the motion before us, but that behind it there was the original main motion and the amendment to that by Mr. Wilson.

Delegate Burkhardt, for what purpose do you arise'!

DELEGATE BURKHARDT: To ask a question, Mr. Chairman. I wonder if we are going to hear a report from the committee that met during the recess?

CHAIRMAN FELT: We shall. Mr. Berg, do you wish to make some statement to inform the delegates of what went on in the interim?

DELEGATE BERG: I would prefer that either Mr. Schiltz or Mr. Davis make the report. I do have an amendment to propose to either Mr. Schiltz's or Mr. Wilson's motions.

CHAIRMAN FELT: Mr. Schiltz will be asked to. I might say that, with the condition of things as they are-with the main motion, an amendment to that motion and a substitute motion, a substitute motion now would not be in order. An amendment to the substitute motion of Mr. Davis would be in order, and if you cannot fit your program into that, then we would have to vote on the substitute motion which is before us in order to make room for a fresh substitute motion.

And, so, Mr. Schiltz, would you expound?

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. We and 10 or 12 other people met around the table back here, and I must report we didn't really come up with anything except that each of us now knows the others' position much better and I think we can have a debate that will be enlightening, if nothing else. I had some difficulty with Mr. Davis' explanation of his motion, and he's satisfied me now that that's not so. I think WC should proceed on Mr. Davis' motion, either pass it or reject it, then go on to Mr. Wilson's, We're at that point, at least, and I think that some of the confusion about the various positions is resolved.

CHAIRMAN FELT: Am I correct in believing, then, that there is no new language to present and we are going to work with the same language we had before the recess?

DELEGATE SCHILTZ: That is correct.

CHAIRMAN FELT: Well, before we start, and also for the information of the delegates, if we go to-get close to 5:30 and it does not appear that we will be able to finish by 6:00, we would then entertain a motion to recess from 5:30 until 7:30, so you can make dinner plans accordingly. If it appears that we could finish by 6:00, we'll stay here to finish.

Delegate Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, because there was no unanimity of agreement in that Rules Committee room, I am going to support the majority report as it was presented.

CHAIRMAN FELT: Delegate Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, as Vice-chairman of this committee and having sat in and listened to the diversities of opinion, I am going to also support the majority report as printed in our book. And I want to tell you people that I will be the first one to volunteer to come down here and help in the Legislature to get these things to where we all want them; but I still feel that they are legislative, that we can do the best job for the people of the State of Montana by sticking with the majority report, and that's where I'm going to stick.

CHAIRMAN FELT: The gentleman, Mr. Davis, for what purpose do you arise?

DELEGATE DAVIS: Mr. Chairman, I rise for the purpose, at this time-before belaboring this thing at length, I understand there's a motion to delete that wants to be tested, so I will withdraw my motion.

CHAIRMAN FELT: Your substitute motion?

DELEGATE DAVIS: My substitute motion, so that can be floored because we're wasting a lot of time if that passes anyway.

CHAIRMAN FELT: If anyone objects to the withdrawal of a motion which has been presented, it cannot be withdrawn without permission of the whole, by vote of the Convention.

The delegate, Mr. Berg.

DELEGATE BERG: I have an amendment which I want to propose to either Mr. Davis' or to Mr. Wilson's motions, and I want to know what my position is under this proposed withdrawal.

CHAIRMAN FELT: If he withdraws and a motion-a substitute motion is made to delete the entire section and if that motion to delete carried, you would not have any opportunity to make your amendment—

DELEGATE BERG: Very well, I'll-

CHAIRMAN FELT: -to the present motion which is pending.

DELEGATE BERG: Very well, then, I would make the motion at this time. I move that—

CHAIRMAN FELT: The delegate, Mr. Berg.

DELEGATE BERG: -that the substitute motion of Mr. Davis be—

CHAIRMAN FELT: The delegate, Mr. Eskildsen.

DELEGATE ESKILDSEN: Just a moment. Are we-have we-do we have a motion now to delete the whole section'?

CHAIRMAN FELT: No, we do not have that motion before us. We have before us a motion by Delegate Davis, and we are about to receive an amendment to that substitute motion.

DELEGATE BERG: I move that the substitute motion of Mr. Davis be amended by including the words "from a flowing stream" between the words "appropriated" and "for recreation".

CHAIRMAN FELT: We'll have the clerk reread-Oh, do you have it in writing, Mr. Berg?

DELEGATE BERG: I do not have it in writing. It's just the three words.

CHAIRMAN FELT: Yes. Well, I'm taking over with handwriting that isn't my own, and my own is bad enough, (Laughter) but you'll have to read it again, at least for me.

DELEGATE BERG: I'll read it so I think it will make some sense.

CHAIRMAN FELT: Read it the way—

DELEGATE BERG: It would read, then—his-the substitute motion of Mr. Davis would read, as I have it: "Provided, however, that water rights appropriated"—I would therein substitute "from a flowing stream"-"for recreation, scenic waterways, habitat for wildlife", and so forth.

CHAIRMAN FELT: You're just inserting some additional language.

DELEGATE BERG: I'm only inserting the words "from a flowing stream".

CHAIRMAN FELT: After the word, appropriated" and before the word "for recreation". Does every delegate feel that they have this before them? The motion is to amend the substitute motion by inserting the words "from a flowing stream" after the word "appropriated", so that the first part of the proposal will now read then: "Provided, however, that water rights appropriated from a flowing stream for recreation", and so forth. Mr. Berg, do you wish to speak on your motion?

DELEGATE BERG: Mr. Chairman, I do. This motion-this amendment which I have proposed, I would propose to either Mr. Davis' or Mr. Wilson's motions. Basically I am in agreement with the necessity of one or the other of their motions because I am, shall I say, married to the idea that agricultural uses by diversion must under all circumstances have a superior right to recreational or wildlife purposes or, I think it says, scenic waterway purposes. However, there are really two ways of appropriating water. Generally, when we're speaking of appropriation, and all of our appropriation law is written primarily with a conception that water will be diverted from a flowing stream, but there is another method of appropriating water and of-that, of course, is by impounding a dam at the head of a stream. Now, back in 1957 when I was in the Legislature, I was successful in amending the water right laws to give the right to impound water on an adjudicated stream, and I want to read to you what that

amendment says so you'll understand thesenseof my proposed amendment. That amendment says: "Provided, however"-"provided that water stored in a reservoir pursuant to an appropriation hereunder, which is subsequent to an adjudication of waters in a flowing stream, when so released from storage, shall not be considered as a part of the natural flow of said adjudicated stream." Now, that has had this effect, at least up to this time. There have been several dams built over in my area of the country at the head of the stream and it has raised the waters, sometimes on a lake, but more often just at the head of a ravine where the stream flows through, it impounds the water during the wintertime. It reserves it for irrigation later in the summer. Always, the-in every adjudication that I've had anything to do with, the court requires that the natural flow, as it comes into that reservoir and leaves it, must at all times be preserved for the water users who have rights, priority rights, in the natural flow of the stream. Now, but the water that is impounded over and above this natural flow-generally the natural flow is that which is spilling over at the end of the season, so it's not difficult to determine it in quantity—that water which spills over-or that natural flow is always reserved to the downstream prior users. Now, the water that is impounded, however, the man who impounds it, the man who spent the money to build and create this reservoir, is said that his-that water to the extent that it is impounded is not a part of the natural flow of that stream, it's not subject to the prior adjudication because it is so-called developed water and belongs to him exclusively so long as he maintains the natural flow of that stream. Now, this has always been-this has been recognized and used repeatedly, in Gallatin and Park Counties, at least. Now, it was based primarily for agricultural uses. We're now talking about a new and different kind of use of water. We are talking about, primarily, recreational use. And I would have you understand that I am the first to stand up and say that agricultural, industrial uses ought always to take priority to recreational use. But I see this in the future, and that is this-that in the future the Fish and Game is going to eventually be building dams also at the headwaters of these streams, and they're going to impound water, and they're going to preserve the natural flow of that water through the dam they build, just as we have done in agricultural purposes. But they're going to impound it for a different purpose, and I think a very worthy purpose. They're going to impound it for that situation so that later in the-in the late time of the year, they can let that water flow down and maintain the flow of that stream to maintain the fish habitat in it. Now, this is the question. Let me tell you about the streams that I've had something to do with on adjudication in Park County. For example, Mill Creek and Pine Creek-these are two small streams. Mill Creek is not so small; it really has quite a head of water. They both flow into the Yellowstone River, but both of those streams, especially during the second cutting of hay, are dry as a bone where the bridge comes across the highway. Much of the accessible fishing area on those two streams are below the highway. There's a good stretch of what once, I suppose, was good fishing stream. It's no longer there. There's no fish life, really, from the last diversion on down to the mouth of the Yellowstone. If the Fish and Game eventually builds a dam at the head of Mill Creek and allows this water to come down, this water would not be available for agricultural uses. It would be, under my amendment, a right of them to turn that down and allow, if you please, fish life. And it's water that would not otherwise be available for agricultural, for any other use, because it's newly developed water created by the impoundment of a dam. My amendment, I think, does this. I think it preserves the right of the Fish and Game to do that, but diversion-in other words, they cannot do that, they can't have a diversion means from a flowing stream, but they can impound at the head of a stream. I think this-1 wanted to explain this to you. I want this amendment-I propose this amendment to either Mr. Davis' or Mr. Wilson's motion. That's my argument.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: I would-for my own purposes if not for everybody else's, I would like to try to put this thing in perspective. What we are after here is to try to keep the water, Montana water, from ever becoming North Dakota water or South Dakota water or Nebraska water; and in so doing, we're making it possible to appropriate water for other uses than what it has traditionally been appropriated for and we're making it possible for people to appropriate it without diverting it. Now, the traditional way to appropriate water is to take it out of a stream and put it to a beneficial use, and that's what farmers and ranchers have been doing in the State of Montana for many years. Now, in so doing, we're fooling around with the internal system-that is to say, just the Montana

system of water rights. We're running the risk of allowing some other type of appropriation without use as having some priority over the traditional uses of water. Now, the worry--my worry and the worry of Archie Wilson and I'm sure the worry of Carl Davis is that, if we leave this to the Legislature, as the committee report does, we don't trust the Legislature to keep those sacred priorities, especially by not using the water. All they have to do is go to the courthouse, or wherever the board is that does this, and say, "I appropriate so many acres of water for water skiing or for looking at or for swimming in." And what Archie wants and what Carl wants and what I want is that we maintain that, at some future time the priority exists for more essential uses of that water; and it's just purely a matter of not trusting the Legislature. I'll go with Mr. Davis' motion, I'll go with Mr. Wilson's motion. Mr. Berg's motion poses a problem, so far as I'm concerned, when he talks about flowing streams, because he's thinking mostly, in that case, of-that all water is flowing water and eventually gets to North Dakota. The fact is, there's lots of casual water in Montana and farmers use it at one time or another. And farmers and ranchers can correct me if I'm wrong-isn't there, Charley? Now, as I see it, if you limit this to flowing streams and you do have a considerable amount of casual water that gets trapped in a coulee somewhere, somebody can go say, "I want to water ski on that", and under Mr. Berg's plan, that particular priority is excluded. Under Mr. Berg's plan of limiting this to flowing water, if a water skier appropriates it without using it, he comes in ahead of that farmer. And that's my problem with Mr. Berg's amendment, and I resist the amendment for that reason.

CHAIRMAN FELT: For the-1 think-I felt that it was appropriate, considering the fact that there was the recess, that there be a general resume' of that nature, and I think it was well done. But from here on, I'm going to insist that comments be directed specifically to the amendment of Delegate Berg and we will not wander into the entire subject.

The delegate, Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. Mr. Berg, would you accede to a question, please?

DELEGATE BERG: Yes

DELEGATE DAVIS: Mr. Berg, if we discuss your amendment and my amendment and Mr. Wilson's amendment and then it should be the will of the body, on a motion that Mr. Etchart has, to strike this whole thing, wouldn't it be better, in your opinion, to get this back where we can vote on whether they want to delete Section 4 first? If Section 4 is not deleted, then I'd like to reinstate and go on an amendment process. Or not?

DELEGATE BERG: In the first place, I, like Mr. Schiltz, want to try as much as I can through constitutional enactment, to save water for Montana. Now—

CHAIRMAN FELT: No, I was putting the gavel down a little firmly, perhaps, but I would prefer if you could give a brief answer-

DELEGATE BERG: I am.

CHAIRMAN FELT: --as to whether or not you think it would work to withdraw your amendment and his motion, temporarily at least, to see what happens with this other approach.

DELEGATE BERG: Well, my whole idea is, I want to see in this Constitution considerable talk about water, because I want to be sure that we are preserving water to Montana. I believe you can do it, even without these amendments. The amendments are designed to safeguard the priority, as I understand it, for agricultural use. Now, this is the way I look at it. I feel this way, that if—

CHAIRMAN FELT: I believe he wants a vote on the motion, so let's get to it.

Mr. McNeil, for what purpose do you arise? To discuss the motion?

DELEGATE MCNEIL: Yes.

CHAIRMAN FELT: Proceed.

DELEGATE MCNEIL: Mr. Chairman, all of the reports coming out of that committee room revolved around the three amendments, and none have voiced the opinion of the majority report. Concerning specifically Mr. Berg's amendment, as applied to Mr. Davis' or to Mr. Wilson's, this would foreclose the possibility of recreation having a water right where recreation provides the funds, acquires the right, and would foreclose them from keeping it in a stream, in a natural stream. Example I'd like to give you. is the Bitterroot River, where the Fish and Game Department spent $100,000, not of tax money but funds that came from license fees-the Western Montana Fish and Wildlife Association put $5,000 into

this-and built an impoundment. They gathered up water, floodwater that would have otherwise been lost. In the middle of the summer, at the height of the irrigating season, the Bitterroot River is drained dry by the irrigators, so at that point in time, the irrigators have used up everything they would have had. Now, the Fish and Game, when they tried to put some water out of the dam that they built with their own money so that the fish could live during the summer, the water is immediately appropriated and put into the fields by the irrigators. Mr. Berg's amendment, Mr. Davis' amendment, and the amendment of Mr. Wilson would still foreclose that possibility. It also would foreclose the possibility of the Fish and Game buying a water right. Waterrights can be bought and sold just like land can. If an irrigator who has been using his water for years for irrigation decides to stop irrigating and sell it to the Fish and Game, they could not put it into the natural stream without it being then immediately taken back out by an irrigator. In addition, the concern of Mr. Berg, Mr. Davis and Mr. Wilson is well-founded. But it is overlooking the fact that in all the areas of our state, in the Gallatin and in the Beaverhead, where there is substantialirrigating, all of those waters are well over-appropriated. There are far more appropriations filed than there is actually water there. This section applies only to waters which are not presently appropriated. Section 1 preserves all of the very sacred rights that they're concerned about, so this applies only to those waters. And that, by the very nature of it, means the Missouri, the Yellowstone, or large bodies of water as they're departing the state and which do not have any appropriations on them. In addition, the majority report dictates that the Legislature must establish a method for the acquiring of water rights without a diversion and may establish priorities. The problems that we had in that committee room and that we're having right now speak exactly to what Professor Stone recommended-don't put priorities in the Constitution. For that reason, I would recommend that we defeat the amendment of Mr. Berg's, defeat the amendment of Mr. Davis, defeat the amendment of Mr. Wilson, and then let's meet the test of the majority report as drafted, either on Delegate Etchart's motion to delete or on an affirmative motion to pass it as drafted.

CHAIRMAN FELT: Does the delegate, Mr. Berg, wish to close on his motion to amend the substitute motion?

DELEGATE BERG: Please. I'll try to be brief. I think that I should have said in the amendment, and 1'11 propose it, "water naturally flowing in the stream". You've got to distinguish, as almost all water law does, contrary to what Mr. McNeil says, that water appropriation comes from water naturally flowing in a stream. Impounded water, water that is contained in a reservoir, in a dam-that's what I'm talking about-is not considered to be a part of the natural flow of a stream; so that what Mr. McNeil is saying, if it occurred in Bitterroot, it occurred because no one took the trouble to make that distinction. Because if the Fish and Game had impounded waters that were not a part of the natural flow of that stream, they could have released that and they could have prevented it and the court decree would have prevented them, anyone, from diverting it, because it's developed water. It's not part of the natural flow of the stream. It was never available to those ranchers when the water was adjudicated. At any rate, my purpose here is to preserve the impounded water not only for this possible Fish and Game use, but primarily to preserve it for agricultural uses, and I think it's a very valid distinction that I would like you to consider.

CHAIRMAN FELT: The delegate, Mr Romney.

DELEGATE ROMNEY: In view of the fact that the Bitterroot situation has been brought up, there is a little bit of a difference of opinion between fact and—

CHAIRMAN FELT: Delegate Romney, I am not going to rule you out of order-even though you are out of order to be speaking after Mr. Berg has closed--as long as you'll make it brief.

DELEGATE ROMNEY: (Inaudible)

CHAIRMAN FELT: All right. We are now ready to vote on the motion of Mr. Berg to amend the substitute motion of Mr. Davis. The motion of Mr. Berg's inserts the words "from a flowing stream--"

DELEGATE BERG: (Inaudible) "from water naturally flowing." Natural flow—

CHAIRMAN FELT: From the-will you state the words the way you wish them'?

DELEGATE BERG: "From the natural flowing stream."

CHAIRMAN FELT: "From the natural flowing stream."

DELEGATE BERG: Yes.

CHAIRMAN FELT: Those are the words to be inserted. We will accept therevised version of the motion.

The delegate, Mr. Wilson, for what purpose do you arise?

DELEGATE WILSON: To call for a roll call vote, Mr. Chairman.

CHAIRMAN FELT: Roll call is called for and sufficient seconds. Thedelegate, Mrs. Eck, did you have that same thing in mind?

DELEGATE ECK: (Inaudible)

CHAIRMAN FELT: Yes. The question now arises, then, on the motion of Delegate Berg. All in favor will signify by voting Aye on the voting machine; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: If not; the clerk will tally the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0..... Absent
Arbanas ..... Nay
Arness..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Aye
Brown.. ..... Absent
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Excused
Cate ..... Aye
Champoux ..... Nay
Choate..... Aye
Conover ..... Nay
Cross ..... Absent
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper., ... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf..... Nay
Lore110 ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Absent
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Kebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay

Schiltz .. .. Nay
Siderius Nay
Simon . . . . Nay
Skari Nay
Sparks..... Nay
Spew ..... Nay
Studer .. .. .. Nay
Sullivan Nay
Swanberg .. .. .. Nay
Toole .....Aye
Van Buskirk .....Absent
Vermillion Nay
Wagner.. .. .. .. Nay
Ward ..... Nay
Warden..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Chairman Felt .. .. .. Nay

CLERK HANSON: Mr. Chairman, 37 delegates voting Aye, 51 voting No.

CHAIRMAN FELT: The question before us now is the motion of Delegate Davis, unless he wishes to try again to withdraw it.

The gentleman, Mr. Arbanas.

DELEGATE ARBANAS: I would like to say a few words in support of the majority report. Back a few hours ago when we started the amendments, beginning with Mr. Wilson's amendment, the many people were saying, "Well, that's what we have to do to compromise. Let's accept it and go on with that." I submit that to set up a sacred right, as Mr. Schiltz talked about, of priorities forever is about the most difficult thing that we could possibly set about; that, as Mr. Berg alluded to several times that he's married the idea that agriculture will always come first. If there are some considerations, why, at some time in the future this may not be true and, why, we'd better be pretty careful about it. First of all, I sense that the time may come in Montana when recreation may be our big industry, andifwe havelocked ourselves into something else, it may be bad news. Also, I kind of resent the idea that agriculture would come first. In a sense it seems to me that we're saying, in so many words, that moneymaking will always be ahead of people-use, and I submit that that may not be always true, that people-use of water may be much different or much larger than always that thing that makes money. The last reason, which is the most compelling in my mind, why I would speak against both amendments is the fact in subsection 2 we spoke of the public use. We passed that, and I'd like to submit that very often industry or agriculture may be private use. Recreation may be the public use that should take priority. Well, anyway, to say one is junior to the other, I think would be a big mistake. To say forever that agriculture or industry will come ahead of-seems to me to be something I don't want in the Constitution.

CHAIRMAN FELT: The delegate, Mr. Wilson.

DELEGATE WILSON: Would Delegate Arbanas yield to a question?

CHAIRMAN FELT: Do you yield?

DELEGATE ARBANAS: Certainly, Mr. Wilson.

DELEGATE WILSON: Would you not agree that perhaps municipal use for water to drink is a beneficial use and should be above recreational use?

DELEGATE ARBANAS: In most cases that I can imagine. I would wonder if that's true every place, always, however.

DELEGATE WILSON: Would Mr. Arbanas yield to another question?

CHAIRMAN FELT: Do you yield?

DELEGATE ARBANAS: Certainly.

DELEGATE WILSON: We spell out in Section 4 the beneficial uses, and it says, "domestic, municipal, agricultural, stock watering, recreation," and so forth. My question to you is that I have seen dry years in certain areas of the State of Montana that drinking water did become a problem for municipalities, and I think they certainly should have a priority. Would you not agree?

DELEGATE ARBANAS: I think what my answer might be, Mr. Wilson, that that's why I wouldn't want it in the Constitution, because situations do change. The very kind of situation you're bringing up, we'd say, why, I wouldn't want to say that, forever, one right had priority.

DELEGATE WILSON: Thank you, Mr. Arbanas.

Mr. President.

CHAIRMAN FELT: Mr. Wilson.

DELEGATE WILSON: I think what we're talking about here is beneficial uses and their priorities, and this is the thought that the delegates should keep in mind. And we are speaking about municipalities. We are speaking about several different uses of these waters, and all we're trying to do here is try to establish priorities to those rights. And I think that as we vote on these issues, this is the thing that we must remember—establish which has the junior and senior rights. Thank you, Mr. President.

CHAIRMAN FELT: The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I believe what we're really saying here is that in the State of Montana, if we accept this, recreation can never be really a beneficial use. It's a beneficial use only for us to use for water that's flowing out of Montana, but so far as water within the state, we've ruled it out as a use that has any priority whatsoever. We are really ruling out our blue-ribbon trout streams that were established a few years ago. We are ruling out the possibility of ever establishing a minimum flow in our streams. In other words, we're saying that industry, agriculture, every other use comes first and that just having water in a stream, even a minimum flow of it, is not of any worth to us and never, never shall be. I think that we would be far betteroffto delete this whole section than to retain the section with a junior standing for these uses.

CHAIRMAN FELT: The delegate, Mrs. Bates.

DELEGATE BATES: Mr. Chairman, fellow delegates. I wish to clarify something here; that in Gallatin County all the water now is appropriated or adjudicated. If the farmers wanted to use the water which is rightfully theirs, they can dry up the river right now. They have a general agreement for the past several years that they reduce the number of inches that they are allowed or permitted to have that is theirs, and they do leave water in the river. This would not make any difference because the adjudicated right, we've already passed on this, is a prior right and it will stay there. What we are discussing here is stream-flow that has not been diverted, that diversion would get a prior right, and this means it would be our water to use. If we let it go downstream, which we will by leaving it just in recreation alone, then Dakota will take the right to that. Later, we may never be able to use it in any form, because we are giving them the real right because of their use and our ability not to do so. Thank you.

CHAIRMAN FELT: The delegate, Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I don't think we really know what we're doing here and all the ramifications of it. And I really feel that we should vote against Mr. Davis' motion so that a motion--substitute motion can come up to delete all of Section 4 and let the Legislature handle it.

CHAIRMAN FELT: Does Mr. Davis wish to close'?

DELEGATE DAVIS: I'll withdraw my motion if the delegates will be kind enough to permit this other motion to come in and test it that way. I'll withdraw my motion.

CHAIRMAN FELT: Without objection—Mr. McDonough for what purpose do you arise?

DELEGATE McDONOUGH: I wasn't going to object; I was going to make a motion to delete.

CHAIRMAN FELT: Without objection, the motion of Mr. Davis will be withdrawn.

The gentleman, Mr. McDonough.

DELEGATE McDONOUGH: As a substitute motion, Mr. President, I'd like to move that the Convention delete subsection 4 of Section 3 of this report.

CHAIRMAN FELT: Do you request a roll call?

DELEGATE McDONOUGH: Yes.

CHAIRMAN FELT: A roll call has been requested.

The gentleman, Mr. Davis. For what purpose do you rise?

DELEGATE DAVIS: May we speak to this motion to delete? Is it—

CHAIRMAN FELT: Yes, it's a debatable motion.

DELEGATE DAVIS: Mr. Chairman, I support Mr. McDonough's motion to delete Section 4. Section 3 provides that all the appropria-

tions are going to be made subject to appropriation for beneficial uses as provided for [by] law. Then Section 4 tries to get in this recreation as a beneficial use without anyone understanding, really, what we're trying to do, as was shown by Mrs. Eck, when she thinks that we can provide a minimum streamflow somehow in July with the water that's already gone out of the state in the highwater time of May. Everyone met in here and we don't reach an agreement amongeveryone here as to what the language is we're trying to put in. I have-Section 4 is clearly the most statutory article that we've tried to write in the Constitution, and Mr. McNeil concedes that. And it's—the argument the majority uses on this is completely inconsistent with the argument they used yesterday with-on the first article to stick with the article—stick with the committee, and let's leave this up to the Legislature. Okay, we've got a completely different argument today on this because they want to put in a nondiversion flow. I respect and appreciate recreation as a beneficial use, but there's no way in the world-if you don't impound it, it just goes down the creek and out your borders. If this doesn't pass, then, of course, Mr. Wilson's motion was made. My motion was intended-if we were going to have such a motion, I thought we should have more than just the partial language out of a telegram from Mr. Aldrich in our Constitution. So we slowed it up enough to get a little thought-so regardless of which way it goes-but this is statutory. Calling your attention to the 1899 [1889] Constitution, they had a lot of speakers came and testified and they all talked about Montana and water, what we could do with water, and they traced the history of irrigation throughout the world, in all the countries. It all depended on irrigation and water. This attempt to get this in for recreation, scenic waterways and wildlife really sounds good to the people back home, but you're not doing a thing for them. If you leave it up to the Legislature, they have to implement it. Let them sit down and work it out and implement it the way it should be. When you get all the lawyers here—and the laymen here admittedly don't know how you're going to make that section work, but we still want to write it in the Constitution. And, ladies and gentlemen, I think we've got to go back to the concept we came with. Let's try to write a Constitution. We've got the purpose, we've got everything in the first three sections until someone wants to inject their personal idea in the Constitution. I'm prone to that, and we all are. And this is exactly what's happened here. I talked with this—Mr. McNeil on this, I kind of agreed with him at times, but it seems to me now it's one of these things. We should delete Section 4 as completely statutory.

CHAIRMAN FELT: The delegate, Mr. Arbanns.

DELEGATE ARBANAS: I wonder if Delegate McNeil would yield to a question.

CHAIRMAN FELT: Does Delegate McNeil yield to a question?

DELEGATE MCNEIL: I yield.

DELEGATE ARBANAS: I understand the first purpose of this subsection was to keep Montana waters guarded against use on downstream. Will this be lost if we delete this thing?

DELEGATE MCNEIL: Yes.

CHAIRMAN FELT: The delegate, Mr. Loendorf.

DELEGATE LOENDORF: Yes, Mr. Felt. I'll ask Mr. Berg to yield to a question, please.

CHAIRMAN FELT: Does Mr. Berg yield?

DELEGATE BERG: I yield.

DELEGATE LOENDORF: Mr. Berg, I'm not up-to-date on water law, I think, like you are. I'd like to pose this question to you. I think the last answer Mr. McNeil gave is inaccurate, but I'm not sure. But it seems to me no matter what we put in our Constitution or what we put in our statutory law, that when a dispute results between two states over water, the case will be tried in federal court and the federal government will then make a determination and divide up the water between the two states as the needs exist within those states. Is that not correct?

DELEGATE BERG: I would-1 think you're correct and I do not agree with Mr. McNeil that by-1 believe that Mr. Loendorf is correct, that this is the way the problem will eventually arise. And I believe that we ought to include at least as many uses of these waters and recognize them in the Constitution, because it gives us that much better status in relation to other states.

CHAIRMAN FELT: The gentleman, Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I am standing up again with another lawbook in my hand, and I'm afraid I'll get shot down here by Mrs. Robinson, but nevertheless, I'll continue. I'd like to refer the body's attention to Section 89.801, and this has to do with the appropriation of water by the Fish and Game Commission. And it says here: "The unappropriated waters of the streams and portions of streams hereafter named shall be subject to appropriation by the Fish and Game Commission of the State of Montana in such amounts only as may be necessary to maintain streamflow as necessary for the preservation of fish and wildlife habitat. Such uses shall have priority of right over other uses until the District Court in which lies the major portion of such stream or streams shall determine that such waters are needed for a use determined by said court to be more beneficial to the public." Now, it seems that one of the main purposes--main arguments of debate for the last hour or so has been to establish in the Constitution that appropriation of water for recreational purposes is a beneficial use. And it would seem to me that the Legislature has already anticipated this in that respect by this section and, I suspect, other sections. They have already declared that water may be appropriated out of our streams for a beneficial use, which is fishing. I think, with other observers here, that we are actually trying to legislate in here. I think subsection 3 is about all we need. And I'd like to ask Mr. Etchart, if he would, to read what the North Dakota Constitution has in it about water rights.

CHAIRMAN FELT: The gentleman, delegate Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, this is all there is to it in North Dakota. "All surface and subsurface water shall forever remain the property of the people and subject to appropriation for beneficial uses as provided by law." That's it.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I want to say to Mr. McNeil and the other members of the committee that I am in complete sympathy with the purpose of subsection 4 and I have no problem with subsection 4. It took me a little while to understand it, I have to say, because getting—acquiring water as subsection 4 says is complete anathema that 25 years of law practice when I'm working with water. But I went--earlier today I talked with Mr. McNeil to see if he could live with Mr. Wilson's proposed amendment, and at that time he told me he could. And I would like to have this Section 4 and I'd like to have it with that amendment. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of the motion to delete. I think all-most of us can see the problems we're creating here by putting this section in, and I would like to say that I don't agree that if we don't have Section 4 that we're going to lose our water to North or South Dakota. I submit that within 10 months there's going to be a Legislature meeting here and they can set up the uses and appropriate all the water, and we don't have to do it in the Constitution. And if you don't think they're going to do it, you go home and get some candidates to run that are going to put this in the Constitution-or in the statutes--when they meet here next year. And I'm scared to death what we're doing here. We're just involving in more and more problems here that we could have the worst fiasco you ever saw with this section in here. I think the Legislature is going to do it. I think they know water is important, and I submit that this should be deleted and leave it up to them. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman.

CHAIRMAN FELT: Be sure you put your name on the list. (Laughter)

DELEGATE SCANLIN: Thank you, Mr. Chairman. If I'm going to go downstream or down the drain, I'm going all the way. I rise in support of the majority report and resist the motion to delete.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I want to talk a little bit about this Bitterroot proposition which was brought up. It is true, as Delegate McNeil said, that the Painted Rocks Lake was constructed. It was constructed, however, as a WPA project. After the government owned it for awhile, the State of Montana Water

Conservation Board acquired it from the federal government, which wanted to get shed of it. As years passed, sportsmen of the Bitterroot and Missoula areas decided they wanted to get more water into the Bitterroot River, which would keep the rocks at the bottom of the river wet during this dry summer season. They raised a fund between the Fish and Game Department, the Western Montana Fish and Game Organization, and the Ravalli County Fish and Wildlife Association, and they bought 5,000 acre-feet of the water from the Painted Rocks Lake, which holds when impoundment is complete approximately 33,000 acre-feet. When the summertime comes and the floodwater is gone in the Bitterroot River, the water-the normal flow of the stream, as described by Delegate Berg, runs down the river and is captured in the irrigation ditches of the various farmers and irrigation districts which own the-which possess the prior rights. At one time my family owned a ranch, which I disposed of some years ago, of approximately a thousand acres. We had a third irrigation right, and in that district of Canyon Creek there were 23 or 24 appropriations. We had third right. In July there was no more water for us, only the water was for the first and second rights. The same thing is true throughout the entire valley. In the summertime, when the floodwaters have disappeared, the river between Victor Crossing-or between Tucker and Victor Crossing is so destitute of water that you could walk across the rocks of the east side channel of the river, the big channel, without getting your socks wet in oxfords. The same thing is true in many other portions of a lot of the creeks, as described by Delegate Berg, in Park County. A lot of our creeks become absolutely dry. The water is captured and put into irrigation, as it should be. However, the 5,000 acre-feet which was purchased by the State Fish and Game Commission and the two sportsmen's organizations--when it is released, it does keep the aquatic insects and the plant life below the water level, it keeps it moist enough in the west fork of the river below the Painted Rocks Dam until it reaches its junction with the east fork of the river. And then, afterthat, the water which was purchased and was supposed to keep the river moist from the lake down to where it joins the river, the Clark Fork at Missoula, it suddenly disappears. Farmers gather it up in their ditches all along the route until there is none. And this is not a fancy at all; it's a fact. And anyone who lives in the Bitterroot or anyone who goes up there during July and August can see it for themselves. One of the worst examples of it is the State Water Board itself, which owns the former Daly ditches which were unloaded on the State of Montana for $1 when they got too costly to maintain. And then the state put several hundred thousand dollars in them to make them operative and we now have good ditches, and they use more water than they are allowed under their appropriation, and so does almost every other farmer. So, if you're going to maintain the water for wildlife, including fish, you are going to have to have somebody riding herd. Well, we have Water Commissioners. We've had Water Commissioners in Ravalli County twice in the histdry of the county on the river. We have them all the time, every summer on the creeks, but on the river we just have had them twice in all the history of Ravalli County, and Ravalli County was one of the first counties to be settled in the State of Montana. Now, if the State of Montana, through its Fish and Game Commission, is going to acquire—spend a lot of tax-license payers' money and federal money that they get in order to impound water and turn it loose, why, there's no reason for us to suspect that we'll have any other results than we've had on the Bitterroot River. I think that this is a pretty good example of the need for this impoundment, and I think the only way we're going to get it is through having recreation a beneficial use. Now, we go waiting for the Legislature to do it. Two members of this assembly sat for almost two years on a committee that was set up just for the purpose of trying to write a new water law for Montana, and when we got through with those two years, we had such voluminous text that none of us would sign the bill. And I don't think you're apt to get anything like this out of the Legislature very quickly. But it's worth trying. I do not think we should sacrifice Section—subsection 4, and I'm for the majority report.

CHAIRMAN FELT: The question before us is the motion of Delegate McDonough to delete this in its entirety.

The gentleman, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I resist the motion to delete. In the conversations I have had with people, it seems like we haven't really had any problem with this section we are talking about until the Bureau of Reclamation got into it, and as far as I'm concerned, the Bureau of Reclamation would probably just a lot sooner have this grandiose plan go through than to have

the people of the State of Montana keep the water. I talked, a couple of weeks ago, with one of Mr. Blaylock's constituents that is in both of the ditch companies in the Billings area. We thoroughly went over the article with he and five others. I received a phone call from this gentleman yesterday afternoon, and he said he was against this, and I said, "Well, now, just a minute. This is the same thing that when we sat down and discussed, you said, 'Well, this we need to keep water for the future of Montana.' The only thing that we did is we took-found when the explanation of it was being written that we had to take part of what was in Section 6 and put it in Section 4 for clarity." I said, "Who's been talking with you? What's causing the trouble?" And, as near as I can find out, it was the Bureau of Reclamation that was causing the trouble. Now, I submit to you that we are the people of the State of Montana and that we are the people that should be writing the Constitution for the State of Montana, and not the Bureau of Reclamation. And I believe that the only quick way and sure way that we are going to have to protect all of the water that we need to protect is to pass Section 4. And I believe that once this is passed, the Legislature will provide the priorities in law as they should, and then we will be sure that we are doing a job for the future generations of this state. As I say, I resist the motion to delete.

CHAIRMAN FELT: The gentleman, Delegate Mr. Holland.

DELEGATE HOLLAND: Yes. Mr. McNeil, would you yield for a question?

DELEGATE MCNEIL: I yield

DELEGATE HOLLAND: Mr. McNeil, to give you my background, I'm a lawyer that never had had a water rights case. We just don't have problems like that in Silver Bow, I guess. In any event, all I ever knew about water was that it didn't flow uphill. That is, up to now. I'm not sure about what I understand. (Laughter) But, I've been sitting here for three hours listening to this debate and trying to find out how anything the two Dakota states are going to do to our water that are going to interfere with recreation. Now how—what can they do in North Dakota or South Dakota that is going to keep us from fishing or water skiing or using these streams? I just-they can't touch this water till it comes within their borders, and I just don't know what they can do.

DELEGATE MCNEIL: They can dig a great big ditch and funnel it out of here in the middle of the summer, and this is in the thinking of many of the master planners at the national level.

DELEGATE HOLLAND: You mean it's within the power of North Dakota to come into the State of Montana and dig a big ditch?

DELEGATE MCNEIL: Mr. Holland, I'm not nearly so concerned about North Dakota as I am Texas and California.

DELEGATE HOLLAND: Well, I—

CHAIRMAN FELT: Does the delegate, Mr. Hanson, wish to speak on the motion?

Delegate Mr. Hanson.

DELEGATE ROD HANSON: Yes, Mr. President, I just wanted to say that the telegrams and the letters that I have got from my people in my area who are irrigation people didn't come from the Bureau of Reclamation, Mr. Gysler. I can assure you this. And as far as I know, Mr. Aldrich has not been in my area in the last two, three weeks.

CHAIRMAN FELT: The question before—The delegate, Mr. Drum.

DELEGATE DRUM: Mr. President. If I could get Mr. Holland's attention, I'm going to invite him on a trip to North Dakota, too, it looks like. The method of establishing a waterright, Mr. Holland, is to use it as—on an irrigated project, say. If the people of North Dakota set up an irrigation project and they are using a certain amount of water, then they establish a right to that water. Now, those people in Montana who, 10, 15, 20 years from now, say, "I think I'll establish an irrigation project here", they establish a project, but a person from North Dakota can come back upstream and he can turn the water off of the people who last filed water rights on that stream. And he can go to a court of law and turn them off. My two days in law school have not prepared me for an argument with you, but that are-those are the facts, Mr. Holland.

CHAIRMAN FELT: The gentleman, Mr. Holland, may speak.

DELEGATE HOLLAND: Yeah, I wasn't quite as dense as I pretended to be. What I'm saying-they're talking about recreation use, and

I fail to see what use--what North Dakota does with the water after it leaves the State of Montana could ever affect a recreation use in Montana. And all of this stuff about diversion; I don't care about it. I don't care about it unless you're going to take Montana water out of Montana. Now, there has been a lot of talk about taking Columbia water down to southern California. I was against it. I said, "Why should they use our water?" When I looked into the practicalities of it, they don't want to take the water in Montana down to California. They don't want to take the water in Idaho down to California. They want to take the water in Oregon down to California. They want to go to the mouth of the Columbia, and that's when it has run its entire course and it's going out into the ocean, and they want to take it at that point and take it to California. And I just don't see where we have any big worry about them taking water from the mouth of the Columbia River and taking it down to California. I just can't see where anybody in Montana is going to be hurt by that. But I further can't see-1 don't know what Mr. Davis is worried about and I don't know what Mr. McNeil is worried about. That's what's got me puzzled. I'd like to vote intelligently on it, and I don't know what they're worried about.

CHAIRMAN FELT: The delegate, Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and delegates. I, too, have been sitting here for quite awhile, trying to understand the issue, and it seems to me if I could try to state it, maybe someone can answer it and help. One of the problems is, we're trying to answer two problems with one section, it seems to me. One is an external one of how to protect our water rights from others; the other is an internal fight in terms of the priorities by which our water is going to be allocated within the state. And it's just very difficult to come to a clarification when you're trying to settle both these issues in one single subdivision of our section. IS there someone who could speak to that and tell me otherwise, or is that really our problem? We're trying to resolve two things with one amendment-or, rather, one statement, and it just is never going to be done. Mr. Mahoney, would you yield to a question?

DELEGATE MAHONEY: (Inaudible)

DELEGATE BURKHARDT: Mr. Chairman, would Mr. Mahoney yield to a question?

CHAIRMAN FELT: Do you yield, Mr. Mahoney?

DELEGATE MAHONEY: Yes.

DELEGATE BURKHARDT: Earlier today, Mr. Mahoney, you spoke of the fact that Montanans are going to have to get together in order to make this thing work. And as I have now stated the problem, does that seem to be related to what we're talking about, or have I missed the whole sense of it as we've talked?

DELEGATE MAHONEY: Would you repeat what you said?

DELEGATE BURKHARDT: My statement was, we're trying, it seems to me, to do two things in one subsection. We're trying to guarantee that we'll not be drained of our potential water use by downstream users and at the same time we are trying to set priorities for the use within the state, and I don't think it can be done in one section in the Constitution. Could you clarify that, or help me?

DELEGATE MAHONEY: Well, you probably are correct in this point, that you're setting two things. All I'm trying to do here in this Convention--as I told you, I don't think we can fight amongst ourselves. We'd better compromise now than to get North Dakota in on the compromising, or South Dakota. Now, I'm not worried—and it's just as much Nebraska. Those are the downstream states. Now, I think that I could live with the present Section 4. I have no objection to the original amendment as presented by Mr. Wilson. I do, though, question to go down to the point of making junior and senior rights around here, because this might be wrong. And now, have I answered your question? If I haven't, I—

DELEGATE BURKHARDT: Mr. Chairman, could I try again and perhaps not with Mr. Mahoney, but just to state the thing? I do appreciate your comments.

CHAIRMAN FELT: Delegate Mr. Burkhardt may speak on the motion.

DELEGATE BURKHARDT: Fine. Thank you, Mr. Mahoney. And it wasn't that you confused me more; it's just that some of you have been wading around in water law most of your lives and others of us are going to have to make a decision, and you're not helping us, it seems to me, to clarify the issue. Some of you have been in this

same business and you are giving us opposite points of view, which only says to me you're protecting the interests of one group or another within our state. You are not looking at the overall picture. If I understand this Section 4 and the amendment as we now have it and whether or not I am going to be willing to delete it, I have to understand this. It seems to me that what's being said is: first of all, we have nothing in the Constitution now about water rights. Therefore, we put something in to protect ourselves for the future, as in relationship to people outside this state. One comment I would make is that 700,000 people are never going to have it in a land where one man-one vote is involved and where we're going to be looking at uses all up and down, so eventually federal legislation is going to take precedence over what we're deciding to do, and I think Jerry Loendorf was on target with that one. Another point it seems to me we have to think about, and this is that what I'm understanding is that the people who have been using the water have it over-appropriated now and if we legitimize another beneficial use, their already over-appropriated uses are endangered even further. They don't want to come in to the Legislature on equal terms with Fish and Game and fight it out. They don't want to come in and fight it out there; they want to have a guarantee that it will be on a junior basis when they get here-and I'm you know, just confused at this point. I'd like to see it a beneficial use and I'd like to see them have to fight it out in the Legislature as to how that gets allocated; and it seems to me that the way it's presented to us now, it's very difficult for someone who hasn't waded around in this for a long, long time to make any kind of intelligent decision. Thank you.

CHAIRMAN FELT: The delegate, Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I would like to answer Mr. Burkhardt. By Section 3, we have provided all waters will be held for the state and the people of Montana. From there on we have turned into a Legislative Assembly and each of us has our own little pet we're trying to get into this Constitution. Therefore, we should delete Section 4.

CHAIRMAN FELT: The delegate, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Mr. Holland has left, but I think he's under a gross misapprehension. The idea, for the rest of you who may have the same confusion, the idea of appropriating this water now is so that some time in the future North Dakota can't take it and deprive us of it. Now, the water skiing he might want to do. When North Dakota gets a prior right to it for having used it and using it, they could just empty that lake or that river or whatever it is, and Dave Holland wouldn't have any place to water ski. Now, to Mr. Burkhardt, so far as trying to do two things in one section, that's true; we are, Mr. Burkhardt. We're trying to do two things in one section, but they're totally interrelated. It's necessary to do two things in one section to accomplish the purpose that Mr. McNeil and his committee are after. You are also right when you say there's a selfish interest here. I admit there's a selfish interest here, and it stems from this one thing-and that's the worry that the Legislature, when it does do this, will not put the proper priorities on the use of that water. Does that help any?

DELEGATE BURKHARDT: May I answer, Mr. Chairman?

CHAIRMAN FELT: The delegate may speak again.

DELEGATE BURKHARDT: Thank you, Mr. Chairman. And I hear you, Mr. Schiltz, and what you are saying is that we are prepared in this body to make a better decision than will be the Legislature; and I think it may be time to seriously question that.

CHAIRMAN FELT: I don't think we need a lot of additional explanations or summaries. The delegates must be getting ready to vote.

The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I have a question I'd still like cleared up. I think that we're all kind of in the same-have the same problem Mr. Burkhardt does, but I wonder if Mr. Schiltz will yield to a question?

CHAIRMAN FELT: The delegate, Mr. Schiltz, yields.

DELEGATE ECK: Under this provision, as amended, would not the provision that the Legislature may, for blue-ribbon trout streams, be crossed out?

DELEGATE SCHILTZ: I don't know. I'd have to ask Mr. McNeil that. I don't know that much about blue-ribbon trout streams, but from—

CHAIRMAN FELT: Does the delegate, Mr. McNeil, wish to respond to the question?

DELEGATE MCNEIL: Mr. Chairman, it could be so interpreted, yes.

CHAIRMAN FELT: The delegate, Mrs. Eck, are you satisfied, or are you done?

DELEGATE ECK: Yes, that was the interpretation I had-that these did provide for minimum flow in these streams, and I can't see that they would have any right for it under this.

CHAIRMAN FELT: Yeah. Members of the committee, there are, I believe, six additional amendments that are up here that have not yet been taken up, in addition to those that are before us, and the hope of completing our work without a night session is rapidly dwindling. And so, you can again keep that in your minds.

The gentleman, Mr. James.

DELEGATE JAMES: Yes. Mr. Felt, I, like Delegate Burkhardt, am a little bit confused and I consider myself equal with Delegate Holland. I know that water flows downstream. I also know, along with Delegate Romney, that you can shut off water downstream by building dams and using the water, and we hear about-talk about denying water to North Dakota and using it first. Is this the idea? Now, the Missouri River is also the lifeblood of the State of North Dakota. Just what are we attempting to do here, Mr. McNeil? Will you yield?

CHAIRMAN FELT: Will Mr. McNeil yield?

DELEGATE MCNEIL: I yield. I think I can answer that with a Z-minute summary that I started the day out with that apparently everyone has forgotten.

CHAIRMAN FELT: Please do that.

DELEGATE MCNEIL: That is, the question, ultimately, probably will be determined, as suggested by Delegate Loendorf, in a federal court. They will look at the state's law. They will up—they will divvy up the water in accordance with the uses that have been made of that water, not just the ownership. They, of course, will look at ownership, which we've taken care of in subparagraph 3. What we are trying to do in subparagraph 4 is say, "Montana recreation, without a diversion, is a valid use that is recognized in Montana law", so that we can say we are using the water. With our present law, our present absence of such a statement in the Constitution or statutory law, when we get into that federal court with the downstream states, they say, "Under your present law, you've got irrigation, domestic, municipal, and that's it." Remember, this does not apply to appropriated waters: it's only those waters that now have no water rights on them, which means it doesn't talk about the Beaverhead and the Gallatin, that are over-appropriated. It's at the tail end of the stream where there's large quantities of water that we don't have any claim on now, that we are not--under our present law, we don't have any recognized use. The Legislature has refused to do this because of this kind of a telegram. That's why we are trying to get it in here.

CHAIRMAN FELT: The delegate, Mr Anderson.

DELEGATE OSCARANDERSON: Well, I live approximately on the banks of the Yellowstone and about 20 miles or less from the Missouri River where the Missouri and the Yellowstone go together, and all I know is that I've seen enough of this water flowing down both those rivers that can be used by other states, and when we want to use this water someday, I want to see a law, in our-or the framework in our Constitution where we could preserve this water to ourselves, ifpossible. Now, I have watched them water ski over on Lake Sacajawea; I've seen this whole Garrison Diversion Project, and I know that if Montana needed that water, someday had a use for that water that's been appropriated by North Dakota, they don't have it. They already have some rights to water that flows out of Montana, and I want to see us reserve full use of our waterrights to Montana, but I sure don't know how to do it. I wish I was smart enough to figure it out.

CHAIRMAN FELT: The delegate, Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wonder if all the other delegates are faced with the same dilemma. You know, I spoke before in support of the majority proposal. I am still in support of the majority proposal, but I'm so afraid that if other things are tacked onto it, we are going to really beworseoffthanweareifwedeletedit. So I'm really torn between deleting this, because something else might come up. Now, I sat in on that meeting during the recess, and it was pure legislative work. I mean, I think that it's just ridiculous for us to try to legislate in the brief time that we have. I think, as Charley Mahoney says,

we should leave it to the wisdom of the Legislature. And I notice that the last sentence in the majority proposal, it says the Legislature may designate priorities for the future rights if necessary. I am still for the majority proposal, but my question to you, Mr. Chairman-you said you have several amendments there. If we pass this, if I vote for the majority proposal, is there a danger of having these other amendments tacked onto it? Perhaps I'd be better off, since I'm for recreation as a beneficial use-perhaps we are all better off to delete the entire section.

CHAIRMAN FELT: Most of these, I believe, are to succeeding sections of this article.

DELEGATE REICHERT: Fine. So that if we vote for the proposal, there will not be the danger of having—

CHAIRMAN FELT: I couldn't assure you of that. Of course, anyone could make motions to amend-anything can come up yet, but I'm just letting you know there's quite a lot here already.

The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, fellow delegates. I have a letter here from one of the grand old men of water development in the State of Montana, Mr. Dick Fabrick, who has an illustrious background. He's former Chairman of the State Planning Board; he's a former member of the State Water Conservation Board, the State Forestry Board, the State Soil Conservation Committee; he served on the National Reclamation Association as our national director for many years. And I'd just like to read his opinion of this proposal to you. In his own words, he says, "If subsection 4 of Section 3 of this proposal is adopted and under its provisions the prior water right for recreation is established, it would give priority status to one water right over all other uses. It would becloud subsequent appropriations for municipal, agricultural, industrial and other beneficial uses and degrade the values of such subsequent water rights, because the waters were already appropriated for recreational use. The water saved and protected for recreation use would flow undiminished into downstream storage for downstream benefits of power development, navigation and pollution abatement. This prior recreational water right would favor competitive uses in downstream states by restricting or limiting future water development in Montana. The adoption of subsection 4 of Section 3 of this proposal would harm the general interests of Montana. It has no place in the Constitution of the state. It should be eliminated from this proposal."

CHAIRMAN FELT: The gentleman, Mr. Siderius. For what purpose do you rise?

DELEGATE SIDERIUS: Mr. Chairman, I was just wondering if-it seems like everybody wants to do the best thing possible for this water; and it is so vital, I think we should. Would it be possible, or would I be in order or out of order if I moved to set this aside for a later date and let some experts mull this over until we get something concrete for this Convention?

CHAIRMAN FELT: Such a motion would be in order, Mr. Siderius. In an attempt, which may be a failure, to simplify this, I believe the majority-the proposal of the committee is an attempt to lay the groundwork for a future lawsuit in federal court. Those who oppose it and wish to delete it, in general, think that they are creating too much havoc in trying to do it and that the risks of that are too great.

DELEGATE SIDERIUS: Would a motion be in order, then?

CHAIRMAN FELT: A motion would be in order, Mr. Siderius.

DELEGATE SIUERIUS: I so move.

CHAIRMAN FELT: Your motion is to postpone until—

DELEGATE SIDERIUS: Until some agreement can-let's see, until-you want a date set, I suppose.

CHAIRMANFELT: Howabouttilltheend of the article--until we reach--move it to the end of the article?

DELEGATE SIDERIUS: Right.

CHAIRMAN FELT: The motion is to postpone the decision on subsection 4, until-and to take it up again when we have completed the rest of the article. All in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. The motion is defeated.

Mr. McDonough, would you wish to close?

DELEGATE McDONOUGH: Mr. Chairman. As Joe McCarvel just told me now; now I know why the Missouri is called the Great Muddy, because really-and I'm half serious on that. The thing is, we really don't know what we're talking about again. We can talk all day and we still don't know all the ramifications of Section 4. This is really legislation. It's something for the Legislature to do. And if in the future we do get in a lawsuit with the State of North Dakota and the federal government and the State of South Dakota and the other states on down the river, we want to be on all fours. You don't go into lawsuits, if you can prevent it, without being on all fours and without having the facts and everything on your side before you even start the lawsuit. You think about that first. You don't go willy-nilly and then we'll take care of it if we get in alawsuit. And really, the Legislature is the best prepared to decide the laws and the priorities and the uses and the beneficial uses than what this Convention is this afternoon in three hours ofdebate. And therefore1 wouldlike to renew my motion-or urge you to support my motion to delete.

CHAIRMAN FELT: The question now arises on the motion to delete.

The gentleman, Mr. Heliker; did you wish to speak?

DELEGATE HELIKER: I ask for a roll call vote.

CHAIRMAN FELT: Oh, a roll call, yes. The question now arises on the motion to delete subsection 4 in its entirety. There will be a roll call. Those in favor of the motion will signify by voting Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Aye
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Nay
Cain	Absent
Campbell	Excused
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Absent
Erdmann	Nay
Eskildsen	Absent
Etchart	Aye
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lorello	Aye

Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Absent
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Chairman Felt	Aye

CLERK HANSON: Mr. Chairman, 53 delegates voting Aye, 36 voting No.

CHAIRMAN FELT: The motion is carried. The clerk will now read-Oh, just a second-the proposed amendment of Mr. Berg. Do you have that, Mr. Clerk? Here's a copy of it.

The gentleman, Mr. Berg.

DELEGATE BERG: Mr. Chairman, I did not anticipate, at the time that I made this proposed motion, that subsection 4 would be deleted, so I now move that instead of amending subsection 4, that in lieu thereof the following be substituted as subsection 4. If the clerk will read it, please?

CHAIRMAN FELT: Yes, the motion is being made by Mr. Berg to insert a new subsection 4, which the clerk will now read.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 4, by inserting the following sentence: 'Jurisdiction to administer and control the right to the use of waters in adjudicated streams is vested in the District Court.' Signed: Berg."

CHAIRMAN FELT: Does the gentleman, Mr. Berg, wish to speak on his motion?

DELEGATE BERG: I do. Mr. Chairman, of all questions that have been asked of me from constituents that I represent in both Park and Gallatin County, this is the one most-important factor to them. You must remember that in our area, water is the lifeblood of our agricultural system and that water, for the most part, in all tributary streams has been adjudicated by the courts. There is very little flowing water in the tributary streams of the Yellowstone River and of the upper regions of the Missouri, both in the Madison, the Gallatin, the Jeff&son, and all of the tributaries to the Yellowstone that are not adjudicated. Now, presently the District Court administers those water rights and it is generally--am I on?--and it is generally done through the system of a Water Commissioner. The proposal is rampant throughout the state to do away with this jurisdiction, and the suggestion is frequently made that it should be placed in a state agency and the state divided into districts, presumably under the jurisdiction of a State Engineer, who will resolve these problems, rather than to have them resolved in the District Court. Now, in our community the ranchers and the farmers, both large and small, arc adamantly opposed to this suggested renovation, and to protect them, they have asked me, and I am presenting this amendment at their request, because this is what happens. The two-there may be a dispute between ranchers on the distribution of the water in their various ditches and the commissioner that is appointed by the court is in a position where he can't resolve it. Almost all of those disputes are quickly and thoroughly resolved when the Commissioner and the disputed water right users go to their District Judge and they get it taken care of on a hot Saturday afternoon in July. They are concerned that if they are required to take this before a

District Engineer at some future time, or to—perhaps even into Helena, they will have chaos in the administration of their water rights system. I urge you to give this matter serious consideration. This is now taken care of by the District Court through statute. There is always the possibility, at least in the minds of the people whom I represent, that it might be changed, and they are adamant against that change.

CHAIRMAN FELT: The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Berg, will you yield to a question?

DELEGATE BERG: I yield.

DELEGATE ETCHART: Mr. Berg, I am on the Board of Directors of the Glasgow Irrigation District, which is a Bureau of Reclamation project, part of the Milk River project, and we have a Water Master, we have a Project Manager, and they administer the water on that project on close to a hundred thousand acres. Now, would this mean we would have to turn over control to the District Judge?

DELEGATE BERG: Not unless the water is adjudicated by a judicial decree. That is, the water rights in that-on that stream, if they have been determined and their priorities are set by the District Court under an adjudication proceeding, then the court has jurisdiction. If it has not been, the court does not have jurisdiction, and it would not apply to unadjudicated streams.

CHAIRMAN FELT: The gentleman, Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President-Mr. Chairman, will Mr. Berg yield to a question?

DELEGATE BERG: I yield.

DELEGATE BLAYLOCK: Mr. Berg, if your proposed substitutemotion were to pass, does that mean that the State Legislature would not have control or could not legislate anything having to do with waters in our rivers?

DELEGATE BERG: No, it would not mean that. They can act-they can enact any law that they want regarding the use of those rights, regarding the priorities of them, but the administration of them and the control of the ditches and the streams that are under adjudication would remain in the District Court, as they are now.

CHAIRMAN FELT: The gentleman, Mr. Habedank.

DELEGATE HABEDANK: Mr. Berg, will you yield to a question? Mr. Chairman.

DELEGATE BERG: I yield.

DELEGATE HABEDANK: The fact that you said jurisdiction to administer and control this water would not preclude appeals to the Supreme Court, would it?

DELEGATE BERG: Of course not. That's all that's vested in the District Court.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman.

CHAIRMAN FELT: Yes, Mr. McNeil

DELEGATE MCNEIL: The committee thoroughly considered this matter. Delegate Berg just stated it is now taken care of through statute. I think that's the precise reason we emasculated our Section 4 as proposed by the committee. Subsection 6, the comments of which I read into the record several hours ago, specifically says that this does not in any way change the present legislatively established system of local control of adjudicated waters by Water Commissioners appointed by the District Court. This is taken care of. It is the present system. Our subparagraph 6 preserves it. It makes no changes. There's one thing that Delegate Berg is overlooking, and that is that some time in the future the District Courts might themselves not want to do this, and it would be locked into the Constitution.

CHAIRMAN FELT: Does the delegate, Mr. Berg, wish to close?

DELEGATE BERG: I will close

CHAIRMAN FELT: The question now arises on the motion to in-to add a sentence as subsection 4 to read as follows: "Jurisdiction to administer and control the right to the use of waters in adjudicated streams is vested in the District Court." All in favor of the motion—

DELEGATE BERG: I thought perhaps I'd close. I'll be very brief.

CHAIRMAN FELT: Oh, I thought you meant that you had closed. I'm sorry. Go ahead.

DELEGATE BERG: The very evil of which Mr. McNeil speaks is the evil that the people that I represent want to avoid. And let me tell you, we went to a meeting about three weeks ago at home. We had a hundred and fifty people there. We've never had that many before; and at least a hundred of them were there concerning this very problem. They are not satisified with leaving it to the Legislature. They don't want this system disturbed.

CHAIRMAN FELT: Those in favor of the motion will signify by voting Aye.

DELEGATE CHAMPOUX: Could we have a recorded vote, please?

CHAIRMAN FELT: The request is made for a roll call vote. Sufficient seconds made, the members will-those in favor of the motion will signify by voting Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim .. .. Nay
Anderson, J. ..... Aye
Anderson, 0. Nay
Arbanas ..... Absent
Arness ..... Absent
Aronow Nay
Artz Nay
Ask ..... Nay
Babcock Absent
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Nay
Blaylock Nay
Blend ..... Nay
Bowman. .. Nay
Brazier ..... Absent
Brown ..... Nay
Bugbee Nay
Burkhardt Nay
Cain ..... Nay
Campbell .. .. .. Excused
Cate .... Aye
Champoux ..... Nay
Choate ..... Absent
Conover ..... Aye
Cross ..... Nay
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... .Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... .Absent
Hanson, R. ..... .Absent
Harbaugh ..... .Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... .Absent
Heliker ..... Nay
Holland. ..... Nay
Jacobsen .... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Aye
Loendorf .... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... .Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay

Rollins.. .Absent
Romney Nay
Rygg ..... Nay
Scanlin Nay
Schiltz Nay
Siderius..... Nay
Simon .....Aye
Skari ..... Nay
Sparks..... Nay
Speer ..... Nay
Studer.....Aye
Sullivan Nay
Swanberg..... Nay
Toole .Absent
Van Buskirk .Absent
Vermillion Nay
Wagner .. .. .. Nay
Ward ..... Nay
Warden Nay
Wilson ..... Nay
Woodmansey .. .. .. Nay
Chairman Felt .. Nay

CLERK HANSON: Mr. Chairman, 16 voting Aye; 64 voting No.

CHAIRMAN FELT: The motion has failed. The clerk will read Section 5-subsection 5.

CLERK HANSON: "Subsection 5: Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests." Mr. Chairman, subsection 5.

CHAIRMAN FELT: The gentleman, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 3, subsection 5, of Proposal Number 6, it recommend the same to be adopted.

CHAIRMAN FELT: Members of the committee, unless there's discussion, the question now arises on the motion to—

The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, this language was taken out of my Delegate Proposal Number 48 and I made a drafting error. I'd like to move to delete the second sentence in that section.

CHAIRMAN FELT: Yes, I see we have a motion here that was just handed to me which would also delete that and insert-is this from you?

DELEGATE ETCHART: No, if my-1 believe that Mr. Wilson submitted it.

CHAIRMAN FELT: Oh, all right.

DELEGATE ETCHART: But it should be deleted because it makes reference to a controlling body which we haven't incorporated in this article.

CHAIRMAN FELT: Will the clerkread the proposed amendment to subsection 5. Well, read it as a motion, but I see that the other copy shows it's been signed by Mr. Wilson, so this must be the one Mr. Etchart is speaking of. Anyway, read the—

CLERK HANSON: "Mr. Chairman, I move to amend Section 3, subsection 5, page 4, being lines 23, 24 and 25, by deleting the following language-quote: 'No appropriation shall be denied except when such denial is demanded by the public interests' and inserting in lieu thereof the following new material-quote: 'Priority of appropriation for beneficial uses shall give the better right.' Signed: Wilson."

CHAIRMAN FELT: The delegate, Mr. Wilson.

DELEGATE WILSON: Mr. President, in view of the explanation of what Mr. Etchart has just told you, I think this is-could be legislative. I think the briefer-or the more brief the explanation is, the better it is, and it wouldn't be controversial. So, I move that "Priority of appropriation for beneficial uses shall give the better right, period", I think this is the best thing to do at this time to avoid controversy.

CHAIRMAN FELT: The delegate, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this provision was placed in the article at the request of Delegate Etchart. If he wants it taken out-1 can't speak for the whole committee, but I certainly have no objection. It serves no purpose, and it would be better out of it.

CHAIRMAN FELT: The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, just so that you're clear on this, now. I only want to take out the second sentence. I want to leave the

language in: "Priority of appropriation for beneficial uses shall give the better right." I want that left in. I want the rest of that deleted.

CHAIRMAN FELT: Without inserting the new material. Is that what you desire, too, Mr. Wilson?

DELEGATE WILSON: (Inaudible)

CHAIRMAN FELT: Do you wish to delete the second sentence without inserting any new material?

DELEGATE WILSON: This is correct.

CHAIRMAN FELT: All right, the question-the motion, as corrected, in lieu of the motion as read by the clerk, is simply to delete the second sentence of subsection 5. Those are on lines 23, 4 and 5 of page 4. Are you ready for the question?

DELEGATE MAHONEY: Mr. Chairman.

CHAIRMAN FELT: Oh, the gentleman, Mr. Mahoney.

DELEGATE MAHONEY: Would somebody answer me what they're doing? I just don't understand this. Would we get somebody to explain what you're doing here?

CHAIRMAN FELT: The gentleman, Mr. McNeil; will you-or Mr. Etchart?

DELEGATE ETCHART: Yes, I'll explain that. What I did, Charley, was I took that section from the Wyoming Constitution, which is their Section 3, and I put that into my delegate proposal because I wanted to have something in there that would specify the priority of rights. In other words, the principle "first in time is first in right". I didn't realize, though, that the second sentence makes reference to-in their Constitution to a Board of Control, and we don't have a board or the-any administrative body mentioned in this present article, so it would be inconsistent with what we're doing here. So it was my error in leaving it in when I originally drafted my Delegate Proposal 48.

CHAIRMAN FELT: Does the gentleman, Mr. Mahoney, wish to speak?

DELEGATE MAHONEY: Mr. President, I would say if we've cut out Number 4, I don't see why we couldn't cut out Number 5 and leave that to the Legislature. I just wonder if we need it in there. Maybe I'm wrong; maybe I don't see the great importance of this. I'm not making that as a motion, but I'm just wondering.

CHAIRMAN FELT: The delegate, Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I think that Section 6 is just as important as Section 3. These are the only two that I really am concerned-

CHAIRMAN FELT: Subsection 5 is the one that we are on right at the moment.

DELEGATE ERDMANN: Well, pardon me. He asked why 6 shouldn't come out, too. I'll wait till later.

CHAIRMAN FELT: He spoke about 5, I believe.

DELEGATE ERDMANN: That's right.

CHAIRMAN FELT: The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think maybe we're getting a little rumdum here; I'm sure I am. But if I read this correctly, we go back to Section 3 and we have given the Legislature the power to appropriate water for beneficial uses. That seems to me- Now, if we go down to 5, if we emasculate it like we're talking about— "Priority of appropriation for beneficial uses shall give the betterright"-will this not give the recreation and the Fish and Game the right to use water from now on, assuming that the Legislature may make them as a beneficial user? Then, down here, we've undone all we've been talking about all day of giving them a junior right. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Swanberg.

DELEGATE SWANBERG: Yes, Mr. President. I believe it is a general statement of irrigation law that priority in time is superior, but I think there will be cases-and I think the law recognizes these cases-where a junior user may well have, in the public interests, a superior claim on the water. I can't right offhand imagine a real good example, but suppose a new town was established and suppose that some water user or rancher or somebody had appropriated all the

water from that stream that could be used for the water supply for that town. It would seem to me that the interest of the people that were in that community would be superior to one person who owned a ranch. I could foreseecasesin the development of our natural resources for recreational purposes where perhaps one person, having appropriated all the water from some certain stream, could block any efforts on the part of the recreation people to make a dam, for instance, and use the water for fishing and things of that nature. And I think that our state law does take those situations into account. I think this priority in time is only a statement of a general rule, and general rules always have many exceptions in the law. But if we put it in the Constitution as a matter of just a flat-out statement that priority in time is always superior, then these very important exceptions would go down the drain; and I would resist. This whole Section 5, I think, should be deleted.

CHAIRMAN FELT: The gentleman, Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, actually, "The priority of appropriation for beneficial use shall give the better right" is what our water law has been since its inception. The second sentence, the public interest is now recognized. When the highway goes through and takes part of a farm and takes part of the water necessary for it, it's under the theory of eminent domain, which is provided for. You can take that. If a city needs some water and there's only so much there and it has to be under the theory of eminent domain, they can take it. Actually, there's no board to determine this; and it only would apply-the second sentence-to future appropriations. Anyway, it's merely a restatement of our existing water law— "The priority of appropriation for beneficial use shall give the better right"--and I submit it should be in the Constitution as a fundamental principle. As to what-there are several different fundamental types of water law, and this states the type that we have always had and will continue to have.

CHAIRMAN FELT: Delegate Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, is a substitute motion in order at this time? I'm not clear about this and I'm not sure of the reason why we do need that in there, so I would like to make a substitute.

CHAIRMAN FELT: A substitute motion is in order.

DELEGATE VERMILLION: If I may, I'd like to make a substitute motion, then, to delete subsection 5 in its entirety. I don't-I'm not sure that there is any necessity of putting this in a constitution; there may be some dangers.

CHAIRMAN FELT: A motion has been made to delete both sentences of Section 5. If there is no further discussion, the question now arises on the motion to delete subsection 5. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Chair is in doubt. We'll use the machine on a division vote. Those in favor of deleting subsection 5 in its entirety will vote Aye, and those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response).

CHAIRMAN FELT: If not, the clerk will tally the vote.

CLERK HANSON: Mr. Chairman, 46 voting Aye, 41 voting No.

CHAIRMAN FELT: The motion is carried. Subsection 5 has been deleted.

The delegate, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, members. I move we recess until 7:30 this evening.

DELEGATES: No.

CHAIRMAN FELT: The motion to recess is a nondebatable motion; and I might mention for the benefit of the delegates, we do have an article on agriculture which we'll also be taking up-1 think it's on page 13 in your book. The question now arises on the motion to recess until 7:30 p.m. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Chair is in doubt. We'll use the machines. Those in favor of the motion to recess will vote Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will tally the vote.

CLERK HANSON: Mr. Chairman, 36 voting Aye, 45 voting No.

CHAIRMAN FELT: The motion has failed. The clerk will read subsection 6.

CLERK HANSON: "Subsection 6. The Legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records." Mr. Chairman, subsection 6.

CHAIRMAN FELT: The gentleman, Delegate Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 3, subsection 6, Proposal Number 6, it recommend the same be adopted.

CHAIRMAN FELT: The delegate, Mrs. Erdmann, for what purpose do you arise?

DELEGATE ERDMANN: I wish to speak on this.

CHAIRMAN FELT: That will be fine, Mrs. Erdmann. I might just call your attention to the fact that there is an amendment to subsection 6 which has been presented. Would you care to speak before that is read?

DELEGATE ERDMANN: No.

CHAIRMAN FELT: All right, we'll recognize you very quickly as soon as-the clerk will read the amendment which has been offered to subsection 6.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 6, in line 28, by adding-quote: 'in addition to the present system of local filing records'." It must go after the period, Mrs. Bates?

CHAIRMAN FELT: The delegate, Mrs. Bates.

DELEGATE BATES: Yes. This is what—Mr. Chairman, this is what is done now. The records are in the county courthouses or the District Courts, and I feel that this should be retained, because this is where these things are decided and for local reference, even though there is a central recordkeeping within the-perhaps the offices in Helena. And I think this is necessary to provide central recording of water rights, but it is also necessary to keep the present water records that are now in the county courthouses or in the District Courts, and that was the reason I added this. If you wish to delete the entire section, that, too, can be done. But I feel that it is necessary if we are going to have a central recording system that we should have the local provision kept.

CHAIRMAN FELT: The delegate, Mr. Berg.

DELEGATE BERG: As a substitute motion, I move to delete all of subsection 6 of Section 3, I think it is.

CHAIRMAN FELT: Yes, it's Section 3. Do you wish to speak on your motion?

DELEGATE BERG: I'll speak on the motion. So long as we've decided we're going to leave everything to the Legislature with regard to water rights-their priorities, their jurisdiction, how they're going to be handled-then I see no point in centralizing records and specifying that in the Constitution, or localizing records and specifying that in the Constitution. I want it deleted.

CHAIRMAN FELT: The delegate, Mrs. Erdmann.

DELEGATE ERDMANN: I speak in favor--against the deletion and in favor of Mrs. Bates' amendment. I think this is a vitally important section to have in here, because the Legislature has not provided this, although they've known about this moratorium coming up. And, actually, all these other states can take all of the water that we do not have appropriated. And how in the world, if you leave it up to the Legislature and they don't da this, how are we going to be able to present a well-documented need for our state? As it is now, every single one of our courthouses

have all of these records. Every single county has filed many times over for all of the water that now flows or ever will flow in the water-in the rivers. And I think, to make some order out of that chaos, I think it wouldn't hurt at all to direct the Legislature to provide for a central documentation of these records. Thank you.

CHAIRMAN FELT: Does the delegate, Mr.-The delegate, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. In the name of consistency, I rise in support of Mr. Berg's motion.

CHAIRMAN FELT: Does the delegate, Mr. Berg, wish to close?

DELEGATE BERG: I would say I have closed.

CHAIRMAN FELT: Question now-the delegate, Mr. Wilson, do you wish to speak? We'll give you another opportunity to close, Mr. Berg.

DELEGATE WILSON: Mr. President, I agree with Mrs. Erdmann that this is a necessary thing to have in the Constitution, and I think the localized records should be available to the local people in the courthouse. I agree that there should be a centralized place in the State of Montana, in Helena, for the keeping of the records and filings, but I also agree that the local records should be available to the people at the local level in the courthouse.

CHAIRMAN FELT: Delegate Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I agree with Mr. Berg in this situation. They do have a-the State Water Board now are going through the counties and they have records of the-of all-in all cases where they have done this, and the records are in the local systems; so I see no reason for this article.

CHAIRMAN FELT: Question now arises on the motion of the gentleman, Mr. Berg, unless he wishes to speak again.

DELEGATE BERG: I close.

CHAIRMAN FELT: Those in favor of the motion to delete subsection 6 will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it.

UNIDENTIFIED DELEGATE: Division.

CHAIRMAN FELT: Well, all right. If you're that late again, you won't get it, because I waited quite a while before rapping. Those in favor of the motion to delete subsection 6 will vote Aye on the voting machine, and those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will tally the vote.

CLERK HANSON: Mr. Chairman, 42 delegates voting Aye, 44 voting No.

CHAIRMAN FELT: The motion has failed. The question now arises on the motion of Delegate Bates to amend subsection 6 by adding the words "in addition to the present system of local filing of records". All in favor of the-Yes.

DELEGATE BATES: Mr. Chairman. We deleted this section, so I can't see how we can—

CHAIRMAN FELT: The motion failed, Mrs. Bates.

DELEGATE BATES: Oh, I'm sorry.

CHAIRMAN FELT: All in favor of the motion to amend will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. So ordered. The question now arises on the motion of Delegate Murray to adopt subsection 6, as amended. Those in favor of the motion will signify by voting Aye.

DELEGATES: Aye

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 4.

CLERK HANSON: "Section 4. Cultural resources. The Legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeological, scientific, cultural and recreational areas, sites and objects and their use and enjoyment by the people." Mr. Chairman, Section 4.

CHAIRMAN FELT: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 4 of Proposal 6, it recommend the same be adopted.

CHAIRMAN FELT: We have two proposed amendments, I believe. I think the first one-Mr. Clerk, which one is first in order? The one of Mr. Jacobsen's? We'll take the one that comes first in order. I believe there are three of these. I don't have them all.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4, page 4, line 29, of the Natural Resources and Agricultural Committee Proposal by adding, after the words 'Cultural resources', a subsection 1. And further amend Section 4, page 5, line 3, by striking the comma after the word 'objects'-line 3, the comma after the word 'objects' and inserting in lieu thereof a period; and further amend Section 4, page 5, by deleting the remainder of lines 3 and 4-delete the following words 'and their use and enjoyment by the people'; and further amend Section 4 by adding a new subsection 2 by inserting the following language and punctuation: 'Subsection 2. The Legislature must reserve such places from the public domain and provide for their administration and their use and enjoyment by the people.' Signed: Mr. Jacobsen."

CHAIRMAN FELT: Mr. Jacobsen and members of the committee, we will first have an explanation of the proposal as it appears from the committee report.

The delegate, Mr. Rebal.

DELEGATE REBAL: Thank you, Mr. Chairman. In response to widespread citizen and delegate interest in preserving our ghost towns, as well as our scenic, archeologic, scientific, cultural and recreational areas, sites and objects, your committee proposes this self-explanatory section. The committee felt that such a section was appropriate in an article providing for protection of our total environment for this and future generations, and I move we accept that.

CHAIRMAN FELT: All right. The gentleman, Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates, I want to take the time to thank the committee for the excellent job they had in writing that up. It's almost the same words. However the-and I won't go into what I had prepared here because of time-but we haven't used the word "administration". I have talked to the Fish and Game Department and the Montana Historical Society about this thing. We have over 50 historical societies in the State of Montana. There are over 500 ghost towns in Montana, as well as many, many other sites that must be preserved. But we must have administration of them. There is one thing I would just like to read from the Montana Ghost Town Society letter that I believe all the delegates received. And this was. at the present time the only powers that the Legislature has given to the State Board for the protection of ghost towns, scientific, historic, archeological, scenic and recreational resources of the state is to the Montana Fish and Game Commission under Section 62-301, R.C.M. 1947, as amended. The provision regarding historical and prehistorical structures which were found in Section 75.1201, R.C.M. 1947, was repealed by the 1971 Legislature. By the repeal of this later act, no penalties, procedure or protection is offered to any historic or prehistoric site. Anyone may, without discrimination, dig and destroy artifacts and other historical data which should be recorded and preserved for our state. Unfortunately, no other power exists for the control and protection of these ghost towns, historical or archeological sites, other than the fact that anyone violating rule of the Fish and Game Commission concerning them shall be punished by a fine of not more than $400 or more than six months in the county jail, or both. The Historical Society, I believe, would be very happy to have under its jurisdiction all of these historic sites. And if the Legislature were to be directed to administer this and put it under the hands of the Montana Historical Society-the

Fish and Game and the Historical Society are in agreement, and I'm sure that we could save these places. And we must do it very soon, for the simple reason that every year more of these ghost towns are disappearing through fires, through vandalism, and, as has been suggested, by just plain neglect. We could restore some of these places—and there is federal money available to do such a thing. And we've talked about it in Demersville up in our Flathead area; however, that place is completely gone. So I would just like the word-and possibly what I said in my amendment is wrong. Possibly we should just use the word "administration" and place it at the end of the paragraph or between the word "administration"—I haven't got the thing here at all. Yes, "enhancement and preservation and administration". You see, on the-on line 1 on page 5—maybe just "administration" is all that we need there, because the Legislature is already directed to do so. So we don't need the whole paragraph, but I would be willing that Style and Drafting take this up. Thank you.

DELEGATE SCHILTZ: (Inaudible)

DELEGATE JACOBSEN: After-on line 1, "restoration and enhancement, preservation"—and then add in there "and administration".

CHAIRMAN FELT: Is that the motion you wish to make-

DELEGATE JACOBSEN: Yes.

CHAIRMAN FELT: -Mr. Jacobsen?

DELEGATE JACOBSEN: Yes.

CHAIRMAN FELT: Members of the committee, is there any further discussion? (No response) If not, we're ready to vote on the motion to amend by inserting the words "and administration" on line 1, page 5, after the word "preservation". All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4, page 5, line 3, of the Natural Resources and Agricultural Committee majority proposal by inserting, after the word 'sites' and before the word 'and', the word and punctuation-quote-comma-'records'. Signed: Brazier."

CHAIRMAN FELT: The gentleman, Delegate Mr. Brazier. Do you wish to speak on your motion?

DELEGATE BRAZIER: Very briefly, Mr. Chairman and fellow delegates. The proposal is put in at the suggestion of Sam Gilluly from the Historical Society. I think it just got overlooked in the rush of things as we were preparing our majority report. Thank you, Mr. Chairman.

CHAIRMAN FELT: Members of the committee, the motion is to amend by inserting the word "records" on line 3 of page 5, after the word "sites". All in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Just a second—
The delegate, Mr. Murray.

DELEGATE MURRAY: I understand that the other proposed amendment delivered to our desk has been withdrawn. Therefore, Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 4 of Proposal Number 6, it recommend the same be adopted as amended.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 4 of the proposal of the Committee on Natural Resources and Agriculture, Number 6, that the same be adopted as amended. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. Members of the committee, we will now consider any motions to reconsider or any further amendments to the article that has-on Environment and Natural Resources.
The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, having voted on the prevailing side of the Cate amendment in Section 2, Reclamation-page 4 in the book-1 move to reconsider this amendment.

CHAIRMAN FELT: The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I'll read what the section says, and then I'll defer to another delegate. Is that proper?

CHAIRMAN FELT: That will be proper.

DELEGATE KAMHOOT: "Section 2. Reclamation." The section reads: "All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." I would now yield to Delegate Studer.

CHAIRMAN FELT: Delegate who?

DELEGATE KAMHOOT: Studer.

CHAIRMAN FELT: The delegate, Mr. Studer.

DELEGATE STUDER: Mr. President. We have all made a serious mistake when we added the words-1 quote-"to a beneficial and productive use" to the reclamation section. All of us favor reclamation. We want to recognize this in our Constitution, and we should. But by addition of the words "to a beneficial and productive use", we have gone beyond a constitutional statement of principle. We have entered into a legislative field. By these words in our Constitution, we have retarded and hamstrung the future economic growth of our great state. These words require not only a beneficial use but also a productive use. We all know that this is impossible in many cases. Consider the farmer or rancher who has a gravel pit on his own place for his own use. In most cases, it is impossible to reclaim it to a productive use. Consider the hardrock miner or prospector. With these words, he is faced with an impossibility, and yet mining is our second-largest industry in Montana. Consider the builder, the contractor of our highways. Each one of these depend upon natural resources from the earth, which in many cases cannot be reclaimed to a beneficial and productive use. They can be reclaimed, yes; but not necessarily to both a beneficial and a productive use. I will now say a few words from the contractor's viewpoint. This is a very dangerous sentence, this "beneficial and productive use". In the course of highway construction, many times we go into an area not necessarily now productive, take out rock or gravel from its present location, and by processing the material, make it into a usable product, such as a rock backfill or a gravel base or a hot-mix top course. It would be nearly impossible for a contractor in many arid areas to make the used pit areas either beneficial or productive. Both are called for. How can I make a rock slope or a rocky or gravelly base of a pit beneficial or productive? In nearly all cases, the Highway Department has located areas of quarries and pits away from highways so they will not be seen by the traveling public, and in most cases not even easily accessible to the public. So this part of theenvironmental problem can be taken care of if slopes are graded and sloped in regulations we now have-to be restored to a condition as close as possible to its former condition. These words-"reclaim to a beneficial and productive use" is ambiguous, dangerous, and could cause harm to many who are unable to comply with this directive. Ifenforced in some way, it could raise the cost to ethereal heights. I submit to each of you: haven't we gone too far? We will and we should set forth the principle of reclamation in our Constitution, but we have gone too far by the addition of these words. We have gotten into a legislative field. These words, if not taken out, will haunt us in years to come. Yes, they could very well spell the defeat of the whole Natural Resources section of this Constitution when voted on by the people later on this year. I not only urge but I implore each of you to support the motion for reconsideration. Thank you.

CHAIRMAN FELT: The motion is to reconsider the action taken by the committee on Section 2.

The delegate, Mr. Cate.

DELEGATE CATE: Well, I'm glad that Mr. Studer is against putting legislative things in the Constitution. I feel the same way about his right-to-work proposal. The-if we don't set any standards for reclamation, it doesn't mean anything, and "beneficial and productive use" is about the most moderate language that we could possibly put in there. And I don't want to take a lot of time, but Mr. Studer asked me what he could do with his gravel pits, and so Mr. Champoux and I have a list of possibilities here. I don't think that I should take the time of the committee to discuss it further. I think it's a question—

CHAIRMAN FELT: You'll have an opportunity to speak, of course, if the motion does prevail.

The delegate, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a clarification of a point of order. Have we voted for reconsideration yet?

CHAIRMAN FELT: No, that's the motion before us—

DELEGATE SCANLIN: Well, I simply want to—

CHAIRMAN FELT: -simply whether or not we are going to reconsider—

DELEGATE SCANLIN: Mr. Chairman, I think we got in trouble once before on this business of debating an issue before we reconsidered it.

CHAIRMAN FELT: We permit some explanation of the purpose of the motion to reconsider, but we would--and it is "pen for debate-but we do respect the fact that there will be a subsequent opportunity to discuss in detail if the motion to reconsider prevails.

The delegate, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, members of the committee, I would very much like to see this committee reconsider their action in connection with the amendment that was passed this morning. And if it's passed, why, I will have a message for you from the Anaconda Company, being that I'm a company man and I'd just like to have that opportunity to see whether or not, really, this Constitutional Convention wants to put the Anaconda Company out of business or not. And if they do, why, I think it should be done today.

CHAIRMAN FELT: Does the delegate, Mr. Kamhoot, or the delegate, Mr. Studer—

Delegate, Mr. Jacobsen.

DELEGATE JACOBSEN: I want to see the committee reconsider this. After all, we've used the gravel, we've used these things out of these pits and so on, for our benefit already. I think the good Lord put these things here for us to use and not later. And to put and restore them or try to restore them into their natural way, we can't do that. So I believe that we must reconsider this to save our industry in this state. And our building industry is just as important because of the sand and gravel comes out of these pits, and to restore them to their natural state is absolutely impossible. Thank you.

CHAIRMAN FELT: The delegate, Mr.— the delegate, Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of the motion to reconsider. I would like to have someone tell me how you plan to put land back into production that, maybe, wasn't producing anything in the first place.

CHAIRMAN FELT: The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Yes, Mr. Chairman. I moved for reconsideration here mainly because, when this amendment was passed, it ran through in just about 20 seconds and I doubt if very many people here really understood what it was. I didn't. I thought it was just merely a thumbprint on the-in the Constitution. It wouldn't hurt anything. But, after thinking a little and talking to a few very knowledgeable people in this room, I find that we have certainly accepted something here that I don't believe the State of Montana could ever live with. If it put the Anaconda Company out of business, this would be pretty bad, as Mr. Joyce says. Maybe it would. I am sure that, perhaps, the courts would have to spend a lot of time and throw this thing out completely, because I don't believe we could use it. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Dahood; for what purpose do you arise?

DELEGATE DAHOOD: Mr. Chairman, I support the motion to reconsider. I want to state that Tommy Joyce, I think in jest, said he's a company man. He is not, and neither am I, but let's not divorce ourselves from some commonsense. Let's think about it and reconsider it.

CHAIRMAN FELT: The question now arises on the motion that the committee reconsider its action on Section 2. All in favor—

DELEGATES: Aye.

CHAIRMAN FELT: No—

Mr. Swanberg?

DELEGATE SWANBERG: I would ask for a roll call vote.

CHAIRMAN FELT: Are there sufficient seconds? (Delegates stood) There being sufficient seconds, there will be a roll call vote. Those in favor of the motion to reconsider will signify by voting Aye; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Absent
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye

Ward ..... Aye
Warden ..... Absent
Wilson Aye
Woodmansey Nay
Chairman Felt.. Aye

CLERK HANSON: Mr. Chairman, 66 delegates voting Aye, 22 voting No.

CHAIRMAN FELT: The motion is carried. No action has been taken now on Section 2. Does any delegate have a motion?

The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I move at this time that we strike from Section 2—on page 3, where it says "reclamation" --we strike the words "to a beneficial and productive use". Thank you, Mr. Chairman.

CHAIRMAN FELT: Is there any discussion?

The delegate, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I just wish to be sure that I had it written right in the first place. I had "to a beneficial or productive use". Is the word "and" in there, or the word "or"?

DELEGATES: "And".

CHAIRMAN FELT: Will the clerk read the amendment made by Mr. Kamhoot.

CLERK HANSON: Should I read the section first?

CHAIRMAN FELT: No, read the motion, if you can.

CLERK HANSON: "Section 2. Reclamation." I'll read the sentence as amended: "All lands disturbed by the taking of natural resources must be reclaimed"-striking the next words, "to a beneficial and productive use".

CHAIRMAN FELT: Now, is that the way you believe, Mr. Clerk, that the sentence-thatthe paragraph would read after the amendment? Is that what you intended, Mr. Kamhoot?

DELEGATE KAMHOOT: Mr. Chairman, that is the way that it reads now, and I move to strike the words "to a beneficial and productive use".

CHAIRMAN FELT: Did you move to restore it back to the original condition of the committee report?

DELEGATE KAMHOOT: Mr. Chairman, I did not.

CHAIRMAN FELT: All right. Are you able to follow that, Mr. Clerk, now?

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN FELT: Read the sentence then, Mr. Clerk, as you believe that it's intended to read.

CLERK HANSON: "All lands disturbed by the taking of natural resources must be reclaimed"-period.

CHAIRMAN FELT: Then pick up again—where do we begin again?

CLERK HANSON: "The Legislator—Legislature shall provide efficient-effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources."

CHAIRMAN FELT: The delegate, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of the proposed amendment of Delegate Kamhoot. I spoke, of course, this morning in favor of deleting the entire section, and that lost. And then, as the subsequent debate got hotter and some people on the floor had the temerity to say that us people who were in favor of deleting the section were just knuckling under to the Anaconda Company. And so I have this to say: I now appear before you as an emissary of the Anaconda Company and I think, also, however, as an emissary of the people who elected me to this Constitutional Convention. I was able to get elected because I had the endorsement, in both the primary and the general election, of the AFL-CIO, and so I was elected. In the general election I spent no dollars. I did not campaign, and, notwithstanding, I was elected. And I really believe that I come over here to represent the people who live in Silver Bow County; and my principal constituent, I take it, is the principal industry of Silver Bow County. And I do not believe the laboring people of Silver Bow County want to put the Anaconda Company out of business. But if this Convention does, why, then that's another matter. And I don't believe that it makes any

sense to write into the Constitution that the Anaconda Company must reclaim their land to a beneficial use when they take any copper out of the ground, because they can't do it. And they have advised me to tell this delegation that, so far, they have taken 725 million tons of material out of the Berkeley pit in Butte alone and if they are required by the Constitution of the State of Montana, before they can take any more material out of that ground, that they must fill up that pit, they cannot do it, they will not do it, and no power on earth can really force them to do it. It's completely impractical to expect that they can or that they should. And why write into the Constitution a requirement that they-before they can disturb the natural resources, that they must do something that is absolutely impossible. Now, everybody recognizes what the purpose of this section was-is it the people of eastern Montana are afraid of the strip mining and they want those people not to be able to just despoil the land; and everybody agrees that that's reasonable. And the Legislature has provided regulations and can in the future provide more-stringent regulations to require them to reasonably reclaim the land, but to require in the Constitution that this land must necessarily, and in all cases for everyone who disturbs the natural resources to put the natural resources back to a beneficial use, just seems to me to be the height of absurdity. And so, if I have lost my liberal credentials by advocating this, why, so be it. I cannot sit here and allow-or I can't-I shouldn't say "allow"—I cannot sit here and be silent while the Constitution writes in some nonsense into the Constitution. And I think I represent the people of my county, the rich and the poor alike, when I speak in favor of this amendment. Now, we provided here in the amendment that the Legislature will apply-provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources, and I have no objection to that. I don't think the Anaconda Company does; I don't think the Butte miners' union do. But it seems to me that if we were afraid of bringing down the wrath of some people who were--some offices, some politicians who were removed from the Constitution, and you're still willing to take on the Anaconda Company and the Butte miners' union and all the people who deserve-who make their living from the mining industry and you still think you're going to pass the Constitution, well, I don't think so. And I don't think that it's being-that it's the issue of what the company wants or we're knuckling under to the company and all that baloney. It seems to me that it's an issue of being reasonable people. The Anaconda Company is doing their best, I think-maybe not; maybe the Legislature ought to make them do better to reclaim the land-but they simply cannot reclaim the mining property in Butte. When they take the-they necessarily cannot reclaim the Berkeley Pit; and the Berkeley pit, of course, is the lifeblood of our community now and hopefully will be for many years to come. And it just seems to me that if the issue is that we want to make sure that the Anaconda Company doesn't continue to do business in the state, why, then we ought to reject this amendment. But I don't think anybody seriously wants to do that. So I respectfully submit that the amendment be adopted. Thank you.

CHAIRMAN FELT: The delegate, Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I don't think anyone will accuse me of coming here as a representative of the Anaconda Company. However, I must declare that1 am a stockholderin the Anaconda Company; a small one, to be sure. I think maybe Mr. Joyce has a point, and I think those words probably don't belong and therefore move a substitute motion that Section 2, as adopted by the committee this morning, be stricken in its entirety and the original report of the committee substituted therefor. Mr. Chairman, may I speak?

CHAIRMAN FELT: Yes, Mr. Heliker, you may speak on your motion.

DELEGATE HELIKER: The committee's proposal seems to me to be innocuous enough and yet, at the same time, to say enough to satisfy all of us here from all points of view. I don't know quite why we didn't accept it to begin with. It says, "All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use"-"or use", get the "or"-"as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." So we're leaving it to the Legislature, and, in its wisdom, I'm sure it will take into account all the sorts of problems that Mr. Joyce has mentioned and that have previously been mentioned before this committee. Thank you.

CHAIRMAN FELT: The delegate, Mr. Studer.

DELEGATE STUDER: Mr. President, I think we are—or Mr. Felt—

CHAIRMAN FELT: Yes, Mr. Studer.

DELEGATE STUDER: I think we're getting right back into the spot we were before we argued this for a long time this morning. When you put in this "in as good a condition or use", you're just about back to where this beneficial and productive use is in force again for the practical effect of it all. How are you going to put something back into as good a condition as it was when you've taken out what was in there and used it? You're getting into an impossible condition here. I don't want to go through this whole lingo that I had awhile ago, but I'm sure that quite a few small industries couldn't live with it. How are you going to take out these little miners, loggers, and the like, that go out here and go to work? Their work is covered pretty well by refinishing their stuff into as close a condition as possible, but to subscribe to as good a condition as it was is impossible. We're getting into a thing that just a lot of people aren't going to accept. And I'd like to see the Constitution, as we make it up here, accepted; and I think that if we pass something like this original deal, we'll be getting a lot of people to vote against it rather than for it. I object to it.

CHAIRMAN FELT: The delegate, Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'm glad this motion came up. Maybe-I think we do need to have very careful wording. I'm concerned that WE leave this without any words or directions to the Legislature, because some future Legislature may be so oriented and be so anticompany that they might write in something that would really be detrimental to thecompany and to the economic situation in Butte. I take it that the company now feels that no future Legislature ever will, but I can't really say that I'm guaranteed of that. Mr. Joyce says that we were talking this baloney when we opposed him. I'm not sure he meant that, exactly. I think we have a right to speak on the other side. I think that the coal miners who are going to operate in the future in eastern Montana should be asked to do something in the way of reclamation if-and Mr. Joyce says that he can see that. Now, what I can't understand is, why should the coal miners in eastern Montana in the future be required to do anything if copper miners in western Montana aren't? It seems to me that we can arrive at some kind of language that will say what we want. I think we need a reclamation section in here. We talked long and hard over water rights. I think land rights are just as important, and I believe, though we are tired at the end of a day, we can arrive at good words. I support Mr. Heliker's suggestion, having looked this over during the afternoon; having been a little bit worried about the words "beneficial and productive"; feeling that we went too far, too soon, with those words. I believe a reversion to the original language of the committee would be the rightthing to do at this time, and I support his motion.

CHAIRMAN FELT: Members of the committee. For your general information, the motion before us would be, in effect, to adopt the original committee proposal. The previous motion by Mr. Kamhoot was to enact a Section 2 on Reclamation which was read to you. If you are not clear as to how that section would read under the Kamhoot proposal, we will have it read again. If you are—and hearing nobody ask for it, we will not.

The delegate, Mrs. Cross.

DELEGATE CROSS: Yes, Mr. Chairman. I have a comment that I'd like to make; and then if Mr. Studer would yield, I'd like to have a-ask him a question.

CHAIRMAN FELT: Will the delegate, Mr. Studer, yield to a question?

DELEGATE STUDER: I sure will.

DELEGATE CROSS: Mr. Studer, your remarks really played on my heartstrings, so I wonder if you would accept this motion if I were to make it: "All lands may be disturbed in any way by the taking of natural resources and left in any condition the disturber may desire."

DELEGATE STUDER: No, I don't. I think you're being a little facetious there.

CHAIRMAN FELT: Does the delegate, Mrs. Cross, wish to speak on themotion before us?

DELEGATE CROSS: Mr. Chairman, I move that we adopt the original language of Section 2.

CHAIRMAN FELT: The motion has already been made, Mrs. Cross.

The delegate, Mr. Davis.

DELEGATE DAVIS: Mr. Felt, Mr. Chairman, I move to amend Mr. Heliker's motion by placing a period after the word "reclaimed", delet-

ing the words "to as good a condition or use as prior to the disturbance", and leaving the last sentence in. May I speak to the motion.

CHAIRMAN FELT: You may speak on your motion to amend the substitute motion.

DELEGATE DAVIS: Mr. Chairman, I have been very anxious to write the best Constitution that can be written. I couldn't care less who you want to identify me with--whether you want to identify me with the AFL, the CIO, the company, the union, or anyone else. My main concern is to try to make a Constitution that's constitutional. You can't lock words in. I can see how, by locking the words in-"productive and beneficial"—could be as harmful and as weakening as they are strengthening. You could make almost anything to say this is a beneficial use, and the Legislature could not set any standards. I mean, it's a sword that cuts both ways, and both ways it cuts very sorely. The Legislature is going to have to have the liberty as the next 50 years go by. If you get an environmental section-if you get a Constitution that you don't pass, you're not going to have any environmental sections, so you've lost the whole ball of wax. And I can see that you're going to have to leave some flexibility to take the situation as it changes from day to day, from generation to generation. So, I would then move the adoption of-Mr. Heliker and I are really on the same side here except for a few words-as amended. (Laughter)

CHAIRMAN FELT: Does the delegate, Mr. Heliker, wish to speak on the amendment to his-Mr. Heliker, do you wish to speak on the amendment to your substitute motion?

DELEGATE HELIKER: No. I don't.

CHAIRMAN FELT: The delegate, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. When I voted on this thing this morning, I thought the wording was "to a beneficial or productive use", and the word "and" makes a considerable difference than what is said. I have listened with considerable interest to what has been said, and while I thought my position was very firm with the word "or" in it, I'm not so sure any more. But I am disturbed about one other thing, and I would make a further amendment and then speak to it. I would—

CHAIRMAN FELT: You are making a further amendment?

DELEGATE HABEDANK: Yes.

CHAIRMAN FELT: All right, you can amend the amendment of Mr. Davis.

DELEGATE HABEDANK: I would insert, after the words-just one word is all I'm going to insert-on line 19—

DELEGATE CHAMPOUX: Point of order.

CHAIRMAN FELT: Just a second, Mr. Habedank. A point of order has been raised. What is the point?

DELEGATE CHAMPOUX: I wonder if you can amend an amendment?

CHAIRMAN FELT: Yes, you may.

DELEGATE CHAMPOUX: All right.

DELEGATE HABEDANK: On line 19, after the word "lands"--and I would not object to Style and Drafting changing it-the word "hereafter". I am concerned that in this amendment, the way we have adopted it, we are making it mandatory upon the people of this state to go out and reclaim everything that has been disturbed in the past. And I think, as a practical matter, we want some reasonable reclamation, but I don't think we intend to force ourselves, when companies have been gone and there's no one who can be compelled to do this, to compel the State of Montana to reclaim everything in the future. And therefore I feel the word "hereafter" should be in there, and if the word "reclaimed" is stopped where it is, we then have to depend on the second sentence of this section to implement what we mean.

CHAIRMAN FELT: The delegate, Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I wonder if Mr. Habedank realizes that by putting that word in there, you automatically eliminate the 40,000 acres in Dawson County which has just been leased. You also eliminate the 80,000 acres in other three counties of eastern Montana which have also been leased for coal.

CHAIRMAN FELT: The delegate, Mr. Aasheim.

DELEGATE AASHEIM: I think we're acting like a bunch of juvenile neophytes. I move a recess.

CHAIRMAN FELT: A motion to recess— would you like to place a time?

DELEGATE AASHEIM: Until tomorrow at 9 o'clock.

CHAIRMAN FELT: Mr. Marshall, the motion, of course, is nondebatable. Do you wish to explain the parliamentary situation?

DELEGATE MURRAY: Well, the problem with recessing is that we don't do it overnight; so if that's the intent of his motion, it's out of order.

DELEGATE AASHEIM: Well, Mr. Chairman, I'll amend my motion to recess till 8 o'clock.

CHAIRMAN FELT: The motion has been made that the committee-

For what purpose does the delegate, Mr. Furlong, rise?

DELEGATE FURLONG: A point of parliamentary information, if I may.

CHAIRMAN FELT: You may ask.

DELEGATE FURLONG: Well, as I read the rule, I understood that when motions or amendments to motions were pending, that those would actually be completed in spite of a—

CHAIRMAN FELT: I think you may be correct. Do you have the reference to the rule number?

DELEGATE FURLONG: No, but I'll accept Mr. Murray's answer for now.

CHAIRMAN FELT: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, the motion to recess is a motion which has priority, and it can be made at any time. Some time back, a few days ago, we got into that situation, and it was then determined that-or it was considered to be that you had to end whatever you were doing in order to make the motion, but that is not the case. The rule does not read that way, and I do not interpret it that way.

CHAIRMAN FELT: The motion to-1 was reading in Rule 60, which, while it does not specifically apply to being in Committee of the Whole, may be applicable. It says that when a recess is taken while a question is-No, I'm not sure that would apply.

Mr. Murray.

DELEGATE MURRAY: Well, I don't think we need to read it. You're looking at the right thing, but it doesn't apply to the point in question. The matter that we have to consider, I suppose, is whether we want to recess at this particular stage, knowing we've got to come back and take up the matter of agriculture. And that's why the motion to recess was made previously by Mr. Eskildsen, because we do have other information that we would like to complete tonight. Of course, if the Convention, in its wisdom, decides that it does not wish to do so, why, they can drop another day behind. I submit that we really ought to proceed with our work. As long as we've stayed this long, we ought to continue working.

CHAIRMAN FELT: The motion before the committee is to recess until 8:00 p.m. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No

CHAIRMAN FELT: The motion is lost. We -

DELEGATE AASHEIM: Division.

CHAIRMAN FELT: Well, it was pretty firm, Mr. Aasheim. I think you're a little bit late, too, so we'll have to-let's find, Mr. Clerk, exactly-I believe we have a motion to amend to insert the word "hereafter", which is an amendment to the amendment of Mr. Davis. So all we are really concerned with at the moment is the word "hereafter". (Laughter)

The delegate, Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Habedank, yield to a question?

DELEGATE HAREDANK: I will

DELEGATE SCHILTZ: Mr. Habedank. For the record, I did hear you say, and it concerns me, that you just wondered if the State of Montana were going to be doing all this reclaiming, or whatever it was. Is it your understanding that the reclamation called for in Section 2 will be done by the state or by the person who does the disturbing?

DELEGATE HABEDANK: I was in hopes-Mr. Chairman, I was in hopes that the person who does the disturbing would do the reclaiming, but we have many acres of land that have been disturbed in the past in Montana which no one is around to reclaim, and this section is all-inclusive. And while I am answering you, I would like to answer Mrs. Cross, when she says do I realize that there have been 80,000 acres leased and 40,000 acres leased. I do realize this, but they will be disturbed after the leasing, and not before. The fact that they have been leased has nothing to do with their disturbing. That's why I'm talking about the word "hereafter" and why I think it is very important that we do not saddle the people of Montana with a reclamation job that they do not intend to assume.

CHAIRMAN FELT: The question arises on the motion to amend the amendment to insert the word "hereafter". All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. Gentlemen, we now have before us the amendment of Mr. Davis to the substitute motion of Mr. Heliker. The amendment would delete words from the section as it appears originally in your book. The words to be deleted commence on line 20. Putting a-put a period after the word "reclaim" and delete the rest of the sentence. Is that clear?

The delegate, Mr. Martin.

DELEGATE MARTIN: Mr. President, I wonder if I could offer an amendment to the amendment?

CHAIRMAN FELT: You could offer an amendment to the amendment, but you may not offer a substitute motion, as we already have a substitute motion before us. The question now arises on the motion to amend. All in favor will signify by voting Aye.

DELEGATES: Roll call.

CHAIRMAN FELT: A roll call is requested.

Mr. Harper, did you ask for recognition?

DELEGATE HARPER: I think Mr. Martin misunderstood you and thought that you had ruled him out, when in fact you ruled that an amendment to an amendment was possible.

CHAIRMAN FELT: Yes, I thought he had understood it, but do you wish to offer an amendment to the amendment?

DELEGATE MARTIN: My amendment to the amendment would be to delete the section.

CHAIRMAN FELT: That is not an amendment to an amendment. Yes, that's what I'd thought. Mr. Davis' amendment is the question before us, to delete the-well, it-all right, Mr. Clerk, read it.

CLERK HANSON: "Section 2. Reclamation. All lands disturbed by the taking of natural resources must be reclaimed. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." Mr. President.

CHAIRMAN FELT: Yes, that's the condition in which the section would appear, but the motion is a motion to amend by deleting the words "to as good a condition or use as prior to the disturbance".

The delegate, Mr. Cate.

DELEGATE CATE: I'd like to speak on the motion.

CHAIRMAN FELT: You may speak on the motion to amend.

DELEGATE CATE: I would support Mr. Davis' motion. I am as concerned as Mr. Joyce is about putting people out of work. Certainly, it was not my intention to put people out of work. I think that the words "beneficial and-or productive use" are good words, that they should be in there. But Mr. Davis' amendment does permit the Legislature to provide the standards at a later time and could well provide those same standards. So I think to get this thing off our shoulders and on the road, that I would urge the adoption of the section as amended by Mr. Davis.

CHAIRMAN FELT: A roll call has been requested on the motion to amend the substitute motion. We will use the voting machines. All in favor of the amendment will signify by voting Aye; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0..... Nay
Arbanas ..... Nay
Arness.....Absent
Aronow.....Aye
Artz ..... Nay
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Absent
Belcher ..... Aye
Berg.. ..... Absent
Berth&on ..... Absent
Blaylock ..... Nay
Blend ..... Nay
Bowman,, ... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain.....Aye
Campbell ..... Excused
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Nay
Dahood.....Aye
Davis.....Aye
Delaney ..... Aye
Driscoll.....Aye
Drum.....Aye
Eck.....Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Foster ..... Aye
Furlong ..... Nay
Garlington.....Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington..... Absent
Heliker ..... Nay
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.....Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel.....Aye
McDonough..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin.....Aye
Monroe ..... Nay
Murray ..... Aye
Noble.....Aye
Nutting.....Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal.....Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder..... Nay
Rollins., ... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Absent
Schiltz..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks, ... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg.....Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner..... Aye
Ward ..... Aye
Warden.....Aye
Wilson..... Absent
Woodmansey ..... Aye
Chairman Felt ..... Aye

CLERK HANSON: Mr. Chairman, 63 delegates voting Aye, 23 voting No.

CHAIRMAN FELT: The amendment is carried. The question would now arise on the motion of Delegate Heliker to adopt Section 2, as amended. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. The section has been adopted. Members of the committee, unless there are additional motions to reconsider some section, we are prepared to go to page 13. The clerk will read the history and title of the—

CLERK HANSON: Mr. Martin is standing up.

CHAIRMAN FELT: Mr. Martin

DELEGATE MARTIN: I move that we reconsider.

CHAIRMAN FELT: Reconsider what?

DELEGATE MARTIN: Section 2

DELEGATES: You can't.

CHAIRMAN FELT: We've had a motion to reconsider and it's been acted upon, so the motion is out of order.

The gentleman, Mr. Murray. Did you wish to say—

DELEGATE MURRAY: Mr. Chairman, I guess we go to the Agricultural Article. I am going to make the motions and Mr. Gysler is going to explain them, and he will take them one at a time.

CHAIRMAN FELT: All right. The clerk will read the history and title of the proposed Article on Agriculture.

CLERK HANSON: "Be it proposed by the Natural Resources and Agriculture Committee that there be a new Article on Agriculture to read as follows: 'Article. Agriculture.'"

CHAIRMAN FELT: Is that the end, Mr. Clerk? The clerk will read Section 1.

CLERK HANSON: "Section 1. Department of Agriculture. The Legislative Assembly must provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the state." Mr. Chairman, Section 1.

CHAIRMAN FELT: The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 1 of the Agriculture Article of Proposal Number 6, it recommend the same be adopted. And I defer you to Mr. Gysler.

CHAIRMAN FELT: The delegate, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I was hoping that we wouldn't hit this section at this time of the day, but I see we did. I will try to keep my comments short. Your committee believes that it is necessary to recognize the largest and most important industry in the state by retaining the constitutional provision for a Department of Agriculture and to require that the Legislature provide appropriations and authorities to adequately protect, enhance and develop the agricultural industry of the state. The new section is intended to remove any reference to agriculture from Article XVIII, Section 1, of our present Constitution and to be the first section of a new article on Agriculture. Now, this section has the endorsement of Mr. Smith, who is the Governor's Agricultural Coordinator. He tells me, in a meeting in Great Falls, I believe around a week ago, that this section has the endorsement of every agricultural group in the State of Montana. In talking with the reorganization people, who had originally recommended that we delete this, and explaining to them why we wanted this section, they agreed wholeheartedly with us. I have gobs of information and so on, but the hour is late and unless someone asks me--wants some of this information, I will defer from putting all of it out. I just want to remind you that this is very important to the agricultural people; and one of the reasons it is-1 also have figures on the declining farm population. And so, with saying no more, I move its adoption.

CHAIRMAN FELT: The delegate, Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Gysler, may I ask you a question?

DELEGATE GYSLER: (Inaudible)

DELEGATE BUGBEE: Is this meant to take the place of the 20th department that is now left untaken by the executive reorganization?

DELEGATE GYSLER: Mrs. Bugbee, it is not, because there is, under the present reorganization system, a Department of Agriculture. I might go a little further and explain that in the reorganization, the Department of Agriculture to some extent was kind of stripped because of the provisions of the present Constitution which said, "There shall be a Commissioner of Agriculture, who shall be appointed for a term of four years", and so was locked into the office. We feel this is one of the reasons it was.

DELEGATE BUGBEE: Well, then, I don't really understand, because it says here "a Department of Agriculture". This does not mean that it will come under the 20 departments of the executive then. Where will it go in the Executive Department?—excuse me?

DELEGATE GYSLER: Mrs. Bugbee, it is, at the present time, one of the 20 and would continue to be one of the 20. We are not creating a new one. We are just making sure that the Department of Agriculture will continue, that it will be a viable Department of Agriculture which will be able to meet the needs of the agricultural industry, which is larger by far than the total of the three next-largest industries in this state.

DELEGATE BUGBEE: I am not unsympathetic to the agricultural interests, but I am concerned about executive reorganization, and it seems to me that this is constitutionalizing on top of a constitutional amendment. Mr. Chairman, may I ask Mr. Joyce a question?

CHAIRMAN FELT: Does the gentleman, Mr. Joyce, yield to a question?

DELEGATE JOYCE: I yield.

DELEGATE BUGBEE: Mr. Joyce, would you clear up for me what-you must have-did your Executive Department take this up?

DELEGATE JOYCE: Well, I don't know as that we took it up, per se. We did reenact—or we did recommend to the Convention thatthecurrent constitutional amendment, which is Section 7 of the Executive report, be reenacted. I suspect maybe that matter could be handled, Mrs. Bugbee, if it were made clear that the Legislative Assembly must provide for a Department of Agriculture, by saying within one of the 20 departments required by Section 7 of the Executive Report, or something like that.

DELEGATE BUGBEE: In other words, it's already provided for.

DELEGATE JOYCE: Yes, there already is a Department of Agriculture, as I understand it, and it's headed by this-the Commissioner of Labor-or Commissioner of Agriculture--and it is one of the 20 departments that's currently operating.

DELEGATE BUGBEE: So, this is what we call—

CHAIRMAN FELT: Mrs. Bugbee—

DELEGATE BUGBEE: --redundant; excuse me—

CHAIRMAN FELT: Are you continuing to ask questions, or do you wish to speak on the motion, or what?

DELEGATE BUGBEE: Well, I would like to say to Mr. Gysler, I think it's unnecessary—

CHAIRMAN FELT: You may speak.

DELEGATE BUGBEE: -1 don't understand it.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I don't believe Mrs. Bugbee understands that this does not change or create anything different from what we presently have in the Constitution. Our present Constitution, Article XVIII, Section 1, says "the Legislative Assembly shall provide for a Department of Agriculture." This proposal deletes the reference to the Commissioner as a 4-year term. But this simply-this suggested article here simply retains the constitutional Department of Agriculture which we have now, and which the Governor has had no trouble putting in as one of his 20 departments under reorganization.

CHAIRMAN FELT: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. McNeil, I do understand.

CHAIRMAN FELT: The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I would like to direct a question to Mr. Gysler.

CHAIRMAN FELT: Will Mr. Gysler yield to a question?

DELEGATE GYSLER: I yield.

DELEGATE ECK: Mr. Gysler, how about the present Department of Livestock, or whatever it's called? Is that to be included in the Department of Agriculture, or is that to remain a separate department?

DELEGATE GYSLER: We-In this wording, we have not touched the Department of Livestock, purposely. It was not set up originally as a constitutional office. It is set up as an office under the reorganization act. Really, what we're trying to do with this is to make sure we have one unified voice to speak out for a minority group in the State of Montana.

CHAIRMAN FELT: The motion is to adopt Section 1. Is there any further—
Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'm a member of the Agricultural Committee and I would like to point out to the delegates here that agriculture produces $640 million in the State of Montana. It's the largest industry there is, and it's certainly entitled to a place in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN FELT: The question now arises on the motion to adopt section-Oh-
The delegate, Mrs. Bates.

DELEGATE BATES: Could we have a recorded vote on this, please?

CHAIRMAN FELT: A roll call vote has been requested. There are sufficient seconds. Those in favor of adopting Section 1 will signify by voting Aye; those opposed will vote No. Has every delegate voted?
(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?
(No response)

CHAIRMAN FELT: The clerk will record the vote.

Aasheim ..... Aye
Anderson, J. Aye
Anderson, O ..... Aye
Arbanas .. .. Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates .. .. Aye
Belcher ..... Aye
Berg .. .. Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown .. .. Absent
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Aye
Champoux ..... Aye
Choate ..... Absent
Conover ..... Aye
Cross .. .. Absent
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher Absent

Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Absent
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Absent
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 77 delegates voting Aye, 4 voting No.

CHAIRMAN FELT: The motion is carried. The clerk will read Section 2.

CLERK HANSON: "Section 2. Right to special levies. A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion." Mr. Chairman, Section 2.

CHAIRMAN FELT: The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 2 of the Agriculture Article of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN FELT: The delegate, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman.

CHAIRMAN FELT: Mr. Gysler, before you proceed, and in the hopes that there might be some saving of time, we do have a proposed amendment which I believe would be suitable for reading now. And you might perhaps address your remarks to your original section and to the potential, at least, amendment. Would the clerk read it.

CLERK HANSON: "Mr. Chairman. I move to amend Section 2 of the Agriculture Article, page 13, line 17, by adding, after the word 'promotion'-quote: 'revenue derived from such levies shall be used solely for the purposes levied.' Signed: Aasheim."

CHAIRMAN FELT: You may proceed, Mr. Gysler.

DELEGATE GYSLER: Thank you, Mr. Chairman. This section revised-is a revision of Article XII, Section 9. Because of the excellent results--of the livestock mill levy, your committee believes all of agriculture should benefit from this method of self-help taxation. However, your committee feels that setting the rate, as was previously done, is a legislative function and to be exercised in response to industry needs. Now, I would like to call to the attention of the delegation that this section in its exact wording is also found in the Revenue and Finance report, as their Section 14. I spoke to Mr. Rygg, the Chairman of that committee, and he said he thought that it properly belonged in our committee and for us to handle it here and if it passed they wouldn't take it up there. I would like to read you their comments. "The proposed language retains the intent of Section 9 regarding livestock mill levies and expands the

permissible list of industries and uses for such statewide levy. The levies are not a pure earmark. They are more of a bookkeeping and accounting procedure. The provision, in explicit terms similar to present Section 9, is no longer necessary. The uniformity clause has been removed from the proposed article, and the statewide property tax list has also been deleted. But the importance of agriculture to the Montana economy should not be underestimated; in fact, it should be emphasized. The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve the economic future of their industry." Also, I would like to read to you from Report Number 15 on Taxation and Finance as to why this is needed. On page 140, at the bottom of the page: "The Montana Supreme Court has ruled that the special livestock mill levy allowed in Article XII, Section 9, could not be levied if it were not specifically authorized in the Constitution. The court said: 'Section 9, Article XII, of the Constitution was expressly amended in 1910 whereby a special levy could be made upon livestock exclusively for certain purposes, and without the amendments, such levy could not be made.'" It is for this reason that I move the adoption of this report. As to the proposed amendment by Mr. Aasheim, it is absolutely the intent of this article that the funds be used as is stated in the amendment. I don't really have-if it is felt that this would clarify something for some groups, something like this, I don't suppose there's really any objection, as this is the intent of our article to start with.

CHAIRMAN FELT: The delegate, Mr. Rygg.

DELEGATE RYGG: Mr. Gysler-Mr. Chairman, Mr. Gysler is correct. We did feel it would be just as well to have it in this article. I wonder now, though--I hadn't noticed that heading. It says, "right to special levies". Now, we didn't have that in ours, and part of our explanation says: "The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve economic future in their industry." My question is, by having that as a right to special levies, would that limit just those? I would like to direct that question to Mr. Schiltz.

CHAIRMAN FELT: Would the delegate, Mr. Schiltz, yield to a question?

DELEGATE SCHILTZ: Yes.

DELEGATE RYGG: Would that make any effect in that?

DELEGATE SCHILTZ: We don't consider that the headnote is binding, and if it doesn't fit the material inside the section, why, we rewrite the headnote. So we'll put it almost any way that—

DELEGATE RYGG: As far as it isn't restrictive, we have no objection.

CHAIRMAN FELT: All right.
The delegate, Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Gysler yield to a question, please?

CHAIRMAN FELT: Does Mr. Gysler yield?

DELEGATE GYSLER: Certainly.

DELEGATE CHAMPOUX: What is your meaning of the word "indemnification" in your section, please?

DELEGATE GYSLER: Well, wait until I find it again.

DELEGATE CHAMPOUX: It's line 17, page 15, I'm looking at. You looking at—

DELEGATE GYSLER: This is a term that is used by the livestock people, I believe, with their-Could I defer the question to Mr. Conover? He says he knows that.

CHAIRMAN FELT: The delegate, Mr. Conover.

DELEGATE CONOVER: Mr. Champoux, if I'm not mistaken, this is like a disease of-in the cattle-like if you had hoof and mouth or this other control over the state which could eliminate a whole herd of cattle-or under quarantine. This is what this special phrase is put in there for.

CHAIRMAN FELT: Does the delegate—
Mr. Barnard.

DELEGATE BARNARD: Perhaps I-Mr. President, perhaps I could shed a little light on that question. Occasionally diseases of livestock get so serious that, in thepublicinterest, it's necessary to destroy them-or do away with them entirely, and this is an indemnity program for those mandatory cases where, in the public interest, it's necessary to destroy livestock.

CHAIRMAN FELT: The **delegate,** Mr. Harlow.

DELEGATE HARLOW: I am disturbed now. If they mean by this that they will levy a special levy on livestock sufficient to pay for the livestock killed in a disease epidemic-if we had hoof and mouth disease, it might wipe out half the herds in Montana. The rest of us going to raise enough money to pay out for that half of herds? No, that's the wrong word, I think.

CHAIRMAN FELT: The delegate, Mr. Ward.

DELEGATE WARD: Mr. Chairman, fellow delegates, maybe I could throw a little light on what this term means. Indemnification means that, from these levies, in certain instances where disease control measures are necessary to eradicate a disease such as foot and mouth disease-for instance, if we have this problem in the state, we will have to destroy how many cattle that-1 don't know. But this is set up so those owners could pay for those cattle as a disease-controlmeasure. Now, this is the only way it has-it can be done. A number of years ago when tuberculosis was very prevalent in livestock and cattle, the livestock sanitary board tested all the cattle. If they got a reactor, the owner was paid either part [or] in whole for this animal in order to get rid of this disease. And this is what it means. If there are any questions, I'll be more than glad to ask them--answer them about the whole setup, because I know it pretty well.

CHAIRMAN FELT: Does the delegate, Mr. Aasheim, wish to speak on his amendment?

DELEGATE AASHEIM: Mr. Chairman, my amendment speaks for itself, pretty much. I know you're getting hungry and tired, and this is what we're trying to protect from is a hungry Legislature. If they are short of funds, they might see fit to delve into these funds that are not protected. And another reason for the amendment is to give the people who are trying to pay their own way in an industry-they have the confidence to put this money into this fund, and they will then be assured that it will be used for the purposes intended.

CHAIRMAN FELT: The delegate, Mrs. Bugbee.

DELEGATE BUGBEE: I don't understand, and I'd like to ask somebody a question. It seems to me that this section is so that the livestock industry can raise their own money in order to pay for their own indemnification. May I ask if someone would answer that question?

CHAIRMAN FELT: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I'll attempt to answer it. This is true. The other taxpayers in Montana are not asked to contribute anything. This is strictly a mill levy on livestock taxable value. It has been working for these many years, since 1910. This Livestock Building over here was built with those funds, for instance. The Livestock Commission, the Sanitary Board has been operating under this for many, many years. Sometimes they need all the money that they have collected; sometimes they don't. Most of the time, I don't think it all has been spent. Now, on the disease control; you know, the brucellosis program [problem], for instance, has been rampant in Montana for many years, and it's about cleared up now. Now, this hasn't cost the taxpayers-other taxpayers in Montana-any money. This has come from the levy just on the livestock, and this indemnity program. For instance, two years ago down in our country, we got a scabies infection—or the fear of one, I should say, and had to go through a lot of dipping program. When I was a small boy, in the twenties, they shipped up scabies from Texas in the cattle and had to dip all the cattle in Montana, for goodness' sake. It was a frightful expensive thing, but this was all paid for by the people in thelivestockindustry themselves. Does this answer your question?

CHAIRMAN FELT: The delegate, Mrs. Bugbee.

DELEGATE BUGBEE: Yes, it answers my question. If I and my children and my family wanted to put money in a bank, it would be our business, just the way this is the business of the livestock people. Therefore, my only question, really, is, why should this be constitutionalized? I'm afraid it was a mistake before; it may be a mistake again. Let the livestock people do what they want to do, but it seems to me this is the worst kind of constitutional writing and that we're really not sticking to what we're here for.

CHAIRMAN FELT: This was not a question, but it was a proper statement in debate. Mr. Gysler, did you wish to speak again?

DELEGATE GYSLER: Yes, I did. I would just like to reiterate, Mr. Chairman, what I read from page 140—that the Supreme Court of the State of Montana said-it said, "If you are going to do these things, you have to have it spelled out in the Constitution." And this is why we are doing it-and this is the Supreme Court of the State of Montana.

CHAIRMAN FELT: The question before us is the motion of Delegate Aasheim to add the words at the end of Section 2, "Revenue derived from such levies shall be used solely for the purposes levied." All in favor of the motion to amend, signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The question before us now is the-will Mr. Murray restate the motion?

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 2 of the Agriculture Article of Committee Proposal Number 6, it recommend the same be adopted as amended.

CHAIRMAN FELT: The question now—A roll call vote has been requested. There are sufficient seconds. The question before us is to adopt the section as amended. Those in favor of the motion will vote Aye; those opposed will vote No. Has every delegate voted?
(No response)

CHAIRMAN FELT: Does **any** delegate wish to change his vote?
(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim Aye
Anderson, J. Aye
Anderson, O. Aye
Arbanas Aye
Arness .. Absent
Aronow Aye
Artz Aye
Ask Aye
Babcock Aye
Barnard Aye
Bates.. Aye
Belcher Aye
Berg.. Aye
Berth&on Aye
Blaylock Aye
Blend Aye
Bowman Aye
Brazier Aye
Brown.. Absent
Bugbee Nay
Burkhardt Aye
Cain Aye
Campbell Excused
Cate Aye
Champoux Aye
Choate Absent
Conover Aye
Cross Absent
Dahood Absent
Davis Aye
Delaney Aye
Driscoll Aye
Drum Aye
Eck Absent
Erdmann Aye
Eskildsen Absent
Etchart Aye
Foster Aye
Furlong Aye
Garlington Aye
Graybill Absent
Gysler Aye
Habedank Aye
Hanson, R.S. Aye
Hanson, R. Aye
Harbaugh Aye
Harlow Aye
Harper Aye
Harrington Absent
Heliker Aye
Holland. Absent
Jacobsen Aye
James Aye
Johnson Aye
Joyce Aye
Kamhoot Aye
Kelleher Absent
Leuthold Aye
Loendorf Absent
Lorello Absent
Mahoney Aye
Mansfield, Aye
Martin Aye
McCarvel Aye

McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin.. ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Chairman Felt ..... Aye

CLERK HANSON: Mr. Chairman, 79 delegates voting Aye, 2 voting No.

CHAIRMAN FELT: The motion is carried. The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN FELT: The question now arises on the motion that the committee rise and finally report. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.

(Vice President Toole in Chair of Convention)

VICE PRESIDENT TOOLE: Convention will be in order.

CLERK HANSON: "March 2, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 6 of the Committee on Natural Resources and Agriculture, recommend as follows:"

VICE PRESIDENT TOOLE: Does the Convention wish the report read?

DELEGATES: No.

CLERK HANSON: "That the committee rise and finally report. Signed: Felt, Chairman."

VICE PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. President. I move the Convention adopt the Committee of the Whole report and refer the Committee Proposal Number 6, containing the articles of Natural Resources and Agriculture, to the Committee on Style and Drafting.

VICE PRESIDENT TOOLE: Mr. Berg.

DELEGATE BERG: I just simply rise to explain that when I voted on Section-subsection 4 of Section 2, being the only No vote, I thought I was voting against its inclusion. I find that everybody voted for deletion. I'm delighted. (Laughter)

VICE PRESIDENT TOOLE: Thank you, Mr. Berg. You've heard the motion that the committee report be adopted and referred to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.
(No response)

VICE PRESIDENT TOOLE: Motion carried. We'll move to Order of Business Number 11, Committee Announcements and Notices.
(No response)

VICE PRESIDENT TOOLE: If there are none, I'll entertain a motion to adjourn.

DELEGATE MURRAY: Mr. Chairman—Mr. Vice President, I move the Convention adjourn until the hour of 9:00 a.m., March 3, 1972.

VICE PRESIDENT TOOLE: You have heard the motion to adjourn. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

DELEGATES: No. (Laughter)

(Convention adjourned at 6:58 p.m.)

March 3. 1972 **Thirty-Seventh Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

VICE PRESIDENT TOOLE: The Convention will come to order. Mr. Arbanas will give the invocation. Please stand.

DELEGATE ARBANAS: Please join with me this morning in the song of creation from the *Book of Daniel.* "Bless the Lord, all you works of the Lord. You heavens, bless the Lord. All you waters above the heavens, bless the Lord. Sun and moon, bless the Lord. Praise and exalt Him above all forever. Stars of heaven, bless the Lord. Every shower and dew, bless the Lord. All you winds, bless the Lord. Praise and exalt Him above all forever. Mountains and hills, bless the Lord. Everything growing from the earth, bless the Lord. You springs, bless the Lord. Praise and exalt Him above all forever. All you beasts, wild and tame, bless the Lord. You sons of men, bless the Lord. Praise and exalt Him above all forever." Amen.

VICE PRESIDENT TOOLE: The clerk will call the roll.

CLERK HANSON: Delegate Ask, Delegate Belcher, Delegate Berg, Delegate Berthelson, Delegate Blaylock, Delegate Brazier, Delegate Brown, Delegate Bugbee, Delegate Cross, Delegate Etchart, Delegate Harper, Delegate Heliker, Delegate Kelleher, Delegate Payne, Delegate Rygg, Delegate Speer, Delegate Kelleher, Delegate Payne, Delegate Speer. Mr. Vice President, may Delegates Arness and Holland be excused? Delegate Payne.

VICE PRESIDENT TOOLE: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, Mrs. Payne is ill.

VICE PRESIDENT TOOLE: Would you repeat that, please. The machine is operating.

CLERK HANSON: Okay. Mrs. Payne is ill. Could she please be excused?

VICE PRESIDENT TOOLE: Yes, we'll arrange for that.

CLERK HANSON: Delegate Payne, excused.

Aasheim		Present
Anderson,	J.	Present
Anderson.	0.	Present
Arbanas		Present
Arness		Excused
Aronow		Present
Artz		Present
Ask		Present
Babcock		Present
Barnard		Present
Bates		Absent
Belcher		Present
Berg		Present
Berthelson		Present
Blaylock		Present
Blend		Present
Bowman		Present
Brazier		Present
Brown..		Present
Bugbee		Present
Burkhardt		Present
Cain		Present
Campbell		Present
Cate		Present
Champoux		Present
Choate		Present
Conover		Present
Cross..		Present
Dahood		Present
Davis		Present
Delaney		Present
Driscoll		Present
Drum		Present
Eck		Present
Erdmann		Present
Eskildsen		Present
Etchart..		Present
Felt		Present
Foster		Present
Furlong		Present
Garlington		Present
Graybill		Present
Gysler		Present
Habedank		Present
Hanson, R.S.		Present
Hanson, R		Present
Harbaugh		Present
Harlow		Present
Harper		Present
Harrington		Present
Heliker		Present
Holland		Excused
Jacobsen		Present
James		Present
Johnson		Present

Joyce	Present
Kamhoot	Present
Kelleher	Absent
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Excused
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Spew	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Absent
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: 96 delegates present, 3 excused, 1 absent.

VICE PRESIDENT TOOLE: Reports of Standing Committees, Order of Business Number 1.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: I would like to make an announcement there. There will be a report-a meeting of the Committee on Administration tomorrow morning at 8 o'clock in the Rules Committee room. That's Administration, tomorrow morning at 8 o'clock, in the Rules Committee room.

Mr. Dahood.

DELEGATE DAHOOD: Mr. President. The Bill of Rights Committee will meet tomorrow morning at 8 o'clock in the Bill of Rights Committee room.

VICE PRESIDENT TOOLE: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number 3, Communications.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number 4.

CLERK HANSON: None, sir.

VICE PRESIDENT TOOLE: -5.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: -6.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

VICE PRESIDENT TOOLE: Number 8, Unfinished Business.

Mr. Graybill.

DELEGATE GRAYBILL: Members of the Convention. It's the second Friday again, and I must report on the budget. And you all have before you, on your desks, copies of the budget—you should have; Mr. Gyslerdoesn't. Now, the first thing I want to mention is what I mentioned yesterday, and I'll just do it briefly. But you understand that we have not adjusted the budget upward to include any federal funds yet because the federal funds are not, in fact, in hand. However, Mr. Baucus spoke with me again this morning. And they sent some more paperwork in yesterday, and everyone says everything's okay. But we haven't got it back in writing, and we have not signed the contract yet with HUD. When we do

that, which I anticipate will be done within the next two-week period, we will add that money back into the budget here, and it will help us especially on the public information end. But at themoment, this budget does not reflect the HUD grant, because it isn't signed up for yet. Now, on the expenses to date, the salaries are right on line. I might tell you that, based on the 9-week Convention, we have 20.84 percent of our time left, and that's just about how much we have left of the salaries. On the staff wages, we only have 18 percent left, but as you know, we're phasing out staff, and I think the next Z-week period will clearly put us back into range on the staff, so we won't be in any trouble there either. You'll recall that, on employee benefits, one of the first things we did after the first Z-week period was add some money in there. Since we added that money in, we've always been in good shape, and we'll have no trouble there. Stationery and supplies; fortunately, I think we're ahead of the game. Obviously, we won't need to spend the other $1,200 on stationery. On flat printing, we may, in fact, spend it, because it's a matter of how we budget that money. We are now getting bids and contracting—or getting ready to contract--on the voter information pamphlet. And one of the things we want to do is try to get some color on that pamphlet and make it an attractive document. And it may be that we'll use that flat printing money-move it into public information and use that flat printing money to make a little better document. In other words, we're a little ahead in the stationery and supplies area. Communications; it appears that we're ahead, but this may be deceptive. We have $3,400 unencumbered of our postage, but you must recall that we changed our method of sending the material out to most of the people that we designated. We're only making three big mailings, and there's a big mailing due with a lot of heavy material now, after these committee reports came out, and for the Style and Drafting reports. So we really have two mailings left to come out of that postage. So I think that perhaps, while we're not in real trouble, we're not actually ahead of the game in postage. Travel's no problem. Contracted services; we're running pretty good on the printing, and the printing is within our budgeted requirements. And I had some checks run yesterday because of an inquiry. You understand, we own the printshop at the moment and we sell printing to the rest of the Capitol. I can report that the salaries in the Printing Department so far for the 2-week period-or [illegible] $1,400 because we get 50 percent of the printing we do for other state agencies. So we ended up with only a $2,100 net figure there, because the Highway and the Attorney General and all have to buy a little printing once in awhile and we get half of it. Now, we are going to watch this, because it does involve labor costs, and perhaps the last week we will-or the last few days, we'll switch out of that mode. And when we're through with printing our Style and Drafting reports, we'll probably switch out of that. But the printing has worked out pretty well with the purchase of the printshop down there. The special expense is-the per diem-is just about on line. We're ahead of ourselves on consultants, so that looks good at the moment. Commission expense is an item that we explained before; it hasn't changed any. That's—what that amounts to is deficit for the Commission that we paid out of our own pocket. There is, of course, some other deficit that nobody has paid yet. Public information--we phased out the film project and, you remember, we then cut the 5,000 that balanced the budget last time out of public information. As I say, if we get the federal grant, we'll be in good shape because we will be able to add some of that money back into public information. All in all, I would say that it looks, today—and I hestitate to say this until we finish Revenue and Finance-like we might be able to get through pretty handily, moneywise. But I still am going to try and keep you to the March 18th schedule. If we end up anytime around March 18th, we'll be in good shape. If we end up a week later, it will be touch and go. So-and the difference is whether we have enough money to adequately pay for a good brochure to the public, and to adequately educate. So I am hoping that we can get through around the 18th, and if we do, we're in good shape. Are there any questions? When we sell the printshop back, we won't make a profit. What we really have done is-you see, we're paying the salaries for everybody down there and we're splitting that 50-50 with the Administration Department; but we are also given half of the income from nonconvention printing. And the point is that we made $1,400 while we spent 3,000 for the labor. So our labor really ended up only costing us half as much as it would have if-and secondly, we are also doing it for cost. If we had done it the other way, the Administration Department would have made a little profit. Okay, thank you. Oh, Mrs-address the Chair, and I'm sure he'll let you have a question.

could I ask Mr. Graybill a question, please?

VICE PRESIDENT TOOLE: Yes, Mr. Graybill will yield, I'm sure.

DELEGATE GRAYBILL: Yes.

DELEGATE BOWMAN: Mr. Graybill, is there an allocation to print the journal in this budget?

DELEGATE GRAYBILL: There is no allocation to print in the sense of printing the journal. The court reporter, of course, comes up with a typed copy. And I did skip over that. We did some calculations yesterday which indicate that we will probably be able to come out within the budget figures on court reporter if we end up around the 18th, too. The court reporter is-that's the-you know, we had to raise that to 15,000 last 2 weeks. And that-the 8,000 there is accrued; it is not all paid out, but that's what's accrued. But assuming that we end up sometime about two weeks from now, we think we'll get by for the court reporter price. But, Mrs. Bowman, that does not include printing any copies. Now, we have taken steps in the last two weeks, and we are having the printshop duplicate-I think it's 10 copies of the journal. Now, we don't intend to duplicate a hundred, but we're duplicating 10. I don't want to have one get lost like it did in 1864, and then not have it. We're duplicating 10, which would give us enough so that we could hand a couple to a printer. But this Convention does not have any money, and never did have any anticipated, to print, in the sense of making into a book, the journal. If the Constitution passes, presumably the Legislature would do that, so that the matter would be available. If it didn't pass, probably nobody would bother to print it.

VICE PRESIDENT TOOLE: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. Leo, we find quite a congestion out here on this one WATT line. Would it throw our budget too much out of balance if we were to reintroduce two of those other two WATT lines?

DELEGATE GRAYBILL: I will look into the fact. I'd rather not buy a whole WATTs line. That costs us about seven or eight hundred dollars, but I'll see if we can't get you another outlet for it. What we did is-we stayed with-we eliminated one of our WATTs lines, which cut our WATTs cost in half, but we are still on the state's 20-it's now 21—it used to be 22 with us in, and now its 21—line WATTs system. I will investigate whether or not we can get another outlet or two. Now, some of you know--and Mr. Toole and I have tried to let any of you who have emergency calls or important calls use our lines. There's one in our office, there's one in the hall here, and there's one in Public Information. And you're certainly free to use them whenever you need to. But I'll see if we can't get another outlet, Mags, onto the 21-line state system. I'll talk about that with the phone company.

VICE PRESIDENT TOOLE: Any further questions about the budget? The Chair will entertain a motion that the budget be accepted.

Mr. Murray.

DELEGATE MURRAY: Mr. Vice President, I move that the Convention accept and adopt the budget report of the President of the Convention.

VICE PRESIDENT TOOLE: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion carried. Order of Business Number 9, Special Orders.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Order of Business Number 10, General Orders of the Day.

Mr. Graybill.

DELEGATE MURRAY: Mr. Vice President, I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

VICE PRESIDENT TOOLE: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion carried.

(Committee of the Whole Chairmanship assumed by President Graybill)

CLERK **HANSON:** March 3, 1972. The following committee proposals are now on General Orders: Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number 3.

CHAIRMAN GRAYBILL: First of all, I'd like to say that I'm gratified to hear that you finished Natural Resources in such good shape last night. I think it-1 think we had some interesting and thorough debates on important topics, and it does prove we can get through and still have the debates. It's my understanding that on Revenue and Finance, we'll start right at the top and go down; but before we do that, Mr. Rygg wants to make a statement. At this time, Sterling, why don't you take the floor and make your statement, and then we'll start down the line?

DELEGATE RYGG: Thank you, Mr. Chairman. I would like to give a little synopsis of our committee report, in case all of you haven't read it. We were given Articles XII, XIII and XXI, which had a total of 42 sections. You will note our proposal has only 14 sections, so we have-

CHAIRMAN GRAYBILL: Sterling, will you hold the mike a little closer.

DELEGATE RYGG: —so we have eliminated some sections, condensed some, and added some new ones. Article XXI, consisting of 18 sections, was condensed into our Section 13. This is the trust and legacy fund, which really never has existed, and had not public school funds and other land grant funds been added in 1938, the whole article would have been useless. The Education Committee also had this article, and we have tried to incorporate their thinking in our majority report. We do have a minority report on this section. Article XIII had to do with public debt, and most of the six sections in this article are now contained in our Sections-our proposed Sections 1, 8 and 11. So, you can see that most of our work was done on Section 12. Now, the first sentence of Section 11 became our new Section 1 and replaced Section 1 (A), and Section l-and Section 1 (A). Section 1 (B), the antidiversion amendment, with modification, became our proposed Section 6. Section 2 is covered in our proposed Section 5, and we have a minority report on this. I might say we had Driscoll, out of a courtesy, signed these two minority reports, we wouldn't have had any. So, the committee was fairly solid on its thinking. The gross proceeds tax, old Section 3, was eliminated from this proposed article. Section 4 was also eliminated and is partly covered by Local Government's proposal. Section 5 is covered in our proposed Section 4. Section 6 and 7 are covered in our Section 2, the surrender clause. Section 8 is guaranteed by our federal Constitution, so we eliminated it. Section 9 is coveredin our Section 14 and also in Section 3. Section 10 is eliminated as it was covered in the new Legislative Article XVIII, I think it was, the other evening, and it came from Article V, Section 5—Section 34, I think it was—this also partially covered in our proposed Section 12. Section 11 is-the first sentence is now our proposed Section 1, and the uniformity clause was eliminated because it really has been a nebulous thing and is sort of covered in the 14th Amendment. Section 12 is covered in our proposed Section 9. Section 13 is covered in the Legislative Article, Section 18, and partly in our Section 12. Section 14 is covered in our Section 12 to a degree. Sections 15 and 16 have been replaced with our proposed Sections 3 and 7. Section 17 was eliminated, as we thought it was no longer needed. Section 18 was also eliminated, as we felt it was not needed. We heard testimony, some hundred and twenty-some people. We didn't have many delegate proposals. We had a few, and we considered them and used part of them. I think this committee has worked on this proposal with a very progressive spirit. We were told by a couple of people who gave testimony that all we should do is write the power to tax, put a no-surrender clause in, and go on home. And I suppose this would have been about equal to Connecticut's, Iowa's, and a couple other states. But we felt that even though the state has theinherent power to tax, we should provide some guidelines for our Legislature. The committee felt that this document should be flexible enough so that future Legislatures would not be restricted for many years to come. We do ask the Convention to look at this proposal with this same farsightedness. In some of these sections, we feel we have made some giant strides for moving into the future, and we ask you to consider them in this same light. While the committee is not in complete accord with everything in this proposal, the consensus is that we have a rather forward-looking document that will meet the challenge of change in the future, and we are asking this Convention to meet that challenge. I would also take a little time and tell you a little bit

bunch. You don't see them talking very much on the floor. I don't even know if you know who is on our committee. Geographically, we cover the state pretty well. We have a man from Conrad, Great Falls, Nashua, Glendive, Billings, and then we sneak into that invisible fence and pick someone out from Butte, America. We go to Anaconda, and then we have two from Kalispcll. As far as occupations are concerned, we have two school teachers--one is a regular high school teacher with journalism and a few other degrees; one is a vo-tech teacher. We have two attorneys; one experienced and one with the great exuberance of youth. We have two businessmen; one affluent and one not. We have one farmer, one accountant, and one banker. And I take the time of telling you this because I want you to know that, really, in this group, I don't think you could feel that there was anyone in the whole group with a special interest. I want you to know that this group had what they thought was the good of Montana—and I know you all did this-but, really, I don't think there were any that were wrapped up in any one subject. We really are trying to put together a proposal which we think will be something the future of Montana needs. Now, I learned a long time ago that whenever I start doing anything-if I'm going to do anything, I have to have on my side a banker, a tax man, and a lawyer. And it happens that this committee did provide these things. However, the banker hasn't decided to back me on this, and at the moment, I don't need a tax man. But this morning I'm going to need the counsel. So I would tell the Convention that I will probably try to handle the easy questions, and as soon as we have something difficult or of a technical nature, I will be calling on Mr. McDonough, or you can call on him, because, admittedly, he is the brains of our committee. So with that, Mr. Chairman, I believe you can say the Mitchell Gang may not be prepared, but they're ready.

CHAIRMAN GRAYBILL: Very well. Will the clerk please read the title of the proposal and then Section 1.

CLERK HANSON: "Montana Constitutional Convention, Revenue and Finance Committee Proposal on Constitutional Revision Number 3. Date reported: February 18th, 1972; Sterling Rygg, Chairman; Morris Driscoll, Vice Chairman. Be it proposed by the Revenue and Finance Committee that there be a new article on Revenue and Finance to read as follows: 'Revenue and Finance. Section 1. Public purpose. Taxes shall be levied by general laws for public purposes.'" Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does rise and report after having had under consideration Section 1 of Proposal 7, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Section 1 is a very simple and general statement which provides the Legislature the necessary leeway to impose taxes as they see fit. When we were discussing the article, of course, we went through many constitutions, as all of you did, and we came up with one of the recommendations here from the Revenue Department, which read: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy taxes by general laws for public purposes only." As I mentioned, we did take out the entire section and we put in the first sentence of Section 11, which is what is now our Section 1. Mr. Felt had a proposal in our committee, and he met with our committee. And he had the other half of this sentence in his, and he had suggested that perhaps we should put the two of them in. I want to say that we have a high regard for Mr. Felt and we did not just discard this without thinking about it. We considered it considerably. But we felt that, really, the Legislature is the branch which does raise the money, so we didn't think we needed more than that sentence to do it. We did think it was well, however, to emphasize two protection requirements--one, that taxes should be raised by general laws and only for public purposes. By doing what we have done, we do not force the Legislature to place a tax on all property. We did remove the part that said "all property". So now the Legislature can decide what they want to tax. We did remove the section which indicated income tax, but that has no bearing at all on what they can tax. Naturally, income tax is still in there and taxable. Much testimony was given to us that household goods are not a good tax base, but because the Constitution has required it for the past 80 years, this property must be assessed and the taxes must be collected. Testimony also revealed to us that this cost of assessing and collecting this type of tax, [in] many cases, was just about as great as the amount of the tax. Further-

more, it was brought out that many taxpayers are reluctant to sign the appraiser's statement, which says this is a true statement, and they feel that maybe they are committing perjury when they do this. Now, by doing-by taking out the former Section 1, we have also eliminated the uniformity clause. And it is probably a desirable thing, but under the present Constitution it's been unattainable. Various classes of property have been created in order to circumvent this provision. And I think here would be the time to mention it, because Section 17 of the present Constitution defines property. We did delete it, because we didn't say that all property must be taxed. So our thinking now is that the Legislature is now free to tax whatever form or class of property it so desires and they can define it at the time they make the law. Again I want to emphasize that in our proposal, we're not telling the Legislature what to do, but we are simply removing the restrictions which in the past have made assessing of certain properties very difficult and unequal. I recommend the adoption of this article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? Very well. Members of the committee, you have before you, on the recommendation of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 1 of article-of the Revenue and Finance Article Proposal 7, that the same be recommended for adoption. All in favor, say Aye. Oh, just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: Yes.

DELEGATE AASHEIM: Mr. Rygg. Now, we-last night we put a special levy on agricultural products and livestock. It'll be impossible, under this Section 1, to do that by the Legislature. Even if a group should ask to do so, would you say-say, if the poultry growers would now ask for-or, say, the horticulturists would like to have a special levy for fruit trees, they couldn't do it because it wouldn't be a general law?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I think they could do it. I think the Legislature could let them do the same as was done in that section which you passed last night. But-Mr. Chairman, maybe I don't understand the question.

DELEGATE AASHEIM: Well, your-Mr. Chairman, taxes shall be levied by general laws. A tax on horticulture growers wouldn't be a general tax, would it? That would be a special tax.

DELEGATE RYGG: Yes, that would be a special tax.

DELEGATE AASHEIM: In other words—Mr. Chairman—

CHAIRMAN GRAYBILL: Mr. Aasheim-

DELEGATE AASHEIM: --according to the Constitution, then, it would be illegal?

DELEGATE RYGG: No.

CHAIRMAN GRAYBILL: Mr. Aasheim, the Chair might be able to help you on that. It would seem to me that the language means that if you have a tax on fruit trees or something, it has to be a tax that applies to all fruit trees anywhere in the state. You can't have-you can have a tax on a special subject, but it has to be broadly based across the state; it can't be on one fellow's group of trees. Mr. Rygg nods in the affirmative, Mr. Aasheim. All right. Now, members of the committee, you have before you for your consideration Section 1 of the Revenue and Finance Article, upon Mr. Rygg's recommendation that when this committee does arise and report that it recommend the same to be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Number 2.

CLERK HANSON: "Section 2. Surrender clause. The power of taxation shall never be surrendered, suspended or contracted away." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Proposal Number 7, it recommend the

same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This is a short surrender clause. Most state constitutions have some sort of surrender clause. The newer ones have it much in this shortened form. Actually our present Constitution says about the same thing, but it takes up two sections, Section 6 and 7. Of course, the power of taxation is the most important power a governmental body possesses, and it is equally important that this power never be treated lightly or bargained away. This section does apply to all government units, not just state governments. It does not imply that the state cannot delegate the taxing authority, by constitutional mandate or statutory law, to local governments. Due to the fact that local governments are merely subdivisions of the state government, this could not be considered relinquishing of taxing power. One reason for having this clause is to prevent the state from ever giving special privileges to any private enterprise. This section is not meant to prevent the state from exempting certain classes of property from taxation. I know that after the Romney hearing, Mr. Ask was concerned about the transfer of this power on local governments. So our committee did give this a great deal of consideration before we did conclude that only this one sentence was necessary. Now, oddly enough, it seems that Illinois and Michigan were somehow able to get this same language in their constitutions. I believe this section should be included in our Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Is there discussion? Members of the committee, you have before you, on the recommendation of Mr. Rygg that when this committee does arise and report, after having under consideration Section 2 of the Revenue and Finance Proposal, that the same be adopted. All in favor, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Number 3.

CLERK HANSON: "Section 3. Property tax administration. Property which is to be taxed shall be appraised, assessed and equalized by the state in the manner prescribed by law." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section doesn't have many more words than the first two sections, but its implementation would open the door to a whole new concept of taxation. Now, the rationale pretty much tells what could be done if this committee's progressive thinking were brought to realization. However, it still would be the Legislature's prerogative to decide how far-reaching it wants the effects of the change to be. Now, in coming to writing a section like this, certainly it didn't come out of thin air. Much consideration was given to it. And I suppose the Serrano-Priest case and the subsequent findings in other states brought out the thinking of this committee, although I would have to say that during the testimony, too, we heard that there were many people who thought tax equalization was not all over Montana. But it did appear to us that, in the near future, Montana, along with all the other states, will have to deal with the issue of equal education for its youth. The only way to accomplish this will be to have statewide financing of education, and the first step in this process is to have a statewide system of taxation, which must start with a statewide system of appraising, assessing and equalizing. We feel that this section would enable the Legislature to implement such a system. It is a duty of the Legislative branch to define the tax administration system and the duty of the Executive branch to administer that system. Let us consider, for a moment, our present system of taxation. Currently each county has its own administrating personnel. Now, if there were no need for statewide taxes and if our educational system was not funded at all by property tax, this method would be adequate. However, because much of the education equality is based on property tax, it is necessary that we change from an individual county system to a statewide system. It is true that at the present time, the State Board of Equalization tries to insure the ratio of sales price to assessed valuation on real property. However, all

counties do not comply with the State Board's directives and, hence, equality is not reached. There is a problem of inequities within districts as well as between counties. Many taxpayers do not complain so much about their own taxes, but the fact that their neighbor's taxes may be lower they find very disturbing. It's impossible to have equitable taxation until statewide assessing and appraising has been achieved. I mentioned before the implications of the Serrano-Priest case will probably soon force Montana to use statewide financing for schools. Now, the committee is not against the Board of Equalization or the County Commissioners or the Assessors, as has been implied by many. In no way can we visualize the elimination of either the Assessors or the County Commissioners. Many counties now have Appraisal Boards, and yet the Assessor is busy running his office. The only difference here, if our proposal were to become a reality, would be that this Appraising Board would have to come from the state. Now, Sections 15 and 16 of the present Constitution do provide that the local Board of Equalization be comprised of the County Commissioners. And our proposal could eliminate this one function from the County Commissioners, but that would be all. It is true that this section would not call for a Board of Equalization in the Constitution; however, it does not prevent the Legislature from retaining this board and using them as a State Appraisal Board. We do, however, envision some problems with retaining it in its present form. Our thinking is that a tax administration system should be administered by the Executive Department, and it is true that this board is appointed by the Governor. It is also true that the Governor does not control the board. The fact that they answer to nobody, they have no checks, is indeed a problem. We feel they should be directly answerable *to* the Governor, probably under the Department of Revenue and, if we are to retain them, probably should be appointed from geographical districts. Now, there is an amendment on your desks that would delete our proposed Section 3 and retain present Articles XV and XVI, or at least the basic functions of these sections. Now, if this amendment passes, we feel it will be very difficult for the state to attain equality of taxation on a statewide basis which will provide statewide financing for school systems. Now, we realize it's hard to adjust to change. The committee feels that change in this area is necessary to meet the challenge of the future, and we do Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I have an amendment for the clerk to read, if he would, please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Eskildsen's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, lines 11 through 13, page 11, of the Revenue and Finance Committee proposal by deleting it in its entirety and inserting in lieu thereof the following new material: 'Section 3. The Board of County Commissioners of each county shall constitute the County Board of Equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective counties. The State Board of Equalization shall be composed of three members, who shall be appointed by the Governor, by and with the advice and consent of the Senate. The members shall have overlapping 6-years terms, with each member holding office until his successor shall have been elected and qualified. The members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization. Provided, further, that each member shall devote his entire time to the duties of the office and shall not serve on or under any committee of any political party or organization or take part, either directly or indirectly, in any political campaign in the interests of any political party or organization or candidate for office. The State Board of Equalization shall increase, decrease, or otherwise adjust the assessed valuation of property established by the taxing jurisdiction to insure a fair, just and equitable valuation of all taxable property between the different classes of property and between individual taxpayers. The State Board of Equalization shall annually assess the property of all railroads, telegraph, telephone, electric power and transmission lines, and all similar property constituting a single and continuous property operated in more than one county in the state, and the same shall be apportioned to the counties, cities, towns, and school districts in which such property is located, in such proportion as will fairly represent the valuation for assessment within each such county, using commonly recognized methods of apportioning as

relating to taxation as may be prescribed by law." Mr. Chairman. "Signed: by Eskildsen."

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I so move. First, I would like to thank the committee for the hard work they've done, because they have worked hard on this.

CHAIRMAN GRAYBILL: There's a question, Mr. Eskildsen. The point is, Mr. Eskildsen has moved this as an amendment to Section 3 of the Taxation-of the Revenue and Finance Article, and the Chair allows the amendment.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I would like to thank the committee for the hard work they've done. As we all know, each committee has put in much time and effort to come out with the proposals they thought best. It's just one of those things that I have a different feeling than what the committee does on what is best for the State of Montana. And because there was no way for us to compromise, which the committee tried, I talked to different committee members and we tried to find out a compromise-tried to reach one. It's just one of those basic differences. And because of that reason, I add this amendment. I would like to think that I could stand here and, in two or three minutes, explain the whole tax program for the State of Montana. This is very complex, so I hope that you'll bear with me while I give you my reasons for submitting this amendment. Section 3 provides that property which is to be taxed shall be assessed, appraised and equalized by the state-this is in your Section 3. "In the manner prescribed by law" simply refers to the method that the state shall appraise, assess and equalize property. This in no way can be read to mean that the Counties' Assessors or County Boards of Equalization or the State Board of Equalization will ever again be involved in the assessment of property. The Revenue and Finance Committee has referred to the state-level system, which simply supports my remarks that the counties will not be involved unless in a subordinate, clerical position to a State Administrator. Now, it has been said that Section 3 doesn't change anything. I submit to you that no one can second-guess what any future Legislature will do. If we delete Section 15 and go with Section 3, I can assure you that in every session, there will be change. I can see this thing working real well. One session of cowpunchers will come in and have a great deal of influence over the Legislature, and they'll come out of the Legislature smelling like a rose. And here we go, up and down and up and down in our tax program. And you can bet the next session, the timber people or some other group will be in. As they approach the Legislature, they will be in with their axes in their hands, and I can assure you they will come out of the next session with all the pine cones. Again, let me repeat. You will start a process of fluctuation in equalization—equalizing programs that we now have that will cause vibrations over the whole state. And what has been accomplished in the last 50 years, but mostly in the last 15, will be the reclassification program would be lost. If you don't believeme, ask the committee if they can guarantee there will be no change in the assessment or equalization program. Because I can assure you that no one in this room can give you that assurance. Without continuity of a Board of Equalization, you will lose stability in our entire tax program. Are we going to have a whole program to replace a State Board of Equalization? Is there going to be one man appointed by the Governor, to serve at his pleasure? I will tell you this is going to be the biggest boondoggle that you have ever seen. If you pass Section 3, I can assure you I will be the man who will be after the job. A few years of assessing railroads and public utilities and satisfying farmers and timber people-and other special interests are just my dear old friends. I could retire in four years. That's all I'd need. And as soon—and as honest a man as I am, I couldn't help but be able to retire, as it would just come to me; that for sure. I wouldn't have to ask for it. You talk about letters coming over the transit [transom]; well, they would be coming under the door if you establish a tax department such as this. I strongly urge that, rather than abolish the State Board of Equalization, that we put into the Constitution that it shall continue to be the head of the Department of Revenue, as the statutes now provide. Under executive reorganization, the Legislature made sure that one man wasn't going to do it all. They left the board in as the head of the department. If we do this, it would lessen my desire to attempt to get the job, because somebody is going to be watching. What is it the State Board of Equalization and County Commissioners are doing that is so bad? Whatever it is, can you assure me that this new, streamlined, and independent and efficient whatever it is we're going to have will do anything different and will be able to do as good? Now, if we are going to keep the same system we have, then we are going to have to appoint

this-then are we going to have this appointee by the Governor, a qualified appointment? When I talk about a person qualified, then we get into the $25,000.a-year bracket. Is that all we are going to do-add one more man to watch the three do their job? I submit to you that if there is anything wrong with the State Board of Equalization now, it could be corrected by a decent appropriation, so that they could do their job right. Now while I'm on the subject, if you would want the ideal tax program and the ideal person to run it and to make sure that everybody was assessed equally-farmers, city dwellers, railroad, timber, et cetera-then the ideal person. would be appointed by the Governor or the Legislature, or picked by the Judiciary or someplace, and he would be made a dictator that could not be replaced or removed. His word would be final, and there would be no appeals. Then, my fellow delegates, you would have a situation where it would be possible that everyone would be taxed the same. I tell you, this isn't the American way, and this isn't my way. I believe in appointments and I believe in elections, but I believe that people should always have recourse. And that is the reason we have democracy, and that is thereason our republic works, and that is the reason I don't want a dictator. And it is also the reason I want my amendment to Section 3-thus assuring the people of Montana that they will have a voice in electing their County Commissioners and County Assessors and are able to appeal to their County Boards and to our State Board of Equalization and on into courts, if need be. Our present system is local county rights, and if we go to Section 3, we will have abolished local rights and we have done to the counties what the federal government is and has been doing to the states. We have created a state centralized system, leaving the counties no say whatever in their property tax assessment. Our Legislature has grappled with this problem. On January 16th, 1963, a special committee was appointed to report to the 38th Legislative Assembly on the reclassification program. In regard to those counties that had failed to complete the program, they stated, and this is-1 quote: "A mere directive that the uncompleted work be done, with an authorization of the State Board of Equalization to demand that the County Attorneys prosecute ouster proceedings against county officials, obviously is not adequate means of obtaining needed cooperation. That, in general, was the method contemplated by the 1957 law."--end of quote. A dispute arose as to whether the State Board had certain authorities over county offi-

ary 5, 1965, for the purpose of studying the activities of the State Board of Equalization and its relation with County Commissioners Association and the County Assessors Association. This committee was chaired by Senator P. J. Gilfeather, while the County Commissioners were represented through their attorney, Mr. William F. Crowley. The County Assessors joined with the County Commissioners, and the State Board was represented by William Douglas, attorney for the Board. The net result of this meeting was signed agreement that the officials would cooperate with one another and interchange ideas in open communication in order that this program could be completed. That is the way of accomplishing fair, just, and equitable taxation, not having one man say, "It shall be done". Who at thestate level really understands the problems at the county level? It is one thing to be concerned about the rights of the individuals, but we should also be concerned about the rights of the various counties. I don't know how many of you know how your home is assessed. In assessing a home in town, the State Board of Equalization currently requires the assessed value to be 40 percent of the market value. By statute, 30 percent of the assessed value equals the taxable value. Simply multiply the mill levy times the taxable value and arrive at the amount of taxes to be paid. It has been asked why the State Board of Equalization is not requiring all counties to assess at market value, as required by statute. I asked the State Board of Equalization to prepare, to the best of their ability, a report similar to the property tax shift report presented by the Board to the Revenue and Finance Committee. I asked them to determine what percentage of market value the current assessed value is and to these apply some hard tax figures on what the present taxes are and what they would be if we were to suddenly assess all property at its full cash value. In preparing this report, they multiplied the present taxable value by 200 mills and determined that there would be 193 million dollars plus in taxes. To raise the same 193 million dollars plus, this 200 mills could be lowered to 61.7 mills, if you assessed all at market value. But what happens? Property tax on agricultural land statewide would suddenly jump from 21 million to 56 million. And if you'll look at that-this particular sheet, you will see it on there. Net proceeds of mines would drop from 15 million to 4 million. There would be very little change in city and town lots statewide. It would decrease from 56million to54 million, but public utilities would suddenly drop from 30 mil-

you assess at 100 percent of market value, as this committee is recommending. Is that what you want? Our present statutes requires property to he assessed at market value. To remove Section 15 from our Constitution-says "fair, just and equitable"-means that we are being forced to assess property at market value. Is this fair, just and equitable as required by the Constitution? Or are we going to have the State of Montana own all the land in the state because no one can afford to pay taxes on it? To really know exactly what is going to happen, it would be necessary that you compute these figures on an individual school district basis, I had the State Board of Equalization check on what would happen in some of our counties. Using the same items, agricultural land went from $656,000 in taxes to $1,989,000 in Yellowstone County. Public utilities decreased from 2,800,000 in taxes to 2~00,000. Solvent credits, held primarily by banks in Yellowstone County, decreased from 3% million to 1.7 million dollars in taxes. Look at this. City and town lots and improvements, now paying 10 million, would increase to nearly 12 million dollars. Is this any way to bring in new industry? I have figures on some other counties. In Fallon County, the taxes on agricultural land will go up four times, from 200,000 to 900,000; farm improvements from 97,000 to 233,000; livestock from 180,000 to 289,000; city and town lots from 220,000 to 330,000; net proceeds of mines will drop from 1,989,000 down to 950,000; public utilities from 450,000 down to 432,000. In Garfield County, agricultural land will go up from 406,000 to $788,000 public utilities will go down from 94,000 to 34,000. Is it wrong because the Boards of County Commissioners and the State Board of Equalization used an income approach? And let me point out, those are the two key words in this whole thing. If I had to do this in 10 words or less, I would merely say, "You can't do it all by actual value; you have to consider the income approach." These are important words. In valuing agricultural lands, rather than valuing the lands based upon what somebody is willing to pay for the land even though he is not concerned about producing a crop on this land, our statutes require that agricultural land be classified according to use and graded according to productivity capacity. This indicates to me that the income from these lands was to be considered in assessing them as our Constitution requires, "fair, just and equitable". Sales prices does not always produce equality in all types of property. Very little land is sold in the State of Montana as an agricultural unit. Many sales are small acreage purchased to add to existing agriculture units. Many sales are speculative or tax writeoffs. I am not aware of any state constitution that requires that all property be assessed at market value; but if we want the State of Montana to own all the land in the state, do as this committee wants and assess all property, including lands, at market value. To use other than cost or sales price to determine market value of property where such property is not being sold every day is not new to all of the members of this committee. As recent as 1967, a member of this committee represented owners of several separate commercial buildings in their appeals before the State Board of Equalization in granting relief to the taxpayers, stated as follows: "The capitalization of net income from probable future rent approach to value indicates a fair market value", et cetera. Railroads and public utilities are therefore not the only properties that you must look at to income. Commercial properties fall in this category. It is also fair, just and equitable to look to the earning ability of the land when assessing it, if the land is to be used for agriculture purposes. I quote from page 9 of the report of the Special Committee on Classification and Appraisals to the House of Representatives of the 38th Legislative Assembly, dated February 5th, 1963, and I quote: "The committee questioned whether market value alone is a satisfactory measure of value for all types of property, because some properties are not bought and sold in the market and because, as to some properties, the market values are artificially inflated." As to the case with farm and ranch land, it is therefore considered desirable to use the term "true value" instead of "full cash value", which connotes market value, and to authorize the State Board of Equalization to consider other criteria and factors, such as productivity, rental value, capitalization of earnings, original cost, reproduction costs, depreciation, value of stocks and debts, inflation in deflated items, as well as sale or market price. In the valuation of properties of various kinds, it is also certainly necessary to authorize a State Board of Equalization to consult with and instruct county officials in the use of such criteria and factors in the assessment of property. As stated before, what has the county boards or the state boards done that is so bad? Have any of you bothered to check to see what they have been doing before you ask to have them abolished? I checked, and here are some more things you can think about. In 1954, a 3-year sales ratio study was conducted. In 1956, biannual report, page 12, showed that the average assessed value of all property assessed at the

county level was approximately 30 percent of market value. This triggered the start of our reclassification and reappraisal program by our 1957 Legislative Assembly. Public utilities and railroads were being assessed at a far higher percentage of market value. In 1959, the State Board of Equalization attempted to equalize all county assessment and state assessment at 40 percent. To do this, it was necessary to increase counties to 40 percent and to decrease the state-assessed property to 40 percent. Because the counties were not able to increase their local assessments rapidly enough, the State Board had to slow down the reduction made to public utilities because of the severe upset to county valuations. Today, public utilities are still assessed at higher than 40 percent and local property is still assessed less than 40 percent. But the gap has been narrowed. Efffectively July lst, 1957, it became necessary to reclassify all of our lands in the entire state. This program was accomplished in about five years' time. And since that time, most of our counties have upgraded their land classification program, with some of our counties completely rechecking all of the land classes to take into account the increase in production. In the past 10 years, the average value per acre of nonirrigated land has been increased over 50 percent; grazing land increased over 18 percent; wild hayland increased over 56 percent. All agricultural lands combined have increased over 23 percent, due to the efforts of the State and County Boards of Equalization in carrying out the reclassification program. It was necessary that all buildings and city and town lots be appraised in a uniform method. This program took better than six years and a great deal of money to get completed. Actually, there were two counties that just completed this program and put it on their books two years ago. A lack of financing on both the state and county levels has prevented the completion of these programs and the updating of them as required by law. Presently, most of our counties are on a 5-year program of reappraising all of their properties, trying to put 20 percent on the books each year. What else is the State Board doing? I have found that they have a total of seven appraisers working on the property tax field program. They requested, for three sessions in a row, a real estate transfer tax so that they could determine whether or not the property is properly assessed. Because the Legislature has refused to enact this program, the Board of Equalization has had to conduct its own sales ratio pro- appraisal records in the county to be certain that properties are assessed equitable within and between counties.

CHAIRMAN GRAYBILL: Let's keep the talk down. If you want to talk, you'll have to leave the chamber. Go ahead. Mr. Eskildsen.

DELEGATE ESKILDSEN: I realize this isn't very interesting, but I can assure you one thing: that of all the things we've done up to this point, this is the part where you get down to the nitty-gritty as who's going to pay and how much. The difference between this assembly here and all Legislative Assemblies is that we don't have to worry about who's going to pay; all we have to do is write it up. In the Legislature, their first question is, how much is it going to cost and who's going to pay for it? And this is what I'm talking about here. I'm talking about the tax program of the State of Montana. And, like I say, it isn't very interesting. Taxes aren't very interesting to talk about, but I'll assure you they're important. And the people that's going to pay them, they're the ones-when you go back home and they look at this whole Constitution, they're going to say, "Well, if I vote for this, how much will this cost me?" And we better have some answers for them. Not only for the boards and bureaus we included in this on a constitutional basis that we're going to have to have money appropriated for by the next Legislative Session, but also who-what's going to happen to our whole tax program and to the State Board of Equalization. It also shows whether the counties are found in the appraisal manual submitted by the state. The same kind of manuals are used nationally. This isn't just one that the state picked out. It's a standard manual that they use, but it fits Montana's condition. Of the seven appraisers, one man works almost entirely with land classification. One is a forester, recently hired to gather data and update formulas to be-use in arriving at proper values for timberland. One senior appraiser instructs county and staff appraisers in assessing more complex properties, revising cost schedules, depreciation schedules, et cetera. Four other well-trained appraisers are involved in appraising improvements for counties, instruction, and assessing county people in revising cost tables and gathering sales ratio data. The State Board of Equalization assessed property that amounts to about 25 percent of the entire tax-state taxable valua-

mine assessments. This brings to me another subject. A member of your committee has questioned why the State Board of Equalization has reduced utility and railroad assessments. I told you one reason why. That should be exactly what this committee is asking for. You will-you want all properties assessed at market value. I have already stated that public utilities are assessed at a higher percentage of value, and they were assessed at a higher percentage of value in 1954. That could be the reason the railroads and public utilities assessments should go down, but here's another reason why railroad assessments are going down. I found Milwaukee Railroad in 1968 had a profit of seven and one-quarter million dollars. In 1969, a million dollars' loss; another eight million dollars lost in 1970; and they were headed for another loss in 1971. This makes a difference in the assessed value. A company that is losing this kind of money cannot be worth as much as it used to be when it was making a profit. This kind of property isn't sold every day, and you have to consider its income as well as its cost. And the stocks and the bonds of the company determine what the property is worth. If the companies aren't making any money, down goes the market value of their stocks, as well as their ability to pay property taxes. I found that in a study conducted by the State of Wyoming, dated January 8, 1969, that the State of Montana was doing-wasn't doing too bad a job in assessing railroads. The Union Pacific Railroad had an average value of $871 million by the 13 states that are involved in this railroad. Montana valued them at $909 million; Oregon at 89 million-$889 million; California at $900 million. These two states, Oregon and California, have the largest appraisal staffs of any of the Western States. All 13 of the states valued the entire Union Pacific Railroad Company about the same as Montana did. I also have another comparison of 14 states that assessed the Burlington-Northern Railroad system last year. In 1971, average assessed value was 96 percent of the previous year's assessed value-96.9. In other words, the average of these states believed that the Burlington-Northern Railroad should be decreased 3.1 percent from the previous year. Montana assessed the Burlington-Northern at 97.4 percent, or a 2.6 percent decrease from the previous year. This proved to me that the Montana State Board of Equalization is not the only state that finds that railroad assessments should decline, even though Montana has not reduced them as much as the average of the other states. Our railroads, nationwide, have been losing propositions in their passenger service, and that is why the federal government has created Amtracks to help offset these losses. The State Board of Equalization, in determining the value and also the final figures of how much taxes should be paid by the railroads, use the annual report submitted by these companies and an annual report submitted by [to] the Interstate Commerce Commission by these companies. By the way, I have checked and-the two figures and find them to be one and the same. These books are audited, and this is what I say: no auditor is going to purge himself falsifying the figures of any company. Figures shown on these reports are used by the companies in filing their federal returns. Look at the same-look at some of the other properties assessed by the State Board of Equalization. The power and gas companies have increased from 135½ million to 183 million between 1960 and 1970. The telephone companies have more than doubled from 35 million to almost 75 million; pipeline companies from 19 million to 38 million. Even though the railroads' values have decreased, the total utilities and railroads assessed by the State Board of Equalization have increased from 386 million to 461 million. So all properties assessed by the State Board of Equalization have not decreased as has been stated. I submit that some of the growing companies should have had an increase in value and that they were increased by the State Board of Equalization. I think our County Boards of Equalization and our State Board of Equalization are doing a good job. And a very difficult job in trying to equalize these properties. If you want a good job of equalization, you should first find out what the program is and what properties it is necessary to decrease and what properties it is necessary to increase, before we try to abolish dedicated people who are only trying to do their job. I wonder if any member of this assembly realizes the amount of money being spent by the Property Tax Department of the State Board of Equalization in trying to do this work that some people seem to be so dissatisified with. During the first seven months of this fiscal year, the Property Tax Department spent $85,000. This amount is an average of $12,190 per month. Divided equally between 56 counties, the total expenditure of this department amounts to $217. We're talking about some new boards and some new people; who's going to pay the bill? I mean-what are we going to get for $217 in each county? This new division couldn't even hire a clerk per month, per county for this amount. Even if we include a board member's salary, the total amount spent by property tax per county

would amount to $240 a month. That's all we're spending on this whole tax program in the State of Montana. In my way of thinking, this department has done a tremendous job on very limited amount of money. If you really want a good job done in equalizing taxes, see to it that our present system is properly financed so that they can do the job; don't take the rights away from our people by establishing a system that nobody knows what it will cost to run and nobody knows where the money will come from to run it, except out of the people's pocket. That will have to last another—right. Now, this-I'm sorry that it took so long. It was rather boring, I know, to people who aren't interested too much in taxes; but I'll tell you, this is the most important section that you've had before you right up till now. I sure hope you give it some consideration. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. It's somewhat difficult to answer the presentation in favor of this amendment, but I rise to oppose this amendment and to bring back some clear facts as to what the majority proposal actually proposes to do. It doesn't propose to raise anybody's taxes. It doesn't change the ratios as to how taxes to be arrived at-1 mean, how property-the valuation of property is to be arrived at. It does, however, change the method of appraising and equalizing taxes in the State of Montana. And there's nothing in the proposal that says that the state cannot designate the County Assessor as their agent as-at the local level. There's nothing in the proposal that says the state cannot designate the Board of County Commissioners to assist at the local level. All it does is give the ultimate authority to appraise and equalize taxes in the state. Present Sections 15 and 16 of the Constitution gives the powers to the Board of County Commissioners and the State Board of Equalization, and the State Board of Equalization has only supervisory powers. And that's been the big hangup. The State Board was given these powers in 1921, and that's over 50 years ago. Reclassification come into effect 14 or 15 years ago, and there still is not equalization between counties. That is all we want to do by this section-is to give the Legislature the power to equalize the property tax in Montana. Now, there's no limitation on the Legislature relative to income tax; there's no limit-They can do what they want, and that's what we want to do by the-removing these restrictions on the valuation of the property tax. Now, I won't go into the deficiencies in the present program. And the State Board has done, in a lot of cases, a very good job. But under the present thing, by incorporating them in the Constitution, in the wording of Sections 15 and 16, they can only go so far. There is farmland-and we talk about equalization-there's farmland from two counties, and they can be right across the fence, and one section of farmland is appraised at $10 an acre and right across the fence it's appraised at $8 an acre or $6 an acre. Now, that has to be equalized. And why we talk about Serrano versus Priest so much? Is it-there is now $90 million raised by property taxes to support education. And if Serrano versus Priest is put into effect, the Legislature, in order to replace that 90 million--and if they wanted to replace that 90 million by property taxes, would actually have to levy approximately 100 mills statewide on property. And if the property isn't equalized, those counties which have purposely kept their assessments down would receive a tremendous advantage from those counties who have fairly equalized their property between the individual taxpayers and between the other counties, as promulgated by the State Board. But under the present system, the only way the State Board can make them equalize-the State Board cannot go down and tell them what their valuations will be on a fair valued basis; the State Board has to bring them to court, have the hearings, bring them to court. And it'll take another 10 or 15 years to equalize property in the State of Montana, if it's done at all. And that's why we're here. We're allowing the Legislature to be able to make a statewide valuation of property. They're the ones, as Mr. Eskildsen says, they're the ones that have to pay the bill. They are the ones that have to levy the taxes. Therefore, they're the ones that have that responsibility, and they should also have the responsibility of setting this thing up so it will work. And they don't have that responsibility or authority at this time. And all we're doing is allowing them to do it. If they feel that the State Board is doing a good job, they can retain them; if they don't, they can replace them with something else. The State Board now, because they're a constitutional board and because it says they'll value property fairly, justly and equitably and because that is in the Constitution, giving their powers, they say their interpretation of those three words

appointed by the Governor on those terms that they are, there's no way you can change it. You can elect the Supreme Court and throw them out if they make bad decisions is what is meant by fair, just and equitable. But you can't change the State Board except through the Governor on a staggered term of once every six years. What it does to the present Constitution is take away from the people the right to control the valuation of property. And that's what we're removing, We are not changing a thing. We're not changing one dollar of valuation. But we're removing that independent board from without the Constitution and allow the property to be taxed much more equitably than it is right now.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman-Would someone tell me if I'm on?

CHAIRMAN GRAYBILL: You're on.

DELEGATE BERTHELSON: Thank you. Mr. Chairman, fellow delegates. I rise to oppose this amendment. I'm sure I don't need to remind the delegates to this Convention that I am a man of few words. Now, I respect Mr. Eskildsen as a member of this delegation, and after his long dissertation, I am sure that each of you are thoroughly confused. Now, our committee heard literally reams of this type of testimony. I would ask each of you, now, to take your Report Number 7, on page 18, and read with me lines 4, 5 and 6 from the committee's comments and rationale—quote: The Committee heard reams of testimony concerning the inadequate job of assessment and tax equalization in the state--end of quote. I should like to refer this committee to the Montana Legislative Council Property Taxation *and the Montana Property Classification Law* of December of 1964. The report is Number 16. And I should like to quote from this report. I am not going to take time to read to you the list of members that served on that Montana Legislative Council. I'm going to hold the book up and refer you to page 10, and I'm going to quote from the heavy black type in this legislative report. And knowing that I might be challenged if I read only part of this quotation, the summary that came from this Montana Legislative Council report, I am going to read it all. The first few sentences are probably not relevant to what I want to emphasize. Quote: "As a matter of fact, our investigations show that land is assessed at about 30 percent of its full value; cattle at approximately 45 percent; sheep, 40 percent; horses and mules, 52 percent; hogs, 18 percent; bank stock, 65 percent; and other forms of property at varying percentages. In the face of the positive statutory enactment requiring assessment at full value and in the face of instruction from the Attorney General that the assessment must be made in that manner": now this is what I want emphasize that came out of this report, and I'm going to supply the emphasis-"the assessors meet every year, resolve themselves into a sort of legislative assembly, and proceed to fix the values at which different species of property shall be assessed-period. We shall later go more fully into the subject of classification of property, which we believe is authorized by the Constitution. We simply desire, at this point, to call attention to the fact that we have a sort of classification of property in Montana, regulated not by the Legislative Assembly but by the assessors and the State and County Boards of Equalization. We believe a classification should be made by the Legislature, and transmit herewith a bill for that purpose. It is generally conceded in this state that the present system of taxation is a failure and results in unjust discrimination and is utterly inadequate"-end of quote. Ladies and gentlemen and fellow delegates, let's vote with the committee on this problem,

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in opposition to Mr. Eskildsen's proposal and in support of the majority proposal. I served on the Revenue and Finance Committee and added, probably, more the exuberance of youth, as our Chairman said, than the expertise of my fellow colleagues. But I was impressed with certain facts and testimony before the committee. One is that we have a deplorable system of equalization and assessment in Montana. Of the reams of testimony which we heard concerning the equality of taxation among and between the counties, I can recall but one witness who testified that we had a fair and equal system between the counties. We were compelled to listen very strongly to the mandate of Serrano versus Priest. As you all know, Serrano versus Priest declared the present system of school financing in California to be unconstitutional. California's present system of school financing is based very similarly--on a system similar to ours. We were also aware-four other—and there are probably more now-cases throughout the states determining school financing at the

local level to be unconstitutional. One of these cases was ruled on by a federal panel of three judges in Texas. These cases are all on their way to the U.S. Supreme Court, and I am certain and all the members of the committee are certain and all the witnesses who testified at our committee are certain that the U.S. Supreme Court is going to rule definitively that the present system of school financing is unconstitutional. What we have, as we all know, is a system whereby counties who are blessed with perhaps a net proceeds tax from the oil or copper industry have the opportunity to lower their valuation and their mill-lower their valuation, bring their mill levy up to par, and then when they don't have enough revenue, drain the general fund. This is a burden on all of us. What our committee proposes is a system of financing whereby we all pay the same mill levy. The state, through our system, will do the assessment and appraisement. We also heard testimony of the inadequacies of the State Board of Equalization. I would dare to say that the witnesses were almost unanimous in declaring that the State Board of Equalization had created a rather shabby system of appraisement and equalization. We heard testimony concerning the local assessors. Local assessment, perhaps, is the greatest evil we have in our system. It's closest to the people, and consequently the local assessors have exerted on them great pressures for favoritism and things of this nature. This is something we must eliminate are— we're to have a fair and equal tax system. But as I mentioned before, the compelling case of Serrano versus Priest perhaps loomed heaviest on us when we were making our decision to open the doors for a system of state financing. I think this is something we cannot ignore, because it's coming. I think the committee realized it was coming, and the committee left the door open. For this reason, I urge the adoption of the majority report. I would like to point out one other problem-a problem I see in Mr. Eskildsen's amendment to our proposal. Mr. Eskildsen provides, and I am quoting, "The State Board of Equalization shall annually assess the property of all railroads, telegraphs, telephones, electric power and transmission lines, and all similar property constituting a single and continuous property operated in one-more than one county in the state, and the same shall be apportioned to the counties, cities, towns and school districts in which such property is located." This is the way it is presently, and this has to be changed again if we are to fund our schools in a manner which will be mandated by the U.S. versus Priest stands for. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. One thing that's been bothering me-I'm on the Revenue and Finance Committee. The other morning-yesterday morning on the ham radio net, this committee was being chewed out royally that we were providing that all property was to be taxed at fair market value. Delegate Eskildsen has also indicated that. I got a telegram, just now, from Great Falls, Belt, and Stockett saying the same thing. Now, I want to get it in the record, loud and clear, that I am a strong advocate of taxing on productive value rather than fair market value. I have been assured by all the members of the committee that Section 3 does not make it mandatory that property be taxed at market value. The wording-it says, "is equalized". Mr. Eskildsen's amendment says "equalized" also. Therefore, I oppose the amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I, too, am a member of the Tax and Revenue Committee. I do not pose as a tax expert. I do rise in opposition to Mr. Eskildson's proposal. What it will actually do is lock into the Constitution what we've had. It won't change it. I'm sure you're all aware-1 know you're all aware-that the power to tax is an inherent power and it's inherent to the Legislature. I think it is fundamental that the Legislature must be able to devise and control and equalize and appraise the property in the State of Montana for the benefit of all Montanans. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. This looks like a parade of the members of the Finance and Revenue Committee. We've spent a good deal of time talking with Joe, and I feel a little bit guilty that he's being outnumbered at the front here, hut I think he's pretty well able to take care of himself. I'd like to say a word about this committee. We're really pretty proud of the product that has come out of this committee. If you will look at the vote on this section in the back of our booklet, it was unanimous from the entire committee that this wording be used. There was no disagreement at all as to our vote. Now, our first conversations in our committee were not directed necessarily to taxes,

session of where we-what contribution WC could make to this Convention and to the people of Montana that would have a beneficial effect on the citizens who arc going to live in our state in the years ahead. And throughout our deliberations, I think this thought was incumbent on us-that we were trying to look ahead at the problems of Montana of the future. And we were all in agreement that we want to make Montana a place that our children want to live and are able to live. Much of the testimony we had was directed at the non-equalization or inequality of the taxing system that we have here today. Now, you've heard from Mr. Eskildsen, and I'm sure that you recognize that many of the-of his thoughts probably reflect the thinking of some of the board-of some of the people who are involved in the structure here now. And in no way did we want to be critical of these people. We think they're good public servants; we think they're doing a good--we-they're working hard; they're striving to accomplish what they think is, undoubtedly, in the best interests of the people of the State of Montana. But the facts of the matter are these: from the testimony we received, we do not have true equality of taxation in the state right now. Now. what effect will true equality have-of taxation'? And true equality may be defined, perhaps, as: "When the other fellow pays the taxes and I don't pay any, we have true equality." This may be some of the thinking behind the statement that you heard today. But our group feels that if Montana is to go ahead, we are going to have to have equalization in the eyes of those who would like to either stay in Montana and invest money or those who would like to come to Montana and invest money, creating more jobs for our young people. It takes about a $20,000 investment to furnish a job for someone. Well, it-in the State of Montana, we've got an awful lot of nice people and we've got an awful lot of nice country. And we've got room for more of our young people to stay here if we're able to create employment opportunities for these young people. And it is in this direction that our board was pointed. Now, our feeling--we have-we express a confidence in the Legislature to make the determinations of how the people of the future are going to be taxed. In my mind, the Legislature acts somewhat as a Board of Directors in a corporation. And for a corporation to say, "We are going to appoint a Board of Directors and charge them with certain responsibilities that are going to be the same responsibilities 50 or 100 or 200 years from now," just doesn't look like it's reasonable. The Legislature is responsive to the people. The Legislature is the people. As times change, as attitudes change, as our economy changes, the Legislature can respond to these changes. And if we lock in wording into the Constitution, it may make it very difficult for our state, which we all are so much in love with, to grow and develop like we hope that it will be able in the future years. Now, the committee is not recommending that we fire anybody. We're not talking about any job losses, and we're not talking about people really losing their responsibility. What we're doing is, we're taking them out of the Constitution and putting it in the hands of the Legislature. And as Mr. McDonough explained-I think quite clearly, but I would like to re-emphasize-it's very, very likely that the Legislature will use much the same structure that we have now. The Tax Assessors may have much the same responsibility in the future. The Assessors, as you all know, are the guys that count the cows. They're the ones that look at the land, determine what the value is. The appraising of the property is the area that there is some question. An Assessor finds it, locates it, but he may look at the appraisal process a little differently than someone else. And our feeling was-and it was, again, derived from the testimony we heard-was that the appraising of Montana property should be equalized, because an acre of land that produces so much-and, again, we are not arguing about the method of taxation, because that, again, is already in the hands of the Legislature; it's statutory-the classification of properties is statutory. The things you heard this morning of farmlands which now pay 21 million, may pay 56 million, this is away from our intent. It-the Legislature, at the present time, are the people who determine the classification of these properties. But what-our feeling was that if we can arrive at a fair, equitable appraisal system for the State of Montana, the people of Montana are going to benefit, because we are going to have an open and a growing economy and environment. Now, I'd like to quote, this morning-I'm not a greatreader of the *Missoulian* and I'm not really a great green-button-puncher, as most of you know-but there's kind of an interesting editorial this morning that may bear reading at this time. About-toward the end, it says: "Today the Convention"-referring to our Convention-"is scheduled to take up the Revenue and Finance Committee proposal. It is a fine document containing both progressive ideas and essential compromises. Yet, it is a good het that the Convention will surrender to the highway lobby on the highway trust fund issue, which has

[was] already compromised in the committee proposal. It might knock out the Tax Appeal Board, set up separate tax appeals for the state agencies, which set revenue policies and procedures. It might reinstitute some of the archaic and limiting revenue provisions of the old Constitution, which the committee proposes to be deleted." I ask you, as delegates, to think not of your friends who are now serving in positions here in the Capitol and think in terms of what is in the best interest of your children and the generation to come. If we are influenced hy the status quo and are locked into the procedures of committee and taxation principles that WE have today, we may really he limiting the growth of our great state in the years to come. I submit and I implore this delegation to support the committee report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The question is on Mr. Eskildsen's amendment. Is there further discussion?

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman.

CHAIRMAN GRAYBILL: You're on, Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I rise in opposition to Mr. Eskildsen's amendment. The reason why I rise has already been stated, but I wish to emphasize, for the Convention, the unanimity of the committee on this proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. President, members of the assemhly, I rise in support of Mr. Eskildsen's amendment. I think all of us are aware that Montana is among the highest property taxes in the nation. I think it is one that is of great concern. I know I have had several calls in regard to this very matter. I have received a telegram here, just now, from the Board of County Commissioners of Beaverhead County. I would like to read it to you: "We, as the Board of County Commissioners of Beaverhead County, would like to support you in your efforts to retain Section 15, Article XII of the new Constitution. Also, reinstate Section 5, 6 of Article XIII-" (balance of telegram text completely indiscernible) I-One of the things that concerns me most about this and, I think, is one that we should consider very seriously. And I think that we should have something in our Constitution to-that we have some Board of Equalization, especially within our counties. I think all of us can recognize that property taxes was mainly thought of to take as a source of revenue for local finances, such as county and municipal uses and our local schools. And-hut we know that we also pay property taxes for state purposes, and I think perhaps rightly so, up to a point. But I think it's just as basic today as it has ever been that we should consider private property taxes mostly for local revenue to support our local government. So I especially think that we should have something in the Constitution that will assure us that we have some sort of a board locally to look after our tax equalization. I thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. As Chairman of the Education Committee, I would he remiss if I didn't, at this time, stand up and make some comments. The Education Committee studied this quite thoroughly. We feel--I'm sure I speak for the committee when I say this-we feel that we have to be flexible for the future. My good friend, Joe Eskildsen, I'm sorry, does not represent that view in my view. A report that was made-thesuperintendent of Public Instruction-Mike Billings has spent about a year developing a report--I don't know if you've seen it, but I'm sure you've read about it in the paper--which definitely shows there are marked inequities throughout this state within the— between the different school districts. Part of this is due to the varied assessment values that have been established. And I will say this on this floor without any doubt, that if someone was to bring a Serrano-type case to the Supreme Court of Montana, he would win that case. The proof is there. The majority report, in my view, looks to the future. It is flexible enough to take care of all possibilities. Therefore, I support the majority review— report, and I'm against the-Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I come from District 6. I have five complete counties in District 6. I have letters here from every one of those Board of Commissioners and Assessors, supporting Joe Eskildsen's minority report here. I have telegrams all over my desk; it's full of them. I have one here with 13 names on it from people in eastern Montana. I can foresee that if this would take place, that farmland is put on a market value as it's inflated today, the day could come, if we

went through another drouth period, when each one of these counties are going to have to own every bit of this farmland, because they certainly could not pay taxes on the basis of a" inflated market value. It must be on a production sliding scale of some kind. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I want to speak in support of the minority Section 3 stating the need for state centralization of the assessment function. There have been ample studies in Montana and by the federal government to prove that our present system results in inequity. We've already heard of the one study of the Legislative Council. There was one in 1960, which pointed out the same inequity. We had the reclassification and reappraisal program in 1937, which was supposed to remedy these conditions. But not only did a Senate-or House Committee of the Montana Legislature say that this had accomplished nothing—there was the-still the same underassessment and inequity in assessment in Montana: and this was also verified by studies of the federal Bureau of the Census. We have had three reports of the Bureau of Census on government which say that in Montana, there is a greater inequity in the assessment between counties than in all but two of the states in the United States. The only two that have greater inequities between counties in the United States are New Hampshire and Texas. That was said in the 1967 Census *of Governments*. The only way to correct this inequity of assessments between counties is through state centralization of assessment, and that is the reason that I support it. There have been two Commissioners of the State Board of Equalization who have said that this board should be removed from the state Constitution. I won't go into the results of the inequities. They've already been pointed out, I think, in the case of the school distribution. Counties can underassess in order to get more of the school foundation program; they can overassess in order to increase salaries of local officials. And there are other evils that result from this inequity and leaving the assessment in the local area.

CHAIRMAN GRAYBILL: Mr. Lorello

DELEGATE LORELLO: Mr. Chairman. I'd like to ask a question, maybe, of Mr. McDonough, please.

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: Yes, Mr. President.

DELEGATE LORELLO: I'm Lorello, Swede. I was with you last nigh-you remember'? (Laughter) Mr. McDonough, I'm concerned about this market value-productive value. I think I understand what they mea". Let's get to the word "equalize". And let's suppose that today we build a home in Billings costing $25,000. Let's then build another home in Philipsburg, Montana, and it too will cost $23,000. Now then, would you tell me what the taxes would be on these two homes'! Just what would they be at the end of the year'! How would you equalize these things, between the two cities?

DELEGATE McDONOUGH: Well, that's a point. What we do by this proposal, we don't tell anybody how they're going to equalize these two tares between these two counties; we leave that to the Legislature. And one thing I'd like to make clear on that here-that we don't say anything has to be equalized in any one manner. We leave that to the Legislature and the body that they set up, whatever it may be. We don't say that land has to he taxed on market value. And incidentally, houses are-residential houses are in Montana. Wc don't say that other land can't be taxed on productive value. And there's nothing in the present law that says that you can't tax land on productive value. And there's nothing in what we're proposing that you can't tax it on productive value. This thing about changing-how do you arrive at valuation, we're leaving that wide open, because how to arrive at valuation of any piece of property is very complex. And market value is just one of the things you take in consideration. Now, on the difference between the houses. Presently now, houses are started off with-that class of property does start off with market value. And if the house is only worth-you build a house in Philipsburg and if there's not too much market for a house and you pay $25,000 for it, it might only be worth 20. And if the Legislature says that houses will be on market value, then that house will be 20 in Philipsburg and 25 in Billings, and they'll apply the local mill levy to it. But I don't know what the Legislature is going to do. They might actually go to a rental value instead of a market value as to figure out the cost of houses. And they should be allowed that flexibility to do that. Does that answer your question, Mr. Lorello?

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think maybe first I should state my bias in this as a former lobbyist, from the League of Women Voters. Our very oldest support position in Montana politics was one supporting a more equitable administration of the property tax. It was also always a very frustrating position, because there was very little we could do about it. We did work with the Board of Equalization, and I don't want to cast any aspersions on them. I think that they were really trying to do the job, but they were also aware that they weren't really able to equalize taxation in Montana. We have talked about the importance of equalizing taxation in the event that we get into statewide support of schools. But I believe, also, that nonuniformity of assessment is a violation of the equal protection clause of the United States Constitution; which means, whether we're dealing with schools or anything else, WC are really-by maintaining a system that is not equal, we are violating the US. Constitution. And I think that eventually we're going to run into trouble with it. In our work with the League, we've also gone into the problems on the county level. I just saw one of our old friends walk into the balcony up here and recall his telling stories when he was a foxy old County Commissioner. We get the idea of reassessment, and I would guess that he wasn't the only County Commissioner who saw to it that their assessment rates were cut something like 35 percent before the Assessors came through. They came through and looked at the books and said, "Well, these are just a little low", and they raised them something like between 18 and 20 percent. In a sense, that's his duty, serving the people in his county. But assessment, if it's going to be looked at as a statewide function, can't really function well with people trying to gain advantage for people-their own people at the local level. And I think that that's the system that we're up against. I was delighted when I saw most of this committee's report. I can't say I'm happy with the entire thing, but I think, for the most part, they've done a splendid job. And I think that they've left the flexibility that we're going to require to meet our needs in Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I am real concerned. Mr. Chairman, I would like to ask my real good friend, Mr. Drum, if he'll yield to a question.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: I certainly will, Mr. Conover.

DELEGATE CONOVER: Dave, in all your deliberations on this, as you know-in my—way I stand, I have land in three counties-and I am disturbed about this. I know it's not equal. I'll have to agree with you. But is there any way that you can prove to me that we will have a County Board of Appeal or Appraisal Board within our counties, that this will not be taken away from us? I can maybe see it go with you, but if we lose this, then I am real afraid.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, do you want a speech or an answer?

DELEGATE CONOVER: I want **an answer.**

DELEGATE DRUM: I, too, have land in three or four counties, Max-and this-the answer I would give is this-that if WC have true equalization, it could mean more taxes for some people but it could mean less taxes for others. And if you base the approach on equality, fair treatment for all is something that-it's pretty--really hard to argue, Max. If you are being taxed in one method in one county--and maybe your taxes are a little different in another county, which is true in many cases. Many ranches in this country have—there's a difference in the value of land that lay on one-or the method of appraising land on one side of the county line and on the other. But the thing I ask you to do is to recognize that, in the best interest of the state and those that are living in the State of Montana, isn't it more logical that we should try to receive fair treatment for all, rather than for you in one county or another county? That is the thing I embrace, and I ask you, and all those in agriculture, to-not to say our taxes are going to go up tomorrow but that true equality of taxation is going to be of real benefit to the State of Montana

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Will Mr. Drum yield to another question'?

CHAIRMAN GRAYBILL: Mr. Drum, would you yield again?

DELEGATE DRUM: Yes, Mr. Chairman

DELEGATE CONOVER: Can you guarantee me that if this-if the majority proposal goes through, can you guarantee me that we will not be taxed on our private land on the valuation, but on the production of it?

DELEGATE DRUM: Well, first-Mr. Chairman. First I would like to say that I learned a long time ago not to guarantee anything-not to guarantee that it's going to get dark tonight, not to guarantee that tomorrow is coming, not to guarantee that the sun is going to come up tomorrow. But I would say if true equality is given to you, that you may go down as well as go up, Max. I don't know what the judgment play is, but I think that once you have true equality, that you certainly don't have anything to complain about. How can I? Mr. Chairman, did I answer his question? No?

CHAIRMAN GRAYBILL: Well, he'll tell you.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I have one way to go, I think. If it happens that we are taxed on our taxable valuation, I only have one choice. I think I'll sell my ranch to Mr. Leo Graybill or else go home and shoot myself or hang myself. I'll take one or the other.

CHAIRMAN GRAYBILL: Well, I can tell you which of those is best, Max. (Laughter)

George Rollins.

DELEGATE ROLLINS: Unlike my colleagues from District 8, I don't own land in three counties. I own, in company with the bank, a little bit of land in one part of a city. But I am concerned that wherever my land is or wherever anyone else's land is, that they all bc assessed equitably. I want to bear my fair share of the taxes; I want others to bear their fair share of the taxes. I also want to say, Mr. Chairman, that I have tried to support majority reports generally in these discussions. I wish to support the majority in this. I know that these people have worked hard. Now, Mr. Drum and Mr. Driscoll, between the two of them, don't know the difference between an old Irish philosopher and a noted English poet. But I do think that, between the two of them, they have made a thorough, sincere study of taxation problems. Mr. Chairman, I oppose Mr. Eskildsen's amendment and stand in support of the majority.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Will Mr. Drum yield to a question:'

CHAIRMAN GRAYBILL: Mr. Drum, will you yield?

DELEGATE DRUM: Yes, Mr. Delaney.

DELEGATE DELANEY: Could you give me a definition of true equality? Is this true equality in your mind, or my mind, or somebody else's mind?

DELEGATE DRUM: I think it would be a judgment call of a fair third party. I think—if you were to say, "I think I should pay so much in the way of taxes," and someone else would say, "I think I should pay so much"-well, it maybe equal in their own minds, but it may not be equal in the others'. So I think an impartial third party should be brought into the picture, and I think this is what we are trying to do with the State Legislature.

DELEGATE DELANEY: As a-Thank you, Mr. Drum.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: In order to receive true equality or to receive any equality under the majority proposal, this would be by the state. And I think it has been kind of-quite well brought out that you would probably have to come to the state to get any equalization and you remove all your local equalization, your local County Commissioners as the Board of Equalization. You're looking to the state for any equalization within your county, within your individual. And, as Mr. Lorello brought up, if you didn't feel that your house or your ranch or anything was equal, you would have to come to the state. You are eliminating your local County Commissioners as Boards of Equalization. And I ask you just to read Mr. Eskildsen's proposal. He is providing for equalization. He is providing for a board that will continue on 6-year terms. Not a board or a man that varies with every session of the Legislature or every change of Governor, a board that is sitting there to provide equalization. And if you will go ahead and read the rest of that, it says "shall increase, decrease, or otherwise adjust the assessed valuation of property established by the judging-taxing jurisdiction to insure a fair, just

and equal valuation of all taxable property between the different classes of property and between individual taxpayers." I think-I don't think Mr. Eskildsen is asking for or advocating unequal taxation between counties, between individuals. He is asking for equalization, through a board that will be sitting there for a period of years, not that varies with every Legislature, every change of Governor. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Will Mr. Delaney yield?

DELEGATE DELANEY: Yes.

CHAIRMAN GRAYBILL: Would you show the Chair where it says, in Section 3, that what you said will happen will happen'! I don't understand your point.

DELEGATE DELANEY: "The power of taxation will be equalized by the state in the manner prescribed by law."

CHAIRMAN GRAYBILL: How does that mean that it's going to change every year'!

DELEGATE DELANEY: It will be prescribed by law. Certainly, the intent, as described in their comments, is to set up state equalization-state-turn it over to the Legislature to provide the state equalization.

CHAIRMAN GRAYBILL: It doesn't say that. I can't see it. All right, Mr. Delaney, thank you.

Mr. Brown.

DELEGATE BROWN: Mr. President. I would like to try and help Mr. Drum answer Mr. Conover and Mr. Delaney. If they'll go to Section 7, it provides for an independent board appointed on a 5-year basis. This board is independent of the assessing board or body. However, it may be fixed up hy the Legislature. Now, as an attorney, I've had experience with trying to get equalization. Under our present method, you get equalization by the same people who assessed your property-it's a frustrating experience and you're normally very unsuccessful--and then you'd have to go to a District Court. This majority provides for this Tax Appeals Board. If you read the latter part of it, it gives you the right to have hearings in your county hy an independent man who had nothing to do with the assessment. I've had experience with other administrative boards in Montana, and they do come to your own district. So we have complete protection by an independent board that's much preferable to the present system. So I support the majority.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to a question'!

CHAIRMAN GRAYBILL: Mr. Eskildsen?

DELEGATE ESKILDSEN: I'll try.

DELEGATE HABEDANK: Mr. Eskildsen. I apologize for prohahly not hearing an explanation you may have made. I listened to your entire presentation. I've been called from this hotly three times by people in three different areas of the state who have been informed that the proposal-the majority proposal will change valuations to a market value rather than the present valuation. I have answered each of these that I heard your presentation, but I can find nothing in Sections 3 or 7 which provides for valuations on the market value basis rather than the samebasis as we may have now. If I am in error in this, please inform me as quickly as possible, without the 15-minute presentation which you made stating it would be all market value.

DELEGATE ESKILDSEN: Mr. Chairman. I'll try to do that. All right. Now, in the Constitution, it says that it shall be just and equitable. Now, when we take that out of the Constitution, then we go to statute and we go to the Legislature, and they say fair-when they say that it's going to he-in the statutes, it doesn't say just and equitable. It says that it shall be market value. These are the differences what the—between what the Legislature can do and what the Constitution says shall be done. I think that income should be considered in assessing property, It has to be. Now if you go to the-take this out of the Constitution, then you're reverting back to the statutes, and this is where the difference is.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: (Inaudible)

DELEGATE HABEDANK: There would be nothing to stop the Legislature from changing the present law which says all property shall be assessed at full value, is there?

DELEGATE ESKILDSEN: Mr. Chairman. No, there wouldn't; but there isn't anything saying that it would change or that it wouldn't change it in some other way. I merely say that in the Constitution, it says it shall be just and equitable. And that's the reason I want it in the Constitution, to show that it will be just and equitable and not just fair market value.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen?

DELEGATE ESKILDSEN: I yield.

DELEGATE HABEDANK: Will you point out to me in your amendment this "just and equitable", any more than is contained in Sections 3 and 7? As I read your--I'll read what I think is pertinent. "The duties of such boards shall be to adjust and equalize the valuation of taxable property within their respective counties." Then you go on down and you further say, "The State Board of Equalization shall increase, decrease or otherwise adjust the assessed valuation", and so forth, "to insure a fair, just and equitable valuation of all taxable property." Is that the difference that you're hanging your hat on? The "just and equitable" down in the body?

DELEGATE ESKILDSEN: You bet. That "just and equitable" is really important, as far as I'm concerned. It's in the Constitution.

DELEGATE HABEDANK: In other words, if the majority proposal had "just and equitable" in it, you would have no objection to it?

DELEGATE ESKILDSEN: Well, it would certainly help the majority proposal. But the difference between the majority proposal and my proposal is that I am in favor of a continuation of the board. Their-the reason--we could compromise on this other stuff, but we could never compromise on their idea that it might stay this way or it might be one man appointed by the Governor to sit at his pleasure or my-my thought is that it should be the board, and I want to keep the board. And that's the difference between the-the reason why we couldn't compromise.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman and members of the committee. I was a member of the Legislative Council subcommittee which Mr. Berthelson referred to as being great authorities in this field we're discussing, and we spent two years studying the Montana property classification laws. We worked and studied hard. We studied every facet of taxing property in Montana. The complexity of taxing property was overwhelming to the committee. My conclusion was that the present system, under the State Board of Equalization, works amazingly well overall. It is flexible enough to stand the test of time and changing economic fortunes. The Legislature is presently working on a method to improve the operations of property taxation in the state, and we presume our present-if we preserve our present system, the deficiencies which exist now may be corrected by future enactments of the Legislature. Increases such as Mr. Eskildsen mentioned in taxes for agriculture, combined with low prices for wheat, dock strikes, and so forth, would put agriculture back in the position they had in the early thirties, when a good share of agricultural land was abandoned because the operators could not pay the taxes. The way it would probably operate now is that the farm operators would have to sell off part of their property or borrow more money against the land to pay their taxes until the loans become too top-heavy and the banks have to foreclose. The whole question of property taxation requires a great judgment factor from the people charged with the responsibility of doing the same. My Legislative Council study indicated that the Legislature, in wrestling with the problem over the years and changing the laws, really didn't improve the situation very much. And I doubt that they would be able to do so in the future. True equalization is like perfection. It's a beautiful goal to be strived for but one which will probably not ever be reached. It's for this reason that I support Mr. Eskildsen's proposal. It retains a system that I think works as well as any system can in the field of property taxation. We could throw this system out and experiment, but my prediction is that history will show that-25 or 50 years from now-that as

many imperfections still will exist as we have at this time. I support the substitute motion and retaining local control.

CHAIRMAN GRAYBILL: Mr. Wagner.

DELEGATE WAGNER: Would Mr. Eskildsen yield?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: (Inaudible)

DELEGATE WAGNER: Mr. Eskildsen, under the present State Board system, couldn't all property be assessed at full market value also?

DELEGATE ESKILDSEN: Yes, I suppose it could be this-but you got to realize that it says in here too "fair and just", and this is what the board has used. They have used the fair and just method where they also take into consideration income of property, not just market value of property. And that's the difference.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would just like to say that I was considering, when we were asked on committees--what committee to be on, and I would have liked to have been on this one. But I was a little bit timid when I figured all the powers and brains that would be on it. And I would like to stand and say that I'm delighted with the majority report on this. I feel that this gives flexibility; it takes a lot of statutory law out of the Constitution. And I think that we will have a much better equalization program because of this proposal by the majority, and I firmly support it. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I'm kind of troubled. A couple of times, at least, this morning, I have heard that the State Board of Equalization doesn't have any power to do these things. I just want to read part of the constitutional powers in our present Constitution. "The State Board of Equalization has these powers: to change, increase, or decrease valuations made by County Commissioners or equalized by County Boards of Equalization and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said State Board of Equalization shall also have such other powers and perform such other duties relating to taxation as may be prescribed by law." Now, our present Constitution gives the State Board of Equalization the power to change any equalization made by a County Board or anything like this in the state. Plus, it gives the Legislature the power to give the State Board of Equalization any other powers as they want to-wanted to prescribe to it by law. Now we go to Section 3, and we're going to leave it all up to the law. Our present Constitution, it seems to me, gave the State Board an awful lot of constitutional power, and now it will all be law power. I cannot see how, if we couldn't get it done with all this constitutional power, we will get it done with just a little bit of law power. And so I'm going to support Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: I represent **Judith** Basin County, Chouteau, Hill and Liberty. And this week, I have been besieged with phone calls, telegrams and letters from my four rural areas, urging that we retain Section 15 and 16 in Article XII. As you know--and I know the ranchers know that it takes a good hundred acres of good grassland to support one cow. And during a drouth or a rain time, when there is an act of God, this land can change in valuation. It can go from $10 in pasture land to $200 or more in wheatlands. We must retain the Board and-so that they may change, as Mr. Gysler says. I urge you to support this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Wagner.

DELEGATE WAGNER: Would Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen?

DELEGATE ESKILDSEN: I yield.

DELEGATE WAGNER: Mr. Eskildsen. Should the State Board of Equalization decide to assess property as full market value, what recourse, under our present Constitution-or under your amendment, would we, as taxpayers, have to adjust this down to a fair and equitable basis? We could not go to the Legislature, I don't believe, since the State Board seems to have powers beyond the Legislature.

DELEGATE ESKILDSEN: Mr. Chairman. That was kind of along question. I hope1 got it all. But if the State Board was to reverse themselves now, from the way they're acting, the first thing that would happen is that they would end in the courts, and the courts would decide whether it should be just and equitable or whether it should be actual market value. That's where you'd end up, in the courts.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Maybe I can throw some light as to where you people are getting all your wires and letters. On February 18th, there was a letter sent out to County Commissioners and County Assessors, and it was signed by Leslie Joe Eskildsen. Here, in part, is what it says. "This section removes our County Assessors, our County Boards of Equalization, and our State Board of Equalization, leaving property subject to taxation by a single Tax Administrator appointed by the Governor." And farther on it says, "It will be necessary that they employ a large staff of appraisers and technicians, simply to check the work being done by the State Administrator and his staff. This is an uncalled-for duplication, in my opinion. I further do not believe that our local taxpayers should be required to travel great distances to have their property tax appeals heard." Then further down, "Please call your delegates today and urge support for retaining Sections 15 and 16 of Article XII." I think that explains a lot of your letters, telegrams and phone calls. I just thought the delegation ought to know.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President. I also am concerned about the taxes on agricultural land going up two and a half times, as has been pointed out here. But I think with the exchange of conversations we've had here between Mr. Wagner and Mr. Eskildsen and others, I feel that that really is not founded. I, too, have had telegrams from County Commissioners that are concerned, and I have discussed with them over the phone. I think, largely, that they are somewhat misinformed here. I think we have inequities now-in the present system. I know Mr. McDonough cited some cases where farmland was assessed at $10 an acre on one side of the fence and $8 on the other side—or 10 and 6. I know, in my own area, there-in my county, it was assessed at $10, and there wasn't even a barbed wire fence, and the other side it was assessed at $5. Now, I'm sure the people in my area are not satisfied with that system. Also the personal property tax on the state level. Personal property in my county was assessed at about $225 per household; and an urban area, it was assessed at $25 per household. This is inequitable. I want fair taxation. I want it for farmers; I want it for everybody. I think we have to take our County Assessors off the hook here, too. They're in a rather bad position. I think the present constitutional powers to the State Board are clumsy and rather unworkable. And I-it seems to me that we could only gain from the majority report, and I support it.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Taxation is one of the more complicated things in government. I spent two years on the Taxation Committee, trying to delve into all the facets and ramifications of taxation. It requires a lot of study and a lot of concentration of study. Now, we are talking here about removing the State Board of Equalization. The State Board of Equalization was created with these thoughts in mind, that we should have an agency that would be somewhat insulated from politics, that they could make fair and equitable judgment on how property should be assessed in the State of Montana. This board, of a necessity, has to have some independence to be able to arrive at the difficult decisions on equity of assessment. If you remove this board and go to an administrator, you have one man that will be performing these functions. He will be subjected to many pressures, from special-interest groups right on down the line, as to how they can get some favors in the assessment of their property. I submit to you that it is much more difficult to get favors from three men than it is one. We could go on and on and on and talk about taxes. We're going to have to pay more taxes; there's no doubt about that. I would submit to you that perhaps your next budget that will be submitted to the Legislature might be pretty close to $2'50 million. It has that aspect now. Where is this money going to come from? Think about this a little bit. Do you want one man that is going to sit down and try to figure this out? Would you rather have a board that is insulated a little bit away from politics so that they can make an impartial judgment of where this money is going to come from? I submit to this delegation that if the thinking of people out in the districts and out in the state means anything to you, you better listen a little bit to what their thinking is. I have on my desk some 30 or 40

letters and telegrams. Some of these telegrams have 15 and 20 names attached to them that solicit retaining the State Board of Equalization. And these are not just people that are jumping up out of the bushes, as Mr. Rygg would seem to indicate from Joe Eskildsen's letter. I had many of these letters shortly after I came up here. I represent five counties. I talked to each set of County Commissioners in those five counties before I came to this Convention. And I asked them this particular question, because I had seen in the reorganization plan that they recommended the abolishment of the State Board of Equalization. There wasn't any hesitancy at all on the part of any of these Commissioners-they wanted that State Board of Equalization retained: we feel that we could work with this board in the equalization of taxes; we would-suggested, however, that this board be adequately funded and adequately staffed to do the job. I think this is one of the fundamental, basic problems that has beset this board from the time of its inception. And it has not had the staff; it has not had the auditing power to go out and really take a look at the various properties, facilities, large companies, and so forth, to be able to really do the job. I think that the State Board of Equalization does have, and will have, the flexibility to cope with the increased tax burdens that we see, that will be developed and put upon the people of the State of Montana. Looking at the tax sheet that was presented to you--now, there's two sheets. We only have one of them in front of us, but the Montana Assessors Association prepared a sheet and, lo and behold, when the two got together, they showed the same figures. Now, we can go back, if we want to talk about letting the Legislative body do this, and we can consider the directive that came out of the 1949 session that said "All properties shall be assessed on a mark&value basis". Fortunately, we had the State Board of Equalization, and they were troubled by this directive and they went to the Supreme Court and asked them what their interpretation of this would be. And the Supreme Court told them that this would not provide a fair and equitable tax situation across the State of Montana, and the courts advised the board to proceed the way they are doing now. If you hadn't had the Board of Equalization, you would have, at that time, immediately went to market value taxation. If you look at the sheet before you, if you do go to market value taxation, look at the differentials. Look at what happens to net proceeds, utilities, other industry, and you will see that those taxes from those companies drop dramatically. But you look at your homes, your land, your real estate, your town property, and see what happens to them. In most cases, they would go up from two to three to very near four times the present taxes that you're paying now. Ladies and gentlemen, if we are going to heed what the people want, we are going to have to pay some attention to what their requests are. They were not, as I said before, brought up out of the bushes by Mr. Eskildsen's letter. These people have been thinking about this for three or four months. Some are dedicated County Commissioners. And I submit to you that most counties do have perhaps some of the more levelheaded, sensible-thinking people in their Board of County Commissioners as you can find anywhere in the state. And when these gentlemen, who have attended many tax meetings at the state level and thought these things out, and the ramifications of the tax problems, when they urge you to retain this State Board of Equalization, I think you should pay some attention to them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Eskildsen's amendment to Section 3, which replaces the present Committee Proposal for Section 3 with a proposal thatretains the State Board of Equalization. Now, the Chair intends to let everyone speak at whatever length they insist, but the Chair intends to try and get a vote on this matter before lunch.

Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. I will speak very briefly and very pointedly. I'm speaking, not from any telegrams or other influences, but from the confidence of the people from 10,000 square miles of Montana and others representing Montana's great agricultural and livestock industry who know thatthedelegate from District Number 1 will speak for them when the time comes. So, after 42 years on a third-generation cattle ranch, this delegate speaks from the northwest quarter of the northwest quarter of Constitutional Hall, and I speak for the retention of the Board of Equalization as pointed through Joe Eskildsen. Thank you.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I see nothing in the proposal of the committee that would warrant the fears that have been expressed this morning. I can only wish, Mr. Chairman, that

more of our committees had met in the Mitchell Building. Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Mr. Chairman. It seems to me that a lot of us are assuming what may happen under this adopted Section 3 of the majority report. But there is one question that arises in my mind. If we are going to finance a statewide education program-and also in our public health, welfare, labor and industry, we are proposing a statewide welfare program-how will this affect the tax system throughout the state? May I ask Mr. McDonough this question?

CHAIRMAN GRAYBILL: Mr. McDonough, would you yield?

DELEGATE McDONOUGH: If there is a statewide financing of education and if there is a statewide levy for welfare, which is quite problematical, because maybe the federal government will take that over in the end anyway--actually, as we said before, unless these are equalized, then you don't have a fair levy of taxes to support education if it's a property tax. And like Mr. Skari pointed out, that if the land is $5 in one county and $10 in the other, the fellow with the-in the $10 county is paying twice as much taxes for school than the fellow in the-with $5. That's how that's going to affect taxes unless some attempt is made to equalize these taxes better than what they're done now.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President. I'm going to watch the clock very carefully, because I don't like to miss my lunch. But I think that this is more important than eating, because it may affect the breadbasket in years to come. Now, some of you are worried here about the property paying the bill of the schools; and I am too, worried about that proposition. In fact, I am going to introduce a section which is going to limit the right of the state to levy property taxes. Now, you may say that's going to violate the principle of the state supporting our schools on equitable basis. We have other means of raising money to support our schools, even if the sales tax was defeated, even if income tax is unpopular. Nothing says, in the Serrano case, that we have to support the schools by property tax. I firmly believe that property taxes should be used for a local purpose, for county government, for city government, and for any additional purposes that the schools may desire. I believe that, and I'm going to fight for it. And now I want to tell you my personal interest in this. Some of you have been telling your personal interests. I am not a big landowner, but I rent land, and I know what the landowner-the landlord makes on his property, and I know he cannot stand to pay many more taxes. And I am confident, too, that any State Board will keep this in mind. No taxing agency is going to tax an industry out of business. I know some of you people are looking longingly at the grasslands of eastern Montana. I know you are looking longingly at the Williston Basin for some of this revenue. And by the way, you are getting some of the revenue from the Williston Basin. Whenever oil is found on school land--and by the way, a couple of weeks ago, one of the biggest wells in the Williston Basin was on school lands, and the State of Montana is going to profit by that well. And I know I'm speaking, now, for the rest of the oil in Sheridan County, for Roosevelt County, and for the other counties that have oil. We are concerned about--we're selfish; we want to maintain it there; we want to keep it there. And I know you people who don't have it would like to have some of it. But, actually, it isn't going to help you very much if it's-if you scatter it throughout the State of Montana. It's going to have just a dent in the tax load. Now, I have watched this tax proposition for a long time. Ever since I was in the Legislature, I've tried to do something about it. We know that taxes are inequitable; we know that the assessments are inequitable. I'll give you an illustration. I went to pay my personal property taxes one day, and I had them assessed at $1,000. That is with my refrigerator and the different things we have in the house. I presented this to the Assistant Assessor, and she said, "Oh, my God." I said, "I know I'm lying like the devil. If you want to higher it, go ahead and make it higher. I don't care." You know what she said? "You're too high." So I said, "Okay, leave it the way you want to; I don't care." So I walked out and I mused a minute and I said, "Well, my gosh, if I'm too high, what are the rest of them doing?" So I went back in again and I said, "Give me the assessment of eight different people who had about the same kind of a house and household goods as I had." And do you know what I found? Did you ever try that? You try it. That varied from $250 assessed valuation to $1,800 in assessed valuation. Now is that fair? Is that equitable? And you don't have to go to personal property. You can go to real property, like it has been mentioned. I'm

sick and tired of the land being assessed higher than the land over here. And a lot of people are being-are sick of that. One of my County Commissioners called me a week ago Sunday. "I'm afraid of this thing that you people are proposing. I don't know what it's going to do." "Well," I said, "I've talked to you people a long time ago. Why don't you get this assessment equitable?" "Well," he said, "we are trying. We would like to have it equitable. We would like to be on the same basis as Roosevelt and Daniels County, hut we have no force that makes us do it. We have no one telling us to do it," And this is what we want today. We want some force that gets to these County Commissioners or these taxing authorities to make this equitable. I may be not able to go home after I say this, hut I'm for the majority report. (Applause)

CHAIRMAN GRAYBILL: Very well. Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I've listened to a lot, and I've probably fought more with the State Board of Equalization than any person in this room. I was on the Tax Committee in 1957 to '59, and we certainly went over this reclassification. I want to tell you that I was a convert to the reclassification program. They had an awful time with me. I was afraid of it because I was afraid we was going to get just about what we got. And I think that we lost $5 million in it. By doing it, it cost the people. Now, I think the system is right. I don't think that we should go out here and abolish the County Boards of Equalization. This is what you're doing. Get down here where the people can get to these people and talk to them. And the-what you're doing-1 just heard that what you do, you're taking it out of the Constitution, then placing it back in the hands of the Legislature. This is what you're doing just as pure and simple, because it will he abolished if the Constitution is adopted, and I think it will. This local hoard, the only people you're going to have in this plan-and we're only discussing the other section; we'll come later on to the other section-I want to stay within the section we're discussing. They have this other plan of five appointed appraisers, I guess you'd call it. Now, right now, in Cascade County, the State Board of Equalization cut the Anaconda Company property. The County Commissioners have now hired somebody to go hack and reappraise the Anaconda Company's power property in Great Falls. If this comes, I don't know that we will have that power under the next session of the Legislature. This is a committee here today of-made up of people the same as going to sit in the next Legislature, if we have a unicameral body. They're the same-going to be elected from the same places and the same state that we have now. Now, I feel that we don't want to turn around here and abolish that local Board of Control. I don't know what the other government is going to say about this proposition of elected officials. We may wind up and have our County Assessors appointed. I remember there's a--the Mayor of the -now Billings came out a few years ago and stated that he wanted one State Assessor. And I looked at him funny. I can see it coming closer all the time. We will have one office sitting up here in Helena that's going to do all the appraising, all the assessing, all the levy. Now, as to the Serrano case; I think we're using that very much more than is necessary. As I see Montana today, and I might he wrong, you have sitting out here first on your levies-when the State of Montana sets up a basic foundation program, if they match the foundation program 100 percent, I cannot see the Serrano case any problem here. The point is, their Legislature is not matching the law that they said is the basic foundation program. Anything above that is extra that the districts themselves want, to have some cream on the cake. I think this is something to watch. As far as the welfare, I've got to say that Delegate Van Buskirk was right. When it came to us, they want to take the welfare program out of the county-and I think ours-we have now made it a legislative responsibility in the committee I'm on. But all of this bases hack to property tax. Nobody's got any madder at the Board of Equalization than I have, I'm telling you. And I have fought with them, because I think they haven't done their duty. But I'm not sure that if we go out and create another board-and I see this group here has been very much on not. I noticed that in the Department of Agriculture last night that was presented and adopted, there was no confirmation. And maybe this might come, so this person that-one person that's got-this is on the hoard over there today on-not the property tax. It's the only one that's still in under the Board of Equalization. It's under a new one-man hoard or commission. I don't know what you'd call it, but I hesitate, and I hate to take away people's-this local people's rights to have their own board down on that county level. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President. The majority of the people in the three southeast-

ern counties of Montana are very vociferous about their rights, and especially in this field. They really support our State Board of Equalization and our State-or our County Commissioners. And they're very fearful of any change in this department. I strongly support Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I've listened carefully to all this, and I'm not yet convinced that our present system is working perfectly. And I am not convinced that the majority of the people think it's working perfectly and want it kept exactly as it is. I support the majority proposal because I think it has the possibility of bringing fair and equitable taxation.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I didn't intend to speak on this, and I'll be very brief. But I am very concerned over this section and what has been said here today. I think we're arriving at a division between the rural and the urban areas of Montana on this Constitution. I ran and came up here with the idea of improving our Constitution, not necessarily doing away with a lot of things. And I think we have-s" far, we have done that. There was a lot of talk about the Justices of the Peace. We didn't do away with them; we improved them. Executive, Legislative-I think we've improved them; we didn't do away with them. Now we come to the State Board of Equalization and the County Board of Equalization; and maybe it shouldn't have been in the old Constitution, but it's there. What arc we going to do with it? It hasn't worked perfectly, so are we going to do away with it'? I submit, let's improve it. I would hate to have this-1 would hope that whatever we come up here with is maybe a compromise-that we can go out and have all of the people support the new Constitution. Now, in listening this morning, we find that the majority said, "Well, we're not going to abolish the State Board of Equalization." Maybe they're going to use it. Why can't we leave it in the Constitution and improve it? Apparently there are just a few words in this particular section of the old Constitution that has been-hide-bound the Legislature from this equalization of taxes. Maybe Mr. McDonough knows the words that are in here that has been in the cases that have held back proper enforcement of equalization. So why don't we adopt Mr. Eskildsen's motion here on the Board of Equalization and the County Board of Equalization and then get down to the wording here to put some power so that we can get equalization throughout the state, rather than going out of here with a state agency that's going to do all the assessing and going home. They're going to ask you-(Inaudible)-we'll say no. Why don't we improve what we have, rather than doing away with it'? Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Mr. Ask yield to a question please, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes.

DELEGATE REICHERT: I wonder if you could explain to me, in Mr. Eskildsen's proposal, how it can be improved. It looks-it appears to me that it is much the same as what we have in our present Section 15, and I'm wondering just how you envision improvement in our system with this proposal.

DELEGATE ASK: This is-the first I'd seen it was this morning, and I haven't read it, but I gather it's very close to our present Constitution.

DELEGATE REICHERT: It is.

DELEGATE ASK: And apparently there is-,the wording in here-

DELEGATE REICHERT: It's actually identical. I wonder-that's why I don't understand the improvement aspect.

DELEGATE ASK: Well, apparently, it's the wording in here that gives the board the power of valuation and adjusting, et cetera.

DELEGATE REICHERT: I'll read you from the present Constitution. It says the same thing.

DELEGATE ASK: Yes. Maybeweoughtto change that wording so that the Legislature has some—a little bit of control over the State Board of Equalization, so that they can pass laws that will make taxation more equitable. That's what I'm after here. Let's improve our system, not do away with it. And I think there's some wording-in fact, I really don't like the wording of the whole section that-but I think it can be improved.

DELEGATE REICHERT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Thank you very much. I appreciate that.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman. Due to the inequities in our county in the past few years and due to the fact that I have received no telegrams opposing the majority report, I support the majority report.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. It seems to me we've been all around the horn and what we're finally finishing up with is the fact that-do we want the assessment to be done on a political basis, or a nonpolitical basis? That's really all it boils down to. When the State Board of Equalization was put in the Constitution, it was put in there particularly to get assessment and appraisals out of the political arena and put them on as good a nonpartisan basis as it could be. That was the purpose of it. Now, we-it's been since 1922—and it seems like we've forgotten that lesson, so we want to go back to the political organization that we had previous to that. And it seems to me that Mr. Eskildsen's proposal, with a few minor amendments which I would prefer to make if it is adopted, could accomplish the purpose that we're looking for and could also comply with the Serrano-Priest cases. When Mr. Drum made his statement, he said that the third party would be the proper person--an impartial third party. That's what this proposal establishes to do-is to set up an impartial third party to make the appraisals, to make the judgments. The-it seems to me that the committee had a little inconsistency when they say, do away with the establishing of appraisals and assessments, put them in the political arena, and yet they establish an appeal board in Section 7 which says, let's take the appeals out. Now, it seems to me that we're-there's a little inconsistency there. I don't object to the appeal provision, and I think it works fine with the amendment as Mr. Eskildsen has submitted it. Thank you.

DELEGATE TOOLE: Mr. Chairman. I—the day before yesterday, I spoke to a group at Fort Benton, a rural group-a large crowd. The general thrust of their feeling was that we're not doing our job here. We were sent down here to write a new Constitution. But they objected to the long ballot. They did not seem worried about the Justices of the Peace; they thought we should abolish them. I am no expert on the thinking of rural people, but it seems to me that judging from this meeting that we had in Fort Benton, that we've got more support from rural people than I had originally supposed for the majority's proposal. Therefore I support it.

CHAIRMAN GRAYBILL: Now, Mr. Wilson, I'm trying to get Mr. Eskildsen to close, and you did have a long time. Do you really want to speak again, Mr. Wilson?

DELEGATE WILSON: Mr. President. I just have a few words I would like to add to my previous presentation. It has been suggested here that there is quite a variation in the taxable assessments in the different counties. And I submit to this delegation that the State Board of Equalization is working just as hard as they can, and they have in all the counties, particularly in the two counties that I'm interested in. They are trying to arrive at an equal assessment, and they are reclassifying the land, and they are working just as hard and just as fast as they possibly can. I submit that all they need is more staff; and I do agree with Mr. Ask that probably we could reword this thing, if we so desire, to give the flexibility that the people seem to want.

CHAIRMAN GRAYBILL: Mr. Eskildsen, you may close.

DELEGATE ESKILDSEN: Mr. Chairman, in case I forget it when I sit down, I'd like to ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ESKILDSEN: In closing-it won't take me but a couple of minutes-I would like to answer the Chairman's remarks that I sent out a letter. Of course, I sent out a letter; that's what I'm here for. We don't want no surprises back home; we want the people to know what we're doing. I told them exactly what 3 was. It sets up a statewide way of appraisal, assessment and equalization-statewide. It does away with the County Commissioners and the County Assessors. If the Legislature decides they want to use this same group, what have you improved other than that you took the State Board out of the Constitution? Unless you appropriate more money, unless the Legislature appropriates more money, you're not going to have anything different than

you've got now. The secret to the whole thing is enough money to do the job properly. One thing that the Chairman also forgot to mention is there was another letter went out under the name of Mr. McDonough. So I wasn't the only one sending letters out. I think that both sides should be heard over the state, and I submit to you that I got a pile of stuffhere. You can't imagine how much thereis in there. I imagine there is 300 letters there from over the state, supporting me. I doubt if any of you can produce at least a dozen letters on the other side. I think that to put in Section 3 would be a step backwards toward political control of the State Board as the governors vary from year to year. I ask that you support my motion to delete Section 3 from majority plan and to adopt my substitute motion. I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call voteon thisissue. Theissueis whether or not to adopt Mr. Eskildsen's amendment, which has the effect of making the State Board of Equalization constitutional, in place of Section 3 as proposed by the Revenue and Finance Subcommittee. All those in favor, vote Aye; all those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Amess	Excused
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Nay
Belcher	Aye
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend.	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
cain	Nay
Campbell	Nay
Cate..	Nay
Champoux	Nay
Choate	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt.	Absent
Foster	Nay
Furlong	Nay
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe..	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Excused

Pemberton Aye
Rebal ..... Aye
Reichert Nay
Robinson Nay
Roeder ..... Nay
Rollins., ... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin .. .. Nay
Schiltz Nay
Si 'erius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan Nay
Swanberg ..... Aye
Toole Nay
Van Buskirk Nay
Vermillion Aye
Wagner .. Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey Aye

CHAIRMAN GRAYBILL: Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: I inadvertently hit the wrong button, and I can't do anything with it now.

CHAIRMAN GRAYBILL: I think you were saved, Mr. Romney.

CLERK SMITH: Mr. President, 32 voting Aye, 63 voting No.

CHAIRMAN GRAYBILL: 63 having voted No and 32 having voted Aye, Mr. Eskildsen's amendment fails. The Chair has no other amendments proposed for Section 3. Does anyone intend to propose other amendments for Section 3?

Mr. Davis.

DELEGATE DAVIS: Mr. President. I have just a deletion amendment, which I have written out. But it's to delete from Section 3 the words "by the state". And I move that—

CHAIRMAN GRAYBILL: Well, Mr. Davis, if you're going to make an amendment of that nature, we'll take that after lunch. I just thought if we weren't going to have any more amendments, we'd settle it.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the committee recess until the hour of 1:30 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1:30. All in favor, say Aye. Oh, wait a minute. Just a moment. Before we announce the vote, I want Mr. Schiltz to have a chance to make his announcement and the Chair has an announcement.

DELEGATE SCHILTZ: Mr. Chairman, I announce a meeting of Style and Drafting Committee immediately, and we can go in and out for lunch so long as we have quorum.

CHAIRMAN GRAYBILL: Very well. The purpose of our 1:30 luncheon is to give Style and Drafting a little bit of time here. Very well, we're in recess until 1:30.

(Convention recessed at 12:17 p.m.—reconvened at 1:36 p.m.)

CHAIRMAN GRAYBILL: The Convention will come to order. The committee will be in session. Under the rules of the committee--under the rules of the Convention, delegates are allowed to rise to personal privilege, and Mr. Foster has asked for the floor.

Mr. Foster.

DELEGATE FOSTER: Thank you, Mr. President. Fellow delegates, recent news articles have interpreted my debate Thursday to cast discredit on the voting records of delegates from Silver Bow. This was in no way my intent. I was attempting to draw attention to the need for all delegates to support a reclamation provision in this Constitution and was intending to appeal to Silver Bow delegates for their support in the interest of all Montanans. Any interpretation of my remarks in the heat of debate to in any way suggest any delegate of this Convention is not discharging his voting right in good faith is in error. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Very well. Before the recess, we were debating Section 3 of the Revenue and Finance Proposal and Mr. Eskildsen's motion was defeated. There are—there is at least one other amendment proposed to Section 3.

Mr. Davis, would you like us to read your amendment, or do you want to make it?

DELEGATE DAVIS: Mr. President. I move to amend Section 3, Property Tax Administration, by deleting the words "by the state" and inserting in lieu thereof "as shall be just and equitable", so it would then read: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law."

Mr. President.

CHAIRMAN GRAYBILL: We take out "by the state" on lines 12 and 13, right?

DELEGATE DAVIS: Yes, sir, and insert, if you would, please, in there, "as shall be just and equitable."

CHAIRMAN GRAYBILL: Very well. Mr. Davis has proposed an amendment to Section 3 to strike the words "by the state" and add a phrase so that the section would read: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law."

Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. I listened to the arguments this morning, and despite the fact that the present Constitution says we will adjust and equalize—the board will-between the counties and between classes and despite the fact our Supreme Court has held that additional powers could be given to them to do this by the Legislature and despite the fact that a telegram was received from my Commissioners to support Mr. Eskildsen, I voted against his proposal. But I do think, in your arguments this morning, that were very persuasive, that we have somewhat of an inconsistency. When you talked about locking all these other words in the Constitution to make them flexible-when you put in "by the state" does not give the flexibility, it would seem to me, that you're talking about. When you assure various people with-by question that this would not change the situation necessarily as it is now, as far as your local county assessment is concerned, I submit that it would. You are still going to have to have your assessment records at the county level. You are going to have to have a County Assessor, whether he's appointed by the state or whether he's appointed by some other method. You're still going to have to have all those records. This is an idealistic dream, if you think it's going to solve all these problems by just putting this in in these few sentences. So if you're going to be consistent, I submit that "by the state" would permit the Legislature to continue with the office of the County Assessor to assess under guidelines that are submitted, as they do now, to assess or to appraise and to keep that office functioning at the local level, rather than create a state bureau, another board. In the interests of reform, we continue to create more boards and more bureaucracy and the same people that want to have the people represented, one man-one vote, turn around and want to create probably the biggest bureau or board in the State of Montana. Now, my county did reclassify. They spent thousands and thousands of dollars and hired a reclassification firm from Denver, and they reclassified to the extent that I'm sure that we're paying a lot more than our neighboring counties. But the fact that many, many counties have reclassified—they have great abundance of valuable records in the county that have been taken care of on a county basis, and I'm sure you're going to want the counties to pay their burden of this taxation by a county office that's still within the-financed by the county under your county budget system. We still need to know what our valuation is in every county for all the budgets; regardless of where the revenue comes from, you're still going to operate your cities and your towns and your schools on a budget system. So I submit that when you say you don't want to lock in wording and when you say that you are permitting the same system when you put in "by the state" this-if you strike that and put in "it shall be just and equitable", which I'm sure is what you all want-as a just and equitable taxation. But I don't think you should lock a system in, totally statewide, and keep the Legislature's hands tied as to whether they can say, we will have the County Assessor's office continue to appraise or assess, and it can be equalized at the state level--or they can appraise, assess and equalize and it be checked at the state level. In other words, they certify all these assessments to the state at this time and then they can go over the ones that haven't properly assessed as between counties and make their adjustments. But the fundamental, basic work still has to be done at the local level, and I strongly object to creating a super board statewide-possibly political appointees all the way down through every county--and tie that into the Constitution. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Davis' amendment, which I'll repeat in case someone came in late, to Section 3, which would make the section read: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law" and which leaves out the words "by the state".

Mr. Rygg.

DELEGATE RYGG: (Inaudible)

CHAIRMAN GRAYBILL: All right, Mr. McDonough.

DELEGATE McDONOUGH: We had some thoughts in the committee relative to these words "by the state". They were inserted in the end because we wanted to leave no doubt that the state would have this-these powers. It would preclude any other section of the Constitution of giving some local governmental officer these powers, where you would get into a conflict, and that's why we put in here the words "by the state". We do not feel, however, that this restricts the Legislature to enactment of a law that would have some state agency do it. Now, counties, as we know, are merely administrative units of the state, and so are county officers. And there's no reason under this wording why the Legislature couldn't designate the County Assessor as their assessing officer in that county or designate the Board of County Commissioners to have some other duty in the assessment process. The words "by the state" were put in just to preclude any other interpretation other than that the state has this assessing power and the Legislature has the power to control the assessments. And for that reason, I'd like to resist the amendment, so it does remain clear that the state has this power.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I'd like to rise in support of Mr. Davis' motion. I think that this is somewhat of a compromise proposal and I believe will somewhat answer the objections that we have had from our rural areas. I still think that, as Mr. McDonough said, the Legislature-he didn't say it this way—but the Legislature could still handle it the way they wanted but it's possible we could have some local control.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I resist the motion, too. I'm afraid if we take "by the state" and take--and put in the words "it shall be just and equitable", we're going to defeat our-this very thing we want to do is to try and get an equitable assessment. After all, these are the words they've been working on all these years and they haven't been able to do it then, so if we take out "by the state" and put in the other, I think we're defeating the purpose that we're going to need if we are ever going to have a statewide financing of schools. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Conover.

DELEGATE CONOVER: Will Mr. McDonough yield to a question, Mr. Chairman?

DELEGATE McDONOUGH: Yes, Mr. Chairman-or Mr. Conover.

DELEGATE CONOVER: The thing that I'm really concerned--would, with this amendment, would this give the County Commissioners more power-1 mean, the same power that they have at the present time?

DELEGATE McDONOUGH: No, it would not. It leaves it up to the Legislature to decide whether they want to give them that power or not.

DELEGATE CONOVER: Well, what I'm getting to, it's been two sessions ago when the State-or maybe longer--when the State Legislature passed a law that all of new appraisable [appraisals] in the counties were to begin-and am I not right? Yet today, we have a few counties that have not done this.

DELEGATE McDONOUGH: Have not reclassified?

DELEGATE CONOVER: Reclassified.

DELEGATE McDONOUGH: I don't know if they have not done it. The testimony before the committee is that-certainly a number of counties that haven't equalized properly.

DELEGATE CONOVER: Mr. Chairman, may I ask Mr. McDonough if he'll yield to another question?

CHAIRMAN GRAYBILL: You bet; yes.

DELEGATE CONOVER: What I'm getting at-is there a way that we could still contain our County Commissioners as appealing board within our counties? What I mean by this is that, I think-well, I shouldn't say "think"—I know that our County Boards, County Commissioners realize the problems within the county and they know the property more than they would on a state level.

DELEGATE McDONOUGH: Well, there is--actually, Section 7 provides for that hearing in the county. Now, there has been placed on the desk an amendment to Section-I mean, a different Section 7 that requires in the appeal procedure that there be a local or county governmental level on the thing; and we intend, by that second sentence there, that if the Legislature wishes, they could certainly make the County Commissioners the local County Appeal Board if they take them out of the business of actually levying and appraising the assessment in the first place. We still want those two things separate.

DELEGATE CONOVER: Thank you, Mr. McDonough.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: If this is so and we can still have-contain this within our counties, then I'm going to support the majority proposal.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I resist the motion. Actually, if you read it-if you take "by the state" out-as Mr. Davis' proposal suggests, it doesn't really change anything in this section. Unless there was some other restriction, the state would still have that particular power. Now, if you do leave it out, then conceivably the state's power could be limited in some other area. Just as it's stated here, whether it's in or out doesn't really make any difference; but the state should have that power, the Legislature should have that power to regulate this to bring about the equalization. Now, I interpret the word "equalize" to mean exactly the same as "just and equitable". I resist the motion.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Will Mr. McDonough yield to a question?

DELEGATE McDONOUGH: Yes, sir, Mr. Wilson.

DELEGATE WILSON: Mr. McDonough, is it your opinion that the County Board of Commissioners is not qualified to make levies in a county, and therefore you wish them eliminated as a Board of Equalization in a county?

DELEGATE McDONOUGH: Well, you said "to make levies". I think they're certainly qualified to make the levies, because they do make all the county and school levies. Do you mean make appraisals, or make levies:'

DELEGATE WILSON: Make appraisals, levies.

DELEGATE McDONOUGH: I think that certainly some County Commissioners arc qualified to make appraisals and they're probably better qualified than a lot of other people, but I think the farther we get away from any-they're not as qualified, let's say, as some professional appraisals and they're not as qualified to make an appraisal that would be equitable for all the people of the state, as a general rule.

DELEGATE WILSON: Mr. Chairman, will Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE WILSON: You feel, then, that the local Board of County Commissioners is not qualified, they don't understand the situation within their county to make appropriate appraisals?

DELEGATE McDONOUGH: county Commissioners are human beings like any one of the rest of us, and I think from a statewide equitable basis-1 don't think they arein all instances, no. Some of them are, and some of them have been very excellent at it. Valley County has been excellent and other counties have been excellent, but I don't think on a statewide basis, they being human beings, they are that way totally.

DELEGATE WILSON: Thank you, Mr. McDonough.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) Mr. Davis, do you care to close?

DELEGATE DAVIS: If you would permit, please. In comments under the Revenue and Taxation, they state the state already possesses the power to levy taxes; they really don't need anything. But they've included in this appraisal assessment and equalization, to create the biggest super board, I submit, and the possibility of the biggest political situation-if it's all going to be appointed, by whom? The Legislature will provide that, but the Legislature is prohibited by the language in this, I submit, to include County Assessors. You can have a State Assessor for Beaverhead County or appraiser at the local level. In reply to the professional appraisal bit, I submit that the person that lives next door is the best person to keep-be honest at the county level, any way, when they complain why someone's house or land isn't taxed as well. The last condemnation case I was involved in, the professional appraisers, at a hundred dollars a day or so for their services, varied from $12,000 for the land taken to a hundred and fifty thousand dollars. And they're professional appraisers. So there can be just as great of inequality. You're going to have to create some structure to put this in the hands of one man or another board or someone to carry out this taxation. If it's taken from the Board of Equalization, who had constitutional mandate before to equalize between counties, you're not really strengthening it except that you're putting everything in a superstate. The farther you can get from the individual, the farther you can get all of it. They could still provide a method where the state equalizes and makes you make your corrections and make you honest between counties without elimination [eliminating] the function in the county, at that level, if the Legislature thought it were wise. Also, the language that's been used here this morning in arguing-you've locked in all these other words. They want to lock in this word now with a system that they don't know whether it will work any better than the old system. I'm willing to give it a try, but I think it should be consistent and not lock it in any more than you should lock in the others. Thank you.

DELEGATE McKEON: May we have a roll call? I call for seconds.

CHAIRMAN GRAYBILL: Yes, we'll have a roll call. Very well, the issue is on Mr. Davis' amendment to Section 3 to strike the words "by the state" on lines 12 and 13, and insert in there a phrase "as shall be just and equitable", so the sentence reads: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law." So many as shall be in favor of **Mr.** Davis' amendment, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted? (No response)

CHAIRMAN GRAYBILL: Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot-take vote.

Aasheim	Absent
Anderson, J.	Aye
Anderson, 0.	Aye
Arbanas	Nay
Arness	Excused
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates..	Aye
Belcher	Aye
Berg	Absent
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Absent
Choate	Aye
Conover	Absent
Cross..	Nay
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay

Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Nay
Holland. ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin., ... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Absent
'Noble ..... Nay
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins., ... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Absent
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Spew ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg .. .. Absent
Toole ..... Absent
Van Buskirk .. .. Nay
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Absent
Warden ..... Absent
Wilson ..... Aye
Woodmansey . ..... Nay
Mr. Chairman Nay

CLERK SMITH: Mr. Chairman, 34 voting Aye, 49 voting No.

CHAIRMAN GRAYBILL: 49 having voted No and 34 having voted Aye, the motion fails. We are now back on Section 3 as the Revenue and Finance Committee proposed it. Are there any further amendments? (No response) Very well, members of the committee, you have before you, on the motion of Mr. Rygg that when this committee does rise and report, after having had under consideration Section 3 of the Revenue and Finance Article, that the same be recommended as adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Will the clerk please read Section 4.

CLERK SMITH: "Section 4. Equal valuation. The assessed valuation of property to be taxed in any taxing jurisdiction shall be the same valuation as the valuation for state and county purposes." Section 4, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having had under consideration Section 4 of Proposal Number 7, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The language and intent of this section is very similar to that of the present Section 6, Article XII, of the existing Constitution. This is an administrative section which

prevents local governments from varying assessment levels to evade statutory mill levy limitations. States which allow taxing jurisdictions to set their own assessed value find thatsystem to be unduly cumbersome. Texas residents, for example, will often receive three or more tax bills, each showing a tax-separate valuation of their property for state, county, city, school district and special district purposes. It is much more efficient to require that the property base be the same for all governmental levels and allow revenue to be adjusted by the mill levies. We do not feel that this is any departure from what we already have; we feel it is still necessary and we ask that you allow it to remain in our proposed Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? (No response) Very well, members of the committee, you have before you for your consideration, on the motion of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 4 of the Revenue and Finance Proposal, that it recommend the same be adopted.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try.

DELEGATE ARONOW: Mr. Rygg, your comments under this are-refer to Section 6 of Article XII; and looking at it, that section deals with the release or discharge of taxes, while Section 5 refers to the same valuation.

DELEGATE RYGG: **You are** correct. It is a typing error.

DELEGATE ARONOW: Okay.

DELEGATE RYGG: I'm sorry.

CHAIRMAN GRAYBILL: The error is in the explanation, right, and not in the text.

DELEGATE RYGG: Right.

CHAIRMAN GRAYBILL: All right. Members of the committee, you have before you Section 4, as I just stated. So many as shall be in favor of adopting Section 4, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk please read Section 5.

CLERK SMITH: "Section 5. Property tax exemptions. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity may be exempt from taxation. Certain classes of property may be exempt from taxation. The Legislative Assembly may authorize creation of special improvement districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby." Section 5, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 5 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: We have made a few changes in this section from the one that's presently in use. First, in line 23 on page 19, at the end of the sentence, you will see that we have used the word "may" instead of the word "shall". Now, we realize it's hard to believe that the federal government would ever make any concession as to what may be taxed, but just in the event that such a thing should happen, we thought we would be ready and change it from "shall" to "may". In the meantime, it isn't going to make any difference, because it's going to be controlled by federal action. We did delete some of the present exemptions. We took out agricultural and horticultural societies and mortgages. We couldn't really find out what agricultural and horticultural societies pertained to anymore, although the way this section is written, the Legislature could establish these again as exemptions if they-if it became necessary. We did add a few words that we

thought might close up a loophole that presently exists; we provide that private interests in government-owned properties can now be taxed, things like right-of-ways and things like that, that are on federally owned lands. And we have spelled out the fact that special improvement district charges can now be made against tax-exempt properties. In most cases these charges are being now-are being paid, but there seemed to be a question of the legality, and we thought it best to spell it out. Along with that, we have further provided that charges can also be made for the maintenance of these original capital investments that are made in the SIDs. There has been a question of whether chip-coating was part of an improvement, things like that, so we allowed for the maintenance on it, too. We further allowed that the Legislature could have the freedom of adding certain other classes to this list in case the need should arise for this in the future. Now, our proposal doesn't require any taxation of all property, so we didn't feel it was necessary to make a further list of exemptions. In fact, we thought it might be detrimental to make these lists, as once you establish a list, that seems to be what they go by and it's hard to add them on from there. So the majority did feel that this section would be better this way in the new Constitution than is the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I would like to move, as a substitute motion, that Minority Proposal Number 1 on page 32 be adopted. Before I ask the clerk to read it, we overlooked four words that we'd like to put on line 17 after the word "dwellings". The words are "all or in part", and that has been sent out. Would the clerk please read ours.

CHAIRMAN GRAYBILL: Would you tell us what line that is?

DELEGATE ARTZ: Line 17.

CHAIRMAN GRAYBILL: "-dwellings all or in part used"?

DELEGATE ARTZ: Right.

CHAIRMAN GRAYBILL: Let's straighten this out for the record, Mr. Clerk. All in favor of letting the minority add the words "all or in part" in line 17, after the word "dwellings", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Very well, will the clerk please read the minority report on page 32.

CLERK SMITH: "The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, household goods and furniture, wearing apparel and other personal property used by the owner for personal and domestic purposes, cash and accounts receivable, dwellings and personal property of totally service-connected disabled veterans, dwellings all or in part used for residential purposes, evidence of debt secured by mortgages of record upon real or personal property in the State of Montana, the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed may be exempt from taxation. The Legislative Assembly may authorize creation of special improvement districts for capital improvements, maintenance of capital improvements and the assessment of charges therefor, against tax-exempt property directly benefited thereby."

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, when we were going through the Judicial Article, there was a Latin phrase there that1 think expresses the intent of the minority committee, which differs from that of the majority. If you will pardon my pronunciation, something like this: "expressio unis exclusio ulternius", which means the expression of one is the exclusion of others. The minority report is in complete disagreement with all references in the rationale of the majority report stating that all property may be exempted from tax by the Legislature. We have faith in the legislative process but are of the opinion that this is opening the door too wide. In our opinion, as upheld by court decisions, only the items of property listed above are eligible to tax exemption by the legislative process. We are especially worried about the one clause in the majority report that says certain

classes of property may be exempt from taxation. You all got a letter from the Montana State AFL-CIO, which backs our proposal on Section 5. We agree that in the past it has been easier to enforce collection of taxes on some property than it is on other property but cannot consider this as a sufficient reason for removal of this type of property from the tax rolls. We maintain that in the future it will be easier to collect property taxes on all property because the function has been transferred from the county level to the state level. The Internal Revenue Service has developed procedures for ferreting out income from cash transactions. We maintain that Montana should be able to find as good qualified people as the Internal Revenue Service can. We know that they have an excellent IBM machine downstairs, over in the Mitchell Building; and we feel that [with] proper utilization of this and other sources, it should be-not be too much of a problem in the future. Our main thought is this, tax equity requires that if certain income-producing property is taxed, then all income property should be taxed. We can see no equity to tax $10,000 worth of equipment or other income-producing property which also has income taxes levied and at the same time give the Legislature the right to eliminate $10,000 of investments, say, tax-exempt securities, the income tax of which is not even subject to income taxes. We also submit that if we leave it open to the Legislature, that they are going to have the same pressures brought on us-brought on them that were brought on us: that you can't find these stocks and bonds; therefore, they should not be taxed. We maintain that [if] that is allowed to happen, a severe injustice will be imposed on lower-income citizens who do not have tax-exempted bonds, and this will accrue, of course, to the benefit of our more-affluent citizens. We cannot imagine that the delegates of this Convention will condone such an inequity. Now, to arrive at this, we admit that we had them make quite a long list. We justify the addition of the following items to the permissive list: household goods and furniture, wearing apparel and other personal property used by the owner for personal and domestic purposes. This was recommended by Delegate Felt. Testimony received indicated that costs of collections are in many instances equal to the tax received. The property does not produce income and, as Mr. Aasheim said this morning, sometimes you feel kind of guilty when you sign the thing because it isn't being figured out correctly. Cash and accounts receivable: they are very fluid items; they do not produce income-and also they were recommended by Delegate Felt. We realize that the term "accounts receivable" is a very broad one, but we are sure that the Legislator-Legislature, in its ultimate wisdom, will be able to clarify exactly which ones that do not produce income could be exempted from taxation. Dwelling and personal property of totally service-connected disabled veterans: we had testimony stating that there are 99,000 veterans, of which approximately only 387 would be eligible for this tax relief. We've--submit this tax exemption is certainly justified when the mental picture of what total disability is is considered. Dwellings all or in part used for residential purposes: dwellings do not produce income. We realize that if you was to eliminate dwellings all at once, it would create a severe hardship upon local government. That's why we put "all-in part" in. We've also put that in so that certain people that are now exempted-such as older people, limited income-a portion of their residence could be exempted from tax. It was a necessity, then, that we had to put in "evidences of debt secured by mortgages of record upon real or personal property in the State of Montana". If we did not do that, we would havedouble taxation, which we also feel is inequitable. The second-last one, Number 6, "The stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed'-again, it was necessary to eliminatedouble taxation. That's all I have to say, and I suggest that the delegates approve our substitute motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McKeon

DELEGATE McKEON: Mr. Chairman, I rise in support of the minority proposal. The primary reason why I sided with the minority in this section was the language of the majority proposal that certain classes of property may be exempt from taxation. It was the feeling of the minority that this language was too broad and gave too much power to the Legislature. It was also our feeling, Mr. Chairman, that that-that this language would open the door to the pressure of special-interest groups and might in the future cause to arise the situation where a large portion of our tax base might be deducted from the tax rolls. So, because of that section, we in the minority got together and tried to foresee and project what the most feasible exemptions might be. As Mr. Artz discussed, we submit the possibility of

excluding household goods and furniture. As we all know, taxation on household goods and furniture is a sham presently. We heard testimony from a Commissioner from Cascade County who told us that if you went by the tax rolls in Cascade County, you would be led to believe there are three color TV sets in the county. This indicates to me that it is impossible to profitably tax household goods and furniture. Mr. Artz has discussed other exemptions that we have included in our minority proposal. Possibly the most startling exemption is that of residential dwellings. It was our feeling that sometime in the future, perhaps not the near future, this state might be able to afford the homestead exemption. We heard testimony from a representative from Missoula County, Mr. Watts, who testified on the homestead exemption and his plan. It was a good plan. We weren't able to study it sufficiently to determine if it was workable, but we do feel, because residential property is not income-producing property, that in the future, when Montana develops a greater tax base and more tax opportunities, we might perhaps exempt the residential dwelling. We also included as an exemption the veterans 100 percent disabled. We felt this was very important. These people had injured themselves sufficiently to be 100 percent disabled for the country, and as a result we felt that it was perhaps the duty of the state to exempt them from the tax rolls. Mr. Artz talked about cash and accounts receivable, but the most important thing, again, is the statements of the majority allowing the Legislature to perhaps exempt certain classes of property. And as I said, we felt this gave the Legislature too much latitude and opened them up to too much pressure, so we have tried to include in our minority proposal those possible groups which might be excluded. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, is there other discussion?

Mr. Davis.

DELEGATE DAVIS: Would Mr. Berthelson answer a question, please?

CHAIRMAN GRAYBILL: Mr. Berthelson?

DELEGATE BERTHELSON: Mr. President, I yield.

DELEGATE DAVIS: Mr. Berth&on, under the present system of taxation, are bank stocks taxed separately? Is there a system of taxation of bank stock?

DELEGATE BERTHELSON: Yes, bank stocks are taxed, Mr. Davis.

DELEGATE DAVIS: The minority proposal, then, would eliminate a tax that is presently being paid by the banking—

DELEGATE BERTHELSON: No, I don't read it that way, Mr. Davis.

DELEGATE DAVIS: -where it says "the stocks of any company or corporation when the property of such company or corporation represented by such stock is within the state and has been taxed may be exempt from taxation". If the building were taxed, then, would the stock not be taxed?

DELEGATE BERTHELSON: Mr. Davis. I don't wish to speak against the minority proposal at all, Mr. Davis, but I can see what you're getting at. Possibly you could misconstrue that to mean that a bank incorporated in Montana-the stocks might be exempt from taxation.

DELEGATE DAVIS: Well, could you possibly construe it any other way? If you're a corporation within the state, have all your stock in the state-or it doesn't even say "all".

DELEGATE BERTHELSON: Mr. Davis, I'll say, "No, you couldn't possibly."

DELEGATE DAVIS: Thank you.

DELEGATE BERTHELSON: Sure.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I would like to resist the motion of the minority and give a few viewpoints as to what the majority meant by their present Section 5. Now, the state has the right to levy property taxes, income taxes and excise taxes-all types of taxes-to support both local and state government. Now, what we want to do here is to give them a free hand as to how these taxes are to be levied, in order to be the most just--and we'll get back to those words again-"just and equitable". They should have this right. There's some property or some income you can't touch other than by an income tax. There's some property that is property that don't produce income and probably should not pay a tax, and we've said they don't

have to tax it. Now, we would like to give the Legislature to be able to tax property as a property tax by another tax method. Now, let's get back to money and credits, stocks and bonds. I don't know how much of that is in the State of Montana and how much is owned by all the people of the State of Montana in that category, but we all know we can't tax it in a very efficient manner because you can't report it. Yourinvestigative procedures would take long; you'd be-your County Assessor would be spending a lot of his time issuing subpoenas for itemizations of that. Now, wouldn't it be better, going along with what Bill Artz said, to exempt that property from taxation and levy a special income tax on interest income to make up for that property tax that you can't levy against that type of property? And that's the flexibility that the majority is talking about by allowing the Legislature to exempt certain portions of property. You have another problem on business inventories. Now, everybody knows that everybody lies on business inventories and they can't tax them and they can't really get a fair report. But it's very possible that the Legislature might figure out a way-and we of the committee, the majority of the committee, don't know how they'll do it-but they'll probably be able to figure out a way in the next 10, 20 years to levy a gross proceeds tax on business inventories and be able to enforce it. They'd have to put some adjustments in it, because gross proceeds-grocery stores certainly have much more proceeds than--and much more of a turnover than a hardware store, but it's something for the Legislature to figure out, and that's why we would like to take the fact that you. must tax all property out of this Constitution and let the Legislature work this out. Now, when you start itemization-itemizing what is exempt from taxation, then you get in trouble again. Now, for instance, in the minority report they talk about cash and accounts receivables. Now, to some people, accounts receivables are quite an income-making thing. All you have to do is look at your Bank of America card, your Master Charge, Your J. C. Penney card, or a conditional sales contract, which can all be carried on the books as accounts receivable but which can make 12 or 13 percent interest on it. So that's why something like that should be left to allow the Legislature to tax that type of property in some other method besides a property tax. Also, when we talk about cash and so forth and so on, we're talking about-a lot of farmers actually have grain in the granary and they treat it as cash. All they have to do is take a telephone call and they've got the cash for it. Well, if the-if they exempt stocks and bonds, there's no reason Why the Legislature shouldn't exempt this grain in the granary and be able to figure out another way to get at that property if and when it's sold, and pay the taxes. Now, actually, we have an exemption law in Montana now, theclassification law, and which the Legislature will still be allowed to do-classify certain properties as to even their cash value and even after the State Board of Equalization has put different values on it, and they've got some things down in the one percent bracket. Well, the 99 percent of that tax is then exempt under the classification law. Well, why don't we go all the way? Allow the Legislature to exempt certain classes of property and be able for them to get the flexibility to tax them a different way, and thereby make the whole tax process of all three or four types of taxes and see if they can equalize the whole structure.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) If not, the question is on Mr. Artz' substitute motion. The substitute motion is to substitute for Section 5 in the majority report the language on page 32, which is the minority report, covering lines 6 to 28 thereof and setting up a different system for property tax exemption.

Mr. Artz, do you want to close?

DELEGATE ARTZ: I do. Mr. Chairman, Mr. McDonough was called the "brain trust of the committee" this morning, but I think his reasoning was a little bit faulty there in one spot. He said that it's too difficult to tax the stocks and bonds because you can't find them. Then he turned right around and he says, "We'll substitute an income tax instead." I maintain that if you can figure out what the income is on those stocks and bonds, it's just as easy to determine that the stocks and bonds do exist. We maintain in the accounts receivable that possibly the word is a little bit broad, and there's certainly no intention that any accounts receivable, such as mentioned, that are earning income will be exempt from taxation. We have clearly spelled that out in our rationale, and we think that would be sufficient instruction to the legislative body to be sure that does not happen. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, do you want a roll call vote? No. All right, so many as shall be in favor of Mr. Artz' substitute motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No

CHAIRMAN GRAYBJLL: The Noes have it, and so ordered. Therefore the issue is still on Section 5, as proposed by the majority on page 11. Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, would Delegate Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try, Mr. Chairman.

DELEGATE ERDMANN: In line with your very laudable effort to remove all unnecessary language from the current Constitution, I'm curious to know why you have continued to insert, on line 19, the words "and public libraries". Can you conceive, Mr. Rygg, of a public library that would neither be the property of the United States, the state, the county or the city? Thank you, Mr. Chairman.

DELEGATE RYGG: No, I don't believe so. I think it was in the language of the present Constitution and we just left it in there. Would you like to have it removed?

DELEGATE ERDMANN: (Inaudible)

DELEGATE RYGG: Well, I don't-It's up to you, I guess, if you want to make that amendment. I don't think it makes that much difference to me.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Rygg yield to another question'?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: (Inaudible)

DELEGATE HARPER: This may not be a large issue. I-Mr. Artz said that the committee heard testimony from totally disabled veterans groups and so they included this one kind of exemption in their listing, and I notice that the majority report does not. Is there any thinking on that?

DELEGATE KYGG: We-Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE RYGG: We did have considerable testimony on this. We certainly didn't want to take anything away from the totally disabled veteran, and it was, I suppose, with some reluctance at least that some of us did not include it. However, we found that we did have a problem of total disability. We found out that perhaps on March 1st a person could be totally disabled and he could go to the doctor the next day and he'd only be 60 percent disabled. So our problem was largely with the fact of when are you totally disabled. And I think-our other thought was there could be totally disabled veterans who might have considerable money, but I believe they changed that in the minority report. But this was our main problem-was when are you a hundred percent totally disabled-and apparently the Veterans Administration admits that you can go from 60 to a hundred with an examination. And that, I think, was the main reason we omitted it.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: May I answer Delegate Harper's question also? I think another thing in the committee that became apparent to us was that there are perhaps 387 totally disabled veterans in the state, but there are quite a large number of maybe 90 percent, and there are a bunch of 80 percent, there are another number of 70 percent and 60 percent; and the veterans organizations themselves seem to feel that this is a statutory matter. They are going to the Legislature and try to allow the Legislature to give them some relief in this area, and I think the consensus of our committee was that it is a statutory matter and should be left in their hands.

CHAIRMAN GRAYBJLL: Mr. Foster.

DELEGATE **FOSTER: Mr.** President, would Delegate McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE FOSTER: Mr. McDonough, on page 11, line--starting, line 21: "Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity may be exempt from taxation". Now, as a lawyer, is it your interpretation that this would mean that the

Legislature could, in fact, tax these properties by a simple majority vote of the Legislature?

DELEGATE McDONOUGH: Yes, they could. That's already under the present Constitution. We just didn't change it.

DELEGATE FOSTER: Thank you, Mr. McDonough. Mr. Chairman and fellow delegates, I merely draw your attention to this because I think it is important to note that we are, in fact, giving the Legislature essentially full powers of taxation, and I submit that this is well and good because, in fact, the Legislature is the proper place for taxation. It is the proper body to handle this problem, and I support the committee fully in this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration, on the motion of Chairman Rygg that when this committee does arise and report, after having had under consideration Section 5, that the same recommend-that we recommend that the same be adopted.

Mr. Mahoney, did you wish to speak'?

DELEGATE MAHONEY: Yes, I'd like to ask a couple of questions, Mr. President, of Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Mr. McDonough, I'm down here where you say "Certain classes of property may be exemptfrom taxation." What do you mean?

DELEGATE McDONOUGH: We mean that the Legislature may by law define and exempt certain classes of property.

DELEGATE MAHONEY: Mr. President, another question.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: Would this—could it be possible for the Legislature to exempt, then, all dwellings?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Wouldn't that be-Another question, Mr. President?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: I have a series of them.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: What would that do to the city?

DELEGATE McDONOUGH: That would be the Legislature's problem. They'd certainly have to think of a way to replace that taxation that they deprive from the cities. I don't think they would. I think they-if-they wouldn't do it unless they had an adequate substitute for it.

DELEGATE MAHONEY: Now-but you wouldn't-then they-but they could also go out and then relieve all property taxes of, like farmlands and that, could they?

DELEGATE McDONOUGH: Yes, they could, but they'd have to find a replacement for it.

DELEGATE MAHONEY: Why would they have to find a replacement?

DELEGATE McDONOUGH: They wouldn't have to. If they didn't want to raise the taxes that year, they wouldn't have to.

DELEGATE MAHONEY: I think that you're running into very dangerous field when you're letting them exempt classes of property. I think you'd better-did you give this serious consideration? (Laughter) Now, what was your-this hearing—

DELEGATE McDONOUGH: Yes, like I said before, the Legislature has for 90 years exempted certain classes of property, partially or practically wholly. We're not really doing very much different from what they've had for the last 90 years. By the Classification Act they have exempted certain partial parts of property.

DELEGATE MAHONEY: Didn't they keep one percent?

DELEGATE McDONOUGH: Yes, one percent they kept.

DELEGATE MAHONEY: The Classification Act is statutory and not constitutional, isn't that correct?

DELEGATE McDONOUGH: That's correct. What we're doing is allowing them to do constitutionally what they've been practically doing for years statutorily.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney,

DELEGATE MAHONEY: I think this is very dangerous-to allow them to loose-to go out and exempt certain property of taxation-classes. I'm wondering then if they couldn't go out and say, "We'll exempt the Anaconda Company." Couldn't we go out and say we will exempt all public utilities in the State of Montana? These are the things that I'm starting to wonder that might happen in this state if we get into one session of the Legislature, and I just question whether we want in the Constitution to allow the Legislature to determine and exempt certain classes of property. That's all I'm trying to say on this.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: I'm also concerned about this same sentence. Did you have any particular property that you had in mind that you want to exempt in this particular category?

DELEGATE McDONOUGH: No. I might say, though, that this wording or the same effect of it-and I hate to bring it up-is contained in the North Dakota Constitution. (Laughter) But we didn't notice that until we got the completed form, which was after this thing was even printed, but I did notice that the other day when we got it.

DELEGATE AASHEIM: Thank you, Mr. McDonough. Mr. President and members of the assembly, I am just as much concerned about this as Mr. Mahoney. I think this is a very treacherous piece of-well, a very treacherous idea to leave in the Constitution. Just imagine-you folks that are going to run for the Legislature. Now, suppose you're in the Legislature next winter and somebody comes up here and says, "Let's exempt this—these household goods. Let's exempt-oh, let's exempt some farmland." And somebody starts dickering and wanting to trade votes. This happens, you know, once in awhile. Can't you foresee that we're in trouble--somebody might be in trouble--exempting certain classes of property? We know very well that household goods should not be taxed, because we know a lot of them are not taxed, and maybe they should beexempt. I'd be all for that. But to exempt any other classes, I would hesitate to do that because I can see the grave dangers within these legislative halls of trading, trading votes; and it does happen. You've heard of it, and there is a danger here. And I'm tempted to put in here, after the word "taxation" on line 25—and I'm going to move this, and I know it's going to create a tempest-on page 11, line 25—but I think it should be ironed out.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, just tell us your amendment; don't give us a commercial here. (Laughter)

DELEGATE AASHEIM: After the word "taxation, exempt personal property" and strike "exempt personal property".

CHAIRMAN GRAYBILL: What line are you on?

DELEGATE AASHEIM: Line 25, page 11-and then strike "Certain classes of property may be exempt from taxation".

CHAIRMAN GRAYBILL: Now, the Chair understands you to have stricken the sentence that says, "Certain classes of property may be exempt from taxation".

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Have you done more than strike the sentence'?

DELEGATE AASHEIM: That's all, and after the word "taxation", on line 25, "exempt personal property". Now, you may argue, well, what is personal—

CHAIRMAN GRAYBILL: Just a moment, Mr. Aasheim, I don't understand. You wanted to say "may be exempt from taxation—exempt personal property"? I don't understand. Line 25, I've taken out the sentence "Certain classes of property may be exempt from taxation". What's the rest of your amendment?

DELEGATE AASHEIM: "—which personal property will be exempt"--let's put it that way-and strike the other sentence. Now—

CHAIRMAN GRAYBILL: Mr. Aasheim, I don't understand you.

DELEGATE AASHEIM: Well—

CHAIRMAN GRAYBILL: So far, the Chair has taken out the sentence that appears on line 25 and 26, "Certain classes of property may be exempt from taxation." Is there more to your amendment than that?

DELEGATE AASHEIM: Let's-afterthat word "taxation", strike the words that I said, "except personal property". Let's strike "Certain classes of property may be exempt from taxation". And I'd like to hear this discussed further because I think this is a dangerous, dangerous sentence, as Mr. Mahoney has said.

CHAIRMAN GRAYBILL: Very well, the sense of the Chair is-the Chair will then rule that your amendment to Section 5 is to strike the sentence "Certain classes of property may be exempted from taxation period".

DELEGATE AASHEIM: That's right.

CHAIRMAN GRAYBILL: Very well.

DELEGATE AASHEIM: And I won't belabor this any farther, because I think if we find that if we need to exempt certain classes of property, that as time goes on we can then go ahead and amend the Constitution. But I don't believe that we should have this influence, this terrific pressure that's going to be on the legislative body, to have this particular feature in it.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I'd just like to tell Mr. Mahoney and Mr. Aasheim that I feel their fears are meaningless. At present, the Legislature can reduce to, say, 1 percent or ½ of 1 percent in any class of property they want, which is, in effect, erasing the tax from one class of property. And we can't prevent them from doing it, so what Mr. Aasheim does is really a meaningless act.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aasheim's amendment?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I wonder if someone were to answer-perhaps Mr. McDonough would yield to a question.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: Mr. McDonough, in this exemption that you're speaking of here, I understand under our present Constitution and our legislative body, we are now giving a relief from certain taxation that-for new businesses and industry. Is this right?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: And is this what you're referring to in this?

DELEGATE McDONOUGH: No, we're not restricting it to that. We say the Legislature can, in some way. They are now giving them tax breaks of approximately-I think they were taxing them at 7 percent, which is quite a tax exemption in and by itself. What we're doing here is just enlarging that a little bit so if the Legislature doesn't want to tax it at all for various reasons—efficiency, cost--and if-they don't have to, and that's all we're doing here. We're not really-1 don't think-in practicality and the working of the assessment schedule, we're really not changing it that much.

DELEGATE BATES: Mr. Chairman, would Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: Mr. McDonough, then it isn't actual classes, or it could be comparative type of industry that may be relieved of some of their tax burden-is this possible under this amendment--and be in competition with local businesses?

DELEGATE McDONOUGH: If it can be classified, it would, yes.

DELEGATE BATES: Okay, thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: May I ask Mr. McDonough a question?

DELEGATE McDONOUGH: (Inaudible)

DELEGATE HARPER: If it's true that having this sentence in there-"Certain classes of property may be exempt from taxation"-does not really change the picture, would--am I right in thinking that if the sentence were not in there, it

also would not change the picture very much? In other words, is the sentence worth fighting over?

DELEGATE McDONOUGH: Yes, it is. I think it is. Actually, now. the Assessor must by law-sometimes they don't--must list all property on the assessment rolls. By leaving this out, and the Legislature so desires, he doesn't have to list the personal property. The Legislature might-I mean household goods and furnishings. The Legislature might, if they decide to tax or keep taxing that thing, they might find another more practical way of taxing furniture and personal property than the listing schedule and the assessment method they do now where they have to either make the personal calls or call them on the telephone or go over and actually look at the house. It's-I think it's important enough to be in there, and I think it's-it just assists the Legislature in performing its duties and the county officials to do their duty and do it properly, where we don't go through the actual sham of the Classification Act.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, if it's in order, I would like to amend Mr. Aasheim's amendment, whereby on line 25, strike the words "Certain classes of' and insert in lieu thereof "Personal", so that sentence would then read: "Personal property may be exempt from taxation."

CHAIRMAN GRAYBILL: Now, you're making an amendment to Mr. Aasheim's amendment?

DELEGATE CHOATE: Right.

CHAIRMAN GRAYBILL: All right, Section 5. Very well, Mr. Choate has amended Mr. Aasheim's amendment. I think I'm going to call that a substitute amendment, since Mr. Aasheim took his-took it out and you can't amend it if it's out. So I'm going to call it a substitute amendment, which puts-has the effect of putting back in this sentence: "Personal property may be exempt from taxation." Is that correct? But it has the effect of leaving out the words "Certain classes of '. So that we're now debating Mr. Choate's substitute motion-substitute amendment-substitute motion, which is: "Personal property may be exempt from taxation", on line 25 and 26.

Mr. Davis.

DELEGATE DAVIS: Mr. President, I would amend the substitute motion to add the words "Certain classes of."

CHAIRMAN GRAYBILL: Very well, Mr. Davis'—now we are full up, for everybody's information. Mr. Davis amendment has the effect of adding the words "Certain classes of' back in, so it now becomes: "Certain classes of personal property may be exempt from taxation", and the effect of the amendment now is to add the word "personal" before "property".

Mr. Davis, do you want to discuss that'?

DELEGATE DAVIS: Just briefly. I support the majority, but if we are going to have amendment, I don't think you should give the Legislature authority to just either exempt or not exempt personal property. I think thedefinition of that is being misunderstood here. That covers a wide spectrum. If it's the will of this Convention to limit this, then I think it should be "classes of personal property be exempt", rather than "all".

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, the present Constitution attempts to place a tax upon practically everything, with a few exemptions. The proposal here is to exempt everything except in a few items. All the trouble in taxation, excepting paying the taxes, is in the field of exemptions. And the fewer exemptions we can have, such as a variation in the percentages of values--which we have now on our property tax—such as the depletion allowances in the federal oil situation and things like that. Every time you exempt anything, you throw everything else out of kilter and give somebody a special privilege, so I think that the fewer exemptions we have, the better off we are. And in the majority article here, offering-the exemptions are fairly well cut to a minimum. They are mainly governmental or religious or educational, and they are beyond-the profit motive is not involved. So I think that they're restricted about as much as you can get them, but if you start adding other exemptions, you are going to get into difficulties and it's going to throw a terrific burden upon the next Legislature; but we've been throwing terrific burdens upon the next Legislature throughout this Convention and will probably be doing it for the next two weeks, so I don't see any reason why we shouldn't do it in this case.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would Mr. McDonough yield to a question, please'?

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: (Inaudible)

DELEGATE NUTTING: Is there any place in this article that it says that all tax-that all property must be taxed?

DELEGATE McDONOUGH: No.

DELEGATE NUTTING: Will you yield to another question, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes.

DELEGATE NUTTING: Then what is the use of Section 5? Because it just says these may not be taxed, and they don't have to be taxed anyway, so I can't see that the whole article means anything.

DELEGATE McDONOUGH: Well, the present Constitution itemizes the exemptions in the first two sentences. They are listed there because, who owns that property? The state or the federal government owns that property. It might not be a different class of property, but they own it and these religious organizations own it, and you might not be able to fit that into a class that can be exempt by that third sentence. That's why they're not-they're itemized in there; that regardless of the class of property, if they're owned by this charitable or governmental organization, the Legislature may exempt them from taxation; and that's why we itemize. And besides, those organizations want to make sure their status stayed the same as it was for the last 90 years. That's the main reason.

CHAIRMAN GRAYBILL: Very well, the discussion is on Mr. Davis' motion to add in "Certain classes of', so the sentence now reads: "Certain classes of personal property may be exempt from taxation."

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, would either Mr. McDonough or—I believe Mr. McDonough will be fine-Would you answer a couple of questions, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Would you tell me which one of these are-property classifications are down to 1 percent?

DELEGATE McDONOUGH: I think there's something in the last Legislature-I think it was disabled veterans at 1 percent. Mr. Drum is showing you a book there. And free port is down to 1 percent.

DELEGATE MAHONEY: Now, those two don't make up much property, do they?

DELEGATE McDONOUGH: I have no idea. It wouldn't, no. The free port could. There's no reason why free port couldn't.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: If you will go and look at the book, and I happen to know-and I didn't realize there was 1 percent, I thought 7 percent was the lowest. I think that old people's homes were cut to 8 percent. There is a thirty-three and a third percent; that is the actual top except for parts of mines, I believe it is. It's mining stocks, that's a hundred percent. If you have mineral rights, that's a hundred percent. Otherwise, from this thirty-three and a third percent is the highest amount that's on there, and that's on livestock. Land is 30 percent, then you drop down to 20, and the low one that I remembered about was wheat at 7 percent and solvent credits are 7 percent. Now, if we're going out here to exempt property, all classes of property could be exempted, and I think that we had better check very closely before we let the Legislature-Pressure comes on-and I've seen it a good many times, too-all of a sudden. I just got a bang out of the distinguished gentleman from over in Sheridan County, Mr. Aasheim. He started to talk personal property, then he stopped. I know why he stopped-cattle, machinery, cars, all of this stuff becomes personal property-and if we take all that out, where are we going? I want to thank you, Mr. Aasheim, for stopping at the personal property thing, because we'd have had very little left but some land and a few buildings under the property tax. Now, I wonder-1 know that Montana must open up a different system the next session of the Legislature. Always in the past we've patched. They've been patching for years, looking for the ultimate time to get the sales tax, and last year that went down the drain. Now we must start over, and I would certainly hestitate to let this next session of the Legislature now start to

exempt some property. We might wind up with very few paying, and this is where I don't think the 1 percent-the discussion of the 1 percent nor the 5 or 8 or 10 or 30 percent is a lot--reasonable thing in this question. And let's do a lot of thinking before we're going to allow the Legislature to exempt classes of property. That's all I have to say, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Mahoney yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE REICHERT: I have before me the journals from the last session, and as mentioned by Mr. McDonough, the free port bill, which was House Bill 267, is an act relating to the classification of property for taxation, providing a basis for the imposition of taxes, in effect an exemption; and then I have in the Senate Journal, Senate Bill 36. What I don't understand, if these exemptions are allowed now-if the Legislature can do that—why are we so concerned about this section, this one sentence in Section 5-that certain classes of property may be exempt? Can't they now be exempt by the Legislature?

DELEGATE MAHONEY: Let me state this, that if a free port bill-this is merchandise that stops enroute, and the Legislature actually went in and put a tax on something that most [of] the states have never even taxed because it's free port-just stopped overnight in the State of Montana or in a warehouse. This is what free port merchandise is.

DELEGATE REICHERT: My question is, though, cannot the Legislature now make exemptions?

DELEGATE MAHONEY: I don't know as I want to give them all that power.

DELEGATE REICHERT: But don't they now have it?

DELEGATE MAHONEY: No, they still have to tax at 1 percent. They have to still put it on.

DELEGATE REICHERT: One percent?

DELEGATE MAHONEY: Yes

DELEGATE REICHERT: Thank you.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, there's two sides to the coin, apparently, and I see a little more sense to the majority proposal in this one sentence than I read before. When it's been brought up that if we limit this to personal property exemption, then what will we do about the old people that just barely have enough to maintain their home rather than go to a county rest home, or a disabled veteran, because we would remove from this any exemption on real property. And I do think it's a mistake, and I therefore withdraw my motion and leave it up to Mr. Davis to pursue his. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Choate's motion is withdrawn, but we're still on Mr. Davis' motion.

DELEGATE DAVIS: Mr. President, my—

CHAIRMAN GRAYBILL: Just a minute. I just want to state it again, Mr. Davis. Mr. Davis' motion has the effect of making the sentence at line 25 read: "Certain classes of personal property may be exempt from taxation." Is there other discussion before he closes?
Oh, Mr. Davis.

DELEGATE DAVIS: I want the tail to go with the hide. I withdraw mine, too. (Laughter)

CHAIRMAN GRAYBILL: Well, it's considered withdrawn, for whatever reason, Mr. Davis. All right, we're back to Mr. Aasheim's motion, which was to strike the line-the sentence: "Certain classes of property may be exempt from taxation"--strike the sentence entirely. Now, is there other discussion before Mr. Aasheim closes? Mr. Choate-or, I mean, Mr. Conover; pardon me.

DELEGATE CONOVER: Mr. Chairman, will Mr. Mahoney yield to a question?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE CONOVER: Charley, if we delete this sentence-"Certain classes of property may be exempt from taxation"-will this give the Legislature the power to exempt our old folks, retired in these homes, that have been taxed beyond their—

DELEGATE MAHONEY: No.

DELEGATE CONOVER: Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I wonder if Mr. McDonough would yield to a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BOWMAN: Mr. McDonough, if we deleted this sentence, as Mr. Aasheim would like to do, would that make it impossible for the Legislature to grant an industry, say, a certain amount of tax relief for pollution control or a certain amount of tax relief in an effort to get an industry to come into the state?

DELEGATE McDONOUGH: Well, if it's deleted—

DELEGATE BOWMAN: Yes, that's my question.

DELEGATE McDONOUGH: -then a court might construe this whole section that you still might have to tax all property. Now, if it's left in, under certain rules and regulations that would not violate the 14th Amendment on discrimination and so forth, the Legislature could give such an exemption.

DELEGATE BOWMAN: Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, will Mr McDonough yield?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE JAMES: If we took this out, would it be possible to aid 100 percent disabled veterans, if we deleted this? Could we still do that, or is this necessary to leave in to accomplish this purpose?

DELEGATE McDONOUGH: Well, if they can write the statute that would put that into a class of property—

DELEGATE JAMES: Well, could we write a statute without this in, though?

DELEGATE McDONOUGH: Well, they've done that by bringing it down to 1 percent. Actually, the same thing.

DELEGATE JAMES: Thank you.

DELEGATE McDONOUGH: I might note that, Mr. James, the Constitution—

CHAIRMAN GRAYBILL: Mr. McDonough, you may finish.

DELEGATE McDONOUGH: Oh—

CHAIRMAN GRAYBILL: Go ahead, Mr. McDonough.

DELEGATE McDONOUGH: I'm sorry, Mr. President. I might note that Mr. James showed me the Alaska Constitution, which also has the wording that we're proposing in Section 5, which is: "Other exemptions of"—wait a minute— "Other exemptions of like or different kind may be granted by general law."

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates. Speaking on this and for the majority report, we need a free port in Montana. Even the 1 percent tax prevents us from having other industries in Montana. At a recent industrial development meeting up in Kalispell, we were informed that the port of Seattle, which is a free port, has leased 30,000 square feet of warehouse space in Chicago for the purpose of bringing in packaged goods and different things, repackaging these things and shipping them on. Now, with us being fortunate to have the Amtrack running both south and north part of our state, this could open up an entire new business for us, not only in Whitefish on the rail line, but in Shelby-the whole—across the northern part of our state and also down in Billings and the southern part of the state, in Butte and so on. I think that this is an important thing to leave in the article as it is. Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Delegate Aasheim would yield to a question.

CHAIRMAN GRAYBILL: Mr. Arbanas-Mr. Aasheim?

DELEGATE AASHEIM: I yield.

DELEGATE ARBANAS: Is it your understanding now that the tax exemptions can go down to 1 percent by law?

DELEGATE AASHEIM: Presently, yes.

DELEGATE ARBANAS: Now, it just occurs to me, and I'd like to have your concurrence or reflection on it, in many cases it seems to me it would cost us more to collect that 1 percent and the taxes would have to be worthwhile, so that we're not really accomplishing anything as far as actual revenue. Would that be possible?

DELEGATE AASHEIM: That's very possible, Mr. Arbanas. May I close?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I can't really-1 wonder that Aasheim and Mahoney are so worried about the Legislature. I really do. As bad as that Legislature-the next one and all those are going to need money; I can't understand how you think they're going to exempt certain classes. I just can't see that. And certainly that's not the intent of this, but if there is something that later on has to be exempted, it's there and we can do it. But as far as exempting large classes of property to reduce the income from Montana, that just seems inconceivable to me. And I know a little bit about pressures and I know that, but I also know the pressure of getting enough money to pay the bills and I think that would come first. And I frankly can't see why that sentence bothers you. I think we need it in there just in case in the future there is something that has to be an exemption, along with some of the others we already have. I think you're overly cautious about that. I don't think you have anything to worry about. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible)

CHAIRMAN GRAYBILL: Oh, wait a minute.

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, just very briefly, I wonder if the Convention realized the significance of Mrs. Bowman's question and whether or not it was adequately answered. We certainly don't want to put ourselves in a situation where we can't exempt taxation to encourage nonpollution, and if this-Mr. Aasheim's amendment would do that, I'm certainly opposed to it, because we want to encourage tax exemption for nonpolluting industries. And not necessarily exemption-temporary exemption, possibly, while the nonpolluting facilities are being amortized. And I think it's a very significant question Mrs. Bowman asked, and I'm not sure that the Convention realizes the full import of it.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I still didn't get my answer from Mr. McDonough, because as I read the old Constitution, Section 1, Article XII, it says that all property shall be taxed. No place in this new article does it say "all properties shall be taxed", so as far as I'm concerned, whether we take it out, we put it in-we put in Section 5 or we take Section 5 out, it still doesn't make any difference. It leaves it up to the Legislature, so I can't see what we're arguing about on this whole article. It's meaningless.

CHAIRMAN GRAYBILL: Mr. McDonough, you may respond.

DELEGATE McDONOUGH: Yes, I think Mr. Nutting is basically right. But we put it in there to make sure a court couldn't construe it any other way than to make sure that this body knew what we were doing when we wrote this article on this exemption. And he is right, generally.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I support Mr. Aasheim's motion as a compromise between the minority and the majority reports. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim, you may close.

DELEGATE AASHEIM: Mr. Chairman, I was concerned about this, and it wasn't properly aired. And in reply to Mr. Mahoney, yes, I have selfish motives for everything I do-and I challenge you to say otherwise-but my personal property taxes aren't worth arguing over. I'm glad to pay them, but I think that the present system of assessing household goods just smells to high heaven, as I said this morning, and that's why I wonder about taxing them; and I think I had the sense of the committee-the group. I think that we have to give the Legislature a little leeway. So with that, I'm going to withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has now withdrawn his motion and we're back with the committee language. Are there other—

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I haven't had time to write this out, but I move to amend by including after-in-as the first sentence in Section 4 the first sentence of the old Constitution.

CHAIRMAN GRAYBILL: You mean Section 5?

DELEGATE NUTTING: The present Constitution.

CHAIRMAN GRAYBILL: You mean Section 5, I presume.

DELEGATE NUTTING: Section 1. The first sentence of Section 5 would be the first sentence of Section 1 of Article XII—

CHAIRMAN GRAYBILL: Would you read—

DELEGATE NUTTING: -which would read: "The necessary revenues for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except those specially provided for in this article."

CHAIRMAN GRAYBILL: Mr. Nutting, I have to have that sent to the Chair, please. All right, I have it now. You may want to write this down. If you do, I'll read it carefully. The present Article XII, Section 1, of the present Constitution -Mr. Nutting wants to add the first sentence of that section to Section 5—at the beginning of Section 5 on line 17—so that Section 5 would read: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly-comma-which shall levy a uniform rate of assessment and taxation—comma—and shall prescribe such regulations as shall secure a just valuation for taxation of all property-comma-except that specifically provided for in this article period". Once again, now, the amendment would add this sentence: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property-comma-except that specifically provided for in this article." Then continuing on, "The property of the United States", et cetera, as shown on line 17, page 11.

Mr. Nutting, is that the sense of your amendment?

DELEGATE NUTTING: Yes, that's correct. I just think we have nothing here that says all property will be exempt-will be taxed; so what is the purpose of having exemptions to something that you don't have to tax in the first place? And by this it says, "all property"--all property shall be taxed, with the following exemptions. I think that clears that up.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE SCANLIN: What's the difference between your amendment and Section 1 of the proposed article?

DELEGATE NUTTING: It says, "Taxes shall be levied by general laws for public purposes." It doesn't say "all" on anything.

DELEGATE SCANLIN: Well, Mr. Chairman-

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: -from my point of view, that would include what Mr. Nutting is trying to say.

CHAIRMAN GRAYBILL: Well, Mr. Scanlin, if this is helpful to you, the Section 1 simply says that all taxes-the taxes levied have to be levied by general laws, but Mr. Nutting's point is that it doesn't say all property has to be taxed.

Mr. Harper.

DELEGATE HARPER: Mr. Nutting has said two or three times now that what he is saying is thatnowheredowesaythatallpropertymustbe taxed. I was just wondering, Dick, when you read all of that, since part of it does conflict in a sense, or is repetitious to some of Sections 1, 2, 3 and 4, why you couldn't just say, "All property shall be taxed except", and then move right on in to Number 5. Then the issue would be clear.

DELEGATE NUTTING: Mr. Harper—

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: I would have no objection if somebody could simplify these words. This is the best thing I could come up with in 30 seconds.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: To make the issue clear to us, may I move to amend Mr. Nutting's addition simply by, on line 17, after the words "property tax exemptions", to begin the sentence by saying: "All property shall be taxed except", and then make that a lower case "t" and go right on with the way Section 5 is drawninthe majority proposal.

CHAIRMAN GRAYBILL: Very well, your substitute motion for Mr. Nutting's motion is accepted for debate. Mr. Harper has now made a substitute motion that Section 5 begin by the sentence: "All property shall be taxed except"- and then go on-"the property of the United States, the state, county", and so forth. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: (Inaudible)

DELEGATE DAVIS: Mr. McDonough, in the language that has now been modified a little that Mr. Nutting put in, was in our original Constitution, we thereafter had a constitutional amendment, did we not, to allow us to put on the income tax?

DELEGATE McDONOUGH: Well, as I understand the income tax, the court did say that the income tax was constitutional about the same time they levied it and made the-1 mean, about the same time they made the amendment. What I hate-1 see Mr. Harper has removed the uniformity clause, which I think should be out of there. I really don't think that this amendment is needed. It's clear like it is. I have the same objection, maybe, to Mr. Nutting's amendment as he had to mine, so I don't think it really clears anything up one way or the other.

DELEGATE DAVIS: Would you yield to another question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE DAVIS: Does Section 1 give authority to levy this property tax?

DELEGATE McDONOUGH: The state has-the Legislature has the inherent power to tax. It doesn't have to give it to them.

DELEGATE DAVIS: They also have the inherent power for income tax?

DELEGATE McDONOUGH: Yes, they do.

DELEGATE DAVIS: And do they have the inherent power for sales tax?

DELEGATE McDONOUGH: Yes, they do.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I resist the motion. I thought we sort of had that cleared up when we went through our Section 1, where we say, "Taxes shall be levied by general laws for public purposes." I think the real meaning for this is, it just doesn't seem to be in Mr. Nutting's mind the need for the exemptions. However, if we do this, of course, there would have to be a lot of exemptions if you want to go down that way; and I think we're really asking for a lot of trouble if we do that. We'd have a very involved plan, because he apparently didn't want to accept McDonough's reason for having Section 5 and he admits that maybe we don't need it; because we say nothing is taxed, we could go the other way. On the other hand, I think Mr. McDonough's explanation is reasonable that we do set some things, because there have been some court rulings on that, and I think we keep it. I resist the amendment.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: Would Mr. McDonough yield to a question, please?

CHAIRMAN GRAYBILL: McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE OSCAR ANDERSON: I have a nonlegal mind, but when you say "Certain classes of property may be exempt from taxation", could anybody interpret that to be otherwise than

saying, unless it's specifically exempted by being exempt from taxation, it would cover all classes of property? Is that correct or incorrect?

DELEGATE McDONOUGH: I'm sure when the Legislature draws the revenue measure, they'll certainly say what's taxable under that revenue measure, and they can say it as easy as we can say it here. They can say "All property shall be taxed". I don't think the Legislature will have any problem defining what's to be taxed. Is that what you mean?

DELEGATE OSCAR ANDERSON: (Inaudible)

CHAIRMAN GRAYBILL: Well, that's your answer anyway, whether it's what he means or not. Is there other discussion? (No response) If not, the issue is on Mr. Harper's amendment. Do you feel it necessary to close, Mr. Harper?

DELEGATE HARPER: Except to say that I was simply trying to clarify what I think Dick Nutting is saying and not expressing my own opinion. I think it would be better left out, so I'm going to vote against this suggestion.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Harper's substitute amendment that Section 5 begin with the phrase: "All property shall be taxed except the property of the United States", et cetera. So many as shall be in favor of Mr. Harper's proposal, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, it's defeated. We're now back on Mr. Nutting's proposal, which is to add the first sentence from the old-from the present Constitution, so that it reads: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specifically provided for in this article"-then going on to say "The property of the United States", et cetera. Is there further discussion on that? (No response) Mr. Nutting, do you wish to close?

DELEGATE NUTTING: Mr. Chairman, with friends like George, who needs enemies? (Laughter) I think the overwhelming support I got on the last vote would demonstrate what's happened here. I withdraw my motion. (Laughter)

CHAIRMAN GRAYBILL: Very well, Mr. Nutting has withdrawn his amendment and we're back to Section 5 without amendments. Is there further discussion? (No response) If not, members of the committee, you have before you for your consideration, upon the motion of Mr. Rygg, Chairman of the Revenue and Finance Committee, that when this committee does arise and report, after having had under consideration Section 5 of the Revenue and Finance Article, that we recommend the same be adopted.

DELEGATE KAMHOOT: Roll call vote.

CHAIRMAN GRAYBILL: There's a roll call vote called for. So many as shall be in favor of that motion, please vote Aye on the voting machines; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Pleasetake the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Excused
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye

Champoux ..... Aye
Choate ..... Absent
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Excused
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Absent
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Nay
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Absent
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 74 delegates voting Aye, 9 voting No.

CHAIRMAN GRAYBILL: 74 delegates having voted Aye, Section 5 is adopted. Now, before we read Section 6, the Chair would like to call on Fred Martin, who has an introduction to make.

DELEGATE MARTIN: Mr. President, I should like to introduce a good friend, a former boss, a good Governor and Legislator, and an 80-year-old, busy Montanan, "the Galloping Swede", Hugo Aronson.

(Applause)

CHAIRMAN GRAYBILL: Mr. Aronson, we are certainly happy to have you with us here this afternoon, and we appreciate your coming, and we hope you'll see that we're working hard.

(Mr. Aronson spoke briefly to the Convention, congratulating them on their efforts and wishing them success. Since he did not speak into a microphone continuously, his remarks were not sufficiently audible to be transcribed faithfully and accurately.)

CHAIRMAN GRAYBILL: Thank you very much, Governor Aronson, and good afternoon.

Mr. Eskildsen.

DELEGATE ESKILDSEN: If there be no objections, let's recess till 3:45.

CHAIRMAN GRAYBILL: The motion is to recess until 3:45. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: And so ordered.

(Convention recessed at 3:25 p.m.—reconvened at 3:48 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. The clerk will read Section 6.

CLERK HANSON: "Section 6. Highway earmark. Revenue, except from general sales and use taxes, from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and the-for county, city and town obligations on streets, roads and bridges, after the deduction of funds for endorsement—enforcement of highway safety, driver education, tourist promotion and for administrative and collection costs as authorized by the Legislative Assembly. By a two-by a three-fifths vote of the members of each house of the Legislative Assembly or by initiated measure approved by a majority of the electorate, such dedicated funds may be appropriated for other purposes." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 6 of Proposal 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This, of course, is the article which we had probably more testimony on than anything else. The committee did change this from the original l(b). We changed it in the Revenue by deleting some of the other revenues and leaving just the gas and diesel fuel tax and the gross vehicle weight tax. Roughly, I suppose, we decreased it about two-plus million dollars. Then, going down, we did change it enough to make it definitely legal for the cities and towns to get the 1 cent they have already been getting and use it for county, city and town streets, roads and bridges. Then, we did allow the Highway Patrol to be paid from this fund. Apparently there is a test case we have now, but we did, in our committee, decide that that should come from this money. We did allow for some drivers' education, and we maintained the allowance for tourist promotion that has already been used. Now, probably the biggest change in here was that we-in the last sentence, it does say that by a three-fifths vote-the members of each house, such dedicatedfundsmay be appropriated for other purposes. I don't believe I'm going to read the comments of our rationale. I think you've all read them. I think I will omit giving you exact figures on revenues and expenses at the moment, because I feel we have something bigger than this that we are arguing about. I think maybe there are three factions, should we say, concerning this proposal. First, I think we have those who really don't approve of earmarking in any form for any purpose. In a way, these people are idealists, but they are sincere and we respect their opinion. I have thought they might want to delete this section, but so far I haven't seen an amendment like that on the desk. Then there is the other group who would like to retain the anti-diversion amendment as it presently is in Section l(b). Now this group probably isn't as idealistic as the first group. They want to make sure they retain what they presently have so they can continue the highway program and other programs that go along with it, and we respect their opinion. It has been rumored that this group wants all or nothing and would attempt to have the new Constitution voted down if they had to make a concession; I refuse to believe this. Then we have the third group, the ones who would want to support our committee proposal, which we think is a practical approach. Some of us on the committee, too, might like to have had no earmarking, but we want Montana to progress, and for that we need highways. We don't want to interrupt the program of being assured of having money available for matching federal funds. We know this is planned several years in advance, and we don't want to upset the applecart. We are willing to make some concessions in order to save our highways and to save our new Constitution. We would like to have these other groups agree to compromise. Now, actually, I have no idea on how things will go on this floor this afternoon. I had thought that perhaps there

would be an amendment here to kill our proposal, and if that were the case, I would hope you would override it and leave us still with our proposal. Then, I had probably thought-and there is an amendment which is the original l(b), so I suppose perhaps that will be first up if the other one isn't forthcoming. And I would hope there, too, that that one would fail. Then I would hope that we would have the opportunity of maybe discussing our own proposal in a little more detail and hoping that you would agree with us that this probably is the best route for Montana to take and that you would put it through as a regular proposal. Thank you, Mr. Chairman.

DELEGATE TOOLE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I hate to take the plunge into this extremely sensitive subject. Several delegates have gotten up and said that this is the most important thing to come before the Convention. Now it's my turn. I say that this, if not the most important, is certainly the most sensitive thing to come before this Convention. I've thought about it many times, laid awake at night. Over the years, I've had a lot of experience with the Montana highway program in one capacity or another, and in 1955 and 1956, I supported the antidiversion amendment in the Legislature; but over the years, as I have observed the Highway Department operating, I havegradually changed my mind, and now I oppose it strenuously. I think we are beginning to create a great evil and that this Convention must address itself to that problem. We are force-feeding, Mr. Chairman, to the Highway Department $38 million a year. We have created an independent and unresponsive and gigantic bureaucracy, not responsible for the people, not responsible to the Legislature, and without control. We all know of the unnecessary roads that have been built; we know of emergency situations that have been neglected; we know of the indifference with which the Highway Department regards matters of ecology, stream diversion, the game crossing. We know the Highway Department has yielded to special interests in the construction of certain highways, but we go on force-feeding them the $38 million, locking it into our Constitution. Now, I recognize the popularity of this amendment that passed in 1956 by a vote of a hundred and sixty thousand to 48,000. I have in my files here the names of the supporters, the organizations--and there are 18 powerful business groups-18-10 large labor unions, including the AFL-CIO. I won't read the list unless the Convention so desires, but I submit to you, Mr. Chairman, that this popularity is beginning to wane as people become disaffected with the activities of the Highway Department. I think the committee has done an admirable job in meeting the problem head-on. As Mr. Rygg stated, they couldn't eliminate it because of its popularity and because of the endangering-because it would endanger the-in my opinion, cause extreme danger to the ratification of the Constitution. The fund is still earmarked, but three-fifths of the Legislature can vote to bring these funds back under legislative control. I think it's a bold and an innovative approach to the problem. Our interstate system is nearing completion, although it has been delayed. Our secondary and primary systems are coming up to standards. There is still much work to be done, and I submit to you, if this report is adopted, that work will continue. We're not going to abandon the Montana highway program. I just think it's time for another look. Should we continue to lock in these vast millions with changing attitudes, changing needs? Attitudes toward the automobile are changing, and its use. The automobile is beginning to create vast social and economic problems. There's a desperate need in some of our communities for adequate mass transportation systems which the communities are unable to finance. It may be that at some time in the future it will be more practical and less expensive to have a monorail running between here and Great Falls. Should we prevent the development of such technology by locking this in forever and constantly force-feeding this money into the construction of more and more highways without regard for the advancing technology which may change the need for those highways? We go on feeding an ever-growing, unresponsive agency. We should open the door. We should allow, then, for future changes and we should reclaim this money, for the people. I recognize that this $38 million brings in 60 to 70 million dollars of federal funds. This is a very knotty problem, but the federal highway trust fund itself is now under attack and there are many serious suggestions for the diversion of moneys from the federal highway trustfund to the mass transit problems of the cities of the east and west coasts. I think we should seize our own destiny and not become the victims of a force-feed on us by the federal government in matching funds. I know the argument that if we give the money back to the Legislature that the Legislature will fritter them away in their desperate need for funds; that

they'll spend them on relief; that they'll spend them on schools. They might want to subsidize mass transportation in Billings, Great Falls, Missoula, Helena or Butte. In my opinion, the Legislature should be permitted to do so; if they want to use gas tax money for schools, for mass transportation, for welfare, they should be permitted to do so. I am going to conclude my remarks on this subject now, Mr. Chairman. Later on, I might have an alternative to present. I think it's necessary that we present an alternative on the ballot, and as of this moment I don't know what that alternative will be. And I want to hear the debate, and then I hope to present to the Convention some sort of alternative so that the people, on thisissue, will have a chance to vote in a rather clear-cut way on two clear-cut decisions. Thank you, Mr. Chairman. I support the committee report.

CHAIRMAN GRAYBILL: Is there other discussion of Section 6? (No response) Very well, members of the committee, you have before you, on the recommendation of Mr. Rygg that when this committee does arise and report, after having under consideration Section 6 of the Revenue and Finance Proposal, that it recommend the same do pass.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I'm amazed that we're about to vote on this thing and there's been no more discussion than what Mr. Toole did, and we're about to take a vote. (Laughter) Now, I-it may be very laudable for Mr. Toole to want to subsidize mass transportation in Great Falls, Billings or Missoula, or wherever. I can't say that I want to pay gasoline taxes to subsidize the mass transportation of those areas. We don't happen to need mass transportation in Shelby, Montana, (Laughter) and I'd just as soon stay out of Great Falls, Billings and Missoula, and I find along the northern part of the State of Montana about everything that I want. And I think this is a terrible thing, if we are just going to vote on the committee-the proposal without any discussion. We're changing an amendment that was passed by the people of the State of Montana not so long ago. I'm not so sure that if the Highway Department is not responsive to the needs of the people-and it's pretty autocratic, I'll admit-and that maybe we ought to do away with the gasoline tax; maybe we ought to reduce the amount. But I don't think we ought to leave it up to the Legislature on a matter that's been voted on by the people. I'd like to hear a little more discussion on this matter.

CHAIRMAN GRAYBILL: Mr. Scanlin

DELEGATE SCANLIN: Mr. Chairman, a point of order. Am I committed to vote for something if I make an amendment?

CHAIRMAN GRAYBILL: No, you can vote as you please.

DELEGATE SCANLIN: Okay. Mr. Chairman, in order to follow the rules of procedure and get some debate on this very important subject, I would like to move, Mr. Chairman, to delete Section 7 of the Committee Proposal and substitute Section l(b) of Article XII of the present Constitution of the State of Montana.

CHAIRMAN GRAYBILL: Mr. Scanlin, do you have Section 1(b) written out for the Chair?

DELEGATE SCANLIN: Yes, I do, sir. I think everybody has a copy of it.

CHAIRMAN GRAYBILL: All right, is this unsigned amendment yours? Antidiversions amendment, it says at the top of the page; is that yours?

DELEGATE SCANLIN: Section 6. Mr. Chairman, I may have made a mistake. It's Section 6 of the proposed article.

CHAIRMAN GRAYBILL: Right

DELEGATE SCANLIN: Committee pro posal.

CHAIRMAN GRAYBILL: The Chair understands that Mr. Scanlin has offered an amendment-which is unsigned, but we'll put his name on it-on your desks, and his amendment would delete Section 6 of the committee report and substitute therefore Section l(b), the old-or the language from the existing Article XII, l(b), of the Constitution. So Mr. Scanlin's amendment is to delete Section 6 in its entirety and substitute therefor Article XII, Section l(b), language from the present Constitution.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I'd yield to anybody who would like to speak on this subject. (Laughter)

CHAIRMAN GRAYBILL: Very well, the Chair accepts Mr. Scanlin's amendment for discussion.

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I hesitate but I must acknowledge that l(b) is partially my baby. It so happened that in 1955 when this was before the Legislature for consideration, I happened to be down in the Governor's office and was sent up here to lobby on behalf of the passage of this through the House and almost was put— placed in contempt of the House for buttonholing delegates at that time. At the time, certainly, there was a desperate need for this sort of funds to build the highways with the interstate coming on and the program that was developing, and certainly it wasn't intended that the Highway Department would become as far from the people as it has since gotten to be. And still we haven't got the interstate completed, and there certainly is need. And I'm hopeful that before we divert all this money away from the Highway Department, that we at least build the-complete the Bozeman hill between Livingston and Bozeman. I think that the committee has put some flexibility in this program, and I would resist the substitute motion.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I rise to resist the substitute motion made by Mr. Scanlin, because I'm one of the idealists who wish we would get rid of the whole thing; but I've been here long enough to realize that that is not possible. However, I would like to quote very briefly from a report made by the Montana Legislative Council in 1962, entitled State Treasury *Funds Structure.* It says: "As a means of allocating resources, earmarking is inefficient because it fails to recognize relativityofneeds. Resources are distributed not by a conscious evaluation of the needs of all agencies but by an arbitrary constitutional and statutory formulas. A dedicated revenue tends to create a vested interest in continuing arrangements, which experience and passage of time may prove to be contrary to the public interest." And I submit that this is painfully apparent as far as the Highway Department is concerned. Going on: "Even if there be at first a proper relation between the proceeds of a given tax and a need for expenditure for a given service, there is no reason to assume that the relationship will continue to exist. Experience demonstrates that once a dedicated fund has been set up, it is extremely difficult to deal with on its merits." I would like to comment on Mr. Aronow's statement that he did not feel that mass transit was necessary in Shelby. I think that his funneling of his gas tax money into a possible mass transit system between Helena and Great Falls is no different than the people of Nebraska whose tax money is funneled into the State of Montana in the federal highway fund. It's somebody else's money paying for our roads. I think that the two are comparable. I think that Parkinson's Law, which says "expenditures rise to meetincome", could be paraphrased to say, "congestion arises to meet highway capacity". The Highway Department is a self-perpetuating bureaucracy and will continue to be so as long as it continues to be locked in the way it is at this point. I think that the committee has worked out a reasonable compromise. I think it allows for flexibility should the time come when maybe we will need some mass transit in Montana. I realize it's hard to visualize that now, but we're not writing this Constitution for now. Therefore, I urge that you reject Mr. Scanlin's substitute motion and vote for the committee proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, would I be out of order, at this time, to ask a member of the committee a question with regard to Section 6?

CHAIRMAN GRAYBILL: No, I think not. This is general debate of the problem.

DELEGATE MELVIN: Well, I notice that the committee has allowed for the payment of highway patrolmen's salaries and driver education and apparently cut down on the fees from the gross vehicle weight and registration and sale of new cars. Has any member of the committee any estimate as to the difference in the income that this would make with regard to highway construction?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I believe that Mr. Furlong has those figures. I think the revenue was cut down about two-plus million dollars, but I think maybe Mr. Furlong has the figures.

CHAIRMAN GRAYBILL: Do you, Mr. Furlong?

DELEGATE FURLONG: Mr. Chairman, I'll try. Actually, when we started looking for figures, so much of the moneys were put into one fund that it was almost impossible to unscramble them. But as nearly as our research indicates, the amount of moneys that would have been taken out-will be taken out if you accept Section 6, would be slightly in excess of $2 million.

DELEGATE MELVIN: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: While I'm on my feet, I might-the-for the benefit of the people, I think the question will probably come up anyhow; I just may save a little time by doing this. The Highway Safety-or the Patrol, which is currently listed, is around three-three and a quarter million dollars. The driver's education, which is under the present program-I think the latest figure the state has, it's costing, on the basis of some incomplete returns from the-all of the schools participating, would be about $72 per child. The total program would cost somewhere around $750,000. Really, those are the only moneys disturbed by the first section of Section 6. The only other disturbance that could be created would be the three-fifths vote which would authorize the Legislature to divert or the initiative amendment. I think those are really the only figures involved in the section. I hope that answers your question.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I am in sympathy with what Mr. Toole said about the Highway Department and I realize that we have quite a problem there, but I also realize that we do have a lot of problems with roads in Montana yet. We have a lot of secondary roads that certainly need improvement--many hundreds of miles of them. We have many hundreds of miles in our state highways that need improvement, and we need this money to do that with. I think that if some provision was made in here that the Legislature may review the activities of the Highway Department, I wouldn't have any objection to it; but I feel this way: that until such a time as we no longer have need for building our highways and improving our road system, that this money should be used for this purpose. And when we feel that we should divert these funds or remove them, then I want to have a different clause. I want to know what these moneys are going to be diverted for. We are paying a tremendous tax on gasoline to build our roads, and if we are going to build roads with that money, let's build roads with them. But if we are going to permit the Legislature, by a three-fifths vote, to divert these funds for some other purpose, then I think it's an option that the people should have a chance to vote on. I suggest that the last sentence of this paragraph should be removed for this reason-that if and when we think that we should not necessarily need this tax on gasoline to build roads, if we think we want to do it-put the tax on for someotherpurpose-then the people should be able to decide what purpose we're going to use this money for and not have the Legislature merely divert the money to some other use without the knowledge of what we're going to do with it. I would move, Mr. President, that the last sentence in Section 6 of the majority proposal be stricken.

CHAIRMAN GRAYBILL: Mr. Wilson, you're out of order. The motion at the moment is Mr. Scanlin's motion to delete Section 6 and substitute l(b). Therefore, the issue before the house is l(b), and you can't amend something that isn't before us. But 1'11 be sure that you have a chance later on to do that if we ever get back to Section 6.

DELEGATE WILSON: You bet. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Scanlin yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Scanlin?

DELEGATE SCANLIN: Happy to.

DELEGATE REICHERT: Mr. Scanlin, during the last session of the Legislature, Senate Bill 99 was passed, both houses, it was signed by the Governor, but even before the ink was dry, its constitutionality was questioned. This is a bill that would have enabled us to save about three and a quarter million dollars because the Highway Patrolmen would have been paid from the Highway Department funds rather than from the general fund. Do you feel-and this is because of our present Constitution, the section you just recommended we adopt, Section l(b)-do you feel that this is justifiable that we should retain this old section so we may not pay Highway Patrolmen with Highway Department funds?

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. Mrs. Reichert, my intelligence is no match for yours. I have no answer.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, will Mr. Furlong yield to a question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE HABEDANK: Mr. Furlong, did I understand your figures correctly, that taking out the excise and license taxes and these other things-gross vehicle weight-would reduce the income to the highway fund approximately $2 million?

DELEGATE FURLONG: No, those aren't being taken out. Those are being left in.

DELEGATE HABEDANK: So there is no reduction of that $2 million under your-under the proposed measure?

DELEGATE FURLONG: No, the $2 million I'm talking about would be basically-I have the figures here. The new car sales tax is really what it is-it's about $1,192,000—and then there are some minor other fees which are currently all put together under what's known as gross vehicle weight. It has nothing to do with the figures that you're reading. I'm referring to the first word "revenue"

DELEGATE HABEDANK: Mr. Chairman, may I ask a series of questions?

CHAIRMAN GRAYBILL: You may.

DELEGATE HABEDANK: Just so I understand-regardless of from where it comes, the revenue under your proposed Section 6 over the revenue that goes into the highway fund in Section l(b) would be approximately $2 million less.

DELEGATE FURLONG: That's right.

DELEGATE HABEDANK: Then we would add to the expense that you put into Section 6 that is not presently covered in Section l(b), driver education, which you estimate at $750,000—

DELEGATE FURLONG: That's right.

DELEGATE HABEDANK: -and then you add the cost to the Highway Patrol, three and a quarter million dollars, which is not presently covered by l(b).

DELEGATE FURLONG: No, it is presently covered by l(b). It's being paid right now. It's under—

DELEGATE HABEDANK: Out of the—the Highway Patrol is presently being paid out of highway revenues that—

DELEGATE FURLONG: Yes, that's right. And I understand that there is a Supreme Court test case on its legality right now.

DELEGATE HABEDANK: If that case is held that it-that can't be done, then there would be an additional 3 million, three and a quarter million that would be paid definitely as provided in your Section 6?

DELEGATE FURLONG: If I understand the question, if it's held unconstitutional under the old Constitution and Section 6 is approved in the new one, then it would be legal. It'd be three and a quarter million dollars, yes.

DELEGATE HABEDANK: So the total difference--or possible difference at the present time of revenue to the highway fund for highway development purposes under your proposed Section 6 and Section l(b), assuming the Supreme Court holds the Highway Patrol cannot be paid out of those funds, would be about $6 million less annually?

DELEGATE FURLONG: Yes, something like that.

DELEGATE HABEDANK: Thank you. That's annually or biennially?

DELEGATE FURLONG: Now you've thrown me a curve; I'm not sure. But no, I think these figures would represent annual income. It happens to be a biennial budget, but—

DELEGATE HABEDANK: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would-Mr. President, would Mrs. Reichert yield to a question?

CHAIRMAN GRAYBILL: Mrs. Reichert, will you yield?

DELEGATE REICHERT: Yes.

DELEGATE DAVIS: Tell me about the 3 million-I got lost on that-that we lost.

DELEGATE REICHERT: Because, if the Supreme Court rules upon the constitutionality-on this, we will have lost three and a quarter million dollars-I thought it was a biennium, perhaps I'm wrong-because the money will have to be taken from the general fund. The constitutionality was questioned before it was even introduced in the Senate. I talked to Mr. Chittim about it, because I was covering that session, and I asked him. And he said-he showed me legal proof that it was unconstitutional, before it got through the Senate, before it got through the House, before the Governor signed it. And so that's why I favor the majority proposal. I feel that we must have this ability.

DELEGATE DAVIS: Would Mrs. Reichert yield to another question?

DELEGATE REICHERT: Yes.

DELEGATE DAVIS: Well, where did the three and a half million go? That's what I'm puzzled about.

DELEGATE REICHERT: Well, it would have to be taken from the general fund if we can't pay it from the Highway Department, if it's unconstitutional.

DELEGATE DAVIS: But if it stays in the Highway Department, it'll still go-we'll still have it in one fund or the other, won't we?

DELEGATE REICHERT: But the problem is, we have control of the general fund; we have no control over the Highway Department fund. I think that's the critical issue.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I think there's a little confusion here. The appropriations are generally made on a biennial basis and the income is generally figured on an annual basis; so the three and a half million, I think, is a biennial appropriation and this other money here would be an annual situation. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would rise to oppose the substitute motion. I would like to just make a couple of brief comments to answer some statements thathave been made and some questions that have been left, perhaps, in the minds of this body. First, I would like to again reiterate the oneness of the committee in their desire to come up with something that would treat all parties fairly, and we had a good deal of-a lot of testimony, and we had more than discussion-I would even call it some pressure in some cases— for us to either delete completely or to leave as is, becausepeoplefeelprettysincerelyaboutthis. Our picking of the figure three-fifths of a vote of the legislative body was done not necessarily to hang a hammer over the head of the Highway Department, because we all recognize that the Highway Department has done an awful lot of good things for the State of Montana. When you get big, you get a little bit inefficient and you hurt a lot of people's feelings, maybe; but at the same time, the Highway Department, in their overall effort, has been a real credit to the State of Montana. However, as this income from these various contributions grow each year-and it appears to us that the figure is going up somewhere in the range of two and a half to three million dollars per year-as we look down the road maybe 20 years hence, if the income from the sale of gasoline or from the gasoline tax and these other sources of income-say, pick an average figure over the next 20 years of $3 million, that would add to the 38 million that will come in this year another $60 million. So we're talking about somewhere in the neighborhood of 90 to a hundred million dollars coming in to the Highway Department. Well, one of our concerns was that down the road somewhere we're going to have federal highways fairly well crisscrossing our state. It may not be 5 years; it may not be 10; it may not be 40; but at some point in the future, the construction of federal highways probably is going to be diminished somewhat from where it is now; and at that point-and for Mr. Wilson's edification and clarification-we want to be able to divert money into the building of county roads and city streets. Now, we also want to be able to do this-or want the Legislature to be able to do this at an early time. Some of us served as legislators and we remember how difficult it was for the Legislature to come up with some money to help the cities back in the 1967 Session. It was a real problem where the money was going to come from. There were some questions of constitutionality of whatever happened, but about a million dollars was arranged-through working around some agreements and some late-night sessions and one

thing or another--would be channeled back to the cities to help in their street programs. This will become more and more of a problem for the cities and the counties because, one, more traffic and, two, the--some of the state highways are probably going to become county roads in the future. Now, if the responsiveness of the Highway Department is sharpened a little bit when they look at that three-fifths or 60 percent figure, it could be one of the real blessings that the Legislature finds themselves blessed with in the years to come. Because if there is no possibility of changing this diversion, other than another constitutional amendment, the responsiveness may be a very difficult-to-find commodity-something like bird droppings in a cuckoo clock; they just may not be around. (Laughter) So the three-fifths will make the Highway Department very responsive. Now, if what the proponents for a hundred percent diversion say is true, the Highway Department has nothing to worry about. All they have to do is perform the fashion that the proponents of the antidiversion measure say they are going to, and we'll have no problem. However, if they do not perform in this fashion, at some point they will have to come to the Legislature and worry about their share, or what is-the way their money is being handled. Another point that didn't come up and I think is one that should be mentioned is it takes about $14 million, as I understand, to obtain the federal matching money. So our committee didn't feel that we were jeopardizing our federal matching funds by any action that we took in writing this, what we thought to be a good compromise article, and I would urge your support of the majority report. Thank you very much.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Scanlin's motion to amend Section 6 by deleting it and substituting Section 1(b).

Mr. Scanlin, do you want to close?

DELEGATE SCANLIN: Thank you, Mr. Chairman. Several years ago, in another political campaign, it was my responsibility to see why it was that the city of Billings was filled with chuckholes and the people of Ward 5 were putting $1 million a year in taxes into highway diversion funds and not 1 cent at that time was returning to the city of Billings. Seventy-five percent of the driving, the consumption of the gasoline on which those taxes were paid, were used in that area; and inquiring from the Bureau of Public Roads, Senator Metcalf, and the Highway Department of the State of Montana, I received at least 10 pounds of material and no satisfaction. Since that time there has been a change of heart and, Mr. Chairman, I wish to withdraw my amendment.

CHAIRMAN GRAYBILL: Mr. Scanlin, you've withdrawn your amendment.

Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow delegates. I think that Mr. Scanlin made his motion for a very good reason, for debate, and I would like to renew the motion and ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, Mr. Foster renews Mr. Scanlin's motion and asks for a roll call vote. So many as shall be-First of all, I should say that the sense of the amendment is to put Section 1(b) from the existing Constitution, the antidiversion amendment, into the new Constitution in place of Section 6 as proposed by the committee. So many as shall be in favor of that motion, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the ballot and take the ballot, please.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Nay
Ames ..... Excused
Aronow ..... Aye
Artz ..... Nay
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay

Campbell ..... Nay
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf Nay
Lore110 ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder Nay
Rollins. .. .. Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz Nay
Siderius.. .. .. Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan Nay
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion Nay
Wagner Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 17 delegates voting Aye, 72 voting No.

CHAIRMAN GRAYBILL: 72 delegates having voted No and 17 having voted Aye, that amendment is defeated. The issue, then, is on Section 6 as shown on page 12 of the Revenue and Finance Proposal. The committee has moved-the majority has moved Section 6. Is there further debate?

Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Drum yield to a question?

DELEGATE DRUM: I yield, Mr. Aasheim.

DELEGATE AASHEIM: I don't know why I picked on you—

DELEGATE DRUM: Please don't, then.

DELEGATE AASHEIM: I'm just wanting to ask a question here. You have said that moneys may be used for highway safety, driver education, tourist promotion, and for administrative and collection costs as authorized by the Legislative Assembly. May I ask why you think the highway money should be used for driver education?

DELEGATE DRUM: I think, Mr. Aasheim, that we heard sufficient testimony that felt that the origination of the funds coming from this source should be directed to probably the safety-future safety on the highways. And I think the safety, including the patrol situation, as well as the safety of the people who learn how to drive at a young age and become better drivers, was probably considered at the same time. I think it came as a result of testimony, and I don't remember that it was really debated or discussed in detail. Perhaps other members of the committee have different recollection than I.

DELEGATE AASHEIM: Thank you, Mr. Drum. I'm not an attorney and I'm not going to put you on the spot, but I'm going to put myself on the spot. In 1965 I was the author of House Bills 91 and 92, which introduced the driver education program in the State of Montana, and I have been very conscious, I have been very concerned about driver education ever since that time. It's a very nice-sounding, it's a very altruistic-sounding proposition. Driver education is good; there's no doubt about it. And I fought very diligently and very hard to introduce that-those two bills, and we got them through. And the idea was, at that time, that we were to help with driver education but that this was sort of a self-help program, that the individuals who wanted it were to go out and help pay for it, because it was going to cost a lot of money to do it properly. And since that time I have been concerned with safety on the highways, and I have found that the greatest promotion towards safety on the highways is good highways. The better your highways, the fewer the accidents. You just look at the interstate system and I think you'll find the fatality rate is something like three and a half, depending on where it is; whereas on other highways in Montana, probably five to seven, because it happens on the poor roads. Now, I haven't-I have read a lot about driver's education and I can find you where driver's educationis detrimental. Now, I don't believe it, because I believe in education; but I can foresee a body like this, when they get appeals for money for driver's education, they'll say, "Well, there's a lot of money here; we'll just take it out. It sounds good. We'll send it back out in the country, because it's good political philosophy. It'll get me votes." And in the meantime, we're taking money out of a fund to build better highways, and that's what Montana needs. And I believe that if we want driver's education to mean something, let's let them pay for it themselves with the assistance of the local schools. Why make a plum out of this highway fund? Let's use it for building roads and maintenance of roads. So, Mr. Chairman-and again I'm going to be very unpopular-I move to strike, on line 11, page 12, "driver's education". Not with the idea that I'm against driver's education, because right now I can ask any one of you and you can't answer me, "What good is it doing?" What good is it doing? All we can say subjectively: we think it's good. I went down to the Highway Patrol and said, "What proof do we have that this is doing any good?" Well, they can't answer me, and I knew they couldn't. The records are still about the same as they were in 1965, about the same number of fatalities. This is a nebulous thing; you can't pinpoint it. But I believe that-let this thing stay back home. Let the people dig up their own shekels and pay for this program. Let's not pick in the highway funds, because I believe highway funds should be made for building highways.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has amended line 11 of the Section 6 of the majority proposal by moving to delete the words "driver education". Is there discussion?

Mr. Berg.

DELEGATE BERG: Will Mr. Aasheim yield to a question?

DELEGATE AASHEIM: Yes, Mr. Berg.

DELEGATE BERG: When you promoted driver's education, did you do it as a matter of highway safety?

DELEGATE AASHEIM: I certainly did.

DELEGATE BERG: And now, if you delete driver's education and leave in highway safety, have you really changed the situation?

DELEGATE AASHEIM: Well, highway safety in general is more-is general; driver's education is specific. And I would hate to take this general statement out, although it might be taken out.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates, I rise in opposition to Mr. Aasheim's proposal. I think, in keeping with what's gone on around here, I should tell you that I teach driver's education. (Laughter) I'd like to also tell you I had nothing to do with putting it in there but I'm glad it's there. I would like the assem-

bly to know, without trying to get really involved, that there are approximately 33 national studies that have been made on the effectiveness of driver's education; and out of the 33 national studies, 30 of them indicate that safety education and driver's training are, in fact, beneficial and that they probably save the people in the United States billions of dollars a year in reduced insurance rates for teenage drivers, in reduced loss of property and of life. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise in opposition to the amendment. I'd just like to underline Mr. Furlong's reference to reduced insurance rates. This seems to me to be the best evidence on Mr. Aasheim's question. Insurance companies are pretty hardheaded in setting their rates and they wouldn't give lower rates unless there was some benefit through driver's education.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I submit that the shekels for the driver's education are coming from the people that are using it at this point. That's the part of that $750,000. We're using the cars and the highways and the gasoline.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I rise in resistance to striking driver's education from this program. I would like to answer Mr. Aasheim's statement as to what proof we have, whether any of us know that it has done any good. I reared four children, and when they took their driver's education, I paid, I believe, twenty or twenty-five dollars for it. My children benefited from it, but the children who did not have the twenty or twenty-five dollars from a parent who could afford to pay for it needed that driver education as much or more than my children. And those kids are getting out in cars and they're going up and down the streets and highways ofthisnation, and I think that the benefit my children derived is equally available under this program to those who are going to drive whether we educate them or not, and I would hope that the day would come that no child will be able to secure his driver's license until he has completed a driver's education course. When we make that mandatory, as we can do with this-in this program, amply funded, I think we will make a great step forward for highway safety. I'm glad that Mr. Aasheim got this measure through in the first instance.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I rise in opposition to the Aasheim amendment, and I'm not worried about a bunch of driver's education people coming in here and influencing the Legislature. I have some figures ahead of me here. There are 404,674 people living in thevarious cities and towns in Montana, and they got a million eight hundred thousand out of this fund last year; and they're going to be back, asking for more or at least that much. There is also a rural population of two hundred eighty-nine thousand, six hundred and eighty-one-671 people and they got a million two hundred thousand dollars out of this fund last year, and they'll be able to be up there yelling for their share, too; and I think we can get proper balances in these people asking for these funds. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aasheim's amendment, or may he close? Mr. Aasheim, you may—

Oh, Mrs. Bates.

DELEGATE BATES: Yes, Mr. Chairman. Just for a point of information, to my knowledge and understanding of the highway structure and the Highway Commission, that now the appropriations that come from all these funds are not under the jurisdiction of the Legislature. Then, in looking at this section, I see that the word, in line 9—that says, after the deduction of the funds that are listed here for the administration and the appropriations. Only after this is done, then, will the Legislature, by a three-fifths vote of its members, be able to appropriate. Now, I don't know-maybe I'm not reading this correctly, but I don't think that last three--or that last sentence has any place, because I doubt that there'll ever be any money left over; and maybe I'm interpreting this wrong. Would someone clarify ths entire section for me, please? Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong, do you want to try?

DELEGATE FURLONG: Mr. Chairman, I'm not sure I can answer it. I have here a minor-or small statement for the period of July lst, 1970, through June 30, 1971, that shows an ending balance as of 6/30/71 of nine and a quarter million

dollars. Now, that's for one year, rather than the biennium.

DELEGATE BATES: (Inaudible)

CHAIRMAN GRAYBILL: Just **a** minute, Mrs. Bates. If you want to ask another question, you stand up and get the Chair's permission.

DELEGATE BATES: Mr. Chairman, could I ask another question?

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Furlong, is this after the appropriations have been made out of the highway funds? This is the way I read it.

DELEGATE FURLONG: Yes, according to this record it is, under the existing Article XII, 1(b).

DELEGATE BATES: Oh, then there would be some. Okay, thank you. That's what I—

CHAIRMAN GRAYBILL: Mr. Aasheim, you may close.

DELEGATE AASHEIM: Will Mr. Furlong yield to a question?

CHAIRMAN GRAYBILL: Mr. Furlong, will you yield?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Mr. Furlong, there is no question in my mind about your ability as an instructor, whether it's in the high school or as a driver. Were any students in your particular area denied driver's education?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Will Mr. Furlong yield to any further questions?

CHAIRMAN GRAYBILL: Mr. Furlong, do you want to yield again?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Of the percent who did not take driver's education, how many—what percent of those, as compared to those who did have driver's education-how many were involved in accidents?

DELEGATE FURLONG: Mr. Aasheim, I cannot answer that. I have no knowledge.

DELEGATE AASHEIM: Mr. Chairman, will he yield to another question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: If you can't answer that question, how do you know the driver's education program is what you say it is?

DELEGATE FURLONG: I will repeat again, Mr. Aasheim, that out of some 33 national figures--national studies, 30 of them have indicated that driver's training is extremely beneficial. I'd rather quit using the word "driver's training", because I think it should include traffic safety education. It's not just piloting the car around; it includes safety education as well.

DELEGATE AASHEIM: Thank you. Delegates, I'm not arguing against driver's education. Naturally not. But what I'm trying to tell you people-that this should be a local project-for one reason only; that in the process of doing it locally and impending [sic] upon financing it locally, you are becoming aware of the problem of driver's education. You are not only educating youth, you are educating the adults. And further, when you have a fund like this, and this is millions of dollars, don't you realize the weakness of a Legislature to say, "Yes, let's just take it and hand it out-let's just take it and hand it out"? If we're not getting driver's education, we should get it. Now, I sincerely believe that, but I don't believe we should dip into this fund to do it. I think we should leave that money for building highways, for building good highways, and when you have good highways, you'll have less accidents.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I wanted to make one statement to Mr. Aasheim's closing statement. I really do not wish to finally get in an argument. It is not locally funded now. The driver's education program in the State of Montana is currently being paid for [by] the poor guy on the highway that gets caught with a moving violation. A percentage of that money goes into a state fund and is reimbursed to the towns and cities and schools that offer driver's education. We, in fact, have a state fund right now, and it comes from a percentage of the moving traffic violations. Practically every school in the state is charging, as Mr. Habedank said, from twenty to

twenty-five dollars per student out of-they're not out of local funds, they're out of the individual parent's pocket. This could conceivably do just exactly what Mr. Habedank wanted-provide, practically, driver's education for all Montana high school students.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's amendment to Section 6 as proposed by the committee, on line 11 on page 12. He wants to take out the words "driver's education".

DELEGATE CAMPBELL: I would like to ask for a roll call vote.

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote. So many as are in favor of taking out "driver's education", vote Aye; and so many as are opposed, vote Nay. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: We'll close the ballot.

Aasheim Aye
Anderson, J. Aye
Anderson, 0. Nay
Arbanas Nay
Arness Excused
Aronow Absent
Artz Nay
Ask Nay
Babcock Absent
Barnard Absent
Bates Aye
Belcher Absent
Berg Nay
Berthelson Nay
Blaylock Nay
Blend Nay
Bowman., Nay
Brazier Aye
Brown Nay
Bugbee Absent
Burkhardt Nay
Cain,. Nay
Campbell Nay
Cate Nay
Champoux Nay
Choate.. Nay
Conover **Nay**
Cross **Nay**
Dahood Absent
Davis Nay
Delaney Nay
Driscoll Nay
Drum Nay
Eck Nay
Erdmann Nay
Eskildsen Absent
Etchart Nay
Felt Absent
Foster Nay
Furlong Absent
Garlington Nay
Gysler Nay
Habedank Nay
Hanson, R.S Nay
Hanson, R. Nay
Harbaugh Nay
Harlow Nay
Harper Nay
Harrington Nay
Heliker Nay
Holland Excused
Jacobsen Nay
James Nay
Johnson Nay
Joyce Nay
Kamhoot Aye
Kelleher Nay
Leuthold Nay
Loendorf Nay
Lorello Nay
Mahoney Aye
Mansfield Aye
Martin Nay
McCarvel Nay
McDonough Nay
McKeon Nay
McNeil Nay
Melvin Nay
Monroe Nay
Murray.. Absent
Noble Nay
Nutting Nay
Payne Excused
Pemberton Nay
Rebal Nay
Reichert Nay
Robinson Nay
Roeder Nay
Rollins. Nay
Romney Nay
Rygg Nay

Scanlin Nay
Schiltz ..... Nay
Sid enus ..... Nay
Simon Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan Nay
Swanberg ..... Nay
Toole Nay
Van Buskirk Nay
Vermillion Nay
Wagner .. .. Nay
Ward ..... Nay
Warden .. Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 8 delegates voting Aye, 79 voting No.

CHAIRMAN GRAYBILL: 79 delegates having-voting No and only 8 Aye, the amendment fails. We're back on Section 6 as proposed by the committee, by the majority report, on page 12.

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I rise in support of the majority proposal. It seems to me we're missing the issue here. I'm amazed that we are talking about how much money should be appropriated in the future for driver's education, how much money should be appropriated for highway construction, how much money we should appropriate for the other functions the Highway Department is expected to accomplish. It seems to me the real issue is how far we should deviate from a basic principle of government. Now, when we reestablish the Executive, Judicial and Legislative branches of government, previously here, I assumed that along with that we established that these various branches should continue to operate as a check on each other. And it seems to me the sole issue here in whether we adopt the majority proposal or go back to the present Constitution is whether we, the people, through our Legislature, should periodically check and determine if state moneys are being spent in a manner consistent with our best interests. I don't think anybody doubts the benefits derived from roads or the need for them; and I believe future Legislatures, the people who are in these future Legislatures, will be able to judge these benefits and determine these needs as well as we can now. I really feel that if we're going to appropriate money here for highways, we have to say we can better judge this now, the amount of moneys that will be needed for roadbuilding purposes in, say, 1984; and if we feel that way, it seems to me, then we should go all the way. We should appropriate the money needed for law enforcement, the money needed for education, and the money needed for all of our other needs. This is a determination that we'll have to make now for a long period in the future. Do we appropriate moneys by a constitution? I think not, and I support the majority. I want my Legislature to take a look at all appropriations in the future and determine if the money is being well spent, and I have confidence they'll continue to appropriate to the Highway Department all the moneys that are needed for roads.

CHAIRMAN GRAYBILL: Now, Mr. Barnard and Mr. Wilson, you both have indicated you wanted to amend Section 6, and I'm waiting for one of you to rise.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I don't know where-there's a new amendment placed on our desks. I don't know where it came from. It looks pretty good to me. Are we going to discuss it? Do you have a copy of it?

CHAIRMAN GRAYBILL: I have a copy of it. I wrote it and Mr. Toole put it out and we can talk about it later, but I think we'd better decide on Section 6 first. I don't think Mr. Toole wants to move it yet; and neither do I, yet.

DELEGATE WILSON: Well, Mr. President, then I remove--renew my motion to strike the last sentence in Section 6 of the majority report.

CHAIRMAN GRAYBILL: Very well. Mr. Wilson makes a motion to strike the last sentence and, Mr. Barnard, I think this is essentially the same thing as you were proposing, so I take it that takes care of your proposal. And the effect of this is to remove the language which the subcommittee—or the committee put into Section 6, calling for a three-fifths vote of the members of the Legislative Assembly. So the motion now is to delete lines 13 through 16—that is, the sentence on lines 13 through 16 on page 12. Has the effect of deleting the legislative three-fifths check on the highway

earmarking paragraph. Is there discussion?

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I won't make a long speech in response to this, as I covered it before; but obviously, if you do this, you cut the heart out of the whole thing because that's the sentence which returns the control of this vast sum of money to the people. And I would strenuously resist any attempt to eliminate from the committee report the element of legislative control.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to resist the proposed deletion. One of the things in campaigning that I said was, if there was some way to make the Highway Department responsive to the people without taking away the earmarking of the funds to a certain extent, this is what I wanted to do. And forthisreason, I support the majority position on this, because I feel that it answers the problem that I had with the earmarking of the funds to the Highway Department. I feel in this way the Highway Department will get all of the money as long as they are responsive and as long as they are doing a good job, and so I support the majority proposal.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I'd like to say that I'm one of the delegates that comes from the sagebrush country down there, and we have a great concern for secondary roads, feeder roads, farm-to-market roads, and county roads-that sort of thing. And I'd like to direct a question to Mr. Drum, if I might.

CHAIRMAN GRAYBILL: Mr. who?

DELEGATE CHOATE: Well, Mr. Drum.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE CHOATE: Dave, do you envision in this report that there will be any change in the position of the Highway Department as to use of funds for secondary or something other than perhaps primary and interstate roads? We-in part of our district, over in Carter County, they're the only county in the United States that does not have a paved road going through their county. There is a road that's paved from Baker down to Ekalaka, and that ends there. Now, these people have a real concern. They have been trying for 20 years to get it paved on down to Alzada. Do you think that any help in this area can be from the wording in your proposition?

DELEGATE DRUM: Yes. (Laughter)

DELEGATE CHOATE: Thank you. An. other question, please. How do you propose that this might be accomplished?

DELEGATE DRUM: Mr. Chairman. Mr. Choate, I-this is one of the considerations that the committee had, is that the Highway Department would be more responsive to the needs of county and city roads for maintenance and for perhaps construction, for resurfacing. As the people's representatives come over here every two years, if they are looking at a bad road situation they hear a lot about it from the voters, they're going to reflect that attitude to the Highway Department. And now we have made it constitutional for them to channel more money back in that direction, and this is one of the reasons that we feel very confident that not only is this a good compromise of all parties, it's going to result in a lot better roads in counties and cities in Montana.

CHAIRMAN GRAYBILL: Mr. Harper, before you speak, the Chair would like to announce that, after consultation with the Committee Chairman, we are going to attempt to finish Section 6 right now, and then we don't intend to work tonight, because we think if we can finish Section 6 we'll be all right tomorrow. That just gives you all an idea what we're going to be doing in the next hour.

Mr. Harper.

DELEGATE HARPER: Very good. I'd like to press on then. Who did you say put this unsigned Section 6 on our desks? (Laughter)

CHAIRMAN GRAYBILL: I said that Mr. Toole, I believe, had it put out and I wrote it; and we have an idea to use it but not yet. Is that right, Mr. Toole?

DELEGATE TOOLE: That is correct.

DELEGATE HARPER: Am I talking about-you put on the desks the thing you just talked against, is that right?

CHAIRMAN GRAYBILL: Well, I may—maybe there's too many things put on the desks

that I don't have copies of.

Mr. Toole.

DELEGATE TOOLE: Yes. It was my intention, and I still don't know what-how to go about it to make it available to the people of this state to have an alternative on the ballot. This is one of the alternatives that we have discussed. I thought that it should be distributed so that you could be studying it, because it may be that after the-at the conclusion of the debate-or after we have heard enough debate, that I will make a proposal that this wording be placed on the ballot as an alternative. Now, the word "Section 6" may confuse you there; that's just the way it happened to be written up.

CHAIRMAN GRAYBILL: Mr. Harper, it's the one with the Roman numeral Section 6.

DELEGATE TOOLE: Yes, the Roman numeral Section 6. Just ignore that. Just think of the-just ignore the Roman numeral Section 6.

DELEGATE HARPER: Well, what I was going to get at-if I'm-I just want to be talking against the thing that I think I'm talking against, that's all. It seems to me that this is a rewriting of Section l(b) of the present article.

CHAIRMAN GRAYBILL: Well, Mr. Harper, let's stay on the subject; the subject is Mr. Wilson's motion to strike the last section of Section 6 as it appears on page 12. Now, if you'll stick with that and not worry about the things that are just put on your desk to read in your spare time—

DELEGATE HARPER: I'm sorry. That's what I was asking, if this is what's before us; so the answer is, "No, it's not"?

CHAIRMAN GRAYBILL: The answer is, "NO".

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of Mr. Wilson's motion and in opposition to the majority report. I would just like to point out that several people from the following associations have met and if the majority proposal goes in the way it is, they have all-they have no alternative but to work against the Constitution: The Wood Products Association; the Montana Motor Transport Association, which has 400 members; the Montana Automobile Dealers, which has 25,000 members; Montana Auto Dealers, 400; Montana Highway Users Federation; AFL-CIO; the Montana Farmers Union; the Montana Taxpayers Association; the Montana Hardware and Implement Dealers, 400 people; and the Montana Petroleum Association. I would like to just urge you to keep in mind when you pass this.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I wasn't going to say anything, but when Mrs. Babcock and Mr. Wilson gang up, I feel that now I'd better, since they've stomped on me in this Convention. I don't-I would-1 can't add anything to what Mr. Drum and Mr. Toole and others and Mr. Loendorf have said very well on this thing. I would like to add this proposition. I think something like this would be very popular. I'm one of the idealists, like Mrs. Bowman, who opposes earmarking on principle. I've said things against earmarking and written things against earmarking for many years. I'm willing to go with the majority proposal, however, and I'd like to add this. I think doing what we're doing here would be very popular, because one of the most open issues in District 11 was the question of earmarking revenues, particularly Section l(b), and most of us-1 can't speak for Fred and Mason and everybody, but I know in my own case, I was completely open. I was opposed to earmarking revenues and I was elected-a Democrat in a Republican community, a college professor in a community where there's a serious downtown problem, and I was completely open. And I just wonder if we really need an alternative, John.

CHAIRMAN GRAYBILL: All right, now the issue is Mr. Wilson's motion to strike the last sentence from Section 6 as it appears on page 12, striking out "the three-fifths vote of the Legislative Assembly".

Mr. Barnard.

DELEGATE BARNARD: Mr. President, I would like to withdraw my proposed amendment and speak in favor of Delegate Wilson's proposal, as they are almost-1 think they are identical. I'd just like to say, if you want to cut the highway program in half in the next four years, why, just leave this section in.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Thank you, Mr. President. I've been sitting back here waiting for some of these more loquacious people to say what I

was going to say, but-and they have said most of it. However, I'm rising in support of Mr. Wilson's motion. I believe that we have such a vast amount of highway system yet to build and improve in Montana; well, it's unbelievable how long it's going to take, how many years before we will have it completed so we have safe roads that Mr. Furlong was talking about-or Mr. Aasheim, excuse me; I'm sorry. And I believe that therein lies our largest safety, these dual highways. There's no question in my mind they save an awful lot of lives, and we're a long ways from it. And if we remove, or get control of these funds so we can divert them into something else-there's a choice apple over there every once in awhile-we're a little low on funds in the Legislature-I'm afraid they'll reach over there quite easily and reduce the highway funds. Now, if they do this, it might get to be a habit and it will be crippling, and therefore we'll have a lot of equipment lying idle, perhaps, and people out of work that were expecting to work. I'm very much in favor of Mr. Wilson's motion.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, could I ask Mr. Furlong a question, please?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: You can ask it, yes.

DELEGATE MAHONEY: Mr. Furlong, could you give me the net loss in revenue that this will take out of the present program-not anything about costs or anything, but the net loss that you're taking out. I understand you're taking out the use-the new car thing. Is that coming right-is that right, that's coming out?

DELEGATE FURLONG: That's right.

DELEGATE MAHONEY: Would you have any idea how much that is?

DELEGATE FURLONG: Yes. For last year, $1,192,043.

DELEGATE MAHONEY: Okay, thank you. Mr. President, might I speak now?
Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: One million, a hundred and ninety-two thousand dollars. That is approximately 10 million-it's very close to 11 million-that's going out for interstate system at 1 to 10. This is 1 to 10. This is what you're taking out in interstate system. Now how much is-1 don't know how much maintenance is. You're already diverting. This body right now is starting in to take away from the highway funds of the State of Montana from the Highway Department. This you're doing, because this is the start of taking away highway funds out of the Highway Department. It's right in this particular start of the amendment. Now, I hear this Highway Department being criticized, and nobody ever criticized them worse than I did. Now, I'm going to get it straight on this floor; I voted for one of the few in the Senate when this highway diversion amendment was placed before the voters. I voted No, but I'm coming to the point that I'm starting to wonder what will happen if we don't tie gasoline and some of this other stuff down. I have watched from no cigarette tax at all when I first came to the Legislature; finally it was 2 cents and look at it now. We're financing buildings, we're financing everything that we have got-what?-soldiers' bonus and that. We're using all this. Now, are we going to do this with gasoline? Are we now going to find this one easy thing sitting out here that people have to have and say we will now take so much to the General Fund, so much for schools, so much for welfare? This becomes the problem that's facing me in this issue. As late as a week before the general election, I was in the Highway Department, and I flatfootedly at that time came out and says, "I'm opposed-I'm for leaving it the way-not the way it is, but the old way." I have, though, changed, and I have watched the defeat of the sales tax. Here now is a new tax we can grab and take on motor fuels. This is why that I watch; right here in this own body, we are now taking away over a million dollars. It's coming out of that fund because it's going to be lost that we have now in there if this passes. And I hope that this Convention will realize that-the pressure that will be on the Legislature. Now, in answer over here--and I got a bang out of Mr. Drum's statement to the distinguished Senator-gentleman from Custer County. If they're all going to do what you wanted down there, we will have nothing in the state. The interstate system will stop dead. If we're going to build that road-and I'm for it; I know the one you're talking about from Carter County over there, down south to get you-the below. You have the-I'm going to say this, that the Highway Department can be controlled by the Legislature the first day the Legislature decides to do it,

There's nothing that says in here-they're now under a line appropriation. They have put them under--and I fought for years and couldn't get it, but they now have got it. Secondly, I think that with the Governor, maybe, in the highway in there, we could do a lot of things. They're not the big things. This is being done by the permission of the Legislature, just because they got the funds they're being appropriated. I'll regard, I imagine, that Mr. Chittim did say that you couldn't take out. I still think you can. I think the Legislature made a very wise move when they did take out and says the Highway Patrol is part of the highway system and policing it is a necessary job. I see nothing wrong with that. Now, I think that-1 question, if we can't pass the Wilson amendment, how would you suggest to go to three-fourths of the Senate, and-or three-fourths of the body-or two-thirds? You have dropped this down to this unicameral legislature-it will take 60. If it is bicameral at the 150, it will take considerably more. But the present time, a two-thirds vote. You come down to three-fifths; you're making it that much easier. I hope that this body-already today we're starting to divert funds away from highways going into someplace else, and I am sure every one of you sitting in here wants roads for your county or your city. Not a one of you wants it, and if you think you can come in to the Legislature and get it easier that way than you can now when we've got it tied down, watch out, because you're going to be facing, as Mr. Toole says, mass transit. We're going to find a number of other things that we're going to be done, and the highways are going to suffer. I just want the public to know it.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, will Mrs. Babcock yield to a question, please?

CHAIRMAN GRAYBILL: Mrs. Babcock?

DELEGATE BABCOCK: I quake in my shoes. Just remember, I'm just an old housewife.

DELEGATE BLEND: Well, woman to woman (Laughter) Betty, the organizations that you mentioned as being opposed, are they specifically in opposition to the three-fifths amendment?

DELEGATE BABCOCK: They would prefer to have the legislation remain the way it is in the present Constitution.

DELEGATE BLEND: Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: I, too, recently have received letters from the organizations which Mrs. Babcock has mentioned. The content of that letter revealed to me-or those letters, revealed to me that they were in opposition to having the anti-diversionary clause removed in its entirety. I feel rather sure that if they knew the content of this. that they would not be so 100 percent in opposition. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, would Mr. Drum yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Drum?

DELEGATE DRUM: Mr. Johnson.

DELEGATE JOHNSON: Dave, have you folks considered in your deliberations that, with the Legislature being able to reach over in the Highway Department with some control and perhaps divert some of these funds, that if there weren't enough there to maybe carry on what the Highway Department was doing at the moment, they might raise the tax on gasoline?

DELEGATE DRUM: Torrey, I-Mr. Johnson-Mr. Chairman. Mr. Johnson, the problem which may arise as a result of the circumstances you describe may be the will of the people. It certainly would be the will of the Legislature if they wanted to react in that way. I couldn't say it would not happen, but as a committee we were confident that the Highway Department would be responsive to the Legislature and the Legislature was going to be responsive to the people in building as many good roads and highways as we can. And it-we didn't feel it was a threat at all that the roads were going to diminish in any way. We thought we were improving the chance of having better roads and highways in the State of Montana, and we are not legislating the money out of the Highway Department. We feel that is up to the Legislature, to take that action at the appropriate time if it ever is needed.

DELEGATE JOHNSON: Thank you. Mr. President.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: I'd just like to point out to the people here-won't it be a dandy

merry-go-round? The Legislature needs some money, just raise the sales tax on gasoline, divert it into the highway fund, reach in there and pick it out. Gee, a dandy way to raise taxes.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, it is very evident to everybody that all of these funds come from the uses of roads and highways. And I have a little more confidence in the committee than I do the next session of the Legislature in the belief that they might divert it out to some other source; but the committee did broaden, according to Mr. Drum, the ability of the funds to be used for secondary roads and that sort of thing-some of the needs that I see more in eastern Montana. So, therefore, I sure rise in support of Mr. Wilson's motion to remove that clause that permits the Legislature to make any further diversion. I don't think it needs to be diverted any further than for use on roads and streets, that sort of thing. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Thank you, Mr. Chairman. I think one of the issues here is not whether the Legislature-how they're going to appropriate this money, but what kind of an organization do we have in the Highway Department and exactly how insensitive are they to the needs of the people? After all, this is not their money, it is our money-both the federal part of it and the state part of it. It is our money, and people don't seem to look at it that way. I'd like to cite one instance that I've followed for a number of years. Now, I'm going to talk about Missoula, because I come [from] there. I assure you that I think that this is wrong in principle. It isn't because it's my town, but I do know about it because I've followed it and worried over it for a long time. Now, yesterday, I found out from Mr. Simpkin of the budget analysis from the Highway Department, and I quote: "Each fiscal year highway divisions submit budgets. The board allocates funds on its subjective judgment as to need and cost effectiveness." Now, I submit that subjective judgment for the use of the people's money is a political dingbat; that is, it is not responsible or responsive to the governance of our money, both state and federal. The Legislature must be able, I feel, to insist on efficiency and to protect the people's interests with fairness and responsiveness to their needs. Now, about this situation. We have in Missoula-the freeway goes through, but on the north-south route, which is the Mexican-Alaskan highway-of this, I'm fairly sure-when it is finished-there is an interchange to connect up. We now have people living on the south side. They can't get to work on the north side over the river because there are not enough bridges. This would alleviate this situation considerably. We have people tied up in traffic every morning and every evening for ½ hour. This has been going on for years. Also, all the traffic that comes in from, say, Spokane or Helena, Billings, Butte, has to go right through town. There is no way to circle this traffic around. And also, I might add, we are the fastest-Missoula is the fastest growing community in the state. Now, I've gone to meetings after meetings. The Highway Department has these meetings; they have to do it by federal mandate. People stand up and are desperate about trying to finish this road because of our situation and all that happens, they listen nicely and then they send you back a very expensive booklet about what you've said and what everybody else has said, and absolutely nothing is done. I might add I've gone and talked to Mr. Chittim, and it didn't get anywhere. I talked to Mr. Olson; and it was 11 o'clock at night and all he kept saying was, "Well, I'm interested in rural roads." And I said, "But I'm talking about a problem that is here in Western Montana. This is your area." And he just kept saying over and over again, "Well, I'm just interested in rural roads;" and I said, "Well, I'm interested in rural roads, too, but here you are-you've got a problem." No answer. I've also talked to the people in Mansfield's office to such an extent that the other day, Peggy DeMichele even sent me a whole-an article about how things are coming on with the highway trust fund. I've even talked to Teddy Kennedy when he came to Missoula and said, "What are we going to do about the federal highway trust fund? It's just great to have this money, but I happen to live in a town where absolutely nothing has been done, and we can't do anything. We go to everybody. We get no answer whatsoever." And then, I'd like to finish up with this. Our delegation came to the Legislature last time-and this is really the point of what I'm trying to say. They found out-it had just come out, what is called the federal highway users tax; 90 percent of the construction cost of any highway would have been covered under these three conditions, all of which Missoula met, by the way: a community under 50,000 where economic development was needed and it had to be tied into recreational development. And we had that in Snow Bowl and we haveitin the California and Texas traffic up to Glacier National Park. Our

delegation went to the Highway Department at least four times to try and talk about this. Now, this is the kind of thing that I don't like as a citizen, is that our delegation could not get any responsiveness out of the Highway Department. Mr. Chittim agreed that Missoula would meet these federal standards. Now, this was a new federal bill, but there had been a prior agreement with the Big Sky Country--with the Big Sky development. Now, this was a road that was due to be built, going where no people were yet. We have been sitting on this problem for about 10 years now, asking and asking and asking for some help. I might also say that one of the things I think that is a real problem-and you will all laugh, but I think this is true--excuse me, Betty-but Missoula, for the past 30 years, has never voted for a Governor. Some people think they're stupid, some people think they're smart; but they haven't. Consequently, they have never had a Highway Commissioner. So we're stuck. I don't think it's right for the fastest-growing community to have this kind of problems when we're building roads going off nowhere. There is no way for that-for us to get any action whatsoever out of the Highway Department. We're stuck. I don't like to be stuck, and I wouldn't like it if I lived in Ekalaka or Glendive or anywhere. I think it's just unfair. And then, when they went to Mr. Chittim—when the Legislators went to Mr. Chittim—and I quote from one of our legislators: "We got the impression that Chittim's hands were tied. By whom, we didn't know." And I don't think that's democratic, I don't think it's fair, and I submit it is our money and there's something wrong with the whole system. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. Everyone knows that the gas tax raises the money, that it's the cow that gives the milk. We all know that, over the years, we've had to go to the people to get this gas tax enacted. Some years ago, the people became incensed because the bureaucracy without ears could not hear their pleading, so they thought, "Well, we'll take care of this by not using--not permitting the use of this gas tax money for anything excepting roads," and that was father to the antidiversionary amendment, and the people voted that. I rarely feel like going against the mandate of the people when they express themselves in a vote in a referendum and do it emphatically. I hestitate to go against their will, and I feel that way about this matter. But we are really diverting when we use gas tax money for driver's education, and I think that's good. We're diverting when we use the money for tourist promotion, and I think that's good. We're diverting when we use it to pay the salaries of the Highway Patrol, and I think that's good. I was loathe to vote for this Section 6 because of the final paragraph, which is the subject of the amendment which we're now discussing. But, like Mrs. Bugbee, if we're going to be legislating in the Constitution as we are, I have a Little Orphan Annie over in western Montana-the Skalkaho road. It was built in 1923 and 1924. It's the only highway in-primary highway in Montana that has no-is not given any consideration whatsoever by the Highway Department. Legislators from Bitterroot, Missoula, Granite County, Silver Bow and Deer Lodge County have gone to-come over here to Helena to meet with the Highway Department. They are going to meet with them again on the 7th of this month. We get nowhere. The bureaucracy has no ears. The people plead, and they get no hearing. So in spite of my feeling that the people of the state voted this antidiversionary amendment, in spite of the fact that I don't like this final sentence which is under discussion at this time, I think that for once, Romney must be practical. And I think that I will vote for the possibility of getting the three-fifths into action in the next Legislature.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I certainly appreciate all the delegates' comments today, because I was completely at a loss on this and I'm afraid I would have made a grievous error and would have pushed the button right along with the rest of them. But it seems to me that Mrs. Bugbee and others have really helped me decide how to vote, because it looks like it's been very clearly stated: we're going to punish the people for not building the roads the way we want them built, so we're going to take the money away from them. And we haven't got our road yet from Dillon to Helena and all the way through Beaverhead County. And it's quite obvious now that if they don't take the road that you want built that's got the biggest number of votes, we'll vote them out. So it looks like the only way we'll get our road is to take the three-fifths out. That's the psychology and that's the good system of good constitutional government you people have been studying. It really amazes me that we are now going to tell the Legislature, "If I don't get my road across the way in Missoula, we're going to vote out all the money and we're going to put it in education or welfare." I'm going

to support the amendment to take out the two-fifths, and if it comes up again, I'll put back in the original one.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: There is only one-there is only room for one government in Montana.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, like many others here in this body, I've listened with considerable interest on this debate, and I must confess that I started out by being in favor of Section 6. I have now changed my mind in line of what I've heard here. I would like to point out that Section l(b) in the Constitution and Section 6 as proposed are different. They are different in that Section 6, as proposed, expands the uses for which this money can be spent, and they include county, city and town obligations on streets, roads and bridges. Now, here is a vast area for improvement. Not too many years ago, the cities were very hard-pressed for funds to finance their maintenance and repair their city streets, and the State Legislature, recognizing that need, passed a tax—I believe it was on liquor. Some of you may know about that. I think that's what it was for. Now, I submit that if these funds can now come from the highway fund, here is a large sum of money now coming from the liquor tax which can be used for these other purposes which the Legislature might want to use. Secondly, the fact that they have expanded the uses for which this fund can be used, which seems to me would be a long, long time before this fund would ever reach the point where there would be a surplus. There's the city streets of Shelby, perhaps, that Mr. Aronow spoke about. They could be paved from the highway fund—probably not get a very high priority; admittedly, the county roads would come first. But it seems to me that we're looking so far into the future where there might be a surplus here as to make the thing unrealistic, especially in view of the fact that by putting in this two-fifths vote that the fund could be tapped makes it a very real possibility that the fund would be diverted long before this surplus ever arose. And, finally, I'd like to call to the attention of the body to the fact that the expansion that's already been made by the proponents of this measure have reduced the amount coming into the fund by, I believe, $7 million. So this, again, postpones further the possibility of there ever being a surplus in this fund. Now, as I understand the purpose of this three-fifths vote, it was just for that purpose and that pm-pose alone. It was to look forward to the day when there might be a surplus in the highway fund and then at that time it could be used for other purposes. And I submit for your consideration that this is a long, long time in the future if they're going to start using it for city streets, if they are going to start using it for all the small roads in the state that have not yet been serviced.

CHAIRMAN GRAYBILL: Now, ladies and gentlemen, the issue is on Mr. Wilson's motion to strike the last sentence out of subsection-out of Section 6. And we've had a lot of debate and you certainly may continue to talk about it, but the Chair will expect you increasingly to stay on the subject of whether or not to delete the last sentence, because I think we've had lots of discussion and we'll still have time to discuss the section again one way or the other, but let's try and decide that issue. Is there further discussion on that issue?

Mr. Simon.

DELEGATE SIMON: Mr. Chairman, I have been seated here in a very comfortable chair and I envy all of you, but I am going to rise out of that chair and support the deletion and support Mr. Wilson on the deletion. We have been 16 years with this enactment of the law, and I see that your Helena streets are in fine condition, but we would not like to have you divert much of this money before we get some in Billings, the largest city in the State of Montana. I went down your street the other day-right down this street down here on your four-lane highway and I thought I was back in Billings. There was waterrunning over the road about 6 or 8 inches deep, and they had a sign on the road, "water". It was a lake. (Laughter) I always enjoy going down to Betty Babcock's place. We have worse streets in Billings, but I don't know where. So I would like to support his motion, because I don't think we're in any position at this time, under any circumstances, after 16 years, to talk about diverting funds. I think 25 years from now we can talk about it, and the people will tell us when they want it done. To divert funds from this for any reason, today, of any kind seems to me that we are doing the thing that the people wanted us-didn't--won't want us to do because [of] what they enacted by referendum 16 years ago in 1956—I guess that's how long ago it is. It seems to me that when you take the attitude that you can divert funds before you have them by a three-fifths

majority-and anything I don't like on the highway is fifths, that's for sure; I'd rather make it a full quart because fifths on the highway do not belong in any constitution. I would heartily support the deletion of the last paragraph.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm sure that everyone in this group can think of a road or a city street that needs improvement, but I'm just wondering-and I would like to ask Mr. Drum to yield to a question, Mr. President.

CHAIRMAN GRAYBILL: Mr. Drum?

DELEGATE DRUM: Mrs. Bates.

DELEGATE BATES: What-Mr. Drum, what is being done in this article for other earmarked funds, and will they be used to the intent and purpose they were intended?

DELEGATE DRUM: The only other semblance of an earmark would be in the agricultural, which was Section 15, which has been-was duplicated exactly in the article we passed yesterday and so, as I understand it, it will not be in the finance article. But that's an earmarking of those who have cattle or wheat and who levy a tax upon themselves for the service to their own industry.

DELEGATE BATES: Okay. Thank you.

DELEGATE DRUM: Did I answer your question, Mrs. Bates?

DELEGATE BATES: Yes, thank you. Mr. President, I would also like to ask Mr. Mahoney to yield to a question.

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE BATES: Mr. Mahoney, you mentioned that the Legislature can now control the highway fund, and if this is so, then why is there any need for Section 6 in this article?

DELEGATE MAHONEY: The Legislature can control the fund. They have it and they're appropriating. They have a line appropriation being made to this department over there now. They can control it. Now, as highway 6-it would be awful if you didn't have l(b) or something. Now, this is it; but there's plenty of ample protection. The highway is appropriating these funds. No question about it.

DELEGATE BATES: Okay, thank you. Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I would like to have a substitute motion that we delete this entire section. I don't really see the need for it. Thank you.

CHAIRMAN GRAYBILL: We voted on that once, Mrs. Bates. No, I guess we didn't. We voted on deleting it and putting in l(b). You are going to make a substitute motion to delete Section 6 in its entirety?

DELEGATE BATES: Yes.

CHAIRMAN GRAYBILL: Mrs. Bates has made a motion to delete Section 6 in its entirety. Is there further discussion? Will those in the back who are not members of the delegation sit down or do something so I can tell who's standing up back there? Please sit down if you're not a delegate.

Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow delegates. I realize the hour is getting late and we're all getting tired, but there are a few points that I would like to get cleared up. Would Chairman Delegate Rygg answer two questions?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: All right.

DELEGATE FOSTER: Chairman Rygg, in your opening remarks concerning the need for this section, you indicated that you felt that it was a compromise. And could you amplify a little bit as to why you felt there was the need for this compromise, in view of the fact that, really, I think in this debate here that has gone on a long period of time, at least to my satisfaction, no one has said—has substantiated, really, the need for the anti-diversion amendment? Could you amplify on that a little bit?

DELEGATE RYGG: I think I said that there-1 thought there were three factions: one who did not want it at all; one who wanted to retain 1(b) as it was; and the third group, which I considered the committee's feeling, was more or less a compromise, yes. And by the compromise I am meaning that we had taken some of the revenue from it and we have added some of the expenses to it, and we had also put in a three-fifths

hammer over the head of the Highway Department, if you want to call it that. That is why I thought it was a compromise,

DELEGATE FOSTER: Do you still feel that, after the debate today, that there is as much need for having this compromise, as you felt before the debate?

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Yes, I think so. I think I feel about the same.

DELEGATE FOSTER: Thank you. Mr. President, fellow delegates, I would like to answer just a few questions that have been raised in the course of the debate. I happen to be one of those-quote, unquote-"idealists", and I personally have not been completely convinced that there is any need for the antidiversion amendment. I realize the importance of the Legislature handling tax money and revenue moneys and I also realize that the Legislature has a great deal of power in handling these moneys. I think you will all recall that, with a simple majority vote of the Legislature, that they, in fact, can remove the tax-exempt status of education property and religious property, et cetera. So I personally don't see that really, we need to give special consideration to the Highway Department. I think that they are very well taken care of in the statutes. And, in fact, I think that's where this whole problem should be put. I'll quote from the statutes, of which there are approximately 30 pages which cover this type of funding: 84-1840 says, "All taxes, interest and penalties collected under this act shall be turned over promptly to the State Treasurer and the State Treasurer shall place the same in the earmarked revenue fund to the credit of the State Highway Department." So I think Mr. Mahoney's point of the money being immediately diverted are a little bit ill-founded. It is presently earmarked and would remain so if we removed this section from the Constitution, and, in fact, what would happen then would be instead of having to have a 60 percent vote, as the present section in the majority report requires, it would simply be a 50 percent vote, the same as all other forms of taxation. I won't belabor the point to any great extent, but I will call your attention to a few of the supporters of the antidiversion amendment and a few things that they have said. I have here a letter from the Montana Highway Users Federation, and at the very bottom, it says: "Let's oppose giving any future Legislature an opportunity to divert these funds." I submit that we should not be tying up the Legislature unduly, and, in fact, I think to delete this whole section would be the logical approach to that. I also quote from a statement by Del Siewert, who was speaking in support of the antidiversion amendment, and he states: "The Constitutional Convention must look at the financing of state government from the practical aspects"--excuse me-"Earmarking is a horrible theory but a very practical method of financing. Our position supports the retention of the antidiversion amendment"; Del Siewert, Executive Secretary, Montana Chamber of Commerce, in the Montana Motorist magazine. I submit that this concept-if it is such a horrible thing, that maybe we ought to at least take a vote on it in this Convention, and in so stating, I support the position of Delegate Bates. I don't want to give anyone the idea that the committee proposal is in any way unsatisfactory to me, because I think they've done an outstanding job and I could, in fact, be very happy to live with their proposal if, in fact, the present motion does not succeed. But I do think that it is important that we have a vote on this and that we, in fact, have the opportunity to express whether we want to retain anything at all in the Constitution in special interest to the Highway Department. Thank you very much for your time.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I resist the motion to delete. I think the section is a good section in the Constitution and especially as it is now written in Section 6. Now, Section 6 is quite logical. What we've taken out of Section 6, basically, as to money that is no longer earmarked but the Legislature can divert it to the highway if they want to, is the new car sales tax; and the new car sales tax is actually a replacement of the property tax on a new car for the first year. That's what we've taken out. Now, that's logical as to whether or not that should be used for highway purposes. Secondly, what we've added to the section is those things that we do feel are related to the proper expenditure of gasoline taxes for highway purposes. We've just enlarged what we've spent. We haven't went and took another type of an expenditure which would devote it entirely from something different associated with highways. And that was our logic in these two changes-to make it more equitable. And I and the

committee feels that an antidiversion amendment is needed in the Constitution with the last sentence on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Artz, you were up next.

DELEGATE ARTZ: Mr. Chairman, I just want to reiterate with facts what Delegate Mahoney said. On November 6, 1956, the antidiversion amendment was passed 160,533 to 47,615 votes, and I think it would be very unwise to antagonize a hundred and sixty thousand people. Thank you.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I might start out by saying-replying to Delegate Artz-that 1956 was quite some time ago now. Attitudes have changed and are changing rapidly, and I'm not as frightened by those statistics as many people are. In reply to Mr. Foster and Mrs. Bates, I would say I, too, came here as an idealist and philosophically I support your proposal to delete Section 6, but as a practical matter it just can't be done. This matter must be compromised. I'm surprised that Mrs. Babcock didn't name all of the pressure groups that are involved in this, because I have a much longer list than she does. This is probably the most powerful coalition of pressure groups ever gathered together in the State of Montana. I think we must compromise. I think the committee has compromised and, before the end of the day, after this debate has reached some sort of conclusion, we may compromise further in the form of an alternative on the ballot, but compromise we must.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I rise in opposition, too, to the Bates amendment and in favor of Delegate Wilson. I never thought the day would come when I would be a supporter of the Highway Department, because I've had lots of troubles with them, too. But nevertheless what we're talking about here, this great need for earmarking, is just because of a human weakness. When you're just desperate for funds to balance a budget at any level of government, you're just going to have to dip into anything you want. And the reason we have to earmark funds for the highway is simply to assure that matching funds will be available. And everybody in Montana brags about all the federal money we have pouring back here into the state; if you don't earmark these funds, you're not going to have money coming back to the state. And I think, also, we lose sight sometimes of the fact that people look very enviously at the federal-at the Highway Department. It isn't because of the funds they raise locally, it's because of these vast millions of federal dollars. And you are never going to let the Legislature be in any position to manage or take care of that money, and I think sometimes we lose sight of that. Thank you, Mr. President.

CHAIRMAN GRAYBILL: All right, now-the issue arises on Mrs. Bates' motion to delete Section 6 in its entirety.

DELEGATE FOSTER: Roll call vote.

CHAIRMAN GRAYBILL: **You** want a roll call vote? Very well, there's plenty of seconds. Mrs. Bates has made a motion that Section 6, as proposed by the Revenue and Finance Committee, be deleted in its entirety. So many as shall be in favor of her motion to delete, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Nay
Anderson, J. Nay
Anderson, O. Absent
Arbanas Absent
Amess ..... Excused
Aronow Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Aye
Belcher Absent
Berg ..... Nay
Berthelson Nay
Blaylock ..... Nay
Blend Nay
Bowman ..... Nay
Brazier Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay

Cain ..... Nay
Campbell ..... Aye
Cate ..... Aye
Champoux Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Absent
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lore110 ..... Nay
Mahoney ..... Nay
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McKeon ..... Aye
McDonough ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. Nay
Romney Nay
Rygg ..... Nay
Scanlin Absent
Schiltz Nay
Siderius .. .. Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan Nay
Swanberg ..... Nay
Toole Nay
Van Buskirk Nay
Vermillion Aye
Wagner., Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK SMITH: Mr. Chairman, 18 voting Aye, 70 voting No.

CHAIRMAN GRAYBILL: 70 having voted No and only 18 Aye, Mrs. Bates' substitute motion is defeated. We're back on Mr. Wilson's amendment to strike the last sentence of Section 6. Is there further discussion?

Mrs. Bates, for what purpose do you arise?

DELEGATE BATES: I would like to say why I voted the way I did and why I asked to strike that. I was hoping—

CHAIRMAN GRAYBILL: All right, you may explain your vote.

DELEGATE BATES: I was hoping the other amendment then could come on the floor, wherever it has come from-

CHAIRMAN GRAYBILL: Very well.

DELEGATE BATES: -because I like it.

CHAIRMAN GRAYBILL: Mr. Wilson, you may close.

DELEGATE WILSON: Thank you, Mr. President. I'll make my remarks very brief, because we're getting tired sitting here. I'd like to call your attention that the last sentence previous

to the one that I wish to strike does say that—"collection costs as authorized by the Legislative Assembly". So the Legislative Assembly will have some control over this highway body, and this is the thing that I am very hopeful that they will exercise their option in. And, as Mr. Mahoney has pointed out to you people that the Legislature, if they will exercise their prerogative, does and can have control of the Highway Department. Therefore I ask to [sic] support for deletion of the last sentence, and I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, as many as shall be in favor of Mr. Wilson's motion to delete the last sentence of Section 6, being the three-fifths vote provision, indicate by voting Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Do any delegates wish to change their vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Absent
Arbanas ..... Absent
Amess ..... Excused
Aronow ..... Aye
Artz ..... Nay
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay

Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. President ..... Nay

CLERK HANSON: Mr. Chairman, 27 delegates voting Aye, 62 voting No.

CHAIRMAN GRAYBILL: 62 delegates having voted No and 27 Aye, Mr. Wilson's amendment is defeated.

Mr. McNeil, did you want to make an amendment?

DELEGATE McNEIL: Mr. Chairman. I move to amend Section 6, page 12 at line 13, by adding, after the word "members", the following three words-quote: "present and voting"-close quote.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I think the intent of the motion is obvious. If a majority of this Convention wants the Legislature to be able to have this vote, I think it ought not to be-the intent of it ought not to be defeated by absenteeism. I close.

CHAIRMAN GRAYBILL: Mr. McNeil has proposed an amendment to line 13 by adding, after the word "members" there, the words "present and voting?. So the sentence would read: "by a three-fifths vote of the members present and voting of each house of the Legislative Assembly", et cetera. Is there discussion?

Mr. Rygg.

DELEGATE RYGG: I would like to resist that motion. I am willing to compromise all right, and I think we have a sufficient hammer there, but I think we should stay at the three-fifths of each house. I really believe this would be going a little too far the other way.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McNeil's amendment-proposed amendment to add the words "present and voting", on line 13, so that the sentence would read: "by a three-fifths vote of the members present and voting of each house of the Legislative Assembly", et cetera. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, a little while ago Delegate Mahoney was talking about this three-fifths, so I move to amend on line 13 by deleting the words "three-fifths" and in place thereof inserting the words "two-thirds". I feel that probably this should be a real good compromise between the people that want to strike it entirely and the other way. Two-thirds of the members of each house, or the one house if that's what it is, is a real tough one to get. I think it will satisfy my problems of wanting to make them a little more responsive, and I would hope the body will accept it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I rise in support of increasing that number. At least we'll get two-thirds of our highway system and then, when two-thirds get their roads, they can take the money for welfare in their areas. Thank you. I support it. (Laughter)

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in opposition to the motion. I think that by indicating our desire for a three-quarters' vote, we're showing a complete distrust of the Legislature and, I think, probably effectively disallowing any control of the Legislature over the Highway Department. It's my feeling, Mr. Chairman, that three-fifths has the effect of 100—three-fourths, excuse me, has the effect of 100 percent and is totally unacceptable to the members of my committee.

CHAIRMAN GRAYBILL: Right. It's two-thirds, not three-fourths. Very well, the motion

arises on-the issue arises on Mr. Gysler's motion to change the number "three-fifths" to "two-thirds" in line 13 on the committee report.

DELEGATE ROD HANSON: Roll call vote.

CHAIRMAN GRAYBILL: A roll call vote having been called for, all those who are in favor of changing "three-fifths" to "two-thirds", which has the effect of raising it, please vote Aye; and those that oppose it, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Absent
Arbanas ..... Absent
Arness ..... Excused
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Absent
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross. ..... Nay
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt. ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Excused
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin.. ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer.. ..... Aye
Sullivan ..... Nay

Swanberg		Aye
Toole		Nay
Van	Buskirk	Absent
Vermillion		Nay
Wagner		Aye
Ward		Aye
Warden	" "	Nay
Wilson		Aye
Woodmansey		Nay
Mr.	Chairman	Nay

CLERK HANSON: Mr. Chairman, 38 delegates voting Aye, 51 voting No.

CHAIRMAN GRAYBILL: 38 delegates having voted Aye and 51 voting No, Mr. Gysler's amendment is defeated.

Mr. Heliker, are you up?

DELEGATE HELIKER: Mr. Chairman, will Delegate Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll yield.

DELEGATE HELIKER: Mr. Rygg, before I make it as a motion, I'd like to inquire of you your reaction to the possibility of inserting, on line 16 on page 12, before the last word of the sentence, between "other" and "purposes", the word "related".

DELEGATE RYGG: I'm sorry. Line 10 on page 12, did you say?

DELEGATE HELIKER: So that it would read, "other related purposes".

CHAIRMAN GRAYBILL: The last sentence-the last line, Mr. Rygg, on page 16—line 16, page 12. "Such dedicated funds may be appropriated for other related purposes."

DELEGATE RYGG: I don't really know what you mean, but I think I'd probably oppose it. (Laughter)

DELEGATE HELIKER: Well, maybe I should explain what I mean. Mr. Chairman, may I inquire further?

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: It's been said here that the-this sentence would give the Legislature the authority to appropriate funds originating in these sources for welfare or for education or for any purpose whatsoever. Let me ask, first of all, is that the intention?

DELEGATE RYGG: Well, the way it reads, yes, it would be strictly up to the Legislature. That's true.

DELEGATE HELIKER: All right, then. If you were to insert "related", it would confine the Legislature to appropriations for purposes related to the above-listed things. I would assume the word "related"-and I would expect the word "related"-to be broadly construed so it might be a fairly large category of things. Now, do you understand my question?

DELEGATE RYGG: Yes, I understand it. I think maybe that would be acceptable. I can't speak for the rest of the committee, however; but I think maybe that would be acceptable. I'm such a nut for going for the majority report it's pretty hard for me to deviate. That's my problem.

DELEGATE HELIKER: Well, Mr. Chairman, with that much encouragement I will make that motion, and I'd like to speak on it if I may. I, like Mr. Foster—

CHAIRMAN GRAYBILL: Wait a minute. Wait a minute. The Chair will give you the floor in a minute. That's in line 16. Very well, the Chair will accept an amendment from Mr. Heliker on line 16 of the subsection-of the Section 6, which adds the word "related" between the words "other" and "purposes" so that line 16 reads: "funds may be appropriated for **other** related purposes".

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I, like Delegate Foster, count myself as an idealist, but one of my ideals is that I think when sales taxes of any kind, including specific sales taxes, which in this case, however, hasmanyofthe characteristics of a general sales tax because it applies to and is paid for by most of us-when such taxes are levied, they ought to be levied to provide specific benefits to those who pay them. And I think that we should not open up the possibility of the Legislature using this gasoline tax and the other related taxes as, in effect, a general sales tax to finance the general government of Montana. I would therefore like to see the use of these funds restricted to the general purposes-and this is a pretty broad area-for which they were originally passed.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to observe that every potential other related purpose has already-been already recited in here and it seems to me that this amendment is totally meaningless.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I oppose this motion because I think it fairly effectively undoes what we have spent so much time doing; namely, keeping this section of the article in. We raise taxes from cigarettes that do not go to cigarette smokers or even to related causes. The same with alcohol. The same with property. Taxes raised on property aren't all spent on property. Or, necessarily, income doesn't bring you more income, and so forth. I don't think Mr. Heliker's line of reasoning in this case is helpful, and I suggest we stay with what we've already done at such great length.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, would Mr. Heliker yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I yield.

DELEGATE McKEON: Mr. Heliker, "related purposes" is rather vague. In your mind, could related purposes include pollution control—automobile pollution control?

DELEGATE HELIKER: As I said, Mr. McKeon, I would expect and it is my intention that the word "related" be broadly construed; and I think it would cover pollution control, which is related to the use of highways, and that means automobiles.

DELEGATE McKEON: Thank you, Mr. Chairman. Thank you, Mr. Heliker.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I'm sorry to have to talk again, but you see, I'll have to tell the professor I don't think very well on my feet and after I sat down so I could think again, I don't believe I could support that amendment; and I wanted to tell you that before it came to a vote. After all afternoon here, too, I've been wondering-I hear the lawyers talking about when they have interests, and so I suppose I should havementioned at the beginning that I am a member of MADA. However, because of my action and vote here, I don't know whether I will be much longer. (Laughter)

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would rise to oppose Mr. Heliker's motion. I think it is confusing. I think our original intent in drawing this article was to rely on the wisdom of the legislatures-of legislators and legislatures of future years. And I feel that the inclusion of that word would weaken the intent of our original article. I oppose Mr. Heliker's motion.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, I'm happy to be included with Mr. Heliker as an idealist, but I certainly oppose his amendment.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Heliker's motion to add, on line 16, the word "related" between "other" and "purposes", so that it reads: "funds may be appropriated for other related purposes".

Mr. Heliker, do you want to close or do you want a roll call vote?

DELEGATE HELIKER: I would like to close, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay.

DELEGATE HELIKER: I reiterate that I think you should think closely about this in terms of what door you are opening for the enactment of what amounts to a general sales tax when the people have just resoundingly defeated same.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Heliker's motion to add the word "related". So many as shall favor that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Now, it is the intention of the Chair to offer a substitute amendment, but not until we have adopted Section 6, at least in principle. Are there other amendments to Section 6? In other words,

the Chair wants Section 6 and the other one. If there are no other amendments to Section 6, without moving that we adopt it finally, would someone—

Mr. Rygg, would you at least put the question on Section 6, without moving it finally?

DELEGATE RYGG: I don't know just how to do that. I'll put the question on 6 without moving it finally, if that's what you like. (Laughter)

CHAIRMAN GRAYBILL: That's one of the best ways to do it, Mr. Rygg. (Laughter)

CHAIRMAN GRAYBILL: All those in favor of Section 6 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the Ayes have it.

UNIDENTIFIED DELEGATES: It wasn't amended.

CHAIRMAN GRAYBILL: All right, as unamended then. There aren't any amendments to it.

(Delegate Aasheim assumes chairmanship of Committee of the Whole)

CHAIRMAN AASHEIM: The assembly will be in order.

Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, you have before me an amendment proposed by me-or an addition proposed by me, and you'll see if you read the line where it says, "Mr. Chairman. I move to add, as an alternative to Section 6, on the ballot, the following", and then I put in this paragraph that some of you have been talking about. Now, my purpose here is, I want in the Constitution the committee's proposal with the two-thirds. I want it in that way. But I do think this Convention faces a serious challenge, because we have been put on notice by a whole long list of people, including those that Mrs. Babcock read and some others, that they are going to oppose this Constitution if we put that in. And, to be quite frank about it, we've been told they're going to oppose it even if we put it in with the two-thirds—or the three-fifths in it, so we've been put on notice that they are going to oppose it. Now, you know, I don't mind that. Everybody has a right to oppose it, but it does seem to me that if they're going to oppose it, we should go with our best shot; and I think maybe our best shot might be to add another alternative for the public so that the public would have a choice of the antidiversion amendment, as amended here with the two-thirds-three-fifths proposal or a slightly broader concept and then the public could choose between them. Now, the source of Section 6, as I have proposed it here, really is originally l(b) with some changes in it, and the main changes are that on line 3 we've used the phrase "public transportation facilities" and down below we have said that the money can be spent for public transportation facilities, the concept being simply to broaden the use from strictly highways, or even highways and streets, to public transportation facilities-the reason being that we are writing a Constitution for quite a long time. If you'll just think with me a minute, there was hardly any highway problem at all when the first Constitution was written, at least in the sense that we know it now, and I don't think any of us can honestly foresee what the transportation problem will be in, say, 50 years. So the only purpose of this is to give the public the alternative where they could vote broadly to say that they wanted funds earmarked from transportation-from any funds from any public transportation facilities to be earmarked for public transportation facilities. It broadens both the intake and the outgo. And up in the first line, where it says "derived from fees", we've added "and charges". I happen to know something about airport financing, and there's a lot of charges involved and fees involved in airport financing; this would have the effect of requiring that airport charges be spent on at least public transportation facilities. And the only purpose, really--and I don't really mind if you kill it-but the only purpose, really, is to offer an alternative to the public so that they could either vote for Section 6 with the three-fifths or vote for a section which is broadly construed, which still earmarks but earmarks only in the broad category of public transportation facilities. Now, it's just that simple; but I think that if it's useful, we ought to give both alternatives to the people and if it isn't useful, why, we'll run our chances, I guess, with what the committee came up with. That's all I have to say.

CHAIRMAN AASHEIM: Any discussion of the addition?

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, would Mr. Graybill yield to a question?

DELEGATE GRAYBILL: I yield.

DELEGATE JOHNSON: Leo, I—

CHAIRMAN AASHEIM: Mr. Johnson, I think we'd better read this first so we have it in the journal. Will the clerk read this addition, and then you'll have the floor.

CLERK HANSON: "Mr. Chairman. I move to add, as an alternative to Section 6, on the ballot, the following: 'Section 6. Revenue derived from fees and charges, and from fines and forfeitures relating to registration, operation or use of vehicles on public transportation facilities, and from excise or license taxes on fuels and other energy sources used for propulsion of such vehicles shall be used solely for payment of obligations incurred for the development, construction, reconstruction, repair and maintenance of public transportation facilities, a State Highway Patrol System, and tourist promotion and administration costs as authorized by the Legislative Assembly.' Signed: Graybill."

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, Mr. Graybill.

DELEGATE GRAYBILL: Yes, Mr. Johnson.

DELEGATE JOHNSON: I'm concerned about your last line there, "as authorized by the Legislative Assembly". Would you clarify for me the—what looks to me a close relationship to the entire last sentence of Section 6, except it would be, I presume, a majority vote. Is that—am I mistaken?

DELEGATE GRAYBILL: I don't quite understand your question, Mr. Johnson.

DELEGATE JOHNSON: Well, I must illustrate, then. It looks to me like here the—on your proposal, that the Legislative Assembly would have the power to do just what this three-fifths vote of the members in each house—you see, the last sentence on the Section 6 that we were trying to delete a while ago.

DELEGATE GRAYBILL: You mean because it says that it's as authorized by the Legislative Assembly, it's the same as the three-fifths, or in fact it's a 50-50?

DELEGATE JOHNSON: Well, I was concerned about it, yes, sir.

DELEGATE GRAYBILL: I think it is. I think it's as broad as the three-fifths language, or perhaps broader.

DELEGATE JOHNSON: Thank you, sir. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, will Mr. Graybill yield, please, to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE DAVIS: Leo, as I read this, it would seem to me that yours is just a total turning it over to the Legislature; not a compromise antidiversion that requires three-fifths, but just leaves it all right to the Legislature.

DELEGATE GRAYBILL: Well—Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, you may answer.

DELEGATE GRAYBILL: Mr. Davis—and I may have answered Mr. Johnson slightly wrong—what mine says is that it's left up to the Legislature, all right, but I think it differs from the three-fifths in that it restricts the Legislature to public transportation facilities uses. In other words, it does just what the last related amendment tried to do, in the sense that the Legislature can determine where within the field of public transportation facilities the money can be spent, but the Legislature could not take it out of public transportation facilities. Do you follow me, Mr. Johnson and Mr. Davis?

DELEGATE DAVIS: Well, I don't see where it says that they can't just spend it without diverting it. Oh, it's limited by your last sentence. I see.

DELEGATE GRAYBILL: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, you may answer.

DELEGATE GRAYBILL: I think it will allow the Legislature to divert, but only within the area of public transportation facilities, Mr. Davis.

DELEGATE DAVIS: Would Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I'm beginning to feel like Mrs. Bowman, but yes, I'll yield.

DELEGATE DAVIS: You have fines and forfeitures included in there. What do you have in mind, and what does this encompass?

DELEGATE GRAYBILL: Well, I'm willing to throw into the pot all fines and forfeitures which come from registration, operation or use of vehicles on public transportation facilities. In other words, traffic fines and so forth. Any fines, or any that come from the public transportation field would have to stay in the public transportation field, but it is broader than just the automobile. It's the whole public transportation field.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: I'll ask him if he'll yield again.

DELEGATE GRAYBILL: Yes, sir.

DELEGATE DAVIS: I don't know how much money we're talking about; but that comes out of the school funds, don't some of these fines and forfeitures? Where do they all go? Do they all go back to the Highway?

DELEGATE GRAYBILL: You'll have to ask Mr. Furlong about that. I don't know where they come from. I'm just willing to leave them in the transportation field.

DELEGATE DAVIS: I'm—Mr. President.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: I'm wondering if we're opening up another can of worms by who we're taking the fines and forfeitures away from, rather than getting some more people upset.

CHAIRMAN AASHEIM: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, under Mr. Graybill's amendment, they are getting substantial revenues back that Section 6 took away from them. Fines and forfeitures are in excess of a million dollars.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Will Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I'll yield.

DELEGATE HARPER: Did you deliberately leave out driver education, which this body by a vote of 79 to 8 expressed an interest in keeping, or is it an oversight on your part? When you list all the different possible things that money might be used for in highway-related enterprises, you did not put in driver education, and I remind you that Mr. Aasheim made that very motion today on the majority proposal and his motion to delete driver education lost 79 to 8. Do you want us to go through that fight again, or are you willing to put it in your—

DELEGATE GRAYBILL: I'm perfectly willing to put it in, but I—the reason that it's not in there now is, at the time I drafted this, we were talking about—I drafted it, really, from another base, which did not have driver education in, but it's immaterial to me whether it's in or out.

DELEGATE HARPER: Will you add it, or shall I make a motion?

DELEGATE GRAYBILL: Well, to get the issue resolved, I'll add it. And then when—if this happens—

CHAIRMAN AASHEIM: Mr. Harper, will you make the motion so we'll get it in the record?

DELEGATE GRAYBILL: Very well, make the motion.

DELEGATE HARPER: Yes, Mr. Chairman. I move that on the next to the last line on Mr. Graybill's proposal, following the comma, following the word "system", at the beginning of the next to the last line, the words "driver education" and comma be inserted. If that's not exactly the proper place for it, Style and Drafting can care for it.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: We are on the motion to amend now, Mr. Melvin.

DELEGATE MELVIN: Very well.

CHAIRMAN AASHEIM: We're on the motion to amend, as presented by Mr. Harper. Any more discussion on the amendment?
Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: Speaking about the amendment, I would like to call attention to what has been left out of Section 1(b), which should be of concern to any agricultural interests here: "statutory refunds and adjustments provided therein". Now what you have done, you have eliminated the possibility of a farmer or anyone who uses gasoline off the highway of getting a refund on these—on this gas that is used.

CHAIRMAN AASHEIM: Mr. Wilson, you're talking about something that is beyond the amendment. We are talking about the amendment as presented by Mr. Harper. Any more discussion on the amendment?
Mr. Berg.

DELEGATE BERG: Would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: Yes, Mr. Berg.

DELEGATE BERG: Does your measure include revenue from general sales and use taxes on cars?

CHAIRMAN AASHEIM: Mr. Berg, we're talking about this amendment by Mr. Harper. I think you are out of order.

DELEGATE GRAYBILL: He wants to stay on driver education.

CHAIRMAN AASHEIM: We want—we're talking about the amendment by Mr. Harper.
Mrs. Babcock.

DELEGATE BABCOCK: Can't I talk about Mr. Graybill?

CHAIRMAN AASHEIM: Certainly not. (Laughter) Are you ready for the amendment by Mr. Harper, to include in the second line from the bottom, after "system", "driver education"—comma—and "tourist promotion"—to include "driver education"? As many as are in favor of including driver education, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Now we're on the motion.
Mr. Berg.

DELEGATE BERG: Mr. Chairman, will Mr. Graybill yield to a question?

DELEGATE AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes, sir.

DELEGATE BERG: It's the same question. I want to know if your amendment will include revenue from general sales and use taxes of automobile sales.

DELEGATE GRAYBILL: It covers fees from registration.

DELEGATE BERG: But that would not be the tax on the sale of a new car, would it?

DELEGATE GRAYBILL: And it—and to my way of reading it, it would not include the property tax on the car.

DELEGATE BERG: And then, a second question.

CHAIRMAN AASHEIM: Mr. Berg.

DELEGATE BERG: Will Mr. Graybill yield?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: I yield.

DELEGATE BERG: Under your proposal, would it be possible for gasoline taxes from the sale of ordinary gasoline—that is, automobile gasoline—to be by the Legislature appropriated, for example, for airport purposes and vice versa—gasoline sales for airport purposes used for auto—

for highway development?

DELEGATE GRAYBILL: Yes, it certainly would. The purpose of this is to allow the Legislature free rein within the public transportation area to move the money around where the Legislature thinks it ought to go. That's the purpose of this.

DELEGATE BERG: And would you construe the amendment—the Section 6 in the majority report as permitting that kind of power or use by the Legislature?

DELEGATE GRAYBILL: No, it does not allow that, because it limits it to a—to funds derived from use of public highways and it doesn't include airports or other transportation facilities—parking lots, for example, or other systems that might be devised—tunnels or rockets or whatever we have.

DELEGATE BERG: No further questions.

CHAIRMAN AASHEIM: Any more discussion?
Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I've been listening all afternoon; I haven't spoken. I would like to make a point at this time. I have no objection if there's an alternative on the ballot. In fact, it might be a good idea. I don't think anyone in this body wants to destroy the Highway Department or their highway system. I think what we do want is a Highway Department that is not autonomous, that is responsible to somebody; and this is what I think is important in either alternative, and I'm not sure that we're getting that across.

CHAIRMAN AASHEIM: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in opposition to Mr. Graybill's amendment because I feel that if we are going to have an alternative on the ballot it should be Section 1(b). That's what the people want and you have the two different choices. This way we're cutting the pie in three pieces.

CHAIRMAN AASHEIM: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE MELVIN: Mr. Graybill, in the second line: "fines and forfeitures relating to registration, operation or use of vehicles on public transportation facilities". Would this mean that fines and forfeitures collected by city police departments and sheriffs' offices would also go into this fund?

DELEGATE GRAYBILL: I think it does.

DELEGATE MELVIN: Thank you.

DELEGATE GRAYBILL: That—it isn't a fund. It's a matter of whether the Legislature can divert it. It might not be diverted. In other words, the Legislature might not divert it from a city use, but the Legislature would have the right to divert it anywhere within the public transportation facilities area.

DELEGATE MELVIN: Another question, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE MELVIN: Well, as I read it, Mr. Graybill, at the end of line 5, it says "shall be used solely for the payment." Is that—that would indicate that there's no choice?

DELEGATE GRAYBILL: "—shall be used solely for payment of obligations incurred in the development, construction, reconstruction, repair and maintenance", and so forth, "of public transportation facilities." So if the fines are now being used for the city general fund for non-transportation purposes, it would divert them, but if they were being used for highway safety or the Police Department, highway programs, street programs, they would not be diverted.

DELEGATE MELVIN: Thank you.

DELEGATE GRAYBILL: Yes.

CHAIRMAN AASHEIM: Mrs. Robinson.

DELEGATE ROMNEY: (Inaudible)

CHAIRMAN AASHEIM: Mrs. Robinson has the floor.

DELEGATE ROMNEY: (Inaudible)

DELEGATE ROBINSON: I'll yield to Mr. Romney.

DELEGATE ROMNEY: (Inaudible)

DELEGATE ROBINSON: Thank you, Mr. Chairman. I'm not so much in opposition as to putting this on the ballot as an alternative, but I'm in opposition to, really, what I think we're implying when we do this. I guess I rather resent being threatened by these powerful lobbyists that they're going to torpedo what we do if we don't submit to their demands. I see a real big hypocrisy in this body today. Everything—or, not everything—but a great many of the things that I've been for in this Constitutional Convention, such as poll-booth registration, a people's advocate, the right to sue, standards for reclamation of our land—everybody says, "Go to the Legislature; that's legislative, that's not constitutional." So, now we're saying that highways are constitutional. People aren't and people's rights aren't, but highways are. I think this is ridiculous. Everything that you people have been against, you've said it's legislative. Well, if this isn't legislative, I don't know what is. I guess it's a matter of priorities, and I guess it's too bad that environmentalists don't have the kind of lobbying effort that some of these other people do. Mr. Mahoney was concerned that his next session of the Legislature wouldn't appropriate money for the highways. Well, I'll contend that with people like the Chamber of Commerce and the AFL-CIO and the Bureau of Public Roads and the Iron and Steel Institute and the Petroleum Institute and the National Association of Manufacturers, the Timber Products Association, and all of these things lobbying that lobbied for this revenue in 1955, they'd be silly to do anything else but appropriate money for roads. I just think that—I guess I don't really care whether we put it on the ballot or not, because I think that, you know, we've really made the basic decision in this body that a few powerful lobbyists can tell us what to do, regardless of the principles that we've established before; that we're not—in some instances we're writing a constitution; but if you believe in something, you're going to say it's constitutional, and if you don't believe in something, you say it's statutory.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: I dislike disagreeing with my seatmate, Mrs. Robinson, but I think that this is a matter which was born of the ballot of the people and it should be resolved, so it probably should go onto the ballot. I—Mr. Chairman, in this connection, I would like to ask a question of the President of the Convention.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield to a question?

DELEGATE GRAYBILL: Yes, sir.

DELEGATE ROMNEY: Mr. Graybill, in view of the fact that you and Delegate Toole, and no doubt others, consider it necessary to put this on the ballot—and I'm not so sure that it is not a wise move in view of the fact that the anti-diversionary measure came onto the ballot as a vote—or came into being as a vote of the people—I'm not so sure but what the alternative that you are offering is not the right one. I wonder what you think about the suggestion of Delegate Babcock about placing the old Section 1(b) on as the alternative. That is, the alternative—not something new.

CHAIRMAN AASHEIM: Do you want to answer that, Mr. Graybill?

DELEGATE GRAYBILL: Yes, I'm going to try. I think that the lobbyists and the groups—and there are very many interest groups that have real interest here—who threaten to oppose the Constitution—I don't think we need to put their position on as an alternative, because the truth of the matter is, their alternative is the present Constitution and if you put it as an alternative they've got two shots at it. It seems to me that what I'm trying to do, and I must admit I'm probably unfair in Mrs. Robinson's eyes, I'm trying to give the public two good choices, and if they happen to vote for either of them, we're in. Now, I'll admit that may be diabolical, but that's what I'm trying to do. Their—the interest groups' alternative is to vote the other way, and I don't think you're going to get them to come on and vote for an alternative when all they have to do is vote against the Constitution and—which is what they've threatened to do. Maybe I'm wrong. That's my view.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Maybe the President is wrong, maybe I'm wrong, and maybe Mrs. Robinson is wrong, and maybe Mrs. Babcock is wrong, maybe the pressure groups are wrong. But

if we're going to put this on the ballot, it seems to me that the alternative is the old section. It seems to me that when, a day or so ago, we were debating about—in the Judiciary Article, we were debating about the judges running against their record. That's what this would be. The people would be voting against the record of the antidiversionary with the choice of another article.

CHAIRMAN AASHEIM: Mrs. Erdmann.

DELEGATE ERDMANN: Would President Graybill yield to a question, please?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE ERDMANN: I stand in opposition to this alternative, and I'm wondering if you realize that by the wording of this you would be torpedoing the general fund of the cities—of Great Falls? The phrase that you have in here, as Mr. Melvin said, in which—fines and forfeitures relating to operation of vehicles on the city streets, I'm sure, would be included in this—would have to go for highway or some such purpose, street department or anything like this—related—wouldn't it?

DELEGATE GRAYBILL: It would have to go for some public transportation facility, but I can tell you—and I'm sure you'll agree with me, Mrs. Erdmann—that there are all kinds of public transportation facilities that the city of Great Falls could spend that money for and, in fact, does today. When we put the fines into the general fund, they come right back out and pave the alley or grade the street.

DELEGATE ERDMANN: No, sir. The Street Department has a separate mill levy. The general fund, where we're so desperately pressed for—

DELEGATE GRAYBILL: I see.

DELEGATE ERDMANN: —funds pays the Police and the Fire Department and those other items. Street Department levies are separate, so this is something to take into consideration. In Great Falls it amounts to about a hundred and sixty thousand dollars a year, the equivalent of two mills of property tax.

DELEGATE GRAYBILL: Mr. Chairman.

CHAIRMAN AASHEIM: Yes, Mr. Graybill.

DELEGATE GRAYBILL: Well, then, I guess, Mrs. Erdmann, we already—we need an antidiversion amendment in Great Falls now, because they're taking money from people for highway fines and doing other than highway things with them and the purpose of this would be to keep public transportation funds in the public transportation field. It might involve some shifting of funds, but notice that it's all still within the Legislative Assembly's prerogative. Nobody is making them move them at all. It just gives the Legislature the right to move them if they ever needed to.

CHAIRMAN AASHEIM: Mr. McNeil, you are wanting to make a comment?

DELEGATE McNEIL: (Inaudible)

CHAIRMAN AASHEIM: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, will Mr. Romney yield to a question, please?

CHAIRMAN AASHEIM: Mr. Romney will you yield?

DELEGATE ROMNEY: Certainly.

DELEGATE REICHERT: Mr. Romney, you mentioned having the old Section 1(b) as an alternative. I think there's an analogy here between what we've done with the unicameral-bicameral. Now, we're not offering the old bicameral as an alternative; we're going to offer a new bicameral and a unicameral, and the old bicameral will be in the body of the Constitution, just as the old Section 1(b) will be in the body of the Constitution. I concur with Mr. Graybill that if we're going to have an alternative, we should have one. But it is my feeling, Mr. Chairman, that we should establish the fact first, whether we want an alternative, and then perhaps we should perfect an alternative, think about an alternative, rather than just accepting this with the questions that have arisen.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: I wish to speak against the idea of compromise—the idea of

alternative, rather. I don't think that we came here to talk things over and then say—go back to the people and say, "Here are a couple of ideas we had; what do you think?" I feel resentment that there wasn't a clear-cut vote on the unicameral or bicameral Legislature. There could still be, perhaps, and I hope there is. I'm in favor of deciding which plan we want here and, if we settle on one, put it in the Constitution and submit the Constitution to the people. I don't know whether Hamlet was right or Laertes was right; but because Hamlet couldn't make up his mind, at the final scene of the play, they were all dead; and I don't want that kind of a thing to occur here. I will vote for the plan that I think is proper. I support the majority plan, and I hope that we can submit whatever we have to the people without any alternatives. Thank you.

CHAIRMAN AASHEIM: Mrs. Eck.

DELEGATE ECK: Mr. Chairman.

CHAIRMAN AASHEIM: Mrs. Eck.

DELEGATE ECK: I really like the looks of Mr. Graybill's plan. I think the idea of looking at public transportation as a whole, rather than just automotive transportation, is probably something we should have thought about earlier. However, I feel if we have alternatives on the ballot, that these are going to be two very confusing alternatives. I think that I, myself, would have a very difficult time choosing between them. I think that if we decide we want an alternative on the ballot, it might be a good idea to rethink the two of them and develop one good article which would do this, which would really be pretty much possible. I was thinking of Mr. Heliker's amendment at the end. We could almost say, "and other uses of public transportation" or "related to public transportation". However, then we would also have to add at the beginning so far as where these funds come from. I really think that our alternatives should be either, as Mrs. Babcock says, put something that is going to be wholly satisfactory to all of these big interests that we seem to be afraid of on the ballot, and there would be some advantage having it there. You know, if we put that in the body of the Constitution, why, they might spend all those millions of dollars just going out and telling people, "Vote yes for our Constitution. It's got in there what we want." I still think that the people would prefer something else. I think that everyone in our district campaigned on the basis that we were going to come here and delete the antidiversion funds—or antidiversion amendment. We, I think, had only one or two people who, for very obvious reasons, opposed us on this basis. We had only one candidate who ran on the basis of supporting this, and he lost. I think that the other really good alternative is to have an option on the ballot to take this out entirely—in other words, to put one in and give the voters an option of deleting one. But I think that putting two good plans in an area that is really confusing and isn't going to get that much public attention anyway and is going to have a lot of interests trying to obscure the real issues is really a poor move. And I think maybe what our discussion ought to evolve around at this point is, do we really want alternatives?

CHAIRMAN AASHEIM: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. Aasheim. May I ask Mr. Murray a question?

CHAIRMAN AASHEIM: Mr. Murray, will you yield?

DELEGATE MURRAY: I'll yield.

DELEGATE PEMBERTON: Thank you, Mr. Murray. Possibly at this time it might be a good idea how we are going to present the Constitution finally to be voted by the public. Mr. Murray, will this be presented article by article, or section by section, or would you please describe the process?

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Murray.

DELEGATE MURRAY: Mrs. Pemberton, I believe that the present plans are to have the Constitution as we write it proposed in its entirety, with an explanation section by section, so that you would vote for or against it. Then, with respect to the Legislative Article, as Illinois has proposed it and as I believe as North Dakota just recently proposed it, there would be two alternatives below the vote on the Constitution as is: Yes or No; would be the—would you want a bicameral, or would you want a unicameral? And with respect to this particular issue, I would think that maybe it could be handled: do you want to retain, or do you not?—do you want to have an antidiversion amendment such as we have now, or not? Or perhaps, as Mr. Graybill has proposed it here, you could have the majority Section 6 in the body of the Constitution, with an optional vote to have what he has proposed by way of his amendment here. So I think

really, Catherine, the answer is that we can do it pretty much as we choose.

DELEGATE PEMBERTON: For those who would prefer the Section 1(b) as it is written into the present Constitution, where would that put that in the new Constitution if it were decided between two proposals?

DELEGATE MURRAY: Shoot that at me again, Catherine, would you please?

DELEGATE PEMBERTON: If it were decided between the section—this new proposal and the section in the old Constitution—or in the present Constitution which refers to the same thing, where would that be written into the proposal so the people would have a choice?

DELEGATE MURRAY: As I understand your question, you would like to retain what has been proposed and turn down in 1(b), which is the existing constitutional amendment?

DELEGATE PEMBERTON: Not necessarily turn it down—give a choice to the people.

DELEGATE MURRAY: Yes, you would like to have it as is now in the constitutional amendment, right? And this alternative that the President has now proposed—how would you handle that on the ballot?

DELEGATE PEMBERTON: Yes, that the majority proposal has, so that the people could vote as they wished if this is so controversial.

DELEGATE MURRAY: Well, frankly, I would think that we could do it in any manner that we choose. That's my answer. I think that we could write one into the body and have the other as an option, or we can have both as options with neither in the body.

CHAIRMAN AASHEIM: The Chair recognizes Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise, report progress and ask leave to sit again.

CHAIRMAN AASHEIM: As many in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?
(No response)

CHAIRMAN AASHEIM: Motion is carried. Please remain at ease for a moment. The Chair has missed his evening meal, but I guess that's better than losing it. (Laughter)

(President Graybill presiding over Convention)

CLERK HANSON: "March 3rd, 1972—"

PRESIDENT GRAYBILL: Will the clerk please read the title of the committee report.

CLERK HANSON: "March 3rd, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 7 of the Committee on Revenue and Finance, recommend as follows:"

PRESIDENT GRAYBILL: Very well, Mr. Murray, do you want to move—unless—does anyone want the Committee of the Whole Report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well, Mr. Murray, would [you] make a motion that it be adopted?

DELEGATE MURRAY: Mr. President, I move that the Committee of the Whole report be adopted.

PRESIDENT GRAYBILL: Very well; all in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: And so ordered. Now, before we adjourn, two announcements. First of all, the blue sheets you've got talks about the delegate party next week. Please note that the date is now changed to Wednesday, the 8th, instead of Tuesday, the 7th. So make note of that, and if you have guests that you want to invite, you can do so. And secondly, Mr—I see Mr. Rygg has gone.

Mr. Rygg, do you want to announce your meeting?

DELEGATE RYGG: Revenue and Finance, Room 437 at 8 o'clock in the morning.

PRESIDENT GRAYBILL: Revenue and Finance, in the morning, 437.

Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights meeting, tomorrow morning, 8 o'clock.

PRESIDENT GRAYBILL: Bill of Rights, at 8 o'clock.

Mr. Aasheim.

DELEGATE AASHEIM: Legislative Committee, at 8:30. Bring your Style and Drafting forms with you, and we will go over and check if we agree with what the Style and Drafting has done.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting, at 8 o'clock. And we're going to have some conflicts with other committees, so I urge everyone to be there.

PRESIDENT GRAYBILL: Are there other announcements?

Mrs. Babcock.

DELEGATE BABCOCK: I would just like to announce, for the benefit of the ladies, that tomorrow night there is a Nile style show, for the benefit of crippled children, at the Civic Center, if any of you would like to go.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, the Rules Committee, meeting at 8:15 in the morning, right outside of the Rules Committee Room because the Administrative Committee is meeting in the room. And are you ready to adjourn?

PRESIDENT GRAYBILL: I see Mr. Toole standing.

DELEGATE TOOLE: I was just going to make the announcement of the Administration Committee at 8 o'clock in the Rules Committee room.

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of 9 a.m., March 4, 1972.

PRESIDENT GRAYBILL: All in favor, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 6:50 p.m.)

March 4, 1972 **Thirty-Eighth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. Will you all please stand, and Mr. Scanlin will give us the invocation.

DELEGATE SCANLIN: The disciples came to Jesus saying, "Lord, teach us to pray." Let us pray together the prayer He taught us. Our Father, who art in Heaven, hallowed be Thy name. Thy kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread and forgive us our debts as we forgive our debtors, and lead us not into temptation, but deliver us from evil, for Thine is the kingdom and the power and the glory forever. Amen.

PRESIDENT GRAYBILL: Very well, we'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Arbanas, Arness, Belcher, Eskildsen and Holland be excused, please?

PRESIDENT GRAYBILL: Arness is present, so take that one out.

CLERK HANSON: May Delegate Felt also be excused, please?

PRESIDENT GRAYBILL: (Inaudible)

CLERK HANSON: Delegate Babcock, Delegate Drum, Delegate Harlow, Delegate James, Delegate Speer.

PRESIDENT GRAYBILL: Read the absences again.

CLERK HANSON: They're all here.

PRESIDENT GRAYBILL: Very well. Take the ballot—take the attendance.

Aasheim ..... Present
Anderson, J. ..... Present
Anderson, O. ..... Present
Arbanas ..... Excused
Arness ..... Present
Aronow ..... Present
Artz ..... Present
Ask ..... Present
Babcock ..... Present
Barnard ..... Present
Bates ..... Present
Belcher ..... Excused
Berg ..... Present
Berthelson ..... Present
Blaylock ..... Present
Blend ..... Present
Bowman ..... Present
Brazier ..... Present
Brown ..... Present
Bugbee ..... Present
Burkhardt ..... Present
Cain ..... Present
Campbell ..... Present
Cate ..... Present
Champoux ..... Present
Choate ..... Present
Conover ..... Present
Cross ..... Present
Dahood ..... Present
Davis ..... Present
Delaney ..... Present
Driscoll ..... Present
Drum ..... Present
Eck ..... Present
Erdmann ..... Present
Eskildsen ..... Present
Etchart ..... Present
Felt ..... Excused
Foster ..... Present
Furlong ..... Present
Garlington ..... Present
Graybill ..... Present
Gysler ..... Present
Habedank ..... Present
Hanson, R.S. ..... Present
Hanson, R. ..... Present
Harbaugh ..... Present
Harlow ..... Present
Harper ..... Present
Harrington ..... Present
Heliker ..... Present
Holland ..... Excused
Jacobsen ..... Present
James ..... Present
Johnson ..... Present
Joyce ..... Present
Kamhoot ..... Present
Kelleher ..... Present
Leuthold ..... Present
Loendorf ..... Present
Lorello ..... Present
Mahoney ..... Present
Mansfield ..... Present
Martin ..... Present
McCarvel ..... Present
McDonough ..... Present

McKeon ..... Present
McNeil ..... Present
Melvin ..... Present
Monroe ..... Present
Murray ..... Present
Noble ..... Present
Nutting ..... Present
Payne ..... Present
Pemberton ..... Present
Rebal ..... Present
Reichert ..... Present
Robinson ..... Present
Roeder ..... Present
Rollins ..... Present
Romney ..... Present
Rygg ..... Present
Scanlin ..... Present
Schiltz ..... Present
Siderius ..... Present
Simon ..... Present
Skari ..... Present
Sparks ..... Present
Speer ..... Present
Studer ..... Present
Sullivan ..... Present
Swanberg ..... Present
Toole ..... Present
Van Buskirk ..... Present
Vermillion ..... Present
Wagner ..... Present
Ward ..... Present
Warden ..... Present
Wilson ..... Present
Woodmansey ..... Present

CLERK HANSON: Mr. President, 96 delegates present, 4 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees. Will the clerk read the Style and Drafting Committee report.

CLERK HANSON: "To Montana Constitutional Convention. The Committee on Style, Drafting, and Transition and Submission transmits revisions of the Executive Article for consideration of the Convention. John M. Schiltz, Chairman; William A. Burkhardt, Vice-Chairman."

PRESIDENT GRAYBILL: The Style and Drafting Committee report on the Executive is referred to General Orders. Reports of Select Committees. None. Communications. None. Introduction and Reference of Delegate Proposals. None. Final Consideration. None. Adoption. None. Motions and Resolutions. On Number 7, Motions and Resolutions, we do have a matter that we want to take up today, out of the Rules Committee, but we're going to pass that, if it's all right with everyone, and take it up after we've finished Revenue and Finance. Hearing no objection, we'll do that. Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: General Orders.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move the Convention resolve itself into Committee of the Whole for the consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: "The Style and Drafting Committee Proposal Number 3 on Legislative Article, having been duplicated and placed on the delegates' desks on the 2nd day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule Number 23, Montana Constitutional Convention Rules. March 4, 1972. The following committee proposals are now on General Orders: Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number 3 and Style and Drafting Report Number 4.

CHAIRMAN GRAYBILL: Very well. Yesterday we were considering, in Committee of the Whole, Section 6 of Revenue and Finance Committee Proposal. And you will recall that we had tentatively adopted Section 6 and that I had taken the floor to propose an alternative to be added to the ballot. At this time, I would like to withdraw my

proposal—that is, an alternative to be put on the ballot. And I so withdraw. The committee met with me this morning, and we feel that it's—this is not necessary at this time. I agree with that, and we're going to withdraw that proposal. Therefore we're back on Section 6.

Mrs. Babcock, I see you have an amendment.

DELEGATE BABCOCK: Mr. Chairman.

CHAIRMAN GRAYBILL: Would you like the clerk to read your amendment?

DELEGATE BABCOCK: Please.

CLERK HANSON: "Mr. Chairman. I move to delete Section 6 of the Revenue and Finance Committee Proposal and to place on the ballot the following: 'Section 6. Revenue derived from fees relating to registration, operation or use of vehicles on public highways, or from excise or license taxation on fuels and other energy sources used for propulsion of such vehicles, shall be used solely for the payment of obligations incurred for the development, construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges for county, city and town obligations on streets, roads and bridges, driver's education, enforcement of highway safety, tourist promotion, and for statutory refunds and adjustments, administrative and collection costs as authorized by the Legislature—Legislative Assembly.' Signed: Babcock."

DELEGATE BABCOCK: Mr. Chairman. I would like to have you change the first sentence there. I should have written, "I move to add, as an alternative to Section 6, and to place on the ballot the following". It has a wrong beginning there. Now, if I may speak to the motion, Mr. President.

CHAIRMAN GRAYBILL: All right. Let me get it straight here. You move to add as an alternative on the ballot, huh?

DELEGATE BABCOCK: To Section 6, yes.

CHAIRMAN GRAYBILL: All right. Mrs. Babcock's motion is to add, as an alternative on the ballot, the language that she proposes here. Mrs. Babcock, may I inquire? I haven't proofread it. Is this Section—is this 1(b)?

DELEGATE BABCOCK: Yes, very similar.

CHAIRMAN GRAYBILL: All right, this is 1(b).

DELEGATE BABCOCK: May I speak to the motion?

CHAIRMAN GRAYBILL: Very well.

DELEGATE BABCOCK: It isn't exactly 1(b), it's very similar to 1(b).

CHAIRMAN GRAYBILL: All right. Maybe you'll explain it to us.

DELEGATE BABCOCK: Yes. Mr. President and fellow delegates, Mr. Rygg was certainly correct when he stated, yesterday, there are two basic factions within the Convention. On the North Pole, we have those who believe no funds should be earmarked because it creates a self-perpetuating and unresponsive bureaucracy. Further, as was stated by Mr. Toole, these delegates believe today's voters have a different attitude toward earmarking highway funds and, in fact, he and other delegates were elected on that basis. On the South Pole, we have those who believe highway funds should be earmarked for highway construction and maintenance. These delegates fear the Legislature will raid the highway fund for other general governmental expenditures, such as education or welfare. They contend the gas tax and motor vehicle fees are use taxes imposed on the highway user to pay for the building of roads and that such taxes should not be diverted to general governmental programs. Yesterday we spent over three hours trying to bridge this gap and to meet the Equator. We were not successful. May I therefore propose we leave the matter entirely up to the voters? Let's remove the committee proposal from the new Constitution and submit an antidiversion section to the voters on a side ballot. Those who contend the people today do not want earmarked funds will win their case by not having any earmarked funds if the voters reject the side ballot. Those who contend the majority of the people today want earmarked funds can win their case if the voters approve the side ballot. In either case, the new Constitution is not placed in jeopardy. If we leave an antidiversion section in the new Constitution, we alienate one group or the other, even if the section is modified, such as was done by the committee, by giving the Legislature the power to divert with a three-fifths vote. We have still alienated a large number of voters. Further, if we adopt the general transportation fund concept of Mr. Graybill's—which,

of course, now he has withdrawn—we would still alienate a large number of voters. Those persons who support antidiversion do not believe either the committee's proposal nor the general transportation fund adequately protects highway funds from legislative raids or diversion. So they have no choice but to try to kill our entire Constitution, which they do not wish to do. They want a new constitution as much as all the other Montana citizens, and as much as we want a new constitution. If we do not put any antidiversion section in the new Constitution, we have gained the support of the idealists but still run the risk of losing the entire ball game. Ladies and gentlemen, I firmly believe we cannot jeopardize all of our efforts in the new Constitution over this one issue. If we would be foolish and senseless, let's protect our new Constitution by moving this entire controversial issue to a side ballot and let the people decide the matter. The antidiversion section I have proposed to be placed on a side ballot is the same as the present 1(b) section with some minor changes. I have added county roads and city streets to assure them these funds can be spent locally if needed. As dictated by your vote yesterday, I have also added Driver's Education and the Highway Patrol. You will note, my proposal retains the present language of statutory refunds and adjustments so as to assure the farmers and ranchers they will continue to receive funds for nonhighway use of fuel. I left fines and forfeitures out of the cities—I left fines and forfeitures, excuse me, out so cities can continue to receive these funds as in the past. Finally, I used the modern and positive language like that used in the committee's proposal. Basically, as stated, my proposed section is the same as that which we now have with these minor changes, which we hope will be acceptable to everyone concerned. If the people vote for this proposal, then those who advocate—if the people vote this proposal down, then those who advocate complete legislative control of all funds will have been right. On the other hand, if the people approve this proposal, then those who have advocated earmarking highway funds will have been right. But in either event, our new Constitution will not have been lost, which most certainly is our first priority. We cannot jeopardize the new Constitution to satisfy a few special interests. Whether they be highway users or idealists, it would be an insult to the people of Montana. I certainly urge your support.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I hate to resist a motion made by Mrs. Babcock, but I think maybe I'm going to have to do that. I would first like to ask Delegate Babcock a question, if she would.

DELEGATE BABCOCK: I probably won't know the answer.

DELEGATE RYGG: Oh, yes.

DELEGATE BABCOCK: I'd rather bake a cake.

DELEGATE RYGG: All I was wondering—I didn't quite understand. Was this going on the ballot as an alternate proposal? Or would just be the one vote, Yes or No?

DELEGATE BABCOCK: As an alternate proposal on the side ballot.

DELEGATE RYGG: Along—Mr. Chairman, may I direct my question—

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: You mean along with this Section 6 that the committee had proposed?

DELEGATE BABCOCK: If you think that's advisable.

DELEGATE RYGG: Thank you.

DELEGATE BABCOCK: I originally wanted to delete your whole section, but if this would get the job done, I'll compromise.

DELEGATE RYGG: Thank you. Mr. Chairman, I think it's only fair that I tell you that our committee did meet this morning, and I think we had thought about a lot during the night. We felt that because we have been charged to write a constitution the best way we can, and to really not allow too many outside influences to change our thinking one way or the other, it is the unanimous feeling of this committee that we try to pass Section 6, as proposed to you yesterday, with one more amendment which we might need. We did probably have to put in statutory refunds. Our thinking had been that public highways would take care of it but maybe not. But aside from that, we feel that we should just write the Constitution that way. That is, the committee feels that this is the thing to do; this is the best way to go. We can't believe that there is anyone who will vote us down because of it. Now, we realize we could be wrong, but it's difficult for us to believe. I have seen letters from farmers here and there

throughout the state. I've seen others. I have been given many threats that have said, "Well, if you do that, we're going to defeat the Constitution." Now, many of those that have said that, I'm sure, don't have the power to do it. Maybe this particular group does. But it is the recommendation of the committee that we try to do the best we can. We feel that right now this Section 6 is what it is, so I suppose I would have to resist this motion—this amendment by Mrs. Babcock. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, will Mrs. Babcock yield to a question?

CHAIRMAN GRAYBILL: Mrs. Babcock?

DELEGATE BABCOCK: Yes, sir, Mr. Toole.

DELEGATE TOOLE: I'm still not clear on this, Mrs. Babcock. You want—in your amendment, you say you want to delete Section 6 altogether, is that correct? Or would you leave Section—

DELEGATE BABCOCK: No, as I—that's my first preference. When I came here, I thought I was going—that Mr. Toole—Mr. Graybill still had his motion on the floor. And I think if we can offer this as an alternate or if we can substitute it for the majority proposal, it'll be fine with me.

DELEGATE TOOLE: Well, in other words, you would leave—Mr. Chairman, just one more question—you would leave Section 6 in and then you would have old Section 1(b) as amended as an alternative proposal?

DELEGATE BABCOCK: As an alternate, yes, on the ballot.

DELEGATE TOOLE: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole, to clear that up, when Mrs. Babcock offered the amendment, she asked to change that first line after "I move". And it now reads, "I move to add as an alternative on the ballot the following." And it has the effect of being an alternative in place of the alternative I withdrew.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't like the motion because—and I didn't like it yesterday, but I never got around to saying so—because at this stage of the game, I don't think we're in a position to say what should or should not go on the ballot, because we don't know what else there might be that should go on the ballot. I don't think the Convention should be bound. Everybody who loses anything can say, "I make a substitute motion that this go on the ballot", and we're going to have a ballot with alternatives that won't quit. And there won't be a ballot in the State of Montana, or a voting machine, long enough to contain them all. I think that if it turns out after all the debates are over on all the issues that will come before this Convention, then we make a recommendation to the Convention, which will probably come out of Style and Drafting, as to what should be on the ballot. And then, when the Convention can look at everything that has a potential for an alternative choice, then it [can] decide which is more important: Mrs. Babcock's idea, may be my idea about how I want my judges selected, may be somebody else's idea that lost by a close vote. I think it's too—it's premature now to bind the Convention to what shall go on the ballot just because we have a hot issue at the moment. Next week it's going to be something under Bill of Rights that's going to be just as hot, and I think it's too early to decide that.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: May I direct a question to Mr. Schiltz?

CHAIRMAN GRAYBILL: Mr. Schiltz, will you yield?

DELEGATE SCHILTZ: I yield.

DELEGATE RYGG: I've been thinking about this same thing, Mr. Schiltz, and my problem has been that if we conclude this—these proposals as we do, section by section, then in our rules, can we go in and open them up and decide if we want an alternate?

DELEGATE SCHILTZ: I don't know. Well, as I conceive the way this Convention will finally operate, we will have approved everything section by section. Then, I think the Style and Drafting Committee will report back to the Convention a ballot that has been adopted and agreed upon within that committee. And then, that—there's a debate on the question of whether that ballot is the ballot that will go out, or another ballot. The Convention can debate to take this

item out of the alternative and put that one in, in spite of the Style and Drafting Committee's proposal. But we'll come out with something concrete.

DELEGATE RYGG: Mr. Chairman, could I direct another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE RYGG: My thinking was this—if, today, we just passed Section 6—just for instance—but then, at another time, say 10 days from now, we should feel that, well, maybe that was wrong; maybe there should have been an alternative. Then is the possibility closed as to putting an alternative at that time?

DELEGATE SCHILTZ: No, I would say not. I would say that Style and Drafting, I think, could say—we could look at an issue that came out on the floor and say that was a tight enough issue so that perhaps we will suggest that be put in the alternative. Or as an individual choice, do you want capital punishment or do you not want capital punishment?

DELEGATE RYGG: Thank you. That answers my question.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that the alternate proposal proposed by Mrs. Babcock, if it meets with the approval of the committee as to its content, be referred to the Rule—to the Style and Drafting Committee for final report of that committee at a later time in the Convention.

CHAIRMAN GRAYBILL: I take it to be your motion to refer Mrs. Babcock's proposed alternative amendment to the Style and Drafting Committee. Is that your—Mr.—you may speak.

DELEGATE JOYCE: Well, my thinking on it is this, that this will meet Mr. Schiltz's well-pointed objection. It seems to me that it's too early to make this decision. And under the rules of the Convention as they have been drafted, with the form of the ballot being assigned to the Style Committee, that if this Convention does believe that this issue was of sufficient importance that it should be, at a later time, considered for submission as an alternate, that if we approved it at this time as to its content and then, before taking any final action thereon, we referred it to the Style and Drafting Committee, they could then report out later in the Convention that they propose a ballot containing this alternative along with Section 6 that the Committee of the Whole has already adopted. And if at that time they decline to put it on the ballot, why, then the issue can be debated again when the Style and Drafting report to the Committee of the Whole on the ballot comes before the Committee of the Whole of this Convention.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I would rise to oppose both Mr. Joyce's amendment and Mrs. Babcock's motion, for this reason. This Convention can do anything they want to do. Now—right now, under the rules under which we are operating, it—nothing is included as to bringing later considerations up. But Mr. Schiltz's point is very well taken. At some point down the road, this body is going to want to look at what is probably going to be the final product. And at that time, it appears to me, it would be the time for us to say, "Here are the four alternatives that we would like to put on the ballot"—or "here are the three", or "here are the two", or maybe "the one". But to make decisions now that will lock us into something down the road, it doesn't look like it's wise. We should consider what the impact is going to be after we have a look at the final product. And I believe, Mr. Chairman, I'm correct in assuming that we—this body drew the rules under which we are now proceeding, and I'm confident that if it looks like it is the will of the majority, that we can suspend the rules and just do about whatever we want to at a later time. Is that true, Mr. Murray, or not? I'd ask you to yield for a question.

DELEGATE MURRAY: I'll yield.

DELEGATE DRUM: Is it true that we could suspend the rules and consider some of these alternatives that may go on the ballot at a later time?

DELEGATE MURRAY: I think that we could suspend the rules and consider some of these alternatives. I also feel that it is within the rules—within the province of our rules to do what Mr. Joyce has moved that we do, to put this matter as a substantive matter relating to the matter of the ballot into Style and Drafting so that they can accept or reject at some future date, after they have looked at the document in its entirety. So I think we could do either one. Now, perhaps in—a little explanation. I've been asked many times, "Who

has the province of determining the question of what shall be contained within the ballot?" Our rules, without specifically stating so, provide that the Committee on Style and Drafting, once it has completed its primary work on the matter of style, then becomes a committee—a substantive committee for the purpose of giving substantive consideration to the question of the ballot and of the form of that ballot under our Enabling Act. And so I feel they have within their province these questions and they will bring this ballot back to us. And we will debate it fully in Committee of the Whole, just like we're debating this matter now, and decide what that ballot will be. So, really the answer to your question is, it can be done both ways, or either way; either by suspending the rules or by taking the action that Mr. Joyce has recommended. And we will face the question at the same time in the same manner, really.

DELEGATE DRUM: Mr. Chairman. I would like to make one more comment, not in defense of the original Section 6 necessarily, but a point of clarification—that within the section as was printed yesterday and was voted on by a majority of this body, there is an alternative. The alternative is in the three-fifths. If everything goes the way that Mrs. Babcock's many friends says it should go and if the Highway Department operates in a satisfactory manner to the Legislature, the antidiversion of funds will never be a problem. However, if the Highway Department does not respond to the will of the people and to the will of the Legislature, at that point the three-fifths probably will become a factor. And it appears to me that we have an alternative written into the same paragraph at the present time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of the motion of Mr. Joyce. I think we should let the Committee on Style and Drafting know that we want to preserve our right on this matter. Now, there's another possibility that no one has talked about, and I think it may be a real possibility. If we keep messing around with this sales tax that's on gasoline and other motor fuel, the taxpayers who pay this may rise up and say, "There's enough of this nonsense, let's just repeal the tax on motor fuel." And that'll end the whole problem; and I'm not so sure that might not be such a bad idea. We're taking money that was raised for a specific purpose and now we're saying that didn't mean anything. We said, "Sure, we pulled a fraud on the taxpayers, and now it doesn't matter. Times have changed; morals have changed; our word doesn't mean anything; the vote of the people doesn't mean anything." And I think we better give this matter some consideration, and I rise in support of the motion of Delegate Joyce that the Babcock amendment be referred to the Committee on Style and Drafting, with the recommendation that it be brought back as an alternate measure on the ballot. Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow. That is not the sense of his motion. He—there's no recommendation involved at all. It's to refer the thing to Style and Drafting. And I just—that's the motion. If you want to amend the motion, you may.

DELEGATE ARONOW: Will Mr. Joyce yield, please?

DELEGATE JOYCE: I will.

DELEGATE ARONOW: What is your motion then, Mr. Joyce?

DELEGATE JOYCE: My motion was that, as the President stated, that this matter be referred to the Committee on Style and Drafting for consideration, to be reported back to—by the Style and Drafting Committee to the Committee of the Whole. And my motion does not carry any recommendation to that committee, one way or the other.

DELEGATE ARONOW: Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I am a little bit afraid that the Convention may be getting lulled into a false sense of security on this business of referring things to be put on the ballot. Mr. Gysler had a constituent here a few days ago who posed a question that none of us can answer. And it was simply this: "Will there be two times to vote on the Constitution, or just one?" She says, "If there are all these alternatives, how do I know how it's going to come out? I might want the Constitution with one set of these combinations, but I might not want it with another. And how do I get to decide?" She says, "If most of the people vote, for example, for a unicameral, I might accept the Constitution if it didn't have 'uni', but I might want to vote against it if it did have 'uni'. And how will I ever know what I'm really going to vote

on?" I've been puzzling about this for the last week, and I simply do not have an answer yet. And I just want to warn all hands that we do not have a sort of "happy haven of refuge" by putting a great combination of alternatives on the ballot, because the net result of it is going to be that people will say, "Gee, I don't know what I'm getting, so better I not vote for any of it", and it'll ding the whole thing.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I rise in opposition to Mr. Joyce's motion. But I have a concern that I picked up in the last four minutes, and I certainly hope that other delegates here have the same concern. I'll try and state it. I understood, or felt I understood, that it was the function of this group to decide what would go on the ballot and that it was the function of Style and Drafting to suggest to us how it would best go on the ballot. And if I'm wrong in that, I'd certainly like to have it explained to me and to the rest of the group.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: If Mr. Furlong is wrong on that, I would like to know, certainly, as the Chairman of Style and Drafting Committee. As I view it, the Style and Drafting Committee will report, as Mr. Murray said a few minutes ago, a recommended ballot. We may be 180 degrees off of anything that you like or want or had previously thought. That will come to Committee of the Whole, and then you move to delete or you move to strike or you move as a substitute motion that instead of this, that go in, and that stay out. It'll be a first-class debate, I'll guarantee you, but that's as I conceive the form.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: May I ask Mr. Schiltz to yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes.

DELEGATE FURLONG: Mr. Schiltz, my concern is that, if I understand what you're saying correctly, you can, in fact, substantively change the decision of this body by the way you determine to present it. Now, isn't it the function of this body to determine what will go on—the substantive material that will go on the ballot?

DELEGATE SCHILTZ: Absolutely, after a debate in the Committee of the Whole. I'm not going to decide anything. The Convention is going to decide—nor is my committee—but we'll make recommendations, and then the fight is on.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: The crucial motion yesterday, a motion by Foster and Scanlin to delete Section 6, page 12 of the majority report, and inserting in lieu thereof Section 1(b) of Article XII of the present Constitution. There were the following votes: 72 Nay and 17 Aye. I would like to share—to remind the Constitution [Convention] of the action which we took yesterday on Section 6, if you'd review it for the benefit of the Convention. (Inaudible)—the "semifinal action", which was your term.

CHAIRMAN GRAYBILL: Well, perhaps you have reference to the fact that the last thing we did was, by voice vote, to decide that Section 6 was the sense of the Convention. We have not finally adopted it to refer to the Convention in the Committee of the Whole, but we did pass, by voice vote, Section 6 for adoption.

DELEGATE DRISCOLL: Mr. Chairman, is a substitute motion in order?

CHAIRMAN GRAYBILL: Yes.

DELEGATE DRISCOLL: I would move the adoption of Section 6 as proposed by the committee.

CHAIRMAN GRAYBILL: Now, do you mean to imply by that, that when this committee does arise and report, after having under consideration Section 6, that it recommend to the Convention that this section be adopted?

DELEGATE DRISCOLL: That is my intention.

CHAIRMAN GRAYBILL: Very well. That substitute motion by Mr. Driscoll will be debated.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I'd like to ask Mr. Driscoll a question.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Yes, Mr. McDonough.

DELEGATE McDONOUGH: Mr. Driscoll, would you consider, in your substitute motion, amending it so that we add to Section 6, on line 10 of page 12, after the word "for", "statutory refunds and adjustments"?

DELEGATE DRISCOLL: Yes, Mr. Chairman, I would accept that.

CHAIRMAN GRAYBILL: Well, now, you gentlemen put the Chair in a spot here. I realize you want to amend Section 6. I think maybe what you better do is withdraw your motion to adopt Section 6 and let's vote on these other two matters. And then we'll still have a motion to adopt Section 6.

DELEGATE DRISCOLL: I will withdraw it.

CHAIRMAN GRAYBILL: Very well. The issue, then, is on Mr. Joyce's motion to refer Mrs. Babcock's motion for a separate alternative to Style and Drafting.

Mr. Monroe.

DELEGATE MONROE: Mr. President. I rise to oppose both these motions of Mr. Joyce and Mrs. Babcock. I concur with Mr. Drum. We worked hard and long yesterday to reach an opinion. I think it was a strong majority. I don't think we should have an alternative on the ballot. Let's support the majority report if we get to it, and we can confirm it then.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. If Mr. Joyce's motion does not mean that this Convention is approving the Babcock amendment and asking the Style and Drafting to present both of them to us, then I take it that the substance of the motion is that the Style and Drafting Committee is left with the substantive decision as not to do it. In other words, if Style and Drafting decides not to present this amendment, then they simply won't bring it up. And in effect, the Style and Drafting Committee will have made the decision, that, I think, maybe this body ought to make.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Just to make that clear—which apparently neither Mr. Murray nor I did—if the Style and Drafting Committee, after sufficient deliberation, decided that that should not be on the ballot, that there was something more important and we couldn't put everything on the ballot, it will be debated—that report will be debated in Committee of the Whole and you or anybody else can say, "I move to take something else off and put this on." or "I move to put this on in addition to what the Style and Drafting Committee has put on". So we don't make the ultimate substantive decision.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: (Inaudible)

DELEGATE HARPER: Isn't that the case now, though, even if we do nothing on this amendment of Mr. Joyce—or motion of Mr. Joyce? Isn't that the case anyway?

DELEGATE SCHILTZ: I think it is.

DELEGATE HARPER: Then are you—Mr. Chairman, may I ask him one more question?

CHAIRMAN GRAYBILL: You bet.

DELEGATE HARPER: Then in effect, Mr. Schiltz, this motion of Mr. Joyce doesn't give you any prerogative you don't already have?

DELEGATE SCHILTZ: That's the way I feel.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: It seems to me—maybe I'm a little too confused; it's early in the morning—but it seems to me that what we're doing here is debating Mr. Joyce's motion, as I understand it, without having debated the merits of Mrs. Babcock's. Now, shouldn't we perhaps debate Mrs. Babcock's motion and, if it fails, then we don't have to go along with what Mr. Joyce has suggested. Now, if we go along with and debate Mr. Joyce's suggestion, then we haven't even talked about her amendment—her motion.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. I think, really, we debated Mrs. Babcock's motion all day yesterday. As I view it, Mr. Joyce's motion merely leaves this option open. If, when we get to the end of the road of our Convention and we see

how voluminous this document is and how many other things they may want or may not want to put on it, then your option is still open if you think this is a critical measure. It doesn't change anyone's mind. They can kill it then as well as today, or they can put it in; but it leaves that option open till the time when you see how big a constitution and how many other items that are going to be referred to the ballot. It leaves it open so you don't put the first item that comes along on the ballot and then that makes it so long you force off any other items when you get down the road—like gambling, capital punishment—that you might think, "Well now, one of these might be a good thing on the ballot", and I think it might. It might bring a lot of voters out if you put capital punishment on your ballot. But if you start putting them on as you go down and say, "This goes on, this doesn't go on", then you get the bottom, we got too many on there. And there might be some better ones down the road. So we've got one on now that we've all agreed on, unicameral-bicameral; I think we should stick with that. But I think we should defer any other options till we get to the end of the road and then bring them back in and check and see whether you want them or not. Now, this isn't going to change anyone's mind on this diversion or antidiversion in this body, but it's to say, "Should we present this to the voters to make them a choice?" I don't think the choice to the voters is particularly good in one of these real substantive measures because I think first they'll vote—if they really are that upset about it, they'll vote against the whole Constitution; but in case the rest of the people vote it in, then they'll take the option. But there's some other things to other people that won't be that important to—so it seems to me that we're at a real good point now to clarify our position. This is only the second thing that's come up about whether we want it on the ballot. If we put this on, it may force something else off because we've got something already on. So it seems like we should delay any decision on what other items we put on the ballot till we get through each article and then bring them back up here and say, "Now, there's a certain number of people want this on the ballot, a certain number this—let's decide whether—how many issues first we can put on it, what'll do the best good for the whole document, as a whole, both substantivewise and a certain amount, attractionwise." As I say, the death penalty could bring out a lot of voters that aren't going to vote against the Constitution but might think that they wanted to vote for or against the death penalty; or maybe the gambling—lottery issue or something like that. So I support Mr. Joyce's motion. It's not only well-taken in antidiversion, but when you get to some of these other issues, the fact that the scheduling of your arguments puts one thing before the other automatically could force off an option later on. So I think if we preserve the right to debate what goes on the ballot of substantive nature till we get all through and see how many there really are left aside. Now, we could decide whether—by vote on Mr. Joyce's motion. It's not approving or disapproving putting this on the ballot, but it just preserves the right to bring it up after you look at your whole document and see how long we've got this document; how many other problems we're presenting; how many other things that say that in your committee, there was some substantive issue that there was an option on. I can't visualize any in that perfect document on education that we've prepared, but it might be something that someone would say, "Let's put that on the ballot." Well, they'd say, "No, we've already got all the things we want on the ballot." So I think you should defer all the options to the end of the thing and then look at them each objectively and see whether we want two, three or four, and see which ones you want and which ones you don't want. And I don't think this speaks for or against the merits of Mrs. Babcock's motion, because we may have other issues that are just as crucial to the passage of the Constitution that we haven't looked at, as this particular thing. So defer it to the end and then bring it back up and see what's this going to do to our Constitution. I certainly support the motion, not only as far as this is concerned, just as a matter of anything else that will come up till we find out what you do want on the ballot.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Just a point of information. Does that mean that we can reopen anything that we've already adopted and redebate it?

CHAIRMAN GRAYBILL: Mr. Studer, you were up. Mr. Studer.

DELEGATE STUDER: Well I have the same—Mr. President. I really have the same question Mr. Martin had. I'd like to ask Mr. Davis.

DELEGATE DAVIS: (Inaudible)—the will of this Convention. We've gone through and we're now on our what?—seventh article. There's only one item we've said should go on the ballot,

and that's been very affirmative. We agreed to that already. But I don't think there's anything else that goes on the ballot, up to today, and anything that anybody wants on it afterward should be deferred to the end, and then we can weigh the respective merits. In other words, what if someone in the next article wants something; then, in the last article, there's something that's real important, but we've already got the ballot watered down with so many issues for the voters that we know it wouldn't be acceptable. I don't think we can go back past today and bring anything up. We've got this far.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Will you yield to another question?

DELEGATE DAVIS: (Inaudible)

DELEGATE STUDER: If we pass this revenue and measure as a whole and adopt it, how are we going to get Mrs. Babcock's proposal back in here if we don't work—vote on it now?

DELEGATE DAVIS: Well, Mr. Joyce's motion—I think we're—I think we have to adopt Section 6, and then we will decide, if his motion sets this aside, to defer consideration of whether this should be on the ballot as a secondary option. Now, we haven't done that with anything so far except bicameral-unicameral, but there may be other things down the road, is my only argument. Your right to work, for instance. You're going to say, "Well, let's put that on the ballot". Then we'll take that death penalty and whatever else and we'll say, "Well, now, how many of these, if any, do we want on the ballot?" and then everybody vote on the whole thing at the end.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, could I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE STUDER: How am I assured that I can put that on? Our rules say that when we pass this section and finally adopt it, it's finally adopted. Style and Drafting doesn't have veto power over Mrs. Babcock's proposal, does it?

DELEGATE DAVIS: Absolutely not, but when you get to your issue, if you make a motion that you defer this with the right to put it on the ballot, if your motion prevails, then it would be weighed. If Mr. Joyce's motion doesn't prevail, then we'll kick it in or out today, as whether it should go on the ballot. That would be—I think you can put—bring something back up by suspending the rules, I suppose, at any time. But, as to this point, there's this only one issue.

DELEGATE STUDER: Could I ask another question to clear this up, Mr. Davis?

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. You say we can suspend the rules, but that takes a vote to suspend the rules, doesn't it?

DELEGATE DAVIS: Absolutely.

DELEGATE STUDER: And you have to have a majority vote to suspend it. So if they don't suspend the rules, we dropped this alternative that Mrs. Babcock wants on here, without having voted on it at all.

DELEGATE DAVIS: Well, Mr.—the sense of Mr. Joyce's motion is to send this to Style and Drafting and delay taking action on it today, as to whether it would go on the ballot or not; then when it comes back up, we would vote. And my thought would be that we would vote on it, whether it goes on the ballot, together with any additional things as we progress through this next two weeks of debate, whether they go on the ballot.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I believe Mr.—that Mrs. Babcock's proposal is the answer to the problem. People do get a choice in a clear-cut way with her alternative. Yesterday we had your alternative on the floor—it was going to be an alternative, but it has since been withdrawn. Time shouldn't really preclude this from being considered, really. Style and Drafting does not have the veto power, I don't believe, to drop an alternative. I'd go for Joyce's proposal to commit to Style and Drafting the Babcock alternative, for form only.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: To get back to my confusion, how can we vote on Mr. Joyce's

suggestion to put something that Mrs. Babcock has brought up to Style and Drafting, when we don't even have the other alternative voted on yet? I think—it seems to me that Mr. Joyce should withdraw his motion at this point and that if we're going to get 6 in there, we vote on 6. And then we decide on whether we're going to have Mrs. Babcock's as an alternative, and then we can send it to Style and Drafting.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I ask you a question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BUGBEE: I think that part of the confusion is when we talk about alternatives, at least in my mind, that we don't know whether these are going to be two alternatives off on the side—say, unicameral and bicameral—or whether we're going to vote on unicameral and bicameral in this body and decide to put the majority vote into the body and then the other off on the side. This is my confusion in this. Is it going to go off as two alternatives, or is the majority vote going to get it into the body of the Constitution with one alternative? Could you clarify that?

CHAIRMAN GRAYBILL: Well, I'll try, Mrs. Bugbee. Let's forget about the issue of this particular matter being referred, because this matter has come up several times. We all know that bicameral-unicameral has been referred in dual nature to the Style and Drafting Committee. Now, the Style Committee becomes a substantive committee for purposes of proposing a ballot. And it will propose a ballot form to us as it sees fit, after having gotten the unicameral-bicameral thing presented to it. Then it will make that recommendation, and then we will debate that recommendation. Now, that's the sense of what Mr. Schiltz has been saying. There are, however, a lot of different ways that things can go on the ballot. The A-B alternative is one way; putting something into the Constitution with an alternative to the side that would take it out is another way; putting something in the Constitution with a Yes-No on that issue only is a third way. There are a lot of different ways, and we do not have to use the same way on all issues. And some issues lend themselves to different methods of putting them on the ballot. But the point is that all this body has to do is to decide if it wants something on the ballot. And when it does, this body can then give it to Style and Drafting, who will put it in a form. If we don't agree with the form, we may amend it and debate it on the floor. But the thing that Style and Drafting wants to know is, are we suggesting to them that it be on the ballot, or are we not? And I think part of the problem here is that—on the motion before us at the moment is that we're not sure that we're telling them to do it or we're not telling them to do it. But maybe that's fine, too. I'm not going to try to change your motions. I don't know if I've answered your question, but the point is that Style and Drafting is a substantive committee for the purposes of suggesting a ballot. And if Style and Drafting wanted to, it could make everything in the Constitution an alternative on the ballot, and we would go down through and, I suppose, vote them down. But, in other words, they have an absolute right to suggest a ballot form.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. In—my efforts to resolve this matter procedurally and to satisfy Mr. Schiltz about not making the decision prematurely, I see, have been in vain. I withdraw my motion.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's motion is withdrawn. We're now debating Mrs. Babcock's motion that—that Section—and alternative Section 6 be added on the ballot.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise, too, for information. It was my impression that we did pass Number 6 as proposed by the committee yesterday. Now, am I wrong on that?

CHAIRMAN GRAYBILL: We, by voice vote, made it the sense of the Convention. We did not make the motion that moves it on into the Convention when this body does arise and report. So it's still open for amendment. If anybody—we didn't finalize it, let's put it that way.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce—Mr. James, you've been up several times.

DELEGATE JAMES: Thank you. Mr. Chairman, fellow delegates. I've been thinking about this all evening, and in reading Article IV of the old Constitution and the first article in the General Government's section of our proposed Constitution, I see that the power of the government of this state are divided into three distinct

departments: Legislative, Executive and Judicial. It says nothing about Highway Department. Now, the thing that bothers me here is, we elect these state officers as a check on the Governor. We feel the Governor's powers shouldn't be too extensive, so we've retained all these elective offices to act as a check. In the Judicial Article, we're having our judges return for confirmation by the electorate. Again, with the Governor, we've given the Legislature new power to override his veto. With the Legislature, of course, there's the government [governor's] veto. All these powers have a check on them. Now, if we adopt other proposals rather than the committee proposal—I would like to ask a question of Mrs. Babcock. What power do we have over the Highway Department if we remove the Legislative veto, you might say? Mrs. Babcock, will you answer that one?

DELEGATE BABCOCK: I'm sorry, I can't answer that.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I think this whole issue comes down to one thing—from the majority committee report, which I support—is to whether the Highway Department of the State of Montana will be answerable in these legislative halls to our committees. Now, I've heard through the years—I've talked to people who have served up here in the State Legislature and have come back home and they've been extremely bitter. They say they have gone over to the Highway Department; they have tried to get information; they have been treated with arrogance; they have been told, in effect, that it's none of their business. And if I might recall just one incident to your mind. I remember, some three or four years ago, that there was finally a Conference Committee put together, of Senators and Representatives, of the Highway Committees to go over and talk to the people in the Highway Department. And I believe, as I remember, Elmer Schye was the Chairman of that committee. They got over there, and it was reported in the newspapers that the people, the highway engineers, said to that committee, "We don't have to answer to you". And Elmer Schye, God bless him, pounded the table and said, "You will answer". But there is nothing under this Section 1(b) that seems to me to make the Highway Department answerable to the people of the State of Montana that serve in these halls. And I think that the majority committee—after all, if you look at these people that are on this committee, they're certainly not wild-eyed radicals (Laughter); they're pretty conservative people. They thought about this. They listened to all the testimony. I think they came up with a good committee report. I can't see why we should go back to the old section when these people have looked it over; they feel that this will serve the people of Montana well; they have written in what I think is a fair safeguard, this three-fifths before they can get any money out of here for these other purposes; and I believe that it's a sound committee report. I support it, and I believe that we should support the majority committee all the way on this.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I submit to this Convention that the powers of the Legislature are sufficient, that they can do anything that they want to with the Highway Department, if there's enough people in the Legislative session that decide to do this. It takes a majority of the Legislature to do it, and they can do. They have that authority. The Legislative Assembly of the State of Montana has the power to do anything they want to if the majority so votes. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Will Mr. Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson?

DELEGATE WILSON: Yes, sir.

DELEGATE TOOLE: Can you tell me how the Legislature can take $38 million away from the Highway Department?

DELEGATE WILSON: Take $38 million away from them?

DELEGATE TOOLE: Under Section 1(b)?

DELEGATE WILSON: The Legislature has the authority to tell the Highway Department what they can do.

DELEGATE TOOLE: They do not, sir. I beg your pardon, Mr. Chairman. They do not, sir. They cannot do anything with that $38 million that is force-fed into the Highway Department. The Legislature has no control over that $38 million, nor do the people of the State of Montana.

CHAIRMAN GRAYBILL: Thank you, Mr. Wilson and Mr. Toole.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. If Delegate Wilson is correct, and I hope he is, then there should be no objection by anyone to the majority report.

CHAIRMAN GRAYBILL: Mr. Champoux, do you feel better now?

DELEGATE CHAMPOUX: Not yet, no siree. And I'm not arguing either point here. I haven't—I didn't stand up yesterday at all. I'm not arguing either position. However, is it my understanding—at this point, at least, I feel this—and I'm directing this question to you, Mr. President—that we are now voting on whether we're going to put this on the ballot or whether—are we going to be debating the merits of Mrs. Babcock's motion?

CHAIRMAN GRAYBILL: Mrs. Babcock's motion is, "I move to add as an alternative on the ballot the following Section 6". Then she has the modified 1(b) language.

DELEGATE CHAMPOUX: Then is it your understanding that we are, at this point, not only debating the merits of Mrs. Babcock's proposal, but also whether it goes on the ballot as an alternative, sir?

CHAIRMAN GRAYBILL: Her motion directs that she wants it added as an alternative on the ballot. That's right.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The idea of the antidiversion amendment is well sold to the people and was placed in the present Constitution by the people. To me, a vote of the people is safer and should be respected. And if the people want to change their minds, let's give them the alternative. Having served in these chambers three sessions of the Legislature, I sincerely feel that three-fifths vote of the Legislative—Legislature is small protection for our highway funds. I've suffered through a special session, and we all know the history of the last two sessions, which were deadlocked because of disagreement over financing. Human nature being what it is, my observation as a member of the Legislative body is that a percentage of the body will move in the line of the least resistance. And I would predict that if a financial deadlock develops again, the signs point loud and clear to the highway funds; and the pressure to make a raid on the gas taxes will be irresistible. Twenty years from now, when we've completed our road work, I would support loosening the highway funds to other uses. So I support Betty Babcock's proposal.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. The people of 1956 changed their minds and sent me up here. I oppose the amendment and I support the majority.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in support of Mrs. Babcock's motion to put Section 1(b) on the ballot as a substitute. I served in the Montana Legislature since, I think, 1945. I remember when—I believe we even voted bonds to build roads to get ourselves out of the mud. At that time the Highway Department didn't have money enough. Today they don't have money enough to keep their construction system going like it should be. That's the reason a lot of these people are hollering for roads and they don't get them. You also should remember that the Legislature has established priorities for the use of this money in all of the various areas; the interstate, the primary and the farm-to-market. And you have to—the Highway Department has to live with those. I agree that there have been times when some members of the Highway Department have been rather rude to delegates that have visited with them, but I have never been to the Highway Department on a request for information that I didn't get a very courteous reply and ample time and explanation of all the things I asked for. And again, I would like to tell you, as I told you yesterday, if you vote for this—if this Proposal Number 6 goes on the ballot and the people have no choice, that within four years' time, your Highway Department construction will be cut in half. I've been in the Legislature and I know how close, many times that the funds that were available to the Highway Department have come to being taken away. And I know the temptations that are going to be before the Legislature, and so I certainly am [in] agreement with Mr. Etchart's statements and hope you support Mrs. Babcock's motion.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President,fellow delegates. I would like to speak first to the

point that Delegate Etchart raised in regard to the vote of the people sustaining, in 1955, the antidiversion amendment. But I wish to call your attention to another point: that in 1967, the majority of the people overruled allowing six amendments to the Constitution on one ballot. In the Legislative Article, we have overruled that decision. In 1967 the people of Montana voted against allowing 80 legislative days in the Constitution, and we have overruled that. And also, in 1961, there were 80,000 people on a very close vote that voted that, in fact, they did not want Justices of the Peace in the Constitution, and in fact, we have retained the Justices of the Peace. So I submit that the previous history of amendments to the Constitution is not our purpose here. We have to decide on the merit of the issue. And I suggest that the merit of retaining the antidiversion amendment as it exists now in the Constitution is not warranted. In fact, in the Bill of Rights Committee, a representative of the Highway Department—a lawyer, Mr. Ron [Don] Douglas—stated that, in fact, he felt that the antidiversion amendment should not be in the Constitution. I think that in the course of this debate we've seen very clearly that the antidiversion amendment does not belong in the Constitution, and we've seen very clearly that the committee that has worked so hard on this has done an excellent job. They presented us an excellent proposition to make the Highway Department responsive and also to give them a little bit of extra protection. Now, I submit that the highway users, the people that are concerned about our highway money, when we give them 10 extra votes in the Legislature, they can take all of that good effort, all that good representation that they've had here, they can take that same ability to present their case to the Legislature, and with those 10 extra votes, they certainly ought to be able to take care of the highways. Now, the point that many raise is that we're going to lose our good roads in the rural areas, we're not going to get the city streets taken care of. And I submit that the history of the Highway Department has been that, in fact, we haven't gotten that in the past. And it seems to me that the proposal of the majority is going to make them more responsive, will use our money better, and, in fact, we'll be a lot better off. And I resist the motion of Mrs. Babcock. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President. I'm concerned about three things. One is immediate; that's the peace of mind and well-being of Rick Champoux. (Laughter) He's perturbed. We can end that by voting down this amendment. Mr. Etchart has joined the ranks of the prophets predicting, with great certainty, that the Legislative—Legislature will fall prey to the temptations of easy money. I'm not sure that he can prove the moral qualities of that next Legislature. Mr. Barnard becomes a Cassandra and says that if such things happen, dire consequences will occur in the future. I don't know where all of these occult powers come from. I'm not going to prophesy anything, although I think I'm the only Mormon here. (Laughter) I'm here to help write a Constitution. I oppose past alternatives and any present alternatives that come. In my opinion, the people should have one choice, the Constitution we write, as opposed to the Constitution they now have. I urge that you vote down Mrs. Babcock's amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I waited all day yesterday, I waited all this morning for the people that claim that labor elected them here to come to the support of labor. Now, I don't think that labor, per se, elected me; the people in District 6 elected me. Sometimes I'm sure that the people that belong to unions there probably don't think I should be up here, but now I think I'm going to have to come to their rescue. It seems like the many people that have been accused of being elected by labor and sold them out—I'm not going to accuse them of that, but I just can't understand. Now, here's in the Montana branch of the International Union of Operating Engineers, 4,900 of them, say that if antidiversion clauses change, the state will lose millions of dollars in federal matching funds. Montana does not have the available matching funds. The federal funds for the fiscal year are lost forever. I think Mr. Mahoney touched on this pretty heavily. Many jobs would be lost if they don't have their matching funds, which they can get if the state has funds. Now, they have 4,900 members, apparently. Montana AFL-CIO has many, many more members than that. In their letter to all of the delegates—I'm sure it did; it was addressed to the President—I'm sure they all got it—"Section 6. Highway antidiversion. This section, in its present form, is not acceptable because it does not provide the adequate safeguards against diversion of highway fuel taxes and other revenues by the Legislature." Now why in the world can't we accept Mrs. Babcock's amendment, put this on the

ballot, let these people have an opportunity to vote on it? I don't see why this is not important enough, if unicameralism is important enough, to put on the ballot. It seems to me with this many people in the State of Montana that are opposed to this as it comes out of the majority report. Now, I don't know whether I agree with the majority report wholeheartedly, or disagree. I don't think I have too much feeling, but I certainly think when this many people take a stand, that we ought to recognize it. It has been said a thousand times here that this is a people's convention. So let's recognize the people and let them vote on something where we have a clear-cut chance to do it, and quit this fooling around trying to lock something in that somebody thinks it ought to have. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Conover.

DELEGATE CONOVER: Mr. President. I came here, I got elected on the basis that if I could do something with the bureaucracy in our state government. And I want to say to you: you're all talking here, a few of you, that the Highway Department is going to run out of money, they're going to take their money. I'm not afraid of the Legislature taking the Highway's money; I'm afraid of the Highway getting into the Legislature's pocket. Just remember last session. What did the Highway Department do? They wanted a $6 million building. And let me clue you here again: if they got that kind of money to build a building, look out for next year; they'll be right back after it again. And I'm saying to you that you—that your—it's going to come out of your pocket and my pocket. And I'm going to put this little plug in just for myself—ourselves. We're sitting with a little back-house back here for agriculture; we're not griping.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Babcock's proposal this morning that she—that we add, as an alternative on the ballot, language similar to 1(b). Does anyone want the language read?

Mr. Kelleher.

DELEGATE KELLEHER: Will Mrs. Babcock yield to a question?

CHAIRMAN GRAYBILL: Mrs. Babcock?

DELEGATE BABCOCK: Yes, sir.

DELEGATE KELLEHER: The last few words, "as authorized by the Legislative Assembly"; I'd just like to know whether they apply to all three phrases following the verbs "shall be used". You'll note that it's broken down into three parts: for expenditures for the public highways; and then the second group, for county, city and town obligations; and then the third group, for statutory refunds. Would the words "as authorized by the Legislative Assembly", Betty, apply to all three groupings?

DELEGATE BABCOCK: Yes.

DELEGATE KELLEHER: Thank you.

DELEGATE BABCOCK: May I close, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Wilson, Mrs. Babcock is going to close. Do you want to speak first?

Mr. Wilson.

DELEGATE WILSON: Mr. President. Since I was challenged by Mr. Toole about the effect the Legislature might have on the Highway Department as such, I believe if you will read very carefully Mrs. Babcock's suggested amendment, that this is taken care of there. It refers to all of the section that such costs will be authorized by the Legislative Assembly.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE CHAMPOUX: Mr. President.

CHAIRMAN GRAYBILL: Just a moment.

Mr. Champoux.

DELEGATE CHAMPOUX: I'm still confused. Now, have we voted in Section 6, sir?

CHAIRMAN GRAYBILL: No.

DELEGATE CHAMPOUX: Now, what we're doing here with this vote, then, is voting in an alternative when we don't have an alternative to match it with. Is that correct?

CHAIRMAN GRAYBILL: Are you addressing the Chair?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: Well, we have Section 6's language proposed, and then we have this amendment proposed. And this amendment

is proposed as an alternative to it, rather than as a substitute for it. Does that help you?

DELEGATE CHAMPOUX: Could it be possible, then, that we vote this in and we don't get Section 6 as the alternative?

CHAIRMAN GRAYBILL: Well, I hesitate to say what's possible and not possible here. (Laughter)

DELEGATE CHAMPOUX: Yes, I can see that. (Laughter)

CHAIRMAN GRAYBILL: Mr. Champoux, all I know is that if we do what Mrs. Babcock asked, it's to be as an alternative.

DELEGATE CHAMPOUX: To what?

CHAIRMAN GRAYBILL: To whatever else we adopt for Section 6.

DELEGATE CHAMPOUX: If we adopt Section 6.

CHAIRMAN GRAYBILL: Right.

DELEGATE CHAMPOUX: Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I'd like to direct a question to Mrs. Babcock.

DELEGATE BABCOCK: Yes, ma'am.

DELEGATE ECK: In keeping with the idea that highway moneys—moneys that we derive from the use of the automobile on our roads—should be spent for those uses, I wonder if you would be able to add—willing to add, say, down after "tourist promotion", another phrase, "and the alleviation of problems attendant to the use of the automobile".

DELEGATE BABCOCK: Which would—in other words, we'll go into the environmental issue, huh?

DELEGATE ECK: Well, those environmental problems that are attendant to the use of the automobile, which could be used car bodies. No, we didn't really want to see that written in the—it could be in cities, it could be air pollution problems.

DELEGATE BABCOCK: I wouldn't be agreeable to writing that in, but I certainly would be agreeable to soliciting the help of the people that are for this amendment to work on the environmental issue, if this passes.

DELEGATE ECK: Thank you. I will not try to amend the motion, Mr. Chairman.

DELEGATE BERTHELSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: May I address a question to Mr. Schiltz? Would you yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE BERTHELSON: Mr. Schiltz, I'm trying to clear up a misunderstanding here as to what the last five words in Betty Babcock's motion refers to, "as authorized by the Legislative Assembly". Mr. Wilson says those words apply to everything said above. I contend they apply only to administrative and collection costs as authorized by the Legislative Assembly. Would you—

DELEGATE SCHILTZ: Mr. Berthelson, I would refer you to some member of the committee who has studied this in more depth than I have. But I suspect your version is the version.

DELEGATE BERTHELSON: I suspect that I'm right. (Laughter)

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: There was a statement made yesterday, I think, that should be cleared up a little. Mrs. Babcock made the statement that if this majority proposal was accepted, the Farmers Union would vote against the whole Constitution. Now, I inquired into that, and I can find no one who has made that statement. There might have been one member, but Farmers Union as a whole has not made that statement.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I would make the same remarks that Mr. Siderius made with reference to the AFL-CIO.

CHAIRMAN GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. Chairman. What confuses me is what Mr. Champoux is con-

fused about. If we vote on Betty Babcock's motion, that does not necessarily say that I'm voting against Number 6. I'm not—as I understand it, Number 6 could be put on the ballot, this could also be put on the ballot. And in voting for this amendment of Betty Babcock's, it is simply giving the people a choice; it's not necessarily saying that I'm voting against Number 6. Am I not right, Betty?

CHAIRMAN GRAYBILL: Mrs. Babcock, will you yield?

DELEGATE BABCOCK: (Inaudible)

DELEGATE SIMON: Am I correct that if I vote for your amendment, that I'm not particularly voting for Number 6 but I am voting for two choices for the people?

DELEGATE BABCOCK: Yes, providing that—I'd like to ask a question now of Mr. Davis.

CHAIRMAN GRAYBILL: Wait a minute, wait a minute, Mrs. Babcock. Mr. Simon has the—your answer is Yes. And Mr. Simon, you have the floor.

DELEGATE SIMON: Well, that was what I was trying to clear up. I think we're talking—we are really making the choice of putting both on the ballot. I would like to clear up one other point, if I might ask my good friend down here, Dr. Rollins, one question.

CHAIRMAN GRAYBILL: Mr. Rollins?

DELEGATE ROLLINS: I yield.

DELEGATE SIMON: I'm not quarreling with you; I'm just asking the question. In your statement, you said that you would write a constitution and give it to the people in one chunk at one time. Are you saying, then, that we should take out unicameral and bicameral and only vote on one?

CHAIRMAN GRAYBILL: Mr. Simon, that's not a relevant question. I'm going to rule it out of order. We're debating a different matter.

DELEGATE SIMON: Thank you, sir.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. I just wanted to clear up—Dr. Rollins talked, a minute ago, about not wanting an alternative on. There are certain things that we do have to have—a real controversial issue—that we should have alternatives. But if we proceeded on his theory, or thesis, that we don't have one, we're certainly getting a real alternative. We're putting this to the people where the "againers"—and people are inclined to vote against things; if they don't like them, they vote against them. We'll have a lot of controversial issues in here. If there's no alternatives, they'll vote against this proposal as against taking the old one. That's the most risky alternative we have yet.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. Very briefly, I'd like to restate my concern of taking the action of endorsing Mrs. Babcock's proposal. It would then become the alternative. And again I say, there may be other alternatives. If you look at our—I'm not suggesting it, but maybe another alternative would be to make the last line of Section 6 an alternative, because everything above that is substantially the same as Mrs. Babcock's. But this, I believe, should come up as a suggestion from the Style and Drafting people at a later time. And the Convention can act as a body, and if 51 percent of the people here feel that it is a problem at that time, I'm certain we can suspend the rules and go ahead and proceed along those lines.

CHAIRMAN GRAYBILL: Mrs. Mansfield was up.

DELEGATE MANSFIELD: Mr. President. I am also opposed to earmarking, but as I read the Constitution as in our (Inaudible)—it says "authorized by the State Legislature". And I believe that I will stick with the majority report. As I understand that, in the past, the Highway Department has been very dictatorial. And in giving them this vote, I think it should be three-fourths; but that's another thing. I believe that we can put our finger down on the Highway Department, because just stating in Mrs. Babcock's, "authorized by the State Legislature", I don't think they'll have too much power. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, a point of information here. Is this amendment of Mrs. Babcock's open now for more amendments, or are we just discussing the possibility of putting this as an alternative measure or proposal?

CHAIRMAN GRAYBILL: No, everything's open for amendment always.

DELEGATE BATES: Okay, I have an amendment here. I have a copy here. Could you take it up to the Chair please? Mr. Chairman, I move that we add to Mrs. Babcock's proposal, "If these funds are no longer needed for the above purposes, then the Legislature must reduce the highway users' taxes".

CHAIRMAN GRAYBILL: Mrs. Bates, have you got that reduced to writing?

DELEGATE BATES: Yes, I have. I just passed it up.

CHAIRMAN GRAYBILL: Would you send it up. I see. I have it here.

DELEGATE BATES: Mr. Chairman, may I speak on this?

CHAIRMAN GRAYBILL: Just a moment. Mrs. Bates proposes an amendment to Mrs. Babcock's language by adding a sentence at the end. It says, "If the above funds are no longer needed for the above purposes, the Legislature must reduce the highway users' taxes."

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. In talking to several people that feel very strongly about these taxes and these revenue measures that are used for highways, and they feel they must be used for these and should not be diverted. And in order to have good roads, I think we need this money. But rather than divert it to another purpose from which the tax was intended, I feel that this would be a safeguard. And it would not be a sales tax, as our gas tax now is, for other purposes. Thank you.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I rise in opposition to this amendment. Building highways is a long-range program and you can't one minute have—hire engineers and not have any roads to build and the next minute have engineers and do just the opposite. Highways are an important umbilical cord to the other states of this nation. We—and here in Montana, we have a particular road situation. Montana is no ordinary state. It's 600 miles across. We have hot and cold weather and that makes a highway building problem. We have a mountainous area. We have to have a long-range building fund for highways. Therefore, I oppose this motion.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Bates' motion to add a sentence to the end of Mrs. Babcock's language: "If the above funds are no longer needed for the above purposes, then the Legislature must reduce the highway users' tax." So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it; it's defeated. We're back to discussing Mrs. Babcock's amendment. Mrs. Babcock, are you ready to close?

DELEGATE BABCOCK: Yes, Mr. President. I would just like to remind the delegates that the people that have advocated this are not stray souls that have wandered in from North Dakota. They are citizens of Montana. They want to work for the Constitution. They want us to have a good highway program, and they want us to have a good Constitution. I would like to also remind you that in voting for this proposal, you can still vote for Section 6 later. And I very much urge you to vote for this proposal. Thank you.

CHAIRMAN GRAYBILL: Very well. Mrs. Babcock's motion is to add, as an alternative to the language that the committee has come up with for Section 6, the language that's before you. I don't suppose I need to read it. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Absent
Arbanas ..... Absent
Arness ..... Nay

Aronow ..... Aye
Artz ..... Nay
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Absent
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 30 voting Aye, 60 voting No.

CHAIRMAN GRAYBILL: 60 having voted No and 30 Aye, the motion fails.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: You have an amendment. Do you want the clerk to read it?

DELEGATE McDONOUGH: Yes, Mr. President.

CHAIRMAN GRAYBILL: Will the clerk read the amendment of Mr. McDonough's to Section 6.

CLERK SMITH: "Mr. Chairman. I move to amend Section 6, on page 12, line 10, of the Revenue and Finance Committee proposal, after the word 'for', by adding the following: 'statutory refunds and adjustments'. Signed: McDonough."

CHAIRMAN GRAYBILL: Very well. If you'll take your books and look at page 12, on line 10. The sense of Mr. McDonough's amendment is to add, on line 10, after the word "for", four words: "statutory refunds and adjustments". So that the line reads—so that the phrase reads: "After the deduction of funds for statutory refunds and adjustments, enforcement"—"enforcement—of highway safety, driver's education", et cetera.

Mr. McDonough.

DELEGATE McDONOUGH: This will be short, Mr. President. We thought originally by the wording of taxes on fuels actually used on the highway, that there would be no questions about it—refunds and adjustments. But the question has arose, and therefore we want to specifically put in here that the fuels are not used propelling motor vehicles down a highway, they certainly can be refunded and adjusted. This is made on behalf of myself and the committee.

CHAIRMAN GRAYBILL: Very well. Mr. McDonough's amendment has the effect of adding the words "statutory refunds and adjustments" to take care of the situation where fuel tax is on nonhighway use. Is there any discussion? All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Rygg, would you care to restate the motion?

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of Proposal 7, that [it] recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well. You have before you, members of the committee, Mr. Rygg's motion that when this committee does arise and report, after having had under consideration Section 6 of the Revenue and Finance Proposal, that this committee recommend the same do pass. So many as shall be in favor, say Aye. Wait a minute. Do you want a roll call? Very well; roll call vote. So many as shall be in favor, vote Aye on the voting machines; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Do any delegates wish to change their vote?

(No response)

CHAIRMAN GRAYBILL: Clerk will take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Excused
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Absent
Bates ..... Aye
Belcher ..... Excused
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Absent
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Absent
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye

Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Excused
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK SMITH: Mr. Chairman, 76 voting Aye, 14 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 14 having voted No, Section 6, as amended, of the committee proposal is adopted. Will the clerk please read Section 7 in its entirety. Just a moment.

Mrs. Van Buskirk, for what purpose do you rise?

DELEGATE VAN BUSKIRK: Mr. Chairman. I'd like to express my feelings that I feel real proud of this group, that we're representing Montana.

CHAIRMAN GRAYBILL: Very well. All right, now the clerk will read Section 7.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I wonder if it would speed up anything. I'm going to move to amend Section 7 by deleting it in its entirety and to supply the material which is on your desk. Now, I don't know if he still must read it or not, but I do plan to move to amend it by deleting it in its entirety and substituting the short amendment, which should be on your desks.

CHAIRMAN GRAYBILL: Mr. Rygg, the Chair and the clerk did not receive your material—or at least the Chair didn't. Very well, may I have your attention? The Chair will ask if there's any objection if we do not read Section 7 of the committee report and allow the amendment without reading that page and a half of material. Is there anyone [who] objects? Very well. Hearing no objection, Mr. Rygg, may the Chair direct the clerk to read your amendment to Section 7?

DELEGATE RYGG: Do, sir.

CHAIRMAN GRAYBILL: Very well. Please read the amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 7 of the Revenue and Finance Committee majority report, starting on line 17 of page 12 through and including line 3 on page 14, by deleting the material contained therein and inserting in lieu thereof the following new material: 'Sec-

tion 7. Tax appeals. The Legislature shall provide taxpayer independent appeal procedures for appraisals, assessments and equalization grievances and tax grievances. The Legislature shall include therein a review procedure at the county or local governmental unit level.' Signed: Rygg."

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I suppose all you committees probably had the same trouble we did in meeting our deadline. And about 11 o'clock one night, we were still wrestling with this section. We did have quite an involved section. At the time, there were some of us on the committee who felt that perhaps this was too involved and really too much of a legislative article to be contained in the Constitution. However, because of the lateness of the hour and the nearness of the deadline, we did feel that we had to submit it. Since then, we have met on several occasions and discussed this particular section. We are not changing our concept at all, because we think that this concept of establishing independent tax review is something that is needed. Under the present tax administration program, the same governmental bodies—that is, the County Boards of Equalization and the State Boards of Equalization—that establish the revenue policies and procedures then also sit in judgment when a person wants to appeal the implementation of these policies and procedures. The testimony heard during the past few weeks indicates this procedure does not guarantee an independent, nonpartial, objective review of tax decisions. The committee feels that the Montana taxpayer needs some avenue of recourse, besides the tax administrators or the courts, to evaluate his tax treatment. We feel this new proposed section will enable the Legislature to set up the proper machinery at a local level and give the taxpayer an independent body to which he can appeal. Again I say, we thought we had spelled it out in too much detail. We had to provide for five; maybe they don't need that many. We are very interested in having it on the local level. And we feel that the Legislature is the only one that can do this. Now, it is the thinking—and I would say that Mr. Wagner and Mr. McDonough have been instrumental in working on this particular section. It is their feeling that the—this board or person or whatever the unit is who is going to appeal this would have the right to go through the records, naturally, to establish what had been done and what hadn't been done, so that they would have the authority any other person does, at any rate, to see all the records. And that they could do this. So we strongly feel that the taxpayer has the right to this independent tax review procedure. So again I reiterate, we have in no way changed our concept. We just feel that we were too legislative in our former Section 7, and now we recommend this shortened plan to this group. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on the committee's proposed Section 7—amended Section 7? If not, members of the committee, you have before you for your consideration, upon the motion of Mr. Rygg, the Chairman of the committee, that when this committee does arise and report, after having had under consideration the amendment they propose to Section 7 of the majority report, that this body recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 7 is amended as adopted. Will the clerk please read Section 8.

CLERK SMITH: "Section 8. State indebtedness. No state debt shall be created unless authorized by three-fifths vote of the members of both houses of the Legislative Assembly. State debts cannot be created to over—to cover deficits incurred when appropriations exceed anticipated revenue during any budget period." Section 8, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The present Constitution restricts the state to a hundred thousand dollar debt limit. Dollar limits do not reflect inflation, so the committee felt the limit should not be

set in dollar amounts. We have seen that an unrealistic dollar limit only encourages circumvention. Some constitutional debt limits are set at a percent of assessed valuation. Reassessments of evaluation do not keep up with inflation either. Most modern assessed values are lower percentages than would necessarily be that of the market value. Such a debt limit could starve governments for borrowing if this percentage figure were locked into the Constitution. A statewide election requiring—requirement is an extraordinary limitation to place on any action of a sovereign state which is required to carry on government. Most states do hold that, notwithstanding debt limits, some obligations are not considered debt. Usually this type of limited obligation is in the form of revenue bonds which are payable exclusively from charges or rentals for the use of some facility or service, such as housing, food services, student union buildings, and so forth. Even on these limited obligations some have a debt limit, usually based on a percentage of the average revenue for the past three or four years, and then they say that the payments cannot—of the principal interest cannot exceed that. Again, such a percentage is a difficult figure to lock into a constitution. So it seems that if a debt limit cannot be clearly stated and—it will only lead to ambiguities. And we feel, as do many others in this area, the best way to be sure you aren't going to have ambiguities is to remove the debt limitation completely. Now, Minnesota abolished its debt limit in 1962, and Illinois did in 1970. The committee feels that with the extraordinary majority requirement of 60 percent, this should prevent any unnecessary programs, and it should also be viable enough so this section should be in use for many generations. Now, after the Romney hearing, Delegate Nutting was concerned with the wording that might allow the Legislature to create a debt to balance the budget, so that is why we added the last sentence. Now, I might say that a few of us met with a group of Senators and Representatives, who were mostly from the Senate Claims and Appropriations Committee, who have a very understanding need of the Legislature. We did present this to them, and I will say that some of them were concerned that we didn't have a debt limit, and they suggested that we did check with some more bond houses. We had already checked with at least one, and they thought our wording was ample. However, at the request of this group, we did some more research on it. We did call a bond-salesman in Minneapolis, and he referred us to a Mr. Whitney of Dorsey, Marquart, Windhorst, West and Halladay of Minneapolis—and they are a legal firm, as I understand it, who are very conversant with the bond problem in all the states. And I have a letter here signed by Mr. Whitney. It's rather long, so I'm not going to read it, but he read our proposed section and lists it here. Then his comment is: "This draft is entirely workable, it seems to us, if the decision is made to omit debt limits from the Constitution and to permit them to be established by the Legislative Assembly." So I suppose that what we are asking you, then, is whether or not you feel that this limit should be erased; and we have the assurance, at least of this firm, that that wording would be workable in the future. Now, these—this firm is fairly knowledgeable of Montana's bonding problems, because they did handle much of the work in the past. So thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, would the gentleman, Mr. Rygg, yield to a question, please?

DELEGATE RYGG: Yes, I'll try.

DELEGATE SCHILTZ: Mr. Rygg, assuming that we had a bicameral Legislature with 150 members in it, is it your version here that it would—90 members from both houses would be necessary whether they came—where they had three-fifths from one house or not?

DELEGATE RYGG: I would think our feeling was it would be three-fifths of either house—or, I suppose, then three-fifths of one house.

DELEGATE SCHILTZ: Will you give me time to work out an amendment? I don't think you said that.

DELEGATE RYGG: That's possible, Mr. Schiltz. I think that was the feeling of the committee. I think I am correct. The wording may be wrong on that. Mr. Drum, do you have an answer to that?

DELEGATE DRUM: Mr. Chairman. Perhaps I could assuage Mr. Schiltz's worries. The way we thought we worded it is, we wanted to make it tough and we wanted to make sure that 60 percent of the people that were elected by the people would be the ones that would act on this, rather than 60 percent of the people who happened to be there in any particular day. We want 60 percent of

the people in each house to vote in the affirmative before the—

CHAIRMAN GRAYBILL: Is there further discussion?
Mr. Berg.

DELEGATE BERG: Would Mr. McDonough yield to a question?

DELEGATE McDONOUGH: Yes, Mr. Berg.

DELEGATE BERG: As I examine not only your Section 8, but the balance of the sections throughout the entire article, I don't find any limitation proposed for cities or municipalities, either on their borrowing capacity or the limits thereon. And I was wondering if that was an intentional omission, or is it otherwise covered?

DELEGATE McDONOUGH: Mr. Berg, we don't put any limits on it in this Constitution. In Section 10, when we talk about local government, we are talking about cities, counties, school districts, and so forth.

DELEGATE BERG: Will—would Mr. McDonough yield to another question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE BERG: On Section 10, you provide for subdivisions and districts. But I, perhaps, should remind you that a municipality is neither a subdivision of the state nor a district of the state. And I'm wondering if, therefore, there is an omission.

DELEGATE McDONOUGH: It isn't so much an omission—I think we have some opinions from our research assistants that a city is a subdivision, but we'd be very glad to change it if you want to change it; but we don't want too much itemization so we get into rule of exclusion.

DELEGATE BERG: Thank you.

CHAIRMAN GRAYBILL: Mr. Berg—Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move to amend Section 8, line 6, page 14, by striking the word "both" and substituting in lieu thereof "each" and striking the "s" on "houses".

CHAIRMAN GRAYBILL: Now, say that again. You want to strike the word "both"?

DELEGATE SCHILTZ: And substitute in lieu thereof, "each" and strike the "s" on "houses". We'll tidy it up after that. I just want to be sure that's their intent.

CHAIRMAN GRAYBILL: Mr. Schiltz—Mr. McDonough.

DELEGATE McDONOUGH: That would be all right. We'd approve that amendment.

CHAIRMAN GRAYBILL: All right. Members of the body, Mr. Schiltz has proposed to amend Section 8, on line 6, by striking the word "both", the third word in the line, and changing it for the—putting in in place of it, the word "each", so that it reads "by a three-fifths vote of the members of each house of the Legislative Assembly." So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Is there further debate?
Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I'd like to ask one of the committee—and I don't know who wishes to answer—what you mean down there in line 7: "State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period."

CHAIRMAN GRAYBILL: I guess you haven't got any takers, Mr. Mahoney.

DELEGATE MAHONEY: Well, I'll try to get my own interpretation, Mr. President.

CHAIRMAN GRAYBILL: Just a moment. Mr. McDonough, do you care to answer?

DELEGATE McDONOUGH: I think, Mr. President, it's self-explanatory.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Well, Mr. President, may I speak?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: Here she goes. We're going federal. We're going fast. This is it. I don't know what you're going to do if the Legislature is in debt. All—with all your laws and that, somebody's going to pay it. You're not going to go out. We had a precedent, even with the other one. We had a precedent that set out here, back in '33 when they passed a bill to work—to go out here and get the warranted indebtedness taken out of some 5 million. I'm the only man, probably, in this room that had to wait to get state warrants cashed. They would only cash enough for me to let me eat on. This is an actual fact. And I just—I'm so careful. And I don't want this greatest state in the Union, that has so small a debt—I love—when I go out and see the federal government going in debt the way it's going in debt. Thank goodness, we stand out here alone as one state in the Union with no indebtedness. We have a few—low warranted indebtedness, and I just see, thank goodness, the Legislature in its wisdom—we're going to have a surplus in the General Fund. I think that's marvelous. This criticized Legislature around here did do something good; it kept our funds in the black. And this is what we're doing here. We're now going to exceed all the limit, and by a three-fifths vote of this Legislature—not the old necessary two-thirds that we used to have on exceptional cases—three-fifths—can go in debt. Waves of hysteria are coming and going. We had to go out by the voters before. Now, we're going to do this by three-fifths; and if it's a unicameral Legislature of a hundred, that's 60 can decide to put the State of Montana in debt terrifically. I question whether we want to do it, and I don't see what you're going to do in Section 7. You say it's self-explanatory. But as I read it, state debt cannot be created to cover deficits incurred by appropriations except anticipated revenue during any budget period. Are you going to go to the next session—of the Legislature and pay this off first before you can continue government? This is what I want to know. But, no, you are going to pass a debt with 60 percent of the body, unicameral, or 60 percent of two bodies if it's bicameral. And we go out here—we're going so loose on this financing. I think—I don't understand the committee for going out this far. If they'd have said three-fourths, I wouldn't have had quite the objection, but two-thirds—to go from the vote of all the people of this state, a majority vote, to go down to 60 members, unicameral. I think we're getting a long ways down the road.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I heartily concur in the comments of Mr. Mahoney a few moments ago. We all know how hard it has been in times past to get bond issues through for various purposes. But I submit that that was one of the advantages of the old system. Public officials thought long and hard and planned extremely carefully before they put something up to a vote of the people on a bond issue. Under the present system, as Mr. Mahoney has pointed out, it will take just 60 people on a unicameral body to approve a debt, that would be presumably a bond issue. And I submit for your consideration the very real possibility that this planning that we have had to use in the past will go down the drain. And there will be all kinds of projects proposed here to put the people of Montana in debt for projects that the public as a whole probably does not want.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of Mr. Mahoney's objections to this provision. We, right now, have in the planning stage this highway complex building. There is a building for the Supreme Court being planned. If this—the proposal of the committee goes through, we'll be back into the shape we were in when I started practicing law in 1933. I can recollect that the warrants of the cities and the counties and—as Mr. Mahoney stated—of the State of Montana were not cash items. You had to stand in line. You had to wait, or you had to discount them if you wanted to get some cash out of them. And I think this is extremely dangerous. It's—we're here to write a constitution, true enough. We have some responsibilities also as delegates to this Convention, and part of those responsibilities are to protect the people of the State of Montana from a debt that will be like the old man of the sea on their backs. And I think we ought to take a careful look. The old Constitution had it in a provision that the Legislature had to balance the budget, and I fail to find that provision anyplace in this proposal.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Mr. Aronow yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: Well, I'll try.

DELEGATE REICHERT: Section 9 states, "Appropriations by the Legislative Assembly shall not exceed anticipated revenues during any budget period". Doesn't that imply balancing the budget?

DELEGATE ARONOW: Yes, it does, but also you have to read this Constitution together. The courts have said that you pick it up by its four corners, like any law. And here in one place you have extremely lax, and the other place you have something else; and what was the intent?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I just wish to state that I speak in support of the majority proposal. I believe the Legislature will attempt to balance the budget.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Ever since I read the proposal of Revenue and Finance and Section 8, it really shook me. I view, with great alarm, the possibilities that could be incurred here by putting the state in such a financial jackpot as the federal government is in now. Montana has kept its skirts clean. We don't have any indebtedness now, and I submit that the old provision, that when you had to go back to the people and get their vote to incur an indebtedness, is a good, sound safeguard, and I think we should preserve it.

CHAIRMAN GRAYBILL: Very well. The issue is on Section 8 as amended.

DELEGATE MAHONEY: May I make a short amendment—very short?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I move to amend—in Section 8, in line 5, strike out the word "three-fifths" and make it "three-fourths".

CHAIRMAN GRAYBILL: Mr. Mahoney has suggested that we replace the language "three-fifths" by the language "three-fourths", in line 5 of Section 8 as proposed by the committee. Mr. Mahoney.

DELEGATE MAHONEY: All I'm trying to do is to get this a little above the Governor's veto. Under your present system, a Governor's veto couldn't have even stopped it, because two-thirds—or three-fifths of the members could have passed it and the Governor wouldn't have anything to say under a veto that they could decide—and—I'm just getting a little—trying to get a little bit above a Governor's veto.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's amendment that we change "three-fifths" to "three-fourths" in line 5 of Section 8, so it reads: "No state debt shall be created unless authorized by a three-fourths vote of the members of each house of the Legislative Assembly." So many as shall be in favor say—do you want a roll call vote? Do you want to speak?

DELEGATE FURLONG: I'd like to speak, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well.

DELEGATE FURLONG: I was hoping some other member of the committee would get up, but what I think we're doing by locking it in at three-fourths is effectively destroying the intent. I've heard a lot of talk about the state not being in debt—and, of course, the state is in debt. It's in all kinds of debt. We have revenue bonds and other kinds of bonds by which we build buildings, and which get declared unconstitutional. We all know that we can exceed the anticipated income and plan a budget on it, and when the income doesn't come in, we end up in debt. I think the three-fourths vote effectively destroys the concept that the committee attempted to establish when they authorized the state to go, if you'll pardon the expression, honestly into debt by a will of the Legislature. I think three-fourths destroys that. I might be willing to go along with two-thirds, but if you put the three-fourths in here, you're effectively killing the concept of the section and I stand in opposition to it.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Will Mr. McDonough yield?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Mr. Brown.

DELEGATE BROWN: Assuming wherever [whatever] we end up with, three-fifths or three-fourths, we'd—is there any way that a simple majority could refer a debt question to the people under this section?

DELEGATE McDONOUGH: Not under this section. That's why three-fourths is just too high. That's three-fourths of all members, not those present and voting; that's all members, when he changes it this way.

CHAIRMAN GRAYBILL: Mr. Joyce was up first.

DELEGATE JOYCE: I hate to keep getting up and talk—It seems to me that when we passed the Legislative Article, we provided that the Legislature could submit any question to the people by referendum, and so, surely, if there's a problem about creating a debt, they can submit it to the people just like they can refer any other measure to the people. So it seems to me that—I'm in favor of the majority of the committee report, and I think the Legislature—if they can and wish to submit a debt to the people, they can. And it seems to me we don't really have to protect the people from Montana from themselves. If they do submit—if they do go heavily in debt, why, I would think that the people will remove that Legislature the next session. I would think that the committee proposal gives flexibility to the Legislature to actually meet the problems and to, as Mr. Furlong said, go in debt honestly. And I take it—I'm willing to trust the future Legislature, that they will do it judiciously.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: Do you refer here to debentures that might be floored by the Legislature to provide for buildings or something of that nature?

DELEGATE McDONOUGH: I think we refer to about everything that might be considered under past decisions as a state debt. And I think that goes to any type of debt that is created which you're pledging any type of taxing revenues to pay. Now, it's very possible that—and I don't think they do—are covered—the debt that's created on revenue bonds, such as the room rents and for food facilities, and so forth, of the University System. But I do think that any time you're pledging any taxes to pay off those bonds, you're creating a state debt.

DELEGATE AASHEIM: Will he yield to one more question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: Do we have any limitation, like three-fifths or three-fourths on now, or can a majority of the Legislature pass a bill which would put us into bond indebtedness?

DELEGATE McDONOUGH: Well, up until the last Supreme Court opinion, the court thought that any state debt in which you pledged the full faith and credit through a property tax to pay off had to be referred to the people, but others did not. However, last fall the Supreme Court changed their minds and said that any debt created in which you pledged any taxing revenue, such as the income tax, then it has to be referred to the people, and subject also to the hundred thousand dollar debt limit. That's essentially what the present law says.

DELEGATE AASHEIM: Will he yield to one more question?

DELEGATE McDONOUGH: Yes.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE AASHEIM: When the Legislature floated bonds for the support of the veterans of—well—the Second World War and they proposed to use the cigarette tax to pay for that indebtedness, didn't a majority of the Legislature approve that?

DELEGATE McDONOUGH: I think they did—or it wouldn't—Tom Joyce says it was by initiative. And what happened in that Supreme Court decision last fall, they said it would not affect the constitutionality of any previously bond issues issued, and so forth.

DELEGATE AASHEIM: Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg was up.

DELEGATE SWANBERG: Mr. President. There's certainly many instances where small bond issues are desirable for small projects, without the necessity of referring them to a vote of

the people. If the Legislature, in its wisdom, felt the need for a small addition to this building, for instance, it might cost, let's say, half a million dollars. The public at large would not be conversant with what the needs of the building were, and it would be a very clumsy proposition to have to submit that to the people. This is one of the problems, I think, that the committee is trying to avoid. It seems to me, however, that there are other projects that the public should vote upon. And I'm wondering if perhaps some addition in here, by way of a limitation, might not be in order. For instance, we could say, in Section 6, as an addendum to it—or Section 8, I beg your pardon, that all indebtedness in excess of a million dollars—to take a figure out of the air—shall be approved by the electors of the State of Montana. That would satisfy, I think, what I think the committee is really getting at here and would also protect the public.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, could I direct a question to Mr. McDonough?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE ECK: The wording in this really concerns me, because it says, "No state debt shall be created unless authorized by a three-fifths vote of the members." Now, don't you think that this could be interpreted to rule out a referendum?

DELEGATE McDONOUGH: I don't know. I haven't studied the General Government section that close as to whether or not that could be.

DELEGATE ECK: Well, this concerns me. I—

DELEGATE McDONOUGH: Wait a minute. Now, there's no reason why the—if the Legislature passed it by a three-fifths vote, there's no reason why—if the General Government section is broad enough—why the people couldn't demand a referendum on it if they didn't like it.

DELEGATE ECK: Now, I can accept that, but I was thinking that suppose we adopt the three-fourths—and I like the idea of three-fourths, because I think that the people are concerned about debt limits. Maybe their fears are really groundless, but I do know that this is one area where there is a lot of concern. And if we adopted a three-fourths, it could be very, very difficult, as you say—it could be even with the two-thirds—to get this kind of approval. And yet there might be issues that you would really want to refer to the people. There might be issues where there is not that much general agreement among the Legislature. And I think the article ought to be flexible enough so that this option is open to the Legislature. And I would like to see some wording change here, but I don't feel that I'm able to make it. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, may I speak on that? Actually, if the Legislature, on this section, did pass it by a three-fifths vote, there's no real reason why they couldn't condition the enacting legislation on a referendum of the people before it became effective.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Well, Mr. Chairman, my—I join with Mrs. Eck. I do have some concern that we're excluding referendum or initiative. And if there's any doubt, I would now like to make an amendment to the substitute motion on—I'm talking on line—or page 14, line 6, after "Legislative Assembly".

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Yes, sir.

CHAIRMAN GRAYBILL: I see your point and I'm certainly in favor of letting you have that right, but we have Mr. Mahoney's amendment to change "three-fifths" to "three-fourths". And I don't see how you can amend that. Do you want to substitute for it, is that it?

DELEGATE BROWN: Well, let's vote on Mr. Mahoney's and then I'll offer an amendment after that.

CHAIRMAN GRAYBILL: Right. Otherwise, you'll kill his issue if you offer a substitute amendment.

DELEGATE BROWN: I will now withdraw my amendment.

CHAIRMAN GRAYBILL: All right. I'll

come back to you. We're still on Mr. Mahoney's amendment to change "three-fifths" to "three-fourths" of the total membership of each house of the Legislative Assembly".

Mr. Martin.

DELEGATE MARTIN: I wonder if I could ask—if Mr. McDonough will yield to a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MARTIN: We have a present limitation of $100,000 in the Constitution.

DELEGATE McDONOUGH: That's right.

DELEGATE MARTIN: But in looking over the State Auditor's monthly report, you find that our state indebtedness is about $83 million, is that right? How do we get there?

DELEGATE McDONOUGH: I don't know whether—I don't know enough about the figures, but actually the $83 million, if I remember correctly, is the revenue bonds issued by the University System and maybe other types of government. So actually, that's why sometimes I think when you think of this state indebtedness and the limits of the revenue bonds, how they can go right around a state debt limit on revenue bonds. It's always important, but now—the state is now 83 million dollars in debt, if Mr. Martin figures correct, of which the [they] only pledged revenues therefor. But you know and I know, if those bonds started to default there would be a lot of pressure on the Legislature to make those payments on those revenue bonds and they would probably make them in order to keep the state's credit, even though that—the buyers of these revenue bonds knew at the time that they could only go to—look to the revenue to pay it. So there is indebtedness created, and there's indebtedness created all the time, that's outside of this limitation.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I think maybe I can throw a little light on the subject of what Mr. Aasheim is talking about. Now this is an opinion from this same firm who has dealt with Montana and their bonds. They say, "Notwithstanding constitutional debt limits, in almost all states, including Montana, the courts hold that some obligations are not—in parenthesis—debt. Typically, as in Montana, these are either revenue bonds payable exclusively from charges or rentals for the use of some tangible facility or service, or special assessment bonds payable exclusively from special assessments which are levied by reason of the special benefit resulting to individual properties for some public improvement." And I'm sure that Mr. Aasheim is correct; I'm sure that when the money was appropriated for the building funds—the long-range building funds, it only required a majority in the—of each house to do that. I believe that's correct. So I think the argument probably is what is really debt and what isn't. From the revenue bonds, they more or less call out a limited obligation rather than a state debt. And I didn't speak against this three-fourths because I didn't think it had a chance of passing. But I figure three-fourths is too high, and I would resist the three-fourths.

CHAIRMAN GRAYBILL: Mr. Mahoney, do you want to close?

DELEGATE MAHONEY: Please. There's an awful lot of difference between a revenue bond for—to pay for a university or something like that—a building for housing or to go out here—and something in revenue. But when you start taking the state General Fund and tying it up with a debt—and that is what you could do with this 60, if it's unicameral—tie up the state forever—putting it on. Now, this will really be good; this is—I'm telling you, this is the best I've heard. Then we turn around and go back to that other section over here that I tried to strike yesterday, where we're going to dock—start exempting classes of property. This could get really rough on the final end. The thing of it comes that I think Fred is correct when he said 83 million, but these are revenue bonds. They were not put out by the people. They weren't—The last thing we voted on, I believe, is that cigarette tax, which we pledged by—for a—I think it's pledged entirely for, at that time and the first thing is soldiers' bonus. Now, I think that if we go out here and make it this easy, it's going to be very easy instead of placing revenue bonds—so as to force these things to be collected, we will be in here getting everything on state general obligation bonds. The pressure is going to be very easy to come down here, under this unicameral system of the Legislature, and work out and get only 60 of them. Now, I'm just

trying to do—is let you go up to get 75 of them. Then if the Governor—he won't have to worry. If he vetoes it, they can still pass it over his head. And I'd certainly hope that the three-fourths will pass.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's amendment, on line 5 of Section 8 as proposed by the committee, to change the numbers "three-fifths" to "three-fourths". Do you want a roll call?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Okay. So many as shall be in favor of Mr. Mahoney's amendment, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Take the vote.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Absent
Arness ..... Nay
Aronow ..... Aye
Artz ..... Nay
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Absent
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Absent
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Absent
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye

Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Absent
Wagner ..... Nay
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 42 voting Aye, 43 voting No.

CHAIRMAN GRAYBILL: 43 having voted No and 42 voting Aye, the motion fails and it remains three-fifths. Mr. Habedank, you sent up an amendment. Would you like the Chair to read it? Mr. Clerk, will you read Mr. Habedank's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 8 to read as follows: 'Unless the law authorizing the same shall have been submitted to the public at a general election and shall have received a majority of the votes cast for and against it at such election, no state debt shall be created unless authorized by a two-thirds vote of the members of each house of the Legislative Assembly. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenues during any budget period.' Signed: Habedank."

CHAIRMAN GRAYBILL: Mr. Clerk, may I have that? The purpose—or substance of Mr. Habedank's amendment, then, is to change the committee's proposed Section 8 by retaining the last sentence but by putting in the first sentence that the matter must be submitted to the electorate unless it has received a majority of two-thirds of the members of each house. Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. The first sentence of that—or the first phrase of that is taken from the last four lines of Section 2 of the present Article XIII and is intended by me to cover the situation where it is possible three-fourths of the Legislative Assembly cannot agree and they will still have the opportunity, by a majority vote, to refer the matter to the people. And if a majority of the people vote for the indebtedness, it can then be created without a three-fourths vote of the Legislature. The next change is just merely changing the word "three-fifths" to "three-fourths", as contained in the balance of the proposal of the—

CHAIRMAN GRAYBILL: Mr. Habedank, you meant "two-thirds". I don't want to get the wrong idea. Go ahead.

DELEGATE HABEDANK: I meant two-thirds—yes, pardon me—two-thirds; I wish to reduce that from three-fourths to two-thirds. But it allows the Legislature leeway, as intended by the committee, and it still gives an opportunity for the creation of debt by a majority vote of the people.

CHAIRMAN GRAYBILL: I'll read that first sentence again for you. "Unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of all the votes cast for or against it at such election"—then it goes back into the regular thing—"no state debt shall be created unless authorized by a two-thirds—" So it has the effect of saying that you have to have two-thirds in the Legislature, or you have to submit it to the electorate. I think that correctly states it.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I sense the feeling of the committee, and I think it's a good arrangement. And I think the committee, if we polled them, would accede to this and agree to this amendment.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise in opposition to the proposed amendment, and I am concerned basically with the nature and character of the wording as it's proposed. I think that when you say, "no state debt shall be created"—if you use that language, you then are limiting the creation of debt of any kind, whether by revenue or general obligation, to action by the Legislature. And you may very well be foreclosing the right to do it by initiative or perhaps even to deny it by referendum. I would suggest that when you—in considering this, that you consider that you are talking principally about general obligation bonds and that the sentence should read in such a manner that it is in an affirmative method—an

affirmative statement rather than a negative statement. Now, I don't propose this as an amendment at the moment, but I would like you to consider, when you're discussing—when you're voting on this particular amendment, language that might be—read such as this: "General obligation debt of the state may be incurred upon a two-third vote of the members of each house of the Legislative Assembly." This is an affirmative statement rather than a negative approach. It relates entirely to general obligation, does not restrict revenue bonds, and does not foreclose the possibility of debt creation by initiative or the refusal of it by referendum.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I have a little confusion about this, and I guess you could clear it up, because we don't have it before us. Do I understand from this amendment that there would—that a two-thirds vote of each house would authorize the debt, much as the committee report provides, but that if they couldn't get two-thirds, a 51 percent vote would be sufficient to get a referendum?

CHAIRMAN GRAYBILL: I think that's the sense of Mr. Habedank's amendment. He changes the "three-fifths" to "two-thirds", but he adds that if they can't get a two-thirds, then any law could be passed by a majority submitting it to the electorate for a vote. Isn't that right, Mr. Habedank?

DELEGATE HABEDANK: Mr. President. That is my intent, and as far as I'm concerned, I don't feel it's necessary for this body to try to straighten out that language; that Style and Drafting can straighten it out. It's my intention that a debt can be created by a majority vote of the people and referred to them by majority of the Legislature or, in lieu thereof, by a two-thirds vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Does the amendment provide, as the majority report does after I amended it, that it requires a two-thirds vote of each house?

CHAIRMAN GRAYBILL: Yes. I want to point out for everybody so we understand, it does say, "unless the law authorizing the same shall have been submitted to the people." So I don't think we've covered the initiative problem.

Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Habedank yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: Yes.

DELEGATE AASHEIM: Would this put a restriction on the building of a highway structure?

DELEGATE HABEDANK: I don't see that it would, any more than the present wording of the Revenue and Finance Committee. We've given them the power to do everything that they can do by a three-fourths—by a two-thirds vote. But I would also have no objection to initiative measures. I want to preserve the situation. It was my intent that we allow the people, by a majority vote, to create this and be referred to them.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd just like to point out, while this discussion is going on, that when the General Government Report Number 12 comes before us, its sections on initiative and referendum allow initiative and referendum on all matters except appropriation of money. And this was the substance of what the Legislative Committee thought through and passed on to them with our recommendation, too. So I just want you to be aware that if we do something here, we're looking down the road a little bit to maybe overturning their proposal on initiative and referendum.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think I need a couple of things cleared up here. One is—maybe Mr. Brown from General Government can answer this one for me. My question is, is debt in the same classification—incurring a debt—as an appropriation, or wouldn't those be different?

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Well, it would be my opinion that they would be different. But I'm going to offer a substitute motion to clear this up, I hope—unless I cloud it up more.

DELEGATE ECK: Why don't you offer your substitute motion now? I think maybe that's what I'm waiting for.

CHAIRMAN GRAYBILL: Well, I've got two or three others up here, but I'll give you the

floor, Mr. Berg—(Laughter)—Mr. Brown. I can't figure them out either. Go ahead.

DELEGATE BROWN: Mr. President. I move, as a substitute motion, to change "three-fifths" to "two-thirds". Then at page 14, at line 6, after "Legislative Assembly", add the following: "or unless authorized by a majority of the electors at a general election." So all you need is an election, however they get to it.

CHAIRMAN GRAYBILL: At a general election?

DELEGATE BROWN: Well, I used the words—the old Constitution. Let's strike "general" and just say "at an election."

CHAIRMAN GRAYBILL: "—at an election."

DELEGATE BROWN: Or I don't know if we even need "at an election"—just "or unless authorized by a majority of the electors period."

CHAIRMAN GRAYBILL: You really don't want "at an election" in there?

DELEGATE BROWN: I don't want "election" in there. I'll leave that up to Mr. Schiltz. I don't think you need "an election" in there. That's the only way it could be authorized.

CHAIRMAN GRAYBILL: Now, that's on line—

DELEGATE BROWN: On line 6, after "legislative assembly". I'm adding the following: "or unless authorized by a majority of the electors."

CHAIRMAN GRAYBILL: All right. The substance of Mr. Brown's substitute motion is to change "three-fifths" to "two-thirds" and to add the words—it—so it'll read: "authorized by a two-thirds vote of the members of each house of the Legislative Assembly or unless authorized by a majority of the electors", which he thinks has the effect of saying that if the Legislature submits it on a 50-50—51 percent vote, fine, or if it comes by initiative, fine. All right, that's the substance of Mr. Brown's substitute motion. Is there discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I think either Mr. Brown's motion or mine would reach the point where the Style and Drafting Committee could accept it. And as long as Mr. Brown agrees to the two-thirds, I support his substitute motion.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I rise to support increasing it to two-thirds and the vote of the people. I think we've got to remember what we did yesterday in relation to this and some other things in this matter. The majority report takes off the 2-mill levy on all the real and personal property taxes in the State of Montana. The majority report then removes the local assessment, equalization and appraisal of this property and vests that in the State of Montana. So when they're worried about the Highway Department's bureaucracy, I'm afraid we've created one that will put it to shame, if this works for about 10 years. And now, they've taken off any debt ceiling as to how much the Legislature then can levy. Now, remember, this is the same Legislature that last week, they didn't even want to give them the authority to fix how many days' notice they had to give to hold a hearing. This is that same Legislature that we're—we talked about hearings here last week. And so, I would support anything that would increase some of the protections that the general public is going to have in this method of finance. Because when you talk about the antidiversion thing scaring the people, that's not going to scare them near as much as when you take all the taxing power away and place it in the state; all the appraisal power. Take it out of the hands of our local Assessor and County Commissioner. When you take off your 2-mill debt levy—I don't know whether it's been mentioned, but the annual mill levy for the University System, or any of the rest of them, won't ever—won't have to go through that struggle anymore, thank goodness. And we won't have any mill levy to be concerned about how much tax can be placed on, but they will be able to appraise the property high enough and levy enough taxes so that won't really work any hardships. So I support making some tighter restrictions in here.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think we're a little bit confused as to the present power of the Legislature to go into debt. I would move that we pass consideration of Section 8 until we reconvene after lunch, and then maybe, in the process, we can find out what we are presently doing in this area. I don't think we know exactly what we're talking about right now.

CHAIRMAN GRAYBILL: Mr. Aasheim has made a motion to pass Section 8 until 1 o'clock p.m. Is there discussion?

Mr. Kelleher. Do you want to discuss that?

DELEGATE KELLEHER: No.

CHAIRMAN GRAYBILL: Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it fails.

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I move, as a substitute motion, that the first sentence of Section 8 read: "General obligation debt of the state may be incurred by a two-third vote of the members of each house of the Legislative Assembly, or"—correction—"or unless authorized by a majority of the electorate."

CHAIRMAN GRAYBILL: All right. For the benefit of the body, the Chair is going to call that an amendment to Mr. Brown's substitute motion, since they—we can't have another substitute motion. But it does have the effect only of changing the—Mr. Brown's amendment from a negative to a positive statement. And it does have the additional amending effect, Mr. Brown, of stating general obligation debt rather than no state debt. And therefore it eliminates, according to Mr. Brown—according to Mr. Berg, the problem of revenue bonds being limited by this language. So I'm going to allow the amendment. And, Mr. Berg, you may discuss it; then I'll come to you.

DELEGATE BERG: The Chair has already put it exactly as I intended, so I'll not make any further statement.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President. I rise in opposition to the amendment. The reason I do so—I'm like Mr. Aasheim, I don't want to get into a debate on debt. But the reason I oppose it is the present Constitution, Article XIII, Section 2; when they talk about debt, they say, "will create any debt". They don't refer to general obligation, revenue or not; and that section, as I presume, has been litigated—or Mr. McDonough is familiar with it, and I'd hate to change the wording of the present Constitution. But I'd defer to Mr. McDonough.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: (Inaudible) —what Mr. Brown has said fully. When you get into general obligation bonds, you might only be limiting this section to general obligation bonds which are pledged. The payment thereon is property taxes only. And it might open you up wide as to pledging income tax, and maybe not the other full faith and credit of the state. We put—in the original draft, we put in state debt especially, because it has been interpreted by the Supreme Court a number of times in Section 2 of the present Article XIII, and we mean it the same way it is meant in there; and we don't want to get into some other thing like general obligation bonds.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: (Inaudible) Will you yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE BERG: Well, isn't it true that of the approximately $86 million debt that we have in the state now, that has been created almost exclusively by revenue bonds? And therefore does not the constitutional limitation apply principally, if not only, to general obligation bonds?

DELEGATE McDONOUGH: Well, I hate to change the wording of our present thing to general obligation over than state debt. Now, state debt has been interpreted as to what it means. I think it means the—pledging the full faith and credit of the state. If you get into GO bonds, then you get into the position that—now, what is a GO bond? Is a GO pledging that full faith and credit only from property taxes, or partially from property and income taxes, or some other excise taxes that can be segregated and pledged to the payment of this? It's actually taxes and not revenue from a source to make it revenue bonds. That's why I don't want to get into GO's.

DELEGATE BERG: Mr. Chairman. I yield to Mr. McDonough's position and withdraw the amendment.

CHAIRMAN GRAYBILL: All right. Mr. Berg's is withdrawn, and we're back on Mr. Brown's motion to change "three-fifths" to "two-thirds" and add the words "or unless authorized by a majority of the electorate". In other words, to say that the Legislature can pass—can create debt by a two-thirds or by referring it to the electorate. But it also covers the initiative problem, because it doesn't forestall it. Is there further discussion of Mr. Brown's proposed amendment—substitute motion.

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: A roll call has been called for.

Do you want to close, Mr. Brown?

DELEGATE BROWN: I close.

CHAIRMAN GRAYBILL: Oh, wait a minute. Mr. Kelleher, you had some questions?

DELEGATE KELLEHER: I'd like to ask a question, if I may, of Mr. McDonough.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE KELLEHER: State debt—could you give me some examples of state debt in the first sentence that would not be included in the last sentence? Are we talking just about general obligation bonds, or revenue bonds, or both? What's included in state debt in the first sentence, and is it any different than state debt in the second sentence?

DELEGATE McDONOUGH: No.

DELEGATE KELLEHER: It's the same thing. Well, then how could we go into debt that isn't excluded by the second sentence?

DELEGATE McDONOUGH: What we're talking about in the first sentence is debt issued on bond issues, and so forth, for capital expenditures. What we're talking on the second sentence is any state debt issued and created for the purpose of beating those appropriations.

DELEGATE KELLEHER: For prior appropriations, is that right?

DELEGATE McDONOUGH: Prior, or present at the time they're fixing up their budget.

DELEGATE KELLEHER: But on the first sentence, you would authorize either general obligations or revenue obligations, either one? Would they be tied into revenue?

DELEGATE McDONOUGH: Revenue is not included in the first sentence.

DELEGATE KELLEHER: It is not?

DELEGATE McDONOUGH: No.

DELEGATE KELLEHER: Thank you.

CHAIRMAN GRAYBILL: You understand why, Mr. Kelleher? The term "state debt" has been defined by the courts only to be that debt which pledges the credit of the state, and the revenue debt bond doesn't. Mr. Brown, do you want to close?

Mr. Rygg.

DELEGATE RYGG: I would just like to say, we were for Habedank's and he withdrew his and Brown's is about the same, so we would support that.

CHAIRMAN GRAYBILL: All right.

Mr. Brown.

DELEGATE BROWN: I close except to clarify that we do have members of each house in there now, don't we?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BROWN: I close.

CHAIRMAN GRAYBILL: Very well. The—a roll call vote has been called for. So many as are in favor of Mr. Brown's motion to change "three-fifths" to "two-thirds" and to add the words "or unless authorized by a majority of the electors", please vote Aye; those that are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Absent
Arness ..... Nay

Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Absent
Bates ..... Aye
Belcher ..... Absent
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Absent
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 86 delegates voting Aye, 2 [3] voting No.

CHAIRMAN GRAYBILL: 86 delegates having voted Aye, 2 [3] voting No, Mr. Brown's amendment is adopted and the section now reads: "No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the Legislative Assembly, as—or unless authorized by a majority of the electors. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period."

Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal 7, that it be adopted as amended. Thank you.

CHAIRMAN GRAYBILL: You've heard the motion of Mr. Rygg, the Chairman of the committee. All in favor of the motion—

Mr. Swanberg, for what purpose do you rise? Oh, do—you want to make another amendment, right?

DELEGATE SWANBERG: If I could, Mr. President, yes.

CHAIRMAN GRAYBILL: Excuse me, I had it here. Mr. Swanberg.

DELEGATE SWANBERG: I would like to now move to amend Section 8 by adding a portion of Section 2 of our present Article XIII in our present Constitution. The amendment just made by Mr. Brown goes a long ways towards clarifying the problems we have here, but I don't think it goes all the way. Under the situation that we now have under Section 8, a debt can be created by a two-thirds vote of the Legislature or it can be referred to the people and they can vote on it. But the fact still remains that a two-thirds vote of the Legislature can create a debt of any amount. And I think this right to create debt in excess of a certain amount should remain with the people. And so I have submitted an amendment which would read as follows—this is out of the present Constitution, in effect—But—"No debt or liability shall be created which shall, singly or in the aggregate with any existing debt or liability, exceed the sum of $1 million"—it used to be a hundred thousand dollars—except in the case, now that the—"unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election." I think that protection in the Constitution is extremely important.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg wants to add as another sentence, on line 9, at the end of Section 8 as proposed by the committee; the language that no debt or liability will be created in excess of a million dollars unless it has been put to the people at a vote at an election.

Mr. Joyce.

DELEGATE JOYCE: Mr. President. I rise in complete opposition to this amendment of $1 million. It seems to me that if this Convention can't do anything more than face the issue squarely—if we put $1 million in there, all we're going to do is go back to the old system that has been practiced since 1889, of circumventing the Constitution by creating the fiction that we're going to create revenue bonds. And so every debt to build any building—you can't build a building for a million dollars any place. Then, it's always—you have to—before you can build a building, you have to submit the thing out to the people. And it seems to me that that's foolish—and then—because the Legislature—if they need a new building, seems to me they ought to be able to authorize to build it. We've got the protection in now that there's two-thirds of the Legislature must agree on it, and so you can't build any new unit at the University, you can't build any new building that's badly needed at the state Capitol, without having an election. So what the Legislature has done in the past, of course, is they've got around the Constitution by creating certain revenue bonds, as they call them. And, of course that's—it's just a fraud. And so, every time, you have to have a test case then, to see whether or not this is really a revenue bond or isn't, and then you leave it up to the court. If they like the idea, then they say, "Yes, it's okay, it's revenue bonds", and if they don't like it, they can say, "No, it's really a general obligation bond in excess of the $1 million." It seems to me that we ought to get rid of this distinction between revenue bonds. If the State of Montana is going to create any debt, they ought to pledge the full faith and credit of the State of Montana to it because we're going to pay the debt. We shouldn't create any debts where there's a possibility that we won't pay them back. And all it does is in the interest market then, because it isn't a general obligation bond and they charge higher interest. And it seems to me that the state shouldn't create any debt at all unless they intend to pay it. And so, to put $1 million and to require this rigamarole of stifling the state to build any buildings just, seems to me, is a gross step backwards. And I think that we ought to meet the issue squarely here and allow the people of Montana, through their elected representatives, to see whether or not they want to build a building. If they start building too many buildings, of course, the people will take care of them in the Legislature. And it seems to me that we can trust the future legislators to judiciously meet the problems of the time as they arise, rather than tying their hands with these artificial debt limits. And I don't think that the people of Montana are going to be in any serious trouble whatever. If it's necessary to go in

debt to build buildings, then how else can you? You can't build a building in one year. None of us can afford to pay for a house in cash. Why shouldn't the state be able to reasonably amortize the construction of their buildings? And so I am vigorously opposed to the amendment offered by Delegate Swanberg.

DELEGATE RYGG: I would like to resist the amendment. In the testimony we heard and in the research we have done, it was pretty well determined that it isn't a very good idea to lock any amount of figures in the Constitution. As I stated before in the presentation, it's—there's inflation to worry about; and I really believe that as you have amended Section 8 now, it has plenty of protection, and I wouldn't want any figures put in there. Thank you.

CHAIRMAN GRAYBILL: The issue arises on Mr. Swanberg's amendment.

Do you want to close, Mr. Swanberg?

DELEGATE SWANBERG: I have a few words, Mr. President. I should note, first, that the limitation proposed does not in any way limit the authority to issue a revenue bond. This talk about bond issues at the University simply does not apply. All of the buildings that I know of at the Universities are financed by Revenue. The fieldhouse at Missoula is financed out of the revenue expected to be derived from the fieldhouse. The dormitories built at Missoula are financed out of the rentals expected to be derived from the dormitories. Those things do not require the vote of the people now, nor would they require a vote of the people if this were passed. All I'm suggesting is when a man's taxes are about to be increased by the construction of a building in excess of a million dollars, I think he should have some control over how that money should be spent. Now, some control is vested here by a two-thirds majority of the Legislature; that's admitted. But I still think that that should apply only to expenditures of a million dollars or less. That gives the Legislature, I think, quite a bit of leeway in the construction of the smaller buildings that they might need. But it still requires, for larger structures of extreme—of large capital expenditure—major additions to the penitentiary, major additions to the hospital at Warm Springs, and things of that nature—it still requires a vote of the people. Perhaps we'll have to get that Warm Springs enlarged, because we may all be going over there before long. (Laughter)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Swanberg's motion to amend Section 8 by adding a sentence, at the end of it, which is out of the old—out of the present Constitution and has the effect of limiting the debt at $1 million unless put to the people for a vote.

UNIDENTIFIED DELEGATE: Roll call vote.

CHAIRMAN GRAYBILL: So many as shall be in favor, vote Aye on the voting machine; and so many as opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Absent
Arness ..... Nay
Aronow ..... Aye
Artz ..... Nay
Ask ..... Nay
Babcock ..... Absent
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Absent
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Absent
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay

Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Absent
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Absent
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Absent
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 16 delegates voting Aye, 67 voting No.

CHAIRMAN GRAYBILL: Members of the committee, 67 having voted No and 16 voted Aye, the amendment fails. Members of—
Mr. Ask.

DELEGATE ASK: Mr. Chairman, could you read Mr. Brown's—what he inserted there on the election—what it says?

CHAIRMAN GRAYBILL: All right. I'll read the section as it is now. "Section 8. State indebtedness. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the Legislative Assembly or unless authorized by a majority of the electors. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period."

DELEGATE ASK: Mr. Chairman, could—would Mr. Brown yield to a question?

CHAIRMAN GRAYBILL: Mr. Brown?

DELEGATE BROWN: I'll yield.

DELEGATE ASK: Mr. Brown. Was it your intent by your amendment that when the question is voted on by the people, that the majority of all the electors—like 51 percent of all the electors—have to vote on it, or just the majority voting?

DELEGATE BROWN: The majority voting was my intention.

DELEGATE ASK: Would Mr. Brown yield to another question?

DELEGATE BROWN: I'll yield.

DELEGATE ASK: Don't you think we should add on the words "the majority voting thereon" to fully clarify this that it's the majority

voting on the question, not the majority of the electors?

DELEGATE BROWN: I'd have no objection to that.

DELEGATE ASK: Mr. Chairman. I would move that the words "majority of the electors voting thereon" be added to Mr. Brown's amendment to clearly show that the majority voting, not the majority of all the electors in the state.

CHAIRMAN GRAYBILL: Mr. Ask has made the point that the electors might be larger than those voting and so he suggests adding to Mr. Brown's amendment "or unless authorized by a majority of the electors voting thereon." Is there discussion on that matter?

DELEGATE ASK: Mr. Chairman, maybe I could explain that. The way it was worded, I have a fear that if you had 100,000 voters, you'd have to have 51,000 voting for the proposition. The way it was worded; and the way it is now, if we have a hundred thousand voters and only 50,000 vote, why, 25,001 would carry it.

CHAIRMAN GRAYBILL: The electorate is larger than the voters at an election. All those in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, members of the committee, you have before you for your consideration Section 8 as amended. Upon the recommendation of the Chairman of the Revenue and Finance Committee that when this committee does arise and report, that we recommend the same be adopted. All in favor of Section 8 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the committee recess until the hour of 1:00 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to amend—the motion is to adjourn—to recess until 1:00 p.m. Before I take that vote, I'd like to point out that we expect to finish Revenue and Finance and we do have Legislative on Style and Drafting this afternoon to finish. All in favor of recessing, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:05 p.m.—reconvened at 1:12 p.m.)

CHAIRMAN GRAYBILL: The committee will come to order. Mr. Vermillion, will you close the back doors. The committee will come to order. Ladies and gentlemen, when we recessed the Committee of the Whole, we were about to consider Section 9. Will the clerk please read Section 9.

CLERK HANSON: "Section 9. Balanced budget. Appropriations by the Legislative Assembly shall not exceed anticipated revenues during any budget period." Mr. Chairman, Section 9.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does rise and report, after having had under consideration Section 9 of Proposal 7, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is similar to Section 12 of Article XII, although it does not have near the words the present article has. It merely requires the state to operate under a balanced budget inasmuch as it is possible to determine the anticipated revenue. Most states have a similar requirement, and the consensus of the committee was that the state should still try to operate in the black. We feel that it is important enough to ask you to retain it in the present Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on Section 9? (No response) If not, members of the committee, you have before you on the recommendation of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 9, that the same be adopted—the same be recommended for adoption. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Adopted. Will the clerk please read Section 10.

CLERK HANSON: "Section 10. Local government indebtedness. The Legislative Assembly shall enact limits of indebtedness for subdivisions and districts of the state." Mr. Chairman, Section 10.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having under discussion Section 10 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This proposed section leaves the question of local government indebtedness and limits that—and limits the indebtedness up to the Legislative Assembly. This proposed section would leave the Legislature free, if it so desired, to pledge the full faith and credit of local government units to back indebtedness. Such a pledge should result in lower interest rates and a savings to the people of Montana. Now, we know there is an amendment here to retain the old 5 percent limit; and this was discussed at great length in the committee, and it was the feeling that there, again, we would be locking in a figure in the Constitution, which we thought would be undesirable. Whether you have a percentage figure or whether you have a new set of what assessed value is, it seemed to have the same trouble of which you're going to manipulate. Now, we did meet with a group of legislators last Saturday, and I think I mentioned that before, and they did represent the leaders of the Senate Finance and Appropriations Committee, and they all agreed that this wording was satisfactory and that it should be very adequate as far as they were concerned. We talked to a bond-salesman in Minneapolis, and he thought it was good. Again, we talked to Mr. Whitney of Dorsey, Marquart, Windhorst, West and Halladay. They thought this was good terminology and would allow the sale of bonds and present no problem. I don't suppose it makes any difference, but Minnesota has never had a debt limit on local indebtedness and Illinois repealed theirs in 1970. The committee does feel that this short section will suffice for many years to come. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I move the substitute amendment to Section 10. I think the—you have it on your desk.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Ask's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 10, page 14, lines 10 through 15—13 through 15 of the Revenue and Finance majority report, to read as follows: 'Section 10. Local government indebtedness. Any local government unit, school district, or any other political subdivision may incur indebtedness not to exceed 5 percent of the assessed value of the taxable property therein. Each local government unit, school district, high school district, or political subdivision shall have separate and independent bonding capacities within the limitations of this section. By a 60 percent vote of the electors voting thereon, the debt limit may be increased an additional 5 percent of the assessed value. The debt limits in this section shall not apply to obligations primarily payable from revenue or sources other than property taxes, whether or not the full faith and credit and taxing power of the issuer is also pledged for the payment of the obligation and interest thereon. For purposes of this section, assessed value shall be determined by methods or factors established by law. No indebtedness or liability shall be incurred for any single purpose to an amount exceeding the sum set by law without the approval of a majority of the electors voting on the question as provided by law.' Signed: Ask."

CHAIRMAN GRAYBILL: Mr. Ask, you also have an amendment to your amendment. Do you want to—do you want us to explain that?

DELEGATE ASK: Yes, I would like to have that inserted now. After the word "school district", in the second sentence, add "community college district". Mr. Champoux requested this and felt it should be added. I had the word "political subdivision", and we may be able to clean up the wording here to include the various districts.

CHAIRMAN GRAYBILL: Very well, Mr. Ask. I think you all have his language before you—and he wants to put on the fifth line of his Section 10, after the word "school district", a caret

and then the words "community college district". All in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, that amendment to Mr. Ask's amendment is allowed, and Mr. Ask now has an amendment that has the effect of changing local government indebtedness from the formula in Section 10 to a 5 percent limitation, not to apply to revenue bonds, et cetera.

Do you want to explain it, Mr. Ask?

DELEGATE ASK: Yes. Mr. Chairman, fellow delegates, this amendment I've put in is not a spur-of-the-moment thing. I've discussed this with Revenue and Finance for two or three weeks since we've been here, and they've discussed it, been very fair about it, and we just have a difference in our philosophy on this particular point; and they knew it was coming up, and I think it's a good time to discuss it, since we went over state indebtedness quite thoroughly. Now, I submitted this amendment not because I don't trust the Legislature in setting the limit of local government. I do it for the purpose of getting the Legislature out of local government to a certain extent. I am on the Local Government Committee, and many of the witnesses that we heard—legislators and people in local government—complaining that every time they turned around they had to go to the Legislature to get some additional mill levy or some type of provision that they can do something in their local government. And even the committee, now—the Legislative Committee that's working on local government, is working real hard to broaden the laws for local government so that they can operate more on their own without coming back. Understand that a terrific amount of the legislation introduced every year in the Legislature is items pertaining to some unit of local government—give us a little more power here, a little more here, a mill levy here. And I think on a—you know, our old Constitution has a 5 percent limitation, and if we adopt the majority report, they're going to—here's another item that they have to go to the Legislature for, to get additional authority to bond. I don't know what the Legislature is going to do, but let me give you an example. Say the Legislature says, "Well, 5 percent doesn't sound too bad. They're getting along on it now. Let's set it at 5 percent and let them run like that." All right, say the city of Billings or Great Falls bonds for various things here and they get up about 4 percent. All right, then they get a project that they're going to have to go over the 5 percent a little bit, maybe 6 percent. What do they have to do? Well, the planners will have to say, "Well, the Legislature set it at 5 percent, so we've got to do our planning and go there next time and try to get them to raise it to 6 or 7 percent." And if—many of you know that have had bond issues on your local level, they get real hectic sometimes. You get a faction on this side and a faction on that side. So what happens? Here comes both factions to the Legislature and says—one says, "Raise it to 7 percent so we can get our—we can built our—do our—finish our project and bond." The other side says, "Gosh, we don't want it. Don't raise it. Don't raise that limit." Now, I don't—if I were a legislator, I wouldn't feel that I should set the—decide what Great Falls wants to do or what Billings wants to do. I think that's up to the local people, and we're just adding another thing for the Legislature to do. Now, I think this—my amendment here, gives you all the flexibility in the world, and this is our form of government. If the people on the local level want to do something, let them vote on it and let them do it. Now, if you'll read my proposal, it says 5 percent. Now, some of them said, "Where did you get the magic figure of 5 percent?" Well, that's our present Constitution, and they did have trouble with it years ago when our valuations were lower, when they equalized; it came up and as far as I know, I don't know of a local government unit that has trouble bonding to build a new school, because the elementary and high school each have separate bonding capacities. So 5 percent is a starter. I checked the Revenue and Finance book and I checked counties, and, of course, the counties are way—they have tremendous capacity left under this 5 percent, the present provision, if they want to use it. And I think the only ones that would be close would be school districts. So what have we done to solve this problem? Well, in this proposal, you can—if the local government unit needs it, rather than go to the Legislature they just put on the ballot on this bond of increasing that 5 percent. The only thing about it, they have to have a 60 percent vote. In other words, not of all the electors, but 60 percent majority of the people voting thereon. Now, that's kind of a break, because, you know, you don't have to be a taxpayer now to vote on bond issues. And this is just a little bit of a break to taxpayers too—and if the whole community wants it, well there would, of course, be no problem. But, see the flexibility here? You've gone

from 5 percent, that's adequate now, to an additional 5 percent if the people vote on it in that particular locality. Now, Mr. Rygg mentioned the problem of—the Legislature might want to pledge the full faith and credit of a local government unit to the—to other types of bonds to get a lower interest rate. Well, I have provided for that in here: "The debt limits in this section shall not apply to obligations primarily payable from revenue or sources other than property, whether or not the full faith and credit of the taxing power—is also pledged." In other words, the people could vote to pledge their full faith and credit on a revenue bond, and this makes for cheaper interest rates. And, of course we've—they had trouble previously on what they meant by "assessed value" under the old section, so I have a sentence in there: "For purposes of this section, assessed value shall be determined by methods or factors established by law." This is the only way I think you can do it to make some clarification. In other words, the Legislature would have to set the methods of assessed value, and this is done for the purpose of the validity of the bonds. And, of course, someone said you can—all the Legislature has to do is just double the assessed value and you get double bonding. Well, if they do that, why, that's up to them; but I mean this is something that's—you have to have it in there for the validity. Now, the last section—or the last paragraph there, it provides: "No indebtedness or liability shall be incurred for any single purpose to an amount exceeding the sum set by law." On the present time, the county, you know, is limited to $10,000 of indebtedness, and this is rather low—it's rather ridiculous—so this amount should be left to the Legislature. If they want to buy a caterpillar or something like that that costs forty—fifty thousand dollars—maybe this limit should be raised; I don't know. But this we leave up to the Legislature. But this shows that you can't have indebtedness set by the Legislature without it being put to a vote of the people. I recall, once as county attorney I had a small school district that wanted to remodel their school building, put in new windows and just remodel it, and I don't remember what it cost, but we had to have a bond issue for it, which was rather ridiculous, I think. The bond issue cost a good part of what it cost, but the district just didn't have the money. Now, this gives them flexibility so these minor things that they don't have the money for, they can at least do something. The Legislature can provide for that. Otherwise, above this sum all the indebtedness must be approved by a majority of the electors voting on the question as provided by law. Under this provision, all the Legislature has to do is set the election methods, which we already have in the statute; and I therefore feel that this proposal is far more flexible and modern and far-reaching than the majority proposal. At least this is my philosophy. the Legislature doesn't have to tinker with it, and this local indebtedness is a local problem, and with this they can go 5 percent and an additional 5 percent. Now, someone has said, "What if they need more than 10 percent?" I don't know. This would be some time in the future, and if they ever get to this point, I think it may be—better be submitted to the people to see whether they want to go higher, or we'd better start looking at other methods of paying for bonds, other than property. And I think, to the taxpayers of this state who are going to vote on this, I think this at least gives them some security; some feeling of saying, "Well, we have the say in our local community of what we're going to do," and we—they don't have to depend on the Legislature. I don't know—this could work the other way. The Legislature may be real conservative sometime and say, "We're going to limit you to 3 percent," and they won't change it; you might stifle your school districts from building something. Or they may get real liberal and say 25 percent, 50 percent. This, I submit, gives a real flexible program for bonding and all local government units, and I think it's real workable. We don't have to fool with the Legislature. And I think it gets the job done, and I would therefore submit that this particular section should be adopted over the majority proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I rise to support this amendment. We had talked it over a little earlier. I, too, talked to Mr. Rygg and various members, and we discussed this a good deal. I'm not challenging too much what they have done here, but I would like to point out just a few things that this would do if the Legislature should decide to raise this debt limit very much. It would dilute the collateral in these school districts by making your debt too high against the collateral, which is the property that's there. This would make it more difficult to sell bonds when you do want to sell them. For the same reason, it could very well increase the interest rates that you would pay, because when they set these interest rates, it's set by how good your collateral is. So if you had too much debt there, why, you'd be paying much more interest rates on the money you did

borrow. It could decrease the sale value of your property—your home, any other property you had—because if it has a large indebtedness on it, you know the person that's going to buy this is not going to be quite so anxious to. There is room to increase it if anyone got in trouble. They could, certainly—60 percent of the people could increase it. Now, a little bit on the sale of these bonds. I think Mr. Rygg mentioned that he had talked to different companies, and I know that he did and I know that's what they told him. But these bonds are sold very competitively, you know, and when you've got the good collateral, you get a lot of people in there bidding on them. Just to give you a little illustration: Rosebud County sold some bonds, I think about $600,000 worth, last fall, and they were able to sell them at 4.16. Now, if anybody can match that, they got one awfully good deal, because most of the surrounding counties were paying up to 6 percent. We were able to do that because we do have collateral. We don't have a big debt limit in Rosebud County. And I think these are all valid arguments that if you take this lid off, you're not going to be able to sell these bonds at that low rate of interest and you're not—to be able to sell your property at the price you may want for it; and that's just a few of the reasons. I can think of others, but I won't take any more time. And I support Mr. Ask's amendment. Thank you, Mr. Chairman and delegates.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I, too, rise in support of this amendment, with one very minor modification. I think that for a point of clarity, after the word "60 percent", the word "affirmative" should be added ahead of "vote" to clarify the fact that it needs a 60 percent affirmative vote on the issue. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Well, I rise in resistance of the substitute motion—or amendment, and it isn't so much that I'm scared of debt or debt should be done. I was just thinking when we were talking about this; I just got off a school board when I come up here, and we had a budget of over a million dollars, of which we could—we were authorized to do without a vote of anybody, and yet we had a debt limit over there of which the interest—principal and interest only amounted to $50,000 of that million dollars, or roughly 5 percent. I think you're overemphasizing debt on this thing. And I wish to point out why we want to make it quite broad at this point and why we restrict it, and we certainly accepted the amendments on the state debt. There is nobody to limit the State Legislature relative to state debt, but for over, oh, 80 years, the Legislature of Montana has never given the state, the counties, and local governments very much power in fiscal matters. And we really don't feel it will change very much in the future except as to probably charter powers in the local government issue, and we intend this section to override any powers the local governments might get by charter relative to going in debt. But the Legislature should set the debt limits. One—and it has to be with the rest of our article. One is the definition of what is assessed value on property. Now, by the exemptions granted that might change, and so your debt limit goes up and down. It could be very well within the time that this Constitution is in effect that local governments will have other taxing powers and bases besides property—they might have income tax powers; they might have excise taxes—and they might want to pledge a certain amount of those revenues to the payment of bonds. And I think the Legislative Assembly should be able to control and set those debt limits. Now, the present constitutional sections relative to this have two or three pages after each section, of Supreme Court interpretations as to what is meant by these sections. They have a number of cases in litigation, and that has been costly both to the taxpayer in bond interest rates, in construction of buildings, and inflation of the cost of those buildings. And by putting this much verbiage again into a debt limitation section, you are again inviting a number of lawsuits relative to whether the issuance of these bonds are legal or in violation of the constitutional limit. By leaving it to the Legislature, if a mistake is made in this verbiage, they can change it themselves the next time. And relative to the interest rates, looking at Mr. Ask's section very—I'm not criticizing it, because it's fairly good—but the last sentence, relative to what is assessed value, that leaves it to the Legislature to define what assessed value is on which to base your 5 percent. Now, the Legislature could say the assessed value is 40 percent of true value one year for this purpose, not for any other appraisement purpose. They could say 20 years [percent] the next year for that purpose, and they could go up to 80 percent the year after that for the same purpose, and the debt—defining what assessed value is meant by this section. So really, the Legislature can change this bond-

ing indebtedness as to property taxes as they go along from year to year. So it doesn't really mean what it says along those lines. Now, as to the last paragraph itself, the Legislature has that authority at the present time to set limits as to what they might borrow, and over that amount they have to go to the people for a vote. I can think of Mr. Ask's section, we are going to have a lawsuit right off the bat, because under the old limits there were prohibition types of things: "no countygovernmentshallincurindebtedness"; and the Supreme Court has interpreted that to mean it is not self-executing, that the state must still authorize the indebtedness, and the state can set limits even under the old one. He has changed this just a little bit to say that any local governments can incur indebtedness. Well, we get back to the question again-is it self-executing or not? Actually, by enacting our section, we do not change any of the present indebtedness limits, because they are all enacted by statute now, and they're all 5 percent, as you see in these original two articles. So what it amounts to on his thing is that it sounds good but it really doesn't make too much difference; and all it does is, the verbiage invites lawsuits. And especially where he has stated that by a 60 percent vote, which is more restrictive than the present Constitutional limit on water and sewer-they can go above the 5 percent now on a majority vote. But then he also says by-the debt limits do not apply to obligations of revenue where you give the full faith and credit of the local unit to those things. Well, you're just-there's a hole that can be very broad. You can issue-say your debt limit is $2 million for high school purposes or city purposes, but you decide to float a water bond issue and you want a little better rate of interest so you pledge the full faith and credit of the city against that, which means all taxing power of the city against that, and the water bond issue is $5 million, so there you've raised your limit up to another $5 million. I think we're much better off. And I think we can have confidence in the Legislature of this because their past experience has been such as they've been very good and very limiting on the powers of local government to create any debts in Montana. And I think we're much better off to leave it to them this time, and I don't think they're going to abuse any of that discretion which we give them to them here. And if we try to legislate it, we're going to get ourselves in trouble again and we're going to have a multitude of lawsuits to decide.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I rise in support of the majority report and against the amendment, because this seems to me that this might be an excellent statute that the nextsession of the Legislature could pass in pursuance to the authority now given them by the Section 10. But it may work for years and years and years and be a splendid way of handling-giving the flexibility that Delegate Ask asks for; but again, to my mind at any rate, it illustrates the lack of wisdom of trying to write a statute into the Constitution. It may very well be that some situation comes up that is not covered by this statute and so you have to amend the Constitution in order to do it. It seems to me that we ought to give the Legislature flexibility to write whatever laws they may in the future, to correct mistakes when they do make them; and I'm glad to be still on the same track that I'm opposed to writing statutes into the Constitution. It seems to me that this is, however desirable and however well thought out this particular statute is at this time, that it's impossible to project into the future whether or not it will fit the situations that may arise, and I'm willing to leave the Legislature some flexibility to write whatever statutes are necessary to meet changing times in the future. And I therefore oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Kollins.

DELEGATE ROLLINS: Mr. Chairman, I'd like to ask Mr. McDonough a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE ROLLINS: Mr. McDonough, what would be the effect, aside from heart failure and the end of the world, if I would ask you what would happen if there were no provision in the Constitution concerning the indebtedness for local governments?

DELEGATE McDONOUGH: The Legislature could do—ever—any area--whatever they wanted to and they could set the debt limits. The only thing we've done here is, we've made it mandatory for them to set some debt limits. If we eliminated 10 altogether, they could still set the debt limits.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: My good friend, Tom Ask, and I have had many interesting conversations which are most frustrating because the madder I get, the more calm he becomes. (Laughter) All I've been-ever tried to do with Tom was to get him to give up trying to improve the horse and at least accept the automobile. (Laughter) Now, it appears to me that he's going back to the same kind of thing with a debt limitation which may be entirely unrealistic. He says there's no magic to 5 percent. Even North Carolina said 8 and 7. I wonder if there's some way—we've talked in the Local Government Committee consistently about giving the local people more ways to carry out their affairs and-but we didn't talk very much about the debt limitation, because we left that to the tender mercies of the Taxation and Finance Committee. Maybe Mr. McDonough's last idea that if we would just do away with any mention whatsoever, then maybe the Legislature would have amnesia and forget to apply such limits. And then perhaps we'd have that happy day when the local people might be able to make a few decisions without having the "Big Brother" looking right down the back of their necks.

CHAIRMAN GRAYBILL: Is there any further discussion? (No response) If not, do you want to close, Mr. Ask?

Oh, Mr. Kamhoot, do you want to speak?

DELEGATE KAMHOOT: Mr. Chairman, just one short observation. The further we go, the more I think we should have trapped the Mitchell Gang while we had them over in their lair. Thank you, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: Mr. Drum, you want a rejoinder?

DELEGATE DRUM: I'm-in defense of the Mitchell Gang, Mr. Chairman, I'd like to say I think the spirit behind this section was that we felt that the cities and the counties should be given complete authority to run their own business, but don't give them enough authority that they can go broke; and I think the committee feels that we've accomplished this in this writing.

CHAIRMAN GRAYBILL: Mr. Ask, do you want to close?

DELEGATE ASK: Yes, Mr. Chairman, just a few remarks. My good friend, George Rollins, mentioned about the horse and the automobile, and I think that if you take the majority, you're going back to the horse and buggy days. I saw in the paper this morning we're rated at 1920. I would put this about 1905, because you're throwing everything back to the Legislature again that we've been trying to get away with with local government. And I think if we do anything coming out of this Convention, is having a provision in our Constitution to improve local government so the people can run their government the way they want to run it on a local level without keep coming back to Helena. And I submit this Section 10 here, where we have it-or the way I have amended it, gives your great, adequate bonding capacity of these local government units, but you leave it up to them. They don't have to come back here again, because you're-1 think many of you who have been here before as legislators know the squabbles and hassles they get into when they want to increase a mill levy for roads, for counties and everything you have. Mr. McDonough mentioned that the Legislature has been very conservative hanging onto the reins of local government. Well, sure they have. That's what we're trying to correct here today. They're hanging on so tight that they can't do anything, and we've given them broad capacity here-5 percent and another 5 percent if they vote on it-and we're going ahead. We're being progressive here. And maybe this isn't the right formula, but certainly 5 percent is greatly adequate right now, and you got another, that's doubling it; and if it ever gets to the point they ever need more, I think the people ought to vote on it again on a constitutional amendment. Mr. McDonough mentioned that we have the old section, there's a lot of lawsuits over it-and I agree there were lawsuits. But I also did quite a lot of work on this particular section and I've handled quite a few bonding matters, and I feel that the wording in this particular section has obviated a lot of the questions that the old Constitution provision had. And he further said that there's a provision in here that they can lend their full faith and credit to other types of revenue bonds and therefore you could have-you could exceed your bonded indebtedness; but the people have to vote on this and if you can give your full faith and credit-the state-you can have that power-if you give your full faith and credit, you can get better interest rates, but the local people have some control over it. They're not-they know what's going on. So I say we're taking the shackles off of local government by this amended Section 10, and if we go back to the Legislature again

when you come to our Local Government Article, we'd just as well go back and put the whole cotton-picking thing back in. Because if you want to shackle them that much, you'd just as well shackle them all the way down the line. Thank you.

CHAIRMAN GRAYBILL: All right, the question is on Mr. Ask's motion that we amend Section 10 by inserting the language that he has supplied you here in place of the committee's language.

UNIDENTIFIED DELEGATE: Koll call.

CHAIRMAN GRAYBILL: And we'll have a roll call vote. You all have this. Does anyone want this read?

(No response)

CHAIRMAN GRAYBILL: I think not. So many as shall be in favor of Mr. Ask's amendment to Section 10, please vote Aye on the voting machines; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please take the ballot.

Aasheim .Absent
Anderson, J. .....Aye
Anderson, 0.. ,, ,, ,, Nay
Arbanas ,, Excused
Arness .Absent
Aronow .....Aye
Artz Nay
Ask .....Aye
Babcock .....Absent
Barnard ..... Nay
Bates .....Absent
Belcher Excused
Berg .....Aye
Berthelson Nay
Blaylock Nay
Blend .Absent
Bowman .....Aye
Brazier Nay
Brown ..... Nay
Bugbee.....Aye
Burkhardt ..... Nay
Cain .....Aye
Campbell .Absent
Cate .....Absent
Champoux ..... Nay
Choate.....Aye
Conover ..... Aye
Cross.. ..... Nay
Dahood ..... Nay
Davis .....Aye
Delaney ..... .Absent
Driscoll ..... Nay
Drum ..... Nay
Eck .....Aye
Erdmann ..... Aye
Eskildsen ..... Excused
Etchart ..... .Aye
Felt ..... Excused
Foster ..... Nay
Furlong ..... Nay
Garlington.....Aye
Gysler ....Aye
Habedank ....Aye
Hanson, R.S..... .Aye
Hanson, R. ..... .Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper.....Aye
Harrington ..... .Absent
Heliker ..... Nay
Holland. ..... Excused
Jacobsen ..... .Aye
James ....Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ....Aye
Kelleher ..... Nay
Leuthold .....Aye
Loendorf..... Nay
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin.....Aye
McCarvel ..... Nay
McDonough..... Nay
McKeon ..... Nay
McNeil ....Aye
Melvin ..... Nay
Monroe ..... Nay
Murray.. ....Aye
Noble .....Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton .....Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay

Romney . . . . Nay
Rygg ..... Nay
Scanlin Nay
Schiltz .. .. Nay
Siderius. .Absent
Simon .....Aye
Skari ..... Nay
Sparks.....Absent
Speer . . . . . Nay
Studer.....Aye
Sullivan Nay
Swanberg.....Aye
Toole ..._...__....._....__, Nay
Van Buskirk .Absent
vermilli ion . . . . Nay
Wagner.. .. .. Nay
Ward .. .. Nay
Warden.....Absent
Wilson .....Aye
Woodmansey .. .. Nay
Chairman Graybill. .. .. .. Nay

CLERK HANSON: Mr. Chairman, 34 delegates voting Aye, 46 voting No.

CHAIRMAN GRAYBILL: 46 delegates having voted No and 34 Aye, the amendment fails. We're back considering Section 10 as submitted by the majority report. "The Legislative Assembly shall enact limits of indebtedness for subdivisions and districts of the state." Is there other debate?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Rygg, the Chairman of the Revenue and Finance Committee, that when this committee does arise and report, after having had under consideration Section 10, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 10 is adopted. Will the clerk please read Section 11.

CLERK HANSON: "Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan." Mr. Chairman, Section 11.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11 of Revenue and Finance Proposal Number 7, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE RYGG: This section is practically identical to Section 3 of Article XIII. It attempts to guarantee proper management of borrowed funds and should prevent misuses or diversion of that money. We believe it is an important enough matter to be retained in the new Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you for your consideration on the recommendation of the Chairman of the Rules-of the Revenue and Finance Committee that when this committee does arise and report, after having under consideration Section 11, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk please read Section 12.

CLERK HANSON: "Section 12. Strict accountability. The Legislative Assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof." Mr. Chairman, Section 12.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12 of Revenue and Finance Proposal 7, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is broad in scope, but it covers the same ground as the detailed sections of 13 and 14 of the present Constitution. It also conveys the intent of specific appropriations covered in Section 10 of Article XII. Now, if this section that we have wasn't covered specifically enough, we feel that the new section that was adopted the other evening-I think it was Section 18 which was added to the Legislative Article-I think it was proposed by Mr. Mahoney, and I think it was the old 30—Section 34, Article V. So with that in the Legislative, plus this, I think we have--we're covered very well. And we feel that there must be an increased accountability of all revenues of the state, and the Legislature must necessarily set up the machinery and the details of accounting procedure. They can do all that. We do feel it is imperative that the Legislature establish a unified accounting system for all governmental units throughout the state; but because this is not of constitutional nature, we will have that on our report to the Legislative Council. As near as we can tell, the present constitutional requirements on deposits, cash flow, are not adhered to as they were supposed to. We feel this is a necessary part of the Constitution and we would ask that you retain it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: Yes, I'll try.

DELEGATE CONOVER: In there, where you say, "to insure strict accountability of all revenues received--and spent by the state"—legislative--would this apply to the legislative audit that's been set up by the last Legislature—the machinery they already have?

DELEGATE RYGG: Yes, I think they would be a part of it, yes.

CHAIRMAN GRAYBILL: Is there other comment?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration, on the motion of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 12 of the Revenue and Finance Proposal, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk read Section 13.

CLERK HANSON: "Section 13. Investment of public funds. The Legislative Assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the Governor, Legislative Assembly and Chief Justice of the Supreme Court." Mr. Chairman, Section 13.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 13 of Revenue and Finance Proposal 7, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This proposed section on investment replaces all of Article XXI in the present Constitution. Most oftheprovisionsin that article are obsolete. In fact, if the public school fund had not been added to the Montana trust and legacy fund in 1938, the article would have no effect whatever. The proposed section stresses the importance of a unified investment program for all public funds. Such a program has been sought in Montana since 1924 and has only recently been accomplished through executive reorganization. The committee feels the importance of unity, professional treatment and supervision of all public fund investments should be stressed at the constitutional level. Because public money is such an important trust for the people of Montana, the investment program should be audited

at least annually. The sentence on separate identity of funds in the public fund investment program was added to insure proper distribution of interest to the individual funds. Although public funds should be invested as a unit to insure a larger return, the interest from that unified program should be distributed on a pro rata basis, depending on the size of the individual funds. The separate fund sentence should insure that distribution. The regulation and limitation of the investment program and the administrative structure of the investment program is left up to the Legislative Assembly. At least two restrictions on the investment program will remain in force in the Constitution. Those provisions in Article XI and the Enabling Act deal with the land grant money. The Legislature is best equipped to make decisions concerning investment opportunities for state money. The obsolete nature of Article XXI illustrates the futility of trying to prescribe an investment program and investment details at the constitutional level. The scope of the Legislature's supervision should also include surplus funds at the local level. Although the Legislature may well leave the handling and investment of such funds in the hands of local governments, its supervisory powers will insure their careful handling and treatment. We feel that this is the better of the proposals. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I move to amend Section 13 by adding the following language on line 4 of page 15, after the word "court": "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." This in effect, then, is minority Proposal Number 2, which you will find on page36. In the original typing, one vital provision was inadvertently left out, and sheets have been passed out showing that the language on page 36, line 12, should have inserted after the word "maintain" the following sentence: "An audit of the investment program shall be conducted at least annually and submitted to the Governor, the Legislative Assembly and Chief Justice of the Supreme Court." In effect, then, all that the minority is attempting to do is add the one sentence stating that, with the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock.

CHAIRMAN GRAYBILL: Now, Mr. Artz, you've lost the Chair; I don't know about the rest of them. I understand that you have an amendment and I understand that it's-is it the minority-is it the language on page 36?

DELEGATE ARTZ: Mr. Chairman, after you insert the following sentence after the word "maintained" on line 12—

CHAIRMAN GRAYBILL: All right. Well, you've got to go slow so we can write that down then.

DELEGATE ARTZ: They had the sheets passed out, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, is that the sheet signed by Mr. Swanberg?

DELEGATE ARTZ: No. That's the one that says, "Additions Required to Revenue and Finance Committee Proposal on Constitutional Revision Number 7."

CHAIRMAN GRAYBILL: Well, the Chair does not have a copy thereof.

DELEGATE ARTZ: The wording is the same—

CHAIRMAN GRAYBILL: Just a minute. Let's get me a copy of it, somebody. Are there copies on everybody's desk? There should be one on my desk back there then. When you instruct pages to pass things out, it's helpful if you include the clerk and the Chair. Oh, nobody has it? Mr. Artz, is it passed out in the body?

DELEGATE ARTZ: Mr. Chairman, it was left with the Chief Clerk and I was told that it would be passed out. As far as I know, everybody has it.

CHAIRMAN GRAYBILL: Now I see it, Mr. Artz. It's a sheet of paper with the first two or three inches only typed on, in case you're looking on your desk for it. Now, Mr. Artz, do I understand that you want to replace-do you want all of this other language on-from line 6 to 15 on page 36, and should that replace Section 13?

DELEGATE ARTZ: With the addition, Mr. Chairman, of the following words after "maintained", which are on page 29, line 18, 19 and 20. All the minority is attempting to do is add one sentence to the majority report.

CHAIRMAN GRAYBILL: And the one sentence is the-"An audit of the investment program shall be conducted at least annually"?

DELEGATE ARTZ: No, that's the one that has to go in the minority. The one we're adding to the majority is the words on lines 12, 13 and 14 and 15 on page 36, which start: "With the exception of moneys-"

CHAIRMAN GRAYBILL: All right, now, your amendment consists, then, of adding the phrase at the end of Section 13: "With the exception of moneys contributed by individuals to retirement funds, no public funds shall beinvested in private corporate capital stock." Is that right?

DELEGATE ARTZ: That is correct, Mr. Chairman.

CHAIRMAN GRAYBILL: And then where do WC add the words "an audit of the investment program shall be conducted"?

DELEGATE ARTZ: The-Mr. Chairman, the words: "An audit of the investment program-" were included in the original wording of the majority, and if we're going to make the minority-then it would be on page 36, line 12, after the word "maintained" and before the word "with".

CHAIRMAN GRAYBILL: I see. Mr. Artz, would it be fair to say, on page 15, which is the minority--which is the majority report, that we could add your sentence: "With the exception of moneys contributed to individuals-by individuals to retirement funds, no public funds shall be invested in private corporate capital stock"? If we added that on line 1 on page 15, after the word "maintained", then we would have your amendment correct?

DELEGATE ARTZ: That's correct.

CHAIRMAN GRAYBILL: That's right?

DELEGATE ARTZ: Come after the word--main thing is to get that one sentence in, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, let's have it the sense of Mr. Artz' amendment that on page 15, line 1, after the words "program shall be strictly maintained", we add a sentence--and the sentence is found on lines 12 through 15 on page 36 and the sentence refers to not investing in private corporate capital stock.

Mr. Artz.

DELEGATE ARTZ: Thank you, Mr. Chairman. The basic fundamentals of the minority report are quite simple. We maintain that the criteria for investment of public funds is different than investing personal or private funds. We say that the priorities should be in the following order: number one, security; number two, that the funds should be invested in Montana as much as possible; and that the final consideration is the return on the investment. We had a lot of testimony which worried me, as Mr. Mahoney says. The emphasis was on return on investment rather than security. I think a good example is a statement made by one of the committee members right here on this floor when we were having our first Romney hearing, and I quote: "You don't find the big red apples next to the trunk of the tree; you find them near the end of the limb." I don't know how many of you have climbed out to the end of that limb and found that the big red apples dropped to the ground and you went after them. I have. Now, it's all right for me to lose my own money, but I don't think we should let the Legislature have the power to lose the public funds. We are violently opposed to gambling with state funds and taking a chance that this limb might break; and any time you put money in private corporate capital stock, you are gambling, because you are down at the very bottom of the balance sheet. You have no security except the earning power of that corporation. There is no assets to back it up unless they're left over after you've taken care of bonded indebtedness and all of the other liabilities. Common stock is the last item. We were told by testimony that the stock market would act as an offset to inflation. It could be, but we also offer, quoting from an advertisement in the *Great* Falls *Tribune* by one of the local banks, that money invested at five and three-quarters percent for 12 years will double. We think that's adequate safeguards against inflation. By the fact that the majority committee report leaves this up to the Legislature, I think you can see that there were pressures exerted on the committee to permit the Legislature to invest our public moneys in the stock market. Now, if the committee was pressured, I am sure that same pressure would be applied on the legislators in the future, and I think personally we've dumped enough things in the legislators' laps. I think we should give them a little barricade to hide behind, at least in one instance. Our last point: when you buy common stock in a corporation you, in effect, own part or all of that corporation, depending upon how much stock you buy. Now let us say that we're going to follow rule number two-keep the money in Montana. The only way we can do that then is to buy in Montana corpora-

tions, and we've had some good development corporations come around and they've had some real good salesmen to sell the stock. That's their job. So they sold the controlling interest in one of these development corporations. Everybody would say, "That's fine, we're helping Montana." But who is going to vote that stock? Now we get into another issue. Let's say that this particular corporation puts out some of those obnoxious fumes that we've heard about over in Missoula—and which I have smelled-and the corporation comes around, they says, "Now here, listen here, fellows, we cannot go ahead and put in all of this necessary equipment to keep those fumes down; if we do, you're not going to get any return on your investment." What position would that put the Legislature in? Now the pages have been sending these little books around and they've been getting your autographs on them. I've been around with my little book, too, and I didn't put autographs down, I put X's; and I have 53 X's of people that said they felt sympathetic towards my ideas. With that, I close. Thank you. (Laughter)

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I would like to make an amendment. I move to delete "and Chief Justice of the Supreme Court".

CHAIRMAN GRAYBILL: What line?

DELEGATE BROWN: Well, there's no line to it because it was omitted, but it was read into the amendment.

CHAIRMAN GRAYBILL: That's line 4 on page 15?

DELEGATE BROWN: You're correct. That's right.

CHAIRMAN GRAYBILL: You move to delete "and Chief Justice of the Supreme Court"?

DELEGATE BROWN: Yes, sir. Then we'd need an "and" between "Governor" and "Legislative Assembly".

CHAIRMAN GRAYBILL: The Chair is thinking, Mr. Brown. You are assuming that Mr. Artz' amendment includes that last language there, which is part of the majority report.

DELEGATE BROWN: I'll make the same motion on the majority if the minority fails.

CHAIRMAN GRAYBILL: Wouldn't it be better to get the other one out of the way?

DELEGATE BROWN: Yeah, we could do that.

CHAIRMAN GRAYBILL: One problem I have is, that I'm-you're stacked up behind two other amendments to this section and if I let you in here, we may be debating something we don't need to debate.

DELEGATE BROWN: I'll withdraw it till the time proper.

CHAIRMAN GRAYBILL: Will you hold it for awhile?

DELEGATE BROWN: You bet.

CHAIRMAN GRAYBILL: All right, the issue is on Mr. Artz' motion to add this sentence, found on page 36: "With the exception of moneys contributed by individuals to the retirement funds, no public stock shall be invested in private corporate capital stock."

Mr. Berg.

DELEGATE BERG: Will Mr. Artz yield to a question?

CHAIRMAN GRAYBILL: Mr. Artz, will you yield?

DELEGATE ARTZ: I yield.

DELEGATE BERG: Mr. Artz, I'm concerned primarily with the words "with the exception of moneys contributed by individuals to retirement funds". Now, for example, in the police court--or in the police retirement fund or in the firemen's retirement fund, individually police or firemen monthly contribute towards a retirement fund; likewise, municipal or city funds are put with that. Are you going to require the city or whatever investment organization is that takes care of these funds to keep a separate accounting of the investments of those funds, distinguishing between what individuals contribute as compared to what the municipality does?

DELEGATE ARTZ: Mr. Chairman, the funds-the retirement funds that I have been acquainted with, the amounts contributed by the individuals are being kept track of, and I maintain that those are individual funds and that those people should have the right to have that money invested as they would like. I would not like to restrict you or myself on what we do with our own

money, but the part the state puts up, I want it restricted. Does that answer the question?

DELEGATE BERG: Not entirely, because the ones that I am familiar with-those thatrelate to police or fire funds-are not kept separate. They are invested together; and I think the same is true with the Public Employees' Retirement System. Individuals contribute to it, so do the municipality or the state; but the funds are all invested alike.

DELEGATE ARTZ: I cannot see that in this computer age that that would cause any problems.

DELEGATE BERG: I just want to call it to your attention.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in support of Mr. Artz' minority proposal. He's stolen my thunder; there's not much left to say. I would, in addition, say that we are concerned-when we talk about priorities, we're concerned more with the security of the investment rather than the speculativeness. He made the comment that these moneys invested at five and three quarters percent will double in 12 years. I think that that's a sufficient rate of return. I also see a problem in the voting of capital stock, the voting of state moneys in capital stock-and he mentioned the situation where the firm would be spewing out pollution. The state would then be in conflict whether or not to perhaps vote for pollution controls and lose money, or vice versa-so I think we create problems. We also create the creeping problem of socialism, and I must tell everyone here I am extremely opposed to socialism. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Ask rise-oh, I have a comment to make about his amendment, if I may. I am in complete sympathy with Mr. Ask's—

CHAIRMAN GRAYBILL: Mr. Artz, you mean?

DELEGATE CHAMPOUX: Excuse me—in his philosophy, especially in terms of the safeguarding of the public school funds. However, there is a problem here, and I wonder if you had thought about it, Mr. Artz. For instance, the Montana University-the University of Montana has certain endowment funds like, as an example, the Dixon fund. Now most of that presently is invested in Anaconda stock. Now, if we pass this, it seems to me that what will happen, then, is that the University fund would then be forced to sell this Anaconda stock and thus convert it into these other, safely secured investments. Would you comment on that, sir, please?

DELEGATE ARTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, as I understand that, it was discussed in committee and I believe that those are private foundations that are not subject to the control of the State of Montana. Am I not correct? You might refer that to Mr. McDonough. I'm sure that was—

CHAIRMAN GRAYBILL: Mr. McDonough isn't here so we can't refer it to him.

Yes, you have the floor, Mr. Champoux.

DELEGATE CHAMPOUX: To my knowledge, I'm not-to my knowledge, they aren't; and I wish we could clear that up.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: I believe I am correct in saying that Mr. Artz is correct that the endowment foundation of the University of Montana is not subject to this regulation now and can invest as it pleases. It's an entirely separate organization, distinct from any state agency or body.

CHAIRMAN GRAYBILL: Now, Mr. Swanberg. Do you want to make your amendment now to Mr. Artz's proposal?

DELEGATE SWANBERG: Thank you, Mr. President. I think that Mr. Artz and myself are in basic agreement. It's just a matter of language, and I would submit at this time the following sentence to be added at the end of Section 13 of the majority report. And I will read it-disregard all that other stuff up at the top-"Investment of all public funds shall be limited to public securities within the state, including school districts, county and municipal bonds, and bonds of the State of Montana; but it also may be partly invested with bonds of the United States, bonds fully guaranteed by the United States as to principal and interest, Federal Land Bank bonds, and private corporate bonds of investment quality. All investments shall be limited to safe loan investments

bearing a fixed rate of interest." Now, this is the (Inaudible).

CHAIRMAN GRAYBILL: Mr. Swanberg, just a minute. Let me state your amendment. The Chair is going to allow Mr. Swanberg's substitute amendment. It's my understanding that you intend to substitute this paragraph in place of the one Mr. Artz proposed. Is that correct?

DELEGATE SWANBERG: That is correct.

CHAIRMAN GRAYBILL: All right, so that the situation is that Mr. Artz proposed this line that-this sentence that limited investments in private corporate capital stock and Mr. Swanberg has now proposed his language in place of Mr. Artz' language. Now you all have Mr. Swanberg's before you on your desks-it just doesn't say Section 13 on it. Very well, Mr. Swanberg—

DELEGATE SWANBERG: Yes.

CHAIRMAN GRAYBILL: -you've read your amendment and I'll allow it. Go ahead.

DELEGATE SWANBERG: The reason for this amendment, ladies and gentlemen, is to protect the Legislature from itself. We all know that there are times when people as a body go just a little bit crazy when it comes to speculation and investment. I wasn't too old at the time, but I do have some dim recollection of 1929 and I've read a number of books on it, and that's one good example. Just prior to that time was the Florida land boom; many fortunes were lost there. Here in Montana we are on the verge of a Montana land boom, and I don't think any of us want our investment funds put into those kind of investments. Back around 1620, if I can go back that far, the people of Holland went crazy and they began to invest in tulip bulbs, of all things, and tulip bulbs all of a sudden commanded tremendously high prices in the markets of Holland. Wealthy people took their fortunes, went out and bought these tulip bulbs and began to trade them back and forth, and common sense in Holland went out the window. And one fine day, somebody asked himself-this handful of tulip bulbs which he had purchased for a fortune-he looked at them and thought, "I wonder if they will grow." And he took them out and planted them and the whole process-he began to think about it, and apparently everybody else was thinking about it at the same time, and the result was financial disaster in Holland. A couple of hundred years later in France, we had the amazing Mississippi bubble in the life of John Law; and this gentleman had devised a financial scheme whereby land over in Louisiana, in the Louisiana area, would be used to somehow finance the monetary system of France. His plan was totally unworkable, but the people of France went for it because it just meant that they kept trading dollars up and up and up, like we are now doing with inflation, and this broke France. I'd hate to think what might have happened in the State of Montana if we had not had this provision in our Constitution back in the twenties. I would venture to state that every legislator who came over here would have just itched to get at $200 million to put in the stock market. I think the desire to do this would have been overwhelming and the arguments which we hear now would have been the same then. Prices are going up; they'll never come down. Well, let me tell you something. We haven't had any great amount of crash the last few years, but if you'll compare the price of Montana Power stock today with what it was in 1963, you'll find that it's lower today. If you compare the price of the Anaconda Company stock in 1963 with what it is today, you'll find that it's lower. And if you'll compare the price of practically any utility stock—I don't care which one it is-of 1963 with whatitis today, you'll find that it's lower. Now, these are the kind of stocks that a prudent person in the stock market would invest in, managing a pension fund or some kind of a trust fund. Railroad stocks are another. Back 20 years ago, anyone would have said, "Why, railroad stock is absolutely safe. Let's buy it." Today, we know, the story is different. I think there should be something in here to protect the Legislature from itself in this way. Now the only question is how to do it. Mr. Rygg has been conferring with the Dorsey law firm on language, and I have been conferring with the bond firm of Dain, Kalman and Quail and Mr. Stan Aby on this problem. Many of you here, I think, know Stan Aby—a very colorful man in the investment world--and I think he's had a hand in practically every revenue bond problem that Montana has ever had. But anyhow, he suggested that if we wanted something in the Constitution, and he thought it was a good idea that we should take the present Constitution as is and add the following phrase, and I have it in my amendment. The phrase is: "and private corporate bonds of investment quality". Now, that phrase-"corporate bonds of investment quality"-has a strict legal meaning that's been construed many times by the courts, and that's why he suggested it. It rules out

the speculative bond, and believe me, they exist. There are bonds that are floating around now that are far more speculative than many of your stocks, commanding extremely high rates of interest, but no one who is managing a fund of this manner could safely invest in them. I would submit, then, that something like this should be in this Constitution. I guess that's it. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Again, Mr. Swanberg, I am in complete sympathy with your philosophies, sir, especially where the public school funds are concerned. However, I have a few questions for you, if I may. One of them is-may I, Mr. Chairman?

CHAIRMAN GRAYBILL: You may ask a series of questions of Mr. Swanberg.

DELEGATE CHAMPOUX: From our studies in the Education Committee, we found out that the-not all Federal Land Bank bonds are fully guaranteed by the government. Did you know that, sir?

DELEGATE SWANBERG: I'm sorry. No, I don't know.

DELEGATE CHAMPOUX: You can check this with the investment people in the—

DELEGATE SWANBERG: I just took the old Constitution, Mr. Champoux, and added that one phrase. If you think the Federal Land Bank bonds should come out, well, let's take it out.

DELEGATE CHAMPOUX: This has happened since the old Constitution. In the past they have been fully guaranteed; however, at this time they aren't. And just for the record, now, when we talk about private corporate bonds of investment quality, are we talking about triple A or above? Is that your—

DELEGATE SWANBERG: Here again, I'm not sure what the A rating is, whether it's triple A or double A, but I know that this is the language that's very frequently used in statutes setting these things up.

DELEGATE CHAMPOUX: The only thing I was concerned about, sir, was the investment quality phraseology. You're convinced that this is all right. Now, when we talk about safe loan investments, to your way of thinking, does this last section here, a fixed rate of interest, indicate what you mean then by a safe loan investment? Is that the protection there?

DELEGATE SWANBERG: Again, that's the provision of the present Constitution and I see no real reason to change it.

DELEGATE CHAMPOUX: All right, with the exception, then, of the Federal Land Bank bonds, I would support this.

CHAIRMAN GRAYBILL: All right, before we go on, the Chair would like to tell everybody that we now have Mr. Artz' amendment and Mr. Swanberg's substitute amendment. Mr. Barnard has an amendment to add to subsection 2, which deals with the public school funds only, and Mr. Davis has an amendment which could be added. But it seems to me that we will have to settle on what we're going to do with Mr. Swanberg's and/or Mr. Artz' before we can add any more unless there's a specific amendment to Mr. Swanberg's language. Very well, let's discuss it.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I'd just like to ask a question for clarification. Really, frankly, I don't know a stock from a bond, because I don't own either; but several months ago I read an article in the *Wall Street Journal* about the State of Ohio, and I believe in that state they could invest in private-I don't know whether it was stocks or bonds. I wonder if perhaps someone here-Mr. Swanberg, could you clarify that situation in Ohio for me I read in *Wall Street Journal a* few months ago, or a year or so ago, about their investment program? Did they invest in stocks or bonds? I mean, I'm confused, because in the minority proposal the sentence is "private corporate capital stock", and in yours you say "private corporate bonds of investment quality" may be invested in. I just don't know the difference.

DELEGATE SWANBERG: Well, there's a gap in between. Mr. Artz' deals-forbids the investment in stock and mine is the-states that the investment will have to be bonds of corporate grade. Now, in between that you have other kinds of securities. You have debentures that are unsecured, for instance, and things of that nature. Here, under Artz' proposal, as I construe it, there could be investments in real estate; and I seriously question that. Does that answer your question?

DELEGATE REICHERT: (Inaudible)—

don't know what happened in Ohio. All I know is they had a bad program there and it was in private investment of stock, I believe.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I'm in sympathy with these-both of these amendments if they can be worked out, and I also wish to make a few remarks about this matter. I notice in the rationale of the majority on page 30 a statement is made-"The obsolete nature of Article XXI illustrates the futility of trying to prescribe an investment program andinvestment details atthe constitutional level." That may be true, but I have some data here that is very impressive on this matter. I think that the trust and legacy fund as used in the State of Montana in recent years has been a spectacular success. I hold in my hand data concerning the common school permanent account in the trust and legacy fund set up under the present Article XXI. Now, of course, this is not just a-this is just pertaining to the common school permanent fund and not to the other funds in the trust and legacy fund, of which there are quite a few; but the principal one is the common school fund and, in fact, it would represent, well, almost all of it. A few million dollars are in the other funds, of which there was some reference made here before. So I'm addressing myself here only to the common school permanent account. It represents not only interest on the fund but also other accretions, such as sale of public lands that the state secured from the United States, oil royalties, lease income, and other material that-all flowing into this one fund and invested. Now, of course, we're going to face this situation again in the Education Article, where a portion of the Enabling Act and the Section 21 is laid out in one of the sections in the Education Document, which we will be discussing here in a few days. And in the meantime, I want to tell you how much money has been built up by this obsolete system. The amount in the permanent common school account as of June 30th, 1954, was 27 million-wait a minute, I want to get in the right—27,177,884.43. Additions that year were 1,853,111.34. In 1955, at the end of the fiscal year, 29 million-I'm just going to read in millions-with accretions that year of 1,630,000. June 30th, 1956, 30,661,000; accretions 1,576,000. June 30th, 1957, 32 million; increase, 1,535,000. June 30th, '58, 33,772,000—and so on and so forth until we get to-and each year, fellow delegates, the amount showed an increase in every instance. On the-June 30th, 1971, the total was $54,839,504, which was invested to the credit of the common school fund of the State of Montana. That is an accretion from 1954 to 1971, 17 years of that, from 27 million to 54 million; which is-and a little bit more--which is a little bit better than a hundred percent in 17 years. Now, I don't think that's a bad job at all; I think it's a good job. I grant that if they had had that much money in 1933 and invested it in Anaconda stock when it was worth $3 and would cash it in today, they would have probably done a great deal better. If they had had it in Montana lifeinsurancein 1910, their hundred dollars would have been worth more than $5,000 now, and you could blow that up along the same line. Now, that is the story of this fund and it-1 submit that instead of being a poor job, it has been a splendid job; and if we can do as well in the future and if we turn it over to the Legislature and they do as well or better, why, Montana will be in a fine situation. However, I want to be sure that we don't lose anything. I'm not so concerned about gaining as I am keeping what we have and gradually going up. I trust I'm a prudent man, as far as finances are concerned, and that's probably why my finances are in the state they are. (Laughter) However, there are other things to consider in this matter, and that is, it isn't just the interest we are going to gain by investing this money in, whether in government bonds or stocks or whatever it might be. I am told that recently one of the divisions of the state government invested several million dollars in United States Shipping Board stock-bonds-and they are going to get over 8 percent interest in it and it's guaranteed. Well, if you can get-if you can invest this money that is in these funds and in the other funds, as well as the common school fund-if you can invest that money in federal guaranteed bonds, such as the United States Shipping Board bonds, at better than 8 percent interest, you can't do much better than that. But there is one way that we are also raising money for this fund, and that is through the coal mining down in eastern Montana which Mrs. Cross is so interested in. In the Decker area, the state school-the State of Montana has a number of school sections, and upon one of them the Decker Mining Company is now engaged in mining coal. This single section of coal land is estimated, under the contracts which the state has entered into with the company, to produce 55 million tons of coal in the next 9 years, for which the State of Montana gets a royalty of 17½ cents a ton. That means that we're going to gain in excess--or at least a million dollars a year and probably 9 million dollars in the anticipated 8 years which

this will be carried out. That means that 10 years from now, not taking into account the gradual growth, we're going to have around 8 or 9 million dollars more in this common school fund. Somebody said in my hearing that these 100 million and 500 million dollar amounts that were laid out in the Section 21, the Trust and Legacy fund, were jokes. They didn't amount to anything. Nothing could be farther from the truth with respect to common school fund, which was one of-which is the $500—is the 500 million dollar fund. The time is going to come very shortly, probably even in my lifetime, when this fund is going to reach a hundred million dollars; and this republic is not too old. The-we're just now celebrating the 100th anniversary of Yellowstone Park. It's plain that in the-at the rate of growth of money, which due to inflation makes it less valuable, we're going to have the day when we will have-if we keep this, we will have $500 million in this fund, and if we even have a hundred million dollars in this fund and it's drawing even 4 or 5 percent interest, it's going to be a very healthy thing for the State of Montana. And that is why we must scrupulously guard this inheritance which is growing and growing and growing. I support the minority.

CHAIRMAN GRAYBILL: Very well, members of the body, we have before us Section 13 on investment in public funds, as proposed by the majority; and we have, to that Mr. Artz' amendment, to add a sentence that limits investment in public corporate capital stock; and we have a substitute motion-a substitute amendment by Mr. Swanberg to allow investment in bonds and certain other bonds which are fully guaranteed. So we're now debating Mr. Swanberg's substitute amendment. Is there further discussion?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise in opposition to the substitute amendment and in support of the majority proposal. I will confine my remarks principally to the effects of this upon the funds invested by the State of Montana for the benefit of public employees-that is, retirement funds. I am not familiar with the problems of the investment of the public school funds, and they may have problems which would dictate somewhat of a different approach. I am appalled by the lack of confidence expressed on this floor, not only in the Legislature of Montana-I'm not so terribly appalled by that, since I have expressed some lack of confidence in it myself from time to time-but also by the lack of confidenceexpressed by the members of this conservative body in the economy of this country, which is essentially what you are saying. Mr. Swanberg speaks of the debacle of the-at the end of the 1920's. I see a headline in the *Billings* Gazette this morning that says we are writing a constitution for the 1920's. Maybe that's exactly what we do have in mind. As an economist, I give you no guarantees, but I think it's highly unlikely that we are going to have to worry about the great crash again. The economy of the United States has changed a great deal in the last 40 years, and we will have our ups and downs in the stock market. But the tulip bubble and the great crash of 1929, I think, are not something we need to worry about in writing a Constitution for the future, at least the foreseeable future. Now, the minority spokesman, Delegate Artz, speaks of his priorities and he puts security at the head of his priorities. I ask you, just how secure is an investment in a fixed dollar security which is depreciating real value at the rate of 5 or 6 percent a year, which it has been doing regularly for the last several years? Mr. Romney speaks with glowing pride of the growth in whatever fund it was you were talking about of a hundred percent in **17** years. In those same 17 years, price level has raised sufficiently that the real value of that fund that he speaks of has remained just about constant. Now, it is a fact, I think--although I haven't checked this-that practically every retirement fund-private retirement fund does permit and does, in fact, invest part of its money, at least, in corporate stocks. And the restriction that has been imposed upon the investment of retirement funds for the benefit of the employees of the State of Montana in the past has, in effect, robbed them of a considerable part of their potential retirement return. I am a member of a private retirement fund, to which I contribute in addition to my contributions to the State of Montana's retirement fund, in which it is possible to vary the amount, the percentage of my contribution as between fixed return-that is, bonds and securities--and stocks-on what is called a variable annuity basis, from zero to a hundred percent in either direction. And I've examined very carefully the results of this fund since it was established in the early 1950's; and with the exception of the last three years or so, one would do considerably better in such a stock fund than in a purely bond fund of the sort which is contemplated here'. I would say to you that we are not talking about the Legislative Assembly-or the Legislature, as the Style and Drafting Committee prefers to call it-investing the public funds of Montana. We are talking about

them, as the language of the majority says, "providing for a unified investment program", and I think they should be allowed to provide for that. We are not-we do not have the picture before us of the Legislature sitting down and actually doing this investment itself. It will turn the job over to experts. And it seems to me that this is the way it should be handled and that we should not try to freeze this into the Constitution. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion on Mr. Swanberg's amendment? Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would like to ask some questions of Mr. Swanberg.

CHAIRMAN GRAYBILL: Mr. Swanberg, will you yield?

DELEGATE SWANBERG: Yes.

DELEGATE HABEDANK: Mr. Swanberg, is there a difference between the fund that would be covered by Section 13 and the investment of school trust funds, or does Section 13 cover all of them?

DELEGATE SWANBERG: The language says "investment of all public funds". Now, perhaps the Finance Committee members can enlighten us further on that, but as I construe that it would be total.

DELEGATE HABEDANK: Mr. Chairman, may I ask a series of questions?

CHAIRMAN GRAYBILL: Yes.

DELEGATE HABEDANK: Mr. Swanberg, is it not correct that, in most of these school trust funds, at least, approximately 95 percent of the income is paid out each year and only **5** percent goes back into the principal fund?

DELEGATE SWANBERG: I'm not familiar with that, Mr. Habedank.

DELEGATE HABEDANK: May I ask Mr. McDonough that question?

CHAIRMAN GRAYBILL: Mr. McDonough, would you like to yield?

DELEGATE McDONOUGH: Repeat your question, would you please?

DELEGATE HABEDANK: Is it not true that in connection with school trust funds, 95 percent is paid out for the schools each year and only 5 percent goes back into the principal trust--or approximately that?

DELEGATE McDONOUGH: That's essentially correct, yes.

DELEGATE HABEDANK: Then was it your thought that if you were limited-Mr. McDonough, please-was it the thought of your committee that if you were limited to investing only in fixed income items, such as bonds, and you paid out 95 percent each year, your principal would, in fact, decrease to a fraction of what it was as outlined by Dr. Heliker?

DELEGATE McDONOUGH: Well, it certainly would-1 mean, if you start out with $40 million and 20 years later the dollar went down to 50 cents in value, you'd only have $20 million afterwards.

DELEGATE HABEDANK: If you had paid out all your interest each year except the 5 percent?

DELEGATE McDONOUGH: That's correct.

DELEGATE HABEDANK: Thank you.

DELEGATE McDONOUGH: One other point I would like to make is that the permanent school fund under Article XI, the wording of that is "insured by the State of Montana against any loss", which means that if they lose any money in the permanent school fund, the Legislature has to raise taxes to replace that money.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mrs Speer.

DELEGATE SPEER: I wish to speak in opposition to the Swanberg amendment, because I feel that it freezes into the Constitution some of the most severe restrictions that are-that exist there. For instance, the phrase "limited to public investments within the state". That certainly represents the perspective of 1889, and I'm sure-1 know that we have broadened our outlook since that date. The only other point that I wanted to raise is that this provision which we now have in the Constitution, and it's found in Mr. Swanberg's amendment, does not say anything about the unified trust funds, the unified system. I think the Supreme Court has upheld the Department of

Investments which puts the investments under a specialized agency, but I know that there are many departments that are still resisting that, and I think it should be in the Constitution that we are to have a unified investment system.

CHAIRMAN GRAYBILL: Mr. Swanberg-Mr. Barnard, do you want to make amendments now, or are you going to wait till he's finished?

DELEGATE BARNARD: (Inaudible)

CHAIRMAN GRAYBILL: All right, you want to speak on Mr. Swanberg's amendment. Go ahead.

DELEGATE BARNARD: I rise in opposition to Mr. Swanberg's proposed amendment. The principal thing in Mr. Swanberg's amendment proposes that we can-the state can invest in corporate bonds, and the consensus of the minority of the Education Committee is they didn't want this done; and for that reason, I oppose Mr. Swanberg's amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would the Chair permit me to discuss what the amendment of Mr. Barnard's is in relation to these other amendments, because it is actually a little stricter? His proposed amendment-

CHAIRMAN GRAYBILL: The Chair will permit you to explain what another amendment may be that might come up later, yes.

DELEGATE DAVIS: Mr. Barnard has an amendment which would restrict you to-public schools funds to be more conservatively invested in bonds of the United States or other securities fully guaranteed as to principal and interest by the United States; so it seems like we have three options and this group will have to make a decision. The first option is whether you want the restrictions just as provided by the Legislature. The second option, which-as proposed here, is whether the investment of all public funds can be made in securities of the State of Montana or in bonds guaranteed by the United States as to principal and interest, Federal Land Bank bonds and corporate bonds of investment quality. And then, the third option will be as to whether you want to make a further limitation on just the public school funds and guarantee them against loss or diversion. The majority report is similar to the majority report we came up with in Education and Public Lands, and the recommendation of the Legislative Council and the Commission on Constitutional Revision was to leave this entirely to the Legislature and open it completely up. We have that, I think, in our majority--or language to that effect, "as provided by law". Subsequent to getting this out, I think we've all taken a second look at the school funds, at least as far as they're concerned as to whether we want to have any nature of speculation at all on those. We are one of the few states that has this $52 million left. I daresay if we were-had, over the last 60 years, 70 years-if we'd had the option, if it hadn't been locked in the Constitution, of speculating with this, we might have had a lot more money but we might not have had none. Most of the states now don't have any; so I think it's-the general consensus of the members of our Committee on Education was that we felt we might be getting a little too loose with it, that we should-the school money itself-lock it back into the Constitution. It's not always-to change things doesn't necessarily always mean we're going to improve on them. In this particular instance, as with our public lands, I think our forebears did an excellent job. We've still got the money. And the question then would be whether you want to liberalize the investment potential to take care of inflation, also to take care of the chances on what may happen in the financial world; whether you want to just leave it up to the Legislature to go along; or whether you want to make it more restrictive. Now, frankly, Mr. Artz' amendment and Mr. Swanberg's amendment is more or less of a compromise between theoriginalposition of the Public Education Committee on this particular article and on our second thought about putting it back in the old constitutional language, because it does include private corporate bonds of investment quality. Under the school section, the public school fund, it provides, shall remain forever inviolate, guaranteed by the state against loss or diversion. So that means the state has to guarantee this fund, this $52 million fund or whatever it is, plus additions thereto, which is 5 percent of the income. But for depletions, such as coal, that goes into the capital. That's not income, I think; the royalty is probably income. When you deplete it, that goes in your capital account, the same as if you sell lands. And the same way with gas; and probably the coal would be the same. I, frankly, feel that1 would prefer supporting the compromise that has now been submitted by Mr. Swanberg in liberalizing this account to the extent that you can invest in investment-quality corporate bonds, par-

tially, and in other securities guaranteed by the United States or the state as to principal interest. And I think this would probably be a wise investment of these funds, and I will support the two amendments and will amend it further if we get past that.

CHAIRMAN GRAYBILL: Now, members of the body, before we go on, the Chair would like to-1 think Mr. Davis has correctly summarized, but in case you didn't write them down, it seems we now have four positions, at least, visible: the position of the committee majority to have the restrictions provided by the Legislature, if any; the second position of Mr. Artz to restrict investments in public--or in private corporate stock; the third position by Mr. Swanberg to restrict investments to public securities within the state and U.S. bonds and certain investment-quality corporate bonds; and a fourth position, which Mr. Barnard will make if we clear the decks here, to restrict public school fund investments. Those are the four possibilities that you're discussing.

Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to interject a fifth, but I may here. I think I see a possible way out of it. Mr. Heliker's comment hasn't been compromised, I don't think-or, I mean, included in it. Do you feel that? Let me—may I offer this? If we were to accept the majority proposal and then Mr. Barnard also has a slip up there, I believe, to the effect that it says: "The Legislative Assembly shall provide for a unified investment program for public funds not otherwise constitutionally restricted". Then if we accept that with the majority proposal, then we add Mr. Barnard's amendment, which would be subsection 2, to this article, I think that would pretty well take care of it. At least, I throw this out as a possibility.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Berth&on.

DELEGATE BERTHELSON: Mr. Chairman, fellow delegates. Please, please think about what-the many, many, many long hours the committee spent listening to this type of debate. I rise, Mr. Chairman, to resist the motion of Mr. Swanberg. Mr. Swanberg, Federal Land Banks are not guaranteed by the federal government any more. I'd like to ask one question and have you consider this carefully. At the time this language was adopted in the present Constitution, did those writers dream that today we might have a Farmers Home Administration which the federal government guarantees with its full faith and credit as to principal and interest? And that many, many millions of dollars worth of Farmers Home Administration bonds are sold and owned by Montanans and that money is going back into Montana agriculture today to help our state? And that at one time those Farmers Home Administration bonds earned as much as eight and a quarter percent and today they are one of the best-yielding investments? I ask you to carefully consider that when the original language, as Mr. Swanberg would have it put back into the Constitution-did those framers of the Constitution envision that the Maritime Commission bonds that we're talking about today would be fully guaranteed as to principal and interest by the United States government? I could go on and on and talk about these things again, referring to the many, many hours of debate and witnesses that this committee listened to night after night and long day after day. I resist the minority motion. I would ask each of you in this body to turn to the Education Committee's report and read what it says in the Education Committee in their majority article on page 15; then read what they say in their minority article on page 40. Mr. Davis referred to it, that in that committee report these public school funds that everyone seems to be concerned about are guaranteed to be held inviolate and forever protected by Montana. Now, I think when you consider that and consider the work of this majority committee, it should allay everyone's fears. I resist the amendments; I resist any motions to amend the amendments. And I ask you to please consider the majority report and as it cuts across the Education report. Now, someone didn't do their homework very good when they said that Montana was the only state that had anything left in their public school fund. This committee, I believe, did its homework with the amount of time that it had allotted to it. We have a near sister state that has in its permanent school fund not $52 million that we're so proud of, but that sister state has in its permanent school fund $252 million. I think that there's one comment here that is-should have some influence on our thinking. This sister state—or near sister state is rated nationally as having one of the very finest investment programs. This state does, too-the state guarantees to hold inviolate these public school funds. But up until the time in 1962 when this state allowed their public school funds to become part of a unified invest-

ment program, the average yield on their public school fund investment, up to that date, was 2.68 percent yield. Since 1962 that yield has been increased until, during the year 1970, which is the last report that we had to compare with-during 1970 the yield on that particular state's permanent school fund was-during the year was 6.02. Mr. President and delegates, I rise in behalf of the Revenue and Finance Committee to resist the amendments, and ask that this body support the majority report and the work of the Education Committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would like to rise in support of the committee report. And I'd like to pass on to you a comment that was just made by my seatmate, that getting to know Old Earl was worth the whole trip over here. And I'm glad that Earl was able to express himself, because he's certainly shortened my comments considerably. I would like, if I may, in support of the committee report, to bring a little more input into this conversation that has not come up yet. I'd like to review a little bit what has happened in our investment program here in the state. At one time, we wereinformed through testimony, the investment of Montana's funds was in the hands of several departments. Supposedly the responsibility and authority was in the hands of the head of the State Land Department; but over years of practices that were just a little bit happenstance in the investment of these moneys-notes would be sent over saying we invested in certain funds-and as a result of these practices, there was considerable doubt as to how much, how many, where and why-for the investments were made. Now, as a result of the legislative reorganization, we are on a road that appeared to our committee to be a pretty healthy road to travel from the investment standpoint. The investments have been computerized. They are pretty close, they tell me now, to knowing about where Montana's money is, about what the returns are on these moneys, and about what the value and worth of the investments are. Now, with this as a background, the fact that we have moved so far in the past few years in this investment program, one of the considerations of our committee was that perhaps we may go another step further, or maybe two steps further. Perhaps at some point in the future the state funds or the state investment people may use the services of very qualified firms—organizations that are in existence here in the United States-to actually do the investing of certain types of our funds. Now, it happened that some weeks ago I happened to encounter some people who are with one of these funds. I didn't turn them on the State of Montana, but I asked them quite a few questions. It happens that they invest the funds-or they are retained by four different states. They happen to be located in Baltimore, Maryland. They invest $4 billion. And after talking to them, I came away with the feeling that for us to put limitations in the Constitution on the handling of the people's money for perhaps another hundred years, we just were not--we're just about half crazy. I said to myself, "If I had X number of dollars, would I give that to someone to manage and say, 'This is the only way you can investment [invest it]"?"-to not consider the inflation thing that Dr. Heliker has mentioned, to not mention the-not to consider the many new types of investments which may become very attractive and very safe for the state in future years. I would like to say that our committee, the Mitchell Gang, really doesn't want to invest all of the state moneys in common stocks. I would like to rise in the defense of some common stocks. My friend, Mr. Artz, you heard speak against the big red apple. I would say, "They're not too bad sometimes, if you happen to get to them." They're all right; but sometimes you do fall off the limb in going after them. But the fact that we are not going to put $300 million or $350 million on one box of red apples. What people who manage money do is, they spread it out. They eliminate the risk. They lower the risk. They minimize the risk and they maximize the opportunity for gain. Now, for the people in the Public Employees' Retirement Fund or the Teachers' Retirement Fund, for them to be limited in the method of investment of their funds-actually it is their money that is being put in; the state matches with a certain amount. These people should be given the opportunity to select how they wish their money to be invested. This is true in most all pension plans today. When a person signs up for a pension plan, in many areas—most, in fact-most teachers' retirement funds throughout the country, they're given an opportunity to say, "I'd like 20 percent of my money to go into common stocks, 20 percent into government bonds, and 50 percent in something else." This is a growing thing; and for us here in the Constitution to limit the ability of the people that invest these people's money, it just is not very practical, really. So I would say that if we could leave in the hands of good legislators of the future; because those of you who have served in

the Legislature know that the real dependable old horses wind up on the finance-in the finance area. They're the people who have come over for years; and they're good, solid people. I'm talking about Norris Nichols' kind of guys, the Francis Bardanouve kind of guys. They're not the kind of people that are going to go out and dump $300 million of Montana's money down the tube someplace. They're just not going to do it, and we are not going to give them the authority to make that decision. It's going to be the authority of the vote of the Legislature and the use of their wisdom and judgment. Now, as far as the doomsday deals that you've heard Mr. Swanberg and Mr. Artz talk about, you can point-history is replete with people who have lost money in investments. Mr. Artz described an investment he made in some common stock that went from 70 to 6. Well, I can tell you of some people I know that got in some things at 8 cents and it's up to $29.50 today. So everything is not bad. There are things that are-that go up. The thing that I'm saying, that people who know how to invest money and whose business it is to invest money are able to evaluate and may be able to make a real contribution to a greater income for the people at some point down the road. Now, the return from the school trust fund, if the proper investment is made-or even more profitable investment is made, returns to us as tax relief. Any way we can-any greater amount of money we can bring in than we are bringing in is money that will appear somewhere in our appropriations as tax relief to the taxpayer. And I think that's something that we should all consider. The faith that Dr. Heliker mentioned in the private enterprise system, I think, is the thread that ran through our committee after we heard-as Mr. Berthelson said, we heard the same comments, the same arguments, the same proposals, really, in our committee. And we spent many enjoyable hours, really, there listening to them. But I think it really all boils down to this: the American system ofprivate enterprise ain't too bad. It's a growing economy. There may be losers, and there are a lot of winners. But if we have faith in that economy and are willing to allow our people to make the decision of whether they want to participate in the growth of the American economy, I think this Constitution should allow them that latitude. I support the majority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I just want this assembly to know why the nonaffluent businessman of this team has not been speaking on this subject. I recognize when I have talent, and I yield to the affluent man and the banker when it comes to talking about investments. We listened for hours to the Investment Board; we feel they're in very good hands. And I think the last two speakers have very ably stated the case of the majority report over the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg, do you want to close?

Mr. Barnard, do you want to speak before he closes? You were at this point about a half an hour ago.

DELEGATE BARNARD: Mr. President, yes, I would like to speak just a second.

CHAIRMAN GRAYBILL: All right.

DELEGATE BARNARD: I'd just like to point out there is no intention on the part of the Education Committee, either the minority or the majority reports, to remove these funds from the unified investment program. We just want to put a little additional limitation on how they may be invested. We're in full agreement with the unified investment program.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I know I've spoken too much today, but I rise in support of the majority report. It seems to me that this has been a splendid committee and thatin line with my philosophy to let the future to the generations yet unborn, I am willing to trust the people of Montana who they'll elect to the Legislature. If they elect people to the Legislature that are crooks, we can turn back the course of history and we can resurrect the vigilante committees and hang some people from the Capitol dome. (Laughter) But I'm not afraid of the future or afraid of the people of Montana, and I submit the progressive majority report and I'm all for them.

CHAIRMAN GRAYBILL: Mr. Swanberg, you may close.

DELEGATE SWANBERG: Thank you, Mr. President. Just a few short comments. I, too, think that the Finance Committee has come in with a splendid report, and I do not like to do anything here which mars an almost-perfect record. Nevertheless, I do feel that the motion submitted has merit. Briefly now, this question of

bonds and inflation. They say that if you invest in stocks, you ward off the possibilities of losing your money through inflation. Well, let me tell you something. You can ward off inflation through bonds also. Now consider this. Right now-and if you'll look at the newspaper, all-you can prove it for yourself-you can buy a bond of American Telephone and Telegraph Company that pays 4 percent for $75 on the hundred. That bond is due in roughly 20 years. If you pay $75 for that bond, it's supposed to-it has a coupon of $4, you are in effect getting an investment of 5 percent; so that all during that 20 years you're getting 5 percent on your money. And then at the end of the 20 years, you get back not $75 that you paid for it, but you get back a hundred. So that all during this period you've been receiving a very nice 5 percent return, very safe, and at the end of the period you get back the-a hundred dollars. Now, if that isn't some protection against inflation, I don't know what it is. They say if you invest in common stocks you'll ward off inflation. Well, which stocks? That's the question. Ten years ago, we would have been having this discussion, they would have said, "Buy utility stocks; buy insurance stocks"; and most of your investment managers would have bought those stocks, only to find that today they are lower than they were 10 years ago. Does that guard against inflation? I don't think that it does. What it boils down to here is a question of safety of your capital, safety of your principal, as against the hope of some small gain in the stock market, and this is the very thing we want to guard against. We want to guard against this hope of some gain in the stock market, having a Legislature in some period of financial frenzy-they say it won't happen again; I say it will happen again-coming in here and opening up the doors to wild investments, and our whole investment program goes down the tube, or a substantial part of it. Now, these small losses that you would incur by this conduct would more than offset the gain that you might not have made by keeping your money in safe investments. There's one final comment. I would like to delete from my motion those Federal Land Bank bonds which are not guaranteed by the government. I guess they ought to come out of there. (Laughter)

CHAIRMAN GRAYBILL: First of all, then, is there any objection to deleting the Federal Land Bank bonds?

(No response)

CHAIRMAN GRAYBILL: All in favor of deleting them, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: All right, they're out. Now the issue is on Mr. Swanberg's amendment. The effect is that Section 13 of the committee report would be amended by adding the language of Mr. Swanberg's amendment—probably on line 1, after the word "maintained"—but in any event, to add this paragraph to the minority report. The paragraph allows investment of public funds in public securities within the state and in bonds of the United States, fully guaranteed, and in certain private corporate bonds of investment quality. Do you want a roll call?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. All in favor of Mr. Swanberg's amendment vote Aye; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed. Please take the vote.

Aasheim .. .. Nay
Anderson, J. .....Aye
Anderson, 0.. .. .. Nay
Arbanas .. .. .. Excused
Amess..... Nay
Aronow .....Aye
Artz .....Aye
Ask .....Aye
Babcock .....Absent
Barnard ..... Nay
Bates ..... Nay
Belcher .. .. Excused
Berg .....Aye
Berthelson Nay
Blaylock..... Nay
Blend Nay
Bowman..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain..... Nay

Campbell ..... Nay
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Nay
Felt ..... Excused
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Warrington ..... Absent
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Absent
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lore110 ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Absent
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Absent
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 21 voting Aye, 65 voting No.

CHAIRMAN GRAYBILL: 65 having voted No, 21 having voted Aye, the motion fails. We are now debating Mr. Artz' motion to amend the majority report by adding the language: "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock."

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I rise in support of the Artz amendment. First, I want to make a comment that has not been contested-that our public school funds are held inviolate. That's a high-sounding phrase, that they are held inviolate. But suppose that any of these funds are invested in common stocks; and we know the probability and the possibility that those stocks could become one-third their value, one-fourth their value. Mr. Berthelson said they are held-this money is inviolate. Inviolate by whom? Who is going to replace that money if it's lost? The Legislature, isn't it? And who is going to force that Legislature to make that money good'? Can you do it? There's nothing under heaven and above earth that can make them do it unless they want to, and if they need $40 million to replace this inviolate fund, they're not going to find it. So let's not be too sure about this inviolate proposition. Sure, back 10 years ago, I too said these common

stocks are good investments, but today I have surely changed my mind. I have changed my mind; and as Mr. Swanberg said, these bonds are pretty secure and they are rising in value as the years go by. You buy them below par and they mature at a hundred percent; and that is capital gains, and we have-they're a security that we do not have in common stocks. And by the way, when teachers and policemen and members of the employment group-here on the Capitol building, anywhere--when they put their dollars into a retirement system, they want dollars back. They want dollars back because that's what they live on, not some potential. Now, I heard some time ago that we should use this money and swing with it. Well, yes, that sounds good, but I feel that we might be waltzing with Matilda over to Sydney, Australia. And just suppose--now, just imagine, we have an investment counselor down here, and he's a good one as far as I know. I've talked with him, because I'm concerned about this money. Is there anything to prevent him from setting up a corporation over in Australia or over in Scotland or someplace and invest this money-not a million dollars, couple million dollars? Nothing to stop him. He says there is, but the Investment Board meets once every month. Oh, yes, we know that we have auditors. You bankers have had auditors, and you bankers have also read in the newspapers where these auditors made a mistake and we find people who've gone off with a million dollars, even with good auditing. Now you know that's a fact. Now, we want security for these moneys, because a Legislature is not bound to replace it. And I've got a list here I can show you where the State of Washington borrowed from the teachers' retirement some $75 million and they haven't replaced it. So you think very seriously about this amendment of Mr. Artz'; and I like it because he doesn't preclude investing in other moneys. This man down here the other day when I was sitting there invested $2 million of money floating around in banks. He just invested and overnight he had made a pretty good chunk of money, and I don't object to that. But to invest these school moneys, this that we have set aside as a trust-it isn't a trust if we put it in some stocks. And I ask you to look again at Mr. Artz' amendment.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would like to just add a brief footnote to what Mr. Aasheim has just said, and I agree with him in terms of the comments he made about the guarantee against loss and diversion. But, Mags, if the Legislature did decide to replace it, where would that money come from? Would it not come from us, the people?

CHAIRMAN GRAYBILL: I think that's a rhetorical question.

Mrs. Cross.

DELEGATE CROSS: I miss-(Inaudible)

DELEGATE CHAMPOUX: (Inaudible)

CHAIRMAN GRAYBILL: All right, you want him to yield. Then you have to ask that. I can't—

DELEGATE CHAMPOUX: Mr. Aasheim, if the Legislature decided to make up the loss, who would pay for it, sir, please?

DELEGATE AASHEIM: If they decided to do that, the taxpayers would; but there's nothing to force them to do so, and you-if you have money in the Teachers' Retirement System, you are the loser.

Mrs. Cain.

DELEGATE CAIN: Yes, Mr. President. I'd like to ask Mr. Artz a question.

CHAIRMAN GRAYBILL: Mr. Artz, do you want to yield'?

DELEGATE ARTZ: Yes.

DELEGATE CAIN: Mr. Artz, in states and systems where they have this kind of investment for retirement moneys, are the individual retirees or people who belong to this association—are they allowed to make a decision as to what their money is used for?

DELEGATE ARTZ: I think, Mr. Chairman, as I recall from the testimony, there are certain states that have it set up, that are highly computerized, where the individuals can make that choice; and my plan does provide that the individuals can make that choice for the money they put in.

DELEGATE CAIN: I see. Well, in that case I would support your amendment.

CHAIRMAN GRAYBILL: Mr. Habedank, did you wish to speak?

DELEGATE HABEDANK: Mr. Chair-

man, I would like to ask Mr. Aasheim if he'd yield to a question.

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I've been waiting, because I saw the glint in your eye.

DELEGATE HABEDANK: Mr. Aasheim, I'm not completely sure about my Montana history, and I'm sure you are, but in the 1920's didn't the Legislature cause a great deal of loss to the school funds through loans to farmers and bad loans, and the Supreme Court forced them to replace it?

DELEGATE AASHEIM: I really don't know, Mr. Habedank. I can't answer that. My memory fails me in that respect.

DELEGATE HABEDANK: Mr. Chairman, may I ask another question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE AASHEIM: I yield.

DELEGATE HABEDANK: If the Supreme Court did force the Legislature to replace it, would your statement still be the same, that no one can force the Legislature to replace that money?

DELEGATE AASHEIM: I don't know for sure, Mr. Habedank. You can lead a horse to water, but you sure can't make him drink.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I rise in support of the majority report. I think Delegate Aasheim's comments might be well taken. Seems to me, however, he's talking about human frailty; and I don't care what system you have, that's possible.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I'd like to respond to Mr. Habedank's questions. The answer is yes. When the homestead boom collapsed, we had put a lot of common school capital into that bubble; and when it burst, we adopted a program of recouping the fund; and I think the last payment made back into the fund was made in 1957.

CHAIRMAN GRAYBILL: Mr. Davis, I just want to caution the body again we're debating Mr. Artz' amendment to add this limitation on investment in common stock.

Mr. Davis.

DELEGATE DAVIS: I'll wait on mine.

CHAIRMAN GRAYBILL: Okay.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, this was caused by the Supreme Court in the Constitution taking protection. This is why the Supreme Court--why they had to pay it back. The Supreme Court said, "You're in violation." Now, if we get this, they won't have to. It wouldn't be under this system. The Supreme Court is not—would not-could not say it, because there's no question here that we have to hold it. This is what the thing is. Now, if you adopt this majority report as is, then the Supreme Court can't tell them to do it; it'll be up to the Legislature, if they will and wish to do it. I hope they do. Now, I think we have to realize that these funds are-most of this is school fund, and this is the one that's worrying me. I don't worry so much about the others. They're created--a fund has been created by Teachers' Retirement, PERS, and that; andifthey lose, it's there-but not the school kids. These school children-this land was given to the school children in the State of Montana, and this is what-now, Montana has not seen. In answer to Mr. Berth&on, and I don't know what state he was talking to, had we sold a lot of this land, we would have had a lot more money in the fund; but thank goodness, the State of Montana for-quite a few years ago, they started to decide to slow up on sales of land; this was one hedge against inflation. You got the acres of the land out here and it's still worth and it's still bringing in. If you sold it and went out here, especially if you sold it back at the time it was selling for 50, 75, or a dollar an acre, we didn't get much. Now this same land is worth an awful lot. I'm sure glad that we didn't sell that school section that we're going to get the great amount of money on. And, thank goodness, we had farsighted people that wasn't looking for the dollar and getting that; that they says, "We'll just hang on." Now, all that I think in this is that we should be farsighted and, say, put this little provision in to slow down future Legislatures. I trust them, but I've got to go back-and I see Arlyne Reichert looking at me-1 trust them, Arlyne, but I go back to this story of Amos and Andy. And probably none of you remember Amos and Andy, but they're talking about Amos one night and he says to Andy-or Amos is asked; he says, "Don't you trust him, the Kingfish?" "Well," he says, "I

trust him, but I sure watch him." And this is what I think here, that this little provision of this permanent school fund--now, this is the baby that worries me. It's been given to us. The federal government in the Enabling Act gave us-and you remember when they started, where we got the 5 percent deal; when we got into this court, Arnold Olsen took one side; the Governor took another. This went to the federal court, and we finally determined that this then, a certain part of it, had to go to the public school fund. Now, all I want to do is be sure it's inviolate. And I know it's nice to go out and say, "Oh, boy"-but I'd hate to have this man or the Governor or the State Superintendent of Public Instruction have to put a ticker tape in down in her office to see how the stock market did that day. This would worry me, and I have watched right now-the stock market has done beautiful here lately. It's going up; but, boy, when it goes down. Now this is all I'm trying to do-is to just keep for the school kids, future generations, protection. And as far as these here things of these bonds, I don't want anything in there that isn't guaranteed by the federal government, because we cannot print money; Montana can't. So we will follow the fluctuation of the United States up and down. That's why I particularly want this protected.

CHAIRMAN GRAYBILL: Mr. Artz, I wanted to call on you, but Mr. Vermillion beat you up.

Mr. Vermillion.

DELEGATE VERMILLION: Thank you, Mr. President. I'll take just a half minute here. I was wondering-remind everybody here, a couple of weeks ago in the Executive--or rather the Legislative Article, we passed a Section 6 of-Section 11, subsection 6, which says: "No appropriations shall be made for any private corporation not under control of the state." And I'm wondering if the State of Montana began investing in private companies, it might be considered they were controlling those companies and therefore they would be free later on to make appropriations for those companies.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I'd like to clear up one point that Mr. Mahoney was talking about. Let's get off that school fund kick. That's in Mr.--

CHAIRMAN GRAYBILL: Champoux.

DELEGATE McDONOUGH: Champoux-I was going to call him Shampoo—Champoux's article, and there's only $53 million in that school fund and it's going to be well covered by Mr. Champoux's article. We're talking about the balance of this fund, which is probably $250 million, that has nothing to do with school funds. And that's what we're talking about in this section-is investment of those funds, the greater majority of which are the pension fund to the Teachers' Retirement System and the Public Employees' Retirement System; and both of those organizations are represented on the Investment Board and agree with the majority report.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm going to be very brief. If you look at both the majority and the minority--and I'm directing this to you, Mr. McDonough—it talks about public funds. Now, whichever one of these moves-or goes through, we're going to move for an amendment-that is to say, Mr. Barnard's amendment-to protect the public school funds. So if you're feeling that that's all right, well, we'll go along with that. And by that I mean we're going to move this amendment when we get through here. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, are we on now Mr. Artz' proposed amendment?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE BERG: Mr. Chairman, I move to amend the substitute motion of Mr. Artz, the minority, by deleting the words "with the exception of moneys contributed by individuals to retirement funds."

Mr. Chairman.

CHAIRMAN GRAYBILL: All right; you want to delete the first clause, is that right?

DELEGATE BERG: Yes.

CHAIRMAN GRAYBILL: So that you would make Mr. Artz' amendment read: "No public funds shall be invested in private corporate capital stock." Is that right?

DELEGATE BERG: That's correct.

CHAIRMAN GRAYBILL: Very well, you may speak.

DELEGATE BERG: Fellow delegates, there are many funds. I think Imentioned already the police retirement fund. These funds are administered by each separate city. Now, I asked Mr. Artz how it would be possible for those funds to be administered in such a way that the public portion--or the public contributions would be invested in one manner and the individual contributions, perhaps, in another manner; and he explained it that this can be done now by computerized equipment. I want to assure you that there is probably no city in the state that can afford that kind of computer equipment for the sole purpose of administering, for example, the police retirement fund. The firemen's fund, for example, is administered on contributions by the firemen and contributions by the respective cities and it's administered by the State Auditor. I doubt very much that the State Auditor in this state is now, or for a long time will be, financially able or equipped to computerize it so that he can make these investments on a different basis. But more important than that is that if it is important that state funds be safeguarded and not invested in corporate securities of questionable character, it is equally important that the employees' funds be equally safeguarded. In other words, the state is the trustee of those funds that are contributed by the employee, just as much as they are a trustee of the funds contributed by the particular unit of government. So that what I am asking by this amendment is to treat everyone equally and not compel cities and not compel the State Auditor and not compel the Public Retirement System to divulge in-to engage in two different types of investment programs, one for employees and one for the contributions made by the units of government.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I object to Mr. Berg's amendment to my amendment. It destroys the whole part of the trend there that public funds are to be treated differently than private funds. I maintain that the people who put their money in have the same right to have that money invested as they want, as I can do with mine in my own private investment program. If I want to fall off the tree, that's my business. That's their business. We have provided in the article for a unified investment program. There are computers available here. I would ask Mr. Berg to take a look in this building and go over to the Mitchell Building. That's no problem at all. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berg's amendment to Mr. Artz' amendment. Mr. Berg would strike the first clause, the words "with the exception of moneys contributed by individuals to retirement funds." He'd strike that so the amendment read only: "No public funds shall be invested in private corporate capital stock." So many as shall be in favor of Mr. Berg's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Mr. Berg's amendment is defeated. Mr. Artz, do you want to close?

DELEGATE ARTZ: Mr. Chairman, I take it from the vote on Mr. Swanberg's amendment, 21 to 65, that he was too conservative. I have felt all along that my proposal was a good compromise. As far as the school funds go, Mr. Barnard has an amendment number one which would allow a few words so that this would not interfere with the school people, the school committee's objective to have more conservative investment oftheirfunds. We're not attempting here to say that the school funds cannot be invested more conservatively if they so wish. I might mention though in that fact, if you did put school moneys into the common stock market, and say you bought some KOA stock for a dollar and it went up to a thousand, you would have $999 profit; but as I interpret the law, that would all go into the permanent fund. We wouldn't get to use any of it this year, probably 5 percent; whereas if we'd made the same in interest, we would get to use 95 percent of it. That's just a little aside. Mr. Aasheim, I think, pretty well refuted Mr. Berth&on's remarks that this word "inviolate" is not quite as safe as it sounds. My only comment is that it does not insure against loss. It merely creates a possibility that the taxpayers will have to pay higher taxes to replace the money lost. Mr. Heliker was real worried about me not letting him gamble with his money; that he could make a lot. I assure him that there is no intention that-any money he puts into the school funds, he can tell them to do what he wants to with it under my proposal; but I still feel that he needs just a little more protection for the part the state

put in, because I'd hate to see him completely broke. It would be nice if he had about 50 percent of it left. Mr. Berthelson and his remarks about Minnesota to me is merely an example of the pressure that would be put on to put yield ahead of security, and I would like to see the Legislature kept free from that kind of pressure. Mr. Drum said he has fallen off the limb. I'm wondering if he's trying to get a little equalization. Does he want all the taxpayers to take a fall with him? I am in complete agreement with Mr. Drum in the fact that we have had a lot of improvement in the investment procedure for the Montana funds, and I think the part of the proposal that both the majority and the minority agree on, the unified investment program, will make this better yet for the future. Mr. Drum said we could get good investment counsel and that that would insure us that we wouldn't lose any money in the stock market. Now, I've put some money in mutual funds, and they supposedly have real good investment counsel; they have computers and analyze the market and the whole thing. But look at their record, even the best of them. Some of them barely kept up with the Dow-Jones, and some of them went broke. Common stock is still a gamble. Unless the Constitution is changed, gambling is illegal. Now, tax relief that he was talking about could certainly turn into tax increases very, very easily. You always have losers when you have winners; it's still a gamble. Mr. Rygg, my impression of the majority of the speakers that talked to us did not support investing in common corporate stock. I know that the teachers' man was in favorofit, but the rest of them said they didn't think the people would go for it. Some of them were absolutely against it. I have the notes in my records. I talked to Aronow—Cedor Aronow, here. He went over to Piper-Jaffray about 10 years ago-they're supposed to be a reputable investment firm; they give good counsel-they told him to buy Penn State (Laughter)—or Penn Central, rather, excuse me. Now, you know what happened to Penn Central. Cedor was smart enough, he didn't do it. I'm sure that 10 years ago any investment counselor would have told you that Anaconda Company was a very good buy. I recommend that you read a current issue of one of the weekly magazines and can check on their condition today. Now, Mr. Furlong spoke about frailty. Let's protect the people from as much frailty as possible. I think this is a good way to go there. Mr. Mahoney spoke that school funds are more important. I agree with Mr. Mahoney; I think they are. But we also have $289,649 in other funds as of October 31, 1971. Finally, the thing I started off with; remember that security is first. Let's keep the money in Montana and let's leave this yield thing on the bottom of the thing. I would like a roll call vote, Mr. Chairman. Thank you.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote on Mr. Artz' proposal that we add this language: "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." We're going to add that language to the majority's Section 13. So many as shall be in favor of Mr. Artz' proposal, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed. Please take it.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Nay
Arbanas ..... Excused
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Excused
Berg.. ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown. ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye

Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Excused
Etchart ..... Aye
Felt., ... Excused
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Nay
Holland, ... Excused
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Absent
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk Nay
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman Aye

CLERK **HANSON:** Mr. Chairman, 53 voting Aye, 35 voting No.

CHAIRMAN GRAYBILL: 53 having voted Aye, 35 No, Mr. Artz' amendment passes and it's adopted.

The Chair will recognize Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard has two amendments on your desk. The Chair has, for purposes of clarification, numbered the long one as Number 1 and the short one as Number 2. Mr. Barnard, which do you want to move first?

DELEGATE BARNARD: Mr. President, I move the Number 1 first, but I would like to call to your attention that we do have a substitute amendment here, this yellow sheet, where we missed a few words in the Number 1.

CHAIRMAN GRAYBILL: Very well, Mr. Barnard wants to amend Number 1 on the third line. Take Number 1, the long amendment of Mr. Barnard's; on the third line it says "public school fund and the"--and he wants to put in the word "permanent" there. So write the word "permanent"-"and the permanent funds of the State University". Line 3—add the word "permanent" after the word "the" so it reads: "and the permanent funds". And then on the fourth line, after the word "learning", he wants to strike "from whatever sources accruing"-those four words. Strike "from whatever sources accruing" on line 4 and 5. Will the clerk please read Mr. Barnard's amendment as-oh, first of all, let me put it this way. Is there any objection to that? If not, all in favor say Aye-of allowing that amendment.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No reponse)

CHAIRMAN GRAYBILL: Very well, now we have Mr. Barnard's Number 1. May the clerk read it, Mr. Barnard?

DELEGATE BARNARD: Yes, the clerk may.

CLERK HANSON: "Mr. Chairman. I move to amend Section 13, page 29, line 21, of the Revenue and Finance Committee Proposal by adding a new subsection 2 to read as follows: 'Subsection 2. The public school fund shall forever remain inviolate and guaranteed against loss or diversion by the state. The public school fund and the permanent funds of the state university and of all other state institutions of learning shall be safely and conservatively invested in public securities within the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixedrate of interest, as may be prescribed by law.' Signed: Barnard."

CHAIRMAN GRAYBILL: Mr. Clerk, may I have that back? Now, Mr. Barnard's amendment has the effect of adding this language as a subsection 2 to Section 13. Very well.

Mr. Barnard.

DELEGATE BARNARD: Mr. President, this is essentially the minority report of the Committee on Education and it's almost-the language isn't quite identical but it actually has the same effect as the language in Article XXI of the Constitution, and I'd like to run over it rather briefly. It says, "shall be safely and conservatively invested in public securities within the state." And the first thing you'd say is "within the state"—I mean, and by saying "public securities"-

CHAIRMAN GRAYBILL: Hold your mike up, Mr. Barnard.

DELEGATE BARNARD: —we **mean** all securities. We don't want to limit it to state bonds, or cities or towns. We mean everything within the state that issues this type of securities or in bonds of the United States or in other securities fully guaranteed as to principal and interest by the United States. Now, someone said awhile ago that there's alimitationhere, that there's a lot of things the United States government guarantees that you couldn't invest in. It says-but you will notice this-it says "or in other securities", which would include all other securities fully guaranteed by the United States government as to principal and interest. It also goes further and says, "or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law." In other words, what we're trying to do here is tie these funds down a little bit tighter than some of the others are, because they are-in other words, we want to stay within the limits of the Enabling Act and we want to see that the funds remain inviolate. I happen to have been in the Legislature when the State of Montana had to put in about four and a half million dollars in taxpayers' money to repay some of the losses because of poor investments. There was an argument: it was discussed on the floor; it went over several years of time. I think that's about all I need to say about that-it's-. Again, one thing I might mention, it does eliminate, I believe, investment in corporate bonds; and that was the intention of the minority report of the Education Committee. And we decided that the proper place that it belonged was in the Revenue and Finance report.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mr. Barnard's amendment?

Mr. Davis.

DELEGATE DAVIS: Fellow delegates, we worked and tried to work out a Trust and Legacy Article, and that is-has 17 sections in it, if you recall, and they are extremely confusing and most of them are obsolete; so if we can dovetail the Education, it'll be in this article. There's not going to be a separate Trust and Legacy Article, to our knowledge, unless someone puts it in. This is a further restriction that Mr. Barnard has requested to apply only to the public school fund, and those funds are set out in this excellent treatment under Taxation and Finance you have. It outlines them all and gives a good history on them. The last sentence of Mr. Barnard's proposal says: "or in such other safe investments bearing a fixed rate of interest, as may be provided bylaw", so that opens the door about as completely as you can. So it looks like you can invest in anything as long as it's not limited by the previous one on stocks. The first part of it, I think, is extremely important, that the public school fund shall remain inviolate and guaranteed against loss or diversion. There's been some discussion here this afternoon, and I think we ought to clarify that at this time. In 1917, the Legislative Assembly passed the Farm Loan Act

as part of the-and as a part of which school permanent funds could be invested in farm loans. Beginning around this time and continuing for several years, drouth and adverse conditions placed the farmers and ranchers in a precarious economic condition. In the 1917 act, the State Land Board loaned school money from the school permanent fund to ranchers and farmers and took first mortgages as security. The mortgagee was the state. By June 1922, there were 2,291 loans on the books valued at $4,517,882 with delinquent interest at 6 percent of $282,574.77. Up to that time the State-Department of State Lands and Investments was forced to pay out $45,297 for taxes in order to protect the state's title to these mortgaged lands. In 1923, seventy-nine thousand-some dollars was invested, and another hundred thousand in '24; and this act was repealed in 1933, and 85 percent of all the lands given as security were obtained by the state through foreclosure of quit claim deeds. And the state then found that they had an unpaid principal invested, including unpaid taxes and other costs, exclusive of all unpaid interest of $4,250,625. The Legislative Assembly was pressured by the school interests and they passed legislation to repay the principal amount to the permanent school fund. To do this, they set up a farm loan sinking fund and took over and administered all the foreclosed lands. The income went in the sinking fund and was then paid to the school fund. During this period, the original owners were given time to redeem their farms, up until March of '41. In all, 2,363 original loans were made and there were eight hundred and three-some thousand acres involved. After the principal had been paid to the permanent fund, it was suggested to the Legislative Assembly that the permanent school fund was in arrears a good share of interest on its money between the years 1916, when the first loan was made, and the time the state assumed responsibility, in 1933. Even after that date, any unpaid principal was earning only 2 percent as against the original loans which carried 6. In 1949, a bill was passed to repay this interest due from the state farm loan sinking fund at a rate on the loans, less this 2 percent interest already paid. This continued in 1953, when a million seven hundred and thirty-seven thousand was still due in interest. A bill was then presented to the Legislative Assembly stating the state would turn over the remaining 340,979 acres of farmlands into the permanent school fund as repayment in full of the interest due, and this bill was passed. With this strong statement, Mr. Barnard has-it's the same as is contained in the existing Constitution-that they'll remain inviolate and guaranteed by the state against loss or diversion. And thathas happened in our history of Montana, and we should keep it in there; and I think we should take his restriction on this $52 million of state funds--and we also have many more dollars coming in through the sale of state lands, royalties and depletion allowances. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: One other comment, if I may. Some of you may wonder why we are also including this in here at this point. Part of the Enabling Act indicates we have to apply some measure of protection, and in 1964 the U.S. government set up a commission to attempt to get rid of all of these enabling acts. As a matter of fact, there has been some that have already gotten rid of, so this is simply to further protect these funds if the Enabling Act happens to be simply eliminated by the federal government. Thank you.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, I rise in support of this amendment to the Taxation and Finance. This is part of our Education proposal, and I am very interested in secure and safe investments of our school funds, and I hope that you will support it.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Well, we're not going to vote yet. Is there any other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. Mr. McDonough, will you yield to a question from the Chair, if nobody else will ask you?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: I'm disturbed by the phrase in-"shall be safely and conservatively invested in public securities within the state." I don't know what that means. Do you?

DELEGATE McDONOUGH: Not too

well, but I think it means municipal bonds issued within the State of Montana by its subdivisions.

CHAIRMAN GRAYBILL: Would you yield to another question?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: Could a court interpret that to mean that-a publicly issued stock of a Montana company?

DELEGATE McDONOUGH: It could be interpreted that way on an issue that's only sold within the state so it doesn't have to be any registration statements filed and so forth and so on, other than with the Auditor.

CHAIRMAN GRAYBILL: If it's publicly issued and is a security within the state, would that language cover it?

DELEGATE McDONOUGH: I-if they don't look at anything else, it certainly would cover it and say that it could be invested.

CHAIRMAN GRAYBILL: Mr. Barnard, would you yield to a question from the Chair?

DELEGATE BARNARD: Yes, I would.

CHAIRMAN GRAYBILL: Is it your intention to allow the public school funds to be invested in private stock of Montana-of corporations, private corporations that publicly issue stock but are limited to Montana only?

DELEGATE BARNARD: Would the Chair repeat the question again? I'm a little bit hard of hearing.

CHAIRMAN GRAYBILL: Right. The words are "public securities within the state", and a private **Montana** corporation could publicly issue securities within the state without being subject to SEC regulations. I want to know if that language means that the state school money could be invested in them, which obviously would be unsafe, or why it couldn't be that-interpreted that way? Is that what you intend? That's my question.

DELEGATE BARNARD: Well, Mr. Chairman-Mr. President, rather-1 think that's an oversight on the part of the-when we drafted this legislation and I think that we should put the words "State of Montana" in there, and I'll so move.

CHAIRMAN GRAYBILL: You mean "public securities of the State of Montana"? I don't understand.

DELEGATE BARNARD: Not "of the State of Montana", but "within the State of Montana", so it could include school districts and cities and all of those other things.

CHAIRMAN GRAYBILL: The Chair is only concerned-I'm sure you intend to mean municipalities, Montana municipalities. But that-the Chair is concerned, and some of the lawyers here should become concerned and decide what to do here. I'm not trying to write it. I'm just raising the issue of whether or not those words don't allow us, if we pass them, to invest in the public stock-publicly offered stock of private Montana corporations, which obviously would not necessarily be a good investment.

DELEGATE BARNARD: I know it was certainly not the intention of the committee, either the majority or the minority, and ifthere's need for correction of the wording there, I'd certainly— glad to accede to anything that would be practical.

CHAIRMAN GRAYBILL: Mrs. Cain.

DELEGATE CAIN: The words are taken from Section 3 of the existing Constitution-"in public securities within the state". What Mr. Barnard and the rest of us who signed the minority meant-securities of the State of Montana and its political subdivisions.

CHAIRMAN GRAYBILL: Mr. Champoux, I'll recognize you, but is Mr. McDonough working on the problem?

DELEGATE CHAMPOUX: I'm going to move--are you going to move?

CHAIRMAN GRAYBILL: All right, go ahead.

DELEGATE McDONOUGH: Mr. President, I wonder if Mr. Barnard would accept this: "invested in public securities of the state, its subdivisions, local governmental units and districts."

DELEGATE BARNARD: Mr. President, I wonder if the gentleman would repeat the statement a little bit louder. I just didn't catch quite all of that.

DELEGATE McDONOUGH: "-invested in public securities of the state, its subdivisions,

local governmental units and districts."

DELEGATE BARNARD: I certainly would.

CHAIRMAN GRAYBILL: Very well, Mr. Barnard proposes that we amend his amendment here by adding, on the fourth from the bottom line, after the word "securities", the words "securities of the state, its subdivisions and local governmental units and districts within the state." So that the sentence would be-the clause would be that the funds of-the public school funds may be— "shall be safely and conservatively invested in public securities of the state, its subdivisions and local governmental units and districts within the state, or in bonds-" Nqw, is there any discussion of the proposed interlineation amendment here that we've made?

Mr. Choate-Mr. Conover.

DELEGATE CONOVER: Would you repeat that, Mr. President? Would you repeat that again?

CHAIRMAN GRAYBILL: Right. Four lines from the bottom, after the word "securities", we write in "of the state, its subdivisions and local governmental units and districts within the state"-the "within the state"is there. All in favor of that interline&ion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well. I don't like to interfere up here, but I don't think we want to get that adopted unless we know what it means. Is there further discussion of Mr. Barnard's language?

(No response)

CHAIRMAN GRAYBILL: Mr. Barnard, would you like to close?

DELEGATE BARNARD: Yes, I'd like to close, Mr. President, but I don't think there's much more to be said. I think most everybody has their mind made up. We just want to add a little more security to these trust funds, be a little more in compliance with the Enabling Act; and I think that's all I have to say.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Barnard's amendment, which would add a Section-subsection 2 to Section 13, which would read: "The public school fund shall remain forever inviolate and guaranteed against loss OF diversion by the state. The public school fund and the permanent funds of the State University and all other state institutions of learning shall be safely and conservatively invested in public securities of the state, its subdivisions and local governmental units and districts within the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law." Did you ask for a roll call vote?

DELEGATE WOODMANSEY: Yes.

CHAIRMAN GRAYBILL: All right, roll call vote. So many as shall be in favor of Mr. Barnard's amendment, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the vote is closed. Please take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Absent
Arbanas ,, ,, ,, Excused
Arness ..... Absent
Aronow ..... Absent
Artz ..... Absent
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher Excused
Berg ..... Aye
Berthelson Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman Absent
Brazier Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover Aye

Cross.. ..Aye
Dahood .Absent
Davis ..Aye
Delaney Aye
Driscoll .Absent
Drum ..Absent
Eck Aye
Erdmann ..Aye
Eskildsen Excused
Etchart .Absent
Felt Excused
Foster Nay
Furlong Aye
Garlington Nay
Gysler ..Aye
Habedank Aye
Hanson, R.S. ..Aye
Hanson, R. .Aye
Harbaugh ..Absent
Harlow Nay
Harper Nay
Harrington. Absent
Heliker Nay
Holland. .Absent
Jacobsen ..Aye
James ..Aye
Johnson .Absent
Joyce.. ..Absent
Kamhoot ..Aye
Kelleher Aye
Leuthold ..Aye
Loendorf. Nay
Lorello .Absent
Mahoney .Absent
Mansfield Aye
Martin ..Aye
McCarvel .Absent
McDonough .Aye
McKeon ..Aye
McNeil ..Aye
Melvin ..Aye
Monroe ..Aye
Murray .Absent
Noble ..Aye
Nutting Nay
Payne ..Aye
Pemberton ..Aye
Rebal ..Aye
Reichert .Aye
Robinson ..Aye
Roeder Nay
Rollins. Nay
Romney Aye
Rygg ..Aye
Scanlin Nay
Schiltz Nay
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Absent
Speer ..Absent
Studer ..Absent
Sullivan .Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk ..Absent
Vermillion Aye
Wagner ..Aye
Ward ..Aye
Warden ..Aye
Wilson ..Aye
Woodmansey ..Aye
Mr. Chairman .Aye

CLERK SMITH: Mr. Chairman, 59 voting Aye, 14 [13] voting No.

CHAIRMAN GRAYBILL: 59 having voted Aye and only 14 [13] No, Mr. Barnard's amendment as adopted is adopted-his amendment as amended is adopted. Mr. Barnard, do you want to make Number 2? Very well, Mr. Garlington was sitting in my seat, pushed my button instead of his. May the journal show that my vote is Mr. Garlington's, to keep him out of jail. I trust that's not a habit of yours, Mr. Garlington. (Laughter) Very well.

Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman, first a point of information. Some of these attorneys may be-1 wonder if this amendment, which states-oh, let's see, I have the wrong one. Well, the subject-here it is-the amendment is—provides that-to amend the Section 13, page 29, line 12 of the Revenue and Finance Committee Proposal by inserting, after the word "funds", the following words: "not otherwise constitutionally restricted." Now, I'm wondering-we don't want to remove this from the permanent-from the regular investment funds; that is, we want it to remain a part of the unified investment program, but we just want these limits on it. Now, is this necessary-that we put this amendment in there? Or should it-or is it necessary? If it isn't necessary, let's leave it out.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: It isn't necessary and it might actually be too restrictive, because the school funds should be under the unified investment program but they can be segregated and be separate to comply with the other amendment. So it should not be in here as you want to amend it. It should be out, left out.

DELEGATE BARNARD: Well, that's— Mr. President—

CHAIRMAN GRAYBILL: You withdraw it, then?

DELEGATE BARNARD: If that's my understanding-that this might remove this school fund from the unified investment program, I will withdraw the amendment if Mr. Champoux and the others are in agreement.

DELEGATE McDONOUGH: It might not remove it from the unified investment program. It probably will not remove it from that program, but it will restrict to-the investors of the program to the paragraph that was just enacted. You don't want to take it out of the program, because you have it pretty well restricted as to what they can invest it in, but you want to leave it in the program.

DELEGATE BARNARD: Yes, we want to leave it in the program; but is this amendment necessary? I don't want to clutter up the record with unnecessary amendments.

DELEGATE McDONOUGH: No, your amendment is not necessary.

DELEGATE BARNARD: Well, very well then, I will withdraw the—

CHAIRMAN GRAYBILL: Very well, Mr. Barnard's amendment-

DELEGATE BARNARD: -motion with the understanding that it is not necessary to accomplish what we're trying to do.

CHAIRMAN GRAYBILL: Mr. Barnard's amendment is withdrawn. Now, Mr. Davis, are you in the room? I want to finish up Section 13 if I can here.
Mr. Brown.

DELEGATE BROWN: I'll make mine in his absence. Mr. President, on line 15-w page 15, after the word "Governor", I want to insert the word "and" and delete-after "Legislative Assembly", there would be a period-and delete "and Chief Justice of the Supreme Court".

CHAIRMAN GRAYBILL: Very well, Mr. Brown has proposed to amend Section 13 as proposed by the committee, on lines 3 and 4 of page 15. He wants to add the word "and" between "Governor" and "Legislative Assembly" and strike the words "and Chief Justice of the Supreme Court". So it will read as follows: "An audit of the investment program shall be conducted at least annually and submitted to the Governor and Legislative Assembly period". Is that the sense of your amendment?

DELEGATE BROWN: Yes, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown, you may speak.

DELEGATE BROWN: Mr. President, if this group, the Governor, the Legislative Assembly and Chief Justice, found mismanagement in this fund, they might recommend civil action or criminal action and would, in effect, having the Chief Justice of our Supreme Court recommending some action against an individual and later may be appealed to that very court. And I don't think any auditing of any other branch of government should be involved with the Judicial, and there's sufficient protection if it's reported to the Governor and the Assembly.

CHAIRMAN GRAYBILL: Very well, is there discussion?
(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Brown's amendment to take "the Chief Justice of the Supreme Court" out of the audit process and put an "and" between "Governor" and "Legislative Assembly". So many as shall favor that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted.
Mr. Brown-or Mr. Davis.

DELEGATE DAVIS: Mr. President, I withdraw that amendment I had previously given to you.

CHAIRMAN GRAYBILL: Very well. Are there other amendments to Section 13?
Mr. Heliker, Section 13?

DELEGATE HELIKER: Mr. Chairman, I move to amend Section 13 as amended, on page 36, line 13, by deleting the words "individuals"-"by individuals" after the word "contributed". Page 36, line 13.

CHAIRMAN GRAYBILL: Very well, Mr. Heliker proposes an amendment. It's to the sentence that the minority suggested; in other words, it's to the Artz amendment. You'll find it on page 36, on line 13, and he would delete the words "by individuals" so that the sentence reads: "With the exception of moneys contributed to retirement funds, no public funds shall be invested in private corporate capital stock."

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: My point here is that, although at the present time the language as adopted would probably not do any damage to the retirement fund, because 50 percent of the contributions-at least this is true of the Teachers' Retirement System-are individually contributed funds, and I don't think any fund managers would want to put more than 50 percent into common stocks. In the future it is entirely possible that the individual contribution will be reduced or even eliminated entirely. I don't have the figures before me, but I have seen them and it is-1 think it is the case that in about half of the state universities—and I don't know about the public school systems in this country-that the contribution to the retirement fund is entirely by the employer. And this is the trend, clearly; and we may very well get to that point in Montana, which would mean that all of the contribution to the retirement fund would be by the state. And what we-by the language we have adopted here today, it would mean none of it could be invested in common stocks, which I think would be, as I said before, robbing the people affected of the potential retirement income. And we have, incidentally, sitting right here on the floor today a perfect example of that. My good friend, Lucile Speer, who worked for 40 years under the Teachers' Retirement System, whose retirement pay today would probably be twice as high if it hadn't been for this constitutional restriction. Now, while I'm on my feet, I would like to ask Delegate Berg to yield to a question.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE HELIKER: Mr. Berg, Mr. Berthelson brought to my attention that you have some question concerning the legal effect of this sentence, this whole sentence; and I wonder if there is such a-if there's a problem there which I don't understand, on the basis of what Mr. Berthelson said, that you would elucidate for the benefit of the committee.

DELEGATE BERG: Well, I think what he has reference to is that, in my opinion, the limitation of just corporate funds is not adequate. My personal viewpoint on it is that always-that public funds have been limited, generally speaking, to bonds, United States government securities, and investments of that character; and I feel that if you simply limit it to corporate funds, you leave it open to the Legislature-to a very wide-open field to them. I felt that if you were going to put limitations on it, you ought to put on the limitations that we've lived under most of these years and under which most funds have operated.

DELEGATE HELIKER: All right, I think I see what you are driving at, but there is nothing in this which would require the fund managers to invest in any particular securities as is written here.

DELEGATE BERG: If-the only limitation here now is to-is on corporate stock, at the present time.

DELEGATE HELIKER: Well, there's no limitation on that either, is there? This sentence exempts the retirement funds from that restriction.

DELEGATE BERG: That's correct. It would, as you have amended it. It would have only applied to investments of individuals prior to that time.

DELEGATE HELIKER: I didn't hear you.

DELEGATE BERG: As I read the sentence as it is now enacted, it is "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." Now, I would take that to mean that individuals' investments in private funds could be invested in corporate stock but that public funds could not.

DELEGATE HELIKER: All right, now, if

we adopted my-the amendment I've just proposed, in your opinion how would that—

DELEGATE BERG: That would, then, permit the investment of both. Well, I'm not quite certain that that does what you would like it to do.

DELEGATE HELIKER: Well, that's what I'd like to know.

DELEGATE BERG: I doubt that it would permit the use of public funds-the investment of corporate funds in private stock if they come either from the public or individuals. That would be my construction.

DELEGATE HELIKER: Well, as I would read it, this would say that-"with the exception of moneys contributed to retirement funds", so that's a definite exception.

DELEGATE BERG: Yes. I'm sorry, you're correct. I'm sorry. The construction would be, if your amendment succeeds, that retirement funds would be exempt from the prohibition of investment in private corporate capital stock.

DELEGATE HELIKER: Yes.

DELEGATE BERG: That's correct.

DELEGATE HELIKER: Okay, fine.

CHAIRMAN GRAYBILL: Is there further discussion? (No response) If not, the question is on Mr. Heliker's amendment to the Artz amendment, which is now part of Section 13. He would delete the words "by individuals", on page 36, line 13, so that the amendment would now read: "With the exception of moneys contributed to retirement funds, no public funds shall be invested in private corporate capital stock." This would have the effect of allowing money to be invested in private corporate capital stock in the case of retirement funds, whether contributed by individuals or by the state. So many as are in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Are there other amendments to Section 13? (No response) If not, Mr. Rygg will

DELEGATE RYGG: Mr. Chairman, when this committee rises and report[s], after having had under consideration Section 13 as amended, I move it be adopted.

CHAIRMAN GRAYBILL: So many as shall be in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Now, ladies and gentlemen, I'd like your attention a minute, especially in the gallery. A purse belonging to Mignon Waterman has been found and is in the Chief Clerk's office. The Chair wishes to tell the body that we have-I'm going to recess for a few minutes--we have before us still two new-well, let me ask Mr. Rygg this. What's the committee's proposal on Section 14?

DELEGATE RYGG: We plan to delete the entire section, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, we have, then, the deletion of Section 14 to consider, two new sections to consider, and one reconsideration to consider, at least-maybe two. The Chair also wishes to point out that I want to finish that, which finishes Revenue and Finance on time. We were supposed to cover style on Legislative today, and we will be three--actually, four articles behind on Style and Drafting as of Tuesday morning. The Chair does not like to announce a Monday session this late in the game for next Monday, so I won't have a Monday session, but I want everyone to be aware that we're way behind on Style and Drafting, although we're up-to-date on the debate portions. Since we're debating Bill of Rights next week and have only 2 days for it, our up-to-dateness may be short-lived. (Laughter) But the Chair would now entertain, Mr. Murray, a motion to recess for 15 minutes, and then we'll come back and finish up the rest of Revenue and Finance, and I'd like you to stay with us, ladies and gentlemen.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for 15 minutes.

CHAIRMAN GRAYBILL: All in favor, say Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 4:22 p.m.--reconvened at 4:44 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. Ladies and gentlemen, when the committee recessed, we were about to consider Section 14. Mr. Clerk, read Section 14, please.

CLERK HANSON: 'Section 14. Agricultural levies. A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion." Mr. Chairman, Section 14.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14 of Revenue and Finance Proposal 7, that it delete the entire article.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This is the same language that was adopted by the other committee the other night, so it is no longer needed in our proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All in favor of Mr. Rygg's motion that we delete Section 14 when we report, please signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 14 is deleted. Now we are ready to take up two new sections that have been proposed. First of all, Mr. Kelleher, you have a proposal, which we will style Section 15. May we read it from-may the clerk read it?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: Will the clerk read proposed Section 15.

CLERK HANSON: "Mr. Chairman. I move to amend the majority proposal of the Revenue and Finance Committee proposal by adding a new section on page 15, line 11, as follows: 'Section 15. The Legislature shall enact no additional sales or use tax other than those in force on December 31, 1971, provided that it may increase such taxes in existence on that date.' Signed: Kelleher."

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, the sales tax usually starts at 2 percent and then it usually goes up to 7-6 or 9-7 percent, as it has in New York; and the Soviet Union has went up as high as a hundred percent. It was an issue in the 1968 campaign. It helped elect the present Governor, and then it was again resurrected last November and defeated by a majority of almost three to one. I would like to dispose of it once and for all by outlawing it in the Constitution and at the same time guarantee support for the Constitution. In conclusion, the only objection I have heard to a unicameral Legislature is the ungrounded fear that it might pay us a sales tax. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I would like to resist this addition to Revenue and Finance. I really don't think it's anything we should write into a constitution. We are supposed to be planning one for the needs of the state for years ahead, and I don't believe we could possibly foresee that there should never be any other sales or use tax than is in force right now. So I would resist it, and I hope the committee does, too. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The Chair is having a hard time trying to see who wants to speak and who wants to sit down. Is there any further discussion?
(No response)

CHAIRMAN GRAYBILL: Mr. Kelleher, do you want to close?

DELEGATE KELLEHER: No. Could I have five seconds, please?

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has asked for a roll call vote. The issue is on Mr. Kelleher's proposed Section 15. Members of the committee, you have before you Mr. Kelleher's

proposed Section 15 and his motion that when this committee does arise and report, after having had under consideration his proposed Section 15, that it recommend the same be adopted. So many as are in favor, vote Aye on the voting machines; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0..... .Absent
Arbanas ..... Excused
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Excused
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman,, ... Nay
Brazier..... Nay
Brown.. ....Absent
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate.. ....Absent
Champoux ..... .Absent
Choate ..... Nay
Cross.. ....Aye
Conover ..... Nay
Dahood .....Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Nay
Felt ..... Excused
Foster ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ....Aye
Harper ..... Nay
Harrington ..... .Absent
Heliker ....Aye
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... Nay
Loendorf..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel .....Aye
McDonough ..... Nay
McKeon ....Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ....Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Absent
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins., ... Nay
Romney ....Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... .Absent
Siderius.....Aye
Simon ..... Nay
Skari ..... Nay
Sparks.....Absent
Speer ..... Nay
Studer ..... .Absent
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk .....Absent
Vermillion ..... Nay

Ward ..... Nay
Warden..... Nay
Wilson . . . . . Nay
Woodmansey .. .. Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 9 delegates voting Aye, 74 voting No.

CHAIRMAN GRAYBILL: 74 having voted No and only 9 having voted Aye, Mr. Kelleher's motion fails.

Mr. Aasheim, you have sent to the Chair a proposed amendment which is out on the desks; and we've changed Mr. Aasheim's proposed amendment to a Section 16 instead of a Section 15.

Mr. Aasheim.

CLERK HANSON: Mrs. Cross is up.

CHAIRMAN GRAYBILL: Yes, Mrs. Cross. Excuse me; I couldn't see.

DELEGATE CROSS: Mr. Chairman, I would like to explain my vote. I think that Mr. Kelleher deserves support sometime. He has supported me, in effect, many times, so this time, Bob, I wanted to support you, though in theory I think your motion was probably not too sensible. (Laughter)

CHAIRMAN GRAYBILL: Well, at least the last word of your statement, Mrs. Cross, was straight to the point. (Laughter) Very well, you have before you on your desk the proposed amendment by Mr. Aasheim, an additional section; please style it 16. And Mr. Aasheim, may we read it?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Will the clerk please read proposed Section 16.

CLERK HANSON: "Mr. Chairman. I move to amend Revenue and Finance majority proposal, page 15, line 11, by adding a new Section 16 to read as follows: 'The rate of taxation on real and personal property for the operation of state government shall not exceed 2 mills on each dollar of valuation unless a proposition to increase such rate, specifying the rate proposed and the time during which such rate shall be levied, shall have been submitted to the people at a general election and shall have received a majority of all votes cast for and against it at such election.' Signed: Aasheim."

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, members of the delegate assembly. Yesterday, I believe it was-it seems like a long time ago when we first started this article-and I want to say that this committee has done a tremendous job. It's likened to an oak tree. It has grown tall and straight and well, with very little pruning. Now, I would like to do just a little grafting and make the tree perfect. Yesterday morning we were talking about equalization and I said I believed in equalization. I think we need it on a state level in order to prepare for the future and also to take care of the present, because we have a foundation program that is predicated on equalization. I haveincluded here a section which is practically verbatim to the current Constitution and that is to guard, protect the property owner from the wiles of an overzealous Legislature. I have confidence in it-in them usually, but they have moments of weakness; they're human. And I propose this amendment to give protection to the property owner from a Legislature that is in search of funds for the operation of state government. Now, please note that we are talking about state government. I feel very sincerely and very, very much the need to protect the property tax levies for local purposes. I suppose you are all cognizant of the fact that cities and counties and school districts pretty much depend on property for their revenue. Towns and counties pretty much entirely so. And it is the prerogative of the people to vote themselves taxes on these levels. I think it should be that way. Consequently, I, with this amendment-to maintain this amendment as at present. I'm asking to reinstitute it in this new Constitution. Now, at first I had-1 was warned that if you put this in now with the California case, the Serrano case, facing us, that we must have equalization, and a similar case in Texas and in other states; possibly the one in Texas is more pertinent to us than the California case. But we do not know if these cases are going to apply to Montana. Let's not be afraid of this California bear until we see the whites of his eyes. Let's not worry about this Texas longhorn; if he comes, we'll dehorn him. Because we don't know but what our present foundation program will not comply with the standards which the federal courts might impose. So let's not cry wolf now and leave the doors open. However, I have left the doors open. In the last sentence you will find that if the Legislature finds itself in a bind and needs more money under this equalization which we think might come under these federal cases, the Legislature

can then go to the people and ask for this money. I think this is democratic. I think it will protect the property owner, which I think that he is going to ask for in this new equalization program we have.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I seem to find it necessary to resist the motion of my good friend, Aasheim. I really do believe if we added this section to our proposal, we would probably be overturning much of what we have done in the last couple of days. Naturally, I would like to know, too, that we would never need over 2 mills. But regardless of the California bear and the Texas longhorn, I think we will have to be prepared for the eventuality, and I can't see where we would be preparing ourselves for that if we should lock this Z-mill levy in the Constitution again. Actually, when we were discussing other articles in our committee, this 2-mill levy, of course, came up; and we decided that if we were going to write a Constitution for the future, one that would serve Montana for years to come, there would be no way of retaining this restriction. I admit we don't know what the courts will say about equalization, but I do believe we agreed that we would have to consider state financing of schools. And if we are to do that, I don't see how we could do it with this limitation, so I would resist the addition to the proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the Serrano case in California is still an uncertain quantity, but the people of California themselves have through initiative petitions and will have on the November ballot a proposition which will limit property tax levies. I think that the people themselves, through their own power, will decide what they'll do. And since we've been talking about the fact that we think the Legislature is the people's representative, I think that perhaps we should not close any options.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I agree with Mr. Martin. We shouldn't close any options, and really that's the whole theory of the Revenue and Finance section, that the options should not be closed. As we stated in the beginning, three basic taxes, which is property, income and excise taxes-this was somewhat to the same limitation that Mr. Kelleher just proposed, that there should be no sales tax enacted by the state, and that-put that in the Constitution. Now, I realize that local government is supported to a great extent by property taxes, but within the time of this Constitution it could be very well reversed, that local government can be very well and better supported by some other type of tax than property tax. By limiting this, then, we again invite some lawsuit as to what is meant by operation of state government. It means one thing to me, it means one thing to somebody else. Operation of state government could mean schools; the state is obligated to operate schools and furnish schools to the children. But more importantly, if we close off avenues of taxation, we really put the burden of taxes on the other avenues that we have. If we limit this to 2 mills and we assume that 2 mills does not go into education-to raise the $80 million that is now raised each year by property taxes for the support of schools-and assuming there is no local taxes for the support of schools, if we went the excise way, which is essentially the sales tax, we may need to have an 8 percent sales tax. If we went the income tax way and not the excise, we'd have to raise the income tax one and one-half times higher than what it is now to finance schools under Serrano versus Priest. And we do have other lawsuits pending, such as in welfare—which I'm not so sure is a-such a dominant public interest as education; but they say, "Well, it isn't going to apply here." But if anyone wants to read the case of Serrano versus Priest and how they discuss the different valuations in the taxing districts and how the State of California had a public foundation program to equalize between their schools, there is so much similarity between the California plan and the Montana plan of the foundation program; it's practically identical. And to say that we'll wait until it comes is not being very forward thinking about the thing, because you don't know what the people are going to do. You put it up to a vote, but there's nothing in the Constitution now that restricts the people from voting on whether or not they want to increase the sales tax or voting on whether or not they want to increase the income tax. What we are trying to do under our whole section is to relieve the thing from the burdens of the past so that the financing of the state can be solved in a much more logical manner, and to give [leave] the avenues open to solving those problems in the future. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I

rise to support Mr. Aasheim's amendment. I look at local government. It allows city-county revenue sharing. I've read the Great Falls *Tribune* over the last year and see how their city council says, "Well, now, if we could only get city-county revenue-sharing from the state, all of our problems would be solved." I feel that some place in this Constitution, we have to have some kind of a limit on something. We've gotten by for years with this 2-mill levy for state government. If we're going to in the future need it for our school systems, I agree with Mr. Aasheim that we will know in plenty of time so we can go ahead and put it to a vote of the people; and if that's necessary, then I'm sure it will be approved. But there are just too many loopholes that are left open. No matter where you read, whether it's from the President on down, everybody says that property taxes are too high, and yet we want to go out and leave the door wide open, As this state grows, there's going to be lots less people who are property-taxpayers and a lot more who are not; or if they are property-taxpayers, they are very small property-taxpayers. And I feel that if we don't get some kind of a limit someplace on some of this, we may not have too many people in years ahead that are going to own their property to pay the taxes on it; so I certainly support Mr. Aasheim's amendment.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I forgot one point, Mr. President. Relative to property taxes on a statewide basis, if you do go to a-and you can't levy a property tax statewide-and you eliminate the property taxes that are now levied for schools, which is about, on the average, two-thirds of what property taxes we pay, who are going to be the biggest benefactors of that elimination? The only way now that we are taxing transportation companies and making them pay their fair tax is by a property tax. They don't pay any state license tax other than the $50 minimum, and the big beneficiaries of a two-thirds reduction in the tax, if we can't do it on a statewide basis, will be the railroads and the transportation companies and anybody else that pays a substantial portion of their taxes by property and do not pay it by income or license tax to the state.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you-Mr. Mahoney, do you want to speak?

DELEGATE MAHONEY: Mr. Chairman, I rise in support of Mr. Aasheim's motion. Now, what you're doing when you leave it the way the committee has done, they won't ever have to vote on the University System again. They can just go out and put that on. Then, if we go out here now, at the present time, we have-now, we haven't got a statewide property tax for schools. They say that before you can share in the foundation program you must have this levy-15 mills, I believe it's for the grade schools and-no, it's 15 and 25. One is for high schools and one is for grade. This is before you can share. This is how it's being done. Now, if we go out here and take all the limits off like the committee has said, then you won't have to worry about that. We will come out with a statewide property tax of probably 40 mills, 50 mills; and it will be divided up, up here in the State Superintendants office or some other department. I'm not sure where it will be, because we may decide to create a new department, and this is when you lose your local control. Now, the people, I'll admit, are not voting for these levies when you get above this natural-this 40 mills. They're starting to question it. Some districts are having to go out three and four times to get this above what is necessary. This is a protest of the people that they don't like what's happening. Now, some of these districts don't have a bit of trouble. They just go right down and vote them, because those people in those districts have decided they like the way their school system is being run. Now, if we have this, we will find this automatically put on on property and we will then have the people with no say. I like to just let the people vote on some of these things, after—beyond a certain point, and I think it's good for them. If they don't like-and they've worried a number of times about the University System. Boy, I've seen them worry about it, the 6 mills. Now, if this happens, we'll have to worry about it. I'll admit the University System can go; and we've heard them complaining here about, the last day, about the Highway Department, and maybe then they won't have any complaints at all at the University System because they can't get at them. Now, this is what we're doing, and if we don't have some limit on here, this will be the keenest thing in the world to put it all back on property. Just watch it.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, apropos of the matter, I think that the trouble is the assessment system. Taking the railroads, for example, the railroad assessments in Montana in 1959 were a hundred and sixty-eight million, two

hundred and seventy-six thousand, two-seven hundred and twenty-two [168,276,722]. This is for statewide railway assessments, not county. The 1968 assessment was one hundred twenty-four million, seven hundred and six thousand. [124,706,000] In the 10 years, the assessments shrunk $44 million. If we had that 44 million on the assessment books, and the same thing goes for other corporations, we wouldn't be bothered so much about our property tax yields.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, do you want to close?

DELEGATE AASHEIM: I appreciate—

CHAIRMAN GRAYBILL: Wait a minute, wait a minute, Mr. Aasheim.

Mrs. Cain.

DELEGATE CAIN: May I ask Mr. Aasheim a question?

DELEGATE AASHEIM: You may.

DELEGATE CAIN: Mr. Aasheim, if Mr. Eskildsen's amendment of the other day had passed, would you have brought this?

DELEGATE AASHEIM: Well, now, I'll have to confess I didn't pay too much attention to that one. I was concerned about the majority report. I thought that was fine. I didn't really pay much attention to it, so I don't know what it would have done.

DELEGATE CAIN: Thank you, Mr. Aasheim. I think what we're doing here is considering our--reconsidering our action of the other day.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to—

Oh, Mr. Skari.

DELEGATE SKARI: Mr. President, I think that maybe this is a rather an important vote, and I'm not too sure about it. It seems it's the central idea of the committee's recommendation here-the committee report is to prepare for a shift here from the local funding of the education to state funding because of the Serrano-Priest decision and these Texas decisions. Now-and I get—as I understand the report, that is what they intend here. Would Mr. McDonough yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE SKARI: Mr. McDonough, what about the-financing the construction of school buildings, now, under this Serrano-Priest decision? Does this decision just apply to the funding of the expenses of running the school[s]? What about the buildings and this sort of thing? Will we still vote locally if this applies in Montana?

DELEGATE McDONOUGH: Well, Serrano versus Priest opens up a whole bag of worms and cats or whatever else you might call it. Now, what happened there was, in Beverly Hills they had a taxable district whereby 3 mills might raise a hundred thousand dollars-and they have voted levies just like we do over and above the foundation program-they had another district where 3 mills might only raise six thousand dollars. In the Beverly Hills district, they spent fifteen hundred dollars per high school student; the other district could only afford, with three times as many mills to spend, only about five hundred dollars per high school student. Now, that's what they threw out and said was unconstitutional; it's logical, it is. I mean, you can take logic any other way you look at it, but that is on the equal protection clause of the Constitution and that's why it was thrown out. Now, if they go to the point that the facilities and buildings furnished for education also have to be somewhat equal, then you get into the same thing on buildings. Now, it's possible that-1 think under buildings, and this is just a half-way thought about what they're talking about-it's possible that buildings could be financed in part by the district and financed in part by the state in order to equalize it so each child has the proper facilities in which to be educated. I don't know what Serrano versus Priest is going to do beyond the original point that we made. And I don't know, but it raises grave problems all up and down the line that the state is required to furnish an equal opportunity to education to each child in thestate, and that's what it essentially. says.

DELEGATE SKARI: Thank you, Mr. McDonough.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: I guess I would appreciate hearing from some of the other members on the committee on this, too. I would like to keep local control of schools, but I'd just like to hear more about it. I think we're going to vote

here a little bit too quickly. Maybe some of them would comment on this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President. Mr. Skari, I would like to call your attention, and the attention of the other delegates, to the comments in the Education Article. Not to prolong this discussion, but on page 10 of that article, the majority report sets forth some of thereasons why this equalization process will have to take place. Just reading a few lines from that report: "Montana's school financing system is similar to those declared unconstitutionalin the states where challenges have been made, and the same vast discrepancies in tax burdens and educational support exists in Montana as exists elsewhere." Then it quotes a recent study done last month in our Superintendent's office which shows that Montana's school district wealth per ANB varies as much as a ratio of 10,000 to 1; and this is the reason that a change has to come in the method of financing schools.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I'd like to point out to the delegates that Mr. Aasheim's proposal does not close the door in any way. If there is a need to exceed the 2-mill levy, then the proposition can be placed upon the ballot and the people will have an opportunity to vote upon it. It will not require any amendment of the Constitution, merely a vote by the majority of the people. This is a matter that I think we should retain the control of our expenditures with the people, and this is an important enough matter that the electorate should have a say in it, should have a voice in it. And I, as I stated during recess and conversation, I don't think any prudent person signs a check in blank and hands it to somebody to do with as they see-please--as they may so please to do. I like to be a little bit prudent about these things, and I don't think it's going to hamstring the operation of government or the school foundation program or anything else that the federal courts might order us to do if we can say to that court, "Our Constitution does not allow us to do it until the people pass upon it"; and that may be a very important safeguard to all of us in Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, first I would like to point out to Mrs. Cain that Mr. Aasheim did not support Mr. Eskildsen yesterday.

DELEGATE CAIN: I know.

DELEGATE GYSLER: Oh, okay. And I'd also like to say this, that if there was something written in with-along with this 2 mill that said that property tax could--above that could only be used for the education system, I would certainly go along with it on that basis. But I want to remind everybody that when you leave off all restrictions, you are not just saying that we are leaving the door open to school financing.

CHAIRMAN GRAYBILL: Mr. Joyce was next.

DELEGATE JOYCE: Mr. Chairman, it seems to me that this proposal has the same merit as Delegate Kelleher's. We just gave a blank check to the Legislature to put on a 20-percent sales tax. They aren't going to do that. I don't like property taxes any more than anyone else, but it seems to me that what we've done in this revenue thing is we've opened up the avenue so that the people who come after us can legitimately finance the state as prudence dictates from time to time. And I don't believe in putting it-lo-mill state property tax levy on any more than anybody else, and nobody is saying that they will. All we are doing is, we're leaving it to future generations to solve the problems as they arise; and the whole purpose of the Constitutional Convention was to free the Legislature so they could meet the problems as they arise. And I might say further, it seems to me the arbitrary restrictions we wrote into the Montana Constitution are the reason that the government went to Washington. The states had themselves-their hands tied so they couldn't meet them on the local level, and so the social forces just by-passed the state and went to Washington. And I think this has the same merit as Delegate Kelleher's proposition that we'll never have a sales tax, and I'm again willing to free the Constitution so that the problems that arise in the future can be met by reasonable men in the future.

CHAIRMAN GRAYBILL: Mr. Wilson,

DELEGATE WILSON: Mr. President, I rise to support Mr. Aasheim's motion. Probably this will do him more harm than good, but— (Laughter) I think we have placed a lot of emphasis all through this Convention on the people's right to vote. We've talked about giving the young

people a right to vote. Don't you think they should have the right to determine what indebtedness they will have to pay off'? I can look around here in this Convention and I see several people, like myself-that you can put on quite an indebtedness and we won't be around to pay it off, but these young people will. And I think this is something that we should think about. We're trying to provide a little protection for the people, and they can come in here and vote these things in if the need arises. We are all talking about the California case, the Texas case, and so on--about the schools. It hasn't arrived here yet. It's not here in Montana, and when it does come, if it ever does, which it probably will, we'll have time enough to decide—the people will-how they want to finance the school system. I support Mr. Aasheim. Let's give the people a little right to vote.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, as the years have gone by and, living on a ranch, I've heard remarks made by neighbors that this is one of the fairest tax that was ever levied on the people-2 mills every year and it brings in a million and three-quarters dollars and it hurts no one; and then the people, if they have to go beyond that, can vote. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates, I rise in opposition. As I see it, the 2 mills could seriously restrict the state government and, in fact, the Legislature. If the case does come, and it will, it could be taken completely out of the people's hands, completely out of the Legislators' hands, and it could be put in the court. The court would then dictate to the Legislature and to the people of the State of Montana how it would be funded and how the funds would be derived and divided. I think you overwhelmingly supported the majority position when it was up before, and I would request that you do the same now. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, we're talking here in a vein as if we are precluding the people from voting. Mr. Wilson said 18-year-olds would not have a chance to vote. Of course they'll have a chance to vote on a statewide property tax levy, just as they do on local levies. This doesn't preclude people from voting on the levies; the fact that they're statewide or whether they're local would not preclude anyone from voting on them.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I was just going to say it's rather arbitrary that we would have the people vote on a property tax and not on the income tax or license tax or any of the other taxes and also that if we followed the logic of Mr. Aasheim's proposal to perhaps an inevitable conclusion, we might have the people vote on every appropriation and every budget that the Legislature determines.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Aasheim, could I ask you a question, please?

DELEGATE AASHEIM: (Inaudible)

DELEGATE BABCOCK: Mr. Aasheim, could I ask you a question, please?

DELEGATE AASHEIM: Yes, ma'am.

DELEGATE BABCOCK: Does this happen to take the place of the 2-mill tax that the Governor can impose in the case of an emergency?

DELEGATE AASHEIM: It's the same.

DELEGATE BABCOCK: It's the same thing.

CHAIRMAN GRAYBILL: Is there any more discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to close?

DELEGATE AASHEIM: I surely appreciate your restraint in limiting the discussion, and I have to answer a few comments. Mrs. Cain, now, I have read Mr. Eskildsen's proposal and it wouldn't have made any difference, really, because his was in a different area-on the State Board of Equalization and school--and local County Commissioners, so it would not make any difference. Now then, I'm going to take these last comments first. Now, Mr. Furlong says the court might overrule us in the Constitution. Is the court above the Constitution? Now and then we had the comment that we don't ask the people to vote on sales taxes. Yes we do, but not income tax. Now,

I'll tell you, you let the local governments levy sales taxes and income taxes and I'll withdraw my motion. But as I reminded you awhile ago, the local governments are restricted to property tax, so that's why I'm asking a restriction on the state level. I can't share Mr. Wilson's pessimism. I'm optimistic, and I'm glad to have your support, Mr. Wilson. You'll win one of these times. Now, this comment was made about one school district having so much more wealth than another. It is true; there is this discrepancy; there is discrepancies all over the place. I might drive a Volkswagen and Mr. Wilson might drive a Continental. I'm not trying to equalize that, but we are trying to equalize it for school purposes. We're trying desperately, but it's pretty difficult. But we are doing it to quite an extent, and the State of Montana is now putting out about $30 million for equalization purposes through the income tax and other sources of revenue. This-the local people are paying property tax. That's where the schools are now getting their money-most of their money; we know that. So we do have the use of the property tax for school purposes. Now, you question again my questioning the integrity of the Legislature. I say the Legislature is made up of people, and I know how they are-they succumb to pressures because they are human. And they're going to say, "Well, sure, if we can put on 2 mills this year and then we need about $2 million, so we'll put on another mill next year; they won't hurt anything, they won't notice it." So next year another mill and another mill. There's no limit. The only ones who cry are the people, and they cry in vain sometimes, as long as there are no constitutional limitations. Now, Mr. Martin, you said, "Wait and let the people do this." Can you imagine-someone said that we should have a choice and let-there isn't enough tax on property now. Heavens above, aren't we living-aren't we realizing that property is bearing about all the load it can? And now we want to give it some more if we possibly can? Now, Mr. Martin, did it ever occur to you that people get so sick of property taxes that they might pass an initiative and say there shall be a IO-mill restriction? And then you've got it tied in, then you've got it tied down; now you haven't. You go to the people and say, "We need a few dollars here, so will you vote it for us?" So don't forget that little thing. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's proposed new Section 16 which has the effect of putting into the Constitution the 2-mill levy. I don't think I need to read it. I take it you want a roll call vote. So many as shall be in favor of Mr. Aasheim's Section 16, putting the 2-mill levy into the Constitution, vote Aye; and so many as opposed, vote No.

DELEGATE BRAZIER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: I rise to explain my failure to vote, and it arises because under our rules we do not permit pairing in the Committee of the Whole. Your secretary, Mrs. Bowman, had to catch an airplane and we got to comparing notes and as a courtesy, I have withheld my vote.

CHAIRMAN GRAYBILL: Very well, have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim	Aye
Anderson, J.	Aye
Anderson, 0	Aye
Arbanas	Excused
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Absent
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Absent
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Absent
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Nay
Davis	Aye

Delaney ..... Aye
Driscoll ..... Nay
Drum.. ....Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Excused
Etchart .....Aye
Felt ..... Excused
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S..... .Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... .Absent
Heliker ..... Nay
Holland. ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ....Aye
Kelleher ..... Nay
Leuthold .....Aye
Loendorf..... Nay
Lorello..... .Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin., ... Nay
McCarvel ..... Nay
McDonough .... Nay
McKeon ..... Nay
McNeil ....Aye
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble .....Aye
Nutting .....Aye
Payne ..... .Absent
Pemberton ..... Aye
Rebal .....Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins., ... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... .Absent
Siderius ..... Nay
Simon ..... Aye
Skari . . . . Nay
Sparks. .Absent
Speer . . . . . Nay
Studer .Absent
Sullivan Nay
Swanberg .....Aye
Toole ..... Nay
Van Buskirk .....Absent
Vermillion Aye
Wagner .....Aye
Ward .....Aye
Warden Nay
Wilson .....Aye
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK SMITH: Mr. Chairman, 32 voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 48 having voted No and only 32 voting Aye, Mr. Aasheim's motion is defeated. Mr. McDonough, would you tell me again the name of the California case? I just need to write it down here. Is it something versus Serranto?

DELEGATE McDONOUGH: Serrano, S-E-R-R-A-N-O versus Priest-Priest, the same as a clergyman. However, it was an Irishman that was one of the state officials.

CHAIRMAN GRAYBILL: Very well. All right, there are no other new sections that I know of.

Mr. Johnson, you have a motion to reconsider. Will you please state your motion, or would you like us to read your motion?

DELEGATE JOHNSON: You may read it.

CHAIRMAN GRAYBILL: All right, will the clerk please read Mr. Johnson's motion to reconsider.

CLERK SMITH: "Mr. Chairman. I move to reconsider Section 5's adoption in order to delete the sentence of the Revenue and Finance Committee proposal on page 12, lines 25 and 26: 'Certain classes of property may be exempt from taxation'."

CHAIRMAN GRAYBILL: All right, Mr. Johnson, your motion is in error; it's page 11. On page 11, lines 25 and 26, you'll find the sentence "Certain classes of property may be exempt from

taxation." Mr. Johnson, do you want to explain, briefly, your motion?

DELEGATE JOHNSON: Yes, Mr. Chairman. Thank you. Having voted on the prevailing side and then studying this some more last night, I've become very concerned over this particular sentence-"Certain classes of property may be exempt from taxation." I'm afraid that if I-I must have been lulled yesterday to vote for this, because this opens the door, I think-well, for instance, the Big Sky complex, resorts of any kind in Montana, any special class of property that might win an exemption by lobbying or other manner. And I can't see that this does anything in here except leave the door open for that type. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, Mr. Johnson wants to reconsider-having voted on the prevailing side, wants to reconsider Section 5 for the purpose of taking out the sentence on lines 25 and 26. Is there discussion of the motion to reconsider? And please be to the point.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. Well, I would like to see the committee reconsider this, because if this were reconsidered and that phrase was taken out, I would like to see us adopt a-some language that would exempt household goods and furniture, wearing apparel and other personal property and also solvent credits. And in our Legislative Council subcommittee study, which Mr. Berthelson referred to earlier in the debate, our study indicated that these two types of property should be exempt from taxation. The solvent credits we found were practically impossible to administer property tax on and-am I getting off the subject here?

CHAIRMAN GRAYBILL: Well, I just wanted you to stay on the subject of reconsideration. You may tell them what you're going to do, but I don't want to get a big debate going until we've decided whether to reconsider.

DELEGATE ETCHART: Yes. Well, this is-if we could reconsider it, this would make a change which the Legislative Council has concluded in the past should be done. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to reconsider?

(No response)

CHAIRMAN GRAYBILL: Very well, you have the motion before you, the motion of Mr. Johnson that this committee reconsider its action on Section 5, page 11, for the purpose of considering the sentence on lines 25 and 26. Anybody want a roll call?

UNIDENTIFIED DELEGATE: Yes.

CHAIRMAN GRAYBILL: All right, the vote will be by roll call. So many as are in favor of reconsidering, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

UNIDENTIFIED DELEGATE: No.

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Nay
Arbanas ..... Excused
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Excused
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell Nay
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Absent
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney Absent
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Absent

Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Excused
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Nay
Holland, ... Excused
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Absent
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Absent
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Absent
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner. ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. President ..... Nay

CLERK SMITH: Mr. Chairman, 29 voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 48 delegates having voted No and 29 voting Aye, the motion to reconsider fails.

Mr. Loendorf, do I understand you want to withdraw your motion to reconsider?

DELEGATE LOENDORF: Yes, Mr. President.

CHAIRMAN GRAYBILL: Very well, are there other motions to reconsider matters contained in the Revenue and Finance proposal?

(No response)

CHAIRMAN GRAYBILL: If not, I think the committee is ready to rise and report on the Revenue and Finance proposal.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, before doing so, I would move that the committee pass consideration of all other business on General Orders for this sitting.

CHAIRMAN GRAYBILL: Very well, that means we're going to pass other business, including the Legislative Style and Drafting, on till Tuesday. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise and finally report.

CHAIRMAN GRAYBILL: The motion is that the committee rise and finally report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

(President Graybill presiding over Convention)

PRESIDENT GRAYBILL: The Ayes have it. Now, while the report is being considered, I'd like you to find on your desks Resolution Number 11, which we will take up in the Convention after we have acted on the committee report. Will the Convention be in order. Will the clerk read the title of the committee report.

CLERK SMITH: "March 4, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 7 of the Committee on Revenue and Finance, move that the committee rise and report."

PRESIDENT GRAYBILL: "Signed: Graybill."

CLERK SMITH: "Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Very well, does anyone wish the Committee of the Whole report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well. Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we adopt the Committee of the Whole report and refer Proposal Number 7 to the Committee on Style and Drafting.

PRESIDENT GRAYBILL: You've heard Mr. Murray's motion to adopt the Committee of the Whole report and refer the Revenue and Finance proposal to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.
Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we revert to Order of Business Number 7.

PRESIDENT GRAYBILL: Without objection, we'll revert to Order of Business Number 7, Resolutions.
Mr. Murray.

DELEGATE MURRAY: Mr. President, the Convention has before it Resolution Number 11, which is aresolution introduced this day by the Committee on Rules. When we previously took up the matter of the election to be held in conjunction with the June 6th primary election, we were asked by the Convention to detail certain information relative to this election. We have considered this matter in detail, and the resolution contains our recommendations. Because of the condition of the statutes of Montana with respect to the designation "special election", and that subject being, it appears, primarily directed toward the filing of a vacancy in office or an election for money, it occurs to us that we must ask for a separate election or an election separate from the state primary election but which would be held simultaneously on the same day, June 6th, 1974-1972, for the purpose of ratifying or rejecting the proposed Constitution. And our resolution I believe to be self-explanatory. I might note that at the top of page 2, in line 1, the committee has suggested an amendment where it says, "the election notice and direct each election judge". That should be changed to County Clerk and Recorder, because it would be nearly impossible to have each election judge post the notice that we require.

PRESIDENT GRAYBILL: Very well, we'll propose an amendment on line 1 of page 2 to strike the words "election judge" and put in the word "Clerk and Recorder". All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE MURRAY: Now the other matter to be considered is the form of the—

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Yes?

PRESIDENT GRAYBILL: I think you should read this, or let us read it. I want everybody to understand it.

DELEGATE MURRAY: I'll read it then.

PRESIDENT GRAYBILL: Maybe you

could read it and comment as you go along.

DELEGATE MURRAY: Okay. "In accordance with Section 17 of the Constitutional Convention Enabling Act,"--and that's the Enabling Act that created this Convention--"Chapter 296, Laws of 1971 as amended by Chapter 1, Extraordinary Session, Laws of 1971, the Convention hereby resolves that: Section 1. An election separate from the state primary election shall be held simultaneously on June 6, 1972, for the purpose of ratifying or rejecting the proposed Constitution"--and I have already discussed that. "The question of adopting the proposed Constitution and related questions, if any there be, on the ballot"-and I submit there will be one because of our action relative to bicameralism and unicameralism-"shall be submitted to the people on a separate ballot which shall be certified by the Secretary of State in the form to be adopted by the Constitutional Convention." We will finally, at the end of this Convention, determine the form of the ballot. We will certify that to the Secretary of State, and that ballot will be printed and distributed. It will be a separate paper ballot. It will not be in connection with a machine or the vote-o-matic card-punching devices that some of us have in our counties, because we do not want to chance in any way the possibility that this might be considered as part of the regular primary election. "Section 3. The County Commissioners in each county shall furnish separate pollbooks, precinct registers, tally sheets and any other supplies necessary for holding a separate election." In doing so, we think that we will furtherinstructthe judges in all of our one thousand-some precincts to ask people if they desire to vote on the Constitutional issue; and if they desire to do so, we will have the necessary supplies for them to sign a separate pollbook. They will then be considered as voting in this election. If they decide to pass the question, they will not sign the book and they will not pick up a ballot. In this manner, we think we will enable ourselves to better overcome the prospect of facing the language of our existing Constitution, which says that we must have a majority of the voters who are participating in the election. "4. The votes cast for the ratification or rejection and related questions shall be tabulated, returned and canvassed separately from the votes cast in the primary election but in the same places, in the same manner, and by the same Election Judges, Clerks and Canvassers." This further goes along with our thinking that we would keep our election separate in every manner from the primary election. "5. The Secretary of State shall prescribe the form of the election notice and direct each Clerk and Recorder to post the notice in public places in their precincts at least 20 days prior to the election and direct each Board of County Commissioners to publish notice of the election in a newspaper of general circulation in the county once at least 10 days before the election." That's self-explanatory and in accordance with existing law. "Section 6. The election laws of Montana shall apply in all other respects to the constitutional ratification or rejection election, including notice of close of registration." And that's to cover the law-the Enabling Act provisions relative to that and to make sure that we cover all of the election problems that might arise. "Section 2, subsection 1. The Secretary of State is hereby requested to requisition the Purchasing Division of the Department of Administration to call for bids for the printing of the proposed Constitution with comments and report to the people as required by subsections 4 and 5 of Section 17 of the Constitutional Convention Enabling Act, which shall be printed in the form prescribed by the Convention." And, Section 2, "There is attached to this resolution a requisition approved by the Constitutional Convention for use by the Secretary of State in requesting the call for bids." Now, that is self-explanatory, and when we discussed this matter previously, I mentioned to you that there was a problem of timing. And in order to get this matter on the ballot on June 6th, we must call for bids, because there will not be time to complete our work and then call for bids; and the requisition is for that purpose. You will notice that there is a date left blank in the second paragraph of the typewritten material on the requisition: "Proofed printers copy to be furnished to successful bidder no later than"-and there is a blank. When the requisition was printed a few days ago, it contained a date, and we left it out for this purpose, because it is necessary that I go down to the Department and establish a new date. The date that they used was not proper for our purpose and was too early, and therefore we left it blank; and I must ask your indulgence to be able to go down and take care ofthatmatter. Now, what we're talking about in this requisition is the document that many of you have seen, and I have it in my hand and show it to you now. This is the Illinois voter information pamphlet. It is tabloid size, which is half the size of a regular newspaper. It is printed on newsprint. We will use white newsprint. We envision three colors on the two pages, the front and back, for purposes of dressing it up a little. We think that we will have the money for

that purpose. Inside this document is contained the report to the people, starting on the first page, and then you will see, inside, the sample ballot that many of you have already inspected. Then you will notice that the Constitution is set forth inside in two colors and in two types of print. The two colors designate the section of the Constitution-or one color designates the section of the Constitution, the other color designates the explanation of this Convention as to that section, whether it would be identical with the present Constitution in Montana or what the change might be. And the two colors have been used in at least Illinois and Arkansas, as we have been able to discover from our examination. We feel that we will be able to complete all our printing and work within the 24 pages used by the State of Illinois, and I think the same number of pages, or even fewer--or lesser, were used by Arkansas. In Illinois, I might note to you, that there were a couple of pages which are filled, one, with the names of the 58 delegates--or a hundred and some delegates who participated in the Constitutional Convention and a letter to the public by the Secretary of State. We envision that we would use these for better purposes unless the space became available and we could use them for such purposes. We feel that the document used in Illinois and Arkansas is such that it would be to our advantage to use the same thing. There is no question but what it is cheaper to use this type of document than it is to print a book with all that might be needed in it, and certainly it can be printed with much greater dispatch. We envision, and the bid-the requisition calls for the printer to deliver the requisite number of copies as are on Appendix II to the various Clerk and Recorders-directly to the various Clerk and Recorders. So we do not run into the problem of having delivery to the office of the Secretary of State and then the burden of having that office make the necessary mailings or deliveries or shipments to the various Clerk and Recorders in Montana. Well, briefly, that covers the intent and purpose of the resolution. I would like very much for you to give it consideration at this time and if possible to adopt it, because I would like to take the matter up with the Purchasing Department and the office of the Secretary of State on Monday morning; and if we do not take care of it now, it would be sometime Tuesday or perhaps Wednesday before we could do it. And, Mr. President, I move that we adopt Resolution Number 11.

PRESIDENT GRAYBILL: Very well, you've heard the motion. First of all, the Chair would like to make a comment, and then we'll have questions. Mr. Murray, I think you should point out to the body that the twenty-four thousand dollars referred to on the requisition is Account Number 110100, Appropriation Number 12255, and that is not our appropriation. That's an additional forty-one thousand dollar appropriation that the Secretary of State has, and he claims that the difference between 24 and 41 are necessary for him to set up the election. Isn't that correct?

DELEGATE MURRAY: Yes, Mr. President.

PRESIDENT GRAYBILL: So this is not our money shown there. Now, my point, Mr. Murray, and in bringing this up--either by letter accompanying this, or perhaps we should amend the requisition, and I don't think that need bother the resolution. I think it should be made clear to bidders that this may not be all the money we have available, that this is one of the sources--one of the projects for which we have applied for the federal funding and which we might also have other funds of our own available. We certainly want to do the proper job on this pamphlet, and we are simply trying to get bid prices. But the twenty-four thousand is from the Secretary of State's appropriation and not our four hundred and ninety-nine thousand dollar appropriation. Am I correct?

DELEGATE MURRAY: Yes, you are right, Mr. President. May I also say that the Legislature, in appropriating the forty-one thousand dollars within which the twenty-four thousand dollars was included to the office of the Secretary of State, envisioned one of those little 6 by 9 pamphlets that you received when you were considering the question of voting for the delegates to this Constitutional Convention or for the Convention itself; and we felt that that was not a satisfactory document and that we should go better than that. Now, I might also say that Illinois and Arkansas, in addition to the voter information pamphlet such as this, printed a book. But we do not think that we, by any means, have the funds to print an additional document and that by dressing this one up with colors-and this has been handed to many people and used; it's still in pretty good condition. It's been in my file for 30 days anyway, and it's been through Style and the President and the officers of this Convention. It seems to hold up pretty well, and I think will be a pretty good job-do a pretty good job for us.

PRESIDENT GRAYBILL: Now, is there question or discussion from the body?

Mr. Gysler.

DELEGATE GYSLER: Would Mr. Murray yield to a question?

DELEGATE MURRAY: Yes, sir.

DELEGATE GYSLER: Mr. Murray, on your requisition-"bid security in the amount of 5 percent of the total bid is requested"-shouldn't that "requested" be "required"?

PRESIDENT GRAYBILL: Where was that, Mr. Gysler?

DELEGATE GYSLER: "Requisition"—down--there's a single line about halfway down through it.

DELEGATE MURRAY: Well, I didn't cut the requisition. That's cut from the Department of Purchasing, and I presume that's the language that they use. We can change it to "required" if you want to, but it's their requisition; it isn't ours. That's on for illustrative purposes only, really.

DELEGATE GYSLER: It just seemed to me to be good business.

DELEGATE MURRAY: I'm sure they will require it, although it says "requested".

PRESIDENT GRAYBILL: Are there other questions about the resolution or the requisition?

Mr. Monroe.

DELEGATE MONROE: Mr. President, in the very first paragraph there; now this doesn't include the mailing costs, am I correct?

DELEGATE MURRAY: This includes the shipping cost to the County Clerk and Recorders but does not include the mailing cost of mailing this document by the County Clerk and Recorder, which is a county expense, to the individual voters.

PRESIDENT GRAYBILL: In other words, the mailing cost is not our cost, Mr. Monroe. It's the County Clerk and Recorder's cost.

DELEGATE MONROE: Okay, another question. The balance of the money-of the forty-one thousand dollars--that's to pay Election Clerks and Judges and so forth?

DELEGATE MURRAY: The balance of that money is for use by the office of the Secretary of State to do what it has to do to conduct this election.

PRESIDENT GRAYBILL: Are there other questions of Mr. Murray? (No response) Is there other discussion about Resolution Number 11?

(No response)

PRESIDENT GRAYBILL: Very well, members of the Convention, you have before you Mr. Murray, the Chairman of the Rules Committee's motion that Resolution Number 11 be adopted by this Convention. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Very well, I think there are no other motions or resolutions.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we advance to Order of Business Number 11.

PRESIDENT GRAYBILL: Without objection, we'll advance to Order of Business Number 11.

Mr. Martin.

DELEGATE MARTIN: On behalf of the Public Information Committee, we would just like to acknowledge and express our appreciation to the Governor of Girls' State, Elaine Koyama, who this past 2 weeks has stayed out of school and given yeoman's service in conducting tours; and I'd like to present her at this time. She's going back to Hardin to finish high school.

PRESIDENT GRAYBILL: Miss Koyama. (Applause)

PRESIDENT GRAYBILL: Mr. Harper, did your daughter get away?

DELEGATE HARPER: (Inaudible)

PRESIDENT GRAYBILL: Well, we missed Miss Montana--or at least we had her but we didn't get her introduced. I intended to, and I guess-if she gets back, Mr. Harper, point it out again. I'm sorry. I get engrossed in these interest-

ing debates, and things just-(Laughter)-get away from me. Are there other announcements? Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights Committee meeting, Tuesday morning, 8 o'clock.

PRESIDENT GRAYBILL: The Chair— Mrs. Warden.

DELEGATE WARDEN: Gee, I guess I'm way back here too far. The Public Information Committee, in the Rules Committee at 8 o'clock Tuesday morning.

PRESIDENT GRAYBILL: In the Rules Committee room at 8 o'clock Tuesday morning. Mr. Murray, wait a minute. The Chair wishes to announce that on Tuesday morning we will take up the Legislative Style and Drafting proposal and we'll take up the Executive Style and Drafting proposal, and we'll be prepared to start on Bill of Rights after we've finished those two Style and Drafting proposals. So please come prepared on them. The Executive one has been given to you and will have complied with the 48-hour rule by Tuesday morning. Are there other announcements? (No response) Mr. Murray, have you your form?

DELEGATE MURRAY: I have. Mr. President, I move, pursuant to the general powers vested in the Montana Constitutional Convention and in accordance with the provisions of Section 7, subsection 6, of the Enabling Act, Chapter 296, Laws of 1971, that the Montana Constitutional Convention recess temporarily until 9:00 a.m. on Tuesday, March 7, 1972.

PRESIDENT GRAYBILL: Very well, you have heard the motion to recess this Convention until Tuesday, March 7th at 9:00 a.m. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 6:00 p.m.)

March 7, 1972 **Thirty-Ninth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: If you'll all arise, Mr. Arness will lead us in the Pledge of Allegiance this morning.

DELEGATE ARNESS: I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: This morning, Veronica Sullivan will lead us in our invocation.

DELEGATE SULLIVAN: Almighty God, we thank You for the privilege of being here. Give us the insight to make this the best possible document for our and succeeding generations of Montanans. Help us to help each other and always remember to be kind and thoughtful. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning on the voting machines. All present, vote Aye.

CLERK HANSON: Mr. President, may Delegates Arbanas, Belcher, Bugbee, Champoux, Eskildsen and-be excused please?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting, Delegate Monroe, Delegate Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting. Delegate Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting, Delegate Romney.

PRESIDENT GRAYBILL: Very well, please take the ballot.

Aasheim ..... Present
Anderson, J. ... Present
Anderson, 0. Present
Arbanas ..... Absent
Arness ..... Present
Aronow ..... Present
Artz ..... Present
Ask ..... Present
Babcock ..... Present
Barnard ..... Present
Bates ..... Present
Belcher ..... Absent
Berg ..... Present
Berthelson ..... Present
Blaylock ..... Present
Blend ..... Present
Bowman ..... Present
Brazier ..... Present
Brown.. ..... Present
Bugbee ..... Absent
Burkhardt ..... Present
Cain ..... Present
Campbell ..... Present
Cate ..... Present
Champoux ..... Absent
Choate ..... Present
Conover ..... Present
cross.. ..... Present
Dahood ..... Present
Davis ..... Present
Delaney ..... Absent
Driscoll ..... Present
Drum ..... Absent
Eck ..... Present
Erdmann ..... Present
Eskildsen ..... Absent
Etchart ..... Present
Felt. ..... Present
Foster ..... Present
Furlong. ..... Absent
Garlington ..... Present
Graybill ..... Present
Gysler ..... Present
Habedank ..... Present
Hanson, R.S ..... Present
Hanson, R. ..... Present
Harbaugh ..... Present
Harlow ..... Present
Harper ..... Present
Harrington ..... Present
Heliker ..... Present
Holland ..... Present
Jacobsen ..... Present
James ..... Present
Johnson ..... Present
Joyce.. ..... Present
Kamhoot ..... Present
Kelleher ..... Present
Leuthold ..... Present
Loendorf ..... Present
Lorello ..... Present
Mahoney ..... Present
Mansfield ..... Present
Martin ..... Present
McCarvel ..... Present
McDonough ..... Present

McKeon ..... Present
McNeil ..... Present
Melvin ..... Present
Monroe ..... Present
Murray ..... Present
Noble ..... Present
Nutting ..... Absent
Payne ..... Present
Pemberton ..... Present
Rebal ..... Present
Reichert ..... Present
Robinson ..... Present
Roeder ..... Present
Rollins. ..... Present
Romney ..... Absent
Rygg ..... Present
Scanlin ..... Present
Schiltz ..... Present
Siderius ..... Present
Simon ..... Present
Skari ..... Present
Sparks ..... Present
Speer ..... Present
Studer ..... Present
Sullivan ..... Present
Swanberg ..... Present
Toole ..... Present
Van Buskirk ..... Present
Vermillion ..... Present
Wagner.. ..... Present
Ward ..... Present
Warden ..... Present
Wilson ..... Present
Woodmansey ..... Present

PRESIDENT GRAYBILL: Mr. Furlong is present.

CLERK HANSON: Mr. Furlong is present. Mr. President, 91 delegates present, 5 excused and **4** absent.

PRESIDENT GRAYBILL: Very well. A quorum is present. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana; March 7, 1972. Honorable Leo Graybill, Jr.; President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the licenses of the following lobbyists have been suspended as of March 7, 1972, for failure to file statements of expense within the period specified by law: 32-72 Gene Tuma; 58-72 Roy G. Crosby; 69-72 Maurice Mulkahey; 84-72 Joe Curtis. The suspension of Gerald McCurdy reported to you on February 22, 1972, is still in effect. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Very well. We have another matter on communications this morning. Mrs. Warden is here, who has a presentation to make to the Convention.

Mrs. Warden.

DELEGATE WARDEN: I come to you this morning with a special scroll from the Great Falls, Montana Advertising Club, proclaiming the Charles M. Russell month. The proclamation was signed by Governor Anderson and also by Mayor McLaughlin of the City of Great Falls. "Whereas Charles Marion Russell, world-famous cowboy artist, belongs to all Montanans and no other man has brought more recognition to the State of Montana and to the field of western art than Charles M. Russell, the Montana Historical Society has dedicated most of its gallery's face to the display of Russell art; and that the Charles M. Russell auction of original western art, held each March in Great Falls, home of the C. M. Russell Gallery and the original studio, is becoming the leading auction of its kind in the United States; and whereas March 19th marks the birthday of Charles M. Russell; now I, therefore, Forrest Anderson, Governor of the State of Montana, and John J. McLaughlin, Mayor of the City of Great Falls, do hereby join together in proclaiming March, 1972, the second statewide Charles M. Russell month in Montana and encourage all areas of the state to honor this celebrated Montanan." I come to you this morning to present the scroll. One will be given to each of you, and I will give one to Mr. Graybill. It is altogether fitting and proper that he receive this scroll beneath one of the finest pictures that Charlie Russell ever did. I take great pleasure in doing this, and I know that your inspiration as you're sitting here, your deliberations can also come from that beautiful picture behind us.

PRESIDENT GRAYBILL: I wanted—

they wanted to take a picture, but I do want to thank Mrs. Warden and the Advertising Club on behalf of the Convention. And I am sure that all of us here have daily received inspiration from being able to view Charlie Russell's marvelous picture behind me. The only real disadvantage to being President that I've found so far is that I don't get to see the picture very much. Thank you very much, Mrs. Warden. We appreciate that, and I'm sure each of the delegates will appreciate their copy. Now, we also have one other honor this morning. We have with us in the chamber, Miss Indian America. Would you please come forward? Good. Miss Indian America is a junior at Brigham Young University, majoring in sociology. And she's taken a year off-come right on up here with me-she's taken a year off to perform her duties as Miss Indian America, and she hopes eventually to get into an occupation of radio and TV. We are awfully happy to have you here with us this morning. Have you something you'd like to say to us?

MISS INDIAN AMERICA: I'd like to thank those-in behalf of my Indian nation, those people that are trying to help our people on the reservations, because we need a lot of help. I'd like to tell you a little bit about my reservation, back on the Navajo Reservation. Sometimes when you travel across the Navajo Reservation, you may see a hogan sitting out there in the middle of nowhere. To the side of the hogan, you may see a shack. Around the hogan, barrels of water, piles of wood, a sheep corral, a wagon, sometimes a pickup; out in the distance, our father hauling water for his family; out into another distance, a small child herding the sheep. The sheep gives him meat, clothing, and his bedding. Along with him he's dragging a little pup, trying to teach the slow pup how to herd the sheep so that, just in case he left home to fulfill his dream, that this pup might take care of the sheep. A little Indian child dreams for things. He wants better things for his people, better education. So I hope that most of you will realize this; that we all have dreams-dreams to better our people, to improve our land, because we have so much pride with what we have. And I thank you.

(Applause)

PRESIDENT GRAYBILL: You may be seated. We're very happy, Miss Indian America, that you could be with us this morning and be in Montana. We Montanans are proud of our seven reservations and many tribes, and most of us in this room have many friends among the Indians. And we certainly appreciate your coming here and talking with us, and we wish you well on your year's reign as Miss Indian America. Thank you very much. Very well, Order of Business Number 4, Introduction and Reference of Delegate Proposals. None. Order of Business Number 5, Final Consideration of Proposals. The Chair would like to announce that General Government 1 and 2 is on final consideration. However, we have made arrangements this morning that whenever a report has passed the Committee of the Whole, the Style and Drafting Report on a—an article has passed Committee of the Whole we're having it printed, so that the final draft will be on your desk. And unless I hear objection, we'll pass final consideration of General Government 1 and 2 this morning, because by tomorrow morning, you'll have the text on your desks as amended in the Style and Drafting debate in the Committee of the Whole. But probably beginning tomorrow, we will be passing those that reach final consideration. Order of Business Number 6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

Oh, pardon me, Mr. Mahoney, do you have a—

DELEGATE MAHONEY: I have a motion.

PRESIDENT GRAYBILL: Very well.

DELEGATE MAHONEY: Mr. President. I ask that we reconsideration our action in adopting Resolution Number 11 and resubmit it back to the Rules Committee for some further discussion.

PRESIDENT GRAYBILL: Very well. Do you want to say-give the reason for that, Mr. Mahoney?

DELEGATE MAHONEY: Yes, Mr. President. I would like to discuss some information that I have received this morning in to-going over to the Purchasing Agent's office. And I went down there-I'd like to have the Convention know I went down there on my own free will and volition. A fellow called me this morning about 7:00 in regard to this matter. And I might state, I wonder if we go out here-we're-as I understand from them, there is two different sizes of this and one will cost approximately $10,000 less than the other. And if this size that we adopted the other day goes, it will cost 12 cents to mail it, and the

other size will cost only 8 cents. Now, I know this is a County Clerk and Recorder's proposal, and I'd like to discuss it with the Rules Committee. This is the only thing I'd like to have, Mr. President.

PRESIDENT GRAYBILL: Very well. The Chair would like to say that you did not bring that matter to the Chair's attention. And the Chair and the Rules Committee have discussed it, and there are committees making those decisions. And the decision has not-we have not accepted the bids yet, and we do have some information that perhaps you don't have about the situation. Now, if the body cares to reconsider it, it may; but I would recommend against it. Is there other discussion?

Mr. Murray.

DELEGATE MURRAY: Mr. President. I hate to rise and discuss this matter, because I'm the Chairman of the Rules Committee and it would be within my province to have this matter reconsidered. However, I note that the motion for reconsideration was not properly phrased by the words "having voted on the prevailing side". I also note that under Rule 66, Motions for Reconsideration, that any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention. It thus appears to me that, in actuality, the motion is out of order. I would be more than pleased to discuss this matter with Mr. Mahoney in detail, as I have carried the burden of the investigation of this matter and the discussion with the Purchasing Department and a printer and the Secretary of State's office, and others involved.

PRESIDENT GRAYBILL: What rule did you refer to, Mr. Murray?

DELEGATE MURRAY: Rule 66, Mr. President.

PRESIDENT GRAYBILL: Rule 66 says, "Any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention or may give notice that he will make such a motion not later than the next succeeding session day." Mr. Mahoney, no notice having been given, I'm going to rule your motion out of order. I am going to suggest that the Rules Committee meet with you, and I'd be happy to meet with you to discuss the matter. But I think that we ought to handle it that way.

DELEGATE MAHONEY: Mr. President. Being as you've ruled this out of order, I think it's very highly irregular when this was handled yesterday-the other evening at the very end of business. And there was no discussion-practically the only-given by the Chairman of the Rules Committee. This information has just come. I think it's-if we have a rule that says that you can't come back the next morning-Now, I understood, at this time of the rules, that the reconsideration had to be done in the Committee of the Whole the day before it left. But if we have written the thing that you can't go on the next succeeding time and have-and ask for it, I think our rules certainly need changing.

PRESIDENT GRAYBILL: That may be, Mr. Mahoney. I will be glad to talk to you about it. I'm sure the Rules Committee, to whom this duty has been assigned, will be glad to talk to you about it. But I'm going to rule you out of order on your reconsideration of Rule-Resolution Number 11. Are there other motions or resolutions? Unfinished Business, Order of Business Number 8.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 10, General Orders of the Day.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole for consideration under General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: Mr. President. The Style and Drafting Committee Proposal Number

4, having been duplicated and placed on the delegates' desks on the 3rd day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. March 7th, 1972, the following committee proposals are now on General Orders: Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 3, Style and Drafting Number 4. Mr. President.

CHAIRMAN GRAYBILL: Very well. This morning on General Orders, we'll take up Style and Drafting Legislature first.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. The style and drafting problem with the Legislative Article is probably the most difficult we're going to face, because we have two articles. However, they are more or less uniform except for Sections 1, 2 and 3 and some changes that were necessary because of the Habedank amendment, which provided that in 1980 there would be a plebiscite on the subject. And if the people voted to go bicameral, we would have to have some article to work from. Now that's assuming that we're unicameral from the adoption of the Constitution until 1980. So I'll be making references to that, and I think it'd be best to work from page 10. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 1 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There should be no difficulty with Section 1. We made a small change in style only.

CHAIRMAN GRAYBILL: All right. If everyone will turn to page 10 so you can follow us. Is there any discussion of Section 1? If not, you've heard the report of the committee Chairman that this be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE GRAYBILL: Section 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Again, style only. We used the--not--we put--word "smaller than"-not-instead of "not less" and "larger". Otherwise, no substantive changes; only style.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2? This is the unicameral legislative body. If not, all in favor of adopting Section 2 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE SCHILTZ: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 3 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We have a typo on page 3. We struck "terms" in the caption, but if you will note, we kept "terms" in, back in the final printed version which precedes this. There is one problem here so far as substance is concerned, and that's the problem of a senator who is elected for a 4-year term and has 2 still to run; if in 1980 there is a reapportionment, he might have that left over. Now, what-the Style and Drafting Committee they drafted-or they wrote this in such a way that-and it's our impression-that that senator would be out of a job. If there's any problem there-that's somewhat substantive, and if there's any problem there, you ought to face it right now. In short, it's-we think the legal consequence is that you would have a brand-new Legislature and that that particular senator would be out.

CHAIRMAN GRAYBILL: And that's—how has that been adjusted in Section 3?

DELEGATE SCHILTZ: We didn't do anything with it, but I raise it because it's somewhat anomalous situation in the language we had. And I'm just, raising it so the Convention will be aware

that that is what the apparent intention is. We faced it because it appeared to us that it was a hole in the operation, and we didn't take it upon ourselves to spell it out one way or another. But I'm just telling you that a man with 2 years to run-or 2 years still to serve, in the event of a reapportionment, so far as we're concerned, is probably out of a job.

CHAIRMAN GRAYBILL: Mrs. Reichert, I believe you were in charge of this part of the article when it was adopted. Do you see the problem that he's talking about?

DELEGATE REICHERT: **Yes,** I do. Originally, in the first proposal we considered, there were 2-year terms, so this problem would have been nonexistent. We didn't deal with staggered terms when the committee first considered the terms of the members. However, with the 4-year staggered terms, I can see, and I wish that it could be worked out somehow in the language here so that it would be clear.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. I don't believe there's any problem here, because we have it happening today in our present Constitution and the court-order rulings have made it that the-if a senator is districted out, his term is expired; if he is in his district and has 2 years to go, he remains. I believe that's been the ruling so far, so I don't see any problem here, really, because I thought about this when we were drawing the article, that the court orders would take care of this in reapportionment. But I do have a question here, Jack, on the word "senator". I don't believe you made the correction back on page 21 on here, did you? Suppose we do go back in 1980 to a bicameral, would the word "senator" be adequate? Wouldn't we want "the legislator"?

DELEGATE SCHILTZ: On 1, 2 and 3, I don't know if we said Senate-that the first time we used "senator"?

DELEGATE AASHEIM: Yes.

DELEGATE SCHILTZ: If you'll look at page—

DELEGATE AASHEIM: It would apply to a senator but not a representative.

DELEGATE SCHILTZ: Just a minute. Section 15 incorporates the Habedank amendment. And we got to-okay-look at page 17, where we put Section 1 in and—

DELEGATE AASHEIM: I see it now. You're all right.

DELEGATE SCHILTZ: -Section 3. We used the word-we converted, in other words. I don't think there's any trouble, Mags, with Section 1, or 2, or with 3.

CHAIRMAN GRAYBILL: Apparently, it's handled differently, Mr. Aasheim, when we get to the bicameral. Is there other discussion about Section 3 of Article V, the unicameral?

Mr. Harper.

DELEGATE HARPER: Didn't this already happen once in reapportionment? This same issue was faced, and I think thedecision was made that everybody had to run again. Wouldn't that be the logical assumption once again? I mean, I don't see any problem if we leave the wording just as it is.

CHAIRMAN GRAYBILL: That was Mr. Aasheim's point. Yes, sir. Very well. All in favor of Section 3 as amended by the Style and Drafting, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 4 of the Style and Drafting Committee Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We made mostly style changes, but we did do some guessing. If you look at page-or line twenty-two and a half, you'll find that we substituted the word "general election", where the report that came off the floor just said "1 year next preceding the election". That could have meant primary, and that's a substantive change, I guess. We put "general" in there in any case, and we carried it on. Down below, on the next-two lines subsequent, the committee report did show "general election", so we made the two

conform. Otherwise-let me see, I've got some notes here. Well, we rephrased this, and this is the way we assumed the intent was. We provide that if a county is more than one district, you must be a resident of the county for 6 months; if there are several counties in the district, you must be a resident of the district 6 months. We spelled that out, and we assumed that was the intent of the Committee of the Whole.

CHAIRMAN GRAYBILL: Very well. You can see that on line 22, the word "general" has been added to make it conform with line 23. The wording has been rearranged, but the in-the sense is still there; that they must be a resident of the county if it contains one or more districts, or of the district if it contains all or parts of more than one county. Is there any question about Section 4? Any debate or discussion?

Mr. Habedank.

DELEGATE HABEDANK: No debate, Mr. President [Chairman]; I would like to ask a question just so it gets clarified into the record. Reading Section 4 with the first line of Section 14 on page 15, I assume that there is no question in reading those two, but what-the person that resides in the county, if it contains more than one district, will not be voted upon by the entire electorate of the county, but only by the members of the district in the event he files in a district in which he does not reside. Is that correct?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Well-I don't see any problem with it; I'll take anotherreading on it. Well-it doesn't say anything about who shall vote. That particular section only talks about who is qualified as a legislative candidate. That may come up somewhere else, Otto; I don't know.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I drafted the original language, Mr. Chairman, and that was my intent, Mr. Habedank-just exactly the way you've stated it.

CHAIRMAN GRAYBILL: Very well. Is there further discussion of Section 4? If not, all in favor of Section 4 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Adopted. Section 5.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 5 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Now, here's a small problem that I raised when I first started talking about it. We only made style changes except that instead of "member of the Legislature"--remember, this is the unicameral section—we used the term "senator". We did it advisedly, because in Section 1, it's recited that the Legislature shall be one chamber whose members are designated "senators". So we attempted to carry "senator" throughout. Now, if in 1980 we should go to bicameral having already been in unicameral, then "senator" is not an appropriate word. It was the decision of the committee to use "senator" throughout in that situation, even though it wouldn't be an appropriate word after 1980, but to correct it in the Transition Article that'll be at the end of the entire Constitution. Some of the—Mr. Harris particularly--and he's talked with me and with my staff and with Mr. Aasheim-would prefer to continue to use the words "member" or "members of the Legislature" whenever that appears. I call it to your attention; it's your decision to make, and I have no strong feelings about it either way.

CHAIRMAN GRAYBILL: Do I understand you to mean, Mr. Schiltz, that in the Transition Article, you would provide that in the event that in 1980 we changed, then the wording would change at that time?

DELEGATE SCHILTZ: No, my intent would be to say in the Transition Article that in the event we went to bicameral after 1980, that the term "senator" meant members of the Legislature or member of the Legislature.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes.

DELEGATE AASHEIM: Jack, I wonder—Instead of trying to reword, rephrase the unicameral proposal, how would it be to say that the bicameral proposal would go into operation in 1980?

DELEGATE SCHILTZ: Well, the trouble with that is, we will then have to print in the Constitution, as finally adopted-after the people adopt it. If they adopt unicameral, we'll have a whole bunch of worthless language in there that says "bi"--all that whole bicameral section. So we've attempted, by altering Sections 1, 2, 3, 10, 13 and 14, I guess, incorporating them at length so that the printed version of the Constitution will be just exactly what it is. There will also be something in the Transition Article that says that the Attorney General shall make a constant review of updating the constitutional language for things that don't become operative for one reason or another, and this would be one of them. After 1980, then, the prints of the Constitution would provide a "uni" if it went back to unicameral. We're making two assumptions here: we're assuming that the people take unicameral, and we're assuming that they reject it in 1980. One or more of them might be unreasonable; but in the transition, we could provide and will provide that the Attorney General will continue to update, and then it wouldn't be overburdened with bicameral language or unicameral language.

DELEGATE AASHEIM: I have another question.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Jack, then the problem of doing a lot of printing would be in 1980 and not in this election this year, is that what you mean?

DELEGATE SCHILTZ: There's no prob. lem this year. We have to print it all anyway.

DELEGATE AASHEIM: The problem would be in 1980?

DELEGATE SCHILTZ: The problem would be having a constitution in the beginning of all the statute books that had a terribly cumbersome, long article that didn't pertain anymore.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I have the constitutional amendment of the State of Nebraska that initiated the unicameral, and I noticed that throughout this amendment, they do not refer to senators; they refer to members of the Legislature. And I'm inclined to agree that instead of substituting the word "senators", such as in Section 5, we retain the original language, "each member of the Legislature". I think it would be simpler in the event that we do revert back to bicameral, and I see no point in using the word "senators", except in the original Section 1, that the members shall be designated "senators".

CHAIRMAN GRAYBILL: Mr. Delaney, do you wish to show your presence?

DELEGATE DELANEY: Yes, sir.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney is present.

Now just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: I shall move, Mr. President [Chairman], that we retain the original language, "member of the Legislature".

CHAIRMAN GRAYBILL: All right. The motion has been made that we use the word "members of the Legislature". I take it that then should be the case in Section 2 and Section 3, no?

DELEGATE SCHILTZ: It's already taken care of in Section 3 in the bi—or in Section 15.

CHAIRMAN GRAYBILL: All right. It's only then in Section 5 so far?

DELEGATE SCHILTZ: No, it's going to be in Sections 5, 6, 8, 9, 10—no, 10's fixed-11 and 17.

CHAIRMAN GRAYBILL: Very well. The issue is whether to use the term "members of the Legislature" or "senator". And the motion has been made by Mr. Aasheim to make it "members of the Legislature" or "member", as it will appear later. Is there discussion about which term you want to use? Very well. All in favor of Mr. Aasheim's proposal-or amendment--motion that we use the words "members of the Legislature", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. The Ayes have it.

DELEGATE AASHEIM: You should strike the word "senator" too.

CHAIRMAN GRAYBILL: So, then that means we shall strike the word "senator" in Section 5, and we'll use the word "each member of the Legislature". Is that correct, Mr. Schiltz?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Very well. Is there other discussion on Section 5?

DELEGATE SCHILTZ: No, we're on 4. Oh wait, no, 5; I'm sorry.

CHAIRMAN GRAYBILL: Very well, all in favor of adopting Section 5 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Section 6.

DELEGATE SCHILTZ: I'm sorry. We have a sub. 2; we were only talking about sub. 1 there.

CHAIRMAN GRAYBILL: Five, sub. 2 now.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, of the Style and Drafting Committee Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This is predominantly a style change. It isn't very long, but I should note that we changed this to "the elected members of the Legislature", which would also obtain for elected members of each of the other branches or departments of government. It wasn't clear in the original report, so it would read: "a salary commission shall" or—"to recommend compensation for the Judiciary and elected members of the Legislative and Executive Departments"—the idea being that we weren't sure, and we didn't think that it was intended that everybody in the Legislative branch-the Chief Clerk, et cetera--everybody in the Executive branch--all the employees in the 20 departments should be part of this Compensation Commission.

CHAIRMAN GRAYBILL: Very well. Is there question about subsection 2? The change made by Style and Drafting is to the effect that it applies only to the elected members of the Legislative and Executive Departments. Very well. All in favor of subsection 2 of Section 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And it's adopted. Now, Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 6 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz, I wonder if you will now incorporate in your motion the change.

DELEGATE SCHILTZ: I will.

CHAIRMAN GRAYBILL: Right.

DELEGATE SCHILTZ: Mr. Chairman. I move that on line 8, the word "senators" be changed to "members", and on line 17, the word "members" be changed to "senators".

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Otherwise, we only have rather minor style changes in that particular section. So I move that when this committee does arise and report, after having had under consideration Section 6 Report Number 3 of the

Style and Drafting Committee, that it recommend the same do pass as amended.

CHAIRMAN GRAYBILL: Is therediscussion of Section 6?
Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. We have a problem here again on line 8 and line 17; the word "senators" is used.

CHAIRMAN GRAYBILL: We just did that, Mr. Aasheim. We just changed that by voice vote.

DELEGATE ASSHEIM: Oh, I'm sorry. On Section 6?

CHAIRMAN GRAYBILL: Yes. We just changed it from "senators" to "members" by voice vote. You have good concentration, Mr. Aasheim. Are there other suggestions on Section 6? If not, all in favor of adopting Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 7 of Style and Drafting Report Number 3, it recommend the same do pass.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no changes in Section 7.

CHAIRMAN GRAYBILL: All in favor of adopting Section 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 8 of Style and Drafting Committee Report Number 3, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no vital changes. On line twenty-seven and a half, the word "senator" should be changed to "member".

CHAIRMAN GRAYBILL: All in favor of changing—

DELEGATE SCHILTZ: Wait a minute, maybe I have another one. No, that's all.

CHAIRMAN GRAYBILL: All in favor of changing "senator" to "member", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Otherwise, we just changed the wording in this. As you will recall, in Suffrage and Elections, we had this same problem as proposed by Mr. Leuthold. So we changed the language here, which is possibly a substantive change, to conform to Section 6 of the Suffrage and Elections Article. In other words, it contemplates freedom from arrest while going to or coming from the election itself. I recommend it pass as amended.

CHAIRMAN GRAYBILL: And this is to conform with the General Government language?

DELEGATE SCHILTZ: Yes, General Government, Suffrage and Elections.

CHAIRMAN GRAYBILL: Is therediscussion of Section 8? All in favor of adopting Section **8,** say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Section 9.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend Section 9 on the Style and Drafting Report, at line 9, by striking "senator" and inserting in lieu thereof "member".

CHAIRMAN GRAYBILL: All in favor of changing "senator" to "member", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed—Mrs. Reichert, is that all right?

DELEGATE REICHERT: Well, Mr. Chairman, I was just going to suggest perhaps we should say "a member of the Legislature".

DELEGATE SCHILTZ: I would-1 don't resist it very hard, but they can't be a member of anything else under the Legislative Article, I wouldn't think.

CHAIRMAN GRAYBILL: Mrs. Reichert, we've used "members" several times, because we used "member of the Legislature" the first time. Do you want to go back and change all the other ones?

DELEGATE REICHERT: In some cases, I think it would be better, but in this case particularly. Because in some instances in sections we mentioned Judiciary and Executive Departments. I know that this is exclusively the Legislative Article, but still I think it's much clearer to say a "member of the Legislature" in this case.

CHAIRMAN GRAYBILL: All right. Mrs. Reichert, you've got to make a motion or else I have to make it for you. You tell me what you want to do, and we'll make it.

DELEGATE REICHERT: I move that in Section 9, line 9, we change the word "senator" to "member of the Legislature".

CHAIRMAN GRAYBILL: Mrs. Reichert has moved that we change it to "member of the Legislature". Is there discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Well, the Chair is in doubt. All right, we'll vote on that. NOW, all in favor, vote Aye on the voting machines; and all opposed, vote No. We have a close one. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well; 39 having voted Aye, 28 having voted No, we'll use "member of the Legislature".

Go ahead, Mr. Schiltz.

DELEGATE SCHILTZ: As to Section 9—well, I guess I haven't made a motion. I move that when this committee does arise and report, after having had under consideration Section 9, as amended, that it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz

DELEGATE SCHILTZ: We completely rewrote this. There's no real change in substance. If you want to check the substance, we don't think there is any. I see Mr. Aasheim standing up; I guess he must have some problem.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. There is a change here that I think we should be aware of. In our original draft, we said no legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time. Now there has-you agreed to change that originally, but there is some disturbed people in regards to making this change. And I have assured them that a person could be a legislator and serve on—as an adviser, or be on a board of some sort. And I believe Miss Speer-is Miss Speer here today? She had been concerned about this matter that a person will be denied the right of serving in an honorary capacity with the present wording. And I think maybe we should probably discuss that. That's the intent of—

DELEGATE SCHILTZ: Well, I heard you emphasize the word "created", and I don't find that anywhere. This is the sort of thing we're dealing with, and I don't see the word "created during his term of office" anywhere.

DELEGATE AASHEIM: That was in the original, Jack.

DELEGATE SCHILTZ: Well, it didn't come from the Committee of the Whole that way.

DELEGATE AASHEIM: No, the Committee of the Whole adopted the present Section 7 of the Constitution. So this is not any of your fault at all. I was just going to wonder if it's understood by the group what we have done here.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. May I ask either Mr. Schiltz or Mr. Aasheim a question? Under this Section 9, would a member of the Legislature be prohibited from holding a reserve commission in the military service?

DELEGATE SCHILTZ: Well, we talked about that and we decided that we had to take the sense of the office here-or I mean the sense of what was given to us, and it made no reservation about military commissions. Although we then referred to what they're doing in the national Congress and had some little information that Senator Goldwater and some of those people are required to resign their commissions, or there's some talk about their doing it. So we just put it in the way it was. It's a substantive change we didn't take upon ourselves to make.

CHAIRMAN GRAYBILL: Is there other discussion of Section 9?

Mr. Habedank.

DELEGATE HABEDANK: I would like to ask a question of Mr. Schiltz. In Section 9, as Mr. Aasheim has pointed out, on line 4, it says, "during the term for which he has been elected, be appointed to any civil office under the state". Now, that would prevent a legislator from being appointed a District Judge or any other officer during the term for which he is elected, as I would interpret it. Where, in your rewritten change, do you have this covered? As I read your rewrite, he could not hold an office but there's nothing to prevent him from being appointed to that office during that term.

DELEGATE SCHILTZ: For one thing, we didn't know what "under the state" meant. We decided that it was an imprecise term that had no real legal consequences. We could find none, so we deleted that. I agree with Mr. Habedank that as of this moment, no member of the Legislature, during his term and until that term has run completely out, can be appointed to the bench, and probably not appointed or run for anything else. I don't know; this is the way we got it.

CHAIRMAN GRAYBILL: Mr. Drum, the journal may show your presence now, so you may vote.

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I'm concerned about the prohibition against holding the office if it applies to a member of the reserve component of the armed forces. We think more in terms of the higher elective offices; but if you strike out the City Alderman, County Commissioners, county offices and the many other offices, it seems to me that this may be more restrictive than we really mean for it to be-that we may not have given this enough consideration.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think if Mr. Davis and all the rest of you that were concerned about reserve officers-it says any civil, federal, state, county or municipal office-and we specifically put "civil" in there to exclude that sort of military thing. I overlooked that in the first—

DELEGATE DAVIS: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: For the benefit of the journal and the records, then, it would be the intent of this body, as I understand it, that this does not restrict any member of the reserve component of any branch of the armed services from filling these offices, notwithstanding the militia that's tagged on the end. Would that be correct, Mr. Schiltz?

DELEGATE SCHILTZ: Well, I can't speak for the entire body. That would be the intent of the committee, I think. If you look at the comments, it might say there. No, we just took care of the "under the state" bit.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. My only thought is to get this in the comments, or in the journal, that this prohibition to-the intent of this body is not a restriction in this regard. Thank you.

CHAIRMAN GRAYBILL: Very well.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President

[Chairman]. I'd like to ask a question of someone in here, if they know. Does the state Legislature appropriate any money to the National Guard in Montana?

CHAIRMAN GRAYBILL: Well, the answer to that is, "Yes, on occasions."

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I move that the journal show that—the intent of this body that this particular section does not prohibit members of the armed services or any reserve component thereof from being prohibited from these offices.

CHAIRMAN GRAYBILL: Very well. Mr. Davis has just made a motion in connection with Section 9 that the journal show that it be the sense of this body that this section does not prohibit those in the military reserve from holding civil offices.

Mr. Aasheim.

DELEGATE AASHEIM: Won't we have to suspend the rules to make this adoption? It's a substantive change.

CHAIRMAN GRAYBILL: We're not changing the language. We're just making a note to the journal. I don't see that it would need that. I think it's just this-Mr. Davis wants to clarify this matter so if it came up in the future and our journal was looked to, it would be quite clear that this body intended this not to cover limitations on reserve officers-not to include limiting reserve officers from holding these other offices. There's no substantive change.

DELEGATE AASHEIM: The question arises in my mind: are we going to allow a legislator to serve in a capacity as an adviser to some board which has no compensation? Would he be denied that?

CHAIRMAN GRAYBILL: The issue now-1 think you have an interesting point, but the issue now is whether or not-the issue now is on Mr. Davis' motion to have the journal show that it does not apply to military reserve officers or personnel. Is there other discussion of Mr. Davis' point? All in favor of Mr. Davis' motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted, and the journal may so show.

Now, Mr. Aasheim, did you want to complete your point?

DELEGATE AASHEIM: It's okay the way it stands, as far as I'm concerned, but I just wanted everyone to be sure that they understand what we're doing. Do you want to deny a legislator the right to serve in some advisory capacity in which he might be well informed and might be valuable to the state? Why should he be denied that right?

CHAIRMAN GRAYBILL: Turn off Mr. Aasheim's mike, please.

DELEGATE HABEDANK: I move to amend Section 9 on line 9 following the word "not" by inserting the following words: "be appointed to nor". This would make the sentence then read, "During the term for which he is elected, a member of the Legislature shall not be appointed to nor hold any federal, state, county or municipal office." I change no other wording.

CHAIRMAN GRAYBILL: Just a minute. I'm trying to fix the journal, Mr. Habedank. All right, now you may speak. Mr. Habedank has proposed an amendment to line 9 of Section 9 to add the words "be appointed to nor", so that it would read: "-member of the Legislature shall not be appointed to nor hold" any civil office.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I—

CHAIRMAN GRAYBILL: Use your mike now, Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. The reason for this amendment is that, as I construe it, the wording of the Style and Drafting Committee leaves out the disqualification which was contained in the Section 9 as originally adopted. As I would read it, as rewritten, it would permit a member of the Legislature, during his term-he would have to resign-but during his term, he could be appointed to be District Judge. He could be appointed to any other civil, federal, state, county or municipal office, although he could not hold both offices. I think this body should make a specific determination. I do not know whether they were aware of what was contained previously, but I think we should specifically decide on this thing so no question could arise in the future.

CHAIRMAN GRAYBILL: Very well. The Chair understands the sense of Mr. Habedank's amendment to be-to limit appointments during a term in office to members of the Legislature. In other words, the members of the Legislature cannot be appointed to some other office and resign his legislative office and take the new office under the Section 9 as we originally adopted it, because of the word "appointed" on line 4 struck out. Mr. Habedank is merely making this conform to that; and if this body doesn't want to do that, now is the time to change it; but at least that's the sense of Mr. Habedank's amendment. Is that correct, Mr. Habedank?

DELEGATE HABEDANK: That is correct.

CHAIRMAN GRAYBILL: So that under this amendment, a person cannot get appointed to some other office and then resign his legislative duties.

Mr. Davis.

DELEGATE DAVIS: I think you probably clarified my question to Mr. Habedank, but would you yield to a question, Mr. Habedank?

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: I yield.

DELEGATE DAVIS: If you were elected to a 4-year term, you could not then hold any other office that-even if you did resign, during that term. Is that your understanding?

DELEGATE HABEDANK: I could hold another office, but I could not be appointed to it. I could resign and run for it. I had this called to my attention very strongly while I was on the Legislative-on the Revision Commission, by Bill Speer, who wanted to be appointed as District Judge in Yellowstone County and thought he could be appointed as District Judge, but because of this prohibition in the Constitution, he couldn't even resign his office and then be appointed. He was prohibited from being appointed to the office of District Judge during the term for which he was elected. I at that time thought it was a little ridiculous, and I still think it's a little ridiculous, but I think we should have the matter completely cleared up. I'm not in favor of the prohibition that I have put in my amendment. I'm against it, but I think we should decide it.

CHAIRMAN GRAYBILL: For your information, when we debated it the other day, I recall the point being made that the reason is to prohibit the Governor or someone else from offering a job to a legislator in order to get something done and then have him resign and appoint him to an office. Now, that's the purpose of the language, and the language that's been proposed does clear up Section 9, as amended. But you have to decide now what to do.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't think Mr. Habedank cured the problem that he's talking about, because if you can't hold the office, why, the same rule still obtains as the one he thinks he's cured. And that obtains throughout his 4-year term, if that's-if he's a Senator and has 2 years to go.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: I hate to disagree with Mr. Schiltz, but the difference--as I look at it, he could not hold his office and serve in another office. But with the prohibition as it was originally written in, he couldn't resign his office which he doesn't hold and then be appointed during that term for which he was elected.

DELEGATE SCHILTZ: Mr. Chairman, We're not talking about holding his Legislative office. We're saying, according to the amendment, "shall not be appointed to nor hold" any of these other offices.

CHAIRMAN GRAYBILL: Very well.

Mrs. Babcock.

DELEGATE BABCOCK: May I ask Mr. Schiltz a question, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, indeed.

DELEGATE BABCOCK: Would this conflict with the Executive Article in regard to a candidate running for office while he has another office?

DELEGATE SCHILTZ: I'm not clear. Do you have a particular section in mind?

DELEGATE BABCOCK: Maybe Mr. Joyce could help me out.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. As I recall, we specifically provided in the Executive Article, and this was passed by the Committee of the Whole, that a holder of an elected Executive office could run for another office during his term.

DELEGATE SCHILTZ: Do you have the section, Tom?

CHAIRMAN GRAYBILL: One answer to your question, Mrs. Babcock, is that this applies to the members of the Legislature and not to the Executive.

DELEGATE BABCOCK: Our intent, Mr. President [Chairman], was to try to have them all be the same throughout the Legislative, Judicial and Executive. I have the information he wanted.

DELEGATE SCHILTZ: It was 5, sub. 2?

DELEGATE BABCOCK: **Yes, 5,** sub. 2, on page 11 of the Executive Article.

DELEGATE SCHILTZ: Well, it particularly-1 don't know who we are who wanted them all the same, but 5, sub. 2, says that somebody in the Executive Department may be a candidate for any public office during his term. This says that a legislator-and the intent was, as I recall, that the-nobody could give the legislator a bribe of any kind, or a hidden bribe, by offering him a judgeship or any other job. Whether it's valid, I don't know. We did it the way it was, but I do want to be very clear that Mr. Habedank's amendment doesn't cure the problem that would allow Mr. Speer to resign and become District Judge, because it says he shall not hold any office. And we thought that "hold office" was sufficient, because if he was proscribed from holding office, he couldn't very well be appointed to it, or certainly he wouldn't be appointed to it.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Habedank yield to a question? The way your amendment would make this article-or section imply that a man could be a Mayor and run for the Legislature, but he could not, while he's in the Legislature, be appointed to an office. He could be a judge and run for the Legislature. He could hold any office and run for the Legislature, is that correct?

DELEGATE HABEDANK: Mr. Aasheim, as I would construe this as it is written by the Drafting Committee, and they-1 think this is a Style and Drafting measure--I just want to be sure it says what we intend. "During the term for which he is elected, a member of the Legislature shall not hold any civil, federal, state, or-county or municipal office." That would mean, to me, that if he were a Mayor, he could run for the Legislature. If he was elected, he could resign the job of Mayor and serve in the Legislature. If he was in the Legislature, he could run for Governor, and if he were elected, he could resign and serve as Governor, the way the Style and Drafting Committee has it written. He could, as they have it written, as I would construe it, he could be appointed a District Judge. He would have to resign from the Legislature to be appointed, but he could be appointed during that term. If it means what it says above, I do not see where "be appointed to nor hold" fails to cover it. But I would yield to people like Mr. Schiltz and Mr. Garlington and the other members of that committee. The point I'm trying to create is that if we mean that no one can resign from the Legislature to be appointed to another job, it should be written or stated into the record that there's no question about that being our intent. But I do not read what they have written as preventing that.

DELEGATE AASHEIM: One more question. Your amendment, then, reads "shall not be appointed to nor hold".

DELEGATE HABEDANK: That is correct. I would add those words. I would also be agreeable to Style and Drafting straightening that out, but I don't think they have it straightened out as they have it worded now.

DELEGATE SCHILTZ: Well, Mr. Chairman, I want to say one more time that what Mr. Habedank's overlooks is that both thelanguage we got from the floor and the language we wrote-it says that "During the term for which he is elected," no senator or no member of the Legislature can have one of these other jobs. And he overlooks the "during the term for which he is elected". We're only doing what it says in the beginning but saying it differently. If it's the feeling of this committee that they want to make a substantive change that he shall be allowed to resign during his term and accept one of these other jobs, then the rules are going to have to be suspended. But as of now, we just rewrote what was in there before with no substantive changes.

CHAIRMAN GRAYBILL: Very well. Now the issue is on Mr. Habedank's amendment to add the words "be appointed to nor". And Mr.

Schiltz's point is, Mr. Habedank-is that since it says "during the term for which he is elected", you really don't need to say anything about the appointment. But I suppose you're correct that you could be appointed and not hold. So if the body wants to add "be appointed" back in, they can. And if they don't--why they don't-it really isn't too significant, Is there other discussion on this particular point?

Mrs. Bates.

DELEGATE BATES: Yes, Mr. Chairman. In looking over what we did while we were in debate, we reverted right back to Article V, Section 7, which is the original wording. And it was rewritten by Style and Drafting, but it's no different than what we have now. This is the way my book is marked. And if that's correct, why, it's the same thing. In our committee discussion, we discussed this a great deal about being appointed to another office. But we did feel that boards or commissions or advisory councils were permitted under the present Legislature, as declared by the-any of the cases that have come up previously-present Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I'm just supposed to agree with Mr. Habedank. It seems to me the addition of the word "hold" by the Style and Drafting Committee changed the sense of the original amendment-or the original provision of the Constitution that was adopted by the Convention in the Committee of the Whole. We go on to question-the original Section 9, as originally adopted in the Committee of the Whole, is identical with the current Constitution. It says that no senator or representative, during the term for which he shall be elected-shall have been elected-shall be appointed to any civil office under the state. The purpose of that in the original Constitution, and as construed historically in the State of Montana, is if you're a member of the Legislature, you cannot be appointed to any other civil office in the state. That means a civil office in which you're elected. And the courts have construed "office" to mean not the office of the Assistant Attorney General or any of that sort of thing, but it means an elected office. And so, the purpose was, in effect, and it's been traditionally construed, that a member of the Legislature cannot be appointed, for example, to a district judgeship. And historically if-those with memories can remember that Phil Duncan was a member of the Senate and a vacancy came in the Beaverhead Judicial District, and Phil Duncan was the only one running for the job. He couldn't be appointed to it. As a result, Governor Bonner appointed John Collins to fill in the job until the next section—until the election, at which time Judge Duncan was elected. But then, to go on with the current Constitution, it says, "and no member of Congress or other person holding office under the United States or this state shall be a member of either house during his continuance in office." So it means that no person holding an office under this state can be a member of the House while he's a member of the-while he holds that other office. So the Secretary of State cannot be the Secretary—could not serve in the House, but he could resign as Secretary of State and then go into the House. Now, it seems to me the Style and Drafting amendment would prohibit anyone from holding any such office, which is an extension of the present Constitution. And I think that Mr. Habedank's motion to add "be appointed to" does conform to the sense of the original Constitution; that the addition of the word "hold" is an enlargement of the additional Constitution. I therefore move, as a substitute for Mr. Habedank's motion-1 make an amendment to Mr. Habedank's motion that the word "hold" be stricken, so that the new section would read: "During the term for which he is elected, a member of the Legislature shall not be appointed to any civil, federal, state, county or municipal office." This prohibition does not apply to a notary public or a member of the militia,

CHAIRMAN GRAYBILL: Mr. Joyce's substitute amendment-substitute motion to strike the word "hold" will be allowed. And we'll debate that now.

Mr. Joyce--or Mr. Schiltz.

DELEGATE SCHILTZ: Would Mr. Joyce yield to a question, please?

DELEGATE JOYCE: Yes, I shall.

DELEGATE SCHILTZ: Mr. Joyce. Do you understand from what Mr. Habedank has had to say that it is his purpose in this amendment to make it possible for a member to resign during his term and hold one of these offices? And do you think that he has accomplished this?

DELEGATE JOYCE: Well, my point-as I understand Mr. Habedank, all he wants to do is to have the Style and Drafting change conform to the sense of the original Constitution as written. And he makes the point-and I think validly-in his amendment, that a member of the Legislature,

as written, would mean that he shall not hold another office. That's the way the Style and Drafting wrote it, and he wants to change it to conform to say that a member of the Legislature shall not be appointed to any office. And that's the way I interpret the original Constitution to mean; but it seems to me that the Style and Drafting Committee, by adding the word "hold" has extended the— has gone beyond what the original constitutional language means, as I read it.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. Mr. Schiltz has misconstrued my purpose. My feeling is that a person should be able to resign and be appointed, but I can see the merit of the debate on the other side. The purpose of my motion was to prevent a person from resigning and being appointed, rather than allowing it. And if it cannot be done in this method, by amending the wording of the Style and Drafting Committee when this thing is done, I would suggest that the wording of the Style and Drafting Committee be deleted in its entirety and go back to the original wording of the Constitution, which was the wording passed by this body and turned over to Style and Drafting; changing it merely so that it would read, "no member of the Legislative Assembly shall", and then making the necessary amendment at the end. But we would retain wording which has been construed through the years and which we understand.

CHAIRMAN GRAYBILL: Mr. Joyce, you hear Mr. Habedank's suggestion. Do you still want to strike the word "hold", or do you want to go back-do you agree with him and want to go back to the original language?

DELEGATE JOYCE: I'll withdraw my amendment to Mr. Habedank's amendment if he wants to withdraw his.

CHAIRMAN GRAYBILL: All right, yours is withdrawn.

Mr. Habedank, do you want to withdraw yours and make another motion that we use the original language?

DELEGATE HABEDANK: Yes, I would like to withdraw my amendment, and then I would move that Section 9 be amended to read: "No member of the Legislative Assembly shall", continuing the words as stricken read, "during the term for which he shall have been elected, be appointed to any civil office under the state, and no member of Congress or other person holding an office, except a notary public or the militia under the United States or this state shall be a member"-and then new words would be-"of the Legislature", in lieu of "either house", "during his continuance in office." In other words, changing it to read-refer to members of the Legislature, we would then retain the wording of the present Constitution.

CHAIRMAN GRAYBILL: Very well. Mr. Habedank has withdrawn his first motion and made a new motion that we substitute for the Style and Drafting language the original language with two changes. One, we changed the word "Senator" or "Representative" to "member of the Legislature", in line with the amendment we had a minute ago. And second, that we change the words "either house" to "the Legislature". Is there discussion on Mr. Habedank's motion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I'm confused. Is the intent of this to actually prevent appointments during the term of the elected office? Is that-or was that the will of this assembly during discussion? I'd really like to know before I vote on this.

CHAIRMAN GRAYBILL: The intent of Mr. Habedank's motion is to clear up what he and Mr. Joyce and some of us believe is a confusion in the Style and Drafting's rewriting of it and go back to the original language and only make the changes about members of the Legislature. So he wants to go back to the original language, which is out of the present Constitution. Now whether— what that does is it would leave it exactly the way it is. In other words—

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes.

DELEGATE FURLONG: That's my concern. I'd like to know what it is under the present Constitution.

CHAIRMAN GRAYBILL: All right. Do any of you attorneys care to tell him what it is under the present Constitution?

Mr. Joyce.

DELEGATE JOYCE: The present Constitution is exactly the words that are stricken out in line 9.

CHAIRMAN GRAYBILL: He wants to know the effect of that, Mr. Joyce.

DELEGATE JOYCE: Well, the effect of it is that a member of the Legislature can't be appointed to any other office. So that if you are a member of the Legislature and you're-during the full course of your term-say you're a Senator and you're just newly elected; you've got 3 years to run; you are-only served the 60 days. You cannot be appointed to any other office. You cannot be appointed Secretary of State if a vacancy comes there; you cannot be appointed State Auditor; you cannot be appointed a District Judge; you cannot be appointed as a Supreme Court Judge. And that has been the law of Montana ever since 1890.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: May I direct a question to Mr. Joyce, please?

CHAIRMAN GRAYBILL: Mr. who?

DELEGATE JOYCE: I yield.

DELEGATE FURLONG: Could you resign for the office for which you were elected and then be appointed?

DELEGATE JOYCE: No, you may not. Under the present Constitution, you could not do that. And as I remember the debate here, I think it was Mr. Aronow who made the substitution on his motion, and that it carried, to go back to the original Constitution.

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I think I realize the reasoning for it, but we're changing the term to 4 years, if this passes. And in spite of the fact that there may be some skulduggery in appointments, I would certainly hope that the Convention would reconsider its action. I'm not at all sure that it's wise to lock elected people out of appointed positions. Four years is a long time to dedicate a life, and there are any number of advancements that could come about in which a person of great qualification could be denied a service or an advancement.

CHAIRMAN GRAYBILL: Mr. Furlong. The Chair would like to point out to you that we're dealing with the style and drafting aspect of this, and if you want to amend what we did the other day, you're going to have to move to reconsider and suspend the rules. Now, I'm not saying you shouldn't, but I'm saying that the issue youraised cannot be reached at this time.

DELEGATE FURLONG: May I ask the Chair a question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE FURLONG: If such a motion was not forthcoming, would this be the last time at which such a motion could be forthcoming?

CHAIRMAN GRAYBILL: Well, that's hard to say. I suppose you can suspend the rules any time.

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: You'd have to catch it when the matter is before us.

DELEGATE FURLONG: Mr. Chairman. Would that be the only method then, by suspending the rules?

CHAIRMAN GRAYBILL: Well, the point is that when we adopt these things in Committee of the Whole, we debate them. Then we go back and adopt them, generally instantly that same day, although it could be the next day. And then they go to Style and Drafting. And this report we're dealing with here is Style and Drafting. And all we can change here is Style and Drafting's style; we're not supposed to change substance. We're going to, in a minute, make a motion on another one of these to amend-or to suspend the rules-1 don't know whether it'll pass or not-and then you can reach the substance of the issue. So-and after it goes out of here, it goes on to General Orders again; and I suppose you could move to suspend the rules and adopt it at that time, when it's on Order of Business Number 5; but you'd have to suspend the rules to do it. And I'm not for or against your proposition; I see your point. I'm merely saying that it can't be reached while we're debating style, and so I don't want to debate it.

DELEGATE FURLONG: I appreciate the Chair's answer. What I wanted to do is be sure that there may be a later option.

CHAIRMAN GRAYBILL: Well, there probably is. Check with Mr. Murray. All right. Now, the issue is on Mr. Habedank's motion to go back and use the old language as amended by the words "members of the Legislature" and "the

Legislature". Does everybody understand the proposition? Anyone want it explained?

(No response)

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Habedank's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Now that strikes the Style and Drafting language and goes back to the old Section 9 language, putting in "members of the Legislature" and putting in "the Legislature" in place of "either body", "either house". Are there other amendments to Section 9 as amended? If not, members of the committee-Mr. Schiltz, do you want me to put the motion? Members of the Committee, you have before you for your consideration, Section 9 as amended and the recommendation of the Style and Drafting Committee that when this body arises and report, it recommend the same do pass. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well, Section 9 is adopted as amended. Section 10.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of the Style and Drafting Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In this case, in Section 15, we've changed all the "senator" words, so there's no problem if it goes to bicameral after unicameral. Otherwise, this is mostly style, except that we added the words "for good cause shown" on line twenty and a half. It was the feeling of the Style and Drafting Committee that thereport that came from the Committee of the Whole didn't spell this out, and we thought it was probably the intent that that was what should be in there and so we put it in. Otherwise, all style.

CHAIRMAN GRAYBILL: Do I understand, Mr. Schiltz, that the word "senator" here is all right because it'll change later? Is that right?

DELEGATE SCHILTZ: It's changed in Section 15 in the Habedank alternate amendment.

CHAIRMAN GRAYBILL: Very well. And the other substantive change--or the other change, not substantive, on line 20 is that you've added the reason, is that right?

DELEGATE SCHILTZ: On line 20, we said "for good cause shown", yes.

CHAIRMAN GRAYBILL: Is there any question or discussion on Section 10?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of adopting Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 11.

DELEGATE SCHILTZ: We're on sub. 2. I should have read that that way. Mr. Chairman, I move when this committee does arise and report, after having had under consideration subsection 2 of Section 10 of Style and Drafting Report Number **3,** it recommend the same do pass.

Mr. Chairman. There is nothing here except a little bit of style.

CHAIRMAN GRAYBILL: Is there discussion of Section 10, sub. 2? Very well. So many as shall be in favor of adopting Section 10, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, Report Number 3 of the Style and

Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Again only style changes, and all very minor.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 3?

(No response)

CHAIRMAN GRAYBILL: All in favor of adopting Section 3-sub. 3, rather, of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Adopted-or, I mean, opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4-subsection 4.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 10, sub. 4, Style and Drafting Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, only very minor style changes.

CHAIRMAN GRAYBILL: Is there any questions about sub. 4 of Section 10? All in favor of adopting sub. 4 of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Now, Section 11.

DELEGATE SCHILTZ: Mr. Chairman. I move, before I make the other motion, that we change, on line 6, the word "senators" to "members".

CHAIRMAN GRAYBILL: "Senators" to "members" on line 6 of Section 11. All in favor, say Aye.

DELEGATES: Aye.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section **11,** sub. 1, as amended, that it recommend the same do pass. This is only-we only have style changes here, and relatively minor.

CHAIRMAN GRAYBILL: Are there any negative votes on making "senators" "members"? I trust there aren't. The journal may so show. Try and vote a little more heartily out there. (Laughter) It's very difficult for the Chair, when only three of you vote, to figure out what's happening. Is there any discussion of Section 11? Very well. All in favor of Section 11, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response) Marvelous.

CHAIRMAN GRAYBILL: Adopted. Now, Section 11, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move, on line 9, to amend line 9 by striking "senator" and inserting in lieu thereof "member".

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 2, Style and Drafting Report Number 3, that it recommend the same do pass as amended.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: These are all style changes. We also incorporated what had been sub. 3 and renumbered the subsections, just for sense. There's no difficulty there that I should inform the body of.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 2? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Read, sir-sub. 3, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section IO-Section 11, sub. 3, Style and Drafting Report Number 3, that it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This was renumbered, as I noted before. I've had a little conversation from a couple of people on the floor this morning. We took the last three lines and made a separate section of them. Now, somebody mentioned to me that we move that to subsection 6—as I recall, subsection 6. The concern of the people who talked to me was that this particular verbiage applied only to the conditions that obtained in subsection 3. However, the Style and Drafting Committee treated it as applying to the whole section, because the language says "this section" on line twenty-five and a half. They didn't say "this subsection", and we thought it pertained to the entire Section 11, so we moved it to subsection 6. If anyone has a real problem with that, now is the time to tell us.

CHAIRMAN GRAYBILL: Mr. Schiltz, I have no problem, but I don't understand you.

DELEGATE SCHILTZ: Well, the question that was raised to me, Mr. Chairman, is that we changed substance by making a separate subsection of those last three lines, in that, by doing so, it applies to the entire Section 11, including subsections 1, 2, 3 and 5.

CHAIRMAN GRAYBILL: What are the last three lines? Are they on the next page?

DELEGATE SCHILTZ: "A law may be challenged"--we struck them there. "A law may be challenged on the grounds of noncompliance with this section", it said. If it said "this subsection" we would have left it where they were, but because it said "this section", we conceived that to mean Section 11. So we made a separate subsection of it, as having a different subject.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I believe that this is a substantive change and that the only place this 2-year period of limitation was discussed in the Committee of the Whole pertained to this subsection 3. And I therefore move to amend the Style and Drafting subsection 3 by reinstating that last sentence that was stricken and changing the word "section" to read "subsection". So that the last sentence, lines 24 through 26 on page 13, would read: "A law may be challenged on the grounds of noncompliance with this subsection within 2 years after its effective date, but not after that period."

CHAIRMAN GRAYBILL: Now, the Chair is still in a high state of confusion. I'm discussing subsection 3 of the Style and Drafting report on lines 13 through 16.

DELEGATE MCNEIL: Yes, Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: See, we struck that. That's a mistake, that sub. 3, the first sub. 3 you corns to. Then go down to sub. 4, which has been struck and—

CHAIRMAN GRAYBILL: In other words, the words "on final passage, the vote shall be taken by the"-that should be stricken?

DELEGATE SCHILTZ: No. Start at line 24-"A law may be challenged on the grounds of noncompliance."

CHAIRMAN GRAYBILL: Yes, I see that.

DELEGATE SCHILTZ: That we struck entirely and made subsection 6 of it.

CHAIRMAN GRAYBILL: Yes, I understand.

DELEGATE SCHILTZ: All right.

CHAIRMAN GRAYBILL: What did you do with lines 13 through 16?

DELEGATE SCHILTZ: Nothing. They're as rewritten; they're part of subsection 2. We made a mistake by not striking that sub. 3 up there.

CHAIRMAN GRAYBILL: Oh, the sub. 3 should be stricken.

DELEGATE SCHILTZ: Well, it is struck on the original front three pages.

CHAIRMAN GRAYBILL: I see. So the words "On final passage the vote shall be taken by Ayes and Nays" is part of subsection 2, right?

DELEGATE SCHILTZ: That's right; that's part of subsection 2.

CHAIRMAN GRAYBILL: All right. Now I want to inquire of the body if anybody wants to reopen subsection 2 after seeing the lines 14 through 16.

Mr. Cate.

DELEGATE CATE: Mr. Chairman. I would simply raise the question with Style and Drafting, if we really need that sentence, "On final passage the vote shall be taken by Ayes and Nays and the names entered in the journal".

DELEGATE SCHILTZ: Well, it's still in there.

CHAIRMAN GRAYBILL: It's part of subsection 2 now.

DELEGATE CATE: Yes, but do we need it? Do we need it, because we've already got a recorded vote on every substantive question in the Legislature? And certainly final passage is a substantive question.

DELEGATE SCHILTZ: Well that's a substantive question if you take it out, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, Mr. Cate, if the Chair may. It seems to the Chair that those words were passed by us, and I don't see how we can take them out of here. I suppose there's a difference between recording the vote and taking it on the Ayes and the Nays. In other words, you can record a number; that's one of the problems that we're trying to cover here. Now, does everyone understand that lines 14 through 16, "On final passage", et cetera, are part of subsection 2? And does anyone have any objection to that since we approved it? All right. That will be considered as part of subsection 2. Now we're on subsection 3, and the issue arises on the last sentence, is that it? All right. Now the Chair understands the problem. Does anybody want to do anything about it?

Mr. McNeil, you made a motion and I didn't get it down. What's your motion?

DELEGATE MCNEIL: Mr. Chairman. My motion is to reinstate that last sentence that was stricken by Style and Drafting. Reinstate it, changing the word "section" to "subsection".

CHAIRMAN GRAYBILL: All right. Mr. McNeil makes a motion—

DELEGATE MCNEIL: And, Mr. Chairman, strike subsection 6. The two should go hand in hand.

CHAIRMAN GRAYBILL: Mr. McNeil makes a motion to add lines 24 to 26 back into subsection 3, adding the word "sub" before "section" and then on the next page, page 14, striking Section 6 where it was set up separately. Your purpose, I think you said, being that you felt that applied to the material in subsection 3; is that it?

DELEGATE MCNEIL: Yes, Mr. Chairman. I'm sure that when this sentence was discussed in the Committee of the Whole, it was intended and, in fact, did apply just to subsection 3 and not to the entire section. It may be a good idea to have it apply to the whole section, but I believe that is a substantive change and was not discussed by this body.

CHAIRMAN GRAYBILL: Very well. Is there discussion of Mr. McNeil's amendment?

Mr. Cate.

DELEGATE CATE: That was the intent of our committee, only apply to the subsection 3—and so I would support it.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. I would oppose the substitute motion of Mr. McNeil. Our committee did meet and approved the Style and Drafting proposal here. I believe Mr. Cate missed that meeting. But it was our intent, and we felt that what we really intended by this line, as now proposed in subsection 6, to prevent laws being declared unconstitutional many years later on technical grounds. And most of the provisions-the subsections here in Section 11 deal with procedures as to how a bill is passed, except subsection 5. And we felt that the provision adequately applied here, since appropriations would now be on an annual basis, and 2 years would be plenty of time to challenge a law there because a law really is only in effect for 1 year; the money will be spent after that.

CHAIRMAN GRAYBILL: Is there further discussion? Very well. The issue arises on Mr. McNeil's motion to add lines 24 and 25 and 26 back into sub. 3 and strike Section 6. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. Are there other matters on subsection 3?

Mr. Aasheim.

DELEGATE AASHEIM: I think Mr. McNeil is right. We have made a substantive change. And if we're going to adopt the wording of the Style and Drafting presentation, we'd better move to suspend the rules and make that change. I have no objection to the change. I think it might be all right to have it in there. So, Mr. President, I move to suspend the rules for the purpose of adopting—

CHAIRMAN GRAYBILL: Mr. Aasheim, can you do that when we get to 6, first of all? We're not there yet.

DELEGATE AASHEIM: We could. That would be fine.

CHAIRMAN GRAYBILL: At the moment, I'm trying to get rid of just subsection 3. Mr. Romney, the record may show that you're present.

Mr. Schiltz.

DELEGATE SCHILTZ: In anticipation of Mr. Aasheim making that motion, I don't think we made a substantive change, because thelanguage that we had said "this section", which pertains to the entire Section 11 and not just subsection 3-or 4 as it was drafted. So, it pertaining to the entire section, we could make a subsection of it without any substantive change, and that's what we did.

CHAIRMAN GRAYBILL: Are there other amendments or suggestions or debate about subsection 3 of Section 11?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I, too, feel that this is a substantive change because our original intent was on the title section only.

CHAIRMAN GRAYBILL: Is there other discussion? Very well. All in favor of adopting Section 11, subsection 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. All right, subsection 4.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 11, subsection 4, of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are nothing but very minor style changes in subsection 4.

CHAIRMAN GRAYBILL: Is there discussion of Section 4-subsection 4? All in favor of subsection 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Subsection 5, on page 14.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration subsection 5 of Section 11, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I guess there are no changes here-a comma, maybe, and the renumbering.

CHAIRMAN GRAYBILL: Any discussion? All in favor of subsection 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Now, subsection 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration sub-

section 6 of Section 11, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think that has been adequately discussed and voted upon.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: It's immaterial to me; if you feel it's all right to leave it this way without suspending the rules, it's fine. I'm just kind of wondering about our comments. Right now I don't have them available. But if our comments show this applied to our subsection 4, this might be questioned. So just a matter of procedure, I'm going to move to suspend the rules for the purpose of adopting subsection 6 in Section 11.

CHAIRMAN GRAYBILL: All right. I've got to have that in writing, Mr. Aasheim. Very well. Mr. Aasheim has moved, concerning Section 11, subsection 6, of the Style and Drafting report on the Legislative proposal. He moves to suspend the rules for the purpose of adopting subsection 6 of Section 11, the unicameral article. A motion to suspend the rules takes an absolute majority or two-thirds, whichever is less. Is there any discussion?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I think that the sense of the group has already been obtained, and I don't know that we need to follow through on this particular motion. The word "section" is used, as Mr. Schiltz pointed out, in number 6 and that was not changed in what is now the new Number 6. Our Legislative Committee went over this in detail; raised this same question. Finally decided that, as Mr. Loendorf said, the real sense and intent of our whole Section 11 had not been changed by it; and so we've decided to go along with the Drafting Committee. I don't think the reconsideration is necessary at this time. We've already accomplished it.

CHAIRMAN GRAYBILL: Is there further discussion? All in favor of Mr. Aasheim's motion to suspend the rules, indicate so by voting Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the vote. 38 having voted Aye, 31 having voted No, the motion fails because less than 50 percent or less than two-thirds has voted for it. Very well. What's your pleasure on Section 6? Is there any more discussion of subsection 6 as proposed by Style and Drafting? All in favor of subsection 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 12.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12, Report Number 3, Style and Drafting Committee, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We made no significant changes except we changed "may" to "shall" on line 11. In other words, we considered that "shall" was intended there, and I feel sure that it was.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 12, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

CHAIRMAN GRAYBILL: It's adopted, Section 13, sub. 1.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 13, sub. 1, of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, **we** substituted the "shall" for "may" on line 16 plus. In other words, it will read: "The Governor, Executive officers, heads of state departments, Judicial officers, and such other officers as may be subject to impeachment by law shall be removed from

office upon conviction of impeachment." Otherwise, there are no changes.

CHAIRMAN GRAYBILL:, The Chair would like to consider Sections 2 and 3 at the same time since there's a motion here on that. Do you have any comments on Section 2-subsections 2 or 3, Mr. Schiltz?

DELEGATE SCHILTZ: Well, we changed it to "Legislature" there, instead of "Senate". "Tribunal hearing the charges shall convict." We attempted to interpret what was intended there. If there's any problem with it, we'd be glad to hear it. I think there is a motion to amend, isn't there?

CHAIRMAN GRAYBILL: Yes. Mr. Harlow, do you want the Chair to read your motion?

DELEGATE HARLOW: Mr. Chairman. Just a few comments before I make the motion to amend this. I was disturbed, when this came in from the Legislative Committee, about the word "conviction of impeachment" and various uses of the word "impeachment". I didn't say anything at that particular time because I thought the Style and Drafting would catch the error. But after it came back from Style and Drafting, I was kind of like Miles Standish. I figured if I was going to do anything, I'd have to do it myself. So I made up these amendments. And I so move now to amend Section 13, subsections 1, 2 and 3, page 4, being lines 10 through 22, to read as-follows. Now, it's on this sheet of paper that's been given to all of you. The top part-1 amended this, all-Sections 1, 2 and 3 merely for expediency. It deals with the same thing all the way along-. You can see there what I took out. I put in one or two other small words. The bottom of the page is the way the thing will read as it is, without the amendment, and on the back of the page are the various comments that I made.

CHAIRMAN GRAYBILL: All right. Now, Mr. Harlow, before we get too far along, we'd better have something read here so that we know the differences. Would you like the clerk to read the amended Section 13-w read the amendments?

DELEGATE HARLOW: Okay, you may go ahead then, Mr. Clerk.

CHAIRMAN GRAYBILL: And read the—why don't you read the amended Section 13—it's the second paragraph-slowly.

CLERK SMITH: "Sub. 1. The Governor, Executive officers, heads of state departments, Judicial officers and such other officers as may be provided by law are subject to impeachment and upon conviction shall be removed from office. Other proceedings for removal from public office may be provided by law. Subsection 2. The Legislature shall provide for the manner and procedure and causes for impeachment and shall provide for a tribunal. Subsection 3. Impeachment can be brought only by a two-thirds vote of the Legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members." Subsection 3 of Section 12, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harlow, do you want to explain the changes you're proposing here?

DELEGATE HARLOW: They're on the comments on the second-on the back of this page. The purpose of this amendment is to eliminate the semantically impossible phrases "conviction of impeachment" in subsection 1 and "conviction for impeachment" in subsection 3 and the reference to "removal by impeachment" in subsection 2. Impeachment, of course, is the act of the Legislature in bringing charges against a public official. The dictionary definition is: "The act of charging a public official before a competent tribunal with misconduct in office." You do not convict a man of having charges brought against him or for having charges brought against him. At the trial resulting from impeachment, he might be convicted, but it would be for a wrongdoing and not for impeachment. An official impeachment by the Legislature cannot be convicted-an official impeached by the Legislature cannot be convicted of impeachment any more than a person indicted by a grand jury can be convicted of indictment. In this amendment, the first sentence in subsection 1 is rearranged to make the meaning clear without the use of the phrase "convicted of impeachment". In subsection 3, the meaning is clear when the words "for impeachment" are deleted with no other changes. Under similar reasoning, the words "removal by" are deleted in subsection 2. You do not remove anyone from office by bringing charges against him; he is only removed upon conviction. The meaning of the subsection is not changed. The intent of these subsections is clear, and the proposed changes merely take out the incorrect use of the technical term "impeachment" in the three phrases mentioned. And a little note that this

same problem will be in the bicameral section, in Section 13, page 4. I move the adoption of the amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harlow. All right, Mr. Aasheim.

DELEGATE AASHEIM: I think Mr. Harlaw has in his amendment the very thing we do have. Because we say, in lines 15 and 16, "such officers as may be made subject to impeachment by law shall be removed from office upon conviction." We don't say they will be removed by impeachment. We say the conviction comes after the charges. So I think the terminology here is adequate. I think it ought to cover what you want.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. It says-you didn't read all of the words. It says "conviction of impeachment". That's the words that I'm objecting to-is "conviction of impeachment". I merely took out the term "of impeachment". I did not change the intent any.

CHAIRMAN GRAYBILL: Mr. Aasheim, the point is that, legally, impeachment is like indictment. And it is not-and you say the word "conviction of impeachment", to Mr. Harlow, is like saying conviction of indictment. And merely indicting is not conviction, so he has, to my way of thinking at least, a legally tenable position here. It's because you add the words "conviction of impeachment". You don't convict them of impeachment. You impeach them and then you convict them. That's separate. I think some of thelawyers might comment if they like, but it does seem to me he has a—

DELEGATE AASHEIM: On line 16, let's put a period after "conviction" and strike "of impeachment".

CHAIRMAN GRAYBILL: Well, that's essentially what he's done. He's made some other minor changes. Is there other-If you want to amend his amendment, fine; but he has done that. Is there other discussion of it?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. We considered this matter in Style and Drafting, but we were reluctant to make any changes, thinking that we might be fooling with substance. We ran into the additional problem of having to specify a tribunal which, if it were unicameral, there won't be, because customarily a bill of impeachment is brought in the House and tried in the Senate. But I have no problem. I think Mr. Harlow is right.

CHAIRMAN GRAYBILL: It's the opinion of the Chair that when we adopted this originally, we did mix up the concept of impeachment and conviction. And for the members here who are not lawyers, impeachment is merely a term that implies you're going to be tried. It's like indictment, and it does not imply that you're guilty. And therefore, as in subsection 2 where it says "causes for removal by impeachment", you really aren't removed by being impeached any more than you're removed from office by being indicted in a criminal sense. So I think Mr. Harlow has correctly cleared up the legal language. Does anybody have any other discussion on the matter?

(No response)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harlow's proposed amendment to subsections 1, 2 and 3 of Section 13. You have it before you there on the desk, and it reads--as he has cleaned it up there in the bottom half-the substance of which is to take out the idea that impeachment in any way involves conviction. So many as shall be in favor of Mr. Harlow's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, the Chair would-Mr. Schiltz, do you want to move Sections 1, 2 and 3 as amended.

DELEGATE SCHILTZ: Yes. I move that when this committee does arise and report, after having had under consideration Section 13, subsections 1, 2 and 3, as amended, Style and Drafting Report Number 3, it recommend the same be adopted.

CHAIRMAN GRAYBILL: So many as are in favor of adopting subsections 1, 2 and 3 of Section 13 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: And it's so ordered. Subsection 4 of Section 13.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection 4, Section 13, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: No significant changes there; put in "only''-or' transposed "only" from one place to another. That's about all.

CHAIRMAN GRAYBILL: Is there any discussion of subsection 4 of Section 13? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 14, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, subsection 1, of the Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no significant changes here.

CHAIRMAN GRAYBILL: Any discussion? All in favor of adopting Section 14, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 14, sub. 2.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 2, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: One note you might want to make and correct on your--our comment on page 22 refers to line 3 here when it should be line 11, just to keep your books in order. Then on line 10, as reported out of the Committee of the Whole, it said "preceding each census", and we inserted the words "federal population census" and gleaned that from the debate on the floor. The rest is all style.

CHAIRMAN GRAYBILL: Is there any discussion of 14, sub. 2? All in favor of adopting it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: It's adopted. **14,** sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 3, of Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There is a possible substantive question here. There was a question in our minds-as the subsection was written, that the first commission should report to the session of the Legislature which appointed it. It seemed obvious to the committee that this was not the intent. For example, if we had a 1979 session and it appointed a commission and we had a 1980 census, which would then report--why, it wouldn't make sense. So we restructured sub. 3 to conform with that thought.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 3? If not, all in favor of adopting **14,** sub. 3—
Excuse me, Mr. Harper.,

DELEGATE HARPER: I wondered if Mr. Schiltz, when talking about a possible substantive change, might have mentioned their addition of the word "regular session", whereas the adopted section did not say "regular session", possibly allowing for a called session. Now, that may not arise, but it might be a technical thing, whereas just a brief called session might deal with this idea when a regular session might be yet maybe a year off.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I apologize for not notingthat. Of course, it is underlined, and I got so carried away with what we'd done otherwise that I didn't note that change. You're right, Mr. Harper. That might be a change. I don't recall exactly what the sense of the debate was on that subject, but I think it-we decided—we did put it in, and we did talk about it and we decided that it should be in there.

DELEGATE HARPER: Mr. Chairman. I move to amend subsection 3 of Section 14 of the committee report by deleting the word "regular" on line 26 so that the sentence reads "the first session".

CHAIRMAN GRAYBILL: Very well. Mr. Harper has proposed an amendment to line 26 of Section 16, sub. 3, striking out the word "regular".
Mr. Harper.

DELEGATE HARPER: The reason being simply that the deletion of that word does not really keep regular sessions from handling it but frees the possibility of a special session to handle it.

CHAIRMAN GRAYBILL: Is there discussion?
Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. I'd just like to comment on why the Committee on Style made that change. The reason we put in "first regular session" is, supposing a regular session of the Legislature appointing the commission appointed them and then went immediately into special session. The session--or sentence, as it reads, would then require that the committee-or the commission appointed submit its plan to the special session, and it may give them a very short time in which to prepare the plan,

CHAIRMAN GRAYBILL: Mrs. Bowman. Nothing? Okay. Is there further discussion? All in favor of Mr. Harper's motion to strike the word "regular" on line 26 in sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All in favor of striking it, vote Aye on the voting machines; and all against it, vote No on the voting machines. Vote Aye if you want to strike the word "regular" and No if you don't. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?
(No response)

CHAIRMAN GRAYBILL: 38 delegates having voted No and 28 having voted Aye, the motion fails. Is there other discussion of subsection 3 of Section 14?
Mrs. Eck.

DELEGATE ECK: I wonder if it would be appropriate to move for reconsideration of this, because I think that the delegates don't really understand the implication on the first apportionment. It might put it off so we didn't have single-member districts till 1976 or 1978.

CHAIRMAN GRAYBILL: Say a little more, Mrs. Eck.

DELEGATE ECK: Okay. In our discussion of this, we could see the possibility that the 1973 session appoints a commission to reapportion for single-member districts. If this first Legislature-and we don't know if these are still going to be biennial sessions, but it is assumed that they could be-so that they might not come back and have reported to them the report until 1975, unless they did it in a special session in 1974. If it didn't get reported until 1975, this means that if there were delays, it could be that it wouldn't even get settled by the 1975 filing date and that it wouldn't be for another couple of years; it might be 1978 before we got single-member districts.

CHAIRMAN GRAYBILL: Mrs. Eck, is it possible that the Transition section could suggest to the Legislature earlier times, or is that impossible?

DELEGATE ECK: I think that the Transition-I think it could be settled in Transition if the annual sessions went into effect immediately so that there would be a 1974 session. And there's been some question about this, since the people elected this fall, presumably, are expecting to be elected for a biennial session. You know, I have no idea what's going to come out in Transition, but I think this is where the problem is. I don't think there would be a real problem if we were assured that there would be another session in 1974-a regular session.

CHAIRMAN GRAYBILL: And may I ask another question? If we had stricken the word "regular", would you feel that that would have solved the problem?

DELEGATE ECK: I think so, because I think that in 1974, with all the work there is to do, that if a biennial session does not-1 think that they will at least have a special session sometime after their 1973 session. You know, we're loading up a whale of a lot of work for them to do. So that I think there would be time for them to come back with a special session, maybe even before January of 1974. Because even getting it done in January of 1974—well, no, if they got it done in 1974, it would be in plenty of time for the '75 ballot. But there are problems-and then you have the fact that-of course, single-member districts doesn't need to be tied in with unicameralism, but there is the fact that we do have that 1980 referendum coming up, and we might really just be barely launched into a single-member district unicameral system when that referendum comes up.

CHAIRMAN GRAYBILL: Well, the Chair would like to suggest to the body that we have not left subsection 3 of Section 14. It hasn't been adopted yet. If anyone is seriously worried about this, you might again try to strike the word "regular"; and if we vote it differently, that might solve the problem without reopening the whole substantive issue of subsection 3. And if you don't want to try that, why, go ahead.

Mr. Burkhardt.

DELEGATE BURKHARDT: I wonder if Mr. Loendorf would yield to a question.

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I'll try.

DELEGATE BURKHARDT: Jerry, I pushed the red button because you did. And usually I do my own thinking, butyourstatement sort of colored what I was thinking about. I wonder, in light of this further conversation, if you'd say a little bit more.

DELEGATE LOENDORF: Could you give me a specific question?

DELEGATE BURKHARDT: Well, are we put off till 1978 before this thing can be done with single-member districts, or are we not?

DELEGATE LOENDORF: I don't think so.

DELEGATE BURKHARDT: When can it happen?

DELEGATE LOENDORF: Well, of course, that depends on when the new Constitution goes into effect. As soon as it goes into effect, then the first session thereafter, whether it be a regular or a special session; it seems to me that the Legislature is required to appoint this commission, which has to report back at the first regular session after its appointment.

DELEGATE BURKHARDT: Mr. Chairman. Is it all right to talk like this? I should be asking permission.

CHAIRMAN GRAYBILL: You may ask another question, Mr. Burkhardt, or a series.

DELEGATE BURKHARDT: Are you saying that the commission would be able to go ahead with its plan without waiting 2 years for another session? Is that what you're saying?

DELEGATE LOENDORF: Yes, if the Constitution is adopted, there'll be annual sessions.

DELEGATE BURKHARDT: So the regular session would be coming up immediately?

DELEGATE LOENDORF: Right.

DELEGATE BURKHARDT: I wonder if Mrs. Yeck-Eck would yield to a question, Mr. Chairman. (Laughter) My apologies, Dorothy.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I yield.

DELEGATE BURKHARDT: We live nearby. We should talk more often, here. Does this satisfy your question, as Jerry has now discussed it, or is it still a problem?

DELEGATE ECK: I think it would satisfy it. It will mean that we will have to be very sure that annual sessions will go immediately into effect when we get it through the transition phase. And I imagine that we'll have a chance to debate and approve that. And I think this is the one question-I think that once you know, once we get launched, there's no problem with the "regular" there.

DELEGATE BURKHARDT: so you would be willing to leave the "regular" in as of now?

DELEGATE ECK: I would really like to leave the "regular" in and make sure that we launch the annual sessions immediately.

DELEGATE BURKHARDT: No further questions, your honor.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President. We—I drew up a little timetable. We discussed this in the committee. The ratification date would be, of course, in June 1972, and then the next election would be November, 1972. That means, in January, 1973, when the Legislature convened, they could appoint this commission. Now, I suppose this somewhat hinges on when this Constitution takes effect. If this Constitution does not take effect until July 1st of 1973, we might have a problem there with these majority-minority leaders being able to appoint people. But if they could do this in '73, during this session, then I don't think there would be any problem. We would-1 would assume that we would have annual sessions starting January, 1974, and the commission could submit a plan then. The Legislature would have—they could submit this plan and have it ready for the opening of that session. The Legislature would have 30 days. And the Secretary of State's office tells me that they have to have a plan, preferably 90 days before the primary election, which is the first Tuesday in June. They could do it with as little as 45 days, but that really cramps them; they prefer about 90. So if this was ready by March 1st or April lst, I think it would be all right-of '74. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Very well. With that discussion in mind, Style and Drafting might think about it in Transition, unless someone has an amendment or motion to make now. Very well. All those in favor of adopting subsection 3, say Aye.

DELEGATES: Aye,

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 15.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 1, of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Minor change in style; no possible change in anything else.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 15, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 2, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no changes here at all.

CHAIRMAN GRAYBILL: All in favor of sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. (No response)

CHAIRMAN GRAYBILL: Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Now, involved in adopting this, because you'll see that there is only sub. 3 here with sub. A's and sub. B's, and so on. But each of those incorporates some language from the bicameral, because this is the section that

obtains when and if we've had a unicameral up till 1980 and then adopt-and then the voters choose to go back to the bicameral. And the committee thought that it would be necessary to have all this language in there for use by the people to know what was in the entire article. So I—

CHAIRMAN GRAYBILL: Mr. Schiltz, would it be better to skip to bicameral?

DELEGATE SCHILTZ: That's what I was just going to suggest; except let's take Sections 16 and 17 and then go to the bicameral for Section 15.

CHAIRMAN GRAYBILL: Unless the Chair hears objection, we will skip Section 15, sub. 3, and move over to page 19, to Section 16, on line 21. Is there objection to that? Hearing none, Section 16, on page 19, line 21.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 16, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only style. We'll probably put this section somewhere else in the final draft, because we don't think it's germane to the legislative subject. That comes up another day.

CHAIRMAN GRAYBILL: Discussion? All in favor of Section 16, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 17.

DELEGATE SCHILTZ: I move to amend Section 17 on line 1, page 20, by striking "senators" and inserting in lieu thereof "members".

CHAIRMAN GRAYBILL: All in favor of striking "senators" and inserting in lieu thereof "members", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 17, Style and Drafting Report Number 3, as amended, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: You will note that this is a complete rewrite, but for style only. This might be relocated, too- No, this one won't be relocated; this is all right here. No, it will be relocated, because it covers all state and local officers and employees.

CHAIRMAN GRAYBILL: Is there any discussion of Section 17? All in favor of Section 17, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

CHAIRMAN GRAYBILL: And it's adopted. Now we skip to page 1. It's an unmarked page after the brown sheet in your book.

DELEGATE SCHILTZ: It has a number 7 after that, Mr. Chairman-on page 7, after the yellow divider.

CHAIRMAN GRAYBILL: Go to page 7, after the yellow divider. Page 7, after the yellow divider, about six pages in from the back. Very well. We're now considering the bicameral Style and Drafting Report.

Mr. Schiltz, Section 1.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1 of the bicameral section, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

DELEGATE SCHILTZ: Only style changes in Section 1.

CHAIRMAN GRAYBILL: Any discussion of Section 1? All in favor of Section 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed. (No response)

CHAIRMAN GRAYBILL: Section 2.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 2 of the bicameral section of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman. Once again, only style changes.

CHAIRMAN GRAYBILL: Have you any discussion, Mr. Schiltz?

DELEGATE SCHILTZ: No discussion.

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. I'm going to move to suspend the rules on Section 2. We have had considerable dissatisfaction voiced in regards to size of our bicameral Legislature; and if this adjustment is made in the bicameral, we will have to reconsider our action on the unicameral, I suppose. But we are tied in here pretty close on this number of the members-100 to 106. Now, remember this, the Legislature shall designate the number of members. This is not the job of the reapportionment commission. So that the Legislature must say how many members there are to be and the commission will then work from that number. Now, it may be that we have here tied ourselves in too closely; and for that purpose I would like to reconsider our action. And I know it's going to open up a can of worms, but I think it's quite important that we do adjust this, because there has been so much dissatisfaction. And I don't have any answer as to the size.

CHAIRMAN GRAYBILL: Mr. Aasheim, let's move to suspend first. I think they've seen your purpose.

DELEGATE AASHEIM: As long as they understand, and as long as it's confined to Section 2; I shall so move, then, to suspend the rules for the purpose of considering Section 2 on page 7 of the Legislative Article.

CHAIRMAN GRAYBILL: And for the purpose of adjusting the size of the membership of the Legislative body therein contained.

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: All right. Now, Mr. Aasheim has moved to suspend the rules so that we can reconsider the substance of Section 2 of the Legislative Bicameral Article on page 7, specifically concerning the number or the size of the membership of the bicameral Legislature. This motion takes two-thirds or 51 votes. Is there discussion?

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I'd like to ask Delegate Aasheim just one question.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE MCNEIL: What size would he propose if the rules are suspended and this is opened up?

CHAIRMAN GRAYBILL: Just a minute, Mr. Aasheim. I think I'm going to rule the question out of order. The purpose of the motion is to discuss the size. And I don't think we should decide the issue on the motion to suspend the rules. We should either decide to discuss it or we should decide not to discuss it. And therefore I'm going to rule the question out of order.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I have a question too. I concur that we should reconsider the size of the bicameral. It's far too large as it is. But as far as the unicameral is concerned, if we suspend the rules, may we also go back and reconsider the size of the unicameral?

CHAIRMAN GRAYBILL: Well, this motion does not reach the unicameral; it only reaches the bicameral. But by doing the same thing as we're doing here, you could reach the unicameral.

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I have a question similar to Mrs. Reichert's. Since the numbers that are going to go on the ballot are very important, then may we go on further back and reconsider whether we want them both on the ballot, or settle this issue right here. In other words—

CHAIRMAN GRAYBILL: You may not do that, Mr. Davis, on Mr. Aasheim's motion, since that's not the purpose of it. If you want to make a motion to suspend the rules to consider that, put it in writing and send it up. The purpose-the rule on suspending the rules, which is number 74, requires that the purpose of the sus-

pension of the rules be stated. The purpose of the suspension of the rules we're asking for here now is to consider the size of the bicameral Legislative Article. That's the only purpose.

Mrs. Payne.

DELEGATE PAYNE: May I ask Mr. Aasheim a question?

CHAIRMAN GRAYBILL: You may ask.

DELEGATE PAYNE: Would you, include in your motion, unicameral too? The size of the unicameral?

CHAIRMAN GRAYBILL: Mrs. Payne, he has not so included it.

DELEGATE PAYNE: I'm asking him; would he be willing to include that?

DELEGATE AASHEIM: If that would make a difference, surely. But I thought maybe—

DELEGATE PAYNE: Well, it would make a difference in the way I vote, whether or not you're willing to open up the unicameral and the bicameral to size both now.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I started to explain that I will be certainly agreeable to someone making that motion after this. But I was going to see if this would work first before we tried the other one. But if you-if that would make it more palatable—

DELEGATE PAYNE: It would.

DELEGATE AASHEIM: Mr. President, I'll amend my motion to include consideration of Section 2 in the unicameral.

CHAIRMAN GRAYBILL: Section 2, unicameral, is on page 13; Section 2 of bicameral is on page 41—or it's on page 7, it's called here. No, it's not-you must-that must be reference to—unicameral is on page-we just worked it on page 2—or page 10. Section 2, on page 10. Mr. Aasheim, have you amended your motion?

DELEGATE AASHEIM: There are two page 7's in this, I believe. I amended-or I moved to consider Section 2, page 7, of the bicameral article.

CHAIRMAN GRAYBILL: Yes. Are you going to do the same on the other?

DELEGATE AASHEIM: I'm going to find the page here and then I'm going to—

CHAIRMAN GRAYBILL: It's page 10 of the first half of the book. Section 2, page 10.

DELEGATE AASHEIM: And I shall move also to consider Section 2, page 10, of the unicameral article.

CHAIRMAN GRAYBILL: Very well. Now the purpose of the motion has been enlarged to include both the unicameral and bicameral articles for the purpose of adjusting the membership in the Legislative body therein. I have this motion written before the Chair here, as required by the rules. It now reads: "I move to suspend the rules for the purpose of considering an adjustment in the membership of the legislative body, being Section 2, page 10, of the unicameral and Section 2, page 7"-in the back part of the book-"of the bicameral." That's the motion. If I can read this correctly, you're saying, "I move to amend the motion of Aasheim to include reconsideration of"—I can't read that word, Mr. Davis-"As to whether there shall be alternatives on the ballot to unicameral and bicameral." What's the word? Whether there shall be a reconsideration of what?

DELEGATE DAVIS: Mr. President [Chairman]. I believe "of the question" or "fact".

CHAIRMAN GRAYBILL: Of the question? All right. Now, Mr. Davis, the Chair does not believe you have reached anything yet. Mr. Aasheim has no motion. The purpose of a motion to suspend the rules must be specifically stated. At my request this morning, he put it in writing and specifically stated. The purpose of it is the purpose of considering an adjustment in the membership in the legislative bodies. So you can't amend anything he's got, that I can see, to make it broader in that sense. Now, secondly, it does not seem to me that that is the point at which the Legislative proposal reached the issue of whether we're going to have an alternative on the ballot. That was done by a separate motion which this body passed separately. Now, if you want to make a motion to reconsider that, I certainly am not going to stop you. But I don't think you should mix the two unless-because it seems to me that the Chair will have to keep the two separate. One is to-a matter of size; the other is a matter of how you're going to put it on the ballot.

DELEGATE DAVIS: Mr. President [Chairman]. May I make my motion and then speak to it? Then, if you wish to rule me out of order, that would be quite all right.

CHAIRMAN GRAYBILL: Well, I'm going to rule any motion out of order that isn't--until this motion to suspend the rules is taken care of.

DELEGATE DAVIS: In other words, it's your ruling that no amendment can be made to Mr. Aasheim's motion except the amendment someone else just made to it from another section.

CHAIRMAN GRAYBILL: No, that's not what I'm ruling, Mr. Davis. I'm ruling that Mr. Aasheim is making the motion to suspend the rules on a specific purpose. Now, if you want to stay within that purpose and on those sections, you go ahead and make your amendment. But I'm saying that the text that you sent up here raises an entirely different question. And if you want to raise that question, you certainly may; but you can't raise it while we're discussing this other subject. It's like being on another section. Do you follow me?

DELEGATE DAVIS: Just briefly, Mr. President [Chairman]. It seems like-that you have to open that question up too, because we can't blank-check that we're going to put something on the ballot that we don't know what the numbers are going to be. We've passed the numbers and said we'll put it on the ballot. Now, we might come up with some very strange numbers without the possibility of putting them on the ballot, so you couldn't reconsider that issue at the same time.

CHAIRMAN GRAYBILL: The Chair would certainly think that if that happened, you should certainly make a motion to suspend the rules to reconsider whether it goes on the ballot. But it doesn't seem we're at that point yet. I see two issues: one, the numbers; and one, whether it goes on the ballot. You certainly may raise yours, Mr. Davis, but I think the Chair is going to rule that you have to be somewhere within-have to betalking about the two Section 2's that he's talking about here. That isn't going to reach the issue you've decided-you've raised. So I'm perfectly happy if you do it, and I'd suggest you read Section-Rule 74 so that you get your purpose stated right. And I'd be happy to have you do it, but I think I'm going to rule that we can only do one at a time. Now, if you want to amend Mr. Aasheim's motion on the specific point of numbers, fine. Is there other debate?

Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman]. I rise in support of Mr. Aasheim's motion. I've heard a great deal of concern about the size; but more important, people that are very experienced in reapportionment say that we're in grave danger by the narrow range of members. So I think it's vital that this body supports Mr. Aasheim.

CHAIRMAN GRAYBILL: Mr. Campbell,

DELEGATE CAMPBELL: I rise to support Delegate Aasheim in his motion to suspend the rules. This week, in my area, we found there was a lot of resentment on the numbers-that were too high. They asked us to do everything we could to reconsider them. I think that-well, I know that I voted for them. I regret that decision now, and I certainly would appreciate the opportunity to reconsider this matter. Thank you.

CHAIRMAN GRAYBILL: Is there further debate on the issue of suspending the rules?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm just wondering. If we open this for reconsideration, how many more of the articles will we be opening? And how many more will we then feel we have to give the other delegates the same courtesy? And it is true, at the time the Legislative Article was passed, I was-felt rather disappointed. But in evaluating the entire article, there are many reforms. And I feel quite satisfied with the article, even though I do not agree with all of it, But I'm just wondering: are we going to-if we go ahead on this reconsideration, are we then going to give each person that wants the same right to reconsider all the other articles the same opportunity? I feel we may be here for many extra days if we do.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I think that we have to weigh very carefully the merits of whether we're going to take this extraordinary action in suspending the rules. And if we set a precedent for suspending the rules in this case, well, I think that it's only fair to realize that other issues that come up at this stage are-also warrant similar precedence of suspending the rules. Now, I personally was very happy

with the way the size of the-came out; but I think that everyone has to weigh carefully whether, in fact, we want to open up these questions again. We spent lengthy debate on trying to resolve the numbers for both of the articles-sections of the article, and I think that for us to go back again and open up this whole question is unwise. And it's simply a matter of being consistent; and I think that we will be setting a precedent which we may regret later on. Thank you, Mr. President [Chairman].

DELEGATE HOLLAND: Mr.-President [Chairman], fellow delegates. I've kept careful note, and Mr. Foster and I have disagreed on everything so far. And I'm rising in support of just what he's just said. This Convention has deadlines to meet. We've got, as I figure it, approximately two weeks. This matter-I'm not like Mr. Foster; I'm not happy with the numbers. But this Convention has got to handle its business expeditiously. The matter, as I remember, was hard-fought on the floor, fully debated. We resolved it; now we're coming back, not for a new proposition, but to hash over the same old thing. It should have been covered on reconsideration. If we open it up, we're going to be opening up on everything that has been won or lost by various delegates here. I strenuously urge this group to reject this motion to suspend the rules because we're going to-if we do it on this, we're going to be doing it on every critical item in this Constitution we've already resolved.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I rise to support the motion to suspend the rules for this purpose. I think the people who are saying that we're going to open this up for everything aren't really stopping to consider the fact of just how important this issue really is. This is one of the places where the people at home have really come out and said to me, on my weekends home, that that's too many. "We want real representation; but let's not get this thing so far out of hand, and have it locked in, that we regret it." And I feel we're going to make a very serious mistake if we don't go along and open this up again and do a job for the people.

CHAIRMAN GRAYBILL: Will those who are not—

Mrs. Erdmann. But before you speak, would those who are not speaking please try to sit down when they're not busy. It's hard for the Chair to tell who's up.

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. I support Mags Aasheim in his request for reconsideration-I mean, suspension of rules. I think this is a very vital matter, and I believe that it shouldn't take too much time. But I think we should allow anyone who is convinced that it is a vital significance-I think we should extend them that courtesy; and then you can dispense with it with a vote, Yes or No.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Aasheim's motion to suspend the rules for the purpose of considering an adjustment in membership of the legislative body in Section 2, on page 10, of the unicameral and in Section 2, on page 7-the back part-of the bicameral article. So many as are in favor of Mr. Aasheim's motion to suspend—

DELEGATE AASHEIM: May we have a roll call vote?

CHAIRMAN GRAYBILL: All right. It'll be a roll call vote. So many as are in favor of suspending the rules, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. Nay
Anderson, O. . Absent
Arbanas ..... Absent
Amess ..... Nay
Aronow Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher Absent
Berg ..... Aye
Berthelson Aye
Blaylock Aye
Blend ..... Aye
Bowman ..... Aye

Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Absent
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Absent
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Absent
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Absent
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye

CHAIRMAN GRAYBILL: Mrs. Bugbee, for what purpose do you rise? Mrs. Bugbee's button please, Rosemary. No, push her button so she can talk, Rosemary. (Laughter)

DELEGATE BUGBEE: Mr. Chairman, I just want to be put down on the record as being present. I did vote.

CHAIRMAN GRAYBILL: Oh, all right. Will the journal show Mrs. Bugbee's presence. Very well, take the vote.

CLERK HANSON: Mr. Chairman, 69 voting Aye, 21 voting No.

CHAIRMAN GRAYBILL: 69 having voted Aye and 21 voting No, and 69 being over both two-thirds and 51, the motion is adopted. The rules will be suspended for your purpose, Mr. Aasheim. You have the floor.

DELEGATE AASHEIM: Mr. President [Chairman]. I want my motion to read: "I move to amend Section 2 of the Legislative Article, being page 7 of the back section." I'm going to make a motion for size and you can start from there.

CHAIRMAN GRAYBILL: All right, Mr. Aasheim. Just a moment now. You have to move to reconsider it, right?

DELEGATE AASHEIM: Well, I was trying to get away from that motion.

CHAIRMAN GRAYBILL: No, I think you have to move to reconsider it. Are you on the prevailing side?

DELEGATE AASHEIM: Yes, I was.

CHAIRMAN GRAYBILL: All right, now, go ahead, saying-put that in your motion, "Being on the prevailing side"—

DELEGATE AASHEIM: Having been on the prevailing side-well, I think I was-1 can't-I moved-1 was on the prevailing side to adopt the section, I'm sure.

CHAIRMAN GRAYBILL: Very well.

DELEGATE AASHEIM: Having been—voted on the prevailing side, I move to reconsider our action in adopting Section 2 of the Legislative Article of the bicameral section, being page 7 of our bicameral section.

CHAIRMAN GRAYBILL: All right. The motion is-1 think we have to take this a step at a time, Mr. Aasheim. The motion is to reconsider the bicameral article, on page 7 in back of the books that you're looking at, Section 2. And, of course, the purpose is the same; to change the--adjust the membership. So the motion of Mr. Aasheim is now to reconsider Section 2, on page 7, of the Legislative Article for the purpose of considering an adjustment of the membership. So many as are in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Aasheim, do you want to make your proposal?

DELEGATE AASHEIM: Mr. President [Chairman]. I'm open to suggestions here. I'm-as you know, my original proposal-my original recommendation was for a 40-80 legislative body. And I'm being realistic. I realize that we have areas here who are going to be unhappy with a small Legislature and we have areas who are going to be unhappy with a large one. So I'm going to make this motion that we-on page-on line 14 on page 7, insert in place of "53", "50" and in place of "50", "45". And on line 15, in place of "106", "100"; and in place of "100", "90". I'm not so naive as to say that you're going to adopt this without talking, so the floor is yours.

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim moves to amend the bicameral Section 2 size article by making the size of the Senate 50 and 45—maximum 50, minimum 45—and the size of the House, maximum 100, minimum 90. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I apparently made the original motion that was so ill-advised at the time. However, we've come quite a ways since that time. We've really got a pretty clear-cut situation. Now, Mr. Aasheim's motion you couldn't live with, but does it really change anything that much? If you really want to cut it down, you could cut it down to half or something, but he knows that you've got to have representation. Yesterday-or Saturday, we passed the Revenue and Taxation bill. We said everything is going to be taxed by the state and it's going to be worked out by a little-legislative group, and we're going to determine the size of this legislative group. And somebody is going to have some taxation without too much representation. There is the geographical problem you've got in this big state. You've got five counties in many districts right now. You can look around this body of a hundred seats and say, "Which ones do we want to eliminate?" Now, I mean not the individuals personally, or else there would be a lot of volunteers for that, but which area do you want to eliminate or consolidate? We've got the anti-diversion of highway funds. I imagine everyone heard about as much discussion over the weekend of that as they did size of the legislative body. Three-fifths can change it. If you cut that number down, that really consolidates the power in a lesser number of people. And that's what you're really-maybe driving at. You got your state indebtedness limitations we talked about in this Constitution. Now, you're going to cut that down to a lesser number of people that have a right to have a representative up here, or covering a much larger area. You really are trying to get-youmust be careful not to get in a situation of taxation without representation, I think, in all these areas.

We passed the environmental program. That's left to the Legislature to implement. How big a Legislature do you want? I know, depending on which side you're on, you might want to knock out many different areas. The reclamation is left solely up to the Legislature. You want a broad spectrum in this Legislature to let everybody be heard; or do you want it to be small? The water rights-what's beneficial use for recreation, domestic, municipality? That's left solely up to the Legislature. What size Legislature? Do you want it to be truly representative of Montana, or do you not? The court-the Legislature is also going to have something to do, approving its own size. So if you have a smaller body, they can meet in the first session, depending on the complexion of the Legislature. We don't know. They can cut it down in the guise of economy, to cut it down the first go-round. I think the biggest argument on it is right now. If this Constitution should pass, you have a Legislative Assembly of 100 in the House, 50 in the Senate that's been-met the test of the federal court. We could go ahead, without spending all this time fighting another reapportionment bill, and do all the other jobs we're assigning to the Legislature without starting right off and spending all their time trying to adjust what size they're going to be-spend all the time on that. They spent a large part, and a lot of effort went into that at the last Legislature, and they came up with the size that we're sitting on right now. And now you say this size isn't any good. A lot of people-and I realize and certainly respect the differences of opinion on this, because I know they're real sincere. But this is the size you're going to get if they defeat this whole Constitution. We're right back with the hundred that's met the court test in the House and 50 in the Senate. Now you-1 don't think you're going to be able to take away from the people their local control of taxation and put it in a board with the state. I don't think you're going to take away all these debt limitations they've had all the time. I don't think you're going to let them dip into the highway funds, after they've voted the antidiversion bill, and then at the same time say, "Well, we're not going to let you get back in there too far. We're going to cut down the representation too"; and then you're really creating a lot of power in a few people. I think, if it comes to the choice on the ballot-naturally, you want a smaller size to make it appealing. And I think the unicameral on the bicameral legislative fight in this body, they're both trying to make their article appealing so they can pass the cause they're championing. And they're trying to do it at the expense of the people of Montana, to keep them from getting fair representation. And as I said before, I don't care which they adopt, but we should havefairrepresentation and go about it on the merits. And I submit that if you cut it down to less than a hundred and less than the 50 in the House--or a hundred in the unicameral, you have now-you're not going to give representation in this great State of Montana that's divided by rivers, mountain ranges, all sorts of different problems. The little towns have different problems than the big towns. The little ranches have different problems from the big ranches, little industry competing with big industry. We have a complex of problems that deserves and justifies any expense you would have with the little difference it would make in the number of people that this amendment would make. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I have a great deal of respect for Mr. Davis' feelings on this thing. I know that, as he has said of us, that we're sincere on this. I know that he is sincere. I think I should say, at this time, that I'm very much interested in seeing the bicameral proposal passed. And insofar as he has said that we're championing our awn cause-and, at least in my respect, this is true. And I believe that if we do have somewhat smaller numbers on this bicameral proposal, then-that we will have an easier job of selling it and championing the cause of the bicameral system, and continuing the bicameral system here in Montana. I do think, Carl, that if we can keep the bicameral system, then certainly we do have, with our Senate-we have the Senate, then we have that body of men over there who will continue to represent the areas of Montana and would provide more representation and more thoughtful consideration to some of these issues that you have raised that we have already put into the Constitution. So I support Mr. Aasheim's motion to accept this. I certainly do want to keep a floor on this. I don't want to ever have it where the Legislature can lower this down so far that we really do strip the rural areas of Montana from representation. But I think that having it from 45 to 50 on the Senate side and from 90 to a hundred does represent a good compromise, and these are figures that will be easier to sell to the people of Montana. So I support Mr. Aasheim's motion.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I, too, support Mr. Aasheim's motion, I feel, too, that we need adequate representation, and I feel this will give us a continued adequate representation. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I support a smaller bicameral Legislative Assembly, but I would like to further amend Mr. Aasheim's motion by deleting his numbers "45" and "90" and inserting in lieu thereof "40" and "80".

CHAIRMAN GRAYBILL: You're making it "50" to "40" and "hundred" to "80", is that right?

DELEGATE ETCHART: Yes, sir.

CHAIRMAN GRAYBILL: All right. Mr. Etchart has proposed an amendment of Section 2, or actually to Mr. Aasheim's amendment, which would lower the bottom numbers to 40 and to 80. In other words, the House would be 80 to a hundred and the Senate would be 40 to 50. Is thatright, Mr. Etchart? Do you wish to discuss it?

DELEGATE ETCHART: Yes. I think that, really, if we're going to make a significant change, just changing 50 to 45 keeps us in a pretty narrow range. And I think if we drop it down to 40, this would be an 80-member House, 40-member Senate, 120-member Legislature; to me, this would be a pretty attractive size bicameral body, especially when we combine it with our single-member districts concept which we've already adopted. And I think-I personally am quite in favor of the bicameral system, and I would like to see the most attractive bicameral proposal come out of this body. Incidentally, I have heard that this was the committee report, 40 and 80, and I believe this would be a very fine number.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I rise in opposition to both Mr. Etchart's and Mr. Aasheim's proposed amendment reducing the number. Let's stop and look at this to our rural areas. It's not just the numbers; it's how you're going to make up this area. And when you go-say you take-have 80 House of Representatives-80. You're going to take 20 off of what we have now, so how are you going to reapportion that? You're going to have to take these areas and attach them onto an urban or city near you, or you're going to have districts running 500 miles long to stay in the rural areas. I say that the rural areas of Montana are going to completely lose representation on this proposal, either one of the numbers. Now, before reapportionment we had 56 senators, and there weren't too many complaints about that. We used to have a hundred and four in the house here; I never recall any complaints. Just because we're going to have annual sessions is no sign it's going to cost that much more money to have a larger bicameral Legislature. And I submit if we go at least to this last reduced number here, we're-the rural parts of Montana are going to completely lose any representation, because they are going to have to be attached to a urban area near them; and who's going to get elected? But it'll be someone from the larger cities in this particular area. I therefore strenuously oppose these changes in the numbers.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I sent a proposed amendment up to the Chair. Is it in order?

CHAIRMAN GRAYBILL: Well, if I read it correctly, it refers to page 10, which is the unicameral article, which we are not debating now. We're debating the bicameral.

DELEGATE JOYCE: Well, I just thought we were debating both of them. I thought his motion to reconsider—

CHAIRMAN GRAYBILL: No, we're only debating page 7 of the—

DELEGATE JOYCE: In any event, may I propose this amendment-or substitute motion to all motions pending then? I haven't got it in writing, of course.

CHAIRMAN GRAYBILL: All right. I have it up here. You want to amend Section 2, on page 7.

DELEGATE JOYCE: Let's make it, instead of 7, whatever the bicameral is.

CHAIRMAN GRAYBILL: That's the bicameral, my friend. There's a second page 7 back of the yellow sheet here. Okay? Can you find it?

DELEGATE JOYCE: Yes.

CHAIRMAN GRAYBILL: Now, the trouble with your amendment that you sent up-the

numbers that you sent up don't appear there. Why don't you tell me what you want to do to Section 2.

DELEGATE JOYCE: All right, here's what I propose to do. I propose to amend Section 2 to provide that the size of the Legislature-I'm reading the section as it currently is-"shall be provided by law, but the Senate shall not have more than 53 nor fewer than 50 members and the House shall have not less than 106 nor fewer than 106 members". [sic] And then I propose to add the following language: "until the year 1982, and after which time the size of the Legislature shall be provided by law, but in no event shall be fewer than 80 members of the House nor 40 members in the Senate." May I speak to the—

CHAIRMAN GRAYBILL: All right. First of all, I want it written out and sent up, Mr. Joyce.

DELEGATE JOYCE: May I ask the Chair a question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE JOYCE: What's your plan? It's 12 o'clock noon. I mean, are you—

CHAIRMAN GRAYBILL: Well, my plan is to debate this article. Let's go. I see what you want to do, and I'm going to let you do it, but I just cannot--we're talking about substance here, and the Chair must have in writing what you people intend to do. Otherwise, these things never get into the journal. Now, the Chair is going to accept an amendment from Mr. Joyce, and I must put the amendment before we discuss it.

For what purpose do you rise, Mr. Felt?

DELEGATE FELT: Well, I thought while we were waiting for that to come up, that I could squeeze in a few comments on the previous motion and save—

CHAIRMAN GRAYBILL: No, you're out of order.

DELEGATE FELT: All right. I didn't know you had received the other motion yet. That's fine.

CHAIRMAN GRAYBILL: I'm sorry, ladies and gentlemen, but I think we must take these things a step at a time. And we have three motions up, and unless I have them here, it gets very difficult. And we'll certainly quit after awhile, but let's see if we can't at least adjust one or two of these items and get the sense of the body before we have lunch.

Now, Mr. Joyce, is this-you want this to be—replace Section 2, is that it?

DELEGATE JOYCE: Yes, sir.

DELEGATE GRAYBILL: Mr. Joyce makes a motion to delete Section 2 in its entirety—this is bicameral-and put in place thereof the following: "The size of the Legislature shall be provided by law, but the Senate shall not have more than 53 nor fewer than 50 members and the House shall not have more than a hundred and six nor less than a hundred members until after 1982. And thereafter, the size of the Legislature shall be set by law at no less than 40 members of the Senate and 80 members of the House." The purpose of this amendment appears to be to leave the present numbers in until 1982; after that, to leave it up to the Legislature, with a floor of 40 and 80 in the bicameral article.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. When-we debated this at length the other night and I spoke in favor of Mr. Davis' motion to set these figures as were finally adopted by the assembly. His theory was that unless the size-We're submitting to the people the issue of whether they're going to have unicameral or bicameral, and no one now knows how they're going to decide that. And further than that, we are adopting the theory of single-member districts, and nobody knows how the single-member districts are going to be arrived at. So therefore we're completely in the dark as to how the size and shape of the Legislature is going to be hereafter. And his-the reason for his amendment, as I understood it, was to at least make the unicameral if we're going-or the situation large enough so that the rural people would have a chance to have representation in the Legislature if we adopted the bicameral system. And it seems to me that until such time as we know the answers to how the state is going to be apportioned under the single-member districts, that if we leave them at this figure until after the year 1982, when the state is reapportioned again and the people have-if they vote unicameral, they may vote it out and have bicameral. At any rate, at that time the people will then have some idea as to how the Legislature is going to be apportioned, and thereafter, it could be reduced. And Mr. Davis' point, as I understood it in talking with him-and why I spoke in support of his motion the other evening-was that presenting a small bicameral

proposal to the people of Montana would compel the rural people to vote for unicameralism so that they'd have a sufficient number to have some voice in the state government. And he wanted to give the rural people a fair chance to still vote for bicameralism and have a sufficient size Legislature so that they would have some representation until such time as they see how the single-member districts were going to be adopted. And he poses a very real problem, it seems to me: if you make the size of the Legislature small, then necessarily, you must have more people per representative. And he lives in a large county in size, small in numbers; that's adjacent to the county in which I live. And he just feels that to-if the situation arises where his county gets lumped in with a portion of our county, that that would present a real problem for his people ever having a representative. And it isn't a situation peculiar to Beaverhead and Silver Bow; it applies also to those counties in eastern Montana where there are sparse population and they are adjacent to a metropolitan center. And so, it seems to me, or at least I submit it to the benefit of the delegates, that until the year 1982, this might be a reasonable compromise. We would then see whether or not we're going to have a unicameral system and whether it's going to be adopted. And we would also see how the single-member district system worked; and then, after the year 1982, then the people of Montana, acting through their Legislature, could reduce the size of the Legislature if they so desired, and they would have some experience on which to draw. And that's why I offered the substitute motion.

CHAIRMAN GRAYBILL: Very well. The question arises on the—

Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman]. I rise in opposition to Mr. Joyce's motion. Perhaps I should be the last one to get up here and make any mention of numbers as far as rural areas concerned, because this is exactly what I represent. But in the discussions that followed the adoption of this proposal the other day, we came to the conclusion that we were not providing sufficient alternatives for the people to consider, as far as numbers is concerned. I think that we can all agree, at the present time, that you have representation of 50 senators and a hundred representatives. And for all practical purposes, for the next session or two, that's exactly where it will stay. But at the same time, we must consider an alternative proposal that will allow the people to consider this when they're considering unicameralism versus bicameralism. This will give them enough option that they can look into the future and see where, if it is desirable, they can move the numbers down if they see a sufficient necessity to do this. But if we don't move our numbers and give greater flexibility for the voters, I don't think we're providing a fair alternative to the voters to decide on between unicameralism and bicameralism. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman]. I rise in support of Mr. Etchart's motion and opposition to Mr. Joyce. As far as the remarks of Delegate Ask and Delegate Davis, if they want a hundred members and 50 senators, they can have them; but we're now telling future generations that if they want to cut down, they can't. And we're writing this Constitution--or I hope we are-to be flexible. And if they want large bodies, they can have them; but if they want to shorten this down in the future, they can do it. And I agree with Mr. Wilson that we should give the people a choice in the future. So I ask this body to support Mr. Etchart and put flexibility into this Constitution. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I support the amendment of Mr. Joyce, not because I'm enamored with it, but because it gives us an opportunity to avoid the horrible alternative of the Etchart—and I don't remember who are the others-alternative. Mr. Chairman, I tell you that if we have Legislatures the size envisioned in those amendments of Mr. Etchart and the other one, people in the smaller counties are not going to have any representation. We're going to-the big-it doesn't make so much difference in the big counties or big districts where the population is large in the cities, because they will continue, whether you have small or large; they will have proportional voice. But if you go--whereas if you have a large Legislature, the people in the rural areas will have a voice. If you cut down the size, we're going to have the people in the smaller, rural areas--we're going to lose our-everything excepting the squeak. We won't have a voice. And I don't like to see that. I think this was a terrible mistake, to bring this back. It's apt to cause us to be bringing back things all through the remainder of the session. I think it was discussed thoroughly once

and decided. And now we find out this decision is overturned. What if we would want to bring back some other things, like the probate and the ombudsman and various others? And if we start bringing those matters back and cause all sorts of discussion, we may not have enough time.

CHAIRMAN GRAYBILL: Mr. Romney, you're debating the issue of whether or not we should have reconsidered. I'd be glad to have you continue debate, only the matter of the numbers, please.

DELEGATE ROMNEY: I was endeavoring to show the ramifications of this nefarious situation. (Laughter)

CHAIRMAN GRAYBILL: One ramification is you're going to be out of order unless you stick to the point. (Laughter)

DELEGATE ROMNEY: In view of this situation, I'm unable to discuss the matter thoroughly. I will vote for the Joyce amendment because I'm handcuffed to it. I want to go back to the other original decision of the Convention.

CHAIRMAN GRAYBILL: Very well. Ladies and—

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I haven't spoken to the Joyce amendment. I would support Mr. Joyce's amendment as an attempt to make a reasonable compromise in here. Mr. Joyce-I would like to clarify the fact he said it would-he thought my thinking was it would compel people to vote for the unicameral. My thinking is it would compel people to vote against the Constitution. They've got a hundred now; they've got representation now; they've got their own local taxation now; they've got so many reasons why, that this change is going to be very difficult. If you say, "We're going to cut your numbers out; we're not going to tell you which one's going to go; we're going to leave that up to the next Legislature." And they know very well the cities control the votes in the State of Montana-seven cities have 50-some percent of the vote. Let's face the fact. And these people are going to say, "Well, these seven cities can go up and, depending on who they elect, they can cut the number down." And that's why I think we should have a floor. I think you've got to be realistic on this. As I said before, we want to get some harmony throughout the state. We don't know what will be, and I agree on the flexibility thing. But I would support Mr. Joyce's amendment to keep them from fiddling with these numbers for the next 10 years-if they pass this thing with all the things that we've left for the Legislature to do, so they don't have to continually try to reapportion themselves until after the next census is taken, and then they can go ahead and make the adjustments. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think that we also have a good number of voters in the state who are concerned about maximum size. And as I understand it, Mr. Joyce's amendment states that after 1980-w '82—whenever it is—there will be no maximum size. I think this would terrify a lot of voters, because the tendency has always been to increase rather than to decrease these bodies. Thank you.

CHAIRMAN GRAYBILL: Very well. Members of the body, the issue is on Mr. Joyce's substitute amendment. It reads as follows: "The size of the Legislature shall be provided by law, but the Senate shall not have more than 53 nor fewer than 50 members and the House shall not have more than a hundred and six nor less than a hundred members until after 1982 and thereafter, the size of the Legislature shall be set by law at no less than 40 members of the Senate and 80 members of the House." Do you want a roll call? No. I'm sorry, Mr. Joyce, you can't close. You've closed. Very well. So many as shall be in favor of the Joyce amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. Now we're debating Mr. Etchart's motion that the range in the Senate in the bicameral be 40 to 45—no, thattherangein the Senate be 40 to 50 and the range in the House be 80 to a hundred. Actually, he amended Mr. Aasheim's motion to lower the minimum to 40 for the Senate and to 80 for the House. That's Mr. Etchart's amendment, and that's whatwe'regoing to debate now. Is there further discussion?

DELEGATE DAVIS: I'd like a roll call vote.

CHAIRMAN GRAYBILL: Mr. Davis wants a roll call vote. All right. The issue, then, is on Mr. Etchart's amendment to lower, in the Senate, the minimum to 40 from 45 and, in the House, the minimum from 90 to 80. This is the minimum only. Mr. Etchart's amendment to Mr. Aasheim's amendment.

Mr. Foster, for what purpose do you rise?

DELEGATE FOSTER: Can I speak on the motion?

CHAIRMAN GRAYBILL: Well, you didn't—

DELEGATE FOSTER: I rose prior to the time—

CHAIRMAN GRAYBILL: All right. Cancel the vote out, Mr. Clerk. You may speak, Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. Well, I think this is an extremely important question that's before this body. For one thing, the broad range is desirable for purposes of-for determining the number of legislators to be chosen. But at the same time, I think you should realize that there will be those in the course of the election which is before us that will use the lower limits for their advantage and there will be those that will use the higher limits for their advantage. Now, let me point out that in the rural areas, people are going to look at that 40 at the bottom and they're going to say, "Now, what is this going to do to the Senate?" And I'm speaking directly, now, to the senator that happens to be representing that present district. And he will be inclined to look at what it's going to do to his particular chances for re-election, and his voice to the people will be dependent upon that point. And I submit that, in most cases, the people that are looking to a larger district to run for are going to be opposed to this size. There will be others who will say that, in fact, you have a limit of a hundred and fifty-which is essentially what we had before-that'11 say the Legislature is going to keep it at the upper limit. They will use the same argument that is presently being used; essentially, you haven't changed the size at all. Now, I think that what we've done, in going to this amendment, is essentially taken the worst of both proposals. We've got those that are going to be concerned because the body is going to be too small, they're going to lose representation; and we still have those that are going to be concerned because it's too large, it's going to be expensive. And I submit that we really haven't improved anything; in fact, we have made it worse by giving this broad limit for the size. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Felt.

DELEGATE FELT: Yes, Mr. Chairman. I am rising to support the amendment of Mr. Etchart and also the original motion of the Chairman of the Committee on the Legislature, Mr. Aasheim. The present situation is, I think, that we have 23 senatorial districts. With the amendments proposed and with the single-member district feature, we would have 40 at the minimum and we could have 50. So that as far as people from rural areas are concerned, I think they would find that, by and large, they would have more people living in a rural setting, making their own living from that type of activity, than they are likely to have at the present time. The Housemembership has been set at 100 by the last Legislature, and it was under that proceeding, which was approved by the court, that we were able to be elected. As I recall, the court did not, however, state that they would necessarily approve it for a legislative session, but that due to the short period of time available, they did approve it for purposes of proceeding with this election. I think we should keep in mind that the basic purpose of the committee that worked so hard on this was to devise the very best type of bicameral legislative body and the very best type of unicameral legislative body that they were able to develop-and I think they did a fine job-and that we did-and our departure from their report have somewhat weakened both; but here we have a proposal by the Chairman of that committee, who referred to the fact that his actual first choice were these minimum figures of 40 and 80, but he did not feel that it was expedient to make the effort for that size, so he phrased his motion as he did. But it is now in our power, if we wish to accept this amendment, to go along with what, I believe, he would have considered to be his own druthers if he could have them, and we have the maximum sizes which are reasonable. And I'm very hopeful that all of us, not thinking of ourselves as representing either urban or rural interests but recognizing that each do have legitimate interests, will try our best to present this to the people in such a way that they are being offered the very best possible bicameral legislative structure and the best possible unicameral. I think that we are getting toward

that, and I hope that the amendment of Mr. Etchart and the motion of Mr. Aasheim will both be accepted in that light. Thank you.

DELEGATE BATES: Mr. Chairman. I rise in opposition to Mr. Etchart's motion and support Mr. Aasheim's. I feel that a body of 40 is not an adequate number to even staff the committees that are necessary in a working body; and in order to assure adequate representation to our rural areas, I support Mags, and not Mr. Etchart's. Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman] and fellow delegates. We already, in our Constitutional Convention, districted to 23 districts. Why not 46 senators and 92 legislators, without leaving it to a new Legislature to decide what size they're going to be? Set it at 46 and 92. It would be a little less than what we're talking about and a little bit more, in some respects, than what we're talking about. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I'm going to support Mr. Etchart's amendment now, and then if that fails, support Mr. Aasheim's. But I think that there's one thing that all of us from the rural area should recognize and think about. As Mr. Davis has said, regardless of what happens numberswise, some towns in this state can control it. I had hoped that by the time we got the Convention this far, that some things would have happened that haven't as yet happened. But I am sure that, at a meeting coming up pretty soon, all of the farm groups organizations in the State of Montana, for the first time, are going to start getting together on some things. And one of these things is what the rural people, the agricultural people of the State of Montana, should have been doing for a long time, and that is letting the people in the cities and the urban areas know that there are a lot of farm dollars being circulated in this state. I feel that when this is worked out with the farm groups and when this kind of a promotion starts, for the first time in many a year that we in the rural areas aren't going to have to worry about being outvoted by the people in the cities. When the people in the cities can walk down their streets on a Saturday or any day of the week and find out how many rural people they have in their town, they're going to recognize where an awful lot of the economy of the State of Montana comes from. And I'm certainly not worried about going to the bottom of 40 and 80 and the maximum of 50 and a hundred as we have right now. I think this 50 and a hundred we should keep, because this is what it is. But unless the people in the rural areas get together and do things like I hope the farm organizations will start on next week or week after when they have their meetings, we're dead sunk no matter how many members we have in there. So I support this Etchart amendment to start with.

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you Mr. Etchart's amendment to lower the Senate minimum to 40 and the House minimum to 80; that's from 45 and from 90. We want a roll call vote. So many as shall be in favor of Mr. Etchart's amendment, please vote Aye on the voting machines; so many as opposed, please vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim Aye
Anderson, J. Nay
Anderson, O. Nay
Arbanas Absent
Arness Nay
Aronow Nay
Artz Aye
Ask Nay
Babcock Aye
Barnard Nay
Bates Nay
Belcher Absent
Berg Aye
Berthelson Nay
Blaylock Nay
Blend Nay
Bowman Aye
Brazier Aye
Brown Aye
Bugbee Aye
Burkhardt Aye
Cain Aye
Campbell Aye
Cate Aye
Champoux Absent
Choate Aye
Conover Nay

Cross ..... Nay
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Absent
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong., ... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S.. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Absent
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey A y e

CLERK HANSON: Mr. Chairman. 62 delegates voting Aye, 30 voting No.

CHAIRMAN GRAYBILL: 62 having voted Aye and 30 voting No, Mr. Etchart's motion prevails. And the minimum in Mr. Aasheim's amendment is 40 on the Senate and 80 on the House. Is there further discussion on Mr. Etchart's-or Mr. Aasheim's motion'?

Mr. Schiltz.

DELEGATE SCHILTZ: I would point out that somewhere in this Legislative Article it provides that a senatorial district be made up of two representative districts. And I don't know if you can make that work out if you have anything but two to one provided for.

CHAIRMAN GRAYBILL: The Chair would observe that the minimums, at least, would allow two to one. Very well, the issue is on Mr. Aasheim's motion. His motion is to change, in Section 2 of the bicameral-if you're on page 7, and the bicameral section-the maximum in the Senate is to be 50 and, as amended, the minimum is to be 40; the maximum in the House is to be 100 and the minimum in the House is to be 80. Do you want a roll call? Very well. You want a roll call. So many as shall be in favor of Mr. Aasheim's amendment, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President [Chairman]. There's some question in this area of the hall-the exact way we're supposed to be looking at this.

CHAIRMAN GRAYBILL: Well, I'm sorry. The vote is on-and you can explain your vote. I've explained that you're voting on Mr. Aasheim's amendment, which is to change the bi-cameral size of the Legislature so that the Senate is 40 and 50 and the House is 80 and a hundred. That's his amendment. It changes it from the 53 and 50 and from the 106 and a hundred. The vote is still open. Does any delegate wish to change his vote?

Mr. Romney, for what purpose—

DELEGATE ROMNEY: Would you please state that again, the numbers?

CHAIRMAN GRAYBILL: Mr. Aasheim's amendment now reads that the maximum in the Senate would be 50 and the minimum would be40; and in the House, the maximum would be a hundred and the minimum would be 80. You're aware that Mr. Etchart amended the bottom limits of Mr. Aasheim's motion. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Anyone doesn't understand yet? Very well. We'll close the vote.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, O. ..... Aye
Arbanas ..... Absent
Amess ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask,, ,, ,, ,, ,, Nay
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Absent
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Cysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Absent
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay

Roeder ..... Aye
Rollins.. Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk .Aye
Vermillion Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 77 delegates voting Aye, 16 voting No.

CHAIRMAN GRAYBILL: 77 voting Aye, 16 voting No, Mr. Aasheim's amendment prevails. Are there other-is there anything else about the numbers? If not—

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I'd like to explain my vote. Not only my vote but—

CHAIRMAN GRAYBILL: Now, wait a minute. I'm sorry; you have to explain your vote before the vote is taken-while the vote is being taken. And there was lots of time. If you voted wrong and would like the journal to show so, you may certainly do so.

DELEGATE MARTIN: I don't want to do that. I thought you said we could explain our vote.

CHAIRMAN GRAYBILL: You may explain your vote, under the rules, until I close the ballot. And there was lots of time; and you certainly may put on the journal something if you want to, but the vote is already cast. But if you wanted the journal to show something, go ahead and state it.

DELEGATE MARTIN: My reason for voting No is for the reason that I'm going to continue and be consistent in voting No. Once we decide something, it seems we should be able to stand up for it.

CHAIRMAN GRAYBILL: All right. Now, just a minute-Mr. Aasheim, do you want to move that Section 2 of the Legislative Bicameral Article be adopted?

DELEGATE AASHEIM: Mr. Chairman. I move to adopt-Section 2 of the bicameral article, as on page 7, be adopted as amended.

CHAIRMAN GRAYBILL: Well, I think you mean to say that when this committee does arise and report, after having had under consideration Section 2 of the—

DELEGATE AASHEIM: I just said it.

CHAIRMAN GRAYBILL: -bicameral article, that this committee report to the Convention that it be adopted. Is that what you say?

DELEGATE AASHEIM: That's what I said, yes.

CHAIRMAN GRAYBILL: All right. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Now, the Chair sees that it's-the hour is late and rather than go on with yours, Mr. Harper, I'm going to recess. But before we recess, Mr. Murray, the Chair would like--unless someone objects, the Chair would like to make two announcements, or three announcements. First of all, some of you might want to arrange during the lunch hour or call your wives—the wives are having a luncheon tomorrow and reservations are necessary. And Mrs. Garlington has arranged to have a speaker discussing interesting and old houses in Helena. And it looks like a good program, so if your wife is not attending yet, and you want to check on it, will you please check and make these arrangements by this afternoon with the office out there. Secondly, the Chair wishes to advise you that we're having a delegates' dinner tomorrow at the Colonial Club, and you're allowed to bring guests. And we do not yet have enough reservations, so please make your reservations. This is another $5, including two drinks, dinner just like the other one, so please get

your names in out there to the people in the glass cage.

Now, Mr. Murray, have you an announcement?

DELEGATE MURRAY: I move the committee recess until the hour of 1:50 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess till 1:50 this day. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:38 p.m.—reconvened at 1:57 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in session.

Mr. Arbanas, 'for what purpose do you arise?

DELEGATE ARBANAS: Mr. President [Chairman], I'd like to be counted as present.

CHAIRMAN GRAYBILL: Very well, you're present and voting; and, let's see, Mr.—somebody else that was absent this morning wants to be present. Oh, Mr. Champoux. He isn't present, but he is. Is he here? Mr. Champoux, do you want to be counted present this afternoon?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: Very well. Members of the committee, before the recess we had completed Section 2 of the Legislative Bicameral Article. The rules were suspended to allow for reconsideration of Section 2 of the unicameral article, which appears on page 10 of the Style and Drafting Legislative Proposal.

The Chair will recognize Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I move to reconsider Section 2 of the Legislative Unicameral Article for the purpose of adjusting the size.

CHAIRMAN GRAYBILL: Mrs. Reichert, did you vote on the prevailing side?

DELEGATE REICHERT: Yes, I did.

CHAIRMAN GRAYBILL: All right. Mrs. Reichert, do you want to explain? Now, this is—we're going to vote on reconsideration. Do you want to explain briefly your purpose?

DELEGATE REICHERT: Very briefly. For the same reasons that the bicameral was reconsidered, I think we need some flexibility. I think that the figures 100 to 105 as they now exist, do not lend the kind of flexibility we would like in this article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion of the motion to reconsider?
(No response)

CHAIRMAN GRAYBILL: If not, all in favor of the motion to reconsider, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I move to amend Section 2, page 10, line 14, of the Legislative Unicameral Article by striking the following figure: "100", and inserting in lieu thereof the following: "90".

Mr. Chairman.

CHAIRMAN GRAYBILL: Is that the only one?

DELEGATE REICHERT: Yes, sir.

CHAIRMAN GRAYBILL: Very well, Mrs. Reichert.

DELEGATE REICHERT: We feel that by substituting the figure 90 for a hundred and retaining the maximum figure of one hundred—and five, we will have attained the type of flexibility we would like in our Legislative Article.

CHAIRMAN GRAYBILL: Very well, the sense of Mrs. Reichert's amendment is to change, on line 14 in Section 2 of the Legislative Unicameral Article, on page 10 of your booklets, the number "100" to "90", so that the spread on the unicameral body would be90 to a hundred and five instead of a hundred to a hundred and five. Is there discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President [Chairman], I move to amend Mrs. Reichert's motion to change the number "105" on line 14, page 10, to "100".

CHAIRMAN GRAYBILL: Mr. Hanson has moved to change the number "105", on line 14, to "100" so that the spread, if both of these amendments was adopted, would be from 90 to a hundred instead of from a hundred to a hundred and five.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I resist the amendment by Mr. Hanson. I've spoken to several of my fellow delegates, particularly Mr. Foster, and 105 seems a more realistic figure for the maximum limit on a unicameral body.

CHAIRMAN GRAYBILL: Is there other discussion? I want to let them discuss it, Mr. Hanson, before you close.

Mr. Romney.

DELEGATE ROMNEY: I concur with the lady from Cascade. Hundred and five is a magic number that we should have had in the other one; and so I think that we should retain the 105 so that all the bicameral&s that wanted to have a large and adequate number of representatives can swing over to the unicameral&s' position in the way in which it was divined they would. May I ask the lady from Cascade a question?

CHAIRMAN GRAYBILL: Mrs. Reichert, will you yield?

DELEGATE REICHERT: Yes, Mr. Chairman.

DELEGATE ROMNEY: Mrs. Reichert, would you advise me who is going to make the decision as to how many it will be?

DELEGATE REICHERT: Well, I think when districting is taken care of, I think, realistically, that we're going to look towards maximum limits in both the unicameral and bicameral for the next few years. I think that, realistically, we're going to have a bicameral of a hundred and fifty for the next few years or a unicameral of a hundred and five. I think that for the future, we need the lower limit of the bicameral, which is a hundred and twenty, if we ever do need it, and then the lower limit of the unicameral as 90.

CHAIRMAN GRAYBILL: Mr. Romney, I don't know that that's responsive to your question, but the section says "the number of senators shall be prescribed by law"; so the Legislature is going to set it. Is there other discussion?

Mr. Skari.

DELEGATE SKARI: Mr. President [Chairman], would Mr. Hanson yield to a question?

CHAIRMAN GRAYBILL: Mr. Hanson, will you yield?

DELEGATE ROD HANSON: I yield.

DELEGATE SKARI: Rod, I notice that on the bicameral we have the range set from 80 to 100. Is there any special reason why you tighten up this range of flexibility on the unicameral from 90 to 100? It does seem to compress it here.

DELEGATE ROD HANSON: Carman, I merely did it to conform to the same size as the House would be in a unicameral body. However, if-1 see the consensus, and I would withdraw my motion to amend.

CHAIRMAN GRAYBILL: Mr. Hanson, do you want to withdraw yours?

DELEGATE ROD HANSON: Yes, I withdraw it.

CHAIRMAN GRAYBILL: Mr. Hanson has withdrawn his motion. Is there any further discussion on Mrs. Reichert's motion to lower the number "100" to "90" so that the range is 90 to a hundred and five?

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Are we on Mr. Hanson's amendment now?

CHAIRMAN GRAYBILL: He just withdrew his.

DELEGATE AASHEIM: Oh, I'm sorry.

CHAIRMAN GRAYBILL: So we're on Mrs. Reichert's which is moving the number "100" down to "90", the bottom.

DELEGATE AASHEIM: But I think there's some clarification that's necessary here. There's a feeling by some people that the commission sets the size of the Legislature. This is not

true. The Legislature still determines the size. I'm sorry Mr. Hanson withdrew his because I-no, that's fine, because I'm sure that the unicameral people (Laughter)-the unicameral people need 5 more to correct the errors the hundred make. (Laughter).

CHAIRMAN GRAYBILL: Mr. Aasheim, maybe I should recap this for you, but Mrs. Reichert has made an amendment to change the minimum from a hundred to 90. Mr. Hanson made a motion, but it has been withdrawn; and Mr. Romney asked who would set it, and we agreed the Legislature would. Is there further discussion?

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I didn't agree the Legislature would. I think the commission will.

CHAIRMAN GRAYBILL: I see, under this section you think the commission will.

DELEGATE ROMNEY: Yes.

CHAIRMAN GRAYBILL: Well, it looks—the Chair would observe that the commission's got to have the power to legislate, then, because it says "as provided by law". Very well, do you want a roll call vote?

DELEGATES: No.

CHAIRMAN GRAYBILL: Mrs. Reichert says yes. All those in favor of Mrs. Reichert's motion to lower the number "100" to "90" on line 14 of Section 2 of the unicameral article, please indicate so by voting Aye; and those that want to leave it-those that do not want to, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Absent
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Absent
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Absent
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Absent
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye

Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Excused
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Absent
Rollins	Aye
Romney	Nay
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Absent
Warden	Aye
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: Mr. Chairman, 76 voting Aye, 9 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 9 No, Mrs. Reichert's motion carries and the number in the unicameral article is now reduced to 90-90 to a hundred and five.

Mr. Schiltz.

DELEGATE SCHILTZ: Having voted on the prevailing side this morning when we considered Section 14 of the unicameral article, I move to add, after the word "senators" on page 4 of page 15—

CHAIRMAN GRAYBILL: Mr. Schiltz, the Chair will let you do that next. But will you move that when this committee does arise and report, after having had under consideration Section 2 of the unicameral Article V under Legislature, that it recommend to the Convention that the same be adopted as amended.

DELEGATE SCHILTZ: In the interests of saving my voice, I so move.

CHAIRMAN GRAYBILL: All right. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: (Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now, Section 2 is closed up again. All right, now you want to look at 14?

DELEGATE SCHILTZ: Fourteen on page 15, and of course it will be changed back on page 3 or wherever it is. On line 4, after the word "senators", which will, of course, be changed to "members", add the words "and each district shall elect one member". Mrs. Bates pointed this out to me; and, of course, we only worked with what we had to work with, and that's what that committee sent us. And in Section 14 in the bicameral, or at least in the corresponding section of the bicameral, that language is used-"and each district shall elect one member"--and I think it probably should be in here because it needs it and because it needs to be parallel.

CHAIRMAN GRAYBILL: And it does not amount to a substantive change because we did adopt the single-member district proposal, is that the idea?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: All right, now, the Chair understands that Mr. Schiltz is moving to reconsider Section 14 in the unicameral, and he has stated his reason. Is there discussion? All in favor of reconsidering Section 14, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz, before you make your amendment, this morning you, I think, left out Section 14. Does it have to be changed to "members" from

"senators"? I don't care. Make your motion.

DELEGATE SCHILTZ: Well, I'll make a motion before we finish with this report that will take care of that, too.

CHAIRMAN GRAYBILL: All right.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend Section 14 of the unicameral section, as it appears on page 15, line 4, by adding, after the word "senators", "and each district shall elect one member".

CHAIRMAN GRAYBILL: Very well, Mr. Schiltz wishes to amend, on page 15 at line 4, after the word "senators", by adding: "and each district shall elect one member", so that the single-member district principle is involved in this section; and he tells us that it is also presently involved in the bicameral section. Is there any discussion? (No response) All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 14 of the unicameral Judicial--or Legislative Article as reported in Report Number 3 of Style and Drafting Committee, that it recommend the same do be adopted as amended.

CHAIRMAN GRAYBILL: You've all heard the motion that Section 14, which we've just reconsidered and amended, be adopted as amended. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted as amended.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Have we moved Section 2 in the bicameral?

CHAIRMAN GRAYBILL: We have.

DELEGATE SCHILTZ: Since it's been changed?

CHAIRMAN GRAYBILL: As amended, we moved it, yes.

DELEGATE SCHILTZ: All right, we're ready to go to Section 3 then.

CHAIRMAN GRAYBILL: All right, if you'll all turn to page 7 after the sheet in the back of the book, on the bicameral proposal, we're now ready to proceed with Section 3.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3 of the bicameral section of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: These are style changes only, and they pertain only to the unicameral-or the bicameral section.

CHAIRMAN GRAYBILL: Is there any discussion or debate of Section 3? (No response) So many as shall be in favor of adopting Section 3, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted, Section 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4 of the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This was approved in the same form this morning in the uni-

camera1 section, so all the style changes that were noted then are in here now.

CHAIRMAN GRAYBILL: Is there any discussion? (No response) All in favor of Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz. Section 5.

DELEGATE SCHILTZ: Before I get into that, I want to ask Mr. Harlow if he's working on Section 13. Are you? (No response) Okay. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 1, of the Style and Drafting Report Number 3, bicameral section, it recommended the same do pass.

Mr. Chairman, again, this was approved in the unicameral portion this morning and it's the same.

CHAIRMAN GRAYBILL: Is there any discussion of Section 5, sub. 1? (No response) All in favor of Section 5, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, bicameral portion of Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, again, this was adopted this morning in the same form.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor of 5, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, this was okayed this morning in the same form in the unicameral section.

CHAIRMAN GRAYBILL: Any discussion? (No response) So many as shall be in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response) It's adopted. Section 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 7 of the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted,

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There were no changes in this this morning, and it's the same as the one we adopted for the unicameral section.

CHAIRMAN GRAYBILL: All those in favor of Section 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8 of the bicameral section of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is, again, the same as the one we adopted this morning for the unicameral section.

CHAIRMAN GRAYBILL: Is there discussion? (No response) All in favor of Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed'?
(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Section 9.

DELEGATE SCHILTZ: Mr. Chairman. I move that the language in Section 9 be deleted, and in lieu thereof the struck-out language be reinstated.

CHAIRMAN GRAYBILL: And in this case we can leave in the word "senator" or "representative", can we?

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: "-and a member of either house". we can leave that in?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: The body will recognize that this is the one this morning where we agreed to put the stricken language back in because it was out of the old-the present Constitution. Is there further discussion?
Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, is a substitute motion in order?

CHAIRMAN GRAYBILL: You certainly can move anything you want on Section 9.

DELEGATE FURLONG: I move as a substitute motion in Section 9, in both the bicameral and unicameral, actually, the—

CHAIRMAN GRAYBILL: Well, you can only do it at this time in Section 9, bicameral.

DELEGATE FURLONG: All right. Thank you. The substitute would read: "Section 9. Disqualification. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time."
Mr. Chairman.

CHAIRMAN GRAYBILL: Well, let me get the sense of your amendment. You're going to use the first four stricken lines down through-is that right?

DELEGATE FURLONG: Well, actually, it's the majority report as it was originally reported to the Convention.

CHAIRMAN GRAYBILL: Read it again slowly, what you want to-your amendment to say.

DELEGATE FURLONG: It would read: "Section 9. Disqualification. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time.

CHAIRMAN GRAYBILL: "No legislator shall"-so we put "legislator" up there in place of "senator or representative"-"during the term for which he shall have been elected, be appointed to any civil office under the State of Montana"-is that what you said?

DELEGATE FURLONG: Yes.

CHAIRMAN GRAYBILL: And then, what's the rest of it?

DELEGATE FURLONG: "-created during such time."

CHAIRMAN GRAYBILL: All right, this-Mr. Furlong has proposed an amendment which limits the disqualification to offices created during the time that the senator or representative-or the legislator serves in his term. I take it that's the sense of your amendment. Isn't that right? In other words, the only disqualification it would have would be a senator or a legislator would be disqualified from serving on any-in any civil office which was created during the time—during the term for which he was elected.

DELEGATE FURLONG: Yes.

CHAIRMAN GRAYBILL: But he could serve on other-he could be appointed to other offices, because he is eliminating the rest of the disqualifications.
Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I actually rise with hesitation to do this, but I realize the dangers inherent that you may have power play and fraud and you may sell votes to get appointed, and that does concern me. But I think the few times that that would conceivably happen under the normal course of circumstances is outweighed by the fact that we are in-we are essentially denying a person the right to improve his position. I can envision where a

person elected for 4 years may, for healthful reasons, decide that he best not serve in the Legislature and could still be barred during that period of time from any appointment. It just seems to me that a man or woman inherently has the right to improve their position, and I just think that the number of times that fraud might be involved would be far outweighed by the number of times that we would, under the present situation, actually disbar or disqualify an otherwise qualified person who may very well be the person for the job or the position to which he would be appointed. I would certainly like to hear some discussion. I would appreciate your support. Thank you.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I rise to a point of order. There's nothing particularly about Mr. Furlong's motion that I disagree with. I don't have any strong feelings one way or another; but this is a Style and Drafting report and it appears to me that that proposed motion goes to substance. And, as such, I ask for a ruling of the Chair as to whether or not Mr. Furlong's motion is in order.

CHAIRMAN GRAYBILL: You're quite correct. I think it does go to substance and I think, Mr. Furlong, I have to move you--rule you out of order now that I understand it, unless you want to make a motion to suspend the rules.

DELEGATE FURLONG: Mr. Chairman and Mr. Holland, thank you for pointing out the error. I just thought I could slip something in. (Laughter) No, actually, I would move to suspend the rules so we could consider the proposition that I've just put before the body.

CHAIRMAN GRAYBILL: All right, you've got to write that down so I've got it up here. Just make a motion to suspend the rules for the purpose of amending Section 9 on disqualification; and I guess we'll vote on that in a minute, soon as you get it written up. Is there discussion or debate of the motion to suspend the rules only? Not the issue, just the motion to suspend therules.
Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to resist the motion to suspend the rules for this proposed amendment to our article.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I likewise resist the motion to suspend the rules. The motion is made to consider precisely what we have already considered in the Committee of the Whole. The majority of this Convention voted to reject the majority committee's report and to adopt the present Article V, Section 7, of our Constitution, which appears in this Style and Drafting, so for that reason I would oppose the motion to suspend the rules.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I move that we have a roll call vote on this. Every time we turn around we're going to suspend therules. I think we ought to roll call them each time.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. Very well, Mr. Furlong's motion is to suspend the rules for the purpose of voting on the substantive issue of what disqualifications should be allowed under Section 9 in the bicameral article. Is there further discussion?
Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise for a point of information. Would you refresh my recollection as to what we did with Section 9 in the unicameral alternative this morning?

CHAIRMAN GRAYBILL: Yes. On Section 9 this morning we struck out the Style and Drafting Committee's language, and we reinserted the stricken out language, which is, in effect, the present Constitution. We also changed, in the other article, "senator or representative" to "legislator"; but that's a minor matter.

DELEGATE HELIKER: We did that on the basis that the Style and Drafting's report was a substantive change?

CHAIRMAN GRAYBILL: No, we did it on the basis that-well, yes, there was some argument that it was a substantive change, but in other words we did not adopt their style change. We went back to the original adopted language of the Convention.

DELEGATE HELIKER: It didn't require a suspension of the rules in any case, did it?

CHAIRMAN GRAYBILL: No, it was not a substantive change from our original language. The argument was made that the language of the committee was a substantive change, but it was

not a substantive change from our original action in the Convention.

Mrs. Erdmann.

DELEGATE ERDMANN: On the same argument that we used this morning, I certainly believe we should go back to the original form that we did for the other section, because it seems to me that—

CHAIRMAN GRAYBILL: Well, all right, but that isn't the issue.

DELEGATE ERDMANN: Right now it's for reconsideration.

CHAIRMAN GRAYBILL: That's right.

DELEGATE ERDMANN: Excuse me.

CHAIRMAN GRAYBILL: In other words, if we reconsider it, then he's going to change it-going to move to change the nature of it. All right, a roll call vote has been called for. So many as are in favor of reconsidering Section 9 of the bicameral article, on page 9 of Style and Drafting's bicameral report, vote Aye; so many as are opposed, vote No. Well, Mr. Clerk, cancel the ballot, and we'll start over. I pushed the wrong button. All right, now, I'll open the vote again. So many as are in favor, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0. ..... Nay
Arbanas ..... Aye
Amess ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Excused
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Absent
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Nay
Cross ..... Aye
Dahood ..... Aye
Davis ..... Absent
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Absent
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Absent
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Absent
Noble ..... Nay

Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 23 voting Aye, 65 voting No.

CHAIRMAN GRAYBILL: 65 having voted No, the motion fails to carry and Section 9 is not reopened for substance; and your motion is then out of order, Mr. Furlong. And Mr. Schiltz, your motion-did you make your motion to use the original language?

DELEGATE SCHILTZ: (Inaudible)

CHAIRMAN GRAYBILL: All right, Section-Mr. Schiltz's motion is to use the original language on Section 9, so that it comports with what we did this morning. Mrs. Erdmann, that's your point. Is there discussion about that? If not, all in favor of Mr. Schiltz's motion to use the original language, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will you move the section again?

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 9 of the bicameral portion of the Style and Drafting Report Number 3, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 9 is adopted. Section 10.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10 of the bicameral section of the-portion of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, we okayed this this morning in the same form except that there is bicameral language in Section 10 in this portion.

CHAIRMAN GRAYBILL: Is there discussion of Section IO?

DELEGATE SCHILTZ: That's sub. 1, I guess.

CHAIRMAN GRAYBILL: Ten, sub. 1. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 2, of the bicameral portion of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is identical with the material we adopted this morning for unicameral.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Sub. 2is adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is the same as we adopted this morning for the unicameral.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? (No response) All in favor of sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 4, the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this again is identical with the material we adopted for unicameral this morning.

CHAIRMAN GRAYBILL: All in favor of sub. 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 5, bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, we did not have this this morning. It's a special provision for bicameral Legislature, but there are no changes other than style changes, and they're very minor.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 5? (No response) All in favor of sub. 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 11.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, sub. 1, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted. Mr. Chairman, these are style changes— No, these are the same provisions that were okayed this morning in the unicameral section.

CHAIRMAN GRAYBILL: Any discussion of Section 11, sub. 1? (No response) All in favor of Section 11, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 2, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is identical to thematerial adopted this morning in the unicameral.

CHAIRMAN GRAYBILL: Any discussion of 11, sub. 2? (No response) All in favor of 11, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Eleven-now, let's make-let's be careful--oh, I see, you did strike the 3 there.

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: All right, now, 11, sub. 3, on line 23, page 10.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 3, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is the same material as we adopted in the unicameral.

CHAIRMAN GRAYBILL: Is there any discussion of 11, sub. 3?

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman], by eliminating the two words-"by a vote of a majority of all members present"-by eliminating "and voting", I'm wondering if we really haven't changed something, because the people present would be answering to the roll call; but you also have members who abstain from voting on a particular item; and I just wondered if that had been considered by the committee.

CHAIRMAN GRAYBILL: What line are you on, Mrs. Erdmann?

DELEGATE SCHILTZ: What line are you on?

DELEGATE ERDMANN: Section 1 of "Bills"-Section 11, end of line 12.

DELEGATE SCHILTZ: Well, I'll have to look at my comments.

CHAIRMAN GRAYBILL: **On** Section 11, sub. 1, are you talking about? I don't see the words "and voting".

DELEGATE ERDMANN: My point is that we have referred before to a majority of the members present "and voting", and this is my point. We have deleted the two words "and voting", and I do believe this makes some difference in the actual count.

CHAIRMAN GRAYBILL: Mrs. Erdmann's point is to line 12, which we've gone over but we can open up. She thinks the words "and voting" should be put after the word "present", on line 12, sub. 1, in 11.

Mr. Schiltz.

DELEGATE SCHILTZ: Well, we didn't have that material to work with and we supplied what did get supplied there, I think. I don't care whether you want to put it in or not. It would be substantive, I think.

CHAIRMAN GRAYBILL: Well, I think Mrs. Erdmann's point is it isn't any more substantive than saying "present". I mean, either one of them is substantive in the sense that we—or either one of them aren't, in the sense that we didn't say specifically.

DELEGATE SCHILTZ: Well, yes; it's whatever anybody wants to do. I don't really care. Well, you see down on page-on lines 19 and 20, we incorporated that material and put it up above.

CHAIRMAN GRAYBILL: I see.

DELEGATE SCHILTZ: And there all it says is "members present", and that's what we used in order that we wouldn't change anything substantive.

CHAIRMAN GRAYBILL: It's-Mrs. Erdmann, they've picked up lines 19 and 20, which they struck out. Do you care to make an amendment, or do you--willing to let it go, Mrs. Erdmann?

DELEGATE ERDMANN: No, I'm willing to let it go.

CHAIRMAN GRAYBILL: All right, you're willing to let it go. Is there other discussion of sub. 3?

DELEGATE AASHEIM: Are we on sub.—Mr. Chairman?

CHAIRMAN GRAYBILL: We're on sub. 3, but if you want to go back to sub. 1 or 2—

DELEGATE AASHEIM: In our original presentation from the committee, our wording went something like this-"on any vote which changes the status or substance of the bill, resolution or rule, a vote of each member must be recorded." I believe it's going to be confusing if we don't say "the people voting", because if you don't say that, you have a head count every time you vote. And I think that was the intent of the committee to have the-because you're going to have times when people won't vote, and if you have the members present, you're going to have to make a head count. Now, Mr. Chairman, may we reconsider subsection 1 on Section 11?

CHAIRMAN GRAYBILL: The motion by Mr. Aasheim is to reconsider subsection 1 of Section 11 to take care of this word "and voting". All those in favor of his motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the Chair is in doubt. All those in favor of reconsidering, say Aye-vote Aye on the machine; and those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 45 having voted Aye, 25 No, we will reconsider subsection 1 of Section 11.

Now, Mr. Aasheim, do you want to make a motion?

DELEGATE AASHEIM: Mr. Chairman. I move to amend Section 11, subsection 1, being line 12, by adding, after the word "present", striking the period and adding "and voting period".

CHAIRMAN GRAYBILL: Mr. Aasheim has proposed to add the word "and voting", so that the line says: "members present and voting." The Chair is going to rule that that is still a Style and Drafting change. Now if anybody cares to challenge the Chair, fine; but it seems to me that it's not clear what members present--and it certainly doesn't seem that we intended that they have to recount the House every time and determine a majority, so I'm going to rule that's a style change. If anyone wants to challenge the Chair, they may. Otherwise, debate is now open on Mr. Aasheim's amendment to add the words "and voting", at the end of line 12, to that sentence. Is there any discussion? (No response) All in favor of Mr. Aasheim's motion to add the words "and voting" to the-so it says "a majority of all members present and voting", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Schiltz, will you remove Section 1, sub. 1.

DELEGATE SCHILTZ: Will I-well, I was going to-well, all right.

CHAIRMAN GRAYBILL: Unless you're not through with it.

DELEGATE SCHILTZ: Well, I'm through with that. I wanted somebody to change the unicameral, too. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 1, bicameral portion of the Style and Drafting Report Number 3, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz, the-all in favor of Mr. Schiltz's motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Sub. 1 is adopted as amended.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move—

CHAIRMAN GRAYBILL: Just a moment. Make a note; and we have passed Section 11, sub. 1, in the unicameral, but we have not adopted the article and moved it out of Committee of the Whole, so we can move to reconsider that at the end.

DELEGATE SCHILTZ: Well, I can make a note, but it would be just as easy to do it now, I think.

CHAIRMAN GRAYBILL: Very well, while everyone is on it, let's turn to page—

DELEGATE SCHILTZ: Thirteen.

CHAIRMAN GRAYBILL: -page 13, line 6. Do you want to make a motion that we reconsider Section 11, sub. 1, of the unicameral article, Mr. Schiltz?

DELEGATE SCHILTZ: I make that motion for the apparent reasons.

CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Very well, it's open. Now, do you want to make your motion to—

DELEGATE SCHILTZ: Yes. I move that Section 11 of the unicameral portion of Style and Drafting Report Number 3 be amended, on line 6 on page 13, by adding, after the word "present", the words "and voting".

CHAIRMAN GRAYBILL: Is there discussion? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Now, do you want to move Section 11-l of the unicameral?

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having under consideration Section 11, sub. 1, the unicameral portion, Style and Drafting Report Number 3, that it recommend the same do pass—be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 11, sub. 1 of the unicameral is adopted, and we're back on Section 11, sub. 3 of the bicameral, on page lo-second page 10.

DELEGATE SCHILTZ: Were we sub. 3? Have I moved that?

CHAIRMAN GRAYBILL: Well, move it again.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 11, sub. 3, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This only has—well, it doesn't even have any changes. It's just identical to the report we adopted this morning in the bicameral-or the section-subsection,

CHAIRMAN GRAYBILL: Any discussion of sub. 3? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 11, sub. 4, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is the same, again, as the one we adopted this morning for the unicameral.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 4-11, sub. 4? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Sub. 4, wasn't it?

CHAIRMAN GRAYBILL: Now we go to sub. 5.

DELEGATE SCHILTZ: Yes. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, sub. 5, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, there are no changes of any significance. It's identical with the provision we adopted this morning for unicameral.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor of sub. 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Sub. 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 6, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, there is no change.

CHAIRMAN GRAYBILL: No change from the unicameral.

DELEGATE SCHILTZ: From the unicameral.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 12.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is identical, again, with the unicameral section that compares with it.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor of Section 12, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Section 13.

DELEGATE SCHILTZ: We should have an amendment by Mr. Harlow, I think.

CHAIRMAN GRAYBILL: Mr. Harlow, is there any reason it can't be identical to the one this morning?

DELEGATE HARLOW: Section l-or Section 13, sub. 1, will be identical. Section 2 will be a little-Section 2 and 3 will be just a little bit different because the wording in these two sections are a little different than what the wording was in the section this morning.

CHAIRMAN GRAYBILL: Have you got them written out there?

DELEGATE HARLOW: I have them. There's only just two little cross-outs.

CHAIRMAN GRAYBILL: All right, do you want to show us in Section 13 what you want to change?

DELEGATE HARLOW: Yes. Section 13, subsection 1, will read identical to theamendment we put in this morning. "The Governor, executive officers, heads of state departments, judicial officers and other such officers as may be provided by law are subject to impeachment and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law." Subsection 2 will be the same as what is in the wording here on page 11, subsection 2, except we will cross out the words, in line 24, "removable by", and the rest of that section will remain the same. And in subsection 3 the wording as is on your page 11 there will be identical, except on page 28, we will cross out the words "for impeachment". Otherwise, Section 2— subsection 2 and 3 will remain the same as there, and subsection 1 will be identical to the words that I just read of what we put in this morning.

CHAIRMAN GRAYBILL: Very well, the Chair will allow an amendment by Mr. Harlow, the sense of which is to change subsection 1 of Section 13 so that it reads identical with the one we adopted for unicameral in the morning. Then, in subsection 2, it will strike the words-I've stricken them so well I can't read them.

DELEGATE HARLOW: "Removal by".

CHAIRMAN GRAYBILL: --"removal by", from line 14. And in subsection 3, it will strike the words—

DELEGATE HARLOW: "For impeachment".

CHAIRMAN GRAYBILL: -"for impeachment", from line 28. The sense of this amendment will then make this section read identical with the one on unicameral. Is that correct, or-make it read substantially identical with the unicameral.

DELEGATE HARLOW: Except that we do not-the words "may select the Senate as tribunal" will be different than what is in the uni-

cameral, because there the-"it shall be provided" -"and shall provide for a tribunal."

CHAIRMAN GRAYBILL: Right. So that it provides for a different method of picking the court, but it makes a parallel change in the impeachment section to that in unicameral.

DELEGATE HARLOW: That's correct.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I had understood-or I had hoped, at least, thatthesechanges would provide that impeachment charges were brought in one body and tried in another; and I don't have his amendment before me, but I wonder if that's contemplated? You see, in unicameral we had to say that they'd provide for a tribunal, and traditionally, the-and I think the way it's always been done in the past in this impeachment article, the House heard the charges and the Senate tried them.

CHAIRMAN GRAYBILL: I think the difficulty is that when we adopted that, Mr. Schiltz, in the Convention Committee of the Whole a few days ago, we made it general. We didn't specify. Isn't that correct? Subsection 2 says now, as amended: "The Legislature shall provide for the manner, procedure, and causes for impeachment and may select the Senate as a tribunal", but it doesn't say "must". That's the way we adopted it the other day.

DELEGATE SCHILTZ: All right. Mr. Chairman-Oh, I guess you want to get that amendment.

CHAIRMAN GRAYBILL: I'm not sure that Mr. Harlow did this, but members of the committee, you have before you the amendment of Mr. Harlow that when this committee does arise and report, after having had under consideration Section 13, sub. 1, 2 and 3, that the same-that we recommend that the same be adopted as amended. Is there discussion? (No response) All in favor of that motion, then, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted as amended.

All right, Mr. Schiltz, subsection 4 of 13.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section-subsection 4 of Section 13, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, this is the same as the unicameral section that corresponds with it, which was adopted this morning.

CHAIRMAN GRAYBILL: Any discussion of subsection 4? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And 4—subsection 4 is adopted. Now, Section 14, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, subsection 1, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is a special section that pertains only to bicameral. We made one change that might be considered substantive. If you look at line 8, we inserted the word "adjoining" as a new word; however, we picked it up from below where they talked about the districts consisting of compact and contiguous territory, and we thought that was warranted.

CHAIRMAN GRAYBILL: Is there discussion of Section 14? (No response) If not, all in favor of Section 14, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And it's adopted. Section 14, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 2, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, this is the same as the unicameral corresponding section adopted this morning.

CHAIRMAN GRAYBILL: All those in favor of 14, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 3, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, again, this is the same as the subsection we adopted this morning for unicameral.

CHAIRMAN GRAYBILL: Is there discussion'? (No response) All in favor of 14, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. How about Section 15, Mr. Schiltz?

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, bicameral section, Style and Drafting Report Number 3, it recommend the same be adopted. This is the same as 16, which we okayed this morning in the unicameral section.

CHAIRMAN GRAYBILL: So many as shall be in favor of Section 15, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 16, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend Section 16 as it's written on page 13, line 19, by striking the word "senators" and inserting in lieu thereof the word "legislators".

CHAIRMAN GRAYBILL: Mr. Schiltz has moved, in line 19, to strike the word "senators" and put in the word "legislators". All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE SCHILTZ: That only proves we're fallible up there, Mr. Chairman. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 16, bicameral portion, Style and Drafting Proposal Number 3, as amended, it recommend the same do pass.

CHAIRMAN GRAYBILL: Is there discussion of Section 16 of the bicameral Legislative Article? (No response) If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that the committee send back for-or rerefer—

CHAIRMAN GRAYBILL: Mr. Schiltz, we're not through. We've got to go to 15-3 on page 16. You will remember this morning, ladies and gentlemen, that when we got to Section 15 on— referendum on unicameral Legislature, we passed--or we adopted subsection 1 and subsection 2, and when we got to subsection 3 the difficulty became that we needed to start talking about the nature of the Legislative Article. It seems to me that we have to now pick up, Mr. Schiltz, the amendments we've just made.

DELEGATE SCHILTZ: Yes, Mr. Chairman, and I'm not sure I'm prepared to do that at this moment. But what I would say is that at the end of this consideration, I will move that the report be rereferred to Style and Drafting for incorporation of all amendments and for the additional purpose of seeing if there are any anomalies that we have created by these amendments that I haven't been able to pick up as we've gone along.

CHAIRMAN GRAYBILL: Well, the Chair-let's do this. On page 17-if you'll all turn

to page 17, the first major amendment is on line 2. You have to put in the "50" and "40" in place of the "53" and "50". And on line 3, you have to put in "a hundred" and "80" in place of the "hundred and six" and "a hundred". So, in other words, we have to amend Section 2 as to size, so that it's 50-40, 100-80. That's the first amendment. Then we might just mark these up. Everything else is okay till you get to number 11, sub. 1-I don't think you ever get there, do you? Yes, you do. No, you don't. Then we have to amend the one on impeachment. The bottom of page 17, Section 13, has to be amended as per the Harlow amendment.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Couldn't we move those as amended? Wouldn't that take care of it?

CHAIRMAN GRAYBILL: Yes, I think we can. I'm just trying to point out which ones we have amended. Then the rest of them, except for—

DELEGATE SCHILTZ: Well, Mr. Chairman, I would be inclined to say—

CHAIRMAN GRAYBILL: That's all.

DELEGATE SCHILTZ: -that we adopt Section-that I move for the adoption of Section 15, sub. 3, as amended, and that will incorporate all the amendments. Then we'll pick them up upstairs.

CHAIRMAN GRAYBILL: Very well, do you want to make that motion?

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3, unicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted as amended. If I may speak to it?

CHAIRMAN GRAYBILL: You may. Let me see if I can't summarize. The changes are Section 2, that we just marked on page 17, and Section 13, at the bottom of page 17; and then, Mr. Schiltz, you have some language in Section 14 thatdoesn't appear anywhere else that maybe we should consider.

DELEGATE SCHILTZ: Are you talking about Section 14, which is—

CHAIRMAN GRAYBILL: Section 14, sub. 4 and 5.

DELEGATE SCHILTZ: Are you talking about the one on page 18?

CHAIRMAN GRAYBILL: Page 19, yes.

DELEGATE SCHILTZ: Well, that's subsection (f).

CHAIRMAN GRAYBILL: In other words, the two lines-if you'll look at line 11 on page 19, ladies and gentlemen, subsections 4 and 5 deal with this matter, Mr. Schiltz, of the election, and I think the only-we haven't looked at them anywhere yet.

DELEGATE SCHILTZ: Subsection 4?

CHAIRMAN GRAYBILL: Have we looked at 14-4? I don't think so. "The members of the unicameral body shall remain in effect-in office and their authority to act shall continue until the members of a bicameral body are elected and qualified." We haven't considered that yet.

DELEGATE SCHILTZ: Oh, that's right. That's new.

CHAIRMAN GRAYBILL: And the next one there, the same-"the present Senate chambers shall exist"-

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Why don't you—

DELEGATE SCHILTZ: I'll move the adoption of those two and 6, also.

CHAIRMAN GRAYBILL: I think that 14-1, 2 and 3 have been adopted; but 4, 5 and 6 have not been adopted.

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: So, if you would move—

DELEGATE SCHILTZ: Mr. Chairman—

CHAIRMAN GRAYBILL: -4, 5 and 6; yes.

DELEGATE SCHILTZ: -1 move that when this committee does arise and report, after having had under consideration the bicameral portion, Style and Drafting Report Number 3, Sec-

tion 15, subsection (f), sub-subsections 4, 5 and 6, that it recommend the same be adopted. No, I don't want to say that, I guess.

CHAIRMAN GRAYBILL: Yes, you will.

DELEGATE SCHILTZ: Well, that-all right-as amended.

CHAIRMAN GRAYBILL: Is there any discussion on 4, 5 or 6 by you or anyone else? (No response) I'm on page 19, lines 11 to 21, ladies and gentlemen. These three subsections deal only with the unicameral elections, assuming there is one. Is there any changes required there? Is everybody happy with the Style and Drafting language?

DELEGATE SCHILTZ: It's-we didn't make any significant changes. It's all transition, and I'm glad you picked it up because I forgot it. But other than what we show there, there are no changes. They're all style changes.

CHAIRMAN GRAYBILL: So many as shall be in favor of subs. 4, 5 and 6 of this Section 14, which is (f) of 15, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: They are adopted. Now, Mr. Schiltz, if you'll move that other one as amended, we're in business.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15 of the bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Is there discussion? (No response) If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz, make your motion.

DELEGATE SCHILTZ: Mr. Chairman. I ask that-or I move that Style and Drafting Report Number 3 be rereferred to the committee for incorporation of amendments and for further examination and with privilege to ask that it be referred back by the committee to Order of Business Number 5.

CHAIRMAN GRAYBILL: Very well, ladies and gentlemen, the purpose of Mr. Schiltz's amendment--or motion is to take the Legislative Article, with the changes we've made this morning, back to Style and Drafting and they'll go through them and see that they're all straight. And if we missed any, they'll comeback; butifnot, they will move Section-we will move their report straight on to Order of Business Number 5. Now, that's the sense of the motion.

Mr. Aasheim.

DELEGATE AASHEIM: A point of information, Mr. Chairman. I don't have my sheet here. What is Order of Business Number 5?

CHAIRMAN GRAYBILL: Well, that's Final Adoption, where it would go after this Style and Drafting. We ordinarily would move it straight to Order of Business Number 5 now, but we're proposing to send it back to the committee for them to check out all of this work we've done today and see that they haven't missed anything, and then move it to Order of Business Number 5 unless there are changes that they think we've overlooked.

DELEGATE AASHEIM: Well, Mr. Chairman, for a point of further information, I think this body wants to know how this body stands on the two propositions, and I'd like to have the information of the Chair when we may make this motion. After tomorrow, it would be too late.

CHAIRMAN GRAYBILL: I take it you're talking about testing the body on unicameral-bicameral. Is that what you're talking about?

DELEGATE AASHEIM: Yes, I want to make a motion now, and 1 think that will test the body; and I wonder if this is the time for the motion to determine the position of these propositions on the ballot.

CHAIRMAN GRAYBILL: Well, it—

DELEGATE AASHEIM: I'd be willing to wait till tomorrow morning, 9 o'clock, if you would want-if you would give us an opportunity at that time, before we go on Order of Business Number 5.

CHAIRMAN GRAYBILL: All right, now, the Chair will explain what the Chair feels the situation is. This body moved the first day that it

discussed Legislature to send the Legislative Article to Style and Drafting as a dual article. And we did send it as a dual article, and we've treated it as a dual article all the way through, and we've now approved it again as a dual article. I realize some people want to test it. I don't know what your purpose in testing it is except just for your own curiosity. It seems to me thatitreally does nothing to aid us in our problem here. Therefore, the Chair is not very anxious to test it, because if it gets tested and somebody loses badly, we may be back redoing the entire Legislative Article, at which point I'm not very happy to start. Now, the Chair has explained before that there is an opportunity, when Style and Drafting brings its budget-its ballot recommendation in here, to make a substitute motion or to amend in some way its ballot proposal so that you can test it at that time. If its-if your test-if your purpose in testing this, ladies and gentlemen, is purely for curiosity, I suggest you do it on a yellow pad; but once you get this body committed more than half to one of these two things, then you have the problem of what you're doing when you go to the public after doing that. What this body has really said so far is that it's going to put this issue to the public as a dual issue. I really do not see what purpose it then does to force everybody here to take a stand and count noses, except if it's a matter of going out and campaigning on the basis of that. Now, the time to do that, it seems to the Chair, is at the time that we have the ballot; and if you really want to knock unicameral out or knock bicameral out, that's the time. If your purpose is not to knock it out but merely to get a head count, I suggest you pass a yellow pad up and down the rows and find out, but I think your-1 think it's very dangerous to start fooling around and getting a vote one way or the other unless you're willing to run the risk of one of these things not going on the ballot.

DELEGATE AASHEIM: Mr. Chairman, may I state my position?

CHAIRMAN GRAYBILL: Surely.

DELEGATE AASHEIM: You know, having-my name begins with a double A, and I'm in a very favorable position usually; and right at this time, as committee Chairman, I am concerned about which of these proposals is going to be on the ballot first; and that's the reason I'm trying to find out—

CHAIRMAN GRAYBILL: Well, all right, now, if that's your purpose, then you are surely premature, because that-which goes on first or the form in which they go on is Style and Drafting's and not Legislative's or this Convention's prerogative to make the recommendation. Then this body can decide and put anything on first or last or in red or green or blue ink if they want to, but not until Style and Drafting has considered that matter and made its ballot recommendation.

DELEGATE AASHEIM: Well, at this time I shall pass further action. If somebody else wants to make a move, it's entirely up to anyone else.

CHAIRMAN GRAYBILL: Now, we have a motion before us, and the motion is whether or not to send this back to Style and Drafting for checking and then, without coming back to the body, put it to Order of Business Number 5 unless there are errors in it.

Do you want to discuss the motion, Mr. Drum?

DELEGATE DRUM: Mr. Chairman, a point of information more than—

CHAIRMAN GRAYBILL: Very well.

DELEGATE DRUM: -of discussion of a motion. The question may come up at some point in the minds of the electorate: did we ever take a vote as to whether this body favored a unicameral or a bicameral? And it seems to me that at some point we should make an indication, which has been averted to date. And I think at the early time that we made the decision that we were going to accept both on the ballot, some of us felt we would hear a little more debate pro or con on bicameral or on unicameral, and I wonder if it may strengthen the posture of the Convention in the eyes of those who we represent if they felt an opinion were coming out of this Convention. And I ask you for an opinion of this, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, as I say, I'm not saying that one isn't coming out; and I can think of some ways to do it, but I think that you ought to think carefully about it before you do do it. If it's the sense of this body that it's going on the ballot, there's a good question as to whether or not it needs to come out, or whether it is helpful to have it come out. But assuming you decided it was helpful, I can think of a lot of ways to get it out. If you want one off the top of my head, why don't you make a resolution and put it in and we'll-that it be the sense of this body that they prefer the unicameral thing, and we'll take a vote some morning

before we get into Committee of the Whole and we'll find out how everybody feels. But I don't see that it does a whole lot of-what I'm terribly afraid of is that about the time we find out that 65 percent of you are in favor of one or the other, we're going to redo the Legislative Article; and I'm not anxious to do that. I think we've made our position clear and I think we've made it clear with the public that this thing is going on the ballot. And I think it would be very dangerous for us to try and get if off of there now; and, quite frankly, I don't trust 65 percent of you, if you happen to be on one side. (Laughter) Mr. Drum, does that answer your question?

DELEGATE DRUM: Would you yield to a question? What if it were 89 or 99 percent, or 81 percent? Shouldn't we know as a Convention what the feeling of this Convention was? I think we've had a system of legislation here for a good many years, and we're going to look foolish if we agree to change it without knowing what the consensus of this body is.

CHAIRMAN GRAYBILL: Mr. Drum, I'm not going to stop this body from finding out if it wants to, but I may make them do it while they're in order and not while they're out of order. And we're on a different motion, and I don't think that this is the place nor the time to do that.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I move that when Style and Drafting has done their work, that this Legislative Article be referred back to General Orders.

CHAIRMAN GRAYBILL: Now, let's see, we have Schiltz's-I'd better catch up here— Schiltz's motion to refer to Style and Drafting with a right to go to Number 5 unless there's trouble. Is that the sense of your motion, Mr. Schiltz?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Unless you find something wrong, you'd send it straight on to Number 5. Now, I have Mr.-that's your motion. Now, Mr. Aasheim has a substitute motion to refer to Style and Drafting and back to General Orders. Is that what you're saying?

DELEGATE AASHEIM: Right.

CHAIRMAN GRAYBILL: This is the Legislative Article.

Very well, Mrs. Bates, do you want to discuss Mr. Aasheim's motion?

DELEGATE BATES: Mr. Chairman, when we discussed this in committee and came out with the recommendation to discuss and to write two very good articles on the bicameral and unicameral, the committee all held to this until these articles were written. After that, we had decided we could all go our own way if it came to a vote on the unicameral or the bicameral. I wonder if it would be out of order to ask that this committee, unless they can get a two-thirds vote for one or the other, that they do refer it to the people. Would that be possible; would I be out of order? Or perhaps this could be done when it comes back on General Orders.

CHAIRMAN GRAYBILL: Well, it would seem to me that any motion as to the form of the ballot is out of order at this time since we have no recommendation from Style and Drafting. I think when Style and Drafting comes in, if you want to make a motion that unless two-thirds agree, why, it has to go to the people, why, I suppose it would be perfectly normal then. Right now we're trying to decide whether to rerefer this to Style and Drafting and if so, where it goes when it comes back. Is there more discussion on Mr. Aasheim's motion to refer it to Style and Drafting and back to General Orders?

Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting has no problem. I think whatever we come back with will be very brief and we can dispense with it in a matter of five minutes.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I'd like a little clarification, perhaps from the Chair. If we vote for the motion of Delegate Aasheim, is it-is this just setting the stage for a future debate, then, as to what the position on the ballot would be for these alternative positions?

CHAIRMAN GRAYBILL: Not in the view of the Chair, it isn't. It would seem to me we would have to—

DELEGATE FELT: Well, I would like to know just what the effect of a vote on this motion would be. then.

CHAIRMAN GRAYBILL: All right. Well, Mr. Felt, you understand that I am perfectly willing to entertain any motion anyone makes; but I don't think Mr. Aasheim's motion-if it prevails and gets this back on General Orders, then the Chair will insist that we do what we do on General Orders-namely, we consider the style changes that they've made-and we will not discuss substance at that time unless you suspend the orders-suspend the rules.

DELEGATE FELT: Is this a motion to get us back on General Orders right now?

CHAIRMAN GRAYBILL: **No,** it's to refer it to the committee—

DELEGATE FELT: Yes.

CHAIRMAN GRAYBILL: -and then come back on General Orders again-say, tomorrow. At that time the Chair would take the position that we have to discuss whether Style and Drafting's changes are correct, and if they are, I would think we could not discuss matters of substance tomorrow unless we suspend the rules.

DELEGATE FELT: I had thought that we would--after Style and Drafting acted, that it automatically came back here to us and we didn't need a motion just to discuss form changes again, that they-it would automatically be discussed by us.

CHAIRMAN GRAYBILL: Well, Mr. Felt, ordinarily at this point we have now adopted Style and Drafting's proposals here, and at this point we ordinarily refer it to General-to Order of Business Number 5. But since there were so many changes, Mr. Schiltz asked that it go back to his committee so he can check it out and see that it's all right; and he asked that it go back to his committee, and, if it's all right, go automatically to Order of Business Number 5. Now, Mr. Aasheim has amended that-that it go back to him and come back to this body on Order of Business Number 10.

DELEGATE FELT: I see.

CHAIRMAN GRAYBILL: And you asked whether or not that would give us an opportunity to open up the question you-that these people are talking about. And I think it would not, because that would be a substantive matter if we discussed whether to put one or the other on the ballot, and it does not seem that we are ready to discuss the form of the ballot yet. No one seems to want to wait. When we get to Style and Drafting—

DELEGATE FELT: Mr. Chairman, I don't want a misunderstanding. I think-I felt that you had ruled correctly, that this was not the proper time, and I wanted to make sure this motion wouldn't have the effect of overturning the position the Chair had taken, because it seems to me, too, that this is-neither today nor tomorrow would be the proper time to take up that question.

CHAIRMAN GRAYBILL: It's the Chair's view that if you want to take this up at the proper time, the proper time is when you debate ballot, which you're going to do before you get out of here, and the Style and Drafting Committee will draw a ballot and that ballot will be up for debate. And if you don't like it, you can move to strike what they did on Legislative and put it on the ballot one way or the other, or neither way, whatever you want. And at that time, we can debate it as much as we want. Of course, that's going to be near the end. Other than that, it seems to me the only other way I can see of getting the consensus of this body—well, there are two ways. One is to suspend the rules and go right back in and start over again on Legislature, and the second way-that is, on 1, 2 and 3 of the Legislative Article. The second way would be, if you want to send to the Rules Committee a rule and get the sense of the body, rather than affect the substance of it, I suppose that the Rules Committee would discuss with you a possibility of having a resolution which might give us the sense of the body without affecting the substance of the article. Now, there's three ways to do it-the ballot time, by resolution, by suspending the rules and starting over again on the Legislature. But I don't think you're going to do it, Mr. Aasheim, by bringing it back to General Orders tomorrow. Is there further—

Mrs. Bates.

DELEGATE BATES: Yes. I would like to ask a question here that I think might clear this up to some extent. When we vote on the ballot, to decide, then will we be deciding which will be on the top-the unicameral or the bicameral? And is it possible that maybe counties will have to stagger these and that some counties will let it take the same shape as candidates and that it may not be the top in one area and—

CHAIRMAN GRAYBILL: You people are all presuming what Style and Drafting is going to

do, and you cannot guess, because they haven't decided.

DELEGATE BATES: Well, Mr. Chairman, when it's candidates-and this, of course, may be different-but when it's candidates, they must be staggered. The first one—

CHAIRMAN GRAYBILL: That's right, Mrs. Bates.

DELEGATE BATES: But it isn't with this ballot, then?

CHAIRMAN GRAYBILL: Now, Mrs. Bates, I didn't say it wasn't. I said Style and Drafting is going to decide that matterandyou'regoing to get a chance to vote on it. Now, this issue is whether or not we should adopt Mr. Aasheim's substitute motion to refer this to Style and Drafting and back to General Orders tomorrow.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'm just asking for another day's time to think this matter over. That's the reason I'm asking to come back on General Orders.

CHAIRMAN GRAYBILL: Very well, is there other discussion? (No response) All in favor of Mr. Aasheim's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. All right, now we're back on Mr. Schiltz's motion that the matter be referred to Style and Drafting and then, if it's all right, go directly to Order of Business Number 5; if not—there are errors-to be brought back to General Orders. So many as are in favor of Mr. Schiltz's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Style and Drafting's Report Number 3 is rereferred to Style and Drafting under the terms of that motion.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee consider the Style and Drafting Report Number 4 on the Executive at 9:00 a.m., March 8, 1972, and consider all other business on General Orders at the next sitting of the committee. And the sense of my motion is to rearrange the calendar and get on with the Bill of Rights work.

CHAIRMAN GRAYBILL: Mr. Murray's motion is to pass the Executive Article Style and Drafting Report until 9 o'clock tomorrow morning and start now with Bill of Rights. Is there any discussion? (No response) All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it.

Mr. Murray.

DELEGATE MURRAY: I move the committee recess until 3:30 this day.

CHAIRMAN GRAYBILL: A move of recess until 3:30. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 3:20 p.m.--reconvened at 3:40 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in session. The Chair would like to announce that the Chair anticipates an evening session tonight. I think I may have said that before, and I anticipate that. We'll probably wind up about 5 or 5:15, and we'll probably come back in at 7:30 or 8:O0.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN GRAYBILL: On the Legislative Style and Drafting Article? The motion's been made to rise and finally report on the Legislative Style and Drafting Article. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. Will the clerk please read the title of the report.

CLERK HANSON: "March 7, 1972. Mr. President: We, your Committee of the Whole, having had under consideration business under General Orders, Report Number 3 of the Committee on Style and Drafting, recommend as follows: that the committee rise and finally report on the Legislative Style and Drafting Report. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention adopt the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion has been made that the Committee of the Whole report be adopted. Is there discussion? (No response) All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Murray, we'll go on to Order of Business Number 11. Are there announcements?

DELEGATE MURRAY: Mr. President. Rules Committee meeting, 8 o'clock in the Rules room. I might add, Mr. President, that's 8 o'clock in the morning in the Rules Committee room.

PRESIDENT GRAYBILL: Rules, at 8 o'clock in the morning. Are there other announcements? (No response) Very well, we'll be back on Order of Business Number 1.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we advance to Order of Business Number 10, General Orders.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders, has beenmoved. Is there-we've been moved to-advanced to that. Is there any objection? (No response) All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: We're back on Order of Business Number 10.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion has been made to resolve this Convention into Committee of the Whole to consider the Bill of Rights proposal. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Convention resolved into Committee of the Whole)

CHAIRMAN GRAYBILL: Ladies and gentlemen of the committee, we will start the Bill of Rights by having Mr. Dahood make a short statement, and then we'll consider it as usual, article by article-section by section.

Mr. Dahood, are you prepared to make your statement now, sir?

DELEGATE DAHOOD: I am prepared, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, fellow delegates. Bill of Rights Committee Proposal Number 8 is before you. We hope and trust that you have examined all 34 sections, that any questions that you might have with respect to any of those sections will be presented to us. We will welcome meaningful dialogue and debate. During the course of preparing the proposal that is before you, the committee received 46 proposals, heard 138 witnesses, and held more than 20 committee hearings. As a result, there are 34 sections in a proposed Bill of Rights for the State of Montana that promises to provide the citizens of the State of Montana with the finest, most expansive declaration of individual rights enacted by any state of the United States. The proposal before you will

show that there were seven votes cast in opposition. With respect to the 34 sections, only 5 sections received negative votes; but nevertheless, when all was resolved, all 11 committee members unanimously pledged their support to all 34 sections without dissent. The committee members will move the various sections. I have placed before the Chair the sections and, opposite those sections, the committee members who will move those respective sections; and I would like to request the Chair to recognize the committee members in the order in which their names appear on the list that is before the Chair, commencing with Preamble and committee member George James. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Clerk, will you read Bill of Rights Preamble Article. Read the title and the Preamble.

CLERK HANSON: "Montana Constitutional Convention, 1971-72, Bill of Rights Committee Proposal Number 8. Date reported, February 23, 1972; Wade Dahood, Chairman; Chet Blaylock, Vice-Chairman. Be it proposed by the Bill of Rights Committee that there be a new article on the Bill of Rights to read as follows: Preamble. We, the people of Montana, grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity, and to secure the blessings of liberty for this and future generations, do ordain and establish this Constitution." Mr. Chairman, the Preamble.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates, guests, members of the staff. I think that we all took an active part in the presentation of this Preamble. It's not the usual form sort of thing that many states have. It expresses a reverence for our land, a pride in it; and it's an expression of a philosophy that we of the committee believe in. Mr. Chairman, I move that when this committee does rise and report, after having under consideration the Preamble, it recommends that the same be adopted.

CHAIRMAN GRAYBILL: Very well, you have before you a motion that the Preamble be adopted. Is there discussion?

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I think the authors of this Preamble are to be congratulated. I think it represents the use of the English language at its very best; yet it is different, so far as I can determine, from any other state constitution. I think it deserves-they deserve great credit for the beauty of the terminology, and I support it and hope for its adoption.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) Very well, members of the committee, you have before you for your consideration, upon the motion of Mr. James that when this committee does arise and report, after having had under consideration the Preamble to the Bill of Rights Article-the Preamble to the Constitution, that this committee recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, please read Section 1 of the Bill of Rights Article.

CLERK HANSON: "Declaration of rights. Section 1, Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole." Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 1 of Proposal Number 8, it recommend the same be adopted.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], this reads exactly as the Section 1 of the 1889 Constitution. We had considered shortening the language; in fact, we had tried it out and the committee discussed this for some period of time. And we had some expression from some people who had come before our committee that they liked the language as it was, they liked the sound of the language. And so the-by a final-the vote of the committee, we decided to leave it just as it is

in the 1889 Constitution, to be put into our new Constitution.

CHAIRMAN GRAYBILL: Is there any discussion of Section 1? (No response) Members of the committee, you have before you for your consideration, upon the motion of Mr. Blaylock that when this committee does arise and report, after having had under consideration Section 1 of the Bill of Rights Article, that this committee recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 2.

CLERK HANSON: "Section 2, self-government. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their Constitution and form of government whenever they may deem it necessary." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Proposal Number 8, it recommend that the same be adopted.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], we have changed this one so far as the language. We straightened it out some to make it read a little more simply. For instance, in the old Constitution, right after "have the" on the-line 21, we struck the words "so and", because wefeltit means the same as exclusive; so we struck those two words. And then we took out the sentence-we say there they "may alter or abolish their Constitution and form a government whenever they may deem it necessary", and we have stricken from this language "provided such change be not repugnant to the Constitution of the United States". We felt that language was not necessary in this, that this is simply a declaration of our rights as citizens of this state.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2? (No response) Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Blaylock that when this committee does arise and report, after having had under consideration Section 2 of the Bill of Rights Article, that we recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 2 is adopted. Section 3-please read, Mr. Clerk.

CLERK HANSON: Mr. Chairman. "Section 3, Inalienable rights. All persons are born free and havecertaininalienablerights, whichinclude the right of pursuing life's basic necessities; of enjoying and defending their lives and liberties; of acquiring, possessing, and protecting property; and of seeking their safety, health, and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 3 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: In the inalienable rights section, we have basically kept it the same as the inalienable rights section in our present Constitution, except for some minor changes. If you'll turn to page 15 in our committee proposal, you can read along with me. The committee proposes, with two dissenting votes, that the former Article III, Section 3, be retained with few substantive changes. The committee struck language which was felt to be redundant. In addition, it is recommended that the right to pursue life's basic necessities be incorporated as a statement of principle. The intent of the committee on this point is not to create a substantive right for all the necessities of life to be provided by the public treasury. The committee heard considerable testimony from low-income people and social service people alike that the current state public assistance programs

are not meeting the genuine needs of low-income people who, because of circumstances beyond their control, are unable to obtain basic necessities. Accordingly, it is hoped that the Legislature will have occasion to review these programs and upgrade them where necessary to provide full necessities to those in-who-in genuine need and to go-and to curb whatever abuses may exist in the programs. What was attempted in this part of the portion-the proposed section was a statement of principle that all persons have inalienable right to pursue the basic necessities of life, that there can be no right to life apart from the possibility of existence. Otherinalienablerightswereindicated, with only minor changes in style for purposes of clarity. In addition, an additional right, the right of seeking health, was incorporated in recognition of the fact that the right to life without health is a very sorry proposition. The final sentence of this section is-having been derived from Delegate Proposal Number 116. Testimony was received both favoring and opposing the inclusion of this statement of corresponding responsibilities in the declaration of rights. Some expressed the feeling that many were accepting rights without recognizing that they create obligations. Others were adamant that a declaration of rights should contain just that-the right of persons against governmental abuses and the rights of minorities against the power of unchecked majorities. The committee felt that the inclusion of such a statement does not infringe or impair the rights granted in the declaration of rights, but only accords a tone of responsibility in their exercise, In regard to basic necessities, we had about 17 people come before our committee. Many of them were of low income status economically, and we had social service workers. And it was our opinion that such a statement in the Bill of Rights as we have stated here does not suggest that the state pay out of the public treasury for those basic necessities, such as housing, medical care and nourishment, but that this is more or less a constitutional sermon so that maybe the Legislature, from time to time, can improve and update--update and upgrade our public assistance programs from time to time as they see fit. Ofcourse, therighttohealth was incorporated in the last sentence and the second to the last sentence of our inalienable rights section. I didn't look it up in the dictionary; but an inalienable right is something, in my estimation, that comes to each one of us just because we're here and we're human beings. Even if there was no such thing as a government, all of us would have these rights. I will stop at this point, and if there's any comments we can hear them, and I move that we adopt this section. Thank you.

CHAIRMAN GRAYBILL: Is there further debate?

Mr. Kelleher. No?

Mr. Burkhardt.

DELEGATE BURKHARDT: I believe that you have, Mr. Chairman, a copy of an amendment for this section that does not delete anything. It's the addition of eight words, and I wonder if the clerk could read it.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Burkhardt's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, Bill of Rights Committee proposal, on page 4, line 26, by inserting, after the word 'include', the following words-quote: 'the right to a clean and healthful environment'-comma, end quote. Signed: Burkhardt."

DELEGATE BURKHARDT: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment. Mr. Burkhardt wishes to make an amendment on line 26, after the word "include", right at the end of the line-"which include"--and he wants to add the words "the right to a clean and healthful environment" before the phrase "the right to pursuing life's basic necessities", et cetera.

Mr. Burkhardt, your amendment is allowed. Go ahead and discuss it.

DELEGATE BURKHARDT: Mr. Chairman. This is a statement that we, as a body, have already adopted in another section of our Constitution, in our Natural Resources section. We have the statement: "It shall be the duty of the State of Montana and each person to maintain and improve a clean and healthful environment." And it seems to me that it's simply striking the other side of the balance to put it here in our Bill of Rights, to recognize that this is, for the time in which we're living and for the foreseeable future, one of the inalienable rights that we hope to assure for our posterity. I don't care to belabor the issue. It seems to me it's self-evident. I would reserve the right to close if there is debate on the issue.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would ask Delegate Burkhardt if he will yield to a question.

DELEGATE BURKHARDT: I will.

DELEGATE DAHOOD: Delegate Burkhardt, I would like to inquire, on behalf of our committee, if by this proposed amendment it is your intention to provide the citizens of the State of Montana with the independent right to initiate a lawsuit when his own health and his own property is not affected within the contemplation of the present law?

DELEGATE BURKHARDT: Mr. Dahood, you have much experience as a trial lawyer and I may be somewhat at a disadvantage in handling the question, but I will try to answer it as I understand it. I read the Preamble to this section on the Bill of Rights and believed it. I think it's a beautiful statement, and it seems to me that what I am proposing here is in concert with what's proposed in that Preamble; that what we are talking about here is the goal toward which we try to grow as a society. I do not see it as an overt attempt to slip in with the opportunity to sue.

DELEGATE DAHOOD: Very fine. Thank you very much. Mr. Chairman, I certainly want to comment that, with respect to the basic concept itself, it is a concept with which no one can disagree, in my judgment, but I certainly would like to hear some of the other delegates with respect to the proposed amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion?

Mrs. Eck.

DELEGATE ECK: Our Bill of Rights Committee discussed environmental issues at some length and decided that we really shouldn't include a section on environmental bill of rights, which I think that a great many of us had expected to do, since this would be covered by the Natural Resources Committee. We did submit a statement to the Natural Resources Committee which included, I think, a slightly stronger statement than what we've included here. We also concurred pretty much with the statement that they came up with, especially their statement of what the duty of the state is in regards to maintaining a clean environment, a healthful environment, a high-quality environment-whatever you want to call it. It's my understanding that they quite purposely did not include a statement of each individual's rights, believing that this kind of a statement really fitted better into the Bill of Rights. We could include a separate statement on it, but I think that with what has gone before, it's not really necessary; and I certainly do concur in Mr. Burkhardt's amendment here as being quite appropriate to what the intention of it was in our committee and I think also the intention of the Natural Resources Committee. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, would Mr. McNeil yield to a question on this subject?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE MCNEIL: I yield.

DELEGATE TOOLE: Mr. McNeil, do you think this tends to reinforce your article in Natural Resources, or how do you regard putting this in with-in the light of what your own committee did?

DELEGATE MCNEIL: I can't speak for the committee; I can only speak as an individual. I introduced a delegate proposal which would have given each individual the right to a quality environment. I have already spoken on this "clean and healthful". I'm afraid that that isn't as strong as what we really want, but if that's the will of the Convention and as strong as they think they can pass, why, I would agree with it.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Well, Mr. Chairman, I would want the minutes and the record of this Convention to show that this amendment does not have as one of its purposes an attempt to circumvent the votes that were taken with respect to the Natural Resources motions that attempted to put in theories with respect to the environment, that were rejected by a majority of these constitutional delegates. And I trust that this is not the intention of the mover of the amendment; and if that be correct, then I would have no objection to the amendment.

CHAIRMAN GRAYBILL: Mr. Burkhardt, do you care to respond?

DELEGATE BURKHARDT: Am I closing or just responding, or what?

CHAIRMAN GRAYBILL: Well, you're probably closing, since I don't see anyone else up.

DELEGATE BURKHARDT: The way I figure it, Bob Kelleher owes all of us an hour and a half, and one of these days I'm going to take it, but not now. (Laughter) Just that I think running through all of us is a concern to provide for future years, and I think industry joins us in this concern. They are, after all, human beings whose children must grow up in our country; and already our major industries are on record in the direction and beyond what we're stating here. So I would say that I did not vote the other day for the public trust concept because I felt it had been an emotional, a distorted issue and that it would be misunderstood; and it seems to me that we are providing here, though, a clear intent. It does present the right of every person. And we've already talked about the duties of persons, and it's nice to balance it with this right. I close with that.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Burkhardt's motion to add the terms-the words "the right to a clean and healthful environment" on line 26, page 4, of the Bill of Rights Article, Section 3. So many—

DELEGATE KAMHOOT: Roll call.

CHAIRMAN GRAYBILL: Mr. Kamhoot wants a roll call vote. So many as are in favor of Mr. Burkhardt's amendment, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas Aye
Arness .Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher Excused
Berg.. ....Aye
Berthelson ..... .Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ....Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain ..... Absent
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ....Aye
Cross.. ....Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Aye
Foster ....Aye
Furlong ..... Absent
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ....Aye
Harlow ....Absent
Harper ..... Aye
Harrington ..... Aye
Heliker ....Aye
Holland. .... .Absent
Jacobsen ....Aye
James ....Absent
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ....Aye
McNeil ....Aye

Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer.. ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 79 delegates voting Aye, 7 voting No.

CHAIRMAN GRAYBILL: 79 delegates having voted Aye and 7 No, the amendment to add that phrase to Section 3 passes-or is adopted. Is there any other discussion of Section 3?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move to substitute the word "conceived" for the word "born" on line 25.

Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute, Mr. Kelleher. Since you didn't send that up, I have to write it out here.

DELEGATE KELLEHER: C-O-N-C-E-I-V-E-D.

CHAIRMAN GRAYBILL: B-O-R-N? Yes, Mr. Kelleher. Mr. Kelleher makes a motion to amend line 25 by striking the word "born" and putting in the word "conceived".

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: My purpose in this is, what's theuseofhavingrightsoftheliving if I don't have the right to be born? A most defenseless human being in the world is the human fetus, which is dependent upon its own mother for protection. And lastly, I would leave to the courts the meaning of when a-quote-"person"-close quote-as used in line 25, is conceived.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I stand in opposition to the amendment. What Delegate Kelleher is attempting to do at this time is, by constitutional command, prohibit abortion in the State of Montana. That issue was brought before the committee. We decided that we should not deal with it within the Bill of Rights. It is a legislative matter insofar as we are concerned. The world of law has for centuries conducted a debate as to when a person becomes a person, at what particular state, at what particular time; and we submit that this particular question shouldnot bedecided by this delegation. It has no part at this time within the Bill of Rights of the Constitution of the State of Montana, and we oppose it for that reason.

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher, you may close.

DELEGATE KELLEHER: May I have five seconds, please, for a roll call vote?

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote. The question now arises on Mr. Kelleher's amendment to substitute the word "conceived" for the word "vote"-or for the word "born". So that the first sentence would read: "All persons are conceived free and have certain inalienable rights." So many as shall be in favor of Mr. Kelleher's motion, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson,0 ..... Nay
Arbanas ..... .Absent
Arness ..... .Absent
Aronow ..... Nay
Artz ....Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates.. ....Absent
Belcher ..... Excused
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain .....Absent
Campbell ..... Nay
Cate ....Aye
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross .....Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll .....Aye
Drum ..... .Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ....Absent
Harper ..... Nay
Harrington ....Aye
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ....Absent
Johnson ..... Nay
Joyce .....Aye
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield. .....Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ....Absent
McNeil ....Aye
Melvin ..... Nay
Monroe.. ....Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder .....Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... .Absent
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Nay
Skari ..... .Absent
Sparks ..... Nay
Speer ..... Nay
Studer .....Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... .Absent
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 15 delegates voting Aye, 71 voting No.

CHAIRMAN GRAYBILL: 71 having voted No and 15 delegates having voted Aye, Mr.

Kelleher's motion fails. Is there other discussion of Section 3? (No response) Very well, members of the committee, you have before you, on the recommendation of Mr. Monroe that when this committee does arise and report, after having had under consideration Section 3, that it recommend the same be adopted as amended. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 3 is adopted. Mr. Clerk, will you please read Section 4.

CLERK HANSON: "Section 4, Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the law nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation or institution; or by the state, its agencies or subdivisions." Mr. Chairman, subsection-Section 4.

CHAIRMAN GRAYBILL: Very well, Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 4 of the Bill of Rights, it recommends it be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: The committee unanimously adopted this section with the intent of providing a constitutional impetus for the eradication of public and private discrimination based on race, color, sex, culture, social origin or condition, or political or religious ideas. The provision, quite similar to that of the Puerto Rico declaration of rights, is aimed at prohibiting private as well as public discrimination in civil and political rights. Considerable testimony was heard concerning the need to include sex in any equal protection or freedom from discrimination provisions. The committee felt that such inclusion was eminently proper and saw no reason for the state to wait for the adoption of the federal equal rights amendment or any amendment which would not explicitly provide as much protection as this provision. The word "culture" was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians. Social origin or condition was included to cover discriminations based on status of income and standard of living. Some fears were expressed that the wording "political or religious ideas" would permit persons who supported the right to work in principle to avoid union membership. Such is not the intent of the committee. The wording was incorporated to prohibit public and private concerns discriminating against persons because of their political or religious beliefs. The wording of this section was derived almost verbatim from the Delegate Proposal Number 61. The committee felt that this proposal incorporated all features of all the delegate proposals, numbers 10, 32, 50 and 51, on the subjects of equal protection of the laws and the freedom from discrimination. The committee is well aware that any broad proposal on these subjects will require considerable statutory embellishment. It is hoped that the Legislature will enact statutes to promote effective eradication of the discriminations prohibited in this section. The considerable support for and the lack of opposition to this provision indicates its import and advisability. Mr. Chairman, I move that when this cornmittee does rise and report, after having this under consideration, Section 4, of the Bill of Rights, it recommends its adoption. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Very well, is there discussion of Section 4?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move to delete from Section 4, on line 8, the words at the end of the line "by any person", and on line 9 the words "firm, corporation or institution; or".

CHAIRMAN GRAYBILL: Line 8 and 9. Very well, Mr. Habedank moves to delete, on lines 8 and 9 of Section 4, the phrase "by any person, firm, corporation or institution—semicolon—or"-so that the last part of the sentence would read: "nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas by the state, its agencies or subdivisions"-the upshot of this being to take out discrimination by persons, firms and corporations from the protections of the Bill of Rights.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], it is my opinion that the words "by any person, firm or corporation ox-institution" can be opening a lot of challenges to the rights of other people to privacy, to things which we have considered dear. I happen to be a very-partly Scandinavian. I belong to an organization called Sons of Norway. They exclude people who aren't Norwegians, although you can go a long ways in finding out who-if you have some Norwegian blood in you. But the point I'm trying to make is that I feel that this amendment, as it is written, can be construed to prohibit organizations which are incorporated from limiting their membership. It can cause me, as an individual, to have to associate with people that I choose not to associate with. And I think the federal Constitution, as it is being interpreted by the United States Supreme Court at the present time, carries this matter far enough, and I am therefore moving the deletion of these words.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I can appreciate Delegate Habedank's concern, because I think that concerned us all, but that is not the intent of Section 4 with respect to individual dignity. We must keep in mind that we have a federal Civil Rights Act of 1964 which encompasses some of the fears that have been expressed by the gentleman delegate who has moved the amendment to strike that particular phraseology. There is no intent within this particular section to do anything other than to remove the apparent type of discrimination that all of us object to with respect to employment, to rental practices, to actual associationship in matters that are public or matters that tend to be somewhat quasi-public. With respect to a religious organization, with respect perhaps to the Sons of Norway or the Sons of Scandinavia, of course, there would necessarily be qualifications that an individual would have to meet before he would be admitted to membership. That type of private organization is certainly not within the intendment of the committeein submitting Section 4. The intent of Section 4 is simply to provide that every individual in the State of Montana, as a citizen of this state, may pursue his inalienable rights without having any shadows cast upon his dignity through unwarranted discrimination. And we submit that the concern of this date and of this Convention with respect to discrimination should not be reflected simply by having limitations upon the state and its agencies, but also by having those same limitations upon the private agencies that live within the society of the State of Montana. I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I also oppose the amendment. I believe-I don't think that we can logically say that we'll just leave it to the state; and so many of these that are going to be--would be stricken if this amendment were to pass are the very firms that are hiring many people and, where we are concerned as Montana citizens, where discrimination may take place, so I do oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Would Mr. Dahood yield, please?

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield to a question?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE LOENDORF: Mr. Dahood, correct me if I'm wrong, but it's my understanding that under the federal equal protection of the laws clause, which is the same as you have here, that everything you have after the word "equal protection of the law" would really be subsumed in that first provision and everything you've said after that would really be unnecessary, although I have no objection to it. It would go without saying, is that correct?

DELEGATE DAHOOD: No person shall be denied the equal protection of the law.

DELEGATE LOENDORF: Right. If you put a period there—

DELEGATE DAHOOD: That's correct.

DELEGATE LOENDORF: -the meaning would be the same.

DELEGATE DAHOOD: But I think when we're dealing with this type of right, Delegate Loendorf, and we are dealing with something that is this basic, to an orderly and progressive society perhaps sometimes the sermon that can be given by constitution, as well as the right, becomes

necessary. And I think it takes that type of language to convey the intent of this committee. Thank you for the question.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Yes, will Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE HOLLAND: Mr. Dahood, I'm a little bit like Mr. Habedank. I understand that we don't want discrimination in employment, things like that, but could-can the intent of this be that, for instance, that all of the ladies would—should be-can join the Elks or the Masons or the strictly men organizations? I mean, you say any corporation--or any person or any corporation-I presume many would apply to that-or any institution. There are several lady organizations, several male organizations, all of which are thereby—

DELEGATE DAHOOD: Mr. Holland, in answer to your question, no, that is not our intent. There are certain requirements, certain qualifications, certain matters, I suppose, that might fall within the term of legitimate discrimination that are not covered by this particular section. Anything that falls within the realm of common sense-1 think you've indicated situations where common sense would have to indicate that the qualifications that would be set for membership are proper, and in those circumstances I would not expect Section 4 to have any effect. Thank you, Mr. Holland.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Would Mr. Dahood yield to another question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HARPER: I think we see what Mr. Habedank is getting at. This says that "No person shall be denied the equal protection of the law". That's clear. Then it continues, "nor be discriminated against"—and this is the phrase—"in the exercise of his civil or political rights". Now is that-does that, in your interpretation, rule out things like girls joining the YMCA and so forth? Aren't civil rights things that the Legislature has to deal with?

DELEGATE DAHOOD: Basically, Delegate Harper, that is correct. And I do not think at this time in America we have an all-inclusive definition of civil rights. Thank you for the question.

CHAIRMAN GRAYBILL: Is there further discussion of Section 4?

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'd also like to point out the fact that this does include protection from religious discrimination, which previously had been in the religious-in the section on freedom of religion; and it is covered here and it is not covered again there.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Dahood yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROBINSON: Mr. Dahood, I'm concerned about this proposal because of some information that was received that it might be a nonself-executing provision as you have it written. And that's why, in my proposal, I followed what Illinois did and provided that this would be a self-executing provision. There is some concern that as you have it written now it would take complete legislative implementation to make it effective. Is that true?

DELEGATE DAHOOD: Delegate Robinson, I think the question is sound, but I must answer by saying in my judgment that is not true for these reasons. I think the Illinois section, if memory serves correct, added a paragraph to indicate that the Legislature would set guidelines for the enforcement of that particular right. In any event, constitutions are based on the premise that they are presumed to be self-executing, particularly within the Bill of Rights. If the language appears to be prohibitory and mandatory, as this particular section is intended to be, then in that event, the courts in interpreting the particular section are bound by that particular presumption and they must assume, in that situation, that it is self-executing. There was a case in Montana some 60 years ago that involved a provision of our Bill of Rights that had to do with an individual right, and there the Supreme Court said that was self-

executing and a citizen could enforce it without any type of legislative implementation. Does that answer your question?

DELEGATE ROBINSON: **Yes.** Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Dahood yield to one more question?

DELEGATE DAHOOD: Mr. Dahood will yield to one more question.

DELEGATE ROBINSON: If Section 3, then, is self-executing, where we are stating a right against discrimination, why would not Section 4—rather, why would not Section 3, where we included the right to a clean and healthful environment? What I-you know, it seems to me that your concern in adding this thing in subsection 3 is perhaps it is not a self-executing thing, and then in 4, perhaps it is. I-it seems that for-in the Bill of Rights, what would apply to Section 4 would apply to Section 3.

DELEGATE DAHOOD: I understand your question. It's very good, but I am being consistent. What we have added to Section 3 is, in my judgment, self-executing with respect to an individual who personally is affected with respect to his health and to his property. And I think the statement is a good one; I think it's an amendment that certainly ought to be in our Bill of Rights, I just wanted to be sure that we were not trying, through some type of subrosa method, bring in the public trust doctrine which was discredited here on the Convention floor. Thank you, Delegate Robinson.

CHAIRMAN GRAYBILL: Is there further discussion of Section 4? (No response) Very well. Members of the committee, you have before you for your consideration, upon the recommendation of Mrs. Mansfield that when this committee does arise and report, after having had under consideration Section 4-just a minute, Mr. Habedank.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, we have an amendment to be disposed of first.

CHAIRMAN GRAYBILL: Oh, so we do. Excuse me. Mr. Habedank has an amendment to strike the words "by any person, firm, corporation, or institution; or", on lines 8 and 9. Is there further discussion?

DELEGATE FOSTER: Roll call.

CHAIRMAN GRAYBILL: **You** want a roll call vote? Very well, so many as are in favor of the motion to strike those words, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, 0	Nay
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Excused
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Aye
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Absent
Eck	Nay
Erdmann	Nay

Eskildsen ..... Excused
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin., ... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Absent
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Absent
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 13 delegates voting Aye, 76 voting No.

CHAIRMAN GRAYBILL: 76 delegates having voted No and only 13 Aye, Mr. Habedank's amendment fails. We're discussing Section 4. Are there other amendments or other discussion? (No response) Very well. Members of the committee, you have before you on the recommendation of Mrs. Mansfield that when this committee shall arise and report, after having had under consideration Section 4 of the Bill of Rights proposal, that this committee recommend that it be adopted. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 5.

CLERK HANSON: "Section 5, Freedom of religion. The State of Montana shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Mr. Chairman, Section 5.

CHAIRMAN GRAYBILL: Mr. Monroe

DELEGATE MONROE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, Proposal 8, it recommend that the same be adopted.

Mr. Chairman, the committee decided unanimously to substitute the concise wording of the freedom of religion clause of the federal First Amendment. Much testimony was heard on this provision, most of it on the subject of public aid to church-related schools. The committee felt that this issue should be dealt with, as it was, by the Education and Public Lands Committee and that the provision incorporated into the declaration of rights should restrict itself to guaranteeing the

free exercise of religion and prohibiting the establishment of any religion. The committee felt especially strong about removing the anti-Mormon biases reflected in the previous wording of Article III, Section 4. This can be found on page 2 of our present Constitution, Section 4. Beyond that, the committee noted that since the religions which historically were persecuted were those alleged to violate or threaten the good order, peace and safety of the state, such passages were dubious of merit in a statement of religious liberty. Accordingly, both, of considerable length, were deleted. What remains is the tradition-ridden guarantee of religous liberty adopted by the first U.S. Congress in 1789 as part of the federal Bill of Rights. Realizing the legal, social, political problems of the church-state area are exceedingly complex, it is not urged that this provision will simplify their resolution. However, it will certainly not make the understanding of these compelling and sometimes paradoxical concerns more difficult. We've, as it says, substituted the First Amendment clause in regard to religious liberty. It makes it a lot more—simpler to understand, in my estimation. The present Section 4 of Article III in OUT Constitution is some 129 words, and in my estimation it is not very clear. Our committee-and members of the committee, as well as many people in the Convention, have received letters from people saying that they feel that is clear. I do not agree with that, and some members of my committee do not agree with that either. Some people have even went as far as saying they would not be able to vote for the Constitution-the adoption of the Constitution-if we altered Section 4 in the present Constitution in its present form. We feel that the federal amendment in regard to religous freedom is quite adequate and has served us for almost 200 years. I move for its adoption, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Is there discussion of this article-this section?

Mr. Rollins.

DELEGATE ROLLINS: I feel I ought to rise and give thanks for the Mormons, in spite of the fact that you are only 82 years behind times, because the Mormons abandoned it officially in 1890 themselves.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you for your consideration, upon the motion of Mr. Monroe that when this committee does arise and report, after having had under consideration Section 5 of the Bill of Rights, that it recommend the same do pass-m the same be adopted. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 5 is adopted. Section 6, Mr. Clerk.

CLERK HANSON: "Section 6, Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or to protest governmental action." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 6 of the Bill of Rights, it recommends its adoption.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: The committee unanimously recommended that the former Article III, Section 26, be adopted with only one stylistic change. The basic right to assemble for redress of grievances by petition or remonstrance remains unchanged. The wording was tightened up a little and the phrase "protest governmental action" was substituted for the phrasing "apply to those invested with the powers of government for redress of grievances by remonstrance"—unquote. In doing so, the committee notes the paramount position of the right and the invaluable function its responsible exercise plays in a democratic society. Mr. Chairman, I move the adoption of this Section.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I move to amend Section 6, page 5, line 16, by adding, after the word "or", the word—quote—"peaceably"-close quote.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil's amendment has the effect of adding, at line 16 on page 5, after the word "or", the word "peaceably".

So that the sentence reads: "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action." Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I think the amendment speaks for itself. I agree with the committee's stylistic change and updating of the language. However, I would not want the absence of the word "peaceably" to imply any endorsement of violent protest of governmental action.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, the word "peaceably" is already on line 15, and I believe it already applies to all of those other words.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I must disagree with that, because of the conjunctive "or". The "peaceably" modifies "assemble"; it does not affect petition for redress. And I don't want there to be any doubt that the protesting of governmental action must likewise be peaceable.

CHAIRMAN GRAYBILL: Is there any further discussion? All in favor of Mr. McNeil's amendment to add the word "peaceably" on line 16 before-"peaceably protest governmental action", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Very well, that amendment is adopted. Is there-are there further amendments to Section 6?

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE AASHEIM: Just a matter of context here. Why didn't you say "to assemble peaceably", rather than to put the "peaceably" first? Why didn't you say "to assemble peaceably"?

DELEGATE DAHOOD: Or "to assemble peaceably"?

DELEGATE AASHEIM: On page-on line 15, yes.

DELEGATE DAHOOD: Delegate Aasheim, are you referring to the old wording of the Constitution?

DELEGATE AASHEIM: Well, it just seems like you are putting the adverb in-out of place. You assemble peaceably, don't you?

DELEGATE DAHOOD: Well, I frankly had not considered it. The Vice-Chairman, who, of course, is our expert in grammar and English composition, indicated to us that that was proper wording. We accepted it; and I fail to see where the meaning can in any way be misconstrued. I thought the amendment proposed by Delegate McNeil would do away with any ambiguity, but if somebody thinks the syntax can be corrected and improved, I have no objection to it.

DELEGATE AASHEIM: A question, then. Do you want "peaceably petition", "peaceably redress"? Is that what your intent was?

DELEGATE DAHOOD: Was that our intent?

DELEGATE AASHEIM: Yes.

DELEGATE DAHOOD: Yes, our intent was that in exercising any of the rights that are set forth in Section 6, that it must be done in a lawful, orderly and peaceable manner. And none of us experienced the ambiguity that's been expressed on the floor.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. President [Chairman], I think if you'll-if Mr. Aasheim will look at the present wording in Section 26 of our present Constitution, he will see that it says "the people shall have the right peaceably to assemble", and I don't think we plan on making any changes in the language.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, the word "peaceably", with that ending, is an adverb; and adverbs modify all forms of verbs; and infinitives are forms of verbs. So I don't see what the question is in this particular sentence. (Laughter)

CHAIRMAN GRAYBILL: I think the journal will at least be clear. Is there any other question? Very well, members of the committee, you have before you for your consideration, upon the motion of-Mrs. Mansfield, is this yours?

DELEGATE MANSFIELD: (Inaudible)

CHAIRMAN GRAYBILL: Okay-of Mrs. Mansfield-that when this committee does arise and report, after having had under consideration Section 6, as amended, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 7.

CLERK HANSON: "Section 7, Freedom of speech, expression and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts." Mr. Chairman, Section 7.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 7 in the Bill of Rights, it recommends the same to be adopted.

Mr. President [Chairman], Section 7. The committee unanimously proposes the adoption of the former Article III-this is on page 19—Section 10, with one substantive change. The freedom of speech is extended, in line with federal decisions under the First Amendment, to cover the freedom of expression. Hopefully this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken word, and the ways in which one expresses his unique personality, in an effort to rebalance the general backseat status of states in the safeguarding of civil liberties. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law. Other minor changes made in the section were merely stylistic in nature, except for the inclusion of the word "slander", to provide protection against abuses of the free speech and press guarantees in cases of spoken as well as written word. The committee retained the established principle that in libel trials, the jury shall decide the law and the facts, on the theory that the removal of this clause might be construed as the denial of a right. The principle is continued, with the note that in the cases of libel it is necessary for the prosecutor to convince both the court and the jury before the free speech and press protections are overridden-Harrington versus Butte Miners Company, et al, in the Montana 550, 554, 139, page 451. I move this adoption, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion?
Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, would Mrs. Mansfield yield to a question?

CHAIRMAN GRAYBILL: Mrs. Mansfield?

DELEGATE MANSFIELD: If I can answer it.

DELEGATE LOENDORF: Mrs. Mansfield, I've read your comment-and I haven't read Harrington versus the Miners Union, though—but I'm concerned about juries determining questions of lawinlibelcases. Would you justelaborate a bit on the reasons the committee retained that?

DELEGATE MANSFIELD: **You** know, I think I'll turn that over to Mr. Dahood. He's our legal—

DELEGATE DAHOOD: Thank you, Mrs. Mansfield.

CHAIRMAN GRAYBILL: Mr. Dahood, you may have the floor.

DELEGATE DAHOOD: Very fine, Mr. Chairman. Thank you very much. In response to the question, let me say that the committee initially applied the same reasoning that is in the

mind of Delegate Loendorf at this time, but research indicates to us-does indicate to us there is a historical reason for the language as contained in that section to the effect that the jury shall determine both the law and the fact. I think to the trained legal mind, at first blush it seems inconceivable that a jury shall have the right to determine the law. But apparently in the common law days of England, the right of free speech was considered so precious that the right, with respect to whether or not the law should apply in a particular case, was left to the jury rather than to the court so that there would be no abuse of that sacred right. That particularright apparently was carried over from England to the United States, and the framers of the current Montana Constitution and Bill of Rights carried that protection into the section on free speech. There was a Montana case, which Mrs. Mansfield cited in her rationale supporting Section 7, and that particular concept was set forth in that case. We do not think thatitis going to change the manner in which cases involving libel and slander are tried in the State of Montana, since the juries are still expected to take their guidance with respect to the law from the court. But it does provide the jury with leeway in the event that they should think, within their community conscience as jurors, that in this particular instance, even though there might be a technical violation of the law, the circumstances are such that there should not be any type of penalty for that violation. The jury would have the right, then, to disregard the technical aspects of the law and find that there has not been any libel in that instance, either in a case of civil libel or criminal libel. To be consistent, to expand upon the right, we've included slander within that rationale, inasmuch as juries tend to follow that particular concept for determining libel and slander cases in any event. We did not want to take away any right that the citizens of the State of Montana presently have in the current Bill of Rights, and our committee takes great pride in the fact that the proposal that you have before you now takes away nothing that the citizens of the State of Montana have, but rather expands their rights in many respects so that expanding government shall continue to be, perhaps will become, more responsible to the citizens of the State of **Montana, I** hope that explanation does respond to the question. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], if Mr. Dahood would yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, subsequent to the Harrington case that-cited in 48 Montana, I believe, or whatever it is, our Supreme Court has held that while under the provisions of this section the jury in libel suits shall determine the law and the facts, the function of the trial court and jury is not greatly different from what it is in other cases. Thus, it is for the court and not the jury to pass upon the admissibility of evidence, upon motions for nonsuit, or for a directed verdict upon motions for a new trial and motions to set aside verdicts and vacate judgments. And so, libel suits, though sui juris, are subject to the rules of practice found wise and useful in administering justice generally in the courts. I know that you've considered this matter, but it seems like this is an archaic carryover that really isn't being followed by the courts anyway, and I wondered if you would resist a motion to strike that portion of it.

DELEGATE DAHOOD: Yes, I do, Carl. I do resist on behalf of the committee, simply because what you have just stated was the premise upon which we approached the section at our first study session; but after reviewing the law, we find that there is general substantial reason as to why the section should remain as it is. The case that you are talking about indicates the traditional function between court and jury does apply in the libel and slander case to the point where the court will instruct the jury as to what the law is in a particular case. The court will continue to determine whether or not there is some basis for granting a motion for a new trial; the court will continue to rule upon objections with respect to the evidence. But in the event the jury in a libel suit should determine that in this particular instance, notwithstanding the facts may fall within the proscription of that particular legal rule, nevertheless the jury does have the right to disregard the law in that instance and find in favor of free speech in that instance. The Montana court would not have the right then, under that rationale, to grant a motion for a new trial. The distinction does exist, and I want to assure you, Carl, that there is reason for leaving the section as we have submitted it to this Convention.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Dahood, yield to another question, please?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE SCHILTZ: Mr. Dahood, I suspect this is in the present Constitution, and if it is it's probably always bothered me. In line 22 it says "prosecutions for libel or slander, the truth thereof ', And to me libel and slander are, per se, untruthful--and then when you say "thereof', it bothers me. Could we change that to "of statements" or something like that?

DELEGATE DAHOOD: Delegate Schiltz, you raise a question that, of course, we raised; and I confess to you that there is language in some of these sections that perhaps could be stated in clearer legal language; but we thought in some of these instances we ought to pay some heed to tradition. I think all of us as lawyers appreciate that whether it's stated in a constitutional Bill of Rights or not, truth, unless actuated by malice, is a complete defense. And rather than be concerned about changing some of the words in that section and bring down the critique of certain segments of Montana society, we thought that this might fall within the legal concept of diminutivus; something that perhaps is too trifling to require any type of major change by the committee. So we left it in its original condition. I hope and trust that explanation is satisfactory to avoid a motion to amend at this time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion? Very well, the question is on Section 7. Members of the committee, you have before you, on the recommendation of Mrs. Mansfield, when this committee rises and reports after having had under consideration Section 7 of the Bill of Rights Article, that this committee recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

CLERK HANSON: "Section 8, Right of participation. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision." Mr. Chairman, Section 8.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 8 of Proposal Number 8, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: The committee unanimously adopted this section in response to the increased public concern and literature about citizen participation in the decisionmaking processes of government. The provision is in part a constitutional sermon designed to serve notice to agencies of government that the citizens of the state will expect to participate in agency decisions prior to the time the agency makes up its mind. In part, it is also a commitment at the level of fundamental law to seek structures, rules, and procedures that maximize the access of citizens to the decisionmaking institutions of state government. If you recall when we were discussing the Legislative Article, we did not arrive at satisfactory wording to the effect that the Legislature must announce the dates of hearings so many days ahead of time. I think that this provision would very well take care of the fact that the Legislature must provide for some-for citizen participation in its hearings. I believethatother agencies of government--and I think right now of the Forest Service-have also become very much aware of the fact that there are real values in citizen participation where a decision is forthcoming. They announce it to the public and ask for public input, and they have found that this not only provides a good public relations with the public, but also provides them with some of the kinds of information they need, really, in making their decision. It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The wording of the provision is derived from Delegate Don Foster's Proposal Number 38. Thank you.

CHAIRMAN GRAYBILL: Is there any discussion of Section 8?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HABEDANK: Mr. Dahood, as I read this, I am in sympathy with what is being attempted, but I am concerned about the use of your words "every feasible" rather than "reasonable". It would seem to me that "every feasible" would be apt to be construed that no matter what you do, something else could have been done to afford citizen opportunity to participate. And without making a motion, I would like your rationale on why you've used "every feasible" rather than "reasonable".

DELEGATE DAHOOD: Well, in our judgment, "feasible" would include "reasonable" within it. What we were trying to express in this particular section was that the Legislature would do everything possible which is reasonable and feasible to allow the citizen to know that some decision is about to be made; and if the citizen wants to voice any opinion with respect to that decision, that they're going to be given not only a reasonable opportunity but a feasible one-one that provides them with easier access to approach that particular agency so that they can make their particular opinion known. Now you might, for example, give reasonable notice under circumstances where it might be difficult to approach the agency in a meaningful manner, such as perhaps having some undue restriction upon the ability of that particular citizen to make his opinion known to that committee. So by "feasible" we're intending to broaden the scope of "reasonable" to provide that the Legislature shall set up guidelines that will give some real substance to the right of the individual citizen to participate with respect to any decisionmaking function of government. As the comment would indicate, Delegate Habedank, this, I think, in substance is what we would call a constitutional sermon. I think we're laying down a particular principle. We want the Legislature to implement it. I am not prepared to say there isn't a self-executing facet to it as well-that if the Legislature did not do anything about it at all, perhaps if some decision were made without giving notice, without giving a citizen a chance to participate, I think that citizen could contend that there was an unconstitutional legislative activity. But we have faith in the Legislature. We think the Legislature, when it is formed after the new Constitution takes effect, is going to look at this particular section. We think they're going to do something about it.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Dahood yield to one more question?

DELEGATE DAHOOD: Yes, I will.

DELEGATE HABEDANK: As I understand your intent then, it is the thought and intent of the committee that "every feasible" leaves to the Legislature the power by statute to determine what is feasible and does not extend to an individual coming in and convincing a court that whatever the Legislature says, something more could have been done.

DELEGATE DAHOOD: No, Otto, I would think that if the Legislature provided a particular system whereby there will be government participation, I think a court could look at it and say that they have met the criterion of feasible as set forth in the Constitution. It's a reasonable set of guidelines. I don't think we'd have that trouble. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. Mr. Dahood, would you yield to a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, would you interpret this to mean that any act taken by a School Board, a City Council, a Board of County Commissioners, any other board or commission, that was not noticed-in other words, any item of business they took up they hadn't previously published notice on and advised all the public--would be illegal and unconstitutional under "every feasible", because it would always probably be feasible to do this. Would you please comment on that?

DELEGATE DAHOOD: Yes, I will comment on that, Delegate Davis. I think the intent of this is that any governmental agency, any agency that represents the people of this state, before it makes any substantial decision-and I think again we've got to depend upon the courts to interpret that in a wise and commonsensical way—

must give that citizen some notice so that he can appear and participate. I think that's the function of democratic government, and I don't think it's too great an obligation on government.

DELEGATE DAVIS: Mr. President, I move to amend this article by striking "every feasible" and put in "reasonable" opportunity.

CHAIRMAN GRAYBILL: Very well, that's in line 27. Mr. Davis proposes to strike the words "every feasible" and substitute therefor the word "reasonable", so that the sentence would read: "have the right to expect governmental agencies to afford reasonable opportunity for citizen participation.

Mr. Davis.

DELEGATE DAVIS: I won't speak further on it. I think it's self-evident. In every branch of our government, from school board meetings on, you have decisions and different business items come up that you would have to publish your complete agenda. The County Commissioners-everybody knows when the board meets, but they don't know all the items that may be necessary to discuss. I think it would restrict the operation of the-and function of our government if you have "every feasible"-is really difficult an interpretation.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I do not experience any particular problem in having the word "reasonable" substituted. I'm sure that my committee would not have any particular difficulty. I think, in our judgment, feasible was synonymous with reasonable but somewhat more expansive; but I think, as a lawyer, having been confronted with the use of the word "reasonable" so many times, having seen it defined so many times, that I think the definition that the law would give it would certainly serve the purpose that we intend to serve by Section 8. And if it pleases this body, I wish to state here and now the committee has no objection to that amendment.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Davis' amendment to delete the words "every feasible" and substitute therefor the word "reasonable", on line 27, so that Section 8 reads: "The public shall have the right to expect governmental agencies to afford reasonable opportunity for citizen participation in the operation of government prior to the final decision."

Mrs. Bugbee.

DELEGATE BUGBEE: A roll call vote, please.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as shall be in favor of that motion, say Aye-vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Excused
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Nay
Foster ..... Aye

Furlong ..... Absent
Garlington ..... Aye
Gysler ..... Absent
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Absent
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 75 delegates voting Aye, 11 voting No.

CHAIRMAN GRAYBILL: 75 delegates having voted Aye, 11 voting No, Mr. Davis' amendment prevails. We are still discussing Section 8. Are there any other matters?

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I have said before, I think it is the responsibility of this body to be-to deliberate carefully and not to do things that are going to create a lot of difficulty and confusion in the future. I am concerned about what is meant by the phrase "opportunity for citizen participation in the operation of government". This-I take it, "operation" means the decisionmaking performance of government. And when you participate in it, this, to some people, would mean the opportunity perhaps to vote or to argue, present a position in the course of the formation of that decision; and I want to propose an example, an illustration of how this might work. I've had considerable experience in the past representing individuals who have been subject to condemnation by the State Highway Department, and there is quite an elaborate appraisal ceremony that the State Highway Department conducts. It is always done in the utmost secrecy, and there is quite a lot of skirmishing that goes on between the right-of-way agent and the owner, usually before the lawyer ever gets into it. And my question is whether this language would not enable any land owner whose lands lie in the course of the interstate or some other highway thing to go to the Highway Department and to participate in the appraisal proceedings and the determination as to how his particular parcel was to be bargained for and acquired. And I certainly wouldn't mind this on behalf of clients whom I might represent, because it would greatly advantage his dealings with the department of government involved; but I think you can see that it would create quite a lot of havoc in the conduct of government. And were this to be applied to any other phases of the governmental function, I think we would be in trouble. And I bring this up so that we can look at these words and make sure that whatever we draft here really states what our intention

is and if there are limits to what we're authorizing. And this is a mandatory right that a citizen could enforce on his own, because it starts right out— "the public shall have the right"-and it would therefore presumably be enforceable in the court. And I would like to know whether it could be pushed as far as I have indicated.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think Delegate Garlington is to be commended for bringing up this point, because I think probably to--someone who did not participate in our committee debates might think that that problem can arise from the language that's contained in Section 8. In our judgment, it cannot arise from the language contained in Section 8 simply because it does not support the rationale and the record of this particular debate; this dialogue and this colloquy between Delegate Garlington and Delegate Dahood I think will lay that particular problem to rest forever. What is intended by Section 8 is that any rules and regulations that shall be made and formulated and announced by any governmental agency, which of course are going to affect the citizens of this state and the common welfare, shall not be made until some notice is given so that the citizen will have a reasonable opportunity to participate with respect to his opinion, either for or against that particular administrative action. With respect to the eminent domain situation that Delegate Garlington talks about, that is not within the ambit of Section 8. That involves a particular treatment of an individual right under laws, rules and regulations already made for which, of course, the courts provide the type of protection or the type of due process that we think the citizen needs to protect that particularright. I hope and trust that, for Delegate Garlington, at least, that answer does serve to set aside the particular concern at this time.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: I would like to shed a little different thinking on this subject, Mr. Chairman. I am particularly delighted to see this section presented in the Bill of Rights. I have been involved in a citizens' participation group for several years now, and I am very much aware of the antagonism of government toward citizens' participation in its deliberations. They feel that citizens' involvement is disruptive; that we have elected them to make the laws, therefore we should not interfere. And I believe that this particular section could bring about an involvement of people in the-on the local level, particularly, in a very fine way. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I am very much in accord with the things that've been said here, but it seems to me that all of this misses the point very badly. The problem is, it seems to me, that here we have a statement which says the public shall have the right, but it is a right to what? A right to expect. Well, I submit that the right to expect something is not a right at all. Therefore, I would move to amend Section 8 by striking the words, on line 25, "the public shall" and on line 26 "have the right to expect" and to further strike—

CHAIRMAN GRAYBILL: Now, just a minute-just a minute. I've got "the public shall". What else are you striking?

DELEGATE HARBAUGH: "The public shall have the right to expect"-to strike those words, capitalize "Governmental agencies", and strike the word "to" and, in place thereof, put the word "shall"; so that the section will read: "Governmental agencies shall afford every reasonable opportunity for citizens' participation in the operation of the government prior to the final decision."

CHAIRMAN GRAYBILL: I trust **you** mean "Governmental agencies shall afford reasonable opportunity". We struck the word "every" before. You don't need that back in, do you?

DELEGATE HARBAUGH: No-yes.

CHAIRMAN GRAYBILL: All right, Mr. Harbaugh's amendment would strike, from lines 25 and 26, the phrase "the public shall have the right to expect"-strike that phrase and then start with a capital "G'-"Governmental agencies"-and then insert the word "shall"-"afford reasonable opportunity for citizen participation in the operation of government prior to final decision."

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, it seems to me that this really is the intent of what the committee has envisioned here. And the way that proposal is phrased at present, it really does not do that-that all that the public is given is

the right to expect something. I would submit that making the amendment that I have proposed would clarify this right that the public is to have under this section.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. As one of the authors of this particular section, I would not be opposed to Delegate Harbaugh's amendment, although, personally, I don't think that it really changes either the intent or the effect of this section. But if this body would like to amend it in this manner, it certainly would not be in opposition to my original thoughts.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, Delegate Foster conferred with me just a moment ago and asked my opinion. I told him that's certainly stating the intent that we had in mind, and with that premise, I certainly would not quarrel with the delegate with respect to his proposed amendment. But I can submit one reason as to why there should not be an amendment, and that is from the standpoint of legislative implementation. We intend to provide by Section 8 not only a right, but a constitutional direction to the Legislature to implement that right by setting forth the guidelines and setting forth the requirements of governmental agencies in this regard. If we accept the amendment, the language would tend to indicate that we have self-executing right that does not require any particular guideline from the Legislature. I would then have a concern, and that concern would be this: who, then, would determine whether or not the agency in question is providing the type of opportunity or the type of regulation for citizen participation that would satisfy the constitutional directive? I think the language of the committee, as it is before you now without amendment, is going to require that there be uniform rules and regulations set by the Legislature with respect to citizen participation, and I submit that Delegate Harbaugh's concern that the word "expect" is not strong enough is not a matter that should cause us any apprehension. It is a matter of constitutional draftsmanship that in certain areas of basic and fundamental rights you make no attempt to be precise; you merely make an attempt to set the principle down in general language so that the Legislature or the implementing lawmaking body will have the opportunity and will have the latitude to set forth the guidelines that will best implement that particular policy and have the opportunity to change those guidelines with the passing years as circumstances change and different needs arise. So, notwithstanding the fact that Delegate Foster and I are satisfied that the language as amended may tend to secure for the citizens the same objective, we will submit, at this time, that the motion to amend should be resisted simply because it is too restrictive with respect to the type of uniform guideline that we would want the Legislature in its wisdom to enact. And therefore I oppose the motion to amend.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Will Delegate Dahood yield to a question?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE JOYCE: Is there any-in your studies, did you find any other state constitution that had a similar provision?

DELEGATE DAHOOD: There were similar state constitutions that took up this particular issue, Mr. Joyce. I do not recall that there was any state constitution that had precisely this particular language. I do recall several that did provide that there should be citizen participation with respect to governmental matters; and I submit to you, Mr. Joyce, in answering your question, that I don't think any governmental agency should have any concern or any apprehension about having a citizen participate before any rule or regulation is laid down that's going to affect the life of that particular citizen. I should think that any governmental agency within a democracy would welcome the opinion of the citizen before some guideline is set down with respect to his conduct and his life as a citizen.

DELEGATE JOYCE: Well let me ask you another quesion, Mr. Dahood. Would—

DELEGATE DAHOOD: I yield once again, Mr. Chairman.

DELEGATE JOYCE: Would you interpret-

CHAIRMAN GRAYBILL: All right. Try this time to-just to answer now, Mr. Dahood. (Laughter)

DELEGATE JOYCE: Would you interpret this section as giving, say, me the right to participate in the Supreme Court conferences when they're deciding cases that I've argued?

DELEGATE DAHOOD: **No,** I do not and it wouldn't do any good anyway. (Laughter)

DELEGATE JOYCE: Well, I know the— but I-May I speak then, Mr. Chairman? I move—

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I move, as a substitute motion, I suppose-there has to be a villain in the piece and I'm willing to be the villain-I move to strike Section 8 in its entirety. May I speak on that motion?

CHAIRMAN GRAYBILL: Mr. Joyce's motion is to strike Section 8 in its entirety. Okay, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, members of the committee. It seems to me that however laudatory the language may be, that when we're writing a Bill of Rights we ought to give people rights or not rights. But to say that they have the right to expect something gives them no right at all, as Delegate Harbaugh pointed out; and it seems to me, with the amendment that the government will afford every reasonable opportunity to participate in the operation of government just makes the whole proposition unworkable. It seems to me that it turns our system of government from a republic into a true democracy. If everybody's got the right to participate in every decision that's made in government, why, then it will disrupt the government in that, under our system of government we elect people to make decisions. We may not agree with them, and we may think they're crazy, and we may want to vote against those people when they come up for election again because they've made decisions that we don't like. But it seems to me that this is completely unworkable to allow the individual citizen to participate in the decisionmaking; that actually the decisionmaking must necessarily rest with the people who are, in fact, elected. And as far as-it just seems to me to write into the Constitution the right to participate in the decision will just create more harm than good and that it really doesn't give anybody a right. And if, as Delegate Dahood says, the right is subject to reasonable legislation-it doesn't say that the Legislature can set up any rights on it-it gives an absolute right to participate. And, on the whole, I think that it will do more harm than good, and I think that we ought to strike the whole section.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates, I wish to speak in opposition to the motion of Delegate Joyce. I think this is a very important question, and I think that we should be very well aware of what this committee is attempting to do. The continuing growth of bureaus has brought a new dimension to our representative form of government. We have drawn clearer lines of election for legislative officials. We have devised a more responsive system of selection and election for judicial officials. We have retained an extensive elective process for our executive officials. But what of the bureaus, the long arm of government with which the average citizen most often comes in contact; the long arm of government which is not responsive to elective officials; the long arms of government with which many, if not most, of our Montana citizens have met frustrating resistance and/or indifference? Elections do not materially affect the bureaus. Political pressures are not sufficient to juvenate [sic] response to public need. Public awareness and access seem to be the only tools to remind the great mass of public servants that their job is to serve the needs of the public and no other; they are paid by tax dollars to benefit the public above all else. It is my opinion that many Montanans' dissatisfaction with government stem from lack of awareness of the primary role of public servants to serve the public; be they rich or poor, strong or weak, helpful or helpless. It is my opinion that many Montanans want to be a part of their government. They want to know their government and what it is doing. They want to provide input on matters which affect them directly or which they are keenly interested in. Not all Montanans are interested in all phases of government. Most Montanans are, I submit, interested in knowing about and participating in relatively limited scope of government; but when that time comes that Montanans wish to be known and be heard, they expect their government to listen and preferably act. If they are received reasonably and heard and the results explained, they will feel that they have done their part in a democratic government. If they are ignored or passed off indefinitely, they become frustrated and demoralized in their

government. It is hard to imagine how the inclusion in our Constitution of a right to know and a right to participate could do anything but improve in some measure responsiveness of government officials to citizens and improve in some measure citizens' confidence and satisfaction in government. The government will be the better for it; the people will be the better because of it. I resist the motion to delete, and I support the proposal of the Bill of Rights Committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I rise also to resist the motion to delete and also to clarify one point that Mr Joyce made. We are not suggesting that the citizens participate in the decision-the decision is made by those who have been elected to make that decision or those who have been appointed to make the decision-but to participate in the deliberations prior to the decisionmaking. I have been a part of this process for a good many years now, and I have found that while at first governmental agencies-and I've participated both on the state and local level—may be threatened by having people around who are seemingly interfering in what they are doing, that after they become accustomed to the fact that there are citizens who are interested and who want to contribute, that they really welcome this kind of participation. I don't think-and I think it's unfortunate, but I don'treallyfeel thatcitizens are going to rush in great droves to participate-we just haven't found that-but I think that if they know when decisions are being made, what topics are being considered, that they will benefit from learning in advance what their people think. I think this is true with individuals, as well as groups. I think that farm groups, Chamber of Commerce groups, labor groups, as well as groups of interested citizens, can really make a valuable contribution to our government; and this is a contribution that is really free. And, I think, will add, you know, at no additional expenses a considerable dimension to the kind of decisions that are being made. Thank you.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Thank you, Mr. Chairman. Mr. Chairman, I rise in opposition to Mr. Joyce's motion to delete. I think in this time, in this age, government is slowly slipping away from the people. I think the people are beginning to lack credibility in their government; and if a provision such as this can bring the government closer to the people, if a provision such as this can give the people more access to the government, then, Mr. Chairman, I think that it is most vital that we accept this provision. And for that reason I resist the motion by Mr. Joyce.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I certainly agree that we are dealing here with ideals; and it would be a great thing if we could operate on the basis of idealism in the participation in government. It has often been said here that the courts are the ones who seem to louse all of this up and to find fault with things. But I want you all to remember that nothing comes to court except when it is brought there by an aggrieved citizen. And you must also remember that, in most of the operations of the government, there is a citizen who is aggrieved as well as the one who is comforted by the action of government. Take the simple business of zoning as it may occur in individual communities. Zoning limits some owner's right to use his property, and he is the one who is aggrieved: someone else is happy that this good result came about by the operation of government. And I want you all to realize that when you have a very brief statement like this, unaccompanied by the hours of discussion and the debate and the consideration that we are having here, you just look at the little old words. And here now is some man, some property owner, who is individually aggrieved by an action of the zoning board and he goes to his counsel and he says, "What can I do to hold this up?" And this is how and where the case begins to get in court. And he goes to his counsel and he says, "Now, it says here that I had a reasonable opportunity to participate in the operation of government before they take their zoning action, whatever it may be, and I don't think I did." Now, there is no guideline here. There isn't anything that says whatreasonable participation amounts to, and there isn't anything to keep that man from starting his case, holding up the operation of the zoning regulation, whatever it may be, while there is litigation as to what transpired and whether he did or did not, in fact, have a reasonable opportunity to participate. And this may take 1 year or 2 years; and of course all he may think is that if he can get it delayed long enough, he can somehow stall or stymie this zoning action, whatever it may be. And I ask you all to look at this seriously now and realize how many different

kinds of government affect the right of one individual against another where the aggrieved one is going to come in and say, "I didn't have the opportunity to participate so this action that was taken does not live up to the Constitution, and I am therefore entitled to object." Now, one thing you have to remember always is that constitutional power is far greater than any other power; and sometimes I kind of fear that we are getting a little intoxicated with the constitutional power that we feel here, and this is why I am always counseling caution in these things, because these are irretrievable and unmanageable. They are rigid and firm. And if you were the judge sitting there and you saw that it said in the Constitution that the citizen had the right to participate in the operation of government, what would you do about it if some fellow came in and said, "Gee, they did this and I didn't have a chance to know. They didn't write me a letter. They didn't explain the things that they were doing. They didn't tell me what they heard from these other people. I didn't know about that"-so on and so on. Now, you multiply this and all the myriad contacts between government and the individual, and you see what this is going to do. And I caution you again that we should make sure that the language we write and we put in here is so clear that these things are not suddenly thrust upon the public in a way that creates disruption and dissatisfaction with government instead of pleasure with it.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of Mr. Joyce's motion. I believe that the Legislature is a deliberative body, and I don't believe that every citizen can rightfully participate in those deliberations. I feel that they participate by electing the representatives to do the deliberating. Thank you.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. President [Chairman], I came here with one idea in mind, a kind of a philosophy, and that is that the public and the people are actually the boss of the government and the government is the servant of the people. You take that in mind and take this Section 8 and replace the words "the public" and make that "the boss" and make "the government" "the employees", you could come up with a phrase like this: "The boss shall have the right to expect his employees to afford him reasonable opportunity to participate in the operation of his business." And that seems to be fairly basic, and it seems to me that we should keep Section 8 as it is, and I oppose Mr. Joyce.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to speak in opposition to the amendment; and in reaction to my fellow committeeman, Mr. Garlington, the fear that there's going to be a case-here's the zoning business and that the man will start a case if he didn't have a chance to participate-it seems to me I would like to see him have a chance to give a case if he didn't have a chance to participate. So fundamental is it that I would be more afraid of that right being infringed upon than the delay of the action.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I think I saw this proposal in its original form as submitted by Mr. Foster and others. At that time I didn't know what it means, and I'm not sure I do now. I was willing to go along with it when I heard Mr. Dahood's explanation that this is a matter that the public-there would be reasonable opportunity for the public to find out what is going on and they will have a reasonable opportunity to express their views to the body that is in— deliberating or taking the action. This seems reasonable to me. But I do think the language here is-like Mr. Garlington says, is pretty strong. We're talking about participation. Now, what notice is going to berequired? Whatright does this give rise to? Does each body have to, at each step of the proceedings, notify all of the public and make sure that all of the public somehow gets the message, and then they have a right to participate? And what is participation? We are 100 delegates here. I can't think of anybody that has ever been more open, yet are we letting the public participate? Are we letting the people in the gallery give-come dawn and talk on this matter, express their views in the open hearing? We've let them— we've given them notice of committee hearings. They could come in. They certainly have sent us numerous letters expressing their views. Now, this is participation; but must it go further? Must they have a voice on the floor and participate? Must they have a vote in the proceedings? All of this is-language is so loose that it can lead, as Mr. Garlington has pointed out, it can lead to nothing but lawsuits. Earlier here, someone designated the constitutionality of-as to whether or not all of

the-in the title of a legislative act, that all of the matters covered therein should be expressed in the legislative act or it becomes unconstitutional. And they spoke, "Well, that's become nothing but a lawyers' feed bill," and I suppose it has, to some extent; but if that's a lawyers' feed bill, I'll guarantee you this one will be, because we won't even have to look up any constitution. Any time a client comes in and they say, "There's a statute against me" or "There's a law against me", we won't even have to turn to the Constitution. We'll just say, "Put somebody on there; find out somewhere in the legislative process where the public didn't have a right to proceed, or to participate." Maybe it's some legislative step. The hearing was had and there's no proof that the public was there or there was room for the public to participate. All of this can open a Pandora's box, and all of it can lead to good solid legislation where the public had adequate notice and they had adequate right to notify their representatives of their feelings on the matter-could still be defeated because of the interpretation put on here by the courts and by—and the courts are nothing but individual judges—in their desire to set aside a law will rule that somehow or another the public couldn't participate. I suggest that if the intentment is as Mr. Dahood says, then I can support it. But I feel very much like Mr. Joyce and Mr. Garlington. It can be pushed far beyond what the Committee on the Bill of Rights wants here, and when it does, then we are creating a monster. And I submit that Mr. Joyce's motion should be accepted.

CHAIRMAN GRAYBILL: Very well. The Chair would like to get a vote on at least Mr. Joyce's motion here before we go to dinner, so the Chair will entertain further debate. Please be brief.

DELEGATE BLAYLOCK: I'm always brief, Mr. President [Chairman].

CHAIRMAN GRAYBILL: That's why I'm calling on you, Mr. Blaylock. (Laughter)

DELEGATE BLAYLOCK: Mr. President [Chairman], I believe it was Mr. Davis who put in the word "reasonable" in here. And when he did that, I thought I saw a vast look of relief spread across all of our barristers' faces, and so if we—he said it was defined; they know what that word means. It says "reasonable opportunity for citizen participation"; and if we go back to Section 1, which this body has adopted, it says: "All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole." So I submit, Mr. President, that a citizen should have a right to participate in that government.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to say that I like the theory of this, but in working with a group of people that has a majority of lay people-this is the comprehensive health planning-I can see all kinds of citizens' participation. But in looking at this, I'm wondering if we aren't looking a little deeper into a policy-making. And even in our organization, I wonder if there was a decision on food stamps within a county or changing the way it was handled, how far can we go? And the words here would make me think this was a lawyer's dream, and therefore I would speak in opposition to this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'll be brief, too. There are a couple of things that I'd like to point out that I don't think have been said yet. I'd like to speak basically in opposition to the motion to delete, because I think we need this sort of section; and the amendment which I offered does not take this out of the realm of political theory. It still is in the realm of political theory. Also it seems to me, secondly, that the title of this article is very misleading if we adopt the article as it is presently written. What is really offered to us under this title of a right of participation is a right to expect something, not a right to participate, and I think we want a right to participate. Perhaps this is a Pandora's box. But if it's a Pandora's box, maybe we'd better open it and see what's in it. So I would resist the motion to delete.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], I come up here as a juryman and I've made up my decision. I think that if this thing is a very strong article and can be interpreted as Mr. Garlington and Holland said, that it could be very dangerous. And as other delegates have said that it's-doesn't mean anything the way it's written; either way it's a bad deal. I would like to go for Mr. Joyce's amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, if this particular section could be interpreted as Mr. Garlington has suggested, as Mr. Holland has suggested, if it doesn't mean anything, as another delegate has suggested, then it ought to go out. But that isn't true. The article states-the section states very clearly that we are talking about governmental agencies, and the rationale on page 21 says as follows: It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The intent of this particular section is to make sure that these governmental agencies, these bureaus, are going to be more responsible to the individual citizen. We are talking particularly about the rule and the regulation that they make to implement the law that is given to them by the Legislature, which directly affects each and every one of us. And we think that when those rules and those regulations are made that are going to affect our everyday lives, that we should have the right to participate. Before the Constitutional Convention accepts a proposal, there's a public hearing. Before the Legislature passes a law, there is a public hearing. And before a governmental agency passes a rule or regulation that has the force and effect of law, there ought to be a public hearing. Now, that's what we're talking about. The language is too broad? How about freedom of speech, and how about freedom of religion? Can anything be broader than that? And yet there has to be restrictions on those particular rights, and the books of law are filled with the restrictions that are necessary to make sure that those rights are realistic rights within a free society. We submit to you that with the debates that have taken place on this floor here and now and with the journal and with the record that is made, therecould be no mistake as to what is intended by Section 8. And the Legislature will carry it out, and the Legislature will set guidelines; and when governmental agencies-and I underscore that-are going to set forth rules and regulations, make rules and regulations that govern all of us, unlike what they've done in the past with callousness andindifference to the American and Montana citizen, they're going to have to give notice that they are going to do this. And they are going to have to listen to the citizen before they pass that type of rule and regulation that unquestionably has the force and effect of law. I oppose the motion to delete.

DELEGATE JOYCE: May I close?

CHAIRMAN GRAYBILL: Apparently you're not going to be able to close. I see Mr. Wilson up. (Laughter)

DELEGATE WILSON: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I rise with a great deal of apprehension. I have a lot of respect for the different lawyers that have approached this subject, and I see that they cannot agree. There's a lot of different opinions; and I propose to the rest of us people who are just nonlawyers, citizens, that perhaps we're opening up a field for a wide range of litigation. If they can't decide among themselves now, we're in trouble.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes. Mr. President [Chairman], I would just like to add that if we have to base our decisions on only those things that the lawyers can agree on, we'll never adopt any of this Constitution. (Laughter)

CHAIRMAN GRAYBILL: Mr. Joyce, you may close.

DELEGATE JOYCE: Mr. Chairman, I suppose that in closing, it's a matter of philosophy as to what should be in a constitution. I happen to believe that constitutions shouldn't contain any sermons. I happen to believethatif you're going to give people rights, they ought to have rights that are enforceable in the courts. I don't read this section that it only pertains to the rulemaking power. I submit that we already have an Administrative Procedure Act that by statute that if there is-it is desirable for the government-for the people to participate in government, that the Legislature ought to set down rules and guidelines, that the Legislature does have that constitutional power now. It seems to me writing anything into a constitution that abrogates or makes unfeasible the reasonable exercise of that power will do more harm than good. I submit that just writing platitudes into the Constitution will do more harm than good. And, in reply to my distinguished delegate, Mrs. Robinson, if us lawyers can't agree, it seems it is an anomaly here that us lawyers are trying to keep away from having a field day with the section, while the rest of you people are trying to force it upon us. And that does seem anomalous to me; and it seems, I might submit to you, that

perhaps because we do practice law and we are involved in courts and we are trying to enforce rights in courts, that maybe we do know something about what constitutions are all about. And, of course, those of you who think we do not, even though we come from every different kind of political persuasion, why, that's just a deficiency, I guess, in the public relations of the legal profession. But notwithstanding, I still reiterate that this section as written will do more harm than good, and I hope that my motion to delete passes.

CHAIRMAN GRAYBILL: Very well, I trust you want a roll call vote. No?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Yes? All right. So many as shall be in favor of Mr. Joyce's motion, which is to strike Section 8 in its entirety, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. Please take the vote.

Aasheim ... Nay
Anderson, J. ... Aye
Anderson, 0. ... Absent
Arbanas ... Nay
Arness ... Absent
Aronow ... Nay
Artz ... Nay
Ask ... Aye
Babcock ... Aye
Barnard ... Aye
Bates ... Aye
Belcher ... Excused
Berg ... Aye
Berthelson ... Nay
Blaylock ... Nay
Blend ... Nay
Bowman ... Aye
Brazier ... Aye
Brown ... Aye
Bugbee ... Nay
Burkhardt ... Nay
Cain ... Nay
Campbell ... Nay
Cate ... Nay
Champoux ... Nay
Choate ... Aye
Conover ... Nay
Cross ... Nay
Dahood ... Nay
Davis ... Aye
Delaney ... Aye
Driscoll ... Aye
Drum ... Absent
Eck ... Nay
Erdmann ... Nay
Eskildsen ... Excused
Etchart ... Nay
Felt ... Absent
Foster ... Nay
Furlong. ... Nay
Garlington ... Aye
Gysler ... Aye
Habedank ... Absent
Hanson, R.S. ... Nay
Hanson, R. ... Nay
Harbaugh ... Nay
Harlow ... Nay
Harper ... Nay
Harrington ... Nay
Heliker ... Nay
Holland ... Aye
Jacobsen ... Aye
James ... Nay
Johnson ... Aye
Joyce ... Aye
Kamhoot ... Aye
Kelleher ... Nay
Leuthold ... Nay
Loendorf ... Nay
Lorello ... Nay
Mahoney ... Aye
Mansfield ... Nay
Martin ... Aye
McCarvel ... Nay
McDonough ... Nay
McKeon ... Nay
McNeil ... Nay
Melvin ... Aye
Monroe ... Nay
Murray ... Nay
Noble ... Aye
Nutting ... Excused
Payne ... Nay
Pemberton ... Aye
Rebal ... Aye
Reichert ... Nay
Robinson ... Nay
Roeder ... Aye
Rollins ... Aye
Romney ... Nay

Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks. ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 37 delegates voting Aye, 54 voting No.

CHAIRMAN GRAYBILL: 54 delegates having voted No and 37 Aye, Mr. Joyce's motion fails.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess until the hour of 8:00 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 8:00 p.m. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 5:50 p.m.-reconvened at 8:02 p.m.)

CHAIRMAN GRAYBILL: Mr. Vermillion, would you shut the doors for us. Members of the committee, before recess we were discussing Section 8, on page 5 of the Bill of Rights Article, and this article was first amended by Mr. Davis by striking the words "every feasible" and putting in the word "reasonable". I see no reason to go behind that. Next it was amended by Mr.-an amendment was proposed by Mr. Harbaugh, striking the first phrase-"The public shall have the right to expect"-and making the phrase read: "Governmental agencies shall afford reasonable opportunities for citizen participation." Then Mr. Joyce made his motion to strike, which was defeated. Unless I hear objection from the floor, I will consider Mr. Harbaugh's amendment as still entertained; namely, that the phrase would read: "Governmental agencies shall afford reasonable opportunity for citizen participation in the operation of the government prior to the final decision." And the matter would be open for further amendments. Is there any objection from the floor to starting at that point? Very well, we'll start at that point. Mr. Harbaugh, with your amendment under discussion. Do you care to rephrase it, or at least to rediscuss it?

DELEGATE HARBAUGH: No, I was going to close if—

CHAIRMAN GRAYBILL: Well, let's not close too quickly. There have been a lot of pencils out over the dinner hour.

Mr. Berg.

DELEGATE BERG: Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE BERG: And would you yield to a series of three or four questions?

DELEGATE DAHOOD: I will yield to a series of three or four questions, Mr. Berg.

DELEGATE BERG: Well, Mr. Dahood, I note that the article as now proposed-or the section says "for citizen participation in the operation of government prior to final decision." Do you mean, by "government", to include all branches of government.?

DELEGATE DAHOOD: I do not. I mean, by "government", include those branches that are going to make rules and regulations that have the force and effect of law with respect to the average citizen. That does not include the Judiciary, Mr. Berg, obviously.

DELEGATE BERG: This is your construction.

DELEGATE DAHOOD: That is my construction.

DELEGATE BERG: Is there any such construction in your comment?

DELEGATE DAHOOD: In the comment-there is no such construction in the comment; but it would seem to me, in my judgment, that that is the only construction that can be given that is reasonable.

DELEGATE BERG: Thank you, Mr. Dahood. I'm sorry that I have to disagree with my colleague, Mr. Dahood.

DELEGATE DAHOOD: You have three questions to go. (Laughter)

DELEGATE BERG: Well, I'm through. I'm through with my questions. I have your answers. I don't think that it's rational or reasonable to describe government and not include all branches of government. I don't see how you can arrive at the interpretation of the word "government" and exclude from it one branch and include others. If it does include Judiciary-as Mr. Dahood assures us it does not-but if it does, you run into a very peculiar problem. For example, if in the course of a trial with a jury, you have litigants there and you have people in the public courtroom, sitting back as observers. These are people, now, who under the terms of this-at least in my construction-would have a right of some kind to participate in the operation of that branch of government before a final decision is reached. I cannot conceive of what their participation would be. I don't know whether it might include suggesting instructions to the court that the jury should be given in the deliberation of this case, or without a jury, whether the participation might include the giving of the findings of fact and proposed conclusions of law. I don't understand what this word "participation in the operation of government" means, especially as it could relate to the Judiciary.

DELEGATE DAHOOD: May I respond now, Mr. Berg?

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: First of all, with respect to Mr. Berg's comment, which I know is a comment that we should have before us. As I indicated earlier, I think this dialogue is very meaningful and the questions, I think, are meritorious. I once again want to urge all of the delegates to look at the term "governmental agencies", which is the key to constructing that particular section. Governmental agencies, I do not think can be defined to include thecourt. Participation-citizen participation in the operation of government; I think the comment would tend to indicate that what we have in mind is that before decisions are made that affect the citizens of Montana, the general welfare of the citizens, that the citizen will have a right to express his opinion and in that way participate in the operation of government that leads to that final decision point. And I do think that we should all recognize that when we're dealing with constitutional doctrine, which must necessarily be phrased in broad language, that we are going to have to deal with a generality and then to bring it down to a specific point. We have to have some regard for the reference within which that generality is framed, and we would expect, of course, that the Legislature would outline for us the guideline for participation in order that we might achieve the objective sought. Once again, I want to point out, we have in mind the governmental agencies that are miniature legislatures who put together rules and regulations that affect us all. And of course I could give you many examples of what I'm talking about, and I'm sure the lawyers are well aware of it and I submit once again that Section 8 advances the rights of the citizen in the State of Montana and is necessary. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'm very much in accord with the whole intent here of this section; and as I look at it more closely, it seems to me that it is clear that what the section speaks about is the right of participation in regard to governmental agencies, as I have amended it. But I am afraid that if we say the public shall have the right to expect, included with the rest of the language, that really we're not getting at the heart of the problem. It seems to me that if we really want to have a right to participate, that then we ought to spell that out; that this is the right that we're specifying, not a right to expect to participate. It seems to me this removes the whole thing one step further from those people whom we would like to see become involved in these things; and I have no quarrel with the expressed intent as it's spelled out in the commentary on this

section. It says in part it is also a commitment at the level of fundamental law to seek structures, rules and procedures that maximize the access of citizens to the decisionmaking institutions of state government; and I am in full accord with that. But I just would hope that we get down to the place where we actually set forth the right to participate, not set forth the right to expect to participate.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I have a substitute motion that I would like to present; and perhaps the Chair would read the substitute motion.

CHAIRMAN GRAYBILL: It's short. I'll read it. Mr. Aronow's substitute motion is, substitute the following language in place of the present Section 8: "Reasonable opportunity shall be afforded to the public to appear and testify before all governmental agencies exercising the power to adopt rules and regulations having the force of law, which opportunity shall be exercised under circumstances prescribed by law." Now, I'll read that more slowly in case you want to write it down. "Reasonable opportunity shall be afforded to the public to appear and testify before all governmental agencies exercising the power to adopt rules and regulations having the force of law—comma-which opportunity shall be exercised under circumstances prescribed by law."

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I have listened to this debate, and I think a matter of this sort has a proper place in the Constitution. And I am greatly impressed with the comments: "It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation." We have in the Constitution the provisions that the Legislature shall act openly when--with public information. We have provisions that no one shall be denied access to the courts. Now we have the problem of the appointive bureaucratic organizations of state government. As you all realize, and I have realized for many years that the appointee does not owe his allegiance to the public. He owes it to the appointive authority; and this is the problem that we're trying to get to, I believe. I realize that the committee has spent a great deal of time and heard a great deal of testimony. We have had a considerable debate, and I do believe that this provision will have the good effect that we want upon the processes of government which are not elective; that is, upon the appointive personnel that makes the rules and regulations that affect the lives of all of us. And it will make these appointive people, hopefully, a little more responsive to the needs of the public rather than their appointive authority. I trust that this proposed amendment will be favored by this Convention.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I rise in opposition, not to the thought which Mr. Aronow has put into his statement, but to the form in which it's expressed. It seems to me that the Bill of Rights is really a poetic statement and is not to be confused with the terse and hard language of the statute. Robert Frost has said, and I think perhaps has said it for generations, that a poem is a momentary stay against confusion; and I have an idea that Frost may be quoted as we now quote Shakespeare sometimes. He may be quoted three or four hundred years hence. He has succeeded on numerous occasions in stating in simple ways the hopes and dreams of people and their experience, and it will stand. I think those who write a Bill of Rights have something of the same goal in mind. They don't want a precise, hidebound kind of inescapable statement that has to be put into the statutes. Whatthey're lookingforis the soul of a document, theliving, growing reality. And I think this group has demonstrated soul, not only in this section but in some of the sections just ahead of us-the right to know, the right to privacy, which I hope we'll get to eventually. But it seems to me that what we're dealing with here is an expression of poetry which, nevertheless, is a kind of a safety net under the high wire in the circus. And while it may not serve every situation, there may be an occasion of blatant abuse when the safety net is needed and it will be there and it will serve a very important function. Therefore, I'd like to get to the language of the original committee, for, while it is somewhat imprecise, it's the kind of poetry that a court that's concerned for justice can work with and the future can find hope in. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aronow's proposed language? (No response) Very well, the issue is on Mr. Aronow's substitute motion to amend Section 8 by deleting it and putting in the language: "Reasonable opportunity shall be afforded to the public to appear and testify before all governmental agen-

cies exercising the power to adopt rules and regulations having the force of law, which opportunity shall be exercised under circumstances prescribed by law." All in favor of that substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

UNIDENTIFIED DELEGATES: Division.

CHAIRMAN GRAYBILL: All in favor, use the voting machines to vote Aye; and all opposed, No. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, 52 having voted No and 37 having voted Aye, Mr. Aronow's motion fails. Very well, we're debating Mr. Harbaugh's language: "Governmental agencies shall afford reasonable opportunity for citizen participation in the operation of the government prior to the final decision". Is there further discussion?
Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I move to amend the amendment to-on line 28, page 5, to substitute the word "agency" for the word "government".

CHAIRMAN GRAYBILL: Now would you state your line again? Are you on page 5?

DELEGATE MCNEIL: Page 5, line 28. Delete the word "government" and insert the word "agency".

CHAIRMAN GRAYBILL: Very well, Mr. McNeil wants to substitute the word "agency".

DELEGATE MCNEIL: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute. It's the second time the word is-the last line of subsection 8, so that it reads: "in the operation of the agency prior to the final decision".

DELEGATE MCNEIL: Yes.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I believe this will clear up the ambiguity that was concerning Delegate Berg. I think it will reach to the heart of what the committee was really looking for, and that is making these bureaucratic agencies responsive to the people. It will eliminate any question that the people are not going to participate by way of vote in terms of the Legislature or the Supreme Court or anything else and will clearly pinpoint the fact that it is the governmental agencies that are the target of this section designed to permit the citizens to participate therein.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I heartily concur.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: So do I. Mr. Chairman, I thought-I might prevent-prefer just for clarity, and I don't know why it sounds better to me, but to have "governmental agencies" rather than "agency". Would that-1 don't know if it makes any difference.

CHAIRMAN GRAYBILL: We already have that on the first line.

DELEGATE ECK: Yes. I guess maybe the "agencies" would be satisfactory, and I think that this is really the intent of the statement. And I think that by eliminating "government", it eliminates things like the Judicial, which we certainly didn't intend to refer to.

CHAIRMAN GRAYBILL: Mr. McNeil, a question has arisen. "Governmental agencies" -plural-"shall afford reasonable opportunity for citizen participation in the operation of the agency or the agencies", I-E-S? I know Style can do that, but—

DELEGATE MCNEIL: If that isn't within the province of agencies-or within the province of Style and Drafting-if the first part of the sentence is to be "governmental agencies", then it should read "participation in the operation of agencies prior to the final decision".

CHAIRMAN GRAYBILL: All right, it can be the-we'll make it plural in both cases. All right, is there further discussion?
Mr. Heliker.

DELEGATE HELIKER: Would Mr. McNeil yield?

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE MCNEIL: I yield.

DELEGATE HELIKER: Just as a matter of curiosity, Mr. McNeil, what is a government agency? (Laughter)

DELEGATE MCNEIL: I don't have a precise answer to that. I think it is what the committee intended to reach with this, and that is appointive commissions, bureaus, so forth, to the exclusion of the Judiciary and the Legislature. But I don't have a precise answer to that question.

DELEGATE HELIKER: Will Mr. Dahood yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HELIKER: Does it exclude legislative agencies of local government?

DELEGATE DAHOOD: Legislative agencies of local government?

DELEGATE HELIKER: City councils and so forth?

DELEGATE DAHOOD: **No,** I would not think that it does that; but I think what we're trying to get at is the type of bureau within the governmental structure. If we have agreed in that fashion, we're going to be talking about whatever would constitute a governmental agency. I suppose it would apply to some of the agencies that may be local. I think a lot would depend on how they're constructed and by whom they're appointed.

DELEGATE HELIKER: Do they have to be appointed?

DELEGATE DAHOOD: Do they have to be?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: His question, Mr. Dahood, was, is the city council a governmental agency?

DELEGATE DAHOOD: The city council, in my judgment, would not be the type of governmental agency that's contemplated by Section 8.

DELEGATE HELIKER: May I ask—inquire further? Then you-this applies only to appointive agencies?

DELEGATE DAHOOD: Basically, that's true, because a city council, for example, just like a Legislature, is not going to act without regard to the-to citizen participation. They are not going to do it; but the governmental agencies that are not elected, that are appointed, that function to carry out the laws that are passed, are the ones, of course, that will enact rules and regulations and make the decisions that affect people with the effect of law without, sometimes, having any regard for citizen participation.

DELEGATE HELIKER: Thank you.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. McNeil's amendment, in line 28 of Section 8, to change the word "government" to the word "agencies", so that the phrase reads: "to afford reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision." So many as shall be in favor of Mr. McNeil's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: His amendment is adopted. Now we're back on Mr. Harbaugh's basic amendment to make it: "Governmental agencies shall afford reasonable opportunity" and to strike the first few words. So many as shall favor Mr. Harbaugh's motion that we strike the first phrase and start the sentence with: "Governmental agencies shall"-so many as are in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in favor, please vote Aye on the voting machines-of the Harbaugh amendment-those opposed, vote No. That strikes the first phrase "The public shall have the right to expect". Have all-has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is 58 against and 30 for, so the motion is defeated. We're now back on the basic language of Section 8: "The public shall have the right to expect governmental agencies to afford reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision". Mr. McNeil's amendment and Mr. Davis' amendments having passed, they will be incorporated in the language we're now debating, so it says "reasonable" and it says "agencies"; but otherwise it's the way the committee wrote it.

Mr. Davis.

DELEGATE DAVIS: I move to amend Section 8 by adding to the end of the sentence, after the word "decision", "as provided by law".

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Davis moves to add, on line 28, after the word "final decision", the phrase "as provided by law", so that the sentence reads: "to afford reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision, as provided by law."

Mr. Davis.

DELEGATE DAVIS: In Mr. Dahood's discussion of this, several times he said he expected the Legislature to establish guidelines for this and it's inferred the Legislature would and so forth. I think it would be clearer to put in the fact that we want the Legislature to establish someguidelines, rather than leaving it in doubt. Because when it comes time to interpret this, the journal may not be published and all the statements that are made here on the floor; so I think this would probably solve a problem in this regard, instead of leaving it by inference.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I support Mr. Davis' amendment. It's probably already provided in the Administrative Pro. cedure Act, which I'm not to familiar with. But at least this will prevent the multiplicity-just a lot of lawsuits over the interpretation of this section, because the notice and the public participation has to be provided by law.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I don't resist these motions at all. It had been my understanding, and I'm not sure I'm right about this, that almost all of these sections inferred "and as provided by law". In other words, we set up a right and infer that laws will be provided to implement them. But I think maybe I would like to hear from Mr. Dahood on this. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would not oppose the amendment. I think it's implicit within it. As we've indicated in Section 8, we are dealing with governmental agencies; and perhaps to more clearly respond to a previous question, "agencies", of course, has to be derived from the generic term of "agent". We have to have a principal and an agent. We're referring to those agencies, those boards, those bureaus that are created by the Legislature or by a city council. And of course the governmental unit that creates these agencies probably should be the one necessarily to set down specific guidelines, and I think that certainly is in accord with our intent that the Legislature shall set down some uniform rule or set of rules by which these agencies must provide for government participation. So I think-on behalf of the committee, I think I can safely state that we would have no objection to that amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Davis' motion to add the phrase "as provided by law" to the end of Section 8. All in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Are there further amendments to Section 8, or is there further discussion? Very well, members of the committee, you have before you, on the recommendation of Mrs. Eck—

Mr. Romney.

DELEGATE ROMNEY: I wish to offer a substitute motion.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROMNEY: "Citizens shall possess the right to attend meetings of govern-

mental units charged with the responsibility of administration of statutes and regulations. Such attendance shall guarantee hearing the deliberations at meetings, view the proceedings, and accept the invitation to offer suggestions."

CHAIRMAN GRAYBILL: Will the page go and get the language from Mr. Romney. All right, I'll read this carefully for you, for those of you who want to take it down. This is a motion-a substitute motion to delete Section 8 and add this language: "Citizens shall possess the right to attend meetings of governmental units charged with the responsibility of administration of statutes and regulations, period". "Such attendance shall guarantee hearing the deliberations at meetings"—I can't read the next word, Mr. Romney-

DELEGATE ROMNEY: "View".

CHAIRMAN GRAYBILL: -"view the proceedings"-"view", I guess it is. "Such attendance shall guarantee hearing the deliberations at meetings-comma-view the proceedings"-it probably should be "viewing the proceedings—comma-and accepting the initiative-initiation -the initiative to offer suggestions."

DELEGATE ROMNEY: "Invitation".

CHAIRMAN GRAYBILL: All right, "suggesting the invitation to offer suggestions"--"and accepting the invitation to offer suggestions." "Such attendance shall guarantee hearing the deliberations at meetings, viewing the proceedings, and accepting the invitation to offer suggestions."

Mr. Romney, do you care to discuss it further?

DELEGATE ROMNEY: Mr. Chairman, it is merely another attempt to solve this enigma, Otherwise, I might say (Inaudible) [res ipsa?] loquitur. (Laughter)

CHAIRMAN GRAYBILL: Or perhaps caveat emptor? (Laughter) All right, is there further discussion? (No response) If not, the issue is on Mr. Romney's motion-substitute motion to delete Section 8 and put in place of it language which says: "Citizens shall possess the right to attend meetings of governmental units charged with the responsibility of administration of statutes and regulations. Such attendance shall guarantee hearing the deliberations at meetings, viewing the proceedings, and accepting the invitation to offer suggestions." So many as shall be in favor of Mr. Romney's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Very well, we are debating Section 8, as amended. Is there other discussion? The amendments involve the word "reasonably" and the word "agencies". Members of the committee, you have before you, on the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 8 as amended, that it recommend this section be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's amended-it's adopted as amended. Section 9. Wait a minute. Is this 9, Mr. Cate?

DELEGATE CATE: Yes it is.

CHAIRMAN GRAYBILL: Okay. Will the clerk read Section 9.

CLERK SMITH: "Section 9, Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the state government and its subdivisions, except in cases in which the demand of individual privacy exceeds the merits of public disclosure." Section 9.

CHAIRMAN GRAYBILL: Mr. Clerk, you're supposed to read that "individual privacy clearly exceeds the merits of public disclosure." If you'll all look in your books, on page 6 and on line 3 thereof, between "privacy" and " exceeds", put in the word "clearly". The committee intends that word to be in there initially. The Chair will allow that amendment to thedocument: "exceptin cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 9 of

Proposal Number 8, that it recommend that the same be accepted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: The committee, with two dissenting votes and after considerable reflection, adopted this provision explicitly establishing a public right to know. In the main, the provision is from Delegate Proposal Number 57. It is a companion to the preceding right of participation. Both arise out of the increasing concern of citizens and commentators alike that the government's sheer bigness threatens the effective exercise of citizenship. The committee notes this concern and believes that one step which can be taken to change this situation is to constitutionally presume the openness of government documents and operations. The provision stipulates that persons have the right to examine governmental documents and the deliberation of all public bodies or agencies, except to the extent that the demands of individual privacy clearly outweigh the needs of the public right of disclosure. The provision applies to state government and its subdivisions. The committee intends by this provision that the deliberations and resolution of all public matters must be subject to public scrutiny. It is urged that this is especially the case in a democratic society wherein the resolution of increasingly complex questions leads to the establishment of a complex and bureaucratic system of administrative agencies. The test of a democratic society is to establish full citizen access in the face of this challenge. The committee approvingly cites Section 82-3401 of The Revised Codes *of Montana,* 1947, which provides: "It is the intent of this act"-that's the Open Meeting Act-"that actions and deliberations of all public agencies shall be conducted openly." The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. We do commend this particular bit of legislation, but we think that probably it is not enough and that this provision does go considerably farther and, as our government continues to grow, will provide a better basis than one that is purely statutory. The committee, during its deliberations on this provision, struck the word "public" from the phrase "to examine public documents". This was done to avoid tying theviability of this provision to the 1895 legislative efforts to define public and private writings. Sections 2 and 3 of Title 93, Chapter 1001 of ***The Revised Codes of*** Montana, 1947, define these two classes of writings. Broad categories of what constitute public writings are stipulated in Section 2; Section 3 proclaims that all other writings are private. The committee admits that this list of public writings is admirably broad; however, using this type of statutory construction is dangerous when one is attempting to establish a right to know. Judging from the example of federal and state statutes on the matter, it is better to stipulate the exclusions rather than the inclusions. To do otherwise is to risk losing the right to examine a document because it does not fit statutory categories as a public document. The committee intends by this provision that the right to know not be absolute. The right of individual privacy is to be fully respected in any statutory embellishment of the provision, as well as in the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply. To clearly establish this point, the committee stipulated in the provision that the right to know is subject to the demands of individual privacy. And further to clarify this point, we added the word "clearly", with the intention of tipping the balance in the favor of the right to know. The committee commends this provision to the Convention as a long step forward in assuring the openness in government. By creating an atmosphere of openness in government, the committee believes that confidence in government will increase and governmental operations will be facilitated. Such a provision, far from limiting the effectiveness of governmental operation, establishes the prerequisite to the effective exercise of citizenship in a democratic society. I think most of you are aware of the fact that we've been getting quite a bit of static on this and especially-in fact, almost entirely--regarding the section which attempts to create the balance between the right to know and privacy. We were aware of this, really, from the beginning in our committee deliberations-the fact that there is a right to privacy involved in the right to know. I think it's come up time after time that we don't intend to open up the state income tax records; that in this case, for the most part, the right to privacy exceeds the demands for public disclosure. We do recognize, however, that there aresomecaseswheretherighttoknowwhatisina document that might be classified may exceed the right to privacy. There are times when the right to know what is going on in a deliberation regarding personnel, which ordinarily would be classified and would not be public--we considered it private-but there are times when the public right

to know clearly exceeds the individual person's right to privacy in this case. You might have an agency head, for instance, whose dismissal is being considered. If there is-if he is being dismissed for cause, I would think that the publichas a right to know that reason of dismissal. There are times when this would apply to local school board situations, local government situations, and many others. Now, we have had a number of suggested revisions on this. The-I can't think of his name-from the School of Journalism, has suggested that we delete the entire last provision with-listing the exceptions. His feeling is that the court will provide the exceptions. We had assumed that the court also would pretty well define the exceptions; in other words, they would determine what the cases are in which the demands of privacy exceed the demands of public disclosure; and I think it was pretty well the agreement of our committee that we would prefer this method of determination. However, I understand that there are some in the body who would prefer leaving it to the Legislature, and, you know, you could end by—in the exception phrase-by saying something like, "except in cases in which the demands of privacy"--no, back further-"subject to these exemptions as may be prescribed by law, or by the Legislature." To my mind, I don't know that I can weigh the advantages of having the Legislature make this determination or the court make it. I think our committee decided, and I'll go along with them on it, that it would be better to leave it to the courts to make this determination; but surely, if this body decides that the Legislature would be a safer or a more responsive body to make the determination, I don't think that our committee would object greatly. For the present time, though, I would like to present it to the committee as it's stated, with our one amendment which inserts the word "clearly" as was read. Thank you.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, members of the committee. I think that this provision is like the Biblical proverb-"the Lord giveth and the Lord taketh away." The first part of that paragraph does give the citizen the right to know, and the second part of that paragraph denies the citizen the right to know. I think under the second part of that paragraph, the fears of the Montana Press Association and other individuals who have written to us are well founded. Any governmental agency or officer could refuse on the grounds that individual privacy exceeded the merits of public disclosure, and in effect you would not have a right to know. You might very well also jeopardize the present statutes which we have in Montana dealing with the right to know; and therefore I think it is prudent to add to that provision a section which would permit the Legislature to set the situations in which individual privacy exceeds the merits of public disclosure as they have under the present public information act. So I have a motion before this body, which I would ask the clerk to read at this time, which I think will take care of that situation, meet the objections of the Montana Press Association as well. Thank you.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Cate's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 9 of the Bill of Rights proposal on page 21, line 19, by inserting, after the word 'except' and before the word 'in', the words 'as may be provided by law'. Signed: Cate."

CHAIRMAN GRAYBILL: Members of the body, that is on-if you're on page 6, that's on line 2—after the word "except", Mr. Cate would add "except as provided by law in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure". So Mr. Cate adds, after the word "except", "as may be provided by law"-the phrase "as may be provided by law"; so that the last phrase reads: "except as may be provided by law in cases in which the demands of individual privacy clearly exceeds the merits of public disclosure". It has the effect of putting the Legislature in as the arbiter of the cases excepted.

Mr. Cate, do you have anything further?

DELEGATE CATE: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. The committee worked long and hard on this particular section, and we invited testimony from members of the news media and we worked with their assistance. It was only after we completed our section that they suddenly, somewhere, from some place, decided that our section was too weak; and I'd like to quote from the testimony of Mr. Dan Foley in regarding this particular subject. He says: "I understand that this committee is very concerned about the right of privacy, and well that you should be in the era of credit checks and computer banks, wiretaps and bugging devices, and military spying on those

exercising their rights of free speech and assembly. Governments, even state governments, collect information on all of us, some of which should not be in the public domain. I would never suggest, for example, that the people's right to know extends to inspection of individual income tax returns." He continues, "But I think the people's right to know about their government and individual citizens' right to privacy can be balanced in the Constitution. I understand you are considering a proposal which guarantees public access except in cases in which the demands of individual privacy exceed the merits of the public disclosure. I would endorse such a proposal. I much prefer it to any provision guaranteeing access-quote-'except as otherwise provided by law.' I don't think the latter provision would give the public or the press any access they don't already have under the state law and it might be an open invitation to legislation setting forth exceptions to the access rule." Now, it was the thinking of the committee that, in fact, the courts would have to strike the balance between the merits of public disclosure and the merits of privacy, and our committee had faith in our courts to strike this balance. And we did not feel that this particular provision should be left to the Legislature to interpret, and I would oppose the amendment of Delegate Cate. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, as a substitute motion, I should like to make a motion to delete the section. I do this with tongue in cheek, because for 50 years I've been trying to accomplish and secure the right to know. But there have been some developments which came up since Dan Foley testified before the Bill of Rights Committee, and on the basis of that and the studies that were made by the Montana State Press Association, I take this position—

CHAIRMAN GRAYBILL: Mr. Martin, the Chair will allow your substitute motion to delete Section 9 in its entirety. Is that your point?

DELEGATE MARTIN: Yes.

CHAIRMAN GRAYBILL: Very well, you may discuss it.

DELEGATE MARTIN: In this morning's *Missoulian* there's an editorial and I'll just quote a little bit. The title to that is "Right to Conceal Must be Killed". "The right to know section proposed by the Constitutional Convention Bill of Rights Committee should better be called the right to conceal." Earlier in Section 8 we talked about a word "expect". The one word in this case is "except". The provision says, "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand for individual privacy exceeds the merits of public disclosure." The words "except in cases in which the demands of individual privacy exceeds the merits of public disclosure" are causing widespread alarm among Montana newspapermen. They believe the words are so vague that they could be interpreted to allow almost any public board, agency or administrator to cover up vital public matters. The Montana Press Association has notified all delegates of its fear that the right to know section would become a vehicle for concealment. There is more of this than the concern being expressed by the press. This article could close much of government to all citizens, frustrating their ability to participate in the decisionmaking process and giving each--even more power to those who like to exercise power behind the scenes. The proposed section either should be amended so the dangerous wording is removed or, better yet, simply deleted entirely. An editor of the other sex, Donna Brown of the *Gallatin County* Tribune, said this last week: "I am positive that the Constitutional Convention delegates would never knowingly pass a section of the proposed Constitution if they thought it was unjust, unworkable, and would contravene one of the original freedoms guaranteed this nation by the founding fathers, freedom of the press, but this is what would happen if the Committee of the Whole does not change a section of the proposed Bill of Rights that will be debated in the near future." Mrs. Brown says, "I take strong exception to the wording, 'except in cases in which the demands of individual privacy exceeds the merits of public disclosure'. As it is written, the passage makes this section of the Bill of Rights very subjective, subject to the desire or whim of the agencies concerned, or possibly the Legislature. In the end, only the courts could settle the matter. This is what can happen when you let the Bill of Rights become a document for government manipulation and distributes a right unequally to the people. Our country is based upon absolute equal individual rights. Let's not, as Senator Irvin says, 'limit the right of the public to be informed with a faulty section in the Bill of Rights'. It would be better to eliminate the right to know provision al-

together than to undermine our present freedoms, however much they may need strengthening." After recess this afternoon, I talked at some length with Francis Mitchell of Common Cause. I think that we have a mutual agreement of the absolute need for strengthening the right of the public to know. And I also talked with Mrs. Eck, as well as with Mr. Dahood, but we came-1 came to the conclusion that you should give some consideration to the letters that came from the attorney for the Montana Press Association in Billings, as well as for the member of the faculty--of the Dean of the School of Journalism, and in their suggestions. I do hope that we can continue the spirit of openness which has marked this Convention, and I think we have made some great strides in regard to this openness of meetings. But let's not get it tangled up so that we have words like "except". Let's either be positive or not have anything at all. I hope the motion to delete prevails.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I oppose the motion to delete, and I think we ought to place proper focus on the position that's taken by the press. The gentlemen of the fourth estate seem to think they have no responsibility in a free society; they have a responsibility. And this particular section was not enacted for their benefit; it was enacted for the benefit of the citizen of the State of Montana. This particular section was in the rough draft that was circulated several weeks back. This particular section was framed after the gentlemen of the press themselves appeared before the committee and said this particular language was acceptable. Recently, someone in an ivory tower in an eastern state, apparently that represents some national press association, has read this particular section and, with his sophisticated training far beyond my own or that of any member of the committee, has decided that the wording in this particular section impairs the right of freedom in a free society. And in the State of Montana, apparently those that represent the press have paid some heed to that clarion call, and they make the same indictment. We're reasonable people. Let's read the section. The first sentence reads: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions." Language, of course, serves the purpose of communication. How much clearer can this communication be with respect to what is intended by the Bill of Rights Committee? What is there in that particular sentence that does not serve the public interest? What is there in that particular sentence that in any way injures or impairs the right of the press to ferret out the news and report to the public? What is there in that particular sentence that shackles the press from acting as a watch guard upon the activities of government for our benefit? Not for their benefit, to sell newspapers, but for our benefit. And the two purposes behind this section, as are the basic purposes behind the federal amendment contained within the Bill of Rights that provides freedom of the press, is twofold: one, to allow the press to be a watch guard on the activity of government and, second, to make sure that the rights of the individual citizen of a free democracy are protected. And that is the only justification for a free press in a democratic society. Now, let's go on to the second part of it— "except in cases in whichthedemandofindividual privacy clearly exceed the merits of public disclosure". Now, what's our concern? Our concern is to make sure that this so-called right to access with respect to government documents, this right of access that we call freedom of the press, is being used to foster individual right and citizenship in this particular society of Montana. There's got to be a limit to it. The reason we organize in a free society is to make sure we have dignity, that we have privacy, that our private affairs are not open to public scrutiny. Now, if I go into a welfare department and I'm a poor citizen and I have to disclose my circumstances— circumstances I'm not proud of; perhaps circumstances that may reflect upon the children of tender years that I have to feed and clothe, whose parentage, perhaps, must be reflected in shadows that I don't want publicly disclosed-but I have to disclose those facts to gain assistance from the beneficent State of Montana. Should that be open to scrutiny? I'm injured--my medical history is important; perhaps I've had diseases I don't care to have disclosed publicly-but that medical history requires that these particular factors be placed within that particular governmental file so that there's sufficient basis for the claim that I make as provided by law. Should the press have access to that? And on and on. How about the confidential relationships that are set by statute that are zealously guarded? Should they not be protected? Should not communication with respect to a private matter that deals with some governmental concern between attorney and client not be protected? Perhaps there's some dis-

closure between priest and penitent, doctor and patient, the sacred relationships that are so important in a free society; should they not be paramount? Should they not be supreme? We are all trained to read our own language. Read this. Where within this language do you see anything that restricts the right of the press to know and to investigate and to examine that is not within the limits of fairness to all of us? They are here to serve us and to protect our rights, and we want our rights protected first and foremost and always. And I submit to you that as Chairman of the Bill of Rights Committee, I thought at times that the journalistic proboscis of the fourth estate was much too long, on many occasions, and was delving into concerns that were beyond fair press and fair report. But the members of my committee convinced me that the press wanted this particular declaration and it should be within the Bill of Rights and we would be forward among all the states in enacting this particular provision. And so I accepted their reasoning, and I accepted their concern, and I accepted their motivation. Most laudable, indeed, to balance the need to know with the need to have the press act as a watch guard upon government. Balance that with the basic right of individual dignity and privacy in the type of governmental structure which we have and which we enjoy. And I say to you here and now, Section 9 will serve that purpose. And this campaign that has been levied against it is not a just campaign and fails to strike the mark, because the mark that we strike is the one for the people of the State of Montana. Mr. Chairman, I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'm concerned about Mr. Martin's proposal to strike this section. I've been trying to read along a little bit ahead and to find out just where else this same right is guaranteed, and I wonder what the answer to this question would be. If we strike out Section 9, the right to know, then where in our Constitution do we guarantee this same thing? And if it is not guaranteed just this way, then if it is left as a matter of law to government agencies to make this decision for themselves, then where do people have this guarantee? So I am going to work and vote to keep this section in, because I think it's necessary. Then a second thought occurs to me. If we do write it in, as Mr. Dahood has suggested, should it be absolute? Or should there be any exceptions? And the third thought occurred to me. If there should be any exceptions, then how do you write it in? If you don't write it in this way, then I'd like to hear--and I'm serious, now-this is dialogue on the subject-if there should be any exceptions, and particularly in view of the next section that we're going to present, the right to privacy, then how would you make a statement of the fact that there should be exceptions that-in a manner that would be superior to this?

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I'd like to direct my remarks chiefly to Mr. Dahood, if he'd remain-(Laughter) No question. I'm serious, though, here, Wade. Mr. Cate made an amendment which I think at this stage I will support, and I didn't think you were opposing it till the remark you made just before you sat down, and apparently you may be. What concerns me here, though, is how this right is to be enforced. If we leave it to the courts, as Mrs. Eck suggested, the agency really makes the first determination. For example, supposing I wish to attend a public meeting. I go and the agency advises me that a man's individual privacy precludes me from attending. I then have to go to court and attempt to get an order allowing me to attend. The court may-by the time I can do that, the court might tell me, "Okay, the question is moot; the meeting is over." Or, for example, the welfare recipient. He goes and makes certain disclosures in order to get the benefit of welfare. Then the agency discloses this to the press. Well then, again, it's too late for him to come in and get an order, really, to protect himself. And I wonder if Mr. Cate's amendment allowing the Legislature to make some general laws in this area, right in the exceptions, might not be good. I'm not sure, and I'd appreciate your comments.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. The Legislature, of course, would still have the right to make any regulation that it deems necessary in conformity with Section 9. With respect to the fears and apprehensions which you have recited, I would much rather have that error made in favor of individual right than in favor of disclosure that might cause some particular problem or error or disgrace or indignity that would be beyond any type of remedy whatsoever. I think we can take any of these particular rights and we can carry our analogy out to the extreme and show where we can have problems, but we've got to have faith in the people that are representing us in

governmental capacity. We've got to have faith in the people that are going to know about this particular section and know that they have a certain obligation and a certain responsibility to disclose these things. We've got to have faith in these people in cases where there is, without any doubt, the right of privacy to restrain that particular disclosure. I think when we make the comment that has been made and the critique, I think we're assuming that these people are not going to act responsibly. Nobody is going to act perfectly. Nobody is so completely perfect, that they're going to act in a manner where they're not going to make any mistakes, but we're going to reduce the chance for error in this connection. There may be a requirement for a court case or two or three to set a proper guideline, but isn't that the history of freedom? Isn't that why we have a Judiciary that's so supreme and that's so final, because there comes a time with all of our rights where a court test is required so that that particular right can be outlined and delineated with respect to the time within which that particular question has been raised. I submit to you there is no way to draft a perfect constitutional provision, but this provision does provide the practical guideline and the practical right and the practical obligation that we want here to accomplish the purpose that's intended. I submit to you that the motions to delete and the motions to amend should be rejected.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman]. I'm going to, if we ever get to it, talk in favor of Mr. Cate's amendment. But we're starting to discuss the philosophy of those--whether it should be by court or Legislature, and I hope we can vote on the deletion now and if that wins, that's the end of it. But if it doesn't, then I think we can go on to the other discussion.

CHAIRMAN GRAYBILL: Mr. Martin, do you want to close?

DELEGATE MARTIN: Mr. Chairman, we have on the statute books today the legislation—Section 82-3401 of the 1947 Codes, "Legislative intent-liberal construction. It is the intent of this act that actions and deliberations of all public agencies shall be conducted openly." Section 82-3402 provides meetings of public agencies to be open to the public, and it has some exceptions—national or state security, the disciplining of any public officer, the employment or appointment or something, the purchasing of public property, the revocation of a license, and law enforcement, and so forth. And then minutes of meetings, on Section 82-3403—"minutes of meetings", "public inspection", "open to the public". Now, the exception that we take with regard to this is not in the positive statements of-that is, "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions". There is nothing wrong with that, but when we get to the "except", it then gives and provides some opportunities where some bureaucrat, some agency, some government official can shut up a classified file and make some decisions. That's the point. If it were just to end with subdivisions and just prior to the exception, there would be no question. And I think that, in view of the statutes that are there, a provision that would provide "except as provided by law". Now, Mr. Cate in his amendment, as I understand it, was going to continue, "in cases in which thedemands for privacy exceed the merits of public disclosure". This was the basis on which our motion to delete was made, and as much as we'd like to see it decided, I think that we want you to know, not that we're trying to tell how people should do and how people should act-in the section on freedom of the press, there are some provisions there that those of us who don't do the right thing are subject to libel and slander actions, and some of us have been burned pretty badly by that. I hope the-my motion prevails.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Martin's motion--substitute motion to delete Section 9 in its entirety. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. All those in favor of deleting Section 9 in its entirety, say-vote Aye; and all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: I'll close the ballot. Will you take the ballot.

Aasheim		Nay
Anderson,	J.	Nay

Anderson, O ..... Nay
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates.. ..... Absent
Belcher ..... Excused
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier.. ..... Nay
Brown ..... Nay
Bugbee ..... Absent
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Aye
Felt. ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Nay
James ..... Nay
Johnson.. ..... Nay
Joyce ..... Aye
Kamhoot ..... Absent
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ..... Nay
Noble ..... Nay
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Spew.. ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward.. ..... Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CHAIRMAN GRAYBILL: We'll announce it twice, Marie. We'll announce it twice. Go ahead. Go ahead and announce the vote.

CLERK SMITH: Mr. Chairman, 14 voting Aye, 76 voting No.

CHAIRMAN GRAYBILL: The committee will be in order. 76 people having voted No and 14 having voted Aye, the motion to delete fails. We're now debating Mr. Cate's amendment.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I rise to support the amendment of Mr. Cate. I think that Mr. Dahood and Mr. Cate and I are trying to get to the same thing. I agree with Wade that we should protect welfare records, medical records, and certain other things like adoptions, that should not be made accessible to newspapermen. However, I can see where this would be abused by a County Commissioner, a Governor, other state officials, using this exception in our present Constitution to deny access to public documents. As a result, you'd have to go to court and end up ultimately with the Supreme Court, which would take years in many cases. We'd be litigating hundreds of cases by public officials denying access. However, if you go along with Mr. Cate's amendment, when they see an abuse of this by public officials, then they can immediately amend the laws to provide for open access. So I go along with Mr. Cate. Don't let the courts tie this all up, but let the Legislature have flexibility provided by law-they've got a clear mandate under this article. Then we can have legislative support for it; and if the courts start to abuse the matter, then the Legislature can correct it. But if you get a narrow-minded court in future years and they narrowly construe this article, then Mr. Dahood's rights are out the window. So I hope the Convention will support Mr. Cate's amendment. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Cate's amendment has the effect of adding, on line 2 on page 6, this phrase: "except as may be provided by law in cases in which the demands for individual privacy clearly exceeds the merits of public disclosure".

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't think this kind of language belongs in the Bill of Rights anywhere. I think we're announcing principles here, and we shouldn't be referring things to the Legislature from the Bill of Rights. I can't see that this adds a thing to the Bill of Rights; and in answer to Mr. Brown's argument, he's throwing up a smokescreen about the Supreme Court and hundreds of cases. The Supreme Court will decide the issues involved here in one or two cases, and it's purely a smokescreen and should be disregarded. I don't approve the amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], I would support this amendment, too. It seems to me-from the discussion of the members of the majority of this committee, they indicate that this is in there by reference anyway, but we already have statutory law that I don't think they intend to repeal by this constitutional provision. It could beinferred they intend to repeal the open meeting part of the statutory law. It's important. As 20 years as County Attorney, there have been many, many things that you cannot make public disclosure on, particularly sex crimes and juvenile matters and that sort of thing. And it's really been no problem-I know in my area, anyway. I think if you make it "as provided by law", it's in keeping with the intent of the majority. They indicate that it's inferred that this will be done, and I'm sure they have no intention to repeal the present statutes on this subject but rather let them expand them and implement them as time goes by. So I'd support Mr. Cate's amendment.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I resist the motion of Mr. Cate very strongly and take exception to Delegate Davis' inference that the majority of the committee would, in fact, support this amendment. We discussed this question of "except in cases as provided by law" in our committee and rejected it and clearly felt that it did not belong in there. And we felt that the proposal of the committee was what, in fact, we wanted. And we felt confident that the courts would determine this in their wisdom, and we also felt that the Legislature could provide provisions within the determinations of the court to embellish it without specifically stating it. And I support the position of Delegate Schiltz, particularly in this regard, and also the position of the majority of the committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, would Mr. Dahood yield, please?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE SKARI: Mr. Dahood, in Section 82-3402, *Revised Codes of Montana, in Sec*tion 4, they say that one of the exceptions is "the purchasing of public property, the investing of public funds, or other matters involving competi-

tion or bargaining which, if made public, may adversely affect the public security or financial interest of the state or any political subdivision or agency of the state." Does your Bill of Rights Section 9 cover that sort of thing? In other words, can the state's interest be protected here?

DELEGATE DAHOOD: Yes, I think the state's interest is protected in those instances where there's a need for that protection. Where you've got a bidding situation, of course, that particular matter must be kept confidential until the bidding is over.

DELEGATE SKARI: Mr. President [Chairman], would Mr. Dahood yield again?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE SKARI: Well, as I read it, Section 9 states "except in the case where the demand of individual privacy exceeds the merits of public disclosure". I have a little trouble with that.

DELEGATE DAHOOD: Well, Delegate Skari, what we are talking about here, of course, is protecting basically the right of the individual with respect to those matters that may affect him. I think what you're talking about is the statute that has to do with certain functions of government in securing property for the operation of government to serve the citizen, and I must confess I have not had occasion to review that statute recently. But I think, as you read it, that indicated that there must be some confidentiality up to a particular point; is that not true?

DELEGATE SKARI: Yes.

DELEGATE DAHOOD: And I think that's necessary for the integrity of government within that particular area. I do not think that anyone would expect to have information before a particular point of decision is reached in that situation, because the reason for it, of course, is to secure property for the government at the best obtainable price.

DELEGATE SKARI: Thank you, Mr. Dahood.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Cate's amendment to add the words "as may be provided by law" after the word "except", so that the last clause reads: "except as may be provided by law in cases in which the demand of individual privacy clearly exceeds the merit of public disclosure". Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Roll call vote has been called for. All in favor of Mr. Cate's amendment, vote Aye on the voting machines; all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas .. .. Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Excused
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Absent
Burkhardt ..... Nay
Cain ..... Nay
Campbell Nay
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Nay

Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce.. ..... Absent
Kamhoot ..... Absent
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Absent
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Nay
Nutting. ..... Excused
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 30 voting Aye, 56 voting No.

CHAIRMAN GRAYBILL: 56 having voted No and 30 voting Aye, Mr. Cate's amendment fails. We're back on Section 9 as submitted by the majority report here of the-by the Bill of Rights Committee report. Is there further discussion of Section 9?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President [Chairman], I now have to ask Mr. Dahood a question. Would he yield, please?

CHAIRMAN GRAYBILL: Mr. Dahood, would you yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE McDONOUGH: Mr. Dahood, would this section now—9, as it's now standing with the defeat of that amendment, would that allow a defendant in a criminal case more leeway and more power than he has now to examine the records of the County Attorney's office relative to the case that he's being tried for?

DELEGATE DAHOOD: No, I think not, Delegate McDonough, for this reason. I think all rights have to be balanced against a police power. I think the Supreme Court of the United States has announced that doctrine time and time and time again. We have a Criminal Code in the State of Montana that provides the discovery that you're talking about, and I think that would be balanced as against that particular section. I do not think that that would have any effect whatsoever upon a criminal situation.

DELEGATE McDONOUGH: Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, for the benefit of the journal and the record here, is it your intention on this to repeal the existing statutes on open hearings, or do you feel that they would still remain in full force and effect?

DELEGATE DAHOOD: I feel they would still remain in full force and effect, Delegate Davis.

DELEGATE DAVIS: Thank you, Delegate-(Laughter)

CHAIRMAN GRAYBILL: Is there other discussion? Very well, members of the committee you have before you for your consideration, upon the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 9 of the Bill of Rights Article, that it recommend the same be adopted.

Mr. Heliker, for what purpose do you arise?

DELEGATE HELIKER: I would like to ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Okay. (Laughter) Mr. Dahood.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HELIKER: Mr. Dahood, being an ignorant nonlawyer, what is an individual?

DELEGATE DAHOOD: What is an individual?

DELEGATE HELIKER: Is it by any chance also a corporation?

DELEGATE DAHOOD: A person can, of course, Dr. Heliker, as you well know, be defined to include a corporation under the law.

DELEGATE HELIKER: I know a person can, but can an individual?

DELEGATE DAHOOD: An individual, in my judgment, would not be a corporation, no.

DELEGATE HELIKER: Thank you.

CHAIRMAN GRAYBILL: Well, the Chair doubts that it needs to restate that lingo. All those in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. Section 9 is adopted. Will the clerk please read Section 10.

CLERK SMITH: "Section 10, Right of privacy. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Section 10, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of Proposal Number 8, it recommend that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, fellow delegates, the right of privacy is a right which is not expressly stated in either the United States or the Montana Constitution. It is our feeling, on the Bill of Rights Committee, that the times have changed sufficiently that this important right should now be recognized. If I may, Mr. Chairman, I would like to add an amendment which the committee has made, and I would like it voted on before I continue. This would be to the-add to Section 10 the right of individual privacy.

CHAIRMAN GRAYBILL: Is that on line 5 of page 6?

DELEGATE CAMPBELL: Yes, Mr. Chairman, and the committee has unanimously approved this amendment and would request a vote on it if necessary.

CHAIRMAN GRAYBILL: So many as shall be in favor of adding the word "individual" so that it reads: "the right of individual privacy", as the committee wishes to have this matter considered, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE CAMPBELL: This would exclude any question about a government or a corporation. In our early history, of course, there was no need to expressly state that an individual should have a right of privacy. Certainly, back in 1776, 1789, when they developed our Bill of Rights, the search and seizure provisions were enough, when a man's home was his castle and the state could not intrude upon this home without the procuring of a search warrant with probable cause being stated before a magistrate and a search warrant being issued. No other protection was necessary; and this certainly was the greatest amount of protection that any free society had given its individuals. In that type of a society, of course, the neighbor was maybe 3 to 4 miles away. There was no real infringement upon the individual and his right of privacy. However, today we have observed an increasingly complex society and we know that our area of privacy has decreased, decreased, and decreased. The United States Supreme Court, in Griswold versus Connecticut, had to construe the right of privacy as an implied right and, in that case, held that the right of privacy extended into the marital privacy, that the state did not have a compelling state interest in going into the bedroom of a married couple to prevent contraception. And they ruled the Connecticut anticontraception law invalid as invading the right of privacy. Now, we don't know how the interpretations will go from there, what the Supreme Court will do. We feel, in the Montana Supreme Court, it has recognized the right of privacy, although it has not been expressly stated in the Montana Constitution, What this would do-by requiring that this area of privacy be protected unless there is a showing of a compelling state interest, it produces what I call a semipermeable wall of separation between individual and state; just as the wall of separation between church and state is absolute, the wall of separation we are proposing with this section would be semipermeable. That is, as a participating member of society, we all recognize that the state must come into our private lives at some point; but what it says is, don't come into our private lives unless you have a good reason for being there. We feel that this, as a mandate to our government, would cause a complete reexamination and guarantee our individual citizens of Montana this very important right-the right to be let alone; and this has been called the most important right of them all. You've all had placed on your desk the *Montana Standard's* editorial of February 3, 1972. I think it states it very well. "Times change. That, in a nutshell, is why the Constitutional Convention delegates in Helena are working on a new and more modern governmental charter for Montana. Today, with wiretaps, electronic and bugging devices, photo surveillance equipment and computerized data banks, a person's privacy can be invaded without his knowledge and the information so gained can be misused in the most insidious ways. It isn't only a careless government that has this power to pry; political organizations, private information gathering firms, and even an individual can now snoop more easily and more effectively than ever before. We certainly hope that such snooping is not as widespread as some persons would have us believe, but with technology easily available and becoming more refined all the time, prudent safeguards against the misuse of such technology are needed. Some may urge and argue that this is a legislative, not a constitutional issue. We think the right of privacy is like a number of other inalienable rights; a carefully worded constitutional article reaffirming this right is desirable. Wade Dahood of Anaconda, Chairman of the Bill of Rights Committee, hit the nail on the head when he said: 'As government functions and controls expand, it is necessary to expand the rights of the individual.' The right to privacy deserves specific protection." Mr. Chairman, I would recommend the adoption of this section.

CHAIRMAN GRAYBILL: Very well, is there discussion?

Mrs. Babcock.

DELEGATE BABCOCK: May I ask a question, please? Would this preclude a corporation made up of family members?

DELEGATE CAMPBELL: It's not-it is intended to protect the individual as we have described it. We do not feel that a corporation is an individual. It can be considered a person, but not an individual. We don't think that this would apply in that area.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd like to move an amendment that, on line 7, after

the word "infringe", we put a period and strike out the rest of the sentence. On line 7, after the word "infringe", simply put a period and strike out the words "without the showing of a compelling state interest" and let this statement about right of privacy simply stand just right there, barefaced, on its own; that we have the right to privacy as stated. Section 11 gives some leeway to that for the state in a lawful way to go about invading the right to privacy in the section on searches and seizures. I am a little worried about that phrase "without the showing of a compelling state interest" because that may be interpreted by whatever state agency happens to have an interest in invading my privacy at that particular time.

CHAIRMAN GRAYBILL: Very well, the Chair will allow Mr. Harper's amendment to strike the last phrase of Section 10 and put a period after "infringed"-strike the words "without the showing of a compelling state interest". Is there discussion on Mr. Harper's amendment?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would agree with Delegate Harper's amendment. The right of privacy is recognized within the law, has been amply defined in case after case within the common-law area. The last phrase that Delegate Harper seeks to strike does not really serve any necessary purpose, inasmuch as the very definition of the right of privacy as we know it in the law takes care of that particular phrase and, consequently, the other matters where the state is involved would have to be balanced against this right. Our committee does not object to the amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises upon Mr. Harper's amendment that would strike the words "without the showing of a compelling state interest" and put a period after "infringed" on line 7, page 6, in Section 10. So many as shall be in favor of Mr. Harper's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Is there further discussion of Section 10? Members of the committee, you have before you, upon the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 10 as amended, that this committee recommend that the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 10 is adopted. Will the clerk read Section 11.

CLERK SMITH: "Section 11, Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing." Section 11, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 11 of Proposal 8, it recommends that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, in this searches and seizures provision, Number 11, we have the outline as is written up on page 24. I won't bother to read that to you. I'm sure you can go through it if you have any questions. You may note that in our rough draft when we did present it to the Convention, it did contain specific information regarding electronic equipment and surveillance. We at the committee felt very strongly that the people of Montana should be protected as much as possible against eavesdropping, electronic surveillance, and such type of activities. We also recognize that there may in the future be a legitimate need for such in legitimate police activities. After careful consideration of the rough draft that we did produce, we found that the citizens of Montana were very suspicious of such type of activity. We found from **the** law enforcement officers we talked to that there was really not a need and such activity was not taking place at this time. We had then decided that what we had done was made constitutional something that we may someday want to *regulate* or even abolish. There

were people that would-testified to our committee that the wiretapping and such should be abolished expressly in the Constitution. It was our feeling, after considering this, that it should not be solidified and cemented into the Constitution; it should be made a legislative matter; and as such, we have removed reference to it from the Constitution. It is not prohibited; and we have added, in addition, that a person's papers, homes, effects should be protected as well as invasions of his privacy. This is a two-pronged approach with the other right of privacy in Section 10. This is one that would affect the officer and the local person enforcing the law. It would not make any more difficult his right to receive a search warrant. It was our feeling that express language concerning electronic equipment should be dealt with by the Legislature and should not be solidified in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Campbell yield to a question?

CHAIRMAN GRAYBILL: Mr. Campbell?

DELEGATE CAMPBELL: I will yield.

DELEGATE ROBINSON: I'm confused by your remarks and by the comments of your committee. It seems to me that your committee very clearly and very strongly wanted to prohibit the future use of wiretapping or any other type of electronic surveillance in the State of Montana. And it seems from your comments that, you know, there is certainly no justification for it in this state; yet you are leaving it open, are you not, by your saying that-in essence that it can be done if probable cause can be shown, or if a warrant can be obtained?

DELEGATE CAMPBELL: No, we are not mentioning it in the search and seizure provision. There was some testimony before our committee that under the present Montana statutes, wiretapping is illegal--or at least under the present state of the law, which is, at best, in flux. It was the feeling of some that putting it in the Constitution would legalize it forever and that we would not be able to change it. If there is going to be any invasion of privacy by intercepting this communication, it will have to be done specifically by the Legislature. It was our feeling that we could not present to the Convention and the State of Montana an absolute prohibition which would forever preclude law enforcement from ever using these things, which some day it may need to use.

DELEGATE ROBINSON: Mr. President [Chairman], will Mr. Campbell yield to another question?

CHAIRMAN GRAYBILL: Mr. Campbell?

DELEGATE CAMPBELL: I will yield, Mr. Chairman.

DELEGATE ROBINSON: I don't see, really, how you can talk about privacy and in the same breath mention the possibility of wiretapping or electronic surveillance. I think these are probably two most incompatible things that you could ever have. I would wonder what the committee or Mr. Campbell's feeling might be. On your committee comments on page 25, you state, in line twenty-six and a half and twenty-seven and a half, that the committee believes that the privacy of communications should remain inviolate from state-level interception. I was wondering if the committee would accept a similar statement—privacy of communications shall be inviolate-as an amendment to Section 11 if your committee was-really believes what your comments say on page 25.

DELEGATE CAMPBELL: Yes, we do really believe it. We would accept it and as a committee we would endorse it.

DELEGATE ROBINSON: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I have an amendment, then, for Section 11, and I'll get it right up there.

CHAIRMAN GRAYBILL: Very well, Mrs. Robinson's amendment is as follows: "I move to amend Section 11 of the Bill of Rights Committee proposal, on line 16 on page 5-page 6, by adding to the following sentence at the end thereof: 'Privacy of communications shall be inviolate.'" ' rivacy of communications shall be inviolate.'

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, this is simply, you know, a very short statement of the committee's comments and language

on page 25. I feel that this is something that the committee obviously felt very strongly about, yet did not put it in the Constitution. I also feel very strongly about this state not ever, ever engaging in wiretapping. I just finished a book by Schwartz of New York State University dealing very extensively with wiretapping. He cites instances after instances where there is no actual proof or even the slightest indication that the gains from wiretapping can ever in any way measure up to the invasion of privacy perpetrated by wiretapping. Privacy, I think, is the right most valued by all men. And Justice Brandeis said that a wiretap, simply because it picks up both sides of all conversations, of all calls made by or to all persons using telephones under surveillance, by definition constitutes a general search, committed not only against a person under suspicion but against many others. I think that if you look at any statistics dealing with wiretapping, you will see that the value of wiretapping in no way measures up to the infringement on private property-private privacy. For example, in 1968 the federal-state officials overheard 4,000 people in 66,000 different conversations, wiretapped conversations. Not a single conviction. In 1969, state and federal officials both overheard 31,000 people in a hundred and seventy-three different conversations. One-third of one percent of the people overheard were convicted, at a cost of something in excess of $680,000. Similar situation occurred in 1970 where 25,000 people were listened to in 300,000 conversations. One-half of the 1 percent of the people overheard on these wiretaps were convicted, and the cost of such wiretapping and electronic surveillance exceeded $3 million. None of these wiretaps were—are—include those in national security or in one-party surveillance. I think it's quite clear that no case has been or can be made for wiretapping in the State of Montana, to have such a blatant disregard of privacy of individuals.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Will Mrs. Robinson yield for a question?

DELEGATE ROBINSON: Yes.

DELEGATE HOLLAND: Mrs. Robinson, I appreciate and agree with your statistics on wiretapping, but you understand that the telephone company sometimes uses blocks to locate obscene phone taps-or phone calls-that this would also rule out monitoring to see where these were coming from. Because you use such a broad term as "communications".

DELEGATE ROBINSON: Yes.

DELEGATE HOLLAND: And may I ask one further question? Will you yield for one further question?

DELEGATE ROBINSON: Yes.

DELEGATE HOLLAND: For instance, "communications" is broad enough for checking mail; that now the prisons can't go through the mail of the prisoners to check on what information they might be passing out, including possible plans for escape or to bring weapons.

DELEGATE ROBINSON: Well, I think that in the area of mail, which would certainly be covered by federal statutes, federal regulations, that anything a state constitution would write in terms of mail inspection would certainly be superseded by the federal regulations of the mail.

DELEGATE HOLLAND: Well, I haven't read the federal statutes on wiretapping, but I presume because they are-there is a certain amount of interstate commerce, they might-it might also-1 have no further questions.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I resist the amendment upon the grounds that, while I am in sympathy with the fact that-and support the position that there should be no wiretapping or other electronic surveillance, I think "communications" is too broad, because it could be stretched to anything-mail; putting blocks in the line as telephone companies do to-when women are being bothered by obscene phone calls, to pick up who's doing the calls; telegrams-communications could even be notes being passed back and forth in prison or any of a number of different situations. And as I say, while I agree with the thinking behind it, and-1 agree more with Mr. Campbell that this thing can be covered much better by legislation, which can be more specific and which can meet the shifting requirements that are required by such statutory matters.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman], I feel this is all immaterial. We've-in Section 10 we gave the absolute right of privacy

without any exceptions regardless of the state interest or any compelling interest. So we've already given them-we've opened the door, and I don't think anything we do now to limit it-we'd be in direct conflict with Section 10. But that's the way the Convention feels; we're going to legislate right through this.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would like to amend Delegate Robinson's amendment by placing the word "oral" between "privacy"-between "of' and "communications". Her amendment would then read: "Privacy of oral communications shall be inviolate".

Mr. President.

CHAIRMAN GRAYBILL: Just a moment. Mr. Campbell's amendment would add the word "privacy of oral communications shall be inviolate"-adding the word "oral" to Mrs. Robinson's amendment.

Mr. Campbell.

DELEGATE CAMPBELL: I feel that the concern was in wiretapping and interception of oral communications. This would eliminate any question on written types of letters, notes and that sort of thing, packages through the mail, which there is a legitimate right in many cases to search and to seize. I feel that with "oral communications" you are not excluding the legitimate law enforcement people who, with the consent of one party, the person who is being threatened by phone calls and things like this, to act on behalf of that victim. The privacy of that individual certainly could be waived with his or her consent, and there's certainly no privacy toward the obscene caller. I feel that this would not hinder law enforcement in that respect at all. If there were situations such as kidnapping, certainly the federal law would prevail. The federal law does provide a number of areas for wiretapping. They certainly are available; they could be used. For the State of Montana, I do not feel that it would be necessary, and it certainly would be expensive, to employ this type of electronic surveillance. I think we would have the adequate protection, and I feel that with that amendment it would be acceptable. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Will Mrs. Robinson yield to a question, please?

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: Yes.

DELEGATE MELVIN: Mrs. Robinson, did I understand you correctly that you felt that this-your amendment would forbid the telephone company and law enforcement officers to trace obscene telephone calls?

DELEGATE ROBINSON: I'm not sure whether it would or not. I feel that these things may have to be-1 really don't know how, technically, they do it-if they do it by a bug or by tapping lines. I know any time that I've had an obscene phone call, they can't do-they never are able to get it anyway. (Laughter)

DELEGATE MELVIN: Thank you, Mrs. Robinson.

DELEGATE ROBINSON: But I'm not sure how they do it, or how they don't do it.

DELEGATE MELVIN: Thank you, Mrs. Robinson.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: I have to speak in opposition to Mrs. Robinson's amendment for that one reason. One of the nastiest, most difficult offenses that is reported to police departments and sheriffs' offices is the obscene phone caller, and in spite of the statistics that have been spread here this evening, there have been some identified. It has not always resulted in criminal prosecution. Sometimes it has resulted in treatment by appropriate psychiatrists or others. But I do feel that this is an area that it's only possible to reach it in this manner. Thank you.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Would Mr. Melvin yield to a question, please?

DELEGATE MELVIN: I yield.

DELEGATE VERMILLION: Mr. Melvin, I was wondering now, on these obscene phone calls, does the receiving party know that the telephone company is intercepting the message?

DELEGATE MELVIN: Yes.

DELEGATE VERMILLION: Well then, this-I'm wondering if this would be a private communication then? It might be that in this instance, this proviso would cover that. I'm wondering—

DELEGATE MELVIN: Well, I could only assume that a court would interpret a communication as a dialogue between two people. Does that answer your question?

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Yes, let me answer that question, Mr. Chairman. First of all, this does not in any way relate to the obscene phone call situation, nor does it relate to the ability of the telephone company to make the traces. The logic and the reason is this: all personal rights, constitutional or otherwise, may be waived. Lady A is receiving the obscene phone call. She waives her right and grants the telephone company the right to intercept that communication. The individual that's making the call does not have the right of privacy with respect to violating the law and making the obscene phone calls, so as a consequence, we are not interfering with anyone's rights by having the telephone company attempt to intercept and discover and determine who the caller is; we are protecting the right of privacy. So as a consequence, may I say that that objection would not be one that we would have to worry about under the law, and the amendment proposed by Delegate Robinson would not in any way interfere with that situation.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I'll have to admit that Mrs. Robinson is probably better endowed for obscene phone calls than I am, and I'll have to yield to her knowledge in that respect. (Laughter)

CHAIRMANGRAYBILL: I'msureyaudo so reluctantly, Mr. Holland. (Laughter)
Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], would Mrs. Robinson yield to a question?

DELEGATE ROBINSON: If it's not obscene. (Laughter)

DELEGATE DAVIS: Mrs. Robinson, if there'd been the crime of murder committed and you and I were standing here and I said that I shot that dirty s.o.b., not to be obscene, would that be an oral communication?

DELEGATE ROBINSON: Well, yes.

DELEGATE DAVIS: And then you would not want to be in a position where you could testify in court that I had made that statement?

DELEGATE ROBINSON: Oh, I think that's totally irrelevant.

DELEGATE DAVIS: Not if it says in the Bill of Rights "privacy of oral communications is inviolate", is it?

DELEGATE ROBINSON: Are you not, in essence, giving upyourrightto total privacy when you tell me what you've done?

DELEGATE DAVIS: You're guaranteeing I can't give up my right of total privacy. There's nothing in here about a waiver, is there?

DELEGATE ROBINSON: Oh, no. You're -there's a difference between your knowing that you're telling me and you know whether there is someone around us listening or if it's just you and I; whereas, on the telephone, you may tell me that and you may suspect that I'm the only one listening, but you certainly may not know that.

DELEGATE DAVIS: Mr. President [Chairman], I would have to rise in opposition to this. After 20 years in law enforcment, there's still some rights of the citizens that have to be protected. In law enforcement, it seems to me oral communications could be a communication that was overheard if I were telephoning someone. It could be a communication overheard on radios between a stakeout and-as was demonstrated in London awhile back, where they overheard them talking about robbing the bank. It seems like it goes a lot further than electronic surveillance and wiretapping, which I think they originally had in mind, If they could clear it up in that regard, it might be acceptable.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, it's not very often I have a little bit of legal knowledge to impart, but I think that there was a case just in this last year that involved something very much like you described, where there-it was not a case of wiretapping; it was a case of a sister-in-law who

was listening-or a sister who was listening in on a communication, and the court ruled that this evidence could not be used because it was a violation of privacy. This had nothing to do with wiretapping, but I think that in this case, it would not be admissible evidence.

CHAIRMAN GRAYBILL: Mr. Gysler was up next.

DELEGATE GYSLER: Mr. Chairman, on page 25, line 13, I read: "The committee had incorporated into the tentative rough draft safeguards for wiretapping, electronic surveillance and other means of communications interceptions." After hearing further testimony, the committee decided to delete any reference to interceptions of communications. And yet, now, the mere mention of it on the floor and they say, "We're for it." I don't know. They really leave me kind of in a state of confusion, so I think I will go along with their written testimony and vote against the amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'd like to respond to what Delegate Gysler has to say, and I think there's some basis for what he does say. First of all, we agreed that we would go along with an amendment that would prohibit electronic surveillance in the State of Montana. The committee is still of that opinion. After listening to testimony, after examining briefs that were submitted to us, after analyzing the situation, it is inconceivable to any of us that there would ever exist a situation in the State of Montana where electronic surveillance could be justified. And the thinking throughout the United States is, electronic surveillance shall be justified only in matters involving national security, perhaps in matters involving certain heinous federal crimes where the situation is such that in those instances we must risk the right of individual privacy because there is a greater purpose to be served. But within the area of the State of Montana, we cannot conceive of a situation where we could ever permit electronic surveillance. And our intention was-in responding to the proposed amendment; that we would not object to it-was to allow an amendment that would prohibit electronic surveillance in the State of Montana. That is the committee explanation.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's motion to amend Section 11 by adding the phrase: "Privacy of oral"— no, let's see, it's on Mr. Campbell's amendment to add the word "oral" to Mrs. Robinson's amendment, so it would read: "Privacy of oral communications shall be inviolate."

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think I'm compelled to state that that particular language, with all due respect to Delegate Robinson, does present some problems. I'm not satisified in my own mind at this time that that is going to reach the electronic surveillance that we want to proscribe, and I think that perhaps that amendment might be withdrawn and perhaps the term "electronic surveillance" put in the phrase that's suggested by way of amendment.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President [Chairman], I would be glad to withdraw that amendment. The wording bothers me too, and I took it directly from the committee report. So anything that Mr. Dahood could come up with that would meet my objectives would be fine.

CHAIRMAN GRAYBILL: Do I understand, Mrs. Robinson, that you wish to withdraw your amendment?

DELEGATE ROBINSON: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Campbell, are you going to withdraw your "oral" word?

DELEGATE CAMPBELL: Yes, I will.

CHAIRMAN GRAYBILL: All right, both Mr. Campbell's and Mrs. Robinson's amendments are withdrawn.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, could I ask Mr. Dahood a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield.

DELEGATE BABCOCK: When the Governor has a device on his telephone that has a beep on it when someone calls in and then your voice is recorded, when you call into the Governor's mansion, is that electronic surveillance?

DELEGATE DAHOOD: It's electronic, but it's done with the consent of the participants in that conversation.

CHAIRMAN GRAYBILL: Very well, the issue before us is Section 11, unamended.

Mr. Loendorf.

DELEGATE LOENDORF: There are no present amendments before us, then, regarding wiretapping, et cetera?

CHAIRMAN GRAYBILL: Mr. Dahood's pencil is busy, but there are none before us.

DELEGATE LOENDORF: May I ask Mr. Campbell a couple of questions, then, while Mr. Dahood is writing? (Laughter)

CHAIRMAN GRAYBILL: Mr. Campbell, would you yield?

DELEGATE CAMPBELL: I will yield.

DELEGATE LOENDORF: There are a couple of things that concern me here, Bob, although not too much because I know the federal case law protects us. But assuming there was no federal law, in Section 10 we now provide for a right of privacy which will not be infringed. In Section 11, which appears now to me to be an exception to Section 10, we allow for invasions of privacy on a showing of probable cause. Now, this leads me to believe that, in the example you gave, the contraception case, that the police could go into court and, on a mere showing of probable cause that a crime is being committed, obtain the search warrant to go in and search unless our state court, as the federal court has done, invented a better right of privacy than I think we have stated here. Since we've removed the provision that a compelling state interest also be shown, I think the officers could merely go in. And I'm wondering if you think we've really changed the law at all by the addition of Section 10 and the additions to Section 11.

DELEGATE CAMPBELL: I see your objection and I would agree with yourreasoning. I certainly would have no objection and would heartily support an amendment you might have to delete invasions of privacy from Section 11, to leave it in its original form.

CHAIRMAN GRAYBILL: Mr. Loendorf, you've been invited to amend Section 11 by dropping the words "and invasions of privacy". Do you wish to?

DELEGATE LOENDORF: I'll leave that to the committee to do that. I just wish to point that out.

CHAIRMAN GRAYBILL: All right, the committee-Mr. Campbell now moves that we strike, on line 11, the words "and invasions of privacy" from Section 11, since we have taken the clause out up above. Because otherwise, the modifier "unreasonable" seems to weaken Section 10. Mr. Campbell, your amendment to strike "invasions of privacy" will be allowed. Is there discussion?

Mrs. Robinson, do you want to discuss this new matter?

DELEGATE ROBINSON: Yes, because this was the objection that I had, because I think that in Section 10 we did protect the right of privacy, but in Section 11, as it was written, it seemed to me that an invasion of privacy could be--would be okay as long as you had a warrant or could show probable cause or these other things. To me, an invasion of privacy is wiretapping and electronic surveillance. If you eliminate invasion of privacy from this section, then you have precluded wiretapping and electronic surveillance and I'm happy.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Campbell's motion to strike the words "and invasions of privacy" on lines 11 and 12 of Section 11 on page 6. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and the offensive words are stricken. Now, is there-are there further amendments to Section 11? Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 11 as amended, that it recommend the same be adopted. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Members of the committee, the Chair is quite pleased that we've gone as far as we've gone. And I see a section coming up that might take some time; I think maybe we should go home.

Mr. Murray, would you like to make a motion?

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise, report progress, and ask leave to sit again.

CHAIRMAN GRAYBILL: The motion has been made that the committee rise and report progress. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings moved from Committee of the Whole into Convention. President Graybill in Chair.)

PRESIDENT GRAYBILL: If you'll just remain for a minute now, we'll finish up. Will the clerk please read the title of the committee report.

CLERK SMITH: "March 7, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee of Bill of Rights, recommend that the committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Members of the committee, hearing no objection, we will not read the entire committee report. So many as shall be in favor—

Oh, Mr. Murray, you want to make the motion?

DELEGATE MURRAY: Mr. President, I move we adopt the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of 9:00 a.m., March 8, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Thank you very much for coming tonight.

(Convention adjourned at 10:13 p.m.)

March 8, 1972 **Fortieth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all rise, Delegate Harbaugh will lead us in the invocation.

DELEGATE HARBAUGH: Let us pray. God, our Father, we do not begin our days here with an invocation just for the sake of ritual, nor because it is traditional to do so, but because we sense that unless the Lord builds the house, those who build labor in vain. We do not know what the future holds, yet we strive to produce a guide for that future. So give us grace today to believe that even though we cannot look beyond our own time with clarity, you hold all time in your hands through Jesus Christ, our Lord. Amen.

PRESIDENT GRAYBILL: We'll take attendance by voting Aye on the voting machines.

CLERK HANSON: Delegate Berg, Delegate Bowman, Delegate Brown, Delegate Cate, Delegate Choate, Delegate Dahood. Mr. President, may Delegate Eskildsen be excused, please?

PRESIDENT GRAYBILL: He may.

CLERK HANSON: Delegate Berg, Delegate Bowman, Delegate Brown, Delegate Choate, Delegate Toole, Delegate Berg.

PRESIDENT GRAYBILL: Take the vote.

Aasheim ,, ,, Present
Anderson, J. Present
Anderson, 0. Present
Arbanas Present
Amess Present
Aronow Present
Artz Present
Ask Present
Babcock Present
Barnard Present
Bates Present
Belcher Present
Berg Absent
Berthelson Present
Blaylock Present
Blend Present
Bowman Absent
Brazier Present
Brown Absent
Bugbee Present
Burkhardt Present
Cain Present
Campbell Present
Cate Present
Champoux Present
Choate Absent
Conover Present
Cross Absent
Dahood Present
Davis Present
Delaney Present
Driscoll Present
Drum Present
Eck Present
Erdmann Present
Eskildsen Excused
Etchart Present
Felt Present
Foster Present
Furlong Present
Garlington Present
Graybill Present
Gysler Present
Habedank Present
Hanson, R.S. Present
Hanson, R. Present
Harbaugh Present
Harlow Present
Harper Present
Harrington Present
Heliker Present
Holland Present
Jacobsen Present
James Present
Johnson Present
Joyce Present
Kamhoot Present
Kelleher Present
Leuthold Present
Loendorf Present
Lorello Present
Mahoney Present
Mansfield Present
Martin Present
McCarvel Present
McDonough Present
McKeon Present
McNeil Present
Melvin Present
Monroe Present
Murray Present
Noble Present
Nutting Present
Payne Present

Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 95 delegates present, 4 absent and 1 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Report of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Report of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana; March 7, 1972. Honorable Leo Graybill, Jr.; President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Roy G. Crosby, Jr., license number 58-72, has been reinstated as of March 7th, 1972. Sincerely yours, Frank Murray, Secretary of State." "March 7, 1972. Honorable Leo Graybill, Jr.; President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Gene A. Tuma, license number 32-72, has been reinstated as of March 7th, 1972. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Are there other communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference of Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5.

Mr. Murray.

DELEGATE MURRAY: Mr. President. Due to the press of business that we have today, I move that we pass this Order of Business and the voting on the General Government Articles at this time.

PRESIDENT GRAYBILL: Mr. Murray's motion is to pass Order of Business Number 5 and take up the General Government Articles tomorrow. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. It is my pleasure this morning to introduce the pages for this week. Would all the pages come forward at this time. As I call your name, please stand. The first one we have is Lois Kamp; she's the niece of Mrs. Grace Bates. Lois, by

the way, is from Manhattan. Leslie Ann Newman from Columbia Falls; Carl Rostad from Martinsdale, Montana; Patsy Seitz from Broadview; Marsha Murray from Kalispell-this is the daughter of our fellow delegate, Marshall Murray; Carolyn Patterson from Missoula; Brad Van Wormer from Missoula; Orville Granger from the Fort Peck Reservation; Keri Baer from Helena; Melody Jackson from Helena, Montana; and Tala Skari from Chester-she's the daugher of Carman Skari. We want to welcome you and hope you enjoy your time here. Now, one of you will come forward and address the Convention.

UNIDENTIFIED PAGE: Ladies and gentlemen of the Convention. I feel I can only respond with-like the pages before us have. And so much-it is a great honor to serve this assembly. The next 2 weeks are final weeks of the Convention. They will probably be the most chaotic, the most demanding, and the most trying upon the Convention, for now you will have to adopt the document which you have compiled. It'll be up to your discretion whether you think the document is a good enough one to submit to the public. We wish you well. I thank you. (Applause)

PRESIDENT GRAYBILL: We want to thank all of you pages, and we're sure we'll have a very pleasant week with you. And I'm sure you'll make it much easier for us to do that job that you described as difficult. Thank you very much. Your names will appear in today's journal, and you'll be given a copy that you may take home with you.

Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders of the Day.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: Very well. The motion is to resolve this Convention into Committee of the Whole to consider matters under General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Mr. Clerk.

(Committee of the Whole)

CLERK HANSON: March 8, 1972. The following committee proposals are now on General Orders: Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 4. Mr. President.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. By way of rearranging the calendar somewhat, I move that the Committee of the Whole take up the consideration of the Executive Article Report from Style and Drafting at this time.

CHAIRMAN GRAYBILL: Very well. It's moved that we take up the Executive Article of Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: That's Booklet Number 4.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of Style and Drafting Report Number 4, it recommend the same do pass.

Mr. Chairman, Section 1—

CHAIRMAN GRAYBILL: Section 1, sub. 1—

DELEGATE SCHILTZ: -sub. 1, is-we only made style changes. I would call your attention to the word, on line 7, "department". In our comment, we noted that this has a different meaning and intent than department does in Section 7 of this same article, where they're talking about the Executive Department under reorganization.

CHAIRMAN GRAYBILL: Ladies and gentlemen of the Convention, in case you haven't got with us, we're on page 9—if you want to follow the changes of the Executive Style and Drafting Article Number 4. Page 9, Section 1, number 1, line 6. Is there discussion of Section 1, article-Section 1, sub. 1? All in favor of Section 1, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 1, sub. 2.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1, sub. 2, of Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman. There are only style changes; nothing significant.

CHAIRMAN GRAYBILL: Discussion on sub. 2? All in favor of Section 1, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We combined sub. 3 and sub. 4. Otherwise, there are no significant differences.

CHAIRMAN GRAYBILL: Sub. 3 and sub. 4 of the original article having been combined, is there any discussion of sub. 3? If not, all in favor of adopting sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 2.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman. There we took out the words—we rearranged the sequence of executive officers, and then we will retain that same sequence throughout. They were mixed up a little bit in the various sections. Style changes only.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2, sub. 1? All in favor of that section, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Sub. 2, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman, no changes except for style. We picked up the words used throughout, in line 26, "provided by law" instead of "as may be prescribed" et cetera. That's all.

CHAIRMAN GRAYBILL: Is there any discussion on sub. 2? All in favor thereof, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 3, sub. 1, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman, only style changes; nothing unusual that should be called to the attention—

CHAIRMAN GRAYBILL: Is there any discussion of Section 3, sub. 1?
Mr. Campbell.

DELEGATE CAMPBELL: I move that we suspend the rules to reconsider the age qualifications in this section.

CHAIRMAN GRAYBILL: All right. Do you want to send some short writing to the Chair so we've got it for the thing-for the record that says that you're suspending the rules on 3, sub. 1, for the purpose of considering the age qualifications?

DELEGATE CAMPBELL: And I would move that the language of the majority report be reintroduced and accepted.

CHAIRMAN GRAYBILL: Mr. Campbell is moving that we suspend the rules on Section 3, sub. 1, which has the age qualifications involved. And he-if the rules are suspended, he will move to reconsider to put in the majority report's original age qualifications. Is there further debate?

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. It seems in our history, there are certain challenges to each Constitutional Convention. And in 1889, the challenge of that day was-the challenge to the Convention to allow the Legislature to someday allow women to have the right to vote. In that particular Convention, a delegate from Missoula suggested such a radical thing in his time. Wyoming had previously allowed women the right to vote and full participation within the system for 20 years prior to our Constitutional Convention in 1889. The arguments used at that Convention were the same arguments that are used today against the young people: they are not responsible; they are not intelligent; they are not qualified to hold our public offices; and they're not qualified to vote. The same fear was expressed that the people of Montana could not accept such a change. I feel that they did not measure up to the challenge of their time, the challenge of Woman Suffrage. Also, I feel that today the challenge of this Convention is a challenge of the younger generation who-unlike the women of 1889, young people already have the right to vote; they're already halfway in the system. What I'm asking you now is to reconsider, to suspend the rules, to reopen this; not to lock into our Constitution artificial age barriers which the Legislature can never, in the future, deal with or lower. I think we would make the same mistake in this Convention as they made in 1889. And as a result of their refusal to stand up to the challenge of their time, women were denied the right to vote in Montana, the Legislature could not do anything about it, for an additional 25 years after that Constitutional Convention. It was not until 1914 that women were finally allowed to have the right to vote. That was an embarrassing 45 years after our neighboring State of Wyoming had set the national example by being courageous enough to allow women to have full participation within the system. I really feel that the arguments that were used against the young people, as against the women of 1889, reflected a basic lack of confidence in the people of Montana and the democratic system, to accept a new group of responsible citizens. The Youth Constitutional Convention has pointed out-has held this-as what they felt was reasonable. I think the young people would not fear this responsibility. I think they would accept it, and I think it would be the last of the artificial age restrictions. I don't feel that we can longer maintain these artificial barriers. Governor Anderson--when he opened up this Convention, he said, "Do not be afraid to challenge the people of Montana. Do not belittle them and feel that they cannot accept some new ideas." President Graybill, when he opened this Convention, said, "Our greatest national--natural resource of the State of Montana is our youth. Let's protect them. Let's try to encourage them to stay within the state." By setting this artificial age barrier, you're certainly not giving them political equality; you're not giving them the respect that they deserve. With me today is someone who has worked her entire life fighting artificial barriers to public office-a person who is rare in that she has received the recognition in her time that few people with great ideas ever realize. She is a person who has fought the stigma that men had against women in 1889. She's the first Congresswoman for the United States of America, a woman we can be proud of-the first native Montanan ever elected to Congress-who supports this position but, because of our rules, cannot speak to it today; who has, more than any one person, sought to reduce these artificial age restrictions; who believes in the democratic system; who believes that the voters will elect the person they feel best qualified: Miss Jeannette Rankin. She's with me today. Because of our rules, unless someone requests it and it's approved, she cannot speak. She will be appearing later. I think that Montana could, as Wyoming, accept this challenge. I know it's a big idea. North Dakota, as you know, went to 21; they would not go down to 18. The average voting age in the 1970 election, for the State of Montana, was 47 years old. There is no mammoth wave of 18-year-old voters that are going to dominate any election. We have to haveconfidencein our people. And we hit the low point of this Convention, in my opinion, when we reversed our 59-to-31 decision to follow the majority report in the Executive Article. We reversed it because, at that time of the Convention, we had little confidence in ourselves and even less in the electorate. Since that time, we have developed backbone; we have faced issues and reform; we have given strength. Most of the mistakes, the criticisms that we've made for not mak-

ing enough reform, for having the full seven offices in the Executive, are things that I think the majority of us now regret. But they are slowly congealing into the cement of Montana history. And we can't-they're all but beyond us; we can almost not change it. As you know, in the Bill of Rights we have an article on adult rights. On the Executive, if you will allow to suspend the rules to reconsider this qualification, it would be the first step in producing the type of reform, the type of recognition of our young people, that I think they deserve. I did not see any wave of joy coming from the young people that this responsibility would not be imposed upon them. I felt a great deal of dismay that we lack the trust and confidence in them and the voters of the state. With that, Mr. Chairman, I would request that we suspend the rules on this section to reconsider our decision. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion on the motion to suspend the rules?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. I would simply like to amplify what Mr. Campbell has said and say that I think that this is one of the poorest things we've done in the Constitution so far. It is simply not a constitutional matter, and it is writing into our document a rigidity that simply does not belong there. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg. The journal may show your presence and you may vote.

Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. I made the motion to reconsider. First, I'd made a motion to reduce the age qualifications from 30 to 25. That made the same-made you eligible to run 5 years earlier for these seven offices. I think this has been misquoted in the press, whether intentionally or unintentionally, that young people are deprived of the right to hold office. They can hold all-the offices of legislators, all the county offices, any state office except these seven. And to have some additional qualifications for office besides the 18-year-old would not seem to be unreasonable to me. I have wondered what we are writing in this, but I finally reviewed my notes last night and discovered that we were writing poetry, Mr. Burkhardt said. So I can see why it would be rather poetic to have all the 18-year-olds eligible for office. I attended the Girls' State; I've attended Boys' State; I've attended the State Key Club Convention; and none of the young people in those even voted to lower the voting age, to say nothing about the age to the highest offices. I think there's another significant question too, about talking about running this government that you've given so much power to; the complete power of taxation and these other things. If you have a team concept that we now have in our Constitution, you can have an old man like myself with the teammate, maybe, as the President of one of the units of the University System, would be very appealing to the voters. You'd have a great team going. And then, if I got killed in a car wreck the next day, I'm sure that everyone would have some misgivings about whether enough experience, and so forth, that goes into this thing. I think, by now, we should all be impressed-I hope we are-by how much experience could mean if we were fortunate enough to have it; and we haven't acquired it ourselves, I'm sure. So I would oppose anything to suspend the rules further in this Convention. There have been very many close votes. The thinking of this Convention is quite novel. A week ago, we voted 71 to 16 on the floor, of how many people we're going to have in the body. Yesterday, we voted 77 to 17, so the stability of our thinking and consistency has been not anything really to be admired. It's almost like a unanimous dissent in the Supreme Court. So I oppose any motion to suspend the rules on this or anything else.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. In defense of us poets, I just want the record to be straight. We're only interested in the book of sounds, otherwise known as the Bill of Rights. We don't intend to put any poetry into the Executive Article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on—

Mr. Kelleher. Do you wish to speak?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: Very well.

DELEGATE KELLEHER: Thank you. I think that my learned brothers teaming up with a teenager is as likely as Mrs. Chisholm teaming up with Mr. Wallace, as a recent suggestion has been made for a national ticket. I think the serious and only relevant matter as far as allowing the 18-year-olds to run for Governor-there's only one question that's really important. Do you have a

quarter of a million dollars? That's whatit costs to run for Governor in this state, and that's the only relevant matter. The young people around here were tremendously disillusioned with this Convention after we reversed ourselves. And I strongly support Mr. Campbell's motion.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman]. Yesterday, I spoke to a gentleman who supposedly represented about, he claimed, about 91,000 people in the State of Montana. And he said they were rather concerned about many things that we had reconsidered in our deliberations. This 18-year-old running for Governor happened to be one of them. So I hope that we move here to reconsider and go even further than that and allow 18-year-olds to run for the office of Governor, even though we know in our owr. minds no 18-year-old is really going to be able to win an election in the State of Montana.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. Last night when I filled up with gas, a 19-year-old service station attendant asked me-he said, "Is it true that someone 18 or 19 like I am can run for the Legislature?" I said, "Yes." In no uncertain terms, he told me that he thought that this body just wasn't too sharp to do something like that. I oppose the motion to reconsider.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Well, I suppose it just depends on who you talk to or who writes to you. Now, I have a letter here. "Dear Mr. James: I support the right of all registered voters to hold public office. Respectfully, John Elliott, President, Youth Con Con." Evidently, this kid had more on the ball than the one Mr. Gysler talked to. (Laughter)

CHAIRMAN GRAYBILL: The Chair will recognize Mrs. Bowman, Mr. Brown, and Mr. Choate, who are now present and may vote. The journal may so show their attendance.

Mr. Martin, do you wish to speak?

DELEGATE MARTIN: Mr. President [Chairman]. As a member of the Executive Committee and one who advocated and urged that the age barrier be dropped, I will just reaffirm the position which I've taken on the floor and which I intend to keep. And that is that I will oppose any motion to reopen debate and discussion once we've decided. I oppose the motion.

CHAIRMAN GRAYBILL: Mr. Campbell, if you want to close, do so briefly, please.

DELEGATE CAMPBELL: That-the argument that someone will have an 18-year-old running mate is as unlikely, and would be as politically popular, as Richard Nixon dropping Spiro Agnew for Lou Rawls. And as Katie Payne said, "Who's Lou Rawls?" To the young people it means something, but politically it's just not going to happen. I would just like to say that since this reversal we did make, and we have made two decisions on it-the first one favoring the young in the Executive Report; the second decision was against them and, what I think, was the low point of the Convention. And now, what I'm asking is an opportunity for us to make our final decision-and we certainly have done it. And I would request a roll call vote.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote. It takes 51 votes or two-thirds, whichever is less, to accomplish this. Those in favor of suspending the rules, vote Aye; those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Nay

Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Aye
Cate ....Aye
Champoux .....Aye
Choate ..... Nay
Conover ..... Nay
Cross .....Aye
Dahood .....Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck .....Aye
Erdmann ..... Nay
Eskildsen .....Absent
Etchart ..... Nay
Felt., ... Nay
Foster ..... Nay
Furlong .....Aye
Garlington .....Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ..... .Absent
Holland. ..... .Absent
Jacobsen ..... Nay
James ....Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... .Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ....Aye
McNeil ....Aye
Melvin ..... Nay
Monroe.. ....Aye
Murray. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ....Aye
Roeder ..... Absent
Rollins.....Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ....Aye
Schiltz .....Aye
Siderius..... Aye
Simon ..... Nay
Skari ....Aye
Sparks.....Aye
Spew.. ....Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ....Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK **HANSON:** Mr. Chairman, 40 voting Aye; 55 voting No.

CHAIRMAN GRAYBILL: 55 having voted No and 40 Aye, the motion to suspend the rules fails. Is there other discussion of Section 3, sub. 1? If not, you've heard Mr. Schiltz's motion that we adopt Section 3, sub. 1. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, sub. 2, of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only style changes, which are self-evident.

CHAIRMAN GRAYBILL: Discussion? All in favor of sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, once again, style changes.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? All in favor of sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4, Mr. Schiltz.

DELEGATE SCHILTZ: Section-Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. In this and the next section, particularly this section, we've taken particular care to define the powers and duties. We thought they were a little fuzzy in the material we got from the floor, and we clearly delineated between the two. Otherwise, everything-and that's style, and everything is style.

CHAIRMAN GRAYBILL: Is there any question about Section 4, sub. 1? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 2, of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. I made the comment about clearly delineating between powers and duties and providing that powers cannot be delegated.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 4, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. These are only style changes. I have one note here I want to look at, though. If you'll look at sub. 3, we provide "the Secretary of State shall maintain official records of the Executive Department", which is transposed from the way we got it because we didn't want it to mean acts of the Executive. We didn't think that's what was intended.

CHAIRMAN GRAYBILL: Is there any discussion of Section 4, sub. 3? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 4, of Style and Drafting Report Number 4, that it recommend the same be adopted.

Mr. Chairman, these are minor style changes.

CHAIRMAN GRAYBILL: Any discussion of sub. 4? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 5, of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We combined sub. 5 with sub. 6. And this will probably be moved at some time to the Legislative Article, when we prepare the final draft. This is the legislative post-audit.

CHAIRMAN GRAYBILL: Any discussion of sub. 5? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Sub. 5 is adopted. Sub. 5 includes 6, is that right?

DELEGATE SCHILTZ: It includes 6 and 7.

CHAIRMAN GRAYBILL: Everyone understands that? Those next two paragraphs? That's the end of Section 4. Very well, It's adopted.

Mr. Habedank.

DELEGATE HABEDANK: I'm wondering if Style and Drafting really intends to move all of sub. 5 to the Legislative Department, It seems to me what they've taken out of 6 is the part that would be moved to the Legislative Article.

DELEGATE SCHILTZ: Well, Mr. Chairman, we're not moving it at this moment, so I don't think there's any need to debate it until we do move it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. When I spoke in response to Mr. Campbell, I overlooked the appreciation of Miss Rankin being here. I wonder if we could take time out to give a rousing hand of applause to a great, dedicated public servant. And I'm very sorry that I, in my debate, overlooked that. Would that be proper, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: I think it would.

(Applause)

CHAIRMAN GRAYBILL: The Convention should understand that Miss Rankin is going to address us next week, so we'll see her again. All right. Lest anyone be confused, subsection 5 of Section 4, which includes the old 6 and 7-or at least it's all been compressed-has been adopted as far as the Chair understands, and we're ready to go on to Section 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. You'll see that we made no change in this; but we did make a comment that this is a somewhat bland statement and that it does not prohibit increase or decrease in salary at any time. We thought we should call that to your attention in the comments. Otherwise, no change.

CHAIRMAN GRAYBILL: Were you talking about sub. 2?

DELEGATE SCHILTZ: I was talking about sub. 1.

CHAIRMAN GRAYBILL: All right. Section 5, sub. 1; no changes. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only style changes--nothing significant to note.

CHAIRMAN GRAYBILL: Is there discussion of sub. 2-Section 5, sub. 2, on page 11? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, we only changed style in some minor places. There's nothing significant to note in the section.

CHAIRMAN GRAYBILL: Any discussion of Section 6? All in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, this is minor style changes only.

CHAIRMAN GRAYBILL: All in favor of Section 6, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 7 of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We made only style changes. We deleted the language on lines 22, 23 and 24 as something that has already been done. This section was apparently taken from the Executive Reorganization Act.

CHAIRMAN GRAYBILL: Is there any discussion of Section 7? All in favor of 6 and 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: These are minor style changes.

CHAIRMAN GRAYBILL: Any discussion of Section 8? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Section 8, 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. This, again, is minor style changes.

CHAIRMAN GRAYBILL: Any discussion of 8, sub. 2? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Eight, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. You'll note that we took out the words "during a recess of the Legislature" and inserted in lieu thereof "is not in session". We did that again in Section-sub. 4 for the reason that during a recess, it has no real meaning and could be confusing. We thought the intent was that—when the Legislature is not in session. Otherwise, everything's style.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 4, of the Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Except as noted, where we supplied--we took out "during recess" again, only style changes.

CHAIRMAN GRAYBILL: Any discussion of sub. 4? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 9.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 9, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We made no changes here.

CHAIRMAN GRAYBILL: Section 9. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Section 10, sub. 1.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. I've some notes I want to look at first. As the material that came from the floor—the material we got from the floor made it possible to read this section-subsection-that a bill could become law if the Governor did not sign and did not veto. That, of course, is not the intent. So we put in language to cure that possibility, which is surely only a style change.

CHAIRMAN GRAYBILL: Is there any question about that? Any discussion of 10, sub. 1? All in favor of 10, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Excuse me. Mrs. Bates, do you want to discuss that?

DELEGATE BATES: Well, I don't know, but I didn't have time to let this sink in. But it seems to me that that's inaccurate. But I'll have to-let's bypass it first.

CHAIRMAN GRAYBILL: Well, let's—Mr. Schiltz—we won't bypass it unless we move to. But let's--would you explain again what you—

DELEGATE SCHILTZ: Yes. I'll have to read it. I did this late last night. Let's see-"it shall be submitted to the Governor for his signature and shall become"-I'm reading on line 5 of page 14—and this is the way we got it from the floor-"and shall become law if he does not sign"—as it read—"if he neither approves nor vetoes the bill within 5 days"-then it goes on, "it shall become law." And we didn't think that anybody meant that, so we had it read as it reads now, that it is sent to the Governor for his signature; if he does not sign or veto the bill within 5 days after its delivery to him, if the Legislature is in session, or within 20 days if the Legislature is adjourned, then it shall become law. I don't think there's any question about the clarity of it now, and we thought there was some question about the clarity then.

CHAIRMAN GRAYBILL: I don't think it changes the sense of it, Mrs. Bates. It makes it a little clearer. Let's put the question again. Is there any further discussion on 10, sub. 1? If not, all in favor of 10, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Ten, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. There are no changes here that need to be noted; it's purely style.

CHAIRMAN GRAYBILL: Ten, sub. 2. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Three-sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, these are only style changes.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: They have the same problem here about "present and voting". Would this apply here also?

DELEGATE SCHILTZ: I couldn't hear, Mrs. Eck.

DELEGATE ECK: We have "two-thirds of the members present". And we discussed this yesterday and decided that it would be preferable to have "present and voting".

DELEGATE SCHILTZ: Well, that's substantive so far as I'm concerned.

CHAIRMAN GRAYBILL: Well, we held yesterday, Mr. Schiltz, that making it "present and voting" was not substantive and was stylistic, to make it clearer what you meant.

DELEGATE SCHILTZ: I should say that we didn't wish to take it upon ourselves to add it.

DELEGATE ECK: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes.

DELEGATE ECK: I move that we add "and voting" after "present".

CHAIRMAN GRAYBILL: This is sub. 3, on line 21 on page 14. Mrs. Eck has made a motion to add the words "and voting" after the word "present", so that it's the same as we did yesterday on the Legislative Article. Is there discussion? All in favor of adding the words "and voting" after the word "present" in line 21, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: That amendment is made. Is there other discussion of sub. 3? Very well. All in favor of sub. 3 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Now, sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 4, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Only style changes.

CHAIRMAN GRAYBILL: Any discussion? All in favor of sub. 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. I would only note that the committee is divided on whether or not this belongs in the Legislative Article or the Executive Article, and that will probably be resolved when we prepare the final draft. Otherwise, no change.

CHAIRMAN GRAYBILL: All those in favor of sub. 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: And it's adopted. Now, Section 11.

DELEGATE SCHILTZ: Mr. Chairman. I should note at this point, because it isn't noted anywhere else, that we entirely deleted the—

Section 11 on page 15 as it came from the floor for-the reason was that it's provided for in Section 6 of the Legislative Article.

CHAIRMAN GRAYBILL: All right. Does everyone understand, then, that Section 11 has been entirely deleted here because in the Legislative Article we put in a section providing for calling special sessions, which said the same thing in substance? Is that right? Said the same thing in substance?

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. It seems to me that, as the Section 11 passed the Committee of the Whole, that the first sentence—or the first clause--what we had in Section 11, which appeared on page 29 of the Executive Report-was retained, where it said that whenever the Governor considers it in the public interest, he may convene the Legislature, either house or the two houses in joint session-period. It just seems to me that that should be retained in the Executive Article, even though it is duplicated in the Legislative Article. For the purposes of clarity, anybody reading the Constitution can see that the Governor does have the power to call special sessions. And I therefore move that the sentence as it passed the Committee of the Whole be reinstated in Section 11 of the Executive Article.

CHAIRMAN GRAYBILL: Mr. Joyce, what number is that in your report? Let's see—we're on Section 11.

DELEGATE JOYCE: Page 29 of the majority report, which was identical with the minority report of the Executive Article.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce has made a motion that we retain the first sentence of Section 11, which says, "Whenever the Governor considers it in the public interest, he may convene the Legislature"-that's lines 2 and 3 on page 15 of the report we're working from-on the grounds that even though it's repetitious, it should be set forth in the Executive Article. Is there further discussion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman. I wonder if Mr. Joyce would consider suggesting to Style and Drafting that they put that portion pertaining to the Governor in the Executive Article and the other portion pertaining to the Legislature in the Legislative Article.

DELEGATE JOYCE: That would be fine with me. It's just-Mr. Chairman, I take it he asked me a question.

CHAIRMAN GRAYBILL: I'm checking the-what we did. We did leave that sentence in. We took out the middle sentence. And we left it as the stricken part shows. Is there further discussion of that matter? Does anyone happen to know, offhand, the number of the-in the Legislative Article?

DELEGATES: Sixteen.

CHAIRMAN GRAYBILL: Page 16 in the Legislative Article.

DELEGATE SCHILTZ: Mr. Graybill?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: Page 11 of the unicameral section-and it's on page 11, starting at line 15.

CHAIRMAN GRAYBILL: Of the unicameral article?

DELEGATE SCHILTZ: Right. It says in *haec uerba,* "The Legislature may be convened in special sessions by the Governor". *In haec verba,* how do you like that one?

CHAIRMAN GRAYBILL: Yes, the Legislative Article says, "The Legislature may be convened in special sessions by the Governor or at the written request of a majority of its-of the members." This one says, "Whenever the Governor considers it in the public interest, he may convene the Legislature." Mr. Joyce's motion is to retain in the Executive Article, the first sentence about the Governor. Is there further discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: I would only have a problem that in one-that the two provisions aren't exactly parallel and somebody might look up one and rely on it and never get around to looking up the other one. I thinkstylistically there should only be one mention of this. In one case, it requires the public interest; in the other case, the Governor can do it willy-nilly. I don't like it just from a style standpoint, but I don't resist it awfully hard.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I hate to quibble over the thing. It just seems to me if in the final styling if there is a Section 11 that says "The Legislature may be convened in special session by the Governor"-period-why, that would be fine with me. It just seems to me that it is one of the powers of the Governor and it should appear in the Executive Article.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I concur with Mr. Joyce, for two reasons. I think it belongs there because it's an executive power, and secondly, I think it spells out who is going to call the Legislature into session if the majority of the Legislature requests it. In the Legislative Article, it just says the majority of the members may call; it doesn't say who is going to implement the call. So I would move that we retain Section 11 in the Executive Article, if that motion hasn't already been made.

CHAIRMAN GRAYBILL: Well, Mr. Joyce only wanted-only made a motion to retain the first sentence. Do you want to make a motion to retain the whole thing?

DELEGATE AASHEIM: As a substitute motion, I do.

CHAIRMAN GRAYBILL: All right. Mr. Aasheim's substitute motion is to retain all of Section 11 as shown on lines 2 to 6, page 15. Is there any discussion?

Mr. Joyce, are you up?

DELEGATE JOYCE: Yes. Mr. Chairman, maybe I'm wrong; my notes indicate that the second sentence was deleted in the Committee of the Whole.

CHAIRMAN GRAYBILL: That's wrong. The middle sentence was deleted, and it's not in the book here, but the last sentence was retained—and that's--what-lines 4 to 6.

Mr. Schiltz.

DELEGATE SCHILTZ: When I indicated that I didn't resist Mr. Joyce's motion too much—but I do resist the substitute motion, because now we're putting into the Executive Article material that is entirely legislative and doesn't belong there.

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Aasheim's motion to retain all of Section 11. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right. That's defeated. Now the issue is on Mr. Joyce's motion to retain the first sentence of Section 11 about the Governor calling the-convening the Legislature. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: That motion passes. So we've adopted that. And, Mr. Schiltz, let's now put the question on the first two sentences of Section 11.

DELEGATE SCHILTZ: And at the same time, I want to include--or renumber--we'll have to renumber as we go along.

CHAIRMAN GRAYBILL: Right.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 11, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Well, let's—

DELEGATE SCHILTZ: Wait a minute; it's Section 11, I'm sorry.

CHAIRMAN GRAYBILL: Section 11—

DELEGATE SCHILTZ: -of Style and Drafting Report Number 4.

CHAIRMAN GRAYBILL: All in favor of adopting Section 11 as Mr. Joyce amended it and as the Chairman has moved, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: All right. It's adopted as amended. Now, we'll take former Section 11, now Section 12.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Sec-

tion 12 of the Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We made some style changes that are not significant. We changed the word "reinstate" to "restore", to coincide with Section 94-4720 of the ***Revised Codes.*** "Reinstate" is not a word used in the Codes.

CHAIRMAN GRAYBILL: All right, now. Members of the body, we'retalking about lines 7 to 10 on page 15. It used to be 12, and then it went to 11, and now it's back to 12. So if you'd renumber "Pardons" as 12 and "Militia" as 13 and "Succession" as 14 in your books, we'll refer to them that way since that's the way Style and Drafting will now want them. Is there discussion of Section 12, Pardons? All in favor of that section, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 13, Militia.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 13, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. The-only style changes here.

CHAIRMAN GRAYBILL: All in favor of ***13,*** sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Thirteen, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 13, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Only minor change in style,

CHAIRMAN GRAYBILL: All in favor of 13, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Section 14, Succession, sub. 1.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We only made one or two minor style changes.

CHAIRMAN GRAYBILL: Any discussion of 14, sub. 1? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Fourteen, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. If you'll look on page 16, during the-at the top, we read the material as it came from the floor that there was a possibility that the Lieutenant Governor could be acting Governor during the 45 days' absence instead of becoming acting Governor after 45 days had elapsed. So we changed it so it was clear that after the Governor had been absent from the state. Otherwise, no other changes-or style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 14, sub. 2?

Mrs. Payne.

DELEGATE PAYNE: Mr. Chairman. May I ask Mr. Schiltz a question?

DELEGATE SCHILTZ: Yes, indeed.

DELEGATE PAYNE: Does the Style and Drafting mean absent from the state, you know, bodily from the state, or do you mean absent from the office of Governor?

DELEGATE SCHILTZ: Well, the material we got from the floor is just "absent from the state.

DELEGATE PAYNE: Well that means— Mr. President [Chairman], may I ask another question?

CHAIRMAN GRAYBILL: Yes, Mrs. Payne.

DELEGATE PAYNE: Well, could he be absent from his office for 45 days and—

DELEGATE SCHILTZ: Well, not the way we got it. As it read, "He shall serve as acting Governor during the absence from the state of the Governor for any period in excess of 45 consecutive days." There's a next section that covers that sort of thing.

DELEGATE PAYNE: Oh, thank you very much.

CHAIRMAN GRAYBILL: The next sections do cover the situation of disability, Mrs. Payne, and might answer your question. Is there any further question about Section 14, sub. 2? All in favor of it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, relatively minor style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 14, sub. 3? Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 4, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, only style changes.

CHAIRMAN GRAYBILL: Is there any question about 14, sub. 4? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 14, sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Only style changes here.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: We have the same problem there, "members present". I move that we add "and voting" after "present".

CHAIRMAN GRAYBILL: On what line?

DELEGATE ECK: On line 19.

CHAIRMAN GRAYBILL: On line 19, Mrs. Eck moves we add, after the word "members present", the words "and voting". All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of adopting it as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 6, Style and Drafting Report Number

4, it recommend **the same be adopted.**

Mr. Chairman, a very minor change. Instead of "herein", we put "in this Constitution".

CHAIRMAN GRAYBILL: All in favor of Section 14, sub. 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 7, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, very minor style changes.

CHAIRMAN GRAYBILL: All in favor of sub. 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 8.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 8, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, in this case, we struck out all that business about the title, powers and duties and emoluments of that office and just said "shall be the Governor". In other words, he's either the Governor or he isn't; and we styled it that way.

CHAIRMAN GRAYBILL: All in favor of Section 14, sub. 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, renumber the next Section 15, on "Information for Governor".

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, we made some style changes which don't need to be noted particularly and added a title which wasn't in there, "Information for Governor".

CHAIRMAN GRAYBILL: Is there any discussion of Section 15, Information for Governor? All in favor of 15, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, we made only style changes; nothing else significant.

CHAIRMAN GRAYBILL: Any discussion? All in favor of 15, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Fifteen, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, only a minor style change.

CHAIRMAN GRAYBILL: Is there discussion? All in favor of 15, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Murray. Just wait a minute—Mr. Roeder.

DELEGATE ROEDER: Before we finally dispose of this, I'd like to suspend the rules and reconsider the Executive Article.

CHAIRMAN GRAYBILL: Mr. Roeder, under Rule 74, I need you to write that down and tell your reason. You may state it and then write it down, but I do need it sent to the Chair.

DELEGATE ROEDER: Well, sir, my reasons would be this: if I were to be vouchsafed such a thing, I would then seek to remove the office of Treasurer from the Constitution, in accordance with the recommendations of the Legislative Council, Report Number 25, October 1968, in which they say, "At a minimum"—underlined— "the constitutional status of State Treasurer should be eliminated."

CHAIRMAN GRAYBILL: Very well. Is there further discussion?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. Before we completely vote on this article, there's something that disturbs me here a little bit. In going over this, on Section 14, on Succession, we've added the words—

CHAIRMAN GRAYBILL: Mrs. Bates, I'll come back to you. But we have a motion before the house to suspend the rules to consider the Executive Article again.

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: Is there debate on the motion to suspend the rules? Very well, the issue is on Mr. Roeder's motion to suspend the rules to reconsider the State Treasurer's office. It takes 51 votes or two-thirds. We'll use the voting machine but not for a recorded vote. So many as are in favor of suspending the rules, please vote Aye. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is 50 for and 29 against. If some mathematician will tell me, I think that's two-thirds. That's not two-thirds? All right, that's not two-thirds. Fifty/seventy-ninths is not two-thirds.

Mr. Felt.

DELEGATE FELT: I have changed my vote from No to Aye.

CHAIRMAN GRAYBILL: Why don't you put the question again, Mr. Felt. Well, I think I've closed the vote, so you can't change your vote, but put the question again. Mr. Felt wanted to change his vote. I had closed the vote. I will be glad to open-1 will be glad to let somebody put the motion again if you want to.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that the Convention-that the Committee of the Whole reconsider its action on the Executive Article for the purpose of deleting from the Constitution the office of State Treasurer.

CHAIRMAN GRAYBILL: All right. You have to say that you want to suspend the rules, Mr. Joyce.

DELEGATE JOYCE: Didn't I say that? I move to suspend the rules for that purpose.

CHAIRMAN GRAYBILL: Let's vote again on suspending the rules. Do you want to clear the machine. Is there further discussion? Very well. We're ready to vote again. We'll use the voting machine. So many as shall be in favor of suspending the rules, vote Aye; and so many as shall be opposed to suspending the rules, vote No. The vote is now 58 to 26. The light has just struck the Chair. The rule is two-thirds or 51 percent, whichever is less. So, since we didn't get 51 last time, that lost; but this one passes. Therefore, we're now in a position to suspend the rules and consider the Executive Article in terms of the Treasurer's office. The rules are now suspended. Does Mr. Roeder or Mr. Felt or Mr. Joyce care to make a motion concerning the Treasurer's office? Since they moved to suspend, Mr. Brazier, I'm going to give them the opportunity to make their motion, and then I'll certainly come back to you.

DELEGATE JOYCE: Mr. Chairman. I move—

CHAIRMAN GRAYBILL: We have to make a motion to reconsider. You tell us what you want to reconsider.

DELEGATE JOYCE: I move to reconsider Section 1, sub. 1, of the Executive Article by deleting, on line 10, the word "Treasurer"; and I further move to amend Section 2, line 19, by deleting the word "Treasurer" and further move to amend Section 3, line 30, to delete the word "Treasurer".

CHAIRMAN GRAYBILL: I'm not sure that the Executive Article is right here. Maybe I'm wrong. Didn't we adopt some duties for these offi-

cers? Where are they? Yes, it would be on page 2, Mr. Joyce, Article--or Section 4, sub. 5. It's got the word "Treasurer" in it, if you're looking for that.

DELEGATE JOYCE: So I further move that subsection 4-Section 4, subsection 5, line 26, that the word "Treasurer" be deleted, on page 2. I further move, in Section 6, line 18, subsection 2, the word "Treasurer" be deleted.

CHAIRMAN GRAYBILL: That's on page 3, line 18.

DELEGATE JOYCE: I further move that Section 7, on line 30, the words "and Treasurer" be deleted and that the word "and" be inserted after the word "instruction" on line 29 and before the word "auditor".

CHAIRMAN GRAYBILL: Very well, Mr. Joyce has moved to reconsider portions of Sections 1, 2, 3, 4, 6 and 7, being all the-referring to "Treasurer".

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. It's just been called to my attention that I'm out of order because I didn't vote on the prevailing side. But Mr. Brazier is willing to make that same motion. I guess for the record you can substitute his.

CHAIRMAN GRAYBILL: Mr. Brazier, do you care to make that motion?

DELEGATE BRAZIER: Mr. Chairman. Having voted on the prevailing side, I now make the motion that Mr. Joyce attempted to make.

CHAIRMAN GRAYBILL: All right. Mr. Brazier has now made the motion to reconsider Section 1, 2, 3, 4, 6 and 7 as regards the reference in those sections to the word "Treasurer". Is there discussion?

Mr. Brazier.

DELEGATE BRAZIER: Just briefly, my reasoning is that I've felt a little concern. I think that some of the delegates have been unfairly castigated for the results of the Executive Article. I came here willing to cut back on the number of executive offices. At the same time, I will defend my decision to try to retain as an elected officer at least one person who has-who is on thecashflow of state funds and has a chance to preserve evidence in case of embezzlement and that sort of abuse of power. I don't feel that I got a meaningful chance to reflect, in my tally when we considered the majority report, what I really thought. I think the motion that I just made more clearly reflects my philosophy. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: As a point of information, Mr. President, did we open up this article for-like Section 2; is that opened up so that we could cut out some more elective offices?

CHAIRMAN GRAYBILL: Section-the motion for substitute-to suspend the rules was to remove an officer. Now, I think the-my notes only show to remove an officer. I think he did mention the Treasurer specifically; I don't know that he mentioned others. Did you mention just the Treasurer?

DELEGATE ROEDER: Yes, I did.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE ROEDER: To suspend the rules, I mentioned only the Treasurer.

CHAIRMAN GRAYBILL: All right. Mr. Joyce, in your motion-Let's see, Mr. Felt, in your motion to suspend the rules, what did you mention?

DELEGATE FELT: I didn't mention any particular office, but I understood it related only to the Treasurer.

CHAIRMAN GRAYBILL: All right. So it's open now, Mr. Mahoney, for the Treasurer, at the moment.

DELEGATE MAHONEY: Didn't we open up the whole section, Mr. Chairman? Can we just go in and take out one word out of a section, under the rules? Or is the whole section open?

CHAIRMAN GRAYBILL: Rule 74 says: "One or more rules may be suspended for a specified purpose by the affirmative vote of two-thirds or a majority of all the delegates of the Convention." So it has to be for a specified purpose. So I think we're limited to the purpose they specified. That's why I insist they write down-and I still expect Mr. Felt and Mr. Roeder to write down their purpose. But they've now said that their purpose is "Treasurer". I'm not against entertaining another one to open for another purpose, Mr. Mahoney, but I think this one opened it for the purpose of taking out the word-the office of Treasurer.

DELEGATE MAHONEY: All that is bothering me, Mr. Chairman, is this: if we're going to open up a section, I don't think we can limit that section to only one thing. If you open the whole section, I think the whole section is either opened or it isn't opened. And this would be my-maybe now I-why, I know the Chair's position and I don't want to question it. I just think that this ruling should be made, because this is going to come up lots of times from now on if we're going into Style and Drafting to reconsideration. I think this is a problem we have to get settled this morning.

CHAIRMAN GRAYBILL: All right, Mr. Mahoney, I'll settle it and then we can challenge the Chair. "One or more rules may be suspended for a specified purpose by the affirmative vote of', et cetera. The Chair is going to rule, and the Chair has made it quite clear to everybody that's done this so far, that they must write down the purpose for which they open it. I'm going to rule that the rules are suspended only for the purpose that they announce, because that's what the other people vote on. They vote assuming that that's the purpose that it's going to be opened for. So if you want to enlarge the purpose, then you can either make another one, or the next time this comes up you may move to amend the purpose so that everybody understands what we're doing. But at this point, the Chair is going to rule that we voted to open these sections-or open the Executive Article for the specific purpose of dealing with the office of Treasurer. I think that's a definable purpose. That's what the rules say; that's what I'm going to rule. If you want to challenge the Chair, I'd be happy to-go ahead.

DELEGATE MAHONEY: I won't be prohibited from making another motion at this time to open this section up so that I can get at the Lieutenant Governor, could I?

CHAIRMAN GRAYBILL: No, you certainly may. I'll be glad to put you down on the list with Mrs. Bates and Mr. Brazier. All right, the motion of Mr. Brazier is to reconsider Sections 1, 2, 3, 4, 6 and 7 concerning the office of Treasurer. Is there further discussion? All in favor of Mr. Brazier's motion to reopen Sections 1, 2, 3, 4, 6 and 7 to consider "Treasurer", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, the section is open. Mr. Brazier or Mr. Joyce, do you want to move to delete those words?

DELEGATE JOYCE: Mr. Chairman. I move that the Style and Drafting Report on the Executive, Number 4, be amended by deleting, in Section 1, line 10, the word "Treasurer"; and in Section 3, line 30, the word "Treasurer"; and in Section 2, line 19, the word "Treasurer"; Section 4, line 26, the word "Treasurer"; Section 6, line 18, the word "Treasurer"; Section 7, line 30, the words "and Treasurer"; and insert, on line 29, after the word "instruction" and before the word "auditor", the word "and".

CHAIRMAN GRAYBILL: Very well. Mr. Joyce has now made a motion to delete the word "Treasurer" from Sections 1, 2, 3, 4, 6 and 7. Is there discussion?

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I'd like to speak in favor of the motion. I was on the Executive Committee. This was the majority report at the beginning. And when we discussed it on the floor, I kind of had the impression that maybe I had read the voters of Montana wrong. We talked for 2 or 3 minutes about it, and everyone seemed to think that the voters would not respond to that type of shortening the ballot. I was extremely surprised when I found out that probably no other item were we more criticized for. People I talked to, who certainly were not wild-eyed liberals or people, you know, willing to change government radically. We just couldn't understand how we had acted so incongruent with the facts of the Executive Department. It seems to me it's rather obvious to a lot of people that a simple ministerial job that is done in some office and cannot really be visible to the voters of Montana cannot be properly handled by a statewide vote. I think a lot of peopleunderstand that very well.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Joyce's motion to delete references to Treasurer in Sections 1, 2, 3, 4, 6 and 7 of the Executive Article.

Mr. Wilson.

DELEGATE WILSON: Mr. President. I, too, served on the Executive Committee, and there was a lot of discussion about this. I don't think that I need to go into all the argument that we had when we were discussing the minority of the

Executive Article and the majority report. Perhaps this did come under some criticisms from some quarters. I can assure you that if you took this question out to all of the people of Montana, you wouldn't get criticism for it; you would get comments in favor of it. Now, we're talking about the person that keeps the cash for you people. You've all expressed a lot of concern about your government agencies. You have, in the passing of your Revenue and Finance Committee proposal, certainly created other problems as to what your cash and cash balances will be. And they talk about this person: nobody knows him; nobody knows anything about the Treasurer. And I submit to you that the person who holds the Treasurer's office got probably one of the largest votes in the last election. There has always been an interest in the Treasurer's office and who ran for it. There again, we hear the argument that we want the people and the young people to have the right to vote. Who are you going to vote for? Do you want to remove another office that these people are going to vote for? Do I have to reinstate my policy to begin with that you're disenfranchising the people's right to vote when you remove the higher offices in the state government? And I suggest that when you look this proposition over—proposal over, that you think about the part that your Treasurer plays, along with your Auditor, in keeping the accounts and the cash flow of state government where it is visible for you, the people, to take a look at. Now, if it is the will of you people that you no longer want to have an elected official who will be responsible to you, the voters, keeping charge of your cash of the Montana state government, so be it. But I suggest that you think about this just a little bit. It is a responsible position, and I think we should have the right to vote for that person. And I resist the motion.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman. I'd like to caution some of the delegates here who think that we're just going to deal right now with the Treasurer; we're going to get this thing out of the way and then we're going to progress. This is not the case. We voted on this thing several times. If we now eliminate the Treasurer, you can be certain that there's going to be moves on to eliminate some of the other officers. So if you're going to let this one go, be prepared to let some more go. I would like to caution you, and I'd like to resist Mr. Joyce's motion.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I'dliketorespond to both Mr. Lore110 and Mr. Wilson. As to opening other offices, I won't make any such motion to open them up, because the people who indicated to me in the last few days that they would support a motion to reconsider indicated they would do so only to consider the office of Treasurer. I would not go back on that agreement. Now, so far as the office being essential that we vote on it, I don't think that's true. The office of Treasurer is not required for modern accounting practices. Your money is going to be safe. The fact of the matter is the office is a historical relic. If you vote to keep it in the Constitution, you're voting to keep it there for sentimental reasons, the way you keep a spittoon in a law library for old times sake.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I have to refer again to the meeting that I attended at Fort Benton a week ago. There were a number of people there from rural communities. The first question I was asked was, "Why didn't you eliminate those old, outmoded constitutional offices?" This comes from a rural group. It comes from a group that would normally, I think, support Mr. Wilson. Apparently they do not. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I was one of the majority of the committee that endeavored to do everything they could to eliminate these offices. But as I said on the floor a few days ago when I asked you the question, "Does this mean that we're going to reopen every article that we've gone through and decided on General Orders?" You said you didn't know. We've found the answer. Yesterday, we opened the-reopened the Legislative Article; today, the Legislative—the Executive; tomorrow will be Judiciary, and on down the line. I oppose the motion just for that reason.

CHAIRMAN GRAYBILL: Mr. Lorello, you may be next.

DELEGATE LORELLO: Mr. Chairman. I'd like to assure Mr. Roeder and some of the others who believe that this isn't going to happen, to look this way and you'll see pencils going very strongly. There's some more going to be coming, believe me.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman]. I rise in support of us deleting this particular office. On a number of different occasions, I've stood before the body and mentioned that I had an opportunity to visit with a lot of people before the 2 weeks previous to the Convention, in excess of 800 people. And every person that I talked to, I asked them to identify eight people in public offices. The results of that particular survey were very, very discouraging. Less than 50 percent of the people could identify 50 percent out of eight of those public officials that I asked them to identify-everything from President Nixon to some of our legislators that are now serving in our Legislature. From that survey, I really can't see where it's very meaningful for the people of our state to go to the polls every 4 years and put into office someone who they really don't even know. They're just marking an "X" on a ballot, maybe. It's more or less like a lottery to them, and especially in the case of this particular office of Treasurer. When, you know, does that person really treasure; do they really have the job; are they really necessary? And I support deleting this particular state office in the Constitution because of the research that I have done and because of the stand that the majority of this Executive Committee took and also because I don't think that that job is necessary today. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: I'd just like to say that I am supporting the motion to delete the Treasurer. However, when you delete the Treasurer, it does not mean that you are eliminating the Treasurer. This is still provided for by statute, and I would assume that it would continue to be an elective office.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I rise to oppose the motion to delete the Treasurer. I feel that this would be a harsh thing for this Convention to do at this time. Last night after we left here, the first thing I heard, as we were driving out of the lot, was that the Constitutional Convention did it again; it changed its mind again. And I think that sometimes the people are going to say, first we do it today and then we don't do it tomorrow. And I think this is going to be-1 hope we don't get this type of publicity all the time. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I think Delegate Harrington really touched on something here. Delegate Monroe said that he interviewed a lot of people who didn't know these officers. Well, I'm sure that everyone in the State of Montana is going to know everyone of this Constitutional Convention if we change our mind every week and take a different direction. It seems to me that we worked in the committees; we've debated this stuff thoroughly; we've gone over it time and again. Like Delegate Martin said, if we're going to start bringing everything back and start all over again, I just wonder how in the world we can expect the people to ever have any confidence in us writing a Constitution. We're trying to write one here that's going to last a hundred years. Every week, we change our minds and take a different direction. To use the phrase of Carl Davis, I think we just ought to let the tail go with the hide here and call it quits. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. I rise in opposition to the motion. We have absolutely no assurance, once this office is taken out of the Constitution, that it will remain an elective office. And I have stated right along that every time you remove an elected office and give it to the power of the Governor to appoint, you have taken democracy one step away from the people. And I thought that the purpose of this Convention was to get the government closer to the people. I therefore oppose the motion. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Joyce, do you want to close?

DELEGATE JOYCE: Mr. Chairman. It seems to me that no useful purpose would be served by making extended argument one way or the other. All of the delegates have heard all of the arguments. And so I'll just submit it to the delegates on the record that has been made.

CHAIRMAN GRAYBILL: Very well. The issue before you is Mr. Joyce's motion to delete the word "Treasurer"--or the concept of Treasurer from Sections 1, 2, 3, 4, 6 and 7 of the Executive Article. We'll have a roll call vote. All those in favor of deleting, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Absent
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 56 have voted Aye, 33 have voted No.

CHAIRMAN GRAYBILL: 56 having

voted Aye and 33 having voted No. the motion to delete the Treasurer from the Executive branch—or the Executive Article is adopted.

Now, Mr. Mahoney.

DELEGATE MAHONEY: I move to suspend the rules to open up everything in regard to the Lieutenant Governor.

CHAIRMAN GRAYBILL: Mr. Mahoney has moved to suspend the rules on the Executive Article to open up the article to discuss the office of Lieutenant Governor, wherever it may appear throughout.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President [Chairman]. Here's an office that I think could be just as well handled by the Governor. We could give him an administrative aide, an additional one, and then in case of death of the Governor, either the President of the Senate or the Speaker of the House could be made the Governor, in case of death only. Now, we're only 24 hours away from any spot in the world. For the-having this there-the Governor-we had a President sign a bill in Peking that became law. Now, I think we could get along beautifully without a Lieutenant Governor. Now, this idea of running in a team is nice, but this fellow will continue to be elected by the people, and he's going to get his own ideas of operation in the final end. Or we could turn around and get dynasty set up here where the Governor picks his Lieutenant Governor candidate as he goes along, and we will have a dynasty. So this is the reason for my motion. And if I do, I will then ask it to be sent back to Style and Drafting. This can't be done on this floor-to send back to Style and Drafting with the instructions to get out the Lieutenant Governor and to put in the President of the Senate or the Speaker of the House, whichever this group feels should be next, only in case of death.

CHAIRMAN GRAYBILL: Is there discussion? Very well. The issue arises on Mr. Mahoney's motion to suspend the rules to reconsider the Executive Article concerning the Lieutenant Governor. We'll have a roll call vote. So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson,0	Nay
Arbanas	Aye
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown..	Aye
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Absent
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Absent
Delaney	Aye
Driscoll	Nay
Drum..	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Absent
Holland.	Absent

Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Absent
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Absent
Warden ..... Nay
Wilson ..... Absent
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 28 have voted Aye, 60 have voted No.

CHAIRMAN GRAYBILL: 60 voting No, **28** having voted Aye, Mr. Mahoney's motion to suspend the rules for the Lieutenant Governor fails.

Mr. Foster, will you please send me up your motions. I want those for the file.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, would you read my motion, please.

CHAIRMAN GRAYBILL: All right. Mr. Foster says he moves to suspend the rules for the purpose of reconsidering the office of Secretary of State in the Style and Drafting Number 4 of the Executive Article. Mr. Foster therefore wants to suspend the rules to consider the office of Secretary of State in the Executive Article.

Mr. Foster.

DELEGATE FOSTER: I think the intent of my motion is quite clear. I don't think it's necessary for me to make a long, belabored speech. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? Very well. The question arises on Mr. Foster's motion to suspend the rules so that the office of Secretary of State can be reconsidered wherever it appears in the report of the Executive Article. Do you want a roll call vote? Very well. All in favor of suspending the rules on the Secretary of State, vote Aye; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay

Brown.. ..Aye
Bugbee .Absent
Burkhardt ..Aye
Cain Nay
Campbell ..Absent
Cate ..Aye
Champoux Nay
Choate ..Aye
Conover Nay
Cross.. ..Absent
Dahood ..Absent
Davis ..Absent
Delaney ..Aye
Driscoll Nay
Drum.. ..Absent
Eck ..Aye
Erdmann Nay
Eskildsen ..Absent
Etchart Nay
Felt ..Aye
Foster ..Aye
Furlong ..Aye
Garlington Nay
Graybill Nay
Gysler Nay
Habedank ..Aye
Hanson, R.S. Nay
Hanson, R. Nay
Harbaugh .Aye
Harlow Nay
Harper ..Nay
Harrington Nay
Heliker .Absent
Holland .Absent
Jacobsen Nay
James Nay
Johnson Nay
Joyce Nay
Kamhoot ..Absent
Kelleher ..Aye
Leuthold Nay
Loendorf ..Aye
Lore110 .Absent
Mahoney Nay
Mansfield Nay
Martin ..Absent
McCarvel Nay
McDonough .Aye
McKeon Nay
McNeil Nay
Melvin Nay
Monroe.. ..Aye
Murray Nay
Noble Nay
Nutting ..Aye
Payne ..Aye
Pemberton .Absent
Rebal Nay
Reichert Aye
Robinson ..Aye
Roeder Nay
Rollins Nay
Romney Nay
Rygg Nay
Scanlin ..Aye
Schiltz Nay
Siderius Nay
Simon Nay
Skari ..Absent
Sparks Nay
Speer ..Aye
Studer Nay
Sullivan Nay
Swanberg ..Absent
Toole Nay
Van Buskirk ..Aye
Vermillion Nay
Wagner .. .. Nay
Ward ..Absent
Warden Nay
Wilson Nay
Woodmansey Nay

CLERK SMITH: Mr. Chairman, 28 have voted Aye, 56 have voted No.

CHAIRMAN GRAYBILL: 56 having voted No and only 28 Aye, Mr. Foster's motion fails.

Mr. Cate.

DELEGATE CATE: Mr. Chairman and fellow delegates. I made a great speech here the other day. My delivery wasn't too good, but I talked about the Attorney General's office and why that office really ought to be eliminated. There's a quarter of a million dollars a year being paid out to private counsel because of the conflict between the Attorney General's office and the Governor's office. The Governor of the State of Montana ought to have his own attorney. Throughout the history of Montana, he has not had his own attorney. Governor Anderson is faced with a Republican Attorney General, Robert Woodahl. Governor Anderson cannot rely upon the advice of the Attorney General, so he has to hire private counsel, not only for himself but for all of the agencies of the Executive Department. This same situation existed when Governor Babcock was Governor and Forrest Anderson was Attorney General. And I know that situation well

because I worked in that office, and there was a constant vying for political advantage between the two offices. The situation existed previously when Arnold Olsen was Attorney General and Aronson was Governor. This is a situation that drastically needs correction. The President of the United States appoints his chief legal officer, the Attorney General. The Governor of Montana should be allowed to do that also, and it would result in a more efficient and effective state government. The office of Attorney General in 35 other states is appointed by the Governor. And it seems to work in those areas, and I think it can work in Montana. Now, a comment was made, after I made my plea for this last time, that the Attorney General of Montana was responsible for bringing the charges against Mr. McGaffick, or bringing them out into the open. The Legislative Auditor was the one who brought those charges out in the open. The comment was made that the Alice Creek state lands situation up at Lincoln was the responsibility-or was something that was brought out by the Attorney General. That's not true, because that was brought out by a reporter by the name of Dick Gilluly from Billings, and it wasn't until Dick Gilluly got on the subject that anything happened with it. And I don't think that the Attorney General constitutes that much of an inhibition to the Governor committing fraud that it's necessary that he remain an elective office. So I would simply urge you to look at this situation. It's a rotten mess. It ought to be cleaned up. And it can be cleaned up, and we have an opportunity here to do that. Thank you very much. I would request a roll call vote on that, too. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Kelleher.

DELEGATE KELLEHER: The present system does not work well, and it is expensive. It is a waste of the taxpayers' money, and I heartily support Mr. Cate's motion.

CHAIRMAN GRAYBILL: Mr. Swanberg. Okay. Very well. The question arises on Mr. Cate's motion to suspend the rules to consider the office of Attorney General as it appears throughout the Executive Article. All in favor-we'll have a roll call vote-all in favor of eliminating the-or re-opening-suspending the rules to consider the Attorney General, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Aye
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Absent
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Absent
Davis	Absent
Delaney	Aye
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Absent
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay

Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Absent
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Absent
Monroe ..... Absent
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 33 delegates voting Aye, 50 voting No.

CHAIRMAN GRAYBILL: 50 having voted No and only 33 Aye, Mr. Cate's motion fails.

Mrs. Bates, we're back to you.

DELEGATE BATES: Yes, Mr. President [Chairman]. In regard to the section-I think it's 14-on succession and the "members present and voting" that we added to this, I wonder ifwereally meant this, because it's something that we have added to the other articles. But when we consider two-thirds of this body, which is 67 voting, then if we consider two-thirds of those voting and present, that's only 44. When we talk of a successor to the Governor, or disqualifying him, I wonder if this is what we really meant.

CHAIRMAN GRAYBILL: Mrs. Bates, tell us again what section you're talking about.

DELEGATE BATES: Section 14.

CHAIRMAN GRAYBILL: Sub. what?

DELEGATE BATES: On succession. It would be under sub. 5.

CHAIRMAN GRAYBILL: Sub. 5.

DELEGATE BATES: On line 27.

CHAIRMAN GRAYBILL: On page 16? On line 27?

DELEGATE BATES: On page 16, where we inserted the words "present and voting" in going through it just a few minutes ago. And I wondered if this is what we really meant, because "present and voting" could mean only 44 of a body of a hundred actually acting on this.

CHAIRMAN GRAYBILL: The Chair-is Mr. Schiltz there?

DELEGATE BATES: In just talking to Mr. Schiltz, he said, "Well, it seems this was the motion from the floor." And he, too, questioned it.

CHAIRMAN GRAYBILL: In a moment, we'll get Mr. Schiltz-

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: -1 hope. The Chair wants to point out another problem here, and I'd like Mr. Schiltz to hear. I'll come to you, Mrs. Eck, in a minute. Mr. Schiltz, we need you. We're on Section 14—

DELEGATE SCHILTZ: You've got me

CHAIRMAN GRAYBILL: We're on Section 14, sub. 5—

DELEGATE SCHILTZ: All right.

CHAIRMAN GRAYBILL: -where the Governor is disabled and we put in the words "present and voting", on line 19, so that it says: "If the Legislature, within 21 days after convening, determines by a two-thirds vote of its members present and voting, that the Governor is unable to discharge the duties." Mrs. Bates raises the issue of whether we mean present and voting; if that isn't too small a number. But I have another problem. If you'll look down on line 27, it says: "Unless the Legislature determines otherwise by a two-thirds vote of its members"; so we've got two different kinds of votes in the same section. Now, maybe that's what we mean, but I just want to call that to your attention. Mrs. Eck, do you see that problem too? Mrs. Bates, do you want to make it two-thirds of the members? Is that your point?

DELEGATE BATES: Yes, Mr. President [Chairman]. I think this is the-was the intent of this group, because this is a pretty serious matter.

CHAIRMAN GRAYBILL: All right. Then why don't you move to reconsider 14, sub. 5? We haven't left-as a matter of fact, I don't think you have to do that. We haven't closed up the article yet.

DELEGATE BATES: Well, I move to delete that-those two words that we inserted here, "present and voting". I think that will clear it up.

CHAIRMAN GRAYBILL: We only inserted "and voting". You move to delete the words "present and voting" on line 19; is that right?

DELEGATE BATES: I think that's where we placed it,-two-thirds voting-yes.

CHAIRMAN GRAYBILL: All right. Mrs. Bates amends Section 14, sub. 5, on line 19, by deleting the words "present and voting". The point of this is that this makes it the same as the vote taken in the second half of the section, which is by a vote of two-thirds of its members. And the issue is whether or not the condition of the Governor-whether he can serve or not-should be decided by two-thirds of the total body or two-thirds of those present and voting. Is there discussion on this?

DELEGATE BATES: I think that if we read the entire paragraph, Mr. President [Chairman], it starts out with "within 21 days after convening, determines by two-thirds of its voters present, that the Governor is unable to discharge the powers and duties of his office, then the Governor shall serve", and so forth. And then—

CHAIRMAN GRAYBILL: Then it says, thereafter when the Governor says that he's ready to resume his powers, it takes two-thirds of its members.

DELEGATE BATES: And I think that would clarify it, just leaving it in its original position. Thank you.

CHAIRMAN GRAYBILL: All right. Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I must apologize to the Convention in that that was the intention of the Executive Committee, to make it that it would have to be two-thirds of the members. And apparently, our drafting made an error in that connection, and I would accede to the amendment offered by Delegate Bates.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Is the word "present" deleted too, Mr. Chairman?

CHAIRMAN GRAYBILL: Mrs. Bates has moved to delete both the word "present", and the words "and voting".

DELEGATE BABCOCK: All right.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: (Inaudible)

CHAIRMAN GRAYBILL: Use your mike; we have to go on the record.

DELEGATE ECK: Mr. Chairman. Could I ask a question of Mrs. Bates?

CHAIRMAN GRAYBILL: Mrs. Bates, will you yield?

DELEGATE BATES: Yes.

DELEGATE ECK: Did you, in your motion, delete the word "present"?

DELEGATE BATES: Well, I'll tell you; I was looking at it, but I just thought that was a

mistake, that present and voting, because that way we could have two-thirds or two-thirds of the body when we looked at it in the second quorum. And I'm not certain, but I just wanted to question this group before we made a final decision.

DELEGATE ECK: Yes, but the motion—Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck and Mrs. Bates, the Chair made your motion "present and voting". Now, if you don't want that, you say so; but at the moment the issue before the body is to strike both the word "present" and the word "voting".

DELEGATE ECK: Very good.

CHAIRMAN GRAYBILL: Is that all right, Mrs. Bates? She says it's okay.

Now, let's see-we were back to Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I only want to clarify the same thing the two ladies wanted to clarify.

CHAIRMAN GRAYBILL: Is there further discussion? If not, the issue arises on Mrs. Bates' motion to delete from line 19 the words "present and voting" so that the vote required to either say that the Governor is unable to discharge or that he is able to discharge is two-thirds of the members of the Legislature. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz, will you move 14, sub. 5 again, As-I'll do it for you, Mr. Schiltz. Wait a minute.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. Just-I'd like to ask a question of you. As we've got that now, would it be possible for a group within the Legislature to simply stay out of the chamber and thus thwart the desires of the chamber?

CHAIRMAN GRAYBILL: The way it is now, it takes a two-thirds vote of whatever the membership is-just as we just got through voting-and it took a 51 percent vote or a two-thirds vote. So, of course, it would be possible to thwart if enough stayed away. On the other hand, if you want my opinion, which I'll give you, it seems to me that if you're going to take the Governor's office away from him, you ought to make it pretty tough. Mr. Murray, just a moment. (Laughter) Mr. Murray, if you can say to me publicly what you buzzed me about a minute ago, speak up.

DELEGATE MURRAY: Yes, Mr. Chairman. To clarify this question about staying away in the Legislature, my understanding of the Legislative rules is that everybody is required to vote. You can force them to do so by having a call of the Convention, so I don't think you can thwart anything in that manner.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I agree wholeheartedly with Mr. Murray. If the Legislature had-if it were unicameral and had one house and it had a hundred members in it, it would take 67 people to accomplish this job.

CHAIRMAN GRAYBILL: Mr. Schiltz, before we get too far away, let's readopt 14, sub. 5 as amended, because we've amended it again.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted as re-amended.

CHAIRMAN GRAYBILL: Very well. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Aasheim.

DELEGATE AASHEIM: Go to page 14 and do the same-make the correction there. On Section 10, sub. 3, line 21, I move, Mr. Chairman, on line 21 to put a period-now wait a minute—delete "present and voting". It would read, then, "two-thirds of the members"-It would read, then: "If, after the receipt of a veto message, two-thirds of the members approve the bill, it shall become law."

CHAIRMAN GRAYBILL: Very well. The Chair will allow Mr. Aasheim's amendment to be

considered, and it has the effect of saying that to override the Governor's veto requires an absolute two thirds, not just an absolute--not just two-thirds of those present and voting. Is there discussion?

Mr. Joyce.

DELEGATE JOYCE: I rise in opposition to the motion because it seems to me that when the Legislative Committee deferred to the Executive Committee to write the veto section, that it was agreed by both committees that it only had to be two-thirds of the members present to override a veto. And that-it seems to me that we're dealing with entirely different policy considerations here. Overriding a veto is the Legislature simply imposing its will against the Governor's wishes, and that there isn't the need for the strictness and the absoluteness to accomplish that purpose; while when we're talking about taking the Governor's office away, why, then it ought to be tougher. But I thought that it was unanimously agreed by both the Executive and the Legislative Committees, when we submitted this proposal to the floor, that it would-the veto could be overridden by two-thirds of the members present.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I might state the present Constitution says "two-thirds of the members present". And that's the present Constitution. I think it's tough enough.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. When we amended this a few minutes ago under Style and Drafting, we added "and voting" there. And I think this is the part that should be deleted and left in its original form as coming from Style and Drafting. And I think this was our committee's action too.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think when this matter was discussed yesterday, our decision was that by adding "and voting", we would make unnecessary a process of counting up how many people were present so that you know whether you have enough. I think that the present Constitution says just "present", but it infers and has been interpreted "and voting". And since we have done it with the Legislative section, I think that it's appropriate also to do it here. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. If you add those words "and voting"-in my role as Chairman of the Style and Drafting Committee, I'll accept anything anybody sends in here, but I'm not talking from that standpoint now. If you put in "and voting", you're inviting the Legislature-or you're allowing the Legislature to say that people don't have to vote. And the rules in the Legislature when I was there, and I'm sure when Mr. Murray and Mr. Felt were there, was that you are required to vote; and that's implicit in the present Constitution. If you say "and voting", you're inviting them to say, "I can sit there and not vote and thereby defeat just what you're trying to get". So those words "and voting" shouldn't be in there at all.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I made the motion purely for the matter of clarification. I shall now withdraw and support the wording as it is.

CHAIRMAN GRAYBILL: All right. Mr. Aasheim has withdrawn his motion, and now it's back where it was.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. As a point of information, we did pass, did we, in the Committee of the Whole this morning, the motion by Mrs. Eck to add the words "and voting"?

CHAIRMAN GRAYBILL: Yes, we did.

DELEGATE JOYCE: I therefore move to-having voted on the prevailing side, I move to reconsider our action in that connection. And if my motion to reconsider should pass, why, I would then move to delete the words "and voting".

CHAIRMAN GRAYBILL: Just a minute. Let me think a minute. The Chair is thinking. We did not adopt-we did not rise and report, but I think you're perhaps right, that we have to— What's bothering me is that we did not vote to reconsider, in the case of Section 5 of Article XIV that Mrs. Bates did. I don't want to be fouled up here. I think to be technically correct, Mr. Joyce, I'll hold your matter in abeyance for a moment. To be technically correct, the Chair would like to ask Mrs. Bates, on Section 9—on Section 14, sub. 5, where you just took out the words "present and voting" in the Governor's illness case, would you please move to reconsider 14, sub. 5.

DELEGATE BATES: Yes, Mr. President [Chairman], I will do so.

CHAIRMAN GRAYBILL: All right. Now, she's moved to reconsider. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now will you move to strike the words "present and voting" out of line 19, Mrs. Bates.

DELEGATE BATES: I move to strike "members present and voting".

CHAIRMAN GRAYBILL: No, not **"mem-**bers", just "present and voting"—

DELEGATE BATES: "present and voting"-sorry.

CHAIRMAN GRAYBILL: Right. She now moves to strike "present and voting" out of Section 14, sub. 5. Is there discussion? Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now I think we've done that right. I didn't want to have an error and have somebody challenge the record. Now, Mr. Joyce, if you want to make a motion to reconsider 9, sub. 3.

DELEGATE JOYCE: I move to reconsider the action of the Committee of the Whole in its consideration of Section 9, sub. 3, of the Style and Drafting report on the Executive Article, Number 4, for the reasons I've previously stated; namely, to strike the words "and voting" if the motion to reconsider does pass.

CHAIRMAN GRAYBILL: It's 9, sub. 3, Mr. Joyce.

DELEGATE JOYCE: Nine, sub 3.

CHAIRMAN GRAYBILL: Is there discussion? All in favor of Mr. Joyce's motion to reconsider 9, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: I beg your pardon, it is 10, sub. 3.

DELEGATE JOYCE: May the record so show.

CHAIRMAN GRAYBILL: Ten, sub. 3. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the reconsideration is allowed. Now, Mr. Joyce, do you want to make your motion?

DELEGATE JOYCE: Mr. Chairman. I move that Section 10, sub. 3, of the Style and Drafting report on the Executive Article Number 4, be amended by striking, in line 21, after the word "members", the words "and voting". So that if the amendment were to pass, subsection 3 would read: "If, after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law."

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's motion is to amend 10, sub. 3, by striking just the words "and voting" which we added this morning. Is there further discussion?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and members of the assembly. I think we're going to have complications here. You're going to have people sitting in their chairs and they are going to refuse to vote, and that'11 require that you take a head count to get the total members present. If you have a tally on the board, there's no question about it. So I resist the motion to delete "and voting".

CHAIRMAN GRAYBILL: Is there further discussion? Very well. All in favor of Mrs. Bates' motion to strike the words "and voting", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All in favor of striking it, use the voting machines and vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 55 having voted Aye, 18 voting No, it is adopted. Now, Mr. Joyce-Mr. Schiltz, would you remove Section 3.

DELEGATE SCHILTZ: Mr. Chairman, can I re-move 14, 5 again?

CHAIRMAN GRAYBILL: Yes, let's remove both of them.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted as reamended.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Fourteen, sub. 5. Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted as reamended.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Well, we're right back where we were an hour ago. Are there further motions?

Mr. Burkhardt.

DELEGATE BURKHARDT: I don't have a motion, Mr. Chairman. I wanted a point of clarification. If, as a matter of style, we discover we've used "and voting"-"present and voting"—throughout the document, are we now empowered to take the "and voting" out?

CHAIRMAN GRAYBILL: Well, Style and Drafting still has the Legislative Article back in it's lair, so I guess—

Mr. Schiltz, do you want to speak to that?

DELEGATE SCHILTZ: Yes, I would like to speak on that. We consider this to be a substantive matter and there are about three interpretations you can put on it. So, when it comes from the floor in one fashion, we assume that the committee intended it to be "present and voting" in one case, or only "present" in another case, and "members" in another case, which would mean all the members and a fraction of two-thirds of all those, which would be 67 if it's a hundred. In answer to Mr. Burkhardt, I don't think that the Style and Drafting Committee will tamper with that in any way, because we intend that-or we interpret that the intent was to send it to us as it came-as we got it.

CHAIRMAN GRAYBILL: Very well. Are there other matters?

Mr. Murray-Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that Style and Drafting Report Number 4 be rereferred to Style and Drafting Committee for incorporation of the changes and amendments made in the Committee of the Whole this day, with the privilege of sending it back to the Convention for referral to Order of Business Number 5.

CHAIRMAN GRAYBILL: Do you think you want it back, Mr. Schiltz?

DELEGATE SCHILTZ: Well, I would assume you'd want a clean copy; I don't know.

CHAIRMAN GRAYBILL: Well, we'll get a clean copy in any event. I don't care. You can do it that way, but there aren't any changes-the two things we double changed we--are right back to your language.

DELEGATE SCHILTZ: Except Section 11, on page 15.

CHAIRMAN GRAYBILL: All right. Well, let's vote on Mr. Schiltz's motion. I take it to be the sense of your motion, Mr. Schiltz, as yesterday, that if there are no changes-if you find no errors, that you may then put it on General Orders-or, put it on Order of Business Number 5. Is that correct? That's correct.

Mrs. Babcock.

DELEGATE BABCOCK: Will this make it possible for this to all be opened up again?

CHAIRMAN GRAYBILL: It can't be opened up again unless Mr. Schiltz finds an error. So we'll hope for the best, Mrs. Babcock. All in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. By way of rearranging our calendar, I move that we pass consideration of all other matters before the Committee of the Whole until the next sitting of the committee.

CHAIRMAN GRAYBILL: What do you mean by that, Mr. Murray?

DELEGATE MURRAY: Well, I mean that we have other matters to take up, like Bill of Rights, and I'd like to move and finally rise and report on this part of it. And that's the purpose of my motion.

CHAIRMAN GRAYBILL: All right. All in favor of Mr. Murray's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE MURRAY: Mr. Chairman. I move that the Committee of the Whole rise and finally report.

CHAIRMAN GRAYBILL: On the Executive Article? The motion is to rise and finally report on the Executive Article of the Style and Drafting Report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

PRESIDENT GRAYBILL: Will the clerk please read the report of the Committee of the Whole.

CLERK HANSON: "March 8, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Style and Drafting, recommend as follows:"—

PRESIDENT GRAYBILL: Mr. Murray.

CLERK HANSON: —"that the committee rise and report. Signed: Graybill."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Unless there's objection, Mr. President, I move we adopt the Committee of the Whole report.

PESIDENT GRAYBILL: Is there objection to not reading the entire Committee of the Whole report? The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE MURRAY: Mr. President. I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves back into Committee of the Whole to consider matters under General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. It's the Chair's intention to take up one or two Bill of Rights articles before noon. That's why we're going back into Committee of the Whole.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Will the clerk please read Section 12 of the Bill of Rights Article Number 8.

CLERK HANSON: "Section 12, Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of any-of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." Mr. Chairman, Section 12.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 12 of Proposal 8, it recommend the same be adopted. Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. On this particular section, which has had a great deal of discussion and has been the subject of a great deal of emotional debate throughout our country and here in Montana in past political races-and insofar as gun registration is concerned, we heard a great many witnesses on this particular section of the Bill of Rights. And it was very early decided among the Bill of Rights Committee members that we would leave this section as is, which is the strongest statement on the right to bear arms of any of the 50 states of the United States. We had many people who are members of the National Rifle Association, the group of the right to keep and bear arms, appear before our committee. Then, when we were holding our hearings in the Senate over here, the question was put to each one of these witnesses, "Are you satisfied with the present section of the right to keep and bear arms?" And with only one exception, every one of them said, yes; they were pefectly happy and would be very pleased if the committee would recommend this. And so we have. And so, I would urge this Convention to keep the present Section 12, the right to keep and bear arms; which is, as I say, the strongest in the United States. And I will rest at this point. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Berthelsan, you have an amendment. May the Chair have the clerk read the amendment? Will the clerk read Mr. Berth&on's amendment?

CLERK HANSON: "Mr. Chairman. I move to amend Section 12, page 6, line 20, of the Bill of Rights Committee proposal by adding the following words after the comma following the word 'question'-quote: 'nor shall any person's firearms be registered or licensed, comma"-end quote. Signed: Berthelson."

CHAIRMAN GRAYBILL: Very well. Mr. Berthelson has proposed an amendment to Section 12 which has the effect of adding, on line 20, the phrase "nor shall any person's firearms be registered or licensed". That's in the middle of the sentence, but it's before the last clause.

Mr. Berth&on.

DELEGATE BERTHELSON: Mr. President [Chairman] and fellow delegates. I rise to speak in favor of the amendment you have just heard read. I should like to commend the Bill of Rights Committee for their work and for the very progressive and forward-looking article which they have presented to this body. I would like to thank the Bill of Rights Committee Chairman, Mr. Dahood, and Vice-Chairman, Mr. Blaylock, and the other members of that committee for the thoughtful consideration which they gave to my Delegate Proposal Number 4. Very sincerely and respectfully, I yield to their judgment that Proposal Number 4 was too long. To comply with Rule 20 of this Convention, I will state that I do hold several guns, including big-game rifles, shotguns for bird hunting and competitive practice and shooting, and I do own four older-model Winchesters which someday may become collectors' items. I should also like to tell this Convention of delegates that I have three sons, three daughters-in-law, four daughters, and four sons-in-law, each of whom I believe to be good, law-abiding citizens and each of whom owns three or more guns. I have several grandchildren whom I look forward to teaching to use guns. I state that I have been a qualified hunter safety instructor for the State of Montana since the inception of that program. Now, I should also like to state further that my father owned one or more guns that he could use. My mother owned two guns that she could use. Likewise, my grandparents owned and could use their guns. Now, beyondthis generation, I cannot testify with certainty, but I would surmise that one or two more generations back my ancestors did use and own guns. Now, I'd like to submit to you, now, that we have today, here in this Convention Hall, a rare opportunity to write a right to bear arms section that can be a landmark model for other states to follow. I should like each of you to consider carefully with me this statement that I'm going to make. Gun registration or licensing is a must before any serious effort toward gun confiscation can be made. Totalitarian powers always want to know what citizens own weapons and where they may be seized. Now, to be brief, I'm going to ask you delegates to think with me now about what has happened in these countries: Czechoslovakia, Hungary, Cuba, Ireland. I submit that each of you know what has happened, Now, we have many citizens who believed that it could never happen here; but might I remind you of the millions of believers behind the Iron and Bamboo Curtains. There are those who say, "Yes, but we have the present section in our Bill of

Rights", and again this is true. But tell me, how much freer would the Czechs, Poles, Hungarians, Cubans, and so forth, be if we sent them a hundred, a thousand, or even a million copies of our present Constitution with its present section on the right to bear arms? Maybe they would be a little warmer as their leaders burned them, but certainly no freer. What is it, then, that truly differs us from these enslaved peoples throughout the world? Might I suggest that it is not only our desire to remain free, but our ability to insure that our rights asserted in the present section will never be overstepped nor infringed. Fellow delegates, I submit to you that that ability will be tremendously strengthened by adding the nine words "nor shall any person's firearms be registered or licensed". Mr. President [Chairman] and fellow delegates, I thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock

DELEGATE BLAYLOCK: Mr. President [Chairman]. I resist the admendment. Since the year 1900 in our country, we have had over 770,000 people die from nonmilitary gunshot wounds in the United States. We're slaughtering each other at the rate of 18,000 a year. Last year, we had 93 policemen shot down in the United States. Ninety-six percent of the murdered policemen killed by gunfire are killed by pistols. Now, no one under our present Bill of Rights right to bear arms section have lost any arms in the State of Montana. No one proposes to take their arms. The argument that we can never-or never should--register these guns, I think we have to contemplate very seriously and go into the future. No one knows how the State of Montana, how our population may grow. Our cities get larger; our problems become more complex. And that we may very well, someday, in our state Legislature, want to give that Legislature and our Constitution the right to register at least pistols. Now, the argument is always given that if we ever register any guns—you know, we do register our automobiles; we register all kinds of things-but if we ever register guns, then they will know where the guns are and therefore they can come and take the guns. And I submit that that's a false argument. If you remember-some of you may have read it--about 5 or 6 weeks ago, there was trouble in Turkey. They thought that there might be-the regime over there thought that there might be trouble, so they thought they would search the homes in Instanbul. They used the army and they went through 216,000 homes in one 24-hour period. I submit that the same thing would happen in any Montana city. If they really want to go through our homes—if that-if we ever had our government go over like that-they will get the guns, and do you know what they'll do? They'll simply pass a decree that anyone caught with a firearm in their home or on them, they will be shot on sight, and you will not keep your guns. The argument is also used-time and time again, I've heard these people use the argument-that the Czechs lost their freedom because they didn't have their guns. Again, historically, that simply is not true. Czechoslovakia lost their freedom in 1938, not because they didn't have guns. They had one of the finest little armies in Europe, very well supplied with arms. They had tanks, they had the whole bit; but they lost their freedom to Nazi Germany because their friends, Prime Minister Daladier of France and Prime Minister Neville Chamberlain of England, sold them out. That's the way they lost their freedom, and that's why the freedom has been lost in most of all of these countries. You will not keep your freedom by having shotguns and rifles in your home. So if you're going to argue from the basis of keeping your freedom, don't use that. You keep your freedom by participating in the democratic political process such as we're doing here and always making sure that that's alive. You cannot fight tanks and all the sophisticated weaponry of modern armies with rifles and shotguns. You'll last as long as the proverbial snowball in you-know-where. It simply won't be done. Now, I just have a couple of clippings here of the kind of things that are happening in the State of Montana all the time. I cut these out of the Billings *Gazette*. Here it is: "Billings Man Shot in Bar." It says, "Patrick Holland, 23, 1619 Clark Avenue was shot in the head about 10 p.m. Sunday in Archer's Beer Depot, 1223 Grand Avenue." I won't read the whole thing. This is in another bar in Billings. "April 20, 1970. A woman was killed and two men wounded in a shooting incident about 1:29 a.m. Sunday in the Standard Bar at 1207 Minnesota Avenue." They'd been having a party. Evidently somebody got looking at the wrong person. The guy hauls out his gun, shoots down three of them. Now, Mr. Berthelson talks about the fact that he owns guns, that his wife owns guns, that his sons own guns and his daughters own guns. The last thing that I would want to do in speaking to this article is to take guns away from the people who legitimately use them. But I think that we're asking the police officers of this country and of our state to do quite a bit when we say we are going to put on the books of the State of Montana, in our

Constitution, that the Legislature can never look at that problem; they can never register these guns or license them. I think the day may come, in maybe 20 years, when we may very well want to do that very thing to protect our police officers. And I resist this amendment.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman] and fellow delegates. Mr. Berthelson has talked about this registration of guns, and I wholeheartedly agree with him. I have over 50 letters and names, and so on, of people that have written me from all over the state wanting us to put these nine words in our right to bear arms article. One of the letters I have states that this extension of these nine words of our previously guaranteed rights is supported by the Montana Wildlife Federation-it's over 10,000 members; The National Rifle Association, over 6,000 members in Montana; Montana Rifle and Pistol Association; Western Montana Fish and Game Association; Montana Gun Collectors Association; Association to Keep and Bear Arms, with groups across our state; Flathead Wildlife Incorporated; and many other groups; and perhaps a quarter of a million hunters and family people here. I believe that we should put this in our Constitution as a safeguard. Denmark, at the start of the Second World War, was taken over because their guns were registered. All the Nazis had to do was go to the Clerk of the Court and get the list of names, under the point of a gun, and go to these homes and pick these guns up. The result was the Nazis moved in without a shot fired and, of course, the Danes became pawns of Hitler and his troops. I would earnestly hope that you would support putting these nine words in our Bill of Rights right to bear arms article. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. For some reason that I've never been able to understand, this whole matter of guns is a very emotional matter across the whole State of Montana. I support the Berthelson amendment for the very reason that I couldn't be honestly supporting the voters of Cascade County who sent me here if I didn't endorse it. I have had more personal telephone calls, more lettters, more petitions, mass media messages from this one group of people in Montana than any others. Actually, I'm sure that if a count were made, it would be just as many people petitioning me for this as the group who petitioned me to vote against the right to work. I do submit that if the future need arises where we should register our guns, it's a simple matter now. We've made several methods of constitutional amendment in Montana. So I submit this would be an easy thing when the people of the State of Montana see the need for it. But in the meantime, I can't see that these nine or ten words make that much difference. I must say I don't own any guns, but I look at this from a political viewpoint. These gun buffs are very emotional. By inserting these words, you will have not a group going to the-threatening you to go to the constitutional ratification election and killing the thing, They will be going there to endorse it, to ratify it. They will get all their friends out to ratify this Constitution just to insure this protection which is so dear to their heart. So I support the Berthelson amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. It looks like we have two and two here now. I think the business of these words being added, of course, is something fairly recent. Up until about 2 weeks ago, the question was posed to me time and again, both at home and after I came here, "Will you support the wording which is in the present Constitution?" And this came from some of the groups that you people have quoted. And at that time, I said, "Yes, I would; I think the present Constitution section is fine and we should keep it." Then, all of a sudden, within the last 2 weeks, we get all of this tremendous outpouring of mail asking us to add these words. I think the committee is wise in retaining the present section. I don't think that adding these words is going to add a great deal to the Constitution. I feel that we are being pressured in a way here which I do not consider the kind of pressure I like to get. I think some of the arguments which have been presented for these words are not legitimate arguments. I think anyone who reads their history very thoroughly knows that that's one argument that has been twisted out of context. As far as registering guns is concerned, there are some of us who have done this voluntarily, mainly as a protection for the weapons, so that if they're ever taken, they can be traced. I happen to be on the board of a museum in our county that has some very old guns in their collections. I went to the police department about 2 years ago and asked them about registering the guns. They told me that it was optional; we could do as we pleased.

But knowing what happens sometimes to these gun collections, if they ever were taken or lost, we would never be able to trace them. So by unanimous vote of that board of trustees, we took the serial numbers of all those guns and our police department has them. Frankly, I can't see the big uproar over these additional words. I think the committee is very wise in wanting to retain the present section, and I support them.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. Having these few words in the Bill of Rights would be a very glaring error. I support the majority report of the Bill of Rights. In my family, my children have a great-grandmother and a great-great-grandmother who used a gun to slaughter her chickens and turkeys. She was such-they were both such good shots they could remove their heads without using the axe. We have many guns in the family that will be passed on to my sons. Today, the men on the ranch carry the guns in the pickup for the purpose of killing predatory animals. The only danger is they may be stolen if the pickups are unlocked. The neighbor had several guns stolen, and they happened to have the numbers registered at home, and they were found in California. And it was only through this registration that they were able to return them. We have one of the finest sections on the right to bear arms in the United States, and I believe it should be retained as is. I support this majority report of the Bill of Rights. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James. I think you were up next.

DELEGATE JAMES: Mr. Chairman and fellow delegates. As a member of the Bill of Rights Committee, I will go along and support our report. We thought this over and Chet has given you some of the material on it. We did hear all kinds of people, and they were well satisfied with this thing before an organized letter campaign started. And just about all these letters came on the same pink stationery, with the exact wording, and-with the exception of one that threatened our Constitution if we didn't go along with them. Now, I think that I'd be a hell of a member of the Bill of Rights if I gave in to threats. I think we've had threats before that this Constitution wouldn't be passed if we did something. I think it's time to stand on our feet as men and reject these threats. Now, we think of ourselves as a frontier people, perhaps a frontier state, but let me read to you what the Constitution of the frontier State of Alaska has to say. This state, as you know, is just a few miles away from Soviet Russia. "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." This is a collective right. Again, let me take the frontier state of Hawaii, which was in our time invaded by a foreign power--or attacked, I should say, at Pearl Harbor. "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Then we have the Constitution of the State of Idaho, which is much more restrictive on the right to bear arms. "The people have the right to keep and bear arms, but the Legislature shall regulate and exercise this right by law." This is much more restrictive. I do think we have a good article here. It gives us the right. It's an individual right, not a collective right like Hawaii and Alaska have. If there's any registration in Montana, I'm sure it will come from the federal government, such as one man-one vote has. If the situation arises here, as Delegate Blaylock has said, that there's a need for registration because the crime rate has risen so, this is up to the Legislature. We have given you the individual right in the present Constitution. We will give it to you in the future Constitution. I think that's about all I have to say. I heartily support our Bill of Rights proposal and will go along with it. Thank you.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I'm a member of the Bill of Rights Committee. I have, since the commencement of our work, reserved my personalright to speak on this subject even though I voted for the section as it appears in the proposal put out by the Bill of Rights Committee. I don't know that I've ever been personally threatened about this matter or any other, either in or out of the committee. I come from an area which is concerned greatly, apparently, from the volume of mail and the phone calls and other contacts that I have had about this matter, both here and at each occasion that I have been in the Flathead during this Convention. I don't speak on this subject from a philosophical standpoint, although I probably could. I don't speak on the subject from an emotional standpoint, although probably I am somewhat emotionally involved in trying to keep and bear arms as we propose it here. I do clearly want to state to you that I am in favor

of the Berthelson amendment for one particular reason, and that is the matter of practical politics. I can't think of one single thing that we could add to our Constitution that would attract voters faster than the adoption of this particular amendment. I think that it does no harm. I think that it might do great good in the practical sense. I do not wish to mean by these comments that I will not support the committee recommendation if this amendment does not pass, but for the reasons given, I support the Berthelson amendment.

CHAIRMAN GRAYBILL: The Chair senses that we're not going to get to a final vote on this issue before noon. I see three people up. I wonder if it wouldn't be advisable for us to recess at this time.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the committee recess till the hour of 1:30 p.m. this day.

CHAIRMAN GRAYBILL: Before the Chair puts this motion, the Chair is going to ask to make two announcements. First of all, Style and Drafting will not meet during the lunch hour, but will meet at 8:00 a.m. tomorrow morning-Style and Drafting, at 8:00 a.m. Secondly, will you please-if you have not, will you please make your reservations for dinner tonight-the $5 dinner at the Colonial Club-for you and your guests, if you have not made them with the girls in the secretary's office in Mr. Toole's or my office. All those in favor of—

Mr. Champoux.

DELEGATE CHAMPOUX: May we have the Education Committee just very briefly in the committee room right after this adjournment, please?

CHAIRMAN GRAYBILL: Education Committee, briefly, after this adjournment. Very well. All in favor of adjourning till 1:30 p.m., say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Recessing— All opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 11:58 a.m.—reconvened at 1:30 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Ladies and gentlemen of the committee, before lunch we were discussing Section 12 of the Bill of Rights Article Number VIII and we had an amendment offered by Mr. Berth&on. The sense of the amendment is to add, on line 20, page 6, at the end of the line, the words: "nor shall any person's firearms be registered or licensed." While everyone is getting settled, I might announce again that some of you have requested that we use the pages with the comment, and I certainly don't mind others doing that. It does confuse-some of us are using one and some the other, and the Chair has tried to use the others; but because of the comments, I lose my place. But I'm perfectly happy if the rest of you want to use the other page; but that's what I use and I'll try and give other references if I can. Now, we're discussing Section 12 and Mr. Berth&on's amendment which adds the phrase "nor shall any person's firearms be registered."

Mrs. Pemberton, you were up before lunch.

DELEGATE PEMBERTON: Thank you very much, Mr. Graybill. There was a reference made to mail this morning that was coming in from people you were representing in your counties, and there was page after page of mimeographed letters. I have about 25 or 30 letters asking that we give consideration to Mr. Berthelson's amendment, and all but four of them are personal letters; and that is from District 1. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], fellow delegates. I've been inclined and very desirous of supporting the majority position on this issue. But it is a very important issue, apparently, because of all the mail and all of the fixed opinions, as noted in the last election, and how active these people were and how concerned they are about the guns. I'm not so concerned that the state is going to license and take away their gun. Now, Mr. Berth&on, as a member of the majority, last week had a great deal of confidence in our state government and gave them authority to do all the taxation, to move the assessment to a state level, remove the state debt limit on taxation so in effect they could take away your house you had the gun in, and so forth; and so I think that that part isn't too serious, about that these same people are going to turn around and make you license your gun and be very-cause a problem. However, I spent the same time here as most the

rest of you--except the officials, who I know have spent a lot of additional time, and we're very grateful for that; but I want a Constitution that we can support. And also, as kind of, I hope, a little practical politician. Now, basically, these gun people are "aginners". They're going to vote against the Constitution if you don't have any article in it; they're going to vote against it if you've just got the same article in it; but they're sure going to be trapped if you put in this amendment because to get this amendment they've got to come out and support the Constitution. Therefore, I'm going to support the amendment.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Well, Mr. Chairman, I wonder if-1 rise in support of Mr. Berthelson's amendment. I wonder if by eliminating Mr. Berth&on's amendment we are not tacitly violating Section 10, the Right of Privacy. Perhaps one of the members of the committee might wish to address himself to that matter. So far as I'm concerned: the part of the country I come from, this is a people issue; this is not a pressure group issue. And I would be very much interested to know that, to have someone comment upon whether or not we are violating Section 10 by tacitly-in our tacit refusal to include Mr. Berthelson's amendment in Section 12. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would like to speak very briefly, sir, concerning this amendment. I want to state, to begin with, that I am in agreement with the majority proposal but I also favor Mr. Berth&on's amendment. Now, it's been said that registration is not confiscation. If it isn't, then what is it for, really? If we're going to talk about registration in terms of stopping crimes, I'm sure the case of New York with their gun control registration act can show that this sort of thing isn't successful. Secondly, Mr. Blaylock's comments on not being able to stop tanks, planes and so forth with firearms; I think the situation in Vietnam could give him an argument that opposes that position. I think the position of this amendment is for protection, as the right to bear arms was originally, and I am in support of the amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'm not going to take much time on this. When I came to the Convention, I thought I would be very happy if we could retain the section that we have in our Constitution. Therefore, I feel that the committee should be commended. However, we have many, many letters, and now it's been stated that these are a form-letter. That may be true, but these people did put-&cent stamp on it, they went to the trouble to send it in, so therefore I know that these people want me to vote for Mr. Berth&on's amendment. And I think this is what we should do, because there's no sense of going against the will of the people. We heard many, many times that this is a people's convention. Well, let's listen to the people a little bit, then. And this is certainly an emotional thing, I don't suppose as important as a lot of people think; but I certainly want to support it because if it's what the people want, that's what we're here for. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Well, Mr. Chairman, thank you. I think most of the arguments for this have been said. I would like to observe that if we register firearms, you're making an outlaw out of everybody that refuses to register them. And I know that this would be done, and it would remind me a great deal of the years when bootlegging was in its prime. And a crook or a dangerous man that needs a gun in his work is certainly going to have it. He's illegal to start with, and any laws against him wouldn't deter him in the least, I'm sure. I support Mr. Berthelson's amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, inasmuch as I have the privilege of serving in the capacity of Chairman of the Bill of Rights Committee, I feel that I am compelled to address myself to the issue that is before the Chair. I sincerely submit that the most prominent nonissue that has been presented on Convention floor is this issue. There is no one on the Bill of Rights Committee—nor has there been a suggestion made that firearms in the State of Montana should be registered. I am opposed to the registration of firearms. I think all the members of our committee at this time are opposed to the registration of firearms. I am not prepared to state, however, with utmost clarity for the future that we may never have a situation where perhaps handguns, in order to preserve law and order in society, may not fall under some legislative directive that may compel registration. That is something for the future, but

for now there isn't anyone on the Bill of Rights Committee that supports any law that would require firearms to beregistered. When this matter first came before our committee, the concern was that we would amend the present protection and thus interfere with the right of the people of the State of Montana to keep and bear arms. We finally convinced all those who appeared before us that that was not true and there was no intention whatsoever to consider such an idea. And so, then, everyone was satisfied with the present protection. We explained to them, as I explain to you now, the federal Constitution, almost 200 years old, does not give you the right that you have in the State of Montana. The federal Constitution, in the Second Article of the federal Bill of Rights, provides for a collective right, when the citizens are acting as a militia, to keep and bear arms. And notwithstanding all of the movement and the argument of the issue generated throughout the country, nobody is suggesting that the federal Bill of Rights be amended. Let me remind you again that in Montana, the provision that we have had since 1889, and which we have now and which our committee suggests be retained, states as follows: "The right of any person to keep or bear arms in defense of his own home, person and property shall remain inviolate." The federal Constitution right says this: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." That has been interpreted by the high courts of the federal Judiciary to mean that this is a collective right and not necessarily an individual right. So in Montana, what do we have now and what is our committee's suggestion that we retain? The broadest, most liberal concept with respect to the right to keep and bear arms that exists anywhere in any of the several states of the United States. From the debates that I've listened to, suddenly there's an issue that doesn't exist here. Registration is not an issue. We want to keep our right as it presently exists, and there is no contention anywhere for registering firearms in the State of Montana. And I submit to you that I am opposed to registration, my Vice-Chairman is opposed to registration, the members of the committee are opposed to registration, and let's not give any homage to a prominent nonissue by voting for the amendment. Because I submit to you we're maintaining the right without any concern that it ever, in the future of the State of Montana, is going to be infringed; and as a consequence, I oppose the amendment. I am going to vote against the amendment; and at the same time, I and the rest of the committee are opposed to registration. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to oppose the amendment. I feel that to lock this into the Constitution would be a grave mistake by this Convention. I also hope that none of the delegates will take the 1970 campaign and the vindictiveness that was waged in that campaign against Senator Mansfield. We are not registering guns. We are not thinking about registering guns. We have, as Mr. Dahood said, one of the strongest articles in the Constitution against the registering of guns, and I feel we should oppose this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman—I'm tangled up in my books here. Mr. Chairman, I rise in support of Mr. Berth&on's amendment. If this is not an issue, then why make an issue of it? As a matter of fact, I thinkregistrationis an issue. The proponents of the majority report have said as much. They said it's not an issue today, but it will be an issue sometimes in the future. I don't think the people of Montana want gun registration now or in the future. Now, I come-or came quite awhile back, 16, 17 years ago, from the State of Michigan, which is a state that does have handgun registration. And it results in so much bureaucratic form-filling-out and nonsense that most gun nuts like me didn't bother to own a handgun. Who had the handguns? You know who had the handguns-those people who had a strong enough use for them to get a registration permit, or those who had a criminal use for them and didn't need a registration permit. Now, Mrs. Cross says this issue came up pretty fast. As a matter of fact, it did. It's also true the public trust issue came up pretty fast. I was for that and I am for Mr. Berthelson's amendment, so how fast it came up is, I think, beside the point. I am for it also because I am a member of the Western Montana Fish and Game Association, which is one of the most responsible organizations around and does not take ill-considered positions on anything and is firmly in support of Mr. Berth&on's amendment. There have been no threats to me from any of my constituents. There have been some well-reasoned letters. I have responded to them by saying that I am in favor of the proposed amendment, although I do not think it is the most important issue in the

world and I wish they would devote some of their energies to other more important issues, and I specified a couple. Now, it has also been said here that if we do get gun registration, particularly handgun registration, it will come from the federal government, which is certainly true. If it does, so be it. But let's not let them say to Montana, "impose it on us". And finally, as a matter of closing, I'd like to take this opportunity to agree with Mr. Murray, for once. This is a matter of practical politics. I think he's absolutely right. We'll get a lot of votes for the Constitution by this.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President [Chairman], to paraphrase an Alka-Seltzer ad, I can't believe I'm hearing this. I firmly support the majority. I see no threat in their proposal to anyone owning guns. I see no portent of any attempt to register guns. I say if we act on political expedience, how do we know what's politically expedient? Perhaps it is politically expedient to go along on this. Is it politically expedient, then, to go along on everything on which we get letters? Where is this great flood of letters? I don't see them. I've had quite a few on this, but I haven't been flooded in the campaign. I had a few ask about it; they didn't object to keeping what we now have. Those who feel that the opponents of the amendment will wreck the Constitution; I think I should point out that if they do wreck this new Constitution, they have exactly the same thing in the present Constitution; what have they gained by their actions? Expediency to me is not a very palatable word. There was a man by the name of Henry David Thoreau who was thrown in jail because he acted according to his own conscience, and his friend, Ralph Waldo Emerson, came to see him and he said, "Why, Henry, what are you doing in there?" To which Henry replied, "Why, Waldo, what are you doing out there?" (Laughter) And all the time he was in prison, Henry Thoreau said, "I am the only free man in this city, because I'm the only one who is living up to my convictions." He also said, "If I am more right than my neighbors, I'm a majority of one." And that's the way in which we operate. The argument of political expediency, to me, is not a good one. I support the majority report and oppose Mr. Berth&on's amendment.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President [Chairman], I am just going to say a few words. As you remember the song, "Pistol Packin' Mama"-this song referred to the people in-the women especially-in Montana, and I would not like to see these nine words placed in our Constitution. At our hearings--and the letters we first received at the beginning of our hearing were handwritten, and we had many people testify to retain what was in the Constitution. And then several did appear that wanted to have these nine words placed in there, and my only question to them was, "If we left this section as is, would you vote for the Constitution?" And they said, yes, no argument. The letters continued to come in to still retain this section and then, all of a sudden, form letters seemed to corns, being signed by Mr. and Mrs.; and I believe that there is something afoot. I still support the major section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE RYGG: Mr. Chairman, I support the Berthelson amendment. I haven't received any threats, but I think I've seen a lot more interest in that than I did in anything in the Revenue and Finance-from our county, that is. (Laughter) I realize that probably this is legislative. I realize that probably isn't the most important thing. On the other hand, in the last couple of days, it seems to me we have done some other things which are probably legislative, and maybe to me they weren't important but to someone else there is. And I honestly believe that these nine words are very important to a great many people. I don't think they will clutter up the article, and1 do support the amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], I justwanttoclearupamisstatement that I think Dr. Rollins gave us a few minutes ago. He said that if these gun people don't want this in the Constitution, they're going to get it back in the old one; if they vote against this new Constitution, they would be getting the same thing back in the old Constitution. But we're talking about the amendment. It is not in the old Constitution. I just want to correct that. And I want to bring up another fact that last year a fellow from the western end of the state come over and run against Mansfield. He was the Republican nominee by the name of Wallace. He run on the right to bear arms issue only, practically only, and he had very few

other issues. We also had a senator over there that run against Melcher, and to thesurpriseofmost of the people, especially in our district, Wallace picked up more votes than Rehberg, and Mr. Rehberg put on a tough race. He worked hard, there was a lot of money spent-there was not a lot of money spent; he didn't have it. Wallace was over there with hardly any support other than the right to work-(Laughter)

CHAIRMAN GRAYBILL: I'm sure that was a Freudian slip, and not an attempt to get around the Chair. (Laughter)

DELEGATE STUDER: Okay, a little commercial doesn't hurt once in a while. (Laughter) But anyway he did not have the support of any known organization other than the right to bear arms. And when he got that many votes, I would say those people are quite serious about their voting; and if we have a chance now, by this addition of these nine words, of getting their vote, I think we ought to do it because I'm quite sure that we will alienate this vote if we don't. I don't think it's very important that we have these nine votes—nine words in here, but I do think we should have the votes, and for that reason I support Mr. Berthelson.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, in-generally I agree with the committee. They have a very good, strong section. However, it will be better with the Berthelson amendment. Delegate Blaylock referred to some 700,000 people who've died from gunshot wounds, and an alarming number of policemen in recent history have been shot down. This is an emotional issue, and I ask that you strongly consider who shot those policemen. Would they comply with a licensing or registration law? Of course not. Delegate Blaylock and Delegate Dahood both referred to some date in the future when we may need licensing and registration. This ignores the fact that only honest, law-abiding citizens will comply with licensing and registration. The perfect example of this is New York City; they've had the Sullivan Law for years and have as high a crime rate as anywhere in the country. I submit that the net result from licensing and registration would simply be to raise the premium that the Mafia would have to pay for an unregistered gun. To the citizens of Montana, having a constitutional guarantee against licensing and registration is far more important than a constitutional right to know orrightto participate or right to privacy. We're talking about the real heart of what is important to Montanans. In addition, I think it would be very nice to have all the gun nuts, and I number myself among them, supporting our Constitution. Delegate Dahood referred to this as a nonissue. I agree. It wouldn't change our Montana law one bit to put this amendment in. It wouldn't change it one bit, but what would it do? It would require that at some time in the future that anyone wants to put licensing and registration as part of the law of Montana, that they'd have todoitbyavoteofthepeoplebya constitutional amendment. I submit that's where it belongs and strongly support the Berthelson amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman], I don't know what I could add to what has already been said here, but-(Laughter)

CHAIRMAN GRAYBILL: Mr. Wilson, is that an invitation to stop, or-(Laughter)

DELEGATE WILSON: I hope that you don't interpret it that way, Mr. President [Chairman]. (Laughter)

CHAIRMAN GRAYBILL: Okay.

DELEGATE WILSON: But, I have many letters and telegrams in my desk and drawer. In fact, it's practically full of them. And they represent people from my district, a lot of them, and if I remain silent on this issue they would certainly question why I did so. I support Mr. Berthelson's amendment. I think that this thing does have a lot of meaning. It has a lot of meaning to these people that wrote these letters. There is not one of these letters in my desk that says that they will not support the Constitution if you do not put this in. They are merely expressing a wish that you will do this. They want it done. They want this additional protection that would come from having it written into the Constitution. As my good friend across the aisle has said, it will require then that the people take a vote on this if they want their guns registered; and this in effect is what these people who sent these letters to us are asking. They're asking this consideration of this body. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], fellow delegates. There is one thing to

be added to this argument why these nine words should be put in our right to bear arms article. There is a movement on foot nationally to register all guns in the United States. Now, when our national Constitution was written, the stateswere given all rights not prohibited by this national Constitution. Now, if this movement to register arms comes even close to being an amendment in the national Bill of Rights, our already having same in our Constitution would prevent, for a time anyway, the registration of firearms in the United States. Now, if we put this amendment in our article, I am sure that other states will follow suit and copy this, the thing that we're doing here. We need this in the Constitution, and now.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, will Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE CONOVER: Mr. Dahood, after hearing all of these different comments for and against, to me, actually, I can't see where it would do the-hurt the article or the section one bit, but I'm going to ask you one question. Isn't it true today that if you buy a gun, even in the State of Montana, that you have to fill out three or four different forms and it's registered within the store that you buy it?

DELEGATE DAHOOD: I think that's probably correct, Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, will Mr. Dahood yield to another question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE CONOVER: Well, in that event, if we put this in the Constitution, these five-nine words, if the federal government at any time requests that all guns be registered, does that override any state?

DELEGATE DAHOOD: Mr. Conover, I wish I could answer it yes or no. I cannot, but I will try and answer your question. I think there'd be a serious question as to what type of traffic we're talking about with respect to firearms. If it's solely a matter within the State of Montana, I would not think that the federal area would have jurisdiction. On the other hand, they could contend that the manufacturer of firearms is within the stream of interstate commerce and as a consequence would have jurisdiction in that fashion. So with respect to registration, I should think that that is not a consideration that quite has the validity that some of the delegates may think it has, simply because I think if someone wanted to have a list of the firearms that exist, that wouldn't be too much trouble. I should think the National Rifle Association has a subscription list for their magazine that's probably long and extensive. I would imagine that anyone on that subscription list probably has a firearm. But in answer to your question, I think it would depend on various circumstances as to whether or not a federal registration act would apply to Montana. It would depend on the circumstances I've indicated.

DELEGATE CONOVER: Thank you, Mr. Dahood.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Well, in listening to all your arguments, I must say that I am one of them too, probably, because I am a great lover of guns. It must come down to one point. It's going to take money out of your pocket if you have to register them. And how much it will mean to each one of these individuals, I wouldn't know. Maybe a hundred dollars, $200, $500; so I think this is the purpose that you want to add these nine words. I think, let's be honest about it.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I want to read this proposed section to which the amendment is to be appended: "Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." That is the background for this amendment which reads, "nor shall any person's firearms be registered or licensed". We all know that we have a backstop for this right to bear arms in the federal Constitution. There is no suggestion of registration or licensing in the committee's proposal-none whatsoever. It is a fear which has been engendered in the people

of Montana's minds over the past several years, and it is widespread. It is so widespread that a person who opposes it might as well paint a big target on his back and run for the mountains and find a hole and run in the hole and pull the hole in after him. If he wants to avoid it, he'd better paint himself sky blue and run along the horizon so nobody can find him. Or, we can have a situation where we have such concern for our budding Constitution, it becomes so sacrosanct that we must embrace it-or embrace this amendment, whether we like it or not, whether it is pertinent or not; and I suggest it is not pertinent. Now, I think this is a matter that is legislative in scope. I don't think it's constitutional law. I'm not in favor of putting it into the Constitution. If I were a Legislator, I would not be in favor of putting it into the statutes of the State of Montana, because I don't believe in registration of guns. I have guns, several of them. I've used them all my life. But there are some other considerations, too. All of the mail that I have received-almost entirely being--on this subject-almost entirely being mimeographed form or material of that type-has been insisting that this be placed in the Constitution. I don't think that there-I've received more than 40, 50 such messages, but they've all been the same. Nobody has suggested that we do not keep it in the Constitution-place this in the Constitution as an amendment. The people who are in favor of placing this in the Constitution as an amendment to the majority report are very much agitated about it, and they are working tooth and toenail. The people who are against it are complacent; they take no part of it. They figure we'll all do our duty as we see it. Now, from my remarks I'm quite certain that you realize that I am not in favor of putting this amendment in the Constitution. However, in November of 1970, the people of Ravalli County took a plebiscite on me on this very question, and they retired me from the Legislature on that-because of this situation. Now I am placed in the diabolical situation of whether I should support my conscience or my constituents. (Laughter) It is a hell of a predicament. (Laughter)

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think the name of the game here right now, and I'm not sure I have all that much to add, is that everybody get on the record on this subject, and I'm going to get on the record on this subject. I have watched andlistened to and looked at almost every kind of weapon that you could name, from three-tenths of a millimeter up to a hundred and fifty-five millimeters. I'm about half deaf in my left ear from standing next to that lanyard on that big one. And I suspect—although I don't claim to be more expert than anybody, I doubt that there's anybody in this room that knows more about guns than I know. I can take them apart in the dark, and I have. I can find first position, second position and third position stoppages and go immediately to the source. And with all that knowledge, I hate them. They make noise. There's only one thing you can do with them and that's shoot them; and there's only one thing you can do when you shoot them and that's hurt somebody or something. I have an intense hate of the things, but I will say this: I don't own one; my grandfather didn't own one; my father didn't own one; and my kids don't own one, and that's possibly because of my influence. But if I did own one, I would have no hesitancy in going downtown and registering the damned thing. (Laughter and applause)

CHAIRMAN GRAYBILL: Please don't demonstrate. We laugh, but we don't demonstrate. (Laughter)

Okay, I think Mr. Blaylock was up next, Mr. Artz.

DELEGATE BLAYLOCK: Mr. President [Chairman], just a few remarks to maybe clarify some of the points that have been made by the supporters of the amendment. First of all, on this matter of the State of New York, I've heard that quoted to me an awful lot, so I finally wrote to the Police Commissioner of the City of New York to ask him what he felt about the gun control law in that city. And I received a reply from the Deputy Commissioner of Licenses, a man by the name of Lewis Stutsman, and he says this: "Your communication concerning gun control has been referred to the undersigned for reply. The provisions of the penal law of the State of New York regulating the possession of firearms is an essential factor in our fight against crime. Our experience has revealed that in most instances firearms used in the commission of crimes in this state originally were purchased in some other jurisdiction and thereafter illegally transported to this state. It is our belief that if there were more rigid controls in other states of the possession and sale of firearms, that the crime situation would be improved." Now, I would also like to show the delegation this telegram-500 names on it from Billings, Montana, to the Bill of Rights Committee. This was addressed to Chairman Wade Dahood. It's from

such people as the National Rifle Association, the National Association to Keep and Bear Arms. This is when we were holding hearings on this. They were all asking that we leave this part of our Constitution just as it is. It was only afterwards, about like 2 weeks ago, like Mrs. Cross said, that we began to get all of this lobbying to change this section. Also, in regard to this business of threats. This was addressed to Mrs. Cross, and she just passed it to me. This is at the bottom. It says: "P.S. As a delegate it would be readily apparent: with no change in Section 13, why should we support a new Constitution?" I count that as a threat-we are going to go against it if you don't do what we want. Also, in regard to-there was a remark made insofar as the country of Denmark by somebody in here, and it was because the Nazis knew where the guns were that they overran Denmark in World War II. Denmark lasted exactly 4 hours, and it wasn't because they knew where the shotguns were. I would like to reiterate that we have one of the very strongest statements on the right to keep and bear arms of any state in the Union. I don't-I think that to add this language does make a change. I think we're tying the hands of future state legislatures when this problem may become more severe some time in the future. And we have-I've heard this said over and over again in this chamber by this body-we'll leave things to the state Legislature. All right, this is a problem that may someday have to be taken up by them, and I think we should leave it to them in case that they do want to do this. Now, insofar as the argument that has been made, and I shall close with this, about the business we're going to pick up votes for this Constitution if we'll just put this in. Now, I heard when we organized this Constitutional Convention back in November, there were a lot of good idealists in here, and there was a lot of things being said about the dirty old politicians who have been over here in the state Legislature. I never did join in that thing, but those were the statements that were made; and that we didn't want caucuses and we didn't want this and we wanted to be open and let's not act like politicians. All right, we're here as a Constitutional Convention and we are writing a Constitution for maybe the next 80 years. Now, are we going to bow to some pressure to change this when maybe in our heart we really don't believe it? Now, if you really don't-if you really do believe that these words don't make any difference and that we'll put this in that they can never be registered or any licens- then I suggest that you do not act like the proverbial politicians and vote just because of pressure. Vote what you really think is right-not on whether this thing is going to beadopted, whether we're going to pick up some support-because I would like to point out that while Mike Mansfield did have some trouble in the last election, he did win and he still won big. There's a silent majority here that's never been heard from. And I think that we have the strongest section of any state; let's leave it alone.

CHAIRMAN GRAYBILL: Mr. Artz is next.

DELEGATE ARTZ: Mr. Chairman, fellow delegates, a few comments only. Number one, the registration will not necessarily stop criminal element. They will merely steal their guns and not register them. You are just going to create a hardship on honest people. I agree with Delegate Erdmann. I've had the same pressure from Cascade County. I would certainly appreciate it if you would support Delegate Berthelson's amendment, because I would hate to take a risk of being shot at when I go back to Cascade County. (Laughter) I would also like to eliminate a chance-or to provide a chance for getting more votes for this Constitution. Maybe I am a dirty old politician, but I'd hate to work over here as hard as I have and, with the elimination of nine words, lose the Constitution. I maintain that if Alaska and Hawaii don't like gun registration, that's fine. The people of Montana like it; they should have it. I've also heard quite a few comments around here about whether it's constitutional or legislative. Well, I found this out: if you're for something, it's constitutional; and if you're against it, it's legislative. Now, technically all of the Revenue and Finance was legislative material. Nine more words certainly should be allowed, considering the number of legislative words we've put in this Constitution up to this point. A point has been made that there was a sudden avalanche of these communications about this. I think possibly it could have been an editorial in the March-April 1972 issue of the *Handloader* magazine that probably give these people a hope that we could accomplish something if we got it in the Montana Constitution. Now, in the comments some of the reasons for not putting this in were stated as follows: "The committee notes that the statutory efforts to regulate the possession of firearms have been at the federal level

zine for March-April 1972, the editorial, and I'm not going to read all of it, just a little, says—quote-"A significant U.S. Supreme Court decision, one which could have a far-reaching effect upon present and future federal firearms laws and could preclude a federal gun registration or licensing program was handed down shortly before the close of the 1971 Session. The decision struckdown the section of the Gun Control Act of 1968 which prohibits convicted felons from possessing firearms, one of the few items in the Gun Control Act of '68 which most sportsmen favored. The case in which the Supreme Court made its decision involved one Dennis Bass of Bronx, New York, who had been convicted on two charges of possessing firearms after having been previously convicted of a felony. The key words were this; this is the crux of the matter. If the Supreme Court will not allow Congress to write laws prohibiting criminal ownership of firearms unless those firearms are directly involved in interstate commerce"—I quote, "interstate commerce"-"then it follows that Congress may not write laws denying firearms ownership to anyone. All of the proposed federal gun registration and/or licensing laws would prohibit anyone's owning a gun without having met the federal requirements. Yet the Supreme Court's Bass decision says that Congress may not take such a prohibition unless the gun is involved in interstate commerce, and without the authority to prohibit unregistered or unlicensed possession of a firearm, Congress can't write a registration or a licensing law"--unquote. Therefore it is up to the states, and I maintain that Montana should put these nine words in. I heartily support Delegate Berthelson's amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh is next.

DELEGATE HARBAUGH: Mr. Chairman, once there was a fellow who had a dog. It was a particular kind of a dog, a very wonderful dog. He could run like the wind. This dog had a tremendous nose; he could trail almost anything. He was a great fighter, but he had one weakness. He was afraid of rabbits. (Laughter) He was what you'd call a scared-rabbit dog. I don't think I'd want to own a scared-rabbit dog. I don't think the people of Montana want a scared-rabbit Convention. It seems to me this is what the issue is when we're talking about putting frosting on the cake. I think that we ought to get on with the business of this Convention. I wouldn't change my mind on this issue in spite of all of the conversation that's taken place here. My mind was made up on this issue before we began. I wouldn't change my mind if all the people in Montana were out here beating on the Capitol door. I say, "Let's vote this amendment down; let's get on with the business of this Convention."

CHAIRMAN GRAYBILL: Mr. Rollins, I think you were next.

DELEGATE ROLLINS: We've heard about these nine little words. Here are nine words. Came from a poem-"Just for a handful of silver he sold us." This poem was a nasty, mean, unwarranted poem aimed at one of our great men, Daniel Webster, because he spoke his conscience in the 7th of March speech in 1850. Mr. Romney said he was in a hell of a predicament. The predicament that I fear is that if I don't vote my conscience-and with my ugly mug, I can't stand to shave more than one face in a day. I don't worry so much about what the people may say. They perhaps exercised poor judgment in electing me, but I've had a number of them say, "Now that you're elected, go there and write the Constitution." And in order to do that, you have to use your own judgment; you have to use your own convictions. And that's what I hope to do. I feel that those nine little words--oh, they don't mean so much; but there was another song--"Three little words, eight little letters-I love you." Man, what a trap that's been. (Laughter) Words have meant things, and those words mean something. The majority report without those words is a very strong protection to those who want to have the right to bear arms. I'm like Mr. Schiltz. I don't own a gun; I wouldn't have one. I have known personally five people who have been killed in gun accidents. I'm afraid of the things, but I don't chastise those who love guns; and I think perhaps I can understand it. I'm that way with books. But I feel that going those extra nine words is not necessary. You have a very strong article the way it is. I hope that the people will support it. Beyond that, all I can do is vote the way I feel, which is in favor of the majority report.

CHAIRMAN GRAYBILL: Mr. Gysler, you were next.

DELEGATE GYSLER: Mr. Chairman, I rise to support the Berthelson amendment. I sat in this chamber on the day that the Bill of Rights Committee had their public hearing, and I'm not going to condemn the committee at all for limiting

the number-the time that people had to speak on this, but I do know that there were-it was after this time when there was considerable opposition to leaving the-this section as it is that the organized stuff started coming. On that day I was lobbied by-to add something to this by the father of Lones Wigger, Jr., who in the Olympics in Japan, I believe in 1964, was a gold medal winner in rifle competition. I can't quite see some of the arguments. They say, "Well, now, this isn't going to happen. Do you know anybody that's going to be doing this?" And then I just checked three fast ones. Do you know anybody around that says we shouldn't have freedom of religion in the State of Montana? But we have a Section 5 passed that way. Do you know anybody, any organized thing going on that would prevent us from having free and open elections? We have a section, a proposed Section 13 that way. Can you imagine somebody in this country at this time in the history of our country to be deprived of life, liberty and property without due process of law? I can't see where any of these things would happen in this country of ours, but yet we still maintain these things in the Bill of Rights. I think the addition of these few words just strengthens the article a little, and this is one of those places where I think if-because this has been historically the position that people of the State of Montana have thought of with the section we have now, that also they can't register them, I think that by-guns-I think that by adding these words in there and putting down in black and white what most of the people have always thought would be there, and then if somebody in some foreseen future--unforeseen future day may want to register them, then it goes back to the people and the people can decide. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I will be brief. I agree with Mr. Toole; I agree with Mr. Gysler. I have received threats. I feel the majority proposal is good with—the Berthelson amendment is better. And I will vote for it, not because of the threats, but in spite of it.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, my conscience doesn't tell me to go one way or the other on this; and I'm not like Romney that I have a feeling for my constituents, because I have some pro and con. I feel this is statutory matter and that the federal government will preempt if they at some time decide to do so. I also have some strong family ties of shooting relatives who are strong gun clobbers, and therefore I will abstain from voting on this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I know I am looked upon with disgust because I rise up at this particular time, but I've listened to all of these arguments and I am reminded of one statement made in our history which said, "millions for defense, but not one cent for tribute." And it looks as though this Convention is now subject to tribute. And where can any of you folks who are so concerned about these nine words being so essential-does it say anywhere in the Constitution or anyplace else that you will be deprived of your guns? The gentleman who is so proud-and I am proud, too-of his relation who is a gold medal winner over at the Olympics; I'm always proud of anyone who achieves success in whatever effort they take. But there is nothing in here that's going to take a gun away from that man; nothing in here that's going to take the guns away from any of you. And as my seatmate here so ably put it, if we haven't got the gumption, the guts, to stand up under what we think is right, what we came here for-Now, when you came here, when you ran for election, was there a single one of you who got up and said, "I'm going to put something in the Constitution to make it impossible to register a gun"? All of you said or agreed to that you would put back in the Constitution what was already there; and this fear that you have-World War I, we had to register our guns and we all still had them when the war was over. And we're writing a Constitution here that is supposed to show to the people of Montana that we have some degree of decision on our own part. I am sure that there are more people in Montana who don't own guns than there are who do own guns, and I realize that all of you have been lobbied. Some of you have fell prey to that lobby and have got up here and stood on the floor and said, "I weakened; I couldn't stand up under the pressure; I'm afraid to go home; I haven't got any backbone to me so I'm going to vote for these nine little words that merely show that we haven't got the guts to be a good delegate and stand up under our own convictions and our own thinking." I know those are strong words, but that's the way I feel.

CHAIRMAN GRAYBILL: Now, fellow delegates, I have two more amendments on Sec-

tion 12 here, but I never see the people who sponsored them stand up; so either you can stay down if you don't want to amend yet, and you can stand up if you do.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I fail to see how, in one breath, we can ask the citizens of Montana to participate in our government and at the same time, when they write to us and say that they want us to do something, that that's a threat. Therefore, I'm going to vote for the nine words. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I think probably most people's minds are already made up and we probably should go for the vote on it. I would like just to mention one thing concerning the telegram, so there can be no question later about intentions on the Bill of Rights Committee or that telegram. Originally there was a rumor around the State of Montana that the Bill of Rights Committee actively wanted to register guns. As a result of that rumor, the telegram from Billings came to our committee, asking us not to change the wording in the present provision. They did not realize that not only was there not a movement to register guns, there was a suggestion from Delegate Berthelson to prohibit the registration of guns. Delegate Berth&on's Proposal Number 4 would have completely removed Section 13 and replaced it with new language which some gun people had told me would eliminate the right completely. I always felt that that proposal, if adopted, would allow some groups to go out and say the right would be eliminated if it was adopted and the present one was gone. Now, I really believe that the people that sent that telegram were not inconsistent when they feel today that they accept his amendment to the present provision. I think also that I've talked to the people and I have complete understanding with the people in our area that in no way can the Montana constitutional provision interfere in any manner with the federal law now in effect, and it may be in effect in the future. They seem to understand that completely. We seem to categorize some of them as extremists, but I have a great deal of mail-1 have it from doctors, professional people, who are also very avid sportsmen; hunters, who also have recreational use. I'm a member of the skeet-trap club. You don't always shoot a gun to kill; you can shoot it for skeet and trap, which I enjoy very much, as well as hunting. I really feel that the people would feel more secure with this. I think if it came to a vote to them, they'd adopt it. I'm not threatened by it because the federal standards will control anyway; but on the telegram, I think that should be understood so laterthey can't say that this telegram was used to misrepresent their views. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman. Just for a point of clarification, would someone explain to me what--after the word "summoned"-"shall not be called in question"--will someone explain to me what that means?

CHAIRMAN GRAYBILL: Since no one stands, Mr. Siderius, the Chairbelieves thatthat's language possibly out of the national Constitution, and it has been, I think, used before to indicate "shall not be abridged or stopped". I think it's out of the national Constitution, where it serves the same purpose. Is that right, Mr. Dahood? Do you know?

DELEGATE DAHOOD: That's right. That merely indicates that the right shall remain inviolate and shall not be questioned by any person in a position of authority.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I, too, have resisted these nine words. I think that, like a lot of the delegates, I have tried to be a purist at this Convention; no legislation. But I suppose that I've supported provisions that a lot of people would consider legislation. Maybe I've crossed that line between delegate and politician, but I suspect that maybe that's not such a clear and definite line. I think perhaps that the decisions are not quite that clear. I think, though, that people are tired of bureaucracy; they are tired of red tape; and they are tired of the paper-shuffling. I can see that these nine words can cause us no harm; therefore I intend to support the Berthelson amendment.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates, I would just like to rise in support of the committee majority position. Those of you who had your minds made up before you came to this debate, this will in no way affect you; but those of you who realize the dilemma that we're up against in this particular problem, I give you full confidence that the committeedeliberated

carefully on this question. We listened to both sides carefully, and I feel in the calmness of reasonable men, we came to a legitimate and fair conclusion. And I request that any of you who are in doubt in any way to rely upon the committee that has worked diligently on this question. I certainly want to go on record opposed to gun registration, but at the same time I strongly support the position of the majority in this particular matter and feel that the provision we have in this section for the Constitution is the best provision; and I oppose the Berthelson amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, would Mr. Foster yield to a question?

CHAIRMAN GRAYBILL: Mr. Foster?

DELEGATE FOSTER: Yes, sir, Mr. Chairman, gladly.

DELEGATE KAMHOOT: Don, was this amendment ever presented to you as a committee-these nine words in that order?

DELEGATE FOSTER: Yes, they were.

DELEGATE KAMHOOT: And you discarded them?

DELEGATE FOSTER: I would enlarge upon that a little bit. We felt that the Constitution was not the place to, in a sense, remove any possibility of any provision ever being enacted in the future if the Legislature felt it was necessary, and at the same time we felt that we had a very strong section and we didn't feel that it was desirable to have these words in the Constitution.

DELEGATE KAMHOOT: Thank you. Mr. Chairman, would Mr. Campbell yield to a question?

CHAIRMAN GRAYBILL: Mr. Campbell?

DELEGATE CAMPBELL: I will yield, Mr. Chairman.

DELEGATE KAMHOOT: Bob, I will put the same question to you. Was this presentation of these nine words in that order put to you in your committee?

DELEGATE CAMPBELL: Our delegate proposal was Number 4. That was the proposal That proposal was considered and rejected. We came out at the Romney hearings with the present section that we have. That is the one we have solidified in the final report. At no time, to my knowledge, did the committee officially receive and consider seriously changing and adopting to these specific words. I-this is alateramendment. It did come in late, I will admit. It was not presented early at the Convention. Delegate Proposal Number 4 was the only change that we considered, and we decided not to go with it.

DELEGATE KAMHOOT: Thank you, Mr. Campbell. Mr. Chairman, I would like to submit to 'the body here at this time, I think this is nothing more than a chauvinistic effort on the part of this committee to protect what they've come out with—and they've come out with a pretty good Bill of Rights-but I still think this is mainly the reason that they're standing so tight on it. I don't think that they're worried that these nine words are going to ruin anything, and I would certainly be afraid if they are worried that these nine words may upset something in the future for Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Berth&on's amendment. Mr. Berthelson would add to line 20 on page 6 of Section 12, the words: "nor shall any person's firearms be registered or licensed." Do you want to close?

DELEGATE BERTHELSON: Mr. President, I'd like to close.

CHAIRMAN GRAYBILL: Very well, you may close.

DELEGATE BERTHELSON: Thank you, Mr. President [Chairman]. Fellow delegates, I feel a little bit like David of old must have felt when he went out to meet the giant, armed only with a slingshot. I stand here, armed with my slingshot of no formal education. The only formal education I have I received in the University of Hard Knocks. I respect Mr. Dahood for his very, very eloquent training. I respect Mr. Chet Blaylock for his education and all of the experience that he has had as a politician. But I am going to attempt to clear up some things very briefly now that seem to be in question. There is no inconsistencies in what has been done. Early in this committee's deliberations there was a rumor circulated throughout this state that there was to be

firearms. It was in response to that rumor that this telegram that lays on this man's desk came. It was in response to that rumor that many, many, many of the letters came to the delegates to this Convention. And now since this amendment containing nine words has been presented to this Convention-and I say it was never presented to the committee when they were in their deliberations-the gun owners and the gun enthusiasts and the sportsmen of Montana are now supporting this amendment. I am real glad that Mr. Blaylock fervently and passionately referred to the accidents that guns cause. He read some statistics for you, and I'd like to read those same statistics from the same sheet that Mr. Blaylock used. Mr. Blaylock was right when he read that a hundred and fourteen lives were lost last year in accidents of all types. Leading the grim parade was 54,800 fatalities caused by motor vehicles; 17,500 deaths due to falls; and 7,300 from drowning. Fire,burns, and so forth caused sixty-seven hundred deaths; poisoning, forty-six hundred; and suffocation, thirty-four hundred. What he didn't read was that firearm accidents took 2,300 lives. Based on total population, firearms accidents recounted for 1 death for each 90,000 people in this country. I'm going to hurry along. Mr. Blaylock and Mr. Dahood both talked about the problems of violence and crime. Now, registration of guns is no solution to the problem. It isn't effective; criminals don't register guns. Registration simply cannot and will not prevent or reduce violence. Registration usually creates more problems than it solves. I want to say just a word about the economic value of guns and their use in this state. I would call your attention, if you will think with me, that firearms have an important social economic impact in the field of conservation and natural resources management. I call your attention-and I don't have to go into any figures as to how much money, economically, the use of firearms brings into this state. But as important as that is the fact that the use of firearms for lawful use in recreational activities aids our economic, sociological and political forces, supporting the conservation and wild use of our natural resources--and wise use of our natural resources. Sportsmen cannot be expected to jeopardize the existence of their sport or these very vital economic, sociological and political forces supporting the conservation and wise use of our natural resources by allowing registration of firearms. I want to read, inclosing, three testimonials. Hubert H. Humphrey, former Vice-President of the United States, had this to say-and I quote: "The right of the citizen to bear arms is just one more guarantee against arbitrary government, one more safeguard against tyranny, which now appears remote in America, but which historically has proved to be always possible"-end of quote. This is a clipping from a Fullerton, California, News *Tribune* article by Billy Graham, and Billy Graham said-and I quote: "Back to your question about the gun control law stopping killings in the United States; in the final analysis, a gun cannot harm anyone unless there is a human being to pull the trigger. Ten million guns would be harmless unless some human became stimulated by hate, greed or prejudice"--end of quote. And Paul Harvey, the dynamic news commentator who makes page 1 understandable and page 3 exciting, stated on one of his regular radio programs-quote: "If the government of the people cannot trust the citizens with a gun, then the citizens cannot trust the government." Fellow delegates, gun registration is foreign and repugnant to our Montana heritage and traditions. Registration or licensing must be prevented. A registered gun is easily confiscated. To allow that guns would ever be registered or licensed would be an irreversible step if we took that step today. Fellow delegates, let us insure that the things I have talked about will never happen here by voting for this amendment. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berth&on's amendment to add the words "nor shall any person's firearms be registered or licensed." I take it you want a roll call vote. All those in favor of his amendment, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please, Mr. Clerk.

Aasheim ..... Nay
Anderson, J. Aye
Anderson, O. .. .. Nay
Arbanas Nay
Arness Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Absent
Belcher Aye
Berg Nay

Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Absent
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Excused
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Absent
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Absent
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 43 have voted Aye, 52 have voted No.

CHAIRMAN GRAYBILL: 52 having voted No, 43 Aye, Mr. Berthelson's amendment is defeated. We are discussing Section 12, the right to bear arms. Are there other amendments? (No response) I take it, then, that I can pass the other two amendments sent up to the Chair.

Mr. Campbell, do you want to pass?

DELEGATE CAMPBELL: I would like to have you read that amendment I sent up, please.

CHAIRMAN GRAYBILL: Very well, the clerk may read Mr. Campbell's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 12, Bill of Rights Committee proposal, on page 6, lines 17 through 22, by adding the following words: 'The right of any person to keep or bear arms in defense of his own home, person, and property' and inserting 'or

'or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.' Signed: Campbell."

CHAIRMAN GRAYBILL: Very well, Mr. Campbell has proposed an amendment that would add, on line 19, after the word "property", the word "or residential use"-the sense of the amendment being to say that-the right of a person to keep or bear arms for residential use.

CLERK HANSON: Recreational.

CHAIRMAN GRAYBILL: Recreational --recreational use, pardon me-"for recreational use shall not be called in question."

Mr. Campbell.

DELEGATE CAMPBELL: I won't dwell on this. There was a legitimate concern as much as registration and licensing over preservation of hunting--or preservation of guns, not only for defense of your home or property, but also for legitimate recreational use. I don't know how wide-scale the national movement is that some people are concerned about, considering the banning of hunting as being cruel to animals and should be eliminated. The Western Montana Fish and Game Department from our area has recommended, to protect the people of Montana from their legislatures in the future, that this provision be placed in the Constitution. I won't mention our sister state to the east, since it has been mentioned so many times, but I might add that they did also include this on their right to keep and bear arms section at this time. I don't know that required discussion is necessary on this, and I think it could be put to a vote. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I resist the amendment. This is the same kind of reasoning that was used on the previous amendment. We're putting up arguments about things that are not-have not come to pass and will not come to pass. This doesn't add anything. We still-this section, as it is, is the broadest, strongest right to bear arms section of any state in the Union, and I resist the amendment. Let's leave it alone and put it in as the majority report of the committee stands.

CHAIRMAN GRAYBILL: Is there further discussion? (No response) If not, the issue is on Mr. Campbell's motion to amend Section 12 by adding the words "or recreational use" on line 19, after the word "property". So many as shall be in favor of Mr. Campbell's amendment to add "or recreational use", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No. Division.

CHAIRMAN GRAYBILL: All right, we'll use the voting machines. So many as are in favor, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change?

(No response)

CHAIRMAN GRAYBILL: 49 having voted No, 33 Aye, the motion is defeated. Is there other discussion of Section 12? (No response) Members of the committee, you have before you for your consideration, when this committee does arise and report, after having had under consideration Section 12 of the Bill of Rights, that this committee recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

UNIDENTIFIED DELEGATES: Roll call.

CHAIRMAN GRAYBILL: You want **a** roll call on Section 12?

UNIDENTIFIED DELEGATES: Yes.

CHAIRMAN GRAYBILL: All right, we'll have a roll call on Section 12. So many as are in favor of the motion, vote Aye on the voting machine; and opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. Aye

Arbanas.. ..Aye
Arness ..Aye
Aronow .. Absent
Artz .. Nay
Ask ..Absent
Babcock .. ..Aye
Barnard .. ..Aye
Bates.. .. ..Aye
Belcher .. Aye
Berg.. .. ..Aye
Berthelson .. Nay
Blaylock ..Aye
Blend ..Absent
Bowman ..Aye
Brazier .. .Absent
Brown .. ..Aye
Bugbee .. .Absent
Burkhardt .. ..Absent
Cain .. ..Aye
Campbell ..Aye
Cate .. ..Aye
Champoux ..Aye
Choate..Aye
Conover .. Aye
Cross.. .. ..Aye
Dahood ..Aye
Davis ..Aye
Delaney .. Aye
Driscoll .. ..Aye
Drum .. Absent
Eck ..Aye
Erdmann .. Nay
Eskildsen .. Excused
Etchart .. Aye
Felt..Aye
Foster .. ..Aye
Furlong ..Aye
Garlington ..Aye
Gysler .. Nay
Habedank .. Nay
Hanson, R.S.. .. .Aye
Hanson, R. .. Aye
Harbaugh .. ..Aye
Harlow .. ..Aye
Harper..Aye
Harrington .. Aye
Heliker .. ..Aye
Holland .. .Absent
Jacobsen .. ..Absent
James .. ..Aye
Johnson .. ..Aye
Joyce.. .. ..Aye
Kamhoot .. ..Aye
Kelleher .. .Absent
Leuthold .. Absent
Loendorf ..Aye
Lorello ..Absent
Mahoney .. Absent
Mansfield ..Aye
Martin ..Aye
McCarvel ..Aye
McDonough .. Aye
McKeon .. ..Aye
McNeil .. ..Aye
Melvin ..Aye
Monroe.. .. ..Aye
Murray.. .. ..Aye
Noble ..Absent
Nutting ..Absent
Payne .. ..Aye
Pemberton .. Aye
Rebal ..Aye
Reichert .. Aye
Robinson .. ..Aye
Roeder ..Aye
Rollins. .. Aye
Romney .. Aye
Rygg .. ..Aye
Scanlin ..Aye
Schiltz ..Aye
Siderius..Aye
Simon .. ..Aye
Skari .. ..Aye
Sparks ..Aye
Speer .. ..Aye
Studer .. ..Aye
Sullivan .. ..Aye
Swanberg ..Aye
Toole .. ..Aye
Van Buskirk .. .Aye
Vermillion .. Aye
Wagner ..Absent
Ward .. Nay
Warden.. .. ..Aye
Wilson .. Absent
Woodmansey .. ..Aye
Mr. Chairman Aye

CLERK HANSON: Mr. Chairman, 76 delegates voting Aye, 6 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye, and 6 voting No, Section 12 is adopted. Will the Clerk read Section 13.

CLERK HANSON: "Section 13, Right to suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mr. Chairman, Section 13

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 13 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: The committee felt that this section should be left just as it is, a guarantee that the right of suffrage shall not be interfered with and that elections shall be free and open. Accordingly, the provision as proposed is the verbatim wording of Article III, Section 5, of the present Montana Constitution. The provision is supplemented, but not replaced by, the proposals of the General Government Committee on Suffrage and Elections. No delegate proposals were received on this provision-thank heaven. (Laughter)

CHAIRMAN GRAYBILL: All right, is there discussion on Section 13, the Right to Suffrage? (No response) Members of the committee, you have before you Section 13 and you have Mrs. Sullivan's motion that when this committee does arise and report, after having had it under consideration, that we recommend it do-be adopted. All in favor of adopting Section 13, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read 14.

CLERK HANSON: "Section 14, Adult rights. Persons 18 years of age are declared to be adults for all purposes and shall have the right to hold public office in the state." Mr. Chairman, Section 14.

CHAIRMAN GRAYBILL: Section 14, Mr. Campbell. The-your books should be amended on page 6 by striking the word "any". Is that right, Mr. Campbell?

DELEGATE CAMPBELL: That is correct, Mr. Chairman.

CHAIRMAN GRAYBILL: **On** line 29, the committee wishes this report to be made with the word "any" before "public office" stricken, so that it reads: "the right to hold public office in the state." Where would that reference may-be on the other page? Strike the word "any". It's on page 27, line 25.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 14 of Proposal Number 8, it recommends that the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: The amendment made, of course, was to drop the word "any" from the provision which would, of course, otherwise be in conflict with our decision on two previous occasions on the Executive Article. It's with great hesitancy, of course, that I watch this happen, since I think that all of us in our lifetimes will see either a constitutional amendment to our Constitution to eliminate this or a United States constitutional amendment which will bring Montana in line with the rest of the nation: I would just like to quote one thing that hadn't been brought up, and I hesitated to bring it up before; and that, of course, was the position of labor on this particular issue. In many other issues, of course, it has been said they had an economic interest, but on this one, I'd just like to quote you what they did say: "In a democratic form of government, there should only be one kind of citizenship. To say that an 18-year-old possesses the necessary capabilities to vote yet is not eligible for public office because of his age does violence to the concept of equal citizenship. Any person of legal voting age, provided he or she has the necessary nonage qualifications as the office may require, is fully entitled to seek public office, with their candidacy to succeed or fail according to the judgment of their peers at the polling place. We of Montana AFL-CIO are proud to point out that our organization was for many years in the forefront of the long fight to secure the vote for citizens 18 years and older." I would just like to close by saying that what the provision-the present Section 14 does is simply acknowledge and welcome in, less enthusiastically than I would have liked, the new citizens who have been accepted by our nation as responsible citizens and eligible to vote and certainly eligible for office, except for the higher offices in the Executive Article. This was the decision on two previous occasions, and if Jeannette Rankin can't change her mind, nobody can; and I would move that it be adopted as presented. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I feel there is a technical conflict here between the broad right to hold public office, as stated in Section 14, and the provisions in the Executive Article on professional qualifications for the Attorney General and the provisions in the Judicial Article as qualifications for Judge of the District Court and Justice of the Supreme Court; and I therefore have proposed a short amendment to be added onto this which would be in the nature of an exception for those instances where professional qualifications are required. I move that the Section 14 be amended by adding that exception for professional qualifications, which you have the only copy of.

CHAIRMAN GRAYBILL: The clerk will please read Mr. Garlington's proposal.

CLERK HANSON: "Mr. Chairman. I move to amend Section 14 by adding the following at the end: 'except those for which professional qualifications are required, period'-end quote. Signed: Garlington."

CHAIRMAN GRAYBILL: Mr. Campbell -No, Mr. Garlington's amendment adds the phrase "except for professional qualifications"— "except those for which professional qualifications are retired--are required", at the end of Section 14. Do you want to discuss it further?

DELEGATE GARLINGTON: I think it's self-evident, Mr. Chairman. I just feel that the provision of Section 14 here has no qualification on right to hold public office, and since the offices of the Judicial branch and of the Attorney General are public offices, we should reconcile the difference in order to avoid a conflict or confusion between the two.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: May I ask— would Delegate Garlington yield to a question, please?

DELEGATE GARLINGTON: He will.

DELEGATE CAMPBELL: Delegate Garlington, would you have any objection to the addition on the end of your amendment, "any professional qualification as provided in this Con-

DELEGATE GARLINGTON: Not at all, because I think that's the place where the problem arises.

DELEGATE CAMPBELL: Thank you. I would like to amend it to add "qualification as found in this Constitution". And with that amendment, I would certainly approve it, and I think the Bill of Rights Committee would approve it. This has always been our intention, that professional qualifications, such as a law degree for a County Attorney or a Judge, certainly are necessary; and I certainly, with that amendment, would have no opposition.

CHAIRMAN GRAYBILL: Now, do I understand you're making another substitute--or additional amendment to Mr. Garlington's, Mr. Campbell? Are you amending his language to say "except those for which professional qualifications are found in this Constitution"? Is that what you said?

DELEGATE CAMPBELL: "--are provided in this Constitution".

CHAIRMAN GRAYBILL: All right, the situation is that we have Mr. Campbell's amendment which adds "provided for"-"provided in this Constitution", which takes the place of the word "required" in Mr. Garlington's amendment; so that if Mr. Campbell's motion prevails, it would say: "except those for which professional qualifications are provided in this Constitution." If Mr. Garlington's prevailed—

Mr. Garlington, do you care whether it says one way or the other?

DELEGATE GARLINGTON: No, your honor. We've just been discussing—

CHAIRMAN GRAYBILL: Wait a minute now-(Laughter) I can't say I don't like it, but it just isn't accurate. (Laughter)

DELEGATE GARLINGTON: —or, Mr. Chairman, we've just been discussing here that perhaps we have not adequately taken care of the conflict that might exist with respect to the 25-year-old qualification for some of the Executive offices. It may be that the amendment is slightly inept in this respect.

CHAIRMAN GRAYBILL: I wonder if the Chair might suggest-Mr. Artz has an amendment up here which says: "except as provided

seem to me to cover all the problems, the 25-year-old, plus the Judges, plus the Attorney General.

DELEGATE GARLINGTON: I would be glad to withdraw my amendment in favor of that one.

CHAIRMAN GRAYBILL: Would you and Mr. Campbell both withdraw?

DELEGATE GARLINGTON: I will.

DELEGATE CAMPBELL: Yes.

CHAIRMAN GRAYBILL: Mr. Artz, you're on.

DELEGATE ARTZ: Let's vote.

CHAIRMAN GRAYBILL: Mr. Artz would make an amendment that would say: "except as provided otherwise in this Constitution." He would add that language at the end of adult rights for the purpose of picking up the three groups we've talked about. Do you care to discuss it further, Mr. Artz?

DELEGATE ARTZ: No.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I'm going to make a substitute motion that Section 14 be deleted.

Mr. Chairman.

CHAIRMAN GRAYBILL: All right, wait till I do my bookwork here. Very well, the situation now is that Mr. Garlington and Mr. Campbell have withdrawn their amendments to Section 13. Mr. Artz has made an amendment that says: "except as otherwise provided in this Constitution", and Mr. Brown has made a substitute motion that we delete Section 13—Section 14-it is-in its entirety.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I feel that this section is in direct conflict with the section we put in on Suffrage and Elections. Now, if you allow them to hold public office with the amendments they've put in, that would allow a felon to hold office, subject to his parole. Then we put, in suffrage, subject to additional qualifications provided by the Legislature, such as county attorneys, county health officers, et cetera, and we completely covered that. And now we are putting in a conflicting section under the Bill of Rights. I'd have no objections to declare that 18-year-olds are adults, but don't get into this public office thing, because we've already covered it.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President [Chairman], I agree with Mr. Brown. There's no definition as to what a public office is, and they've now limited it to a public officer. Anybody could serve as a public officer who meets the guidelines set out by this Constitution, and there can be-very well be Legislative officers set up who could be classified as public officers that would have to have more qualifications than what's set forth in this Constitution--and especially those officers who are classified as public officers who are appointed. I certainly agree with Mr. Brown that this section should be deleted before it ties up the Legislature so it couldn't set any qualifications for any type of public office.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I resist Mr. Brown's motion. I'd like to have the Constitution shortened, and we have covered some things, but I think the portion of this section-persons 18 years of age are declared to be adults for all purposes-should remain in the Bill of Rights, and by deleting the whole thing we would not have it in there.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I believe Mr. Habedank is right; and if I could, I'd amend my motion to put a period after "all purposes" and then delete the rest; and I think it would satisfy everybody--I hope.

CHAIRMAN GRAYBILL: Mr. Brown, I'm going to let you withdraw. Mr. Brown, you're going to withdraw and then make a new motion deleting only up to the word "purposes"-after the word "purposes"? Is that right?

DELEGATE BROWN: Yes, sir, and then delete the remainder of that section.

CHAIRMAN GRAYBILL: Delete lines 29 and 30?

DELEGATE BROWN: Correct.

CHAIRMAN GRAYBILL: All right, for the body, the sense of the situation now is that Mr.

Brown has deleted only the last half of that section, He's deleted the lines 29 and 30 on page 6, so that the section now reads: "Persons 18 years of age are declared to be adults for all purposes."

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would support Mr. Brown, and I appreciate his removing of his motion to delete. I think there should be some reference here. I think that we can accept the young people. I think they will be satisfied with this. I think we can be proud of it, and I would simply like to close.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Brown's proposal?

Mrs. Babcock.

DELEGATE BABCOCK: Could I just ask a question? Mr. Brown, I did receive some correspondence about people who are on welfare; that if this is left, that they'd lose part of their payments. Do you know if that's correct, or if we should consider that, or if it's important?

DELEGATE BROWN: Do you mean the Suffrage and Elections Article or this article?

DELEGATE BABCOCK: **No, women** who have children that are 18 years old can still receive benefits, because they are not considered adults.

DELEGATE BROWN: Well, I believe they're adults under our statutory law now-or 19—and I know, Social Security, you can get benefits for an l&year-old or over attending college. I don't think it would present any problem.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Brown's motion to delete the last half of Section 14 so it reads: "Adult rights. Persons 18 years of age are declared to be adults for all purposes,-period". Do you want a roll call on that?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: So many as shall be in favor, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim	Absent
Anderson, J.	Aye
Anderson, 0.	Aye
Arbanas..	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock..	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg..	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown..	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Aye
Davis	Absent
Delaney	Aye
Driscoll	Absent
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Absent
Felt	Aye
Foster	Aye
Furlong.	Absent
Garlington	Aye
Gysler	Absent
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Aye
Holland.,	Absent
Jacobsen	Aye
James	Aye

Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Absent
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I would like to change my vote. I made a mistake. (Laughter)

CHAIRMAN GRAYBILL: Mr. Harrington. Go ahead and announce the vote.

CLERK HANSON: Mr. Chairman, 82 delegates voting Aye, 2 voting No.

CHAIRMAN GRAYBILL: Now, Mr. Harrington, after I push that button I can't change it, but you may stand and explain it to the journal.

DELEGATE HARRINGTON: Well, to be truthful, I thought we were voting on the amendment, and I was voting against the amendment on this, so it's my fault.

CHAIRMAN GRAYBILL: Your point is you voted wrong and you wish you had voted the other way?

DELEGATE HARRINGTON: Yes.

CHAIRMAN GRAYBILL: Very well, the record may show Mr. Harrington wishes he voted the other way. (Laughter) 82 having voted Aye, 2 having voted No, the motion carries and the last half of Section 14 is deleted. Are there other-that wipes out your amendment, Mr. Artz, it seems to me. Are there other amendments to Section 14? Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Campbell that when thiscommitteedoes arise and report, after having had under consideration Section 14 as amended, that the same be recommended for adoption. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Fourteen is adopted. Will the clerk read 15.

CLERK HANSON: "Section 15, Rights of persons under the age of majority. The rights of persons under the age of majority shall include but not be limited to all the fundamental rights of this article, except where specifically precluded by laws which enhance the protection for such persons." Mr. Chairman, Section 15.

CHAIRMAN GRAYBILL: Mr. Monroe-I'm sorry.

DELEGATE MONROE: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 15, Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: The committee adopted, with one dissenting vote, this statement explicitly recognizing that persons under the age of majority have all the fundamental rights of the Declaration of Rights. The only exceptions permitted in this recognition are in cases in which rights are infringed by laws designed and operating to enhance the protection for such persons. The committee took this action in recognition of the fact that young people who have not been held to possess basic civil rights-although it has been held that they are persons under the due process clause of the 14th Amendment, the Supreme Court has not ruled in their favor under the equal protection clause of that same amendment. What this means is that persons under the age of majority have been accorded certain specific rights which are felt to be part of the due process. However, the broad outline of the kinds of rights young people possess does not yet exist. This is the crux of the committee proposal-to recognize that persons under the age of majority have the same protections for-from governmental and majoritarian abuses as do adults. In such cases where the protection of the special status of minors demands it, exceptions can be made on clear showing that such protection is being enhanced. This provision was taken in part from Delegate Proposal Number 65 and Number 88. Mr. Foster, I think-one of his proposals-I think they've got the wrong number there-but it was 65, my proposal, and Mr. Foster's proposal, I believe, were the ones that were combined to make this Section 15. I would disclose at the beginning that I have a special interest in this particular section. For about the past 10 years, I've been involved in youth development type programs with the YMCA and Red Cross, Encampment for Citizenship and Mockford Development, and school programs, et cetera; and from this experience I've learned to know young people and to understand many of their circumstances. What this section is attempting to do is to help young people to reach their full potential. Where juveniles have rights at this time, we certainly want to make sure that those rights and privileges are retained; and whatever rights and privileges might be given to them in the future, we also want to protect them. But we do not want them to lose any rights that any other Montana citizen has, and this is specifically what this particular section is attempting to do. We hope that it would enhance the proper parent-child relationthe family unit. We had a lot of very informative and well-presented testimony from many different groups in our community and our state. The Montana Advisory Council on Children and Youth came before us with five people testifying, representing over the past couple of years over 200 community-type meetings involving over 6,000 people. As we have been quoted to this body before, one-half of the State of Montana's population is under the age of 25, so when we talk about children and youth in the state or those people under the age of majority, we know that we're talking about from-anywhere from one hundred to about a hundred and fifty thousand people. Seventy-one people came before our committee, with five people giving written testimony. I consider these people the cream of Montana's young adult crop. I have much of the testimony here in brochures that you can view. Judge Brownlee from Missoula has compiled the Juvenile Codes of the State of Montana. I have these here for you to view. I think all of us in the body have received letters from our own constituents in our communities and areas that are concerned about the rights of children under the age of majority. Our research analyst of our committee compiled much information for us and our committee report, pages 301 through 305, discussed the situation of people under the age of majority quite thoroughly. And from those-this research and the testimony, we have devised Section 15. In quoting our Chairman, Mr. Dahood, it is altogether fitting and proper that we should give our young adults-and as our Chairman, our President of our Convention mentions, our most valuable resource-And our Chairman of our committee says that if we're expecting these people to respect us, I think we should respect them in some way. it seems to me that Montana can be the leader among all the states in recognizing the rights of people under the age of majority. If there's any questions, I'll certainly try and answer them. I move that this section be adopted, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Rygg.

DELEGATE RYGG: Would Mr. Monroe yield to a question?

CHAIRMAN GRAYBILL: Mr. Monroe?

DELEGATE RYGG: I'm just wondering- I read this and I still wonder. Could you give me an example of what we're doing? Just one concrete example so that I could find out just what you're trying to do?

DELEGATE MONROE: Okay. Right now, young people are not generally protected by constitutional standards of fairness and due process of law, such as the right to counsel, trial by peers or jury, the right against self-incrimination, and the right to know the nature and cause of accusation. I would cite myself, maybe, as an example, Mr. Rygg. In 1964 I had the pleasure of attending a basketball tournament in Butte, Montana, It was a state basketball tournament, and it was the first one I'd ever been to. Well, some of my friends had traveled down to the tournament in the fair city of Butte beforehand, and along the way they stopped by Helena and they had done some mischievous deeds. And they attended another school, and I met them in the city of Butte and asked them if they could give me a ride to my motel. Well, at the time I was in their car they were apprehended by the police officers and I was incarcerated, and this was my first basketball tournament and the only one I was ever able to attend. There I was, without having seen a basketball game, sitting in the jail of Butte. Now, I didn't know what I was sitting there for, and in this instance I did not know the nature or the cause of any of the accusations that were being brought against me. I didn't know anything, and there I was incarcerated. I was not able to make a phone call or anything. And that would be just one small example. There's certainly examples of where children's rights are not afforded them in child-abuse cases, for example. I've got a file in here; the Montana Advisory Council on Children and Youth has compiled documentation of specific instances where a child's-or rights of children and youth are just nonexistent, really. And what we're attempting to do by this particular section is to give them rights, except where specifically precluded by law. Now, when we say "specifically precluded by law"-let's say there's a law on the books that says you've got to be 16 years old to have a driver's license, and that is to protect and enhance that individual. Thatlawis on the book to protect and enhance them. Or if it says they must be 19 years old, which is the majority age in Montana right now until, hopefully, this Constitution is adopted; then it will be 18. But that law, 19, that they could drink legally, is there to protect them. So we're suggesting that they would have all the rights of this article except where it's specifically precluded by laws in this article-in this Constitution, or any laws on the statute books that are there now to protect and enhance them or that might come in the future. I went a little bit further than answering your question, but my own specific example is where I felt that some of the rights of those people under the age of majority were being infringed upon.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I don't see, really, the purpose of this article, even after the explanation. This Bill of Rights covers all people, and it doesn't say only those over the age of majority or those over 65 or anything else; it covers all people. And the example Mr. Monroe told about being put in jail, I know a lot of adults who've been put in jail and never known what they were charged with. And, I really don't see where this serves any useful purpose.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, this does serve a very definite and useful purpose. There is a constitutional controversy throughout this land as to whether or not the basic protections of the Bill of Rights shall be applied to those persons who are not adults, with respect to arrest, detention and trial. We are not, in this situation, affecting in any way the relationship of parent and child or of guardian and ward with respect to someone under the age of majority. Pay close attention to the fact that the last phrase reads, "except where specifically precluded by laws which enhance the protection for such person." So, as a consequence, what we are doing by this article is focusing on the basic guarantees that citizens have with respect to their person, their property and their liberty. With respect to juvenile proceedings in the State of Montana, every effort is made by our court and by our judges to make sure that these young people do have what we for ourselves consider due process. There are instances, however, where these abuses do take place by many of our juvenile authorities thinking that persons under the age of 18-or under the age of 19, at the present time, are not entitled to the basic rights that are accorded the adult citizen in a court of record. For example, there are situations where there are unlawful and unwarranted detentions. There are abuses with respect to young boys and young girls. Searches and siezures take place that violate the basic concept under our Bill of Rights.

Hearings are held under circumstances where a true defense opportunity is not provided. Things have changed in Montana and in America. Although we may say that the rule is, by regulation and by common sense, that whatever you do before you reach the age of majority shall never be used against you. Nevertheless, the investigatory processes throughout this state and this nation are such, anymore, that after you become an adult, somehow they find something perhaps that may have taken place that-during the age of minority and that can be used against you, sometimes is used against you. When that record is compared against the record of someone competing with you for a particular position or place that does not contain that type of apparent blemish, that person, of course, is going to be selected. And as a consequence, a disservice is done simply because the thinking has been, until recently, "What difference does it make if there has been some slight transgression with respect to the right of the minor? It's not going to count against him anyway." I assure you there is a very definite need for it. All we're going to do is make sure that the young boys and the young girls, the young men, the young women, prior to reaching the age of majority, are going to know that during that particular period of maturity they shall have all the basic rights that are accorded to all citizens of the State of Montana, and they are going to be better trained to be more responsible citizens. This is the least that we can do for them. We are not upsetting anything. This is not revolutionary by any means. It merely makes sure that they have the basic rights that many of us assume that they do have and which they do not have, and this will make sure that this Constitution and this Bill of Rights does apply to all citizens regardless of age. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion? (No response) Very well, the issue arises on the motion of Mr. Monroe that when this committee does arise and report, after having had under consideration Section 15, thatitrecommend that this section be adopted. So many as shall—

DELEGATE HARPER: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0..... .Absent
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ....Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock.. ....Aye
Blend ..... Aye
Bowman. ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... .Absent
Burkhardt ....Aye
Cain ..... Aye
Campbell.. ....Aye
Cate ....Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Absent
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart ..... Aye
Felt ..... Absent
Foster ....Aye
Furlong. ..... Aye
Garlington ..... Aye
Gysler ....Aye
Habedank ..... .Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye

Harrington ....Aye
Heliker ....Aye
Holland, ... Nay
Jacobsen ..... Aye
James.. ....Absent
Johnson ..... Nay
Joyce .....Aye
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... Aye
Loendorf .....Aye
Lorello .....Aye
Mahoney ....Aye
Mansfield .....Aye
Martin .....Aye
McCarvel ..... Aye
McDonough..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin ..... Nay
Monroe .....Aye
Murray.. ....Absent
Noble .....Aye
Nutting .....Aye
Payne ....Aye
Pemberton .....Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins. ..... Aye
Romney ....Absent
Rygg ....Absent
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius .....Aye
Simon ....Aye
Skari ....Aye
Sparks .....Aye
Speer ....Aye
Studer ....Aye
Sullivan ..... Aye
Swanberg. ..... Nay
Toole ..... .Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Absent
Warden ..... Aye
Wilson .....Absent
Woodmansey ....Aye
Mr. Chairman ..... Aye

CLERK SMITH: Mr. Chairman, 76 have voted Aye, 11 have voted No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 11 No, Section 15 is adopted.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for 15 minutes.

CHAIRMAN GRAYBILL: The motion is to recess for 15 minutes, or until 10 minutes to 4:00. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 3:35 p.m.-reconvened at 3:59 p.m.)

CHAIRMAN GRAYBILL: The committee will come to order. Ladies and gentlemen, just before the recess we had finished Section 15. We're ready to start on Section 16. Very well. Mr. Clerk, will you please read Section 16.

CLERK SMITH: "Section 16. The administration of justice. Courts of justice shall be open to every person and speedy remedy afforded for every injury of person, property or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Montana Workmen's Compensation laws of this state; and that right and justice shall be administered without sale, denial or delay." Section 16, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 16 of Proposal 8, it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: The committee voted unanimously to retain this section with one important addition. The provision as it stands in the present Constitution guarantees justice and a speedy remedy for all without sale, denial or delay. The committee felt, in light of a recent interpreta-

tion of the Workmen's Compensation law, that this remedy needed to be explicitly guaranteed to persons who may be employed by one covered by Workmen's Compensation to work on the facilities of another. Under Montana law, as announced in the recent decision of Ashcraft versus Montana Power Company, the employee has no redress against third parties for injuries caused by themif his immediate employer is covered under the Workmen's Compensation law. The committee feels that this violates the spirit of the guarantee of a speedy remedy for all injuries of person, property or character. It is this specificdenial, and this one only, that the committee intends to alter with the following additional wording: "No person shall be deprived of his full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation laws of this state." In other words, the committee wants to insure that the Workmen's Compensation laws of the state will be used for their original purpose-to provide compensation to injured workmen-rather than to deprive an injured worker ofredress against negligent third parties, beyond his employer and fellow employees, because his immediate employer is covered by Workmen's Compensation. The committee believes that clarifying this remedy would have a salutary effect on the conscientiousness of persons who may contract out work to be done on their premises. To permit no remedy against third parties in cases where the employer is covered by Workmen's Compensationis to encourage persons with rundown premises to contract out work without improving the quality of the premises. The committee urges that this is an abuse of the Workmen's Compensation law and constitutes a misapplication of that law to protect persons who are negligent. The committee commends this provision to the Convention with the belief that it is an important, if technical, aspect of the administration of justice. Those are the remarks which are contained in the booklet. Let me amplify them by saying basically this: we feel that the right to third party action is a right which we should establish in our Constitution. It is a right which working men and women who are unfortunate enough to be injured have had for nearly 80 years in this state. We feel that it was wrongly taken away from these people by the Supreme Court decision which was mentioned. We feel that we perhaps are legislating in asking that this be written into our Constitution are acting in a judicial manner in asking that it be written in the Constitution for we feel that this Convention, perhaps, is the court of last resort for injured working men and women in Montana with respect to the third party lawsuit, and we recommend that the section be adopted.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I wonder if Mr. Murray would yield to a question.

CHAIRMAN GRAYBILL: Mr. Murray, will you yield?

DELEGATE MURRAY: Yes, Mr. Chairman.

DELEGATE BOWMAN: Mr. Murray, I don't understand what this means and I wonder if you would explain it, giving us a specific example of what happened so we'd know what you're talking about.

DELEGATE MURRAY: Mrs. Bowman, in the case in question, the-one of the important utilities in this state hired a contractor to repair some of its powerlines and the employee of the contractor that was hired crawled up a power pole and, while there working on that pole, it broke and it fell with him to the ground and he was injured. In the case in question, because of the decision of the Supreme Court, the injured employee was limited to Workmen's Compensation benefits through the coverage of the contractor. Ordinarily, if it were not for this interpretation, the injured employee would be entitled to sue the important utility in this state and recover in addition to his Workmen's Compensation benefits. Those benefits or a portion of those benefits recovered under Workmen's Compensation, were the injured workman-did he-or were he to make a recovery against the important utility, would be paid back under the theory of subrogation to the Industrial Accident Fund of Montana. But does that explain basically what occurred, at least in this one instance?

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move to delete from Section 16, page 29, commencing with the line 27, the words beginning with "No person", ending the deletion with the

CHAIRMAN GRAYBILL: Beginning with the words "No person"?

DELEGATE HABEDANK: Yes.

CHAIRMAN GRAYBILL: On page 7 that means that you would delete lines 9 through 13, plus the word "state" on line 14.

DELEGATE HABEDANK: I would have to go back to page 7 to check that.

CHAIRMAN GRAYBILL: In other words, you move to delete the clause that covers the matter that Mr. Marshall Murray was just talking about.

DELEGATE HABEDANK: This is correct.

CHAIRMAN GRAYBILL: Very well, Mr. Habedank has an amendment that would propose to delete lines 9 to 14 on page 7-w lines whatever it was he gave on the other page-namely, this Industrial Accident or Workmen's Compensation problem.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], ladies and gentlemen. I have no objection to this being in here if you put it in here with full knowledge of what you are doing. The decision of the Supreme Court in the Ashcraft case, which I heard and which was brilliantly argued by Mr. Dahood, made quite a change in what a lot of us thought the law was. However, they were interpreting a specific statute of the State of Montana. All that is necessary to change their interpretation is to amend the statute of the State of Montana. And you, if you adopt this particular provision, are writing into the Constitution by vote of a majority of this group what I consider to be strictly statutory matter. This may be a laudable objective, and in interpreting the Ashcraft case your attention may be directed to the Montana Power Company. I think they were the defendant, but it doesn't make any difference, because the next case that could arise in this would be a case where you, as the owner of a house, contract with somebody else to renovate that house. You require the contractor to carry industrial accident coverage. His employee is hurt. He recovers compensation under the coverage which you have required the contractor to carry and then he, in turn, turns around and sues you as the owner because of your alleged negligence in doing something in connection with this house that makes you liable to him because he was hurt because of your negligence. As I view this amendment, it will not allow anyone to recover from anyone else without negligence on the part of the person being charged. However, it will eliminate the ability of you as a owner to hire an independent contractor, require him to carry Workmen's Compensation as a part of the coverage, and be assured that you will not be sued on a third party claim. As I recall the interpretation of the Supreme Court in the Ashcraft case, and I'm sure Mr. Dahood will correct me if I'm wrong, this was-the intent of the decision or the purport of it was to prevent an employee from collecting on a third party claim from either the prime contractor or the owner. He was barred as to those two people. He can still sue as to any other third party who may be responsible for his injury. But as to the owner or the prime contractor who hires the subcontractor, he is effectively barred from his suit. Now, in 1971, I believe it was, an amendment to this act was proposed to the Legislature which would correct this opinion, this construction of the statute by our Supreme Court, and it failed to get through both houses of the Legislature. Whether that would be true in the next session, I do not know. So if you wish to include this, I think you should do it knowingly. I will disclose my interest in this thing. I am a practicing lawyer. I defend many insurance companies; I defend people who are insured; and I do not worry about either the insurance company or the people who are insured, because they pay me. And if they're sued, then I defend. But I don't think that the people who are not aware of this, who hire independent contractors to do a job and are not aware of the fact that they can be sued because they are the owner, as a result of this change, should make this change without knowing what they're doing.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I had intended not to speak on this particular section simply because I was trial counsel on behalf of Charles Ashcraft, who is permanently disabled for the rest of his life and shall never work again at his trade. I have heard this argument in the Supreme Court, an argument that had no basis in logic. I have heard it by several defense counsel who represent the best of corporate interests, that this is going to affect the individual property owner, and if he hires a contractor, he is going to be exposed to a liability that is unprecedented and they did not experience before. This is totally untrue. This section is doing nothing more, and

the wording has been very precisely selected to make sure that it does nothing more, than place the injured working man back in the status that he enjoyed prior to 1971, a very basic constitutional right which he enjoyed for 80 years in the State of Montana. What happened in the Ashcraft case? The Montana Trial Lawyers Association, 150 members strong, to a man, without a dissent, believes that this Constitutional Convention must return this right to the injured working man. The unions, without exception, believe that a very basic right has been taken away from the injured working man in the State of Montana, and I understand that the corporate interests that specifically are involved in this have decided that they will not ask anyone to offer opposition to it on the Convention floor. Here is what happened in the Ashcraft case. Charles Ashcraft worked for an independent contractor having no connection with the Montana Power Company. The Montana Power Company made what we call an independent contract to have a new phase placed upon their power poles. Charles Ashcraft went 35 feet into the air. He was there for 20 minutes. Without warning, without any chance to protect himself, that pole gave way below ground level and carried Charles Ashcraft 35 feet to the ground. He was 90-some days in the hospital, but he survived; but he will not work at his trade again. What were the real facts? And keep this in mind: we are only talking about a situation where someone, through negligence, through a failure to use due care, has brought about the injury. There is nothing automatic. You may still suffer injury that is no fault of anyone else-not recover. We are not talking about that. So what were the facts? Dr. Clancy Gordon, one of the environmental advocates, was retained by us. He is a professor of botany at the University of Montana. He examined the pole and found several apparent things about it. One, it violated the statute of the State of Montana that's been on the statute books for more than 50 years, that power companies must construct their poles of cedar-quality or other standardized material. This was a lodgepole pine; it was not as required by statute. This was a lodgepole pine that has a useful life of from 17 to 20 years at the most. This pole had been in place for more than 23 years and had not been inspected for more than 5 years before the accident occurred. As a consequence, the rotting that took place took place below the ground level where the lineman, before climbing the pole, could not detect it, even though in this instance Charles Ashcraft did what he was base of the pole. And as a consequence, through the negligence of the Montana Power Company, he suffered this permanent injury. Up until this decision by the Supreme Court, there was no question that in that situation the injured citizen, the injured working man had a right for proper redress. The Workmen's Compensation law, which is inadequate at best, has certain public reasons for its existence. It applies only between the employer and the employee. So clever legal counsel for the Montana Power Company, and very able, decided maybe there's some way to get away from this case. So they went back to 1965, when the Legislature amended the independent contractor law to provide that you no longer could defend on the ground that someone injured within your work premises was not entitled to Workmen's Compensation from you because he was employed by an independent contractor unless you insisted that that independent contractor carry Workmen's Compensation. The legislators that were behind that amendment were interviewed. They said, "We had nointention whatsoeverofbringing about the results that were brought about by this Supreme Court decision, and you have to strain the reading of that particular section to come up with that particular position." But nevertheless, the Supreme Court--and there's a very bitter dissent on that case-a long and well-reasoned dissent-but in any event, in that case they fastened upon that as a justification and an excuse for denying this working man his remedy. When that happened-and this was after Judge Battin of the Federal Court in a similar case had ruled in Montana that this amendment does not do that—he then had to change his mind, because under federal law, he's bound by a Montana decision. The legal community was shocked. None of us were able to explain the result to the unions, to the working people. This particular right was taken away from the working man after 80 years, so promptly legislators introduced in the Senate a bill to overcome that. It passed the Senate-and I don't want to make a bicameral or a unicameral argument here. (Laughter) Promptly the lobby of the vested corporate interests went across the hall-and we determined this to be true--and made sure that it did not pass in the House. So we're now at the court of last resort. We allowed in our Bill of Rights an amendment to a clean and healthy environment. By this provision and this amendment, we are going to provide for the working man a safe environment. How does the law stand at the moment? Let me tell you how it

ests are now using independent contractors because it's reduced their cost of operation. If you have some particular tough job that you want done on your premises where there may be some danger connected with it, what you do, you go out and you hire an independent contractor. Don't have your employees in that dangerous area, because if they're hurt or there's an accident, you have to pay them Workmen's Compensation. So here's the way you do it now that we have immunity from the Supreme Court--an immunity neither intended by the people nor intended by the Legislature. What you do, you hire someone on an independent contractor basis and their employees are in this dangerous area. You don't have to worry about safety anymore. You don't have to do anything to make your premises safe. You don't have to be concerned about a safe environment for the people that are working there to benefit your interests. If they're injured, even though it's the most blatant type of negligence and carelessness, all you have to say is, "Well, we're sorry, but you have your Workmen's Compensation." Maybe you have a wife and seven children, but it's $65 a week for awhile and it's 60, and now, of course, the Legislature has raised it and you can get more money, but that's it. The Workmen's Compensation people were astounded at the decision. They sent their lawyers up to petition forrehearing. I do not think that any strong legal mind could really and truly justify what had happened, which has resulted in this, that in a particular area of industry now we need not have a safe environment for the working man. The vested corporate interest has immunity without paying anything for it. Now, how does it work if we return this basic right that the injured working man had for 80 years? Simply this. Let's assume-let's take the Charles Ashcraft situation. Charles Ashcraft is injured. He proves all these factors about the negligence of the Montana Power Company. He is paid his Workmen's Compensation, so he files what the lawyers call a third party lawsuit. The Montana Power Company then is compelled to acknowledge its obligation. They make payment. He then pays back to the Workmen's Compensation carrier. We have a provision in Montana in the Workmen's Compensation Law that provides for these actions-that the working man doesn't bring it, the Industrial Accident Board does. That law has never been changed. But how about now? That law is almost useless because of this particular interpretation. So what has happened? Regardless of all this conflict, this technicality, having to use the word "Workmen's Compensation" in this particular section, which we didn't want to do, because the minute we did it we knew that somebody would jump up and say it's legislative, but if you're going to draft something with precision and you want to make sure that all that you're doing is returning the law to what it was prior to this decision a year ago, you are compelled, sometimes, in fashioning this precise language to use language that may be seized upon by someone else as legislative. It is not. It is giving back a basic constitutional right that the citizen of Montana had prior to that particular decision. And we submit to you that by this particular provision, all that we are doing is returning that right to the working man; and how can anyone truly, justly object to doing that and only that? Now that is what happened in that particular situation. This is a constitutional provision. We say, in the first sentence, that every citizen shall have the right to full legal redress. We've taken away full legal redress in that particular area. We want to give full legal redress back in that one specific area, and that is why it is framed in that particular fashion. And we submit to you, our fellow delegates, that we are here to make sure that the rights of the citizen are protected, and this is nothing more than a step forward to make sure that they will continue to have a protection that existed for 80 years. We submit it's a constitutional matter and that the amendment is required to have a progressive Bill of Rights. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, I rise in opposition to Mr. Habedank's amendment. I think if there's anything that should be put into this Constitution, it's the right of a working man. And I feel by this decision of the Supreme Court that he has been denied this right. So I ask the delegates to vote against the amendment and to support the committee's proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman. I also support the committee's proposal. In eastern Montana there's a lot of accidents in the oilfield, and practically all the work is subcontracted out or contracted out, and we never dreamed--and Mr. Habedank, I'm sure, admits himself he never dreamed, because he's defended these lawsuits-that the Supreme Court would rule in this manner. And I support the committee's

proposal because it just-it was a very bad law and it should be restored.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, would Mr. Dahood yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE JOHNSON: Wade, I'm a cattle rancher down in southeastern Montana and we live way back in the hills, off the road. We have to maintain our own road; in fact, it's 12 miles there. We built what kind of a road we have, and we try to get by on it. We have some homemade bridges there, and this and that. As a point of clarification, I wanted to ask you, where we would contract somebody to do some work on this road and perhaps one of them with a piece of heavy equipment were doing some shaling or graveling of this or that and one of these bridges would collapse and one of those men would be hurt, then I would be responsible?

DELEGATE DAHOOD: Torrey, you would not be responsible. This amendment does nothing more than return the law to what it was about a year ago. Please recall what I said. The only time that someone would be responsible, such as the Montana Power Company, is when they are negligent, they are guilty of some type of civil wrongdoing. And this other argument that's been used, that it's going to open you up or it's going to open the owner of a residence up to some type of lawsuit, is simply, absolutely not true. That's why we fashioned this language precisely as we have. We're doing nothing more than trying to return the law to what it was prior to a year ago. Your situation would be no different than it's been in all the years gone by, Torrey.

DELEGATE JOHNSON: Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I rise to support our committee's recommendation for this section. I admit that when it first came up from-for discussion, I was appalled at the idea of having something like this in the Bill of Rights. Since that time, I've talked to a good many lawyers. I've only run into a couple of them who don't feel that this Supreme Court case was just--was grossly unfair, the best way to remedy it would be to put it into the Constitution. I did talk with one district judge who suggested that, given a period of time, the climate and the character of the Supreme Court probably would change and they would-probably would reverse this. But I think that in the meantime a good many Montanans are going to suffer an injustice, and I think that, for the most part, our Bill of Rights is really to prevent injustice, even to the few. I also hesitated seeing it come up on the floor, because I think that it really represents a slap in the face to our Supreme Court. And this has been discussed with a great many people. But I think that in this case, the Constitutional Convention does have an opportunity to correct a most unfortunate situation.

CHAIRMAN GRAYBILL: Very well, Mr. Habedank, do you want to close?

DELEGATE HABEDANK: Yes, Mr. President [Chairman]. You've had themattervery fairly presented to you by Mr. Dahood. As I told you in the first place, I do not particularly oppose this particular amendment, but I have been told that we lawyers are writing the Constitution, trying to slip matters into this Constitution for our own personal gain. You've had the pro and the con given to you. This is something that can be corrected by the Legislature. You have it in your power to be the supreme Legislature, as the committee has requested you to do. I leave it to you, but I do think that when you do it, you should do it knowing what you do and not accuse the lawyers of pulling the wool over your eyes.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Habedank's motion to delete lines 9 through 14. We'll have a roll call vote. So many as shall be in favor of Mr. Habedank's motion to delete this material, vote Aye; so many as are opposed, vote No. Has everydelegatevoted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, please take the vote.

Aasheim		Nay
Anderson,	J.	Nay
Anderson,	O..	Nay
Arbanas		Nay

Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg.. ....Aye
Berthelson ..... .Aye
Blaylock ..... Nay
Blend .....Absent
Bowman, ... Nay
Brazier ....Aye
Brown ..... Nay
Bugbee .Absent
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate..... Nay
Conover ..... Aye
Cross ..... Nay
Dahood ..... Nay
Davis .....Absent
Delaney ..... .Absent
Driscoll Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Excused
Etchart .....Aye
Felt.....Aye
Foster ..... Nay
Furlong ..... Nay
Garlington.....Aye
Gysler ..... Nay
Habedank .Aye
Hanson, R.S. Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ....Aye
Joyce.. ..... Nay
Kamhoot ....Absent
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf..... Nay
Lorello Nay
Mahoney ..... .Absent
Mansfield., ... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting .....Aye
Payne ..... Nay
Pemberton ..... .Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... .Absent
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks.....Absent
Speer ..... Nay
Studer ....Aye
Sullivan Nay
Swanberg .....Absent
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ....Aye
Warden ..... Nay
Wilson .....Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 14 have voted Aye, 76 have voted No.

CHAIRMAN GRAYBILL: 76 having voted No and 14 Aye, Mr. Habedank'smotion does not pass. We're on Section 16. Are there other amendments? If not, members of the committee, you have before you on your-on the recommendation of Mr. Murray that when this committee does arise and report, after having had under consideration Section 16, that it recommend the same shall be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk read Section 17.

CLERK SMITH: "Section 17, Due process of law. No person shall be deprived of life, liberty or property without due process of law." Section **17,** Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, the committee felt that the tradition-ridden phrasing of the due process of law clause should remain just as it is. Accordingly, the wording of Article III, Section 27, of our present Constitution is incorporated verbatim in this proposal. The committee received no suggestion for change in this section, and we recommend its adoption.

CHAIRMAN GRAYBILL: Is there any discussion of section—

DELEGATE MURRAY: Excuse me, Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 17 of Proposal 8, it recommend the same be adopted, with the explanation I gave.

CHAIRMAN GRAYBILL: Is there any discussion of Section 17? (No response) So many as shall be in favor of the motion of Mr. Murray, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 17 is adopted. Will the clerk read Section 18.

CLERK SMITH: "Section 18, Nonimmunity from suit. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973." Section 18, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report., after having had under consideration Section 18 of Proposal 8, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: This particular provision has, on page 31, 32, and 33, some very lengthy notes that explain what we are attempting to do here. This is the doctrine-all of us know it-the vernacular that the king can do no wrong. It is an old and archaic doctrine, but it is one which the State of Montana has adhered to except in those instances where by statute the state had said that there will not be immunity in-to the extent of insurance coverage. We feel that the doctrine of sovereign immunity, which we are attempting to do away with by this particular provision, really means that the king can do whatever he wants but he doesn't have to pay for it; and we'd like to do away with that doctrine. We are well aware of the fact that the trend in the United States is to do away with this doctrine. We are aware of the fact that a Colorado case did away with the doctrine. We recognize that we took our Constitution and some of our basic laws from Colorado, and we think that now is the time and that this is the place for Montanans to do away with this particular archaic doctrine, and we recommend the adoption of the committee report.

CHAIRMAN GRAYBILL: Mr. Habedank. Do you want the Chair to read your amendment?

DELEGATE HABEDANK: Please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Habedank's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 18, line 26, page 31, by adding the following words after the word 'suit': 'for injury to a person or property'. As amended, the section would read: 'Section 18, Nonimmunity from suit. The state and its subdivisions shall have no special immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after June 1, 1973.' Signed: Habedank."

CHAIRMAN GRAYBILL: Mr. Habedank has an amendment that adds this language on page 7-it's at the end of line 20, after the word "suit": "immunity from suit for injury to a person or property".

Mr. Habedank.

DELEGATE HABEDANK: Mr. Presi-

ing nonimmunity for the state. However, ending where it does, I am not certain how far it may go, and I do object to going beyond injury to person or property. In North Dakota, the amendment which they adopted to be submitted to the people reads: "Suits may be brought against the state and its political subdivisions for negligent injury to a person or his property, but the Legislative Assembly may provide for reasonable limitations." That's the end of their amendment. With the provision as it has been offered by the committee and as amended by me, various bodies can pm-chase liability insurance, and they are given time in which to do it, June 1, 1973. And if an injury occurs, they will still not be liable unless there is negligence, but at least no one will be able to hide behind the skirts of the governmental immunity clause in prohibiting the very people that they took insurance to protect from obtaining redress for their wrongs. Limited as it is, for injury to a person or property, the Legislature is still free to make it more open if they desire to in the future. But we at least have assured the people of the State of Montana that they can sue for negligent injury.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I have reviewed with Mr. Habedank and with Chairman Dahood the amendment proposed, and the committee-and I'm sure that I speak for it—will concede to the amendment.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Will Mr. Murray yield to a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I yield.

DELEGATE HOLLAND: Putting this limitation on an injury to a person--or what if, through negligence of, we'll say, the State of Montana, someone is killed and his survivors--what about their rights?

DELEGATE MURRAY: Well, I think they would still apply under this section. It's my intention that it would, yes.

DELEGATE HOLLAND: What is the purpose of the limitation by limiting the injury just to a person?

DELEGATE MURRAY: It's Mr. Habedank's amendment; you'd probably better ask that of him. I don't know what his purpose is, but I do not find his purpose to be ulterior, as far as I'm concerned.

DELEGATE HOLLAND: I know. May I ask Mr. Habedank to yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank, would you yield?

DELEGATE HABEDANK: I yield.

DELEGATE HOLLAND: I don't understand the-why you want the limitation of just injury to a person. I'm not talking about the property rights, because it would seem to me that might put into some question about the survivor's rights-for instance, a wife's rights, children's rights, the state's rights-all of those things which could arise from injuries which ultimately result in the death of the person injured.

DELEGATE HABEDANK: I believe injuries to a person which result in death are covered by our survival statutes as they are in existence now. This provides there shall be no special immunity for injury to a person or property, and I believe it would allow the same survival situation that exists before. It was certainly not my objective to eliminate that, but I think there are many instances where there may be some governmental employees do some things in connection with contractual fields that we try to stick the government for where there is a good reason to maintain our governmental immunity in those situations.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, for Mr. Holland's information, I suggest-or I offer that the Supreme Court has held that survivor action is a property right, subject to a 2-year limitation, statute of limitations, as opposed to a 3-year for personal injury, and I think that property right would take care of the problem you're talking about.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Habedank's proposed amendment?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Habedank's amendment, which would add to Section 18, at line 20, at the end of the line, a comma and then the words: "for injury to a person or property", so that the sentence read: "The state and its subdivisions shall have no

special immunity from suit for injury to a person or property, period". So many as shall be in favor of Mr. Habedank's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Is there other discussion of Section 17? Section 18 it is, excuse me.

Mr. Rygg.

DELEGATE RYGG: I'd like to ask Mr. Murray a question, if I may.

CHAIRMAN GRAYBILL: Mr. Murray, would you yield?

DELEGATE MURRAY: I yield.

DELEGATE RYGG: I'm just wondering, having been on the Appropriations Committee before, how is the state going to protect itself? Do you figure just a-do they buy insurance now and take cars of this? Is that what—

DELEGATE MURRAY: In most instances, they have insurance to cover this particular thing. One problem that you might have would be with respect to the-1 think of the Highway Department as a classic example of where they might not have insurance to cover a road defect, or their failure to cure some problem with respect to the highway which might lead or be such negligence as would cause an accident. And in those particular respects, they are not now covered by liability insurance and you cannot sue them, and I think that if we want to build into this state safe highways and make sure that our maintenance work is done properly and that they do not expose the citizens of Montana and elsewhere-the tourists who come into this state-to various situations which might damage or injure them, that we've got to put the pressure on them of suffering the possibility of a lawsuit, because this makes them responsible to us.

DELEGATE RYGG: One further question, if I may.

CHAIRMAN GRAYBILL: Yes, Mr. Rygg.

DELEGATE RYGG: Do you anticipate this to extra insurance to cost the state any great

DELEGATE MURRAY: No, I really don't, Sterling.

CHAIRMAN GRAYBILL: Is there other discussion of Section 19—Section 18 as amended?

Mr. Garlington.

DELEGATE GARLINGTON: I want, Mr. Chairman, to raise the question of what is the proper interpretation to be given to the words "state and its subdivisions". I have reference to local government units and school districts, and it seems to me that this language does not very clearly point to any particular area, and we therefore are building up controversy as to how far this immunity extends. And I think we would have an obligation in this body so to construct our language that we do not create an ambiguity—litigation if we can help it.

CHAIRMAN GRAYBILL: Do any of the committee care to speak to that matter? (No response) Very well, Mr. Wilson.

DELEGATE WILSON: Can I ask Mr. Murray a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I yield.

DELEGATE WILSON: Mr. Murray, don't you feel that perhaps this is more statutory than constitutional?

DELEGATE MURRAY: Well, I guess North Dakota felt that it must be constitutional, and I have been hearing a lot about North Dakota, so I defer to their wisdom in that respect. No, I feel it's a constitutional thing.

DELEGATE WILSON: Would this then apply-if I may ask another question—

CHAIRMAN GRAYBILL: Go ahead, Mr. Wilson.

DELEGATE WILSON: Would this apply then to all political subdivisions, as Mr. Garlington has raised the question, such as school districts, school boards, and so forth?

DELEGATE MURRAY: Well, it is my understanding that it is, I think, the intent of the committee that its application shall be to all political subdivisions of the State of Montana, what-

DELEGATE WILSON: Then this would cover-would affect fire departments?

DELEGATE MURRAY: I think so.

DELEGATE WILSON: Law enforcement agencies?

DELEGATE MURRAY: I think so. Cities, towns, irrigation districts-anything which might come within the doctrine of sovereign immunity. We're now trying to get rid of that doctrine of sovereign immunity.

DELEGATE WILSON: May I ask another question, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes, Mr. Wilson.

DELEGATE MURRAY: I yield.

DELEGATE WILSON: Mr. Murray, you said it wouldn't cost very much. Isn't this kind of compulsory insurance? Would it cost a great deal of money?

DELEGATE MURRAY: Well, Mr. Wilson, I can't answer you in that respect because I'm not familiar with the cost of insurance. The situations in which the doctrine of sovereign immunity have been invoked in the State of Montana I don't suppose have been many, and I doubt very much if there really will be a great increase in insurance premiums as a result of this change. There may be some. To what extent, I can't answer.

DELEGATE WILSON: Thank you, Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Wilson, the Chair would observe that many governmental units carry insurance now in spite of the doctrine of sovereign immunity.

Mr. Anderson.

DELEGATE OSCAR ANDERSON: Would Mr. Murray yield to a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I will yield.

DELEGATE OSCAR ANDERSON: Would you or your committee object to the Legislature providing reasonable limitations?

DELEGATE MURRAY: I beg your pardon?

DELEGATE OSCAR ANDERSON: Would you or your committee object to the addition of the word "the Legislature may provide for reasonable limitations"?

DELEGATE MURRAY: I don't think we would object to that particularly. That's in the North Dakota Constitution, is it not?

DELEGATE OSCAR ANDERSON: Yes.

DELEGATE MURRAY: The one that Mr. Wenstrom sent you? (Laughter)

DELEGATE OSCAR ANDERSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, Mr. Anderson.

DELEGATE OSCAR ANDERSON: Being a nonlawyer, I'm not going to make a motion, but I sure wish somebody else would.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think we should point out that there might be some question with respect to the extent of the language "the state and its subdivisions". I think Delegate Garlington does bring up a point. What our committee is really concerned about is making sure that an antiquated doctrine that had no place within American jurisprudence in the first instance is removed from the face of justice in the State of Montana. The federal government did it quite some years ago. They passed the federal tort claims act to cover any negligent activity by any servant of the federal government, and they passed the Tucker Act to make sure that in contract matters this particular defense of sovereign immunity, which should have no place in a democracy, could not be used against someone that was entitled to have full justice and full legal redress. The way the situation stands in the State of Montana at the present time, unless there is some type of insurance coverage, a governmental servant could run you down in the street, be drunk at the time he does it, go through a red stoplight, and you can't recover a dime for your hospital and medical bills and for the support of yourself and your family during your disability. Now surely, no sound-thinking individual can say that that is right. And the intent of the committee is to make sure that in Montana we take it away by constitutional command. In the last several decades, 16 states have done it through Supreme Court decision; several

have done it through constitutional amendment. There isn't a legal scholar that1 have read over the past two decades of practicing law, and I'm sure my colleagues here on Convention floor will agree, that can justify the retention of that particular doctrine that the king can do no wrong in Montana and in any of the states of this particular democracy. So it is our intention to remove this particular doctrine because the Supreme Court, when it's been confronted with this particular issue, has said, "Well, we have had it all these years and we don't want to remove it. Let the Legislature do it." The Legislature will come back and say, "Well, let the Supreme Court do it, because, after all, we didn't construct this doctrine-the courts did it years back when they paid so much homage to the law of England that they thought they had to bring it over the seas here to the North American continent." So they keep passing the responsibility back and forth. We have an opportunity now, as long as in Montana no one else will accept it, to make sure that we have full redress and full justice for all of our citizens. So that way, we reduce public dissatisfaction with the administration of justice and make sure that every citizen of Montana has the full right to which he's entitled. We submit it's an inalienable right to have remedy when someone injures you through negligence and through a wrongdoing, regardless of whether he has the status of a governmental servant or not. That is the committee explanation. We think if it's adopted in the language in which it is submitted, that it's going to tell our Supreme Court we do not want that doctrine in the State of Montana. Let's judge cases on the merit, on the principle of what's fair and what's right between man and woman in an organized society. We submit the present language will convey that message. That will be our epistle to justice in the State of Montana and will improve its administration for the benefit of all of us. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The question arises on Mr. Murray's motion that when this body arises and reports, after having had under consideration Section 18 as amended, that the same shall be recommended for adoption. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk read Section 19.

CLERK SMITH: "Section 19, Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended." Section 19, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: I move that when this committee does arise and report, having had under consideration Section 19 of Proposal Number 8, it recommend the same be adopted.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: The present language is shown in our Bill of Rights: "The privilege of the writ of habeas corpus shall never be suspended." In the present section, Number 21, we have deleted the words "unless in case ofrebellion or invasion, the public safety requires it". The committee felt that we would be accomplishing what we wanted to by cutting out the last words. We hope that you will move for the amendment—or the adoption of this section.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I feel I especially have to rise in support of this Section 19. The cowboys down in Powder River country just love those words "habeas corpus". (Laughter)

CHAIRMAN GRAYBILL: Those cowboys are learning a lot of new language, too, aren't they, Torrey? (Laughter) All right, is there discussion of Section 19? Members of the committee, you have before you, on the motion of Mr. Hanson that when this committee does arise and report, after having had under consideration Section 19, thatit recommend the same do be adopted. All in favor of Section 19, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, NO.

(No response)

CHAIRMAN GRAYBILL: Section 19 is adopted. Will the clerk read Section 20.

CLERK SMITH: "Section 20. Initiation of

inferior to the District Courts have jurisdiction shall be prosecuted by complaint. All criminal actions in District Court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary and shall so order." Section 20, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R. S. HANSON: I move that when this committee does rise and report, having had under consideration Section 20 of Proposal Number 8, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: In this section there have been a few changes in words. They are almost identical to our present Section 8, and the committee voted unanimously that this section, which stipulates the method of initiating criminal proceedings, should remain as-with one minor change. The phrase 'justice's courts and municipal and other courts' was deleted as unnecessary and redundant wording. The remainder of the section is verbatim rendering of the Article III, Section 8, providing for prosecution by complaint, information and indictment. It is noted that these fixed aspects of the initiation of proceedings are part of the basic procedural rights framework established to maintain the accusatorial nature of the system of criminal justice. No delegate proposals were received on this provision.

CHAIRMAN GRAYBILL: Mr. Melvin, you have an amendment. Do you want the clerk to read it?

DELEGATE MELVIN: If you please, Mr. Chairman.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Melvin's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend the Bill of Rights Committee Proposal, Section 20, page 35, line 9, by deleting the word 'seven' and inserting the word 'eleven' and on line 10 by deleting the word 'five' and inserting the word 'eight'. Signed: Melvin."

CHAIRMAN GRAYBILL: Mr. Melvin has an amendment to Section 20 which appears on page 8. He wants to change the numbers of the grand jury so that they are 11 and 8 must concur in the indictment.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman and delegates, the sole purpose of the amendment is to increase the number of grand jurors so that a better chance of the jury arriving at some strong leadership in order to perform the function which they're chosen to do. Now, in 17 years I've observed the two grand juries perform in my particular area-one with regard to a police scandal; the other involved two murders. Especially with regard to the police scandal, that grand jury performed very well and information was obtained during that grand jury hearing that would not otherwise have been obtained. Now, for the layman, I think that it's been so seldom that grand juries have been used in Montana that you should be aware that a grand jury is called only at the request of a District Judge. They assemble at the county seat, and their powers are broad. They're described in Chapter 14 of the Montana Codes, and they can go into all areas of county and city government and functions of the county offices, as well as specific crimes. I'll not belabor the point other than to point out that it's because of the fact that I feel that from 11 people, that stronger leadership could be obtained to conduct this function that I'm asking for this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: Mr. Chairman, I don't think that the committee has any reason to oppose this amendment, but I'd like to have Mr. Dahood speak on it for a minute.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Delegate Melvin was gracious enough to discuss this with me, and he has had experience with a grand jury in the State of Montana, and I daresay there are very few lawyers on this Convention floor that have had any experience with it. Let me tell you why. In the Federal Courts, under the federal system of justice, before anyone can be

charged with any serious crime or a felony type of crime, it must be upon presentment to the grand jury and the return of a true bill. In Montana we have an alternative provision whereby the prosecuting officer can file against an individual and accuse him of a felony type crime by what we call an information. Although we do have a grand jury procedure, it is almost never used. So it has come down to this in the State of Montana: a grand jury is used on rare occasions when some matter of great concern to the community has arisen and there is some question as to what action should be taken by the county prosecutor, and upon request to the presiding judge of that particular district, a grand jury may be called. It is seldom ever done; and since we have the experience of Delegate Melvin with respect to two grand juries that were called in the 18th Judicial District and he believes that a larger number should serve in that particular instance, we certainly will not quarrel with that opinion. I think there is a rational basis for his amendment, and I think having a larger number in a matter of that type of pressing importance certainly commends itself to us. I think it will serve the purpose for calling a grand jury and for that reason, on behalf of the Bill of Rights Committee, we have no objection to the amendment as presented. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Melvin's amendment that we insert, in Section 20, the numbers "11" for a grand jury, with the number of "8" to concur for the indictment. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The **Ayes** have it, and Mr. Melvin's motion is adopted. Is there other discussion of Section 20? (Noresponse) Very well, members of the committee, you have before you for your consideration Mr. Hanson's motion that when this committee does arise and report, after having had under consideration Section 20 as amended, that the same be recommended for adoption. All in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

CHAIRMAN GRAYBILL: It's adopted. Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise, report progress, and ask leave to sit again.

CHAIRMAN GRAYBILL: Very well, the motion is to rise and report progress. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The committee will rise.

(Proceedings moved from Committee of the Whole into Convention. President Graybill in Chair.)

PRESIDENT GRAYBILL: Will the clerk please read the Committee of the Whole report.

CLERK SMITH: "March 8th, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee on Bill of Rights, recommend that the committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Members of the committee, unless objection is heard, we will not read the entire report.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the Convention adopt the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the report of the Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. May we be on Order of Business Number 11, Announcements.
Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee tomorrow morning please at 8:30 in

PRESIDENT GRAYBILL: Oh, I'm trying to remember what it is Mrs. Babcock wants me to announce. It's that women who might be interested in attending the prayer luncheon on Saturday should make arrangements for that. The prayer breakfast starts at such a late hour that we would have to abandon Saturday morning, but the prayer luncheon will start at noon. And we will probably work till at least noon or a little past on Saturday and give anyone who wants to go to that until about 1:30, so you probably can attend the prayer luncheon if you want to. The prayer breakfast would take from 9:00 till 11:00, and we'll be in session at that time. So if you're interested in the prayer luncheon, please make your arrangements. Are there other announcements? The Chair would like to invite you all to still come to dinner tonight. Mr. Murray, do you have another motion?

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of 9:00 a.m., March 9th, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 tomorrow morning. All in favor, say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 5:05 p.m.)

March 9. 1972 **Forty-First Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention **will be in order.** If you'll all rise, Mr. Harper will lead us in the invocation this morning.

DELEGATE HARPER: There's a familiar passage of Scripture that says, "This is the day that the Lord has made; let us rejoice in it and be glad." Let us pray. Our Father, let us live this day in the knowledge that it may be the only day we have here. Let this be the day when our wishes are in accord with Your will. Let this be the day when we measure ourselves not against each other, nor even against ourselves of the past, but againstthe measuring rod of humanity we saw in Jesus. And stand us up against the needs and the possibilities of future generations until we see our own lives here in proper perspective and are made humble enough to serve and confident enough to rejoicein this, the day You have made for us, together. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President. May Delegates Bowman, Cate, Garlington, Mahoney be excused, please, and Delegate Furlong?

PRESIDENT GRAYBILL: Very well. Those-Furlong does not need to be excused yet. Those other delegates are in Great Falls for the television show. Are there other absences?

CLERK HANSON: Delegate Anderson, Delegate Artz, Delegate Bates, Delegate Dahood, Delegate Holland, Delegate McKeon. Delegate Anderson, Delegate Bates, Delegate Dahood, Delegate Holland, Delegate McKeon. Delegate Anderson, Delegate Bates, Delegate Dahood, Delegate Holland, Delegate McKeon.

PRESIDENT GRAYBILL: Very well. Will you take the attendance.

Aasheim		Present
Anderson,	J.	Present
Anderson,	0..	.Absent
Arbanas		Present
Arness		Present
Aronow		Present
Artz		Present
Ask		Present
Bates		..Absent
Belcher		Present
Berg		Present
Berthelson		Present
Blaylock		Present
Blend		Present
Bowman.,		Excused
Brazier		Present
Brown		.. Present
Bugbee		Present
Burkhardt		Present
Cain		Present
Campbell		Present
Cate		Excused
Champoux		Present
Choate		Present
Conover		Present
Cross		Present
Dahood		..Absent
Davis		Present
Delaney		Present
Driscoll		Present
Drum		Present
Eck		Present
Erdmann		Present
Eskildsen		Present
Etchart		Present
Felt		Present
Foster		Present
Furlong		Present
Garlington		Excused
Graybill		Present
Gysler		.. Present
Habedank		Present
Hanson, R.S.		Present
Hanson, R.		Present
Harbaugh		Present
Harlow		Present
Harper		Present
Harrington		Present
Heliker		Present
Holland.		.Absent
Jacobsen		Present
James		.. Present
Johnson		Present
Joyce		Present
Kamhoot		.. Present
Kelleher		Present
Leuthold		Present
Loendorf		Present
Lorello		Present
Mahoney		Excused

Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Absent
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin..	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. Chairman, 91 delegates present, 4 excused and 5 absent.

PRESIDENT GRAYBILL: Very well. A quorum is present. The journal may so show. Order of Business Number 1.

CLERK HANSON: "Mr. President. We, the Committee on Style, Drafting, Transition and Submission, transmits revisions of the Judiciary Article for consideration of the Convention. John M. Schiltz, Chairman; -William A. Burkhardt, Vice-Chairman."

PRESIDENT GRAYBILL: The Judiciary Article is before you on your desks from Style and Drafting, I might point out to you that it is very possible that we would get to that this afternoon and we might want to waive the time. So if you have any time at noon, you might want to look at the Judiciary Article on style and drafting. We may be getting to that before tomorrow. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana: March 8th, 1972. Honorable Leo Graybill, Jr., President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Joel L. Curtis, license number 84-72, has been reinstated as of March 8th, 1972. Sincerely yours, Frank Murray, Secretary of State." Mr. President.

PRESIDENT GRAYBILL: Yes. Order of Business Number 4, Introduction and Reference of Delegates Proposal.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5.
Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that we postpone consideration of business under Order of Business Number 5 until the Convention again reaches that Order of Business, which I hope will be later in the day. And, at that time, we should have the Legislative, final little typewritten report for us so that we'll know finally what we're voting on. And we can take up General Government 1 and 2 and Legislative.

PRESIDENT GRAYBILL: Yes, members of the Convention, the Chair is advised that the Legislative reprint has not yet reached your desks, but it is due and we expect it this morning. So we'd rather do all of those at once. All those in favor of Mr. Murray's motion to pass Order of Business Number 5, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman [President]. I move that this Convention request from the Department of Revenue a fiscal note forecasting the cost of added services to be performed by state and local governments as included in the first eight proposals.

Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I have no other motive for this than my own curiosity. I guess I feel somewhat the same as if my wife and I had both been on a trip and we'd been spending a lot of counter checks, and now it's time to go down to the bank to see if they'd add them up for me.

PRESIDENT GRAYBILL: Very well. The Chair understands the sense of Mr. Rygg's motion to be that he'd like to ask the state fiscal people for a fiscal note as to what may be the results of what we've done so far in the Convention. If you pass this motion that we ask for that, it is the Chair's intention to refer the matter to Resolutions-so that the Rules and Resolutions—so that the Rules Committee can draw an appropriate resolution to the governmental-or the state agencies so that they will act on more than just our motion. But if you agree with Mr. Rygg that we should ask them for a fiscal note, then vote Yes; and if you don't agree, vote No. And we'll put his motion. Is there discussion?

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman [President]. Will the roll please show me as present.

PRESIDENT GRAYBILL: The roll will show Mr. Holland as present, and the roll will show Mr. McKeon as present; and the roll show Mr. Dahood is present.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President. Who, specifically, are we going to direct this inquiry to, please?

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The Department of Revenue. The reason for putting it in the Department of Revenue is that they have the personnel normal procedure in the Legislature for every bill that needs an appropriation that we have a fiscal note, and they come back with a figure. I admit they can't always give you the proper figure. They'll have to say, "Well, if you have a hundred members, it's going to be less than if you have a hundred and fifty." But usually they're pretty good about putting down there the approximate reasons for it and giving an alternative of what it will be. So it would just be to the Department of Revenue, and I believe they have a staff who can adequately do that.

PRESIDENT GRAYBILL: Are there other questions or discussion of Mr. Rygg's motion? All in favor of asking the Department of Revenue for a fiscal note on the results of our Convention so far, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and the Chair will refer the matter to the Rules and Resolutions Committee; and Mr. Rygg if you'll work with them to work up a suitable resolution, which we can probably pass tomorrow, and couch it in language so that we can get this accomplished. Are there other resolutions or motions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business. None?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move the Convention resolve itself into Committee of the Whole for the consideration of business under General Orders.

PRESIDENT GRAYBILL: Mr. Murray's motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: March 9th, 1972. The following committee proposals are now on General Orders: Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number 5.
Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. When we completed our work yesterday afternoon, we were-we had just completed Section 20 of the Bill of Rights, so we're on Section 21. Will the clerk please read Section 21.

CLERK HANSON: "Section 21, Bail. All persons shall be bailable by sufficient securities, except for capital offenses, when the proof is evident or the presumption great." Mr. Chairman, Section 21.

CHAIRMAN GRAYBILL: All right. The word is "sureties" in line 9.
Mr. Hanson.

DELEGATE HANSON: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 21 of the Bill of Rights Number 8, it recommend the same be adopted as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE HANSON: The committee voted unanimously to retain this section unchanged. As it stands, the section announces that all persons are bailable except in certain capital offenses. No delegate proposals were received on this provision.

CHAIRMAN GRAYBILL: Is therediscussion of Section 21? Very well. You've all heard the motion of Mr. Hanson that this committee recommend the adoption of Section 21. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 22.

CLERK SMITH: "Section 22, Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted." Section 22, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 22 of Proposal 8, it recommends that the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: The Committee voted unanimously that this section be retained unchanged. It is thought that the section provides the Judiciary and the Legislative adequate flexibility to apply the principle that there shall not be excessive bail, excessive fines, or cruel and unusual punishments. No delegates proposals were received on this provision. Mr. Chairman.

CHAIRMAN GRAYBILL: Is therediscussion of Section 22? Members of the committee, you've heard Mrs. Sullivan's recommendation that Section 22 be adopted. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 23.

CLERK SMITH: "Section 23, Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same. If he cannot give security, his deposition shall be taken in the manner prescribed by law and in the presence of the accused and his counsel or without their presence if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial if the witness shall be dead or absent from the state." Section 23. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 23 of the Bill of Rights Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman. This section is exactly the same as Article III, Section 17, in the present Constitution. The provision prohibits unreasonable detention of witnesses and prescribes in detail the procedure for securing testimony in the event the witness cannot be procured for the trial. No delegate proposals were received on this particular section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HABEDANK: In connection with Section 23, Mr. Dahood, was any consideration given by your committee to enlarging the use of the deposition so that it could be used under circumstances where the witness was not absent from the state or dead? It occurs to me that there are many instances which would arise, where a deposition has been so taken, that the evidence is necessary, the witness cannot be located. He may be ill, many other things.

DELEGATE DAHOOD: Well, Mr. Habedank, that was discussed to some extent, not any great extent; but we felt that the Montana Civil Procedure Act would take care of that under the discovery Sections, 26 through 37. And we thought that the deposition sections contained therein covered those situations that you refer to now.

DELEGATE HABEDANK: Mr. Dahood -may I ask Mr. Dahood another question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HABEDANK: Did you consult with any prosecuting attorneys-I have never been one-as to whether or not they have ever

DELEGATE DAHOOD: Mr. Habedank, we did not consult with any prosecuting attorney. Again, we have the new Criminal Code which we think, in certain sections, covers that situation. And we did not see that there was any particular reason or need for any constitutional change. That is why we stayed with the section as it is.

DELEGATE HABEDANK: Thank you, Mr. Chairman.

DELEGATE DAHOOD: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Kelleher.

DELEGATE KELLEHER: I just delivered a proposed amendment to the clerk, Mr. Chairman. It simply would strike the last sentence off-and I move to strike the last sentence of Section 23, starting at lines 24 through 26 on page 8. Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want the clerk to read your—

DELEGATE KELLEHER: I don't think it's necessary.

CHAIRMAN GRAYBILL: All right. Mr. Kelleher has an amendment.

DELEGATE KELLEHER: The reason—Mr. Chairman—

CHAIRMAN GRAYBILL: Yes, just a minute till I write it down here. Explain-you want to strike the last sentence?

DELEGATE KELLEHER: Only the last sentence.

CHAIRMAN GRAYBILL: The last sentence begins—

DELEGATE KELLEHER: "Any deposition authorized by this section may be received as evidence on a trial if the witness shall be dead or absent from the state."

CHAIRMAN GRAYBILL: All right. Mr. Kelleher has proposed an amendment to Section 23 which would strike the last sentence from the language of Section 23: "Any deposition authorized by this section may be received as evidence on a trial if the witness shall be dead or absent from

DELEGATE KELLEHER: The reason— the primary reason for striking this, Mr. Chairman, is that I believe it clearly violates Section— Amendment 6—of the federal Constitution which, as you know, has been incorporated into Article XIV. The matter is well covered under Section 95.1802. In fact, I think the whole section is constitutional, but it is a rather important matter, so I did not move to strike the whole section. At page 171 of the Bill of Rights Committee's own report— the very fine work done by Mr. Applegate-he points out the fact that in Pointer versus Texas, that was a 1965 case, the 6th Amendment was put in the 14th Amendment-and, of course, that was written many years after our own-original Constitution was drafted-that the government cannot use such a deposition. The deposition may be used by the defendant. And we could amend to put that-to allow that in the last sentence, but that's already included in our statutes, so I see no need for it. And this is very similar to Rule 15 of the Federal Rules of Criminal Procedure; and in Moore's Federal ***Practice,*** the commentary reads: "The government has no right to move to take a deposition under Rule 15. The use of depositions in criminal cases has always raised questions of possible infringement of a defendant's 6th Amendment right to confront witnesses against him. This was no doubt the reason for the Supreme Court's rejection of the original advisory committee's proposal to permit government depositions, as well as for the rejection of a similar provision contained in a proposed amendment." Now, I realize, as I said, that it's in the present Constitution, but that amendment-that portion of it was declared unconstitutional. If the committee wants to allow the defendant, as it is in the federal rule, to use these depositions, I have no objection to that, but just that-so long as the government in a prosecution cannot use the deposition because of the 6th Amendment. And that matter, incidentally, is very well covered in the committee's following section, Section 24, the fourth line at the bottom of page 8, where we read: "to meet the witnesses against him face to face". Even though the deposition has been taken, that-the criminal defendant still has a right to have that deponent— have the jury examine his demeanor on the witness stand. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. We do not object to the motion by Delegate Kelleher, but I think I should explain some of the problems that have been discussed, for the benefit of the nonlawyer delegates. The word "deposition" simply means that you take the testimony of a witness, under oath before a court reporter, and then that testimony is transcribed. When you have a material witness who is absolutely essential to the case for the state or the prosecution, it sometimes becomes necessary to preserve that testimony for the benefit of the state by taking what is called a deposition. Again, nothing more nor less than the testimony of that witness, under oath, by question and answer. The Montana Criminal Code is going to protect the defendant, because that deposition can only be taken upon proper notice. And one of the bulwarks of liberty under our system of law is the right of the defendant to confront the witness who may stand against him and through his counsel to cross-examine that witness. That right is provided when a deposition is taken. In other words, the state is represented by the prosecuting attorney, the questions are asked of that particular witness. Those questions are written down by the court reporter, as well as the answers; and then the attorney on behalf of the defendant will ask questions and they are written down along with the answers. And any objections with respect to any questions that may be wrong are then decided by the judge at a later time. Since these matters are covered within our Montana Criminal Code and, with respect to any other matter that may relate to any civil procedure, also covered by the Montana Civil Procedure Code, there is really no problem. The constitutional guarantees are going to be applied. We did not take that sentenceout, because we were quite concerned about making sure that, wherever we could, we left the basic rights of the people in the same language in which they were framed in 1889, where the language was still correct and was still proper and was still reflective of society's current needs to have these particular rights in the Bill of Rights. With that explanation, I again state that the Bill of Rights Committee hasnoobjection to the amendment to delete as proposed by Delegate Kelleher. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood. I wonder if the-if you'd yield to a question from the Chair.

DELEGATE DAHOOD: I do yield.

CHAIRMAN GRAYBILL: On line 21, it says-it says in line 20 that the deposition of such a witness must be taken in the presence of the accused or his counsel or without their presence if they shall fail to attend the examination after

reasonable notice of the time and place thereof. And then, down in your next section-Section 24—it says "to meet the witnesses against him face to face". Assuming a situation where a criminal—where a person might be charged but not yet apprehended, would you expect this person to come in and appear for the deposition? And if you don't really expect that, then how are you going to let him meet the witnesses face to face? In other words, I'm bothered by Mr. Kelleher's point that in some cases, the defendant-it isn't just amatterof notice like in a civil case. This defendant may have good reason not to appear, and yet he wouldn't be able to meet his accuser face to face as you are requiring in the next section.

DELEGATE DAHOOD: In my judgment, Mr. Chairman, I think it is absolutely essential that the person against whom that deposition is to be used does appear, under circumstances where he is before the court under process of court. I should think that in the situation that you have just stated, that that particular defendant is not yet under the control of the court by effective service of process, and therefore in my judgment, he would not be bound by any deposition taken under those circumstances.

CHAIRMAN GRAYBILL: That may be; that doesn't appear to me from lines 22 and 23.

DELEGATE DAHOOD: Well, that would be my opinion: that the only time that you can use a deposition is when there has been fair process, just process, due process with respect to that defendant. There's some technical reason as to why he is not within the power and jurisdiction of the court because he has not been arrested and arraigned. Under those circumstances, I do not think that this particular type of deposition procedure can be effective against him. And that is our thinking and my thinking as Chairman of the committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion of Section-of Mr. Kelleher's amendment to Section-proposed amendment to Section 23?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, could I ask Mr. Dahood a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE McDONOUGH: Mr. Dagranting power to a trial judge to allow this deposition to be entered if all the qualifications are met in the preceding section and if they are met down below; whereby if it is struck out, regardless of whether--what the 6th Amendment says, until it's specifically ruled on by the court maybe it should be left in to allow the prosecution to be able to introduce such a deposition even though, at the time of the trial, the defendant does not have the right to, you know, to be able to be present and cross-examined.

DELEGATE DAHOOD: Well, Delegate McDonough, I think you raised a good point. I think that the Montana Criminal Code, which, of course, was recently passed and which recently became law in Montana, does cover the point. But I think you're correct that this does provide a direction to the court that if these other conditions are met, then this particular deposition shall be admissible. But in my judgment, I do not think eliminating this particular section is going to change the status of criminal procedure in any respect. And perhaps, Mr. Chairman, as long as these questions are being raised and there is some doubt, perhaps then we should reject the amendment. I, from a standpoint of substance, do not think it's going to affect our present state with respect to civil procedure in the criminal area at all. But if there is some question, then I think perhaps then, even though I have no personal objection on behalf of the committee to the amendment, it ought to be rejected. We looked at this section. I looked at it; the other lawyers looked at it. There were things that we could have done, perhaps to make the wording more clear, perhaps to add something; but we did think that there were other areas of the law which, of course, were enacted by the Legislature that covered the situation. There are basic constitutional protections with respect to a defendant that must be honored at all times. But in view of the questions that have been raised, and questions by lawyers, I would think under the circumstances then, perhaps I should not agree with Delegate Kelleher and perhaps the section should remain as it is. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I would feel compelled to resist the amendment. There's a lot of truth in what's been said about the fact that the federal may control, but this has been in the statutes-or in the Consti-

interpreted the last time in 147 Montana-I don't know what year that would be, but about '65 or after that-and they held that this provision allowing for the taking of depositions does not violate Article III, Section 16, of the Montana Constitution, which provides for the right to confrontation and that this deposition taken under authority of this provision are admissible upon trial upon showing the witness is either dead or not within the jurisdiction. It's extremely important in a case, and I think I maybe can give you an example that may be of some benefit. In a recent criminal action, we had a real notorious criminal who robbed an old man down by the river, tied him up and he was going to kill him. The witnesses to the thing were from out-of-state. We're permitted to take their deposition and preserve it. The testimony is then preserved, and in some instances, you don't have the defendant himself captured. You don't even know who he is, maybe, until several years later, in some recent cases in Montana. The first part of this section permits you to take this man-material witness and hold him unless he makes bail or take his deposition. Well, the whole theory is not to hold the material witness. It's the right of another person is 'involved here now, is the right of a witness. He's not going to be confined till trial. You can release him, but he takes his deposition, If the defendant is unknown or in flight, it's not necessarily prejudicial; it may never be used. In the case that I'm referringto, the defendant jumped $15,000 bail and was apprehended 2 years later, hoping that the old man would die. His testimony would then be gone, the case is gone against him; or the other material witness would be gone, who had moved out of state in the construction business. So I would think that it would be a grave mistake to take away this. If the courts-if the federal courts are very jealously guarding all rights of defendants, the Supreme Court is very jealously guarding all rights of defendant, and I don't think it would accomplish what you're really seeking to do by just deleting the last portion of this. There needs to be a provision for taking of depositions of material witnesses in any criminal case, and I'm sure we want to preserve that. Thank you.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. I didn't mean to instigate a great debate over such a minor technical matter. But in State versus Storm, our own Supreme Court held-and this is no place to conduct an education class on criminal procedure, I realize that, too-but our Supreme Court, in 1953, said it was error for the trial court to allow the testimony of a witness at the first trial to be read into evidence at the second trial. It was the right of the defendant to have the jury seen—observe the witness upon the witness stand. It was his right that the jury see how the witness acted upon direct- and cross-examination. It was his right to have the jury judge the credibility of the witness from his appearanceand manner while on the witness stand. None of these rights could be had except and unless the witness met the defendant-quote-"face to face"-close quote—in the presence of the jury during the course of the trial. This is awful clear law. I thought it was. I had a murder case last summer, and the only witness was a prostitute. And they had to go find her, put her in jail, take her deposition, and she took off. The Federal Court in Pointer versus Texas—once again, the blue and white book done by Mr. Applegate-clearly sets forth that "The Supreme Court held that the right would be enforced against the state under the 14th Amendment according to the same standards to protect those personal rights against federal encroachment."-close quote. There's no doubt-by striking the last sentence, they could still take the deposition of any defendant. They could put this person in jail. And the reason I didn't strike the whole section is, as I told Chairman Dahood the other day I had planned originally to do, is that I think there's some merit to leaving the first part of the section in so that they just can't take them, lock them up, take their deposition and then forget about them. They have to release them, but even that's covered by the statute. The more I'm thinking about it, Chairman Dahood, I think maybe the whole section ought to be stricken. It's unnecessary in the Bill of Rights and it's covered by the federal-I mean, it's covered by our statutory law, in Title 95 of the ***Revised Codes.*** If we want to leave in an unconstitutional provision, that's all right. I'm not going to make a big issue-there's a lot of other matters that are a lot more important, Mr. Chairman, that we should be getting on to.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Kelleher's amendment to strike the last sentence, lines 24 to 26 of Section 23. Those—that sentence saying: "Any deposition authorized by this section may be received as evidence on a trial if the witness shall be dead or absent from the state." So many as shall be in favor of Mr. Kelleher's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Mr. Arbanas, do you have an amendment to this section? No, is it 28? Very well. Is there other discussion of Section 23? If not, members of the committee, you have before you for your consideration, upon the recommendation of Mr. Foster, that when this committee does arise and report, after having had under consideration Section 23, that it recommend the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Twenty-four, Mr. Clerk.

CLERK SMITH: "Section 24, Rights of the accused. In all criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witness against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same." Section 24, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. I move that when this committee does arise and report, after having had under consideration Section 24 of Proposal 8, it recommends that the same be adopted as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: The committee voted unanimously to retain the former Article III, Section 16, unchanged. The committee felt it was an admirable statement of the fundamental procedural rights of the accused. No delegate proposals were received on this provision. This article-or this section is basically the same as Article VI in the Bill of Rights in the federal Con-16 in our present Constitution. It has stood the test of time, and I feel that it should be adopted as is.

CHAIRMAN GRAYBILL: Is there discussion?
Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. Would Mr. James yield to a question?

DELEGATE JAMES: Yes, Mr. Habedank.

DELEGATE HABEDANK: I realize this section is identical with the present Constitution, but I've always wondered about the words on line 11 in the present Constitution, and as contained herein, "or district". I'm wondering if any consideration was given by the committee to striking those words so that a person would have to be tried in the county where the crime is committed. We don't have districts in the State of Montana, and I don't know what the framers had in mind.

DELEGATE JAMES: Well, I assume, while I'm not a—one of the "legalites", I do believe this is the county judicial district, or I suppose if we set up a district system eventually in our state, this could apply. Does that satisfy you? Thank you, Mr. Habedank.

CHAIRMAN GRAYBILL: Is there further discussion? If not, members of the committee, you have before you Section 24, upon Mr. James' recommendation that when this committee arise and reports, that we recommend it do be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 24 is adopted. Will the clerk read Section 25.

CLERK SMITH: "Section 25, Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction." Section 25, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. I move that when this committee does rise and

tion 25 of Proposal Number 8, it recommends that the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. "Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in criminal proceedings, nor shall any person be twice put in jeopardy for the same [offense] previously tried in any jurisdiction." Now, there's a little change in this. If you read the comments, I believe there have been some cases here where a person could possibly be put in-tried both in state and federal jurisdiction. I must admit, Mr. Chairman, I'm kind of on the spot here, because according to my standard motion sheet, I was supposed to take 24, 28, 29 and 31. So I was sort of caught off base on this one, so I will defer to Mr. Dahood.

CHAIRMAN GRAYBILL: Mr. Dahood wrote your name on the sheet. Mr. Dahood, would you like to help him out?

DELEGATE DAHOOD: Yes, I will Mr. Chairman. I think there was a mistake in the typing. But in any event, probably it's something that I should explain, since it is a legal distinction. We have added the language "nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction." The phrase "previously tried in any jurisdiction" has been added. The rule throughout the United States and the several states in the past has always been that you could be tried twice for the same crime and be punished twice for the same crime, contrary to the popular conception that this cannot happen in America. It was justified by the courts in this fashion: a state is a separate criminal jurisdiction; the United States is a separate federal jurisdiction. Each is autonomous in the area of criminal practice, and each has a sovereign right to prescribe punishment for transgressions of the law within its own area of jurisdiction. So consequently, if you stole a car in Montana and drove it across a state line, you would commit two crimes. The first crime, of course, would be against the law of the State of Montana in taking the car, and technically you could be tried, convicted and sentenced to a substantial term in the penitentiary. And the federal court could then place a detainer upon you and, upon your release, since the statute of limitations would not run while you're incarcerated, then take you to a federal courtroom and have you tried and convicted and sentenced to a federal penitentiary. The Supreme Court of the United States, in reviewing the situation, has now indicated that the two-sovereignties rule is perhaps unconstitutional. We do not have a clear-cut declaration that this is going to be applied absolutely in all cases. I understand that in the federal prosecuting area, there is a somewhat unwritten policy that the federal government will no longer participate in that type of situation. We think it violates a basic fundamental right that an individual should be punished only once for whichever transgression he may be convicted of, whether under federal law or state law. It shouldn't make any difference which jurisdiction has him first. The idea, of course, is to protect society, to have him punished, to have him pay his debt to society, and after that debt has been paid in full, to return and rehabilitate himself and become a useful, functioning member of society. What this does, it provides now in Montana that if someone should commit some crime within the geographical sovereign limits of Montana and he transgresses federal criminal law at the time that he does it and the Federal Court should have him tried and convicted after indictment by a federal grand jury, that's the end of it. The State of Montana then loses jurisdiction to try him. I might tell you this: that usually, unless there's some overriding consideration, the federal prosecuting authorities usually will defer to the wishes of the state prosecuting authorities in proceeding where there is a violation of state law. We think it is a right that should be afforded constitutionally. It is fair and just, and we submit that this particular section, as amended, should be adopted. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. That's exactly what I meant. Thank you, Wade. (Laughter)

CHAIRMAN GRAYBILL: Mr. Arbanas—Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, maybe I should address my question to Mr. James, then. (Laughter). I wonder if I could ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Mr. Dahood, would you and Mr. James yield?

DELEGATE DAHOOD: I yield.

DELEGATE ARNESS: As I understand it, Mr. Dahood, this area is an area that is covered

by the-or generally comes into play under the operation of what's called the Posse Comitatus Act that was enacted by the federal Congress. And where we get into problems of this kind would be a situation where an airman from Malmstrom would steal a car in Great Falls and drive it into the Air Force base. The prosecution in the federal-or in the state court for the car theft would probably not entirely satisfy the Air Force authorities, who might want to give this man a dishonorable discharge on account of the offense that he had committed against his status as an airman. How would this provision that we have in the Constitution here affect the operation of the Posse Comitatus Act and the situation that I've described?

DELEGATE DAHOOD: If you're referring to the military tribunal, Delegate Arness, let me state this: that I was an officer in the Judge Advocate General's Corps during the Korean War, served in the Defense Appellate Division in Washington, D.C., under the new Uniform Code of Military Justice, and it's a little toocomplicated to discuss at this point. Let me just say this: what we're trying to do here is to make sure that Montana is not going to punish someone who has already been punished for a transgression against society, whether it be the Montana society or the federal society.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: May1 ask another question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ARNESS: You don't think, then, that the other-the operation of this, on the other hand- that is, from the other point of view- from the federal point of view, would make any difference so far as our deliberations is concerned?

DELEGATE DAHOOD: No, Delegate Arness, because we cannot do anything that is going to be binding upon the federal jurisdiction or the military jurisdiction. We can only pass a constitutional protection with respect to the operation of Montana law. Any protection within the two sovereignties, that rule, must come, for the federal area, from the federal courts; within the military area, from the United States Court of Military Appeals. We can only be concerned with Montana. We're hopeful that by doing this in Montana, we're going to balance out the trend and the movement within the federal area. As to what the military is doing, I'm not prepared to state at this time.

DELEGATE ARNESS: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: No, that's all the questions I have.

CHAIRMAN GRAYBILL: All right. Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. Would Delegate Dahood yield to another question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE STUDER: I really don't know much about this Kamikaze Quo Vadis Act or whatever it was you were talking about, but (Laughter) if a fellow stole that car like you say and went out of the state with it and the federals tried him first for transportation over the state line and I wasn't exactly satisfied that they'd prosecuted right or it'd been bungled some way and he'd been turned loose, that means that when that fellow comes back here and we have definite evidence that he'd swiped the car and everything, I can't do anything about it?

DELEGATE DAHOOD: No, not a thing you can do about it, Delegate Studer, simply because-that they've had one chance at him, that's enough. That's double jeopardy. It's just like in our state courts. Let me amplify somewhat. Let's assume that an individual is tried in state court for a criminal act and some mistake is made in the trial that allowed the jury to come back with a verdict of acquittal. You cannot then appeal to the Supreme Court, for example, and say that there was some type of procedural error or there was some evidence that we could have procured at that particular time that might have convicted him which we didn't have at that time. Once the acquittal is made, once there's a verdict of not guilty, that's the end of it, regardless of what anyone might think upon reflection.

DELEGATE STUDER: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Yes.

DELEGATE STUDER: Can I ask another question?

CHAIRMAN GRAYBILL: Yes, Mr. Studer.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE STUDER: You haven't got it exactly right. You know, they prosecuted him for going across the state line with a car; now I want to prosecute him for swiping the car. I mean, isn't that two different actions?

DELEGATE DAHOOD: Basically, Delegate Studer, the courts look at it from the standpoint that there are certain operative facts within a particular crime or a particular area of criminal activity. And that argument has been used a number of times to try and get around the double jeopardy provision, but the courts always say that if you're in the course and conduct of a particular activity to accomplish a particular act, either you are going to be tried on a number of counts at that particular time for the various laws that you may have violated in trying to achieve this particular criminal objective, or the courts and the prosecuting officials are prohibited from going back into it. And I know precisely what you have in mind. You might be able to say, "Well, even though he's only done this one thing, he's violated a number of laws." He's violated, perhaps, a law of break-in and entry, perhaps a malicious destruction of property, asportation of the property itself. Perhaps in taking the car, there was an assault and a battery. There are a number of things that could take place. If you want that individual convicted for all of those independent criminal transgressions, even though they come within the same criminal activity area, then you must allege different counts at the time that he's being tried. If you elect to go ahead just on one count, you can't say, "Well, I'll try it on one count; and if I don't make it there, then I'll come back and get the guy on the second count; and if I miss there, I'm going to get him on the third; and if I miss there I'm to get him on the fourth." That's not permitted. Have I answered your question?

DELEGATE STUDER: Yeah, but not too good. I ain't satisfied with it. (Laughter)

DELEGATE DAHOOD: All right, Delegate Studer, thank you very much.

CHAIRMAN GRAYBILL: Mr. Dahood, you've answered his question.

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Dahood, would you yield?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE LOENDORF: Is your answer to Mr. Studer's question this: that where there are two acts, the act of stealing a car and the second act, the act of taking the car across the state lines, that there-may there be a prosecution under the federal law for violation of a federal law, the interstate transportation, and also a subsequent prosecution under our state law for the car theft?

DELEGATE DAHOOD: My answer is that under our amendment, that cannot take place.

CHAIRMAN GRAYBILL: Is there further discussion of Section 25? If not, members of the body, you have before you, on the motion of Mr. James that when this committee does arise and report, after having had under consideration Section 25, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, I postponed this until after Mr. Kelleher made his motion awhile ago, but Mr. Kelleher, would you like to make your public recantation now? (Laughter)

DELEGATE KELLEHER: Oh, it isn't that bad, Wade. I just would like the journal to show that I was on that wrong-way trip with wrong-way Harrington; I was in that airplane yesterday with you, Dan. I meant to vote on Section 14, was it, on the 18-year-olds having adult rights. I wanted to show that I thought I was voting on the amendment, and I wanted the record to show that I'm in favor of 18-year-olds being declared adults. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, that's number two of the two people that voted against

that required roll call vote yesterday; they've both admitted they were wrong now. (Laughter) We're glad to have the record show that you two meant to be with the majority, and I'm still looking for the guy that made us go on a roll call on that one. (Laughter)

All right. Mr. Campbell, do you wish to recant?

DELEGATE CAMPBELL: No, I certainly don't. I would just like to congratulate Mr. Kelleher and Mr. Harrington and say that it was the first unanimous vote that we've ever agreed on anything. And I'm certainly happy it's on the record, and it couldn't be for a better group. So thank you very much.

CHAIRMAN GRAYBILL: All right. Now we're on Section 26. Would the clerk read 26.

CLERK SMITH: "Section 26, Trial by jury. The right of trial by jury shall be secured to all and remain inviolate, but in all cases and upon default of appearance or by consent of the parties expressed in such manners as law may prescribe, a trial by jury may be waived or a trial had by any less number of jurors than the number provided by law. In all civil actions, two-thirds in number of jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous." Section 26, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 26 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: You will see, on page 39 of our Bill of Rights booklet, the comments on this section. We have kept it the same except for two changes which we feel will allow a great deal of flexibility in the law. First of all, a number less than 12 could be used in any civil or criminal trial if the defendant or the parties agree. Second of all, a jury trial could be waived by a defendant. Now, this is important especially in the smaller counties where a jury trial may come up [illegible] quate county jails until the next jury term. This would allow him to intelligently waive this right and allow him to be tried by the judge without a jury. The second-or the third change in this would require a unanimous jury verdict. As you know, under the old Constitution, a misdemeanor is two-thirds of the jury in a criminal action [and] could convict. We feel that the misdemeanor status for any criminal action should require the same standard of proof, and that is beyond a reasonable doubt. We do not feel that we can justify taking away a man's livelihood, putting a permanent criminal record on him, for anything less than a unanimous jury verdict. In the federal courts, a unanimous jury verdict is required in all civil and criminal cases. We have talked with the Montana County Attorneys Association about these two changes. They did enthusiastically accept them, and I would recommend that they be adopted by the Convention. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank, do you want to—

DELEGATE HABEDANK: Mr. President [Chairman]. In lieu of the amendment which I sent up to you, I would propose amending this section on line 5, page 39, by inserting between the words "actions" and "two-thirds", the following words: "and in criminal cases not amounting to felony".

CHAIRMAN GRAYBILL: What line was that, Mr. Habedank?

DELEGATE HABEDANK: It would be on line 5, page 39, of your particular one.

CHAIRMAN GRAYBILL: Seventeen?

DELEGATE HABEDANK: Line 5, page 39, between the words "actions" and "two-thirds".

CHAIRMAN GRAYBILL: All right. That's on line 19, page 9. In other words, Mr. Habedank proposes an amendment to Section 26, on line 19, page 9, of the first text: "In all civil actions and in criminal cases not amounting to felonies"-you wanted it "felonies", plural?

DELEGATE HABEDANK: I was using "felony", singular.

CHAIRMAN GRAYBILL: All right, to a felony, two-thirds number of the jury could render a verdict. In other words, it would have the effect of making misdemeanors in civil and criminal

DELEGATE HABEDANK: That is correct, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Habedank, you may discuss that.

DELEGATE HABEDANK: Mr. President [Chairman]. The words I have inserted and the way it is inserted would make the present proposed Section 26 read as our prior Section 23 did. I am aware of the thinking of the majority, but I do not agree with the majority that a conviction of a misdemeanor results in a lifetime criminal record. I feel that any case in Justice Court is appealable to District Court. If a person receives what he considers an unfair trial without any other reason than that, he can appeal the case to District Court and have it tried de novo. I feel a conviction by two-thirds of a jury is just as reasonable in a misdemeanor case as two-thirds in a civil case. And I strongly urge that the Constitution as it has been in existence for all these years be retained. I have not been in connection with the County Attorneys Association, but I'm a little perplexed that they would endorse such a change wholeheartedly. I rather think they may have stated that they would accept and have to work with it, which they would have to if they required a unanimous decision. I would like to ask Mr. Davis if he would yield to a question, as he has been in this business.

Mr. Davis.

DELEGATE DAVIS: Mr. Habedank.

DELEGATE HABEDANK: Would you state your feeling as a County Attorney about a unanimous verdict in misdemeanor cases?

DELEGATE DAVIS: I don't feel a unanimous verdict is necessary. I don't know what testimony the committee heard on this particular point. I would rather have some very serious reservations, if there were too much testimony, that this created any great amount of injustice. You're dealing with the lesser type offenses. And I don't know what the County Attorneys Association position is on it, as I'm no longer a County Attorney, so I'm not too much help. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President [Chairman] and fellow delegates. I resist the amendment very strongly. The whole concept of trial by jury is that the individual have the protection that he be declared guilty beyond a reasonable doubt. And if, in fact, the prosecution can show that he is guilty beyond a reasonable doubt, he will, in fact, be found guilty by a unanimous decision. The question of the seriousness, to me, seems to be somewhat begging the point. Whether it's a misdemeanor or a felony, it's still a question of prosecution. It's still a question that's on your record. It's a question which society is looking to in judging you as an individual. And I submit that if any of us are going to be tried on a count, it'll probably be on a misdemeanor charge, and I think that we need the protection of being found guilty beyond a reasonable doubt. And I think that this is a very basic right as an American citizen, and I think that this is taking a step in our Constitution to preserve this important right. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. Would Mr. Foster yield to a question?

CHAIRMAN GRAYBILL: Mr. Foster?

DELEGATE FOSTER: **Yes,** Mr. Chairman.

DELEGATE MELVIN: Mr. Foster, in the present Constitution, the provision is the same as the amendment. Did your committee hear any testimony that would indicate any abuses as a result of the two-thirds rule in the Constitution?

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Our committee discussed it in considerable detail, and we did not actually solicit or receive outside testimony. But in the course of our deliberations and in the course of our discussions, we felt that, in fact, a number of instances could apply where if a person had been found guilty of a misdemeanor, it could affect him in business. It could affect him in his normal life. It also could affect him if he was later charged with some other act. And we felt that it was an important right that he be found guilty beyond a reasonable doubt. We did not go out and solicit input of people that have been found guilty of misdemeanors. We didn't feel that this was necessary. But our committee did discuss it very fully, and we unanimously agreed that this provision should be in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Thank you. Mr. Chairman, I support Mr. Habedank's amendment as being the same as in the present Constitution. And it seems to me that that has served us quite adequately.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE BERG: Under the provisions of the amendment as you have it for a misdemeanor, it would require a unanimous verdict to acquit as well as to convict for a misdemeanor. Is that true?

DELEGATE DAHOOD: A unanimous verdict to acquit?

DELEGATE BERG: Yes.

DELEGATE DAHOOD: That would be correct; otherwise you would have a hung jury.

DELEGATE BERG: And if you have a hung jury, you'd have a mistrial and the action may be tried again.

DELEGATE DAHOOD: And that is the same situation as in a felony case at the present time, Mr. Berg. That's correct.

DELEGATE BERG: This, then, would obtain on misdemeanors. So that the delegation understands it, in order to acquit, you also require a unanimous jury decision. Whereas, under the old Constitution, it took two-thirds to acquit as well as to convict.

DELEGATE DAHOOD: Except for one thing, Mr. Berg. You're placing the emphasis on the wrong side of that particular issue. We're concerned with protecting the innocent from an unjust conviction. But your reasoning, if carried out logically, is correct.

DELEGATE BERG: And unquestionably, the jury would be so instructed, would they not?

DELEGATE DAHOOD: They would have to be so instructed.

DELEGATE DAHOOD: Mr. Chairman. I think the nonlawyer delegates would be interested to know that we have two requirements of proof in the system of justice that we have in the State of Montana. The heart and soul of the American protective system of criminal justice is reasonable doubt. That system exists first and foremost for the protection of the innocent. In a criminal case, you are compelled to prove that the defendant is guilty beyond a reasonable doubt, in different terms but to the same effect, to a point of moral certainty, before you cast your vote in favor of guilty. In a civil case, the requirement of proof is substantially different. All that is required in a civil case is that, upon the scales of justice, the evidence tips ever so slightly towards one party or the other for that particular party to prevail. In other words, if you have a quantum of proof that is measured as 100 percent, if you have 51 percent in a civil suit, you're entitled to the verdict of that jury. You don't have moral certainty: you don't have reasonable doubt involved. In a criminal case, the state may have proved its case by 99 percent of the evidence, but a reasonable mind, because of that 1 percent vacuum, many engender or harbor some reasonable doubt; and under our law, solidified by the wisdom of thecenturies, that individual is entitled to be found not guilty. If the rule be, then, from that reasoning, thatin all criminal cases, in order to have our system of justice work as we intend it to work, you have to be found guilty beyond a reasonable doubt regardless of whether it's a felony or a misdemeanor. How can you apply that reasoning to a misdemeanor case where four out of six have voted for guilt and two have not? How can you say, then, that this individual has been convicted beyond a reasonable doubt when two competent citizens have said, "We are not satisfied"? Has reasonable doubt been really satisfied in that situation? Does moral certainty really take over and command those facts to a point where we can say that, to a moral certainty, his guilt has been established when two competent citizens have said "No, we are not satisfied"? And the misdemeanor case is far more important now than it was before. We discussed this issue with respect to the rights of young people. And my colleagues can tell you of sheets that are sent to the sheriffs office, and to the prosecuting officers, from the federal enforcement authorities, from the FBI headquarters in Washington. You may think that a misdemeanor doesn't mean anything, but let me tell you this: the vast record-

particular mode of life, and they will show whether or not the accusation has been made and what the result of that accusation has been. And it is important. A misdemeanor is a criminal matter, even though of less severe import than a felony matter. But the reasoning behind it is the same; the spirit that protects the innocent as opposed to the guilty is the same. And if we're going to have any consistency, any logical run of reason throughout all of the law, which is what we should have, if we're going to have a soundlegalcriminal law system, then the mode of proof-the requirement of proof, the requirement of verdict must necessarily be the same. And I must support the position of our committee.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I wonder if I could ask Mr. Dahood two or three questions in a row here.

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield—

DELEGATE DAHOOD: I yield.

CHAIRMAN GRAYBILL: -for a series of questions?

DELEGATE KAMHOOT: Wade, this is for my own knowledge mainly, now, so I may know how to vote. We're talking about minor traffic violations, are we?

DELEGATE DAHOOD: We are.

DELEGATE KAMHOOT: Yes.

DELEGATE DAHOOD: Anything that constitutes a misdemeanor.

DELEGATE KAMHOOT: Yes. Then, in the case of a minor traffic violation, it is this person's right to demand a jury trial. Is this also true?

DELEGATE DAHOOD: That is true.

DELEGATE KAMHOOT: Then he does not have to hire an attorney?

DELEGATE DAHOOD: He does not, in a misdemeanor matter or in any other matter.

DELEGATE KAMHOOT: So he has no expense himself by asking for a jury trial?

DELEGATE DAHOOD: He does not.

DELEGATE KAMHOOT: I see. Yeah. well, thank you, Wade. I'd like to reiterate a little something that happened in our area. Now, I don't know very much about courts; I've never been into one, only as a witness or a juryman. We had a case where there was a young person that had already had two convictions against him for bad driving of his car. He was brought into court. He demanded a jury trial. He did not hire a lawyer. He had no expense. The jury system of selecting for these little traffic things is very loose. They have a panel, and the first six that show up, they seat them on a jury. His defense was-well, the charge was for careless driving and inconsiderate, and several other things. What he had done-and he didn't deny it at all-he would come to an intersection where there was a stop sign and he would go through it in a proper manner. Then he'd floorboard his car and spin his wheels for three-fourths of the block; then he'd set the brakes and slide for the other fourth up to the next one. He did this in three stop signs in succession. The policeman observed all of this, and he thought that this was grounds for bringing him into court and he did. He had a witness. He defended himself. The defense was solely that he'd gotten some bad gasoline in his car and it just sputtered a little once in awhile. The only way he could clear it out was tromp on the gas, give it full throttle. Then another fault had occurred that he didn't know about and the throttle would stick. So consequently, he went through three intersections, three blocks and spinning his wheels for three-fourths of the block and sliding them to the other fourth because of malfunctions; first it was bad gas, the next was that the throttle would stick. Now, this was the defense. Now, he was convicted; his driver's license was taken away for 60 days. But that was not a unanimous decision. Now, it's very easy to get someone on that jury that's going to stand up for that kid for whatever he does. So I think this is completely ridiculous. I think you're going to just turn something loose here that you don't want to live with, so I would certainly support the amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness. First of all, Mr. Arness, the journal may show Oscar Anderson is here and may vote.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. I have been a County Attorney and a City Attorney. And I'm not one right now, but I have prosecuted a number of these cases, including a number like Mr. Kamhoot has described. In fact, that sounds

very much like the typical City of Libby case. I think that County Attorneys and City Attorneys wouldn't object to having a unanimous verdict despite what's been said here about this. I can't, of course, speak for the association presently, but it seems to me that this would be something that the prosecutor would probably be indifferent to one way or the other. And certainly, as the members of the committee have already pointed out, this is the kind of thing that the defendant would be a good deal more interested in than the prosecutor. And the defendant certainly had his representatives on the Bill of Rights Committee. I think that the reference to the County Attorneys and their approval of this section probably referred to another aspect of this section, which County Attorneys would be quite interested in and which I'd like to talk about after we get over this one. But so far as this question of two-thirds or a majority is concerned, I'm sure the prosecutor would be, for the most part, indifferent to it. This is, after all, a description of what the federal system is, and that works, and they don't have any trouble with that. I think that the amendment should be defeated, and I'd say that as a former prosecutor. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I rise to oppose the amendment. What we're talking about is not just a traffic ticket, it's not a parking ticket, it's up to 1 year in the county jail-anything less than going to prison for, and that's a big, big crime. How many of us would want to spend 11 months in a county jail? How many of our families would ever want to have this sort of thing? We hope we never would. Now, the crime in many cases-in misdemeanor cases where I've had, that Mr. Dahood has had, that Mr. Murray has had-Mr. Mm-ray, being a County Attorney was on the Bill of Rights Committee. We discussed all of these things. We felt that the protection is needed for the individual, not the prosecutor. We don't seem to think that the prosecutor should have the easiest life possible to put the criminal records on our citizens. Many times these misdemeanors will deprive a man of his livelihood. If it's a driver's license, if there's a close question, should he be convicted? Should he lose his driver's license? Should he lose his livelihood? And this could run into thousands of dollars a year. Should his family be forced to go onto welfare cm these things? These are very serious questions; and after careful con-

Murray's experience-and I've talked to the past President of the Montana Bar Association, Cale Crowley from Billings, on this. He felt it was a good idea. He supported it. The County Attorney's Association has not met on it as a group; I only talked with its President. I did talk about the entire section with him. I don't mean to infer that they're going to come out and wave the flag in support of the whole thing, certainly, at the steps of the Capitol building. But he did feel that this section, as recommended by the majority report, would be a substantialimprovement over the present law. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman] and fellow delegates. I think we should clarify one thing about how this works: in Justice Court or Police Court that Mr. Campbell appears in as he mentioned and you defend someone, if there's a two-thirds vote-verdict in favor of the defendant, he's acquitted, the case is over. The County Attorney can't prosecute further, and he's happy to have it disposed of. If there's a two-thirds verdict and the man is convicted, the state may very well just be started, because all you have to do is appeal to the District Court and you have the case all over again. I couldn't care less, if I were still a County Attorney, whether you had the two-thirds, but it's a two-edged sword. In other words, you can dispose of a lot of cases if you have a good defense and are found innocent. Then, of course, you're completely off the hook with only two-thirds. The point that Mr. Berg is trying to make: if you're found guilty, you can go right to District Court, by simply filing a notice of appeal, and have a unanimous verdict required for your conviction. It's still two-thirds in District Court on a misdemeanor. All right. Anyway, you can still appeal and get your second trial all over again on your District Court rules. But as far as the prosecution is concerned, it would give them a clear mandate. If you don't get your two-thirds, I wouldn't think that they would be pursuing the case any further. If you do get your two-thirds, they have their other right. But it's not a big issue, I don't think, as far as any of the County Attorneys or law enforcement-the problems that have been hung on the law enforcement by the Bill of Rights and the Supreme Court far exceed this. This is really secondary, so whatever action is taken on it, I wouldn't be concerned with.

DELEGATE CHOATE: Mr. Chairman. There's been quite a little talk about improvement of justice in our lower court. And I think that if we're going to look for some improvement, it would certainly be fair that we knead out the same kind of justice there on misdemeanors as would be the case in District Court or higher court. And I support the majority report.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I was formerly a County Attorney. I am no longer, and I don't intend to be any. But I would-should be arguing for the majority, since I'll probably be a defense attorney in some cases. But I rise to support Mr. Habedank's amendment here. In my experience as County Attorney, this two-thirds vote in Justice Court has worked very well. I've never seen any hardship that is created. I think in certain cases, I think we have to have some protection for society also. And I have seen most of these cases that go through Justice Court at the present time are DWIs—driving while intoxicated. And I don't care what kind of a case you have, you always have someone on the jury, if you talk to them afterwards-you know, what they thought of the case, et cetera-there's always maybe one or two on there that'11 say, "Oh, sure he was, but let him go. You know-he'll lose his license", et cetera. I don't think society is being protected with that kind of an attitude. And I think a two-thirds vote is a protection for the defendant, either for a conviction or acquittal. If you get a two-thirds, you haven't proved your case, you're out of court. I think the amendment will put it back. And I think it's been reasonable. It would work very well, and I think we should support it. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. May I ask Mr. Dahood a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROMNEY: Mr. Dahood, I'm not sure that I heard accurately. Did I understand you to say that in cases of accusations of violations amounting to a misdemeanor, or in convictions of same, that the data was sent to Washington to Mr. Hoover's apparatus or someplace else?

DELEGATE DAHOOD: When they investigate, they seem to pick up that information. Delegate Romney.

DELEGATE ROMNEY: Mr. Chairman, another question. Does that mean that the FBI is maintaining a dossier on all of us who are accused of a misdemeanor?

DELEGATE DAHOOD: I don't know. I've seen some of the reports that do reflect what action was taken with respect to misdemeanor matters.

DELEGATE ROMNEY: Thank you.

CHAIRMAN GRAYBILL: Is there further discussion? If not, the question is on Mr. Habedank's motion that we add, on line 19, to Section 26, the phrase: "In all civil actions", then add "and in criminal causes not amounting to a felony, two-thirds the number of the jury may render the verdict." We'll have a roll call vote. All in favor of Mr. Habedank's amendment, say Aye; all opposed, say No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk tally the vote.

Aasheim ..... Aye
Anderson, J. Aye
Anderson, 0.. Aye
Arbanas ..... Nay
Amess ..... Nay
Aronow Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg ..... Nay
Berthelson Aye
Blaylock Absent
Blend ..... Nay
Bowman Absent
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Absent
Burkhardt .. .. .. Nay
Cain ..... Nay
Campbell Nay
Cate Absent
Champoux ..... Absent
Choate.. .. .. Nay

Conover ..... Nay
Cross.. ....Aye
Dahood ..... Nay
Davis .....Absent
Delaney ....Aye
Driscoll ..... .Absent
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen .....Aye
Etchart .....Absent
Felt .....Absent
Foster ..... Nay
Furlong ..... .Absent
Garlington .....Absent
Graybill ..... Nay
Gysler ....Absent
Habedank ..... Aye
Hanson, R.S..... Nay
Hanson, R. ..... .Absent
Harbaugh ..... .Absent
Harlow ..... Nay
Harper.....Absent
Harrington ..... Nay
Heliker ..... Nay
Holland. Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ....Aye
Kelleher ..... .Absent
Leuthold .....Aye
Loendorf ..... .Absent
Lore110 ..... Nay
Mahoney ..... .Absent
Mansfield ..... .Absent
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ....Aye
Melvin .....Aye
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal .....Absent
Reichert ..... Nay
Robinson ....Absent
Roeder ..... Nay
Rollins ..... Nay
Rygg .....Absent
Scanlin Nay
Schiltz Nay
Siderius.. Nay
Simon .....Aye
Skari .....Aye
Sparks.. .. .. Nay
Spew ..... Nay
Studer .....Aye
Sullivan Nay
Swanberg .....Aye
Toole .....Absent
Van Buskirk .. .. .. Nay
Vermillion Nay
Wagner .....Aye
Ward .....Absent
Warden .....Absent
Wilson .....Aye
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 28 delegates voting Aye; 46 noting No.

CHAIRMAN GRAYBILL: 46 having voted No and 28 having voted Aye, the motion is defeated. And we're considering still Section 26.

Mr. Arness, do you want the clerk to read your amendment?

DELEGATE ARNESS: Please, Mr. Chairman.

CLERK HANSON: "Mr. Chairman. I move to amend Section 26, line 15, page 9, of the Bill of Rights Proposal, by adding the words, following the word 'all' on line 15, as follows—quote-'civil cases and in all criminal cases not amounting to felony.' Signed: Arness."

CHAIRMAN GRAYBILL: Just a minute. Mr. Clerk, may I have it a minute?

CHAIRMAN GRAYBILL: Mr. Arness proposes an amendment on line 15 of Section 26, so that the sentence would read: "Theright of trial by jury shall be secured to all and remain inviolate, but in all"-and then he adds-"civil cases and in all criminal cases not amounting to a felony-"

DELEGATE ARNESS: Then we should strike the word "cases" I see.

CHAIRMAN GRAYBILL: Strike the word "cases" "and upon default of appearance

by law, trial by jury may be waived." In other words, it has the effect, in my view, of not allowing a defendant in a capital-in a felony case to waive the trial by jury, is that right?

DELEGATE ARNESS: Correct, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Arness.

DELEGATE ARNESS: This is the portion of the change which I think that the County Attorneys would have liked. And for this, I think that probably they may very well have endorsed this, although I don't know. The effect of this would be to make it a good deal easier to be a County Attorney. I think, speaking from my own experience at that, that it's much easier to try a case without a jury. It requires a good deal less work and a good deal less preparation. And I think that the present rule, which does not permit a waiver of a jury case in a felony, is a good one. Most of these felony cases and most of the criminal cases are defended by young lawyers. Many of them are people without experience and more enthusiasm, sometimes, than legal training. I think that there is a temptation for them to waive the jury trial and that they may not fully be apprised of what they are doing or the disadvantages in waiving a jury trial on behalf of their client. Also, there is a certain trepidation about going before a jury. The defendant in a criminal case is, I think, entitled to a jury, especially in a felony case, because these are matters of serious import not only for the defendant but for society as a whole. And I feel that the jury case gives a good deal more exposure and a good deal more publicity and certainly a good deal more consideration to the case than just a trial before the judge. And it seems to me inconsistent to require that the verdict be unanimous in all cases, which I think is a good provision, and then on the other hand, to allow the jury to be waived, so that what essentially we have is a jury of one person to try the case. I realize that it probably would not be wise to put in this paragraph-or in this provision that all juries be 12-man juries. I would betempted to suggest such a thing, but as it is, I think that this amendment is sufficient. It would at least insure that, in felony cases, that there would be a jury. And I think that in such cases, that a jury is required and that it's necessary under our adversary system. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of Mr. Arness' amendment. It's been a long time since I've been a County Attorney; I think it's been almost 30 years since I was last County Attorney. But I do know, in the criminal cases, most of them occur with indigence being charged, where the court makes an appointment of some young lawyer in the community to defend the accused. And I endorse much of what Mr. Arness said in that regard, but there's one more factor: that on a trial to the court without a jury, it's much less expensive for the county. There's quite a bit of pressure put on the appointive counsel to waive a valuable right of a jury to-which the accused is entitled to have. Also, the temptation on the part of the defense counsel, who is appointed and who gets about the same amount of money whether he disposes of the case easily or whether he works hard at it, is to take the easy route. And I don't think our form-system of justice should be influenced in that manner. I don't care who the person is. Under our law and under our theory of justice, that individual is entitled to the best effort possible in his behalf. He is entitled to put forth whatever defense he may have in the best light possible. And oftentimes, the judge also is somewhat desirous of making his court look good in the eyes of the taxpayers and the County Commissioners, to cut down costs. And this opens up a whole Pandora's box of reasons why the pressure is placed upon a defendant, upon the defendant's appointive counsel to waive the jury, do things the easy way, save taxpayers money. And, therefore, I support Mr. Arness. This is an important matter also in regard to the protection of the individual rights of people.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise to oppose the amendment. I certainly feel that this is not in any way eliminating a person's right to a jury trial. Hecertainly does have it. What it does is give the individual the option of determining, with his attorney, whether or not it would be in the best behalf of his defense to waive the jury trial, which may not come up in this county for another 4 to 5 months while he's still in the jail, or go directly to the judge now, waiving the jury. The burden is on the state always to prove that he knowingly and intelligently waived this constitutional right. They would certainly see that this is protected. As far as the public defenders, I've found that the younger public defenders have by far been the best public defenders and that many of the old have been ineffective in many

cases. It would allow the Legislature to be flexible in dealing with this. In the Criminal Code, it would allow them to set the standards that they want; they would not be bound. It would give them flexibility, and I feel that it would still give the protection to the individual. And, as I said, I have spoken with this entire section to the past President of the Montana Bar Association, and he thought it would be a very good step forward. And as a defense attorney on this, it's something that1 would like to see; and our committee felt would be a great improvement in the present law. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion? Very well. The issue arises on Mr. Arness' motion to add the term-the words "civil cases and in all criminal cases not amounting to a felony" on line 15, the effect of which would be to make it impossible for a defendant to waive the jury trial on a felony. So many as shall be in favor of Mr. Arness' motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails. We are now back discussing Section 26.

And, Mr. Holland, do you have an amendment?

DELEGATE HOLLAND: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want the clerk to read your amendment, Mr. Holland?

DELEGATE HOLLAND: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to amend Section 26, page 9, line 14, following the word 'shall' by inserting-quote-'in all cases in law and equity'-end quote. Signed: Holland."

CHAIRMAN GRAYBILL: What line was that?

CLERK HANSON: Line 14 on page 9.

CHAIRMAN GRAYBILL: "-in all cases in law and equity"?

CLERK HANSON: Yes, sir.

CHAIRMAN GRAYBILL: Very well. Mr. Holland has an amendment, the purpose of which is to add, on line 15, Section 26, after the word "cases", the words "in law and equity", so that the phrase reads: "but in all cases in law and equity upon the default of appearance", et cetera; is that right, Mr. Holland?

DELEGATE HOLLAND: Yes.

CHAIRMAN GRAYBILL: Very well. Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. I've discussed this matter with Mr. Dahood, and what I wanted to do is clarify the right of a person in a civil case to have a trial in either law or equity. Mr. Dahood has stated that he personally doesn't have any objection; I don't know if he can speak for the committee. But I wanted this for clarification purposes.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Mr. Holland approached me with respect to the amendment, and I indicated to him that I certainly had no objection. And I think I should explain that within the civil area of the law in the State of Montana, as well as in all other jurisdictions, we have a certain area that we call the area of equity. And although within that area you may have the same major concern with respect to the rights of the individual from a civil standpoint, nevertheless, traditionally, the courts have said that in those areas you do not have a right to a jury trial. Sometimes, in those areas that we referred to as the areas of equity, the consequences may be more severe than they are in those civil areas of the law where the right to a jury trial is permitted. I see nothing in Mr. Holland's amendment that is going to cause any particular problem in the administration of justice. It may well improve it, because within this so-called area of equity, in the event that there are not any fact questions for a jury to decide and what is before the court is solely a matter of law, a question for a trained judge to answer, you would not have the right to a trial by jury, be&use a jury is basically the judges of the facts. Moreover, under our rules of civil procedure, even though we indicate in our Bill of Rights that every citizen is entitled to a jury trial, still that individual citizen or party litigant must invoke that right by making demand, at the appropriate point in the civil court proceeding, demanding

that he have a jury trial. In most equity actions, I am satisfied that counsel representing the respective parties would probably not invoke the right to a jury trial. But as Mr. Holland has indicated by his amendment, there may very well be cases within the area of equity where the fact dispute is very serious and very complex and a fact dispute that traditionally should be decided by a jury. I think I speak on behalf of my committee; I have looked in the direction of the committee members that are on the floor. I don't see anyone disagreeing with the statements that I have made, and, consequently, on behalf of the committee, we do not oppose the amendment proposed.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: May I ask Mr. Holland a question?

CHAIRMAN GRAYBILL: Mr. Holland, will you yield? Get Mr. Holland.

DELEGATE ARNESS: (Laughter) I guess he doesn't yield. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis, you take over, and we'll get Mr. Holland back.

DELEGATE DAVIS: Mr. President [Chairman] and fellow delegates. Don't leave, Mr. Dahood; I might want to ask you a question. I oppose the majority committee who has had such a well-thought-out and well-reasoned proposal here, abandoning their position so easily on this matter of in law or in equity. We haven't-if, as long as this committee didn't have the opportunity-give the good reasoning to this as they have to other-You can sit down; I haven't got a question yet, thanks, Wade. No, go ahead. (Laughter)

CHAIRMAN GRAYBILL: Delegate Dahood.

DELEGATE DAVIS: It comes to mind the traditional procedure that's been established in our courts for a long time-We don't know-it hasn't been explained by Delegate Holland or by Delegate Dahood in abandoning the principal position-what we're going to have this extend to. Are we going to have it extend to the equitable matters of child custody cases and have the jury sit in on such matters as this? On dependent neglected children? On adoption matters? On accounting-complicated accounting procedures that are equitable matters? On title matters? Quiet title actions that are equitable matters, principally complicated legal proceedings, where the law is what will prevail and there are no questions of fact? I would seriously resist changing the language of the present Constitution in this regard without some strong comments and a strong position in this proposal or some strong reasoning in this journal as to what it's intended to affect and what it isn't intended to affect. The traditional concept, as you all know, in jury trials and civil cases is the jury tries-determines the factual situation and the court determines the law. And if you have a question and it's a legal matter, then, of course, you have no need for a jury and they cannot make any determination. They have to follow the law or it's a mistrial. So I support the majority proposal as it's written in the majority proposal and oppose the proposed amendment by my good friend, Delegate Holland, from Silver Bow County. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: **Yes,** I see Mr. Holland is back. And, of course, my question went to what Mr. Davis was talking about just now, and I was wondering particularly what equity matters you had in mind. Is it divorce, quiet title, or accounting, or what is it that you're after here?

DELEGATE HOLLAND: All equity matters, Mr. Arness. Divorce, I might state for you and Mr. Davis, has always been, my understanding, a statutory matter and isn't an equity matter at all. What I'm talking about is factual questions. As the lawyers all know, law in England grew up in two courts: one, the equity, the ecclesiastical court in which no jury trial was granted; theotheroneis the common law system in which jury trials were always granted. Now, for some strange reason-1 think this is the traditional language that's in here-"The right of jury trial shall be secured to all and remain inviolate." Now, for some strange reason, the Montana court has held in equity matters--and I'm not talking about divorces; I'm talking about equity matters, factual questions like a question of-an equity question on a contract. That is-supposing that you claim the right to set aside a contract as distinguished from a breach of a contract. The court does not grant that one, because it grew up in equity--a jury trial, because it grew up in equity, and does grant it in the other. And I say that a jury should be granted in all matters, whether they come out of ecclesiastical courts or otherwise. Now, Mr. Davis speaks of child custody. I would take it he was talking about the state taking the children away from the mother, rather than the custody case in a divorce

case. Those are statutory in matter and wouldn't be covered by an equity action. It's only those actions that came out of equity as I had referenced to. This is where they've been depriving-for years they've been depriving people in those cases of a jury trial. Now they want to put this language in so that any contested action that came out of the old common law or the equity system, you get the right to jury trials. It seems to me that when you got two things: you got a contract; one, you're going to reform it, you can't have a jury; the other, you got a breach and you do have a jury. It doesn't make sense to me. I say that if you've got a factual question, you should be entitled to a jury in either action. And I'm not referring, of course, to all these statutory actions at all. Divorces wouldn't be covered. Child custody-the state taking away custody of children, things like that wouldn't be affected at all. It would only be in the actions coming out of equity that this would go to.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: May I ask another question on it?

CHAIRMAN GRAYBILL: Yes.

DELEGATE ARNESS: Mr. Holland. It's been my understanding that the court has ruled that these matters that you talked about as statutory are, in fact, equity matters-quiet title, accounting, divorce, this type of thing. Aren't they considered equity? And isn't that what you had in-that's not what you had in mind then?

DELEGATE HOLLAND: Quiet title, Mr. Arness, I believe is equity, but divorce isn't. Divorce is statutory, which is-in other words, there was no divorce in the ecclesiastical court, so it's not considered an equitable action. Title to real estate-the quieting title to real estate does come, I think-maybe we-1 should do more research on quiet title, but I believe it is equitable in action. Now, what I'm saying to you, Mr. Arness, is if we have a factual question-if, for instance, your client has a deed, he claims it's a good deed; my client resisted that this is a good deed. Now why can't a jury hear the facts and rule in that matter, rather than having the court do it?These-the fact that we lawyers have been making mistakes for a thousand years doesn't mean we could--we should continue to make mistakes. What I'm saying is I'm a very strong supporter of jury trials; and I'm saying that in all factual cases-what reason or what logic can anyone say that because in England they did it a thousand years ago, we have to continue to do it today? I'm saying that if we got a factual question and it comes out of equity, a person should have a right to a jury trial just the same as whether it came out of the common law court.

DELEGATE ARNESS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness. Let's have it quiet, please, in the chamber.

DELEGATE ARNESS: Apparently, Mr. Holland and I have a disagreement on this. It's my understanding, at any rate, that the courts of chancellery-or the chancellor's courts were not necessarily the ecclesiastical courts and that equity would comprehend, under our system, all things that are not criminal in nature or not matters at law as we talk of things at law. I'm not talking against the proposal, but it seems to me that what we're doing is granting trial by jury in all cases regardless of what they are and of what nature they may be. And it seems to me that it's something that hasn't been considered by the committee. I just think that the Convention should be aware that this is something that doesn't seem to have been fully considered. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I would like to respond to both the points of Delegate Davis and Delegate Arness. I think that, speaking for myself, the reason that I'm so readily amenable to accepting this amendment is because-that when I considered it-and I think that most other nonlawyers would approach it the same way-when I read the words "the right of trial by jury shall be secured to all", that's the way I interpreted it. And so, when additional wording is put in there to further clarify the fact that, in truth, trial by jury will be secured to all at their request, this is the reason that I support the question without a great deal of deliberation or consideration. Because that was my understanding when we first presented the section, and when question is brought that, in fact, maybe that wording isn't sufficient to secure a trial by jury to all, then I support that position. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I'm not one of the fraternity of attorneys and so I don't speak in "legalese", but according to Webster's

dictionary, there is a third definition of this word "equity" which raises some questions in my mind, and perhaps one of them could clarify it. It says, "the money value of a property or of an interest in a property in excess of claims or liens against it; a risk interest or ownership right in property". And I'm really puzzled by this, and I really would like to know what they mean when they put in the word "equity".

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. In response to the question of Delegate Cross, the courts have traditionally referred to certain cases as falling within the ambit of equity, and as Delegate Arness has pointed out, it stems from the jurisdiction of the chancellor's court in England. In 104 Montana, in a case that involved this question, the Supreme Court of the State of Montana did say that the conditions that existed with respect to the distinction between equity and law shall pertain notwithstanding the constitutional provision that you have before you, and the Supreme Court ruled that the framers of our Constitution did not intend to put aside the distinction between the law and the equity insofar as the jurisdiction of the court is concerned. And our court indicated there is no right to a trial by jury, notwithstanding this constitutional section, in those cases that fall within the jurisdiction of the common law chancellor's court. Question: why did we not expand it in the committee? One, we had no delegate proposals; two, we did not have a citizen suggestion; three, perhaps sometimes lawyers are timid in dealing with the broad scope of their profession. In a particular case, where we represent an individual client, we don't know the meaning of the word "timidity"; we're out to represent our client to the fullest extent of our ability, our energy, and the law. But when we're dealing in these procedural matters, we, of course, do not want to bring about changes that some may consider to be drastic changes. There would be some problem, and Delegate Davis has pointed to some of the problems that we might have. Precisely how would that particular right be restricted so as not to apply to certain cases where a trial by jury would not serve the cause of justice? And, of course, we're talking about the domestic relations suit, the divorce matter, the separate maintenance matter, the child custody case. As Delegate Holland has indicated, it is not his intention to have that particular right to trial by jury apply to that type of case. And I think we have made the record here this morning, with this dialogue and with this debate, so that if the amendment is adopted, it is not going to be applied to those situations. But the fact, nevertheless, remains true as Delegate Holland has pointed out. It does happen on occasion, in cases that are denominated equity cases simply because traditionally they were within the jurisdiction of the old chancellor's court where the fact controversy is won, that under our American concept of justice, the citizens of the community should resolve and decide for the citizens in controversy. I cannot stand in opposition to the amendment because the amendment would serve, in certain areas of the law, the best interests of the citizens. And other than that, I'm not prepared to make any additional comments, and I hope that my colleague, Louise Cross, is satisfied with my answer. She doesn't know, but thank you anyway, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I rise in opposition to the amendment. I think it's better taken care of by the Supreme Court and its rule-making authority, or taken care of by statute. Actually, it's been working fairly well for 500 years. If there is a substantial question of fact in most equity cases-he isn't required to-a judge will call a jury to decide that question of fact. This is a substantial departure over what the present practice is, and it might substantially increase the cost of the counties as to juries. I think it should be decided by the Legislature.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I want to call your attention to the fact that equity is not just limited to some of the matters that have been discussed here so far. It includes, among other things, interpretation of instruments such as wills; it includes the construction of contracts; it includes the recision-that is, the cancellation-of contracts or other instruments of record; it includes the reformation of those contractual relationships between individuals; it includes matters of trust. All of these are considered, inherently, within the jurisdiction of equity. Now, I suppose that, at least in our court system in Gallatin and Park County, that there are perhaps at least twice-perhaps three times-as many equity cases tried as actions at law. Generally speaking, when we're speaking of actions at law, we're looking at money damage; we're looking at negligence cases; we're looking at actions to recover debt. I

believe that these actions constitute less than half of the matters considered in the District Courts today. And if the District Court was required to have a jury in all equity cases, then I think it will cause considerable congestion on court calendars, and this could raise a serious problem just in the administration of justice. I call this to your attention for your consideration.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Holland's motion. Mr. Holland, do you want to close?

DELEGATE HOLLAND: Yes. I have just this to say to the delegates. Mr. Berg and Mr. McDonough and Mr. Davis have all-and Mr. Arness have all spoken about the-this right to jury trial. I think if you listened closely to them, what they said was, "We did it this way for 500 years, so why improve it now." And I suggest that we're getting all kinds of criticism for not making an improvement. We're not going to congest the calendar. We may add a little expense, but we're going to get more justice, and I don't see any reason for resisting something just because it's expensive if we're going to get better justice. I submit there never was a good distinguishment—a good reason for it. The original Convention wanted jury trials, obviously, and the court has overruled it. And I think if we make it clear here, we'll be able to have a jury trial in every contract action, whether it's recision, reformation, or breach. And why should your client be deprived of the right to trial by jury because the English system did it that way? I submit that the jury trial is the most important bulwark a citizen has in enforcing his rights, and we should extend it to equitable actions.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. Holland's amendment to Section 26. He would add, on line 14, a phrase so that the sentence would read: "The right of trial by jury shall, in all cases in law and equity, be secured to all", et cetera. So many as shall be in favor of Mr. Holland's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So many as are in favor, please vote Aye on the voting machines; so many as are opposed, please vote No. Have all the delegates voted?

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote being 44 against and 31 for, the motion fails. Very well. We're still discussing Section 26. Are there further amendments? Members of the committee, you have before you, on the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 26, that it recommend the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered, and it's adopted. Section 27, Mr. Clerk.

CLERK SMITH: "Section 27, Imprisonment for debt. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver upon his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud." Section 27, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 27 of Proposal 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: The committee voted unanimously to retain the former Article III, Section 12, unchanged. It was felt that the provision is an adequate safeguard for the right of one in debt to be free from imprisonment. No delegate proposals are received on this provision. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland—or Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that Section 27 be amended, in line 25 on page 9, by inserting a period after the word "debt" and deleting the rest of the sentence.

CHAIRMAN GRAYBILL: Mr. Joyce has

period after the word "debt", so it reads: "No person shall be imprisoned for debt", and then deleting the words "except in the manner prescribed by law, upon refusal to deliver his estate", and so forth.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I note that the recent North Dakota Constitution did just this. The additional language is obsolete. I don't think anybody has been imprisoned for debt for hundreds of years. I think it ought to be made clear that you can't be imprisoned just for being in debt. And if you committed some crime, you've defrauded somebody, you can be prosecuted criminally. And I think the archaic words in this section should be deleted to recognize the modern facts of life, which everyone agrees--or at least I should think everyone now agrees-that you shouldn't be thrown into debtor's prison. Thank you.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. May I ask a couple of questions of Mr. Joyce, please?

CHAIRMAN GRAYBILL: You may ask a series of questions of Mr. Joyce.

DELEGATE JOYCE: I yield.

DELEGATE MURRAY: Nothing serious-do you--would you anticipate, Delegate Joyce, there would be any problem for-under this section, as you propose to amend it, where you would have any circumstance arising on a contempt of court which might arise out of a debt?

DELEGATE JOYCE: No, I don't. I mean -as I understand it, the power of the court to put you in debt is the inherent power--or in jail for contempt is when you refuse to comply with the court order. And that's-in those cases where the court has the power to compel you to do something, such as, I take it you have in mind, to support your children.

DELEGATE MURRAY: Right. And I also have in mind the matter of investigation after a judgment is taken-you know, where you call a judgment debtor in-and the proceeding there.

DELEGATE JOYCE: Well, it seems to me when you call people in on the supplementary proceedings, you want to collect a judgment because the fellow has made a fraudulent transfer, why, you set aside the transfers. But I don't think the court has the power to put you in jail just because you won't pay the judgment. I don't think he should have. I don'tthink they have ever exercised it that way, to my knowledge.

DELEGATE MURRAY: Then it is not your intent to get around thosematters by making this amendment in any way, is it?

DELEGATE JOYCE: No, absolutely not. I think it-that the law should be that you just can't be imprisoned for a debt, period. And if you refuse to deliver up your property for the benefit of your creditors, if there are equitable procedures to compel you to do so, then you have to institute an action in the court, get an order of the court authorize--ordering you to do that. And if you don't do it, you're in contempt of court and the court imprisons you, then, at that time not because-just because you violated theorderofthe court, which the court has jurisdiction to impose on you; but I don't think that really should ever be done either. But—

DELEGATE MURRAY: Okay. Thank you very much, Delegate Joyce. After this dialogue, Mr. Chairman, I do not resist, on behalf of the committee, this amendment.

DELEGATE AASHEIM: Mr. Chairman, may I ask Delegate Joyce a question?

DELEGATE JOYCE: I yield.

DELEGATE AASHEIM: Mr. Joyce. I notice, under Section 12 of Article III in the Code, there's an annotation in 30 ALR as to alimony or maintenance as debt within constitutionalor statutory provisions against imprisonment. Have you looked into that question, or have you read the annotation?

DELEGATE JOYCE: I haven't, but I would say this: that if the argument is-1 would guess that the annotation says if the argument is made that you can't be imprisoned for failure to pay alimony, that you cannot rely upon the constitutional prohibition that deprives you of being imprisoned for a debt.

DELEGATE AASHEIM: Will Mr. Joyce yield again?

DELEGATE JOYCE: Yes.

DELEGATE AASHEIM: I would imagine that also, but I wonderedifyou had read the article referred to.

DELEGATE JOYCE: Well I-a truthful answer to it is that I haven't, but I'll be glad to go out and get it and read it and make you a bet that I'm right.

CHAIRMAN GRAYBILL: Mr. Drum. The Chair would like to point out to the delegates that when you stand in the back like that, it makes it very difficult for me to tell who's up. So I don't mind you talking to people, but when you--will you please move off behind the posts. I get a lot of criticism from the back row for not seeing them, and the main reason is that there's too much traffic back there. Anybody can-1 don't mind you going in and out, but when you're not doing anything, I wish you'd stay away from the back row so I can see who's back there.

Now, Mr. Berg.

DELEGATE BERG: [Will] Mr. Joyce yield to a question?

DELEGATE JOYCE: Mr. President [Chairman], I will.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE BERG: Would you object to an exception as for the support and maintenance of dependents?

DELEGATE JOYCE: Well, I don't think you should be able—

DELEGATE BERG: Go ahead.

DELEGATE JOYCE: Would I object to amending something in that connection?

DELEGATE BERG: Yes, including that in the amendment.

DELEGATE JOYCE: No, I wouldn't; because it seems to me that you can't be imprisoned for not supporting your children per se. The-what they have to do is, they charge you with a crime, in one instance-say for not supporting your dependents. That's a misdemeanor and you're charged with the crime and you can be imprisoned for that. And secondly, if you-say there's an order of the court that you're compelled to pay something and you don't pay it, they put you in jail because of-you're in contempt of court. But it doesn't seem to me that they should be able up your estate, and this gives the Legislature the authority to put you in jail, except in the manner prescribed by law, for debt. And I don't think you should ever have to go to jail for not paying your debts.

DELEGATE BERG: Well, Mr.-Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE BERG: As I construe this, a debt created by a court decree or a judgment can be distinguished in this respect: that a debt for payment of an obligation, such as a contractual obligation, is one kind of a debt; but a debt created for the support and maintenance of minors or for the support and maintenance of a divorced wife is also by court decree, and traditionally, that has been enforceable by the contempt proceedings inherent in the court, whereas an ordinary civil debt is not. And if we're to treat this word "debt" without that distinction, we may very well be preventing the court from enforcing it's decrees in domestic relation matters. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise in support of the Joyce amendment. One of the finest legal minds in Montana is Professor Larry Elison, who appeared before our committee in extensive hearings. After we had completed our final draft, I sent it to him, and he had very few comments to make. However, in this particular section, it was his recommendation— and I don't know that Delegate Joyce had talked to him-that after the word "debt", a period be placed. Discussing this with him, he said it would in no way affect the contempt powers of the court in divorce matters, in alimony matters. He felt it was as the law should be, and he fully supported this amendment. And I wholeheartedly agree and would support Delegate Joyce and recommend that it be adopted as amended.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I yield, Mr. Presi-

DELEGATE JACOBSEN: Now, it states, "No person shall be imprisoned for debt". Now, aren't there laws on the books already that said, "except in the manner prescribed by law"? What would be wrong with leaving "except in the manner prescribed by law" in this first sentence and delete the rest?

DELEGATE JOYCE: Well, I suppose it's a philosophical proposition. I just don't think that the Legislature should ever be able to pass a law to be able to put you in jail for a debt. I think that the concept of the debtor's prison is lost in antiquity.

DELEGATE JACOBSEN: one more question, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE JACOBSEN: Mr. Campbell spoke of the divorcee. I have a personal relation with a party that put her former husband in jail for nonpayment of alimony, and this did force him to pay it for awhile. Now, is this in the law right now?

DELEGATE JOYCE: Yes, and it would continue to be in the law under my amendment, because in order to put-1 mean, you've had-if you only know of one case, I know of hundreds, and every lawyer here knows of thousands. That's one of the biggest social problems of the day, I suppose. But the way you put people in jail for not supporting their children is that you get jurisdiction over them, you cite them into court, you have a hearing, you have the court make an order ordering [him] to pay a certain amount and then, if they don't pay it, they're in contempt of the court. That's how they're jailed. And it isn't-but you just can't go out and pick them up for not supporting them without some due process of law. And this-my amendment wouldn't affect it in any way. And I think what the framers of the original Constitution-I think they borrowed this from Colorado-and at that time, they were still putting people in jail for certain types of fraud on creditors; and I think that they don't do it anymore and that they shouldn't be able to do it anymore. And that's why I've offered the amendment. Our sister state of North Dakota has done it, and it seems to me that's the way it should be done.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. Mr. Joyce, would you yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE DAVIS: Now, Mr. Joyce, I want it thoroughly understood for the record that if I vote for your amendment and I don't pay my income tax, which is a debt, I cannot be imprisoned for that then. Is that correct?

DELEGATE JOYCE: No, it's not correct.

DELEGATE DAVIS: Why not? Isn't that a debt?

DELEGATE JOYCE: Because the State of Montana, I don't think, does make it a criminal offense not to pay your income tax now; but how they get you in the federal level, that they don't put you in jail for not paying the tax, they put you in jail for lying-for making a false return under oath, under perjury. But as I understand, the federal law is if you report your income and that you owe, like in your case, several thousands of dollars (Laughter) of federal income tax—

DELEGATE DAVIS:. That's over a 10-year period.

DELEGATE JOYCE: -and you report that you owe this money but you just don't have it to pay, that's a civil matter. They can come in, seize your property, collect it; but they can't put you in jail for it. And I think that's proper.

DELEGATE DAVIS: Thank you, Delegate Joyce.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I yield.

DELEGATE DAHOOD: Mr. Joyce. I must start with an apology. I stepped out of the room in connection with a phone call when you moved the amendment. May I inquire, then, for the record and for my own satisfaction, so that I may consider voting for your amendment-what you are saying is this: that no citizen shall be imprisoned for debt as such, but if some particular payment is ordered by the court and it is the determination by the court that that individual has the ability to pay and refuses to do so, he at that point can be cited for contempt of that court order. And for that contempt, the inherent power of the court to judge

a person to be in contempt, he can be ordered to jail until he purges himself of that contempt either by living up to some condition laid down by the court or paying the amount involved. Is that correct?

DELEGATE JOYCE: Well, let me answer it this way. We get back to the distinction between law and equity. I think the only way they put you in jail now is if the court has some equity jurisdiction where they have the power to compel you to do something and you don't do it; you're in contempt of court; they send you to jail. But I don't want the Legislature or any court, just because I don't pay somebody's judgment at law-say you sue me for $500 and get a judgment against you. As I understand the law now, no court has the right or the power to compel me to pay that judgment; you've got to collect it the best way you know how. And I don't think any court has the right to put me in jail for not paying it now, and I don't think they should have in the future.

DELEGATE DAHOOD: Mr. Chairman. May I ask Mr. Joyce to yield to another question? Will you yield?

DELEGATE JOYCE: I yield.

DELEGATE DAHOOD: Mr. Joyce, in a typical case where there is a judgment for payment of a certain sum of money and in order to enforce that judgment a writ of court is issued so that the defendant or debtor is examined in aid of execution and it is found that he is concealing assets that can be used to pay that honest debt. As you well know, under present law, if he refuses to disclose the whereabouts of those assets for execution so that debt can be paid, he can be judged in contempt of court and placed in jail until he purges himself. Now, by your amendment, would that situation then be prohibited?

DELEGATE JOYCE: Yes, I think it would.

DELEGATE DAHOOD: You think it would?

DELEGATE JOYCE: Yeah. Well, as I understand, the proceedings supplementary to judgment are equitable proceedings. You cite the man in and you ask him where his property is, and if he's discovered that he's concealing his assets, why, I don't think that--apparently under the current law, the argument could be made that he could be jailed for that. But if he refuses to disclose where his assets are in answer to a legitimate question, he could be jailed for contempt of court for not following an order of the court. My point is that I don't think that you should be able to jail anybody for debt.

DELEGATE DAHOOD: Mr. Chairman. One of the inherent basic powers of any judicial tribunal is the power to enforce its orders, its decrees, and its judgments. And if the day should ever come when a court does not have that power to enforce its orders, decrees, and its judgments, then we are substituting lawlessness for the law. And under the answer that has been given to us by Delegate Joyce, I must, in the interests of law and order, oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. May I ask a question of Mr. Dahood?

CHAIRMAN GRAYBILL: Mr. Dahood, do you yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROMNEY: Mr. Dahood. As a layman, I hear all through this Convention about the inherent powers. May-will you kindly advise me where the court gets its inherent power?

DELEGATE DAHOOD: The court, Mr. Romney, receives its inherent powers from the traditional concept under which the courts have developed through the common law which has been recognized in the American jurisdiction. The courts do have a certain amount of power that is given to them by statute, but the framers of that power assume that within the exercise of the type of justice that we have, there are certain powers that necessarily must run with the court for the courts to be able to function. If you were to take away these particular powers for the courts to act as courts, then you would not have any way of enforcing what the courts do in resolving controversy between citizens. And then the courts would cease to function effectively.

DELEGATE ROMNEY: Mr. Chairman, another question.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE ROMNEY: That means that the inherent power is not a power bestowed upon the courts-not just in this case, but in any case—by the people.

DELEGATE JOYCE: Yes, impliedly, it is bestowed by the people so that the court can function with all of the power and authority the court must necessarily have in our type of society. It is not defined explicitly, simply because thecitizens, by framing the Constitution that creates the court, leave it up to the court to take those powers that it must necessarily have, short of actually violating the basic rights of the people as set forth in the constitutional document itself. For example, in our Bill of Rights-many of the provisions in that Bill of Rights are limitations upon the power of the court. And as long as the court does not conflict with those particular limitations, that court has whatever power is necessary to function as a court, with authority to enforce its decrees, its orders, and its judgments.

DELEGATE ROMNEY: Mr. Chairman, a couple of other questions.

CHAIRMAN GRAYBILL: Yes, Mr. Romney.

DELEGATE ROMNEY: In that case, then, the court can-by these inherent powers, it makes its own rules, avoids the constitutional inhibition to-against accepting payment for per diem and mileage, expends money that is not appropriated, and things of that kind. It has an inherent power because it is a court?

DELEGATE JOYCE: No, Mr. Romney, the court does not have any inherent power to do anything that violates the Constitution. No branch of government has that power. The court will determine whether or not the course of conduct that has been questioned violates the Constitution, but the court does not have any power to violate the Constitution. And the Supreme and Appellate Courts have always stated in a particular case--regardless of the fact controversy, regardless of the individual involved, no matter how heinous, how despicable the crime--what is before the court at that particular point for judgment is the constitutional document itself, to make sure that the rights of the citizens are fully protected. The court cannot, does not, and will not violate the Constitution.

DELEGATE ROMNEY: That is, it should not. Thank you very much.

DELEGATE DAHOOD: And should not. We corrected one of those incidents yesterday.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Will Mr. Dahood yield?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, but this isn't my amendment. (Laughter)

DELEGATE LOENDORF: That's right. But you have opposed it, and your reason for opposing it is the last answer given to you by Mr. Joyce, is that correct?

DELEGATE DAHOOD: That's correct, Jerry.

DELEGATE LOENDORF: Are you absolutely sure his answer was accurate?

DELEGATE DAHOOD: I'm not absolutely sure it was accurate, but it's reflected upon the journal, and that necessarily is going to aid whoever should interpret that particular provision in reaching some conclusion. And I think if they look to our journal, to our records of the dialogue that took place, they would take Mr. Joyce's answer and say this is what was meant by it. And if that's what is meant by it, that is destructive to the judicial process.

DELEGATE LOENDORF: Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Not being on the committee and not having the benefit of the research, I'm going to make my guess here too. I'm going to support Mr. Joyce's amendment. And I believe there's a real distinction between a debt and an obligation a court finds to exist based on law. For example, if I owe Mr. Dahood a hundred dollars or he believes I do, he sues me in court and gets a judgment against me. The court merely finds and determines that I owe him a hundred dollars; it does not order me to pay that hundred dollars and could not hold me in contempt for not complying with that judgment. But in a case where we have a divorce, for example-I'll have to use Dahood or someone else, assuming I'm not married. Perhaps I can use Mr. Noble-(Laughter) --assuming he was divorced and a court ordered him to pay so much money as child support or alimony. This is an obligation, it seems to me; a court finds, based on law and not by a contractual obligation, between two parties and then not based on a debt, as I understand it. And, therefore, I support Joyce's amendment.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, may I close?

CHAIRMAN GRAYBILL: No, not yet.

DELEGATE JOYCE: Well, let me explain then.

CHAIRMAN GRAYBILL: Okay, you may explain.

DELEGATE JOYCE: I yielded to several questions, and each time, I answered the question as I thought, as perfectly elementary that my amendment would not prohibit a court from putting someone in jail for contempt of court. Then Mr. Dahood asked me, did I propose to do away with what currently appears in the Constitution which, in effect, says that the Legislature can, by law, imprison me for refusal to deliver up my estate to pay a debt. And I say, "Yes, I intended to provide that a court can put me in jail for that particular offense, if it is an offense." So that I really am not trying to destroy the entire judicial system or get into the code words of law and order. I think everyone's for law and order. But I just thought that this was-North Dakota has done it, and it just seems so elementary that you shouldn't be imprisoned for debt per se, and that the courts still can enforce obedience to their orders which they are authorized by law to make.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I move that we pass Section 27 until we reconvene after the noon hour. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I'm unwilling to accept Mr. Joyce's conclusions that debt would not include, for among other things, alimony and support of minors; and that the court power to hold one in contempt for failure to support his family is not included within the term "debt". I haven't read, nor has Mr. Joyce, the annotation on that that appears in 30 ALR at page 130. I think we'll all be better informed if we'll wait-at least a review of that annotation to determine this question.

CHAIRMAN GRAYBILL: Very well. The issue is on—

Mr. Dahood.

DELEGATE DAHOOD: I rise with some reluctance to oppose the motion. My reason foritis this: there's nothing wrong with the way in which the law is operating at the present time. No one is being imprisoned for debt; that violates the United States Constitution and it violates the Constitution of the State of Montana. There is no cause for concern that the particular language of this section is going to do anything to interfere with the rights of any citizen of the State of Montana. And I think my colleagues will have to admit that the law is being administered, at the present time, with due regard to those rights that we hold precious in our society. No court has abused its inherent power with respect to enforcing its judgments, its orders, and its decrees. We found no good reason to change this particular language. Yes, we thought about it. And I suppose if you want to try and isolate some of the words in that particular provision, you might be able to force the tortured conclusion that's been enunciated on this Convention floor. But by leaving the section exactly as it is, we do nothing more than approve and ratify what has been done till now. That is a basic concept for interpreting the intent of constitutional revision when it is made, and that is the primary presumption that must be indulged in when a Constitutional Convention affirms the language that has been in the old Constitution and is placed within the framework of the new Constitution. I see no need to change anything. And for that reason, I would oppose, reluctantly, the motion of Delegate Berg, whose intention is certainly most laudable, so that we might decide without any further discussion the motion of Delegate Joyce. And I would submit that we should defeat both motions and leave the law as it presently stands, which is a good law and an orderly law and one that has not caused any problem in the State of Montana. I oppose the motion, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I shall be brief. I, of course, just like Mr. Joyce and Mr. Dahood, do not want any debtor prisons of any kind in Montana. And I am in sympathy with the position that no one should be jailed for debt. But I am concerned as to what we mean by the term "debt". I am not satisfied with the discourse that's taken place here on the floor this morning. Indeed, I am afraid that if the interpretations of the word "debt" in other constitutions is contrary to what Mr. Joyce believes it to be and if the courts are to look to this Convention floor at this debate,

and the journal, for determining that question and they find that it is contrary to what courts in other states have said, you have a serious problem of interpretation. I simply want to be certain that that question of interpretation is resolved without any question whatsoever.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. Berg's motion to pass Section 27 until after the noon recess. So many as shall be in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. Very well. The question is now on Mr. Joyce's motion. Do you want to close again?

DELEGATE JOYCE: Well, I asked you if I could close the last time and you said no. So—

CHAIRMAN GRAYBILL: I thought you did so, though, but go ahead, Mr. Joyce. (Laughter)

DELEGATE JOYCE: I'm just going to call the Convention's attention to the Hawaii Constitution, which says in Section 17, Article I, "There shall be no imprisonment for debt, period". And Alaska says "There shall be no imprisonment for debt". This section does not prohibit civil arrests of absconding debtors, which is, I guess, somewhere in between. And so I'm going all the way for the-against the debtor prison, with Hawaii and North Dakota. And as my good friend, Mr. Davis, says, I'm willing to let the hair go with the hide. I close.

UNIDENTIFIED DELEGATE: Tail— (Laughter)

CHAIRMAN GRAYBILL: Very well. the issue is on Mr. Joyce's motion to put a period after the word "debt" and delete the rest of Section 27.

Mr. Romney.

DELEGATE ROMNEY: May we have a roll call?

CHAIRMAN GRAYBILL: All right. All in favor, vote Aye on the voting machines; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please take the vote.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0. ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock.. ..... Absent
Barnard ..... Aye
Bates.. ..... Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Absent
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Absent
Cate ..... Absent
Champoux ..... Nay
Choate. Nay
Conover ..... Nay
Cross.. ..... Aye
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Absent
Drum ..... Absent
Eck ..... Nay
Erdmann.. ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Absent
Garlington ..... Absent
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye

Harrington ....Absent
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce .....Aye
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Nay
Loendorf.....Aye
Lorello.....Absent
Mahoney ..... .Absent
Mansfield ..... Nay
Martin.....Absent
McCarvel ..... Nay
McDonough ..... .Aye
McKeon ....Absent
McNeil ..... Nay
Melvin.....Aye
Monroe ..... Nay
Murray.. ....Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... .Absent
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins.....Aye
Romney ....Aye
Rygg ....Absent
Scanlin ....Aye
Schiltz ..... Aye
Siderius.....Aye
Simon ..... Nay
Skari ....Aye
Sparks.....Aye
Spew.. ..... Nay
Studer ....Aye
Sullivan Nay
Swanberg ..... Nay
Toole ....Absent
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner.....Aye
Ward ..... Nay
Warden.....Aye
Wilson ..... Nay
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 34 have voted Aye; 44 have voted No.

CHAIRMAN GRAYBILL: 44 having voted No and 34 having voted Aye, the amendment fails. We're considering Section 27. Members of the committee, you have before you, on the motion of Mrs. Sullivan that when this committee does arise and report, after having had under consideration Section 37-m 27, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 28.

CLERK SMITH: "Section 28, Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation, and full rights shall be automatically restored upon termination of state supervision for any offense against the state." Section 28, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. I move that when this committee does rise and report, after having had under consideration Section 28 of Proposal Number 8, it recommends that the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. The committee voted unanimously to adopt this revision of former Article III, Section 24. In doing so, the committee recommends that once a person who has been convicted has served his sentence and is no longer under state supervision, he should be entitled to the restoration of all civil and political rights, including the right to vote, hold office, and enter occupations which require state licensing. The committee believed that this is eminently proper and that the paramount concerns of prevention and reformation cannot be realized unless the ex-convict can readily move back into society as an equal participant in community affairs. Surely to rehabilitate one and attempt to insure that he has the opportunity to become a full member of the community requires that he be restored to the same rights, privileges and immunities as other citizens. This provision does not speak to the rights of the incarcerated while they're in prison, as did Delegate Proposal Number 98. It is not meant in any way to preclude

them having all rights except those necessarily denied as a condition of their incarceration. The committee has also deleted reference to capital punishment. The reference to capital punishment is not necessary, as it merely grants the Legislature the power to do something it can do anyway. To delete this reference has no effect on the status of capital punishment in Montana. It remains in effect in those instances which the Legislature provides. The committee rejected Delegate Proposal Number 3, which would have abolished capital punishment. The committee felt the matter should be better left up to the Legislature. Now, for those delegates who think that this is soft on crime or the criminal and gives him more rights than he should have, may I say that, at present, I believe there are 24 occupations which are state licensed. At present, a person released from prison, until he is pardoned, cannot resume his occupation. He is, you might say, in a state of limbo or still in a state of isolation from society. This is, I would say, a catalytic agent for return to criminal activity, rather than an inducement to be a good member of society. So I do believe that we should adopt this section as the committee has reported it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas, you have an amendment. Do you want the clerk to read it? Will the clerk please read Mr. Arbanas' amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 28, page 10, line 3, by adding, after the word 'state', the following—quote-'death shall not be prescribed as a penalty for any crime'-end quote. Signed: Arbanas."

CHAIRMAN GRAYBILL: Mr. Arbanas has proposed an amendment to add a sentence at the end of Section 28 which would have the effect of abolishing the death penalty.

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates, I do not presume to second-guess the committee. Yesterday I made a point of talking to Mr. Dahood and Mr. Blaylock about what had transpired in the committee with regard to the death penalty. And pretty much the word that I received back was the fact that, well, there is a national trend in this direction and that the federal courts are going to decide it anyway and that California has been on the bandwagon, and sooner or later it'll come to Montana, so to speak, and so that there's really not much reason for it to do it now, when the Legislature could do it anyway. I'd like to have us very seriously consider whether something is to be gained by a statement in our Constitution on this matter. I would liken it very much to this house of delegates; a motion comes on the floor and we all kind of listen to it and then say, "Well, is there something to be gained by my getting up and saying something about it?" And sometimes we do and sometimes we don't, but very often the actual vote of this house is influenced by what is said. And I'd like to submit to you today that as this national trend, you know, is before our nation, for us not to consider it even, or not to say something on it, might be a big mistake. I'd like to see Montana take a lead on something; and if we do adopt something, it'll be the vote of one more state in this direction. And I think that could be very important. So I'd like to see the issue debated by the Convention and faced by the Convention. I find it hard to imagine, in 1972, any Constitutional Convention meeting and not considering this very important item. The issue before the Convention, it seems to me in this item, is the sacredness of life. We havedebated abouttheright to vote and the land and privacy and water. We come here, I think, in criminal justice, to a very important item of the sacredness of life. We have on the other side of the docket, murder; all sorts of terrible crimes that certainly we don't want to go easy on; but we always have to measure that against the sacredness of life. Perhaps we're unfortunate to meet this question right before noon hour, but I'd like to see the Convention react to the proposition. I'd like to see us be one state to vote in favor of the sacredness of life.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I'd like to rise in opposition to the amendment by Mr. Arbanas. I think we have probably seen some trends at the national level in this area, but I think we're building here a constitution for the State of Montana. We've seen what, of course, California has done. I don't think we have to follow what the California courts have decided. Just what the courts of California decide does not necessarily say what the people of California, as a whole, believe. I know many people in California, and I have found them to be distressed with what has gone on. I know I have had people talk to me regarding this during the time we have had the Convention. I feel the people I represent want something there. I don't think they feel that we're

going to go out and use the rope, as is possible, but I think many people feel that it may serve a deterrent in any way. And I think if you were affected by some major crime like this, that you would have strong opinions this way. And I'm very much against putting this into the Constitution and changing our present stance on this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I rise in support of the Arbanas amendment. I think that the proposal of the committee, in effect, dodges the issue; or maybe it really doesn't dodge the issue either, because the committee proposal says that the punishment of crime shall be founded upon the principles of the prevention and reformation. Now, I fail to see how the application of the death penalty, in any way, can come within the scope of that particular clause and intent. It seems to me that we have long since passed the time when this type of amendment is due in our Constitution. I think the Constitution is the place to tackle this sort of issue. I don't think it's the sort of thing that we ought to pass on to the Legislature. I believe that we have a duty to the people of our state to, in effect, carry out to its conclusion the thing that has been begun by the committee's proposal. They have struck a very important phrase from the present article, and it seems to me that that indicates that we are moving one step more in the direction of the abolition of the death penalty. And I think that the Arbanas amendment makes this clear, makes our intent clear, and I support the amendment.

CHAIRMAN GRAYBILL: Mrs. Speer. Miss Speer.

DELEGATE SPEER: I rise to support Arthur Arbanas' motion. I have a great respect for this Bill of Rights Committee and the Chairman, but I do have strong conviction and I want to speak. I feel that the death penalty is an archaic relic of the past years when there was little regard for life. And I would like to see this Constitution, representing the people of Montana, commit this state to the abolition ofrevengeful punishment for crime.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Would Delegate Arbanas yield to a question?

CHAIRMAN GRAYBILL: Mr. Arbanas?

DELEGATE ARBANAS: Certainly.

DELEGATE McCARVEL: You speak of the sacredness of the human life. Which one are you talking about? The man that commits the crime or the man that he does away with?

DELEGATE ARBANAS: That's a pretty good question. I think that our-the sacredness of life, of course--we know that the tremendous crime that is committed with murder--and I think that our way of handling in the past has been "an eye for an eye and a tooth for a tooth" sort of thing; that "you took my life and the state takes your life". And that's, I think, what Mrs. Speer was talking about when she talked of vengeful taking of life. I don't-if this were a deterrent, if this actually reduced that type of crime and-then I think we'd have something to talk about. I think there, our modern investigation, modern thought in this would tell us and pretty well display that what we had in mind to accomplish, you know, to protect that sacredness of the life of the man being murdered, actually is not being accomplished. In other words, it's almost like the man who's desperate to do something. I mean, it just seems that if you wanted to take a life, or lets say, I mean, to punish by taking a life, that that would be the supreme punishment for the supreme crime. But in fact, it doesn't happen that way. But, I mean, as far as the deterrent, as far as the philosophy of an eye for an eye; so I think that I understand what you're saying, but I don't think it actually argues against the point.

DELEGATE McCARVEL: Would Delegate Arbanas yield to another question?

DELEGATE ARBANAS: Yes.

DELEGATE McCARVEL: Well, in doing away with the death penalty, does that not cheapen my life? You can take my life, but I can't take yours.

DELEGATE ARBANAS: Well, I don't know if you were dead that you could take my life. But the-1 don't believe so. It's necessarily not the intent of why-the opposition to the death penalty. Certainly if you--what you're saying, an eye for an eye and a tooth for a tooth, that's a philosophy. It seems to me that what we have to look at here is that any one of us, at anytime in our life, make a certain number of mistakes and we do harm to one another. We do it every day, in smaller ways or in larger ways. And so that, after a particular incident has happened, then you have-we,

as society, have-how do you deal with that? You deal with it by correction. You deal with it by using your information to prevent other things happening. You deal with it by rehabilitation. Well, I submit that death doesn't do any of those.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Maybe—would Delegate Arbanas yield to another question?

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Certainly.

DELEGATE McCARVEL: What about a man that is we'll say, put on-imprisoned for life? What is to deter him from taking a guard's life, because he's already in there? And if he is—through some action of one of the guards, he may take his life. It doesn't mean any more to him.

DELEGATE ARBANAS: What your question probably presumes is the man who is so intent on evil or so twisted that he's, you know, a murderer. That-I submit there are other ways of doing that too. But I don't know how-our presumption is when someone commits a crime, they are a bad person, rather than a person who's made a mistake. Maybe that's really the difference in the philosophy that we're bantering back and forth in our questions; whether you think a person is a bad person or a person who made a mistake. And I'd submit that adopting one of those philosophies or the other may well depend how you take care of it.

DELEGATE McCARVEL: Well, I feel that there is a difference between a disturbed person and one that is just inherent to kill, that's all. And I think there is a difference in between there. And one would be in a mental institution and the other one would be in a prison. That is all, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that the committee recess until the hour of 1:30 p.m. this day.

CHAIRMAN GRAYBILL: Before we recess, the Chair would like to announce that there is a Citizens' Corps luncheon at noon at Jorgenson's.

Mr. Blaylock, for what purpose do you arise?

DELEGATE BLAYLOCK: To announce a committee meeting of the Bill of Rights, right after adjournment in the committee room.

CHAIRMAN GRAYBILL: Mrs. Blend, for what purpose do you arise?

DELEGATE BLEND: To announce a committee meeting of the Local Government Committee in Room 437 during the lunch recess. Please bring your lunch.

CHAIRMAN GRAYBILL: Will everyone wait until we finish the business at hand. It's very disconcerting to the Chair to try and adjourn this meeting when everybody's standing up, and to take announcements. Will everyone please sit down. Okay.

Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. President [Chairman], I'm sorry, but with all the commotion, we didn't hear the announcement that you made.

CHAIRMAN GRAYBILL: Right. The announcement I made was that there's a noon luncheon for the Citizens' Corps executive people, and many people involved in the Citizens' Corp know about it. And I'm asked to remind you of that luncheon at Jorgenson's this noon. Now, the motion is to adjourn this Convention until--or this committee until 1:30 pm. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Adjourned.

(Convention recessed at 12:03 p.m.—reconvened at 1:45 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. Ladies and gentlemen, before lunch we were debating Section 28 of the Bill of Rights Article, and Mr. Arbanas had offered an amendment which would add a sentence to the Bill of Rights Article on rights of the convicted saying: "Death shall not be prescribed as a penalty for any crime." We had not taken a vote. We're going to continue to debate on that issue. Does anyone else care to speak?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman and group, I think we are to a place where we can do something for the State of Montana psychologi-

cally. I believe that most of us in our own private consciences would find it hard to vote if we were on a jury to have a man killed or a woman killed. I think most of us personally would shy away from it; I think most of the people in the State of Montana would. I've been reflecting on this over the lunch hour, and I think what the people of Montana would like to see-they would heave a big sigh of relief, in fact-if some group like the Constitutional Convention-or if we don't do it, some day the Legislature--would just all together sort of tighten their belts, stiffen up and do this thing; just remove this from the lawbooks. Now, I think there'd be just a big sigh of relief go up from people all across our state. Now, I think there's some practical reasons for doing this, too. I'm a little suspect of a law that's on the books that isn't operative. I suppose lawyers here can tell us when the last death penalty was placed in Montana.

UNIDENTIFIED DELEGATE: 1944.

DELEGATE HARPER: '44? It isn't anything that is presently done. I have heard people say, particularly lawyers, that people on juries are a little bit reluctant to bring in a first degree murder conviction because they are not always sure that the judge might not impose a death penalty; which implies to me that it really makes almost ineffective the more stringent types of punishment we would like to place upon a person who has committed an offense that would call for capital punishment. The other side of the coin—and it's practical, too-is that as a result these jury trials seem to drag out almost interminably and the State of Montana is cost a lot of money that might otherwise not have to be spent on these jury trials. If we ourselves as a people on a jury would not like to see this, I sort of hate to put other citizens who might be on juries in the future in the place where they have to face this. I think the committee has already given us a good lead, because in writing this present Section 28 they state, "Laws for the punishment of crime should be founded on the principles of prevention and reformation". So it seems to me like this is a logical amendment here, because the things I have read in the last 20 years or so from people who have tried to write objectively in this field all indicate that capital punishment on the lawbooks is not really a case of preventive medicine and does not do the job for prevention. I think no one can quarrel with the fact that it is a very poor way to reform a person. The average corpse is seldom reformed by the fact that he has been rendered so by some judicial decision. I think, for practical purposes as well as for maybe the bigger psychological, philosophical principle that underlies this, that the State of Montana would, in a sense, breathe a real sigh of relief if we just, as their Constitutional Convention, would strike forever this archaic law from our books.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of the motion by Delegate Arbanas to abolish the death penalty in Montana. I've done some reading during the lunch hour on death penalty statistics and the philosophy of the death penalty in general. I noted there are 14 states presently in this country without the death penalty. These states have been studied in comparison to states with their borders adjacent and the other states in general, and it has been found that the states without the death penalty do not have a rate of capital crime any higher than any of the states with the death penalty. We have heard the argument that the death penalty is a deterrent to crime. I feel this is the shabbiest of arguments in defense of the death penalty. The death penalty is not a deterrent. We all know, I am sure, that most death cases are--result from passion. Murder is a crime of passion. It is not a reasoned crime. For this reason, I submit the hanging over the head of the person of a death penalty plays no part in deterring him from the crime. I read of some interesting cases. There was a case in one state where a police officer argued very vehemently for the death penalty on the statute books of that case. Ten days after the-his argument was adopted in that state, he murdered his wife. There are other cases where a man was in prison for a crime and while in prison he helped in the erection of a gas chamber. He was released and immediately committed a murder. Now this man must have been quite aware of the possibilities of death for the crime of murder in that state, yet they did not-yet this possibility did not deter him. The examples are legion. The examples of this situation are legion. Also in a book I read, entitled ***The Case Against Capital Punishment,*** the author pointed out that murderers are least likely to be recidivous. Recidivists, as you know, are repeaters. Parole officers from across the country were examined, and they testified that the paroled murderer was least-was probably the best parolee. He, more than others, realizes the error in his ways and is more likely to try to redeem himself in the eyes of society. Also, Mr. Chairman, I think that with 14 states having abolition of the death penalty, we have a situation which is somewhat similar to a lottery. We take

our chances, depending on the state in which we happen to commit the crime. But I would say, and perhaps this is the strongest argument which I have, that civilization is gauged by the way people treat others; and if we are to progress and if we are to become more civilized, then, Mr. Chairman, I say we must look at the way we treat others. And I think one way is to abolish the death penalty as inhuman and barbaric and no way for a society that portends to be civilized to continue. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, on behalf of the committee, I think our fellow delegates should know ourposition with respectto this issue. I am personally opposed to the death penalty. I think the evidence in favor of abolishing the death penalty preponderates. I'm not going to go into all the reasons and the statistics that exist. They could be discussed here. We could conduct an intellectual debate, and I'm satisfied if we could measure it on some logical scale, those that favor the abolition of the death penalty would prevail. Unfortunately for that position, statistics throughout the United States reflect that the people are not as convinced as some of us that the death penalty should be abolished. The latest survey indicated that 51 percent favor the death penalty. We are not going to place in the Bill of Rights or in this Constitution, as far as our committee is concerned, an issue that could very well be the basis for a crusade and a campaign against the entire document. Let me suggest this to you, my fellow delegates: placing separate proposals on a ballot has a very useful function to perform. It generates interest in the constitutional issue. We have one issue that will be on the ballot in the alternative with respect to the Legislature. I submit to you we need more than one. The abolition of the death penalty question might very well be another proposal that has sufficient merit to appear as a separate proposal. This is going to generate debate and discussion throughout Montana, and I am sure that there will be a number of citizens who will go to the polls simply because that issue is presented to them in that fashion, and let them decide it. After all, on an issue that statistics indicate is so close to the division point of public opinion, I think we ought to leave it up to the people to decide it. That is our position on the Bill of Rights Committee. I think when our committee voted, I think we would have voted to abolish the death penalty, but we're here to serve this Constitutional Convention to the best of our ability, wisely and practically, and we do not want to do anything that may cast aside all of the good and great things that we are doing and will accomplish before this Convention adjourns. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I support the resolution of the Bill of Rights Committee in this instance, that the abolition of the death penalty should not be included in this section. I also support, if there are not too many other provisions going to the people, the reference of this question to the people. I stated in my campaign for this office, whenever I was asked, that I personally opposed the abolition of the death penalty and I would oppose it here, but that if anything was to be done about it, I would favor its referral to the people of the State of Montana to decide. If they wish to decide this through an initiative measure, they can, without it being included in the Constitution. If, when themajority of the Legislature decides the death penalty should be abolished, they would have that power under the proposal. I would like to state in answer to the argument that civilization is rated by the way we treat others, that the 51 percent of the people of this country who do not favor doing away with the death penalty feel that it is probably proper that we give some attention to the people who are being murdered. It is true, probably, that a murderer is not a recidivist. It is also true that the person who is murdered does not repeat the performance. No one in this state is now or will be, under our laws, sentenced to death except for a willful, premeditated murder. In my experience in the courtroom and previous to that as a court reporter, I have only seen one man sentenced to death. His sentence was commuted by Governor Ford. That man deliberately shot a person in the back. He did it willfully, he did it intentionally, and he pleaded guilty to the act. The court sentenced him to hang. The fact that Governor Ford, for the sake of his family, saw fit to commute that sentence, in my opinion is no reason for the law to be changed. Whether or not the death penalty is a deterrent, I feel anyone who commits a crimeof premeditated willful murder should know that the possible sentence for that penalty is death. Bobby Kennedy did nothing to Sirhan. When he killed him, he killed him deliberately and intentionally. And I know of no reason why he should be reformed to go out and possibly kill again, or to do some

other act, if the jury found he met the qualifications of the law in California. When a person is convicted of deliberately murdering and raping an innocent girl and he meets the qualifications of the law, I see personally no justification, either in religion or morals, for the rehabilitation of that person. I read in the book on the case against the death penalty where it had a bad psychological effect on the convicted person. Yes, if he is convicted, the effect is psychologically bad. I could and would vote for the execution of a person who met the requirements of the law as a premeditated murderer. I think there are many other people in the State of Montana who would do this, and I do not think that the law should bechanged untilitis changed by the Legislature or the people of Montana. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I must rise in support of the position of the committee on Section 28. Everybody in this room believes in capital punishment or else you don't believe in the system. You have put stars and badges on officers and handed them guns, and many times those officers are called upon in seconds' time to decide whether or not they believe in capital punishment. Now, I think that this is the issue. In a matter of seconds, those officers have to decide. Some of these cases ofmurder-and we're not talking about mistakes, we are talking about first degree murder, which requires the element of premeditation, planning, a decision to commit murder before the murder is committed, or else a case of a person participating in a felony and committing murder at that particular time. Now, I am sure that I can speak for a good many law enforcement officers in Montana when I tell you that they would feel very much more confident if they felt there was a little backup. And after all, aren't we kind of jousting with windmills?—1944 was the last capital punishment in Montana. Now, in the past week or 10 days, there was an article in the papers from the Associated Press, from the Montana Criminal Law Commission. And they're recommending that the death penalty be used if the court finds that: one, the deliberate homicide was committed by a convict sentenced to imprisonment for more than 30 years; number two, the defendant was previously convicted of another deliberate homicide; number three, the deliberate homicide was committed for pecuniary gain; number four, the deliberate homicide was especially heinous, atrocious or cruel, manifesting exceptional depravity. Is that too much to ask? And as far as a deterrent is concerned, I think that this is a question that will be argued from now until there's no longer a world. We have talked about a state to the east of us, and that particular state has life imprisonment for murder. By a man's own admission, he realized that he was in Montana when his wife informed him that she was not interested in a reconcilement, and he realized that Montana still used the rope, so, by his own statement, he drove back to that fair state before he committed the deed, and he received life imprisonment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I call your attention to the fact that West Virginia formerly had ceased to use capital punishment, but in the past month they reverted to capital punishment. I call to your attention the deed of this man Mason [sic] and his three girlfriends who recently-I forgot the name. (Laughter) Anyway, you know who I mean-down in California. He and his three women accomplices killed several people and have been sentenced to death and now apparently are reprieved by action of California in doing-the court doing away with the death sentence there. I don't know whether capital punishment is a deterrent or not, but how many of you have ever seen a legal execution? I have. I've seen two of them. In 1921 or '22, the State of Montana executed a man by the name of Vulkovich in Missoula. Sheriff Houston was in charge of the execution. The county erected a huge pine-board fence around one corner of the courthouse. Imposing invitations were printed and mailed to many people. I was a young newspaper reporter at the time, and I attended to view the proceedings to write the story for my paper. It was during the period of the noble experiment of Prohibition, but most everybody there was drunk on moonshine. They led the condemned man out, and during the proceedings they dropped him three times, and he strangled rather than having his neck broken. It's pretty grisly business, folks. Makes me sick to think about it. There were people who vomited. Some of them were nearly ready to faint; and I felt pretty much that way myself, although I was a pretty flip young buck in those days. About a year later, in early '24, while I was steamshipping in the Orient in what is now Vietnam, I witnessed another execution. The condemned man was-they kneeled him down before a block and with one stroke of a huge knife, the executioner sliced his head off, and the blood spurted up like that. I tell you, I'm not going to vote for capital punishment.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: (Inaudible)

CHAIRMAN GRAYBILL: Restate that, Mr. Martin.

DELEGATE MARTIN: I'm wondering if Delegate Dahood will yield to a question.

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I would, Mr. Chairman.

DELEGATE MARTIN: Is it a fact that presently we have capital punishment by statute?

DELEGATE DAHOOD: That is correct.

DELEGATE MARTIN: Is there any need to put it in the Constitution?

DELEGATE DAHOOD: There is no need, in my opinion.

DELEGATE MARTIN: Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I rise in opposition to the statement which would remove capital punishment from our statutes. There are only two or three reasons why I think a person should be executed. One of them, certainly, is when, just for instance, a man who would rape a little girl, two or three before they catch him, and murder each one as he goes along; and for all intents and purposes otherwise, the psychiatrists say he's perfectly sane. You can't find a thing-of course, these psychiatrists build themselves up and say they're great, they've really learned, they've got the new medical dictionary memorized, and they can treat these people so that they're completely cured; they turn them loose and in 2, 3 days you have another little girl, or two or three, raped and murdered, dismembered, whatever. This is vicious. This type of killer-when you turn him loose, this is what happens all the time. For some reason or another, somebody gets them turned loose, and they go out and kill somebody else. What kind of responsibility is it if you're going to let these people out again to do this? We should have that in [the] background. I don't believe in hanging everybody. (Laughter) However, there is another category where I would certainly like to see capital punishment used once in awhile, and that's for these drug wholesalers and pushers. This is the most fiendish operation. They ruin more lives than any number of murderers. Now, that's about all I have to say, except maybe you could add cattle rustlers in there. (Laughter)

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], I maintain that the death penalty is a deterrent. I just bring it up because I happened to read about the Mafia and these gangsters and what they do every once in awhile, putting these fellows in a sack of concrete and throwing them off a bridge in the river, or taking them out and shooting them now and then. If they aren't using this as a deterrent, I don't know what they're using it for. It certainly does stop a lot of going off on directions that the chiefs don't want them to go, and that isn't even murder. They just keep them in line with a death penalty. I'm sure it's a deterrent. How can people quote figures when they don't know how many people haven't been murdered or raped because of the fact that there was a death penalty but they didn't use it, or something like that. There's no question-I mean, you can't guess as to how many people might have been killed or might not have been killed. The facts were, this morning on the television-it just happened to be on CBS or NBS [NBC]—I remember seeing a fellow talking about this same thing, the death penalty. And he quoted the figures that during the time that 42 people were reprieved, there were 5,000 more violent crimes in that period than in previous periods of the same length of time. This fellow was evidently for keeping on the death penalty, and he had a pretty good argument. I don't see what harm it does to leave it in there, and it may do some good. And if we do go on this alternate thing of Mr. Dahood, I believe that the alternate ballot might be the answer to it.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I support the stand of the majority report. I'm sorry I didn't know about Miles Romney's little stories, or I would have probably spent last night looking up the story of the Vigilantes and entertain you and shock you with the stories of the hanging of Henry Plummer and his road agents. However, I don't pretend to understand how men think; but I thought it might be interesting to you to know what the results of *a Good Housekeeping* poll have been in regard to capital punishment. About 10 years ago they polled their lady readers--and this represents middle-class women

across America-and at that time the enlightened reading woman of the *Good Housekeeping* class were about 90 percent against the death penalty. But last fall, late last fall-and the reports of their last poll were published shortly before Christmas-they polled their lady readers again. And perhaps it was because of the assassinations or it may have been-they also mentioned it may have been the result of this increased danger from the airline hijackers, but at any rate the women had changed their mind. Sixty-some percent were in favor of the death penalty, with 30 percent, in rough numbers, being against it, and about 10 percent not responding. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think I would like to just address my remarks to Delegate Romney. He very emotionally and gruesomely described what he had seen. I'm sure if he'd have been on the riverbank over near Gardiner 2 years ago, he would have seen a sight that probably would have made him sick completely, when this fellow chopped another one up and ate part of him. And I'm sure the blood squirted pretty high there, too. I think Delegate Romney is well aware of the Lindbergh Law. I can remember when the Lindbergh Law was enacted, and it certainly did slow up the kidnapping of these children, and the reason it did was because it was for the death penalty for people that did these kinds of crimes. Now, I don't know how many people should be hanged or how many shouldn't, but I do feel that as long as Montana retains this right to put people to death on some of these crimes, that we may keep some of this crud out of Montana. And I certainly would be for that, and will not support the amendment of Delegate Arbanas. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I would just like to comment, along with the other members, that in this time-and especially after last night, the hijacking of airplanes-I think maybe we'll have to pass something like this too, along with the Lindbergh Law, to curtail this. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I rise in defense of our committee's position, and I do so somewhat reluctantly. And, I think along with a good share of the members on our committee, I very much oppose a death penalty. But I think that the kind of arguments we've had on the floor today indicate the kind of arguments we would get around the state during the campaign time. Now, we have a lot of fairly difficult issues to present to the public. We want them to be aware of the changes we're making in the structure of state government; we want them to be aware of the kind of government we are going to try to bring to the people of Montana. And I see this as an issue that could just cloud over everything else and really steal our thunder and in many ways prevent the people of Montana from facing up to the much more relevant issues that are facing us. I agree that the death penalty is not really appropriate; it's not really being used; the action we take probably is not going to make any difference on whether a person is ever executed in Montana. I think it's quite possible that the Supreme Court might take action on this and make any action on the state level unnecessary. But if we do feel that removing the death penalty is necessary and that it should be written into the Constitution, I think it would be much wiser to take it as a separate issue in some other year when we don't have an issue of this magnitude and this complication facing the people of Montana. And I urge you to stay with the majority report for this reason. I think this is a very difficult decision. I think a lot of us are going to be very reluctant to push a red button on this issue because we really do believe in abolishing the death penalty; but on the other hand, I think it's an appropriate thing to do. I think that it could cause the whole understanding of the constitutional issues a great deal of damage. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'd like to take issue with Mrs. Eck and what she said, because the committee chairman has, in fact, said that he favors the abolition of the death penalty. And if it is true, as someone stated here, that a majority of the public are very much opposed to doing away with this provision in our present Constitution, then I think we are already in trouble, because this is what the majority proposal does. It removes from constitutional status the death penalty and it leaves it up to the Legislature eventually to abolish it. Now, if the people of the state are so very much in favor of retaining it, then I suggest that we have already broached the issue and that if the people are this concerned they

will then, in fact, vote against the Constitution if they're going to vote against it for that reason. So it seems to me that it would do no good, in the light of the proposal that the committee has brought forth, to put this on the ballot in an alternate form. I think this is the time and this is the place to decide the issue, and, again, I would support Mr. Arbanas' amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman], I rise in opposition to Mr. Arbanas' amendment, and I would like to pose this question to you fellow delegates. I wonder how many lives have been saved by the very fact that we do have this penalty hanging in front of people. Just ask yourselves, now, don't--wouldn't you think just a little bit about maybe they might stretch your neck if you killed someone? I wonder how many other people has thought about this. I wonder how many lives have been saved just with this thought. And I suggest to you that we have a terrific problem with law enforcement at the present time. Every law enforcement officer that is on duty never knows when he's going to be subjected to a bullet, and if you remove this little bit of fear that most law-abiding citizens have, what does a life sentence mean in Montana? The maximum is about 13 years. I've known several that got out in far less time than that-5 or 6 or 8 or 9—for murder. But there, again, I say-you don't know how many lives you have saved with this, with the very threat that this poses to the person and checks him just in time before he commits this crime. I think that this is something that we really need to think about. How many lives will we save-not how many people we're going to execute. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, would Delegate Harbaugh yield to a question?

CHAIRMAN GRAYBILL: Mr. Harbaugh?

DELEGATE HARBALJGH: I yield.

DELEGATE CHOATE: Yes, Mr. Harbaugh. Where in the present Constitution do you find a provision that provides for capital punishment?

DELEGATE HARBAUGH: Well, the provision is in the parallel article, Section 24. Section 24 says: "Laws for the punishment of crimes shall be founded on the principle of reformation and preservation-prevention, but this shall not affect the power of the Legislative Assembly to provide for punishing offenses by death." And that's removed from the committee's language.

DELEGATE CHOATE: Okay, thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], fellow delegates. I am a person who has given a lot ofthought to the death penalty over the years, and it's been in relation to making the decision of whether to ask for the death penalty or not in prosecuting murder cases. I've never had a case where I have asked for the death penalty. In the last five murder cases I tried, there were never a case where I could ask for the death penalty. But I think it's important for you to know, in the State of Montana, at the outset ofthe trial, you can make a determination as to whether you are going to ask for the death penalty or not, and that's binding and the judge cannot and will not give the death penalty if you ask for it. So it's not an automatic, speculative thing. In a trial, it's a thing that requires a lot of soul-searching; and you think one way one time in your life, and I suppose you think another way when there's a real heinous crime committed. I recall-it's not a type of thing where you're going to get a jury or a judge to very easily give a death penalty. In other words, when someone made the statement here, "Let's be strong and get rid of it"—I would submit that it's going to take someone an awful lot stronger that's going to be able to give the death penalty ifthey think it's [an] appropriate case for it. It wasn't too long ago I asked the judge from another jurisdiction what had happened where a boy had shot his father and mother and they turned him loose. And the judge said, "Well, they felt sorry for him because he's an orphan. (Laughter) And that's usually what happens on these type of cases. I mean, there's no rights in here for the victims of these crimes. I've been in the investigation where the widows and the orphans are completely forgot about, and all the rights are the other way. Everybody immediately starts thinking about the rights of the defendant. And then, there's another thing I really think that's kind of interesting in this thing. When you gave the right in your Constitution for anyone to give--use sufficient force to enforce-to protect his own life and his own property, you, in a sense, said you can shoot somebody in self-defense, and that's a death penalty in reverse. In other words, you wouldn't want to take that right

away to protect your wife and your children and your property. I think we're creating a great deal of alarm over a situation that's not bound to happen. The matter's before the Supreme Court of the United States right now. It would seem to me this body, in its good judgment, would leave our Constitution in its present form, and it's a Legislative matter in its present form, or defer the matter to a vote of the people-in other words, and see whether we want to superimpose our personal, individual judgments on those other people who are quite concerned. I think the death penalty would be more important to put on the ballot than whether we can have lotteries, or a lot of other things that are going to come up as great big challenges of dealing with rights and so forth. This might be the kind of thing that everybody's voice should be heard in it. So I would support, in the best interests of this document that we're trying to write, leaving this matter in its present form and defeating the amendment and leaving the matter to the Legislature or putting it as a separate issue on the ballot.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I have two principal objections to the death penalty. The first one is that the hangman's noose is a white man's weapon, not only here but in the South; and I believe the last man to be hung in this state was a black man, and there are very few black men in this state. I have referred to that very well-read document, Report Number 10, of Rick Applegate's, of the Bill of Rights, which I'm sure all of you have read thoroughly. On page 185, he states: "Race is a clear factor in the application of the death penalty. For example, between 1932 and 1957, twice as many blacks as whites were executed in the South. To be sure, crime rates for blacks and whites are different, but not to the extent reflected by capital punishment statistics. Especially in cases of rape, the discriminatory application is clear. From 1930 to 1962,446 people were executed for rape. Forty-five were white, 2 were Indian and 399 were black. A total of 436 of these executions were in the South. Forty-two were white, 2 were Indian, and 392 were black. Just over two pages previous to that, in the well-read document of Mr. Applegate, on page 183, he set forth 10 states-the records in 10 states-for the period 1964 through '68. He matched up these 10 states, like Rhode Island and Connecticut, Wisconsin and Indiana-those that had the capital punishment and those that did not-and the statistics very, very clearly indicate that capital punishment is not a deterrent to capital crimes. They used to say the Germans had 200 words for making war and the French had 200 words for making love and the British had 200 reasons for hanging you. In 1801, the British hung a IO-year-old-13. year-old boy for stealing a spoon. The British, several years ago, after World War II, as you'll recall-the men of my generation-abolished capital punishment; and although we have capital punishment in almost all our states, including the great state of Texas, our President, Jack Kennedy, although we had a battalion of SS men-secret service men-to help protect him, was assassinated. Bobby Kennedy was assassinated, although California had the death penalty. Great Britain does not have the death penalty. The Prime Minister of Great Britain has one bodyguard. The British Bobbies do not carry guns, and yet their death rate-the number of capital crimes, rather-has decreased since they got rid of the death penalty. Only the Soviet Union, in the modern countries, and Spain and one other European country-I believe the French with their guillotines-still have capital punishment. The rest of the civilized-so-called civilized world has done away with it. I support Mr. Arbanas' amendment.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I have a question as to a point of order, I think. I notice on our desks that we have a proposed amendment that would deal with two other aspects of the same question, and apparently, regardless of how we go on this, we'll have to discuss that later. I wonder whether it's the intention of the proposer of this now to withdraw it, or are we going to have to discuss this again at a later time?

CHAIRMAN GRAYBILL: No, Mr. Arness. Oftentimes people have things that they want people to understand and they put them out on the desks. Nothing happens till it comes through the Chair, and I think we should not discuss or debate things that get on your desks until they're brought up. You may read them so you understand them, but if you start discussing or debating them before they're brought to the Chair or put on the floor, you're oftentimes debating something that need not be debated. I don't know whether they're going to be brought up or not. I let any of you bring up anything as you please, and I suppose it depends. So I think the practice of letting people put things on the desks ahead of time is

a good one, because it lets people understand and gives them a little chance to read them. But this cams up the other day, and I think we should not place too much significance on things put on the desks, except to read them, until they come before the body. Is there further discussion on Mr. Arbanas' proposal?

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I have been patiently waiting for somebody to bring up this point, and I ask you to consider which is more important-this proposed Constitution or the life of an innocent person. Courts have made mistakes. Innocent people have been convicted. An innocent person has-after he has been executed, it becomes rather impossible to correct the mistake. I ask you how many have read the book, *Convicting the* Innocent? I also would like to ask you to consider one little sentence that goes about quite commonly; that only the poor are hung, not the rich. Thank you.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DELANEY: It would appear to me by these words "prevention and reformation" that you've already removed the death penalty in your article without this additional word.

DELEGATE DAHOOD: Delegate Delaney, we have not done that. Contrary to a misconception that seems to be prevalent, our present Constitution does not provide for the death penalty as a form of punishment. It merely states that the Legislature may enact legislation providing for the death penalty in a given case. That language, in our opinion, doesn't serve any real purpose in the Bill of Rights. We have merely removed the language, which results in changing absolutely nothing. The Legislature still has the power to abolish the death penalty or the Legislature has the power to extend the death penalty, and I commend to you Delegate Eck's comments that perhaps we are dealing with an issue that, for this moment and for this time, does not have that kind of importance because of all the factors that have been discussed here, and there are more important issues for the electorate of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, what Mrs. Eck and what Mr. Dahood say may be true, but unless Mr. Arbanas is going to arise to withdraw his amendment, I'm going to have to do one of three things. I'm going to have to vote yes, I go for abolishing the death penalty; I'm going to have to vote no, I favor keeping it; or I'm going to have to sit here and not punch a button and let somebody else make my decision. Now, I'm going to make a decision, and it's going to be on a very simple basis. I think that the death penalty is wrong. Now, that may sound very naive and very idealistic and it may sound just like what you would expect a minister to say, because I do actually say that kind of thing Sunday after Sunday. Now this is Thursday and my congregation is not here and I'm not behind the pulpit, but I'm sitting here where we're all sitting, behind these two buttons. Now, if everybody in this room is for capital punishment, I'll just make niy stand; I think it's wrong. If everybody in the State of Montana is for capital punishment, I still think it's wrong. I have voted that way on several issues. I believe in the right to free voting, so I voted that way. I would vote that way if somebody came in here and said everybody in Montana is for restricting the ballot. I would still vote that way. I voted for due process of law; I think no person should be denied it. If a whole group of people came in here and said this is going to make the Constitution in precarious balance, I would still vote for due process of law. I would vote against double jeopardy. I have voted for several issues in the Bill of Rights on the question of right or wrong and they have been my personal decisions, and I'll vote that way on this one, too. I do not think capital punishment is in accord with my principles, and so I shall vote against it.

(A dog entered the Hall and started barking—Laughter)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I don't expect to contend with that type of competition, but I would like to respond in some part to Delegate Artz's comment and also, I think, to a degree to Delegate Harper's comments. Since the time that I was in junior high school and studying the question of capital

punishment, through high school, all the way through college, and to the present time, I have always been opposed to it in principle. I am opposed to it on a very basic ground that for the state to take a life is really not the proper way to conduct the government of the people. And if we here assembled were up against the question once and for all, with no further chance to determine the question, I would vote in favor of removing the death penalty. But, in fact, we're not in that position. There will be other chances to remove this particular practice. The Supreme Court of the United States of America could remove it tomorrow. The Legislature assembled here one year from now could remove it one year from now. And assuming that the Constitution passes, the people of Montana by initiative could remove this at any time that they pleased in the future by referendum. And I feel that this issue is such that people that are opposed to removing the death penalty, opposed to putting in the Constitution that the State of Montana under no circumstances shall ever use capital punishment, are not going to reason this question out. And this is the type of a question which people will, from the very depths of their intestinal fortitude, if you will, will vote. And I feel that the Constitution will be in very grave danger if it gave these type of people no option whatsoever. I support the committee position completely, and I feel that we should not lock the door to people of the State of Montana that feel so strongly about this issue that they are not willing to consider any of the other merits of the Constitution. If a movement is made to put the question to a side issue on the ballot, I would also support that. But at this point, I oppose the amendment of Harold Arbanas and support the majority position of the Bill of Rights Committee. Thank you for your attention. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman and fellow delegates. I would like to close, and I appreciate the many fine thinking and concerned over this issue. I tried to make some notes during the various talks, and I hoped that I could go back and kind of at least react from my point of view on what was said. I mentioned that a vote in favor of this amendment would be a vote of this state for a national movement. Delegate Woodmansey seemed to think that I was implying that we had to do what California did. I wouldn't suggest that. I think that we have to not wait for others to do it. I think we have a possibility of doing something and taking a lead. All through the debate, the one thing that kind of kept coming back to me, of course, was the fact that this first murderer that we talked about, and I suppose in a case of murder this first murderer was wrong. I don't know how that suddenly sets up that another murder is right. I must confess that George Harper and I would be right on the same wavelength. I just cannot see that there is a right thing here. There's a presumption in our talks that the state can do that thing—that suddenly, because the state does it, it's right. I think there's a great deal to be said on your individual philosophy of whether you look on any crime as a thing that makes a person bad, or whether you emphasize in your mind the possibility of rehabilitation. One of the books I was reading had a sentence which impressed me very much-"The civilized goal of criminal justice is rehabilitation." I suggest that we live in a civilized time. There's possibly many cop-outs that all of us can take during the forum of this Convention. One of the cop-outs, of course, is to throw in "as determined by the Legislature"-and sometimes that's good; sometimes its bad. Maybe even a more severe cop-out would be, let's refer it to the people. I react very strongly about the idea that kept coming up over and over again-they could do it. What I'm trying to tell you today is we can do it and we have to face it that way. There was some talk—Delegate Habedank, when you talked-about the fact of such-and-such a case, there was no reason to reform this man and that even religion wouldn't save him; I would have to say from the point of view of religion that I have always been taught that somehow or another it's never too late, and that's the kind of religion I kind of stick with. The business of a law officer-I think that's a real different case than a cool, calculating murder of a criminal, or if you want to put it, execution. I suggest that that cool, calculating execution is not too much different than the cool, calculating execution we started with, and the fact that we do give guns to law enforcement officers is quite a different matter. There was a suggestion, too-and I think this is very important for you to think about-that between execution and letting a man out in 15 years we had no middle ground; that there was a suggestion that we let people out now in the short time so they can go out and repeat the crime. Maybe that's where the reform has to take place. We don't have to jump from, let's say, a poor detention system, the men you reform, to capital punishment as an excuse for that. After hearing Delegate Romney's description of the execution, I found it difficult to agree with Marian Erdmann that somehow hanging was good housekeeping.

(Laughter) I have to agree-disagree, too,—disagree with Delegate Eck on the matter that we should avoid the problem because it's a tough one; that we're working for reform of government in Montana and that's the kind of government we want to set, she said, before the people. I think that's the real point. Are we going to avoid those—that kind of issue? Finally, I suppose I began the argument on the sacredness of life. I would just hope that if the day ever came that I was on the docket and accused of a crime I never committed, that there would be people around that believed in the sacredness of life-the fact that I could be rehabilitated. I don't believe we can keep saying they could do it; I think we have to say we could do it. I don't think we have to keep saying that the people of Montana will vote their emotions, and then vote our emotions. Somehow or another, somebody has to deal with this in a reasonable fashion. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Arbanas' motion—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: Yes, we'll have a roll call-to add to the end of Section 28 the language: "Death shall not be prescribed as a penalty for any crime." So many as shall be in favor of Mr. Arbanas' motion, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote, Mr. Clerk.

Aasheim .Absent
Anderson, J. Nay
Anderson, 0. Nay
Arbanas Aye
Arness.. Nay
Aronow Nay
Artz.....Aye
Ask.. Nay
Babcock ..... Nay
Barnard.....Aye
Bates..... Excused
Belcher Nay
Berg.....Aye
Berthelson Nay
Blaylock .....Aye
Blend .....Absent
Bowman ..... Nay
Brazier .....Absent
Brown ..... Nay
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Aye
Cate ....Aye
Champoux .....Aye
Choate ..... Nay
Conover ..... Nay
Cross ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll .....Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt.....Absent
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ..... Aye
Heliker ....Aye
Holland.....Aye
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce .....Absent
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Nay
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough..... Aye
McKeon ....Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ....Aye
Murray ..... Nay

Noble ..... Nay
Nutting .....Absent
Payne ....Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... .Absent
Robinson ....Aye
Roeder .....Absent
Rollins ..... Aye
Romney ....Aye
Rygg ....Aye
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ....Aye
Sparks ..... Nay
Speer ....Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg .....Aye
Toole ..... Nay
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman 42 delegates voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 42 delegates having voted Aye and 48 having voted No, Mr. Arbanas' motion does not prevail and we're still discussing Section 28.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would request that the clerk read my amendment which has been presented.

CHAIRMAN GRAYBILL: Mr. Campbell has an amendment. Would you read it, Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to place as a side issue on the ballot the following-quote: 'Death shall not be prescribed as a penalty for any crime against the state'-end quote. Signed: Campbell."

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Campbell's amendment, which is to place this matter as a side issue on the ballot: "Death shall not be prescribed as a penalty for any crime against the state."

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, if I may. I won't take a great deal of time on this to discuss it. I think the issue has pretty well been discussed, and most of us have our opinion on whether or not we're for it or against it. We have decided as a Constitutional Convention not to place it in the Constitution on the ballot. It is a large question. It's one that I think the people themselves should decide. One of the booklets that our committee received while considering this matter *was The Case Against Capital Punishment,* a hundred and fifty of which have been passed out. You may or may not have had a chance to read this. It goes into many of the areas that have been discussed here today, and I feel that if the people of Montana will take the time to discuss it, that they can come to their proper decision on the June 6th ballot as a side issue. I think if you follow the development of capital punishment, you'll know back in the 18th Century capital punishment was used in such things as a deterrent for fishing in a private stream, robbery of a rabbit warren, and as a deterrent, the crime of pickpocketing. But they found out that pickpocketing was going on at the time of a hanging for the same crime. Michigan, in 1846, which was a hundred and twenty-six years ago, was the first state to abolish it. Since then we have 13 other states. California, as you know, by their Supreme Court abolished it; and the United States Supreme Court is considering abolishing it-which would affect Montana, of course-as being cruel and unusual punishment.

(Chairman Graybill gaveled for quiet)

CHAIRMAN GRAYBILL: Go ahead, Mr. Campbell.

DELEGATE CAMPBELL: Thank you. The present majority report does not in any way abolish the death penalty, which is still in the statutes of Montana. If the people themselves decide on this side issue that they do wish to abolish the death penalty, I think they should have every opportunity and right to do so. I have one other matter that I would bring in the closing. I don't know how much debate this would require. I feel it is a proper item to be considered on the ballot as a side issue.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move to amend the proposal of my learned brother Campbell to read as follows: "The death penalty shall not be authorized except for the murder of policemen or prison guards on duty and for the commission of a second capital felony."

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has proposed an amendment to Mr. Campbell's proposal. Do you mean, then, to have your language, which is on your sheet, Mr. Kelleher, as an amendment to the section? Do you mean to have it as a matter to go on the ballot?

DELEGATE KELLEHER: Yes. It's the third one, Mr. Chairman, on that list.

CHAIRMAN GRAYBILL: Yes. Do you have that sheet with Mr. Kelleher's amendment? It's Number 3, but the title of it needs to be changed to move to put it on the ballot. And the substance of Mr. Kelleher's amendment is that the death penalty would not be authorized except for the murder of policemen or prison guards on duty or for the commisison of a second capital felony.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I'm going to attempt to do a service to both of these movements. I will suggest to both of you, if you lose this today, I think you've very well had it, Now, if you wait until you find out the relative importance of this thing by letting the Style and Drafting Committee come in with a report and possibly recommending this, and with the possibility of amending that report to include this, you're going to have a much better shot at it than if you try to bind the Style and Drafting Committee in its proposed ballot. I will say once again what I said last Saturday, that each issue as it's hot is the most important thing we're looking at, and the day after tomorrow it wanes just a little bit and it doesn't become so important. And you're just going to bind us to do something that is going to eliminate some other issue, and I urge the members of this committee to reject any binding of the Style and Drafting Committee on its ballot as of any hot moment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I concur with Mr. Schiltz, and I thought we were told that they would make the recommendations and then we'd vote on all of them. As a result of that, I voted against Mrs. Babcock on the anti-diversion because I thought it was an improper motion at that time. But I thought this was up to Style and Drafting, and I don't want to make a decision on everything that's going on the ballot till we know all the issues.

CHAIRMAN GRAYBILL: Mr. Brown, that may require a comment from the Chair. The Chair doesn't invite these; I just take them when they send them up.

DELEGATE BROWN: I'm not criticizing the Chair.

CHAIRMAN GRAYBILL: Okay.
Mr. Harper.

DELEGATE HARPER: I'd like to ask a question of Mr. Schiltz for clarification and, likewise, I hope all the rest of you listen to the question. Do I understand what you're saying is that the Style and Drafting will decide, after we are through with all the issues, all of these documents, which things are to go as special issues on the ballot or not? In other words, now we have voted against this motion of having the deletion of the death penalty. Now, that was a clear vote. I was on the losing side, but it was a clear vote. Do I understand that Style and Drafting may decide, "Well, actually the Convention didn't really mean to vote against that-they really meant to put it on the ballot", and so you'll come back with that written up that way without any directive from the Convention?

DELEGATE SCHILTZ: Are you through asking your question?

DELEGATE HARPER: Yes.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We won't decide anything. That's your original mistake. I've tried to say over and over again that we will propose a ballot and it may include things that have been rejected by this Convention as things that merit a choice by the voters. Now, if that's wrong, I want to be told by somebody that that's wrong.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: That's the very point of my question. I think right now we ought to tell the Style and Drafting Committee whether this is right or wrong. For example, I take it the Style and Drafting may come back with the idea that parliament should be an option, along with unicameral and bicameral. If the Style and Drafting Committee decides that anything that has

been discussed that wasn't properly settled by the Convention, they can decide to propose-I realize it's not a final assumption, but you can propose it to us; and I just never dreamed that Style and Drafting had that kind of power, if you want to call it that. I think the Style and Drafting Committee, if and when this Convention directs that a thing should go on the ballot, should come back with a suggested way of putting it on the ballot, but not be allowed to suggest what issues go on the ballot.

CHAIRMAN GRAYBILL: Mr. Monroe was up, Mr. Dahood.

DELEGATE MONROE: Mr. Chairman, I am against the proposed amendment here, not in so much the intent, but in I think that we're, by putting this as a side issue or even suggesting us putting this as a side issue on the ballot, we're doing a disservice to ourselves and to the people of Montana. Rights, individual rights, rights we're trying to include here in the Bill of Rights of the State of Montana, should not be at the mercy of the whims of the majority of the people of this state or any state or any nation; and I think we'd be doing a grave disservice if we proposed that there should be anything in regard to the death penalty as a side issue on our ballot that we're proposing for the Montana State Constitution. And I would much rather just accept the vote that we just took and go with the majority report, rather than putting any of this as a side issue on our ballot.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I want to completely concur on the remarks of Delegate Harper. I, for one, would not expect to see anything on the ballot that we rejected on this Convention floor. It seems to me that our decision should be final and should be respected. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. Let me reflect, too, that during the debate one thing that impressed me was the fact the number of delegates who voted No and were opposed to this being in the Constitution, you know, made the statement that this should be a side issue and that's where it should be placed. And, you know, I respect them for their opinion; and somehow to say that we can't, as a group, say that's what we want to do is pretty tough procedure. We should be able to say that that's what we want to do. I resist that restriction. I'm sure it's not always wise and I'm not so sure it's wise here, but I would hate to see us not able to do that.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. One thing, if we do put it as a side issue on the ballot, it could lock it in the Constitution. Now, I kind of think that we're tilting at windmills here. We had a very emotional issue yesterday on gun control. Now, I think there's been more light than heat generated. I don't think we're a bunch of guys in white hats and guys in black hats. I think-I don't think there's any of us here want gun registration. I think there are many of us here that are against the death penalty, although we didn't vote with Mr. Arbanas; we voted to go along with the committee proposal. I wonder how many here would want to drop the pellets in the gas chamber or pull the trap on the—as the hangman or push the button in the electric chair. I just don't know. Of course, you let the state do it; and you're still responsible, but you do it. But here is two things, federal gun control-you could lock it in the Constitution, then the federal government wipes it out, so you've got an archaic thing in the Constitution that doesn't mean anything anyway. If you, by amendment, put the death penalty in the Constitution, the Supreme Court rules on it and knocks it out, it's another archaic thing. So why should we clutter up our new Constitution with things that actually will be decided for us?

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, fellow delegates. Fellow Delegate James, of course, is on the same committee, the Bill of Rights, and I'm afraid he misunderstands the nature of my motion, at least. My motion is to allow the people to decide whether or not they want to abolish the death penalty. If they vote No, that provision does not go in the new Constitution and it is left up to the Legislature, as the majority of the Bill of Rights Committee had recommended. This is not an either/or between two-one that will require it or one that will abolish it. It's whether or not the people want to abolish it, yes or no. If they don't want to abolish it, the Legislature still has it on the books and it would still be into effect. I would resist the amendment suggested by Delegate Kelleher. I think that this would lock something into the Constitution; this would not allow the Legislature to have the complete flexibility that it should have. And I think that the issue should clearly be presented-do we want to have

the death penalty or not? And I feel that we should give it to the people to decide. In the book on capital punishment, they point out that some of these murders in prison have actually been committed by people who wanted to commit suicide and force the state to kill them, so I feel that Mr. Kelleher's amendment is ill-advised and would oppose it and urge that it be rejected.

CHAIRMAN GRAYBILL: Mr. Scanlin, did you want the floor?

DELEGATE SCANLIN: Mr. Chairman, this was-1 was just inquiring a point of order and I was trying to write it out here. It seems to me that the Chair should rule on whether or not this is a legitimate part of the discussion; that is, to entertain a motion which is divorced from Section 28.

CHAIRMAN GRAYBILL: Yes, I see your point. And since you've raised it, the Chair will rule that it is a legitimate time to debate it. We've had so much debate on it, I don't want to do that all over again. I want to catch it right now while everybody's knowledgeable on the subject.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I feel we're exhausted on that subject. We've beat the death penalty to death. (Laughter)

CHAIRMAN GRAYBILL: Stick around, Mr. Scanlin. (Laughter)

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, could I direct a question to Mr. Schiltz?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE ECK: Mr. Schiltz, I believe that we are concerned in one aspect of this about what is the proper way of calling the attention or getting some consideration from your committee. And as I understand it, it was suggested to us that we could submit a resolution asking your committee to consider something. It was suggested this morning that a petition could be circulated among delegates, asking your committee to consider something. Would it be more appropriate, rather than directing you at this time, to put in a motion asking your committee's consideration of an issue?

DELEGATE SCHILTZ: That only came to me as a rumor. I have no official knowledge that there is going to be any form of resolution or anything else. I want to reassure Mr. Harper and Mr. Dahood and a great many others of you that this is no great amount of power that is in the committee. This happens to be the hardest-working committee in this place, and we're overburdened. And let me assure you that if we can get out of putting this thing together, we'd be happy to get out of it; wouldn't we, Jim and Rich and everybody else on our committee? But we conceived-and this is our conception-from osmosis, I suppose, we picked it up-that this is the way the ballot is going to be prepared. We look at other people's ballots and they have alternatives on it and it has come from the Style and Drafting Committee: and as a matter of fact, it's just another form ofreconsideration after we put that thing out to this body. We're not drunk with power; we don't even want the power, but we have it. If you want to do it by resolution and you got 87 names on it, we'll consider it. I haven't seen anything about a resolution.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President [Chairman], I spoke in behalf of the amendment that Mr. Arbanas made, but I think that at this point I agree with theremarks thatweremade by Mr. James a few moments ago and that I will vote against a motion to place this in the alternative on the ballot. I'm satisfied that we had a good discussion of it here. I think that if this body feels that it does not want to include that provision, then it should not go on the ballot. And I would be against the motion and against theamendment to the motion.

CHAIRMAN GRAYBILL: Now, the Chair is going to entertain the rest of your debate, but the Chair wants to point out that we do have these motions and people do have the right to make them. And I think this body has the right to instruct Style and Drafting or it has a right not to, and you people have to decide it. But let's now try and stick, if we can, to Mr. Kelleher's amendment, which is whether you want the thing on the ballot to say-if it went there, which we're going to decide too-"The death penalty shall not be authorized except for the murder of policemen and prison guards on duty and for the commission of a second capital felony." Now, if you have something to say on that, let's decide it, and then we'll vote on that. And then we'll go ahead and vote on Mr. Campbell's motion as to whether to put it on

the ballot, and then we'll go ahead and vote on 28 again.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes.

DELEGATE ARONOW: Bob, in looking at the language in this thing-"The death penalty shall not be authorized except for the murder of policemen or prison guards on duty and for the commission of a second capital felony"-could this be so construed-in looking at it, there's a doubt in my mind that the death penalty must be meted out if there's a conviction in the last part in those two or three instances.

DELEGATE KELLEHER: For those three cases-the murder of a policeman, or (b) a prison guard on duty, or (3), a commission of a second capital felony. It is not my-that's a good question, and it was raised earlier. It's a very good question, but it is not my intent. That's what I'm going to say for the record. It's not my intent that that be the case.

DELEGATE ARONOW: Okay.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I am against the death penalty and I intend to vote, but I received a letter from a constituent which has a different viewpoint, and I want to read this to the Convention. I think it's quite important. "The Honorable Mr. Holland; Montana Con-Con, State Capitol, Helena, Montana. Mr. Holland: I would like to state my opinion on capital punishment. I think the people have the right to make a murderer pay for his crime with his life. I think if a murderer has been convicted and the state lawfully convicts him, he should pay for it with his life instead of being able to sponge off the people. I mean, we let a murderer kill somebody and then let him sit around while we give him a vacation for the rest of his life at our expense. This is not justice, to me. I understand that sometimes a man may be convicted unjustly, but this is just something that you have to take the good with the bad." (Laughter) Now, I'm going to make an amendment if these two bills don't, that if we keep the death penalty that the State of Montana be restricted to hanging no more than 10 innocent people a year. (Laughter) And I'm quite serious about this. England abolished the death penalty when they found out they hung a man unjustly, a man who was not guilty of the crime. And I am convinced, in this day and age-we haven't had an execution, I think, since 1966 or '67-I'm convinced that, we do one thing right, we should abolish this death penalty and do it today.

CHAIRMAN GRAYBILL: Very well, the issue is on—

Mr. Simon.

DELEGATE SIMON: Mr. Chairman. I've been listening very, very carefully to what everyone has had to say, and I didn't want to say anything until I had heard a great many people. I had an experience in my life that-it was as gruesome as my friend over here-when a 14-year-old girl left my store in Bridger, Montana, and the man that killed her brought her back in an hour, seated in his automobile, and drove up within a quarter of a block of my mother's home. Now, that's the gruesome part of it. But I think most of you know that I spent 5 years on your Board of Pardons of the State of Montana. I think most of you know that at the time the Board of Pardons was formed, that there were 685 people in prison. I think that most of you know that today that there's only two hundred and forty-or-fifty in prison, and most of them are out on parole or being given deferred sentences. Now today, with my conscience and my upstairs doing something to down here where your heart is, I voted green, and we lost. Now, I did that for a very, very specific reason. And I believe that what we've done here today has put us in a position that we are in at this moment; this hundred people, these hundred people here today, are saying to themselves, "I would not be the one that pulled the rope", and if we took a vote on that, I think we would have gotten a bigger vote in the green side. But I thought perhaps under some circumstances we must consider, or should consider-the fact is that we should give the people of Montana-now, each one of us represents about 7,000 people-we should give the people of Montana the opportunity to say whether they want to abolish capital punishment. Now, the reason that I voted as I did today-and I want to be very specific-that I have sat closer to more murderers, I believe, than anybody in this room, because I sat right across the desk in the prison, back in a little room they call the mug-room, and interviewed 4,400 interviews-twenty-two hundred-and-some people-on this Board of Pardons in 5 years. Now, the reason I voted like I did, and with the hope that we could give the people a

chance on the ballot to ask these people, I thought perhaps that if we could take some time through the courts to find out how many people come into this state and are only in here from 1 day to 3 weeks that commit some of our more dastardly crimes from other states, you'd be astounded. The second reason I voted as I did, every murderer is innocent. And there was times in my life that I sat in front of a man-it was right-I was always in the middle of the desk-he was right there--where I was not sure that that man had been convicted of the crime. Now, they're all innocent, you understand, when they go to prison; but I was not sure that I could make that decision to turn that man loose. I could not make that decision if I had to, if I was going to say, "You put that man on the gallows, and I'll pull the string." I could not make that decision today. That's the reason I voted the other way. I would like a study made of our state that would indicate, in our major crimes of murder and rape, some sort of an analysis made of how many crimes are committed within 1 month, 1 year, 2 years-that are not our residents. I believe that this should go on the ballot. The people of the State of Montana should be given the opportunity to make this decision. I don't think we're making the right decision today. I think all of us voted as an individual; what we would do and not what the people of Montana would do. I urge you to put this on the ballot. If you have any doubts in your mind about how many come in here and commit dastardly crimes, you go down to the prison when the Board of Pardons meets, especially if they have 685, and listen to people who have been in the state for a few hours and have raped grandmothers, mothers, daughters-not once, but under three occasions on one conviction. Thank you very much, ladies and gentlemen.

CHAIRMAN GRAYBILL: Now, the Chair hopes to get a vote soon on these two things on the ballot, but Mrs. Babcock, you've been up before.

DELEGATE BABCOCK: Mr. Chairman, would a motion be in order to submit this issue of how we're going to put things on the ballot to the Rules Committee so that this could finally be decided? I think it affects some of our votes.

CHAIRMAN GRAYBILL: I don't think it would be in order before we take these votes. The point is, this body can do whatever it wants to. It can send directions to Style and Drafting; it cannot send directions to Style and Drafting; it can send the whole thing to the Rules Committee if you want to; but this body can do as it pleases. I'm not trying to tell them and I don't think any of us can. And you may make a motion, I suppose to-1 suppose the only motion in order now would be a substitute motion to segregate-or to refer these matters to the Rules Committee. But I don't think you intend to refer the death penalty matter to the Rules Committee; you intend to refer the issue to the Rules Committee. And if you want to do that, you certainly may. But my point is that these things come up when people have them and send them, and that we have to vote on them and decide them. That's all I'm trying to do.

DELEGATE BABCOCK: I hope we can figure out some way how this body can do it.

CHAIRMAN GRAYBILL: Mr. Studer's been up.

DELEGATE STUDER: Mr. President [Chairman], I just wanted to clear up a point. Are we voting on Kelleher's deal as an alternative?

CHAIRMAN GRAYBILL: Mr. Kelleher moved that as an alternative to Mr. Campbell's,

DELEGATE STUDER: Well, it doesn't say so on the sheet I got.

CHAIRMAN GRAYBILL: No, but I've twice pointed out that you should amend the sheet, Mr. Studer, so that it says: "I move to put on the ballot the following."

DELEGATE STUDER: Okay, thank you very much.

CHAIRMAN GRAYBILL: Okay. Are there further questions on Mr.-before we go to vote on Mr. Kelleher's motion?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I wonder if we couldn't take just a couple of minutes to eliminate the confusion in my mind, and I think in the minds of most of the delegates, as to what the power of the Style and Drafting Committee is. In Rule 51 it says that the Committee on Style shall prepare for submission to the electorate the proposals of the Convention and a ballot. Now I don't see how they can come back and propose to us something that we have voted down. How can they? It isn't a proposal of the Convention unless we voted for it.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, fellow delegates. I don't have the authority, probably, to give you a decision on what we do, but I can assure you that anything that the majority here doesn't vote for certainly will not be done, and the Style and Drafting cannot do it. We have to have a majority vote in this body on any motion that is made and it will so carry, and that's the way it will be done. So, to-what Style and Drafting does, it will have to be with this body's sanction.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: You know, about once a week I get confused.

CHAIRMAN GRAYBILL: It's not Saturday yet, Mr. Champoux. (Laughter)

DELEGATE CHAMPOUX: I know, but I'm a day early this week. (Laughter)

CHAIRMAN GRAYBILL: Oh, that's right. You've made your point.

DELEGATE CHAMPOUX: Wait till tomorrow. (Laughter)

CHAIRMAN GRAYBILL: You've made your point. Do you want to sit down while you're ahead, Mr. Champoux? (Laughter)

DELEGATE CHAMPOUX: You know, I think this whole business about Style and Drafting could turn out to be a real dangerous thing and a lot of things could be read into it. For instance, if we get a motion back from Style and Draftingthat they feel that a certain thing should be on the ballot, isn't that indirectly a move to reconsider, sir?

CHAIRMAN GRAYBILL: Are you asking the Chair a question?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: The Chair has never suggested that the way to get things on the ballot is to wait for Style and Drafting. Style and Drafting has suggested that. The Chair thinks that this body-if you want to know what the Chair thinks, I think this body has to suggest or send something to Style and Drafting, as we did the first day with unicameral, and tell them to put it on the ballot. Now, if we do that, I think they'd tell us how. But-I'm trying not to debate this, but my view is that you have to tell them. I don't think they should come up with new suggestions out of the blue. I don't really think they're going to.

DELEGATE CHAMPOUX: All right, thank you, sir.

CHAIRMAN GRAYBILL: I think maybe they're, in an abundance of caution, trying to keep the issues down. All right, are we ready to vote on this issue? The issue is Mr. Kelleher's motion, which is a substitute motion, to put on the ballot the following words: "The death penalty shall not be authorized except for the murder of policemen or prison guards on duty and for the commission of a second capital felony." The way, the precise way, in which it would go on the ballot would be up to Style and Drafting, but whether or not to make that an issue to go on the ballot is what we're talking about.

Mr. Kelleher, do you want to close, or you just want to—

DELEGATE KELLEHER: No, I don't want to take the time to close. I think the matter has been very thoroughly discussed. But Mason Melvin has just called to my attention something, and I would like to, if there is no objection, substitute for the word "policemen" the words "law enforcement officers" so as to include sheriffs, highway patrolmen, and indeed, for therecord, all types of law enforcement officers.

CHAIRMAN GRAYBILL: All in favor of allowing Mr. Kelleher to make that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. All right, are you ready for the question then? Those in favor of Mr. Kelleher's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, that one is defeated. Now we're discussing Mr. Campbell's mbtion, which is to place as a side issue on the ballot the phrase: "Death shall not be prescribed as a penalty for any crime against the state."

UNIDENTIFIED DELEGATES: Roll call vote.

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote.

Mr. Campbell, do you want to close?

DELEGATE CAMPBELL: I certainly am not going to spend much time on it. I have received one letter, which is the most moving letter I've received since I've been at the Convention. It's from an inmate in our own prison, and many of us think with all the safeguards, innocent men never get convicted. Of course not; it couldn't happen. I'd just like to read to you. The first part of the letter, they were very excited about the first part of this section as an incentive for rehabilitation. On the second page, this is what this man in our prison wrote to me: "Recently I was faced with a moral dilemma which I later realized never existed. Briefly, a full confession was made to me by another prisoner regarding a murder he had committed. This man further indicated in detail how he had successfully framed another individual for this same crime. I'm ashamed to say that for 2 weeks I kept this information to myself. Fortunately, I was able to muster enough guts to overcome this rather warped sense of values, and now I know I've made the right decision. The guilty man has since been convicted, while the innocent one has been returned his freedom." It can happen, A man lied to convict another man to save himself, and with all the safeguards our system has, this can still happen. And this is why I think that this should be placed on the ballot, that people should consider it; and certainly the majority in the early 1400's knew without thinking about it that the world was flat, and I think that this is one thing that we're going to have to think about. And I would sincerely hope that we give the people of Montana this opportunity to abolish it or let the Legislature deal with it. Thank you.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. The issue is on Mr. Campbell's amendment to Section 28 to place-it's in conjunction with 28—to place as a side issue on the ballot the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." All those in favor, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim ..... Absent
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye

Johnson	Nay
Joyce..	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin..	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Nay
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 58 delegates voting Aye, 35 voting No.

CHAIRMAN GRAYBILL: 58 delegates having voted Aye and 35 No, Mr. Campbell's motion prevails, and that will be sent to Style and Drafting for that purpose.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for 15 minutes, until 3:35 p.m. this day.

CHAIRMAN GRAYBILL: Now, ladies and gentlemen, we're going to learn, I think, that we have to wait till this motion is put.

Mr. Rygg, do you have a-did you wish to be heard?

DELEGATE RYGG: I wanted to make a committee announcement. Is it possible to do that now?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE RYGG: I would like to have Revenue and Finance, in Room 437, immediately upon recess. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Now, all in favor of recessing for 15 minutes, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Thank you. Recess.

(Committee recessed at 3:20 p.m.-reconvened at 3:50 p.m.)

CHAIRMAN GRAYBILL: The committee meeting will please come to order. Is there other discussion of Section 28?

Mr. Habedank.

DELEGATE HABEDANK: I have a motion which I'd like the clerk to read.

CHAIRMAN GRAYBILL: Right. The clerk will read Mr. Habedank's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 28, page 40, by addition of the following: 'Nothing contained in this section shall be-allow a person convicted of crime to continue in or enter any business, trade, occupation or profession when prohibited from engaging therein by the licensing provisions provided by law.' Signed: Habedank."

DELEGATE HABEDANK: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Habedank, your amendment, which would add a sentence to 28 to the effect that anyone convicted of a crime may not enter a trade, business or occupation which-wherein he is prohibited by licensing provisions to do so, will be allowed and you may discuss it.

DELEGATE HABEDANK: Mr. President [Chairman], the Bill of Rights Committee, in their presentation on the floor before, very forthrightly said that it was their intention in the adoption of this article that when any person had served his sentence, he was to be restored both to his political rights and to his civil rights; which meant, as they explained it in answer to a specific question by myself, that if I as a lawyer were convicted of a crime, sent to the penitentiary, served my sentence, I would automatically be restored to the practice of my profession when I finished my sentence. Each profession, whether it's lawyer, doctor, certified public accountant, or any of the other professions, have licensing boards who exercise some discretion as to whether or not a person should be admitted to practice; and in the exercise of that discretion, I think it is proper that they should not, for the mere fact that a person has been in the penitentiary alone, be allowed to refuse his admittance to practice. But the mere fact that a person has completed his sentence does not, in my opinion, necessarily entitle him to full faith and credit and be returned to a profession. Licensing provisions are made for the protection of the public. I think the licensing boards in each of the professions are people of character and discretion, and as I read this provision as given by the majority, they would not have this discretion. They would automatically be required to restore a person to his profession, and I think this is going too far as a matter of constitutional law. The Legislature should be left some discretion in this matter, and as I look at it, my amendment would do this. And I urge your support of the amendment.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to oppose the proposed amendment of Mr. Habedank's. Certainly nothing is a greater threat to rehabilitation than the present restrictions we've placed on people whom, at the end of their sentence-not just the time that they're released from prison, but the time at which they are released from supervision, the time at which we tell them, "You have paid your debt to society, we are going to restore your rights." This is what we determined in the Bill of Rights Committee would be only fair. At the present time, a person cannot—there is no discretion in the board. If you have a felony in your record, you cannot engage in these occupations that the Montana Legislature has provided felony restrictions on. They include approximately 23 professions. It has gone all the way from the doctors, the lawyers, the teachers, all the way through the barbers and to the last classification that the Legislature put that a felon could not engage in, and that is an artificial inseminator for cattle. Now, I say to you, the Legislature is going too far, that there is no reasonable relationship between a person's pastrecord and the ability to practice any meaningful occupation in this state. This would be a step forward. It would judge a man on his merits. I still believe that if he was unfit to practice his particular profession, it could certainly be handled by the Legislature. We do not intend to bind this in as far as that goes. It's my position that right now there is no discretion on the boards at all; that if there is truly some relationship between a man's fitness to practice his profession, then certainly the board should and will have it even under this amendment. It's just saying that we're giving him the presumption, when he starts out, that he's capable, that he's paid his debt, that he can engage in some meaningful occupations which he cannot now. For the rest of his life he is, at the present time, excluded from all of these occupations and he's certainly rejected from the system And I think that if we are going to have rehabilitation, we're going to have to start with a clean slate. I've talked with the Parole Board on this. They have been very excited about this. This is one thing that would certainly help them in the rehabilitation, and I would oppose the amendment. I feel it is destroying the very thing that we're trying to do, and that is to make useful citizens out of people who have made a mistake and paid their debt. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would like to close. In answer to what Mr. Campbell has said, he is correct up to a point. But the Legislature can change this, and when we lock it in the other way, I submit to you that we are locking into the Constitution a provision that will prohibit you from protecting the public through the Legislature.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Habedank's-

Mr. Studer, you want to speak?

DELEGATE STUDER: No, I just wanted to ask if we could have that read to us-that amendment.

CHAIRMAN GRAYBILL: I'm going to read it to you.

DELEGATE STUDER: Okay.

CHAIRMAN GRAYBILL: The issue is on Mr. Habedank's motion that we add the following language to Section 28: "Nothing contained in this section shall allow a person convicted of crime to continue in or enter any business, trade, occupation or profession when prohibited from engaging therein by the licensing provisions provided by law. Nothing contained in this section shall allow a person convicted of a crime to continue in or enter any business, trade, occupation or profession when prohibited from entering therein by the licensing provisions provided by law." So many as shall be in favor-

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: Roll call. So many as shall be in favor of adding that to the Section 28 on the Bill of Rights, please vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the vote.

Aasheim Nay
Anderson, J. Aye
Anderson, O. Absent
Arbanas Nay
Arness Nay
Aronow Aye
Artz Aye
Ask Aye
Babcock Nay
Barnard Nay
Bates Excused
Belcher Aye
Berg Aye
Berth&on Aye
Blaylock Nay
Blend Nay
Bowman Aye
Brazier Absent
Brown Absent
Bugbee Nay
Burkhardt Nay
Cain Nay
Campbell Nay
Cate Nay
Champoux Nay
Choate Absent
Conover Nay
Cross Nay
Dahood Nay
Davis Nay
Delaney Absent
Driscoll Absent
Drum Aye
Eck Nay
Erdmann Aye
Eskildsen Absent
Etchart Nay
Felt Aye
Foster Nay
Furlong Excused
Garlington Aye
Gysler Absent
Habedank Aye
Hanson, R.S. Nay
Hanson, R. Absent
Harbaugh Nay
Harlow Nay
Harper Aye
Harrington Nay
Heliker Nay
Holland Absent
Jacobsen Aye
James Nay
Johnson Aye
Joyce Nay
Kamhoot Aye
Kelleher Nay
Leuthold Aye
Loendorf Nay
Lorello Nay
Mahoney Absent
Mansfield Absent
Martin Absent
McCarvel Nay
McDonough Nay
McKeon Nay
McNeil Nay
Melvin Aye
Monroe Nay
Murray Absent

Noble ..... Aye
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Absent
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Absent
Vermillion ..... Absent
Wagner ..... Absent
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 24 have voted Aye, 54 have voted No.

CHAIRMAN GRAYBILL: 54 having voted No and 24 Aye, the motion fails. Is there other discussion of Section 28? Members of the committee, you have before you for your consideration Section 28 and you've had the recommendation of Mr. James that when this committee does rise and report, after having had it under consideration, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 28 is adopted. Will the clerk read Section 29.

CLERK SMITH: "Section 29, Eminent domain. Private property shall not be taken or damaged for public use without compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner is the prevailing party." Section 29, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, thanks for reminding me I brought up Section 28. It seems like a long time ago. (Laughter)

CHAIRMAN GRAYBILL: How about Section 29, Mr. James? (Laughter)

DELEGATE JAMES: Thank you, Mr. Chairman. Mr. Chairman, I move that when this committee does rise and report, after having under consideration Section 29 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman, the committee unanimously approved substantive changes in the eminent domain section. The thrust of the committeeeffort was to assure the full and just compensation—that full and just compensation be made in all eminent domain actions. Without it, some of the costs of eminent domain action fall where they do not belong-on the person whose property is being condemned. In order to give substance to the citizen's effort to challenge the compensation figure of the condemnor, the last sentence of this provision was added. Those testifying in opposition to the committee's original eminent domain proposal agreed that this sentence, which awards necessary expenses of litigation to the private property owner when he is the prevailing party, is just. The committee intends, by "necessary expenses of litigation", all costs including appraiser's fee, attorney fees and court costs. It is felt that when-this stipulation will produce a climate in which the condemnor's offer for compensation will be more-will more adequately reflect the compensation to which the property owner is entitled. The property owner will have a chance to collect the expenses he incurs in challenging the condemnor's action. In addition, it will redress the imbalance between the vast resources brought to bear by the state and those available to the individual property owner in contested cases. The committee recommends this section to the Convention as insurance that the compensation to the private property owner will, in fact, be just. Delegate Proposal Number 75 was amended to accomplish this provision. I think you're all familiar with the term "the public good". Sometimes this is rather elusive and is used to condemn

property and a figure which may be unjust to the property owner is not contested because of the cost of litigation. This, I believe, will correct this situation. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion of Section 29?

Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, I move to amend Section 29, on page 41, line 29, by placing a period after the word "loss" and deleting therefrom the words "having been first made to or paid into court for the owner".

CHAIRMAN GRAYBILL: Now, you just want to delete the rest of that sentence, is that right?

DELEGATE DAVIS: Yes, sir.

CHAIRMAN GRAYBILL: Mr. Davis proposes an amendment to Section 27 which puts a period after the word "loss" and strikes the words "having been first made to or paid into court for the owner".

Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. Although I confess I've not had the extensive experience in this matter that Chairman Dahood has, in the road problems we've had in our area with the state, the full extent of the loss has not been fully determined until after the road has been constructed. Many people have settled on what they thought were the full extent of the loss, then to find out that the underpasses wouldn't work or that right-of-ways weren't there, and so forth. I think that the expansion they made to have the additional cost paid are very fine, but I don't think we want to hold up the wholeinterstateroad program until all the litigation is over, and I don't think that you can make a determination of what the full extent of the loss is until after the construction takes place. We've had many representations made of many landowners in our area who have settled based on the right-of-way agreements, only to find out subsequently that their frontage roads weren't there or that their other underpasses, in some cases, were not adequate to get stock through or machinery from one side of the road or the other, and then they were precluded from getting the full amount of their loss. So I think that this amendment will be in keeping, I hope, with what they have in mind. I don't think that you can stop the program on road construction by having all the litigation settled, and I don't think-this again is a two-edged sword. It can work to the detriment of the landowner as well as to the-to his benefit; and I think it would be much better this way, in keeping with an orderly construction program, and also better for the owner, so they can determine what's actually happened after the construction has taken place; and I'll yield to Mr. Dahood to present his views on this.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think Delegate Davis is really addressing himself to the delegate proposal before we changed it. The comments that he has made, at the moment, in my judgment, do not apply to the section as it presently reads. The language that Delegate Davis seeks to omit by his motion is language that we have had in the State of Montana for80 years. The present constitutional provision, Article III, Section 14, reads: "Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner." The reasons that Delegate Davis has given for deleting this particular language relates to an entirely different problem. And, of course, the function of the court is to find out what is the full extent of the loss. When condemnation is made by the State of Montana, they are required by law to make deposit with the court with respect to the amount that is claimed by the property owner. That property owner is permitted, because it's necessary for him in order to protect his property position, to ask the court for permission to withdraw that sum of money. He is then permitted to present his case to a jury, to have that jury determine what is the full extent of the loss. That is the real conflict and the real controversy in an eminent domain proceeding. With respect to whether or not a frontage road is adequate, whether or not the underpass may be sufficient, that is a separate question that is not related necessarily to the amount of compensation. You have the plans of the Highway Department; they're produced in court. Their engineers testify, and the full extent of the loss is based upon what has been presented in that respect. If it turns out that the plans are later changed or that the construction does not fit that particular plan, you have then perhaps a different type of taking; and then, under this particular constitutional section, you have what we call inverse condemnation, where then the property owner can file a complaint in court and sue the state for an additional taking not within the contemplation of the first award. I took this time to explain for the benefit of

the nonlawyer delegates what is involved, and I would ask Mr. Davis, Delegate Davis, if he would yield to a question.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I yield, Delegate Dahood.

DELEGATE DAHOOD: Now, Carl, perhaps I have not responded directly to your position; and in order to clarify it so that everyone will understand what the situation is, if you have another question, I would welcome it at this time.

DELEGATE DAVIS: I do have another question, and perhaps more, if you would yield.

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE DAVIS: Your principal change, as I understand-in the first sentence of this section from our present Constitution, which says "just compensation"-your principal change is to have "compensation to the full extent of the loss". Would you explain the difference in adopting that language.

DELEGATE DAHOOD: Carl, in my judgment, I don't think it makes any real substantial difference. As you well know, there are many, many, many eminent domain cases decided by the Supreme Court of the State of Montana dealing with the question of what is the full extent of the loss. I do not think it is going to change the law that expands with time and circumstance. I think we have merely indicated here that we want to be sure that the court continues to recognize that we want the citizen compensated to the full extent of the loss. As you well know, the leading authority on this particular subject of the law is Nichols; that contains some eight volumes, and most of that work is related to the question of what is the full extent of the loss.

DELEGATE DAVIS: Thank you. Will you yield to another question?

CHAIRMAN GRAYBILL: Mr. Davis. Will you yield, Mr. Dahood?

DELEGATE DAHOOD: I do, Mr. Chairman.

DELEGATE DAVIS: For the purpose of the record in this matter, Mr. Dahood, is it your thought that the highway construction can then proceed as they now are by either you consenting or getting their take and go ahead with the construction before all litigation is-has been concluded regarding this particular take, to determine the full extent of the loss?

DELEGATE DAHOOD: Carl, without any doubt; we have not changed the present system whatsoever insofar as the ability of the State Highway Department to start construction.

DELEGATE DAVIS: All right, with that in the record, I'll withdraw my motion.

DELEGATE DAHOOD: Thank you very much.

CHAIRMAN GRAYBILL: Mr. Davis' amendment is withdrawn. Is there other discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: Yes, I yield, Mr. Chairman.

DELEGATE HABEDANK: Mr. Dahood, for the purpose of the journal in future litigation over interpretation of this term, will you please state into the record what is meant by the words "prevailing party".

DELEGATE DAHOOD: By "prevailing party" I mean, for the record, the property owner, in the event that he is the prevailing party. The only person intended by this particular section and the sentence that has been added-"just compensation shall be awarded by the court only"— "just compensation shall include expenses of litigation only when the prevailing party is the private property".

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Dahood, I failed to ask the question properly. If the Highway Department offered an owner $5,000 for his property and the owner refused it and went into court and secured a judgment from the jury for less than $5,000, would he then be a prevailing party?

DELEGATE DAHOOD: He would not be a prevailing party.

DELEGATE HABEDANK: If he obtained $5,001, would he be a prevailing—

DELEGATE DAHOOD: He would be a prevailing party.

DELEGATE HABEDANK: Thank you, Mr. Dahood.

CHAIRMAN GRAYBILL: Is there other discussion of Section 29?
Mr. Harlow.

DELEGATE HARLOW: I merely wish to rise in support of this section. I want to ask Mr. Dahood the one question in between what Mr. Habedank-take the same case that Mr. Habedank had, and the party received only the $5,000. Would he be prevailing?

DELEGATE DAHOOD: He is not the prevailing party in that instance.

DELEGATE HARLOW: He's got to get $1 more?

DELEGATE DAHOOD: He has to exceed the offer made by the State of Montana.

DELEGATE HARLOW: Thank you. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on the motion of Mr. James that when this body does arise and report, after having had under consideration Section 29, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 30, Mr. Clerk.

CLERK SMITH: "Section 30, Treason and descent of estates. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his confession in open court; no person shall be attainted of treason or felony by the Legislative Assembly; no conviction shall cause the loss of property to relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death." Section 30, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 30 of Proposal Number 8, that it recommend the same be adopted.
Mr. President.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. This section reads the same as the Section 9 in the 1889 Constitution, except for the last-right-starting on line 17 on page 10; and we did change the language there. We took out that business of the corruption of the blood. We thought that sounded a bit obscene and so wechanged it to "no conviction shall cause the loss of property to the relatives or heirs of the convicted." We thought it stated it in better English. And then we changed the last sentence to read: "The estates of suicides shall descend or vest as in cases of natural death", rather than the old, archaic language of the 1889 Constitution. And we thought about changing the language further, but some of the members wanted to leave the language as much as possible as is.

CHAIRMAN GRAYBILL: Is there discussion?
Mr. Harper.

DELEGATE HARPER: Mr. Chairman, will Mr. Blaylock yield to a question?

DELEGATE BLAYLOCK: Yes.

CHAIRMAN GRAYBILL: Mr. Blaylock?

DELEGATE BLAYLOCK: I yield.

DELEGATE HARPER: How do I go about committing treason to the State of Montana?

DELEGATE BLAYLOCK: Well, to think up a good example, Mr. Harper, I suppose one case of treason against the State of Montana would be if there were a conspiracy to be formed and they were to, say, storm this building and to try to take the seat of government of the State of Montana. That would be one case of treason against the state. I don't know whether you like it or not.

DELEGATE HARPER: Well, no, that's fine. I'm just glad-I'm just grasping for straws here because several people here in town have asked me, "Well, what [why] in the world are you

going to have something about treason of the State of Montana? Is somebody going to wage war on Montana?" We're talking about aiding its enemies. They fought a war in the 1860's that decided that Montana can't-decided to be a sovereign state and leave the Union. And they pretty well settled that, and I wasn't really able-and I'm-if you could give me even one other illustration, I'd appreciate it; but storming the Capitol will probably do in Helena. (Laughter)

CHAIRMAN GRAYBILL: Are there any other questions or discussion on Section 30? Members of the committee, you have before you, on the recommendation of Mr. Blaylock that when this committee does arise and report, after having had under consideration Section 30, that we recommend the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 31, Mr. Clerk.

CLERK SMITH: "Section 31, Ex post facto, obligation of contracts and irrevocable privileges. No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises, or immunities shall be passed by the Legislative Assembly." Section 31, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 31 of Proposal Number 8, it recommends that the same be adopted.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. President, I'd like to read the brief comments on this. "The committee voted unanimously to retain the former Article III of Section 2 unchanged. The protections against ex post facto laws, laws impairing the obligation of contracts and laws granting irrevocable privileges seemed adequate. No delegate proposals were received on this provision." With this ex post facto in here, I believe the cowboys of the Powder River country and the loggers of the Kootenai and, I hope, the 24 licensed attorneys will accept this.

CHAIRMAN GRAYBILL: Well, there's one that would like to discuss it.

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, just for the benefit of some of the peons in this assembly, would somebody-perhaps the Chairman of the committee or maybe the Chair—explain the meaning of the word "ex post facto law"?

CHAIRMAN GRAYBILL: Well, it has nothing to do with what those Powder River cowboys think it means. (Laughter) Ex post facto means making a law that relates back to a period before the law was passed. In other words, if they passed a law in the next Legislature making it a crime to participate in a constitutional convention, that would be an ex post facto law. Is that right, Mr. Johnson?

DELEGATE JOHNSON: Mr. Chairman, I believe those cowboys down there in Powder River country are thoroughly confused. (Laughter)

CHAIRMAN GRAYBILL: Is there other discussion of Section 31? It means you can't make a law that goes backwards, or behind the time the law was made. All right, members of the committee, you've had before you the recommendation of Mr. James that when this body does arise and report, after having had under consideration Section 31, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 32.

CLERK SMITH: "Section 32, Civilian control of the military. The military shall always be in strict subordination to the civil power. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law." Section 32, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 32 of Proposal Number 8, it recommends

that the same be adopted.

The committee voted unanimously to retain this former Article III, Section 22, as unchanged. In doing so, the committeenotes theimportanceof the declaration of principle that the civilian authority always supersedes that of the military. Although the quartering of troops prohibition has not been an issue in many years, the committee felt it was wise to retain the safeguard. No delegate proposals were received on this provision.

CHAIRMAN GRAYBILL: Is there any discussion of Section 32?

Mr. Bugbee.

DELEGATE BUGBEE: I'd just like to ask why the committee felt it was wise to retain that safeguard of quartering and-it doesn't make any sense to me.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: Well, Ithink the committee felt they didn't want to take any of the rights away from the people and say that we had deleted something from the Bill of Rights. Now, I don't know why they probably put it in the one in 1889; but as long as it was there, they just continued to keep it in this present Constitution.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Maybe Mr. Dahood would answer that.

CHAIRMAN GRAYBILL: Mr. Dahood, the question is, why do you keep, "No soldier shall in time of peace be quartered in any house"?

DELEGATE DAHOOD: Well, simply because this is a right the people have at the present time. We do have such thing as a National Guard. We can have a militia. We've had situations involving a riot at the state penitentiary, where some well-meaning individual with military power and control may want to do something. We merely want to indicate that as far as the people of Montana are concerned, they want that particular protection and they're going to insist upon it and continue to do so.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I'd like to ask—

CHAIRMAN GRAYBILL: (Gaveling for quiet) Mr. Rollins has the floor.

DELEGATE ROLLINS: I'd like to ask Mr. Dahood a question, please.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: I yield.

DELEGATE ROLLINS: Mr. Dahood, under what circumstances could martial law be proclaimed in the State of Montana?

DELEGATE DAHOOD: Under what circumstances?—I would suppose under some type of state or national emergency.

DELEGATE ROLLINS: And if that occurred, would the civilian be superior to the military?

DELEGATE DAHOOD: Would the civilian be superior to the military? I would hope with respect to this particular right, yes, about the quartering of soldiers.

DELEGATE ROLLINS: How about the first part of the statement? It said that the military would always be in strict subordination to the civil power. Would this prevent the declaration of martial law?

DELEGATE DAHOOD: No, it would not.

DELEGATE ROLLINS: Thank you.

CHAIRMAN GRAYBILL: Mr. Rollins, the Governor would always be in charge theoretically.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, I'd like to amend that we put a period in after "power" and delete the rest of that.

CHAIRMAN GRAYBILL: Mrs. Bugbee, you write that amendment up now and send it up to me.

CHAIRMAN GRAYBILL: Mrs. Bugbee has proposed an amendment to Section 32 which would place a period after the word "power", so that the section would read: "The military shall always be in strict subordination to the civil power." She would then strike the words: "No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law."

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, if it has had no use in the past Constitution, I don't understand why it needs to be kept and that's why I think it should be deleted. If no one can defend it, I don't see why we should keep it.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, in the big blue and white book, *Bill of Rights*, page 91, you'll find an explanation of why this is kept. It goes back to the American Revolution, and it was one of the principles that was very important at that time. I'd like to quote some of this material. "Nearly every state Constitution has a provision prohibiting the quartering of troops in private dwellings. The principle was expressed as a complaint in the English petition of right of 1628"— and they quote that. I'd also like to read further. It says: "The principle of no quartering of troops is now well established and seems to be of little relevance today; however, the enunciation of such a principle is a sign of the pervasive colonial mistrust of the military and the colonists' desire to prevent the potential abuses with which they knew standing armies threatened society. In 1765, General Gage secured the passage of a quartering act to aid him in the enforcement of the Stamp Act and the Revenue Act of 1764." Well, maybe it won't happen again, but there's your history.

CHAIRMAN GRAYBILL: Is there further discussion?
Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, on behalf of the Bill of Rights Committee, I oppose the amendment. As a practical point, I don't expect that this is ever going to happen, but it's a protection that the people have. They have had it traditionally and they have had it historically. It could serve some purpose. There could be some violation of that right under some unique emergent circumstance that can happen; probably will not. But the people are entitled to have that. We took the position on our Bill of Rights Committee that we were not going to take away any of the rights of the people unless there was some overriding reason as to why there ought to be some change, some modification, or why the particular provision should be taken away. The people sent us here to protect their rights and to expand upon them where a reason required it, and we submit that striking that last portion of Section 32 serves no useful purpose and there is a useful purpose to be served by retaining it. I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I guess I could talk to Daphne without getting to the microphone, but I've just been reading the story of the San Francisco earthquake recently, and there were some strange things that happened in the midst of that; and I would remind her we're sitting on an earthquake fault right here in Helena, and there may be reason to keep such a provision in the Constitution.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, if the National Guard on maneuvers in the vicinity of Missoula are quartered in Daphne's house without her consent, perhaps the meaning of that would be more clear. (Laughter)

CHAIRMAN GRAYBILL: I think, Mr. McNeil, the point is that it can't be without her consent. (Laughter) Perhaps the Chair should stay out of the argument. Is there other discussion? (Laughter)
Mr. Harper.

DELEGATE HARPER: I'd just like to comment, Mr. Chairman, thatthey'd better not try to quarter anybody in Rachel Mansfield's grandmother's house. (Laughter)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you Mrs. Bugbee's amendment. So many as shall be in favor of her amendment to put a period after "power" and strike the quartering act, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No. (Laughter)

CHAIRMAN GRAYBILL: The motion is defeated. Are there other discussion of Section 32? Members of the committee, you have before you, on the recommendation of Mr. Hanson that when this committee does arise and report, after having had under consideration Section 32, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 33, Mr. Clerk.

CLERK SMITH: "Section 33, Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of peace or the suppression of domestic violence, except upon application of the Legislative Assembly or of the Governor when the Legislative Assembly cannot be convened," Section 33, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. I move that when this committee does arise and report, having had under consideration Section 33 of the Bill of Rights Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman. Article III, Section 31, remains unchanged. The protection, initially established to prevent the importation of strikebreakers, is thought to be an adequate safeguard against any body of armed men coming into the state. No delegate proposals were received on this provision. This particular section was reviewed in somewhat similar light as to the one previous to it. The thinking of the committee on this question was the same. It does have some history to it, and there is a possibility that in the case of an unruly situation that someone might be inclined to bring armed men into the state. And we felt that it was a good safeguard, and the committee felt it was important that this be retained as a safeguard to the people of the State of Montana. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Is there discussion? Members of the committee, you have before you, on Mr. Foster's recommendation, that Section 33 be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Section 34.

CLERK SMITH: "Section 34, Unenumerated rights. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people," Section 34, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 34 of Proposal Number 8, that it recommend the same be adopted.

Mr. Chairman, this provision is the same as the one we had in our last-in our present Bill of Rights, Section 30, and it's also contained in the federal Bill of Rights. I think that it is completely self-explanatory. There are rights which are not enumerated which the people of Montana should not be denied. Thank you.

CHAIRMAN GRAYBILL: Is there any discussion of Section 34? Members of the committee, you have before you, on the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 34, that we recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Members of the committee, we have one new matter.

Mr. Campbell, do you want to make your proposal now? Do you want to make this other one or not? Do you want to leave it-drop it?

DELEGATE CAMPBELL: (Inaudible)

CHAIRMAN GRAYBILL: Well, you have on my desk an alternative proposal for the ballot on Section 12. I don't know whether you want it or not.

DELEGATE CAMPBELL: I would see if someone would--was going to move for reconsideration on that matter. If they did move for reconsideration, I would enter that later.

CHAIRMAN GRAYBILL: Very well, we have for reconsideration one matter, and I understand-Mr. Studer, my point is, if you want to make a motion to reconsider, do so; but I don't think I can hold the article; so you prepare yourself one way or the other. Mrs. Warden, do you want to take your matter first?

Mrs. Warden.

DELEGATE WARDEN: Yes, Mr. President [Chairman]. Having voted on the prevailing side, I move to reconsider Section 12 of the Bill of

Rights Article. I voted on the prevailing side and I've had second thoughts on this. This is the right to bear arms. I feel that I would like to suggest that instead of going through all the debate that we went through yesterday, that perhaps even a vote on this to put in those nine little words that were taken out yesterday would be in order. I think that we know pretty much what the problem is. We've talked about it; we've hashed it over for several hours yesterday. And I felt that I needed to bring it up today, and I would hope that we could have a vote without a great deal of debate. Thank you.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: I've been expecting this, Mr. Chairman, and I don't know whether to call it "here we go again", or "it seems to me I've heard that song before". (Laughter) It is another attempt to substitute a later action for an action that has already been taken by this Convention. I doubt that much new can be adduced by redebating this. I don't know why certain people would have changed their minds unless they got word back from the folks back home or had a sudden reconversion during the night. I wonder if we discuss this all again-I've been thinking of titles again-will we, by reconsidering it, be doing as Longfellow states, doing something real in earnest, or will we be, as Shakespeare suggests, be enacting a tale told by an idiot, full of sound and fury, signifying nothing. I oppose the reconsideration of this motion.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman and fellow delegates. I had a-1 get real emotional on this matter of guns, and yesterday I had prepared a 2-hour speech in support of a motion to delete the entire section, let alone amend it. But I forbore myself yesterday looking at my little sign that says, "Blessed is the man who, having nothing to say, abstains from giving in words evidence of that fact"-said sign having been distributed to us earlier. But I do believe I would be unable to resist the temptation today, if this matter were opened up, as I was successfully able in resisting the temptation yesterday. (Laughter)

CHAIRMAN GRAYBILL: Very well, apparently the issue arises on Mrs. Warden's motion that we reconsider Section 12.

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], fellow delegates. I believe that we should reopen this for not too much debate, but for the simple reason that there are fifteen to twenty thousand people in the State of Montana that are a little bit emotional about this not being in our Constitution, not being added. And those nine little words certainly won't add much to the document as far as paper is concerned, but it can mean a lot in having a lot of other people concerned and voting for this completed document. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mrs.-

Mr. Choate, do you want to debate or do you want to discuss? Go ahead.

DELEGATE CHOATE: Only to say that I would support the motion to reconsider. I've had about a hundred and fifty letters regarding this issue, and I would support the motion.

CHAIRMAN GRAYBILL: All right now, that seems repititious. The Chair wants to get this going. All those in favor of Mrs. Warden's motion to reconsider—

Mrs. Warden, do you want to close?

DELEGATE WARDEN: I want a roll call.

CHAIRMAN GRAYBILL: You want **a** roll call vote. All those in favor of Mrs. Warden's motion to reconsider Section 12, please indicate by voting Aye; those opposed, vote No. It takes two-thirds or 51. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Now, I think the Chair stated that wrong. This is not to suspend the rules, this is to reconsider; so it does not take two-thirds or 51 percent, it takes a majority. Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the vote, take the tally.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas ..... Nay
Arness Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye

Barnard ..... Nay
Bates ..... Excused
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Absent
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Spew ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 47 have voted Aye, 45 have voted No.

CHAIRMAN GRAYBILL: 47 having voted Aye, 45 having voted No, Section 12 is reconsidered. Will the clerk please read Section 12.

CLERK SMITH: "Section 12, Right to bear arms. The right of any person to keep or bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." Section 12, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President [Chairman], may I put in the same amendment that we had yesterday-"nor shall any person's firearms be registered or licensed"? I think it's all in the book. Do you need an extra amendment on it?

CHAIRMAN GRAYBILL: Would you read it to me.

DELEGATE WARDEN: "--nor shall any person's firearms be registered or licensed."

CHAIRMAN GRAYBILL: You want to insert that after-at the end?

DELEGATE WARDEN: May I ask, Mr. Chairman—

CHAIRMAN GRAYBILL: Or do you want to put it under--after the word "property"? Is that right? Or where do you put it? No, you put it-"shall not be called in question".

DELEGATE WARDEN: --"in question".

CHAIRMAN GRAYBILL: All right, on line 20 on page 6, in Section 12, Mrs. Warden moves to add the words "nor shall any person's firearms be registered or licensed".

Mrs. Warden.

DELEGATE WARDEN: I would just like to say again I would hope that there could be a simple vote on this without a great long bit of debate.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move to delete Section 12, the entire section of the Bill of Rights Committee proposal.

Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute. That's a substitute motion?

DELEGATE KELLEHER: As a substitute motion, yes, sir.

CHAIRMAN GRAYBILL: Mr. Kelleher has now made a motion to delete Section 12 in its entirety.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, fellow delegates. When I was at the-on active duty last summer at the War College in Pennsylvania, a mother calmly walked into a bedroom in Harrisburg, Pennsylvania, and shot—pumped five slugs into her 16-year-old son as he lay in bed. Last week in Massachusetts a mother calmly shot three of her children and shot herself. Last summer in Billings, Montana, to get a little closer to home, a 20-year-old son had a dispute with his father, got the family .45 and did in the old man. Seventy-five percent of the homicides in the United States are with guns-that are with guns are committed in a fit of temper and a fit of passion. The only problem is they may cool off later, but the person who has been shot has been cooled off permanently. Seventy-five percent of these homicides with guns are between relatives or friends, people who know each other. I will not allow loaded weapons in my house, as has been said by some of the members here yesterday. I have stayed active in the Army Reserve for 23 years because I feel this is my duty in the field of national defense. And1 submit that anybody here, or anybody in this state who is very anxious to protect the State of Montana and its land and its people, they can either join the National Guard—the Army National Guard or the Air National Guard. I'd be very happy personally to swear them into the Army Reserve here in Montana. They are also eligible, you know, to join the Navy Reserve or the Air Force Reserve. If you are really interested in defending your state, I urge you, and anybody outside who has been writing you these mimeographed, hectographed letters, that they do likewise. In fact, under our new Constitution, I'm very happy to say that females will be able to live in our barracks in the future, and I think that's wonderful. They, too, can bear arms as long as they wear a uniform. I think that's great. I'm all for it. That beats beer in a barracks any day. I just wish I was born 20 years later, that's all. This matter of registration of guns, as far as I'm concerned-I don't care what anybody feels or says about it-1 would like to see us register guns. I would like to see very strict controls on handguns. If you want to belong to a gun association, let the Legislature provide for some kind of control of these weapons; you go out to the firing range and you can shoot at paper targets. I just don't like people shooting their kids, that's all-nor the old man, especially since I've got six kids. Might get mad at me, decide to do in the old man. The only problem with a gun, it's kind of final. Another thing about a gun is, it's very impersonal. If you go after me with a knife, at least I got a chance; you know, I can kick you someplace. Or if you try to poison me, I've got some kind of a chance; maybe I'll smell the poison in my drink or something. But with a gun, you just get away 10 or

15 or 20 feet and you calmly pull the trigger, and a little piece of lead comes out and hits me in my brain or my leaden heart or some other lethal place and does me in. This is what's so vicious about guns. So many guns have been imported into the city of Detroit that it is now known as the murder capital of the United States; and the least little spark, the smallest spark, could set off a rampage between the blacks and the whites in Detroit. Not everybody in Germany, in West Germany, carries a gun, or in England or in Norway or Sweden. Why do we have this big hangup that we've got to have a gun? I submit it's some kind of Freudian insufficiency of some sort. I have the utmost confidence in the sheriffs, in the deputy sheriffs, the highway patrolmen, and in the police of the city of Billings. As far as I'm concerned-in the County of Yellowstone. As far as I'm concerned, we have the best damned police force in the United States right down in Billings, Montana. We have a superb sheriffs department. When my children were little they very often got lost, and the police and the sheriff—

CHAIRMAN GRAYBILL: Mr. Kelleher, let's try and stay on the subject. We have a lot of other items to debate yet this afternoon.

DELEGATE KELLEHER: -they were always successful in finding my children, and I have the utmost confidence in them. And I'm not really going to carry out my threat, Mr. President, you know that. I have the utmost confidence in them, and I don't feel I've got to be carrying around--walking around with a .38 or a .45 hanging from my hip. It's not necessary. Therefore, Mr. Chairman and my fellow delegates, I urge you to strike Section 12, stop making America an armed camp where we settle every dispute like they did in the days of old, in the mining camps at Alder Gulch, with a .44. We have courts in Montana—and state courts and federal courts-and they are there with the help of us grateful and wonderful lawyers to settle any disputes that you have. You don't need to settle your disputes with a gun. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President [Chairman], fellow delegates, I rise for the first time in support of my delegate friend, Bob Kelleher. You may think that's a little bit surprising, because I come from probably as strong a gun country as there is in the State of Montana. Before we got to this question, a few of the delegates were discussing it; and we felt at that time maybe a motion to delete this whole section might be the appropriate way to view this, because maybe then the people of this state would come to their senses about what we're doing in this particular section. Now, if this body at this particular time would pass this motion, we would not have prevented the right of the citizens of this state to keep and bear arms. The federal Constitution would still allow them to keep and bear arms, so we wouldn't have done anything completely out of the ordinary or completely wild. And we could let this thing sit for awhile, and we could see what the people of Montana think then. And if there is such a big rush for us to not only write the strongest gun control law in the whole United States, but in addition to that, legislate into that provision for the Constitution the provision that this state shall never register or license guns under any conditions in the future, then maybe we could reconsider it if it was all that important, and we could come back to a reasonable position which we found that the committee on the Bill of Rights took in the first place. Now, maybe that's begging the point, but I don't think it really is because these "right-to-bear-armers", I'll call them for eloquence or something, are really not satisfied with the strongest provision in the Constitution of any state in the Union. We gave them that, and maybe we gave it to them too easily. And I submit that if we delete this section, sit overnight, let them know where this Convention stands in our own minds, then maybe they'll be happy with the strongest protection of any state in the Union. This is an important issue, this guns. We talked about capital punishment. We were all extremely concerned about one man being killed by the state, and very well intended that we should be, but now we're putting a provision in the Constitution that ties the hands of the state in the future to in any way control guns under any circumstances. And I support the position of Delegate Kelleher that at this time that this Convention delete the section.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I rise to oppose the motion to delete this section and I also oppose Mrs. Warden's motion to change the section as it was submitted by the Bill of Rights Committee's majority report. When I was campaigning for the Constitutional Convention, I made a real effort on this section because I knew a lot of the fellows around Laurel, my hometown where I have lived for the past 14 Years, were very concerned about this business of

right to keep and bear arms. I went to a number of them and I asked them about this specific section and I showed them how it was in our 1889 Constitution and I said, "Would you fellows be satisfied if we left that as it is?" And they said, "Well, that certainly looks good to us, and we'll go with it. This is what we want. We've been happy with this. Let's leave it alone." And as I pointed out yesterday, and I'm not going to repeat all the things I said then, but we had a great deal of-a great many indications from these different groups who are very, very concerned about this, and sincerely so. I don't question their sincerity. But they said the same thing; that they were satisfied with this section. I made that statement yesterday about this being the strongest one of any of the states of the United States. We have preserved that for our people who are concerned about keeping their rifles and shotguns; and so I say, let's leave it as it is. A few minutes ago, on this business of the death penalty, we heard people giving examples-some of the people who wanted to change this yesterday-talking about policemen getting shot down in the State of Montana and throughout the United States. This is true. We do have our police officers being gunned down, and my concern— and that's why I say there are not just nine little words. That's not all they are. There is this thing that the people of the State of Montana may someday want to take action to stop that kind of thing, and I don't believe that we should change this so that the state Legislature of the State of Montana cannot do that. So I ask this delegation, this Convention, to accept the majority report as it was given to this Constitutional Convention. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. I don't want to belabor this body with much debate, but I was silent on this issue yesterday and I didn't think I'd need to get up and speak. I didn't think I'd have the opportunity again, either, but I see that I have. I thought our vote yesterday was rather rational. It was closer than I would expect, but considering the amount of pressure that was put upon each one of us, I can see why the vote was the way it was. There was a person from my delegation that told the people back in my home community that a number of people in my delegation were the ones that defeated the Berthelson amendment. I was rather offended by that particular report, and I guess I differ from some people in my particular delegation from my community and county in that respect. And I'm willing to stand on my conviction, as Mr. Romney is. I'm willing to go back to my community and get shot out of my saddle. I've been shot before. In 1959 I almost lost my life in a hunting accident, at the ripe young age of 13, and I'm willing to get shot again. If they want to bring a .38 right here and put it right at my head, I'll vote the exact same way as I did yesterday and I'll vote my conviction. And I'm going to watch everybody, how they vote today, and compare it as to how they voted yesterday; and I'll bet you that not one person under the age of 40 changes their votes and anybody that does change their votes is going to be over the age of 40. Thank you. (Laughter)

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], fellow delegates. I have received no threats from any of my constituents, if they didn't have this in the Constitution that they would work against it. However, I think that the number of names that have been sent in to a lot of the delegates means that a lot of people are concerned about this particular issue, because they haven't come just from the Flathead country; they've come from all over the state. Now, the 500 names that Mr. Blaylock has on this telegram actually were got through a scare tactic. The word got out, or a rumor, stating that the present guns part of the bill, just as we're trying to do now with Mr. Kelleher's motion, would be to take and do away with this. And this is what created the 500 names on this telegram, so they said leave it as is. Now, handguns are a different story, and I believe that proper use of them and the law can take care of that. When President Nixon visited our Flathead last year, his Secret Service body that were there before were really concerned because there were trucks and cars and so on parked around that airport and hundreds and hundreds of guns were shown right there in public view. The sheriff was, of course, not concerned, but the Secret Service was. And he says, "You don't have to worry about those guns-they're out where they can be seen." I also have a very good friend up there in our country that has at least 20 guns. He's a gun nut, as are a lot of people, and he says, "By golly," he says, "if the United States or the government ever starts to register my guns, I might register one or two of them but, boy, the others will be hidden"; and this would make crooks out of 90 percent of the gun owners in the State of Montana. I believe we should put these nine words in there and give us another chance of selling this Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. President [Chairman], I resent Delegate Monroe's remarks about the Geritol set. (Laughter) We, too, have our principles and we, too, vote our convictions. The thing about this that's bothered me, and I said this before, we're not taking anything away from them, we're not giving them anything. This whole issue is a sort of a mirage out in the desert. It's a will-o'-the-wisp that they're following. If registration comes, it will either come from the federal government or from the needs of the state to control crime. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Felt, are you up'?

Mr. Harlow.

DELEGATE HARLOW: The issue has finally surfaced. What is a gun? The delegate from Flathead just made the remark that this registration-or these nine words did not apply to handguns; so, fellow delegates, these nine words need not be in there. If the handguns are dangerous, and one of their advocates just made the remark that this registration did not apply to handguns, then where are you going to draw the line between a one-hand gun and a two-hand gun? So, let's not be too wishy-washy. Let's keep those nine words where they were kept all night and for many, many years. We don't need those nine words. Let's remember just what was said, that they cannot—some guns should be registered and some should not, so let's keep the nine words out. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President [Chairman], I come from a country that does a lot of hunting and the people have a lot of guns. I haven't received one letter asking for this amendment-proposed amendment of Mrs. Warden's to our present Constitution. I received numerous letters from many people in the country, asking for this amendment. I've answered many of them, asking them why. First I told them how our present Constitution read and I said, "Why do you want this changed?" I received not one single answer as to why, so I'm opposed to the motion.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Are we debating the nine words, or are we debating Kelleher's amendment?

CHAIRMAN GRAYBILL: Well, it's-the Chair could sit up here and argue with each of you about what you're debating, but it's very difficult to determine whether you're debating-you know, if you strike the 12, I guess you don't get the nine words; so one side of the coin is one and one side is the other. So my inclination is to let you all talk yourselves out, and when you're all through, why, we'll vote on all these issues. And we've got several others on the Bill of Rights, so we'll continue to work when we're through, so go right ahead—have at it.

Mr. Harbaugh.

DELEGATE HARBAUGH: (Inaudible)

CHAIRMAN GRAYBILL: We are not ready to vote yet unless somebody else doesn't want to talk. Very well, now, the issue is on Mr.—

DELEGATE KELLEHER: Mr. Chairman, can I close?

CHAIRMAN GRAYBILL: You betcha, Mr. Kelleher.

DELEGATE KELLEHER: Thank you, Mr. Chairman. I just wish, my fellow delegates—this is like the preacher talking to the congregation, bawling them out for the people that aren't there in church on Sunday-but I just wish we had as much interest in whether we elected our judges or appointed our judges and whether we had a short ballot or a long ballot. It's very sad that we have to spend so much time on something like this. I do want to say that I don't want to take the guns from the hunters. I know people that give up good jobs to come out here so they can hunt; and I know people, in fact in my own community back in Yellowstone, that is the only meat they have is the deer and the antelope that they shoot. But the only thing that I'm really concerned about is the handguns, and I don't want mothers and kids to be able to get the handguns, that's all. Could I have five seconds?

CHAIRMAN GRAYBILL: Yes, we're going to have a roll call vote, Mr. Kelleher. Now, the issue is on Mr. Kelleher's motion to delete Section 12 in its entirety. So many as shall be in favor of that, vote Aye; and so many shall be opposed to that, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegates want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot, please.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Excused
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown.. ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... .Absent
Cross.. ....Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... .Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ....Aye
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... .Absent
Harbaugh ..... Aye
Harlow ....Aye
Harper ..... Nay
Harrington ....Aye
Heliker ..... Nay
Holland ..... .Absent
Jacobsen ..... Nay
James ....Absent
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... .Aye
Leuthold ..... Nay
Loendorf ..... .Absent
Lore110 ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... .Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ....Aye
Murray.. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ....Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 13 have voted Aye, 79 have voted No.

CHAIRMAN GRAYBILL: 13 having voted Aye, 79 voting No, Mr. Kelleher's motion fails. We're now on Mrs. Warden's motion to add

the words "nor shall any person's firearms be registered or licensed" on line 19, Section 12, page 6.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I refrained from speaking on this issue yesterday, and I'm going to be very brief today. It saddens me to see the false identification of registration with confiscation. This is simply an indication of hysteria on the part of gun people. My youngest son, Steve, is a gun expert. He has earned all the awards available in the Junior Rifle Association and the United States Navy in marksmanship, and my opposition to this amendment is on his behalf. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, there is not one scintilla of evidence that there was any intention of requiring registration of firearms in the majority report. There is no evidence that the Legislature would impose that obligation upon people, like myself, who own guns. The history tells us that in the past, in 1918 or '19—'17, during World War I, there was a registration of firearms in Montana and people turned in their registration at the sheriffs' offices in the various counties of the state. There was never any effort on the part of anybody to sequester those firearms, confiscate them. The history of the movement throughout the United States has never indicated, so far as I can ascertain, any effort upon the part of the government to confiscate guns. We have no threat of registration. I think this is a red herring that is being drawn across the trail of the Convention in order to muddy up the issue and perhaps defeat the Convention. I think that we should defeat this motion of Mrs. Warden and go on with our business.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, everybody gets up and says, "I didn't speak yesterday and I was hoping I wouldn't today on this particular issue." It seems to me it's been well talked; but it's come to the point where you raise a question of whether you were even present if you aren't on the record on an issue like this. And so, you know, a hundred of us are going to get something on the record regarding this, and maybe that's our right and the reason we're here. I think we could make emotional statements that would inflame each other. We tried, at both ends of this thing, and I don't propose to do that. I could list how many guns I own. I'm an elk hunter and I have a Chesapeake Bay retriever and on and on, you know, those things can be shared. I was hunting elk on November 22, 1963, and I came home and heard the news about our President having been shot, and I could draw some kind of big emotional thing in terms of that experience for myself. I looked at that telescopic rifle I'd been carrying all day and I thought some very deep thoughts about what happens in a society, and what happens within each of us at times, in terms of selling out to some kind of hysteric or emotional impulse. I think the people of Montana are reasonable enough to know that there are more issues at stake that affect our lives vitally than are guns, and it seems like a cheap way to garner a lot of votes to go with this thing and say, you know, "We're going to get them, and this is a good way to do it. It doesn't really hurt anything." I see it as an opportunity to salute the intelligence of our people by saying, we do-we did what we thought was right, wherever it comes out. And really, you know, there were some issues that were more important than what we put in the Constitution with regard to our guns. It just seems to me that this promise of a lot of easy votes-and I can be a practical politician, too-but our people are smarter than that, and I'd like to salute their intelligence and vote the way I did yesterday, which is to say we have the strongest statement of any Bill of Rights. If we lived in any other state but this one and Alaska, I would be really afraid of that kind of a statement in the Bill of Rights, but we have few people and lots of space and so we're relatively safe out there hunting. Most states don't have that option; we still do. But I'm going to vote the way I did yesterday, and I wanted to be on record. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I rise in support of the amendment. I did yesterday. I feel very sincere about this, and that's all I'm going to say except would Mr. Schiltz yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE JOHNSON: Mr. Schiltz, yesterday you impressed me very greatly with the knowledge you have of all types of guns, and I never-1 tried to catch you to ask you a question, just individually and out in the hall or someplace, but you eluded me all the time; and I know there's other people here concerned in the same area, and I could hardly sleep last night, and I've been so

concerned. You said that you could put-or take those guns apart in the dark, but you didn't say whether you could put them back together. Can you?

DELEGATE SCHILTZ: Yes, I did and I could.

DELEGATE JOHNSON: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, just so we don't cut the debate too short, I wasn't on the record yesterday on my position on this matter. I do support Mrs. Warden's amendment, as I supported Mr. Berth&on's amendment yesterday. I don't think it's a red herring if we have letters and indications from the electorate around the state in the number of thousands, because it will amount to that. I think they have expressed their preference, and I think that we're here to do their will. And I support it and I think it will pass.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mrs. Warden's motion that we add the words "nor shall any person's firearm be registered or licensed" on line 20, after the word "question", to Section 12.

UNIDENTIFIED DELEGATE: Roll call vote.

CHAIRMAN GRAYBILL: So many as shall be in favor of that motion, vote Aye on the voting machine; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The last time. Very well, take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0.. ..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Excused
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman. ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Absent
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Aye
Gysler.. ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Absent
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Absent
Holland, ... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson.. ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye

Melvin	Nay
Monroe	Nay
Murray..	..Aye
Noble	Absent
Nutting	Aye
Payne	Nay
Pemberton	.Aye
Rebal	Aye
Reichert	Aye
Robinson	..Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	..Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	..Aye
Skari	..Aye
Sparks	Nay
Speer	Nay
Studer	..Aye
Sullivan	Nay
Swanberg	Nay
Toole	..Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner.	Nay
Ward	..Aye
Warden	Aye
Wilson	Aye
Woodmansey	..Aye
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 39 have voted Aye, 52 have voted No.

CHAIRMAN GRAYBILL: 52 having voted No, 39 having voted Aye, the motion is defeated.

Mr. Jacobsen, you had an amendment-do you want-a section to add. Do you want the Chair to read it?

DELEGATE JACOBSEN: Mr. President [Chairman], I'll hold that till another time in General Government. Thank you.

CHAIRMAN GRAYBILL: Mr. McKeon, you have a section here for the Chair. May we read your amendment?

DELEGATE McKEON: Yes, please read it, Mr. Chairman.

CHAIRMAN GRAYBILL: It'll be styled Section 35, proposed Section 35. Will the clerk please read proposed Section 35.

CLERK SMITH: "Section 35. The people of Montana declare that Montana servicemen, servicewomen and veterans of all wars may be given special considerations as determined by the Legislative Assembly." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McKeon wants to add a Section 35 concerning servicemen, stating that the Legislature may give special consideration to servicemen and women.

Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I move that when this committee does arise and report, that it recommend this section to pass. Mr. Chairman, this section is a permissive section to be added to the Bill of Rights, allowing the Legislature to give special consideration to veterans of wars. Mr. Chairman, there are-this section was adopted from the North Dakota Constitution. Also, Mr. Chairman, I would like to point out that Missouri just very recently adopted by constitutional amendment a section very similar to this. They adopted this by a four to one plurality. I think this exhibits the popularity of a section of this nature. Also, I would like to bring to the attention of the committee the fact that there are 100,000 veterans in the State of Montana. That, coupled with the fact that the majority of them are married or who have friends and relatives who would be very much in favor of this amendment, I think would give impetus to the Convention to pass something of this nature, perhaps just because of the salability of it. Mr. Chairman, as you, and I'm sure all the members of the Convention, are aware, the war in Vietnam has created a crisis not over there but a crisis at home. Our American fighting men and women are returning to our shores and are, as they return, Mr. Chairman, are being faced with serious problems. They many times lack education, lack the employment opportunities; many are wounded, many have become addicted to drugs; and things of this nature. I think all of us can agree that the veteran who returns now from Vietnam is at a great disadvantage when he tried to place himself back in the role of a productive citizen in this country, so I think that we should include a section of this nature in the Bill of Rights to give the Legislature an impetus to try and help these individuals who've gone over and given us the risk of their lives to protect our country, and in many occasions to fight a war in which they do not believe.

So, Mr. Chairman, without further adieu, I would recommend that this committee do pass it, because I think it is important and I think it is very good and I think what-it will be very helpful to all the people in Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion?
Mr. Lorello.

DELEGATE LORELLO: Just a short comment, Mr. Chairman. There are 43 veterans, I think, in this group of 100. I hope that we can do something for our servicemen, servicewomen, and the veterans. I hope you'll support the motion.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: I believe that the war in Vietnam, the so-called war in Vietnam, is not a declared war. And I think that, as your thing reads, you ought to take into consideration an amendment there.

DELEGATE McKEON: -brief amendment with the permission of the committee—

CHAIRMAN GRAYBILL: Just a minute. Mr. McKeon, you may have the floor.

DELEGATE McKEON: Thank you, Mr. Chairman. Mr. Chairman, I would request permission to amend the proposed section by deleting, on the second line, the phrase "of all wars".

CHAIRMAN GRAYBILL: All in favor of allowing the deletion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. Is there other discussion? Mr. McKeon, do you need to close?

DELEGATE McKEON: I close, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McKeon's motion to add Section 35 to the Bill of Rights, which shall state: "The people of Montana declare that Montana servicemen, servicewomen and veterans may be given special considerations as determined by the Legislative Assembly." So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. So many as are in favor, vote Aye; so many as opposed, vote No.

UNIDENTIFIED DELEGATE: Roll call vote.

CHAIRMAN GRAYBILL: Too late. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: 50 having voted Aye and 39 No, the motion passes and the section is adopted. Now, Mr. Dahood, I'm afraid we did not put the motion properly, and I don't know who did it the other day, but may I say that--would you move that when this committee does arise and report, after having had under consideration Section 12, after having reconsidered it, that it recommend the same be adopted? Will you so move?

DELEGATE DAHOOD: I so move, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, all in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 12 is closed again. Now, we have an amendment from Mr.-a proposed new section from Mr. Kelleher which I've styled 36, and it's the one on alcohol, Mr. Kelleher. May we read it from the clerk-clerk, read number 36, please.

CLERK SMITH: "Mr. Chairman. I move to amend by adding a new section of the Bill of Rights Committee proposal on page 11, line 10; the following words: 'Section 36. Addiction neither to alcohol nor drugs is a crime.' Signed: Kelleher."

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: Go ahead

DELEGATE KELLEHER: I'll be very brief, Mr. Chairman and fellow delegates. You will note that this provides merely that the disease of alcoholism and the disease of drug addiction are not crimes. I believe in the case of Power versus Texas, it was taken up to the Supreme Court of the United States, and by a five to four decision the United States Supreme Court held that being an alcoholic can be a crime. Power, or whoever the defendant was in that case, was picked up for being an alcoholic 99 times, and they thought he might be a good test case, having been picked up for being drunk 99 times. But those nine wise men-five of them, anyway-decided that alcoholism was not-that alcoholism was a crime and a man could be put in jail for it. This merely would provide that alcoholism is not a crime. And also drug addiction. Now, this has nothing to do with drugpushing, please note that. I'm just as violently opposed to drugpushing as anybody else is, but as far as this is-the person, the individual, who has a habit of-they are actually addicted to narcotics. This is where it has reached, medically, the point of being a disease, and I-this only states that it would not be a crime. In the case of Robinson versus California in 1962, drug addiction-the Supreme Court of California struck down addiction as a crime and, briefly, the court said: "A California statute makes it a misdemeanor punishable by imprisonment for any person to"—quote-'be addicted to the use of narcotics'-close quote-"and in sustaining petitioner's conviction thereunder, the California courts construed the statute as making the status"-in quotes-'the status of narcotic addiction a criminal offense for which the offender may be prosecuted'—quote—'at any time before he reforms'-close quote—"even though he has never used or possessed any narcotics within the state and has not been guilty of any antisocial behavior." The court held: "As so construed and applied, the statute inflicts a cruel and unusual punishment in violation of the 8th and 14th Amendments." Regarding the matter of alcohol, an association known as Alcoholics Anonymous was created in 1935. It has a very good record. It has a record of approximately 60 percent cures; but people, to go into AA, have to do it voluntarily, of their own free will. And we have found out a long time ago in AA-and I'm not ashamed to say that I am personally a member of AA and have been for some 14 months, because alcoholism is a disease for me, Bob Kelleher; I cannot take that first drink. I do not feel that I am a criminal because I had the disease of alcoholism, and that's all that this motion-this provision would provide, is that if a person is diseased, has the disease of alcoholism or is addicted to a narcotic, that it is not a crime. The courts would still have control over it. A man would be responsible for any crimes that he has-and he would still be-he would be responsible for any crimes he would commit under the influence of alcohol; any crimes he would commit under the influence of drug addiction. All this would do is--would provide that the person who is-that a person would not commit a crime because of the fact of addiction, that's all. Pushing, that's something else. This has nothing to do with that. And the same way with alcoholism. I have been asked, "Is alcoholism and drug addiction a crime under our present statutes?" My understanding that if you are picked up-1 know it is a municipal ordinance in Billings and I think most of our communities—I'll have to bow to some of the other prosecutors here in the other communities-but I know that being picked up for-you can be picked up for public drunk and put in jail, and this would prevent that. The judge could then send you to Warm Springs or refer you to medical treatment someplace else. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I can agree with Mr. Kelleher completely that alcoholism and drug addiction certainly should not be crimes. This was not proposed to our committee as a proposal. I can see no way that we can get into the Constitution a listing of what is and what is not a crime in the State of Montana. I think the same thing would apply to his other proposal. We did briefly consider the possibility of including crimes without victims, and here again we decided that this is a matter that has traditionally been left to statute and it is completely not appropriate for a constitutional document. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on—

Mr. Simon.

DELEGATE SIMON: Would Mr. Kelleher yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Kelleher, would you yield?

DELEGATE KELLEHER: Yes, sir.

DELEGATE SIMON: I've been connected for some 30 years with Billings Deaconess Hospital and I was President for some 17 years; I'm still

connected. We have our problems at the hospital under the insurance acts of malpractice. We have about a hundred and thirty-five doctors on the staff. I'm not an attorney, but I would like to ask Mr. Kelleher if he would answer how and who would establish at what point an individual becomes addicted-one cigarette of marijuana, one injection of morphine--and who would establish at what point he is addicted?

DELEGATE KELLEHER: The same way, Mr. Simon, that we now determine how a man is declared incompetent. We lawyers and a judge in a courtroom, we bring in a couple of doctors and get medical advice and decide whether you go to Warm Springs or not. That's the only way. It'd have to be competent medical testimony, that's all.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Kelleher's proposal—

DELEGATE KELLEHER: Mr. Chairman, could I have five seconds, please, for a roll call?

CHAIRMAN GRAYBILL: Okay. (Laughter) The question arises on Mr. Kelleher's motion that Section 36—"addiction neither to alcohol nor drugs is a crime"-be added to the Bill of Rights. So many as are in favor, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot, please.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Excused
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown .. .. Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Absent
Choate ..... Nay
Conover ..... Nay
Cross .. .. Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Absent
Felt ..... Aye
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce .. .. Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray .. .. Nay
Noble ..... Absent

Nutting. .. .. .. Nay
Payne Nay
Pemberton .Absent
Rebal .....Aye
Reichert Nay
Robinson Nay
Roeder .....Aye
Rollins.. Aye
Romney .. Nay
Rygg Nay
Scanlin Nay
Schiltz Nay
Siderius. Nay
Simon ..... Nay
Skari ..... Nay
Sparks.. Nay
Spew ..... Nay
Studer Nay
Sullivan Nay
Swanberg. Nay
Toole Nay
Van Buskirk .Absent
Vermillion Aye
Wagner ... Nay
Ward ..... Nay
Warden .. Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK SMITH: Mr. Chairman, 15 have voted Aye, 74 have voted No.

CHAIRMAN GRAYBILL: Very well, 74 having voted No and 15 Aye, the motion fails. Will the clerk please read proposed Section 37 by Mr. Kelleher about incarceration.

CLERK SMITH: "Section 37. Incarcerated persons lose none of their human or civil rights when convicted of a felony, other than the choice of habitation, the right to vote and to hold public office. No incarcerated person may be placed in solitary confinement. Signed: Kelleher."

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, fellow delegates. There is nobody here, of course, to speak for the people in the penitentiary or in the jails of our state. Once they're convicted, they can't even vote. But this section would merely provide that when they have been convicted of a felony, that they would lose only these rights: where they're going to stay, the right to vote, and the right to hold public office. And this conforms to what we've already done in the past. I'm concerned about the fact that so many members of the minority groups end up in our penitentiaries and in our jails, and I just want their rights protected. And the last sentence of this section provides that the penalty of solitary confinement shall not be given--authorized at any time. And my reason for that is, it's my opinion it has not yet been declared cruel and unusual punishment by the United States Supreme Court but that it is, indeed, cruel and unusual punishment, even for a short time. I don't know how many of you've been in jail, other than my brother attorneys--we've been in jail many times-but every time that steel door clangs behind me, I ask myself, "I wonderifthatsheriffs going to let me out of here." And it's a pretty terrible, terrible feeling. And we all know that not too long ago, within the past 10 years, a young man was placed in solitary over at Deer Lodge and was killed; he was sick. And I ask you when you vote on this matter to consider yourself. I know a lot of you are great law and order people, and I'm a law and order man or I wouldn't be a lawyer, but consider yourself-put yourself, when you vote on this, in the jail at Deer Lodge. If you have never been in jail, you can imagine what it's like. And imagine that you're in solitary confinement-and this is not a really big figment of your imagination that perhaps, just perhaps, you don't belong there. Thank you, Mr. Chairman. Could I have a roll call on this, please?

CHAIRMAN GRAYBILL: Well, we're going to debate it first.
Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher, will you yield?

DELEGATE KELLEHER: Yes, Torrey.

DELEGATE JOHNSON: Bob, just as a point of clarification, solitary confinement-now if you have a person who is very unpopular there and is in danger of bodily injury from some of the other inmates, you'd necessarily have to put him someplace, wouldn't you, to protect him from those people? And how would you call that?

DELEGATE KELLEHER: Protective custody. We do that for other ways, too. That would not be prohibited.

DELEGATE JOHNSON: I mean, that would be provided for okay without—

DELEGATE KELLEHER: Yes, I'm glad you asked me that, in case this is accepted. That, of course, would be a valid exemption; to protect the man for his own physical well-being, he could be protected and set aside from the other inmates. That's right.

DELEGATE JOHNSON: I see. Thank you. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, would Delegate Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes, sir.

DELEGATE McNEIL: Bob, in reading your three other proposed amendments, does this mean that an incarcerated person in jail would have a right to drugs, liquor and sex?

DELEGATE KELLEHER: Well, how many-how much time can I have on that one?

CHAIRMAN GRAYBILL: Well, I'll rule it out of order for you, Mr. Kelleher.

DELEGATE KELLEHER: Thanks for the help, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, would Delegate Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Mr. Artz.

DELEGATE ARTZ: I want to have the record straight. I'm not a lawyer and I don't know exactly what you mean by "solitary confinement". Does that mean they have to have roommates, or can't they put one in a cell by himself? Thank you.

DELEGATE KELLEHER: No, that's a good question, too. What if it's a friendly little town; it's only got one customer in the jail? Obviously, he's in solitary confinement, but he's got the company of the sheriff and he can play stud poker with the sheriff. I'm not talking about that sort of thing. We don't have to provide company for them, no. (Laughter)

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes, sir.

DELEGATE CHOATE: Mr. Kelleher, I'm wondering about, when you say he'll lose none of his human or civil rights except those specified, what about right of communication and that sort of thing?

DELEGATE KELLEHER: I think he should have that right. If we want to censor it-his mail, that's all right. I'll tell you what I had, frankly, in mind. The human rights is what bothers me. In a penitentiary, and it's a problem in our state-our state is not as-our penitentiary is not heavily populated as, say, Sing Sing or someplace like Pennsylvania's, But in the State of Maryland, a young l&year-old white boy was attacked by 12 other inmates of another race, and he was in surgery for 12 hours. and I just want those young men or women-1 don't know what it's like in a ladies' penitentiary-but I want those people to be protected. When they-even when-though they're in prison, they're human beings, and they're not to be treated like dirt. We treat our cattle and our sheep better than we treat the human beings in our penitentiaries, and this would protect their rights. That's all I have intended by this.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Kelleher's proposed Section 37 about incarceration of persons; losing their civil rights in jail. So many as shall be in favor of that motion-did you ask for a roll call on this, Mr. Kelleher?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: You did? (Laughter) Okay. So many as shall be in favor, vote Aye on the voting machines; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Pleasetake the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Excused
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Absent
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Absent
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Aye
Champoux	Absent
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Excused
Garlington	Nay
Gysler	Nay
Habedank	Absent
Hanson, R.S.	Nay
Hanson, R.	Absent
Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Aye
Holland	Absent
Jacobsen	Nay
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Absent
Nutting	Nay
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Aye
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Aye
Studer	Nay
Sullivan	Absent
Swanberg	Nay
Toole	Nay
Van Buskirk	Absent
Vermillion	Aye
Wagner	Nay
Ward	Absent
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 18 have voted Aye, 66 have voted No.

CHAIRMAN GRAYBILL: 66 having voted No and 18 Aye, the motion fails. Mr. Kelleher, we'll read Number 38 now.

CLERK SMITH: "Section 38. Private sexual acts between consenting adults do not constitute a crime." Section 38, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher has proposed a Section 38 to read: "Private sexual acts between consenting adults do not constitute a crime."

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, a typographical error omitted the word "private". The adjective should be in front of "sexual acts". I just don't want any off-Broadway plays down on 27th Street in Billings. So the word "private" should be added at the beginning. Our present sodomy statute provides that every person who is guilty of the infamous crime against nature committed with mankind or any animal is punishable by imprisonment in the state prison not less than 5 years. In other words, you can get life imprisonment under our present statute; and our court has held that this is not only a difficult case-an easy case to charge a person with, matter-but there is-as a result of intense prejudice, naturally you vote by such a charge or-convicting upon slight evidence, since the charge is easily made, hard to prove, and still harder to disprove. The State of Texas has now declared this type of statute, at least for married couples, as unconstitutional, and I'm not going to go through that decision as I planned, because of the lateness of the hour. And this is my last amendment, I assure you-the last one for the day. (Laughter)

CHAIRMAN GRAYBILL: Wait a minute, Mr. Kelleher, we've got you on the record on that first statement. (Laughter)

DELEGATE KELLEHER: It's primarily concerned to handle the problems of homosexuality, which, again, is a physical-mental disease. And I'm not a doctor-I'm having enough trouble practicing law with a license without trying to practice medicine without one-but this is a very serious problem today. And this, once again, where competent medical authority has declared that somebody is a homosexual that that's what it's primarily aimed at; that these people would not be put in jail for having a disease. Thank you, Mr. Chairman. Could I have a roll call on this? It's the last one.

CHAIRMAN GRAYBILL: Well, you've only got two seconds so far, Mr. Kelleher. (Laughter) Okay, is there debate or discussion? Very well, the issue arises on Mr. Kelleher's Section 38, which would add a section to the Bill of Rights that "Private sexual acts between consenting adults do not constitute a crime." So many as are in favor of that, vote Aye; so many as are opposed, vote No. Have all the delegates voted'?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will you please take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Excused
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown..	Absent
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Aye
Cate	Aye
Champoux	Absent
Choate	Absent
Conover	Nay
Cross..	Absent
Dahood	Nay
Davis	Nay
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Excused
Garlington	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Absent

Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Aye
Holland,,	Nay
Jacobsen	Aye
James..	Absent
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield,	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe..	Aye
Murray	Nay
Noble	Absent
Nutting	Nay
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Absent
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CHAIRMAN GRAYBILL: No photographs, please.

DELEGATE CATE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: I don't want any inference drawn from the fact that Mr. Campbell and I voted together. (Laughter)

CHAIRMAN GRAYBILL: Will the clerk please announce the vote.

CLERK SMITH: Mr. Chairman, 16 have voted Aye; 69 have voted No.

CHAIRMAN GRAYBILL: 69 people having voted No and 16 voting Aye, the amendment fails.

Mr. Harper, may we read your proposal?

CLERK HANSON: "Mr. Chairman. Having voted on the prevailing side, I move to reconsider Section 10 as amended, of the Bill of Rights Committee Proposal Number 8. Signed: Harper."

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper has proposed to reconsider Section 10. Mr. Harper-on the issue of reconsideration.

DELEGATE HARPER: It's going to be hard for Delegate Ask to follow that act of Kelleher; but he asked me, since I voted on the prevailing side, if I would make this motion, and I do. And I now ask-for reasons of reconsideration, I yield to Delegate Ask.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. Thank you, Delegate Harper, for making the motion to reconsider. We had Section 10 under consideration the other evening and maybe we acted rather hastily. I like the section, but I-if you'll all recall, and turn to Section 10, we deleted the last phrase "without the showing of a compelling state interest". And this went through rather hurriedly, and I got to considering that and became concerned about it; and I've talked to other attorneys here who are also concerned, and I have also talked to the members of the Bill of Rights. We maybe disagree on interpretation, but I think we should reconsider this section, not deleting it but putting back in the verbiage that the majority proposal proposes here. Now, the reason I say this is, the right of privacy has come down through the years

by a case law, the U.S. Supreme Court and our Supreme Court; and they go on the idea of what's reasonable, the privacy that's justifiable as in regard to the state. And I think when we have the wording here that we presently have in Section IO-the way we adopted it, it says: "The rights of individual privacy is essential to well-being of a free society and shall not be infringed". So we're making this absolute now, and I don't think there's even hardly any opening for a court interpretation of this. At least, this is my view of it. I also contacted the Attorney General's office on that. They didn't want to become involved in anything on the Convention, but I requested them; I was a delegate; I felt that being in law enforcement, this would concern them. And they feel that the wording of this section is rather strong and it cannot be infringed and it could stop everything. And they didn't know how it would be interpreted by the court. Now, I also called Professor Elison—I believe Mr. Campbell has talked to him on the phone-and he indicated that he had looked at this section the way the majority proposal had it, and he was satisfied with it and thought it should be in the Constitution. I talked to him today and posed the question of how this would be interpreted. This is a-we've now made it an absolute right, just like religion; we can't interfere with religion by any statute whatsoever. No one can do anything about it, and it's in the Constitution. And he said, "Well," he said, "I don't know for sure how the court would interpret that, whether they'd interpret it with Section 11; I don't know how." Now, I don't know how either, but are we going to put something into the Constitution that we don't know how the courts are going to interpret it? Shouldn't we put something in there that's clear? And I submit that we don't have absolute, complete right of privacy in all phases. The U.S. Supreme Court doesn't feel that way, and certainly when there is a compelling state interest, they can invade privacy. Now, I don't know what we're doing here, but I think the majority proposal is right, that we should leave those words in there. And if you'll read their comments on the next page, it's a-they are showing the reasons for this section and how flexible-how it's going to work. By putting these words in, we're giving direction to the court how they are going to interpret this. If there's no compelling state interest, you can't invade a person's right of privacy. And this is going to have to be shown, and this is the direction to the court. And I submit that we should reconsider this section and put the original wording in as the majority of the committee proposed, so we clarify this issue and don't cloud it up and create a legal hassle in the years to come. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell. This is on the issue of reconsideration.

DELEGATE CAMPBELL: Right. I oppose the motion for reconsideration in this matter. The right of privacy is a right that has been established for some time. I'd like to quote you out of a federal case, just briefly, in Connecticut. The right was first suggested by the famous Warren and Brandeis article in the *Harvard Law Review in* 1890. "There are 22 American states which have recognized the right as part of their common law. In recent years the trend has been especially pronounced. Law review support is practically unanimous. Since 1936, no court in any state has denied the right. As recently as 1952", this federal case goes on, "Illinois and Montana adopted the right by express holding and with no misgivings". I submit to you that we do have in Montana a Supreme Court case which does hold that the right of privacy is embraced within the absolute rights of personal security and personal liberty. The basis of the right of privacy is the right to be let alone and is part of the right to liberty and pursuit of happiness, and they quote cases. I suggest to you that the Supreme Court is not going to be bound on this. They certainly are going to interpret the right of privacy. We had much discussion before our committee, and why not try to define the right, to put in specific examples. But it was our feeling that once you do that, you are running a risk that you may eliminate other areas in the future which may be developed by the court. As *you* have seen in the *Montana Standard,* they feel this right is a right that should have express protection in the Constitution. I think that the words that were deleted did not add anything. The court, when interpreting this, will of course interpret this to mean that there must be some limitations; it's not absolute. They have interpreted this in the past on what this is. I feel that it will be interpreted properly in the future, and I think that once we get into this, we could open up the entire area that our committee spent many, many hours considering. And I feel that it is proper the way we amended it and that I would oppose this reconsideration. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on—

DELEGATE ASK: May I close?

CHAIRMAN GRAYBILL: Mr. Ask, yes.

DELEGATE ASK: I would like to close on that. Mr. Campbell mentioned that this is recognized in so many states. I agree the federal government recognizes it, but they do not recognize it as an absolute right like we have written it into this section here. I think we're creating problems. I'm not against the right of privacy, but I think we're creating more legal problems if we don't give some direction. And these cases don't hold that this right of privacy is absolute. They all go by what's reasonable; what's justifiable. Now, there's the latest United States case, United States versus White; it was decided April 5, 1971, and in there it was quoted: "Our problem in terms of principles announced in Katz," which was a previous case, "is what expectations of privacy are constitutionally justifiable, what expectations the 4th Amendment will predict-protect in the absence of warrant." So they're under the 4th Amendment. There's nothing in the federal Constitution that gives this right of privacy. They've interpreted it from the 4th Amendment. Then going on, it says: "particularly under the 4th Amendment, which is ruled by fluid concepts of reasonableness." So you have to, when they interpret this section, you have to go to whether it's justifiable and the reasonableness of it; and I think if we add the remainder of this Section 10 that the majority committee came out with for our proposal, that we will be going in that direction and we will avoid a lot of misunderstanding of this section, misinterpretation. Thank YOU.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Harper's motion that we reconsider Section 10. You've heard the discussion. All in favor of reconsidering Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in favor of reconsidering, say Aye; and all opposed, say No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 56 having voted Aye and 33 having voted No, we'll reconsider Section 10.

Mr. Ask.

DELEGATE ASK: Mr. Chairman. I move that we adopt Section 10, the right of privacy, in the full wording as proposed by the committee on the majority proposal-it's on page 23—that we—with the word "individual" that was included in the amendment and include the entire wording of that section. And I have given the reasons before, and I will not belabor the point. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, the Bill of Rights Committee has no objection. In the final analysis, I don't think the fears that have been expressed are valid; but nevertheless, we have no objection to adding that particular clause so that the right will read as originally submitted to this body.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'd just like to put in one more little lick. The reason I said it in the first place-put a period there—"without the showing of a compelling state interest" is not defined, at least clearly, in my mind as to who must show thecompellinginterest, what it must be, and who decides what it must be. Section 11 deals with search and seizures, puts a limit on the-a limitation on the kind of invasion of privacy that the government can legally do. I guess I'm just not that worried about the state taking care of itself as I am worried about the individual being able to take care of his own privacy.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I think that with the words "without the showing of a compelling state interest", that the thing is made meaningless. With the addition of those words, it's meaningless.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Ask's motion that we add back in the words "without the showing of a compelling state interest". So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted.

Mr. Dahood, do you want to move Section 10 for me?

DELEGATE DAHOOD: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 10 as now amended, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rearrange its calendar by passing the consideration of all other matters before General Orders at this sitting of the committee.

CHAIRMAN GRAYBILL: The motion is to pass all other matters on General Orders. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN GRAYBILL: The motion is that this committee rise and finally report.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. President [Chairman], could I have the record show that I made a mistake in voting not to put the death penalty on the ballot? I'd like to show that.1 was in favor of that, please.

CHAIRMAN GRAYBILL: Very well, the record now shows that. The motion is to rise and finally report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

CHAIRMAN GRAYBILL: So ordered. Now, if you'll just wait till it's ready, we'll do that.

(Proceedings moved from Committee of the Whole to Convention. President Graybill in Chair.)

PRESIDENT GRAYBILL: Since it's getting late, the Chair would like to make an announcement or two while we're waiting for it to be printed. Please understand that John Gardiner, the ex-Secretary of Health, Education and Welfare, is in town and will be addressing us in this Convention Hall at 8:00 p.m. tonight. This is on our Distinguished Speakers Series, as you know, and there is a cocktail hour that begins awfully quickly, if you want to get there. We'll try and adjourn in time. It's at the Colonial Club. Other than that, we'll expect to see you back, if you'd like to hear Mr. Gardiner, at 8 o'clock tonight, but not until we adjourn. Mr. Harbaugh-just a moment.

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, might we be advised of what the schedule will be tomorrow?

PRESIDENT GRAYBILL: Well, tomorrow we're going to start on Style and Drafting, and I think-and we also have Section-and we also have some matters up on Order of Business Number 5, the General Government matter that we thought we'd get to today-General Government and Legislature on Order of Business Number 5. Style and Drafting-I think Judiciary is not up, because it has not been there long enough-and after we finish Style and Drafting—finish Order of Business Number 5, I presume we'll be on Education, which is next up.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, does the Chair have either an inkling or indication of what the schedule-if we will be working Monday, or whether there's a possibility, or—

PRESIDENT GRAYBILL: There's a possibility, but the Chair-we're only 1 day behind now, but I am hoping we won't be 1 day behind after another day or so, or 2 days. The Chair really wouldn't know until probably at least Friday night. We are 1 day behind, as you all know now, plus some style and drafting.

DELEGATE FOSTER: Thank you, Mr. Chairman.

PRESIDENT GRAYBILL: So I think there's a chance we might work Monday, yes. Will the clerk please read the Committee of the Whole report.

CLERK HANSON: "March 9, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee on Bill of Rights, recommend as follows: that the committee pass consideration of other business on General Orders; that the committee rise and report. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Is there anyone who wants the Committee of the Whole report read in its entirety? If not, we'll pass that.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we adopt the Committee of the Whole report and refer the Bill of Rights Proposal Number 8 to Committee on Style and Drafting.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report and refer this Bill of Rights Article to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until Friday, March 10th, 9:oo a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until tomorrow morning at 9:00 a.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Thank you. So ordered.

(Convention adjourned at 6:00 p.m.)

March 10. 1972 **Fortv-Second Day** **Convention Hall**
9:10 **a.m.** **Helena, Montana**

PRESIDENT GRAYBILL: If you'll all stand, Delegate Scanlin will lead us in the invocation this morning.

DELEGATE SCANLIN: "The shouting and the tumult dies, the captains and the kings depart. Still stands that ancient sacrifice and a humble and a contrite heart." With these thoughts of Kipling in mind, let us pray. Suffering long hours of what seems to us to be interminable debate, help us, 0 Lord, to keep our prize in view. Let us neither gloat in times of victory or become glum in moments of defeat. May we heed the lesson of St. Paul when he wrote: "I have learned in whatsoever state I am, therein to be content." Amen.

PRESIDENT GRAYBILL: We'll take attendance by voting Aye on the voting machines, please.

CLERK HANSON: Delegate Babcock, Delegate Blaylock, Delegate Brown, Delegate Campbell, Delegate Choate, Delegate Drum, Delegate Kelleher, Delegate Swanberg. Mr. President, may Delegate Furlong be excused, please?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Blaylock, Delegate Drum, Delegate Kelleher, Delegate Swanberg.

PRESIDENT GRAYBILL: There's Drum.

CLERK HANSON: Delegate Blaylock, Delegate Kelleher, Delegate Swanberg.

PRESIDENT GRAYBILL: Push the button, Mr. Drum, and we'll close the ballot. Mr. Drum, push the button. Very well, take the attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, O..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask..	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg..	Present
Berthelson	Present
Blaylock	Absent
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Excused
Garlington	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland.	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present

McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present
Mr. President	Present

CLERK HANSON: Mr. President, Delegate Swanberg present; 98 delegates present, 1 absent, 1 excused.

PRESIDENT GRAYBILL: Who is absent?

CLERK HANSON: Blaylock.

PRESIDENT GRAYBILL: Blaylock and Kelleher-is Kelleher here?

CLERK HANSON: Yes, Kelleher is here.

PRESIDENT GRAYBILL: He's here? Blaylock is missing. Very well, Order of Business Number 1, Report of Standing Committees.

CLERK HANSON: "Mr. President. We, your Committee on Style, Drafting, Transition and Submission, submits to the Convention Report Number 6, Natural Resources and Agriculture. Signed: John M. Schiltz, Chairman; William Burkhardt, Vice-Chairman."

PRESIDENT GRAYBILL: Very well, that may be-is being printed and will be put upon your desks and is placed on General Orders. Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications. Mr. Clerk-Mr. Schiltz, are you on 1?

DELEGATE SCHILTZ: Are we on 1? Yes. Reports of Standing Committees. May we go back there?

PRESIDENT GRAYBILL: All right, back to Order of Business Number 1, Style and Drafting's Natural Resources is accepted.

DELEGATE SCHILTZ: No, I'm referring to the Legislative Article, which Style and Drafting reported back under Order of Business Number 5—and is—

PRESIDENT GRAYBILL: Right.

DELEGATE SCHILTZ: --was on the desks yesterday.

PRESIDENT GRAYBILL: We're going to take care of that later. You're out of-you're up too quick.

DELEGATE SCHILTZ: Well, no, I just wanted to report it back under Order of Business Number 1 so you could refer it.

PRESIDENT GRAYBILL: Oh, very well. And Executive, also?

DELEGATE SCHILTZ: And Executive also, yes, but I-well, I don't think we need to report that back, but we do. All right, we'll report Executive back, too.

PRESIDENT GRAYBILL: All right, Legislative and Executive are back for Order of Business Number 5. Now, we went through Order of Business Number 2. On Order of Business Number 3, Communications, the Chair would like the record to show that last night, as the fourth speaker on our distinguished speakers series, we had John N. Gardiner here, who spoke to some of

the delegates and who gave an excellent address, for which we are thankful.

CLERK HANSON: John W. Gardiner.

PRESIDENT GRAYBILL: John W. Gardiner; all right. Order of Business Number 4, Introduction of Proposals.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Now, Order of Business Number 5, Final Consideration of Proposals.

Mr. Murray.

DELEGATE MURRAY: Mr. President, it's my understanding that the Legislative Style and Drafting report that Mr. Schiltz just gave verbally-that there are a-some matters, a matter or two, which should be discussed in the Committee of the Whole before we vote on this matter on--under Order of Business Number 5. So I would move at this time that we advance to Order of Business Number 10, which is General Orders, for the specific and limited purpose of considering this report on the Legislative Style and Drafting.

PRESIDENT GRAYBILL: Very well, you've heard the motion of Mr. Murray that we advance from Order of Business Number 5 to Order of Business Number 10 for the specific purpose of handling some minor changes in the Legislative Article placed before you. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: All right, we're now—

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the Convention resolve itself into Committee of the Whole for the consideration of the Legislative Style and Drafting report under General Orders.

PRESIDENT GRAYBILL: Very well, all in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention resolved itself into Committee of the Whole. Leo Graybill, Jr., in Chair)

CHAIRMAN GRAYBILL: Mr. Schiltz, will you explain the problems in the Legislative Article.

DELEGATE SCHILTZ: Yes. Mr. Chairman and members of the committee, we shortcutted a little bit here. I hesitate to use that word because it might have a bad connotation in view of all the queries I got yesterday, but had we followed normal routine, we would have made some of these very minor changes on the Legislative Article and reported it back for ripening for 2 days under the Committee of the Whole and then we would have got to it some other time when everybody would have forgotten it. The changes were, indeed, minor. And you'll recall that the other day I asked that it be rereferred to Style and Drafting so we could incorporate the amendments that were made and also look for any anomalous situations that might have been created that we overlooked. So thereportthatyoushould belookingatis called unicameral--and--up in the upper right-hand corner-and it says, "Order of Business Number 5, Final Consideration, Style and Drafting, Legislative, Number 3." That's the one you should be looking at.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does rise and report, after having had under consideration Order of Business Number 5, Style and Drafting report, Legislative Article, that it adopt the committee's report as to Section 4.

CHAIRMAN GRAYBILL: Very well, will you explain Section 4, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, here we're just making parallelism between the unicameral and the bicameral, and we inserted the words "for the Legislature" on lines 18 and 19.

CHAIRMAN GRAYBILL: Is there any discussion of Section 4?

(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's motion as to Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 8 of the unicameral portion of Style and Drafting's report, that it recommend the same be adopted as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In this case, on line 14 again, we added the words "member of the Legislature" for parallelism.

CHAIRMAN GRAYBILL: Is there any discussion of Section 8?
(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10 of Style and Drafting's report, it recommend the same be adopted as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In this case, we added the words, on line 29, "by law", and again for parallelism.

CHAIRMAN GRAYBILL: Is there any discussion'?
(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: And Section 10 is adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 14 of Style and Drafting's report, unicameral section of the Legislative Article, that it recommend the same be adopted, as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Section 14 is on page 4.

DELEGATE SCHILTZ: That's right. We made a capital letter out of the "t" on line 29, and we changed--we added the word "senator", over on page 5, line 1. Otherwise, no problems.

CHAIRMAN GRAYBILL: Is there any discussion of Section 14, sub. 1?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 15, sub. 3, sub. (b), of the Style and Drafting report on the unicameral Legislative Article, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz, you've lost me. What page?

DELEGATE SCHILTZ: On page 6. We're talking about line 10.

CHAIRMAN GRAYBILL: Page 6, line 10.

DELEGATE SCHILTZ: This, as you will remember on Section 15, is more of the transition section in case we go back to bicameral, and we found that we had changed the numbers in the major sections but had not changed them into this-sections that are picked up in toto and put into the bicameral-put in as bicameral sections. Otherwise, there's no problem there.

CHAIRMAN GRAYBILL: All right, is there any discussion on Section 15, sub. (b)?

DELEGATE SCHILTZ: That should be sub. 3, sub. (b).

CHAIRMAN GRAYBILL: Sub. 3, sub.(b). (No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: That's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3—no, sub. 5, sub. (e), on page 7 of the Style and Drafting report on the Judicial Article, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All right, 15-5 (e) on page 7. It's styled Section 13 after the(e), so you can find it there on line 9.
Mr. Schiltz.

DELEGATE SCHILTZ: In this case, we incorporated the--again, this is still under Section 15—and we picked up the impeachment provisions pertaining to the bicameral section.

CHAIRMAN GRAYBILL: And this implements Mr. Harlow's amendment?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Is there any discussion of this section?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 15, sub. 5, sub. 2, on line-on page 7, line 16, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All right, that's 15-5, sub. (e), sub. 2.

DELEGATE SCHILTZ: Right; sub. (e), sub. 2.

CHAIRMAN GRAYBILL: On line 17. Go ahead.

DELEGATE SCHILTZ: Again, this is the picking up of the bicameral portion to insert into Section 15, and it is the Harlow amendment.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 9 of the bicameral portion after the divider page, which is page 2, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Section 9 is on page 2 after the divider?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, we again are straining for parallelism, and we inserted here "member of the Legislature" instead of "no senator or representative".

CHAIRMAN GRAYBILL: And the term "Legislature" in place of "either house".

DELEGATE SCHILTZ: And the same would be true in that same section on line 29, "either house" and "the Legislature". That's right.

CHAIRMAN GRAYBILL: Is there any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 9 is adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 14 of the bicameral portion, which will be found on page 5 of the Style and Drafting report on the Legislative Article-I'm talking now about 14, sub. 3, on page 5-that it recommend the same be adopted. I really hate even to talk about this, because all we did was strike a comma on line 30, but we are thorough.

CHAIRMAN GRAYBILL: Is there any discussion about the saving in time and space by striking that comma on line 30? (Laughter)
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: That concludes the Style and Drafting report, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, since we're here for the limited purpose of doing just what we have now completed doing, I move that the committee rise and finally report on Style and Drafting report on the Legislature, which is Style and Drafting Report Number 3.

CHAIRMAN GRAYBILL: The motion is to rise and finally report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings revert to Convention from Committee of the Whole, President Graybill presiding.)

PRESIDENT GRAYBILL: Will the clerk read the Committee of the Whole report.

CLERK HANSON: Do you want it all read?

PRESIDENT GRAYBILL: No, read the title and the—

CLERK HANSON: "March 10th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 3 of the Committee on Style and Drafting, Legislative, unicameral and bicameral, recommend as follows: that the committee rise and finally report on Style and Drafting Report Number 3. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: Without objection, we will not read the whole report. Is there a motion, Mr. Murray, to adopt the report?

DELEGATE MURRAY: Mr. President, I move we adopt the Committee of the Whole report and refer Style and Drafting on the Legislative, which is Style and Drafting Report Number 3, to Order of Business Number 5.

PRESIDENT GRAYBILL: All in favor of the motion, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I move the Convention revert to Order of Business Number 5.

PRESIDENT GRAYBILL: The motion is to revert to Order of Business Number 5. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered. Very well, on Order of Business Number 5, the Chair would like to make a little explanation for you. If you'll take the Order of Business Number 5 reports of the Convention that we now have—Number 1, on Suffrage and Elections; Number 2, Constitutional Revision; Number 3, Legislative; and Number 4, Executive--we will go through

these this morning. The rules require that these be adopted section by section. We will not read subsections. They also require-or, the intent is to do this without debate. Now, you should all know whether you have any objection and intend to vote against, either for the record or because51 percent of you want to, any particular sections that have now been adopted and gotten to this stage. But for the record, we must take a roll call vote on each section. That takes a little time. We will not read the section. We will read the title and take the roll call vote, and we will not read subsections. Now, the first one we'll do this morning is Number 1, Suffrage and Elections. Mr. Clerk, Section 1.

CLERK HANSON: "Section 1. Ballot."

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1, vote Aye on the voting machine; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot, Mr. Clerk.

Mr. Schiltz, for what purpose do you rise?

DELEGATE SCHILTZ: Mr. Chairman, my voting machine is not registering up there, I guess.

PRESIDENT GRAYBILL: Well, you may not have voted quickly enough. I may have cut you off.

DELEGATE SCHILTZ: I vote Aye in any case.

PRESIDENT GRAYBILL: All right. We'll catch you next time around then.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask.. ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier.. ..... Aye
Brown.. ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Absent
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Absent
Johnson.. ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye

Melvin ..... Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble .....Aye
Nutting .....Absent
Payne ..... .Absent
Pemberton ..... Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ..... .Absent
Roeder .....Aye
Rollins .....Aye
Romney ....Aye
Rygg ....Aye
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius. ..... Aye
Simon ....Aye
Skari ....Aye
Sparks .....Aye
Speer ....Ay e
Studer ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ..... .Absent
Van Buskirk .....Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Ay e
Warden .....Aye
Wilson .....Aye
Woodmansey ..... Aye
Mr. President ..... Aye

PRESIDENT GRAYBILL: I don't think you need to-well, announce the vote in numbers.

CLERK HANSON: Mr. Chairman, 89 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 2.

CLERK HANSON: "Section 2. Qualified electors."

PRESIDENT GRAYBILL: So many as are in favor of Section 2, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Any delegate who sees his voting machine is not working?

(No response)

PRESIDENT GRAYBILL: Very well, close the ballot. Take the vote, please.

DELEGATE FELT: Felt votes Aye.

PRESIDENT GRAYBILL: Felt votes Aye.

Aasheim .....Aye
Anderson, J. ..... Aye
Anderson, O.....Aye
Arbanas.. ....Aye
Arness .....Aye
Aronow .....Aye
Artz ..... Aye
Ask .....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... .Aye
Berg.. ....Aye
Berthelson ..... Aye
Blaylock .....Aye
Blend .....Aye
Bowman .....Aye
Brazier ....Aye
Brown ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ....Aye
Cate .. ..Aye
Champoux .....Aye
Choate .....Aye
Conover ..... Aye
Cross.. ....Aye
Dahood .....Absent
Davis .....Aye
Delaney ....Aye
Driscoll .....Aye
Drum .....Aye
Eck .....Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart .....Aye
Felt .....Aye
Foster ....Aye
Furlong., ... Excused
Garlington .....Aye
Gysler ..... Nay
Habedank .....Aye
Hanson, R.S..... .Aye
Hanson, R. ....Aye

Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker .. .. .Absent
Holland. .Absent
Jacobsen ..... Aye
James ....Aye
Johnson .... Nay
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold .....Aye
Loendorf .....Aye
Lorello .....Aye
Mahoney .....Aye
Mansfield .....Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Aye
McKeon ....Aye
McNeil ....Aye
Melvin .....Aye
Monroe ..... Aye
Murray.. ....Aye
Noble .....Aye
Nutting .....Aye
Payne ....Aye
Pemberton ..... .Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins.....Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin.. ....Aye
Schiltz .....Aye
Siderius.....Aye
Simon ....Aye
Skari ....Aye
Sparks.....Aye
Speer ....Aye
Studer ....Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ....Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ..... Nay
Warden.. ....Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 88 delegates voting Aye, 7 voting No.

PRESIDENT GRAYBILL: Very well, Section 3.

CLERK HANSON: "Section 3. Elections."

PRESIDENT GRAYBILL: So many delegates as shall be in favor of Section 3, vote Aye on the voting machines; opposed, No. Has every delegate voted?

UNIDENTIFIED DELEGATE: No.

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Clerk will cast the ballot.

Aasheim ..... Aye
Anderson, J. .....Aye
Anderson, 0. ..... Aye
Arbanas.. ....Aye
Arness .....Aye
Aronow .....Aye
Artz ....Aye
Ask .....Aye
Babcock ..... Nay
Barnard ....Aye
Bates ..... Nay
Belcher ..... Aye
Berg .....Aye
Berthelson ..... Aye
Blaylock .....Aye
Blend .....Aye
Bowman ..... Nay
Brazier ....Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain ....Aye
Campbell ....Aye
Cate ..... Aye
Champoux ..... Aye
Choate.....Aye
Conover ..... Aye
Cross.. ....Aye
Dahood .....Absent
Davis .....Aye
Delaney ....Aye
Drum .....Aye
Driscoll ..... Aye
Eck .....Absent
Erdmann ..... .Aye

Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 82 delegates voting Aye, 12 voting No.

PRESIDENT GRAYBILL: Very well, Section 4.

CLERK HANSON: "Section 4, Eligibility for public office."

PRESIDENT GRAYBILL: Every delegate in favor of-any-please vote Aye in favor of Section 4 and No on the voting machines if you're not in favor of Section 4. Every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

DELEGATE ROBINSON: Robinson votes Aye.

PRESIDENT GRAYBILL: Robinson votes Aye.

DELEGATE ROMNEY: Mr. Chairman, Romney votes No.

PRESIDENT GRAYBILL: Are these changes, or are these nonrecorded votes?

DELEGATE ROMNEY: Nonrecorded.

DELEGATE ROBINSON: Nonrecorded.

PRESIDENT GRAYBILL: All right; Mr. Romney votes No, Mrs. Robinson votes Aye. Was there another one?

DELEGATE RYGG: Rygg votes No.

PRESIDENT GRAYBILL: Rygg votes NO.

Aasheim ..... Aye
Anderson, J. ..... Aye

Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Absent
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Absent
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 88 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 5.

CLERK HANSON: "Section 5. Result of elections." Mr. President.

PRESIDENT GRAYBILL: Section 5. So many as shall be in favor of Section 5, vote Aye on the voting machines; so many as opposed, vote

No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

(Mrs. Speer waved flag from back row to attract Chair's attention)

(Laughter)

PRESIDENT GRAYBILL: Stick with me, Mrs. Spew. Do you have some point?

DELEGATE SPEER: I vote Yes.

PRESIDENT GRAYBILL: Mrs. Spew votes Yes on Number 5.

Aasheim ..... Aye
Anderson, J. Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong., ... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf..... Aye
Lorello..... Aye
Mahoney ..... Aye
Mansfield..... Aye
Martin..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble..... Aye
Nutting..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin..... Aye
Schiltz..... Aye
Siderius..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks..... Aye
Speer ..... Aye
Studer ..... Aye

Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman-Mr. President, 96 delegates voting Aye, none voting NO.

PRESIDENT GRAYBILL: Section 6.

CLERK HANSON: "Section 6. Privilege from arrest." Mr. President.

PRESIDENT GRAYBILL: So many delegates as support Section 6 vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye

Romney Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson Aye
Woodmansey Aye
Mr. President Aye

PRESIDENT GRAYBILL: Would the floor manager mind looking at his telephone?

Mr. Blaylock, for what purpose do you rise?

DELEGATE BLAYLOCK: To announce my presence.

PRESIDENT GRAYBILL: Very well, show Mr. Blaylock's presence in the journal.

(Pause while voting machine being repaired)

PRESIDENT GRAYBILL: The Chair—as is obvious, the machine has jammed here a minute and we're fixing it. At the time we adopted the rules, that roll call vote on every section seemed like such a good idea, (Laughter) but if that voting machine breaks, I wonder whether we'll rue the day—

Mr. Scanlin.

DELEGATE SCANLIN: While we're having a little trouble with the machine, I just wanted to register my protests to the next article that's coming up as an insult to our intelligence and an afront to future generations. Thank you, Mr. President.

PRESIDENT GRAYBILL: All right; we'll consider that not debate, Mr. Scanlin. Okay? The committee will be in order. Have you announced the vote for Section 6?

CLERK HANSON: Mr. President, 91 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Now, Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I rise for a suggestion on this. If we have to have roll call votes, since there's only two or three people voting No on each one of these, why don't we go through these section by section and have those people who are opposed stand and we take their names and the rest of us are counted as voting Aye? And it will speed it up and maybe save the machine.

PRESIDENT GRAYBILL: Well, now, Mr. Blaylock, I appreciate your suggestion, but the machine is fixed. It's the same old thing with typewriters. The ribbon ran off the end; it didn't reverse. That happens to everybody's typewriter sooner or later. I think it'll be all right. I think that we may be presumptuous in assuming that we aren't going to get a number of negative votes; and everyone does have a right-and, in fact, the rules require--and, in fact, I think we have to get everyone on record. And this, unfortunately, is the crucial vote on which we have to do that. If the machine, in fact, is broken and won't take a lot more, why, we'll pass this order and we'll get the man over and fix it. But I think we do have to get everyone on the record and everyone has a right to register his protest, and I think we'll be able to do it. I realize that it's time-consuming, but that's, unfortunately, the nature of our business. Thank you. Ladies and gentlemen, you have passed each article of Suffrage and Elections Article, and the Chair will now rerefer Suffrage and Elections, as passed, back to Style and Drafting for inclusion in the final product. Very well. we'll proceed to the Constitutional Revision Article, Number II. Constitutional Revision Number Roman II, Section 1.

CLERK HANSON: "Section 1. Constitutional convention." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1 of the Constitutional Revision Article, please vote Aye on the voting machine; and so many as shall be opposed, please vote No.

DELEGATE HABEDANK: Mr. President.

PRESIDENT GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: The copy I

have, unless there's been another one put out, does not show the words "and unlimited" written in. Is this-have these been written into the ones we're voting on?

PRESIDENT GRAYBILL: Where is the word "unlimited"? I understand you're looking at the wrong copy. Let me see your copy, Mr. Clerk.

DELEGATE HABEDANK: Thank you very much, Mr. President.

PRESIDENT GRAYBILL: This should be headed Order of Business Number 5, Final Consideration, Style and Drafting, Constitutional Revision, Number II-Roman II. Is everybody with us now? And this is Section 1, Constitutional Convention. All in favor, vote Aye; all opposed, vote No. Does any delegate-have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Let's put it this way: all the delegates have not voted; does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
c am ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong., ... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye

Scanlin ..... Aye
Schiltz Aye
Siderius Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye
Mr. President Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: The Chair has just checked with the Rules Committee, and it is true that you do not have to vote on these things, but you are shown as absent on the vote if you don't vote on these things. So either vote or expect to be shown absent in the journal forever. (Laughter) Very well, Section 2.

CLERK HANSON: "Section 2. Initiative for constitutional convention." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye on the voting machines; and opposed, vote No.

DELEGATE BATES: Mr. Chairman.

PRESIDENT GRAYBILL: Mrs. Bates.

DELEGATE BATES: I notice in both of these sections that we-when we looked out at this article from--after Style and Drafting had it, we reinserted the word "unlimited"-and-both of these Sections, 1 and 2, and I don't see it.

PRESIDENT GRAYBILL: You're in **your** wrong book. Mine has the word "unlimited" on line 12 of Section 2. You're in a draft-you're in a previous draft. It's a draft with no cover on it— Order of Business Number 5, it says at the top.

UNIDENTIFIED DELEGATES: We don't have it.

PRESIDENT GRAYBILL: Would-the Chair would appreciate a show of hands of those who do not have the proper one. (Show of hands) All right, something's wrong. Did you all have the proper one for Number 1?

DELEGATES: Yes.

PRESIDENT GRAYBILL: May I ask if you all have the proper Order of Business Number 5, Unicameral, that we worked from this morning on Legislative?

DELEGATES: Yes.

PRESIDENT GRAYBILL: All right, and do you all have it for Executive?

DELEGATES: Yes.

PRESIDENT GRAYBILL: All right, hearing no objection, the Chair will set aside Constitutional Revision, the General Government one, and we'll start on Legislative. And meantime we'll see the Sergeant-at-Arms and see that everybody gets a proper Order of Business Number 5 on Roman I and II. Let's move to the Legislative Article, the one we just worked on this morning. Is everybody ready?

Mrs. Babcock.

DELEGATE BABCOCK: Can we vote on the bicameral and unicameral?

PRESIDENT GRAYBILL: In the Legislative, we vote on everything that's in this pamphlet, yes. You vote on both the bicameral and unicameral. You may-what you're voting is-on the bicameral and unicameral, you're voting that-it's the sense of the body this go on the ballot, and this is the way you want the bicameral and this is the way you want the unicameral on the ballot. You don't have to be for one more than the other. You-this is the way you want these particular things to be if that one happens to be adopted by the public. Very well, we'll begin on Legislative Article, Section 1.

Mr. Clerk.

CLERK HANSON: "Section 1. Power and structure." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1 of the unicameral article, Power and structure, vote Aye on the voting machine; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, after all my work on a unicameral, I certainly want my vote to register Aye, and it's not working.

PRESIDENT GRAYBILL: It isn't working now because it's closed, but if you vote before—

DELEGATE REICHERT: I did. I voted.

PRESIDENT GRAYBILL: All right, now, don't panic. (Laughter) We'll just-if you're-you know, watch your button when you push it, and if the switch doesn't work, push it two or three times; and if it still doesn't work, stand up and I'll recognize you and we'll get you on. And in this case, Mrs. Reichert, we'll make a special rule, and Mrs. Reichert votes Aye on Section 1. Would you announce the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Absent
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Absent
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay

Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner.. .. .. Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 9 voting No.

PRESIDENT GRAYBILL: Very well, Section 2.

CLERK HANSON: "Section 2. Size." Mr. President.

PRESIDENT GRAYBILL: **So many** delegates as shall be in favor of Section 2, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I'm wondering about the size as it's listed here. It says, a minimum of 90 and a maximum of 105. I thought that was to be 100. Is that correct?

PRESIDENT GRAYBILL: That's correct.

DELEGATE CHOATE: Okay.

PRESIDENT GRAYBILL: Very well, we'll close the ballot. Please cast the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. .. .. Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye

McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 82 delegates voting Aye, 12 voting No.

PRESIDENT GRAYBILL: Very well. Ladies and gentlemen, we'll have the pages pass out Section 1. Now, we do not have a hundred, so those of you who happen to have Section 1, please don't accept one from the pages. That's-we've already finished that, but we'll pass it out for you in case you didn't have one. Now, the sergeant tells me that these were put out. Apparently they were put out at some time when they were swept into the baskets along with all of the other things you didn't want, so some of you should have them; and you might look around, because we do not have enough Section 2's. Now, we'll go print some more.

Mr. Hanson.

DELEGATE ROD HANSON: I have two, if you're short.

PRESIDENT GRAYBILL: Well, just share with your neighbor there.

DELEGATE ROD HANSON: They've all got 2.

PRESIDENT GRAYBILL: All right, now, the first thing we're going to do is put out Number 1. And if you don't have it, just take one, but if you do have it, please let the page not give it to you.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, I just rise to say that I don't blame anybody for getting rid of that Number 2.

PRESIDENT GRAYBILL: Section 3.

CLERK HANSON: "Section 3. Election and terms." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 3, Election and terms, of the Unicameral Article of the Legislative Article, please vote Aye on the voting machines; and so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot, Mr. Clerk.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye

Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain ..... Aye
Campbell ....Aye
Cate ....Aye
Champoux ..... Aye
Choate ..... Aye
Conover ....Aye
Cross.. ....Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ....Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ....Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S.. ..... .Aye
Hanson, R. ..... Aye
Harbaugh ....Aye
Harlow ....Aye
Harper ..... Nay
Harrington ....Aye
Heliker ....Aye
Holland., ...Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Aye
Joyce ..... Absent
Kamhoot ....Aye
Kelleher ..... .Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... .Absent
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin ..... Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble ..... Aye
Nutting ..... Aye
Payne ....Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Nay
Rygg ....Absent
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius ....Aye
Simon ....Aye
Skari ....Aye
Sparks ..... Aye
Speer ....Aye
Studer ....Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ....Aye
Van Buskirk ..... .Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ....Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 79 delegates voting Aye, 11 voting No.

PRESIDENT GRAYBILL: Very well, Section 4.

CLERK HANSON: "Section 4. Qualifications." Mr. President.

PRESIDENT GRAYBILL: So many as wish to vote Aye on Section 4, vote on the voting machine; and those opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: We'll close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas ....Aye
Arness ..... Aye
Aronow ..... Aye
Artz ....Aye

Ask ..... Absent
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong, ... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

PRESIDENT GRAYBILL: Mr. Clerk.

CLERK HANSON: Mr. President, 79 voting Aye, 14 voting No.

PRESIDENT GRAYBILL: Very well, Section 5.

CLERK HANSON: "Section 5—"

PRESIDENT GRAYBILL: "Compensation."

CLERK HANSON: "-Compensation." Mr. President.

PRESIDENT GRAYBILL: So many **as** shall favor Section 5 on compensation will vote

Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The ballot is closed. Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 83 voting Aye, 9 voting No.

PRESIDENT GRAYBILL: Very well, Section 6.

CLERK HANSON: "Section 6. Sessions." Mr. President.

PRESIDENT GRAYBILL: Section' 6 is the bottom of page 1 and on page 2. So many as shall favor Section 6, vote Aye on the voting machines: and opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The ballot is closed. Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier.. ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye

Sullivan Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk .Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President Aye

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I see we'revoting by sections but not by subsections. In such instances where there are two substantive propositions in the section, where you might be for one and against the other, what does a poor devil do?

PRESIDENT GRAYBILL: Mr. Romney, I told you at the beginning of the vote on this that the rules require that we do this by section and not by subsection, and you have to then decide whether you want to go with the-with your vote or not. You have to decide whether you like the whole thing as a whole or not, and then you get to vote.

Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, I was under the impression that we-this is the way it's to go on the ballot and that we are approving or disapproving of the wayitis worded.

PRESIDENT GRAYBILL: We're voting on the Legislative Article, and it will go on the ballot as the Style and Drafting Committee finally styles it, and you're approving the text of this material—

DELEGATE PEMBERTON: Thank you.

PRESIDENT GRAYBILL: -and you can vote for or against it, either way.

Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: I seek information.

PRESIDENT GRAYBILL: Very well.

DELEGATE ROMNEY: Would it be possible for me, at this late date, to change my vote on Section 5?

PRESIDENT GRAYBILL: No, but you can explain it, if you want to, for the journal.

DELEGATE ROMNEY: I will be more careful in the future, I promise. I voted in favor of Section 5, being in favor of the first subsection, whereas I am against the second subsection, so the record will show that's my feeling.

PRESIDENT GRAYBILL: Very well. Section 7, Mr. Clerk.

CLERK HANSON: Shouldn't we announce the vote?

PRESIDENT GRAYBILL: Oh, all right, announce the vote.

CLERK HANSON: 76 delegates voting Aye, 18 voting No. Mr. President.

PRESIDENT GRAYBILL: All right, Section 7.

CLERK HANSON: "Section 7. Vacancies." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted? Section 7 is in the middle of page 2.

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas Aye
Arness . Aye
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier Aye
Brown ..... Aye
Bugbee ..... Aye

Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 78 delegates voting Aye, 16 voting No.

PRESIDENT GRAYBILL: Very well, Section 8.

CLERK HANSON: "Section 8. Immunity." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 8, vote Aye on the voting machine; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye

Barnard ..... Nay
Bates.. ....Aye
Belcher ..... Aye
Berthelson ..... .Aye
Berg .....Aye
Blaylock .....Aye
Blend .....Aye
Bowman ..... Aye
Brazier ....Aye
Brown ..... Nay
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Aye
Cate ....Aye
Champoux .....Aye
Choate.....Aye
Conover ....Aye
Cross.. ....Aye
Dahood ..... .Absent
Davis .....Absent
Delaney ....Aye
Driscoll ..... Nay
Drum .....Absent
Eck ..... Aye
Erdmann ..... .Aye
Eskildsen .....Aye
Etchart ..... .Absent
Felt ..... Aye
Foster ....Aye
Furlong ..... Excused
Garlington .....Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S.....Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ..... Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ....Aye
Joyce.. ....Aye
Kamhoot ....Aye
Kelleher ....Aye
Leuthold .....Aye
Loendorf.....Aye
Lorello ..... Aye
Mahoney ....Absent
Mansfield.....Aye
Martin.....Aye
McCarvel .....Aye
McDonough ..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin.....Aye
Monroe.. ....Aye
Murray ....Aye
Noble .....Aye
Nutting .....Aye
Payne ....Aye
Pemberton ..... .Aye
Rebal ..... Aye
Reichert ....Aye
Robinson ....Aye
Roeder .....Aye
Rollins. ..... Aye
Romney ....Aye
Rygg ....Aye
Scanlin .....Aye
Schiltz .....Aye
Siderius.....Aye
Simon ....Aye
Skari ....Aye
Sparks.....Aye
Speer ....Aye
Studer ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ....Absent
Van Buskirk .....Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey .....Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 9.

CLERK HANSON: "Section 9. Disqualifications." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, please vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J. .....Absent
Anderson, 0..... Aye
Arbanas ....Aye
Arness.....Aye
Aronow .....Aye
Artz ....Aye
Ask .....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg.. ....Aye
Berthelson ..... .Aye
Blaylock ..... .Aye
Blend .....Aye
Bowman ..... Nay
Brazier..... Nay
Brown ..... Nay
Bugbee ....Aye
Burkhardt ....Aye
c am..... ..Aye
Campbell ..... Aye
Cate ....Aye
Champoux .....Aye
Choate.....Aye
Conover ....Aye
Cross.. ....Aye
Dahood .....Absent
Davis .....Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum .....Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen .....Aye
Etchart ..... Nay
Felt ..... Aye
Foster ....Aye
Furlong ..... Excused
Garlington.....Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S..... .Aye
Hanson, R. ..... Aye
Harbaugh Aye
Harlow ....Aye
Harper.....Aye
Harrington ..... Aye
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold .....Aye
Loendorf.....Aye
Lorello .....Aye
Mahoney ..... Nay
Mansfield. ..... Aye
Martin.....Aye
McCarvel .....Aye
McDonough..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin.....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble.....Aye
Nutting .....Aye
Payne ....Aye
Pemberton ..... Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder .....Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius.....Aye
Simon ....Aye
Skari ....Aye
Sparks.....Aye
Speer ....Aye
Studer .....Aye
Sullivan ....Aye
Swanberg.....Aye
Toole ..... .Absent
Van Buskirk .....Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Aye
Warden .....Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 78 delegates voting Aye, 15 voting No.

PRESIDENT GRAYBILL: Section 10.

CLERK HANSON: "Section 10. Organization and procedure." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Absent
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay

Woodmansey .... Aye
Mr. President ..... .Aye

CLERK **HANSON:** Mr. President, 81 delegates voting Aye, 11 voting No.

PRESIDENT GRAYBILL: Very well, Section 11, on the middle of page 3.

CLERK HANSON: "Section 11. Bills. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 11, which contains six subsections, vote Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot.

Aasheim ..... .Aye
Anderson, J. .....Aye
Anderson, 0..... Aye
Arbanas ....Absent
Arness ..... Nay
Aronow .....Aye
Artz ....Aye
Ask .....Absent
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock .....Aye
Blend .....Aye
Bowman ..... Aye
Brazier ..... ,... Nay
Brown ..... Nay
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ....Aye
Cate ..... Aye
Champoux .....Aye
Choate .....Aye
Conover ..... Aye
Cross.. ....Aye
Dahood .....Absent
Davis..... Absent
Delaney ....Aye
Driscoll ..... Nay
Drum .....Absent
Eck .....Aye
Erdmann ....Aye
Eskildsen .....Aye
Etchart ..... Nay
Felt .....Aye
Foster ..... Nay
Furlong., ... Excused
Garlington .....Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S..... Nay
Hanson, R. ..... .Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper .....Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ....Aye
James ....Aye
Johnson ....Aye
Joyce.. ....Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold .....Aye
Loendorf .....Aye
Lorello .....Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin .....Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ....Aye
Melvin .....Aye
Monroe ..... Aye
Murray.. ....Aye
Noble ..... .Aye
Nutting .....Aye
Payne ....Aye
Pemberton ..... Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Nay
Rollins, ... Nay
Romney ....Aye
Rygg ....Aye
Scanlin .....Aye
Schiltz ..... Aye
Siderius .....Aye
Simon ..... Aye
Skari ....Aye

Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 69 delegates voting Aye, 23 voting No.

PRESIDENT GRAYBILL: Section 12, on page 4.

CLERK HANSON: "Section 12. Local and special legislation." Mr. President.

PRESIDENT GRAYBILL: **So many** delegates as shall favor Section 12, vote Aye on the voting machines; so many as opposed, vote Nay. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot and cast the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye

Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 89 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 13, on page 4, including four subsections.

CLERK HANSON: "Section 13. Impeachment."

PRESIDENT GRAYBILL: So many as are in favor of Section 13, vote Aye on the voting machine; and so many as opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot, please.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye

McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 86 delegates voting Aye, 7 voting No.

PRESIDENT GRAYBILL: Very well. Graybill votes Aye.

CLERK HANSON: 87 voting Aye, 7 voting NO.

PRESIDENT GRAYBILL: Section 14.

CLERK HANSON: "Section 14. Districting and apportionment." Mr. President.

PRESIDENT GRAYBILL: Section 14, including three subsections. So many as are in favor, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any other delegates wish to change their votes?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye

Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman-Mr. President, 79 voting Aye, 16 voting No.

PRESIDENT GRAYBILL: Very well, Section 15, at the bottom of page 5.

CLERK HANSON: "Section 15. Referendum of unicameral legislature." Mr. President.

PRESIDENT GRAYBILL: Section 15 consists of a great many subsections because it includes the Bicameral Article. So many as are in favor of Section 16, vote Aye on the voting machines; and so many as opposed, vote No.

DELEGATES: Section 15.

PRESIDENT GRAYBILL: —15, I beg your pardon; 15, on the bottom of page 5. Referendum on unicameral legislature. It includes the bicameral alternative in the event the referendum is turned down. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: The ballot is closed.

DELEGATE ROMNEY: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I didn't punch it hard enough, I guess. I want to vote Aye.

PRESIDENT GRAYBILL: Mr. Romney votes Aye.

Aasheim ..... Aye
Anderson, J. Aye
Anderson, O. Aye
Arbanas ..... Aye
Arness .. Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend Nay
Bowman ..... Aye
Brazier Aye
Brown ..... Aye
Bugbee ..... Aye

Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 75 delegates voting Aye, 19 voting No.

PRESIDENT GRAYBILL: Very well, Section 16, on page 9.

CLERK HANSON: "Section 16. Prohibited payments." Mr. President.

PRESIDENT GRAYBILL: Section 16, on page 9. So many delegates are in favor, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye

Barnard.. ..Aye
Bates.. ..Aye
Belcher ..Aye
Berg.. ..Aye
Berthelson Aye
Blaylock ..Aye
Blend Nay
Bowman ..Aye
Brazier ..Aye
Brown.. ..Aye
Bugbee ..Aye
Burkhardt ..Aye
Cain ..Aye
Campbell Aye
Cate ..Aye
Champoux ..Aye
Choate ..Aye
Conover Aye
Cross ..Aye
Dahood ..Absent
Davis ..Aye
Delaney ..Aye
Driscoll Nay
Drum ..Aye
Eck ..Aye
Erdmann ..Aye
Eskildsen ..Aye
Etchart Nay
Felt ..Aye
Foster ..Aye
Furlong Excused
Garlington ..Aye
Gysler Aye
Habedank Aye
Hanson, R.S. .Aye
Hanson, R. Aye
Harbaugh Aye
Harlow ..Aye
Harper ..Aye
Harrington Absent
Heliker ..Aye
Holland .Absent
Jacobsen ..Aye
James ..Aye
Johnson.. ..Aye
Joyce ..Aye
Kamhoot ..Aye
Kelleher ..Aye
Leuthold ..Aye
Loendorf Nay
Lorello ..Aye
Mahoney Aye
Mansfield Aye
Martin ..Aye
McCarvel Aye
McDonough Aye
McKeon ..Aye
McNeil Nay
Melvin ..Aye
Monroe.. ..Aye
Murray.. ..Aye
Noble ..Aye
Nutting ..Aye
Payne ..Aye
Pemberton .Aye
Rebal ..Aye
Reichert Aye
Robinson .Aye
Roeder ..Aye
Rollins. Aye
Romney ..Aye
Rygg ..Aye
Scanlin ..Aye
Schiltz ..Aye
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Aye
Spew.. ..Aye
Studer ..Aye
Sullivan Aye
Swanberg ..Aye
Toole .Absent
Van Buskirk .Aye
Vermillion Aye
Wagner ..Aye
Ward ..Aye
Warden ..Aye
Wilson ..Aye
Woodmansey Aye
Mr. President .Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 17.

CLERK HANSON: "Section 17. Code of ethics." Mr. President.

PRESIDENT GRAYBILL: Section 17, on page 9. So many delegates are in favor, vote Aye on the voting machine; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot, please.

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, Reichert votes Aye.

PRESIDENT GRAYBILL: Reichert votes Aye.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skan ..... Aye
Sparks ..... Aye
Speer ..... Absent
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK **HANSON:** Mr. President, 88 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well. Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, yesterday afternoon we had an hour television program debating the unicameral and bicameral, and I can see now why Mrs. Reichert is failing to press that button properly. She probably was convinced that unicameral wasn't as good as she thought it was. (Laughter)

DELEGATE REICHERT: (Inaudible)-if it's not too late.

PRESIDENT GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I vote Aye. This isn't working.

PRESIDENT GRAYBILL: On Section 17?

DELEGATE SPEER: Yes.

PRESIDENT GRAYBILL: Very well.

DELEGATE BATES: Mr. Chairman.

PRESIDENT GRAYBILL: The Chair knows that this is difficult for you. It's a little difficult for the clerk, too; and we're just running the tape back so we don't-we have-our only problem is the tape, and we've sent for the repairman, but bear with us and I think we can get this job done.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman.

PRESIDENT GRAYBILL: For what purpose do you rise?

DELEGATE BATES: In voting on Section 1, I voted wrong. I meant to vote No.

PRESIDENT GRAYBILL: Very well, on Section 1 of the Legislative Article?

DELEGATE BATES: Yes, because it says "one-chamber body", and I'm not for a one-chamber.

PRESIDENT GRAYBILL: That's fine, Mrs. Bates. That may show in the journal-or the transcript.

Mr. Mahoney.

DELEGATE MAHONEY: I might have to confess. Like Mrs. Bates, I made an awful error and I didn't realize at the time. But I did make an error on Section 1, but I don't want any questions on it. I just wanted the body to know I did make an error.

PRESIDENT GRAYBILL: Confession is good for the soul. (Laughter) We're now going to start on the Legislative Bicameral Article, after the middle sheet. Mr. Clerk, will you please read Section 1?

CLERK HANSON: "Section 1. Power and structure." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1 of the Bicameral Article, on page 1 behind the manila-colored-or the cream-colored sheet, vote Aye on the voting machines; as many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, the vote is closed.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Absent
Bowman.. .Aye
Brazier Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt .Aye
Cain ..... Aye
Campbell Aye
Cate Aye
Champoux .Aye

Choate ..... Nay
Conover ..... Aye
Cross.. ....Aye
Dahood ..... .Absent
Davis .....Absent
Delaney ....Aye
Driscoll ....Aye
Drum .....Aye
Eck ..... Nay
Erdmann ....Aye
Eskildsen ..... Aye
Etchart ..... .Aye
Felt .....Aye
Foster ....Aye
Furlong ..... Excused
Garlington .....Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S. .....Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper .....Aye
Harrington ....Aye
Heliker ....Absent
Holland ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Aye
Joyce.. ....Aye
Kamhoot ....Aye
Kelleher ..... Nay
Leuthold .....Aye
Loendorf .....Aye
Lorello .....Aye
Mahoney ..... Aye
Mansfield ..... .Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Aye
McKeon ....Aye
McNeil ....Aye
Melvin .....Aye
Monroe ..... Nay
Murray.. ....Aye
Noble .....Absent
Nutting .....Aye
Payne ....Aye
Pemberton ..... .Aye
Rebal .....Aye
Reichert ..... .Aye
Robinson ..... .Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ....Aye
Rygg ....Aye
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius .....Aye
Simon ....Aye
Skari ....Aye
Sparks .....Aye
Speer ..... Nay
Studer ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ....Aye
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Aye
Warden ..... Nay
Wilson ....Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 10 voting No.

PRESIDENT GRAYBILL: Very well. Section 2, Size.

CLERK HANSON: "Section 2. Size." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 2, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, the vote's closed.

Aasheim .....Aye
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas .....Aye
Arness .....Aye
Aronow ..... Nay
Artz ....Aye
Ask ..... Nay
Babcock.. ....Aye
Barnard ....Aye
Bates.. ..... Nay
Belcher ..... Nay
Berg.. ....Aye
Berthelson ..... .Aye

Blaylock.. ....Aye
Blend .....Aye
Bowman .....Aye
Brazier ..... Aye
Brown.. ....Aye
Bugbee ..... Nay
Burkhardt ....Aye
c aim ..... Nay
Campbell ..... Aye
Cate.. ....Aye
Champoux ..... Nay
Choate ..... Nay
Conover ..... Aye
Cross.. ....Aye
Dahood .....Absent
Davis .....Absent
Delaney ....Aye
Driscoll .....Aye
Drum .....Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen .....Aye
Etchart ..... Aye
Felt .....Aye
Foster ....Aye
Furlong ..... Excused
Garlington .....Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... .Aye
Harlow ..... Nay
Harper..... Nay
Harrington ....Aye
Heliker ....Absent
Holland .Absent
Jacobsen ..... Nay
James ....Aye
Johnson ....Aye
Joyce .....Aye
Kamhoot ....Aye
Kelleher Nay
Leuthold .....Aye
Loendorf..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin .....Aye
Monroe ..... Nay
Murray.. ....Aye
Noble ..... .Absent
Nutting ..... Nay
Payne ....Aye
Pemberton ..... .Aye
Rebal .....Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Nay
Rygg ....Aye
Scanlin.. ....Aye
Schiltz .....Aye
Siderius .....Aye
Simon ....Aye
Skari ....Aye
Sparks .....Aye
Spew ..... Nay
Studer ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ..... .Aye
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ..... Nay
Warden ..... Nay
Wilson .....Aye
Woodmansey ....Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 69 delegates voting Aye, 25 voting No.

PRESIDENT GRAYBILL: Very well, Section 3.

CLERK HANSON: "Section 3. Election and terms." Mr. President.

PRESIDENT GRAYBILL: **So** many delegates as shall be in favor of Section 3, vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ....Aye
Anderson, 0..... .Aye
Arbanas.. ....Aye

Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Absent
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: Very well, Section 4.

CLERK HANSON: "Section 4. Qualifications." Mr. President.

PRESIDENT GRAYBILL: So many delegates are in favor of Section 4, vote Aye on the voting machines; and opposed, vote No. Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Have all delegates voted?

(No response)

PRESIDENT GRAYBILL: We'll cast the ballot.

Mr. Champoux.

DELEGATE CHAMPOUX: I'd like to record that I made a mistake. I want to vote No on that, please. Sorry.

PRESIDENT GRAYBILL: Champoux votes No.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Absent
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Absent
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siœrius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye

Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President Aye

CLERK HANSON: Mr. President, 72 delegates voting Aye, 20 voting No.

PRESIDENT GRAYBILL: Very well. Now, ladies and gentlemen, we have gotten enough copies of the Section--or of the Constitutional Revision Article printed, and we are going to have it passed among you by the pages. I think we have enough for everybody on this, so there isn't any problem. If the pages care to pass that out now, that will be fine. That's what's coming around. We'll do that after we finish Legislative. Very well, Section 5.

CLERK HANSON: "Section 5. Compensation." Mr. President.

PRESIDENT GRAYBILL: Section 5, consisting of two subsections. So many as are in favor, vote Aye on the voting machine; opposed, No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?
(No response)

PRESIDENT GRAYBILL: Cast the ballot. Mr. Clerk, Graybill votes Aye.

DELEGATE BABCOCK: Babcock votes Aye.

PRESIDENT GRAYBILL: Babcock votes Aye.

Aasheim .Aye
Anderson, J. ..... Aye
Anderson, O.. Aye
Arbanas Aye
Arness ..... Aye
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher .Aye
Berg ..... Aye
Berthelson .Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Absent
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Absent
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... .Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... .Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... .Absent
Heliker ..... .Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay

Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins., ... Nay
Romney N a y
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
S ak ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Absent
Mr. President ..... Aye

CLERK HANSON: Mr. President, 81 delegates voting Aye, 10 voting No.

PRESIDENT GRAYBILL: Very well, Section 6, on page 2.

CLERK HANSON: "Section 6. Sessions." Mr. President.

PRESIDENT GRAYBILL: So many as shall favor Section 6, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O.. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Nay
Belcher ..... Nay
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood.. ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Absent
Holland, ... Absent
Jacobsen ..... Aye
James.. ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye

Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Nay
scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 74 delegates voting Aye, 17 voting No.

PRESIDENT GRAYBILL: Very well, Section 7.

CLERK HANSON: "Section 7. Vacancies." Mr. President.

PRESIDENT GRAYBILL: So many as shall favor Section 7, Vacancies, on page 2, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask. ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Absent
Blaylock ..... Nay
Blend ..... Absent
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
cam ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate. ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye

Heliker ..... Absent
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Absent
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Absent
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Absent
Wilson ..... Absent
Woodmansey Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 76 voting Aye, 13 voting No.

PRESIDENT GRAYBILL: Very well. Section 8.

CLERK HANSON: "Section 8. Immunity." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 8, vote Aye; so many as opposed, vote No. Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye

Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well, Section 9.

CLERK HANSON: "Section 9. Disqualification." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Absent
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent

Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ,, ... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Absent
Harrington ..... Absent
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ,, ,, ... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Aye
Mahoney ..... Aye
Mansfield.. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius. ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 76 voting Aye, 16 voting No.

PRESIDENT GRAYBILL: Very well, Section 10, consisting of five subsections.

CLERK HANSON: "Section 10. Organization and procedure." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, vote Aye; opposed, No. Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: All the delegates voted?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye

Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 85 voting Aye, 9 voting No.

PRESIDENT GRAYBILL: Very well, Section 11.

CLERK HANSON: "Section 11. Bills." Mr. President.

PRESIDENT GRAYBILL: Section 11 consists of six subsections, on page 3 and 4. All in favor of Section 11 vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye

Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate .. .. Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorel10 ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 71 voting Aye, 24 voting No.

PRESIDENT GRAYBILL: Very well, Section 12.

CLERK HANSON: "Section 12. Local and special legislation." Mr. President.

PRESIDENT GRAYBILL: As many as are in favor of Section 12, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong., ... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland. ..... Absent
Jacobsen Aye
James ..... Aye
Johnson Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins., Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well, Section 13.

CLERK HANSON: "Section 13. Impeachment." Mr. President.

PRESIDENT GRAYBILL: Section 13, with four subsections. So many as are in favor, vote Aye; so many as opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman. ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye

Woodmansey Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: Very well, Section 14.

CLERK HANSON: "Section 14. Districting and apportionment." Mr. President.

PRESIDENT GRAYBILL: Section 14, consisting of three subsections. All in favor, vote Aye on the voting machines; opposed, No. Have all the delegates voted?
(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye

Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 79 voting Aye, 17 voting No.

PRESIDENT GRAYBILL: Very well, Section 15.

CLERK HANSON: "Section 15. Prohibited payments." Mr. President.

PRESIDENT GRAYBILL: It's on page 6. So many as in favor, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay

Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 89 voting Aye, 7 voting No.

PRESIDENT GRAYBILL: Section 16.

CLERK HANSON: "Section 16. Code of ethics." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 16, vote Aye; opposed, vote No. Every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I think I'd better explain that last vote. I'm not against ethics, I'm just against the bicameral system. (Laughter)

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye

Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 4 delegates voting No.

PRESIDENT GRAYBILL: Very well. By your vote you have adopted every article of both the unicameral and bicameral section of the Legislative Article, and the Chair will refer it back to Style and Drafting. Now, if the Chair may be permitted an observation, I am really at somewhat of a loss. This is serious business. We do want to record your vote. I'm at a little bit of a loss to know why people don't vote the same on identical sections two times in a row. So you might think about that. I mean, many of you-hardly any of these votes come out the same, even though the sections are identical. There are only a few different sections. So, I don't know what you're trying to do, but some of you are on record on both sides of these issues, which seems to me a little bit inconsistent of you. Now, we'll take up Number II. Very well, does everyone now have their Constitutional Revision Order of Business Number 5, Number II, before them?

(No response)

PRESIDENT GRAYBILL: Now, last time we took the vote on Section 1, but—and it was 94 to nothing-but I'll take it over again so that everyone-because some of you may have been confused as to which article you were working from last time. We're talking about the Constitutional Revision Article on General Government; it's numbered Roman II and it's under Order of Business Number 5. Mr. Clerk, Constitutional Revision, Section Number **1.**

CLERK HANSON: "Section 1. Constitutional convention."

PRESIDENT GRAYBILL: Very well, so many as shall be in favor of Section 1, Constitutional Convention, of Genera1 Government's Number II, please vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Seven delegates have not voted. Does any delegate wish to vote or change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, we'll cast the ballot.

Aasheim Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier Aye
Brown ..... Aye

Bugbee ....Aye
Burkhardt ....Aye
cam..... Aye
Campbell ..... Aye
Cate ..... .Aye
Champoux.....Aye
Choate.....Aye
Conover ..... .Aye
Cross ..... Aye
Dahood ..... .Absent
Davis.....Aye
Delaney ....Aye
Driscoll ..... .Aye
Drum.....Absent
Eck.....Aye
Erdmann ....Aye
Eskildsen.....Aye
Etchart ....Aye
Felt.....Aye
Foster ....Aye
Furlong ..... Excused
Garlington.....Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S.....Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Absent
Harrington ..... Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Aye
Joyce.....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin.....Aye
McCarvel ....Aye
McDonough..... .Absent
McKeon ....Aye
McNeil ....Aye
Melvin.....Aye
Monroe ..... Aye
Murray.. ....Aye
Noble.....Aye
Nutting.....Aye
Payne ....Aye
Pemberton ..... .Absent
Rebal.....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins. ..... .Absent
Romney ....Absent
Rygg ....Aye
Scanlin ....Aye
Schiltz ..... .Aye
Siderius.....Aye
Simon ....Aye
Skari ....Aye
Sparks.....Aye
Speer ....Aye
Studer ....Aye
Sullivan ..... Aye
Swanberg.....Aye
Toole ..... .Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner.....Aye
Ward ....Aye
Warden.....Aye
Wilson.....Aye
Woodmansey ..... Aye
Mr. President .Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 2.

CLERK HANSON: "Section 2. Initiative for Constitutional Convention." Mr. President.

PRESIDENT GRAYBILL: Section 2, consisting of two subsections. So many as are in favor, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Nay
Anderson, J.....Aye
Anderson, 0..... Aye
Arbanas ....Aye
Arness.....Aye
Aronow.....Aye
Artz ....Aye
Ask.....Aye

Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Absent
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Absent
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Absent
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well, Section 3.

CLERK HANSON: "Section 3. Periodic submission." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 3, vote Aye; and opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong, ... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harringtan ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 59 delegates voting Aye, 34 voting No.

PRESIDENT GRAYBILL: Very well, Section 4.

CLERK HANSON: "Section 4. Call of convention." Mr. President.

PRESIDENT GRAYBILL: So many delegates as are in favor of Section 4, please vote Aye; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

Mr. President ..... .Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 5.

CLERK HANSON: "Section 5. Convention expenses." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 5, vote Aye; opposed, No. All the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim .....Aye
Anderson, J. .....Aye
Anderson, 0 Aye
Arbanas.. ..Aye
Arness .....Aye
Aronow ..... .Aye
Artz ....Aye
Ask .....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher.. ....Aye
Berg.. ....Aye
Berthelson ..... Aye
Blaylock .....Aye
Blend .....Aye
Bowman .....Aye
Brazier ..... Aye
Brown.. ....Absent
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell .....Aye
Cate ....Aye
Champoux .....Absent
Choate .....Aye
Conover ..... .Aye
Cross.. ....Aye
Dahood .....Absent
Davis .....Aye
Delaney ....Aye
Driscoll .....Aye
Drum .....Aye
Eck .....Aye
Erdmann.. ....Aye
Eskildsen .....Aye
Etchart .....Aye
Felt .....Aye
Foster ....Aye
Furlong ..... Excused
Garlington .....Aye
Gysler ....Aye
Habedank ..... .Aye
Hanson, R.S. .....Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper .....Aye
Harrington ..... Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Aye
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold .....Aye
Loendorf .....Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Absent
McKeon ....Aye
McNeil ....Aye
Melvin .....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble .....Aye
Nutting .....Aye
Payne ....Aye
Pemberton ..... .Absent
Rebal .....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins .....Aye
Romney ....Aye
Rygg ....Aye
Scanlin Nay
Schiltz .....Aye
Siderius .....Aye
Simon ....Aye
Skari ....Aye
Sparks ..... Aye
Speer ....Aye
Studer ....Aye

Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Absent

CLERK HANSON: Mr. President, 91 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Section 6.

CLERK HANSON: "Section 6. Oath—vacancies." Mr. President.

PRESIDENT GRAYBILL: So many delegates as are in favor of Section 6, please vote Aye; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye

Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 7.

CLERK HANSON: "Section 7. Convention duties." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Absent
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Absent
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhaot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye

Murray.. ..Aye
Noble ..Aye
Nutting ..Aye
Payne ..Aye
Pemberton .Absent
Rebal ..Aye
Reichert Aye
Robinson Aye
Roeder ..Aye
Rollins. Nay
Romney ..Aye
Rygg ..Aye
Scanlin Nay
Schiltz Aye
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Aye
Speer ..Absent
Studer ..Aye
Sullivan ..Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk .Aye
Vermillion Aye
Wagner ..Aye
Ward ..Aye
Warden ..Aye
Wilson ..Aye
Woodmansey Aye
Mr. President .Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 8.

CLERK HANSON: "Section 8. Amendment by legislative referendum." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 8, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim Aye
Anderson, J. Aye
Anderson, O. ..Aye
Arbanas ..Aye
Arness ..Aye
Aronow ..Aye
Artz ..Aye
Ask ..Aye
Babcock.. ..Aye
Barnard.. ..Aye
Bates.. ..Aye
Belcher .Aye
Berg.. ..Aye
Berthelson .Aye
Blaylock ..Absent
Blend ..Aye
Bowman Aye
Brazier ..Aye
Brown.. ..Aye
Bugbee ..Aye
Burkhardt ..Aye
Cain ..Aye
Campbell ..Aye
Cate ..Aye
Champoux ..Absent
Choate ..Aye
Conover Aye
Cross.. ..Aye
Dahood ..Absent
Davis ..Aye
Delaney ..Aye
Driscoll Aye
Drum ..Aye
Eck ..Aye
Erdmann ..Aye
Eskildsen ..Aye
Etchart Aye
Felt ..Aye
Foster ..Aye
Furlong Excused
Garlington ..Aye
Gysler ..Aye
Habedank Aye
Hanson, R.S. ..Aye
Hanson, R. ..Aye
Harbaugh Aye
Harlow ..Aye
Harper ..Aye
Harrington ..Aye
Heliker ..Aye
Holland ..Absent
Jacobsen Aye
James ..Aye
Johnson Aye
Joyce.. ..Aye
Kamhoot ..Aye
Kelleher Aye
Leuthold ..Aye
Loendorf ..Aye

Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 92 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 9.

CLERK HANSON: "Section 9. Amendment by initiative."

PRESIDENT GRAYBILL: So many as are in favor of Section 9, vote Aye on the voting machines; opposed, No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye

Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
J0hnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... .Aye
Leuthold .....Aye
Loendorf .....Aye
Lorello .....Aye
Mahoney ..... Aye
Mansfield,, ...Absent
Martin .....Aye
McCarvel .....Aye
McDonough ..... Aye
McKeon ....Absent
McNeil ....Aye
Melvin .....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble .....Aye
Nutting.. ....Aye
Payne ....Aye
Pemberton ..... .Absent
Rebal .....Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder .....Aye
Rollins, ... Aye
Romney ....Aye
Rygg ....Aye
Scanlin ....Aye
Schiltz ....Aye
Siderius .....Aye
Simon ....Aye
Skari ..... Aye
Sparks .....Aye
Speer ....Aye
Studer ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ....Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ..... Nay
Warden .....Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 7 voting No.

PRESIDENT GRAYBILL: Very well, Section 10.

CLERK HANSON: "Section 10. Petition signers." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, vote Aye; as many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot.

DELEGATE ARONOW: Aronow votes Aye.

PRESIDENT GRAYBILL: Mr. Aronow votes Aye.

Aasheim .....Aye
Anderson, J. .....Aye
Anderson, 0..... .....Aye
Arbanas .... Aye
Arness ..... Aye
Aronow .....Aye
Artz ....Aye
Ask .....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg.. ....Aye
Berthelsan ..... .Aye
Blaylock .....Aye
Blend ..... Aye
Bowman .....Aye
Brazier ..... Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Aye
Cate ....Aye
Champoux .....Aye
Choate .....Aye
Conover ..... Aye
Cross .....Aye
Dahood .....Absent
Davis .....Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ....Aye
Eck .....Aye
Erdmann ..... .Aye
Eskildsen ..... .Aye

Etchart ..... Aye
Felt. ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. A y e
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Stcerius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 11.

CLERK HANSON: "Section 11. Submission." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 11, vote Aye; and so many as shall be opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier.. ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye

Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Aye
Schiltz Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole . . . Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye; no delegates voting No.

PRESIDENT GRAYBILL: Very well. Ladies and gentlemen, by sustaining all of these sections, you have sustained the Constitutional Revision, and the Chair will refer Constitutional Revision Article Number 11 back to Style and Drafting for inclusion in the final Constitution. We'll stand at ease for a minute while we run the tape back.

(Convention at ease)

PRESIDENT GRAYBILL: The Convention will be in session.

Mrs. Bates, for what purpose do you rise?

DELEGATE BATES: Mr. President, I just wanted to bring something to our attention. In voting here on Section 6, we voted for an oath that we haven't looked at yet. Is this a rubber stamp, then, for the future proposal?

PRESIDENT GRAYBILL: Now, Mrs. Bates, I don't understand what you're talking about. Are you talking about the one-General Government?

DELEGATE BATES: Yes, it's one that we—

PRESIDENT GRAYBILL: May I see a copy, Mr. Clerk? And your point is that Section 6 you haven't looked at? What do you mean?

DELEGATE BATES: The oath of office.

PRESIDENT GRAYBILL: (Gaveling for order) Will everyone please sit down and be quiet?

DELEGATE BATES: As yet, as far as I can recall, we haven't acted on the actual oath that will be provided in this Constitution and-

PRESIDENT GRAYBILL: You're talking about Section 6, Oaths and vacancies?

DELEGATE BATES: **Yes,** in Section 2 of this Constitutional Revision; but I just thought maybe it was something that we should be aware of. Thank you.

PRESIDENT GRAYBILL: I don't understand you at all, Mrs. Bates. We have voted on Section 6, to my recollection. Now, I'll be glad to pull my book—

DELEGATE BATES: **Yes,** Mr. Chairman, we just voted on it now; but as far as the actual oath that will be included in this Constitution, we haven't acted on it previously as far as I can recall, although I did miss a session yesterday.

DELEGATE ETCHART: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: The oath is part of the General Government Article which will be coming out at the end of the last article.

PRESIDENT GRAYBILL: I see. Well, Mrs. Bates, you are absolutely correct. We have voted on an oath that we haven't seen. It will come out of General Government. This Convention took an oath. I think the delegates presumed that the next Convention, if there was one, would take an oath. I see what you mean. I'm--we're not supposed to debate or discuss it. If you have other questions-we've been through this one about three times. I think you're correct-technically correct-I think it's probably unimportant at this time, and you may certainly debate the oath when Mr. Etchart brings the oath in. Okay, now I understand what your point is. Very well, we'll now take up the Executive Article, Order of Business Number 5, Executive, styled Number Roman IV. Everyone should have that. It was put on your desks today.

Very well, Mr. Clerk, Section 1.

CLERK HANSON: "Section 1. Officers." Mr. President.

PRESIDENT GRAYBILL: **So many as** shall be in favor of Section 1 of the Executive Article, being Order of Business Number 5, Executive Number Roman IV, please vote Aye on the voting machine; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: We'll close the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Nay
Aronow	Absent
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman.	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhart	Nay
Cain	Aye
Campbell	Nay
Cate	Absent
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Aye
Felt	Aye
Foster	Nay
Furlong	Excused
Garlington	Nay
Gysler	Nay

Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President Aye

CLERK HANSON: Mr. President, 48 voting Aye, 46 voting No.

PRESIDENT GRAYBILL: Very well, Section 2.

CLERK HANSON: "Section 2. Election." Mr. President.

PRESIDENT GRAYBILL: Section 2, consisting of subsections 1 and 2. All those in favor, vote Aye; opposed, vote No.

Mrs. Robinson.

DELEGATE ROBINSON: Point of order. On final consideration on Section l-am I wrong-do we not have to have 50-a majority of the membership of the body, rather than a majority of those present and voting?

PRESIDENT GRAYBILL: Just a moment. We'll check. May I have your attention? I'm going to void the existing ballot on Number 2, and we'll come back to that. Just void that one. Mrs. Robinson has raised a point of order which I'm sure is interesting to everybody. And it's Rule 51, on page 23: "On final consideration of articles, the Convention shall finally consider individual articles at Order of Business Number 5, section by section-a majority of elected delegates-by a majority of elected delegates and refer the said articles to Style and Drafting." So, at the moment you have not-you are not going to send Section 1 to Style and Drafting. It's going to be deleted, 48 only having voted Aye.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move for a call of the Convention.

PRESIDENT GRAYBILL: Very well, a call of the Convention having been moved for, we'll-yes, Mr. Sergeant-at-Arms, we've had a call of the Convention. Will you call in the lobbies and see if we can't get the rest in here? All in favor of a call of the Convention, vote Aye-say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Very well. Will all those present please vote Aye on the voting machines, so we'll find out where we stand?

CLERK HANSON: Mr. Barnard.

PRESIDENT GRAYBILL: Mr. Eskildsen.

CLERK HANSON: Pemberton, Holland, Dahood.

PRESIDENT GRAYBILL: Members of the Convention, you may be interested in-a call of the house having been ordered and voted, we're on, now, Rule 68: "No one shall be permitted to leave the floor of the Convention without permission of the President. The Sergeant-at-Arms will notify all members within the bar of the Convention", which the sergeant is now doing. "The roll of the Convention shall be called and the absentees noted. The Sergeant-at-Arms may be dispatched after absentees. The Convention may proceed to business under a call of the Convention pending the arrival of the absentees."

Mr. Murray, what's your pleasure?

DELEGATE MURRAY: Well, my pleasure is to advise the Convention that we have just done a most serious act. Apparently, we want to go back to January 17th and commence committee work again on the Executive Article by indication of our last vote. And I think that we should remind ourselves that we are in a most-probably the most critical stage of our Convention right now. We have, by the rules, required 51 votes to pass things. This means that the delegates should remain in this hall, should pay attention to their voting, and should be careful what they're doing. Now, if they intend to do that, somebody is going to have to get that particular section of the Executive Article back into that committee or do something with it. And I hope they have in mind some good idea as to what they're going to do, because that just simply destroys that committee and this Convention's work to this stage. Now, progress having been made with Delegate Pemberton having returned to the chamber, I move call of the house be dispensed with.

PRESIDENT GRAYBILL: Mr. Arbanas, for what purpose do you rise?

DELEGATE ARBANAS: I'd like to have a more careful explanation. If we persist in this vote, what does it actually mean? What are the processes we'll follow?

PRESIDENT GRAYBILL: Well, at the moment it means that we have no executive officers in the new Constitution.

DELEGATE ARBANAS: Yes, but now what do we do about it? That's what my question-does this go back to committee?

PRESIDENT GRAYBILL: I'm sure the Executive Committee and others are thinking about that, Mr. Arbanas, right now.

Mr. Murray.

DELEGATE MURRAY: Well, Mr. President, if nobody can come up with a better idea, then I would have to move to suspend the rules to put it back into the committee, which again places it in January 17th status.

DELEGATE SIMON: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Simon.

DELEGATE SIMON: I would like to change my vote.

PRESIDENT GRAYBILL: I'm sorry, Mr. Simon, you can't change your vote at this time. The vote was cast.

DELEGATE SIMON: The vote is cast?

PRESIDENT GRAYBILL: Yes. There's a lot of us might want to change our vote, but it's cast.

DELEGATE KELLEHER: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I'd like to say1 just don't want Mr. Murray's remarks to go with no response. We are a plenipotentiary body, and we can do anything we darned please. And if we want to reconsiderthis and send it back to committee, that's our power to do so. Our people are going to live with this Constitution for a heck of a long time, presumably, and if it means a few extra hours or a couple extra days to redecide this matter, I see no harm in that.

PRESIDENT GRAYBILL: I don't think Mr. Murray meant anything-that we couldn't do that, Mr. Kelleher. The problem is, we have now a serious problem because we have destroyed the Executive Article. And that's fine; we'll certainly work on it.

Mr. Murray-Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I believe that I was the only member of the Executive Committee who voted for this, and I just want

to reiterate the position that I've taken on the floor and that is that—

PRESIDENT GRAYBILL: Well, Mr. Martin, I am not interested in arguing the Executive Article now. If anyone has any discussion about the problem we're in, I will certainly be interested in—

DELEGATE MARTIN: Well, I think it is of—

PRESIDENT GRAYBILL: -but I'm not interested in arguing the Executive Article.

DELEGATE MARTIN: It's a policy that I think the Convention should adopt, and that is not to reconsider and reconsider.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I made a motion that we dispense with the call of the Convention. Has that motion ever been voted on?

PRESIDENT GRAYBILL: No, it hasn't. The motion is to dispense with the call of the Convention. Is there other discussion on that motion?

(No response)

PRESIDENT GRAYBILL: All in favor of dispensing with the call of the Convention, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we suspend our rules for the specific purpose of revoting on Section 1 of the Executive Article.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I think that to be out of order. I think he can move to reconsider if he wishes to, but I don't think-question at this time if we should ask for the suspension of the rules. You have a number of issues here that can be used. You can reconsider this vote and get a majority and then revote it, or you can send this back to committee. But I don't see any question of suspending the rules for this.

DELEGATE MURRAY: Mr. President, the reason that I make the motion to suspend the rule is so the matter can be handled under this Order of Business. If we do not do so, we have to pass it for the time, go on to Order of Business Number 7 and then move to reconsider. And that's why I make it now, Mr. Mahoney. I think that it should be made now so we can dispose of the matter.

DELEGATE MAHONEY: (Inaudible)

PRESIDENT GRAYBILL: All right, just a minute. No one has the floor. Will the Convention be in order. Mr. Murray, at this time, the Chair is going to rule your motion to suspend the rules out of order; there being, in the Chair's opinion, other ways of approaching the problem. I'd call the delegates' attention to Rule 66, Motion for Reconsideration: "Any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention, or may give notice for the next day. If the delegate who gave the notice does not make the motion the next day"-and so forth. The Committee on Style also may do it. "A motion to reconsider shall take precedence over all other questions except a motion to fix the time to which to adjourn"-a motion to adjourn, and so forth. "A motion to reconsider shall not be renewed." I've asked the question once of the Rules Committee as to whether or not we can't reconsider at this stage. I see nothing in the rules that prohibits reconsideration at Order of Business Number 5; therefore, a motion to reconsider would be in order. The Chair voted on the prevailing side, and if no one else will do it, I'll make a motion to reconsider.

Mr. Habedank, for what purpose do you rise?

DELEGATE HABEDANK: Mr. President, I voted on the prevailing side and I move that we reconsider our action, our vote on that section.

PRESIDENT GRAYBILL: Very well.

DELEGATE HABEDANK: Mr. President, I thought the motion lost. I did not vote on the prevailing side.

PRESIDENT GRAYBILL: Yes, Mr. Habedank, you're out of order.

Mr. Harlow, for what purpose do you rise?

DELEGATE HARLOW: First, I was going to ask for a point of order, but it has been cleared up. I want to know who voted-or, that is, what was the prevailing side?

PRESIDENT GRAYBILL: The prevailing side was—(gaveling for order)-Mr. Harlow has asked a question which the Chair intends to answer, so everybody take their time here. The motion that the Chair put was to adopt Section 1, and so I would say that the people that voted on the 46 side-that is, No-were the prevailing side. The Chair is going to rule that way. Does anyone care to challenge the Chair? In other words, the No votes were the prevailing side. Anybody that voted Aye can-anybody that voted No can move to reconsider. Now, let's check again, Mr. Habedank.

DELEGATE HABEDANK: I voted No.

PRESIDENT GRAYBILL: Mr. Habedank, having voted No, you are on the prevailing side. Mr. Habedank, having previously recognized you, I'll recognize you again. What's your purpose?

DELEGATE HABEDANK: I move we reconsider the vote on Section 1.

DELEGATE FELT: Mr. President.

PRESIDENT GRAYBILL: Mr. Felt, you do not have the floor.

DELEGATE FELT: I know. I'm seeking it.

PRESIDENT GRAYBILL: Yes, I know, Mr. Felt. Mr. Felt, for what purpose do you rise?

DELEGATE FELT: The Chair invited the question if anyone wished to challenge the ruling of the Chair, but none-given no opportunity to do so, I'm not—

PRESIDENT GRAYBILL: Just a moment, Mr. Felt. We have not proceeded. I'll be happy to give you that opportunity. I do have to think one thing through at a time, Mr. Felt.

Now, Mr. Felt, for what purpose do you rise?

DELEGATE FELT: To challenge the ruling of the Chair that the No votes were the prevailing side.

PRESIDENT GRAYBILL: Very well.

DELEGATE FELT: And I'm not trying to be obstreperous. I think it's a difficult question and it might require just a little more thought by all of us, but the-it would seem to me that no side prevailed-there was no prevailing side-and that no action was taken; and a motion to reconsider would therefore be of some questionable validity. And I would just like to suggest as a possibility, which I'm not sure is available, either that a motion to revert to Section 1 of the Executive Article—

PRESIDENT GRAYBILL: Mr. Felt, you're out of order on that. You've challenged the order of the Chair, and we'll take care of that matter.

DELEGATE FELT: I was just suggesting that as a possibility.

PRESIDENT GRAYBILL: All right, now Rule—

DELEGATE FELT: My only point is to challenge the ruling of the Chair.

PRESIDENT GRAYBILL: Very well, Mr. Felt, and the Chair will allowyourchallenge. Rule 75 is the one that you want to look at on challenge of the Chair: "On all appeals from decisions of the Chair, the question shall be, shall the appeal be sustained?"-that is, shall the Chair be-shall Mr. Felt's appeal be sustained? "A favorable vote of a majority of the delegates present and voting shall sustain the appeal. The presiding officer may cast his vote on an appeal from his decision, and he shall have the right to explain his decision." Very well, I shall now explain my decision, and then we'll vote on Mr. Felt's challenge. When I put Section 1 to the body, I put it for adoption. Therefore, those that voted Aye were voting for adoption. It failed of adoption because oftherules; therefore, I've ruled that the prevailing side were people who were trying to keep it from being adopted. That's why I ruled that way. Secondly, I would like to point out that having ruled-that I have to rule one way or the other. We have to find-have someone do it, and then as soon as we have made that ruling, one of us, either Mr. Habedank or someone on the other side, can then make a motion to reconsider. It doesn't seem to me thatit makes much difference. If I'd ruled the other way, we would have had someone else make the motion to reconsider, but that's the way I ruled. Now, the issue is, shall Mr. Felt's challenge of the Chair be sustained? All those in favor of sustaining Mr. Felt's-and we'll take a roll call-all those in favor of Mr. Felt's motion challenging the Chair, vote

Aye; and those that wish to sustain the Chair, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, we'll cast the ballot.

Aasheim ..... Absent
Anderson, J. ..... Absent
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates .. .. Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Nay
Erdmann Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe .. .. Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. President ..... Nay

CLERK HANSON: Mr. Chairman, 9 delegates voting Aye, 86 voting No.

PRESIDENT GRAYBILL: 9 delegates having voted Aye and 86 voting No, the Chair is sustained. And the people that voted-the 46 of you-are the prevailing side and Mr. Habedank's motion is in order. Mr. Habedank's motion is a move to reconsider. Now, the Chair would like to explain at this time to all the delegates that I'm aware this is an important matter for many of you. The Chair is merely going to put these things, and we're going to get a vote. Obviously, we have a vote that upset the applecart. Now the question is whether there are enough people here to sustain that vote. Some people are willing to have it reconsidered. The Chair has to put thatreconsideration, and we will put the reconsideration. If we reconsider Section 1, then you can vote on it again; if we don't reconsider it, then we won't vote on it again and we'll have to take it from there. I suppose you want a roll call vote on the reconsideration.

DELEGATES: Yes.

PRESIDENT GRAYBILL: Very well. Mr. Mahoney, are you up?

DELEGATE MAHONEY: (Inaudible)

PRESIDENT GRAYBILL: No? Just--all right. Now, the vote-we're going to have a roll call vote. So many as shall be in favor of reconsidering, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, we'll close the ballot.

Mr. Aasheim, for what purpose do you rise?

DELEGATE AASHEIM: For the purpose of information, Mr. President.

PRESIDENT GRAYBILL: Very well, state your point.

DELEGATE AASHEIM: Will Mr. Murray yield to a question?

PRESIDENT GRAYBILL: Mr. Murray, there's a point of information and you've been asked to yield.

DELEGATE MURRAY: I yield.

DELEGATE AASHEIM: Could we not refer this section to General Orders, rather than back to the committee?

DELEGATE MURRAY: No, we're right here on Order of Business Number 5. The President has decided that he wants a reconsideration at this time; we've just voted to do that. My inquiry of the Chair and my motion was to suspend the rules because I disagreed with the President that we should have reconsideration here. He's authorized that motion; we've agreed. Now we'll vote on it. We don't take it out of here again; we leave it right here. If we lose it and we do not get 51 votes, then some appropriate motion will have to be made under Order of Business Number 7 to put it someplace.

DELEGATE AASHEIM: One more question.

PRESIDENT GRAYBILL: Very well, Mr. Aasheim.

DELEGATE AASHEIM: We could then put it to General Orders if we wanted to?

DELEGATE MURRAY: On Order of Business Number 7; but you can't do it here.

PRESIDENT GRAYBILL: The Chair would only like to correct the inference that the Chair cares. I'm going to vote, but it was not the Chair's idea that we have to do it this way. This way was available without suspending the rules. Someone took the way, and that's why we're doing it.

Mr. Mahoney, for what purpose—

DELEGATE MAHONEY: I might think we're on a roll call vote and this is highly irregular to be discussing. I think the President has been right in his decisions all the way, and I think we're on roll call. I believe the only thing you can do is explain your vote.

PRESIDENT GRAYBILL: This was a point of information, and that's why we took it that way. It's not a debate of the issue. Will the clerk please announce the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Nay
Aronow	Aye
Artz	Aye

Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland., ... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President Nay

CLERK HANSON: Mr. President, 83 delegates voting Aye, 15 voting No.

PRESIDENT GRAYBILL: Very well, 83 having voted Aye and 15 No, we will reconsider Section 1 of the Executive branch-Order of Business Number 5, Executive Number Roman IV.

Mr. Monroe, for what purpose do you rise?

DELEGATE MONROE: Mr. President, I rise to explain my vote.

PRESIDENT GRAYBILL: Well, it's too late to explain your vote after the-after it's cast; you have to explain it before we announce it.

DELEGATE MONROE: Okay, thank you.

PRESIDENT GRAYBILL: Very well, we're ready to vote again on Section 1.

Mr. Clerk, Section 1.

CLERK HANSON: "Section 1. Officers." Mr. President.

PRESIDENT GRAYBILL: Very well, so many as shall be in favor of adopting Section 1, Officers, vote Aye-and so many as shall--and that includes subsections 1, 2 and 3—and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye

Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk .. Aye
Vermillion .. Aye
Wagner ..... Aye
Ward ..... Nay
Warden .. .. Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President .. Nay

CLERK **HANSON:** Mr. President, 62 delegates voting Aye, 36 voting No.

PRESIDENT GRAYBILL: 62 delegates having voted Aye and 36 having voted No, Section 1 of the Executive Article is now adopted.

DELEGATE MAHONEY: Mr. President.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I'd like to thank Mae Nan Robinson for bringing this to the attention of the delegates; and there's nothing at harm now, it's good. But thank you very much for bringing this to the attention of the delegates.

PRESIDENT GRAYBILL: Very well. Very well, we're on Section 2, and there are two subsections.

Mr. Clerk.

CLERK HANSON: "Section 2. Election." Mr. President.

PRESIDENT GRAYBILL: Section 2. So many as shall be in favor, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I guess I didn't push my button quite hard enough. I vote—

PRESIDENT GRAYBILL: Very well, Siderius votes Aye.

DELEGATE SIDERIUS: I vote Aye. (Laughter)

Aasheim ..... Aye
Anderson, J. .. Aye
Anderson, 0 .. Aye
Arbanas .. Aye
Arness .. Nay
Aronow ..... Aye
Artz .. Aye
Ask ..... Aye
Babcock .. Aye
Barnard .. Aye
Bates.. .. Aye
Belcher .. Aye
Berg.. .. Aye
Berthelson .. Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman., .. Nay
Brazier .. Aye
Brawn.. .. Aye
Bugbee .. Aye
Burkhardt .. Aye
Cain ..... Aye
Campbell .. Aye
Cate .. Aye
Champoux ..... Aye
Choate ..... Aye
Conover .. Aye
Cross.. .. Absent
Dahood ..... Absent
Davis ..... Aye
Delaney .. Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann .. Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster .. Aye
Furlong., .. Excused
Garlington ..... Absent
Gysler .. Aye
Habedank .. Aye
Hanson, R.S. .. Aye
Hanson, R. .. Aye
Harbaugh .. Nay
Harlow .. Nay
Harper ..... Aye
Harrington .. Aye
Heliker .. Nay
Holland ..... Aye
Jacobsen .. Aye
James .. Aye
Johnson .. Aye
Joyce ..... Aye

Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden.. ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, 12 voting No.

PRESIDENT GRAYBILL: That was right, wasn't it, Mr. Siderius? (Laughter) Very well. Excuse me, Mr. Siderius. (Laughter) Section 3, containing three subsections.

CLERK HANSON: "Section 3. Qualifications." Mr. President.

PRESIDENT GRAYBILL: Section 3. So many as shall be in favor, vote Aye on the voting machines; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas.. ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Absent
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye

Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorel10 ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Absent
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 67 delegates voting Aye, 29 voting No.

PRESIDENT GRAYBILL: Very well, Section 4. Section 4 is on page 2; contains four—five subsections.

CLERK HANSON: "Section 4. Duties." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 4, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Absent
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Absent
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye

Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong., ... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Absent
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, 11 voting No.

PRESIDENT GRAYBILL: Very well. Section 5, containing two articles-two subsections.

CLERK HANSON: "Section 5. Compensation." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 5, vote Aye; opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye

Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Absent
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Absent
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well. Section 6, containing two articles-subsections.

CLERK HANSON: "Section 6. Vacancy in office." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 6, please vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye

Bates.. ..Aye
Belcher ..Aye
Berg.. ..Aye
Berthelson ..Aye
Blaylock ..Aye
Blend ..Absent
Bowman ..Aye
Brazier ..Aye
Brown.. ..Aye
Bugbee ..Aye
Burkhardt ..Aye
Cain ..Aye
Campbell ..Aye
Cate ..Aye
Champoux ..Aye
Choate ..Aye
Conover ..Aye
Cross ..Aye
Dahood ..Absent
Davis ..Absent
Delaney ..Aye
Driscoll ..Aye
Drum ..Aye
Eck ..Aye
Erdmann ..Aye
Eskildsen ..Aye
Etchart ..Aye
Felt ..Aye
Foster ..Aye
Furlong ..Excused
Garlington ..Absent
Gysler ..Aye
Habedank ..Aye
Hanson, R.S. ..Aye
Hanson, R. ..Aye
Harbaugh ..Nay
Harlow ..Aye
Harper ..Aye
Harrington ..Aye
Heliker ..Aye
Holland ..Aye
Jacobsen ..Aye
James ..Aye
Johnson ..Aye
Joyce ..Aye
Kamhoot ..Aye
Kelleher Nay
Leuthold ..Aye
Loendorf ..Aye
Lorello ..Aye
Mahoney ..Nay
Mansfield ..Aye
Martin ..Aye
McCarvel ..Aye
McDonough ..Aye
McKeon ..Aye
McNeil ..Aye
Melvin ..Aye
Monroe.. ..Aye
Murray.. ..Aye
Noble ..Aye
Nutting ..Aye
Payne ..Aye
Pemberton ..Aye
Rebal ..Aye
Reichert ..Aye
Robinson ..Aye
Roeder ..Aye
Rollins ..Aye
Romney ..Aye
Rygg ..Aye
Scanlin ..Aye
Schiltz ..Aye
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Aye
Speer ..Aye
Studer ..Aye
Sullivan ..Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk ..Aye
Vermillion ..Aye
Wagner ..Aye
Ward ..Aye
Warden ..Aye
Wilson ..Aye
Woodmansey ..Aye
Mr. President ..Aye

CLERK HANSON: Mr. President, 82 delegates voting Aye, 3 voting No.

JOURNAL CLERK ACHER: 92.

CLERK HANSON: 92 voting Aye, 3 voting NO.

PRESIDENT GRAYBILL: 92, very well. Section 7.

CLERK HANSON: "Section 7. Twenty departments." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7, vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
c am ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton. ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius. ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 85 delegates voting Aye, 13 voting No.

PRESIDENT GRAYBILL: Ladies and

gentlemen, some of you have requested the pages to send up for certain of these votes. Now, you certainly can have them, but they all have to be separated. They're put together. Rosemary has to record them in the journal. They'll all be available at the clerk's office this afternoon, or I think at the recess-noon recess. It's just about impossible. And if you really want one, you'd better come up yourself and look at it and go back; but it's not possible to send you copies or lend them to you yet till we've recorded them. It's quite a job for the journal to record them all. Very well, Section 8.

CLERK HANSON: "Section 8. Appointing power." Mr. President.

PRESIDENT GRAYBILL: Section 8 consists of four subsections. All in favor of Section 8, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland., ... Aye
Jacobsen A y e
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye

Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 8 voting No.

PRESIDENT GRAYBILL: Very well, Section 9.

CLERK HANSON: "Section 9. Budget and messages." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, vote Aye on the voting machines; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye

Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 95 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well. Section 10, consisting of five subsections.

CLERK HANSON: "Section 10. Veto power." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 10, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye

Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well, Section 11.

CLERK HANSON: "Section 11. Special session." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 11, vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Absent
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye

James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well, Section 12.

CLERK HANSON: "Section 12. Pardons." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 12, vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Anyone want to change their vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused

Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Absent
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 13.

CLERK HANSON: "Section 13. Militia." Mr. President.

PRESIDENT GRAYBILL: Militia consists of two subsections. So many as shall favor it, vote Aye; so many as opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Absent
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent

Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 12 voting No.

PRESIDENT GRAYBILL: Very well, Section 13 is finished. Section 14.

CLERK HANSON: "Section 14. Succession."

PRESIDENT GRAYBILL: Section 14 consists of eight subsections, on page 6 and 7. So many as shall favor Section 14, vote Aye on the voting machines; opposed, No. Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: All the delegates voted?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye

Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin., ... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullwan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well, Section 15, consisting of three subsections.

CLERK HANSON: "Section 15. Information for Governor." Mr. President.

PRESIDENT GRAYBILL: So many as shall favor Section 15, vote Aye; and so many shall oppose, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

Mrs. Speer.

DELEGATE SPEER: Mr. President-I regret that my attention was diverted on that Section 3. I want—

PRESIDENT GRAYBILL: For what purpose do you rise, Mrs. Speer?

DELEGATE SPEER: To explain my vote, Mr. President.

PRESIDENT GRAYBILL: Very well, explain it.

DELEGATE SPEER: Oh, thank you. I regret that I was diverted when I was voting on Section 3. I wish there to be a record that I am opposed-that I wanted to vote Nay on Section 3, consistent with my original vote.

PRESIDENT GRAYBILL: Mrs. Speer, I think you're talking about basically Section 3, not subsection 3.

DELEGATE SPEER: Section 3, so—

PRESIDENT GRAYBILL: All right. Well, the record may show-the transcript will show your objection, but you're not really explaining your vote, because you have to do that before it's closed. I've closed the vote on Section 15. Will the clerk please take the vote on 15.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Aye
Bates .. .. Aye
Belcher ..... Aye
Berg .. .. Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross .. .. Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Excused
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe .. .. Aye
Murray .. .. Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins,, ... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer .. .. Aye
Sullivan ..... Aye

Swanberg..... ..... Aye
Toole ..... Aye
Van Buskirk .. .. Aye
Vermilion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye
Mr. President Aye

CLERK HANSON: Mr. President, 92 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Members of the body, you have sustained the sections of the Executive Article, and the Chair will rerefer it to Style and Drafting for inclusion in the final—

Oh, Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, as a point of information, I know-1 think Miss Spew-this-and I don't have any objection, but I think it would be better in the future if they would wait until after the roll call is completed, and then it will show definitely what section-as we had a subsection 3 in this-and I sure hope that maybe it would show--afterwards it would be better.

PRESIDENT GRAYBILL: Right. Well, first of all, the Chair will refer this back to Style and Drafting. Now, secondly, the Chair would like to say it's been a little bit of a rough morning, but at least you begin to see that when you adopt it, it sometimes can get tough, too. And I would like to suggest to you all that I think perhaps some of us didn't pay enough attention beforehand. If you'll read over these when they come and mark in the margins the ones that you intend to vote against, then we'll go along much more smoothly and there won't be any problems. I realize it's difficult to follow and read all of this, but I think you can appreciate that it would be very difficult if we read everything in full, too, and took a lot of time. So why don't you read it over and mark the ones that you want to be careful on, and then the rest of them you can vote straight through on. And the Chair does let you explain your vote if you get up before the vote is shut off. And then we'll hold it open while you explain it, but if-once the vote is cast, we can't back off of it. And then the Chair will let you do a second thing-namely, we'll let you explain it, so that the transcript shows what you meant. Very well.

Mr. Murray.

DELEGATE MURRAY: Mr. President, just one remark before I make my motion. Most of us don't have any difficulty staying on the floor during this Order of Business, and I appreciate the fact that you do stay. If you do leave the floor, I would appreciate it if you'd let somebody know where you are so we can find you, because sometimes, as you can see, these things get suddenly very critical and without knowing where you are, it really slows us down, and I thank you for your consideration this morning. I hope that my remarks did not mean to indicate that I was lobbying one side or the other on that particular issue, because I was not. I just wanted you to realize the serious ramifications of the action which you took and that this is no stage at which to play. Now, Mr. President, I move that we advance to Order of Business Number 10.

PRESIDENT GRAYBILL: Very well, the motion is to advance to Order of Business Number 10. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Mr. Clerk.

CLERK HANSON: "March 10, 1972. The following committee proposals are now on General Orders: Education, Public Health, Local Government, General Government, Style and Drafting Number 5, Style and Drafting Number 6." Mr. President.

PRESIDENT GRAYBILL: So the body may know the Chair's intentions, it is the intention of the Chair to take up Education at this time. Mr. Champoux has a short opening statement. We'll take that before lunch, and we'll be ready to debate after lunch.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: All in favor of resolving this Convention into Committee of the Whole, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Convention resolved into Committee of the Whole—Mr. Graybill in Chair)

CHAIRMAN GRAYBILL: You have before you the brightly colored orangefolderon Education, Number 10. The Chair will recognize Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates, at this time I'd like to stand and introduce the Education Proposal. Before I do, however, in compliance with the rules, I would like to state my special interest in this case. I am a history and political science professor at Flathead Valley Community College in Kalispell. I'm also the Chairman of the Social Science Division there. I think if you read over the article, you will find in no instance do we have any special favor cast for the community colleges. I also would like to state, at this time, that there were other members of the board from other levels of education-long experience as well as board members. Also, I want to indicate that we have received widespread support for this proposal from the State Superintendent of Public Instruction and from the MEA, which represents the lower educational support level. Also, at this time, I'd like to make some corrections in the proposal. If you would go to Section 10, please, on page-well, let's do it in the front-page 6, yes. There were some things left out. If you go to line 12, it should read "after the duties of'-would you please put in "this board and of'-line 12, page 6, after "the duties of', it should read: "this board and of the Superintendent of Public Instruction". If you go to Section-5 on page 4, line 25—Section 5, page 4, line 25. After "secondary schools", we should knock out the "s''-the plural "schools", make it singular, and add "districts''-"secondary school districts". The word to add is "districts". The word "districts" is plural. Now, as we go through the different sections of the proposal, on Section Number 4, Mr. Barnard will come in with an amendment. That will be brought to the Chair, and it is simply a way to correct Section 4 so that it comes into--excuse me, Section 3. If you look at Section 3, on page 4, it concerns the public school fund inviolate. Now, the last section of that is in violation with what we did under Revenue and Finance last Saturday in terms of investments. There will be an amendment from Mr. Barnard to correct this. Education occupies a place ofcardinalimportancein the public realm. The educational system is charged with the task of shaping and cultivating the mind of each succeeding generation and with developing the capacities for cultural and technical advancement of society. State and local governments devote a far larger share of their financial resources to the support of education than to any other single public activity. Because of this overriding importance of education, the committee recognizes the awesome task of providing the appropriate constitutional provisions necessary to protect and nurture the public educational system. Each aspect of existing and proposed constitutional language was thoroughly and deeply reflected upon by the committee in light ofpresent and future needs. Fundamental to the committee's considerations were the twin goals of protecting the integrity of a quality educational system and allowing for flexibility to meet changes as yet unknown but which will certainly occur in future developments in the field of learning. These were our primary objectives-very difficult ones, I might say, to adhere to. In light of these aims, the committee has preserved those provisions in the existing Constitution which have proven worth and which pose no hindrance to potential developments. On the other hand, the committee has made revisions in those places where it saw a definite need for constitutional improvement. Some of these changes have to do with basic aims of the educational system; others are concerned with structural or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a mandate for thesupport of education allowing increased financial flexibility-and this was an extremely difficult one in light of the Serrano case, as we noted when we took up Revenue and Finance-the deletion of antiquated age and school term restrictions, and a revised administrative structure for both the public school system and for higher education. The committee views these proposed changes as vital to the quality and efficiency of education in Montana. The proposed article provides appropriate guarantees to the viability of the public school system, while leaving the way open to future transformations in the educational process. Individual members of the committee will be taking up sections. President Graybill has a list of who is assigned. At the end of this statement, I would just simply like to say that as we go through these, let's think of the present generation of young Montanans in our public schools and all to come. Thank you.

CHAIRMAN GRAYBILL: Thank you, Mr. Champoux.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move we recess until 1 o'clock this day,

CHAIRMAN GRAYBILL: The motion is to recess until 1 o'clock this day. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered

(Committee recessed at 11:55 a.m.—reconvened at 1:12 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. Mr. Clerk, will you read the title on Section 1 of the Education Article.

CLERK HANSON: "Montana Constitutional Convention, Education and Public Lands Committee Proposal Number 10, reported February 22, 1972. Champoux, Chairman; Noble, Vice-Chairman. Be it proposed by the Education and Public Lands Committee that there be a new article on education to read as follows: 'Section 1. Educational goals and duties of the state. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.'" Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. Before I make the motion on this section, I would like to make two minor corrections. The committee has consented to these corrections. We are going to subsection-Section 1 into subsection 1 and subsection 2 and-at the paragraphs.

CHAIRMAN GRAYBILL: Very well. The motion is that on line 8, we put a sub. 1, and on line 13, we put a sub. 2. Is that correct?

DELEGATE HARBAUGH: That's correct.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 1, subsection 1, of the Education and Public Lands Proposal, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: We in Montana are standing on the threshold of a great opportunity in the area of education. Mr. Champoux, in his opening remarks before lunch, mentioned some of the implications of this. But the fact that the convening of our Montana Constitutional Convention coincides with a time in which there are tremendous changes taking place in the area of education and in the methods of financing education put us in a very unique position. We in Montana are in a position of being on the cutting edge of a new frontier, not only in terms of philosophy of education, but in terms of the method of financing education. And it was in the full awareness of this unique situation that the committee undertook to draft these articles on education and public lands. Section 1 of the Education Article combines the present sections 1, 6 and 7 of the Constitution. The mandate of the present Section 1 and 6, which establishes a system of free common schools and provides for their funding, is included in subsection 2 of this article. The committee has omitted the age references which were included in Section 7 of the present Constitution, feeling that these things were better left to statutory detail and that their inclusion might stifle the development of the educational enterprise. In subsection 1 we have a broad statement of the goal of education in our state. And that goal, as it is stated, is to establish a system of education which will develop the full educational potential of each person. Now, this is something new, but the committee intends that this be taken in much the same respect as some of the provisions which we included and adopted in our Bill of Rights section yesterday-that really, just as we were in the area of political theory there, here we are also in the area of educational theory. And so we're setting forth a goal. Now, the committee realizes that eco-

nomic resources of the state limit this goal, and yet it's our belief that it's very important to set forth a goal for education and that the development of our human resources to the fullest possible extent ought to be a primary goal of the state's educational enterprise. The inclusion of this kind of statement in a constitution is not new. The Illinois Constitution contains a very similar statement, and I'd like to read one line of that. It says, "A fundamental goal of the people of the state is the educational development of all persons to the limit of their capacity." The Constitution of Puerto Rico also contains a similar statement. It says, and I quote: "Every person has a right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental free dom." We've also included in subsection 1 a statement guaranteeing equality of educational opportunity within this stated goal. Now, what does this mean? Well, basically, we are taking a stand which is in line with the more recent interpretations of the courts of this land, but it even reaches back further than that. And I'd like to read to you a quotation from Brown versus the Board of Education decision written in 1954 by the United States Supreme Court. In that decision, nearly 20 years ago, the Supreme Court said, and I quote: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." And, of course, recent court decisions have affirmed this position. The committee recognizes that there is a corollary between the doctrine of equal protection under the law and the fundamental right to equality of educational opportunity. Now, does this statement set forth a mandate that opens the door to a welter of demands for making education absolutely equal for every person at every level? Obviously, it does not. The guarantee here is limited, as are all constitutional guarantees, by other factors and freedoms. No right is absolute, and it would be an absurd construction to interpret this guarantee as an absolute guarantee. One of the concrete limitations on this guarantee would be the ability of the state to finance a system of education which guarantees equality; and where the state can show a compelling cause-compelling state interest, such as the preservation of the economic welfare of the state, this would be a limiting factor imposed upon this guarantee. But the committee does wish to take the position that equality of educational opportunity is a fundamental right of all. And the time is long past when the state can afford to promote one standard of education for those who are members of one geographical area or economic or cultural group and a different standard for those who are members of some other geographical area or economic or cultural group within the borders of this state. Mr. President, I urge the adoption of Section 1, subsection 1.

CHAIRMAN GRAYBILL: Mrs. Eck, I understand you want to have an amendment. At this point, it looks to me like your amendment goes to the first section, doesn't it?

DELEGATE ECK: Yes, it does, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. May we read your amendment?

DELEGATE ECK: Do you want me to read it, or the clerk?

CHAIRMAN GRAYBILL: No, the clerk will read it.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, page 3, between line 12 and line 13, of the Education and Public Land Majority Proposal, by adding a new paragraph— quote: 'The state recognizes the distinct and unique cultural heritage of the American Indians and is committed to the preservation of their cultural integrity.' Signed: Eck."

CHAIRMAN GRAYBILL: Very well. The Chair will allow an amendment of Mrs. Eck to add, at line 12, the sentence that you all have before you from her concerning Indian cultural heritage.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman and delegates. During one of our very early hearings in the Bill of Rights Committee, there appeared before us two young Indian students representing student groups of the Fort Peck Reservation. They cams asking what we could do, or what the Convention could do, to assure them that they would have the opportunity-and their schools-to study their own culture, perhaps their own language, and to develop a real feeling of pride in themselves for their own heritage and culture, and also a hope that other students all over Montana would recognize the importance and the real dignity of American Indians in the life of Montana.

After that time, our committee, as well as the Education Committee, were visited by a large number of Indians coming with pretty much the same plea. We considered substituting a special article in the Constitution for Article Number II which we have now, which was military reservations. But after a good deal of discussion and talking with Indians and their representatives, it appears that the area that they are most concerned about is that of education. And after consultation with members of the Education Committee, we agreed that we would like to present this amendment to the Education Article. Thank you.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. As some of you know, I've done a great deal of work with Indians. I think this is possibly the only place that this will appear or that anything about Indians is going to appear in the Constitution. They're a responsible segment of our society, and this should be included, so far as I'm concerned. They care a great deal about it, and they're entitled to have it in here. And my only problem is whether or not this belongs in this particular spot. And if Mrs. Eck would not object and if it does pass, I would consider relocating it somewhere in the Education Article-but that's beside the point. They are entitled to have something in, and this is the thing they care most about, some preservation of their own culture.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. I rise in support of this motion. Now, the "red cowboys" from down on the Little Big Horn feel that the primary step in being an integral part of our social and economic competition in Montana is education. And I agree with this. I've lived in the area with the Indians all my life. I try to understand how they feel about it. They do feel very strongly that education is a basic necessity. If this isn't the proper place for it, I really don't know where. I would very much like to see it in this article. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Harper

DELEGATE HARPER: Mr. Chairman. Maybe you all feel like this already. I support this. The only thing that motivates a person, I believe, more than any other thing, for good is the self-image. That would also go for ill as well. And the one thing that any minority group needs-this has been true in all the development of black history in the recent few years of our country, where it has been for good development, and the same thing will hold true for the red man-is this self-image, which has been, in a sense, stomped in the dust. And now we must help him return to the kind of self-image that will give him the proper motivation not only to be an Indian, but to be an American. And I think this little section will help more than any other one thing we have done or probably will do in the writing of this Constitution toward that end.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. I rise in support of this amendment. I perhaps should state my special interests here. I don't have any Indian blood, I am not an Indian, but I was once made an Indian chief. They called me Chief Little Duck. (Laughter) As I left the powwow that day, though, I think I lost it all when one Indian said to another, "It'll never get off the ground." (Laughter) Well, now that I have your attention, these Indians have come before the Education Committee, the Revenue and Finance Committee, the Bill of Rights Committee. Each time, what have they been told? Oh, that belongs-if they come before the Education Committee, they're told that belongs before the Bill of Rights Committee; if they come before the Bill of Rights Committee, they're told that belongs to the Education Committee. And they're sick of it. In other words, this has been a cop-out, and they know it. What we've been doing, then, is pushing them back and forth between the committees in an attempt to get rid of them, and they know it. Robert Gopher-a beautiful name, isn't it?-came before the Finance Committee, I believe it was. Eventually, he came before the Education Committee. And he asked for money for powwows. And some of the people laughed at him. They said, "What's he doing? He's foolish. What's he up here looking for money for powwows for?" Ladies and gentlemen, a powwow is an Indian educational endeavor. That's where they teach their culture. So he knew what he was about. Now, the first time-day I cams to this assembly, I looked around and wondered where were-why there were no Indians here as delegates. Later, as I left that door, I saw four Indian students-young college students from the University of Montana-standing out there against the wall. And I thought to myself, how ironic. Here

they are, typically, standing outside the door while the white man makes all the decisions for them inside. Isn't it also ironic to see here today a Frenchman from Boston, without any Indian blood, standing at the Montana Constitutional Convention pleading for the Indians, to preserve their cultural integrity? We like to think of ourselves as a great melting pot where everyone becomes a-quote--"typical American", a homogenized society. We are, in fact, a heterogeneous country, a mixing bowl, made up of a colorful patch full of people with different cultural backgrounds. And each group has contributed and woven into the pattern of American customs from their respective homelands. These people are good Americans, but the emotional tie still remains; the identification with the countries of their origin. The argument has been made that it is not possible to single out one ethnic group as a special group. For our Indian people, it is impossible not to mention them as a special group. The State of Montana is composed of the sovereign State of Montana and five autonomous self-governing Indian nations whose people have a dual citizenship. Every other ethnic group in this country has a country of origin to relate to in their pride of heritage, and we have learned in our schools about their countries. All of us have taken Greek history, Roman history, English history, French history, and so forth. Why not Indian history? The Irish have a national day. Try to deny the Irish in this country or in Butte (Laughter) the celebration of that national day. I hope I can be there next Friday to celebrate it with them. (Laughter) We'd have a revolution on our hands. Why not a Chief Charlo Day, Chief Joseph, Chief Hungry Horse, and so forth? What is the country of origin for our American Indians? It is America. What have the average Americans learned in our schools about our American people? Very little, if not nothing. How many delegates sitting in this assembly could answer these questions? Who were the Indians of the Iroquois nation? Which Indians belonged to the five civilized tribes? Now, those are easy questions. They're eastern questions, but they're easy ones. Which-what happened to them? How about the native tribes? How many of us here can name the native tribes of Montana and tell me about their history and native cultures? We've all heard of George Kaplan, the great painter. Some of his works are to be found around this very Capitol. How many have heard this statement by George Kaplan about the Montana Indians? And I quote: "I love a people who are honest without laws, who have no jails and no poorhouses. I love a people who keep the commandments without ever having read them or heard them preached from the pulpit." Are we to tell the Indian people that their history has no place in our schools? Are we to tell them-the Indian people that their ways, their governments were wrong and that they must accept ours, because ours are better? Or will we help them to retain their ethnic identity and make their adaptation as Americans? If there is ever to be a solution to the Indian problem in this country, it will only come about when our educational system provides the knowledge which is needed to understand. And I agree here with Mr. Harper-Reverend Harper wholeheartedly. It will only come when our educational system provides the knowledge which is needed to understand and respect the cultural difference between us and the state helps to preserve and protect their cultural integrity. This is a matter of pride. All of us are proud of our heritage, whether we be English, Irish, Jewish, or whatever. We are proud because we know about our history, our culture and our integrity--our heritage. Are we now to continue to deny this to these, the first citizens of the State of Montana? Ladies and gentlemen, the Montana Indians are still waiting outside the door. Are you going to answer them?

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I rise in support of this amendment. My grandchildren have an Indian heritage. I am most proud of this heritage that they have. As a third-generation Montanan and American, I think it would be more fitting if the Indians were here to recognize our culture. I support the amendment.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. As a first-generation Montanan, a second-generation American, I am very sorry that there are not more of the Indian people here to hear Rick Champoux's fine speech. Earl Barlow is sitting here, and I'm glad that he is here. But I think from-all the way from the Kootenai to the Powder River, every one of us are anxious to see something put in. I hate to see this put in as an amendment. I agree with Mr. Schiltz. I thought it was to be a separate article, but I wholly support the thinking here. And if we're to develop, as this section says, the full educational potential of each person and to recognize the Indian heritage and dignity, I hope that as Torrey and I support this-and we very seldom are

on the same side of anything-but I hope this signifies unanimous support for this amendment,

CHAIRMAN GRAYBILL: Does anyone rise in opposition to this amendment?

Mr. Wilson.

DELEGATE WILSON: Mr. President. I have lived among the Indians practically all of my life. I've had property on Indian reservations. I have many Indian friends. And I have seen the Indian heritage, at one time which was very prominent, go downhill from the participation of white people trying to give them and give them and give them. And you can never give anybody enough to satisfy them. I have many, many Indian friends that I think are as equal to the white person as anybody in this room, but I think they have been exploited. They have been provided for many years with equal educational opportunities. Then, what happened? They go back to their reservation for the simple reason that Uncle Sam provides a shed over them, and they don't go out and institute their initiative. These people want equal educational opportunity. They want to be recognized just the same as you and I do, as equals, and not being set aside. I have a thinking-feeling that this tends to set them aside as different from us, and I don't think they are. I think they're Americans, and I think that they need-needs to be emphasized that they do have the same educational opportunity as anyone else. And if they want to preserve their heritages and their cultures, more power to them. Each one of the races wants to preserve this, but to set them aside in the Constitution as being different, this I can't quite follow the reasoning of. And I don't think this is what the Indian people want. They want to be equal. Now, there is a movement on to teach their language in the schools. In my opinion, this is one way of keeping them in the back door. They have to learn our ways. The young people want to learn our ways, and if they pursue the equal educational facilities and become as well educated, which many of them are, they certainly are just as free to be a constitutional delegate, be a governor, a senator, representative, or hold any other office. All they have to do is cast aside the blanket that we, the white people, have thrown over them and take advantage of their education. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: Do you have an amendment here you want read?

DELEGATE HARBAUGH: I have an amendment to the amendment.

CHAIRMAN GRAYBILL: Very well. I'll read it, and then you may speak on it. If you'll take Mrs. Eck's amendment before you, on the third line, after the word "committed", Mr. Harbaugh wants an amendment that adds "in its educational goals"—"in its educational goals". So that the sentence would read: "The state recognizes the distinct and unique cultural heritage of the American Indians and is committed, in its educational goals, to the preservation of their cultural integrity."

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I hope this is in accord with the intent of the persons who made the amendment. In speaking on the amendment itself, I also would speak in favor of the amendment. I think what Mr. Champoux said is correct, that the Indian people felt-who came to testify before our committees—that they were getting the runaround, that they were getting sent back and forth between one committee and another. And I think it is important, perhaps, to have something like this in here even though, in my interpretation of subsection 1, by granting equal opportunity--when I think of equal opportunity and when I interpret that phrase, to me it means that we recognize the distinctiveness of various groups within our society. And I would have to take very serious issue with Mr. Wilson on this particular thing. I have lived for almost 7 years on the Fort Peck Reservation at Poplar, which is the tribal headquarters for the Sioux and Assiniboine Tribes; and make no mistake, the Indian people are different from us "Wasituse" as they call us. There is a difference. And the fact that our culture for many, many years has failed to recognize the cultural differences has led to some very deep misunderstandings about how we ought to relate ourselves and our society to the Indian people. I'm very much in accord with the idea that the Indian culture aught to be upheld and that it ought to be protected as over against the dominant society. While I feel that, really, this is the intention of the Education Committee's report in setting forth equal educational opportunity, I do not resist the amendment here which makes this specific, and I would speak in favor of it.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harbaugh's additional amendment to add the phrase "in its educational goals" to Mrs. Eck's amendment.

Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. President. I would also like to rise in support of this amendment with Gene Harbaugh's addition to it. I think I have been quoted quite a bit-or it has been-gotten in-it has been in the paper about the Indians, and I would just like to say that I am in-very much in accord with this. And having lived on the reservation over in western Montana for somewhat over 59 years, I think I know some of the problems. And I think that in the last few years, through better education, we're finding many changes that are coming about that are much better. And we considered these things in the Bill of Rights, and I think that we should adopt this amendment.

CHAIRMAN GRAYBILL: The issue is on Mr. Harbaugh's amendment.

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. I would just like to say that at the University of Montana-in the Department of Indian Affairs, for the last couple of years, they have been in the process of preparing books for Indian children. And they have coordinated-this is not only the Department of Indian Affairs, it's the Art Department, Religious Studies, and Education-and this is a coordinated effort to prepare these books. I've seen two of them, and they are really extraordinary. And I'd like to say that this amendment would certainly assure that this-these books and that continuing-that more books like this will be used. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise in support of the Harbaugh amendment and the intent of including a phrase on Indian cultures in this particular section. In the Bill of Rights Committee, in our rough draft, we suggested giving recognition to the Indians by, in the Preamble, putting in "the spirit of our Creator". We felt that the natives of this state—this great land had lived for thousands of years in a special relationship with their environment, with their mountains, with their wildlife, and they had a special relationship with the spirit of their unpopular, so we did remove it and it's no longer in the Preamble. I feel that we had many opportunities to hear from many different peoples, and the Indian people did come before our committee and say they wanted this particular provision. Delegate Wilson did not come before this committee, and no one came before the committee saying the Indian people did not want such a provision and such recognition. I don't own a big ranch in eastern Montana, but I have been close to Indian reservations. I think that they want this. I think they have a deep pride which has been crushed. And as a political matter, I think it would be very good for this Convention to put this particular provision in there now, to encourage working within the system and neutralize the red power, young militants in the reservations who want to change Custer's massacre to Sitting Bull's victory. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I rise in support of the amendment. I want to mention that not long ago, the Christian Science *Monitor* featured an article on our Constitutional Convention. They mentioned very few issues, but they spent the major portion of that article on the Indian situation in this state. They were speculating whether Indians would be mentioned in our Constitution. I firmly support this amendment, and I hope we will almost have unanimity.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I support the amendment to the amendment, and the amendment. Through the years, we have given the Indians a great many things that didn't prove to be too good for the Indians. We gave them treaties which we later broke. We gave them discrimination, in the guise of such great statements as "the only good Indian is a dead Indian". We gave them social diseases. We gave them smallpox-infected blankets so we could reduce their surplus population. We gave them alcohol. We gave them a religion which we didn't live up to ourselves and we gave them massacres, such as at Washita and at Wounded Knee. Now, the Indians have appeared before our committees at this Convention and they have asked for these-or this inclusion in our Constitution. And I think-I certainly agree with Mr. Harbaugh. The Indians in Montana are different than any other group that came in here. They were here first; they owned it; and we took it all from them. And I think this is the

CHAIRMAN GRAYBILL: Now, the Chair would like to point out that you can all get on the record on this when we vote. But if you have to make a speech, stand up.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I rise in support of the amendment and of the original motion. I should point out a special interest. My law partner, Jean Turnage, and I are counsel for the Confederated Salish and Kootenai Tribes of the Flathead Reservation. However, I speak not as their counsel, but as their friend. Michelle Robinson will understand when I urge to this Convention that it would be a serious error of omission if we failed to include specific recognition of the cultural heritage of our American Indians. And I strongly support the motion.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you very much. I don't speak very often, but when I do, I'm really sincere about it. Three years ago, I was General Chairman of a National Presswomen's Convention in Billings, Montana. At this time, one of the greatest things we did was to introduce our women of the press across the whole United States to two of the great Indian tribes in the State of Montana. And we were able, through other friends, to take them to Crow Agency and to Custer's Battlefield. I don't believe it either--occurred to either of the two delegates from District Number 1, Torrey Johnson and myself, that we were set apart from anyone else within our area. And I know that our friends on both of these reservations would expect us to be representing them and supporting this amendment, which I do wholeheartedly. They didn't approach us. They didn't approach me in any way. They just took it for granted that I would be part of their own delegation. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Just one brief point, sir, if I may. Mr. Harbaugh, when you use the word "goals", do you intend that to mean for the future? There can be that connotation. I would suggest perhaps that we use the word "endeavors", if it would be all right with you, sir. Thank YOU.

DELEGATE HARBAUGH: Mr. Chairman, may I respond?

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I used the word "goals" because I think that this ties the statement in with the goals which are set forth in subsection 1. And since this is going to be included in the Education Article, it would seem to me to be appropriate to use the word "goals" and to relate back to the goals which are mentioned-the broad goals for education-in subsection 1.

CHAIRMAN GRAYBILL: Very well. The issue—

Mr. Wilson, do you want to speak on the amendment?

DELEGATE WILSON: I just wanted to make my position pretty clear.

CHAIRMAN GRAYBILL: Okay.

DELEGATE WILSON: I'm not against setting up something for the Indians. The thing that I am against is setting them aside, or making a different type of education for the Indians. I merely want them equal. I want them to have the same equal status as the white people. I don't want to set up a different educational system for the Indians and the white people. I want them to be the same.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. Mr. Wilson said that he thought they were Americans. Well, I know they're Americans, and they know they're Americans. Last week I attended the Indian Education Conference at the Jefferson School. And I talked to many of their representatives there, and I was there long enough to hear Mr. Harold Gray from the University of Montana, a very fine representative of their people, speak on this very thing. And I think the people there were all unanimous in their endorsement of a recognition in our Constitution. And I think we've been rationalizing and evading them too long and avoiding our responsibility too long. I speak in behalf of the amendment and the amendment to the amendment.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harbaugh's amendment that we add the phrase "in its educational goals" to Mrs. Eck's amendment, so that it reads: "The state would be committed in its educational goals to the preservation of cultural integrity." So many as shall be in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: That's adopted. Very well. The issue is now on Mrs. Eck's amendment, that the state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity. So many as want to add that to Section l-subsection l-of the Educational Article-yes, we'll have a roll call-may indicate so by voting Aye on the voting machines; and opposed may vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Will the clerk cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Nay
Bates .. .. Aye
Belcher ..... Aye
Berg ..... Absent
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Absent
Brown .. .. Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Absent
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Absent
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Absent
Felt ..... Aye
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce .. .. Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe .. .. Aye
Murray .. .. Absent
Noble ..... Aye
Nutting .. .. Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins. ..... Aye
Romney ..... Absent
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye

Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 83 delegates voting Aye, 1 voting No.

CHAIRMAN GRAYBILL: 83 having voted Aye and only 1 No, that motion passes. Is there other discussion of Section 1, sub. 1?

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman—President, I have an amendment up there.

CHAIRMAN GRAYBILL: It appears to the Chair that your amendment goes to Section 1, sub. 2, Mr. Martin. They've made a sub. 1 and a sub. 2 of those paragraphs.

DELEGATE MARTIN: Oh, I'm sorry.

CHAIRMAN GRAYBILL: I'll call on you. Are there other amendments or discussion to sub. 1? That's the first paragraph-Oh--up from lines **7** to 12, plus the new material.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would Mr. Harbaugh yield to a question?

CHAIRMAN GRAYBILL: Mr. Harbaugh?

DELEGATE HARBAUGH: I yield.

DELEGATE NUTTING: 'The three words "full educational potential"-conceivably, could that mean kindergarten for every child in the State of Montana? Adult education for every person in Montana? Vo-tech for every person in Montana?

DELEGATE HARBAUGH: Mr. President.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Yes, it is conceivable that it could mean that. It's inconceivable to me, however, that the Legislature would ever authorize that sort of thing, because, as I stated in my introductory remarks, this would probably break the State of Montana. That would be in my estimation, a compelling state interest and would be completely wrong, I think, and a misconstruction of the broad, goal-oriented statement that we're making here, to look at that in this way.

DELEGATE NUTTING: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: When you look at Section 1 and Section 2 and take them together-I know we make different statements on the floor, but still to read these two sections, I can't read them any other way but that the full educational potential of each person shall be developed. And in the last line, it shall be the duty of the Legislature to fully fund. So I-the statements we're making here on the floor and the statements that we-that I read on the page don't seem to be consistent.

DELEGATE HARBAUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: One of the reasons-the basic reason that I moved to amend this section to subsections is precisely for the reason that Mr. Nutting has pointed out. We are setting forth, in subsection 1, basically a broad philosophy of education. We're trying to lay out the goals of education. In subsection 2, which we will come to next, we're going to talk about the mandate-in other words, the implementation of those goals. And I think that you have to make this distinction, that the one is a goal; that the second is the mandate.

CHAIRMAN GRAYBILL: Is there other discussion? If not, the question arises on the issue of the adoption of Section—

Mr. Martin.

DELEGATE MARTIN: I think that a portion of my amendment to this section is in 1, the word "full".

CHAIRMAN GRAYBILL: Well, it may be. Your amendment says at line 13, and the word "full" doesn't appear on line 13. So if you'll tell me what you're talking about on line 10—

DELEGATE MARTIN: Thirteen of page 8.

CHAIRMAN GRAYBILL: Oh, well, just a moment. Very well. Mr. Martin, would you like us to read your amendment?

DELEGATE MARTIN: Yes, please.

CHAIRMAN GRAYBILL: Mr. Martin has an amendment. Will the clerk please read the first amendment to Mr. Martin's, because the second one applies to the second paragraph.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, page 8, of the Education and Public Lands Committee Proposal Number 10 as follows: At line 13, page 8, by deleting the word 'full'. Signed: Martin."

CHAIRMAN GRAYBILL: Mr. Martin would delete the word "full", so that the sentence reads, "provide for the establishment of a system of education which will develop the educational potential" rather than "the full educational potential".

Mr. Martin.

DELEGATE MARTIN: Mr. President. I find it nice to find, in the adoption of the amendment that was just made-to be on the popular side. And I must state a special interest. At one time, I was made a member of the Flathead Tribe. In talking about this amendment, I'd like to refer, if I may, to-or first of all, I'd like to extend my appreciation to the work of the Education Committee for the work that they did in preparing this article. I think it has some great potential and good for education. But I think that-there were some references made to some special interests that people had, and that was in the-an article which appeared in the Tribune this morning which indicated that anyone who would be in opposition to the committee would recognize—would represent some special interest. And particularly singled out was the Montana School Boards Association. At the moment, I might say that I am not a member of the Montana School Boards Association; I'm not a member of the Montana Education Association; I'm not a member of the Montana Board of Administrative School Officers. I only have a deep and sincere and abiding interest in the educational process. I think that Mr. Gardiner last night emphasized two points; the right to know and the right to have a say. And then he turned around and said, "It's time to open the doors and give the country back to the people." Throughout this article, I think there is an effort to centralize education, and I think that we should go back and review a little bit of the history. And I'm only sorry today that a man who I think was a pioneer in the promotion of educational opportunity for Montanans isn't here this afternoon, and that's Paul Harlow. Because Paul Harlow and some others were responsible for the development of the foundation program in the State of Montana. They sought and saw the opportunity to provide educational opportunity for the young people of Montana. But most of all, they took off the wraps so that the teaching profession of the State of Montana could participate in government. And I think it's a credit to the-this Convention that we have so many educators who are taking part in this. And most of all, I think it's to the credit of Montana that the educators at the State University units, as well as the educators in the schools, have taken off their wraps and buried their notions that they couldn't participate in government because that wasn't the thing for teachers to do. They were supposed to be nonpartisan, nonpolitical and shouldn't even have a chance to say. So we have provided an educational opportunity for not only the youngsters of the state, but the teachers and the people who participate in education, to participate and contribute to good government. Now, when we're talking about the full educational development, we're writing a check that would be hard to deliver, and that has been evidenced by the fact that the foundation program, since it's adoption, has never been able to fully fulfill the obligations that it started. So I think that before we write into the Constitution the idea of "full", we better take a good look at this proposition. I hope that my amendment to this section prevails.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, members of the Convention. I would like to speak in opposition to the motion to delete the word "full". I suspect that the-there's been a kind of a misunderstanding here of the problem. Certainly the inclusion of the word "full" does not command an unlimited expansion of the field of education. What it does-it does not foist upon us an artificial limitation of the field of education. So that—unlike the former Constitution that said we had to start only at this age and only go to that age or only this type of education or that type of education, the inclusion of the word "full" allows us to develop the education of Montana to its top poten-

tial in capacity. Therefore, I don't see the danger that Mr. Martin sees in the words.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Being the Chairman of the committee, I'd like to speak very briefly to this, if I may. Mr. Martin, of course, is a scholar of the English language and-(Inaudible). And actually, I think the thing we ought to be looking at, Fred, is the term "goals". And also, if we take out-what is the educational potential? I mean, can we ever measure it? Is it from 5 to a hundred and two? And if we take out "full", how much does that do for clarification? We still have educational potential as a goal. So this is the argument-I'm not quibbling over it, but I don't see any point in taking it out.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I feel that the comments that Mr. Martin made may be of a legitimate concern, but not at this point. As I explained in my other remarks and as Mr. Champoux has just stated, we're talking here about a broad statement of philosophy. Now, we're not talking about the financing of the school system, which you referred to, Mr. Martin. And I would resist the amendment. I think that "full" is a modifier here of the educational potential, and to remove it, I think, would not do anything really to change the impact or the intent of this section. I would resist the amendment.

CHAIRMAN GRAYBILL: Very well. The question is—

Mr. Burkhardt.

DELEGATE BURKHARDT: Just as one other member of the Education Committee, Mr. Chairman, I would say I hope the word "full" remains. It would be like striking "liberty" from "life, liberty and the pursuit of happiness." It is a goal, and we'll hope to work toward it.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Martin's motion to delete the word "full" from line 10, on page 3, of Section 1. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. Very well. Is there other discussion of Section 1?

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President. Will Mr. Champoux yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I will.

DELEGATE JACOBSEN: Rick, in the— we've divided Section 1, now, into two sections, after Mrs. Eck's amendment and the other amendments. Now, should the-at-on line 10, at the end of the line, a person should—

DELEGATE CHAMPOUX: What page are you on, sir, please?

DELEGATE JACOBSEN: On page 3.

DELEGATE CHAMPOUX: At the end of line 10?

DELEGATE JACOBSEN: On the end of line 10, where you have a period-on "person". Should "in the public school system" not be added here, inasmuch as these two sections are divided now?

DELEGATE CHAMPOUX: I'd defer that to Mr. Harbaugh, since he has this section.

DELEGATE JACOBSEN: And also after "opportunity" on line 11, "in the public school". Mr. Harbaugh.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Let me see if I understand your question.

CHAIRMAN GRAYBILL: Mr. Harbaugh, the sense of his question is whether he doesn't want to limit the language in the first paragraph to "in the public schools".

DELEGATE HARBAUGH: "Shall be guaranteed to each person in the public schools?"

DELEGATE JACOBSEN: On line 10, it says "develop the full educational potential of each person." Shouldn't the words "in the public school system" be added there, inasmuch as we've divided this section into two parts?

DELEGATE HARBAUGH: Mr. Chairman. In response to that, I thinknot. I think thatif you would turn to the comments on page 9, here are some comments in regard to what we mean by this sentence. "It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person." And here we state that learning is a gradual process--or gradually being recognized as a process which extends throughout life. And that-as we all know, there are being developed, across the nation and in our own state, many educational opportunities for adults, for people of various age groups. I think that in my opening remarks, when I spoke about a new philosophy of education-I think one of the things that we need to recognize is that education is no longer thought of just in terms of very narrow boundaries of certain age limits and, in looking at the goal ofeducation, thatwe want to realize that education is a continuing process. And many older people today are taking-are availing themselves of the opportunity to take courses and this sort of thing which, perhaps, they could not take when they were young. And to the extent that the state is able to provide this, we would like to make it a goal of the state to do this.

DELEGATE JACOBSEN: Will you yield to one more question?

DELEGATE HARBAUGH: Yes, I yield.

DELEGATE JACOBSEN: But now, does this refer to the fact that aid to private schools could come under this?

DELEGATE HARBAUGH: Mr. Chairman. No, this has no reference to that, at least in my mind, whatsoever.

DELEGATE JACOBSEN: Thank you.

CHAIRMAN GRAYBILL: Very well. The issue arises that when this committee does arise and report, after having had under consideration Section 1, sub. 1, as amended, that it recommend that this section shall be adopted. So many as shall be in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Sub. 1 is adopt-

CLERK HANSON: 'Section 1, subsection 2. The Legislature shall provide for a system of high-quality, free public elementary and secondary schools. The Legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable. It shall be the duty of the Legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 1, subsection 2, of the Education and Public Lands proposal, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: This subsection is the mandate for implementing the establishment of our educational system within the state. And in this respect, as I noted earlier, it is similar to Sections 1 and 6 of our present Constitution. We might note here that the courts have construed the present Sections 1 and 6 not as a limitation on the Legislature, but as a mandate to the Legislature. And this section states that the Legislature shall provide for a system of high-quality, free public elementary and secondary schools. What do we mean by the words "high-quality?" They've been used as an instruction here to the Legislature to provide not just a minimum education system, a substandard system, but one that meets a contemporary need and is capable of producing well-informed citizens. Now, the committee recognizes that changing systems of financing the public school system are in the direction of providing equality of education and that this could lead to a reduction of the kind of education that we have. In other words, we recognize that, if in the future it is required that education be equalized across the districts, that this could jeopardize the quality of education, and we would not want to see this happen. And this is what we wish to safeguard against. And, therefore, we stressed in this Legislative mandate that the state shall provide a high-quality system of education. Now again, I'd like to point out that this is not untried ground that

recently adopted, states-and I quote: "The state shall provide for an efficient system of high-quality educational institutions and services". There are possibly some other words here that need explanation-the word "free". By the word "free" in subsection 2, it is understood by the committee to mean that those aspects of the elementary and secondary education which are essential to courses required by the schools for graduation shall be free of cost to the student. The words "public elementary and secondary" replace, in this article, the term "common schools", which was contained in the old Constitution-in the present Constitution. We feel that this is more precise. The term "common schools", back in 1889, referred primarily to the elementary school system. And also, we want to make it clear, by using the terms "public elementary and secondary", that the word "free" does not apply to all aspects of the educational system but that it applies to the basic education which the state is mandated to fund. In the second sentence ofsubsection 2, we've given a broad grant of power to the Legislature to provide for additional educational institutions and programs which it deems desirable. And according to the court interpretations of the present Article XI, Section 1, this right already rests with the Legislative Assembly under our present Constitution. So this is nothing new that is being added here. The last sentence of subsection 2 is directed toward the financing of the school system. Now, a great deal has been said about the Serrano-Priest case and other decisions across the land affecting the financing of the public school system. In analyzing our Montana finance structure, the committee found that there is great disparity between the level of school financing among the various districts of the state. This isn't something that has just come to our attention. For several years, across the nation, there has been a nationwide study being conducted on methods of financing public education. One of our members, Mrs. Cain, as probably most of you know, attended a meeting in Denver at her own expense, during the course of this Convention, to attend a meeting which solidified the results of several years of study on this very question. And whether the Supreme Court of the land rules on this matter or not seems to me to be beside the point. It's our feeling that the state should make every effort to insure that insofar as it is possible, equality of financial expenditures for schoolchildren of our state is implemented. Now, in the last sentence of subsection 2, we simply provide the means whereby this may be done. The Legislature is to provide, by taxation or other means, and to distribute in an equitable manner funds for the funding of our school system. Now, I'd like to point out here that the language that we've incorporated here is very close to that of Section 6—that we have incorporated some of the language of Section 6 in this last statement. Clearly, the existing school foundation program does not meet the aims of equalizing educational burdens and benefits. A most recent study of our foundation program shows that the expenditures by the state actually subsidize districts that are wealthy more than they do districts that are poor and that, in fact, the foundation program aggravates factors which tend to make the level of education dependent on the wealth of the district. We use the term "full funding". What does this mean? Well, it means that the state will insure the funding of a basic minimum program. After the state has assessed the needs and established what a minimum program ought to be, we feel that the state ought then to provide, by whatever means it sees fit, for the funding of that program. And if we fail to do this, if we fail to provide even the minimum that we establish, then we fall far short of the goal that ought to be ours in education. The full funding requirement here will substitute equity and rationality for the confusion and for the inequities that have often plagued school financing in the past. And it will also do one other thing that I think is very important: it will free the local school boards from a preoccupation with matters of finance, so that they can focus on the real issue of education in our local communities. Mr. Chairman, I move the adoption of subsection 2.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I move to amend subsection 2 of Section 1 by adding, in front of the word "system" on line 13, page 3, the word "basic"; and in front of the word "public" on line 20, page 3, the word "basic". Did you find that, Mr. President?

CHAIRMAN GRAYBILL: Yes, I find it. I don't know why I didn't have it up here. The Chair will allow it, but I do wish if you're going to make amendments on these things, you should have thought about them, unless there's something that comes up in debate. But I'll allow it.

DELEGATE HABEDANK: Mr. President. The explanation gave by the committee, through Mr. Harbaugh, shows that it is in-the

intention of the committee that the Legislature shall be required to fund a basic system of quality education. This is carried out by their comments as shown on page 12, where they say "the fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education." On line 17, they again say they wish to "insure the quality-insure the existence of a quality-basic educational system." On page 14 of their comments, they again say, on lines 4 through 7: "Once the needs for a basic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum basic program be fully funded." I am a former member of the Montana School Boards Association. I was its President back in 1952. I, along with Paul Harlow and many other dedicated citizens--at least, I think I was dedicated, and I'm sure Paul was-worked long and hard in developing the foundation program of education. At that time, it was called to our attention by educators that Section 1 of Article XI of the Constitution provided that it shall be the duty of the Legislative Assembly of Montana to establish and maintain a general uniform and thorough system of public free common schools. And it was argued, not without merit, that it was the duty of the Legislature under our original Constitution to fund the common schools. But we made the objectives so high that the Legislature, nor nobody else, paid any attention to that mandate. I think that the comments as made by the committee, which clarify the fact that they do, in fact, intend to require only a basic educational program system, is good. But the comments are not before the people of Montana. And as they vote on this, I think they should be told that it is the intention of those on the committee, in their very fine draft, to require the educational-to require the Legislature to do full funding of a basic educational program and that the frills and the things beyond the basic program, as the Legislature determines it, can still remain with the people. And for this reason, I urge your support of the addition of these words to Section 2.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, will Mr. Davis yield?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: I yield, Mr. McDonough.

DELEGATE McDONOUGH: You were on the-this committee, were you not?

DELEGATE DAVIS: I had theprivilegeof serving on this committee, yes, thank you.

DELEGATE McDONOUGH: The last sentence of subsection 2, does that require the Legislature to put the Serrano versus Priest doctrine in at this time?

DELEGATE DAVIS: Well, let me read it. "It shall be the duty of the Legislature to provide, by taxation or otherwise, and to distribute in an equitable manner funds sufficient to insure full funding of the basic public elementary and secondary school system." It is my opinion, Mr. McDonough, it does not require us to put the Serrano versus Priest doctrine, whatever it is, in at this time. It seems to me that this section-the intent behind this section--was to provide for full funding of the foundation program. When I campaigned in my area, we found that one of the big problems we had was the lack of full funding of the foundation program. They had to come back in and have these various mill levies; and the first time in the history of our county, I think, we had to have three votes. So the intent there was to require the state to establish a priority for education that would make a full funding of the basic primary and elementary-secondary education programs, fully funded as a high state priority. Then, if they ran out of money at the other end, they'd have to cut their budget someplace else instead of cutting it on education each time and coming up with 90 percent or 85 percent and gradually downward, which causes us to increase our property tax levy and cause us a lot of difficulty on the local school level. Does that answer your question?

DELEGATE McDONOUGH: No, it does not, but I don't know if we can even answer it. I think—

DELEGATE DAVIS: It's my opinion, Mr. McDonough, it does not require us to put the Serrano versus Priest doctrine in at this time. They can go ahead with their foundation program; and hopefully the full funding really doesn't add anything to our present Constitution, where it says they will maintain a system. But it may be stronger language: we hope it is.

DELEGATE McDONOUGH: Thank you, Mr. Davis.

Mr. President.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I object to a number of words in this paragraph. I object to the words "high" and "quality". I object to the words "equitable manner". I object to the words "full funding". What it does, I think-we get back to a basic point I've made before; this is a mandate to the Legislature. We're no longer on goals; we're no longer on preamble. We're on a mandate to the Legislature to do a certain thing, and we get back to Mr. Brazier's talk of the other day that when you use these type of adjectives-in an equitable manner-that you're actually-you may be leaving it to the Supreme Court to decide what is "high quality"; what is distribution in an "equitable manner"; and what is "full funding" of the educational program? Now, that should be left with the Legislature and the Legislature only, and nobody else. They're the representatives of the people up here to decide fiscal matters, not the Supreme Court of Montana and not anybody else. It's the Legislature that has this power, and the Legislature should have it. And I'd like to make a motion, as a substitute for all other motions, thatwe strike the last two sentences in this subsection.

CHAIRMAN GRAYBILL: Just a moment. Mr. McDonough has made a motion to strike the last two sentences of subsection 2. That's the sentence, "The Legislature may also provide for other educational institutions, public libraries and educational programs as aredeemed desirable, and it shall be the duty of the Legislature to provide, by taxation or other means, and distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system." Mr. McDonough, before I give you the floor, I'd like to point out that Mr. Martin does have an amendment coming in to strike the word "high" and the sentence that you're leaving there, so that may be of interest to you. Mr. McDonough has an amendment to strike the last two sentences of this section in their entirety, to delete them.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I think we're back again on specifics and details and what's constitutional and what's for good intents and purposes and what's legislative. Actually, the Legislature has all the power to do what it said in those two last sentences. And I'm sure they will, and I have full confidence that they will. There's going to be problems from time to time, but if you leave them in as they are now worded, you're going to have more problems of constitutional-legal construction on any lawsuits relative to the application of these last two sentences. I think it's certainly sufficient in a constitution to direct the Legislature to provide for a quality, free public elementary and secondary schools. And really, it doesn't have to say any more than that; and when you get more detail than that, you're just opening the door to various constructions, and so forth. That's all they have to do. If we have confidence in the people of this state to elect a Legislature that should represent them, then I don't think we have to say any more than this in this subsection. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I would rise in opposition to this motion to delete. It seems to me that this effectively strips the intent of all that we have said in the goals; that it strips the intent of the Education Article. I wonder if the Legislature in the past-if we look at history, I wonder how Mr. McDonough can say that he has confidence in the work of the Legislature in the past, when we think in terms of what has happened to the funding of education and, in particular, in the funding of the school foundation program by the Legislature over the past years. I don't share that confidence. Education has taken a back seat long enough in this state. Always when we come down to the end of the session, education takes what's left over after all of the other programs have been funded. And I think by putting in the Constitution a mandate which says that we will establish a basic program, and that the state will fund that program, is very essential. These last two sentences are no more statutory than the sentences which are contained in the present Section 6. If you look at the present Section 6, you will find that it says it is the duty of the Legislative Assembly to provide, by taxation or otherwise, sufficient means in connection with the amount received from the general school fund to maintain a public, free common school in each organized district in the state for at least 3 months in each year. Now, this isn't nearly as statutory, it isn't nearly as specific as that is. And on the one hand, he argues that we're being too specific; and on the other hand, he argues that we are inviting court tests. It seems to me that this is an inconsistency in the argument, and I would speak against deleting these two lines-two sentences—from the report.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I rise to object to Mr. McDonough's amendment because he would include in the deletion the second sentence, "The Legislature may also provide for other educational institutions, public libraries and the education-and educational programs as deemed desirable." I want to remind the delegates that this is the first time that there has been any constitutional recognition of public libraries as a part of the educational process in this state. It does not mandate the Legislature to provide for a public educational system, but I do think that it is of great value and it will strengthen the public library system in the state to include this second sentence in subsection 2 of Section 1.

(Committee of the Whole chairmanship assumed by Mr. Aasheim)

CHAIRMAN AASHEIM: Mr. Habedank, you have the floor.

DELEGATE HABEDANK: Thank you, Mr. Chairman. I resist Mr. McDonough's motion to delete. I would again call to your attention what was provided by Section 6, which Mr. Harbaugh read to you, and Section 1, which I previously read to you, where the Legislature was mandated to do this and it saw fit not to do it for many years. We attempted to bring this into fruition through this foundation program, but the Legislature was never in a position to adequately fund it. Back in the years about 1952, a constitutional amendment was submitted to the Legislature, which did not make it through the Legislature, to the effect that it would be their duty to fund this-fund the state's share of the foundation program 100 percent. If you carry out Mr. McDonough's motion to delete, you are putting the thing right back in the situation where there is no teeth in this thing whatsoever, and I think it is time that the children of Montana have a right to have taxes levied where the property is and spent where the child is for a basic-and again, I want to go back to my motion-a basic system of public education as determined by the Legislature.

CHAIRMAN AASHEIM: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman and fellow delegates. I rise to oppose the amendment to delete the words. Now, all through the committee's deliberations, we came up with the word "equitable". Were we providing an equitable education in Montana? And this was due to the fact that possibly we, in Montana, might face a court case similar to that of California. Now, for some of the delegates who do not understand exactly what the Serrano-Priest case-1 would like to go over exactly what it was. Now, the California Supreme Court finding on property taxes as the basis for support of education has generated considerable turmoil and a "back of the drawing boards" attitude on the part of the Legislature and many school people. Here is some background on the findings prepared by Gordon Winston of Sacramento Legislative Office. "Serrano versus Priest, the now-historic case involving school finance in California, began when the Western Center on Law and Poverty, a group of attorneys from UCLA, USC and Loyola Law School in Los Angeles, filed a suit in Superior Court of Los Angeles in August 1968 alleging that the scheme of financing public schools in California did not meet the test of equitable protection guarantees of the 14th Amendment of the United States Constitution and that the scheme was also a violation of equal protection clauses of the Constitution of the State of California. The defendants, various states, and Los Angeles County school and tax officials, represented by the State Attorney General's office, filed a demurrer to the complaint that was sustained by the court. A demurrer is a legal pleading which says, in effect, assuming everything you say in your complaint is true, so what? The court then gave the plaintiffs permission to amend their complaint to try the state legal cause of action. The defendants failed to amend the complaint, and the court issued an order of dismissal of the lawsuit. It was this order of the dismissal which appealed to the California Supreme Court and let the decision of Serrano-Priest. The theory of the plaintiffs' case was based upon the contention that under the system of financing public education in California, the quality of public education varied from district to district because of the accident of the amount assessed wealth, location of commerce and industry with the district. The 14th Amendment of the United States Constitution provides, in part, that no state shall deny any person within its jurisdiction the equal protection of law. The attorneys for the plaintiffs in there arguing the case before the Supreme Court stated the proposition: a quality public education may not be the function of wealth other than the wealth of the state as a whole. As we went through this case, we found that Montana also would fall into this case with our type of funding of the public education system. And in making these statements, I feel that we will reach the point to possi-

bly fund the program-the public education in a more equitable manner. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President, fellow delegates. I suppose I have to reveal that I have been in education for some 23 years and have been on any number of special meetings of planning where, you know, education is going to be in the next 50 years, hundred years and that sort of thing. It's a very interesting subject, but oneofthe things they tell us in those meetings is the fact that our schools as we know today may be our minor way of carrying on the challenge of education in the coming years. The little red schoolhouse may graduate into all sorts of other forms. One of the strengths of these last two sentences in this article is the fact that it does not lock in education in schools as being completely coterminous, that education program in the state might well have to be much more than just our schools. In planning for the future, it would be unrealistic to let those sentences go.

CHAIRMAN AASHEIM: Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would just like to say that there has been little talk of libraries in this Convention, and I have long been interested in libraries, so I'll have to reveal my vested interest. I am not a librarian as an official librarian, but I am interested in libraries. I think there is a place in this article for libraries. I think that the education that people can get in future years can come in a large part from the public library. It is the only place in the community that has the past, present, and the things of the future. I think that before we think about deleting this second sentence particularly, that we should consider the fact that libraries are important. They are the education--an educational field for many, many people who do not go back to adult education or other forms of school. You have many people that are currently using libraries to help retrain themselves in different jobs. This is a vital thing, and I would hope you would think long and hard before you delete the word "public libraries" from this Educational Article.

CHAIRMAN AASHEIM: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. It isn't very often that I have a chance to resist my good friend, Delegate McDonough, in favor of Mr. Habedank on his basic idea. I stand here as a vested-interest person, as an instructor in adult basic education with School District Number 2, Billings, for the past 6 years. And I would hate to see stricken from this article the words "educational programs as are deemed desirable". If I could shift the camera in the opposite direction, you see before you, fellow delegates, a former student of mine who came crawling into our classroom literally on his hands and knees. He was a victim of an oilfield accident and paralyzed for 3 months. Without a high school education, he could go nowhere. And now, as a result of a program that was adopted by School District Number 2, Roger Stowakin is putting the camera on me and it should be on him. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Champoux.

DELEGATE CHAMPOUX: I rise in opposition to my good friend Swede's motion. I wholeheartedly agree with Mr. Habedank's comments. I think, Swede, maybe we're missing something here. When we talk about equitable, we're talking about something that's equal, but notice the word "manner". Notice the word "manner". Now, what we're talking about here is the-it's M-A-N-N-E-R. By the way, if you look at the present method of distribution, which is the census method, that is an inequitable manner. And the proof of that is right here in this book. A study-it's called *A Study Of Basic Educational Programs Funding Methodology in Montana,* and I'm sure you're familiar with it. It's the study that was made by Mr. Mike Billings, Superintendent of Public Instruction Colberg's office. Now, in here, there is absolute proof that the method of distribution presently is inequitable. As a matter of fact, the variance is 10,000 to 1. And this is what I mentioned last Saturday when I said that we have evidence that a Serrano case decision could be won tomorrow. And I think you'd agree with me on this, wouldn't you? Not only that, but the study shows that wealthier elementary school districts tend to spend more-they receive more state aid per pupil in support of these programs. Now, my question is, "Why?" And I'll tell you why. It's because the manner of distribution has been inequitable, and that's why we changed it. Now to go on to the second point. If you'll look at this business of full funding, it has been developed that actually the Legislature--even though the mandate is in the present Constitution, they have not fully funded the program. Why? Because they know that whatever is needed back home, some of it can be picked up by the permissive county levy, so they can cop out if they want to. And that's

exactly what's happened. So I'm against the amendment. Thank you.

CHAIRMAN AASHEIM: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I seem to find some inconsistencies here myself, Mr. Harbaugh. In your explanation of full funding, I understood you to say you only meant full funding of a basic minimum program. But in this same subsection, it says "a high-quality" program. Now surely, I would like to have the Legislature full-fund it, but it seems to me there'd be quite a difference if you're going to full-fund a basic program or if you're going to full-fund a high-quality. And I don't know how much difference in money that would be, but to me, it's inconsistent to have this in there. Now, I realize there's an amendment there that would change it to "basic", but that hasn't passed yet. So at the moment, I can't help but think that we are inconsistent when we say we want to full-fund a basic program, but in the same sentence, we require a high-quality. And in defending the Legislature, which I've been a member of, I don't think they ever didn't want to; they just didn't have the money. And I still say if they're going to full-fund on an equal basis, we better not start right at the top. If you're really going to be realistic and find out if we can full-fund it, I don't think we can go right to the top right away. You're going to have to let them grow a little bit, I think.

CHAIRMAN AASHEIM: Mr. Harbaugh.

DELEGATE HARBAUGH: A point of order, Mr. Chairman. I think that's not within the section that we're debating.

CHAIRMAN AASHEIM: What is your point, Mr. Harbaugh?

DELEGATE HARBAUGH: Well, we're debating the deletion of the last two sentences and those remarks, while I will respond to those later, but I think they're not within the section we're debating now.

CHAIRMAN AASHEIM: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, the section is to delete the two sentences. And I figure if we're going to be consistent, you can't have all three sentences in there. So that would be my reason for debating in that manner.

CHAIRMAN AASHEIM: Mr. Harbaugh.

DELEGATE HARBAUGH: Well, in that case, I'll respond. The-I don't feel there is any inconsistency, I would disagree with you very much, Mr. Rygg, that there is an inconsistency. If we do not finance a high-quality basic education, then what do we finance? A low-quality basic education? I feel that we have a high quality of education in Montana at present. And I think that this in no way reflects the fact that we are going to do something that sets a standard which is extreme, which is far beyond what we have at present. I think that all we are saying here, simply, is that we want to be sure that as we assess the educational needs of the state, that we set forth a realistic standard that is high in quality of what our children and youth ought to be getting. And then, that we fund-that we see to it that the state funds-in some manner. And we don't know at this time what that manner of funding will be, but that-but we do want to insure that in some manner that the state does fund at least this basic program. And I am in concurrence with the word-the amendment which Mr. Habedank has proposed. I don't see any inconsistency here.

CHAIRMAN AASHEIM: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. I'm also on the Board of Education, and I rise in opposition to deleting the last two sentences. If you go back a number of years, the Legislature started out on a foundation program appropriating around-in the neighborhood of 80,85 percent. What did they do to us 2 years ago? They dropped to 66 percent. And if-1 think I'm not mistaken, if you want to get the right-correct figure, I think it's around 65 percent again this year, or 66. What does this do? It throws all the burden back onto the districts and the property owners. This is a very hard thing to say, but what I mean-this is one way that the property owners of Montana have—one way of saying no to the Legislature. And what are they doing? Voting down our special levies for our elementary and secondary schools. And if you think for one moment that we had trouble last year, I want to warn you, we're in serious trouble this year. Because I know of a lot of districts that are going to be in serious trouble for funding their schools to operate next year. And why? Because the Legislature leaves that foundation program the very last thing to provide for in providing for our school system, and it is wrong. I don't think if you will ever give the Legislature the power to do-to take care of our schools, they will never do it any more than what they have done in the past. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. I, too, am a member of the Education Committee, and I'm not a teacher, and I didn't even learn too much there at times; but a lot of effort was made on this. I think possibly Mr. McDonough's motion was partially made as a result of maybe a very poor answer I gave to him on his question about whether this dealt with Serrano, and also possibly because of my Delegate Proposal 68 which I had proposed-that, you may have noticed, at the back of your book, "that the Legislative Assembly of Montana shall establish and maintain a general, uniform, thorough and equitable system of public free common schools, open to all persons, as provided by law". This was not adopted by our committee, and that's not the reason I have the only negative vote cast against this in the back of the book. I am for the full funding. I do-there's just no way that I could not concede, as an attorney, Mr. McDonough, that the second sentence that says the Legislature may also provide for educational institutions, public libraries and educational programs as are deemed desirable-there's no way I could say anything-but that's statutory, because they have that authority whether it's in there or not. They've implemented that, starting with vo-techs and community colleges, and the great system of education we now have in Montana that's expanded from those few words in our 1889 Constitution. I do-so I could not argue with you as to the second sentence. It was a bow, in a sense, to the public libraries, which we're all for, and they were incorporated, and it was placed as the Legislature deemed desirable. Also, at the time I voted against this particular sentence, it was early, when we were more purists than we were now, when we had some constitutional thoughts of what should and should not go in a constitution. We've deviated quite a bit at this time, so I don't even object to that sentence. I do think the last sentence would have a lot to do with Serrano if it were tried in Montana. I have a basic thing-if taxation is equitably derived and equitably distributed, we will meet the test regardless of what formula we come up with. And I think if we can go with the basic system of education--and I can't speak for all the committee, I can certainly speak for myself-when we pass this section, which I voted to pass and with the majority on this, it incorporated the language. And Mr. Harbaugh has testified to the language here that he means a basic system. And I think we need a basic system, and I think the full funding is very important. And it seems to me that we're doing exactly the same thing you did here that you did, and we're consistent with your action in Revenue and Finance in taking off the 2-mill levy and leaving it open so there could be funding for this very purpose. Now, if you took the 2-mill levy off in Revenue and Finance for anything other than education, then I sure hope we can consider that later on again. So I would oppose the deletion of the last sentence in this and support some amendments as they come along. And I think we'll still have a pretty good section here.

CHAIRMAN AASHEIM: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman. I rise in opposition to deleting the last two sentences of this article as proposed by Delegate McDonough. I'm afraid that if we do this, this may be an indication to the Legislature that we're not interested in full funding of the school program. I think that even though we may not get full funding all the time, that by leaving this language in, it at least is an indication that we would like to have full funding. I also-while I'm up, I want to also support Delegate Habedank's amendment to insert the word "basic". I think that that way, the Legislature then would be on-we'd go on record as notifying them that we expected them to fully fund a basic education system.

CHAIRMAN AASHEIM: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I wanted to simply refer, I think-and I'm speaking against the deletion of the two sentences as a member of the Education Committee. I wanted to refer to the report of the Revenue and Taxation Committee, on page 6, which Mr. McDonough has signed, and simply underscore what our fine lawyer member of our committee, Carl Davis, has just said. I'll read from that page 6 of their report, beginning with line 11: "The committee has heard conflicting testimony on the Serrano case and its application to the Montana situation, but the overwhelming weight of the evidence indicates its applicability. The committee simply had to face the possibility that Montana may have to levy a statewide property tax for educational purposes. That possibility was strengthened by the acceptance of the Serrano doctrine in Texas, Minnesota and New Jersey." I would simply say you have faced it there and done what you had to. We faced it here and did what we feel we had to.

CHAIRMAN AASHEIM: Mr. Martin.

DELEGATE MARTIN: I wonder if Mr. McDonough will yield to a question, please.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MARTIN: Mr. McDonough, are you aware of the fact that the voters of California have initiated an initiative to limit the property taxes in California in the light of the Serrano decision?

DELEGATE McDONOUGH: Yes, I am.

DELEGATE MARTIN: Another question, sir, if I may.

CHAIRMAN AASHEIM: You may.

DELEGATE MARTIN: You're aware also, I presume, of the fact that 70 percent of every tax dollar in the State of Montana is for schools?

DELEGATE McDONOUGH: Yes, I am.

DELEGATE MARTIN: And may I say one other-well, that wouldn't be pertinent to your question, so—

CHAIRMAN AASHEIM: You may answer that if you want to, Mr. McDonough. You didn't finish your answer, I'm sure.

DELEGATE McDONOUGH: What they're doing here is actually mandating Serrano versus Priest into the Constitution of the State of Montana. And that's what I object to; mandating it.

CHAIRMAN AASHEIM: Mr. Woodmansey.

DELEGATE WOODMANSEY: First of all, I'd like to say I was a member of this committee that worked on this document. I also think that you should know that I am a teacher, so I do have an interest here. Just a couple of comments regarding the motion to delete these two sections by Mr. McDonough. I think there's fear here that we're asking the state to do all of the financing for education. This is not what we're trying to do. I think what we're trying to do here is to do what the foundation program has not done. I don't think we're trying to eliminate levies at the local level. I don't foresee this, and I would hate to see it come. I think at the local level, still there should be ability-or the people should be able to have a higher quality of education and in some other community. And I really think the underlying fear here is that the state is going to provide the total financing, and this is not true. We're asking for the full funding; and when we're asking that, we're talking, really, in the sense that we have in the past in this area. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Holland.

DELEGATE HOLLAND: Yes. Will Mr. Davis yield for a question?

DELEGATE DAVIS: Why did you come back? Yes, I yield.

DELEGATE HOLLAND: Mr. Davis, I'm a little bit concerned about this public library. I don't understand it. In some towns the libraries are owned by foundations, or sometimes by the city, sometimes by the county. Are you going to build libraries with school funds and fill them up? What is the meaning of that? That has me concerned.

DELEGATE DAVIS: Well, the meaning of "public", you know that, and the meaning of "libraries". And that means that if the Legislature wants, they can establish public libraries. As I say, there's no question; but that's all it means. And I defer that to our honorable Chairman. I don't know why you asked me, the only lawyer, about the libraries, with all the educators on our committee. Maybe Mr. Champoux can answer that. Would that be all right, Mr. Holland?

DELEGATE HOLLAND: Thank you.

CHAIRMAN AASHEIM: Mr. Champoux, do you want to answer that?

DELEGATE CHAMPOUX: Please. I would like to answer Mr. Holland. May I refer also to comments-

CHAIRMAN AASHEIM: You have the floor.

DELEGATE CHAMPOUX: First of all, Dave, there is a trend today-No to your question, all right?-in that it says "may". But there is a trend today in certain areas. We know of one instance, for instance, in the State of Montana where they're trying to consolidate library facilities in the city. It's a small town in eastern Montana. And there is something-there is a concept of what's called a learning resource center. So it is conceivable that in the future in the State of Montana, you might have, for instance, the library in conjunction with the educational institution in the city. By that I mean, there they would have stored

things like films, audiovisual equipment, and so forth, and that the schools could also, you know, go and apply themselves in terms of distribution and getting the product. So we're saying "may" on the one hand, and we're providing the-you know, if the Legislature wants to do it, they can. May I refer to Mr. McDonough's question at this point, please? Swede, the Serrano case did not only concern taxation in terms of the tax burden, but it also concerned distribution. Have you ever read that case?

DELEGATE McDONOUGH: Yes.

DELEGATE CHAMPOUX: And you know this, then. Now, if you look at what we have provided-we thought we provided-and I still—we think we have provided as flexible a section as possible, so that if Serrano does come into being—and I think you would agree that it's going to come-then we've made it as flexible as possible, so that the Legislature could bring into process, if you will, a method of equitable distributing of money in providing the taxation by either direct taxation or other means. You see? Thank you.

(Committee of the Whole chairmanship assumed by Mr. Graybill)

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. I wonder if Mr. Woodmansey would yield to a question.

CHAIRMAN GRAYBILL: Mr. Woodmansey?

DELEGATE WOODMANSEY: I yield.

DELEGATE McCARVEL: Mr. Woodmansey, I'm just one of these that didn't get an education, so I'd like to be educated here.

DELEGATE WOODMANSEY: I don't say I'll do it, but I'll try.

DELEGATE McCARVEL: Well I-you said that this does not mean that the Legislature is going to fund all the schools-public and elementary schools. And the way I read this, it says it will insure full funding.

DELEGATE WOODMANSEY: We're talking about the foundation program; and I think, Mr. McCarvel, you know as well as I do, in each community throughout the state today there are voted levies. And even if the foundation program were funded fully, in many communities there would still be voted levies. And what I'm saying is that it's my belief, and I think it was the belief of the committee, that in a community who wanted-that wanted a higher quality education than the basic program-the foundation program provides, they still have the right to have voted levies. And the state isn't going to pay the full way in every community necessarily.

DELEGATE McCARVEL: Would Mr. Woodmansey yield to another question?

CHAIRMAN GRAYBILL: Mr. Woodmansey?

DELEGATE WOODMANSEY: Yes, I will.

DELEGATE McCARVEL: I see no place in this article where it says "foundation program". It just says it shall be the duty of the Legislature to furnish and provide taxation or other means to distribute, in an equitable manner, funds sufficient to insure full funding. I don't see where the foundation program comes in here at all.

DELEGATE WOODMANSEY: I feel that it's implied in the area where we discussed the area of full funding. I feel that it's implied here. You may not feel so, but I think we felt, in the committee, that it's implied in this section, full funding.

DELEGATE McCARVEL: Well, to me, the section is vacant, Mr. Chairman. I don't know, I think they should do a little more work on it, because my basic education is-does not grasp anything other than the state will have to fund the whole school system by taxation.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. McDonough's motion to strike the last two sentences of subsection 2. Now, we'll continue to debate it, but let's be on the point.

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I'd like to ask Mr. McCarvel to open his Constitution to Section 6 of the present Constitution and to read the language in Section 6. It says: "It shall be the duty of the Legislative Assembly to provide by taxation or other means--or otherwise sufficient means"--and then some other words—"for the funding of the common schools." The language that we are proposing is really no different from this, and I think we are missing the point. I

think that the intent of what we're saying in these last sections here is simply that the Legislature shall make provisions. The provisions may be to authorize property taxes at the local level; it may be that the Legislature will decide to make an appropriation. The Legislature already provides the means for the funding of the public schools, and as I see it, this does not change that at all. It simply opens the door so that if we have to change the system in some way, we can do it; we're not locked in.

CHAIRMAN GRAYBILL: Very well. The issue is still on the motion to strike the last two sentences. Now, if you have something new to add, please speak. Otherwise, I think everybody has the idea.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I may as well put the final coup de grace to Swede McDonough in that I rise in support of Mr. McDonough. (Laughter)

CHAIRMAN GRAYBILL: See if you can make it quick, Mr. Joyce. Go ahead.

DELEGATE JOYCE: Before-the reason that-this just occurs to me. What if the next session of the Legislature repeals the Foundation Act, what will this section mean? It seems to me we've been talking doubletalk all around the room all day, that it means this and it doesn't mean that. And when we come right down to it, what everybody means is that the Legislature shall provide for a system of high-quality public elementary and secondary schools, period. And that's what we hope that they will do. That's all they can do. It's up to the people of Montana to be able to fund it if they can. To require them to do something which they-you can't force them to do anyway-it's just writing nonsense into the Constitution. Constitutions are supposed to be-to pertain to law. And the Legislators represent the people of Montana, and the people of Montana want to fund their schools if they can afford them, but they don't want to necessarily impose sales taxes to do that. I think that's relatively evident. And so it seems to me that the prudent thing to do is to do like the State of North Dakota did and simply say that we'll have a system of free public elementary and secondary schools. And, secondly, that just because we have statutory material in the current Constitution which has been ignored all these years and has been-no one has interpreted them to mean anything, is a good reason why we should get back to basic constitutional law and simply retain the first sentence of the section. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. McDonough's motion to strike two sentences.

Mr. Aasheim.

DELEGATE AASHEIM: I assure you I have something new to add or I wouldn't have rised.

CHAIRMAN GRAYBILL: Good.

DELEGATE AASHEIM: Mr. Chairman. It's going to take me just about one minute. To be against education today was like being against motherhood 10 years ago. This also may change. I hope I don't. And I want to express now that I also have an interest in education, because whenever we do not have a child that is properly educated, he may become a charge on the state and it will be my responsibility to help support him. However, I see that you have deviated from the original Constitution--our present Constitution. You name public elementary and secondary school system. Why didn't you remain with the language to say public schools? Then you are all-inclusive. I also want to warn you about this trend toward centralization of financing public schools. I am very much concerned that it may defeat, eventually, our concern for a better public school system. You know-and my district is one of them-they are willing to levy taxes to educate their youngsters way and beyond what some of you people realize because there are programs that they want. Some areas want a new gymnasium. By the way, are we funding-are we building school buildings in this program that you people are advocating? It doesn't say you're not. Under the present system, we can emphasize a music program if we so desire. We can build racetracks. We can have horseracing if we wanted to, if you want to go way out. If, under the present system-but if we're going to centralize our educational program, what incentive will there be on the local level to do a better job for our children? Think about this.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would like to rise in support of Mr McDonough's amendment. And I feel I sure got a dirty look from the Chairman there, but I have a comment. I would like to share a thought or two with you. First, as I was sitting and listening to

the comments and to the expressions on the faces of the body here, I asked myself, "If I were going to send one person over here to write a Constitution that I thought would be the best one for the people of Montana, who would that person be?" And I'll tell you who that person would be: it would be Swede McDonough. So when Swede is concerned, I am pretty concerned myself about the impact this may have on our legislative bodies of the future. As I sat in an Education Committee meeting one day, the thought came back to me of a dog race that I had attended at one time in my youth, when I was somewhat wayward, and I noticed that the baying greyhounds were chasing a white rabbit around the track. And as the greyhounds got closer to the white rabbit, the white rabbit kept getting a little bit faster and a little faster. There was never any hope of the greyhounds catching that rabbit. And I happened to ask one of the people that was working at the track, "Do thegreyhoundsevercatch thatrabbit?" They said, "No; the biggest problem is not whether they catch the rabbit or not, it's whether the rabbit gets too far ahead of the greyhounds." Now, I kind of likened, as I sat in the Education Committee—perhaps we, the taxpayers-and you are certainly included in this "we"-are chasing a white rabbit around a track. I think it is important that we keep a fair gap between the rabbit and the dogs, or the taxpayer and education. If it gets a little too far away, the taxpayers are liable to say, "I'm tired running; I'm going to take my investment, I'm going to take my business, I'm going to leave Montana. I can't keep up with that white rabbit." Now, in the committee on Education we heard this testimony, that here in Montana, the taxpayer rates third-ranks third in the United States. Of 50 states, we rank third in the individual's contribution to education. That leaves two spots: number two, which we may be able to attain, but once we get into number one, there's nothing else to compare ourselves with. So when I peruse this article and I go back to the words which Swede McDonough referred our interest to, in the second line, "it shall be the duty". And I would like to say to Reverend Harbaugh that in his comments he continually uses the word "may", but I would refer him to the writing here, "It shall be the duty of the Legislature". And down in the next line, "to insure full funding of our elementary and secondary", and then, referring back to the wording in the top of the paragraph, "of high-quality, free public and elementary education." So when you take these three phrases and read them together-I personally understand what Mr. McDonough is talking about, and I am concerned. I would like to ask the body to consider his amendment and vote in the affirmative on his amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. My remarks will be brief, too. It said that this wouldn't really make too much of a change. I'd like to point out to you that once you put your school boards in nothing but an administrative position and instead of being tax collectors as they are now and responsible for the budget that they set, that they will now be administering the money that they get and every school board will be in there for all they can acquire from the state. And I can see no end to the amount of costs that we'll have, because all the little frills that we once wanted, we'll now be after. I think this is a very important difference in our school structure, whether it's on a local level or whether it's on a state level, as far as the funding is concerned and who's responsible in supplying the money. I have one other question that maybe somebody can answer. These two little words, this "other means". Just for the record, I wonder if the committee would go into a little more detail on what the "other means" are.

CHAIRMAN GRAYBILL: Mr. Wilson, I'm not going to let Mr. Harbaugh speak till he closes. Do you want to speak, Mr. Wilson? Okay.

Mr. Harbaugh, I guess we're-

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I would just like to add one thing. If we adopt Mr. McDonough's amendment and strike these words, we will be taking a step backward. In the Constitution of 1889, they said "It shall be the duty of the Legislative Assembly to establish and maintain". We are not even going to give that command, if we adopt his amendment, to the Legislature. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, Mr. Harbaugh, you may close. You may close on your part, and then I'll go to Mr. McDonough to close.

DELEGATE HARBAUGH: I was just rising to respond to the question about "other means".

CHAIRMAN GRAYBILL: All right.

DELEGATE HARBAUGH: "Other means" is the exact language that's taken out of

the old Constitution. It refers, basically, to the foundation program-pardon me, not to the foundation program-to the income and interest funds that are presently distributed to the schools. This is not a taxation levy, but this is a distribution of the "I and I" money.

CHAIRMAN GRAYBILL: Very well. Mr. McDonough, now you may close.

DELEGATE McDONOUGH: Mr. President, this will be short. Actually, I'm in full agreement with the Serrano versus Priest case, and the Serrano versus Priest case is covered very fully under goals of Section 1 where it says "equality of educational opportunities shall be guaranteed to each person of this stat&'--and that's basically all Serrano versus Priest says-that-As to the distribution of money and so forth, we're getting back into a Legislative thing by that last sentence of the subparagraph 2, and it should be stricken and should be left entirely to the Legislature to guarantee the equality of educational opportunities to every person in the state. Thank you.

CHAIRMAN GRAYBILL: Very well. Do you want a roll call vote? Very well. All-Mr. McDonough's amendment would strike lines 14 to 19—strike the last two sentences of subparagraph 2 of Section 1 and would leave just the first sentence of subparagraph 2. So many as shall be in favor of his amendment-namely, striking that—please vote Aye on the voting machines; so many as shall be opposed, please vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas . . .. Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Absent
Babcock ..... Aye
Barnard . . . . Nay
Bates ..... Aye
Belcher Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross.. ..... Absent
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Nay
Erdmann.. ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Absent
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye

Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Absent
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Absent
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 43 delegates voting Aye, 46 voting No.

CHAIRMAN GRAYBILL: 43 having voted Aye, 46 No, the amendment fails. We're now back on Mr. Habedank's motion about the word "basic"-to add the word "basic" on line 13 so it says "a basic system of high-quality education" and add the word "basic" on line 20 to make it "of the basic public elementary system". Is there any other discussion of that matter?

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I support the basic-addition of the word "basic" here. I would like to ask Mr. Habedank, however, if he feels that it is necessary to include it in line 20. It seems to me that it's somewhat redundant there.

DELEGATE HABEDANK: Mr. Harbaugh, of the two places, I would consider "basic" more needed in line 20 than in line 13. I don't consider it redundant in either place.

DELEGATE HARBAUGH: I have no objection to it.

CHAIRMAN GRAYBILL: Very well, do you want to close, Mr. Habedank? Have you?

DELEGATE HABEDANK: I close.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Habedank's amendment to add the word "basic" in line 13 and 20.

Mr. Romney, did I miss you? Do you want a roll call?

DELEGATE ROMNEY: Yes.

CHAIRMAN GRAYBILL: A roll call vote. All those in favor of adding the word "basic", vote Aye; opposed, No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Absent
Babcock.. ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Absent
Dahood ..... Absent

Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins. ..... Absent
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 86 delegates voting Aye, 3 voting No.

CHAIRMAN GRAYBILL: 86 having voted Aye, 3 voting No, the motion to add the word "basic" prevails. Ladies and gentlemen, we have some other amendments to subsection 2 of Section 1, but before we take them up, I'd like to call on Mr. Eskildsen. And—

Mr. Schiltz, do you have a matter before then?

DELEGATE SCHILTZ: Yes, Mr. Chairman. Members of the Committee, there's a gentleman sitting today at a desk that I once occupied when Mae Nan Robinson was 4 years old, and I'm sitting at a desk in the approximate area that he occupied at that same time. And I would like to call your attention to the presence of a great citizen of Montana, a gentleman who was the Speaker of this House of Representatives several times, in an era when we had some Legislative giants in Montana, and the father of our President, Mr. Leo Graybill, Sr. Would you all give him a hand.

(Applause)

CHAIRMAN GRAYBILL: Thank you very much, Mr. Schiltz. I did explain to him thatif he voted there, it was a felony. (Laughter) But Mr. Garlington and Mr. Gysler are taking good care of him.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move we recess until 3:45 p.m. this afternoon.

CHAIRMAN GRAYBILL: The motion is to recess till 3:45 p.m. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Recess 3:25 p.m.--reconvened 3:50 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Mr. Vermillion, will you close the back doors, please? Temporarily. Ladies and gentlemen, I want to make an announcement which may be of interest to you. It's the management's intention not to work tonight. I find that it's very difficult sometimes on some of you when we work too long. However, I would like to suggest that you might read carefully the rest of the book and get yourself ready for tomorrow so it doesn't take quite so long. We want to finish this article tomorrow. If we finish this article tomorrow, which will, I think, in itself be difficult, we'll still be one day behind. And we intend, therefore, to work Monday. So if you need to make plans based on that, you might want to make them. We intend to work Monday but not work tonight. Very well. The issue is on Section 1, subsection 2. We have a number of amendments presented during the recess.

The Chair will first recognize Mr. Martin. Do you want your amendment read from the Chair, Mr. Martin?

DELEGATE MARTIN: Yes, sir.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Martin's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, subsection 2, page 8, of the Education and Public Lands Committee Pro. posal Number 10 as follows: at line 16, page 8, by deleting the word 'high'. And further amend at line 22, page 8, by adding between the word 'manner' and the word 'funds' the following words-quote: 'to the several school districts of this state'-end quote. Signed: Martin."

CHAIRMAN GRAYBILL: Very well. The point of Mr. Martin's amendment is to strike the word "high" on line 13, the end of the line-end of the sentence-end of the line there so that the sentence reads: "The Legislature shall provide for a system of-for a basic system of quality free public elementary and secondary schools", instead of "high-quality", and then to add, on line 19—if you have your books-after the word "manner", the phrase "to the several school districts of the state" so that that phrase reads: "and to distribute in an equitable manner to the several school districts of the state funds sufficient to insure full funding of the basic public elementary and secondary school system."

Mr. Martin.

DELEGATE MARTIN: Mr. President. It seems obvious that we don't need "high" when we're talking about quality, because it contains the same language. So I think I'll just stop at that. But I would call your attention to the fact that Section 6 of the present Constitution provides "it shall be the duty of the Legislative Assembly to provide, by taxation or otherwise, sufficient means in connection with the amount received from the general school fund to maintain a public, free common school in each organized district of the state for at least 3 months of the year." In Section 5, we also have the reference to the several school districts of the state. It would seem that the present article completely omits the reference to school districts, and I would think that we don't want to see that happen.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I wonder if Mr. Martin would yield to a question.

CHAIRMAN GRAYBILL: Mr. Martin, will you yield?

DELEGATE MARTIN: Yes.

DELEGATE HARBAUGH: Mr. Martin, would you have any objection to dividing your amendment, because as a committee, there may be a difference between how the committee feels about this? We have no real strong objection to deleting the word "high", but we do have serious reservations about the last part of that amendment, and I would explain our reasons for that. But would you consider dividing your motion?

DELEGATE MARTIN: Surely.

CHAIRMAN GRAYBILL: Is it my understanding, Mr. Martin, you want to divide your motion?

DELEGATE MARTIN: I'd be agreeable if that's the way they want to go.

CHAIRMAN GRAYBILL: All right. Let's take the word "high" first; so we'll hold the rest of Mr. Martin's amendment and we'll discuss only the deletion of the word "high". Is there any

further discussion of that? If not, all in favor of deleting the word "high" on line 13 so that the sentence reads "The Legislature shall provide for a basic system of quality free public elementary", et cetera-so many as are in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: That's passed and adopted. Now, Mr. Martin, we'll allow you to have the second part of your amendment. Is there discussion?

Mr. Martin.

DELEGATE MARTIN: Do you want me to move it again?

CHAIRMAN GRAYBILL: No, you don't need to move it again. Is there discussion?

Mr. Harbaugh.

DELEGATE HARBAUGH: Yes, Mr. Chairman. We feel that there is a reason why we deleted these words. These words were in the present Constitution and their inclusion in Section 1, I think, could cause serious problems for us in this respect-that the distribution of funds to the various districts involves distribution of the interest and income money of the state, and the way in which that distribution has been done in the past is on what you might call a flat grant basis. In other words, each district of the state gets so much money per child that they have in attendance in the school district. Now, this has been part of the problem causing an inequity in the financing of the systems. The flat grant method of financing in our state is one of the things that causes the spread between the wealthier districts and the poorer districts to be greater. And therefore there may be instances in the distribution of this money, if we're concerned about equalizing the financial funding of the school systems, there may be instances in which a district would not be eligible to receive the "I and I" funds, if we're trying to equalize education. And therefore to add here the language "to the several school districts" may indicate that each district was to receive the "I and I" funds. And we feel that this could be a problem, a sort of roadblock in the way of equalizing the educational expenditures across the state. So we resist the inclusion of these words in subsection 2.

CHAIRMAN GRAYBILL: Very well. Is there—

Mr. Wagner.

DELEGATE WAGNER: I'd like to ask Mr. Harbaugh a question.

CHAIRMAN GRAYBILL: Mr. Harbaugh, will you yield?

DELEGATE HARBAUGH: I yield.

DELEGATE WAGNER: Gene, don't you say that the funds will be distributed in an equitable manner? Wouldn't that take care of that?

DELEGATE HARBAUGH: Mr. Chairman. Yes, I think it would. This is what we're aiming at, is an equitable distribution of the funds, and I think that the inclusion of this phrase would be a limitation on that, possibly that we wouldn't want to see put in there.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I wonder if Delegate Harbaugh would lead-yield to a question.

CHAIRMAN GRAYBILL: Mr. Harbaugh, will you yield?

DELEGATE HARBAUGH: Yes, I yield.

DELEGATE MARTIN: Isn't-presently, hasn't the foundation program enacted legislation which provides for a 25-mill and a 15-mill, 40 mills in each county for equalization?

DELEGATE HARBAUGH: Yes, it has.

DELEGATE MARTIN: Is it the intent of the committee that this would be abandoned, that all districts-all taxes would be paid or all funds would be supplied by the state rather than the counties?

DELEGATE HARBAUGH: No, this is not necessarily the intent of the committee. All we are doing, Mr. Martin, is trying to leave the door open for some new system. We don't know what the system will be, but we don't want to place impediments in the road of possibly that type of system of funding.

DELEGATE MARTIN: Don't you think that the Legislature should have some leeway in what they could do?

DELEGATE HARBAUGH: That's precisely what we're attempting to do is—

CHAIRMAN GRAYBILL: Very well. Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. It seems to me that education is the grassroots of the people and that the school boards are an integral part of this movement and that the general public has some rights. We have given powers to the Legislature in the Legislative Article to have annual sessions to meet the problems as they arise. We haven't got the Serrano-Priest decision here yet; it probably will be several years before it comes. And I think that some consideration should be given to the counsel and judgment of the school districts throughout the state.

CHAIRMAN GRAYBILL: Mrs. Cain.

DELEGATE CAIN: I think if Mr. Martin will look at our Section 8, he will notice that we, too, are recognizing the school districts and the election process of the district trustees.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would like to state first of all that the committee believes that the local school board is the very basic foundation of our educational program and there is no intention whatsoever to take anything away from the local school districts. However, there are some problems here that's very obvious to us in the Education Committee that have studied this problem extensively that we're trying to bring out to you, and they're not coming through. For instance, if you look at the current method of distribution, which is called the census-this provides that every school-every child between the age of 6 and 21 is going to be counted, then they're going to distribute the money on the basis of that count. Now, what's resulted from that, as we have found out? Well, in some cities like-take for instance-well, we'll take Butte as an example-I was talking to Joe about it just a little while ago—that has a larger population-Catholic population-than typically another city has. In that city, every child between the age of 6 and 21 is counted and the funds are distributed to the public school system. Now, if you take another city that doesn't have any Catholics, we'll say, or any other nonpublic schools, the amount of money that would be distributed in those-in that city would be less than the amount of money that would be distributed in a school-in a district with a lot of nonpublic students. This is unequal. It is an inequity, and Serrano does apply. If you look at the-if you could study this foundation program and how it's developed, it does provide, as Fred has said, county equalization. That is not going to be taken away by this section whatsoever. That is a determination of the Legislature, as Mr. Martin knows. The thing we're talking about in themiddle here is this business of state equalization, though. And, for instance, when we talk about full funding of state equalization, we're not talking about 100 percent of all of the funds. That doesn't mean that every school district is going to get total funding from the state. But we're asking for total funding by the state of the state's obligation, by taxation or other means. I hope that will clear up a little bit more.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I would like to clarify a little more-go a little bit deeper than Mr. Champoux. Now, I, as a delegate from Butte-the first thing that came up—and, of course, we have to go ahead on this answer, because I think it all comes into perspective in this particular section-now, when this first came up, the dropping of the census as-which will be in Section 5 as a basis-now, I'm going to the Legislature to choose what method they will use. In other words, for using this "I and I" money. I protested quite vigorously. And I felt that Butte—Silver Bow County--would suffer greatly through this change, because we do have quite a parochial school attendance. And, of course, I did quite a bit of investigating myself on this matter, and I found that through the equalization process that we will have after this, the money that will not be distributed exactly on the number of students--on average number of belonging-will come back to the school districts and will come back on the foundation program. And actually, I think they will, actually, from what I could see, will benefit from this even more. So in other words, what I'm trying to-if someone had the idea that possibly they would lose on this, this is not true; by going away from the census and letting the Legislature decide whether they go on the ANB or any other type of funding-but I hope I've made it a little clearer on this one point, that these cities with parochial schools will not lose tax money because of this change.

CHAIRMAN GRAYBILL: Just a minute. Are you ready to close, Mr. Martin?

DELEGATE MARTIN: Delegate Champoux would yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I will yield.

DELEGATE MARTIN: Under the provision of this article as it's written, would you say that there would be an opportunity to expand some of the state educational funds for other purposes than for the districts and elementary and secondary schools?

DELEGATE CHAMPOUX: What, specifically, were you referring to, Mr. Martin, when you say "for other"?

DELEGATE MARTIN: Well, supposing we talk about community colleges.

DELEGATE CHAMPOUX: All right, suppose we do. Go ahead.

DELEGATE MARTIN: Isn't there that possibility, that some of these funds could be given for that? Should the decision be left within the Constitution, or shouldn't it be left to the Legislature?

DELEGATE CHAMPOUX: Mr. Martin, if you read the first sentence in here, it mandates the Legislature to provide for the system. Therefore, I think that that's all that has to be said. The Legislature has the provision.

DELEGATE MARTIN: Why is it the committee doesn't consider the school boards?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Well, we have considered the school boards, Mr. Martin. If you'll remember my opening remarks, I appended—amended Section 5 where it says "school districts", period. And there, you see, there's the funding again that Mr. Woodmansey will enlighten you on when we get to that section. So we haven't taken out the school districts; they're there. We love them; we hope they remain there. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, fellow delegates. It seems to me that we are spending a lot of time and being completely confused about the amendment that Mr. Martin has here. I feel that it is very essential and something that will not detract from the integrity of the Education Committee but will make it a little clearer to whom this money is going to be distributed. It will merely be distributed equitably to the several school districts. And I think it's a good amendment. And I realize the committee seemed to have a moralobligation to themselves to get their exact wording put into the Constitution that they have labored so laboriously on and are cherishing so dearly. But from a truly educational standpoint and from an executive operation standpoint, I feel that these words are very useful and will tend to take away any fears that the school districts or the school people may have about how this money is to be distributed and to whom it is to be distributed. I hope we vote soon and in favor of Mr. Martin's motion.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. If I heard right, the committee said that this is what the-the words in Mr. Martin's motion are what they intended. I feel that if this is going to not be against what the committee intended and make it clearer for the people that read it, I think we should put these words in. So I support the amendment.

CHAIRMAN GRAYBILL: Mr. Champoux

DELEGATE CHAMPOUX: Just to make the point clear, we would agree to go for the school districts. You can put that in. However, if you say "several school districts", you may run into some problems, because this reinforces the inequalities of wealthy districts versus poor. But you can put in "school districts", as far as I'm concerned. Thank you.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in opposition to the substitute motion. We're getting right back into this same problem, which the committee tried to avoid all the way through its work, of setting up something that would be hard for the Legislature to face the-anything they-any proposition they might have to face under the Serrano versus Priest case. We want to give them plenty of leeway, and if we tie this down to each of the school districts, then we get right back into the very same thing that was stated in Serrano versus Priest. And while I'm speaking here, I'd like to make one other statement. I am sure no one on this Education Committee had any

idea of, in any manner, deteriorating from the position of our present school districts. They like them, and they want to keep them there. But one thing we're all overlooking is that we may not be faced with Serrano versus Priest. We may be faced with a charge under the 14th Amendment of the United States Constitution, and then where will our small school districts be if we don't provide the leeway that the Education Committee has tried to provide for meeting those situations?

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President and fellow delegates. I think we've got to realize a problem that we are at this juncture-that there's no one but the Legislature that can provide the finances for the school district because we've passed the Revenue and Finance section which says the Legislature is going to assess--equalize. So there's nobody but the Legislature that can do this. So that is one reason it's here. For the purpose of the record, I think that if you have a foundation program or whatever means-say you have so many mills in our district or in any district-the main idea is that the state sets up a program or formula and says "your district's share is this and our share is this" and they pay their share. In other words, they fund their part of it. And that's the big problem we've been having now with our schools throughout the State of Montana; they don't pay their share of their own formula that they've set up and adopted and then we have to come back and have an additional voted levy at the district level and the people don't understand why the schools are doing this. So I think the record should show, and I can confirm for the purposes of the record, that at no time in the Education Committee's hearings have we ever discussed operating schools other than through your local school boards and through your local districts, and we certainly wouldn't want it any other way. So I personally have no objection to the fact that the school districts should be in there, whether you want to put "several" or how you want to putitin. I think it'll all come out the same, because I know no Legislature is ever going to change that either, because they're all elected from someplace, too.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: I yield.

DELEGATE HARPER: Mr. Davis. I see what Mr. Martin is getting at. He wants to make sure that "several school districts" are mentioned in here, but just for a layman reading it, when you say to distribute in an equitable manner to the several school districts of the state, does that imply-it does to me-an equal amount to each of the school districts?

DELEGATE DAVIS: Well, I don't think so. It wouldn't be my thinking on it. I think under the Serrano case, they say what's equitable can be based on need. And it's based on need right now and it's inequitable. And that's what Revenue and Finance told us. Some counties weren't assessing up to the full value and another one was. So then the state funded the in-between. Does that answer it?

DELEGATE HARPER: Yes.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President. I've been following this with interest to see where I've missed the point here. If this isn't distributed to somebody such as the school district, who is it going to be distributed to?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: When you use the term "elementary and secondary school system", all-there isn't a single elementary or secondary school outside of a school district in any system in the State of Montana. Now, if you want to put in "school districts", it's fine; but "several" might have problems with that word.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: If Mr. Davis would yield to a question?

DELEGATE DAVIS: Mr. Martin, I yield,

DELEGATE MARTIN: Isn't it true that, under the foundation program now, that within the counties there is what you might call inequitable distribution?

DELEGATE DAVIS: It depends on how you use the word "equitable". They distribute money within the counties on an ANB basis so each person gets the same per ANB. But in a district that's only got 90,000 valuation versus a rich district that got 800,000, it's grossly inequitable. So it does have to be some other basis of equity in there.

DELEGATE MARTIN: In other words, if you have a district that has a railroad running through it, then you have a district that doesn't have a railroad, the district that doesn't have the railroad gets more--a larger share of the county equalization fund, is that right?

DELEGATE DAVIS: Well, the first thing, if you've got a railroad, you don't need much else. (Laughter) That's as far as valuation is concerned. I'm not too sure I can answer that accurately. If you have a railroad, of course, you have a great deal of a valuation, but you could have another district without a railroad that could be bigger and have more. So I couldn't really answer it on just that set of facts.

DELEGATE MARTIN: Well, that has been-that was the real purpose of the foundation program, as I recall it and as my understanding of what it amounts to. And the point I'm getting about-getting at is I think that the school system of Montana needs the school districts and needs the school officials that would make them a part. And I can't see why the opposition to this.

DELEGATE DAVIS: Mr. Martin, to clarify a thing, if I could answer your question, it seems to me that we're now on the same side. Everybody's agreed to your amendment, so let's vote and get something else.

CHAIRMAN GRAYBILL: Mr. Davis, will you yield to a question from the Chair?

DELEGATE DAVIS: I'll yield, Mr. President.

CHAIRMAN GRAYBILL: When you say "to the several school districts", is there any sense in which that can mean the present school districts?

DELEGATE DAVIS: It seems to me that it'll have to be to the school districts that exist at the time the distribution is made. Your school districts are changing all the time throughout the state, like consolidation, annexation or abandonment.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to ask a question of Mr. Martin. How do you interpret the word "several"? Do you interpret the word "several" to mean each?

DELEGATE MARTIN: No. I think that we could interpret this last sentence as a duty of the Legislature. It's a legislative mandate; it isn't anything else. And the Legislature could do whatever it wants with that. If we're going to have consolidation of districts as we do now, you wouldn't have several school districts. If you recall, the Peabody Report some years ago advocated that there only be one district in each county, and that could happen by legislative action.

DELEGATE HARBAUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I think his answer helps me some. At least if "several" does not mean "each", we're making some progress. The concern of the committee is not to try to deny the local school district any autonomy. It is not a subversive plot to take school districts out of the Constitution. We simply are trying to free up the constitutional language here in such a way that the Legislature can, in an equitable manner, give funds to school districts which need it. Now, if we give, on a flat grant basis, money to every district, we upset the applecart of equality. If we give money on the basis of equalizing to those which need it because they have low evaluation, then we can equalize. This is the only reason that we have deleted this language.

CHAIRMAN GRAYBILL: Very well.

Mr. Champoux.

DELEGATE CHAMPOUX: You know, I'd be remiss if I didn't ask Mr. Martin this question. Mr. Martin, do you feel, under this, that some school districts would not get equalizing funds?

DELEGATE MARTIN: No.

DELEGATE CHAMPOUX: Do you feel that everyone, then, would get some funds even though it was unequal within the district?

DELEGATE MARTIN: I think that under the present foundation program, there could be equalization. I think that the way this is worded in this section, it still would be up to the Legislature to do that. And when we're speaking in terms of how we're going to distribute funds, we've got to recognize that we have implemented the powers of the Legislature, given them an opportunity to meet more often, developed more committees, and to work out the program. I would say that with this amendment, you can work it out in good shape.

DELEGATE CHAMPOUX: Well, my only answer to that, sir, is if you read Billings' study, the question is, "Why do we then have a variation of 10,000 to I?" Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Martin's motion to add the phrase "to the several school districts of the state" on line 19, Section 1, sub. 2. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. So many as are in favor of that motion, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 44 having voted Aye and 41 having voted No, the Chair says that the amendment carries. I think it's obvious from the vote, however, that we don't all understand what we're doing. I'm sure I don't, if the rest of you do. Very well; it's passed. Very well. Mr. Artz, you have an amendment. May the Chair read it? Mr. Clerk, will you read the amendment of Mr. Artz.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, subsection 2, page 3, line 17 through 20, by deleting the following language-by deleting the last sentence: 'It shall be the duty of the Legislature to provide by taxation or other means and to distribute in an equitable manner to the several school districts of the state funds sufficient to insure full funding of the basic public elementary and secondary school system'." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz. We have now amended the last sentence. Do you intend to delete the part we just put in, too?

DELEGATE ARTZ: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Artz's amendment has the effect of deleting the sentence on line 17 to 20, including the part we just put in.

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. When Mr. McDonough brought up his original motion to delete both sentences, I had mixed emotions because I certainly did not want to eliminate libraries; I did not want to eliminate vo-techs or the university system. But when Mr. McDonough worries--and I worked with him on Revenue and Finance for a long time--about what this last line could do, I get very worried. Now, this thing has been discussed fully, and that's all I have to say. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Well, I just rise to say that it hasn't been discussed nearly as fully here as it was in the committee. And the committee is pretty firm about its feeling about this last sentence. I ask you to vote against the amendment.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Artz's-

Mr. Nutting, are you up?

DELEGATE NUTTING: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay.

DELEGATE NUTTING: Just one moment. I think there's a little misunderstanding on what "full funding of the foundation program" means. Now, the foundation program is based on three principles. First, you have a basic levy that is throughout the state. Next, the amount of money that the Legislature has by other means, other than property, normally, is offered to equalize the program throughout the state. If you want more than that, then there are voted levies. Now, we're talking about 40 mills, but 40 mills is merely the figure set by the Legislature. So to fully fund the program, the Legislature can take the money that they have available from other sources-let's say it's 40 million for the biennium--and if they can't fully fund the program, they don't have to add a dollar from the state level. All they have to do is increase the mill levy on the local level. The basic level-levy can go up from 40 to 50 to 60, whatever it needs to be, and the program is fully funded; there hasn't been one more dollar come in from state funds. But I think we should understand that when we talk about full funding that it doesn't mean that there will be more money available from the state level.

CHAIRMAN GRAYBILL: Mr. Brown.

VICE PRESIDENT BROWN: Mr. Chairman. I rise in support of Mr. Artz's motion. While we're discussing Mr. McDonough's motion, I went through all these other constitutions in our blue and white book. They're all very simple in this particular area. The model constitution is the same way; the North Dakota Constitution-and I do like it-is the same way. And this will allow complete flexibility by reason of any change in the federal laws or the Constitution. And this is legislative, and we've been arguing for 3 hours and showing why it is legislation. So I certainly wholeheartedly endorse this motion.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. May I ask Mr. Nutting a question, please?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE BABCOCK: In this section, it doesn't say to fully fund the foundation program, does it?

DELEGATE NUTTING: No, it doesn't, but that's been the discussion on the floor-is the full funding of the basic education.

DELEGATE BABCOCK: Well, this wouldn't provide the same type of funding then, would it?

DELEGATE NUTTING: The discussion has been that it would be based on the foundation program.

CHAIRMAN GRAYBILL: Very well. The issue is on whether or not to sustain Mr. Artz's amendment, which has the effect of deleting the last sentence of subsection 2 of Section 1.

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President. Would Mr. Champoux yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I feel like Wade Dahood. Yes, I'll yield. (Laughter)

DELEGATE JACOBSEN: Now, we all know that the school foundation program has for many years fallen short of the 80 percent-of the hundred percent of funding promised in our present law. As Mr. Nutting said, this could be increased and we could have fully funded this, but it would come from the same source, taxes. Property owners must always pick up the difference in special levies. Now, have you considered how the Legislature, will raise the cash to fully fund this foundation program?

DELEGATE CHAMPOUX: Oh, boy. Yes, we did; but we threw it to the Mitchell Gang. In other words, when we started out with this, the committee was faced with a very obvious fact, and that is that the state-the Legislature had not adhered to its-the constitutional mandate, nor to its own Legislative Article, which is the foundation program. And if we accept the amendment that's being proposed, we're going back to that situation. Now, what we tried to do was to attempt to make it so that the Legislature would have to-maybe they'll avoid it again, I don't know. Now, as to the method of financing, we want to leave it flexible enough so the gentlemen over in the Mitchell Building would be able to develop a scheme for financing. No, we didn't-there's no way that we developed a specific system to finance it.

DELEGATE JACOBSEN: Thank you, Mr. Champoux.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: You know, we're putting more and more burden on this Legislature every day. Everything we do is legislative. Now, why don't we give the Legislature an answer to the question we're talking about here and-in the funding of our schools? Why don't we consider a 2-percent sales tax, a general sales tax by the Legislature, to fully fund the school foundation system and reduce property taxes accordingly? There's the answer. It takes the burden off of the Legislature.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. May I take a shot at that last question of Mr. Jacobsen's?

CHAIRMAN GRAYBILL: Yes.

DELEGATE DAVIS: It's a thought that we discussed in our committee, whether we're right or wrong, this-if the Legislature establishes a program, whether you call it a foundation program or any other program, that to establish a basic educational course in your primary and secondary level, it's going to take so much money.

They say the local people will put in so much by whatever way they want and the state will put in so much. Our full funding intends, hopefully, that the state says, "We've got this priority. We owe so much to these schools out of this 2 million-200 million dollar budget. Education has got a commitment-we've made a commitment to that." So instead of when they get to the end oftheroad and they spend their 2 million, instead of taking it, deducting it from education and saying, "We're going to build a new building here or there", they're going to say, "We haven't gotthemoney to do that, because we've still got to fund the basic education program-so they've got that in their budget. So when they run short at the end, they can't take it out of education. And this is just basic for primary and elementary education. So, if that helps the explanation-but that's the way we discussed it, and that was our hope-that it would move this up as a priority and say, "Well, we'll give education, when we get through at the end, what's left"-say "We've got to fund whatever our commitment is and if something else doesn't get it, that's their tough luck, because that's a lower priority."

CHAIRMAN GRAYBILL: Mr.--wait a minute-now, wait a minute until you get the floor.

Mr. Jacobsen.

DELEGATE JACOBSEN: Why not, Mr. Davis, a direction to the Legislature to set a—up to-say, a maximum of 2-percent sales tax for the benefit of the schools? And if there is money left over, give the property owners some relief. The property owners are sick and tired of continually paying. They're failing to meet these things. They don't-the bond issues and so on are failing all the time. We've got to pass it. We could do it right here. We have the power to do it and direct the Legislature to put in a sales tax for school systems, period.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: We just defeated that-the people down in my county and the rest of the state-two to one; so you might put that in the Constitution, but you might save the rest of the money for this Convention and go home if you're going to put that in. People have spoken to that question very firmly. But that's not really the point. The point is you shouldn't tie in a constitution any method of financing. We've got to have a basic education program. How they might finance it or fund it this year or 10 years from now, or 50, would be entirely different. But it's got to be flexible, so we can't tie in a method. I mean, that would be my sincere answer on it.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President. Would Mr. Champoux yield to a question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I yield.

DELEGATE HABEDANK: Mr. Champoux. In connection with this section, you have provided for a great deal of leeway on the part of the Legislature toward full funding of education. I am wondering why you omitted, before the last line on page 23, following the words "full funding", the words "of the state's share of the basic public elementary and secondary school system".

DELEGATE CHAMPOUX: Well, I just—we just never thought of it. That never did come up in the committee, if that's what you mean. Is that your point?

DELEGATE HABEDANK: Yes.

DELEGATE CHAMPOUX: No, we didn't discuss that particular phrase, sir.

DELEGATE HABEDANK: May I ask Mr. Champoux another question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I'll yield.

DELEGATE HABEDANK: Is it not a fact, Mr. Champoux, that when you're talking about full funding, you have allowed in this and anticipated that the state might-the Legislature might continue as they have in the past with the present foundation program; but the problem that you're facing is the fact that the state, year after year, does not meet its share of the foundation program and as a result, the thing that Mr. Nutting spoke about, the local taxpayer being stuck for the difference, results in inequities?

DELEGATE CHAMPOUX: Absolutely, sir.

DELEGATE HABEDANK: Would you object, then, from the standpoint of clarifying it in the minds of everyone what "full funding" means,

to an amendment adding "of the state's share" in here?

DELEGATE CHAMPOUX: I wouldn't object, sir, if the other members of the committee wouldn't.

CHAIRMAN GRAYBILL: Mr. Habedank, you're going to he out of order if you try to amend a section that we're deleting.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I'm concerned that-and I guess we've all been there at one time or another-I'm concerned that when we reach a point of discussion that we sort of throw up our hands and say, "Oh, let somebody else think about it later", and we just want to leave it there. I think what we've put in this particular section, this sentence that Mr. Artz has asked to delete, is a hit of direction. It is not the specifying of details of how it's going to he handled, but it's a bit of direction in terms of both the nature of the distribution. And we already have income and interest coming in which has to bedistributed, and there has to he a hit of direction in terms of how that's going to he distributed. The old Constitution stated it would he on a basis of a census, people between the ages of 6 and 21. We felt that was a hit tight in terms of interpretation as we looked ahead for years and years and years, and that it didn't belong. We simply say, "equitable distribution and taxation". Now, we have "the several school districts" in there so that there's no question about where it's going in terms of the elementary and secondary system, and it's not a great long legislative piece of statement, really. What concerns me is that if we don't get some direction, we do slip backward. And we, as a committee, spent many hours wondering: how do you nudge ourselves and our communities forward a hit in terms of their goals in education? And this seemed to heoneway to take advantage of what's going on in other parts of the country and to be aware of what we might do without forcing anybody to do anything. It seems to me that it's so much easier to kill a good idea than it is to nurture it. And I'm afraid that just out of inertia and fatigue, we'll kill a good idea which is to look ahead, rather than to assume that we're cementing what has been a past pattern. We're trying to give a direction hut leave it open for further growth. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to rise again just to speak in opposition of the motion to delete and to say that I would he very much in accord with the suggestion of Mr. Hahedank that we could amend the article as he suggested in the event the deletion fails.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I wish to resist this motion to delete this particular section. I can see the concern that the delegates have, but if we would leave it in there, I think it can be amended to not only express an idea of direction hut to express in positive terms the direction. And at the expense of killing what I have in mind, or having you kill it, I would like to explain to you what I thought-conceived to he a very good idea to fund the state's share way hack in 1952 when the constitutional amendment—

CHAIRMAN GRAYBILL: Now, Mr. Habedank-the Chair is willing that you explain your idea. You have explained your idea. The Chair is not willing to debate it. We're going to debate the deletion. You've explained that if it is not deleted, you would amend by adding those words. Now, otherwise, I want you to stick to the subject if you can, please.

DELEGATE HABEDANK: I felt the—

CHAIRMAN GRAYBILL: I can't see how some other plan that was adopted or talked about several years ago has any relevance to the deletion. If you can show me how it will, fine, hut I do think that the Chair has some duty. Now, I've let everybody go on. We've talked education all afternoon. We must move on this. I think if we don't know enough about it, then we've got to think it through overnight; but I must insist now that you stay with the subject. If you can show me what you have is relevant, I'll he happy to let you talk.

DELEGATE HABEDANK: I couldn't show you what I have is relevant without making a statement.

CHAIRMAN GRAYBILL: You may make a statement, Mr. Hahedank, but you started to describe another system of education.

DELEGATE HABEDANK: No,

CHAIRMAN GRAYBILL: Well, that's what you said. But go ahead. Explain it to me, Mr. Hahedank.

DELEGATE HABEDANK: Under this particular clause, if it's left in and if it's amended to refer to the state's share, if the body will look at what they have done in the Revenue and Finance measure, what will automatically be done is what has been stated here previously by Mr. Davis; that

by removing the 2-mill tax limitation, any shortage would then be funded.

CHAIRMAN GRAYBILL: Mr. McDonough, you may close.

DELEGATE McDONOUGH: I didn't make the motion, but if it's all right with Mr. Artz, I may close.

CHAIRMAN GRAYBILL: Mr. Artz says you may close. He doesn't want to close after you close.

DELEGATE McDONOUGH: I think, really, why the motion of Mr. Artz should be adopted is the discussion that's been had for the last hour, hour and a half. When you get into amending this section and this sentence, you think of a lot of things that should be in there or taken out. And you'll think of some tomorrow, and you'll think of some next year. And that's why it should not be put in this Constitution. It should be left-the first sentence of this section and the second sentence, if you so desire, as to the libraries. But what you're trying to do is develop a plan-or develop wording that means something now, and you'll think about it a half-hour later and you think of something else you want in. Really, all you want in this section is for the state to provide for an adequate, good, high-quality-if the word high is still in there, I guess it isn't-public school system. That's all you want, and that's all that should be in the Constitution. Thank you, Mr. President.

CHAIRMAN GRAYBILL: For what purpose do you rise, Mr. Harrington?

DELEGATE HARRINGTON: To answer Mr. McDonough's statement on—

CHAIRMAN GRAYBILL: I'm sorry, we've closed. Now, if you want a roll call, fine. We'll take a roll call vote. All in favor of Mr. Artz's motion to delete the last sentence of sub. 2, say Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim		Aye
Anderson,	J.	Aye
Anderson,	0..	Aye
Arbanas		Nay
Arness		Aye
Aronow		Aye
Artz		Aye
Ask		Absent
Babcock		Aye
Barnard		Nay
Bates..		Aye
Belcher		Aye
Berg..		Aye
Berthelson		Aye
Blaylock		Nay
Blend		Nay
Bowman		Aye
Brazier		Aye
Brown..		Aye
Bugbee		Aye
Burkhardt		Nay
Cain		Absent
Campbell		Nay
Cate		Absent
Champoux		Nay
Choate		Aye
Conover		Nay
Cross..		Absent
Dahood		Absent
Davis		Nay
Delaney		Aye
Driscoll		Nay
Drum		Aye
Eck		Nay
Erdmann		Aye
Eskildsen		Aye
Etchart		Aye
Felt		Nay
Foster		Aye
Furlong		Absent
Garlington		Nay
Graybill		Aye
Gysler		Aye
Habedank		Nay
Hanson, R.S.		Nay
Hanson, R.		Nay
Harbaugh		Nay
Harlow		Nay
Harper		Nay
Harrington		Nay
Heliker		Nay
Holland		Absent
Jacobsen		Absent
James		Nay
Johnson		Aye
Joyce..		Aye
Kamhoot		Aye
Kelleher		Nay
Leuthold		Aye
Loendorf		Aye

Lorello	Nay
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Absent
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Nay
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Absent
Reichert	Nay
Robinson	Nay
Roeder	Absent
Rollins.	Nay
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Nay
Siderius.	Nay
Simon	Aye
Skari	Aye
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 50 have voted Aye, 38 have voted No.

CHAIRMAN GRAYBILL: 50 having voted Aye, 38 No, the last sentence of Section 1, subsection 2, is deleted.

Mr. Arness, you have an amendment up here that pertains to part of the section still remaining. Do you wish it read?

DELEGATE ARNESS: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Will the clerk please read it.

CLERK SMITH: "Mr. Chairman. I move to amend Section 1, subsection 2, page 3, line 14 of the majority Education Proposal by deleting the words 'elementary and secondary'. Signed: Arness."

CHAIRMAN GRAYBILL: Mr. Arness proposes an amendment that takes out the words "elementary and secondary", so it says, "quality, free public schools".

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. The purpose of this motion is simply to make the language in the section conform to the stated purpose of the committee in preparing this section. As I understand it, it's their position that education is in a state of flux and that the system as we presently know it-with a grade school, high school, college level-may be changing and probably is changing. For that reason, we shouldn't freeze these forms of school that we have into the Constitution at the present time. There's reference later on to a third level, a higher school, which obviously refers to the University System. I've discussed this with the Chairman of the committee, and it's my understanding that he agrees that this language should be removed so that the system can be as flexible as possible. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion? Very well. The issue is on Mr. Arness' motion to strike the words "elementary and secondary" on line 14 of Section 1, sub. 2.

Mr. Woodmansey, do you want to discuss it?

DELEGATE WOODMANSEY: Mr. Chairman. I don't have these amendments before me; and this bothers me, because now we're making a decision to strike a section that we, in the committee, worked on for a period of time. I just am concerned that maybe we here, by doing this, may throw the doors open wider to some sort of thing that we don't want to do, or may not want to do at a later point. I would refrain from removing the terms "public elementary and secondary schools".

CHAIRMAN GRAYBILL: All right, now, Mr. Woodmansey, the motion is in writing at the Chair. And generally, when you people know them ahead of time-and that's why I urge you to get them in ahead of time. If they are important amendments, we have you-have them printed and spread. That, of course, becomes difficult on Saturday when we have no printer. I do then read them. If you don't understand them, I'm perfectly happy to go slow enough so that you can write

them down. This is not a very difficult one. And if you'll take your book, Mr. Woodmansey, on page 3—

DELEGATE WOODMANSEY: I can see it, but here in a minute I'm to make a decision regarding this. And I resist it, and I will vote against it.

CHAIRMAN GRAYBILL: Very well—

DELEGATE WOODMANSEY: I don't foresee the impact. And it looks to me, under—maybe under the foundation program, we're going to finance the colleges of Montana. And I don't believe this is what the people of Montana want. I think that they don't mind financing the public schools through the state's foundation program, but I think there might be real resistance if this can happen by so removing these words here. Thank you.

CHAIRMAN GRAYBILL: Now, Mr. Woodmansey, you may argue the point. You did misstate it, and I want to clear up your mind on the matter. On line 14, the amendment takes out the words "elementary and secondary" and it leaves in the word "public", so that it says "The Legislature shall provide a basic system of quality, free public schools". Now, that's what it says now. We've added the word "basic"; we've taken out the word "high". And now, we're talking about the words "elementary and secondary". I don't mind it being debated, but if you don't understand the amendments, please ask and we'll make it clear. We can't print them all. You have to" many, unfortunately.

Mr. Champoux.

DELEGATE CHAMPOUX: Sir, if I may, just to clear up a little point here. When Mr. Arness approached me and Mr. Aasheim, we were discussing it. If you look at the old article, it talks about the free common public schools. Now, in the "Id days, that meant up to the eighth grade. The question then became, why did we put in "elementary and secondary"? Well, this is what we're familiar with now. Of course, Mr. Arness' contention is, as I read it, what are we going to be calling them in the future? However, I felt that-or at least I thought that Mr. Arness was going to propose something else in terms of defining this, because I think Mr. Woodmansey's worry is a cogent one. What is the-what are the-what are we talking about when we talk about the free public schools? Mr. Arness might know. I don't know.

CHAIRMAN GRAYBILL: Mrs. Cain

DELEGATE CAIN: Might I ask Mr. Arness a question?

CHAIRMAN GRAYBILL: Mr. Arness, will you yield?

DELEGATE ARNESS: I yield.

DELEGATE CAIN: By this, do you mean to imply that all schools--elementary, secondary, kindergartens, junior colleges, vo-tech, universities, colleges--all free? The word "free" is also a modifier.

DELEGATE ARNESS: I'm not sure I understand your question. Is that—

CHAIRMAN GRAYBILL: Well, her question, Mr. Arness, is that if you take those words out, you're making kindergarten and university free. Is that what you mean?

DELEGATE ARNESS: No, I'm not trying to do that.

CHAIRMAN GRAYBILL: Well, then you better think about your amendment.

DELEGATE ARNESS: Well, I think that the amendment does speak for itself. The-if we—

CHAIRMAN GRAYBILL: Very well. Let's put it and see what happens.

DELEGATE ARNESS: Thank you.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Arness' amendment to take the word "elementary and secondary" out of that first sentence so that it reads: "The Legislature shall provide for a basic system of quality, free public schools", please say Aye-a roll call is called for; all right-vote Aye on the voting machines; and those that say No, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim.....		Nay
Anderson,	J.	Nay
Anderson,	0..	Aye

Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Absent
Babcock. ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Absent
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Absent
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Absent
Drum. ..... Nay
Eck ..... Absent
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Absent
Felt ..... Absent
Foster ..... Nay
Furlong ..... Absent
Garlingt on ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Absent
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf.. ..... Nay
Lorello ..... Nay
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Absent
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CHAIRMAN GRAYBILL: Mrs. Robinson, for what purpose do you rise?

DELEGATE ROBINSON: Mr. President. I'm sorry, I punched the wrong button.

CHAIRMAN GRAYBILL: Mrs. Robinson, that won't help us much unless you tell us which way you voted. She wishes to vote No, is that right? Very well. Mrs. Robinson wishes to be recorded as No. The vote is taken.

What about you, Mr. James?

DELEGATE JAMES: Mr. Chairman, I wish to vote No, too

CHAIRMAN GRAYBILL: Very well, Mr. James wishes to vote No. The vote is taken, but we'll-the journal will so-the transcript will so show. Will you please announce the vote.

CLERK SMITH: Mr. Chairman, 7 delegates have voted Aye, 75 delegates have voted No.

CHAIRMAN GRAYBILL: Actually the vote is 73 to 9, Mr. Clerk. And they may show on the roll but they may not change their votes. Very well; 73 having voted No and 9 having voted Aye, the motion is defeated. Now, the Chair would like to observe for the body here that you must be careful if you're going to play around with what the committee has done. I'm not saying that a lot of people haven't had excellent amendments this afternoon. The problem, Mr. Arness, was that you were about to make the universities free, and I don't think the rest of us were willing. And I think you must be careful. And you're wasting a lot of time when you write these amendments at your desks and don't know what you're talking about. So please be careful. Now, let's go on. Are there other amendments about Section Z-subsection 2? Very well. Members of this—

Mr. Hanson.

DELEGATE ROBERT HANSON: May I ask Mr. Harbaugh a question, please?

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE ROBERT HANSON: I've been waiting until after all these amendments were over, but I've been listening and they've been talking about many studies. Did you and your committee come up with any figure as to how much-how many mills might be needed statewide to fund the program?

DELEGATE HARBAUGH: Mr. Chairman. We didn't think that was within our province to go into those kind of details. We did not.

DELEGATE ROBERT HANSON: Well, on the 15th of April, I know we're all going to be interested in some of these things.

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you on the recommendation of Mr. Harbaugh that when this committee does arise and report, after having had under consideration Section 1, sub. 2, as amended, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Would the clerk read Section 2.

CLERK SMITH: "Section 2. Public school fund. The public school fund of the state shall consist of the proceeds of such lands as heretofore have been granted, or may hereafter be granted to the state by the general government, known as school lands; and those granted in lieu of such lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; and all other grants, gifts, devises or bequests made to the state for general educational purposes." Section 2, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: Mr. Chairman. I move when this committee does arise and report, after having under consideration Section 2 of the Education and Public Lands Proposal, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I'd just like to make a few comments regarding this section. This section is just the same as the present Section 2 of our present Constitution. Just a few comments taken from our report on page 14: "In securing assured sources of support for the educational system, the committee agreed that the constitutional protection should be supplied to the public school fund. Section 2 in the existing Constitution has provided this protection by itemizing the components of the fund and unequivocally specifying that these contributing funds should be used for education. The name public school fund which appears in this section is adopted as the name to be used consistently hereafter in the Constitution." Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion of Section 2? If not, members of the body, you have before you on the recommendation of Mr.

Woodmansey, when this body does arise and report after having had under consideration Section 2, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 3, Mr. Clerk.

CLERK SMITH: "Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under the restrictions to be provided by law." Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Members of the body, Mr. Barnard will take Section 3, and he does have an amendment. Mr. Barnard, do you want to explain your amendment, or do you want the Chair to read it first?

DELEGATE BARNARD: The Chair can read the amendment.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read Mr. Barnard's amendment.

CLERK SMITH: "Mr. Chairman. I move that Section 3 be amended by striking the word 'of on line 8, and inserting in lieu thereof the word 'or' and by inserting a period after the word 'diversion' in line 8 and by striking the rest of the sentence. Signed: Barnard."

DELEGATE BARNARD: Mr. President. In reviewing the—

CHAIRMAN GRAYBILL: Just a minute, Mr. Barnard. Let's get this straight.

DELEGATE BARNARD: Yeah, okay.

CHAIRMAN GRAYBILL: Mr. Barnard's amendment has the effect of putting a period after the word "diversion" and striking the rest of the sentence. I don't see the "of'. It looks like "or" in my book. All right, on page 4, it's already "or" and on page 13, if it's "of ', change it to "or". Very well. Mr. Barnard.

DELEGATE BARNARD: Mr. President. I move we disregard the question of "of' or "or" and leave that to Style and Drafting. I noticed that myself. It was different in two different places. I also move to insert a period after the word "diversion" and delete the rest of the sentence.

CHAIRMAN GRAYBILL: Very well.

DELEGATE BARNARD: The reason for this is just to make it comply with the provisions and limitations we put in the Revenue and Finance Report.

CHAIRMAN GRAYBILL: Very well. All -Mr. Barnard has explained that this is to make it comply with what we've done in the Revenue and Finance section. All in favor of allowing the committee to make that amendment in the printed book here, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. Mr. Barnard, it's done. Go ahead.

DELEGATE BARNARD: Mr. President. I move that when this committee does arise to report, after having had under consideration Section 3 of the report of the Education and Public Lands Committee, that the same be passed as amended.

CHAIRMAN GRAYBILL: Very well. Is there discussion? Members of the body, you have before you for your consideration Section 3, as amended, upon the recommendation of Mr. Barnard that when this committee does arise and report after this consideration, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 4.

CLERK SMITH: "Section 4. Board of Land Commissioners. The Governor, Superintendent of Public Instruction, Secretary of State and Attorney General shall constitute the State Board of Land Commissioners, which shall have the direction, control, leasing, exchange and sale of the school lands of the state and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law." Section 4, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section XI-Article XI, Section 4, of the Education and Public Lands Proposal, that it recommend the same and be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: This section remains practically the same as in the old Constitution, with the exception of one word. We had at first taken out--away from on-the board commissioners, but then with long deliberation we contained the same as in it. This section remains almost unchanged from the original Constitution. The board, composedoffourelectiveofficials-the Governor, Superintendent of Public Instruction, Attorney General and Secretary of State--serves an important function in supervising the manage. ment of the state's school lands and the income derived from these lands. The board, while operating under this constitutional provision, has well worked in the past and would appear to be able to do the same for the foreseeable future. The only change deemed desirable at this time is the addition of the word "exchange". We felt that to make this more workable and more flexible, that we inserted this word. The Enabling Act of 1889, which gave Montana certain sections of land for school support, was amended in 1932 to state: "Any of said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area", and so forth. Our Constitution has not been amended since this time. Since we are unable to provide for such exchanges as listed in the Enabling Act, we are now proposing that the Constitution contain a provision consistent with the Enabling Act to provide for exchanges of land, consolidate diverse holdings for better management. We hope to give the state the opportunity to exchange isolated tracts ofland for equal holdings adjacent to or in the near proximity of other state lands so that the management of all state lands may be done with a limited effort and achieving the maximum benefit to the school fund. This is borne out when one can observe one tract of state land completely surrounded by private land. The problems of leasing, maintenance and access in these areas would be solved by allowing for this isolated state land to be exchanged. Requests from officials for this provision-these came from the men who run into this type of problem often in trying to achieve the maximum amount of the benefit to the people of Montana. Mr. Ted Schwinden, Commissioner of State Lands; Mr. Gareth Moon, State Forester; the Constitution Revision Commission recommended the deletion of the Public Lands Article. Due to statutory nature, House Joint Resolution Number 32 asked the Convention for multiple-use classification and the need for sound land-management principles which encompass the inclusion of the word "exchange" to reach this goal. In summary, the committee feels that this provision, written in general terms yet providing for adequate safe. guards, would allow for greater legislative flexibility in future dealings with the state lands to best meet the changing needs and interests of the people. This provision will enhance the benefits obtained from state lands, whether it be for the school fund or from state lands or other prospective purposes that these lands were granted for. In conclusion, let me reinstate the need for this provision to bring Constitution up-to-date and, consistent with the present amended Enabling Act of 1889, to consolidate diverse holdings for better management, requests from officials who operate under the existing cumbersome provision. For these reasons and other testimonies given to our committee, I support you for this change. And this is the reason why that we would put this word in here. As you know, we have some state lands, especially in the northeastern part of our state, which takes from 2 to 3 days to maintain-to go down there and revalue--reappraise this land. And they were-from all of our testimonies, it took probably 2 years in rental money before they got enough to pay for the-for sending this man down here to maintain this. The only change deemed— is "exchanged" to the list of activities within the board's power. This is what-the reason why we did this. The need for this has become evident in cases where the state has been prevented from making advantageous exchanges of land by the omission of this power from the present constitutional provision. The committee also considered revising the membership of the board, and particularly reducing the number of members to three by omission of the Secretary of State, but decided that the four constitutionally named elective officers were as important so as to direct control and that an even-numbered board requiring a majority of three for a decision would emphasize the principle of caution over that of expediency. Mr. Chairman, I hope you will support our majority vote.

CHAIRMAN GRAYBILL: Very well. Section 4-there's an amendment proposed by Mrs. Warden. Do you want it read from the Chair, Mrs. Warden?

DELEGATE WARDEN: Yes, please.

CHAIRMAN GRAYBILL: Very well. Will the clerk read Mrs. Warden's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 4, line 11, on page 4, of the Education and Public Lands Proposal by deleting the words 'Secretary of State'-end of quote. Signed: Warden."

CHAIRMAN GRAYBILL: Mrs. Warden wants to make an amendment leaving out the Secretary of State off the Land Board in line 11, Section 4.

Mrs. Warden.

DELEGATE WARDEN: Mr. President and fellow delegates. I hate to disagree with Mr. Conover and the Education Board, but I've worked on a great number of boards in the years that I've done public service, and I have yet to find that an uneven number wasn't more practical than an even number. And as a member of the Executive Committee, I felt that we should have a short ballot, and this may come to pass at another time. I think the Secretary of State as a record-keeper has statutory duties and that in order to provide for some future time, if there is a shorter ballot at some time, that perhaps it would be good to eliminate it. And I would strongly support a three-man board.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President and fellow delegates. I'm afraid I have to take the responsibility for the Education Committee leaving the statute exactly as it was before. My argument before the committee at that time was, why delete it? Three is better-in this particular case, the only authority they have is exchange, sale, or lease public lands; and we said, in this case, we don't want them selling any anyway, so if they get hung up or deadlocked, that means they can't sell; so we decided to leave it in. But if you want it out, it really doesn't make any difference. As far as we were concerned, though, in this particular case, if they get deadlocked on selling something, well, let them stay deadlocked; that means they can't go ahead and sell it. We want to keep the lands in the state. We don't want to restrict them from selling it, but we want it to be done with the greatest deal of caution. So if they get deadlocked, we would be perfectly happy. We're not trying to make it an easy function in this particular area.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. Delegate Davis says it doesn't make any difference anyway. I think when the Executive Committee talked to the Commissioner of Land and to the members of the-and looked into the matter of the Land Board, there were many of us, at least, that had the doubt whether it made any difference we had a board or not at all. And I think that we ought to consider this very seriously. I must say, and I can only speak for myself, that we spent several hours talking to the people involved, and we were very impressed with the fact that the real work is done by the Commissioner of Lands. This board met regularly once a month for about a half hour-that's what we were told by everybody-pretty much rubber-stamped what the Commissioner had already decided. The regulations were there about, you know, that the lands were inviolate, so there weren't many decisions. And that-this seems like a protection, but I wonder if it really is. And I can't help wondering if we ought not to talk about deleting. I'd be--rather hear some debate before I make that motion, but it seems to me that if we left it to the Legislature to design that type of board that would give us the protection that we need and not tie up our four chief state officers in a half hour meeting once a month that-to rubber-stamp the work anyway, we might be much wiser. I think we should seriously consider that.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I would certainly support the majority report in retaining the Land Board, but I wish to disagree with my colleague, Carl Davis. He and I discussed it somewhat briefly, and I can appreciate that we should pay some respect, I suppose, for tradition and the past. But it just does not seem to me to be good business or good draftsmanship to have a situation where you can have a tie vote. I would never draw a corporate document in that fashion. I would never put together a business enterprise or a business organization where you're going to have a tie vote and force the courts, of course, to break the tie. In this situation, I suppose if you had a tie, you would have no action at all. I support Delegate Margaret Warden. I think it's a very sensible amendment. I think it's one we should adopt.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I would like to make a couple of comments. I favor the

recommendation of the committee. First of all, we have to remember that the State Land Commissioner is appointed by the Governor. We have the Governor on the board, and I feel that when we reduce this to a three-man board, we create a little bit more of the risk of having some of this land sold or done away with in some manner where the public schools of the state might be cheated. I don't believe in selling this land, and I don't believe anyone else does unless it's not economically feasible to keep them. But this land is a very valuable thing, and there are many people in this state who would like to get their hands on this land. And I don't think we should forget that. And just because we have four members on the board, I don't feel it's necessarily bad. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I support the position of the majority report. I think that we should have perhaps five on it if we have to have an uneven number, rather than four. They are elective officers. They possibly will be members of opposing political parties. They will all be watching each other, and I'm in favor of having them watch one another. This land is very valuable, as Delegate Woodmansey pointed out. I pointed out here on this floor a few days ago money that is coming to the state from one section of land down in Johnson-Pemberton land, of $9 million in the next 8 or 9 years. And this isn't any chickenfeed.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I have here a recommendation of the Montana School Boards Association, and they recommend that Section 4 be included without an amendment, and that includes that the Governor, Superintendent of Public Instruction, Secretary of State, and Attorney General shall constitute the ex officio members of the State Land Board. They urge the adoption of this.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. Would I be out of order if I gave a few comments of the valuation of our land and investments?

CHAIRMAN GRAYBILL: Well, can you tell me how it applies to whether or not we keep the Secretary of State on the board?

DELEGATE CONOVER: Well, I'll be just-the reason why, they would probably make up their mind if they figured they need three or whether they need four or five.

CHAIRMAN GRAYBILL: Well, go ahead and do so briefly then, Mr. Conover.

DELEGATE CONOVER: Fellow delegates. As you know, our public lands constitute five-point million acres, or pretty near 6 percent of the total land area of the State of Montana. The present value of this land is appraised at $114 million-plus. The interest in income alone from these state lands amounted to $10,531,000 for the fiscal year of 1970. It also should be noted that 90 percent of the receipts belong to the public school fund. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I support the amendment of Delegate Warden. I feel that the removal of the Secretary of State is admirable. If we really want to have a large board for controlling this particular situation, we might turn it back to the Legislature. But I think that the board-as indicated, the three members would be desirable to four. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The question is on Mrs. Warden's motion to delete the Secretary of State from the State Land Board.

Mrs. Babcock.

DELEGATE BABCOCK: I'd just like to point out that occasionally a Governor might be out of state, and if you eliminate the Secretary of State, you'd still have only two people acting on the Land Board..

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. Our committee also was involved in considerable study on this-on the publiclands situation. And I certainly wouldn't-will not support any amendment to decrease the number on that board.

CHAIRMAN GRAYBILL: Mrs. Warden, do you want to close?

DELEGATE WARDEN: I just want to—

CHAIRMAN GRAYBILL: Oh, Mr. Woodmansey, do you want to speak?

DELEGATE WOODMANSEY: I would just like to make one further comment. I'm sure many of you are aware-a short time ago, when you had a two-to-two tie on the board. It regarded

some state land in the Lincoln area. And I think it was fortunate that we had a four-member board at that time. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden, do you want to close?

DELEGATE WARDEN: I'll just close. I think all the arguments have been said.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Warden's motion, which would eliminate the Secretary of State-the word "Secretary of State" from line 11 on Section 4. A roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Pleasetake the vote.

Aasheim ..... Nay
Anderson, J..... Nay
Anderson, 0..... .Absent
Arbanas ....Aye
Arness .....Absent
Aronow ..... Nay
Artz ..... Nay
Ask, ...Absent
Babcock ..... Nay
Barnard ..... Nay
Bates.. ....Aye
Belcher ..... .Absent
Berg.. ....Aye
Berthelson ..... Nay
Blaylock .....Aye
Blend ..... Aye
Bowman., ... Nay
Brazier ..... Nay
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell .....Aye
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... .Absent
Dahood .....Aye
Davis..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum .....Aye
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt.....Absent
Foster ....Aye
Furlong. ..... .Absent
Garlington.....Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... .Absent
Hanson, R.S..... Nay
Hanson,R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf.....Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin. ..... .Absent
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin. ..... Nay
Monroe.. ....Aye
Murray.. ....Absent
Noble ..... Nay
Nutting ..... Nay
Payne ....Aye
Pemberton ..... Nay
Rebal.....Absent
Reichert ....Aye
Robinson ....Aye
Roeder.....Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin .....Aye
Schiltz ..... .Absent
Siderius ..... Nay
Simon ....Aye
Skari ..... Nay
Sparks.....Absent
Spew.. ....Aye

Studer	Nay
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Absent
Warden	Aye
Wilson	Nay
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 2'5 delegates have voted Aye; 59 have voted No.

CHAIRMAN GRAYBILL: Very well; 59 having voted No and 25 Aye, the motion is defeated.

Mr. Cate, you have an amendment before the Chair. Would you like it read?

DELEGATE CATE: Please.

CHAIRMAN GRAYBILL: It's **very** short. I'll read it, Mr. Clerk. Mr. Cate moves to take the words "and sale" out of Section 4, on line 14. The effect would be to take away from the Land Board the power of selling land, but they may still control, lease, and exchange land.

Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. When the federal government gave the State of Montana the federal-the state school lands, it was one of the greatest things that ever happened to our state. And the intention of the federal government in giving us those school lands was to allow the state to sell those lands to homesteaders and others for the purpose of financing the public school system within the state, the free public school system. Fortunately for the people of Montana, those lands were not sold in the manner that was intended by the federal government when they were granted to the State of Montana, and they have now become the greatest single asset that we have in the State of Montana. Now, presently, any citizen of the State of Montana can petition the Land Board for the sale of state lands. Then public notice of the sale is published in the newspaper; the land is appraised by the State Land Board; and ifthatindividualmeets the-he's required to meet the appraised bid-and the land can be bought by private individuals. What concerns me here is this: that I know of several situations where out-of-state corporations have purchased our state lands. And the manner in which they do it is this: they have someone who lives in Montana petition for the sale of state land and go in and pay the bid price, and then, after he has purchased the land, that individual transfers the land to this out-of-state corporation. Now, it concerns me that some wealthy individual or some out-of-state corporation could at some time in the future move into the State of Montana and accomplish the purchase of a substantial portion of our valuable state lands, which would then be gone from the school fund forever. And I think this amendment would take away from the State Board of Land Commissioners the right to sell the land, but I see no great restriction being caused by the removal of that. They still have the right to exchange land. So if a particular section of land was needed for some other purpose and someone wanted to obtain it from the state, they could arrange for an exchange with the state, but the trust fund itself would remain intact for all time to come. And I recognize that at the present time the average sale of state lands is only about 400 acres a year. That's been the average over the last 5 years; about 400 acres a year have been sold. But as the demand comes for more and more recreational lands in Montana, as we become more populated, the demand for these state lands and the petitions of citizens to purchase them are going to become greater. And I think that we ought to afford this protection to this trust fund, which has turned out to be the greatest asset that our schools have. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. Will Mr. Cate yield to a question?

CHAIRMAN GRAYBILL: Mr. Cate, will you yield?

DELEGATE CATE: I certainly would.

DELEGATE BLAYLOCK: Jerry, did you talk to Ted Schwinden about this?

DELEGATE CATE: No, I did not.

DELEGATE BLAYLOCK: Thank you, Jerry. I'd like to speak to it briefly. I'm as concerned as Mr. Cate and I appreciate his feeling on this about-that we want to preserve our state lands. But I have gone down and talked to Mr. Schwinden at times, and I think--I consider him one of the outstanding Land Commissioners we've ever had in the State of Montana. And there are times that arise when it is advantageous to the State of Montana and to our management of the trust lands to sell some of them. The last thing we want is to have them all sold off, but sometimes it

is profitable to the State of Montana to sell them. So I think this would be too restrictive, if we were to strike those words. I would oppose the amendment to strike.

CHAIRMAN GRAYBILL: Mr. Johnson, you were next.

DELEGATE JOHNSON: Mr. Chairman. Would Mr. Cate yield to a question?

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: I'd be glad to, Torrey.

DELEGATE JOHNSON: Jerry, I only have one small piece of school land on our ranch. If it were sold, it would bring, oh, probably $50 an acre. Now, if that money was put into this trust that's inviolate, you'd never touch it-couldn't it be invested so it would bring more than a dollar an acre, the approximate lease that most of the school lands bring at this time? Wouldn't it bring 5 percent or better?

DELEGATE CATE: Well, I don't know what you're paying for your school land right now, but if that's the case, perhaps the lands aren't being properly managed. My concern would be to protect-Money, Torrey, is, in an inflationary society, is not a very stable thing. But in any society, land has traditionally been the standard of value. A piece of land today, even though it might be leased out for less than it's worth, is a stable commodity. And $50—if it could be sold for $50 an acre today, 10 years from now $50 an acre might be worth 50 cents. But the land is going to have its inherent value for as long as there's a demand for land, and there's going to be a demand for land as long as there's people. So I don't think I'd-at the present time, I would agree with you that that would be the effect. The money invested would bring more money back, but on the other hand, if we have inflation, that money isn't going to mean anything compared to what the land would mean in that event. I think the land is better security.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Okay, thank you. Mr. Chairman. I wasn't trying to get somebody to sell me-or to have the state sell this particular piece of land, because, under the circumstances, and the way it has been, it's much cheaper for the person that's using the land to lease it than it is to buy it and pay taxes on it. This is the way it has been. But-and I wasn't trying to take any money away from the state. I was trying to point out that in a lot of cases, they would probably make more money if they had this money invested, maybe drawing a better rate of interest and so on. But as Mr. Cate pointed out, and thanks to him, I see what he means by holding onto it for another 10 or 15 years and it could easily be worth quite a little bit more. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari has been up.

DELEGATE SKARI: Mr. President and fellow delegates. I appreciate Mr. Cate's intentions there, but I think perhaps it's just a little bit too restrictive. I think we have insured that this land cannot be disposed of without very good reason by requiring a three-fourths vote on that. At times it may be profitable to sell, as Mr. Johnson pointed out. Some of these lands are small parcels and they're isolated and, at times, they bring very high prices. I know in my area they do; they're very seldom sold now. Also, landlords sometimes don't return the rental they should on these lands, for one reason or another. And sometimes, for this reason, it is better that the state dispose of them. There might be a few risks here, but I think that we should allow the State Land Board a little discretion there.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman. Would Mr. Cate yield to two points ofinformation, please?

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: I certainly would try to, Mrs. Blend.

DELEGATE BLEND: Jerry, the money obtained from sales does go into the foundation plan, right?

DELEGATE CATE: Yes, as I understand, it does.

DELEGATE BLEND: And a share of the mineral rights are retained, right?

DELEGATE CATE: I'm not sure about that. I think they have the discretion to retain them. All of them are, yeah.

DELEGATE BLEND: Thank you.

CHAIRMAN GRAYBILL: I'd like those in the chamber to be quiet, who are not talking, and I'd appreciate it if the group at the back would either go outside or sit down. I can't see who's up. Thank you.

Mr. Drum.

DELEGATE DRUM: Thank you, Mr. Chairman. I would like to oppose Mr. Cate's amendment for this reason: it is impractical for a State Land Commissioner to operate at full efficiency unless he has the ability, at certain times, to sell certain portions of the state-owned land. He would have to be able to do it in order to accumulate blocks of land. Exchanges, at some times, will be impractical. And I commend the committee for allowing the State Land Commissioner to operate more effectively. At the present time, Mr. Cate, it so happens that over a period of 15 years, I have leased a piece of state land along the Yellowstone River. It's about three-quarters of a mile of Yellowstone River land; it's a very nice piece of land. It costs me $5.14 a year to lease it, I think. And it's—my conscience bothers me every time I pay that bill. While I've been here in this delegation at the Constitutional Convention, I was contacted by the State Land Commission--would it be all right with me if they could sell that to the city of Billings for a park facility? And I said I'd be tickled to death to have the state to do that. As you know, the city of Billings is accumulating land in that area, and it, in the future, will become a very, very nice park area. Now, if your amendment is passed, it will take away the ability of the state to accumulate land, probably sell it to cities or to counties or to park systems or that type of thing. I would suggest that we leave the latitude that is recommended by this section in the hands of the Commission and depend upon the Legislature, which in the future--which presently limits the State Land Commission. They are very restrictivein the statutes as to how this can be handled, and I feel that we should give them this latitude and support the committee report. Thank you.

CHAIRMAN GRAYBILL: Very well. Mr. Cate, would you like to close?

Mr. Davis, do you really want to talk?

DELEGATE DAVIS: Yes, I think I should, as Chairman of the Subcommittee on State Lands in this Convention and for the Education and Public Lands, much as I hate to. We considered Jerry's position very seriously because we're opposed to sales. We talked about making that prohibition. I woke up in the middle of the night and remembered I'd worked 20 years on the Clark Canyon Dam in Beaverhead County. They formed an irrigation district, and they had many acres of state land. If the state hadn't been able to sell that, we couldn't have had the project, a great project for the State of Montana to preserve its water. So it is too restrictive if we limit it that way. And we all feel the same as Jerry does on it. But they've been a great guardian of this trust. I mean, their record is such that I think that you can feel confident they will not sell any lands unwisely. Therefore, I would oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I'd like to speak in opposition to Mr. Cate's amendment. I would like to also correct some statements that's been made here. We have a couple small parcels of school land on our operation, and we certainly pay more per acre for those lands than the taxes would be on them. And I would also say that I wonder how Mr. Drum got by as well as he did. But I think this is one of the reasons why we have a Land Board. And they try to correct these situations, and they do have to have the flexibility to be able to trade lands or sell lands in such a manner that it would be beneficial to the educational system in Montana. And I think that if we put this restriction on them, we would certainly be putting a restriction on the future of the educational program in the State of Montana. Thank you.

CHAIRMAN GRAYBILL: Now, Mr. Cate, would you like to close?

DELEGATE CATE: Mr. Chairman. Would Mr. Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: Mr. Cate.

DELEGATE CATE: Would your committee have any objection to adding, after the word "and sale"-adding the words "in its discretion", which would give the Land Board the right to refuse to sell?

DELEGATE DAVIS: In answer to that—

DELEGATE CATE: So that there's a specific provision to that effect.

DELEGATE DAVIS: Mr. Cate, we have a lot of statutory law and policy on this.

DELEGATE CATE: Right. I—

DELEGATE DAVIS: And it is in their discretion now, and they exercise their discretion wisely, I think.

DELEGATE CATE: That's a judicable issue which is, in fact, presently pending down here in the local district court, whether or not they have discretion. And there's a serious question whether or not they have discretion. And if we put those words in there, then we'd be sure that they had the right to refuse to sell.

DELEGATE DAVIS: Well, I couldn't speak for the members of the committee, but I personally would object to making any change in the report as it now stands.

DELEGATE CATE: Mr. Chairman, fellow delegates. I would have to disagree with Mr. Drum that the city of Billings would be prevented from selling this land to him or providing this land for a park, because all the city of Billings would have to do is to go out and buy some land to exchange with the Land Board for that land. The same situation applies in all these other cases. And for the rural people who are concerned about leasing school lands, well, it looks to me like they'd be getting a bargain forever here by eliminating this right to sell, because they'd never be forced to buy it. Thank you.

CHAIRMAN GRAYBILL: The question is on Mr. Cate's motion to strike the words "and sale" on line 14 of Section 4, taking away from the Board of Land Commissioners the right to sell lands but leaving the right to control, lease and exchange lands. Mr. Foster wants a roll call. So many as shall be in favor of that motion, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O. ..... Absent
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Absent
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Absent
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Absent
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay

McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Absent
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Absent
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmaney ..... Nay

CLERK SMITH: Mr. Chairman, 10 have voted Aye, 77 have voted No.

CHAIRMAN GRAYBILL: 77 having voted No and only 10 having voted Aye, the motion fails.

Mr. Studer, you have a motion before the Chair. Do you want it read?

DELEGATE STUDER: Yes, please.

CHAIRMAN GRAYBILL: Very well. Mr. Studer.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I didn't write it just right. I was in kind of a hurry. I really should have omitted the word "and" in front of "Attorney General" and put it behind it, in front of "State Auditor."

CHAIRMAN GRAYBILL: Mr. Studer has an amendment which proposes to add the words "State Auditor" to the list of people on the Board of Land Commissioners. If you add it after Public— "Superintendent of Public Instruction", you don't need another-to move the "and", Mr. Studer. So his proposal is to add the words "State Auditor" after "Superintendent of Public Instruction".

Mr. Studer.

DELEGATE STUDER: Mr. President. The only reason I done this was because I don't really like to see a four-board-four people try to decide on anything and go into a hassle over it and leave it up in the air for a great length of time. I don't see where adding another man wouldn't cure that problem, and with that, that's all I've got to say.

CHAIRMAN GRAYBILL: Is there any discussion?

Mr. Dahood.

DELEGATE DAHOOD: Well, Mr. Chairman, this guarantees the protection that some of the delegates were talking about. Not even the Supreme Court would have an even number of people deciding the matters in controversy that are absolutely important to the liberty of the individual citizen. And it certainly is not good business. It's not good construction for any type of organization or board to have an even number on it. Delegate Studer's amendment is going to cure that particular vice, it's going to give greater protection to school lands, it's going to be more businesslike, and it's going to be more sensible. And I suggest that the amendment should be adopted.

CHAIRMAN GRAYBILL: Is there further discussion? Very well, the issue is on—

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. We could do the same thing by just merely putting forth to the-in our record that we would suggest that the Land Board from now on only have the Chairman vote in the case of a tie. Now, if you have a four-member board, you would never have a tie, because there'd be two for it and one against it. If you had one member absent, you'd have two members, and he'd break the tie if they were opposite each other. So there really is no object in having a five-member board if you went along with that idea. It's very simple.

CHAIRMAN GRAYBILL: Is there further discussion? Very well. The issue is on Mr. Studer's motion to add the State Auditor to the Board of Land Commissioners on line 11, after "Superintendent of Public Instruction". So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. So many as shall be in favor, vote Aye; and so many opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please. No, it's not a roll call, so never mind. 48 having voted Aye, 40 having voted No, the motion prevails. Members of the committee, are there-is there further discussion of subsection 4, the Board of Land Commissioners?

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I've been trying to do a little fast arithmetic here while we were discussing this question. It seems to me we're overlooking a real bonanza, and I think we're treating it in a rather cavalier fashion. The statement was indicated here that we have 10,531,000 acres of land and our annual income is around $5 million per year. That comes to two bucks an acre. I don't know of much land around my part of the country that you can buy for much less than $40 at the present time. Just last fall, I sold a 160-acre tract about 30 miles north of town that was practically all gumbo, and I got 40 bucks an acre for it. A couple of years ago, I sold a 160-acre tract in the Bear Paw Montains. It was on top of a mountain. I sold it to the Henderson Ranch, and I got $50 an acre for that. This is land for people out of the state. I would submit that $40 an acre is probably the rock-bottom price for land in Montana at the present time, and that much of this school land is probably worth a hundred fifty to two hundred dollars an acre. But let's take just the $40 per acre figure. And if we sold all of the land-now mind you, I'm not advocating this; I, too, want to hang onto the land, but I want to see it managed. If we took ten and a half million acres of land and sold it for $40 an acre, that would produce $420 million. And if that were invested at 5 percent, which is a conservative figure at this time, that would produce an income of $21 million per year against the 5 million that we're getting. Now, I used a basic minimum figure of $40 per acre. And I submit that if the land were more realistically valued, it would probably be sold for closer to a billion dollars, or twice what it is now-and even that's conservative--which would produce an income of roughly $50 million per year to the State of Montana. Against this, we're getting 5. Now, there's something wrong. I don't know where it is. And I'm simply throwing this out to inquire of the committee if they took this matter up, or if the Finance Committee took this matter up. This is a chunk of dough worthgoing after. I think we could easily get $21 million a year out of this instead of the measly 5. Now, they might say that,well, we don't want to hire all those people to go out and check these crops, or we don't want to go out and hire all those people to go out and check land leases, or we don't want to hire these people to go out and check the return per barrel on oil land. But the truth of the matter is, there's an awful lot of money here that I don't think the State of Montana is getting. Now, I suppose this question comes up in the Legislature year after dreary year; but we're a Constitutional Convention, and we're sitting here setting up a commission that is entirely political. Every single one of those is an elected official, and undertheirdirection, they hire a man. Now does that sound like a good deal to you when it looks like we're dealing with about $21 million per year at a basic minimum? Don't you think that we should think a little more clearly about this and perhaps give some thought to taking this matter out of politics entirely if we can? If we can. One thought that I have just offhand is putting this in the Public Service Commission. There is an organization that's not nearly as politically oriented as the Governor and the Auditor and all the rest. And perhaps they could hire a group of people to go out and investigate these things and increase the return substantially. NOW, that's just one idea, but it does seem to me that the commission that we set up here in the Constitution is politically oriented, and that's probably one of the reasons why we're not getting the income we should be. I'm wondering if we shouldn't leave the whole thing out of the commission-out of the Constitution rather--and leave it up to the Legislature and let them see if they couldn't organize as nonpolitical a body as they could come up with to manage these lands.

DELEGATE HARBAUGH: Mr. Chairman, I don't know where Mr. Swanberg got his figures, but they are not anywhere nearly close to being correct. He says we have ten and a half million acres. Somewhere there's about 6 million acres that, apparently, the Public-the Education and Public Lands Committee overlooked, because we have less than 5 million acres of school land. And I think this simply shows that when we react to things off the cuff, how wide of the mark sometimes we come.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Drum. Well, let's see, Mr. Conover was up. I'll come back to you.

Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. I hate to do this to my fellow delegate in our Education Committee, but I'm going to have to correct both of you. The public land constitutes five million point eight acres that we have in the state school lands, and the income from those lands of 1970 was ten million, five hundred thirty-one thousand dollars and one cent. That makes the average paid value on this land of about $20 an acre. You want to remember that a lot of the state land today is basically up around the Fort Peck Dam. If you would put a cow on it, you'd have to give her a lunch bucket for her to go across it and come back, because she'd starve to death. (Laughter) I would like to see anybody here that would even buy a piece of land. Even if you put a price on it of five cents an acre or a penny an acre, there isn't a soul in here that would buy it. Now this is-these are the actual-State lands is appraised at $114 million-plus. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, Mr. Drum.

DELEGATE DRUM: Very quickly, Mr. Chairman, I would like to even correct Mr. Conover. (Laughter) In the State Land Department investments in 1970, the acreage was a net acreage of 5,287,000, of which grazing lands are 4,141,223.72; agricultural lands, in other words, wheatlands is about 500,000 acres. Now, my comment to Mr. Cate-where that this-put by injecting this word "exchange", it is going to allow the State Board of Land Commissioners to be much more effective in their management of these lands. It may break your heart to know thatright now the average income on an acre of rangeland to the State of Montana is about between 18 and 19 cents per acre. If that were on the tax rolls, it would be bringing in something in excess of 20 cents per acre, somewhere in the neighborhood of 23, 24 cents on the average throughout the State of Montana. So actually, right now, if all of this land were given to the fellow who is leasing it and let him pay taxes on it, somewhere there would be more money coming in from it. The problem is, if you will look at the map in Mr. Schwinden's office-is each one of these sections that is owned by the state-or the school trust-it is Section 16 and 36, and it is absolutely impossible to manage land that is located in that way. The ranchers who have it now are not going to fence it. They are not going to allow someone to come in and use it if they are-if they don't wish them to, because they're not going to give them the right-of-way to do it. So the ranchers are going to be able to use this land from now on, and maybe they should if it fits into their ranch. But what I'm saying is that in order for the state to come up with a fair and equitable return on this land, they are going to have to have the ability to trade it around, perhaps with the rancher, perhaps trade it for more recreational land. A trade may be in order or maybe a sale may be in order as the one I described down in Yellowstone County, because Yellowstone County certainly is not going to go out and buy another piece of land to trade for this land. I don't think that is going to be agreeable with the state. So the wording of the present section is going to allow, I believe, the Board of Land Commissioners to be more effective. And we hope that in the future they will be able to bring this income up, because that is truly the purest form of tax relief. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates, you were next.

DELEGATE BATES: Mr. Chairman, fellow delegates. I doubt that many of you really understand the problem of state land leasing. For many years we have leased state land. Now-this land was in the ownership of our family, and during the depression, this land was lost for taxes. We cannot buy it back. The state demands the interest on the money to be valued at what their income is now. This means that this land would now be sold at the-at a much higher going rate than is valuable, tillable land. Also, we must meet matching bids if we are to retain this land to farm. I would like to find some of this cheap rent-based land that some of you are talking about, because we find we are paying, on our state land, much higher rent than we are receiving from the private land-the place that we rent-lease. We must maintain, on

the land that we lease, the buildings, the upkeep, the fences, all the other things that are necessary to maintain a ranch; while at the same time, the little farm that we lease out-we must, as the owners keep up this property. And I think this land must be maintained for our schools and for our children, and we must try to protect it; but don't think that the farmers are getting a deal, because they're really not.

CHAIRMAN GRAYBILL: The Chair has no motions ahead-before it except just Section 4. Now, we can continue to discuss this; but when you're finished, we'll go to dinner.

Mr. Siderius.

DELEGATE SIDERIUS: Mr. President. I think one of our biggest mistakes here is that we're not getting enough for our grazing lands. Now, the state charges 86 cents a month per animal unit, which consists of a cow and a calf. They charge from 86 cents down to 66 cents. Now, when we lease from individuals--when one private party leases to another, they get as high as $4 a month per animal unit. Now, that makes quite a difference in the grazing rentals. And I think that's where our biggest mistake is-that is, the state's biggest mistake is-and I would sure like to see that brought up to where it should be.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. We're going to have a Public Land Article that we're going to discuss subsequently. And there is quite a little material I know you'll want to know onwhat they're trying to do. But I wonder if we could defer that until we get to the Public Land, if it's possible. I certainly think everyone should have their say, but there's quite a bit they are trying to do statutorily; and I don't think we should get into that this evening.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, may I close?

CHAIRMAN GRAYBILL: **You may** close. (Laughter)

DELEGATE CONOVER: I have great respect for Jerry's motion that he wanted to make, because we thought of it, but it would be-it wouldn't be workable; it just couldn't be there. So I want to say very briefly that we-the article--or the section that we have here is practically the same as the old Constitution with only one word "exchange", and I hope that it will be ofbenefit for the future.

CHAIRMAN GRAYBILL: Very well. Now, Mr. Conover, we took care of that one, but we do need you to close on your article. But I think all we need to say is that--members of the body, you have before you for your consideration Section 4, on the recommendation of Mr. Conover, when this body arises and reports that it recommend the same be adopted as amended. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Section 4 is adopted.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Committee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: Mrs. Babcock, for what purpose do you rise?

DELEGATE BABCOCK: Mr. Chairman. I rise for a point of personal privilege. I don't know if anyone has noticed, but we have a picture of the Vice President of the United States on the walls of this Convention Hall. It has been defamed, and it's been recorded on this machine all afternoon. And this tape will be used to show our children, and I don't think that's in good taste at all.

CHAIRMAN GRAYBILL: Very well. I wonder if whoever owns that picture will take it down. And if they don't, in the morning we'll have a vote to see if we can take it down. The motion was to rise and report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Report progress, that is. Very well, Opposed?

(No response)

CHAIRMAN GRAYBILL: **So** ordered.

PRESIDENT GRAYBILL: Will the clerk please read the title and signature of the committee report.

CLERK SMITH: "March 10, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 10 of

the Committee on Education and Public Lands, recommend as follows: that the Committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Is there anyone who wants the entire report read?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well. So many as are in favor of the report of the Committee of the Whole, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.
Mr. Eskildsen.

DELEGATE ESKILDSEN: I so move that we adopt the Committee of the Whole report. There are a couple of announcements.

PRESIDENT GRAYBILL: Mrs. Eck

DELEGATE ECK: Mr. Chairman and delegates. The interns have asked me to announce that they are having a party at their house tonight. Kind of a-1 think this is the beginning of final week if they were in school, so it seems kind of the time for a last fling. Their address is 1215 Peosta—at 8 o'clock; and they would like any or all of you to come. Thank you.

PRESIDENT GRAYBILL: Very well. Revenue and Finance, the meeting will only last 5 minutes but it will be in Room 437 on adjournment. Other announcements? Very well. All in—
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move we adjourn until Saturday, March llth, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: All in favor of adjourning till tomorrow morning at 9:00 a.m., say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: And so ordered.

(Adjournment 5:56 p.m.)

March 11.1972 **Forty-Third Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: If you'll all rise, Father Arbanas will give us the invocation this morning.

DELEGATE ARBANAS: Good Father, we are working on education. Help us to do a good job. We pray for our teachers, that they may teach both how to make a living and how a life should be lived. We pray for our students who are in school right now, that they may appreciate the wisdom of the past, the responsibility of the present, and the hope of the future. Lord, grant each of us today that we may keep in mind that one bright-eyed, freckled-face, squirmy kid is of more value than any and all of our institutions and that our most joyful privilege is to help young people to grow and to be free and to inherit a world just a little better than the one our parents left to us. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Delegate Babcock, Delegate Choate, Delegate Cross, Delegate Felt, Delegate Foster, Delegate Harbaugh, Delegate Heliker, Delegate Holland, Delegate James, Delegate Johnson, Delegate Joyce, Delegate Kelleher, Delegate Loendorf, Delegate Payne, Delegate Rollins, Delegate Scanlin, Delegate Babcock, Delegate Choate, Delegate Foster, Delegate Holland, Delegate Rollins. Mr. President, may Delegates Roeder and Furlong be excused, please?

PRESIDENT GRAYBILL: Very well. Now list the absents once more, will you.

CLERK HANSON: Delegate Babcock, Delegate Choate, Delegate Foster, Delegate Holland.

PRESIDENT GRAYBILL: Very well. Take the attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Absent
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Absent
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Absent
Furlong	Excused
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Absent
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lore110	Present
Mahoney	Present
Mansfield	Present
Martin	Present

McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Excused
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius.	Present
Simon	Present
Skari	Present
Sparks	Present
Spew	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

PRESIDENT GRAYBILL: Mr. Clerk, Mr. Holland is present.

CLERK HANSON: Mr. President, 95 delegates present, 2 excused, 3 absent. [The journal shows 94 present, 4 absent, 2 excused--editor]

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1.

CLERK HANSON: "Mr. President. We, your Committee on Style, Drafting, Transition and Submission transmits revisions of Report Number 7 of the Committee on Revenue and Finance. Signed: John Schiltz, Chairman."

PRESIDENT GRAYBILL: Very well. Revenue and Finance is before you and is placed on General Orders—the Style and Drafting Report on Revenue and Finance. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 4, Introduction.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders to handle Proposal Number 10, on Education.

PRESIDENT GRAYBILL: The motion is to move this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole Delegate Graybill, Chairman)

CLERK HANSON: "The Style and Drafting Committee Proposal Number 5, having been duplicated and placed on the delegates' desks on the 9th day of March, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules, March llth, 1972. The following committee proposals are now on General Orders: Education, Public Health, Local Government, General Government, Style and Drafting Reports Number 5, 6 and 7." Mr. President.

CHAIRMAN GRAYBILL: Very well. I think the point of Mr. Eskildsen's motion was that although the rules require that we take up Style and Drafting first, we--without objection we'll pass Judiciary on Style and Drafting and continue with Education this morning. Is there objection? Very well. We'll consider-continue with Education. Will the clerk please read Section 5 of Proposal Number 10, the Education and Public Lands Committee proposal.

CLERK HANSON: "Section 5. Public school fund revenue. Ninety-five percentum of all the interest received on the school funds of the state and 95 percentum of all rents received from the leasing of school lands and of all other income from the public school funds shall be equitably apportioned annually to the public elementary and secondary districts as provided by law. The remaining 5 percentum of all the interest received on the school funds of the state and the remaining 5 percentum of all the rents received from the leasing of school lands of all other income from the public school funds shall annually be added to the public school fund of the state and become and forever remain an inseparable and inviolable part thereof." Mr. Chairman, Section 5.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration the new Section 5 of the Education and Public Lands Article, that the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: The proposed Section 5 is a shortened and revised version of Section 5 of the present Constitution. The intent of the provision-is [to] constitutionally protect the interest and income of the public school fund—is important. However, in the particular restrictions as its distribution to the schools are considered obsolete in light of present conditions. The language concerning the portions of the-distributed and which is to be reinvested remains the same as in the present Constitution. The methods of distribution previously specified are replaced by a general phrase, "shall be equitably apportioned annually to elementary and secondary schools as provided by law". The replacement language provides the desired flexibility to the Legislature to develop the school financing programs in tune with current necessities. Particularly relevant to the change is the trend across the nation, in accordance with recent court decisions under equal protection doctrine, to provide more equitable school financing systems. The flat grant type of aid provided under the old method of distributing income and interest to the school districts on a census basis is clearly antiequalizing under the standards discussed in the commentary in Section 1, but the-specifying only that the distribution must be equitable-and the new language allows the Legislature to determine the type of distribution which will attain this goal. Restrictionsin the form of specified districts, age, and school terms which may have been applicable at the time of writing an 1889 Constitution are no longer meaningful. Rather than attempt to apply new restrictions more in keeping with the contemporary school system, the committee's determined that it's preferable to allowforchangingneeds as interpreted by the Legislature by designating only a broad standard; namely, "equitably apportioned-as provided by law". A further element in the distribution system authorized by the existing provision is the specification that the interest and income money is distributed to the several school districts. This has been interpreted in the past to mean that funds deriving from this source be granted only to elementary schools, presumably because elementary schools are the only public schools in existence at the time when the provision was written. In keeping with this intention to expand legislative possibilities in educational finance, as discussed in the commentary on Section 1, the committee has replaced the phrase "several school districts" with "public elementary and secondary" schools. This would change the existing distribution system to include high schools as recipients of interest and income money. The immediate results is the-anticipated by the office of Superintendent of Public Instruction to result in a net saving of the administrative costs to the

state. We have felt through this change that we have made a much more equitable section to the Constitution. Now, some actions taken in Section 1 yesterday may not be actually applicable to this. In other words, we've gone back to "several school districts". But the committee feels that this is very important. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Is there discussion of Section 5?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. I had a delegate proposal in on this section. The committee has incorporated the-in different langauge, but the idea is there. I commend the Education Committee for changing this so that we get away from the old distribution formula to— where it was distributed to the students--or the children of a district between the ages of 6 and 21. This really didn't work out in these later years. It was-as Dan said, it might have been good for 1889, it certainly is no longer reasonable to have such language in. And I think that this is a great improvement and will give a great deal more flexibility on the distribution of these-income from these school lands. I support the Education Committee on this.

CHAIRMAN GRAYBILL: Mr. Martin, are you up?

DELEGATE MARTIN: **Yes,** sir. Do I have an amendment up there?

CHAIRMAN GRAYBILL: Not to 5, that I know of.

DELEGATE MARTIN: If not—

CHAIRMAN GRAYBILL: **You've** got one to 8.

DELEGATE MARTIN: There's one on the same page as the one that was on yesterday.

CHAIRMAN GRAYBILL: Oh, well. All right. The clerk will read Mr. Martin's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 5, page 17, of the Education and Public Lands Committee Proposal Number 10, as follows: at line 5, page 17, by adding, between the word 'to' and the word 'public', the following words-quote: 'the several school districts of the state for'-end quote. Signed: Martin."

CHAIRMAN GRAYBILL: The phrase to add is "the several school districts of the state".

DELEGATE MARTIN: Mr. President.

CHAIRMAN GRAYBILL: Just a minute till we get it down, Mr. Martin. "Several school districts of the state for"-that phrase goes-if you're on page 4, it's on line 24, after "annually to the"-"several school districts". So the sense of the sentence reads, the money will be distributed— equitably apportioned annually to the several school districts of the state for public elementary and secondary school districts.

Mr. Martin.

DELEGATE MARTIN: Mr. President, Delegate Champoux was good enough to give me a book yesterday. He said my education had been neglected. And it's a working draft of a study of basic educational program funding methodology in Montana. I'll be very brief. On one page of it, it says: "The sources of revenue for school district general fund budget support for 1971 and 1972: general fund revenue, 134.8 million; the foundation program, state and county, 87.2 million, of which-and which included a permissive levy of the districts of 21.59 million and a voted levy of the district of 25.47 million." I think it evident from that that the school districts have a real part in financing education. And for that reason, I think that the amendment should be retained.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Martin gets a "C" for the day. He didn't read far enough. (Laughter)

CHAIRMAN GRAYBILL: That's better than "F", Mr. Champoux.

DELEGATE CHAMPOUX: **Yes,** it is, sir. (Laughter) Fred, you're right. This is correct. I absolutely believe that the local school district is a necessity in this whole process. The problem is with that word "several", though. Now, if I may just briefly go over that point again. You see— because-if you read that report further, you'll find out that in many districts of this state, there is inequality in terms of the amount of money to be spent. Now, as Mr. Harrington noted on the business of the flat grant, a flat grant simply means a block of money that's apportioned to each individual district. Now, if the district is ahead in terms of money to begin with, when you give them the flat grant from the state, it even throws it further out of

balance. You see that? So if it's unequal to begin with and you give them that flat grant, then it's going to be even more unequal. Now, when we use this-the term "several districts"--and why I asked Fred the meaning of that yesterday was to attempt to get on the record whether we mean by that every district, every district. Now, if you lawyers can convince me that the courts will say that does not mean every district, I will accept the word "several". However, if it can be open to contention, then we're in trouble. I will agree to the school districts any day, Fred. Thank you.

CHAIRMAN GRAYBILL: Mr. Martin, the Chair would like to inquire of you. You're aware that Mr. Champoux, before he started this section, did amend line 25 on page 4 to put in the word "districts", so that it is now "annually to public elementary and secondary school districts". You're aware the word "districts" is already in the sentence?

DELEGATE MARTIN: I'm sorry, Mr. Chairman.

CHAIRMAN GRAYBILL: Why don't you look at your book there? And either go to—can you go to page 4 a minute with me?

DELEGATE MARTIN: You bet.

CHAIRMAN GRAYBILL: Page 4, line 25. Before we started the whole Education Article, we amended by-they made some addenda to their draft here. And it says-the line should read "secondary school districts". They've got a little caret there. So that-1 just want you to know that word is there.

DELEGATE MARTIN: I'll withdraw my amendment.

CHAIRMAN GRAYBILL: Now, I don't—okay?

DELEGATE MARTIN: I'm sorry.

CHAIRMAN GRAYBILL: Very well. We'll let you. All right. Mr. Martin's amendment is withdrawn. Is there other discussion of Section 5?
(No response)

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you for your consideration, on the recommendation of Mr. Harrington that when this committee does arise and report after having had under consideration Section 5 of the Education Article, that the same be recommended for adoption. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 5 is adopted. Will the clerk read Section 6.

CLERK HANSON: "Section 6. Aid prohibited to sectarian schools. Neither the Legislative Assembly nor any county, city, town, or school district, or other public corporations shall ever make, directly or indirectly, any appropriation or pay from any public fund or moneys whatever or make any grant of lands or other property in aid of any church or for any sectarian purpose or to aid in the support of any school, academy, seminary, college, university, or other library, scientific institution, controlled in wholeorinpart by any church, sect or denomination whatever." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I move that when this committee, after its consideration of this section of the Education Article, does rise and report that it move to adopt the same.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: We have, in this article-in this section, as—a majority of the committee recommended the retention of the existing language for several reasons, and I wouldlike, if you would be willing, to look with me at these reasons on pages 19 and 20 and 21. If you're like I am, on some of these reports, you've had excellent intentions, but you've been busy with your own committee and haven't had the time to maybe look in depth. And it could be that looking at them now would save us time as we carry on the debate which follows. I would direct your attention to the top of page 20. Page 19 simply states that we did very seriously consider the issue and here are some of the major points which came up. Number one, on line 3: "The primary and sigificant advantage secured by the present provision is the unequivocal support it provides for a strong public school system. The traditional separation between church and state, an important part of the American social framework, has also become a fundamental principle, of American education. The growth of a strong, universal, and free educa-

tional system in the United States has been due in part to its exclusively public character. Under federal and state mandates to concentrate public funds in public schools, our educational system has grown strong in an atmosphere free from divisiveness and fragmentation. Any diversion of funds or effort from the public school system would tend to weaken that system in favor of schools established for private or religious purposes." The second argument has to do with the fact that it is the function of the state to provide for education. We've recognized that already in the article as we proposed it. We do have that right as a state. Moving to line 26, in the third of the major points which we, as acommittee, considered-and this, I think, had perhaps as much to do with the decision we made as any of these that we have discussed-"Change in the present provision, whether substantial or merely formal, might endanger passage of the entire Constitution. The church-state issue, which is interwoven with the question of public aid to nonpublic schools, stirs deeply held emotional feelings in various sectors of the public. The emotionalism aroused over potential debates on this question might obscure other important issues in education and in the Constitution as a whole. The change in this area proposed in New York's 1967 Constitution is thought to have been a significant contributing factor to the Constitution's defeat at the polls. A large number of witnesses, representing various religious and nonreligious organizations, testified emphatically against any change in the present provision." Our fourth major point, that's listed beginning on line 10, poses the possible threat to religious groups if the state begins in some larger measure to participate in their educational process. Down on line 24 of page 21, we begin a bit of in-depth statement about the alternatives that have been proposed. "A second alternative considered by the committee was to exclude federal funds administered by the state from the applicability of the provision. A fundamental concern expressed by some witnesses before the committee was that some forms of federal aid to nonpublic schools, particularly of the type envisaged in revenue sharing programs, are or would be prohibited under the existing provision." The committee does not agree that this poses a realistic problem for, as indicated in Appendix F at the back of this report, there is a listing of the funds and the kinds of aid which have reached students in nonpublic educational institutions in the state. "It is the majority of the committee's opinion that presently operating federal aid programs in education are not being significantly affected by our constitutional provision. As to future federal programs, the committee feels that precedent shows that potential problems can be resolved without a change in the constitutional provision. No specific case was brought to the committee's attention in which federally granted funds have been denied in Montana to nonpublic schools because of the operation of the existing constitutional provision. A note from the Department of Public Instruction indicates that they have not kept any available federal funds from distribution to nonpublic schools." And I think if you look at the appendices that are in the back of our report, there's an indication of textbook loans and various federal programs which have been available and have been distributed in the amounts that are there stated. Let me say that, simply to make some kind of statement about feelings on this thing, it seems to me that I am somewhat uncomfortable in defending status quo things. I feel that life is a changing process and that we constantly have to be in a dynamic kind of dialogue with what's going on if we're going to stay in touch with what's happening in our world. Probably if we were starting from no place, the exact wording of this statement might not be as it is in our Constitution, but we did genuinely feel that this had had an effect on the New York Constitution, thatitwasestablishingat least the principle of separation that we have observed in our government and in our schools throughout history, and that to tamper with it would be to endanger the entire document. As a way of understanding this, I thought for myself that this Constitution, in some ways, can be likened to shipbuilding in this country in the middle of the 1800's, when there was a change going on from sailboats to steam engines. And for awhile those who advocated steam and those who advocated sails were in battle as to how to build vessels that would handle ocean transport. There was a period in our history when both sails and steam were onboard the ships; they didn't trust either one completely. I think Montana is in process of transition, as is our nation, and always is in the process of transition and there must be some holding firm on certain principles as we move out in others. And I've sometimes thought we're midway between the cow pony and solid fuel rocketry here in Montana. We have both. Both have a place, and each does a job. I profoundly hope that the solid fuel rocketry that's less than a hundred miles from here and-never is used in those silos; I hope we'll see the day when that's refashioned for a granary or whatever those things. But at any rate, this is where we are. And we felt that to play fair with the document as a whole, the majority of us would

advocate keeping the section as it now stands. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I'd like to move an amendment to this section. The amendment is the minority proposal on page 43. The amendment removes the word "indirectly" from the body of the majority proposal and adds, at the close, these words: "This section shall not apply to funds from federal sources provided to the state for the expressed purpose of distribution to nonpublic education."

CHAIRMAN GRAYBILL: Mr. Harbaugh, what's the ward that you remove?

DELEGATE HARBAUGH: The words "or indirectly", on line-well, it's on line 8 of the minority proposal, where the correction is made. In the majority proposal, it's on line 6.

CHAIRMAN GRAYBILL: Line-all right, on page what?

DELEGATE HARBAUGH: On page 5, removing the words "or indirectly".

CHAIRMAN GRAYBILL: Line-I just want to be with you here. Line-page 6—

DELEGATE HARBAUGH: Page 5, line 6. We're deleting "or indirectly".

CHAIRMAN GRAYBILL: Okay. So the sense of the minority proposal is to delete the words "or indirectly", on line 6 on page 5, and to add the sentence which is placed at the end, which is line 14 to 17 on page 43. Is that correct?

DELEGATE HARBAUGH: That's correct.

CHAIRMAN GRAYBILL: All right. Now, go ahead.

DELEGATE HARBAUGH: Mr. Chairman. I suppose at the beginning of this I should say that-1 should admit to my special interest here, that I am a member of a denomination which, along with three other denominations—two other denominations-has a financial interest in the support of Rocky Mountain College in Billings. The press had an interesting time with the fact that I was planning to debate this, and I hope that, if nothing else, this debate will prove that ministers are human and that they can disagree with one another. I'd like to give you some of the reasons why I think we need some changes in this section. First of all, I think that it's important to understand the background of the so-called Blaine Amendment, which is the section that is presently in our Constitution, which the majority is proposing that we retain. Now, this type of article is common to many states. I think there are 30-some states that have this particular type of article. It originated through a man by the name of James G. Blaine, who was an American statesman and politician back in the 19th century. In 1862, he was elected to Congress, and he introduced into the Congress the Blaine Amendment, which basically is the clause that we have in our Constitution. That amendment did not pass the federal Constitution, but it developed in an area when there was a great deal of concern across the country about foreigners and about Catholics in particular. A rather secret society grew up, the purpose of which was to be sure that no foreigners and no Catholics were elected to public offices. They called themselves the "Know-nothing Party", because whenever they were asked what party they belonged to, they would reply that—"I don't know." And so they gained the name of the Know-nothing Party. Now, even though the Blaine Amendment failed in the Congress-the amendment which espoused the purpose of the Know-nothing Party-at about this same time across the country, many states were writing their constitutions. And, consequently, as the hysteria of this movement spread across the nation, many state constitutions wrote into their document the Blaine Amendment. And so, in 1889, when Montana was developing its Constitution, along with the Dakotas, this section was included. So, here in 1972, or 80 years later, the State of Montana still retains in its constitution remnants of a long-past era of prejudice. And the inflexibility and the rigidity of this borrowed heritage is something that I do not think belongs in our Constitution. Now, having said that, I want to make the point that it is not my intention here to debate the doctrine of separation of church and state, because I think that doctrine has amply been set forth by the United States Supreme Court's interpretation of the 1st Amendment and there is absolutely nothing that we could do here as a body that could in any way alter 200 years of court interpretation and tradition. And so, the point of this amendment has to do with federal aid to nonpublic education; it does not have to do with state aid to public education. The minority is right in pointing-or the majority, rather-is right in pointing out that we are already receiving federal funds in this state

and-although, because of the restrictive language of our present Constitution, sometimes we have to use some rather questionable methods in order to see that the aid gets to its destination. Just as one example, let me cite the way that we distribute textbooks in this state to the nonpublic schools. They have to go out on what is called permanent loan to the public schools, because the state cannot give textbooks to the public schools because of this particular section of our Constitution. And so, we loan them permanently. Now, you and I know that if we have a book in our library and we loan it permanently, what that means. And the purpose ofremoving the word "indirectly" from the majority section would simply serve to legitimatize constitutionally what we, in fact, are doing in many areas and would make it possible for the state to authorize other forms of indirect aid permissible under the 1st Amendment, which provides assistance on the child-benefit theory. So let's keep this clearly in mind. We're talking about federal aid in this amendment, not about state aid. Secondly, the primary thrust of this amendment would be to insure that any federal funds that were made available to nonpublic parochial schools in the future would not be denied. Why do we need this sort of amendment? Well, precisely because we don't know what the structure of the financing of the public school systems is going to be in the decades ahead. Let me read to you a section of a news clipping which appeared in the *Independent Record* just a few days ago: "A presidential commission urged today that the states assume the primary burden for financing public schools and said much less reliance should be placed in local property taxes for this purpose. The commission on school finance appointed by President Nixon 2 years ago also recommended the federal government distribute incentive grants that would reimburse the states for part of the cost of financing elementary and secondary education. In the appendix, the commission said it did not think it appropriate to offer recommendations affecting national tax policy, including, among other things, new revenue sources such as value added tax. The report itself did not mention such a possibility. The commission-and then it goes on to tell more about the commission. But the point is here that across the nation there are many studies going on affecting various methods of financing education. Currently there is in Congress a $24 billion package for higher education underconsideration, which, if it becomes a reality, would pump large sums of federal money into the states. Now, if the federal government should, in the years to come, make block grants, provide tuition payments to students, Montana might be in a position where we could not receive such funds if its Constitution forbade the distribution of those funds through the State Department of Public Instruction. And by the addition of these few words at this time, I think we could prevent this from ever happening. Private school students need all the help that they can get in these days of inflation and rising cost. And the state should not, in my opinion, take a position which might, because of its extreme inflexibility, deny at some future date funds which might legitimately bechanneled to them from federal sources. If we're serious about our concern to give all students within our state an equal educational opportunity without regard to their religious preference, here is a way in which that cause can be aided, and it can be done without any additional cost to the State of Montana. I urge the adoption of this amendment.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I don't really know quite how I got mixed up in this. I don't belong to any church or have any affiliation with any college, public or private, or school, public or private. I guess I got mixed up in it because I looked at the language, and to me, the language seems eminently fair. It takes away nothing from anyone. We have-it is admitted that Section 6 is an especially stringent section that perhaps is among the most stringent in the nation. It seems to me that those who resist the minority report perhaps might be accused of taking a "dog in the manger" attitude; if we can't have it, you can't have it either. What would happen to the federal funds if they came to the State of Montana and, under the Blaine Amendment, they could not be distributed to nonpublic schools? Would they lay idle in the state treasury? Would they revert to the federal government? I think, Mr. Chairman, that this Convention has given great attention to the rights of minorities, and I submit to you that in this instance, we have a minority right of great significance. We have given great attention to the matter of pluralism in our society and the necessity to maintain it. I think these few harmless words could be of significant benefit and cannot possibly harm anyone in the State of Montana. I urge the adoption of the minority report.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I rise in support of Mr. Harbaugh's amendment. I first must state that I do have an interest in this argument. I am a Catholic and the parent of 10 children attending both public and private schools. I've also been engaged in public education all my life. I look with a great deal of respect on Mr. Burkhardt. I have followed his thoughts during this Convention quite well. He speaks eloquently and persuasively in everything that he does. However, when he speaks of Montana in transition and yet wants to retain an archaic provision in our Constitution, I can't quite understand that. When we're going to put the welfare of 10,000 children against the defeat of this document, we must also remember that we are getting another minority group who will attempt to defeat the document. I feel that Mr. Burkhardt's provision is adequate. It doesn't provide for any religious emphasis. It does not provide for any conflict in church and state. It merely provides that we give children of another minority group as much of a benefit as we gave the Indians yesterday. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman. When I came in this morning, I was going to move to delete all of Section 6. I was requested not to, so I would like to speak on behalf of the minority. I'm a Protestant. I have five children. They all go to the public schools and to the state universities, and I have no intention of sending them to any private school at this time. The majority states that they know that parochial schools are getting funds from the federal government, and they say it's fine. If it is all right, why can't we accept this simple amendment? I cannot see their reasoning at all. I've heard the argument that if they want their own schools, then they should pay for them themselves. I agree with this doctrine, but if we want true separation of church and state, then the other churches-they don't pay property taxes; they don't pay any income taxes; when they have a donation or a bequest by reason of death, they pay no state inheritance tax, they pay no federal estate taxes. Now, if you want true separation, you should require your churches to pay these taxes, and don't ask for these benefits from the government. So I think it is really ridiculous not to accept the minority. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I'm with Mr. Brown. I've lived with the Blaine Amendment and the philosophy of the Blaine Amendment all the days of my life. I can remember during the Al Smith campaign when they burned crosses on the rim-rocks in Billings. I can remember being let out of school in the fourth grade to erase three "Ks" on the front doors of the Catholic church in Billings. I am a Roman Catholic. I'm not a card-carrying Roman Catholic; I'm a practicing one. I don'ttake up the collection or work very hard on drives, but I find something in my religion that I need, and I don't try to visit it on anyone else. To me, the Blaine Amendment is a badge of bigotry, and it should be repealed. I've been asked to back off on that and I'm going to try to be as reasonable as I can, although I feel much more emotionally about this than I do about our courts of justice which, just a week ago, I worked so hard on. My credentials on trying to get rid of badges of bigotry are good. In 1953, I personally and singlehandedly repealed the miscegenous marriage law of Montana on the very sound ground that our statute books should not be graced with such a despicable statute. I feel the same way about the Blaine Amendment. Somebody asked the other day how much purer we can get than pure, what we could do with our water to make it any cleaner than clean. I submit to you that the Legislative Article has a watered-down version of the Blaine Amendment in it, I don't know what more we could do than perhaps make it impossible for the Justices of the Supreme Court to approve any such legislation, or possibly prohibit the Governor from signing such legislation. My personal opinion is that this thing should come out of here as a badge of bigotry, but I'll be content with what-the well-reasoned statements that Mr. Harbaugh has made if that can be accomplished. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I am not exactly sure what Mr. Schiltz meant—what all he meant to include in this bigotry idea of his. I rather think that most of us do not believe that the separation of church and state is an evidence of bigotry. I think we rather believe it to be an evidence of an evolution in history that has proved to be very wise in this country. You don't have to go back just 5, 10 years. You can go back across the history of church-state relationships, not only in this country but in other countries, and back as far as recorded history of man is concerned. And somehow, when state and a dominant church, or any church, get mixed up, it always has seemed to work to the detriment of both the

church-the religious institution, finally, and to the state itself. I don't think I need to make a long speech to document that. I believe Americans—thoughtful Americans are dedicated to the idea of church and state separation. Evidently, the minority group is dedicated to that idea because they do not wish to change this section. The remarks suggest that they want to change it, but there must be some reason that they do not ask to strike it all out. They simply would like to add this one particular amendment to say that we now allow, in definite words in our Constitution, that federal aid will not be prohibited. The majority report, I notice on page 20, simply says-or rather on page 22—said that no specific case was brought to the committee's attention in which federally granted funds have been denied in Montana to nonpublic schools because of the operation of the existing constitutional provision. The arguments for putting this sentence in is that it is done anyway. I presume the majority committee's suggestion for keeping it out is equally valid, that since it has no effect and does not limit the present situation-is not limited-and federal aid is able to be channeled for these specific purposes, that there's no real reason for including it. I did not identify myself as one with particular interests in this on the basis of being a United Methodist with interests in Rocky Mountain College, because several years ago our three denominations-presbyterian, Congregational and Methodist-gave up corporate control of Rocky Mountain College on this particular issue. The administration of the college said that they could not get federal funds because we were a church-related college and the church had corporate control. And because we did not see it several years ago, nor do we see now, any real way for a college to continue in existence in Montana without some kind of government help in terms of building and the rest of it, our three denominations voted to give up the corporate control of Rocky Mountain College. Rocky Mountain College is now a private institution. Our three denominations are still traditionally and historically and psychologically interested in Rocky Mountain College, but we do not now control it. We did it for two reasons: one, I've said that Rocky could not get federal aid for building and programs as a church institution that it needed to have and, secondly, that our denominations actually do believe in this idea of separation of church and state. And rather than receive aid for our church school, we gave up control of the school that we had built and maintained and sustained for nearly a century, through many hard times, here in Montana. I submit to you that many people of this state do feel very, very keenly on this issue. We've mentioned this on others. I would-1 don't think I'm going to vote just on that; I'm going to vote on the basis of my own private belief on this. But I think it is something that we need to take into consideration. One of the proponents of this minority proposal said that many people will vote against-perhaps be against the new Constitution if we do not make the change. Well, I submit to you that they hardly are going to espouse the old Constitution where the wording is exactly the same on that account. There are many other things that could be said, and I'm sure other people will put in their particular viewpoints. I simply rise to suggest that because many people are not rising on this other side is not because we believe that church-state separation is a badge of bigotry.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. I'd like to make a substitute motion, and perhaps the Chair would read it.

CHAIRMAN GRAYBILL: Will the clerk read Mr. Loendorf s substitute motion.

CLERK HANSON: "Mr. Chairman. I move to amend Section 6, page 5, lines 3 through 13, of the Education and Public Lands Committee Majority Proposal by deleting it in its entirety and inserting in lieu thereof the following words and punctuation: 'Section 6. Aid prohibited to sectarian schools. Neither the Legislative Assembly nor any county, city, town or school district or other public corporations shall ever make, directly or indirectly, any appropriation or pay from any public fund or moneys whatever or make any grant of land or other property in aid of any church or for any sectarian purpose or for the aid in the support of any school, academy, seminary, college, university or other-library, scientific institution, controlled in whole or in part by any church, sect, or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the expressed purpose of distribution to nonpublic education.' Signed: Loendorf."

CHAIRMAN GRAYBILL: Very well. Mr. Loendorf has made a substitute motion the effect of which is to add to the majority report the so-called Blaine Amendment, the last sentence of the minority report about federal funds. So that we now have the majority report; we then have the minority report that has that sentence on it but also takes out the word "indirectly"; and we now have Mr. Loendorf s substitute motion which, if

I'm not mistaken, Mr. Loendorf , is the text of the majority report with the last sentence from the minority report written in. Is that correct?

DELEGATE LOENDORF: That's correct, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. You may have your substitute motion.

DELEGATE LOENDORF: Okay. Thank you, Mr. Chairman. As Mr. Burkhardt indicated initially, he thought this was perhaps an issue that was a bit emotional, and I thought we could talk on it a completely common sense and logical basis. I see I've got the Chair a little excited; he's back to calling me Loendorf again. (Laughter) [Editor's note: Delegate Loendorf pronounced his name "Lendorf".]

CHAIRMAN GRAYBILL: I had something else in mind and I just--excuse me, Mr. Loendorf.

DELEGATE LOENDORF: Right. But I do believe this body is capable of a common sense and logical approach to this question. I recognize it's emotional in certain areas, and I think the amendment I've made shouldn't cause much emotion. If you read it, it's as the Chair explained. It takes Article XI, Section 8, and keeps it asitis. It's different from the minority report in the sense it puts the words "or indirectly comma," back into it. What this section does in our present Constitution and what it means, I'm not sure. But under my provision--or my proposal, it will continue to mean and do whatever it does now. The minority report differed from the majority, then, in only one other area, and that was the last sentence, by which it excluded federal funds from application of that section. And I'd like to talk about that, I think, in an area I think that was forgotten. That is, what effect does this last sentence have on public schools? To me, whatever benefits it has for private schools, which I'm sure it was aimed at and attempted to do, it will have the same benefit for public schools. Now, the majority, if I read their comments correctly, did not reject that last sentence because they wanted to prohibit federal funds from coming into the state. Rather, they felt it was not necessary and, so far, I agree; it has not been necessary yet. But I would point out that no one has taken this matter to court yet. And in, these programs, which the majority mentions in their comment, involve some state administration, that is, aid to private schools. It may or may not be aid which our present Constitution prohibits. I don't know. But if somebody does take, say, one of these present programs to court-say the program mentioned in the appendix which concerned loans to textbooks-and were successful, the $5,000 that were-apparently went to loans to private schools would be lost to the state from the federal government. But the hundred and fifty-five thousand dollars which went to the benefit of public schools would also be lost. So what we're dealing with here is a two-edged sword. And I've observed this happen on two occasions. I'm a member of the Board of Directors for Legal Services for the state. Last summer, a gentleman from the federal government came from either Kansas City or Denver and told us we had to amend our bylaws, change our method of operation, if we wanted the federal funds. We did so and we did get the funds. One of the last special sessions of the Legislature was called for the purpose-so we could amend state law to comply with the Highway Beautification Act so we could receive federal funds there. And, of course, both these things we could do. We had flexibility there. It's easy to change a bylaw; you can change a statute. But here, we're dealing with a constitutional provision. And I think if we want to achieve the goal of the majority as stated by Mr. Champoux yesterday when he read to us initial report-or the initial statement of the majority-and that is to allow flexibility to meet changes yet unknown-then I think the last sentence proposed by the minority is something we should add. I'm not too concerned about present programs. I am very concerned about the future, what's coming under revenue sharing. We don't know what that'11 be, but we do know one thing for sure: that's going to involve a lot more state participation, state involvement. If from-what I read in the papers is true, the state will probably be granted funds to selfadminister entirely. Now, if we find ourselves in a position where we can't accept those funds because of our Constitution, we're in a rather precarious position, because it will not be easy to amend and put in this sentence that we have the opportunity to do now, quickly. It'll take a period of time, perhaps a couple years. If this never occurs, then this last sentence will never have any effect. So, merely what my amendment does, doesn't change anything. It merely maintains the status quo. It's like a doorstop on the door that's open that allows federal funds to come into the state, and nothing more than that. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. Will Mr. Burkhardt yield to a question?

CHAIRMAN GRAYBILL: Mr. Burkhardt, will you yield?

DELEGATE BURKHARDT: Yes.

DELEGATE BLAYLOCK: Mr. Burkhardt. On the New York Constitution which failed, as you told us about, on this issue, was that a matter, in their Constitution, where state funds would be distributed to the nonpublic schools?

DELEGATE BURKHARDT: I think that was the fear, Chet, that was involved. They had substituted the 1st Amendment, as I understand it, for their former, more restrictive statement. Perhaps someone else has that right at the tip of their tongue, but that's my reaction.

DELEGATE BLAYLOCK: Mr. President.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: I am a public school teacher. I worked in public schools all my life. I am Protestant. I could not buy the 1st Amendment because of the deletion of the word "indirectly". I think that if that were out of there, that it would be fairly easy to appropriate a number of funds and then-to some other group and then say this will be done indirectly. However, I am going to support Mr. Loendorf s amendment. It is stated just as it is in the old Constitution, and I, for the life of me, can't see any harm with this where it says that this section shall not apply to funds from federal sources provided to the state for the expressed purpose of distribution to nonpublic education. And if those federal funds come in and are for those purposes, for all the children of the State of Montana, I can't see harm in that. And I shall support Mr. Loendorf s amendment.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. Rather reluctantly, I will accept the deletion of this phrase "or indirectly". I really think that there's no need to have that in our Constitution. I think we ought to realize that we have at least two other places in the proposed Constitution we've already adopted: in the Legislative Articlein subsection 6 of Section 11, which Mr. Schiltz pointed out, that prohibits direct aid of any kind; and in the Bill of Rights, in Section 5, we adopted the language of the 1st Amendment. I guess if you put it in there three times, you've really got the message across. But there are a couple of other things that I think need to be said on this, particularly in regard to the New York Constitution. It's been pretty much accepted here that the New York Constitution failed because it substituted the wording of the 1st Amendment, and I would question that. There were many other reasons why the New York Constitution failed, one of which was that they spent $11 billion and-or $11 million. I think there were also some political considerations that had to do with the failure of that Constitution, too. There were many witnesses who testified before our committee on this issue. And those who favored retaining the present section very often did give evidence of being quite emotional about this thing. However, I made it a point during the testimony to question many of these people and to ask them, specifically, whether or not they objected to federal aid being received by our schools where it was allowable under the 1st Amendment. And I think that, as I recall, there was only one and possibly two exceptions of the-1 suppose we had nearly 40 people who testified on this-but with the exception of one and possibly two people, none of them that I questioned on this objected to the federal aid going to the nonpublic schools. Now, Mr. Harper mentioned that his denomination gave up control of its school because of the financial squeeze; and I think that's too bad, that we have to reach a state in America where that happens. I feel that we are approaching a situation in which the pluralism of our society could be very seriously threatened if, indeed, education becomes the prerogative only of the state. And I think we ought to keep that very much in mind. I think we ought to remember that there was a time in this country when there was no such thing at all as public education; that it was the religious denominations, in fact, who brought education to America and established it; and that for a hundred years, it was the denominations of this country which fostered education in America. And now, in a time when there is intense competition, our denominational schools are being forced out of existence. It seems to me that the situation is a little like that of a man who divorces his wife after she's lost her attractiveness and appeal to him.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. Will Mr. Loendorf yield?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I yield.

DELEGATE JAMES: Mr. Loendorf. The next to the last line of your amendment here says "to the state". Can funds be distributed to non-public education without going through the state? Is that possible?

DELEGATE LOENDORF: Very possible. As I pointed out, Mr. James, we don't know how this will be done by the federal government. Now, I understand--although the educators, I'm sure, know this better than I-that they usually distribute them through the state.

DELEGATE JAMES: Mr. Loendorf, will you yield again?

DELEGATE LOENDORF: Yes, I yield, Mr. James.

DELEGATE JAMES: Do you think this would be more palatable to some who have objections if this "to the state" was deleted? Or do you suppose it would be as effective? I mean this is just one of those iffy questions.

DELEGATE LOENDORF: I doubt-I don't think whether those words are in or out really makes any difference in the meaning of the section. It's-there's perhaps no problem with the federal government, and there wouldn't be if they distribute them directly. So it seems to me that you would need the words "to the state" in there that-to show that you're covering cases where the funds are funneled through the state to the schools.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. Mr. Loendorf, the purpose of my comment was: I was wondering if taking out "to the state" wouldmake it more palatable and remove some of the emotion—

DELEGATE LOENDORF: Well, to me—

DELEGATE JAMES: --without emasculating the thing.

DELEGATE LOENDORF: I guess I'm not a very emotional person. I don't see any emotion in "to the state".

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I rise in opposition to the Loendorf amendment, in opposition to the minority report, and in support of the majority report as written. For the record, I'll state my personal interest in this matter. I am a Mason and a product of the public school system of the State of Montana in the city of Anaconda. However, I am happily married to a charming Catholic woman, JoAnn, we've been happily married for 14 years. I'm raising my son Chuck and my daughter Jolie as Catholics; and even the Pope will admit, that's pretty open-minded for a Bagdad Shriner. (Laughter) However, I am speaking to you today not as a Mason or as a Protestant, but as one who is dedicated to preserving our public school system. And that's what this issue is all about. I don't think we ought to dilute that in any way. We aught not to open the door to anyone. We have the finest public school system, open to all, that has ever been devised by any society. I glanced at the Helena telephone directory in the yellow pages and found over 40 listings under the heading "Churches". We're not just talking about some tax money to the parochial or Catholic schools. If we open the door to any of them, they all will be equally entitled to tax money. Speaking specifically to the two amendments, to the Loendorf amendment and the minority report, it absolutely escapes me, the distinction between state and federal moneys. For Reverend Harbaugh's information, I don't know whether you think this federal money comes from the collection plate on Sunday. It comes out of my pocket as a taxpayer. It is fundamentally wrong to take any tax money, and this applies to all federal money, and apply it to any church purpose. So, I think that both of these amendments really would open the door-could open the door to a violation of our public school system. I strongly urge that we maintain the majority report as written. I would not want to see the State of Montana to constitutionally say, "We can take tax money, run it through the hallowed walls of Congress and then it's all right to give it to a church school, but we won't take it from our taxpayers and run it through this house right here and give it back to the church school." I strongly urge that we support the majority report.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: In all our testimony, as Mr. Harbaugh told you, we had three different church denominations that spoke before us who are very, very opposed to any public money--or any federal money-to be allocated to any of their church or schools. They wanted to preserve the article the same as written. To tell you specifics on one, the Seventh Day Advent schools-he talked to us and he pointed out very strongly that if any of this money is ever distributed to any private school, then the federal

government or the state will take over part of their church work. And they specifically told us they wanted no aid from no taxes or any allocation of any kind. He pointed out that-"If we cannot support our private schools, then it's our fault. We are the ones that's running it, and we don't want nobody to interfere with us. We teach our religion and we want it this way." Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in support of the majority report. I, too, am a taxpayer of the federal government and I don't want any of my tax money going into my church, and my church doesn't want it. And I think that both of these amendments start the opening of the door to the use of not only state but-federal money, but the possibility in the very near future of state money for the use of private and parochial schools.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. I belong to Holy Family Parish in Great Falls. I am the financial adviser commissioner for the parish, so I do have a little prejudice. I don't think I'm emotional, though, because we're talking about money. Money is not a very emotional thing. (Laughter) I would like to go much farther, of course, than either of the amendments go, but I am a practical person; I realize it would be impossible. But to show you what some of the other ideas are and to give Father Gorman, my parish priest, full credit, I think I should read a little of his work into the record. Just one paragraph taken from his release of February 3, 1972, entitled Parish Goals *and Objectives in Education-quote:* "We cannot speak of the state as independent of the people who make it up, so we should not merely grant each other freedom of religion but actually facilitate the teaching of religion. At the present time in history, we can only hope that those who demand freedom for themselves will also grant it to others, for it is only those who silence their conscience who agree that justice is being served at the present time when only nonreligious schools receive taxes levied on all people for education."--end quote. You all got this booklet the other day put out by the Task Force on Economic Growth and Opportunity. The task force was made up of 100 corporation presidents, and, briefly, they bring up one other point-and I quote: "In brief, we recommend that the government consider continuing to finance education for all children but that it offer them, as an alternative to public education, financial support for private education up to the amount of the average expenditure per pupil in local public schools." Now, they're basically concerned with just one educational setup; there is nothing to compare it with. Quoting-"Where market discipline, the knowledge that if the job is not done as well as it can be, someone else who can do it better will get to do it, is absent, both complacently and timidity develops." And finally, on one other little issue, I have a letter here signed by Reverend Charles Gorman; Sister Mary Kevin, who is the Principal of Holy Family School. "To whom it may concern: As of now, Holy Family School has 18 students in attendance from Malmstrom Air Force Base in Great Falls. To date, the school has not received federal funding of any kind for these students."—end quote. We do receive, in the city of Great Falls, federal impact funds to take care of the cost of educating those children who come into Malmstrom and other federal projects. According to the report in the back of the article we're working on, there are 2,057 private school children in Great Falls. We are saving the taxpayers of Cascade County $1,364,081. That averages out-1 didn't have my calculator, but reasonably close to $658.76. Multiplying that by the 18 students, Holy Family is saving Cascade County approximately $12,000 on those 18 students. Therefore, I think in fair to-fairness, we should be at least entitled to a few federal funds if we can get them. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman. I'm a Catholic and a taxpayer, and if I were to try to convince everybody in this hall that I knew everything about this Education Article, I think I'd be less than truthful. I've asked some educators who can't even explain the foundation program to me, and I really don't understand it myself; but I have a little problem in that I have two children going to school several blocks away from one another, and when they go to get on the school bus in the morning, the one that goes to the private school can't get on the bus and the other one can. Now, really, our problem in Anaconda isn't that great, because we have a very nice individual, Mr. Sonny Gore, who owns the buses, and he insists that they all can ride as long as he owns them. Now, I can't understand why my-both the children can't ride the buses, and my children can't either. I hope you'll support Mr. Loendorf.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I would rise to resist the Loendorf amendment and also the minority report. I think probably the best example that we've seen here of the double standard I think that we have here is that in our present Constitution, we do not allow any state funds to go to the private sector. And if our money goes to Washington and comes back, that's okay. And I believe that it was the intention of those who first set up this Constitution that there should be separation of church and state. Our public schools are free to anyone who wishes to go. In many cases, taking over those students from the private school will not increase the cost to the taxpayer that much. As we see at the present time, especially in the lower grades, the enrollments are going down. This does not necessarily mean a new building or necessarily a fantastic amount of new teachers. It may, in some way. I'll be glad to pay it. I want this separation of church and state, and I shall fight for it through our Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I rise first to request that my presence be noted so that I can vote, because I do want to support the Loendorf amendment. We live about a half a block away from a good public school in Miles City.

CHAIRMAN GRAYBILL: The journal may so show, Mr. Choate.

DELEGATE CHOATE: Thank you. We live about a half a block from a good public school in Miles City. I am a Protestant. We have two children in school. The Catholic school, the Sacred Heart School, is clear across town. They don't have any bus service going there so we, necessarily, have to get them there ourselves. And I drive them, or one of us does. We have both children in the Sacred Heart School. Now, either we're kind of stupid or else it's because it's a pretty good-quality school. I feel there is a good deal of merit to it, and I think they are entitled to some assistance federally. And I support Jerry's amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. Will Mr. McNeil yield to a question?

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE MCNEIL: I yield.

DELEGATE BLAYLOCK: Mr. McNeil. There can be no quarrel that tax money is tax money, whether it's state or federal. You're right. On the other hand, is it your position that if the federal government were to give public--or funds as this last sentence says, "provided to the state for the expressed purpose of distribution to non-public education," that you would want the State of Montana bound so it could not accept those funds, even though, say, Wyoming and Idaho and Minnesota could?

DELEGATE MCNEIL: Mr. Blaylock. If the federal government makes our tax money available for education, I want it to go to our public school system and not be divided among 40 different school systems.

CHAIRMAN GRAYBILL: Is there any further debate?
Mr. Noble.

DELEGATE NOBLE: Mr. Chairman. I rise in support of the majority report.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President, fellow delegates. I think this discussion here today reminds me of the poem I'm sure that—

CHAIRMAN GRAYBILL: Hold your mike a little closer.

DELEGATE SKARI: -most of you are familiar with. It's the "Mending Wall" by Robert Frost, wherein he describes the repairing of a fence on a farm in New England in the fall, I take it-or in the spring. I guess it's an annual chore there to repair these rock fences that they have between the farms. And Frost and his neighbor go out to share the job of putting up the stones from each side of the wall and replacing them. And Frost has mentioned several times that he writes his poems about New England, but not necessarily just for New England. When he's talking about-he talks about the fences that society builds. And he also asks the question, when we build a wall we have to take into account what we're walling in and what we're walling out. I think here we have to consider this, too. I think we have built a substantial, solid wall in our old Constitution. I think that this wall is good and proper. I don't think we could remove it if we wanted to. For this reason, I favor the-1 support the Loendorf amendment. I don't think we should, intentionally, build the same wall, however, in regard to the federal moneys. I think the states have rights here. I think they can be more

stringent, but I think perhaps we would be a little unfair by building the same wall. I don't think this will undermine our public school system; I think it may even strengthen it. It will-financially, the private schools take some strain off our state system. Many other states will provide no obstacles to these federal funds, and I fail to see that we should either. Frost's farmer friend also mentioned that good friends-good fences make good neighbors. I think we-he was partly right here. It's a very earthy point. I think maybe he was partially right, but I think we have to take into account what we're walling in and whatwe're walling out. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. Would Mr. McNeil yield to a question?

DELEGATE MCNEIL: I yield.

DELEGATE STUDER: What I wanted to find out, McNeil, is whether or not loans which are granted would be forbidden under your thinking? I mean, would you be against granting loans to students for education in which some [of] them are used in secular schools?

DELEGATE MCNEIL: Of course not, and our present constitutional provision, which is the majority report, does not foreclose that either.

DELEGATE STUDER: Well, I was wondering if it did. That's my question.

DELEGATE MCNEIL: No, it does not.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, fellow delegates. When we first came here in January, I introduced a delegate proposal which stated that the State of Montana should use the 1st Amendment as the basis for this-to replace this article-section, rather. Now I find that even with myself, this 1st Amendment would not be strong enough, and I do support Mr. Loendorf s amendment, as I was part of the minority with Mr. Harbaugh. And I feel, possibly, as we look at this, we've-many times we've gone-it's come up on this floor-is the number of times signatures have come up on petitions stating whether they would or would not support a certain item. Now, as part of this, I think that, actually, we-all you're doing here is possibly guaranteeing, in a way, something that possibly we would not have—that—these parochial schools receive right now, in a way. Should we go to this revenue sharing? Should--we are not keeping this away-we are not keeping this money away from the state. But I do say that to go along with this minority proposal and with Mr. Loendorf s amendment, that we will make many friends of the Constitution, and I hope that we do. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman, thank you. Fellow delegates, I rise to resist both of these amendments and to ask this body to support the majority proposal. I don't need to tell anyone in this group of 100 people to what denomination I belong, nor to how the denomination I belong to feels about the matter of education. I urge each of you delegates to think what has gone on here this morning. Think about it. Consider it, and let's vote for the majority proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: In answer to Mr. Studer's question on loans to students. I went to the bank in the city of Billings when I was down there to investigate this very question, because I figured it would come up. The banks today will loan any student to go to any school, private or nonprivate, in the State of Montana. All the application they need is from the school which they're going to attend. If they are-have the requirements, the bank asks no questions and gives them the loan. They pay every quarter for their tuition, their books, and their room and board. If the student's parents make under $15,000 a year, the government will absorb half of the interest. If their income is over $15,000, the student absorbs all of the interest. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Would Mr. Conover yield to a question?

CHAIRMAN GRAYBILL: Mr. Conover?

DELEGATE CONOVER: Yes, I will.

DELEGATE STUDER: Mr. Conover. You were getting just about to what I wanted. I thought that-you gave me an answer that-1 was talking about public funds. The government has granted funds to be loaned to students. They're being

loaned in places like Texas, where their Constitution does not forbid their use, like, to Southern Methodist, or students going to Baylor, or schools like that-parochial schools, you might say. So what I really wanted to know-is direct grants from the federal government to be put out as loans to students going to-be a loan to students at the College of Great Falls or Rocky Mountain?

DELEGATE CONOVER: That's right, Ralph.

DELEGATE STUDER: Okay, that's what I wanted to know.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. May I ask Mr. Loendorf a question?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I yield.

DELEGATE ROMNEY: Mr. Loendorf. In the last sentence of your amendment, it says "from federal sources provided to the state". Now, if the state distributes federal funds directly to nonpublic schools, there's no need for this amendment, is there?

DELEGATE LOENDORF: Neither the state nor the federal government now can distribute funds directly to nonpublic schools.

DELEGATE ROMNEY: Mr. Chairman. May I ask a second question?

CHAIRMAN GRAYBILL: Yes, Mr. Romney.

DELEGATE ROMNEY: That being the case, you a little while ago, eluded to the fact that the situation now is all right, but we don't-can't look into the future to see what's going to transpire then, about the matters you were discussing. We can't look into the future to see why not-the federal government might not deal directly in the future either, right?

DELEGATE LOENDORF: I can't hear him, Mr. Chairman.

DELEGATE ROMNEY: A little while ago, you spoke about not being able to look into the future to see what might transpire then.

DELEGATE LOENDORF: That's right.

DELEGATE ROMNEY: Neither can you look into the future now and know for certain that the federal government will not deal directly in the future.

DELEGATE LOENDORF: No, that's the whole point. We don't know what's going to happen in the future.

DELEGATE ROMNEY: So if the federal government should deal directly in the future, your amendment would be unnecessary.

DELEGATE LOENDORF: That's right, It would be meaningless, harmless, of no purpose, and of no effect even. It's just there to provide for cases in case the federal government chooses to deal through the state as it has in the past. And no funds, no matter how-where they come from, either the state or the federal government, under either constitutional provisions-the present state provision or the federal provision-could be given by the federal government or by the state to private schools, as I interpret it.

(Committee of the Whole chairmanship assumed by Mr. Etchart)

CHAIRMAN ETCHART: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. It seems to me, in listening to this debate, we're confusing two issues: the elementary-secondary and higher education. There is no way that we here today can blanket both issues. And I think the chances are best for the future to stay with the majority report. And consequently, I would reject any amendments. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Now, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I'd like to call Mr. Romney's attention to the paragraph on page 47 of the Education Article. You'll find in the indentation there a quotation from a recent study by the National Education and Finance Project. And this is a part of the recent national study that's just been made, and this is in regard to whether or not federal funds would go to the state, or how they would be applied. It says, "Whatever federal grants are made in the days ahead, they should not bypass state government. Instead, federal grants for public schools should be made to a state educational agency for allocation to local schools in accordance with state plans." And I heartily agree with that. I don't think we want to get into a situation where we bypass the state. And this is part of the concern to-of our amendment.

DELEGATE ROMNEY: (Inaudible)

DELEGATE HARBAUGH: No, that's just in response to the question you asked.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN ETCHART: Mr. Romney.

DELEGATE ROMNEY: That's a matter of opinion.

CHAIRMAN ETCHART: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I'd like to ask a question about WICHE funds, and I don't know-1 thought maybe Mr. Champoux could answer it. Maybe someone else can answer it. The way our Constitution is worded now, could WICHE funds ever be given to students going, say to Rocky Mountain College or Carroll College here in this state?

CHAIRMAN ETCHART: Mr. Champoux, do you yield?

DELEGATE CHAMPOUX: No.

CHAIRMAN ETCHART: Would anyone care to answer that?

Mr. Conover.

DELEGATE CONOVER: Yes, Jean, it can and it is being done now with the banks in Billings. This money comes from the federal government; and Rocky Mountain College-all they have to do is send a requisition or fill out a form to any of the banks and any one of these students to any private school can get four years of college education.

CHAIRMAN ETCHART: Mrs. Bowman.

DELEGATE BOWMAN: Well, Mr. Chairman, my understanding of WICHE money is that it's only state money appropriated by our State Legislature, matched by the college. We don't get federal money—

DELEGATE CONOVER: I couldn't answer you about state money.

DELEGATE BOWMAN: Well, that's what I wanted to know. Mr. Burkhardt, do you know?

CHAIRMAN ETCHART: Mr. Burkhardt.

DELEGATE BURKHARDT: I'm sorry, Mrs. Bowman. I'm not able to discuss that. I'm thinking-I'm aware of individual cases where people who are going to a medical school or a veterinarian school, with no regard to what institution they are now in, applied for these things. But, I don't have the facts in front of me.

DELEGATE BOWMAN: Thank you.

CHAIRMAN ETCHART: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I think that what Jean is talking about is the Western Interstate Commission on Higher Education. And the money that the state appropriates goes into a fund and can only be used to designated schools. I think in Montana, as I recall, forestry and some other schools can come, but I think that at present, no, Rocky Mountain or Carroll or the College of Great Falls would be eligible, or students would be eligible for those funds.

CHAIRMAN ETCHART: Mr. Romney.

DELEGATE ROMNEY: WICHE is an organization of several states which provide and is funded by the Legislatures of thevarious states, It provides for education for students in Montana, for example, for students who can go to institutions of higher education where we have in our state no educational colleges for that purpose, such as medicine, veterinary, and several others. And the states--I think it's Montana, Idaho—there's six or seven of them-and they are funded and Montana appropriates a proportionate share.

CHAIRMAN ETCHART: Mr. Champoux.

DELEGATE CHAMPOUX: I'm sorry, I was out of the room. I was getting a copy of a document. Essentially, Mr. Romney is correct. If the funds go to the school-it can go directly to the school-and there are many instances of this in the State of Montana, for instance. But if it goes through the state, it cannot go to the schools, Thank you.

CHAIRMAN ETCHART: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I want to stir a little bit deeper here. Before I do, let me make this observation just for the record. As a churchman, there is a real principle we're talking about here. As of right now, at this moment, at this time in our history, it's not very large, it doesn't loom large here. The basic principle I'd like to iterate is this: that it's very difficult for a church supported by a state to be critical of the state, as I think a church should. We see evidence of this in Italy; we saw evidence of this in Germany; all across history. That's why I say this is no little

thing, this matter of keeping separation of church and state. Now, I don't mean to take that blanket principle and apply it specific to every little detail that has been mentioned here. I'd like to-when I said I want to stir a little bit deeper, I would like to ask the Education Committee, and then those on the minority, and then Mr. Loendorf, what I think is a basic question. Why, in none of these reports, is any mention of private schools made? Now, I have sat here and I've looked through the entire Education report. In the very first instance, in Section 1, subsection 2, we passed this: "The Legislature shall provide for a system of quality, free public elementary and secondary schools." Now, listen to this. "The Legislature also may provide for other educational institutions, public libraries and educational programs as are deemed desirable." Now that covers a lot of territory. When we get to Section 6, we restrict this. We say they may do this. They may get up other educational programs. They may support other educational institutions. But they cannot directly or indirectly support any church or sect in any kind of educational enterprise. Now, this is my question for information. Where, in this entire document, is there a prohibition of the state's sponsoring or giving money to aid private education? Now, I also-1 spoke a moment ago from the viewpoint of a churchman. Let me speak now as a viewpoint of a man who comes from Alabama originally, where the big subversion of public school moneys was not to church, but to so-called private institutions, in order to get around the issue-to beat the issue of segregation and nondiscrimination. Do we have any kind of protection, or do you think any kind of protection of that sort is needed in our present-in our new Constitution? Mr. Champoux, would you like to start on that?

CHAIRMAN ETCHART: Mr. Champoux.

DELEGATE CHAMPOUX: I believe, if you remember, back in the Legislative Article, there was a-1 can't remember exactly the specific-in Section 6, if you read that, it specifically says that there will be no moneys given to private corporations and so forth. It's in there.

CHAIRMAN ETCHART: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I had hoped that this issue might not be a very emotional one up here, and I don't think it needs to be. I certainly agree with McNeil back here, with his thinking. I, too, pay federal taxes, but we do have to be practical. Life is a system of compromises. And the federal aid is coming in now, and it just seems to me that the way to get off center here, move this Convention on, perhaps not stand here and argue about it all day long and raise a lot of tempers, would be to accept Delegate Loendorf's amendment. I would support that and get on with the Convention. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. When this committee gets ready to vote, I ask for a roll call.

CHAIRMAN ETCHART: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. Would Mr. Harbaugh yield to a question?

CHAIRMAN ETCHART: Will you yield?

DELEGATE HARBAUGH: Yes.

DELEGATE KELLEHER: Gene, this is a legal question, but maybe you've looked into it. If the--Carroll College or the College of Great Falls were ruled by a lay board of trustees, as many institutions throughout the United States are now, and if legal and equitable title to the property were transferred from the Bishop, who normally owns property like that as a corporation sole, to a private corporation, could then the Legislature grant state aid to Carroll College? Now, I'm not talking about federal funds; I'm talking about state taxes. And do you want to-Jerry would YOU-

DELEGATE HARBAUGH: I'd have to defer to Mr. Loendorf. We're on his amendment here.

CHAIRMAN ETCHART: Mr. Loendorf.

DELEGATE LOENDORF: First of all, Bob, I think those schools probably are operated that way. I don't know; I'm not that familiar with them. Secondly, the ownership of the property would have nothing to do with it. A public school can lease its institutions from a religion and operate them if they want to. And I don't think that has anything to do with what we're discussing, does it? I don't see your point. I don't think the Legislature-whatever it can do as far as state funds are concerned, we're not changing by this amendment. If it can do it now, it can do it; if it can't do it now, which I assume it cannot, then it cannot.

DELEGATE KELLEHER: so your amendment is limited, then, strictly to federal tax money--would allow the expense-we of federal tax money?

DELEGATE LOENDORF: It's completely and solely limited to that.

DELEGATE KELLEHER: And that's your intention?

DELEGATE LOENDORF: Right.

DELEGATE KELLEHER: Yes, all right, fine; you've answered two questions. Now, while you're still up-Mr. Chairman, may I ask Mr. Loendorf another question?

CHAIRMAN ETCHART: Mr. Loendorf, do you yield?

DELEGATE LOENDORF: I yield.

DELEGATE KELLEHER: Now, is federal aid ever contingent-federal educational aid ever contingent, like OEO, legal funds, the highway funds and other moneys, upon a small percentage of state participation? And if educational aid from the federal government were contingent even upon a l-percent state participation, would your amendment authorize that?

DELEGATE LOENDORF: My amendment wouldn't authorize the state to participate with any funds. If the federal government chooses to endorse-or enact a program under the present provision or under the amendment I've attached, the result will be the same. I don't know what it'll be.

DELEGATE KELLEHER: Thank you. Mr. Chairman.

CHAIRMAN ETCHART: Mr. Kelleher.

DELEGATE KELLEHER: As I understand the most recent decisions of the Supreme Court-in fact, just this past summer--a State Legislature may appropriate aid to a institution of higher learning above the secondary level. So that really is a moot point for grade schools and high schools. Now, the comment was made that the New York Constitution was killed because of this-because it did not contain such a provision as the so-called Blaine Amendment. I submit that the New York Constitution actually contained a directive to the Legislature. If the New York Constitution had merely contained the 1st Amendment, that would have been one thing, but it actually contained the following directive--and I'm reading from page 30, Article IX of their Education Article: "Section l-B, sub. 1: The Legislature shall establish and define a system of higher education for all the people of the state encompassing both public and nonpublic institutions by programs which may include free tuition grants, fellowships, and scholarships." As I understand it-and it's only hearsay-the Catholic hierarchy in the State of New York was responsible for urging this through and obtaining its passage at the New York Constitutional Convention. Now, I'm a "diaper Catholic" with six children. None of my children go to a parochial school. And I am almost a half century old, and in that time I think I've heard every argument, either sensible or nonsensible, on this subject. I'm a strong believer in the 1st Amendment to the federal Constitution. And regardless of what we do, we always have the protections of the 1st Amendment of the federal Constitution. And I think, in 1972, that it is time to bury some of our old prejudices and our fears, particularly our fears. I dislike the word "bigotry", because what is bigotry for me may be a very logical reason to another man. I went to parochial schools when I was a young boy. In fact, I spent 9 years in a Carmelite Monastery. I've been in state institutions, and I do not like to see the private school, whether it's sectarian or nonsectarian, disappear, because I think it is a valuable norm or canon against which state-owned institutions can guide themselves and determine whether they are keeping up with the times in the best possible methods of educational science. Therefore, Mr. Chairman, I'm going to move as-if it's in order. I believe there are two amendments up there.

CHAIRMAN ETCHART: Right.

DELEGATE KELLEHER: Perhaps I'd better ask the Chair first whether a substitute amendment is in order at this time. I believe you have two amendments now.

CHAIRMAN ETCHART: Well, we're on a substitute amendment by Mr. Loendorf.

DELEGATE KELLEHER: Now, is **a** substitute to Mr. Loendorfs amendment in order? That's my question.

CHAIRMAN ETCHART: I-No, sir. An amendment to his substitute amendment would be in order.

DELEGATE KELLEHER: Just-could I have just a moment to inquire of counsel? (Laughter) I'm not in order to make the motion-the specific motion that I want to make at this time. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Arness.

DELEGATE ARNESS: Will Mr. Harbaugh yield?

CHAIRMAN ETCHART: Do you yield, Mr. Harbaugh?

DELEGATE HARBAUGH: Yes.

DELEGATE ARNESS: Is it my understanding now that the minority of the committee has acceded to the substitute motion which has—proposed by Loendorf, and that you're supporting that?

DELEGATE HARBAUGH: Yes, I'll support the amendment. I think that basically it doesn't change the intent of what we're trying to accomplish.

DELEGATE ARNESS: Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Aronow.

DELEGATE ARONOW: Will Mr. Loendorf yield to a question?

CHAIRMAN ETCHART: Mr. Loendorf yield?

DELEGATE LOENDORF: I yield.

DELEGATE ARONOW: In looking at your amendment, Jerry, I-you say it will not—shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education. Do you mean by that that the funds have to be earmarked by Congress before the state can act as a conduit to transmit those funds from the state to nonpublic schools? In other words, the Congress has to specifically earmark those funds and say X-number of dollars to Rocky Mountain Collegeor X-number of dollars to the College of Great Falls? In the absence of that kind of earmarking, the state cannot act as a conduit?

DELEGATE LOENDORF: Right, that's exactly what we mean, I think. That-in other words: a grant comes from the federal government; unless they expressly say in it that it's to be used for these purposes, then the section above applies. And they might not earmark particular funds. I don't think they will earmark funds for at least elementary and secondary schools. I don't think they can. But what they might do, and I think they do something similar to this now, is say, "Okay, purchase a certain amount of textbooks-or these funds are for the purpose of textbooks to be distributed to the pupils attending state-approved schools of the state, whether they be public or private."

DELEGATE ARONOW: Would you yield to another question?

DELEGATE LOENDORF: Surely.

CHAIRMAN ETCHART: Mr. Aronow.

DELEGATE ARONOW: If moneys come to the State of Montana under an assumed revenue sharing type of deal that may be evolved in the future and those funds are not earmarked but they're X-number of dollars to be used for education in Montana, is it your opinion, under this amendment of yours, that the state could then say that X-number of dollars might go to nonpublic schools?

DELEGATE LOENDORF: No, I do not believe the state could, unless they can get around the first sentence of Section 6, which is Article XI, Section 8.

DELEGATE ARONOW: Thank you, Mr. Loendorf.

CHAIRMAN ETCHART: Mr. Mahoney.

DELEGATE MAHONEY: Would Mr. Loendorf or Mr. Harbaugh-Mr. Loendorf would be fine.

CHAIRMAN ETCHART: Mr. Loendorf, will you yield?

DELEGATE LOENDORF: I yield.

DELEGATE MAHONEY: Could this in any way dilute funds going to the public schools? I'm thinking of trade schools and things like this that we may develop in the future.

DELEGATE LOENDORF: I doubt it, When the federal government enacts legislation creating a program for schools, they do it. The fact that we would not accept the funds unless they, say, limit them to only public schools, I don't think would make them change their minds. My experience in the other areas-for example, the legal service example I gave you-legal services had a different type of operational setup than prescribed by the federal government. As I say, when the gentleman came from-and I don't remember, it was Kansas City or Denver-he just told us we had to operate the way they said or no money. And that was it.

DELEGATE MAHONEY: Well, Mr. Chairman. All I'm worried about on this deal is this-that I can see a proliferation of private schools developing United States-wide. And this might be that we've only got so much money coming in here after we get into block grants. And I think this is coming. I think this is no question about it. I think we're going to have the value added tax, and this is where-going back and send money back to the states under block grants. Now, I'm perturbed if these come, and I think they will. I see chances of-we've noticed it here, as Delegate Harper said, in the South. And we could get to the point we're going to have some private schools, and especially in vo-technical education and some of these. And if they have to divide it up on a student basis, we might could ruin our public vo-tech education. This, I think is coming, and this is what is bothering me about the whole situation on this-is not the question of parochial schools but the new-1 think parochial schools are going out. I think we're going to find these people come in, and we're seeing the start of a school out here. We're getting block grants. They're going to say, "This is so much going to the state. You've got 694,000 population, and you get so many dollars." Then, if we have to hand it out over these-and this is why I have to have a lot of clearance on that particular point.

CHAIRMAN ETCHART: Mr. Loendorf, do you wish to close?

DELEGATE LOENDORF: I'll close if no one else wishes to speak. I perhaps misled you, Charley. Whatever we put in our state Constitution will not have any effect on that. If the federal government wants to provide for block grants to private w-technical schools, they can do it, irregardless of what's in our Constitution. I perhaps misled Mr. Lore110 also. At least, I've had a lot of questions raised here that I think my amendment has no effect on. It will not allow Peter's kids to ride the bus, and I hope I don't lose his support because of that. All this amendment does is maintain the status quo. It simply will allow federal tax dollars, which the federal government is going to take irregardless of what's in our Constitution, to come back as they are now. And it will insure that they come back in the future, whatever type of program the federal government develops in the future. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I tried to rise before Mr. Loendorf started to close on the thing. I would like to ask Mr. Loendorf a couple of questions, if he would yield.

CHAIRMAN ETCHART: Mr. Campbell, Mr. Loendorf has closed. A roll call vote has been called for. Members of the committee, the question now arises on the motion by Mr. Loendorf to delete Section 6 and substitute the wording as we have—as you have on your desks. As many as are in favor will vote Aye; as many as are opposed will vote No. Does any member wish to change his vote?

(No response)

CHAIRMAN ETCHART: If not, the clerk will record the vote.

DELEGATE FELT: I vote No.

CHAIRMAN ETCHART: Felt votes No.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Absent
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Nay
Cain	Nay
Campbell	Aye
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Aye

Felt ..... Nay
Foster ..... Absent
Furlong ..... Absent
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins., ... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 53 have voted Aye; 40 have voted No.

CHAIRMAN ETCHART: 53 having voted Aye, 40 having voted No, the motion is carried.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to say why I voted against the amendment was I was hoping that Mr. Campbell's amendment to the article, which I felt was-which I liked better, would be part of the article. I did not rise to my feet earlier because I was hoping he would submit his amendment, and I wanted to explain my vote. Also, I noticed in the back of the article where they listed the number of students, they missed the largest school in Gallatin Valley, which has 370 students at this time and is a private school. These people-I'm very pleased this amendment was passed, because I feel that these people are being loaded down with taxes for our public schools. I do support public schools; my children went to public schools. But I do feel that when they have an opportunity to receive some nonstate funds, they should. And I want the record to show that I do favor that. Thank you.

CHAIRMAN ETCHART: Let the record so show, Are there any other amendments to Section 6?

Mr. Campbell.

DELEGATE CAMPBELL: Would Delegate Loendorf yield to a series of questions, please?

CHAIRMAN ETCHART: Delegate Loendorf?

DELEGATE LOENDORF: I yield.

DELEGATE CAMPBELL: Delegate Loendorf, in comparing the last sentence which you have in your amendment which was adopted, to the proposed amendment I would make, did you consider whether or not there may be any nonfederal sources, such as foundations or things like this, that might go through the state?

DELEGATE LOENDORF: That is possible, Bob, and my amendment doesn't cover those.

DELEGATE CAMPBELL: And what if the Congress in its wisdom provided for a hot lunch program for the school children of Montana and gave it to the children of Montana for distribution through the state? Would the state, under your provision, be prevented from allowing nonpublic school children from receiving this hot lunch program?

DELEGATE LOENDORF: I believe the federal government has done that now for all school children.

DELEGATE CAMPBELL: Well, in that type of a thing where some other thing that's similar to a lunch program, that a grant is made to the state but doesn't specifically say it's intended for nonpublic education, wouldn't your amendment still prevent that?

DELEGATE LOENDORF: If the grant coming to the state doesn't specifically say it's for nonpublic education, then my amendment would not allow nonpublic education to participate.

DELEGATE CAMPBELL: Mr. Chairman.

CHAIRMAN ETCHART: Mr. Campbell.

DELEGATE CAMPBELL: I feel that this would restrict the state, and I would like to move that my amendment be read and considered at this time.

CHAIRMAN ETCHART: Will the clerk read Mr. Campbell's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 6, page 5, line 13, of the Education and Public Lands Majority Proposal by adding the following: 'Nothing herein shall prevent nonstate money from being distributed for the benefit of all students within the State of Montana.' Signed: Campbell."

CHAIRMAN ETCHART: Mr. Campbell.

DELEGATE CAMPBELL: This would be an amendment to the section that we just passed that Mr. Loendorf had approved. If I may speak just a few minutes on this, I feel that we are still not really achieving our goal. I'd like to go into a little background. I was raised in a small eastern Montana town. It's a town that is isolated geographically, and sometimes from ideas also. The town is very secure in that individuals are very secure in their absolute beliefs in their own faith. And they have, over the past, had a deep mistrust of others who didn't believe the way they did. In the past, this distrust has lessened with more enlightenment, and we do have, today, social events between groups that were in the past deeply suspicious of each other in their motives. I was very disturbed over the reaction in this town when this question of support for nonpublic education arose, because I felt that this was again bringing up the religious intolerances that I thought were slowly diminishing in that area. I firmly believe, as does Delegate Kamhoot, that life is a series of compromises. And I am deeply touched, in the Bill of Rights Committee, from the number of responses I have received from schoolchildren throughout the state. Many of them said, "Remove the Blaine Amendment and please help me in my education and save my school." I was very touched by their handwriting. And many times, of course-once in awhile, they would say, "Dear Mr. Blaine, please do something about the Blaine Amendment." But I feel that they do have a legitimate concern. In the Bill of Rights Committee, we did have the Montana Catholic Conference appear. And our questioning of that conference went to what reason they had for asking that this section be amended. They assured us that they did not intend to have the State of Montana funds diverted to nonpublic schools, to their schools. Their concern was, in the future, there may be a grant to the state which doesn't say parochial or nonparochial schools, and that this might prevent some type of program from uniformly being distributed within the state. I'm willing to take them at their word. I feel that by adding this amendment, we would take in the question of [if] there's any other nonfederal sources involved and also take care of the question of whether or not there's a specific direction from Congress. I'm worried about this, because a few states have this rigid requirement that we have against any nonpublic school or academy, directly or nondirectly. I think this would still give us the protection we want. It would allow these funds to be distributed, such as a lunch program, and I feel that it would be an addition which would give more flexibility than the present one that we passed. Thank you Mr. Chairman.

CHAIRMAN ETCHART: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. Bob is concerned about the free lunch program.

Every private school in the state can have private-school lunch program. I received this on school lunch programs, and this is for private and public schools. The commodities-flour, turkey, butter, and so forth-whatever-are commodities from the U.S. Department of Agriculture, are distributed free to both public and private schools. The Montana Legislature-in 1947, the Montana Legislature authorized a revolving fund of $25,000 to have commodities freighted into the state. They are shipped to Helena from the nearest federal terminal. This fund is not tax supported, except for the original year. Funds to keep the repayment to the fund by both public and private schools-the shipping charges fluctuate but average a dollar and a half per shipping unit of food donated. Charges are prorated by the amount purchased. The general cash is available equally to both public and private schools, and after they are set up, you can charge for lunches. This is what supports your school lunch program, regardless whether it's private or public. This is what maintains it. From the government on, children who cannot afford to buy lunch tickets are reimbursed to whichever school it involves. They will pay the total price of that lunch for this child by making application for it, and it's set up by the federal government and the state. It also says here that the public schools and private schools may participate throughout the State of Montana.

(Committee of the Whole chairmanship assumed by Mr. Graybill)

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. May I ask Mr. Campbell a question?

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Yes.

DELEGATE BUGBEE: Mr. Campbell, I'm confused. Do you intend to add your amendment to Mr. Loendorf s amendment or substitute it for his amendment? Just—

DELEGATE CAMPBELL: Okay, I intend to substitute it for the last sentence of his amendment which we have just passed. I would replace: "This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education." Mine would replace that, saying: "Nothing herein shall prevent nonstate money from being distributed for the benefit of all students within the State of Montana."

CHAIRMAN GRAYBILL: I think, Mrs. Bugbee, the Chair understands, then, that the effect would be if you pass the Campbell amendment, you'd have the original with-except the words "or indirectly" are out. Mr. Loendorf s was a substitute motion, so it took out the words "or indirectly" on line 6 of Section 7. Right? Pardon?

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. My amendment put the words "or indirectly" back in.

CHAIRMAN GRAYBILL: Oh, I guess you're right. Okay, you put "or indirectly" back in. That's right. So it's just the same way as it was, with the extra sentence, and now this is to replace that extra sentence. All right, excuse me; now I'm straight.

Mr. Burkhardt.

DELEGATE BURKHARDT: I'm not sure the Chair has it straight yet, but you do have his amendment in front of you, do you?

CHAIRMAN GRAYBILL: Yes, I do.

DELEGATE BURKHARDT: Fine. Well, then, it's there. It was enacted as he presented it. I have a question for the body and for Mr. Campbell. I'm wondering if the language of your substitute for Mr. Loendorfs language could be confused. For instance, if you have nonstate money in the form of local levies; what are you going to say about that? Are you saying those become available? What are you saying?

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. Mr. Burkhardt, no, I'm certainly not saying that local levies would not be included. It would be my intent to have local moneys construed as being state moneys, regardless if they're raised on the state or local level.

DELEGATE BURKHARDT: But as the funds are administered, they're administered locally without going through a state source at the present time, as I understand it.

DELEGATE CAMPBELL: That could be. Perhaps Mr. Champoux could better explain that than me.

DELEGATE BURKHARDT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Having been the proponent-or the person who had the task of presenting the original majority position, I would move to-or rather speak to defeat Mr. Campbell's motion. It seems to me that what we have added here by Mr. Loendorf is a face-saving thing for all of us. We left the "directly" in-or the "indirectly" in up above. We merely recognize, in the last sentence, the fact that this is now happening, and we trust will happen in the future, and that what he's done has been something that we can live with and can explain to our people. If we come in with this other one, it may be rather awkward in terms of what we mean by "nonstate money".

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: I'll support Mr. Burkhardt's position, and I think, as usual, he's given very good reasons for it. It seems to me that Mr. Campbell's amendment does two things we perhaps do not want to do-well, one at least— and that would allow that the state could distribute money to nonpublic schools even if not designated to them. I don't think we want it to do that. All we wanted it to do in my amendment was prevent federal money from coming into the state just because it happened to be designated in part for nonpublic schools.

CHAIRMAN GRAYBILL: Is there further debate on Mr. Campbell's motion to add, in place of Mr. Loendorf s last sentence, his phrase?

Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I didn't understand what Mr. Loendorf just said. I wonder if he'd say it again, please. (Laughter)

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: The amendment that we added-that's been added now, the amendment I proposed--will allow federal moneys to come into the state even if designated in part for nonpublic schools. Now-and it will not require the state, in any way, to-well, it will allow the state to go along with the federal restrictions on that money and accept it. Mr. Campbell's amendment will allow the state to accept the money from federal government, which it can do anyway, but it may allow the state to distribute money from the federal government which is not designated specifically for nonpublic schools, to nonpublic schools, which was Mr. Aronow's concern.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I'd like to speak in opposition to Mr. Campbell's amendment. I feel that it's totally unnecessary. I'm a member of a committee in Great Falls where aid to educationally--aid to children who are gifted-and this program completely circumvents our present constitutional provision, because the money goes directly from the federal government to the school district. And the children in Great Falls who attend parochial schools go to the public schools for this special educational program, which proves that money coming in from the federal government, going to school districts is now being accepted. And so I really feel that this amendment is completely unnecessary.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: I'd like to-Mr. President, I'd like to rise in opposition to Mr. Campbell's proposed amendment. I think that maybe we're overlooking something here. The wording of this particular amendment could possibly include grants from federal Forest Service lands to the State of Montana for education and other purposes. It could include grants from the Bureau of Land Management to the various counties. It could include floodplain land moneys that come into the counties for school and road purposes, and apparently it can include all of those things. So I think we're getting into pretty dangerous territory here if we adopt this amendment.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Campbell's motion to add the phrase "nothing herein shall prevent nonstate money from being distributed for the benefit of all students within the State of Montana", in place of the language we adopted in Mr. Loendorf's amendment.

Mr. Wilson.

DELEGATE WILSON: Could we have a roll call vote, please?

CHAIRMAN GRAYBILL: Mr. Wilson, Mr. Campbell wants to close.

Mr. Campbell.

DELEGATE CAMPBELL: Fellow delegates. It's rarely that everyone agrees so unanimously on one of my proposals. (Laughter) But I do feel that Montana, being one of the few-and I've checked with Mr. Champoux-seven or eight states-that has this provision in there, may very

well be denied, in the future, some funds merely because we are saying that the Congress should state explicitly that it must be made to nonpublic education. And I would feel that it would be a great disservice to this state-and I do not feel that Montana and the minority of states that are with it on this point would be enough to change the mind of Congress to make this provision simply for our benefit and because we put this provision in our Constitution. I really feel that if federal sources are given to the state for distributions in a program similar to a hot lunch program for distribution to all the children in the state, I certainly think they should receive them. Winston Churchill once said that a community can make no finer investment than putting milk into babies. And I don't think he meant just Protestant babies or just Catholic babies. Now, as you know, today we receive funds through the federal government through our ADC program to help children. Now, they don't say through those programs that if you give it to a Catholic family, that you are entangling church and state. We all agree there are certain things that young people need to be helped with, and I feel that my amendment would allow the Legislature to distribute these funds to all children based on need rather than on religious preference. And certainly if we denied funds like an ADC program to a family because it's Catholic, or because it's Protestant, would only leave one group open that could receive the funds, those of the family that had no religious preference at all. I don't think that's intended. I think that my amendment would not open new areas; we would still have the protection for State of Montana funds from not being diverted. And I feel that if the need ever arises in the future, we would have problems with the Loendorf sentence at the end; and I would urge you to accept mine. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster. Your presence is noted and you may vote.

DELEGATE FOSTER: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux. We're about to have a roll call vote.

DELEGATE CHAMPOUX: A point of order, Mr. President, for clarification if I may. May I?

CHAIRMAN GRAYBILL: You may state your point, yes.

DELEGATE CHAMPOUX: I don't want this assembly to get the impression that I agree with all of Mr. Campbell's statements. I only agree with the first sentence, which says that seven other states have a Blaine-type Amendment. Thank you.

CHAIRMAN GRAYBILL: All right. You shoehorned it in on me, Mr. Champoux. (Laughter) The issue is on Mr. Campbell's amendment to replace the language at the end of the Loendorf amendment with the language concerning nothing to prevent nonstate money being distributed to students within the State of Montana. We'll have a roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim Nay
Anderson, J. Nay
Anderson, 0.. Nay
Arbanas Nay
Arness Aye
Aronow Nay
Artz Aye
Ask Nay
Babcock Absent
Barnard Nay
Bates Aye
Belcher Nay
Berg Nay
Berthelson Nay
Blaylock Nay
Blend Nay
Bowman., Nay
Brazier Nay
Brown Nay
Bugbee Nay
Burkhardt Nay
Caim. Nay
Campbell Aye
Cate Aye
Champoux Nay
Choate. Absent
Conover Nay
Cross Nay
Dahood Nay
Davis Nay
Delaney Nay

Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland. ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 13 delegates voting Aye, 79 voting No.

CHAIRMAN GRAYBILL: 79 voting No and 13 Aye, the motion is defeated. We are now back debating Section 6 as amended by Mr. Loendorf. Are there further amendments? Is there further discussion? Are we ready to vote? Members of the body, you have before you on the recommendation of Mr. Burkhardt, when this committee does arise and report after having had under consideration Section 6, as amended, that we recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Will theclerkread Section 7.

CLERK HANSON: "Section 7. Nondiscrimination in education. No religious or partisan test or qualification shall ever be required of any person as a condition of admissioninto any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever; nor shall any sectarian tenets be taught in any public educational institution of the state: nor shall any person be debarred admission to any public institution of learning on account of sex, race, creed, religion or national origin." Mr. Chairman, Section 7.

CHAIRMAN GRAYBILL: Mr. Noble.

DELEGATE NOBLE: Mr. Chairman. As the committee rise and report after having this section under consideration, I move the adoption.

CHAIRMAN GRAYBILL: Very well. Is there any discussion of Section 7?

DELEGATE NOBLE: I think it's self-explanatory. It's about like the old Constitution, with the addition of "race, creed" and "religion or national origin". Other than that, it's the same as what we have.

CHAIRMAN GRAYBILL: Very well. With the addition of the words about religion and national origin, is there any discussion about this section?

Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I merely move-or rise for a bit of discussion and clarification in regard to this section it referred to as the nondiscrimination section. And it states that no qualification, along with the other words, shall be required to attend school. It hasdisturbed me over the years-and particularly in the later years, but over the years-that school boards will set up some arbitrary qualifications that a student must meet before they can attend school. Quite a few years ago, when the styles of ladies' dresses were coming higher, the Glasgow School Board said that the girls could not come to school if they wore stylish dresses. Just lately, we had a case that's been brought clear to the courts, both in Hamilton and in Columbia Falls, in which the school board arbitrarily set up a requirement on how often you were supposed to get a haircut. And the court upheld the student in Hamilton. He could not go to school because his hair was a little bit long-similarly applied to the students in Columbia Falls. Now, I would like to know if this word "qualification" in the Constitution will prohibit such actions by school boards. And if this word has been in here as it is said and as will I agree to-then what right has the Supreme Courts or-this didn't go to the Supreme Court; I think it may. But the local courts can state that school boards can set up qualifications before a student is allowed to come to school. Now, the-I'm perfectly willing to accept the fact that maybe some qualifications as to health might debar the student from coming to school, if it's a contagious disease or something along that particular line-he might want to come to school. But I would like to get some opinions from the various judicial lines here, if this word will restrict and make the school boards allow students to come to school where they are properly dressed and hair length and various other things.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. As a member of the majority on this, it's my understanding that that has been interpreted only as saying "no religious or partisan test or qualification". I think it refers only to the religious or partisan test or qualification and doesn't go into these other matters in this Constitution. I think that's the reason why that has not been a factor in determining these, as near as I know, Mr. Harlow.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I'll now move to delete Section 7.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brown has made a motion to delete Section 7 in its entirety.

Mr. Brown.

DELEGATE BROWN: I'm not moving to delete this because I believe in discrimination in education. I want to make that clear. But Section 4 of our Bill of Rights fully covers any discrimination in the exercise of any of your civil and political rights and covers race, color, sex, cultures, social, political, religious ideas. And this is not in most Educational Articles in other constitutions. I feel it's surplus, because it's been covered. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: As Chairman of the committee, I feel I have to say something about this. I hadn't considered that, Mr. Brown, even though I was the mover of that particular one on discrimination in the Bill of Rights. We were concerned here about some problems in terms, well, first of all, of teachers that came up before the committee, teachers in certain areas. And, I believe, one of our committee members even made the point that he had experienced this where the community had been totally of one denomination-regardless of what it had been-and there'd been discrimination in that community in terms of hiring. That was oneofthe conditions. The other one was, if you'll notice, at the end, we've added the original statement said—had something concerning just sex in terms of-1 mean-discrimination in terms of higher education on the basis of sex. And we've extended it. Now, if you can satisfy us that this clause in the Bill of Rights does cover that, I would certainly be willing to accept it.

CHAIRMAN GRAYBILL: Mrs. Cain.

DELEGATE CAIN: The consideration of the rights of teachers in placement without regard to religion and other external personal choices has come full-cycle since I first began to teach. When I first began asking for teacher positions, there was a surplus of qualified teachers; there were more available than there were vacancies. A good opening was often obtained by political pull. Many application forms asked such questions as, "What is your church affiliation? Do you attend weekly? Would you be willing to teach a Sunday School class? Do you play cards? Do you smoke? Do you drink? Do you support a political party?" Those days passed, and we came into a period where there were more vacancies than there were qualified--and I emphasize qualified applicants. Now, we are again in a period like thelatethirties, when teachers are unable to find jobs. Could it not happen again?

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, will Mr. Champoux yield to a question?

DELEGATE CHAMPOUX: Reluctantly.

DELEGATE ROBINSON: Mr. Champoux. On your-this last section, dealing with discrimination, I noticed that in the Education proposed draft as compared with the Bill of Rights, you leave out political ideas, which was included in the Bill of Rights. And I-was that intentional?

DELEGATE CHAMPOUX: No ma'am, but we heard you had an amendment to put in there. We haven't seen it yet, but we heard.

DELEGATE ROBINSON: Well, if Mr. Brown's move to delete does not prevail, I will offer such an amendment. Will you yield to one more question?

DELEGATE CHAMPOUX:. I certainly will.

DELEGATE ROBINSON: The first section, as Mr. Davis indicated, has been interpreted to be religious or partisan test or qualifications. I'm not sure exactly what a partisan test is. But I think at a different time, and it may be a different court, could that not be interpreted to say that no test ofanyqualification could be required? That is, the University System would always be precluded from having entrance exams, for example?

DELEGATE CHAMPOUX: Well, in reference to your--may I answer her?

CHAIRMAN GRAYBILL: Sure.

DELEGATE CHAMPOUX: In reference to your first question, a partisan test is usually interpreted as meaning belonging to one particular political party, for instance. These two lost words, "test" and "qualification", are nouns, as you well know, with the adjective modifier "religious" and "partisan". Now, it has held up for the many years since the Constitution has been in force, where it has never been subjected to the test whether that means that there are no qualifications that apply. Where that is precedent, I would say that it has never been challenged, to my knowledge, on the basis of the argument you make. I think it would stand the test of time. In reference to Mr. Harlow's-may I mention that or not?

CHAIRMAN GRAYBILL: Mr. Champoux, you may have the floor.

DELEGATE CHAMPOUX: He brought up a good point-l think Mr. Harlow brought up a good point, and, Paul, I don't think at this point that our Constitution covers that, personally. And from the judges' opinions, apparently it doesn't, and I think it's certainly a lack. If you look at— there are two other things here, though, in reference to Mr. Brown's deletion movement, that are not applicable to the Bill of Rights section as I see it. For instance, it says here, "nor shall attendance be required in any religious service whatever". But more important than that, it says "nor shall any sectarian tenets be taught in any public educational institution of the state". Now, if we eliminate the entire section, we're going to be eliminating those two points too, and I think you should consider that. Thank you.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Champoux yield to just one further question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: Yes, I yield.

DELEGATE ROBINSON: It **was** not clear to me from your answer whether or not your committee dealt with the question of whether or not the institutions of higher learning in Montana could or could not use LSATs, or any kind of a test, for admission to the University.

DELEGATE CHAMPOUX: Well, Mrs. Robinson, I didn't grab that question to begin with, or understand it. The answer is "No, we haven't; we didn't." And I know of no case that's been-come before the courts using this clause as a basis to support a test for entrance. It could perhaps; I don't know.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I'll briefly close. I think the questions have showed that we just keep adding things; we get more confusion. And we do have religious studies in our institutions of higher learning-I know Missoula does-and discrimination is completely covered very broadly by the Bill of Rights. And I repeat, I see no reason to put more of this into the Constitution. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Very well. Apparently, we're ready to vote on Mr. Brown's issue of deleting Section 7 in its entirety.

DELEGATE FOSTER: Roll call.

CHAIRMAN GRAYBILL: Mr. Foster, do you want a roll call vote?

DELEGATE FOSTER: Please.

CHAIRMAN GRAYBILL: So many as shall be in favor of deleting Section 7 in its entirety, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

DELEGATE HELIKER: Heliker votes NO.

CHAIRMAN GRAYBILL: Too bad. You may explain your vote, Mr. Heliker, but you may not change it.

Aasheim ..... Nay
Anderson, J.. .Aye
Anderson, 0. .Absent
Arbanas ..... Nay
Arness .....Aye
Aronow Nay
Artz ..... Nay
Ask .....Aye
Babcock.. ....Absent
Barnard ..... Nay
Bates.. ....Absent
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman .....Aye
Brazier ..... Nay
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate .....Aye
Champoux ..... Nay
Choate.. ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood .....Absent
Davis .....Aye
Delaney ....Aye
Driscoll ..... Aye
Drum .....Aye
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ....Aye
Furlong. ..... .Absent
Garlington .....Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ....Aye
Harper ..... Nay
Harrington ..... Nay
Heliker ....Absent
Holland ..... .Absent
Jacobsen ....Aye
James ..... Nay
Johnson ....Aye
Joyce .....Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf .....Aye
Lorello ..... .Absent
Mahoney ..... Aye
Mansfield .....Aye
Martin ..... Nay

McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson Nay
Roeder ..... Absent
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks. ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Absent
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 33 delegates have voted Aye; 56 have voted No.

CHAIRMAN GRAYBILL: 56 having voted No and 33 Aye, the motion fails.

Mr. Heliker, do you want the floor?

DELEGATE HELIKER: I got in a little late; I didn't vote. I wanted a No vote recorded.

CHAIRMAN GRAYBILL: You can show a No vote in the journal, but you can't record one. Very well. We're discussing Section 7. Is there other discussion?

Mr. Harbaugh, I don't know whether you want this substitute motion mentioned or not.

DELEGATE HARBAUGH: I think, Mr. Chairman, in light of the discussion, I would like to move the amendment.

CHAIRMAN GRAYBILL: You want to move it?

DELEGATE HARBAUGH: Yes.

CHAIRMAN GRAYBILL: All right. I had 20 copies made because it's long, and I think people may want to see it. So, Mr. Clerk, will you have several of those-a couple in each row so people have a chance to see it. Now, Mr. Harbaugh, would you like-care to read your amendment? Mr. Clerk, did you keep one? Will the clerk please read Mr. Harbaugh's proposed substitute amendment.

CLERK HANSON: "Substitutefor Section 7. Mr. Chairman. 'All public educational institutions in this state shall guarantee the integrity of the diverse political, religious, cultural and social sectors of a pluralistic society. No discrimination on the basis of race, sex, religion, creed, or national origin shall be permitted in matters of employment in or admission to any public educational institution.' Signed: Harbaugh."

CHAIRMAN GRAYBILL: Mr. Harbaugh has proposed that language as a substitute motion replacing the language in Section 7 as shown in the majority report. You're aware that the printer-the print shop is not open today, so I had 20 copies made on the Xerox so you'd have a chance to look at it if you can share it up and down the aisle a little bit.

Mr. Harbaugh.

DELEGATE HARBAUGH: It was not my intention originally to move this, until I heard some of the discussion here on the floor this morning. And there seems to be some sentiment in favor of making some changes in this section. I think we do need a section comparable to the present one that we have, and I move this substitute motion because we did discuss this in our Education Committee and, after quite a lot of discussion, decided to stay with the original section. Possibly, this would be a compromise-type of article. There was a time, certainly, in the history of our educational system where we needed a listing, perhaps, of the sort that is contained in the present section. However, I think that times have changed and that we have seen that strict statements, such as the one in Article IX, have been construed sometimes in such a way that they prohibit some of the things that we maybe didn't want to prohibit; study of maybe certain religious material or this kind of thing in the public schools. And really, all I'm doing is trying to restate the tenets of the present section in a more positive language and term, so that it

would not prohibit some of the things that I think we find desirable today in our educational institutions. Thank you.

CHAIRMAN GRAYBILL: Very well. Is there discussion?

Mr. Noble.

DELEGATE NOBLE: As a member of the committee and the one who proposed this section, I resist Mr. Harbaugh's amendment. We talked in the committee, and the committee voted unanimously to adopt the other one.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: May I ask Mr. Champoux a question?

DELEGATE CHAMPOUX: I yield.

DELEGATE BUGBEE: Mr. Champoux. Again, I don't understand-when you use the word "sectarian tenets to be taught in any public educational institution", what do you do about a Department of Religious Studies? I agree with Mr. Brown. It seems to me that this is something to be studied and thought about and learned about.

DELEGATE CHAMPOUX: Mr. Brown had closed, and, of course, under the rules you can't stand up unless you can sneak one in, and I've already gotten one in this morning so I wasn't going to try again. But if you look at the word "taught" there--we brought this up in committee and we felt that the word "taught" has a, you know, a different connotation than the word "study". You won't buy that?

DELEGATE BUGBEE: No.

DELEGATE CHAMPOUX: All right. Well, (Laughter) if you go back to the original in the old Constitution, it says practically the same thing. As a matter of fact, in that area, it does say exactly the same thing. And the intent, of course, of the original section was to keep a public school teacher from teaching his particular religious tenets in the classroom. And this is the way it's been interpreted by the courts, as we understand it. Now, the University has, of course, had a School of Religion. I'm not quite sure, it isn't directly affiliated with the school-the University, is it? Directly is a part of the University?

DELEGATE BUGBEE: Yes, it is.

DELEGATE CHAMPOUX: Yeah, I knew it wasn't at one time. All right.

CHAIRMAN GRAYBILL: Just let Mr. Champoux answer. And then if you want the floor, I'll give it back to you. Don't pay any attention to his inquiries during his answer. (Laughter)

DELEGATE CHAMPOUX: Well, I'm a different kind of teacher. We, you know, we go back and forth in my classroom. Well, anyway—

CHAIRMAN GRAYBILL: This is a different kind of classroom, Mr. Champoux. (Laughter)

DELEGATE CHAMPOUX: Yes, wait till this afternoon. Okay, now the only thing I can say at this point is that since the University has been able to do it up to this point without objection, I would say it's still allowed.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Champoux, I'd just like to answer. I think the thing-to me anyway, it's a can of worms. I'd also like to add that the Department of Religious Studies, the University of Montana, is the most prestigious in the country. I don't think many people know that. Also, they are bringing in a new person this year to teach, who is probably the best-known person in the world to teach Indian religion. And I-it's a—when you teach, you study-you study, somebody has to teach it.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I think Mrs. Bugbee is right on to a point that is essential, and I think this is possibly one of the main reasons Mr. Harbaugh rewrote this. And looking it over this quickly, I like his rewriting, and I think I will support it.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in opposition to the substitute motion. I think this present section of nondiscrimination in education is well understood by the people. It's been interpreted many times, and I can't see why we should substitute something that isn't as good for something that is good.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Fellow delegates. In reading over the amendment, the words that impress me very much and that will, if you read them carefully, will allay the fears you may have. I think it-"shall guarantee the integrity" and "no discrimination". Certainly if there's any type of teaching, as Mr. Champoux would indi-

cate, it would violate both of those tenets. And it seems adequately taken care of and yet allows the other factor which, if you're going to study in school, seems to be a very important one.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. Since we do not have copies of this amendment and since we are working on the Education Article, I think that we should be educated as to what we're voting on. I wonder if we could please have Mr. Harlow's amendment read to us.

CHAIRMAN GRAYBILL: Right. There are some copies near you. Someone could perhaps hand you one. I'll reread it. "All public educational institutions in this state shallguarantee the integrity of the diverse political, religious, cultural and social sectors of a pluralistic society. No discrimination on the basis of race, sex, religion, creed, or national origin shall be permitted in matters of employment in or admission to any public educational institution." So the first sentence says "shall guarantee the integrity of the diverse political, religious", and so forth, "sectors" and the second one says "no discrimination"-with a big, long list of things-"shall be permitted in employment or admission to any education institution." Mr. Woodmansey.

DELEGATE WOODMANSEY: I would like to direct a couple of questions to Mr. Harbaugh and, I think, the body here, if Mr. Harbaugh-if he would accede to the questions. There are a few words in the first part of your amendment here that bother me. First of all, you talk about the diverse political, religious, cultural and social sectors. The word "diverse" bothers me; the word "sectors" bothers me. You go on a little bit further, it says "pluralistic society". To tell you the truth, I'd like to know what you mean by each of these words. I don't understand them. I feel it's a poor choice in this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I'll try to respond to that. "Diverse", in my understanding of the word, means the various. I suppose you could substitute the word "various", the various groups that are enumerated here. The word "sector" seems to me also to be fairly clear. You could use the word "segment" if you want. That, I assume, would be parallel to the word "sector". The word "pluralistic" is one that is more and more being employed by the courts. In fact, if you'll read some of the recent Supreme Court decisions regarding the 1st Amendment, you'll find that they use the word "pluralistic" quite freely. And it's, I think, accepted by almost everyone that we live in a pluralistic society, or that this is the intention, at least, of the great American dream—is that people who share different forms of culture, different religions, and so forth, live together in this society and that one of these particular segments or beliefs of society does not dominate any other. This is what I mean by "pluralism".

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I think that answers my question, and I would resist the amendment. I feel it does nothing to add to the present Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I feel, in rising to speak to this, that there would beacouple of ways to go. If we are trying to state something about nondiscrimination in education, we might amend it by striking the first sentence and just stating no discrimination will be allowed. We're trying to say both a positive and a negative thing under a title of no discrimination, and I think that bears some scrutiny. The other thought is the former one which has been in our Constitution, has-in speaking to the teaching of sectarian tenets, is a different concept than Mrs. Bugbee was referring to, where you have an attempt to understand in depth the meaning and the history and the philosophy of various religious groups. That's one thing. Another thing is to advocate a particular tenet, and that is what this section originally was intended to protect, that you would not simply be, as in the University, examining in depth various philosophies and religions and thinking about them with some adult perspective. You would, perhaps, without this statement, be subjecting very young children to the sect prejudices of a particular teacher. And I think there are a couple of things here that are involved. As far as the one that Mr. Harbaugh has submitted, I assume that our educational institutions have some devotion to the search for truth. And the search for truth may or may not guarantee the integrity of every diverse political, religious cultural, social sector as it comes to us. It bears some thought.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think that what we're concerned about here is the difference between teaching and studying and indoctrination. And I believe that not only on the University level, but also down to the grade schools, as students become more involved in studies of the cultures of the world, they cannot really study these without studying the religious beliefs and tenets of those people. And it's possible that what we ought to try to do is to incorporate prohibition against indoctrination, rather [than] against teaching in this section.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Harbaugh yield to a few questions, please?

CHAIRMAN GRAYBILL: Mr. Harbaugh?

DELEGATE HARBAUGH: I'll try.

DELEGATE CHAMPOUX: Now, Gene, you and I and the rest of the committee had a long discussion during this section on secularism. Remember? And some concerns were expressed that something called secularism, which I'm going to have you define here in a minute if you would, is becoming prominent in our schools. And perhaps there should be done-something else should be done to balance this a bit. Now, first of all, would you define secularism for me, sir?

DELEGATE HARBAUGH: Secularism? Well, secularism is not easy to define. I believe, though, that in one of the court cases-Supreme Court cases-1 can't recall just exactly which one-one of the Justices did, in effect, say that the teaching of certain tenets in the public school could amount to what I believe he described as a secular religion. And my understanding of it would be that, basically, it's the promotion of sort of an agnostic point of view in which we say basically this-we can't really know the truth about any of the religious beliefs, and therefore that's what we'll teach, agnosticism. And I suppose secularism would have to be equated in some sense with that and would, since we can't know the truth about these other things, would then say the truth is that the scientific, technological things that we can see and touch, and so forth, are basically the things we must believe in.

DELEGATE CHAMPOUX: May I ask him another question?

CHAIRMAN GRAYBILL: Yes, Mr. Champoux.

DELEGATE CHAMPOUX: All right, now, when we talk about a pluralistic society, is it your intent, then, by this-for the record perhaps to get more religion in our schools?

DELEGATE HARBAUGH: No. My intent is that, as Mrs. Eck stated, that we simply not stifle the freedom of the student to study various beliefs and points of view. It's not my intention to make the public school into an institution that instructs youngsters or promotes any particular religious point of view.

DELEGATE CHAMPOUX: Thank you very much. I've brought this out, sir, for the record, so that we could be clear on this. We had a long, extended discussion. Now, I simply acted as the devil's advocate at this point to bring this point out. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and delegates. I think we're concerned about this matter of "taught", and I think it's justified. I'm sure that we're not trying to hinder the teaching of religion in any University System; the comparative religions in the high schools or grade schools. What we are concerned about is promoting one particular religion over another. So as a substitute motion for all motions pending, I move to amend, on page 22 of Section 7, in line 21, strike the word "any" and insert the word "one". In line 22, strike the "s" on "tenets". Strike the word "taught" and insert in lieu thereof "advocated above another". So we will have it reading like this: "nor shall one sectarian tenet be advocated above another in any public educational institution of the state."

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr.-just a minute now.

DELEGATE AASHEIM: I shall repeat—

CHAIRMAN GRAYBILL: No, just a minute, don't repeat yet. Mr. Harbaugh's amendment was styled a substitute amendment to replace Section 6 with a different set of language. We have not allowed substitute amendments to substitute amendments. Now that seems to me to put the Chair in the position of saying that you may amend Mr. Harbaugh's. And I suppose I could allow you to amend it by striking it in its entirety and putting in this other with some changes, but that amounts to a substitute amendment. I think

you may explain the purpose that you have here, Mr. Aasheim, which I think you have done, and you may do it further if you feel. I think we've got to have the sense of the body on what we're doing with Mr. Harbaugh's motion before we get into restructuring another one, or else we're going to have substitute motions on substitute motions. And you wouldn't want Mrs. Robinson's substitute motion, which she has up here, on yours, so I think you may explain it, and then I'll rule it out of order. And then we'll consider Mr. Harbaugh's and we'll come back to you.

DELEGATE AASHEIM: Your point is well taken, Mr. Chairman. And I like Mr. Harbaugh's ideas. But we have school teachers and we have school professors asking questions about the terminology and meaning of these terms. One of my directives when coming here was to make this language in this Constitution plain, so that eighth graders can understand it, and maybe sixth graders can understand it. I like-as I said before, I like Mr. Harbaugh's meaning, but I also like the original terminology, the wording of our present Constitution. I think what we're concerned about is the meaning of the word "taught". We don't want to prevent the evaluation of religions in our public schools or in our colleges. And with that, I'll close.

CHAIRMAN GRAYBILL: Very well. So that everyone understands, Mr. Harbaugh has a substitute motion, and it can be amended once; but other than that, Mr. Aasheim has a proposal for amending Section 7, if it doesn't pass. Mrs. Robinson has such a proposal, and Mr. Harper has such a proposal. One of them deals with the word "taught"; one of them puts in another category to be protected-namely, political beliefs. Now, with that background, we can go ahead.

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I, too, like the Harbaugh proposition, and I think we would do better to amend it than to replace it. That-and for that reason, I'll ask Mr. Harbaugh for a question, please.

DELEGATE HARBAUGH: Yes, I yield.

DELEGATE ARBANAS: Do you think that we could clear up the matter by an amendment such as this at the end of your statement-by just saying simply, "no indoctrination of sectarian tenets shall be allowed"? It seems to me-I'm asking you first.

DELEGATE HARBAUGH: Mr. Chairman. Mr. Harlow has just sent up an amendment to the Chair to that effect, and I would heartily endorse that.

DELEGATE ARBANAS: I'd like to— having heard the answer, then, I would like to make that amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, now, do you want to make it before you hear Mr. Harlow's? It's already in writing on my desk.

DELEGATE ARBANAS: Okay, very good.

CHAIRMAN GRAYBILL: Okay, Mr. Harlow, are you ready to have your amendment put?

DELEGATE HARLOW: Yes.

CHAIRMAN GRAYBILL: Very well. Mr. Harlow would amend Mr. Harbaugh's language by adding, at the bottom-and those of you who have the sheet might want to write this on it: "nor shall any sectarian tenets be promoted in any public educational institution of the state." "Nor shall any sectarian tenets"-T-E-N-E-T-S-"be promoted in any public educational institution of the state". Mr. Harlow, I'll allow your amendment.

Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I move that amendment. I do it primarily and exclusively for the purpose of overcoming some of the objections to Mr. Harbaugh's amendment. This, I think, takes out the fear that has been expressed here. And if I may support the amendment in its entirety-that is, Mr. Harbaugh's amendment and this slight amendment I gave here-1 think it overcomes one of the objections that I had to original Section 7, in that it barred students from going to school because they were not conformists, because they had a little different thinking about their personal appearance. And I think it is sad here that this body, and particularly various members of it, are so concerned and so carried on and so want to perpetuate conformity in our society. Many years ago, maybeconformity was very fine-or it was accepted, let me put it that way-maybe it wasn't so fine. But we had conformity. As Mrs. Cain brought out, when she first applied for a teacher's certificate, there was various restrictions on what she could or couldn't do. I remember the same thing on my first application, or my first contract. I was not allowed to go to Billings more than two times in a semester. I thought Billings was all right. Of course, I just heard the remark here that that was a good thing

to put in the contract to keep you out of Billings. (Laughter) It may have been at that time, but I think if such a contract was proposed today, it would be absurdity. And the same thing, I think, is wrong in allowing the school boards to put up various absurd conformities for children to go to school. That is my problem and my paramount reason for trying to amend this section of the Constitution to make it so that school boards cannot discriminate against the students. It has been done here in the past and is being done now. I'm hoping that this amendment that we have in here now will meet all of those qualifications. My qualifications, which allows no discrimination against a student because of his personal thoughts and no discrimination or not allowing--I mean, not allowing the schools to take over the teaching of a certain specific kind of religion or thought. We must keep this broader thought in mind: the amendment that was applied earlier in this article, that allowed us to teach Indian culture. I think if we get down too fine on the-on this discrimination, that we will nullify that amendment that was put on. I hope this amendment of mine prevails and then the amendment of Mr. Harbaugh's prevails. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to quibble on the words, but I think there's a concern here for what Mrs. Bugbee perhaps, was concerned about when we used the word "promoted". I don't know if you see that that way, Mrs. Bugbee. What's the difference between "teaching" and "promoted"? Or if you're lucky, at the end of the year—

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Champoux, I agree with you. And I think there is-there will be confusion with the word "promoted". And I prefer Mrs. Eck's use of the word "advocated". I think if that were substituted, if "advocated" were put in, it would be adequate.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harlow's amendment. I don't see why you'd need to close, Mr. Harlow. We've only had a minor exchange. Do you want to close?

DELEGATE HARLOW: The word definition came up here. The word "advocate" was considered better than the word "promote". If I may, at this time, cancel out the word "promoted" and put in the word "advocated".

CHAIRMAN GRAYBILL: Is there any objection to allowing Mr. Harlow to substitute the word "advocated" for the word "promoted" in his amendment? Hearing none, it'll be done. Therefore, the issue arises on Mr. Harlow's amendment to add to Mr. Harbaugh's amendment this language: "nor shall any sectarian tenets be advocated in any public educational institution of this state". So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. So many as are in favor, say Aye-vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. The vote'11 be closed. The vote is 42 to 41 in favor, so it's adopted. Now, the issue is on Mr. Harbaugh's amendment that "all public educational institutions of the state shall guarantee the integrity of diverse political", and so forth, and second, No discriminatory- "no discrimination based on sex, religion, or creed shall be permitted", with the addition of this sentence: "nor shall any sectarian tenets be advocated in any public educational institution in this state." That's the issue.

Mr. Burkhardt.

DELEGATE BURKHARDT: (Inaudible)

CHAIRMAN GRAYBILL: Just a moment. We'll be at ease for one minute while we change the tape. Very well. We're back in order, Mr. Burkhardt. The issue is Mr. Harbaugh's amended substitute motion.

DELEGATE BURKHARDT: Mr. Chairman, would it be in order at this time to ask for a noon recess and get a chance to look at some of this and talk about it with the proponents and opponents?

CHAIRMAN GRAYBILL: Well, the Chair is very desirous of completing Section 7. I had expected to complete 7 and 8 before noon. We are working a little late. Some of the people may go to the prayer luncheon, and I told them I wouldn't

recess until 12:30 at least. I don't see any reason why we can't finish it. We got lots of motions up here to go.

DELEGATE BURKHARDT: All right. I wonder if Davis is in the room-1 wonder if Mr. Dahood would yield to a question.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: I yield to a question, Mr. Chairman.

DELEGATE BURKHARDT: Wade, by now you're an authority on so many things (Laughter) we might as well put you—

DELEGATE DAHOOD: The newspapers would disagree with you, Delegate Burkhardt.

CHAIRMAN GRAYBILL: Mr. Burkhardt, I think this comes as a rude shock. (Laughter)

DELEGATE BURKHARDT: I'm concerned, and I thought maybe as a lawyer, sir, you could speak to this. As I read it, we are here guaranteeing the integrity of diverse sectors of a pluralistic society. It doesn't say we're defending them in school. We're on record to go out and promote them and defend them everywhere. I wonder how we're going to afford that and other questions.

DELEGATE DAHOOD: You wonder how we're going to afford that?

DELEGATE BURKHARDT: No, I wonder if you read it the same way I do in terms of what we're guaranteeing by the language of this amendment. Do you have it in front of you, as Gene Harbaugh has—

DELEGATE DAHOOD: Yes, and I really have some doubt. In fact, I've expressed my opinion, and probably what we ought to do is find one sentence to indicate that we're not going to have any discrimination of any kind in education. And I think we'd be a lot better off.

DELEGATE BURKHARDT: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'll close on my motion if there are no more—

CHAIRMAN GRAYBILL: Mr. Wilson, do you want to speak?

DELEGATE WILSON: Yes, Mr. President. I think the old section has served us well over the years. I don't see any quarrel with it at all. They've only added six words to the old section. I think this is sufficient and adequate. I think we know what we're voting on when we vote for it. I think the courts have determined that this is right, and I don't see any need to borrow trouble or stir up dissention. And I would urge the adoption of the majority report.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I'd like to direct a question to Mr. Harbaugh.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE ROMNEY: Mr. Harbaugh, there was some discussion about whether the cultural and social sectors would lead us to a matter of dress-hair for boys for example, and dungarees for girls attending school. Is that included in your-for the record?

DELEGATE HARBAUGH: Mr. Romney, I doubt that it is. The courts have had some of these cases under advisement in the past, and I think that what we come up against in those questions is a question of the authority of local school boards and the autonomy of the local districts. And I doubt very much that this is directed to that particular question.

CHAIRMAN GRAYBILL: Very well. Is there other discussion? Now you may close, Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'd just like to say, in closing, that in rewriting this section, I don't think that we are doing anything radical or extreme, because in the annotations on this section, there are none in the old Constitution. So to say that the old one served us well, I'm not sure there's truth to that. It hasn't served us at all. The question hasn't come into the courts, and-at least in Montana, and I think this might be a more plausible way of approaching the question. I close.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harbaugh's motion to substitute for Section 7 the language: "All public educational institutions in this state shall guarantee the integrity of the diverse political, religious, cultural and social sectors of a pluralistic society. No discrimination on the basis of race, sex, religion, creed, or national origin shall be permitted in matters of

employment in or admission to any public educational institution nor shall any sectarian tenets be advocated in any public educational institution of the state." So many as shall be in favor of that amendment, vote Aye on the voting machines; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0..... Nay
Arbanas .....Aye
Arness .....Absent
Aronow ..... Nay
Artz ....Aye
Ask ..... Nay
Babcock ....Absent
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock.. ....Aye
Blend ..... Nay
Bowman ..... Nay
Brazier ..... .Absent
Brown.. ....Absent
Bugbee ....Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate.....Absent
Conover ..... Nay
Cross ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... .Aye
Drum ..... Nay
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong. ..... .Absent
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ....Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ..... Nay
Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce .....Absent
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold ..... Nay
Loendorf.....Aye
Lorello ..... .Absent
Mahoney ..... Nay
Mansfield ..... .Absent
Martin ..... Nay
McCarvel .....Aye
McDonough..... Nay
McKeon ....Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ....Aye
Murray.. ....Absent
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder .....Absent
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... .Absent
Siderius..... .Aye
Simon ..... Nay
Skari ....Absent
Sparks ..... Nay
Speer ..... Nay
Studer ....Aye
Sullivan ....Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk .....Absent
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay

Warden .. .. Nay
Wilson..... Nay
Woodmansey . . . . . Nay

CLERK SMITH: Mr. Chairman, 23 delegates have voted Aye; 62 have voted No.

CHAIRMAN GRAYBILL: 62 having voted No and 23 having voted Aye, the motion is defeated.

Mrs. Robinson, you're next. Are you ready for your motion to be read?

DELEGATE ROBINSON: Yes.

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK SMITH: "Mr. Chairman. I move to amend Section 7 of the Education Article, page 5, line 23, by adding the following words and punctuation-quote: 'political beliefs'-end of quote— after the word--quote: 'religion'-end of quote. Signed: Robinson."

CHAIRMAN GRAYBILL: All right, Mrs. Robinson wants to add an amendment to Section 7, on line 23, to add the words "political belief', so that it says: "No person may be debarred from admission to any public institution of learning on account of sex, race, creed, religion, political beliefs, or national origin." In other words, she's added "political beliefs" to the list of things for which you cannot be kept out of school.

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman. This is just to bring this up to what we passed in the Bill of Rights. And also, I'm really concerned about getting this "political beliefs" in here. I suspect that in a year or so, I may have to go to Butte to apply for a job as a schoolteacher, and with my conservative Republican voting record (Laughter), I wouldn't want them to refuse to hire me because of my political beliefs.

CHAIRMAN GRAYBILL: Is there discussion? Very well. The issue is on Mrs. Robinson's proposal to add the words "political beliefs" to the list of things for which you cannot be debarred admission to public institutions of learning. So many as shall be in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. and she wins.

Very well, Mr. Harper, you're next. Do you want yours read?

DELEGATE HARPER: Mr. Chairman, either mine or Mr. Aasheim's. Does he have one before you?

CHAIRMAN GRAYBILL: He doesn't have one written. Will the clerk read Mr. Harper's here.

CLERK SMITH: "Mr. Chairman. I move to amend the Education Article, page 5, Section 7, line 20, by changing the word 'taught' to the word 'advocated'. Signed: Harper."

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper's point is to change the word "taught" to the word "advocated" on line 20 in Section 7.

Mr. Harper.

DELEGATE HARPER: It's a one-word change, and I think it strikes at many of the comments that have been made here, so I won't belabor the point. I suppose most of us have had experience with this kind of a conflict in the minds of people-administrators and teachers in our public schools, as to just how far they can go in even bringing up religious subjects. Mr. Champoux said a moment ago that they didn't mind people studying them, but we didn't want them taught. Well, that's hard to do. It's pretty hard for any person to bring up a subject, in a sense, without teaching it, though it was possible when I was a student, I'm sure of that. The school person--one schoolteacher, for example, invited me into a class on English Literature to talk about the Book of Job in the Bible. The next year, the same course was taught by another teacher, who felt that this would be a religious imposition on the students, and so the format of the course was changed. It didn't make any particular difference to me. I simply use it as an illustration of the fact that the word "taught" does mean different things to different people. I think the word-a word like "advocated", as Mr. Aasheim and I are suggesting, seems to be more directly to the point of what this whole section is about.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. I concur with Mr. Harper's suggestion here, inserting the word "advocated". After consideration, I believe mine might have been in violation of the federal Constitution, because then an institution

could have advocated two religions which would be, I would say, in violation. So I concur with eliminating the word "taught" and substituting "advocated".

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Rebal.

DELEGATE REBAL: Mr. Chairman. I believe we're trying to write words into a document that has already served us well. And it seems to me that we are getting away from the framework of a constitution and trying to write in words that we are not certain ourselves of the meanings thereof. Thank you.

CHAIRMAN GRAYBILL: Mr. Studer. Oh, Mr. Studer was stretching.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. As I understand this, we're dealing with placing the word "advocated" in, in place of "taught" in line 20?

CHAIRMAN GRAYBILL: That's right. So it says, "nor shall any sectarian tenet be advocated in any public educational institution of the state."

DELEGATE ROMNEY: Very well.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harper's amendment, which would add the word "advocated" in place of "taught", so that the phrase would be "nor shall any sectarian tenets be advocated in any public institution." So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's amended.

Well, Mr. Foster, I guess you're next. Would you like us to read yours, Mr. Foster?

DELEGATE FOSTER: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Clerk, would you read Mr. Foster's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend the Education Article, Section 7, page 22, line 21, after 'whatever', and delete the remainder of the section."

CHAIRMAN GRAYBILL: Well, let me have it, and I'll see if I can read it. Put a period after the word "whatever". The word "whatever" doesn't appear on that line, Mr.--oh, you're on page 22. Well, we'll have to transpose here. All right, now, if you go to your books, on line-it's on page 22, line 21, and on page 5, it's line 19. He wants to put a period after the word "whatever", so that the-Section 7 would read-and strike the rest-"No religious or partisan test or qualification shall ever be required of any person as a condition for admission to any public educational institution of the state, either as teacher or student, nor shall attendance be required at any religious services whatever." And then, he wants to leave out the rest of it about sectarian tenets and being debarred from admission on account of sex, religion, creed, public beliefs or national origins.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. The basic line of my reasoning here is the same as presented by Delegate Brown. However, I do feel that it's necessary to retain the provisions which come in the first portion of this section. "No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student, nor shall attendance be required at any religious services whatever." And I can accept the fact that some of you may have concerns about deleting this wording. However, I think the lengthy discussion that we have had in the area of trying to prescribe what type of freedom or limitations on freedom in the area of studies, in the area of activities of our institutions, it's clear that we're getting into an area which we really shouldn't be getting into in the Constitution. I refer you to Section 4 in the Bill of Rights Article in which we state, "The dignity of the human being is inviolable. No person shall be denied the equal protection of the law nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas by any person, firm, corporation, or institution or by the state, its agencies or subdivisions." And I submit that what we're concerned about here is amply covered in our new section as written in the Bill of Rights. And I see no reason to belabor this argument, and I feel that the amendment, as presented, should be adopted. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Harper's amendment would put a period after the

word "whatever" on line 19, page 5, of Section 7 and would delete the reference to sectarian tenets and to the phrase that says, "nor shall any person be debarred from admission to any public institution on account of sex, race, creed, religion, political beliefs, or natural origins." I'll amend "Harper" to "Foster"; it's Mr. Foster's amendment to strike thelasthalf of Section 7. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. Now, ladies and gentlemen, you have for your consideration Section 7. I have no amendments up.

Mrs. Bugbee.

DELEGATE BUGBEE: May I ask Mr. Champoux a question?

DELEGATE CHAMPOUX: Anytime, Mrs. Bugbee.

DELEGATE BUGBEE: Thank you. You talked previously about that word "qualification".

DELEGATE CHAMPOUX: Yes.

DELEGATE BUGBEE: You think there's no problem there?

DELEGATE CHAMPOUX: I wouldn't say that. What I'm basing my conclusion on is the past record of the courts. That's all I'm basing it on. I think Mr. Davis will substantiate me on that, that we haven't had any problems on that. Whether we will in the future, who knows?

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. May I ask Mr. Dahood to yield, please?

DELEGATE DAHOOD: Yes.

DELEGATE BUGBEE: Mr. Dahood, what's your opinion of that word?

DELEGATE DAHOOD: I'm bothered by the word "qualification". I suppose somebody could use it in a way in which it's not intended. I regret that Delegate Foster's amendment didn't carry, and then perhaps we could have gone back to the word "qualification"-had something that's going to carry out our intent. But I could see where someone could cause some problem with respect to "qualification".

CHAIRMAN GRAYBILL: Mrs. Bugbee and Mr. Dahood. May the Chair observe that Mr. Davis explained at the beginning of this, and I think it's not an unreasonable explanation, that the word "qualification" is modified by "religious" and "partisan". It's religious qualifications and partisan qualifications which the Constitution has been held so far to prescribe. Now, if you want to take it out of there, fine, but that's Mr. Davis' explanation.

Mr. Davis.

DELEGATE DAVIS: Mr. President. This was placed in the Constitution in 1889. We've never had a case come up on it yet. Now, maybe we can change it and do better than they've done the last 80-some years, but I have some serious doubts. When I ran, I also told the constituents in my area that I was going to try to leave some of the things in that worked for about 80 or 90 years without causing any problems. So I support the majority to leave it in like it is.

CHAIRMAN GRAYBILL: Members of the body, you have before you for your consideration, on the recommendation of Mr. Noble that when this body does arise and report, after having had under consideration Section 7, as amended, we recommend it be adopted. All those in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move we stand in recess until 1:30 this day.

CHAIRMAN GRAYBILL: Let's make it about 1:40, since we're past the half hour. Is that all right? All right, the motion is to recess until 1:40. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

(Convention recessed at 12:36 pm-reconvened at 1:45 p.m.)

CHAIRMAN GRAYBILL: The committee will come to order. Ladies and gentlemen of the committee, when we recessed at noon, we had just finished adopting Section 7 as amended. Therefore, will the clerk please read Section 8.

CLERK SMITH: "Section 8. School elections, The Legislative Assembly shall provide for elections of School District Trustees." Section 8, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, I move that when this committee arises, that they adopt Section 8.

CHAIRMAN GRAYBILL: Very well, the motion has been made that when this committee arises and reports, after having had under consideration Section 8, we adopt it. Mr. Martin, would you like us-Mr. Martin's not here.

Mr. Heliker, would you like us to read your amendment?

DELEGATE HELIKER: (Inaudible)

CHAIRMAN GRAYBILL: Will the clerk read Mr. Heliker's amendment to Section 8.

CLERK SMITH: "Mr. Chairman, I move to amend Section 8 of the Education and Public Lands Committee Proposal on page 5, line 24, after the word and punctuation 'elections': 'The supervision and control of schools in each school district shall be vested in a school board.' Signed: Heliker."

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker, do you mean to put a period after the word "elections"? Oh, you want to substitute that language in place of the language that's there, is that it?

DELEGATE HELIKER: No, I want to add it before the language that's there.

CHAIRMAN GRAYBILL: Add it before. All right. The purpose of Mr. Heliker's amendment is to add to Section 8, on line 24, page 5, right at the beginning of the section, the following sentence: "The supervision and control of schools in each school district shall be vested in a school board." Then it would go on and say, "The Legislative Assembly shall provide-" Mr. Heliker, are copies of your amendments on the desks?

DELEGATE HELIKER: No.

CHAIRMAN GRAYBILL: You might want to write that down then. "The supervision and control of schools in each school district shall be vested in a school board." Then the rest of the sentence-the rest of Section 8 would remain the same.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, not being a member of the Education Committee, although I am vitally interested in the subjects considered by that committee for the same reason that all of us are, of course, plus the fact that I am myself a teacher, but not being a member of the committee, I have become aware of the problems that the committee has considered only as its report has approached the debate stage and as it has come on the floor and been debated. And I became aware-that is, acutely aware, although I was generally aware before, I suppose, if I thought about it much-that there is grounds for concern of-concerning the autonomy of the local control, the local school boards, as financing of the schools gravitates toward the state more and more and as we see in the future the increasing likelihood that it-there will be a continuation of that trend. And the fear has been expressed here on-in this committee, when we were discussing these matters previously, that the local school boards would lose autonomy as they lost their control over the funds, if they do. Now, this committee has not provided, I notice, for autonomy in the Constitution for local school boards, although that autonomy is provided in the statutes which make the local school boards bodies corporate. At the same time, however, the committee proposal in Section 11 provides for autonomy to a certain extent for the Board of Regents, which they propose to establish as a constitutional board. And I feel, therefore, that we should give constitutional recognition and status to the local boards to-first of all, to allay the fears which have been expressed, which I think are well founded, concerning the preservation of local autonomy; and secondly, to give parallel treatment to the governing boards of the public schools, as well as the public universities and colleges. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. I also have felt that there is

quite a bit of fear on the part of many delegates here, and no matter what we say, perhaps they'd still have that fear that the local school districts are going to lose some control and some power. And if you'll note in my remarks to the-when we get to 9,10 and 11, you will note that we have even eliminated the word "control" in the new Public Board of Education, where it is in the old Constitution, and only use the word "supervise", By this amendment the intent is shown, I think, that this delegate-this body does want local control to remain with the local school districts, and I heartily support it.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Heliker's amendment?

Mr. Burkhardt.

DELEGATE BURKHARDT: I was off the floor. I wonder if you could repeat the amendment. Perhaps others have the same question.

CHAIRMAN GRAYBILL: Very well, the amendment is to add to Section 8, immediately after the title, a sentence as follows: "The supervision and control of schools in each school district shall be vested in a school board." Then the rest of it would be: "The Legislative Assembly shall provide for elections of school district trustees." It establishes a school board.

DELEGATE BURKHARDT: I would speak in favor of it and, as a member of the Education Committee, would heartily support it.

CHAIRMAN GRAYBILL: All right, is there any more discussion?

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I just rise in hearty support of Mr. Heliker's amendment. I think that our local school boards certainly should have constitutional status.

CHAIRMAN GRAYBILL: Very well. The issue, then, is on Mr. Heliker's amendment, which would have the effect of adding to Section 8 a sentence saying: "The supervision and control of schools in each local school-in each school district shall be vested in a school board." So many as shall be in favor of his amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted.

Now, Mr. Martin, may we read your amendment?

DELEGATE MARTIN: (Inaudible)

CHAIRMAN GRAYBILL: Read Mr. Martin's amendment please.

CLERK SMITH: "Mr. Chairman. I move to amend Section 8, page 23, of the Education and Public Lands Committee Proposal Number 10 as follows: at line 23, page 23, by adding, following the word 'trustee' and before the period at the end of the sentence, the following words: 'which shall be separate from elections at which state and county officers are elected.' Signed: Martin."

CHAIRMAN GRAYBILL: Very well, Mr. Martin has proposed an amendment which would add to Section 8, after the word "trustees", language setting up the separateness of school board elections from state and county office elections.

Mr. Martin.

DELEGATE MARTIN: Mr. President, in our Executive Committee we gave consideration to the idea that perhaps the state elections, and particularly for Governor, should be in the off 2 years from the presidential election. The purpose of this amendment is to make certain that when we're discussing voting in school elections, that we have them separate and apart from other elections. I think that's-it needs no-1 don't need to belabor the point, and I urge your adoption of the amendment.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. In the Education Committee this was quite a discussed item. And one of the things that was brought up-and the reason we dropped or deleted the words from the old Constitution, saying it would be a nonpartisan election held separate from any city, county, or state election-was the fact that in many counties at this time, we find that you have two elections every other year, back to back, and sometimes these elections cost ten thousand, twelve thousand dollars. And it's felt that the taxpayer has to pay for these extra elections; and by putting in the Constitution the fact that these elections cannot be held on the same day as another election, this is costing the taxpayers a great deal of money, where this money could possibly be saved if these elections could be combined. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: One other point that I may add if I-and it's in the notes, but I just bring it out-and that is that in at least one instance, there is a partisan election of school trustees in the state, and I believe it is Butte-is that correct, Mr. Harrington?

CHAIRMAN GRAYBILL: Just a minute. Just a minute, now. Now, who did you ask?

DELEGATE CHAMPOUX: Mr. Chairman, may I direct a question to Mr. Harrington?

CHAIRMAN GRAYBILL: You may direct a question to Mr. Harrington. What is it?

DELEGATE CHAMPOUX: Is it correct that there is at least one-Butte-that has partisan elections?

DELEGATE HARRINGTON: Well, they have-they have parties that they call-it's supposed to be nonpartisan, I guess, but they have different parties-Independent United Party and Nonpartisan Party-and they vie against each other in election. (Laughter)

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President. I support the idea of separate elections, but I don't think that we necessarily need it in the Constitution. I think that it could be done by the Legislature and probably would, in their wisdom.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. In the absence of Mrs. Payne from Missoula, I think that someone should speak on her behalf. She was a very strong advocate of leaving this flexible so the school district people and the local people had an option on these elections. She indicated-and I don't remember the figure for sure, whether it cost 10 or 20 thousand dollars to hold a school trustee-or a school election in Missoula County. And with the change that may take place where you no longer have a mill levy election at a local levy, and the time may come when you don't have that, then the argument that was presented saying, "Well, you have to have a mill levy election anyway, so you might as well elect the trustees". There was a lot ofthinking that the trustees' election could be fixed by local option at some future date at a time other than in the spring when they're working on budgets—perhaps in the fall, when they'd have time to work their budgets out. But if no one else wants to carry the oar for Mrs. Payne, I am very happy to say that she was very concerned in this, and her argument was the one that persuaded us to change it.

CHAIRMAN GRAYBILL: Mr. Martin, do you want to close?

DELEGATE MARTIN: Perhaps we should have an amendment to the effect that it would exclude Silver Bow and Missoula. (Laughter)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Martin's amendment to add to Section 8 language which would state "The assembly shall provide for elections for school district trustees which shall be separate from elections at which state and county officers are elected." In other words, separate school district elections would be required under this amendment. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Looks like it's wider than Butte and Missoula, Mr. Martin. All right, that's defeated. Are there other proposals for Section 8 as amended?

(No response)

CHAIRMAN GRAYBILL: If not, members of this committee, you have before you for your consideration, upon the motion of Mr. Champoux that when this committee does arise and report, after having had under consideration Section 8 as amended, that the same be adopted. Now, you realize-some of you came in late-the amendment says: "The supervision and control of schools in each school district shall be vested in a school board. The Legislative Assembly shall provide for elections of school district trustees." So we added that one sentence to Section 8. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted as amended. Will the clerk please read—well, just a moment. Now ladies and gentlemen, Section 9, 10 and 11 are associated, and I'm going to ask the clerk to read 9,10 and 11 all at once. And

the committee has asked that they then be given a time in which to explain the interrelationships of 9, 10 and 11, and the Chair has before it three proposed amendments to 9, 10 and 11 as a group and three proposed amendments to Section 11, if we ever get there, and we'll take them up in the order that they've been shown. But will the clerk now read Sections 9, 10 and 11 all together.

CLERK HANSON: Mr. Chairman. "Section 9. State Board of Education. The Board of Public Education and the Board of Regents of Higher Education, as hereafter designated, shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. In case of a tie vote at such meeting, the Superintendent of Public Instruction may cast a vote." "Section 10. Board of Public Education. There shall be a Board of Public Education which shall exercise general supervision over the public school system and such other public educational institutions as assigned by law. Said board shall consist of seven members appointed by the Governor, with confirmation of the Senate, to 6-year overlapping terms. The Governor and State Superintendent of Public Instruction shall be ex officio, nonvoting members of the board. The duties of this board and the Superintendent of Public Instruction shall be prescribed by law." "Section 11. Board of Regents of Higher Education. There shall be a Board of Regents of Higher Education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana University System and shall supervise and coordinate other public educational institutions which may be assigned by law. Said board shall consist of seven members appointed by the Governor to 6-year overlapping terms, subject to confirmation by the Senate, under regulations provided by law. The board shall appoint its Executive Officer and prescribe his term and duties. The Governor and Superintendent of Public Instruction shall be ex officio, nonvoting members of this board." Mr. Chairman, Sections 9, 10 and 11.

CHAIRMAN GRAYBILL: Very well. Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. At this point I would like to spend some time going over what the two-board concept is, and in the process telling you about some of the ramifications in terms of what will happen, for instance. I also intend to define "body corporate" along the way. Oh-I move that when this committee does arise, that we adopt 9,10 and 11. Is that proper at this time? No? Marshall just told me that.

CHAIRMAN GRAYBILL: That'11 do in this classroom, Mr. Champoux. (Laughter)

DELEGATE CHAMPOUX: Well, here we go. Sit back, relax. If you look at the old Constitution, here's where part of the problem develops. If you look at the old Constitution-I'll read it for you, you don't have to look at it-it talks about, in Section 11—the general control and supervision of the State University and various other state educational institutions shall be vested in a State Board of Education. Now, that's all right up to that point, because it gives this board a certain amount of power. The problem comes, however, when you look in the next sentence, where it says, "whose powers and duties shall be prescribed and regulated by law." Now, what the problem here is: on the one hand they've made this board and given them powers, and on the other they've taken them away. Not only that, there is a question, or there has been until our Supreme Court-there was until the Supreme Court decision was made—whether this board actually was to control the lower public schools. Well, Sections 9,10 and 11 of the proposed new article deal with the state administrative structure for education. Together, these sections provide a substantially revised framework for the operation of the educational system under the authority of Section 11 of the existing Constitution, which is a single Board of Education, which presently exercises supervision and control over the entire educational system, while sitting as the State Board of Education on matters concerning the public school system and ex officio in terms of Board of Regents on the University matters. Now, the proposed sections would replace this structure with the boards—with two boards which would separately supervise higher education on the one hand and the public school system on the other, but would meet jointly as the State Board of Education on matters of mutual concern. And incidentally, I want to stop right there and say that there was an editorial in the *Missoulian* 2 days ago that suggested perhaps that this board should present a unified budget to the state-the Legislature. Now, there's been a lot of fears expressed here that the two boards will tend to become competitive in terms of funds, insofar as the Legislature is concerned. Now, one of the things this committee wanted to do was tend to stop this ever-ending-never-ending parade of administrators coming to the Legislature, lobbying proliferation of courses. You know, one school gets a department, another school wants it; so the

way they do, the way they get it is they come up and do their lobbying and what-have-you. We'd like to stop that. And I would suggest that perhaps someone might want to amend that board if we ever get to it-that "umbrella board", so to speak-that one State Board of Education-so that it does provide only one unified budget to the Legislature. Well, the proposed structure would provide a much-needed reform in the administration of education in Montana. The State Board of Education, as it presently exists, operates under a provision written at a time, 1889, when the educational system was fundamentally different from what it is today. The educational system of Montana in the 19th Century consisted only of primary grammar schools up to the eighth grade and a newly founded State University. Today it consists of a universal system of elementary and secondary schools and a public higher educational system composed of two major universities, four colleges, three community colleges, a number of vo-tech centers-five of them in all-and, plus, they have another vo-tech area at Bozeman. In 1889 there were less than 12,000 students in this system; in 1970 there were more than 200,000 students enrolled. At the time of statehood, the office of the Superintendent of Public Instruction consisted of one person and a clerk. The function of the office was mainly information-gathering. At present the office has a staff of a hundred and sixty-two and administers more than $52 million for a vast array of state educational programs. The provision for a board which was appropriate to the 1889 section-situation-is clearly not appropriate today. At least the committee doesn't think so. It was not even clear that the State Board of Education was ever intended to serve as the board for the entire educational system. The phrase-and I quote-"and the various other state educational institutions", in the existing Section 11, appears to refer only to what are commonly thought to be state-run institutions; that is to say, not local schools-in other words, the state normal schools, school for the deaf, blind, and so forth. It was only by virtue of a Montana Supreme Court interpretation in the State versus Cooney case in 1936 that this section was specifically ruled to apply to the elementary and secondary school system. In practice, the State Board of Education has devoted the great majority of its time to matters of higher education--now, one board member told us 90 percent; another board member disputed that and said 80 percent. There's a 1968 legislative study that says 85 percent-so take what you want to. At least it's the overwhelming amount of the time that's spent on higher education. There is a kind of informal division of labor between the board and the State Superintendent, such that the lower schools are looked after by the Superintendent of Public Instruction and that the board sees its duties primarily in the field of higher education. A recent study that was concluded in 1958, the Durham Report, says: "The result is that the board's functions"-and I'm quoting-"in public education become more of the nature of trouble-shooting and too little of consistent long-range planning, policy formulation, appraisal", and the like. One major reason, therefore, for the creation of a two-board structure is the establishment of a board that will be specifically qualified for and concerned with the problems of elementary and secondary education and other institutions which may be assigned by law. The correlate of this structure is the establishment of a separate board for higher education which will be similarly qualified for and attuned to the particular problems of higher education. The necessary coordination between these two separate boards would occur in the joint board provided for in Section 9. This joint board, the State Board of Education, would meet periodically to act on matters of mutual concern to both sectors of education. Now, we did talk about this matter of "periodically", and we thought perhaps it would be better to leave it loose, rather than say, you know, they're going to meet 5 times, 10 times a year, what-have-you. There has been some criticism about that. Also, there's been some criticism to the extent that it doesn't provide for a Chairman of this board. I would assume-1 don't know, we never really discussed this as to what the committee feels who the Chairman should be-but I would assume that perhaps it would be the Governor. However, the other two boards would elect their own Chairman--why couldn't this board? Further reasons for the reorganization of the boards of education are presented in the next section, I want you to notice, in this Number 9, if you look at the old section of the Constitution, it talks about supervision and control. In this section we have left out the word "control". Again, we want to emphasize that we want the local public school boards to have as much power as possible. Also, we want you to notice that it talks about "and other similar"-let's see, the phrasing is exactly—well, we'll go on. All right, let's go to the new public board, or the Board of Public Education, Section 10. The membership is prescribed, and its responsibilities are prescribed also. As described in the preceding comments, the greatly expanded activities, personnel, and funding involved in elementary and secondary education requires that this crucial sector of education have its own administrative board. The largest share of state funds for any one purpose goes to elementary and second-

ary education. The state administers over 25 major federal programs in education at this level. The kinds of education needed and offered are constantly changing and expanding. A board which is to cope adequately with this vast area of responsibilities must consist of members who are qualified and who have sufficient time to become knowledgeable about the particular problems and issues of public education. A board is no more capable than is a Superintendent of being competent to administer two fundamentally different areas of education. Now, another problem that's arising here, and I'm sure that if you've been reading the papers and you look at the Serrano thing and so forth, it's very, very obvious that we're going to get more federal funding. Now, there have been two studies on this. The commission-the presidential commission that was issued-the report that was issued last Monday said that we're going to get, at a minimum, 21 percent of federal funding-21 percent. Now, another intergovernmental commission that issued a report in January, a presidential commission, said that these grants will be conditional on matching or more funds. Now, if that's true-now, presently we're getting 70-7 percent federal funding. If we're going to have 21 percent federal funding, that means, then, that the state government is going to be putting in 21 percent; that gives you 42 percent. Presently the state government is putting in 27 percent. You're talking about 69 percent state and federal funding-69 percent. Now, it is my estimation from all that I know, and I'm sure that some of the members of the Revenue and Finance Committee will agree with this, since they have studied extensively, that that figure is going to be an absolute minimum. It is probably way too low. What I'm saying here, then, is that we're talking probably about anywhere from 80 to 85 percent federal and state funding that's coming, and we might as well face it. Now, with all of that money flowing through the state, don't you thinkweneed another board to be looking at it-a board of lay people watching over this, having a check on the State Superintendent's office, and so forth? The need for a separate board for public education promises, then, to become even greater in the future. The present trends indicate the assumption of much greater role in educational financing by state and federal, possibly as much as 90 percent--and I don't want to go into that, because this is according to Serrano, and there's a variance factor there that-constitutional lawyers say there's somewhere between 10 and 12 percent, but we don't know. Well, a well-informed and representative board would provide a much-needed balance to decisions on administrative policies, and that is one of the things I want to emphasize. In this whole business of the boards, we have to keep in mind all the time that the Legislature is not going to be here in session all the time, that the representatives of the people are not going to be here administering this. And the greatest fear is the bureaucracy; the greatest fear is the bureaucracy. A large majority of witnesses who testified on the subject, including key state officials and many educators, spoke in favor of the two-board concept. As a matter of fact, every major person involved in education, like the State Superintendent of Public Instruction, the Presidents of all the University Systems, community—the university units-the community college presidents, the Montana Education Association, the largest education association in the state, and many, many other groups totally support this two-board concept. Three major studies that have been made since 1958—the Durham Report, the Peabody Report, and the Legislative Council study of 1958—all of them support the two-board concept. Not only that, at one time we had a constitutional amendment brought out-1 believe it was in 1960; three of them were brought out-they were never put on the ballot, because they weren't signed by the Governor. It had nothing to do with the two-board concept. The longest-serving member of the State Board of Education, Maury Richards—many of you know him-sent us a letter, and I quote: "Please give every consideration to a two-board system. Frankly, even the most capable, dedicated board member finds it impossible to do justice to the total assignment." Numerous studies have shown that we need this. The fear has been expressed that a separate board for public education might usurp the powers of local boards. There is no reason to be concerned about such a policy—possibility-however, since the powers granted the state board would be almost identical to those now granted, and what we have just done is to guarantee the control by the local board at the local level. Indeed, the committee has actually deleted the word "control" from the powers and granted-now granted the board, so that the new section reads: "exercise general supervision over the public school system." It would be difficult to argue that this grants any additional powers to the state board at the expense of local school boards. Under existing law, vocational-let me bring up this question about where's the vocational-technical schools going to go. This has caused a lot of concern. I want to make sure, at this time, for the record, the feeling of the committee and cite a number of other things. First of all, the committee wants it categorically stated that their feeling is that they want the vo-tech schools to

remain under the secondary-primary board. Now, we have consulted with constitutional lawyers on this. They say that the statutes would not change unless the Legislature decided this. See? Now, why haven't we stated thatthevo-tech centers will remain under the secondary-or the primary board? Well, very simply because the vo-tech representatives that came to us and said-and I'm quoting directly from the transcript of the meeting-Mr. Driscoll and-Maurice Driscoll, a fellow delegate and Bill Korizek, representing the vo-tech centers, said that they "wanted no mention of specific units in the Constitution". No mention of them. And we agreed with that, because we felt it would be too restrictive and would set these units in concrete. Not only that, they stated-and I quote-they "favored one single board of education". I notice that Mr. Driscoll has brought up an amendment. He's going to be advocating that; and Mr. Gysler also has some connection with the vo-tech-is also advocating that. But notice this, and I quote from their own testimony-they "favor one single board of education with three subdivisions". Three subdivisions. Now, why are we concerned a little bit about this? You notice the same wording is used over in the new Board for Higher Regents, with one little variation that I will explain to you when we get to it. Now, why have we done this? Well, if you go back to 1889, who ever heard of vo-tech centers in 1889? Who ever heard of community colleges in 1889? What are these schools going to be called in 1999? What kind of schools are we going to have in 1999? What we've done this for, then, is to provide some flexibility so there can be movement back and forth. Not only that, I want you to note that only 61 percent of the vo-tech education is in the vo-tech centers; 39 percent of it is in either the community colleges or at Havre—at Northern at Havre. These figures come from the Department of Public Instruction, and also Mr. Ball's office in the Vocational office. Well, what we are trying to do, then, is to provide flexibility. From what we have found out, the greatest emphasis perhaps in the next 20 years is going to be on vo-tech education, or what would be called practical education. After all, isn't a teacher a vocation, too? And it's estimated, within 10 years, perhaps 50 percent of all education will be of this nature. This is why we have attempted to provide some leeway, some flexibility, where these units could move back and forth. Within 10 years, 50 percent, perhaps, of all education will be of this type, and it will be involved not only at the kindergarten level but all the way up through and including the university level. All right, the voting members of the board would consist of seven members selected by the Governor for 6-year overlapping terms. The Governor and Superintendent retain ex officio membership on the board, but in a nonvoting capacity. Now, the reason why we did that, we heard from many people voting-board members also-that sometimes these people come in-they come in with their proposals, you see; especially the State Superintendent of Public Instruction. Here's her proposal to the board, and then she votes on it. And we thought that that perhaps wasn't right, so this is why we put that in there. We feel that the elected officials should be separate from the board decisionmaking but should retain membership on the board for informational and coordinating purposes. The committee feels that the duties of the Superintendent should be legislatively prescribed to allow for changing conditions and possible alterations of the relationship between the board and the Superintendent. It is fully expected by the committee that the office of Superintendent shall be provided by election, and it has been. A majority of the committee feels strongly that the Superintendent should be elected-well, I don't have to go into that. All right, let's go to the last board, this Board of Regents of Higher Education. The second fundamental component of the proposed new administrative structure for education is a Board of Regents of Higher Education. The same reasons which apply to the need for specialization and concentration on the public school board hold also for the Board of Regents. Higher education is fundamentally different from public school education in goals, curriculum, financing, control, operation, and so forth; and it must be administered accordingly. There is very little in common between the public school system and higher education, other than a shared need to provide a smooth transition for students between the two systems. Now, I have a kind of a suspicion that some of you are interested in what this word "a body corporate" means, so at this point I want to stop and define "a body corporate" and tell you a little bit about it. And at the end of this-my little lecture here today, I'm going to tell you what we see as happening if this occurs and what we see as not happening if it occurs. All right, let's look at the definition of a "body corporate"—this is from Black's Law *Dictionary*—one, it provides legal recognition as an entity apart from a normal administrative or executive agency. It limits liability of directors or members; and that point was brought up by some board members in terms that they can be sued without this. Under this the board can, but not members. It recognizes the perpetuation of the body between individual membership. It generally grants right to purchase or sell property, hold title to property,

sue, contract, adopt a seal, and so forth. It generally grants right to the body to govern its own internal operations, and that should be emphasized. That is what the keys to all of this is about, the power to govern its own internal operations, according to articles of charter or incorporation—in other words, the grant of power. It has this power to exercise all powers necessary or convenient to effect any or all of the purposes which the organization is-corporation is organized, to sell things, and what-have-you. Now, the following states have a body corporate: Alaska, California, Colorado, Georgia, Hawaii, Idaho, Louisiana, Michigan, Minnesota, New York and Florida. A body corporate is also a term applied to corporations, public and private, and is a term particularly applied to a public corporation having powers especially assigned. It indicates the distinguishing characteristics of a corporation-and what are the distinguishing characteristics? Is an artificial person a legal entity, capable of acting through its corporate offices and agents; of suing, being sued; of taking, holding property; of contracting its own name; and of continuing to exist independently of the individuals who compose it? All right. A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil powers delegated to it, generally within a particular territory-a subdivision of the state-and usually invested for that purpose with subordinate and local powers, and so forth. Now, all school districts in the State of Montana, by statute, are body corporates. All school districts in the State of Montana, by statute, are body corporates. If you look at the *Revised Codes,* 75.6501, it says "any district shall be a body corporate." Every community college in the Stats of Montana -community college district -is a body corporate. If you look at the ***Revised Codes,*** 75-8102, these are by statutes; however, all vo-tech schools-centers which are administered by local school districts come under the powers of a body corporate. The University System is the only educational unit in the state that is not a body corporate. Now, what does it mean, really? It means that you are master of your own house; that you can set your own curriculum; that you can hire and fire. And 1'11 go into detail later on as to what the limitations on this power are. We've been using the term "autonomy" around here. I think we've been using it rather loosely, because autonomy means freedom, complete independence; and this isn't necessary to the case, as we shall point out, with this board. All right. A recognition, then, of the particular needs and problems of higher education has led all but two states in the Union-all but two-to establish separate state governing boards for higher education. Now, they've either established it by constitutional status or by legislative status. Montana and Idaho remain the only two states which retain a single board for both public schools and the University System. Some states have more than two boards for their educational system; some have three and four. But the generally recognized principle is that different educational tasks require different administrative structures. As noted in the comments to the previous sections, major studies of education in Montana recommended the creation of two separate boards-the Durham Report, 1958, and so forth. In addition to administrative questions, another fundamental reason exists for the establishment of a separate Board of Regents of Higher Education. Higher education is not simply another state service. The administrative structure of higher education cannot be considered an ordinary state agency. The unique character of the college and university stands apart from the business and usual of the state. Higher learning and research is a sensitive area which requires a particular kind of protection not matched in other administrative functions of the state. Few would dispute the vital importance of academic freedom to the process of higher learning. Such freedom is the essence of the American higher educational system. The great movements of mankind have come out of the great modern schools, the modern university system, ever since the time of the Renaissance. And the greatest of these movements have come out of the schools that were unfettered by controls that would tend to stifle them. Only in an atmosphere of independent, then, and unfettered inquiry can an objective pursuit of knowledge be conducted which is unhindered by prejudice and vested interest. The great contributions to both scientific and humanistic learning which have emerged from American colleges and universities can be attributed in large part to the freedom traditionally enjoyed by the teachers and students in such institutions. This was the idea implicit in the founding of both private and public colleges and universities in the United States. And here I want to stop for a minute and say something-that originally-(Laughter) You're awake. How about that?

CHAIRMAN GRAYBILL: You're entitled to one mistake, Mr. Champoux. Go ahead. (Laughter)

DELEGATE CHAMPOUX: I'm sure going to make more of you when I get through—saying something about that. (Laughter) Oh, we needed a pause. In the beginning these schools

were established independently. If you go back in the Renaissance-only in modern times have we found this tendency for more state and bureaucratic control. And it's getting worse and worse, as I will show you, all the time. The society as a whole accepts the principle unreservedly. This was the idea implicit in the founding of both private and public colleges and universities in the United States, and it is an idea which still prevails. The society as a whole accepts the principle unreservedly. Rarely does a direct attack come upon the concept of free inquiry. However, a more subtle kind of coercion has made its appearance, and it is of the sort which is likely to become an ever--even greater threat to the integrity of higher education in the future; and this is the growing power of the centralized bureaucratic state. Without overtly intending to curtail freedoms, the modern state has absorbed an increasing amount of power and control in the name of efficiency. A pervasive form of influence and manipulation has grown hand-in-hand with the emerging predominance of the government form and the computer. What do I mean by that? Laws are made by Legislators, but the bureaucrats administer them, and that's the problem. We hear all the time about the unresponsive government, the unresponsive government, and so many times we think of it as being the Governor, the Attorney General, the Legislators, and so forth. The greatest danger in this country is not from our elected officials, but the ones that are hired to administer the laws. I'll never forget the day, 2 years ago, in a speech Senator Metcalf said, in Kalispell, that he had been in the Congress for I don't know how many years, and all of a sudden he heard about an agency down in the cellar of some building there that had fought at something he wanted to do. He looked into this, and he found out about an agency that had been never authorized by anyone, anywhere, and here it was administering programs. Not only that, Senator Goldwater-boy, I've hit both sides of the fence there, haven't I-over in Spokane made the same claim-I've got the right and left in on it now—that the greatest danger is from this bureaucratic control. A warning of this social trend was voiced in a landmark study of the condition of the American university conducted in the late 1950's under the chairmanship of Dr. Milton Eisenhower under a Ford Foundation grant-now I've got good old Ike on my side. The study described a variety of creeping controls on university systems which have appeared in recent years across the country. It warns that strict adherence by institutions of higher learning to a bewildering array of centralized bureaucratic controls will ultimately endanger the academic as well as the administrative freedom of the colleges in this country. This is from a book by-it's in a book called *The Campus and the* State by Malcolm Moos and Francis Bourke. Among the sources of growing controls which increasingly impinge on universities are state budget offices, state auditors, comptrollers, purchasing departments, personnel offices, central building agencies, and a variety of older forms of controls, such as legislative riders, which are being used in new ways to affect colleges and universities. The informal controls associated with these direct means often exert an even stronger influence on the educational process. The study concludes that the maintenance of the system of higher education free from unnecessary bureaucratic and political interference is important not only to a healthy academic atmosphere, but also to the administrative efficiency of the system of higher education. "Creative research"-and I quote-"by its very nature requires freedom to move in a different direction if the facts uncovered require it. The further away budget authority lies and the more time-consuming it is to get permission for such changes, the less will be accomplished. Research and instruction at the higher levels are not services for which specifications can be written in advance, and for which one seeks the lowest bidder. They are venture capital investments, where one successful strike in a multitude, either in the form of a new ideal or a trained individual capable of producing them, may spell the difference between a forward-moving or a retrograding nation. The power to coordinate and operate the system of higher education is one which belongs primarily, properly, to an informed Board of Regents who have the knowledge and ability to determine rationally the course of higher education. Master plans have been suggested for the guidance of higher education in Montana but have failed to be applied because of a lack of power." We could have a master plan in this state where all of the higher education units would be coordinated-all of them-so we wouldn't have this duplication of courses, this duplication of programs, and also the duplication of our units, if we only had power in a board that could enforce its own mandates in terms of its internal controls. And that is going to be one of the greatest benefits-and I want to put that on the record as the intent of this committee-that this unit would tend to put the house of our higher education in proper order. A Board of Regents empowered to carry out its informed judgments would be an important force for efficiency in the higher educational system. It is this factor of efficiency which

is highlighted in the study chaired by Dr. Eisenhower. The primary conclusion of the study is that freedom actually enhances efficient operation of a university system. You might say, you know, "Why, we'll give them freedom, and they're going to go off and do their own thing." They're going to be very aware of public opinion, and once they can put their own house in order-they've got the control to do it-they will. The fact that higher education very largely owes its autonomous position in state government to the belief that freedom promotes rather than limits efficiency. In the future there is one point that colleges and universities will need to make to the public and its elected representatives very persuasively; this is simply that the goal of efficiency in higher education can be realized without noneducational officials intervening in the fiscal affairs of colleges and universities. The factors in particular add to the efficiency of a university-two factors-which is relatively free to control its own affairs--one, long-range planning. We've seen a lot of instant expert work in this very floor here-all the time. What would you feel like if you were a Professor that had planned something a long time and had come up, tried to get it passed in the Legislature, completely fail; and then some guy in the back row got up and decided, "Well, this is a brilliant idea", and passed it. And you'd have to administrate it, oftentimes without money to finance it. In the future there is one point that colleges and universities will need-well, long-range planning and administrative decentralization. There is a clear need for a strong Board of Regents tomakelong-range plans which are appropriate to the needs of higher education and free from short-term political whims. The limits of decentralization-centralization in government-oftentimes operations have become apparent, particularly in such an unpredictable and flexible field as higher education. A Board of Regents which is given the power to control and manage its own affairs would enormously improve the planning situation for higher education in Montana. Well, I want to get to something here now. Last Thursday, on the floor of this assembly, was distributed a letter to certain delegates from the Office of the Department of Administration. I heard about it. I finally acquired a copy, and I want to read you that letter. It says: "The Department of Administration is in favor of safeguarding the academic freedom of the University System in the Constitution. However, the proposed change goes far beyond the question of academic freedom. It gives the University System complete autonomy in the areas of finance and administration as well, without any control being exercised by the Legislature or central government. Past experience indicates the Board of Regents has not exercised its authority over the budget process." The attached newspaper clipping shows the board put its-quote-"rubber stamp" on the 1971-73 biennium education budget. Now, look at this-Great Falls Tribune, 2 years ago. They really had to search through the clipping file to get that baby, didn't they? Not only that, the headline doesn't coincide with what's said in the article: and we've had experience with headlines in this assembly, haven't we? Well, the general fund appropriations-it goes on, such-and-such-it names them-then it says, "The state is now in the process of developing a uniform statewide budgeting and accounting system. If the University System is excluded from thestate's financial and administrative rules and regulations, it will be impossible to adequately report on the state's financial operations. The taxpayers are entitled to know where and how their whole tax dollars are being used, and not just part of their tax dollars. Full disclosure in reporting is fundamental to achieve full accountability. If the University System is given full autonomy from financial and administrative controls, this means they will be"-and then he has about ten exemptions-ten exemptions-and I want to look at some of these exemptions, and then I'm going to give you my answers. He says, first of all—incidentally, this letter was unsigned. We sent a member of my staff down to the administration office, and we asked if this had come from the office. They denied it. They said no, they would never get involved in convention affairs in this manner. When we informed them that we had subpoena power, it was a different story and it was found out that Mr. Saxby, the State Comptroller, wrote this letter-a bureaucrat. Number one—says here-his letter-"they will be exempt from using the state treasury system." It's a nice interesting charge, but it's not true. All moneys appropriated by the Legislature would still be directed through the state treasury system. States with similar provisions as we're proposing employ the same-the state treasuries for such financial operations. Incidentally, we called five different states with this kind of a setup, and this is the information they gave us. Number two: Mr. Saxby says that they would be exempt from legislative audit of their operations. Absolutely untrue. The Legislative Auditor works for the Legislature and will continue to audit units of the University System as he saw fit. Legislative Auditors are continu-

ously at work inspecting the operations of the universities in those states with similar provisions. Number three: exemption from an external preaudit of their claims. Partially untrue. The claims of the University System could be preaudited, although this would not automatically entitle a preauditor to absolute veto power over the University System claims. Preauditing continues on a full basis in states with other similar provisions. Number four: they would be exempt from investing their funds-funds for the Board of Investments. Now, that's an interesting charge in that it seems to indicate that Mr. Saxby didn't even read the financial-the educational report, nor even read the stipulation. Because in Number 12 that we'll be taking up here, I hope, this afternoon, it says university funds shall be-quote: "respectively invested under such regulations as may be prescribed by law", and certainly that would be through the Department of Investments. Number five: exempt from having their construction programs reviewed by the State Architect. This is questionable. Some states which have similar provisions still have the State Architect review building programs. However, the advisability of such a review, even if continued, is debatable. The new science building at the University of Montana, which has severe architectural defects, was reviewed by the State Architect. Six: They would be exempt from having their warrants issued by the State Auditor. Untrue. The state warrant process is the only method that state—that funds can be spent from the state treasury. Moreover, there is no reason why the Board of Regents would want to quibble with this process. They would be exempt from executive review of their budget adjustments. Untrue. The Department of Administration could still review budget adjustments. The department would not have absolute veto power, but it could most certainly voice objections to the Governor and the Board of Regents. States with similar provisions have exhaustive full-time executive reviews of university budgets. They would be exempt from executive review of their fee schedules and fee waivers. The Board of Regents currently has the statutory power to levy fees, not the Executive branch. The next one is a very interesting one: it says they would be exempt from the statewide budgeting and accounting system. It's interesting because it is a system not even in existence. Apparently the department plans to implement such a program and fears the University System might be excluded. The University System would not be exempt from this accounting system, as it would relate to state treasury funds. The University System's right to design and maintain its own internal accounting system is appropriate to its own activities, as it has traditionally been done, to provide proper management information as it has in the past. Then it goes on and on. Central Purchasing-it would be exempt from it. They wouldn't be exempt from Central Purchasing. If they felt that they wanted to-you know, it would be better and advantageous to them-but we're going to show you some examples herein a minute where it hasn't been advantageous to them, and so forth. Next, he makes the charge that-he's a former employee of Governor Reagan of California, incidentally. He makes the charge-he links the campus disturbances at Berkeley to the constitutional status of Board of Regents. This sort of innuendo is disgraceful. Anyone who has any knowledge of higher education knows that the situation at Berkeley had nothing to do with the powers of the Board of Regents; and more violent confrontations occurred at San Francisco State, the governing Board of which has no constitutional protection whatsoever. On the other hand, why haven't there been no riots at the University of Georgia, Michigan, Minnesota, Colorado, and so forth, that have corporate status? The real intent of the Department of Administration appears to be revealed in the last paragraph of their letter. The department wants power, bureaucratic power, and they're afraid that they might not be able to increase it if this Board of Regents goes into effect. Let's look at some examples of what's happened. Here's the Music Department at Missoula. Whenever they order something they have to come up here and put up their orders for bid, and such things as pianos and other instruments. Here are experts in the field down in Missoula and they come up here; they ask for a certain instrument, but it's overruled by an accountant, Why? They have to buy on the lowest bid basis. Oftentimes this lowest bid basis is an out-of-state bid. Sometimes it's only a few dollars cheaper than the local dealer, and they can't get service to be-service cannot be obtained locally. You can't buy secondhand equipment because of a state regulation, even from Helena, the city of Helena. Now, the problem comes when you've got 8-year-old Sears and Roebuck pianos. You ought to listen to some of those students and their piano playing. The State Department of Administration has been attempting for 2 years to impose an accounting system on the University System which is simply not appropriate to educational institutions. The University System has, in fact, been using a far

more modern, double entry accounting system than the state has used for years, thesamesystem that's recommended by the American Council of Education and used nationally in all major universities for educational accounting. The University submits the most detailed and well-prepared financial reports in the state, double entry, twice a year. The obvious solution to this problem is simply to write a computer program that goes along with the University System and include it in the state system. I wonder if they've thought of that yet? The State Administration Department has expressed desire to incorporate other University-connected funds into the state General Fund, such as dormitories, fraternities, sororities, and so forth. These funds are self-sustaining and self-liquidating. It would be silly to bring them all the way up here, when they're going to have to be turned over so many times at Missoula, Bozeman, and so forth. Research grants by the government-they want to administer them all through the State Senate. But one of the better ones is the Motor Pool. This has been a fiasco from the start. The University was paying 8 cents per mile previously; now it pays 8.6 percent. Well, that may be inflation. Even after handing over approximately a hundred and fifty cars to the state, enormous inconvenience and extra cost in time is wasted going to and from the depots; adding mileage and time to the cost of going out of the way is probably greater than the savings. It takes 7 months to get billing. Not only that, anyone who uses a car permanently assigned to him must send in daily—daily-a report on its use. The man at the Agricultural Experiment Station has to drive 18 miles each way, each day, to get gas for his car. The state is in the process of getting into the gas station business-competing with private industry. All of this resulted from the bright idea of a bureaucrat that the car pool in Helena should be made statewide. Look at investment. In its review of the University investment policies, the Legislative Audit Committee complimented the University System on its fine record and said it should continue until the state could do as well. The state is making 3 percent on its investments; the University is making 6 percent.

CHAIRMAN GRAYBILL: Mr. Champoux, I wonder if you could conclude as quickly as possible.

DELEGATE CHAMPOUX: I'm going to, right now.

CHAIRMAN GRAYBILL: I think you've had plenty of time.

DELEGATE CHAMPOUX: Here it is. Okay. If you look at also some other problems; a tax on people, individuals, in the system-some of you remember Dr. Morton Borden here a few years ago because of a speech he made out in Minnesota, I guess it was, on cooperatives and the economic system, before the Farmers Union. He was severely attacked on this floor. They tried to eliminate his salary from the budget. As a result, Borden is now teaching, Head of the Graduate Program at the University of Santa Barbara. Dr. Louis Levine made extensive studies of mine taxation, and because of their controversial nature with respect to powerful mining interests, the Chancellor, under pressure from the Legislature and a threat to cut appropriations, suspended Dr. Levine. He resigned and went to New York. Well, if a board is created for higher education and given the responsibility for education but not the authority to carry out such responsibility, how can they be held accountable to the people? If the real authority for carrying out the policies of higher education is dispersed among the bureaucratic political frameworks of other agencies, who then is accountable to the public? A healthy post-secondary educational system must have freedom from political changes of fortune, while still maintaining its responsibility and accountability to the state. The institutions themselves, the centers of teaching and learning, must be immune from external political or ideological pressures. Thank you very much for the time I've spent.

CHAIRMAN GRAYBILL: Very well, the issue under consideration is Sections 9,10 and 11.

Mr. Rygg, you have an amendment. Do you want us to read it?

DELEGATE RYGG: Yes, would you read it, please.

CHAIRMAN GRAYBILL: Will the clerk read Mr. Rygg's amendment to Section 9.

CLERK HANSON: "Mr. Chairman. I move to amend by deleting in their entirety Sections 9, 10 and 11 on pages 24, 25, 27 and 31 of the Education and Public Lands Committee Proposal Number 10, and by substituting in lieu thereof the following section-quote: 'Section 10. The general control and supervision of the State University and the various other state educational institutions shall be vested in a Commissioner of Education, whose powers and duties shall be prescribed

and regulated by law.' Signed: Rygg." Mr. Chairman.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg has proposed an amendment to eliminate Sections 9, 10 and 11 and put in place thereof a Section 9 which would set up a Commissioner of Education. Mr. Rygg.

DELEGATE RYGG: Mr. Chairman-

CHAIRMAN GRAYBILL: I wish everyone that's not debating would sit down and get off the floor.

DELEGATE RYGG: Mr. Chairman-

CHAIRMAN GRAYBILL: Very well, Mr. Rygg.

DELEGATE RYGG: This, I suppose, could be called a Kelleher amendment; that is to say, I'm sure it has no chance of passing-and my apologies to Bob, because he isn't here right now. But during the early days of the Convention, I approached several delegates with this idea, and each one said it wouldn't work. They said we'd tried the chancellor system once and it failed. Because of this, I did not prepare a delegate proposal, nor did I present my idea to the committee. And therefore, probably asking you folks to waste a few minutes of your time, but I'll try to make it up by not talking much the next few days. I do feel compelled to throw out this idea, though, as I believe it actually would solve Montana's problem of administering this school system. The only way we are ever going to get efficiency in our school system, especially in our higher education, is to have one man accountable. What I have observed, over the last 12 years, the University Presidents influence the Board of Regents, and that's understandably so because the layman bows to the professional. And the Presidents also, in my opinion, influence the Executive Director, even though I think he is supposedly answerable to the Board of Regents; and as a result, all six of the Presidents tries to build his own little empire, and that you can't blame them for. Now, a one-man rule could stop this empire-building and make the decisions as to what each institution should be offering as far as courses are concerned. This is especially true in the graduate field, but could apply in the other areas. Under the Commissioner of Education there should be one University President, and under this University President there should be six Vice Presidents and six Deans: and the Vice Presidents should be more businessmen than educators and the Deans, of course, should have charge of the academic field. Under this same Commissioner-in all, there should be three departments. The President of the University should be one; the second should be the Superintendent of Public Instruction, who should be in charge of the elementary and secondary schools, which is the case now; and the third department head is also needed, and that's one to be in charge of vo-tech and community colleges, so there are—because there are really three departments. I am convinced that a system like this, or one similar to it, is the only way out of Montana's present dilemma, especially in the field of higher education. Now, out of deference to Chairman Champoux who, of course, is my colleague from Flathead County, and in the interest of saving time, I hereby withdraw my motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, I understand Mr. Rygg to have made the following motion: "The general control and supervision of the State University and the various other state educational institutions shall be vested in a Commissioner of Education, whose powers and duties shall be prescribed and regulated by law." And I understand that he has now withdrawn that motion.

Mr. Gysler.

DELEGATE GYSLER: I have an amendment, Mr. Chairman. I wish the clerk to read it.

CHAIRMAN GRAYBILL: Well, we'll read your amendment-Mr. Clerk, will you read Mr. Gysler's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend by deleting in their entirety Sections 9,10 and 11 on pages 24, 25, 27 and 31 of the Education and Public Lands Committee Proposal Number 10 and by substituting in lieu thereof the following section: 'Section 9. The general control and supervision of the State University and various other state educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of 14 members, the Governor and Attorney General being members ex officio; the other 12 members thereof shall be appointed by the Governor, subject to the confirmation of the Senate, as provided by law. The State Superintendent of Public Instruction

shall be the executive officer of the board, shall perform such duties as the board shall prescribe in addition to such other duties as are provided by law, and shall receive such salary as is provided by law.' Signed: Gysler." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Gysler has proposed an amendment which takes out Sections 9,10 and 11 and substitutes a single State Board of Education.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I rise with a little hesitancy, being a Norwegian born in the northeast corner of Montana and getting up against a Frenchman from Boston, especially after the very eloquent hour-and-some-minute speech he made. First, I want to say that probably I have a real interest in this-1 don't know if you would call vested or not-but I have three sons who are in the educational system of the State of Montana. I've been active at home in vocational education, but to those of you who think that I'm all things, I'm a real conservative. Things have been going on in the Fort Benton school system; and if you picked up today's Great Falls *Tribune,* you will see two pictures on the front page of what was happening yesterday in the Fort Benton school system; and if you will turn to page 12, you will find the writeup on what happened there. I was also one who taught school at a very unusual deal last October, when all of the teachers went to an in-training service session at the school. I confess that I have been more active in the line of vocational education than I have been higher education, and this is for a couple of reasons. But primarily the number one reason is because I feel the great inequity that we have had over the years between higher education and vocational education, and I have been working to help to try to correct that. As an invited participant to the Secretary of Health, Education and Welfare's regional meeting in Denver last April-I believe it was Region 8 they called it-six states-and by the way, I paid my own expenses. Dr. Rump from the Department of Education in Washington, D.C., told us that by 1980 only 20 percent of the jobs available in our country would require a college education, so that this leaves 80 percent that do not require a college education. A couple of mornings ago while I was getting dressed, I heard on the radio that by-some national commentator, I forget who he is-comes on roughly 7:15—that just a few years ago, 15 percent of the jobs in this country required no education, or at least none beyond high school. In 2 or 3 years, that number will drop to 5 percent. So with this little bit of background, first I would like to explain what I've attempted to do with the article I've introduced. As with the majority proposal, the general supervision and so on-we say control, too-but just generally is vested in this board-the Board of Education, whose duties shall be prescribed and regulated by law.

(Delegate Eskildsen assumes chairmanship of Committee of the Whole)

DELEGATE GYSLER: I propose this to be one board and, as you will note, it's a total of 14 members, 12 of who are appointed by the Governor according to law so that there is enough people on it to subdivide and-if they so desire--and spend the time in separate areas as you do on a board of directors of most any large corporation. But this is one board. I was very happy to hear the Chairman of the Education Committee admit that there should only be one board when you come around to the dollars and cents aspects, and I submit to you that there's a lot more to education and a lot more coordinating needs to be done besides on the dollars and cents aspects. The Governor and the Attorney General are ex officio members, but I hope that I've got this so they're voting members. Now, I've taken the State Superintendent off from being a voting member because, really, I don't feel someone who is being the chief administrator should also be on the jury end of what the administration-of how the functions are being carried out. I also-and this will probably draw some fire-1 say that the State Superintendent of Public Instruction shall be the executive officer of the board and shall perform such duties as the board shall prescribe, in addition to duties by law and so on. Now, this has drawn some fire, but really what I'm attempting to do here is to make one system of education in the State of Montana. It is very important that all levels of education be integrated, and by doing this, this is the intent of this article. Now, when I say the State Superintendent shall have such duties as prescribed by law, this was the only way to-that I could see, anyway, to be sure that the State Superintendent was elevated on up to the top of the whole works. Now, maybe we're going to have to take another look and just not elect a Superintendent of Schools that's good for primary and secondary education. But if we're going to have one board and one system of education in the State of Montana, this really is what we have to

end up doing. Now, the duties in that part-the duties that I am assuming that the board will prescribe-would be in the general supervision category of what the board wants done in the University Systems; and under the State Superintendent, then, would be your Executive Officer as the present Board of Regents has. But this not only elevates the State Superintendent, but also it is, I think, a very economical and efficient manner to see that we are going to get the best education for the children of the State of Montana, and adults, that we can possibly get; because no matter how far we go along, I'm sure we're always going to be short, dollars and cents-wise. So this, I think, basically then, pretty well describes what I was talking about. I would like to-as long as I'm on this, I'd like to say that the only-1 have only received two pieces of correspondence from my school at home. The first one was just a letter, which I felt very complimented on, from the Superintendent, that said he regretted that he didn't see me to express his feelings, but he thought that education in the State of Montana wouldn't have to-or would be safe as long as I was working on it. The second one was the correspondence that1 received just shortly before I testified before the Education Committee, and had to do with figures of what is happening in our school system. In 1967 we sent 87 percent of the graduates out of Fort Benton High School to a 4-year college. Last year we sent, I believe it was 65 percent. I testified to this effect before the Education Committee, and I also testified that I thought as far as boards were concerned that vocational education should have at least as big a say as the University Systems. I believe that under one board they have this. I do want to take a little issue with the Chairman of the Education Committee when he is quoted in yesterday's Great Falls Tribune as saying that the School Boards Association is a special interest. I would hope that they are a special interest, but not in the manner Mr. Champoux referred. The school boards in all of our area are elected by you and I, if we're doing our job. What kind of pay do they get for it? They get long hours, we give them a lot of heck at times, but this is it. Now, as far as I'm concerned, there is only one goal that the school boards have, and that is to see that the best education system as can be provided is provided. I knew that Mr. Champoux would either snow me or shampoo me under with his eloquence, and I did come across-see a letter which was written by the Executive Secretary of the National School Boards Association which, in part anyway, says much more eloquently than I can what I mean. So I would like to read just a little bit from this letter-about three paragraphs or something like that. "Simply stated, I believe in one board of education for each state, composed primarily of laymen appointed by the Governor, confirmed by the Legislature. This board should have the power to oversee the curricula of all schools in the state elementary, secondary, collegiate, graduate, private, technical and parochial"--well, I don't know-well, I guess they do now in parochial, too. "The board should determine standards for health, safety of students, and standards for reasonable productivity. It should establish criteria for professional certification. The board should have the power to hire its executive officers, including such persons as the State Superintendent of Public Instruction"-well, we've already knocked that out-"and the Chancellor. The arguments for such a system are based upon simple assumptions and inherent logic. One: education should be viewed as a continuous process necessary in our complex society from cradle to the grave. Education at one level depends on the previous and is responsible to the next. It isn't a different kind, one level to the next, obeying different laws of learning. Education should strive for efficiency. The money for education comes from one pot, usually appropriated or authorized by the State Legislature. One board speaking for all education can present a unified and intelligent budget which takes into account all the priorities of the people. It can articulate among the levels of education and keep them in balance. The governing structure itself should be simple. It should be able to act quickly to change circumstances." I just want to interrupt here and say, one reason there is no mention here as to length of terms is to leave it open so that the Legislature can do this in case this board isn't responsive, and so on. "The State Board of Education should be powerful and widely respected. With only a piece of the action and without adequate power, it is forced to operate by importuning, cajoling, and mere persuasion. Some critics of a one-board system will quickly counter out of fear of the power of one board. This is inappropriate, because a state board is always modified by the Governor, by the Legislature, by the educational professionals, and by the weight of public opinion."

(President Graybill assumes chairmanship of Committee of the Whole)

DELEGATE GYSLER: "Other critics will argue that the unique attributes of the various levels of education require separate boards.

Higher education will be the first forward with these claims. On the other hand, boards of higher education have allowed colleges to become curricularly inappropriate, have feared crediting societies more than their public, have maintained questionable undergraduate majors, and so on. Many of the problems of higher education-its too often inappropriateness and its too low productivity per dollar expended-are due to the autonomy which has been granted to the institutions of higher education in the past. A third set of critics of one board in government will emerge from the professional groups who want self-regulation. This argument I dismiss with a harsh and insensitive caveat that a profession which is self-regulating is, from the standpoint of public interest, unregulated. Many states have one board for public elementary, secondary schools and one for-and one or more for institutions of higher education. In almost every state, Legislatures are faced with powerful lobbying factions and the demand for funds beyond reasonable capacity to produce. Jurisdictional battles are common, and Legislatures very often acquiesce to the most powerful forces rather than the most logical. Having one state board won't end the philosophical problems for the Legislatures but will simplify the interface." I heard the Chairman say about how many people testified before his committee in favor of the two boards, and it sounded like almost everyone there did. Would Mr. Woodmansey yield to a question?

CHAIRMAN GRAYBILL: Mr. Woodmansey?

DELEGATE WOODMANSEY: Yes, I would.

DELEGATE GYSLER: Mr. Woodmansey, you're on that committee-on the Education Committee. Who testified for two boards, and who for one board? What was the—

DELEGATE WOODMANSEY: I assume you're asking me because you see I voted no in some way in this area. Yes, I'll be glad to respond to this, and I hope as accurately as my memory serves me. The-we had several members of the present State Board of Education who came before the committee. If my recollection is right, I don't remember any of them asking for a two-board system. We had the State Superintendent of Public Instruction, who came before the committee and, as I heard it-1 didn't hear that she was opposed to this. The Governor came before our committee, and it was my understanding, after listening to him, that it could be either way; that he could live with the one board or have the two-boards system. Of course, the Montana School Boards Association was opposed to a two-board system. The Montana Education Association, which represents a majority of the teachers in the state, was opposed to a two-board system. I may have omitted others who appeared before the committee. I'm sure maybe someone else could contribute further, but this was my feeling after listening to them.

DELEGATE GYSLER: Thank you, Mr. Woodmansey. Another point I want to bring out is what the Chairman said about "body corporate". Well, I've been President of a body corporate for about thirteen years, and I know how they work. I've worked with a lot of other body corporates, and the board of directors run them; and that doesn't leave an awful lot for the rest of the people-which, in the case of the people of Montana, you would be the stockholders and the Board of Education would be the board of directors.

CHAIRMAN GRAYBILL: Mr. Gysler, do you have any idea about how much longer you'll need?

DELEGATE GYSLER: About 2 or 3 minutes.

CHAIRMAN GRAYBILL: Okay.

DELEGATE GYSLER: So it is fine, like the Chairman said. The boards of school districts are now body corporates, but this is in the Legislature. It is not in the Constitution, and to me there is quite a difference. I want to just, in conclusion, say that this article that I have proposed is not proposed because of any special-interest group. The only thing that I have had to do with education is paying taxes, and paying my own expenses because I'm interested in it. And I certainly hope that when this body does arise and report, that you will accept this amendment.

CHAIRMAN GRAYBILL: Mr. Driscoll, you have an amendment. Do you want the Chair to read it?

DELEGATE DRISCOLL: Yes, I would like—

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Driscoll's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Sections 9,10 and 11, being pages 5 and 6 of the Education and Public Lands Committee Proposal Number 10, by deleting these sections in their entirety and inserting in lieu thereof—quote 'The general control and supervision of the State University and the various other state educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of 14 members; the Governor, State Superintendent of Public Instruction and Attorney General being members ex officio. The other 11 members thereof shall be appointed by the Governor, subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law.' Signed: Driscoll." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Driscoll proposes an amendment which proposes a one-board system. I might quickly recap for you. The majority wants a two-board system. Mr. Gysler wants a one-board system with the Governor and Attorney General ex officio and the Superintendent of Public Instruction as the executive officer. Mr. Driscoll wants a one-board system with the Governor, the Attorney General, and the Superintendent of Public Instruction ex officio.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I'll be relatively brief. I lack the eloquence of the Chairman of the committee and his persuasive manner and this type of thing, but most of you people will notice that this is the present provision in our Constitution, with one minor change. The board now will consist of 14 members, with the Governor, the State Superintendent of Public Instruction and the Attorney General being ex officio members. As I ran for this Constitutional Convention, I made the statement that there were a good many parts of our Constitution which I liked and which I thought should remain; and the present provision regarding the State Board of Education is one of these. In my testimony before Mr. Champoux's committee, I made some statements which I regret. One of the statements was that I didn't want vocational-technical education mentioned in the Constitution. I can see now that I made a mistake. I look around this assembly here, and I see at least two people, two members of the Legislature-one from the Senate and one from the House-who in 1952 and 1954 attempted to establish with me a vocational-technical center—centers in Montana. From the beginning, with Paul Harlow and Charley Mahoney-Charley Mahoney in the Senate and Paul Harlow in the House-we developed an adult education provision which is now prevalent in the state. We also laid the basis for our vocational-technical centers. I would like to report to the Committee of the Whole the present status of our vocational-technical centers. The status is ambiguous. We are in a netherland someplace. The way the law is written and is applied, the budget and curriculum are determined by the State Board of Education; administration, then, is left in the hands of the local school district in which the vocational-technical center is located. However, the largest part of administration is budget and curriculum determination. I would also like to remind the members of this committee that there are no local district funds involved in the financing of the vocational-technical centers. This is funded entirely by state funds and the l-mill countywide levy. And this experiment in education, which is probably the most exciting in the United States at the present time-we are in a situation which is rather nebulous. We don't quite know where we belong; we don't quite know where we are going. And under the proposals by the majority, we still wouldn't know where we belong. I don't know if the University System is going to exist as it is now, 20 years from now; I haven't the faintest idea. But if we take the majority's proposal, it is going to exist. I don't know where vocational-technical centers will be 20 years from now, but I do know that it has shown-that they have shown the greatest growth of any educational system that's in the state and that they have been received well and happily by most people. I would also like to talk briefly about the State Board of Education as being unresponsive. I venture to say that I have had more personal experience with the State Board of Education than anyothermemberofthis floor, and I have found those people responsive, dedicated, courageous, and concerned. I am sure that this little amendment which I propose, and a few more statutory meetings allowing them to develop a good committee system, will be in the best interests of education in general in Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: If we could all be back here promptly at 20 minutes to 4:00, why, then I'll move to recess. I so move, Mr. Chairman.

CHAIRMAN GRAYBILL: The motion is to recess until 20 minutes to 4:O0. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee of the Whole in recess from 3:27 p.m. to 3:42 p.m.)

CHAIRMAN GRAYBILL: Mr. Wagner, will you close the door for me, please? The committee will be in session. Ladies and gentlemen of the committee, we now have before us, on Section 9,10 and 11, three proposals-the majority proposal which proposes a two-board system, a proposal by Mr. Gysler which proposes a one-board system with the Governor and Attorney General on the board and the Superintendent of Public Instruction as the executive officer of the board; then we have one by Mr. Driscoll that proposes a one-board system with the Governor, Attorney General and Superintendent of Public Instruction all on the board. The matter is open for discussion.

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates, the discussion of the three plans has centered down on whether we had two boards or one board. That's a very important item, but I think there's another important item that somehow is just a little bit lost in my mind anyway in the three discussions. And I'd like to take just a moment to get the information for you and for me, to try and clear up, and that's the position of the Superintendent of Schools in all three plans, because we have to face the fact that when the board goes home, somebody has to be left there to man the shop. And one of the big questions I think in the whole proposition is, who works for whom? Now, if Mr. Driscoll would yield to a question, I would like to ask one.

DELEGATE DRISCOLL: I yield.

DELEGATE ARBANAS: Mr. Driscoll, the plan that you have is pretty much like we have it now, with the Superintendent of Schools relating strictly-or in a, you know, running sort of capacity to the elementary and secondary and in an advisory capacity to the higher education. Would that be a true statement?

DELEGATE DRISCOLL: It's exactly as it is now. She does not act in an advisory capacity to the higher education; she acts as a member of the Board of Education.

DELEGATE ARBANAS: A member of the board, yes, right. Fine. Thank you very much.

DELEGATE DRISCOLL: Thank you.

DELEGATE ARBANAS: Mr. Driscoll-Mr. Gysler, would yield for a question?

CHAIRMAN GRAYBILL: Mr. Gysler? Will you yield?

DELEGATE GYSLER: I yield.

DELEGATE ARBANAS: As I understand your system-I'd just like to check it out—you have made the Superintendent of Schools the Executive Secretary of the board, is that right?

DELEGATE GYSLER: No.

DELEGATE ARBANAS: Could you yield for another question?

DELEGATE GYSLER: Yes.

DELEGATE ARBANAS: Would you picture that role a little bit clearer for me.

DELEGATE GYSLER: Certainly. Mr. Arbanas, what I have done here is to make the Superintendent not the executive secretary, but the executive officer; because I feel that under this system, then, the higher education, then, will have their executive secretary, and so on. Really, what I am attempting to do with this is centralize everything; and in relation to the higher education ends, that will be more a supervisory there in the fields than the State Superintendent is now in. The functions, I think, will stay the same, relatively.

DELEGATE ARBANAS: Will Mr. Gysler yield for another question?

CHAIRMAN GRAYBILL: Mr. Gysler, will you yield?

DELEGATE GYSLER: Certainly.

DELEGATE ARBANAS: In other words, the relationship to higher education is different than the relationship to lower education.

DELEGATE GYSLER: I would say yes. I don't envision, except from an overall, probably responsibility standpoint-a member of the board could call up and say to Joe Doakes, Executive Secretary, "Get that stuff done." They would have somebody there checking and so on, but more— not actually under, but not too much control. I envision that the board really runs that and the State Superintendent is more there-as at present. But it centralizes it.

DELEGATE ARBANAS: Mr. Champoux, would you yield for a question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I certainly will.

DELEGATE ARBANAS: As I understand the board system you propose, I get the impression that the State Superintendent of School would be advisory to one board and be advised by the other board. In other words, you've changed the lower board and say that it's now supervisory, so she's more or less being advised by them; and the higher board, she's advisory to them, so to speak. Would that be true-accurate?

DELEGATE CHAMPOUX: Yes, that is true. See, our problem with the situation there is— and I think one of the major defects of Mr. Gysler's plan is-that you have an elected official. Now, under his proposition you're having a lay appointed board giving directions to an elected official. I—

DELEGATE ARBANAS: Thank you very much.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I'd like to submit to the Convention that, as far as I see in the three plans, there are strengths and weaknesses in all of them. But the thing that would worry me in all three plans is with the higher University System, that there is really nobody in charge when everybody goes home. Now, maybe I'm wrong, but that's the way it seems to me; that when it's all said and done, there's different ways that the board control. But I would like to have seen in the plan, and I think Mr. Rygg brings it out in his discussion, that the Commissioner of Education, there's-I feel that primary and secondary under all three plans is pretty well taken care of by the Superintendent of Public Instruction, but even though we have this new, independent Board of Regents, like Mr. Champoux would suggest to us, there's still no one to take care of it on a day-by-day basis when the-everyone's gone home.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Champoux some questions, please?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I yield.

DELEGATE BOWMAN: Mr. Champoux, the first question that I'd like to ask is, how do the two boards mesh with the elected Superintendent?

DELEGATE CHAMPOUX: Mesh? In what—

DELEGATE BOWMAN: Well, I can't see how the three of these entities are going to work together-the two boards and the elected Superintendent.

DELEGATE CHAMPOUX: Well, I don't know. In what specific way? They're going to meet together over mutual concerns, and I have recommended that we amend that major board so they submit a combined budget, if that's what you mean. Is that the problem?

DELEGATE BOWMAN: Well, it's just the concept that I'm having a little trouble getting—

DELEGATE CHAMPOUX: Well, we have an elected Superintendent. Now, if you notice in the Executive Article, it says her duties shall be prescribed by law. Now, we have a board here, and we also mention "whose duties shall beprescribed by law". Now, the reason why we've done that is to keep it flexible, see? Is this what you wanted, or-

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Champoux another question?

CHAIRMAN GRAYBILL: Yes, you could. Mr. Champoux.

DELEGATE CHAMPOUX: I'll yield.

DELEGATE BOWMAN: Who will really be in charge of education in Montana-theelected Superintendent of Public Instruction, one or two or both of the boards, or the executive which is elected by the Board of Regents?

DELEGATE CHAMPOUX: Well, what we are after here is a combination of things. First of all, we wanted direct participation by the people; and this, as we see it, are themembers of these lay boards. Secondly, we wanted some involvement by the Executive Branch, directly and indirectly. Directly, we have it through the Governor's presence; indirectly, because he nominates these board members. We also wanted some involvement in terms of the Legislature, and this is why we have confirmation. Another direct involvement by the electorate is the direct election of the State Superintendent.

CHAIRMAN GRAYBILL: Mr. Champoux, that's not responsive. She wants to know who runs it.

DELEGATE BOWMAN: Thank you, Mr. Chairman.

DELEGATE CHAMPOUX: Who runs—

CHAIRMAN GRAYBILL: Yes, she wanted to know who runs education in the state under your plan, and you just told her a lot of other things. I'm just pointing out that you haven't answered her question.

DELEGATE CHAMPOUX: As I see it, the boards.

DELEGATE BOWMAN: Could I ask just one final question, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes, Mrs. Bowman.

DELEGATE BOWMAN: Have you considered letting the Governor vote on either one or both of the boards?

DELEGATE CHAMPOUX: Yes, we did.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: And you decided that was not a good idea?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Yes, we did. We felt that his influence perhaps would be too much, in the fact that he's going to appoint the board members and they come within his term.

DELEGATE BOWMAN: Thank you very much.

CHAIRMAN GRAYBILL: Very well. Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I just want to point out that on the basis of the way these three articles are, the Superintendent of Public Education runs the whole educational system and is the officer who has the tie vote to swing the thing if an issue arises. Because under Section 10 there's a board of seven on public education; on Section 11, there's a board of seven on higher education; and Section 9 expressly says that in the event of a tie vote, the Superintendent of Public Instruction votes. So when the higher education people confront the lower education people, the swing is the Superintendent of Public Instruction. And there isn't any other way you can put these together. And I just have to say that we ought to note that that's the kind of architecture that we are drafting.

CHAIRMAN GRAYBILL: Very well. Mrs. Warden.

DELEGATE WARDEN: Mr. President, would Mr. Champoux yield?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: (Inaudible)

DELEGATE WARDEN: I notice here, under Section 10—or, no, in Section 11-you say the Board of Regents of Higher Education, which shall govern and control the academic, financial and administrative affairs of the Montana University system. My question is this: would you envision that the budget of each unit would be presented by the proposed Board of Regents to the Legislature, or would each school-that is, each university unit-propose its own budget and come to the Legislature and see how many votes they could gamer to get their budget passed in relation to the other person's budget, which is the way it has been operating with a Board of Regents -that is, the Board of Education working 95 percent of the time as a Board of Regents?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Neither of those options; and that is that each unit would come to the board, and that's where they would do their lobbying. Then it would be the board, under the present system, that would present the budget-combined budget-to the Legislature. And then, when it came back, it would have to be proportioned out according to the original budgets from the different units. Now, if we follow my recommendation, though, and get an amendment to that upper board, then both boards will come together as a common board and submit a combined unified budget to the Legislature. I don't see these people lobbying, no.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, may I ask him another question?

CHAIRMAN GRAYBILL: Mr. Champoux, will you yield?

DELEGATE CHAMPOUX: I yield.

DELEGATE WARDEN: Under the present system, the Board of Regents, to my knowledge, has not determined a priority system on buildings on the campuses. Now, by your plan, do you envision that this would work better-that the Board of Regents would do this sort of thing and that they would come to the Legislature with priorities for the different schools?

DELEGATE CHAMPOUX: I would assume that this would be argued out within the boards themselves-within the boarditself, before they ever came to the Legislature. And they would have the power, then, to internally decree where these priorities would go. As of present, they don't.

DELEGATE WARDEN: Well, why would they—

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President. Mr. Champoux, would you yield to a third question?

DELEGATE CHAMPOUX: I will yield.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE WARDEN: How would you remedy this?

DELEGATE CHAMPOUX: I guess—

DELEGATE WARDEN: There is nothing in the article that says that things will operate like this. The duties are prescribed by law, of course.

DELEGATE CHAMPOUX: That's what body corporate is all about. They will have the power then. One of the things that was considered in this committee was-and it was a proposal-I forget who put it in-that each unit have-become a body corporate. That would be probably the worst thing that could happen: but, you see, under this system the board is the body corporate. They have the right, then, to determine the priorities.

DELEGATE WARDEN: Thank you, Mr. Champoux. Thank you.

DELEGATE CHAMPOUX: Thank you.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Well, Mr. Chairman, I think Mr. Champoux spoke very completely on the two-board system and on the body corporate, and I planned to speak at some length on the same subject but now find that I don't want to be repetitious, so my remarks will be brief. The Education Committee has submitted to this body a real blueprint for reform in our system of education. The two amendments now before you contain very little change from 1889. In fact, they lift the language from that section in many ways. I'm not sure that Montana wants to remain one of two states with a single-board system, and I hope that, in our haste to get away on a Saturday night, we give this more than cursory attention. I want to call your attention to an incident that I witnessed last year in connection with the two boards. The six University Presidents were in town for a meeting with the Board of Education and the Board of Regents. The board was in the process of a hearing upon a complaint from a teacher in the primary school who had been discharged. The two-the six University Presidents were kept waiting for 2 days during the period of this hearing. And I'm sure the teacher's complaint had merit-and I don't want to make any accusations in that way. But it's an illustration of the inefficiency and the impossibility of operating this system, this tremendous system, under one board; to keep those six Presidents here, waiting for 2 days during this hearing on a primary school teacher. Now, I want to talk very briefly about the body corporate concept. Mr. Champoux covered it completely. But I submit to you that you now have before you an example of what's happening in the University

System because of the lack of a body corporate type of organization. The University of Montana unit at Missoula recommended three architects for the construction of the new Science Building to the State Board of Examiners. These architects were all rejected by the State Board of Examiners, and another architect chosen. And I'm certainly not going to pass judgment on his qualifications. Nevertheless, you've all read in the press-it's been in every daily paper-that building is in a mess; that it does not serve its purpose; that it's going to take substantial funds to put it in shape. Now, had we been operating under the body corporate system, the State Board of Examiners would not have been able to decline the recommendations of the University System for the hiring of those architects. So far as the housekeeping that Mr. Arbanas is concerned about, the board can easily take care of this themselves through an organization or a director, located here in Helena, to perform such functions as the board may direct. But I hope the Convention will give the committee report serious consideration. We do not want to step back into the 19th Century. I urge the adoption of the committee's report and the rejection of the two amendments. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman, I'd like to speak in opposition to the two-board system. And we've heard a lot of testimony today about the different studies that have been presented and so forth, and I just would like to bring up a few figures that came from the Session Laws: 1961, our general fund biennium budget was $71 million-that was 1961; 1971, our last session, was a hundred and eight-five point six million dollars. And it's estimated and been mentioned on the floor that our 1973 biennium budget would approximate $250 million. I don't know how we're going to raise that kind of money, but I just wanted to mention that in the 1971-73 university appropriation budget, the total was $86,000,772 million which is about $15 million more than our total general fund budget in 1961 forrunning all of the state government. And I notice, in this $86 million, with one board, we have $475,000 for the office of the Executive Secretary of the Montana University System. The State Board of Regents has $300,000 for a total of $775,000 per year, or a million five hundred and fifty thousand dollars for the biennium; and this is for one board. So if we were going to have another board, we would probably get another million and a half dollars every biennium, if we're going to go on this basis.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, I'm not sure exactly how we're going to reconcile any of these three plans with what we've done previously. The majority-the minority report that this committee adopted of the Executive Committee, we decided to elect the Superintendent of Public Instruction. The rationale behind that decision, which was advocated by the Education Committee, was that the Superintendent would be the major state educational officer. I don't believe, although they provided that the duties would be provided by law-that was the theory; that this was the chief educational officer of the State of Montana. I do not feel that any of these three plans that have been proposed encompass that idea, even tacitly. Mr. Gysler's proposal-I think I agree with Mr. Arbanas. It does make her the Executive Secretary. She can't even vote, and yet she's supposed to be one of the policy planners, and she can't even vote on that board. Mr. Driscoll's plan, also, she is an ex officio member. I would hardly think under his plan she could be the chief educational policy planner. Now, under the majority report, the Superintendent of Public Instruction is mentioned several times. The only real major function that is stipulated that she serve is that she may vote in case of a tie when the two boards meet together and that she serves as an ex officio member on both of the boards. In neither case is she really a part of the policy-making process. I think that this should, perhaps, in some way be reconciled. Under the majority plan-which I do favor the two boards-it seems to me a kind of a vacuum in terms of who is really going to be responsible. You have the Board of Regents of Higher Education who elect their own executive officer. You have the Board of Public Education, and there's no provision at all for an executive officer. Maybe it can be inferred that the Superintendent of Public Instruction will be the executive officer of that board, but it certainly doesn't say so. Most of the state Constitutions, at least the last nine that have been adopted, you know, do not try to reconcile what we're trying to reconcile here-the fact that we've already got the Superintendent of Public Instruction created in the Executive Branch, which really has nothing to do with the Executive Branch but deals with education. And here we are in the Education Article and we're trying to work around what we

already adopted in another article that didn't have anything to do with that article. It seems that we're really going to have to decide if what we did in the Executive Branch, you know, if that's what we really intend. If we really want the Superintendent of Public Instruction to be in charge of the education of the State of Montana, then I think all three of these plans are going to have to be reexamined.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the executive plan has been adopted, and it does prescribe that we elect a Superintendent of Public Instruction. I think that there was a good deal of merit in Mr. Rygg's plan, and I toyed with the idea of having an article that would read something—or suggesting one that would read something like this-that the education-the Superintendent of Public Instruction should be the Executive Officer of Education in Montana and that a board could be appointed. I have since decided, and I think I would support the amendment that was offered by Mr. Gysler, for the reason that, in my opinion, based on the testimony that the Executive Committee had with the educational officers as well as the joint committee meeting with the Education Committee, that we found this situation developed. We find a lot of headless monsters. The w-tech doesn't have any direction; the community college doesn't have any direction. All of these other factors in education aren't interrelated and interconnected, and we don't have one board or one power to direct education in Montana. As I told in the colloquy that we had with Mrs. Colburg, I said in my opinion it seemed to me that what we need in education is integration, not segregation. I think that this would be based on the experience of what I've observed down through the years as far as the University System. You've got competing units of the six units, and without having some sort of an executive officer, you're going to be in trouble. I think we could take a page from what happened in the Department of Administration when we established a board and set in motion a group which takes the prison, the home at Boulder, and all of the other units, and puts them together. And they've had little trouble with the Legislature, and they have effectively worked. I think the same thing could be done here, and in—under Mr. Gysler's amendment, the Superintendent of Public Instruction could employ, just as she has in other instances, could employ someone to be executive secretary of the university units and could work. We had this testimony from some of the board members; and to mention another special interest which Rick didn't convey or mention, the MEA has taken the position that they retain the present constitutional provision, which establishes a single State Board of Education capable of governing and supervising all levels of public education. We've heard statements today and we've studied, and those of us who have been in the field of education recognize that there are some real changes going on in education. I think that Mr. Gysler pointed out that probably by 1980, less than 20 percent will be going to college. There will be special training and special training programs. I think that in our testimony it developed that perhaps there needs some revamping in the elementary and secondary education program. It requires and will require some intensive study on the part of some boards, and I think thatinstead of integrating--or segregating and dividing this all up, we would be a lot better off to retain a single board.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would the committee turn to page 5, line 30, and just listen to the following: "The State Board of Education shall meet at least quarterly with primary attention given to a unified budget. The Superintendent of Public Instruction shall be Chairman of this board."

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: First of all, I want to answer Mr. Martin. Mr. Martin, on your desk yesterday morning you received a cover letter from me with three other letters in it in support for this proposal. The top one is from the Montana Education Association, which says-they did—you're right-originally oppose at our hearings the two-board system. However, now they unequivocally accept it. It says: "We have studied the committee proposal carefully and wish to commend you and your committee for developing an excellent article on education for the new Constitution. The proposal shows the results of a great deal of work, careful thought and excellent leadership. The only suggestion we have is that there should be constitutional safeguards for the investment of state trust funds." This was taken care of last Saturday in the Revenue and Finance Committee thing. "We should like to express our appre-

ciation to you and your committee members for the courtesy and consideration given to all who wished to appear before the committee", and so forth. The last sentence-"Again, thank you very much for your excellent work. It's been a long, arduous task and we are careful--we are grateful." The MEA does support the two-board concept that we have proposed, unequivocally. All right, let's look at Mr. Gysler's-may I speak to Mr. Gysler's proposal?

CHAIRMAN GRAYBILL: Certainly.

DELEGATE CHAMPOUX: All right, let's look at this—

CHAIRMAN GRAYBILL: Briefly.

DELEGATE CHAMPOUX: Yes. Yes, sir. (Laughter)

DELEGATE CHAMPOUX: Fourteen members of the committee-we looked at that. Can you imagine 14 members sitting in one room, all agreeing? It's too many on the committee. All right, we're concerned about vo-tech. Ifyoulook at ours, it's very flexible. It takes care of vo-tech all the way through and for the future. Mr. Gysler's and Mr. Driscoll's proposition doesn't get at the problem. All right, let's talk about the comment in the *Great Falls Tribune* yesterday. That was not directed at the state-the local state-local boards of education; it was directed at a special interest group that's been lobbying this Convention since the day it opened, the Montana School Boards Association. All right, if you have one board, the upper board, you have one budget. How can you say there's going to be competition? Another thing, the State Superintendent of Public Instruction overwhelmingly supports the two-board principle, and if she is in this room today, we can bring her right down here and she'll testify. Let's look at the people—

CHAIRMAN GRAYBILL: You can't do that, Mr. Champoux.

DELEGATE CHAMPOUX: I know. (Laughter) I know, but I just want to clear up some of these misconceptions here. If we look at the total of the people that testified before our committee— and here it is, it's compiled. These are the people that testified for the two-board system: the Montana Federation of Teachers; the PTA; Bob Jovick, who was representing the Montana Student Presidents Association; the County Superintendent of Schools Association; Robert Pantzer, the President of the University of Montana, representing the Presidents of the University System; James Short, Western Montana College. Governor Anderson was ambiguous-the MEA was not— (Laughter)-1 didn't mean that as a-he was going both ways, sir. (Laughter) It was unclear. Dolores Colburg does support the two-board system. The faculty center at Eastern Montana College, all the community college presidents. Who were the groups against it? The Montana School Boards Association and the vo-tech centers. Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: First I would like to announce to the group my interest in education, the fact that I've been a part of the University community as a student and as a part-time student and as a part-time teacher and a faculty wife. And I have also spent a lot of time with Legislators who have been very much concerned about the direction of our University program. Somehow, I think that most of us found this whole issue to be one of the most frustrating ones we dealt with during the campaign, and I think that I came over here expecting somehow for the-a light to flash and all the problems be solved. My frustration, I think, is that I would like to see somereallystrong direction, some central direction to the whole University System, and I think that most of us involved in education feel this same thing. Yet we see this program of a Board of Regents and we're not sure that this Board of Regents is going to be very much stronger than our Board of Education, which also sits as a Board of Regents. And we considered all kinds of ideas. You know, we thought about letting the Board of Education be elected or having the Legislature elect the Board of Regents or having nominations come from groups of faculty people and student people and taxpayers around the state so that we got a group of people who would really concentrate attention on the problems. We've also considered the fact that Mr. Rygg brought up, that probably the one thing we need is some really strong leadership at the top, someone who is really in charge. And it's frustrating to look at a plan and not be able to determine who really is in charge. But on the other hand, I think that if we consider the various possibilities that we have to work with and look at the majority plan report, there is a great deal of flexibility here. It's not giving us, you know, a beautiful answer that we can see in black and white that is going to start working next year. It leaves a great deal to

the Legislature. I can see a plan such as Mr. Rygg proposed actually working under this two-board system. I can see the possibility of the elected Superintendent of Schools being given some real responsibility, maybe almost complete authority in the area of public education. I think it would be perfectly possible for the Board of Regents to hire a very strong administrator who would be something like a Chancellor or a Commissioner of Education. I think that the possibilities that are presented in the majority report are the kind of possibilities that our Legislature and our Board of Education can work with for a long time to come, and that won't be limiting. On the other hand, I look at the two amendments and I can't see, really, any change from what we have now, which has not really proven to be very satisfactory. The only addition is really the addition of a couple of more board members. And true, this could help, but we don't have any indication that a couple of more people on the board are going to make that much difference. I don't see this as any great panacea to the problems, but I do think that the majority report has been looked at by educators of all kinds from around Montana and has given them some confidence that this is a good way for us to go. I don't think by debating this thing all night tonight, we're going to have-come up with some original, great idea of what to do, and I strongly recommend that we go along with the majority report. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I've listened to the arguments pro and con, and I gather that our paramount reason for being here is, first, of course, to make sure that the citizens of the State of Montana are protected with respect to their rights as citizens; and second, when we construct government, that it be efficient and economic. I've looked at the majority report, and I think what they're trying to do is give us a more efficient and more economical system. In the professions, there is a substantial trend towards specialization. The medical profession has demonstrated that to us over the years, and as a consequence they've increased the progress and the advance of medical science toward the frontiers that have provided us with problems. The legal profession is moving in that direction; and I submit to you that as the educational system expands and becomes more complex, that same degree of expertise is required. The higher education system of Montana has problems that are opposed to the problems that exist in the public school system. I think that it's far better to have separate groups who are connected with those particular systems who, through time and experience and devotion to that particular area of educational jurisdiction, can develop the type of expertise that's going to result in efficiency and economy. And, consequently, I submit that the two-board system commends itself to us at this time. I note, too, that all 11 members of the Education Committee support the two-board system. I think after 4 weeks of study, and with respect for their position as individuals particularly interested in education, that they should be recognized for their expertise in the area. And unless we have some real reason for disagreeing with their report, we should accept it. I do have one concern, and I share this concern with my fellow delegate from Butte, Mr. Driscoll. I think the vo-tech educational program is probably as important a program as we could have in the State of Montana. I do not think a liberal arts degree for everyone is necessarily a good thing. I am satisfied that for the majority of the young men that want to find a place in the working society in which we live, that a vo-tech education for them is the real answer. And I would like to inquire of the Chairman of the Educational Committee, if he will return, as to the proper place of the vo-tech program with respect to the two boards. Mr. Chairman, may I inquire and will Mr. Champoux yield to that inquiry?

CHAIRMAN GRAYBILL: Will Mr. Champoux yield? Mr. Champoux, will you yield?

DELEGATE CHAMPOUX: I will yield, sir.

DELEGATE DAHOOD: Mr. Champoux, will you tell us under which board-the Board of Public Education or the Board of Regents-you would place the vocational education program of Montana?

DELEGATE CHAMPOUX: The Board of Public Education, sir.

DELEGATE DAHOOD: Thank you very much. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I think that if you were to ask each member of this committee, they would be the first to say that they are not experts in this field. There are no experts in solving this problem; and I assure you, no matter

which way we go, we will live with it and we will still have many problems. Right now, I can go either way and I'll be unhappy. (Laughter) Now, you're talking about a single strong head. We tried that. We had Chancellors. We had good Chancellors and they were strong Chancellors, but they could not last because they were too good. The last one was tremendous. So let's forget about that. And also let's go back and analyze our present operations. The people who control the purse strings of the University System are the people we send to this legislative body; and in case you don't realize how they function, let me tell you. The Appropriations Committee divides itself up into groups, and these groups go not only to the institutions, but they go to the university units. And they analyze and they talk with the presidents and the heads of the departments and ask them what they need for their operation of the University System. Now, they control the purse strings; and no matter what you do with the body corporate, the Legislature will control the purse strings. They've got to. Now, what they want with this body corporate, whether you like it or not, they want the money allocated to them and they want to spend it whatever way they please. If I were President, I would also. Wouldn't you? They don't want to have to answer to anybody, whether they use Mary Doe for secretary today and Helen Jones another time. They don't want to have to report back here to Helena how they spent their money, That's about what it means. They also want to have more authority about their curriculum. Now then, where does the present State Board of Education fit into this picture today? Actually they don't do much as far as administration is concerned. They advise the presidents. They approve curriculum changes, yes; and here's where you have problems. The President of one institution wants to put in a new course. The President of another one wants the same course, and we have a competition here, not only in the area of curriculum, but other areas. So this is a very difficult proposition to reconcile the differences between these university heads. It's a big problem. That's why the Chancellor couldn't operate, because it wasn't only the presidents, it was the downtown quarterbacks that were also pressuring the Chancellor, So let's reconcile ourselves to living with a board. Now, I'm thinking about this-1 lean to Mr. Gysler's and Mr. Driscoll's system, because I fear very much the setting up of one Board of Regents as being—controlling our educational-higher educational system. Now, Mr. Champoux, I'm going to direct to you because you are the spokesman here. You're political science. Naturally we are concerned with the particular area we are centered. We're going to work for this political science, someone else is going to work for mathematics, and someone else is going to work for other areas of social science. What I'm getting at is this-we become centered in the areas in which we are trained, and in the process of setting up a Board of Regents, the Board of Regents is going to be concerned about higher education only. Why do we teach algebra today in high school? Why? Because the University System says you have to have it sometimes to get into our system. There are other matters we could talk about in that same area. They are determining what's going to come up from down below. Now, Mr. Gysler, you said you were proud about the fact that you had 67 percent of your graduates going to college. Very commendable, but I wonder if it is so commendable after the records we have seen over the past years. The people who are going to college are not too happy with college. Very slowly we are changing this concept of education. The need to make the student happy with what he's taking and also to fulfill a place in society. Now, here we have a Board of Regents, and all it's concerned about is the higher education system. Don't we need somebody who'll start with kindergarten to elementary to high school, w-tech and college? Shouldn't they all be integrated? And I maintain if we have 12 members on the board, we can divide this board into three units-higher education, public schools and x-tech. Can't they concentrate in this big board? Can't the four people go to the University System, which I'm sure the eight aren't doing now, and find the problems? Can't fourdoit better? Can't four people study w-tech better? Can't four study the problems of elementary education better? And then, can't they come together like we have done here in our committee system and talk their problems over? They will not be competing for money. They'll say, "We've got to put this whole thing together." Therefore, I urge you to give serious consideration to the other two proposals. As I said, I'll be happy with any of them.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman, I rise in support of either the Gysler or the Driscoll, at the moment, amendment--whichever one we get to first, I guess. It seems to me like we've spent several hours here just a few days ago trying to decide how we could control the funds that the

State Highway Department gets and talking about having a fourth house, or whatever you want to call it, there. And now we're talking here today about doing the same thing again in the education department. I would think that with a proposal like Mr. Gysler has, that with the State Superintendent of Public Instruction as the executive officer of the board-now, I would think that she could operate as the executive officer, not as the executive secretary. And through this type of a provision, you could develop a organization whereby you could have a policy-setting board and an administrative person who could hire a staff and do a sufficient job along these lines and yet have this same type of control that we have now back through the Legislature, instead of getting another monstrosity, if you want to call it that, like we was talking about in the Highway Department just a few days ago for several hours.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, may I respond to Mr. Hanson's remarks? Of course there is a fundamental difference, Mr. Hanson, in these two agencies-the fundamental difference being that the Legislature still has the purse strings on the educational system under the two-board, the committee report. The Legislature does not have the purse strings in the Highway Department. That's the fundamental difference. Any other comparisons, of course, don't-or inconsistencies don't bear water-hold water. Because, of course, the whole business of academic freedom, curriculum, and individual liberties are not involved in the Highway Department, so any inconsistency that might be taken-might be charged against me in this regard doesn't hold water. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I'd like to follow up first of all from what Delegate Martin had to say about the need for integration, not segregation, and then what Delegate Aasheim and then what Delegate Hanson had to say. I really think we're going to divide ourselves into probably two groups of-you know, the one-board group and the two-board group. And I, at the present time, feel that the strongest proposition we have before us is the proposition of Mr. Gysler; but when I talked to him on the-with regard to the role of the Superintendent of Public Instruction, we got kind of mixed up in going back and forth, and I made some conferences with him. And I think it's important for us to consider as we see the strengths and weaknesses of both sides, that at least at the present time-and this is informal at this present moment-that he would be willing to accept this kind of an amendment if we ever got to thatpoint: "The State Superintendent of Public Instruction shall be the Executive Officer of the Board'-that's as far as it's printed on the page-and then to go on and say, "and shall be the State Commissioner of the educational system of the state." The intention would be, of course, to take Mr. Gysler's plan and amplify, as Mr. Hanson was hinting at, that this being the Executive Officer would be equivalent to being the State Commissioner of Education. I think you'd have to go a long ways to find a more unified and stronger executive plan than that, with one board large enough to divide into several interest groups and a State Commissioner of Education, elected by the people, who is subject to the board and actually in control of the education of the state. I think that's where I stand right now.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I've listened here the biggest part of the afternoon to some very eloquent displays of orientation of education, but I will have to agree with Mr. Gysler's proposed amendment. I think that in all fairness to the people, the young people of the state, taxpayers of the state, that one board can better sit down together and analyze the problems of education. I think further that the State of Montana and the people of Montana are very much concerned today about education; and I think that as your Legislature convenes again and takes another look at education, that they are going to become more conscious of the problem. I have talked to many, many people across the State of Montana that are so thoroughly upset with the present system of higher education that they are in a quandary as to whether they even want to send their youngsters on to higher education, the way it is run today. Now, these are the problems that is confronting the educational system and the structure as it is today. If there isn't some improvement, you're going to have a taxpayers' revolt, because the educational system takes about a 70-percent bite out of your tax dollars; and we want to see good education, and we want everyone to take another good look at it. I can visualize, under the two-board system, that you will have a two-headed monster that will be going off in separate directions, pressuring the Legislature for funds, particularly for

higher education, and you'll have the lower board for elementary education that will be working in the other direction. But if you have one board that can divide itself into subcommittees to study the different factions-vocational, elementary, and higher education-and then come together and put their feet under the table and talk about these things, I think they can provide better direction for education to go. I think that we need to really examine this proposition. I don't want to see a high dynasty set up, and I don't think any of us here do, and particularly the taxpayer. And I think your Legislature in the future will subscribe to these duties, and I think they will take appropriate action. And as far as having a directive-an Executive Director-they can also prescribe this if they see fit. But let's give the Legislature the flexibility and control that they need to have in working out the problems with future educational systems.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think there are several things that have emerged for just a plain man looking at this situation. One is an obvious thing to me, that we need a division of labor. I think every person here knows that you would not expect anybody to be an expert on graduate education, as far as the University System is concerned, and have that same person really knowledgeable about kindergarten, elementary, secondary education. There just simply has to be a division of labor. And everybody who has spoken has admitted to this, whether we call it a basic one-board approach, or two, or what. If you don't call it a Board of Regents, then call it something else. But some group has to be specially concerned about higher education in this state or we will just simply take a step backward on this. I think most people understand-now, I'm just talking as a private citizen who doesn't know all the ins and outs of it-but when I vote for a Superintendent of Public Instruction, I, in the past few years, have voted for a lady schoolteacher. Now, in my mind, the Superintendent of Public Instruction relates to the State Board of Education and the state educational system the way the Superintendent of Public Instruction in Helena relates to our school board and to our elementary and secondary education. And I think the thing that is written into the majority report gives the Legislature--and into our whole Constitution-gives the Legislature a chance to spell this kind of detail out. That's where I think she or he belongs, and not having to try to find a person who can be an expert, both for elementary education and for higher education. Secondly, I think we all understand we need a combined budget approach. We do not want this business continued, of every different agency running to the state Legislature, vying for a position for appropriations. And with the kind of amendment that I have sent to the Chair for suggestion—for Section 9, of one sentence, I think we can make this State Board of Education that agency that can do this business of forming a plan for allocating funds and of one single approach to the Legislature about funds. Thirdly, and we're all agreed that the Legislature needs to have, and does have, in fact, control of appropriations and of money. Now, this is all complex. I'm sorry now that the report that came from the majority did not say that we call for one State Board of Education with two sections, because really, if you read it, that's what it says. We have two boards, we're calling them; and you've all referred to it as a two-board system. But Section 9 says "There shall be a State Board of Education", which, with a little doctoring and amending, can be set there to combine the efforts, particularly in terms of allocating funds and making approach to the Legislature in a one-board system. So I think we ought to stick with the majority report, beat on the floor on the vote these two amendments that are so-called one-board, though they call for different committees, and then take the basic approach that this committee has worked out in this complicated area for weeks and weeks of intensive study and amend it until it says exactly what we want.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Driscoll's amendment to Mr. Gysler's amendment, which is a substitute to the majority report. I merely want to point out that the Chair intends to debate this and then you may decide which way we're going. And we now have several other amendments, once we know which way we're going. Who wants to be next?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise to speak on this issue from a multitude of conflicts of interest. You all know, of course, that I'm a professor of economics at the University of Montana. What some of you may not know is that I am the President of the University Teachers' Union, which is a local--local 497—with the American Federation of Teachers, which is affiliated with the AFL-CIO. This is the second time that I have been President of that organization;

the first was in 1960. Since 1960 I have, off and on-mostly on-been engaged in a running battle with the administration of the University in a fight for more faculty rights as compared to the administration-more faculty power, if you will, against the administration. The administration, of course, represents the Board of Regents. Now, there is no question, I think, that a Board of Regents with more power, as the majority proposes to give it, could be more difficult for the faculty to deal with. Certainly, it is generally true that a weak administration or management, if you want to call it that, means at least the possibility of greater faculty control-it's easier to manipulate. Now, my second interest is that, being involved in the American Federation of Teachers, I'm necessarily involved in AFL-CIO. I know the state leadership of the AFL-CIO, many of the local leaders around the state. I, in general, sympathize with their objectives. You probably—many of you, I know, did receive a letter from James Murry, the Executive Secretary of the AFL-CIO, on the matter which is now before us; and that letter was critical of the majority proposal. It said a lot of things which I think Mr. Champoux has effectively answered; a lot of things which were in essence untrue and some other things which, if true, can certainly be handled easily in this Convention with little damage to the majority's proposal. On the other hand, the AFL-CIO's problems are real problems. What they are hung up on, to be quite frank with you, is the fact that they have had considerable amount of trouble in dealing with University unit administrators. I'm talking about negotiations for labor contracts by the plumbers and the other craft unions, such unions as that that deal with the nonacademic personnel. I can testify from my own experience that there are some pretty hard characters among the administrations of some of these units, difficult to deal with. And I can certainly sympathize with the AFL-CIO's feeling that they need to keep some kind of a handle, through the Legislature or through other means, on the University unit managements. Now, on the other hand, my interest--my third interest in this affair is that I am, as I said, a professor of economics at the University of Montana and have been for the last 17 years; and that I have two children who are attending two units of the University System at the present time, one at Missoula and one at Bozeman—one about to graduate at Bozeman in mechanical engineering. And as a professor and as a parent and as a Montanan, I want the best university that we can afford. I want it for myself, because I work there; I want it for my kids, because that's where they're getting their education; and I want it for all Montana kids with whom I have associated these last 17 years. Now, how to resolve these conflicts? Well, it seems to me there can be no question that the excellence of the University System must take precedence over any other consideration. We in the University Teachers' Union may find our problem more difficult if you adopt the majority proposal, but we will work with it and we will find ways to work with it. The AFL-CIO and some of its constituent unions may find it a little more difficult, but they're going to have to solve those problems in the way unions usually solve their problems-by better organization, by better negotiation. And, it seems to me, not by twisting the Legislators' arms and putting indirect pressure on the University administration. Now, I spoke of excellence. What does excellence in the University System require? It requires, of course, first of all, money. But we are always short of that, and we always will be short of that, and we are going to have to work within the constraints of the money that's available from the citizens of Montana. The second thing it seems to me that makes for excellence in a University System is a strong, unified management. The third thing is a faculty free from political intimidation-not necessarily from political influence, but political intimidation. Fourth, what excellence requires, it seems to me, is the support and understanding of the public, the people of Montana. Now, how will the majority proposal affect the excellence of the University System? In the first place, as regard to money, it's not going to get us more money; but it's going to mean the money we do get will be more efficiently used; and that's the same thing as more money. As to unified management, this, of course, is the name of the majority proposal. It means unified budget development, unified budget presentation, and it means unified management of the appropriated funds. As to the freedom of the faculty, it will, of course, mean more insulation from the Legislature, less of the sort of thing we had in the Morton Borden case. Although the Legislature is still going to be the boss, because he who controls the purse strings is going to call the tune and this body that meets here will control the purse strings-most of them, at any rate-and it will have the say as to the overall direction of the University System. Finally, as to the support and understanding of the people of Montana, I think Mr. Wilson is probably correct when he says that the people are at the present time somewhat disaffected with the University System, perhaps less

so at the present time than they have been at times in the past. But I think the establishment of a strong Board of Regents that can really manage this system will have the effect, over a period of time, of increasing the people's confidence in the system, because the Board of Regents with that kind of authority will have the flexibility-will have the ability to really manage that they do not have now. Now, we may hope also that such unified management will lead to some elimination—or at least reduction-in the unseemly competition between the University units, which I think is a source of a good bit of the criticism of the University System by the people, and I think a justifiable criticism. Now, if you defeat the proposed amendments-which I hope you will, so that we can get back to the majority proposal-it is my intention and the intention of certain other delegates to propose amendments to the proposal which will allay some of the fears which have been expressed concerning it. On the matter of financial accountability, Delegate Aasheim says the University administrations don't want to report back here to Helena how they spent their money. This simply is not true. And I don't think anyone ever supposed that the majority proposal would free the University from financial accountability, particularly from a legislative audit. But if there is any such possibility in this proposal, then certainly we ought to amend it, and I will so propose to put in explicit provision mandating legislative audit of the University. As to the term "body corporate", the term "body corporate" as applied to the Board of Regents isn't any different than the term "body corporate" as applied to a local school board, and I don't think we ought to get hung up on that term. But if it is something like the public trust, which bothers people because of words, then take it out, because it isn't all that important. Now, finally, what to do about vo-tech? I wish that we could simply propose an amendment which would take care of Maurice Driscoll's problem, whatever it may be, because I don't really understand it. I don't think that anybody in the University System wants w-tech. I don't think the Board of Regents would want it except as it relates-that term may cover such things as are presently in the program of Northern College at Havre, which is one of the very effective parts of the University System which should be under the Board of Regents now and in the future, and I think we must leave to the Legislature the flexibility, the ability as conditions change, to allocate responsibility as is reasonably necessary. I don't think there's any way that we can solve this problem here by some kind of an amendment to the proposal of the majority which would say vo-tech shall be under the control of one or the other boards, because as a practical matter, it is now partly under one and partly under the other. We do, of course, at the present time have a two-board system in the guise of a one-board system. And because the two boards are combined as one, they don't work very well, because the board spends so much time on its duties as a Board of Education that it interferes with its performance of its duties as a Board of Regents; and it would be certainly much more efficient to separate them. Now, as to Mrs. Robinson's problem, to the extent that it isn't simply because her car wouldn't start this noon, I think we can safely leave this question of the duties of the Superintendent of Public Instruction, as we said we would in the Executive Article, to the Legislature. And Mrs. Colburg apparently thinks, and I see no reason to dispute her judgment, that the result will be satisfactory. Thank you very much.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. President, fellow delegates. I feel, too, that since we have continued to call the Superintendent of Schools an elective constitutional office, that she should have responsibility and not be an ex officio board member, regardless of what type of board we set up. In coming here, as Dorothy has told you earlier, we were undecided what direction we must take-a one- or two-board. Early in the Convention we received a questionnaire that came from one of the Vice Presidents at the University at Montana State, and it was almost evenly divided amongst two groups as to a single board or a two-board. Most recently, I received a questionnaire from the Chamber of Commerce in Bozeman. In checking over their 18 questions, I find they're evenly divided. They have seven of their proposals-they've won seven and lost seven so far—to things that we have done here. As far as the two-board, they were almost two to one against a two-board. Now, this is a university town. The-I was wondering, Mr. President, now we have two substitute motions; would it be out of order to have an amendment at this time?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BATES: To the substitute—Okay.

CHAIRMAN GRAYBILL: Unless you have a third major plan.

DELEGATE BATES: No, I do not have a third.

CHAIRMAN GRAYBILL: That's fine. I want to find out which way we're going, and when we know which way we're going, we'll then consider and amend that particular plan as much as we need.

DELEGATE BATES: Okay, fine. Thank you, Mr. President. I feel very strongly that the Superintendent-and we must have responsibility someplace, and I don't feel the majority plan points to that responsibility. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates and members of the body, the Chair would like to observe that "ex officio" means that they are members of the board from their office. In both the Driscoll and Gysler plans, they would be voting members. In the board-in the majority plan it says ex officio, nonvoting members of-at least in Section 10—the Board of Education, and in that case they would not be voting; but ex officio does not mean you do not vote. Just so everybody understands.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and fellow delegates, I rise to speak against the two amendments and in favor of the majority proposal which has come in. And I'm looking forward to seeing the amendments which you have on your desks relating to that, so I'll be brief. Let me give you a bit of the feeling of this committee as we've lived and worked together over these weeks. Rich Champoux I've gained great respect for as a human being, as a former Bostonian, and as a Montanan. He's a slave driver. We met early morning, at night, at noon, and listened to many, many people in many, many fields. And I feel he's done a very creditable job, as have other members of the committee, in assessing our needs and trying to lay the foundation for the future that would be a sort of growing kind of opportunity for our young people, whether they be in the lower grades or in vo-tech or in higher education facilities or programs. I think one of the problems has been, as we've tried to deal with this on the floor and as different individuals have tried to address themselves to it, something to the effect that Marshall McLewen, as he sort of put into memorable terms when he said, "One of our problems in looking at the future is that we tend to go through life looking through a rear-vision mirror." And it's awfully hard to drive down the road if your line of sight is constantly in the rear-vision mirror. You've got to look there every once in awhile; it's important, but you can't make it if you have that kind of orientation altogether. It seemed to me, as we listened to testimony from those who were feeling threatened, really, and quite defensive about the thought that possibly higher education would be given some kind of more than equal status by our proposal, there was the feeling that it was our intent that they should win and other people should lose, in this admittedly limited field of finance which we have in our state. All of us know we're a capital deficit area; we have to depend on outside capital. No institution in this state is financed adequately; none of them are endowed. That's just a fact of life. But our intent as a committee, and I think if you look at it and allow yourself to look at it in a fresh way, was to strengthen all aspects of education in the state, not to promote one at the expense of another. I think those who have seen the work of University Presidents and lobbyists in the past in the legislative halls will be pleasantly surprised in the future to find that this combined board will come in with something unified, if these amendments are stated in the way that I feel they are going to be stated, and it will have something very much a step ahead that will help all of us in all of our programs. I think that Mr. Heliker made a very beautiful statement. I won't attempt to repeatit. It seems to me that as we look ahead, we have to provide the kind of foundation that will allow for the kind of future we're going to be living in, and it's going to require more and more education. Whether you think about it in terms of orientation toward vocations or not, there will be more education demanded in the years to come as the explosion of knowledge goes on, as our society grows more and more complex. How do you provide for it? What do you do to make the best kind of opportunity available? I don't know that we've solved it; we feel we have taken a step or two that gets us out of some of the snafus of the past and may allow us to take a step or two forward. But it doesn't settle it for all time, and it does leave the people of this state and our Legislature much to do in implementing it. I think the specialization thing is the thing that's convinced me, and the clear delegation of authority. And so I feel that this proposal as we have it is a strong one for the guys who have to represent people in the outlying areas of our state. I think somehow you need to know that. Once I went out and got on a horse, and I didn't

know what I was doing. But I was asked by Sterling Loney and Jules Atune one time to come watch them brand some cattle out in Sarpy, east of Hardin-and they were branding their own stuff, as far as I know; I think it was theirs. (Laughter) And they put me on that horse, and I was circling around a bunch of bulls who were pawing the ground and snorting and fighting the flies, and I'm glad the horse knew what he was doing, because I was scared to death, just riding in a circle. They didn't have any corral; you were just out in the open. You had to do this thing. But the guys who were doing the branding knew what they were doing. And those calves weren't all 2 weeks old; some of them were pretty husky. They seemed to know how to use the momentum of the calf himself to catch him and throw a knee into his ribs and lay him down with an ear-and-a-hindquarter grasp. They gave him a knee to the ribs, and down he went. They used his momentum. And all I'm saying is, in the time in which we're living, we've got to use the momentum of the time which we're a part of, and we've got to use the facilities and resources and skills which our society provides. And we've tried to do that. You guys understand that as well as we do. You use the best skills for your work that you can bring to it. We feel we've done that as a committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Burkhardt, you had Mrs. Pemberton's attention for the first time today. (Laughter)

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin, will you yield? I suppose I'd—

DELEGATE MARTIN: Yes, I'll yield. (Laughter)

DELEGATE PEMBERTON: Mr. Chairman. First, I'm flattered to have had your attention-(Laughter)-and I think Mr. Burkhardt is also flattered to have mine, after some of the things that have gone on between us. Thank you.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I just want to take a minute to say that until Rick Champoux mentioned the letter and the material that was put on our desks yesterday, I didn't know about it and did-couldn't find it on this disheveled desk of mine. And my good seatmate here, Mrs. Mansfield, got it out for me. And I apologize, Rick.

CHAIRMAN GRAYBILL: Very well, are there other people that want to talk before we vote on these three proposals?

Mr. Blaylock, do you have a question?

DELEGATE BLAYLOCK: Yes. Mr. Champoux, will you yield to a question?

DELEGATE CHAMPOUX: I yield, Mr. Chairman.

DELEGATE BLAYLOCK: Rick, you, I think, would agree that what Mr. Burkhardt said a moment ago-that we are a capital deficit state; that we need money; that we're going to-there's always a struggle to get enough money. As I understand it, under your plan, with this two-board system, that when it comes to allocating the money, you're asking the Legislature for the money; that these two boards will come together and work out an agreement between the two boards as to how much money they're going to ask for. Now, if they are both championing their own cause-in one case the higher education; the other case the primary, secondary-what if those two boards cannot agree? Now what are you going to do?

DELEGATE CHAMPOUX: Well, if we can ever get these two boards through, we have an amendment-Mr. Harper has suggested it-a unified budget-and I believe Mr. Garlington, are you going to move?

DELEGATE GARLINGTON: (Inaudible)

DELEGATE CHAMPOUX: He's going to move that the Governor be the chief of the board. Is that correct?

DELEGATE GARLINGTON: (Nodding affirmatively)

DELEGATE CHAMPOUX: And I believe Mr. Scanlin down here has another one making the State Superintendent the chief of the board. So if we get to that point, we might be able to solve some of these things. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I certainly am not an expert in the field of either

higher or lower education, but I do know what I want. I want the Legislature to have the purse strings, and I guess they have it under any of these three plans. Another thing I want is to have control of the budget finally in the Legislature, and as I understand it they will have it. Another thing that I want is a real, honest-to-goodness audit. Chairman Champoux of the committee indicated there would be an audit, but I don't like the idea of somebody auditing themselves. I don't think that's a satisfactory audit, and that's what it is. But Delegate Helikerindicated that there—he was going to offer-or somebody was going to offer another type of audit to the Legislative Audit, and I think that that is a splendid idea. And I was wondering if I may ask Chairman Champoux-if such an amendment is offered, if the committee will entertain it.

DELEGATE CHAMPOUX: Mr. President, may I reply?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: For the sake of the information of the assembly, Mr. President, could you read Mr. Heliker's proposed audit—amendment?

CHAIRMAN GRAYBILL: Mr. Heliker is going to have an amendment that says: "The Legislature shall be given an annual accounting of all the income and expenditures of each unit of the University System." In addition, the Chair would observe that the Legislative Auditor could still audit. Is there other comment?

Mr. Swanberg.

DELEGATE SWANBERG: I'll just be very brief, Mr. President. It just seems to me that with all the changes that are coming up in the field of education-this field of vo-tech, for instance—that I, for one, would want one single board to supervise it. I could see if there were two boards, the one board-the college board-might feel that some aspect of vo-tech should be under their jurisdiction and the other board might feel that some aspect of vo-tech should be under their jurisdiction, in spite of where it's assigned. And under this majority proposal there is no-any one person that makes these assignments. And I think in view of this, one board making all these decisions would be far to be preferred. That one board, of course, could divide itself up-there's 12 to 14 members-and one subcommittee could be on higher education, another subcommittee could be on w-tech, and the third subcommittee could be on the elementary system. And for that reason I favor either of the minority reports.

CHAIRMAN GRAYBILL: Mr. Mahoney,

DELEGATE MAHONEY: Mr. Chairman, I remember when Montana had a Chancellor. Then the Legislature, in its wisdom, refused to fund the Chancellor. They used to write in their appropriation, "There'll be no money expended for a Chancellor." The law stayed on the books. They didn't take it off. I saw some terrific fights. You think this is long. This is short one to what I saw in the Senate over a Chancellor fight. I don't think this is long at all on this. I think this is a very important discussion this afternoon, and I've enjoyed every minute of it. You people have stayed right on the line, and I think it's been marvelous. Now, I don't care what -we do, it ain't going to work. (Laughter) I have seen the Chancellor then come back. They thought everything was going to be fine; now we got the Chancellor system. So we got a new Chancellor, and he couldn't last. So then we increased the size of the Board of Education. They did that. So don't worry, whatever we do—and we're going back to that thing. We're going to have an awful time with it. There's a few things that I would like to see. Now, I heard Mr. Champoux say over here, and I think in all honesty he said that the vo-tech would be under the Board of Education. Well, then I listened to the distinguished-or our distinguished member here from Silver Bow-saying that the vo-tech is being funded entirely by the state; it isn't costing anything. So now we get the money coming from the state, going to be under the Board of Education, and they're not funded by the state because this goes back to the other angle. Now, I-we're going to have to get some of these things straightened out as far as w-tech is. Now, in going down here reading-and I'm not much of a reader-but in line 16 on page 6, it says down here, "a body corporate, which shall govern and control the academic, financial and administrative affairs of the University." Now, I hope if we can get to where-we're going to have to define what you mean by the word "financial". Are you guys, the body corporate, coming into this body-to the Legislature, and saying, "All we want is X-number of dollars. You give us X-number of dollars: we will spend it as we please." All six institutions-now, thank goodness, the vo-tech is out from there, because they'll have to get it someplace else. Now, if that

means financial, I'd like to know that; if that's the way you're going to spend it. Now, I know having served on that Finance and Claims Committee—and I am sure that with Senator Groff or with Norris Nichols, through the appropriations-and I sets right down here-sets a former member of Appropriations Committee, Mr. Barnard, and a Chairman of it. I don't think you're ever going to get them to say, "so much money, and you divide it up". Now, you might say that they can do it, except that they will go and take out and says, "This is in the Constitution; this is not law. This is-you people don't have nothing to say about this." This is what bothers me. Now, when we vote on these two boards, I would like to see it go back to have one board. If we have it in the general plan, I'd like to see seven getting together once in awhile. I think Mr. Harper has a great idea. I hate to see these fellows meeting at the same time there. Now, I think another thing; we'd save a lot in administration. Now, I don't know whether you know this or not, but the Board of Institutions—their budget request last year, just for the Board of Institutions--not for the institutions--was $l,SOO,OOO for the biennium. This was the request. Now, these are the things when we start creating two boards. I just saw Ed Nelson up here today, who's now the Board of Regents Manager, and I think is doing a mighty good job. We'll have another one. Now, I've watched this Capitol grounds grow around here, and I go down and I'm telling you, Ed's got a beautiful spot down here on-down on 11th Avenue, and we'll have some more. Now, this is what we must realize--and when we go to these. Now, if we have to go back to the majority plan, do you suppose we could put a little connecting link in there so they would have the same office and the same administrator and we could let them use the same stenographer and save a little money? This is the main thing I'd like to see, because somewhere, somehow, somebody has to pay the freight around here. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, my landlady stops feeding at 5:30, and in the last 10 workdays, I've missed 6 meals. When are you going to let me eat?

CHAIRMAN GRAYBILL: You'd better get a pair, Mr. Kelleher.

Mr. Champoux.

DELEGATE CHAMPOUX: May I answer very briefly, Mr. Mahoney? Charley, you're beautiful. He's great, isn't he? I think we ought to have an amendment to make him the Commissioner of Education of the state. However, vo-tech is funded in three ways. There are state funds, there are federal funds, and there are local funds. The other point that you were making concerning the Executive Secretary; I'm glad it was brought up, because Mr. Arbanas referred to who's going to be minding the store. Well, the store is being minded right now. They have an Executive Secretary, and he did refer to the gentleman. The building is already there. It's been in existence for I don't know how long. So actually, you're not-are you going to get rid of the building? Is this the thing? I mean, the building's there, so it isn't going to mean a matter-if I may just throw this—if I may answer you; the building is there. Going to sell the building, Charley?

CHAIRMAN GRAYBILL: Why did you have to end in a question, Mr. Champoux? (Laughter)

Mr. Mahoney.

DELEGATE MAHONEY: I might state, for the benefit of the assembly, this organization, the greater University, moved out of the Capitol building into a rented building last fall.

CHAIRMAN GRAYBILL: Mr. Driscoll, would you like to close, briefly?

DELEGATE DRISCOLL: Mr. Chairman, may I close? It's quarter after 5:00, and I have to get back to Butte, America, and I'd like to close. Thank you. (Laughter)

CHAIRMAN GRAYBILL: All right, the issue is on Mr. Driscoll's amendment. Mr. Driscoll's amendment is before you. It has the effect of calling for one Board of Education on which the Governor, Attorney General, and Superintendent of Public Instruction serve ex officio—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: -with 11 other members. We'll have a roll call vote. So many as shall be in favor of Mr. Driscoll's amendment, vote Aye; so many as are opposed, vote No.

Mr. Eskildsen, for what purpose do you rise?

DELEGATE ESKILDSEN: I rise because I don't think this is a fair way to take this vote. I think if we are going to vote on a one-body group, we should vote on-decide whether we want one body or we should decide whether we want two bodies. And then decide, if we take the one body, to

take either Driscoll's or Gysler's. If we decide we want the two bodies, or the majority plan, fine.

CHAIRMAN GRAYBILL: All right, Mr. Eskildsen. I'm sorry; the Chair will have to rule you out of order. We are in the middle of a vote. This is the way they came in. This is the last amendment to Mr. Gysler's amendment. If, when we get all through, you aren't satisfied, you send another amendment to the Chair and I'll put your amendment. Has all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the vote. Please take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0..... Nay
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Excused
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman. ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt., ... Nay
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. A y e
Harbaugh ..... Nay
Harlow ..... Nay
Harper..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland..... Aye
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Aye
Lore110 ..... Nay
Mahoney Aye
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Excused
Rollins., ... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Nay

Vermillion Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman Nay

CLERK SMITH: Mr. Chairman, 29 delegates have voted Aye, 66 have voted No.

CHAIRMAN GRAYBILL: 66 delegates having voted No and 29 Aye, the matter is defeated. Now, the next issue is Mr. Gysler's. Is there more discussion? Mr. Gysler, just a moment. Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Gysler yield to a question?

CHAIRMAN GRAYBILL: Mr. Gysler?

DELEGATE GYSLER: Certainly.

DELEGATE AASHEIM: In your pi-o-posal, Mr. Gysler—or, Erv-"the general control and supervision of the State University and the various other state educational institutions"—what do you mean by "state educational institutions"?

DELEGATE GYSLER: Mr. Aasheim, this term is broad to cover what-hopefully, whatever the Legislature would provide for the duties there, as far as education goes. It's the same as in the old Constitution there, Mags.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will he yield to another question, please?

CHAIRMAN GRAYBILL: Mr. Gysler?

DELEGATE GYSLER: Yes.

DELEGATE AASHEIM: What was your reason for making the State Superintendent of Public Instruction the executive officer of the board?

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Aasheim, our reason for doing that-and I gave Mr. Arbanas a very poor answer an hour or two ago--my reason for that was to make the State Superintendent of Public Instruction in charge of the housekeeping when the people go home, when the board goes home. In other words, making the State Superintendent of Public Instruction the number one there.

DELEGATE AASHEIM: Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I sort of, as I intimated when I spoke formerly-that I tend to favor this amendment or suggestion of Mr. Gysler's, but I think it needs, probably, a little working over. I think it should be mentioned-the fact that we are also including public schools here, rather than educational institutions. And I also question here the matter of making the State Superintendent the Executive Officer, as a senior officer above the Governor. I do like the idea of having one board, as I said, and having 12 members and dividing the membership into three different areas. But I think, like Mr. Eskildsen, that we probably have here, maybe, a Hobson's choice. And I would hesitate to adopt this Gysler proposal, even if I do like it, with the wording as it is now; and right now, I'm not ready to make any amendments to make it really workable. I really am not conversant with the problems that would be involved. However, as I said before, I do like this idea of a single board.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: May I inquire of the Chair, please? If this were to pass, it could be amended afterwards, and really, the choice we have is between the-now is between a plan with one and a plan with two; and once we adopt the plan, we can amend, can't we?

CHAIRMAN GRAYBILL: That's right. Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I'll be short in closing. What I'm trying to do-and I think I should say to Mr. Eskildsen: right now, I believe, is the time when you choose between one board and two boards. The thing that I want to primarily do is to make everything one board with enough people so that they can get the job done and so that we don't have two separate boards and then the two boards come together and fight. If there's going to be some fighting, let's get it done right inside of the board that meets, and every time a board meets, this board will meet. I take issue a little bit with Mr. Heliker's statement that the University System must be number one over all, because if the University System is number one over all and we let other phases of our educational system go to pot, then we won't have anyone qualified to go to the University System. Mr. Mahoney, as far as the things are concerned—everything is-your doubts-I feel that my plan

basically takes care of them. Mr. Champoux, a long time ago, said that the board proposed by me was too large, but yet at the same time he says his board should get together and meet, and there's 14 plus 1, which makes a board of 15. With that, I will close.

CHAIRMAN GRAYBILL: We're going to have a roll call vote.

Is that what you want, Mr. Kamhoot? For what purpose do you rise?

DELEGATE KAMHOOT: Mr. Chairman, I rise for the purpose of explaining my vote. Delegate Kelleher has gone. He was going to vote against the amendment, and I want to vote for the amendment, but I'll not punch the button. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Very well, we'll have a roll call vote. The issue is on Mr. Gysler's proposal for substituting his Section 9 for Sections 9,10 and 11 in the committee report. His section calls for one Board of Education on which the Governor and Attorney General serve ex officio and the State Superintendent of Public Instruction as Executive Officer of the board. So many as shall be in favor of that motion, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Excused
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Absent
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Excused
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Absent
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay

Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Excused
Rollins .. Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Spew ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg .. Aye
Toole ..... Nay
Van Buskirk .Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 38 delegates voting Aye, 54 voting No.

CHAIRMAN GRAYBILL: 54 delegates having voted No and 34 having vote-38 having voted Aye, the amendment fails. Will the Chair please have the pages put these out. There's about 20 copies, 2 to a row.

Mr. Harper, you're the first up on amendments to Section 9. May we read yours, Mr. Harper?

DELEGATE HARPER: Please.

CHAIRMAN GRAYBILL: All right, the pages put out about two in each row. This is an amendment that has some text to it, and we did not have any printing. I made about 20 copies so you can look at them. Will the clerk please read Mr. Harper's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 9, page 6, line 1, of the Education and Public Lands Committee proposal, by adding a sentence, following the period after the word 'concern'-quote: 'The State Board of Education shall determine budget requests to be made of the Legislature, after forming a plan for allocating funds to all phases of the state's educational programs.' Signed: Harper."

CHAIRMAN GRAYBILL: Very well, you're going to have that before you in a moment. The amendment goes in on page 6, line l-page 6, line 1, after the word "concern" in the middle of the first line. It says-I'll read it again: "The State Board of Education"-that's the combined board-"shall determine budget requests to be made of the Legislature-comma-after forming a plan for allocating funds to all phases of the state's educational program." "The State Board of Education shall determine budget requests to be made of the Legislature, after forming a plan for allocating funds to all phases of the state's educational program."

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, this is just in the nature of getting to work now to see if we can put into our so-called two-board proposal some of the things that people who wanted the one-board proposal were concerned about. And the thing I heard mentioned several times was the matter of making sure that budget allocations were looked at in the light of total educational program of the state, rather than in two segments, then coming to the Legislature in a sense in the nature of a dogfight between two conflicting elements. And since we have, under this plan, a State Board of Education set up, combining the efforts of the two sections, I offer this amendment. It does a perfectly obvious thing: it suggests that the State Board of Education will make a budget request to the Legislature. And, of course, in order to do that, they have to decide among themselves how they will allocate a total amount of fund that they expect to get from the Legislature. I hold no particular brief for the wording of this, but I think the idea is perfectly obvious.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm in support of that amendment.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: We still don't have copies.

CHAIRMAN GRAYBILL: All right, will someone in Mr. Romney's area get him a copy, and I'll also read it again slowly. "The State Board of Education shall determine budget requests"—now, that's by the State Board of Education they mean-Section 9; that's the combined boards—"shall determine budget requests to be made of the

Legislature, after forming a plan for allocating funds to all phases of the state's educational program."

Mr. Woodmansey.

DELEGATE WOODMANSEY: It appears to me that, in this case, I wouldn't particularly like to be the Superintendent of Public Instruction, because each board of seven members will be there to defend the request from their area and it will be up to the Superintendent to break the tie. And whichever way the Superintendent goes, it will be the wrong way, it appears to me. I don't know how we can alleviate this, but it looks like the Superintendent is going to get caught in the middle right from the start.

CHAIRMAN GRAYBILL: So that you—

DELEGATE WOODMANSEY: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: I think the body should have in mind these two other amendments. Mr. Garlington's amendment would substitute the Governor for the Superintendent of Public Instruction, so that the Governor would make the decision Mr. Woodmansey just discussed. Mr. Scanlin's amendment would leave the decision with the Superintendent of Public Instruction, but would require that the board meet at least quarterly to give attention to the unified budget, and the Superintendent would be Chairman.

Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I think it's quite conceivable that a board-the two boards might be able to agree without necessarily a deadlock each time. You're assuming-someone's assuming that there will be seven on one board, dedicated solely to getting as much money for their segment as possible, and matched by seven on another board. It might possibly be that there are men and women with an intense desire to compromise and work out these matters for the good of all.

CHAIRMAN GRAYBILL: The Chair would like to observe, for the benefit of the body, that both the Board of Public Education and the Board of Regents have seven public members, plus the Governor and the Superintendent. Now, I realize they have no votes in either case, but in other words, there are other people on those boards.

Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. will Mr. Harper yield to a question?

CHAIRMAN GRAYBILL: Mr. Harper?

DELEGATE HARPER: Yes.

DELEGATE CONOVER: Mr. Harper, is it your intention that your--what you're getting at is at the w-tech schools? You know, at the present time, that the financing of our public schools is already administrated through the State Superintendent by the taxes and the foundation program. Now, just who are you relating this Board of Education-is it strictly to the vo-tech schools?

DELEGATE HARPER: I'm not sure I understand that question, Mr. Conover. My answer would be that the Legislature appropriates the funds for all of these now and will according to this plan, too. My concern was that the Legislature-the Committee, in the Legislature, on Finance-not be faced with asking from the vocational people and maybe in-as a part of that from different vocational units--not be faced by asking from various units of the University System, and so forth. But that the Board of Education would be the place-the State Board of Education would be the place where all of these things were threshed out together, so that when the Legislature was asked for an amount, there would have been some agreement reached between the vocational-tech people, the community college people, the university people, the-all phases of education.

CHAIRMAN GRAYBILL: Very well.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would Mr. Harper yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Harper?

DELEGATE HARPER: Yes.

DELEGATE NUTTING: When we look at it realistically, though, we know what is going to happen is that the budget request is going to far exceed the amount of funds available. Is it your anticipation that this amendment will mean that the funds will be voted by the Legislature and then it will be up to this board to again decide where the cuts come--whether they'll come from the University or the elementary or the w-tech, or where they'll come from?

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I can see two possibilities here. The Legislature would decide which of these two it wanted to do. It may not do always the same way. The Legislature need not come back with that kind of an appropriation and say to this board, "We leave it up to you to apportion it out." They may, having the asking from the board in their hands, simply make the allocation any way they want. On the other hand, there may be points at which-or times at which the Legislature might well say, "We have this much money-we will allocate this much of a fund to the Board of Regents of the University System; we'll allocate this much for another segment of it-and leave it up to the board to decide." I wouldn't want to try to second-guess the Legislature on that, but I don't think there's anything implicit in this motion that tells about how the funds have to be handled after the Legislature has allocated them.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Harper—may I direct a question to Mr. Harper?

CHAIRMAN GRAYBILL: Mr. Harper?

DELEGATE HARPER: Yes.

DELEGATE ROMNEY: Maybe a couple.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE ROMNEY: George, in line 17, Section 11, thefinancialpowerisgiven, at least to a degree, to the board, so if the Legislature-if the board comes up with a budget and the Legislature doesn't have enough money to fund it and cuts it in part-like you said, maybe one place or another-then does the Board of Regents lose its power to allocate?

DELEGATE HARPER: Mr. Chairman. Mr. Romney, let's start with this. It's for sure that the-this Board of Regents is not going to be able to allocate any more money than the Legislature gives it. So if an asking comes in from the State Board of Education and then the Legislature appropriates only a portion of it, then obviously all of the original allocations can't be made. I was suggesting that-1 suppose that if this Section 11 is passed without further amendment, that what you are suggesting would be true. The money appropriated for this area of higher education would be given to the Board of Regents, and then they would make the allocation.

DELEGATE ROMNEY: Mr. Harper, then it's a matter of who's going to divide the pie for the record, and that's what I was trying to bring out.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: There may be other amendments that need to be added in other sections here to answer this question of Mr. Romney-and that-they're probably in the minds of other people. I simply am trying, in this one amendment, to make clear the duty of the State Board of Education to correlate this business of financial askings to the Legislature.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I have a question, I think, for Mr. Harper. I don't know that I understand just how this budget is going to be sent to the Legislature. Do I understand, then, that it will bypass the Administration Department or the Budget Department completely, and the budget will go directly to the Legislature? Would that be it? That would be a difference from the past.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I must confess ignorance at that point. If the request is not made directly to the Legislature, if there are other channels through which it ought more properly to go, and if this does not afford the right channels, then I would be open to an amendment. I'm not posing as an expert in financial affairs. I'm just trying to make clear-at least give the basis for making clear here something that I think we'd all like to get at.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This does cause me some concern. I'm not an expert on it either, but I have been on the Appropriations Committee a few times, and it would appear to me, by this amendment, that we are completely bypassing all other parts of the Administration Department. And if this is a body corporate, am I to assume, then, that that is it; that the-any other part of the Administrative Department is bypassed and this corporate body gets its one budget directly to the Legislature? That's the way this would read to me, and I don't know if that's the proper mechanics or not. I don't know what difficulty it would make, but I think it would be a definite change from the pres-

ent. Now, maybe that's thewayit is supposed to be if this is a body corporate--and apparently is going to bypass all the Administration Departments or anything, and it's going direct to the Legislature. Mr. Chairman, could I ask Mr. Champoux a question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I'll yield.

DELEGATE RYGG: Is that the way it would be then, Mr. Champoux?

DELEGATE CHAMPOUX: Sterling, if you look at the examples in all other states, the procedure is to go through the executive Budgetary Department. And I would assume--we could specify here-but I would assume-1 think what we want to do is to go through the regular channels as they go through presently, which you have described. Do you think we should dress it up here with some more specific words, or—

DELEGATE RYGG: Well, the way it's worded, I certainly don't think it would go through the channels it goes through now.

DELEGATE CHAMPOUX: What do you suggest then? When you make a-May I, sir? May I?

CHAIRMAN GRAYBILL: Mr. Rygg, you have the floor.

DELEGATE RYGG: Well, I don't know that I'm prepared to make that amendment in there unless you'd-I don't know if this is right—you'd say that-to the Legislature through the regular channels, perhaps, would get it down to where I think it ought to be.

CHAIRMAN GRAYBILL: Now, may I have your attention. The Chair would like to tell you that I would like to finish Section 9 only tonight. There are four amendments on Section 11. If it's not possible to finish Section 9 tonight, maybe we won't, but I would like to try to finish Section 9 tonight. We have three proposed amendments-this one on budgeting; one on whether to have the Governor or the Superintendent as the chief officer of Section-of the board; and the third one as to whether or not to have them consider the budget annually or quarterly. Those don't seem to be too difficult, and I'd like you to try and work them out. Now, I don't know-1 think this is an interesting point that has been raised.

And Mr. Leuthold, although you were up, I see that Mr. Davis, who is an attorney and has been on the Education Board, is here. I wonderifhe can shed light on this problem. I'll come back to you, Mr. Leuthold.

DELEGATE DAVIS: I think we can shed light on it by just unshedding the third line, "to be made of the Legislature", and make it read: "The State Board of Education shall determine all budget requests, after forming a plan for allocating funds to all phases of the state's educational program." Then it'll just go through regular channels. I would move to amend the motion of Dr. Harper's by striking "to be made of the Legislature".

CHAIRMAN GRAYBILL: Very well, Mr. Davis makes a motion that we strike out the words "to be made of the Legislature", so that the sense of the Harper amendment is that the State Board of Education is to determine budget requests after forming a plan for allocating them to the state's educational program, the assumption being that that would leave them to run through the normal budgeting process.

Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. President. I'd like to help out here, and my suggestion is that we don't need any of these amendments; that in the-Section 1 we have given the responsibility to the Legislature to provide for education, and if they're going to provide for education, they're going to have to provide the money. I think everything is taken care of in Section 1, and I don't think we need any of these amendments.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I would have to speak against that. I think what we're trying to do here, Mr. Leuthold, is to try to keep everyone from coming in directly to the Legislature with their own budget--each one of the units of the University System and the community colleges and votech, And this-in other words, they come up with a unified plan of all the educational expenditures and work that out in their boards and then present it. We do give authority to the Legislature to fund it all, but rather than have them have to hassle at all, at the outset anyway.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: May I simply accept Mr. Davis' amendment and strike that

from my amendment, rather than to take the time to—

CHAIRMAN GRAYBILL: Well, we've debated yours far enough. I'm going to have to put it, but you may certainly say that you'll accept it.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I know that Brother Harper and I are trying to head in the same direction, and would it expedite things if I submitted mine as a substitute motion at this time?

CHAIRMAN GRAYBILL: Your motion doesn't go to the issue of the budget that I can see, does it?

DELEGATE SCANLIN: It sure does, in about three words-about two paragraphs less than Brother Harper's

CHAIRMAN GRAYBILL: Just a minute. Let me read it. Very well, I'll allow you to make it as a substitute to Mr. Harper's Wait a minute, now. I'll allow you to make it as a substitute motion; and if it prevails, fine; and if it doesn't, we're back on the Davis-Harper problem. Mr. Scanlin's motion may be read by the clerk.

CLERK HANSON: "Mr. Chairman. I move to amend Section 9, page 5, line 30, of the Educational proposal by striking the following words, starting on line 30-quote: 'periodically on matters of mutual concern. In case of a tie vote at such meeting, the Superintendent of Public Instruction may cast a vote'-end quote; and insert in lieu thereof the following words-quote: 'at least quarterly-comma-giving primary attention to a unified budget, period'. 'The Superintendent of Public Instruction shall be Chairman period'-end of quote."

CHAIRMAN GRAYBILL: Mr. Clerk, may I have it? Very well, Mr. Scanlin has offered a substitute motion, the effect of which is to put-is to strike out everything after the word "meet". Strike out "periodically" on the bottom of page 5 and the rest of the sentence on page 6, and substitute these words so that the sentence reads: "The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet at least quarterly, giving primary attention to a unified budget. The Superintendent of Public Instruction shall be Chairman." The point is that it simply says that this board shall meet at least quarterly, giving primary attention to a unified budget, and it makes the Superintendent of Public Instruction Chairman.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, it seems to me the scare-word was "periodically". It weakened the whole proposal. The strength of these three sections is in Section 9. There you have your one board that everybody wants. I feel that the amendment that I offered would answer several of the very important objections that have been raised. First, it would fix the responsibility for a unified budget; second, it would solve the place of vo-tech by implication, as the-Chairman Champoux has indicated; third, it would give an elected official, the Superintendent of Public Instruction, a very definite position of control; and, finally, it would make the position of Superintendent of Public Instruction less attractive for unqualified political candidates. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion?

Mr. Rygg.

DELEGATE RYGG: Well, Mr. Chairman, I-this bothers me a little bit, too, because normally, the way it is now, the budget is made out on a 2-year basis. And I assume from what we're heading for, it'll be an annual basis; but I really don't see how you could have a budget each quarter. And this would specifically say they'd have to meet quarterly on a unified budget, and I rather think that it should have to be on an annual basis to establish a budget. So I would wonder why they should meet quarterly for that particular reason.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I think we have to realize there's still a little protocol in the United States, and I would hate to see the Superintendent of Public Instruction presiding over a board that the Governor is ex officio member of. Now, we either let the Governor off entirely, or put him on as Chairman of thatboard. I think that he's the man-he's the Chief Executive, and I would hate to see him have to go in and sit down on that board as to be-1 understand Mr. Garlington has an amendment something along this line-1 don't know, but it was mentioned—but, please, don't put the Superintendent presiding over the board and the Governor ex officio, sitting there and can't even vote. With the highest-priced man we've got, I think—

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Scanlin, do you need to close?

DELEGATE SCANLIN: I'd like to clarify the concern of Delegate Rygg. The matter of meeting quarterly was not limited to a discussion of the unified budget, but the budget would be of primary concern in the difficulty that we face here. But it would not be limited simply to-the joint meeting of the two boards as the State Board of Education would not necessarily be limited just to financial matters. I would hope not. Mr. Chairman, I don't see where the Governor is mentioned specifically in Section 9, but I can see where Mr.-Delegate Mahoney, would bring the Governor in in both Sections 10 and 11. I recognize that objection.

CHAIRMAN GRAYBILL: Very well, the Chair would observe that if it passes, it can be amended; but if it doesn't pass, we won't worry about it. So many as are in favor of Mr. Scanlin's motion, which would have the effect of adding this language-the section would then read: "The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet at least quarterly, giving primary attention to a unified budget. The Superintendent of Public Instruction shall be Chairman." So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. Very well, we're back on Mr. Davis' amendment to Mr. Harper's amendment. Mr. Davis' amendment was to strike out the center line, the third line, of Mr. Harper's motion so that Mr. Harper's motion would read: "The State Board of Education shall determine budget requests after forming a plan for allocating funds," et cetera. It leaves off "to be made of the State Legislature"-"budget requests of the State Legislature."

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, is a substitute motion in order?

CHAIRMAN GRAYBILL: Well, I'll hear it and see what its feature is.

DELEGATE NUTTING: I would move to strike the-everything after the word "shall", so that the-and add the following words, so that the sentence would then read: "The State Board of Education shall submit unified budget requests." The last sentence worries me about a plan for allocating funds, and I think this would get around the fact that the budget plans would be submitted--unified budget requests would be submitted. And it would also take the-everybody off the hook as far as where they are to be submitted, because they are-if our different-if we change procedures, they could be submitted wherever they would be necessary.

CHAIRMAN GRAYBILL: Do I understand it to be the sense of your motion that Mr. Harper's motion would then read: "The State Board of Education shall submit unified budget requests"-is that what you're saying, Mr. Nutting?

DELEGATE NUTTING: (Inaudible)

CHAIRMAN GRAYBILL: And you're making that as a substitute motion?

DELEGATE NUTTING: (Inaudible)

CHAIRMAN GRAYBILL: Very well, the issue now will be on Mr. Nutting's substitute motion, which would have the effect of adding to Section 9 the following language: "The State Board of Education shall submit unified budget requests." Is there discussion?

Mr. Rygg.

DELEGATE RYGG: I think this would be much better than the original motion. I think it would relieve me of my worries anyway. I think they would go through in the regular channels, and I would support this substitute motion.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I have no pride of authorship. I think Nutting, as usual, has said in four or five words what it takes a preacher a paragraph to say. (Laughter)

CHAIRMAN GRAYBILL: Very well, the issue will be on Mr. Nutting's substitute motion. It will have the effect of adding a sentence that says: "The State Board of Education shall submit unified budget requests." So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. And the sentence will be added on page 6, line 1, after the word "concerned", where Mr. Harper suggested. "The State Board of Education shall submit unified budget requests." That's adopted, assuming that we adopt the section. (Laughter) Now, we've taken care of Mr. Scanlin. Mr. Garlington, you're next. May we read yours? Mr. Garlington's is very simple. I'll read it, It says: "substitute 'Governor' for 'Superintendent of Public Instruction' in the last sentence, so that the Governor casts the tie vote." In otherwords, in the case of a tie vote at such a meeting, the Governor may cast a vote. You see, otherwise the Governor and the Superintendent have no vote.

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, my problem in connection with this, and the reason for the suggested amendment, is to remove what seems to me to be an implied conflict of interest on the part of the Superintendent of Public Instruction. I think it would be wrong to put that officer in that position. By tradition and history and common consent of all concerned, the Superintendent's primary function is in the field of elementary and secondary education. There are two boards of equal size and dignity here, and to put a person who is primarily associated with one board in the position of judging between the two if a deadlock should occur would create the very sensitive situation that Mr. Woodmansey referred to. Now, if you search around for some way to resolve this, the name of the Governor emerges as the most likely solution. He doesn't have any conflict between the one board or the other, because he appoints them both. And we're all citizens in the state together, and we're all concerned with education together. And since the Governoris elected by all hands and represents all hands and also is ex officio on both boards, so that he should have adequate information for casting a vote, he seems to make the most logical choice for being the one to break a tie if it should occur. I agree with Mr. Rollins that it would seem improbable that this would often occur, but the very fact that there is this means of resolving it, I think is healthy in avoiding the situation in any event.

CHAIRMAN GRAYBILL: Is there dis cussion?

Mr. Davis.

DELEGATE DAVIS: (Inaudible)—member of the board-of the Committee on Education, I think this would be a very good idea to relieve the Superintendent of being placed in this untenable situation.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I-the Governor has the responsibility to submit a budget to the Legislature, and I think that this is one thing we don't ever want to take away from him. We want that budget submitted to the Legislature by the Governor. He is a budget officer. He is all of this. Now, I just question, if he's got a board there that all he sits there in case of a tie-1 would much rather see him the boss man of this board and say, "Now, you're going to submit this or I'm going to know the reason why." I don't like to relieve him of a responsibility in education. Let's get him right out there-this is-make it part of his responsibility. I hate to think of a Governor having to walk in and says, "Well, I can sit here, but I can't vote." Now, we don't do that with the President of the Convention. We don't do that in anything else-that we tell him he can be-sit around here, but he can't vote. Well, I think the time has come to go out here and make him a voting man of this board all the way through, the way we've had it. And he can-they've done it in the past, and I see nothing wrong, and I'd hate to have him just vote in case of a tie.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I would support Mr. Garlington's proposal. I think the Governor ducks in and out of these meetings and he's there from time to time, but he doesn't carry the major brunt of it. And I think when something critical is coming up, he'll be there-if there is a tie, he'll be on hand; and I would support his motion.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Garlington's amendment to substitute the word "Governor" for "Superintendent of Public Instruction", so that the last sentence of Section 9 reads: "In the case of a tie vote at such a meeting, the Governor may cast a vote." So many as are in favor of Mr. Garlington's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Very well, we now have Section 9 reading as follows: "The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. The State Board of Education shall submit unified budget requests. In the case of a tie vote at such a meeting, the Governor may cast a vote." The Chair has no more amendments before it. Do you want to move it again, Mr. Champoux, or do you want me to?

DELEGATE CHAMPOUX: After4 hours, I would like to have the pleasure of moving this for a vote, please.

CHAIRMAN GRAYBILL: Please. Well, you want me to do it, though? Very well, members of the body, you have before you for your-on your consideration and on the record-for your consideration and on the recommendation of Mr. Champoux that when this body arises and reports, after having had under consideration Section 9, as amended, that we recommend the same be adopted.

DELEGATE CHAMPOUX: Roll call.

CHAIRMAN GRAYBILL: Roll call. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, vote No on the voting machines. Roll call has been called for. So many as are in favor, vote Aye; so many as are opposed, vote No. We are voting on Section 9 only, State Board of Education. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas ..... Aye
Arness .Absent
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Excused
Barnard ....Aye
Bates.. ....Aye
Belcher ....Aye
Berg.. ....Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
c am ..... Aye
Campbell ..... Aye
Cate ....Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ....Aye
Dahood.. ....Aye
Davis ..... Aye
Delaney ..... .Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ....Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ....Aye
Furlong. Excused
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ....Aye
Harlow ....Aye
Harper ..... Aye
Harrington ....Absent
Heliker ....Aye
Holland ..... .Absent
Jacobsen ..... Aye
James ....Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... .Absent
Mahoney ..... Nay
Mansfield ..... Aye

Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Absent
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Excused
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 74 delegates voting Aye, 13 voting No.

CHAIRMAN GRAYBILL: 74 delegates having voted Aye and 13 delegates having voted No, Section 9 is adopted as amended.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is that the Committee of the Whole rise and report progress and beg leave to sit again. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, NO.
(No response)

CHAIRMAN GRAYBILL: Very well, we'll do that. If you'll sit around a minute, we'll have it done for you.

(Proceedings moved from Committee of the Whole to Convention, President Graybill presiding)

PRESIDENT GRAYBILL: Will the clerk please read the report of the Committee of the Whole.

CLERK HANSON: "March 11, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 10 of the Committee on Education, recommend as follows: that the committee rise and report progress and beg leave to sit again. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: Are there—does anyone want the Committee of the Whole report read in full?

UNIDENTIFIED DELEGATE: Yes. (Laughter)

PRESIDENT GRAYBILL: You want to stand up and say that? (Laughter)
Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: It's been moved that we adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: Very well.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Pursuant to the general powers vested in Montana Constitutional Convention, in accordance with the provisions of Section 7(6) of the Enabling Act, Chapter 296, Laws of 1971, the Montana Constitutional Convention shall recess temporarily until 9:00 a.m. on Monday, March 13, 1972.

PRESIDENT GRAYBILL: Now, the Chair would like to point out that we are going to meet Monday at 9:00, and there has been some notes sent up to me that you want to think about and do some draftsmanship. Please think about it before 9 o'clock Monday morning if you want to change Section 10 and 11. All those in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Thank you.

(Convention recessed at 6:05 p.m.)

March 13, 1972 **Forty-Fourth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will come to order. If you'll all stand, Don Belcher will lead us in the Pledge of Allegiance this morning.

DELEGATES WITH DELEGATE BELCHER: I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: And if you'll remain standing, Don Scanlin will lead us in an invocation.

DELEGATE SCANLIN: Let us pray. Oh Lord, Thou hast given to us the responsibility for saying yes or no, aye or nay, green or red. Suffer us not too many mistaken, snap judgments made in the heat of the day. Let us rely more on Thee for insight and decision and not alone on the words and wisdom of men. Only thus may we truly fulfill the obligation placed upon us in our Master's name. Amen.

PRESIDENT GRAYBILL: We'll take roll by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Kamhoot, Davis and Artz be excused please?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Choate, Delegate Dahood, Delegate Drum, Delegate Eck, Delegate Holland, Delegate Jacobsen, Delegate James, Delegate Johnson, Delegate Kelleher, Delegate Pemberton, Delegate Dahood, Delegate Drum, Delegate Holland, Delegate Kelleher, Delegate James, Delegate Pemberton.

PRESIDENT GRAYBILL: Very well. Take the attendance. Delegate Davis' and Delegate Kamhoot's presence is noted, and they may leave when they need to today.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Excused
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Absent
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Absent
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Absent
Jacobsen	Present
James	Absent
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Absent
Leuthold	Present
Loendorf	Present
Lore110	Present
Mahoney	Present

Mansfield.. Present
Martin..... Present
McCarvel Present
McDonough Present
McKeon Present
McNeil ..... Present
Melvin..... Present
Monroe Present
Murray Present
Noble Present
Nutting..... Present
Payne Present
Pemberton .Absent
Rebal Present
Reichert Present
Robinson Present
Roeder Present
Rollins.. Present
Romney..... Present
Rygg Present
Scanlin Present
Schiltz Present
Siderius. Present
Simon ..... Present
Skari Present
Sparks.. ... Present
Speer..... Present
Studer Present
Sullivan Present
Swanberg.. Present
Toole Present
Van Buskirk Present
Vermillion Present
Wagner.. Present
Ward..... Present
Warden Present
Wilson Present
Woodmansey P r e s e n t

CLERK HANSON: Mr. President, 93 delegates present, 1 excused, 6 absent.

PRESIDENT GRAYBILL: Very well. A quorum is present. Order of Business Number 1, Introduction.

CLERK HANSON: "Mr. President. We, the Committee on Style, Drafting, Transition and Submission transmits revisions of Report Number 8 of the Committee on Bill of Rights. John M. Schiltz, Chairman; William A. Burkhardt, Vice-Chairman." Mr. President.

PRESIDENT GRAYBILL: Very well. The Bill of Rights Style and Drafting Report is accepted and placed on General Orders. Order of Business Number 2.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications. This morning, I would merely like to spend 1 minute with you considering where we stand. I think if we can complete debate this week, we will be in good shape. Now, when we complete debate, we're not quite through. By that I don't mean complete all the Style and Drafting and all the ballot debate; I mean the debate on the 10 articles. And if we can do that, we'll be in pretty good shape. To do that, we're going to have to work fairly hard this week, because, as you know, we still have Public Health, Local Government and part of General Government left to go after we finish Education. I am hopeful that we can finish Education either by noon or by early afternoon so that we can take Judicial, Natural Resources and Revenue's Style and Drafting today. From now on, we have to work very carefully with Style and Drafting, because we need their fuli time available so that they can keep up and catch up. It's either feast or famine with their committee. If we do these things, however, and are able to complete these major articles by Saturday, I think we will have no trouble financially. Mrs. Pemberton, your presence is noted. Very well. Mr. James, your presence is noted. Order of Business Number 4, Introduction and Reference.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: "Montana Consti-"

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, the clerk has a resolution from the Rules Committee, I might ask that he read it at this time.

PRESIDENT GRAYBILL: Very well.

CLERK HANSON: "Montana Constitutional Convention, 1971-72, Resolution Number 12. Introduced March 13, 1972. A resolution

requesting a fiscal note. Whereas the Convention has recommended constitutional change which might cause Montanans more tax dollars; and Whereas the extent of such possible expenses is a matter of considerable interest and should be determined for delegate information to the extent possible. Now, therefore, be it resolved by the Constitutional Convention of the State of Montana that this Convention request that the Revenue Department prepare a fiscal note forecasting the amount of expenditures for the extra services, if any, provided in the proposed Constitution. Introduced by Committee on Rules and Resolutions. Marshall Murray, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. By way of explanation, although I don't think that much explanation is necessary, this is in compliance with the request of Delegate Rygg last week who asked-who, under this order of business, moved that a fiscal note be requested from the Revenue Department. Rather than handle the manner [matter] in the fashion of having Delegate Rygg prepare and introduce the resolution, the Rules Committee has done so. We have met on the matter and, without objection-in other words, by unanimous vote-we agree that this would be a most valuable thing to all of the delegates at this Convention and to the public at large, and therefore we have prepared this resolution and introduced it, requesting that the Convention ask the Revenue Department of the State of Montana to prepare a fiscal note to the best of their ability to forecast the amount of expenditures, if any, that might be forthcoming from our proposed Constitution. And at this time, I would move that the resolution be adopted.

PRESIDENT GRAYBILL: Very well. Is there discussion? All in favor of adopting the resolution asking the Revenue Department for a fiscal note on the amount of expenditures for extra services, if any, provided by the proposed Constitution, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Are there other resolutions or motions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that the Convention resolve itself into the Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: Style and Drafting Committee Proposal Number 6, Natural Resources, having been duplicated and placed on the delegates' desks on the 10th day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule Number 23 of the Montana Constitutional Convention Rules. Style and Drafting Committee Proposal Number 7, Revenue. having been duplicated and placed on the delegates' desks on the 11th day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. March 13, 1972. The following committee proposals are now on General Orders: Education; Public Health; Local Government; Style Number 5, Judiciary; Style Number 6, Natural Resources; Style Number 7, Revenue; and Style Number 8, Bill of Rights." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. By way of rearranging the calendar and in accordance with your earlier remarks this morning, I move that the committee take up the matters under the Education proposal at this time and pass consideration of the matters from the Style

and Drafting Committee which are on General Orders before the Committee of the Whole until the next sitting of the committee.

CHAIRMAN GRAYBILL: Very well. The motion is to pass Style and Drafting reports on Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Very well. Mr. Kelleher, your presence may be noted. Ladies and gentlemen of the committee, when we finished on Saturday, we had discussed 9, 10 and 11 and we had finally adopted Section 9 as amended. Now, we have about five or six amendments to Section 11 before me, and we have a couple of proposals to amend 9,10 and 11 again. And I have pointed out to the proponents of these that this would require reconsideration of Section 9. I'm not against doing that, but I always have asked thatweconsiderreconsiderationsattheend of the article so that we don't get to reconsidering too quickly. Therefore, I have suggested that the persons who want to reconsider 9 and think that it's tied into 10 and 11-if they care to rise and explain their motions now, I-we will listen to their explanation, but we will proceed, as soon as that has happened, on Section 10.

Mrs. Bates, do you want to do that?

DELEGATE BATES: Yes, Mr. Chairman; thank you. I would recommend, when we do and if we should reconsider to reconsider, that we would delete Sections 9, 10 and 11 for one paragraph only, which would state: "The general control and supervision of the State University and the various other state educational institutions shall be vested in the Superintendent of Schools and one or more State Boards of Education whose powers and duties shall be prescribed and regulated by law." And this, I feel, would solve many of the problems that we would face by having two boards or tying anything down in the Constitution. And this would permit the Legislature to control it.

CHAIRMAN GRAYBILL: Mr. Harper, for what purpose do you rise?

DELEGATE HARPER: To answer your request that suggestions for number-changes for Number 9 be explained.

CHAIRMAN GRAYBILL: Very well.

DELEGATE HARPER: This suggestion will be coming before us also-that, really, we make Sections 9,10 and 11 all Section 9 with three subsections-l, 2 and 3-and that, in effect, we would write a little bit more into what is the present Section 9. Since we now have stated "the State Board of Education, comprised of these two other boards"-the Board of Public Education and the Board of Regents of Higher Education-and since we have already said they would be charged with the business of presenting a unified budget, which implies that they would have to give some consideration to overall policy and general administration planning, a sentence like this might be written in-this is under Section-what is now Section 9: "It shall be responsible for a long-range planning and evaluation of policies, programs and administration for the state's educational systems." And then follow up with: "It shall submit unified budget requests." And then to suggest when we get down into IO-what is now presently 10 and 11-that, in the Board of Regents section, that instead of saying "an Executive Officer and prescribe his terms and duties", a suggestion that we call this person a "Commissioner of Higher Education", and they could prescribe his duties. And then suggest, in Section 9, that this person, along with the Governor and State Superintendent, also be a member of the Board of Public Education-a nonvoting member-and also in Section 11. So that you would have some person who'd be minding the store, as we've been saying, with definite responsibility set in there. But the key idea is to add this overall policymaking idea which it-now is implicit in the so-called "State Board of Education" in Section 9.

CHAIRMAN GRAYBILL: Very well. We're ready to consider Section 10. Will the clerk please read Section 10.

CLERK HANSON: "Section 10, Board of Public Education. There shall be a Board of Public Education, which shall exercise general supervision over the public school system and such other public educational institutions as assigned by law. Said Board shall consist of seven members, appointed by the Governor, with confirmation of the Senate, to 6-year overlapping terms. The Governor and the State Superintendent of Public Instruction shall be ex officio nonvoting members of the Board. The duties of this Board and the Superintendent of Public Instruction shall be prescribed by law." Mr. Chairman, Section 10.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 10 of the Education and Public Lands Commission Committee Proposal, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: And I'm going to be brief, sir. Very briefly, if you look at this section compared with the old section, you'll find out that we've eliminated the word "control". Now, we did this to alleviate any fears that the local boards might have. This indicates, in our mind, that the local boards should stay in control of education at the local level. And we've indicated this also by passing the section, last Friday, which gives them control over local education. We use the word only "supervise". Notice the words "such other educational institutions as assigned by law". Here our intention is that things shall remain as they are presently. Now, under statutory law, the w-tech centers are assigned to this board. It is the intent, as I've indicated before, that this remain-the intent of the committee-remain as it is-also, at the suggestion of Morris Driscoll, who is the President of the Vo-Tech Center at Butte, and other leaders of the other w-tech centers. Now-and we're also going to indicate this in the other board under Section 11 for the community colleges. Now, when we get to the duties of the Board and the State Superintendent, we had a big, long discussion, quite a bit of deliberation. And the possibilities, of course, were do we make the board-give them power over the State Superintendent? Now, we thought that that was probably ridiculous, since she was an elected official. The other alternative is, of course, do we make her, then, in complete charge of this Board appointed by the Governor and representing, directly, the people? We thought that wasn't the best thing to do either. Then we looked at the present situation and we found that, as-at present, the duties and-how do we word it?-yes-the duties of the Board and the Superintendent are prescribed by law, and so we left it the same. It has worked quite well in the past, so this is why we left it as it is. Mr. President, thank you.

CHAIRMAN GRAYBILL: Is there discussion of Section IO?

Mrs. Eck, do you want to—

DELEGATE ECK: Mr. Chairman. In keeping with the recommendations that George Harper just made, I would recommend--or I will move to add, after the word "Governor", line 10, page 6, the words "Commissioner of Higher Education".

Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment. Do I understand that you propose an amendment which would add the term "Commissioner of Higher Education" on line 10? So that the sentence would read: "The Governor, Commissioner of Higher Education, and State Superintendent of Public Instruction shall be ex officio nonvoting members."

DELEGATE ECK: Yes.

CHAIRMAN GRAYBILL: Very well. Mrs. Eck has an amendment to that effect.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. Obviously, the idea of the Commissioner of Education really belongs in the next section on Board of Regents. But our thinking was that each of these boards should have an executive officer of equal status and that if the Superintendent of Schools is to be an ex officio officer on the Board of Regents as listed-and I think that she should be-also the Commissioner of Education should be an ex officio officer on the Board of Public Education in order to provide the coordination among these groups. We also, in looking at this, can see, as George had said, that the Board of Education itself, sitting as a joint body, should do more than just take care of matters of common interest and make final decisions upon the budget-that, really, there's a lot of planning, evaluating, policymaking that probably should be done as one joint body. Now, you can say that this is implied-and I think, indeed, it is-by a budget-making duty, but on the other hand, it would be very possible to circumvent any central planning and central evaluation in policymaking. It could be that these two boards would just come together as one to-to really haggle over the budget, and I don't think that this is what any of us have in mind here. So far as the need for a Commissioner of Education rather than an Executive Officer, I think that probably, except as a semantic maneuver, it really doesn't make much difference. It's true the Executive Officer could be truly a person with as much

status as the Superintendent of Public Instruction, but I think that the Commissioner of Higher Education does infer this kind of status, and I really strongly feel that this is what the University System needs-is a person at the head who really serves as an officer for the Board of Regents and to whom--and who is responsible to the Board of Regents, rather, really, than being responsible primarily to the various university presidents. I think that through a strong person in this office, we'd get the kind of coordination that the people of Montana have been asking for for a long, long time. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Would Mrs. Yeck-Eck yield to a few questions please? Sorry, Mrs. Eck. (Laughter)

DELEGATE ECK: I'd be glad to.

DELEGATE CHAMPOUX: It was a hard Saturday, and I haven't recovered yet. Mrs. Eck, in your Section 11 that you're going to propose-is it proposed? Do I understand it that this individual, the Commissioner of Higher Education, is going to be appointed by the Board and his duties assigned by the Board?

DELEGATE ECK: Yes, very much so.

DELEGATE CHAMPOUX: Very good.

DELEGATE ECK: Actually, there would be-what we have in mind for Section 11 is that the name "Commissioner of Education" would replace the name of ex officio-no, administrative officer.

DELEGATE CHAMPOUX: Thank you. I'm in support of that amendment.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and delegates. I hesitate to arise and oppose my delegate from Gallatin County, but as I mentioned Saturday, we have tried chancellors, and we've had good chancellors, and they were really hired commissioners. And I think we're just building a big monstrosity here, like the pioneers of the plains. They built one building, and when the family grew, they put a lean-to, and then it had a lean-to onto a lean-to. And I think that we should not put a commissioner into the Constitution. Let's leave it to the Legislature. If they feel they need a commissioner, let them do so.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Rygg.

DELEGATE RYGG: I guess I don't see why this commissioner is necessarily a chancellor. All we're doing is giving the present Executive Director, which they have now, a little more authority--which I think he needs, because, right now, I'm not sure who he looks to-if he looks to the six presidents or if he looks to the Board of Regents. It's my understanding he's supposed to be working for the Board of Regents in doing--as is suggested in here, but I have the impression—and it's only my opinion-that he looks more to the six college presidents and does as they wish. I can't see why this would be putting in a commissioner system. I think it would just be giving the man who works for the Regents a little more authority and a little more ability to try to arrange things the way they want. I think it's a good idea.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. Would Mrs. Eck yield to a question, please?

CHAIRMAN GRAYBILL: Mrs. Eck?

DELEGATE ECK: Yes, I would.

DELEGATE DAVIS: Mrs. Eck, do you think there should be any-did you give any thought to the fact as to whether you should call it a "Commissioner of Higher Education", so it wouldn't be confused with the fact that this man might be over all education?

DELEGATE ECK: Yes. I-in my amendment, that's what I have. I think that when I was speaking last time, I referred to him as the "Commissioner of Education"; "the Commissioner of Higher Education" is what the amendment reads.

DELEGATE DAVIS: All right, thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I would like to speak a moment in support of this idea. I would like to call the attention of the body to the fact that this educational burden we have in Montana is really our most important

trust and our biggest business. I don't know what the total figures that we spend on education amount to, but they're something in excess of a hundred million dollars a year. And I think it is incumbent upon us to be very careful that we discharge this responsibility fully. And this brings me to the setup that we have here of these two boards. Now, I quite agree with Mr. Dahood that areas of specialization are significant today and that a group of laymen cannot absorb all the facts and the problems in either area in the course of a few meetings, and I think they really need some expert counsel and assistance in discharging their responsibility. The problem with Section 9 is that it creates this State Board of Education without any head, without any guidance and simply says that it shall meet on matters of "mutual concern", which are really very vague. We added to the responsibilities of that board the matter of budget duty, and I think this could very easily become a situation where the Board of Regents presents a budget, the Board of Public Education presents a budget, and the two are then simply combined by the super board and transmitted to the Legislature. In other words, it could well become merely a conduit for the two separate budgets. Lacking in all of this is any concept of long-range programming and policy evaluation. I think we just have to have, in a hundred-million-dollar-a-year business, some office that will belooking ahead and making the best effort it can to see that we dovetail and avoid duplication and that we look ahead and we keep up with the developments in education as they come forward. And therefore it seems to me that the idea of clearly enunciating the duty of the super board to take care of program evaluation and policy in administration is essential in order to keep us from getting in a position of rivalry between the two boards. So I hope that we will be careful to include a clear statement of responsibility for the super board. As it is now, with just having responsibility for a unified budget in there, I think we're in danger of falling into one of the mantraps that seem to prevail in the Powder River country of having "expressio unius exclusio alterius." Therefore, we had better be careful to make sure that the big board has the big responsibility. And I think this all has to be knitted together in the study of Sections 9,10 and 11. And it seems to me that we can't expect a board of amateurs to discharge this awesome responsibility without some real professional assistance. The Commissioner of Higher Education would provide the service that we need. If we don't do this, it seems to me this is very similar to imagining the Dallas Cowboys trying to operate without the services of Tom Landry. If they tried to use only the line coach and the backfield coach and the run-back coach and the trainer, they probably wouldn't function very well, and I'm afraid that's the position we're putting our lay Board of Education up against unless we give them some professional guidance. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I don't have any particular objection to whatever it is we want to call this person, Commissioner of Education or whatever, but it seems to me that we are confusing a couple of things here. We have delineated an Executive Officer to the Board of Higher Education in the next article, in Section 11. And it seems to me that the thing that we're doing here is that we're giving certain duties of general supervision of the two boards to a person who is appointed by the higher board. To me, this seems to be a little inconsistent, and I think that, as thecommitteeproposalwasoutlined originally, that we intended that there should be someone to have some general supervision in both areas and to act as a liaison person and that that person would be, in fact, the elected Superintendent of Public Instruction. And it just seems to me that an elected official, elected by the electorate of Montana, would be in a much more responsible and better position to act as this liaison person than one individual appointed by one of the boards to sort of be the watchdog over both the boards. And I can't really see the logic or the reason for having one person selected by the higher Board of Education to be in this position and to serve as an ex officio member on the lower board. I think, really, that the proposal that the committee originally outlined provided for this type of liaisdn and I would have to resist the motion at this point.

CHAIRMAN GRAYBILL: Mr. Dahood, the record is going to show your presence so you may vote. Go ahead.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I have to agree with Mr. Harbaugh. It seems to me that what Mr. Garlington says about we have to have an expert to take a look at our higher educational system, to provide some guidance there, makes good sense. I don't quarrel with that, but I don't see why, in order to get that person, that we have to have two Boards of Education. I think

Charley Mahoney was right the other day when he said we've got a monster. And there's probably no solution to the whole thing, because we've got six units in this huge State of Montana. They're all fighting for prestige, and when things begin to go wrong with their particular area or their particular school, all they do is send their people over here to lobby in this state Legislature for the things that they want. And they have-of course, the Legislature has the power to say "This is what you're going to get", regardless of what any particular board may say. We're stuck with that; and I don't care what we do in this Constitutional Convention, you can't stop people from fighting for these various units that are around the State of Montana. That's always going to be. Maybe we were very unwise in the beginning to set up these six units, but be given the size of the state, we decided that in the early days that we had to do it. And we've gone ahead, and now we have it. But I read this plan; I've looked at it; I've tried to be objective about it. I can't see where setting up two boards is going to do one thing for the State of Montana. If we want to set up one Board of Education, with the Governor and the Superintendent of Public Instruction on there, and then to give them direction-that one board direction that we will have a Commissioner of Higher Education in the Constitution, fine. But let's not set up two boards. All they'll do is fight. Now, let's quit kidding each other. When they get down to the nitty-gritty of the money, which is where we always separate, and these two groups over here want a bigger piece of that pie, you're-they're not going to get along and they're not going to come to agreement. So let's have one board and go ahead and put in a Commissioner or a Chancellor or whatever you want to call him, but one board is all we need in the State of Montana.

CHAIRMAN GRAYBILL: Now, the Chair is somewhat disturbed by the turn of events here, because we did debate that and vote on it the other day. And I didn't want to stop you, Mr. Blaylock, from not considering the amendment, but the amendment is to add the term "Commissioner of Higher Education", so let's try and stick to the subject.

Mr. Woodmansey.

DELEGATE WOODMANSEY: I feel that by adding the words "Commissioner of Higher Education", we'll come to the point where we no longer have a Superintendent of Public Instruction in the state. We'll have a superintendent for elementary and secondary schools, and I resist the amendment.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I think, as a member of the committee, I would say the amendment really doesn't make that much impact on what we are recommending. I would support it. It's in the name that you're giving to the executive officer and implying by the name, as Mr. Garlington put it, a bit more recognition for the scope of the duties in this vast educational enterprise that we have in the state. I don't want to go back and debate what we did Saturday. We did at that time, I think, find ourselves feeling the need for the Board of Regents. I don't think this is the time to debate it. We may when we hit Number 11, but I think it makes sense to have this person who is in higher education, working with the Regents and the University System, to also be represented in the policymaking function that may be outlined for the joint boards. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would like to make a comment in regards to Mr. Woodmansey's comment. At present, the State Superintendent of Public Instruction has very little to do with higher education, only in the areas of the vo-tech and the-that is, post-secondary-at least beyond the high school-and the areas of vo-tech and some aspects of the community college program. The only area which he would get involved presently is on the State Board of Education when they wear the ex officio hats as the Board of Regents. And she has stated publicly she'd rather not be involved in higher education. Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. This reminds me of a story that-1 suppose I shouldn't tell a story, but maybe it were early in the morning, and I suppose I could take that much time. This is in the book *Rawhide Rollins* of which Russell wrote quite a story. And he said that this boy was born up in Vermont. He said those kids didn't get to school very early, and he said the boys got quite big, because they had to go out to work, and so they just had a short time. So when they got up to this size, they determined that they'd kind of tell the teacher what to do, and if she didn't or he

didn't, they'd just run him out. He said it was pretty good, and so the kids weren't getting much schooling. And he said the parents didn't particularly like that, so they decided they'd send one fellow down to New York City to look for a teacher. They wanted to get a stranger. And he said they go down and they find a prizefighter. He's out of work, and he said, "You know it's kind of funny, come in there the first morning and," he said, "you know, his front legs hung clear down to his knees." And he said he could back out of his shirt without unbuttoning the collar. He said he called the school to order, and the very first thing, somebody said something. And he said the next thing he knew, he was pouring water on him, bringing him to. And he said-so he lined them all up and he said the girls were all up in the front of the row and the little kids and he said, "Now listen, you little kids move back"-says, "I'm putting all you big boys up in the front. Now," he said, "we're going to sing a little song-'We love our loving teacher and love his kindly rule'." Now, this is what we've got with the University System. I've been thinking this over quite strongly since Saturday, and I'm bothered about this. Maybe this is not a solution, but it's something to think about. And it is an amendment, Mr. Chairman-I'm just putting it up-that we'd have a committee of three for the Board of Education. This committee of three--one would have to be from labor. And I'd like him out from either the teamsters or the bricklayers or the cementmasons or something. I want him big, and I want him tough. Then, I want a great big guy-something like Torrey Johnson over here--out of the agricultural step; I want him big, and I want him tough. Then I want a woman doctor on that board to administer first aid. Then I want them to put these six units of the University right up in the front row and have them singing that song every Monday morning-"We love our loving teacher and love his kindly rule." This is what we've got. This is the whole trouble. Mrs. Eck, your point is good, but Chancellor Brannon couldn't handle them; Chancellor Selky couldn't handle them. I'm telling you, there's never been a chancellor able to run that six units of the University. I wish that we had only one, like Wyoming. This would be fine. Then there wouldn't be the fight. This idea of a business manager as a chancellor-Now, do we want to put this in the Constitution? I remember one old senator that sat up here, and his only job was to see there was no appropriation made that the University System could have a chancellor. Now, I tell ya-it was Old Man Garber from Sanders County. This can happen again-they'll just get out their business manager. Now, if we could go out here and get a small board on the payroll all the time, so they didn't come in here four times a year and they've been looking after their cows or they've been looking after their own business-and they're fine people, but you can't deal with this fellow that's been on the payroll 7 days a week out there, and he's getting more than the Governor. This is what's happening. I think we have to realize that if we'd come out--I, myself, if I had my way about it, we'd leave it all to the Legislature-one thing-and let the Legislature-because every 4 years, they're going to change it anyway. And, 20 years, we'll have to have a constitutional amendment to offer. I watched the University System when they had a very small board. Then everything was going to be said. Senator Herb Hate from Fergus County says if we can get the eight-men overlapping terms, everything is done. We're no better off than we've had. This is what's bothering me with this University System. We have to get somebody to whip those boys into line. Now, I listened yesterday to "60 Minutes", and I thought it was marvelous. Here's Hayakawa from San Francisco State telling how he got control of that University again. And he's got them fellows standing now on the front row singing that song every morning-"We love our loving teacher and love his kindly rule." (Laughter)

CHAIRMAN GRAYBILL: Mr. Mahoney, could you supply the Chair with a copy of that whole song? I'd like to work it over. (Laughter)

Mr. Champoux. Oh, wait a minute. Let's let Mr. Wilson talk, Mr. Champoux.

DELEGATE WILSON: Mr. President, ladies and gentlemen. I'm perplexed by the things that we're doing here and the problems that we're creating, and I suggest to you that if you're going to have a Board of Education, what is this board going to do? You're proposing now to set up an executive officer who'll be in charge of education. He's going to sit there and tell the board what to do, I guess. Is that what the proposal is? Now, if you're going to have a Board of Education, shouldn't they have the right to elect their Chairman? Maybe you want the Governor to elect a Chairman. Maybe this isn't bad. But if you are going to have a Board of Education, if they're going to have any leeway to operate, shouldn't they be the one that will pick their executive officer? Now, you're talking about the Superintendent of Public Instruction. She's an elected official; supposedly, she is in charge of education, period, as an execu-

tive officer. Wouldn't it be possible that this Board of Education could choose her as an executive officer to mind the store when these board members are not present? Fellow delegates, I have sat on state boards. We've picked our own Chairman. We had executive officers that was in charge of the day-to-day functions, oftheregulations that we prescribed. And I see-foresee-the problems that you're creating here for this Board of Education. In my opinion, you just as well not have this Board of Education if you don't leave them the flexibility to perform their duties. And I think this whole three sections ties together, and I think we should be thinking about this as we're considering this. I disagree that you should have the Governor and the Attorney General as members of this board. Now, the Governor can come in any time and sit down with this board and make his wishes known. The Attorney General is the legal officer, and the board can call on him at any time that they have a legal problem. But can you imagine serving on a board-the Governor has appointed you, and he's a member of the board-he sits there with you. Are you going to feel like arguing with the highest officer in the state about any of these problems? What kind of position are you, as a board member, going to be in, sitting there arguing with the Governor? You just don't do those things. Now, many times in the board that I sat on-1 sat under three different Governors-that Governor would come over and sit in with us, and certainly we listened to him. And he was aware all the time of the things that we were doing or proposing to do. I don't wish to belittle the office of Governor; I think it deserves a lot of prestige. But I can see the harm that you're doing if you have the Governor required to sit in on every board meeting. I suggest that you think about this just a little bit. I think the board should have the flexibility to elect its own executive officer, if it so chooses. Perhaps the Legislature may want to take some action on this. But let's provide, if we're going to have a board-and I support the one board conception-but if we're going to have even two boards, then let's have them free to exercise the prerogatives that they wish to do so with education. Thank you, Mr. Chairman.

DELEGATE CHAMPOUX: Mr. Chairman. First of all, I thought the discussion was on the inclusion of a Commissioner of Higher Education under Number 10. At this point, I don't-1 haven't heard of anyone suggesting that we put a education czar at the top of this whole system, and I would certainly be against that because you would have power concentrated in one individual and there's no state system in the United States left who has a single individual who governs all of education. They found out what happened in some other states when this happened. Now, in reference to Mr. Mahoney's comments, Charley is even better early on Monday morning, and few of us can say that, I'll tell you. But I have a question, Charley. You named three people. Who's the teacher? Who are they singing to? Now, if we get a Commissioner of Higher Education on the Board of Regents, they'll have one person to sing to. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, if I may be permitted to discuss this generally as a member of the Education Committee: We're really talking, now, at this sole issue, I suppose-if we want to limit it-as to whether you want a Commissioner of Education after we get over to the next article. And that-if you do, then whether you want him as a member of this Board of Education. It would seem to me that he's a nonvoting member, for consistency in thought and consistency in action throughout youreducationalprocesses, and as big an issue as this educational thing is and as big a problem, that he certainly is in a good position and should be on there and should be interested in the total education. I would like, off the point, if you'll permit, Mr. President, to clarify a little bit that was said last Saturday on the floor by our very able and hard-working Chairman, Mr. Champoux, in his enthusiasm when he referred to some of the people as "bureaucrats". That did not represent, I don't think, the feeling of the body in the thing; and when he referred to people as "special-interest groups", particularly the School Boards Association, that also was not a comment from all of us. And I'm sure, in his enthusiasm in defending the project, that was said. However, we have invited people to appear here; I, personally, have invited people to appear and present their views. And all these things have to be able to stand constructive criticism, or we're not going to get very far with it. So I'd like the record to show that that was probably in abundance of enthusiasm, rather than attacking anyone who didn't like our plan just the way it was written, because we certainly are open to everyone's suggestion. I favor the one board; as a matter of fact, I favored none in my delegate proposal, left it all to Legislature. But I was in the minority, and I signed the majority. And it's the majority will here that we

have two boards. We've voted on that Saturday, and we spent a full day discussing it. Now, when we discussed whether the Superintendent of Public Instruction should be elective or appointive, she appeared and testified at great length about the duties of her office, how challenging they were and how great they were. And we toured her office, and we toured the annexes downtown where we have many other offices. And right now, her office is one of the biggest. I don't know, if there was a challenged matched between the Highway Department and Superintendent's office, exactly who would win, but it would be close. And then, we also have all the additional federal funding that we're going to have to look forward to coming. And there are bills before the United States Congress now, and these are going to be involved and have to be administered. So I think that the Superintendent's position that she should not get involved in the higher education, other than incorrelating to it, is very well taken, very well thought out on her part, and that it is a tremendously big job—just your financing, your public and elementary education, all your special programs. Therefore she should be on the Board of Education and on the Board of Regents. Now, the Executive Secretary; we've provided for an Executive Secretary in our proposal, the majority proposal. The name won't change it. We have him already. You're going to have to have an Executive Secretary. You can't have a board under as big a project as this now. Our board-right now, our Board of Regents--one member testified before our committee, and, I hope in a nonsarcastic manner, I asked if-how many units had been visited by this particular one. I said-well, they visited-only been on 2 years-they visited two units of the University System and one w-tech. Really left me kind of cold, you know-1 mean, as big a problem as this is. It's-if there's any way that they would be freer to devote more time to higher education, I think we should make it possible. It's an area that there's a lot of difference of opinion, but we thrashed it out very thoroughly Saturday. This is the majority, the democratic process. We decided we're going to have two boards, we want to make them as workable as we can. So it seems that a Commissioner of Education is a nice name-or Higher Education. I think one other point we should have clarified is the amount of time the two boards spend. A lot of discussion was given to that, and I think we should have that cleared up as we go along. It was discussed that they didn't spend much time on lower education. And what's the reason for that? Well, it's very, very simple. We've got local school boards that handle that. There's local school boards run the high schools and the grade schools. There's nothing for the Board of Education to do with grade schools, high schools, and elementary except approve of the curriculum and that sort of thing. Except one other thing-we have that great, expanding vo-tech program. It's our thought that should stay with the Board of Education. And as that program expands, it may justify this second board by itself. It's a great program, it's an expanding program, and I would be hopeful that we get a board and take some of the weight off Mr. Driscoll's shoulders and help he and the other people with this program, who battled it in this educational field pretty much by themselves to get it through. So I think your second board, your Board of Education and your Board of Regents, is just as workable as any plan anyone else has here. No one has come up with a better plan, and the majority has approved this plan. So I would be hopeful that we can proceed along the line. I'm kind of partial to Mr. Harper's thing as making it one article and making it three subsections, which would tie it all together, maybe, a little bit clearer. So I would support the Commissioner of Higher Education being on the Board of Education, as a nonvoting member, so they would keep all these things together. I think the Governor should be on this board. The Governor testified before our committee. He said he didn't know too much about what was going on in education, and he thought he should. And I think he should be on thatboard. That doesn't mean he has to attend all the time, as a nonvoting member, but it means that he can sit in on those meetings and keep abreast of that for his budget message and the total program for the State of Montana. So I'm hopeful that we can proceed with this the way it is. I don't think you're going to come up with better--anything better. You could discuss the problems, as we did for a month in the committee. We don't have a solution. If this will implement getting this educational thing off the ground, where it will be more flexible and where it will open the door for a total program for the educational process of the State of Montana, I think it would be a good thing. I don't think we can do more. I think Mr. Garlington said the doctrine-the--well, we call it the "Powder River Latin Doctrine"-is one you want to be concerned with. I was concerned over the weekend even about putting a unified budget in that article Saturday, because it might be easily construed to be—that that's all they were intended for, and I sure don't think it is. I'm wondering, if we put in some other language, if that will then be a limiting

thing. I'm wondering if those things should not be left to the Legislature as to the functions of the two boards, to keep it flexible as we go along. Thank you.

CHAIRMAN GRAYBILL: The journal may show Mr. Drum's presence.

Mr. Martin.

DELEGATE MARTIN: I'm wondering if Mr. Davis would yield to a question.

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: Yes, sir, Mr. Martin. I yield.

DELEGATE MARTIN: Section 11, you provide for an executive officer of the Board of Regents. In Section 10, you don't. Had you-did the committee consider designating the Superintendent of Public Instruction as the executive officer of the board?

DELEGATE DAVIS: I'm just taking a look, Mr. Martin. I'm sure that it was the consensus of the committee-at least, it would be my thinking-that she is the chief elected official in the-that area and that she would serve in that capacity unless, for some reason-it was flexible— if they didn't want her to do that.

DELEGATE MARTIN: In-if I may just go on-Mr. President, if I may just ask another question.

CHAIRMAN GRAYBILL: Mr. Martin?

DELEGATE MARTIN: In the Executive Committee, we suggested that perhaps she might serve as executive board member-executive officer of the board, and she declined and set forth. some objections to it. I'mjustwondering, wouldn't that be a good idea?

DELEGATE DAVIS: Well, Mr. Martin, I personally think it probably would be, but if there are some reservations on her part, it's left in the way the article is written, it's left flexible. It says "as provided by law". If the Legislature made her Executive Officer, then she would be. If it didn't work out, then they could leave the Board the authority to elect their own Executive Officer. In other words-without going through a constitutional process again-in other words, it says "provided by law"; and the Legislature could put her in, and if it didn't work, they could take her back out again.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Would Mrs. Eck yield to a question?

CHAIRMAN GRAYBILL: Mrs. Eck?

DELEGATE ECK: Yes, I would.

DELEGATE HARBAUGH: I think there's been a lot of confusion here as to just what we're talking about, and I'd like to ask you what would the authority and the responsibility of this Commissioner of Higher Education be in the area of the elementary and secondary education?

DELEGATE ECK: I don't see his having any responsibilities here, but I do think that it's very important, if you're going to have a coordinated program, that he would sit in on their meetings and would be aware of what they were doing. Just as I don't really see the Superintendent of Public Instruction's taking any responsible role with the Board of Higher Education-with the Board of Regents. In other words, I see each of these persons sitting on the boards of the other primarily as liaison persons, to coordinate and interpret, also, the program of the other board.

DELEGATE HARBAUGH: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I think this helps to clarify the thing we're talking about. We're not talking here about someone to oversee the total educational program of the state when we're talking about this commissioner, and I think that needs to be clarified. Really, I think there's no objection to having an executive officer for higher education. We've mentioned this in our article in Section 11, and as long as this is clear, I think we can get on with this subject.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. President. I wondered if Mrs. Eck would yield to a question.

CHAIRMAN GRAYBILL: Mrs. Eck?

DELEGATE ECK: Yes, I would.

DELEGATE BATES: Dorothy, I noticed you placed this executive--or this Commissioner of Education between the Governor and the Superintendent of Schools. Would you anticipate this would be an elective office, then, or an appointive office?

DELEGATE ECK: Oh, no. It states down in Number 11 that, in taking the place of the Executive officer, that it's appointed by the Board of Regents. You know, you put her in there-you put him in in that place, because then you don't have to add any "ands" or "commas".

DELEGATE BATES: Well, then, would you yield to another question?

DELEGATE ECK: Yes.

DELEGATE BATES: Then you—the executive officer mentioned in Section 11 would be the same person as you were anticipating here?

DELEGATE ECK: Actually, all we're doing here is changing the name from Executive Officer to a Commissioner of Higher Education, but we're also thinking of him in-as having a greater status here, and for that reason, we would like to see him serve as an ex officio memberofthe other board.

DELEGATE BATES: Thank you. Mr. Chairman, I feel, then, this should be clarified if we-in this article if we continue--or if we vote to retain this Commissioner of Education, because in the next article-or next section, it specifies an appointment, and I'm just wondering just how it would be handled. Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. Would Mr. Champoux yield?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I yield.

DELEGATE JAMES: Now, I think, Rick, I'm a little bit concerned about this Commissioner of Education—

DELEGATE CHAMPOUX: Higher Education.

DELEGATE JAMES: -of Higher Education. In your estimation, if you agree with this, would he be coequal with the State-the elected State Superintendent, or a subordinate, or what would the relationship be?

DELEGATE CHAMPOUX: You have two questions there, as I see it. Number one, certainly he wouldn't be coequal, because she's an elected official. In terms of subordination, no, since he would be on a different board than she would. And the only way he would get himself involved in this other board, which would be ex officio, nonvoting, would be strictly as an advisory capacity. If something came up, as he was sitting there, that they want to know about higher education, he would be able to tell them. That's all it's about.

DELEGATE JAMES: Thank you, Mr. Champoux.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Would Mr. Champoux yield again?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I will yield.

DELEGATE JAMES: There's another thing that bothered me here, this body corporate. There seems to be a problem here about the various units of the University System all coming together with their hand out. And do you feel that this body corporate would have authority to unify the University System so that we wouldn't have this problem? Is this implicit in your majority proposal?

DELEGATE CHAMPOUX: There are three questions involved here. First of all, I'll make the statement-I don't think the discussion of the body corporate at this point is relevant, because we're going to be going into great detail, I imagine, when we get to Number 11. Number two, I am not a very effective lecturer, because I run down at the end of the hour, and that was quite a point of emphasis last Saturday in my talk. And that's one of the things I hope to come about--we hope to come about-that is to say, some authority to bring all that higher education together, to stop the proliferation of courses, to stop the duplication of programs, and so forth. That's our intent; yes, sir.

DELEGATE JAMES: Thank you, Mr. Champoux. I would say, then, that this majority proposal does have the flexibility that's needed, and I would urge its adoption. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Now, the issue is on the--adding the words "Commissioner of Higher Education" on line 10 in Section 10.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I'm somewhat perplexed by the lack of anybody available, in these proposals, who would assume the responsibility for the big picture. It has always been my understanding that the Superintendent of Public Instruction was elected by the people to represent them in the responsibility of getting the total picture of what our educational problem is here in the State of Montana. And the testimony of both Mr. Davis and Mr. Champoux indicates that the present Superintendent of Public Instruction has other, more important business than assuming any responsibility for the University System. Now, it seems to me, Mr. Chairman, that there exists in our state, at the present moment, a tremendous cloud hanging over our educational system. This is due, in my opinion, first, to the ascendancy of professionalism on the lower level and, secondly, on the dominance of the University System, aimed primarily on self-perpetuation and self-aggrandizement. I contend, with Charley Mahoney, that it will be impossible for us to resolve this problem here and now. Time and legislative action alone will be able to handle it. Our aim should be to make it possible for the future to face its responsibilities. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I had not intended to discuss this, because I am definitely a layman in the field of education. However, I've developed some ideas about the matter after listening to the debate and reading and a little study. I understand the proposition advanced by Delegate Eck for a Commissioner of Higher Education which will, undoubtedly, appear later in Section 11 and is merely incorporated in Section 10 to make up a liaison. I think that, perhaps, that is a good idea for the Board of Regents. It takes the place, as I understand it, of the present Executive Officer. In the-for the board-for the secondary and elementary area, we already have the Superintendent of Schools, an elective officer. And someday, according to the information produced here and which we heard in the Legislature when we enacted the statutes pertaining to the vo-tech, there will probably need to be a similar officer to handle vo-tech. Any and all of those now could be under the present Board of Education; the Superintendent is, the Executive Officer of the University is. They are already functioning. As I examine these Sections 9, 10 and 11, of which the Commissioner of Higher Education would be in two of them and, by indirection, in the Section 9, it seems to me that about all we have is we've taken Section 11 of the contemporary Constitution and divided it up into three parts—parcels, and into one of them we have incorporated a body corporate, and we are in process of performing an operation on the body corporate which would provide for the budgeting and for the auditing which we already have under Section 11 in the contemporary Constitution. So, I am drifting swiftly into a current which is carrying me back to Section 11 of the current, contemporary Constitution. Mr. Chairman, change merely for the sake of change is no good. Section 11 of the present Constitution provides everything that we have or need, and the Legislature would, through it, be empowered to put on the fringes and add the embellishments and take care of the necessities that will accrue in the future. I think that I am going to support a single body, and I hope that someone will provide a substitute to place Section 11 into the running. If someone else doesn't do it, I may do it myself.

CHAIRMAN GRAYBILL: Very well. Now, the Chair wishes to announce that I hope we're not going to have to redebate everything we went over last Saturday. And I have seven amendments to Section 11 before me, and I want to finish the Education Article, and I'm sure all of you do. And so, from now on, I'm going to ride herd rather tightly on you, and I expect you to talk to the subject of whether or not you want the words "Commissioner of Higher Education" put in on line 10. If you want to talk about that, I'm ready to listen.

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I'd like to suggest that the addition of the Commissioner of Higher Education might be much more important than we think. Remember the opening talk of Delegate Champoux—when there was some talk about the present Board of Regents and that estimation that maybe they spent 80 percent of their time actually on the University System-or maybe it was 90 or someplace in that area? What I'm suggesting is that by making them separate, we're really not putting so much more power there, because that's what they are anyway. And so, the adding of the Commissioner with-1 would say, with much more strength than you're talking about, Delegate Eck, is really the only thing that we're doing to strengthen the higher education system. When it

really comes down to it, it's not too much different without this commissioner. And that's why I think it's extremely important.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Eck's amendment, which has the effect of placing on line 10, after the word "Governor", the phrase "Commissioner of Higher Education", so that the sentence reads: "The Governor, Commissioner of Higher Education and State Superintendent of Public Instruction shall be ex officio members—ex officio nonvoting members." I understand we want a roll call vote. All in favor of Mrs. Eck's amendment, vote Aye; opposed, No-on the voting machines. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim ..... Nay
Anderson, J ..... Nay
Anderson, 0. ..... Aye
Arbanas ....Aye
Arness ..... Absent
Aronow ..... .Absent
Artz ..... Excused
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Aye
Berg.. ....Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Nay
Brazier ..... .Absent
Brown ..... Nay
Bugbee ..... .Absent
Burkhardt ....Aye
Cain ..... Aye
Campbell ....Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ....Aye
Cross.. ....Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... .Absent
Driscoll .... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... .Absent
Etchart ..... Nay
Felt ..... Absent
Foster ....Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ....Absent
Mansfield ..... .Absent
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ....Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ....Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ....Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... .Aye
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Aye
Rygg ....Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye

Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg .. Absent
Toole ..... Nay
Van Buskirk Aye
Vermillion Aye
Wagner Nay
Ward ..... Nay
Warden ..... Aye
Wilson Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 53 delegates voting Aye, 32 voting No.

CHAIRMAN GRAYBILL: 53 delegates having voted Aye, Mrs. Eck's amendment prevails and the term "Commissioner of Higher Education" shall be put in line 10. Is there other discussion of Section 10? Very well. Members of the committee, you have before you for your consideration, on the recommendation of Mr. Champoux that when this committee does arise and report after having had under consideration Section 10 of the Educational Article, that the same be recommended for adoption. All in favor, say Aye. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: All right. We'll have a roll call vote. All in favor, vote Aye on the voting machines; opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

Aasheim Nay
Anderson, J. ..... Nay
Anderson, O.. Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow .Absent
Artz Excused
Ask ..... Aye
Babcock . . .. Nay
Barnard . . .. Nay
Bates ..... Absent
Belcher ....Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... .Absent
Brown.. ..... Nay
Bugbee ....Absent
Burkhardt ....Aye
Cain ..... Aye
Campbell.. ....Aye
Cate ....Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ....Aye
Dahood ..... .Absent
Davis ..... Aye
Delaney ..... .Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ....Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ....Aye
Harlow ....Aye
Harper ..... Aye
Harrington ....Aye
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... .Absent
Mahoney ..... Absent
Mansfield ..... .Absent
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye

McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 62 delegates voting Aye, 20 voting No.

CHAIRMAN GRAYBILL: 62 having voted Aye and 20 No, Section 10 is adopted as amended. Will the clerk please read Section 11.

CLERK HANSON: "Section 11, Board of Regents of Higher Education. There shall be a Board of Regents of Higher Education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the **Montana** University System and shall have-and shall supervise and coordinate other public educational institutions which may be assigned by law. Said Board shall constitute of seven members, appointed by the Governor to 6-year overlapping terms, subject to confirmation by the Senate, under regulations provided by law. The Board shall appoint its Executive Officer and prescribe his term and duties. The Governor and Superintendent of Public Instruction shall be ex officio nonvoting members of this board." Mr. Chairman, Section 11.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 11 of the Education and Public Lands Committee Proposal, that it recommend the same be adopted. I went into a long, long discussion of this last Saturday, and I don't intend to repeat it at this point. The only thing I want to notice here is that the section which says "shall supervise and coordinate other public educational institutions as assigned"-this is to-the intention here of the committee is to have the public community colleges under this Board of Higher Regents, as they are presently, by statute. As a matter of fact, that phrase is directly from the statute that now assigns them to the Board of Regents of Higher Education, and it was their wish and desire. It also provides flexibility, however, for movement in the future. Later on-I'm not sure if Mr. Heliker is ready to work into it at this point, but he was going to discuss something about the body corporate. Not now?

CHAIRMAN GRAYBILL: He's next.

DELEGATE CHAMPOUX: Okay. Thank you.

CHAIRMAN GRAYBILL: Very well.

Mr. Heliker, you have an amendment. Do you want it read?

DELEGATE HELIKER: (Inaudible)

CLERK HANSON: "Mr. Chairman. I move to amend Section 11, page 6, of the Education and Public Lands Committee Proposal by adding, at the end thereof, a second paragraph to read: 'The Legislature shall be given an annual accounting of all income and expenditures by each unit of the University System'." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker has an amendment which would add, as a section-a separate section of Section 11—separate sentence, at least-the idea that there would be an annual accounting of all income and expenditures by each unit of the University System.

Mr. Heliker.

DELEGATE HELIKER: As I said on Saturday, Mr. Chairman, the purpose of this amendment is simply to lay to rest any fears there may be, as expressed, for example, by Delegate Aasheim, that the University units would not be required, under the majority proposal, to render an accounting to the Legislature of their expenditures. This-the purpose of this is to insure that that-although I think it was clearly implied in the majority proposal-but-to-nailed it down and made it certain. Now, may I ask Mr. Champoux a question?

CHAIRMAN GRAYBILL: Mr. Champoux, will you yield?

DELEGATE CHAMPOUX: (Inaudible)

DELEGATE HELIKER: I was tuned out when you were saying something about "body corporate".

DELEGATE CHAMPOUX: Well, I thought you were going to discuss something in terms of the fears of this concept of the body corporate, one of them being that the Legislature would not have control, and you were going to indicate that this certainly is an area of control.

DELEGATE HELIKER: Yes. Mr. Chairman, if I may comment further. The crux of the matter here, as I see it, is whether we're going to give the Board of Regents the power to manage the University System effectively. In order, it seems to me, for them to have effective managerial power, they are going to have to have the kind of power that is established by Section 11 as proposed by the majority, which is to say, the power to govern and control the academic, financial and administrative affairs of the University System. That, right there, is the core of the matter. And if we substitute other language that their powers shall be established by the Legislature or provided by law or something of that sort, then what we are doing is cutting the guts out of this proposal. Because the proposal is to give an autonomy to the Board so that they can manage effectively as the managing authority of the University System. Without that authority, then, they're-we're back in the old rut. That's all I have to say now, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Heliker's amendment.

Mr. Berg.

DELEGATE BERG: Will Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I yield.

DELEGATE BERG: Is your amendment limited to the six University units-six units of the University System? Does it include, for example, community colleges?

DELEGATE HELIKER: I can't hear you.

DELEGATE BERG: Does it include community colleges as well as units of the University System?

DELEGATE HELIKER: Mr. Champoux says "Yes". Perhaps he should answer the question. I'm not acquainted with the situation of the community colleges, but it says "each unit", so I would suppose it would cover them. That would be my intention.

DELEGATE BERG: Will Mr. Champoux, then-will yield?

DELEGATE CHAMPOUX: I will yield.

DELEGATE BERG: Does-is a community college one of the units of the University System today?

DELEGATE CHAMPOUX: In answer to that question, no.

DELEGATE BERG: Then, is it covered by the accounting system as proposed in Mr. Heliker's budget?

DELEGATE CHAMPOUX: It would be the intent of that amendment to bring these under the control. They would be within the area of control by the amendment. And that's our intent.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: If I understand the language of this amendment, it is restricted to the units of the University System, and I suggest to you that there is no clear definition that community colleges are a part of the units of the University System. I would recommend that this amendment be amended so as to include other educational institutions.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I think the point is well taken, and I would therefore propose such an amendment to-or a change in my amendment to read "by each unit"—

CHAIRMAN GRAYBILL: Mr. Heliker. How about "each unit of the University System and other state-supported educations-higher educational institutions"? Is that what you're trying to say?

DELEGATE HELIKER: "--under the Board of Regents."

CHAIRMAN GRAYBILL: "-and other state institutions administered by the Board of Regents?"

DELEGATE HELIKER: That sounds all right to me.

CHAIRMAN GRAYBILL: All right. Mr. Heliker would like to amend his amendment so that it says, "an annual accounting of all income and expenditures by each unit of the University System and other state institutions administered by the Board of Regents." I think we can find out on voice vote if we allow-if we'll allow him to amend his thing. All those in favor of amending this--allowing Mr. Heliker to amend in this manner--say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Okay, that amendment is allowed, and now the Heliker amendment includes the last clause including the other state institutions.

Now, Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. Can I ask a question of Mr. Champoux, please?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I yield.

DELEGATE DRISCOLL: Mr. Champoux. In your language on lines 18-19, I do not think that they will prevent the w-tech centers, at some time in the future, coming under the Board of Regents.

DELEGATE CHAMPOUX: Is—and—what is your question, sir?

DELEGATE DRISCOLL: At some time in the future, the w-tech centers may want to come under the Board of Regents. I don't think they're precluded from doing this by your language.

DELEGATE CHAMPOUX: No sir, they aren't, by the language.

DELEGATE DRISCOLL: Thank you.

DELEGATE CHAMPOUX: You bet.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President. The amendment that Mr. Heliker gave and which you read several times very rapidly has not been written down, and I would—

CHAIRMAN GRAYBILL: I'll read it again.

DELEGATE HABEDANK: I'd appreciate it.

CHAIRMAN GRAYBILL: In other words, you don't have the whole amendment, is that it? Okay. "The Legislature shall be given"-well, we're going to add it at the end of Section 11, either as a separate paragraph-or it doesn't matter. Anyway, we're going to add it to Section 11. "The Legislature shall be given an annual accounting of all income and expenditures by each unit of the University System, and other state institutions, administered by the Board of Regents." I'm not sure we need the comma after "University Systems". "The Legislature shall be given an annual accounting of all income and expenditures by each unit of the University System and other state institutions, administered by the Board of Regents." Do you have that, Mr. Habedank? Very well.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I agree with Mr. Garlington; the more detail we start putting into these articles, the more we, by implication, are going to exclude. We have a legislative audit in our Constitution now, and he will certainly demand and receive all this information. I think this is unnecessary. If you'll look ahead to Mr. Rygg's provisions-if you want this in the Constitution, he's provided for it in much more simple language, and very flexible; so that I'd speak in opposition to this amendment.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in opposition to the amendment. It does absolutely nothing more than to make a report to the Legislature or whatever other accounting department of state government that you make the report to. If you read carefully this section-if you'll read this Montana-this last edition of the Montana *Law Review,* if you read some reports by the University of Missoula, it will show you they can make all the reports they want to to the state departments of government, but there is not one thing in there that says that they must abide by any one of them. You've got examples in Utah and other places where these reports have been made, where the authenticity of the report has been questioned, that it has gone into court and the courts have ruled that the Board of Regents had the full authority, that the-any other department of government couldn't question whether the accounts should be paid or not. They had to pay it, and they had no authority to question it. So a report of this kind is valueless except to show where the money went. You can't question whether it's valid or not valid, and no part-no division of government, under this particular section, would have that authority.

CHAIRMAN GRAYBILL: Mr. Barnard. The Chair would merely observe that it says "an annual accounting". An accounting is an after-the-fact report.

DELEGATE BARNARD: Mr. President. (Inaudible) an annual accounting, and that's quite desirable, in a way, except that it accomplishes nothing because there's no authority on the people to whom the accounting is made to say whether it was authentic or not.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I have all of the time been insistent upon a audit, and I don't think this gives it to us. This gives us an audit by the institution. That's me auditing myself. It won't work. Delegate Brown points out that the Legislative Audit would do it. I don't know. Up here in line 17, we're talking about "which shall govern and control the academic, financial and administrative". "Financial" is going to govern it. I'm not so sure that the Legislative Audit can get its work done there. I don't think this amendment of Delegate Heliker does the job.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. I'd like to say, first of all, that no one has asked me to speak on this, and I'd like to describe something to you that I know fairly intimately. My husband is Chairman of the Philosophy Department at the University of Montana, and I think you would agree with me that he's a quitely—or a highly paid person for the State of Montana. Perhaps I shouldn't say this, but he has been offered four chairmanships of other departments in the rest of the country. All four of them were more than what he is being paid now, and he has turned them down. Now, I consider, and I think a number of people who-in this room who have had children who have-of theirs who have worked with him—he's very competent at what he does, but at the same time, within his daily work, he has an enormous amount of paperwork to face. He has told me that every year it gets worse. Now, this is not talking about the point of view of the top of the University itself, but what happens to someone who is a professor in the system. With this increase in paperwork, it means that this is what he does more and more. The very requisitioning of a typewriter in his department becomes something that has consumed hours of his time. And the real question I want to ask is-this has to do with autonomy and also how funds of the University are spent-but do you really want him-does the State of Montana want him to do-to work at something he does very well? Or do they want him to spend this sizable amount of time, which increases with every year, requisitioning paper clips, typewriters, paper, and so forth, which is increasing? I would like to read from the *Eisen*-hower Report-Mr. Champoux spoke about it the other day-but it expresses, better than I can, part of the problem which I think we should think about at this point. "For the greater part of the century, the relations between public institutions of higher education and state government have been marked by increasing anxiety. This tension has been more visibly and deeply felt by educators than by state officials. The point of departure for this development cannot, of course, be precisely fixed"-by the way, this was written in 1957, I think,-this Eisenhower *Report* that I'm reading from-but, generally speaking, it may be said to commence with the movement, beginning around 1917, to regroup state administrative units into a more centralized orbit and to bring them under tighter executive control." This won't take me very long. "The state budget office, beyond question, is now in a position to wield more actual or potential influence over higher education than any other state administrative agency. With the develop

ment of the executive budget, in state after state, the budget office has moved forward to a point where its recommendations can have a decisive effect on the judgments reached by both the Governor and the Legislature on appropriations for higher education. Other central control agencies that have brought closer supervision over the operations of state colleges and universities are state auditors, controllers, purchasing departments, personnel offices and central building agencies," Mr. Champoux talked about this with the motor pool kind of thing. "Potentially, at least, the entrance of these new controls represents a grave threat to the tradition of free colleges or universities in America, for in their zeal to apply controls over higher education in the name of economy and tidy administration, some state officials have forgotten the compelling reasons that led to the grant of legal autonomy to institutions of higher education. With the steady advance of state controls, the legal independence of higher education in many of the states now stands in serious danger of erosion. The educator understands the rationale between-behind the steady increase in executive as well as legislative agencies of centralized oversight. He recognizes that the centralized controls have been prompted by the obviously sound purposes of economy and efficiency and that they have come about in response to urgent public demand and need. He despairs, however, of what he believes is the tendency of state officials to look at university life solely from the vantage point of fiscal procedures. Education is intricate in design and ancient in lineage. It cannot be viewed merely in terms of unit costs, rigid personnel requirements, and audit exemptions. Moreover, the tendency of all topside controls is to squeeze the sovereignty of the college in the conduct of its vital responsibilities in teaching research and the selection of distinguished personnel, as well as the procurement of intricate laboratory equipment. The educator pleads that central controls should not be imposed over any college in such a way as to jeopardize the performance of its essential functions. In short, educators agree that the Legislature and and Governor, acting through the Budget Office, have clear authority to decide the initial questions of what portion of a state's economic resources should be committed to higher education. This decision is immovably a political one, and, under a democratic system, it must be made by elected representatives in response to the public will. But the second phase of fiscal control, the expenditure and internal allocation of state funds once they have been appropriated, is another matter. Here, educators are convinced that once the Legislature has spoken, fiscal control thereafter should be the responsibility of the college or university itself. It is this principle of fiscal responsibility-if this principle of fiscal responsibility is accepted, then college officials believe that the schools will not be impaled on controls that not only frustrate day-to-day operation, but on occasion, threaten to decline in standards and quality at the institution itself." Thank you very much. Did I say in the beginning no one asked me to read this? This is on my own. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. Mrs. Bugbee's comments are all well and good but are not directly pertinent to the problem before us right now. Now, as I said, what I wanted to get at was an absolute guarantee that the institutions under the Board of Regents would be subject to the Legislative Audit. Apparently, the language that1 offered was not sufficient to that purpose. It came from the Michigan Constitution, and I took it from the Michigan Constitution because Michigan has the kind of autonomy for the Board of Regents that we are seeking here in the majority proposal. If I may, I'd like to withdraw my amendment and substitute other language which will, I think, be clearer and get to the point that I want to get to.

CHAIRMAN GRAYBILL: Now, Mr. Heliker, tell me what you want to do. You want to withdraw your entire amendment?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: All right.

DELEGATE HELIKER: And to substitute for it, the following language.

CHAIRMAN GRAYBILL: Can you tell me where you're getting the following language?

DELEGATE HELIKER: Yes, the following language comes from the last sentence of the substitute amendment that you have before you, signed by Mr. Rollins.

CHAIRMAN GRAYBILL: Well, you can certainly do that. Mr. Rollins hadn't had it printed, and I just sent it out to printing. And I really don't want to-we'll do it, but I guess we'll wait for printing. Well, you can go ahead.

DELEGATE HELIKER: Well, it's a short sentence and very clear, I think. "The funds and appropriations under the control of the Regents shall be subject to the same Legislative Audit provisions as any other funds of the state."

CHAIRMAN GRAYBILL: Very well. I've allowed you to withdraw your other one, and I'll allow you to make this amendment, but I will caution the group that Mr. Rollins has a Section 11 proposal of which that's only part. It is more-has a lot of other material in it. And I'm having it printed, and we'll get it up here as fast as we can. Yeah, I've got it; but it's just a matter of everybody else doesn't have it, Rick. I'll read it again in a minute. The amendment that Mr. Heliker now wants in place of his is: "The funds and appropriations under which"-No-"The funds and appropriations under the control of the Regents shall be subject to the same Legislative Audit provisions as all other funds of the state." Now, in about 5 minutes, everybody will have that on his desk, because it's now in printing.

Go ahead, Mr. Heliker. Do you want to speak to your amendment?

DELEGATE HELIKER: No, Mr. Chairman, except to say I hope it now satisfies everyone that the funds administered by the Board of Regents will be, indeed, subject to a legislative audit as all other agencies' funds are.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. Will Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker, will you yield?

DELEGATE HELIKER: Yes.

DELEGATE BLAYLOCK: George, what does this add that isn't already in effect?

DELEGATE HELIKER: I'm not sure it adds anything. I have pointed out that we have adopted a Legislative Audit. It is my understanding that that would apply to the Board of Regents; however, there has been some fear expressed that it wouldn't. I-my object here is to nail this down 100 percent certain that it would.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I think what concerns some of us is the fact that Section 11 is providing for a body corporate, and, of course, that has certain legalramifications that are rather important in determining whether or not we should vote for Section 11 precisely as it appears before this body at this time. I should think that the majority of the delegates certainly support the principle of academic freedom, but on the other hand, we want that academic freedom to be compatible with the demands of a contemporary society. And as a consequence, it would be, I should think, the judgment of a good number of the delegates that we want the Board of Regents of Higher Education, if it becomes a body corporate, to still be responsible to the people of this state. And I'm opposed to the amendment that's presently before this body for the reason that I think we have before us a-an amendment proposed by Delegate Rygg that provides that the powers and duties over financial and administrative affairs shall be prescribed and regulated by law, which I think is the type of balance that must be included in any type of provision if we're to have the type of public control that I think must be in any provision that we pass. And for that reason, I'm opposed to the amendment that's before this body.

CHAIRMAN GRAYBILL: The Chair would like to announce that as soon as the printing is finished, we'll get Mr. Rollins' amendment out and we'll get-we'll ask the others whether they want theirs out. And if they-we'll get them all out here, and then we'll discuss them all at once.

Mr. Champoux.

DELEGATE CHAMPOUX: If I may react to the comments of Mr. Dahood?

CHAIRMAN GRAYBILL: You may.

DELEGATE CHAMPOUX: One of the problems there, Wade, is that it doesn't get at this business of internal control by the universities, as I see it. Now, if you'll look at-we're not discussing Mr. Rygg's, of course-but if you notice what he has in here, "prescribed and regulated by law", it's going to get back to the same situation as you have in the present Constitution where, under 11, it says "The general control and supervision of the State University is vested in this board." Yet, in the very next sentence, Wade, its says, "whose powers and duties shall be prescribed and regulated by law." See-this, then, gets the state government again and bureaucratic-or I won't use that word anymore-governmental bureaus involved, possibly, in things like hiring and firing of faculty, determination of, you know, what kind

of pianos you're going to buy, whereas specialists say something else. This is the problem.

CHAIRMAN GRAYBILL: All right, now, the Chair would like to inquire of Mr. Rollins if you want your amendment passed out. Yes or No?

DELEGATE ROLLINS: Yes, I would appreciate it.

CHAIRMAN GRAYBILL: Very well. We'll pass yours out.

Mr. Toole, do you want yours passed out?

DELEGATE TOOLE: I would prefer to have mine wait, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, we'll hold yours.

Mr. Barnard, do you want yours passed out?

DELEGATE BARNARD: (Inaudible)

CHAIRMAN GRAYBILL: All right. Pass out Rollins' and Barnard's.

Mr. Martin, do you want yours passed out?

DELEGATE MARTIN: (Inaudible)

CHAIRMAN GRAYBILL: Yes, Mr. Martin's passed out. I understand you have Mr. Rygg's before you.

Mr. Harper, I haven't printed yours yet. Do you want it printed?

DELEGATE HARPER: (Inaudible)

CHAIRMAN GRAYBILL: Okay. Very well. We'll pass out Rollins', Barnard's, and Martin's. And you have Mr. Rygg's before you, and Mr. Toole is not passing his out. Let's just wait a minute till the passing out is done here. Mr. Heliker, the Chair would like to inquire whether you want to keep your last sentence of Mr. Rollins' separate. In other words, you want that as a separate proposal, is that right? Yes?

DELEGATE HELIKER: Yes. Yes.

CHAIRMAN GRAYBILL: Yes. Okay. Will the committee please be in order.

Mr. Barnard, for what purpose do you rise?

DELEGATE BARNARD: Mr. President, a point of information. 1 have one proposed substitute in for Number 11, but I also have a very short amendment which I might like to submit prior to that time. Would that be permissible?

CHAIRMAN GRAYBILL: Well, is it an amendment to your amendment? Or is it—

DELEGATE BARNARD: No, it would be an amendment to Section 11.

CHAIRMAN GRAYBILL: Well, let me show you how I think we're going to get at this, and then we'll see-you can see. I-you'll certainly have a chance sometime to put it in, especially if Section 11 survives. Now, if I may have your attention, you have before you an amendment by Mr. Heliker, and in keeping with the rule of only three layers, we're going to have to work around this a little here. Mr. Heliker's amendment-if you want to make notes-is the present Section 11 plus one sentence concerning fiscal responsibility—being-concerning the fact that the funds would be subject to a legislative audit, plus one sentence on the legislative audit, which happens to be the last sentence of Mr. Rollins' proposal. All right, now, Mr. Rollins has a proposal, which I presume he'll make in a moment, which has the effect of removing "the body corporate"-isn't that correct, Mr. Rollins?-from the language of Section 11 and otherwise provides for the Board of Regents with this legislative audit on the bottom. In other words, it's no "body corporate", plus a legislative audit. Then, Mr. Barnard has a proposal which also deletes the legislative audit-also deletes "the body corporate", but places the Regents in a position of operating the University System as a public trust in a manner consistent with the general laws and includes limitations on the legislative authority to change this system. Now, those three would fill up the docket. But, then, Mr. Rygg has one which has the effect of being Section 11 with a sentence that says, "Powers and duties over fiscal and administrative affairs shall be prescribed and regulated by law." In other words, it would place the fiscal control of the Board of Regents back in the Legislature. Those four proposals are before us, and possibly some minor amendments that might come up. At this time, I would-we already have Mr. Heliker's amendment, Section 11 plus the last sentence of Rollins'.

Mr. Rollins, I would entertain a motion to amend that by adding your Section 11. And after you've spoken, I would entertain a motion from you, Mr. Barnard, to put a substitute motion. And that would get your three before us, and then we can get Mr. Rygg's before us if we ever get there.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: At the time you were speaking about me, someone else came to speak with-to me. Would you say that again, please? The—

CHAIRMAN GRAYBILL: Mr. Rollins, is there any question which one you're going to listen to now? I'm just kidding you. Mr. Rollins, would you like to move your Section 11 as an amendment to Mr. Heliker's motion?

DELEGATE ROLLINS: Yes, Mr. President. I move that my amendment be read as an amendment to Mr. Heliker's.

CHAIRMAN GRAYBILL: All right. Will the clerk please read Mr. Rollins' amendment.

CLERK HANSON: "Mr. Chairman. I move to amend the Heliker amendment by adding the following language before his sentence. Section 11: 'The government and control of Montana's University System shall be vested in a Board of Regents, who shall be selected as provided herein. The Regents shall have full power, responsibility and authority to supervise management and control of the Montana University System and shall supervise and coordinate other public educational institutions which may be assigned by law. Said Board shall consist of seven members, appointed by the Governor to overlapping terms, subject to confirmation by the Senate, under regulations provided by law. The Board shall appoint its Executive Officer and describe his term and duties. The Governor and the Superintendent of Public Instruction shall be ex officio nonvoting members of this Board. The Regents shall present a unified budget request to the Legislative Assembly. Signed: Rollins."

CHAIRMAN GRAYBILL: And then, Mr. Rollins' does, of course, incorporate the rest of that sentence there, because it's an amendment to Mr. Heliker's. So, it does have "The funds and appropriations under control of the Regents shall be subject to the same Legislative Audit provisions as other funds of the state." Is that correct, Mr. Rollins?

DELEGATE ROLLINS: Yes, Mr. President. I'd like to speak to that a moment please.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROLLINS: In proposing this amendment, I'm trying to achieve certain things and to avoid certain types of objections. I'm trying to achieve a Board of Regents that has the essential powers to carry on the work of the University System and such other educational institutions as might be assigned by law to that Board of Regents. And in my opinion, the major duty of the-of higher education is education. And the only reasons why there should be administrative controls would be to make it so that it can carry out its primary task, with the additional need for accountability to the people who support it. So, I think that this amendment indicates a Board of Regents with the power to make the necessary decisions to conduct higher education. I am willing to sacrifice the idea of body corporate. Like the feller said, "I didn't understand it too well anyway," and apparently many others don't. And it's a bone of contention, and I think it's an old, dry, dead bone-maybe not worth chewing on for a considerable length of time. There are those who've expressed fears that there would be not— not be fiscal responsibility. Under this, I don't see how it could be escaped in any way, because the appropriations are made by the Legislature. And the University System--or the system of higher education would be subjected to the Legislative Audit. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Barnard, may the clerk read your amendment?

DELEGATE BARNARD: Mr. President, first I would like to ask Mr. Rollins a question, if I might, please?

CHAIRMAN GRAYBILL: Mr. Rollins, will you yield?

DELEGATE ROLLINS: Yes, sir.

DELEGATE BARNARD: Was your intention in the last wording of your-It says "legislative audit provisions as all other funds of the state". I have a question I want to ask you. Presuming that we have a legislative audit of the University System and they find something is wrong; is your intention, then, that they would have authority to straighten that out, that the Legislative Audit Committee would?

DELEGATE ROLLINS: Surely; I would say so.

DELEGATE BARNARD: And it's your intention that they would have that authority in this statement you've made here?

DELEGATE ROLLINS: Well, Mr. Barnard, I can't say exactly what powers the Legislative Audit does have. I assume that if the Legislative Audit finds something, that there are-there's a mechanism to set things right. The University System would be subject to the same kind of action as would any other funds that the state supervises.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: May I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BARNARD: My problem is, here, I'm a little bit worried about this thing, because there have been so many court decisions in other states on this very same subject where, even after an audit, the party--or the group conducting the audit or no other state agency had any authority to correct it, excepting the Board of Regents. That's my question, and that's the thing I don't want to see. I want to see somebody have some authority besides the Board of Regents. That's why I asked the question.

DELEGATE ROLLINS: It certainly wouldn't be my intention with this that the Board of Regents would defy the Legislative Audit in any way. I assume the Legislative Audit makes a report to the Legislature and is subject to any action that mechanics demand.

DELEGATE BARNARD: That's all, Mr. President.

CHAIRMAN GRAYBILL: All right. Now, Mr. Barnard, do you care-do you want to put your amendment?

DELEGATE BARNARD: That is the amendment to the Section 11?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BARNARD: Yes, I could put my proposed amendment to Section 11. I have two copies I've just handwritten. Do you want one of them up there or-

CHAIRMAN GRAYBILL: No. What I'm interested in-you handed up, a long time ago, a full Section 11 amendment which I had printed and spread. Do you want to make that amendment or don't you?

DELEGATE BARNARD: Well, I didn't want to make it at this particular time, but I will if—

CHAIRMAN GRAYBILL: No, now—I'm not trying to urge you to. I just want to know what you want to do.

DELEGATE BARNARD: Oh, I'd rather let it go for a little while.

CHAIRMAN GRAYBILL: All right, we'll let it go.

Mr. Rygg, that leaves a slot open for yours. Would you like to make yours?

DELEGATE RYGG: No, I'd just as soon—I'm content with Rollins'. Ifthatone goes through, why, that's fine. Otherwise, I'd want mine, but I'm willing to vote on this one.

CHAIRMAN GRAYBILL: All right. This is a hard bunch to manage. (Laughter) May I merely point out to the body that you have these others before you; and I'm perfectly willing that we debate the whole thing at once, because I don't see how we can debate it except all at once. And at the moment, then, we have Mr. Heliker's motion, which is Section 11 with "the body corporate" and the sentence on the bottom about the legislative audit. And we have Mr. Rollins' amendment, which is Section 11, somewhat modified, without "the body corporate" and with the language on the bottom. Which, I think, puts us in the position of debating "the body corporate".

Now, Mr. Champoux.

DELEGATE CHAMPOUX: I think Mr. Rollins' amendment kind of takes in pretty much all of it. "Body corporate" is kind of like "public trust" around here, and I'm really afraid if we bring that up, Mr. Brazier is going to get up and talk again. (Laughter) And I like Jeff and-So, I would accede to Mr. Rollins' amendment, and I think it takes in everything. I would support it. Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I'll withdraw my amendment. I'll support Mr. Rollins' substitute.

CHAIRMAN GRAYBILL: All right, Heliker's second one is withdrawn. Okay.

DELEGATE HELIKER: Do I still have the floor, Mr. Chairman?

CHAIRMAN GRAYBILL: You may have the floor.

DELEGATE HELIKER: I'd just like to say that what I'd like to see achieved is a Board of Regents with the power to manage the University System. I want to see them fully accountable to the Legislature, and I think we should bear in mind that they will have to present a unified budget, with the Board of Public Education, to the Legislature. The Legislature will appropriate the funds. The use of those funds will be audited by the Legislature. The Legislature will know exactly how they're used, and then the Board of Regents will have to go back before the Legislature the next time around. So, it seems to me, you have full and complete legislative control under Mr. Rollins' proposal without sacrificing the necessary, it seems to me, ingredients of managerial authority on the part of the Board of Regents.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. Since Mr. Rygg has withdrawn his amendment and since our Honorable Chairman supports Mr. Rollins' amendment, I will withdraw my amendment. And this, perhaps, will speed things along a bit.

CHAIRMAN GRAYBILL: All right. Yours isn't in yet, but you can withdraw it without it being in.

Mr. Loendorf, I guess you were up next.

DELEGATE LOENDORF: Mr. Chairman. Would Mr. Rollins yield?

CHAIRMAN GRAYBILL: Mr. Rollins?

DELEGATE ROLLINS: I yield.

DELEGATE LOENDORF: Mr. Rollins, I have no particular opinion on your amendment, I guess. I'm just concerned about one thing. The second-to-last sentence provides "The Regents shall present a unified budget to the Legislative Assembly." It seems to me, Saturday, in Section 9, we had the Regents and this other board operating together and presenting a unified budget to the Legislative Assembly. Do you have a problem here? Are you in conflict with Section 9 now?

DELEGATE ROLLINS: Perhaps we are. That part of it could be either amended or deleted to make it in line with Section 9

DELEGATE LOENDORF: That's up to you. I have no opinion, as I say.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins

DELEGATE ROLLINS: I would like, from my proposal to delete the sentence which says, "The Regents shall present a unified budget request to the Legislative Assembly" because that's already covered in Section 9.

CHAIRMAN GRAYBILL: That's what we did the other day.

DELEGATE ROLLINS: Yes.

CHAIRMAN GRAYBILL: So, you want to delete that sentence?

DELEGATE ROLLINS: Yes, sir.

CHAIRMAN GRAYBILL: All in favor of letting Mr. Rollins delete that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right, Mr. Rollins, that's deleted.

Now, Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman. Would Delegate Rollins yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Rollins?

DELEGATE ROLLINS: I yield.

DELEGATE ARBANAS: In the sentence where you talk about the Executive Officer, you know, being appointed by the Board of Regents, would we do better to actually name him the "Commissioner of Higher Education", because there's some possibility, in reading the two sections, he might come out as two different people. I wonder if that should be seriously considered?

DELEGATE ROLLINS: In the interest of consistency, Mr. Arbanas, I would say that that should be done. That could be changed to say "The Board shall appoint a Commissioner of Higher Education and prescribe his terms and duties." Mr. Chairman, may I make that correction?

CHAIRMAN GRAYBILL: Would you state it again, please?

DELEGATE ROLLINS: "The Board shall appoint a Commissioner of Higher Education and prescribe his term and duties."

CHAIRMAN GRAYBILL: All right. If we want to do that, now, let's see. "The Board shall appoint a higher—a Commissioner of Higher Education".

DELEGATE ROLLINS: Yes, sir; "and prescribe his term and duties".

CHAIRMAN GRAYBILL: And strike out "its Executive Officer".

DELEGATE ROLLINS: Yes.

CHAIRMAN GRAYBILL: Mr. Rollins now wants to amend his Section 11 to say "The Board shall appoint a Commissioner of Higher Education." In other words, naming the Executive Officer the same name that we adopted in Section 10 a few minutes ago, and strike the words "it's Executive officer" so the sentence reads: "The Board shall appoint a Commissioner of Higher Education and prescribe his terms and duties." Does anyone care to discuss that proposed amendment?

DELEGATE BERG: (Inaudible)

CHAIRMAN GRAYBILL: Thank you, Mr. Berg. Mrs. Bowman wishes to discuss it.

DELEGATE BOWMAN: I must ask a question, because I'm getting more confused as the morning progresses.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Is the Commissioner of Higher Education in Section 11 going to be the same person as in Section 10, or are each one of these boards going to have a Commissioner of Higher Education?

CHAIRMAN GRAYBILL: The same person, Mrs. Bowman.

DELEGATE BOWMAN: Thank you.

CHAIRMAN GRAYBILL: Very well. Is there other discussion of changing the line that says "its Executive Officer" to "a Commissioner of Higher Education"? If not, all in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right, that amendment will be allowed. We may have discovered a new way to do this.

Mr. Rygg.

DELEGATE RYGG: (Inaudible)-a point of clarification. Mr. Toole said I'd withdrawn my amendment. I didn't do that. I said I was willing to have you vote on his first, but I haven't withdrawn it yet. This is just a point of verification.

CHAIRMAN GRAYBILL: Right. Okay, I'm with you, Mr. Rygg.

Now, Mr. Mahoney, you're next.

DELEGATE MAHONEY: Would Mr. Rollins yield to a question?

DELEGATE ROLLINS: I yield.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE MAHONEY: In looking this over, Mr. Rollins-and I haven't had a great long time to study it, because you've got a lot of things in it--would this now remove the Department of Administration and the Department-and the Budget Director entirely from having anything to do over the Board of Education?

DELEGATE ROLLINS: I wouldn't say so, Mr. Mahoney, but I don't know exactly what the relationship would be, because I don't know what it is right now.

DELEGATE MAHONEY: Mr. Chairman, I'd like to talk a little on this.

CHAIRMAN GRAYBILL: Mr. Mahoney, you have the floor.

DELEGATE MAHONEY: In my humble opinion-and I'm not a lawyer and, remember, I don't have any qualifications-but I can see this as we've taken away, now, from the Governor all charge of the Legislature of the pair-by having these terms. We're going to have them overlapping-six, seven members appointed by the Governor-overlapping terms. So, now the new Governor comes in and he has new ideas, and we're going to let him sit in there ex officio, nonvoting. I don't know what he'll do. Maybe if he's nonvoting, he can take out the ashtrays or do some

sweeping or something like that. That's about all he can have under this "ex officio nonvoting member". He don't have anything to say. Now, we take him out-the Board of Education or the Board of Regents-from under the Budget Department of which-and also under the Department of Administration. I don't know what the Governor is going to have to do with this. So it'll all be under the Legislature, and I'm not too sure that we shouldn't have some executive control over the Board of Education besides the overlapping appointment of 6-year terms or six or seven members.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Mahoney. Last Saturday, I went into great detail as to what the current situation is in terms of things like architecture, state warrants, the treasury system, investments, and so forth. I indicated, for the record, that these-many of them will not change, Now, if you want to look at the situation in North Dakota, which, incidentally, just passed a provision similar to ours but that has been in force in North Dakota since 1931. Now, if you look at the situation there in North Dakota, what happens? The university funds are kept in the state treasury. Preauditing occurs on travel vouchers, annual legislative audit. The University System goes through-the University goes through the Budget Bureau of the Investment Bureau. They issue reviews of salaries-the Executive does. The Executive reviews fees in the general budget. After all, the general budget, Charley, as you well know, has to go through the Governor's office. It's involved in a uniform accounting system. The University System indicates to us that they're going to involve themselves in the state system simply by developing a program that will fit into the state system. The central purchasing presently-it doesn't seem to me that the University System, under this control, would ever get out of it. There are some instances, however, like the pianos and certain great detailed instruments that they would, perhaps, want to purchase on their own. Central financing is provided for the reporting of it under this legislative audit. We have all kinds of control, plus the Governor sits on two boards that are involved in it, and he also names the members. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert, you've been up—

DELEGATE REICHERT: Mr. Chairman. Will Mr. Champoux yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: Yes.

DELEGATE REICHERT: I noticed in Mr. Rollins' amendment that he deletes any mention of time for this overlapping term. In your majority proposal, you do stipulate, on line 21, page 6, "6-year overlapping terms". Do you-does your committee have any strong feelings? Frankly, I support Mr. Rollins.

DELEGATE CHAMPOUX: Thank you very much for bringing that to my attention. I missed it. I think we ought to put in "6 overlapping years". I think George would agree to that-"six overlapping terms"-I'd suggest we put that in.

CHAIRMAN GRAYBILL: Well, we know what you want. We'll let George speak for himself. (Laughter)

Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman. I'm getting like the preacher that said it happened so long ago and so much had happened, he didn't know whether Lazarus came fourth or fifth. (Laughter) And I-part of the trouble is I didn't do my homework as thoroughly as I should. If I may do it, I should like to insert, after the word "appointed by the Governor to", "6-year overlapping terms".

CHAIRMAN GRAYBILL: Very well. Mr. Rollins wants to amend his amendment to include "6-year overlapping terms" instead of just plain "overlapping terms". Is there discussion of that issue?

Mrs. Reichert, you've discussed it.

DELEGATE REICHERT: Mr. Chairman. I thought Mr. Rollins had intentionally deleted "6-year overlapping terms". I had considered deleting that from the majority proposal. (Laughter)

CHAIRMAN GRAYBILL: You want to speak against Mr. Rollins' proposed amendment?

DELEGATE REICHERT: Yes, in— because I feel we need a flexible Constitution. I would dislike seeing "6-year overlapping terms" written into our Constitution. I think that that following phrase of the same sentence, "under reg-

ulations provided by law", would mean that the Legislature could set these terms.

CHAIRMAN GRAYBILL: Well, at the moment, Mr. Rollins is setting it at 6 years. Is there discussion? Very well. So many as are in favor of "6-year overlapping terms", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt, So many as are in favor of 6 years, vote on the machines Aye; and if you're not in favor, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote? Any other delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Take the ballot. This was not a roll call. I beg your pardon; 46 have voted No and 42 have voted Aye, so the 6 years are out at the moment-46 to 42.

Mr. Berg, you were up.

DELEGATE BERG: Will Mr. Rollins yield to a question?

DELEGATE ROLLINS: I yield.

DELEGATE BERG: Mr. Rollins, I like your amendment, but I have some problems with regard to the second sentence, which reads: "The Regents shall have full power, responsibility and authority to supervise, manage and control the Montana University System." Now, I understand that that would relate to the six units of the University System. But as to other educational units, it has only the power to supervise and coordinate. Did you intend, by this amendment, to distinguish the authority which the Board of Regents would have over the University System as it might have over, for example, community colleges?

DELEGATE ROLLINS: Yes, Mr. Berg, because I think there is a difference.

DELEGATE BERG: Did you—

DELEGATE ROLLINS: The community colleges have some local direction which the units of the University System would not have. There's also a sharing of funds there, involving local concern-consideration. So, I think that that's what I'd like to see.

DELEGATE BERG: Would he yield to a further question? Mr. Rollins.

DELEGATE ROLLINS: Yes.

DELEGATE BERG: Did you deliberately leave out the word "coordinate" as it refers to the six University Systems?

DELEGATE ROLLINS: No, not deliberately, but I-that could be under the "full power and responsibility".

DELEGATE BERG: Would you object to an amendment which would include "coordination" of the University Systems?

DELEGATE ROLLINS: Not at all. I would not object.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I move to insert, between the words "supervise" and "manage", the word "coordinate", so that the sentence reads: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the Montana University System."

CHAIRMAN GRAYBILL: Very well. Mr. Berg has proposed an amendment to Mr. Rollins' amendment. It's on line 4 of the printed amendment before you; he wants to add the word "coordinate", so that it reads: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control-" Is there farther discussion?

Mr. Davis.

DELEGATE DAVIS: Would Mr. Berg yield to a question, please?

DELEGATE BERG: I yield.

DELEGATE DAVIS: Mr. Berg, for the purposes of the record on this article, when it goes out of here, regardless of how it goes-Under that language, you think it would be possible for the Board of Regents to close Western Montana College of Education if they thought they wanted to?

DELEGATE BERG: No, I don't. I think they could coordinate its functions and see to it

that the educational program provided at Dillon corresponded with what was provided at Bozeman.

DELEGATE DAVIS: And that would, likewise, apply to any other units of the system?

DELEGATE BERG: Yes.

DELEGATE DAVIS: I want that clearly in the record, though, because some of the members of the public are going to be concerned about that. Thank you.

DELEGATE BERG: I don't think that the word "coordinate" changes it in any sense.

CHAIRMAN GRAYBILL: Are there other questions or is there other debate on Mr. Berg's amendment to add the word "coordinate"? All in favor of Mr. Berg's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. All right, we're back on Mr. Rollins' proposal.
Mr. Nutting.

DELEGATE NUTTING: Would Mr. Rollins yield to a question?

DELEGATE ROLLINS: I yield.

DELEGATE NUTTING: In your last sentence, where you say "subject to the same legislative audit provisions", would you object to removing the word "legislative"? I think that is restrictive in that we now have an executive audit, too, that does part of the work on the-So, that would then read: "subject to the same audit provisions as all other funds." So then, it would take in both provisions.

DELEGATE ROLLINS: Mr. Chairman. May I answer that question by asking Mr. Nutting one?

CHAIRMAN GRAYBILL: If Mr. Nutting will yield.

DELEGATE NUTTING: Yes.

DELEGATE ROLLINS: Would all of these--are all of these other funds now subject to the legislative audit?

DELEGATE NUTTING: The legislative audit and the executive audit both working--are working and coordinate in different areas.

DELEGATE ROLLINS: I would not object, then, Mr. Nutting.

CHAIRMAN GRAYBILL: Mr. Nutting. Let's make-it makes my bookwork a little easier. Do you want to make that amendment, Mr. Rollins?

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes.

DELEGATE ROLLINS: I move to amend the last line of my proposal by striking the word "legislative".

CHAIRMAN GRAYBILL: Very well. Is there discussion? All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. It just means that only you are doing this and I don't have to start another amendment. Mr. Nutting, have you other questions?
Mr. Skari.

DELEGATE SKARI: Mr. President. Would Mr. Rollins yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Rollins?

DELEGATE ROLLINS: I yield.

DELEGATE SKARI: Mr. Rollins, where you--we inserted "Commissioner of Education" in here and we struck "who shall act as Executive Officer". I know that you intend that he shall act as the Executive Officer. Do you see any problem? It seems to me it could be a little unclear here, that it doesn't-We have put the title in here; we haven't clearly expressed his duties. I'm sure that you intend that he be the Executive Officer of the Board.

DELEGATE ROLLINS: Mr. Skari, I don't think I did, necessarily. I think the term "as prescribed by the Board" should cover that. The Board may wish to assign him some other kinds of duties.

DELEGATE SKARI: Thank you, Mr. Rollins.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. May I ask Mr. Champoux a question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I yield.

DELEGATE BUGBEE: Does striking the word "legislative" mean that we get into the same kind of proposition we did with that science complex, that everything then comes under the Executive? Every paper clip has to go through the Executive Department, every typewriter, every everything?

DELEGATE CHAMPOUX: I'm glad you brought that question up. Actually, it may; it might very well happen that way. Now, if it's the intent of this body that that do happen, maybe we should get it on record. As far as I'm concerned, it shouldn't happen, and that's what I was speaking against Friday-Saturday.

DELEGATE BUGBEE: Mr. Chairman.

CHAIRMAN GRAYBILL: The Chair would like to observe that you're talking about audit now. You're not talking about appropriation. The last sentence refers only to audit. And if you understand that and everybody does, fine, go ahead.

DELEGATE BUGBEE: It says, "Funds and appropriations under the control of the Regents shall be subject to the same audit provision."

CHAIRMAN GRAYBILL: Audit has nothing to do with appropriation. And if some of the legislators would like to explain that-the Chair doesn't want to, but the Chair doesn't intend to speak-but I'm sure some of the legislators that have been on the board will explain that to you. This is after-the-fact control, the audit.

Mr. Rygg.

DELEGATE RYGG: I'm sure this doesn't present a problem, Mrs. Bugbee, because this is strictly an audit and that would have nothing to do with the way it's spent. This is when it comes in afterwards, and they want to audit what has done, but it would have nothing to do with the purchasing of it.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: I would just like to-I don't understand the internal mechanisms of this, obviously, but I am very concerned about that Highway complex and how that thing got meshed into all of the state government and the mess it was in because of the way it was tied together.

CHAIRMAN GRAYBILL: Mr. Champoux, you're up. Would you like to speak?

DELEGATE CHAMPOUX: Would Mr. Nutting yield to a few questions, please, sir, for the record?

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: (Inaudible)

DELEGATE CHAMPOUX: Mr. Nutting, is it your intent that all of the units under this Board of Higher Regents-that they channel all of the purchasing and so forth, through the Administrative Division of this government?

DELEGATE NUTTING: Audit merely is after the fact, and that's what we're discussing in this last sentence. The funds and appropriations and the methods of establishing would be altogether different. They would not be-it-after the fact. They would be established beforehand.

DELEGATE CHAMPOUX: May I ask another question?

DELEGATE NUTTING: Yes.

DELEGATE CHAMPOUX: What-why do you feel that we need two audits? We have one from the Legislature-you want to-is it a double-check or—

DELEGATE NUTTING: It's in now, and it is-not that it's particularly good, but that is the way, and I do believe that the Governor has a right to audit the Executive Departments. They are his departments, and he should have somebody to look after them for him. The Legislative Audit is merely-operates in-on behalf of the Legislature, so you-both audits are really needed.

DELEGATE CHAMPOUX: Thank you, sir.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. We spent considerable time with the Legislative Auditor and also the head of the Department of

Administration to find out what was the nature of their work. The Legislative Audit has no executive or administrative authority. The only thing that he does is call it as it is, turn it over to his committee, and then the committee turns and asks the institutions which are audited to make a report back. And on the basis of that, they try to get compliance with the law. For instance, just to give you an idea of what the Legislative Audit did in-with respect to its audit of the University units, it came up with a number of recommendations. And I'll just take-quote briefly from the executive-or the Legislative Auditor's report with regard to the University units: One, was to transfer bank balances to appropriate funds in the State Treasury and deposit future receipts therein promptly upon their receipt; two-implement a formal-these were recommendations--a formal system of documenting the time expended by faculty personnel in the nature of their services; three, convert the University units' payroll to the central payroll system: four, establish more precise regulations regarding consulting fees, honorariums, and so forth, earned by University unit personnel; five, the State Controller establish an account in the appropriate treasury fund to receive, hold, and disburse all moneys available for general support operations for each University unit; six, collect administrative cost reimbursements and deposit the collective as-collections as revenue in the general fund to the extent the costs were involved in appropriated moneys; seven, seek legislation to provide the statutory authority for waiver or reduction of fees in those circumstances where such waiver or reduction is in the best interest of the state; eight, establish a uniform University accounting system which meets management's needs and is compatible with the statewide system currently in operation. With regard to the University fees, the Legislative Auditor's report found that over $625,000 in fees were waived by the University during fiscal year 1969 and 70. Of this amount, $525,877 in fees were waived under circumstances which are not specifically authorized by law. The Department of Administration has-is in the process of implementing an accounting in the budget system, and the Legislative Audit is just reporting the facts as they are. I think that they're-anyone that knows something about the competition that exists between the University units, how one president at one time has been in supremacy and the other president has been again, you could find reasons for the Legislature to be concerned and the Executive Department to have some concern for some sort of a coordinated policy on this proposition. In my opinion, I think that we shouldn't turn around and give and delegate all of the powers to a Board of Regents or to a Commissioner of Education.

DELEGATE CHAMPOUX: I'd like to ask Mr. Nutting one question, for the record, please.

DELEGATE NUTTING: Yes.

DELEGATE CHAMPOUX: If I may, sir. Now, just to clarify this, if I may, when you said "after the fact", you do not-you mean "post audit". Is that correct, sir? You do not mean "pre-audit".

DELEGATE NUTTING: That's what an audit discussion is, right.

DELEGATE CHAMPOUX: Thank you very much, sir.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I am a little bit perturbed here-or worried or whatever the word that we could use—disturbed—yes, maybe that's good. When we get down here in this line that says "manage and control", how supreme is that? Now, I'd like to have Mr. Rollins define that for me, please, if he would.

DELEGATE ROLLINS: How complete should the control of the Board of Regents be of the University System? I can't answer that categorically, Mr. Mahoney, but I feel that the Board of Regents should have the power needed to carry out the academic functions of the University System without undue harassment from outside forces. Now, we're in the business of educating people; we're not in the business of running a business according to certain things; we're not trying to make a profit. I think we lose sight of the fact that the important ones in the University System are the students. And any management controls or anything like that should be devoted to making the University System more useful to the student. At the same time, I do not deny any responsibility on the part of the Board of Regents to give full accountability to the people. Does that answer your question, sir?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. Another question-I have a couple more, Mr. Rollins, if you would, please, to answer.

CHAIRMAN GRAYBILL: Very well. You may ask two more.

DELEGATE MAHONEY: Is this going to pull the University System out from the-entirely under-from under the Purchasing Agent?

DELEGATE ROLLINS: No, sir. We would have to abide by the same kinds of rules and regulations concerning purchasing as any other agency of the government, and we do.

DELEGATE MAHONEY: Would this pull, then-do you think, then, that it would not pull it out from underneath the Budget Director?

DELEGATE ROLLINS: If the Budget Director has certain relationships with all other agencies of the government, I assume he would have the same kinds of relationships with the University System.

DELEGATE MAHONEY: Thank you, Mr. Rollins.

Mr. President-Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I wish that I could agree with all of this, and I know we're starting to get in, I'm watching Mr. Champoux here this morning get a record. And I don't know how much the Supreme Court is going to pay any attention to this record when they get ready to rule. I'm afraid they're going to take the very wording that we are adopting here, and we are not going to be in a position to tell them what we mean except in the words that we put into this thing. Now, "manage and control"--now, I didn't get as perturbed about this-or whatever the word should be--until Delegate Bugbee started mentioning about the paper clips, and I wondered if we were getting out from under the Purchasing Agent in this. Now, I know that this Convention does not want to set up another separate branch of government out here that only the Legislature can look at. I want to keep this under the Governor; he's the Chief Executive. He runs and he gets out here and he gets the most votes, and then he should have a lot to do with it. One-third, I've always felt-the Governor, the Supreme Court and the Legislature—not in that order but-because I'm a legislator first. But I do feel that in this kind of wording, "manage and control"-this-they could do anything. Now, I'm going to tell you what's happening over here now, and I'm questioning it. Why do we have an architect working over in the present Board of Education? All right, we've got state architects; we've got those now. I wonder why we got to set up separate branches of government in here. This is what's bothering me on this-and I'm afraid if we get this far out of field-Now, I want to ask, while I'm on my feet--and I don't know whether this will do. I haven't been able to study the Rollins amendment as far as I'd like to, but this is in the court rules in the University of Michigan and this was under theirs and it was very nearly like the one that we have here before us—before this amendment-and they state, down here, "Unconstitutionally declared. Judge Salmon ruled unconstitutional section of bills which prescribed the number of classroom hours to be taught by the faculty." The Legislature couldn't say anything about that-"Limited the University's rights to set their own tuition rates or to raise them if they choose after the academic year has started." They've got that. Now, let's go on here a little further--"spelled out the number of out-of-state students the University could enroll"; the Legislature lost all control of that. And I think we've got a marvelous University System. I'm sure that we could get a lot more-"Provided for line-item appropriations under which funds given for research or expansion of a medical school could not be used for other purposes." In other words, the Legislature determined-the Legislature, for this appropriation, and the Supreme Court held-said, "You lost that." Now, "specified that no state money could be used to pay the salaries or employees of scholarships of students convicted of discrimination of campus-for destruction of campus property." The Legislature lost its power again. Then, here, "the three universities also won right to start branch campuses or to expand present branches without the approval of the Board of Education." Then, the state did not win on these two points. "The legislative authority to say what"-wait until I get my glasses here; can't read that big word-"construction funds shall be used for and its ability to order University to use a standard financial reporting system." That's the only thing they won on. Now, I know this Convention does not want to set up the fourth branch of government. I'm sure that you don't. We-I want to answer Mrs. Daphne Bugbee—pardon me, Delegate Bugbee-in regard to the Highway thing. This was as legitimate as anything in the world.

CHAIRMAN GRAYBILL: The Highway what?

DELEGATE MAHONEY: The Highway thing that she mentioned about, Mr. President—about she wanted to know how this thing-how the Highway—

CHAIRMAN GRAYBILL: I don't think we should discuss how the Highway complex got in.

DELEGATE MAHONEY: All right-all right. That's all right. She asked the question, and I was going to answer it.

CHAIRMAN GRAYBILL: Right. You tell her at noon.

DELEGATE MAHONEY: All right. (Laughter) Now, this is why I don't like to set up another branch of government here. I'd like to see-be sure. And if we-if you think the record is strong enough-but I don't think it is-that-be assured that it still remains under our state government all the way. Legislative-I don't think we'll get out from under the court, but I'm afraid that we're going to be stricken clean out from under the Executive under the way-this amendment. Now, I don't want to belabor a point. This is just my opinion, and I might be the last guy in here that's right.

CHAIRMAN GRAYBILL: Mr. Barnard. Do you want to move your amendment now?

DELEGATE BARNARD: Mr. President. Yes, please have the clerk read my amendment.

CHAIRMAN GRAYBILL: Very well. Will the clerk read Mr. Barnard's amendment as a substitute motion.

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion, to amend Section 11, page 6, lines 14 through 26, of the Education and Public Lands Committee Majority Proposal by deleting it in its entirety and inserting in lieu thereof the following words and punctuation: 'The government and control of the academic, financial, administrative affairs of the Montana University System shall be vested in a Board of Regents, who shall be selected as provided herein. The Regents shall have the power and it shall be their duty to govern the University System as a public trust in a manner consistent with the general laws of Montana. The Legislature shall pass no law which infringes upon, diminishes or transfers to another body any of the authority provided by this section. Said Board shall consist of seven members, appointed by the Governor to 6-years overlapping terms, subject to confirmation by the Senate under regulations provided by law. The Board shall appoint its Executive Officer and prescribe his term and duties. The Governor and the Superintendent of Public Instruction shall be ex officio nonvoting members of this Board.' Signed: Barnard." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. First, I would like to say that I don't claim any pride of authorship in this particular proposal. It is a compromise proposal worked out by the-an attorney at Bozeman. It's kind of a compromise between the two extremes. I would like to state, first, that I do believe that the Board of Regents needs sufficient authority to do a good job in administering the affairs of the University System. I believe, also, that they should be accountable to the Governor of the State of Montana and to the people. And I believe that this might accomplish it. In the first place, we get rid of that thing we're arguing about, the body corporate, which so many of us seem to be wondering about. And we set them up-the system up as a public trust-the Board of Regents--as having a public trust to administer the University System for the people of Montana. Secondly, we set them up subject to the general laws of the State of Montana-that would be to all of the laws affecting all of the other divisions of state government. We have a provision, of course, that-in here that would limit the Legislature from passing punitive laws directly against the University System. The balance-the last paragraph is almost-is identical to theproposalofthe Education Committee in Section Number 11. And I just introduce this as a subject for discussion and we-something that might be worked out—something--we might work something out of it that all of us could agree with and would be workable with the University System. That's all I have, Mr. President.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: May I, first of all, direct a few questions--one question, at least, to Mr. Mahoney and then react to Mr. Barnard, sir?

CHAIRMAN GRAYBILL: Yes, you may.

DELEGATE CHAMPOUX: Charley, I agree--where did Charley go?—where'd he go? (Laughter)

CHAIRMAN GRAYBILL: Let's skip his question, shall we'?

DELEGATE CHAMPOUX: All right. Well, I'm going to-for the record, I'm going to state what I have to say about it anyway. The committee does not want to set up a separate unit of government here. We feel, by the Rollins' amendment-I do-that it provides all kinds of controls, but I certainly don't think the Governor wants to hire and fire the University professors, one after another. Nor, I'm sure, the Governor-does the Governor want to, every Monday morning, sign requisition slips for paper clips. Now, the State Architect's office was the one that reviewed the University science building. Perhaps if there'd been provision for a local architect on the scene, even as one of his subordinates-this would have-that is to say, attached to the Board of Regents of Higher Education--we might have avoided that problem. In Michigan, the problem is that each unit of the University System is an independent unit, each unit. Now, what we want to do is to give the control to this body here, called the "Board of Regents of Higher Education", so we can stop this independent movement on the behalf of all of these different schools. That's what the intent of that is. Now, let's look at Mr. Barnard's amendment, if I may. The first problem we're going to have here, of course--and I hate to start this one all over again-and that's the business about what's a public trust? And, by gosh, I'm going to read Saxby's book before I debate that one. Now, another problem that's going to be is what's the general laws of Montana? Why that phrase? Can we define that as distinct to other laws-from other laws? Thirdly, once we've given this power-you see, they have to be consistent with the general laws-then we say "The Legislature shall pass no law which infringes upon, diminishes or transfers to another body." Now, is that going to be a general law, or what kind of a law is that going to be? And also, number four, the board shall appoint its Executive Officer--aren't we going to have this Higher Commissioner of Education there? Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. In the event we don't get this concluded before the noon hour-Mr. Barnard's first paragraph of his-comes from your Law Review that you all received of Lawrence Waldock, was considered extensively in committee. I don't care which one we finally go on and start delousing and get the thing so we can live with it, but you could all read your *Law Review* article during the noon hour if you want to find out about this. But I think Mr. Waldock, in his conclusion, said this-he said: "The quality of education in Montana will continue to depend more upon the caliber of the state's Legislators, Regents and general citizenry than upon the phrasing of this constitutional provision." And I think that's true. We can go with one or the other and get it worked over; but that is where it comes from; and you could read it over, if anyone's interested.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. It seems to me that essentially what Mr. Mahoney and Mr. Barnard both are saying is they want to make the Legislature the Board of Regents. And that is what the majority proposal is aimed at preventing-of giving the Board of Regents the authority to be the Board of Regents, giving the Legislature to control the Board of Regents via the appropriations and via the Legislative Audit. Now, I spoke on this subject at some length last Saturday and I pointed out to you that the AFL-CIO state executive secretary had given you a letter [in] which he has stated certain objections to the majority report and proposed a-what he called "a reasonable compromise". And that reasonable compromise is the exact wording of Mr. Barnard's proposal before you now. And I told you, then, the reason why the state AFL-CIO wanted that particular wording. They want it because they think it will leave the Legislature the Board of Regents, and they can't twist the arms in the legislative halls and put the pressure on the Board of Regents, which will make it possible-or easier, at least-for them to accomplish their ends in negotiating labor contracts with the Board of Regents or with the separate unit managements. Now, the basic question before us is still the same one that always has been, and that is, are we going to give to the Board of Regents the ability to manage the University System? Are we going to make them a real Board of Regents, with the power and the independence of the Legislature and of the Executive so that they don't have-so that the management of the University units do not have to run to some bureaucrat in Helena or have the Legislature specifying by line items and by particular instructions exactly how the University shall be operated, but shall have the authority to do that themselves. Let me give you an example of the sort

of thing that comes up. It comes up all of the time. Enrollments in the University are never predictable, and in particular courses, they are particularly unpredictable. And we run, constantly, into the problem that we have more students than we expected and we have to have more equipment to handle a class than we expected we would have to have. Particularly this is true in the sciences, where they use fairly expensive instruments. For example, one that came up fairly recently was a gas-if I can pronounce it; this is a little bit out of my field-well, a mass spectrometer, for example, and a gas chronograph. These are fairly expensive items which have to be used in the classroom and in the laboratory, and they didn't have enough. Now, they didn't have, as things are now structured, the power to go out and buy those things immediately and have them available so that the students could use them in this course. They had to go through the state Department of Administration and take 3 weeks to get them-3 weeks out of a 10-week quarter, which seriously interferes with the ability to do the instructional job that we want to do. If the Board of Regents is given the kind of authority that the majority proposes, this sort of thing wouldn't happen, because the board would then have the financial authority to take care of this kind of problem. Now, there are other kinds of problems which arise because of the dependence of the Board of Regents upon the regulations of the-specified by the Department of Administration—

CHAIRMAN GRAYBILL: Mr. Heliker, unfortunately, we'd like to record your remarks, and we need you to stop.

DELEGATE HELIKER: Unfortunately? (Laughter)

CHAIRMAN GRAYBILL: Unfortunately we need you to stop, because we'd like to record your remarks. How's that? (Laughter)

DELEGATE HELIKER: I accept the amendment. (Laughter)

CHAIRMAN GRAYBILL: Okay. Very well. The committee will be in session-the committee will be in order.

Mr. Heliker, you may proceed.

DELEGATE HELIKER: Mr. Chairman. To revert to the example that I was giving you of the scientific instruments, let me remind you that, should the University management by some-for some reason which is difficult for me to imagine, be extravagant in the use of this power, they will have to report. They are financially accountable. The Legislature will obtain the audit after the fact and can call them on the carpet when they next come before the Legislature. Now, the-another problem which has arisen, and as a matter of fact is a current problem, is the insistence of the Board of Administration-or the Department of Administration upon uniform classifications. Now, the fact of the matter is that the Board of Regents and the University administrations are in a much better position to determine the classification of University personnel than a Department of Administration. The Department of Administration turns out to have very strange ideas. For example, the functions of deans, who they want to throw in with such people as the heads of strictly non-academic departments. It seems to me, as a person who has been around higher education for a long time, that this is nonsense and that the University administration is in the best position to make these judgments. They should not be under the thumb of Mr. Saxby or other representatives of the Executive. They should have a measure of independence from them and must have a measure of independence from the Executive as well as the Legislature if they are to be able to do their job. That's the issue before us: are we going to make the Board of Regents the Board of Regents, or are we going to leave the Legislature the Board of Regents? The Legislature, I repeat, will-has and always will have plenty of power, because it controls the purse strings. It will have the power of appropriation and it will have the power of audit.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. The first thing-I'd like to correct one statement that has been made here on the floor that this particular proposal I introduced was a creature of the labor organizations. I would have to tell all of you that the labor groups were not even awareofit until I pointed this out. When I was discussing this and looking for something that might work as a compromise that people would accept, I pointed this out to them. And that's where they got their information from. It was nothing they dreamed up and thought of that would work from--work to their own advantage. I'm responsible for whatever information the labor groups got for it, and nobody else. I picked this up and worked on it for weeks trying to figure out if it might work as a compromise. I don't know if it will or it won't, but I

don't want any misunderstanding as to where it came from. Now, I would like to also point out something else. I've had some experience with the Purchasing Department downstairs, not just recently, but a few years back. I saw an instance where a switch from an outside purchasing group through the Purchasing Department saved the State of Montana a hundred and forty thousand dollars. It hasn't been too long ago. And yet, I know that the Purchasing Department doesn't demand that every item that any institution buys goes through that department. There are many things that they buy that are general items that they can buy locally at a better price and get them when they need them. They're not as ironclad as a lot of people here would like to let on like they are. I've worked with the Purchasing Department of the State of Montana and I've worked with the Purchasing Department of the federal government. They all work about the same. Where there's a need-a real need for immediate purchase and-there's no questions asked. When there's time to go through the Purchasing Department, that's what they like to have you do. And it saves you people money every time they do it. And just think of the one item-and it wasn't too big an item either-a saving of a hundred and forty thousand dollars that I saw not too long ago right through the Purchasing Department downstairs. That's the reason that I think we should have some connection with the general government of the State of Montana with the University System. Again, I want to state that I think the Board of Regents needs authority. They need sufficient authority to do a good job in a University System, but we don't want to sit them out on an island by themselves, completely nonresponsible to anyone. And that's the thing I don't want to accomplish. I don't, also, want to subject them to punitive laws by the general-Legislative Assembly, and that's why that the statement about the general laws of Montana is in here. There is some otherwording in here that perhaps doesn't do any good or any harm. I'm not overly proud of the proposal, but I still think it's probably the best one that we've got so far.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. We've got three proposals before us. There's not too much difference in any of them. And the most time has been taken, really, on Mr. Rollins'. I think the same thing could be done with the majority. But our Chairman, and I concur with him, thinks this is an adequate substitute. I think the work has been done on Mr. Rollins' in any language change, so I would recommend that we proceed, at this time, by defeating Mr. Barnard's, substituting Mr. Rollins', passing it, and then go to work on the language of Mr. Rollins'. And if you want to, put in Mr. Rygg's language and test it and Rollins', or whatever you want to do, and then we'll make some progress. Because I think we're stalemated here now and going in a circle.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Barnard's proposal?

Mr. Barnard, do you want to close again?

DELEGATE BARNARD: I'd like to close this again by stating that, if there's-some other compromise is going to work out better, I'm not going to push this. I'm just looking for what's the best for the Board of Regents and the University System of the State of Montana and the people.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Barnard's amendment, which you all have before you, the purpose of which is to substitute two paragraphs in exchange for the Section 11 of the majority report. We'll have a roll call vote. So many as shall be in favor of Mr. Barnard's proposal, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim		Absent
Anderson,	J.	Nay
Anderson,	O.	Nay
Arbanas		Nay
Arness		Aye
Aronow		Nay
Artz		Excused
Ask		Nay
Babcock		Nay
Barnard		Aye
Bates		Nay
Belcher		Nay
Berg		Nay
Berthelson		Nay
Blaylock		Nay
Blend		Nay
Bowman		Nay

Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Absent
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Absent
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 3 delegates voting Aye, 90 voting No.

CHAIRMAN GRAYBILL: Very well, the issue now is back on Mr. Rollins' amendment, as amended. You remember we put in the words "supervise, coordinate and manage" we put in the words "to appoint a Commissioner of Higher Education" in place of "Executive Officer". We left out any length of term, and we took out the sentence, "The Regents shall present a unified budget request to the Legislative Assembly", since that was already in the other one in Section 9. And we took out the word "Legislative" before "audit", in the last line. Is there further discussion of Mr. Rollins'?

Mr. Foster. First of all-Mr. Holland, the Chair will recognize your presence. And if you voted on the last one, the Chair will note that you were here before the last vote was taken, so you should have voted.

Mr. Rollins-or, I mean, Mr. Foster; excuse me.

DELEGATE FOSTER: Mr. Chairman. Would Delegate Champoux yield to a question?

CHAIRMAN GRAYBILL: Mr. Champoux?

DELEGATE CHAMPOUX: I'll yield.

DELEGATE FOSTER: Mr. Champoux. I ask you this question because this same phrase was in the original majority proposal. On line 6 of Delegate Rollins' proposal, we have the phrase "which may be assigned by law". Now, I want to clarify, for my own purpose and also for the other delegates. Now, it would be my interpretation that this would refer to the other public educational institutions; and my question would be, then, that that would mean strictly other public educational institutions and would not refer to the Montana University System. It would also be my interpretation that if they could assign these educational institutions under the Board of Regents, that they could also remove them. Now, is this your interpretation of that wording?

DELEGATE CHAMPOUX: Well, to begin with, as I said in my opening remarks, this was to take care of the community colleges. Now, this is the terminology that's used in the statutes that puts the community colleges presently under the Board of Regents. Now, if your concern is public educational institutions, by that we mean, very specifically, those in the higher education area, because you'll notice that this section in the majority proposal is called "Board of Regents of Higher Education"; and we would hope that Style and Drafting would keep it that way. Now, as to—this is to provide flexibility. As to whether they could remove them, I would say no. Well, wait a minute; no. It would have to be yes-it would have to be, yes-because then the flexibility would be there. They could move them either back and forth. That would be in answer to Mr. Driscoll's question earlier.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. It was my intent that it be if they were able to assign them, that they could also reassign them. Now, I would just provide this information for Style and Drafting, in case they wanted to clarify the wording in that area. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. President. Would Delegate Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis, will you yield?

DELEGATE DAVIS: I yield.

DELEGATE JOHN ANDERSON: Carl, I'm concerned about the second section in-or sentence, rather, in George Rollins' proposal, and I know you are also. My concern is the same as you mentioned briefly here a while ago in regard to Western Montana College. It seems to me that this proposal gives delegates full power, responsibility and authority to supervise, manage and control the Montana University System. And the thing that concerns me and bothers me somewhat is this, perhaps, could be adversely to a college like Western-so I'd like to have your thinking in regard to it.

DELEGATE DAVIS: Well, I'm glad you brought that question up, because it not only concerns Western, it concerns any of the minor units of the University System. There's a long history of the two major branches advocating closing all the rest of the system, for years. But I think we're past that point now, Mr. Anderson. I think even with the growth of community colleges and our vo-tech, I think we've turned the corner on that centralization. And I think that they would be adequately protected under this article at this time. However, if Mr. Rollins' prevails, I'm going to suggest a compromise-not at this time, but we'll wait till we vote on Rollins'-to provide that control of the academic and administrative be vested in the board and that the financial should be prescribed as-and regulated by law, because, I think you're, in fact, that way anyplace wherein I think this would possibly be an acceptable compromise, at least one that we can test the air on. But I think—in answer to your question, I think that all the units of the University System will have to be administered as they presently exist, without some major action by the Legislature or by the people in closing any of them. Thanks for asking the question.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. Will Mr. Rollins yield to a question?

CHAIRMAN GRAYBILL: Mr. Rollins?

DELEGATE ROLLINS: Yes, sir.

DELEGATE BLAYLOCK: George, under your statement here, "The Regents shall have full

power, responsibility and authority to supervise, manage and control the Montana State--or Montana University System"-Now, under that language, do you see it that the Board of Regents then could, say, put in regulations as to what course that a student would have had to have followed in the secondary schools in order to be admitted to the University System? For instance, could Montana State University say, "You cannot enter this school unless you have had, say, algebra, geometry, chemistry"-whatever they might-and thus indirectly dictate the curriculum of the secondary schools?

DELEGATE ROLLINS: It could, I suppose; but that might be one of the values of another board, which would consult with the Board of Higher Education on such matters. The entrance requirements, I think, have usually been set up by the Board of Regents, sometimes as prescribed by law, perhaps. They could, I suppose, alter those; and it would indirectly influence the curriculum in the lower schools.

CHAIRMAN GRAYBILL: Very well. If there is no further discussion, the issue arises on Mr. Rollins' amendment, as amended. We'll have a roll call vote, I suppose. Very well. The section as amended, at the moment, says-and Mr. Davis is quite right that once we've adopted it as Section 11, it's still open to amendment-"The government and control of the Montana University System shall be vested in a Board of Regents, who shall be selected as provided herein. The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the Montana State-no, the Montana University System and shall supervise and coordinate other public educational institutions which may be assigned by law. Said Board shall consist of seven members, appointed by the Governor, with overlapping terms, subject to confirmation of the Senate, under the regulations provided by law. The Board shall appoint a Commissioner of Higher Education and prescribe his terms and duties. The Governor and the Superintendent of Public Instruction shall be ex officio nonvoting members of this Board. The funds and appropriations under the control of the Regents shall be subject to the same audit provisions as other funds of the state." So many as shall favor that amendment, please vote Aye; and so many shall oppose, please vote No on the voting machines. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Absent
Anderson, J.	Aye
Anderson, 0	Aye
Artanas	Aye
Arness	Aye
Aronow	Aye
Artz	Excused
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Absent
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Aye

Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 82 delegates voting Aye, 14 voting No.

CHAIRMAN GRAYBILL: 82 having voted Aye and 14 No, that form of Section 11 passes. Are there other matters?

I see, Mr. Davis, that you have a matter before the Chair. Do you want it read?

DELEGATE DAVIS: If you would, please.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read this for Mr. Davis.

CLERK HANSON: "Mr. Chairman. I move to amend Rollins' Section 11 of-line 4, following 'academic and administrative affairs'."

CHAIRMAN GRAYBILL: Mr. Davis, I think you've got to explain that to us.

DELEGATE DAVIS: Mr. President. At the end of line 4, it would then read: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic and administrative affairs of the Montana University System."

CHAIRMAN GRAYBILL: "Academic and administrative", is that what you added?

DELEGATE DAVIS: Yes, sir, "academic and administrative". And then, after the end of the second sentence, then we would add the language "power and duties over financial affairs shall be prescribed and regulated by law." In other words, that's the Rygg amendment, or a portion of it.

CHAIRMAN GRAYBILL: Allright, just a minute. All right, if you have your Rollins' amendment before you, at the end of line 4, you want to put an asterisk and add this sentence-this language, "academic and administrative"-so that it reads: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic and administrative-"

DELEGATE DAVIS: "Affairs".

CHAIRMAN GRAYBILL: "--affairs of-"

DELEGATE DAVIS: "-the Montana University System."

CHAIRMAN GRAYBILL: "-affairs of the Montana University System." And then, which is the second sentence?

DELEGATE DAVIS: The second sentence is "The Regents"—

CHAIRMAN GRAYBILL: -shall be subscribed by-they "shall-supervise and coordinate other public institutions as may be assigned by law." Then we'd add another sentence. "Powers and duties over financial affairs shall be prescribed and regulated by law." That's another asterisk after the word "law", on line 6. Very well. Mr. Davis may have that amendment. I'll repeat it once more. "The Regents shall have full power, responsibility and authority to supervise, coordinate, and-manage and control the academic and administrative affairs of the Montana University System." And then we add a sentence after the sentence-the middle sentence there--which says: "Powers and duties over financial affairs shall be prescribed and regulated by law."

Mr. Davis.

DELEGATE DAVIS: Mr. President. I think this is really the heart of the matter-is how much control does this body want to give the University System? So let's face it head on, issue by issue, and vote and determine it. The next amendment of Mr. Rygg's provides that powers and duties over both financial and administrative affairs would be regulated and prescribed by the Legislature. This is one step above that and provides that only financial affairs will be. It seems that we all believe in academic freedom and that we don't want the Legislature prescribing what courses are going to be taught, who's going to teach them. And I think they should have the control over the hire and firing of their personnel, and not be subjected to coming to Legislature. Now, a lot of you feel they should have financial control, too. However, I suggest that that might be an area of compromise, because the Legislature, in fact, has financial control, regardless of what you put in there. They still are going to have to appropriate the money, and if they're not satisfied with the way you're doing it, they're still going to make you talk turkey to them. So, I think this may be a compromise where we'll start meeting these issues head on and find out which route we want to take.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: As Mr. Davis knows, when he puts this in, he just goes back to the old Constitution and the old problem again. And he's been listening to me for 2 months, but I haven't convinced him. When you get-if you look at the old Section **11,** it's been given general control and supervision. Then, it's been taken away from them in the second paragraph. And if you put the financial-all the financial controls as prescribed by law, you're doing that very same thing again. After all, if you're sitting in here in this assembly and somebody doesn't like a professor-and it's happened many, many times before-you simply delete his salary from the general appropriation. Isn't that one way to control the faculty? What we're talking about here-in terms of finances, if after the State Board of Education has brought this budget to the Assembly and the Assembly decides, you know, how they want to—the amount as to how much they want and the specific details, it'll be a detailed budget. Then, when it goes back, the University should have internal control of their financial affairs in terms of hiring and firing and this sort of thing. They're going to be using central purchasing. They would want to, since it's the cheapest way. But this simply-this is what the whole argument has been about this morning. Mr. Davis knows it. If you put this in, then you've undercut the whole thing.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I'm quite happy to support Delegate Davis' substitute motion, and I think that's the direction we were trying to go to start with.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I rise to oppose Mr. Davis' amendment. I think our Chairman, Mr. Champoux, has stated it very well. This says we want the Legislature to be the Board of Regents. And that's been our problem for many, many years. We need some kind of independent, decisionmaking authority. All of us sit on boards of various kinds. I happen to serve on a hospital board, and seven to ten people can make decisions and work and a hundred people have a hard time. They can make the overall appropriation, but they need the local-or, rather, the day-by-day kind of attention that a System and its Regents can back up. I would oppose Mr. Davis' amendment.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I rise to oppose the amendment. I think Delegate Davis suggested that the Legisla-

ture makes appropriations anyway, and that's true. But I'm suggesting that the amendment says much more than that-that they've only had the fiscal control which the Legislature is willing to give. And I can't help feeling that there would be very little give, and we're back where we started from.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman. I, too, rise in opposition to the motion by Delegate Davis. I think that it would be completely wrong for us to seek to control the academic and administrative affairs of the University System and that the Constitution should be free of that language. I will not speak on the rest of it, but I intend to oppose the whole thing since that's in there.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: It seems to me that there's a little confusion here. The amendment provides that the Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic and administrative affairs of the University System. Now, the present Constitution--my learned Chairman of the History Department seems to think that says that in the present Constitution, but it says in the present Constitution they "will have general control and supervision subject-as prescribed by law" as to all three. Now, this limits the Legislature to-this gives you your academic freedom that you all want. This will give you your administrative freedom that you all want, but it's going to test the air as to whether this body is going to give you your financial freedom. And that's-I'm trying to get to the heart of it-and that's the thing we want you to do. Get up and take sides, and then we can vote, because that's really the only issue you have left here unless there's some in the body that don't even think you should have academic and administrative freedom.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm going to have to answer that again. Now, if you talk about "as prescribed by law", you go back to that old Constitution. That also included, Carl-and you know it-the financial affairs. And this is part of the problem we're having, total financial control. We're looking for internal control. If you say-to a degree-if you say that the Legislature is going to completely control the purse, you know that the power of the purse controls everything. Now, you said you want to get on, you're going to get to the heart of it, and so forth. All right. You also said that Mr. Rygg has got another proposal for an administrative-control over the administrative, but I submit if you give the financial and the administrative control, then you've lost control completely to this Board of Regents and you've got the State Legislature as the Board of Regents.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I know that this body still believes in law and they still believe in the legislative system. And let the Legislature determine-I think that it's terrible if we go out here, and all of a sudden, we've got another group sitting out here. I-now-on this amendment, you see-and I think he said "administrative"-away goes the Purchasing Agent. I think he'll be out of there. And I think, also, that you're going to find that the budgeting-as far as the Budget Director-and the Governor trying to get a balanced budget. And he's suppose to-1 don't know what-1 don't remember what the new Constitution says, but in the old one, he had to present a balanced budget to the Legislature. Now, we come with this group, and all of a sudden, the Governor's got it and they come in here and say, "Well, now, here's what we want; you draw your budget, Mr. Governor, to the way we'regoing to get ours first." Now I-let's please get the University System back under law. Just a keen way of saying the University has-the Legislature's-to me is a supreme power in government. This is the only thing that can initiate; he can-they can initiate. The Governor can't initiate. He can send up, but the only person that can get it is the—introduction of a bill is on the floor, if it's a one-house or a two-house Legislature. So, all I'm trying to do is to just see that this one department, these six institutions located in the State of Montana—and they're great institutions-but let's just get them back under the rest of the government. We don't want them sitting out here to the side. That's all I want. And I question Mr. Davis' point of the Purchasing Agent. The Highway Department has to be under Purchasing. Everybody else is under Purchasing. The great institutions of the State of Montana are under Purchasing. Well, let's get these people under Purchasing. Then I think that we have those things that-let's get them under—all under one law, and Montana will be under one system. Now, in answer to this that I think Mr.

Champoux—and I-in answer to one question that he mentioned about this-the presidents'-the salaries that they could cut out, the Legislature-the Congress had that determined for them, I think, in two or three cases. They cut a man's salary off and said they would abolish the department, and the Congress-the Supreme Court of the United States said they couldn't do it. So I think that that is handled. Now, I know that we all hate to live under law. I'm sure that each one of us would like to break a law if we could, but please, let's all get under one law in the State of Montana.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I rise in opposition to Mr. Davis' amendment. And, Mr. Mahoney, this--we're not taking the University System out from under the law. The Board of Regents, of which the Governor is a member, is not going to submit a budget that will make it impossible for him to submit a balanced budget as prescribed by the Constitution. And I don't-I think we should give the University System its right to manage its financial affairs. I oppose Mr. Davis' amendment.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I'd like to ask Mr. Davis a question, if I may.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: (Inaudible)

DELEGATE RYGG: Mr. Davis, what do you feel you removed from there when you took the word "administrative"-Do you feel that had to do with purchasing and architects and things like that, or what does it mean?

DELEGATE DAVIS: I don't know. I think it means the same thing to me when I took it out as you had it in when you put it in. (Laughter)

CHAIRMAN GRAYBILL: Can you be a little more specific, Mr. Davis?

DELEGATE DAVIS: Yes, sir. In-Mr. Rygg's proposed amendment says, "Powers and duties over financial and administrative affairs shall be prescribed and regulated by law." I want the University System to have the power to administer their own affairs. I don't want legislators to be expert educators during the period of time that they gather here, so I want them to have the authority to administer their own affairs. Whether it includes purchasing, I think that will be up to the Board of Regents to make that determination. And we're going to have an appointed Board, confirmed by the Senate. I hope they'll be capable, qualified people. If they don't, the whole system is not going to work anyway, whether they've got it or whether they haven't.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. Davis' amendment which has the-we'll have a roll call-which has the effect of adding the words "academic and administrative affairs of the Montana State University Systems"—so that it says: "The Regents shall have full power, responsibility and authority" and so forth "over the academic and administrative affairs". And then, put in another sentence: "Powers and duties over financial affairs shall be prescribed and regulated by law." So many as shall be in favor of Mr. Davis' amendments, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim .Absent
Anderson, J. .....Aye
Anderson, O. .....Aye
Arbanas Nay
Arness .....Aye
Aronow .....Aye
Artz Excused
Ask.. Aye
Babcock .....Aye
Barnard .....Aye
Bates .....Aye
Belcher Aye
Berg ..... Nay
Berthelson Aye
Blaylock .....Aye
Blend .....Aye
Bowman..... Nay
Brazier Nay
Brown ..... Nay
Bugbee..... Nay
Burkhardt ..... Nay
Cain..... Nay
Campbell Nay
Cate .....Absent

Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann .. .. Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland, ... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe .. .. Nay
Murray .. .. Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins .. .. Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks. ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Absent
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 40 delegates voting Aye, 52 voting No.

CHAIRMAN GRAYBILL: 52 delegates having voted No and 40 having voted Aye, Mr. Davis' amendment fails and we're back considering Section 11.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the Committee recess until 1:45 p.m. this day.

CHAIRMAN GRAYBILL: The committee-motion is to recess until 1:45 p.m. today. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:37 p.m.--reconvened at 1:50 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. The journal may show the presence of Mr. Artz. Very well, ladies and gentlemen of the committee, before lunch we were still debating Section 11 and we had adopted, tentatively, Mr. Rollins' amendment to replace the committee's majority report, and as you know, Mr. Rollins' language was amended in several specifics.

It's still open to amendment.

And, Mr. Rygg, I see you have a new one up. May we read that one?

DELEGATE RYGG: (Inaudible)

CHAIRMAN GRAYBILL: Very well, we'll start with Mr. Rygg's new amendment. Now, it's different in some respects from the one you have printed, so you'd better listen and see what he says.

CLERK HANSON: "Mr. Chairman. I move to amend the Rollins amendment, in line 4, by adding, after the word 'the', the following words: 'academic afffairs of the'-"

CHAIRMAN GRAYBILL: Does that mean "control of the academic affairs of the"-is that what it says?

CLERK HANSON: Yes, sir.

CHAIRMAN GRAYBILL: Is that all?

CLERK HANSON: "-and further amend, in line 6, after the period after the word 'law', the following words and punctuation 'Powers and duties over financial and administrative affairs shall be prescribed and regulated by law.' Signed: Rygg."

CHAIRMAN GRAYBILL: Very well, this amendment is similar to Mr. Davis' amendment. You remember, we discussed that before lunch and Mr. Davis added the words "academic" and "administrative". Now, Mr. Rygg would add just "academic", on line 4, so it would read this way: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic affairs of the Montana University System"-and then he would add, at the end of the second sentence, the language which is underlined in the middle of his proposal that's on our desks, namely: "Powers and duties over financial and administrative affairs shall be prescribed and regulated by law"-the effect of Mr. Rygg's amendment being to place in the hands of the Legislature both the financial and administrative but leave the academic in the hands of the Board of Regents. Is that correct, Mr. Rygg?

DELEGATE RYGG: That's correct, Mr. Chairman, and I think you've explained it well enough. It's just-the difference between Mr. Davis' amendment is that I have limited it to academic affairs and, of course, increased the powers of the Legislature over the administrative affairs, so I don't want to belabor it. I think we all know what it's about. It's just another chance to vote on it a different way. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: What we have here, 50 percent of it we have already voted down this morning. As a matter of fact, this is even more restrictive than what Mr. Davis offered, because now we're not only going to deny them the right to spend their money internally; we're also going to administer it-decide what kind of paper clips we're going to buy, what kind of pianos, and what have you. The same arguments that we used against Mr. Davis' amendments apply here, in that we go back to the old Constitution where you give them powers and then you deny it. There isn't any difference in this with that amendment than what we have presently, and you're going to have the same problems. I object to the Rygg amendment, and I oppose it.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Toole.

DELEGATE TOOLE: Well, I don't—Mr. Chairman, I don't see how we can grant them financial powers and take away administrative powers. It seems to me we put them in a hopeless situation. I just don't see how we can--we're just in an absolute box if we do that, so I oppose the Rygg amendment.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well.

Oh, Mrs. Speer, yes.

Mrs. Spew.

DELEGATE SPEER: I rise to speak against Mr. Rygg's amendment. I spent 37 years at the University of Montana as a documents librarian, and for about 15 or 20 of those years, I was in charge of the binding. I-In that experience I learned what the inefficiency and the cost to the state was of placing the University System under the administrative and financial regulations of the Legislature. This meant that the contracts for

the binding had to be submitted each year to the Purchasing Agent and then were awarded to the lowest bidder. We spent-or I spent many hours each year in preparing estimates of the costs that were involved in changing binderies. This is a sort of an internal matter, but I just explain that this involved matching colors to a new bindery. It involves taking rubbings of the backs of the volumes in order to insure that you had the same kind of lettering, the same size, and the same placement on the back. If the Purchasing Agent then, awarded the contract to the lowest bidder, it didn't make any difference how far away or how long a time the volumes were away from the library and not available for use. Upon their return, then, to the library we—if we had to change to a new bindery, we had to spend the time in collating; that is, in going through the volumes to see if the binder could be relied upon to see that every page was there and was not torn or mutilated or missing. I cannot recall the amount of money involved in the binding budget of the University Library, but it was a very substantial sum, and there was a great deal of cost that was incurred in the changing of binderies every year. It did not always occur every year, but we were never-be--able to place the binding-renew the contract with the same bidder without going through all of this bidding procedure.

CHAIRMAN GRAYBILL: Very well, is there other discussion?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President, I'd just say that if we are ever to have a new day for higher education in this state, we must defeat this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: I think that the sense of this body is to provide some degree of insulation for the field of higher education from political pressures. And for this reason, I resist the amendment by Mr. Rygg. I think that this insulation will not guarantee excellence in the field of higher education, but I think we have a better chance if we do provide it. Thank you.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I would just like to relate a story about budgets and university presidents. Not too many years ago, some of us were on a committee for the support of higher education; and at the meeting that we had prior to the adoption of the budget, it was sug gested that, in view of the financial status of the state, that perhaps the budget should be trimmed. One president said, "Well, we'll trim it, but I'm going to have some fat in it." After the Legislature had concluded its findings and it was-had-went over, supposedly with a fine-toothed comb, the President came back to the school, after having given statements that the University had-or the institution had been robbed, you might say, by the Legislature, he came back and, in an address to the faculty, explained that despite the cut, he was able to provide an increase of 13 percent in salaries for everybody all across the board and that he had ample money to operate the University. I think that there needs to be some supervision among the universities.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Rygg's amendment to add to the Rollins amendment the words "supervise, consolidate"-"coordinate"-rather-"manage and control the academic affairs of the Montana University System", and then to add this other line: "Powers and duties over financial and administrative affairs shall be prescribed and regulated by law." So many as shall be in favor of that amendment, vote Aye on the voting machines; so many as shall be opposed, vote No on the voting machines. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Nay

Bowman ..... Nay
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
cross ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Absent
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Siderius ..... Nay
Simon ..... Aye
Schiltz ..... Nay
Skan ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Absent
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 38 delegates voting Aye, 58 voting No.

CHAIRMAN GRAYBILL: 58 having voted No and 33 having voted Aye, the motion is defeated; and we're discussing the language of the Rollins' amendment, substituting it for Section 11 of the majority report.

I take it, Mr. Rygg, your other amendment can be withdrawn?

DELEGATE RYGG: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Toole, I take it you don't want to make your amendment?

DELEGATE TOOLE: (Indicating the negative)

CHAIRMAN GRAYBILL: Okay. Members of the committee, you have before you on the recommendation of Mr. Champoux that when this committee does arise and report, after having had under consideration Section 11, as amended, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Do you want a roll call vote? Mr. Champoux likes roll call votes on this. All those in favor vote Aye on the voting machines; all those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask., ... Nay
Babcock ..... Aye
Barnard ..... Nay
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock.. ..... Aye
Blend ..... Aye
Bowman., ... Aye
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. .. .. Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield., ... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Absent
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay

Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey Aye
Mr. Chairman .Aye

CLERK HANSON: Mr. Chairman, 68 delegates voting Aye, 25 voting No.

CHAIRMAN GRAYBILL: 68 delegates having voted Aye and 25 having voted No, Mr. Rollins' substitute for Section 11, as amended, is adopted. Will the clerk please read Section 12.

CLERK HANSON: "Section 12. State University Funds. The funds of the State University and all other state institutions of learning, from what other--whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties, shall be devoted to themaintenance and perpetuation of these respective institutions." Mr. Chairman, Section 12.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman, I move that when this committee does rise to report, after having under consideration Education and Public Lands Committee report, Section 12, that the same be passed.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: This is identical to the old section in the old-in the Constitution; and it has served real well; and there have been no problems with it; and I don't see any use of belaboring the point, arguing one way or the other about it, so I close.

CHAIRMAN GRAYBILL: Is there any discussion of Section 12, State University Funds?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you, on the recommendation of Mr. Barnard that when this committee does arise and report, after having under consideration Section 12, that we recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. Now, if you'll turn to page 49 in your booklets, you'll see the Public Lands Article. The majority report on the Public Lands Article is on page 49. Will the clerk please read Section 1 of page-of the Public Lands Article.

CLERK HANSON: "Section 1. Public Land Trust-Disposition. All lands of the state that have been or that may hereafter be granted to the state by Congress and all lands acquired by gift or grant or devise from any person or corporation shall be public lands of the state and shall be held in trust for the people, to be disposed of hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or inherent-interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any land which the state holds by grant from the United States, in any case in which the manner of disposal and minimum price are so prescribed, be disposed except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the Board of Land Commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area." Mr. Chairman, Section 1, Public Lands.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I move that when the committee does arise and report, after giving dueconsideration thereto, that we do adopt Section 1 of the Education Article on Public Land Trust.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. This article was jointly assigned to the Education Committee and the Committee on Natural Resources, and we met jointly with-or representatives of both committees met, reviewed

the provisions of this article, and we agreed to present this proposal in this fashion for your consideration. I'll not reread it, but all but the last sentence thereof is identical to the first sentenceof Section 1. We have deleted the balance of the first section and given the Land Board power to classify lands as provided by law. We have deleted the statutory matter in-or what we felt was statutory matter in Sections 2 and 3. Since you all did so well on the Education Article and we got through, I trust I could have a couple of minutes on this article, because it's extremely important. I don't think it would be improper, I trust, to thank and give credit to C. R. Anderson, a great educator in our state, who contributed a lot of information on the public lands, which I used, which will come out in a book of his that's soon to he published. I also don't think it would be improper to put in the record our thanks to the members of our committee: Mr. Bruce Sievers, our research analyst in the Education and Public Lands Article; Sally Watson, our secretary; Geoffrey Rupp, Maureen Callaghan, Nancy Lien and John Murphy. These people provided-and the other interns on the staff-a great contribution to this Convention, and we're very grateful for what they have done, and I'd like the record to show that. I want to call attention, and I trust that all you historians and people who have heard this before will kindly bear with me for those who haven't, but it seems like it should go into this thing at this time, because no one has known what a public trust was in this Convention too much, and now is the time when we are going to talk about a public trust. We had some people in this country, years ago, who understood public trust. It went 'way hack in time, and I think it's worth consideration that the Land Ordinance Act of May 20, 1785, reserved lot 16 of every township for the maintenance of public schools within the territory, and the State of Iowa, in 1802, received Section 16 in trust for schools. In 1848, when Oregon became a territory, it was granted Sections 16 and 36 in trust for education, and the Organic Act for Montana of 1864 reserved Sections 16 and 36 for the public schools. Our Enabling Act, in 1889, in Section 10 thereof, granted Sections 16 and 36 to the State of Montana in trust for the support of common schools, and when we accepted the Enabling Act by Number 1 ordinance appended to the Constitution, we adopted-we accepted this trust, under certain terms and conditions which provided that we couldn't sell the lands for less than $10 per acre, and it provided for certain classifications. It also provides that we could exchange the land and said that they shall be public lands of the state and shall he held in trust for the people to he disposed of "as hereinafter provided". Now, the Constitution-the Enabling Act says that we could sell and lease the land, and our Constitution had a similar provision. The Enabling Act was amended by Congress in 1932, which gave us permission to exchange lands for other lands, public or private, of equal value or as near as may he of equal value. Now, our Constitution has never been amended since we were permitted to do this by the Enabling Act; hence, we have placed in this section the very small word "exchange", which is a real nice Constitutional, legal thing to do, and very simple to explain. Now, another thing about the public lands-you should know that the Enabling Act originally excluded lands that were mineral-hearing. This, too, was amended in 1921 and let us get mineral lands, hut those old people that placed this in trust at that time said you have to keep all your oil and gas. It's not optional; whether we sell the land, exchange them or otherwise, we retain the oil and all the mineral rights. So we therefore have a hundred and eighty-seven years of continuing concern by our lawmakers for education, and we have a hundred and eighty-seven years of the keeping of a great public trust. It states in your comments how well the lawmakers throughout the years have looked after this trust, and it has been discussed here on the floor that we have in excess of four and a half million acres of land in the trust; we have almost $3 million in deferred payments from sales-not annually, however-total; and we have close to $53 million in the permanent school fund. So, that accounts for the first step in our change. Now, the second step. The 1971 Legislature passed, by House Joint Resolution 32, for the Constitutional Convention to amend Section 17, Sections 1 and 2, to permit classification other than the four classifications that were in the original Constitution; and the main idea of this was so we could have classification for multiple-use purposes-and multiple-use, of course, will answer a lot of questions that have been in the minds of, maybe not you folks, hut the public, as to why more recreational use cannot he made of these lands. They have been constitutionally classified under agricultural, grazing, and so forth, but there was no other classification, and so we have deleted that to leave it statutory, and this was met with the unanimous approval of both the Natural Resources Committee and the Education and Public Lands Committee and should, then, permit the State Land Department to go ahead and classify these lands as to what natural

resource benefits they should have. So, we merely deleted the classification restrictions and left it, then, to the Legislature. I might comment, just briefly, on another matter that was brought up on the floor-and I promised to comment on it atthat time-and that is as to whether the Legislature is trying to make the best use of these lands or obtain the greatest return for them-the lands. They have developed a policy to improve the state lands, and the Legislature has formed some objectives to improve the lands, and their objectives are to improve-to develop and improve state lands in order to promote increased returns to the trust or to restore the land to its productive potential, to place tracts of state land in their highest and best use and derive greater income for the support of the trust. And among the other provisions and policies adopted is-the conservation of wildlife habitat will be a consideration in any project undertaken. Every effort will be made to preserve existing habitat, and whenever feasible, plans for increased cover and feed will be incorporated in the projects. So the State Land Board is on a program, right now, of trying to improve these state lands to make a bigger yield and a bigger return. In reviewing this with the Land Department, our committee was provided with a summary of their resource developments, which showed with graphs and charts the expenditures they were making on the lands, what returns would be made to the State of Montana after these developments were made. So it would be our committee's recommendation to this body to adopt the committee report as it is here. Thank you.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I would like to state that I am very happy that Mr. Davis chose to define the term "public trust"; I wish he had done it 13 days ago. I know what the term means, and I think most everybody in this chamber knows what it means. It was accepted almost a century ago; and I submit that if it was a good idea then, it's a good idea today; and so I support Mr. Davis in his explanation here as far as the school lands are concerned. I would also like to say that if there were those in this Convention who did not know the meaning of the term, I submit it was because they chose not to know it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. Chairman, may I make just a comment before I-then permission to ask Mr. Davis a question?

CHAIRMAN GRAYBILL: Very well.

DELEGATE SIMON: In the exchange of—

CHAIRMAN GRAYBILL: Mr. Simon, speak up, and then we'll turn the volume down and cut out some of the music. Speak up good and loud.

DELEGATE SIMON: In some of the conditions of the exchange of land, I have recently, in the last 3 years, had some experience. Now, this is not state lands; this was federal land-1 mean, Forest Service land-but the State of Montana could get into the same condition. In the area at Red Lodge, we have a ski run that I helped start up there. Many years ago, on this same mountain there, was the Anaconda Company owned four pieces of land. Now, the land that they owned was cut over, and the timber was taken out, and then that grew up over the last 60 years. When we chose to put on the ski run at Red Lodge, we were in the drainage valley, where-the only place you could put your terminal. Four of these pieces of land were available, and the ski run bought one at the bottom and one at the top, just at the right of-a quarter of a mile from where they might land. The land at the top was not available for-and it wasn't any good for anything but just growing timber. It was in the Forest Service. The land at the bottom, where we owned the land, did not exactly set where we put our terminal. Now, we have about--with a road up there, the whole ski area is about a million dollars now. We went to the Forest Service--and this is where your exchange of lands could be really important-we went to the Forest Service, because our terminal did not set on our own land, and we were only a few feet from it. We had 80 acres of very fine land. We said to the Forest Service, "We would like to trade you 800 acres that's the only private land beyond what we could use in the ski run, 480 acres next to the ski run, the hundred and sixty acres on top, which was owned by the ski run, and some land we had down below, if we could get the land which was where our terminal sat. Now, the reason I'm bringing this up, you have a paragraph in here, Mr. Davis, that has to do with exchange and sale of public lands. Now, the state could get into this same situation. We went to the Forest Service, they went to Missoula, and Missoula went to the Washington, D.C.—and we offered them 1,488 acres of land, plus land we owned down below for exchange, a hundred and sixty on top, all sur-

rounded by the Forest Service, at the price of the land before the ski run went in there. Part of the land next to it, I paid $2.35 an acre; it was just mountain. When we put in the ski run and attempted to make the change where we could put our own terminal on our own land and provide the Forest Service with-we only wanted 40 acres—1,488 acres surrounding the run, this is what we got, and this is what I want to bring to your attention. After 2 years of going back and forth and meeting with the Forest Service about 15 times and then going back, here's what happened, in brief. Each time we met with the Forest Service—this could happen to state lands-each time we met with the Forest Service, they came back one step at a time and said, "The land at the bottom of the mountain has now changed in value." Why did it change in value? I said, "It isn't any different from the land 16 feet from it," and they said, "Oh, yes it is. You have now put almost a million dollars, including the road in this area, and the land that your ski terminal sits on is now worth"-listen to this-"$2,000 an acre." They refused 2,000-w 1,488 acres for 40 acres that was all the same kind of land before the ski run went in. And I would caution you, in your last sentence, having had this difficulty and being right in the middle of it from Washington, D.C. down and the state could be the same way. Now, may I ask a question of Mr. Davis?

DELEGATE DAVIS: I yield, Mr. Simon.

DELEGATE SIMON: Supposing you had a piece of land that was in a position where development might take place. The thing that bothers me in your proposal, where you may, in a sense—any land may be exchanged for other land-so good-public or private-so good-which is equal in value-so good-but when you get down, as closely as possible, to equal acreage, you can lose your shirt; and I think that something ought to be done in that area, where we are having recreation come into our state in such great numbers, where something ought to be in this different than equal acreage. Do you have any comment, Mr. Davis?

DELEGATE DAVIS: Well, my only comment would be, I believe, Mr. Simon, that's the language that came with the amendment to the Enabling Act by the Congress. In other words, they permitted us to exchange land for other land, equal in value or equal in acreage or as nearly thereto as possible, so we have adopted the language that-1 think you've got a very good thing, and I'm glad you did bring it up. And, of course, the point you make, I think, is the reason we are all interested in retaining the state lands. It just gets more valuable as developments do take place, and will continue to.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. Over the last couple of weeks, I received considerable mail-and I know the Chairman of the Educational Committee has received considerable mail-about public access to the public lands; and rather than to ask us to assume that issue, I've got an amendment, which I'd like to propose, which would allow the Legislature to provide for public access on these trust lands. And I think when you are dealing with a trust, as we are here, that one might say that the power to provide access is inherent; but I think there is a serious legal question when you are talking about trust lands. Therefore, I think that this type of an amendment is necessary in order to clear any question in the mind of legislators in the future as to whether they do have the power to provide public access. So, I would move to amend Section 1 of the Public Lands Trust proposal by adding thereto, on line 29, page 49, the following sentence: "The Legislature may provide public access to these public lands for recreational and other purposes." Thank you.

CHAIRMAN GRAYBILL: Settle down, please. Mr. Cate, will you send your amendment to the Chair. Very well. Mr. Cate proposes an amendment to Section 1 of the Public Lands Article by adding a sentence at the end of the article that says: "The Legislature may provide public access to these public lands for recreational and other purposes." "The Legislature may provide public access to these public lands for recreational and other purposes."

Mr. Cate, do you want to discuss that further?

DELEGATE CATE: I'll discuss it if anybody has any questions. Apparently Mr. Davis does.

CHAIRMAN GRAYBILL: All right, Mr. Davis, you have the floor.

DELEGATE DAVIS: Mr. President, fellow delegates. I very reluctantly take issue with Jerry on this matter, but I feel I must. The question of access was discussed in our committee. Now.

unfortunately, we didn't have any witnesses who appeared and testified-as you'll notice, the witness in the back of our comments--although access was included in our comments. The big problem you have in that question is whether that is in complete disregard of the Organic Act and the Enabling Act as to what the-who the principal beneficiary of this trust is. The beneficiary of this trust is the schools, and whether you can take money out of the school funds to provide public access for recreational use would probably violate the federal Enabling Act, but I don't think the problem is that serious. We've tried to meet that problem, and the Legislature is aware of the recreational interest in making the highest and best use of this land by changing the classification so we can get recreation in a classification by the Legislature and by the Department of Lands. Now, the Department of Public Lands right now is making a survey and a study of what the recreational value is of these lands. Now, if it's a question of getting access for recreation, it's the same as getting access for the highway. If you're going to have eminent domain proceedings to go through my house or Mr. Cate's, or whether there's access by a county road, they're studying that. In the policy of the state, as described by the Legislature of 1967, it states, under development of state land resources, I quote: "It is in the best interest and to the great advantage of the State of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the University System, and other institutions benefiting therefrom, and that in so doing, the economy of the local community, as well as the state, is benefited as a result of the impact of such development." Then it goes on, and at this time they earmarked and permit a-two and a half percent of the income to go into a resource development so they could develop these areas and develop these lands to place them at a higher and better use. There, again, we're getting in a matter that I think that Mr. Garlington has spoke of this morning. Of course, the Legislature can provide for public access. They can do a thousand things with these lands-they're doing-so, if you start spelling out just one item that they can do, which they already can do, you may be excluding many other things, such as the resource development program they've already passed. So, most respectfully, Jerry, I'm glad you brought that up, because it needed to be discussed here on the floor. It's in our comments, and we received many, many letters on that subject of public access, but I think the answer to those questions primarily is that the Enabling Act places these things for school. I don't think the Land Department can give this land away for recreation. It has to get its highest and best value, and they are working to get a multiple-use classification. That's the very point of our changing the classification, so I most respectfully would have to resist the amendment.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would resist the amendment, and I would leave it to some of the ranchers who lease such lands from the state-Mrs. Pemberton and Torrey Johnson and others-but I have clients who lease grazing land from the state, and if you have dual use, as I think this would make possible, or at least it would constitute a recommendation for dual use, you're going to cut down on the revenue of that property, at least from what I hear from my clients. They're constantly beset by people getting or. those state lease lands and setting fires on them and rustling on them and doing all those other things on them, and I don't think we want to do that in this Constitution.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to have Delegate Cate yield to a question.

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: (Inaudible)

DELEGATE BATES: Mr. Cate, now in the case of private land-and the only way they have access to state land is through private land-then what would you recommend in this case? Do you think the state should buy this, then?

DELEGATE CATE: Well, that's the problem that we're faced with. So much of our state lands are tied up and surrounded by private lands that there's no way for the public to gain access to it, and these public lands are the public's land—they belong to the people, not just tc the rancher that happens to be leasing them. That's our land—your land and my land-and I think that what we own we ought to have the right to use, and what this provision provides is not that the Legislature must provide access or not that all lands are open for access, but that the Legislature may provide access to public lands. Now, in certain areas sur-

rounding the cities, where there is a need for recreational areas, this would provide a place that the city dweller could go hunting, the city dweller that doesn't know a rancher in the area; he would have a place to go hunting; he would have a place to go fishing-this type of thing. And in those situations where that area is surrounded by private land, the state would have to condemn a right-of-way-and that's contemplated-but this, Grace, this doesn't open up the whole thing. It says "The Legislature may provide", and, as Mr. Davis pointed out, there is a question, where you have a trust, whether or not--unless it's expressly provided, whether or not this is inherent in the trust powers-to provide access.

DELEGATE BATES: Okay. Would Mr. Cate yield to another question, Mr. President?

DELEGATE CATE: I certainly would.

DELEGATE BATES: I was wondering, now, in cases where now in residential areas, I understand 9 percent of the land must be put aside for recreation, for parks. There's an area in one town that I know that is really isolated from the rest of the people. Then, would you require, if you were renting a home in this strip where this park is in the center, that they, too, would have to allow access to this park?

DELEGATE CATE: Mrs. Bates, this amendment of mine is directed towards the school lands and wouldn't cover-it says, "The Legislature may provide public access to these public lands", referring to the lands in-that are in this section, which are school lands, not the parklands within the city that you're talking about.

DELEGATE BATES: Thank you.

DELEGATE CATE: However, in any event, I think that those parks are open to the public.

DELEGATE BATES: Thank you, Jerry.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Yes, I can see that this is a comparative thing, because either way, you would have to permit access over privateland, and one is the same as the other. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, fellow delegates. We went at this in long, long discussions and detail. We have literally hundreds of letters from people concerned about public access to these lands. Now, we talked this over in great detail with Mr. Schwinden, the very capable Public Land Commissioner-he's done a wonderful job down there in that department in the past, also-and his problem is, as a trust, there is the responsibility. Now, what happens if damage is done to this land? Who's going to assume the damages? Is it going to be the lessee? Is it going to be the Public Land Commissioner, or shall the Legislature provide for the damage that might be done? There's the problem. Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, fellow delegates. I think you're opening up a very controversial subject here, and I think Mr. Champoux pointed out a very possible thing that could happen. If you have ever observed some of the hunting camps, some of the things that were done in camps, that they could move in and—

(Interference in sound system from radio broadcast)

CHAIRMAN GRAYBILL: Mr. Wilson, hold it a little closer and speak up, please.

DELEGATE WILSON: -they could move into a piece of school land and create a lot of damage, and as he has pointed out, who would be responsible? Now, this creates a problem. Also, many of these tracts are small tracts that are isolated in range operations, and you would have to go across several miles of private land to get to them. How many more roads are you going to create? How many more gates are you going to have left open? You're opening up a whole series of problems, and I do not think that wherever there is any basic need for the people to have access to these lands, such as fishing streams and so on, that they will be denied the right to go into them. But I urge you to think this over very deliberately—about the controversial issues that you are opening up if you go for this amendment. Thank you.

CHAIRMAN GRAYBILL: Very well, is there further discussion?

Mr. Conover.

DELEGATE CONOVER: I think that we're opening up something real wide, as he has told you. I want to remind you, I think every rancher in here, including myself, when we have

state land, which I have some of, in a very dry year like we had last year and a shortage of grass and we move our cattle from different areas to protect this ground from the cattle tramping it-from dry-drouth areas. What would happen if you give them access to this land-that you're trying to protect the grass you've got on it for fall feed? I would guarantee you that, if you let all the hunters in there, that you wouldn't have any more grass unless you left a thousand head of cows in there, in a few hours. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I would just like to point out that these public lands-these state lands, which are school lands, are in trust, as I understand it, particularly and only to the support of the schools of Montana, and they are not in trust like federal land would be—forest land, national forest, or this. When a person leases these school lands, he has particular obligations there to live up to. He can improve the land, it points out very carefully in the contract, but you must not delete it or destroy it or abuse it in any manner. These things are laid down. You are in possession of that land under the contract. It is just practically as if you owned it, but you certainly have a responsibility. But, again, I must repeat that it is in trust, just the schools. I think I'm right there. Thank you.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Would Mr. Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis, will you yield?

DELEGATE DAVIS: Yes, Mr. Ask.

DELEGATE ASK: Say this provision is not placed in the Constitution, could the Legislature some day provide for public access for recreation to certain sections of land, should the thinking change, particularly in their lease agreement?

DELEGATE DAVIS: The Legislature—the State Land Board is doing that now. They're trying to provide access. Without any constitutional provision, the Fish and Game Department is buying access to the major streams for fishing sites, and it is a goal under one of the goals set out under the statutory on the development of the lands-under goal Number 9 of the Land Board, it says, "Certain areas of the state land can be readily adapted to recreational purposes. In developing these areas, consideration must be given to multiple-use for the state lands." So, your answer is not only yes, they are doing it right now under the present Constitution.

DELEGATE ASK: Thank you, Mr. Davis.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I know a little about some of these lands because I was born and raised in eastern Montana, and the land that we are talking about, by and large, is grazing land. Mr. Conover, the other day, stated, I think, there's 4.6 million acres of this total package that we're talking about that is grazing land. You would be very hard-pressed, I think, to describe most of this as recreational in value, Most of it is dry grassland, and there isn't very much there that you could find recreational use for in the first place. As has been pointed out here, in cases where there is land that does have recreational potential, we are now flexible enough, I think, in our Public Lands article so that the state can exchange, in cases where that can be done, and give public access to this. But I wonder if the public wants access to the grazing land that we're talking about, that four--over 4% million acres we're talking about; if the public is willing to pay part of the lease when they go out to drive around on these lands, or whatever they're going to do on them-I'm not sure what they're going to do-1 wonder if they're ready to assume the liability for fires or this kind of thing that might develop on this land. I think if they're willing to do these things, fine-then let them use the land. But until they are, it seems to me that we have an obligation to the school fund, which is no small fund-it amounts to over $52 million-and this has accrued as a result of the management of these lands in the past. I doubt very seriously that the Legislature would want to change this pattern unless they can see where the school lands are going to bring in the kind of revenue that's been brought in under the present program. We'd better defeat this amendment.

CHAIRMAN GRAYBILL: Very well. Mr. Cate, do you want to close?

DELEGATE CATE: Yes, I do. First of all, who's responsible for damage? Well, I don't know what type of damage you're talking about. I go out on your land and shoot a cow, I'm responsible for

it. If that cow is on state land or federal land or private land and I shoot that cow, I'm responsible for it. If I go out and set a forest fire, I'm responsible for that forest fire and I can be sued for it by the federal government, and, likewise, if I set a range fire on state land, I can be sued for that. The individual is responsible for the damage that he does. Now, North Dakokta has a provision that is strictly enforced and works. With regard to hunters-to the use of their state lands, you cannot drive an automobile off the road, and if you do, you're subject to fine. And that practice is generally followed throughout North Dakota, because—I have some personal knowledge about that because my family has about 80 sections over there-and people don't drive off the road; they drive on the road. That prevents the individual from going out and driving all over the property, like Mr. Conover talks about. I think that the demands of the city people have to be recognized here, and we're not opening this up so that every section of state land is open to the public. What we're providing is that the Legislature could provide that certain state lands, like that land down on the river Mr. Drum has, can be used by the public. That's what we're talking about-in the wisdom of the Legislature if they see fit-and supplemental payments could be made by Fish and Game if necessary to supplement the school fund in order to provide this public access in the use of these public lands by the public. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Cate's amendment, which would add to Section 1 of the public trust-of the Public Lands Article the following language: "The Legislature may provide public access to the-to these public lands for recreational and other purposes."

DELEGATE FOSTER: (Inaudible)

CHAIRMAN GRAYBILL: Do you want a roll call? So many as shall be in favor of this amendment, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote.

Aasheim		Nay
Anderson,	J.	Nay
Anderson,	O.	Absent
Arbanas		Aye
Arness		Aye
Aronow		Nay
Artz		Nay
Ask		Nay
Babcock		Nay
Barnard		Nay
Bates		Nay
Belcher		Nay
Berg		Nay
Berthelson		Nay
Blaylock		Absent
Blend		Nay
Bowman		Aye
Brazier		Nay
Brown		Nay
Bugbee		Nay
Burkhardt		Nay
Cain		Nay
Campbell		Aye
Cate		Aye
Champoux		Aye
Choate		Nay
Conover		Nay
Cross		Aye
Dahood		Absent
Davis		Nay
Delaney		Absent
Driscoll		Nay
Drum		Nay
Eck		Aye
Erdmann		Nay
Eskildsen		Nay
Etchart		Nay
Felt		Absent
Foster		Nay
Furlong		Nay
Garlington		Nay
Gysler		Nay
Habedank		Aye
Hanson, R.S.		Nay
Hanson, R.		Nay
Harbaugh		Nay
Harlow		Nay
Harper		Nay
Harrington		Aye
Heliker		Aye
Holland		Aye
Jacobsen		Aye
James		Nay
Johnson		Nay
Joyce		Nay
Kamhoot		Nay
Kelleher		Aye

Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin.,	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Nay
Monroe..	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Aye
Roeder	Absent
Rollins	Absent
Romney	Aye
Rygg	Absent
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 23 delegates voting Aye, 69 voting No.

CHAIRMAN GRAYBILL: **23** having voted Aye and 69 No, the amendment fails. We're considering Section 1 of the Public Lands Article. Is there further discussion?

Mr. Belcher.

DELEGATE BELCHER: Would Mr. Davis yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: **Yes,** sir, Mr. Belcher, I yield.

DELEGATE BELCHER: Carl, probably somewhere in the Constitution or somewhere along the line there is some mention of mineral rights being reserved by the state, but I fail to see it. Could you answer this for me?

DELEGATE DAVIS: I'll answer your question. Mineral rights were first reserved by the United States government, and we could only select nonmineral-bearing grounds. When they—they didn't identify all this land, and when they did, finally-we did get land and there certain new minerals were found as time progressed. And I think it was in 1921 that the government changed the Enabling Act and said we could locate mineral-bearing grounds, or confirmed our ownership of the minerals on the lands we'd already located; so regardless of whatever date it is, the act now provides that we have to retain for the school fund-the Enabling Act-any minerals in any of the lands; so that's by the Enabling Act, right when we took it. Now, in addition to that, the Legislature has passed a statute saying that in any sales, leases or exchanges, the State of Montana reserves all the mineral rights, so it's not a discretionary matter; the mineral rights are reserved to the school fund.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Davis that when this committee arises and reports, after having had under consideration Section 1 of the Public Lands Article, that it recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted.

Now, Mr. Champoux, do I understand that there is no-Is there a majority Investments Article, or is there—

DELEGATE CHAMPOUX: The-as I indicated the other day to you, Mr. President, if

you look at the majority and the minority, they've already been taken care of in the Revenue and Finance Article under investments, unless there's an objection to that.

CHAIRMAN GRAYBILL: Very well. Then am I correct, Mr. Champoux, that we have now acted upon each article of the Education and Public Lands proposal?

DELEGATE CHAMPOUX: I think Mr. Barnard has a question.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, yes, we have acted on that already. That was the amendment we put in Revenue and Finance report the other day, unless we missed something.

CHAIRMAN GRAYBILL: Very well, Mr. Champoux. I think one of the reasons I'm having trouble is that my book doesn't have a page 55, but I think it might be a good idea that you make a motion that Section 1 of the Investments Article not be adopted, Mr. Champoux, and then we'll find out whether it's taken care of or not.

DELEGATE CHAMPOUX: I so move.

CHAIRMAN GRAYBILL: Very well. The motion has been made that when this body arises and reports, after having had under consideration Section 1 under the Investments Article on page 55 in the committee's book, the majority proposal—and there is a minority in the book, on page 61, I think it is-that we recommend the same not be adopted. Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of not adopting anything on investments in the Education and Public Lands Articles, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered, and Investments are dropped out.

Now, Mr. Champoux, I think we've covered your article, is that correct?

DELEGATE CHAMPOUX: Yes, sir. Shall I move to—

CHAIRMAN GRAYBILL: No. Mr. Murray, do you want to move that we rise and finally report?

DELEGATE MURRAY: (Inaudible)

CHAIRMAN GRAYBILL: Oh, all right. I guess we want to go back to reconsiderations. Oh, I thought I might get by there. All right, Mr. Murray, you've made a request to reconsider. Do you want to state it?

DELEGATE MURRAY: Mr. Chairman, it appears you couldn't avoid me either way. Mr. Chairman, having voted on the prevailing side, I move to reconsider Section 1, subsection 2, commencing particularly on line 20, page 8, of the majority proposal of the Education and Public Lands Committee, to permit consideration of an amendment of the last sentence of subsection 2, which was deleted by the Committee of the Whole, and I defer at this time to Delegate Harbaugh for explanation.

CHAIRMAN GRAYBILL: Very well. Mr. Harbaugh, if you want to explain briefly for purposes of the motion to reconsider what it is you want to reconsider.

DELEGATE HARBAUGH: Mr. Chairman, we realize that there were some fears about the meaning of this phrase "full funding" in connection with Section 1, subsection 2, of the Education report; and the committee members, along with some of the various other delegates here, have discussed the implications of this section and feel that it ought to be reconsidered; and there has been placed on your desks several items. One is this pamphlet "Here's How it Works", which explains the foundation program and which we hope some of you have had time to look at since last Saturday--or Friday, when we discussed this. We felt that this might better help us to understand the concerns that the committee has with respect to the full funding of the state's share of the basic elementary and secondary program; and if this section is accepted for reconsideration, we would like to move Mr. Habedank's amendment which has been prepared and placed on your desks.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to reconsider, limiting the discussion strictly to that?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman-Mr. President. I feel that the action of this committee on the Bill of Rights equal opportunity has set forth the goals of what we want to do but that when we came down to subsection 2 and the

elimination of the last sentence, we closed the door to carrying out these rights. I urge you to let us discuss the amendment which you have before you and show you why it is-at least, we feel it is--necessary that a sentence worded similarly to what I have set forth in my amendment be considered and passed as a part of the Constitution; and for that reason, I urge you to give us an opportunity to reconsider our action in this regard.

CHAIRMAN GRAYBILL: Very well, the motion is Mr. Murray's motion to reconsider Section 1, subsection 2 of the Education Article.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, would I be out of order to ask for reconsideration of Section 9, 10 and 11, too, at this time, too?

CHAIRMAN GRAYBILL: I'm coming to you next, but I think we'd better take them one at a time. Section 1, subsection 2.

Mr. Champoux-on the issue of reconsideration.

DELEGATE CHAMPOUX: As Chairman of the Education Committee, I am for that move to reconsider that section. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Murray's motion to reconsider Section 1, subsection 2. All in favor of the motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted.

Mr. Habedank, do you want the Chair to have the clerk read your—

DELEGATE HABEDANK: Please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Habedank's motion.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, subsection 2, commencing on line 20, page 8, of the majority proposal of the Education and Public Lands Committee, by adding the following sentence after the words 'deemed desirable': 'It shall fund and distribute in an equitable manner to the school districts of the state the state's share of the basic elementary and secondary school system' Signed: Habedank."

CHAIRMAN GRAYBILL: Now, if you happen to be on the other page, it's at line 17 on page 3-Section 1, Article 2, and Mr. Habedank would add the language: "It shall fund and distribute in an equitable manner to the school districts of the state the state's share of the basic elementary and secondary school system." The last sentence was deleted previously. Very well.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, ladies and gentlemen. I am sure that you, along with me, had several qualms about the words of the last sentence of subsection 2, which was deleted by this Convention. In the first place, the goals which we set forth for education were obviously unattainable for a considerable period of time. We set forth in the first section that we wanted to provide full educational potential—develop the full educational potential for each person. The committee very carefully explained to you that this was a goal and not a mandate to the Legislature. They divided the section into two subsections; and they came down to the second subsection and they said, very properly, "The Legislature shall provide for a system of quality free public elementary and secondary schools"; and they explained to you that it was their intention in this regard to limit this to elementary and secondary schools. In the remarks which was made, they carefully pointed out they did not intend to saddle the State of Montana with the funding of kindergarten schools, nor to saddle the State of Montana with this free public school, the higher educational system. By the insertion of the word "basic" into this program, we clarified, I think, satisfactorily the fears that many people had that the courts would come along and there would be a series of lawsuits to try to compel the Legislature to provide whatever type of elementary and secondary school education someone might conceive of. We have clarified this in the Constitution. We said they shall provide a basic system, and this is what the Legislature has been doing. It's been—it's done it for years. Whether or not that has been a system which gives every child in the State of Montana truly equal opportunity to an equal basic educational program is questionable. Back in 1949 the foundation program, which I'm sure is now familiar to all of you, was developed-which theoretically, at least, provided that the property -the money would be raised from the taxing of

property where the property was and would allow it to be spent on an equalized basis where the child is. This program has been nurtured, worked out, conceived and is-1 think correctly so-is now on the statute books. But the inequities that the Committee on Education has pointed out exist in it principally for the reason that the State of Montana, after requiring the basic levies which bring into play the foundation program, has never funded its share of the foundation program, with the result that the foundation program, as it is adopted by the Legislature, sets forth the basic educational system all right, but it does not equalize between districts and between counties because of the fact that when it fails to fund its share of this, pouring the money in so that the program is truly equalized, the poorer counties or the areas with low valuations are forced to tax themselves even greater than before, and many times without a vote of the people, to meet the foundation program plus the permissive levy. Now, what have we done so far in this Convention to take care of education? The Revenue and Finance Committee, in its well-presented and passed article, mentioned to you the Serrano case and why they were trying to arrange the Revenue and Finance Article so that they could take care of this, and by a tremendous majority, this body voted to turn over to the Legislature the requirement that taxes and assessments be equalized between counties and they gave them the teeth to carry this into effect. There has been a lot of debate as to whether or not they would be able to do this any better than they have done through the State Board of Equalization-the County Boards of Equalization or not, but at least the command is there, and they will have to attempt it. Then, the next thing, the State Board of Equalization-the Revenue and Finance Committee did-was to change the mill limitation which has previously existed, limiting the mills that could be levied by the Legislature to 2 mills. If the Legislature is to tax property for any reason whatsoever, it was pointed out on this floor, the only reason that they should have the right to tax property is for education. The suggestion has been made by members of the Revenue and Finance Committee--where is the Legislature going to get the money to finance its share that they have failed to fund up to now? Up to this time, in fairness to the Legislature, you will have to say that we have limited them; they could not tax property, they had to provide the money from some other source--and I'm in favor of that, if they can. But if they cannot, it is no more unfair or wrong for the Legislature to tax property on a statewide basis to fund their share of the educational program than it is for the local districts to have to do it on an unequalized basis. The proposal which I have made is not, I contend, legislative; it is strictly constitutional. We are saying to the Legislature, "We have untied your hands. We want you to set up a basic elementary and secondary education. You have full power to decide what that is going to be; but when you get it done, the state's share of it, as you determine it"—we give the Legislature full power there to determine its share, too-we haven't tied their hands-"shall be funded and distributed in an equitable manner to the school districts of the state." Now, we have also, heretofore, provided in this article that the school districts shall be in charge of the local schools, and this is as it should be. I think it's also essential that the Legislature should have the power to require school districts to tax for a portion of their educational program in order to keep control of education at a local level, in order to allow people to know what is being spent for education, and this is what my proposal also does. It does not say to the Legislature, "You have to pass a sales tax; you have to increase income tax; you have to do this or you have to do that." If they can do it through some other means, they can; and that is where legislation comes in and where their hands are free. But as a constitution is both a grant of powers and a prohibition of powers, I submit that the only body who can tell the Legislature what they shall do as far as funding of the state's share is concerned is this body sitting here today; and if the things you said in the Bill of Rights means anything, if the things you said in regard to a desire to provide a basicsystem of quality free public elementary and secondary schools means anything, then the Legislature deserves the protection of also having you to say to them that they have the duty to fund and to distribute in an equitable manner the state's share of this program. I urge you to think this over very carefully. The committee's proposal, as I read it, did nothing more than what I have here, except we have taken out the words that have caused uneasiness, like "full funding" and "sufficient''-we struck "funds sufficient to insure full funding"—and then they didn't have in there the state's share. We put back in that it's to be the state's share, they shall fund it. And I urge you to seriously reconsider your action on this and put back in the Constitution-or put into the Constitution that we will submit to the people this provision; and I feel very strongly that there isn't a school district, there isn't a board of trustees

throughout the State of Montana-except in those limited instances where we have excessive valuations and they are getting by on low taxes because no one can reach their property for the support of schools-that would be against this proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, would Mr. Habedank yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: I yield.

DELEGATE ECK: I-you know, I read through this a half dozen times before it dawned on me what it was meaning. But I still don't think it quite says it, because if you break it down, it really says something like "it shall distribute the state share of the elementary and secondary school system", and, you know, I kept seeing the school system being distributed, and I wonder if maybe what you mean to be saying is something more like "the state share in the funding of the basic elementary and secondary school system".

CHAIRMAN GRAYBILL: Mr. Habedank, the Chair had the same trouble; and don't you mean the state share of the program or of the cost?

DELEGATE HABEDANK: I would be happy to put in "of the cost".

CHAIRMAN GRAYBILL: Maybe we can let Style and Drafting do it, but the sentence-as it stands, you have them distributing the system, whatever that means.

DELEGATE HABEDANK: I would be-1 had in there originally, "It shall be the duty of the Legislature to provide by taxation or other means" and do these things; and in an attempt to meet the objections of various members of the Revenue and Finance Committee, we tried to strike it down to basic words and I-the cost is what I'm talking about, and I'd be very happy to amend "the state share of the cost of the"-Mr. Chairman, I move—

CHAIRMAN GRAYBILL: Mrs. Eck, if he added the words "of the cost"-"share of the cost of the basic elementary system"-is that what you're driving at, Mrs. Eck?

DELEGATE ECK: Yes.

CHAIRMAN GRAYBILL: Mr. Habedank, do you want to make that amendment to your own motion?

DELEGATE HABEDANK: Yes, Mr. President.

CHAIRMAN GRAYBILL: Very well, after the word "state share", we'd put in the words "of the cost of the basic elementary and secondary school system". All in favor of letting Mr. Habedank make that amendment in his amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well, that's what we'll do-"the state share of the cost". It passes. Is there further discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I'd like to nominate Mrs. Eck and Mr. Choate to the Style and Drafting Committee, because the three of us had the same idea and one of them got the floor first. I also wonder if Mr. Habedank would yield on another question.

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: I yield.

DELEGATE SCHILTZ: Is there any magic in the word "basic"? I don't recall that there's any definition anywhere in the statutes or elsewhere about a basic elementary and secondary school system. Wouldn't it be just as well if we just called it the "elementary and secondary school system"?

DELEGATE HABEDANK: I think there may be no magic in it-there's no magic as far as I am concerned-but I think there's a magic as far as the public is concerned. They are very concerned. And the delegation here, in deleting that section, evidenced its concern about educational theorists coming in with every type of-shall we call it "screwball education proposal" and insisting that this be in here, and it was felt that "basic" would help. I conceded something-the court would have to-might be called upon to construe, but I think the Legislature is also given an opportunity to construe it in that word.

CHAIRMAN GRAYBILL: Members of the committee, Mr. Schiltz, you might-I might refresh your recollection. The other day when we redid subsection 2, we struck out the word "high" and we added the word "basic", so it now says, at the moment: "The Legislature shall provide for a basic system of quality free public elementary and secondary schools". I don't know why we did that, but we did put the word "basic" in line 1 and took out the word "high".

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I will have to give my same speech I try and give every time, I guess, but I have read all of these new, modern constitutions and they all say generally that the state will provide a free public school system. They all stop. They don't try and go on and say what kind of taxes are we going to have, how we're going to distribute them. It's purely legislative. The brief comments we've had now show the confusion or differences between delegates; and obviously if we say that the Legislature shall provide for a public school system, they're obviously going to have to raise taxes. I can't say that we'll have a foundation program 30 years from now, or how they'll have to finance it. It might be all by sales tax, income tax, property tax, oil income; and I just think that-or a lottery-I just think we're getting into trouble to keep legislating in this Constitution, and this type of language has no place in it, so I speak in opposition to it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I would have to disagree with what Mr. Brown says. I feel this is a very much needed thing in our Constitution. It's true that the other constitutions don't include this, but the other states aren't in the same position that Montana is in. Mr. Drum said the other day that our state ranks third in the amount of property tax that our citizens pay towards schools, and that's true. Our people are doing a tremendous job. They are carrying a tremendous load and burden in this respect. But there's another statistic that we need to look at here, too. Montana ranks 44th among the states in the amount of support that the state gives to the school systems. About 24 percent of the total budgetary needs of our school system is supplied by the state. There are only a very few states that are below us in this category, and this is one of the reasons that we feel that we have to have something like this in our Constitution.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I don't oppose this amendment, for some of the reasons I had the other day; however, I'd like to comment on what Mr. Harbaugh just said. When we talk about percentage of contributions, there's undoubtedly some states that levy a statewide property tax for school systems and that's included in the state's grants back to the school system, so you really can't use percentages like that. What you're trying to do is glue into a Constitution a mandate on top of a purely legislative program. The foundation program was started in '49, and it's purely legislative and depends on what the Legislature wants to do every fiscal period, or every year now if we're going to meet every year. And you're just trying to mandate something on top of that program that they can change at will, and I agree very strenuously with Mr. Brown that you are just creating more words and more words for confusing in this program. And just the way it's worded-like we had trouble--what Mr. Schiltz and Dorothy Eck brought out, but we also have, I think, trouble with the word "equitably". Equitable to who? The student, the taxpayer, the teacher-to who? I just don't think it belongs in the Constitution. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Three points, sir, if I may. In reference to Mr. Brown's comment, only these are-this is a statement that he used from the Municipal League's suggested constitution. States have adopted-only 10 states have adopted this particular wording; most others have some kind of detail. In reference to Mr. McDonough's comment; our biggest problem, Swede, has been not the foundation program; it won't be, I don't think, in the future, any particular type of program that the state puts out. The thing that we want to do is to make sure the state pays their share, and they haven't been doing it in the past, Now, I am in support of the Habedank amendment.

CHAIRMAN GRAYBILL: Mr. Joyce,

DELEGATE JOYCE: Mr. Chairman, Mr. Brown keeps stealing my lines all the time. What

if, hypothetically, the state determines that its share of the support of the state schools is going to be 10 percent of the cost of the basic program, which they certainly can do because, after all, they set the foundation by law, and here we haven't defined the foundation program in the Constitution. And besides, who's the state and who's the county? The state doesn't have any money; the state just gets the money from the taxpayers, and the state has to work out a system of how they are going to distribute the taxes that they collect from the people. So, it seems to me that it's-to say that the state will fund the foundation program when we don't even define the foundation program in the Constitution seems the height of absurdity. We had a considerable argument, as I remember it, when the General Government came in and suggested that the Legislature might amend the Constitution by passing an amendment and letting two sessions of the Legislature go by and then have it go into effect; but here we're putting an amend-a provision in the Constitution that would give the Legislature the power to repeal it the next day by simply repealing the foundation program. And so it just gets back to the fact that we're going to have to finance our schools the way the Legislature, through-acting through the people of the State of Montana, wanttodoit; and I just can't see where this sentence adds anything but confusion.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I oppose this amendment, too, but not really because of the amount of money. I can't help but make an observation. I think our committee did say that we opened the door to statewide financing, and maybe we were wrong in doing that. Maybe we should have said we just unlocked it and we wanted the Legislature to open it. But, certainly, we didn't expect to have the Board of Education just-well, I mean, the Committee of Education right there at the door when you open it up and come right through. (Laughter) We sort of figured we should have a little time to get this thing squared away; and if we're going to do it on a statewide basis, it's going to take a little while to arrange this on a statewide basis and get it appraised on a statewide basis. And after all, we didn't do it, we just made it possible for the Legislature to do it; and I really think we're rushing things a little bit, because this is going to be a little matter of time and it's going to-first they are going to have to agree to do it, which we haven't told them to do, and we're letting it up to them; we're suggesting they do it. We should think it be on an appraisal-but, man, to have someone just come up to the door and knock it down and say, "We want it right now"-before we are ready-1 really think it's too soon, and I, frankly, don't think this would do any good anyway. I don't think it's part of the Constitution. I am against the amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I can see both sides of the argument. I can see where this could be legislative, but while I was home just Sunday-we didn't have a very long weekend, as you know, this weekend-I had two calls from local School Board members wanting to know why we deleted the state's funding of the school program, and they were quite concerned about it. And I explained to them that I didn't think this really done what they thought it did, that it was still up to the Legislature and they could still do it, but that didn't seem to satisfy them. They seemed to have the idea that, when we take this language out, that we don't necessarily intend to finance the program through the state levy; so perhaps we ought to think of it from that standpoint, from the reaction that some of the local School Board members are going to have, because they're going to have a lot of influence on the final acceptance or rejection of this Constitution. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise in support of Mr. Habedank's motion. I feel that in the cities across the State of Montana, now, we're faced with a great problem-the number of mill levies that will have to be run in this current school election-will be held April the first-and the city I come from and the city Mr. Joyce comes from, that mill levy is-36 mills will be run this time; and I'd say the chance of passage of this are very slim. And somewhere along the line, we have to do something to correct this problem; and maybe a mandate to the Legislature to fund this program will be the mandate necessary. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I rise in support of it, and I think the most impor-

tant reason is the one that Mr. Habedank explained. The state, up till now, has set a foundation program and has been unable to fund it, and they simply put it back on the local property tax. And most of the trouble that education has been catching is because the Legislature has essentially balanced its budget with the educational program of the State of Montana. What this does say is that once the state determines that, the state is responsible for its share. I think it's essential and highly desirable. We will get equitable assessment, and this will help. And I'd like to disagree with my esteemed Chairman, Mr. Rygg; I don't think education is kicking down the door. I think this is necessary to go along with what Revenue and Finance has attempted to do-provide equality and equality of assessment, taxation within the state.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I support the Habedank amendment. I'd like to point out, as he did, that we do have a good foundation program in the State of Montana and thatthe more that the state funds that program, the more closely our foundation program comes up to the criteria as laid down by the Serrano case in California. It is only when our state Legislature fails to meet the obligation under the foundation program that we begin to get these real inequities built into it. For instance, the state right now is funding only about 65 percent, and the other 35 percent has to go back on local property tax levies, which builds in these inequities. And, to make matters worse, the Legislature has fully-has failed to fully fund even these inadequate schedules for 16 of the 23 years since the enactment of the foundation program. We are also fully aware of what the Legislature will attempt when hard-pressed for money. In the last session the Senate, by a vote of 42to 11, passed a bill that would have reduced income tax earmarking for school equalization from 25 percent to 1 percent, barely enough to still be constitutional and with no assurance or commitment to replace the money with an increased appropriation. Now we have, in the Revenue and Finance Article, completely removed earmarking of income tax for school equalization and last Friday even removed the instruction to the Legislature to appropriate any money for school support. In fact, Revenue and Finance even removed the constitutional requirement that there be a state income tax. So, I think that this is little enough insurance, if we put in the Habedank amendment, to at least instruct the Legislature that they must meet their share of the foundation program; and I support the amendment.

CHAIRMAN GRAYBILL: Very well, the issue is still on Mr. Habedank's amendment.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, the diagram I hold in my hand shows the manner in which the pie is cut at the present time, only it isn't. This proposition in the Habedank amendment would make constitutional what is now statutory. It would place the foundation fund into the Constitution-that's what it amounts to-and I have no particular objection to it excepting I think it's statutory and has been ever since the thing has been started. I point out that in the-since the removal of the Z-mill levy, that there is no reason why the state could not take over the county equalization basic 25-mill levy and 15-mill levy and approximate the state equalization fund and levy enough mills to make it. That would undoubtedly qualify us, under any construction of the Serrano case, as affording equal funding by the state; and I don't think this amendment is worth all of the haggling.

CHAIRMAN GRAYBILL: Mr. Champoux, do you want to—

DELEGATE CHAMPOUX: Briefly, sir, if I may respond to that. Mr. Romney, Mr. Rygg, we are only knocking at the door; but you know, we've been inside that room before-that lovely damsel known as education has been statutorily raped because we haven't got, and we haven't up to this day received, what we should have to fully clothe what is known as the educational system of Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I rise in support of this amendment. I think it's innocuous, it doesn't mean anything, it won't cause--won't do any good and won't do any harm; and if it'll keep somebody happy, I guess we'd better put it in.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Habedank's motion that we add to subsection—

Do you want to close, Mr. Habedank?

DELEGATE HABEDANK: Yes. First I would like to say that my interest in this is not that I have children in school who will need this. My children are finishing college, but I have worked with this since 1949. The next thing I would like to say, in regard to my colleagues who are so interested in constitution instead of legislation, that I would suggest that they might have thought of that a few days ago when they amended the legislative act by constitutional amendment in order to take care of an actrelating to Workmen's Compensation, which the Legislature could have corrected. I have learned very well, while I've been here, if I'm for something, it's constitutional, and if I'm against it, it's legislative. I can't think of anything, Mr. Rygg, that would bring about fair appraisals faster than if you had a statewide levy, and I do not think we necessarily have to wait until the Legislature gets around to correcting all these things before this could take effect, because you are, in effect, having levies now unequally on a county basis. To those of you who say we're locking in the foundation program, I say to you most sincerely the foundation program is on the books. We are not locking it in. The Legislature can change it; and to that extent I agree with Mr. Nutting that this thing may not do any good, but it certainly won't do any harm, and if it will make me and a lot of other people who have been working with schools for a lot of years happy, I think the schools and the chidren of Montana are entitled to have it. The next thing I would call to your attention is that the Montana School Boards Association, the M.E.A., and I am aware of no other school organization-people who work with the schools-who opposed the full funding of the state's share of whatever program they have for equalization. The only organization that I'm aware of who has opposed this-and they don't oppose it in principle, but they're always talking about the inequalities of taxation-they've been talking about it since they helped get the foundation program through in the first place-and that's the Montana Taxpayers Association. And even there, in the article which appeared in the paper which I'm sure you received-it came in our box-was directed more to this funding of education at a level which no one could understand what it was going to be-in other words, full educational opportunities for everyone-then they were-then they point out that this would have to be funded by the Legislature. We have taken care of all of these objections. Admittedly, the Legislature can change the program, and this is fine. I think that this is what the Legislature should do, but I think the children of Montana are entitled to this, and I urge you to reconsider your vote and include this in the new Constitution as a new basis for the children.

DELEGATE FURLONG: I ask for a roll call, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue before us is Mr. Habedank's amendment to add to subsection 2 of Section 1 the language: "It shall fund and distribute in an equitable manner to the school districts of the state the state's share of the cost of the basic elementary and secondary school system". So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Absent
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Absent
Berg.. ..... Aye
Berthelson ..... Absent
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye

Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Absent
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: (Inaudible)

CHAIRMAN GRAYBILL: Very well-is your mike out? Very well, 75 having voted Aye and 19 voting No, that motion carries and that amendment is made. Members of the body, you have before you, on the motion, I believe, of Mr. Harbaugh, originally, that when this committee does arise and report, after having had under consideration subsection 2 of Section 1 of the Education Article, as amended, that we recommend the same be adopted. Is that all right, Mr. Harbaugh?

DELEGATE HARBAUGH: (Inaudible)

CHAIRMAN GRAYBILL: Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended.

Mrs. Bates, you have a motion to reopen Section 9, 10 and 11. Is that correct?

DELEGATES BATES: Mr. President.

CHAIRMAN GRAYBILL: And may the Chair read your motion?

DELEGATE BATES: Yes, please; and then I would like to speak on it.

CHAIRMAN GRAYBILL: All right, the clerk-do you want to read the motion to reconsider.

CLERK HANSON: "Mr. Chairman. I move to amend Sections 9, 10 and 11—"

CHAIRMAN GRAYBILL: Well, you are—did you—

DELEGATE BATES: I'm asking—

CHAIRMAN GRAYBILL: -vote on the prevailing side?

DELEGATE BATES: Yes, I did vote on the prevailing side.

CHAIRMAN GRAYBILL: Very well, she means to make this as a motion to reconsider.

DELEGATE BATES: —reconsideration—

CHAIRMAN GRAYBILL: Go ahead.

CLERK HANSON: "Mr. Chairman. Having voted on the prevailing side, I move to reconsider and to amend Sections 9, 10 and 11, pages 5 and 6, by deleting these sections in their entirety and inserting in lieu thereof the following language: 'The general control and supervision of the State University and the various other state educational institutions shall be vested in the Superintendent of Schools and one or more State Boards of Education whose powers and duties shall be prescribed and regulated by law.' Signed: Bates." Mr. Chairman.

DELEGATE CHAMPOUX: Point of order, Mr. Chairman.

DELEGATE BATES: Mr. Chairman—

CHAIRMAN GRAYBILL: Just a moment. Mr. Champoux, what's your point?

DELEGATE CHAMPOUX: I'm questioning the-Mrs. Bates' vote on one particular—Section 9 we were working on. For instance, if we are working on the Gysler amendment-is that the one?

CHAIRMAN GRAYBILL: Well, we're working on the final adoption of Section 9—

DELEGATE CHAMPOUX: This morning?

CHAIRMAN GRAYBILL: —10 **or** 11—

DELEGATE BATES: Final adoption.

CHAIRMAN GRAYBILL: -10 and 11 this morning-

DELEGATE CHAMPOUX: This morning.

CHAIRMAN GRAYBILL: -and 9 last night.

DELEGATE CHAMPOUX: All right, I remove it.

CHAIRMAN GRAYBILL: Very well. Now, Mrs. Bates, explain briefly the purpose for which you want 9, 10 and 11 opened, please.

DELEGATE BATES: Mr. President, fellow delegates. We here are working for a workable Constitution, a fundamental document. We are trying to get away from the too-detailed, restrictive Constitution that we are now tied with. We—in listening to all the arguments pro and con on the various topics under education this morning, I see we-1 understand the entire group is for a very responsive, accountable Department of Education while still providing the safeguards and flexibility. Today we have adopted, up until now, the—and locked in the Constitution a great deal of statutory measure. We have discussed two boards, one board, a chancellor system; and many of us realize that some of these systems have been tried and have not proven workable. If we let this to the Legislature as a statutory measure, if something wasn't workable, then they could handle it. We have no guarantee that what we have done here today will solve the problems for tomorrow. What we need is flexibility that will provide accountability, control, responsibility under the Legislature. Therefore, I ask your consideration in reconsidering and supporting my amendment. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Harper, you also had a motion concerning this. Do you want to discuss it?

DELEGATE HARPER: Yes, Mr. Chairman. Mine has been distributed and is on your desks. One-two simple suggestions, really. One is that, instead of labeling Sections 9, 10 and 11 as if they're three separate sections, recognize the fact that they are intertwined and call it all Section 9, with three subsections, subsections 1, 2 and 3, and thus, maybe, by the structure of the article relate these boards a little bit more. I think we've done a good job of thrashing out the duties of these boards, and I would not like to join with Mrs. Bates in seeing us strike all that out. I have one concern that might hit at something of what she and others are getting at, though; and they're concerned that instead of leaving so general the wording in present Section 9 on the so-called "State

Board of Education"-that is, the joint meeting of the other two boards-that this be the group that's required-really, this requirement is implied now by the fact that we are asking them to submit a unified budget request through proper channels to the Legislature-that the implication be spelled out a little bit with a sentence as we have it here: "It shall be responsible for long-range planning and evaluation of policies and programs"--I'd like to strike out the words "and administration", because that gets us into a snarl with the particulars too much-responsible for long-range planning and evaluation of policies and programs for the state's educational system. Now, what we mean, simply, is this: somebody needs to take an overall look and see how elementary education, secondary education, vocational education, community colleges, university systems, and all relate in terms of overall planning. As I say, in order to approach a unified budget asking, they would almost have to do this, but I believe it makes that statement about our state overall Board of Education a little bit clearer. And that would be the motion should Section 9 be reconsidered.

CHAIRMAN GRAYBILL: Very well, the Chair has accepted Mrs. Bates' and will accept Mr. Harper's motions to reconsider. The purpose of Mrs. Bates' motion to reconsider is to insert new language-general language that would replace 9, 10 and 11. The purpose of Mr. Harper's motion is to renumber 9,10 and 11 as 9, sub. 1, sub. 2 and sub. 3, and then to propose a new 9, sub. 1, as you see before you on his distributed sheet. Now, the issue, then, is whether to reconsider Sections 9, 10 and 11 in order to do either of these two things. If the motion to reconsider passes, it would be the Chair's intention to let Mrs. Bates make her motion and let Mr. Harper make his substitute motion, or vice versa, and then we will consider and dispose of them one way or the other.

Mr. Champoux, do you want to discuss the issue of reconsideration?

DELEGATE CHAMPOUX: Yes, sir. I would rather that you took up both of these reconsiderations at once, sir.

CHAIRMAN GRAYBILL: That's what I'm doing.

DELEGATE CHAMPOUX: To react to Mrs. Bates' amendment, this is the same old argument that we've heard—

CHAIRMAN GRAYBILL: Now, I don't want you to argue the issues and whether you should do with her amendment. I want you to argue whether you want to reconsider or not.

DELEGATE CHAMPOUX: I am against reconsideration, simply because we'd be rehashing the whole thing over again. It's a move simply to get the one board in again.

CHAIRMAN GRAYBILL: Is there other discussion of the motions to reconsider?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of Mrs. Bates' and Mr. Harper's—

DELEGATE CHAMPOUX: Roll call.

CHAIRMAN GRAYBILL: -Harper's motions to reconsider will vote Aye on the voting machines; and those opposed, vote No on the voting machines. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O	Absent
Arbanas	Nay
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Nay
Cate	Aye
Champoux	Nay
Choate	Aye

Conover ..... Nay
Cross.. ....Aye
Dahood .....Absent
Davis ..... Excused
Delaney ....Aye
Driscoll ..... Aye
Drum .....Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt .....Absent
Foster ..... Nay
Furlong ..... .Absent
Garlington .....Aye
Gysler ....Aye
Habedank ....Aye
Hanson, R.S. .....Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper .....Aye
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... .Absent
Jacobsen ..... Nay
James ..... Nay
Johnson.. ....Aye
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf..... Aye
Lore110 ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Aye
McKeon ....Absent
McNeil ....Aye
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting .....Aye
Payne ....Aye
Pemberton ..... Nay
Rebal .....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin Aye
Schiltz ..... Nay
Siderius.. ,, ,, ,, Nay
Simon .....Absent
Skari .....Aye
Sparks. Nay
Speer ..... Nay
Studer .....Aye
Sullivan Nay
Swanberg .Absent
Toole Nay
Van Buskirk .....Aye
Vermillion Nay
Wagner .....Aye
Ward .....Aye
Warden .....Aye
Wilson .....Aye
Woodmansey ,, Nay
Mr. Chairman Aye

CLERK HANSON: Mr. Chairman, 58 delegates voting Aye, 32 voting No.

CHAIRMAN GRAYBILL: 58 having voted for reconsideration and 32 against it, we will reconsider Sections 9, 10 and 11. Now, the Chair has had typed-but only for the Chair-Section 9 as amended; and I'll read it to you carefully; and you might check your books, because that we did yesterday-you may-m Saturday--and you may have forgotten: "State Board of Education. The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. The State Board of Education shall submit unified budgets. In case of a tie vote at such meeting, the Governor may cast a tie vote." That's the way it reads at the present time. The two boards shall together constitute the State Board of Education, which shallmeet periodically on matters of mutual concern. The State Board of Education shall submit unified budget requests. In case of a tie vote at such meetings, the Governor may cast a tie vote-or may cast a vote.

Very well, Mrs. Bates, do you wish to make your motion?

DELEGATE BATES: Yes, Mr. Chairman. You have read my motion. I would like to state that this motion would provide the flexibility for a—one or more boards, set by the Legislature, with the powers and duties prescribed andregulated by law. However, I would like to amend that to read "the Superintendent of Public Instruction"--and

I have "Superintendent of Schools", but it should be "Public Instruction".

CHAIRMAN GRAYBILL: Very well, we'll consider it so amended.

DELEGATE BATES: Okay, thank you. I think it pretty well states for itself.

CHAIRMAN GRAYBILL: The Chair would like to observe that if there are other stylistic or minor changes you might want to make in either this or Mr. Harper's amendment, let's adopt one or the other or reject them first, and then we'll have an opportunity to amend them in detail if we want to.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I would like to offer my proposal as a substitute for Mrs. Bates'.

CHAIRMAN GRAYBILL: All right, I guess we don't need to read yours again, do we?

DELEGATE HARPER: I don't think so.

CHAIRMAN GRAYBILL: It's-the purpose-the substance of Mr. Harper's is that we would renumber 9, 10 and 11, sub. 1, sub. 2 and sub. 3, and then put the language--and I'm sure you all have before you-for sub. 1 in in place of the present sub. 1. And that will be a substitute motion for Mrs. Bates', and we may discuss both of them.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes-if you'll look at present Section 9, it uses, at the end of that first sentence, "which shall meet periodically on matters of mutual concern". Well, that didn't seem like much of a clause to me, and I thought we could put just a period-just state the composition of the board of these-made up of these other two boards; and then, really, the only thing different is this little sentence: "It shall be responsible for long-range planning and evaluation of policies and programs for the state's educational systems''—plural--and then we include the rest of the language as in Section 9 as we adopted it yesterday-or Saturday: "It shall submit unified budget requests"-and then with exactly the same wording about the Governor casting a tie-breaking vote. I don't think I need, really, to speak on it, and I don't want to prolong it. If it's something that the body likes as a way of expressing it, fine; if not, I'm perfectly agreeable to-either way.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'll speak—may I speak to both of them at once, sir?

CHAIRMAN GRAYBILL: Surely.

DELEGATE CHAMPOUX: All right, very briefly. What we have in Mrs. Bates' amendment here-first of all, it gets rid of all this work we've done-we've been over this whole thing for nearly 2 days-and again we get back to the same old problem where the general control and supervision is going to be established in these boards, the same old problem that we have in the 1889 Constitution, because if you look at the last sentence, it says right here-they give the power, but then they take it away-"whose powers and duties shall be prescribed and regulated bylaw". There it is. It doesn't get at the problems we have mentioned. Now, the question, of course, is why, if the Legislature is so good about solving these problems, why haven't they solved this problem for 82 years? All right, what's going to happen under this is the boards are truly going to become political. You want to get political? Buy this amendment. And what's going to happen if the Legislature doesn't like a board? They're going to pull that board out after maybe 2 years in office and then put it in 3 years later. You're going to have a dance going on here. Who is going to do the appointing? You want to get political? You're going to find out that's going to really be political. Now, insofar as Mr. Harper's amendment is concerned, I am not in disagreement with it at all. I think, perhaps, George, that the first section could be left to Style and Drafting, but I am in favor of his amendment, and I absolutely oppose the Bates amendment.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, would Delegate Harper yield to a question?

CHAIRMAN GRAYBILL: Mr. Harper?

DELEGATE HARPER: Yes, I will.

DELEGATE ARBANAS: I have a little problem with regard to the picture of sort of one board sitting in judgment of the work of another board, when you use the word "evaluation", and I wonder if you don't really mean "to plan and eval-

uate common programs and common policies", and that-if that were added, I could be very comfortable with it because it would take away that picture of, you know, the Higher Education Board really evaluating what the other board, you know, decided or wanted to do.

DELEGATE HARPER: Mr. Chairman, may I respond?

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I think one way you look at that, the word "common" would do what you're thinking about. On the other hand, it might limit it to the fact that unless a thing were held in common between the elementary school and the higher university system, then you shouldn't discuss it. And what I'm talking about is that some board, our State Board of Education, takes an overall look and says, "Well, okay, we've only got so many resources and we want to get certain total objectives accomplished", as we said we would do in the very first section of this educational article, and somebody ought to take this overview of it. That's all we're trying to write in here.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would Mr. Harper yield to a question?

CHAIRMAN GRAYBILL: Mr. Harper?

DELEGATE HARPER: (Inaudible)

DELEGATE BERG: Somehow or another, I am married to the word "coordinate" today, and I was wondering if you might include coordination as well as planning and evaluation of the policies and programs of all systems?

DELEGATE HARPER: Yes, Mr. Berg, I think you're married to a pretty good word in this area here, and your suggestion is for long-range planning-?

DELEGATE BERG: Planning, coordination and evaluation of policies.

DELEGATE HARPER: Mr. Chairman, I would accept that.

DELEGATE BERG: Mr. Chairman, I—

CHAIRMAN GRAYBILL: All in favor of allowing Mr. Harper to amend by adding the word "coordinate"-"coordinating'-say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right, Mr. Harper, "coordinating" is after "planning".

DELEGATE HARPER: Fine. Thank you, Mr. Berg.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I think that with Mrs. Bates' proposal, we are finally getting down to the thing that we came up here for. There was a lot of mistrust of the Legislature in 1889, but there seems to be a whole lot more now than there was then. This gets down to the basics. I will support it, because I think that we have been just purely legislating all day long and on Saturday.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, would Delegate Harper yield to a question?

CHAIRMAN GRAYBILL: Mr. Harper?

DELEGATE HARPER: Yes.

DELEGATE ERDMANN: When he speaks at the end of his first paragraph of making the present Section 11 becoming Section 9, subsection 3, does he mean the present section under the majority report, or is he speaking of Delegate Rollins' amendment this morning which replaced the other one?

DELEGATE HARPER: I'm glad, Mrs. Erdmann, you asked that. I should have said that, in my amending-or substitution for Mrs. Bates' motion, since she dealt with all three of those sections-that I would contemplate this revision of Section 9—our present Section 9—and then contemplate leaving Section 10 and Section 11 exactly as we have passed them, as amended.

CHAIRMAN GRAYBILL: In other words, it's the reopened sections, Mrs. Erdmann, the ones we passed this morning. It would be Mr. Rollins' for Number 11, and it would be Number 10 as amended by a few little interlineations this morning. We put in the word "Commissioner of Higher Education", et cetera.

DELEGATE HARPER: And now I am offering no amendment to those Sections-10 and 11.

CHAIRMAN GRAYBILL: Ten would become sub. 2 and 11 would become sub. 3.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I was wondering for a while if the-Delegate Harper still had two boards, but I see now we still have two boards. Everything-all that you've done is going to let these two meet on-together. I think this is all-now, I think this problem-and we've probably debated a long time-1 don't want to take a great length of time, but I think one person has been-one outfit has been left out entirely that we've seen. We have the University System and they have their University presidents. Then we go down and we see the state administration down here, but all of a sudden we forgot these little fellows that run on—I believe it's the first Saturday in April every year-these school board trustees--and we have certainly forgot them in all of our debate today. People that have stood up—they spend nights, they spend days, they get nothing for it, all they do is get complained at every time there's a school board meeting-and these people have certainly been forgot. I wondered if there was no way we would even let this group of dedicated people throughout the State of Montana have some little say somewhere in the educational setup. I'm afraid of this thing now—that we're building a great setup--maybe I'm wrong-but I'm afraid we are building the State of Montana practically into one school district-be run out of a building up here-and that's what's going to happen to this local schools we've discussed. University-university-and I'm glad—they're great people, but we have to get the child up to the university first. This is quite a little thing, getting him up there, and I just hope-1 think with one board looking over the whole situation, subservient to the Legislature-now, I want this understood-I think we should keep this-all the education under the Legislature, whether it's university or wherever it is, and-because if we're going to have statewide mill levies, the Legislature is going to have considerable to say about the appropriations, and I think we should have everything under the Legislature, and so I hope-1 certainly hope Mrs. Bates' amendment prevails.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm going to be very happy when you don't have to recognize me any more, believe me. Charley, I think you were out of the room the other day. We passed a section in there concerning the school boards. Were you here when we passed that? All right. So they are included, and they are in control of the local situation. Also, if you will note, the Habedank amendment has them included in terms of getting the money and doing the stuff at the local level, so I think they have been-as a matter of fact, they are probably 200 percent more involved in this Constitution than they ever were in the last, so I believe they are well provided for.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I feel that the Harper amendment certainly helps this-these three sections; however, I would just like to point out that this is one of the difficulties when in this Constitution we try to do the legislating. We are-a lot of people fought for two boards; now we're coming back and saying, "Now, this is going to be one board for here, and then they will split", and so on. This just really kind of gets you back to one, except in some respects it does a lot of tying of the hands of the people in government over the next 50 years, if this is adopted by the people. We're trying to legislate this and trying to legislate that; and sitting here today, it seems to me as though a fair amount of this document has been written to satisfy the present State Superintendent of Education. Now, maybe she will be the present Superintendent--or will be the Superintendent for the next 20 years or so, but someday somebody is going to replace her, and maybe they won't like it. I really have to agree with Mr. Davis, this morning, when he said that there are two monstrous bureaucracies, more or less, in the state government. One of them is the Highway Department, which this body did some clipping of feathers on last week, I believe it was, and theotherone is the Education Department. They both spend a whale of a lot of money, and the more we get into legislating in this Education Article on the Board of Education and so on, the more we constitutionalize the bureaucracy that can happen in the Education Department. So, I-like I say, I believe Mr. Harper's amendment is an improvement, but I would certainly go for the Bates amendment-or substitute, because it leaves it free; it isn't tying anything down. People say we want to write a document for the future. How many of you know what the future is in 40 years and what the state

will need? I wish, before you vote, you would stop and think about what the future will be and how you're tying things-or how things would be tied down under the present article. Thank you.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, I think we've discussed this at great length, and I don't want to prolong it, but I would like to thank the Committee of the Whole for the work they have done in clarifying and developing the proposal which the majority brought in of this committee. And I think, with Mr. Harper's cleaning up of some of the concepts that we've struggled to kind of put together here on the floor, that we have a very strong foundation for the foreseeable and long-range future of our children; and I, for one who has some children who may be thinking of a university program in this state, am deeply grateful for the work of the Committee of the Whole and the fact that we are now in a position where we will have two strong boards and then, working together under a State Board of Education, a coordinated effort; and I ask you to support this proposal that Mr. Harper has brought in and that we have developed here in the Committee of the Whole.

CHAIRMAN GRAYBILL: Mr. Rollins. Pass? No? Okay.

DELEGATE ROLLINS: I'll pass.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I think I have a suggestion that may be a compromise and settle this whole thing, and I'll just very briefly-and then if there's any support, then we might go from there. I would like to say this: "There shall be a State Board of Higher Education, who shall meet periodically with the State Highway Commission to determine how all state moneys shall be allocated to all branches and departments of government. The two boards, jointly, shall be responsible for notifying the Legislature of their decision at least 3 days"-and you note we get the 3-day notice in here-"at least 3 days before the deadline date set for such appropriations each year." (Laughter) I think that would probably take care of the whole—

UNIDENTIFIED DELEGATE: Roll call. (Laughter)

CHAIRMAN GRAYBILL: Mr. Hanson, can't you get the Supreme Court in there somewhere? (Laughter)

DELEGATE ROD HANSON: I thought of making this subject to the Supreme Court decisions, but I thought that might complicate the thing a little. (Laughter)

CHAIRMAN GRAYBILL: Very well, Mr. Scanlin, you're still up.

DELEGATE SCANLIN: Mr. Chairman, I only wish to say that the Harper caucus has clarified many of the questions I had concerning the article before. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Right now, I'm in a dilemma. I like the Harper amendment; but suppose we vote on that and reject it and go over and vote on Bates' amendment and reject that, then we will have rejected a good suggestion here by Mr. Harper. So I think we should probably go back and vote on Mrs. Bates' amendment first, and see how we stand. I think I know, but if we eliminated that, then we could go back and see how the Harper amendment works into our 9, 10 and 11 sections. So with that, Mr. Chairman, I shall move that we pass consideration of the Harper amendment until after we have voted on the Bates amendment.

CHAIRMAN GRAYBILL: Well, Mr. Aasheim, the Chair observes that it's six of one and a half dozen of the other, depending on who's the first one up, and when we've done that, Mrs. Bates might want a second motion to reconsider and reverse it. I don't see why the body can't decide whether they like one or the other. The Chair thinks you're out of order in making a motion to restructure the order that the people have structured. Now, if you want to challenge that, okay.

DELEGATE AASHEIM: Mr. Chairman. No, I'm not going to challenge your decision here. I'm just trying to be logical, because, actually, it wouldn't take long to decide on the Bates amendment and—

CHAIRMAN GRAYBILL: Well, the point is, the body will know whether it's for or against the Harper amendment. If it's against the Harper amendment, then we'll give them a chance on the Bates amendment. If it's against the Bates

amendment, why, send up an amendment, and we'll start on the Harper amendment all over again, if you want to. But I don't see that it does any good to switch, because as soon as you switch, then maybe one of the ones that made them-You know, I don't choose the order here; they choose it--unless they disagree, then I choose it. And I just don't like to get in the business of starting sorting out on the floor by secondary motions what order things are going to be taken up in. I think the issue is on Mr. Harper's motion, and if we're through discussing it, we'll have a roll call vote on it. All right, the point of Mr. Harper's motion is, first of all, to number the subsections 9, 10—to number Sections 9,10 and 11 as-as 9, sub. 1, sub. 2 and sub. 3-I don't think that's too difficult or important. Secondly, to substitute for Section 9 the language on subsection 1 of Section 9 shown on his amendment, and we've added to that the word "coordinating". Now, does anybody want me to read that or read yesterday's Section 9?

(No response)

CHAIRMAN GRAYBILL: I think everybody's got the picture. All right. So many as are in favor of Mr. Harper's amendment, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. ..... Absent
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Excused
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Gate.. ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann.. ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James.. ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye

Rebal Aye
Reichert Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins Aye
Romney Nay
Rygg ..... Nay
Scanlin Aye
Schiltz ..... Aye
Siderius Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer Nay
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman Aye

CLERK HANSON: Mr. Chairman, 71 delegates voting Aye, 20 voting No.

CHAIRMAN GRAYBILL: Very well, 71 having voted Aye and 20 No, you have adopted Mr. Harper's amendment and Section 9 is now styled subsection 1, State Board of Education, with the language-the Harper language as amended. The vote was 71 to 20. Then Section 10 is now styled subsection 2; Section 11 is now styled subsection 3. Now, before we close up the reconsideration of 9, 10 and 11, Mrs. Bates or Mr. Aasheim or anyone else, do you want to take another stab at it?

Mrs. Bates.

DELEGATE BATES: Is my motion still on the floor, or do I have to—

CHAIRMAN GRAYBILL: No, your mo-tion is, at the moment, wiped out, because his was a substitute motion.

DELEGATE BATES: Well, I shall reinstate it.

CHAIRMAN GRAYBILL: Do you want to renew it?

DELEGATE BATES: I move that we delete Sections 9, 10 and 11 for my motion, and you've all heard it. I don't have to reread it, I'm sure. In-I, too, believe, like Mr. Burkhardt, that the majority did a beautiful job with their ideas; and I think if they will present these to the Legislature, they may get what they want. I asked for your consideration on my substitute motion because I feel it will provide the flexibility. When Mr. Champoux mentioned that this could be too political, I can't see that it would be any more political than the Governor appointing any other board or-with the sanction of the Senate, which is done in most cases of boards, and I imagine this is the way the Legislature would structure a Board of Education. At this, I'll so move.

CHAIRMAN GRAYBILL: Very well, Mrs. Bates has renewed her motion as to Sections 9, 10 and 11— or, now, as to Sections 9, sub. 1, sub. 2 and sub. 3. The effect of it would be to replace 9, sub. 1, sub. 2 and sub. 3, that's the Harper amendment, the Rollins' amendment, and Section 2-or Section 10 as it was this morning, and put in place of it the language: "The general control and supervision of the State University and various other state educational institutions shall be vested in the Superintendent of Public Instruction and one or more State Boards of Education, whose powers and duties shall be prescribed and regulated by law."

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I rise to resist the substitute-or the new amendment suggested by Mrs. Bates. When I first read this amendment, it appealed to me as taking care of the purists and all those people who want nothing in the Constitution that is legislative in any way whatsoever. However, as I studied it further and as I study what we have done in connection with the majority proposals adopted, it seems to me that the proposal adopts the best ideas of Mr. Gysler, Mr. Driscoll and Mrs. Bates into what we think education should be governed by today. Admittedly, this situation can change in the future, but we are writing a Constitution for today as well as tomorrow. And I would suggest to you that you also consider, in connection with this, that if this does not prove to be satisfactory, you have adopted an amendment procedure whereby the Legislature can submit the Mrs. Bates amendment to the people, and if they don't do that and the people aren't happy, we have adopted Mr. Mahoney's suggestion whereby the people by initiative can submit Mrs. Bates'

amendment to the people and correct the situation. I urge you that we take care of today and hope that it takes care of tomorrow.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. Are you all through debating?

(No response)

CHAIRMAN GRAYBILL: So many as shall favor Mrs. Bates' motion, which has the effect of substituting one paragraph for 9, 10 and 1 l-or 9, 1, 2 and 3—so many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0..... .Absent
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ....Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Excused
Blaylock .....Aye
Blend ..... Nay
Bowman ..... Nay
Brazier ....Ay e
Brown.. ....Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Nay
Choate.....Aye
Conover ..... Nay
Cross.. ....Ay e
Dahood ..... Nay
Davis ..... Excused
Delaney ....Ay e
Driscoll .....Aye
Drum .....Aye
Eck ..... Nay
Erdmann ..... Nay
Eskildsen .....Aye
Etchart ..... Aye
Felt.....Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ....Aye
Habedank ..... Nay
Hanson, R.S.....Aye
Hanson, R. ....Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland., ... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ....Aye
Joyce.. ....Aye
Kamhoot ....Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... .Absent
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ....Ay e
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting .....Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ....Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay

Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 34 delegates voting Aye, 59 voting No.

CHAIRMAN GRAYBILL: 59 having voted No and 34 having voted Aye, the motion fails and we're back to 9, sub. 1, 2 and 3. Is there any more discussion?

Mr. Ask.

DELEGATE ASK: Mr. Chairman, a point of information. The Harper amendment-did he delete the words "and administration" or-?

CHAIRMAN GRAYBILL: Yes. In what are you talking about? In—

DELEGATE ASK: In sub. 1, there, "policies, programs and administration".

CHAIRMAN GRAYBILL: He deleted the words "and administration"; it says: "It shall be responsible for long-range planning, coordinating and evaluation of policies and programs for the state's educational system."

DELEGATE ASK: Mr. Chairman, I move that we put the words "and administration" back in again. I think they're quite important. I like this two boards and this sub. 1, here, "for long-range planning and coordination and evaluation of policies, programs, administration". I think this is part of it. This is probably one of the most important words, I think, in this whole section, and therefore I would like to see it be-those two words be put back in again.

CHAIRMAN GRAYBILL: Mr. Ask has an amendment to Section 9, sub. 1, as presently adopted, to add in the words "administration". I have scratched them out too well here, but I think it says "and administration", doesn't it? What's it say? "-and administration for the state's educational system"-that's four lines from the bottom on Mr. Harper's amendment.

Mr. Ask, do you want to discuss it any further?

DELEGATE ASK: Yes, Mr. Chairman. We now have two boards, which I think is a good idea, but somewhere along the line they're going to have to coordinate all their activities. And we have it in here that they're going to have long-range planning, evaluation of policies and programs, and evaluate the administration, and I think this is an important aspect of it. We can't have the administration for two boards going off in different directions, and I think they should be able to evaluate and do some planning and programming on administration also. I think these are real important words. In other words, we have two boards that are going to go out in their separate fields but they are going to work together very closely in certain areas here, and I think we're—this is what we're after. And I would submit that we should include those words back in again. Thank you.

CHAIRMAN GRAYBILL: Is there any discussion?

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in support of Mr. Ask's amendment. I have occasion to watch Central Purchasing in the State of Montana from another angle, and I believe that I can say that I do not think that the University System would create any greater cost by accident or misuse of funds than Central Purchasing seems to manage in other areas by the pure massiveness of the system. I think if we are to have a responsive University System, that we should allow them to administer their own departments, and I support the amendment.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE ARBANAS: Mr. Chairman, fellow delegates, I think I would like to resist the addition there for two reasons. First of all, when you were talking, Mr. Ask, it seemed to me you were talking about planning, evaluation about administration, and that's quite a different thing than the actual administration of the total system. It seems to me you get into a place where that first board would override--or could override the other two boards rather arbitrarily. In fact, it might even be-and that would be my second reason—that if you took that word literally, it might even be the disappearance of the two boards.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, maybe I should have explained a little bit more as to why I wanted to delete the words "and administration", and it follows what Mr. Arbanas has just said. In the Rollins amendment, for example, under Section 11, we said that "the government and control of the Montana University System shall be vested in a Board of Entrants-Regents, who shall be selected"-and so forth. "They shall have full power, responsibility and authority to supervise, coordinate, manage, control"—we used similar wordings in-with the other board, and we thought perhaps the words "administration"-we get so many people dabbling with administration that we might get conflicts ofinterest there; whereas, we thought that an overall look at the policy and program, without using the word "administration", would accomplish what we want without running into the possible conflicts between having three different groups delving into specifics of administration.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I rise in opposition to the addition of those two words. It's going to have the effect of taking the true direction of these two boards away from the individual members of the boards in terms of specific area control, and it's going to put it in the hands of this one board combined. And this isn't what we've worked on all this time to do, and maybe Mr. Ask didn't see that as he suggested that. That's the bad point about that, and I oppose the addition.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Ask's motion to add the words "and administration" back into Section 9, sub. 1—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: -so that it reads: "It shall be responsible for long-range coordination, planning"-No, let's see-"planning, coordinating and evaluation of policies and programs and administration for the state's educational system".

DELEGATE CHAMPOUX: Roll call, please.

CHAIRMAN GRAYBILL: So many shall be in favor, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Do the rest of you want to vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask. ..... Aye
Babcock.. ..... Aye
Barnard ..... Nay
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Nay
Berthelson ..... Excused
Blaylock ..... Absent
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Nay
Choate ..... Absent
Conover ..... Nay
Cross.. ..... Nay
Dahood ..... Absent
Davis ..... Excused
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Absent
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay

Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland.,	.Absent
Jacobsen	Nay
James	Nay
Johnson..	..Aye
Joyce	Nay
Kamhoot	..Absent
Kelleher	Nay
Leuthold	Nay
Loendorf	.Absent
Lore110	Nay
Mahoney	.Absent
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	.Absent
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins.	Nay
Romney	Nay
Rygg	..Aye
Scanlin	Nay
Schiltz	Nay
Sid erius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	..Aye
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	.Aye
Ward	Nay
Warden	Nay
Wilson	.Absent
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 18 delegates voting Aye, 66 voting No.

CHAIRMAN GRAYBILL: 66 having voted No and 18 Aye, the motion fails. Is there other discussion of Sections 9, 10 and 11, which are now open?

Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, in Section 6-I mean, sorry-in Section 10, on line 9, right near the end of the line—

CHAIRMAN GRAYBILL: All right.

DELEGATE BOWMAN: -we're talking about 6-year overlapping terms for the Board of Public Education. Then, in Section 11, Mr. Rollins' amendment, as we adopted it, we decided to delete the 6-year overlapping terms. Now, I think, in an effort to be consistent, we should delete the 6-year overlapping term phrase in Section 10, and I so move.

CHAIRMAN GRAYBILL: I think you have an interesting thought-point. Very well, Mrs. Bowman has an amendment to Section 9, sub. 2, to delete the words "6-year", on line 9, page 6-about the middle of sub. 2, if you are on the other page-in order to make it confirm-conform to sub. 3.

Mr. Harbaugh.

DELEGATE HARBAUGH: Did we take a vote on the 6-year terms in the other-to delete?

CHAIRMAN GRAYBILL: We took a vote when we—we took a vote on Mr. Rollins' amendment, and the vote was close, but the vote took out the 6-year term. The vote was 46 to 42 to take out the 6-year term and leave it open-leave the term open for the Legislature.

DELEGATE HARBAUGH: Well, Mr. Chairman, I would just like to say that I really think we ought to have the 6-year terms in there, and the reason that the committee put these in in the first place was so that there would be continuity on these boards from one gubernatorial election on into the next and so that the whole board would not change with the change in administration, and I really think that it ought to be left in there. I think it ought to be put back in the section where we took it out.

CHAIRMAN GRAYBILL: The Chair would only like to observe that if you have overlapping terms, it's bound to-the board is bound not

to change in an administration regardless of the length of the term, unless it was awful short. But we've left it to the Legislature now, and Mrs. Bowman's motion is to take it out of section—subsection 2.

Mrs. Bowman, for what purpose do you rise?

DELEGATE BOWMAN: Well, I suppose as long as I made the motion, I maybe ought to say something about it. (Laughter)

CHAIRMAN GRAYBILL: Suit yourself, Mrs. Bowman. (Laughter) You have the floor, Mrs. Bowman.

DELEGATE BOWMAN: I do not speak very often. I think that we did the right thing to take it out of Mr. Rollins' amendment; and I think we should take it out here, because I think that, even though the Legislature might indeed decide on a 6-year term, that if this proves to be, for some reason, wrong-either too long or too short-they can change it; and I think it's a mistake to put the term in the Constitution.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, in checking on Mr. Rollins' amendment, it does have confirmation by the Senate under regulations provided by law. Now, we don't have this here. I'm not sure whether it's absolutely necessary; but I would guess that, if you're going to have terms set at all, that it would be a good idea that if we deleted the 6-year overlapping term-or the 6 years from the overlapping terms, that we should add "under regulations provided by law"; and I would like to so amend Mrs. Bowman's amendment.

CHAIRMAN GRAYBILL: Do you want to include the deletion of the 6-year term, Mrs. Eck?

DELEGATE ECK: Yes.

CHAIRMAN GRAYBILL: Very well, Mrs. Eck has made an amendment to Mrs. Bowman's motion. She will leave in the deletion of the term "6-year", but after the words "overlapping terms", she would put ", subject to confirmation by the Senate under regulations provided by law", the purpose being to make this identical in subsection 2 with the language we've now adopted as Rollins' amendment in subsection 3. Is that correct, Mrs. Eck?

DELEGATE ECK: Yes.

CHAIRMAN GRAYBILL: Very well, the point, then, is if you vote for the Eck amendment, you both wipe out the 6-year term and you add ", subject to confirmation by the Senate under regulations provided by law". Is there further discussion?

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, the "under"-the "with"--"of"-"the confirmation of the Senate" is already there. It precedes the "6-year term" now, so that I think that just after "overlapping terms", I would need the "under regulations as provided by law".

CHAIRMAN GRAYBILL: Or we could tell Style and Drafting to make them the same. Mr. Style and Drafting is nodding his head. Would you like to withdraw yours, and he says he'll make them the same if we-Mrs. Eck has withdrawn hers. We're back to the issue of deleting the "6-year term". Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of Mrs. Bowman's motion to delete "6-year term", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's deleted. Are there other amendments to subsections 9-1, -2 and -3?

Mr. Scanlin, do you want to make an amendment?

DELEGATE SCANLIN: No, I just wanted to make an observation.

CHAIRMAN GRAYBILL: Is it a short observation?

DELEGATE SCANLIN: It sure is.

CHAIRMAN GRAYBILL: Okay, shoot.

DELEGATE SCANLIN: Mr. Chairman, I would trust the Legislature to realize that if there were seven members, they would fix 7-year terms. Thank you.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Sec-

tion 9, as amended, of Education and Public Land Committee Proposal Number 10, it recommend that the same be adopted.

CHAIRMAN GRAYBILL: Section 9, as amended, includes 9, sub. 1, 2 and 3, which is 9, 10 and 11 of the old.

Now, Mr. Heliker, for what purpose do you rise?

DELEGATE HELIKER: I rise to propose a further amendment.

CHAIRMAN GRAYBILL: Have you got it in writing?

DELEGATE HELIKER: It's only one word.

CHAIRMAN GRAYBILL: Let's have it.

DELEGATE HELIKER: It is to the renumbered Section 9, subsection 3, otherwise known as the Rollins amendment. I move to amend the last line of that Rollins amendment, before the word "audit", by adding the word "post".

CHAIRMAN GRAYBILL: Well, since you-1 suppose you know what you are doing. Okay, Mr. Heliker proposes to put the word "post" in in the place of where we used to have "Legislative" and where we have nothing now, so that the sentence reads: "The funds and appropriations under control of the Regents shall be subject to the same post-audit provisions as other funds of the state."

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, the record of the debate on this is perfectly clear that that's what we meant. I propose simply that we clear up the language also to make it clear that we mean "post-audit".

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Mahoney, hit a couple more buttons.

DELEGATE MAHONEY: If you used just the word "post-audit" I think you would exclude the word "Legislative Audit" or any other audit. You would be limiting it to one audit. It should be a post-audit.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, that is not my intention. The Legislative Audit is a post-audit. It would not eliminate the Legislative Audit.

DELEGATE MAHONEY: A post-audit, as I understand it-you'd limit it and you could have a post-audit and you might not limit-I think you'd better leave it the way it is with just one--no words in there.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Heliker's motion to add the word "post", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and the word "post" is out.

Now, Mr. Murray, you want to renew your motion?

DELEGATE MURRAY: Mr. Chairman, I renew my motion as previously stated.

CHAIRMAN GRAYBILL: All right. Now, the motion of Mr. Murray's is to finally adopt 9, sub. 1, 2 and 3, which is the old 9, 10 and 11. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, vote No.

(No response)

CHAIRMAN GRAYBILL: You may show it as a unanimous vote on your ballot, Mr. Champoux. All right, 9 is therefore closed up. Style and Drafting, naturally, will renumber the other sections. Now, are there other amendments?

(No response)

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise and finally report.

CHAIRMAN GRAYBILL: The motion is for the committee to rise and finally report on the Education and Public Lands Committee Proposal Number 10. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.
Mr. Rygg, for what purpose do you rise?

DELEGATE RYGG: I would like to make a committee announcement at this time, if I may.

CHAIRMAN GRAYBILL: All right.

DELEGATE RYGG: I assume **we're** going to have a recess rather soon, and I would like to call a meeting of Revenue and Finance immediately upon recess in Room 437.

CHAIRMAN GRAYBILL: Very well.

(Proceedings moved from Committee of the Whole to Convention, President Graybill in Chair)

PRESIDENT GRAYBILL: Will the clerk please read the Committee of the Whole report—title and signature.

CLERK HANSON: "March 13, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 10 of the Committee on Education, recommend as follows: that the committee rise and finally report on the Education Article Number 10. Signed: Leo Graybill, Jr., President."

PRESIDENT GRAYBILL: Does anyone care to have the report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Committee of the Whole report be adopted and that Education and Public Lands Committee Proposal Number 10 be referred to the Committee on Style and Drafting.

PRESIDENT GRAYBILL: Very well, you've heard the motion to adopt and refer this committee proposal to Style and Drafting. All in favor of the motion to adopt it, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?
(No response)

PRESIDENT GRAYBILL: Very well, it's assigned to Style and Drafting.
Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention recess for 15 minutes, or until 4:45 p.m. this day.

PRESIDENT GRAYBILL: Very well. Before we vote on that, the Chair would like to announce that we'll take up Judiciary and perhaps Natural Resources and we'll work at least until 6:00 to try and get as much of those done as possible. The motion is to recess for 15 minutes. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?
(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 4:30 p.m.—reconvened at 4:55 p.m.)

PRESIDENT GRAYBILL: The committee will be in session. The Convention will be in session. Mr. Murray, without objection, the Chair is going to ask that we be on Order of Business Number 3, Communications. Is there any objection?
(No response)

PRESIDENT GRAYBILL: Very well, the purpose of going to Order of Business Number 3-I've had placed on your desks a memorandum from me to the delegates, and it merely makes suggestions for two committees and for-it gives you some idea of the thinking, at the moment, on the voter education problem after the Convention adjourns, and unless there's objection, I shall refer this memorandum to Rules, and it says in the memorandum that Rules will hold a hearing-ma meeting at 8 o'clock in the morning to consider this, because we need to prepare a resolution of some nature to accomplish either what's suggested here or whatever else may be suggested. Is there any objection to referring this memorandum to the Rules Committee?
(No response)

PRESIDENT GRAYBILL: If not, all in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.
(No response)

PRESIDENT GRAYBILL: Okay. Mr. Murray, this is now referred to you. And is 8 o'clock in the morning a good time? Is that available?

DELEGATE MURRAY: Yeah, Mr. President, 8:00 is a—

PRESIDENT GRAYBILL: No?

DELEGATE MURRAY: Excuse me just a minute. I think 8:00 will be fine, and we'll commence. And I may have to withdraw for a few minutes, but I think we'd better call it for 8 o'clock in the morning because I know not what other time we would have.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I would like to bring to the attention of the Chair and the delegates that, 8 o'clock in the morning, the Bill of Rights Committee is going to meet in the Governor's conference room for the purpose of hearing from the press with respect to the controversial right-to-know, and I know a number of delegates are interested in attending. I think that's going to be very important to all of us, and for that reason, I should like to have the Chair keep that particular meeting in mind.

PRESIDENT GRAYBILL: Very well. Our only point-this doesn't have to go that fast, perhaps, but it ought to be done promptly so these committees can get to work, and we are shooting for getting them appointed and the resolution adopted on Wednesday. Do you want to have your meeting Tuesday--on adjournment or Tuesday—well, we can't have it Tuesday night-do you want to have it tonight?

DELEGATE MURRAY: Mr. Chairman, I would prefer to meet Tuesday at the noon recess and have lunch in the committee room and take the matter up at that time, since Bill of Rights does have this important meeting for which we have some out-of-town people scheduled.

PRESIDENT GRAYBILL: Very well, let's take this matter up Tuesday on adjournment in the Rules Committee rooms, so if anybody has some suggestions, you can come at that time or you can write them up and give them to Mr. Murray. The things I have put in my memorandum are suggestions only, and we would like to hear your suggestions. On the other hand, we do have to act deliberately and soon on this matter. Very well, that takes care of that.

Now, Mr. Murray, maybe without objection, we can be back on Order of Business Number 10.

DELEGATE MURRAY: Since we are on Order of Business Number 10, Mr. President, I move we resolve-the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention resolved into Committee of the Whole with Mr. Graybill presiding)

CHAIRMAN GRAYBILL: Before we take up the Judiciary Style and Drafting report-Mr. Schiltz, is it correct that we put in an amended page 4 and an amended page 11; is that correct?

DELEGATE SCHILTZ: That's correct, Mr. Chairman, and they've been distributedin the last 15 or 20 minutes, so you might-with a lot of other stuff-so you might have to look for them.

CHAIRMAN GRAYBILL: You might want to amend your books by striking out your existing page 11 and page 4 so you don't get mixed up. Now, members of the commitee, it might be easier if we followed along on page 7 through the Judiciary Article so that we can see what's been changed. You'll remember that our method is to read the section number only and let the Chairman of Style and Drafting discuss it. Mr. Clerk, do you want to read, beginning on page 7, Section 1 of the Judicial Style and Drafting proposal? Just Section 1 and the title.

CLERK HANSON: "Section 1. Judicial power."

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 1 of report Number 5, Style and Drafting Committee, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We have changed "a" to "one" on line 8 to conform to the same language in the Supreme Court, U.S. We've added "justice courts". Otherwise, minor style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 1?

(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of Style and Drafting's proposal on Section 1 of the Judicial Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2-Supreme Court Jurisdiction", four subsections. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does rise and report, after having had under consideration Section 2, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted.

Mr. Chairman, the only changes in sub. 1 are style changes. I changed the title. Nothing significant to note.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I have a joint motion.

CHAIRMAN GRAYBILL: Very well, there's a motion here from Holland and Berg.

DELEGATE HOLLAND: By Mr. Berg, who is the author of the minority report, and by myself as Chairman of the committee. We move to suspend the rules for the specific and limited purpose of amending Section 2, subdivision 1, line 15, of the Style and Drafting report on Judiciary by adding the following words after the word "corpus": "and such other writs as may be provided by law".

Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the motion is to suspend the rules to allow the amendment of Section 2, sub. 1, by adding, at the end of the section, after "habeus corpus", a phrase: "and such other writs as may be provided by law".

Now, on the issue of the suspension of the rules only, Mr. Holland, do you wish to speak?

DELEGATE HOLLAND: Yes. As the Convention may know, the Convention first decided to consider the minority report, and following the extensive debate on Saturday, some of the members of the committee and some of the people who weren't on the committee got together and did a certain amount of rewriting and, under the stress, overlooked that this language would eliminate certain basic writs which are necessary for the jurisdiction of the Supreme Court in the orderly conduct of its business. Several of us noted this. As many members of the committee could—got together saw that this had been eliminated just by oversight, and I wish to-and on behalf of Mr. Berg, who is-as I say, had written the minority report-we wish the Convention, for the sole purpose of adding these words, to suspend the rules. Now, I realize that this is an unusual action, but seeing as how a majority of the committee are in favor of this suspension, it would take but a very few minutes and, I expect, very little floor debate. We would ask the Convention to suspend the rules for this limited and specific purpose only.

CHAIRMAN GRAYBILL: Very well. For those of you who may want to be refreshed on this, the rule is Rule 74 and it says that one or more rules may be suspended for a specific purpose by an affirmative vote of two-thirds of the delegates present or a majority of all the delegates, whichever is lesser-so it's 51 votes or two-thirds. And the specific purpose has been properly stated by Mr. Berg and Mr. Holland. Is there other discussion of the motion to suspend the rules?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of suspending the rules, please indicate by voting Aye on the voting machines; and all opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 77 having voted Aye and 2 voting No, the rules are now suspended.

Now, Mr. Holland, do you wish to make a motion to reconsider Section 2, sub. 1?

DELEGATE HOLLAND: The rules having been suspended, we hereby move that the Style and Drafting report, at the place indicated, be amended by adding the following words and sentence which—

CHAIRMAN GRAYBILL: Wait a minute, now. You've got to move to reconsider. We've got to go through all the steps, I think. Isn't that right, Mr. Murray?

DELEGATE MURRAY: (Nodding yes)

CHAIRMAN GRAYBILL: Yes. Just say, "I move to reconsider Section 2, sub. 1", and I think we'll do it for you.

DELEGATE HOLLAND: We move to— we'll move to reconsider section—

CHAIRMAN GRAYBILL: -2, sub. 1.

DELEGATE HOLLAND: -Section 1, sub.—or Section 2, sub. 1, at this time.

CHAIRMAN GRAYBILL: For the purpose stated.

DELEGATE HOLLAND: For the purpose stated.

CHAIRMAN GRAYBILL: All in favor of the motion to reconsider, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, would you state your motion.

DELEGATE HOLLAND: Yes. I'll ask that line 15 of page 2-page 1 of the Style and Drafting report, the following words be added after the word "corpus": "and such other writs as may be provided by law period".

Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you'll be allowed an amendment which adds, at line 16, "and such other writs as may be provided by law". Do you care to discuss it?

DELEGATE HOLLAND: I see no need to discuss it, considering what I said earlier, and I'll leave it open for other discussion.

CHAIRMAN GRAYBILL: Mr. Berg

DELEGATE BERG: Mr. Chairman. I join, of course, in this motion to reconsider. It developed that after we had written the article, Sandra Muckelston, the research analyst, pointed out to us a case in the Montana Supreme Court, known as *Naegele versus Kelsey,* in which the Supreme Court held that under the old Constitution there was some question, perhaps, as to whether writs—remedial writs-might be issued if it was limited to appellate jurisdiction as we had written it here. It is to correct that possibility that we ask that this amendment be made so as to conform with what the Supreme Court has already determined its jurisdiction to be.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of the amendment which would add the words "and such other writs as may be provided by law"-to the Supreme Court's power to determine writs of habeas corpus--all in favor of that motion, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: 'Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered, and it's amended.

Mr. Holland, do you wish to move that when this committee rises and reports, after having had under consideration Section 2, sub. 1, as amended, that we recommend the same be adopted?

DELEGATE SCHILTZ: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Schiltz makes that motion. Very well; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well. it's amended.

Mr. Schiltz, do you want to explain anything further about Section 2, sub. 1, in the Style and Drafting phase?

DELEGATE SCHILTZ: No, I had already explained that before the amendment, and there's nothing new by the amendment. Mr. Chairman, I

move when this committee does arise and report, after having had under consideration Section 2, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are no changes at all in that subsection.

CHAIRMAN GRAYBILL: All right, now, the Chair may have-1 see what you did, but I don't want to-is everybody agreed that Section 2, sub. 1, is adopted as amended? If anybody had any other amendments that they wanted to offer, I want to know about it. Any other comment, rather, on the style and drafting.

(No response)

CHAIRMAN GRAYBILL: Very well, we'll consider that adopted as amended. Now, on Section 2, sub. 2, no changes. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 2, sub 3, Style and Drafting Report Number 5, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mostly style. On line 22 we took out the words "approval or" on the assumption that if the Legislature approves, there's no reason for it to act in any way, so it will just read "subject to disapproval by the Legislature". That's all.

CHAIRMAN GRAYBILL: Any discussion of sub. 3?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Sub. 3 is adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 2, sub. 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Section-or subsection 4 was moved from Section 4, sub. 3, where it covered both the Supreme Court and the District Court, and we just put this in here for the Supreme Court alone. That's all.

CHAIRMAN GRAYBILL: In otherwords, you've underlined because you've moved it to a new place?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Does everyone understand that? Is thereanydiscussion of sub. 4?

(No response)

CHAIRMAN GRAYBILL: All in favor of sub. 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk please read the title of Section 3.

CLERK HANSON: "Section 3. Supreme Court organization." Mr. Chairman.

CHAIRMAN GRAYBILL: That's consisting of two subsections.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 3, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This increased the number of justices from four to six, but as it was drafted previously, we talked about one chief justice and four justices, so we just changed that to conform to that-so there'll be one chief justice, four justices-and then we can increase the number of justices from four to six, making a court of seven.

CHAIRMAN GRAYBILL: Is there any discussion of Section 3, sub. 1?

DELEGATE SCHILTZ: Oh, and we made-now, we made one other change on the next page, page 8. We put "joined in and", for pronouncing the decision. We thought it made no sense if they just pronounced the decision; we wanted them to join in on it. That's all.

CHAIRMAN GRAYBILL: "A majority shall join in and pronounce the decision—decisions".

DELEGATE SCHILTZ: "Joined in and" is new language.

CHAIRMAN GRAYBILL: Yes, "joined in" is new language. Any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 3, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 3, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are only very minor style changes in this subsection.

CHAIRMAN GRAYBILL: All in favor of Section 3, sub. 2, say Aye.

DELEGATES: Aye.

CLERK HANSON: (Inaudible)

CHAIRMAN GRAYBILL: Oh, pardon me, Mr. Eskildsen; I didn't see you. Mr. Eskildsen, what have you got to say?

DELEGATE ESKILDSEN: Well, Mr. Chairman, members of the Convention. I just have this question to ask. It's for disqualification or disability. Somewhere, farther along the line, did we put in there for any other reason?

DELEGATE SCHILTZ: Are you asking me?

DELEGATE ESKILDSEN: Yes.

DELEGATE SCHILTZ: Tell me what you're talking about again.

DELEGATE ESKILDSEN: Well, as this section is, a district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability. Does anyplace else in the section-I can't remember anymore-does anyplace else in the section have other qualifications for a district judge to sit in the place of a Supreme Court justice?

DELEGATE SCHILTZ: Do you mean what constitutes disqualification or disability, or-

DELEGATE ESKILDSEN: Well,—

DELEGATE SCHILTZ: No, this is the only place there is any mention of when a district judge may sit on the Supreme Court.

DELEGATE ESKILDSEN: Well, what about when they take a vacation? That isn't a disqualification or it isn't a disability. I'm just wondering what we've done here, if we've-

DELEGATE SCHILTZ: If we did any more than we did, we'd be making substantive changes, and we didn't do it.

CHAIRMAN GRAYBILL: We did not cover the other situations, Mr. Eskildsen.

DELEGATE ESKILDSEN: Fine. I just wanted to know if there was-if there is any other place in here where the district judge can be seated on the Supreme Court other than by disqualification or disability. You answered my question. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Section 3, sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of **3,** sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted, Read Section 4, please, Mr. Clerk.

CLERK HANSON: "Section 4. District

Court jurisdiction." Contains three subsections. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 4, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, we made one change here on line 17, and I referred to it before when I was talking about the Supreme Court-the "process shall extend to all parts of the state". We moved that up from Section 4, sub. 3-you'll see it deleted down there-and added it on at this section--subsection 1.

CHAIRMAN GRAY&ILL: Any discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of **4,** sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, sub. 2, Style and Drafting Report Number 5, (Loud sneeze) it recommend the same be adopted—without that last amendment. (Laughter) Well, this is a very slight style arrangement. It had a sub. 3 at that point, and we just struck that.

CHAIRMAN GRAYBILL: Discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of **4,** sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 4, sub. 3, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, we made only style changes until you get to lines 27 and 28, where it said: "Appeals from inferior courts must be tried anew in the District Court. The Supreme Court and District Court process shall extend to all parts of the state." I referred to that before, and they were-that last sentence was replaced. The appeals from inferior courts was deleted in its entirety before conflict with subsection 2, which says that the District Court shall hear appeals from inferior courts as trials anew. That's all the amendments.

CHAIRMAN GRAYBILL: Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All right, subsection 4 of-subsection 3 of Section 4. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Clerk, read Section 5.

CLERK HANSON: "Section 5. Justices of the Peace." Contains three subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, you will note that this is the Justice of the Peace part of the Judicial system, which was put back in as—or put in as Section 10. We thought it more properly belonged here, after listing the jurisdiction of the Supreme Court and the District Court, so we'd have all the courts in a row, so we renumbered that Section 5. Now, as to subsection 1, there are no changes except style changes.

CHAIRMAN GRAYBILL: Subsection 1 of Section 5. Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration subsection 2 of Section 5, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this involves only minor style changes.

CHAIRMAN GRAYBILL: Any discussion of subsection 2?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Subsection 3.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration subsection 3 of Section 5, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, all we did here was delete, on lines 13 and 14, material which was in conflict with Section 1—"or other types of courts below the District Court level as is deemed necessary"—and we covered that in Section 1.

CHAIRMAN GRAYBILL: Section 1 of this Section 5?

DELEGATE SCHILTZ: No, no, Section 1 itself. It says, after "Justice Courts", "and such other courts as may be provided by law". We didn't see there was any reason to put them both in there.

CHAIRMAN GRAYBILL: Is there any discussion of Section 5, sub. 3?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6, clerk.

CLERK HANSON: "Section 6. Judicial jurisdiction-judicial districts". Contains three subsections. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, only style changes in subsection 1.

CHAIRMAN GRAYBILL: Mr. Schiltz, you picked up the last sentence from somewhere else?

DELEGATE SCHILTZ: That's right, and I was just looking for where it was. Yes, it came out of sub. 2, lines 23 and 24.

CHAIRMAN GRAYBILL: All right, is there any discussion of Section 6, sub. 1?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, style changes, and, as noted, we took out lines 23 and 24 and put them up in subsection 1.

CHAIRMAN GRAYBILL: Any discussion of sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 5-6, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, sub. 3, Style and Drafting Report Number 5, it

recommend the same be adopted. Mr. Chairman, in this case we have a possible substantive change which should be backed up by an inquiry that was made on the floor. As it read, it said, "The chief justice may, upon request, assign the district judges"--and we've provided the language "upon request of the district judge assign". Somebody asked on the floor at whose request that was, and the response was that-"the district judge's", so we felt free to do it.

CHAIRMAN GRAYBILL: Is there any discussion of that subsection?

(No response)

CHAIRMAN GRAYBILL: All in favor of Section 6, subsection 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7, Mr. Clerk.

CLERK HANSON: "Section 7. Terms and pay." Contains two subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 7, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, only minor style changes.

CHAIRMAN GRAYBILL: Any discussion of Section 7?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Section 7, sub. 1 is adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 7, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, only minor style changes.

CHAIRMAN GRAYBILL: Any question on sub. 2?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to ask Mr. Schiltz-Delegate Schiltz-do you-is it necessary to add in there "as provided by law", since we have already set up the term of offices for the various judges?

DELEGATE SCHILTZ: Well, Mrs. Bates, it says: "and as provided by law" and that's been-

CHAIRMAN GRAYBILL: "-for other judges"--"as provided by law for other judges" is what it says.

DELEGATE BATES: Oh.

CHAIRMAN GRAYBILL: It says "8 years for Supreme Court, 6 years for District Court, and as provided by law for other judges."

DELEGATE SCHILTZ: Right.

DELEGATE BATES: Well, now, in a previous-Mr. Chairman—

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: In the previous-I don't remember what section it is-we set up 4 years for JPs. Is this necessary? Are there going to be other judges in addition to these?

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: If Mrs. Bates would go back and look at Section 1—or somewhere in that neighborhood, it'll-seeit's left open for intermediate courts of appeal and so on-on line 9: "and such other courts as may be provided by law". This language takes care of such other courts as may be provided by law.

CHAIRMAN GRAYBILL: I think there is a point, Mr. Schiltz, as to whether or not JPs should be put in there. Perhaps they shouldn't, but they do have a term provided in the Constitution. Perhaps it need not be put there.

Mr. Delaney.

DELEGATE DELANEY: Mr. Chairman, in Section 5, subsection 3, the-Style and Drafting deleted "or other types of courts below the District Court level as is deemed necessary". I thought that was put in there with the idea that the Legis-

lature would--ought to form a Small Claims Court, and I thought this was the other type of court--was the idea of the other type of court we were discussing of-or judges that we were discussing.

CHAIRMAN GRAYBILL: And Mr. Schiltz already pointed out that we did provide, in Section 1, for such other courts as may be provided by law. So, Mr. Delaney, the reference to allowing other courts is in Section 1 on page 7; it isn't lost. But your point may be that-that may not be your point.

DELEGATE DELANEY: That was my point.

CHAIRMAN GRAYBILL: Do you find it in Section 1?

DELEGATE DELANEY: (Inaudible)

CHAIRMAN GRAYBILL: All right. Mr. Schiltz, do you have any comment on why justices of the peace's terms are not with the other terms?

DELEGATE SCHILTZ: No. Again, we look at the substantive material that we have and we just didn't pick up the anomaly there, if there is one. I think somebody ought to-1 move that-Mr. Chairman, I move that Style and Drafting Report Number 5, Section 7, subsection 2, be amended by adding "4 years for justices of the peace" after the word--after the words "District Court judges".

CHAIRMAN GRAYBILL: All right, we have now added on-between lines 9 and 10, "4 years for justices of the peace", so it will read: "Terms of office shall be 8 years for Supreme Court justices, 6 years for District Court judges, 4 years for justices of the peace, and as provided by law for other judges".

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion of that amendment?

DELEGATE SCHILTZ: Well, if we're going to do that, then to keep the whole article consistent, we should delete, on line 2, page 9, the words "for a term of 4 years".

CHAIRMAN GRAYBILL: Yeah, I'm going to go back and do that. Let's just see if they want to put it in here first. Is there any objection to putting in "4 years for justices of the peace"-in with the other judges' terms?

(No response)

CHAIRMAN GRAYBILL: All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: All right, that's adopted. Now we ought to go back and reopen Section 5, sub. 1, and take out the words "for a term of 4 years", that are underlined. Is that what you mean, Mr. Schiltz?

DELEGATE SCHILTZ: That's my motion, yes.

CHAIRMAN GRAYBILL: Any objection to opening 5, sub. 1, and taking out "for a term of 4 years", since we have now put it in another place?

(No response)

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Okay, that's adopted, too. Very well, is there other-are there other amendments to Section 7, sub. 2, about the terms of office of the judges?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor, say Aye.

UNIDENTIFIED DELEGATE: No.

CHAIRMAN GRAYBILL: Mr. Schiltz, did you want to say something?

DELEGATE SCHILTZ: Well, I was going to move we adopt it as amended.

CHAIRMAN GRAYBILL: All right, the motion is to adopt Section 7, sub. 2, as amended. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Do you want a division?

DELEGATES: Yes.

CHAIRMAN GRAYBLLL: All right. All in favor, vote Aye on the voting machines; opposed, vote No. Have all the delegates voted?

UNIDENTIFIED DELEGATES: No.

CHAIRMAN GRAYBILL: Any delegates want to change their votes?
(No response)

CHAIRMAN GRAYBILL: Close the ballot. 68 having voted Aye, 14 No, Section 7, sub. 2, as amended, is adopted.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment, Mr. Schiltz. Right. Mrs., Acher says when we took-on Section 5, on page 8 and 9, sub. l-when we took out the words "and for a term of 4 years", we should readopt Section 5 as amended. Very well.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 5, we recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. That's 5, sub. 1. Now, we're back on Section 8.
Mr. Clerk.

CLERK HANSON: "Section 8. Selection." Contains three subsections. 'Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are rather extensive style changes, but nothing significant that might be considered substantive.

CHAIRMAN GRAYBILL: Any discussion of 8, sub. 1?
(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of Section 8, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this is the amended page. We had one go at it and then had another committee meeting in its connection and decided that we had to go back almost to the original language, but our first problem was occasioned by the fact that, on page 20—on page 10, line 29, we talked about the first primary election, and nowhere in the Constitution is there or will there be any provision for a direct primary. It's a statutory matter and it's very-it's conceivable that we could go to some other system at some time and then leave this section dangling, so-or of no force-or of questionable force. So, our first problem was to delete the word "primary", which we eventually did. Now, the change we made that will be-appear on your amended 11 will be the deletion of, on page 11, line 8—the deletion of the word "primary" and just leaving it read "election". And then we restored most of the language -well, I'm not down there yet. Okay, that's all, except for style changes.

CHAIRMAN GRAYBILL: In other words, they took out the word "primary" so that it doesn't-so that the section would not refer to a system which might be deleted out of the statutes. Is there any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 8, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.-8, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, sub. 3, Style and Drafting Report Number 5, it

recommend the same be adopted. Mr. Chairman, now, in this case we restored the language so it reads "if an incumbent judge does not run", and we had-if you'll look at the other one-put in there "requests that his name not be placed on the ballot". We were confused as to just exactly how that would work but are confident that subsection 3, as restored, will work. "There shall be an election for the office"--we took out the word "contested"-"election for the office"-because it appeared to us that if only one man filed, there must still be an election. We can't be assured that two people will file or be nominated in some fashion. Otherwise--well, that's all the change we made.

CHAIRMAN GRAYBILL: Right. You said you put the word "judge" back in, but you didn't.

DELEGATE SCHILTZ: No, that's right.

CHAIRMAN GRAYBILL: "Subsection 3. If an incumbent does not run, there shall be an election for the office." Is there discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, Section 9.

CLERK HANSON: "Section 9. Qualifications"; containing four subsections, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, subsection 1 involves only style changes. We rearranged the language rather extensively, but we think it reads better.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 9, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, we-1 have to look at my notes here for a minute. Oh, you'll notice that we provided that judges shall collect expense money--or we put in the words--or we still have the words "except salary and actual travel expenses"-and deleted "as provided by law". This may be substantive, and I'm calling it to your attention. We deleted those words because we determined it to be the intent, from the debate on the floor, to entitle judges to actual travel expenses; whereas, "as provided by law", might contemplate a per diem that, in fact, is smaller than the actual travel expenses the judges are frequently put to.

CHAIRMAN GRAYBILL: Is there any discussion of 9, sub. 1—or sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of 9, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 9, sub. 3, it recommend the same be adopted. Mr. Chairman, there's no change in this subsection. Well, we deleted some language, but we added it to a new Section 10.

CHAIRMAN GRAYBILL: Any objection to 9, sub. 3?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 4, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, in the first paragraph, we deleted some-or we just made style changes, then we struck the language "any judicial officer who may absent himself from the state for more than 60 consecutive days shall be deemed to have forfeited his office"-and we put that down in Section 10 as a new section--as not being germane to the subject.

CHAIRMAN GRAYBILL: Any discussion of sub. 4?
(No response)

CHAIRMAN GRAYBILL: All in favor of sub. 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Read Section 10.

CLERK HANSON: "Section 10. Forfeiture of judicial position." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, I just noted this. We moved that language down from the previous subsection and restyled it to some extent.

CHAIRMAN GRAYBILL: I take it that this means that he's-he forfeits if he does either of these two things which were contained in two separate paragraphs above; namely, files for another elective office or absents himself for 60 days. Is that right?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Is there question about that?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. How about Section 11?

CLERK HANSON: "Section 11. Removal and discipline." Mr.-two subsections, Mr. Chairman-three subsections.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, Style and Drafting-Section 11, sub. 1. Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this is only style change and very little of it. We deleted subsection 2 and put it-well, we-no-okay, we're on sub. l-okay, that's all.

CHAIRMAN GRAYBILL: Any discussion on Y-Section 11, sub. 1?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, sub. 2, it recommend the same be adopted-Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, you'll see that we rephrased that language completely but kept the same sense. The redraft provides that the Commission shall investigate these various complaints and make rules implementing the section --now this may be substantive-I'll raise it-and keep its proceedings confidential. As it was written above, it sounded as though it shall investigate complaints, subpoena witnesses and documents, and make rules implementing this section and providing for confidentiality of proceedings. We took out the rules for that and interpreted that to mean keep its proceedings confidential.

CHAIRMAN GRAYBILL: Is there any discussion of 11, sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of 11, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, sub. 3, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Eleven, sub. 3—all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted; and that includes (a) and (b), does it?

DELEGATE SCHILTZ: That includes (a) and (b).

CHAIRMAN GRAYBILL: Everyone understand that?
(No response)

CHAIRMAN GRAYBILL: Very well, Section 11, sub. 3, (a) and (b), is adopted. Section 12.

CLERK HANSON: "Section 12. Exemption laws." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 12, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this section and the one following were sections assigned to the Judiciary Committee, and it has been-the-Section 12 has been rephrased slightly, and it will be placed somewhere else in the Constitution.

CHAIRMAN GRAYBILL: Any objection to Section 12?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 12, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Section 13. Perpetuities.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 13, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, as I indicated when discussing 12, this was assigned also to us, and this will also be placed somewhere else, and there are no changes.

CHAIRMAN GRAYBILL: For the record, Section 12 is adopted. Section 13-is there any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 13, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates, having voted on the prevailing side during the course of the debate on the Judicial Article that turned down the section on campaign expenses explicitly for Supreme Court judges, and the vote being so close, I move at this time to suspend the rules for the reconsideration of a new section in the Judicial Article and-are we going to read it or-shall I read it or-

CHAIRMAN GRAYBILL: The clerk can read it.
Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to suspend the rules for reconsideration of a new section in the Judicial Article as follows: 'Section 14. Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court nor any person or persons on his own or her behalf shall expend

money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly.' Signed: Champoux." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: May I speak very briefly to it, sir?

CHAIRMAN GRAYBILL: Yes. The motion-Mr. Champoux's motion is to suspend the rules so that we can consider whether or not to adopt a Section 14. We did consider that, and it was rejected. He wants to suspend the rules and consider it again.

Mr. Champoux.

DELEGATE CHAMPOUX: This is—throughout the course of this Convention, I have in my own mind deliberated on every vote, tried to do the best I could, but there's one vote that really bothers me. There is only one vote that I'm not sure of, and it's this vote; and a last statement of Jack Schiltz's is what keyed this bother in my mind, when he said that "Just remember that if we don't provide the expenses for these judges, somebody else will, and that other group will be, in the main, large companies that come before this court, whether they do it directly or indirectly." Now, I realize that this is a new concept, this idea of providing campaign expenses. It's been approached at the national level, as you well know. And if we're writing a Constitution for the future, maybe this idea is not going to be that unusual in the very near future; so I would like to suspend the rules for reconsideration of something that's bothering me ever since I voted against it; and that's all I have to say. Thank you.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I'll speak at this moment very briefly, and I'll speak very briefly if its reconsidered. There have been a couple of new developments in this field since we discussed it the last time, and if we reconsider, I would like to bring those to the attention of the committee.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, a point of information. What-is this the same as the article that was included in the majority report before, or where do we find this?

CHAIRMAN GRAYBILL: I'm not sure that it's identically the same. I'll read it to you carefully if we reconsider it. The point is, it's the "campaign expenses for Supreme Court justices only" clause.

Mr. Martin.

DELEGATE MARTIN: Mr. President, to be consistent, I resist the motion.

CHAIRMAN GRAYBILL: Mr. McNeil. No?

DELEGATE McNEIL: Mr. Chairman, I was just going to clarify that this proposed reconsideration is for Supreme Court justices only, and I believe our original consideration also included district judges.

CHAIRMAN GRAYBILL: I think that's right.

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I feel that this is an area that is-very, very important that we do reconsider our previous action. This is a life-and-death proposition in the court of justice.

CHAIRMAN GRAYBILL: Now, the issue is on the motion to suspend the rules-Mr. Champoux's motion to suspend therules. You don't need to close, do you?

DELEGATE CHAMPOUX: No, I just wanted to mention that. If I remember right, we had eliminated the District Court judges through an amendment-

CHAIRMAN GRAYBILL: I think your—

DELEGATE CHAMPOUX: -before we took the final vote.

CHAIRMAN GRAYBILL: -1 think the original language was both, and then we eliminated the District Courts and we defeated that, too. All right, now, the—

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, to me this is strictly legislative, and if you want to start, we should go back and amend the Legislative Article, the Judicial Article, and the Executive Article and all. This is straight legislative

proposition. The Legislature can do it if it wants to, and suppose the Legislature only appropriates a thousand dollars to this. Where are they going to be? Now, I think you'd better stop to thinking here a little. They ain't going to have too much money.

CHAIRMAN GRAYBILL: Very well, the motion is on Mr. Champoux's request to suspend the rules for the purpose of considering a Section 14 on campaign expenses for Supreme Court judges.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'd like to ask Delegate Champoux a question.

CHAIRMAN GRAY&ILL: Well, now, I don't want to discuss the merits. Is this on why he should suspend the rules?

DELEGATE BATES: Yes.

CHAIRMAN GRAYBILL: All right, ask your question.

DELEGATE BATES: What I'd like to know, didn't-I can't see anything here that we've referred to on the partisan or nonpartisanship of judges; and if this is true, then why should we reconsider, because if they would be on the same as any other partisan candidate.

DELEGATE CHAMPOUX: Her question isn't clear to me. What is your question specifically?

DELEGATE BATES: Well, is it-why should it be necessary to suspend the rules and vote on this proposal when we have given the judges permission to file as a partisan ticket now?

CHAIRMAN GRAYBILL: It would seem to me that that's-that might be discussion. I don't think it's pertinent to the issue of discussing-of suspending the rules. I'd like—

Mr. Schiltz.

DELEGATE SCHILTZ: I think it is, because I think there was some confusion the other day about that. Mrs. Babcock raised the question, and I never got a chance to answer it, but in the course of the Judicial Article, we struck out the word "partisan" for the same reason we took out "primary election", that it's a statutory matter-we might be partisan one year and not partisan another is the fact of the matter, We are not running judges either nonpartisan or partisan so far as the Constitution is concerned.

CHAIRMAN GRAYBILL: All right. In other words, it isn't a constitutional matter, it's a statutory matter, Mrs. Bates. Very well, the issue is on Mr. Champoux's motion to reconsider—suspend the rules. This is not a roll call vote, but we have to know whether 51 or two-thirds vote, so please vote Aye if you—

DELEGATE MAHONEY: I want a roll call vote.

CHAIRMAN GRAYBILL: You want a roll call vote? Very well, we'll make it a roll call vote. All in favor of suspending the rules, vote Aye; all opposed, vote No-on the voting machine. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim		Aye
Anderson,	J.	Aye
Anderson,	0.	Nay
Arbanas		Absent
Amess		Nay
Aronow		Aye
Artz		Aye
Ask		Nay
Babcock		Nay
Barnard		Aye
Bates		Nay
Belcher		Nay
Berg		Aye
Berthelson		Excused
Blaylock		Aye
Blend		Absent
Bowman		Absent
Brazier		Aye
Brown		Aye
Bugbee		Aye
Burkhardt		Aye
Cain		Aye
Campbell		Absent
Cate		Aye
Champoux		Aye
Choate		Aye
Conover		Absent
Cross		Absent
Dahood		Aye
Davis		Excused
Delaney		Aye

Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lore110 ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Absent
Murray ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Absent
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Absent
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 58 delegates voting Aye, 27 voting No.

CHAIRMAN GRAYBILL: 58 delegates having voted Aye, 27 voting No, we'll suspend the rules to consider Section 14. There is no other section to reconsider, so I don't see any point in putting the reconsideration.

Mr. Champoux, are you or Mr. Schiltz going to put the motion? Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section-I guess it's 14, which appears on page 39 of the Judiciary report, that it recommend the same be adopted. Mr. Chairman, I would like to make clear that this applies only to Supreme Court justices, as I contemplate the motion, and whether we did or did not, I want for the-"and District Court judges" struck.

CHAIRMAN GRAYBILL: Very well, Mr. Schiltz has made a motion for Section 14. It's on page--roughly, the text is on page 39 of the Judicial-the initial-the original Judicial proposal, but I'll read it for you: "Section 14. Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justice of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court nor any person or persons on his or her behalf shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly." If the language in the book has "district judges" in it, that's stricken here. It's for the office of justices of the Supreme Court.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I'm not going to burden you at this late hour very long with this matter, but as I said, two or three things have come up that we didn't have under our consideration or in our realm of knowledge at the time. First of all, I call your attention to the International Telephone and Telegraph outfit putting forth $400,000 in the Republican campaign. This is exactly the sort of thing that this particular provision is aimed at. You don't find little people contributing money of this nature and getting favors or alleged favors in return. Now, whether that was dishonest in some way or not remains to be seen, but the fact is that the entire country thinks there was something wrong with it. Now, the second thing that came up, so far as I'm concerned, was Section 16 of the Bill of Rights Committee-or committee report. You'll recall that that was for the express purpose of turning around a decision of the Supreme Court in which the Montana Power Company was involved. Now, I want to emphasize that I do not say that the Supreme Court justices were in any way dishonest in making that Ashcraft decision. What I do say is that because they're people and their adherents and various associated people do contribute to the campaigns of the Supreme Court justices, it looks bad to the people of the State of Montana when such a thing happens. Under this amendment, there would be no possibility of that. The Legislature would appropriate the money. Now, the third thing that cams up was that John Gardiner came here and talked the other night, and I took down one aspect of his speech. He was saying it was time to give government back to the people, and he said, "The most serious obstacle a citizen faces when he sets out to participate is that someone with a lot of money got there first and bought up the public address system. If we wish to diminish the power of money to corrupt the public process, we must pass laws to control campaign financing." Now, I see this as a wave of the future. Now, Charley Mahoney said he watched "60 Minutes" yesterday and one of those commentators commented on the-in the same connection, Charley-that we've got to change this elective process somehow. They're spending hundreds of millions of dollars to elect a President, and the wrong people are spending it. It isn't coming from anybody in this place except in 3- or 4- or 5-dollar dribbles, and you're not going to have any influence with it. This I see as a wave of the future and I see that-if we can enact this for five judges of the Supreme Court, that if it works-and I'm sure it will—that it will be adopted for other offices in the State of Montana. Now, so far as the cost is concerned, Mr. Garlington managed to amend the terms of the Supreme Court justices to 8 years from 6. If we had five judges who all were contested every 8 years, and we appropriated $10,000 for their campaigns-and believe me, that's enough if nobody's spending any more and nobody has to match anybody with more money-it would cost $12,500 a year, and that would cost something like 1.7 cents for every citizen of the State of Montana, and I submit to you, that's cheap. Thank you. That's all I'm going to say on the subject.

CHAIRMAN GRAYBILL: Just a minute, Mr. Habedank. The Chair wishes to make it clear that-1 have discussed this with Mr. Murray, and we think that since there is no Section 14 in here, it's unnecessary to reconsider a defeated motion. A motion was made to suspend the rules for the purpose of offering a 14 and therefore we haven't put the motion on reconsideration. Now, if anybody objects to that, why, we'll put it, but the vote was 58 to 27, and I suppose that if they want to suspend it, they at least want to hear it, so unless I hear from anybody objecting, we're going to assume that they may put the Section 14 as it has been done.

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: If we don't reconsider it then-if we don't consider this a reconsideration and this should fail, I don't think we should have to reconsider it again, so I think maybe we should reconsider our action.

CHAIRMAN GRAYBILL: All right. All in favor of reconsidering the defeat of Section 14, which I believe it was styled before-all those in favor of reconsidering that decision, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, now it won't have to be reconsidered if this reconsideration fails.

Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Schiltz yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE HABEDANK: Mr. Schiltz, in connection with this, there was a discussion last time it was up as to whether or not the Legislature would furnish campaign expenses for as many people as-who-as might file for the office of justice in the primary or in the general election, and I don't see anything in here.

DELEGATE SCHILTZ: Mr. Habedank, the language clearly says "for general election campaign expenses".

DELEGATE HABEDANK: Very well, thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee, I'm about to send your motion back to you. I don't understand it. Do you want to make it?

DELEGATE BUGBEE: (No audible response)

CHAIRMAN GRAYBILL: Mr. Foster. I'll come back to you, Mrs. Bugbee.

DELEGATE FOSTER: Mr. Chairman, would Delegate Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE FOSTER: Is this made clear-that this money would be made available only in the case of a contested election?

DELEGATE SCHILTZ: Right-general election campaign contests or whatever.

CHAIRMAN GRAYBILL: It says—

DELEGATE SCHILTZ: It says "contested general election campaign expenses".

DELEGATE FOSTER: So, in the event it was not contested, this money would not be available then—

DELEGATE SCHILTZ: That's right.

DELEGATE FOSTER: He'd just be running against his record without any—

DELEGATE SCHILTZ: That's right.

DELEGATE FOSTER: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. This is going to sound exceedingly strange, but I would request that every lawyer in this Convention stand and, in as short amount of time as he'd like to spend, state his position on this. I feel the same as my fellow delegate, Mr. Champoux, but I'd really like to have some direction on this.

CHAIRMAN GRAYBILL: Well, any lawyers that want to can stand and speak.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I'm not a lawyer, but could I ask Mr. Schiltz a couple questions, please?

CHAIRMAN GRAYBILL: Surely.

DELEGATE BABCOCK: Would this preclude private citizens from contributing to a judge's campaign?

DELEGATE SCHILTZ: Yes, it would.

DELEGATE BABCOCK: And do you anticipate that in 20 to 50 years the campaign expense will be the same as it is now?

DELEGATE SCHILTZ: I don't know. It's up to the Legislature, and they can make that adjustment.

DELEGATE BABCOCK: Well, I think some TV stations might have something to do with it.

DELEGATE SCHILTZ: They very well might.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I'm an attorney, and I'm going to arise and give you my thoughts on this. This is the worst kind of legislation in the Constitution, as far as I'm concerned. This is for the Legislature; and if they see fit to pass something like this, let them do it; but if it was wrong, they can change it the next year-and here we got it locked in if it doesn't work. How much they going to give them? Say they only give them $500. You can bet there's a lot of money going to be spent in that primary to get whoever you want-whoever the people want in the pri-

mary, so your primary is going to be your big election. And let me give you some examples how this might work. I was county attorney, and the first time I ran, I didn't expect to win. I was new in the community, and I ran-it's the only way you can advertise, I guess-but I happened to win, and if I wanted to go for a state political office, what better way would there be to try to get in the Supreme Court justice and get some free campaign money; and you get your name splashed all over the state; and you run long enough, you might get it-and you might not even be capable or competent to have the job-or you get your name out in the public, you've got a good name, you're going to get elected to some other job. So I think this is the worst kind of thing we could do, and if you want to do it, let's do it for all officers. Look at the money they're spending on the President, how much they spend on the Governor here. If we're going to go to pay campaign expenses, let's do it legislatively and let's go right down the line-Governor, Lieutenant Governor, whatever other office that you have running--and let's get some real control. I agree with you, thereshouldn't be so much money spent on campaigns by individuals, corporations, et cetera, but let's get the whole ball of wax. Let's do it by legislative-by statute, so you have some control over it and if it's wrong, you can correct it. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, it's exactly to what Mr. Ask said that I wanted to add a final sentence saying, "No candidate, upon winning election, may run for any other office for 10 years".

CHAIRMAN GRAYBILL: Well, are you talking about-he can't run for the same office again, Mr. Bugbee?

DELEGATE BUGBEE: Any other office.

CHAIRMAN GRAYBILL: I see.

DELEGATE BUGBEE: Yes, any other office.

CHAIRMAN GRAYBILL: Now, Mrs. Bugbee, if you want to make that amendment-I don't mean to stop you. I just didn't understand what you wanted to make it to. And it really wasn't in the written form that we require, because it didn't say what it amended. Now, if you want to send it up, I'll put it.

Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to ask Mr. Schiltz if he'd yield to a question, or maybe two questions.

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE HARBAUGH: Now, the way this has been written, this section, this would apply only to contested elections. Is it your understanding that this would mean, then, only two candidates, a maximum of two candidates?

DELEGATE SCHILTZ: That's right. That's the statute--well, of course, it leaves it to the Legislature, but as the statutes now are, after the primary you're boiled down to two elections—two candidates.

DELEGATE HARBAUGH: May I ask another question? In the event, that, say, someone wanted-more than two people ran in the general election on a nonpartisan basis-and I think it wouldn't be necessary to go through a primary, would it, to run for the general election?

DELEGATE SCHILTZ: Well, I suppose if-1 think they do have to go through the primary, but I suppose there may be something in the election laws now or there could be something in the future that would allow somebody to get X-thousand number of signatures and be able to appear on the ballot. It happens very seldom.

DELEGATE HARBAUGH: This would be my concern-that-I don't see anything in here that limits it just to two persons opposing one another. It seems to me that it would be very possible for three, four, maybe five candidates to get involved in this election race.

DELEGATE SCHILTZ: Mr. Chairman, if you're asking me a question, we're talking about the general election, where you're down to two candidates.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Mr. Schiltz, I would just point this out-that the statutes may change from time to time and from year to year and maybe Independents will be able to run. Maybe we'll have Republicans and Democrats running for the judge-justice of the Supreme Court--and we might end up with, also, Independent candidates, and we can't say what the statutes are going to be 20 years from now. If

we put it in the Constitution, there'll only be two candidates, whatever they are-they might be men and women, we don't know-whatever way you want to class them-but I can see that very possibly we could have a half a dozen candidates all drawing the same amount of money. And I can also see that the underdog in this race doesn't have a chance in the world of winning if they happen to set the amount of money too low. Ifthey offer $500, why-or a thousand dollars, he wouldn't have a chance in the world, especially if the judge has been elected one time for 8 years and he's been in that long. He wouldn't even have to spend his. Suppose they give $10,000. He wouldn't even have to spend his. He could just pocket that and buy a new boat. But the candidate running against him would have to spend it all to try to get elected. Now, another thing that might happen is maybe you must run for the fun of it, just to get the $10,000 and don't even do any campaigning-run around the state a little bit and let it go at that. I don't think this has any place in the Constitution at all-maybe the Legislature, but not the Constitution. If you want to elect-if you want to do it for the judges, they get paid more than any other officer in the state-elected officer--other than the Governor, maybe-but if you're going to do it for them, I think you should do it for the lonely little old legislator that runs, too. I think any person that's running for office-you're not going to get a chance to answer till I'm through, Jack-sorry (Laughter) I'm making a statement, not a question-but if we're going to do it for one, we should do it for all in the Constitution or not do it at all-just forget about it. It should belegislative.

CHAIRMAN GRAYBILL: Mrs. Bugbee, do you care to-do you want to amend Section 14?

DELEGATE BUGBEE: Yes, I'd like to ask-add the last sentence: "No candidate, upon winning election, may run for any other office for IO years." Now, my intent here is that they shall not use public money in order to run for Congress or Governor or US. Senate or anything like that. Mr. Drum brought his up the other day, and I thought it was the one legitimate argument against this. If we are going to vote on it, I'd like to have this in.

CHAIRMAN GRAYBILL: Very well, Mrs. Bugbee has proposed an amendment: "No candidate, upon winning election, may run for any other office for 10 years." She wants to add that at the end of Section 14. Is there discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the question arises on Mrs. Bugbee's proposed amendment.

Do you want to speak on it, Mr. Gysler?

DELEGATE GYSLER: Yes, I'd like to ask Mrs. Bugbee a question. Mrs. Bugbee, it kind of appears to me that you aren't getting at what you're trying to get at, because it seems to me as though the person who would probably stand to gain the most from this money spent would be the person who lost and used it-used this means to promote himself. Now, did you intend to leave that one open?

DELEGATE BUGBEE: You're right.

CHAIRMAN GRAYBILL: Very well. Mr. Studer.

DELEGATE STUDER: Mr. President, for Mrs. Bugbee's information, couldn't she just put that in-to limit the amount of money to be given to a person only once?

CHAIRMAN GRAYBILL: That's not a question, Mrs. Bugbee, that's just a statement, I think, unless you're asking her to yield. Very well, the issue apparently is on Mrs. Bugbee's proposed amendment to add a final sentence to Section 14 to say: "No candidate, upon winning election, may run for any other office for 10 years". All in favor of Mrs. Bugbee's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, it's defeated. Is there other discussion?

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman and fellow delegates. If there was anything that came through loud and clear during the Judiciary Committee hearings, it was the fact that a judicial candidate in campaigning for an office-what could he say-"I'11 give you better justice than the other fellow"? Let's stop and think about this now. The further we can remove the "for sale" sign from the courts of justice, the better off we're going to be. Now, we're not comparing courts of justice with the other departments of government. We are talking about that last appeal, that final appeal. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I certainly share Mr. Melvin's desire that we get the courts as far removed from politics as we can, because nobody knows whose case is going to come up next or whose politics will be involved, but I have to take issue with the idea that this is the means of removing the courts from politics. On the contrary, no matter how good a record a judge has, he is assured of a free political campaign as soon as his term expires and he comes up again for election; and it seems to me that this is a perfect way tomakecertain thatallofthejudges, allofthe time, will have politics firmly in the front of their conscience and their minds as they go about their work; and I think this would be an unmitigated disaster in the business of attaining a decent administration of justice in Montana. The gentlemen are entirely right. If the time comes that this becomes an abuse, the Legislature is in a complete position to take care of it, and it is the one that has the purse strings, and should it feel that in a certain campaign there is a judge that they don't particularly like, it would be very easy to rig the amount provided for the campaign on that election to effect the purposes of the Legislature and make sure that it would be a kind of a political result that the legislative people in command would like to achieve. Since this is utterly unprecedented in constitutions and we have had many lessons in not putting something in and making it a burden forever, it seems to methat the proper judgment here is to leave this to such time as it may genuinely prove in our own state to be an evil that needs correction, and then our people's representatives, the Legislature, can do so.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, regarding the primary, the Legislaturecould limit the number--amount of funds that could be spent in the primary, so assuming you had 10 lawyers filing for associate justice, which is unlikely but a possibility-it's never happened in the past, to my knowledge-so that takes care of the primary. And, unfortunately, I wasn't here for the debate-1 was ill-it occurred, apparently, right after I strongly urged that we take care of this problem; and we wouldn't really have the problem if we had used the method of-that I proposed, the federal method of appointing the judges. That is the only fair way-the only way that you're going to get a truly independent Judiciary, but we have already decided against that. My proposal, as I recall, had 13 votes. It was the original-part of the original Montana plan. Now that we have opted for elections, which I detest, in the Judiciary-and I think it's ridiculous and absurd to elect judges and have popularity contests for judges. Judges are not supposed to be popular; they're supposed to be just. But now that we have made up our mind to have these elections every so often--every 8 years-for the Supreme Court, then I do not feel that the judge should be tempted. One justice told me that the first time he ran, it took him-for the 6-year term-it was a full 6-year term, as I recall-it took him 3 years to pay off his campaign debts. Then what's he supposed to do? Spend the last 3 years to pay for his-to get ready for the next campaign? How in Heaven's name can you expect to have an independent Judiciary under these circumstances? It's just lucky, as I said before, that we have never had a terrible scandal, as they had in the State of Oklahoma, where two associate justices and a Supreme Court justice, as I recall, were involved in bribetaking from an oil company. Therefore, although I do not like this method of electing judges, I feel the only safe way of putting them beyond reproach and doubt--and our people must never, never have any doubt in their mind that they are going to get justice on the other side of this Capitol building. Therefore, I support Mr. Schiltz's amendment and I urge you most strongly to vote for it.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates. I heard many years ago that, in England, when a person is running for most any office, that there isn't campaigns like we have here; that they are provided with the same publicity-it's possibly a legal-sized paper, qualifying that person with his qualifications and the reasons why people should vote for that particular person. Now, if the Legislature saw fit, why couldn't the state printing presses put out the qualifications on these men running for the judicial-put out the same amount for each man running, whether it be in the primary and then in the general election-and let the Legislature decide just how much of this material would go out in a very fair and favorable manner. This way they would have complete control of it, and the costs shouldn't have to be prohibitive, and, of course, the judge himself would really not be out on the campaign trail.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, what I'm wondering here-say there were several young, upcoming lawyers decided they were going to run for judge, and if they made it through the primary, they would receive perhaps $10,000 for the general election. If they were defeated in the primary, they went out and got sufficient number of signatures to run as an Independent-we could be paying several young attorneys to run in the general election and all they were really wanting was to get their name out before the public for some future advances in their own business. And I certainly object to this proposal.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I can see-sense some problems with this proposal that we cannot yet foresee. But on the other hand, I already know of a lot of problems that we have right now and I can't even guess that problems that will be any bigger than the ones we have now with the present situation, so I think I'll vote for this.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I sure hesitate to see this Convention write into the Montana Constitution something that the national justices-Supreme Court justices and Congress of the United States are wrestling with at this time, trying to determine what procedure to follow along these lines; and if we should lock this into our Constitution, however noble we think it is, and it doesn't work, then what do we do? I think this is purely a legislative matter and that at such a time that the Supreme Court of the United States decides that this is an issue that should be inaugurated throughout the country, then perhaps Montana should go ahead and adopt it; but at this time, I think we would surely be premature. We don't know the mathematics of how it would work, and we don't know what the Legislature would determine. They could be influenced politically one way or the other, depending on the politics of that body, and it certainly would be an experiment at this time. And I'm firmly against this proposal.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President, **I** favor Mr. Schiltz's proposal because it might make our judges like Caesar's wife-above suspicion.

CHAIRMAN GRAYBILL: Mr. Aasheim, will you take the Chair?

DELEGATE AASHEIM: May I say a few words first?

CHAIRMAN GRAYBILL: Sure.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Members of the assembly, I think Mr. Schiltz has a very worthwhile idea here, but I feel that it doesn't belong in the Constitution, and I wonder, Mr. Chairman, if we could not direct a resolution or direct this to the Legislature--a resolution that the Convention recommend that they give serious consideration to this proposition, rather than making it into the Constitution.

(Delegate Aasheim assumed Chairmanship of Committee of the Whole)

CHAIRMAN AASHEIM: Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman. Mr. Furlong asked a moment ago for lawyers to stand and discuss this, and since I discussed it the other day and since I feel strongly on it, I will do what he asks. I'd like to-first of all, I would like to tell you that I'm in favor of it and will vote for it, and now I'd like to discuss some of the points that have been raised. Concerning the number of candidates, the number of candidates almost always has to be only two. It's the general election and the election laws provide that everyone else is eliminated in the primary; and I think it may be possible, through a great effort, to get your name on the ballot through a great--as an Independent. This has never been a very successful method, but conceivably if the money were there and were very much, it might be used more, but it still would be a difficult thing to do and wouldn't raise materially the cost, in my view. One of the-one of you mentioned that if it's such a good-1 think Mr. Ask said-if it's such a good idea, why don't we do it for other offices. The truth of the matter is, we should do it for other offices. The truth of the matter is, probably within the lifetimes of most of us in this room, we will do it for other offices. The question is whether this Convention is going to take the lead in breaking the ice and starting with the Judicial Supreme Court offices in this state. This Convention invited John Gardiner to speak. I didn't know what Mr. Gardiner was going to speak on, except his general reputation for being a person who speaks about better government throughout the country. Only about half of you came. I know why;

you were all tired. I don't blame you. I wish you would have all come. You would have felt a little differently about this article at the moment. This man didn't know anything about Montana, but he talked about the national situation, and he pointed out how absolutely impossible it is getting to run campaigns decently and honestly and honorably on the kind of money that must be spent for media and for coverage and for moving about. Now, this is true in the State of Montana and it's true for the office of Supreme Court. This is a big state. The judges for the Supreme Court, under the present circumstances, are forced to compete with several other officers. They have to buy television time, and generally a lot of it-at least they do buy a lot of it. It's a very expensive proposition. All of the arguments that he made for any office being supported financially by the public apply to the Supreme Court justice, and as Mr. Melvin has twice told you this afternoon, there are several additional reasons why it applies especially to the judicial offices-these people who are supposed to decide fairly and evenly between all of us after they get elected. It's one thing to support a senator or a congressman and have him help you out with a bureaucracy; it's another thing to support a judge and have him help you out with a decision. The next thing that was mentioned was maybe these fellows would pocket the money if they were a sure bet. Well, you know, the section provides that this shall all be done by Legislative Assembly appropriation and obviously under the Legislature's eye, and the Legislature is not going to be foolish enough to hand these men the money on June 7th and let them have it. The Legislature is going to pay their bills, and their bills are going to have to be audited, and it's not going to pay anybody any money unless they've spent it on campaign expenditures. Now, I must, at this time, rise in opposition-for one of the rare times in this Convention-with my good brother off the bench, Mr. Garlington. Mr. Garlington stood and said, "Whose case comes up next?" If we knew whose case comes up next-well, I can tell you whose case is coming up next. It isn't the dollar giver; it's the thousand dollar giver whose case is coming up next. And I can tell you quite honestly and straightforwardly that there are law firms in this state who give a thousand dollars to the campaign expenses of one judge for the Supreme Court, and you only have to walk a half a block and check it up yourself if you don't believe me. Now, I don't know if there's any campaign expenditures down there now, because they destroy them after 6 months, but there will be the next time the Supreme Court is up, and there are those who photostated them before and could show them to you. There are law firms that give that much. There are others who give great sums of money, sometimes split among numerous relatives, to Supreme Court judges when they run for office. That's what has to happen now for a Supreme Court judge to get together the kind of money that it takes to put on the kind of campaign that it takes to get reelected--or even to get defeated-and if you want to continue that, as I said a week and a half ago, today's your chance to continue that by voting against this. But if you want to change it, today's your chance to help Montana take a really important new step in how to run campaigns. Then, Mr. Garlington said, "If the time is here that it's an abuse, the Legislature can do something about it." My friends, the time is here when it's in abuse. It's in abuse today. It was in abuse in the last election, and it was in abuse in the election before the last election. And asking the Legislature to do something about it, if it's such a good idea, is only putting off the dirty work of taking the step to somebody else. We're a Constitutional Convention. We only meet once. We can do that job if we have to. It would be very difficult for the Legislature to do it. Mr. Garlington also discussed the subject--well, I don't remember that point. The point-the last point I want to make is that someone said that we might lock it in-1 think Mr. Wilson said we might lock it in and it might not work. First of all, if we lock it in, it will limit the expenditures for Supreme Court judges except as set by the Legislature. If, in fact, some other supraagency comes in that will pay all of these bills, we've caused no problem, because the Legislature can then reduce the amount to zero that would be paid for the campaigns of these judges, but if no one else takes over that burden of supplying campaign money on a national or state basis-statewide basis-then we will have at least cured the problem for the Supreme Court. Of course it's not perfect, and of course it's only a start. We have a chance to start this afternoon.

CHAIRMAN AASHEIM: Mr. James.

DELEGATE JAMES: Mr. Chairman, would you read that new section again? I know we had it when the Judiciary was under consideration, but I don't think any of us have it on our desk now.

CLERK HANSON: "Section 14. Campaign expenses. The Legislative Assembly shall

appropriate funds for the contested general election campaign expenses of candidates for the office of justices of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court nor any person or persons on his or her behalf shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly."

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Johnson,

DELEGATE JOHNSON: Ladies and gentlemen, I'm in favor of the Legislature setting the amount that is necessary for a campaign. I don't know just what it would be-say, for instance, a thousand dollars-I'd like to take that amount. Could you get your name in the paper, a writeup about you so that you would be-so people could get acquainted with you and what your qualifications are and so on, all over the State of Montana? Then, if each justice would spend a thousand dollars-be allowed by legislative law to spend $1,000 on his campaign, that wouldn't hurt him very much. He wouldn't have to go into this terribly expensive TV programs and travel all around the place, and I think that would equalize it. Then the Legislature itself would not have to raise this money. I really do not believe in the Legislature raising money-taxpayers' money—to pay for campaigns of political officials. Certainly this, in my opinion, is going to set a dangerous precedent if we do it in this manner; but I am in favor of that part where the Legislature regulates the amount that might be spent. I think that's a real good idea and that should extend to all political offices seeking-or candidates seeking office. I think in the future we spend too much money and too much time chasing around. Look at the months and the money and the clubs you have to raise. Only people who benefit from this are advertising agencies and radio and et cetera, et cetera. I think it's ridiculous to spend, oh, great many more times the amount of money than you make as a legislator or a public-officeholder. Your salary wouldn't pay for one week's expenditure for a campaign. I'm against it as it is, but I would be in favor of the Legislature controlling-or setting the amount that's allowable to be spent. Thank you.

CHAIRMAN AASHEIM: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I just wanted to ask a question of the assembly. Is this why this body, when we were discussing the Revenue and Finance Article-is this why we removed the Z-mill property limit, in order to finance all the political aspirations of our lawyers wanting to run for Supreme Court justice or other higher offices?

CHAIRMAN AASHEIM: Mr. Champoux.

DELEGATE CHAMPOUX: You know, you heard a lot from me in the last few days and I hate to-you know, you keep hearing my voice, but-and I was against this, and I thought it was a lawyer-relief bill. Very frankly, you lawyers, I figured, well, here we go again-we're going to really-you know, all those big salaries, and we're really going to take care of them with this thing, But, you know, I've been impressed. I think there's greatness in this combined body; I really do. Look at the way you worked us over in that Education—and we had a perfect Education bill. (Laughter) But everything we've done here has been better. I am very much impressed with all of you. We have contributed something already. We are the first Constitution in any state in the Union that has ever put in a special clause for the American Indian. First one. Papers haven't caught that one yet. Here's a chance for another great move if we look ahead and think ahead, and I'm going to support this proposal. Thank you.

CHAIRMAN AASHEIM: Oscar Anderson.

DELEGATE OSCAR ANDERSON: Just for a point of clarification, I'll ask this from some. one of the experts on legislation. Would the Legislature be forced to appropriate this money? I think I can direct this at Mr. Mahoney-he seems to be the legislative expert. Would you yield, Mr. Mahoney?

CHAIRMAN AASHEIM: Mr. Mahoney, will you yield?

DELEGATE MAHONEY: What is the question, Mr. President?

DELEGATE OSCAR ANDERSON: Would the Legislature be forced to-by this constitutional mandate-be forced to appropriate the money?

DELEGATE MAHONEY: Yes, $1.

DELEGATE OSCAR ANDERSON: A further question--would you yield for another question, Mr. Mahoney?

CHAIRMAN AASHEIM: Will you yield for a question?

DELEGATE MAHONEY: I'll try.

DELEGATE OSCAR ANDERSON: If they didn't appropriate, say, for instance, a dollar, then no one could spend any money at all for these judges? Would that be right? I want some clarification of this point.

DELEGATE MAHONEY: I'd agree with that. That's the way-my interpretation of it.

CHAIRMAN AASHEIM: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I've listened here with some interest for some time on this, and I certainly agree with Mr. Schiltz that the spirit of this is very commendable. Certainly, in all of our campaigns, if-insofar as we could, it would be very desirable to take all the popularity contest aspect out of them, but I submit for your consideration that the proposal as submitted would not accomplish what it's intended to accomplish. Theincumbent always has the edge—just the fact that he can put out an ad saying "reelect John Jones". And the Supreme Court offices being what they are, they don't get much publicity, so nobody has heard anything bad about the man; they'll tend to reelect him. This means that the person running against him has got to come up with a better campaign. That's the first point you want to keep in mind. Secondly, all the incumbent has to do is to start campaigning ahead of time. He's in office, we must remember. He has all kinds of opportunities to go around and make public speeches. These would not be a part of campaign expenditures, would not be regarded as even a campaign. I would foresee a situation where the other justices on the bench, having been invited to go to Missoula or Great Falls or Havre, Billings, to give a talk, would turn to the incumbent-to-be or the candidate-to-be and say, "Here, Joe, you go down and take this. You're going to be running for office pretty quick, and you could use a little publicity." The net result would be that our incumbent, by this system, would be given a tremendous edge. I would predict that, if it went into effect, the incumbent would win every time, because his opponent would only have the same amount of money that he had. Now, let's consider something else. We're going to have a hard-pressed Legislature on a budget matter every time; they're always hard-pressed. We have a law on the books now that says a candidate for public office is expended-is limited in his expenditures to 5 percent of his income-5 percent. This was passed some time ago-and as was pointed out a little while ago, it was got around by the club concept—but nevertheless it's on the books, and so the Legislative Budget Committee is going to look at that and say, "Well, we have a law on the books that says 5 percent is thelimit, so that's whatwe'll give these judge candidates. His pay is $20,000 a year, so we'll give each of these men $1,000." I don't think a thousand dollars is hardly even enough to cover the state letting the public know who's running. I don't think you could run ads in all the newspapers in the state just by way of announcement-so that the candidate trying to oust the incumbent would be a-have a terrific disadvantage. And I think that, for thesereasons, we should leave it up to the Legislature; and as I say, the aim is very desirable, but I think it's got to be given more thought.

CHAIRMAN AASHEIM: Mr. Kamhoot.

DELEGATE KAMHOOT: I've been listening here to all of these talks. I can certainly see a lot of desirable things, but I would like to speak as a member of the minority group. Now, I don't mean politically, I mean the taxpayer. Now, I say minority-we're in the minority today-on June 6th, the taxpayer of this state is not going to be in the minority. Now we've heard time and time and again here the remark, "the old Constitution". I think Delegate Champoux used that a hundred times, probably. I would like to submit to you that this is the old Constitution; it's the present Constitution, and it very well could be the Constitution of the future. I think it's time that we startrealizing a little bit what we put onto the Legislature. Everything that we do directs the Legislature to spend some more money. Now, just where in the world are we going to get it? We haven't been able to fund our institutions properly for many years. We haven't been able to fund our school system. Now, is there some great new tax base that's been discovered that I don't know about? I sure hope it isn't removing that 2-mill levy off my property. I hope that isn't the tax base that's been discovered, but I'm afraid it may be. Now, this thing kind of builds up on you day after day. A little dose at a time doesn't seem to mean much as it comes, but I think it's just like DDT. I think maybe you get enough DDT in the ecology and probably you're

going to wreck the whole thing, and I'm wondering if this isn't just about what we're doing here with these little doses, one at a time, and I'm certainly going to have to give this whole document a real good looking over when we get through, because I do think that the taxpayer is going to be in the majority when it comes June 6th. And that's about all I have to say on this subject and I thank you, Mr. Chairman and fellow delegates.

CHAIRMAN AASHEIM: Mr. Drum.

DELEGATE DRUM: Thank you, Mr. Chairman, I'd rather be in front of Mr. Dahood than behind him. (Laughter) The-no offense meant. The thought crosses my mind that if each of us here, by statute, were allowed to spend a hundred and twenty dollars in the general and a hundred and eighty dollars in the primary-and I wonder how many stayed within that limit. If you did happen to exceed that limit-I, for one-if you did happen to exceed that limit, the chances were you set up a club mechanism, so the comments I make I would like to address to Mr. Graybill's and Mr. Schiltz's intent, which is a better, more just, more representative Supreme Court. However, unless more restrictions are put on the spending of club money, it would seem to me that, really, we aren't going to accomplish anything by funding the candidates' expenditures, because certainly the club expenditures will continue unless it's prohibited by statute. Excuse me, Mr. Schiltz, would you like to yield to a question--or-The legal profession seems-the times that I have taken an interest in any of these-and I've been a contributor to two of the candidates that ran in the last Supreme Court race; one of them was picked up in a airplane for supposedly carrying a bomb or something and the other's been mad at me ever since we've been here because I didn't support this thing the first go-around (Laughter) but the exposure I've had to the legal fraternity is that they sort of pick, generally--without making a big issue out of it-the fellow that they think is going to make the best judge; and if their law firms support that person financially, it may be a good thing, because you may wind up with the gentleman as a Supreme Court justice who the legal fraternity generally thinks will be the best judge; and we may be excluding quality if we put them both on the same basis. If one fellow has the quality to attract more support, why not allow him to get the support, rather than to-and I'm assuming that most of this-most of the contributions will come from the legal profession, or a good part of them will come from there. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'm sure that I'm not going to sway any minds. To me the reasons that are opposed to the proposition now before this delegation reveal the same type of frustration that our Bill of Rights Committee has been having with the Montana Press Association with respect to the right to know. No matter how much reason, how much logic we give to the issue, I'm reminded of the placard that was in vogue in offices throughout the country several years back-"My opinion is made up, don't confuse me with the facts". The taxpayer, above all, should have paramount interest in this proposal. He is the one that is affected by the quality of justice, more than anyone else. What cases are presented to the highest tribunal of this state? Cases that involve every facet of Montana society-complicated tax cases, complicated assessment cases, zoning cases-every type of case that involves the tax structure of the State of Montana-and I wonder how many times in the last decade those cases have been decided adverse to the ordinary taxpayer in the State of Montana, in favor of the vested interest, and thus have taken away from the ordinary taxpayer a measure of revenue that is required that taxes be raised with respect to the ordinary taxpayer to make up for that particular deficit. How much is too high a price to pay for real justice? If more than two, by some type of political circumstance, should be in the general election, does that really make that much difference? If the Legislature has to make another appropriation to cover that situation, are we going to measure the quality of justice by how much we have to pay to secure it? What separates civilization from the jungle but law and order? And the quality of law and order has to be tested at the top, and the Judiciary is different than the Executive and is different than the Legislative, because it's the final word; it's the court of last resort. It's the last place to which the citizen can carry his complaint, and there the result had better be correct and it had better be right. Some reasons have been given that are plausible. One, theincumbent would have an advantage; two, we might not appropriate enough to help the challenger; three, the minute you put in an advertisement or on TV "reelect", that is going to give that particular individual an advantage. And all those things may well be true, but in final analysis and logically, when that indi-

vidual is placed back in his position-reelected, if you will-at least then he owes his office to the people of this state and not to some vested interest. There are problems, I should think, in making this particular proposition work in practical effect, but it's a start in the right direction because it's a start towards the type of justice that the people of this state want, and I'm for it.

CHAIRMAN AASHEIM: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I just listened to Mr. Dahood, and I'm sure that he didn't mean that the way I am taking it. I trust the courts of the State of Montana. I think they've been honest. I think they've been fair. I don't think that they're to be challenged here on this floor as acting that they're dishonest. Now, I might be altogether wrong on this, but I feel that here we've got a branch of government, and it would seem to me that they have just been indicted. I just wonder, Mr. Dahood, on this point, that those men-now, I have criticized their opinions, and when I went down, I have decided that they were finally decided on a straight, legal law issue in this state, and I think that the Supreme Court here has done that job as according to law. Now, this is my opinion.

CHAIRMAN AASHEIM: Does anyone else wish to speak on the proposition?
Mr. Romney.

DELEGATE ROMNEY: I will be very brief. (Laughter) The gentleman from Anaconda spoke about--and I believe someone else before him-spoke about the ability of getting the ad in the paper, "reelect". I know something about political campaigns. I've been in them up to my neck all my life, and I know it costs money; but there is one thing that the challenger could do, and particularly Delegate Mahoney in the judicial arena, and that would be to put a little l-inch reverse ad in, "why reelect?"

CHAIRMAN AASHEIM: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to have Delegate Graybill yield to a question.

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I will yield.

DELEGATE BATES: If the Legislature in times past-when they set a limit and this hasn't worked, then can you see how they can control clubs and individuals holding to a limit now?

DELEGATE GRAYBILL: Well, in the past and under the present circumstances, the clubs have a perfectly legal right to support the candidate with any amount of money they want to and any number of individuals can support them with any amount of money they want to. The sense of this proposal here is that they cannot spend any money, that the money must be appropriated by the Legislature. It would simply be a clear-cut violation of the law, so I think that we ought to at least try making the law tight. Right now there's absolutely no reason why somebody can't spend $50,000 on a judge if they want to.

DELEGATE BATES: Would Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield to another question, Mr. Graybill.

DELEGATE GRAYBILL: (Inaudible)

DELEGATE BATES: You say they-now they can, but can the Legislature control individual and club spending if they wanted to do this, even though there were limits, even though we did enact this appropriation?

DELEGATE GRAYBILL: The Legislature could pass a law that clubs can't spend money, but they never have. The Legislature lets clubs and individuals spend any amount. It limits the amount we spend individually as candidates. Now, about five hands went up here, and the rest of us know we spent more than that on our campaigns, and we got it from our friends. Now, that's exactly what the judges do. The point is the judges are then deciding the cases involving many of the friends as their lawyers or their clients-or the clients.

DELEGATE BATES: Well, I can't see how this would control it. Thank you.

CHAIRMAN AASHEIM: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I'll try.

DELEGATE HABEDANK: Mr. Graybill, I'm very much in favor of some way to elect judges without contributions. Let's assume that you were the candidate and some person or persons--am I on?

DELEGATE GRAYBILL: Yes.

DELEGATE HABEDANK: --some per-son or persons on your behalf did spend money. Now, they have violated the law. Are you to-as you look at this proposal, would you be forfeiting the position if this happened?

DELEGATE GRAYBILL: I don't believe you would be, but I believe that the people that violated the law would be subject to going to the— would be subject to criminal prosecution, and I think after the first or second criminal prosecution, you'd have quite a lot less of it.

DELEGATE HABEDANK: But I think we should make this appear very clearly in the record-that the proponents of this and the people who are in favor of this feel that if any person or persons in the State of Montana do spend money on behalf of a candidate, the candidate elected shall not forfeit his office. The prosecution shall be against the person; that would be the intent of this—

DELEGATE GRAYBILL: Certainly, I think that's right, Mr. Habedank. Now, if it were proved in a court of law that the candidate himself induced the spending of the money, he, of course, would be a party to the criminal act; and1 suppose then he might lose his office; but if he didn't intend it, I'm sure he wouldn't.

CHAIRMAN AASHEIM: For what purpose do you arise, Mr. Habedank?

DELEGATE HABEDANK: I wish to point out that Mr. Graybill said—

CHAIRMAN AASHEIM: Are you on-do you want to discuss the proposition?

DELEGATE HABEDANK: Yes. Yes.

CHAIRMAN AASHEIM: Oh, all right.

DELEGATE HABEDANK: Mr. Graybill pointed out that under the law, if the person running for office could be proved to have-should it prove there was collusion between the person running for office and the person spending the money, that then he could lose his office, and I agree with this. But this, to me, is the crux of the matter, and with that in the record, as much as I feel this is legislation, I am going to support the proposal.

CHAIRMAN AASHEIM: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Delegate Mahoney made a point that I think is a fair point, and I think it deserves response. I don't think anyone who speaks in favor of this particular new section indicts the Supreme Court justices. I think they're all gentlemen of integrity. However, I think in a close situation, subconsciously perhaps, as a matter of elementary psychology, you're going to pay greater heed to the arguments and to the presentations and the authority submitted by those who have been responsible for the position that you occupy at that particular point; and I think what we are saying is that we would like to do away with that particular situation and circumstance that does exist; and I venture to say that the Supreme Court justices themselves would like to do away with the present system. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Anyone else want to speak?

Are you going to close, Mr. Schiltz?

DELEGATE SCHILTZ: Yes, if I may.

CHAIRMAN AASHEIM: Mr. Burkhardt first.

DELEGATE BURKHARDT: Could I ask a question of Mr. Schiltz, as long as he's on his feet?

CHAIRMAN AASHEIM: Mr. Schiltz, will you yield to a question?

DELEGATE SCHILTZ: Yes, indeed.

DELEGATE BURKHARDT: Jack, do you know what was spent in your campaign, as far as your opponent and yourself-not in dollars, but comparatively? Do you know whether you spent similar amounts? Is that public information, or what?

DELEGATE SCHILTZ: I can only tell you right now what I spent, and it was in the neighborhood of $11,000, and I declared every dime I got. I'm not sure I added up what my opponent spent. I guess I did, but I don't recall. I know where his money came from, which is very significant, I think.

DELEGATE BURKHARDT: Another thought that runs through my mind is—does—

CHAIRMAN AASHEIM: Are you asking another question?

DELEGATE BURKHARDT: Well, let me ask it just-let me just raise my own questions as I go, and maybe someone will speak to them-but is the system only corruptible in terms of those who give to campaigns, or don't you get paid off along the way? It seems to me that there are lots of opportunities as time goes on, not simply in terms of your campaign expenses, when friends help each other, and so you've got that to think about. Buying justice is something that you wonder whether the people-we the people have any better chance of buying justice than friends of friends, and these are questions I think we have to sort out and struggle with. Maybe somebody will try to speak to it.

CHAIRMAN AASHEIM: All right, Mr. Schiltz.

DELEGATE SCHILTZ: May I close?

CHAIRMAN AASHEIM: You may close.

DELEGATE SCHILTZ: I want to say that, along with Mr. Dahood, that-and I said it earlier-that nobody is indicting the Supreme Court. We're concerned about how it looks to have the Supreme Court get the money from where it gets it. As Mr. Dahood said, certainly the Supreme Court would probably be the first people who would endorse this sort of an idea. It would save them, as incumbents, from this taint that inevitably falls on them, and I want to say that and make it perfectly clear, as Mr. Nixon says. Secondly, I want to say that this has nothing to do with lawyers. We're talking about our clients, and we're talking about the ordinary person who goes into the court of justice, and he's entitled to think that there's no possible way that that thing is anything but a proper court of justice, and with that, I close.

DELEGATE KAMHOOT: Roll call, please.

CHAIRMAN AASHEIM: A roll call vote has been asked for. Do you understand the Section 15 now, as it is proposed'! Any request to have it read?

(No response)

CHAIRMAN AASHEIM: If not, a roll call vote has been requested. As many as are in favor of the-of Section 15 as amended, vote Aye; those who are opposed, vote-will vote No. Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone want to change his vote?

Mr. Martin, for what purpose do you arise?

DELEGATE MARTIN: I want to explain my vote. It's because I opposereconsideration during style and drafting.

CHAIRMAN AASHEIM: The clerk will tally the vote.

Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas	Absent
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg..	Aye
Berthelson	Excused
Blaylock	Aye
Blend	Absent
Bowman	Absent
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Absent
Cain	Aye
Campbell	Absent
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Absent
Dahood	Aye
Davis	Excused
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Nay

Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks. ..... Absent
Speer ..... Absent
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Aasheim, Chairman Nay

CLERK HANSON: Mr. Chairman, 55 delegates voting Aye, 32 voting No.

CHAIRMAN AASHEIM: 55 having voted Aye, 32 voting No, the section is adopted.

(Mr. Graybill assumes Chairmanship of Committee of the Whole)

CHAIRMAN GRAYBILL: May the Chair be indulged the privilege of pointing out that I voted from my seat and not as Mr. President. I got in trouble last time when I asked somebody that had a different opinion than me to do that. Very well, Mr. Murray, do you think we've moved that for final consideration? I guess we-is thatright? I guess we have.

Did you make a—I think you made the motion that, when we rise and report, didn't you, Mr. Schiltz?

DELEGATE SCHILTZ: Well, yes, I did, and I would ask that it be referred to Style and Drafting for incorporation into the article and report back as we did before.

CHAIRMAN GRAYBILL: Very well, then, Section 14 is adopted. Is there other-are there other matters to come before us on the Judicial Style and Drafting Article?

(No response)

CHAIRMAN GRAYBILL: If not, Mr. Murray, do you want to make a motion?

DELEGATE MURRAY: Mr. Chairman, I move that we pass-by way of rearranging the calendar, I move that we pass consideration of all other matters of business on General Orders until the next sitting of the committee.

CHAIRMAN GRAYBILL: The motion is to pass all other matters on General Orders until the next sitting of the committee. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Murray, do you want to move that this

committee rise and report finally on the Judiciary Article?

DELEGATE MURRAY: Yeah, Mr. Chairman, I move the Committee of the Whole rise and report finally on the Judiciary Article.

CHAIRMAN GRAYBILL: Very well, the motion is to rise and report finally on Style and Drafting's Judicial Number 5. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings moved from Committee of the Whole to Convention, President Graybill presiding)

PRESIDENT GRAYBILL: Mr. Clerk, will you read the title and signature of the motion.

CLERK HANSON: "March 13th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 5 of the Committee on Style and Drafting and Transition on Judiciary, recommend as follows: that the committee rise and report finally on Style and Drafting Report Number-on Judiciary, Number 5. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Does anyone want the report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: All in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: Mr. Murray, we did put the motion, didn't we?

DELEGATE MURRAY: I retroactively move it.

PRESIDENT GRAYBILL: Well, it's written into the committee report, Mr. Murray, so it's there. Very well, we have now adopted Style and Drafting's report on Judiciary, Number 5, and I will move it-1 will assign it to Order of Business Number 5.

Mr. Murray.

DELEGATE MURRAY: Are we on Order of Business Number 11?

PRESIDENT GRAYBILL: We are on Order of Business Number 10, and now we can go on to Order of Business Number 11.

DELEGATE MURRAY: The Bill of Rights hearing, in the morning, 8 o'clock, in the Governor's reception room, and Rules, at noon recess tomorrow.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I thought we moved this article to Style and Drafting so they could incorporate it.

PRESIDENT GRAYBILL: I think that's right. I think we-1 probably did the wrong thing.
Mr. Schiltz, do you want this whole thing back to Style and Drafting?

DELEGATE SCHILTZ: I think it should go back to Style and Drafting. I notice the language is "Legislative Assembly", and we'll want to change that to "Legislature", and that sort of thing.

PRESIDENT GRAYBILL: All right, do you need the whole article? I guess you do.

DELEGATE SCHILTZ: I think we do, yes.

PRESIDENT GRAYBILL: All right, we passed-1 think what we did was we passed the Committee of the Whole report, having passed it in the Convention, the President assigned it to Style-to Order of Business Number 5, and without objection, I'll withdraw it from Order of Business Number 5 and assign it to Style and Drafting. Now, I think we've got it straightened out. Anyone object to that?
(No response)

PRESIDENT GRAYBILL: Very well, it's assigned to Style and Drafting. One other announcement on Order of Business Number 11, tomorrow night at 8:00 p.m., Miss Jeannette Rankin will be here and address the delegates at a little Distinguished Speakers meeting. That means we will not meet tomorrow night. It's our present intention to start with Natural Resources and Revenue Style and Drafting in the morning and take up Public Health as soon as we get to it tomorrow. Are there other announcements?
(No response)

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President. I move the Convention adjourn until the hour of 9:00 a.m., March 14, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 7:00 p.m.)

March 14, 1972 Forty-Fifth Day Convention **Hall**
9:oo a.m. Helena, Montana

PRESIDENT GRAYBILL: The Convention will come to order. If you'll all stand, Delegate Carman Skari will lead us in an invocation this morning.

DELEGATE SKARI: As we begin a new day, may we continue to feel the sense of the importance of what we do. May we be aware of the limitations of our knowledge and the existence of our prejudices. May we be tempered by this self-knowledge, but not intimidated from making the decisions that we-must. May we have confidence in our ability and a proper respect for the opinions of our fellow delegates. And may we not forget that we represent not only those who have sent us, but those who are not yet born. For this purpose, we ask for guidance, for knowledge, for wisdom, but most of all for tolerance and understanding. Amen.

PRESIDENT GRAYBILL: We'll take the attendance by voting Aye on thevotingmachines.

CLERK HANSON: Mr. President, may Delegates Davis and Kamhoot beexcused, please?

PRESIDENT GRAYBILL: Very well.

CLERK HANSON: Delegate Blend, Delegate Brown, Delegate Kelleher, Delegate Reichert.

PRESIDENT GRAYBILL: Who's absent? Call the absentees again. Very well. Take the roll.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Excused
Delaney	Present
Driscoll	Present
Drum..	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present

Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 99 delegates present, 1 excused.

PRESIDENT GRAYBILL: Very well. Order cf Business Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana, March 13th, 1972; Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15 (2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Maurice Mulcahy, license number 69-72, has been reinstated as of March 13th, 1972. Sincerely yours, Frank Murray, Secretary of State." Mr. President.

PRESIDENT GRAYBILL: Very well. Order of Business Number 4, Introductions.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. It is my pleasure this morning to introduce the pages for the week. Will all pages come forward please. As I call your name, please stand and remain standing. The first one is Andy Shipp from Saco, Montana; Jim McLean from Brady, Montana; Brian Furlong from Kalispell, Montana-Brian is the son of our fellow delegate, Noel Furlong; Denise Johnson from Anaconda-and Denise is the daughter of our fellow delegate, Peter Lore110 from Anaconda; Roberta Korsmoe from Great Falls; Susan Leaphart from Helena; Debbie Beartusk from Lame Deer; Alberta Harris from Lame Deer; Pattie Robinson, Lame Deer; Chris Fisher, Ashland; and Nancy Klingman, Billings. And one of the pages will step forward and greet the Convention.

PAGE JIM McLEAN: Good morning. As you know, there are 12 pages serving you this week, and each of us are very happy to be here and are anxious to serve you to the best of our ability. I would like to encourage you to use the pages as much as possible, because with 12 pages serving you this week, we have an abundance of help available. Thank you.

(Applause)

PRESIDENT GRAYBILL: We're very happy to have you pages with us, and your names will appear in today's proceedings, and you'll get a copy to take home. We are certainly looking for-

ward to working with you this week. Thank you. Mr. Champoux.

DELEGATE CHAMPOUX: I inadvertently forgot oneofthe pages, Chris Tiel, attheend, from Billings. Thank you.

(Applause)

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to move the committee into Committee-move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: "March 14th, 1972. The following committee proposals are now on General Orders: Public Health; Local Government; General Government; Style and Drafting Report Number 6, Natural Resources; Style and Drafting Report Number 7, Revenue and Finance." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Ladies and gentlemen, this morning we'll take up Natural Resources and Agriculture Style and Drafting first. And unless we hit trouble, we'll take up Revenue and Finance Style and Drafting second. If you'll all find your Natural Resources books, then we'll get ready here. You should begin on page 3 if you want to follow more easily. Very well. In accordance with our practice, we'll read the section head, and Mr. Schiltz will then describe the Style and Drafting changes. Oh, Mr. Burkhardt's going to do it today. Very well. Mr. Clerk, we'll start with Environment and Natural Resources Article. Will you read Section 1.

CLERK HANSON: "Section 1. Protection and improvement"; containing three subsections. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: When-I move that when this committee shall rise and report, after having had on consideration this Report Number 6, Style and Drafting, and having considered Section 1, approve the same. Mr. Chairman, you'll note that in this section we have changed an "a" before "clean and healthful", deleted the words "the Montana" before "environment" and then added "in Montana" thereafter, in order to preserve the sense of amendments adopted in Committee of the Whole. The other changes in the section do not change substance.

CHAIRMAN GRAYBILL: Is there any discussion of Section 1, sub. 1, Natural Resources -Environment and Natural Resources Article?

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. This isn't my wording and I don't know that it makes much difference, but I think that-whether it was Mr. McNeil-or I don't remember who-but the idea of putting "the Montana environment" was meant to refer to the way it was now. And it might be that if you had "a clean and healthful environment of Montana"-1'11 refer to Mr. McNeil, but I'd like to hear his comments, because I think that this was his concern.

CHAIRMAN GRAYBILL: In other words, the language was "a clean"--was "the Montana environment" and now it's "a clean and healthful environment".

DELEGATE ECK: Yes, and I admit that "a clean and healthful environment in Montana" isn't really what we want to say either.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. Mrs. Eck is correct in that that was the position that was advocated by the committee-that is, the majority of the committee was advocating "maintain and improve the Montana environment". However, that was changed by this Committee of the Whole with the Campbell amendment to read "clean and healthful environment". And as a

result of that amendment, I believe Style and Drafting is probably correct, but it does change the-it changes intent and meaning that the majority of our committee wanted. But that is not--Style and Drafting didn't make that change; that change was made by the majority of this body adopting the Campbell amendment to insert "clean and healthful".

CHAIRMAN GRAYBILL: Is therefurther discussion of that issue, or are we going to let it go the way it is? Do you want to say "the clean"- "the clean and healthful Montana environment for present and future generations"?

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. A quorum of the committee met yesterday morning at 8 o'clock to go over this, and it was the consensus of that quorum that this is what the Committee of the Whole had agreed upon. SO I'm not sure now just what can be done other than to accept what the Committee of the Whole did.

DELEGATE BURKHARDT: I'm sure that Style and Drafting would not fight an amendment if someone wished to change words at this point, but we're about to approve it, I guess.

CHAIRMAN GRAYBILL: Apparently, nobody does. Dorothy, are you satisfied? Very well. Is there other discussion of Section 1, sub. 1? If not, all in favor of Section 1, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

Mr. Burkhardt.

DELEGATE BURKHARDT: We're going subsection by subsection. You'll note simply the change of "must" to "shall", which is a style consistency throughout the article. It does not weaken it; it's a mandate still. No substantive change. I move that, when we've had this under consideration, that we approve it.

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you for your consideration subsection 2 of Section 1 on Mr. Burkhardt's motion that when this committee arises and report, that it recommend the same for adoption. All in favor of subsection 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Burkhardt, subsection 3.

DELEGATE BURKHARDT: In subsection 3, I move that after having had it under consideration, we adopt the same. Again, no substantive change. There's merely some language changes in that one.

CHAIRMAN GRAYBILL: Members of the committee, you have before you on the recommendation of Mr. Burkhardt, when this committee does arise and report after having had under consideration subsection 3, that we recommend the same do pass. Is there discussion? Very well. All in favor of subsection 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, Section 2.

CLERK HANSON: "Section 2. Reclamation." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I move that after consideration of this Section 2, Reclamation, of the report by Style and Drafting, that the committee approve the same. Mr. Chairman, the only changes in Section 2 are in line 20—simply the change of the word "must" to "shall", which is stylistic, and then the dropping of some repetitious language in the 22nd and 23rd lines.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2?

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think that second sentence could be reworded and it will sound a little better. Couldn't they say "The Legislature shall provide effective requirements to meet those standards"?

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I think the sentence would be clearer if they said, at the end of it, "and standards for such reclamation", instead of "for the reclamation".

DELEGATE BURKHARDT: One of the facts about the Style Committee is that they don't like the word "such" in that kind of usage, and so it's not been done in that manner. However, if the body wishes to consider it, why, we'reopen to hear it. Someone suggests striking "the" before "reclamation". Would that alter the sense of it, Mr. Schiltz, or anybody, if we were to do that?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: No, I think we need the "the" to refer back to the reclamation we were talking about previously-"lands to be reclaimed". I would resist, as Mr. Burkhardt does, the inclusion of "such". It's bad drafting. I think the sentence is pefectly clean and perfectly clear if you read both sentences together. If you isolate the second sentence, then it may-causes some difficulty. But if you read the two together, it's very clear and very plain.

CHAIRMAN GRAYBILL: Mr. Schiltz. I think Mr. Aasheim's point is it's a little awkward ending with the word "reclamation". What if you said "reclamation of lands disturbed" so that we'd know you're referring to the sentence up above? You see, the word "reclamation" doesn't really appear. It's the word "reclaim" that appears.

DELEGATE SCHILTZ: I have no problem in doing that. I don't think it's necessary. We're always trying to eliminate words, but if it made it clearer, why, that's fine.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you have any feeling on that matter?
Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. Again, the quorum discussed this yesterday morning, and they felt that the language was all right. In reply to Mr. Aasheim, requirements and standards are not necessarily the same. So I would not be in favor of his suggestion.

CHAIRMAN GRAYBILL: Well, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I think this is all right here, but perhaps adding, as Delegate Schiltz suggested, "for all lands disturbed" would certainly make it a little stronger. I wouldn't want to weaken that first section any—that first line that says: "All lands disturbed by the taking of natural resources shall be reclaimed"-and that is the intent of the committee. I wouldn't want to change that any. The second sentence would be all right. I have no objection to it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that the words "of lands disturbed" be added on line 22.

CHAIRMAN GRAYBILL: The motion of Mr. Schiltz is that we add back in the words "of lands disturbed", so that the last sentence reads: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed." Is there discussion of that?
Mr. Champoux.

DELEGATE CHAMPOUX: Maybe I'm all off base on this, but-in terms of the substantive parts of it-but when we talk about reclamation-by whom?

CHAIRMAN GRAYBILL: Well, we've already-

DELEGATE BURKHARDT: I'm afraid that's substantive.

CHAIRMAN GRAYBILL: That is substantive. We've passed that problem, and that question was raised, and we left it this way on purpose, I guess. Is there further discussion of Mr. Schiltz's amendment? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the Ayes have it, and we'll add it-back in the words "of lands disturbed".

DELEGATE BURKHARDT: Mr. Chairman. I move, then, that when this committee does arise and report, they approve this Section Number 2, as amended.

CHAIRMAN GRAYBILL: Very well. You've heard the motion of Mr. Burkhardt. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 3.

CLERK HANSON: "Section 3. Water rights"; containing four subsections. Mr. Chairman.

DELEGATE BURKHARDT: Mr. Chairman. I move that when the committee does arise and report, after having had under consideration Section 3 of the report on Environment and Natural Resources from Style and Drafting, that the same be adopted. This—

CHAIRMAN GRAYBILL: Subsection 1.

DELEGATE BURKHARDT: There has been a bit of reordering and deleting of language, but in-no change in substance in subsection 1.

CHAIRMAN GRAYBILL: Any discussion of l-subsection 1? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: Subsection 1 is adopted. Subsection 2.

DELEGATE BURKHARDT: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection 2 of Section 3 of this report of Style and Drafting, that the same be adopted. In Section 2-or subsection 2 of this section, there was the attempt on the part of the-well, on page 5-I'm trying to read this language and understand it. Perhaps you're following it there. You'll note an explanation for what the changes are in that section.

CHAIRMAN GRAYBILL: Well, Mr. Burkhardt, you either better tell us, or we'll have to stop and read it.

DELEGATE BURKHARDT: I'll read it. "It should be noted that the substantive committee comments appended to subsection 2 were that Section 15, Article III, of the present Constitution were duplicated verbatim to preserve the substantial number of court decisions interpreting and incorporating the language." But there's been a bit of style cleanup, and we just wanted to call your attention to it.

CHAIRMAN GRAYBILL: Is there any discussion of Section 3, subsection 2?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I think what the committee should know is that what we're really saying there in our comment on Section 3 is that we don't particularly like the drafting, but we did not disturb the drafting because there were a great many court decisions involving that verbiage, and so we kept it as it is. We're covering our own skirts a little bit.

CHAIRMAN GRAYBILL: Very well. Is there any discussion of subsection 2 of Section 3? If not, all in favor—

Mr. Simon.

DELEGATE SIMON: May I ask Mr. Schiltz a question, please?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes.

DELEGATE SIMON: Jack, in the storing of water-because there are some things going on in the Red Lodge area where people are building quite good-size ponds-what happens to a pond, as far as public use, if it would be an acre or two? I mean—

DELEGATE SCHILTZ: I have no idea, but I don't think it's affected in any way here. If it is affected in any way by this, it's substantive. And I haven't studied it substantively, I was just thinking—

DELEGATE SIMON: I just wondered—there's some private fishponds up there-a number of them-like-that have fishing now—that it's being planted in private ponds that-that are-it's becoming a business. And if everybody could go in and use the private ponds for their public fishing-"public use" it says-well, I want to know that private ponds-I'm sure not against anything else, but I'd sure want to know that private ponds would be protected-if a person wants to go in business, which some are doing, that they would not be for public use.

DELEGATE BURKHARDT: Mr. Chairman. It seems to me we're getting into a substantive thing here that I'm not sure, at this moment, we're able to handle. But maybe you're going to rule otherwise.

CHAIRMAN GRAYBILL: No, I'm not going to rule otherwise. I think it is substantive. I think the point is that any use of water is held to be a public use, Mr. Simon, and therefore you must handle the water in a manner consistent with the public. Now, whether or not that would mean that they'd have access to fish, I don't know; but you can't pollute the water, in other words, I think that is the point. Is there any further discussion of subsection 2?

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. On this, there's absolutely no intent on the part of the committee to change anything in that respect. I think some people-1 saw a letter to the editor that Mrs. Mansfield gave me yesterday-some people are reading some things in which this really doesn't say. And-if you got a pond, it's the same thing as it always has been. You can—if you have a private fishpond and you start it now, the only thing that would ever change would be if you didn't have any water rights to put the water in the fishpond. This is-but other than that, things are the same as they've always been.

CHAIRMAN GRAYBILL: Very well. All in favor of Section 3, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 3, sub. 3.

DELEGATE BURKHARDT: Mr. Chairman, I move that when this committee does arise and report, after having considered subsection 3 of Section 3, that the same be adopted. You'll note that there are just style changes here and a verb added to make it clear.

CHAIRMAN GRAYBILL: All in favor of subsection 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Subsection 4.

DELEGATE BURKHARDT: In subsection 4, there's very little change. I move that when this committee does arise and report, after having had it under consideration, that it move the same be adopted. It's pretty apparent. There is a comma that's been added and a word that's been scratched.

CHAIRMAN GRAYBILL: Any discussion of subsection 4? If not, all in favor of subsection 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted—Oh, all opposed, say No.
(No response)

CHAIRMAN GRAYBILL: Now, it's adopted. All right, now, Section 4, Mr. Clerk.

CLERK HANSON: "Section 4. Cultural resources." Mr. Chairman.

DELEGATE BURKHARDT: Mr. Chairman. I move that when the committee does arise and report, after having under consideration Section 4 of this report, that the same be adopted. This is a new one, and there are no changes of substance in it.

CHAIRMAN GRAYBILL: Any discussion of Section 4? All in favor of adopting Section **4,** say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, if you'll turn to page 7, the sections on agriculture appear. Mr. Clerk, will you read Section 1.

CLERK HANSON: "Agriculture-Section 1. Department of Agriculture." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, the wording of this Section 1 in the Department of Agriculture--well, let me make those little words first. Let's see-Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 1 of this report, that the same be adopted. Mr. Chairman, there is in this section a bit of rewording, and there was earlier some question on the part of some who had been present on that committee about the meaning of the changes, but there is no substantive change. In fact, it's a stronger statement

legally, evidently, to say "There is a Department of Agriculture", rather than to put it in the future in a kind of false imperative. Therefore, we present this as style here.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. Mr. Burkhardt, don't you think that "shall" would be a better word than "is"?

DELEGATE BURKHARDT: Let me, Mr. Conover, share with you some real legal interpretation. It's a chance to impress the body with some of the adviser capacity that we received from Mr. Gardner Cromwell in our committee, and I think it's a very convincing case that he makes. A draftsman, in using language, frequently uses the word "is" rather than "shall" or "shall not". Evidently, the intent has to do with a legalresult, and you can announce the result simply by the word "is" rather than by using a kind of future tense. And in this case, there's no question but what the department exists and will exist. And there's also a provision for funding in the next section. I'm sure that some lawyer could speak to this in more depth than I, but if you have a question, I would be happy to share his report with you which-I think in other sections of the Constitution, we followed the same style and have used simply the declaratory rather than the imperative tone and said, "it is".

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm not happy with this section. I feel that when you say "there is"-does that guarantee in the future that we'll have a Department of Agriculture? I think "There shall be a Department of Agriculture". Actually, under reorganization, the Department of Agriculture is almost a skeleton, as it exists now.

DELEGATE BURKHARDT: Mrs. Bates, if I may answer—

CHAIRMAN GRAYBILL: Just a moment, Mr. Burkhardt. Are you asking a question?

DELEGATE BATES: No, but I'm-I would be happy to retain the original wording,

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. This is a basic style thing. If you look at it this way, I think you'll see the wisdom of it, or the reason for it. If you say "there shall be", we're talking about sitting here and drafting a constitution. But, once this constitution is adopted, for the rest of our lives and while that constitution is alive, we're continuing to say "there shall be" when the fact of the matter is that, once the vote is taken and this is approved, then there is a Department of Agriculture and we're no longer saying there shall be one in the future. We're saying what the situation is now, and we've done that consistently throughout. In the Judicial Article, if you still have it around, we say "the Supreme Court of the"-well, let me see, "the judicial power of the State of Montana is vested in the Supreme Court". We don't say "shall be" because it will be a fait accompli at that time.

CHAIRMAN GRAYBILL: Mr. Schiltz and Mr. Burkhardt, the Chair does not wish to nitpick the section, but I see a substantive change. The old language said that the Legislative Assembly must provide for the Department of Agriculture. The new language you put in says "The Legislature shall provide appropriations for agriculture", but it doesn't say you have to provide for the State Department of Agriculture. Now, I wonder if you don't want to say, "The Legislature shall enact laws and provide appropriations for the said department and to protect and enhance", In other words, the body did pass language that said that the Legislature shall provide for-now, maybe "provide" means nothing but set up, but maybe it means more. I don't know, that's the question I raise. It looks to me like you've appropriated money for agriculture but you haven't forced the Legislature to appropriate money for the department, which, I think, was the point of the argument anyway.

DELEGATE BURKHARDT: (Inaudible) Mr. Schiltz on that one, I'm sure.

CHAIRMAN GRAYBILL: Mr. Schiltz, you've been yielded to.

DELEGATE SCHILTZ: I'm working on it,

CHAIRMAN GRAYBILL: Maybe I'm— maybe the words "provide for the Department of Agriculture" means nothing but set it up, but maybe it meant more than that. I don't know.

DELEGATE SCHILTZ: Well, I can see your point. I don't think we considered it quite that way. I'm not prepared this fast to make an amendment, but somebody else might be.

CHAIRMAN GRAYBILL: Well if-was it the sense of the body when you debated agriculture that the-that you wanted a Department of Agriculture funded by the Legislature? If that's the point, then it's easy to say so by saying "and provide appropriations for the said department and to protect and enhance".

Mr. Delaney.

DELEGATE DELANEY: I would like to see the original language as passed by the body here returned, or pretty close to it-that "The Legislature must provide"--or "shall provide".

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman. The way it reads right now, Jack, is that the state could pay for our hail insurance, which would be fine, but I don't think we want it quite that way.

CHAIRMAN GRAYBILL: Just a minute. Mr. Burkhardt-wait a minute, now. Mr. Burkhardt, you have the floor.

DELEGATE BURKHARDT: Jack would say this better than I, but I don't think the committee wants to stand here and defend its language. I think we'd like to put the right thing in. And-Do you concur, Jack, on that?

CHAIRMAN GRAYBILL: Mr. Schiltz, do you want the floor?

DELEGATE SCHILTZ: Yes, I would like to get this done as rapidly as possible and still maintain what we want. But, if we read "the Legislative Assembly"—I guess we could go back to the original language without harming the style any.

CHAIRMAN GRAYBILL: Can you say "The Legislature must provide"? You like that word better than "Legislative Assembly".

DELEGATE SCHILTZ: Well, that's uniform throughout, yes. "The Legislature must provide for a Department of Agriculture and enact laws"-we'll take "The Legislature shall" out—"and enact laws and provide appropriations to protect and enhance". We could still leave out "of the state". So I move, Mr. Chairman, that we amend Section 1 by making the necessary additions and deletions so that it will read as follows: "Section 1. Department of Agriculture. The Legislature shall provide"-instead of "must provide"-"shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture period". I move that amendment.

CHAIRMAN GRAYBILL: All right. The first sentence would now read, then: "The Legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture." Is there any discussion of that language? Very well, all in—

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman. As long as-at the beginning, we have now gone back and said that the Legislature should provide for the department. Could we now strike out the word "provide appropriations" and just say that they shall enact laws to protect, enhance and develop all agriculture? That would remove any fear people would have about passing appropriations for any particular phase of agriculture.

CHAIRMAN GRAYBILL: It looks to me that that might be substantive, Mrs. Erdmann. It seems to me, Mrs. Erdmann, that this body directed, when it passed this section initially, that appropriations could be made, if necessary, to protect, enhance and develop agriculture. And "providing for" may or may not mean appropriations, so if you take out "appropriations", I think you've substantively changed it now. If anyone has a different idea, I'd like them to speak to it, but— Very well. "The Legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture." Further discussion? Mr. Burkhardt, I take it you don't want to discuss; you're just standing. Okay. So many as shall be in favor of the new language, as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended. Section 2, Mr. Clerk.

CLERK HANSON: "Section 2. Special levies." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: (Inaudible)

CHAIRMAN GRAYBILL: Would you start over again?

DELEGATE BURKHARDT: I move that when this committee does arise and report, after having had under consideration Section 2 of this article, the same be adopted. Mr. Chairman, in this section, the only real change was in making plural the word "levies", rather than "levy", because the series of things for which money could be raised indicated that this might be called for. Otherwise, no substantive change.

CHAIRMAN GRAYBILL: Any discussion of Section 2? All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 2 is adopted. Very well. I think we've completed our adoption of Natural Resources and Agriculture, and rather than rise and report, let's lay it on the side and take up Revenue and Finance. And if you'll turn to page 4, you can follow most easily—page 4 of the Revenue and Finance Style and Drafting proposal.

Mr. Clerk, would you read the title and Section 1.

CLERK HANSON: "Revenue and Finance. Section 1. Tax purposes." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1, Style and Drafting Report Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We've changed the title only, in Section 1. It did read "Public purposes", and we didn't think that was descriptive. We changed it to "Tax purposes".

CHAIRMAN GRAYBILL: Is there any discussion of Section 1? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 2.

CLERK HANSON: "Section 2. Tax power inalienable." Mr. Chairman, Section 2.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 2, title-Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, again we changed the title as not being descriptive of thematerial. Insteadof "Surrender&use", we said "Tax power inalienable". Otherwise, a minor style change.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2? Very well. Section 2—all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 2 is adopted. Section 3.

CLERK HANSON: "Section 3. Property tax administration." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, Style and Drafting Report Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In this case, we had problem-we restyled the whole first sentence because, as it read before the restyling, property would be equalized, and that gave us a problem because we didn't know how you could equalize property. So we rewrote it to say: "The state shall appraise, assess and equalize the valuation of all property." Otherwise, only style.

CHAIRMAN GRAYBILL: Is there discussion of Section 3?

Mr. Anderson.

DELEGATE OSCAR ANDERSON: There's a clause in here where you cannot tax certain property. Would they be able to appraise, assess and determine the valuation on the property that was not subject to taxation according to law, like exempt property?

DELEGATE SCHILTZ: Is Mr. Anderson asking me a question?

DELEGATE OSCAR ANDERSON: Yes.

DELEGATE SCHILTZ: Well, if it is, it's substantive-we-it's somewhere else if it's there; and if it isn't there, it isn't there. We only took what we got from the floor.

CHAIRMAN GRAYBILL: Mr. Anderson, I don't quite understand you. It says here, "appraise, assess and equalize the valuation of all property which is to be taxed". So it wouldn't apply to exempt property. Maybe I don't understand you, but I don't think the clause applies to exempt property. Is there other discussion?

Mr. Anderson.

DELEGATE OSCAR ANDERSON: My point was this. Is-if they should decide to say that all the people over 65 years of age should be subject to an exemption, would the state then have the right to come in and value that property and find out-or appraise it-or find out anything about it for tax purposes, to find out how much they were lacking or-in that manner?

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE SCHILTZ: I don't-I'm not too clear, but if Mr. Anderson would look at page 5, on line 4, where they have exemptions, you'll see that listed as "(c) or any other classes of property". I suppose that could be within that other class of property if the state ever decided to exempt it, or the Legislature could exempt it.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Schiltz yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes.

DELEGATE HABEDANK: Mr. Schiltz, as this was devised by the Revenue and Finance Committee and passed by the Committee of the Whole, the words "to be taxed" were in the original measure as shown on line 17. Will you explain why you dropped the words "to be taxed"?

DELEGATE SCHILTZ: We didn't drop them. We still have them. I'm looking at line 14, page 4. Well, we're not on that section yet, Mr. Habedank.

DELEGATE HABEDANK: Okay, that answers the problem.

CHAIRMAN GRAYBILL: Is there further discussion of Section 3? All in favor of Section **3,** say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 4.

CLERK HANSON: "Section 4. Equal valuation." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, you'll note, on line 19, that we took out "county purposes". We did that. It would have read, "established by the-or for state and county purposes". We took "county purposes" out so the Section 4 would be consistent with Section 3, which provides that the state shall do all assessing and equalizing, et cetera. And "county purposes" would serve no purpose there except to confuse the problem. Now, as to the question Mr. Habedank asked me, why we dropped "to be taxed" on line 17, well, we dropped it because, if it isn't going to be taxed, why, it won't be subject to this section. But-all taxing jurisdictions shall use the assessed valuation of property. And when you say "taxing jurisdictions", you're saying the same thing as you are when you're talking about "to be taxed".

CHAIRMAN GRAYBILL: Very well. Is there any other discussion of Section 4?

DELEGATE ESKILDSEN: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Why did we put in "county purposes", then, in the first place?

DELEGATE SCHILTZ: Mr. Eskildsen, I had a problem with you last night when I didn't know whether you were asking a question or not. Are you asking one now?

DELEGATE ESKILDSEN: Yes, I'm asking you why we put it in there.

DELEGATE SCHILTZ: I don't know. You'd have to ask the committee; but, Joe, if you'll look at Section 3, when you put "county purposes" in, you just weaken Section 3. And-because all— under Section 3, the state is doing all of this assessing and equalizing and evaluating and appraising. Then if you come down here and say, "for state and county purposes", it seemed to the committee, at least-and maybe they were wrong, and I point it out to you for that reason-that it destroyed the intent of Section 3.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Well, "state and county purposes" was used originally because that's the wording of the present section of our Constitution relative to this article. It requires all property to be assessed the same for all tax purposes. I don't think, actually, Style and Drafting has done any major changes or done any substantive changes to Section 4.

CHAIRMAN GRAYBILL: Is there other discussion of Section 4? Very well. So many as shall be in favor of Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 5.

CLERK HANSON: "Section 5. Property tax exemptions"; containing two subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 5, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, you will notice that all of this subsection has been extensively redone. It was done with the concurrence of the substantive committee in charge. There are no substantive changes, although it has been rather extensively changed. We call attention, in the comments, that though property of the United States is listed there, you can't-nobody should draw the inference that in any way the State of Montana can, in fact, tax property of the United States. We just noted that for the sake of noting it, however. That's all, Mr. Chairman.

CHAIRMAN GRAYBILL: I take it that the "A" and the "B"-you've segregated it into classifications. Is that what you've done?

DELEGATE SCHILTZ: That's right. We listed--we said the Legislature may exempt from taxation, and then we said what-the A, B and C-what could be exempt, and we made a series of them. We think it's more intelligible that way, instead of running them all together, and the committee concurred with us.

CHAIRMAN GRAYBILL: Is there any discussion--any further discussion of subsection 1-A and -B of Section 5? If not, all in—
Mr. Harbaugh.

DELEGATE HARBAUGH: Does this include C?

CHAIRMAN GRAYBILL: -A, B and C.

DELEGATE HARBAUGH: Is C a complete sentence there, or what is it related to?

DELEGATE SCHILTZ: Mr. Harbaugh, none of them is a complete sentence. They're a complete sentence when taken together with "The Legislature may exempt from taxation colon".

DELEGATE HARBAUGH: I see. Okay. Thank you.

CHAIRMAN GRAYBILL: Very well. All in favor of subsection l-A, -B, and -C of Section 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Subsection 2.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 5, subsection 2, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, we made only style changes there, nothing significant that needs to be noted.

CHAIRMAN GRAYBILL: All in favor of section-subsection 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Clerk, will you hand out the sheets of paper placed on our desks here about anti-diversion. The committee will be in order. Will the clerk read Section 6.

CLERK HANSON: "Section 6. Highway revenue diversion-Highway revenue nondiversion"; two subsections. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 6, Style and Drafting Report Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I can see what's coming here, so I would like to make a comment or two. I think, in view of the debate that is coming, that if we can adopt the stylistic changes on Section 6 as it came from the floor, that then we could work on this proposal that will be coming up from the standpoint of the stylistic changes we made. Now, we went in-there are no substantive changes, but we went into this in considerable detail with the substantive committee that was in charge of Revenue and Finance, and they're agreed and we're agreed that this is a much more intelligible section than it was in the old statute. Everybody had difficulty reading that old-or the old Constitution; everybody had difficulty reading that, So you'll know, we thought "highway earmark" was kind of an inelegant term. We debated quite a while trying to find the right words that were descriptive for the section. We arrived at "highway revenue nondiversion". We're not too happy with that, but it's the best we could come up with, With that, Mr. Chairman--otherwise, everything was style. All the substance is there that was there before, and there's no change in substance.

CHAIRMAN GRAYBILL: The Chair intends to consider the matter of the anti-diversion proposals at the time-at this present time while we're considering Section 6, but the Chair agrees with Mr. Schiltz that we should first direct our attention to the style changes that Style and Drafting has made. Is there any discussion of those?

Mr. Harper.

DELEGATE HARPER: I'm just wondering, Mr. Chairman, if "highway revenue diversion" is not actually a better title for the entire section than "highway revenue nondiversion". I realize that it speaks to both subjects, but the details of it are about the diverted tax.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Well-we took the position-we thought of that, Mr. Harper, and we took the position that the basic purpose of that constitutional amendment was that highway revenues should not be diverted. And we considered what this three-fifths of the Legislative Assembly would do to it, and we decided that that would be the only exception to their nondiversions. So that's-it's just a semantic thing.

CHAIRMAN GRAYBILL: Is there other discussion of the language used by the committee in Style and Drafting?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I know probably this is different than Style and Drafting, but I'd like to ask a question of Mr. Schiltz, please.

DELEGATE SCHILTZ: I yield.

DELEGATE MAHONEY: Now, would this stop the Governor from vetoing a diversion?

CHAIRMAN GRAYBILL: The question is out of order. Very well. Is there any other discussion of the language-of the Style and Drafting language here? If not, all in favor of Style and Drafting's language and sectioning here of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right, it's adopted. Now, who wants the floor?

DELEGATE SCHILTZ: Mr. Chairman, we have a subsection 2; do you want me to move that, too?

CHAIRMAN GRAYBILL: Oh, all right. Let's move subsection 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, subsection 2, Style and Drafting Report

Number 7, it recommend the same be adopted. Only style changes, as I previously explained.

CHAIRMAN GRAYBILL: Any questions? All in favor of subsection 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: And it's adopted.

All right, now, Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I would like now to move to suspend the rules and be heard on the same.

Mr. Chairman.

CHAIRMAN GRAYBILL: Have you an amendment-have you a motion to send to the Chair? I have this sheet, but I haven't your motion. The-Rule Number 74 requires--and I'll wait while you prepare one-but it requires that the reason for suspending the rules be specifically stated. Mr. Brown makes a motion to suspend the rules to reconsider allowing reconsideration of antidiversion provision to be put on the ballot as an alternative. So the purpose is to allow the reconsideration of an antidiversion provision to be put on the ballot as an alternative.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman. At the time Section 6 was adopted, I was on the prevailing side and still believe that the present Section 6 from Style and Drafting should be part of the Constitution. However, we also had a motion, at that time, by Mrs. Babcock to place an alternate provision on the ballot. I won't go into the merits of it. It's similar to the old nondiversion. It prohibits the three-fifths diversion and puts language in allowing expenditures for pollution, drivers' education, highway patrol, et cetera. At that time, I voted against Mrs. Babcock's motion. It was my understanding that it was premature and that Style and Drafting would bring back a recommendation to the floor as to whatmatters would go on the ballot. For that reason, many of us voted against Mrs. Babcock's motion. Now, I feel that there's a large segment of our society and voters, various contractors, the Triple A, and various groups, who are vitally interested in this highway diversion. There's also a large group of labor and employees of these people who are vitally interested in the antidiversion measure. If they have an alternate, I believe they will take an interest in this Constitution and go out and work for it. They think it's vitally important to a large segment of the state, and I think it's vital that they have a chance to have their alternate placed on the ballot. We'll only have two alternates, as I understand it-death penalty and unicameral and possibly gambling, but I doubt that. So I think we have to look to these people and we have to look to the 1956 vote, which everyone says was a long time ago, but it was still a three-to-four-to-one majority. And as far as constitutions go, it isn't too long. So I think that we should be allowed to suspend the rules and place this alternate an the ballot. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, fellow delegates. Last night I voted to suspend the rules, to reopen on the Judicial Article-I voted that way. I sat here for, I think, two and a half hours and listened to a long debate, and I made up my mind I was-1 voted for suspending the rules for something like that for the last time. This matter has been before the Convention once-or before the committee once. It's been decided. We're going to reopen this now, we're going to leave ourselves open for another 3 or 4 hours debate. We're going to throw ourselves all off of our time schedule, and sure as I-sure as we do, if we'll open on this one, we're going to open on another one tomorrow and another one the next day and another one the next day and we're not going to be out of here on the time schedule. This matter was fully debated at one time-taken-and if we vote on this reconsideration, we're just going to open it up to where we're never going to get out of here in time. And I sincerely ask this body to vote this reconsideration down, and let's get on with our next order of business on the report of the Public Health Committee, please.

CHAIRMAN GRAYBILL: All right-let's stick on the issue of whether to suspend the rules.

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I would like to support the suspension of the rules. Would Mr. Brown yield to a couple of questions'?

CHAIRMAN GRAYBILL: Mr. Brown?

DELEGATE BROWN: (Inaudible)

DELEGATE TOOLE: Mr. Brown, did you give consideration to simply putting the three-

fifths majority of the Legislature as a side issue on the ballot?

DELEGATE BROWN: Either way the Convention would want to do it would be agreeable with me.

DELEGATE TOOLE: In what significant respect does your Section 6 on your sheet differ from the old Section I-B?

DELEGATE BROWN: This allows diversion or expenditures for abatement of pollution caused by auto-motor vehicles, drivers' education, enforcement of highway safety, tourist promotion, and also brings into it state fines and forfeitures for the reason that the patrol now uses that money for the retirement fund. Otherwise, it is similar.

DELEGATE TOOLE: Thank you, Mr. Brown. I support the motion to reconsider.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President. I also support the motion to suspend therules, and I would add to what Delegate Brown—Bruce—has just said. There is another very vital, important issue that you have added here along with fines and forfeitures. The action of the committee the other day deleted the registration fees from this amendment. And this is vitally important to local government, because we're just talking about fine-about license plates now. And their effort was to refer it all to the Legislature in order to equalize, I think, motor vehicle tax, which is worthy. But license plates have always been used for the county and city roads-the $10.50 item is what I'm talking about; it's an equal sum all over the state. And this, I think, would be jeopardizing our local and city financing to have this thrown. It's nothing at the expense of the Highway Department. By taking it out, you have just sort of endangered the safety of this item which-the counties and the cities split this license money on a mileage basis. Therefore, I do support this new proposed suspension of rules.

CHAIRMAN GRAYBILL: Mrs. Erdmann. The Chair would point out to you that the purpose of the motion so far is to consider an alternative only. And if you expect to reach any of the language, substantively, of Section 6 in the majority report here, you have got to broaden. I understand it's in that, but if it goes on as an alternative, you'll have it in one and out of the other. Now, I'm merely pointing out to you that if you expect to reach the language substantively, you will have to broaden the motion to suspend the rules.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I believe that this is the question I have, and I think I would ask the Chair just how narrow this is. Now, is it possible, under the motion we have, to consider Mr. Toole's suggestion, for instance? And is it possible at all to reconsider any of the language that is already in Section 6?

CHAIRMAN GRAYBILL: Well, it's the Chair's present understanding that it would allow reconsideration of antidiversion provision to be put on the ballot as an alternative. So I think that the one before you is only one possibility that could be put on the ballot. And I'm positive that if the thing prevails, there'll be others-other proposals. But I think it does not yet allow us to reach the language of Section 6 which we have just adopted in Style and Drafting, because it speaks only to an alternative on the ballot.

DELEGATE ECK: So that in this case if, in reconsidering, we decided to go with the—whether or not to keep the three-fifths provision, which to me would-seems a much more understandable issue to take to the voters than two issues which state, in very different terms, then, Mrs. Erdmann's concern for the license fees that go to the city-that we could not reconsider that at all. Is that right?

CHAIRMAN GRAYBILL: You could put it in the new one, but you-the one that was on the side-but you couldn't put it-you can't change it in the body unless you broaden the motion to suspend the rules.

DELEGATE ECK: I think you should add it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I just want to say that the majority of the committee still feels that what we have is adequate. But, of course, if the body thinks it should be on the ballot, that's another question. But the committee does feel that what we have is adequate and it's all right the way it is. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I realize it's important for us to maintain a schedule and finish our work on time, but I think it's more important that we make wise decisions. And sometimes it is necessary to reconsider our actions, and I surely support the motion to suspend the rules to reconsider.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. Normally, I'm not in favor of suspending the rules nor I-am I in this instance, because I do not consider this a suspension of the rules for the same subject. When we discussed this matter the other day, we were discussing the antidiversion amendment which is in our present Constitution and the substitution which has been made. In this instance, we are asking the suspension of the rules so that the matter may be discussed with the idea in mind of placing the two proposals as alternates on the ballot, which is quite a different matter. Now, I remember, the other day, that there was a lot of talk concerning the way the bureaucracy over across the street operates, and many people have been offended by it, and I have felt that way myself. However, we've got to look at this in a long-range view. In the present Constitution of the State of Montana, Section 1—

CHAIRMAN GRAYBILL: Mr. Romney, I want to know how this affects the motion to suspend the rules.

DELEGATE ROMNEY: I think if the Chair permits me to continue—

CHAIRMAN GRAYBILL: Well, I-just explain to me how it applies. What's your point? What are you driving at?

DELEGATE ROMNEY: The argument has been that the people, when they voted on this matter in 1956—that it has been a long time. I wish to, by analogy, demolish that argument in order to provide reason for a suspension of the rules.

CHAIRMAN GRAYBILL: It seems to me that you are arguing the issue of whether or not an alternative should be put on there. We're arguing the issue of whether or not the rules should be suspended. Once the rule-once they are suspended, then we have the-still have the choice of whether or not to put something on the ballot. And I don't want substantive argument on the issue of what to put on or why we should put it on; I only want to hear what you have to say about suspending the rules.

DELEGATE ROMNEY: Very well. I feel that we've got to-we have a right and it's for the best interests of the State of Montana to have this matter placed upon the ballot so that the people can make a decision.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I just rise in support of Delegate Brown's motion to suspend the rules.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I, too, rise in support of the motion to suspend the rules. I have had the experience, as have many others, of finding that the Highway Department is not very responsive to the Legislature, but I nevertheless feel this is of such importance, and I want to hear all that Delegate Romney and others have to say when we get the opportunity to debate the merits of the question.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President. I oppose the suggestion to suspend the rules. I was real proud of the committee when we followed the recommendation of the Revenue and Finance Committee in this antidiversion section. And I would hope that the body remains on that decision and votes down the reconsideration.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I rise in support of the suspension of rules on the basis that what's sauce for the Judiciary ought to be sauce for the Revenue and Finance.

CHAIRMAN GRAYBILL: Very well. The issue is on whether or not to suspend the rules. Do you want a roll call vote? All right, you want a roll call vote. So many as shall be in favor of suspending the rules, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Take the ballot.

Aasheim .....Aye

Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Absent
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Absent
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Absent
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Absent
Warden ..... Nay
Wilson ..... Absent
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 54 delegates voting Aye, 37 voted No.

CHAIRMAN GRAYBILL: 54 delegates having voted Aye and 37 having voted NO, we'll suspend the rules. Is Mr. Etchart in the room? Would a page go and check the lobby for Mr. Etchart. He was here a minute ago.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I rise for a point of order.

CHAIRMAN GRAYBILL: Very well.

DELEGATE HABEDANK: As I read Rule 74--and I'm in favor of reconsideration of this-but it says, "The rules may be suspended for a specified purpose by the affirmative vote of two-thirds of the delegates present or a majority of all of the delegates of the Convention, whichever constitutes the lesser number." Does that mean-shouldn't that mean that it takes two-thirds?

CHAIRMAN GRAYBILL: No, whichever constitutes the lesser number. The lesser number would be 51, so it passed. Mr. Nutting, would you like to take the Chair?

(Committee of the Whole chairmanship assumed by Mr. Nutting)

CHAIRMAN NUTTING: The delegate, Mr. Brown.

DELEGATE BROWN: Mr. Chairman. Having voted on the prevailing side, I now move that there be placed on the ballot an alternate, in the form to be provided for by Style and Drafting, in the words of Section 6, alternate, which you now have on your desks.

Mr. Chairman.

CHAIRMAN NUTTING: Mr. Brown.

DELEGATE BROWN: This alternate-in speaking for it, I do not want to speak against the present Section 6. I believe they should both be given to the voters to decide which provision they would like. The present Section 6 allows a diversion by acts of the Legislature. The alternate would not allow any diversion by the Legislature. The other differences-and I'll be brief because I've gone over them briefly--would include the fines and forfeitures by the state. This would not include county or city fines and forfeitures, of course. It would include them, because they are now included for Highway retirement funds, and we now pay the Highway Patrol out of these funds. This would also allow diversion from the present section where pollution abatement caused by motor vehicles, your driver education, et cetera. Mr. Romney is going to speak on the fact that this was put in by the people in recent years, so I won't go into that. But there is a tremendous segment of our society that is concerned about this, and I'm just positive that if this is on the ballot, it'll create interest, bring out the voters, and it will take a large segment that will support this Constitution. So I can't see where it will do any harm. We only have two matters on the ballot now. This would probably be the third and final matter, and those people who are for diversion by the Highway Department--or by the Legislature-it will still give the people a choice. And we don't want this Constitution to go down by any segment of society. So, I say, "Let's give everybody a chance and put this on as an alternate." Thank you, Mr. Chairman.

CHAIRMAN NUTTING: The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I would like to make a substitute amendment. I haven't written it out, but I think that it's so simple—

CHAIRMAN NUTTING: Mrs. Eck, the motion is a motion to reconsider at the present time.

DELEGATE ECK: Oh, excuse me. 1'11 wait.

CHAIRMAN NUTTING: Is there any further discussion?

The delegate, Mrs. Babcock.

DELEGATE BABCOCK: It's already passed to reconsider by 54 to 39.

CHAIRMAN NUTTING: That was the motion to suspend the rules, Mrs. Babcock.

DELEGATE BABCOCK: I beg your pardon.

CHAIRMAN NUTTING: Is there any further discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, what are we reconsidering, then? I thought this was a new article to go on. I didn't realize we were reconsidering anything. It was opening it to consider a new article to go in the Constitution.

CHAIRMAN NUTTING: The motion is now to reconsider Section 6 with the purpose, as Mr. Brown stated, to put an alternate on the ballot, Is there any further discussion? No further discussion?

The delegate, Mr. Toole.

DELEGATE TOOLE: Mrs. Eck, do you have a motion before the-are you going to submit an amendment to this proposal?

DELEGATE ECK: Mr. Toole, yes, I am. The amendment I wish to-or the substitute motion I wish to put in when we get to that point is that, in one form on the ballot, the last sentence, with the three-fifths, is included and in another form, it is not included. My thinking on this is that in looking through these two alternates, I think that it took me-and I think it'll take any voter—too long a time to determine what the difference is between one and the other. And, you know, they'll probably end up not voting or maybe voting not the way they really intended to vote, because in the voting booth, it's too difficult to tell the difference. But I think that the main point ofcontention here is whether the Legislature shall be able, by a three-fifths vote, to use this money for other purposes. Therefore, if we had an alternate in the ballot-one form which was to leave the three-fifths provision in, one to take it out-1 believe that this would simplify the issue and make it much more understandable. Thank you.

CHAIRMAN NUTTING: The delegate, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I take it that, at this time, while we're working on reconsideration, there's no opportunity to speak on the merits.

CHAIRMAN NUTTING: If you-if the presentation is the motion to reconsider, there should be at least some discussion as to why you wanted to reconsider. As I understand it, Mr. Brown's decision is to-the reason he wants to reconsider is that it would be a substitution to place Section 6—or the substitute Section 6. Mrs. Eck states that if it is reconsidered, she would want to amend it in a different way. But they both have reasons for wanting to reconsider it. But if the only decision is that-to put an alternative, I would say the discussion at this time should be on that particular point.

DELEGATE ROMNEY: Very well.

CHAIRMAN NUTTING: If there is no further discussion, the question now arises on the motion by Mr. Brown that we reconsider our action and-in passing Section Number 6. As many as are in favor, signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN NUTTING: Those opposed, NO.

DELEGATES: No.

CHAIRMAN NUTTING: The Chair is not certain. We'll have a division. Has every delegate voted?

DELEGATE BURKHARDT: Something happened to the machine and a bunch of lights went out. We'd better--everybody check his button.

CHAIRMAN NUTTING: Does any delegate wish to change his vote?

(No response)

CHAIRMAN NUTTING: 48 havingvoted Aye, 34 voting No, the motion carries. We are now reconsidering Article Number 6.

The delegate, Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I now move that Section 6, as prepared by Style and Drafting, and the Section 6 now on your desks be placed on the ballot in such form as Style and Drafting may determine. And I think I've given you all my reasons for saying this should be on the ballot, so I will now close on that part. Thank you, Mr. Chairman.

CHAIRMAN NUTTING: Mr. Brown. Could I ask a question? What you're suggesting is, then, that Section Number 6 as in the Style and Drafting and your Section 6, which is the bottom of this sheet, would be placed as alternatives on the ballot? Is that correct?

DELEGATE BROWN: That is correct, Mr. Chairman. And I believe, as far as Mrs. Eck's motion is concerned, I'd have no objection to that, but I would like Mr. Schiltz to yield to a question.

CHAIRMAN NUTTING: Mr. Schiltz, will you yield?

DELEGATE SCHILTZ: I yield.

DELEGATE BROWN: Mr. Schiltz, if my motion would prevail, then, would not Style and Drafting prepare the form of ballot? Would that take care of Mrs. Eck's motion to—

DELEGATE SCHILTZ: Well, we-yes, we will prepare the ballot, and it can either be accepted or rejected by the Committee of the Whole.

DELEGATE BROWN: Thank you.

CHAIRMAN NUTTING: Mr. Graybill.

DELEGATE GRAYBILL: Will Mr. Brown yield to a question? Mr. Brown, will you yield to a question?

CHAIRMAN NUTTING: Mr. Brown, will you yield to a question?

DELEGATE BROWN: I'll yield.

DELEGATE GRAYBILL: I understand your motion to be to place these on the ballot in the alternative. Are you, by that motion, attempting to tell Style and Drafting the form of the ballot that they should use in placing these matters before the public on the ballot?

DELEGATE BROWN: No, Mr. Graybill, I think that would be a matter for the Convention to decide, or Style and Drafting would bring their recommendations to us and then we would vote at that time.

DELEGATE GRAYBILL: Mr. Chairman, may I ask another question?

CHAIRMAN NUTTING: Mr. Brown, will you yield?

DELEGATE BROWN: I'll yield.

DELEGATE GRAYBILL: Under that, could Style and Drafting place the committee's proposal in the Constitution as a whole and place the language you're attempting to put in here as an alternative on the side?

DELEGATE BROWN: I think that will be up to the Convention itself, probably, to tell Style and Drafting how they want it.

DELEGATE GRAYBILL: Mr. Chairman.

CHAIRMAN NUTTING: Mr. Graybill.

DELEGATE GRAYBILL: In otherwords, you're not trying to establish that pattern at this time?

DELEGATE BROWN: No, all I want to establish is that the people would have the chance to vote on one or the other.

DELEGATE GRAYBILL: Very well.

CHAIRMAN NUTTING: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, is a substitute motion in order?

CHAIRMAN NUTTING: Yes, we only have one motion.

DELEGATE SCANLIN: I move, Mr. Chairman, that-as a substitute motion for the alternative on the ballot, to delete Section 2—subsection Z-of Section 6.

CHAIRMAN NUTTING: Do you have that written out, Mr. Scanlin? I can't—

DELEGATE SCANLIN: It's just a matter of deletion, Mr. Chairman.

CHAIRMAN NUTTING: Delete subsection 2?

DELEGATE SCANLIN: Right-of the present Section 6.

CHAIRMAN NUTTING: Mr. Scanlin. I—am I right? You're amending-I'm afraid I don't quite understand what you're doing here. On the alternative, you're-you want the same, with the deletion of Section 2, is that correct?

DELEGATE SCANLIN: My substitute motion would eliminate it from the ballot. Mr. Chairman, is my intent clear on this?

CHAIRMAN NUTTING: Yes, Mr. Scanlin. I think, at this time, you're out of order, because we're on-the reconsideration was for the suspension of the rules--rather, was for the purpose of establishing-of putting on the alternative. And if you are amending the original Section 2, then I would say you're out of order at this time.

DELEGATE SCANLIN: Thank you, Mr. Chairman.

CHAIRMAN NUTTING: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I thought Mr. Scanlin was making the samemotion I intended to make, but if not, and if you can understand my amendment, would you read it.

CHAIRMAN NUTTING: It's "A substitute motion to put as an alternative on the ballot omitting Section 2 of Section 6, page 6, line 10. Signed: Eck."

DELEGATE ECK: Mr. Chairman.

CHAIRMAN NUTTING: Mrs. Eck.

DELEGATE ECK: My intention here is

pretty much what I just explained. It's to have, as an alternative on the ballot, Section 6 as it now reads minus the subsection 2. Now, I think that probably the easiest way for Style and Drafting to do this is to put, as an alternative on the ballot, whether-you know, a Yes or a No--whether you're going to include subsection 2 or not. I think that we can leave this to them-you know, how they're going to frame it. My thinking behind this-and I'll repeat what I said before-is that I think that this is where the real issue is and that the voters can very simply decide whether they want to allow the Legislature to control these funds in this way or whether they don't want to allow them to. I think that if we have two entire sections, it will create a great deal of confusion. Thank you.

CHAIRMAN NUTTING: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I beg your pardon.

CHAIRMAN NUTTING: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I rise to support Mrs. Eck's proposal. The three-fifths vote of the Legislature is the heart of this matter. It's a simple proposition and easy for the voter to understand, and I think it is the most feasible way to put it on the ballot. However, if hers does not prevail, I will still support the alternative proposal of Mr. Brown. But I do want to express my firm support of Mrs. Eck, which-as being the most feasible, the most simple, and the most understandable way to place this issue on the ballot.

CHAIRMAN NUTTING: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I would like to say to Mr. Toole and Mrs. Eck that these two provisions aren't exactly parallel. There's one source of taxation that's in one and out of the other, and I don't know that you could do that unless you amend one or the other of them.

CHAIRMAN NUTTING: Mr. Chairman, I would assume that the-1 would take Mrs. Eck's motion to mean that she is taking Sections 1, 2, 3 and 4-Section 1 plus--without Section 2 as her alternative, which means that we have-she is using the original as it appears in the Revenue and Finance Article for one alternative, and the other alternative would be merely Section 1. That was the reason for my ruling.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman. I think we're going at this a little backwards. I think what-we decided to suspend the rules to reconsider Section 6 for the purpose of an alternative, then we moved and passed the motion to reconsider for that purpose. I think what we should first vote on is to-whether or not we should have an alternative on the ballot. And then, when we get done with that vote, then we should decide as-the wording of that alternative on the ballot. Now, Mrs. Eck, by making this motion, makes it mandatory; you either have to pick one or the other-two of these wordings to put on the ballot. We really haven't made it as an independent issue yet, as to whether or not to put any alternative on the ballot, if I remember correctly. And I would appreciate it if you could restate Mr. Brown's motion so that exactly-we'd know exactly what it says.

CHAIRMAN NUTTING: The question—the motion by Mr. Brown was to reconsider our action for the purpose of placing an alternative on the ballot.

DELEGATE McDONOUGH: On behalf of the Revenue and Finance Committee, I'd like to ask Mrs. Eck to withdraw her motion so we can decide whether or not to put an alternative on the ballot.

CHAIRMAN NUTTING: That motion was passed. Now we have a motion by Mr. Brown, so we have already passed that motion. That was Mr. Brown's first motion was to reconsider for that purpose, which was passed-1 can't remember; I don't have the exact figures now, but it was passed on a division. The next motion by Mr. Brown was to substitute Section 6, as it appears on your-m the sheet that was passed out to you, as an alternative-the lower one. Then Mrs. Eck amended that so that it would now be merely a change in Section 2. So that is Mrs. Eck's motion now, but both are alternatives to the original proposal.

DELEGATE McDONOUGH: Thank you.

CHAIRMAN NUTTING: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. Maybe I'm just confused, but I think I'd have to challenge the ruling of the Chair on that. I don't think that, by the fact that we passed the motion to reconsider, means that we have adopted the idea that we are going to have an alternative.

CHAIRMAN NUTTING: Mr. Harbaugh, the Chair would welcome the challenge; however, that was the motion. Am I correct in that? The motion was to reconsider for the purpose of placing on the ballot an alternative on this issue; and that was on a division vote.

Mr. Felt.

DELEGATE FELT: I'm rising, first as a point of parliamentary inquiry, to further deal with this question and possibly will offer a substitute motion for all motions pending, to clarify. Because, I feel-1 believe that the Chair has ruled correctly but that there's a little question in the minds of many of us, including myself, as to just what the exact effect of the Chair's ruling may be. The last-the motion made by Mr. Brown, as I understood it, was a specific motion calling for the inclusion of all the material that was distributed to us-the first section being as it was originally adopted by us from the committee report and that has been revised in Style and Drafting so that we have slightly different phraseology and numbering on the sheet that was distributed to us compared with the Style and Drafting report, which, I think, has led to some confusion-but that he does specifically call for the language in the lower part of this sheet as the alternative to be placed on the ballot. While Mrs. Eck's motion, which I think was properly ruled to be in order, calls for different wording--some wording to be taken out of the previous adopted Section 6, being called subsection 2 in our Style and Drafting report, and to place that on the ballot as an alternative to what is referred to as "modified 1-B" here in the sheet distributed to us. And that some members now feel that they want, first of all, to clearly vote on simply the proposition of whether something should be placed on the ballot as an alternative, without necessarily preferring the wording proposed by Mrs. Eck or the wording proposed by Mr. Brown. And if the Chair's ruling is that the bare vote on the motion to reconsider does also constitute a motion to place something on the ballot, then perhaps my substitute motion would not be necessary; but if the motion to reconsider, which did pass, simply means that we're ready to receive a new motion but does not encompass a decision to place something on the ballot, then I would offer as a substitute motion, if it would be in order--as a substitute for all motions pending-the simple proposition that we do accept the proposition that some alternative-the wording to be later determined--will be placed on the ballot as an alternative and with the methods of placing it also to be determined later, perhaps after recommendations from the Committee on Style and Drafting, if the thing proceeds that far. So I'd appreciate it-if the Chair has anything further to say in clarification and if the Chair feels my motion is in order, I would present it as a substitute motion at this time.

CHAIRMAN NUTTING: I would rule that Mrs. Eck's is an amendment and that Mr. Felt's motion is now in order, but we are now at the end of the line here on this as far as motions is concerned.

Mr. Eskildsen.

DELEGATE ESKILDSEN: What we voted on was a reconsideration by Mr. Brown, and even though he included in what his proposal was, he merely showed us-told us what we're-what he was going to present to us. Now, if he'd make another motion so that we could vote on whether we want to adopt his or not, then if somebody wants to get up and start amending it, we'll be in order, as far as I'm concerned. The way we are right now, we're just kind of in the air; we don't know whether we're really voting on just reconsideration or what. But I think if you would make that, Mr. Brown, so that we could have yours before us, then it would clear everything up. I think Mr. Felt's idea is kind of farfetched, because we're just kind of talking about something that we might be going to do-we might be going to put it on the ballot in some kind of form or other. We can't do it that way; we've got to have words down here. We can't vote on the idea that we think we're going to do something. Let's get it before us before we start doing that.

CHAIRMAN NUTTING: Mr. Eskildsen, we do have such a motion on the floor-made by Mr. Brown-to accept as the decision this-the sheet as it was passed out to us, which is an alternative. Then, we have an amendment by Mrs. Eck which places, as an alternative, the language of Section 2 plus-as an alternative, the language of Section 2 without Section l-Section 6 without Section 2 on it. So we now have those two alternatives before us.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. The point I'm making is that we merely voted on the reconsideration because he added all the rest to it. That was to inform us what we were reconsidering, what we'd probably do after we reconsidered. Now, we reconsidered and we passed that vote. Now, it's time for Mr. Brown to

make a motion that we adopt what he has here before us; and when he does that, then that will be the motion before us. Then, if Mrs. Eck wants to start amending it, we'll be in order.

CHAIRMAN NUTTING: He has made that motion, Mr. Eskildsen. And Mrs. Brown has amended it as-or Mrs. Eck has amended it.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, may I ask Mr. Felt a question, please?

CHAIRMAN NUTTING: Mr. Felt, would you yield?

DELEGATE FELT: Yes, I yield.

DELEGATE DRISCOLL: Mr. Felt, is it the sense of your motion that a Nay vote would indicate that it would be accepted exactly as it is-that there'd be no alternative on the ballot?

DELEGATE FELT: A Nay vote?

DELEGATE DRISCOLL: A Nay vote to your motion.

DELEGATE FELT: Yes.

DELEGATE DRISCOLL: Then there would be no alternative on the ballot if the Nays prevail in your motion?

DELEGATE FELT: That is--would-Yes.

DELEGATE DRISCOLL: Thank you, Mr. Felt.

DELEGATE FELT: If the Nay votes prevailed, we would have determined that we intended to place something on the ballot if we can come to an agreement on some particular wording. And you'd have to still get an Aye vote in favor of some particular wording at a later time. But if there was a Nay majority, it would end the subject.

DELEGATE DRISCOLL: Mr. Chairman, I rise in support of Mr. Felt's motion. It will expedite the work of this Convention. Thank you very much.

CHAIRMAN NUTTING: Mr. Chairman -Mr. Felt, would you yield to a question from the Chair?

DELEGATE FELT: Yes.

CHAIRMAN NUTTING: Would you limit that motion to a motion that we could get down here with the secretary?

DELEGATE FELT: Yes. I'm in the process of writing it, and I must-1 might say that, in line with Delegate Driscoll, that this was intended to save time. And I personally do support placing some alternative on the ballot. That-yet, I can see Mr. Eskildsen's point that it's a little unusual, I think, to place before the house for its consideration, as a motion, a simple statement that we will do something. I do feel, under all the circumstances, that it is the proper procedure, myself, and I will present it in writing to the Chair. It should be there within 60 seconds if I don't have any more questions.

CHAIRMAN NUTTING: Mrs. Eck.

DELEGATE ECK: I resist Mr. Felt's motion. I think that a great many of us don't want just any antidiversion alternate on the ballot. And I certainly would not be willing--and I don't think very many others would be willing-to commit myself ahead of time to having something on the ballot without knowing what it was going to be. I think that there are still opportunities for further consideration. I mean, you know, we can-1 think that there are still a couple of more coming up-1 understand that someone would like to put on the ballot leaving the provision that is now in the Constitution-but I think that the only just way to deal with these is one at a time as we go along.

CHAIRMAN NUTTING: Mr. Berg.

DELEGATE BERG: Mr. Chairman. Am I correct in assuming that this motion to-of Mr. Felt's, if you vote No, that ends the issue completely, so that if Mrs. Eck wants to resist Mr. Felt's motion, she's in effect denying herself an opportunity to present any further motions?

CHAIRMAN NUTTING: I just got the motion here, Mr. Berg, and I'll read it. "A substitute motion that the Convention will debate the question of placing on the ballot an alternative proposal on the matters embraced within Section 6, Revenue and Finance."

Mr. Felt.

DELEGATE FELT: In response to Mrs. Eck's comments, a favorable vote here would not be a commitment to any particular language. It leaves everybody free to endeavor to agree upon what would be the best course of action to follow in selecting the particular thing to be placed on the ballot as the alternative. And I would hope that

if this was not the case, then I would oppose my own motion, because I wish to be free to support Mrs. Eck's proposal and I wish to be free to support Mr. Brown's proposal. And I might support some other proposal, because I feel very strongly that we should place this question on the ballot. And I'm extremely proud of the committee for having included in its report this matter of a three-fifths vote, the members of the Legislature being able to set aside the dedication of these funds. But I feel that it's a question that the people will be called upon to express themselves. This will be forced upon us at one time or another. In any event, I think this is the proper time to present it to the people and that we, by adopting this motion, are simply trying to move this along to get to an orderly debate on the exact question that needs to be determined by the assembly.

CHAIRMAN NUTTING: The question now is on the motion by Mr. Felt that we debate the question of placing on the ballot an alternative proposal.

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I would like to speak against Mr. Felt's motion in the sense that I'm contending that there should not be an alternate on the ballot, I would be the first to rise, I think, and say there should be an alternate if the matter could be decided fairly by the people. I sense that that is an impossible situation. We have to face the fact that through these many years with the nondiversion amendment, that the forces that we're talking about have become rather vested, have become financially powerful. Therefore, a campaign that was-went to the people for a decision, I would predict, would be highly funded in opposition—would protect, rather dramatically, those vested interests-and that we would not get a fair vote from the people. I really feel that this is about the only body in Montana that can open that up or not open it up and, if we don't do it, that it'll just be simply impossible for the people to do it even if they wanted to.

CHAIRMAN NUTTING: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. If I understand Mr. Felt's motion properly, if I vote Nay on his motion, that there, in fact, will not be an alternative on the ballot. Now, I could be wrong at that.

CHAIRMAN NUTTING: That is correct.

DELEGATE MONROE: Okay. I would urge this body to vote Nay on his motion. I think that the other day, on March 3rd or 4th, when we discussed Revenue and Finance Article, that we voted rather significantly to take the antidiversion clause out and by a three-fifths vote, the Legislature could divert funds to other areas. And I think if we're toying with the idea of putting something on the ballot here, I think we're doing a grave injustice to the people of Montana. We, as a body, have come under some criticism as not really doing our job here at the Convention. And if we were to give them an alternativeon the ballot, I think those criticisms would be very justified—that we're, in fact, passing the buck to them. It seems to me if we put many alternatives on the ballot, including this one, we're confusing the hell out of those voters. They're confused enough as it is. We're pretty damn confused right here. So I suggest that we defeat-or vote Nay in regard to Mr. Felt's motion. And on this particular instance, I'm not going to use my little rule, like I did the other day, and make a bet with you that those people who are going to change their votes are over a particular age. I won't put you in those circumstances again, even though I won my bet the other day. Thank you.

CHAIRMAN NUTTING: Mrs. Warden.

DELEGATE WARDEN: Mr. Chairman. I would just like to say that on-that I think we should leave these things up to Style and Drafting to bring back to us, so that when we're all through considering all of the articles, that they will have the determination of what is vital enough to go on the ballot. And then, we can argue that out. Thank YOU.

CHAIRMAN NUTTING: Mr. Toole-Mr. Romney-Mr. Toole, you were up.

DELEGATE TOOLE: Mr. Chairman, I made my lengthy speech a couple of weeks ago on this subject. Everybody knows how I feel about the evils of antidiversion. And we all know that there are powerful and well-financed groups that are involved in this, and they don't scare me a bit. But we have to face the fact of the popularity of this. Poll after poll shows that the people still favor antidiversion of fuel taxes. I don't like Section 1-B a bit-the old section. I have searched over and over again for an alternative. I like Mr. Graybill's alternative that he presented to us 2 weeks ago, but he withdrew it. I'm convinced that to save this Constitution, we must give the people a choice in

this very controversial matter which indicates that the people still support antidiversion. Now, they're getting educated; and 2, 3, 4 years from now, they won't support it, because they will perceive the evils involved in it. But at this time in history, we still have to give them a choice. Therefore, under Mr. Felt's amendment-or Mr. Felt's motion-substitute motion, I think we must entertain the discussion and the debate of some sort of an alternative. Thank you, Mr. Chairman.

CHAIRMAN NUTTING: Mrs. Robinson.

DELEGATE ROBINSON: Would Mr. Brown yield to a question?

CHAIRMAN NUTTING: Mr. Brown, will you yield?

DELEGATE BROWN: I yield.

DELEGATE ROBINSON: Mr. Brown; is the purpose of putting this on the ballot-is to preclude what you think might be a highway users group voting against the entire Constitution because of our present Section 6?

DELEGATE BROWN: Well, I'm not-Yes. I think many-I'm not talking about largevested interests; I'm talking about many thousands of people that I feel are very strong for antidiversion. And if we give them no alternative, I think there is a danger that there'll be another segment that will vote against the Constitution, and I don't think we should take that chance, by very simply giving them an alternative.

DELEGATE ROBINSON: Mr. Chairman. Will Mr. Brown yield to one other question?

CHAIRMAN NUTTING: Will you yield, Mr. Brown?

DELEGATE BROWN: Yes, ma'am.

DELEGATE ROBINSON: If that's the case, if there are that many one-issue voters, would not it be true that if, as an alternative, we presented one of these watered-down amendments, they would still-they would vote Yes for the amendment but also vote No for the entire Constitution because of-that's-a watered-down amendment might pass. My point is that they have nothing to gain by voting for the new Constitution because they have what they want in the old one, if there are, in fact, that many one-issue voters.

DELEGATE BROWN: I don't think they're that strong one-issue. I think, they're given an alternative, they like our new Constitution-or I hope they will-and this will, then, give them an alternative to try and have their own plan in it. But if we give them no alternative, they'll have no alternative to vote No. Is that clear? Thank you.

CHAIRMAN NUTTING: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I don't know whether this is the appropriate time to discuss this matter, but everybody else is discussing it, so I think that I will, too. There have been fears voiced by delegates in the last few minutes that the people would not have an opportunity to have a fair break in an election. I think thatthatis an insult to the intelligence of the electorate, and I don't concur. There has been voiced a view that if you don't vote the same way you did upon Section 6 the other day, that you'll get a black mark in the little black book, and I don't think that anyone is going to be frightened by such threats. I feel that the people are the only place where we can get an answer to this matter. There have been statements made that the vote taken in 1956 was a long time ago and that times have changed and that perhaps the viewpoint of the people has changed. That may be so, but still, I look back in the present Constitution adopted in 1889, Article III, Section 1. This reads: "All political powers vested in and derived from the people; all governmental rights originates with the people, is founded upon their will only and is instituted solely for the good of the whole." That was 83 years ago. This body, engaged in preparing a new Constitution, has adopted a similar section-Section 1, popular sovereignty-"All political powers vested in and derived from the people; all governmental rights originate with the people, and is founded upon their will only, is instituted solely for the good of the whole." Exactly the same phraseology. We haven't changed much in the last 80 years. We've maintained the same philosophy, and I think it's a good philosophy. And I think all of us have concurred in it, because we voted for it just the other day. It's not so long back to 1956, but the people spoke eloquently upon this subject back in 1956 when they enacted the antidiversion amendment to the Constitution. I have before me the abstract of the vote of that election. The aggregate vote was 160,543 for-160,543 for and 47,615 against, making the majority of Montana people of 112,928 in favor of the proposition. Now, why did that-why was there such a tremendous majority? I'll tell you

why. Prior to that time, this nasty Legislature had been putting its sticky fingers onto some of this money. When it took some of that money out over a period of time, people became outraged and a movement was instituted-led by the Montana Automobile Dealers Association, older car dealers, and others-to prohibit such goings-on in the future. So, they enacted an amendment to the Montana Constitution by the vote which I just indicated. Now, how did they vote? Every single county in the State of Montana, without exception, voted in favor of this amendment. There was not a slacker in the bunch. Beaverhead voted 18— I'm going to leave off everything except hundreds here-

CHAIRMAN NUTTING: Mr. Romney, would you keep your comments as close to possible as the-whether an alternative should be on or not. Thank you.

DELEGATE ROMNEY: I will, Mr. Chairman. I don't think that anything could be more poignant than the vote. Beaverhead voted 1,833 to 732; Big Horn, 2,054 to 661; Blaine, 2,117.440; Broadwater, 855 to 85; Carbon, 2,637.917; Carter, 696-289. Cascade, Mr. President, had a vote of 10,219 to 3,726. Going on to Chouteau, the vote was 2,517 to 633. Down in Mr. Brown's bailiwick, it was 2,940 to 1,127. In Daniels, it was 1,188 to 415; Dawson, 2,933.904; Deer Lodge, Mr. Dahood's bailiwick, 4,080.1,441. Down in southeastern Montana, in Fallon County, 1,031 and 373; Flathead—I see the gentleman, Mr. Murray-his county voted 9,347 to 2,966. Fergus, 3,954 and 1,582. My friend, Mr. Roeder's county voted 7,123-I wish he was here so he could hear this-to 1,714. Garfield, 601 to 56; Glacier 2,609.685; Golden Valley, 425-125; Granite, 874-363; Hill, up on the Hi-Line, 4,578. 1,123; Jefferson, 1,128.419; Judith Basin, 1,066. 373. My friend, Mr. McNeil's county, thirty-six sixty-three to one nine. Here's Lewis and Clark county, Mr. Brazier's home country, 8,746 to 2,236. Again, up on the Hi-Line, Liberty had 747 to 202.

CHAIRMAN NUTTING: Settle down, please.

DELEGATE ROMNEY: Lincoln, Mr. James', 3,154.980; Madison, 1,578.640; McCone, 1,046.402; Meagher, 687-214; Mineral, 872-209. Mrs. Robinson's country down here in Missoula, near the beautiful Bitterroot, 11,018 voted for it, 2,839 voted against it; Musselshell, 1,159.325; my fellow journalist, over in Park County, 3,362.1,651; Petroleum, 276-113; Mr. Eskildsen's area, 2,194-510; Pondera, 2,079.596; Powder River, 707-272-I wonder what the boys down there would think about it now; 1,895.661 for Powell; Prairie, 596 to 214; Bitterroot, Ravalli County, Mr. Ward-I'm sorry he's not here right now-3,450.1,278; Richland, 2,821.795, Mr. Habedank; Roosevelt, 2,758. 812; Rosebud, 1,628.495; Sanders, 2,211.638; Sheridan, 1,939.579; Mr. Holland, Silver Bow voted 7,556 to 2,485; Stillwater, 1,745-510; Sweet Grass, 1,049.323; Teton, 2,224.578; Toole, 2,334. 593; Treasure, 368.113; Valley, 3,552.789; Wheatland, 1,020.271; Wibaux, 516-183; and Yellowstone-1 see my friend, Mr. Blaylock, gazing intently-13,788-that's almost as many votes as he got-to 2,341. I think this is a remarkable argument. I don't think all of these people could have-possibly have changed their minds in this time. And if they have, they certainly--we certainly ought to be able-we should have the right--we should have the duty I maintain-to find out, to give them the opportunity. There's nothing dearer than such an opportunity to vote. I have a feeling that never should the Legislature or a convention override an expressed plebiscite where such a tremendous majority was adduced. I thank you, Mr. Chairman, for your patience.

CHAIRMAN NUTTING: The question is on whether we shall place on the ballot an alternative proposal. I want to have the discussion as pertinent as possible.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President-Mr. Chairman, would Mr. Romney yield to one question which he'll, I hope, answer shortly?

CHAIRMAN NUTTING: Mr. Romney, will you yield?

DELEGATE ROMNEY: I will endeavor.

DELEGATE BLAYLOCK: Mr. Romney. You went through the list of all the counties and you said what the votes were, and they were all in the majority for putting in the antidiversion amendment. How much money was spent by the Petroleum Association, the Automobile Dealers Association and all of the various interest groups on that campaign for a yes vote?

DELEGATE ROMNEY: Mr. Blaylock, I cannot answer that because I do not know. However, I was in the newspaper business at that time, as I am now, and I remember the campaign very well, and I remember the outrage of the people, which engendered such a vote.

DELEGATE BLAYLOCK: Mr. Chairman, I would just like to make a few points.

CHAIRMAN NUTTING: Mr. Blaylock.

DELEGATE BLAYLOCK: I think Mrs. Robinson's point was very good-that if these are one-issue voters, why should they come out and vote for the Constitution if we just put in one of these watered-down versions. I'd like to also remind you people that the Revenue and Finance Committee, which we all had confidence in and which we supported right down through their report, recommended that we go for this proposition, and we supported them. I think, also, that we have to remember Marshall McCluen's statement that the medium is the message, and the medium will be bought up by these interest groups and you will hear nothing but to vote for what they want. Who's going to put up the money for the other side, for the side that, really, the majority supported in this Convention the first time? The money isn't there, because they don't have it. So, I would say to this Convention, at this time, if we want to change our minds, let's not put this thing on the ballot. Let's go ahead and strip this three-fifths out of here, because that's what's going to happen in the final analysis anyhow. We, the—just the plain people, have no chance against these interest groups. So let's stop wasting time, if that's the decision of this Convention: strip it out now and put it into the Constitution minus the three-fifths proposition. So far as people voting for things, I think that, probably, we should remember that Montana voted for prohibition once. We found out we got awfully dry before we changed that. So let's not think that we can't change--we made a mistake before, Miles, and maybe we should change our mind now.

CHAIRMAN NUTTING: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman. I can't quite remember all of Delegate Romney's figures, but one figure does stick in my mind from our group. We were told that $2 million were expended on the issue of nondiversion of funds in 1956. That might help Mr. Blaylock some--$2 million. I rise in support of Mr. Felt's motion but for different reasons than for which he made it. I hope that we vote a resounding No on his motion and thus kill debate. We don't have one proposal before us. I think we probably have a proposal on every desk; on at least one desk, there are three different proposals. The whole thrust of these proposals are, in effect-they have to do with the three-fifths vote. We have not diverted any money in the majority proposal, which was overwhelmingly accepted a couple of weeks ago; we have permitted diversion on a three-fifths vote of the Legislature. And I would suggest to this body, in spite of what you've been told, that the Legislatures and legislators are a responsible body. They are not going to go out and rape this fund for some other purpose. All of the other proposals that were accepted in the majority report have been, as a matter of fact, accepted in all of the modified proposals. The only real issue here is the three-fifths vote. If the Legislature did, as a matter of fact, divert that money, I assume that most of them would earn themselves a long vacation from these halls, because I don't think the public would stand for it. We have not diverted money. As a matter of fact, I was hoping that, when we first started discussing this, that we'd drop the whole term "diversion" or "nondiversion" and just call it "highway revenue". But I would repeat for the body once again, there has been no diversion. Now, if you want to argue about the $2 million from the very top that we talked about the other day, that has been accepted in every other counterproposal that has been put before this body, and up till now it's been rejected: and I hope that you would continue to reject them today by voting down Mr. Felt's proposal. Thank you.

CHAIRMAN NUTTING: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise to resist Mr. Felt's motion. I have very strong feelings about the appropriateness of the anti-diversion 1-B in the Constitution, and I won't burden you with my feelings. However, I think that if Mr. Felt's motion does prevail and we are then in the position of deciding that we're going to put an alternative on the side for the voters to accept or reject, that we have a great obligation to be sure that the voters have a comparable choice. That is, I don't think that the proposed modified 1-B is a fair choice tomakein the alternative to the Revenue and Finance proposed Section 6. There are many things about them which are not comparable, and I think you put the voter in an impossible position, because he may like part of one and like part of the other, and then what's he going to do? So I urge you, if you do sustain Mr. Felt's motion to put this on the side, that we give a great deal of thought to the way it is presented so that the voter is not put in a-to a disadvantage when it comes time for him to vote. Thank you.

CHAIRMAN NUTTING: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I'd like to speak against Mr. Felt's motion. It's a very fine motion, because I think it's going to clear the air for us and we'll get down to the decision of whether or not we're going to put an alternative on the ballot or not. And I hope that we are not going to put an alternative on the ballot, because the amendment-or rather the section that has been presented to us is, itself, a compromise solution to the problem. We've already considered putting two other items on the constitutional ballot at this point, the capital punishment issue and the issue of the two Legislative Assemblies. Are we going, then, to put a third on? And are we then going to put on a fourth, with the lotteries? If we are, I think we ought to put aid to parochial schools on. I think we ought to have about six alternatives on the ballot. If we begin now to set this kind of precedent, we're going to have a ballot that's about a mile wide and a half mile long. This isn't constitution writing, I think, when we get down to this sort of thing. This section, obviously, is a statutory thing in the first place, and I can't see any point in our dodging the issue here. We're here to write a constitution. Let's put it in the form that we want it in, and let's submit it to the voters that way. If we do vote to approve this motion of Mr. Felt's, we're going to have about eight or ten different proposals, because we're going to have to reconcile them all. It's going to take us all day to do that. And I think that we've been through this debate enough that we don't want to go through it again. So let's defeat this motion, and let's get on with the Style and Drafting report.

CHAIRMAN NUTTING: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, fellow delegates. This issue is one I've been attempting to follow. I wasn't on the committee, but I've been attempting to follow it right along. I was inclined to go along with one of the delegates on the committee that I talked to that wanted to strike the entire article of diversion out of the Constitution. But the committee, I'm sure, considered the practicality of the politics involved and arrived at what I consider a compromise. That is that if things get so bad with this highway fund that it has to be diverted, that three-fifths of the Legislature can do it. And I submit that would take a very, very compelling circumstance to have the Legislature-three-fifths of the Legislature join together to take it away. What you've done here is to degrade a fund-and it's been growing every year. Now, if I-the figures I have-which I've received from Mr. Furlong--are accurate, it's grown 9 million last year, up to the point whereit's 38 billion-million dollars annually. Now, we can expect it'll continue to grow. Now, when you give all of that sum to one department to use, nobody else can use it, they don't just use the part that is necessary and send it back for the rest of the state to live on. We all know what short resources the rest of the state is being run on. We have one department over there that we all know is pretty fat right now, it's likely to get fatter. And before they send back a dime, they'll have everybody in the organization driving a gold-plated Cadillac, because they don't send money back. That's the history of any organization. Bureaucracy will use all the money it can get. Now, sensibly, the committee has foreseen that it can come to this, where they don't use their money for highways or where the highways will be fully completed to where they don't need it any more, and we'll need this revenue. And the State of Montana is right at the point where we're going to have to get some revenue somewhere. And if we don't have some of this coming back from the Highway when they don't need it, we very likely might find-have put the Legislature in the position where they're going to enact a sales tax. Now, what Reverend Harbaugh said is completely accurate-the more of these side issues we put on the ballot, the greater the chance we have of the Constitution falling under it's own weight. The history that I've heard of the states where they put many side issues on the ballot-every side issue tends to defeat the ballot and, by itself, just having additional side issues can do so. What Mrs. Robinson said is also very true. I many times have risen here to talk about practical politics. Mrs. Robinson and I agreed every time on practical politics, and I'm glad to hear her talking politics. Because what they're doing here is what we call, in Butte, "double-shooting the turn". We're giving them two shots at the Constitution. They're not going to vote for the Constitution if there's a chance they're going to lose their precious revenue; they're going to vote No on the Constitution. And then you put this on the side, thinking you're going to avert this. You're just giving them a second chance to vote No; you're double-shooting the turn". Now, like Mr. Brown says, hundreds and thousands of citizens are worried. Well, Mr. Brown may have heard from hundreds and thousands of citizens, but I haven't heard one word. But I heard a lot from dealers; I heard a lot from truckers; I heard a lot from highway groups. Those are the people

that are putting the pressure on. And I say the committee has given them every break. If many of us in this Convention had had our way, there would be nothing in here about any diversion. The tax money would be put in here where it could be used for the welfare, where it could be used for the other things we need revenue on. But they've kept their revenue sacred, and it's going to take three-fifths of the Legislature to take it out. But if we bend further, we give 'em-we fall into two chances-one, this Constitution will fall under its own weight because it's got too many side issues, and the other is they're just going to double-shoot the turn on us and both-vote No both ways. So I suggest that Mr. Felt's amendment should be defeated and we should sustain the committee.

CHAIRMAN NUTTING: Mr. Scanlin, you'll be next, but we have to change the tape up here so if you'll be at ease for a moment.

(Tape changed)

CHAIRMAN NUTTING: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, may I make an announcement while they are changing the tape?

CHAIRMAN NUTTING: If we can have your attention, Mr. Campbell will make an announcement while we're at ease.

DELEGATE CAMPBELL: As you know, this evening at 8 o'clock, Miss Jeannette Rankin will be speaking to us. One of the things she will be speaking to is a new proposal that Senator Mansfield and Achen have also discussed in the press recently-that is, a national presidential primary. And what she'd like to do, as part of her speech tonight, have us cooperate by filling out our preferences on 10 presidential candidates who are listed on this sheet that will be given to you. And if you could do this before noon and then pass them to the center of the aisle, she will tabulate them and tell you the results of how this would come out if this worked on a national level. So we'd certainly appreciate you taking the time. And on the ballot you have 10 candidates, and then you mark which one you'd rather have as President, all the way down from 1 to 10. Ignore the last one-11-it shouldn't have been on there-somebody lost out in New Hampshire. But if you would do this, we'd certainly appreciate it. Thank you very much.

CHAIRMAN NUTTING: The house will be in order.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a clarification of the issue. If I understood correctly, the Chair just made a statement that what we were voting on in Mr. Felt's amendment was to-whether or not we should place it on the ballot, and, as I understood, Mr. Felt's amendment was that-it was to debate whether or not we were going to put it on the ballot, and that's what we've been doing for the last hour.

CHAIRMAN NUTTING: That's correct, Mr. Scanlin. The question is whether we shall debate it, and I think it has been debated pretty well.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. As I think most of you know, I have felt very strongly about this highway anti-diversion amendment. I have felt very strongly that it does not belong-in any manner, way, shape or form-in the Constitution, and I think that most people that really look at it carefully agree with this general position. I was perfectly willing to go along with the committee. They heard all the testimony; they heard both sides of the issue. They worked hard on it, and they came up with, indeed, a compromise. When we first discussed the question during the debate, initially—my recollection isn't perfect-but it seems to me there were about 16 people in this body that voted in favor of retention of the present section. And after a good number of hours, we got down to the point that we, in fact, voted that we did not want to place it on the ballot. I really don't know what has transpired in the meantime. There certainly has not been a ground swell of voter concern from the people of the State of Montana. I, like Delegate Holland from Butte, have received no mail from citizens on this question--no one that's concerned because, in fact, we've compromised one way or the other. I think that the people of Montana are satisfied with the position that we've taken, and I certainly see no reason to go back over this ground again and stir up the thing and present an alternative on the ballot on this question which not only doesn't belong on the ballot, but it doesn't belong in the Constitution at all. Delegate Romney went through a very extensive and well-documented course on the voting history. I could present the same course of votes that have been taken on questions such as justice of the peace, questions such as whether there should be three amendments, six amendments to the Constitution, and I think that this is really academic. The question really is

whether we're going to present a constitution that the people, after they read it all, are going to be willing to accept. There are going to be things in there that every individual, personally, is not going to be particularly enchanted with-there are things in there that I'm certainly not particularly enchanted with-but I submit that there are going to be things that they know and recognize as major improvements. And this is going to be the question of whether they're going to vote for the Constitution or against it. The voters of the state are going to have to consider all aspects and not just the aspects of what the highway users and Mr. Jack Rehberg say about it. They're going to have to consider the whole question. And I feel it's important that we stick with reason, and I submit that the committee presented a very reasonable proposal. We voted in favor of it. And to submit this complicating issue on the ballot and to get a lot of money being spent to support a particular amendment is only going to confuse the voters. And I have faith in the voters of Montana. I think they're really quite well-informed, and1 think that after we get through in our own districts, they'll be much better informed. The majority of this body does not support antidiversion, and1 don't see any reason why we should submit it to the people for them to have to make a decision on this particular issue in the clouds of campaigns and a lot of money being spent. I submit we have a good proposal at the present time, and let's leave it that way. And let's defeat the motion of my good friend, Delegate Felt, and get on with more important issues. Thank you, Mr. Chairman and fellow delegates.

CHAIRMAN NUTTING: Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman, I rise in opposition to Delegate Felt's motion. I think we're missing one point here, though, in all of this argument. I keep hearing the statement that the Legislature has no control over the Highway Department, that it's a creature set out by itself with absolute-it controls itself and does as it pleases. I wonder how many of you have ever stopped to think about the fact that practically all of your highway proposals are presented through some budget system through the Legislature, with-probably as much as 5 years ahead of time-and that the Legislature, in its wisdom, has control entirely by setting the amount of gasoline tax that is put on to pay for the anticipated future highway construction. If the Legislature wants to control the Highway Department, all they have to do is start reducing the gasoline tax and other taxes that support it; they've got absolute control. I heard the argument here on the floor yesterday that the University System could be controlled by the Legislature because it appropriated the funds. Well, the Legislature doesn't exactly appropriate the funds to the Highway Department, but it does set the amount of gasoline tax that you pay in order to provide those funds, so I don't know why they don't have some control.

CHAIRMAN NUTTING: Mr. Felt, do you want to close?

Mr. Drum.

DELEGATE DRUM: Mr. Chairman. Our committee-the Revenue and Finance Committee hasn't said much this morning, but I would like to pass on some of the considerations that we had in placing this section into our article. When you talk about conversation and talk about muscle and talk about phone calls and talk about a lot of things, I'll tell you the committee is really quite familiar with the many feelings of people in transportation, the different motor carriers and motor groups of all kinds. And I think, in defense of the committee, we gave very fair consideration to all of the arguments, but we really felt that what was in the best interests of the people of Montana was to put a line into our section which gives the final responsibility and authority to the Legislature. And this, I think, is what we're debating this morning. Nobody's talking much about it, but we felt, after hearing the abundance of testimony, that the Highway Department would become more responsive to the will and the needs of the people of Montana and to the Legislature if they had this one line added to our-to this particular section. Now, we feel that there is an alternative in this one line. If what the advocates andexponents of eliminating any chance of this money--any diversion of this money, if what they say is true, they have nothing to worry about. The Legislature is going to support them, we feel, in every way that they can. But if the Highway Department, number 1, accumulates a lot of money in the next 20 years-and we're talking about roughly two and a half to three million dollars a year that this fund is growing-instead of talking about $38 million, Mr. Holland, we may be talking about, 20 years from today, $98 million-and if there is no possibility of diverting that money, it may really become cumberson to the legislative body and it may be something that is not in the best interests of the people of Montana. Now we've had phone calls-I've had them early in the morning and late

at night-and when I explain the committee's position to these people, it--usually they say, "Fine, we thought-our understanding of this thing is that you weren't going to spend any money on county roads, there was no money going to city streets." And, really, in my mind-and I'm certain in the minds of our committee-more money is going to be available for county roads, more money is going to be available for city streets the way this section is written. As far as the arithmetic on the money, there's very little change as to the relocation of these moneys. As Mr. McDonough said, the license tax money is statutory now and will continue to be so. But from the best interests of the people of Montana, I urge you to defeat Mr. Felt's amendment and to leave this section as it is given to-given as a choice to the people of Montana. Thank you, Mr. Chairman.

CHAIRMAN NUTTING: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I don't think you've heard much from the committee, because I think they-you heard from them a week, 10 days ago, and I don't think there's been much change. I think, if you noticed the votes this morning, we're probably still voting about the same way, at least more than even-the majority of us. So that's why you haven't heard a great deal from the committee.

CHAIRMAN NUTTING: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman. Somewhere in the far distance, out past one of those tepees on that painting, I anticipate reaching a point where there can be a final vote on this subject. These old, dry bones have come up now for about the seventh time, and each time, I've struck with great valor to try to put them in their final resting place. Now, Mr. Felt gives me another chance, and I appreciate the favor, because this gives me about the eighth blow now. I intend to vote against this measure and hope that the matter can be put to rest.

CHAIRMAN NUTTING: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I resist the motion in giving a choice on this. I think it's going to be confusing for the voters to make this decision. When they go into the polling booth, they're going to weigh these fractions here regarding a legislative vote, how effective a three-fifths vote is and this sort of thing. I think we really should decide this one way or the other. It seems to me we have several choices, though, other than this. We can leave it the way we have it, we can-1 suppose we could put back in l-B, or possibly we could raise the fraction here. Mr. Romney's remarks are somewhat pertinent. He gave some statistics on the vote in 19-15 years ago. However, we also have to remember, as someone pointed out, that voters do change their minds-that 15,000 people voted, in 1889, for this Constitution and 4,000 against-something like four to one-and 80 years later, we had a two-to-one vote asking that it be revised. It seems to me we want some options left open here in the event that more funds are received, as Mr. Drum said, than are necessary for sensible road construction. We also want some-1 think it's the feeling of this body that we want a certain amount of responsiveness from the Highway Department. However, there are many areas in this state where we do need roads yet. We are-our roads aren't finished out in the eastern part of the state and, I presume, in a lot of parts of the state. I would-1 don't know-1 don't think a substitute motion is in order, but I would suggest that we might consider raising the fraction to two-thirds.

CHAIRMAN NUTTING: A substitute motion is not in order at this time, Mr. Skari.

DELEGATE SKARI: Thank you, Mr. President.

CHAIRMAN NUTTING: Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman. I'd just like to announce that I misunderstood Mr. Felt's motion, and I am in favor of it rather than opposed to it.

CHAIRMAN NUTTING: Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, members of the Convention. I will not-1 rise in opposition to Mr. Felt's motion, and I have only two small points. First of all, as an answer to Mr. Romney, there is a simple solution to Mr. Romney's problem. We have an antidiversion amendment in the present Constitution. The committee has provided us with an antidiversion amendment. It simply has a three-fifths lever on it in case the Highway Department gets out of hand. So, anybody that's for the antidiversion amendment should be for the present committee's proposal. Secondly, I rise in opposition to Mr. Felt's motion because Mr. Felt's motion-if you vote Yes, it requires you to accept the proposition that we'll put something on the ballot, and we haven't any

idea of what it's going to be yet. And you can tell by papers rustling here that there are a lot of chances, and I'm sure none of us would agree to all of them. So you're voting for a pig in a poke. I hope you'll defeat the Felt amendment. Thank you.

CHAIRMAN NUTTING: Mr. Felt, do you want to close?

DELEGATE FELT: Mr. Chairman. I'm delighted to close. I think everyone will be glad to get on with this matter. I do not feel that I can answer all of the different points that have been brought up, but I want to discuss some of them. I feel, first of all, that regardless of how we acted when the committee report came before us, that the votes that we've cast here this morning to suspend the rules and to reconsider the question indicate a general feeling that something, in addition, should be either done or at least seriously considered. But I was not certain that there was enough agreement amongst those of that persuasion that they could immediately agree upon just what that additional matter might be. I want to express, again, my complete support for the committee proposal and to state that if my motion fails and the committee proposal then remains just as it is-intact, I intend to spend most of my time in working on this matter when it comes before the people, trying to support what the committee has proposed. Because I like it very, very much, and I think it took a lot of courage. I know they must have received a great deal of pressure to go either one way or the other, and they adopted a sensible compromise. However, if this compromise that I consider sensible would, in fact, not be found to be quite palatable enough and would cause many people to vote against the entire Constitution, then I feel it is time that we make some further effort to arrive at a compromise program which is even more palatable and which could lead to a successful vote on the entire Constitution and a successful solution to this particular antidiversion problem. The committee's proposal, by-for all the reasons given for-by different delegates-most recently, I think, by Delegate Drum-is very commendable, much improved over the present antidiversion thing that we have in our present Constitution. But I do not feel as discouraged as some delegates-such as Delegate Blaylock felt-that we have no chance of convincing the people to go along with what we and our committee felt was right. I think we do have a chance and that, if there is some organized support for the premise that these funds should not be diverted as they have been in recent years, that we have a chance to succeed even against the bogeymen that have been waved at us—as the people who will either defeat the whole Constitution or they would defeat the proposal-the part of the proposal which would give the Legislature discretionary power to override by a three-fifths vote. I wish that things were simple, many times myself, but they aren't simple, and we have to find our way through a rather confusing maze of influences and counter-influences to arrive at something. I wish to take at least minor exception to the final point raised by Delegate Graybill, too. We are not buying a pig in a poke when-if we vote for this. You're simply saying you're willing to take a look at the pigs and see if they find one that you might like; but we're not buying anything. And if it turns out that we don't find a single one that we like, then, of course, we're back with the present committee proposal and the Convention can go on about its business. But—and, of course, we hate to take the time to go into these alternatives, but for something as important to us as the handling of our highway program and the part that the Legislature can play in that, and just how we're going to handle it-the problems of giving some aid to the cities and counties with their road programs, things that I assure you we have struggled with because we were tied down by this present antidiversion. And we have probably done some things that are of questionable constitutional validity in an effort to circumvent the tightness of the present antidiversion amendment. All of these things do need, I feel, to be considered by all the members of this Convention-and that we can, I hope, find an alternative. For my own personal preference, if there's a favorable vote on my motion, I would then strongly support the alternative offered by Delegate Eck to place this alternative on the ballot. And I could then support the alternative on the ballot, because it would give the Legislature the power, by a three-fifths vote, to override the antidiversion principle. On the other hand, if it turns out-and this is why this thing gets confusing-if it turned out that her proposal failed, I would support the proposal made by Delegate Brown to put that alternative on the ballot. But then, when I went out before the people, I would oppose his alternate proposal and try to convince them that they should stay with the committee report as the best of the two alternatives. So this is kind of hard to follow. But I do believe that we have a chance with the people, as well as in this Convention, that the best possible compromise on this whole matter would be approved by the people and that we would have, then, a flexible constitu-

tion dealing with this entire matter and one where we would get very fine results. I thank you.

CHAIRMAN NUTTING: Mr. Furlong, for what reason do you rise?

DELEGATE FURLONG: Mr. Chairman. I ask for a roll call vote, and I wonder if the Chair would explain the effect of a Yes on the Felt amendment.

CHAIRMAN NUTTING: Yes, I'll be happy to. Do we have sufficient seconds for a roll call vote? Sufficient seconds being-we-a roll call been asked. Now, the question arises on the substitute motion by Mr. Felt that the Convention will debate the question of placing on the ballot an alternative proposal on the matters embraced in Section 6, Revenue and Finance. Now, what this means is that a Yes vote means that we will consider different alternatives; a No vote will mean that the matter is closed, because the motion to reconsider was only to offer an alternative. So, therefore, if we vote No on this motion, it will mean that then there will be no more reconsideration on this matter. Is that clear? Are there any questions?

(No response)

CHAIRMAN NUTTING: As many as are in favor of the motion by Mr. Felt, vote Aye; as many as are opposed, vote No. Has everybody voted?

(No response)

CHAIRMAN NUTTING: Does anyone wish to change their vote?

(No response)

CHAIRMAN NUTTING: The vote is closed.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O..	Nay
Arbanas	Nay
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Absent
Dahood	Aye
Davis	Excused
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Aye
Harrington	Nay
Heliker	Aye
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield,,	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray..	Aye

Noble	Absent
Nutting	Absent
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins.,	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius.	Nay
Simon	Nay
Skari	Nay
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CHAIRMAN NUTTING: The clerk will announce the vote.

CLERK HANSON: Mr. Chairman, 31 delegates voting Aye, 65 voting No.

CHAIRMAN NUTTING: 31 having voted Aye, 65 voting No, the motion fails and thematter is closed.

(Committee of the Whole chairmanship resumed by Mr. Graybill)

CHAIRMAN GRAYBILL: Ladies and gentlemen of the committee, there's a small matter on Section 6 to be completed.

And, Mr. Kelleher, do you want to explain your problem and-?

DELEGATE KELLEHER: Mr. Chairman. I discussed the matter with the Chairman of the Revenue and Finance Committee and also my own Chairman, Mr. Schiltz. And Mr. Schiltz has agreed to discuss the matter.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. If you'llrefer to Section 6 as redrafted, you will find, on page 6, line 9—or subsection C, in any case--where we provide—and you have to go back to the beginning and say that "these various funds shall be used solely for"--and then we list A, B and C. Now, under C, as restyled and I think as originally stated, but I could be wrong-in any case, this is substantive if it is this way. As restyled we say that the highway safety, driver education, tourist promotion and administrative collection costs can be spent from these funds if authorized by the Legislature. Now, there's a question whether or not that "authorized by the Legislature" pertains only to subsection C or whether it should pertain to all-A, B and C. From the language we had to work with, the committee decided that "as authorized by the Legislature"-Now, if you look back at the original language that we worked with on pages 21, Z-page 5, lines 21, 2 and 3, you can see why we did as we did. Now, it's a very simple problem--either the Legislature authorizes only that one category or the Legislature must authorize all of those various types of expenditures. And we leave it to the committee to tell us which way. Now, if it's to modify all those various types of expenditures, we can go to page 5-it'll be a little cumbersome, but—on line 30, after the word "used", we can put in there-it'll be two parenthetic&-but anyway, we can put in there "as authorized by the Legislature", after the word "used", and then continue on and then on line 9 strike "authorized by the Legislature". I just pose the problem for you to solve.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Well, the thinking of the committee, at least, was that the payment of county-city-town obligations on streets, roads and bridges was to be authorized by the Legislature. I'm not sure that that first one went in there, so I'll probably have to turn that over to our counsel, McDonough, but I know that our thinking on payment of county-city-town obligations on streets, roads and bridges-We specifically put that in because they were circumventing that now to give that cent [sic], and we wanted to make that legal. And I would ask Mr. McDonough if he would yield to-as-whether or not that section A should be included in the same. I don't know, myself.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I think to be consistent, Mr. President, it has to be included in-within it.

CHAIRMAN GRAYBILL: Then, Mr. McDonough, is it your proposal that we should move the term "authorized by the Legislature" back on page 5 to modify all three? Is that your suggestion?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: All right. Now, to do that, I think a motion must be made to reconsider Section 6.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after-No, I move that we reconsider the action taken previously this morning on Section 6. And inasmuch as I didn't vote at all, I can be said to have voted on the prevailing side.

CHAIRMAN GRAYBILL: Well, it was a voice vote, so we'll assume you voted on the prevailing side. A motion has been made by Mr. Schiltz to reconsider Section 6 for the purpose of making this-putting to the Convention this change. So many-is there discussion?

(No response)

CHAIRMAN GRAYBILL: So many as are in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: All right. Mr. Schiltz, do you want to make your motion?

DELEGATE SCHILTZ: Mr. Chairman. I move that Section 6, sub. 1, be amended by inserting after the word "used", on line 30, page 5, and its comparable line and page in the other material, "as authorized by the Legislature" and that Section 6, sub. 1, sub. C be further amended on line 9, page 6, and its comparable page and line, by striking the words "authorized by the Legislature".

CHAIRMAN GRAYBILL: Very well. The sense of Mr. Schiltz's amendment, then, is on line 30, page 5, after the word "used comma", put in the phrase "as authorized by the Legislature"; and then strike the words on page 6, line 9, "authorized by the Legislature" and put a period after "costs". That makes Section 1 read: "Revenue from gross vehicle weights, fees, excises and license tax except" so-and so forth, "on gasoline, fuel and other energy sources", and so forth, "shall be used as authorized by the Legislature after deduction of statutory refunds and adjustments solely for A, B and C." Is there discussion?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

(No response)

CHAIRMAN GRAYBILL: Very well. It's adopted as amended.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want to move the whole section now?

DELEGATE SCHILTZ: Right. I move that when this committee does arise and report, after having had under consideration Section 6, Style and Drafting-sub. 1, Style and Drafting Report Number 7, that it recommend that the same be adopted as amended.

CHAIRMAN GRAYBILL: So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right. The Ayes have it, and it's adopted as amended. Mr. Schiltz, the Chair thinks that we should stop and get started with Section 7 after lunch.

DELEGATE SCHILTZ: We haven't done subsection 2.

CHAIRMAN GRAYBILL: Oh, all right. Subsection 2. Do you want to move it?

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 6, subsection 2, Style and DraftingReportNumber7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE SCHILTZ: We simply made a subsection 2 out of this. It was all run together in the material that came from the floor, and we think it reads better.

CHAIRMAN GRAYBILL: Any discussion?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of subsection 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Very well.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Before we recess, I'd like to have you recognize Bob Camel for an announcement.

CHAIRMAN GRAYBILL: Bob, did you make your announcement?

MR. CAMEL: I'd just like to remind you to fill out the presidential preference things and send them to the center aisle. If you don't participate within the system, there's a real chance Shirley Chisholm might be the next President. So, do write them out, please. Thank you.

CHAIRMAN GRAYBILL: I'd like to call the attention to all delegates-of all delegates to the announcement that's been placed on your desks-namely, that the Columbians will perform in the rotunda this noon-and that's one reason I want to stop promptly at noon. So if you want to hear a little band concert, go down there-listen on the rotunda. Other announcements?

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move we recess until 1:15 this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1:15 today. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The committee is in recess.

(Convention recessed at 12:07 p.m.--reconvened at 1:25 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Members of the committee, before lunch we had completed Section 6 of Style and Drafting on Revenue and Finance, and we're on Section 7. Will the clerk please read Section 7.

CLERK HANSON: "Section 7. Tax appeals." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report. after having had under consideration Section 7, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, we rearranged the language some for style. We struck out "county or local government unit" at the bottom. I think that's all. Instead of-we put in "local government unit"--oh, no, that was already in there. We took out "county or"--we took out "county"--oh, I see-just to comply with other definitions in the rest of the Constitution, using "local government unit", which would include "county".

CHAIRMAN GRAYBILL: Is there discussion of Section 7?

(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of Section 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Section 8.

CLERK HANSON: "Section 8. State debt." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, some rearrangement for style. No substantive changes; nothing significant that should be called to the attention of the committee.

CHAIRMAN GRAYBILL: Is there any discussion of Section 8?
(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Section 9.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, a very minor change-changed "Legislative Assembly" to "Legislature", dropped the words "during any budget period" as not necessary.

CHAIRMAN GRAYBILL: Is there any discussion of Section 9?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 10.

CLERK HANSON: "Section 10. Local government debt." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 7, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We changed the title slightly. We took this-the changes here-up with the substantive committee and agreed that "subdivisions and districts of the state" did not fit the intent, so we supplied the words "and all other local governmental entities". Now, there's some judicial interpretation, not necessarily in the State of Montana, but other places, that qualifies the term "all other local government entities" for what the committee's intent was. The committee concurred in this change. We-you'll see we would have some trouble with "for subdivisions and districts of the state" as being rather imprecise.

CHAIRMAN GRAYBILL: Is there any discussion of Section 10?

DELEGATE SCHILTZ: Oh, there is a word "of' that appears to have been struck in this. When you run into those, if-before you run to me, look back on the clean copy, the unstruck out and amended copy; frequently you will find that we have taken care of it, but this is just a slip here.

CHAIRMAN GRAYBILL: Where does the "of' go?

DELEGATE SCHILTZ: Well, I don't know. Somebody talked to me about it sometime.

CHAIRMAN GRAYBILL: The first "of' in line 2 should be still in there. Is thatyourpoint?

DELEGATE SCHILTZ: That's right, and it's okay over on page 3 or 2 or somewhere.

CHAIRMAN GRAYBILL: "The Legislature shall by law-" I don't understand, Mr. Schiltz.

DELEGATE SCHILTZ: Well, ifyou'lllook on page 3, Mr. Chairman—

CHAIRMAN GRAYBILL: All right.

DELEGATE SCHILTZ: It reads-on line 4, it reads, "the Legislature shall by law limit debts of counties, cities, towns, and all other local governmental units", and I don't think it quite reads that way on page 7.

CHAIRMAN GRAYBILL: All right, the "s" should be off of "limits".

DELEGATE SCHILTZ: Well, it's struck, but it so nearly approximates the cross on the "s" that—

CHAIRMAN GRAYBILL: I see. "The Legislature shall by law limit debts of '--and then we need the "of'.

DELEGATE SCHILTZ: Then the "of' is in there, right.

CHAIRMAN GRAYBILL: Okay. Is there any more discussion of Section IO?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 11.

CLERK HANSON: "Section 11. Use of loan proceeds." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, we again used "all other local governmental entities", and we did that throughout the next two sections—11, 12 and 13—and so I won't call attention to them hereafter. Otherwise, only style.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 11, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 12.

CLERK HANSON: "Section 12. Strict accountability." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 12, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, only style changes.

CHAIRMAN GRAYBILL: Discussion on Section 12?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 12, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 13.

CLERK HANSON: "Section 13. Investment of public funds." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 13, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, only style changes, plus the "local governmental entities" language.

CHAIRMAN GRAYBILL: Very well, Section 13. Any discussion?
Mr. Barnard.

DELEGATE BARNARD: Mr. President, either I've lost something or missed something in the report of the Revenue and Finance, but we made an amendment to it and included a limitation on the investment of the school trust funds, and so far I haven't been able to find it. It should be on Section 13—under Section 13, I believe, and so far I haven't located it. Maybe I've missed it someplace.

DELEGATE SCHILTZ: Well, Mr. Chairman, Mr. Woodmansey just pointed out for me-1 couldn't find it earlier-on line 26 it says, "No public funds shall be invested in private corporate capital stock". Is that the question you have, Mr. Barnard?

DELEGATE BARNARD: No, the question is-we put a limitation on the investment of the trust funds, such as securities of the United States and securities of the various towns and the State of Montana and the school districts-the schools--and it was a little different from the **other** one. It's a full section in itself.

DELEGATE SCHILTZ: Well, Mr. Chairman-

CHAIRMAN GRAYBILL: We added a subsection 2, which you don't seem to have, Mr. Schiltz.

DELEGATE SCHILTZ: Where is that, Mr. Chairman?

CHAIRMAN GRAYBILL: 13 has a subsection 2, which you don't seem to have.

DELEGATE SCHILTZ: Well, either we didn't get it from the journal or we missed it. I—perhaps—

CHAIRMAN GRAYBILL: I have it here and could read it to you. It says: "The public school fund shall remain forever inviolate and guaranteed against loss or diversion. The public school funds and the permanent funds of the State University and other university institutions, state institutions of learning shall be safely and conservatively invested in public securities of the state, its subdivisions, and"-something, something, something-"or in bonds of the United States" and so forth. This whole thing was the Barnard amendment, and we made it a subsection 2. So, I think probably what we need to do is refer this particular one back to Style and Drafting to pick up subsection 2 of Section 13.

DELEGATE SCHILTZ: Well, if we could approve the-1 don't know if it needs any styling or not. I guess we'd better have it referred; and we'll refer it back, styled under Order of Business Number 5, as we've done previously, to save one printing, I think.

CHAIRMAN GRAYBILL: Right. Very well. Other than that, you're absolutely right, Mr. Barnard--and other than that, we've adopted this.

Mr. Schiltz, is there any reason that Natural Resources has to go back to you?

DELEGATE SCHILTZ: Is that Number 6 that we did this morning?

CHAIRMAN GRAYBILL: Yes.

DELEGATE SCHILTZ: I thinkitdoes. We made some changes in there.

CHAIRMAN GRAYBILL: Very well, then, I would entertain a motion from you that Style and Drafting Reports Number 6 and 7 be referred to Style and Drafting for presentation— for preparation for Order of Business Number 5, so that you only print them for Order of Business Number 5—

DELEGATE SCHILTZ: (Inaudible)

CHAIRMAN GRAYBILL: -and then back to the Committee of the Whole for final consideration again. Okay?

DELEGATE SCHILTZ: That's fine. Thank you.

CHAIRMAN GRAYBILL: Does everyone understand the motion? We're going to send 6 and 7 back to Style and Drafting for printing for Order of Business Number 5, but they will pick up this Section 13, sub. 2, and any other changes they have. It will come here to the Committee of the Whole again for at least a moment before it goes to Order of Business Number 5. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered. Very well, that's what we'll do.

Mr. Murray, do we need to rise and report on that? Or is that enough?

DELEGATE MURRAY: Mr. Chairman, I don't think that we need to do it at this time. I think we can--unless you want to get this back to Style so that you could have it on Order of Business Number 5 tomorrow sometime. Do you think that we will complete the work of Public Health, Welfare, today?

CHAIRMAN GRAYBILL: No, but tomorrow we'll want this on Order of Business Number 5.

DELEGATE MURRAY: Well, then, I think we should rise and finally report on this so that we get it out of here.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: First you'll have to come back to Committee of the Whole in order to include what Mr. Barnard has, so that we can adopt that—

CHAIRMAN GRAYBILL: Very well, I—

DELEGATE ESKILDSEN: -and then we can go to Order of Business Number 5 with it.

CHAIRMAN GRAYBILL: And we might have to waive the time.

DELEGATE ESKILDSEN: That's right.

CHAIRMAN GRAYBILL: All right, let's not do that. Members of the body, we will not rise and report this until they come back to us sometime tomorrow. Very well, then, it's the Chair's position that we're ready to go to Public Health, Welfare, Labor and Industry. Is that correct? Anybody have anything else before that?
(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you a proposed order of consideration of proposals in Public Health, Welfare, Labor and Industry, which we will attempt to follow, starting with nonmunicipal corporations on page 3 to 7, which is Sections 1 to 6, then moving to institutions and assistance, then to the labor majority and minority proposals.

Very well, Mr. Heliker, do you want an opening statement?

DELEGATE HELIKER: Very briefly, Mr. Chairman. The-I'd like to express publicly, to begin with, the appreciation of the committee for the unstinting labors of our research analyst, Dick Spall, who became a research analyst rather late in the game and worked under exceedingly difficult circumstances because he did not have the 6 months or more background that most of the research analysts did. He's done a tremendous job for the committee, and we owe him a great debt of gratitude. I'd also like to express the same general sentiments concerning the work of our interns, Candy Hauf and George Mahoney, and our secretary, Sylvia Kinsey. The separate proposals of the committee will be presented by separate members of the committee and the first one, on nonmunicipal corporations, by Mr. Ward, and I now yield the floor to Mr. Ward.

CHAIRMAN GRAYBILL: Mr. Ward— Before we start, will the clerk please read the title of the article and Section 1.

CLERK HANSON: "Public Health, Welfare, Labor and Industry Proposal Number 9, introduced February 19th, 1972; George B. Heliker, Chairman; J. Ward, Vice-chairman. Be it proposed by the Public Health, Welfare, Labor and Industry Committee: that there be a new article on the nonmunicipal corporations, to read as follows: 'Section 1. Grant of power. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.'" Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 1 of Proposal 9, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, the corporation article has been deleted considerable. The old article on corporations had 20 sections, and at present we have it down to 6. During our hearings throughout the committee work, we had no one to testify for or against any particular portion of this article, so we had to start from scratch and through different state agencies, lawyers in the delegation and a few that I contacted in Missoula-I spent considerable time with them— one man has moved here from California-and so this is a basic part of our work. I'd also like to thank Mr. Mahoney and Mrs. Van Buskirk for their work on this article, which we were on the subcommittee of. This Article I is a special grant to charter-for corporate charters granted, modified and dissolved. It replaces Section 2 of the original section on-in the old Constitution, and it gives that general power.

CHAIRMAN GRAYBILL: Is there other discussion of Section 1?

(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of Section 1 of the Nonmunicipal Corporations Act of the Public Health, Welfare, Labor and Industry proposal-all in favor of that Section 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted, Section 2, Mr. Clerk.

CLERK HANSON: "Section 2. Protection for citizenry. The Legislative Assembly shall provide for protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 2 of Proposal 9, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: This is a new section; it combines some of the old ones together. It's rather broad, but it was felt by the committee that in the State of Montana we have some foreign

corporations that do business here that is almost void from any control and also associations, individuals, that--out of state, that cause problems in Montana once in awhile. We also had two proposals for what we were-consumer protection proposals-and through a number of things, we tried to set up some type of program that the Legislature can direct towards harmful and unfair practices of either foreign or domestic corporations, individuals, or associations. So this can cover a multitude of things, and I think that's all I have to say for the present. I think there's an amendment to it, but I think it should be debated.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, would Mr. Ward yield to a question?

CHAIRMAN GRAYBILL: Mr. Ward?

DELEGATE WARD: I yield.

DELEGATE BLAYLOCK: Mr. Ward, would you give us a specificexampleof, say, something that's going on now by a foreign corporation which this proposal would protect us against.

DELEGATE WARD: Well, the first thing that comes to my mind, some of the foreign corporations in real estate send out notices to people here and try to get you to buy either a square inch or a square foot of land in some of their area. This is one of the examples that was brought up in committee.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I was just reading Sections 2, 3, 4 and 5 and 6, and actually, basically all it is is statutory law. I hate to bring that up again, but it is. I can see Section 1, possibly, so that a specific charter isn't granted to a special corporation: but 2, 3, 4 and 5 and 6 are actually statutory law. And we really do have a very good model business code act for profit corporations and another act that covers nonprofit corporations, and practically all of these things are included in those two acts, and I really don't see too much reason to include them in the Constitution.

CHAIRMAN GRAYBILL: Mr. Jacobsen, You have an amendment up here. Do you want it moved, or are you waiting?

DELEGATE JACOBSEN: If this is the proper time, Mr. President, I would have the clerk read this amendment.

CHAIRMAN GRAYBILL: Well, it is to this section. Maybe we ought to get it out on the floor, and everybody can think about it. Will the clerk please read Mr. Jacobsen's amendment.

CLERK HANSON: "Mr. Chairman, I move to amend Section 2, page 3, by making Section 2 read 'Section 2, subsection 1. Protection for citizenry' and adding as a subsection 2 the following: 'Subsection 2. The Legislature shall provide for the State of Montana shall refrain from engaging in any monopolistic business. Any such existing monopoly must be dissolved by the Legislature in the first assembly after the adoption of this Constitution or by December 31, 1974. This section does not prevent the Legislature from regulating or taxing according to law.' Signed: Jacobsen and Johnson." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson has proposed an amendment to add a subsection 2 to Section 2—making the present section subsection l-the substance of which is to provide that the Legislature shall refrain from engaging in any monopolistic business and requiring that the Legislature dissolve any such monopolistic businesses as the state may now be in.

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President-

CHAIRMAN GRAYBILL: First of all, may I ask if this is printed and on the desks?

DELEGATE JACOBSEN: Yes, it is.

CHAIRMAN GRAYBILL: Okay.
Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates. I should state my own personal interest in this. I have no business, at present; I am retired. I have no interest, really, in the liquor business except that I believe that this type of business does not belong in our State of Montana, and we have this opportunity to get it out. Now, according to the annual Montana Liquor Control Board operating statement of 1969 and 1970, after paying expenses and including county licenses and taxes and other income, the total income was just in excess of $12 million. This includes state and county taxes and licenses on beer. I want to retain that net revenue for the State of Montana. I

am not recommending any change in the licenses or beer tax on the-or the state or county liquor license taxes. However, I am recommending that the state get out of the liquor sales business from which, after paying in excess of $2,660,000 for expenses, the net income was $4,930,000. I would get this net income by a stamp tax, which would be collected by the distilleries as sales are made to private enterprise and then remitted to the State of Montana. There are many factors that have to be considered in determining the stamp cost to be collected by distilleries; however, as a simple illustration, let us assume that 10 million one-fifth gallon bottles of bourbon, gin and vodka were sold in Montana in the year 1970. No sales of wine or Scotch or other liquors are considered in this example. To raise the $4,930,000, it would simply be necessary for the distilleries to add 50 cents per bottle on this. This would raise $5 million. With competition among retailers for the sale of liquor, the result should be a lower cost to consumers in Montana. The balance sheet of the Liquor Board, as of June 30, 1970, showed an inventory of more than $4 million was in state retail stores and state warehouses. When the State of Montana is no longer involved in the sale of liquor, this $4 million of inventory would become $4 million in cash to be placed either in our general fund or distributed to the cities and towns of our state. This inventory, if carried by private enterprise, would be taxable under a personal property tax laws, as would the independent warehouses and retail buildings. Right at this moment, I'm going to ask the President if he would allow Torrey Johnson to make other remarks on this issue.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, thank you. Ladies and gentlemen, I do believe in a private enterprise-free enterprise in Montana and the right to engage in any competitive business. Now, an examination of a report of the Liquor Control Board was done by the Legislative Auditor for fiscal year ending June 30, 1969. This study disclosed many unbusinesslike activities of this state-controlled monopoly. All liquor stores in the State of Montana are regulated by the Liquor Control Board. This board has control over all sales of the liquor and the collection of the revenue. The law grants broad powers to this board, and its powers involve every aspect of controlling the sale of liquor. It is truly a monopolistic bureau. The duties of the board include both retail business powers, as well as governmental control functions. It stands to reason that a body in charge of prohibiting and deciding the sale of certain types of liquor, and also what types to sell, and hiring and discharging employees should not also be in charge of regulatory duties. Some of these regulatory duties include licensing retail liquor and beer dealers, licensing brewers and wholesalers, appointing inspectors to enforce the law, distributing the portion of the taxes to local government, and making regulations necessary to implement liquor laws. It stands to reason that if an agency sets up procedural rules for a business, that same body should not be allowed to set the governmental controls. Since the liquor business in Montana is a monopoly and prices are set by the Liquor Control Board, a large markup percentage has occurred. Domestic liquor is marked up sixty-five and a half percent and imported liquor is marked up eighty-nine and six-tenths percent. Wines are marked on a different scale, and the less-expensive wines are marked up 75 percent over cost and the more expensive wines are marked up 53 percent over cost. The only restriction on the board concerning markup is that there are no wholesale prices and reductions in price for purchases in quantity. So, you buy 20 cases, you don't get it any cheaper than if you buy one bottle, and that-in private dealers-in other states, why, you can always buy whiskey a little cheaper if you buy it in quantity. Now, the entire volume of liquor sales is handled by the Liquor Control Board, yet this board meets only 2 days, once each month. The net income of the liquor monopoly, including beer licenses and taxes, for the fiscal year 1969 was $10 million, that is. It seems that any group having supervisory and regulatory control over such a large amount of business would find it necessary to put forth much more time in order to adequately perform their duties. There is no procedure established for accurate minutes taken at the board's meetings. This has led to some discrepancy between what has actually occurred at the meetings and what has been reported. For example, inspection tours for board members are noted, as well as travel claims, but not the results of the inspections. One board member mentioned that he traveled to another state, but no mention of that trip was included in the records. In one instance, a board member was listed as being in attendance at a scheduled meeting and was credited for seconding a motion when, in fact, that member was absent from that meeting. The minutes reported that the hours of convening and adjourning were usually 9:00 a.m. and 5:00 p.m., when the actual adjournment time was

well before 5:00 p.m. But that's all right; if they get their work done, I guess they can go home early, you know. Anyway, in a study of the Legislative Council, it was reported that, by any standards, the official minutes of the board are insufficient for a public agency which collects an annual gross revenue of many millions of dollars. The insufficiency and substandard method of record content of the board meetings were part of the observations in a December 1964 report. It is stipulated in Section 2-11(b) of the Board's rules and regulations that the Administrator shall sign all purchase orders. Several purchase orders were not signed by the Administrator, and in some cases additional items were placed on the order after the Administrator had signed it. All liquor is ordered through the central office in Helena. It's oftentimes difficult for the Purchasing Agent to know what the needs of each individual store happens to be, and the Purchasing Agent does not take into consideration the amount of inventory in stores when determining the quantity of merchandise to be ordered. This is just one example of the inefficiency involved when a central authority takes over functions which could be better handled by a private-on the local level and an independent businessman. Each individual liquor store is aware of its own requirements, naturally, and, if operating privately, could more efficiently allocate its own resources. The representatives of distilleries and wineries meet with these members of the Liquor Control Board during their regular monthly meetings, and this is the only time these representatives are allowed to conductbusinessin the State of Montana. They have to leave right away. I think they're only allowed 24 hours in the state-they're real fly-by-nights, you know. It is also during this time that the Board decides what liquors it will purchase, and some distillery representatives have exerted undue influence on some employees and officials at times which were not appropriate for the transaction of business. The employees of the Liquor Control Board cannot best serve Montana or maintain independence through association with representatives whose financial rewards depend on the purchase of certain liquors. Some liquor-imported liquors can be consigned directly to certain churches for sacramental use, and according to this legislative audit, they find that this privilege has been abused several times, and yet there has been no positive means of control established. One of the major unbusinesslike activities of the board is its policies on unsalable liquor. Approximately 31,000 bottles of liquor were suspended from inventory under the pretense of being unsalable or withdrawn by the distiller representative. The cost of this liquor was $72,482, while the potential retail value would have been a hundred and nineteen thousand, eight seventy-six. This resulted in a loss of $47,000 to the State of Montana in markup excise taxes. This unsalable liquor included unusually large quantities of top-selling brands that went through various credit application processes by the distillers, in which they supposedly withdrew their product and supplied credit instead. Eventually the Board recovered part of the cost of this unsalable liquor, but a number of credit memorandums issued by distillers indicated that they consider the cost of unsalable liquor to be a sales promotion expense. Officials were never able to ascertain whatbecameofthegreatestportion of this unsalable liquor, and the audit states--I quote from page 38: "There is no question in our opinion that liquor was illegally removed from the warehouse inventory"-end of quote. A large quantity of liquor was found near the board members' meeting room. This liquor consisted of537 bottles, most of which was repacked in other boxes. Some of the liquor was in the original distiller box and was addressed to various officials of the Board, including the five board members and the administrator and legal counsel. Section 4-153, R.C.M., 1945, states that no member of the board can receive gifts from distillery representatives and must keep accurate records on samples received. Accordingly, no matter how the liquor was removed from the warehouse inventory and distributed, in the opinion of the Legislative Auditor, one or more provisions of the law were violated. Of the 5,000 cases of liquor withdrawn-or the $5,000 cost of liquor withdrawn for unsalable purposes, $2,690 of that supply was on hand at the time of the Auditor's count. The undistributed liquorwas subsequently impounded by the Attorney General. In addition, the Board has no permanent record of invoices prepared for damaged or defective merchandise. There is no policy for personnel requirements, and no formal procedures have been set up to minimize personal and financial risk to the state liquor stores as a result of robberies or holdups. These and many other inefficiencies involved in the Montana liquor business could be solved if the state is taken out of the monopoly as it is now. Private enterprise can and will create a greater revenue for the State of Montana. Now, bureaucracy has its inefficiencies, we all know that, and this is sort of one of those-growing into it, and I'm against the political patronage that goes along with this deal. The fact still remains

that, in our system of free enterprise, it's the profit motive that keeps our quality of business high in this state, through competition and a personal stake in the overall outcome. There are only a few of the-1 mean, these are only a few of the hundreds of unbusinesslike procedures to be found in the report on examination, dated June 30th, 1969, by the office of the Legislative Auditor. It's a hundred and fifty-seven pages in length, and it's available to everybody. Read it; you won't like it. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. Torrey, you didn't happen to bring a couple of shots with you, did you? We're going to need it. In support of Mr. Jacobsen's amendment, I would like to offer a few statistics here that will be very brief. As you may know, Montana is one of the 18 so-called "monopoly states". However, 2 of the 18, Wyoming and Mississippi, operate from the wholesale level only. Alabama wholesales miniature bottles and half-pints at the wholesale level. Retailing in these states is left to the licensees. If Montana markup of 38 percent, excluding present state taxes, were applied to Wyoming's sales, their net return would exceed that of Montana's, due to their being able to operate with a working force of only 25 people out of one warehouse in Cheyenne. The retail price of liquor in Cheyenne is competitive with Colorado, of necessity. For example, a half gallon of Ancient Age bourbon sells at retail for $8.60 in Denver and Cheyenne and $11.80 in Montana, a difference of $3.80. In the remaining 32 states, liquor is marketed and sold under a competitively open, free enterprise system, with all control still in the hands of commissioners or, in most cases, the ACB boards-alcohol control boards--which handle taxes, markups, licensing and inspections. In some cases, these control units are established at the local level, rather than state. In six of the free or licensed states of Arkansas, Connecticut, Kansas, Kentucky, Rhode Island and Tennessee, the ACB board establishes a minimum markup in addition to all state and local taxes. This would tend to prove that under the free enterprise system, Montana would not lose the present net profit of 4.9 million, as shown in their 1970 financial report of the Montana Liquor Control Board, but would, indeed, gain an additional 2.6 million now being expended in the operation of the monopoly system. The cost of operating this system appear to be excessive in comparison to other free enterprise businesses throughout the state, ranging at 35 percent of the gross profit. There has been concern expressed at a potential loss of jobs for the 400-some people presently employed by the state. These people, and many more, would be absorbed in the retailing and wholesaling new businesses that would result on this changeover to a new method of operation. I'm sure the consumption would not decrease; in fact, it continues to increase every year. The first year of this proposed change in method of operation would result in a windfall for the state and cities and counties, since the present inventory in the state stores and warehouses would be liquidated. The inventory is in excess of $4 million, at cost, and, when all taxes and markups are applied, would exceed $6 million to be distributed between state, cities and counties. In addition, the $6 million inventory would become taxable at the local level. Fellow delegates, there can be a source of new revenue in this changeover to assist our financially hard-pressed cities and counties. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, some of this sounds good if you say it quick, and the only way this can pass this group is for us to vote immediately before anybody else thinks much about it, because just as soon as you start to think about it, some other questions will have to be raised. One thing you'll begin to ask yourself is, "Isn't this the same thing that comes up before every Legislature every time it meets? And you begin to say, "Well, yes, we've been reading our papers, and we're quite familiar." This is the same kind of a proposition that comes up each time. It's been turned down again and again. Then you think back a little farther and you say to yourself, "Did this just happen? Did the Liquor Control Board system in Montana drop out of the sky one day, and all of a sudden, we've been saddled with it by demons? Or was there some reason, originally, for going into the Liquor Control Board system?" And you find yourself repeating several times, as you ask these questions, the word "control". But I notice the word "control" has been left out of these conversations mostly. We've been assured that business would not be injured if we do away with the monopoly-state monopoly on this, and if we leave it to private enterprise, we can actually increase the consumption of alcoholic beverages in Montana. And I have no reason to disagree with people who are far more adequately-adequate and capable of discussing that angle than I am.

(Laughter) I simply would like to emphasize the fact that the board is set up in Montana and named the Liquor Control Board because the word "control" is the key word. Why isn't the state in the business of being a monopoly in competition with other kinds of businesses-farm equipment, automobiles, other things? And the answer is obvious to any person who is an adult, knows anything about how we live together in this society-that liquor happens to be one of those things we have licensed in our midst and allows as a society, but we all do it with fear and trepidation because it happens to have so many attendant socialills that we know that it must be controlled, and we are all a little bit squeamish, usually, about the fact that a society like ours, that's supposed to be civilized, has to have it at all. If someone came here today and proposed selling something that would make one out of every nine cows go crazy, run through the fence and on the highway, or commit suicide, or some way die with what the bovine version of DTs, how far would that get with the rural representation? (Laughter) As long as we're talking only about our own kids, of course, it doesn't make much difference. If every airplane that took off and as you bought your ticket, they made you know that somewhere enroute, say, from here and Chicago, at about 40,000 feet, one out of every nine seats would automatically drop out-we didn't know which ones-there'd be very few takers, and the state probably would be in a sort of a frenzy to control that kind of activity. Well, I don't need to go on with the obvious. Now that you are thinking about it, I think that's all we need to do. Several instances have been raised about the things that ought to be changed in the Liquor Control Board system. One thing is, as Torrey said, a lot of sacramental wine is being used. (Laughter) That really worries me, (Laughter) but it doesn't worry me much when I stop to think that there are very few murders committed in church, (Laughter) and yet every newspaper you pick up has the news of a brawl, a shooting, or something else in a bar and where the wine evidently is not sacramental. (Laughter) I'm not-the point simply is that we're not just simply talking about how we can raise more revenue or have more business by taking away a state monopoly, we're talking about the business of control. You see, actually, if something goes wrong in a public agency and a legislative audit uncovers it, then the public can control its public control agency. Now, I don't presume that Torrey and the others meant to say that all individual businesses handling liquor are perfectly managed and that everybody uses good accounting systems and that there is no dishonesty involved in it or any of the rest. It's just that when it gets out of the public specter [sic], we have no control at all over that kind of thing. Now, businessmen can sell more liquor if we turned them loose; I don't rise to argue about that. I think this is a matter of control. It's been left to our Legislature to handle, and I think that we ought to properly vote against this suggestion.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise in opposition to the substitute motion. This argument about the various departments of state government, the irregularities in their operation, it isn't only confined to the State Liquor Board. First, I'd like to tell you that I've gone through some investigations of the State Liquor Board years ago-some pretty rank ones-they were straightened up and—

CHAIRMAN GRAYBILL: A little closer to your mouth.

DELEGATE BARNARD: Not so many years ago, I remember one involved the State Board of Equalization, on gasoline tax refunds. I don't think there's a department of government that you can't go run an audit through, particularly pertaining to methods of operation, and find some irregularities. I've not only seen it in the State of Montana, I've seen it in the U.S. government, and I never saw an audit report that didn't show some irregularities. I think that's something we've got to expect and that's really no excuse to try to do away with the State Liquor Control Board, just because there's irregularities there, and I oppose the motion.

CHAIRMAN GRAYBILL: Mr. McDonough—Oh, Mr. McCarvel.

DELEGATE McCARVEL: Mr. President, I rise in support of the amendment. We, in the committee, felt that Section 2 was a consumer's protection section in the Constitution, so therefore, I think it's rightfully that the liquor consumer should have some protection also.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I don't know whether I impeached myself the other day on being able to talk about alcoholism, but I'll stay away from the subject of alcoholism and just talk about money. I don't know what the

boys in the-down in the Powder River are doing with all that sacramental wine, but as far as finances are concerned, in fiscal '71, our Liquor Board made $13,114,000, and thus far in fiscal '72, it has made $9,328,010. There are 18 of our 50 states have liquor control boards, and I think the thing that's interesting is to compare the amount of revenue that we receive from the booze as compared to how much we consume. In Montana we consume 1.5 gallons per person, per capita, and per capita we make $15.09; whereas, in a noncontrolled state, they consume 1.96 gallons-or almost 25 percent more liquor is consumed per capita in the state—but the revenue is only $11.99—or about $12 per capita. So, they're drinking more booze in the other states and making less money, and several of the states that are so-called "open states" have been looking at Montana's record, not of drinking but of making money, and have become envious of it, and I understand that the great and sovereign state of North Dakota, which is just a few weeks ahead of us with their Constitution, has now decided to become a closed state, like Montana. The estimate from Joe Shea, the Liquor Board, is that we would lose between $4 and $5 million a year--and this is increasing as we consume more booze and that $4 or $5 million is going to have to come from someplace, and it's going to have to come from property tax, and I think what we ought to do is maybe put an additional tax on cattle or land-or tax the land down in Powder River County, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion of the amendment?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I listened quite closely to Mr. Johnson's statistics on the discrepancies discovered by the legislative post-audit, and I followed those quite closely when those were being brought to light, and I think that this is one of the things that really proved to the people of Montana that our legislative post-audit really was working. But since that legislative post-audit in 1969, those discrepancies have been cleared up, so far as I have been able to find out, and the recommendations of the Legislative Post-Auditor have been carried out by our Liquor Control Board. And I have questioned the legislators returning from the Legislature from Yellowstone County several times about this business, because I thought, along with Mr. Jacobsen, that maybe this was the way to go-that we should get out of the liquor business and let private enterprise handle it-and I thought about all those employees that we wouldn't have to hire and all those liquor stores that we could stop renting or building, but I questioned our legislators, and they told me that they had investigated quite closely-they had investigated California and some of these other states--and they said that from everything they could find out, that our liquor control business here in Montana was run better and we made more money than any of these other states, so I would be very hesitant about taking away our Liquor Control Hoard.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise to resist this amendment on two grounds. One, this was a delegate proposal which was referred to the General Government Committee and was the subject of hearings held by that committee, and if-and was rejected by that committee, and if it is to be brought on the floor as an amendment to a committee report, it seems to me it ought to be an amendment to that committee's report, not to this one. And the second reason that I would oppose it is because of the unnecessarily broad language of the amendment, which is designed to get at one specific thing-namely, the liquor monopoly-and yet is so broad as to cover any business whatsoever so long as it's monopolistic, and as I'm sure you are aware, there is a proposal coming on the floor under the report of this committee which relates to the question of certain monopolistic businesses and proposals, granting power to subdivisions of the State of Montana to engage in those businesses. I would hate to see that subject prejudiced at this point by such a broad proposal directed at such a narrow subject. I would also like to take the opportunity to enlarge upon something that Delegate Harper referred to when he said that one of the advantages of having a liquor monopoly is that any hanky-panky that occurs, being that some of it occurs in a public business, is subjected to the limelight of scrutiny by the legislative audit and by others, by the newspapers. I clipped out of the Great *Falls* ***Tribune,*** today, a long article having to do with a quarrel in the State of Nebraska concerning the construction of a nuclearpowerplant for one of the publicly-owned power districts in that state, and I'd like to read you one pertinent paragraph. This is from a-from the New ***York*** Times-it was reprinted in the New ***York*** Times. "Similar disputes", the author says, "are settled elsewhere behind the doors of corporate board rooms, but this one is difficult to hide because the powerplant is not being built by a privately owned company but by a public power

district with a board of directors elected by the 505,000 people of Omaha and the parts of 13 counties in eastern Nebraska." Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on the amendment by Mr. Jacobsen and Mr. Johnson to take the state out of monopolistic businesses.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I wish to briefly augment the information given by Delegate Kelleher. It is a fact that, outside of the gas tax, which we won't talk about here, the liquor monopoly is one of the biggest suppliers ofrevenue in the State of Montana. If you leave out the individual income tax and the corporation license tax, it is next in order. It is even larger than the severance taxes-take, for example, the metal mines tax; in 1970, the last year, it produced $1,440,000. The coal severance tax produced $50,300; the oil production license tax, 3,038,492; the corporation license tax of 6,102,000; individual income tax, 24,877. We can't afford to neglect this very provident supplier of revenue and establish in its place a private enterprise system which flourished so splendidly that it brought us Prohibition.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, I oppose this amendment, and I think, as Mr. Heliker pointed out, it does go beyond the liquor business. And I would point out that coming up at the end of this week sometime, we'll be discussing the so-called "lottery and gambling provision", and if this Convention should deem-see fit to change that, there are some who say in the future there might be a lottery in the State of Montana. That remains to be seen, but if this particular amendment were passed, it would outlaw a state lottery any time in the future.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, would Mr. Garlington yield to a question?

CHAIRMAN GRAYBILL: Mr. who?

DELEGATE WARD: Garlington.

CHAIRMAN GRAYBILL: Mr. Garlington is missing.

DELEGATE WARD: How about the Chair? Would you yield, Mr. President?

CHAIRMAN GRAYBILL: Well, I'll hear your question. (Laughter)

DELEGATE WARD: Well, the article is entitled "Nonmunicipal Corporations", and I'm wondering if the state is a municipal corporation, if this could be defined as such.

CHAIRMAN GRAYBILL: You're wondering if the state is a nonmunicipal corporation. I don't think that's quite the right way to put it, but some of these other lawyers might correct me. This doesn't say that-your worried about it being in the wrong place?

DELEGATE WARD: Mr. Chairman, this committee had no hearings on any type of this proposal, and I don't believe it belongs in this article, and therefore I oppose the amendment.

CHAIRMAN GRAYBILL: I think probably it got here because of the language in Section 2 about protecting the public against harmful and unfair practices. The Chair would prefer that we vote on it. If we adopt it, Style and Drafting would feel free to move it to another section. We've had quite a debate on it. I'd like to get the sense of the body on it. I think I'll still allow them to have it, Mr. Ward. Is there other discussion on the issue?

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, the idea of getting the state out of the retail industry has intrigued me. Basically, I've gone along-that I think private industry is always more efficient than government. We all realize that democracy is the best form of government, but we know it costs money; and in many instances, private industry, because of the way they operate, can do it cheaper. I was quite intrigued by the hundred and thirty-eight pages of comment in the 1969 audit. I am sure that a good many of these things have been corrected, as Mr. Blaylock said, but I don't think they can be corrected so you go completely as far as private industry could with constant supervision. There are some things thatreally intrigue me in that-possibly they've been mentioned. I enjoyed the fact that the cash control in one store was a little weak, and the lady was short and she said, "Well, I used that money to buy my groceries, but I do put a check in at the end of the month." Mr. Kelleher has been worrying about we'd lose money. The amendment, as I see it, would permit the State Liquor Board to transfer the profit of 4 million in '69 and 5 in '70 from the operation of the state stores to taxes. I believe somebody said that it would take about 50 cents a bottle to replace that

money, but the regulation of the taxation is still around. Mr. Harper is worrying about controls. We have the same problems now of controlling liquor sales, because anybody can go to the local tavern and buy it. It costs a little more money, but the controls are there so that it is handled properly. You'll find a few cases where bars do sell to minors, but you would still have the same control. They could be put out of business. I'm not suggesting, by any means, that the state does not retain the right to control and regulate. I would like to see the word "monopolistic" changed some way so that it would not exclude the possibility of public utility districts that will-coming up later, if those were so desired. Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen, do you want to close?

DELEGATE JACOBSEN: May I close, sir? I have here, ladies and gentlemen, about 35 or 40 letters. And here-one of them reads: "Glad to see someone is doing something to get the state out of the liquor business. This is the place to do this, and not in the Legislature. As you know, the Legislature has been hit with this every timeforthelast 15 or 20 years." Other letters here are very similar, and so on, but they say, "It is heartening to know that one is being represented at the Constitutional Convention by a person with enough courage to make the proposal you have. For years, thinking people have given lipservice to the fact that a state has no right or need to engage in a retail business. It is entirely out of keeping with our American way of life, yet nothing has been done to change the condition until you now move to do so. I support your proposal and wish you success in your effort." And I have a lot of other letters like that, if any of you would like to see them. Galusha, Higgins and Galusha made a report, February 15th, 1971—and this is concerning the state finance statement and showing what they would lose when this was a bill before-they showed that the state would lose $3,906,000 if they went out of the liquor business; and Galusha, Higgins and Galusha came out and said that, using their figures and taking over the leases and the rents and the whole thing, that the state would gain a hundred seventy-five thousand eight hundred and seventy-six dollars. This is a book here that's been passing around. There's a hundred and fifty-seven pages in it, and there's not one good thing to say about this monopoly liquor business. I mean, it's all finding fault. Now, I'll say just one—a few more words. Our ombudsman that we talked about is here-1 find this out-in the Legislative Auditor. He is our ombudsman, and I think that is one of the great things we have done in this Constitutional Convention. "Americans must reform their governmental institutions and make them work, or their free society may not survive. Most state governments are incompetent. All the evidence indicates that we have failed the system. Corruption runs rampant through the systems. We cannot survive long in a free society unless citizens feel that they, themselves, are in touch with their government. Our system is being corrupted by special interests." Most of you have heard these words before, because they were stated by John Gardiner, Chairman of Common Cause, last Thursday, March the ninth. He also stated that four things were needed to help citizens reform government. They are access, responsiveness, accountability and effectiveness. John Gardiner did not know it, but he was speaking partly about a monster bureau we have right here in the city of Helena. It is the monopoly liquor business, which has not been accountable. It is not effective, because there is too much expense. Underhanded business practices have been allowed, for many years, to grow. We know that private enterprise can and does provide a greater benefit than a bureaucracy ever can. Our great nation was actually created by the pioneers, fearless adventurers seeking freedom and a better way of life. Some of these people became the businessmen, both retail and wholesale, along the trails and railroad rights-of-way. These stops and resting places of the early days became the towns and cities we now know. Independent business has been, and is now, the backbone of every community in this way of life of ours. These businessmen and women are the employers, the Chamber of Commerce, and the many other civic groups in every community. Private enterprise is the golden goose that provides not only most of the employment, but a large share of our taxes and other benefits for our schools, special improvements, and so forth. Let's give private enterprise a break by directing the Legislature to take money—Montana out of the liquor business completely except for the directing and policing as they now do, and I-in my proposal, I didn't-I said that the Legislature should set up the controls for that. The state will then receive a greater dividend in the form of taxes and license fees from liquor. Beer licenses and taxes are no problem, nor are gas taxes and tobacco, so it stands to reason that the state can regulate licenses and taxes on liquor so that, at the very least, receive as much as it ever has with the annual increases. Our state liquor stores are open 5 days per week, 8 hours per day.

Under private enterprise, our stores would be open at least 12 hours per day and 6 days per week, giving tourists a chance to leave more of their cash in our state. Also, did you know that at least—that as of last year, according toliquorstore figures, we are 45th out of 50 states in consumption of liquor? So we don't consume very much in our state as compared to some of them. You have heard a few important reasons why the state liquor monopoly should be removed. They are from the legislative audit of June 30th, 1969. A dozen more of the complete reports, consisting of 157 pages, are being passed around this hall. Quite a few people have read them, I believe. I have never read anything so unbusinesslike in my life, and every one of you delegates must realize that we are--only have this one opportunity to rid our great state of this scandalous bureaucracy that will just continue to be a source of distrust in our government. The Legislature, over the years, has not acted; therefore, it is up to us to direct our Legislature to do so as part of the plan to create trust in our people for elected officials. We must create a good moral feeling for our government, and we must be concerned about our state's future by taking bureaucracy out of it. Let us here and now take the advice of John Gardiner and make our great state responsible, effective and accountable to the people. Private enterprise can take this bureaucratic liquor monopoly out of the state competitive business and, through free enterprise, competitive practices, create new industry, new taxes and a healthy business climate with more employment for more people. I sincerely believe that this will create many more dollars than we-that we desperately need for education and other things. We have been told that the state will save at least $2½ million by eliminating this monopoly-this came out of Revenue and Taxation. The state controls, as I stated before, would still be on, and we can do this great thing if we do this. Now, Mr. President, I would like to remove this amendment from this section, if it will be possible to put it in General Government, where it possibly does belong; but I thought that protection in this section, and it states so-protection for our citizens from these things that have happened-it would be a place to have a hearing on it. Thank you, sir.

CHAIRMAN GRAYBILL: Well, now, Mr. Jacobsen, I don't quite understand you. I am a little loathe to withdraw it at the end of the debate. You certainly could reintroduce it in General Government. I don't see any reason you couldn't. It may be appropriate there, too, but are you saying that you now want to withdraw it?

DELEGATE JACOBSEN: Unless you would like to move on it here and then give us an opportunity—

CHAIRMAN GRAYBILL: All right, but Mr. Jacobsen—

DELEGATE JACOBSEN: -if need be, to get it back in General Government.

CHAIRMAN GRAYBILL: —you can't shift that burden to the Chair; it's up to you now. It's your motion, and I'm not going to decide whether to decide it or not. You've put it in, and we have had a debate upon it, and people have heard about it, and I just don't like to waste the debate. But you decide whether you want it voted on or whether you don't. I'm not going to decide that.

DELEGATE JACOBSEN: Well, let's have a vote on it. I'd like a roll call vote.

CHAIRMAN GRAYBILL: You'd like a roll call vote. Very well, we're going to have a roll call vote on this issue. So many as shall be in favor of Mr. Jacobsen's motion to add a subsection 2 to Section 2 of the Nonmunicipal Corporations Article by adding the language before you about getting the state out of monopolistic businesses, please vote Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O. ..... Absent
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Absent
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay

Blend	Aye
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Nay
Cate	Aye
Champoux	Absent
Choate	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Excused
Delaney	Nay
Driscoll	Nay
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Nay
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Absent
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Absent
Jacobsen	Aye
James	Absent
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield.,	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray..	Absent
Noble	Absent
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 18 delegates have voted Aye, 72 have voted No.

CHAIRMAN GRAYBILL: 72 having voted No and 18 having voted Aye, the motion fails. We're now back on Section 2 of the Non-municipal Corporations Article. Is there further discussion?

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in support of the majority proposal Section 2, Protection for Citizenry. I notice in the Bill of Rights book that the research analyst devoted eight pages to the frustrated consumer. I think this is a serious problem and a fundamental problem. I do wish to take issue with Delegate McDonough. I know he said this is a statutory provision. I think that this is no more statutory than the workmen's compensation provision that we adopted in our Bill of Rights Article. I feel that, although it is statutory in some respects, the Legislature already has the power which we're providing in this provision. I think it's necessary at this time to include it in our Constitution. I feel

that there are so many features of our new Constitution which we've fretted about and worried about because we feel perhaps the voters will go against our Constitution if we include them. I feel that this is one area where inclusion will be very helpful. I think that the people of this state deserve a right for consumer protection; therefore, I whole. heartedly support the majority proposal.

CHAIRMAN GRAYBILL: Very well, the issue arises on Section 2 of the committee report. Members of the committee, you have before you, on the recommendation of Mr. Ward that when this committee does arise and report, after having had under consideration Section 2, the Non-municipal Corporations Act, that we recommend this be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 3, Mr. Clerk.

CLERK SMITH: "Section 3. Cumulative voting. All elections for directors or trustees of incorporated companies shall provide all stockholders the right to vote by person or proxy the number of shares of stock owned by him for as many directors or trustees as are to be elected or to cumulate the shares and give a candidate as many votes as the number of directors multiplied by the number of his shares or to distribute them in a similar manner among as many candidates as he sees fit." Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, there's an amendment. Do you have a copy of the amendment to that section?

CHAIRMAN GRAYBILL: Yes, shall we read the amendment'?

DELEGATE WARD: Could I have that read at the same time, please?

CHAIRMAN GRAYBILL: Will the clerk please read the amendment, too.

CLERK SMITH: "Mr. Chairman. I move to amend Section 3, page 3, line 21, of the Public Health, Welfare, Labor and Industry Committee proposal by adding the following: 'This section shall not prevent the lawful creation of classes of nonvoting corporate shares of stock and shall not require that their holders vote in elections for directors or trustees of incorporated companies.' Signed: Ward."

CHAIRMAN GRAYBILL: Mr. Ward, the Chair would like to know if this amendment is a majority report amendment.

DELEGATE WARD: Yes, it is, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, if it is, members of the body, you have before you this amendment. Does everyone-is it on the desks? Yes, it's on the desks. It's been our practiceto allow the majority report to come in as they want it. I would like to suggest that we quickly allow them to do this, and then we'll consider the whole Section 3 at one time. Is there any objection to that?

(No response)

CHAIRMAN GRAYBILL: All right, all in favor of adding the sentence that the majority wants added to their majority report, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Very well, this amendment, Mr. Ward, is incorporated in your report. Now, go ahead.

DELEGATE WARD: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 3 of Proposal 9, that it recommend the same do-be adopted.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, this section was retained from the old Constitution as a protection to the minority stockholder. During the committee hearings and in consultation with other people, this amendment was presented and it was accepted by the committee, and basically, it's Statutory-I'll agree with Mr. McDonough— but it was felt by the committee and by many people who I contacted that this should be retained. It's covered in the statutes, but at the same time, if these were repealed or amended, it was felt by the committee that this should be retained in our present Constitution.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I guess I was blended in too much with the wall back here and you didn't see me on that last vote that was taken. But my name appears on this majority report, but according to the instructions in the introduction, I would like to be recorded in opposition to that particular amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Are you talking about the amendment that we just took, adding the sentence to subsection 3?

DELEGATE SCANLIN: That's right.

CHAIRMAN GRAYBILL: All right, the journal may show that you're in opposition to that, Mr. Scanlin.

DELEGATE SCANLIN: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion of Section 3?
Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, as a substitute motion, I move to delete Sections 3, 4 and 5 of the majority report, if that's in order.

CHAIRMAN GRAYBILL: Well, I think we'd better take them one at a time. Let's take 3. You can explain that you will move to delete 4 and 5, if you want to, but I have it-we have to do it section by section, and we haven't moved the other.

DELEGATE LOENDORF: Well, I think we can just test the waters on one of them. I think the reasons for deleting one are the same for all of them, and I will not make the motion to delete 4 and 5 if the motion to delete Section 3 then fails.

CHAIRMAN GRAYBILL: Very well, the motion to delete Section 3 is made, and, Mr. Loendorf-and you may discuss it.

DELEGATE LOENDORF: Okay. I think everybody here has recognized this is statutory, and I would just like to test the waters and see how much of this statutory stuff we want to put in the Constitution. I really have no particular feelings about this provision. I support it on its merits. In fact, it's found in our present statutory law. It's one of the 140 sections of the new Business Corporations Act, enacted by Montana here within the last 5 or 6 years; and when I look at one of the statutes in the Constitution, I wonder, and I cannot see the difference, why this particular provision deserves constitutional status and the other 139 sections do not. This provision merely deals with how directors of corporations are elected. Now, if this amendment which has been proposed is needed, then for the last 89 years-or 82 years since our Constitution was first adopted, we've been violating that Constitution, because Section 3 is merely a restatement of Section 10 of Article XV of the former Constitution, so I think you can see one of the problems involved in putting statutory matters in a constitution. We already have to have an amendment, or think that we do, before we even have adopted it on the floor.

CHAIRMAN GRAYBILL: Is there further discussion?
Mr. Swanberg.

DELEGATE SWANBERG: I might state at this time that Mr. Ward, in the research on this subject, contacted several members of the Bar that are in our membership, and I believe that he would agree that he placed these for your consideration on the basis of the recommendations he received, It was my own personal opinion that practically the entire section here probably could be deleted—that is, Sections 1, 2, 3, 4 and 5, and possibly 6-but that, as a matter of courtesy to the other members of the Bar here-and there's a veryrealpossibility they may have something to add-we thought we would leave these sections in for their discussion on the floor. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I must confess that I have a part of the responsibility for this, and I am the one who composed the amendment that Dr. Ward has very kindly made a part of the majority report. The reason I did that is that the old law does prevent the creation of nonvoting shares of stock and it does prevent the application of one of those sections of the uniform business corporation law that the Legislature adopted, and it came to my attention, especially because it loused up the plans of a client of ours over in Missoula who was trying to make with his own family corporation for his estate, because, in simple terms, he had a small family motel, some children growing up-one of them would stay with the business, the others

wouldn't--and he wanted to give part of his corporation to his kids, but he wanted to retain control, and his accountant said, "Well, why don't you just create a nonvoting class of stock, and you keep the voting stock and the kids can have the other, and this will all work out." Well, it was unconstitutional. This is really palpably ridiculous, because what is said here about this statutory material being in the Constitution is entirely correct. If you were to take this book on the comparison of Montana Constitution with other constitutions, Volume V, and turn to Article XV therein, which is where we have all our corporation law, you would find, on page after page, that in Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, the model constitution, it says "no comparable article", "no comparable article", "no comparable article". So, I guess what we have in our Article XV is simply an archaic carryover of the early days of the Copper Kings and the problems they had in those days with them and their railroads and one thing and another. So I make this explanation, Mr. Chairman, just to show how we got into this situation, but I really think that Mr. Loendorf is entirely correct in that we could well delete this material, consistent with the principle that I think some of us have tried to advocate right along, that this Constitution is to be limited to basic, fundamental structures of government and that we should not try to stick turkey feathersinto the constitutional eagle.

CHAIRMAN GRAYBILL: Is that one of those eagles we were looking for a few weeks ago? All right, is there other discussion?

Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: I would like to tell the delegates here thatofall thelawyers that we contacted, it seems that each one of them-that these three sections-that one ofthem was their pet, that they did not want to see it deleted from the Constitution. So we figured that of all the lawyers that we talked to and all the other people that were involved in this-that these were the three major sections that they would not like to see deleted and that, as has been mentioned, that they are statutory, but they would not like to see them removed from the statutes, so they would like to see them in the Constitution.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I might state that this committee went to the Secretary of State's office, it went to the Auditor's office, it went to the Attorney General--not an official opinion, but from staff. We discussed this for and back, and here was the reason the committee has put this in: we trust the Legislature, but all of a sudden, we get out here and the Legislature could do things and repeal. If we've got something in the Constitution and relating to these corporations, other than municipal, we can protect the people for the long haul and we can also protect the corporation. I think we have to realize there's got to be protection on both sides. And this is the reason. We've known all this is statutory; we've been told this a number of times. And we have seen it, we have looked it over; but in-the committee, in its wisdom, decided that maybe a little bit ofstatutory for the protection of the public in the Constitution wouldn't hurt anything-protecting the public and the corporations; and if we're going to come out here today and say-after some of the things we've put in this Constitution in the last few days, I think we aren't going to make it up here. And I sure hope this motion does not prevail, because the committee, in its wisdom-and it was not easy, we spent hours on this thing to determine we thought it was the best for the State of Montana as a whole.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes. May I ask Mr. Heliker a question? If he is the person who might have the answer to this.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE HELIKER: I yield, reluctantly.

DELEGATE HARPER: Mr. Heliker, a young former Montana citizen, who still considers himself that, I think-a graduate of the University-is now working for the state air pollution agency-control agency in Minnesota, and the other day he called to ask about one or two things-just out of interest-and, as an environmentalists, he was trying to stress to me-and I didn't have this section before me and I hardly knew what he was talking about-this matter of cumulative voting. How would this relate to people who were interested in environment? And I'm really asking this as a matter of information.

DELEGATE HELIKER: Beats me. (Laughter)

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: In answer to Mr. Harper's question, I think that that question should be aimed at Section 2 instead of Section 3 and-as far as the environment goes.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I support the motion of Delegate Loendorf. I think that we have to take this seriously. I think there are two points. One is that, right or wrong, to some degree, we will be measured in the work we do here by the length of the document, and if there is not any real clear mandate to include this in the Constitution, I think that, in fact, we would be well to leave it out; but secondly, and probably more important, is that these matters which are admittedly statutory, something that the Legislature really should handle, change from time to time, and something that might be very good and well to preserve at the present time might not be so good 10, 15, 20 years from now. And I think that, in this particular case, that we would be much better to leave it to the statutes and delete it from the Constitution and then allow-if the situation changes for some reason 20 years from now, allow the Legislature to update the situation as it sees fit at the time that the problem arises. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Well, this particular section has been in the Constitution for all these many years, since the first one was written, with the exception of the last sentence. Yes, the amendment made by Mr. Ward. Now this particular section was Mr. Mahoney's baby, I believe, and I'd like to ask Mr. Mahoney a question.

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll yield, please.

DELEGATE HELIKER: Charley, as I recall when we discussed this in committee-and incidentally, I wasn't consulted on this amendment, therefore I'm in the same class with Mr. Scanlin, I guess, although I don't necessarily oppose it-but I would like to ask you, since it seems to me that you were opposed to such an amendment, whether you now accept it and, if so, just exactly what is your reasoning on that?

DELEGATE MAHONEY: Well, Mr. Chairman, I might state this: that in the first place, I was bothered about a number of kinds of stock, and the reason-1 was thinking-I could see mutual funds, I can see a lot of these things that are getting in now to take the people's money; so this is where-now I discussed this with Mr. Ward, and out of deference to Mr. Garlington, this is how's they come that they said they-it wouldn't affect the mutual funds or these out-of-state operators, that I could see happening. And this is why I am supporting that amendment, Mr. Heliker-is that it won't affect mutual funds or those; then we have a different kind of stock. This is my understanding of it.

DELEGATE HELIKER: May I ask further?

DELEGATE MAHONEY: Yes, I'll try.

DELEGATE HELIKER: You don't feel that this added sentence subverts the purpose of the old section?

DELEGATE MAHONEY: Well, I don't think this works the part of the cumulative voting-this is what-that one of the main things we discussed in this section was the cumulative voting so that minor stockholders could get somebody on the board-this was the main thing, was my reasoning in there-was letting the minor stockholders get somebody on the board and cumulative voting; and I don't think it's hurting it as bad as maybe we-1 may think. Now, Mr. Garlington has explained his idea on it.

DELEGATE HELIKER: May I ask another question?

DELEGATE MAHONEY: Yes, sir.

DELEGATE HELIKER: Well, isn't the effect of this amendment to keep minority stockholders from getting on the board?

DELEGATE MAHONEY: No, I wouldn't concede that point. I'll see if I can find it right here. I wouldn't say that. I-"The section shall not prevent the lawful creation of classes of nonvoting corporate shares of stock and shall not require their holders vote in elections for directors or trustees of incorporated companies." Now, Mr. Ward went into this much deeper than I would, and than I did, and I'd like to have Mr. Ward answer on this particular section. He went into it much deeper than I did, and he told me it was all right.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I think Mr. Harper didn't get a very good answer from Mr. Heliker on his question as to how cumulative voting could be used by environmentalists. I think the obvious answer is that a group of environmentalists, under cumulative voting, could acquire a director on the board who would be favorable to their position.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would like to bring another point out that I don't believe has been brought out. In the codes, in the statutes we now--under which we now operate, the model business corporation act provides for the wording that we have in Section 3. Now, this model business corporation act is, as I understand it, a uniform law that the American Bar Association has quite a little to do with, and it's sort of a national agreement of the ground rules under which we operate. Say a corporation in Montana were to-say it wanted to go public in the national, or sell stock publically. If sometime during its life the model business corporation act were to change its ground rules, so that the corporation act were to change nationally, but because it is written into our Constitution in Montana, it were prohibited—the corporation that is a Montana resident were prohibited from complying with the national act, then the stock in that company would be much less desirable and maybe difficult to sell in many states around the country. So this-by writing this into our Constitution, we may be precluding the possibility of corporations coming into Montana and setting up with Montana as a home base, or it may encourage Montana corporations which may some-at some point in their life, desire to become a public corporation-they may move to another state because of the lack of compliance. So I would suggest that we leave it in the statutes, where it can be changed by the Legislature at a later time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on whether or not to delete Section 3, on Mr. Loendorf's motion. Is there other debate? You want a roll call vote? Very well, all in favor of Mr. Loendorf's motion to delete Section 3 in its entirety from the Nonmunicipal Corporations Article, please indicate so by voting Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot, please.

Aasheim	Aye
Anderson, J.	Aye
Anderson, 0	Aye
Arbanas	Aye
Arness	Aye
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Absent
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Absent
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Nay
Choate.	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Excused
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Aye
Foster	Aye
Furlong	Nay
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Nay
Harper	Nay

Harrington	Nay
Heliker	Nay
Holland.	.Absent
Jacobsen	.Absent
James	..Aye
Johnson	Aye
Joyce..	..Aye
Kamhoot	..Aye
Kelleher	..Aye
Leuthold	.Aye
Loendorf	.Aye
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	..Aye
Melvin	.Aye
Monroe	Aye
Murray..	..Absent
Noble	.Absent
Nutting	.Aye
Payne	..Aye
Pemberton	Aye
Rebal	.Aye
Reichert	Aye
Robinson	..Aye
Roeder	.Aye
Rollins	.Aye
Romney	Aye
Rygg	..Aye
Scanlin..	..Aye
Schiltz	.Aye
Siderius	Nay
Simon	Nay
Skari	..Aye
Sparks	.Aye
Speer	..Aye
Studer	Nay
sullivan	Nay
Swanberg	.Aye
Toole	..Aye
Van Buskirk	Nay
Vermillion	Aye
Wagner	.Aye
Ward	Nay
Warden	.Absent
Wilson	Aye
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 67 delegates have voted Aye; 25 have voted No.

CHAIRMAN GRAYBILL: 67 delegates having voted Aye, 25 No, Section 3 is deleted. Will the Chair-clerk read Section 4.

CLERK SMITH: "Section 4. Long-short-haul clause. No transportation company shall be allowed to charge, under any penalties which the Legislative Assembly shall prescribe, any greater charge for the transportation of freight or passengers to any place upon its route than it charges for the transportation of the same class of freight or passengers to any more distant place upon its route within this state." Section 4, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 4 of Proposal 9, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: The-this Section 4 is taken from Section 5 of the old Constitution. And during our research, we find that all transportation companies are regulated by ICC regulations-that's interstate transportation companies. This is the only statute on the books to-in the Constitution that we found that regulates intrastate railroads. At this time we have three railroads in the state-intrastate railroads-one from Anaconda to Butte, there's one up in the northeastern part of the state, and then, in the future, we don't know what's going to happen to some of these coalfields in eastern Montana. So it was-the consensus of the committee was to leave this in the Constitution as is.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I'd like to support Mr. Loendorf's motion to delete this. I think we can, by statute, take care of future John D. Rockefellers employing this device—unfair competition-and if this is retained in the Constitution, I'm posting notice that I will submit an amendment to require the Butte-Anaconda-Pacific to retain a passenger ticket agent.

CHAIRMAN GRAYBILL: Well, at the moment we don't have an amendment. Mr. Loendorf, do you want to make one?

DELEGATE LOENDORF: I'll so move now, Mr. Chairman, that we delete Section 4 of the majority report. I think it's obviously statutory,

and I have just noted that the Legislative Council report-your report Number 6 recommends its repeal and states that none of the other six Constitutions which they studied had a similar provision. The previous constitutional preparatory commission in this state recommended its repeal in report Number 7, and looking at the Constitutions of Illinois, which was just passed, and the proposed Constitution of North Dakota, they handle private corporations with the one sentence, in the case of Illinois, and it took North Dakota two. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Mahoney.

DELEGATE MAHONEY: We-this is put in here at the suggestion of the Railroad and Public Service Commission. This is not put in here—they said they thought it was necessary, there was no question about it; and they have asked for it. Now if we should decide here that the former Legislative Councils in all these studies know more than the Railroad Commission, then we vote her out.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I would like to ask a question of any member of the committee. Mr. Ward, in connection with this Section 4, if this were out, would there be anything in our Constitution which would prevent the Burlington-Northern from charging a lower rate from Seattle to Minneapolis than they charge for hauling the same amount of goods in Montana, mileagewise, from Butte to Minneapolis?

DELEGATE WARD: Mr. Habedank, I think as long as you're crossing state boundaries that this would be regulated by ICC.

DELEGATE HABEDANK: That would be covered entirely by the federal long-short-haul clause, then?

DELEGATE WARD: Yes.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Loendorf's motion to strike or delete Section 4 in its entirety. So many as shall be in favor of that motion, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Aye
Arbanas..	Absent
Arness	Aye
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Nay
Barnard	Nay
Bates..	Aye
Belcher	Aye
Berg..	Aye
Berthelson	Aye
Blaylock	Absent
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown..	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate..	Aye
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Excused
Delaney	Nay
Driscoll	Aye
Drum..	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Nay
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Absent
Garlington	Absent
Graybill	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Nay

Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold .....Aye
Loendorf .....Aye
Lorello ..... Nay
Mahoney Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin. ..... Aye
Monroe.. ....Aye
Murray.. ....Absent
Noble .....Absent
Nutting .....Aye
Payne ....Aye
Pemberton ..... Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz .....Aye
Siderius. ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks .....Aye
Speer ....Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg .....Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner .....Aye
Ward ..... Nay
Warden ..... .Absent
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 53 delegates voting Aye, 38 voting No.

CHAIRMAN GRAYBILL: 53 delegates having voted Aye and 38 having voted No, the Section 4 is deleted. Will the clerk read Section 5.

CLERK HANSON: "Section 5. Watered stock provision. No corporation shall issue stocks or bonds except for labor done, services performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without consent of those persons holding a majority of the stock first obtained at a meeting held after notice given in pursuance of law." Mr. Chairman, Section 5.

DELEGATE WARD: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 5, Proposal 9, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: This is another-the same section as Section 3. The same-1 shouldn't have very much to say about this. We retained this section for the same purposes that we did Section 3.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, as a substitute motion, I'll move to delete it, again for the same reasons that we deleted subsection 3-m Section 3, rather.

CHAIRMAN GRAYBILL: Very well, On Section 5, Mr. Loendorf has a motion to delete Section 5 in it's entirety.

Mr. Loendorf, do you want to discuss it?

DELEGATE LOENDORF: I'll discuss it only if I have to close, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Loendorfs motion to delete Section 5 in its entirety. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Will the clerk read Section 6.

CLERK HANSON: "Section 6. Retrospective law prohibition. The Legislative Assembly shall pass no law, retrospective in its operations, which imposes on the people a new liability in respect to transactions or considerations already passed." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 6, Proposal 9, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: This is another protective-protection from the Legislature. This comes from Section 13 of the old Constitution, and this is one article that both the council and the commission recommended retaining in the Constitution. They recommended it-passing it to the Legislative Article. The Legislative Committee was contacted, and they looked it over and sent it right back to us. So, we have retained it except for deletion of-we deleted "county and municipal subdivisions of the state". Otherwise, the reading and the intent is the same.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, would Delegate Ward yield to a question?

CHAIRMAN GRAYBILL: Mr. Ward?

DELEGATE WARD: I yield.

DELEGATE FOSTER: Jack, would you explain to me what the difference is between this Section 6 of yours and the section that we passed in the Bill of Rights, which says that no ex post facto law nor law impairing the obligation of contracts--and goes on-can you explain what the difference is?

DELEGATE WARD: You may have to call on some of the legal counsel, but I was told that the ex post facto law pertained to criminal cases, whereas this law wouldn't. If I'mincorrect, I think maybe we could call on Mr. Berg.

CHAIRMAN GRAYBILL: The section in the Bill of Rights is Section 31, if you happen to want to look at it.

Mr. Berg.

DELEGATE BERG: That is correct. Ex post facto laws relate only to criminal proceedings. The retrospective laws which are referred to by this section would apply to civil matters, as distinguished from criminal. And insofar as the prohibition against the-1 can't recall offhand— against contracts thatmaynot be-1 can't recall— the wording is my problem offhand. Do you have the wording there in the Bill of Rights? That's what I-I can't recall it, exactly.

CHAIRMAN GRAYBILL: Read him the Bill of Rights, Mr. Foster. Section 31.

DELEGATE FOSTER: Mr. Chairman. It states: "No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises or immunity shall be passed by the Legislature." Now it seems to me that that provision covers it, and I would like to ask Delegate Dahood to yield to a question, if—

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE FOSTER: It was my understanding, in the discussion of the Bill of Rights, that this provision does go beyond the area of purely criminal cases; now am I mistaken in that? Is this-?

DELEGATE DAHOOD: The Bill of Rights provision?

DELEGATE FOSTER: Yes.

DELEGATE DAHOOD: Yes, it does. The Bill of Rights provision, with respect to the other language, Mr.-Delegate Berg, does extend to all matters. That's correct.

CHAIRMAN GRAYBILL: I think the question these civilians are asking you lawyers is whether Section 6 is necessary in view of the other language in Section 31. Does any other lawyer want to hazard a guess?

(No response)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, in order to get this matter off the floor and to get me in my seat, I submit that-it was my understanding that the provision WC had in the Bill of Rights would cover the subject in Section 6, and unless someone shows me to be wrong, I would move to delete that section. But I'll leave that question for the moment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, in comparing the two sections, there is language in present Section 6 which is before the Convention at this time-before this committee-that would perhaps extend a protection beyond what is within the Bill of Rights section. Within the Bill of Rights section, we provide there shall be no law made impairing the obligation of contract. Now this Section 6 is-indicates the Legislative Assembly shall pass no law. It conceivably could be that some law could be passed that would tend to affect a legal situation, as contemplated by 6, thatwould not impair the obligation of contract. Quite frankly, for that reason, I would be inclined to want to leave Section 6 as it is. If there is some doubt as to whether or not the people are receiving full protection, I would much rather resolve that doubt in their favor and leave Section 6, to make sure that all those avenues are covered and protected.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Would Mr. Swanberg yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Swanberg?

DELEGATE SWANBERG: I yield.

DELEGATE McDONOUGH: Could Section 6 in any way be interpreted to prohibit the Legislature from enacting laws protecting the public safety, health and welfare that might override or supersede a contractual right?

DELEGATE SWANBERG: Say that again, Mac, will you.

DELEGATE McDONOUGH: I don't know; I'm just asking the question. Would Section 6 prevent the Legislature from enacting a law relative to the public's health, safety and morals, such as a sanitation law, which would override a contractual right, a previous contractual right? In other words, if the Legislature wanted to tighten up the sanitation standards and there was a contract that said that they must conform to certain standards, would that prevent the Legislature from doing that?

DELEGATE SWANBERG: I don't think it would prohibit that kind of a statute.

DELEGATE McDONOUGH: Thank you.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: One possible application of this Section 6, I think, would be in connection with taxation. For instance, if we were a legislative body, we could not now impose a tax on a transaction that occurred in the year 1971. And this would make it certain that you could not impose a liability on something that occurred prior to the date of the enactment of the law.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: I can't refrain from rating the interesting comment that the preparatory commission made on this section-the preparatory commission that preceded this one. They noted that although the Legislative Council recommended that the present Section 13 of Article XV be deleted, the Judicial Subcommittee recommended that this section be retained and transferred to the Legislative Article. They then say, "This section is probably obsolete and not necessary. It could be revised, the Legislative Assembly shall pass no law retrospective in its operations." Very confusing, I think, of the people who prepared the research.

CHAIRMAN GRAYBILL: Very well. The Chair understands the issue to be on Section 6, retrospective law prohibition, and the Chair does not have any amendments at the moment.

Mr. Ward, do you want to close?

DELEGATE WARD: Yes, Mr. Chairman, When the committee drew up this new article on the-on this Section 6, at that time we were going by what was in the old Bill of Rights and we didn't have the new Bill of Rights, but I think for the protection of the people and everything else, I'd prefer to retain it if possible. Thank you.

CHAIRMAN GRAYBILL: Now, Mr. Foster, I don't want any misunderstanding here. The Chair did not-the Chair understood that you did

not make a motion, you just suggested a motion; is that right?

DELEGATE FOSTER: Well, in case there's some question, I will move to delete the section. I think that the provision in the Bill of Rights covers it, and I think there might be some question of conflict between the two, and I personally would like to see it deleted.

CHAIRMAN GRAYBILL: Very well. The Chair will allow Mr. Foster's motion to delete Section 6. Now we'll debate it.

Mr. Berg.

DELEGATE BERG: I rise to resist the motion to delete. The impairment of a contract provision in the Bill of Rights is not as broad as the retrospective action proposed by this section—and which we have always had-except that it is broadened here. It would, as Mr. Felt suggests, take care of a situation where a tax has been imposed, so that on a retroactive basis that would be prohibited so far as the Legislature is concerned now; and I think that's a very valid reason and purpose for continuing this provision in the Constitution.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I may have missed this along the line, but in case we do decide to retain this-and it seems to me pretty iffy when there is so much hesitation about what the meaning is. In what way has this been broadened from what we have had before, exactly, Mr. Ward?

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: As I stated before, Mrs. Eck, the removal of-"county and municipal subdivisions" was deleted from-as stated in the old Constitution. So I presume that it-the wording was changed but the main meaning is still there.

CHAIRMAN GRAYBILL: Mrs. Eck.

'DELEGATE ECK: Would Mr. Ward yield to another question?

CHAIRMAN GRAYBILL: Mr. Ward?

DELEGATE WARD: I yield.

DELEGATE ECK: In other words, it's really been narrowed so that this just applies to the state, whereas it used to apply to subdivisions also?

DELEGATE WARD: Well, you'd have to have one of the legal minds do this interpretation, but I would say it would apply to any transaction that has a new liability to the people, any place.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I just wish to say that I support Mr. Foster's motion to delete, because of the fact we actually don't all know what it means, and if-does-we don't know what it means, we should delete it out of the Constitution.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you Mr. Foster's motion to delete Section 6.

Mr. Foster, do you want a roll call?

DELEGATE FOSTER: Yes.

CHAIRMAN GRAYBILL: So many as shall be in favor of deleting Section 6, vote Aye; so many as shall be opposed to deleting Section 6, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. Nay
Anderson, 0.. Nay
Arbanas Nay
Amess ..... Nay
Aronow ..... Absent
Artz ..... Nay
Ask ..... Aye
Babcock ..... Absent
Barnard ..... Nay
Bates ..... Absent
Belcher Nay
Berg ..... Nay
Berthelson Nay
Blaylock ..... Aye
Blend ..... Absent
Bowman.. Nay
Brazier ..... Nay

Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Nay
Dahood ..... Nay
Davis ..... Excused
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Absent
Felt. ..... Nay
Foster ..... Aye
Fur ong ..... Aye
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Aye
Lore110 ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray.. ..... Nay
Noble ..... Absent
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Absent
Rollins.. ..... Nay
Romney ..... Absent
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
s ü1' ıvan ..... Absent
Swanberg .. .. Nay
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Absent
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 24 delegates voting Aye, 61 voting No.

CHAIRMAN GRAYBILL: 61 having voted No and 24 Aye, Mr. Foster's motion fails. We're back on Section 6. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you for your consideration, on the recommendation of Mr. Ward that when this committee does arise and report after having had under consideration Section 6, that we recommend the same be adopted, All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move we stand in recess until 3:45 this day.

CHAIRMAN GRAYBILL: The motion is to recess until 3:45. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(The Committee recessed from 3:25 p.m. to 3:45 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. Ladies and gentlemen of the committee, we had finished the Nonmunicipal Corporations Article. And now, if you will turn, on public health schedule, to page 13, we'll take up Institutions and Assistance. Very well, Mr. Clerk, will you read Section 1, and the-the title and Section 1 of Institutions and Assistance?

CLERK SMITH: "Be it proposed by the Public Health, Welfare, Labor and Industry Committee: that there be a new article on Institutions and Assistance to read as follows: 'Section 1. Institutions. Such institutions as the public good may require shall be established and supported by the state as may be prescribed by law.'" Section 1, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I move that when this Committee does arise and report, after having had under consideration Section 1 of the Institutions and Assistance Article of the Public Health, Welfare, Labor and Industry report, do recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: This section and the old section in the present Constitution, which will be found on page 27 of the yellow book, are practically the same except that our section does not specify the institutions which they can set up. The old section did, and we saw no advantage in this specification. I might also add that the only real problem we had with it was the soldiers' home, and we met some resistance in that area. Some felt that the soldiers' home, I believe it's in Columbia Falls, should have some constitutional mention; the majority of your committee did not see why that should be necessary, and so we stuck with the general enumeration. I might add, also, that the Legislature has plenary power, as it is, to establish these institutions and that if the section were deleted, there would be no loss. The majority of your committee, however, felt that this probably should be a step left to the body as a whole.

CHAIRMAN GRAYBILL: Very well. Mr. Rygg, you have an amendment; do you want it read?

DELEGATE RYGG: Would you read it, please?

CHAIRMAN GRAYBILL: Very well; the clerk read Mr. Rygg's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 1, page 13, being lines 8 through 10, by deleting the section in its entirety and inserting in lieu thereof the following language: 'Such institutions, including homes which may be necessary and desirable for the care of veterans, as the public good may require may be established and supported by the state as may be prescribed by law.' Signed: Rygg."

CHAIRMAN GRAYBILL: Mr. Rygg proposes an amendment which would delete the language of Section 1 in its entirety and substitute therefor this other language that you have before you: "Such institutions, including homes for veterans, as the public good may require", has the effect of including this parenthetical phrase, "including homes which may be necessary and desirable for the care of veterans", into the language of the committee.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, this amendment is offered on behalf of a good number of veterans, not only in the Columbia Falls area, but from various parts of the state. They seem to feel that the Veterans' Home is really not an institution because, they say, one has to be committed to an institution. The Veterans' Home is now under the Board of Institutions, and they wanted this wording enlarged to include the understanding that they didn't have to be committed but be could just apply for residency. Now, I suppose I could quote Mr. Nutting, as he said yesterday, and say, "This is rather innocuous and won't take much room and make a lot of people happy", but I think it goes deeper than that and shouldn't be treated that lightly. These veterans want their dignity preserved, and they feel that this is one way of accomplishing that. Now, Isupposemaybe

it's proper that I say I am on the advisory board of the Veterans' Home in Columbia Falls, if you think that would make any difference in my thinking, and I did go to the committee chairman and tell him of this amendment, so it isn't exactly a surprise to him. But I do feel that the veterans all over the state would really think that their rights were being protected if we could be allowed to put this in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I resist the proposed amendment, for the reasons which I stated a few moments ago and for the additional reason that Section 35 of the Bill of Rights Article provides the people declare that Montana servicemen and servicewomen and veterans may be given special consideration, determined by the Legislature. I think the real worry that the veterans have is that this home in Columbia Falls, once it's taken out of the Constitution, would probably be abandoned by the Legislature. I think, with-the inclusion in the Bill of Rights of this section saying that veterans shall be given special consideration will prove to be a very good foundation and a very good argument for those who want to see the home retained. And for this reason, I would resist the amendment. As for as providing for the Veterans' Home in the majority article, I would have no objection to the inclusion of the two words "and facilities" after the word "institutions", in line 8 on page 13. The section would then read, "such institutions and facilities as the public good may require". This would take away the stigma of the word "institutions" applied to the veterans who lived in that home and might go a long ways towards solving Mr. Rygg's objections to it. So I would move at this time that Section 1 of the Institutions and assistance Article-yes, article-on page 13-be amended, on page 8, by adding the two words "and facilities" after the word "institutions".

CHAIRMAN GRAYBILL: Very well, I'll consider that a substitute motion for Mr. Rygg's motion. And we now have Mr. Swanberg making a substitute motion to add the words "and facilities" after the word "institutions"-"such institutions and facilities as the public good may require shall be established and supported by the state." You may discuss both Mr. Swanberg's and Mr. Rygg's amendment at once, it seems to me.

Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I support Mr. Rygg's amendment. I've had quite a little-quite a few letters on this issue, and if we don't do anything else but make-satisfy the veterans, I support this amendment.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, would Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: Yes, I'll yield, Mr. Chairman.

DELEGATE CONOVER: Sterling, does this include private institutions, like here in Helena?

DELEGATE RYGG: No, I'm sure—private institutions?

DELEGATE CONOVER: Like the Crittenton Home.

DELEGATE RYGG: I'm sorry, I didn't hear the question, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: Private institutions like the Crittenton Home?

DELEGATE RYGG: Like the Crittenton Home here in Helena? Well, no, this refers only to institutions under the Board of Institutions, as I read this, Mr. Conover.

CHAIRMAN GRAYBILL: Very well. Mr. Melvin.

DELEGATE MELVIN: Will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: Yes, Mr. Chairman.

DELEGATE MELVIN: Mr. Chairman. Mr. Rygg, where is the soldiers' home presently, is it statutory or constitutional?

DELEGATE RYGG: Well, I think its-1 don't know if it's listed in that section or not. I don't know if it is. I thought it was just statutory, but, they tell me it is listed in the Constitution now and it was removed in this-by this committee. Is that correct? So it is in the Constitution now, and it has been removed by the committee.

DELEGATE MELVIN: Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: I'd like to stand, Mr. President and fellow delegates, in support of Sterling's proposal. Our veterans up there are very, very happy. We have just recently built a new addition to the home. This is a home for them; they're happy there. And some of you are possibly veterans and may one day wish to go there. And it's in a beautiful valley. I think that the least we can do is keep them in our new Constitution as veterans.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Would Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: Yes, I'll try, Mr. Chairman.

DELEGATE LORELLO: Mr. Rygg, when Mr. Swanberg added these two words over here, does that do what you want to do in your amendment?

DELEGATE RYGG: Well, it doesn't do what the veterans want to do; no.

DELEGATE LORELLO: I will support Mr. Rygg in this.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I rise in support of Mr. Rygg's motion, and I do note that under Article X, Section 1, of our present Constitution, it does provide for the soldiers' home, such other institutions as public good may require. So it appears that it is constitutional, and I think it should remain so.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, for to get the benefits straight, I voted against this article, and if you'll look-so that there'll be no question about it-on page 53, I voted NO-SO YOU won't think I'm deserting the committee, I voted No and the very reason-the first thing I said when this came in was that will-this could close the soldiers' home. Now I happen to know they've had some troubles in the past. There's not too many there. But I feel that the veterans of this state have worked; they've got a new building; they've got a lot of things. And I certainly would like to see this maintained in the Constitution, because here's what's bothering me-there's a move underfoot in the last session of the Legislature to limit membership. All of a sudden, they went down here to the school that--out of Twin Bridges and said you can only have so many. Now they are talking of moving the girls' school down to the boys' school at Miles City. And I just like to hold these soldiers pretty solid there, and I think they've done a great thing for this country, and let's leave the soldiers' home in, please.

CHAIRMAN GRAYBILL: Mr. Heliker. I'll get back to you in a minute, Mr. Swanberg.

DELEGATE HELIKER: Mr. Chairman, I have no objection to Mr. Rygg's amendment. We've had a lot of-how shall I say-flak on the subject. I would like to ask Mr. Rygg a question; I hope I'm not repeating one that's already been asked, Sterling.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE HELIKER: Is the veterans group aware of this, and do they approve of this particular language?

DELEGATE RYGG: Yes, they are aware of the language that was in there, and they-as far as I know, they approve of it. I have-1 wrote to them several days ago. And actually, the language came from Mr. Kellner, at my request of some way of including it in there.

DELEGATE HELIKER: Yes, it was my recollection that this language was that suggested by the veterans group. Actually, it doesn't accomplish what they would like to accomplish, which is the guarantee that the soldiers' home be maintained at Columbia Falls. And if I remember correctly-and Mr. Mahoney can correct me if I'm wrong-that the fight in the Legislature was about removing the location of the home. Nevertheless, it always seems to me to be a good buy when you can get something for nothing, and it doesn't seem to me we're giving away anything and we may be avoiding some trouble, because this particular group is very well organized and very adamant about this; and even though they probably aren't accomplishing what they'd like to accomplish, nonetheless, I accept the amendment.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I rise to oppose the amendment and offer a substitute motion.

CHAIRMAN GRAYBILL: Well, we've got a-let's see. We've got an amendment-we've got a substitute motion, but I'll hear it. Maybe it's an amendment to Mr. Swanberg's motion, and then it could be allowable; if not, you can explain it.

DELEGATE SCANLIN: My substitute motion would be simply to add another sentence to Section 1 saying the soldiers' home at Columbia Falls shall remain inviolate forever. (Laughter)

CHAIRMAN GRAYBILL: I don't know that the Chair can effectuate that amendment, but—

Mr. Rygg.

DELEGATE RYGG: To answer Mr. Heliker's question, I think that this is exactly what they would want. (Laughter)

CHAIRMAN GRAYBILL: All right. You want to make that amendment; is that right, Mr. Scanlin?

DELEGATE SCANLIN: Yes.

CHAIRMAN GRAYBILL: All right, have you got it in writing? Okay. Very well, Mr. Scanlin has an amendment which we will consider an amendment to Mr. Swanberg's amendment, Mr. Swanberg having put in "such institutions and facilities". So what we'll do with Mr. Scanlin's is-we'll put in Section 1 as it originally was, without the word "and facilities" and add the following sentence thereafter: "So the soldiers' home at Columbia Falls to remain inviolate forever". Now we will discuss Mr. Scanlin's motion. Mr. Scanlin do you care to discuss it further?

DELEGATE SCANLIN: (Inaudible)

CHAIRMAN GRAYBILL: I'll let Mrs. Speer talk after I know that you're through with your motion, Mr. Scanlin.

(Inaudible)

CHAIRMAN GRAYBILL: Well, do you accept it? The Chair has to know what to do here. Do you want it changed that way now?

DELEGATE SCANLIN: No, no. (Laughter) Delegate Speer just withdrew.

CHAIRMAN GRAYBILL: Is there any discussion of Mr. Scanlin's amendment?

(No response)

CHAIRMAN GRAYBILL: Mr. Scanlin, does this mean that you accept the inevitability of war? Very well, is there any further discussion of Mr. Scanlin's amendment?

Mr. Swanberg.

DELEGATE SWANBERG: Well, Mr. President, I would oppose it for the same reasons that were outlined when I gave the majority comments. It was the majority of your committee's belief that every institution should stand on its merits, that it should not receive any artificial infusions or props by way of constitutional recognition. We give no constitutional recognition to any other institution here, and I see no reason why the Veterans' Home in Kalispell—or Columbia Falls should be propped up this way. There may come a time when it's most undesirable to have such a home. I can't really see that happening, but it could occur. Now I'm a veteran. I don't recall any great amount of pressure on me to come over here and support this. I have received some letters, but I don't recall any great amount of pressure. And I thought that we had got over this after the anti-diversion discussions that we had-discussions in other areas of the Constitution; I thought we had recovered from this fear of the numerous pressure groups around the state who were going to sack this Constitution if we didn't give in to them; and I think that's what we're doing here. It's my understanding that almost every time the Legislature meets, it considers this soldiers' home situation. Now these people are not disabled; they're just elderly, and they go up there and live. And I guess it is a pretty good deal for them, and I certainly don't hold it against them-it's fine and dandy. But bear in mind we are using public funds for this. The federal government has long since established institutions of a similar nature for the semi-disabled veteran; and while it may be desirable to recognize our veterans in this way, we must remember that we are considering public money on a very limited basis. I don't know what the capacity is-1 think it's only 40 or 50; if I'm wrong, well, okay, I'm wrong-but it just doesn't seem to me that we should be giving this artificial recognition for this one institution. And so I would resist all of these amendments. But I would recognize the word "facilities", and I also, again, reiterate that Section 35 of the Bill of Rights Article does state that special consideration shall be given to veterans, so I think with those two provisions in

there, it would actually be a long, long time before that home was ever abandoned, if ever.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I rise and state once again my bias in this case as a member of the League of Women Voters. We did about a 4-year study on state institutions. I think all through this we realized that of all the institutions, the only one which had a group representing and lobbying for them was the Veterans' Home, and they would keep telling us that what they really needed was an alumni association, and somehow the institutions don't ever seem to be able to establish one. But I would think that, if we're going to consider institutions, we ought to consider special consideration for the aged who are in our institutions, the mentally retarded, those who-juvenile delinquents, and some of them who really aren't so delinquent, who are cared for in our institutions. I think each one of the institutions in this state has a hard time presenting its case. There used to be a time when they would each come individually to the Legislature and lobby for their own cause. I think that the Board of Institutions has done a great job, and I would give a lot more credence to this if the request came from the Board of Institutions. I don't think that they would come to us with such a request. And, you know, I thought, to begin with, this was somewhat of a facetious discussion; if it's not, I rise to oppose it. Even if it is, I rise to oppose it.

CHAIRMAN GRAYBILL: Mr. Siderius, you were next.

DELEGATE SIDERIUS: Mr. President, I'd like to read to you a paragraph out of a letter I think maybe more of you have received, but I'll read one paragraph out of there. This is from the Veterans Council of Flathead County, Kalispell, Montana. "We only hope the delegates to the Montana Constitutional Convention understand that the veterans of Montana have never considered our Veterans' Home as an institution. It is a home earned by the veteran, and he makes application to live there. People of all walks of life are committed to an institution. The veteran is not this type of person. There may be some, but they don't reside at the Veterans' Home at Columbia Falls, Montana." Now a copy of this letter was sent to Mike Mansfield, and here's his answer: "This will acknowledge the receipt of the resolution adopted by the Flathead United Veterans Council, petitioning Montana Constitutional Convention to provide for a permanent establishment in-of a Montana Veterans' Home. I am certain that the Constitutional Convention will give this proposal their serious consideration. As you know, it is a matter entirely under the jurisdiction of the Convention, but I certainly will watch their activities in this great interest. With best personal wishes, I am sincerely yours, Mike Mansfield."

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I just wanted to clear up a couple of points. The federal government does contribute something-I think it's about $4 a day-to the veterans, and I think the cost of the home there runs about $8 per person, if I'm not wrong; it's right in there. And I think the-right now, they have about a hundred there. It's a building that was built a few years ago; it's one new building and the drawing board is ready for a 40-bed nursing home. Just so you get a little better picture of what it is there. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Rygg yield to a few questions, please, sir?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try.

DELEGATE CHAMPOUX: Mr. Rygg, if we accept your amendment, is it your feeling that the Convention should indicate by this acceptance that no institutions presently established in the state, especially the Veterans' Home at Columbia Falls, not be moved?

DELEGATE RYGG: Well, my particular motion didn't state it should stay in Columbia Falls. I said that's exactly what the veterans wanted. I don't think it means none of them could be moved. Was that your question?

DELEGATE CHAMPOUX: **Yes.** It is your feeling that all institutions presently established, should we-if we accept your amendment, should remain as they are?

DELEGATE RYGG: Well, I couldn't truthfully say that; no.

DELEGATE CHAMPOUX: All right. Thank you.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Will Mr. Scanlin yield for a question?

CHAIRMAN GRAYBILL: Mr. Scanlin?

DELEGATE SCANLIN: Yes, sir.

DELEGATE HOLLAND: Mr. Scanlin, as I understand your amendment, if we run out of veterans, we still have to keep the Veterans' Home for the rest of the time the Montana Constitution is in effect; is this your intent?

DELEGATE RYGG: Mr. Chairman. Mr. Holland, I see no way that forever we're going to run out of veterans.

DELEGATE HOLLAND: God love you, I hope you're wrong.

DELEGATE RYGG: I hope so, too.

DELEGATE HOLLAND: I have this observation. There was onedelegateproposal here which I didn't think considered-had enough consideration. That was Delegate McKeon's proposal that all of the various institutions remain where they are. Delegate McKeon living in a districtthat has all of them in them, I didn't, well, blame him. And I'm willing to go along with Mr. Rygg's proposal. I do think that-1 do hope that someday that we will run out of veterans, Dan; but I think Sterling's would be probably more practical.

CHAIRMAN GRAYBILL: Mr. Scanlin, do you want to close?

DELEGATE SCANLIN: Mr. Chairman, Mrs. Eck has raised a very serious dilemma on my part. I didn't want to insist on a roll call vote on this matter, but I was hoping I could withdraw without being accused of being facetious; I mean I was half serious on this thing. Here we have a special interest being given special attention in the Constitution, and I object to that kind of a tactic; and consequently, I will withdraw my substitute motion and support the committee as amended by Delegate Swanberg and hope that that will satisfy the delegates of this Convention. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Scanlin's amendment is withdrawn. The issue is now on Mr. Swanberg's amendment to add the word "and facilities" to Mr. Rygg's amendment, so that it says "such institutions and facilities as the public good may require". Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Do you want to close, Mr. Swanberg?

DELEGATE SWANBERG: Just a few more comments, Mr. President. I think a lot ofyou members here are a little worried about the veteran vote, and perhaps a few of you may be thinking about the political aspects of this, but keep in mind, please, that we have a question of priorities here, as brought out by Mrs. Eck. Certainly it's a nice thing for our veterans to have this home-nobody argues that-but it's only for a very few veterans, really. I don't know how many are up there; I said 40 or 50, maybe 200. Out of the thousands of veterans we have here in Montana, only just a few hundred enjoy this home up there in Kalispell. Now, consider we're spending a considerable amount of money up there for this purpose. These people are not ill; they're simply elderly veterans who have received this special consideration. Think how much more desirable it might be used-if this money were used for a small home for the mentally retarded children. Think of the thousand and one real cases of need we have in this state for things of this nature which are not now being used, and then compare that with this home in Kalispell which, desirable though it may be, should not rank as high in order of need as some other needs which we have. And I hope when you consider this, you will vote in favor of this amendment. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Swanberg's amendment to add the word "and facilities" to the first line of Section 1.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, I'm sorry that I've-Is Sterling Rygg's thing gone now?

CHAIRMAN GRAYBILL: No, it's not gone; it's second.

DELEGATE BURKHARDT: Okay. So all we're doing is adding "facilities" to the present language of the committee?

CHAIRMAN GRAYBILL: He's adding "facilities", and then after that, we'll have to consider what happens. But he substituted that for Mr. Rygg's.

DELEGATE BURKHARDT: Well, that sounds a little more palatable, yeah.

CHAIRMAN GRAYBILL: And then if his passes, we'll have to consider whether Mr. Rygg wants to continue his or redo it.

Mr. Aasheim.

DELEGATE AASHEIM: The motion was made by Rygg to amend, was it not?

CHAIRMAN GRAYBILL: The motion was made by Rygg to amend, and he amended by putting in a sentence in the middle.

DELEGATE AASHEIM: Mr. Chairman, I think the engine has jumped the tracks; it jumped the roadbeds going up the cowpath. (Laughter) I think that we must consider Rygg's motion first.

CHAIRMAN GRAYBILL: Well, now, Mr. Aasheim, I just take these as they come. And Mr. Swanberg made another amendment, and he made it in the form of a substitute amendment, which struck Rygg's and put back in his original one, with just the word "and facilities" added, as a substitute motion for Mr. Rygg's. Now if you want to reach Mr. Swanberg's, you may reach it either by-it doesn't make much difference whether you oppose or support the one to add "facilities". When we get the word "facilities" either in or out, then you'll be able to support or put in Mr. Rygg's again if you want to; but I have to take them as they come.

DELEGATE AASHEIM: Mr. Chairman, the motion was to delete. We're deleting the section, and as long as we're deleting, we can't be amending it.

CHAIRMAN GRAYBILL: All right. I'll go over it once again with you, as the Chair sees it. The motion was to delete Section 1 and add language, and the Chair has the language and so have you. Now the language happened to be the same as Section 1, with a parenthetical expression in it. All right, then we were considering that. Then Mr. Swanberg came along and made a substitute motion to delete Section 1 as Mr. Rygg had put it in and put his own back with the word "and facilities" in it; so we are on that now. Don't worry, Mr. Aasheim, you'll get a chance to amend it again if you like.

DELEGATE AASHEIM: I'm not worried; I'm just trying-I'm just trying to see-to keep Mr. Rygg's in proper perspective. And I think that we are really off the track when we're not considering Rygg's first. That's my point.

CHAIRMAN GRAYBILL: Well, when Mr. Swanberg comes up with an amendment after Mr. Rygg's hits the floor, what is the Chair to do? I can't refuse Mr. Swanberg's amendment. It was in order. Therefore, the issue, my friends, is on Mr. Swanberg's amendment to add the word "and facilities" so that it reads "Such institutions and facilities as the public good may require shall be established and supported by the state as may be prescribed by law." Now, so many as are in favor of Mr. Swanberg's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So many as are in favor, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 65 having voted Aye and 24 having voted No, Mr. Swanberg's motion passes. At the moment the section, then, reads "Such institutions and facilities as the public good may require may be established". At the moment, Mr. Rygg's motion is gone; but, Mr. Rygg, you or Mr. Aasheim have the right to remake it.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I would like to insert the same thing, the parenthetical line in-after "facilities". "Such institutions and facilities, including homes which may be necessary and desirable for the care of veterans".

CHAIRMAN GRAYBILL: Very well. Mr. Rygg's motion is renewed. After the word "facilities", he would then add the phrase "including homes which may be necessary and desirable for the care of veterans". You'll find the language parenthetically in the language he put on your desks. Is there discussion?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'm happy with either one. It makes no difference to me, as long as we get the engine back on the track.

CHAIRMAN GRAYBILL: It moves about

as well over ground as over rails, Mr. Aasheim. (Laughter)

Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. I would like to go on record as supporting Mr. Rygg's amendment.

CHAIRMAN GRAYBILL: Very well. You have before you Mr. Rygg's amendment, which is to add the phrase "including homes which may be necessary and desirable for the care of veterans" after the word "facilities".

UNIDENTIFIED DELEGATE: Roll call, Mr. President.

CHAIRMAN GRAYBILL: All right, we've asked for a roll call. It would read "Such institutions and facilities, including homes which may be necessary and desirable for the care of veterans, as the public good may require shall be established and supported by the state as may be prescribed by law." All those in favor, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Absent
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Absent
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross .. .. Nay
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Absent
Eskildsen .. .. Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce .. .. Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe .. .. Nay
Murray .. .. Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay

Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CHAIRMAN GRAYBILL: Will the clerk announce the roll-the ballot.

CLERK SMITH: Mr. Chairman, 71 delegates have voted Aye; 18 have voted No.

CHAIRMAN GRAYBILL: 71 voted Aye and 18 voted No, Mr. Rygg's amendment is passed, and we now have both "facilities" and the phrase "including homes" and so forth in. Is there other material-or other discussion of Section 1?

(No response)

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you, upon the recommendation of Mr. Swanberg that when this body does arise and report, after having under consideration Section 1, as amended, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 1 is adopted as amended. Mr. Clerk, read Section 2, please.

CLERK SMITH: "Section 2. Assistance. It shall be the duty of the Legislative Assembly to provide economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune, may have need for the aid of society." Section 2, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I move that when this committee does arise and report, after having had under consideration Section 2 of the Institutions and Assistance Article of the Public Health, Welfare, Labor and Industry report, do recommend that the same be adopted.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Now, this section will be found on page 27 of the yellow book, and the old section stated that the several counties of the state shall provide for the care of their indigents. This section, as you see, states that the Legislative Assembly shall provide for their assistance. Beneath this rather innocuous-seeming change will be found a social phenomena and of rather profound significance. And I'd like to take it up at some length here, to give you a little background. When our committee met to consider this, in connection with another proposal, we had a joint meeting with the Bill of Rights Committee, and at that hearing some testimony was taken about the aid to dependent children sector of our Public Welfare Department. I might point out, here at the beginning, that it is this sector-the aid to dependent children--where the vast majority of the public welfare funds go. The other funds--aid to the blind and needy, the lame, and so on-while they're considerable, are not to be compared with the money that's spent for this aid to dependent children. And in the course of this hearing that we had with the Bill of Rights Committee, it became evident that these costs were rising at a rather astonishing rate; and if you will look at the graph that you have on your desks, you will see the extent of this rise. In 1960, for example, the number of families who were receiving this aid was under 2,000, and in 10 years it had risen to 3,000; and then in 1970, from 3,000, to the end of '71, it had almost doubled to 6,000. And some of the witnesses who appeared at that hearing were asked, what was the reason for this phenomena? It was close to 5 o'clock, and so we didn't get an answer to the question, although I'm quite sure that most of the witnesses there knew what the answer was. And so, to get a little perspective on

this, I'd like to take you through a little bit of time and then make a few comments when we get through. Let's go back to 1930 and look at the number of births at that time, 200—2,203,000 in 1930. Now, 1930 was on the eve of the Depression, as you all recall, and all during the Depression our birth rate was abnormally low. In 1932, as a matter of fact, in the depth of the Depression, it got down to barely just above 2 million people. In 1935, it was not much better, 2,155,000 people; and even in 1940—the Depression was just kind of getting over-there were still only 2,660,000 people born that year. Then, in 1945, the veterans came back from World War II, and I might state that he was appalled at the sorry state of our birth rate. Now he postponed those dreams he had long had—those week-long fishing trips, those pleasant evenings at the bowling alley, and those cozy hours before the fire with the old stamp collection-and proceeded to do something about the birth rate. (Laughter) The women of our nation responded with magnificence, although I suspect they were somewhat startled, at first, by all the sudden interest in this field; but by 1946, scarcely a year after the war was over, our birth rate had risen to 3,288,000 people; and by 1950, it was up to three and a half million. So we had a rather sudden shift from an abnormally low number of births to, all of a sudden, an abnormally high number of births. By 1955, the veterans were still at it, and the number of births in that year was 4,047,000. Now 4 million births, my friends, is almost double what it was back in 1935 or thereabouts. Now, that's an astonishing increase in people, and it had an astonishing increase-or I should say, an impact on our economy. All of you remember those frantic years when schools had to be built to take care of this sudden onrush of people. What is not so generally well known, although I think many of you do know it-that this had an astonishing impact on business, and companies which were once obscure and unknown suddenly found themselves in the bigtime. We need not go into that in any detail here, but I do want to point out, as reinforcement of a point I wish to make later on, that such companies as those who made baby food suddenly found themselves big corporations. And this phenomena had about it all the certainty of a depot schedule, a train schedule. You could have only looked at what was happening to business to know what was going on in the birth department, because this growth went from baby food to schools, and schools meant bricks and cement and iron and steel-it meant desks, and companies like International Desk Company, International Textbook Company, McGraw-Hill, all of them obscure companies at one time, suddenly found themselves large and flourishing. Then came phonograph records; and we now see that these children are getting into their teens, and we have sporting goods, musical instruments, the Honda-and how we remember the Honda and how it took over the country, just about the time these kids were getting to be 15 and 16 years old. Then about 1965—if you'll take 20 years off 1965, you reach 1945—and we see that is just about when the birth rate, the number of births, began to increase. In 1945, the next thing that this mass of people became involved in was marriage and, as an inevitable consequence, they became involved in divorce. This, then, is the reason, I submit, for this large increase in the number of families who have aid to dependent children, as shown on this graph; and I submit that it will get worse-much, much worse-before it gets better. The city of Great Falls, at this time, is broke in its welfare fund. This situation is going to continue in the months and the years ahead. If you will look at the chart, on the other side of this thing, you will note that in 1966—and I will use Cascade County as an example-there were 933 children in Cascade County receiving welfare support, and just 5 years later, that number had risen to 2,355 children. You will see that, in terms of expense-I'm sorry, the expense is not stated for 1966, but it is stated for the month of September, 1971, for Cascade County-and as you will see, we spent the sum of $139,995 for that month. On a statewide basis, the number of children on aid to dependent children rose from 6,598 in September of 1966 to 14,387 just 5 years later, in 1971. Now, I've got to give you some figures here-and they're only estimates—but in 1971, we're dealing approximately with those children who were born in 1951 and now getting married, and at that time there was a birth of three and a half million people. Let us go ahead to 1982 and go back to 1962, or '61 or thereabouts, and at that time, there were 4,268,000 children born. The point I'm trying to establish here is that we are just now coming into this large increase in births, insofar as marriage and divorce is concerned, and it's going to have its inevitable impact upon the whole welfare philosophy. The money we spent in September of 1971 for aid to dependent children alone, and this is at the rate of $40 per month, was $788,067 on a statewide basis. I leave it to your imaginations to ask yourself how many schools this would have built, or how many institutions this might have built. Cascade County, with this kind of an expenditure, could have built

a school and paid cash for it in 1950. It's not the money, though, so much-the money is critical, but it's not entirely the money, because, with 14,000 young kids disenfranchised, if you please-children of broken homes, mostly; getting $40 per month for their care and support, living in sub. standard conditions, mostly with inadequate clothing and inadequate food-the medical care, however, being excellent because it's paid for by the state-1 submit that we have a rather serious wound in the body of our society, and I seriously question whether a bandage made of money is going to solve it. This is too many people to grow up under such conditions. Now, Mr. McCarvel and I were on a subcommittee that considered this, and we had several heart-to-heart talks, you might say, with Mr. Carkulis of the Public Health, Welfare and Labor Department-or-the Public Health Department, I'm sorry-and I might add, at this point, that I have rarely seen a more dedicated man and a more knowledgeable man-and the report which he issues monthly that summarizes the activities of the Public Welfare Department is, in my opinion, a minor masterpiece in statistics. Any of you people here in the body who are interested in this subject owe it to yourself to get a copy of this report and study it. The page which I submitted to you is a part of that report. And Mr. McCarvel and I asked ourselves some very searching questions, and, like most people here in the delegation when they had their committee work before them, we must confess we didn't sleep too well. We thought and thought about what we could put in the Constitution that might go to solve this problem, and, frankly, we didn't come up with anything. We had some ideas. I have an idea. It's not a constitutional idea, but I believe that this Constitutional Convention, in addition to working on a Constitution, should also serve as a forum for the debate and consideration of our more-pressing social problems, and I submit that this is one of them. And the idea that I would like to throw out for just general consideration-1 don't necessarily endorse it, it's a concept that's been in use in England for centuries; again, England has preceded us a little bit, or anticipated us-and that's the doctrine of the boarding school. If I thought we were getting our money's worth—$139,000 worth every month-1 wouldn't feel so bad, but I don't think we are. And I submit that I don't think we can allow 14,000 children in this state to grow up largely unsupervised in substandard conditions, with very little training in citizenship and esthetics and morals and all the rest of it that a solid home should provide. These kids are just not getting it. I submit it's a litter of a sort; it's children that have been—well, it's not abandoned, but almost-by people who, for one reason or another, have decided to forsake their obvious responsibilities. The boarding school concept in England has long been in effect and has long been successful. It would cost hundreds of thousands of dollars to start something here, but a pilot program could get started. And here we'd have a real chance to get something for our money, and those kids would have a real chance to grow up to be useful citizens. They'd get good food; they'd get a good bed; they'd get good supervision from trained sociologists and psychologists. And here again I might say a few kind words for the Welfare Department they do have this kind of personnel, but I suspect that they're largely frustrated by the system under which they have to work--$40 per month per child. Some would say, "Well, this is depriving the mother of her children." I think the mother, once she saw what the child was getting, would be glad to have this happen. She could then put her children in a home where she knew they were going to get some kind of care and go out and get herself straightened around. She could find a job, she could improve herself by going to school, and then go back and get her children and take them back. As it is now, most these kids get a divorce after about age 22; they have no particular skill: they're dazed; the divorce hits them; she goes and gets herself a job as a waitress; she goes and gets a job as something in a hospital; then she hires a babysitter to take care of her children and most of the money that she gets from the Welfare Department goes to pay the babysitter. So; as a consequence, we have these children being raised largely by babysitters and mothers who can't quite provide. Now getting down to the section involved, after these brief remarks; we changed the old Constitution-which stated that the county shall provide-to a provision that states that the Legislature shall provide. We did this because the evidence that we gathered at our hearing showed that these children and their mothers tended to congregate in the larger cities; they did so, I suppose, because of better job opportunities-that would be my guess. In the case of Great Falls, they might also do this because we have a county hospital there which provides pretty good care in this field. And if you'll notice on this sheet again, I circled some of the larger cities in Montana, and if you'll go down those, you'll find your own city and you will find that in the cities I circled, in 1966, they constituted 44 percent of the total. The cities I

circled were Great Falls, Kalispell, Bozeman, Helena, Missoula, Butte and Billings. There's a few others I could have added, but I just stopped at that number. And then, if you'll go to 1971, you'll see that the figure is 52 percent of the total, indicating, together with the other evidence which we took, that this migration does occur. Now, the figures alone, I will concede, don't show that. You could conclude from the figures alone that the people in cities were just getting divorced quicker, or more frequently, than the children in the smaller communities. But the evidence which we heard from Mr. Carkulis and the evidence which we heard from Mr. Ed Shubat, who is Cascade County Commissioner, stated that this migration phenomenon did occur. I'll call your attention to Chouteau County, which is Fort Benton, and you will note-it's right under Cascade County-you will note that in 1966 they had 58 children on the ADC program, and in 1971 they had only 48. Now Fort Benton is only 40 miles from Great Falls, and I think what's happening is that the children in Fort Benton and their parents are moving into the larger centers. If you'll take some of the smaller counties, you'll show that—you'll see that that same phenomenon holds true. Teton County, which is Chateau, 56 miles from Great Falls, had 39 children on ADC in 1966, and in 1972 they had only 32 children. You'll find this throughout the report, that in spite of quite a con. siderable increase in the total number of children on ADC, from 6,598 in 1966, to 14,387 in 1971, still there are quite a few counties here, the smaller counties, who show a decrease. And we submit that this is why it's so. Thank you, Mr. President,

CHAIRMAN GRAYBILL: Is there discussion of Section 2?

Mr. Monroe.

DELEGATE MONROE: Mr. President, I rise in support of Section 2, the majority report of the Health, Welfare, Labor and Industry Committee. I think they did a fine job, and I would hope this body supports Section 2.

CHAIRMAN GRAYBILL: Is there other discussion?

Mrs. Reichert.

DELEGATE REICHERT: I, too, rise in support of the committee proposal, but I would like to ask Mr. Swanberg to yield to a question.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE REICHERT: In thecourse of your committee discussion, did you consider the responsibility of the federal government? Since ours is a nation of mobility, what do you-how do you feel the federal government is going to enter into this revenue sharing picture as far as welfare is concerned?

DELEGATE SWANBERG: I'm glad you asked that, Arlyne, because I forgot to cover it in my comments. The federal government is now participating in this program. They contribute two-thirds of all funds going for the aid to dependent children, and of the remaining one-third, the county puts in one-third and the state puts in two-thirds-if you can figure out this arithmetic. It winds up to where the county provides about 10 percent-10 to 11 percent of the total money going into the aid to dependent children program. The welfare levy under the statutes is now a maximum of 17 mills, and once that 17 mills is reached and—excuse me-then that 17-mill basis is used to secure the federal and state participation. I might add, in this connection, that the federal government is also groping with this problem. There's a bill in Congress at the present time to guarantee every family in the United States-a family of four--$200 a month. It's passed the House and it's now being considered by the Senate. For the reasons I have just stated, I don't think that's the solution. It seems, in this welfare field, that the more we try to do, the worse it gets. The easier we make it to get a divorce, the easier we make it to-so that the children will be cared for, the worse the problem becomes. There has to be, in my opinion, some other solution.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President. I think it would be nice if we'd hear from people outside of Cascade County, but I don't want to waste any time in adding my approval. I actually had hoped that the committee would place the entire responsibility for the care of theindigent on the Legislature, simply because of this Supreme Court ruling which has now knocked out the residency requirement for welfare, and we get people not only from other counties but from other states, and they do all seem to flock to Cascade County because of our fine health department and our convalescent hospital, I believe. But it is no longer fair for the taxpayers of a county like Cascade County to assume this staggering burden, when

they can come in from anyplace from the outside. And I do believe that the committee is to be congratulated at least in placing this burden instead of on the county, to the discretion of the Legislature so that it becomes a state obligation, largely. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I have a couple of questions. I guess I'd like to direct them to Mr. Swanberg, if I may.

CHAIRMAN GRAYBILL: Mr. Swanberg, will you respond?

DELEGATE SWANBERG: Yes, Mr. Furlong.

DELEGATE FURLONG: I have to confess my ignorance; I'm not just quite sure how the present state law works. But you mentioned 17 mills, I think, is now the maximum on the state. Do all counties automatically have to levy 17 mills?

DELEGATE SWANBERG: No, they do not. Great Falls levies the full 17; Anaconda levies the full 17; I think Butte does; I think Kalispell does. Many of the smaller counties maybe just levy just a couple of mills, and when they levy that 2 or 3 mills, let's say, that gives them the right to secure matching federal and state funds. Does that answer the question?

DELEGATE FURLONG: May I direct another question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE SWANBERG: (Inaudible)

DELEGATE FURLONG: Do I understand you correctly, now, that whether you levy the mandatory 17 mills or not, if you levy any portion of the millage, that you, in fact, then participate equally with the counties who levy the 17 mills for federal and state support?

DELEGATE SWANBERG: You levy to the extent of the money that you levied. In other words, if you levied 3 mills and produced, say, $30,000, the state will kick in on top of that another **$20,000,** roughly, and then the state-or the government will kick in some more. But after you have exhausted that, you can't get any more federal funds; you've got to then go and make an emergency levy. The county would have to exhaust their 17-mill allowance before they got any more money from the government. Am I clear here?

DELEGATE FURLONG: I'm sure you're clear; I'm not quite.

DELEGATE SWANBERG: If a county, let's say, levied 5 mills for the Welfare Department and then ran out of money-now if they levy the 5, they're going to get matching funds on that 5 mills, on the percentages that I've mentioned-and then if they run out of money, they then have to have an emergency levy in the county, because, you see, they've only been levying 5 mills. They might conceivably have to go on up to the full 17. They have to make that emergency levy, and then that fund will also be matched. Now in the case of a county that's already at the 17-mill maximum, they just get grants from the state to take care of the deficit, because they're already at the maximum and there's nothing else they can do but make a statewide contribution.

DELEGATE FURLONG: I'd like-May I ask another question of Mr. Swanberg? Will you yield?

DELEGATE SWANBERG: Yes.

DELEGATE FURLONG: I'll just pick one at random here for my benefit; since I used to live there, I'll pick it at random. I see Liberty County, for example, in 1966, had nine children, three families, and now, in 1971, it's six and two. I have no idea what welfare they actually--or, I'm sorry, what mill levy they actually have in Liberty County. I am aware, however, of the fact that the county has bonded itself for a county hospital for-certainly not for the aid to dependent children, but for the elderly in the county. Now, as I understand what you're suggesting here, it would, in fact, then be a statewide levy which would go into a general fund and then would be distributed on the basis of-well, is it-conceivably, then, the people in Liberty County could be paying a considerable welfare which would actually be funded into such areas as Cascade and Kalispell, Flathead, et cetera?

DELEGATE SWANBERG: Make no mistake about it, you residents of the smaller counties, this is going to raise your taxes; there just isn't any shadow of a doubt. To be able to be-We have left it up to the Legislature to fix the levy; now they can do anything they want. They may leave it as it is,

but I doubt it. I would, rather, be inclined to think that now that we've removed the 2-mill limitation, they'd put on a statewide levy of we don't know how much-3, 4, 5 mills, perhaps; maybe more—and this will raise the property taxes in the smaller communities to finance this welfare program.

DELEGATE FURLONG: Mr. Chairman. I'm—

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I'm in complete sympathy with the problem. I think my problem is that I'm not in sympathy with the solution. I stand opposed to Section 2-the Assistance. Perhaps I wouldn't if I knew more about it, but as it's been explained to me right now, it looks to me like a statewide levy-many counties are going to begin to pay considerable amounts of money to levy for problems which they might, in fact, not have helped create. I stand opposed to Section 2. Thank you.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHIER: Will Mr. Swanberg yield, please?

CHAIRMAN GRAYBILL: Mr. Swanberg?

DELEGATE SWANBERG: Yes, Bob.

DELEGATE KELLEHER: Bill, if a divorced mother, say with three children, left Conrad and moved down to Great Falls because the—of the Supreme Court removal of the restriction on residency requirements, I understand that she could demand, under present law, immediate ADC aid; is that right?

DELEGATE SWANBERG: That is correct. The-Go ahead.

DELEGATE KELLEHER: Now, another question, if I may.

CHAIRMAN GRAYBILL: Mr. Kelleher, go ahead.

DELEGATE KELLEHER: May I, Mr. Chairman? Could your County Attorney in Cascade County sue the County Commissioners under either statutory law--under any Montana statutory law or be under case law and sue the County Commissioners of Pondera County to reimburse Cascade County for the money that you spent supporting those three children?

DELEGATE SWANBERG: That isn't the way it works. Most of the time that woman-that wife or ex-wife with three children-is going to make a permanent move down to Great Falls, and once she's done that, there is no particular residence requirements established; she doesn't have to live there any particular length of time any more—

DELEGATE KELLEHER: Yeah, I know that.

DELEGATE SWANBERG: -she's on welfare right now, and there is no recourse against Pondera County.

DELEGATE KELLEHER: There is none whatsoever—

DELEGATE SWANBERG: No.

DELEGATE KELLEHER: -that Cascade County can recoup that money?

DELEGATE SWANBERG: No.

DELEGATE KELLEHER: Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I think that maybe I could help Mr. Furlong here a little. I might state, for the benefit, last year-and this is 1971-72—Cascade County levied 17 mills, Deer Lodge County levied 17 mills, also Silver Bow County. Now if you want to know what Flathead levied, Flathead County levied 5.56 mills. When you start looking at this book, Mr. Chairman, it's-this is why I have been a little bit bothered about the statewide levy, when I see we go from some counties from-1 believe there's two and a half mills-3 mills is the lowest, that's in Carter County--up to these three. Now, as Mr. Swanberg has stated, you cannot get any funds from the State of Montana until you levy the 17 mills. Now, Cascade County is coming in on the 15th day of next month-this was in the *Great Falls Tribune* -to start to get some of the state funds to handle over-to carry them over till the next July first. Now this committee up there had this discussion whatever--a long time, and we debated whether we would make it a state responsibility or we would leave it to the Legislature to make the decision-so maybe we ducked, maybe we didn't; but this committee decided we would leave it to the

Legislature and take it away because it was-we were getting into trouble in a county responsibility. Now this does not mean that the Legislature has to levy a statewide levy; if we'd of made it a state proposition, then I think we would have had a statewide levy. We thought maybe we would leave some to it. Now what this is going to do to the revenue proposal of-which we have received; with the unlimited statewide levy, this could be quite a thing, Mr. Furlong. That's all I have to say on it.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I'd like to thank Charley for helping me. When he first started to help me, I was a little bit worried. (Laughter) I would like to direct a question to Mr. Mahoney, if I might.

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: (Inaudible)

DELEGATE FURLONG: I want to be sure I understood you correctly. Since you used Flathead County, I'll use it also. You say they levied five point five-tenths mills. Now did you say that they do not come in for state share?

DELEGATE MAHONEY: They-what we have-and I think what you're missing here—there's a special fund set down here that the state for divide up with the counties if they run out of welfare money; but the first prerequisite says you must levy 17 mills in order to get it. You couldn't get one cent of that. Now here's what happens. This does not affect ADC, aid to dependent children, and that. This is extra welfare money that they get-the state has a fund of-about $250,000 is held back and set off to the side to aid assisting counties; but the first prerequisite, 17 mills. So this limited here. Now-I think there is an error here, but I believe Mineral County has-is also 17 mills. I think that Mineral County--we've had some problems in Mineral. Does that answer your question?

DELEGATE FURLONG: Yes, thank you.

CHAIRMAN GRAYBILL: Mr. Anderson, you were up.

DELEGATE OSCAR ANDERSON: I was going to clear up that difficulty Mr. Furlong was having. And Liberty County is levying, currently, 5 mills. But I would like to direct a question to Mr. Swanberg. Will you yield, sir?

CHAIRMAN GRAYBILL: Mr. Swanberg?

DELEGATE SWANBERG: Yes.

DELEGATE OSCAR ANDERSON: Do you feel that this is a mandate for the Legislature to institute a statewide tax for equalization of the welfare total costs?

DELEGATE SWANBERG: No, I do not. I—

DELEGATE OSCAR ANDERSON: Would you yield for another question, Mr. Swanberg?

DELEGATE SWANBERG: Yes, go ahead.

DELEGATE OSCAR ANDERSON: Does the Legislature at this time have power and authority so that they could-say, for instance, someone from Richland County, my county, if they moved to Cascade-that they could pass a bill back for Cascade, even in view of the residency requirements that have been declared unconstitutional?

DELEGATE SWANBERG: There is no provision for that at the present time. And that used to be the law, but people move around so much these days-that's the problem-that you can't pin them down.

CHAIRMAN GRAYBILL: Mr. Anderson—

DELEGATE SWANBERG: As a consequence, the Welfare Department is recommending, and your committee is recommending, that some kind of a statewide financing program be instituted. Now whether part of it's county and part of it's state, or whether it's all state, we don't know.

DELEGATE OSCAR ANDERSON: Thank you.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I want to point out, for the record, clearly a distinct difference between the majority proposal and our present Constitution. Article X, Section 5, of the present Constitution says, "The several counties of the state shall provide as may be prescribed by law for those inhabitants who, by reason of age,

infirmity or misfortune, may have claims upon the sympathy and aid of society." The majority proposal establishes a constitutional right to a claim for the same necessary services, for the same economic assistance and social and rehabilitative. The key to it is, quite obviously, found in the comments on page 14, where they indicate the Legislative Assembly shall decide whether it will be a county levy or a statewide levy. This is legislative in nature and ought not to be in this Constitution. Our present Constitution has a permissive "may", where this is a mandatory. I move to delete Section 2, Assistance, from the article on Institutions and Assistance.

Mr. Chairman.

CHAIRMAN GRAYBILL: Your motion is to delete it?

DELEGATE MCNEIL: That's correct.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil has a motion to delete Section 2 in its entirety.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I'll be brief. It's the same reasons that we deleted the several other paragraphs from this committee report. At page 5 of the comparison of the Montana Constitution with the constitutions of selected other states, no other state with which Montana's Constitution was compared had a comparable section, for the obvious reason that it is legislative. And I'll say nothing further.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Speaking as an individual and not as a member of the committee, I would state that I have no objection to this deletion. I would simply point out, however, that it would remove the present situation, which now calls for this assistance to be instituted on a countywide basis; and since I am in favor of eliminating that, I would have no objection to deleting this whole section and leaving the entire problem up to the Legislature.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman, as one who might have a special interest in this particular section-as many of you now, I at least have been a social service worker and have some experience in the field of working with indigents—I don't know what to say about the conversations that have gone on here and the dialogue; I think they have gotten somewhat off base. Certainly all of us in the State of Montana recognize that there is a certain segment of our society that is, in some respects, unable-due to infirmities, as they mentioned here, or misfortune, age, or what have you--unable to provide for themselves. And I think maybe the question we are asking ourselves is--we're getting down to a lot of nitty-gritty dollars and cents things; I'm not saying we should neglect that, but I'm not sure we should make that our paramount topic of discussion here. Certainly if their services, social and rehabilitative-if they're going to be provided, they're going to have to be paid for; and we've talked about who was going to be paying for them. What we're suggesting in Article II is that the Legislature provide a system for economic and social and rehabilitative assistance and services. And as we see the migration from the, let's say, rural areas to the urban areas to take advantage of, maybe, some of the benefits that are available in urban areas, such as medical and what have you, it's rather unfair, maybe, that the urban areas would have to take the responsibility on of levying the 17 mills and request the state for further assistance; and maybe a rural county that doesn't have some of these services available, that they would not have to levy the 17 mills. So I guess what I'm saying is that those people who cannot otherwise provide for themselves is the responsibility of society. I don't think any of us would disagree with that. And so, the responsibility should lie with the state; and I would resist any motions to maybe, delete this section. I think the responsibility should be with the state, that we should all share in this problem of society. It's probably not going to get much better. We do have unemployment problems; we have economic problems; but the alternative to not making the state responsible for some of these things and not us taking the responsibility is much grimmer. If people are not offered these services that they need, or inadequate services, then it seems to me we create much larger social problems; and I don't want to face those consequences. So, in view of the fact that more federal aid is going to be coming in this area, hopefully, and, hopefully, we affirm the majority report of this committee to keep this section in, I think this body should take this responsibility, hand it to the state and they be responsible for this social and rehabilitative services. I urge you to keep Section 2, as it is recommended by the majority, in our Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I must say that I read the thrust of this section quite differently, maybe, than Mr. Swanberg, who I thought was quite quick to be willing to delete it. Here's the point: I have two other articles that we have finished, one on-in the field of education-and remember our original language in all reacting to the work of the Supreme Court. This original language, before we changed it: "It shall be the duty of the Legislature to provide, by taxation and other means, and to distribute in an equitable manner, funds sufficient to insure full funding of the public elementary and secondary school systems." There was a definite trend or philosophy in that article that there was a shift from local responsibility to state responsibility in the field of education. Then, when we got to Revenue and Finance, we talked about, the state respond-the state shall appraise, assess and equalize. What I saw happening in the Convention, in those two articles, was a move away from the local and county dealing with those things, to a state-equalized program. And I would read this article in the Public Health and Welfare as following that same trend and therefore to be considered rather seriously. That's the trend we're setting up, then I would say, by way of consistency, that's the way it would be. And I-if I read the recent Supreme Court decisions, I think taxation, education, welfare are all going in that direction--and that I saw this as a response to that direction; therefore, I would-I'm not saying not to delete it, but I'm saying, "Let's not delete it without some careful consideration of the trend that we're setting up in this whole Constitution." And I think it bears a lot of serious thought here, more than just sort of a casual taking care of it.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, as this rolls on here, I-it becomes more obvious to me that I must support the McNeil amendment, and I have my reasons. I took off of this chart a little bit here that Yellowstone County has 761 families on welfare, Silver Bow has 447, Missoula County has 488, and Cascade has 964. Now I'm representing five counties in eastern Montana, which is over 10 percent of the state; Treasure County has 6 families, Rosebud has 140, Garfield has 4 families, McCone has 4, Prairie has 5. I think perhaps our solution would be to secede from Montana and join North Dakota and let these counties of Cascade, Yellowstone, Silver Bow and Missoula have all their welfare residents and take care of them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Do you so move, Mr. Kamhoot? (Laughter)

DELEGATE KAMHOOT: I'm going to hang on just a little while longer, Mr. Chairman; thank you.

CHAIRMAN GRAYBILL: Some of us might call your bluff-that's my point.

Mr.—Mrs. Eck, please.

DELEGATE ECK: Mr. Chairman, I don't have the chart in front of me right now, but I know that, from looking at similar charts, that Gallatin County has been one where the welfare load has been low and our millage has been low for welfare. I also know that people who are in need from Gallatin County-and I would guess from most other counties with low welfare loads in Montana -those who are in need might struggle for a few months, or maybe even a year or two, in Gallatin County, but it won't be long before they realize that things are really better for them in Cascade County. If they have-if they are in need of a special kind of medical attention, if they have special handicaps, if they are in need of job training, all of these things-our county is not equipped to deal with welfare people or people in need of any kinds of special services,and I think that there are very few counties in Montana that are equipped to deal with them. So far as our taxpayers go, it's great that they all move to Cascade, but I think that there are a great number of people who-in Gallatin County who, for a long, long time, have felt a bit guilty about this. I think that by far the best thing for these people to do is to move to Cascade County, but I think that our people should share in the care that these people require, and the best way for us to share is through letting the State Legislature decide how we are going to share in it. Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I should be the last one getting up here defending this, because, in looking over my district, we're not so high. But I think we have to realize that we went out here and said, "We want schools financed statewide; we want to go out here and find everything else done"; but when we come to welfare—Now, I'm sure that I can look at some of these with-1 can take a county in eastern Montana—I'd just as well name it, Petroleum County-has no

hospital; they have nothing to take care of their people; they have-and they have a very nice, cheap mill levy. Now, in thecounty I came from, in Garfield County, they had a hospital, they tried to do something, and this has cost some extra money. Now, if we're going to turn around here—that is one state-and I know that we have problems, because Butte, Anaconda, Great Falls are in a different line of occupation. Now if we want to close those cities down, that's one thing. But I listened to the County Commissioners from Cascade County, and they came up there. We had Mr. Carkulis, the welfare man, up there. We had a number of people discussing this issue with us. At the time-and I'm sorry to see some of the committee now is changing-at the time we came out, we agreed to this proposition, that we knew welfare was a statewide problem, because the days of going by horseback is over. We've only got a few minutes by automobile to cross the county line. Now, all right, we heard this-and I don't know how much truth about it-that they congregate in Great Falls. They maybe do better. Maybe-It reminds me, and I shouldn't say this, but another little Russell story-and I love the man, he's done a great thing-he told about a restaurant at Shelby. He said this was the greatest place in the whole Northwest. He said all the flies come and wintered there in the winter; it was the best place to winter. Well, I think maybe it is a little better in Cascade County, but let me say this: We have a welfare department; they are selecting these people under law; then the County Commissioners have very little to say about welfare. This has been the Legislature that's done this. Now I think the time has come that-1 know some of these counties-I'm just looking at one here-three mills, Carter County. The next one is Cascade, it's 17. Now, I know, in Carter County-and I love the county; I sure got a lot of friends down there-but is Carter County asking some other county to furnish the hospital? Is Carter County going out here and asking, like Petroleum County, some of the welfare needs? Are we going to find all of our old people having to leave to go out there where they do maintain a hospital? And these cost money. And I think we should realize that this is partly a legislative proposition. We did not say "state"; we said "Legislature shall determine". If we leave this out entirely, I would question-I think we would be doing a disservice. Even in the old Constitution, they recognized there was a point for these people, indigent people, people through no fault of their own-1 think we have this to realize, and I would certainly hesitate to see this section taken out; maybe it could be amended. But please remember this-if we're going to have education statewide, and this seems to be what you agreed on yesterday, I think welfare has the same privilege in this state.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, as a supporting member of the majority report on this particular section, I think the so-called "big counties" have been picked on long enough. Take a look at Big Horn; take a look at Glacier; take a look at Hill; take a look at Lake; take a look at Lincoln County; take a look at Roosevelt; take a look at Rosebud and Valley. Now these are not metropolitan centers, but our problem is their problem, too, and it can only be solved through the adoption of, this Convention, Section 2. And I stand by the majority report.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I'm sorry, but I really am lost. And I must know if we're debating the merits of statewide welfare financing versus county and state welfare financing-is that what we are debating?

CHAIRMAN GRAYBILL: Are you addressing that question to the Chair?

DELEGATE BOWMAN: To anybody who can answer it.

CHAIRMAN GRAYBILL: Well, the committee report in Section 2, says that the Legislative Assembly-which of course, is the state—shall provide economic-such economic assistance as is necessary—

DELEGATE BOWMAN: Right.

CHAIRMAN GRAYBILL: -and the present Constitution involves the counties. And Mr. Swanberg has made it clear that, while they didn't assign the duty to the state, they're leaving it open under Section 2 to the State Legislature, whether to have it statewide or countywide. I don't think we're determining; we're giving the power to the Legislature. Now if any members ofthecommittee think I have misstated the section, please speak up. But that's what I understand. We aren't moving it from county to state; we're moving it from county-oriented to Legislative, which could go either way. We are liberalizing it.

DELEGATE BOWMAN: Well, then, could

I make an observation? Would that be in order?

CHAIRMAN GRAYBILL: Well, if you can squeeze it into any of the narrow concepts of debate that you've heard expressed here today. (Laughter)

DELEGATE BOWMAN: That's what got me confused; they're so narrow it's hard to find a place to talk.

CHAIRMAN GRAYBILL: Would you like us to come back to you, Mrs. Bowman?

DELEGATE BOWMAN: No, no. I'll regain my composure; I'm sorry. Okay. Now, the way I read it, it says that the Legislative Assembly is going to provide economic assistance. To me, that means that the state is going to do it. And it seems to me that if you want to let this be a joint effort or let the Legislature decide how it's going to be, then you have to insert the word "for" between the word "provide" and "economic". And I'm probably wrong, and I wish somebody would explain it to me. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: I have to reveal my vested interests. I am from Cascade County, and I am well aware of the problems that they have had in welfare. And I would just like to say I want to support the majority, and I do not want to delete this section.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Being a member of this committee and coming from a county that is neither metropolitan nor otherwise-and no medical facilities--our levage [sic] is 15.4, I think, to date, on welfare. I don't agree with all the welfare programs, in my own mind; but at the same time, I have to support the Section 2 as the committee has written it.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I was about ready to suggest a new approach to this. It seems to me if we strike the words, on line 12 of page 14, "Legislative Assembly" and insert therein "Fish and Game Department"-now we haven't gotten the Fish and Game Department in the Constitution yet, and it seems to me like this is somewhat indirectly related to their recreation program anyhow.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Being a member of this committee, I would resist the motion to delete this section, because, as has been mentioned by other speakers, I think that welfare should be included in the trend along with the other changing, you might say, needs of the Constitution and, as long as people are moving from county to county, that some counties are shirking their share and by this way, the way the Legislature would provide would probably be equal for everyone.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. President, also being a member of this committee and being on the subcommittee that drafted this, I could make an observation here that the County Commissioner from Cascade County made the appeal for this type of article, due to the fact that he wanted the word "state" stricken from the article in the present Constitution, thereby not being in conflict with any federal funds that would be coming into the state; and that is why we took that out and left it to the Legislature to decide. And I therefore support the majority proposal.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, so far we've been talking about nuts and bolts and dollars and cents, and I think the mere fact that we're considering deleting this article is reprehensible. I think we, as representatives of our people back home, owe something to other members of this state. I don't care what county you live in or what end of the state, I think we have a humanitarian obligation.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, I wonder if Chairman Heliker would yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I was afraid somebody was going to ask me that.

DELEGATE BURKHARDT: Mr. Heliker, it seems to me that possibly, as Chairman of the committee, you many times demonstrated a facility here on the floor of getting to the heart of

an issue and laying it open, and rather than go into great length, would you present your reasons why this is important? I feel it should not be deleted, but I'd like to hear your statement on it.

DELEGATE HELIKER: Is that a question?

DELEGATE BURKHARDT: That's a question.

DELEGATE HELIKER: I think Mr. Swanberg has very thoroughly covered the matter. It seems to me that the issue is perfectly clear.

DELEGATE BURKHARDT: How are you going to vote?

DELEGATE HELIKER: I'm going to vote for the majority report.

DELEGATE BURKHARDT: Thank you.

CHAIRMAN GRAYBILL: Mr. Studer—oh, he's not here. Mr. Skari.

DELEGATE SKARI: I see some of the problems the committee faced here. I would like to just question how far do we go with state financing? The problem of fair taxation is who pays for what. Now, how about such things as county roads, for example? These rural counties have problems, too; they're real problems. Maybe their welfare levy is considerably lower. I just took down a few statistics here. I notice that McCone County has a welfare levy of 6.5 mills, but it has a road levy of 20 mills and a bridge levy of 3. Liberty has a road levy of 15 mills, a bridge levy of 3.5, and a poor fund levy of 5—or poor--welfare, rather. Yellowstone, on the other hand, has a road fund of only 3.8, a bridge fund of 1.7 and a poor fund of 7.27. Silver Bow-while it has a poor fund levy of 17, it only has a road fund levy of 6.75; and Missoula, a poor fund levy of 12.9, has a road fund levy of 3.68. I ask you to also consider that in these counties, anyone is certainly welcome to drive on the county roads there. We have, in my rather sparse county of 2,300 people, we have, I think, 1,100 miles of road that we do touch with a blade at one time or another: I think Chouteau has something like 3,000. So I think-I realize these problems that the cities are having because of the mobile society, but we have some problems here, too, that I think are connected. Thank you.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman. In answer to Delegate Skari's analysis here, it was brought-presented to the committee that it depends on the evaluation of the land in each county how much money each mill levy-each mill will bring in on taxation, and I think this accounts for considerable difference in Yellowstone and Great Falls Counties, because the evaluation of the land and the property is higher in the Yellowstone County. This was presented to us in committee. And here we come right back to the same problem we had on Taxation and Revenue Committee, of equalization of taxes and assessment of evaluation of properties. Does that answer your question?

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, is there any room for a substitute motion up there now? Just a motion to delete some language?

CHAIRMAN GRAYBILL: We have a motion to delete the whole section. We have-1 have before me two other motions if that one's defeated, all from Mr. McNeil. I don't know what you have in mind. Could we get rid of the one to delete it, and then if it's deleted, why, we'll take yours, Mr. Wilson, and you can put another one in. If you don't delete it, when we've defeated it, you can amend it.

DELEGATE WILSON: Okay. If it's deleted, mine wouldn't fit. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I strongly oppose the motion to delete, simply because the last week or two we have been entrusting our all to the Legislature, every bit of our Taxation and Finance Article. We have to put our complete trust in the Legislature, and I think that it's ridiculous now to start quibbling about the fact that we are just entrusting them with the responsibility for providing for the indigents. And to explain to Mrs. Bowman, if you will read the comments on page 14 and 15, I'm sure that word "for" was inferred. And as I said before, I was disappointed that they didn't make it a state duty, but they didn't; they've left it up to the Legislature; and we have left everything else under the sun to the Legislature, so I fail to see now why we're worried. Thank you.

CHAIRMAN GRAYBILL: All right. Now,

the Chair wants to vote on this and some other amendments tonight, so if you have something new to add, fine; otherwise, let's begin to vote.

Mr. Swanberg.

DELEGATE SWANBERG: I just want to make one short comment, Mr. President. A little while ago, I acquiesced in Mr. McNeil's motion to delete, and that was an error. It was based on technical considerations only and did not go to the heart of the matter. I most definitely would like to see the meaning of Section 2 retained, and for that reason, I would now resist the motion to delete. That's good enough.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil, do you want to close?

DELEGATE McNEIL: Yes, Mr. Chairman. Briefly, all of the comments here, all of the debate, have been oriented toward whether it's going to be a shift from the county to the state. My concern is we're shifting from the Legislature "may" provide economic assistance to a shift to a constitutional mandate that they "shall". We are providing a constitutional right to welfare that is not in our present Constitution. Our present Constitution says the Legislature may provide economic assistance; this says they shall. And my motion does not speak to who pays for it; my-to delete this section would leave no reference in the Constitution *to* the county, which is in the present one, nor would it leave any reference to the state; it would leave the decision as to who's going to pay for it, whether it's going to be the rural areas or the city, or whomever-would leave that decision to the Legislature; and that, I submit, is where it belongs.

CHAIRMAN GRAYBILL: Very well. Do you want a roll call vote or not?

(Affirmative response)

CHAIRMAN GRAYBILL: Very well. All those in favor of deleting Section 2 in its entirety, vote Aye; all those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Absent
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Nay
Barnard	Nay
Bates	Absent
Belcher	Aye
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Absent
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Excused
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Aye
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Aye
Habedank	Absent
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay

Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Absent
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Absent
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Absent
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Absent
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Aye
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 30 delegates have voted Aye; 59 have voted No.

CHAIRMAN GRAYBILL: 59 having voted No and 39-30 having voted Aye, the motion is defeated.

Mr. McNeil, do you want us to read your Number 1?

DELEGATE McNEIL: Please.

CLERK SMITH: "Mr. Chairman. I move to amend Section 2, Institutions and Assistance, page 13, at lines 11 and 12, by striking 'It shall be the duty of the Legislative Assembly to' and substitute therefor the following: 'The Legislature may'. Signed: McNeil."

CHAIRMAN GRAYBILL: Mr. McNeil has an amendment, the purpose of which is to strike from lines 11 and 12 the language "It shall be the duty of the Legislature to" and start that sentence out by saying "The Legislature may provide economic assistance", and so forth, "as may be necessary".

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I think the intent of that is obvious; it's to conform to our present Constitution and to avoid establishing a constitutional right to welfare without the requirement of any work. I close.

CHAIRMAN GRAYBILL: Mr. Wilson, does your amendment apply now?

DELEGATE WILSON: That was my amendment. We just-1 don't know-We had mental telepathy going here, I guess, so—

CHAIRMAN GRAYBILL: Very well, I'll strike your name and assume that this satisfies you. Okay.

Mr. Monroe.

DELEGATE MONROE: Mr. President. I would resist this amendment or motion to delete those words. I think, as a social change comes about in our society, we see indications of welfare rights, or welfare becoming more of a right than it has in the past. Our committee, in the Bill of Rights, for example, had a section in our treatise in regard to this same question. And I think it's a matter of time before all of us in the United States of America have a constitutional right to assistance. And I strongly resist this motion to delete this. I do believe that all of us have a right to assistance if we cannot provide for ourselves. And I think that's what we're talking about here-is people who cannot provide for themselves, or are in a temporary state where they cannot provide for themselves. And some will never be able to provide for themselves. And I think that is their right and it is our duty, and as they're suggesting here, the Legislative Assembly-it shall be their duty to provide for those people. I definitely believe it is right, and I think we should keep this section as is proposed by the majority.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. McNeil's motion to take out the words "It shall be the duty of the Legislative" and substitute "The Legislature may".

Mrs. Bugbee-Mr. Harper.

DELEGATE HARPER: In 1889 the Constitutional Convention used the word "shall". It didn't say "the Legislative Assembly", it said "the several counties of the state shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity" and so forth. I don't think we want to step back past there.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, I rise in opposition to Mr. McNeil's motion, mainly on the-well, partly on the grounds of what we did in Natural Resources and Agriculture Article. We said, "The Legislature shall enact laws and provide appropriations to protect, enhance and develop all agriculture." We didn't say anything about working there either. I think we'd better stay with "shall" here.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. This-I hope this is not personal here, it is not intended to be. But Mr. McNeil, in presenting the thing, at the end of his sentence, used the word "welfare without any work". I must say that it touched off something in me, because it told me that behind those words was a real opposition to welfare. I'm not so sure that what we're saying here isn't an attempt, really, to kill this type of responsibility. I get that feeling-I-in that type of words that are used. The appeal that comes to me as we debate this this afternoon is, before the Convention started, someone asked-at one of those sessions where, as a novice politician, you were asked all sorts of questions-what is the requirement to be a member of the Constitutional Convention?-sort of a—one of those personality things you should have. And someone answered it-and it struck me at the time-that we need statesmen and not politicians. I suggest that we're, perhaps, approaching this problem as politicians-dividing up the state, looking across these lists that we're looking at, and the rest of it-and not as statesmen. Seems to me if we were statesmen, we would look at that state responsibility and a clear statement of the state answering that responsibility.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to support the motion that we keep Section 2 as is and against the amendment by Mr. McNeil. I feel that welfare and other types of assistance are with us, whether we like it or not; I think we have to face up to the problem. I also feel that this does not say a word whether there will be work to receive some of this assistance or not. I don't-and I oppose the motion. Thank you.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I want to make something clear here, that I have not supported any of the motions-in any way, shape, manner or form-but I want to be honest with the people that I will contact after we leave this hall, My question was, "Is this a mandate to the Legislature for statewide welfare levies?" And again, in view of Mr. Swanberg's correction to his earlier statement, I would like to know if he would yield for a question.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Yes, I yield.

DELEGATE OSCAR ANDERSON: For the record, so I can be honest with the people that contact me or I appear in front of after this Convention is over with, is this a mandate for a statewide welfare property tax levy?

DELEGATE SWANBERG: No, it is not.

DELEGATE OSCAR ANDERSON: Thank you very much. And I wanted to have that very, very clear in the record.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. McNeil's motion to substitute "The Legislature may" for the words "It shall be the duty of the Legislature-Legislative Assembly to."

Mr. Heliker, do you want to speak before we vote?

DELEGATE HELIKER: I do.

CHAIRMAN GRAYBILL: Very well, speak.

DELEGATE HELIKER: I'll speak very briefly. I hope that we will keep the language of the

majority report and speak no less strongly on this than the Constitutional Convention of 1889 did, but this is not an issue it seems to me that you should get unnecessarily excited about, and I direct your attention to the language "as may be necessary", which leaves it to the Legislature.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote. The issue is on whether to substitute the language "The Legislature may provide economic assistance" for the language "It shall be the duty of the Legislature-Legislative Assembly". If you vote Yes, you'll be voting for Mr. McNeil's motion to use the phrase "The Legislature may'.. If you vote No, you will be voting for the present Section 2. Any delegates-Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Nay
Ask ..... Aye
Babcock .. .. Nay
Barnard ..... Nay
Bates ..... Absent
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Excused
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland, ... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Absent
McCarvel ..... Nay
McDonough ..... Absent
McKeon ..... Nay
McNeil ..... Aye
Melvin. ..... Nay
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins., ... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay

Simon Nay
Skari ..... Aye
Sparks ..... Nay
Spew ..... Nay
Studer ..... Absent
Sullivan Nay
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk Nay
Vermillion Nay
Wagner.. Nay
Ward ..... Nay
Warden ..... Nay
Wilson Aye
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 27 delegates have voted Aye; 64 have voted No.

CHAIRMAN GRAYBILL: 64 having voted No and 24 Aye, the motion is defeated.

Mr. McNeil, you have another one up here; do you want it in?

DELEGATE McNEIL: Yes.

CHAIRMAN GRAYBILL: Very well. Will the Chair-will the clerk please read that one.

CLERK SMITH: "'Mr. Chairman. I move to amend Section 2, Institutions and Assistance, at page 13, line 12, after the word 'provide'by adding 'the opportunity to earn'. Signed: McNeil."

CHAIRMAN ,GRAYBILL: May I have it? Very well. Mr. McNeil has proposed an amendment which goes on line 12 in Section 2, on page 13. After the word "provide", he would add "the opportunity to earn", so that the sentence would read: "It shall be the duty of the Legislative Assembly to provide the opportunity to earn economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune may have need for the aid of society."

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I think the intent speaks for itself, and I close.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman, would Mr. McNeil yield to a question or two?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE MONROE: Mr. McNeil, I'm wondering--a person that is aninvalid in the Cascade County Convalescent Home, for example, that is on assistance; would you require them to earn their keep?

DELEGATE McNEIL: Of course not, Mr. Monroe. It says "the Legislature provide the opportunity". If they're incapacitated, they obviously would not have to work. The amendment is intended and directed to those who are physically able and capable of working who do not do so.

DELEGATE MONROE: Will Mr. McNeil yield to another question?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE MONROE: Do you think every able-bodied person that is, let's say, even temporarily on assistance should be made to earn that assistance?

DELEGATE McNEIL: Mr. Chairman, the proposed amendment provides that the opportunity to earn should be presented to them, and if the opportunity to earn their economic assistance is made available and they are physically able, I would say "Yes, they ought to before they receive it."

DELEGATE MONROE: Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: I would oppose this amendment to this particular article. It seems to me we've kind of covered it in our Section 3 of our Bill of Rights. We've suggested there that people have a right to pursue some of the basic necessities, and in that same section we also are suggesting that the people have a duty and responsibility--or corresponding responsibility, there-to take some sort of responsibility-for example, if they are receiving assistance. I don't agree with the idea that people should have to work for, let's say, welfare benefits, and I don't disagree with it either; but I know the problems that exist right now. If we're suggesting that people that are on assistance at this time go out and work for it, I think that's a great idea, and it has happened in many occasions in many of the counties in the State of Montana. The fact is that vou

tions, in many cases, because you run into union conflicts; and you would probably run into the same if you require assistance recipients to work for benefits there. It's a beautiful and a great idea, but it's rather impractical to implement. So I resist this particular amendment.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. McNeil's motion that we add the words "the opportunity to earn" after the word "provide", so that it would be the duty of the Legislative Assembly to provide the opportunity to earn.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I was certainly happy, and I know my constituents will be, when Mrs. Robinson said that we had passed something in our Constitution that the people in agriculture wouldn't have to work anymore. I didn't realize we had done that; and I'm certainly sorry, Mrs. Robinson-I'd have never voted for it if I'd known we'd done that. But I do have a question for Mr. Monroe, and I'll make it short.

CHAIRMAN GRAYBILL: For whom? Mr. Monroe, do you care to yield?

DELEGATE MONROE: I yield.

DELEGATE KAMHOOT: Delegate Monroe, I notice in your county of Cascade, and I'm sure you're quite knowledgeable on this because you work with these people, the last report here, in '71, on the chart that-was 964 families receiving aid. Do you feel that none of these people were able to work in Cascade County?

DELEGATE MONROE: As those statistics also indicate, there was 2,355 children. Now, that indicates to me that there's a lot of ADC— these statistics are indicating ADC families, you've got 964 families-now, out of that many children, there's a lot of heads of households that are one-member households, let's say it's a female member. Now, if you want her to go out and work for her assistance, well and good, but what you're doing is you're taking her out of the family unit; you're taking her out of the household; maybe you're helping getting her some training or you're having her work somewhere. That's fine, if that's what you want. But I say "Let's keep that family unit stable; let's keep that family together." Those children have rights to grow up with the mother, to grow up with the love-it's a question of where you think that the head of the household should be, and I'm saying that a good number of the heads of those households on those welfare rolls in Cascade County are heads of ADC families, and it's usually women, and I say their place is in the home taking care of that family. If they're able-bodied and they can get out and work, well and good, if they want to. But I would say the better place for them is to get these kids education, get them through school so they can provide for themselves; otherwise, we're creating a cycle where the kids are going to drop out of school and they're going to be on the welfare rolls, too.

DELEGATE KAMHOOT: Mr. Chairman, another question?

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: I didn't expect quite such a long answer, Lyle, so I'll go back to my other question. Are there any of these 964 families that would be capable of working if they wanted to?

DELEGATE MONROE: I'm sure there are. I'm sure there are.

DELEGATE KAMHOOT: Thank you. That's all Mr. Chairman. Thank you.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, to enlighten Mr. Kamhoot further, there are men in Great Falls and Cascade County who are capable of work, but we don't have jobs for them. What do they and their families do while they're attempting to get one? And I might also say that the great number of these people who come to the urban areas to find employment are unskilled and uneducated, and they seem to come from the rural areas. (Laughter)

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman, I'm in sympathy with Mr. McNeil in some aspects, but if you'll look at delegate proposal 148, this was presented to our committee, and it more or less says the same thing, but the committee rejected it because of a number of problems. First of all, it's not constitutional, but it should be, probably, looked at by the Legislature. Also, it states that the state, more or less, is the employer of last resort; so then we get into a problem with contractors and the unions. But I will have to stay with the committee and oppose the amendment.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. McNeil's motion to add the term "the opportunity to work"--or "opportunity to earn" into the sentence, so that it says: "It shall be the duty of the Legislative Assembly to provide the opportunity to earn economic assistance as may be necessary", et cetera. We'll have a roll call vote. So many as are in favor of that, say Aye—vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, 0	Absent
Arbanas	Nay
Arness	Absent
Aronow	Aye
Artz	Nay
Ask.	Nay
Babcock..	Absent
Barnard	Nay
Bates	Absent
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Absent
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Excused
Delaney	Nay
Driscoll	Nay
Drum	Aye
Eck	Absent
Erdmann	Nay
Eskildsen	Aye
Etchart	Aye
Felt	Aye
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Absent
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Absent
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Nay
Noble	Absent
Nutting	Nay
Payne	Nay
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins.	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay

Toole ..... Nay
Van Buskirk .. .. Nay
Vermillion Nay
Wagner.. Nay
Ward ..... Nay
Warden .. .. Nay
Wilson .....Aye
Woodmansey Nay

CLERK SMITH: Mr. Chairman, 19 delegates have voted Aye; 70 have voted No.

CHAIRMAN GRAYBILL: 70 delegates having voted No and 19 Aye, the motion is defeated. The issue is now on Section 2.
Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I direct a question to Delegate Swanberg, and then speak on the subject?

DELEGATE SWANBERG: Yes, I yield, Miles.

DELEGATE ROMNEY: Mr. Swanberg, I understand from our conversation that if Section 2 were passed, it is your opinion that the Legislature could, if it so desired, enact legislation and make appropriations which would be similar to what are now in effect?

DELEGATE SWANBERG: That is correct.

DELEGATE ROMNEY: Thank you.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I'll address myself very briefly to this matter. I never have heard, in this body, a more gripping and thoroughly documented statement than that which was made by Delegate Swanberg. I think he did a splendid job. As the debate progressed, I became somewhat alarmed, because it is another case where we are passing the buck to the Legislature. And in this instance, the county is passing out of the picture and the Legislature is assuming some of the fiscal responsibilities that now are in the hands of the Legislature. As a respresentative of a county, Ravalli, which has a 15.4 mill levy, so we are growing close to the charmed circle where you pay on 17 mills for welfare and then perhaps can get some more if you need it. I, perhaps, should not have been alarmed; but I'm alarmed at the progressing tendency of this body, which was initiated in almost the opening day of the debate and has been growing progressively ever since, to transfer responsibilities to the Legislature, and chiefly they end up as fiscal responsibilities. And one of these days, the request for a fiscal note is going to come into--onto this floor and we're going to have to face this drizzly specter face to face. And whereas, I'm in favor of all these reforms, such as this and the school foundation fund and the rest of these things where we must have--where the state is assuming more and more responsibility, I recognize the fact that, one of these days, we're going to have to pay for them. And I have-this is not a taxing institution, this Convention; we are handing that responsibility over to the Legislature, which will be forced with the responsibility of raising the funds. And whereas, I can support this on the basis of Mr. Swanberg's statement, I am appalled at what the future is likely to unfold.

CHAIRMAN GRAYBILL: Members of the Legislature-Members of the committee, I have before me a motion by Mrs. Bowman, which is very simple, and I'd like to put to you since no one else is up. Mrs. Bowman wants to add the word "for" after "provide" on line 12, so that the sentence reads: "Legislative Assembly to provide for economic assistance". Is that correct, Mrs. Bowman?

DELEGATE BOWMAN: "Methods for". I'm sorry, it-doesn't it say "methods for"?

CHAIRMAN GRAYBILL: "-provide methods for", I see, "methods for economic assistance".

DELEGATE BOWMAN: When I read this last night, and it's still unclear to me that this is what we're doing-perhaps the "for" is implied, but it didn't come through that way to me. And it seems to me that what we're all hung up on is that we've given the Legislature sort of a carte blanche check to write the welfare provisions for the entire state. And it seems to me that if we insert those two words, or even the word "for", that we've made it clear that this will not necessarily rest totally with the state. That is all I have to say. Thank you.

CHAIRMAN GRAYBILL: Is there any discussion?
Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, as I read Section 2, it says, "It shall be the duty of the Legislature to provide economic assistance." That's a clear mandate, and the only way that the

Legislature can provide it is by levying a tax to fund it. And I rise in support of Mrs. Bowman's amendment, which gives the Legislature some leeway so that they can say that the counties take up to a certain portion and then the state will fund the rest, as they are doing now, or perhaps the number of mills can be changed; it leaves it flexible. But if we adopt this article the way it is now, there is no leeway left to the Legislature, but it must provide economic assistance and the rest of these things; and the only way it can provideitis to appropriate out of the general fund or levy taxes to fund the cost. But with the amendment, I think we've got—we have the flexibility that we're striving for; that it will give the Legislature an opportunity--say that the counties must levy up to X-number of mills and then after that the state steps in. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Aronow yield to a question?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I yield-I will.

DELEGATE BLAYLOCK: Cedor, is it possible, then, for counties--under this present state law, can they leave their county levy ridiculously low so that they don't even try for state assistance, and thus run their people out and make them go to Cascade, Yellowstone, Silver Bow and the rest of them?

DELEGATE ARONOW: Well, I don't know the rules and regulations of welfare. I think there are some state standards that are set by the Department of Welfare that they have to pay up to a certain amount, and I think the welfare worker in each county is supposedly trained and guided and instructed by the State Department.

CHAIRMAN GRAYBILL: Mrs. Sullivan, did you want the floor?

DELEGATE SULLIVAN: No, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Speer, do you want the floor?

DELEGATE SPEER: Mr. Chairman, I am sorry. I cannot agree with my friend, Jean Bowman. To me, this section reads specifically that the Legislature is to provide the assistance, and I think that is the obligation. I do think thatthereis a trend in our federal government to make this a national responsibility, and we already—our state and local units are sharing in federal funds; so I would resist this amendment to change it to provide methods.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, as I interpret this Section 2 as we have worked on it so far, it would seem to me that we've locked in forever into the Constitution the right to welfare, without any requirement that an able-bodied person will be required to earn a living. And I think that this is-1 think we should take a look at this; I think we should provide the Legislature with the necessary flexibility to provide this assistance; and I think in their wisdom they, perhaps, will. We all know that welfare is a gigantic problem and it is going to need the sensible meditation of the Legislature and they are going to need flexibility to be able to provide for this assistance. And I think that we really need to consider this, and I am in support of Mrs. Bowman's amendment.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I'm opposed to the Bowman amendment. This is a state responsibility; we cannot-1 didn't want to talk, and the hour is late. We can't put any barricades on the highway from Forsyth to Billings; we can't and we won't stop a widow from Forsyth with three kids coming to Billings because we have good medical facilities and because we have jobs in Billings. The whole thing is that, and I'm convinced that if we don't do this, the Supreme Court, through the courts, are going to order us to do this statewide, just the way we handle education. And I submit that if we don't pass this thing the way it was written by the committee, and I'm rather shocked that the committee-I thought the committee would be a little stronger-I realize that, one by one, some of them have gotten up, but I thought they would be a little bit stronger about this matter. And if we don't approve this thing the way it is, we may as well go back-send a gallon of paint to the Statue of Liberty and paint out the words that says "Send me your poor". Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I resist the amendment. It is unnecessary, superfluous, and besides, it's excess baggage. The language of the majority report is perfectly clear—"the Legislature shall provide", and that leaves it to the Legislature to find the means and the

methods and the funds to provide, and they may do it as they see fit.

CHAIRMAN GRAYBILL: Mrs. Bowman, do you want to close? You don't have to.

DELEGATE BOWMAN: (Inaudible)

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Bowman's amendment to add the words "methods for" after the word "to provide", so that it would read: "The Legislative-the duty of the Legislative Assembly to provide methods for economic assistance, social and rehabilitative services as may be necessary." A roll call has been called for. All in favor of the motion, say Aye; all opposed say No-vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Absent
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Absent
Barnard ..... Nay
Bates .. .. Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain. ..... Absent
Campbell ..... Nay
Cate .. .. Nay
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross .. .. Nay
Dahood ..... Nay
Davis ..... Excused
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Absent
Martin ..... Absent
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Nay
Murray .. .. Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay

Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer Nay
Sullivan Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk .. Nay
Vermillion Aye
Wagner ..... Aye
Ward ..... Nay
Warden .. .. .. Nay
Wilson ..... Aye
Woodmansey N a y

CHAIRMAN GRAYBILL: Who asked for the roll call? Monroe, did you ask for the roll call? Oh, Heliker asked for the roll call. Very well.

CLERK SMITH: Mr. Chairman, 36 delegates have voted Aye; 52 have voted No.

CHAIRMAN GRAYBILL: 52 having voted No, the motion is defeated. Members of the committee, you have before you, on the recommendation of Mr. Swanberg when this committee does arise and report, after having had under consideration Section 2, that we recommend the same for adoption. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. So ordered.

Mr. Eskildsen, can the committee rise and report progress?

DELEGATE ESKILDSEN: I-Mr. Chairman, I move the committee rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is the committee rise and report progress. All in favor, say Aye.

DELEGATES: Aye

CHAIRMAN GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Members of the committee, may I have your attention. While we're waiting for the report to be typed, I would like to make two announcements, even though it's out of order. First of all, there's-this Convention bought a number of Stenorette tapes; we are unable to locate all the tapes. Some of them were used-we have a number of them that are used and have material on them-but we cannot find all of them. If any of you delegates have put things on tapes and happen to have them yet or are using those tapes, we'd like you to let Mr. Baucus know so we can locate as many of our tapes as possible. Number two: the Chair would like a show of hands-you all understand that Miss Jeannette Rankin will be with us for awhile at 8 o'clock tonight. I'd like a show of hands as to how many are coming so I can decide whether to hold the meeting in here or in the Senate. All right, sufficient members have shown an interest that I think we'd better hold it in here. There was some suggestion that it be in the Senate, but it looks like about two-thirds will be here, and I think we'll hold it right here. So it will be here at 8 o'clock tonight with Miss Rankin. Will the clerk please read the committee report.

CLERK SMITH: "March 14th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 11—report Number 6 of the Committee on Style and Drafting, Environment and Natural Resources, recommend as follows: that the committee rise and report and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: The motion—does anyone want the committee report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: All right. Then—

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report that we rise and report progress. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, say NO.

(No response)

PRESIDENT GRAYBILL: So ordered. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move that we adjourn until March 15th, 9:oo a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 6:10 p.m.)

March 15. 1972 **Fortv-Sixth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: If you'll all rise, Delegate Harbaugh will lead us in the invocation this morning.

DELEGATE HARBAUGH: Let us pray. Eternal God, today we would offer You praise in the words of the psalmist: "Bless the Lord, 0 my soul; and all that is within me, bless his holy name. Bless the Lord, 0 my soul, and forget not all his benefits, who forgives all your iniquity; who heals all your diseases; who redeems your life from the pit; who crowns you with steadfast love and mercy; who satisfies you with good as long as you live, so that your youth is renewed like the eagles." For the mercies granted to each one of us, 0 God, and for the beauty of this day, for the work that You have for us to do, we offer You our praise and our thanksgiving, through Jesus Christ our Lord, Amen.

PRESIDENT GRAYBILL: We'll take attendance today on the voting machines by voting Aye.

CLERK HANSON: Delegate Berg, Delegate Drum, Delegate Kamhoot, Delegate McKeon, Delegate Reichert, Delegate Roeder. Delegate Berg, Delegate Drum, Delegate Reichert, Delegate Roeder.

PRESIDENT GRAYBILL: Very well, take the attendance.

Aasheim ... Present
Anderson, J. ... Present
Anderson, 0.. ... Present
Arbanas ... Present
Arness ... Present
Aronow ... Present
Artz ... Present
Ask ... Present
Babcock ... Present
Barnard ... Present
Bates ... Present
Belcher ... Present
Berg ... Absent
Berthelson ... Present
Blaylock ... Present
Blend ... Present
Bowman ... Present
Brazier ... Present
Brown ... Present
Bugbee ... Present
Burkhardt ... Present
Cain ... Present
Campbell ... Present
Cate ... Present
Champoux ... Present
Choate ... Present
Conover ... Present
Cross.. ... Present
Dahood ... Present
Davis ... Present
Delaney ... Present
Driscoll ... Present
Drum ... Absent
Eck ... Present
Erdmann ... Present
Eskildsen ... Present
Etchart ... Present
Felt ... Present
Foster ... Present
Furlong ... Present
Garlington ... Present
Graybill ... Present
Gysler ... Present
Habedank ... Present
Hanson, R.S. ... Present
Hanson, R. ... Present
Harbaugh ... Present
Harlow ... Present
Harper ... Present
Harrington ... Present
Heliker ... Present
Holland ... Present
Jacobsen ... Present
James ... Present
Johnson ... Present
Joyce.. ... Present
Kamhoot ... Present
Kelleher ... Present
Leuthold ... Present
Loendorf ... Present
Lorello ... Present
Mahoney ... Present
Mansfield ... Present
Martin., ... Present
McCarvel ... Present
McDonough ... Present
McKeon ... Present
McNeil ... Present
Melvin ... Present
Monroe.. ... Present
Murray ... Present
Noble ... Present
Nutting ... Present
Payne ... Present

Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg..	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson..	Present
Woodmansey	Present

PRESIDENT GRAYBILL: Mr. Clerk, before announcing the attendance, Mr. Roeder and Mr. Berg are present.

CLERK HANSON: Mr. President, 98 delegates present, 2 absent.

PRESIDENT GRAYBILL: Very well, the journal may so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: "March 15, 1972. Mr. President: We, the Committee on Style, Drafting, Transition and Submission, transmits herewith revisions of the Education Article, Report Number 10, for consideration by the Convention, John M. Schiltz, Chairman; William A. Burkhardt, Vice-chairman." Mr. President.

PRESIDENT GRAYBILL: Very well. The report of Style and Drafting on Education is placed on General Orders and should be on your desks this morning. Order of Business Number 2.

CLERK HANSON: None

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Members of the body, there are threereports-Judiciary, Natural Resources, and Revenue and Finance-which should be back to us yet today on Order of Business Number 10 in the Committee of the Whole and then, with very minor changes, can be placed on Order of Business Number 5. So that's what we anticipate there. Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. There are none now. We anticipate two resolutions before the day is out, to set up those committees, Mrs. Reichert, your presence is noted for the journal. Order of Business Number 8, Unfinished Business.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well. The motion is to resolve the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole, Graybill, Chairman)

CHAIRMAN GRAYBILL: Mr. Clerk,

CLERK HANSON: The Style and Drafting Proposal Number 8, Bill of Rights, having been duplicated and placed on the delegates' desks on the 13th day of March, 1972, at 12:00 a.m. noon, will be in compliance with Rule 23 of the Montana Constitutional Convention as of 12:OO noon, March 15th, 1972. The following committee proposals are now on General Orders: Public Health, Local Government, General Government, Style and Drafting Number 8, Bill of Rights, and Style and Drafting Education. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Since the Bill of Rights has not been on the desks 48 hours, the matter up before us this morning automatically on Order of Business Number 10, General Orders, is to continue with Public Health, Welfare, Labor and Industry Committee, and we will do that. Members of the committee, we had completed nonmunicipal corporations and institutions and assistance yesterday. Today we're ready to start on the labor proposals. The majority proposal is found on page 8; if you'll turn to page 8 of your booklets. The clerk will please read the title and Section 1 of page 8.

CLERK HANSON: "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on labor to read as follows: Labor. Section 1, Department and commissioner. The Legislative-"

CHAIRMAN GRAYBILL: Mrs. Sullivan, for what purpose do you rise?

DELEGATE SULLIVAN: Mr. President [Chairman], my Section 3 on the Institutions that we talked about yesterday.

CHAIRMAN GRAYBILL: Oh, I see. Mrs. Sullivan did have an amendment up here, and I see now that it is to-for Section 3, for Institutions, and it wasn't in the book. And so, we'll back up a little bit, and the clerk will read Mrs. Sullivan's Proposal Number 3-Section-the proposed Section 3 for the Article on Institutions.

CLERK HANSON: "Mr. Chairman. I propose as Section 3-quote: 'Section 3. Restoration of rights. Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. All rights necessarily suspended shall be restored upon termination of the state's responsibility.' Signed: Veronica Sullivan." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mrs. Sullivan has a proposal to add a Section 3 to the Institutions and Assistance section. You have it before you, except the copy you have before you does not have her title in. She'd like the title to be "Section 3, Restoration of rights"; and you should write that in on your copies ahead of the underlined text-Restoration of rights. Mrs. Sullivan, your proposal is accepted for debate, and would you like to explain it, please?

DELEGATE SULLIVAN: Thank you, Mr. President [Chairman]. During the past few weeks, we have been reviewing all facets of government. We have extended the scope of our proposed Constitution to guarantee certain rights to large segments of our people, ranging from the 18-year-old to the restoration of rights of the criminal who has paid his debt to society and has been rehabilitated. There still exists, however, one group that deserves our consideration. It is for this reason that I rise today in defense of the rights of the mentally ill. We are all aware that, down through the years, the mentally ill have been treated largely with fear and suspicion. Our communities have put these unfortunates in hospitals or asylums and have literally forgotten all about them. In this day and age, we can no longer consider the mentally ill as cursed or as incurable. There have been unbelievable advances in medical care and treatment, particularly in the last decade. There has been much emphasis placed on rehabilitation not only of the criminal, but of the retarded, the handicapped, and the mentally ill. I am not concerned with the procedures, purely legislative, by which persons are sent to our various institutions. However, I am concerned that all individuals are treated equally by our Constitution. Since patients committed to Warm Springs State Hospital on standard commitments lose all their civil rights while in the hospital and until such time as the released patient goes through the involved and costly process of petitioning the courts to restore his or her rights, then why isn't this policy applied to all the mentally ill throughout our state? Why is it that individuals who can afford private psychiatric care and treatment or those who are handled by our community mental health clinics on an outpatient basis are not deprived of their rights? Why this double standard? This amendment in no way changes or recommends changes in the present care and treatment of patients in these institutions. It merely returns all rights to these individuals when, in the rehabilitative process of their treatment, they

are considered by the professionals to be capable of functioning in society and are therefore discharged from the responsibility of the hospital. These people cannot function as effective members of society unless they have all the same, full rights. To deny these rights and to expect them to act as if rehabilitated is to expect the improbable. Therefore Mr. Chairman and fellow delegates, I urge you to vote Yes on this amendment. Let us, in Montana, be in the forefront in providing our mentally ill with the opportunities for complete rehabilitation. And I wrote that before I heard Jeannette Rankin last night. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, fellow delegates. The amendment that you have just listened to is a very important amendment. The essential quality of any type of system of justice is equal treatment. In the Bill of Rights, in Section 28, this committee approved the following language: "Laws for the punishment of crime shall be founded on the principles of prevention and reformation, and full rights shall be automatically restored upon termination of state supervision for any offense against the state." What happens to the mentally ill, who are ill through no fault of their own whatsoever; one of the tragic consequences of human personality? If an individual becomes mentally ill and has to be committed, he must, by the courts, be judged an incompetent person. When his treatment is completed and he is released, he must hire a lawyer. He must go to court. He must present his petition, evidence in support of it, and ask the court to enter an order restoring him to competency. Isn't this a truly shattering psychotraumatic experience for someone who has undergone a treatment, a hospitalization that has some bearing upon his personality's stability, and then have to walk into a court of law, even though he has been released by his medical attendant as fully competent, and once again announce to the world that he suffered from mental disease? What good reason is there for not allowing these individuals to be automatically restored to capacity upon their release from state supervision? When you're judged an incompetent person, your civil rights are taken away from you. If we can do that for the individual who insults society, who injures society, and who steals from society, we most certainly can do it for someone who is unfortunate enough to suffer from the type of mental disease and defectthatrequires placement in an institution. I commend to you the amendment that is before you. It states the same right for the mentally ill as the right for the convicted: "All rights necessarily suspended shall be restored upon termination of the state's responsibility." What could be more just and more right than that for the mentally ill? Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I would also rise in support of this. I'd like to see us do it 98 to nothing. It seems to me that we live in a time when we recognize that mental illness is [not] something that one should be ashamed of or put down for, but somehow helped to become part of society again. As one who works with people both before and after hospitalization, it's a very difficult thing to come back after a loss of confidence that always goes with the feeling that your perception of the world is somehow not accurate. And it certainly doesn't help, when you're trying to rebuild a fabric of trust in the world around you, to have society take a position that you're no longer trustworthy. And I think it would be a great step forward, and I would like to support it.

CHAIRMAN GRAYBILL: The Chair will recognize Mr. Drum's presence, and it might possibly be a hundred to nothing, Mr. Burkhardt.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I should also like to rise in support of this amendment. I think the most powerful argument that Mrs. Sullivan made to me when we were talking in private, and she reiterated here on this floor, is the fact that if people have the economic wherewithal to go to private hospitals, then they don't suffer the loss of these rights. It's only those that we must commit to our state hospitals to whom we apply this law that they have to go through the courts to have a restoration of their rights. And I believe that, with the rest, that this would be a real step forward for the State of Montana, and I support her amendment.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. Is this the-I'm not sure-1 lost the copy that was put on my desk, and-is this the one that's dated March third?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE HELIKER: Well, I have no objection to the intent, but the language says "persons committed to any such institutions", which refers to the Section 1 that we adopted, which replaces a section in the present Constitution which enumerates a group of institutions including educational institutions and so on. It's certainly not confined to mental institutions. I would suggest, therefore, that Mrs. Sullivan amend this to make it specific.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I would resist the amendment simply because I think it's necessarily implicit, without any ambiguity at all, that if you're committed to any institution where your rights are jeopardized or suspended or taken away, that upon release from that particular institution, upon release from supervision, that you should have those rights restored to you. I don't see the problem that Delegate Heliker sees in it, and for that reason I would suggest there not be any amendment.

CHAIRMAN GRAYBILL: Mr. Studer-or Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Yes, I indicated that you may ask him a question.

DELEGATE SCANLIN: Thank you, Mr. Chairman. Was there a proposal, Mr. Dahood, that was submitted to your Committee on Bill of Rights relative to this particular amendment?

DELEGATE DAHOOD: There was a proposal submitted at a point when there was some confusion as to whether or not it should go within the Bill of Rights or within Public Health and Welfare. It was decided that it should go into this particular Public Health section. Our committee, 11 to nothing, was in favor of this particular right.

DELEGATE SCANLIN: Will Mr. Dahood yield to another question?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE SCANLIN: Mr. Dahood, would it be impossible at this point to have it

DELEGATE DAHOOD: I think it would require suspension of the rules, and I don't think it would be impossible to accomplish, Delegate Scanlin. But on the other hand, I think that inasmuch as we do have an article on Institutions and Assistance, I think as a Section 3 it would necessarily, logically fit within the ambit of this particular proposed article.

DELEGATE SCANLIN: Well, thank you, Mr. Dahood. As a member of the majority report on this committee, I would resist the amendment and have it referred to the Bill of Rights somehow or other. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I withdraw my objection, since no one is likely to be committed to any of these other institutions. That's the point, right? That we-okay-1 have no objection.

CHAIRMAN GRAYBILL: Is there other discussion?

Mrs. Sullivan, do you want to close?

DELEGATE SULLIVAN: Mr. President [Chairman]. I would just like to add one thing. I would rather it be here with institutions, and I do not mean just Warm Springs, so I'd rather we didn't change it in that. But with all of the excellent help I've had, I close. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mrs. Sullivan's motion to add a Section 3 to the article on Institutions and Assistance, the section to be titled "Restoration of rights" and the text to be as you have before you.

Mr. Blaylock.

DELEGATE BLAYLOCK: Roll call.

CHAIRMAN GRAYBILL: All right, we'll have a roll call. "Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. All rights necessarily suspended shall be restored upon termination of the state's responsibility." So many as are in favor of that motion, vote Aye on the voting machine; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ... . Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... A~ e
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugb ee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 95 delegates voting Aye, 1 voting No.

CHAIRMAN GRAYBILL: Very well, 95 having voted Aye and 1 voting No, the amendment carries and that part will be included in

Institutions and Assistance. Now, Mr. Clerk, let's turn to page 8. We're on page 8 now of your booklets on the Labor Article; page 8. Will the clerk please read the title and the Section 1.

CLERK HANSON: "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on labor to read as follows: 'Labor. Section 1, Department and commissioner. The Legislative Assembly shall provide for a Department of Labor and Industry. The department shall be under the control of a Commissioner appointed by the Governor, confirmed by the Legislature.'" Section 1, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel -Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of the proposed Labor Article of the Public Health, Education-Public Health, Welfare, Labor and Industry Committee, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. We have a problem of order here. If the committee will refer to page IO-if you read this over, you'll note that the majority report deletes from the old Constitution all parts of the Labor Article except Section 1, which it revises considerably. Mr. McCarvel has proposed an amendment relative to the old Section 4, which he has numbered Section 3. In order to discuss this subject intelligently, I think it would be desirable if Mr. McCarvel's amendment could be brought in right after Section 1. Are you with me, Mr. Chairman? Mr. McCarvel has before us on the desk and-proposed an amendment to the proposed Labor Article which he has numbered Section 3 and titled "Eight-hour day."

CHAIRMAN GRAYBILL: Yes.

DELEGATE HELIKER: I would like, with Mr. McCarvel's approval, to have that numbered Section 2, so that we can discuss it in connection with the old Labor Article and right after we discuss Section 1. Because its not-it would be out of order to take it after we discuss the merit sys-

CHAIRMAN GRAYBILL: Is Mr. McCarvel's Section 3 a committee amendment, or is it just Mr. McCarvel's? The rule is that we adopt new sections at the end, and I only adopted Mrs. Sullivan's when we did because it was the end of that article. And maybe I should have put it off till the end of the discussion, but it's been our practice to adopt new sections after we adopt everything else. But my question is-my preliminary question is, is this Mr. McCarvel's only or does the rest of the committee agree with it?

DELEGATE HELIKER: This is Mr. McCarvel's amendment, with which I concur. There's been no committee action on it.

CHAIRMAN GRAYBILL: Well, why don't you-1 think the Chair will rule that you may refer to it, and so forth, and it may be styled anywhere that Style and Drafting wants to put it. But I think in all fairness to the way we've been doing it that it ought not to be a part of the committee's proposal. We'll go through the committee's proposal, and we'll take other new matter later, but you may certainly refer to it and discuss it. Okay.

DELEGATE HELIKER: All right, that's fine. With respect to Section 1, this is an abbreviation of the-of Section 1 of Article XVIII of the present Constitution. The proposal retains a constitutional Department of Labor. You will recall that the old section-or the present section, I should say, creates a Department of Labor and Industry and a Department of Agriculture. We've already readopted the constitutional status of the Department of Agriculture. Section 1 of this proposal would retain constitutional status of the Department of Labor and Industry. However, it deletes the requirement in the present Constitution that the department be located at the Capitol. It retains a constitutional office, but deletes reference to a specific term. It retains the requirement that the Commissioner be confirmed by the Legislature or the Senate. The committee felt that this was as far as we wanted to go in restricting the legislators' discretion with respect to this office. It is our intention that the Legislature may leave the Commissioner subject to removal by the Governor at his pleasure, or may in its discretion provide a definite term of office and/or require that he be removable only for cause. As under the present Constitution, the powers and duties of the Commissioner are left to legislative specification. And

from this recommendation with respect to the deletion of a specific term for the Commissioner of Labor. Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, would Delegate Heliker yield to a question?

DELEGATE HELIKER: Yes.

DELEGATE ARBANAS: You probably don't have your-I've been comparing this with the Department of Agriculture Article, which I feel much more satisfied with. It says simply, "There shall be a Department of Agriculture." My reasons would be that the last part is certainly already in the Executive Article, about appointed by the Governor and confirmed by the Senate, in the 20-department section; and secondly, that the Commissioner might well be the model now but not the model 10 years from now. How doyoureact to that idea of just, in the Constitution, authorizing the department and not specifying any further?

DELEGATE HELIKER: Well, it's not a matter on which I have a great deal of feeling one way or the other. Some of the other committee members may have. I would point out to you that we didn't go nearly as far as the Agricultural Committee did in writing into this mandate to the Legislature to specify duties and provide funds and all that other stuff that we did put in there.

DELEGATE ARBANAS: Mr. Chairman. I'm not prepared to do this, but I would like to test the idea before the group and to propose an amendment that the final sentence will be deleted from Section 1 of the majority report on Article XVIII.

CHAIRMAN GRAYBILL: Section 1 will be deleted from—

DELEGATE ARBANAS: The final sentence.

CHAIRMAN GRAYBILL: The last sentence of Section 1, on page 8?

DELEGATE ARBANAS: Yes, so the article would read: "The Legislative Assembly shall provide for a Department of Labor and Industry, period".

CHAIRMAN GRAYBILL: All right. Do you want to make a substitute motion to that effect-or an amendment to that effect? An amendment?

DELEGATE HELIKER: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay. Mr. Arbanas has an amendment, the substance of which is to delete the last sentence of Section 1 on page 8 of the Labor Article. Is there further discussion?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I ask Mr. Heliker a question, please?

CHAIRMAN GRAYBILL: Mr. Heliker, will you yield?

DELEGATE HELIKER: Yes.

DELEGATE BUGBEE: George, is this—of the Executive Department of the 20 departments-is this meant to take the place of the 19th department, which is the only one left free?

DELEGATE HELIKER: Just a moment. I'm not sure what the answer to that question is.

DELEGATE BUGBEE: Well, I submit that this is really an important question, because when we-when the State of Montana voted for executive reorganization, essentially they were voting to strengthen the Governor's hand, to give him flexibility in the future to move one department; when they were phased out, to be able to move them around, change them at his discretion. I, myself, was very interested in having a Department of Local Government. I felt that if the 19th department was going to be taken up with anything, it should have been the Department of Local Government. But I resisted this on the very basis that I just didn't feel that it's good government to write something in with rigidity in the Consitution when he's going to need that kind of flexibility.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Might I refer this question to Charley Mahoney? He has all these things at his fingertip. Charley, where is that department now?

DELEGATE MAHONEY: It's one of the separate departments that we have. And it's Labor, and they've got the Unemployment Compensation. This is already one of the departments, Mr. Chairman. It's already one of the departments of state government. In the-Labor is one of them, and I think Mr. Smith is some-secondly-1 don't

know who-1 think he heads it-1 think he's heading the whole department-Smith's heading the whole department. Unemployment Compensation, everything is under him.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Is it presently called the Department of Labor and Industry?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I can't give you the exact name on it, Mr. Chairman, but it's-isn't Unemployment Compensation-the whole works is in there in one group. But I can't give you the name, but I can look it up for you.

DELEGATE HELIKER: Well, Mr. Chairman, I think the answer, then, to Mrs. Bugbee's question is this wouldn't really make any change in the number of departments.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, I disagree. I think by writing it into the Constitution you do write in inflexibility, and this is really not what we're here to do. That department is now being taken care of and being taken care of, I think, quite well. And I don't see why we should tie the hands of the Executive Department by writing this in. And I move to delete it.

CHAIRMAN GRAYBILL: All right. Now, do I understand that you've made a substitute motion to delete the entire section? Is that right, Mrs. Bugbee?

DELEGATE BUGBEE: Yes, sir.

CHAIRMAN GRAYBILL: Very well. The situation now is that Mr. Arbanas moved to delete Section-the second sentence. But Mrs. Bugbee has now moved a substitute motion to delete all of Section 1 of the Labor Article. Mrs. Bugbee, are you finished discussing it?

DELEGATE BUGBEE: For the moment.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: May I ask Mrs. Bugbee a question?

CHAIRMAN GRAYBILL: Yes. Mrs. Bugbee?

DELEGATE BUGBEE: Yes.

DELEGATE HELIKER: Mrs. Bugbee, when we came to this selfsame article of the present Constitution under the report of the Committee on Natural Resources and Agriculture, why didn't you move to delete the Department of Agriculture?

DELEGATE BUGBEE: I did. We discussed it.

DELEGATE HELIKER: All right then, Mr. Chairman.

DELEGATE BUGBEE: No, I'm talking about the Department of Agriculture. Mr. Gysler and I, we went around in that. And he said no, that that was not intended in any way to be one of the 20 departments. It's simply floating. That's my understanding, right?

CHAIRMAN GRAYBILL: Mrs. Bugbee, you're still answering. Are you through?

DELEGATE BUGBEE: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Well, may I inquire of Mr. Gysler to straighten this out? What is the answer to that?

CHAIRMAN GRAYBILL: Mr. Gysler, will you yield?

DELEGATE GYSLER: Yes, I'll yield. Mr. Heliker, as Mrs. Bugbee said, we did have a conversation back and forth on this. At that time I explained, as you have just explained, that Agriculture is-the Agriculture Department is presently oneofthe20, justlikeLaborisoneofthe20 at the present time. I'm sure we're both put--wanted these in there for the same reason; that these are two things that, you know, we know are always going to be there and will always be a department.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Thank you, Mr. Gysler. Mr. Chairman, I resist the proposed motion to delete on the grounds just stated by Mr. Gysler-that these are two parallel and important functions of government which have been there by constitutional provision and will be around. We have provided for a constitutional Department of Agriculture. I think we must, in interest of consistency, provide for a constitutional Department of Labor and Industry. It should create no problems that weren't created by the provision for a

Department of Agriculture.

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim.

DELEGATE AASHEIM: Well, Mr. Chairman. I happen to have a chart from the organization of the Executive branch of government here with me, and they have activated the Department of Labor and Industry. And they had a Board of Labor Appeals as a department under the Department of Labor and Industry. But this has been activated according to this chart, if that was the question Mrs. Bugbee wanted to know.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I'd like first to direct a question to Mr. Aasheim. Would he yield?

DELEGATE AASHEIM: I'll yield, but I don't know if I can answer it or not.

DELEGATE ECK: You've got the chart.

DELEGATE AASHEIM: I have the chart, yes.

DELEGATE ECK: Is it true thatrightnow the Department of Agriculture is headed by a board rather than-1 mean the Department of Industry and Labor-is headed by a board rather than a department head?

DELEGATE AASHEIM: It just says that the Governor has under his jurisdiction the Department of Labor and Industry. And the Board of Labor Appeals is a separate board under the jurisdiction of the Department of Labor and Industry. That's all I can tell you.

DELEGATE ECK: The Board of Appeals, did you say?

DELEGATE AASHEIM: The Board of Labor Appeals, yes.

DELEGATE ECK: Mr. Chairman. I agree very much with Mrs. Bugbee's point that it is restrictive in a Constitution to include specifications of various departments. However, I think that in light of the fact that we already have named a Department of Agriculture, and I don't think that we're at all likely to go back and reconsider our action, or could, I think that also a Department of Labor and Industry is really required. I think that there's no doubt that any change is likely to occur in the next hundred years, at least, in our state government which would make such departments unwarranted. And, therefore, we're not really hindering state government. **I** don't think it needs to be in the Constitution, and I would certainly support Mr. Arbanas' suggestion that the last sentence of Section 1 be deleted.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. I rise in opposition to both of the amendments-or the motions-the motion to delete the section and also the motion to delete the last sentence. I am always amazed at the various statements that are made in these halls, and in other halls of discussion and debate, in which it gets up and teams to give the idea that some industry, like agriculture or mining or logging or services, is the greatest industry in Montana; it's the leading industry in Montana. I'm wondering how far any of these industries would get without labor. I have a farm, and I wouldn't do very much without labor. You who run lawyer offices wouldn't do very much without labor; you who aredoctors-any business. I don't need to clutter up the record with naming the various industries or businesses that are dependent upon labor. And I think it is very nearsighted when we start to delete and to degrade the Department of Labor. Style and Drafting tried to make the Agriculture Department a little more understandable by the rearrangement of words, and they were rather emphatically told that they wanted the words just the way the Agricultural put them in the Constitution. And I think the Labor Department wording is not any more than adequate, and it's a cinch we do not want to delete them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates, you were up.

DELEGATE BATES: Mr. President [Chairman], fellow delegates. Just a few days ago, we added a Commissioner of Education. This was not a constitutional-status position before; both the Commissioner of Agriculture and the Commissioner of Labor have been. 1 agreed with the Department of Agriculture being in the Constitution, because I thought it was important. I would have preferred a Commissioner, but we-the general agreement was for a department. I feel this should not be deleted. It is very important, and I oppose the amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman. If

you'll refer to page 43 of the old Constitution, both a Department of Labor and Industry and also Agriculture is in the first section. And it was the consensus of our committee to split these up. They'll remain the same as they've already been in the Executive branch; they've been organized for a number of years. I resist the motion to delete. I will go along with Mr. Arbanas' deletion of the last sentence, as a member of the committee.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: As a member of the committee, I also resist the motion to delete, because I do feel that Labor is one of our important departments, and I would like to see it in the Constitution.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman]. As a member of the committee, I also resist the motion to delete.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Mr. Chairman, thank you. I agree with Mr. Heliker that in-as consistency is concerned, we did approve in this Convention the retention of the Department of Agriculture, and there is just as great reason to retain the Department of Labor and Industry. However, I want to point out that I did not vote to retain the Department of Agriculture in the Constitution, and therefore I feel that I must be consistent; that these are not constitutional matters. They are in the statutes already established, and I think both of these departments are part of the traditions of Montana. I don't think there is any danger that they will be wiped out.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. I would like to add somelanguage that1 sent to the Chair, at the beginning of the first sentence. But in view of earlier rulings of the Chair and in view of Mrs. Bugbee's motion to delete, is my—would my motion to add language to the present section be in order?

CHAIRMAN GRAYBILL: Not until we decide whether we're going to delete it or not.

DELEGATE KELLEHER: Well, then, I would like to speak.

CHAIRMAN GRAYBILL: But you may explain it.

DELEGATE KELLEHER: I plan to add, if it is not deleted, the words-quote-% protect the rights of working men and for other purposes" at the beginning, if it is not deleted. I notice that the Agricultural Article-that agriculture is our number one industry in Montana. And I'm in favor of keeping the agricultural provision in, of course. But I do feel that, like Paul Harlow, that labor is also important in Montana. And therefore I am opposed to the motion to delete either the last sentence or the entire article.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. I'm sympathetic with the women that want to remove labor, but not in the Constitution. (Laughter) But not in the Constitution. I think it has a place in here. It has for a good many years, and I think in the future it is going to be needed more than ever. Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I have now been able to get a little dope on what's in the Unemployment. This is all under the Department of Labor, and it's under the Commissioner, Mr. Smith. And this has been-this is also-the Unemployment Compensation, the Industrial Accident Board and some other minor things are under this department at this time. So this is not creating one of the new boards or taking up any board that we had under the 20. Now, if this should be removed, as the Bugbee amendment, then the Labor Department could be shoved anyplace, anywhere that they wished. And once we get this unicameral legislature and we get waves of hysteria, we're going to be in a terrible time. And I think that labor, as important a product as it is in the State of Montana, is certainly entitled to one place in the Constitution. I don't think that we should turn around out here and kick them out. Now, while I'm on my feet, I'm going to tell you why that I did not sign this report. I wanted to go further. I wanted the Commissioner appointed for a definite term, confirmed by the Senate or the unicameral body, whichever one it is, and then we would-they would know he would have the job for 4 years. Otherwise, the Governor might just wake up some morning and say, "I want your resignation." I think it would be unfair to labor. So this is the reason I did not sign it. I did not bring in a

minority report, and I thought I would leave it up to the Convention. But I think this section, as good as it is-I'll go along for a while. The Legislature, in its wisdom, might determine a term of 4 years, or 2 years, or something like that, because I think we have a new plan that comes in with the annual session of the Legislature. We might decide that we wanted only Z-year terms instead of 4-year terms. Now, I'm not going to object, but I'd like to see this kept as the committee come in, even if I didn't sign the report. I am behind it 100 percent, and let's don't amend it. I think it's good. Let's don't take them out of the Constitution. And as I see it, I don't see why we can't have this man appointed by the Governor and confirmed by the senate.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: I would just like to finish, and say in response to Mr. Harlow, that1 am in no way against deleting or degrading any Department of Labor. As a matter of fact, I was backed by labor, and I'm all for them. I'm all for what is going on now in executive reorganization. But the very-the fact is that the people of this state did vote for executive reorganization, and implied in thatis a flexibility thatweleaveitto the Legislature to handle, and to the Governor-to the Executive Department. And I voted against the Department of Agriculture, and I was roundly defeated, and perhaps I will be today. But this is a matter of principle, and I want to stand on it. Thank you.

CHAIRMAN GRAYBILL: Mrs. Cross,

DELEGATE CROSS: Mr. Chairman. For the benefit of the delegation, I sent upstairs to our committee room and have brought down the chart that shows executive reorganization. If there's any place to put it up, I'd be happy to do that. The Department of Labor is shown here as one of those departments. So, if anyone would like to see it, it's here.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. I'm sure glad to seesomanypeoplein the House so concerned about labor. I hope their sentiments will prevail when I get up with mine. But I do want to mention that I want to support the committee. We sure feel this section should be in there, and I support it.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I, like Mr. Mahoney, have gotten ahold of a little dope since this question first came up. First of all, the Department of Labor and Industry is headed by a single Commissioner, Sidney Smith. Secondly, let me read you what is-the duties conferred upon the department are. The department will perform the functions of the existing Department of Labor, Apprenticeship Council, Employment Security Commission, Commission on Status of Women. It also has responsibility for Nurses' Employment Practices Act and the Division of Workmen's Compensation. There is a Labor Appeals Board of three members, created to hold hearings pertaining to the unemployment compensation matters.

CHAIRMAN GRAYBILL: Is there further discussion? If not, the issue—

Mr. Toole.

DELEGATE TOOLE: Any of you that have read the proceedings of the Constitutional Convention of 1889, the words expressed here this morning are almost identical. Grandpappy—my grandpappy voted for and fought for and led the fight for the Department ofLabor. I gottago along with the old boy. (Laughter)

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Bugbee's motion to delete Section 1 of the Labor Article in its entirety. We'll have a roll call vote. All those in favor, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ,, Nay
Anderson, J. Nay
Anderson, O. Nay
Arbanas Nay
Arness .. ,, ,, ,, Nay
Aronow .Absent
Artz Nay
Ask Nay
Babcock Nay
Barnard Nay
Bates Nay
Belcher Nay
Berg Nay
Berthelson Nay

Blaylock	Nay
Blend	'Nay
Bowman	Aye
Brazier	Nay
Brown..	..Aye
Bugbee	..Aye
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Absent
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt.,	Nay
Foster	Nay
Furlong	.Absent
Garlington	.Absent
Graybill	Nay
Gysler	Nay
Habedank	..Absent
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland,	Nay
Jacobsen	Nay
James	..Absent
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	.Absent
McKeon	Nay
McNeil	Nay
Monroe	Nay
Murray..	..Absent
Noble,,	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin.	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks.	Nay
Speer	..Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Nay
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 4 delegates have voted Aye, 87 have voted No.

CHAIRMAN GRAYBILL: 87 having voted No and 4 voting Aye, the motion is defeated. The issue is now Mr. Arbanas' motion to strike the last sentence: "The department shall be under the control of a Commissioner appointed by the Governor and confirmed by the Legislature or Senate."

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. Certainly it was not my intention to in any way cut down the effectiveness of this department. About the only one I know in state government is Mr. Smith, and so I don't have those motivations. But in our Executive Article which we have adopted, we say, "Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the Governor, subject to confirmation by the Senate, to hold office until the end of

Governor." Now, consistent with that, it seems to me that this second sentence is both unnecessary and inflexible. And therefore I think it's in tune with executive reorganization not to not allow the department to adjust to changing needs.

CHAIRMAN GRAYBILL: Is there other discussion? Very well, the issue is on Mr. Arbanas' motion to delete the last sentence of Section 1 of the Labor Article. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. The issue is now back on Section 1.

Mr. Kelleher, do you want to make your amendment?

DELEGATE KELLEHER: Mr. Chairman. As I have done so many times in the last 2 months, I'm going to adheed [sic] and listen to the advice of my dear friend, Charley Mahoney, and withdraw my motion.

CHAIRMAN GRAYBILL: How many times? (Laughter) Very well, Mr. Kelleher's proposal is withdrawn. The issue is on Section 1 of the Labor Article. Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Heliker that when this committee does arise and report, after having had under consideration Section 1 of the Labor Article, that it recommend the same do pass-No, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 2 of the Labor Article, page 9.

CLERK SMITH: "Section 2, Merit system. The Legislative Assembly shall establish a system under which the merit principle will govern the employment of persons by the state." Section 2, Mr. Chairman.

CHAIRMAN GRAYBILL: I don't know which of you gentlemen want to take this; you have me confused.

Mr. McCarvel—Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I wish to withdraw my support of this section due to the fact that I don't think I can count on any help from the committee. Thank you.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: I'd like to make a motion to pass consideration of this section until after we've dealt with the section concerning the right of public employees to bargain collectively. May I speak to this?

CHAIRMAN GRAYBILL: You may.

DELEGATE McKEON: Briefly, I just want to say that a merit system in itself is a very harmful thing to the labor unions and to the working people unless there is a provision for the right to bargain collectively. So for this reason, Mr. Chairman, I would request that we would pass consideration on this until we have dealt with the collective bargaining proposal.

CHAIRMAN GRAYBILL: The Chair thinks the rule-the motion is to defer-to pass, not indefinitely but to a specific time, and we'll make it till 1:30 p.m. And if that doesn't suffice, we'll adjust it at that time. Now, I will allow Mr. McKeon's motion. Is there debate?

Mr. Kelleher.

DELEGATE KELLEHER: I just have a question to ask of the Chair. I have an additional section to add to the Labor Department. Would I be foresworn here or prevented from adding that at that time, at 1:30?

CHAIRMAN GRAYBILL: Well, you'll never be prevented from adding anything if you can get the votes, but let's take it up later, okay?

DELEGATE KELLEHER: That's all I want to know. Thanks.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Am I lost here? I mean, did I get lost? I thought we had Mr. McCarvel's amendment come up, and now Mr. McKeon is talking about merit system, which is another section. And I didn't think this would affect Mr. McCarvel's amendment. I thought we would—maybe could complete the Labor. And this is not

another section; this is another article. Am I lost here?

CHAIRMAN GRAYBILL: I don't think you're lost. It's another article-no, it's the same article. It's the Section 2 of the Labor Article. And the situation, Mr. Mahoney, is that when we came to it, Mr. McKeon moved to pass consideration until 1:30, and we're debating that motion.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. Mr. Mahoney is probably right that this should have been put in as a separate article, but it wasn't; it was put in as a section. And we-to be logical, we should be considering Mr. McCarvel's amendment at this time. And I certainly have no objection, if Mr. Scanlin doesn't, to passing consideration of the merit system question until after we have disposed of these things having to do with the Labor Department and labor relations matters.

CHAIRMAN GRAYBILL: All right. Let's find the sense of the body on this. So many as are in favor of passing, until 1:30, Section 2 of the Labor Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's passed. Very well. Now, the Chair is somewhat confused. There's a minority report to the Labor Article. We have now dealt with Section 1; we've passed Section 2; there is no Section 3 except the new section, which should be considered last. Mr. Studer, are you ready? Or is this the time for Mr. Studer?

Mr. Heliker, do you have a view?

DELEGATE HELIKER: I guess I do.

CHAIRMAN GRAYBILL: Well, we'll hear it.

DELEGATE HELIKER: My view is that we ought to discuss the 8-hour-day question first and, if necessary to get to it, suspend the rules. Since it was a part of the old Labor Article and that's where we started, I think we ought to stick with it until we finish it.

CHAIRMAN GRAYBILL: Mr. Studer, do you object to taking up the amendment for a new section on the 8-hour law first? Mr. Studer?

DELEGATE STUDER: No objection.

CHAIRMAN GRAYBILL: Right. Well, the usual procedure is to complete the work on the majority and minority reports. But having the permission of both the majority and the minority here and being at the end of the Labor Article until we--until 1:30, the Chair will now entertain Mr. McCarvel's motion. Mr. McCarvel, do you want it read?

DELEGATE McCARVEL: Yes, Mr. Chairman. I'd like to have it read.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. McCarvel's addition of Section 3 to the Labor Article.

CLERK SMITH: "Mr. Chairman. I move to amend the Labor Article by adding a new section to read as follows: 'Section 3, Eight-hour day. A period of 8 hours shall be-shall constitute a day's work in all industries, occupations, undertakings, and employments, except farming and stockraising, and except when an employee voluntarily agrees to work longer than the prescribed 8 hours; provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever, in its opinion, a reduction will better promote the general welfare.'" Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 3, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Under the present Constitution, Section 4, it's stated that "a period of 8 hours shall constitute a day's work in all industries, occupations, undertakings and employment, except farming and stockraising; provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever it is-in its opinion, a reduction would be--would better promote the general welfare, but it shall have no authority to increase the number of hours constituting a day's work beyond that herein provided." The thing that made that law ineffective was that if a man worked over 8 hours, it was in violation of it; and if he was required to work over 8 hours, it was in

violation of it. That is why this amendment to this article reads that an employee voluntarily agrees to work longer. I think this will take care of this article, and I hope that the delegates will treat it favorably.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I concur in Mr. McCarvel's amendment, and I'd like to direct your attention to the discussion of this issue on page 11. We had hearings on this article, of course, and we became aware, as we went through the article and heard the witnesses, that there were certain problems with this section as it had been previously written. These are set forth on this page. However, I think the committee was generally of the feeling that if acceptable language could be found that would solve those problems, we were not adverse to keeping the section. We were not persuaded, in the course of hearings and committee discussion that we had found that language. I refer you particularly to the sentence in the middle of the page. That language is the language which Mr. McCarvel now suggests; and it would remove practically all protection for workers in nonunion situations, whereas it may be argued that the worker under union management contract needs no such protection. Well, we have found since-I've had a lot of correspondence and a lot of phone calls on this-that that statement simply isn't true; that, as a matter of fact, the provision as it is in the old Constitution has been used by certain unions and individuals to protect members of weak unions, in some cases, and in other cases, members of strong unions who do not have any contractual protection, against compulsory overtime. Now, the fact is, of course, that for most employees this is no great problem. Most employees-or the great majority, I suppose—want all the overtime they can get. But there are certain employees, for certain reasons-all kinds of reasons, and many of them very good reasons—who resist compulsory overtime beyond 8 hours a day. And this provision in the old Constitution has, as a matter of fact, been used. I have a couple letters right here in front of me-one from Hotel and Restaurant Employees Union--where they cite specific examples of using this provision to set an employer right who was working a girl washing dishes for 15 hours a day; and in another case, where workers in a sawmill resisted compulsory overtime and used this provision to combat it. I have a whole sheaf of grievance forms from the Anaconda Smelter in Anaconda, where the company disciplined employees, or threatened discipline, for refusing overtime. And these grievances were settled by the union on the basis that the disciplinary action was withdrawn when the union called the company's attention to this constitutional provision. So it has developed since we held our hearings, and since we wrote this provision out of the Constitution, or recommended so, that as a matter of fact, it has been an important matter to a certain number of employees. And I think that even with the language--which is necessary-"and except when an employee voluntarily agrees to work longer than the prescribed 8 hours", because, as Mr. McCarvel explained, under the present Constitution, the employee who voluntarily works longer than 8 hours is violating the Constitution as much as the employer. This language is therefore necessary to cure that problem. And it will, of course, mean that I suppose most employees in nonunion situations who are asked to work overtime will voluntarily agree to do so. But there are a significant number of situations where, despite that clause, the provision can be used to protect employees who wish to avoid compulsory overtime.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President [Chairman], would Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: Yes, sir.

DELEGATE ROD HANSON: George, in your hearings, did you have any testimony that had to do with the new trend of a 4-day—four 10-hour day or 4-day, 40-hour week? I was wondering what effect this might have.

DELEGATE HELIKER: Yes, we-and that was one ofthereasons why we-1 think that's mentioned somewhere here-why we voted to remove it. However, with this clause in, "except when an employee voluntarily agrees to work longer than the prescribed 8 hours", that would take care of that problem. There wouldn't be any problem.

DELEGATE ROD HANSON: Would Mr. Heliker yield to another question?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: Yes.

DELEGATE ROD HANSON: Assuming then, George, you hired a new employee, would you have to get his agreement at that time? I suppose then that he would be willing to work these different hours than R-hour day.

DELEGATE HELIKER: Yes. That would do it.

DELEGATE ROD HANSON: Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. This had a lot of discussion in the committee. And this is one of the things we discussed originally, was the new trend that's coming. We may get down here to the 40 hours by working 4 days. Then, this will be IO-hour day. I see in the future, maybe not too far down the line, that we develop into 3 10-hour days plus 1 5-hour day. In order to have 3 days off, this can be done. Industry can then operate around the clock. I think this is something that we have to look down the road to. I was just talking to one of the labor men this morning—Highway Department. It may be in maintenance men that we come to the point of letting--using this equipment for the full week, and come out to something like this. This is why that I feel very keenly on the flexibility that this is going to allow. We've got problems of-maybe we don't have to—we'll have two crews instead of one on overtime, partly. This is the thing that we were thinking of, and I'm sure Mr. McCarvel and I discussed this yesterday. And this was our main thing, was leaving some flexibility; not to hurt anybody, but to turn around we've got-we're-recreation. I'm not going to use the word "alarm", but we've got a lot of it. And these people now want 3 days off. I can see this coming. Now if we can do this and have the 10-hour day which gives 3 days off, I think it'll be a great flexibility. And that's why I support the amendment.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, fellow delegates. I would have to rise in opposition to Mr. McCarvel's amendment. The phrase "and except when an employee voluntarily agrees to work longer than the prescribed 8 hours" is exceptionally dangerous to labor. This would mean that when a man comes and applies for a job, his employer could require him to work any period of time-12 hours, 10 hours, 14 hours-and the guy that's looking for a job is going to have to sign that agreement and not going to have any choice. The Constitution makes it permissible-the Legislature could not prohibit it. So you're creating the exact opposite here of what you want to create. You want to protect labor, but you're not protecting labor by this clause, because, in effect, you're eliminating the 8-hour provision and you're making it constitutionally legal for any employer to require any employee to work any period of time. And I submit the man that's looking for a job doesn't have any choice; he's got to sign that agreement. And this is doing the opposite of what it's intended to do. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I have to rise in opposition to the section as proposed by Delegate McCarvel. I'm extremely concerned that the bees in the bee industry might not consent to working more than 8 hours, and that's a personal interest of mine. But more important is the fact that I think that by putting this in the Constitution, we can do two things: one, we can lock it in and make it difficult for flexibility in the future in the area of a three-and-a-half-day week or a 4-day week, or whatever might come about in the future; and secondly, I think that the provision is something that the Legislature, in changing times, can much better handle. And I think that we have to have confidence in them in this area. And to specify an 8-hour day clearly has its dangers, and to allow for the exceptions has its dangers. And I feel that we're better without this section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. In responding to Mr. Cate's comments, this problem that I spoke of and is spoken of on page 11 was recognized by labor, by the representatives of labor, by the unions; and, as a matter of fact, they are all, as far as I know, in agreement with the language suggested by Mr. McCarvel. There's just no way of coping with the problems except to put in that clause. As to Mr. Foster's comment that we're putting this into the Constitution, I would remind you that this is the result of a long tradition in Montana constitutional law. This was put in in 1903 as an amendment originally applying to underground mines and state employees and then was then strengthened in 1935 in a referendum adopted by the people applying it to all classes of employees. I think we should keep it, eliminating what problems have grown up around it.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of the McCarvel amendment. As Mr. Heliker stated, it's been a long tradition in Montana. The R-hour day, the problems have been taken care of, and I think a large number of people in Montana would feel real aggrieved and hurt and disappointed if we had no reference to the R-hour day in the Constitution. Thank you.

CHAIRMAN GRAYBILL: Mrs. Payne.

DELEGATE PAYNE: May I ask Mr. Heliker a question?

CHAIRMAN GRAYBILL: Mr. Heliker, will you yield?

DELEGATE HELIKER: I yield.

DELEGATE PAYNE: Mr. Heliker, I'm interested in women being able to work a 4-hour day. You know, some of us who have family responsibilities are not able to work a full 8-hour shift. And now with--and particularly in the nursing profession with this, hospitals don't want nurses working a half-day shift. Is there any remedy for that in this?

DELEGATE HELIKER: I'm not sure I undertand what the problem is.

DELEGATE PAYNE: Well, you see there are a lot of women who could work half days, who could work 4 hours a day. We would not want to be limited with this B-hour business.

DELEGATE HELIKER: Well, you wouldn't be. Under McCarvel's proposal, it's strictly voluntary.

DELEGATE PAYNE: Well, it seems to me that it is restrictive, that you have to work 8 hours.

DELEGATE HELIKER: That you have to work 8 hours? No—

DELEGATE PAYNE: Well, if you're going to work-it takes away the flexibility of being able to work half days.

DELEGATE HELIKER: No, I don't think there's any such intention. I don't see it in the language either.

CHAIRMAN GRAYBILL: Mrs. Payne.

DELEGATE PAYNE: Well, is there any way in which this could be made clearer? Excuse me.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: I didn't hear the last question. Hold your mike a little closer.

CHAIRMAN GRAYBILL: Is there any way this could be made clearer, Mr. Heliker?

DELEGATE HELIKER: Well, can I see that copy? What you're saying is that the provision says "a period of 8 hours shall constitute a day's work". That's the—

DELEGATE PAYNE: Right, that's what you said.

DELEGATE HELIKER: Well, this has always been understood to mean that no more than a period of 8 hours--as a limit, in other words. I'm sure you're the first person who has ever thought of interpreting it as requiring 8 hours.

DELEGATE PAYNE: Well, now-Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Payne.

DELEGATE PAYNE: This is a problem in the nursing profession particularly, because some of us would like to work half-day shifts, and sometimes hospitals don't want that. And so it seems to me that this is somewhat restrictive. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, would Mr. Heliker or Mr. McCarvel yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker or Mr. McCarvel, will you yield? Mr. Heliker?

DELEGATE HELIKER: Okay.

DELEGATE FURLONG: What effect, if any, would this R-hour-day law have on the "in lieu of' clauses. For example, the mileage clause used by the railroad unions--a hundred mile or A-hour day.

DELEGATE HELIKER: None at all. That's covered by federal law.

DELEGATE FURLONG: What about such things as-oh, time differential?

DELEGATE HELIKER: Time differential?

DELEGATE FURLONG: Yes. For example, if you're working a different shift, say a graveyard shift, and you get a time differential. Would it have any effect?

DELEGATE HELIKER: It could have an effect if theresult was an employee was required to work more than 8 hours in one day. If he objected to that, he could use this.

DELEGATE FURLONG: Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman]. As Mr. Heliker's just told you, the members of the committee would liked to have something-or would have liked to have had something in the Constitution about the 8-hour day. And it was not our intention, in deleting it, to be unmindful of the desires of labor in this respect. But you've all listened now to the various problems that arise in connection with this proposal. Mrs. Payne, I think, made a very good observation. It doesn't provide for those situations where there's less than an 8-hour day provided for. Mr. Cate has made a very good observation that those in nonunion employment may be victimized under certain circumstances. And these are the very things that Mr. Heliker and I tried to consider. And we tried to come up with a short sentence that would cover all these situations and, frankly, we weren't able to do so. Now, let's consider the 1889 provision. When that was passed, it was thought, on the face of it, that it was simple and workable in its terms. And yet, within a very short time, Workmens' Compensation was established, and lo and behold, anybody that was working beyond the 8-hour day, voluntarily or otherwise, was outside the terms of the Constitution and couldn't collect his workmen's compensation if the injury occurred during that period. And so, as a matter of fact, everybody had to start lying. They had to say that the injury occurred, not beyond the A-hour period, but at the seven-and-a-half-hour times. And this is not a good situation. And I submit that if we try to put something in here that will cover the situations which we now foresee, in a very short time something else will come up and this thing will be unworkable. I think the whole thing is statutory, and there are many, many statutes on the books covering this. There's a provision for [illegible] provision for carpenters; there's a provision for plumbers, and on down the line. I think that each of these different trades and occupations have different working conditions to contend with. And if we try to put something fixed and inflexible into the Constitution, I think we'll not be helping labor, but defeating the aims that we're trying to establish.

CHAIRMAN GRAYBILL: Mr. McCarvel. Oh, wait a minute-if you're not ready to close, I don't mean to cut you off.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. Will Mrs. Payne yield to a question?

CHAIRMAN GRAYBILL: Mrs. Payne?

DELEGATE PAYNE: I'll be glad to.

DELEGATE BLAYLOCK: Mrs. Payne, under your objections to this, you spoke about the nursing profession. Are you saying that a number of nurses have not been able to work because the prospective employer said, "Well, it's in the Constitution-you have to work 8 hours"?

DELEGATE PAYNE: I don't know that that's the reason. I do know that at one time I was turned down employment because I did not want to work an 8-hour shift. I only wanted to work half days.

DELEGATE BLAYLOCK: But they didn't cite the Constitution as the reason?

DELEGATE PAYNE: No, but I think now that we have aired this, I think they could use this now.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Would Mr. McCarvel yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McCarvel?

DELEGATE McCARVEL: I yield, Mr. Chairman.

DELEGATE REICHERT: In view of Mrs. Payne's statements and her concern about part-time workers, would it help if your amendment included the word "full day's work"? It would read: "A period of 8 hours shall constitute a full day's work in all industries". And therefore part-

DELEGATE McCARVEL: No, I can see where that would not change it any, either a full day or a legal day's work. Full day would be all right.

DELEGATE REICHERT: Mr. Chairman, is an amendment in order to add the word "full" before "day's work"?

CHAIRMAN GRAYBILL: It is, Mrs. Reich&, but-and you can make it if you want to. I might suggest that if we pass this, it can be amended.

DELEGATE REICHERT: Fine.

CHAIRMAN GRAYBILL: If we make several amendments to it now and don't pass it—

DELEGATE REICHERT: Mr. Chairman. May I speak momentarily in support of the amendment?

CHAIRMAN GRAYBILL: Yes.

DELEGATE REICHERT: I do want to say that it is an important provision in our Constitution. I know there's some employees in this state who are fully capable of doing a competent job for 8 hours, but they just can't stand the physical strain for longer periods in some heavy industries. Some employers either force employees to quit or they fire them, if they refuse to work over 8 hours. This usually happens to an employee when he's at an age when it is hard to get another job. If most of the people would adhere to an 8-hour day, the unemployment rate in our state, I feel, would not be so great. Therefore, I support this amendment.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. I wish to add a few comments on things that we discussed in our committee on this deal, especially on this back-to-back week and the IO-hour days that they're working on, and starting to work so much in industry, especially in offices today. They're getting these 40-hour weeks in, and this was discussed very thoroughly, and this 10-hour law wouldn't help that a bit. Forty hours at 10 hours a day isn't a bad wrinkle, and it's coming to the front quite fast. In many industries in the East, it's been adopted, and they seem to like it. I was in a committee hearing one night-a subcommittee hearing-in which Mr. McCarvel and Heliker, and the aid of two business agents-you can't call that really a stacked committee, I don't suppose-but we decided then and there that the 8-hour law was not necessary, and we came out of that committee deciding against it. So I don't see why it should be brought up here.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I'm very happy to be able to support Jerry Cate after 46 days. (Laughter) It seems that this, to me, is a statutory matter to be worked out between labor and management. I think when you put the clause in as it now appears in this matter, "except when employee voluntarily agrees to work longer than prescribed 8 hours", it really takes it out. If he doesn't agree, then he's out. And so it seems to me that the majority proposal that's considered all these matters is very proper. And it seems to me that this could do more harm than good to the very people you're trying to benefit; I mean, to the employees and to the laborers. We're trying to put something in that will please them, and I think in the long run, it could be very detrimental to them. This thing is pretty well covered by statutory law. You'll remember there's a judgment came out of Madison County for the people that worked for the Children's Center that just collected four-hundred-and-some thousand dollars in a court action for working overtime, the housekeepers, around the clock. So there's a lot of federal law on this thing, and I think the majority has thought this thing out. And I think it's more flexible. I don't think voting against it's voting against labor in any sense of the word. I think you're giving them more flexibility, and I think the majority is the soundest measure in this regard.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I would like the journal to show that my vote on this issue will be strictly symbolic. The old man led the fight for this in 1889, and I'm not going to desert him 82 years later.

CHAIRMAN GRAYBILL: We may have a hundred and one delegates here. (Laughter)

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I rise to support Mr. McCarvel's motion. I feel that labor itself feels that this is important that this is--remains in the Constitution as it is Section 4 in the old-in the present Constitution. I think we should maintain this. I think this has been used in many cases where there has been a

dispute over the working over the 8 hours. And thus, I think if this Constitutional Convention turns around and takes this out, it may cause us a little problem. And I do say that labor favors maintaining this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: I would like to reiterate what Mr. Harrington said. Labor very much wants this in the Constitution. Also I might say that until a few weeks ago, I thought the battle for the 8-hour day had been fought and won by labor. But apparently, after reviewing the grievance reports that Mr. Heliker spoke about later-a few minutes ago, I find that the battle is still being fought; and I find that the Anaconda Company, in particular, is fighting the battle. They are, many, many times coercing employees to work longer than 8 hours in conditions which are terribly unhealthy to the employee. And I think that a constitutional mandate for an 8-hour day is important. I think we have to retain it. I think that thestatutes right now which provide for the 8-hour day are only written because we have the constitutional provision, and I fear what might happen to these statutes if we remove from the Constitution the mandate for an 8-hour day. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. Could I ask Mr. McCarvel a question, please?

CHAIRMAN GRAYBILL: Mr. McCarvel?

DELEGATE McCARVEL: I yield, Mr—

DELEGATE BABCOCK: Does this mean 8 hours on the same job, or can they hold more than one job? I have lots of employees that hold more than one job in a day.

DELEGATE McCARVEL: This would be 8 hours on one job.

DELEGATE BABCOCK: Then, they could be a waitress for 8 hours and a cook for 8 hours if they wanted to?

DELEGATE McCARVEL: Yes. Well—

DELEGATE BABCOCK: Then, how does it help?

DELEGATE McCARVEL: That would be up to a bargaining agreement, I would say. That would come under-if you hit them in the same area there where you were-split labor—

DELEGATE BABCOCK: Well, are you going to prevent them from holding down two jobs? What if you have one a secretary for 8 hours and one a cocktail waitress for 8 hours?

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Well, that would-8 hours on a-would constitute a day's work. And if they want to work 16, I guess this would not relieve them of that responsibility.

DELEGATE BABCOCK: Well, therefore, I oppose Mr. McCarvel's amendment.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I would rise to oppose Mr. McCarvel's amendment. It would--and I-hate to question the wisdom of our labor friends, but going back to the time that the Constitution under which we now are living was written, I would presume that an 11-, 12- or 16-hour day was logical. And maybe 50 years from now, a 4- or 5- or 6-hour day may be something that is very commonplace. And it would appear to me that to put an 8-hour day into the Constitution would certainly limit the ability of the leaders in the labor movement to create better working conditions for laborers of 40 or 50 years away from now. And it also would eliminate some of the latitude of movement that it would appear labor could operate in in negotiating the 4-hour—or the 4-day, 10-hour; or maybe at some point in the future, maybe 4 4-hour days. As our society becomes more affluent, all reports that you read indicate that 50 or a hundred years from now, people may only have to work 2 hours a day to make a living and feed their families and to sustain life. And for us to lock something into the Constitution which could become very cumbersome to the labor movement down the road certainly looks like we lack wisdom in making that judgment at this time.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President [Chairman]. I have served several years on the Status of Women Commission in the State of Montana, which is a commission endorsed nationally. And at different times, we have discussed the possibility of women working for half days instead of the full 8 hours. And that is the reason

that Mrs. Payne brought this up on her own behalf, and my support of her question. I feel very much that the amendment for 8 hours or longer is great, but by reducing the number of hours by Legislative-by the Legislature seems to me to limit it very much in reduction. I should like to hear, possibly, Mr. McCarvel talk about this.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. There's nothing in here that does not allow less than 8 hours; 8 hours just constitutes a full day-as Mrs. Reichert asked if I would be-if I would condescend to do that. Eight hours is just the full day; and then, if you were forced to work over it, like they have done in the industry of my hometown-they have forced these men to work over 8 hours or be subject to discipline. Now, this is what we want to get away from. Eight hours is a full day, and some men can work more than 8 hours and some can't. And when they are asked to work, then it should be up to their discretion whether they want to work overtime or not and not be subject to discipline by working, which might be injurious to their own health. No one knows from day to day how you will feel, whether you feel like working more than 8 hours or not, and that is why the voluntary provision is put in here.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President [Chairman], may I ask Mr. McCarvel a question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE McCARVEL: I yield.

DELEGATE PEMBERTON: Mr. McCarvel, that part of it isn't what I'm interested in. It's after the semicolon, "provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever, in its opinion, a reduction will better promote the general welfare."

DELEGATE McCARVEL: Yes, that we could go to a lower than a R-hour day, that we go to a 6-hour day.

DELEGATE PEMBERTON: By legislation?

DELEGATE McCARVEL: Yes.

DELEGATE PEMBERTON: Thank you

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Would Mr. Swanberg yield to a question, please?

DELEGATE SWANBERG: I yield, Bob.

DELEGATE KELLEHER: Bill, if industry in Montana did go, say, to 4-day, IO-hour workday, would they have to pay--under this proposal, would they have to pay time-and-a-half for those last 2 hours of each of those 4 days each week, in your opinion.

DELEGATE SWANBERG: Well, this is one of those questions that would undoubtedly come up. The constitutional provision as written says "8 hours a day shall constitute a day's work". It doesn't say that there'll be overtime or no overtime for those extra 2 hours. It's just one of those ambiguities that a court would have to thrash out. It's not our intent that overtime be paid for those extra 2 hours on any one day, but we don't say that in here. And this, again, is another reason for leaving this whole thing to the Legislature. You'd have to write a book to put this thing in the Constitution.

CHAIRMAN GRAYBILL: Mr. Kelleher. The Chair would observe that they could work at straight time under the section, but not under the existing federal and state law.

Mr. Cate.

DELEGATE CATE: I'm going to move to amend Mr. McCarvel's proposition. And if you have before you the Committee of the Whole amendment, I would move to add, after the word "a" in the first sentence, between "a period", "a maximum period"; so that it reads "a maximum period of 8 hours", which would meet the-I believe, the question that Mrs. Payne had. And then on the fourth line, after "employee", to— would insert "or employees' association"-or "employees' representative"; so it reads "when an employee or employees' representative voluntarily agrees." And on line 3, after the word "except", "and except as provided by law"-"as provided by law" would be added in there. So that the entire section would read: "Eight-hour day. A maximum period of 8 hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stockraising, and except as provided by law, when an employee or employee's representative voluntarily agrees to work longer than the prescribed 8 hours; provided, however, that the Legislative Assembly may by

law reduce the number of hours constituting a day's work whenever, in its opinion, a reduction would better promote the general welfare." Then, I would further move to amend the section by adding the following language after "general welfare"-striking the period and putting in a colon-"and provided further that the Legislature shall fix an overtime rate of pay in the absence of negotiated contractual provisions covering same between the employer and employee." I'll read that again: "and provided further that the Legislature shall fix an overtime rate of pay in the absence of negotiated contractual provisions covering same between the employer and employee." And that would protect the employee who is working for a nonunion type situation from being abused in the overtime situation.

CHAIRMAN GRAYBILL: Mr. Cate, the Chair has made notes of your amendments. The trouble is that if we amend this before we get the sense of the body, we're going to have to have this printed up. I don't think we should be adopting this kind of technical language without all the delegates having it on their table to look at. Therefore we're either going to have to print it up now, or we're going to have to pass the motion and deal with the 8-hour day. And if we pass it, then we'll print it up. But I just can't accept that kind of a long motion without it being printed up and put on the desks. So—

DELEGATE CATE: I recognize the problem.

CHAIRMAN GRAYBILL: --so, why don't you go out and print it up.

DELEGATE CATE: Right. I'd like to move that we pass consideration of this until 1:00 p.m. this afternoon.

CHAIRMAN GRAYBILL: Do you want to make that 1:45, so it's obviously after the other one? Mr. Cate, is that okay?

DELEGATE CATE: Yes, that's fine.

CHAIRMAN GRAYBILL: All right. Mr. Cate moves to pass consideration of this section until 1:45 today. All in favor, say Aye.

Oh, excuse me, Mr. Davis.

DELEGATE DAVIS: I wonder if we couldn't first determine whether they want the 8-hour day in the Constitution. If we could vote on that and then make a determination-if they do, amendments. If it's the sense of the body they don't want it in, then we're wasting a lot of time and passing up a lot of stuff, when we could get on with our work. Now, that's just a thought. In other words, if they want an R-hour day in the Constitution, we could meet that issue right now. If they don't, we'd have it settled. And if they do, then we could go on for amendments. Would that he agreeable, Jerry?

DELEGATE CATE: (Inaudible)

CHAIRMAN GRAYBILL: Very well, Mr. Cate. I'll have you withdraw both your motions.

DELEGATE CATE: (Inaudible)

CHAIRMAN GRAYBILL: Now, Mr. McCarvel, is it agreeable with you that we vote on your section with the understanding that if it passes, we will have it open for further amendment at 1:45 today?

DELEGATE McCARVEL: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: And if we vote-so that everybody understands, if it's voted against, then we will have finished it; and if it's voted to put it in, it can still be amended. Is that correct?

DELEGATE McCARVEL: That's correct.

CHAIRMAN GRAYBILL: All right, now, let's do it that way, and then we'll know whether we need to do this or not. Is there further discussion before we vote on the principle of the 8-hour day? We'll have a roll call, hut let's-is there any further discussion on the principle of the 8-hour day?

Mrs. Bates.

DELEGATE BATES: Mr. President [Chairman] and fellow delegates. I feel since this was in the present Constitution, and it is a protection, and since slavery went out a long time ago, or should have if it hasn't, and this is a basic human right, I feel it is a protection, and I also support it in the Constitution.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman. We took considerable time in the committee of trying to get something worked out for this R-hour day. And from the things that have been said here, I don't want to vote against labor, hut I think this

law to put in the Constitution. So therefore I oppose amendment.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President [Chairman]. It seems to me this was a very necessary protection back in 1889, and I suspect that's why they put it in then, because there was a real need for this R-hour day. It was not universally accepted at that time. Now, it seems to me, this is covered by statutes by both the federal and state; also by tradition; that it seems to me that it is statutory now. It appears that it will limit the goals of labor rather than really give them any adequate protection, because there's several people, as Mr. Mahoney brought out here-the change is around the corner, and in leisure time and this sort of thing. And for this reason, I would favor deleting it.

CHAIRMAN GRAYBILL: Mr. Heliker, are you going to close, or is Mr. McCarvel?

DELEGATE HELIKER: Well, Mr. McCarvel can close, but I'd like to speak.

CHAIRMAN GRAYBILL: Okay.

DELEGATE HELIKER: A number of things have been brought up which I think are throwing sand in the machinery here. Mr. Swanberg said that under the original clause, we got involved in workers failing to receive workmen's compensation. It's my understanding that that never was a problem. Mr. Davis speaks of the majority report, and how he wants to support it. The fact is the majority, Mr. Davis, has fallen apart. And as a matter of fact, the majority was never very certain of itself on this, and we agreed to delete the thing because we, at that point, had reached the opinion that it wasn't useful to anyone. But we have found since, at least Mr. McCarvel and I, and I think Mr. Mahoney agrees, that as a matter of fact, to a certain number of people, it is highly useful and that we ought to keep it. And as I say the same thing to Mr. Skari, not everyone is covered by these laws that you speak of. And as a matter of fact, this constitutional provision is being used to protect some people at the present time. Now, as to Mr. Drum and his reference to 1889, this amendment was adopted in 1935. It's not quite all that ancient. As to it becoming cumbersome down the road and preventing labor from accomplishing what it wants to, and so forth, I don't think this is any problem either. Written as it is now written, with Mr. McCarvel's amendment, it's quite flexible. I would, however, like to see us vote on an amendment which would cure the, I think, purely hypothetical problem-but perhaps it's a real problem that Mrs. Payne brought up, by introducing after the first word the word "maximum", so it would read: "a maximum period". And I so move as an amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James, do you want to speak on that? The Chair hasn't decided whether to allow it, yet. No, you don't have the floor. Mr. Heliker, I have an agreement with the author of this committee that we're going to decide whether we're going to vote on the 8-hour day or not, and then we can amend it if it passes. Now, you've explained your amendment, and I'm going to rule your motion out of order. Is there other discussion of whether or not-a general discussion of the 8-hour day only. And my personal view is that everybody's discussed it rather thoroughly, but if anybody cares to rise and complete the education of the body, here's your chance.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I am certainly sympathetic with the H-hour day and everything, but as the small employer who has been thinking about, particularly part of the year, for the benefit of the employees, going to this 4-day and-or 4-day workweek for the 40 hours, which, of course, has been covered for about 12, 13 years under the Federal Wage and Hour Law, and that allows me to do it. But, I've always kind of looked at this provision and wondered what would happen if I had 90 percent of my people want to do this and the other 10 percent don't. It's always bothered me as to just whatwould happen here. So I'm going to vote for deletion of it.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. The reason I wanted to speak again is that I was asked to explain this back-to-back week. Apparently, some of them didn't understand it, And we did use this quite a long while ago, and it may come up again under these welfare programs that are being talked about. It's entirely possible that they'll put welfare out on WPA projects again. And it was the custom that they'd start on Thursday, Friday--or Friday, Saturday-Thursday, Friday, Saturday of one week, skip Sunday and work Monday, Tuesday and Wednesday. And that was a full week; that was a 60-hour week back-to-back, and workers would then start again on the next week, they'd have a week off and a week on.

And they would work on this back-to-back week, 10 hours a day. Well, now, this could hurt quite a bit, especially if welfare workers got into this; it hurt quite a bit. The way welfare workers get into it-they don't have the equipment or the machinery or the superintendents to get along on some of these projects that welfare workers may be assigned to, and it's entirely possible that something like this could come up again. I think it would be a good thing. And if they did, why, here you'd have an 8-hour law making a short work week out of it. Thereason the IO-hour law would be better-naturally, I'm looking after the contractor's interests, are very selfish interests in being here. And a big contractor's lobby put me in here, of course, and just like some of these other outfits that have a few men in here and—

CHAIRMAN GRAYBILL: Stay on the subject, Mr. Studer. (Laughter)

DELEGATE STUDER: Okay. But then, on Heliker's-just reminded that there were some workers that weren't covered. Well, it's entirely possible that there's workers that don't want to be covered under this 8-hour law. I can imagine a lot of small businessmen, or filling station operators, or somebody that's out there working and they got a man working for them. And they got a—whatever they're doing-a couple hours left to work, they'd just as soon work; they're getting a good hourly wage. They don't have to be worrying about their time. They usually work sort of on a day basis, but they get a little extra if they work over; but they do work on hourly wages a lot of places. They're not covered by union laws. They're mostly covered by federal laws that-on this stuff anyway, but where they only have less than eight men, in a lot of cases they aren't. And if they want to work, let them work. I don't see harm in it; they want to. They're getting a good wage, and they don't always have to be protected. With a law like this, some lawyer get ahold of a fellow that happened to work 10, 12 hours a day, a big husky guy that didn't object to it at all, and come back and show him a couple years later you got a cause against this man. Don't you remember when you worked a couple hours over there? It could cause a lot of trouble. I don't see any reason for it being in there.

CHAIRMAN GRAYBILL: Mr. McCarvel -just a minute. Mrs. Babcock, he's going to close. Do you want to speak?

add one thing. Housewives aren't protected. Would this limit their work to 8 hours?

CHAIRMAN GRAYBILL: That's either farming or stockraising, Mrs. Babcock. (Laughter)

Mr. James.

DELEGATE JAMES: Mr. Chairman. I take it Constitutional Convention delegates aren't covered either by this. But I would consider that—I'll make my remarks short so maybe we can get in an 8-hour day. I do think that to remove this would be a step backwards, though, and I'm all for Joe's section here.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. I'd like to make a few comments on some of the statements that were made and-like Mrs. Babcock's, Maybe the housewife comes under the terms of recreation; or also stockraising might be raising pigs instead of children; I don't know. I've often said that to my own children. I would have been further ahead. (Laughter)

CHAIRMAN GRAYBILL: Stick to the subject, Mr. McCarvel.

DELEGATE McCARVEL: Well, as for Don here, he says that his bees might complain about working overtime, and I don't know why they'd complain. They got a honey of a job. (Laughter) So I see nothing wrong in here. It leaves it up to the employee to voluntarily agree whether he wants to work over 8 hours. That fear that you're going to limit it to just 8 hours-that's up to the employee whether he wants to work over the 8 hours. And the fear of less than 8 hours, well, the Legislature can take care of that and they can reduce the number when they see fit to promote the general welfare. And I don't see the fear. There's not as much wrong with this one, I would say, as in the present Constitution where it's locked in that you are in violation if you work over 8 hours and you're in violation if you have somebody work over 8 hours. So, with that, I close, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. McCarvel's amendment to add a new Section 3 to the Labor Article. The new section is to be an 8-hour day. And I won't read the exact terms of it, because the understanding is that if it passes, it may be amended further. The vote is really on whether or not you favor an R-hour day in the Constitution, or whether you want it out

those in favor of an 8-hour day section in the Constitution, vote Aye; and those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock.. ..... Aye
Blend ..... Absent
Bowman. ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Absent
Burkhardt ..... Absent
Cain. ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Absent
Hanson, R.S ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton.. ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 65 delegates voting Aye, 27 voting No.

CHAIRMAN GRAYBILL: 65 having voted Aye and 27 having voted No, the section passes.

Now, Mr. Cate, do you want to make your motion to pass consideration till 1:45?

DELEGATE CATE: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Cate has made a motion to pass consideration until 1:45. Is there discussion?

Mr. Heliker.

DELEGATE HELIKER: What time did we set for the merit proposal?

CHAIRMAN GRAYBILL: 1:30.

DELEGATE HELIKER: Well, this **really** ought to come before the merit change, for the same reasons I gave before.

CHAIRMAN GRAYBILL: All right. Let's set it for 1:30 or 1:29. We'll take it up ahead of the other one, if that's what you want. I'm not too firm on those times anyway, as you all know. The motion is to defer consideration of this until 1:29. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Very well. If you'll all turn to page 16-Mr. Kelleher, we're not going to take yours next. We're going to finish the majority-minority report. I guess I'm on the wrong page. You should be on page 36-all right, 32. I've got a sheet up here that tells me where to go, but it's not very clear. (Laughter) With the help of Mr. Heliker, I'm going to get there. (Laughter) We're now on page 32, considering the Labor Article on right of organization and collective bargaining.

Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman. I move that when this committee does arise and report, after having under consideration— what article-the Labor Article on the rights of organize collectively, after having under consideration that the proposal-that it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel, I put you in a bad position there. I should have had the clerk read it first. And, Mr. Clerk, will you denominate it Section 4, the right to work one being denominated Section 3. Will the clerk please read it.

CLERK HANSON: "Section 4, Right of organization and collective bargaining. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other—

CHAIRMAN GRAYBILL: -concerted.

CLERK HANSON: -concerted activities for the purpose of collective bargaining or other mutual aid and protection." Mr. Chairman, Section 4.

CHAIRMAN GRAYBILL: Now, Mr. McCarvel, I'll consider that you've moved this for adoption by the committee. Do you want to discuss it?

DELEGATE McCARVEL: Yes, Mr. Chairman. This proposal is taken verbatim from Section 7 of the National Labor Relations Act except for the addition, "in private or public employment". Its intent is to give constitutional recognition to the right first accorded employees covered by the NLRA in 1935 and to extend them to all employees, including public employees. It does no more than confer the dignity of constitutional recognition upon the long-since well-protected rights of most private employees. It does, however, extend to public employees a clarification of their rights to organize and collective bargaining, with Benson versus School District No. 1, Silver Bow County, 139 Montana Statutes 77; and Zadarek versus Silver Bow County, 154 Montana 118, 1969. On the other hand, it does not establish the right to strike, nor in any manner restrict the power of the Legislature to regulate collective bargaining within the area not preempted by federal law; to regulate or prohibit the use of the strike or other aspects of the process of collective bargaining; or to regulate the internal affairs of unions. The Legislature is not mandated to implement the stated rights, although its power to do so is unrestricted. As respect to public employees particularly, the Legislature is given no mandate, although it is intended that the rights established would, of necessity, be recognized in any legislation providing for merit or civil service

systems for state employees. The minority believes that it is time to give the rights of organization and collective bargaining the constitutional standing eventually accorded every basic right of free men. The history of constitution-making is that rights are accorded constitutional status after long decades or centuries of struggle for which they've been largely won in law and in fact. The rights recognized by the founding fathers in our federal Bill of Rights has already been won by countless brave and dedicated men who, for century, really gave their liberties, their lives, and their property to secure them. The Constitution merely reflects the success of the long struggle. The same long struggleextendsin America over a century and a half. It was necessary to secure the rights to form unions, free from the repression of government and the coercion of powerful and ruthless agglomeration of private capital. The same unselfish sacrifice of liberty, life, and property by brave and dedicated men occurred as the never-ending battle to keep and strengthen the civil rights and liberties of the free people go unabated 2 centuries after our Bill of Rights was conceived; so will the striving to bring into employer and employee relationship in all sectors of the economy the principles of fair play, contravailing [sic] power-The majority rule has been recognized in law and fact for nearly two generations, bat now is the time to a contest, to create and preserve the rights will be unending, to elevate them in general principle to the dignity of constitutional law. Mr. Chairman, I may reiterate a little bit, in that a number of our public employee relationships with the state at this time, and other segments of our state, city and county, all have the no-strike clause within their bargaining agreement. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman]. The majority of your committee considered this collective bargaining proposal, and it's the majority of the committee's opinion that it's a legislative item rather than a statutory item-1 mean a legislative item rather than a constitutional item. Our comments are found on page 35, the principal one being paragraph 3, which states that the right of public employees to collectively bargain would be an aspect of any merit system established. We believe that both of these are legislative matters and should be considered only by the Legislature. As I see the problem, a collective bargaining provision in the Constitution could be inconsistent with any merit system that was established. And by the same token, a merit system provision in the Constitution could be inconsistent with any right of collective bargaining in the statute. The two should work together, and they should work together at the legislative level. I might state, for the benefit of the members of the body, that a Senate subcommittee of our Legislature now has this whole problem under study-the merit system, that is-and whether it should not be established in the State of Montana. In view of the fact that there is this study underway and in view of the fact that collective bargaining could be repugnant to the merit system and, by the same token, in view of the fact tha the merit system could berepugnant to collective bargaining, it's my position that neither of these statutes--neither of these provisions, I beg your pardon, should be in the Constitution. I believe this is the feeling of the majority of the committee, and we would resist the motion of the minority.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. At this time, I wish to amend this article.

CHAIRMAN GRAYBILL: Very well. Your amendment is on what page? Is it in the book?

DELEGATE STUDER: It's in the book, on page 32-is the article we're talking about. And my amendment will read: "Publicemployees shall not have the right to strike."

CHAIRMAN GRAYBILL: All right. So you want to amend Section 4. What line do you want that on, at the end?

DELEGATE STUDER: Well, add it at the end of the article, at line 14.

CHAIRMAN GRAYBILL: Very well. Mr. Studer has proposed an amendment to be added on line 14. Add the phrase "Public employees shall not have the right to strike".

Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. Mr. McCarvel, in his talk on his item--or-Section 4 just now-in closing-in the last sentence, I think he mentioned that the bargaining rights at this time do keep out the right to strike, and they have used this as their argument and, I suppose, in their bargaining. They don't have-they don't want the right to strike at this

time, so I don't imagine they would oppose this, because there are so many ways that the striking privilege could hurt, and it's been demonstrated time and again that this is an unfair advantage. It's an illegal act. I don't see how they can ask a legislative group, a town or a city council, to delegate legislative rights to someone else for the body that follows. I don't see how they can make a collective bargaining agreement that could stand up. I don't know all the ramifications of the legal angles, but it certainly doesn't seem that they could be able to do this. They do have the right, however, to tie up the public to where it could actually cause a great inconvenience, even a loss of life. Fire departments, police departments would have the right to go. And if we use the experience of public employees to go along with what private organizations have done, they strike at the crucial times. I mean, they don't wait until everything is hunky-dory and it wouldn't hurt if you shut down for a while; their strike comes when your notes are due next month and when labor conditions are such that you got to use them right now. They weren't born yesterday: and this right to strike is used as a club. And I really believe that it's a very bad thing to-1 don't mind giving the public the right to bargain; I have it in my own proposal. But I do think that giving the right to strike is something that certainly should not be allowed.

CHAIRMAN GRAYBILL: Is there further discussion on this matter?

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move to strike the-well, let's see-he offered an amendment. That's the question, isn't it, before the house?

CHAIRMAN GRAYBILL: Right. His amendment is to-"Public employees shall not have the right to strike".

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I would oppose the amendment, not that I don't think the Legislature should have full authority to prohibit strikes or regulate strikes of public employees. I do. I think, however, that if the Legislature restricts the right of strike, it should consider very carefully putting something-some viable substitute in its place. And it probably isn't necessary either that the right to strike on the part of public employees be prohibited across the who can be allowed the right to strike without serious-any more inconvenience to the public than is the case with private employees. This is a very complex matter, and not one, I think, which we can handle here. And that's the reason why the language that is included in this proposal was chosen carefully, to provide language under which all kinds of regulation have been imposed by law, including regulation of the right to strike—extensive regulation of the right to strike of private employees, and regulation of unions and their internal affairs. There is nothing in this language whatsoever which inhibits the Legislature from regulating any aspect of labor relations, private or public, which is not preempted by federal law. And I think it would be very inadvisable to enact such a blanket amendment as Mr. Studer proposes. At the same time, I think it should be left-the Legislature should be left absolutely uninhibited in its power to do so.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move as a substitute motion that this section of the majority report be deleted in its entirety-of the minority report.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce has made a substitute motion to delete Section 4 in its entirety.

DELEGATE JOYCE: Mr. Chairman. Fools rush in where angels—

CHAIRMAN GRAYBILL: Just a minute Mr. Joyce. I want to make it clear to everybody on the floor that the effect of Mr. Joyce's motion would be to wipe out the section which Mr. Studer proposes to amend. I don't want any misunderstanding that Mr. Studer's amendment would be left if you adopt the motion to delete. They will both be wiped out if you adopt the motion to delete. Now, you may certainly, then, make all the other amendments you want to, but I just want it clear so we don't get mixed up on what this does. Mr. Studer's was a motion to amend by adding, and if we wipe out 4, we have-wipe out what he's adding, too.

Very well, now, you may discuss it, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. As I say, fools rush in where angels dare [fear] to tread. But my position, I think the position that this Convention should take, is that we should take—that we should not provide in the Constitution for

opposed to the minority report for the same reason that I'm going to be opposed to Mr. Studer's amendment which is coming on, in that I submit that this is clearly a legislative matter, that the matter should not be spoken of in the Constitution, and that labor's right to organize should be left to the Legislature. They ought to fight those battles another day. It seems to me-1 take the policy position of the AFL-CIO, which endorsed me for this Convention, at its face value. As I recall it, they stated that they thought the Constitution should be neutral, that they would give up any special legislation that favored them if other people would do the same. It seems to me that other people should and have done the same; that to include this in the Constitution as a constitutional right will cause great controversy around the state; that labor does not need this. It seems to me that they can-that the right of public employees to bargain with state agencies has to be given some fluidity in the future. They have to be able to be regulated by law, because in the nature of things, bargaining collectively with the government is different than bargaining collectively with private individuals. And it seems to me further that the Legislature should have the power to regulate this activity in the public interest. It doesn't follow that-necessarily that labor cannot get the right to bargain collectively with public employees; seems to me that the Legislature can authorize them to do so. But to write this into the Constitution as a constitutional right seems to me, as I keep saying, would be the height of imprudence and that this is clearly a legislative matter, just as the subject of the right to work is a legislative matter. I'm willing to have labor and management fight those battles another day, and I don't believe that either should be written into the Constitution. And, therefore, that is why I've moved to delete the section in its entirety.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Are we speaking just on the Joyce deletion thing, or can we speak to Mr. Studer?

CHAIRMAN GRAYBILL: No, you may speak to the issue.

DELEGATE CHAMPOUX: One of the strongest points in any collective bargaining procedure is the threat of the right to strike. And I think the reason perhaps why-well, to put this sort of amendment in will simply gut the whole collective bargaining process, as I see it. If we put it in, it freezes it forever. Later-the concept of the public employees striking is not acceptable to many people today, but in the future it may be acceptable under certain conditions. And if you do this, you might-if you accept the Studer amendment, you might as well throw this whole section out, because it's going to be worthless without the implied right to strike. Now, this sort of thinking—the Studer amendment sort of thinking is involved in a nationwide movement. There's a lot of this going on all over the country, not only in terms of denying the right to strike to public employees, but also attempts are being made to deny the right to strike to all of organized labor. There's a nationwide movement on, then, to take away this right to strike. It is, in essence, as I see it, an indirect attack on the right of collective bargaining itself. And if it is successful, then it means the death of the organized labor movement in this country. This proposal, then-1 stand in support of the minority proposal, against the Studer amendment, and against Mr. Joyce's motion to delete. For I feel that this proposal without the amendment is a step forward; with the amendment, it is a step backward, coupled with other nationwide efforts that could lead us on a dark road that eventually could lead back to utter exploitation of labor. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. I rise to support the Joyce amendment. All through the campaign in Cascade County, I declared that I believed that neither collective bargaining nor the right to work had any place in a constitution; they are both strictly statutory; and therefore I support the Joyce amendment to delete.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, fellow delegates. I rise in opposition to the Joyce motion to delete in spite of the fact he's my close friend, associate, and fellow delegate from District 20. The matter of collective bargaining between employees of the government and the government itself was considered very closely in Zadarek versus Silver Bow County, 154 Montana 118, 1969 case. And I don't know how many of my fellow attorneys are familiar with the case, but the original opinion as written came close to saying that the-a public employee had no right to bargain, had no right to enter into a binding contract with a

county or city organization. It was-the original opinion, as I remember, was written and then withdrawn before issued, and an opinion still quite restrictive but not so restrictive as to say there is no right to bargain was eventually passed. I think it is extremely important that the right of labor working for government to join into an organization and to bargain collectively be guaranteed by this Constitution, because I say, as late as 1969, there nearly was a declaration by the Montana Supreme Court that there was no such right. Now, particularly if this-the minority report had in here the option of Mr. Studer's proposal that these organizations have a right to strike, then I would not support such a thing. I also am opposed to Mr. Studer's right to-or amendment that they have no right to strike because the employees in the county, city, and state organizations fall into entirely different classes. When I worked for the State of Montana back in the long, long time ago in 1942, the-some of the employees, the teamsters in the-on the state department, went out and striked for a month, and I don't think the public was greatly inconvenienced. They arrived at a bargaining contract, and everything was fine. However, if your house was on fire and the-and your fire department was out on strike, it would be bone-chilling to think of such a circumstance. I think what Mr. Heliker has said, and I think what Mr. McCarvel has said--we-you don't want to give them the absolute right to strike; you don't want to give them any absolutes except the absolute right to do what everyone else can do, to join together and to bargain. Now, the Legislature can deal with this problem in the field of street repair, teamsters, things like that-a strike is no great concern to the public, assuming it doesn't go on any too long. But when you come to firemen, policemen organizations, entirely different approaches can be made. And I'm not suggesting these should be made by the Legislature, but there can be a system of state arbitration put in, binding arbitration in which the-in which if the parties couldn't agree, an arbitrator would be called in. He'd hear the-both sides; issue an opinion which would be binding; there'd be no right to strike. There's also been many years' talk of labor courts in which the issue would be settled that way. I particularly want to point out that all this does is just say these people have the same rights that you and I have to get together, form an organization, and go talk to our employer and see if we can't work out the differences between us. It doesn't give them the right to strike. And corremotion to say "thou shalt not strike", because then these people would be forever barred from going to these intermediate reliefs or, in appropriate circumstances, striking. And I don't want you to think that I think doctors or nurses or policemen or firemen can—we can ever reach a situation where they are allowed to close down those things we need for governmental protection. But I suggest that in view of the past history of the Montana Supreme Court, unless we adopt this measure, the public employees will sometime in the future be denied the right to enter into a contract with the state, county, or city. And it is one in which labor isn't looking for any special privilege. All they want is the right to go in and talk to their employer collectively and arrive at a satisfactory contract.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I must rise to support Delegate Joyce. Right at the outset, to delay any thoughts that perhaps, due to the seating arrangement, that there's been any influence on Delegate Joyce, I want to lay those at rest. Delegate Johnson and myself have not been able to influence him in one single matter. I think the CIO should be commended for selecting a delegate that has not only the guts, but has the common sense to stand up here and talk the way that Delegate Joyce does on things that should not be in the Constitution. And I certainly want to support him and his amendment here. And he has used a lot of common sense at many times, even when I didn't vote with him. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: We will be at ease one moment while the tape is changed. Very well, the committee will be in session.

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, fellow delegates. I rise to oppose the amendment by my fellow delegate, Mr. Joyce, and also by Mr. Studer. Now, many people say I am a teacher; I am trying to stand up for myself. Well, basically not, because we've had the right of collective bargaining in Butte since 1934, and we do have very fine contracts in Butte. And so, actually, what I'm doing here is speaking for some of these other public employees throughout the state. I feel that it's very, very important that these people have the right to bargain as any other type of employee-employer. And I think that this is a

time, whether we put this in the Constitution. I believe it does belong in the Constitution. As someone has just mentioned a minute ago, the veterans are in the Constitution, the farmers are in the Constitution; well, I believethatlaborshould be in the Constitution. I think it does have an important part to do with the Constitution, the basic right of a man to work for a living wage. And I think that it should be supported by this Convention. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in support of Mr. Joyce's comments. It occurs to me that this Convention is being maneuvered into considering three items that should not be included in the Constitution. Because the-what is it called-employment right section has been included, I think, it was only then mandatory that collective bargaining be included. I don't believe that either one should be considered on this floor. Collective bargaining is well established by federal and by state law and will continue to be so. I think that the amendment that we are spending our time on is denouement to the entire situation. And I would ask this Convention to consider whether we should be spending our time on any of the three of these, because they are legislative and certainly not constitutional material. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I rise to support Mr. Joyce's motion. In 1880, actually, after the Debs cases, a lot of states got together in their constitutions and put in antilabor provisions in their constitution. Labor yelled against these for 50 years, and they're still in some of the more conservative states. And that's actually what we might be doing here; I'm not so sure whether this is for or against labor, but it's purely legislative, what we're trying to do right now. It has no business in the Constitution. And I might say for those proponents of it that a very conservative court who would construe a constitutional provision, and not so much the Legislature, might narrowly restrict the rights supposedly granted by these provisions because of the thought we're giving to them right now. I've noticed some employees scribbling amendments to these sections without any thought as to the understanding and ramifications of these sections. And it's very easy that a Supreme Court could actually, narrowly restrict labor's right if you pass these things without that consideration. Now, the R-hour day thing that just passed, which I think was poorly drawn and it could actually restrict the state. Not that I might agree with what they might want to do on it, but the state might be in a position, because of social reasons, to restrict it to a 6- or a 4-hour day, to pass around the work in the event of a great depression. Now, here it's got your clause in it that the employee can voluntarily agree with the employer and extend it over that 8 hours. And actually, because of this constitutional provision, the state might not be able to pass the work around. And the farther we get into it and the faster we write amendments, I think it's-the worse it's going to be. And I think the Supreme Court could very well, on a very conservative day, narrowly restrict labor's rights much less than whatthey were now. They worked 50 years and 60 years to get these provisions out of constitutions, and they finally have out of a lot of them-to get it in a legislative field so as times change, they can change the rules so that there would be equality between employer and employee in bargaining. But if you start sticking things in here and you start letting the court interpret it, then you might not be able to get the equality between the two of them that you need to have free and collective bargaining. Thank you.

CHAIRMAN GRAYBILL: Will the gentlemen standing in the back take your seats or move somewhere else? I can't see who's up.

Mr. Berg, are you up?

DELEGATE BERG: Yes.

CHAIRMAN GRAYBILL: Very well.

DELEGATE BERG: Will Mr. Helikeryield to a question?

DELEGATE HELIKER: I yield.

DELEGATE BERG: Mr. Heliker. I call your attention to the words "and to engage in other concerted activities". And I want to also call your attention to Mr. Champoux's remarks that this collective bargaining provision necessarily implies the right to strike. I want to know if the words "and to engage in other concerted activities" specifically includes the right to strike.

DELEGATE HELIKER: In my opinion, it does not. I disagree with Mr. Champoux that there is any implication of the right to strike or of the Legislature's right to regulate strikes by public employees or by private employees who are—

would be covered by the section that is not already covered by federal law.

DELEGATE BERG: Would you yield to another question?

DELEGATE HELIKER: Yes.

DELEGATE BERG: If, however, those words were interpreted broadly by the Supreme Court, they could include the right of public employees to strike by virtue of this provision?

DELEGATE HELIKER: Well, there is no, as far as I know, any statute in Montana prohibiting rights-or public employees to strike at the present time. But I-again, I disagree with Mr. Champoux when he said the strike, on the part of public employees, may become more acceptable in the future. I would expect the trend will be the reverse, as a matter of fact, and that we will have regulation. And I would want to preserve the right of the Legislature to enact those regulations.

DELEGATE BERG: Would you yield to one more question? Do you find in this section any right reserved to the Legislature to regulate strikes or collective bargaining?

DELEGATE HELIKER: Well, this proposal is the language of the National Labor Relations Act, Section 7, under which the Congress of the United States has extensively regulated the right to strike and all other aspects of the collective bargaining relationship.

DELEGATE BERG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I rise in support of the Joyce Amendment. I think if you properly read this Section 4, in spite of the comment that it does not include the right to strike, it is certainly broad enough to include it under the words "and to engage in other concerted activities". I don't believe that this Convention, at this time, desires to recognize the right of public employees to strike. I don't believe that the section, as it's proposed, would permit the Legislature to distinguish between, for example, police departments and street crews. I think that if you adopt the section, you will be in effect adopting an unquestioned right to strike by any public employee regardless of the nature of his position. I, therefore, agree with Mr. Joyce; this is a legislative matter and should be left to the Legislature, where it can be, as

CHAIRMAN GRAYBILL: Mr. Swanberg, are you up? Very well.

DELEGATE SWANBERG: I'm up, Mr. President; I'm not sure that I'm awake. I would simply like to state that the Joyce amendment is in complete consonance with the majority report here on this collective bargaining matter. And I am in total agreement with the comments just made by Delegate Berg. And for this reason, I would support the Joyce amendment to delete.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I-Mr. Chairman. It has been said in comments just recently that this right of collective bargaining is taken for granted now. But I would point out that the Legislature, at least in the last two sessions, has refused to grant the right of collective bargainingto public employees. I think this is a fundamental right of the worker, and the worker has a right to participate in determining the conditions of his labor. The labor is all that the worker has to contribute in our economic system, and I think he should share in the regulating-in determining the various matters that concern laboring conditions.

CHAIRMAN GRAYBILL: Now, the Chair wants that corner cleared over there. Young man, you're standing there; I can't see Mrs. Speer; I can't see the other people. The Chair has asked a dozen times to keep the back row cleared. If we have to station a page, we'll do it. Secondly, I apologize for the fact that Mr. Cate's amendment-it's not his fault-but I apologize for the fact that it's put out in the middle of debate. It's not supposed to be. It can be put out at noon. I'm trying to keep this debate clear so we can understand each other. Now, if all the pages and everybody else will sit down, we'll go ahead.

Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in opposition to Mr. Joyce's motion to delete. Mr. Chairman, the right of employees, whether in the public or private sector, to band together to bargain collectively is indigenous to a free society. Until we give them this right in the Constitution, they are second-class citizens. They're second-class to their brethren in the public sector. Mr. Chairman, I think that-until we give them this right, they remain second-class citizens. They remain unable to seek the opportunity-the economic benefits that their brethren in industry

tant constitutional matter that we give them this right that their others-that their brethren have, to band together to bargain collectively with their employer, whether he be the state or a private individual. For that reason, Mr. Chairman, I will oppose Mr. Joyce's amendment.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I think that after all these days of debate on some of these issues, that we ought to leave something up to the Legislature, and this looks like a good one for them to bite on. And I support Mr. Joyce's amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman]. I rise in support of Mr. Joyce's amendment. I've noticed over the years that whenever there's a public job comes up for-or is open for employment, that we have all kinds of applications. So they apparently must agree that these positions are pretty good. The next thing is that most all public employment is set by a physical [sic] budget and you have to live within these budgets. And if there is a move to strike or form a collective bargaining system, then you have to adjust these budgets to fit this. And the very fact that people seem to regard most of these public positions, with their public employment retirement systems and all the benefits that goes with them, it seems that these arehighly regarded positions, and I question if it is in public interest to have collective bargaining or the right to strike. I sincerely approve of Mr. Joyce's amendment.

CHAIRMAN GRAYBILL: Very well. Unless-if there are further people who wish to debate this, we'll adjourn. If not, we'll vote. Mr. Heliker, are you going to debate? Are you going to debate, Mr. Heliker?

DELEGATE HELIKER: Yes, I will.

CHAIRMAN GRAYBILL: Very well. Mr. Eskildsen, let's have a motion to adjourn. Mr. Eskildsen, let's have a motion to recess until 1:25.

DELEGATE ESKILDSEN: Mr. Chairman. I move the Convention stand in recess until 1:25 this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1:25. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

UNIDENTIFIED DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

(Convention recessed at 11:49 a.m.—reconvened at 1:40 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. Ladies and gentlemen, before the noon recess we were discussing Section 4, and the situation was-Section 4 of the Labor Article, on page 32—and the situation was that Mr. Studer had moved an amendment that public employees should not have the right to strike and Mr. Joyce had moved a substitute motion to delete Section 4 in its entirety. Now, we were debating the Joyce motion. Now, I know we have these other two things laid over, but I want to finish Section 4; then we'll go back to the two things that were laid over. And I think Mr. Heliker had the floor, if he wants it.

Mr. Heliker, you have the floor, if you want it, on the motion to delete Section 4.

DELEGATE HELIKER: Mr. Chairman, members of the committee. I wanted to respond to some of the things that various people have said. With regard to Mrs. Blend's comment that collective bargaining is well established by federal and state law, this is true as a general proposition; but there are still quite a few people left out in the cold, and it's those that we are trying to get to here, and put them on the same footing with the majority. Now, I oppose Mr. Joyce's motion to delete. He argues that it's legislative. This, of course, is the argument that everyone makes against anything that they oppose. He argues also that it's somehow related to the Studer proposal. I cannot see this at all. I think they're entirely different matters. We're asking here that you provide a general, broadly stated protection of simply the right of organization and collective bargaining. Mr. Studer is asking for a very specific regulation on collective bargaining, which is, in my opinion, no way similar. This problem of collective bargaining by public employees, which worries Mr. Wilson somewhat, is a problem that is already with us. Collective bargaining, organization of public employees into unions, and the demand for collective bargaining is increasing by leaps and bounds. And, as Mr. Holland pointed out, the status of collective bargaining in the law of Montana is at the present time uncertain. We are asking that this

uncertainty be cleared up and that the public employees, along with those private employees not covered by federal law, be given clear right to organization and collective bargaining. Now, it may be probably obvious that I am primarily concerned with the public employees, and I just ask you, why should the public employees be the orphans of the labor force? Why shouldn't they have the recognition of the right to organize and bargain collectively that most private employees have? Now, there's another aspect of this matter that I want to bring to your attention and that concerns me very much, and that is the relationship of this proposition to the proposal which we will be considering shortly concerning a merit system for state employees. I feel very strongly that we need a merit system. A lot of people feel this very strongly. The Legislature has wrestled with the problem several times-as a matter of fact for a very long time--without successfully passing a law. We have a proposal which would give them a little nudge in the direction of passing such a law, but the basic problem that's confronted the Legislature here is that we do not have a clear recognition of the right of public employees' unions to a significant role in the merit system, whatever it may be. And I think these two things should be considered together and that we should-1 think we should pass a mandate to the Legislature to enact a merit system law, and I think we should, along with it, pass a recognition of the right of organization and collective bargaining of public employees, so that the Legislature can get over this hump and write into its merit system law a provision for a clear role for collective bargaining. Thank you.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I yield.

DELEGATE ROBINSON: In addition to Hawaii, how many states have in their constitutions the right for public employees to bargain collectively?

DELEGATE HELIKER: I couldn't tell YOU.

DELEGATE ROBINSON: How many states have the right recognized in statutes of public employees to bargain collectively?

DELEGATE HELIKER: I couldn't tell you that, offhand, either.

DELEGATE ROBINSON: All right.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: May I close?

CHAIRMAN GRAYBILL: Mr. Joyce, you may close.

DELEGATE JOYCE: Mr. Chairman and members of the committee. I suppose that the issue now before the house is one of philosophy as to what a constitution should contain, and of course George Heliker and I are philosophically opposed to what should be in a constitution. And he uses the argument that if you're opposed to it, it's legislation, and if you aren't, it's constitutional. And I submit that that is not my position at all. I'm not opposed to the public employees having the right to bargain, but it seems to me that you don't have to write everything into the Constitution in order to give that. And in reply to my distinguished colleague from Silver Bow, who is a good friend of mine and with whom I visit all the time; have lunch with very frequently. And we violently disagree about everything, perhaps, but still we're good friends because we realize that this is a free country and everybody can think as they so desire. And he may be right and I may be right, and maybe both of us are wrong most of the time, but that's the way it goes. At any rate, I'm not opposed to the public employees having the right to bargain, but it seems to me that it is perfectly apparent that it does make a difference when you are bargaining with the public, because even Franklin Roosevelt didn't believe in the right of public employees to strike against the government of the United States. And every time a case comes up, why, they always quote President Roosevelt in that connection. And so it seems to me that the public employees ought to have the right to bargain and they ought to have the right to bargain in accordance with procedures that are established by law. And it seems to me, further, that if the Legislature won't pass such an act, it's because labor doesn't have the muscle to get it through the Legislature; and so what they've got to do is get more muscle. But at any rate, that's where all of the battles are fought is in the legislative halls, and sometimes you win and sometimes you lose. And I'm perfectly willing to let future generations of Montana battle this out in the Legislature. I see

no particular reason why this should be granted in the Constitution. It may do more harm than good; and it seems, further, to me that it will damage the Constitution. The more legislation we write into the Constitution, the more opportunity we're giving those who are opposed to any change in the Constitution to defeat it. And I've spent 2 months over here and I haven't won all my points, but I'm still for the Constitution that we've written. I think that we've made some great strides. We have opened up the Legislative Article so that the Legislature can, in fact, legislate and solve Montana's future-problems in the future. We've opened up their right to tax, and I've opposed any restriction on that. I have made everybody in the room mad at me, I suppose, from one time or another. I believe they ought to have the right to tax so that we can solve our problems as we go along in the future, and that's all that a Constitution should be. It should be politically neutral. It shouldn't favor labor; it shouldn't favor management. It shouldn't favor the school teachers; it shouldn't favor the farmers. It shouldn't favor the agricultural people; it shouldn't favor the city people. It ought to be neutral so that when and if, as future generations come along, they can fight these battles another day, as I keep saying. And after all, I don't have all the wisdom of the world, egotistical that I am; I really can't solve all the problems of the world here in this Convention. And I submit that if any—each of you look into your hearts, you might very humbly say that there may be one or two that you can't solve either. Some people want to solve them all right here and now. And frequently, however, when you set about to solve all the problems of the world, you create more problems than you intend, because you write certain language that seems to solve them all now and then a situation comes up that you didn't think about and, of course, instead of solving the problem you've just created new ones. And so, in closing, while I may have made a political mistake in my hometown-I really don't think so-but even if I have, it's like Harry Truman says, "If you can't stand the heat, you ought to stay out of the kitchen." And further than that, I say that I have resolved-I have assuaged my conscience in his connection in that I have taken to heart the words of Kipling, that if you can keep your head when all about you arelosing theirs and blaming it on you, yours is the world and everything that's in it; and which is more, you'll be a man, my son. Thank you. (Laughter)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Joyce's substitute motion that we delete Section 4, on page 32, in its entirety. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: So many as shall be in favor of deleting Section 4 on page 32 in its entirety, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will you cast the ballot, please.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Nay
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Nay
Bates .. .. Nay
Belcher ..... Aye
Berg .. .. Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Absent
Burkhardt ..... Absent
Cain ..... Nay
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross .. .. Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye

Foster ..... Aye
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius. ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Absent
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 63 delegates voting Aye, 29 voting No.

CHAIRMAN GRAYBILL: 63 delegates having voted Aye and 29 having voted No, Section 4 is deleted in its entirety. As I explained at the beginning of this debate, with it goes Mr. Studer's amendment; and I think that takes care of Section 4.

Mr. Heliker.

DELEGATE HELIKER: Is a substitute motion in order?

CHAIRMAN GRAYBILL: Yes.

DELEGATE HELIKER: I move, as a substitute motion for the motion just deleted, the language of the original proposal plus the following language. Eliminate the period at the end of the last sentence and add: "subject to reasonable regulation as provided by law".

CHAIRMAN GRAYBILL: Very well, Mr. Heliker has a substitute motion for the right to organize and collectively bargain, which shall consist of the language on page 32, lines 9 through 14, with a comma at the end, plus the language "subject to reasonable regulation as provided by law".

Mr. Heliker.

DELEGATE HELIKER: A number of delegates expressed the fear that the last clause of this proposal would guarantee the right to strike. I wish by this amendment or change to lay that fear at rest by making it explicitly clear that the Legislature may regulate.

CHAIRMAN GRAYBILL: Is there—

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President [Chairman], this is just a kind of little back-doorway coming in there, it looks like to me. They'll still retain in the Constitution the right of public employees to bargain collectively, and I think this is the main thing. And all you've did now is just turn around and said the Legislature can write a little rules. I think the intent's exactly the same as

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I think Mr. Heliker has now confirmed what Mr. Joyce contended by the last vote-that it's statutory. You just added that fact to it, so I think it should be defeated.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Heliker's motion-substitute motion-that we add a Section 4, Right to organize and collectively bargain, consisting of lines 9 through 14, which wasthemajority-theminority proposal, together with the phrase at the end, "subject to reasonable regulation as prescribed by law", so it says: "and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, subject to reasonable regulations provided by law". Do you want a roll call?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Very well, so many as are in favor of that motion, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim Nay
Anderson, J. Nay
Anderson, O. Nay
Arbanas Aye
Arness Nay
Aronow Aye
Artz Aye
Ask Nay
Babcock Nay
Barnard Aye
Bates Aye
Belcher Nay
Berg Aye
Berthelson Nay
Blaylock Nay
Blend Nay
Bowman Nay
Brazier Nay
Brown Nay
Bugbee Aye
Burkhardt Absent
Cain Aye
Campbell Aye
Cate Nay
Champoux Aye
Choate Nay
Conover Nay
Cross Nay
Dahood Nay
Davis Nay
Delaney Nay
Driscoll Aye
Drum Absent
Eck Aye
Erdmann Nay
Eskildsen Nay
Etchart Nay
Felt, Nay
Foster Nay
Furlong Aye
Garlington Nay
Gysler Nay
Habedank Nay
Hanson, R.S. Nay
Hanson, R. Nay
Harbaugh Aye
Harlow Aye
Harper Aye
Harrington Aye
Heliker Aye
Holland Absent
Jacobsen Nay
James Nay
Johnson Nay
Joyce Nay
Kamhoot Nay
Kelleher Aye
Leuthold Nay
Loendorf Nay
Lorello Aye
Mahoney Nay
Mansfield Nay
Martin Nay
McCarvel Aye
McDonough Nay
McKeon Aye
McNeil Nay
Melvin Nay
Monroe Aye
Murray Nay
Noble Nay
Nutting Nay
Payne Nay
Pemberton Nay
Rebal Nay
Reichert Nay

Robinson Nay
Roeder..... Nay
Rollins Aye
Romney .....Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz .Absent
Siderius.....Aye
Simon Nay
Skari ,, ,, ,, Nay
Sparks Nay
Speer.....Aye
Studer ..... Nay
Sullivan Aye
Swanberg.. ,, ,, ,, ,, ,, Nay
Toole .Absent
Van Buskirk .Aye
Vermillion Nay
Wagner Nay
Ward ..... Nay
Warden Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 29 delegates voting Aye, 66 voting No.

CHAIRMAN GRAYBILL: 66 delegates having voted No and only 29 having voted Aye, the motion is defeated and Section 4 is again out. Now, ladies and gentlemen, we agreed to take up, at 1:29, Section 3, which was the language on the B-hour law on page-what? Oh, it's Mr. McCarvel's amendment.

Mr. McCarvel, are you prepared on Section 3, your B-hour law?

DELEGATE McCARVEL: Mr. Chairman, I was hoping to have from the printing a substitute for--amendment for my amendment.

CHAIRMAN GRAYBILL: Well, Mr. McCarvel, let's find out if the printer has got it up yet. And send-let's send a page and find out.

DELEGATE McCARVEL: All right, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Cate, the—my point is that Mr. McCarvel wants to substitute other language for his, and we can start with his. I realize you have an amendment here, but he was the moving party this morning.

(Pause in Proceedings)

CHAIRMAN GRAYBILL: Will the committee be in order. Members of the committee, this morning we postponed consideration of Section 3 after we'd adopted it, so that it could be worked over during the lunch hour. And we are now ready to consider Section 3, and I understand that Mr. McCarvel has some new language to propose. And the material being passed out to you should be styled-you should put a "Section 3" at the top of it so you know what it is-Section 3, under the Labor Article. Very well, Mr. McCarvel, do you want this read from the rostrum?

DELEGATE McCARVEL: Yes, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Very well, will the clerk please read the proposed language.

CLERK SMITH: "Section 3, Eight-hour day. A maximum period of 8 hours shall constitute a regular day's work in all industries and employment, except in agriculture and stockraising. The Legislature may, however, change this maximum whenever, in its opinion, the change will better promote the general welfare. Signed: McCarvel."

CHAIRMAN GRAYBILL: Mr. McCarvel, are you proposing this as a substitute for the language you had this morning?

DELEGATE McCARVEL: Yes, Mr. Chairman. I had pointed out to me some flaws that was in the original proposal that I made, especially in the voluntary agreeing to work, which may entail a new employee being employed may be coerced, actually, by an employer to agree to work 10 hours in order to secure employment. So I think that the languagein this amendmentto that article should clarify that and take care of the situation. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the Chair will allow the language that's been placed before you as Mr. McCarvel's substitute motion for the language that we passed this morning, and the issue is open for discussion.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. Since I opposed the original wording of Delegate McCarvel, I would like to say at this time that this is-seems perfectly acceptable to me, and also the bees in central Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I would like to say that I also support this. It gets rid of some of the problems that was in the original language, and I think that this is one of the things that our laboring people have wanted and have fought for for years. And I think it is a safety factor for our laboring people to have this 8-hour proposal written into our Constitution, and I support it.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. McCarvel's substitute motion to substitute this language for that that he proposed and that we tentatively passed this morning. Do you want a roll call vote?

DELEGATE McCARVEL: Yes.

CHAIRMAN GRAYBILL: Very well, all in favor of the new language for Section 8 that you have-or for Section 3, H-hour day, that you have before you, vote Aye on the voting machines; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. Aye
Anderson, 0.. Aye
Arbanas Aye
Arness Aye
Aronow Aye
Artz ..... Aye
Ask ..... Absent
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman.. .. .. Nay
Brazier Aye
Brown ..... Absent
Bugbee ..... Absent
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Absent
Drum ..... Nay
Eck ..... Absent
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye

Robinson .Aye
Roeder Aye
Rollins .....Aye
Romney .....Aye
Rygg .....Aye
Scanlin Nay
Schiltz .....Aye
Siderius .....Aye
Simon .....Aye
Skari .....Absent
Sparks ..... Nay
Speer .....Aye
Studer .. .. Nay
s ú1'ivan .....Aye
Swanberg ..... Nay
Toole .Absent
Van Buskirk .Aye
Vermillion .Aye
Wagner .Absent
Ward .....Aye
Warden .....Aye
Wilson ..... Nay
Woodmansey A y e
Mr. Chairman .Aye

CLERK SMITH: Mr. Chairman, 74 delegates have voted Aye, 13 have voted No.

CHAIRMAN GRAYBILL: Very well, Mr. McCarvel, will you move that when the members of this committee do arise and report, after having had under consideration Section 3 of the Labor Article, as amended, that we recommend the same be adopted.

DELEGATE McCARVEL: I do so move, Mr. Chairman.

CHAIRMAN GRAYBILL: You've heard the motion. All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 3 is adopted. Now, this morning we had before us Section 2 on the merit system. It's on page 9. We deferred it until 1:30. Mr. Heliker, are you prepared on that at this time? Oh, I guess this is Mr. Scanlin's. Is Mr. Scanlin-do you care to take it now, Mr. Scanlin?

DELEGATE SCANLIN: Mr. Chairman, I repeat what I said this morning. I wish to withdraw my support of this section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Heliker—or Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, if the section is before us, I would like to make a motion that it be deleted in its entirety. Is the section before us?

CHAIRMAN GRAYBILL: Mr. Heliker, will you place the section before us?

DELEGATE HELIKER: Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 2 of the Labor Article recommended by the Public Health, Welfare, Labor and Industry Committee, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I move that the section be deleted in its entirety. Mr. Chairman, it's statutory. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the motion is to delete Section 2 in its entirety. Is there discussion?

Mr. Harper.

DELEGATE HARPER: I'd just like to point out, Mr. Chairman, this does not saythatwe establish a merit system in the strict sense of the word. It says that we establish a system under which the merit principle will govern the employment of persons by the state. We have a choice, I suppose, in the state of using the spoils system, or using some kind of lottery approach to gaining employees, or establishing some kind of a workable system where merit in employment does count. And it seems to me this article as written, or Section 2, tries to speak to that issue. And I just simply rose to keep it alive a little bit longer here, so-call your attention to the fact that we're voting on this and not a merit system, per se.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I arise to oppose the substitute motion. I'm going to make-attempt to make some distinctions to why this is not statutory, but I'll admit initially that it borders on it. I think it is not, for these reasons. First, it merely sets forth a concept; it doesn't even contain any major details as to how that system would be carried out. Secondly, I think it's not statutory because I think it sets forth the concept that we could support for the next 80

years. To me, all it says is that people will be hired by the state government on the basis of what they can do, rather than what they know, and I think this has been a real problem in state government in the past. And to illustrate that, I would like to talk a little bit about the Attorney General's office, since this is the only field I know anything about. The Attorney General's office is an elective office, you know, and the Attorney General is elected every 4 years, so the attorneys employed in that office never know if they can work there for more than 4 years. And as a consequence, they always have the young attorneys fresh from law school there, and I think it was our present Governor who made the statement--and I hate to admit it, being a young lawyer-but that an old lawyer can do more in 2 hours than a young lawyer can do in 2 weeks. I hope all the potential clients here don't run to Mr. Habedank and Mr. Davis and Mr. Kelleher and my other older brothers. (Laughter) But that is—

CHAIRMAN GRAYBILL: Thank you, Mr. Loendorf. (Laughter)

DELEGATE LOENDORF: And Mr. Graybill. (Laughter) There's a lot of truth in that though. When you--when a young lawyer gets out of law school, he doesn't even know his way to the courthouse. 1 wouldn't even know where it was in Missoula, except we were required to go up there at one time during the 3 years I was there. But a merit system, as I understand it, would allow a person to plan on having a career in government and that attorneys--and I assume we have the same problem in other fields-if they chose to go to work in the Attorney General's office, could plan on staying there if they liked that type of work. Now, they work there for, I would guess, a rough average of about 2 years. The present Attorney General, I know, has had at least a hundred percent turnover since he's been there. I know he employs no more than six or seven men; and1 havelisted the names here of two, five, seven who I can remember that have left there in the last three and a half years, and I think probably there may have been more. So I think a merit system could do a lot for the state in the way of allowing experienced employees to work there. As the situation is now, the state is deprived, I think, of the benefit of a lot of expertise. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman], I understand that the 25,000 members of the Montana Public Employees Association have requested that our group help them in giving constitutional authority to some systems of merit employment system. Their organization contacted 30 other states to find out if they had any system of civil service or merit system existing, and out of those they contacted, only Montana and North Dakota had the old spoils system; the other 28 states all had professional personnel agencies which recruited, examined, tested, and qualified applicants for public employment. It's a matter of fact that only 13 other states do have constitutional enabling authority for merit system today. The truth of it is that most of our constitutions in this country were enacted long before they had this system, and there have been very few constitutional conventions since. I think that it's extremely important that we protect our 25,000 employees in Montana in public agencies by listening to their request for a merit system. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman. As a member of this committee, during our hearings there was several different testimonies for, and the one that I think most of the committee went by was from Senator Bertsche from Great Falls, who explained that this system had been introduced, worked on for the last 6 years, and the proposal—the merit system as a whole-had gone to the House and the Senate last year, and that he expressed his concern that if we put this into the Constitution, it might enhance-or might hinder any chances of it being passed in the next Legislature. So for this reason, I will go along with Senator-or Delegate McKeon with his motion for deletion.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, could I ask Mr. Loendorf a question, please?

CHAIRMAN GRAYBILL: Mr. Loendorf!

DELEGATE LOENDORF: I yield.

DELEGATE BOWMAN: Mr. Loendorf, would it be your feeling that merit system should include schoolteachers in the public school system, and possibly University people, also?

DELEGATE LOENDORF: The Legislature can establish it, and that's up to them to determine the scope of it.

DELEGATE BOWMAN: Could I ask you one more question, please?

DELEGATE LOENDORF: Yes, I yield.

DELEGATE BOWMAN: You-all right—

DELEGATE LOENDORF: I'm on my feet anyway.

DELEGATE BOWMAN: The other question I'd like to ask is, do you personally feel that it should include those two areas?

DELEGATE LOENDORF: I think—that's the thing I want to avoid in the Constitution, is getting into this specific detail. I think we have to leave that to the wisdom of the Legislature.

DELEGATE BOWMAN: Okay, thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas was up next.

DELEGATE ARBANAS: I-Mr. Chairman, would Mr. Loendorf yield for a question?

CHAIRMAN GRAYBILL: Mr. Loendorf, will you yield?

DELEGATE LOENDORF: I yield.

DELEGATE ARBANAS: During the early part of the Convention, I had many side-aisle fights on the merit system. I was going along with it very much, and every time it came up people argued against me, said that, well, when it's all said and done, it's a way of keeping from firing the incompetents. Now, how do you-in other words, it's a way of keeping employees who are incompetent on their jobs. And I think that's the way it comes off to about 80 percent of the delegates. Do you have an answer to that?

DELEGATE LOENDORF: Yes. I think merit is just the opposite. It's a system that is based on competence.

DELEGATE ARBANAS: That's what I thought, too.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: When we met with the Department of Administration in the Executive Article--or Executive Committee, he made the statement which impressed me very much, that "When all is said and done, the chief problem in state government is the people problem-the employees who work for the state." And I think that we have a real choice of continuing a spoils system or a merit principle. I like the article because it doesn't talk about a merit system; it talks about a merit principle; and many, many forms can be tried and worked toward that goal. But I think we do have a choice, and I think it's not a small problem in state government.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, fellow delegates. I think by adopting this merit system, it would be a step backwards, now actually, from [for] many public employees. And I would oppose this quite heartily. Now, one of the big things that you'll find here is that there is collective bargaining in certain areas. Should this be put into the Constitution? Should it be used as the law of the land? Then I think we're going to run into a problem in these areas where we do have collective bargaining, and I do think it's a step backwards. We've already turned down collective bargaining because we've called this statutory. I think that this is much more statutory, and I think it would and will step on-in certain areas. And I think where public employees have the right to bargain collectively that this would be very harsh and could be interpreted whatever way you—whatever way the courts want to afterwards, as to whether they should have the right to bargain collectively. And I ask that this Convention turn this down. Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: As a member of the committee in consideration, I was one of the members of the minority thatresisted this motion, and I would like to point out again Senator Bertsche's testimony. The Senate now has under consideration a merit principle for consideration at the next Legislative Assembly, under which the merit system will be presented. And I think we can all agree that things such as enthusiasm have to do with merit; and I think we all can agree that things such as industry on the part of the employee have to do with merit; and I think we can all agree that the ability of that particular individual to cooperate and get along with his fellow employees has to do with merit. We have here a provision that states that the merit principleshall be used. Now, suppose that the bill that's presented does not include any provisions for testing

enthusiasm; does not include any provisions for testing the man's industry; and does not include any provisions for testing the man's cooperation. That bill would provide every legislator with a good opportunity to vote against it. They would say, "It does not meet the constitutional requirements of a merit principle"; and this is the thing that Senator Bertsche was getting at. He said, "This bill is going to be hard to pass if we submit it and you put something in the Constitution that some of the legislators can hang their hat on to vote against, they'll do it." And I think if we put it in, that's just what we'll do; and that's the reason we resisted it in committee-that is, the minority.

CHAIRMAN GRAYBILL: Mr. Holland,

DELEGATE HOLLAND: Will Mr. Loendorf yield for a question?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I yield.

DELEGATE HOLLAND: When I look at this merit system, I can't help but think of civil service. What are the differences?

DELEGATE LOENDORF: Between merit and civil service? I don't know that there's a distinction. Merit simply means, to me, employment based on merit. I haven't attempted to define civil service, but I would doubt that there's a distinction.

DELEGATE HOLLAND: This is one thing I came over here determined not to do, and that's create a new bureaucracy. One of the most upsetting things in the government of the United States, in my estimation, is the federal bureaucracy. And if we're going to create a system-1 have no objection to hiring someone on merit, but when they're going to be retained just because they have seniority, I have a serious objection, One of my heroes, Senator-or President Kennedy, took office and he wanted to make certain changes. He'd issue an order and nothing would happen, just because of the entrenched bureaucracy. And I don't think we should have an entrenched bureaucracy at the state level, and we surely shouldn't make it mandatory. And I point out to the Convention this is mandatory--"shall create a system of merit". We're mandating the Legislature to create a state bureaucracy. And I certainly would support Mr. McKeon in entirety in striking this from the Constitution.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of Delegate McKeon's motion. It seems to me that the section as written really doesn't say anything anyway. It establishes a principle. It's purely legislative. It's up to the Legislature to decide what sort of a merit system they will put in, if they decide to do so, and in which departments. It seems to me it runs contrary to the whole principle of the executive reorganization, in that we provided in there that the heads of these departments will be appointed by the Governor, subject to the confirmation by the Senate, and serve at his pleasure. And that's-the very point is, the difference between the spoils system and the merit system, I suppose, depends on your point of view. When the Republicans come into power, us Democrats-and fire all the Democrats, us Democrats think that that's the spoils system. And conversely, when the Republicans come-the Democrats come in and fire all the Republicans, then the Republicans say it's the spoils system. But the fact of the matter is, I think, that the intelligent people in both parties know that that's not the situation. In the testimony before our committee, Governor Babcock conceded the right of Governor Anderson to remove his key employees. Governor Anderson, it's-when he testified before our committee, thought that it was inherent that the Governor ought to be able to bring his own people in and shape the policy of government. Presumably the people-when they do vote for a change, they're voting for a new direction, and it seems that to write a merit system into the Constitution would be foolhardy. The Legislature can, if they wish and in their wisdom, establish some sort of a merit system in various departments whereby people would retain their clerical positions, but I don't see that we should require them to do so in the Constitution. And further than that, I agree now with Delegate Holland that any employee who works for the state government who gives a full 8 hours for the government is, in fact, retained. There are many people who have worked for the State of Montana through one administration and the other without being discharged, and that it seems to me that that is as it should be. But any time the employee feels that he should be able to subvert the policy of the elected officials, why, then I think that he should not have that right and should go out. And so, therefore, I'm back, I hope, in the good graces with my friends in that I support striking this because it's clearly a legislative matter.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, will Mr. Swanberg yield to a question?

CHAIRMAN GRAYBILL: Mr. Swanberg?

DELEGATE SWANBERG: Yes.

DELEGATE BUGBEE: I found it very interesting what you said about Senator Bertsche because he, certainly more than anyone else in the state, has been behind getting a good merit system. He's been working on this for several sessions, and the fact that he does not want this article in this Constitution-the question I want to ask you is, does he feel that this will be passed in the next Legislature? Does he feel encouraged about the way things are going with his merit system plans? Did he talk—

DELEGATE SWANBERG: I couldn't answer that with any certainty, Mrs. Bugbee. I do know that he appeared before our committee when we considered this, stated that the whole problem of the merit system is under study by his Senate study group; and he strongly advised us against putting anything in the Constitution, for the reasons that I have stated.

DELEGATE BUGBEE: Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I find it hard to believe that including a directive in the Constitution for the Legislative Assembly to establish a system under which the merit principle will govern the employment of persons by the state will hurt the chances of a merit system. That logic really totally escapes me. I actually am not really coming down hard on either side of this. It's just that, in the halls and around today, I've seen this thing washed back and forth. "If collective bargaining goes in", the labor support people said, "then we'll support the merit system"; and I guess the hackles rose a little bit on the back of my neck to think that we're trading back and forth on constitutional principle. Mr. Joyce awhile ago was against something-collective bargaining—because it's legislative. He redeemed himself a little bit at the end of his speech, but he started out by saying, "Well, this only states a principle", and I found that a little hard to say. Now-but I'm glad that everybody's back in each--everybody else's good graces. Now that the thing has been aired, though, and we see what it actually says, maybe we can vote on it. As a person who lives here in Helena and just watches as sometimes good people are shunted in and out of jobs for no other reason other than the political climate changes, I find myself, as a citizen, saying, "Why can't we establish some kind of a system in our government where a person's merit on the job will have something to do about his staying on the job?" Now, I never have been greatly enamored of the spoils system. Mr. Joyce says that if you're a Democrat and the Republicans push you out, it's a spoils system; but if you're a Democrat and the Democrats push you out, it's not. I'm speaking as an Independent. Looks to me like it's the spoils system working both ways. We see it wash over this community and over the state offices here about every 4 years when there's a change in the executive government, and I just don't think it's a good way to run a railroad.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: I would like to answer Mrs. Bugbee. I personally also think that this should not be in the Constitution, but I did sign the majority report because I knew there was enough interest among the delegates and it should come on the floor for debate. But when I was talking to the senator, he said that they had been working on it for the last two sessions and at presently the report had been up to 96 pages and there were still a lot of bugs that had to be ironed out. And he said, "Whatever you do, don't force our hands, because we are working on it, and eventually they will come up with something." But I would like to tell-the last time I was home, I had a meeting with the city, county, and educational people, and one of the college professors was telling me that the state that he came from, he took a test for civil defense and out of the hundred and fifty questions, there were only 15 that related to civil defense. And an accountant came out with the high score; and when they went in for a personal interview, he went out talking to the other men that were asked to be there for an interview, and his first question is, "What is civil defense?"

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, may I direct an inquiry to Delegate Harper?

DELEGATE HARPER: Yes.

DELEGATE ROMNEY: Friend Harper,

can you tell me what the percentage of turnover in this Capitol building and in the Capitol complex has been in employees in the last 10 years?

DELEGATE HARPER: No, I can't.

DELEGATE ROMNEY: May I ask another question, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Harper, in view of that, why so much consternation concerning the spoils system in this edifice?

DELEGATE HARPER: Because I know there have been some, and I don't know-1 never have checked up-1 don't know how many employees we have, and I just couldn't answer your question as to what the percentage is.

DELEGATE ROMNEY: Mr. Chairman, it has been my observation from hanging around this place for a number of years that most of the faces have become very familiar. I think that they've been here for a long, long time. I don't think the spoils system is operating as efficiently as it should be. (Laughter)

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. President [Chairman]-sorry to disrupt the proceedings because I dropped all my papers. You know, we've had a merit system in Montana for a long time, and I can confess to being present at the birth of the system. In 1937—some of the people around here will laugh when I say this-1 was a labor leader in Great Falls, a member of the executive board of the Cascade County Trades and Labor Assembly, and I came down to Helena to protest the manner in which welfare was being distributed in the State of Montana. And there1 met one of the greatest public servants that we had in the State of Montana. I.M. Branjord, who many of you will remember-the old-timers, at least-was on the State Land Board for many years and then became Director of the Welfare-Public Welfare in Montana. And as I came down and protested the manner in which political patronage was used instead of-in-as a spoils system in the selection of people to distribute welfare, Mr. Branjord said, "you're just one of the men thatwe'relookingfor". And he said, "We're going to put you on a merit examining committee to start a welfare program—a merit service program in the Welfare Department." As a result of that, people in welfare are selected on the basis of their educational qualifications; they must take certain training; and I think we've had less and less trouble. Prior to that time, it was a constant state of affairs. The-as a result of that, and very particularly-I suppose it's federal interference--we now have a Merit Examining Board in the state which handles the Department of Public Welfare, the Board of Health, the Unemployment Compensation, and several other agencies. We have something going. It's been in process. We don't need to put it into the Constitution. And to indicate that we can do something about it, back in the 1953 Legislature, the Legislature adopted a personnel commission program and set up money for a personnel commission and a study that was made. And it was thrown out, but the tools are still available. We can make it. And I just want to make one other observation. When I went into the Governor's office with the Governor, as his Executive Secretary, in 1953, would you believe it that the only place where there were any spoils that we could satisfy the county political committees was in the Liquor Board, and that was the appointments at the various liquor stores. You've got pretty near a merit system presently operating in the State of Montana, and I think it would be better, and I certainly would agree with Senator Bill Bertsche-another great public servant-that we should leave it to the Legislature. And I favor Senator McKeon's—or McKeon's motion (Laughter) that we delete. I just promoted you.

CHAIRMAN GRAYBILL: Not too fast there, Mr. Martin. (Laughter) Mrs. Babcock-Mr. Martin would like one more word, Mrs. Babcock.

Mr. Martin.

DELEGATE MARTIN: As a native of Butte, I wanted to get back into the good graces of the Butte delegation. (Laughter)

CHAIRMAN GRAYBILL: That may be hard to do, Mr. Martin. (Laughter)

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I'd just like to point out that there's one employee for the state that has been in their employ for over 20 years. She's worked for five Governors, two of them Democrat and two of them Republican, and I think everybody in town knows the merits of Elsie Jones, the cook.

CHAIRMAN GRAYBILL: Mr. McKeon, do you want to close?

DELEGATE McKEON: Mr. Chairman, I didn't mean to be flippant when I made my opening remark that it was statutory and sat down. I thought that that comment alone would suffice. I appreciate the comments made by Senator Bertsche that-who was an ardent supporter of the merit system, that it shouldn't be locked into the Constitution. I would agree in principle with the merit system; however, locking it into the Constitution without providing for bilateral participation, that being participation with the employers and the employees, I think is a dreadful mistake. I think that when we have a merit system, we have to reach a delicate balance. I think the employer has to participate, and I think the employee has to participate. So I would hope that we would leave this matter to the Legislature. And I know that the Legislature will be working and has been working very hard on this matter, and I'm certain they will come up with that balance that we cannot create within the Constitution. May I have a roll call, Mr. Chairman?

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. McKeon's motion to delete Section 2 under Labor, the merit system. A roll call vote has been called for. All in favor of deleting, vote Aye; all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot, please.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent

Reichert Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins.. Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan .Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk .Aye
Vermillion Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman .Aye

CLERK SMITH: Mr. Chairman, 75 delegates have voted Aye, 15 have voted No.

CHAIRMAN GRAYBILL: 75 delegates having voted Aye and 15 No, Section 2 is deleted.

Mr. Kelleher, for what purpose do you rise?

DELEGATE KELLEHER: Mr. Chairman, I have a substitute for Section 2. It was an addition, and the Chair did not recognize me when Mr. McKeon spoke. And I'd like to substitute it now that the section has been deleted. It's the underlined words, "The state and local governmental units shall pay appointed employees an amount no smaller than that paid to employees of the United States doing comparable work". It's the last sentence-it's the underlined sentence of my amendment.

CHAIRMAN GRAYBILL: Mr. Kelleher-

DELEGATE KELLEHER: On page 9.

CHAIRMAN GRAYBILL: Mr. Kelleher, the Chair does not have it. Would you send it up? I have a new section and an amendment to—

DELEGATE KELLEHER: It's on the merit system, Section 2.

CHAIRMAN GRAYBILL: Yes. I don't have it. You withdrew it, Mr. Kelleher, I thought. Is that wrong:'

DELEGATE KELLEHER: No.

CHAIRMAN GRAYBILL: It's not wrong?

DELEGATE KELLEHER: Sir?

CHAIRMAN GRAYBILL: Yeah, you withdrew that this morning. Do you want to renew it now?

DELEGATE KELLEHER: No, that was not the one I withdrew.

CHAIRMAN GRAYBILL: Very well, you want your Section 2 read. Very well, will the clerk please read Section 2, as proposed by Mr. Kelleher?

CLERK SMITH: "The state and local government units shall pay appointed employees an amount no smaller than that paid to employees of the United States doing comparable work. Signed: Kelleher."

CHAIRMAN GRAYBILL: No, read the whole section. He has to put in the whole section now. Read the whole section.

CLERK SMITH: "The Legislative Assembly shall establish a system under which the merit principle will govern the employment of persons by the state. The state and local government units shall pay appointed employees an amount no smaller than that paid to employees of the United States doing comparable work. Signed: Kelleher."

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has an amendment to put language in for Section 2, which we're dealing with, on page 9, the substance of which is to take the first sentence of the original Section 2 and add to it the language that the state and local governmental units shall pay appointed employees an amount no smaller than that paid employees of the United States for doing comparable work.

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, it was my intention to delete that first section that you have before you, because we just voted it out, and just to substitute in its stead the last portion, the underlined portion.

CHAIRMAN GRAYBILL: Is that what you want to do?

DELEGATE KELLEHER: Yes, sir, that's what I want to do.

CHAIRMAN GRAYBILL: All right. Therefore, Mr. Kelleher does not intend the deleted Section 2 to be in. He only intends the underlined language-I think you all have it before you-he only intends the underlined language to be his amendment. That would be Section 2.

Okay, Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. There is a great deal of difference between federal and state salaries, but there is-for doing the same type of work here in the State of Montana. And it is not fair to pay state employees-it is unjust discrimination to pay state employees a lesser sum than we are paying federal employees for doing comparable work, and there is really no rhyme or reason, even in the present system under the state. For instance, the Department of Revenue, a clerk-typist I receives $4,200; a clerk typist II receives $5,300; and for some strange reason, a clerk-typist III goes back down to $4,800. The comparable federal salary is $7,854. In the Department of Administration for the State of Montana, a clerk-typist I receives $4,300, whereas the average salary for a federal typist is sixty-nine and the low is 5,100 for the federal and 4,200 for the state. The overall general difference between the two is between $1,200 and $2,600 per year. That's all I'm going to say on the matter, Mr. Chairman. Could I have a roll call vote? Could I have five seconds, please? (Seconds stood)

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I would just like to say for the benefit of the body that this was a delegate proposal that was considered by our committee. We discussed this with Mr. Kelleher for perhaps an hour, and it was the, I think, unanimous view of our committee that this delegate proposal should not pass because-for reasons which-I can't really remember them all now. But at any rate, we felt it was unworkable.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Kelleher's proposed Section 2: "The state and local government units shall pay appointed employees an amount no smaller than that paid the United States for doing comparable work." Are you ready to vote on that? I would hope—

Mr. Wilson, do you want to talk?

DELEGATE WILSON: Mr. President [Chairman], I'd just like to point out that the federal government is several billion dollars in the red; Montana is in the black. If you adopt this proposal, why, you're going to put Montana in the red. I worked in-had an administrative office in the state, and we just couldn't possibly keep up with the federal government in the pay raises that they required. There was no way that our budget could match the federal budget.

CHAIRMAN GRAYBILL: Very well, all in favor of Mr. Kelleher's motion that we substitute this language for Section 2, say Aye.

DELEGATES: No-a roll call.

CHAIRMAN GRAYBILL: Oh, you want a roll call vote? All in favor, vote Aye; all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, please take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Absent
Babcock..	Nay
Barnard	Nay
Bates..	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Nay
Brown	Nay
Bugbee	Absent
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross..	Nay
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay

Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Nay
Felt. ..... Nay
Foster ..... Nay
Furlong ..... Absent
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper. ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland,, ... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Absent
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf. ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ... . Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius. ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg .. .. Nay
Toole ..... Absent
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey .. .. .. Nay
Mr. Chairman ..... Nay

CLERK SMITH: Mr. Chairman, 4 delegates have voted Aye, 88 have voted No.

CHAIRMAN GRAYBILL: Mr. Cate, for what purpose do you rise?

DELEGATE CATE: Mr. Chairman. Mr. Kelleher, one thing about it, you make some of us other losers feel real good. Thank you, (Laughter)

CHAIRMAN GRAYBILL: Mr. Kelleher, I'll give you 30 seconds.

DELEGATE KELLEHER: Wait till I ask for reconsideration on my legalized prostitution measure. (Laughter)

CHAIRMAN GRAYBILL: Very well, if you'll all turn with me to page 36. My memoranda says that the next man up is Mr. Studer. Will the clerk please read the minority proposal on Section-on page 36, and style it Section 5.

CLERK SMITH: "Section 5, Employment rights. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." Section 5, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Studer, I understand you want to amend this before you debate it or discuss it. Is that correct?

DELEGATE STUDER: That's right, Mr. President [Chairman]. I think I'd probably do so at this time, before I make this motion to strike all but the first sentence.

CHAIRMAN GRAYBILL: In other words, you want to strike the right of employees,

by and through labor organizations, to bargain collectively?

DELEGATE STUDER: I do.

CHAIRMAN GRAYBILL: And you want to strike the last one about public employees shall have the right to strike?

DELEGATE STUDER: Not have the right to strike.

CHAIRMAN GRAYBILL: Shall not have the right to strike.

DELEGATE STUDER: We don't have any public employees bill in now, do we?

CHAIRMAN GRAYBILL: Very well, Mr. Studer has moved to strike lines 13 to 16, except the word "organization", so that only the first sentence appears in his proposal. In keeping with our rule that we let people put in their motion--or their proposal in any form that they like, I would like to have the sense of the body. All those in favor of allowing him to so amend, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well, Mr. Studer, you now have just the first sentence of Section 5.

DELEGATE STUDER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I move that when this committee does arise and report, after having under consideration Section--would this be 5?

DELEGATES: Five.

DELEGATE STUDER: -5, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. Chairman. First of all I want to say, in the debate here awhile ago, I also-1 heard Delegate Champoux, I think it was, refer to some group or power behind the people that were making proposals in this right-to-strike debate in which I moved to eliminate--or to-1 amended it to not give the right to strike to public employees. And I want to say here and now, before I start, that at no time any-did anyone come forward or ask me to put these bills in. I got into this trouble all by myself. (Laughter) I had no help from anyone that I didn't call on to either talk for me or help me. The right to work people at no time contacted me. I contacted them to get some information after I was in here. So I don't want anybody to start out with the idea that I had some power behind me in any way, shape, or form. I'm on my own; and that's the way I'm going to die, I guess. (Laughter) Mr. President [Chairman] and fellow delegates. I am very, very proud to be able to plead for this bill of rights for labor with you, and I'm just scared to death that I may not prevail when I have such a wealth of facts at my disposal and such a preponderance of rights on my side. Before I go into the history of unionism as it pertains to features that affect the bill of rights for workers, I will make a few comments relating to talks that we have had here in this Convention, which may help a little. The other night, John Gardiner appeared and he spoke, oh, a few evenings ago. And he said, and I quote: "It's time to open the doors and windows and give this country back to the people." Now, you know he was applauded heartily, and he could have been speaking just as sincerely about giving the worker's rights back to the worker. He also said, and I quote approximately, that "money talks louder and longer and drowns out others." And I think he could have been referring just as well to the terrific clout of the labor unions that we have here, and for the bill of rights for the workers. The Montana *Standard* the other day said Wade Dahood hit the nail on the head when he was discussing a right nearly-not nearly as important as the right of association, the right of privacy, and I quote: "He said as government functions and controls expand, it is necessary to expand the rights of the individual." Now, the *Montana Standard gave* Wade credit; said he hit the nail right on the head. He was discussing a right, and it was a right, and he had the right idea, and I certainly think it is no time to contract or reduce the rights of any individuals, or even to take them away entirely. Think about this a minute. Now, Supreme Court Justice Douglas, certainly not a conservative, said in 1950 in a court decision-and I quote: "The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, and to own property. It does man little good to stay alive and to be free and propertied if they cannot work. To work means to eat. To eat means to live." Well, that's the end of the quote. (Laughter) There's more-there's more, but that's all that pertains to

this, and that's his feelings on this subject. Oh yes, and Delegate Dahood, in pleading for a unanimous verdict the other day-I get a kick out of this-he won a unanimous verdict the other day to convict for a misdemeanor, and he won his case. I just wish he was here in my boots now. With all the facts and figures that I've got here, he could win this thing hands down. Hell, it'd look like that last roll call. (Laughter) Now, I ask you-he did ask for this conviction by a unanimous verdict for a misdemeanor. Now, I ask you, is that consistent with what labor is doing to the minority. A minority-just think of it-a minority of labor can go into industry, an establishment, and come out with a 49 percent of the vote, and they've given their rights to bargain to 51 percent. And from then on that 51 percent can convict the rest of that bunch for life for paying 10, 15 dollars a month, whatever the dues are. And they've got a 49 percent minority, but they're convicted for life for a fine and they haven't done anything except give up some rights. They got maybe a fine of a hundred dollars or more right off the bat to join the union. Think about that, fellow delegates. The minority are only guilty of having decided to use an inalienable right of association, and they're fined 10 bucks a month for life, and probably deprived of the right to life, too, if they don't have a job and can't eat. Now, I'll talk about the majority having the rights to collective bargaining for all. This is a little more-goes back to 1935, when the Wagner Act, which is the National Labor Relations Act, was enacted. They-since then they have had the right to enforce a closed shop. But by that-by 1947, a little feeling had been built up in Congress to restrict their abuse of this right and other powers, and among the restrictions that were imposed then, in the Taft-Hartley law, was the clause saying in effect that compulsory unionism could not be enforced in any state which had laws preventing it. This is 14(b) of the Taft-Hartley law. I'll not go into the many battles fought by organized labor to repeal, but many of you should remember when Senator Dirksen of Illinois almost singlehandedly, in 1965, shortly before his death, rallied enough strength from the multitude of letters and wires and the voices of the people to soundly beat this terrific power of the union bosses that they-the mass to repeal this bill. And I remind you that Senator Mansfield was the loser on the-was the big gun on the losing side. When this law, 14(b) of the Taft-Hartley, came into effect, I think 11 states had the bill of rights for labor laws, and since then, 8 morestates have adopted them. And I think there's either 8 or 9 with constitutions that have the Bill of Rights in their Constitutions-Bill of Rights for labor—sometimes called the right-to-work law. Let me quote you some of the opinions of some of the Senators and Governors of the state, in direct contradiction of what we've been hearing from the union bosses around here. And this is a pretty late bunch of quotations, but in Wyoming: "The right-to-work law is designed to restore full freedom of choice to the working man and woman of Wyoming. Also, it guarantees one of the most important hallmarks of American liberty and citizenship—the right of individual decisionmaking."—Clifford Hanson, U.S. Senator and former Governor. In Virginia: "The opposition to repeal of the right-to-work law is neither antilabor or antiunion. In this state, both industry and unions have expanded and prospered." In Tennessee-I only got a couple of these: "As I see it, we have had pretty good labor-management relations in this state. We have gained new industries because of our right-to-work laws. Industry knows that both management and labor will get fair play." In Nebraska-Oh, this was by Buford Ellington, the Governor of Tennessee. In Nebraska: "The most important function of our right to work is to safeguard individual freedom. Not surprisingly, how. ever, it has also had a beneficial effect on Nebraska's economy."-Senator Curtis, U.S. Senator. Well, I can go on here for quite awhile, but I'll finish with Utah: "Under our right to work, Utah's economy has prospered as never before. There are more jobs at higher wages than ever before."-Wallace Bennett. I can also go back to Wyoming and cite you something that came up in our committee. Unfortunately, I lost the letter I had here to back it up, but I made the statement that since we'd worked in Wyoming since 1963 in the right-to-work law-came in there at that time-we heard argument after argument and thousands of dollars were spent down there by the labor bosses to try to keep that thing from going through the-to be enacted as a law in Wyoming—and they prophesied all the things that you're hearing here. And let me tell you, since they went in in 1963, the Wyoming union scales for the comparative classifications-in Wyoming, our neighboring state to the south, they have increased their union scale I think it's 7 percent faster than they have here in Montana, since 1963. And that's where the prophets of doom were really going to town. Of course, they had a Right-to-Work Committee going down there, too, I guess, and they put out a lot more stuff. But don't tell me they haven't been working against me here a little bit. Anyway,

what I've just told you here from these Governors and Senators, from these various facts, doesn't jibe with the facts and the figures that the labor people have been trying to tell you, I'm sure. Better go where I can start again. Now, since I've been at this Convention, I've learned a lot, and I've missed a lot more, about taxation and education, environment, general government, and stuff like that. And I know that I certainly was not as educated on those things as I should have been, and I'm just taking it for granted that from here on in, a lot of you people are not educated in labor deals as much as I've been. So I'm assuming that, anyway. And do you know-1 don't think a lot of you know a lot more about these labor problems than I did when I came in here. Just like one of my younger brothers-I've got to bring a story up here. We weren't too bright in our family, but this wasn't one of the brightest one of us, either, but— (Laughter) I remember-well, I'll go back into another story as long as you think that one was— (Laughter) We did have a—we had a pretty good family. I think there were nine brothers-I can't remember that far—

CHAIRMAN GRAYBILL: Just keep it relevant, Mr. Studer.

DELEGATE STUDER: There was nine brothers and one sister, and we were all sitting around the table, and we had a fellow come in for dinner, and he remarked to my Dad what a wonderful family we had, and this and that. And my Dad told him, "Well, yes, it's a remarkable family all right-look real good. But, sad thing, one of them is a little off." And of course the fellow said, "Well, that's sure too bad, Ed. I feel sorry for you." He says, "Well, that isn't the worst part", he says, "We can't tell which one it is." (Laughter)

CHAIRMAN GRAYBILL: Ralph-we might help him a little, Ralph. (Laughter)

DELEGATE STUDER: Well, that was a kind of a dirty one. (Laughter) Well, really, that isn't the story I was going to tell. (Laughter) This kid brother of mine-I'll get this all over with and then I'll get serious. This young brother did go in-he went in with this load of hides to sell. This was during those old dust bowl days. And she was really tough; and so he sent him into town with this load of hides, and then he gave him half a dozen chickens. He says, "Take them in, too", you know, "and get a little groceries. Flour and salt; you know, the staples-and sugar and stuff— whiskey and things that we needed."-(Laughter) And when he went in there, why, he was gone quite awhile, and when he came back, why, Dad went over and looked in the grocery box and there was nothing in there. He said, "Say, I thought— what's the matter here? You had some chickens and stuff there and you was going to sell those hides. What happened to the groceries you were supposed to buy?" Well, he says, "You know, I got in there and Joe says, 'You know the price of hides has gone down again, and by the time I pay the fellow for cleaning these up and taking them over to the station and shippingthem to St. Louis, why, paying the freight', he says, 'I think you'll be about a dollar and a half short.' Well," he said— "so I gave him the other three chickens to pay for that. I gave him three, and then I gave him three and told him we'd bring him in another load of hides tomorrow." (Laughter)

CHAIRMAN GRAYBILL: I'm about to go to the Rules Committee, Mr. Studer. (Laughter)

DELEGATE STUDER: Well, our standard of living is much higher now than it was then, and wages and prices for things are 5 and 10 times as high. But I have a sinking feeling that our country and our economy and our working man, among other, other than a relatively few which are in the higher priced areas, and their relatively secure government jobs and the like, are in a very precarious position economically. And I place the blame for the great share of it at the door of the ruthless, power-hungry, avaricious, and short-sighted labor bosses who are at the top echelons of our unions. When union bosses for organized labor begin to flourish and expand and while our production lines are growing-were growing by uses of finer machinery and technology and new products and so forth were coming on the market, wage increases were only keeping pace with the increased sales and production and inflation was very little, except for the periods of war and shortage of labor. That's when our labor increases-all the fringe benefits and the like that were started— were added to a rapidly expanding economy, due to this technology and this stuff that I mentioned. And they didn't necessarily increase our inflation at all, because a fellow produces twice as much, why, you can afford to give him twice as much. There's no reason to pass on any costs to our society at all. To make a long story short, I will skip a little here and quote from the Congressional ***Record*** some stuff I just found out. They have introduced a bill there on this, and in one of the talks, Mr. Steiger of Arizona quoted-171 skip

some of that: Do you think union demands for higher wages and benefits will cause higher prices and more inflation, or can companies meet union demands without raising prices? This was a question asked by an opinion poll of the Research Corporation of Princeton, New Jersey. "Mr. Speaker, 63 percent"-well, he was talking to the House there-"63 percent of the union families in the country say that these demands do indeed cause higher prices and more inflation. These families instinctively know, as does the general public, that unrestrained union power is a key factor in bringing our nation to the brink of economic disaster, Most respected economists agree on this point. As Henry Hazlett noted, the government has been turned into a union organizing agency and virtually compels employers to make substantial concessions to union demands, no matter how unreasonable." This is all a quote of Mr. Steiger. "This resulted in the union wage freeze that is now melting into phase two of our new economic policy. Unfortunately, the new economic policy treats the symptoms of the problem, rather than the disease, and that is compulsory unionism, and that is one of the reasons why I am sponsoring a national right-to-work legislation." This has all been taking place while we're here. Writer John Davenport recently noted: "What ails the economy is not the free price and profit system as such, but the fact that it has afflicted in a single sector by a powerful and pervasive monopoly element. I refer, of course, to the power of the labor unions to force up wages and costs year after year, without regard to general productivity advance. The effective and courageous way to deal with union monopoly is a large-scale revision of our present permissive labor laws and their administration. This is the missing ingredient from the President's program; and had it been undertaken in good time, we might never have arrived at our present impasse. Americans everywhere are keenly aware that the nation's economy has entered a vital period. Action taken by us in the next few months will have a profound influence on the future of this country. Surely, excessive union power has steered the American ship of state to the brink of disaster, and this makes sound economic sense. It does make sound economic sense to eliminate the root, because of this unhealthy concentration of power, and that root is compulsory union membership. Anything else, to paraphrase a comment made by a nationally syndicated columnist during one of the recurring railroad crises a few years ago, would amount to be-putting a band-aid on a compound fracture. At the bottom of this whole thing," he noted, "is the vice of compulsory unionism." Well, he goes on with quite a bit of that stuff, but you won't be listening to me in about a minute. The facts are as presented to you here and by the paper I placed on your desk either yesterday or day before, that had a lot of quotes and a lot of facts and figures. I don't know if you all read them. I am not going to take the trouble to read them to you here now, because I know the longer I go, the-well, I won't be making any votes, I don't think. So there's no reason that we wouldn't prosper as these other states have, according to the figures on this sheet that I placed on your desk-all 19 of these right-to-work states have progressed faster economically than any statistic you can put in here that Montana has today in a compulsory unionism state. Now, that ought to show something to you. That ought to be argument enough right here, right now. If 19 states can do more economically for their society than we have done here without the use of this bill of rights for labor, why don't we get smart and adopt it? You know why? We've got that clout over our heads right now, and that is really one of the troubles. If we could just come in here and have the facts explained to us about a new deal, and I was bringing it up without having had it heard one way or another about this thing, and I was trying to sell you something, and I had all the facts that I have here as to where it had worked and how good it had worked previously in a hundred percent of the places I had sold it, I think you'd buy it. I don't know why you don't just go ahead and buy it from me now and raise your hands and say, "I'll go with you," and I could stop right here. The Bill of Rights for workers does not wreck unions; it stabilizes them. Justice Brandeis, a famous labor lawyer, said in part in a decision: "The unions attain a success when it reaches the ideal condition, and the ideal condition for a union is to be strong and stable, and yet to have in the trade outside its own ranks an appreciable number of men who are non-unionist." Now, this is from Justice Brandeis, who is a very famous old-time labor leader—lawyer—around 1905 or something--and he was quoted in this opinion here by Justice Frankfurter when he ruled that the Arizona right-to-work law was legal, in 1945. Now, Justice Brandeis also said a nucleus of unorganized labor will check oppression by the union, just as a union checks oppression by the employer. Now, nothing could be said much more simple than that. I don't understand why a fellow would want to even think that you can take the rights away from a minority of a group that have voted to give their collective bargaining rights to

the employer and then from that day on say that that minority cannot work. It just seems so unreasonable to me that that's really why I brought up this right-to-work law here--what I got in here. I heard a-rights to do danged near anything-you've got the right, the inalienable right, you got all these rights, but you don't have the right to work. And the right to work is the right to eat, and it's the right to live. My God, if you don't eat, you can't hardly live. We can't all go on welfare. I think we should talk about the bill of rights for labor as it concerns us here in this Constitution. Some of you will come up with the old dodge that this is legislative. (Laughter) I got something written here on that. (Laughter) It's a red sheet here someplace. Well, anyway it's legislative all right, and I'll agree to it. But we also had a deal put through here that was legislative the other day, and I didn't like it a bit, and I'm looking right at the guy that put it through-Dahood, over there. (Laughter) And you know, he did. He got a law pushed through here, and he starts right out telling you that he knows it's legislative but he had a little grievance there. Well, I got a big grievance here. (Laughter) I don't see why, if we can sit right here and, with our great amount of judgment, go along and vote against something that is as important to the economic growth of this state—and I'm serious now-1 don't see how we can possibly do it. It is just impossible in my reasoning to think that we could even think of doing such a thing when we've got all the facts and all the figures and all the reasons for going along with my proposal on my side. I don't know of anything that's been said against this right-to-work law, except that it's an awful thing. It just--what's an awful thing about it? The right to work? It isn't too bad. A lot of us got out of the habit, and we're getting the hell. (Laughter) This is a very important measure, and the fact that you're going to try to say it's legislative, I just hope you don't, because it's too important for the state at this time. And for anybody to come up here and try to oppose that, you're just--well, you're just sneaking out, that's what you're doing. (Laughter) You got-you aren't taking the issue at heart, and if you do such a thing-you can clobber it, probably. But it is not—it is legislative, but it's got no chance in the world of getting through this legislative body-the bodies that we're setting up, and if it's a unicameral system, it probably will have a little less because this clout is here. There's a fellow made a statement here a little while ago in his talk, Delegate Joyce, in which he mentioned he was endorsed by labor. Well, hell, an endorsement doesn't mean selling your life and your conscience and your--all of your thinking from now on, does it? If it does, I'd just as well sit down. I'm trying to convince the ones of you that feel like you've got to give your vote to labor. If you really want to give your vote to labor and not to the labor bosses, you'll go along with me. Because labor is who I'm fighting for. I have been for labor all my life. I started out when I got out of college-hell, I'm going to throw my speech away. (Laughter) I got out of college and I worked for labor. That was the first place I ever got on the labor group was—that's when my Dad was accused of having us morons--when I got on that labor group. I was appointed by the Governor to be on the—Associated Contractors at that time had quite a wrestle with labor. I think we were getting a couple of bucks a day and board, or 40 cents an hour. Those were the wages in those days. I thought that was pretty rough to live in over the winter. We had transient help, you might say. We fire them in the fall and hire them in the spring, and that was the common practice. So I thought, well, we should have just a little more justice in our dealings with labor. We should give them a fair enough wage so that they could live through the winter without having to borrow money from the boss to start the spring. By the time you got the boss paid back, well, he was pretty near where he was before-fall was in there and he didn't have any money again. So we did pass labor laws. We got the first 40 cents an hour law, I think, in the State of Montana-or the State of Minnesota at that time, which was around, oh, I don't know probably 1926 or '25, something in there. Later on, I got away from there and got out of the area. But 1935, of course, labor unions got started, and they didn't have any help. They were progressing very fairly and I have no objection. I worked with them, we got along fine with them. But all at once we come up here to where their wage-their asking was faster than their production. They asked for a wage increase rather--or whether or not they got any extra production or not, even with the increased production of machinery, the efficiency of machinery. They didn't care about that, and you could see what was happening then. They did not care about labor. Somewhere along the line-well, it had something to do-there's a lot of pretty rough people got into the labor movement. I don't say they're all in there now, but there was a lot of labor organizations that were fought by the big shots when the CIO and the AF of L merged. And some of these unions could not get into this merger, mainly because they were riddled with Communists, and there

were a lot of pretty big unions that had to rid themselves of Communists. And, you know, they went so far and they got so strong later on, and the big shots in there had forgotten about labor. I'm sure of that, because these prices, after they had gone past the productivity angle to where they related their wage increases with the increases in production, that's when our trouble started. You have to pass the cost on to somebody. Whenever you have raised the costs, the boss doesn't take that raise. If he does, he goes broke. So contractors like myself could care less about these wage increases. We're not hurt. You'd think I was arguing like a lot of these letters say that we're getting from these people. I got a lot of them. They're set-and you know, it's just like the school teacher tells you-"You write a letter to Aunt Lucy; she's got a lot of money and she isn't feeling so good; and you'd better all write her a letter tomorrow." Well, you're getting them. They're dictated. They're regimented. They come 20-15, 20 in a pack from different towns, sort of. I can pretty near trace the way the business agent was traveling. (Laughter) Well, anyway, after we got into this mess, that's when I became worried. I really thoughtthatsomething should be done about this right-to-work law, and it's been brought into this state several times and tried to be passed here in the Legislature. People have started to bring it up. I don't think it's ever got out of committee. They had an initiative here a short time ago and-well, 1958, I think it was-in which they went around and made a concerted effort to get an initiative, because they could feel that the Legislature was never going to get it because of this clout. Believe me, these union bosses have got to have this clout. They're not interested in this labor. I was going to show you where labor is hurt. We could move five or six times the amount of dirt in our business or lay twice as much oil or twice as much gravel as we ever used to, with halfthelabor that we used to, because they forced us to do it. And price doesn't mean anything. They try to tell you that we're trying to bring the price down, that we're going to take-make a lot of money. I've got a letter here-"Stupid bugger, you," I mean, "what are you trying to do? You're trying to lower the wages? You're trying to make a slave state out of this state?" Well, nothing could be further from the truth. When we bid on work, we use a prevailing wage. Nearly every building going up today, nearly every construction job of any size whatsoever has got some federal money in it someplace, and as soon as that federal money enters that picture, you pay that prevailing wage. And that prevailing wage is set fairly close to the union standards, whatever they are, and so the fact that they come out here and tell you you're trying to make a slave state out of this, that's for the birds. It just isn't. There's no such thing. We pay the prevailing wage. We do, however, have the opportunity of paying a lower wage if that right-to-work law is here, and that is where an increase in the use of labor will come in. That's why a lot of these states prosper that have got the right-to-work law, because on some of this other stuff-If I want to make a deal here with Blend, there, or Torrey, there, or somebody to go out and build him something, I can go out and build it. I can go out and build something for a fellow, and instead of having to use these union restrictions, this featherbedding stuff doesn't apply. That only applies when you have a contract that goes out on this work where your union restrictions, your compulsory union, is in effect. But in a Right-to-Work law, you could have the right to go out and go to work and work, and if they didn't like it, they could take the chance that maybe you'll quit that union, or you may go nonunion. So they tried to make a little more stable laws. I can go out and make a deal with you fellows, and I can build your feedlot or whatever you might want, or your driveway, and instead of having a roller operator there for 2 hours and having to pay him until noon, I can take him and put him on a shovel or on the truck or something else, without having to pay him sitting, and I can't use him. All these featherbedding deals, they hurt. And you know who they hurt? The laboring man. Hell, you just go out and find something bigger and better to do the job and replace two or three of those fellows so that you can avoid having all these fellows around and having to worry about what they're going to do next. You get a few men and do four, five times as much work, and 10 or 12 fellows sit on the side. It's just that simple. I maintain, somewhere along the line, and I think probably it was in a Romney hearing, that it's much better--and think of this now, fellows, think of it. It's just a lot better if we had 10 men getting $4 an hour, we'll say, than 4 men getting $10 an hour. That just makes sense. Those $4-an-hour men will be getting quite a bit more than our minimum wage law is today, and are the labor people very interested in this low class of labor? Hell, no; there's no money in that. They just aren't. They aren't going out where it's hard to organize, and they aren't interested in labor as a whole. They're interested in dues. If the dues don't come in fast enough to more than pay for their organizing, they aren't interested.

They're interested in dues, and I'm telling you that's why they want compulsory unionism, is dues. They're driving men out-time after time, driving them out of work, and they could careless. You don't pay our dues, you don't work. They're glad to sign up another man that's got money in his pocket that'11 take out a card, and I can prove it. Well, anyway, I'm certainly not antiunion, like I've been accused of out of these letters. I'm for the-I'm not antilabor, I mean. I'm certainly anti-union-boss. Now, I got off my subject, I guess, or off my speech.

CHAIRMAN GRAYBILL: Mr. Studer, will you do what you can to complete?

DELEGATE STUDER: I'm going to finish right now.

CHAIRMAN GRAYBILL: That's good.

DELEGATE STUDER: I want to bring in this fact about welfare. You know, the welfare people have a bill of rights. We were listening to their stuff, and they have a bill. You have a right to welfare. Now, that's about the most ridiculous thing I've ever heard. Not that I'm against welfare. If you're poor and you've had a lot of bad luck, I say that you should get welfare, but you don't have a right as it's-as I'm applying it. This right was given to us to work, and they're taking it away from us. Now, how ridiculous that sounds, when they bring up the fact that you have a bill of rights for welfare-which they have, a printed bill of rights for welfare-and we just go along here and can't even go to work so that we can get off of welfare. How ridiculous that is. You've got a right to get on welfare, but you haven't got a right to get on work to get off welfare. What kind of a corner are we getting into? In closing, I have a 60-second editorial here from--well, I'm not going to read it. Labor's very existence is at stake. It is as sick as our economy is sick. Why not give it the help it needs? My bill of rights for labor has worked in 19 states as the medicine that has worked. It will work here. Why not give it a try? Does the doctor with the medicine that will cure a patient withhold it from him because he objects to its taste? The real issue here is the right that a working man has that he has unjustly lost. I'll not belabor this, but it is the only right that we've debated here that really affects us all in a very earthy, practical and easy-to-see manner. It hits our lives daily. It is the right to work and to eat and to live. It's ironical, isn't it, that we've had a large delegation here before our committee, testifying very emotionally about their right-and this right that I just talked about, this right to welfare-and we don't even have this right to work to get off of it. There's not one of us here who can, in good conscience, vote against the bill of rights for labor, if you know it should be done. Even though you've-honestly want to honor a commitment that asks you to do differently. That is why we must, should, or can with honor place this measure on the ballot so that can be voted on at once and for always by we, the people. By giving the people this alternative on the ballot-and that's what I'm going to talk about now-you have helped the Constitution to pass and you can rest assured that you voted for the best interests of the thousands who must live with this Constitution in the years to come. Let's give the real working man back his rights to work that is his, and that can be again. Now, this alternative is a very important deal. You've all heard it. You know it. We've tried to keep it off, we've tried to put it on; but this is one that says right in my bill that it's an alternate. It's an alternative that will be put on the ballot; you shall either vote for it, or you shall vote against it. I hope it's on there. I didn't remember--okay, it's on there--and it's not to be voted into the Constitution. I did not want it in this Constitution. That sounds funny, but I certainly did not want it in the Constitution. And the first time we met to talk about it, I brought it up, and that's-it had to be put in as a proposal: and when I put it in in the committee, it was-the alternative was put in, and that alternative gives people the right to vote on this important issue. It's been a very, very controversial issue in the state, and it will bring out a lot of people to vote. And believe me, all the people that will come out to vote for this thing are certainly going to put an "X" on top to go for the Constitution. They might vote against it or they might vote for it, but they're going to vote on-the ones that want the right to work in, they're certainly going to vote for the Constitution. And as has been shown by labor-and this is very important-in the ballot that they took on whether they wanted to stabilize or to go on phase two, and labor leaders all said "No, we won't go along with you. We're going to have to have our own way here. We're not going to go along." They took a ballot of labor, and 63percent oflaborvoted that they would go along with this wage stabilization as against their union leaders. That goes to show you how they can vote when they've got a ballot that they don't have to put their names on. Now, if that is put on and even half of labor comes out and even wants to vote against this right-to-work law-even if all of those people voted against the Constitution, it wouldn't hurt it. Half of them,

you see-because half of them will vote for it. Half of the labor leaders. There's people right in here, labor union people working right in here, that have told me that they would be glad to speak for me if they could just do it and not lose their jobs tomorrow morning. Now, I want you to know that this is a serious proposition, this alternative, and that is the key to the whole thing. If you're not willing to put it on the ballot as an alternative, you're voting against the will of the people and there's going to be a lot of people against it. I don't say it's threatening the Constitution's passing in any way, but I'll say we could help the Constitution in passing by bringing out this big vote for this bill and for-and they would certainly vote for the Constitution. There was a time when a man once said: "Is life so dear or peace so sweet so as to be purchased at the price of chains and slavery?" It may be, delegates, that we have become unworthy of such a heritage. I'll now close with this thought: that there are no extraordinary men, there are only ordinary men that do extraordinary things. Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Studer is correct that his motion on page 36 does include the idea that is to be submitted as a separate issue to the people. That issue is now open for debate. Mr. Lorello, you did have a motion that you want to make. Do you want to make your motion now?

DELEGATE LORELLO: Mr. Chairman, I do. I read this section and it reads "employment rights". I don't believe it's-here comes the dodge, Ralph-I don't believe it's a constitutional item, and this is what we're going to be telling people if we vote on this thing. I read just the section that gives the employment rights part, and I don't think that we can vote on both issues at once. We don't know whether this is going to go on the ballot or not. I'd like to discuss the thing or have the body discuss it and get a vote on it and then, if it has merit, perhaps be put on as a separate item. But I don't think we can vote both issues at once.

CHAIRMAN GRAYBILL: Are you going to make the motion?

DELEGATE LORELLO: Is that correct? Yes, you have my motion there.

CHAIRMAN GRAYBILL: Yes. Mr. Lorello's motion is he moves to delete Section 36-or Section 5 on page 36. So his motion to delete will be allowed, and we'll debate that, and it's the same thing either way. And you may debate either issue. Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman, exactly what I said before-1 don't believe that this is a constitutional issue. We've talked about this all day. I'd like to have some other talk on it. Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. Mr. Lorello and I had the same thought on this. We, this morning, voted down a right to organization and collective bargaining. I think that we should be consistent and vote down this employment right. I've had some experience with employment rights back in the '30's. I joined an organization, and I was working for William Randolph Hearst, a bleeding heart for the rights of labor. And I saw some heads busted and a lot of people gassed so that the scabs could have their employment rights. They were peacefully picketing. I don't think this thing is concerned with employment rights, but the right to break unions and lower wages. I, along with Mr. Lorello, would like to see this thing gotten rid of. Let's be consistent. If we can't have bargaining rights, let's not put in employment rights.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'm sure going to catch it now. You know, when I came up here, I didn't think anything about there'd be a right to work or anything come up. 1 came up here to see what I could do to help write a better fundamental law for the State of Montana. Since I have come here, of course, I have learned a good deal. As Mr. Studer said, he certainly has been very short in knowledge of many of these things, and I have, too. And I suppose I am in-as far as labor goes. Now, when I was elected in November by the people of District 6, I know there was a good many union people that voted for me. I suppose that some of those, perhaps, after I speak here, may wish they had not have voted for me. However, I do feel that the wives of many of these union men are probably pretty glad that they did vote for me about now, because I'm sure that they would rather have paychecks coming in than some kind of a big promise of something that they're going to have after they strike 6 or 8 months and it's questionable whether they will get it or not. Now, along these lines of whether I speak for this or against it, Delegate Wilson and I were instructed to bring up another subject here. You could call it a right to work or whatever you want

to. Many people in our district didn't think the legal profession was treating them quite as they should, so we brought up a proposal. Wediscussed it very thoroughly here, and I think many of the legal profession realize that these things are going on. And I'm sure that they are going to do something about this on their own accord, and that's the way it should be. I don't think we ever hoped to put any position in the Constitution that would force this, but we did get it aired. I think this is one of the things that we should talk about this-let's open it up and look at it and see what Mr. Studer has here. Now, quoting Delegate McKeon here the other day--we're talking about the death penalty. He said it was 14 states had abolished it. This meant that it should be abolished. Well, there's 19 states have the right-to-work laws, so by that same measurement, what's the matter with right-to-work laws? Good or bad, 19 states have it. Now here's something to think about when we're considering this whole thing. Let's just look out here in the parking lot. How many foreign cars do you see? How many delegates here drive them? Why? You know why. Because they're a good car and they're cheaper. They're building them somewhere else. What about your television sets, your tape decks, your radios? Why? You know why. Cameras? Are there any being made in the United States any more? I think not. They're all farmed out-some foreign country. What about our timber products? Ship them to Japan, make plywood, bring it back, sell it on our market. What happens to the laboring man when this happens? He isn't making that plywood. How about that? What about the iron ore? Shipped to Japan; shipped to West Germany; prefabricated; comes back and we buy it. Is the laboring man of the United States doing any good with that? Why, certainly not. What about the pipeline that's going to be laid from the north slope to Valdez some of these days, when they get the thing settled to where they won't destroy the ecology? That pipe was all made in Japan; it's laying up there, millions and millions of dollars worth of it. What about the loading platform out on Cook Inlet, a hundred miles from Anchorage? I've seen it. I've landed on it with a helicopter. It's the only way you can get there. They load these oceangoing vessels with oil out there. They can-they have 60 feet of water at the shallowest tide. That whole thing was built in Japan, was towed to Cook Inlet by tugboats from Japan. Why? Why didn't they build it in the United States? You know why. I'm like Mr. Studer here; we've got to move to another page. What about the SST, the supersonic transport? Where is it being built? It's being built in Japan; they bought the plans. We couldn't afford to build it here; it cost too much. Go into any store downtown, look at the labels on all these goods; look where they were made. Why were they made there? You know why they were made there. What about the Montana wheat? All piled up in Montana because it can't be shipped to where we battled and battled to get markets. Our Wheat Commission worked. They took labor leaders over there, showed them the markets they had. Look what's happened to it. They were very sympathetic. They come right back and called another dock strike. That's how sympathetic they were. Now, I don't think that all this is caused because the price of labor is too high. Certainly not. As Mr. Studer says, it isn't the price you pay, it's the production you get and it's the work rules. They won't let them work. They won't let them produce. Now, somebody is going to get up here and—probably and say, "Well, yes, but the American worker produces so much more per hour." Well, he does not produce any more per hour. The figures show that the Japanese worker will produce a ton of steel for a little over 5-hours man-5 hours—man-hours. What's the United States steel worker's record? Seven plus hours. How come so many American ships are sailing under foreign flags? On account of the work rules they have to abide by. Now, this isn't providing any work. Now, yesterday we had a great big discussion here on the welfare rights of people-that they were entitled to this and entitled to the other. We had a chart here-the statistics of the counties that—how many they had. Lyle here has worked with them; he knows this. Isn't it a little bit odd that these same counties are where they have the closed-shop unions, the very same ones now have the big welfare problems? Mr. Monroe stated right here many of these people had to be on welfare only because they couldn't get a job. In some cases the union wouldn't let them work. Well, how about it? These are just some of the things. Now, Delegate Pete over here-my good friend, Delegate George, too-they want to delete this. Let's not talk about it any more. Well, I was down to my good friend Delegate Harper's church Sunday, and he told a little story, and I'm going to tell it at this time. The Arab was sitting in his tent. It was dark and he lighted a candle, and he reached over and he's got this bag of dates, and he sat down and he was going to eat. He took out the first date and he opened it by the light of the candle, and it had a worm in it. He threw it aside. He reached back, he got another date and he opened it, and it had a

worm in it, and he threw it aside. He reached in and he got another one, and he opened it by the light of the candle, and it had a worm in it, and he threw it aside. Do you know what he did? He blew out the candle and he ate the fourth date. Now, I submit to you that that's what this amendment-my good friend, Pete, over here is suggesting-is we just blow out the candle and continue to eat the dates. Just one more little story here. Do you know what the people in our good sister State of North Dakota are doing, where they have the right-to-work law-what they're doing while we Montanans are telling North Dakota stories? They're building highways. And if you don't believe it, just go down there and look at the roads you have to drive on. I thank you, Mr. Chairman, and I certainly will support Mr. Studer's position.

CHAIRMAN GRAYBILL: Very well. The Chair wishes to announce that Rule 28 provides that the rules of the Convention shall be observed in the Committee of the Whole as-so far as they may be applicable thereto. Rule 17 provides "No delegate shall speak longer than 10 minutes at any one time." Rule 17 goes on to say: "This restriction imposed by this rule shall not beapplicable to Chairmen or Vice-chairmen of commission when they're presenting a report of their committee to the Committee of the Whole. The same exception from this requirement shall be applicable in the case of the chief spokesman for a minority report." Now, the Chair is not certain that he has always cut people off after 10 minutes, but I know that—and I know that most of the long speeches have been by majority leaders or minority leaders presenting reports, which is fully within the rule. But the Chair wishes to announce now that from now on out, the Chair is going to enforce the 10-minute rule, and if it gets too bad, we'll enforce a lot more strict one.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I rise to support Mr. Lorello's motion to delete this, and I would like to answer a few of the things-points that have been put forth here. I'd like to say, first of all, that I think that Mr. Studer is an entirely engaging man and I think he's utterly sincere in his feeling about this right to work; that he thinks this will solve a lot of things. And presumably he also believes that he is a friend of the workingman. I'd like to say that I have worked for both union contractors and nonunion contractors; and when I was working for the union contractors, I, from my own point of view, I always received a better deal. I was paid better. If I worked overtime, I got paid for that overtime, It was not so with the nonunion. I attended the Romney hearings here in this room, and I listened to the parade of witnesses that came up here to this rostrum. There wasn't a single laboring man in that group--up there pleading for the rights of the workingman. It was all contractors-pleading for the rights of the workingman. And I think that's a little strange. And when I worked for these nonunion contractors--and I have been forced to do things if I wanted to keep my job, such as working overtime at straight pay, or any of the other things that I found perfectly disagreeable-I never once, in all that time I ever worked for nonunion contractors, ever had another contractor come along and say, "Chet, your rights are being violated and I'm going to do something about it." It's always only on this right-to-work provision that they say, "I've got to protect this poor working man." Now, so far as this business of what happens within the union itself on the voting, Mr. Studer makes the point that if 51 percent vote to have a union, the other 49 percent are forced into that for life. Not so. They can have another election any time that you want to get a certain number of signers on a petition, or wait for the next time to come around, and if they can get 51 or 55 or 60 percent to vote out that union, it can be voted out. There's nothing in that for life. Now, I don't know where some of these facts and figures come from that they were quoting how great it was in these right-to-work states. They always go to percentages when they want to sometimes kid us. Any time you're a workingman, though, you're interested in what your hourly pay rate is. That's where the real important thing comes in. And looking at these right-to-work states; for instance, Wyoming ranks 25th. The average pay down there is $3.36 an hour. In North Dakota it's $2.93 an hour, which ranks 37th. And Montana is paying $3.70 an hour, and it ranks 11th. There's only one nonright-right-to-work state, Iowa, that ranks along with Montana. And there's only one right-to-work state that ranks above it, and that's Nevada. Now, there's a lot of-a lot of people always say about unions that certain things go wrong within unions, and that's true; but I think that could be said of almost any organization you want to take a look at. Something certainly went wrong with the Penn Central Railraod. They had to reorganize that thing completely. Something certainly went wrong with the Lockheed Aircraft Corporation, because we had to put up $450 million of government money to keep that thing going, or as a guarantee. So it isn't just unions that have their problems. Anti I don't

know, I guess I resent a little bit this business of calling union leaders goons and avaricious people and dirty and all these things, because there's a number of labor leaders in this state that are my friends. The head of the AFL-CIO, Jim Murry, is from my hometown, Laurel. And while Jim isn't the greatest man in the world, I suppose, neither am I; and neither are any of the rest of us in here. He makes his mistakes, I make mine; but I certainly would wait a long time before I called him a goon or avaricious or any of those things. I find him a good man who works hard for the AFL-CIO, the labor movement of Montana; who is utterly dedicated to that and works 18 hours a day for the laboring people of this state. And I find this true of most of the laboring people that I know in Billings. They have a tough job. The head of the waitresses' unions in these different towns-1 know some of them, and they are utterly dedicated. It's difficult, and I don't find them those kind of people the way they've been described. Now, insofar as this business of saying that because we have unions that that's why there's lots of Volkswagens in this country, and Toyotas and all the other different products that come in; it's true. These things come in at a cheaper rate because we've let down the barriers on our tariffs, and they do. They don't have well-organized unions in those countries, so they can sell it cheaper over here. But I really don't think that this is a very good argument for the ranchers and farmers in the State of Montana to be used--use against laboring people. How about if we start bringing in Argentine beef? You know, we can bring that in awfully cheap, too. We can bring it in by the ton, and you could drive every Montana cattleman out of business. Let's start bringing in New Zealand wool-take the tariffs off of that. You'll bring every Montana sheepman to his knees; they're out of business. Why is that? Because we're so inefficient? I don't think so. They can do it cheaper in those countries. Now, on the matter of Japan and its steel. That's quite true. You know why? Because Japan has the most modern steelmaking processes in the world, and you know who built them? We did. With our money. That's why they can produce more cheaply than we can-at least one of the reasons. So, again, I don't think that's any argument. I don't believe this belongs in the Constitution; I don't believe it belongs as a side issue on the ballot; and I support Mr. Lorello.

CHAIRMAN GRAYBILL: Very well. The Chair wants to apprise this body of the situation we are in. And we are going to continue to debate this; but, ladies and gentlemen, there's only a few of you debating and there are a lot of you listening. Now, the Chair has before it two more minority reports to discuss on this particular issue. One of them has 11 amendments to it on my desk. In addition to that, there are two-there are three proposals for new sections. So there are fourteen matters besides the two reports on my desk on Public Health, which we should finish this afternoon. In addition to that, the Bill of Rights Style and Drafting is up before us today; and in addition to that, Judiciary, Natural Resources, and Revenue and Finance are ready for final approval on Order of Business Number 5. Now, I've been asking among you, and I've found out that some of you would rather work through till at least 7 o'clock than have an evening session. But we may not be able to get it done by 7 o'clock, or even part of it done. So you go right ahead and talk. But I want you to know that if we don't finish a good deal of this work today, Style and Drafting-or, I mean, Rules will bring in a rule for a very stringent restriction on debate tomorrow. I don't mind debating an issue, but when an issue has been debated and the sense of this body is clearly determined. I think the rest of you should then be brief and should let the body vote. It's quite obvious that we're-that some of the issues we're debating that end up 90 to 4 and 95 to 1 do not need an hour and a half of debate. Who wants to be next?

Mr. Wilson.

DELEGATE WILSON: Thank you, Mr. President [Chairman], for telling me how long I should talk. I don't propose to talk—

CHAIRMAN GRAYBILL: Mr. Wilson, I haven't told you how long to talk, and I want everybody to understand that. The Chair wants to be ruthlessly fair here. But I think there are 99 other people besides the man speaking that have had so far the patience to listen, and I don't want their patience to wear out, nor mine. You may speak as long as you want up to 10 minutes under the rules, Mr. Wilson.

DELEGATE WILSON: Thank you, Mr. President [Chairman]. I don't think the issue here is against labor unions. I'm not against labor unions, and I think they should stand the light of day. I think placing the issue on the ballot just gives the people the right to exercise their option, and if they want to go a hundred percent in favor of retaining unionism and being against the right-to-work-the law, then I think this would clear the air. Every time that this has ever been brought up

to any prospective legislator or politician, he shies away from it. It's taboo. So by putting it on the ballot, it just gives the people the right to exercise their opinion. Do we want it, or do we not want it? And if I were the labor people and the labor union people, I think I would welcome this, because then they can say, "here's the merits", and they can go out and tell the people why they should have this right to work or not have it-not have the right to work. Now, I belong to several cattle associations-the Montana Cattle Stockgrowers' Association, the American National Cattlemen's Association-and we think that all the cattle producers and livestock producers in the state, in the United States, benefit from these organizations. But should we compel every livestock producer to belong to these associations? Should we say to every person that-who raises cattle and livestock in the State of Montana that you must belong to the Montana Stockgrowers' Association? I suppose we'd like to do that, but should we do it? Should we go out across the United States and say every livestock producer must belong to the American National Cattlemen's Association or the American National Woolgrowers' Association? I don't think we want to do that. We're proud of our associations, and we're proud of the independence of it. And I think the people should be proud to vote whether they want to belong to a union or not, and I think the unions should be proud to have them exercise that option. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], fellow delegates. Mr. Studer's and Mr. Wilson's remarks are very well-founded. Mr. Studer's remarks especially are not a laughing matter. I think they're a very serious thing at this time, and a serious situation. Like Mr. Wilson said, the people should have a right to vote on this on the ballot. I'm not against unions. I've been a union man in Butte as a young man, and during the second World War at Great Falls I worked on Gore Hill for 5 months as a carpenter, and I did go to my union meetings. I was an employer for many years, having employed five to six clerks in my stores-two stores in Butte. I belonged to the employers' association during these years and sat in negotiations with union leaders. I insisted that my employees go, too, and take an active part in their union. I believe in unions. They have been very important in the past, helping us to build the greatest economy the world has ever seen. But I believe they must be cleaned up at the top. Labor unions have been-become too powerful. I do not blame this on the labor union leaders, because they're only human. Give some people a little power and they'll take all they can get. I blame it on the union members themselves, who do not take an active part in their unions. Good, hard-working men really need no union; they would get along fine. But they have allowed the powerful labor bosses to become unreasonable in their demands against the golden goose, the small and large employers throughout this country, and especially this state. We have buried a lot of businesses here through labor unions, and the ones that are unreasonable. Any time the employer has to increase salaries and wages unreasonably, the price of that commodity necessarily goes up. I agree with Studer on the facts he has submitted to us. Labor unions must clean up their own house, and they would-there would be no question about people wanting to join for the benefits a larger group can negotiate and get for them. Get labor union leaders-let labor union leaders lose their salaries, and a lot of the union employees-as do the union employees during a strike, and the strikes would not be prolonged as we have seen them. I saw Butte go down from a very progressive, fine city to a shambles. Prolonged labor union strikes have put many businesses out of business. I, myself, sold--or, I should say, gave away--one of my retail stores just to get out of Butte because of these strikes every year. A clerks' union strike cost me $13,000 in 3 weeks and forced me to close it out. They were unfair to me because I was a hometown boy making good. Give the people a chance to clean up the unions; they will be stronger. And encourage people to want to be a member. Union members themselves can do this, but they have been apathetic. Why can't Montana induce more industry into our state? We cannot compete. And I would hope we can eventually get labor and employers working together, not selfishly, but for the benefit of our entire economy. Thank you.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman and fellow delegates. I didn't intend to speak on this, because I really didn't think there was really that much necessary-it would be that necessary, actually, for this much floor debate. But I would like to take issue with Mr. Jacobsenin stating that Butte is down to shambles. I feel it's far from that, but I would just like to make that

point clear. But I would also like to say that the workingman has come a long way, and if this Convention feels in its wisdom that it can go ahead and pass a bill which the Montana Chamber of Commerce feels very highly that they can write about and-in letters to the editors in the *Montana Standard,* as they spoke today, that this is what they want. Well, I think that everyone can realize exactly what the Montana Chamber of Commerce wants. So I hope that this is turned down quite soundly. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. We, today, have decided that the right to collective bargaining did not belong in the Constitution; we decided also that we didn't-the merit system did not belong in the Constitution; and I don't think this belongs in the Constitution. And I'm afraid if this was put on the ballot and this would be-this Constitutional Convention-it's question of constitution-because we would be submitting it. And this is why I opposed it in the committee. I'm still opposed to it. I think this has no place. If they want to go to the next session of the Legislature, which will start next year in January. I-yes, it will be in January, because the new law will not be in effect at that time-they have plenty of time then to go out and do it. And I certainly hope that this Convention will continue to leave this kind of stuff out of the Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I've been told at home by a person that if I ever wanted to run for political office again, I'd better not vote for this. But not being very politically inclined and not being much of a politician anyway, it didn't have too much effect on me. Over the years, this has been bantered back and forth so much, and personally I'm for putting it out to the Great Legislature, and that's the people. There is no way that I would vote to include this to go in the Constitution to be put out with the rest of it, but I would like to see it handled by the people and decided by the people. And we either have it or we don't have it, and it's done and, hopefully, buried one way or the other then for quite awhile. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I'll speak very briefly for the minority-or for the majority. I wrote the majority comments which you will find on page 41, and I won't repeat them here. I think they are reasoned. I would hope the Convention will vote this proposal down on its merits, which I think are very small. I would like to say that I am a lifelong student oflaboreconomics and labor relations. I have read almost all, I think, of the literature on this subject. All of the arguments that have been brought up here today of an economic nature in support of a right-to-work law can be fully answered and have been fully answered in the literature, and I'm not going to take the time to repeat that here. I would like to say one thing. I echo Mr. Blaylock-I-comments on his feeling of insult to his friends. They are also my friends. I know a great many labor leaders in this state. They are not the nasty characters that they have been pictured here. They are decent men, and they work hard for their people. And I'd particularly like to respond to one comment which Mr. Studer made, which I think is totally baseless, and that is the statement that labor unions don't try to help workers unless they're sure of being paid for in dues. I know from my own personal experience and observation of countless instances in which unions have attempted to organize workers, and are today attempting to organize workers, where they have very little or no hope that they will ever be repaid in dues for their efforts; and this is simply a false charge. I hope you will vote this down.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, the Montana cattlemen were very adamant that a special levy on livestock be provided for in the Constitution. They did not want it as a side issue on the ballot. We provided for that with a special levy under the Revenue and Finance report. Now, we are being asked to prohibit labor from providing for mandatory membership by contract. Equity and fairness demand that we give labor the same consideration that we gave the cattlemen. I am opposed to Delegate Studer's minority report. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is—

Mr. Studer, do you want to close?

DELEGATE STUDER: (Inaudible)-vote on this amendment. Mr. President [Chairman], I—

CHAIRMAN GRAYBILL: Let's see, I guess it isn't a matter of closing; it's-Mr. Lore110 is up.

DELEGATE STUDER: Yes, I wanted to talk on the subject, though, before it goes to that, or I might be—

CHAIRMAN GRAYBILL: All right, I'll let you talk-1 hope briefly.

DELEGATE STUDER: Yes, very briefly. Mr. Blaylock showed that the figures on the right-to-work laws in Montana-I just wanted to show why that is. There's-Montana's compulsory unionism, and they have most of their labor working under that basis and they have a higher rate-I was going to show Mr. Blend, some of these people--I just picked them out as a person-that I could do work for other people and I wouldn't have all these other clauses in there. I can go out and get a crew together and do work once in awhile without paying six or seven or eight or ten dollars an hour. I can do it on a four, five dollar an hour basis. I don't think we've even hurt labor doing it, but it does increase the amount of money going to labor; but it necessarily would bring the cost per hour down a little bit. Calling union men avaricious people I don't think was too bad. I really mean the fact that they have been that way in this feather-bedding deal that I passed around here the other day. It actually shows it. I mean, the fact that you demand to pay a man, and for sitting there watching a fellow welder work all day just so you can go ahead and do some plumbing a half an hour afterwords isn't anything but asking for money for nothing. And if that isn't avaricious, I don't know what it is. It's asking for it maybe for the laboring man, but just the same the union bosses have got that in mind. They're certainly not looking for you to hire more people. That isn't the answer for that, because you raise the cost out of-way out of proportion. And naturally people are looking for the labor-saving devices to buy, and that's been proven. I didn't take that all in. I skipped it in-on account of brevity. And as far as shipping to Japan and back, who is getting hurt in the whole deal? The differences in the cost of labor-if we didn't have such a high labor scale, how could we afford to ship our stuff over there, manufacture it with their labor, ship it back here, distribute it, and market it again, and still make a profit when we could have just as well have done the whole thing in this country? The difference is in labor here as against there. We put their men to work; we haven't put ours to work. Ours are out. It's quite a serious thing. That's one of the causes of our terrific unemployment problem here today. And as far as Lorello's motion, it's exactly what I said. It's just a slippery method of evading the issue. Are we afraid to take this thing to the people? We're not talking about putting it in the Constitution, and I'm not talking about putting it in the Constitution. I'm talking about the people putting it into the Constitution. Why should we hide behind the thing? If you're afraid of that clout, that's exactly what I'm talking about-that you are afraid of this clout. You don't want to be up there on a roll call against them, and I claim it's just evading the issue because it's strictly-do we want to let the people vote on this, or do we not let the people vote on this? I think that we, the people, is what this thing was brought up about. Mrs. Spr's book, "We, The *People,"* was the first book we got when we got started here as delegates, and we were indoctrinated on the thought that we should be here representing the people. How are we going to do it on certain issues that are special issues, and put them in the Constitution? And here's an issue that's controversial-they want to vote on it. I have a tentative ballot. I didn't try to hurt the Constitution by putting it in there, and you try to evade it by deleting it. That is slippery, and I claim it's damned cheap, and I think it's showing who you owe your allegiance to. I hope you can live with your conscience. I'm sure that I couldn't if I voted a slippery little measure like this out when you've got a chance to give something to the people-1 don't think I could rest good. This thing is going on for years and years, and I'm sure if you in your own conscience think that this is a good measure, you should vote for it; and if you think that in all my presentation here I have failed completely and that the unions are a hundred percent right and they're a growing organization and they're very healthy and they're working for the laboring man, that is a good reason to vote for. But then I'd certainly let the people decide that, because between now and June 6th, there's going to be an awful lot of people brought out for and against this thing and I-like I say, I think they'll help the Constitution a lot. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Lorello's motion to delete Section 5 as proposed by Mr. Studer. A roll call vote has been demanded.

Mr. Romney, are you going to speak on it or not?

DELEGATE ROMNEY: I would like to, but I don't know.

CHAIRMAN GRAYBILL: You may speak.

DELEGATE ROMNEY: Mr. Chairman, I have never belonged to a labor union. I've operated a business for about 40 years. The fact that I didn't-that labor has improved its status during that period until now it has really a standing in the American community which it did not have many years ago when I first became an employer, has, I believe, aided the American economy immeasurably. The farmers are organized in numerous organizations like the Grange, the Farmers Union, national organizations, the Farm Bureau. The stockgrowers are organized, the doctors are organized, lawyers are organized--nearly every form of activity in the economy is organized; and labor is organized. When the birds go south or north in their migrations, they're organized. They normally go in large flocks, and the ones that don't go in flocks benefit by the flight patterns of the flocks. And I say that the people who are unorganized in the Montana and American labor movement are benefiting by the efforts and the sacrifices that are made by the labor movement. It's true that sometimes things go amiss, like when Mr. Hoffa and Mr. Beck carry on peccadillos and get into jail, but that happens in big business. It happens even among our friends. And that does not place a stigma upon the entire movement. I think that we would be very foolhardy if we embraced this so-called right-to-work issue, and I support Mr. Lorello's motion to delete.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: May I close, Mr. Chairman?

CHAIRMAN GRAYBILL: You can close unless someone wants to stand and say that they want to speak. (No response) **Very well,** you **may** close, Mr. Lorello.

DELEGATE LORELLO: I'm an employer also, and I also workforindustry. And1 think that we could really get into a lot of debate about these things and find out the nasty little things that labor done to industry and that industry done to labor. Yesterday, Mr. Garlington was searching for eagles, and today, I think Mr. Studer was looking for some pigeons. I sincerely hope that you'll give the right to work the indecent burial that it so rightly deserves. And I guess we asked for a roll call. Thank you.

CHAIRMAN GRAYBILL: Very well, all in favor of Mr. Lorello's motion to delete Section 5, as proposed by Mr. Studer, vote Aye; and opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0..... Absent
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier.. ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate..... Absent
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Drum ..... Nay
Driscoll ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt, ... Nay

Foster ..... Aye
Furlong., ... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 79 delegates voting Aye, 16 voting No.

CHAIRMAN GRAYBILL: 79 having voted Aye, 16 voted No, that section is dead. Mr. Kelleher, you have an amendment to the Labor Article. Do you want it read? It concerns compulsory arbitration. Will the clerk read it. Here it is, John.

CLERK HANSON: "Mr. Chairman. I move to amend the majority proposal of the Labor Article of the Public Health, Welfare, Labor and Industry Committee, page 8, line 13, by adding thereto the following new section: Section-"

CHAIRMAN GRAYBILL: It'll be Section 6.

CLERK HANSON: "-6. Section 6. The Legislature shall provide for a system of compulsory arbitration." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher has made a motion that we put in, as Section 6, the language: "The Legislature shall provide for a system of compulsory arbitration."

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I'll be brief. In the last half of the last century we saw the rise of big capitalism, and the first half of this century we saw the rise of big unionism. And big labor and big management have long ago decided in their arbitration-in their bargaining agreements that there's a big fat cat out there, there's no use putting the shaft to each other—there's a big fat cat out there, and that big fat cat is the public; and this proposal would protect the public. The unions would have the right to strike under this proposal, but the Legislature could set up such machinery--say a Montana Labor Relations Board-as they saw fit, that would allow them to strike for only a certain time and then they would have to submit to the jurisdiction of the agency. And whatever provisions or whatever arbitration decision the agency finally came up with would be enforceable in the courts, and this would mean an end to the long, costly strikes that

we have known in the United States and in the State of Montana for such a long, lengthy time. Now, I know I'm known as a liberal; I've walked a picket line; but I think the day has come to take a different tack in the field of labor-management relationships, and that the long-drawn-out strike is simply a luxury that we can no longer afford in the United States, and particularly in the State of Montana. And, Mr. Chairman, I would like to have five seconds for a roll call vote on this.

CHAIRMAN GRAYBILL: You may have a roll call vote. Is there discussion?

Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, may I speak? I'll be very brief. Two objections: one, I think this is very definitely statutory; secondly, on the merits, I think the compulsory arbitration deprives the union of perhaps its most potent and only right, that being the right to strike. And it's my feeling that it's tantamount to slavery, so I will oppose the motion.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I feel the same. This is statutory. I don't want this in the Constitution. If the Legislature in its wisdom wants to pass one, I'm certainly going to let them do it. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Kelleher's motion to put in a section—

Mr. Kelleher.

DELEGATE KELLEHER: May I close? This is not statutory. It is merely directive to the Legislature to set up such legislation.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Kelleher's proposal that we add a Section 6, the terms of which would be: "The Legislature shall provide for a system of compulsory arbitration." So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim ..... Absent
Anderson, J. ..... Nay
Anderson, O. ..... Absent
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg. ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Absent
c am ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross. ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Absent
Johnson. ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye

Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Absent
McKeon	Nay
McNeil	Nay
Melvin	Absent
Monroe	Absent
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius.	Nay
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 70 delegates voting Aye-7 delegates voting Aye; 80 voting No.

CHAIRMAN GRAYBILL: 80 having voted No and only 7 having voted Aye, the motion is defeated. Mr. Kelleher, you have another here that I'll style Section 7. Do you want it presented?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: Very well, the clerk read proposed Section 7.

CLERK HANSON: "Section 7. Mr. Chairman. I move to amend the article on Labor of the Public Health, Welfare, Labor and Industry Committee Report, page 9, by adding a new section to read as follows: 'Section 7. No retail or wholesale business, except for those necessary services and amusement places exempted by law, may be open for business from such hour approximating sundown on Saturday until such approximating sunrise on Monday, as shall be provided by law.' Signed: Kelleher."

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. The last one, Section 6, is for the future. Our state and the country's going to come forth-come to it in the future. Section 7, the one we're talking about now, is for now; and I'm real serious about this one. It would guarantee'emancipation of our working people, of those in nonessential industries-like hospitals, police, fire departments, and so on-that they would be guaranteed at least one day a week with their families at home. And many of the clerks at Buttreys and Albertson's and the stores down in Billings have urged me to put in this proposal, and I have more written support for this than I do for the guns and the right to work together, many times over. Even this Convention has-allows us-as hard a taskmaster as you are, Mr. Chairman, you even, thus far anyway, have allowed us to go home on Sunday. The Legislature—

CHAIRMAN GRAYBILL: I'll make a note of that, Mr. Kelleher. (Laughter)

DELEGATE KELLEHER: The Legislature would decide what the exact hour would be. The Legislature could change it from the summertime to the wintertime. There's no set hour and there's no set business that would be closed or allowed to be open on the weekend. It is very common for this-this is very common in Europe-in Switzerland, in Germany, in France, in Holland. They just shut her down about 4 o'clock Saturday afternoon so people can have a weekend by themselves. You'll note that it is not a blue law-and I repeat, it is not a blue law-because, in addition to necessary services such as gasoline stations, hospitals, police departments, fire departments, and so on, and apothecaries-selected apothecaries—drug stores in an area that are allowed to stay

open, places of amusement are allowed to stay open, such as ski lifts, movie theaters, and that sort of thing; and if you'd passed my other resolution--my other proposal, something else might have been allowed to be-stay open, but you-McNeil killed that. (Laughter) McNeil's against fun. (Laughter) In my own town of Billings there is a very large department store. The manager, around Christmastime, is required to keep it open on Sunday. He doesn't want it open on Sunday; his employees do not want it open on Sunday; but some vice-president back in Chicago, who's probably out playing golf on Sunday, has decided that his store in Billings, Montana, must be left open on Sunday. And the employees are told that if you want to work in this establishment, you must work on Sunday. And this, I say, is involuntary servitude. There is a large store in Bozeman where the management has his orders to tell his department heads that you will work on Sunday, or else. Now, this does not require you to go to listen to George Harper on Sunday, though I highly recommend that. It merely says that on Sunday you must not work in a retail or wholesale business as-that business as determined by the Legislature. This matter is not legislative, because it is the right of people to have at least this one day with their family. And it is a directive to the Legislature, and the Legislature is given very wide latitude as to what types of establishments will be closed on the weekend and which type of establishments will be allowed to stay open, and also the time that they are allowed to stay open. It would not affect motels and that sort-or hotels, or any type of necessary service or place of amusement. And I would like to have five seconds for a roll call. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: We'll have a roll call. Is there anybody on the other side of this?

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], I think that we should have something in on the other side of this, because this is a blue law. And although I am not a Seventh Day Adventist, this is a great infringement on the rights of-the religious thinking of people who do worship on a different day than Sunday. And I do suggest that it's probably a violation of Section 3 of the Bill of Rights, which provides all people are born free and have certain inalienable rights, which include the right of pursuing life's basic necessities. So I think this should be defeated. It's not the type of thing-it's an infringement on the rights of any Seventh Day Adventist who take their day off on Saturday, and if they wish to work on Sunday, they have that right.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Kelleher's motion that we have a Section 7.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to amend this to put in Friday and including-Friday evening sundown till Monday morning.

CHAIRMAN GRAYBILL: Send it to the Chair in writing, Mrs. Bates. Is there any other discussion? Now, you'll have to hurry. Very well, you can close, Mr. Kelleher.

DELEGATE KELLEHER: I just wanted to say that I did consider the possibility that the Jewish Sabbath actually starts on Friday evening, and I would like to have that long weekend, but it would be asking too much. And I know the Seventh Day Adventists worship on Saturday, Sabbath, but if the Legislature wants to set it earlier in the afternoon, they could still have their time off for evening services. But I want to repeat, this is not-is not a religious blue law. It is to guarantee the workingman and the workingwoman one day a week that they can spend with their families.

CHAIRMAN GRAYBILL: Very well, the Chair will now have to put Mrs. Bates' amendment, which is to amend it to read from Friday sundown until Sunday-"the hours approximately sundown on Friday", on line 4, "to sunrise on Monday".

Mrs. Bates, you want to discuss that?

DELEGATE BATES: Yes, I would like to discuss it.

CHAIRMAN GRAYBILL: Okay.

DELEGATE BATES: This is what they do in Australia, and I've heard several people say maybe we should go to Australia. And they enjoy a long weekend there, and if we really want to do something about a weekend, let's make a long one. Thank you.

CHAIRMAN GRAYBILL: Do you want a roll call on that, Mrs. Bates?

DELEGATE BATES: (Inaudible)

CHAIRMAN GRAYBILL: Very well, the issue is whether Mrs. Bates' motion, which is to make 7—Section 7 read: "No retail or wholesale business, except for those necessary services and amusement places exempt by law, may be open for business from such hours approximating sundown on Friday until such approximating sunrise on Monday, as shall be provided by law." So many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: The Chair is in doubt. Use the voting machines. So many as are in favor, vote Aye; so many as are opposed, vote No.

DELEGATE KELLEHER: Mr. Chairman, I asked earlier for a roll call.

CHAIRMAN GRAYBILL: We're not on your motion, Mr. Kelleher. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: 7 having opted for Australia and 72 for America, the thing is defeated. (Laughter) Now we're back on Mr. Kelleher's motion.

Do you want to close, Mr. Kelleher?

DELEGATE KELLEHER: l-no, I didn't, Paul-I, like you, and I think most the lawyers here, probably work 6, 7, 8 days a week. You lay people may not believe that, but we do. In Spain they sleep from 1 to 3 hours-l to 3 in the afternoon-and I think that if we had something like this, men of our age might live a little bit longer and might not have so many ulcers and might not have our coronaries so quickly. Thank you.

CHAIRMAN GRAYBILL: Very well, all in favor, vote Aye on the voting machines; and all opposed, vote No.

For what purpose do you rise, Mrs. Bates?

DELEGATE BATES: Mr. Chairman, I'd like to explain my vote.

CHAIRMAN GRAYBILL: Go ahead.

DELEGATE BATES: The kids have to be fed and the cows need to be milked. (Laughter)

CHAIRMAN GRAYBILL: Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot, please.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Absent
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Absent
Bowman	Absent
Brazier	Nay
Brown	Nay
Bugbee	Absent
Burkhardt	Absent
Cain	Nay
Campbell	Nay
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Absent
Eck.	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay

Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Aye
Holland.	Nay
Jacobsen	Nay
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Absent
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe..	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Aye
Reichert	Aye
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Absent
Sullivan	Aye
Swanberg	Nay
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Aye
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 20 delegates voting Aye, 68 voting No.

CHAIRMAN GRAYBILL: 68 having voted No and 20 Aye, the motion is defeated. Are there other amendments to the Labor Article? (No response) Very well. Members of the body, the Chair would like to point out that my obvious displeasure at the length it takes to do this is caused by the fact that I think we are here on very serious business and we are dealing with an article which has some very important material in it and I'm perfectly willing it be debated. But I think you should realize that it costs us and the taxpayers something like eight or nine thousand dollars a day to sit here, and we are about to lose our schedule of finishing next week. The Chair feels this is very serious. Now, if you have serious amendments to make and serious arguments to make, I'm the first one that wants to give you that chance. But I don't think that a few of us should trifle with the rest of us with things which really haven't a chance, and I think we should exercise some discretion as to what we attempt to put into this Constitution as we get into these final days. And I don't think that we have been exercising that discretion, and I don't think we're going to finish this job unless you force me to be terribly harsh on you and put on-put in time limits and make you work hours which will make some of us ill. And I don't think that's fair, so I'm asking you to-you know, we have committees, the committees have thought, the committees have got their proposals. These are not minority proposals; these are delegate proposals, of which there are thousands of them if we want to start going through them. And I really think that those of you who have done these things ought to think carefully about it before you do it again, because you're really trifling with the patience of, obviously, 85 delegates who consistently vote against this sort of thing. Now, the Chair will entertain a motion to recess for 10 minutes, and the recess will be only 10 minutes.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I so move.

CHAIRMAN GRAYBILL: Very well, the motion is to recess for 10 minutes. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

(Committee in recess from 4:30 p.m. to 4:50 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. The Convention will be in order. Members of the committee, we're on the minority report, on page 16. Will the clerk please read the title and the first section of page 16.

CLERK HANSON: "Minority Report. Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on regulation of public utilities to read as follows: Article. Regulation of Public Utilities. Section 1, Public Utilities Commissioner. A Public Utilities Commissioner shall be appointed by the Governor and confirmed by the Legislature (Senate) after public hearings, for a term of 4 years, which shall coincide with the Governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The Governor may at any time remove the Commissioner for any cause deemed by him sufficient, after such public hearings as may be provided by law." Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of the minority proposal on regulation of public utilities of the Public Health, Welfare, Labor and Industry Committee, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, members of the Committee. I should perhaps open this discussion by observing that Mr. McCarvel and I do not hate the Montana Power Company, the Montana-Dakota Utilities Company, the Pacific Power and Light Company, nor Mountain Bell. As for the railroads, I am positively sympathetic to their problems. Not only do I not hate the Montana Power Company, I must even admit to a certain grudging admiration of its efficiency. After all, I am an economist, and economists are notorious for their reverence for efficiency. The efficiency to which I refer, though, is not primarily economic efficiency. In truth, I am not at all sure how efficient Montana Power is as an economic institution. One of the unfortunate aspects of regulated industries is that we never have any sure means of determining whether they are economically efficient. I am sure, however, that the company is an efficient political institution. Historically, the company usually has had its way, even though there are some signs its grip may be loosening. They will, of course, fight the new Constitution, and whether we adopt the proposals of Mr. McCarvel and myself will not influence that issue in the least. In fact, by adopting those proposals, we could go a long way toward neutralizing the company's opposition. The electorate would then expect it, recognize it as self-serving, and discount it appropriately. May we also observe that we do not think our proposal is in any respect a panacea. Quite the contrary. They represent merely a first step in a process of reform. However, in addition to the reforms included in the proposals, their adoption by the Convention would force the Legislature to reopen the whole subject of regulatory law and write a new law. Moreover, these reforms, together with the legislative reforms that would necessarily follow, should have a salutary effect on the Supreme Court's approach to regulatory law. Now, let me take a couple of minutes to state the economic philosophy underlying these proposals. Mr. McCarvel and I believe in a free market, competitive, private enterprise system. We believe in such a system because, to the extent that it is really free and competitive, it is the best economic system for the consumer. It is productive and technically efficient because it contains incentives to keep output high and costs low. It is fair to the consumer because it contains a built-in control system-namely, competition-that keeps prices and profits down and assures that the consumer gets what he wants when he wants it. On the other hand, we dislike socialism, because any kind of socialism fails in some degree to provide either the incentives or the controls to insure that the system serves the consumer. The worst kind of socialism is private socialism, otherwise known as private enterprise monopoly. The brand of socialism we most often think of is government enterprise monopoly, which is bad enough but at least has the virtue of being responsive to some degree to democratic political institutions. Privateenterprise monopoly -private socialism-is intolerable unless government intervenes effectively to protect the consumer. We would be best served if we could avoid socialism of any kind, because it lacks the incentive for efficiency and the controls for equity that free, competitive, private enterprise provides. But sometimes-usually because of the technological requirements of some industries-free, competitive, private enterprise is impossible and we are

stuck, like it or not, with some form of socialism. We can take our choice between private socialism and governmental socialism, but either way we have to find means of supplying the missing ingredients-incentives for efficiency and controls for fairness. Traditionally, we have elected in Montana to accept private socialism in the industries generally known as public utilities, and we try to supply the missing ingredients through a process called regulation. The evidence that we have not been successful is a matter of common knowledge. The proposal you have before you is an attempt to begin putting some effective control on Montana's socialist enterprises. Mr. Chairman, with that by way of introduction and with your indulgence, I would like to go over the entire proposal, beginning on page 18, briefly, before the committee considers each section separately, in order to give you an overview of the interrelation of the proposed sections.

CHAIRMAN GRAYBILL: Very well.

DELEGATE HELIKER: The first section provides for the abolition of the existing elected Public Service Commission and the substitution therefor of a single Utility Commissioner to be appointed by the Governor for a definite term. The second section provides for the powers of the Commissioner, and its main point is that it eliminates the so-called fair value rule under which regulation has for-since about 1913 taken place in the State of Montana. The third section provides for a mandate to the Legislature to supply an adequate staff to the Commissioner and provides for the impartiality of that staff. The fourth section sets forth clearly the duty of the Commissioner to represent the customers of public utilities and the public. The fifth section requires that regulatory power be concentrated in the office of the Commissioner. Now, Mr. Chairman, I will revert to Section 1, which is under consideration.

CHAIRMAN GRAYBILL: Very well.

DELEGATE HELIKER: Section 1 replaces the existing statutory three-man, elected Railroad and Public Service Commission, which goes back to 1907 and 1913, with a single appointed Commissioner. The proposed reform is modeled on the system used since 1932 in the State of Oregon with generally recognized success from the standpoint of both the regulated companies and the public. And I remind you of Mr. O'Scanlin, the current Public Utility Commissioner of Oregon's, appearance before this Convention, and I have had placed on your desks within the last day or so a copy of his speech for-to refresh your recollection. It is also influenced-that is, this recommendation of a single Commissioner-by the findings and recommendations of the President's Advisory Council on Executive Organization, otherwise known as the Ash Council, a copy of the pertinent chapter of which I have also had placed on our desks. It is entitled "A New Regulatory Framework Report on Selected Independent Regulatory Agencies". This was a commission appointed by President Nixon, and it reported-the report was released on February 11, 1971. The members of that council were Roy L. Ash, President of Litton Industries; George P. Baker, former Dean of Harvard University, who did not participate; John B. Connally, the present Secretary of the Treasury; Frederick R. Kappel, former Chairman of the Board of Directors of AT&T, who dissented; Richard M. Paget, President of Cresap, McCormick and Paget, Incorporated, a management consulting firm; and Walter N. Thayer, President of Whitney Communication Corporation. Now, this council studied federal regulatory agencies—seven of them-the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission. The council recommended a number of things, butpertinentto the present discussion, it recommended restructuring and combining the seven agencies into five, four of which would be headed by a single commissioner. This single commissioner would be appointed by the President to serve at the pleasure of the President, which is, of course, different from the proposal before you, which provides for a definite term; provides for confirmation by the Senate. The recommendation of the council was based on the finding that single administrators would enable the agencies to attract and retain highly qualified personnel and increase accountability to both the President and the Congress and enhance the efficiency of administration. In most states, as in Montana, the multimember regulatory commissions, whether appointed or elected, have proved ineffective at best. This is generally recognized by students of the problem. I may say, parenthetically, that up until the time that I received my Ph.D. degree in Economics at the University of Michigan, one of my fields was the public control of industries. Since that time, since I have come to Montana, I've taught a course in public utilities only one quarter, in 1955; and

since 1955 I have been inactive in the field. I do not hold myself forth as an expert in the details of regulatory law or economics, but one does not need, as I have previously stated, to be an expert in this field to recognize the need for reform in Montana. The attempt to insulate regulation from politics has resulted in freeing the regulators from accountability to the public whose interest they are charged with protecting, but it has not insulated them from overwhelming pressures of the powerful corporations whose rates and service they supposedly supervise. In fact, it is axiomatic among professional students of utility regulation that the regulators have long since become the regulated. Now, this is not peculiar to Montana, This is generally the story across the country with these state regulatory commissions, and the more they are insulated from politics in the sense in which Montana is insulated, the worse a job they tend to do. The minority of this committee is convinced, after hearing testimony from highly placed officials and counsel of almost all of the important regulated monopolies in Montana, and many, I might say, of the unimportant ones, that their customers would be as well off as they are now if regulation were to be abolished altogether. We are persuaded that the existing regulatory process is but an elaborate sham battle, a sort of Roman bread-and-circus game in which the monopolies get the bread and the consumer pays for the circus. The upshot of the whole sorry spectacle is that the corporations secure the imprimatur of the state for rates no higher than they would set entirely on their own initiative. In dreary near-unanimity, witnesses for the monopolies agreed that in the procedures, regulations, structure, method of selection, and the law under which the Montana commission came into existence way back in 1913 and operates, all is for the best in the best of possible worlds. They admit one exception to the rule. They agree it would be better if the taxpayers would ante up more money for a larger commission staff so that their rate applications could be approved with less delay. Incidentally, I have before me the report of the Montana Legislative Council's-the subcommittee which looked into this matter and reported in December 1970, and I find their experience coincided with ours. On page 8, they say: "All of the public utilities in the state were invited to attend a subcommittee meeting to provide the subcommittee with information which might be helpful in its study. The meeting was well attended. Many statements were offered and many questions were propounded. In general, the utility people were satisfied with the services of the commission and staff and did not feel that any legislation was required. The only adverse comments made were: one, failure of the commission to allow the increases requested-that's a strange one; two, delay in rendering a decision after a hearing; and three, that the commission had an excellent and qualified staff, but there is need for additional commission personnel to handle the workload." We heard the same story, except I don't recall that we heard any criticism of the commission for failure to approve their rate increases. The minority is convinced that the Montana ratepayer will never get fair treatment of the present multimember elected Commission, because it is literally impossible for the election process to attract and select more than an occasional qualified, competent and dedicated Commissioner. The electorate simply does not have the opportunity to acquaint itself with the qualifications, of the Commission candidate running as one among a crowd of candidates for various and sundry state, city and county offices. The result is that not only does the average voter know little or nothing of the Commissioners' qualifications-he frequently votes on the basis of name association, as you well know-but also not 1 in 10,000 even know the Commissioners' names. The minority believes now is the time to put an end to this disgraceful charade. At the same time, the minority was persuaded by the testimony, and perhaps by other recent events, that it would be unwise not to give the Commissioner a substantial measure of independence of the Governor. In this respect, our proposal is also modeled on the Oregon experience, but we have added the requirement of legislative confirmation, We believe there is a clear movement toward greater accountability of regulatory agencies—particularly as shown by the Ash Commission's—Ash Council's report-accountability to the people through the chief executive and toward focusing attention and responsibility on one man. We believe Montana should be a leader in this movement. I may say, those of you who supported the principle in this Convention of a shorter ballot and of greater accountability through the chief executive, that this is an opportunity to further that principle and this is an area in which that principle needs to be furthered.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, having been on the committee on the majority side

of this, I move that when this committee arise and report, they delete this section. I forget the number of it, but it's the section we have before us.

CHAIRMAN GRAYBILL: Section 1 of the article on Regulation?

DELEGATE MAHONEY: Yes. That's right. Now, Mr. Chairman—

CHAIRMAN GRAYBILL: Just a minute, Mr. Mahoney. Mr. Mahoney shall have a motion to delete Section 1 of the article on Regulation of Public Utilities. Very well.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, your committee heard a lot of testimony, and I think every time we were told that this should be legislative. The present Constitution-the present Railroad Commission are not in the Constitution. These are straightly by a legislative article, and the Legislature, if it wishes, could change it at any time it wishes. It could put in a one-man Commissioner, a five-man commission; it could be districts or any number of things. Now, the Legislative Council is studying this. We had the Chairman of the committee who is studying it, Senator Bollinger from down in Valley County at Glasgow—came in and asked the organization-the committee-to not put this in the Constitution, that they thought they could come up with a very good idea at the next session of the Legislature. And I have the absolute confidence of Mr. Bollinger. He has never at any time-he has never been, I'm sure, on any relation to the Montana Power Company. He's a groceryman down there, and he's been very tough, so I think he's a very honorable man. Now, the-if we had this in the Constitution, this one-man Commission-now, this is the question of Oregon's, We met Mr. O'Scanlin. He's a mightly personable young man. He had been in, I believe, about 9 months if-1 think it's been a very short time. He was in the Attorney General's office, and immediately then he went to became the expert on rates. Now, I know he has staff, and he has lots of staff and Montana could have, but the funny part-the biggest operation that he has is operation of motor vehicles-he told us this—because they have a weight-distance tax out there, and it takes a lot to supervise that in the State of Oregon. Now, Mr.-the Chairman of this committee has stated that he wants it picked by appointment of the Governor. He thinks this will make the Governor more responsive-has all the problems. If everybody's going to have the Governor responsive, he's going to be in an awful thing, because he's got 20 big appointments to make on boards, and not all of them-there's most of them will be appointed. He has a lot of other appointments, and I don't think we can hold him responsible on this one appointment. I know he's got it, and I want to say this: first, it was not going to be confirmed by the Senate for a definite term, and I think he did a nice job of putting that in for a definite term. But I am quite a man to think that-let the electorate make their own mistakes. I know that a lot of you don't like the Commission. They happen to be all very good friends of mine-Mr. Steel, Mr. Boedecker, and Mr. Langley-and I want you to know I could name them. This, to me, are men-if-they got the most votes, and they were put on. Now, if we had-we've done this-maybe if you go out here, we would-1 think the people can select their own Railroad Commissioners, and I'm sorry to use that word "railroad", because it's a very small-1 certainly agree that the railroads are in the tough shape, but there's very little regulation of them, because they're regulated by other—the Interstate Commerce Commission. So I'm in hopes that Mr.-the Chairman-the minority report will not prevail. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, I rise in resistance of deleting this article from the Constitution. I think perhaps this is one way that the consumer can protect itself against some of the regulation that is being done by some of our public utilities. When Senator Mansfield spoke before our committee, he told that our own Montana Power last year took in more than a million and a half dollars more than they did in 1970, but paid less in taxes, maintaining a national record of two-22 and 6 cents net profit for every revenue dollar. Now, I think something has to be done to regulate that kind of profit, and I think a one-man-as Mr. O'Scanlin says in his statement before the committee, perhaps I have chosen the only practical approach to a single Commissioner to quickly spot and work directly with selected staff members, including legal counsel that I can trust, and can grasp the regulatory direction I am pursuing and that I can help-and that can help me draw the kind of staff support I need. So I think this has merit, and I think that it is time that we, the people of Montana, take care of the consumers of Montana. And I don't think they have been taken care of by the Legislature.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, will Mr. Mahoney yield to a question, please?

DELEGATE MAHONEY: I'll try.

DELEGATE REICHERT: Well, first, Charley, I want to say you've ruined the poll I was conducting among the delegates. I was asking them to name the three Commissioners, and although some of them could name two, most of them on the third—

CHAIRMAN GRAYBILL: I don't think that's material, Arlyne.

DELEGATE REICHERT: All right. Well, my question is this: could you tell me if it is true that the Commissioner who is up for election is the one who usually votes on the side of the public?

DELEGATE MAHONEY: No, I don't think that's true. I don't think it's true at all. I think that these people vote their convictions. Now, this is-1 honestly do.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President [Chairman]. I do not wish to talk on the issue, because I think Mr. Heliker has explained it very well. I merely say that I oppose the motion to delete it and support Mr. Heliker.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I support the motion to delete, not simply on the grounds that this is legislative. Trying to legislate in this Constitution is not new to me, because I attempted to do that with the water section in our Natural Resources, and the learned wisdom of this body threw it out. The motives behind this-the proper regulation of rate utilities-are of the highest, and I am sure that our next Legislature will take a close look at this. But I do oppose this because, in my opinion, this is badlegislation. The first section replaces what is now a statutory three-man elected Commission-and I emphasize the word "elected"-and replaces it with a single appointee. Delegate Heliker referred to the efficient political institution of the utilities he is seeking to regulate. If they are sufficiently efficient to influence the election of three elected officials, I submit that they would be equally or more efficient in being able to influence a single appointee as well as the appointor. The comments that I will make concerning the Section 2, 3, 4, 5, which are not before this body at this time but are intimately interwoven with 1, relate directly to testimony which both our General Government and Local Government Committees have heard me give before, and that relates to our separation of powers. This bad legislation destroys the fundamental concept of our American democracy, and that is, having separate branches of government-Executive, Legislative and Judicial-all accountable to the people. This combines constitutionally all three of those powers into a single appointed official, accountable to no one except the person who appoints him. This is fundamentally wrong. Not only does Section 2 say the Legislature may confer Legislative, Executive and Judicial powers upon this single appointee, it goes much further and specifically says one of these powers shall be the determination of rates and tariffs. I submit this is presently accomplished by our Legislature. This is done through the Public Service Commission, which is a creature of the Legislature. They can abolish him, expand it, give them whatever powers they want, but it right now is in the hands of our Legislature. This would take that away and give it to one appointed man. Further on, in Section 2: "such rates and tariffs shall be just and reasonable". The Commissioner shall determine the weight and credibility of any evidence. We're giving the one appointed man the full powers of our courts to sit there as judge and jury in one appointee. Section 4: "this single appointee shall make use of the powers of his office to protect the customers". This is the enforcement-here comes the Executive power. And all three ofthese powers now merged into one man who's appointed. Delegate McCarvel referred to the consumer and how important it is that we have someone represent him. Under our present system, the consumer can vote the scoundrel out of office who ignores the appeals of the consumer. We can vote him out of office. There's no way you could get rid of this appointed Commissioner. Finally, this Section 5, upon ratification of this proposal-if this were in our Constitution and ratified by the people, as of that moment we would have taken away from the Legislature--we would have taken away from the people except by constitutional amendment any right, any power to regulate rates. Look at that section. "No power to regulate any public utility in respect of rates"-skipping down-"shall be conferred on any other official or agency". Forever locked into this Constitution, one man. We've taken away from the Legislature even the right to abolish the Public Service Commission or set rates or do anything else, upon ratification of this provi-

sion. One man would forever, until amended in this Constitution, have the exclusive power to set rates. In conclusion, I will simply repeat that I do not oppose this on the grounds that it's legislative, but that it is bad legislation and violative of the very principles of our separation of powers. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, fellow delegates. I think Charley Mahoney knows just as well as I do that this particular provision or anything roughly similar to it will never-1 repeat, never-get past the Legislature in the State of Montana. I'm going to speak only once on this thing. I think it is a good idea because it's responsive-it will be responsive to the people in that, if that man's wrong, he's going right down the drain and so is the Governor that appointed him. And finally, certainly things can't be any worse than they are now and we need to do something new. I support Mr. Heliker's minority report.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I was happy to see this proposal in the report of this committee, because it was one thing that was brought up during our campaign. I didn't realize it was going to be in here, but I'm glad that it is. There were two committees which were greatly spoken about by the voters of our district. This was one of the committees. The people are completely disaffected by their actions, and they're completely dissatisfied. I recall at least two meetings where this was discussed at great length, and if I remember correctly, all four of the delegates from District 3 were there at the time. I hope that it will be discussed quite fully here on the floor, and it is my own opinion that I would support Mr. Heliker.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman]. As a member of this committee, I rise in support of Mr. Mahoney's motion to delete. I'll make my remarks brief. I think Delegate McNeil has covered them very admirably, along with Mr. Mahoney. I'd simply like to point out one or two additional items. The first is, only one state in the Union has this system in operation and no state in the Union has it in their Constitution. This is in an Oregon statute; it's not in their Constitution. Secondly, only one other state has tried this. That was Rhode Island in 1967. Rhode Island abandoned it after 3 years, for what reason we do not know, but went back to a three-man Commission. We can only say for Rhode Island that it was fortunate for Rhode Island that it was in their statutes and not in their Constitution, so when they found it didn't work for them, they could abandon it without great difficulty. We had many people come to testify before our committee. I don't recall a single person that was in favor of this proposal. If any of the members of our committee think otherwise, they, of course, will correct me. We had one acknowledged expert in the field of utilities appear before our committee, and that's Senator Lee Metcalf. Everyone knows that he's long been active in this field, and he appeared before our committee and stated flatly unequivocally that this was a statutory matter and not a constitutional matter. Finally, we have the testimony of Mr. O'Scanlin himself, and he made one or two very revealing comments-one which surprised me; I wonder if the rest of the committee caught it. He said, "Of course, I could only last 5 or 6 years in this job." And immediately our ears pricked up, andwesaid, "Why?" Hesays, "Nobody could stand it any longer." Now, here we have a situation-a young man in the prime of his life, appointed to a job, and he could only hack it for 5 or 6 years. What happens then? He retires from the job, having been trained at state expense to be an extremely capable utility expert, and where does he go? He goes out into private industry and represents private industry in their rate applications before the State of Oregon. So, what Oregon actually has is a training ground for rate experts who will appear before them and against them. He stated also-this was not testimony, it was just conversation-I believe that there'd been five or six-pardon me, I think he stated that the longest term that any of these Commissioners lasted in Oregon was 5 or 6 years. Now, whether it was political or whether it was what he stated as being exhaustion, I'll leave it up to you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I, too, was concerned about this, as I know everyone is here, and as the approach to try to solve these problems. But the leader in this field has long been Senator Metcalf. When everyone else-when a lot of people here weren't even born, he was carrying the fight on the utilities. And when he stood up in front of this committee as an invitee and said this doesn't belong in the statute, I was inclined to believe him. And here again we

have the big dispute that we've gone back and forth with now for 46 days. The elected officials are responsible to the people on Tuesdays. Now we are on Wednesdays; now we're going to have one appointed person that's going to solve all that problem. On Mondays-or on-maybe we'd better make it Saturdays-we have the good legislative body that we're going to give the unlimited taxing power to, state welfare program, no ceilings, no limits. Now here today we have the bad Legislature that we can't trust to solve these problems—the people that represent the people. Then someone says they are the people, and the next day they vote against the Legislature having control to do anything. It's the highest degree of inconsistency to amend a statute by constitutional provision. The situation is bad, but you can't remedy a bad situation by writing in the Constitution. The people are going to have to remedy it from the grassroots up. Therefore, I support the motion to delete this and the rest of the section.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I rise in opposition to Mr. Mahoney's motion to delete. I'm particularly limiting my discussion to Section 1, which his motion is to. There are some of the remaining paragraphs here that I have some disagreement. I have spoken before this body until I'm sure they're sick of hearing me talk about elected officials, and I'm now going to say that we should not have elected officials. In my-I've been born and raised in Montana, and during my majority the problem of the Montana rates-the Montana Power rates, Montana-Dakota rates, and the other rates-But many, many times there's a good deal of testimony as to how high these are, and I submit that they're-the testimony is they're among the-as high as there are in the nation. Now, the argument has been made that elected officials will take care of this, and I don't know how many elections there's been since I've been voting-I'd say in some 24 years or longer-each 2 years a Railroad Commissioner comes up. We've never gotten a Railroad Commissioner devoted to serve the people in during that time. I think the problem is insoluble. The rate applications don't come up that often. The public is angry at the time of the rate increase; they're indignant, they've got a situation that is impossible. Like everyone else's memory-one of those Commissioners is probably up about 6 years and then another Commissioner 4 years, and another Commissioner will come up in 2 years. And as Mrs. Reichert pointed out, very often that Commissioner is the sole Commissioner who votes against the rate increase, and even if he doesn't, there are so many people mad at him. I can remember one time when a very severe rate increase went through, and something like 10 filed against the incumbent. And if anybody knows anything about politics, they'll know that that man, with a very, very small plurality slipped through-probably got lapped by the rest of his ticket five or six times. The situation is impossible to solve. The Legislature won't solve it. They've had it since what, 1913? Nothing is going to be done unless this body does it, and the fact that it's legislative is immaterial. The fact that the Legislature some day might solve it, when they haven't solved it in the length of time it's been before us, is a good example why, if it's going to be solved, it must be solved by this body. Now, when I came into this body, I took the attitude that we should make certain improvements, maybe 10 percent. If we started making a lot of improvements we'd build up a lot of enemies, and while I think we've got an excellent Constitution that I'm going to support and vote for, I think we've made our enemies as we've gone along. And I think we've got to start doing something for the people, something that we can go out and, when the people say to us, "We're wondering why we should vote for your Constitution", we have a reason. We'll only have not one reason, but many reasons. Like Mr. Heliker, I think we long ago have taken on the Montana Power as an enemy. Whether we pass this, we pass the next one, which I call the PUD, doesn't make any difference. These people are going to vote and going to work and going to try to beat this Constitution, so we're not going to take on one additional enemy by accepting this measure. Now, the question is, are we going to have a better government? Now, the magic in numbers is whether we have three Commissioners, seven Commissioners, one Commissioner-makes little or no difference to me. But what the magic is, can we have a Commissioner who is responsive to the people? Under the elective system, I submit they are not responsive to the people. Mr. Heliker's figures in his speech covers that far better than I can do, but it's obvious we haven't been able to beat any of these Commissioners after they've voted in the wage increase. What is the one office-the one office that is always under the gun, the one office that people look to for responsibility when the state government is failing to function? The answer is obvious. It's the office of Governor. Many times Governors have been defeated, in the

past, when they didn't have the power that they'd been given under the-this present Constitution and the amendments just prior, but now the Governor has the power to run this state. If there are mistakes, it's set up so that he will be exposed as an incompetent and can be defeated at the polls. If he's doing a good job, we should go in and retain the man. Now, what does Section 1 do? It says the Governor shall appoint this man, who shall be confirmed by either the--whatever the Legislature -it's one body or the other thing-for a term of 4 years which will coincide with the Governor's term of office. In other words, he doesn't take the last administration man unless he was doing a good job. He comes in, he's going to do a job, he takes a man that he's got confidence in, who will act fairly both for the power company and for the consumer, puts him in there, gives him full responsibility and says, "Let's go". And what happens? If the man doesn't perform either in his fairness to the utility or in his fairness to the consumer, the Governor may at any time remove the Commissioner for any cause deemed by him sufficient. In other words, if he's not performing, the Governor says "out he goes". And what advantage is this? The advantage is this: if the Governor appoints a man who doesn't do a fair job, doesn't do a good job, then he should fire him. If he doesn't fire him, then we-at the end of that Governor's 4 years, then we, the people, know who to look to for the responsibility, And under the elective system, we haven't been able to assess responsibility; we haven't been able to fight the interests. And I submit if we're ever going to be able to fight the interests on equal terms, it's going to be in that one office-of Governor. And I submit that this body is at a turning point. We can adopt something here that we can go back to the voters, and they want to know whether we should adopt this Constitution, we say, "Yes, there's one reason you should adopt it. We'll now have someone setting your rates who will be responsible to you, because if you don't like the job he's doing, if he's not doing the right job, then vote the Governor out." And you can be-better be sure that the Governor is going to be careful who he puts in. And I submit that if we are going to have a document we're going to go back and sell to the people, let's vote for this section; let's put it in here. Let's go back to the people and say, "We have an improved Constitution; support us."

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I believe in the chancellor system for the University. I believe in one man instead of a State Board of Equalization. I believe in one man for this Commission. I like to be able to point my finger at that one man who's sitting in a fishbowl, and, surprisingly enough, I'm in favor of this minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker, do you want to—

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, could I ask Mr. Holland a question, please?

CHAIRMAN GRAYBILL: Mr. Holland?

DELEGATE HOLLAND: It's a pleasure, Mrs. Babcock.

DELEGATE BABCOCK: If two truckers are applying for an MRC permit, do you think it's right that they appear before one man to get that permit?

DELEGATE HOLLAND: Mrs. Babcock, I may have misread this-and I don't really know about this. I take this as referring to public utilities, not—

DELEGATE BABCOCK: Well, the Railroad and Public Service Commission also establishes rates for truckers, and they hear hearings in regard to whether they will have a permit to haul gas. And I don't think that that should be very right to have them have to appear before one man.

DELEGATE HOLLAND: Mrs. Babcock, what I'm pointing out to you, this applies to utilities and not to truckers. The Railroad and Public Commission isn't abolished by this, but theutility function of the Railroad and Public Commission will be put over to this department. The Railroad and Public Commissioners, I presume, unless the Legislature changes it, will handle the trucking problems, and not this man.

DELEGATE BABCOCK: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Doesn't the Public and Railroad Service Commission handle the trucking now?

DELEGATE HOLLAND: Yes, and they would continue to do so, is my understanding. The only thing this takes is the utilities. This is the

Montana Power, the gas rates, the water rates, the public-those are public utilities, you understand. A trucking concern is-hauls on public service and necessity. I see nothing in here-and maybe Mr. Heliker can direct me-but I see nothing in here where this Commissioner will take over anything but utility functions. It won't take over the trucking. Do you understand?

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, may I ask Mr. Mahoney a question? Is that right, Mr. Mahoney?

DELEGATE MAHONEY: I might state that the undertanding that I had in the discussion, everything that's under the Railroad and Public Service Commission would be left under it. Now, Oregon, this commission-this one-man commissioner handles all the trucks in Oregon, and he stated that. He has over 200 employees.

CHAIRMAN GRAYBILL: Mr. Heliker, can you answer that question before you—

DELEGATE HELIKER: Yes, I'd like to clear that up. It is the intention that all of the functions of the Public Service Commission and the Railroad Commission would be conferred upon the Commissioner. There is no reason whatsoever why he cannot perform those functions as well as a three-man Commission. It is done in Oregon. It is done by-through a staff, with hearing officers. The Commissioner makes the final decision. He's the man-he's the place where the buck stops.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I wish to oppose the Mahoney motion. I favor the one-man Commissioner. Normally I am in favor of people electing all policymaking public officers. This is not a normal situation. Ever since the Public Service and Railroad Commission was established, it has been going from bad to worse. I cannot concur with Delegate Mahoney's judgment on the manner in which the Railroad Commissioner whose term is expiring votes on rate cases. Normally, I think he votes for the people, while the other two vote for the utility. Now, this is not to say that the utilities are always wrong, but there are cases or-that I have been following for many years, and I have attended many hearings-1 don't think the public gets a squareshake. I think that Delegate Holland put his finger on a very important spot when he said that the Governor, in appointing a single Commissioner, would place himself in a position where he would have to appoint a very competent and reliable individual, because if the man failed to produce results and provide a fair and effective administration of the office, the Governor would be held responsible. And the Governors normally are seeking reelection or advancement to the United States Senate or some other post in the public, and I don't think that they would very likely keep an incompetent person upon the post. I know that this is probably statutory in essence, but I think that there are times when things that are statutory by their very nat 're become constitutional. We observed that the Auditor, which could have been, and many people thought should be, statutory, all of a sudden became very constitutional in this body during this Convention. I don't think that you're going to get fair, equitable rate--utility rate administration unless you do something like this, and so I am going to vote against the Mahoney surrender and I'm going to vote for the minority report.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Mahoney's motion to delete Section 1 under the Regulation of Public Utilities Article.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I would like to speak to some of the points that have been raised. Mr. Davis agrees the situation is bad; Mr. Mahoney and McNeil don't speak to that question; but they all think that the next Legislature will act or that something will happen. I have here the transmittal letter from Senator Frank W. Hazelbaker, Chairman of the Montana Legislative Council, in which this report of the subcommittee that I spoke of previously was transmitted to the Forty-second Legislative Assembly, and I'd like to read you one paragraph in that transmittal letter. "The responsibilities of the Railroad and Public Service Committee-Commission are many and varied, making an in-depth examination difficult at best. You will note from the enclosed report that the subcommittee narrowed its field of interest principally to the sensitive area of the regulation of powergeneratingutilities. The fact that it is 'sensitive'-and the word 'sensitive' is put in quotation marks-"and controversial area accounts for the fact that little unanimity of thought existed in the subcommitee, and the Legislative Council felt obliged to submit the

subcommittee report to you"-quote-"without recommendation"-end quote. The quote marks are in the original. Now, I submit to you that there is absolutely no evidence whatsoever that the Legislature of Montana is about to act on this problem in any-in the foreseeable future. On the contrary, all of the evidence is in the opposite direction. This question has come before Legislature after Legislature after Legislature. In fact, every session there's been some bill to attack this problem, and they have gone down to defeat with very little consideration. Now, this has been attacked-although I am happy to see that Mr. McNeil is willing to fight it on the grounds of whether it's good or bad-but it's been attacked, naturally, on the grounds that it is legislative and that it shouldn't be in the Constitution and it isn't generally in constitutions. Well, I want to say, first of all, that there is precedents for this in the-in constitutions. It does appear in at least three constitutions that I have found, and in great detail in the constitution of the State of California. It appears in the North Dakota Constitution, where they set up a three-man commission, as you recently read. It appears in the Virginia Constitution. Now this proposal, with the five sections that I am proposing, which can be printed easily, double spaced, on two pages-less than two pages-is no public utility regulation act. Here is the laws of the State of Oregon administered by the Public Service Commission. This is a public utility act. What I am proposing is nothing like that at all. It is simply certain directions to the Legislature and an effort which will force-if adopted, will force the Legislature to open the Montana law and rewrite it for the sake of the people of Montana. Now, I'd like to speak also to the question of the cost of the single Commissioner, his expertise; the fact that he only lasts for a limited term; that he becomes trained by the state and then goes on to work for private industry. When I first began digging into this question before this Convention met, I met with some attorneys who were familiar with the problem, and I said to one, "If we were to adopt a single-Commissioner system, what would we have to pay such a man in order to get a qualified man who would do the job for the people of Montana?" And he said, "Well, I think you would have to pay around 30, 35 thousand dollars a year." Now, we held hearings on this subject at great length, and I and other members of the committee made a point of asking what we would have to pay the Commissioners, the three present Commissioners, in order to get good commissioners, and they said 30, 35 thousand dollars a year. So I was very interested when Mr. O'Scanlin, whom I think impressed all of you favorably, appeared here. And I asked him, "What do they pay you, Mr. O'Scanlin, over in Oregon", because I had said to my lawyer friend before, when I was first digging into this matter, I said, "I don't agree with that. I think that you could probably get some young lawyer-smart young lawyer who would take this over for a few years, between 20 and 25 thousand. Mr. O'Scanlin is paid $23,500. Now, I submit to you that we don't need to pay a hundred and five thousand dollars a year for a three-man Commission. We can hire a more capable single Commissioner for a small fraction of that amount. And if you want to ask--answer the question that has been asked on this floor several times-"Where are we going to get the money to pay for some of these things we've been adopting?"-here's one place you could get it. Now, this bright young man, like Mr. O'Scanlin—and there are lots of them around in the bushes; they're not so hard to find—this bright young man becomes an expert very rapidly if he has an effective staff. That's the key to the problem. You do have to have an effective staff. Everybody testified before our committee said our Commission doesn't have it; they ought to have it. I agree with that. We have five men at the present time in the Public Utility portion of the Montana Public Service Commission, which is a bit ridiculous, and they do not have, incidentally, merit system-merit principle protection. And I wonder how independent they are without that protection. Now, as to the fact that the single Commissioner, like Mr. O'Scanlin in Oregon, will last for only 5 or 6 years, this is certainly true-5 or 6 years, or at the most two Governor's terms, 8 years-and then go into private industry. There is, of course, no guarantee that he's going to be hired by some utility company. But it is a fact, in the federal commissions and in the other commissions, that when you get experts trained by—either in the staff or on the commissions-by the state at low salaries, that they do have a habit of—eventually of going to work for some private firm in the industry. This is just a part of our system. This is the way it works, and we might as well accept it. And if Oregon has a training ground, I would say Montana would be well advised to institute a similar training ground and take advantage of the training that we do. At the present time we do not have a training ground. Our Public Service Commissioners do not go out and get jobs with private-with public utilities; they don't become that well trained. Now, as to the objection that this is bad legislation, I am happy to meet the issue on

this ground. If this is badlegislation-thatis, having the Commissioner appointed by the Governor and violating, as Mr. McNeil says, the separation of powers doctrine-then all of the federal commissions are bad legislation also, because they are appointed by the President of the United States; confirmed by the Senate. And the recommendations of the Ash Council--and I remind you that these recommendations are not by wild-eyed radicals, but are by such people as Roy L. Ash, the President of Litton Industries, and by John B. Connally, who has never been accused of being a great liberal-they are certainly violating this principle, also. The fact is that these federal commissions are generally recognized as more effective than the state commissions, and here comes along the Ash Council and says they can be made more effective by appointing single Commissioners. Now, we did have witnesses in favor of the single-Commission form. I forget all of them at the moment, but Clyde Jarvis of the Farmers Union was one, and I have just had a letter from the 20,000.member Graingrowers' Association, endorsing the proposal-this specific section of the proposal, also. Now, as to Senator Metcalf s role in this matter. It is true, as I'm sure all of you know, that Senator Metcalf came before the committee. And although he agreed with me in every respect concerning what the problem is, the nature of the problem, what needs to be done about it, he did not agree that we should write it into the Constitution. That very same day, Senator Metcalf went before the Natural Resources Committee in this Convention in a hearing and advocated writing into the Constitution matter exactly parallel and fully as legislative as what you have before you at the present time. So the senator is not exactly consistent. I don't know the reason for his position; I haven't asked him, and I don't intend to. Now, one final comment that was made was "utilities are not always wrong". This is certainly true. In inflationary times it is inevitable that utility companies like Montana Power Company will, upon occasion, need-have good case for rate increases. But I want to point out to you that the Montana Power Company is very well provided for. It is not in a position of going begging. It is not an applicant for welfare. I have here in my hand a report of the percent return on common equity of 200 public utility companies, gas-class A and B electric utility companies in the United States, which shows the Montana Power Company with a rate of return to-on it's common equity, right at the top of the list. Now, you can argue about the way in which the particular percentage-and I haven't even bothered to mention it-is computed, but you can't argue about the comparability of these figures. The Montana Power is at the top of the list. It is one of the most profitable utility companies in the country, so that, although it has not always been wrong, I'm sure, when it has come before the Commission, it has received treatment which is beyond that that should be accorded it in liberality in the consumers' interest. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman and delegates. After 4, 5, 6 days of hearings on public utilities, as Vicechairman of this committee, I have to support Delegate Mahoney's motion from this standpoint: that I believe this area is too complex for this committee to take under consideration as a whole. And I am not going to say whether we need an appointed Commissioner or a three-man elected one, but I think it's-should be left to the Legislature, to be more flexible. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises—

Mr. Mahoney, do you want to speak again?

DELEGATE MAHONEY: I would. I'ts my motion. I can-can I close, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes, if you want to.

DELEGATE MAHONEY: If there's nobody else-1 don't want to cut anybody off.

CHAIRMAN GRAYBILL: All right, go ahead.

DELEGATE MAHONEY: Mr. Chairman, I've listened to all the discussion and I get a bang-elected officials, I feel, are responsible to the people. I think they have a great thing. They go out before them, and I do think they are responsible. Now, I know here, the last election, when a man run for the Public Service Commission and defeated a man who'd been on the Commission for years-in the Democratic primary, and you all remember it-so the people did know who they were voting about. Mr. Smith was defeated, and the new man went in. Now, he was defeated in the general election, I will admit, but the people did speak and they are-they have a right. Now, I just wonder right here, is only the Governor responsible? This is what bothers me. He makes the appointments, then are they-is he going to make the appointment? Only he is responsible. I think

that this is a misconception. I wonder what this would be when the Governor gets ready for re-election. Boy, I'm telling you, campaign funds can really be got. This is something that I think the Governor could really use is-is there? Now, we've heard about the next Legislature. The next Legislature is going to be elected from the same districts and in the same manner as this group here was elected. I am sure-1 don't think-I don't know how the Constitution is going to handle it. If it's a unicameral body, whether it will be in the next session of the Legislature or not; or we may have to wait for a year on this. But at the present time, as1 see it, you're going to be elected from these same districts, the same people are going to do the electing that they have elected you. Now, if the—maybe this next Legislature, which has been re-districting-if you want responsive, this is the time to get it. I think the last Legislature has studied-and I want to say this: Senator Gordon Bollinger is making a study, as I've stated before, and he came before our committee, and he said, "We are studying this." Now, on the legislative thing that was mentioned by Mr. Heliker, this report-it's too bad that it was ever written that way by Mr. Hazelbaker. It's too bad, because he cut the limb right out from under a committee that he had appointed. Now, number three-and I'm not going to take much time-the Legislature has never appropriated enough money for staff over here, and I think we've got to blame the Legislature for that. I blame the Commission some, because I don't think maybe they've pushed it hard enough, but I believe that we have got this—they can have the staff if they want it. Now, if we come out here and the Legislature will not appropriate the money for the one-man staff, we haven't gained a thing. Now, I was surprised very much when Mr. Heliker said Senator Metcalf is not consistent. This bothered me. Lee Metcalf has been so consistent in that United States Senate, fighting power companies for years-he's stood out against terrific odds. Senator Metcalf did not quibble when he stated that this, he felt, was not—belong in the Constitution; this was legislative. Now, if he decided to go to another committee—and I don't know what the issue was-1 heard him talk, and I thought he gave a good talk before both committees. Now, Senator Thiessen-this is another man that stood right down there and said, "I agree one"—"I support the stand of Senator Metcalf." Now, he's another Democrat, and he's very much in this power, so you're going out here. Here's three-one United States Senator, one state Senator-says this is not constitutional, and we have Mr.-Senator Bollinger, who is another senator, said this is legislative. And none of these men are-belong in anything in the conservative group. Thank you.

CHAIRMAN GRAYBILL: Very well—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: -the issue arises on Mr. Mahoney's motion to delete Section 1 of the article on Regulation of Public Utilities. A roll call vote has been called for. All in favor of Mr. Mahoney's motion to delete, vote Aye; all opposed, vote No.

Mrs. Babcock, for what purpose do you rise?

DELEGATE BABCOCK: To explain my vote.

CHAIRMAN GRAYBILL: Very well.

DELEGATE BABCOCK: I'd just like to note-like the record to show that in voting for Mr. Mahoney, I am not supporting Mr. Metcalf. (Laughter)

CHAIRMAN GRAYBILL: Mr. Toole, for what purpose do you rise?

DELEGATE TOOLE: Mr. Chairman, to explain my vote--under Rule 20, conflict of interest.

CHAIRMAN GRAYBILL: Very well, have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye

Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Nay
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Nay

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I pushed the wrong button.

CHAIRMAN GRAYBILL: All right, the record may show Mrs. Bates pushed the wrong button.

CLERK HANSON: She's voting No, then?

CHAIRMAN GRAYBILL: No, she can't change it. She just has to explain it. It doesn't change the vote.

CLERK HANSON: Mr. Chairman, 58 delegates voting Aye, 37 voting No, 5 not voting.

CHAIRMAN GRAYBILL: Mrs. Sullivan, for what purpose do your rise?

DELEGATE SULLIVAN: Mr. President [Chairman]. I'm sorry, I pushed the wrong button. I'd like to be on record as being on the other one.

CHAIRMAN GRAYBILL: Anybody else push the wrong button?

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I didn't push the wrong button—

CHAIRMAN GRAYBILL: For what purpose do you arise?

DELEGATE SCANLIN: -but I certainly want to thank the members of this Convention for supporting the majority. Thank you.

CHAIRMAN GRAYBILL: Very well, 58 having voted Aye, 37 having voted No, the Section 1 of the Public-the Regulation of Public Utilities Article is deleted.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman—

CHAIRMAN GRAYBILL: Do you want us to read Number 1 of your amend-of your substitute motion?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Will the Chair read-will the clerk please read Number 1 of Mr. Heliker's substitute motion. Is it passed out, Mr. Heliker?

DELEGATE HELIKER: It's being passed out now.

CHAIRMAN GRAYBILL: Very well, pass it out. Go ahead and read it. Pass it out, yes, please.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, page 16, by substituting the following: 'Section 1, Regulatory authority. The Legislature shall provide by law for a regulatory authority, which may consist of one or more Commissioners, who shall be appointed by the Governor and confirmed by the Legislature (Senate) after public hearings, for terms which shall be provided by law. The Governor may at any time remove a Commissioner for any cause deemed by him sufficient, after such public hearings as may be provided by law.' Signed: Heliker." Mr. Chairman.

CHAIRMAN GRAYBILL: May I see it, Mr. Clerk? Lines 8 through 16 having been deleted, your motion is slightly different-should be slightly different, but in any event the Chair understands it to be your purpose to insert this in place of Section 1 deleted. It is substantially different. The Chair will allow you this change, Mr. Heliker. Do you want to speak to it?

DELEGATE HELIKER: Mr. Chairman, if a substantial number of delegates voted against the idea of a single Commissioner, I would like to give them the opportunity to vote for a reform of the process of regulation by retaining-by allowing the Legislature to determine how many Commissioners there will be, but by retaining the central idea of the original proposal that they be appointed by the Governor.

CHAIRMAN GRAYBILL: Mr. Heliker's motion is to-simply to substitute another Section 1, the purpose of which is to say that the Legislature shall provide by law for a regulatory authority, which may consist of one or more Commissioners. In other words, it gives the Legislature the right to have as many Commissioners as they want, instead of one; and a few other changes that you can see in what's been passed out. Is there discussion?

Mr. Mahoney.

DELEGATE MAHONEY: I-we're still getting back to the appointive concept of this; and I am just as much opposed to this amendment as I was the last one, because we're going straightly to appointive Commissioners and was no-that's so little different from the other one, I certainly oppose the motion.

CHAIRMAN GRAYBILL: Very well, now, the issue is appointive and the issue is more than one. Does anyone else care to speak to it? Do you want a roll call vote, Mr. Heliker? Do you want to close? Mr. Heliker, do you want a roll call vote, or do you want to close?

DELEGATE HELIKER: (Inaudible)

CHAIRMAN GRAYBILL: Very well, he wants a roll call vote. Mr. Heliker's motion is to substitute for Section 1 of the regulation of public utilities the material placed before you, which has the effect of having an appointed Commission-or giving the Legislature the right to supply an appointed Commission of more than one member. All in favor of that, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0. ..... Nay
Arbanas ..... Absent
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Aye
Erdmann Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Aye
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lore110 ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough. ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Nay
Rollins, ... Absent
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Spew.. ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 36 voting Aye, 56 voting No.

CHAIRMAN GRAYBILL: 56 delegates having voted No and 36 delegates having voted Aye, the substitute section is defeated.

Mr. Heliker, what's your pleasure about Section 2?

DELEGATE HELIKER: I move the substitute motion that you have up there, entitled "Powers of a Public Service Commission".

CHAIRMAN GRAYBILL: Do you know which number it is?

DELEGATE HELIKER: I don't have a number on mine. It's Section 1, Powers of Public Service Commission.

CHAIRMAN GRAYBILL: Very well, do you wish to move that?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read this one. What's the number?

CLERK HANSON: "Mr. Chairman. I move as substitute language for deleted Section 1 the following language-quote: 'Section 1, Powers of Public Service Commission. The existing Railroad and Public Service Commission, or any successive agency provided by law, shall have such jurisdiction and such Legislative, Executive and Judicial powers as are conferred upon it by the Legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In exercise of such powers, one of which shall be of the determination of rates and tariffs of the utilities over which it may be given jurisdiction, the Commission shall not be required in considering evidence presented before it to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The Commission shall determine the weight and credibility of any evidence that is introduced. The manner and scope of review, if any, of the Commission's actions in a court of record shall be provided by law.' Signed: Heliker." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Heliker has proposed the second substitute section for Section 1, which provides that the existing Railroad and Public Service Commission or any successive agency shall have jurisdiction that the Legislature provides, but it goes on to explain some of the other features of that Public Service Commission.

Mr. Heliker, would you care to explain it?

DELEGATE HELIKER: Mr. Chairman, this is actually a substitute for Section 2 of the proposal, renumbered Section 1 since Section 1 has been knocked out. There is one typographical error on line 2. The word "successive" should read "successor".

CHAIRMAN GRAYBILL: "Successor"? Very well, the Chair now understands that Mr. Heliker's position is that Section 1 about a Public Utility Commissioner, having been knocked out, Section 2 talks about powers of Commissioners. That would not be appropriate, and you're now suggesting a section on powers of Public Service Commissioners, which would be in place of Section 2 in the book. Is that correct?

DELEGATE HELIKER: That is correct.

CHAIRMAN GRAYBILL: Very well. Do we all understand that the proposed language that has been handed out to you is in place of Section 2 in the books? And are you withdrawing Section 2 in the book?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Section 2 in the book is withdrawn, and we'll now consider Section 2—or Section 1 restyled, on powers of Public Service Commission.

Mr. Heliker.

DELEGATE HELIKER: If the committee would refer to page 21, the wording of this substitute that you have before you is identical with that contained on page 21 except that it now applies to the existing Public Service Commission rather than to the proposed Commissioner or regulatory authority. Now, this is really quite a separate issue, and this section standingaloneis extremely important to the reform of regulatory law in Montana and the effectiveness of the present Public Service Commission. In my opinion, as I have expressed it adequately, I think, the present Public Service Commission, until it is reformed, will not be anything to be proud of. But the fact is-and we had testimony in great detail before the committee-that the present Public Service Commission or any regulatory authority established by the Legislature without change in the existing statute is bound by a law established--written by the Supreme Court of Montana which is obsolete, outmoded, and prevents the Commission from effective regulation. I can go over this with you; it's not very long. The history of regulatory law is too lengthy and complex to be set forth adequately in

any space less than a large book, and I'm not kidding about that. There are many large books written on this subject, and I've read several of them. We can only say here that the Montana utility regulation has muddled along under the burden of law labeled obsolete by the United States Supreme Court more than a generation ago. The leading Montana case, which is the present ruling case-Tobacco River Company versus Public Service Commission, decided in 1940—was an accurate statement of the law as enunciated by the United States Supreme Court up until that time. But only 2 years later, that court handed down the first of a series of decisions generally known as the natural gas cases-in Natural Gas Pipeline versus Federal Power Commission, 1942—which revolutionized regulatory law as interpreted by that court. The court went further, and further emphasized the change in 1944 in FPC versus Hope Natural Gas, which is now generally regarded as the leading case in federal law. Many other state Supreme Courts followed the lead of the federal court-as did, for example, The Utah Supreme Court in Utah Power and Light versus Public Service Commission, 1944—and freed their state regulatory bodies from the shackles of the arcane fair value rule. The Montana Supreme Court, however, chose, in State versus Public Service Commission in 1957, to keep the Montana Commission in the dark ages of regulatory law; and testimony before this committee was virtually unanimous that the Montana Commission is, in fact, bound to the fair value rule until the law is changed by the Supreme Court, by the Legislature, or by this Convention. It is the minority's belief that the first two are not likely to act. It is the minority's belief that this Convention should act for the people by freeing the Public Service Commission from the fair value rule. The specific language of the proposed section is designed to free the Public Service Commission to exercise its best judgment, to weigh the evidence subject to no court-imposed theories, save only that the result be just and reasonable; which is, incidentally, the language in the present act and the standard imposed by the United States Supreme Court, to which he would be held by that court-which, I should say, it would be held by that court-in any case. Otherwise, the section preserves the Legislature's full discretionary power to define the Commission's powers and jurisdiction and define the meaning of "public utility". The last two sentences of the section are designed to prevent the court from substituting their judgment for the Commissioners', so long as they find the result of its deliberations just and reasonable and arrived in it-at in a manner not contrary to procedural due process of law, and to empower the Legislature to restrict Judicial review of the commission's actions if it so chooses. Those last two sentences, by the way, are taken from the language proposed by the California Constitutional Revision Commission. Now, I think I should take a few moments to explain the so-called fair value rule and what it does to utility regulation in Montana. This dates back to 1898, when the United States Supreme Court, in the case of Smythe versus Ames, listed about 15 different things which it said regulatory commissions must consider in determining a rate base. Now, a rate base is simply the valuation placed upon the property used by the utility for the public's benefit, and the theory is that in conjunction with such a rate base and a so-called fair rate of return, one then arrives at an amount in dollars which would be called a fair return-that is, the amount which the utility is allowed to collect from theratepayers to pay the cost of capital to the firm-that is, to pay the-a reasonable return on its investment. Smythe versus Ames included all sorts of nonsensical things, including the market value of the stock which, of course, is determined by the rates allowed through the utility and, thus, circular reasoning. They also threw in some things, including a strange animal called reproduction cost. Now, it would take a much longer lecture than I have time to deliver to tell you about all the intricacies of reproduction cost, but it is a totally unworkable, a totally fictional value which the courts-the federal court-the United States Supreme Court, up until 1942, imposed upon the state and the federal commissions. But in 1942 and 1944 in the natural gas cases, the federal court finally decided that this formula was unworkable and said that it would no longer inquire as to the method of valuation used by the Commission, provided that the result was just and reasonable. And that is now the standard applied by the United States Supreme Court. The Montana Supreme Court, on the other hand, decided-contrary to the decisions of other states' Supreme Courts which followed the Hope natural gas case, decided that the old Smythe versus Ames rule, as modified over the years in many, many cases and as set forth in Montana in the Tobacco River case, must still be applied by the Montana Public Service Commission. Now, the statute does not specify any such formula; this was written into the law by the Supreme Court. There have been people who have said that the Public Service Commission has the power, if it only would assert it, to free itself from

the fair value rule; and we inquired carefully in our hearings as to the truth ofthattheory and, I think, established beyond a shadow of a doubt that the Public Service Commission does not have the power to free itself from the fair value rule—that if it failed to consider reproduction costs, that the Montana Supreme Court would strike down its order. It has also been suggested that the Commission in Montana could achievethe same results by simply varying the rate ofreturn. You multiply the rate base or valuation found by this strange mixture called fair value by a rate of return, and so your final result is a compound of the two things: the value and the rate of return. And it is said all the Commission has to do is simply to reduce the rate of return and you'll arrive at the same result. So we asked in a—we asked-1 asked practically every witness that came before the committee who was qualified to answer the question if this would work. We asked Mr. Langley and Mr. Johnson of the Commission staff if this was possible, and they answered, no, it was not possible; if we reduced the rate of return, the Montana Supreme Court would regard it as circumvention of the rule, and they simply wouldn't get away with it. And I think there is no question that that is true, so that we are at the present time stuck with this system whereby we throw into a pot a whole series of things. And let me list them for you: reproduction cost-that's reproduction cost new, reproduction cost new depreciated, original cost new, original cost depreciated, assessed value, and cost of capital. Now, what assessed value, which is evaluation for tax purposes, has to do with it, no one has ever explained. And every witness who was questioned on this subject said it doesn'thave anything to do with it, but it nevertheless is required by the Montana Supreme Court to be considered by the Commission. All of these things are thrown into a pot, stirred up, and the staff of the Commission comes up with some kind of an answer called a fair value of the corporation's investment. Now, the way-the result of this is that the Commissioners can decide among themselves what rate of increase they want to give to the applicant utility company and they can tell the staff, "That's what we want to give them." And the staff then can, with this mixed-up formula, come up with a justification for any answer that the Commission wants whatsoever, which means that regulation is the opposite of scientific. It has nothing to do with real numbers; it has to do simply with figures which the Commission pulls out of its hat. Now, the way in which most of the Commissions in the country and the federal commissions go about this is to use a straightforward, honest, easily ascertained value, which is the original cost to the corporation, depreciated according to some accepted formula, to arrive at an accounting value which can be attained very easily from the books of the corporation. And you don't need a lot of engineers employing phony formulas to arrive at something called reproduction cost new, which, as I say, no matter how carefully done and how much money they spend on it-and sometimes they spend as much as $3 million on it-is strictly fictional. And that is presumably what the Commission would, under this section, adopt, because it is the logical and sensible and the easy thing for the Commission-the workable thing for the Commission to do. This section, however, does not require them to adopt such a method. They could, as a matter of fact, readopt the present method, which simply says they do not have to—they cannot be required to use any particular theories or methods for determining rates or tariffs in considering the evidence which is presented to them. They are freed from the handcuffs which the Supreme Court has imposed upon them. And that is the purpose-the main purpose of this section. Now, the last two sentences, as I've explained, are devised for the purpose, and are taken directly from the California Constitution, to insure the independence of the Commission from meddling by the courts. If you go back over the history of public utility regulation in this country, you find that the great curse-the thing which has made it ineffective-has been the substitution by the courts of their relatively uninformed judgment for the supposedly expert judgment of the Commission; and this would prevent that in Montana. It would, however, allow the courts to review the decisions of the-and the orders of the Commission to determine whether they are just and reasonable; but if it found evidence that they were just and reasonable in the record, then it would have to uphold them. Thank you.

CHAIRMAN GRAYBILL: Very well. Mr. Brown.

DELEGATE BROWN: Mr. Chairman. Mr. Heliker does not like the method of fixing rates by reproduction cost new, and he wants original cost less depreciation. I have been in these rate hearings, and they're extremely complicated field, and I doubt if practically anyone in this room could be an expert on rates. Maybe one or two are, but it's a technical field. The very evil that Mr. Heliker is trying to avoid he has written into this Constitu-

tion, because he says that this Commission may adopt any theory whatever that they want. So we're precluding the Legislature or the courts or anyone else from changing an unfair ratemaking base and we're just getting into a field we're not competent in. And we cannot write a rate theory into the Constitution; therefore, I request that this section, as amended, be not adopted.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I might state that this section-it's all statutory—and the Tobacco River case was decided on a statute. And they agreed at that time-and I want to say and I want to be fair to this Convention—Associate Justice Erickson was on the board, and nobody can say that he is any friend of the power company-of the-1 was on the court at the time the Tobacco River case was in. Now, to go-this is what-1 agree with Mr. Brown that this is a very touchy situation, to write law like this and have to make a decision here. Now, this takes a lot and I, maybe-1 don't know. You get into the law, and I have an awful time to decide just what is correct and what isn't correct. Now, personally, I would like to see the next Legislature go out and do this that the people are going to elect, and I am sure after Mr. Bollinger talked like he talked, they're going into this quite deeply. And I'd just like to see us now not put a piece of law into this Convention. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, just briefly; even though this is a substitute section, it still contains a constitutional provision giving one governmental commission, even though it's elective-giving one commission Legislative, Executive and Judicial powers. We don't give that power to the Governor; we don't give that power to the Supreme Court; we don't give that power to any legislator; and it ought not to be anywhere in this Constitution. In addition, it is an attempt to set up, as Delegate Mahoney said, in the Constitution a method for rate determination. Let me warn you what can happen if this is adopted. And if the Supreme Court of this state were to give a very narrow construction to that, the only way it could be changed would be by constitutional amendment or to get that court to change. Now, the system that Delegate Heliker is concerned about evolved legislatively and can be changed legislatively, and if the court has given the wrong interpretation to that legislatively established rate determination-if the court makes a wrong decision, you can go to the Legislature and correct it. If we put this in the Constitution and the court makes a decision we don't like, you've got to get that court to change its mind or have a constitutional amendment, and we can't do it through our elected representatives in the Legislature. I urge that for the same reasons we oppose this section.

CHAIRMAN GRAYBILL: Mr. Heliker, do you want to close?

DELEGATE HELIKER: No, Mr. Chairman, I do not want to close. I want to ask Mr. Mahoney a question.

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE HELIKER: Mr. Mahoney, I have in my hand a copy of an article—news report which appeared in the Billings *Gazette* January 29, 1970, in which one Charles Mahoney is quoted as saying-I'll read it: "Mr. Charles Mahoney, former Executive Director of the Montana Legislative Council, claims he was forced out of his job by the Montana Power Company. He resigned last week. Mahoney was in Billings Wednesday to address County Extension Clubs. 'They didn't do it directly,' Mahoney says, 'it was done strictly by their man Hazelbaker.' Montana Power-quoting now-'Montana Power is sitting behind the scenes. You can't blame them. They have quite a little thing going for them up there, and they want to keep it', Mahoney says. 'The pressure came from the Montana Power. A lot of fellows would have taken it; I wouldn't', the one-time Montana state Republican majority leader said."

CHAIRMAN GRAYBILL: Mr. Heliker, the Chair has listened carefully and you haven't said anything in there about the Tobacco River case or this section. And I think it's out of order—

DELEGATE HELIKER: I was coming to it, Mr.—

CHAIRMAN GRAYBILL: -so I'll rule it out of order.

DELEGATE HELIKER: -Chairman, it's right down the line here, just about two words.

CHAIRMAN GRAYBILL: Well, I think it's unfortunate you read the rest of it then. I think it's out of order, and I'm going to rule you out of

order. Do you have anything else to discuss on Section l-the substitute Section 1? Anyone else want the floor?

DELEGATE HELIKER: I have something else I'd like to say, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. Mr. Mahoney, do you have anything to say on Section 1?

DELEGATE MAHONEY: Mr. Chairman, all this proves is that I'm not working for the Montana Power Company. (Laughter)

CHAIRMAN GRAYBILL: Very well, Mr. Heliker, you may speak now.

DELEGATE HELIKER: Mr. Mahoney said in that-on that occasion that they used replacement cost less depreciation. Some of these things have been depreciated out twice and are going into their third depreciation. And what I wanted to ask Mr. Mahoney is what he meant by that.

CHAIRMAN GRAYBILL: I'm not trying to stop you from asking him about concepts, but I think the letter was far beyond the scope of this, and I'm going to hold you people to what you're talking about now. Now, you've explained rather well what reproduction cost new is and what the— what the fair value is, and you're going to have to take your chances with the body-so am I-as to what they think. So let's get on with it.

DELEGATE HELIKER: Well, if Mr. Mahoney doesn't want to answer, I'll go on.

CHAIRMAN GRAYBILL: Well, you haven't asked him a question. You want to ask him a theoretical question, okay; but I don't think you should have read the letter and I ruled you out of order. If you want to ask him a question about some concept, you go right ahead.

DELEGATE HELIKER: Well, will he yield?

CHAIRMAN GRAYBILL: I'm sure he will.

DELEGATE MAHONEY: I'll try, Mr. Chairman.

DELEGATE HELIKER: I want to know, Charley, what you meant by that when you said that-"he's the one behind looking at the original base less depreciation as a method to fix electrical rates for Montana Power Company". But that's not what is used. They use replacement cost, less depreciation. Some of these things have been depreciated out twice and they're going into their third depreciation. What did you have in mind?

DELEGATE MAHONEY: Some of these dams have been constructed for approximately, I guess, probably 60 years, and they have been depreciated out. And I do not agree with the question of original cost-or new depreciation-new reproduction cost—

CHAIRMAN GRAYBILL: Reproduction cost new.

DELEGATE MAHONEY: -depreciated. I do not agree with that, and I think that this is the point, but I was discussing the Tobacco River case in this case here, which is statutory and this is what you have here. And you aren't changing a thing on this, if you—

CHAIRMAN GRAYBILL: Okay, Charley, you've answered. Now, if you've got another question—

DELEGATE HELIKER: Will Delegate Mahoney yield to another question?

CHAIRMAN GRAYBILL: Okay, another question.

DELEGATE HELIKER: You say the Tobacco River case is statutory. What do you mean by that?

DELEGATE MAHONEY: That the statute-the section-the Tobacco River case was decided on one section in the statutes. And that's-you know that just as well as I do, and it's there. It's not in any constitution or anything.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Heliker.

DELEGATE HELIKER: I know of no such thing. The Tobacco River case was decided as a matter of fact-1 have a copy of it here right beside me-was decided on the basis of the whole history of the law up to that time. And I have said that the Tobacco River case was an accurate statement of the law at that time; and the fact that Mr. Erickson was on the court and voted for the court's decision proves nothing at all, because it was an

accurate statement of the law at that time. Two years later, the United States Supreme Court reversed that law, changed it entirely, and the Montana Supreme Court has never gone along with the United States Supreme Court. Now, I want to reply to Mr. O'Neill's statement that we are attempting here to set up a method for rate determination. No such thing. We are simply trying to free the Public Service Commission to adopt a rational method of rate determination. We are not trying to impose upon them any method. Now, this-Mr. O'Neill, I believe it was, said-McNeil, excuse me-said also that the system has evolved legislatively. This system was established in 1913, and it has not evolved since. The only evolution has been by court interpretation, by the decisions of the Montana Supreme Court, which has, since 1940, refused to evolve at all. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Heliker's substitute motion for Section 1, Powers of Public Service Commission. You all have it before you. So many as shall be in favor of it, vote Aye; so many as shall be opposed to it, vote No. It allows the existing Public Service Commission to exist, but it does require that-it does state that the Commission shall not be required, in considering evidence, to consider any particular theories. That's the gist of it. Now, all in favor of it, vote Aye; and all opposed to it, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim ... Aye
Anderson, J. ... Nay
Anderson, 0. ... Nay
Arbanas ... Absent
Arness ... Absent
Aronow ... Aye
Artz ... Aye
Ask ... Nay
Babcock ... Nay
Barnard ... Aye
Bates ... Aye
Belcher ... Nay
Berg ... Nay
Berthelson ... Nay
Blaylock ... Nay
Blend ... Nay
Bowman ... Absent
Brazier ... Nay
Brown ... Nay
Bugbee ... Nay
Burkhardt ... Absent
Cain ... Aye
Campbell ... Aye
Cate ... Aye
Champoux ... Aye
Choate ... Nay
Conover ... Nay
Cross ... Aye
Dahood ... Absent
Davis ... Nay
Delaney ... Aye
Driscoll ... Aye
Drum ... Nay
Eck ... Nay
Erdmann ... Nay
Eskildsen ... Nay
Etchart ... Nay
Felt ... Absent
Foster ... Nay
Furlong ... Aye
Garlington ... Nay
Gysler ... Nay
Habedank ... Nay
Hanson, R.S. ... Nay
Hanson, R. ... Aye
Harbaugh ... Aye
Harlow ... Aye
Harper ... Aye
Harrington ... Aye
Heliker ... Aye
Holland ... Absent
Jacobsen ... Nay
James ... Aye
Johnson ... Nay
Joyce ... Absent
Kamhoot ... Nay
Kelleher ... Aye
Leuthold ... Nay
Loendorf ... Nay
Lorello ... Absent
Mahoney ... Nay
Mansfield ... Nay
Martin ... Nay
McCarvel ... Aye
McDonough ... Nay
McKeon ... Aye
McNeil ... Nay
Melvin ... Nay
Monroe ... Aye
Murray ... Nay
Noble ... Nay

Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Absent
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Absent
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 35 delegates voting Aye, 52 voting No.

CHAIRMAN GRAYBILL: 52 delegates having voted No and only 35 Aye, the motion is defeated. Section 2 has been withdrawn.

Mr. Heliker, I don't see another Section 2 here. Do you want to move on to Section 3, or what's your pleasure?

DELEGATE HELIKER: That was Section 1.

CHAIRMAN GRAYBILL: Well, that was a Section 2 restyled Section 1, right?

DELEGATE HELIKER: Yes, we have a substitute motion for Section 3, restyled Section—

CHAIRMAN GRAYBILL: What about Section 3? Are you withdrawing the existing Section 3?

DELEGATE HELIKER: Yes, and substituting therefor the one you have.

CHAIRMAN GRAYBILL: The one that starts, "Impartiality of staff'?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Very well, the pages may put it out and the clerk will read the section. It's styledSection3. We won't worry about its styling; that's what it replaces.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, page 17, by deleting its entirety and substituting the following language: 'Section 3, Impartiality of staff. In the determination of rates and tariffs, the authority shall be provided with staff personnel and help in such determination and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant."' Mr. Chairman, Section 3-"Signed: Heliker."

CHAIRMAN GRAYBILL: May I see it, Mr. Clerk? Now, the clerk-the Chair will allow Mr. Heliker's amendment to substitute this language for present Section 3. The Chair will observe that the word "the authority" appears therein. If the motion-if the section shall pass after we have considered it, then the Chair will consider other amendments to change the word "authority" to "Public Service Commission", which I presume you would mean, Mr. Heliker, in the event it passed. Is that right?

DELEGATE HELIKER: I thought that it said "Commission", but I didn't keep a copy.

CHAIRMAN GRAYBILL: You need a copy of it? Will one of the pages give Mr. Heliker a copy. Oh, well-very well, the Chair had another one in hand. Very well, the one that Mr. Heliker wants considered at this time, apparently, is Section-is styled Section Z-we'll ignore the styling. It does say "in the determination of rates and tariffs, the Commission shall be provided"-so it's all right and I'll withdraw the other one, Mr. Heliker.

DELEGATE HELIKER: Yes, Mr. Chairman, this applies to the present Commission and simply says that in the determination of rates and tariffs, the Commission shall be provided with staff personnel and help. The help is there for provision for consultants, outside consultants, and that they-the recommendations of staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant. Now, the point here is that the Commission should be representing the public interest, the staff should

be representing the public interest as the employees of the commission, and their reports should be impartial and should have the standing as the recommendations of impartial persons, as opposed to the partiality of the material, evidence, presented to-and conclusions presented to the Commission by either the applicant or any persons or organizations who may be protesting the application.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes. Will Mr. Heliker yield to a question or two?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: Yes.

DELEGATE HARPER: It is my understanding that the Railroad and Public Service—Public Utilities Commission-is at present statutory instead of constitutional. Is that correct?

DELEGATE HELIKER: That's correct.

DELEGATE HARPER: And is it also correct that nowhere, so far, in our new Constitution have we mentioned that Commission?

DELEGATE HELIKER: That is correct.

DELEGATE HARPER: And are you proposing now that we just have this thing that starts off, "In the determination of rates and tariffs, the Commission shall be provided"--and yet such Commission has not been named yet?

DELEGATE HELIKER: Well, Mr. Harper, I expect that if this were passed, Style and Drafting would take care of that and where it would go in the Constitution. I don't know, but the "Commission" obviously would say "Public Service Commission".

DELEGATE HARPER: Now, may I ask one more question, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes, Mr. Harper.

DELEGATE HARPER: Then, do I understand that you want to write into the Constitution the present Railway and Public Service Commission?

DELEGATE HELIKER: No. I think that's a good point, Mr. Harper.

DELEGATE HARPER: Yes. Mr. Chairman, I've been right with Mr. Heliker all along this afternoon, and I understood him not to want to write the present Commission into the Constitution, is the reason I'm raising this question. I'm not badgering the witness.

DELEGATE HELIKER: That's all right; I don't mind a little badgering. No, the-Mr. Harper does have a very good point, Mr. Chairman, and this should read "the Public Service Commission or successor agency", just as the recently killed Section 1 would have read.

CHAIRMAN GRAYBILL: All right, the Chair will rule that you may discuss the matter. If it passes, we will then consider making the language "the Commission" more artful. I understand that you have a way of amending it so that it can cover the present Commission or any other substitute Commission thatthelaw mightprovide for, and let's take that up after we've had the vote on whether or not the Convention is interested in putting the impartiality of staff in the Convention, Mr. Heliker.

DELEGATE HELIKER: Yes, there really are two issues here in addition to the one I've already mentioned. There is the fact that the people who testified before the committee were unanimous in their statement that the Commission is understaffed, that it should have more adequate staff. So the first part of this is a-in effect a direction to the Legislature to provide that staff. The second part is--would establish a standing for the staff which it does not have now.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. I, along with Delegate Harper, am a bit puzzled about this. I went along with Delegate Heliker on his proposals, but they were obviously beaten, so I believe that 3, 4 and 5 no longer apply and should be deleted.

CHAIRMAN GRAYBILL: Well, he has withdrawn 3, and this is a substitute for 3.

DELEGATE ARONOW: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I might be able to shed a little light on this proposition. I've been involved with some rather lengthy hearings before the Federal Power Commission in Wash-

ington, D.C., and they have a like provision where they have a staff that makes an independent investigation and comes up with costs. My case happened to be under the Natural Gas Act. It makes an independent study of natural gas, reserves, cost of pipelines, and all that type of thing. And that investigation and their conclusions may well differ from those of the applicant and those of the protestant, but their conclusions are supposedly made on an impartial basis, with no interest in the outcome of the case, whatever it may be, and that is taken into consideration by whether it be the examiner or the full-the Commission. And I thought this explanation might be helpful to this body. Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, it would seem to me this would look kind of funny in the Constitution now, after all this has been taken out, and I am sure that this has to be the Legislature can handle it. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Heliker's motion to substitute the language styled Section 2, Impartiality of staff, for withdrawn Section 3. Do you want a roll call vote?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as are in favor of that, please vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Absent
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Absent
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross ..... Aye
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Absent
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay

Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK SMITH: Mr. Chairman, 31 delegates have voted Aye, 56 have voted No.

CHAIRMAN GRAYBILL: 56 having voted No and only 31 Aye, that motion is defeated.

Mr. Heliker, what's your pleasure on Section 4? Do you want to withdraw the written Section 4?

DELEGATE HELIKER: Yes, and substitute therefor the one you have before you.

CHAIRMAN GRAYBILL: All right, we'll withdraw Section 4, and you want to substitute the one that says, "Duty to represent customers. The Commission-"?

DELEGATE HELIKER: Yes, but I want to change those words again.

CHAIRMAN GRAYBILL: All right, it would be the "Public Service Commission or other appropriate agency"?

DELEGATE HELIKER: "—or its successor agency", or something of that sort.

CHAIRMAN GRAYBILL: Very well, will the clerk read it, and the clerk may read it "the Public Service Commission or other successor agency" this time. We'll clear that all up. We'll allow Mr. Heliker to do that. Will the clerk read proposed Section 3, Duty to represent customers.

CLERK HANSON: "Section 3, Duty to represent customers. The Public Service Commission or successor agency shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters over which it may be given jurisdiction, and it shall make use of its jurisdiction and powers to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates. Signed: Heliker."

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, this section by itself is worth adopting. It is the language of the Oregon statute. It establishes a much more--much stronger position for the Public Service Commission to represent the consumer and the public generally.

CHAIRMAN GRAYBILL: Very well. Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I hope I'm expressing the feeling of a good many people who maybe have been voting against the others—

CHAIRMAN GRAYBILL: Mr. Harper, excuse me. Has that been passed out? All right, pass it out. Let's hold everything up till we see it. Let's get two or three more pages working on it and get it out quickly.

DELEGATE HARPER: It really is Section 4, just as it is, with a few minor changes.

CHAIRMAN GRAYBILL: It's styled Section 3; it's like Section 4.

DELEGATE HARPER: I'm not going to make a speech on it; I'm just going to say I'm going to support it. I think Mr. Heliker is right. This paragraph can stand by its own, does have meaning, and as he says, this is a section in the Oregon Constitution. And it seems to me the kind of thing that ought properly to be in a constitution.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman, I rise to support this substitute section-motion by Mr. Heliker. I've sat here this afternoon and watched some of the big boys, evidently, win the case, and out in the lobby I see them smiling. I think it's about time maybe we get a Public Service Commission that is responsible to the people and that represents us instead of them.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. Again, this seems it's an Oregon statute, as I understand it, and I'm sure that we can be sure and get this over to the next session of the Legislature and they can study it and probably can adopt something on it.

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman. This amendment, Section 3, I think could beinterpreted very well with the Section 2 of the Corporation Article that was passed yesterday. Therefore, I oppose it.

CHAIRMAN GRAYBILL: Is there any further discussion?

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in support of this amendment. I think it varies enough from Section 2 regarding consumer protection, because this deals specifically with the public utilities.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman]. I resist the substituted Section 3 for a very good reason-that it doesn't mention the utility involved, and any Public Service Commission in their rate hearings have got to represent both sides. If we have a provision in our Constitution which simply says that the Public Service Commission shall represent the utility-1 mean, the customer-and at that-and stayed with that at all times, you would very soon have rates that were favorable to the customer but not the utility. And over the long period of time, that would be a very serious detriment to the public, because they would probably cut the rate so low they could not provide for replacements of needed equipment, and as a result the service would diminish. Now, I know all of you have in mind Montana Power, but there were other smaller companies that appeared before our committee. We had two very small telephone companies-one in Project and one at Hysham. They are very small concerns, and it seems to me that we should protect those people, too. And if you want to put something like this in here, it seems to me there should be something in there that said to respresent both sides, the customer and the utility.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. Mr. Swanberg, I hope I live to see that day.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, the final clause of the proposed section says, "to obtain for them adequate service at just and reasonable rates". And as Mr. Swanberg well knows, no rates established by the Commission would stand in the courts unless they were indked just and reasonable to the corporations.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I remind this delegation that yesterday or the day before, we took out of the article on Corporations the right to vote your stock (indistinguishable word), which is a great protection to minority stockholders. We took out the provision preventing the watering of stock-the corporate stock—we-and I admit I voted against the ombudsman proposition that came up here, and we have no place in this Constitution to do anything for the protection of the public or the consumer. We have an innocuous article in-we do have one article that the consumer shall be protected, but no way is it spelled out or specified. And in the average rate hearing I've been involved in-some rate hearings around the State of Montana-the consumer has no staff, he has no method, no way to prepare his case. He usually is-or whoever he hires-is dependent on contributions from a group of people; you never have adequate money to get the job done. And at least one place in the Constitution, we should have some provision for some protection for the consumer from rates that are unfair and unjust and unreasonable. I rise in support of Mr. Heliker's amendment.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Heliker's proposed amendment, styled Section 3 to replace Section 4, the first line of which is: "The Public Service Commission or

other successor agency shall-". Is there further discussion?

Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], Mr. Heliker just said that they could be assured that the utilities would get just and reasonable rates. I would like to think that that meant just and reasonable to both sides.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, for all the delegates that want to leave this to the-these articles to the Legislature, maybe I should remind them that some of the testimony that we received in our committee hearing-that the Public Service Commission takes in around about $900,000 and their budget only runs $300,000. So I don't think the Legislature is taking care of the public utilities, and maybe this will be able to get them moving and get something to them.

CHAIRMAN GRAYBILL: Mr. Studer-or Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I just ask the members of this Convention to please stand fast for the majority report. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Heliker's motion to substitute Section-what's styled Section 3, Duty to represent customers, for withdrawn Section 4. The first line should read: "The Public Service Commission or other successor agency shall represent customers", et cetera. Do you want a roll call vote? All in favor vote Aye; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, I'm going to cast the ballot. Cast the ballot.

Aasheim ... Nay
Anderson, J. ... Nay
Anderson, O. ... Aye
Arbanas ... Absent
Ames ... Absent
Aronow ... Aye
Artz ... Aye
Ask., ... Nay
Babcock ... Nay
Barnard ... Aye
Bates.. ... Aye
Belcher ... Aye
Berg.. ... Aye
Berthelson ... Nay
Blaylock.. ... Aye
Blend ... Aye
Bowman ... Absent
Brazier ... Nay
Brown ... Nay
Bugbee ... Nay
Burkhardt ... Absent
Cain ... Aye
Campbell ... Aye
Cate ... Aye
Champoux ... Aye
Choate ... Nay
Conover ... Nay
Cross.. ... Aye
Dahood ... Aye
Davis ... Nay
Delaney ... Nay
Driscoll ... Nay
Drum ... Nay
Eck ... Aye
Erdmann ... Nay
Eskildsen ... Aye
Etchart ... Nay
Felt ... Absent
Foster ... Absent
Furlong ... Aye
Garlington ... Nay
Gysler ... Nay
Habedank ... Aye
Hanson, R.S. ... Nay
Hanson, R. ... Aye
Harbaugh ... Aye
Harlow ... Aye
Harper ... Aye
Harrington ... Aye
Heliker ... Aye
Holland ... Absent
Jacobsen ... Aye
James ... Absent
Johnson ... Nay
Joyce ... Absent
Kamhoot ... Nay
Kelleher ... Aye
Leuthold ... Nay
Loendorf ... Nay
Lorello ... Aye
Mahoney ... Nay

Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Absent
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Absent
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Spew	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK SMITH: Mr. Chairman, 43 delegates have voted Aye, 44 have voted No.

CHAIRMAN GRAYBILL: 44 having voted No and 43 having voted Aye, that motion fails.

Mr. Heliker, what is your pleasure on Section 5? Do you want to withdraw the one in the book?

DELEGATE HELIKER: I will withdraw the Section 5, and I do not wish to introduce a substitute. I do wish to introduce a new section, if it's in order at this time. Do you have it up there?

CHAIRMAN GRAYBILL: Yes, I have it up here and I see no other motions in the regulation of Public Utilities District--or the Public Utility Article that matter, or should be ahead of it, and therefore I'll allow you to present what we'll style Section 6, so that we keep it separate. Will the clerk please read styled Section 6. And-just a moment. Has it been passed out? Yes; it's on Consumer Counsel. Has it been passed out? Please pass it out. Clerk will read it.

CLERK SMITH: "Section 6, Consumer Counsel. The Legislature shall provide by law for an Office of Consumer Counsel, which shall have the duty of representing consumer interests in hearings before the Public Service Commission. The Legislature shall provide by law for the funding of the Office of Consumer Counsel by a special tax on the net income or gross revenues of regulated companies. Signed: Heliker." Section 6, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Heliker has an amendment--or has a new section, which we styled Section 6, to offer under the Regulation of Public Utilities Article, styled Consumer Counsel.

Mr. Heliker.

DELEGATE HELIKER: Can I wait until they're on the desks?

CHAIRMAN GRAYBILL: Does everybody have one?

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Since the last proposal was lost, the consumers have no one to represent them, and the object of this proposal is to mandate the Legislature to establish an Office of Consumer Counsel which would have the duty of representing consumer interests in hearings before the Public Service Commission, and to provide for the funding thereof by a special tax on the net income or gross revenues of the regulated companies. As you, I'm sure, are aware, in the past we have had ad hoc consumer organizations which have collected small amounts of money, something in the order, I think, of a maximum of **$15,000** in one case. Where is it? May I have your indulgence while I see if I can find that Legislative Council report. It seems to have disappeared. I refer again to the December 1970 report of the subcommittee of the Legislative Council, which pointed out that in 1968, in one case, testimony submitted showed that a power company had

spent $82,000 to pursue one of its rate cases, which would be more than one-third of the Commission's budget for that year. In another case the power company apparently spent $300,000 in preparation of one rate case, which was more than the entire yearly budget of the Railroad Commission. In the latter case, a Consumers' Council was organized-this was privately organized-set a hearing and was able to raise about $15,000 to pay three lawyers and an expert consultant to contest the request to increase the rates of the power company-$15,000 against $300,000 collected from you and me in our rates by the power company.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Harper.

DELEGATE HARPER: Would you accept the additional wording after "Public Service Commission", at the end of the first sentence, "or a successor agency", or need I make a move to have an amendment to that effect? Mr. Heliker says he accepts it.

CHAIRMAN GRAYBILL: Mr. Heliker, do I understand that you would like that-like Section 6 to be put in in that fashion, with the words "or any successor agency" added after "Public Service Commission" on the fourth line?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: Very well, all in favor of allowing Mr. Heliker to amend this section in that manner before he presents it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Ward.

DELEGATE WARD: Will Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Ward—Mr. Heliker?

DELEGATE WARD: Delegate Heliker-

DELEGATE HELIKER: Yes.

DELEGATE WARD: On the last line, on the special tax on the net or gross revenues of regulated companies, who do you think will eventually pay that tax, the company or the consumer?

DELEGATE HELIKER: I suppose the consumer will pay it, Mr. Ward, but he's paying it anyway-through the nose.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I should like to rise in support of this amendment by Mr. Heliker. Over and over again this afternoon we've heard about these rate cases before the Public Service Commission, how extremely difficult and complicated they are, and when groups of people appear before the Commission they are never adequately prepared. We don't have anyone really protecting the consumer, and so I think if we have this Consumer Counsel to speak for the people, and even if this were passed on to the people as far as the cost is concerned, I'd be perfectly willing to pay it, to at least hear-have my side-that is, the public's side-adequately presented to the Public Service Commission. I support this amendment.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. President [Chairman], would I be in order to offer an amendment? I want to strike—

CHAIRMAN GRAYBILL: Well, I'll certainly hear it.

DELEGATE SULLIVAN: -1 want to strike a line.

CHAIRMAN GRAYBILL: Which line do you want to strike'?

DELEGATE SULLIVAN: To put a period after "Counsel" in the second line from the bottom and strike the rest of that sentence, so it would read: "The Legislature shall provide by law for the funding of the Office of Consumer Counsel."

CHAIRMAN GRAYBILL: Mrs. Sullivan has an amendment which strikes the last half of the last sentence, so that she strikes the words: "by a special tax on the net income or gross revenues of regulated companies". She would put a period in there after "Consumer Council", so it says: "The Legislature shall provide by law for the funding of the Office of Consumer Counsel". We're discussing Mrs. Sullivan's amendment.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I resist the amendment for the reason that we are more likely to get adequate funding by this method and for the reason that this is the method used in the State of Oregon successfully for 40 years to finance this regulatory agency.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: I rise at 7 o'clock to protest what I did at 9 o'clock this morning. I hate to see these amendments come in out of the walls and ceiling, not having been considered by our committee. They're just coming out of nowhere, and I don't think it's fair to a committee that was appointed by this Convention to have to suffer through an ordeal such as this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman, I'd like to respond to Mr. Scanlin. I think that the substitute amendments that have been offered here--and sections-throughout the afternoon have been rather responsible and they've been well thought out. And I guess my impression or observation has been that they have been more responsible, really, than probably the majority of the committee. I think maybe the majority report is the one that's backward, and these motions have been the forward-looking and the more responsible courses of action to take.

CHAIRMAN GRAYBILL: Is there any other discussion of the Sullivan amendment? Except Mr.—

All right, Mr. Mahoney.

DELEGATE MAHONEY: Mr. President [Chairman], I reside-rise to maybe answer to the delegate from Cascade. Is he impugning our integrity that we don't know what we're doing? Is—

CHAIRMAN GRAYBILL: Mr. Mahoney, I'm sure that he meant the committee-that this is a minority report too. He didn't mean the Committee of the Whole, he meant the Public Health Committee.

DELEGATE MAHONEY: This is what I wondered, if he meant the majority of the Public Health Committee—

CHAIRMAN GRAYBILL: Yes, I see—okay—

DELEGATE MAHONEY: -didn't know what they were doing—

CHAIRMAN GRAYBILL: -1 see; just so we have it straight.

DELEGATE MAHONEY: -1 mean, this is what I wondered. I'm not going to get into—indulge in those kind of things. I never have, and I'm not going to do it now. I-this thing here-this committee-this study never-this one that we're voting on never came before the Committee of Public Health and Welfare. The first time I saw any of this was now, and I think that the Chairman--and he was presiding-should have presented this to the committee for our things. Now, personally I'm not opposed to a Consumer Counsel, but I want him into everything instead of just into utilities. I want him into everything if we're going to have that, and I think this is hastily drawn. And this, to me-it should be if there-if we're going to have Consumer—and if you want to put it in the Constitution, which I oppose, I think it should-this is straight legislative, and so I will have to oppose the Heliker amendment even with your-1 think you have helped a lot, Mrs. Sullivan, but I still oppose it.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: I just want to keep the record straight, Mr. Chairman. Everything that has been presented to you this afternoon was discussed by the committee, except this last Consumer Counsel proposal, and that was discussed before the committee in hearing by Senator Metcalf, who recommended it.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Sullivan's amendment. All those in favor of Mrs. Sullivan's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and Mrs. Sullivan's amendment is defeated. Now the issue is on Mr. Heliker's proposal to add a Section 6 entitled "Consumer Counsel". It says—you have it before you--with the last sentence in except it does say "Public Service Commission or any successor agency". Do you want a roll call vote?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: A roll call vote is called for. All those in favor of it, vote Aye; all those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0..... Nay
Arbanas.. ....Absent
Arness.....Absent
Aronow.....Aye
Artz ....Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ....Aye
Bates.. ....Aye
Belcher..... Nay
Berg ..... Nay
Berthelson..... Nay
Blaylock.....Aye
Blend.....Aye
Bowman.....Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ....Aye
Burkhardt ....Absent
Cain.....Aye
Campbell.. ....Aye
Cate ....Aye
Champoux.....Aye
Choate ..... Nay
Conover ..... Nay
Cross ....Aye
Dahood ..... .Aye
Davis.....Aye
Delaney ..... Nay
Driscoll ..... Aye
Drum.....Absent
Eck.....Aye
Erdmann ..... Nay
Eskildsen.....Aye
Etchart ..... Nay
Felt.....Absent
Foster ....Absent
Furlong. .....Aye
Garlington..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S..... Nay
Hanson, R. ..... .Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ..... Aye
Heliker ....Aye
Holland.....Absent
Jacobsen ..... Nay
James ....Aye
Johnson ..... Nay
Joyce.....Absent
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel.....Aye
McDonough..... Nay
McKeon ....Aye
McNeil ..... Nay
Melvin.....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble ..... Nay
Nutting.....Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal.....Absent
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins ..... Aye
Romney ....Aye
Rygg ....Absent
Scanlin..... Nay
Schiltz.....Aye
Siderius.....Aye
Simon ..... Nay
Skari ....Aye
Sparks ..... Nay
Speer ....Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg. ..... Nay
Toole ..... .Absent
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden.....Absent
Wilson ..... Nay

Woodmansey A y e
Mr. Chairman .Aye

CLERK SMITH: Mr. Chairman, 49 delegates have voted Aye, 38 have voted No.

CHAIRMAN GRAYBILL: 49 delegates having voted Aye and only 38 voting No, Section 6, as amended, is adopted.

Mr. Heliker, do I understand that you move that when this committee does arise and report, after having had under consideration Section 6 of the Regulation of Public Utilities Article, that we recommend the same be adopted? You so move?

DELEGATE HELIKER: (Inaudible)

CHAIRMAN GRAYBILL: Very well, all in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Now, ladies and gentlemen, if you'll turn to page 29, the clerk will please read the proposal on page 29, the minority report on public utility corporations.

CLERK HANSON: "Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law." Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Mr. Chairman. I move that when this committee does arise and report, after having under consideration section on public utility corporations on Proposal Number 9, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: I am on page 30. The minority believes that the people should have the right to choose the type of utility, publicly or privately owned, from which they will obtain the necessary services commonly called utilities. As Senator Metcalf pointed out in his testimony before this committee, Montana is the only mainland state without a single municipal electric system. The other state is Hawaii. This right is especially important in our state, where consumer protection against unreasonable and unjust exactions of privately owned monopoly utility corporations is inadequate, and where the Legislature has historically displayed no disposition to improve it. In our ***Revised Codes of Montana*** there is authorization for cities or towns for municipal utilities, and this is for water and gas only, but for electricity it is not clearly defined. Thirty-one local publicly owned electric systems have been created by voters in 14 states since 1960. Twenty-eight of them are municipal systems, two are bulk power systems, one is a county-owned retail electric utility. The reasons for this change-over were: first, lower rates; second, revenue from electric systems could be used to finance other city operations. Just as a community has the right to create a new local municipal owned utility, it has the right to do away with it and to contract with another utility to serve its people. At the present time, doubt exists as to the status of county and municipal ownership of utilities in the State of Montana. Constitutional provision is needed to clear this doubt, so there is a need for this general law. People have a right to select who should provide the services and should also have the right to establish their own publicly owned utility companies. As this is Delegate Proposal Number 121 by Paul Harlow, I would like to have him answer all the technical questions.

CHAIRMAN GRAYBILL: Mr. McKeon, you have an amendment on this on the desk here. Do you want us to read your amendment?

DELEGATE McKEON: Yes, would you read it, please, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, will the clerk please read Mr. McKeon's amendment.

CLERK SMITH: "Mr. Chairman. I move as a substitute motion, to delete the section on page 29 and to substitute in lieu thereof the following: 'There shall be'-'The Legislature shall provide for the organization and financing of public corporations for the maintenance and operation of utilities by municipal, county, or other geographical or political subdivisions.' Signed: McKeon."

CHAIRMAN GRAYBILL: Members of the body, so everyone keeps straight, the Chair has styled Mrs. Van Buskirk's section, Section 7. We haven't used that number yet. And Style and

Drafting can renumber it, but style it Section 7. And this is an amendment to Section 7 by replacing it with the language Mr. McKeon has just had read. Does everyone have it before them?

Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, thank you. My proposal differs from the minority proposal in that I call for public utility districts; the minority proposal limits it to municipal and county districts. Mr. Chairman, I have done this for one salient reason. I think the people of the State of Montana deserve the right to choose how they will be serviced. I think it's been a long time coming, Mr. Chairman, and I think we can point our finger at just one company who has monopolized this state for so many years, and that's the Montana Power Company. The Montana Power Company, in my mind, has been totally irresponsible to anything that is good for the State of Montana; they've been totally selfish. I think, Mr. Chairman, that it's about time the Montana Power Company is afforded the opportunity to have some competition, and I submit that my proposal will give them that competition. Mr. Chairman, I'm sure every member of the Board of Directors of the Montana Power Company would argue that we need free enterprise. If they can argue that, Mr. Chairman, then I'm sure they can readily accept the concept of the public utility district as honest competition in their field. For this reason, Mr. Chairman, I had planned to discuss the merits of the PUD. Simply, I would say, I resent paying rates for my electricity when the Montana Power Company would use it to support the sales tax, would use it to support judges that I think are totally irresponsible to the wishes of the people, and support-And also, Mr. Chairman, I resent paying these fees when the Montana Power Company is so irresponsible as to buy such ridiculous luxuries as Learjets at the expense of the people of the State of Montana. Also, Mr. Chairman, I would-1 should say that we have the irrigation districts, we have mosquito districts, water districts, and sewer districts; why can't we have electricity districts? I know of only one reason why we can't, and that's because the long arm of the Montana Power Company has stretched wide around this state and has coerced so many for so long in our Legislature into opposing any type of public utility district. The Montana Power Company used to use the argument that it's socialism. This was in the hysterical fifties; I assume they've abandoned that argument since. I might add that Saco is the only city in the stats with a municipal gas supply, and I don't think they're carrying the thoughts and works of Chairman Mao around. Senator Metcalf made the point that Montana is the only state in mainland America that does not have municipal electrics. I think that it's about time we do have municipal electrics. I think it's about time the Montana Power Company had some competition. I think, most importantly, that the people of the State of Montana should be given the right to choose. And for this reason, Mr. Chairman, I would urge everyone at this Convention to support this proposal. Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. McKeon's amendment is allowed and is open for discussion.

Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, fellow delegates, along sometime today I had placed on your desks this little letter from me with some charts underneath it. I think they are very enlightening. This chart, as it's been indicated down before, is a relatively brand-new chart and was revised on the first of last year, in '71. And before I go into the full discussion of the embezzlement of the people of Montana in their utilities and their natural resources, I want to draw your attention to what has happened in electric rates in states where we have competition, in states where we have free enterprise. The chart is self-explanatory--on the bottom of it; the little round circles that are sort of grey-colored are privately owned utility areas; the ones that are black and round are publicly owned; and the diamond-shaped ones are cooperatives or your REAs. The first page deals with residential affairs and the second one with commercial service, so those of you who are in business can see how much money it's costing you to stay in business in Montana. I realize it is late, but you've-we've all endured the same amount, and this is very important to you, your business, and the keeping of people in Montana. Just a slight comparison, Missoula has $18.45 for a thousand kilowatts. You drop to Spokane, Washington, which uses Montana water power, it costs you eleven and a half for a thousand kilowatts of electricity. And you can move it around if you want to get where it's real cheap; go to Seattle, where you have a municipally owned utility, and you get your thousand kilowatts of electricity for $8.15. That's quite a little less than the $18.45 that you pay for this hundred kilowatts-or thousand kilowatts of electricity in all-in any of the cities served by Montana Power.

Now, the interesting facts here, also, is that up in Whitefish and Kalispell, an area that is served by the Pacific Power and Light, which has competition over in the other areas and realizes that they are making good money over in Idaho and Washington, they just haven't got the stamina—they just can't afford to-1 mean, they just can't stand to charge the Montana residents in Whitefish and Kalispell $12.85. Now, theonelittlegroup that is quite interesting here, the one area which has public power-and I'm sure some of the residents-the delegates from that area will be up and talk rather strongly against public power—that it's socialism and so forth-the city of Polson, which is served by a public utility-or not-1 mean, a public power area, buys their electricity for $7.00—or for $12.00; whereas Missoula and the rest of the Montana cities pay $18.45. Now some of you are going to-1 will not go through that little chart any more, because it is self-explanatory; it shows you how much you are being charged in excess for what the cost of electricity is in other states in the Northwest. But I want to tell you a little of how the-our resources here in Montana have been embezzled. Not too many years ago, the government--or the Bureau of Reclamation—built Canyon Ferry Dam out here. It was built by your money, and the power companies maneuvered that so the city of Helena could not become a municipally owned utility and enjoy the cheap electricity available there. They also made it so it could not be transported by publicly owned transmission lines. So they cornered all that electricity at Canyon Ferry and bought it for a dump-rate price and are selling it to all of you-you in business, you on your residence-for anywhere from a thousand to ten thousand times more than what they paid for it. And some of you will say that this is legislation. I'll recall to you again that little remark I made here earlier, how we had the water in Montana protected by legislation in 1921 so that we thought we would have some protection for our water in Montana; but in 1951 they repealed that law, and we in Montana now are storing water without any compensation to be used by utilities in Idaho. They made the promise-I'll carry a little further on that-they made the promise to the local County Commissioners in Sanders County that they would pay taxes on the land that they were flooding at the same assessed valuation that they paid for it. That lasted 1 year, and now that land that they flooded and paid a fair price for is being taxed at a price—at a taxable valuation of wasteland, sort of industrial land-a very small fraction of what they paid for it. Then, a few years-or right after that dam was built in Cabinet, Idaho, theutilities, Washington Water Power, came in and built the Noxon Dam. They strongly opposed that dam being built by the Army Engineers or the Reclamation project. That dam at Noxon produces almost as much electricity as all the other hydroelectric dams in Montana. All of that electricity goes out of Montana. It all goes into Idaho and Washington, and it goes into Washington and is sold in Spokane for eleven dollars and a half for a thousand kilowatts; whereas the other hydroelectric power developed in Montana sells at Missoula, Great Falls and Billings for $18.45. We had a law, and do have a law, on the books which is supposed to tax the electricity generated in Montana. It has the little catch on that law that this electricity will be taxed only if it is sold in Montana. Well, this electricity is not sold in Montana, so that 400,000 kilowatt capacity at the Noxon Rapids Dam goes out of the state and all that Montana receives for it is a little bit of property tax that is paid into Sanders County. The state itself receives only the two-mill levy that's levied down there occasionally off of that giant hydroelectric plant there at Noxon Rapids Dam. We may use the argument that this public utility district type of thing is socialism; it's not right. I would merely bring to the attention of all of you the various places in Montana--out of Billings, out of Lewistown, out of Great Falls, out of Missoula-where the Montana Power Company came into the REAs, the people's cooperatives, which they had a little load that was growing in their territory which was going to be used to sort of support them and make them progress and make them so they had a little money-the Montana Power moved in and took it away from them.

CHAIRMAN GRAYBILL: You have 1 minute left on your 10 minutes.

DELEGATE HARLOW: Thank you. So in this 1 minute that I have left, I want to bring to your attention again that unless you put some kind of a thing in the Constitution that the Legislature can't repeal, you, the people of Montana, who are paying all of this extra money into Montana Power's coffers, then going to New York, will continue to pay this exorbitant price. Think about it before you vote. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. McKeon's substitute motion to put his language in Section 7 in place of Section 7 as proposed in the minority report.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I'd like to-1 wonder if Mr. McKeon would yield.

CHAIRMAN GRAYBILL: Mr. McKeon?

DELEGATE McKEON: I yield.

DELEGATE GYSLER: Mike, don't the cities vote every so often on giving a contract to a utility for a certain number of years?

DELEGATE McKEON: Electric utilities?

DELEGATE GYSLER: Right.

DELEGATE McKEON: I'll yield to Mr. Harlow on this question.

DELEGATE HARLOW: **Yes,** they do. They have no other alternative. They are given a charter to serve the city with electricity, but they can't take it over themselves because they've got—the law won't allow it.

DELEGATE GYSLER: Mr. Davis, would you like to answer that question, too?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: As I understand the law, under our present statutory law the cities don't have any choice. You can't-the REAs can't serve within the city; they can't even serve residential within the city unless it's over-what, 3500?—if it's under 3500 people.

DELEGATE GYSLER: The point I wanted to bring out is that I believe we had one of these elections in Fort Benton just a few years ago-and some of you people can correct me if you want to-but I believe that term is for 50 years. Now, I'm sure that there's probably at least 40 years to run on that, so I just wanted to make that point that passing something like this isn't, right off the bat, isn't going to open up every city in the town-in the state to this type of a district. Another thing that I would like to point out is that with this Consumer Counsel that was just established, there will probably be a whale of a lot better ratemaking system, because there is going to be a lot more rate feed-in, if anything can possibly do it, The third point that I wanted to bring out, and I think we all should recognize, is that if we make a public utility district, then we have taken away a pretty fair tax base. Now, sure, we pay that tax through our utility rate, but I just want this body to remember that when you remove the utility and you think about a lower rate, you've also removed the tax structure that goes along with it.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. Chairman, I'd like to speak in opposition to Mr. McKeon's substitute motion. I happen to live up in Lake County, and Montana Power doesn't sell any electrical energy up there to the residents. And they-1 think in the last year they paid over $535,000 in property tax for our schools and the operation of the county government, which is about one-third of all the taxes paid by all the people in Lake County. And if we would lose this $535—or $535,000, I'm sure that we would all have to pay about twice as much individual property tax, so therefore I resist this amendment.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President [Chairman], can I talk after Mr. Hanson? I would like to just have one of the attorneys correct, I think, the wrong impression that may have been given to answer-in answer to Mr. Gysler's question. I believe that in Montana the cities grant the use of the roads and alleys and this type of thing for utilities for a period of time, and I don't believe 50 years. I think it's about 20 or-and this, I believe, is only for gas and perhaps water. But I'm quite sure that in Montana-and I wish some attorney that knows this law would correct me if I'm wrong-but I believe in Montana there isn't any such thing required for electric utilities--not to my knowledge. Now, I might say that I hadn't intended to get up and speak on this issue because I probably do have a special interest, being a manager of a rural electric cooperative. But I would like to have that clear.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, the franchises are granted by the city councils, and they are for various terms of years according to the way they're negotiated. I know that's the way it is in Hamilton.

CHAIRMAN GRAYBILL: Members of the body, I don't see any attorneys rising. It's my understanding that all franchises of this nature in Montana are nonexclusive.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I think Mr. Gysler hit on a terrific point. We have

just passed, in this body-now that we're going to statewide property tax, we're going to have statewide levies, we're going to have big bonded indebtedness. Now, if one community or one county should go a PUD-and I think that's probably what they would have-then not the loan but the state would lose--under the schools and that. Now, Mr. Gysler said they would have cheaper electricity, but what about thecounty taxes? What about the school tax? What about the other-we're going to statewide levies. We would just give the groups that organized this a beautiful subsidy. They would have no problem of paying any taxes unless we changed it. Maybe the Legislature would, but this could be a very tough thing. Now, I think, furthermore, I certainly agree with Mr. Harlow. I'm one ofthefourin the Senate of the State of Montana that voted against the Cabinet Gorge bill, I want that understood. There was only four of us; all the rest of them went. It's the only place in the journal, in any journal, where the Governor has sent a message to the Legislature telling them why he signed the bill. And this was Governor Bonner, so I want that-there's no other place in any other journal that the Governor has ever sent a message and said why he signed a bill. The vetoes have always made it, but this was done. Now, let's go out here a little bit further. This is going to be a little difficult. First, you've got to have power, if it's going to be electricity; you're going to have to have natural gas, if it's going to be natural gas. Now, Saco was mentioned. They're right in the middle of a gasfield; this is thereason. 'This is a very small-and only part of the town is in-handled by this municipal. I have no objections. Get this a little further; in 1953, I think it was, there was a bill put-introduced and passed both houses of the Legislature, of which I fought very hard against, which was repealing the right to issue revenue bonds for to have electrical and natural gas. I opposed that. And those cities came in-nobody came in to help me at all. I knew what it was doing, and I opposed it, and it was-the bill passed and was signed by the Governor—Aronson, at the time. The scheme was, at that time, that says, "we've just got a wasted law here, and if we're going to remove from the books a law that is no good'-now, this-if this law was reenacted, you could then pass revenue bonds to go into municipal systems and you wouldn't have a property tax or a utility tax on all property. If we go under this system of public utility districts, this is where we will probably go countywide. This will mean that they should--and maybe they won't—will buy out whatever utility is operating within that county. Montana Power Company, Pacific Power and Light, or Montana-Dakota Utilities. Those are the three that operate in this state. Now, providing they bought-and I look here, right out here-then they're going to have to buy powerplants. Now, if they buy powerplants, what's going to happen to the other county alongside where this powerplant is not in that county? Now, if this body wants to go to public utility districts, I think-and I might be wrong-that the only way we can go is in this big integrated system; is to go to the Nebraska system, that we purchase the whole area of the Montana Power Company or to purchase the whole part of the Montana-Dakota Utilities in their area, or Pacific Power and Light. We'll take, for instance at Billings-we'll just use Billings-they would now, if they purchased the steamplants, they would be fine there. But what would some of the othersurroundingcounties that are there-now are they going to then be at the mercy of a power organization in Yellowstone County, where there is no power? Now, I think, furthermore-that I think you've got to realize that every bit of the power in the Bonneville system is allocated until there is-that is, firm power--until there is new dams get on the line. Maybe you could get some out of Libby. Now, in eastern Montana, the cooperatives are all going to North Dakota, because there is no more power available on firm basis. Now, in answer to Mr. Harlow out here-in regard to this dam out here, and I've been just as disgusted with it and just as mad as anybody. This power has now all been allocated, Mr. Harlow, after they closed the bus at Fort Peck. Now, this power can flow all down into the State of Nebraska, the State of Iowa, the State of Minnesota, and North and South Dakota. There's no power available in firm power, and that's the only thing rural electric cooperatives—the only thing PUDs can purchase, because firm power is every hour of the clock you have to have it. Now, this is what1 think you're getting into is to this thing here now. When you say "The Legislature shall provide", I want you to realize that we can't let one county go, because then he's going to get out of taxes on schools under the new things—statewide levies-and I would hesitate to see then some other counties placed in that. So it's going to have to be in large areas, and the one thing is to come out and put the State of Montana to take over all the power of the Montana Power Company or all the natural gas of them, because distribution is the problem, and getting it there. And I hope you know-take it-and Mr. Chairman, I therefore oppose the resolution.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I just might want to point out one thing about this thing. It says that "The Legislature shall provide for the organization and financing of the public corporations." Now, it really doesn't mean a thing, and we're back to legislation again that gives our intent that doesn't do any good. Actually, the Legislature, in the financing of such a public corporation, could set up the financing structure so it would be impossible to do a proper financing job so that a corporation could even get off the ground. And, therefore, it's still legislation. I can give you another example of that on banks in Montana. We have a statute on various banks in Montana as to how they're set up. We have a Morris plan bank that isn't practical in this time, so nobody sets one up. We have a savings bank that nobody sets one up because it just isn't practical, and the Legislature can very well set up the financing of a public utility district that would be practically impractical. They could say that the bonds would have to be paid off in 5 years if they want to. Therefore, this is purely legislation, and I again would resist the amendment and ask you to vote it down.

CHAIRMAN GRAYBILL: Well, Mr. Swanberg's still up. Mr. Harper is coming up.

DELEGATE SWANBERG: Mr. Chairman, as a member of the majority of the Public Health, Welfare, Labor and Industry Committee, I stand to oppose both of these proposals. I might say at the beginning-and I'll have to speak just a few minutes here-we have here another very complex subject, and your committee gave very little time to it. It somehow sort of tagged along with the Public Utility Proposal as a whole, and there just wasn't time to get to it. I would like to-briefly just to go to the heart of the matter here and submit for your consideration that the record of public utility districts in Montana, and I should say the United States, has not been too impressive in recent years. Very quickly, I'll take you back to 1920, and at that time there were 3,046 public utility districts in the United States. This number, from that point on, shrank. And we must remember that in 1920 electricity was not all that generally available. Small communities throughout the United States did not have electric power—the larger utilities had not got out to them-and the public utility district concept at that time was a valid idea. Small towns could buy whatever the equipment was needed, set up their electric plant and have electric lights. But from that point on—1920, there were 3000 districts. In 1925, only 5 years later, there were only 2000; and then from that point on-in 1935, there were a hundred and sixty-seven districts created, 59 abandoned; 1940, a hundred and nineteen created and 40 abandoned; and then in 1945, there was only 54 districts created and 96 were abandoned; in 1950, 26 were created and 45 abandoned; in 1955, 10 were created and 42 were abandoned; and so on down the line-1 won't give you every year. The point is clear. In 1964, only 3 districts were created and 5 were abandoned; in 1969, only 2 were created and 8 were abandoned. And at the present time there are 1,923 districts still operating in this country. Who are these districts sold to? Let me briefly go down the list-1 won't bore you with too many details here-but they were sold to the very people, the very kind of people that now run our public utility system in Montana. Hayworth, Illinois, was sold out to Central Illinois Electric Gas Company; Crowdersville, Indiana-Public Service Company of Indiana; Grimes, Iowa-Iowa Power and Light; Williams, Arizona-Arizona Public Service Company; Hoped&, Illinois-Central Illinois Light Company; Milo, Iowa-Iowa Power and Light; and so on. In other words, it would appear from this record that the customers of these small public utility districts, for one reason or another, found that it was to their advantage to sell out their public utility district and join with a private utility. I'm not through yet, Miles. We also have on the books, fellow delegates, three statutes that deal with the establishment of public utility districts. We have, of course, a statute allowing cities and towns to set up water supplies, and that is a public utility district. We have a statute on the books that allows cities and towns to set up lighting plants; that would be a public utility district. And finally, we have a statute, quite detailed, that allows cities and towns to set up gasworks and gas supplies, and I will read that statute to you just briefly. It says the city or town council has the power to contract an indebtedness of a city or town upon the credit thereof, of borrowing money and so on, for the purpose of purchasing or developing an adequate supply of natural gas, and to construct or purchase a system of gaslines for the distribution thereof to the inhabitants of said city or town or vicinity. Now, I bring that up because there is a public utility district statute right now on the books in Montana. It's not being used. We have cities and towns in this state, situated right in the middle of gasfields, and they're not taking advantage of this statute. Why isn't Shelby using

this? Why isn't Cut Bank using this? Why is only one town in the State of Montana, Saco, which is half public and half private? There must be a reason for this. The matter of taxation has already been covered. I wish to remind you that if the private property of a public utility like Montana Power is taken over by a public utility district, the property goes off the tax rolls and your private taxes are correspondingly increased. The comparison I want to make again is not too germane here, but it does have a point. Now, we have 40 private water companies in the State of Montana, and 122 municipal companies. The records of the Public Service Commission will show that the 212 municipal companies have been before the Public Service Commission an average of 1.73 times since 1945 to ask for rate increases and the 40 private companies have been before the Public Service Commission an average of .57 times, which would indicate to some extent that the privately operated water companies of this state are far more efficient than the publicly owned utilities. Now, one more point now. You have a chart before you which has to do with public utility districts in the State of Washington and Oregon and your-it has been suggested to you to compare the rates between these two places. Let me remind you, fellow delegates, that the density of population in Washington and Oregon is far greater than it is in Montana. The density of the population of Oregon is 18 per square mile. The density of the population of Washington is 42 per square mile. The density of Montana for population is 6 per square mile. And it shouldn't take too much guesswork to realize that this has a very big bearing on the amount of power cost you're going to pay. It costs the same to string a mile of wire whether you serve 50 customers or whether you serve 1, and this is one of the reasons that the rates in those areas are somewhat lower than they are here. Point two: heating is used extensively in these two states for heating homes-they use electricity extensively for heating, and since they have all this extra power demand at their disposal, they can charge a lower rate. We don't use heating-we don't use electricity for heating in Montana, and that makes a difference. Now, these are just a few of the things to point out to you how technical this subject is. I think that it's statutory, and I certainly would not recommend a snap judgment in putting it into this Constitution. Thank you.

CHAIRMAN GRAYBILL: We'll stand at ease while the tape is changed. The Committee will be in session.

Mr. Harper.

DELEGATE HARPER: Well now, friends, I think some of us little citizens could just get talked right out of here, and we can. I don't have a brief, as apparently some people came prepared to discuss this, all right, but just as a citizen, I'm kind of interested that this-evidently this thing hits a nerve somewhere, it gets such a reaction. I read it, and I don't see why it should get all that reaction. It must be possible to have public utilities, although the last few speeches have just about convinced me that it's absolutely impossible to do it. And yet every other state in the Union has it, except the State of Montana. I grew up in a place where they had public utility, and they still have public utility there. Now, it's true it's a larger town, but I have in the back of my mind, as we write this Constitution, that the towns and cities in Montana are going to grow someday. This—there's nothing in this thing, as I see it, in this new Section 7, that says any of this is mandatory. There's no-no town is going to be forced, no county, no agency is going to be forced to run in a public utility district, and if the profits don't exceed the taxes-1 want to make this point because several people have risen to say that the taxes that we get from Montana Power, for example, and from other companies probably will far exceed any profits that could be made on it. To me, just as a layman who knows very little about it, it's a very poor business they're running if their profits don't exceed the taxes they're paying. Now, I have an idea that if the city of Helena were going to consider setting up a public utility system sometime and if, in preparing for it, we discovered that it would not be profitable, that we'd lose more in taxes than we'd gain in profits, I doubt if our City Council and the people here would ever vote to do it. It's been suggested that there really is no power left, that it's all been allocated. And my reaction to that is, if there's no power left, then we couldn't possibly run a public utility. So I really don't see what the big deal is. This makes it possible at some time in the future for this to be done; and if it is not possible, and if nobody ever finds it profitable, and if we're getting better service otherwise, I don't see how it could be any threat to anybody. So I'm not quite sure. I guess I just don't understand, maybe, everything that's down and under here. I don't quite see how this hit the nerve that apparently it did.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Well, I, too, am

just a little bit-1 just can't quite understand this. I was born in the country, and I still live in the country; I probably will die there. I wonder if Mr. Mahoney will yield to a question?

CHAIRMAN GRAYBILL: Mr. Mahoney, would you yield to a question?

DELEGATE MAHONEY: I'll try, Mr. Chairman.

DELEGATE AASHEIM: Well, Mr. Mahoney, now, when I turn the spigot on and I get some water in this city of Helena, I understand that the city of Helena owns that water system, and it seems to be operating pretty efficiently. Why is it so bad to have an electric plant-or to sell electricity at the same time?

DELEGATE MAHONEY: Only thing that I've got to say in answer to that is, you've got-they've got to have-they went out here to get the water and gradually, over a long time, they bought the water. And right now they just passed a whole bunch of bonds last year again for the water, and this is what you'll have with the electricity. Now, here's what you're doing. Don't forget the taxes. This is what you're doing. You're going out here-if you're going to the statewide property tax, this became much more serious. That's all I have.

DELEGATE AASHEIM: Will he yield—

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will he yield to one more question?

DELEGATE MAHONEY: I'll try.

DELEGATE AASHEIM: I'm still from the country, and I just don't quite understand this, Now, is somebody losing money furnishing electricity to this town?

DELEGATE MAHONEY: Absolutely not.

DELEGATE AASHEIM: Will you yield to another question?

CHAIRMAN GRAYBILL: Another question, Mr. Mahoney?

DELEGATE MAHONEY: I'll try, Mr. Chairman.

DELEGATE AASHEIM: Well, if the present utility is making money, would it be possible for the city to make some money on this electricity?

DELEGATE MAHONEY: Why, certainly. Certainly. I'm not saying they wouldn't.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Thank you, Mr. Mahoney. I'm still confused, and I suppose it's getting late-that's probably one of the reasons—but I just can't quite—

CHAIRMAN GRAYBILL: Mr. Aasheim, it's not late yet. Don't worry. (Laughter)

DELEGATE AASHEIM: But I think that's the reason for my confusion. But I have driven through Iowa, and Iowa is something like Nebraska-it's kind of conservative--and yet I see smoke coming up in these towns in Iowa, with little rings around, you know, and I inquire what's going on here; how come these plants are operating here in Iowa? And they tell me the city owns the powerplant. Now, I can't understand why it's good in Iowa, why it's so bad in Montana. Mr. McKeon, will he yield to a question?

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: (Inaudible)

DELEGATE AASHEIM: I think you have a good plan here, but will you tell me again, what is better about yours than over the original?

DELEGATE McKEON: I-the original one submitted by Mrs. Van Buskirk just provides for counties or cities, as I understand it. Mine provides for districts, so that perhaps one county could band together with another county for a public utility district, instead of just that one county having the district.

DELEGATE AASHEIM: Thank you, Mr. McKeon. Needless to say that, in all this confusion, in my fuzziness, I still think either plan sounds pretty good.

CHAIRMAN GRAYBILL: Mr. Romney, you've been up for a long time. Would you like to speak?

DELEGATE ROMNEY: Yes, sir. Mr. Chairman, I want to support either the McKeon or the minority plan. I think they're both good. We'll talk first a little bit about the McKeon plan. It is based on public utility districts in Washington

and Oregon, which have proved singularly successful. However, there's a lot of talk about financing them. Well, out in Washington they organize these districts, they sell bonds, and just like the Montana Power Company or the Montana-Dakota Utilities or any other private utility does. They sell bonds, and then they-by rates they eventually pay those bonds off. And in Washington and Oregon they pay tax-pay funds in lieu of taxes, and so that's taken care of. And the city of Seattle, where they have city light, they do the same thing. There's no magic in this that the power companies-private power utilities have that the PUDs or the cities cannot also use, and they have used them in other places and they are using them in other places, and they gradually are paying these things off. As I believe Delegate Mahoney spoke about Nebraska, they have statewide power in Nebraska. Two, 3 years ago the province of British Columbia bought out all of the private utilities, I think, in the province of British Columbia and is running them at a profit and gradually will pay them off; have the whole thing and gradually will be able to use the funds derived from the sale of the property-the electrical energy-for building sewers, parks, whatever—zoos, whatever you want. And there's no magic in this. There's no reason why it can't be done in Montana. There probably is some validity in Delegate Mahoney's argument that we might have to take over large districts in order to do it, but it would be a pretty good thing. Talking about the bonds, I recall in a hearing that I attended in Billings of the Montana-Dakota Utilities when they were seeking rate increases, the chief thing that they were asking rate increases for, if my recollection is right and I'm sure it is, was the excessive rate of interest that they were having to pay on new bond issues they were floating to pay off bond issues which were maturing. That's the history all over. That's the history of it in the Montana Power case. They are in the grips of this inflationary movement and they're having to pay more-a higher rate of interest on the new bonds that they're floating in order to take up for the old ones as they come due. And the same thing would happen in the operation and-of PUDs or municipalities if they should happen to be brought into being in the Treasure State. Now, I wish to also address myself to the nationwide recapitulation made by the delegate from Cascade, showing a decrease in the number of public utility districts. My friends, those are not public utility districts. Those were municipal operations. The only PUDs are been-practically are out in Oregon and Washington, and they have not been decreasing in number.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I think this would be a great thing for the State of Montana. Look at all the money we would save here instead of sending it back to New Jersey to the stockholders of the Montana Power Company. I think this is tremendous.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, maybe I could elaborate a little bit on George's-Mr. Harper's statement that he hit a nerve. I, too, hit a nerve, George, when Mr. O'Connor appeared before our committee. He stated that the Montana Power Company paid a total of $10,474,000 in taxes to these entities, meaning the state. The revenue would be lost forever if that system was taken over. This revenue will have to be made up by some other source, and there is only one other source and that's the taxpayer. Now, how can you tell me that you wouldn't make money on this, like you? And I asked him that, And he said-he hit the nerve on me, too-he said, "Well, Mr. McCarvel, how would you like to pay double school taxes". I says, "I already am. My children all go lo private schools, so," I says, "I have no problem there, Mr. O'Connor." But he got mad at me, and he did send a little apology for the way he treated me.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President, would Mr. McKeon yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McKeon?

DELEGATE McKEON: I yield.

DELEGATE SKARI: Mike, in your motion here, is this a mandate to the Legislature to do this, or does this leave an option open for each municipality or district?

DELEGATE McKEON: The intent of this section was to leave the option open to the district; however, this does provide the skeleton for the machinery which should-could be implemented if the option is accepted by the district.

DELEGATE SKARI: May I ask another question, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Then each, any, or no district, if it chose, or any municipality could refuse to do this? It would be up to them?

DELEGATE McKEON: Certainly. It's a matter of the right to choose. I think that's the essence of the proposal that's before us now. It just gives the district the right to choose. And we're not mandating or compelling anyone to have a public utility district, and perhaps no one will have it; but if somebody does want it, it's there for this district to have.

DELEGATE SKARI: Thank you. Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: I think that local public power systems are alive and well in this country, and they are big business. I think the assets presently exceed $10 billion in public power. I think there are a great many benefits. For example, there are no stockholders. Every dollar of revenue over cost remains in the community, either in lower rates or to offset the increased taxes. I would also submit that the decisions remain at home, too. I think it's a trend away from big business, and I think that's something the country is looking at. And the cost has also proven to be lower. In public power, the average user, residential consumer, in this country used 8,546 kilowatt hours in 1969, at a total cost of a hundred and twenty-three dollars and ninety cents. In private power, each residential consumer used on an average 6,246 kilowatts at a cost of a hundred and thirty-nine dollars and seventy-seven cents. In other words, about a third more power at about eleven and a half percent less cost. The public power cost a dollar and forty-five cents per kilowatt hour; private, two-point-two-one. These are Federal Power Commission statistics. Now, we could ask, why are they lower? For one reason, they are nonprofit-no dividends or federal income tax is paid on this. Public power systems do pay as much in state and local taxes, however, as private power. Now, I would throw this out if someone would question this. This is according to my research. Revenue bonds to finance capital expansion in public power are tax-free, and therefore the interest rates are lower. And it has been shown that these public power systems, local systems, are more efficient in their management. They handle their accounting, their collections, promotion, advertising, administrative and general managerial expenses more economically than the larger private power companies. There are many local contributions from these, too. The lower rates help to offset other costs of government. Often, street lighting is provided at no cost to the city treasury. They often light athletic fields, parks, and other public facilities. I point out that Jacksonville, Florida, has invested $50 million in a new coliseum, auditorium, city hall and street and sewer improvements, and most of this money has been paid for out of the profit from their electric system. Hamilton and Norwalk, Ohio, recently built new city halls; most of the cost paid for by electric company earnings--municipal power. Has the cost of service going-gone up? No. As I indicated, in almost every case these benefits have been provided while the electric rates continued to be lower than those of neighboring private utilities. There is also local industry, local payroll, the purchases are made locally; and here again, we have local control. I think there's tremendous pride in ownership in these cities. I would also mention, too, that when you have this local control, you can pay very careful attention to environmental control in the areas, too. Many of these cities are putting these systems underground because local-because of the local response to this. I think we should allow the option here. Montana is the only-Montana and Hawaii are the only states without this option. I don't know if it would be widely used, but I would like to see it available. I think it also would probably be a fair yardstick at the cost of power distribution in this state. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Ward.

DELEGATE WARD: Mr. Chairman. I rise in opposition to this amendment, and I'm going to stay with the majority proposal. I lived in Washington for about 4 years, and I might relate that we had a property tax. I owned a house while going to school there. We had some trouble with the public utility districts, and I might state that they have about a five and a half to six percent sales tax at the present time.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman], I'd have to agree with Mr. Aasheim. I'm from the boondocks, too; I'm getting a little fuzzy. But I can remember when we had a public utility in thelittle town that I lived in, and we had a l-horse diesel engine, and we had the one light bulb hanging from the ceiling. And I'm just afraid if you keep monkeying around here, we might go

back to that. And also, if you try to buy out Montana Power or some of these others, you're probably going to tax my ranch so much that I can't afford to own it. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I would like to give the committee just one small hint as to why it might be profitable for the people to organize their own power company if they're in the territory of the Montana Power Company. My research analyst and I have been doing a little quick figuring. You know, when the Montana Power Company was organized in 1913, there was incorporated into its capitalization about $20 million in water, and this went into the rate base and was so found in 1944 by the Federal Power Commission and for federal purpose was ordered out of the rate base, but the Montana Public Service Commission kept it. Well, now, the little figuring we did was, what is the present value of that income stream-$1.2 million a year that the Montana Power rate payers have been paying in overcharge for 59 years? It figures out to $679 million. In other words, if the rate payers could have kept that $1.2 million every year and invested it at 6 percent, they could have bought the Montana Power Company in 1972 twice over.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. It's late, and I'm kind of a country boy myself, but I knew this was coming up and I called and got some figures on the thing, and I'm delighted that Mr. Heliker-Delegate Heliker-has brought this situation up. I got a note from Mae Nan a little bit ago, and she said, "How about hearing from a capitalist?" Well, I hope I am not looked upon as being one of those, but I do know something about publicly held companies, Dr. Heliker, and if it's that good a deal, I think we all better go buy some stock. Rut I asked a broker what the Montana Power Company stock was selling for, oh, 5, 6 years ago. It was selling for about $45.38 a share at its high mark. And in today's paper it's about twenty-nine and a half, if you've checked it. And I think the high for this year was $34, and the low was something like 26. Now, for those of you who may not understand the private enterprisesystem here in America, everyone has the opportunity to buy stock in a publicly held company. A publicly held company is regulated pretty much by the SEC, the Security Exchange Commission.

CHAIRMAN GRAYBILL: Mr. Drum, I don't want to be picking on you, but I really don't see how an explanation of the capital structure of a privately held company has-what that has to do with whether or not we should also have the other. Now, I don't want to be too tough, but I think you really ought to stay on the subject, which is whether or not we should have the language that he puts in Section 7.

DELEGATE DRUM: Don't get-thank you, Mr. Chairman, for the reminder. It reminds me of the story that Ralph Studer might tell—fiddle with the bull and you get a horn in the fanny. (Laughter)

CHAIRMAN GRAYBILL: Consider yourself gored, Mr. Drum. (Laughter)

DELEGATE DRUM: Surprise. My point, Mr. Chairman, I would like to come to is that I--really, I don't own any stock in the power company. The only thing I ever hear from them is I get a bill once a month from them. I do an awful lot of business with a bunch of cooperatives. I've got a bunch of feedlots around, and we buy a lot of power, and we get along fine. I get along fine with the power company. I'm not one of their guys, but I do recognize that their position in private enterprise has become a whipping-dog for many who would like to run for office-one who holds an office in Washington. We've heard from many politicians, and the facts are not really clearly presented to you delegates here. You hear these twenty-three and a half percent return on power sales, and this and that and the other. What I am saying is that if this is true, the investors in America would be out here in droves buying that stock. They would come from New Jersey, they would come from everywhere else, to buy Montana Power stock. I submit to you that it's not that big a deal. I don't think they're making as much money as has been presented here on the floor today. I don't think it is as good a deal as a lot of people seem to think it is for a community to get into the power business. Now, not too long ago-and I would like to deviate a little bit, if you will permit me, Mr. Chairman—

CHAIRMAN GRAYBILL: I'll watch you. Go ahead.

DELEGATE DRUM: I was one of the ones who promoted—or foisted on thecitizens of Yellowstone County a community center, a la Jacksonville, Florida. Now, the power company, I will

admit, was not one of our supporters. They didn't bump it, but they sure as the devil didn't support it. But now that it has passed the electorate, I'll tell you, they're going to support it to the extent of about 9 percent of the cost of that thing, because they pay about 9 percent of the taxes in Yellowstone County. They support the schools 9 percent; they support the courthouse 9 percent. And in our county, we have 10 percent of the taxes come from agriculture, 40 percent come from the homeowners, and 50 percent from industry. Almost 10 percent of that is coming from the power company. So when you say that this-all profit is going to New Jersey, it is supporting things like community centers and schools in our county. Now, I asked for some details on the taxes that were paid in various counties. Yellowstone, we get about $900,000 out of them down there; Cascade, you get about a million three hundred; Missoula, about $643,000; in Lewis and Clark it's something like 748,000; Gallatin and Lake Counties are around 500,000. Well, when you talk very loosely about let's go set up a public utility, you are talking about leaving a cavity or a gap in your capital structure of your community. You may foul up your bond schedule, and you may lay some taxes on someone else who are the taxpayers in the area. So what I'm saying is-not that I am a big power company man and I'm not a PUD man, but let's get the record straight here. It may not be as good a deal as you have heard today from some of the bumpers of private enterprise. It is a consideration that should, I think, be in the hands of the Legislature. I think if it is as good a deal as it has been portrayed as being, I think the Legislature at some point will open their arms, put it in the statutes, and go from there. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. McKeon's motion that we substitute a Section 7 that says: "The Legislature shall provide for the organization and financing of public corporations for the maintenance and operation of utilities by municipal, county, or other geographical or political subdivisions".

UNIDENTIFIED DELEGATES: Question.

CHAIRMAN GRAYBILL: No, I'm not interested in question, but I wish those that aren't intending to speak would sit down so I can find out who's up.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I'd like to explain my vote. In the interests of fair play, I signed the minority report, but I'm not voting that way.

CHAIRMAN GRAYBILL: Now, all of you that are up now have been up before. Is there anyone that hasn't been up that would like to get into the act?

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I was glad to hear Mr. Drum come out with a talk like that. I think I can add just a little bit here. We all point our finger at these people and we point how much they're making, and we have politicians in Washington that get in the act. I saw this happen with the sugar farmers down in Big Horn Valley. They were mad at the sugar companies. The sugar companies were robbing them. They was going to build a plant of their own. They was going to do all these things. They had their Congressman working for them. Sugar company shut the plant down, and boy, what I mean, they've been scrambling ever since, too. Their Congressman has been scrambling. He can't do anything. Farmers haven't got any plant now, but they sure do miss that tax base and that sugar check every fall, I'll tell you. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President [Chairman], just one brief statement or question, or however you want to call it. I wonder who really pays the taxes Montana boasts about? Isn't it the people that use the electricity down in the towns and little communities all over? I think that's who pays the taxes that you see advertised in the papers that Montana Power pays, and MDU pays, and so on. It's just the users themselves; it isn't the company.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: He answered my question.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President [Chairman], it was stated a few moments ago that we had touched a sensitive nerve here, and I don't know whether it was meant for Mr. Mahoney or for myself. We've been the principal speakers on this on behalf of the majority report, but I would

like to state for the record, and it might have some effect on the vote, that I do not represent any public utility. I am not in their employ. I have never represented a public utility as a lawyer. I've never appeared before the Public Service Commission in a private capacity, although I have for the city of Great Falls. And I appear here as a delegate to the Constitutional Convention. My sole interest is to write as good a constitution as, in my opinion, we can; and it's my opinion that this matter is legislative. It's my opinion that it is dangerous. And I respectfully urge all of you to very carefully consider the fact that you're dealing with a very technical subject on very inadequate consideration, and I respectfully urge that you delete both of these proposals.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I am receiving electric service from a private utility, and I am very well satisfied with it, and I hope to continue receiving service from this private utility. But I feel that it is the right of any community to make its choice of service. I would like to retract a statement I made awhile ago. I prefer the terminology in the minority report. Consequently, I shall move to delete the McKeon recommendation and in favor of Section 7 as it's in the minority report.

CHAIRMAN GRAYBILL: You're moving to strike-Mr. McKeon's got an amendment to Mrs. Sullivan's, if I remember correctly.

Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible)—error there. His motion was to delete in the first place, so I'm in error.

CHAIRMAN GRAYBILL: Right.

DELEGATE AASHEIM: So, I'll have to withdraw my motion; it's incorrect. And I would like to say, then, I would recommend that we vote against the McKeon substitution, in favor of the original.

CHAIRMAN GRAYBILL: It's actually not Mrs. Sullivan's; it's Mrs. Van Buskirk's; and that's what confused me. The situation is that Mrs. Van Buskirk moved Section 7 on page 29. Mr. McKeon moved to delete it and put his language for Section 7 in place of it. If you want to amend Mr. McKeon's, you can, but I don't think you can amend it by going right back where he started from. So the issue is still on Mr. McKeon's motion. Now, is there anybody who want to talk before Mr. McKeon closes? Mr. McKeon, you may close.

DELEGATE McKEON: Thank you, Mr. Chairman. Mr. Chairman, I think the real issue here is whether or not we are going to give the people the right to choose. We have heard some speak in favor of the PUDs; we have heard those who are opposed. I think that it is incumbent upon us just to give the people the right to make their own choice, and with that, I close. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want a roll call vote? Mr. McKeon? Mr. Harper does. All right, we'll have a roll call vote. All in favor of Mr. McKeon's substituted Section 7, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	Nay
Anderson, J	Nay
Anderson, 0	Nay
Arbanas	Absent
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Nay
Brown	Nay
Bugbee	Absent
Burkhardt	Absent
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Nay

Delaney ..... Nay
Driscoll .....Aye
Drum ..... Nay
Eck .....Aye
Erdmann ..... Nay
Eskildsen .....Aye
Etchart ..... Nay
Felt .....Absent
Foster ....Aye
Furlong .....Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... .Absent
Harbaugh .....Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ..... Nay
James ....Aye
Johnson ..... Nay
Joyce .....Absent
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf..... Nay
Lorello.....Aye
Mahoney ..... Nay
Mansfield., ... Nay
Martin., ... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon .....Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe .....Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ....Absent
Pemberton ..... Nay
Rebal ..... .Absent
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins. ..... Aye
Romney ....Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz.....Aye
Siderius.....Aye
Simon ..... Nay
Skari.....Aye
Sparks..... Nay
Speer.....Aye
Studer ..... Nay
Sullivan Nay
Swanberg.. Nay
Toole .Absent
Van Buskirk.. .. .. Nay
Vermillion Aye
Wagner .. .. .. Nay
Ward ..... Nay
Warden .....Absent
Wilson ..... Nay
Woodmansey .. Nay
Mr. Chairman .Aye

CLERK SMITH: Mr. Chairman, 32 delegates have voted Aye, 54 have voted No.

CHAIRMAN GRAYBILL: 54 voting No and 32 Aye, the motion is defeated. The issue is now on Mrs. Van Buskirk's Section 7.

Mr. Aasheim.

DELEGATE AASHEIM: I move to amend Section 7 by-on line 31—or page 31, line 2, after "subdivision", to add the words "or other political subdivision"-"or other political subdivision", so that the paragraph will read: "Any county or municipal subdivision or other political subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law".

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim, I take it your motion is to add, after the first line, "Any county or municipal subdivision or other political subdivision"-so that it's broader than municipal or county subdivisions, is that right?

DELEGATE AASHEIM: That's right.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim's amendment is before the body.

DELEGATE AASHEIM: I'm not going to speak very long on this. This is permissive legislation, and there's nothing in here that authorizes a-or dictates to a political subdivision to go ahead. I feel that this is a democracy, and if the people want to try something of this nature, I think that they should have this prerogative. I certainly believe that we should maintain the competitive system in America. I have been a strong supporter of the rural electric co-ops, but I cer-

tainly would not want to see the rural electric co-ops have a monopoly in my area, because I think it's to the best interest of all of us that we maintain competition. And I think that if we have a municipality who feels that they can operate their own powerplant or buy electricity from some other source, that they should have this right to do so as any other state in America has that right.

CHAIRMAN GRAYBILL: Is there any other discussion? Mr. Aasheim, do you want a roll call?

DELEGATE AASHEIM: I would like a roll call.

CHAIRMAN GRAYBILL: Very well, all in favor of Mr. Aasheim's amendment, which would add the phrase "or other political subdivision", on line 6, page 29, to Section 7, vote Aye on the voting machines; those that are opposed, vote No on the voting machines. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the vote.

Aasheim ..... Aye
Anderson, J. Nay
Anderson, 0.. Aye
Arbanas ..... Absent
Arness ..... Absent
Aronow ..... Aye
Artz ..... Absent
Ask ..... Nay
Babcock Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Absent
Berg ..... Nay
Berthelson Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman. Absent
Brazier ..... Aye
Brown Nay
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate Aye
Champoux Aye
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Absent
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James.. ..... Aye
Johnson ..... Nay
Joyce ..... Absent
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Nay
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Absent
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay

Scanlin Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Spew ..... Aye
Studer ..... Nay
Sullivan Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk .Aye
Vermillion Aye
Wagner.. Nay
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman .Aye

CLERK SMITH: Mr. Chairman, 47 delegates have voted Aye, 37 have voted No.

CHAIRMAN GRAYBILL: Very well, the amendment prevails and Section 7 now reads: "Any county or municipal subdivision or other political subdivision of the state" et cetera. The issue is on Mrs. Van Buskirk's Section 7.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President [Chairman], I wish to restate my objection to the former one of Mr. McKeon's. This really doesn't mean anything. It's subject to regulations as prescribed by law. The Legislature now has the right to create these districts and give the power to the cities. You adopt this, you clutter up the Constitution. And unless the Legislature wants to make reasonable regulations, it's going to be a dead letter within 2 or 3 years. I resist inserting this into the Constitution.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman and fellow delegates. I merely want to state some corrections that may have been made here. The statement was made that there was no prime power available for any municipality that wanted to start a municipality now. That is not correct. Over in the Bonneville area, over west of the Continental Divide, there is prime power available for any municipality that wishes to start any municipal operation. I say that not from hearsay, but from fact. I'm a member of the Bonneville Power Advisory Commission, and I've talked directly with the economist in charge of distributing power-or in charge of seeing that power is available for anyone, so those are not true statements. The tax structure has not collapsed in Idaho, Washington, Oregon or all of the other 48 states that have public utility or municipal districts. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mrs. Van Buskirk's proposed Section 7, on page 29. It would set up-it would authorize county and municipal subdivisions or other political subdivisions of the state to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law. I presume a roll call is desired. All in favor, vote Aye; opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J ..... Nay
Anderson, 0 ..... .Aye
Arbanas ..... Absent
Arness ..... Absent
Aronow ..... Nay
Artz ..... .Absent
Ask. ..... Nay
Babcock.. ..... Nay
Barnard.. ....Aye
Bates.. ....Aye
Belcher ..... .Absent
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown.. ..... Nay
Bugbee ....Aye
Burkhardt ....Absent
Cain ....Aye
Campbell ..... Aye
Cate ....Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross.. ....Aye
Dahood ..... Nay

Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Absent
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Absent
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Absent
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK SMITH: Mr. Chairman, 41 delegates have voted Aye, 43 have voted No.

CHAIRMAN GRAYBILL: 43 delegates having voted No, 41 delegates having vote Aye, the section fails. The Chair has no other proposals for Section 7 before it. The Chair has no other minority reports before it. Mr. Romney, you have a matter before the Chair that you may want reconsidered. Do you want to reconsider Section 1, on page 16 of the Regulation of Public Utilities Article? If so, say so.

DELEGATE ROMNEY: Mr. Chairman, I move to reconsider Section 1. The Chair has the proposal. It has not been printed. It is an effort to compose some of the matters that-Mr. Chairman, I can't seem to find that. Could it be read?

CHAIRMAN GRAYBILL: Mr. Romney-if Mr. Romney is allowed to reconsider Section 1, he would put in an amendment that says: "Section 1, Regulatory authority. The Legislature shall provide for a regulatory authority which shall consist of three commissioners who will be elected by the people and whose terms shall be provided by law, but must coincide".

Mr. Romney.

DELEGATE ROMNEY: It's a matter to compose the differences between the delegates on this matter. It isn't what I wanted, but it might clear up a difficulty that has recurred over the years. It would-instead of having overlapping terms of whatever the Legislature might fix, it would have a term of whatever years the Legislature might fix and they would be concurrent. That's all I have to say.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Romney's motion to reconsider. Is there discussion?

Mr. Brown.

DELEGATE BROWN: I'll be brief, Mr. Chairman, but if you put that in, you forever lock it in, so Mr. Heliker's one-man Commissioner or any other type of plan for fixing utility rates would be out the window. So I oppose the motion.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I oppose this motion also. A few minutes ago we passed a Consumer Counsel law here, and it said by a special tax on a net income or gross revenue of regulated companies. Now, every municipal water plant in the State of Montana is a regulated company. I think that we ought to use more care, or realize exactly what we are doing, when we pass these hurried-up proposals.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to reconsider?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, briefly, we just voted by roll call vote, 58 to 37, to delete Section 1. Then when a substitute came in; we voted 52 to 35 to delete it. It's still legislative, and I oppose the motion to reconsider.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Romney's motion to reconsider Section 1 of the Regulation of Public Utilities Article. Mr. Romney, I hesitateto put this orally unless I know you don't care.

DELEGATE ROMNEY: I'll ask for a roll call and seconds.

CHAIRMAN GRAYBILL: Very well, all in favor of reconsidering Section 1 of the Regulation of Public Utilities, vote Aye; and all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim		Nay
Anderson,	J.	Nay
Anderson,	0.	Nay
Arbanas		Absent
Arness		Absent
Aronow		Nay
Artz		Nay
Ask		Nay
Babcock		Nay
Barnard		Aye
Bates		Absent
Belcher		Absent
Berg		Nay
Berthelson		Nay
Blaylock		Nay
Blend		Nay
Bowman		Absent
Brazier		Nay
Brown		Nay
Bugbee		Nay
Burkhardt		Absent
Cain		Absent
Campbell		Aye
Cate		Nay
Champoux		Nay
Choate		Nay
Conover		Nay
Cross		Aye
Dahood		Absent
Davis		Nay
Delaney		Absent
Driscoll		Absent
Drum		Nay
Eck		Nay
Erdmann		Nay
Eskildsen		Nay
Etchart		Nay
Felt		Absent
Foster		Nay
Furlong		Nay
Garlington		Nay
Gysler		Nay
Habedank		Nay
Hanson, R.S.		Nay
Hanson, R.		Nay
Harbaugh		Aye
Harlow		Absent
Harper		Nay
Harrington		Nay
Heliker		Nay
Holland		Absent
Jacobsen		Nay
James		Nay
Johnson		Nay
Joyce		Absent
Kamhoot		Nay
Kelleher		Nay
Leuthold		Nay

Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Absent
Pemberton	Nay
Rebal	Absent
Reichert	Nay
Robinson	Aye
Roeder	Nay
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 15 delegates have voted Aye, 67 have voted No.

CHAIRMAN GRAYBILL: 67 delegates having voted No and 15 having voted Aye, the motion to reconsider is killed. The Chair has no other motions before it. Mr. Eskildsen, just a moment.

Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Before we close, Mr. Chairman, I'd like to say that I pushed the wrong button on R. J. Studer's right-to-work bill.

CHAIRMAN GRAYBILL: Very well, the record may so show.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I want you all to note that I haven't had a thing to say all day. I just listened intently and enjoyed every moment of it, clear up till 8:30. (Laughter) At this time, I would like to move that we pass all other business on Order of Business until the next sitting.

CHAIRMAN GRAYBILL: Order of Business Number 10. The motion is to pass all other matters on Order of Business Number 10. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole rise and finally report.

CHAIRMAN GRAYBILL: The motion is that the Committee of the Whole rise and finally report, but I'd like you to stay till we do it. All those in favor of rising and finally reporting on the Public Health, Welfare, Labor and Industry committee proposal, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well, if you will stand at ease a moment while we do it.

(Proceedings moved from Committee of the Whole to Convention, President Graybill in Chair)

PRESIDENT GRAYBILL: Members of the Committee, the Chair would like to point out to you that we failed to cover Style and Drafting on Bill of Rights. We failed to cover Judiciary, Natural Resources, Revenue and Finance on Order of Business Number 10—reconsideration of the minor matters in them. We'll take those up in the morning and hope to get them covered on Order of Business Number 5 in the morning, so that they

can be worked on by the rest of the staff. We are now at least another day behind, so we'll expect to be here bright and early and working hard in the morning. Will the clerk please read the title and the signature of the committee report.

CLERK SMITH: "March 15th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 9 of the Committee on Public Health, Welfare, Labor and Industry Committee, recommend as follows: that the committee rise and finally report. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Now, is there anyone that would like the report read in full?

DELEGATES: No.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committeeofthe Wholereport and that Public Health, Welfare, Labor and Industry proposal be referred to the Committee on Style and Drafting.

PRESIDENT GRAYBILL: The motion is to adopt the committee report and refer the Public Health report to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Eskildsen-just a moment.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Just a moment.

Mr. Schiltz.

DELEGATE SCHILTZ: For those of the hard-working Style and Drafting Committee who are still here, and most of them are, we will not meet in the morning.

PRESIDENT GRAYBILL: But you'll meet all night, so relax. (Laughter)

Mrs. Bates, for what purpose do you arise?

DELEGATE BATES: I just wanted to be off the record. I wanted to thank the group, whoever is responsible, for the collection for Grace Bates' ticket to Australia, leaving immediately. And if you really want me to go, you're going to have to do a lot more, boys. Thank you.

UNIDENTIFIED DELEGATE: You're welcome, Grace! (Laughter)

PRESIDENT GRAYBILL: Here, Grace— All right, the motion is to adjourn-have you made the motion? All right, make the motion, please, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until Thursday, March 16th, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m., tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: And so ordered.

(Convention adjourned at 8:40 p.m.)

March 16, 1972 **Forty-Seventh Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will come to order. Reverend Harper has asked Reverend Martin Bauman of the **First Lutheran** Church of Helena, Montana, to say our invocation for us this morning. Will you all please rise.

REVEREND BAUMAN: Help us, Almighty God, at all times to do the things we ought to do. To that end, give us clear sight that we may know what to do, courage to embark upon it, skill to find a way through all its problems, perseverance to bring it to its appointed end, strength to resist all the temptations which would seek to lure us aside. So help us to begin, to continue, and to end all things in You, our God and Father. May the peace of God which passes all understanding keep our hearts and minds in the knowledge and love of God and of his Son, Jesus Christ, our Lord, and the blessing of Almighty God, the Father, the Son and the Holy Spirit be among us and remain with us always. Amen.

PRESIDENT GRAYBILL: Well, the Chair wants to express its thanks to all of you for working so hard and late last night. And I'm glad to see you all up this morning in such good shape. We'll take attendance, to see who isn't here, by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Bates, Conover and Warden beexcused, please?

PRESIDENT GRAYBILL: They may. Someone put up some extra money and Grace left last night. (Laughter)

CLERK HANSON: Delegate Heliker.

PRESIDENT GRAYBILL: Very well. Take the attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Excused
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Excused
cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Absent
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present

McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks.,	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Excused
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 96 delegates present, 3 excused, 1 absent. Mr. Heliker has just walked in.

PRESIDENT GRAYBILL: The journal may show your presence, Mr. Heliker.

CLERK HANSON: 97 delegates present.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: "Mr. President. We, the Committee on Style, Drafting, Transition and Submission, transmits the Judiciary and Revenue and Finance Articles for further consideration to Order of Business Number 10. Signed: Schiltz, Chairman." "We, the Committee on Style and Drafting, Transition and Submission, transmits the Natural Resources Article to Order of Business Number 5 for final consideration. Signed: Schiltz, Chairman."

PRESIDENT GRAYBILL: Very well. Natural-let's see-Judiciary and Revenue and Finance to go to 10; Natural Resources is assigned to 5. So that we'll all understand what we're doing here, on Judiciary and Revenue and Finance, the Style and Drafting Committee asked to have them back. On one of them we found an extra half section, and on the other one they wanted to look at it. We will, in a few minutes here, proceed to Order of Business Number 10 and clean up those two on Order of Business Number 10 and refer them back to 5. And then, we hope to cover first this morning, or maybe I should say second, Judiciary, Natural Resources, and Revenue and Finance on Order of Business Number 5, Final Adoption, this morning. Mr. Clerk, how about the other?

CLERK HANSON: "Montana Constitutional Convention, 1971-1972. Committee on Style and Drafting, Transition and Submission Proposal Number 13, reported March 16, 1972. The Committee on Style, Drafting, Transition and Submission submits a unanimous proposal entitled 'Compact with United States'. Signed: John M. Schiltz, Chairman." Mr. Chairman.

PRESIDENT GRAYBILL: This has been placed on your desks this morning. This is Style and Drafting's report on the ordinances. It'll be placed on Order of Business Number 10, to remain there for 48 hours. Very well. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5. Without objection, we'll pass Order of Business Number 5 until we have cleaned up the Judiciary and Revenue and Finance Articles on 10 in a few moments. Is there objection? Very well. We'll pass Order of Business Number 5. Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. We have two resolutions this morning.

Mr. Murray, do you want the Chair to read 13?

DELEGATE MURRAY: Yes, Mr. President.

PRESIDENT GRAYBILL: Will the clerk please read Resolution Number 13.

CLERK HANSON: "Montana Constitutional Convention, 1971-72. Resolution Number 13, introduced March 15th, 1972. Be it resolved by the Constitutional Convention of the State of Montana that a select committee composed of delegates hereinafter named be appointed by the President for the purpose of preparing for and arranging of appropriate final ceremonies to be held upon the conclusion of this Convention. Delegates to serve are J.C. Garlington, Chairman; Paul K. Harlow, Clark E. Simon, Lucile Speer, Veronica Sullivan. Introduced by Committee on Rules and Resolutions, Marshall Murray, Chairman."

DELEGATE MURRAY: Mr. President. I'm sure that all the delegates have reviewed the memorandum of March 13, 1972, to them from you. It was placed on the desks a day or two ago. There have been newspaper stories as the result of the public hearing which the Rules and Resolutions Committee held on this matter. We have, this morning, Resolutions 13 and 14 from the Rules Committee, and they were recommended unanimously by the committees. In accordance with your memorandum, this particular resolution—Resolution Number 13-is simply for the purpose of appointing, through you, a select committee to prepare for and arrange appropriate final ceremonies to be held upon the conclusion of this Convention, which it would appear now to be sometime between Wednesday and Friday, depending upon who you talk to and whether or not it's Mr. Schiltz or the President. But sometime next week, and hopefully not later than Friday, we anticipate a motion adjournment sine die. We would like to have some type of an appropriate ceremony, and the resolution is simply for that purpose. I believe it needs no further explanation, and I would move at this time that Resolution Number 13 be adopted.

PRESIDENT GRAYBILL: Is there discussion of Resolution Number 13? Very well. All in favor of Resolution Number 13, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered, Resolution Number 13 is adopted. Will the clerk please read Resolution Number 14.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972. Resolution Number 14, introduced March 15th, 1972. Whereas the Montana Constitutional Convention has nearly completed its substantive activities and is making arrangements for adjournment sine die in order to meet its election date commitment of June 6, 1972; and whereas prior to adjournment sine die the Convention will be able to complete its procedural, administrative and voter education affairs, all of which must be concluded in orderly and reasonable manner; and whereas the Convention anticipates that it will need to establish an appropriate committee to manage and conclude all of its procedural, administrative and voter education affairs after adjournment sine die. Now, therefore, it is resolved by the Constitutional Convention of the State of Montana as follows: One, the Convention hereby creates a committee to act with the President of the Convention on its behalf after adjournment sine die, delegating to it full authority to manage and conclude all the Convention's procedural, administrative and voter education affairs and to spend the Convention's funds therefor, but only within the limits of its appropriation and such funds as the Convention may have. Number two, the Convention hereby appoints to said committee the President, Leo Graybill, Jr., who shall act as its Chairman, and the following delegates: John Toole, Dorothy Eck, Bruce Brown, Jean Bowman, Margaret Warden, Fred Martin, Robert Vermillion, Katie Payne, Betty Babcock, Marshall Murray, Catherine Pemberton, John Schiltz, Tom Joyce, George Harper, Bill Burkhardt, Jerome Loendorf, Oscar Anderson and Gene Harbaugh. Number three, no delegate may serve on the committee who speak-shall seek public office in the primary election to be held on June 6th, 1972. The President, as Chairman of the committee, shall have authority to substitute other Convention delegates for any committee member named herein who may decide to seek public office. Number four, the Convention hereby delegates the authority to the committee to receive, disburse, and account for all federal funds

which the Convention may receive. Number five, the Convention also delegates authority to the committee to supervise and edit any and all voter education material prepared on behalf of the Convention or by other persons related-relative to the work of the Convention. Number six, the committee shall terminate its work at such time as all the Convention procedural, administrative and educational affairs have been completed and all requirements of the Enabling Act have been met. Introduced by Committee on Rules and Resolutions, Marshall Murray, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the adoption of Resolution Number 14.

Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: By way of explanation, let me say that this is again the result of your memorandum of March 13th, 1972, to all of the delegates. This matter was referred to the Rules Committee. A public hearing was held. Those interested in the matter did appear, and we did discuss this situation in detail. It does-and the Rules Committee unanimously recommended that this resolution be adopted. It appears quite clearly at this stage of the Convention that we will not be able to complete all of our procedural and administrative affairs, although we will have, at the time of adjournment sine die, completed the Constitution. Because of these details, it appears necessary to establish some-an appropriate committee, as we call it in the resolution--whatever title we decide we should give to it-to handle these matters after the adjournment. Now, let me explain, with respect to the voter information pamphlet, a problem that we have. At 10 o'clock this morning, we will be receiving bids for the printing of this particular document. At this state of the Convention, we do not have all of the work connected with that document completed. It is anticipated we may not have all of the arrangements with respect to that document completed by adjournment sine die. We have the report from the Convention to the people; we have the explanation of the various sections; and these particular matters concern us as to whether or not we will be able to achieve their completion by the date of adjournment. And we have certain other matters relative to the election itself, which we have decided should be on June 6, 1972, which somebody has to oversee, from this Convention. We think that the matter should be handled by a committee delegated the appropriate power to do so. We also know that we will be the recipient of approximately $30,000 in federal funds which we have not received. If we do not receive and disburse these funds and account for them prior to adjournment sine die, it is doubtful that the federal authorities would give us the money unless we have created a body that could handle this and which would have delegated by this Convention the authority to receive and disburse it and account for it. And that's another reason we think we need it. We also know that in the handling of whatever voter educational affairs that this Convention might undertake, that we will not be able to get to those until after adjournment sine die. We know that there is great interest amongst the delegates to have this work done in an informational and educationalmanner only, and not for the purpose of selling it nor to put anything out to the public which might be slanted in any way, but hopefully for the purpose merely of explanation. We want to make sure that we have somebody charged with the authority to edit and handle these matters so that that educational program will be conducted in the fair, impartial manner that this body has indicated it would like to have it handled. We feel that this committee is composed of delegates who have the best interests of this Convention at heart and would do this job. Now, let me say that, first of all, as you read down the list of names, you will see that all of the elected officers are listed-all of the elected officers. We have then named four delegates from Helena, because we feel that they will be here-most available to the President and to the Vice-president, both of whom will be working two or three days a week until the election, without expenses or charge to us. And we feel that they need a nucleus of this particular committee to work with from day to day; the Helena people will be available for that purpose. Then there are others who have been either connected with the Public Information Committee, who are skilled with the media—Margaret Warden, of course, who is the Chairman of that committee; Fred Martin, from a newspaper standpoint; Robert Vermillion from the other media, particularly radio; and a few of us who are concerned about making sure that this be handled in a proper matter. And we feel that the committee is representative of the political makeup of this Convention; that it is neither liberal nor conservative if you cross party lines in that fashion; and that it certainly should not be made up of anybody who is willing to-or at this time or may prior to the time of this election or prior to April 17th—I

think is the date-intend to file for public office in this state, because we do not think it would be in the best interests of the Convention for somebody to be serving on an interim committee, an ad hoc committee such as this might be, with this authority and also attempt to further their own personal political interests. And so, paragraph 3 provides the necessary power in the President to substitute some other Convention delegate for anybody who may choose-who is named on this committee who may choose to seek public office after their appointment to the committee. Now we-with reference to paragraph 4, we specifically delegate authority to the committee to receive, disburse and account for federal funds, because we think that if we do not mention this specifically, we may have a problem in the receipt of those funds. We do not desire to have any problem in that respect. Now, the last part is, the Convention also delegates authority to the committee to supervise and edit any and all voter educational materials prepared on behalf of the Convention. I'm talking about those materials which will not be prepared and which you will not have seen prior to adjournment sine die. And for the reasons that I have previously stated, I think this committee will have the interest of this Convention at heart, and also the interest of the citizens of the State of Montana, so that this work will be done in an informational and educational manner and will not be of a selling-type proposition. Also, we think in paragraph 6 we should provide for the termination of this committee, but not at such time until the requirements of the Enabling Act have been met. Now, the Enabling Act requires us to do some things with certain documents-the journal, the verbatim transcripts of this Convention-and somebody should be authorized to make sure that these matters are concluded in reasonable fashion. Now, all of this, in addition to what I have said, requires the retention of some staff. And we will-we anticipate that we will need one stenographer-this is after Style has completed its work if they haven't completed all of it-but we will need one stenographer. We probably will need one or two other people who will be helping us in various manners, and at such time, of course, as their work is completed they would be terminated. With respect to the federal funds, we know that we will need some type of coordinator and bookkeeper for that purpose, and we anticipate that we will have to keep somebody working on the payroll until that job is completed. Now, of course, when you have staff you have to pay their bills, and that's another thing that the committee would undertake. And I think, as briefly as I can, that does explain the reason for the appointment of a committee. The Rules Committee did not believe that the President should appoint this particular committee as we sort of authorized in Resolution Number 13, but that it should be a Convention committee. And I'm available to answer any questions at this time. Thank you, Mr. President.

PRESIDENT GRAYBILL: Before the questions, may the President address himself simply to Number 3 for a moment? The list of people that I suggested there, Mr. Murray has explained. But I would like to make it clear that I don't mean to leave anybody out, but we can't all be on the committee unless we all want to stay. And there will be many opportunities for the rest of us to still serve in the educational capacity, particularly if the plans for the television panels go on. We'll certainly use as many of you as we can there, and there will be plenty of other opportunities for you to work in your committee. And we certainly expect and need all of you to help as you can, and I don't want anyone to feel left out. We did put all the officers, we put all the active committee heads of the Public Information Committee, we put, as he said, several from Helena here so there'd be a nucleus, and then we balanced it out with a few people from corners of the state which were not otherwise very well covered. But I certainly don't want anyone to be offended by the fact that they got left off the committee. The only other point I'd like to make is that-and Mr. Murray explained-that the HUD people and the planning board do insist we have somebody to give this money to. The problem is there isn't any possibility of getting the money now. The money-the federal funds-can't be pipelined in time to get here before we adjourn, so we have to have the committee that has a kind of a continuing existence so that when the funds get here, they can be disbursed. Now let's discuss it.

Mr. Mahoney, I saw you up.

DELEGATE MAHONEY: Mr. Chairman [President]. In line 27 in Section 1, would-could somebody answer what you mean by "limits of its appropriations and such other funds as the Convention may have".

PRESIDENT GRAYBILL: Do you want me to do that, Mr. Murray, or you?

DELEGATE MURRAY: No, go ahead.

PRESIDENT GRAYBILL: We do-the appropriation is 499 plus a thousand dollars. We do have other funds. We have made about $3,000 selling reports and selling things through the concession out here, and that means that that money could be spent. And third, it applies to the federal funds. In other words, "such other funds" would include the federal funds if we got them. So the total sources of funds that we have are the $499,000 appropriation, the potential 30,000 in federal funds, and something in the nature of $3,000 that we've made-earned during the Convention for selling the total packets-we made about 3,000 selling the total Convention reports like the Legislature does-and then we've made about four or five hundred dollars selling, at a quarter a page and 10 cents a sheet, on the mimeograph. So that just is a line to include the rest of those funds, Charley.

DELEGATE MAHONEY: All I'd like to do is I don't want any donations coming in from the outside into this. I think this-if we're going to have this Convention, I don't want to see pressure groups--and if they want, let them have it. I don't want it mixed with this. This is all I'm trying to do is to get it in the record.

PRESIDENT GRAYBILL: Right. Anything of that nature, you certainly would be advised of. And you do know, of course-it's been in all the literature-that we have the—Bozeman has a grant and is putting out this one tabloid with the grant money that the University has. Other than that, everything's been explained before. And there are no-nobody's come forward with any other money, and if they did, we certainly would have the committee advise this body. We don't want this body accepting money from people that they don't know about.

DELEGATE MAHONEY: Well, Mr. Chairman [President], the only thing I have-and this became a new radical procedure 2 years ago, or at the time of the adoption of this Constitutional Convention and the 20 boards. This is the first time in the history of the State of Montana that we had ever taken public funds to sell something. And I still question that. Now, if this here Convention goes out-and I'm sure you're going to present this in a fair and honest, logical way-but I always think that maybe his majesty's loyal opposition maybe should be taken into consideration at the time of the selling of things; that maybe there is another side, than maybe this Convention's side, or-and that-this is what's bothering me, is this new procedure that we have now developed in the last 3 years to come out here and now taking state funds. And this acts to me that we're taking funds to sell something to the public, and I wonder at times. Now, I have no objection to this. I think it's been fine. I certainly have no objection to the committee and that, but I just want to get this in the record that I'm not too strong to take public funds-1 don't care whether federal or state or where they came from-to sell something to the people when maybe—

PRESIDENT GRAYBILL: Mr. Mahoney. The Chair would like to point out that I purposely put the author of the motion, Mr. Schiltz, on this committee, and I expect to have lots of trouble.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman [President]. I just want to suggest that the committee, when they put out the printing for bids, I think they should be very careful of the bidders, just to make sure they don't have a conflict of interest. (Laughter)

PRESIDENT GRAYBILL: Well, we've already scratched Romney's and Martin's bids.

Mr. Furlong.

DELEGATE FURLONG: Mr. President. Would you or Mr. Murray explain the last sentence-or last portion of the sentence of paragraph 5 on lines 17 and 18, "or by other persons relative to the work of the Convention". This has to do with the editing and supervision.

PRESIDENT GRAYBILL: Right. There's a-right now, for example, we have some staff members working on material that will go in—that will be part of the public information of the Convention. For example, Mrs. Dowling is now working on the explanation for the voter information pamphlet of each section. And this means that someone on behalf of the committee will edit that. So in other words, we have staff people that are doing that. Secondly, it is very likely that in order to put this thing together, we're going to need agency help in terms of getting time and—media time and media layout ready. If we do any media layout, for example for an advertisement, the point is that it would have to be proofed by this committee or some subcommittee of the committee before it could be put out. It cannot be put out by an agency or an artist without our having approved it.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: May I further explain, too, that there may be people who want to do some work with respect to what we have done here by way of information, that would come to some of us and would say, "Is this done fairly, or is it done accurately"? And this committee, I think, should have the authority to judge that matter and to edit it and to make sure that it is. Now, I think of-one thing in this respect particularly is the Montana State University project and the tabloid that they're going to put out. Now, if we should, in any way supplement this, then I think we should have the right to edit it, and this gives the authority to the committee for that purpose.

PRESIDENT GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: This isn't particularly a concern, but I can foresee that it could conceivably happen. While this committee is working-and I think it's a great idea-1 presume in all of the areas of the state there will be other kinds of information in which delegates will be invited to participate, in radio, TV, et cetera, and my only concern was here that you may find a conflict of opinion between individual delegates on some of these programs as compared to the activity of this committee. And I wanted to be sure that this is in the record and that there were no possible conflict here; that, conceivably, you will find some conflict between now and the time the thing is ratified or killed.

PRESIDENT GRAYBILL: Mr. Furlong, your discussion raises a horrible thought in the President's mind. We certainly don't intend to tell any of you what to say when you get back home. Perish the thought! Is thereotherdiscussion of the resolution?

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman [President]. You are aware, of course, that I had a resolution that I was trying to present. And I wondered if this wouldn't—

PRESIDENT GRAYBILL: It's coming up next, and it will be referred. And of course, it may override all of this; I'm not saying it wouldn't. But it's the next item on the business, Mr. Johnson.

DELEGATE JOHNSON: Thank you.

PRESIDENT GRAYBILL: Very well. All in favor of this resolution, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: All right, this resolution is adopted. Will the clerk read Mr. Johnson's resolution.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972, Delegate Resolution Number 15, introduced March 15th, 1972. The resolution of the Constitutional Convention of the State of Montana for the members torecessforthe purpose of evaluating the entire document."

PRESIDENT GRAYBILL: They haven't been read in their entirety, but I think it ought to be read in its entirety. Yeah, please read it.

CLERK HANSON: "Whereas this Constitutional Convention has cost the State of Montana $700,000 in money and has cost its delegates about 8 months of their lives devoted to study and research in the field of constitutional government; and whereas we certainly do not want to waste the effort, money or time involved. Therefore, I move this Convention consider the following: The Montana Constitutional Convention shall, after completing debate on the proposed new Constitution, recess for 5 months to August 15th, 1972, and then convene and reconsider our new proposed Constitution in its entirety. After this interim, used for knowledgeable consideration and observation, we will complete a superior document more worthy of this dedicated group of delegates and more worthy of Montana. Introduced by Torrey B. Johnson." Mr. President.

PRESIDENT GRAYBILL: Very well. You've heard Mr. Johnson's resolution. Mr. Johnson's resolution, under the rules-Mr. Johnson, I'm going to refer that to the Rules Committee, under the rules, and the Rules Committee should hold a hearing or a meeting on it. And I hope that you can announce before we adjourn today when your meeting will be, and we'll bring it back as fast as we can. Can you tell us now?

DELEGATE MURRAY: Mr. President. The Rules Committee will meet on that resolution at 8:15 tomorrow morning.

PRESIDENT GRAYBILL: 8:15 tomorrow morning. So, anybody that has any viewpoint on that or wants to discuss that with the Rules Committee, see them at 8:15 tomorrow morning,

And thereafter, the Rules Committee will bring Mr. Johnson's resolution back to this body for discussion. Is that satisfactory, Mr. Johnson?

DELEGATE JOHNSON: Yes.

PRESIDENT GRAYBILL: Very well. All right, are there other rules or resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders of the Day.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders. Mr. President.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole.

Mrs. Pemberton, for what purpose do you rise?

DELEGATE PEMBERTON: Mr. President. I didn't know where this came in the order of business. Mrs. Warden left a memorandum with me last night concerning the pictures of the Convention. It is still possible to order a few more. I have the blanks here on my desk, but they must go in almost immediately to Miss Harrison's office. Thank you.

PRESIDENT GRAYBILL: Mr. Eskildsen. The Chair suddenly remembers something else we didn't do. I wonder if we might revert to Order of Business Number 3, without objection, Communications. It has been our practice to put a note in the journal about our distinguished speaker series. And I would like the journal to show that on Tuesday night, this Convention had as the final speaker on its distinguished speaker series, Miss Jeannette Rankin, who addressed delegates here in Convention Hall, answered questions, and provided the delegates with an entertaining evening. I'd like that note to show in the journal, and I'm sorry I missed it yesterday. Does everyone understand Mrs. Pemberton's announcement? Other pictures are available. See her if you haven't taken care of your pictures. Mrs. Pemberton, did that mean other pictures or the same pictures'

DELEGATE PEMBERTON: Mr. President. These are the same pictures of the committees and the Convention. And they have-they will take orders now. You also have to put 50 cents additional charges with them for mailing, because the shop can't get them out in time before the Convention. Thank you.

PRESIDENT GRAYBILL: Very well. It's the same pictures, but if you missed the deadline, here's your chance again. All right. Now may we be back on Order of Business Number 10, without objection.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole, Delegate Graybill, Chairman)

CHAIRMAN GRAYBILL: The business before us on Committee of the Whole this morning is, first, consideration of the Judiciary Article. Mr. Schiltz, do you want to explain what part of the Judiciary Article, Order of Business Number 5?

DELEGATE SCHILTZ: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Before you do that, let's point out to everybody that we're talking about the white paper with no cover, styled Order of Business Number 5, and then Final Consideration, Style and Drafting Judiciary Number 5. And you will need, shortly, the one on Revenue and Finance and, shortly, the one on Natural Resources, so you might start looking.

Now, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. We're concerned, on the Judiciary, only with Section 14, which you will recall was added in the Committee of the Whole debate the other day. And that necessitated that Section 14 go to Style and Drafting for style and drafting. It's on the back of the papers you have.

CHAIRMAN GRAYBILL: Page 6.

DELEGATE SCHILTZ: Right. Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 14, Order of Business Number 5, of Style and Drafting Judiciary Article, it recommend the same be adopted.

Mr. Chairman. We just made this conform to the other language in the article and in other articles, changed "Legislative Assembly" to "Legislature", and made "Chief Justices" and "Justices" to conform with Section 3.

CHAIRMAN GRAYBILL: Is there any discussion of the Style and Drafting changes on Section 14? Very well. All in favor—

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. I would like Mr. Schiltz to explain for the record the meaning of the last sentence of Section 14 where he-where it's stated that no candidates shall extend (expend] money in a campaign in excess of the amount appropriated and authorized by the Legislature. Would that mean that no money can be spent in either the general or the primary campaign unless it's authorized by the Legislature, or does that refer only to the general campaign?

DELEGATE SCHILTZ: Well, so far as I'm concerned, Mr. Habedank, it means only for the general election campaign which is referred to above.

CHAIRMAN GRAYBILL: Very well.

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I've talked to a number of Legislators about this in the last few days. They seem to be of the unanimous opinion they will appropriate $1. I don't want to bring this whole thing up again, but what happens then?

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think we're-

CHAIRMAN GRAYBILL: Right. I think that's out of order. It's not style and drafting. Are there other questions about the style or drafting?

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. Would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: (Inaudible)

DELEGATE NUTTING: Did you place the word "acting" in? It's underlined.

DELEGATE SCHILTZ: Oh, yes, that's put in. That's new material, right.

DELEGATE NUTTING: Would he yield to another question?

DELEGATE SCHILTZ: Yes.

DELEGATE NUTTING: Would that-the way it's worded, would that be-say if I do it on behalf of myself, would I—could I then contribute? I'm not acting on his behalf.

DELEGATE SCHILTZ: Well, I-not so far as I'm concerned. I wouldn't think that's—

DELEGATE NUTTING: You wouldn't interpret it that way?

DELEGATE SCHILTZ: No.

DELEGATE NUTTING: Okay.

CHAIRMAN GRAYBILL: Very well. Is there any other consideration or discussion of Section 14, Style and Drafting? Very well. All in favor of Section 14 as reported by Style and Drafting, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz, do you want to move the Judiciary Article to Order of Business Number 5?

DELEGATE SCHILTZ: Yes. I move that the Judiciary Article go to Order of Business Number 5.

CHAIRMAN GRAYBILL: Very well. You have before you for your consideration the Judi-

ciary Article as reported back from Style and Drafting after we've changed-or after we've reconsidered-or after we've considered Section 14, having previously considered all the other sections, and Mr. Schiltz's recommendation that it now be referred to Order of Business Number 5. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz-

DELEGATE SCHILTZ: Mr. Chairman, I don't think we adopted the language either. That was my first motion.

CHAIRMAN GRAYBILL: Yes, you made a motion.

DELEGATE SCHILTZ: I made the motion, but I don't think you voted it.

CHAIRMAN GRAYBILL: You're talking about Section 14?

DELEGATE SCHILTZ: Yes. Did we vote on that?

CHAIRMAN GRAYBILL: We sure did.

DELEGATE SCHILTZ: Oh, okay.

CHAIRMAN GRAYBILL: I wrote it down.

DELEGATE SCHILTZ: Now we're ready for Revenue and Finance.

CHAIRMAN GRAYBILL: You get those lapses, Mr. Schiltz. I have them myself.

DELEGATE SCHILTZ: After 6 hours' sleep, I have them all the time.

CHAIRMAN GRAYBILL: I had mine—more of them yesterday than usual. All right, now, if you'll take, for style and drafting purposes, the—Order of Business Number 5, Revenue and Finance Number 7, in hand. Mr. Schiltz, Order of Business Number 5, Revenue and Finance Number 7, was referred back to the committee.

DELEGATE SCHILTZ: Right. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 13 of the Revenue and Finance Article, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. If the delegates will refer to page 3, Section 13—we lost Section 2 somewhere and found it again and restyled it. These are just minorstylechanges; "by the state", on line 23, is added.

CHAIRMAN GRAYBILL: Mr. Schiltz, let's take it one at a time. Section 13, sub. 1, you've put in a sub. 1, is that right?

DELEGATE SCHILTZ: We've put in a sub. 1, that's right.

CHAIRMAN GRAYBILL: All in favor of Section 13, sub. 1, as amended, with the sub. 1 added, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. (No response)

CHAIRMAN GRAYBILL: It's adopted, Now—

DELEGATE SCHILTZ: Now, we're on sub. 2. And I move that when this committee does arise and report, after having had under consideration Section 13, sub. 2, that it recommend the same be adopted as amended. Minor style changes throughout.

CHAIRMAN GRAYBILL: Now, sub. 2 does consist of itself plus A, B, and C—

DELEGATE SCHILTZ: A, B and C.

CHAIRMAN GRAYBILL: -which we don't consider subs. Is there any question about the style and drafting in sub. 2? Very well. All in favor of adopting Section 13, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. (No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman. I move that Style and Drafting report concerning Revenue and Finance be referred to Order of Business Number 10.

CHAIRMAN GRAYBILL: Very well. The

motion is to refer the Style and Drafting Revenue and Finance Report Number 7 back to Order of Business Number 10—5. Mr. Schiltz, may I?

DELEGATE SCHILTZ: I'm sorry—

CHAIRMAN GRAYBILL: Right--refer it to Order of Business Number 5, Final Adoption. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Eskildsen, I move-I'd like to have the committee rise and finally report.

DELEGATE ESKILDSEN: Mr. Chairman. I move the committee rise and finally report.

CHAIRMAN GRAYBILL: All in favor of rising and finally reporting on these two items, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings moved from Committee of the Whole to Convention, President Graybill in Chair)

PRESIDENT GRAYBILL: Will the clerk please read the committee reports.

CLERK HANSON: "March 16, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business under General Orders, recommend as follows: that the committee rise and finally report. Signed: Gray bill, Chairman."

UNIDENTIFIED DELEGATE: Mr. President.

PRESIDENT GRAYBILL: Just a minute. Does anyone want the report read in full? Very well. Mr.-

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed.
(No response)

PRESIDENT GRAYBILL: Very well. Now, without objection, we are on Order of Business Number 10. Without objection, I'd like to revert to Order of Business Number 5 to take on final consideration of these three matters. Is there objection? Very well, we're on Order of Business Number 5. And the first one up is the Judiciary Article, the same thing we just worked on. Order of Business Number 5, Final Consideration, Style and Drafting, Judiciary Number 5. And now is the time for final adoption. These are all roll call votes. You'll recall that our style is that I ask for the clerk to read the section. He reads the title only. We then call for the vote; we then take it on the voting machines and see what happens. Very well. Mr. Clerk, will you read the title of the report and Section 1 of the Judiciary Article.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Judiciary Number 5. Article, the Judiciary. Section 1, Judicial powers." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1 of the Judiciary Article, vote Aye on the voting machines; opposed, vote No. Have all the delegates voted?
(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Excused
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye

Brown.. ..Aye
Bugbee ..Aye
Burkhardt Aye
Cain ..Aye
Campbell ..Aye
Cate ..Aye
Champoux ..Aye
Choate ..Aye
Conover Excused
Cross ..Aye
Dahood ..Aye
Davis ..Aye
Delaney .Absent
Driscoll .Absent
Drum ..Aye
Eck ..Aye
Erdmann Aye
Eskildsen ..Aye
Etchart .Absent
Felt ..Absent
Foster ..Aye
Furlong. Aye
Garlington ..Aye
Graybill Aye
Gysler ..Aye
Habedank Aye
Hanson, R.S. ..Aye
Hanson, R. ..Aye
Harbaugh Aye
Harlow Aye
Harper ..Absent
Harrington ..Aye
Heliker ..Aye
Holland .Absent
Jacobsen ..Aye
James ..Aye
Johnson.. ..Aye
Joyce ..Aye
Kamhoot ..Aye
Kelleher .Absent
Leuthold ..Aye
Loendorf ..Aye
Lorello ..Aye
Mahoney Aye
Mansfield Aye
Martin ..Aye
McCarvel ..Aye
McDonough .Aye
McKeon Aye
McNeil Aye
Melvin Aye
Monroe Aye
Murray Absent
Noble ..Absent
Nutting ..Aye
Payne ..Aye
Pemberton Aye
Rebal ..Aye
Reichert Aye
Robinson.. ..Aye
Roeder ..Aye
Rollins, Aye
Romney ..Aye
Rygg ..Aye
Scanlin.. ..Aye
Schiltz ..Aye
Siderius. Aye
Simon Aye
Skari ..Aye
Sparks ..Aye
Speer ..Aye
Studer ..Aye
sulliwan Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk ..Aye
Vermillion Aye
Wagner ..Aye
Ward ..Aye
Warden Excused
Wilson ..Aye
Woodmansey ..Aye

DELEGATE ETCHART: Etchart votes Aye.

PRESIDENT GRAYBILL: Etchart votes Aye.

CLERK HANSON: Mr. Chairman [President], 88 delegates voting Aye, no delegates-89 delegates voting Aye and no delegates voting No.

PRESIDENT GRAYBILL: Very well. Section 1 is adopted. Mr. Clerk, Section 2.

CLERK HANSON: "Section 2, Supreme court jurisdiction." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2 of the Judiciary Article, Supreme court jurisdiction, vote Aye; opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Absent
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong, ... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Absent
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Absent
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman [President], 88 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: 88 having voted Aye and 2 voting No, it's adopted. Section 3, Mr. Clerk. And let's start pointing out that Section 3 includes two subsections.

CLERK HANSON: "Section 3, Supreme

court organization", containing two subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 3 of the Judiciary Article, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Mr. Johnson, for what purpose do you rise?

DELEGATE JOHNSON: To vote Aye, if you please.

PRESIDENT GRAYBILL: Johnson votes Aye.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Absent
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Absent
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Nay
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Absent
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Absent
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye

Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, Johnson votes Aye. 83 delegates voting Aye, 6 voting NO.

PRESIDENT GRAYBILL: Very well. Section 3 is adopted. Will the clerk read Section 4.

CLERK HANSON: "Section 4, District court jurisdiction," containing three subsections. Mr. President.

PRESIDENT GRAYBILL: Very well. So many as shall be in favor of Section 4 of the Judicial Article, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye

Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Absent
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman [President], 92 delegates voting Aye, no delegates voting NO.

PRESIDENT GRAYBILL: Very well, Section 4 is adopted.

CLERK HANSON: "Section 5, Justices of the peace," containing three subsections. Mr. President.

PRESIDENT GRAYBILL: Very well. So many as shall be in favor of Section 5, Justices of the peace, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot, please.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye

Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman [President], 65 delegates voting Aye, 27 voting No.

PRESIDENT GRAYBILL: 65 having voted Aye and 27 No, Section 5 is adopted. Mr. Clerk read Section 6.

CLERK HANSON: "Section 6, Judicial districts," with three subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 6, vote Aye on the voting machines; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot. My concern has been that there were a couple of nonvoters. And I-you might look at your lights. If you're-1 didn't want anybody not to be registered that wanted to be. But the ones that weren't voting are now voting, so I presume everybody's all right now.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye

Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ....Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Aye
Joyce.....Aye
Kamhoot ....Aye
Kelleher ..... .Absent
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin.....Aye
McCarvel.....Aye
McDonough..... .Aye
McKeon ....Aye
McNeil ....Aye
Melvin.....Aye
Monroe.. ....Aye
Murray.. ....Absent
Noble.....Absent
Nutting.....Aye
Payne ....Aye
Pemberton ..... Aye
Rebal.....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins.....Aye
Romney ..... Aye
Rygg ....Aye
Scanlin ..... Aye
Schiltz.....Aye
Siderius.....Aye
Simon ..... Aye
Skari ....Aye
Sparks., ... Aye
Speer ....Aye
Studer.....Aye
Sullivan ....Aye
Swanberg.....Aye
Toole ....Aye
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner.....Aye
Ward.. ....Aye
Warden ..... Excused
Wilson.....Aye
Woodmansey Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well. Section 6 is adopted. Section 7.

DELEGATE JAMES: Mr. Chairman [President].

PRESIDENT GRAYBILL: Mr. James.

DELEGATE JAMES: I had a lapse or something. I meant to vote Aye, and I was gazing off at the Indians. (Laughter)

PRESIDENT GRAYBILL: Very well, Mr. James. The record may show thatyouvoted-that you wanted to vote Aye on Section 6.

Mr. Martin.

DELEGATE MARTIN: I was meandering and didn't vote. I vote Aye.

PRESIDENT GRAYBILL: All right. Let's record Mr. James and Mr. Martin as Aye on that last one. That makes it Section 6, 93. I don't want to disturb you people-(Laughter)-but if you want to vote, now is the time. Okay. Section 7.

CLERK HANSON: "Section 7, Terms and pay", containing two subsections. Mr. President.

PRESIDENT GRAYBILL: **So** many as shall be in favor of Section 7, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim.....Aye
Anderson, J.....Aye
Anderson, 0.. .Aye
Arbanas.....Aye
Arness.....Aye
Aronow Nay
Artz.....Aye
Ask..... Nay
Babcock . ..... Nay
Barnard.....Aye
Bates..... Excused
Belcher.....Aye

Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
c am ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong., ... Aye
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman [President], 64 delegates voting Aye, 29 voting No.

PRESIDENT GRAYBILL: 64 having voted Aye and 29 No, Section 7 is adopted. Section **8.**

CLERK HANSON: "Section 8, Selection", containing three subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 8, containing three subsections, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot on Section 8.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard .. .. Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown .. .. Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell .. .. Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart .. .. Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson .. .. Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray .. .. Absent
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 77 delegates voting Aye, 14 voting No.

PRESIDENT GRAYBILL: 77 having voted Aye, Section 8 is adopted. Section 9.

CLERK HANSON: "Section 9, Qualifications," containing four subsections. Mr. President.

PRESIDENT GRAYBILL: Section 9 on Qualifications. So many as shall be in favor, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Aye
Bates .. .. Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock .. .. Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown .. .. Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart .. .. Aye
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray .. .. Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin .. .. Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Absent
Vermillion ..... Aye
Wagner ..... Aye
Ward .. .. Aye
Warden ..... Excused

Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman [President], 90 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: 90 having voted Aye and 2 voting No, it passes. Section 10.

CLERK HANSON: "Section 10, Forfeiture of judicial position." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, vote Aye; and opposed vote No on the voting machines. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?
(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson. 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Absent
Blend ..... Aye
Bowman. ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye

Sparks ..... Aye
Speer ..... Absent
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Absent
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman [President], 88 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well. 88 having voted Aye, Section 10 passes. Section 11.

CLERK HANSON: "Section 11, Removal and discipline," containing three subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 11, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent

Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 88 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: 88 having voted Aye, Section 11 is adopted. Section 12.

CLERK HANSON: "Section 12, Exemption laws." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 12, vote Aye; and so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Absent
Bates.. ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Absent
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Absent
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye

McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 82 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well. Section 12 is adopted. Section 13.

CLERK HANSON: "Section 13, Perpetuities." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 13, vote Aye; and opposed, vote No on the voting machines. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye

Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 92 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: 92 having voted Aye, Section 13 passes. Section 14.

CLERK HANSON: "Section 14, Campaign expenses." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 14, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Excused
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye

Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield. ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks. ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 49 delegates voting Aye, 46 voting No.

PRESIDENT GRAYBILL: 49 having voted Aye, 46 having voted No, I think it's failed. Is that right? Where is the roll? "The Convention shall finally consider individual articles on Order of Business Number 5, section by section, by a majority of elected delegates and refer the said articles to the Committee on Style." No-"by a majority of the elected delegates", so it's failed.

DELEGATE CAMPBELL: Mr. Chairman [President].

PRESIDENT GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I would call for a call of the Convention, please.

PRESIDENT GRAYBILL: Five-how many-four, five, six, seven-how many did we have absent today? The motion is for a call of the Convention. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: All right. Notify the Sergeant-at-Arms.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I think we've already taken this vote. Unless we at some other time reconsider, why, this vote has all gone by.

PRESIDENT GRAYBILL: Right, we have, and we'll give these people the same chance as the others had the other day. If they want to, they may move to suspend and get everybody to vote on it. And then, if it fails, it fails; if it passes, it passes. Will everyone indicate their presence by voting Aye on the voting machines. Who's absent, Mr. Clerk? Cate?—

CLERK HANSON: Delegate Murray and Delegate Rebal.

PRESIDENT GRAYBILL: All right. Murray is around and Rebal is around. Let's just send the Sergeant for Murray. He may be down at the-is Murray in the Rules Committee?

Mr. Dahood, for what purpose do you rise?

DELEGATE DAHOOD: Mr. President, Mr. Murray was on our committee; notified me that he could be found at printing.

PRESIDENT GRAYBILL: Very well. Let's have the Sergeant check for Mr. Murray in printing. I think he's at-I'll tell you where he is. Check the Secretary of State's office for-he's taking bids. (Long pause in proceedings) The Convention will be in order.

Mr. Eskildsen, for what purpose do you rise?

DELEGATE ESKILDSEN: Progress having been shown, I move we dispense with the call of the house-call of the Convention.

PRESIDENT GRAYBILL: Very well, the Chair would like to-before we do that, the Chair would like to-now, would you please indicate your presence on the voting machines again, please. Please vote Aye on the voting machines if you're present. All right, who's not present that isn't excused?

CLERK HANSON: Delegate Babcock. She's here now. That's it.

PRESIDENT GRAYBILL: All right, now there's three excused? Very well. All are here. The motion is to stop the call of the house. Is that it? What's the word you want?

DELEGATE ESKILDSEN: Progress having been shown, I move that the call of the house be dispensed with.

PRESIDENT GRAYBILL: The motion is to dispense with the call of the house, progress having been shown. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Very well. Now, the Chair sees the situation as similarto one we had the other day, and I simply want to give everybody a third chance. What we did the other day at this point was have a motion to suspend the rules. If that passes, then we have a motion to reconsider. If that passes, then we vote on Section 14 again, and it either passes or fails. Anyone care to make a motion to suspend the rules?

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman [President]. I make a motion to suspend the rules.

PRESIDENT GRAYBILL: For the purpose of—

DELEGATE CAMPBELL: --reconsidering the last ballot.

PRESIDENT GRAYBILL: --on Section 14 of the Judicial Article, Mr. Campbell?

DELEGATE CAMPBELL: That is correct.

PRESIDENT GRAYBILL: Very well. The motion is to suspend the rules by-to reconsider Section 14 of the Judicial Article again. So many as shall be in favor of that, vote Aye on the voting machines; so many shall be opposed, vote No. This is not a roll call, but it's a tally. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, 58 having voted in favor of suspending the rules and 37 having voted against it, that motion prevails; it needing only a majority. Very well. Is there a motion to reconsider?

DELEGATE CAMPBELL: Mr. Chairman [President].

PRESIDENT GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I move to reconsider to vote on Section 14 of the Judicial Article.

PRESIDENT GRAYBILL: Mr. Campbell, did you vote on the prevailing side or not?

DELEGATE CAMPBELL: No.

PRESIDENT GRAYBILL: Now, the prevailing side was those who voted-the Chair will rule--was those who voted with the-what was my vote?

DELEGATE ESKILDSEN: Mr. President. It would be those that had voted No, if you're going to rule the same way as you ruled-did the other day.

PRESIDENT GRAYBILL: Yes, it would be those who voted No, and that was the 46. Mr.— All right, it would be those who voted Yes. No, 49

voted Yes and 46 voted No. Now, just a minute. I'll think it out. (Laughter) It's those who voted Yes, because they did not prevail. Those who voted No so far have prevailed. Those who voted Yes-So, anybody that voted Yes-and I suppose, Mr. Campbell, you voted Yes?

Mr. Eskildsen, I'll hear you.

DELEGATE ESKILDSEN: Mr. President. When we went through this yesterday or the day before, it was the side that lost was the-or the side that voted No that was the prevailing side. The side that voted 46.

PRESIDENT GRAYBILL: That's right, but the situation was different than it is today. Today—

DELEGATE ESKILDSEN: No, it isn't, Mr. President.

PRESIDENT GRAYBILL: Now, will you listen to me, and I'll listen to you?

DELEGATE ESKILDSEN: All right.

PRESIDENT GRAYBILL: Today-the other day, the people that were against it were in the majority. No? Well, I ruled the other day that the people who had wanted the section passed had not prevailed. Now, the people who want this section passed are the 49, and they did not prevail; so they're the ones that lost. That's really the substance of my vote the other day. Now we can solve this in two manners: you can either challenge my ruling, or is there somebody on the other side that will make a motion to reconsider?

DELEGATE ESKILDSEN: (Inaudible)— and I think it should be-1 think we should be consistent. We had the same vote. The reason it lost is because we did not have 51 votes. It lost for that reason.

PRESIDENT GRAYBILL: Right.

DELEGATE ESKILDSEN: And this is the reason you give the day before yesterday or whenever it was-that the side that needed the 51 votes lost even though they had the most votes, so the other side were the ones that had to redo there-considering. So it would be the people who-that voted red that would have to reconsider this.

PRESIDENT GRAYBILL: Oh, that's right. I think you're right, Mr. Eskildsen. The Chair has now seen the error of his ways.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman [President]. Having voted on the prevailing side in voting Nay, and going to continue to vote Nay, I offer a motion to reconsider.

PRESIDENT GRAYBILL: Very well. Mr. Driscoll has moved to reconsider Section 14 of the Judicial Article. So many as shall be in favor of voting-of reconsidering, vote Aye on the voting machine for a nonrecorded tally vote; and so many as shall not be in favor, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well; 56 have voted to reconsider and 41 have voted not to reconsider.

Now, Mr. Campbell, do you want to make a motion? Or-let's see-yes, we need a motion for the adoption of Section 14.

DELEGATE CAMPBELL: I make a motion for the adoption of Section 14 of the Judicial Article.

PRESIDENT GRAYBILL: Very well. Mr. Campbell has moved to adopt Section 14 of the Judicial Article, entitled "Campaign expenses". This will be a roll call vote. So many as in favor of adopting it, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, we'll take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Excused
Belcher	Nay
Berg	Nay

Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Nay
Cain	Nay
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Excused
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Nay
Graybill	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Aye
Warden	Excused
Wilson	Nay
Woodmansey	Aye

CLERK HANSON: Mr. President, 49 voting Aye, 48 voting No.

PRESIDENT GRAYBILL: 49 having voted Aye and 48 having voted No, under Rule—what's the number of the rule, John? Under Rule 51, which requires that a majority of the delegates favor a section on final adoption--under Rule 51, Section 14 fails, and it will be deleted from the Judicial Article. Very well. That wasn't so hard, now, was it?

Mr. Murray, for what purpose do you rise?

DELEGATE MURRAY: Mr. President, I rise for two purposes. One, to apologize to the Convention for not being here and-at the time of a crucial situation; and secondly, for the record so that it will show that I was not here unintentionally. I ask to be forgiven for purpose of the record, because I was in the Purchasing Department assisting with the opening of bids on the voter information pamphlet.

PRESIDENT GRAYBILL: Very well. You may be reexcused, Mr. Murray, if you need to. Very well, we've passed the Judicial Article, all except Section 14. Sections 1 through 13 of the Judicial Article have passed, and we'll send it to Style and Drafting--refer it to Style and Drafting for inclusion in the final document. Now, if you'll take your Order of Business Number 5, Environment and Natural Resources Number 6. Very well, we'll consider on final adoption, section by section, the Environmental and Natural Resources Article. I don't know about your copy, but my copy, on line 5, says Section 5, "Protection". That-you want to watch that-correct that "r" there; it looks like "pp" to me, but we'll correct it. Very well, will the clerk please read the title and Section 1 of the article.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting Environment and Natural Resources Number 6. Article, Environment and Natural Resources. Section 1, Protection and improvement", containing three subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1 and the three subsections, please vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

Mrs. Cross, for what purpose do you rise?

DELEGATE CROSS: Mr. Chairman [President]. I'd like to explain my vote.

PRESIDENT GRAYBILL: You may.

DELEGATE CROSS: Since half a loaf is better than none, I'm voting Aye. (Laughter)

PRESIDENT GRAYBILL: Pretty big loaf, Mrs. Cross. Close the ballot and take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye

McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 92 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well; 92 having voted Aye, Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2, Reclamation." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye; and so many as opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Absent
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye

Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Absent
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 86 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: 86 having voted Aye and 5 No, it's adopted. Section 3.

CLERK HANSON: "Section 3, Water rights," containing three subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 3, vote Aye; so many as opposed, vote No. Three subsections-Four subsections. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Absent
Bowman, ... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye

Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward.. ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: 90 having voted Aye and 3 voting No, Section 3 is adopted. Section 4.

CLERK HANSON: "Section 4, Cultural resources." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 4, vote Aye; and opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Absent
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye

Drum ..... Absent
Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon.. ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 86 delegates voting Aye, '7 voting No. Mr. President.

PRESIDENT GRAYBILL: 86 having voted Aye, Section-and 7, No, Section 4 is adopted. Will you now turn to the section on Agriculture, and will the clerk read the title and first section.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting Agriculture Number 6. Article, Agriculture. Section 1, Department of Agriculture." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1, vote Aye on the voting machines; opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye

Blend ..... Aye
Bowman,, ... Nay
Brazier ..... Aye
Brown.. ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson.. ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 86 delegates voting Aye, 10 voting No.

PRESIDENT GRAYBILL: 86 having voted Aye and 10 No, Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2, Special levies." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye

Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Absent
Barnard.. ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong., ... Nay
Garlington ..... Absent
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 7 voting No.

PRESIDENT GRAYBILL: 87 having voted Aye and 7 voting No, Section 2 is adopted. And the Chair hereby refers Natural Resources back to Style and Drafting for inclusion in the final Article--final Constitution. Now, if you'll take Revenue and Finance, Order of Business Number 5-Revenue and Finance Number 7. Will the clerk please read the title and Section 1.

CLERK HANSON: "Order of Business

Number 5, Final Consideration, Style and Drafting Revenue and Finance Number 7. Article, Revenue and Finance. Section 1, Tax purposes." Mr. Chairman [President].

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1, vote Aye on the voting machines; so many as opposed, vote No. have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Mr. Driscoll.

DELEGATE DRISCOLL: Driscoll votes Aye.

PRESIDENT GRAYBILL: Driscoll votes Aye.

Aasheim ..... .Aye
Anderson, J. ....Aye
Anderson, 0..... Aye
Arbanas .....Aye
Arness .....Aye
Aronow .....Aye
Artz ....Aye
Ask .....Aye
Babcock ....Aye
Barnard.. ....Aye
Bates ..... Excused
Belcher ....Aye
Berg .....Aye
Berthelson ..... .Aye
Blaylock .....Aye
Blend ..... Aye
Bowman .....Aye
Brazier ....Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
c am..... Aye
Campbell.. ....Aye
Cate .....Aye
Champoux .....Aye
Choate.....Aye
Conover ..... Excused
Cross .....Aye
Dahood ..... Aye
Davis .....Absent
Delaney ....Aye
Driscoll ..... .Absent
Drum .....Absent
Eck ..... Aye
Erdmann.. ....Aye
Eskildsen ..... Aye
Etchart ....Aye
Felt ..... Aye
Foster ....Aye
Furlong .....Aye
Garlington .....Aye
Graybill ..... Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland ..... Aye
Jacobsen ....Aye
James ..... Aye
J0hnson ..... Aye
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold .....Aye
Loendorf..... Aye
Lorello .....Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Aye
McKeon ....Aye
McNeil ..... Nay
Melvin .....Aye
Monroe .....Aye
Murray ..... Aye
Noble .....Aye
Nutting .....Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal .....Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder .....Aye
Rollins ..... .Absent
Romney ....Aye
Rygg ..... Aye
Scanlin ..... .Absent
Schiltz ..... Aye
Sicerius.....Aye
Simon ....Aye
Skari ....Aye

Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg. ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward.. ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK **HANSON:** Mr. President, Driscoll votes Aye; 92 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Section 2.

CLERK HANSON: "Section 2, Tax power inalienable." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye; opposed, No. Have all the delegates voted?
(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?
(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield,, ... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye

Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 88 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: 88 having voted Aye and 5 voting No, Section 2 is adopted. Section **3.**

CLERK HANSON: "Section 3, Property tax administration." Mr. President.

PRESIDENT GRAYBILL: so many shall be in favor of Section 3, vote Aye on the voting machines; so many as are opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot. Speer votes Aye on Number 3.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock.. ..... Nay
Barnard.. ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye

McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward.. ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, Speer votes Aye on-68 voting Aye, 27 voting No.

PRESIDENT GRAYBILL: Very well. Section 4.

CLERK HANSON: "Section 4, Equal valuation." Mr. Chairman [President].

PRESIDENT GRAYBILL: So many as shall be in favor of Section 4, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock.. ..... Nay
Barnard.. ..... Absent
Bates ..... Excused
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay

Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Absent
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 69 delegates voting Aye, 22 voting No.

PRESIDENT GRAYBILL: Very well; 69 having voted Aye and 22 No, Section 4 is adopted. Section 5.

CLERK HANSON: "Section 5, Property tax exemptions," containing two subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 5, vote Aye; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye
Furlong, ... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Nay

Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ....Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland.....Aye
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce.....Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin.....Aye
McCarvel ..... Aye
McDonough.. .Aye
McKeon ....Aye
McNeil ..... Nay
Melvin.....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble.....Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal.....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins.....Aye
Romney ....Aye
Rygg ....Ay e
Scanlin .....Absent
Schiltz.....Aye
Siderius.....Aye
Simon ..... Nay
Skari ....Aye
Sparks.....Aye
Speer .....Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg.....Aye
Toole ....Aye
Van Buskirk .....Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ....Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ....Aye

CLERK HANSON: Mr. President, 71 delegates voting Aye, 24 voting No.

PRESIDENT GRAYBILL: 71 having voted Aye and 24 No, Section 5 passes. Section 6.

CLERK HANSON: "Section 6, Highway revenue nondiversion," containing two subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 6, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J..... Nay
Anderson, 0..... Aye
Arbanas ....Aye
Arness.....Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard.. ..... Nay
Bates ..... Excused
Belcher ....Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock.....Aye
Blend.....Aye
Bowman., ... Aye
Brazier ..... Nay
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain.....Aye
Campbell.. ....Aye
Cate.. ....Aye
Champoux.....Aye
Choate ..... Nay
Conover ..... Excused
cross.. ....Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye

Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 62 delegates voting Aye, 34 voting No.

PRESIDENT GRAYBILL: Very well; 62 having voted Aye and 34 having voted No, Section 6 is adopted. Section 7.

CLERK HANSON: "Section 7, Tax appeals." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye

Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon.. ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner., ... Nay
Ward.. ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 85 delegates voting Aye, 8 voting No.

PRESIDENT GRAYBILL: 85 having voted Aye and 8 No, Section 7 is adopted. Section 8.

CLERK HANSON: "Section 8, State debt." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 8, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay

Barnard.. ..... Nay
Bates ..... Excused
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock.. ....Aye
Blend .....Aye
Bowman .....Aye
Brazier ..... Nay
Brown ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain., ...Aye
Campbell ..... Aye
Cate .....Aye
Champoux .....Aye
Choate .....Aye
Conover ..... Excused
Cross.. ....Aye
Dahood .....Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll .....Aye
Drum .....Absent
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt .....Aye
Foster ....Aye
Furlong ..... Aye
Garlington .....Aye
Graybill ..... .Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper .....Aye
Harrington ....Aye
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf .....Aye
Lorello .....Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin .....Aye
McCarvel .....Aye
McDonough ..... .Aye
McKeon ....Aye
McNeil ..... Nay
Melvin .....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble .....Aye
Nutting, ... Nay
Payne ....Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder .....Aye
Rollins, ... Aye
Romney ....Aye
Rygg ....Aye
Scanlin ..... Nay
Schiltz .....Aye
Siderius .....Aye
Simon.. ....Aye
Skari ....Aye
Sparks .....Aye
Speer ....Aye
Studer ..... Nay
Sullivan ....Aye
Swanberg ..... Nay
Toole ....Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner. ..... Aye
Ward ....Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 67 delegates voting Aye, 28 voting No.

PRESIDENT GRAYBILL: 67 having voted Aye, 28 No, Section 8 is adopted. Section 9.

CLERK HANSON: "Section 9, Balanced budget." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, vote Aye. (Laughter) Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot. Some people arealways switching. (Laughter)

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: 91 having voted Aye and 2 voting No, Section 9 is adopted. Section 10.

CLERK HANSON: "Section 10, Local government debt." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, vote Aye; so many as opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay

Woodmansey ..... Aye

CLERK HANSON: Mr. President, 77 delegates voting Aye, 17 voting No.

PRESIDENT GRAYBILL: Very well; 77 having voted Aye and 17 No, Section 10 is adopted. Section 11.

CLERK HANSON: "Section 11, Use of loan proceeds." Mr. President.

PRESIDENT GRAYBILL: So many shall be in favor, vote Aye; and opposed, vote No. All the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
conover ..... Excused
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye

Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Absent
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well. Section 12.

CLERK HANSON: "Section 12, Strict accountability." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 12, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate. ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson.. ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye

Robinson Aye
Roeder ..... Aye
Rollins.. Aye
Romney Aye
Rygg ..... Aye
Scanlin .Absent
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well; 91 having voted Aye; 3 No, Section 12 is adopted. Section 13.

CLERK HANSON: "Section 13, Investment of public funds," containing two subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 13, vote Aye; and so many as shall be opposed, vote No.

Mr. McNeil, for what purpose do you rise?

DELEGATE MCNEIL: Mr. Chairman [President], I rise to explain my vote.

PRESIDENT GRAYBILL: You may explain it.

DELEGATE MCNEIL: Mr. Chairman [President]. I supported the Eskildsen amendment to keep in the Board of Equalization. I supported the Swanberg amendment to keep some limitation on state debt. I supported the Aasheim amendment to keep the maximum 2-mill levy for the imposition of a-for the support of state government by a mill levy on property taxes. There is no way I can support a Revenue and Finance Article in which the only limitation on spending is the imagination of the Legislature-Dagwood, in the comic strip-and I agree that's like giving a monkey his own banana plantation.

PRESIDENT GRAYBILL: Very well. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Has everybody voted that wants to vote?

(No response)

PRESIDENT GRAYBILL: Very well. We'll close the ballot.

DELEGATE JOYCE: Mr. Chairman [President], Joyce votes Aye.

PRESIDENT GRAYBILL: Joyce votes Aye.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates ..... Excused
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... .Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... .Absent
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Absent
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent

Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, Joyce voting Aye; 76 delegates voting Aye, 16 voting No.

PRESIDENT GRAYBILL: 76 having voted Aye and 16 No, Section 13 is adopted. You've now adopted all thirteen articles of the Revenue and Finance-thirteen sections of the Revenue and Finance Article. The Chair will refer it to Style and Drafting for inclusion in the final document. Very well. We've finished with the items on Order of Business Number 5 that we had to deal with today. Without objection, we'll proceed back to Order of Business Number 7. Is there objection? I mean Number 10—Number 10, excuse me.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into the Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: "March 16th, 1972. The following committee proposals are now on General Orders: Local Government, General Government, Style and Drafting Report Number 8 of Education, and Style and Drafting Number 10, Education." Eight is Bill of Rights.

CHAIRMAN GRAYBILL: Very well. Members of the committee, the only Style and Drafting report that's been on General Orders 48 hours is Bill of Rights. Education will be up tomor-

row; that is, its 48 hours will be up tomorrow. If you'll all take your Bill of Rights Style and Drafting report and turn therein to page 9—use page 9 if you want to see the changes the committee made. You'll recall that the manner in which we do this is to read the title, turn it over to the Chairman, the Chairman explains it. We take a voice vote unless a roll call is called for. Will the clerk please read the title and Preamble of the Bill of Rights Proposal Number 8.

CLERK HANSON: "Montana Constitution Convention, 1971-1972. Report of Committee on Style, Drafting, Transition and Submission on Bill of Rights Number 8, reported March 13, 1972. Schiltz: Chairman. Be it proposed by the Bill of Rights Committee that there be a new article on the Bill of Rights to read as follows. 'Preamble.'" Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Style and Drafting Report Number 8 and the Preamble thereof, it recommend the same be adopted. There are no changes in the Preamble.

CHAIRMAN GRAYBILL: Is there any discussion of the Preamble? On page 9, Style and Drafting report. Very well. All in favor of the Preamble, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Chairman-Mr. Clerk, Section 1 of the Declaration of Rights.

CLERK HANSON: "Declaration of Rights. Section 1, Popular sovereignty." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman. We've made two sentences out of one rather long sentence. Otherwise, no changes. I might say in connection with the entire Bill of Rights that, in our first comment, we recognized that there is a lot of personal effort in here, and because it wasn't constitutionally substantive, in many cases we had a light hand in editing the Bill of Rights.

CHAIRMAN GRAYBILL: Very well. Is there any discussion of Section 1? All in favor of Section 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 2.

CLERK HANSON: "Section 2, Self-government." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, minor style changes in Section 2. Deleted the words "of the state" as not being necessary and substituted the word "the" for the possessive pronoun on line 23. That's all.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2? All in favor of Section 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 3.

CLERK HANSON: "Section 3, Inalienable rights." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, minor style changes. I have a note I want to check, though. Oh, you'll notice on page 10, line 2, we changed "the people" to "all persons", for the reason that they are doing some relating one to another and it's pretty hard for the people to relate. So we changed it to "All persons—recognize corresponding responsibilities".

CHAIRMAN GRAYBILL: Is there any discussion of Section 3? All in favor of Section 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4.

CLERK HANSON: "Section 4, Individual dignity." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4 of Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, style changes. We put the statement in the positive as opposed to the negative and would-on the supposition that's what a Bill of Rights should do.

CHAIRMAN GRAYBILL: Any discussion of Section 4?

Mr. Cate.

DELEGATE CATE: Mr. Schiltz, for the record, I take it you did not intend to eliminate cities or towns or counties from this prohibition?

DELEGATE SCHILTZ: Well, oh, I should have noted that; I have a mark on it. Agencies and subdivisions are included; we've used that-Let me see, where am I?

CHAIRMAN GRAYBILL: You've used the state only.

DELEGATE SCHILTZ: Oh, I see, yeah, agencies and subdivisions by definition are part of the state and they're included in the state, so for that reason we took them out.

CHAIRMAN GRAYBILL: Very well, all in favor of Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 5.

CLERK HANSON: "Section 5. Freedom of religion." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 5, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman. We just struck "of Montana" so it reads "the state".

CHAIRMAN GRAYBILL: Any discussion of Section 5? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

CLERK HANSON: "Section 6, Freedom of assembly." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman. You will recall that we had some little difficulty the other day on the right peaceably to assemble, and so on, and it was a little cumbersome. Now, as restyled, this states one right to assemble for two purposes; one to petition-one of the purposes being to petition for redress; and the other, to protest against government action.

CHAIRMAN GRAYBILL: Any discussion of Section 6?

DELEGATE SCHILTZ: Mr. McNeil has a question.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. Will Delegate Schiltz yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE MCNEIL: Just for the record, Jack, I want to be perfectly clear that taking out the second "peaceably" that I had put in does not express an intent for nonpeaceable protest of governmental action.

DELEGATE SCHILTZ: I would think not.

CHAIRMAN GRAYBILL: Mr. Schiltz, will you yield to a question from the Chair?

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: Did it used to read, "The people shall have the right peaceably to assemble, petition for redress or peaceably protest government actions"?

DELEGATE SCHILTZ: Yes. Right.

CHAIRMAN GRAYBILL: I don't see—was there another "to" in there? My question is—

DELEGATE SCHILTZ: Well, that was added on the floor, I think by Mr. McNeil.

CHAIRMAN GRAYBILL: Well, my problem is this, Mr. Schiltz. You've said that the people shall have the right peaceably to assemble for two purposes. I'm wondering if the initial language didn't say that they had the right to peaceably assemble, whatever the purpose might be.

Mrs. Eck.

DELEGATE ECK: I believe it did, and I think that it also would grant them the privilege of petitioning without assembling, as it was written. I don't really object to the way this was written, but the meaning is slightly different.

CHAIRMAN GRAYBILL: Can someone find--are you looking up the language we used to have, Mr. Schiltz?

DELEGATE SCHILTZ: No, I don't have that, except as its—

DELEGATE LOENDORF: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: What Style and Drafting did here: in the original section, there were three particular, I think, provisions the Chair mentioned. But this was in conflict with the committee's comment, and we restyled it to bring the section into compliance with the comment.

CHAIRMAN GRAYBILL: Mr. Schiltz, what color is your book on-Mr. Dahood, what color is your book?-Section 6 used to say "Freedom of assembly. The people shall have the right peaceably to assemble-comma-petition for redress or peaceably protest governmental action." Mr. Schiltz, the Chair thinks you've made a substantive change by allowing them only to assemble for two purposes. Now, I don't know-1 just want to call that to everybody's attention.

DELEGATE SCHILTZ: Mr. Chairman, I don't think we did, because we followed the comment on page 19 of the substantive committee, where they said the basic right to assemble for redress of grievances by petition or remonstrance remains unchanged. The wording was typed up a little, in the phrase "protest government action" was substituted for the phrasing "apply to those invested with the powers of government for redress of grievances by remonstrances." In doing so, the committee notes the paramount position of the right and the invaluable function. In any case, we attempted to interpret those comments, and with the interpretation of those comments, we came up with it. I flagged it and pointed it out just exactly what we had done for this very purpose, you see-if somebody wanted to go back to something else.

CHAIRMAN GRAYBILL: I don't like to argue from the Chair, but I don't think this is a terribly deep argument. But it seems to me that the committee comments could very well have listed some of the reasons that they could've-that people can peaceably assemble. But I can conceive of a lot of times that people might peaceably assemble for other purposes than to petition or have anything to do with the government. And I think that they ought to have that right to peaceably assemble if it's to hold a fair, or if it's to do something else. And I think we have taken it away from them in the language-in the change between the language we originally had and the language we have now.

DELEGATE SCHILTZ: Well, this is one of those things we do up there, and if the people want to go back-if the Convention wants to go back to the original language, we have no problem.

CHAIRMAN GRAYBILL: I got the Chairman up now, let's hear from him; then we'll come to you, Mr. Eskildsen.

DELEGATE DAHOOD: Mr. Chairman. I've listened to the reasons from the Style Committee. I do not think the reasons are valid; I think they have changed the intent and purpose of it. We intended to stand with original Section 26 of the current Constitution, which reads, "The people shall have the right peacefully to assemble for the common good and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance." And I move at this time that Style and Drafting be directed to

return to the original language as proposed by the Bill of Rights Committee and adopted by this Committee of the Whole.

CHAIRMAN GRAYBILL: Did you move that?

DELEGATE DAHOOD: I did move it.

CHAIRMAN GRAYBILL: Okay. Mr. Aasheim.

DELEGATE AASHEIM: In the Committee of the Whole, I think we left it this way: That "people shall have the right peaceably to assemble, petition for redress or", and then we included "peaceably protest governmental action".

CHAIRMAN GRAYBILL: Right.

DELEGATE AASHEIM: That's the way we left it. However, at that time I was trying to correct this grammatical misconstruction to say that we should have the right to assemble peaceably and I don't think that it would be necessary to peaceably petition for redress; I don't think a petition could be anything but peaceable. So then we included "peaceably protest governmental action". So I would like to see the Style and Drafting, if they're going to make any changes, to adopt what we did in the Committee of the Whole but to make this grammatical correction, to say that "the right to assemble peaceably", because I don't think that would change the meaning at all.

CHAIRMAN GRAYBILL: All right. Now, some of you may not have your salmon-colored books before you, and the language used to be "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action." You do have the new language before you, "The people shall have the right to assemble peaceably in order to petition for redress or grievance or protest governmental action." The motion at the moment is Mr. Dahood's motion to return to the Convention's language that I just read to you, that we adopted the other day, the non-Style-and-Drafting-change language.

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman. I concur with the motion of Chairman Dahood to return to the original language, and I think part of the problem lies in the caption. Now our present Constitution just has a section number and no title. The title, which was put on by the committee and retained by Style and Drafting, speaks of freedom of assembly. I think there are three separate, distinct freedoms stated in that one paragraph: the right to peaceably assemble; a separate distinct right topetitionforredress, and that need not be by an assembly; and a separate, distinct right peaceably to protest governmental action, which might be by an individual and does not necessarily refer to the right of assembly. So I think we've got three distinct rights there, and I think the original language of the committee ought to be retained, with my extra "peaceably" snuck in there.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Dahood's motion to restore the language that the Convention adopted in Committee of the Whole? Mr. Lorello, are you up? Okay.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. Would there be any possibility of putting those in three sections? I might be for one of them but against some of them.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There would be the very real problem that it would mess up the automatic typewriters, I will say that.

CHAIRMAN GRAYBILL: Mrs. Babcock, you can move to amend one of them out of there. No, you can't either-no, you can't-not now, not unless we suspend the rules.

DELEGATE BABCOCK: Mr. Chairman, may I ask another question? For instance, could I ask this of Mr. Dahood, please, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE BABCOCK: If a teacher at a college, for instance, decides to protest and leaves the classroom and then a student that's going to that college wants to participate in the class but the teacher is out protesting, I believe you're denying the student the right of going to that class.

DELEGATE DAHOOD: Well, I would think the teacher would have violated the contractual obligation. I think that, Delegate Babcock, that's a situation removed from what we're talking about here.

DELEGATE BABCOCK: Okay, thank you, sir.

DELEGATE DAHOOD: And may I recommend to the Committee of the Whole that the language that we drafted and submitted to this Committee of the Whole retains the current protection under our Bill of Rights and we take the position that no basic change should be made in the substance of it, and I renew the motion.

CHAIRMAN GRAYBILL: Very well. Is there other discussion of the motion to return to the language that the Committee of the Whole adopted?

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I'd like to direct a question to Mr. Schiltz.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE ECK: Mr. Schiltz. I can remember during our discussion of this, we considered whether to add "of grievances" which we didn't have. Now do you think that that would be-what was your thinking in adding this?

DELEGATE SCHILTZ: Well, you're talking substance, and I'm not going to take any position on substance. We had a reason for putting it in there. I think Mr. McNeil really hit it on the head. When we called it freedom of assembly, we decided it was a single thing. It's been 5 days since we went over these and I can't remember all the details of the discussion, but I think that that's just about what happened and that's how it got restyled this way. We don't care in Style and Drafting, but if you want to take "grievances" out of there-1 think we picked that up from the comment-I don't care one way or another.

DELEGATE ECK: Mr. Chairman. I was just really indicating that I thought that maybe "of grievances" was a good addition here, but I don't feel strongly one way or the other.

CHAIRMAN GRAYBILL: Very well. The—

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Dahood, do you yield to a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE AASHEIM: I hate to be nit-picky about this thing, but would you object to-to having-to read "to assemble peaceably"; would that make a difference to your interpretation?

DELEGATE DAHOOD: It would make no difference as far as I'm concerned, Mags. I'm concerned in maintaining the substance that we presented to the Committee of the Whole.

DELEGATE AASHEIM: Yeah. Mr. Chairman, I would like to instruct the—

CHAIRMAN GRAYBILL: Why don't you make a motion to amend it.

DELEGATE AASHEIM: Well, if that's in order, I will do so.

CHAIRMAN GRAYBILL: It is—

DELEGATE AASHEIM: But the-just for a matter of having it in the right order, I'd say the-that the word "peaceably" follow "to assemble".

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has proposed an amendment to Mr. Dahood's motion that when we return to the original language, it should--we should put the word "peaceably" after "assemble". So it would say, "The people shall have the right to peaceably assemble"-no, "to assemble peaceably". "The people shall have the right to assemble peaceably, petition for redress"-all he's done is make it "assemble peaceably" instead of "peaceably to assemble"-"assemble peaceably".

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I don't know whether we need to get that nit-picky. The First Amendment to the United States Constitution provides the people-the right of the people peaceably to assemble and to petititon the government for redress of grievances. So-and our Constitution has had that in all the time, and I think the committee properly considered this and brought it out, and I think we should leave it that way. I don't think we are going to improve on the United States Constitution—that's repetition of that anyway. I think we should leave it the same.

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Aasheim's amendment, now, to make it "assemble peaceably", instead of "peaceably to assemble".

Mr. Aasheim.

DELEGATE AASHEIM: In reply to Mr. Davis, I want to remind him that the people who drew up the original Constitution either walked or came on horseback.

CHAIRMAN GRAYBILL: All right, now, we're going to decide this. Everybody ready? So many as shall be in favor of Mr. Aasheim's amendment to make it "assemble peaceably", vote Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: I'll start over— wait a minute, I'll start over again. So many as shall be in favor of Mr. Aasheim's amendment which is to make it say "assemble peaceably" instead of "peaceably to assemble", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. Vote on the machines. If you want to change it to say "peaceably-"assemble peaceably", vote Aye; if you want to do it the other way, vote No. Now here's a real controversy. We better have a call of the house. All right, has everybody voted?

(No response)

CHAIRMAN GRAYBILL: I'm going to close the ballot; anybody want to change their vote?

(No response)

CHAIRMAN GRAYBILL: 28 having voted to change it to "assemble peaceably" and 55 sticking with the founding fathers in the original Constitution, the motion fails, Mr. Aasheim. All right. Now we are back on Mr. Dahood's motion.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, as you read that, I'm not sure that you got Mr. McNeil's second "peaceably" in there, which is in the—

CHAIRMAN GRAYBILL: Yes, it's in there.

DELEGATE SCHILTZ: Is it? Where is it? Because I want to be able to tell the committee.

CHAIRMAN GRAYBILL: All right. If you adopt Mr. Dahood's motion, the section will read, "Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action". That's what we did the other day. Now, so many as shall be in favor of Mr. Dahood's motion to use the language of the Committee of the Whole, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

(No response)

CHAIRMAN GRAYBILL: Okay, we're back to the original language.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 6, Style and Drafting Report Number 8, as amended, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well, all in favor of Section 6 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted, as amended by going back to the original Committee of the Whole language. Mr. Clerk, Section 7.

CLERK HANSON: "Section 7, Freedom of speech, expression and press." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 7, Style and Drafting Report Number 8, it recommend the same be adopted. I shouldn't have any problems with this one, Mr. Chairman. We didn't change anything.

CHAIRMAN GRAYBILL: Is there any discussion? All in favor of Section 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

CLERK HANSON: "Section 8, Right of participation." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 8, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only very minor style changes.

CHAIRMAN GRAYBILL: Any discussion?

DELEGATE SCHILTZ: I might call attention to the fact that on line 30 you will see possibly the only "such" that will be in the entire Constitution.

CHAIRMAN GRAYBILL: And that one's unnecessary. All in favor of Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, narrowly. It's adopted. Section 9.

CLERK HANSON: "Section 9, Right to know." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 9, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman. There are no changes.

CHAIRMAN GRAYBILL: Mr. Dahood, I know for what purpose you rise. You want-you're going to-let's adopt the Style and Drafting thing, and then we'll open it up at this point for a motion. All those in favor of Section 9, Style and Drafting report, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. On behalf of the Bill of Rights Committee, I move at this time that the Committee of the Whole vote to suspend the rules for the purpose of reconsidering Section 9.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood has made a motion to suspend the rules for the purpose of reconsidering Section 9. Is there a discussion on just the issue of suspending the rules? We'll have a roll call vote.

Mrs. Eck, did you want to discuss it?

DELEGATE ECK: I just wanted to be sure that people knew why we were suspending the rules. We have met and have come up with an amendment to this section which appears to be satisfactory to the press. And the committee feels not only it's satisfactory to us, but in reality strengthens the section. Thank you.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as shall be in favor of suspending the rules, vote Aye; and so many shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Mr. Martin.

DELEGATE MARTIN: I'd like to explain my vote. I am very much in accord with the motion to reconsider, but I must be consistent.

Aasheim.. .. .. Nay
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas Aye
Arness .. Nay
Aronow .. .. Nay
Artz .Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates..... Excused
Belcher ..... Aye
Berg ..... Absent
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier Nay
Brown ..... Aye
Bugbee ..... Aye

Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Excused
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Nay
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Nay
Mansfield. ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Absent
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal Aye
Reichert ..... Aye
Robinson Aye
Roeder ..... Absent
Rollins, Aye
Romney Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius.. Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Aye
Studer ..... Nay
Sullivan Aye
Swanberg. Absent
Toole Absent
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Excused
Wilson ..... Nay
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 64 delegates voting Aye, 22 voting No.

CHAIRMAN GRAYBILL: 64 having voted Aye and 22 having voted No, the motion to reconsider is adopted. Now, somebody want-a motion to suspend the rules is adopted, pardon me. Now, somebody want to make a motion to reconsider? We've suspended the rules; now in order to reconsider Section 9, we have to have a motion.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I move that the Committee of the Whole reconsider Section 9 for the purpose of adding the following language-I refer the Committee of the Whole to page 6, line 3—after the word "the", by inserting the following words and punctuation: "Legislature, subject to court interpretation, shall have determined that the". The pages have passed to all of the delegates "Right to know", typed with that language inserted. That language is underlined.

CHAIRMAN GRAYBILL: Mr. Dahood has-Mr. Dahood, I presume you voted on the prevailing side?

DELEGATE DAHOOD: I did.

CHAIRMAN GRAYBILL: Very well. Now, I'll allow your motion to reconsider. For

those of you that might be following in your Style and Drafting books, it's on page 11, line 6, before the last word in the line, "demand", is where you pot in the little phrase.

DELEGATE DAHOOD: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: If this committee should favor the motion to reconsider on behalf of the Bill of Rights Committee, with two dissenting votes, I will then move to amend Section 9 in the particulars already stated. The Bill of Rights Committee held a hearing at which the protestants of the press were invited to attend. The committee then called a committee meeting and decided that the Right to know, Section 9, should be amended and that comments be added to the Bill of Rights proposal so that there can be no mistake as to the intent behind the amendment. I respectfully request the members of the Committee of the Whole to grant us the right to reconsider--approve the motion so that we may move for that amendment.

CHAIRMAN GRAYBILL: Is there discussion on the motion to reconsider? Very well, all in favor of the motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman and members of the Committee, I move to amend Section 9 in the particulars already stated, adding the words, "the Legislature, subject to court interpretation, shall have determined that", so that Section 9 will then read in these terms: "Section 9. Right to know. No person shall be deprived of the right to examine documents, or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the Legislature, subject to court interpretation, shall have determined that the demands of individual privacy exceed the merits of public disclosure." Along with it, joined in that motion, is a request that the comments supporting that section, which appear at pages 21, 22 and 23 of the Bill of Rights Committee Proposal Number 8, be amended by adding, at page 23 in the salmon-colored committee proposal, which you have, after the paragraph ending on line 18 on page 23, the following words which willconstitute, on behalf of the Bill of Rights Committee and on behalf of its Chairman, our reasons for asking that this amendment be adopted. The comment to be added would read in these terms, the wording: "except in cases in which the Legislature, subject to court interpretation, shall have determined that the demands of individual privacy exceed the merits of public disclosure" is incorporated to require that any administrative decision or regulation adopted pursuant to this section be based either on a legislative enactment or the case law which develops under this provision. The thrust of this effort is similar to the design of the federal Freedom of Information Act, to insure that exceptions be carefully enough defined to reduce the potential for abuse of discretion by those who decide to withhold a document or close a meeting. In denying access, the agency would have to indicate some basis for its decision. The committee notes that the highest court in Montana has in several decisions recognized a broad right of privacy, citing cases. The committee in no way intends to overturn these decisions which establish so important a right. The right of individual privacy announced in this section, intentionally limited to individual privacy so as to preclude a government agency or corporation claiming the right, is intended to curtail disclosure insofar as it is established by the Legislature and/or the courts that the demands of such privacy clearly exceed the merits of public disclosure. The intent of the phrase "subject to court interpretation" is to avoid the situation of a recent sovereign immunity decision in which the State Supreme Court refused to weigh the merits of the doctrine of sovereign immunity, saying the Legislature has spoken, citing that particular decision. It is intended that any legislative exemption under this section be subject to court interpretation and review. This seemingly obvious point is made to emphasize that the courts have a role in balancing the two important rights in themanner specified in this section. My opinion, as Chairman of the Bill of Rights Committee, is that by this amendment we reach that point of compromise that satisfies the press of the State of Montana. We have not taken away any of the substance incorporated in Section 9, Right to know, as adopted by this Committee of the Whole. For reasons that are well known to all of us, we think this particular amendment should be accepted and adopted. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. For the first time I rise in opposition to my Chairman. And I hate to do it, because I like him and I respect him and I have worked together with him very closely through these weeks and I don't think we've ever had a serious disagreement. But like the one man said-he said, "Any time two guys are always together and they're always agreeing, one of them isn't doing any thinking". Now, I just take a couple of moments here to point out a few things. First of all, the language that we adopted in this committee was very carefully worked out in the Bill of Rights Committee. We all agreed to it, and then it was presented to this Committee of the Whole, where it was debated very thoroughly. We have many legal people in this room, and they-and we adopted it. Then, after we-shortly before this came before this Committee of the Whole and after its adoption, came the deluge of criticism saying that we just simply had to change this thing. And one of the things that disturbs me is then that we begin to have some ad hoc committees meeting-and so far as I can find out, not authorized by anyone-and we were presented the other day with a fait accompli in as far as the change of language was concerned. Now, Torrey, a fait accompli is what we boys down in Yellowstone mean when-we use when we've been had. Now, (Laughter) I believe that the language which was originally adopted by this Committee of the Whole and by the Bill of Rights is good language. I believe that we should leave it alone. I would not object to putting into our comments what is meant insofar as giving the Legislature power to lay out those very special cases where we feel that the right-the demands of individual privacy exceed the merits of public disclosure as interpreted by the court. I think this could be put into the comments, but I resist changing this language under pressure. This group held fast in two other instances that I'm very aware of, where great pressure was put on, and I think we should hold fast here.

DELEGATE DAVIS: Mr. President [Chairman]. Where do we stand **now?** Has Mr. Dahood made a motion to adopt this new amendment?

CHAIRMAN GRAYBILL: Yes.

DELEGATE DAVIS: I would like at this time to make a substitute motion to delete this section.

CHAIRMAN GRAYBILL: Well, just a minute. Mr. Dahood has made a motion to substitute the new language, and your motion will be in order. This is another motion before me, but even if yours prevailed, it's not jeopardized since it was going to start by deleting. Mr. Davis, do you want to delete Section 9 in its entirety?

DELEGATE DAVIS: Yes, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Foster, for what purpose do you rise?

DELEGATE FOSTER: A point of order. Was the original motion to suspend the rules pursuant upon considering thesection as amended, or what's the ruling on that?

DELEGATE DAVIS: Once you open it, it's open for all purposes, isn't it, Mr. President [Chairman]?

CHAIRMAN GRAYBELL: Well, the original order was to suspend the rules to reconsider Section 9, the way I took it. I think it's that broad. Mr. Dahood, you made the motion. Wasn't it to reconsider Section 9?

DELEGATE DAHOOD: Yes, Mr. Chairman. And I conferred with the Chairman of the Rules Committee, and he indicated to me that when I moved that the rules be suspended for the specific purpose of reconsidering Section 9, that that opened Section 9 up to the type of motion that Delegate Davis has attempted to place before this committee.

CHAIRMAN GRAYBILL: I think we— Mr. Foster, I think we have the whole ball of wax before us. And-is that a good phrase, Mr. Foster?

DELEGATE FOSTER: Well, my only point has been that in the past when we have made moves to suspend the rules that, in fact, we've limited it to very narrow interpretation. And I don't want to argue with the Chair, but it does seem that in this case maybe we've taken an exception to the reason-to the way that we've suspended the rules in the past. But I won't—

CHAIRMAN GRAYBILL: Mr. Foster, the Chair would say that it doesn't necessarily try to limit it; the Chair tries to make it specific. And in this case, I wrote down that Mr. Dahood had said "for the purpose of reconsidering Section 9". Now that's what he said. He didn't-then he went ahead and told what he would do later on, on the motion to reconsider; he told what he'd do if that

was done. But on the motion to suspend the rules, he just said "for the purpose of reconsidering Section 9". I believe that's correct. Isn't that correct, Mr. Dahood?

DELEGATE DAHOOD: Mr. Chairman. I think perhaps Delegate Foster is correct in this respect, that although the motion to suspend the rules was carried for that specific purpose, the Chair ruled that the Chairman of Style and Drafting should nevertheless move that that particular section be adopted. That was done, and then I moved to amend the section as it was adopted, so I should think that that's beyond-reconsideration is beyond deletion and only open for the purpose of amendment.

CHAIRMAN GRAYBILL: Now, the Chair is going to rule that Section 9 is open for any purpose. Now, if we want to challenge that, I'll be happy to—

DELEGATE BLAYLOCK: I challenge that.

CHAIRMAN GRAYBILL: All right. The challenge is whether Section 9 is open for any purpose. Who is making the challenge?

DELEGATE BLAYLOCK: I will.

CHAIRMAN GRAYBILL: Very well, the Chair has been challenged, and I think the language is that you must vote to sustain a challenge and the Chair gets to explain its position. And I think I have explained the position that I think Mr. Dahood moved to suspend the rules to-with reference to Section 9, and I think Section 9 is now open for rediscussion. But if you wish to sustain Mr. Blaylock's motion that it is not open for rediscussion in the sense that it-what you're really saying, then, is that it is not open for deletion; it's only open for the purposes of Mr. Blaylock's-of Mr. Dahood's motion. And it seems to me that we then have to adopt or not adopt Mr. Dahood's motion only, and having adopted or not adopted his motion only, we'd be dead unless we went back and widened the suspension of the rules. So the Chair rules that it's wide open; and Mr. Blaylock says it's not, it's only open for Mr. Dahood's language. And the motion must be put, do you sustain Mr. Blaylock's objection? So on the voting machines for recorded vote, vote Yes if you vote with Mr. Blaylock and vote No if you vote to sustain the Chair-but Yes to sustain the objection. So many as shall be-or let's say, have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, I'm going to close the ballot. Take the ballot.

Aasheim	.Aye
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	..Aye
Bates	Excused
Belcher	Nay
Berg	Nay
Berthelson	.Aye
Blaylock	Aye
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Aye
Cate	..Aye
Champoux	Aye
Choate	Nay
Conover	Excused
Cross..	..Ay e
Dahood	.Aye
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt.	Nay
Foster	Nay
Furlong	Aye
Garlington	Nay
Graybill	Nay
Gysler	..Absent
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	..Aye

Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Aye
Holland.	Absent
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Nay
Sullivan	Aye
Swanberg	Absent
Toole	Absent
Van Buskirk	Absent
Vermillion	Aye
Wagner.,	Nay
Ward	Nay
Warden	Excused
Wilson	Nay
Woodmansey	Nay

DELEGATE MAHONEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: (Inaudible)—that we didn't get this wrong. Actually-the probably-now the Noes are voting in your favor—should have been that you-the Chair-the question is, shall the Chair be sustained? That's probably the proper way to put the motion.

CHAIRMAN GRAYBILL: Well, I don't think it is. We're off the tape, so when we get on the tape I'll explain it, Mr. Mahoney.

CHAIRMAN GRAYBILL: Now, Mr. Mahoney, would you restate your position so it's on the tape?

DELEGATE MAHONEY: Well, Mr. Chairman, all I was trying to state that actually—in my understanding of old, maybe not in this body, but ordinarily on an appeal from the decision of the Chair, it is ordinarily placed-the question is, "shall the Chair be sustained?" And this is a normal parliamentary procedure, and I don't know what we operate under here.

CHAIRMAN GRAYBILL: Right. Now, the Chair would like to explain that we did it backwards here, and we did it backwards here because of Rule 75 which says: "On all appeals from decisions of the Chair, the question shall be, 'Shall the appeal be sustained?'" And this came up before and I-this was pointed out to me and I did explain it clearly that if you voted red, naturally you voted with me since I voted red; and if you voted green, you voted with Mr. Blaylack. So I don't think anyone was confused; but unfortunately, our rules are opposite of *Robert's* on that issue, and that's why I had to explain that. Mr. Clerk will you read the vote.

CLERK HANSON: Mr. Chairman, 23 delegates voting Aye, 67 voting No.

CHAIRMAN GRAYBILL: 67 having voted No, the appeal is not sustained and the Chair is right. Now, before we go on, the Chair would like to explain that one of the reasons I did this is not that I am trying to get into the business here, but I have had other requests from other delegates and I have a pile of papers here for other people that want other amendments. And I know that they wanted to do this, and I was not in a position, unless Mr. Dahood more strictly limited it to freeze them out, and so that's why I did it, Now, we're back on Mr. Davis' motion to delete

Section 9 entirely, and I think I've got you the floor, Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman] and fellow delegates. I think this is a rather critical situation we've found ourselves in here. This Bill of Rights Committee gave a lot of study and in all good faith made an effort to have disclosure and examination of documents. The press, as I understand their testimony when we're on the floor, had appeared before them; and apparently it was overlooked that the press, of course, was anxious to see what all documents and all records in any office are. And so was the committee, but the committee was also anxious to protect the individual and-it says, "The right of privacy is essential to well-being". Is that the one?

CHAIRMAN GRAYBILL: Right. Number 9, that's Number 10.

DELEGATE DAVIS: Thank you. In other words, it said they will have the right to examine, and everyone says "except in cases in which the demands of individual privacy clearly exceeds the merits of public disclosure". Well now, that would seem to be about as fair as you could put it. In other words, we recognize all through the Bill of Rights we're trying to protect individual rights, and everyone was all for that, And in this we sound like we're all for it, except after it was in and adopted and Mr. Dahood made a very stirring talk on this floor about it, Mr. Martin got up and had the brashness to suggest we delete it then; it was going to cause problems. But we didn't pay much attention to him, so we voted him down 14 to 76, because Mr. Martin's only been in the newspaper business about 50 years and, of course, this is a newspaper and we're all-have been come--90-day wonders we called them in World War II when we got our commission right quick. So in all these things—now we've got a situation where the press has publicly attacked the Convention to the extent of taking front page editorials in the Billings Gazette, saying they couldn't support this Constitution. Well now, what if we put something else in here today and maybe next week, like they did this time, they'll find it not quite suitable or something else? It's the type of thing-and it's the very proof, and it's wonderful that it happened-to show what can happen when you try to writesomething you don't know all about in a Constitution, and two weeks later someone discovers it really is not going to fit their picture like they wanted it, and let's amend it. Well, we're down to the last stage; we can't do much more changing. So let's delouse some of these things we're trying to put in here that aren't going to work forever, and leave it up to the Legislature. The Legislature has an act on the right to know now. The press can go to those legislators and expand on this to whatever degree they want. They can go to the court, and so can the individuals. Let's not try to foster a battle with the press; on the other hand, let's not be intimidated when they say, "We don't like this"; let's not back up. All the words that we said on this floor last week and have a complete compromise--and then the next day we'll hear how we sold out to the Montana Power or someone else by the same story. So let's be consistent; let's delete this whole section and get on with the rest of it and let them work out something that will be acceptable and flexible. The inflexibility of these things is dramatized by what has transpired here; and we can turn around and create just as bad a situation by trying to reach a compromise that we haven't all had time to sit on. We haven't all been involved in this; it's been kind of a private treaty. And I have all the respect in the world for the committee, but under our open rule theory, we should have done 'er all on the floor; we should have had the debates, and we weren't able to. So I think we should, at this point then, delete this and leave it to the Legislature. Thank you.

CHAIRMAN GRAYBILL: Mr. Belcher.

DELEGATE BELCHER: Just one point. I think it ought to be noted that Grace Bates missed the vote, and she's back here and I think we ought to have her vote.

CHAIRMAN GRAYBILL: Very well. Grace, your presence is noted for the journal, and you may vote from now on.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. This has been my proposal, and I still stand by it. I think that, really, the right to know is one of the provisions that is rather symbolic of our whole Convention, and I would really protest having it struck at this time. I think probably more than any other body-official body, anyway-which has ever met in Montana, we have stood up for the public's right to know. I think that there have been times when it's caused us a lot of discomfort, it's times when it's been frustrating, but I think that practically all of us agree that, all in all, it has been a very wise principle under which to operate. Now, so far as our present disagreements, as has been said before we came up with the wording

which we presented to the Convention after a great deal of deliberating. And we came up with it satisfied-but satisfied because we had considered a lot of other possibilities of ways that we could really put the burden of stating privacy on the agency-in other words, some way whereby the agency would be the one which would have to prove the burden--or to bear the burden of proof so far as privacy goes. This is very difficult to do. As the amendment came onto the floor--or as the provision came onto the floor for debate, Section 9, we were considering at that time-a number of people had considered, and, in fact, Delegate Cate proposed, an amendment which would have provided--which would have included a "provided by law". I think it might have been given more serious consideration if the hour hadn't been so late and if-1 think there was a bit of confusion as to whether the "provided by law" would refer to the right to know section or to the exception. I'm sure that Delegate Cate intended it to apply to the exception. And I-at that time I had spoken with quite a number of people from our committee who agreed that this wouldn't really make any difference. I'd also talked with a number of attorneys, and the attorneys' viewpoint was that it neither strengthened nor weakened it by putting this "as provided by law" in, which, you know, would have read, "except in such cases as provided by law". However, the press would have been satisfied with this. Now, this isn't entirely a press amendment, although at that time it was obvious to us that that was all that they seemed to want, was an assurance that the Legislature would outline those cases in which the demands of individual privacy were really clearly and-note "clearly"; "clearly" wasn't used in some of the comments this morning, and I think on this little sheet it's not included, but that's an oversight. The difficulty here is, as is-was noted by Mr. Dahood this morning, that there have been some court cases in which where you say "provided by law", the court refuses to rule on it. They say, "Well, the Legislature has already ruled". We also didn't want to get that kind of a situation because it's quite possible that a Legislature would, in times to come, determine that a-that privacy was of very-a broad construction and would apply to a lot of situations where the merits of public disclosure really would be greater. So for that reason we felt that it was really important to assure that we would have some court interpretation here. I think that this whole situation has-it's been regrettable. I'm not sure in my own mind that the amendment we have presented to you is really necessary, but I am sure that not only for the press but for a good many individuals who areconcerned about what's going on in agencies, that this will truly clarify things for them. In other words, they can go to an agency and they can say, you know, "Show us the legislative restriction that prevents us from going to this meeting, or prevents us from seeing these documents in your files, or show us some court cases which prevent it". And if those cannot be pointed to, that means that they are entitled to go to that meeting and they are entitled to look at those documents. So probably for the operation of a right to know, these words are really helpful; and I do hope that you will vote against Mr. Davis' motion to delete and vote for our amendment to the article. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. On behalf of the committee, I want all the delegates to fully understand that the section, Right to know, was fully discussed and fully debated in our committee. We did not have any misapprehension about it, any doubt about its effect. I think any constitutional lawyer would look at Section 9 and put a grade of "A plus" upon it. It's stated in a broad principle form. It's the type of constitutional right that must necessarily be expressed in general terms; the specific guidelines that perhaps some of the critics would like cannot be stated within that particular section if it's to fall within the framework of a true constitutional principle, It's a principle that must endure for the decades and the ages. It still provides that the Legislature can set guidelines within this particular doctrine; the court shall interpret within this particular doctrine. That is not the problem. The problem is the one that's obvious to all of us; and I don't like to stand here and say that I have withdrawn from the committee's original position because of pressure, but I think I have a higher responsibility than my own personal satisfaction, perhaps, in prevailing in a situation such as this, where I know we are right; and that is to give this constitutional document, when it's finally executed by all of us, its best chance for passage when it's presented in the public form. I submit that this right is important, and I think we should consider it; but on the other hand, sometimes it's the hallmark of good judgment to compromise. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman,

fellow delegates. I'd like to recall for you-first of all, I'm speaking against the move to delete. I recall for you when we first discussed the article that came from the Bill of Rights, the article said, very simply, "except in cases in which the demand of individual privacy exceeds the merits of public disclosure". We immediately saw that there was a problem about who was going to make that judgment, and so we added by amendment the word "clearly". And all that it seems to me that the people who are in that field are trying to tell us is that we need to define it just a little bit more. There is fear here of intimidation, power play. I personally don't feel it, I feel that I can listen to someone who is experienced as the result of an article and tells us reasonably what-how that should be further defined. So I think all we're doing is accepting a further delineation of that word "clearly", which we saw ourselves and we all accepted; it needed to be in there. So I don't think this action of accepting this new wording is at all contrary to our original move at all.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. It grieves me sore to be required to reject the motion of the gentleman from Beaverhead County, but I must. I do not think it's a good idea to remove this Right to know section, and I will briefly tell you why. Let us take a not-so-hypothetical case of an adult and three juveniles in the dead of night breaking into a service station and filching the bankroll; they're apprehended. The newspaper, seeking to carry the news, has a reporter call at the Clerk of the Court's office or Sheriffs office, secure information upon which to base an article. If you can get the name of the adult but you can't get the name of the juvenile and if you print the name of the juvenile you are apt to find yourselfin the clink for contempt of court, you print the adult's name and not the juvenile's name, and there's a gross misapplication of justice. Newspapers are supposed to print all of the facts, not part of them. It's almost every week, and even in small operations like mine, something of this character is encountered; and I feel that the right to know must be protected. And I think that the Lee papers, in bringing this case to the public, were very remiss in not doing it earlier, but I think it was necessary even though it did cause this regrettable dislocation of our operation. I think personally that the original section was satisfactory, and I think that the present contemplated section is satisfactory, except the day might come when the Legislature or court might impose some restrictions that the press will not like nearly as much as they have right now. So they may inherit the whirlwind, but for the moment I must oppose Delegate Davis' motion.

CHAIRMAN GRAYBILL: The issue is on Mr. Davis' motion to delete Section 9 in its entirety.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. If the intent of this section was solely to benefit the press and news media of this state, I think I probably would be inclined to go along with Mr. Davis' motion; but the intent of this section is not solely designed for the press and news media. The press and the news media have power; they have money; they have ways of getting information; and quite frankly I'm not particularly concerned about the press and news media getting the news. They will get the news one way or another. That's their business; that's their talent; that's why they're there. But I'm concerned about the average citizen; the citizen that has some particular interest in a meeting of government, something that's particularly involved that affects him personally as a citizen. And the intent of this section was to broaden the protection of the average citizen, and, in fact, that's what the original section as written did. I would like to speak further on the-as relates to the amendment, but at this time I strongly protest the move of Delegate Davis to delete in its entirety this section. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I resist the motion to delete. I agree with Chairman Dahood insofar as we have worked on this; I think this is an important right to keep in our Constitution, in our Bill of Rights. I believe that the language, as I said before, is adequate and is good in our original adoption, but whichever way this Convention goes or decides to do, I would hope that we'd take one or the other, and not throw the whole thing out.

CHAIRMAN GRAYBILL: Very well. The motion is on Mr. Davis'—or the issue is on Mr. Davis' motion to delete in its entirety.

Mr. Martin, do you wish to speak before Mr. Davis closes?

DELEGATE MARTIN: If I may, please.

CHAIRMAN GRAYBILL: Very well.

DELEGATE MARTIN: Mr. President [Chairman]. It's odd to find oneself in a dilemma. I knew that when I voted, the first person who would be around to check on me would be Jack Schiltz; and he was there because of the fact that1 had said that I would oppose reconsideration. I next got a note from Delegate Burkhardt that said, "The dinosaur was consistent, too." And then my seatmate ahead of me turned around and gave me a quotation from Emerson: "The love of consistency is the hobgoblin of little minds." (Laughter) So I am properly in my place; but I would say that my decision for, I hope, consistency with regard to reconsideration was to put an end to the repetitious diarrhea of words that we've been experiencing by reason of the fact that we have continuous reconsiderations. As a newspaper man for, as Delegate Davis says, half a century, I think that we do and should retain the right to know, and I think that it's been demonstrated over the last 15 or 16 years that we have developed a freer and freer press in Montana. And I think the interest that the press has and the Press Association has in this matter is primarily to insure the right of a free press and the protection of people. Mr. Dahood has over there, on his desk, a clipping from the Billings Gazette which shows a picture of a reporter being evicted from a County Commissioners' welfare meeting. The purpose of that meeting was a group of protesters seeking consideration of the food stamps; and those people, the County Commissioners, to evict the press, said it was a private meeting. And that is just a sample of some of the things that we find as we try to get news. The Bill of Rights does have a protection guaranteeing the freedom of the press. I think that the people who had this conviction, and maybe I'm not altogether in sympathy with some of the tactics that they had, I think that they were dedicated and sincere in their efforts to try to do what was best for the people. I think that's about all I say; I leave it to you. I have stated my position on reconsideration. That's my story.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: May I close, sir?

CHAIRMAN GRAYBILL: I think so.

DELEGATE DAVIS: Is that all right with everybody?

DELEGATES: Yes.

DELEGATE DAVIS: All right. I would like to reply to a couple of things if I can, Mr. President [Chairman]. The first thing, we all want to write something that's appealing to everyone in this Constitution. So now here's what our right to know is going to say: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions", now, "except in cases in which the Legislature, subject to court interpretation-" Now, that's the consitutional provision that I would defy Mrs. Eck to find in any constitution in the world. You are going to put it in, "subject to"-"except in cases which the Legislature, subject to court interpretation-" Now that might help the press, but as far as the poor little individual that's going to come, armed with his legislative and court interpretations, down to find out which documents he can examine, the whole thing has to be done by the Legislature. The first article was all right; it would still have to be interpreted anyway, but we're just—writing it in is a strict appeasement situation. I'm all for the right to know, but I'm all for the rights of the individual. In 20 years as County Attorney, there were many, many things that came up in my office that I'm sure it wasn't the best for everybody to know about at that time, until after there's some decision been made. And the press in our area was very discreetful and very understanding and didn't create any problem. But as far as writing in a constitutional platform like this, I think it's completely unreasonable. Now I don't think it's a question of whether you are going to alienate the press or not. The Legislature, you know-that same Legislature that last week you gave-took off all debt limits on and you took off all-gave complete power to tax, that's the same Legislature that's going to elect the legislators that are going to go up there to make the rules. They have an open meeting thing now, and those same voters that are very intelligent-elected you and I-are going to elect those legislators that are going up that are going to make this law. And whether you put this in the Constitution or whether you don't, it's left up to the Legislature. It's probably-if Mr. Dahood says this is going to be an "A plus" provision in the Constitution, it's going to be an "A plus" because there's no constitution in the world that has one like it and there never will be one that has one like it, and so it'll stand only because of its peculiarity in that regard. Now, the right to know is a very important right-it's a fundamental right and a constitutional right-but if we can't put it in any better than this, then we should leave

it out entirely. There's no question but the press brought about this complete turnaround-this complete turnaround on our committee. I'm grateful to them; I think they should be thanked. I think they overreacted a little bit, but then they do on everything; I mean, that's to be expected. But they brought this about--and, of course, the press is a pressure group; they are lobbying for their own interest in this regard--and I think the thing should be completely removed and let them go and lobby the Legislature on how they want this done. Thank you.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote. All in favor of deleting Section 9 in its entirety, vote Aye; all against it, vote No.

Has every delegate voted?

UNIDENTIFIED DELEGATES: No.

CHAIRMAN GRAYBILL: All right; hustle, fellows. What you're doing out in the hall while Mr. Davis is closing, I don't know. All those in favor of deleting Section 9, vote Aye; all those opposed, vote No.

Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote.

Aasheim .. Nay
Anderson, J. ..... Aye
Anderson, 0.. Aye
Arbanas Nay
Arness ..... Aye
Aronow Aye
Artz Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Nay
Belcher Nay
Berg ..... Nay
Berthelson Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Absent
Burkhardt ..... Absent
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Excused
Cross.. ..... Nay
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt ..... Aye
Foster ..... Nay
Furlong ..... Nay
Garlngton ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland, ... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Absent
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye

Reichert . Nay
Robinson . . . . Nay
Roeder . Nay
Rollins.. Nay
Romney Nay
Rygg .....Absent
Scanlin ..... Nay
Schiltz . Nay
Siderius. Nay
Simon .....Aye
Skari ..... Nay
Sparks.....Absent
Spew ..... Nay
Studer .....Aye
Sullivan Nay
Swanberg.. .Absent
Toole.....Absent
Van Buskirk ..... Nay
Vermillion Nay
Wagner .. .. Nay
Ward .....Aye
Warden..... Excused
Wilson .....Aye
Woodmansey .. Nay

CHAIRMAN GRAYBILL: Will the clerk announce the ballot.

CLERK HANSON: Mr. Chairman, 33 delegates have voted Aye, 56 have voted No.

CHAIRMAN GRAYBILL: 56 have voted No, the motion fails. We're now discussing Mr. Dahood's motion to put in the new language: "the Legislature, subject to court interpretation, shall have determined that the"-to-in other words, we write in the extra exception.

Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. I was one of the dissenters in our Bill of Rights Committee for the amendment to this particular section. A representative of the news media came before our committee, and we met with this person, and I felt that some of his reasoning was unfounded. And he didn't present, in my estimation, a very good argument for amending our present Section 9 on the Right to know. I think we've been subjected to some maybe undue pressure; and I think our original section as it was stated is quite adequate, and I don't want to weaken it by amending it with the present wording. So I oppose the amendment to Section 9, and I urge this body to retain the original Section 9 on the Right to know as adopted by this committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I don't really know why it has to be in there, "subject to court interpretation", because that's what they'regoing to do anyway, whether you have it in there or not. It's really very immaterial. But for the record, the Legislature is going to have to write some new codes. I'm sure, on this. And for the record, I'd like it very plain that when they're-when the Senate, if we do have one, or the Legislature as a body—that it be very plain that they have the right to—when they're confirming appointments by the Governor, that they have the right to hear the person being confirmed in privacy. I think that the various political parties, and particularly the Democratic and the Republican parties-the legislators that are elected-have the right to caucus privately; that the County Commissioners, in particular, have the right to interview welfare personnel privately. I think this is the right of the individual that's being interviewed. I went along with Mr. Davis on this to delete the whole thing, but I can see that if we are going to pass this amendment, that the Legislature will have a stack of codes very high; that the courts and case will be many. I think to delete the amendment would be the best thing right now. I think when it says: "except in cases in which demands of the individual privacy exceeds the merits of public disclosure", is good in just the way it is, and by adding the Legislature we only compound any good decisions we might have and that we will end up with many codes and many court decisions on each single item that they bring forward.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman. I thought of the idea perhaps you ought to try to eliminate freedom of the press and worry about the people, but I resisted that temptation. This doesn't have a blessed thing to do with the right of the free press; it's already guaranteed and there's already a body of law having to do with the free press. This has to do with the right of the people, the little guy, to find out what's going on, and I resist the motion to be stampeded into changing this thing. I would rather stick with the original. I think it has nothing whatsoever to do with the press, but the people. The press will take care of itself; lets us take care of the people.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I have listened with a great deal of interest to Delegate Eskildsen, and I think there's got to be a

few more things in the record so that the Convention knows this; and I'm just putting this on the record. Impeachment proceedings; when they're deliberating, I think they have certainly got to be able to have secrecy. I think of investigating committees of the Legislature. I have seen times when people would not testify except behind-so that they know-we made testimony of it later. I'm just trying to get into the record that we think these provisions should remain inviolate for that, and this is what's bothering me more about the Legislature. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. I rise, too, to oppose the amendment because I can think of many situations that would come up; for instance, in city hall in which the occasion is an emergency and it couldn't possibly fall under any particular vague guideline that the Legislature might have setup. And you can't call a special session of Legislature into session while they're waiting to get a decision. And I strongly oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. First, I would like to speak to the problem that the committee brought before this body. I know that the members of the committee or--would have been much happier to have said, "Okay, we presented our article and the body has approved it and everything is well and good". But I think the course of this Convention will show that, in fact, most committees are subject to at least one reconsideration; and I submit that our committee is subject to at least one reconsideration, and this is it. Second, I'd like to point out that, in my opinion, with the information that we had available at the time we presented the article to this body, we did, in fact, present the best section on Right to know that we could present with the information we had available. But I think that you will all have to admit that there is additional information brought out in the course of debate when the article is presented for Committee of the Whole. There is additional information which comes to the attention of the committee after this has met the scrutiny of public opinion. And I think you will all have to recall that in many cases we have reacted to the scrutiny of public opinion, and this, in fact, is what we are doing in this case. Now, as for the section itself, it is the feeling of the committee, and it's my particular feeling, that we have in no way weakened the section as far as the right to know of the citizen; we have only attempted to clarify it. Now, granted, the Legislature is going to have to pass laws for any article in this Constitution, for the most part; and when we say "the Legislature", we are only drawing to the attention of anyone that would read this what is already the case. But after, that phrase is more than just subject to court interpretation-the phrase continues, it does not end at that point: "subject to court interpretation, shall have determined that the demands of individual privacy exceed the merits of public disclosure". And this latter phrase is which-is where the committee felt additional clarification was necessary, because we have, in fact, stated a principle which must be defined. It was the original feeling of the committee that this, in fact, meant that the Legislature would pass laws that would clarify it and the court would have interpretations of those laws which would clarify it. Some people interpreted this to mean that the individual who had the information could determine whether, in fact, it exceeded the merits of public disclosure. This is the sole reason for adding the additional language; to clarify the point that, in fact, the individual who has the information or is in charge of the meeting being held is not really capable of saying at that time and point, "This meeting is closed; this information is private on the basis of it exceeding the merits of public disclosure". So we felt, as a committee, that it was necessary to clarify this instance where an individual comes to a meeting and is told that, in fact, this meeting is closed. There was really no other reason for putting this wording in here, and I think that if you will read it carefully you will see that, in fact, all we have done is clarified it. And that was the intent of the committee, and I think that they have been correct in that intent. I strongly support the amendment. I feel that it will be the best of reasonable worlds, and I submit that it will still be an extremely strong--as strong as it was before-provision. Thank you, Mr. Chairman and fellow delegates.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: May I direct two short inquiries to Delegate Dahood?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROMNEY: Mr. Dahood, in your opinion, would not the Legislature be likely to implement the Section 9 as it is in the book anyway, with legislation?

DELEGATE DAHOOD: Yes, I think that's correct.

DELEGATE ROMNEY: And the second question is, would not the court at some time or other cover the legislation that was so enacted?

DELEGATE DAHOOD: I don't think there's any question about it. I think that if we Look into any Bill of Rights for any state or for the federal government, we are going to find hundreds and thousands of cases that have become necessary over a period of time to define precisely the guidelines for those particular rights.

DELEGATE ROMNEY: Now, the third question and final. The sentence which is placed in here as an amendment then is just spelling out what would be done anyway?

DELEGATE DAHOOD: That's my judgment.

DELEGATE ROMNEY: Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I think the wording proposed in the amendment is probably more important than we might think at first sight. I tried to work it out in my own mind what it might really mean, and I came up with an example, for what it's worth. Take the question of gambling; let's say we had a law that says there shall be no clear gambling. Now, what would that mean? That would mean only when it was out in the open, and it's quite different than saying there shall be no gambling except as allowed by the Legislature. It seems to me that that's kind of the same wording we have here, when you say there shall be no clearly difference between the two, that you'll leave it actually unsaid. And so this opens up all cases; in other words, we have the blanket opening of all cases except as restricted. And I think that's very important.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I wish to speak in opposition to the amendment. And I think the thing that we're not addressing ourselves to is this change. The fundamental change gives the individual the right to privacy unless public disclosure compels it to or--unless-there has to be public disclosure. This means that the right to know exceeds the right to privacy unless you can go to the Legislature and get a bill passed or a court—and a court interpretation. And so you've turned the thing completely around. In other words, you've given the people who want the right to know to say, "We've got the right to know unless you've got legislation on the books". And if they don't meet or you don't get your bill passed for 2 years-and there are many, many things that come up in public bodies. And I think it's ill-conceived, and I think it's ill-considered, and I don't-and illegally written. And I think if we're going to have one on there the same at all, let's take the one that was thought out the first time. It's not that serious with the press. They're going to have the right to know just like they always have, whether there was anything in the Constitution or not, and the Legislature is going to have to implement it, so I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President [Chairman]. I also rise to oppose the amendment. I worked for about 6 years in areas where this question of the right of privacy was quite a subject. I saw so many, many cases where, if the newspaper had got hold of some of the material that I had, that the many, many individuals who were completely innocent of any wrongdoing whatever would have had their names spread all over the front page of the papers, and perhaps their reputation ruined for life. So I certainly hope that this doesn't pass.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. As a member of the committee, I agreed with this the other day; but as more people talked about it, it has caused a question in my mind; and I might have to use a woman's prerogative and vote against this amendment. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I would like to speak in opposition to the amendment for two reasons. It's unclear in my mind as who wrote this amendment. I do not-I'm not sure that it was the committee who wrote it. I really don't think it makes any difference, when you get right down to it, whether we have the amendment

in the Constitution or whether we accept the original committee report. I thinkultimately, ofcourse, the court is going to interpret what we're going to be able to do. Primarily though, I object to the way this whole thing was handled. I got a letter-I'm sure other people from Yellowstone County got a letter, from the publisher of the Billings Gazette, who until now has been, I felt, very strongly in support of what we were doing here. I didn't appreciate the way he handled it. I would agree with Mr. Foster that we have reacted to public opinion before, but we have not acquiesced to public opinion before, and it occurs to me that this is what we're just about to do. Lots of public pressure has been brought on lots of issues and we've discussed them, but we really have never acquiesced; and I am afraid that if we accept this amendment, while it really won't, I don't think, change anything, we will have admitted that we have acquiesced to the public pressure of the newspaper.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, may I close?

CHAIRMAN GRAYBILL: No, before you close there are some other speakers.

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I want it very clearly understood that1 want to see a right to know written into this Constitution. I think it is an absolute right of every citizen to know what's going on in the government that he elects. But I rise in opposition to this proposed amendment. I think it is just so much gobbledygook. I can't really believe that it's been written by anyone who understands the nature and function of government. Let me read it to you and explain my reasons. It says: "the Legislature, subject to court interpretation, shall have determined". Now, to start off with, the Legislature enacts laws, or the Legislature repeals laws, or the Legislature appropriates money. In all of my experience, I have never yet seen the words, "the Legislature determines". I really don't know what that means, and I don't think anyone here in this body can clearly, explicitly explain it. We should write this Right to know; if it has exceptions, we should put them in clearly. Now, I also am a great advocate of the right to privacy and the right of dignity in an individual, and I don't want to see this Convention do anything that is going to interfere with those two rights. When we talk about the right to know as compared to the right of individual privacy, we are talking, to a certain extent, about two conflicting theories; and basically, that's what our problem is here today. I submit to you that this proposed language does not cure anything. What does it really mean? It says this, that if there is a conflict, if a problem arises, the Legislature is going to determine, apparently, the individual problems, perhaps even as they arise. That's not an unreasonable interpretation of the language as it is contained under this proposed amendment. Further, it says that even though the Legislature makes that determination, if it should do it—and I submit to you it does not determine things, it enacts, it repeals, it appropriates; that's all it does-nevertheless it's going to be subject to court interpretation. How in the world is this going to be a workable provision at all? Now, I submit to you that if you turn this down, as I think you should—this particular amendment-I submit that really what should be said here is: "The Legislature shall enact laws to protect individual privacy and dignity". Sure-not that the courts--of course, the courts may-a problem may arise, an individual may have a problem, two individuals may disagree, the courts are the forum for the decision on that matter, not the Legislature. For these reasons, I hope you will turn this particular hodgepodge of an amendment down.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to take the Chair?

(Delegate Aasheim takes the Chair)

CHAIRMAN AASHEIM: Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, members of the body. I rise with some hesitation to oppose the Chairman of the committee on this matter, but I do so partly because I notice that he rises with some reluctance himself to change this language. I've listened carefully to debate and I agree with many of the people that have spoken, but there are some things that I think should be pointed out. First of all, a Bill of Rights is the document of the Constitutional Convention and of the Constitution, and that's what we're on, Bill of Rights. It is our statement of the rights of the people, as Mr. Furlong says, and this language says that we'll give it to the Legislature. Now, I don't-I'm not against giving lots of things to the Legislature, and we've done our share and I think it's been fine, but we should not push on the Legislature the duty of determining what the rights of the people are in this state. Their right to know is our job to protect, and we're pushing it on the

Legislature with this language. Now then, when we've done that, I'm concerned because I understand the newspaper's lawyer had something to do with this. When we've done that, what have we done here? Suppose the Legislature says nothing's secret, is the newspaper going to be happy? Yes, but what about the people? Suppose the Legislature repeals its present statute some week or some year, and they say everything's secret. Have we protected the rights of the press and of the people to know? We're giving up the right of the people to have us determine this matter right here. Now, secondly, it says "subject to court interpretation", so obviously the argument that the courts are going to have to look at it is out the window, because the courts are supposed to look at it under the new language as well as under the old. But, Mr. Foster, I'd like to take a shot at getting you back in the fold, because I think you made an interesting argument, and one which-I'd like to even protect the press, if I may, from itself. You know, before the courts interpret this language, somebody else is going to interpret it. What's going to happen is the Legislature's going to pass a statute of some kind, that's going to list all of the incidences that it thinks should be secret. Now if you know the Legislature as I do, they're not going to do that in one line; there's going to be a lot of different things that are secret. They're going to have the same trouble we're going to have, or we're having. They're going to put a lot of words in that statute. And when somebody comes to the agency and wants to know-let's say it's the reporter, or let's say it's a person-when they come to the agency and want to know, or when they try to get into the agency meeting, who's the first person that's going to interpret the Legislature's language? It ain't going to be the courts, it's going to be the agency. So the more language you give that agency to work with, the less to know there's going to be left, because they'll be able to interpret it right out of the window. So if the press really wants to lock this state up, just let them have the Legislature pass a nice, long-as-your-arm statute about what's secret; and everything will be secret by the time the agency, or the agency head, or the agency lawyer gets his hands on it and advises whether the people can come to the meeting or whether the papers can be shown to the press. I don't think the press has yet thought this thing through. The press has to go and demand what it wants, and if an agency makes an unreasonable determination, the press has to take them to court and whip them; that's the only way this thing's going to work. But the way the committee originally drew it, at least the little guy's got something to say to that agency man when he goes to the door; he's got the Constitution. But he hasn't got anything when we get through amending it. So I think, Mr. Foster, you could do the press a big favor, and I'm sure we could all help Mr. Furlong protect the people, if they'll just let us write the Constitution and they'll write the articles.

CHAIRMAN AASHEIM: Any further discussion? (No response)

Mr. Dahood, do you want to close?

DELEGATE DAHOOD: I do, Mr. Chairman, and I close. Thank you.

CHAIRMAN AASHEIM: What's the question? The question then arises on the motion of Mr. Dahood to insert the following language: "the Legislature, subject to court interpretation, shall have determined that the", in the body of the original Right to know, Section 9. Any question about the meaning of the amendment? If not, those who are in favor will vote Aye; those who are opposed will vote No.

Mrs. Babcock.

DELEGATE BABCOCK: (Inaudible)-in favor of inserting the language, the amendment, you vote Aye-or NO?

CHAIRMAN AASHEIM: Of Mr. Dahood, yes. If you are in favor of that language, you vote Aye; if you oppose this amendment, you vote No. And you-are you clear? Has everyone voted?

(No response)

CHAIRMAN AASHEIM: Does anyone want to change his vote?

Mr. Romney, for what purpose do you arise?

DELEGATE ROMNEY: Mr. Chairman, I want to explain my vote. I do have a personal interest, but I think that the public interest is paramount, and I am voting.

CHAIRMAN AASHEIM: The clerk will tally the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay

Barnard.. ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman. ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... .Absent
Burkhardt ....Absent
Cain ..... Nay
Campbell ..... Nay
Cate ....Aye
Champoux .....Absent
Choate ..... Nay
Conover ..... Excused
Cross ..... Nay
Dahood .....Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll .....Aye
Drum .....Absent
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ....Aye
Furlong ..... Nay
Garlington .....Aye
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper.....Aye
Harrington ..... Nay
Heliker ..... Nay
Holland ..... .Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ....Absent
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello .....Aye
Mahoney ..... Aye
Mansfield ..... Nay
Martin .....Absent
McCarvel ..... Nay
McDonough ..... .Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray.. ....Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin .....Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks .....Absent
Speer ..... Nay
Studer ..... Nay
Sullivan ....Aye
Swanberg .....Absent
Toole ....Absent
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Excused
Wilson .....Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman. 18 delegates have voted Aye, 70 have voted No.

CHAIRMAN AASHEIM: 18 having voted Aye, 70 voting No, the amendment is lost.

(Delegate Graybill assumes the Chair)

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz, I think you should re-move Section 9 as is. And we'll—

DELEGATE SCHILTZ: I did move it and it was adopted, Mr. Chairman.

CHAIRMAN GRAYBILL: So I guess we don't need to do anything.

DELEGATE SCHILTZ: No.

CHAIRMAN GRAYBILL: Mr. Berg, for

what purpose do you rise?

DELEGATE BERG: I did have a proposed amendment in another portion that I wanted to have considered.

CHAIRMAN GRAYBILL: Well, we're not through with Style and Drafting on this at all. I'm just trying to finish up Section 9.

DELEGATE BERG: You have-may I propose the amendment? It eliminates two words.

CHAIRMAN GRAYBILL: In Section 9?

DELEGATE BERG: In Section 9.

CHAIRMANGRAYBILL: Youdon'thave it up here.

DELEGATE BERG: I do not have it there.

CHAIRMAN GRAYBILL: Very well, while Section 9 is open then, Mr. Berg, what's your proposal?

DELEGATE BERG: I move to delete the word "bodies" and the word "or", following the word "public" and before the word "agency".

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I have been concerned as a lawyer about the use of the word "public bodies", particularly as it relates to the verb-or the noun really-"deliberations" or "deliberate". When I think of a public body deliberating, I think first of a jury; that's a deliberative public body. I think not only of an ordinary jury sitting in a civil or criminal case, I think also of grand juries, of which we have had some operating in both Gallatin and Park Counties. Those deliberations ought not to be open and available for observation by any member of the public or any participant in the litigation or any person who's under suspect before the grand jury. For that reason I think we should strike the words "bodies or", because I think with that terminology in there it is clearly broad enough to include the deliberations of a public body; to wit: a jury. Similarly, and of course my mind does run, I admit, along judicial lines, but take the deliberations of the Supreme Court. That's a public body. Is it to be understood that Mr. Davis, or Mr. Dahood, or myself, if we're on opposite sides of the case, having finished the argument, may then go into chambers with the court and observe their deliberations in the judgment of the case we just argued? I submit to you, under the language as it is, those things would be possible. I don't think you intend it. If you strike the words "bodies or", you leave it to the agencies of state government. Now I want to see all agencies, in particular, opened up to the public. I want their documents examined; I want their deliberations open. I am particularly interested in the operations of the city councils and boards of county commissioners, as well as all other agencies and commissions and forms of government. I want their deliberations open; I want their documents available for inspection. But I do not think that the term "public bodies" adds anything, and it may create problems which we do not otherwise envisage. I therefore submit for your consideration the deletion of those two words "bodies or".

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I have a hard time thinking of the Constitutional Convention as an agency, or the Legislature as an agency, and I-my mind is not fast enough, maybe, to turn to some others. I don't know what other word to use for groups like this, other than public bodies. It seems to me like-1 tried to listen carefully as he went through the list, maybe not in every case, but in many of the things Mr. Berg described, the phrase that takes exception, that says "clearly exceeds the merits of public disclosure", certainly would be applied to a grand jury. I just can't picture this not applying there. I think I would oppose the amendment.

CHAIRMAN GRAYBILL: Now, the Chair would like to know how many people expect to speak on this. If we're going to debate it, we're going to recess; and I'm perfectly happy that you do so.

All right, Mr. Dahood, we'll take one more shot at it.

DELEGATE DAHOOD: Well, Mr. Chairman. I think probably I should rise in view of the fact that some question has been raised. If the language of Delegate Berg can be accepted, then of course I think his concern is one that should concern us all. And I think the interpretation that he has given could possibly be laid against this section, but I am very reluctant to rise in opposition to Delegate Berg on this issue because I'm certainly in accord with everything that he says, except I'm not satisfied in my mind and judgment that a court could conceivably give thatinterpretation to

"bodies". We are referring there to public bodies; perhaps city councils, perhaps some bureaucratic groups or some bureau that may have been established perhaps for some particular special public purpose that may not fall within the term of "agencies". But then again, "agencies", I suppose, is a generic term. We are involved, I suppose, in semantics here. I think our comments clearly indicate that we are not trying to upset any traditional rule of procedure with respect to anything within the judiciary. I think our comments certainly indicate we're not trying to upset any particular privacy that's required in the matters referred to by Delegate Mahoney. I just do not think that that problem would arise. And with those comments in the record and in the journal, I would stand with the present language.

CHAIRMAN GRAYBILL: The Chair sees others that want to debate it. I think we'll debate it after lunch; we're all pretty hungry.

Mr. Eskildsen. For what purpose do you rise, Mrs. Eck?

DELEGATE ECK: I have an announcement.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE ECK: I have an announcement.

CHAIRMAN GRAYBILL: I'll come to that.

DELEGATE ECK: Oh, okay.

DELEGATE ESKILDSEN: Mr. Chairman. I move that the Committee of the Whole stand in recess until 2 o'clock this day.

CHAIRMAN GRAYBILL: All right. We're going to recess until 2 o'clock if you vote for it, but I must announce that there will be a Style and Drafting meeting during lunch.

And Mrs. Eck, do you want to make your announcement, or do you want me to?

DELEGATE ECK: Why don't you.

CHAIRMAN GRAYBILL: There is to be an Administration Committee meeting in the Rules Committee room at a quarter of 2:OO; that'11 be 15 minutes before we come in. Very well, all in favor of recessing until 2 o'clock, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:46 p.m.--reconvened at 2:14 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Members of the committee, before lunch we were discussing Section 9 still. And the situation was that Mr. Berg had an amendment to Section 9, as it's shown on page 11 of the Style and Drafting report, that we were working in. His motion was on line 5 to delete the words "bodies of'-line 4?-"bodies" or-all right- "bodies or"--excuse me, line 5, so that it would read: "or to observe the deliberations of all public agencies" instead of "public bodies or agencies". And it was Mr. Wilson's turn to talk.

Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman]. Would Mr. Berg yield to a question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE WILSON: Mr. Berg, as this provision is now written, would this pertain to all Police department files, Sheriffs office files, Attorney General's files, County Attorney's files, in respect to investigative matters?

DELEGATE BERG: Well, I wouldn't want to be the one to pass judgment on that, but I would call your attention to the last portion which reads that: "unless the demands of individual privacy clearly exceed the merits of public disclosure". And I would suspect that there will be problems arise in the interpretation of it that only the courts will decide. I could not give you a firm answer, yes or no.

DELEGATE WILSON: Mr. President [Chairman]. Will Mr. Berg yield to another question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE WILSON: Who, in your opinion, would determine whether this would be public or not?

DELEGATE BERG: I anticipate that there would be court cases develop and, out of that, decisions rendered as in any other statutory or

constitutional interpretation problem.

DELEGATE WILSON: Mr. Berg yield to another question?

CHAIRMAN GRAYBILL: Mr. Berg?

DELEGATE BERG: I yield.

DELEGATE WILSON: Would you foresee a lot of litigation, separate litigations on these particular issues?

DELEGATE BERG: No, I foresee that there will be litigation. I foresee that there will be interpretations, and that final decisions will be achieved through the courts.

DELEGATE WILSON: Thank you, Mr. Berg.

CHAIRMAN GRAYBILL: Is there other discussion? Very well, members of the committee, you have before you the motion of Mr. Berg that we delete the words "bodies or", so that Section 9 reads: "or to observe the deliberations of all public agencies" instead of "public bodies or agencies". Roll call?

DELEGATE BERG: May I close now?

CHAIRMAN GRAYBILL: Yes, close.

DELEGATE BERG: I only want to remark that during the noon recess I asked our research analyst to look up definitions of "public bodies". She was unable to find any court decisions actually interpreting the word "public bodies". So I assume that we are now inserting, if we leave it in the Constitution, words that do not have any interpretation and, to this date, have no fixed meaning. I would like to remark, for the purpose of the record, that my purpose in asking to delete the word "bodies or" is to eliminate the potential interpretation that it might include juries, grand juries, Supreme Court deliberations.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berg's motion to delete the words "bodies or". So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and the motion fails. No, I think that was pretty clear. Now we're still debating Section 9; is there any further discussion?

Mr. Schiltz, is it your opinion that we don't need to readopt Section 9?

DELEGATE SCHILTZ: Mr. Graybill, it's much stronger than an opinion; I did it and it has been adopted.

CHAIRMAN GRAYBILL: So that if we're all through reconsidering it, we just leave it alone?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Is Mr. Scanlin's motion to amend Section 9 going to come before us?

CHAIRMAN GRAYBILL: Well, Mr. Scanlin, what do you want to do, withdraw it or leave it?

DELEGATE SCANLIN: Mr. Chairman, I wish to withdraw it.

CHAIRMAN GRAYBILL: It's withdrawn. Very well, unless the Chair hears differently, we will consider the matter of reconsideration of Section 9 closed. Mr. Clerk, will you read Section 10.

CLERK HANSON: "Section 10, Right of privacy." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Any discussion? As many as shall be in favor of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 11.

CLERK HANSON: "Section 11, Search and seizure." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 11, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we made one or two minor style changes, nothing significant.

CHAIRMAN GRAYBILL: Any discussion of Section 11? All in favor of Section 11, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered--or it's adopted. Section 12.

CLERK HANSON: "Section 12, Right to bear arms." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 12, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, there are no changes in Section 12.

CHAIRMAN GRAYBILL: Section 12, is there any discussion? So many as shall be in favor of Section 12, say Aye.

CHAIRMAN GRAYBILL: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 13.

CLERK HANSON: "Section 13, Right of suffrage." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this Committee does rise and report, after having had under consideration Section 13, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we changed the title of "Right to suffrage" to "Right of suffrage" to confirm with what was said on line 28. And besides, that sounds better.

CHAIRMAN GRAYBILL: Any discussion of Section 13? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 14.

CLERK HANSON: "Section 14, Adult rights." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 14, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we changed the word "eighteen" to figures "18" for drafting purposes. And then we struck "or older", because anybody 18 years of age is an adult and we didn't think that was necessary.

CHAIRMAN GRAYBILL: It looks to me like you put "or older" in.

DELEGATE SCHILTZ: Or, I mean—that's what I mean to say; we put "or older" in, because otherwise it sounded as though we only had 18-year-olds who were adults. I'm sorry.

CHAIRMAN GRAYBILL: We've got to watch you, don't we, Mr. Schiltz?

DELEGATE SCHILTZ: This is a bad day, all the way around.

CHAIRMAN GRAYBILL: All right. Is there any discussion on Section 14? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Section 15.

CLERK HANSON: "Section 15, Rights of persons not adults." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report,

after having had under consideration Section 15, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we made this conform with Section 14 by style changes.

CHAIRMAN GRAYBILL: Any discussion of Section 15? All in favor of Section 15, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 16.

CLERK HANSON: "Section 16, The administration of justice." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 16, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, one or two minor style changes, nothing else.

CHAIRMAN GRAYBILL: Section 16. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 17.

CLERK HANSON: "Section 17, Due process of law." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 17, Style and Drafting Report Number 8, it recommend the same be adopted.

We had to restrain the committee quite a bit, Mr. Chairman, to leave this one alone, but it was just like the U.S. Constitution, so we decided to leave it.

CHAIRMAN GRAYBILL: Is there any discussion? Is that all right, Mr. Davis? (Laughter) All in favor of Section 17, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 18.

CLERK HANSON: "Section 18, State subject to suit." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 18, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we made some changes here- we changed "Nonimmunity from" to "State subject to suit". Nonimmunity sounds like two negatives, which we didn't like, and I think this is better. We used the words "local governmental entities" to conform to the language we used in the Revenue and Finance Article, which will be used throughout the Constitution. We made a substantive change on line 27; where it had "June first", we put in "July first", for the reason that most insurance is going to be purchased probably after the first of July and not-or effective the middle of the year and also statutes become effective on the first of July unless some earlier date is specified. And we checked this with the committee, and the committee had no problem.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. The committee does agree, and I am compelled to concede to Style and Drafting that they have improved the language.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 18, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. 19.

CLERK HANSON: "Section 19, Habeas corpus." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 19, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, no changes.

CHAIRMAN GRAYBILL: Mr. Johnson, oh-All in favor of Section 19, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. **20.**

CLERK HANSON: "Section 20, Initiation of proceedings." Mr. Chairman. Containing two subsections.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 2, sub. 1, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we made style changes; nothing very significant.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 20, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 20, sub. 2, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, again style changes; nothing significant.

CHAIRMAN GRAYBILL: Now, are you on 21 or 20?

DELEGATE SCHILTZ: I am on 20, sub. 2.

CHAIRMAN GRAYBILL: Well, we take these whole things at a time, Mr. Schiltz, don't we?

DELEGATE SCHILTZ: No.

CHAIRMAN GRAYBILL: Oh, we don't, I beg your pardon. That's on the other half of the melon. Okay, 20, sub. 2. Is there any objection?

DELEGATE SCHILTZ: I'm watching you pretty close, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: All in favor of **20,** sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered— it's adopted. A fellow could get confused at this game if you played it long enough. Section 21.

CLERK HANSON: "Section 21, Bail." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 21, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, no change.

CHAIRMAN GRAYBILL: 21? All in favor of 21, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. **22.**

CLERK HANSON: "Section 22, Excessive sanctions." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 22, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, no changes; it's the old section from the Constitution.

CHAIRMAN GRAYBILL: All in favor of Section 22, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. **23.**

CLERK HANSON: "Section 23, Detention." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 23, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we only made a change on line 26 to be consistent-"provided by law" as opposed to "prescribed by law"-and that's all.

CHAIRMAN GRAYBILL: All in favor of Section 23, say Aye.

Oh, Mr. Joyce, were you up?

DELEGATE JOYCE: Yes, Mr. Chairman. I'm going to move at this time to suspend the rules.

CHAIRMAN GRAYBILL: On 23?

DELEGATE JOYCE: On Section 23. And if I am successful, I would propose to strike the last sentence, because as I understand it, the United States Supreme Court has held that a deposition may not be received as evidence at the trial if the witness is dead or absent from the state; and it just seems to me that we really shouldn't pass something that's contrary to the federal Constitution.

CHAIRMAN GRAYBILL: Very well, the Chair understands Mr. Joyce's motion to be to suspend the rules to-so that we could reconsider Section 23. And he has also further said that if that happened, he would make a motion to reconsider and would be interested in the last sentence; but notice that the whole section will be open. Is there any discussion of the motion to suspend the rules? All in favor of suspending the rules on Section 23, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in favor, vote Aye; and all opposed, vote No. Every delegate voted?

UNIDENTIFIED DELEGATE: No.

CHAIRMAN GRAYBILL: Does any delegate want to change his vote? Very well, 64 having voted in favor and 16 against, the motion to suspend the rules is adopted.

Now Mr. Joyce, do you want to make a motion to reconsider?

DELEGATE JOYCE: Mr. Chairman. I move to reconsider the section-the action of the Convention on Section 23, and if that motion passes I would have a motion to delete the last sentence.

CHAIRMAN GRAYBILL: Is there discussion on the motion to reconsider? All in favor of the motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Joyce, do you want to state your-Mr. Joyce, you did vote on the prevailing side when we adopted this, didn't you? To the best of your recollection? (Laughter)

DELEGATE JOYCE: Let me say I think so.

CHAIRMAN GRAYBILL: Very well, what's your motion?

DELEGATE JOYCE: Mr. Chairman. I move to delete the last sentence of Section 23, on line 29, at page 13—that's where I'm reading-the following words, beginning with "Any": "Any deposition authorized by this section may be received as evidence on the trial if the witness shall be dead or absent from the state."

CHAIRMAN GRAYBILL: Mr. Joyce. Your motion is to delete the last sentence in its entirety, is that correct?

DELEGATE JOYCE: Yes.

CHAIRMAN GRAYBILL: Very well. You may have a motion deleting the last sentence beginning with the word "Any" in line 29: "Any deposition authorized by this section may be received as evidence on the trial if the witness shall be dead or absent from the state."

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. It's my—as I understand it, the United States Supreme Court has held that you cannot use a deposition in a criminal trial against a defendant in that, if the person-the witness is dead, he must-his evidence is gone forever. And if he's absent from the state, you can't use the deposition against him because the federal Constitution, which guarantees that a person will beconfronted by-has the right to be confronted by his accusers-that on the trial of the case, the jury has the right to see the accuser to test his credibility and witness on the stand and if he isn't there the evidence just can't be admissible. And any constitution or statutes that authorize it violate the fed-

eral Constitution. And since the Supreme Court has so held, it seems to me that adopting a Constitution thereafter, that we really shouldn't fly in the face of the United States Supreme Court.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. There is some question as to whether or not this particular provision would conflict with that particular decision, because there areinstances where the testimony that is so preserved may be in favor of defendant. But in any event, the Criminal Code of the State of Montana, which was recently enacted, does provide for the particular procedure involved in these matters. And because of that concern that's been expressed by Delegate Joyce and several other lawyers who are members of the Convention, the committee would have no objection to deleting that sentence. It does not take away from the substance of that particular Section 23.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Joyce's motion to delete the last sentence of Section 23, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's deleted. Are there other amendments to Section 23?
Mr. Schiltz.

DELEGATE SCHILTZ: I move when this committee does arise and report, after having had under consideration Section 23, Style and Drafting Report Number 8, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: The motion is to adopt Section 23 as amended. Is there discussion? All in favor of adopting Section 23 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Section 24.

CLERK HANSON: "Section 24, Rights of accused." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 24, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Section 24? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 25.

CLERK HANSON: "Section 25, Self-incrimination and double jeopardy." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 25, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we made style changes; nothing significant. We said "No person shall be again put in jeopardy for the same offense", as opposed to "twice put in jeopardy".

CHAIRMAN GRAYBILL: Section 25. Any discussion? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 26.

CLERK HANSON: "Section 26, Trial by jury." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 26, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, we made style changes, with no substantive changes.

CHAIRMAN GRAYBILL: Section 26. All in favor of Section 26, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, say NO.

(No response)

CHAIRMAN GRAYBILL: Section 26 is adopted. Section 27.

CLERK HANSON: "Section 27, Imprisonment for debt." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 27, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, minor style change.

CHAIRMAN GRAYBILL: Section 27. Is there any discussion? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, say No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 28.

CLERK HANSON: "Section 28, Rights of the convicted." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 28, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, in this case we struck out "and full rights shall be automatically restored", and reinserted, on lines 10 and 11, "shall restore all civil and political rights". Now I understand that Mr. Campbell has some problem with that, but in defense of the committee, if you'll look at-well, you don't have it, but on page 41 of the committee report, it was their express intent that any such person should be entitled to the restoration of all civil and political rights; so we used those words on the theory that "full rights" really had no legal significance and wasn't anything measurable or definable. So we used two terms that were definable.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I would rise to amend the changes made by Style and Drafting. I'm afraid in this case, just as in Section 6, they inadvertently changed the substantive nature of the section, and that is in this way. We intended full rights be restored as in the report we had on page 41. We felt that when a person has paid the debt and there's no longer state supervision, all of the rights should be restored. We said specifically in that writeup that he has the opportunity to become a full member of the community and it's required that he be restored to the same rights, privileges and immunities as other citizens. That's why we put in "full rights", to cover these other areas also. Now, in changing this, Style and Drafting excluded our "full rights" and put "civil and political". I feel, in talking to members of the committee, that this would not cover such things as occupational rights, and certainly it was not our intent to exclude those. We feel-1 feel that the Supreme Court could very likely say that an occupational right is not a civil right, it's a privilege, and as a result would not give full meaning to our phrase "full rights". And for this reason, I would accept the changes they made with the addition "and privileges" at the end, so there would be no question that this is to be part of the section. This was the original intent, and to prevent any substantive change I would recommend this be added to their report.

CHAIRMAN GRAYBILL: Now, the Chair does not understand that you've made a motion yet, Mr. Campbell.

DELEGATE CAMPBELL: I make a motion that the words "and privileges" be added after "rights". I will withdraw to our Chairman, Mr. Dahood.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Delegate Campbell speaks on behalf of the committee. We think he is correct, and I would like to move-and this, as I understand it, would be a substitute motion-that the original language of Section 28 be adopted by Style and Drafting and inserted within this particular article. Since it is our considered judgment that there is some question as to whether or not certain privileges are excluded by the adoption of the language submitted to this committee, I so move, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. The Chair doesn't understand it to be substitute, it's just your motion to restore. I didn't accept Mr. Campbell's motion.

DELEGATE DAHOOD: Yes, it is our motion.

CHAIRMAN GRAYBILL: Right. All right, Mr. Dahood has made a motion that the original language passed by the Convention--or by the Committee of the Whole be restored and that Style and Drafting use it in place of what they've put in here. Is there discussion?

Mr. Burkhart.

DELEGATE BURKHARDT: Mr. Chairman, I wonder if Bob Campbell intended to insert "and privileges", or whether that's simply to be noted in the journal.

CHAIRMAN GRAYBILL: It is not inserted in the original language. And Mr. Campbell has referred to it as having come from the comment, but it is not part of the original language. Does everybody-I think it's pretty easy to make out what the original language was there.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I would like to urge on Mr. Dahood that for the sake of Style and Drafting, not mine but his, that he accept our change and put in his "full rights" down there at the end, because as written it says, "full right shall be automatically restored". We have a real problem, and I think Mr. Dahood will recognize it just as soon as he starts to-parts the sentence: "restored" by whom?-and "automatically". Both those words bugged all of the committee and I just think are bad draftsmanship, and I think you would agree.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I don't see where the language of Style and Drafting is any more self-executing than the language that our committee submitted to the Committee of the Whole and which was adopted. I'm certainly quite willing to accept any suggestion that's going to improve the effect of the language, but unfortunately, at this moment I'm unable to see that that particular benefit is to be gained by accepting the language of Style and Drafting. They indicate in the language that they have suggested that termination of state supervision shall restore all civil and political rights. We say in the original language, "full rights shall be automatically restored upon termination of state supervision". And I must confess, if there is a difference I fail to perceive it at this time.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: So far as we're concerned, the reading would be that the termination-the act of termination, whenever that happens, constitutes a restoration of all civil and political rights--or full rights if you-if that's the wording you want. Whereas, as it's written, "full rights shall be"-and that indicates to us that somebody shall do it. And then "automatically"-1 don't like the word "automatically" because it doesn't seem to me "automatically" has any place in the Bill of Rights. "Full rights shall be restored", that means to me that somebody must do it. I realize you have "upon termination", but it still indicates to me that somebody must take some action, and I don't think that's what you want.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Will Mr. Schiltz yield to a question?

DELEGATE SCHILTZ: Yes.

DELEGATE DAHOOD: Mr. Schiltz. It states in the original language that full rights shall be automatically restored upon termination of state supervision. It clearly indicates when that particular event shall happen. Perhaps this language would be an improvement, and perhaps be acceptable to your committee, to read, "full rights are restored upon termination of state supervision." Would that be more satisfactory to the committee?

DELEGATE SCHILTZ: That would be better. Or if you used "by" instead of "upon", it seems to me it would be better. Do you see what I am getting at? I don't--we're really debate-I don't think it's all that important.

DELEGATE DAHOOD: We have no objection to substituting the word "by" for "upon".

DELEGATE SCHILTZ: All right.

DELEGATE DAHOOD: Perhaps Mr. Schiltz now will read that section with that particular change. And if Mr. Schiltz thinks the word "automatically" should be stricken, I think it's superfluous; it serves no particularly useful purpose. But on the other hand, sometimes the use of words, even though perhaps not necessary from the standpoint of strict English composition, do emphasize a particular point or a particular right, and that was the reason for using the word "automatically".

CHAIRMAN GRAYBILL: Mr. Dahood and Mr. Schiltz. The Chair has listened carefully to you. I understand, Mr. Dahood, that you might withdraw your motion and make a motion that the sentence read, "and full rights shall be"-striking the word "automatically"-"restored"-and then change--and strike "upon" and put in the word "by"-"termination of state supervision for any offense against the state".

DELEGATE DAHOOD: That is correct, Mr. Chairman, and thank you for your assistance.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood has changed his original motion, and it now is to change the language so that it reads: "Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation". -can we leave that period there, Mr. Dahood? And strike the "and" and say: "Full rights shall be restored by termination of state supervision for any offense against the state".

DELEGATE DAHOOD: That is correct, except there was one suggested change made. In line 23, instead of using the words "shall be", use the-in place thereof "are", so that it will read: "Full rights are restored by termination of state supervision".

CHAIRMAN GRAYBILL: All right, "Full rights are-" All right, now, ladies and gentlemen, the first sentence will remain as it appears in the Style and Drafting report. The second sentence will read, if you want to interlineate: "Full rights are restored by"--small "t"--"termination of state supervision for any offense against the state"-period-striking the rest of the underlined material-Now, as I understand it, that's agreeable with the committee. Is that agreeable with Style and Drafting? Are there others who care to discuss this matter? Very well, all in favor of Section 28—let's say, all in favor of the changes that have been proposed by Mr. Dahood, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right. Now, Mr. Schiltz, restate the section as amended.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 28, Style and Drafting Report Number 8, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All those in favor of adopting Section 28 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: **So** ordered; it's adopted. Section 29.

CLERK HANSON: "Section 29, Eminent domain." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I recommend--I move when this committee does arise and report, after having had under consideration Section 29, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, a slight change in style on line 18; nothing else.

CHAIRMAN GRAYBILL: All in favor of Section 29, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 30.

CLERK HANSON: "Section 30, Treason and descent of estates." Mr. Chairman.

DELEGATE SCHILTZ: I move when this committee does arise and report, after having had under consideration Section 30, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, a minor change to "Legislature" on line 25.

CHAIRMAN GRAYBILL: All in favor of Section 30, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 31.

CLERK HANSON: "Section 31, Ex post facto, obligation of contracts and irrevocable privileges." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 31, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, no changes except for a comma, I guess, on line 29 and "Legislature" on line 4 of page 16.

CHAIRMAN GRAYBILL: All in favor of Section 31, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 32.

CLERK HANSON: "Section 32, Civilian control of military." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 32, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, minor style change on line 9.

CHAIRMAN GRAYBILL: All in favor of Section 32, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 33.

CLERK HANSON: "Section 33, Importation of armed persons." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 33, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, again, minor changes for "Legislature" on lines 14 and 15.

CHAIRMAN GRAYBILL: Section 33. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 34.

CLERK HANSON: "Section 34, Unenumerated rights." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 34, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, no changes.

CHAIRMAN GRAYBILL: All in favor of Section 34, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 35.

CLERK HANSON: "Section 35, Servicemen, servicewomen and veterans." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 35, Style and Drafting Report Number 8, it recommend the same be adopted.

Mr. Chairman, minor style changes for-on lines 21 and 23.

CHAIRMAN GRAYBILL: All in favor of Section 35, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 35 is adopted.

DELEGATE SCHILTZ: Mr. Chairman. I should note in this-in connection with this particular article, that the death penalty provision is not reported here; it goes on the ballot.

CHAIRMAN GRAYBILL: In other words, there is that item to go on the ballot that's not in the book here.

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: That'11 be part

of the ballot. All right. Ladies and gentlemen of the committee, you have adopted the 35 articles, the Bill of Rights.

Mr. Murray, do we need to rise and report to refer this to—

Mr. Eskildsen, will you rise and report?

DELEGATE ESKILDSEN: Mr. Chairman. I move we rise and final report.

CHAIRMAN GRAYBILL: The motion is to rise and report on the Style and Drafting proposal on the Bill of Rights. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Clerk, will you read the report.

CLERK HANSON: "March 16th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee on Style, Drafting of the Bill of Rights recommend as follows: that the committee rise and finally report on the Style and Drafting proposal on Bill of Rights. Signed: Leo Graybill, Chairman."

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report and that Bill of Rights Proposal Number 8 be referred to Order of Business Number 5.

PRESIDENT GRAYBILL: The motion is that the Committee report be adopted and referred to Order of Business Number 5.

Mr. Schiltz, for what purpose do you rise?

DELEGATE SCHILTZ: I was going to suggest that you go to Style and Drafting for engrossing of the amendments and then back to Order of Business Number 5.

PRESIDENT GRAYBILL: Well, if we do that, can you put it straight to Order of Business Number 5?

DELEGATE SCHILTZ: Right.

PRESIDENT GRAYBILL: Very well. We'll send it to Style and Drafting for making the changes, and then we'll send it straight to Order of Business Number 5, without going back to Order of Business Number 10. All in favor of the motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the committee resolve itself into the Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves back into a Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

CHAIRMAN GRAYBILL: Mr. Clerk, before you read, just a minute, here. Mr. Murray, are you ready? Members of the committee, we're going to let Mr. Murray take the start of Local Government this afternoon. So Mr. Murray, welcome.

(Committee of the Whole Chairmanship assumed by Mr. Murray.) (Long pause in proceedings)

CHAIRMAN MURRAY: The committee will be in order. I understand that there have been distributed to the desk of the delegates a 2-page report from the Local Government Committee, and on the second page there are some amendments. And if you have these before you--which I assume that you do; I see many of you holding them-we will consider that these amendments are committee amendments, and unless there is objection, they will be deemed to be such and will be included in the committee's report as we proceed. The clerk will read the history and titleofthe General Government Proposal.

CLERK HANSON: "Mr. Chairman. Montana Constitutional Convention, 1971-72. Local Government Committee Proposal Number 11. Introduced February 19th, 1972. Oscar L. Anderson, Chairman; Virginia H. Blend, Vice-chairman. Majority proposal. Be it proposed by the Local Government Committee: that there be a new article on Local Government to read as follows: Article, Local Government. Section 1."

CHAIRMAN MURRAY: At this time we'll call on Mr. Anderson. No, before we read Section 1, Mr. Clerk, we'll have the committee Chairman, Mr. Anderson, give an introduction.

DELEGATE 0. ANDERSON: Mr. Chairman, fellow delegates. You have just been distributed a-two folders here; if you'll turn to the second one, there's a correction to make. We are not going to use the sub. 1 and sub. 2 and sub. 3. You will take your report, on either page 4, and insert where it says "the following", between lines **26** and 27—or if you are using the section where comments are, it would be on page 23, between lines 7 and 8. Strike that-after the-following the 2 in parentheses: "If the Legislature does not provide such procedures by July Ist, 1975, they may be established by election either-colon-(a) initiated by petition in the local government unit or combination of units-semicolon--or (b) called by the governing body of the local government unit or a combination of units". And then please disregard all of this below that; where it says Section 5, below "self-government charters", disregard that completely. You all got that straight, we'll start.

CHAIRMAN MURRAY: You may proceed, Mr. Anderson, with the introduction.

DELEGATE 0. ANDERSON: Fellow delegates. The Local Government Committee submits herewith its unanimous proposal for a new Local Government Article. The proposal is intended to replace in their entirety the present Article XVI, Counties, Municipal Corporations and Offices; and Article XIX, Section 6, dealing with county offices. The committee was in general agreement that a new Local Government Article should provide flexibility, but was divided on how best to attain this goal. This proposal tends to work with the existing local government structure of cities, towns and counties and seeks to achieve improvement by encouraging experimentation in local government powers and form. Strong minority support originally was voiced in thecommittee for a proposal by Delegate Franklin Arness to replace the existing city, town, county and school district structure with a new one-level district structure. Eventually each of the 11 committee members voted for the adoption of this proposal. In signing this report, however, a committee member does not necessarily endorse each and every statement in it. This proposal was adopted after consideration was given to nearly 3,000 citizen suggestions and 19 delegate proposals. We wish to express our thanks to the citizens for their interest and to the delegates who submitted the proposals, the intent of which influenced the final proposal to a great degree. The committee utilized the services of the following people in addition to its members: Mrs. William L. Romine, committee secretary; Mrs. Pat-Miss Pat Chvatal, a Carroll College senior, intern; and Jerry Halloron, committee research analyst. I wish at this time to give special recognition and thanks to these people. And a little later Mrs. Blend will give further thanks to Jerry for his work. This committee believes this proposal provides a much improved constitutional framework for local government in Montana and urges its adoption by the Constitutional Convention. At this time-I'm going to stop here and say no more, but Virginia Blend will continue.

CHAIRMAN MURRAY: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, fellow delegates. Flexibility and accountability best describe the goals embodied in the proposal of the Local Government Article. The proposal aims at creating the widest possible array of local government forms so that local structure may be tailored to local needs. It provides for new self-government powers that may be exercised on the local level and gives a constitutional boost to local efforts to eliminate costly and inefficient duplication of services and functions. At the same time, the proposal requires accountability from local government units. Each new form of government authorized under the proposal would require the approval of local voters before it could be implemented. Local government could exercise self-government powers only with the approval of local residents. County boundaries could be exchanged only if a majority of the affected residents could be-pardon me, only if a majority of the affected residents agree. The people would be guaranteed the powers of initiative, referendum, and recall on the local level. Although the proposal would not force Montanans to change their

local governments, it would force them to closely examine the local units, with an eye toward improving them. This examination is provided for in the unique voter review of local government, which at the least should pay huge dividends in terms of increased voter awareness in and concern for local government. The length of the present local government provisions is more than cut in half by this proposal. Statutory material concerning indebtedness of new counties, county commissioner districts, and county officer location is deleted. The form of county government now in effect in 55 counties is mentioned, but only as one of what will hopefully be several optional forms of county government. But the real news in the proposal is its incorporation of new devices to make local governments more responsive and more responsible. Totally new provisions are added allowing local citizens to design their own form of local government, to increase local authority and responsibility, and to the-end needless duplication of local services. The Local Government Committee did not set out to replace the thinking of 1889 with that of 1972; rather, it attempted to replace the thinking of 1889 with a broad framework that would allow implementation of the thinking of 1990, 2010 and 2072, as well as that of 1972. The committee believes this proposal creates that framework. Now, please don't grab your pens and start writing amendments to each of the sections as we cover them until you have cross-referenced each, as we have indicated in the Local Government Committee material distributed to you earlier this day. We have been told that our article is one which has an invisible continuity and clarity of purpose when time is taken to read and study it. We have written it as a whole piece of cloth. The success of local government under this Constitution depends on this completeness. We call your attention that Sections 1 and 2 are basic to all local government units and to the article. Remember Section 3 should be related to Sections 5 and 6, which are for the hale and the hearty. Section 4 is common to Sections 3, 5, 6 and 7; and Section 11, the final one, is what ties up the package for all. It is important for you to know, we think, the complement of our committee which has brought expertise-it included political science majors; experience from former county attorneys, county commissioners, mayors, aldermen and women; and considerable knowledge on the part of public-spirited, civic-minded members who have actively participated in local government to improve it under the present Constitution, and to have known the frustrations. Our article has the full support of every local government organization and citizen groups involved. We have not had objections from any citizen or individual city or county official. We were delighted this morning to receive, from the National Municipal League, a letter from Mr. Cassella, who spoke to us a number of weeks ago, and I quote you in part from his letter: "I have read with great interest and care the Local Government Committee proposal. I can say that it would appear that your committee has developed a most imaginative and forward-looking Local Government Article, which certainly provides a most appropriate framework for achieving the goals of flexibility and accountability which your committee has endorsed. I certainly agree with these goals." As you all know, there is very little research about local government, much less success stories. We have been privileged to have made available to us the very fine text on Montana local government prepared by our research analyst, Jerry Holloron. We feel his contribution, Local Government Number 16, without which we would have been seriously handicapped, will be the basis upon which future authors will rely upon to update this subject. It has the greatest possibilities for Montana schools and hopefully will be the bible for local government units in making the transition into better government. As we in this Convention have researched the constitutions of other states, we think there will be requests for it as other states reach revision in the future. In closing, we ask you to bear in mind that we have reviewed six proposals containing complete government-Local Government Articles. After review: we chose two. These were prepared by Delegate Tom Ask and Delegate Lucile Speer, both members of our committee, which we felt had the broadest face from which to accomplish our goal. We have conceived our goal to be to provide options of self-determination by local government, whether in a town of 25 people or a city of 80,000, whether in a county of under 500 or a county of eighty or ninety thousand. We feel we have accomplished this. True democracy and true freedom only exist when we have the freedom of choice. We received a total of 19 delegate proposals; and we refer you to pages 34 and 35 of our report to learn our disposition of them. This article will be presented by the members of our committee. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Thank you, Mrs. Blend. The clerk will read Section 1.

CLERK HANSON: "Section 1, Definition.

The term "Local government units" includes but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law." Mr. Chairman, Section 1.

CHAIRMAN MURRAY: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 1 of Proposal Number 11, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN MURRAY: Mr. Rollins.

DELEGATE ROLLINS: The present Montana Constitution creates considerable confusion in the scatter-gun use of terminology concerning local government. Such imprecise constitutional terminology has resulted in confusion and court litigation. In an attempt to avoid this problem, Section 1 adopts local government units as a generic term and specifies that counties and incorporated cities and towns fall within its meaning. However, the section specifically authorizes the Legislature to create other local government units, thus providing freedom for the Legislature to meet future needs that cannot be met by the traditional city or county structures. Certain special districts, for example, might be appropriately designed-designated as "local government units" by the Legislature. The committee believes that Section 1 will discourage litigation and avoid confusion concerning the rest of the Local Government Article; it also recommends that terminology corresponding to that used in this section be incorporated in other articles of the new Constitution when local government units are discussed. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Discussion?

Mr. Gysler.

DELEGATE GYSLER: Will Mr. Rollins yield to a question?

CHAIRMAN MURRAY: Mr. Rollins, do you yield?

DELEGATE ROLLINS: I yield.

DELEGATE GYSLER: Just a point of information. Do you consider a school board a local government unit?

DELEGATE ROLLINS: No, because that's covered under the Education provision.

DELEGATE GYSLER: In other words, then-one more question, please.

CHAIRMAN MURRAY: Another question, do you yield, Mr. Rollins?

DELEGATE ROLLINS: I yield.

DELEGATE GYSLER: You do not consider any of the school organizations a local government unit?

DELEGATE ROLLINS: No, sir.

DELEGATE GYSLER: Thank you.

CHAIRMAN MURRAY: Mr. Nutting.

DELEGATE NUTTING: Would Mr. Rollins yield to a question?

DELEGATE ROLLINS: I yield.

DELEGATE NUTTING: "-but is not limited to", do you consider that that takes care of say, fire districts, cemetery districts, and so forth; that is considered—

DELEGATE ROLLINS: Special districts of many kinds.

DELEGATE NUTTING: Thank you.

CHAIRMAN MURRAY: The question now arises, on the motion of Mr. Rollins that when this committee does rise and report after having had under consideration Section 1 of the Local Government Proposal Number 11, that it recommend the same be adopted. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The clerk will read Section 2.

CLERK HANSON: "Section 2, Counties. The counties of the State of Montana as they exist at the adoption of this Constitution are the counties of the state. County boundaries shall not be changed or county seats transferred until approved by a majority of those voting on the question in each county affected." Mr. Chairman, Section 2.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE 0. ANDERSON: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 2 of Proposal Number 11, it recommends that the same be adopted.

Section 2, admittedly controversial, provides that the present county boundaries and county seats will be retained unless changed by a majority of those voting on the question in each county affected. County A could be consolidated with County B only if a majority of those voting on the question in each county approves. Thus, a large county could not swallow a small county without the latter's permission. The proposed section combines Sections 1, 2 and 8 of Article XVI of the present Constitution. Other than deletion of statutory material, the basic intent of those sections is retained, with one exception. The present language, Sections 2 and 8, requires approval of a majority of the qualified electors of the county affected before a county boundary can be changed or a county seat transferred; the proposed Section 2 would require approval of a majority of those voting on the question. This difference can be quickly seen. Under the present provision, for example, if a county to be consolidated had 5,000 qualified electors but only 3,000 of them vote on the consolidation question, amajority of the 5,000, or 2,501, rather than a majority of the 3,000, or 1,501, apparently would have to favor consolidation to meet the constitutional restriction. Under the proposed language, on the other hand, a majority of those voting-or 1,501—would be required. In substituting the less stringent but more common majority requirement, the committee endorses the reasoning that persons who do not vote on an issue should not be able to thwart the will of those who do; let the proponents and opponents of county consolidation or county seat transfer go to the polls, and let the majority rule. County boundaries: calls for county consolidation, both nationwide and statewide, have gone unanswered despite their frequency during the 20th Century. Indeed, the number of counties nationwide has remained almost constant in the last 40 years, despite frequent complaints that many counties lack the population and economic base to be viable units of local government. If judged by national standards, certainly many of Montana's 56 counties are too sparsely populated to meet the tests of viability. But who should be the final judge of whether a county is too large or too small, and of whether it should be consolidated with another? The Local Government Committee believes this choice must be left to the voters of the counties affected. Therefore, Section 2 allows changes in county boundaries only if approved by a majority of those voting on the question in each county affected. The committee considered leaving the matter of county boundaries entirely to the Legislature, but decided that the authority would be more appropriately lodged in the people of the affected counties. After all, if sparsely populated counties are as inefficient and uneconomical as some of their critics claim, certainly the residents of those counties soon will be clamoring for county consolidation because of high tax bills and insufficient local government services. It should be stressed that the proposed Section 2 does not prevent county consolidation. It simply requires that any such boundary change must be approved by the persons most directly affected, the residents of the counties concerned. It should also be noted that the proposed Local Government Article allows ways short of total consolidation in which counties with dwindling population and tax base can be aided. Under Sections 3 and 5, a widerange of structural options can be provided, including one or more directed toward those counties that do not need the full range of county offices and services. Indeed, Petroleum County, the county with the smallest population in the state, already makes successful use of a county manager form of government. In addition, the broad language of Section 7 should encourage counties to band together and to join with cities and towns within their boundaries to provide more efficient, economical government services. Provisions in the present Constitution, Article XVI, Section 3, concerning the division of debt when new counties are formed were deleted from this proposal on the basis that they can be provided by legislation if they are ever needed. County seats: constitutional provisions protecting county seats from being changed by legislative action are common among the 50 states. Section 2 simply substitutes a concise statement of the protection now found in Article XVI, Section 2, and Article V, Section 26. The present Constitution's requirement that county offices must be kept at the county seat, Article XIX, Section 6, was deleted from the proposal. Such a requirement might prevent counties from sharing officers and setting up branch county offices. To the extent that such a requirement is needed, it can be provided for by law. Now, I'd like to close with this one note. Almost every state has almost these same provisions about county seats and county boundaries. We looked in the North Dakota one; they took three sections and 120 words. We assigned the task of cutting this down

to Jerry Holloron. He did this in 50 words and said it better. And I say that anything-this proves that anything they can do in North Dakota, we can do it better here.

CHAIRMAN MURRAY: Discussion on Section 2? The question now arises on the motion of Mr. Anderson that when this committee does rise and report, after having had under consideration Committee Proposal Number 11, Section 2, of Local Government, that the same be adopted. As many are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say Nay.

DELEGATES: No.

CHAIRMAN MURRAY: The Ayes have it, and so ordered. Section 3.

CLERK HANSON: "Section 3, Forms of government. The Legislature shall provide by law for the government of local government units and for procedures of incorporating, classifying, merging, consolidating and dissolving such units and of altering their boundaries. The Legislature shall provide by law for optional or alternative forms of government for each unit or combination of units to enable a unit of combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question. One optional form of county government includes but is not limited to the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator, whose terms, qualifications, duties and compensation shall be prescribed by law. The Board of County Commissioners may consolidate two or more offices. The Board of County Commissioners of two or more counties may provide for a joint office and for election of one official to perform the duties of that office in the respective counties." Mr. Chairman, Section 3.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 3, Proposal Number 11, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: I hope this section gets by as easy as the other two. (Laughter) I'm going to cover the comments in two separate stages here, because there are two separate paragraphs and basically two different ideas. If you'll follow me on page 13 of the comments, I will read that. Section 3-that's the first paragraph, now-aims at allowing the Legislature to provide the broadest possible range of forms of local government for counties, cities, towns and other local government units, including consolidated forms. Virtually every national and state authority on local government urges such flexibility, and even our old Section 7 of the Constitution of Article XVI, gives the Legislature broad powers to provide any plan, kind, manner or form of local government. The intent of Section 3 is to offer just as broad freedom to the Legislature to provide various forms of local government as is allowed under the present Section 7. Because of that intent, the committee considered retaining the present language of Section 7. This idea eventually was rejected because the present wording is unclear and confusing. It is hoped that Section 3's straightforward direction to the Legislature to provide optional and alternative forms of government will result in a greatly expanded offering to the local government units in Montana. The possibilities that could be provided under Section 3 are great. At present only three forms of city government--and that would be-the mayor council, would be one; the commission form; and the commission-manager-two forms of county government, the traditional form and then the county manager form, and one general form of city-county consolidation are authorized by statute in Montana at the present time. Other states offer considerably more alternatives; New Jersey, for example, employs what has been called the cafeteria-style form of local government options, under which a local unit may choose different alternatives within a form of government offered by the Legislature. This Section 3 was drafted to allow such a flexible cafeteria style in Montana, too. Thus, the Legislature could offer the mayor-council form of government but leave to the locality the question of whether to elect or appoint a city treasurer, a police judge, or other city officers. In this regard, it should be noted that Section 3 specifically directs the Legislature to provide forms of government which can be amended as well as adopted and abandoned by a vote of the local residents. Section 3 provides the Legislature

with authority to meettherapidly shifting governmental needs of vastly different units of local government. For example, the Legislature, under Section 3, could provide streamlined forms of county government specifically-or specially suited for areas in which the population is dwindling, and a variety of forms of consolidated government for areas where virtually all of a county's population is urban. Section 3 clearly states that any optional or alternative plan will go into effect on a local level only after it has been approved by the voters. The Legislature is directed to offer choices of government structure for local government units. The voters of these units have the final control over what type of structure they select. So you will note the main point of this first section, then, is that it's going to-up to the local residents if they want to change their present form of government or adopt a new one. It's up to them; they have to vote on it. Now, we haven't outlined any specific forms, and this will be up to the Legislature, but I thought maybe I could give you ideas that the Legislature possibly could adopt for various optional or alternative forms of government. You have thecitymanagerform, whichisineffect, I think, in Bozeman and Helena; this is one form we have on the books that could stay as that form. Then we have the city commission form; and you elect a commission, and each commissioner also heads one of the major departments of the city; this could be another form. And there's the mayor-council; this seems to be the most popular city government-there's 124 cities and towns in Montana have this form; this could remain as one of the various officials in the government; you could variations of this mayor-council or commissioner form. It's unlimited as to what you could do with the various officials in the government; you could have an appointed executive or an elected-like you have elected mayor-or you could have all different types. As to counties, there are only three forms now. Fifty-five of the counties have the traditional county form of the three commissioners and the various officials that are elected. And one county, Petroleum, has a county manager form, which has the board of-three county commissioners are elected and they appoint a manager, and the only other official in the county that's elected is the county attorney. And then you could also have a county executive form of government, which some other states have and which we don't have now. And you could have an elected commission which serves as a legislative body and elect an executive, or whatever you wanted to call him, or you could make him appointed or elected. Then you could have what other officers you wanted in the county to be elective or appointive; it would be up to the people. And you could have a county administrator form of government, which California has; and this includes appointment by commissioners of an administrative officer who lacks the power of a county manager; and this plan is kind of a compromise between the no executive arrangement, and the traditional in other counties, and the strong manager system. And neither one of these, of course, are authorized, but the Legislature could authorize this form. And, of course, variations of the traditional form that we have now, three commissioners and various officers-you could have all kinds of variations of that. And you will note in this section we've also covered consolidated governments. Now, we visualize this would be a consolidated government between a city and a county, or city and towns and counties; you'd have one government for the area and even two counties if they so wished. And, in other words, under this consolidated form, you'd have-could have a commission-mayor form, and the commissioners were elected and the mayor could be elected or appointed. And you could have the commission-manager form, where you have commissioners elected from this particular area, and you could have the manager appointed by these commissioners. And then, under this program, you could have a sheriff or you could have a law department; you could have them appointed or elected. In other words, there's many, many varieties of different types of consolidated governments that you could have; but again I want to stress that the main point of this is that—this section is that the people of the area are going to be the ones to decide what kind of government they want. Now, you might say, "Well, how would this go about? How would they do this?" Well, I would visualize the Legislature would set up these various optional or alternative forms, and they would provide in there that the city or county, if they desired to change their government, could have a three-man commission appointed to make a study of it and have hearings, say, for 6 months, where people could be invited in to see what they thought of their government and what changes could be made. And then, at the end of this, this commission would propose the best plan that they thought for the county or the city or the town, which would be voted on by the people at the next election. And this is what I visualize would happen. Course, like I say, the Legislature has to implement this entire program; but I think it certainly gives the flexibility. You can dream of all

types of local government that-to fit our needs. We decide upon this particular paragraph because we have a city-or small towns of 30 to 40 people in Montana, on up to urban areas of 85 and 90,000 people, so it's pretty hard to find one form of government that's going to fit all these various types of cities and towns and counties. Now, the second paragraph in this particular article is-if you remember the clerk reading it, or you can read it-is what we call the present, traditional form of county government; elect three county commissioners and the clerk and recorder, clerk of the district court, et cetera. You recall when we were on the Judicial Article, they moved the clerk of court and the county attorney over to local government, which we accepted. We did this so all your county officials would be under one section, and if you'll note, they're under the jurisdiction of the county commissioners, and they can join two offices together or county commissioners of two or more counties can make one official serve all or be elected in two or three counties. And this gives complete freedom to the county commissioners to, in other words, update their county government to fit the needs of the particular area. Some of your larger counties, I'm sure, will need all of these officers and possibly more, so I'm sure they wouldn't do anything; but I'm sure some of the smaller, intermediate counties would want to join some of these offices like clerk and recorder, clerk of the district court. And there's a tremendous savings here to the counties. Now, many of you may say, "Well, why do you even mention it in the Constitution?" This-we had quite a discussion in our committee on this, and we did it for a number of reasons. Number one, as you'll note, we had 3,000 citizen suggestions on this very point. Of course a lot of them may have come from county officials, They're concerned, and the people of the state are concerned, that they're going to lose their elected county government. So we're putting this one form in there as an alternative; they can always say, "We have one constitutional form of county government that they can't take away from us." And maybe this is an assurance to the people we're not going to do away with county government. And if you'll note that this is just one alternative and if the people don't want it and they want some other form of government, they can vote on it and adopt any type ofgovernment that they want; but at least they'll have one that they-can never be taken away from them. I think this factor is also important in our Constitution. YOU know, everything we do here, you either lose a few votes or gain a few votes, and I would rather go out of this Convention with this paragraph in here, with this traditional form of county government that the people can know that their-can have if they so desire. And we'll get all the help and support of all the county officials and all the people that are concerned that they're going to lose their local government; and I'd rather have them on our side than against us, believe me. And another factor is, we had many witnesses before the committee that said, "What's wrong with our county government? We like ours, we don't want to change." And I think this feeling is throughout the state. So if it is working good, has worked good for many years, why take it out of the Constitution? It was in the old one, why not leave it in there? And a third factor is that I think that we've been very fortunate over the years to have the type of people for these various county officers; and I think they've been dedicated people, they're dedicated now, and I think they'll probably continue to be dedicated people. And certainly we're not locking in only one form of county government; this is just one alternative. And I think with those considerations, the committee finally voted that this optional form of county government, as it is today, would be left in here. And the last point that I-thing that I want to point out on this optional form of county government is the fact that the big saving of money that can be-say, for example, the peopledidn't want to change their government and they kept the old style under the old Constitution. Well, not near as much could be done by the county to improve it. We have put another sentence in here, allowing an officer to serve in more than one county, beelected in more than one county. And to the committee—in reviewing this, this is going to be a great savings to many counties throughout the state, and particularly now where you're getting to where you need so many experts. I visualize that assessment is going to be more and more difficult over the years, that you're going to have to have an expert. Why should you have to have one in every county? You could have a good man, an expert that could serve two or three counties, or maybe four or five. They could share the expense-it would be quite a saving-and they still have the competence of a technical appraiser. With that, I would submit that this Section 3 is a good section; it'll give all the flexibility and protection that we need; and it's actually up to the Legislature and the people what type of government they want. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Thank you, Mr. Ask.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'd have a question of Mr. Ask.

CHAIRMAN MURRAY: Mr. Ask, will you yield?

DELEGATE ASK: I'll yield.

DELEGATE KAMHOOT: Yes, Tom, as you know, of course, I'm going to have to answer about five different county governments of just what happened up here. And in my own mind, I think this is clear; but I did want to put the question to you: now, these county commissioners can abolish an office if they wish, like the clerk of the court when they don't need one, county superintendent of schools if they don't even have a country school any more? They can just abolish these on their own, can't they?

DELEGATE ASK: Yes, under this section they can, if they retain this type of government. Of course, they can choose another type if they want to, in a year or two, you know, whenever it comes to them. They wouldn't even have these officials in there if they didn't want to. But under this present form, they can abolish an office or join it, yes.

DELEGATE KAMHOOT: This is— another question?

CHAIRMAN MURRAY: Mr. Ask, will you yield to more questions?

DELEGATE ASK: I'll yield.

DELEGATE KAMHOOT: Yes, Tom— well, unless they vote to change the type of government we now have, let's say that they don't do anything; we just go home and we still have our setup like we had it, then the county commissioners could abolish the clerk of the court or something where they didn't need one?

DELEGATE ASK: Yes, that's true.

DELEGATE KAMHOOT: Yes, well, thank you, Tom. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Loendorf.

DELEGATE LOENDORF: Yes, would Mr. Ask yield?

CHAIRMAN MURRAY: Mr. Ask, will you yield to a question?

DELEGATE ASK: Yes, Mr. Chairman, I'll yield.

DELEGATE LOENDORF: Tom, I think you meant to say in answer to Mr. Kamhoot's question that the county commissioners can abolish-or they cannot abolish the office, but they may consolidate the offices; is that right?

DELEGATE ASK: They can consolidate, yes.

DELEGATE LOENDORF: So the office itself is not abolished, is that right?

DELEGATE ASK: No, they can consolidate two or more offices. Excuse me, I guess I didn't answer that question right. I mean—

CHAIRMAN MURRAY: Mr. Kamhoot.

DELEGATE KAMHOOT: Yes, another question?

CHAIRMAN MURRAY: Will you yield, Mr. Ask? Mr. Kamhoot.

DELEGATE ASK: Yes, all right, I yield.

DELEGATE KAMHOOT: Well, I'll go back to the other question then again. First, I want to clarify this. I had one clerk of the court came up to me in one of the counties and says, "Whatever you do up there, get rid of these clerk of the court jobs." She said, "I'm elected to it, I'm being paid for it, and I'm ashamed of myself every day I'm here because they don't need me," she said, "and I'd just like to have it so that this county could say, 'we don't need a clerk of the court, so let's abolish this position and quit spending the money on it.'"

DELEGATE ASK: Could I answer that, Mr. Chairman?

CHAIRMAN MURRAY: Yes. You may answer the question.

DELEGATE ASK: What I meant was, you can do away with it, but it doesn't say that; you consolidate, you put them together. So, you're always going to have to have some type of clerk of court, but it could be joined with the clerk and recorder or some other office, superintendent of the schools. In the county, by doing that, you've done away with one of the offices, but you still have the services of that person being performed by someone else.

DELEGATE KAMHOOT: Well, another question?

CHAIRMAN MURRAY: Yes, Mr. Kamhoot. Mr. Ask, will you yield?

DELEGATE ASK: Yes, I'll yield.

DELEGATE KAMHOOT: Take the county superintendent of schools; now some of our counties have country schools, some do not. If there was no need of a county superintendent of schools and the county superintendent didn't run again for reelection, so the office would be vacant, there'd be no need for it, they could go along this way; but if someone came along with the qualifications for this job and ran for it, would they be forced to let her occupy this office and pay this salary even with nothing to do?

DELEGATE ASK: Yes, they would. But what they'd have to do there is consolidate with another office, which some of them-1 think there are one or two counties have done that already, consolidated with another office. But if you will note, Mr. Kamhoot, in this we have left the qualifications and-terms, qualifications, duties and compensation all provided by law, so this qualification is a-would be a separate item under Legislature. But if you didn't need a county superintendent of schools in one county, you'd just assign the duties of that office to some other office and you'd accomplish the same thing.

DELEGATE KAMHOOT: It's not in the Constitution, then it's up to Legislature to-? Yeah. Thank you.

DELEGATE ASK: Yes-well, for that particular facet.

DELEGATE KAMHOOT: Yeah, thank you, Tom.

CHAIRMAN MURRAY: Mrs. Bowman.

DELEGATE BOWMAN: Thank you, Mr. Chairman. I didn't think you would call on me. Could I ask Mr. Ask a question, please?

CHAIRMAN MURRAY: If Mr. Ask will yield.

DELEGATE ASK: I yield.

DELEGATE BOWMAN: You may have answered this question, and if you did, I apologize. But I'm concerned about the machinery for getting this change going. Is it entirely dependent on the leadership of the various units which wish to change, or can it be instigated by citizen initiative?

DELEGATE ASK: I'll be happy to answer that. If you'll notice, here's where you havetotieit all together. Section 11 is going to provide for that-how it gets done if the people don't doit. But when-we also have initiative and referendum in here on local government, where they-the people can initiate it themselves. But I would assume the Legislature is going to set up a standard procedure that says any government that wants to change can appoint a commission of three men, say, or five, to study the government and then they'll come up with a proposal to be on the ballot the next election. And if your local government units do this, why, you'll have a standard procedure to follow; and if they don't do it, why, Section 11 will take care of it, and initiative and referendum will also take care of it. The people have this right themselves.

CHAIRMAN MURRAY: Mr. Harbaugh.

DELEGATE HARBAUGH: Just a comment, Mr. Chairman, in regard to Mr. Kamhoot's question. Already the Constitution, the present Constitution, gives this power to consolidate these offices. And if you'll note on page 147 of the Local Government book, it specifies some of these counties that have already done this; and I know that some very interesting-note some very interesting combinations. The office of the treasurer and the superintendent of schools in one county, in Treasure County, is combined; in Roosevelt County, in my county, the office of the clerk and recorder and surveyor is combined in one office. So apparently the thing that you're suggesting here is not anything new, it's just a restating of the old principle.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Why, that is true, Mr. Harbaugh, that the consolidating offices is in the old Constitution; but we've added the new sentence on there, the commissioners of two or more counties can consolidate the duties of one officer. And we particularly heard witnesses that-from superintendents of schools-that they could handle maybe two or three counties, so they could be elected in these three counties. This is the first provision that you have that they could even do that; and I think on your superintendent of schools, where you need special qualifications, these are the kind of offices that should serve more than one county. And I think this probably answers the question; for a qualified person for these duties where there are not enough work in one county, but four or five-two or threecounties, they could do that.

CHAIRMAN MURRAY: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, will Delegate Ask yield to a question?

CHAIRMAN MURRAY: Will Delegate Ask yield?

DELEGATE ASK: I will yield.

CHAIRMAN MURRAY: Go ahead.

DELEGATE McNEIL: Tom, I just want to ask what I think is basically a style and drafting concern that I have; but for the record, in the second paragraph, where it says, "the election of three county commissioners", is it thecommittee's intent that the word "the election" also applies to all of the other listed county offices?

DELEGATE ASK: Yes, that-they apply to all those other county officers.

CHAIRMAN MURRAY: Is there further discussion on Section 3?

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. Chairman and fellow delegates. Local Government is my committee, too, and Mr. Ask has done a wonderful job of presenting it to you. I had a proposal in for the increasing of county commissioners if it was needed. Now, some of our counties are growing pretty big; some of our cities are growing pretty big; and it's just possible under this program that we could, if the need arises, and upon an election of the people, to have four or five or up to seven county commissioners if that time comes along. And it's important, I think, that the flexibility in this is passed by this group. Thank you.

CHAIRMAN MURRAY: Members of the—

Mr. Garlington.

DELEGATE GARLINGTON: I would like to testify a little in support of this Section 3. I came over here with the idea that we probably ought to have a judicial district clerk of court instead of county clerks of court, because I felt that in a great many counties this office was not particularly busy, like Mr. Kamhoot says. And for the information of all hands, I think it would be worthwhile to pass on what I learned about the fruitful financial saving for the taxpayers that can be developed by utilizing fully the flexibility that is in this paragraph 3. In Montana we have 18 judicial districts where there is one or more judges residing at one place. This means that the other three or four counties, I guess it is, do not have a resident judge but they have a resident clerk of court. Now if there were a district clerk of court instead of a county clerk of court, there would be many, many less clerks of court. And I found that in the year 1970, there was expended by the taxpayers for the clerks of court in the counties where no judge resides and where there is very little work to do usually, five hundred and twenty-seven thousand-some-odd dollars. And I suggest that if there is a pool of a half a million dollars or more to be effected as a savings for the taxpayers in just one small example, that there is a lot of relief for the taxpayers in the Local Government Article; and I think also that one of the ways that we can persuade the voters that this new Constitution is better than the old one is to point out to them the potential for dollar savings in tax expense of government by utilizing this sort of thing which this document will make available. I had hoped that that pool of a half a million dollars would be an easy way to improve the status of the justice of peace courts, and indeed, it would make available presently consumed tax moneys for a new and better purpose. And all this simply illustrates that, really, there is much improvement that can be made in our government through more flexibility, and here's a fine example of it. Thank you.

CHAIRMAN GRAYBILL: Members of the committee, the question now arises on the motion of Mr. Ask that when this committee does arise and report, after having had under consideration Section 3 of Proposal Number 11 on Local Government, that the same be adopted. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The clerk will read Section 4 in its entirety, please.

CLERK SMITH: "Section 4, General powers. Local government units not exercising self-government powers under Section 5 and 6 shall have the following general powers: Subsection 1. Incorporated cities and towns shall have the powers of a municipal corporation and such legislative, administrative and other powers as provided or implied by law. Subsection 2. Counties shall

have such legislative, administrative and other powers as provided or implied by law. Subsection 3. The powers of incorporated cities and towns and counties shall beliberally construed. Subsection 4. Other local government units shall have such powers as provided by law." Section 4, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Arness, I'll ask at this time that you move the entire section, even though there are subsections here, because the Chair has no amendments before it.

DELEGATE ARNESS: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4 of Proposal Number 11, it recommends that the same be adopted.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I think the Chairman of the committee wanted me to talk on this one because it gives me a chance to talk about Mr. Dillon's rule. I'll tell ya, Lyle, I'll start right there. Well, the Dillon rule, which has no relation to the "Gunsmoke" show, I'm told, is named after-or takes its name from a judge who enunciated this rule, so far as it applies to cities and counties and other municipal corporations as we know them and as we know them here in Montana. The rule, simply stated, is that-oh, and this does appear on the-in the gloss that you have on the comments on this Section Number 4. So far as it relates to towns, it provides that the municipality has only those powers which are expressly granted to it by the Legislature or which may necessarily be derived or implied from the grant from the Legislature. And that is the rule in Montana; the Dillon rule is the rule for the cities in our state. The rule that is proposed in this section, which is subsection 1 in Section 4, is a restatement of the Dillon rule. Under the proposed Section 4, sub. 1, then, the cities and towns of the state will have such powers as the Legislature grants to them and such other powers as may necessarily be implied from that grant. This Section 4, sub. 1, is a restatement of the existing law. The only possible modification that could be considered to have occurred so far as that rule is concerned would appear in subsection 3 of sub-Section 4. Subsection 3 provides that the courts will liberally construe these powers, and to the extent that that is operative, that would be a modification of our existing situation. I think that it is fair to state that the section at that point, then, is simply a restatement of our existing law. The Dillon rule, as it applies so far as our counties are concerned, is even more stringent. The situation where the counties are concerned, as far as their powers, is that the county has only those powers which are conferred upon it by the Legislature. In the case of counties, they don't get the benefit of any implication that might derive from the grants of power, and it is the situation in Montana, by court decision, that counties are an administrative arm of the state. The courts have uniformly held, and the only authority on this proposition is what we get from the courts, that counties are part of the executive branch of the government and they are part— and they are an administrative branch of that government. So they are part of the executive; they are administrative; and as the court said in one of the cases which is cited in the gloss that you have before you, a county must derive its powers by express, direct grant from the Legislature, such as we held proper in the case of City Missoula against Missoula; and that is the rule. Now that rule is treated in Section 4 in subsection 2, and this is the other modification of the powers, if it can be considered to be a modification, that appears in this section. Under this section, then, counties will now have legislative powers, provided that the Legislature gives them such powers. To the extent that that section has any operation, the decisions of the Montana court-1 think three of the decisions of the Montana court--are controlling. Those decisions are cited to you in the gloss; they are, beginning first of all, a case of Baucus against Lake County; and then, continuing, Plath against Hi-Ball Contractors; and the last case that I think is significant is the Missoula against Missoula County case that I mentioned to you earlier. Basically these cases hold this: in Baucus against Lake County, I think that it is fair to say that the court summed up a long line of its own decisions, and there are lots of decisions about what counties and cities can do in this state; I have been unfortunate enough to have participated in some of them. The court said that first of all, it's well settled that the county is simply a part of the executive branch of government. It is not judicial; it is not legislative; and it's clearly part of the executive. And moreover, it's an administrative branch of the executive; it's there to do what the state tells it that it ought to do in carrying out the laws of the state. Then the court went on in that case-now this case involved an attempt by a county-or several counties to set up a health district. And the court went on in that case to consider whether the counties had gone beyond what they

could do as administrative arms of the executive branch of government; and they considered whether the rule against the separation of the powers had been violated or not; and they laid down a guideline for deciding whether the county had overstepped itself or not. The court there said that when the Legislature confers authority on an administrative agency-in other words, the county-it must lay down the policy or reasons behind the statute and also prescribe standards and guides for the grant of power which had—which has been made to the administrative agency. The rule has been stated as follows: The lawmaking power may not be granted to an administrative agency to be exercised under the guise of administrative discretion. Now, there is the crux of the problem where the counties have been concerned. When are they exercising administrative discretion and when are they exercising legislative authority? Well, in the Plath case-this was a zoning case which came from Billings-the court examined a zoning statute and struck it down and said that in this case the counties have been given by the Legislature a grant which violates the separation of powers principle. The court then went on and said, not only does it do that, but by allowing the counties, in combination with the cities, to set up a city-county planning board, what you've really done is violated Section 7 of the existing Constitution, which was the section that authorized consolidation of cities and counties. So the court said, "What you've done, you've allowed these counties and cities to consolidate without telling anybody. And not only did you let them legislate by zoning, but you let them combine by giving them the power to control areas around the cities by zoning and by land-use planning." At the same term of court, the court decided another case, Missoula against Missoula County. This was a suit that also involved a zoning ordinance, and in that case the court found that the zoning ordinance was constitutional. The-it's a little hard at this point to decide what is-when is the county legislating by enacting zoning laws and when is it acting as an administrative agency; because I think, in fairness, it's really difficult to say that there was much difference between the statute that the court struck down in the Plath case and the statute that the court upheld in the Missoula case. It is true, however, that in the case involving the City of Missoula, that there was no super-agency or no agency formed as a result of a combination of two existing municipalities, and possibly that is a basis for distinction between the two cases. Also, the statute under the-in the Missoula case is-was a good deal more cumbersome to operate under than the statute had been in the case of the Billings agency. But the courts have laid down this rule clearly: that in Montana, at any rate, the distinction between the three branches of government is an important distinction so far as counties are concerned. The court will allow the Legislature to delegate to the counties what it decides are administrative discretionary acts, but it will not allow the Legislature to delegate to counties what it determines to be primarily legislative functions; the difference between a legislative function and an administrative discretion will be decided by the court. The court has said that there are certain guidelines that it will follow, and generally speaking, it describes the reason and the rationale for this rule as this: they say that the tests go to the question as to whether or not sufficient standards have been provided in the delegation of power and whether or not sufficient safeguards have been established with regard to the procedure for carrying out the power. So when you view the proposed section in the light of the existing case law, what we have, I think, is this: I think that it is the opinion of the majority of the committee that the court should be encouraged to look with liberality upon attempts by counties to zone and to otherwise function in the areas of zoning and planning. The provision that we have in Section 4, subsection 2, is very cautious, and I do not think that it amounts to more than a restatement of the existing Montana law. The general tone and tenor of Section 4 is, however, directed to this end: that where possible, the Legislature-the court, in construing situations that come before it, should construe them with liberality; again, the same situation that we had so far as the cities are concerned. In summing, then, the powers that are granted under this section, I think that it's fair to say that they are a restatement of what we presently have and that the two points of departure are: one, the statement that the Legislature may delegate certain legislative powers to counties-obviously, the Legislature is the one to do it, and the delegation, I think, would be a delegation that would be in conformity to those standards that have already been determined judicially; and second, an invitation to the courts, I suppose-or an instruction to the court to liberally construe the powers of the cities and, too, the counties. There are other constitutions that have this language in them, so far as liberal construction is concerned. Massachusetts says that-in its Constitution that its courts should liberally construe questions aris-

ing as to cities and towns. Alaska says the same thing. Illinois says it; and Michigan says it. So far as the provision relating to the counties and the ordinance-making or legislative powers of the counties, there are other states that do allow some measure of power to counties. Most of them that do that go considerably farther than the article that has been proposed here. There are some-and these are states who, what we call allocate powers; that is, they give certain definite powers to counties-such as Washington-that allow counties to make ordinances regulating traffic and make ordinances regarding police matters. There are other areas that go farther. And there are some states, even, that do appear to give to the counties powers that would be almost identical to those that the cities have. I think, however, in a great many of those, that that power is largely illusory. But at any rate, there are a numberofotherstates, California and Hawaii and Washington being a few, that do allow counties some ordinance-making powers, and that would go beyond what we have done here. And there may be-it is possible that one of the states may go to the extent of allowing the counties what are called residual powers; that is, that giving them a situation which would be the opposite of the Dillon rule, where they would have the powers that were not denied to them, rather than what we have in Montana where they have only such powers as are granted to them. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: The committee will be in order, please. And we now have before us Section 4, open for discussion. Is there any discussion on Section 4? The question now arises on the motion of Mr. Arness that when this committee does rise and report, after having had under consideration Section 4 of Committee Proposal Number 11 on Local Government, it recommend the same be adopted. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The clerk will read it with the committee amendments included, please.

CLERK SMITH: "Section 5. Self-government charters. The Legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question. The prescribed procedures, however, shall not require approval of a charter by a legislative body. If the Legislature does not provide such procedures by July 1, 1975, they may be established by election, either: sub. (a) initiated by petition in the local government unit or combination of units; or sub. (b), called by the governing body of the local government unit or combination of units. Charter provisions with respect to a local government unit's executive, legislative and adminstrative structure and organization shall be superior to statutory provisions." Section 5, Mr. Chairman.

CHAIRMAN MURRAY: Mrs. Spew

DELEGATE SPEER: Mr. Chairman, I move that when this committee does arise and report, after having considered Section 5, as amended by the committee, that it be adopted.

CHAIRMAN MURRAY: Miss Speer.

DELEGATE SPEER: Mr. Chairman, I would like to make a few preparatory remarks to Section 5 and 6 before I speak to Section 5 specifically. There are two important elements in a local government charter-the structure or form of government, and the powers of local government-and these two elements are closely related; in fact, they are almost inseparable. The Committee for Economic Development has said that local government structures must first be modernized before they are capable of exercising broad powers. In Sections 5 and 6, the Local Government Committee believes that it has given the maximum amount of flexibility to local government in both the forms available and in the structures; and we believe that it provides a flexibility and representativeness and accountability for the present and for a long future. Mr. Chairman, I wish to speak first to Section 5. Section 5 directs the Legislature to provide procedures for local governments-for this Legislature to set up procedures by which local governments may frame their own charters. Delegate Ask spoke to the optional forms of charters which the Legislature might provide. As he very well described, it seems that the Legislature might provide an ample array of selections for local governments-both cities, counties and towns-to adopt. But this Section 5 carries the flexibility a bit further, and it authorizes the Legislature to prescribe limits and procedures by which local governments may frame and adopt their own

charters. Today more than half of the state constitutions-or states have a charter writing powers for their cities and towns. There's a lesser number of counties that have this power; there are only 17. The section here, Section 5, in directing the Legislature to provide procedures and limitations under which local government units or combinations of units-for example, a county and a city or a county, city and towns within the county -can design their own form of government, provides for two major safeguards. First, the Legislature must set the limits and the procedures under which the charters may be designed or drafted. For example, they might-the Legislature might determine that only those units or combinations of units with more than 10,000 population should have charter-writing power. In fact, this is a frequent limitation placed upon self-writing charters. Or the Legislature could specify the number of members of the charter-writing commission and how they are to be selected, whether elected or appointed, and so on. There's a second safeguard provided here, that no charter or charter amendment could become effective until it is approved by a majority of the local voters. In other words, this leaves it up to the people affected to decide exactly what-whether they want the charter that has been framed by their elected representatives. This section also places certain limitation on the power of the Legislature. It prescribes the procedures that are to be used-or it authorizes the Legislature to provide the procedures that are to be used in adopting and framing a new charter, and it specifically states that the Legislature and the local governing body cannot deny or veto a locally drafted charter once it has been framed and if it has been framed in accordance with procedures that have been approved by the Legislature. Charter provisions on a local government's executive, legislative and administrative structure will supersede statutory and administrative measures. Well, this simply means that if a local unit chooses to appoint or elect a treasurer or select it in a different way from what the Legislature says, it may do so. (Clearing throat)—I'm sorry-I've got to get a cough drop.

CHAIRMAN MURRAY: You're doing very well, don't hurry.

DELEGATE SPEER: Just a minute. (Laughter)

CHAIRMAN MURRAY: If you're going to tell jokes back there, we want to hear them at the Chair. The Chair wants to know whether you're trying to compete with Studer. (Laughter)

DELEGATE SPEER: No, I told him I-no jokes, so that mine would be brief. I don't want to compete with Ralph.

CHAIRMAN MURRAY: Okay, you may proceed, please.

DELEGATE SPEER: The section that has been added says that if the Legislature does not provide such procedures by July lst, 1975, they may be established by election, either through initiative, by petition in the local government or combination of units, or they may be called by the governing body of the local government unit. In other words, if the Legislature fails to enact certain procedures for framing local charters, then the local government could proceed under provisions which it has framed for itself, with the approval of the citizens. The committee believes that this charter-framing power offers the greatest range of forms that can be made available to local governments, and it allows them to tailor governments to their own needs and their own interests. And Montana does have a great variety in the size and the interests and the needs of its communities, from rural-small rural communities to large; from very small counties and to larger counties with greater wealth. And this would give them the opportunity to, as I say, frame their charters to meet their own needs. According to the testimony which our committee received, there was not a great deal of interest in charter-framing; however, there are some communities that expressed an interest, and we believe that it would be desirable to give this opportunity to them so that they would not need to wait for the Legislature to provide the additional optional forms which Mr. Ask has suggested. The committee feels that this would open the door for local government to design a form of government that is best suited to their needs and will express their own interests. We do urge the support of this Section 5. Thank you. There is to be a vote now, isn't there, or questions and a vote, rather than continuing with Section 6?

CHAIRMAN MURRAY: We will open this for discussion on Section 5 and vote, and then proceed to Section 6.

Miss Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I ask Miss Speer to yield to a question?

CHAIRMAN MURRAY: Miss Speer, will you yield to a question, please?

DELEGATE SPEER: Yes, I yield.

DELEGATE BUGBEE: Lucile, I think this is just a beautiful article, but there's just one thing that I'd like to ask. You know, in connection with the interlocal cooperation commissions in both Missoula and Great Falls, it seems to me that one of the problems when people get together to look into their local government-and drafting a local charter is a very difficult proposition-that it's very-it seems to me that it's almost impossible for ordinary citizens to do it; that this is one area in which government really needs staff. Did you consider at all putting in there that the Legislature--even thesuggestion that the Legislature may fund? I mean, I don't think it even occurs to the Legislature the problems of doing something like this and how these people, a local community, does need some money to get some kind of technical staff to do their-the basic work on that.

DELEGATE SPEER: Well, we didn't consider funding. There are various procedures that are-well, there are several-there are some that are rather standard; and some constitutions--oh, not a great number-have what are called the self-executing, and tells just the steps that they go about in forming a charter-framing commission, and so on. First of all, they decide on the method of creating the commission and the number of members, and how it's to be elected, and then what length of time it would have to prepare a charter, and then how long before it would be voted on and when, then, if adopted, the provisions for adoption, and then when it would go into effect. This could be included, the procedure, in the Constitution, The only one I-well, I think I've read two—South Dakota was one that gave all of the steps to be taken in framing-in going about the framing of the charter. But I don't know that that answers your question, Daphne. Just what they-we did not consider funding of any state--urban affairs agency, no. That really would be an agency of the state rather than of local government.

CHAIRMAN MURRAY: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I ask another question?

CHAIRMAN MURRAY: Miss Speer, will you yield to another question?

DELEGATE SPEER: Yes.

DELEGATE BUGBEE: Lucile, that isn't what I meant. I'm not talking about a local-I'm not talking about the executive or local government committee, but about giving some direction to the Legislature; some admission that this-if you don't have self-executing powers and you go it alone, that the community needs some help. And if we're going to come into a new era, which I certainly hope we are, I just wondered if you gave it any thought of you-just putting in that one word?

DELEGATE SPEER: Pardon-Mr. Chairman, may I-ask-what was the one word? I didn't get that.

DELEGATE BUGBEE: Well, I'm not going to put it in now; I'm going to wait till the whole article is over. But I wanted to know if you'd talked about this at all.

DELEGATE SPEER: Well-Mr. Chairman.

CHAIRMAN MURRAY: Miss Speer, you may answer.

DELEGATE SPEER: I wish to restate that the committee did consider this matter, putting in what we called the self-executing provisions in the Constitution. But we felt it was better to leave that open for change in the future rather than to add a long-or rather, probably two pages-of procedural matters, when it might be that in 10 years there would be some more desirable way open. And I don't think that that information is so difficult to secure. We have talked-we did talk of leaving with the Legislative Council information as to these things which they might get to the Legislature in the coming sessions.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE 0. ANDERSON: In answer to Mrs. Bugbee, I have this red book here, and I'm reminded of the story that years ago, when Miss Speer was just starting out, the class was studying about moths, especially about Cecropia moths. And they came in to Miss Spew, and a student asked where they could get some information about butterflies and moths, and Miss Speer took a book out about three times this size and gave it to him. A few days later he brought it back and he said, "Miss Speer, there's sure a whole lot more about butterflies in this book than I really need or care to know." But there are a lot of cities with—that have gone through this chartering, and I discussed this with the Mr. Mizner of the League of Cities and Towns, and he said help would be available in this area in many areas. Now, we did dis-

cuss a self-executing charter, and since constitutional space is limited and constitutional language is very inflexible, it was thought better that we would leave this to the Legislature to develop; but there is some historical precedent. The State of Pennsylvania, I believe, had a law like this for 27 years and didn't enact self-executing charters; so this addition to Section 5 was put in so if the Legislature did not implement the chartering route, you could do it on your own. Does that help you out, Mrs. Bugbee?

CHAIRMAN MURRAY: Mr. Ask, did you wish to speak on this matter? You were up.

DELEGATE ASK: Mr. Chairman, I would like to answer Mrs. Bugbee on the question. When we talked about a Department of Local Government for the state, we thought, well, we're just adding another tier on; we'll leave that up to the Legislature if they want to do it. As far as funding goes, we feel that this is a local matter, and if there's a lot of interest in it, they possibly will do some funding themselves. And we have the League of Cities and Towns and the County Commissioners Association that are quite active and interested in this, and they indicated they would set up-they have offices to facilitate a lot of this study. And I think it's going to take a period of time to cover it, and we just didn't want to get into funding of it or who does-the city and town does it, the county, or whether the state does it. And we're just going to leave this up to the Legislature, but I'm sure they will get it done if there's any interest in any of the localities.

CHAIRMAN MURRAY: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, perhaps one of the committee could straighten me out. On page 23, on line 5, in Section 5, it says, "a majority of those voting"; and then on the next page, in the comments, on line 10, it says "by a majority of the local voters". I would assume that the comments were meant to conform with the section by stating "a majority of those voting", Would somebody care to answer?

CHAIRMAN MURRAY: Mr. Ask?

DELEGATE ASK: Mr. Chairman, I'll answer that question. That was the intent of the committee, that it be the majority of those voting; and for the record, why, we can say it would be the majority of those voting on the question.

CHAIRMAN MURRAY: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I wonder if Mr. Ask could clarify something for me.

CHAIRMAN MURRAY: Mr. Ask, will you yield to a question?

DELEGATE ASK: Yes, I will yield.

DELEGATE CROSS: Your comments here on how this will be done and so forth are fairly clear, but the question that comes to my mind is, you've mentioned the Legislature and you've mentioned the county officers as possibly initiating this. Are those the only two means that you are anticipating for initiating this type of local government, or is there some way the people can get involved in the initiation of it? Or does that come later?

DELEGATE ASK: Mrs. Cross, they-this will be-if the Legislature will set up the procedures and how to go about doing it, and I would assume it would provide for a three- or five-man commission, and the local government would do—but if they don't do it, we have provisions for initiative and referendum so that the people can force the counties or cities to take a look at their government and have a self-government charter. And we feel that it can come from the top or come from the bottom, either way; and I think they can accomplish what they want to do.

CHAIRMAN MURRAY: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, would Mr. Ask yield to a question?

CHAIRMAN MURRAY: Mr. Ask, will you yield?

DELEGATE ASK: Yes, I will yield.

DELEGATE CHOATE: Tom, I understand from reading this, it doesn't specify whether or not any particular slate of elected or appointed local officials is required. I assume they could adopt whatever offices they want to under charter, is that right?

DELEGATE ASK: Mr. Choate, under a charter, all the Legislature is going to do is set the limits, like you have to be a population of x-thousand people before you can do it. And they'll set out the procedure of how you have a self. government charter, and then the people-and then set limits; and I assume one of the limits will be taxation. They're probably not going to give them unlimited taxation, these charters, and they

can limit them to keep them out of the felony criminal field. No, they can't pass an ordinance on felonies, but probably on a misdemeanor. They'll set the limits, and then these people that form the charter will draw their own charter, just like the articles of incorporation of a corporation--will have a President, a Vice-president and a Counsel, and will have so many elected officers or appointed officers-you go right down the line. It'll probably be quite a lengthy document. You know-how they'll pass ordinances; what they have to do to run their government so that the people know what's going on; notice to the public; and how they're going to hold their elections, et cetera. In other words, it'll be all-inclusive, what they can do themselves. And then the people, of course, get the right to vote on that. But they'll-if they want five elected officials, they'll set out what their terms are, commissioners or managers or mayors or whatever they are, and then they will go right on down the line, powers and duties for each officer-treasurer. And once that's adopted, why, that's their form of government and they can operate within that and they don't have to follow any of the other statutes, except for taxation or wherever they're limited. Thank you very much.

DELEGATE CHOATE: Thank you, Tom.

CHAIRMAN MURRAY: Mr. Choate, do you wish to speak now on this matter?

DELEGATE CHOATE: Well, I thought I had the floor. I posed a question to him.

CHAIRMAN MURRAY: Do you want to ask another question?

DELEGATE CHOATE: No. I just want to say that I support it. I think it makes good common sense. Thank you.

CHAIRMAN MURRAY: Mr. Harbaugh.

DELEGATE HARBAUGH: I have a question in my mind. I don't know whether this is the place to ask it or not, but I wonder if Miss Speer would yield?

CHAIRMAN MURRAY: Miss Speer, will you yield, please?

DELEGATE SPEER: Yes.

DELEGATE HARBAUGH: We passed a section the other day, and I don't even remember where it is, but it was a section in regard to sovereign immunity, which we abolished. And my question is, how will this apply to units of local governments, such as a city, which are under a self-government charter? Will they lose that sovereign immunity which they might have as a result of being a subdivision of the state?

DELEGATE SPEER: Well, Mr. Harbaugh, perhaps I could ask—

CHAIRMAN MURRAY: Miss Spew, would it be better if Mr. Ask responded to that question?

DELEGATE SPEER: -well, he is an attorney; but my understanding that a city or town or incorporated one exercising charter powers, does it have immunity? Now a county did, because it was an arm of the state, but since the state sovereignty is abolished, then the county no longer has any.

CHAIRMAN MURRAY: Perhaps the Chair can answer that question. As the language was adopted today by the Committee of the Whole in the Style and Drafting report, sovereign immunity for municipalities was abolished; and the fact that they were self-governing or not would not make any difference in the-in my opinion. That doctrine is now dead if this Constitution is enacted.

Mr. Arness.

DELEGATE ARNESS: That's the opinion of the committee, too.

CHAIRMAN MURRAY: There being no further discussion, the question now arises on the motion of Delegate Spew that when this committee does rise and report, after having had under consideration Section 5 of Committee Proposal 11 on **Local** Government, that the same be adopted with the committee amendments. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No.

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The clerk will read Section 6.

CLERK HANSON: "Section 6, Self-government powers. Local government units adopting self-government charters may exercise all powers not prohibited by this Constitution, by

law, or by charter. This grant of self-government power may be extended to other local government units through optical forms-optional forms of government provided for in Section 3." Mr. Chair. man, Section 6.

CHAIRMAN MURRAY: Miss Spew.

DELEGATE SPEER: I move that when this committee does arise and report on the local— that it adopt Section 6 of the Local Government Article. Mr. Chairman.

CHAIRMAN MURRAY: I think your mike is on now. Yes, if you'll speak right into it, Miss Spew.

DELEGATE SPEER: In the beginning remarks, I spoke of the interrelatedness of Section 5 and Section 6, which dealt with the two things, the power-the structure of local government and then the power. Now we extend the powers of local government beyond the general powers that were described by Franklin [sic] Ask in Section 4 and carry them to a rather broad extent. However, we do limit or hinge the exercise of these broad powers to the framing of a local charger. Now, we said local government units now have only those powers that are delegated to them by the Legislature, but under Section 6 this would give local governments, in effect, all the powers that are not denied to them by the Constitution, or by law, or by their charters. This, however, does have certain limitations. Section 6 is intended to authorize certain limits; local units to have considerably more freedom to determine their local affairs, but they are limited on the one hand to the fact that they could exercise these broad powers only if they had framed and adopted charters, and then they are also limited by the fact that they would have to be approved by the voters. This is a new concept in local government powers. We have talked of delegated powers of local government, and we are now talking of the concept of shared powers. The functions performed by local government have been extended far beyond local boundary levels, and therefore local governments cannot properly exercise the functions that they are called upon to do when limited to only local powers. Therefore, we want to give them, in this Section 6, power to share with the state government the power to serve certain-to provide certain services that are needed. For instance, air pollution is a problem that is not limited to a local area. The local area, however, has aresponsibility there and must perform a function, but it is also a state and an area, a regional function; and so it's a question of the local government sharing power with the state. It is not a delegation of powerwhich limits the local government. The local government is free to act in any function so long as the state has not exercised this function. Now this may sound as though it were giving a great deal of power to local government; but as I said, in the first place we limited only to those local governments that have framed their own charter, and the second limitation we put upon it is that the Legislature can at any time enact a law to restrict local government power or preempt that area if the local government has exercised power that is not within its proper area. Now the question is usually raised to what should be the powers of local government in the area of taxation and local debt? Well, so far, I think in the new Constitution we havelimited the local government power. We've given the Legislature the power to regulate, set limits on local debt; and it may be that the Legislature probably will set limits upon the taxing power of local governments; and in the exercise of various judicial functions, the Legislature will probably limit the powers of local government. So it is not a give-away of the state of these broad powers; it simply means that local governments are free to act to perform any service or function unless the area of service has been preempted by the state government. We feel that this is a needed power for local government in order to serve the expanding and the developing needs that are common to local communities, both urban and rural. Our local governments have changed greatly from 1889, when the Constitution was framed; in fact, the Constitution, as I think we have pointed out here, makes no reference to local powers. And we want to "pen this, with Section 6, so that local governments can exercise a broad range of new powers to perform services that we do not even imagine at the present time. It does give the Legislature plenty of control over local government, as I pointed out, in the fact that the Legislature can step in and limit that power or preempt the power by the exercise-by legislation. I urge the adoption of this Section 6, in conjunction with Section 5, which I believe will "pen local government to opportunities for service functions for our present time and for many, many years to come. Thank you.

CHAIRMAN MURRAY: Is there any discussion on this section?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chair-

man, will Miss Speer yield to a question?

CHAIRMAN MURRAY: Miss Speer, will you yield to a question?

DELEGATE SPEER: Yes.

CHAIRMAN MURRAY: She will yield.

DELEGATE BLAYLOCK: Lucile, you speak of these powers that can be given, and if they're not necessarily-if they're not absolutely precluded by the State Legislature, then the local government has the power if they set up these charters, is that right?

DELEGATE SPEER: Yes, if the state government has not used that power—

DELEGATE BLAYLOCK: May I ask you another question?

DELEGATE SPEER: -and that is-that means that it has not been expressed as a state function.

CHAIRMAN MURRAY: You may ask another question, Mr. Blaylock.

DELEGATE BLAYLOCK: Does this mean, then, that if the Legislaturedoesnot stateit as a negative, that a local city government could enact a sales tax and enact a right-to-work law?

DELEGATE SPEER: Yes, it does, unless the Legislature prohibited it; unless the Legislature had said that the local government cannot pass any such tax.

CHAIRMAN MURRAY: Are you done, Miss Speer?

Mr. Ask.

DELEGATE ASK: Mr. Chairman, maybe I could clarify that for Mr. Blaylock. Chet, when you have a self-government charter, the people can restrict the powers right in their charter; we won't have any right-to-work law or whatever you want to put in there; you can't tax beyond a certain mill or you can't have above a certain indebtedness. So the charter itself can be restrictive that the people vote on, and I assume there would be some restrictions in a self-government charter to protect the people; I mean, they don't want to give them unlimited power. But if the Legislature doesn't deny the power, if the charter doesn't deny the power, why, then they would, of course, have the power to do it, probably. Does that explain your question more, that the-?

CHAIRMAN MURRAY: Miss Speer.

DELEGATE SPEER: I wanted to say that this power, Mr. Blaylock, to-the sales tax, you see, could not be exercised unless the local government approved it; the people. And I wanted to read to you the last paragraph of a letter which our committee, Mr. Anderson, Chairman, received from Jim Murry, the Executive Secretary of the state AFL-CIO. "We have carefully analyzed your committee's majority report, as amended, and we believe the fears of our Convention"-which I think Mr. Blaylock was referring, perhaps, to; some of the reports in the paper last summer-"are satisfactorily resolved. We especially approve of the revised wording of the first sentence in Section 5, which now reads: 'The Legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question.'"

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Yes, I think I should maybe expand on that just a little bit. In answer to your question, Chet, what we've done here is really establish two classes of powers that cities and towns and municipalities can exercise. The first class is the class that1 spoke to you about in paragraph 4. That's the situation that we have now; that's what we call the Dillon's rule. In other words, there's nothing that the Legislature—except what the Legislature gives. Now, that's the first-that's paragraph-that's Section 4; that's the one that I talked to you about. Now, the second class of power is the one-is contained in the two sections Miss Speer talks to you about. First of all, it should be observed that these do not execute themselves; the Legislature has to act. So really, it's not what it appears to be. Miss Speer was assuming that the Legislature-in her answers—that the Legislature had acted and had set up the charters. That hasn't happened, but it is possible for the Legislature to do that. However, it does require an affirmation act by the Legislature to bring this second class of power into play. The—it's contemplated that if the second class, then, is ever created-in other words, a situation where Dillon's rule is not applied but where you have a unit of government that has more than just the minimal power that might be given to it by the Legislature-if that class is ever created, that the Legislature will classify it. So it's going to set down a rule, cities of a population of 100,000 or

more may adopt charters; the charters they may adopt are as follows. The-it's not at all a situation where cities, and counties, municipalities could write themselves a charter form of government, vote it in, and then start going. We won't have a situation of little city-states under the proposal that we have here. This, as they say in the Powder River country, this is not a situation where imperium in-imperial could develop. We won't have a government within a government unless the Legislature should set up a class of that kind. It's extremely unlikely that these areas would be taxing entities, such as you've suggested, or anything of the sort; but there is a second class of power here that could be called into being by the Legislature. It's obviously not suitable for small localities. It is something that would probably require a fairly large population; to me, it would seem something like 100,000 would bereasonable. When we-when the committee was talking about this, we talked about putting a figure in here, saying that if a city had 50,000 people or 25,000 people, that it could be classified this way by the Legislature; but we were-the committee was not able to agree upon a definite population figure. But this is not a situation-this is not something that's self-executing at all; this requires the Legislature to do it. So, really, it's not a situation that brings into play what has been called residual powers. These places, if they exist, do not have residual powers. They really have to go to the Legislature first; then and only then could they exercise more powerthan what they have now. Have I stated the proposition fairly, Tom and the other members of the committee?

DELEGATE ASK: Yes.

CHAIRMAN MURRAY: Mr. Blaylock.

DELEGATE BLAYLOCK: May I ask Mr. Arness a question?

CHAIRMAN MURRAY: Will you yield, Mr. Arness?

DELEGATE ARNESS: I yield.

DELEGATE BLAYLOCK: When I first asked this question, several-I think it was Oscar-gave me a letter here signed by Jim Murry, and evidently he had analyzed this. But I think Jim made a public confession one day, in the committee meeting up here, that he had learned most of his law in Sonny O'Day's bar; so I don't want to take too much credence in whether the legal interpretation is great or not. So what I'd like to ask you, Frank, is, if I followed you correctly, when the Legislature gives the power in granting these charters, they could say in—when they set this up, cities of, say, fifty or a hundred thousand in the State of Montana shall have the power to enact a general sales tax. The Legislature or-and they could go on and say they shall have the power, if they so decide, to enact a right-to-work law. Could the Legislature-the Legislature could do that?

DELEGATE ARNESS: Conceivably it could; it's possible that they might. I can't say, of course, what the Legislature would do, but I think it would be within their power to do that, yes.

CHAIRMAN MURRAY: Mr. Foster.

DELEGATE FOSTER: Thank you, Mr. Chairman. Would Delegate Ask yield to a question?

CHAIRMAN MURRAY: Will you yield, Mr. Ask?

DELEGATE ASK: Yes.

DELEGATE FOSTER: Tom, now, assuming that at some time one of these charters is created and assuming that there are certain listed powers that that city has under that charter, would it be possible for the Legislature to take those powers away once the charter is established, or not?

DELEGATE ASK: Mr. Foster, I feel that the Legislature would always keep some control over this, and I think they could take a certain area-but they just couldn't say, "Billings, you can't have the power of that"; they'd have to do it all the way across the state-cities with charters cannot do thus and so, see? But they can't specify one particular place; it would have to be a general law-we're taking away all taxing power; the state's going to do it; and I think they could take it away that way. Yes, I think they'd have authority to do that.

DELEGATE FOSTER: Would Mr. Ask yield to another question?

CHAIRMAN MURRAY: Will you yield?

DELEGATE ASK: Yes, I yield.

DELEGATE FOSTER: After the power was granted, after the charter was established, after it was in function, the Legislature could still

come back and in a general law say that you no longer have that power, is that right?

DELEGATE ASK: Yes, in a general area. This is my understanding of it. I mean you-1 mean, after all, the Legislature is the supreme legislative body of the state. I think they-if something ever got out of hand, I think they have the right to do it; but they can't pinpoint special areas; it would be-have to be a general statute.

DELEGATE FOSTER: Thank you, Mr. Ask. It would seem to me that if the charter was established and the city was operating under it, that at least under one provision, that the charter would take precedence over the Legislature; but I won't belabor the point. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I would like to add that, actually, there isn't any reason right now why the Legislature couldn't say that cities could enact a sales tax or cities could enact a right-to-work law. These things are available now; if that's the context one thinks of in connection with charter. But remember, the Legislature is to deal with general law for the state and not with special laws. And I just can't-I've never heard of any concept in connection with charters that hasn't dealt with general law, and not with nitty-gritty-type things of that sort. They would give general taxing powers of certain kinds, et cetera, to make them conform with the state revenue and taxing prerogatives.

CHAIRMAN MURRAY: And, Miss Speer, did you have something further to say?

DELEGATE SPEER: Mrs. Blend said what I was going to say.

CHAIRMAN MURRAY: Okay, Mrs. Blend covered that point.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, maybe I could answer Mr. Foster's question a little more thoroughly. I think you're thinking of Section 5, where-in the second paragraph, where it says: "Charter provisions with respect to a local government unit's executive, legislative and administrative structure and organization shall be superior to statutory provision". In other words, that's their executive, legislative and administrative; they would have their own for that; and I think that's what you were talking about, their powers, what they could do in taxation or misdemeanors. I think they could change that, but probably not the structure.

CHAIRMAN MURRAY: Mr. Foster.

DELEGATE FOSTER: I would yield to a question, if that was a question. When I first read this provision you refer to here, the end of Section 5, "shall be superior to statutory provisions"—when I read "statutory provisions", I was thinking of legislative state statutes. But your intent here, then, is that those are city statutory provisions?

CHAIRMAN MURRAY: Mr. Ask?

DELEGATE ASK: Mr. Foster, that means that with this charter they'll have an executive—set up some type of an executive, and their legislative powers will be set forth in there. How they-what-they going to have a council or a commission-that would be their legislative power. And then their administrative structure, like they're going to have a sheriff, a treasurer, et cetera. In other words, when this-this is superior to the statutory law, because they are choosing their own type of government. And whatever the other statutes say-that you have to have a treasurer, auditor, or something like that-they don't have to abide by that because they have their own officers. So, so far as that's concerned, they're superior to statutory law; but then, when you get out into taxation and criminal law, fields like that, then the Legislature has power. Because that is—it doesn't say that; it just says "executive, legislative and administrative"-they would have complete authority over that. In other words, the Legislature couldn't pass a statute, say, we do away with all commission forms of government and self-government charters; they couldn't do that because they've adopted their own.

CHAIRMAN MURRAY: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, if1 have the floor, I would just make one observation: that if, in fact, this statutory provision is a limited statutory provision, at least I interpret it wrong and there's a possibility that others might interpret it wrong. I suppose Style and Drafting can probably clarify that point. But I was a little-it seemed to me when it says that it's superior to statutory provisions, I immediately r~ad into it that once the charter was established and functioning, that, in fact, they retained those pow-

ers without control by the Legislature; and if that's not the intent, it would be my opinion that it should be made clear at least. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Further discussion? Members of the committee—

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I would like to ask a couple questions of Delegate Arness.

CHAIRMAN MURRAY: Mr. Arness, will you yield to a couple of questions from Mr. Romney?

DELEGATE ARNESS: I yield.

DELEGATE ROMNEY: My friend, I was a little agitated by the replies you gave to Delegate Blaylock. To continue that a little bit farther, we'll say that the city of Opportunity sets up a charter, and they can enact right-to-work laws and sales taxes; permit wide-open gambling, prostitution, drug sales, and one thing or another of that character; and become a little Las Vegas-and maybe not so little. What's to stop them?

DELEGATE ARNESS: What you're asking me is what's to stop the Legislature, really. I think the people that we're worried about-that worried about the right-to-work law and other things felt that they could fight their battles out in the Legislature; but that's the answer, of course. It would have to be dealt with at the Legislature-or at the legislative level, probably, rather than city by city or town by town. Surely, if we had the charters for these villages of a thousand, or ten thousand people, it would be too much for any organization or group of organizations to handle, fighting the things they didn't like. I think that the Legislature is the battleground for these things. But certainly that possibility, I suppose, is opened up here, although it seems to me that it's a very vague possibility. Did I answer you?

DELEGATE ROMNEY: Then-yes, it does. Then what-we have to depend entirely upon the restrictions which the Legislature imposes?

DELEGATE ARNESS: Yes, that's right. Not only-it goes a step further than that, because, first of all, assuming that this section is adopted, then there are no restrictions, there are no procedures, and there is no second class of power as far as the cities or the municipalities are concerned. It's up to the Legislature to create this second class in the first place; and then, having created that class, cities who found themselves eligible, or areas that found themselves eligible, could apply to the Legislature. But it would require, really, two steps: first of all, for the Legislature to act at all to create these classes; and once having created it, then, of course, the second step, the actual charter itself.

DELEGATE ROMNEY: The next question is in this Number 2, "If the Legislature does not provide such procedures by July 1, 1975, they may be established by election", and so on, so forth. That means, if the Legislature doesn't act, Opportunity could grasp the opportunity and go ahead by itself?

DELEGATE ARNESS: It would appear that does say that, and I believe that-it's my opinion that you've stated this correctly.

DELEGATE ROMNEY: And then, as I understood Delegate Ask, once a charter is granted, the Legislature cannot take it away?

DELEGATE ARNESS: No, I don't think that he meant that; I don't think that he said that. There's nothing in the provision of this article that would prevent the Legislature from restricting a charter once it had been granted. This is not a situation where the charter-there are some places, I understand, that do have language that give charter provisions that kind of status once they've been set up. But as I understand it here, that's not the case. And the Legislature could limit charters, having granted them. The language that Mr. Ask was talking about refers to the intent to allow the area, once it has elected to enjoy this city-state status, to determine the form of its city-state, So if it wants to have an emperor and a court, I suppose then that it could decree that and we couldn't do anything about that; but if the emperor decided that he had to have a right-to-work law, the Legislature could put an end to that, but not to his status as emperor. I think that's clearly intended by that, that the area can decide what form of government it wants, but it can't decide the substance of any of the substantive laws. I believe that's theintention of the majority of the committee. You understand that I am answering for the majority.

DELEGATE ROMNEY: And if that—then nothing would preclude the establishment of a parliamentary government?

DELEGATE ARNESS: No, I think that's right; in fact, I think that's what all the cities in Montana have right now, isn't it? Excuse me, I'm sorry; I shouldn't have asked you a question.

DELEGATE ROMNEY: I think that's a little aside.

DELEGATE ARNESS: Possibly we could refer that to our parliamentary expert.

CHAIRMAN MURRAY: Let's keep our dialogue in point, now.

DELEGATE ROMNEY: Finally, I would like to know if, having aldermanic plan available and the city commissioner plan and the city manager plan available, was there any hue and cry and clamor on the part of the populace of Montana for a charter situation?

DELEGATE ARNESS: So far as I know, there was only one witness that appeared before our committee who was even vaguely interested in this; and as I interpreted it, his interest was-there was some interest, that's right-that was the mayor of Missoula, and that's the only one that talked about it.

CHAIRMAN MURRAY: Any further discussion?

Mr. Simon.

DELEGATE SIMON: May I, Mr. Chairman, ask if Mr. Romney would yield to a question?

CHAIRMAN MURRAY: Mr. Romney, will you yield to a question by Mr. Simon?

DELEGATE ROMNEY: Yes, sir. I yield.

DELEGATE SIMON: Mr. Romney, in the area that we aretalking about, I wonder if many of the things that you are worried about are not going to be covered in the Constitution; and I don't think the Legislature could usurp the things and put them in a charter that is prohibited in the Constitution, am I right?

DELEGATE ROMNEY: Yes. The whole thing has such fascinating possibilities that are offered, that I couldn't-I wanted to find out what was available.

DELEGATE SIMON: Thank you.

CHAIRMAN MURRAY: Miss Speer.

DELEGATE SPEER: Mr. Chairman, I wanted to remind Mr. Romney that in the early history of our counties and states, that local governments did possess these powers. It was only in later years that they were curbed by Legislatures. That was a-the Dillon rule was a much later interpretation. So this return to some degree of self-government, which is hinged upon the desire, the initiative, the will of the people to frame their own charter, is probably not going to be exercised widely; but it was done in the early days of our country. And I think the old town meeting was supposed to be the most democratic form of local government, was it not, Mr. Romney?

CHAIRMAN MURRAY: Members of the committee, the question now arises on the motion of Delegate Speer that when this committee does arise and report, after having had under consideration Section 6 of Committee Proposal Number 11 on Local Government, that it recommend the same be adopted. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

Mr. Rygg.

DELEGATE RYGG: I move the committee be in recess for 10 minutes.

CHAIRMAN MURRAY: Motion has been made by Mr. Rygg that the committee be in recess for 10 minutes. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: Ayes have it.

(Convention recessed at 4:50 p.m.--reconvened at 5:10 p.m.)

CHAIRMAN MURRAY: The committee will be in order. The committee will come to order. The clerk will read Section 7.

CLERK HANSON: "Section 7, Intergovernmental cooperation. A local government unit, by act of its governing body, may or, upon being required by initiative or referendum, shall

cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state of the United States, unless prohibited by law or charter." Mr. Chairman, Section 7.

CHAIRMAN MURRAY: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 7 of Proposal Number 11, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN MURRAY: Mrs. Blend.

DELEGATE BLEND: The Intergovernmental Cooperation Act has been on the statutes since the Twenties. This revised section which we offer in our article would provide cooperation, coordination, agreement or consolidation in the exercise of any function, power or responsibility of a local governmental unit. It would provide again for the sharing of the services of a public officer. It could provide the transferring or the delegating of functions, powers or responsibilities or-and duties of an officer. And, of course, all local government units, cities, towns, counties, and any mix and match arrangement thereof-school districts-can enter into interlocal government cooperation agreements. And we have added in ours, which is not in the statute, that local government units can also have agreements with the State of Montana or the United States. Regardless of the form of government that local government units might have-whether they are joint units, single units; whether they have retained the status quo with the form of government they currently have; or if they change-they canenterinto intergovernment cooperation agreements very easily. It is an opportunity for entities of government to get together with their neighbors down the road, or with their county officials, to decide on things which may not require a change or a form in government, but only to provide a function that may bring on economy. Some of the things that one thinks about is the mutual purchase of a snowplow, of county equipment for repair of roads; for the use of any utility functions where it might be feasible to arrange an agreement. Another feature of our revised intergovernmental cooperation agreement is that it is functioning if it is agreeable and signed by the entities of local government; it does not have to be approved by the attorney of state, which is the provision in the prevailing statutes now. We feel that this should be in the Constitutional Article to make a full, complete framework of local government at this time, which lack of framework in the present Constitution and the piecemeal fashion in which it has been developed over the years makes it very difficult for people on the local level to coherently know what is available to them. Recent state Constitutions have included it in their Constitutions; such as Alaska, Hawaii, Illinois, Michigan, the State of Virginia, and Pennsylvania, of course. The proposed North Dakota Constitution also included such a section. Local government units no longer would have to wait for specific legislation authorizing them to cooperate and share services. This section, as proposed, directly gives local units the authorities to cooperate and share. In other words, ultimate legislative authority is retained in setting up the provision, but local government is free to act under their provisions established in advance. This would give the people an opportunity, perhaps preliminarily, to review their government to learn how cooperative action can take place between a city and a county or cities, which could lead to an understanding of consolidation or chartering or another form of government. The section specifically makes it clear that the people, through an initiative and referendum measure, may force their local government to cooperate if government itself does not take it upon itself to arrive at these conclusions. I think that most of the delegates are familiar with interlocal commission; it was established somewhere back in the twenties, but it was not until 1967, when it was revised in the Legislature, that the local government units in the state really became aware of it. Several towns-cities in the state have experienced interlocal government commission arrangement. They are so very valuable from the standpoint of citizenry getting together to talk over their problems, if nothing else. I think that it is worthwhile to retain it in the Legislature-in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Members—
Mr. Berg.

DELEGATE BERG: Would Mrs. Blend yield to a question?

CHAIRMAN MURRAY: Mrs. Blend, will you yield?

DELEGATE BLEND: I yield, Mr. Berg.

DELEGATE BERG: Under this provision, would it permit a city and a school district to cooperate and coordinate their functions in the construction, for example, of a swimming pool?

DELEGATE BLEND: Yes, that could be accomplished.

DELEGATE BERG: Well, I can't find anywhere in the article where it refers to the cooperation or the agreement with regards to facilities. I see it so far as the services of an officer are concerned, and the exercise of functions, but I don't see it insofar as the use or management of a facility or the ownership of a facility is concerned.

DELEGATE BLEND: Power--well, really, it does provide for ownership because examples of it have been that local government can purchase equipment together; they can use a computer together, either on a lease basis or whatever arrangement they decide upon. I don't believe that the Interlocal Cooperation Act particularly has to mention ownership. The basis of the coordination, cooperation, or consolidation indicates that whatever agreements or terms the local governmental entities come to and they make the formal contract, arranging for the payments, et cetera, et cetera, will make it a bona fide agreement.

DELEGATE BERG: Would you yield—would Mrs. Blend yield to another question?

CHAIRMAN MURRAY: Will you yield to another question, Mrs. Blend?

DELEGATE BLEND: I yield.

DELEGATE BERG: If at-I'm looking at page 28—if you added the word, after "officer", at the end of that line, "or facilities"-comma, would that clarify the situation that I have in mind and which is a problem in our community?

CHAIRMAN MURRAY: Now, the committee's been noisy all afternoon and I wish you wouldn't be, please. Show a little respect to these people-besides that, I can't hear. Now, go ahead, Mr. Berg.

DELEGATE BERG: I'm only suggesting that you might add the word "or facilities", which I think might clarify the situation.

DELEGATE BLEND: I think that perhaps it would, and I would have no objection and I don't believe that the committee would, because we want this agreement to be inclusive and expansive. That would be agreeable.

DELEGATE BERG: Mr. Chairman, then I move to amend Section 7, on page 28, line 18, at the end thereof, by striking the comma and adding the words "or facilities, comma".

CHAIRMAN MURRAY: All right. Now, I'm working from a different page than you are. Give me that again, please.

DELEGATE BERG: I was on page 28, and on line 18, where it says "or share the services of an officer", I would strike the comma and add the words "or facilities, comma".

CHAIRMAN MURRAY: "Or facilities, comma"; is that right?

DELEGATE BERG: Yes.

CHAIRMAN MURRAY: Do you wish to speak to that, Mr. Berg?

DELEGATE BERG: No, I think the questions I've asked and the answers given are explanatory enough.

CHAIRMAN MURRAY: Okay. Mr. Berg has offered an amendment to strike the comma after the word "officer" and add the words "or facilities" and then place the comma. As many as are in favor of his amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. Further discussion? (No response) The question now arises on the motion of Delegate Blend that when this committee does rise and report, after having had under consideration Section 7 of Committee Proposal Number 11 on Local Government, that it be adopted as amended. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The clerk'11 read Section 8.

CLERK HANSON: "Section 8, Revenue sharing. Nothing in this Constitution shall prohibit the state from sharing revenue with local government units, or the units from participating in revenue sharing with the state or the United States." Mr. Chairman, Section 8.

CHAIRMAN MURRAY: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 8 of Proposal Number 11, it recommends that the same be adopted.

Mr. President [Chairman].

CHAIRMAN MURRAY: Mrs. Erdmann.

DELEGATE ERDMANN: Article XII, Section 4, of the present Constitution of Montana has been interpreted as limiting the state aid that can be provided for local government. The result has been a tightening of the local fiscal squeeze, increased reliance on the property tax, subterfuge to get around the constitutional limitation, and the resulting fact that Montana ranks 46th in the nation in state per capita aid to city and county governments. As a matter of fact, in the tabulation for the year 1969, the-on a per capita basis, Montana distributed $6 to its people in local-and I mean-when I say "local", I mean county and city-$6 on a per capita basis, as compared to the national average of $49. At this time, since we adopted the Taxation and Revenue Committee report, this restriction has been removed-deleted from the Constitution; however, the committee believes it is highly desirable to affirmatively provide that the state may share revenue with the local units and that the local units may participate in revenue sharing with the state and with the United States. Such a provision will not assure such state or federal assistance, it will only assure that the Constitution will not stand in the way of statutory provisions for such aid. Mr. Chairman, because I believe there's been a little bit of confusion about this revenue sharing, may I continue further a moment?

CHAIRMAN MURRAY: Yes, you may, Mrs. Erdmann.

DELEGATE ERDMANN: Section 8 actually does two things: it states that nothing in the Constitution shall prohibit the state from giving aid to the local units, and it states that nothing in the Constitution should prohibit the local units from accepting that aid from the state or national governments. The committee felt that the present programs of state aid are such a tangle of subterfuge that it will take a direct statement that state aid is permissible, such as Section 8, to straighten out the general mess. For example, at present, taxes are disguised as license fees so that they may be given to local governments; and the purpose of state aid has been claimed to be for the purpose of the state rather than of the locality, to get around the present Constitution. No one knows for sure what form federal aid to local governments is going to take in the future. Will it be direct grants to the units locally, or will the money be channeled through the state? Will it be based on population, or will it be based on need? What will the county and the city governments have to do to comply to get the money? No one knows the answers to these questions now. Section 8 simply assures that the State Constitution will not stand in the way of local governments accepting such aid, and thus relieving their local property taxes. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Gysler, you have an amendment. Would you like the clerk to read it at this time?

DELEGATE GYSLER: Please.

CLERK HANSON: "Mr. Chairman. I move to amend Section 8 of the Local Government Committee Proposal Number 11, on page 5, line 17, by adding the following between the words 'revenue' and 'with'-quote: 'except revenue from real estate and personal property taxes'-comma. Signed: Gysler."

CHAIRMAN MURRAY: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, fellow delegates. I've been on this floor a time or two before, as you will recall, on removing the mill levy on property taxes and so on. In talking to members of this committee-and I have done this over a period of quite awhile-their intent, they tell me, is not to share any real estate and personal property taxes: their intent is to allow federal revenue sharing, the liquor taxes, the gas taxes, and to make all of these things legal, which I am certainly in agreement with them. However, as long as this is their intent, I decided to write this amendment. Now, if you-if the committee will recall, when we were on Section 1, I asked Mr. Rollins whether any of these governmental units that were being talked about in this section applied to school districts or school boards or anything like that, and Mr. Rollins answered no. Now

this was the reason given to us in the Revenue and Finance Article that we could not put any mill levy limit on there, so now we have that restriction removed. I think as long as this is the committee's desire, as stated to me by several of them, that federal-or property taxes not be used for this revenue sharing, that we add the eight words to the Constitution and say that it won't be. As I have said on this floor before, I live 40 miles from a town who is in a financial mess. When the Revenue and Finance Committee had their hearing here and Mrs. Erdmann asked the Revenue and Finance Committee about revenue sharing with cities and so on, none of them did; but if you will recall, at that time I stood up and said that I would have some reservations about it. After that the mayor of Great Falls sat over there and tried to stare a hole at me-or through me for about 20 minutes. But this is the real concern; and it really is a concern to those of us who live close to that-to Great Falls. If you buy the *Great Falls Tribune*, you see on the front page this morning in a big headline, "City in Money Mess". They had-1 believe they had some auditors up there awhile ago; now they have seven state auditors in there trying to figure out what's going on. But I think-I know that this is a real concern, whether you're in Shelby where Mr. Aronow lives, or where I live; and so I sincerely ask you to adopt this.

CHAIRMAN MURRAY: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman], I would like to have Mr. McDonough—I don't believe he's in the room, but he'll probably be here presently-respond to this, because I would imagine it's in violation of the statewide assessing and the property tax paragraph in his report. However, I can't help but observe the anxiety that Mr. Gysler has always expressed, as a resident of Fort Benton, against my hometown. I think it goes back to the days when we dumped all our sewage in his river, probably. (Laughter) But I do say that I would like to hear from Tom Ask until the attorney for the Taxation and Revenue Committee would be in the room. But the paragraph that we have put in here, I'm sure Mr. Gysler understands, is simply to protect his county and our cities so that they are-it safeguards them so they're in a position to share revenue. His anxiety I certainly share, but I believe the time to have fought this was during the time that we were having the Taxation and Finance Article. I believe it was folly to lift the 2-mill statewide property tax, but I don't believe that you can fight that battle in this section; and I share, and I'll repeat again, I'm concerned about the loss of the earmarking. When we removed the auto license earmarking from the antidiversion section of the highway section, we automatically put that $5 million that heretofore has been earmarked for roads for county and city purposes and we have given it to the Legislature to their general fund. The Taxation and Finance Committee keep assuring me that the Legislature now has statutes giving this money back to the counties and the cities and that there's no reason to think they won't do it in the future. They don't have to do it in the future; and I see they're going to be in a desperate situation with all the extra costs that this commission is going to throw back on them after the adoption of the new Constitution. They're going to have to have a great deal more money to take care of welfare and education, and I would feel much, much more relaxed if we had continued to keep the $5 million license plate money earmarked for local-for county and cities. But we didn't do it. And I maintain that his problem should have been settled under Taxation and Finance. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Will Mr. Gysler yield?

CHAIRMAN MURRAY: Mr. Gysler, will you yield to a question, please?

DELEGATE GYSLER: Certainly.

DELEGATE ARNESS: If I got this amendment right, now, Erv-I wrote it down here--what you want to do is to prohibit sharing from personal real property taxes between the state and units of the state. That's what you said, "personal real property taxes"?

DELEGATE GYSLER: Mr. Arness—

CHAIRMAN MURRAY: The amendment reads, "except revenue from real estate and personal property taxes".

DELEGATE ARNESS: Oh, okay, I've got it--"except revenue from real estate and personal property taxes". May I ask, what is the purpose of the amendment? I'm not sure that I understand it.

CHAIRMAN MURRAY: Mr. Gysler, he asked you what the purpose of the amendment was.

DELEGATE GYSLER: Mr. Arness, the purpose of the amendment is to try to keep down

the property taxes in the state. Now the reason that I did just those two taxes is your committee members-I don't believe I talked to you on it, but the committee members that I did talk to said that they had no intent to use any of these kind of funds. This, then, does not restrict the gas taxes or any of the other taxes or the federal funding from going to the states; just this, because this was such a great concern while I was campaigning last fall.

DELEGATE ARNESS: Thank you. That's all I had.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE 0. ANDERSON: Would Mr. Gysler yield to a question?

CHAIRMAN MURRAY: Mr. Gysler, you will yield-I guess.

DELEGATE GYSLER: Certainly.

DELEGATE 0. ANDERSON: Mr. Gysler, what would happen if a city-county library in, perhaps, your county should want to combine with the local school library? Eventually there should be a statewide levy for schools, and that money would come back from the state to the schools and they would attempt to cut expenses in your county and wouldn't be able to do so because the courts might hold that this would be a distribution of real estate or property taxes.

DELEGATE GYSLER: Well, Mr. Anderson, I think the first thing that would happen would be a taxpayer revolt in my county and quite a few others if they started financing that way.

DELEGATE 0. ANDERSON: Mr. Chairman.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE 0. ANDERSON: I would like to rise and resist this amendment, because I can see the implications. The whole intent and purpose of the Local Government Article was to allow flexibility so we could bring about two things in local government; one of them is economy. The maximum economy could be used in every area of local government by utilizing and combining their resources and flexibility. Now, there is no intent-you know, I'm a hick from Hicksville, right down in Sidney, Montana, and I don't want to see any property taxes on either real or personal property pulled into state and redistributed to the cities; and that's the furthest thing from our minds. But I certainly do resist the—anything that could come into the future, such as the utilization of a school library and a city-county library that could effect savings for a-in the local government area and the school area both, and something coming along like this to prohibit it. And I resist the amendment.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in opposition to this amendment. If you read this section as proposed, it's not directing the Legislature to share revenue, it's just saying that nothing in this Constitution prohibits the sharing of revenue. And I look for the day, maybe many years from now, that possibly a school district could be classified as a local government unit, to give it some more power; it would be a larger district maybe and elected trustees; it could be-they say, "Well, we'll give you the powers of a local government unit." And then here we lock in these words; and if you have a statewide levy of some type for schools, how would you ever get the money to the school districts then? And I don't see your problem, Mr. Gysler. We're not intending to take money from your county to pay in some other county here. We're just saying that we're not prohibiting revenue sharing. But I wouldn't like to see these words locked into our Constitution and prohibit something in the future-future years if you happen to call a school district a local government unit, which they might want to do some day. And by this you'd say, "Well, we can't do it then; you'll just have to go on your own like we are right now."

CHAIRMAN MURRAY: Mrs. Blend.

DELEGATE BLEND: Would Mr. Gysler yield to a question, please?

CHAIRMAN MURRAY: Mr. Gysler, will you yield to a question?

DELEGATE GYSLER: Certainly.

DELEGATE BLEND: Mr. Gysler, if I read the section which we passed under Environment and Natural Resources--now, money to be collected on cattle, et cetera, would be personal property tax, wouldn't it? Well, that goes into the state coffers. Now, if you restrict a sharing of money from personal and real property tax, how could any of that come back to Chouteau County, the same as the educational funds?

DELEGATE GYSLER: Mrs. Blend, if you

will read that article on levies and read the comments along with it, that is a tax on a special commodity that is produced to be used, not in the local community particularly, that is to be used for the good of agriculture in that particular commodity all over. This money will be gone out-taken care of with a state agency; and here we are talking about local government; and I don't really foresee any problems with the mill levy situation at all.

DELEGATE BLEND: Mr. Chairman, may I reply?

CHAIRMAN MURRAY: Mrs. Blend, you may speak.

DELEGATE BLEND: Well, Mr. Gysler, in a-to restrict an article of finance in a general article such as local government is-1 think there possibly could be an interpretation of that kind, because you're unrestrictedly saying "real and personal property". If it is your thought--and I really can't believe it is-that the real and personal property tax that you would collect in Fort Benton, Montana, could in any way be redistributed up and back through the state down to Great Falls, Montana, I can't possibly envision anything like that. Is that, if I may ask, what you have in mind?

DELEGATE GYSLER: That is to me a very real possibility after reading your *Great* Falls *Tribune* for the last year and seeing what your city council says; they will be out of the financial troubles if the new Constitution, if it's approved, will just approve revenue sharing.

DELEGATE BLEND: Mr. Chairman, may I reply?

CHAIRMAN MURRAY: Mrs. Blend, I don't know who's asking who questions, but you may speak. (Laughter)

DELEGATE BLEND: Thank you.

CHAIRMAN MURRAY: And if you don't ask him a question without asking me, then I'll know who is asking who a question. (Laughter)

DELEGATE BLEND: Thank you. Well, I cannot believe that Mr. Gysler believes everything that he reads in the paper; (Laughter) because if we have ever had a good course in that, it's been at this Constitutional Convention. The particular problems that Great Falls has, I hope that other communities can benefit from: and I assure him that it has never occurred to anyone, nor is it possible under the law, for us to look to other communities to help pay our bills, because if we had, we have towns in our county that we perhaps would have looked to. I do not think that Mr. Gysler's fears are anything but fears in this connection. And he would restrict the flow of funds that it would be possible to get from the state, which certainly would be on a pro rata basis exactly as the ones that we have now. And I resist his amendment for not being valid. Thank you, Mr. Chairman.

DELEGATE ARONOW: Mr. Chairman.

CHAIRMAN MURRAY: Mr. Aronow.

DELEGATE ARONOW: I rise in support of Mr. Gysler's amendment; and let me tell you that Mr. Gysler's fears are not imagined, they're real. And during the campaign in District 15, that was one of the things that our cowboys-excuse me, Torrey, we have some that are not from Powder River County; they are from Glacier, Teton, Toole and Pondera; and we have a lot of wheat farmers also-they were highly concerned; and that's one of the things that I pledged-that I would not come down to this Convention and do anything that would authorize a levy of a tax by the State of Montana on the rural and agricultural lands and other assets of this state in order to be funneled through the State of Montana back to the urban areas. Sure we have towns; we have cities, small in population. And the amount that we would get in our area and along the entire Hi-Line of northern Montana would be a drop in the bucket-it'd be pennies to the dollars that urban areas would receive. The rural people of Montana contribute a great deal to the merchants, the business places of every city; they support them; and without that rural population, the cities cannot exist under their own momentum. And this is a dangerous thing in this Constitution. It is something, I think, that will defeat this Constitution, because people are not going to buy this type of thing. And those fears are not imagined; I tell you they are real. They are one of the fears that a majority of the people of this state have, and no matter how many words you use here on the floor of this Convention, it is not going to convince the people of Montana. And I rise in support of Mr. Gysler's amendment, the language may need to be dressed up a little bit. And at the moment I can't—Style and Drafting might take care of it. We hope. And if you want to defeat this Constitution, this is just the exact thing that will do it. And I'll be

forced-1 can tell you this: that I'll be forced to go home and campaign against it, because it's a promise I made to my people, that I will nevervote for anything of this sort. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman.

CHAIRMAN MURRAY: Mr. Mahoney, will you wait just a moment, please, before talking, because we want to change the tape up here again. Thank you. Mahoney, we're now ready for you. We're quick up here.

DELEGATE MAHONEY: Mr. Chairman, first we come in with a tax thing, and that was very good, very able; and they let us have statewide levies unlimited, no troubles at all. Then here the other day we helped-and I helped-put the welfare over to the Legislature, so this is now statewide. We aren't going to have anything. Now we come along with this one, and we're going to now put the cities out here under the-getting part of the statewide levies. Now, in answer to Mr. Gysler, I don't think your amendment is worth a dime. And this looks at me kind of funny-but it ain't, because once you get the money in the funds down here, it ceases to be earmarked; it ceases to be anything. Now, if you don't-if you could go out here and say, "We're going to put this money out to the cities"-but you just turn around and take another fund and you send out to the schools, and you shut-cut that down and you put this money out; and so you're evading your law. I can see how that could be evaded; it isn't the question. The question is, right here, we're going back to the next session of this Legislature, and it's becoming very difficult when this body, unicameralor bicameral, to decide on the next tax proposition after the defeat of the sales tax. Now we're taking off all strings on property tax. We done this in the Revenue Committee, and this became an unlimited-bonds, unlimited levies-and we also turned around and decided to exempt certain classes of property. Now, if this goes-and Mr. Aronow is so correct-this is going to come out and have property tax, then we will have the cities going. Now we're already started; this is nothing new. I don't know how they're doing it. We have the sewer bonds-that were sewer-millions; I believe it's 3 million was appropriated last time to take care of the sewers in stricken sewerage treatment plants. Helena's right in there getting; so is Billings; there's a lot of the other cities. I don't know if Great Falls is or not; maybe if they'd get that they wouldn't be in the trouble they're in. But this is what you are actually doing under this, once we go to revenue sharing. Now revenue sharing may be fine. This might be-I'm going to say this: this might be an idea; it's not obligated to the Legislature; I don't think you're doing that, except it's here. And if you don't think these cities ain't just as smart as the-anybody else-they're a lot smarter than us fellows-Well, I didn't come from Powder River-but they're just as smart-they're going to be in here grabbing and saying, "Now, the Constitution says this; we can get it; they meant for us to get it; and you--we want the appropriation". And we will see the pressure that will come on either that unicameral or that bicameral bodies of the next session of the Legislature. And I think this whole section should be defeated because this is there. Now, if you have no provision in the Constitution that says you can't revenue share at all, that I don't think you have; but the other one has been quite explicit. Maybe we don't need any section in here. I'm not going to make that motion; I'm going to let some of the more learned gentlemen make it.

CHAIRMAN MURRAY: Mr. Swanberg.

DELEGATE SWANBERG: Mu. President [Chairman], with some reluctance I rise to support the comments of Charley Mahoney. Two of my very good friends from Great Falls are on this committee, Mrs. Blend and Mrs. Erdmann. I have a very high regard for both of them. And in my own opinion, what they have here in Section 8 is not the intent of what's been stated. I think what they had in mind was a situation where the Legislature passed the liquor tax, for example, and perhaps part of it was retained by the state and the rest of it went to the cities for the maintenance of their streets. We're doing that now, and it's working very well; and the people of the larger communities in this state are really appreciative of the action taken by the Legislature in the past to give us this much-needed money. And yet I must confess that this is a dangerous section. I would agree with the comments of Mr. Aronow and I would agree with the comments of Mr. Gysler that the small towns would look at this with alarm when it came up for passage. Speaking as a resident of a larger community in the state, I can tell you that the residents of those cities do not particularly want state aid. They want to run their cities by their own property tax, and to the best of their ability, they want to stay within it. But there are

situations in taxation, such as the gas tax, where the money is used for the maintenance of the city streets; and justly so, because much of the gas is burned on city streets, in county, and of the large— in the large and small towns both, so that these sharing situations are fair enough. Now I would like to direct a question to the committee as a whole that's on this. We have revenue sharing now, in effect; we share lots of money with the state and the cities; and if we deleted this, what would prevent this process from continuing? I know of nothing in the Finance Article which we have passed that would prohibit it, and why don't we just delete it and keep the situation as it is? Perhaps Mrs. Erdmann would answer that for me.

CHAIRMAN MURRAY: Mrs. Erdmann.

DELEGATE ERDMANN: I am perfectly willing to move to delete it if it is necessary. I certainly don't want to get all of the rural areas upset over this. It was our intention to just be sure that we were in line to share federal revenue, and we wanted to reaffirm our ability legally to do what we've been doing illegally with the gasoline and the beer tax and all the rest for years. But I see your apprehension; it's well founded. But I would like to hear from Mr. McDonough before I make that motion. I think he should speak to the amendment as made.

CHAIRMAN MURRAY: The learned Mr. McDonough, now being present, is called upon. All of the ladies have been running around this hall and asking for you (Laughter); some have been over visiting with you; and now with all the suspension [suspense] ended, we seek your advice.

DELEGATE McDONOUGH: Well, I certainly appreciate it.

CHAIRMAN MURRAY: You're welcome.

DELEGATE McDONOUGH: I don't really think it makes any difference whether this section's in here or not. If there's any-and I've sat and talked to Tom Ask about it-If there's any apprehension about this section, we can delete it. And I then-therefore move, as a substitute motion for all motions, that Section 8 of this article be deleted.

CHAIRMAN MURRAY: Do you wish to speak further to it, Mr. McDonough? Or is—

DELEGATE McDONOUGH: I think it pretty well covers it, unless there's some other argument. There's-it's somewhat repetitious, and I don't think it's really needed. If it's going to create that type of problem, we can delete it.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE 0. ANDERSON: Mr. Chairman, may I speak on the motion?

CHAIRMAN MURRAY: Yes.

DELEGATE 0. ANDERSON: I have here before me a sheet detailing statistics in the revenue sharing that's been going on in regard to gasoline tax revenue. And the necessity for the back-door method of sharing this gas tax revenue came through a court interpretation that I think was wrongly arrived at; but I have here, Chouteau County gets $32,784 a year in revenue sharing, but they have to kind of come in through the back door-you all know how they split this gas tax money-Fort Benton gets $10,260 a year revenue sharing on gas tax. It was the intention of the committee-I'm sorry, I don't have the figures on the beer tax, but I'd be glad to show them to Mr. Gysler as soon as I get them-It was the intention of the committee to make certain that some court interpretation coming out of no place, or out of the woodwork, like this one in regard to gas tax, come-came forth and would deny the cities and counties the right to share in revenue sharing developed some way or another. There was absolutely no thought that there would be any real or personal property tax taken into the state and then reallocated to the cities. We do not resist the amendment.

CHAIRMAN MURRAY: Now, excuse me, Mr. Anderson, but you have now confused the Chairman. You do not resist the motion to delete?

DELEGATE 0. ANDERSON: (Inaudible)

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Mr. Chairman, as a member of the Local Government Committee, I don't resist the motion to delete. If it's going to create this kind of furor, let's get it out of there, because it really doesn't say that the Legislature should share revenue; it just says nothing prohibits it. If it's going to create any fears in the voters, as far as I'm concerned-I think the-probably the majority of the committee feel that way-let's just delete it and get it out of there, because I think they can do it under the other sections of Revenue

and Finance anyway, so let's not put any more in here than we have to.

CHAIRMAN MURRAY: Okay, are you sure?

Mr. Champoux.

DELEGATE CHAMPOUX: Will Mr. McDonough rise for a few questions, please, sir?

CHAIRMAN MURRAY: Who?

DELEGATE CHAMPOUX: Mr. McDonough.

CHAIRMAN MURRAY: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: Yes.

DELEGATE CHAMPOUX: Mr. McDonough, as a lawyer and a learned person in terms of local government units and so forth, does the phrase, in your mind, "local government unit"-or could it-include also school districts?

DELEGATE McDONOUGH: Well, not under the definition of Section 1 of this article, it could not.

DELEGATE CHAMPOUX: Yes, I remember that. All right. Is a school district considered to be a local political subdivision?

DELEGATE McDONOUGH: Well, it's a body politic incorporate. I suppose the Legislature, if it so wanted to, could make it a political subdivision.

DELEGATE CHAMPOUX: All right, what's the difference between a local political subdivision, then, and a local governmental unit, sir, in your mind?

DELEGATE McDONOUGH: Well, the local governmental unit is what is defined under this article, which is defined very broadly. A subdivision is something like a county, which is actually a subdivision of the state to carry out the administrative function of the state without having what you might call legislative or other types of powers of that type, more administrative than legislative or judicial.

DELEGATE CHAMPOUX: Thank you, sir. Mr. Chairman, may I speak to this now?

CHAIRMAN MURRAY: Mr. Champoux, you may speak.

DELEGATE CHAMPOUX: My concern here is, I know it's-the local government unit's limited in the front; however, I've seen statutes describing local government units or governmental units as school districts-described as school districts. And my fear here is that if we pass this with the Gysler amendment, and realizing the types of school financing that are possible in the future-that is to say, from the state and based upon the Revenue and Finance recommendations of the possibility of statewide property taxes—that under this provision the local school districts-there is a possibility, and I think it's open for interpretation, that the local school districts could be denied statewide property taxes or personal property taxes that are collected by the state. I am very, very dubious about this section. I think we're going to have to be really cautious here on this one. Thank you.

CHAIRMAN MURRAY: Mr. Champoux, for this-for my edification, are you in favor of Mr. McDonough's motion to delete?

DELEGATE CHAMPOUX: You will find out when I vote, sir. (Laughter)

CHAIRMAN MURRAY: That's for sure.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I don't know if this is out of order, but could we have an estimated time of adjournment?

CHAIRMAN MURRAY: Let's finish this section, and then I'll let you know what I have in mind.

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, for the purpose of establishing the committee's intent in inserting Section-what is it—8, it was the intent of our committee to enable each individual local government unit to share in funds that might be available from the state. I would like it clearly understood there is no intent for local entities to share in each others tax money. It is to enable each of us to obtain money from the state to help us out locally, and I think that the intent of this article is completely different from the amendment and from the fears that have been expressed here. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman], I certainly wholeheartedly agree

with the majority report on this revenue sharing. I would oppose the motion to delete and the Gysler amendment to this particular section. I think, as a young person in my particular community, I've watched a lot of tax dollars come from Montana residents, for example, to our state and even to our federal government, that has not returned. And as a young adult who is going to be living a good share of my lifetime in this state, I would like to see it where that the communities and local government units can share of state funds and federal funds. And I urge this body to take this progressive move, support the majority report, defeat the motion to delete and defeat the amendment of Mr. Gysler, and stick with the majority report.

CHAIRMAN MURRAY: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. I support the motion to delete. I do not have any further words of wisdom.

CHAIRMAN MURRAY: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I support the motion to delete. If we don't delete this and then get amendments into a technical tax field, we'll be trying to do something in a few minutes which may affect every local unit of government; so let's support the committee now. They want to delete it, and I believe we could vote on that and then go on if we don't delete it.

CHAIRMAN MURRAY: The question now arises on the motion-substitute motion of Mr. McDonough that we delete Section 8. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Opposed, say NO.

DELEGATES: No.

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I move the committee arise and report progress and beg leave to sit again.

CHAIRMAN MURRAY: You've heard the motion of Mr. Nutting that the committee rise, report progress, and beg leave to sit again. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. If all of you will rest quietly for a few minutes we'll have this report out, and we do not intend to come back this evening. We made very good progress on this.

ACTING PRESIDENT MURRAY: The clerk will read the Committee of the Whole report.

CLERK SMITH: "March 16th, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 11 of the Committee on Local Government, recommend as follows: that the committee rise and report progress and beg leave to sit again. Signed: Murray, Chairman."

ACTING PRESIDENT MURRAY: Is there any objection to the-not reading the report in its entirety? There be no objection?

DELEGATES: No.

ACTING PRESIDENT MURRAY: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman [President], I move we adopt thecommitteereport.

ACTING PRESIDENT MURRAY: You've heard the motion of Mr. Nutting. As many are in favor, say Aye.

DELEGATES: Aye.

ACTING PRESIDENT MURRAY: Those opposed, say No.

(No response)

ACTING PRESIDENT MURRAY: Ayes have it, and so ordered. We'll be on Order of Business Number 11. Any announcements?

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I would like to report to this body that, based on tours scheduled and estimated numbers of-in groups that arrived without being scheduled, that we've had 6,165 persons on conducted tours. I would like to also ask, if any of the delegates would like to see the slide presentation, we would set up a special showing tomorrow at 12:15. In addition, I have had a request from one of the delegates to have copies of these slides; and if at that time, after you see the slide program, if you'd like copies,

I would also look into that further. Could I have a show of hands how many might want to see the slides? All right, if it's all right with the Convention, I'll set up a program tomorrow at 12:15, and lots of you are in the presentation. Thank you very much.

ACTING PRESIDENT MURRAY: I guess it's the consensus of the—

DELEGATE BABCOCK: Excuse me-it will be in the Senate chambers at 12:15.

ACTING PRESIDENT MURRAY: That's fine.

Mr. Furlong.

DELEGATE FURLONG: Mr. President, fellow delegates. I'd like to take just a minute of your time to call attention to a poll that you should have found on your desks, distributed this afternoon. The poll has been prepared by Randy Gray, one of our interns from the University of Montana. I told Randy I would ask the delegates to please cooperate and fill in the poll for the young man. It's part of a project he's working on in his further studies at the University of Montana. I would like to tell you that Randy had this duplicated and run off at his own expense. He has spent considerable time on it; he worked real hard for the Revenue and Finance Committee, and I would like to encourage your support of his poll. We've got to get these kids graduated. Thank you.

ACTING PRESIDENT MURRAY: Any further announcements? (No response) Remember Rules Committee meeting at 8:15 in the morning, on the Torrey Johnson resolution. We'll-if there's no objection, we will revert to Order of Business Number 1 for just a moment, please. The clerk has a report that he would like to read.

CLERK HANSON: "Mr. Chairman. We, the Committee on Style, Drafting, Transition and Submission, transmit revisions of the Public Health, Welfare, Labor and Industry Article Number 9 for consideration of the Convention, Signed: Schiltz, Chairman."

ACTING PRESIDENT MURRAY: If there is no objection, we will revert to Order of Business Number 11.

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I move that we adjourn until 9:00 a.m., March 17th.

ACTING PRESIDENT MURRAY: The question now arises on the motion of Mr. Nutting to adjourn till 9:00 a.m. tomorrow, which is March 17th. As many as are in favor, say Aye.

DELEGATES: Aye.

ACTING PRESIDENT MURRAY: Those opposed, say No.

(No response)

ACTING PRESIDENT MURRAY: The Ayes have it, and so ordered.

(The Convention adjourned at 6:20 p.m.)

March 17. 1972 **Forty-Eighth Day** **Convention Hall**
9:00 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: Sure and begorra, it's time to start the Convention again. (Laughter Applause) If you'll all stand, Delegate O'Scanlin will give us the invocation. (Laughter)

DELEGATE SCANLIN: It is my privilege, this morning, to have with me the folks with whom I've been staying while in Helena, and Marge Fowler will sing for us "The Lord's Prayer". Let us be in the spirit of prayer.

(Miss Fowler sang "The Lord's Prayer")

PRESIDENT GRAYBILL: Thank you very much for that very lovely song. Very well, we'll take attendance today by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Warden, Harlow and Holland be excused, please?

PRESIDENT GRAYBILL: Very well.

CLERK HANSON: Delegate Berg, Delegate Brown, Delegate Cain, Delegate Drum, Delegate Etchart, Delegate Holland-Delegate James.

PRESIDENT GRAYBILL: List the absences again.

CLERK HANSON: Delegate Brown, Delegate Drum. Kelleher is voting No.

PRESIDENT GRAYBILL: Very well, take the ballot. He's here.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Absent
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Absent
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Excused
Harper	Present
Harrington	Present
Heliker	Present
Holland	Excused
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present

Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Excused
Wilson	Present
Woodmansey	Present
Mr. Chairman	Present

CLERK HANSON: Mr. President, 95 delegates present, 3 excused, 2 absent.

PRESIDENT GRAYBILL: Very well. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions. The Chair would like to announce that the Rules Committee met and will meet again on Mr. Johnson's resolution, and it is my understanding that it'll be out tomorrow morning. Are there other motions or resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business. Ladies and Gentlemen, today is the day that I report again on the budget; and I will do that, but I'm not prepared to do it yet. I'm still working on it, but I will do it before the day is finished, as far as I know. So, if we'll pass Order of Business Number 8. Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Without objection, the Chair would pass for a moment to Order of Business Number 11 to make a couple of announcements that will help you plan your schedules. On adjournment this morning-on recess this morning-that is, at 11:45, 11:30, whenever we get through, or 12-I'd like to have a meeting of the committee chairmen-and I think probably we ought to have that-is the Legislative room upstairs available? Let's have it up in the Legislative Committee room. And then, on adjournment tonight, whenever that is, I'd like the Voter Education Committee-that's the new committee we appointed yesterday-the Voter Education Committee to meet, on adjournment tonight. And Mrs. Babcock informs me that she is prepared to show the slide presentation to any delegates that are interested, about noon, but she can do that shortly after adjournment, whenever that may be, this morning. Very well, we'll go back on Order of Business Number 10. May I make, also, a couple of observations there? We'll finish up Local Government this morning; and when we finish that-if we finished it this morning--we will also consider Style and Drafting's Proposal Number 13 on the ordinances, if you want to be prepared on that. If it's all right with everyone, we will pass Education until after lunch; but presuming that we might finish Local business this morning, we will take up Education on Style and Drafting after lunch. And in a moment you are going to get-oh, I guess you've already gotten-Public Health on your

desks. If we finish Education this morning, it would be the Chair's intention to move to suspend the rules-the 48-hour rule-to consider Public Health this afternoon on Style and Drafting. If we can get these Style and Drafting reports out of the way today, it will make quite a difference to the Style and Drafting Committee's ability to handle the Constitution on the typewriters. So the plan is to handle Local Government this morning and the ordinances this morning and then recess this morning for these committee meetings.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention resolved into Committee of the Whole, Mr. Graybill in Chair)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: "Style and Drafting Committee Proposal Number 10, Education, having been duplicated and placed on the delegates' desks on the 15th day of March, 1972, at 12:00 noon, will, at 12:00 this day be in compliance with Rule 23 of the Montana Constitutional Convention rules. March 17, 1972. The following committee proposals are now on general orders: Local Government; General Government; Style and Drafting 10, Education; Style and Drafting Number 9, Public Health; Style and Drafting Proposal Number 13." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, we're ready to go to Local Government; and the Chair, recognizing when he has a good thing, is going to have Marshall Murray finish that one up. We're doing very well on that, and I'm very pleased. So, Mr. Murray, will you take the Chair.

(Delegate Marshall Murray assumed chairmanship of the Committee of the Whole)

CHAIRMAN MURRAY: My records indicate that the committee finished the first eight sections last evening, and we should start with Section 9. The clerk will read Section 9.

CLERK HANSON: "Section 9. Initiative and referendum. The initiative and referendum powers reserved to the people by the Constitution shall be extended by law to the qualified voters of each local government unit." Mr. Chairman, Section 9.

CHAIRMAN MURRAY: Mr. Simon.

DELEGATE SIMON: Mr. Chairman, fellow delegates. I move that when this committee does arise and report, after having under consideration Section 9 of Proposal Number 11, it recommends that the same be adopted. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Simon.

DELEGATE SIMON: Mr. Chairman, the Local Government Article, as we told you yesterday, would like to have one single document, as near as possible as we can, and with that, then, we would like to have the initiative and referendum section include this part. On page 30, the comments that you have before you will be brief. The committee believes it is essential that local residents have the power of initiative and referendum, particularly in view of the broad self-government powers offered in this proposal. This committee also believes that the proper place to assure these people's powers is in the Local Government Article. Specific provisions concerning petitions requirements, however, should be left to statutory law, where they can be easily reached if change is needed. Now, this initiative and referendum was not dealt with in the general government article and will be dealt with when the general article comes up. A few other little minor things that we would like to talk about and give you a little emphasis on-Section 9 does one thing; it directs the Legislature to extend the initiative and referendum powers to local government units, such as cities, towns and counties. The section itself does not set specific limits under which the initiative and referendum should be enacted locally. These details--such as the number of signers on the initiative petition-are left to statutory law. It is also important to stress that the General Government Committee report does not provide for local initiative referendum. Therefore, this proposed section is not duplicated elsewhere in this Constitution. Initiative and ref-

erendum are not new in Montana, particularly on the local-city level. Such provisions already are part of the statutory law for city and town ordinance in the ***Revised Codes*** of Montana of 1947. It'll be unnecessary to give you all the sections. In addition, certain other county matters, such as debt, must be submitted to the vote for the voters' approval. It is important that Section 9 of the committee's proposal would assure that this power be provided for people on the local level. It is particularly important that it be provided, in view of the fact that local government units will be strengthened, in terms of power, under the committee proposal. The initiative and referendum offer another check on this power and are of such importance that they should receive constitutional guarantee. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: I'll call for discussion of Section 9 at this time. Any discussion?
(No response)

CHAIRMAN MURRAY: Members of the Committee, the question now arises on the motion of Delegate Simon that when this committee does rise and report, after having had under consideration Section 9 of committee proposal 11 on Local Government, that the same be adopted. As many as are in favor, say Aye.

DELEGATES: Aye

CHAIRMAN MURRAY: Those opposed, say No.
(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The clerk will read Section 10.

CLERK HANSON: "Section 10. Recall. All elected public officials of the local government units are subject to recall by the voters of the unit from which elected. Procedures for recall shall be prescribed by law." Mr. Chairman, Section 10.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 10 of Proposal Number 11, itrecommends that the same be adopted.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, at least 13 state constitutions provide for recall of all elected officials, and I think that the gloss which the delegates have before them contains a listing of that. The possibility for recall of officials on the local level is also nothing new in Montana. The provisions of existing Section 11-721.1 provide for recall of officials at the municipal level. In addition to that, in the event thatconsolidationoccurs, the Commissioners of the consolidated unit may be recalled under provisions of existing statutes—let's see, Section eleven thirty-one, thirty-two and following sections provide for that procedure. Under our existing statutory law, however, the county officials themselves are not subject to recall. This provision would enable the recall of County Commissioners, as well as Mayors or County Commissioners of consolidated counties-cities, such as we presently have. This is not a duplication of the general government article. The general government article provides that recall may be had of certain elected state officials; however, it also provides a standard whereby the recall can be effected and provides that 25 percent of the-that a petition must be signed by 25 percent of the electors in the area, as determined by the last election for Governor. Since some of the local government units in which recall could be effected do not conform to the voting precincts, it would be impossible for a-or it would be impossible to determine under the local government—or the general government provision, rather—whether the required number of petitioners had signed a petition so as to recall, for example, a Mayor, in certain instances. If recall is desired, therefore, it does appear that it is necessary to have a provision for recall in the local government article. It's doubtful that county officials could be recalled at the present time. In order to make it possible to recall the Commissioners of unconsolidated counties as well as consolidated counties and in order to make it possible to recall other county officials, as we can now recall city officials, it would be necessary to adopt this provision. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Kelleher, the Chair has an amendment which you haveoffered, and it treats it as a substitute motion. And I would like to have the clerk read it at this time.

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion, to amend Section 10 of the Local Government Committee proposal, being page 5, lines 24 through 27, by deleting it in its entirety. Signed: Kelleher." Mr. Chairman.

CHAIRMAN MURRAY: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, would Mr. Arness yield to a question, please?

CHAIRMAN MURRAY: Mr. Arness, will you yield?

DELEGATE ARNESS: (Inaudible)

CHAIRMAN MURRAY: He yields, Mr. Kelleher.

DELEGATE KELLEHER: Franklin, on the bottom of page 30 and the top of page 31 of your comments regarding recall, you state that the requirements should be of sufficient severity to eliminate frivolous and repeated recall elections. And you state there that your committee had some concern about this, and I am concerned, too. I wonder how you plan, through the recall, to eliminate frivolous and repeated recall elections, which I understand was once a problem in North Dakota.

DELEGATE ARNESS: I'm not sure that it really was a problem. So far as I know, this—these recall provisions have-presently exist in at least 13 states as a matter--as a constitutional matter, and there are a number of others where recall is allowed, including Montana at the present time. There has been no frivolous use of our recall provision, so far as I know; and, in fact, so far as I know, it hasn't even been used. In North Dakota, it's true that one of their governors was recalled. I don't know whether it was justified or not, but I assume that, it having occurred, there was some basis for it. I only know of one instance where there was a recall. The recall has been used relatively infrequently, despite the fact that it's been on the books for a long, long time. According to the statistics we had, there are 1,510 cities that answered the survey that had recall provisions available to them, and out of those cities, they—recall had been used only 59 times in-over a 4-year period, and it had been successful 25 out of those 59 times. I-Under our present law, it takes 25 percent of the registered electors, as determined by the vote at the last municipal elections, in order to stage a recall, and I submit that 25 percent is a large number. I don't think that the recall provisions have been abused, and I'm not aware of any instances where they have. I don't think that it's true that they were abused in North Dakota. North Dakota still has the recall provisions, and I notice that the recall provision is retained in the draft of proposed North Dakota Constitution.

CHAIRMAN MURRAY: Mr. Kelleher

DELEGATE KELLEHER: Mr. Chairman. I still didn't quite get an answer, I don't think, to how we are going to eliminate frivolous and repeated recall elections. Eight states that have the recall provision provide for all of their officials, and I realize we're just talking about local government, but we're going to come up to general government on this matter-the same matter tomorrow. Eight states, the provision applies to all elected state officials. In Idaho, Michigan, Louisiana and Washington, they exempt all or some judicial officers and generally a recall petition may not be filed against an official during the first 6 months of his term; Wisconsin allows it after the first year. Now, obviously, one of the reasons why they let the officeholders stay there for a small-at least 6 months or a year, I assume, is to find out whether he's going to be doing his job or what, but I call to the attention of the committee that aldermen are elected every 2 years, and if we did allow recall we would be having elections very often. Now, some of the reasons-Or could have elections if we recalled a man. My principal objection to recall is that it's not done on the merits. I could start a recall petition for any reason. In fact, I could go down to West Park Plaza and get people to sign-get a few thousand signatures on a petition to get rid of an alderman, I think, in 2 days' time; people will sign petitions without even knowing what's on them. And these elections cost an awful lot of money, and I submit-how would you like it if there was somebody out here in the lobby waving around a recall petition, and every time you threatened to vote for or against something that they didn't like, they'd say, "Well, I'm going to go file this recall and we're going to get you out of here"? In fact, can you imagine if somebody had--what this Convention would be like if somebody had recalled Kelleher from Yellowstone County? (Laughter) In all—

CHAIRMAN MURRAY: Let's keep a little order in the assembly here. Mr. Kelleher, you may try and proceed.

DELEGATE KELLEHER: In all states, including our state, I call your attention to the fact that we do have impeachment proceedings and if a public officer is convicted of a-1 mean, commits—charged with commission of a felony or even a misdemeanor, he can be charged like any other citizen in the courts. Improper conduct by public officials is grounds for removal by judicial, legislative, or sometimes gubernatorial action. If a member of the Legislature or the City Council can

be expelled-in fact, down in Billings, we did expel a City Council member, and his ward immediately reelected him. It-Finally, it's a provision as a tool for well-organized groups and for political recrimination. I submit, Mr. Chairman, that once a man or woman has been elected, let them do their job, and without threat. We've had threats to this Convention and we know how we've all reacted to those threats, and I say that the recall is the most vicious threat of all, and it is the weapon of the anarchist. Finally, I see no reason why this matter couldn't be left to the Legislature. It's really not necessary to put it in the Constitution for—what—80 percent of the states don't have it in their constitution. If they want to put it in-if the Legislature wants to put it into laws, all right. So I move to delete the entire section.

CHAIRMAN MURRAY: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I can't miss what might be my only opportunity to support something proposed by Mr. Kelleher. (Laughter) Mr. Chairman, I would support Mr. Kelleher's motion to delete, for these reasons. First, I note that it was not very popular with the committee; it passed there by a six-to-four vote. Secondly, I think it goes against the philosophy espoused by the committee in this particular article; and that philosophy seems to be: let the people of the various local governments choose the type of government they want, the officials they want to run that government, and provide for their election or appointment. Requiring recall elections appears to me to be making a choice for them that we are not required to make. Why constitutionalize this? Why not let them make this choice themselves? Regarding the argument in General Government, it seems to me there is a possible conflict between the two articles. The General Government proposed section at this time provides for the recall of all elected officials of the state and its political subdivisions and then sets forth the procedure. I think maybe if we do adopt this provision in Local Government, they'll have to follow the procedures set forth in the General Government article anyway. However, when we get to that section, I'm at least going to move to amend it at that time. And regarding the question whether we have to have something in the Constitution in order to have recall, I think not. Under the present Constitution, I would agree we would regarding county officials, because their term of office is set forth in the Constitution, and I think it would be an attempt to amend the statute-or that Constitution by statutory law to attempt to shorten that term by a recall provision. But looking at the general government article, they leave the term of office to the people to be set by them, the people of that local government unit. Therefore, I think we should allow the people to choose whether they want to shorten those terms by recall elections. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I think that, probably, the point was missed here on the difference between this and the Local Government article. The point is that if we adopt the General Government article on recall, that it's not possible to implement it in the case it was to be used for a public official. The General Government article on recall provides a percentage that is to appear on the petition-and I don't have that article right here, right in front of me-then it provides the machinery by which the determination is to be made as to whether or not you have a sufficient number of signers: and that determination is based upon the number of votes cast in the preceding gubernatorial election, based upon the precinct breakdown. Now, theprecinctbreakdown is not going to correspond to all the local governmental units that we have, so there may be-there are a number of situations whereitis possible that an elected local government official would not be elected on the-in an area where it could be determined how many of the people who voted for him had voted also for the Governor. You've-there are a number of cities where the precinct lines don't follow exactly the city boundaries. It's also possible, as been pointed out earlier, that at some time a school district may become a local government unit, and, again, the boundaries of the school district are not going to conform to the precinct boundaries. In those cases, how do you determine who-or how many voters in the area where that local government official is elected did, in fact, vote for the Governor at the next preceding election? You can't do it. So, if we're going to have it-if we're going to have a machinery for recalling these people, and I-it's up to the Convention: of course, whether they think recall is a good idea or not-but if we're going to have it for these people, then we have to have something that makes it possible to do it. The General Government article would cut off Local Government officials for the simple reason that it provides the mechanics that do not conform to the realities of the local government situation. So if you don't want local-recall

on the local government level, fine, but that is the problem. Now, these two articles are in conflict. We can resolve the conflict by making one apply to state offices and one apply to local offices and avoiding it that way, but if we want to make it general, then we have to have some other standard than the one that's set up in the general article. I just want to point that out; that's all. It-I suppose that it's entirely up to the Convention whether they think, like Mr. Kelleher, that this will result in anarchy-I think that's rather an unusual idea of recall-but if you think that way, that's fine; but we can't have it both ways.

CHAIRMAN MURRAY: Mr. Harper.

DELEGATE HARPER: I think Mr. Arness is right in that he implied the issue is whether or not we want it. The Legislative Committee talked about recall quite at length. We tried to put down on one side what the advantages of recall are and on the other side thedisadvantages. It was our rather studied opinion that the disadvantages outweighed the advantages, and the one that is uppermost in my mind is-when you raise the question as what will recall be used for-as Mr. Kelleher pointed out, there are several provisions for removing a person from office if he really is involved in practices that are contrary to the law. If not, then the question becomes whether or not you disagree with his approach or his political philosophy or the way he's voting. Now, we have a recall provision-it's called the election-and every couple of years or so, the people elect and there's a chance-a real honest chance atrecall, in a sense, of an elected official if he chooses to run again; he may be defeated. Let's put 25 percent—let's take this into a little district. Twenty-five percent of the voters might be what? Well, we discovered that some societies-I forget-there was a Jack Ash Society or some name-it was some tree-

CHAIRMAN MURRAY: You're going to have to speak a little clearer, Mr. Harper. (Laughter)

DELEGATE HARPER: -and these people were pushing very much for this. I think they saw this as a way of holding a club over the head of an elected representative. It could be that, let's say, a union or any other sizable segment of people in a particular locality could say, as a sort of a club, behind the door, to any elected official, "Now, you know, we have more than 25 percent of the voters, and if you don't go along with our line, then we're going to have you running again". And when we weighed the advantages against the disadvantages, we thought our straight electoral system, with rather brief timespans between elections, with all the safeguards of law that we have put around it already, was perfectly adequate, and we didn't want to get into the possibilities of having happen what Idaho had with three legislators recalled from one district because the legislators voted to raise their salaries, and so forth.

CHAIRMAN MURRAY: Mr. Martin

DELEGATE MARTIN: Mr. Chairman, I just want to put in a disclaimer. Having introduced this recall provision, I certainly am not a member of the Jack Ash (Laughter) committee (Laughter) or society and want no part in it. (Laughter) And I think that we of the Convention have a short time and perhaps the best thing to do is to forget about recall.

CHAIRMAN MURRAY: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I'd just like to point out that the Legislature in the last session provided that subsequent aldermanic and mayoral races will be every 4 years now, and not every 2, and County Commissioners are elected every 6 years. So you don't have only a 2-year span in the case of Mayors and Aldermen.

CHAIRMAN MURRAY: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. Chairman and fellow delegates. There is such a thing, and we have had it at times in my town of Whitefish, where Aldermen are elected and they are absent more than our United States Senators. An Alderman is not any good to any citizen or any precinct unless he attends the meetings, and I think that the majority report here-this could be one way of taking that man or woman out of office, just because they are not doing the job that we elected them to do, and I would hope that you would support the majority report.

CHAIRMAN MURRAY: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I support the motion to delete. I've been attending council meetings for almost half a century, and the people who are attending the meetings most of the time are the Mayor and the Aldermen. Unfortunately, the public is so apathetic that it normally doesn't attend the council meetings unless it wants something, and as soon as it gets what it

wants or has a request turned down, it packs its tent and silently steals away. I think that in more than 80 years of application of the present method of election of county and municipal officers, we've got along famously without having a recall provision in the Constitution, and I think we can get along until we have another constitutional convention 20 years hence, at which time I will take the matter up again and be against it. (Laughter)

CHAIRMAN MURRAY: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I support the motion to delete this, because you take, for instance-like on a local school board, very few people in that school board could create a large-a big hassle just over a little incident that didn't really amount to a damn by trying to recall a delegate-or a trustee--and I-therefore I support the amendment to delete that.

CHAIRMAN MURRAY: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates, I support the motion to delete. Originally, I felt that the idea of recall was a very good idea for the same-some of the same reasons that the committee has presented here. However, I have thought about this from the beginning of the Convention, and it's my opinion that the dangers outweigh the advantages and, in fact, what we're doing is saying that the electorate, once they choose, has a chance to decide again. And I think the electorate should be aware of the fact that when they elect a public official, it's an extremely important step and they should take their vote very seriously and they should do everything in their power to define the advantages of the candidate they're voting for. And I think it's a very real possibility that a 25-percent minority, if it was well organized, was extremely militant or active, could, in fact, use this minority position as a club over the elected official; and I think the motion to delete is well founded and I support it. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, the-1 only want to point out to the delegation, without taking any particular side on this one way or another, that at this point, the Convention is facing a problem as far as uniformity of application of the recall provisions are concerned. Now, if you strike this recall provision out of the Local Government article, we'll still have Section 10 in the General Government article to consider. And if you approve that section, having struck this section out, you may have and probably will be creating a situation where you can recall all of the state officers and some of the local officials but not all of the local officials. Now, if that's the situation that you want, that's fine. If you, on the other hand, have determined, at this point, that you think that recall is a bad idea generally and you're going to strike recall out of this provision and out of the general article, that's fine and there will be no problems. But I would like to avoid getting into the situation where we get into Section 10 in General Government and then discover that we ought to go back here and reconsider this section in this article that's now before us. I think that we should be aware that we will have a problem, as far as the uniform application of these provisions, when we get to that point. If we want uniformity, then we should either approve both these sections or disapprove both these sections. If, on the other hand, we want to discriminate against some of our officials and leave them without recall provisions while we can recall others, then, of course, I suppose we can go either way. But I think that we should bear that in mind-that we've got the possibility of an inconsistency in our situation. We do have an inconsistency now. Mr. Romney mentioned that we've gotten along without recall, and I think maybe he meant just in the Constitution-or maybe he said that--but we've had recall for our municipal officers and for certain of our other local officials since 1911, and that's quite a while, so far as I know, without any abuses. We have definitely had recall for our municipal officers for the last several years. We have existing statutory provisions that provide for recall of these local officials, as Mr. Kelleher mentioned; one of the aldermen in Billings was recalled. We can't recall our county officials at the present time. We can recall our local Mayors and Councilmen. We've got an apparent anomaly right there in our present local government laws. The question is, then, whether we want to continue that or not. It may be the sense of this Convention that we just don't want recall, but we should bear in mind that if we strike this provision out, we probably ought to strike it out of the General Government Article as well. Thank you, Mr. Chairman.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I'd like to call the attention to the delegates-I have here a book, and records are real hard to come by in regard to cities-but in the Western cities in the

last 4 years, there were 22 actions for recall, of which 11 were successful. I think this disputes the frivolity of the recall procedure. Now, I'd also like to call your attention to our own actions here. We're actually using the recall procedures right here ourselves. I wonder how many times that we have acted to reconsider our own actions right here. I think this is a fundamental right that the voters should have in their local government areas. We've been very conscious of not denying rights to very, very many groups of people and segments of our society; and I think the fact that, if we took this away and there would be no recall rights to the voters, we would be denying them a fundamental right that they should be able to exercise; and I oppose the motion to delete.

CHAIRMAN MURRAY: Mr. Kelleher, would you like to close? It appears that there's no further debate.

DELEGATE KELLEHER: I just notice that the Chairman of that committee voted No on Section 10 in the roll call on page 40. That's all I have to say, Mr. Chairman.

CHAIRMAN MURRAY: Okay. The question now arises-have you closed?

DELEGATE KELLEHER: I have.

CHAIRMAN MURRAY: You are closed. Okay.

DELEGATE ROMNEY: Roll call.

CHAIRMAN MURRAY: Roll call? Okay. The question now arises on the substitute motion by Mr. Kelleher to delete Section 10. As many as are in favor of the motion, vote Green, I guess (Laughter) and those opposed, vote Red. Has every delegate voted?

(No response)

CHAIRMAN MURRAY: Does **any** delegate wish to change his vote?

(No response)

CHAIRMAN MURRAY: The vote will now be closed. The clerk will take the vote.

Aasheim ..... Aye
Anderson, J. .. .. Nay
Anderson, 0.. .. .. Nay
Arbanas .. .. Nay
Arness.. .. .. Nay
Aronow .. .. Nay
Ask ..... Nay
Babcock.. ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Nay
Berg.. ....Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown.. ....Absent
Bugbee ....Aye
Burkhardt ....Aye
Cain ..... Nay
Campbell ....Aye
Cate ..... Absent
Champoux ..... .Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... .Absent
Drum.. ....Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... .Absent
Foster ....Aye
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Nay
Habedank ..... .Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ....Aye
Harlow ..... Excused
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... .Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... .Absent

Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Absent
McNeil ..... Aye
Melvin. ..... Aye
Monroe ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton.. ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Absent
Ward ..... Absent
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Aye
Chairman Murray ..... Aye

CLERK HANSON: Mr. Chairman, 49 delegates voting Aye, 31 voting No.

CHAIRMAN MURRAY: 49 delegates having voted Aye and 31 voted No, the motion is carried and Section 10 has been deleted in its entirety. Section 1 l-the clerk will read Section 11.

CLERK HANSON: "Section 11. Voter review of local government. The Legislature shall, within 4 hours-4 years of the adoption of this Constitution, provide for procedures by which each local government unit, either separately or jointly, shall review the government structure of the local unit or joint unit and shall submit one alternative form of government to the voters at the next general or special election. The Legislature shall provide for a review procedure each 10 years after the first election." Mr. Chairman, Section 11.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I move that when this committee does arise and report, after having under-had under consideration Section 11 of proposed-Proposal Number 11, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Fellow delegates, this Section 11, we believe, is the key to the whole Local Government Article. You've heard many times, everyone complains about local government but nothing is ever done about it. We feel, with this section, that something will have to be doneabout it and, in other words, this is the start to the reform in local governments if reform is needed in any particular area. Now, we've talked in our committee and personally to many officials of cities and towns and have posed the question as why they hadn't tried to improve their local government units, and many of them say that they have tried and they've had so much heat over it, you might say, that they have just dropped the idea and they just don't do anything. And many of them were asked, "If you were in a position where you had to, so often at least, look at your local government, would you do this?"-and they thought this was a good idea. Now, if you recall, Section 7 of our present Constitution, which provides for all types of local government, was adopted in 1922—that's 50 years ago-and very little has been done with local government since that time. And I think one county-Petroleum-adopted a different type of county government; all the other 55 kept the same type that they have now and very few cities and towns made any attempt to change their government. And the reason for this is that there was no-nothing in there that forced them to look at their-and have the people become involved and to change their government. Now, the key of this particular article on reform and change of local government is that it will start the process of reform, and then if the people want a change, they can change it. If they don't want a change, it will remain the same, but at least they'll have a chance. Now, many have asked the question, "Well, how will this particular section work?" I think I mentioned it briefly yesterday-that a commission of probably three or five people would be appointed in either the cities-in the cities and

the towns and also for the county-that would make a study of their government--and we assume they would work with the present government officials, hold hearings that the various citizens in the community could attend-and eventually they'd come up with a alternative or optional form of government. And all that would be done then-that if they decided on this, this commission would agree on this-that this alternative type of government would be submitted to the people at the next election and all they'd have to do is vote whether they wanted this new type of government-if they voted No, they'd go back to their old form. Now, as you recall, in our General Government article a few weeks ago, we adopted the idea of the Constitution being-idea of having a constitutional convention be submitted to the people every 20 years, and this was voted in—thought it would be a good idea. Well, here we have a-provided for a review every 10 years; and the reason we put this in here is that the first review will be 4 years after this Constitution is adopted, But then, you don't want to sit still on 4 years—we'd go another 50 without any change-so we see nothing wrong in submitting this every 10 years. Now, many of the city and county officials were very concerned about this lo-year business because, they said, of the ramifications of it-the cost of it, and it would be too complicated-but if you'll read that section, it just says that the Legislature shall provide for a review procedure, and I would assume that they could simply say-they'd just put on the ballot, are you-whether you vote that you're in favor of your present structure of government. If you vote Yes-if you're in favor of it, it will remain the same; if you're not pleased with your government, you'd vote No and then they'd have another commission to make a study and submit another alternative plan. So we feel that this section is the key-and also, there has been some concern that, say, a government changed its-say before this 4-year period or some time before the 10-year period-could they do this; and we would like to state for the record that a city or county government-any local government unit could change its government at any time. You don't have to wait for this 4 years or this 10 years, but this 10 years is--would have to be mandatory. So we feel this section is the key to the whole Local Government for reform of local government units, and we would ask that you support and adopt this particular section. Thank you.

CHAIRMAN MURRAY: Mr. Kelleher.

DELEGATE KELLEHER: Would Mr. Ask yield to a question, please?

CHAIRMAN MURRAY: Mr. Ask, will you yield to a question?

DELEGATE ASK: Yes.

CHAIRMAN MURRAY: All right.

DELEGATE KELLEHER: Tom, under Section 11, could the voters of Billings, which now have a unicameral legislature, could they choose to have either the city manager form, of government or-and the alternative-and could they do this at one election? Could they have an alternative at one election-a choice, say, between a city manager form of government and a form of government where the aldermen would choose one of their number as mayor-in other words, the so-called "parliamentary" form of government? Could that be done at the same election?

DELEGATE ASK: Yes, Mr. Kelleher. When this commission-or whatever alternative is submitted to them-it could be any type of government; whatever this commission thought was the best-this would be submitted. The people could either adopt it, or if they didn't adopt it, they'd go back to their old system, but it—that—any type of city government could be submitted.

DELEGATE KELLEHER: As alternatives on the ballot?

DELEGATE ASK: Yes.

DELEGATE KELLEHER: Thank you.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN MURRAY: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I move to delete Section 11. I do it because I think that we've had-there is ample opportunity for municipalities and counties to carry on elections to change their form of government under the present situation, especially since we have adopted the arguments in the section previously adopted in this article. Take the city of Missoula, for example. Some years ago, they started out with a mayor and alderman type of government. Later on they decided that they wanted to have a change, so they took up the commission form of government. After a few years of using a commission form of government, they took up, I believe, the city manager form of government; and now they are back to-they decided they didn't like

that, so they are now using the mayor and alderman type of government. And they're-according to the debate yesterday, the Mayor of Missoula was the only witness who appeared before the committee, asking that there be incorporated in this document a plan for a charter form of government, so I presume that Missoula will soon be embracing a charter form of government. Another-My argument is that there's ample latitude at the present time for change, and I think that it is an imposition to have an election every 4 years or every 10 years when they already can do it. Thank you.

CHAIRMAN MURRAY: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, I disagree with Mr. Romney wholeheartedly. I think that this is one of the most innovative things we have in our whole Constitution. The history of local government is that it-people sit on what they have-that they do not-they cannot pick the thing up and innovate-and this will put them on-this will put the problem of their government in front of them and they will have to face what they will do or will not do. I really disagree with what Mr. Romney said.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, the-it should be kept in mind that by-we have kept our traditional form of government, including our traditional form of county government, and that the present organization of our county government tends to favor inaction. Most of the time that the County Commissioners spend, whether we like it or not or whether we are willing to admit it or not, consists in-not in taking action, but in trying to frame decisions that avoid action. The structure of county government is designed so as to create the greatest possible inertia over the longest possible time. That's one of the problems that we have. Our county government is not suited, of course, for a rural situation-or for a urban situation. County governments are antithetical to cities, and they are as much opposed to them as they are opposed to action. I submit that, in order to goad these people into some kind of movement, something is necessary. This is a very, very small thing that we have put in here, and it seems to me that it might have some good effect; it could certainly have-do no harm. It would help to overcome the inertia that exists in the existing system by virtue of its very structure, and I submit to you that we ought to keep this section.

CHAIRMAN MURRAY: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, when we had numerous county and city officials in for-to testify before our committee, I was impressed with the idea that the responses of local government to needs for change are about as fast as the reflexes of a brontosaurus that blinks its eyes 4 minutes after it's bitten on the tail by a tyrannosaurus. (Laughter) Mr. Romney mentions the changes that Missoula has made, and I applaud Missoula. They may find something that will solve their problems. I think that this is one of the vital parts of the Constitution as far as local government is concerned, because it gives a needed push to the local governments in order to meet local needs. We hear quite often that local governments will say they're satisfied with what they have, which, to me, is a rather low state of contentment. I remember once getting in a fight, and the other kid beat the soup out of me, and he says, "Are you satisfied?" And I said Yes, but I wasn't happy. (Laughter) Now, the local people have been getting the soup beaten out of them sometimes because they are under governments which refuse to meet the challenge, and I think this is something that will at least force them to propose some kind of an alternative within 4 years and again in 10 years, and I think it's one of the more valuable parts of the article.

CHAIRMAN MURRAY: Mr. Simon.

DELEGATE SIMON: Mr. Chairman, fellow delegates. This is the section that does the job for local government, and I'd hate to see the-this Convention drop any part of this section. We were accused the other day by some of the media of having gone from 1889 to 1920. Let's not kill the section that puts us back to 1900. Now, we've got tremendous problems in our area-in Billings, Montana-and if this section can do something in the next 10 years-Now this section here provides, within 4 years, that if the Legislature doesn't do something in providing procedures, the local voters can do something; and, for heaven's sake, let's not kill the very heart ofthelocal government proposal by deleting this section. I implore you to-and tell you that this is one of the sections that Delegate-we gave the most consideration of any single section in this Local Government Article. I don't want to go home with a Local Government Article and say that we had nine good sections and we loused it up at the tail end by deleting Section 11, and I implore you to keep Section 11 alive. Thank you very much.

CHAIRMAN MURRAY: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, the entire idea of the Local Government Article is to get action to make people on thelocallevel become aware of their government. This Section 11 would create interest in government. I would question Mr. Romney's prerogative in analyzing Missoula's government, because this is something for them to do. This is why we need this section, so that each unit of government may question their own government or not as they choose. This is the flexibility and this is the ribbon that ties up the entire section for action on the part of local government in the future.

CHAIRMAN MURRAY: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, as the oldest living resident of Missoula in this Convention, it's history having been brought into question here, I think I ought to explain a little what went on. We tried to have the innovation of a city manager system there, but we ran into personnel problems, and the reason there was a change was just the personnel situation. Otherwise, I think we match up in citizen lethargy to most of the rest of the state, and I just have to say in conclusion that it doesn't seem to be too high a standard for the 21st Century to have the citizens be forced to face a new thought at least once every 10 years. (Laughter)

CHAIRMAN MURRAY: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I, too, rise in support of the majority proposal. I think this is by far the most innovative section; and if you will recall, yesterday we were told that the National Municipal League had commended the Local Government Committee for their fine work on their article. I think if we deleted this section, we'd probably get a retraction of that letter from the National Municipal League.

CHAIRMAN MURRAY: Mr. Furlong, you've been up.

DELEGATE FURLONG: Mr. Chairman, I oppose deletion, and if I could prevail on some kind soul who was on the majority of the last section, I would even like to make a comment or two about that. What I'm seeking, Mr. Chairman, is some support for reconsideration, after Section 11, of Section 10. Thank you.

CHAIRMAN MURRAY: Mr. James.

DELEGATE JAMES: Mr. Chairman, I think we all campaigned on a platform that we'd make government more flexible, that we'd take the-take government out of a straitjacket. I think this is what we're doing by this section. I support it.

CHAIRMAN MURRAY: Miss Speer.

DELEGATE SPEER: I think I have-Mr. Chairman, I think I have only one thing to add to the arguments that have been made. I feel that local government is the training ground for our citizens in government participation, and I see nothing reprehensible in the fact that Missoula has changed a few times. I think it shows a citizen alertness and awareness, and this is not shown in too many communities. From the lot of interest in the Local Government Article on-in this Convention-and I am just as aware as anyone else, or perhaps more so, of the weariness of people at this state, which probably accounts for some of this-but I think that unless this provision for a voter review is made automatic in the Constitution, that there will tend to remain a status quo.

CHAIRMAN MURRAY: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President. I, too, am strongly opposed to the deletion of this article for the very reasons that everyone else has stated-the fact that this will tend to overcome the apathy on the local level toward the existing system of government. You know, people are very prone to criticize the courthouse or the city hall. They crab all the time aboutit. But this gives them a chance now-in 4 years after the ratification of this, they have a chance to do something, to quit complaining--and I have a sneaking suspicion that it will result in a vote of overwhelming confidence in the people who are trying to do a good job in local government--and therefore, I certainly oppose the amendment to delete.

CHAIRMAN MURRAY: Mr. Kelleher

DELEGATE KELLEHER: Mr. Chairman, I think the Local Government Committee should be highly commended. I think this is one of the greatest articles going into this Constitution. We have the so-called "strong" mayor type of government down in Billings; and a month or so ago, one of the aldermen called him a "goofy buzzard"; and this led to a rash of sale-started a new industry in "goofy buzzard" T-shirts down in Billings. Our City Council does nothing but feud and fight. It's one of the biggest hindrances to the

amusement industry in Billings (Laughter) because everybody can get a free show on Monday night down in Billings. It doesn't cost a nickel; you just have to hurry up and get down there early in order to insure yourself of a seat. We have recently appropriated-or spent Uncle Sam's money, which means our money-$300,000 on Poly Drive, to widen it. Made it a very nice four-lane highway-east-west highway in Billings-and the City Council wanted to make it-the Traffic Commission wanted to make it four lanes-they're nonpaid people that-citizens that serve on the Traffic Commission-but a few housewives went down and says, "No, we got no place to park our cars"--and so it's this huge-it's almost six lanes wide-it's still a two-lane highway because a handful of housewives--or a handful of men, too, for that matter-can run the City Council. And 24th Street West was another one. It's a very heavily trafficked four-lane highway-should be four lanes-it is four lanes, but it's painted for two lanes because a few of the people down there didn't like to have it four lanes. And I submit that one of the things that we really need in Billings is this provision, and if we have a new type of government where the-in the City Council, that we'll be able to get things done. Thank you.

CHAIRMAN MURRAY: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. Chairman, fellow delegates. We hope that this section shall and will create a movement in the counties and cities and towns to encourage the people to take a more active part in local government. We are closest to this form of government in our counties and cities, but we know the least about them. We just are apathetic. Indifference and apathy by citizens in most towns makes it absolutely necessary that we try to encourage the citizen to become involved. Our Local Government Article is flexible to this point and a very good article, I believe. Now, we must plan to zone and help our town to have a more active citizenry. Now, we would like the Constitution-or this Convention to be remembered for the new avenues of democratic self-government and opportunities and the opportunities that it opens for Montana, rather than the doors it leaves locked and unopened. We would not be concerned about a constitution as a literary document to be filed in the archives, but, rather, one that is functional and flexible and which encourages the democratic desires of the people, with a minimum of checks and balances aimed at preventing excessive or abusive use of power, rather than denying the people access to participation and responsibility for the government. This does encourage the people to take a more active part, and they will be aware of it 4 years from now and 10 years after that and for each 10 years thereafter, so we can have better local government.

CHAIRMAN MURRAY: And, Mr. Romney, would you choose to close?

DELEGATE ROMNEY: I don't know why.

CHAIRMAN MURRAY: Oh, Mr. Ma-. honey, I'm sorry. I just couldn't see you. There's so much activity ahead of you.

DELEGATE ROMNEY: Mr. Chairman—Oh, pardon me.

DELEGATE MAHONEY: Mr. Chairman, I never knew there was so much wrong with our city and county government until this morning. I guess it's all out. We should throw the whole works out. There's nothing good about it. I've heard nothing here good for our present officeholders that have been elected by the people. Now, this I'm wondering about-and maybe I'm altogether wrong-4 years, and 2 years later they've got to submit a new plan. Now, I am sure that maybe those housewives down on Poly Drive, they're going to maybe want to leave it as is, or they may want a new plan, and I certainly want them to have their side, but how many new plans are we going to have? This becomes a very serious question to me. Now, I'll admit they haven't changed as much as a lot of people want to change. Billings-and I happen to get the Billings paper, because I took it before I came up here, and I still take it, and I get a bang-all of a sudden there was a group down there that wants a city-manager form of government, but the worst blow they got is when, all of a sudden, down at Sheridan, they kicked out the city-manager form. It just ruined the Billings program. Now, we find these places over here, and we have in Helena, and they seems to be doing good. I think Helena is doing fine—city-manager form of government. Maybe it's a fine way. Bozeman is doing very well. Now, Missoula—and I see that on TV, and I see they have their problems in Missoula, and there seems to be an awful lot in Missoula. Now, will these problems change once we have-Now, this one structure might not be so bad, but to force the people every 10 years to come out with an alternate plan, come out with some new plan-it says here, and it's very keen, it's got to be a new plan that you're going to vote upon. Now, the rest of the other time, this

responsibility-if you wanted to change in plans--was responsible upon the people that were the change-they wanted the change, they had to go out and get the petitions signed and do the work. Now, we're putting it over to state government and county government and says, "You shall submit a new plan." Now, I just-I'd just like to have the initiation come from the people and not from the top down. Now, they're going to name the commission, as I understand--and if the Legislature says that--and I think we have a lot of things to study up on this-"The Legislature shall provide for a review procedure each 10 years after the first election." Maybe we should leave this down and let the people at the bottom. Now, I'm willing to go with the first one, but this last section seems to me--every 10 years. Now, if you want to go out and rehash the whole state--and there's things I think could be done. I've been strongly for-to go—a lot of these small counties to go to the county-manager form of government; I think Petroleum County has proved that it can be done. I see nothing wrong with Silver Bow County going to a consolidated city-county manager form of government, but the voters of Silver Bow County, in its wisdom, each time has turned it down. Now, you got to remember this, that you went out here in Mineral County--and I think it was 2 or 4 years ago-they tried to go county manager, and the voters turned it down. Now, what I hate to see is to subject this to election every 10 years. I'm willing to go with the first one, but I'd like to have you give awful good consideration to this every-lo-year thing. Now, if you could do this under the parliamentary system of government that has been suggested by the distinguished delegate from Yellowstone, then they could pick the time. You know, Labor government just got lost out in England the last time because they didn't pick the right time; ordinarily they pick the time to have an election so they can win. Now, maybe we shouldn't have this on the 10-year interval; maybe we should go to this parliamentary system and let them pick the time when they want to change the government; and maybe this would be one way, for the parliamentary system. Now, if we want to go far enough, then let's go out and say to the State of Montana that the State of Montana shall submit every 10 years the parliamentary system or some other system of government to all the people. We're just asking the cities and counties to do things that we aren't asking the state to do. Now, this is-1 think this-1 don't mind the first one but, boy, I'll have an awful time on the second one. Thank you.

CHAIRMAN MURRAY: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I would like to reply to Mr. Mahoney. On the 10 years, I think you misunderstood that. Wedon'tintend, by the 10 years, to submit an alternative plan, go through the whole procedure. All that is worded, if you'll look at it, is that they'll provide for a review procedure, which we contemplate to be merely placing on the ballot to the people at an election—do you-are you happy or do you want to change your government, or are you satisfied with your present structure of government-do you vote Yes or No? You vote Yes, that's all that's to it. If the majority of people want to vote at that election that they want to change their government, then they go through the process of submitting an alternative at the next election. We assume this is the way it's going to work. They're not required to go through this lengthy procedure every 10 years. And, if you'll recall, we have a 6-year provision if the unicameral is adopted that'11 be put on the ballot-what is it, 6 or 8 years?—I can't recall. And, also, our Constitution is going to come up for a convention every 20 years, so the people are going to get a chance to-whether they want to change the structure of their state government. I see nothing wrong on the grassroots, the local government, to have this opportunity to vote Yes or No every 10 years. But they're-just so it's clear to everyone here, they're not required to go through the lengthy process. And we have in the Bill of Rights, I believe, that they want people to participate in government-the right to know, the right to participate. Well, I think by this procedure, we're giving them a right to participate, to take an interest in it, and I therefore oppose the motion to delete and would ask that the Convention adopt the section.

CHAIRMAN MURRAY: Mrs. Eck.

DELEGATE ECK: I would just like to say a few words in behalf of County Commissioners; I think that they have been kind of blasted from time to time here. But the Commissioners, as I understand it, look at their job as not one of initiating new forms, and this is a very difficult thing for them. Now, it might be that this is just our Commissioners, but at least they have the feeling that if they are going to change, then our Commissioners are in a situation where we are, you know-we are fast becoming an urbanized county or a county where urban services are needed out in the outlying areas, and yet they are continually criticized if they try to initiate action. This would really be a way where the Legislature would direct them to involve citizens in a process where they

with the citizens, could come up with some changes that might enable them to deal with their problems more effectively. You know, fortunately, our city government doesn't have these problems. Bozeman is one of those fortunate places with a city-manager form of government where we have continually had very good management. Thank you.

CHAIRMAN MURRAY: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, I would just very briefly like to respond to some of the comments made by Mr. Mahoney, particularly in relation to Missoula's problems. Since I've been at the Convention, Missoula has lost one of its problems, so you don't have to worry about that. But I would just like to say, in support of the majority report of the Local Government Committee, it seems to me that you're right that there has not been much change in local government, and I'm not so sure it's because we're that satisfied with it. I'm sure the delegates to the 1889 Constitutional Convention would be quite familiar with our present form of municipal government, but I think you have to realize that in—even as late as 1920, there were only something like 24 incorporated municipalities; now we have a hundred and twenty-six. But of this hundred and twenty-six, only 37 of these are gaining any population at all, and a great many of them arerapidly decreasing and will soon become to the point where they may--would like to be unincorporated. I think this is a real essential part of this revision of local government-to allow these areas where the population is decreasing to, every 10 years, or periodically, look at their form of government in relation to the number of people that they have, because this is changing, and the need for the governmental services that they need to provide. I think that this is probably the most crucial point of having some of these hundred and twenty-six incorporated municipalities get into the 1970's.

CHAIRMAN MURRAY: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I rise to support the majority report and say that, in my opinion, this is something that we need. It's an educational program, and it isn't going to cost anything. If the motion prevails, I would move that we delete one phrase, "or special", and to have it read: "The local unit shall submit one alternative form of government to the voters at the next general"-and I would omit "or special"—"election". And I think that it would be something that wouldn't cost any additional amount of money and it would be highly informative. As you talk to Commissioners sometimes and recognize their problems, they find that they haven't got enough citizen participation, and this would be a good opportunity for just that. I support the motion of the majority.

CHAIRMAN MURRAY: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I would like to see us resolve this issue on its merits and have a vote at this time.

CHAIRMAN MURRAY: Well, Mr. Romney has the opportunity to close, and I am going to give him that opportunity.

Mr. Romney, you are closing?

DELEGATE ROMNEY: Sir?

CHAIRMAN MURRAY: **You are** going to close, is that right?

DELEGATE ROMNEY: **Yes,** sir—

CHAIRMAN MURRAY: Okay.

DELEGATE ROMNEY: --unless someone else wants to talk.

CHAIRMAN MURRAY: I see nobody else.

DELEGATE ROMNEY: Mr. Chairman, I brought this matter up because I felt that there was ample opportunity for change under the present situation, as augmented by the material that was adopted yesterday. I still think that, and so I think that I'll let the matter go, with the observation that yesterday I noted that the Convention was slumbering through the session. At one time there were 56 people-delegates-on the floor by actual count, and the Convention had degenerated into a Rip Van Winkle assemblage. I think that something had to be done to dynamite some action into the operation so that people would become aware of what was transpiring. I think it has served that purpose in the discussion on the last section, as well as on this Section 10, and if it is necessary to nail my hide on the electric voting board, why, I think it is well done. I thank you.

CHAIRMAN MURRAY: All right. Members of the committee, the now-the question now arises on the motion of Mr. Romney-

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN MURRAY: We'll have a roll call vote; and Drum and Brown have returned, so they may vote. The question now arises on the motion-substitute motion of Mr. Romney that we delete Section 11 in its entirety. We'll use the voting machine. So many as are in favor, vote Aye; those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN MURRAY: Does any delegate wish to change his vote?

(No response)

CHAIRMAN MURRAY: The vote is now closed. The clerk will tally the vote.

Aasheim ..... Nay
Anderson, J..... Nay
Anderson, 0..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ....Aye
Bug-bee ....Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate ..... Nay
Champoux ..... .Absent
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Nay
Dahood .....Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... .Absent
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart .....Aye
Felt ..... Nay
Foster ..... Nay
Garlington ..... Nay
Graybill ..... .Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Excused
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce.. ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lore110 ..... Nay
Mahoney .....Aye
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Nay
Romney ....Aye
Rygg ..... Nay
Scanlin.. ..... Nay
Schiltz ..... Nay
Siderius. ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... .Absent
Van Buskirk ..... .Absent
Vermillion ..... Nay

Ward		Nay
Warden		Excused
Wilson		Nay
Woodmansey		Nay
Chairman	Murray	Nay

(Delegate Bugbee rose to gain the Chair's recognition) (Laughter)

CLERK HANSON: She wants to explain her vote.

CHAIRMAN MURRAY: I think you're out of order. (Laughter) What do you want-what would you like to say?

DELEGATE BUGBEE: Mr. Chairman, I would like to change my vote. (Laughter)

CHAIRMAN MURRAY: You would like to--I'm sorry, the vote is closed, but the record will show that you voted in error.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN MURRAY: Mr. Romney.

DELEGATE ROMNEY: I think that Mrs. Bugbee should be allowed to change her vote. She was overwhelmed with the green of the day. (Laughter)

CHAIRMAN MURRAY: The record will show that she voted in error.

CLERK HANSON: Mr. Chairman, 5 delegates voting Aye, 85 voting No.

CHAIRMAN MURRAY: 5 delegates having voted Aye and 85 voting No, the motion has failed. The question now arises—
Mr. Martin.

DELEGATE MARTIN: I would like to offer an amendment to delete "or special" in line 10.

CHAIRMAN MURRAY: Now, what page are you on, at line IO?

DELEGATE MARTIN: On page 31.

CHAIRMAN MURRAY: You're-you would simply delete the words "or special election", is that right?

DELEGATE MARTIN: That's right.

CHAIRMAN MURRAY: And that would be the same three words, "or special election", on line 4 of page 6. Just "or special", I guess; that's your motion.

DELEGATE MARTIN: Right.

CHAIRMAN MURRAY: The two words "or special".
Mr. Martin.

DELEGATE MARTIN: In order to save time, I'll be quiet. (Laughter)

CHAIRMAN MURRAY: Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN MURRAY: Mr. Wilson.

DELEGATE WILSON: I don't have any quarrel with this proposal, except that it does require the voters in a county to do this every 10 years, whether they want to or not. And I submit that perhaps this may-should be a voluntary thing and if a group wants to submit an alternate plan, this would be fine; and I would like to change one word on page 6, line 3, and insert "may" instead of "shall".

CHAIRMAN MURRAY: Give me that again, would you please, Mr. Wilson?

DELEGATE WILSON: Insert "may" in place of "shall" on line 3, page 6.

CHAIRMAN MURRAY: Is that a form of a substitute motion for Mr. Martin?

DELEGATE WILSON: This is right.

CHAIRMAN MURRAY: Mr. Wilson, I'm going to rule your motion out of order, because it does not affect Mr. Martin's motion at all. His amendment can stand alone without yours, and let's take up the issue of Mr. Martin's amendment-that's the one you should be addressing yourself to-and then let's go to yours, if that's all right.

DELEGATE WILSON: That will be fine, Mr. Chairman.

CHAIRMAN MURRAY: All right.
Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. Chairman and fellow delegates. Isn't it true that our city elections, especially, are held usually at just a—it's a special election just for that purpose? Our city officials are not held at regular presidential general elections, so special elections or city elec-

tions instead of these special--maybe we could substitute and put in there, "general" or "local elections".

CHAIRMAN MURRAY: Mr. Ask, could you respond to that, please?

DELEGATE ASK: Mr. Chairman, I think I would oppose this motion to delete those two words by Mr. Martin. We're not out here to get special elections. We want to cover it broadly. You have a general or a special election. Now, city elections are held on different days than the general election. The general election, of course, would apply to the county, so I would say, let's leave it flexible. And I'm sure the local officials are not going to be wasting money on elections if they don't have to. And if your city officials are elected for 4 years, possibly you'd go a long time here without an election, so let's leave it up to the local people when they want to have their election, whether they want to wait until the general election or the next city election or whether they want to even have a special election-I don't think they would-but let's leave it up to the local level and not decide it here. So, I would move-1 would be in opposition to that motion to delete those two words.

CHAIRMAN MURRAY: Mr. Martin, do you choose to close?

DELEGATE MARTIN: I would be agreeable to change it to "city election"--or "city election or local election". I wasn't precluding any regular authorized elections. My point was that it shouldn't be a special election to add additional cost and it should come at a time when you are voting for regular city or county officials, and the general election is where you elect the county officials, so you could-1 would be willing to change it--"or city elections" or something of this sort.

CHAIRMAN MURRAY: I have no motion to that effect, Mr. Martin. You still have the floor; do you wish to make such a motion?

DELEGATE MARTIN: Well, I'll amend it to say "general or city election". Well, the county is at a general election-is-am I right? "General or city election"-1'11 amend it to that.

CHAIRMAN MURRAY: So your motion now stands, then, instead of deleting the words "or special", you want to change those words to read "or city"; is that right?

CHAIRMAN MURRAY: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I'll offer a substitute motion to delete "general or special", so that it will read "at the next election".

CHAIRMAN MURRAY: Mrs. Babcock has now made a substitute motion to delete the words "general or special election", but I guess, by virtue of doing so, she is attempting to wipe out Mr. Martin's motion to change "special" to "city". All right.

Mr. Anderson.

DELEGATE OSCAR ANDERSON: I resist all of these substitute motions and would like to have the delegation consider the original language. This provides the flexibility that you need. The local officials are aware of their situation. They're responsive to the voters, and they're not going to increase expenses by holding a needless special election. I'd like to see them have the utmost flexibility so they can act on the voters' behalf in the most efficient and economical way. Please defeat these substitute motions.

CHAIRMAN MURRAY: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I would support the position of the majority report, because, conceivably, if you said just "election", a school board election might be the next election, and it certainly would not fit this situation.

CHAIRMAN MURRAY: Okay. The question now arises on the motion of Mrs. Babcock, a substitute motion to delete the words "general or special" on line 4 of page 6. As many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No

CHAIRMAN MURRAY: The Noes have it, and so ordered. The question now arises on the motion of Mr. Martin to amend the word "special" to "city", so that the language reads: "the voters at the next general or city election". As many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed

DELEGATES: No.

CHAIRMAN MURRAY: The Noes have it, and so ordered.

Now, Mr. Wilson, I think that your motion would be in order at this time.

DELEGATE WILSON: I move that, on line 3, after the word "and", in place of the word "shall", we put in the word "may"-on page 6.

CHAIRMAN MURRAY: Do you wish to speak to that motion, Mr. Wilson?

DELEGATE WILSON: Mr. President, I think this will provide the people in the local county with the opportunity to either-they won't be required to do this-it wouldn't be a definite term-thing, as spelled out here; that they would have to do it-and if they're satisfied, why, they would just remain with their status quo. I do believe that it-any county or-that is satisfied with their system shouldn't be required to do this every 10 years if they don't choose to do so.

CHAIRMAN MURRAY: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I can't help but feel that maybe Mr. Wilson doesn't entirely understand what the committee was trying to do here, and I'd like to get him back on the majority's side, if we can. The idea of Section 11 is to give voters in the area a chance to take a look at it and decide. That's the whole point of it. If they decide at the election that they want to review it, then they'll go ahead and engage in the review procedure; if they decide they don't want it, then they won't. And they're not being forced, under the present Section 11 the way it is in the majority report, to do something or not to do something, They are given just exactly what you pointed out, they're given a choice. This is their election, and at the election they make the choice whether they want to make the review or not to make the review. Nothing is forced on the voters by this section. I oppose the amendment on behalf of the committee, Mr. Chairman.

CHAIRMAN MURRAY: Okay. The question now arises on Mr. Wilson's motion to amend the word "shall" to the word "may". As many as are in favor of his motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No.

CHAIRMAN MURRAY: The Noes have it, and so ordered. Committee members, the question now arises on themotion of Delegate Ask that when this committee does rise and report, after having had under consideration Section 11 of committee proposal 11 on Local Government, that the same be adopted. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No.

CHAIRMAN MURRAY: The Ayes have it, and so ordered. The Chair has no further amendments.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN MURRAY: The question now arises on the motion by Mr. Eskildsen that the committee rise and finally report. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: All those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

(Proceedings reverted from Committee of the Whole to Convention, Delegate Murray as Acting President)

CLERK HANSON: "March 17th, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 11 of the Committee on Local Government, recommend as follows: that the Committee rise and finally report. Signed: Marshall Murray, Chairman."

DELEGATE ESKILDSEN: Mr. Acting Vice-Mr. Acting President, Mr. Murray, Delegate, sir, I move the adoption of the Committee of the Whole report.

ACTING PRESIDENT MURRAY: And that committee proposal Number 11 be referred to the Committee on Style and Drafting.

DELEGATE ESKILDSEN: I so do, Mr. Murray.

ACTING PRESIDENT MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

ACTING PRESIDENT MURRAY: Those opposed, say No.

(No response)

ACTING PRESIDENT MURRAY: The Ayes have it, and so ordered.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Acting President, Marshall Murray, because of the way we've conducted ourselves, I move that we stand in recess until 11 o'clock this day.

ACTING PRESIDENT MURRAY: Thank you. Now, just before going into recess, before calling for that vote, I would like to have the pages-I have a note the pages are to go out into the foyer out there for some purpose. They will please do that, and I have been asked that I should suggest to you that you remain in your seats for just a moment after we recess. As many as are in favor of Mr. Eskildsen's motion to recess until 11 o'clock, say Aye.

DELEGATES: Aye.

ACTING PRESIDENT MURRAY: All those opposed, say No.

(No response)

ACTING PRESIDENT MURRAY: The Ayes have it, and so ordered.

(Convention recessed at 10:45 a.m.)

(During the recess, flowers were placed on the desks of the male delegates in commemoration of St. Patrick's Day, and a brief presentation was made by Mrs. J. C. Garlington. Appropriate thanks were extended by Mr. Murray.)

(Convention reconvened at 11:10 a.m., President Graybill in Chair.)

PRESIDENT GRAYBILL: The Convention will be in session-the Committee will be in session. Ladies and Gentlemen, including those in the lobby, I wish you'd come to your seats. Very well, members of the Committee, we'll be in session, I understand, in my absence, that the wives of those delegates that are living here were nice enough to bring us these flowers, and I want to point out to the Convention that my wife chose snapdragons. (Laughter) However, I'd also like to say that I was stopped in the lobby by the press and they said, "Is this the funeral for Mr. Studer's right-to-work bill?" (Laughter) Very well, I think enough of us are back.

Mr. Eskildsen, will you make a motion.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention resolved into Committee of the Whole. President Graybill in Chair.)

CHAIRMAN GRAYBILL: Mr. Schiltz, we're prepared, I think, to go ahead on Report Number 13 from the Style and Drafting Committee; and to do that, I think it will require a motion to suspend the rule about the 48 hours on the desks. We might try the body and see if they'll do that.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that the Committee of the Whole suspend the rules--and I don't-I'm not sure which rule it is—

CHAIRMAN GRAYBILL: Rule 23.

DELEGATE SCHILTZ: —23?

CHAIRMAN GRAYBILL: Rule 23.

DELEGATE SCHILTZ: -suspend Rule 23 for the purpose of considering Style and Drafting substantive report, which is labeled Report Number 13. As everybody knows, we're moving along pretty fast on some of this, and it's going to be necessary to suspend the rules to get everything done by tomorrow night.

CHAIRMAN GRAYBILL: Very well, the motion is to suspend the rules--or suspend Rule 23, which requires 48 hours on your desk before consideration, on Style and Drafting's Report

Number 13, which concerns the ordinances. Is there discussion of that motion?

Mr. Harlow.

DELEGATE HARLOW: I just want to be here so I can vote.

CHAIRMAN GRAYBILL: Very well. Oh, Harlow was-Harlow, you're-Mr. Harlow, your presence may be shown on the journal. Mr. Drum, your presence may be shown on the journal. Very well, the motion is to suspend Rule 23 to allow consideration of Style and Drafting Report Number 13 without it having lain on your desk 48 hours. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Clerk, will you read the title and the article of Report Number 13.

CLERK HANSON: "Montana Constitutional Convention, 1971-72; Committee on Style, Drafting, Transition and Submission Proposal Number 13. Reported March 16th, 1972; John M. Schiltz, Chairman. Be it proposed by the Committee on Style, Drafting, Transition and Submission that there be a new article on Compact with the United States, to read as follows: Article. Compact with the United States. All provisions of the Enabling Act of Congress, approved February 22, 1889, 25 Stat. 676, and of Ordinance Number 1, appended to the Constitution of the State of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the Congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana. Signed: Schiltz, Chairman."

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Style and Drafting Report Number 13, it recommend the same be adopted. Mr. Chairman, this particular article is in answer to a request by the various Indian tribes of Montana that something go into the Constitution-in particular, the Indian tribes wanted the Ordinance Number 1 reprinted at length so that our present Constitution provide exactly as the—as-that our new Constitution provide exactly as the old one—or the present one. We, in the Style and Drafting Committee, decided not to do that because there's quite a lot of material in there that doesn't pertain to the Indians themselves, but we considered, as North Dakota did, that it was necessary to put something in the Constitution to acknowledge that the old Enabling Act requirements were still in full force and effect in this new Constitution and to note particularly that the general language that the declaration that all lands owned or held by Indians and Indian tribes shall remain under the jurisdiction and control of the Congress of the United States. I think North Dakota, in response to an inquiry from us, answered the problem about as well as it could be answered. They said not to put it in would be like throwing away our copy of the contract. Mr. Chairman, I move the adoption.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, would Mr. Schiltz yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE DAVIS: Mr. Schiltz, I'm sure you gave consideration to this, but I wonder what the thinking was, when you refer to this as your copy of the contract, the Enabling Act has been amended at least twice since that time. I wondered if the language "and subsequent amendments thereto" would be appropriate. I mean, if you're adopting the original.

DELEGATE SCHILTZ: Well, I don't think Ordinance Number 1 has ever been amended, and that's the particular reference.

DELEGATE DAVIS: It says that all provisions of the Enabling Act of Congress, approved-and of Ordinance 1, and I'm just—

DELEGATE SCHILTZ: Well, we will be adopting any amendments that are now in that Enabling Act.

DELEGATE DAVIS: All right, thank you.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: On behalf of my Indian friends and the United Tribal Council, I want to thank the Committee on Style and Drafting for giving consideration to proposal Number

15, and I'm very happy with the results. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, the second section of Ordinance 1 was referred to the Bill of Rights Committee. We decided in committee that we really didn't have the authority to make any changes in it, since it was really a contract with the United States government and that it should be left as is. We have not met to consider the proposal of the Style and Drafting Committee, but in looking at what it says, which is really that the ordinance will-is still accepted, I think that it satisfies that provision. I would hope that in some printed copies of the Constitution, the ordinances would be included, even though they-you know, when you read through them, they'revery-pretty much outdated. I think that the phrase "that all lands owned or held by Indian or Indian tribes shall remain under the absolute jurisdiction and control of the Congress of the United States" is really what the Indians were concerned about. I tried this morning to get in touch with the local representative of the Intertribal Council and was not able to reach her, and I think that anyone who has discussed it with her might relate this to the body. In looking at it just from the short time I've had to look at it, it's-looks as though it's really pretty much in keeping with what they want. Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, may I ask Mr. Schiltz a question, please?

DELEGATE SCHILTZ: I yield.

DELEGATE JACOBSEN: Mr. Schiltz, does--would this prevent the Indians from selling their lands or leasing them to others? I understand that maybe Mr. Hanson from Ronan could tell us this, but the Indians-a lot of white people own, or apparently own, Indian lands. Would this prevent them from selling these lands, then?

DELEGATE SCHILTZ: Absolutely not. This has no effect on anything-any existing law, any-it just reaffirms the contract we made with the United States under the Enabling Act, in which we've protected the rights of Indian lands—and whatever the Congress does, this won't affect it. They still have the right to do it. So—

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would Mr. Schiltz yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE DAVIS: Mr. Schiltz, on line 9, after six-seven-six, with the parentheses around it, would you have any objection to adding the words "as amended", or would it create a problem with Style and Drafting?

DELEGATE SCHILTZ: Well, I wouldn't want to do it unless I had some very good authority on what the amendments are, and I don't as I stand here right now.

DELEGATE DAVIS: Well, the statutes—

DELEGATE SCHILTZ: I don't think the ordinances have been amended.

DELEGATE DAVIS: No, I'm referring to the Enabling Act that you are talking about more than the ordinances. You're talking about your adopting the Enabling Act—

DELEGATE SCHILTZ: Oh, all right—

DELEGATE DAVIS: -and the ordinance. The Enabling Act was amended in 1920-something to provide that we could accept mineral-bearing lands. It was later again, in 1930's, amended to permit us to keep the minerals and requiring us-in any future sales or exchanges, to reserve all minerals for the schools. So, I would think you would have our complete contract, accepting the original and the amendments thereto as well.

DELEGATE SCHILTZ: All right, why don't you insert an amendment after the word "six seventy-six" and before the paren?

DELEGATE DAVIS: I would so move, Mr. President, if you follow that. After the parenthesis on line 9, "six-seven-six, as amended"-

DELEGATE SCHILTZ: (Inaudible)-as amended?

DELEGATE DAVIS: I beg your pardon?

DELEGATE SCHILTZ: Don't you think the paren ought to follow "as amended"?

CHAIRMAN GRAYBILL: Mr. Davis, he's proposing you put it in so that it reads: "February

-or-"as amended."

DELEGATE DAVIS: Very good.

CHAIRMAN GRAYBILL: As amended?

DELEGATE DAVIS: As amended. Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Davis has proposed an amendment to the article, Compact with the United States, which would appear in your books on page 2, line 9, within the parentheses and after the numbers "six seventy-six", we would add the words "as amended", so that it would read: "All provisions of the Enabling Act of Congress, approved February 22nd, 1889, 25 Statutes 676, as amended, and of Ordinance Number 1." Is that the sense of your motion, Mr. Davis?

DELEGATE DAVIS: Yes.

CHAIRMAN GRAYBILL: Very well.
Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, would Mr. Loendorf yield to a question?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I'll yield.

DELEGATE JOHNSON: Jerry, after looking over this-1 value your opinion-does it change the intent of the present Constitution as referring to the Indian lands?

DELEGATE LOENDORF: This is the provision that was on the handout sheet that merely makes reference to that ordinance rather than incorporates it in its entirety?

DELEGATE JOHNSON: Yes, sir. I'm particularly concerned there about-is the reference to the Indian lands. What I-when-it was your opinion-does the Style and Drafting wording here—

DELEGATE LOENDORF: There's no change in substance.

DELEGATE JOHNSON: -any different than the intent that's in the Constitution as it is?

DELEGATE LOENDORF: None at all. None at all.

DELEGATE JOHNSON: You feel that way?

DELEGATE LOENDORF: Right.

DELEGATE JOHNSON: Thank you very much.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson,

DELEGATE JOHNSON: Would Mr. Cate yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Cate?

DELEGATE CATE: Certainly.

DELEGATE JOHNSON: Jerry, I would like to ask you the same question I just asked Jerry Loendorf. Do you agree that there is no change in the absolute intent in the Style and Drafting in their presentation here from the ordinances as written in the present Constitution?

DELEGATE CATE: I think that it carries through the same intent. I haven't examined it in detail, Mr. Johnson. I'll take a look at it here-Mr. Blaylock just handed it to me-and I'll answer your question in a moment. All right?

DELEGATE JOHNSON: Thank you. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Davis' amendment or the ordinance?
Mr. Burkhardt.

DELEGATE BURKHARDT: Just about the ordinance. The lack of a signature says I wasn't here, not that I don't approve of it, and I wanted to have that there for the record.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Davis' motion that we add the words "as amended" to the reference to the Enabling Act of Congress in the Compact with the United States article. So many as are in favor of adding that language, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as are opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, we're back considering the language as a whole. The substance of this-this is a substantive report from Style and Drafting, and we may consider it substantively and style. Is there any

further discussion of the article entitled, "Compact with the United States"?

(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of the article as it's written and amended here, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended. I'd like a motion, Mr. Murray; I'd like a motion this committee rise and report finally on Style and Drafting Report Number 13, Ordinance.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise and finally report on Committee on Style, Drafting, Transition and Submission Proposal Number 13.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings moved into Convention from Committee of the Whole. President Graybill presiding)

PRESIDENT GRAYBILL: Will the clerk please read the Committee of the Whole report.

CLERK HANSON: "March 17th, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 13 of the Committeeon Style, Drafting, Transition and Submission, recommend as follows: that the committee rise and report. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: Does anyone want the committee report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well, Mr. Murray.

DELEGATE MURRAY: Mr. President, 1 move that we adopt the Committee of the Whole report and refer Committee on Style, Drafting, Transition and Submission Proposal Number 13 to Order of Business Number 5.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report and refer Proposal Number 13 to Order of Business Number 5, Final Adoption. Is there any discussion?

(No response)

PRESIDENT GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: No-all opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered. Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we revert to Order of Business Number 5.

PRESIDENT GRAYBILL: The motion is to revert to Order of Business Number 5, Adoption. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: Very well, be--we're on Order of Business Number 5. Now, the purpose of this, members of the body, is that Style and Drafting, having drafted the ordinance and it being short-having drafted the proposal about the ordinance and it being short, there seems no purpose in sending it back to Style and Drafting, and Mr.-let's see-so we're considering it on Order of Business Number 5 right now, and we'll finally adopt it unless someone has objection.

(No response)

PRESIDENT GRAYBILL: Very well, the clerk will read Proposal Number 13, as amended, for action on Order of Business Number 5.

CLERK HANSON: "Committee on Style, Drafting, Transition, Submission Proposal Number 13. Be it proposed by the Committee on Style, Drafting, Transition and Submission that there be a new article on Compact with the United States, to read as follows: Article. Compact with the United States. All provisions of the Enabling

Act of Congress, approved February 22nd, 1889, 25 Statutes 676, as amended, and of Ordinance Number 1, appended to the Constitution of the State of Montana and approved February 22nd, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the Congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana." Mr. President, Number 13.

PRESIDENT GRAYBILL: Very well, the article entitled "Compact with the United States" is before you. All those in favor of it, vote Aye on the voting machines; and opposed, vote No. This is a final vote. For those of you who just arrived, we're taking Order of Business Number 5, Final Adoption of Compact with the United States, which we just adopted as amended. The words "as amended" were the amendment. So the Compact with the United States is the issue. If you're in favor of it, vote Aye; if you're opposed to it, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please take the roll.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Ames ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Absent
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Absent
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Absent
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Excused
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Absent

Roeder ..... Aye
Rollins. Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg.. Aye
Toole ..... Absent
Van Buskirk .Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Absent
Warden ..... Excused
Wilson ..... Aye
Woodmansey A y e
Mr. President Aye

CLERK **HANSON:** Mr. President, 89 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: 89 having voted Aye and 1 having voted No, the Compact with the United States is adopted. Now, ladies and gentlemen, we do not want to start the Education Style and Drafting until after the noon recess. Have in mind that the Public Health Style and Drafting will probably be taken up this afternoon on a motion to suspend the 48-hour rule. If we finish both of those, we will start General Government this afternoon, and I want to remind you that the committee chairmen--I'd like to have a meeting of the committee chairmen in the Legislative room immediately upon the noon recess.

Mr. Murray.

DELEGATE MURRAY: Mr. President, just a reminder that Rules will also meet, and I would like to meet at 15 minutes to 1:00, realizing that we're going to recess until I o'clock, so I would move at this time that the Convention stand in recess until 1:00 p.m. this day.

PRESIDENT GRAYBILL: The motion is to recess until 1:00 p.m. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 11:35 a.m.—reconvened at 1:32 p.m.)

PRESIDENT GRAYBILL: The Convention will be in order. Members of the Committee, the Chair apologizes for being a half hour late, but, believe me, we've been handling lots of business, so don't worry about it; and the business has been going well, so don't worry. Now, we were on Order of Business Number 5 when the Committee recessed, and without objection we'll be back on Order of Business Number 10. Is there objection?

(No response)

PRESIDENT GRAYBILL: Very well. Mr. Murray, will you make a motion on Order of Business Number 10.

DELEGATE MURRAY: Mr. President, I move that the Convention resolve itself into the Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it. Very well. On Order of Business Number 10, we're now ready to take up Style and Drafting's Report Number 9, on Education-10-w get before you the Committee on Style and Drafting's Number 10, on Education and Public Lands; and if you'll turn to page 6, that's the easiest place to follow the text-page 6. Will the clerk please read the title and Section 1 of the bill.

CLERK HANSON: "Montana Constitutional Convention, 1971-72; Report of Committee on Style and Drafting, Transition and Submission on Education and Public Lands, Number 10. Reported March 15th, 1972; John Schiltz, Chairman. Be it proposed by the Education and Public Lands Committee that there be a new article on education, to read as follows: Article. Education. Section 1." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 1,

Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, minor changes in style in Section 1, sub. 1; and I make that motion as to Section 1, subsection 1.

CHAIRMAN GRAYBILL: Very well. Is there discussion of Section 1, subsection 1?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 1, subsection 1, of the Education Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted, Section 1, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 1, subsection 2, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, no changes except that this became a subsection instead of part of the main section.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: Very well, Section 1, subsection 2; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 2—subsection 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 1, subsection 3, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman-I should have made this motion first-on line 18, I move that the words "quality" and "free" be interchanged. Someone might slip a hyphen in there sometime and make it read, "system of quality-free public elementary and secondary schools." (Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz has styled and drafted, at this late date, to reverse the words "quality" and "free", on line 18. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: All right, your subamendment is approved, Mr. Schiltz; now do you want to go ahead?

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 1, subsection 3, Style and Drafting Report Number 10, it recommend the same be adopted as amended. Otherwise, minor style changes; nothing significant.

CHAIRMAN GRAYBILL: **Is** there any discussion of Section 1, subsection 3?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk read Section 2.

CLERK HANSON: "Section 2. Public school fund." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 2, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, may I first call your attention to the fact that these are not subsections; it's numeration of a series. Secondly, on line 29 of page 6, you'll see that the words "known as school lands" are not struck out. They are struck out over on page 1 and should have been struck out here. We operate with two typewriters, and they don't have a link between them. Otherwise, let me see-Oh, I have an amendment here. On line 6, page 7, of this section, I move that we strike the words "no other" and substitute in lieu thereof "without". Now, that's awfully hard to read unless you go back to page 1—or 2; then you'll see why I did it. At the top of page 2, if we don't do that, it reads: "All other grants of land or money made from the United

States for general educational purposes or no other special purpose", and it reads better if we say, "-or without special purpose", so I offer that amendment.

CHAIRMAN GRAYBILL: All right, the Chair understands that Mr. Schiltz has proposed two subamendments here, one to strike out, just on the page 6 version of Section 2, the words "known as school lands", on line 29; and also, on line 6 on page 7, to strike out the words "the other"-

DELEGATE SCHILTZ: No other.

CHAIRMAN GRAYBILL: -"no other", and substitute the word "without". So many as are in favor of allowing Style and Drafting Committee those preliminary amendments, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Okay; those were approved, Mr. Schiltz.

DELEGATE SCHILTZ: Before I make my final motion, I will say that the rest of it is minor style. And so I now move that when this committee does rise and report, after having had under consideration Section 2, Style and Drafting Report Number 10, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Is there discussion?
(No response)

CHAIRMAN GRAYBILL: Very well, Section 2, as amended; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it. It's adopted. Section 3.

CLERK HANSON: "Section 3. Public school fund inviolate." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 3, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, there

CHAIRMAN GRAYBILL: Section 3. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4.

CLERK HANSON: "Section 4. Board of land commissioners." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I want to make an amendment here. If you'll direct your attention to line 20 on page 7, and-wait, I have to be careful here. All right, I want to make it read this way, Mr. Chairman-I think that it's the best way to say it: "the authority to direct, control, lease, exchange and sell", and then I want to strike "of the" at the end of that line; so it will amount to inserting, after the first "the" on line 20, the words "authority to" and then striking the "i-o-n" on "direction" and the "i-n-g" and substituting an "e" for "leasing" and "sell" instead of "sale".

CHAIRMAN GRAYBILL: And the "of the" at the end of the line?

DELEGATE SCHILTZ: That's struck, yes.

CHAIRMAN GRAYBILL: All right, Mr. Schiltz has proposed an amendment to Section 4 so that the sentence beginning at the end of line 19 will read: "It has the authority to direct, control, lease, exchange and sell school lands and lands which have been or may be granted", et cetera.

DELEGATE SCHILTZ: Mr. Chairman, this we can call the Eck Amendment. Mrs. Eck correctly pointed out that we had gerunds and various other participles, and so we struck them all out so they're uniform.

CHAIRMAN GRAYBILL: Very well. All in favor of allowing this preamendment to Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Now, you want

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 4, Style and Drafting Report Number 10, it recommend the same be adopted. Otherwise, Mr. Chairman, we have rather minor style changes.

CHAIRMAN GRAYBILL: Section 4.

DELEGATE SCHILTZ: I think I said "as amended"; if I didn't, I meant to.

CHAIRMAN GRAYBILL: All in favor of Section 4 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 5.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 5, subsection 1, it recommend the same be adopted. Mr. Chairman, minor style changes in subsection 1 of Section 5.

CHAIRMAN GRAYBILL: Any question about 5, sub. 1?
(No response)

CHAIRMAN GRAYBILL: All in favor of 5, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. — 5, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 5, sub. 2, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, minor style changes-we inserted the word "public" in front of "school funds"; otherwise, struck some unnecessary verbiage.

CHAIRMAN GRAYBILL: Any discussion of 5, sub. 2?
(No response)

CHAIRMAN GRAYBILL: Very well. All in favor of 5, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6, Mr. Clerk.

CLERK HANSON: "Section 6. Aid prohibited to sectarian schools"; containing two subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does rise and report, after having had under consideration Section 6, sub. 1, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, we did some rearranging in this case but didn't affect the substance in any case and, I think, improved the style.

CHAIRMAN GRAYBILL: Any discussion on Section 6?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: That's 6, sub. 1.

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: -6, sub. 1 is adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 6, sub. 2, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, there are no changes in sub. 2.

CHAIRMAN GRAYBILL: -6, sub. 2. Any discussion? (No response)

CHAIRMAN GRAYBILL: All in favor of 6, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. It

was close, but it's adopted. Section 7.

CLERK HANSON: "Section 7. Non-discrimination in education." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 7, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, there are no substantive changes. We did insert, instead of "person" of line 28, "teacher or student", and I think we borrowed some of that from the comments. And I have gone over it with Mr. Champoux, and he had no problem there. We didn't know-we couldn't see that any such tests would be applied to anybody other than teachers or students; and so that could be a basic change or a substantive change, but I don't think it is. That's all.

CHAIRMAN GRAYBILL: Very well. Section 7; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted, Section 8.

CLERK HANSON: "Section 8. School district trustees." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 8, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, no substantive changes: changes in style only.

CHAIRMAN GRAYBILL: Is there any discussion of Section 8?
(No response)

CHAIRMAN GRAYBILL: Very well. Section 8; all those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Section 9, Mr. Clerk.

CLERK HANSON: "Section 9. Boards of education"; containing three subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I want to move to amend, on line 30 of page 9, by striking out the word "state". That just slipped in there--or it didn't slip in there, we just forgot to take it out. We've taken it out everywhere else.

CHAIRMAN GRAYBILL: Very well. All in favor of taking "state", before "state superintendent", out of line 30 so it just reads "and superintendent of"—all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: That's done. Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 9, subsection 1, it recommend the same be adopted. Mr. Chairman, in connection with this entire Section 9, I should say that it's been completely rearranged and largely-if you'll recall the debate, Mr. Harper made the amendment after a long, hot afternoon; and we got one of those things that said, "If there's any problems here, we'll leave it up to Style and Drafting"; and we took him at his word. I checked with him early this morning, and he thought it was fine; and then I fine-toothed-combed it with Mr. Champoux, and Mr. Champoux, has no problems. There are a couple of minor things that Mr. Champoux and1 talked about, and I think I can satisfy him on those privately, without any amendments. Now, as to subsection 1, those are all style changes, but all the substance is there. As to subsection 2, when we get to it: it used to be subsection 3; we reversed the order of those two boards, and so now I move the adoption of subsection 1.

CHAIRMAN GRAYBILL: Very well.
Mr. Rygg, you have a motion here. Do you want to take it up at this time, or—

DELEGATE RYGG: I don't believe it's on subsection 1. But-it's in this same section, if you want me to make it now.

CHAIRMAN GRAYBILL: All right. Well, is it-it's in subsection 2?

DELEGATE RYGG: Yes, it would be-it's 2, now, I believe-that was 3. It would be in 2, now.

DELEGATE SCHILTZ: Well, Mr. Chairman, just to be very careful about those two sections, it would be-it's safer to look over on page 4—or the bottom of page 9 and 4, to see how they've been reversed. They've been cut up quite a lot, and I think they make easier reading over on page 3 and 4.

CHAIRMAN GRAYBILL: All right. Well, I take it that there's no problem with subsection 1, then. Is there discussion of subsection 1?

(No response)

CHAIRMAN GRAYBILL: Very well; all in favor of subsection 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now let's take subsection 2, on page 10. In other words, we'll take them in subsection number, but they're out of sequence here. Subsection 2 is the old subsection 3, the Style and Drafting Committee apparently reversing the order of these two boards and the description; is that correct, Mr. Schiltz?

DELEGATE SCHILTZ: That's right. You see, we-all right, go ahead.

CHAIRMAN GRAYBILL: Discuss subsection 2 (a) and (b) and(c), on page 10, please; line **4** to **22.**

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAY&ILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 9, subsection 2, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, these are style changes. It would take an awful lot of explanation to show how we revised all these various things and tried to make the two boards parallel, but they are only style-no substantive changes.

CHAIRMAN GRAYBILL: Allright. Now, at this point we're discussing the Board of Regents, right? Mr. Schiltz? Subsection 2 will now be the Board of Regents?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: All right.

Now, Mr. Rygg, would you like us to read your proposal?

DELEGATE RYGG: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want to read Mr. Rygg's proposal.

CLERK HANSON: "Mr. Chairman. I move to suspend the rules for the express purpose of reconsidering line 21 on page 4, Article IX"-page 10—

CHAIRMAN GRAYBILL: It's line 21, page 10.

CLERK HANSON: Line 21, page 10, right.

CHAIRMAN GRAYBILL: Of Article X. All right, Mr. Rygg, I'm allowing you a motion to suspend the rules for the purpose of reconsidering line 21 on page 10. Mr. Rygg's motion further says: "My intent"-he has to tell his intent to do this—"My intent would be to add the words 'accounting and' after the word 'some'-'same'-after the word 'same'—so it would be 'are subject to the same accounting and audit provisions'." Now, that's his purpose, and his motion is to suspend the rules. Is there discussion of the motion to suspend the rules?

Mr. Rygg.

DELEGATE RYGG: May I speak on this a moment? I admit I'm really quite concerned about the fact that our University System is now a complete autonomy with very little control by the Legislature. In fact, I suppose I think we've created another Highway Department. However, this body has shown that that's its desire, so I'm not going to attempt to insert the words "as provided by law". I feel about the only control a Legislature has now is the purse strings; and, really, the purse strings aren't much control in education, because we have to give money to education. So I feel that, really, all that's left is accountability—as far as the Legislature is concerned-and I don't think that just an audit will do much good, because auditors can audit anything, but unless there is a unified system of accounting, it's pretty hard for an audit to show a statement that can be read by legislators or any committee or anything like that. So, my thinking is that I believe we should include all institutions in a unified accounting system over the state. I believe it's nearly implemented now. I think that they hope to have it

done by July first of this year, and I think it's important enough to include it in there. The Revenue and Finance Committeewas considering a proposal like this, but we didn't put it in the Constitution, actually, as a general thing, but our comments did stress very much that we thought it was very important. So my only intent, if this should pass, would be to add those two words so that we could have statewide accounting in there, so that an audit would really mean something, so the Legislature could have true accountability. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Is it within the rules, sir, that I may answer that and defer, after a few comments, to Mr. Heliker for an argument? Sir?

CHAIRMAN GRAYBILL: You want to ask what?

DELEGATE CHAMPOUX: Is it within the rules that I may answer that, very briefly, with just a few sentences?

CHAIRMAN GRAYBILL: You may answer it briefly, but stick to the fact of whether or not the rules should be suspended to do this.

DELEGATE CHAMPOUX: All right. Then later, may I defer to Mr. Heliker, after I make my two sentences?

CHAIRMAN GRAYBILL: Certainly, everybody can discuss.

DELEGATE CHAMPOUX: All right. First of all, I'm absolutely opposed to this. This will accomplish what we spent 8 hours debating, which means that all the control is back in the statehouse. When you're involved in accounting procedures, you're also involved in managerial decisions. And it's just simply another way of getting the same kind of controls. Now, at this point, I'd like to defer to Mr. Heliker. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Well, I have, Mr. Chairman, nothing in essence to add to what Mr. Champoux has said, except to say that the intent of this amendment is to emasculate the decision that we made to give the Board of Regents managerial authority. If the Director of the State Department of Administration is able to impose internal structure of accounting procedures on the University system, then it means it can take away the managerial flexibility, managerial power of the Board of Regents and put it in the Department of Administration, and this will completely subvert what we debated for many hours and decided to do the other day.

CHAIRMAN GRAYBILL: All right. Now, I'll allow other discussion, but I'm going to hold you closely to the concept of whether we should suspend **the** rules. We now-1 think everybody now sees what the issue is going to be, but—

Mr. Furlong.

DELEGATE FURLONG: Would-Mr. Chairman, would Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: Yes, I will.

DELEGATE FURLONG: Delegate Rygg, is there anything in this subsection 2, or anything else in Revenue and Finance that you know of, that would prevent the state from implementing in all subdivisions, as a matter of fact, a uniform accounting procedure?

DELEGATE RYGG: Well, I think the way this is written, it could, because they have complete autonomy. I don't think any other section has it-any other department has it; I don't think they have the autonomy that this particular has right now. I think that's why it's needed in this one, yes.

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I would resist the reconsideration, because I don't believe it's necessary. I believe the state has the authority to establish a uniform accounting procedure throughout the whole of the state. I think they're well on their way to doing it right now, and there's really no purpose in reopening this to accomplish what I think is already being accomplished.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I resist the motion to suspend the rules, in keeping with a continuing policy of the dinosaur. I hope-1 was in support of the position of Mr. Rygg, but in this case, I think that we would do just as we did yesterday on the right to know; we would talk for 3

hours and end up with just exactly the same position.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I'd like to just remind the members of the Convention that, in reconsideration, this is the only opportunity that a one-body house has of looking over what we just did. And this is really something that we offer to the people that feel that something has been done that they can't quite agree with. Now, whether you agree with what he's trying to do or not, I still think that in the way that this body operates, this is the only opportunity he has to say that he isn't satisfied what we did another day. I think we should give him the opportunity to reconsider. I think we should give anyone an opportunity to reconsider pretty near any motion that they want to bring up.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I'll be very brief. This is just a hashing over what we've hashed over. It's an attempt to ram down the throats of the University System an accounting system to which they cannot possibly adjust, and I suggest to you that if there is uniformity of accounting required, that this can be done by computers.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. There's been about 10 to 15 years spent trying to get a uniform system of accounts for the State of Montana.

CHAIRMAN GRAYBILL: Mr. Artz, how's that-that's argument, isn't it? I don't want to interrupt you, but—

DELEGATE ARTZ: No, I merely answered Mr.-

CHAIRMAN GRAYBILL: I'm interested in arguing the issue of whether we should suspend the rules. I don't care how long ago we've had accounting or where we are in the accounting business; we'll debate that if we suspend the rules. Now, if you want to say you're for it or something, that's fine; but don't talk about the accounting system yet. In other words, the motion is to suspend the rules. Are you for or against that, and what are your reasons? And they're not supposed to be the reasons that we're going to debate later.

DELEGATE ARTZ: Well, the reason I was for it, Mr. Chairman-and stop me the minute I get out of order-but we had hired Touche, Ross, Bailey and Smart to come in and determine that we needed this. We thought we still needed it, and their statement said: "Accounting systems have developed more or less independently of each other. Consistent application of generally accepted government accounting practices and principles does not exist. This deficiency makes the interpretation and comparison of financial information for planning, operating and controlling government activities difficult and, in some cases, nearly impossible.

CHAIRMAN GRAYBILL: All right. Now, that seems to the Chair to be clearly argumentative.

DELEGATE ARTZ: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The issue is clearly drawn here that if we suspend the rules, we're going to debate accounting in the University System; but I want to know if you have any more to say about whether or not we should suspend the rules, not about the accounting system.

Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would support the-suspension of the rules. I think the question is so important for the future of all involved that, if there is any question in the minds of this body here, I think this is the time to clarify it and come to an agreement. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I have previously felt, like Mr. Martin, that it wasn't proper to reconsider, and I've resisted all the prior motions to reconsider. If-After listening to Mr. Eskildsen, it has occurred to me that the reasons that I have formerly felt that it was improper to reconsider for were reasons that would be more properly applicable in a court, rather than in a deliberative body. Since this is not a judicial proceeding, but a-in fact a deliberative proceeding, I think that it is proper for us to reconsider; and I have decided that I have been wrong; and so I publicly confess the error of my ways; and I intend from now on to vote for, rather than against, reconsideration every time it comes up. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, being a strong advocate of unicameral system and this being a unicameral body-and you must reconsider things in unicameral; you can't put it over to somebody else to do-I'm strongly in support of the motion to reconsider.

CHAIRMAN GRAYBILL: Very well. The motion is to reconsider Mr. Rygg's-or the motion is to suspend the rules so we can reconsider. It's Mr. Rygg's motion, and his purpose is to consider line 21-I think the Chair will rule that the purpose will be to consider anything under sub. (d), which would be lines 20, 21 and 22, because I don't want to fix it so we can only talk about one gap in the sentence. Anybody-If we reconsider, it will be to consider the matter of "The funds and appropriations under the control of the Board of Regents are subject to the same audit provisions as are all other state funds." Now, so many as shall be in favor of that, vote Aye on the voting machines; and opposed, No. It's not a roll call vote, but I must know the total, since the rules provide that it requires two-thirds or 51 percent, whichever may be less. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. The ballot is 52 to reconsider, 42 not to, so we will reconsider-or we will suspend the rules, rather—suspend the rules.

All right, now, Mr. Rygg, do you want to make a motion to reconsider?

DELEGATE RYGG: (Inaudible)

CHAIRMAN GRAYBILL: All right, Mr. Hanson will make the motion.

Mr. Hanson.

DELEGATE HANSON: Mr. Chairman, having voted on the prevailing side on the question involved, I now move that we reconsider Section 9, subsection 3-or whatever it is-part 3-for the express purpose of adding the words "accounting and"—I can't read my writing-before the word "audit" on line 21, page 10, of the Style and Drafting report.

CHAIRMAN GRAYBILL: Mr. Hanson, will you allow me to state your motion as 9-3-(d), the way I said it awhile ago, so everybody is together?

DELEGATE HANSON: Yes, I will. Correct-right.

CHAIRMAN GRAYBILL: Nine-three-(d)-the motion is to reconsider Section 9-3-(d). All right-Well, it's 9-2-(d); it used to be 9-3-(d). Okay. It's sub. (d), lines 20 to 22 on page 10. All right, the motion to reconsider has been made.

DELEGATE HANSON: Mr. President, I'd like to defer at this time to my accountant, Delegate Artz.

CHAIRMAN GRAYBILL: Mr. Artz, can you discuss the motion to reconsider?

DELEGATE ARTZ: Mr. Chairman, I'm all in favor of the motion to reconsider. I'm not sure, under the rules, exactly what I can say, but we do need a lot of change. We need those words in. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. The motion is to reconsider *Section* 9-3-(d) of the Education Article. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and the motion carries.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move to amend 9-2-(d) on line 21 by adding the words "accounting and" after the word "same", so that it would read: "The funds and appropriations under the control of the Board of Regents are subject to the same accounting and audit provisions as are all other state funds."

Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, everyone should understand that he wants to add the words "accounting and" on line 21, after the word "same".

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. Basically I have covered this before; I'm not going to belabor the point. I honestly feel that we're not doing away with what we did before. I don't think this is in any way hurting the autonomy of the University System. I feel that there has to be some regulation from the Legislature; I think, because they are spending the taxpayers' money, I just

think that we have the right to have the accountability of it. I don't believe that such an accounting system is going to overturn the internal policies, because-the one they are working, I think, is now a WICHE program, which is used in all states; and from all the information I can gather there, it's not going to work a hardship on the University. I think it's true that probably the Controller can switch that into it, but it still would come out the same. There is another reason for this, too. We have required-in the previous section, I think it was-that they have unified budgets, and unless the accounting procedures are the same, it's going to be very difficult to anyone to work out a budget, because I can't imagine that just a sum brought in to the Appropriations Committee is going to be acted on that way. I think they are going to have to have some knowledge of what it is, and I think the six universities are also going to have to have some knowledge of rearranging this, in case they wouldn't get the full amount. And as it has been in the past, the four main captions, probably, of Personnel, Capital, Operating Expenses have not always been the same in each institution. Under Operating Expenses in one, there will be several account numbers, and the other institution, it'll be different-and the same with the other headings. And when you do it that way, it's just about impossible to know how you're appropriating it or how it's being spent. So I have given up the idea of getting a control of the University System, as I said, and this is strictly an accounting procedure and showing the accountability. And I can't understand why it should hurt anything in the University System. They're nearly on it now. I just want to make sure that an audit will mean something, and I don't think it's meaningful unless the same accounting system is throughout the system I think the Legislature and the Appropriations Committee are entitled to have a readable financial statement, whereas if it were the other way, it would just be the auditors that could read it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise in support of the motion to amend. I think that if I were sitting at the head of one of the University Systems in-I'd want this accounting system in my own self defense, to-because of the fact that I'm using public money. I would want to be sure that the public knew where the money went and how it was used and it was used in the way it should be. And there's quite a little difference between an audit and an accounting system, and again, I think the people of the University System and the Board of Regents are-that the people are entitled to know where this money went and how it went.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, would Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: Yes, I'll try.

DELEGATE ECK: Mr. Rygg, I'd like to know just how much this-accepting the state auditing means. Would it mean, for instance, that there would be preauditing, whereexpenses would have to be approved by the state beforehand, and would it go over into the area of personnel at all?

DELEGATE RYGG: Not to my understanding of it, no; it's just the-that the actual bookkeeping, accounting numbers, would mesh with what the state has, even if it has to go through a computer to do it. It's just so they can have an accountability of where the funds were appropriated and where they were spent. As far as I know, it has nothing to do with preaudit. I know that-Mr. Champoux is showing me what North Dakota did-and in that it included a preaudit, but I didn't think that could be done here, because I think they'll handle that right in their own, the way it's set up.

DELEGATE ECK: Mr. Chairman, would Mr. Artz yield to a question?

CHAIRMAN GRAYBILL: Mr. Artz?

DELEGATE ARTZ: (Inaudible)

DELEGATE ECK: Mr. Artz, would you also agree that this wouldn't affect either any checks on personnel or on preauditing?

DELEGATE ARTZ: Delegate Eck, as far as I'm concerned, the only purpose of adding this word is to see that we have a uniform system of accounting throughout the state. Now, as I tried to mention at first, the Forty-first and the Forty-second Legislative Assemblies made specific appropriations to get this done. They hired an outside firm-a national firm, Touche, Ross, Bailey and Smart; one of the eight national firms in the United States-to make this, and they came back, as I mentioned at first, and said that there

was a terrific lack of uniformity. And all we're trying to do is-we don't care how the University System-or where they buy their apples or where they buy their oranges, but we want them classified as apples and oranges, the same as everybody else does. In other words, to insure that when the Legislature gets reports, they will be in conformity with the reports they get from the other state agencies. It's taken about 15 years to get this accomplished, and I'd certainly hate to see one branch of the government or one agency of the government slip out through this thing we put in here the other day. Does that answer your question?

DELEGATE ECK: I believe it does. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I rise in support of the amendment, and I'd just like to say a word to the body here. I hope they've listened to the words of Mr. Lloyd Barnard with a deep sense of care. I'm sure you're all aware that Mr. Barnard was in this position as Chairman of the House Appropriations Committee.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I wonder if the body realizes the fundamentally unique nature of an institution of higher education. To try to impose a businesslike system of accounting on a University System has proven to be unworkable and impractical. As Mrs. Bugbee said at length the other day, you find Deans-highly paid Deans--running around with requisition orders for paper clips and typewriters; and I'm not going to repeat that over and over again. But to try to impose this, we found that after the University System be-came under the Department of Administration, there was greatly increased cost to the University System by reason of having to comply with a system of accounting that was designed for something like the Fish and Game Department or the Board of Health or something else. You have a completely unique type of institution which does not lend itself to the kind of an accounting system that Mr. Artz is talking about. I know from personal experience in dealing with the University that this imposition of a uniform accounting system on the University has greatly increased their costs, immeasurably increased their costs, and I think they simply have to be let alone to work out their accounting system in the best interests of the student body and of the people of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: This will be short, Mr. President. We spent, oh, 15 minutes to an hour or two on the public's right to know in the Bill of Rights section. I think this is just as important as the public's right to know. What we're actually doing by putting this in here and making uniform accounting methods is that the Legislature also has the right to know, and so doesn't the public have the right to know how the money is to be expended and has been-not to be expended, but has been spent? And this is only a logical deal to implement-and very efficiently implement—the Legislature's and the public's right to know how the money is spent in the University System.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I'm not an accountant and I will not be able, therefore, because I've not been immersed in this question as an accountant would be-but I have consulted with University System accountants on this matter. This is not a question of accountability-we have written accountability into the section as it is now written-it is a question of managerial control. Now, I have a five-page brief on the subject here, which I am not going to read to you in its entirety, but because I think you must be informed on this as to exactly what the issues are, I'm going to ask you to bear with me for a few minutes while I read part of it. "Unquestionably"—I read from this report—"unquestionably, a state-supported university is part of a larger accounting entity, the state, which is subject to specially formulated and defined governmental accounting principles which apply to the state as a whole. However, unlike most other state agencies, a university is subject to generally accepted accounting principles of its own, which must take precedence in designing an accounting system if the information reports provided by that system are to be meaningful. This concept is widely accepted by the profession, as evidenced by Donald C. Bruggeman and Gerald D. Brighton in October, 1963, issue of ***Accounting*** *Review,* where they state: 'There is truly a separate and distinct set of generally accepted accounting principles for colleges and universities.' What, then, are these generally accepted accounting principles as applied to universities, and what constitutes authoritative support for these principles? The general answer to the first part of the question is the principle of separate, distinct fund groups. This broad

principle is recognized by W. Lynn Fluckinger, C.P.A., in the August, 1963, issue of the *Journal of Accountancy,* where he writes: 'One other concept peculiar to reporting for fund type enterprises should be mentioned. While an institution will have only one general fund, it might have many, perhaps hundreds, of designated funds. In such cases, it becomes, obviously, desirable that these funds be grouped for reporting purposes. When funds are grouped, it is necessary that they be grouped by like purposes and restrictions so that the assets applicable to them can be reported jointly and the various accounting statements, when combined, will be meaningful. The fund groups which are applicable to the various types of institutions are usually designated in the related accounting literature. The composition of these groupings should be followed carefully. Specifically, the need for this principle of separate fund groups as applied to universities was stated in the Finance *of Higher* Education, by J. D. Russells, as follows: 'The separate nature of each of these fund groups cannot be too strongly emphasized. In dealing with each kind of asset, the institution should consider itself practically a separate enterprise. Thus, in caring for current funds, the institution acts as an operating corporation. In handling student loan funds, it acts as a commercial credit agency. In managing endowment, its actions are those of investment trusts. The accounting procedure must segregate the transactions in each fund group just as vigorously as if entirely separate managing corporations were involved.' A review of the nation's colleges and universities would soon reveal that College *and University Business Administration,* Revised Edition, is by far the most widely used accounting reference. That this edition recognizes the principle of fund group accounting is evidenced by the following article in the March, 1969, Journal of *Accountancy.* That authority continues to recommend as a basic principle that the accounts of colleges anduniversities should be classified in balanced fund groups; not only in books of account, but also in financial reports. In addition, all financial transactions should be recorded and reported by fund groups. The authors of this article, Ralph S. John, C.P.A., and Howard A. Whitney, C.P.A., are partners of the national C.P.A. firms of Haskins &Sells, and Peat, Marwick, Mitchell & Co., respectively. They represented their firms, which in turn were chosen by the A.I.C.P.A. to represent the profession as consultants to the American Counsel on Education. This article also recognized the general acceptability of College *and University Business Administration,* Revised Edition, with the following: 'In the opinion of the writers, College and *University Business Administration,* Revised Edition, is the authoritative guide in accounting for colleges and universities. It is well prepared and contains as complete a statement of accounting principles applicable in a specific area in accounting as is currently available in any area.' Having established that there is a distinct set of generally accepted accounting principles to apply to universities, it then becomes necessary to address the conflict that arises when, as in-the proposed Statewide Budgeting Accounting System proposed by the Department -the Director of the Department of Administration does, an attempt is made to include a university accounting system under the same broad funds that apply to a stategovernment. Basically, the problem arises because of a misconception in the definition of fund groups; that is, that a direct correlation can be drawn between the funds in a state accounting system and the fund groups in a university accounting system. For example, it may appear at first glance that a general-state general fund may correspond to a university's current unrestricted fund group or that a state, federal and private revenue fund may correspond to a university's currently restricted fund group or that a state agency fund may correspond to a university agency fund group. When these assumptions are approached with adequate knowledge of a university's accounting problems, however, these simplistic correlations soon prove false. An attempt, therefore, to force a university accounting system into the broad spectrum of a state government system without special recognition of the uniqueness of university accounting will result in the production of inaccurate and inadequate information, at best, and mass confusion substantially-and substantially increased workloads, at worst." Now, I read you just enough to give you an idea of what is involved. This is a highly technical matter, but the nub of the matter is this: that the Department of Administration does have the authority now to require a reporting framework, which is controlled by the Director of the Department of Administration, in the disbursement of funds. All of the funds of the University System are kept in the state treasury, and state warrants must be drawn and processed by the Treasurer and charged to an account that is structured in the treasury and which the Director of the Department of Administration has the power to control. Now, the proposal which the State Director has made would give him the

authority to structure not only that reporting framework, but the internal accounting of the University System, which is a management tool and without which the University System will find it difficult to manage. Now the Legislature and the Executive have plenty of authority, without having the authority to structure the internal accounts of the University System, to control the University System. You have the purse strings held by the Legislature. You have the post-audit—legislative audit-by the Legislature; you have the University accountable to the Legislature through that procedure. You have the Governor on the Board of Regents. It is not conceivable that the Board of Regents could run contrary to the wishes of the Governor, as a matter of fact, with the Governor as the Chairman of this board. Now, these institutions that we are talking about-of higher education are set up-and they're out there to do a very important and very special job for the people of Montana, and they are not set up to be the playthings of an accountant or set of accountants in the Department of Administration in Helena. And I say to you that what we adopted the other day and what is contained in this provision is to give the Board of Regents and University administrations the power to manage those units effectively, and that is the power that I hope you will leave to them. I hope you will confirm that principle, but if you adopt this amendment, you will be reversing 180 degrees and you will be imposing upon the University System, through the control of their internal accounting, effective managerial control by the Department of Administration.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Very briefly, if I may add to that, sir, let's note the fact that no Constitution-none-in the United States has anything concerning accounting systems in it. Now, the University isn't-and I want to emphasize this-the University isn't against getting into the state accounting system. They aren't. Let's get that understood. Now, the problem is, they have their own accounting system; it's the educational accounting system. Now, what would be agreeable? It would be this, as Mr. Toole pointed out: that the State Administration office work out a computer program and simply include the educational accounting system in the statewide system. And it is not something that you do through a constitutional amendment, and I want to make that clear. Now, let's look at this state accounting system; let's really look at it. Well, we can't. You know why? It isn't in existence. So, what we're talking about is a system that isn't in existence. Not only that, when the system was being proposed, the state accountants in the Administration office did not go down and consult with any of the educational-accountants in the educational units-none of them. Now, my question is-and I'm going to leave it with you: is this system ever going to change, this statewide system? Are all others going to change in the future? If we tie this in, it will be too inflexible. Does this mean, for instance, that we always will have a statewide system of accounting? Not necessarily, since we have lived without one for 88 years. Thank you.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Will Mr. Heliker yield?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I yield.

DELEGATE SPEER: Mr. Heliker, you said that this was a matter of internal management, I believe.

DELEGATE HELIKER: Yes.

DELEGATE SPEER: Now, does this not mean, then, that the courts could interpret, if this decision to include accounting were put in the Constitution-could the courts not then interpret almost any internal management function as to be under the Legislature?

DELEGATE HELIKER: Well, this is the heart of the managerial function. I have no idea what the courts would interpret.

DELEGATE SPEER: Well, my point is, Mr. Chairman, that this could be carried into far other areas through interpretation by the courts.

CHAIRMAN GRAYBILL: Mrs. Speer, are you finished?

DELEGATE SPEER: Yes, thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Let's see-Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I've heard these good old decisions before, these old arguments--we can't operate-I've heard them for years, and I think this thing could operate just nicely under the government, the state

government-Legislature, Governor and all-and I don't see any sense in going out and giving them this exclusive right just because they're the University System. I don't know, maybe two and two isn't four in different accounting, but that's what I get back to. And I heard this discussion that they can't operate and the people of this state voted for 20 departments and in these 20 departments, the Governor and the Legislature, in their wisdom, set up a Department of Business Administration. And all they have to do is live under it, and I'm sure that we-the University won't close if they get under our-rest of our government.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, may I direct a series of questions to Mr. Rygg?

CHAIRMAN GRAYBILL: You may.

DELEGATE RYGG: I yield.

DELEGATE MELVIN: Mr. Rygg, it seems to me like we're beating all around the bush. Are we suggesting that because the accounting system that the University System has-that it isn't adequate? Or are we suggesting that some funds may be being spent that are covered or not being shown by the present accounting system?

DELEGATE RYGG: I don't know that we're suggesting that at all. We're just suggesting that we have everything in the state in the uniform system so that an audit can be meaningful. In talking with the budget-the post auditor yesterday, he said they can audit anything and they can understand it, but unless it has a uniform system, they can't put out a-meaningful statements that could be understood by a layman. So I think in the past there certainly has been some evidences of things being covered up, but I don't think that's what we're aiming at now, no.

DELEGATE MELVIN: One more question. Has there been any discussion, that you're aware of, Mr. Rygg, between the Legislature and the University units concerning the accounting system and the objection that they have to state accounting or the system set up by the state?

DELEGATE RYGG: Yes, there has been in the past. There's been a difficulty in reading them, and I think, as Mr. Artz noticed that-noted, that in the last 12 or 15 years, they've been trying to get this coordinated so they would be in a statewide system. And I understand that they are now working under the WICHE system, which can be used and is used by other states and does coordinate with the state system, and I think this is to be implemented very shortly.

DELEGATE MELVIN: Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I would rise to support what Mr. Heliker said. I think I would be amiss not to give testimony to 20 years of some school administration, to say how different it really is. I'm surprised with this move on the University System, so to speak, that we don't have a similar move on our grade school and high school system. I think we recognize the uniqueness of that control, and yet we want to take away, almost, from our University Presidents and-that autonomy which is necessary to operate a school. I would find the move that's being made here not much more ridiculous-to me, anyway, with my experience-than to ask our elementary schools to take on the bookkeeping system of the Department of Agriculture or our high schools to take on the bookkeeping system of our Highway Department.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, again we come down to a difference in basic philosophy, and I think we all understand how many people are involved in a University System. It isn't just the teachers and the administrators; it involves a great many young people. I wonder if Mr. Rygg would yield to a question.

DELEGATE RYGG: Yes, I yield, Mr. Chairman.

DELEGATE CROSS: Mr. Rygg, in your remarks, it raised a question in my mind. Does each unit of the University System, then, do their accounting as each one wants to do it, or are the units within the system on a uniform system, or how much variation is there?

DELEGATE RYGG: I can't answer you how much variation there is. There has been a great deal of variation in the past. They are gradually getting into being more uniform; but, yes, different universities in the six systems will have different account numbers under the account headings. That's true.

DELEGATE CROSS: Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, I'd again like to repeat that no one has asked me to speak, not on this floor and not in the rest of the state. I really feel that it is absolutely tragic that this body would not be able-cannot be able to read the Eisenhower report of 1957 before we vote on this. Essentially what they are saying is that all over the country this is happening; as departments of state centralize and centralize their administrative procedures, that higher education coming under this is slowly being smothered. Now, as I said the other day and I will repeat-also my husband feels this-with every passing month, practically, the paperwork is going up; the difficulty of getting the right size paper clips, the difficulty of doing this, of doing that is absolutely drowning these people. If, Mr. Rygg, what you wanted was a unified accounting system between the University departments, that would be fine by me; but to put the whole higher education department under the Department of Administration, so that everything-all buildings go under them, this is what I object to, and it seems to me this is what your--what this amendment would mean. And—this is what I'd like to be sure of. If they are alike—you understand what I mean? If they have to be alike and unique, all six of them the same, that is fine; this sounds very logical to me. But it's when they come under the Department of Administration for every bloody paper clip and building—science building,, complex and everything else—that higher education and the delicacy ofteaching begins to fall apart, and this is the whole thrust of this Eisenhower report. And I repeat, this is something that is happening nationwide; and it seems to me that we are going to do exactly what they are predicting is happening in higher education: it is becoming less and less sensitive to the need that it needs to fulfill, which is teaching.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would like to rise in support of the amendment and make a couple of comments. One, I've learned to respect Mr. Artz' wisdom. He's a Certified Public Accountant and he has used extremely good judgment in our Finance and Revenue Committee, and I'm certainly willing to listen to him in this matter. I would suspect that if the universities or the higher education system were on a unified system of accounting--which, probably, the reason they are not now; and we've heard people say that they are striving for this at the present time, because I think they all recognize that higher education may be better off as a result of it-it's kind of painful at times; but the people who sold computers here several years ago happened to sell one flavor to one higher education unit and another flavor to another, and this is part of the problem now. But the people that I have talked to in higher education agree that this would be a good thing; but if the audit time of the legislative post-audit could be cut-and unified accounting would certainly cut the time that they have to spend making the audit-I think it would be a-effect quite a savings to the state. I think responsible people in-whether it's in a business or in education or wherever-really learn to respect and desire good accounting systems, because it relieves the minds of those. It's good-it creates more efficiency and it makes them look like winners if we have good accounting. I'm not sure just what all the problems are that we have over at the University now, but good accounting may have eliminated some of those problems. Now, for the-each school or each one to say, "We have different problems here and different problems there", I would wonder if perhaps J. C. Penney might not have different problems in, say, their New York store than they have, say, in the Billings, Montana, store. But they've overcome these problems, and the reason that J. C. Penney and Sears & Roebuck and people like that win is because they have unified accounting. They create a situation where they save money and they pass it on to the taxpayers-or to the purchasers. I think perhaps this same result could come in our higher education system. It may be a tax saving down the road for the taxpayers of the State of Montana. And if the Legislature could be-the real important point is if the Legislature can be better informed, it will be more responsive to the needs of the higher education and the people will be more responsive. That is the important point, as I see it, Mr. Chairman. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Rygg's amendment to add the words "accounting and" on line 21 of page 10 of the Education report of Style and Drafting.

Mr. Burkhardt.

DELEGATE BURKHARDT: I haven't had time to check with the Chairman of our committee; I would like to maybe ask him a question at this point in relation to this amendment. I wonder if Mr. Champoux would yield.

DELEGATE CHAMPOUX: I'll yield.

DELEGATE BURKHARDT: Rick, I was going to write you a note, but what I was wonder-

ing was if, for instance, on line 21, you read: "The funds and appropriations under the control of the Board of Regents shall be accounted for in a uniform manner and then subject to audit provisions as are all other state funds", you would gain a nudge toward uniformity in between units, but you would not be turning over to the State Administration Department the managerial function. I wonder if this, as you look at it, would have some possibilities in terms of what the group really is seeking-and that is, some kind of measurable and discernable understandable accounting system; not necessarily the system of the state, but a uniform system within the various units of the Board-or the system of education. Now, that's a long question. Let me read it to you again. After the word "Regents", on line 21, to insert "shall be accounted for in a uniform manner, and subject to the same audit provisions as are all other state funds."

DELEGATE CHAMPOUX: Okay. First of all, let me say this: that within the University Systems, there is a uniform system of accounting recommended by WICHE, the Western Interstate Compact on Higher Education, which covers all of the western United States, all of the university systems, all the college systems-they're all going to have the same kind of accounting. For-It's been recommended-this kind of accounting has been recommended by the Commission-by the United States Commission on Higher Education. Now, it's estimated by-They have all of it implemented in the different units right now. The only thing that's lacking is coordination between the units; they figure they'll have that finished by July. And this is another reason why-you see, now, they've been working on this; they're ready to go on-stream with it; it's working within the units. They're ready to go on-stream with it between the units, and now they're being told, "Well, we've got to hold; wait a minute; we now want you to bring in-come in on the new kind of accounting system that the state's going to impose." Does that answer your question, sir?

DELEGATE BURKHARDT: Rick, as I read this, did it seem to you to be clear in its delineation of the function? In other words, it would still be under the control of the Board of Regents, but it would be necessary for them to account in a uniform manner; and you say it's already happening?

DELEGATE CHAMPOUX: Yes. If you want to add "internally", it would probably be better.

DELEGATE BURKHARDT: Internally?

DELEGATE CHAMPOUX: Yes. That would be acceptable, Bill.

DELEGATE BURKHARDT: I would like to propose a substitute amendment for the amendment before us, which maybe I would trust our Chairman of this committee to work on a bit and bring to you, Mr. Chairman, rather than myself in some kind of an offhand way. But I would so move that we put in a substitute amendment at this point, rather than the amendment which is now before us; and I would like our Chairman of the committee to bring it forward, if he would.

CHAIRMAN GRAYBILL: I'm sorry. Now, the Chair isn't going to accept a motion to amend that isn't in writing and that you're asking somebody else to prepare. Go out in the hall and prepare your motions; I don't care. But I'm not going to sit around; we're going to debate it while we do this.

DELEGATE BURKHARDT: Well, if you know that's what we're working on, why, maybe you won't vote too fast. Okay?

CHAIRMAN GRAYBILL: I don't control this system, I only run it.
Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I'll tell Mr. Burkhardt before he goes why I don't agree with what he's proposing, because I think that the difficulty here is in the very last phrase here, where the accounting system must be the same as those of other state agencies, or however it's worded.

CHAIRMAN GRAYBILL: "-are all other state funds-"

DELEGATE ECK: Yes.

CHAIRMAN GRAYBILL: "—as are all other state funds."

DELEGATE ECK: Yes. Right now, the University System is developing a compatible system so they're compatible among themselves and with other units. Now, I think that you could ask them to develop a system that is compatible with the sytem that our Department of Administration uses. I think you could have a system that is com-

patible with this system, as well as being compatible with the system that is used throughout the University System. But, really, to ask them to use the same system is making them possibly not compatible with whatever WICHE uses. I think that the real problem we're dealing here-with here is that it would be possible, and I think this is what the universities are afraid of, that the whole accounting procedure be moved, really, out of the hands of the Board of Regents and into the hands of the Board of Administration; and whereas, all the Penney's stores all over the United States might be able to use the same accounting system, it might not be a system that would also be appropriate, say, for all the fish and game departments all over the country. In using a system of accounting as the states do in developing a program, planning and budgeting system, this is a little difficult at times to transfer into a University System, because a university has to evaluate, based on different values other than cash values, what their money is being spent for. And for this reason, I think that university systems might find occasions where their system cannot be the same, even though it could be compatible; and I really think that this is what we're looking for. And I think that if amendment came up that would do this, it would be quite appropriate. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, Mr. Drum is a dandy person. I like him very much, but I really think it is simplistic to equate the University System to J. C. Penney's or Sears-Roebuck. Obviously, there are deep differences.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, will Mr. Rygg yield to a question?

DELEGATE RYGG: Yes, Mr. Chairman, I'll try.

DELEGATE CONOVER: Sterling, by leaving this out, the way it was written before, would this have any effect on the legislative audit that does now pertain to the University Systems?

DELEGATE RYGG: Well, it'll make this difference in that the legislative post-audit can post-audit anything, you know, and they can audit it, no matter what system of books YOU have any where, but they would not be able to bring in a meaningful statement so that it could be read by the average legislator or anyone in the Appropriations Committee. They can audit anything, any bookkeeping system, anywhere. But what they bring back, the meaning-the statement would not be meaningful.

DELEGATE CONOVER: Thank you, Sterling. Well, the one thing that concerns me, then: why is the University so afraid of having somebody audit them? This I don't understand. I would like to hear from somebody that-to speak on this, except the professors from the Universities. This is the only one that we've heard, is from that side. I'd like to hear the other side awhile. Thank you. Mr. Chairman.

DELEGATE TOOLE: Mr. Chairman, I'm far from being a professor at the University, but I've had a lot of experience with the-how the University operated before we had a Department of Administration, when it operated efficiently with a small crew and was able to conduct its affairs to the satisfaction of the people of the State of Montana and there never was any problem with the accounting. But now, since they're operating under the Department of Administration, there's an army of people out there at taxpayers' expense, running around, trying to conform to accounting principles which are not adapted to higher education. And I submit to you that it is costing the taxpayers a great deal of money, which is not necessary if the University System were permitted to manage its own financial affairs. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis, you were up.

DELEGATE DAVIS: I think Mr. Roeder was ahead of me, sir.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Conover, I rise, not to offer any apologia for the University System or its leadership, but I do think what I see here is a mutual distrust--and perhaps it's deserved. I think there's a feeling on the part of some people-perhaps Mr. Rygg feels this way—that the University leadership does not always do what it ought to do, and maybe that's the case. On the other hand, I think the University people are deeply suspicious of bureaucrats in Helena-and maybe that's as it should be, too, because, you know, really, the two big problems of our society are garbage and bureaucracy. Now, I submit that there are probably real problems here-that-and

there probably is basis in reality for both areas of suspicion; but if I may tear a page out of the book of Mr. McDonough here, the way to deal with this is in a normal political and administrative process and not in the Constitution. You've said in here that the Board of Regents shall be the governing body for the University. So be it. Work out the other problems in the course of normal political life.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, delegates. The other day I thought it was-be a good idea to have a little compromise here between the influential nonbureaucratic educating people, who have control of a lot of funds, and the people that wondered about this and suggested we put the financial control in the Legislature and give them complete academic freedom and complete administrative freedom. Now, when that didn't pass **and** when you gave complete financial control, by a strong vote of this thing-well, let's leave it that way. That's what you gave it to-the Board of Regents-and if they got it, don't start writing accounting procedures in a Constitution. There's no place for it. Either go all the way, or stay home-one or the other. Once you got this far, you might as well leave it that way. Now, I think, of course, you have a very strong consensus of people here in the educational field, which is-more power to them. They ran, and they got elected, and that's their baby; and they're not looking after their own salaries, I don't think, but they're interested in their field; and it is a big field. I don't agree with Mr. Toole when he gets up and calls the Highway Department a bureaucracy and then says that the education field is pure. I'm sure that there's lots of places in the field of education that money can be spent, to. But that's what they're going to work on. But that's what you put the Board of Regents in there for; they're all citizens. They're going to run this thing; they're going to require accounting procedures. And they're not going to go to the Legislature and say, "We're not going to go without some accounting", because they know the Legislature is not going to give them 5 cents unless they're satisfied. The Legislature still has to appropriate the money. So I think you should stay with the majority report; forget about-you've got this far with it; you've given complete financial, academic and administrative freedom and autonomy in the University System-and that's where it is, and so you might as well leave it there. There's no use starting to qualify it at this late date in the game. And you're going to have to rely upon the Board of Regents, and they have complete power-not the administrators, not the educators; the Board of Regents. If you have confidence in them-and they're appointed-and this is Friday, and remember, it's the odd-even days when we have a great confidence in appointed people; it's on the odd days that we have confidence in the elected people. (Laughter) So, you've got confidence, this is-being Friday-let's keep it there, and let's stay with the majority and get this Constitution written.

CHAIRMAN GRAYBILL: Very well. Now, the issue is on Mr. Rygg's amendment to add the words "accounting and" to the line that says that the regents are subject to the same accounting and audit provisions as are other departments of the state.

Mr. Burkhardt.

DELEGATE BURKHARDT: Because I was on my feet a moment ago, I felt I should stand and perhaps clarify where I **am** now in terms of a suggested way to go. I would urge the body to defeat-to defeat the amendment by Mr. Rygg. I will not be offering an amendment. I would hope that we would go, as Mr. Davis has suggested, with the original language. I hope we will defeat Mr. Rygg's amendment.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President, I rise, of course, again-in support again of the motion of Mr. Rygg. I'd like to point out a few things from past experience. I put in 8 years on the House Appropriations Committee, where every year I had to battle to get sufficient money for the University System to operate, and I know that the Appropriation Committee of the House or the Revenue and Finance Committee of the Senate are not going to appropriate any money unless they have a full accounting of every single item that is spent in the University System. They may not even appropriate $1. It's always a battle to get money for the University System here, and in defense of the University System themselves, I think they owe this to the people.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. As a rank-and-file teacher, I'm not an administrator. I told you the other day that a strong, unified management of the University would probably make me-make life a little bit more difficult for me-as a rebel, sometimes, in the position of hav-

ing to fight with administrators-but I come back to my old theme that if we are to use the people's money effectively and efficiently and get the job of education done, we really need that managerial efficiency and unification. Now, speaking to this question of uniformity of accounts within the University System, the University System units are quite different. You have an engineering school down at Bozeman; we don't have an engineering school at Missoula. We have computer centers on both campuses, but the computer centers are for quite different purposes because of the differences in the two institutions. If you force on those two units identical accounting systems, you will force on them identical management systems over their computer centers. This is one example, and there are many examples like this. And this simply is tying them to a straitjacket which is not efficient and which does not allow them to use their resources to the best purpose. Now, there is absolutely no fear of audit or accountability that I have been able to detect on the part of the University administrations or the Board of Regents. The legislative audit is in there and goes over the books. Mr. Drum says if you had absolutely uniform accounts, it would make the Legislative Auditor's job a little easier. This may be true, but it will also be at the expense of flexible management of our higher education units-flexible and efficient-and this is what we want, I think, in their management.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I am disposed to point out something that I think has not been mentioned in the discussion so far that, it seems to me, has quite a little bearing on the whole problem. In the past, we had a weak Board of Education with no leadership. We have cured that, now., by the new system that we worked out and amended and put in here; and untried, as yet, is a new Board of Regents with definite power to run the show and with definite authority to obtain an expert to help them in the process. The people who will be on the board face the fact that the Constitution now says that they shall together work out a unified budget request to go to the Legislature, and being intelligent people and this also being a new thing which has not been done before, it seems reasonable that they would realize what is required to satisfy the legislative demands and would act accordingly. And rather than impose some kind of uniform straitjacket that applies to all boards, bureaus, commissions and bureaucracies in Montana on an admittedly unique type of thing, it seems to me that we ought to feel that the handiwork of our previous days deserves a fair trial and that we should not sort of throttle it at the last minute by imposing a standardization which none of us expert accountants can really understand the full impact of. So, I feel that we did a good job. We've got good, responsible management now, and I think we ought to give it a fair chance, to see what it can do. If we hamper it before it ever starts, I'm sure we'll all feel that--afterward that we made a mistake and that our vehicle for the future of education was deprived of a wheel at the last minute and that we made a sad mistake. So I believe we should, along with Mr. Davis, leave it the way it is and trust the people whom we have now equipped with adequate authority to handle the situation to go ahead and handle it.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, in deference to Mr. Heliker, I am a school administrator. I handle roughly $400,000 of state funds and a million two hundred thousand dollars of federal funds each year. I am perfectly willing to be accountable for those funds to the state or any other way I have to be. And in deference to the Board of Regents, and we've set up this thing that's going to work so well, perhaps we should now give them the tools to operate. The Board of Regents as it operated previously was an excellent system. I defy anybody to say they weren't. I worked with them; they were, as I stated, courageous, competent individuals. And I, for an administrator handling these state and federal funds, am perfectly willing to come under a system of state accountability.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, fellow delegates. It seems to be two main worries expressed by the people from the University System. Number one, they're worried about how they're going to be allowed to spend their money, This is not the intent of putting this in. They can spend the money as they see fit; but we think it is important that the legislative body know how they spent it, that it be put in a form that they can understand, a form that is similar to the other reports that come in. I maintain that dollars are dollars; just because they're University dollars don't make them any different than Fish and Game dollars; they're all still tax dollars and us

taxpayers are paying them. We depend upon the Legislature to see that we get full value received. I don't like to see any obstructions put in to make their job harder. Now, we've had another problem here: that the University System requires an accounting system that is completely different, I admit that there are some differences in the accounting procedures. They have admitted that the WICHE system will work, that it is working; they're satisfied with it. I checked with the Department of Administration. The WICHE system is compatible with the state accounting system. As a matter of fact, they are currently working on the program to get it implemented. They're talking about all these problems. We have the post legislative auditors; these are C.P.A.s. They aren't national C.P.A.s; they're Montana C.P.A.s; but we think Montana C.P.A.s are just as good as the national ones, maybe a little bit better. And we think that if there are any minor problems involved, the state-or the post legislative auditors will certainly be able to make the necessary recommendations to solve them. Haskins & Sells, a national firm, was quoted. I think it is only fair that Touche, Ross, Bailey and Smart, another national firm-there's only eight of them-get a few more remarks that they put in when they helped the State of Montana get some uniformity. They said, "A lack of statewide uniform accounting systems and procedures also results in considerable difficulties when attempts are made to prepare consolidated statements of financial position for financial planning and reporting purposes." At this time, they made this statement: "Finally, there is an almost complete lack, in Montana, of financial reports which of-are of any use in making decisions about resource allocation alternatives or in effectively monitoring the operations of a particular agency." The last paragraph I will quote: "A statewide uniform system of accounts and accounting coding structure should be implemented across all state agencies to insure uniformity and consistency in accounting and budgeting data. The accounting classification should be designed to satisfy all of the state's accounting, budgeting and financial reporting requirements." All we're asking is that all the wheels be the same size. We don't want some 13-inch wheels, some 14-inch wheels and some 15-inch wheels going around. You know, you have a pretty uneven vehicle then. I certainly hope that you will support Mr. Rygg's proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Rygg, you may close.

DELEGATE RYGG: I'll be very brief. I could talk about these paper clips and I could talk to Delegate Arbanas about the difference between a budget that's put into the Legislature and about the school systems, and that-but I won't. I think your minds are made up, and I close. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Rygg's amendment.

DELEGATE RYGG: Could we have a roll call vote, please, and ask for sufficient seconds?

CHAIRMAN GRAYBILL: Yes, that's fine-Section 9-2-(d), on page 10, line 21, to add the words "accounting and", so that it reads: "(d) The funds and appropriations under the control of the Board of Regents are subject to the same accounting and audit provisions as are all other state funds." So many as shall be in favor of that amendment, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask .. Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher Nay
Berg ..... Nay
Berthelson .Aye
Blaylock ..... Absent
Blend ..... Aye
Bowman .. Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell Nay
Cate ..... Nay
Champoux ..... Nay

Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Excused
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Absent
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Aye
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Excused
Wilson ..... Aye
Woodmansey ..... Nay

CLERK SMITH: Mr. Chairman, 40 delegates have voted Aye; 52 have voted No.

CHAIRMAN GRAYBILL: 40 delegates having voted Aye and 52 having voted No, the motion is defeated. Is there anything else on 9, sub. 2, sub. (d)?

(No response)

CHAIRMAN GRAYBILL: Mr. Schiltz, will you again state your motion on 9 (d) 2-9-2, and we'll put that matter?

DELEGATE SCHILTZ: I want to check if I have any amendments on that besides that one. No. Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 2, Style and Drafting Report Number 10, it recommend the same be adopted, and I have explained it previously.

CHAIRMAN GRAYBILL: Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, 9-3, which is back on page 9, lines 22 to the end.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 3, Style and Drafting Report Number 10, it recommend the same be adopted as amended. We amended the word "state", on line 30, there. Right. Mr. Chairman, as I explained before, this whole Section 9 was rearranged and extensively edited and rewritten, all with the concurrence of the committee chairman, and I presume with his committee through him. There have been no substantive changes; all style changes.

CHAIRMAN GRAYBILL: Any discussion?

Mr. Harlow.

DELEGATE HARLOW: Well, I'm wondering-I'm on page 5. You have there, in subsection (b), you go on through the Governor, Commissioner of Higher Education and the State Superintendent of Public Instruction--now, you've been cutting out "state" in most of the areas.

CHAIRMAN GRAYBILL: Mr. Harlow, we took "state" out by amendment before we started on this whole subsection--whole section. Is there any other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. All in favor of 9, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 10, on page 10, line 23. Mr. Clerk.

CLERK HANSON: "Section 10. State university funds." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, only minor style changes.

CHAIRMAN GRAYBILL: Any question about Section 10?

(No response)

CHAIRMAN GRAYBILL: All in favor of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, if you'll turn behind the yellow manila folder-or manila sheet, to page 12, and, in fact, to page 13 if you want to follow the changes, Mr. Schiltz will take up the article on Public Lands. Will the clerk read the title of Section 1.

CLERK HANSON: "Be it proposed by the Education and Public Lands Committee that there be a new article on Public Lands, to read as follows: Article. Public Lands. Section 1. Public land trust-disposition." Mr. Chairman.

CHAIRMAN GRAYBILL: There are four subsections. Mr. Schiltz, Section-subsection 1.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, Public Lands, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, there are no changes in Section 1, but I would call attention of the committee to the fact that, on line 9, the language says "Congress"-"all lands of the state that have been or may be granted by Congress"; previously we've used "the United States", but we feel there's some reason to leave "Congress" in there. It comes from the old Constitution, Article XVII, Section 1.

CHAIRMAN GRAYBILL: Very well. Are there any questions about 1, sub. 1, Public Lands?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, sub. 2, Public Lands, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, we've made fairly extensive style changes, but nothing that alters substance.

CHAIRMAN GRAYBILL: All those in favor of Section 1, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, sub. 3, Public Lands, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, again we've made some style changes, but nothing substantive.

CHAIRMAN GRAYBILL: Public Lands, 1, sub. 3; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, sub. 4, Public Lands, Style and Drafting Report Number 10, it recommend the same be adopted. Mr. Chairman, again, style changes that do not alter any substance.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: Very well. Section 1, sub. 4, Public Lands; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, ladies and gentlemen, you've adopted the four subsections of sub. 1 on Public Lands and the 10 sections of Education. It's the Chair's intent to set that aside until we've finished Public Health after the recess, and then we will rise and report on both of these Style and Draftings at the same time. Let me think. Mr. Murray. Very well, before we recess, the Chair would like to point out that we should do Public Health after the recess. I have a budget report. It might be possible for us to—depending on how long Public Health took, it might be possible for us to-Oh, we'll also take Mr. Johnson's resolution-is now ready, is that right, Mr. Johnson? Have you got your resolution out, or is it ready to go out?

DELEGATE JOHNSON: It's ready to go out.

CHAIRMAN GRAYBILL: All right, we'll put it out on the desk during the recess; and this afternoon, after Public Health-I think we can take it today instead of tomorrow and discuss it. Very well. And then, if we have any time, I think we will probably do Bill of Rights on Order of Business Number 5, rather than start General Government today. I don't know that we'll be able to do that, but I thought you might like to know that. We'll still try to get out of here reasonably early.

Mr. Eskildsen, can we have a motion to recess for 15 minutes?

DELEGATE ESKILDSEN: Mr. Chairman, I move we stand in recess until 3:30 this day.

CHAIRMAN GRAYBILL: Very well. The motion to recess until 3:30; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(The Convention recessed at 3:15 p.m.—reconvened at 3:40 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. Will the delegates in the lobby please take their seats. Members of the committee, we now are prepared to proceed with the report of the Style and Drafting Committee on Public Health, Welfare, Labor and Industry, Number 9.

Mr. Murray, this report not having lain on the desk 48 hours, I wonder if you'd make a motion to suspend Rule 23.

DELEGATE MURRAY: Mr. Chairman, I move to suspend Rule Number 23 for the purpose of considering this particular proposal at this time.

CHAIRMAN GRAYBILL: Very well. The motion is to suspend Rule 23 so that we can consider the Public Health, Industry-Public Health, Welfare, Labor and Industry proposal as it's been

returned from Style and Drafting. Is there discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of the motion to suspend Rule 23, which requires 48 hours on the desk, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well, will the clerk please turn-if you'll all please turn to page 5—if you'd care to follow the changes, page 5. And—

Mr. Murray, I wonder if you'd take the Chair for 5 minutes?

(Delegate Murray assumes the Chair)

CHAIRMAN MURRAY: The clerk will read Section 1.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972. Report of the Committee on Style, Drafting, Transition and Submission on Public Health, Welfare, Labor and Industry, Number 9. Reported March 17th, 1972; Schiltz, Chairman. Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on nonmunicipal corporations, to read as follows: Article. Nonmunicipal Corporations. Section 1. Limitation of power." Mr. Chairman.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1, Nonmunicipal Corporations, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, because the word "only" was in there on line 9, we changed it from "grant of power" to "limitation of power", which seems appropriate; otherwise, no changes.

CHAIRMAN MURRAY: Any discussion?

(No response)

CHAIRMAN MURRAY: As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

CLERK HANSON: "Section 2. Protection for citizenry." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 2, Nonmunicipal Corporations, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, minor style change on line 12 and striking of the word "for" on the same line.

CHAIRMAN MURRAY: Any discussion on Section 2?

(No response)

CHAIRMAN MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

CLERK HANSON: 'Section 3. Retrospective law prohibition." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 3, Nonmunicipal Corporations, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, on behalf of the Committee, we all hope-or we're all glad this is something that's only style, because none of us really knows what it means. (Laughter)

CHAIRMAN MURRAY: Is there any discussion?

(No response)

CHAIRMAN MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No.

CHAIRMAN MURRAY: The Ayes have it, and so ordered. Okay, page 6, Labor Article.

CLERK HANSON: "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on labor, to read as follows: Article. Labor. Section 1. Department and commissioner." Mr. Chairman.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, Labor, Style and Drafting Report Number 9, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: You'll notice that on-wait, I've got to find this-on line 11, we've struck "under the control of' and substituted therefore "headed by a Commissioner", so that it would conform with Section 8, Article I of a totally different article, the Executive Article; and then we also thought that they didn't really want this board to be totally under the control and "headed by" sounded better. Then there's "Legislature", and "Senate" was in paren—we've struck "Legislature", and in the transition article, we will cover that transition if this should become a unicameral legislature. That's all, Mr. Chairman.

CHAIRMAN MURRAY: Any discussion on Section 1 of the Labor Article?

(No response)

CHAIRMAN MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

CLERK HANSON: "Section 2. Eight-hour day." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2, Labor, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, minor style changes.

CHAIRMAN MURRAY: Any discussion on Section 2?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I'd like to ask the group's indulgence for a few minutes. Could we pass this and go on and then come back to it?

CHAIRMAN MURRAY: What's your problem?

DELEGATE BLAYLOCK: There's proposed new language that they would like to put in here, if we can—

CHAIRMAN MURRAY: If you want to pass it, you'll have to make a motion to that effect.

DELEGATE BLAYLOCK: All right. I move that we pass this.

CHAIRMAN MURRAY: Until when?

DELEGATE BLAYLOCK: For about 5 minutes.

CHAIRMAN MURRAY: Well, let's put it ahead or behind something else, so we've got a place to take it up; 5 minutes doesn't really mean anything.

DELEGATE BLAYLOCK: Fine. I move that we take this up after we have finished with Section 6.

CHAIRMAN MURRAY: Any discussion on that motion? Mr. Blaylock has moved that we take this up after we discuss Section 6.

(No response)

CHAIRMAN MURRAY: As many as are in favor of his motion to pass consideration of Section 2 of the Labor Article until we have considered Section 6, which is Regulation of Public Utilities, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No.

CHAIRMAN MURRAY: Well, the Chair is in doubt on that one. We'll have to use the board. The Chair is no longer in doubt. The Ayes have it, and we will pass consideration of Section 2 under the Labor Article until after we have considered Section 6, Regulation of Public Utilities. We will go now to the Article on Institutions and Assistance.

CLERK HANSON: "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on institutions

and assistance, to read as follows: Article. Institutions and Assistance. Section 1. Institutions." Mr. Chairman.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, Institutions and Assistance, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, rearranged the wording a little bit, but it didn't affect the substance in any way.

CHAIRMAN MURRAY: Is there any discussion on Section 1, Institutions?

(No response)

CHAIRMAN MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

DELEGATES: No.

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

CLERK HANSON: "Section 2. Restoration of rights." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 2, Institutions and Assistance, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, a few minor style changes. We exchanged Section 2 for Section 3 and Section 3 for Section 2, as we got it from the floor. I will call that to your attention: otherwise, no substantive changes.

CHAIRMAN MURRAY: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would like to suggest to Style and Drafting that, in line 17, after "suspended rights", that the words "shall be" be stricken and the word "are" substituted therefor, so it will read: "Suspended rights are restored upon termination of the state's responsibility." Because I think that was the sense of the Committee of the Whole at the time that this particular section was added: and I would like to inquire, Mr. Schiltz, if that would not be a change that would more fully carry out the sense of this Committee at the time that this section was adopted.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: Well, it would be my observation-we-I'm not clear what the sense of the Committee was, but if it wasthatthey shall be restored when that happens-when that contingency happens, why, then, I think "shall be" is correct, but if they're somehow automatically restored, as you and I talked of yesterday in a different section and a different article, why, then it should be "are".

CHAIRMAN MURRAY: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, it was the sense of this Committee they should be automatically restored, and the language "shall be" would still lead to the interpretation that perhaps somebody has to petition a court to have that restoration made official. And I think if we substitute for that language the word "are", that will indicate they are automatically restored, and then some system could be set up whereby a certification of restoration could be given administratively and court action would not be necessary. I so move, Mr. Chairman.

CHAIRMAN MURRAY: Your motion, then, would be to substitute the word "are" for the two words "shall be" in line 17?

DELEGATE DAHOOD: That is correct, Mr. Chairman.

CHAIRMAN MURRAY: And that's page 7.

DELEGATE DAHOOD: I so move.

CHAIRMAN MURRAY: And Mr. Schiltz does not resist that, I presume, on the basis that it is substantive rather than stylistic? Do you agree that it is style change?

DELEGATE SCHILTZ: Well, for the purposes of the record, I will; yes.

CHAIRMAN MURRAY: All right. (Laughter) Is there any discussion on Mr. Dahood's motion?

Mr. Choate.

DELEGATE CHOATE: Yesterday, we did have a vote on this very change. Wade-Mr. Dahood proposed that this word be changed from "shall be" to "are", and we took a vote on it and it was passed.

CHAIRMAN MURRAY: I didn't hear the end of that, did you say it did pass or did not pass?

DELEGATE CHOATE: Did pass.

CHAIRMAN MURRAY: It did pass? Well, I'm sorry that the Chair doesn't recall that, but I will put the question to you at this time. Any further discussion?
Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I don't like to disagree with my Chairman, Chairman Schiltz, but I think Wade is right and that's-was our intent, anyway, that they be automatically-rather than go to the Governor, as now, to get a pardon.

CHAIRMAN MURRAY: Okay, the question now arises on Mr. Dahood's motion to amend line 17 by deleting the words "shall be" and substituting the word "are". As many as are in favor of his amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.
(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 2, Institutions and Assistance, Style and Drafting Report Number 9, it recommend the same be adopted as amended.

CHAIRMAN MURRAY: Any discussion?
(No response)

CHAIRMAN MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.
(No response)

CHAIRMAN MURRAY: The Ayes have it. So ordered.

CLERK HANSON: "Section 3. Assistance." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Assistance -Institutions and Assistance, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, only style changes— "Legislative Assembly", and we had to put a "such" in there. I apologize for it, but we had to.

CHAIRMAN MURRAY: Any discussion on Section 3?
(No response)

CHAIRMAN MURRAY: As many as are in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.
(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered. Okay, we'll take up Section 6, Regulation of Public Utilities-Consumer Council.

CLERK HANSON: "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on regulation of public utilities, to read as follows: Article. Regulation of Public Utilities. Section 6. Consumer counsel." Mr. Chairman.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 6, Regulation of Public Utilities, Style and Drafting Report Number 9, it recommend the same be adopted. Mr. Chairman, we only deleted the words "by law", under Section 9, because that's about the only way the Legislature can provide.

CHAIRMAN MURRAY: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this is a technical thing that I mentioned to Mr. Burkhardt yesterday in Mr. Schiltz' absence, but I think the caption should be changed. The article reads, now, "Regulation of Public Utilities", and the only section contained underneath it is "Consumer counsel", which does not relate to regulation, so I believe the heading should be just "Public Utilities" or something other than "Regulation", because the section doesn't speak to it. I move to delete the words "Regulation of' from the caption to the article.

CHAIRMAN MURRAY: Mr. Schiltz.

DELEGATE SCHILTZ: No objection.

CHAIRMAN MURRAY: All right, the question now arises on the motion of—

Excuse me, Mr. Loendorf, did you—

DELEGATE LOENDORF: Am I correct in assuming it's proper to wait until the section is adopted before making it?

CHAIRMAN MURRAY: I think so. I'm going to call cm you; I realize that you have an amendment to it or a motion to make. The question now arises on Mr. McNeil's amendment to delete the words "Regulation of' in the title, so that the title of the article then reads "Public Utilities". As many as are in favor of the amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

DELEGATE SCHILTZ: Mr. Chairman, I would like to make another amendment. I would call on some of my committee to correct me if I'm wrong, but I don't think we need a Section 6 or a Section 1, either one, under-this is-there are no other sections, and this would be a lone provision under this article, so unless I hear objection from my committee members, I will move to delete the words "Section 6" on line 8.

CHAIRMAN MURRAY: Is there any discussion?

Do you agree, Mr. Garlington?

DELEGATE GARLINGTON: Yes.

CHAIRMAN MURRAY: Okay, the question now arises on the motion of Mr. Schiltz to delete the language "Section 6", as it appears before the words "Consumer counsel" on line 8 of page 8. As many as are in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN MURRAY: Those opposed, say No.

(No response)

CHAIRMAN MURRAY: The Ayes have it, and so ordered.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Public Utilities, Style and Drafting Report Number 9, that it recommend the same be adopted as amended.

CHAIRMAN MURRAY: Mr. Loendorf, I presume that you wish to make a motion which would be to suspend the rules, and then offer some language instead of this one; is this right?

DELEGATE LOENDORF: That's correct, Mr. Chairman. At this time, I would move to suspend the rules for the purpose of reconsidering the former Section 6-now, I presume, just the section on Public Utilities--or the article on Public Utilities. Mr. Chairman, may I speak to the motion?

CHAIRMAN MURRAY: Yes, Mr. Loendorf.

DELEGATE LOENDORF: Fellow delegates, I apologize for making this motion at this late date. However, as you know, Section 6 was not part of the original article; it was an amendment that came in quickly, and we didn't have a lot of time to review it before voting on it. Secondly, I would like to say that some of you have expressed the fear to me that suspending the rules now and reconsidering this matter would result in its deletion. That is certainly not my purpose in making the motion, and if my amendment does fail, I guarantee you I will support the present article. Now, what I have proposed-I've had an amendment placed on your desks that if the rules are suspended, I would make a motion to reconsider this section and have that language substituted therefor. And, as you note, it amends the present section in two respects; one, it broadens the scopes of the duties of the office of Consumer Counsel. He would represent consumers before all public agencies, rather than just the Public Service Commission or its successor, the one agency. Secondly, it would leave to the Legislature complete discretion in providing for the funding. The reason for the first amendment was this: I'm not completely aware of how often rate hearings occur before the Public Service Commission, but I'm wondering if they do not come up more frequently than once or twice every year or two. And I'm wondering: if we're creating a new office in the Constitution, if we should not give this person something to do. I certainly don't want to pay somebody to sit around waiting for another rate hearing to come up, and he may be waiting 6 months to a year. Therefore, I propose that we let him represent consumers before all agencies of the state. Secondly, I've deleted the words--or the provision providing for the special tax. Initially, I thought possibly there was a constitutional question here. How-

ever, after talking it over with other lawyers, I'm probably incorrect on that, but since I've now broadened the office to deal with all state agencies, I assume the Legislature can find a tax from an appropriate source or even the one we have proposed here. Thank you, Mr. Chairman.

(Chairman Graybill assumes the Chair)

CHAIRMAN GRAYBILL: Very well. Is there other discussion on the motion to suspend the rules?

Mr. Murray.

DELEGATE MURRAY: I-thank you, Mr. Chairman. I resist the motion to suspend the rules for this particular purpose. I point out that the amendment to be proposed is different in scope entirely. I do not think, on review of it and discussion of it with Mr. Loendorf, that it would accomplish the purpose for which it is designed. I think that it is introducing again to this assembly a people's advocate, or ombudsman, and this is not the purpose of the original section. I might point out to you that I think the language would delete any rate regulation possibility before the Public Service Commission, and as such I resist his motion to suspend the rules.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I, too, resist the motion to suspend the rules, but-and looking at this, I don't think it looks like an ombudsman to me. You know, if I thought it was really going to be one, I would support it. (Laughter) But it looks to me more like a way of getting around what proves to be kind of an objectionable way of funding to some groups, and I resist it. I think that the article-the section as stated-I guess it's an article right now- is very adequate to do what we intended it to do. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Loendorfs motion to suspend the rules so that we can consider the public utilities article. We'll take a non-roll call vote. All in favor of suspending the rules, vote Aye; all against, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well; 66 having voted against it and 27 for it, the motion is defeated-66 to 27-and so we won't suspend the rules.

Mr. Schiltz, have we adopted the article yet?

DELEGATE SCHILTZ: No, sir, **we** have made the motion and-that it be adopted as amended, but no vote has been taken.

CHAIRMAN GRAYBILL: Very well. And we have amended the title and the style under there.

DELEGATE SCHILTZ: We took out Section 6—the words "Section 6" and the word "regulation of '.

CHAIRMAN GRAYBILL: Is there other discussion of Section-of the article on Public Utilities? Mr. Wilson, on Style and Drafting?

DELEGATE WILSON: Will Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE WILSON: Would it be your interpretation of this suggestion that it would require this person to regulate all utilities, such as water systems, public municipalities, and so forth?

DELEGATE SCHILTZ: Mr. Wilson, it would be my interpretation of this that there are two sentences there, and under Style and Drafting, that's as far as I'm authorized to go.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, would you yield to the question of whether this would cover all municipalities, water systems and so forth, as well as public utilities?

CHAIRMAN GRAYBILL: I think, Mr. Wilson, the point is that-Mr. Schiltz is making the point that we're on Style and Drafting and not on substance. Now, I haven't read it carefully, as a lawyer, and I don't want to make a comment on it from the Chair if I had, and I really haven't. I really don't know. Are there other comments on it?

(No response)

CHAIRMAN GRAYBILL: All in favor of adopting the article on public utilities, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have

it, and it's adopted. Very well, I understand we passed Labor, Section 2.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, there was one article that we-or one section or article that we passed.

CHAIRMAN GRAYBILL: Yes, Section 2 of the Labor Article. Do you want to move it again, Mr. Schiltz? And I have someone else who wants to speak on it.

DELEGATE SCHILTZ: All right. Mr. Chairman, I move-let me see if we had any amendments-Mr. Chairman, I move that when this committee does arise and report, having had under consideration Section 2, Labor, Style and Drafting Report Number 9, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Cate-or Mr. Blaylock, did you want the floor?

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, it was at my request that we pass this, because I had understood that some of the laboring people were very concerned about some of the' language in this, but it has been conferred and they have decided to leave the language as is, so I thank the assembly very much for their indulgence.

CHAIRMAN GRAYBILL: Very well; Mr. Schiltz.

DELEGATE SCHILTZ: Mr.-I guess I made the motion, Mr. Chairman.

CHAIRMAN GRAYBILL: You made the motion; are there any explanations you want to make?

DELEGATE SCHILTZ: No, we only had style changes of no-nothing that changed any substance.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, would it be in order for me to suggest that we amend out "and stockraising"? It would seem to me that "agriculture" in general would cover this area, and who was-ranchers are all stockraisers, and probably people who feed cattle are stockraisers-they're raising the weight of the cattle—one thing or another. But it would seem to me that "agriculture" would be better wording to use in this section. And I would like to propose that we just say "employment except agriculture" on line 14, period.

CHAIRMAN GRAYBILL: You're suggesting that the words "and stockraising" are included in the concept of agriculture?

DELEGATE DRUM: Stockraising-they seem to be-they are in the-certainly in the concept of agriculture, yes.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you care to speak to that?

DELEGATE SCHILTZ: I don't-1 think the point is reasonably well taken, but I don't know what the authors-whether agriculture includes stockraising, or whether there's a definition somewhere in the world that says that stockraising might include feeding, such as you do, and is not agriculture; I have no idea. I'd think safety would indicate leaving it in.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I think they're two separate functions, and I would resist the motion to delete it.

CHAIRMAN GRAYBILL: We don't have a motion. Now, Mr. Drum, one of the stockraisers doesn't want to.

Mr. Etchart.

DELEGATE ETCHART: That language is in the present Constitution, and I agree with Mr. Wilson that we should leave it in.

CHAIRMAN GRAYBILL: Mr. Drum, are you going to acquiesce?

DELEGATE DRUM: No, Mr. Chairman, I'm not going to acquiesce, because stockraising is in agriculture; and when you use the word "stockraising", you are restricting the word "agriculture" considerably, because there are a lot of other activities that-it seems to me that "and stockraising" restricts the application of the word "agriculture" here. I move that we amend it by deleting "and stockraising". Stock is certainly in agriculture.

CHAIRMAN GRAYBILL: Very well. The Chair is going to rule that, with the explanations made here on the floor that agriculture is intended to cover stockraising, that this then becomes a matter of style and not a matter of substance, and we can decide whether or not to do it-which way to do it. Therefore, I'll allow Mr. Drum's

amendment-motion that we delete the words "and stockraising", and it's open for debate on the style issue of whether or not you want to use "agriculture" or "agriculture and stockraising". Is there any further discussion?

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I'd just like to comment: in our state government we separate them, so it would assume-the assumption would be, on a state level, that they are separate departments, so therefore I would resist the movement.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, having been raised down in that Jordan country as a cowpuncher, I would resist being called a farmer. (Laughter)

CHAIRMAN GRAYBILL: Where does it say "farmer", Mr. Harbaugh? (Laughter)

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, just to add to what Harbaugh was saying, in agriculture you could conceivably hold to an 8-hour day without hurting anybody, particularly. I think, if you drew the line around them so that you'd be driving a tractor and cultivating wheat, et cetera, whereas if you're out punching cows and you leave a bunch eight-nine miles from home just because it's time to quit and you haven't got them where you're going yet, that wouldn't be so very good, you know. I think you have-No, seriously, now, you've got problems living with a cow that —you can turn a tractor off, you know, but you can't turn a cow off. That's all there is to it. (Laughter)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I think that this is purely a matter of what the words mean, and I certainly interpret agriculture to include stockraising, beekeeping, and a lot of other terminologies. And I think that stockraising is a narrower form of agriculture, and when you put it in the Constitution, by rights you should then list all of the other similar categories of agriculture in the Powder River rule. And so I think that Mr. Drum's motion is very well put, and I think that agriculture certainly includes stockraising, as well as many other different practices.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I have a dictionary here, and the definition of the word "agriculture" in Webster's Dictionary is: "the art or science of cultivating the ground; the production of crops and livestock on a farm; farming." Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. I—the only authority I have is from the play *Oklahoma!* where they sing, "Oh, the farmer and the cowboy should be friends." (Laughter)

CHAIRMAN GRAYBILL: The Chair is going to observe that we have a pretty good one going here. (Laughter)

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman.

CHAIRMAN GRAYBILL: How does it look from up above?

DELEGATE CHOATE: They probably agree. I think that probably if we could consider Mr. Foster's bees-or herd of bees, it probably ought to come under ranching; and I'd suggest that we change these words, both of them, to "farming and ranching".

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: I was waiting to hear from Mr. Burkhardt, Mr. President. (Laughter)

CHAIRMAN GRAYBILL: Mr. Burkhardt, do you yield.

DELEGATE BURKHARDT: I simply can't resist. If we ever-if we do get beyond this—I've talked to four people here; none of us were here when this was debated. Why is it in the Constitution? I realize that isn't the discussion of the amendment, but if we get past this amendment, I'm going to ask to suspend the rules and ask why it's in the Constitution.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. President, may I say to the assembly that you meant that Mr. Choate is a pilot, and you weren't referring to the gallery?

CHAIRMAN GRAYBILL: That's right. (Laughter)

Mr. Champoux.

DELEGATE CHAMPOUX: In Choate's -it doesn't make any difference with Choate, he's always flying anyway.

CHAIRMAN GRAYBILL: All right, now, the issue is on whether to take the word "and stockraising" out of line 15 and 16. So many as shall be in favor of taking those words out, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No. (Laughter)

UNIDENTIFIED DELEGATE: -the cowboys are winning!

CHAIRMAN GRAYBILL: The Noes have it. All right, so many as are in favor, vote Aye on the voting machines; and so many as are opposed, vote No-for a nonrecorded vote. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The Noes have it, 57 to 33; 57 voting No, 33 voting Aye, so we leave the words in the Constitution.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, at the risk of our being here more than an 8-hour day, I just would-1 ask whether this body might move to suspend the rules and reconsider this issue, and I would so move.

CHAIRMAN GRAYBILL: Mr. Burkhardt moves that we suspend the rules on Section 2 of the Labor Article. Is that correct?

DELEGATE BURKHARDT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: If I ask to reconsider this, I'd like to explain what I have in mind. This is one of those things that, in a very few years, is going--we're going to be asking ourselves, "Why did we put that in there?"-and I'd like to hear someone say why it's there originally. I was off the floor when this was debated, and no one to my left or right within reach here, remembers talking about it. I serve on a board of a hospital where the employees have voted and are working 10-hour days 4 days a week and enjoying a three-day weekend, and they're happy with it; and am I now going to tell them that that's unconstitutional? I think it may be something we want to look at in some depth.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to suspend the rules?

Mrs. Babcock.

DELEGATE BABCOCK: Well, I'm probably talking on the wrong subject. Mr. Chairman, I'd like to point out to Mr. Burkhardt that agriculture and stockraising and labor are the threemost important industries in Montana, and they should certainly be in the Constitution.

CHAIRMAN GRAYBILL: All right. Now, we're on the issue of suspending the rules.

The next one up, I think, was Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I believe this is very restrictive and we should reconsider it, so I would back Mr. Burkhardt.

CHAIRMAN GRAYBILL: The next one up was Mr. Woodmansey.

DELEGATE WOODMANSEY: Those of you who were here yesterday would have found, in the debate, that we put in the word "maximum" here, and I would resist deleting this. I think it's important. Things may change; if you want to work a 10-hour day and still get in the workweek somehow, this will allow it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I resist the motion to suspend the rules. For Mr. Burkhardt's benefit, we debated this quite extensively; and just because he wasn't here is no reason to go all over it again.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: For Mr. Burkhardt's benefit, in answer to his question of why it's in there, I once heard a story of why it's there. I don't know whether this is true or not. It's my understanding that, in the days of mining, that the miners would come to the shaft and they would have to sit around there for half an hour or so before they'd take them down into the bottom to work in the shafts. And then, after 8 hours was completed down there, they would have to lay down there in the mining shafts underground a

half hour or so waiting for the cable car to come down to pick them up. And so, in effect, they were putting in not 8-hour days, but 9- or 10-hour days, because they had to sit around and wait for the mining car to come up and down. And it's my understanding that that was the original purpose for having this put into our Constitution, and I think it still serves a purpose in that it prevents that type of thing from happening in the mining industry and elsewhere.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, feel that it would be wise for us to perhaps reconsider this thing. I had a communication that I'd like to pass on-and I don't have any connection in any way with this group, but it apparently has become a point of concern to the Contractor's Council. They feel that the limitation of an B-hour day may make it difficult for them to know-if the people don't care to work over 8 hours-in their bidding of jobs and that type of thing, there may be some restrictions that will raise some havoc with the construction industry in general, and I think they would like to pass that on to this body. Thank you.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, I rise to resist the opening of this section. I think it was clearly debated yesterday on how much restriction this would be, and there is absolutely none, and it leaves it open on the end for the Legislature to draw up any other restrictions that may-and conditions that may affect labor.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. We discussed this a lot yesterday, all right; but as far as reconsidering it, I've had a lot of people concerned about this, and I would like to see it reconsidered.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I-in the motion to reconsider, I just wonder how far we can discuss it, but we did discuss this at great length yesterday, and the old Constitution let you-couldn't work over 8 hours. If you ever worked over 8 hours and are not paid overtime, you're in violation. Now, the worst trouble has been, the person working, as well as the other, were both in violation. This is a liberalized thing; this lets us do it in the-later; and I'd resist the motion to reconsider at this time.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, for Mr. Burkhardt's information, the roll call vote on this was 74 to 13, so unless an awful lot of people have changed their mind, I think we ought to oppose the reconsideration.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, I—

CHAIRMAN GRAYBILL: Mr. Burkhardt, I-All right, go ahead.

DELEGATE BURKHARDT: Yeah. Just that if someone else wants to make this motion, they may. I will withdraw my move to reconsider. I think, as I've heard it explained, it has some possibility for flexibility, and it does seem statutory to me, but I withdraw my move to delete. Someone else may want to make it.

CHAIRMAN GRAYBILL: Mr. Burkhardt has withdrawn his motion to reconsider.

Mr. Harper.

DELEGATE HARPER: I'm not going to renew it. I'm just going to point out to Bill how short our article on labor will be if we take this out. (Laughter)

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you for your consideration, on the recommendation of Mr. Schiltz that when this body has finished considering sub-Section 2 of the Labor Article, as Style and Drafting has sent it to us, that we adopt it. All in favor of adopting Section 2, Style and Drafting's Labor Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Very well, members of the body, you have adopted both the Public Health, Welfare and Labor and Industry Style and Drafting proposal, plus the Education and Public Lands-Oh, wait a minute. Mr. Harper, I guess I almost went by you. Go ahead. Mr. Harper wants to add a new section to Public Health, Welfare, Labor and Industry.

Mr. Harper.

DELEGATE HARPER: Yes. Mr. Chairman, I'd like to, I presume, move to suspend the rules in order to add a new section. I'm not sure what you'd call it; you might call it subsection 2 under the article of regulation of public utilities on--I'm looking at page 8 of Style and Drafting report-assuming that the first one, entitled "Consumer counsel", would become subsection 1.

CHAIRMAN GRAYBILL: That's right, Mr. Harper.

DELEGATE HARPER: This new section, to be presented to the voters in the June 6th election as a separate issue on the ballot, and it would read, as the clerk has it—or I can read it—

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Harper's proposal.

CLERK HANSON: "Section 2. Any county or-"

CHAIRMAN GRAYBILL: Wait a minute-wait a minute. Read his proposal: I move to amend—

CLERK HANSON: "Mr. Chairman. I move to add a section to the Public Health, Welfare, Labor and Industry report, to be presented to the voters in June 6th election as a separate issue on the ballot: Section 2. Any county or municipal subdivision of the state has the power and authority to establish public cooperatives for the maintenance and operation of facilities, subject to regulations provided by law. Signed: Harper."

DELEGATE HARPER: Thank you. I'll just speak to the motion to suspend. Sixteen of you who didn't get a chance to express yourselves on this issue-and I know you feel badly about that—in a vote that turned out 43 to 41, will find this—these exact words-in so-called "Section 7" on page 29 of the Committee Report, the original Public Health, Welfare-et cetera-Committee report. I think its intent is obvious, except for the 16 people who didn't hear it. The debate was long and arduous, and I simply offer it again as a possible way of getting something that a good many people are interested in onto the ballot as-to give the people a chance to express themselves on it. It doesn't make any real difference to the utility companies, and there probably will be no contest on it. If it does, they can make-take a good deal of interest in explaining both sides of this to the people. I understand that this is not now allowable unless the Legislature actually passes a law making it allowable, and it does seem to me to be consistent with our basic approach toward freeing people and communities for action.

CHAIRMAN GRAYBILL: Very well. Mr. Harper has made a motion to suspend the rules to consider adding a Section 2 to the public utilities article, the substance of which would be to place on the ballot this subsection-subdivision as an alternative for the people to vote on-whether or not county and municipal subdivisions can establish public cooperatives for the maintenance and operation of utilities. Is there discussion of the motion to suspend the rules?

Mr. Hanson.

DELEGATE HANSON: Mr. President, is the word "public cooperatives" or "public corporations"? I checked mine, and I thought I heard it different.

CHAIRMAN GRAYBILL: It says "public cooperatives" on the motion that Mr. Harper makes. I don't know if that's exactly what it was in the previous—

DELEGATE HARPER: My writing is hard to read, and I can-1 apologize to the secretary as well as to you. That should be "corporations".

CHAIRMAN GRAYBILL: All right, it's "public corporations for the maintenance and operation of public utilities, subject to regulations provided by law." Mr. Harper says that it's Section 7 that we considered the other day, of Public Health's article, and the purpose of it would be to place this matter as an alternative on the ballot.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I resist the motion to place this on the ballot. I voted in favor of this the other day—

CHAIRMAN GRAYBILL: All right, now, Mr.—

DELEGATE HABEDANK: -just let me finish.

CHAIRMAN GRAYBILL: All right, but that's not the motion that is before you.

DELEGATE HABEDANK: The motion to reconsider.

CHAIRMANGRAYBILL: Youmayresist the motion to reconsider, but not the motion to

place it on the ballot, because we don't have such a motion. Okay.

DELEGATE HABEDANK: Mr. President, I resist the motion to reconsider.

CHAIRMAN GRAYBILL: Very well.

DELEGATE HABEDANK: I feel that the motion that will be made to reconsider is to place it on the ballot; and I feel that we discussed this thing, we voted on it, it was lost. And there are other-there is another motion-there is another proposal coming up for being placed on the ballot, and I think we will have too many matters on the ballot; and for this reason, I oppose its reconsideration for that purpose.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I support the motion to suspend the rules. I think that it's important, with a greater number of people here today, that we again air this argument with more people in the house. As Mr. Harper noted, it was a 41 to 43 vote, and I have noticed many people have decided-or are considering changing their minds on this issue, so I think that it would be important that we would give the committee the opportunity to discuss it again.

CHAIRMAN GRAYBILL: On the issue of suspending the rules, Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: I am also in favor of suspending the rules that we may vote on this again.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. Frankly, I'm somewhat surprised at this attempt here, because we've already allowed cities and towns to establish their municipal electric systems when we considered Local Government yesterday, and I see no point in having it in here twice.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I don't think that's entirely accurate. There's really nothing in the Local Government proposal that this body adopted that changes the present situation in any way. I support the motion to suspend the rules.

CHAIRMAN GRAYBILL: All right, now, the Chair is going to rule that that issue has been spoken on on both sides, and there seems to be a disagreement, and we can certainly go into that if we open the rules, so I'm not interested in hearing any more about whether it's in or out of Local Government. Is there any more discussion about suspending the rules?

(No response)

CHAIRMAN GRAYBILL: Very well, the motion is to suspend the rules in order to authorize the addition of a section concerning-to the public health article on public utilities to allow county and municipal subdivisions to establish public corporations to maintain and operate utilities. So many as shall be in favor of suspending the rules, vote Aye; and so many as shall be opposed, vote No.

Mr. Toole, for what purpose do you rise?

DELEGATE TOOLE: Mr. Chairman, to explain my vote. I decline to vote under Rule 20.

CHAIRMAN GRAYBILL: Mr. Rebal, for what purpose do you rise?

DELEGATE REBAL: Mr. Chairman. I paired with Mr. Holland, he being for; me being against-so I'm not voting.

CHAIRMAN GRAYBILL: Just a minute. We're in Committee of the Whole; you're explaining your nonvote.

DELEGATE REBAL: I'm explaining my nonvote, sir.

CHAIRMAN GRAYBILL: A pair is not allowed in the Committee of the Whole. It's allowed in the body as a whole. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the Chair will close the ballot; 50 have voted Aye, 42 have voted No. It takes a majority of 51 or a two-thirds majority to carry a motion to suspend the rules; therefore, the motion fails.

Mr. Eskildsen.

DELEGATE ESKILDSEN: **You** must count the two votes that was paired, then. Oh, yes.

CHAIRMAN GRAYBILL: I'm sorry, the rule is that you must have an absolute majority of

the body, which is 51, or two-thirds, whichever is less; so we have to have 51 votes.

DELEGATE ESKILDSEN: (Inaudible)

CHAIRMAN GRAYBILL: The other rule is, Mr. Eskildsen, there are no pairs in the Committee of the Whole. I don't care what he says, there aren't any.

DELEGATE ESKILDSEN: I understand that, very well; you can still vote, then, Mr.—

CHAIRMAN GRAYBILL: No, he can't vote now.

Mr. Cate, for what purpose do you rise?

DELEGATE CATE: Mr. Chairman, we have a delegate that did not vote that I believe wished to vote, Mrs. Speer.

CHAIRMAN GRAYBILL: Well, I'm sorry; it's too late now. Now, if somebody wants to remake the motion, I'll put the vote again, but when I close the ballot-and this one was open a long time-1 can't help it. The motion has failed. Does somebody want to remake the motion?

DELEGATE McKEON: Mr. Chairman, I so move.

CHAIRMAN GRAYBILL: Mr. McKeon will remake the motion. The motion is to suspend the rules for the purpose of considering a new Section 2. I see no reason for further debate. The Chair will open the ballot. All those in favor of suspending the rules, vote Aye; those opposed, vote No. All right, now, has every delegate voted that wants to?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, it's 51 to 43; therefore the motion prevails.

Very well, Mr. Harper-Mr. Harper, the Chair is somewhat concerned. We voted on this issue. Are you prepared to make a motion to reconsider the section that we voted on? And voted down?

DELEGATE HARPER: Does that need to be done?

CHAIRMAN GRAYBILL: I would think it does, because otherwise I'd be adding an identical section to one that was already added, so—

DELEGATE HARPER: Mr. Chairman, I am prepared to move that we reconsider—

CHAIRMAN GRAYBILL: Well, now are you prepared in the sense that you voted on the prevailing side?

DELEGATE HARPER: You are right; I am not prepared-(Laughter)

CHAIRMAN GRAYBILL: All right, is there any—

DELEGATE HARPER: -but I'm looking right at a friend for whom, the other day, I moved to reconsider to kill my own measure, and he got it done, and I'm sure Mr. Ask is going to ask for the privilege of moving to reconsider. (Laughter)

CHAIRMAN GRAYBILL: Mr. Ask, are you prepared to reconsider?

DELEGATE ASK: Mr. Chairman, having voted on the prevailing side on this section, I move that the-we reconsider this particular section, and I yield to Mr. Harper for the grounds and reasons.

CHAIRMAN GRAYBILL: Mr. Harper, is the grounds and reasons the same as the reasons you suspended the rules?

DELEGATE HARPER: Just exactly.

CHAIRMAN GRAYBILL: In other words, it's to propose a new Section 2 to the Public Utilities Article of the Public Health proposal, that would say "Any county and municipal subdivision in the state has the power and authority to establish public corporations for the maintenance and operations of utilities, subject to regulations provided by law." That's the motion to reconsider. Do you need to discuss it, Mr. Harper?

DELEGATE HARPER: No. I'd like to point out again, in case they didn't catch it, that on page 29 of their committee report, Section 7, they find these words. That's why I didn't ask a secretary to type up copies for everyone.

CHAIRMAN GRAYBILL: That's of the original committee report? The—

DELEGATE HARPER: Yes; right.

CHAIRMAN GRAYBILL: The reddish-colored committee report. Very well. The motion—

Mr. Heliker.

DELEGATE HELIKER: Was the motion stated as putting this on the ballot as a separate issue?

CHAIRMAN GRAYBILL: Do you intend, Mr. Harper, to put this on the ballot as a separate issue? Is that right?

DELEGATE HARPER: Is it possible to amend this now, or will it be getting under the wire with the wrong—

CHAIRMAN GRAYBILL: No, the—

DELEGATE HARPER: -with duplicity if I just went for a straight vote on putting it in?

CHAIRMAN GRAYBILL: Yes, that would be duplicitous, Mr. Harper.

DELEGATE HARPER: Well, I wouldn't want to be engaged in that kind of process, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: The problem being that you garnered your 51 votes on a motion to suspend for the purpose of putting it on the side, on the ballot. All right, now, the issue is to move to reconsider; all those in favor of reconsidering, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's reconsidered. All right, now, Mr. Harper, would you like to make your motion?

DELEGATE HARPER: The motion now to add a section to the Public Health-Labor-Industry report to be presented to the voters in the June 6th election as a separate issue on the ballot.

CHAIRMAN GRAYBILL: Mr. Harper, do you have that motion?

DELEGATE HARPER: As it was read to you. I don't think I'll go into any kind of a long discussion about this again; I'm kind of hoping nobody else will, unless some of those who weren't here might need some information. I look upon this as something that's permissive. I find-1 really found it difficult, the other day-wheneverit was; it seems like weeks ago that we discussed this; maybe it was yesterday-but there was so much opposition to it, since it is not mandating anything but simply freeing up counties or municipal subdivisions of the state to do this if and whenever in the future they wanted to do it. As I understand, now this is not permissible unless the Legislature would enact new legislation; and I think it's perfectly in keeping with a lot of the things that we've written into the Constitution. And I would rather sit down and maybe have the opposition show cause, to use a court phrase, as to why this should not be allowed to the people.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to make a parliamentary inquiry, Mr. Chairman. I wonder: is there some way to test the body whether it would want to split this issue? It seems to me there are really two issues. As I sit here with my next-door neighbor and he's opposed to the idea because of adding one idea to the ballot and I'm for it because I'm for the concept and not too anxious about putting something on the ballot-can we—is there some way to split the issue?

CHAIRMAN GRAYBILL: I don't think there is, at the moment, Mr. Arbanas, because we voted yesterday--or the other day, on the issue; and it's true that a number of people weren't here and it was narrowly defeated. Now, in considering it at this time, it took a motion to suspend the rules. The rules were suspended upon the indication from the mover, Mr. Harper, that his purpose was to place this matter as an issue on the ballot-with public-in other words, it would only be adopted if the public approved it in some form on the ballot. Style and Drafting would have to put it on the ballot in a manner that would allow the public to vote on it. Then, when that passed-and, as you know, narrowly--we had a motion to reconsider, which I construed from Mr. Ask to be within the original motion to suspend the rules for the specific purpose only of the ballot type of issue; so—and then the motion has been made for that effect, so I don't think I could allow an amendment to strip the ballot issue away from it without going back and letting you move to open the-to suspend the rules for a different purpose.

DELEGATE ARBANAS: I understand.

CHAIRMAN GRAYBILL: Now, when this has been-has failed, if you want to try again and test that 50/51 margin, you may.

DELEGATE ARBANAS: I understand, thank you.

CHAIRMAN GRAYBILL: Very well. Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. This may be a very fine issue, but I am very much in favor of this proposal, but I would be very definitely against putting it on the ballot as a separate issue. And I'd like to inquire, either from the Chair or from Mr. Harper, what it is a separate issue to. I don't see anything on the ballot presently that stands over against this article.

CHAIRMAN GRAYBILL: The point would be, Mr. Harbaugh, to say, on the ballot: Section 2 concerns the right of county and municipal subdivisions to have power to establish and maintain and operate utilities. Are youforplacing this in the Constitution? Yes-No? If they voted Yes, it becomes part of the Constitution; if they vote No, it doesn't. We have done the exact same thing on the-we've sent it to Style and Drafting—on the abolition of the death penalty. The abolition of the death penalty is not in the Constitution. We've said, "Do you want it in there?" If it went in there, it would only have the effect of changing the statutory law in Montana. So this would be put in the same manner; I don't know exactly how Style and Drafting would do it, but it is possible to put an issue to the public that we don't decide here.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I wish to reiterate once again-apparently Mr. Arness and I have a small disagreement here-but I submit that yesterday when we considered the Local Government Article, Sections 5 and 6, on home rule, we specifically allowed municipal -or cities and towns to establish their own municipal electric system if they want to. We say, in Section 5 of the Local Government Article-or Section 6, one of the two-that once they've adopted the home rule by such measures as the Legislature may prescribe, they can do anything that's not prohibited by law. Now there's nothing on the statutes that prohibits the establishment of municipal electric systems. There's not one word about them at all, one way or the other; and that being the case, as the law stands at the present time, they could go ahead and establish their municipal electric system if they saw fit. And I don't see any reason why we should--we have to have some separate issue on the ballot to cover the point twice. That's my point.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. It's correct that we do have a basic disagreement here, and the disagreement is not only with me but with the entire committee and with the intents of the committee report. Dillon's rule is the rule in Montana at the present time. If the proposed Constitution is adopted, Dillon's rule will be the rule in Montana under the new Constitution; that is not changed. There is no change so far as the power of local governments under our proposal. The local governments, at the present time, cannot acquire public utilities and operate them because of the operation of Dillon's Rule. There are some of them, like Libby, that would like to acquire power companies and have not been able to acquire them because of the fact of the status of local government in this state. The status is not changed by the Local Government Article; Sections 5 and 6 create the possibility that the Legislature may set up a class of cities and that a class of cities, once designated, may then apply for a more powerful status than they enjoy. There are two steps there that require action by the Legislature. The rule is the same now as it has always been, and there is nothing in the Local Government Article that you adopted that would permit cities and towns to acquire public utilities. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Payne.

DELEGATE PAYNE: Mr. Chairman. I beg to disagree with my colleague, because in Section 6 it clearly says, in the Local Government Article, that local government units adopting self-government charters may exercise all powers now prohibited by this Constitution by law or by charter. So, if you want to carry it this far, I certainly think it could be done.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: I've had the reasons explained to me before, but I would like to ask again how it was that themunicipality of Saco got their public utility. I should know, but I haven't got the time to go down and look it up. Would one of the-Tom, Mr. Joyce, are you familiar with that statute or how they did it?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I don't even know where Saco is. (Laughter)

CHAIRMAN GRAYBILL: Mr. Swanberg-

Mr. Scanlin, are you finished?

DELEGATE SCANLIN: Evidently Joe knows, could he explain it?

CHAIRMAN GRAYBILL: He knows where Saco is.

Mr. Eskildsen. (Laughter)

DELEGATE ESKILDSEN: Mr. Scanlin, Saco is in the eastern part of the State of Montana. It's a fine little city that sits on top of a gas dome. And long before-many years ago, long before the Montana Power Company or the Dakota Utilities and those were barely established in the State of Montana, the city of Saco drilled a well and got gas and they piped it around the city. And later on, other towns tried the same thing, but they wasn't lucky enough to hit the gas. And in the meantime, the Montana Power Company, the Montana-Dakota Utilities, and so forth were established, and they established themselves around the state; and since then, why, you can follow the courses that have taken place. But this happened before those companies moved in.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. Is there any reason that any other community couldn't do the same thing if they wanted to with any utility?

CHAIRMAN GRAYBILL: Are you asking-who are you asking, Mr. Scanlin?

DELEGATE SCANLIN: Anybody that can give me an answer to the question.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: You can't do it now, because they have a franchise within your cities and they have the pipelines and they own the utilities and the power poles and that kind of stuff. If you were going to take over, you would have to buy them out; you couldn't just move in with another franchise.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I think I have a-to ask a question of some of the attorneys here. As I understand the situation, it's now permissible to start up a gas system--natural gas system in a municipality, and the electrical side of it is the only one that's excluded. I don't know whether I'm right or not, but that was my understanding of it, and that's the reason that this particular emphasis is on electricity.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I might state, for the benefit of those that weren't here yesterday--and I don't want to bore this new--other group that has listened to this long debate-but they can, if they wish to sell general obligation bonds, they could go out and do it. The only prohibition is that they can't sell revenue bonds, and this came out in 1953—that's when that law was taken off the books. Now to go back to Saco, they used this originally to get started. Up until 1953, they could use the revenue bonds-this came off the books. Now the big problem on that is that now you have to go to general obligation bonds instead of revenue bonds. This is the prohibition, Mr. Scanlin, as of now on that issue.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. If the legal research which was done by our committee analyst is correct, there is no statutory authority for a municipality to go into the electric business. They can go into the gas business, because there is specific authority for that.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, the-that's true as things stand now, but we're talking about a new Constitution. We're talking about the future here; we're not talking about 1927 when the statutes which allowed cities and towns to put in their own gas service was put in effect; we're talking about the future. And under Section 6 of the Local Government Article, as Mrs. Payne pointed out, if any city or town adopts the home rule procedure here, it says right in there they can do anything-they may exercise all powers not prohibited by this Constitution, by law or by charter. Now there's not a word in the statute that prohibits a city or town from setting up their own municipal system. So why can't they set it up in the future? That's my point.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I really promised myself today I wouldn't get up on this issue, but I have to again. I forgot to tell you yesterday that I might have a special interest in this thing, which I'd forgotten about; that our law firm represents the Golden Valley Electric Co-op. And I have no idea how they feel on this issue, so I think I'm free to talk about it. But I did

want to get up, but I have to object to it again on the grounds you're legislating, and all you have to do is read this thing-"establish public corporations for the maintenance and operation of utilities". Now, it doesn't say anything about constructing them; it doesn't say anything about purchasing or acquiring utilities. If you adopt something like this, and I agree with the concept—I've been that way for 20 years-of public utilities and Nebraska system. But I just say, you're like Don Quixote and the windmill by adopting this thing; and you're actually going to mislead the voters by putting it on the ballot, because you're going to lead the voters to believe that, by adopting this section, that they're going to be able to acquire utilities; and even by it's wording it doesn't give them the power to acquire and it even-even if it did put the wording in there-you could acquire-that it's still up to the Legislature to tell the public-these counties, municipals only, it doesn't even go as far today as to say "public utility districts". And you could have a very uneconomical unit by counties and cities only, as Charley brought out the other day. So I think you're just like Don Quixote and the windmill: if you adopt it, you're going to mislead the voters; and if it's passed by the voters, it isn't going to do anything anyway.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. I certainly support what Mr. McDonough said on that and where it says "subject to regulation prescribed by law". For the benefit of those who weren't here yesterday, I come from Dillon and I have nothing to do with the Dillon Rule.

CHAIRMAN GRAYBILL: Mr. Harper, do you want to close?

DELEGATE HARPER: I'd be glad to close.

CHAIRMAN GRAYBILL: Mr.-Wait a minute. Mr. Mahoney, aren't you willing that he close?

DELEGATE MAHONEY: I would like to just say one thing, that I was answering a question the other time and I don't want to belabor a point. But if this Constitutional Convention is coming out here now to issue or send out petitions to the voters, and this is what we're doing-I mean, here we're sending out—it is not alternative or anything like that. This is what we're going to do is-getting initiative to the people-of the Constitutional Convention sending it to them, this is what we're doing under this initiative.

CHAIRMAN GRAYBILL: Anyone else care to debate it before Mr. Harper closes?

Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I want to say, without belaboring the point, that I think that the issue here is whether or not we want to give the voter the choice. I can't imagine anyone-1 can't imagine the Montana Power Company-wish to deprive the voter of his choice as to whether or not he wishes to be under a public utility or such as this or under Montana Power service. So I think that if we decided thisissuejust on the merit of giving the voter a chance, a choice to decide what he wants, I think that we would have realized exactly what we're doing. So for that reason-that we are giving the voter a choice, I will urge that we do support this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper—Oh, all right, now, I don't want to cut off debate. But art you-do others want to debate it now?

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I would just like to remind Delegate McKeon that this delegation had a wonderful chance to give the people of Montana a chance, just the other day when the right-to-work law was up. And that was supposed to be put on the ballot-if we wanted to give the people a choice, so-and we couldn't do that. I don't see why we should give them a choice on something like this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. I'd like to know whether Mr. Harper's language is amendable.

CHAIRMAN GRAYBILL: If we adopt the thing, it's amendable, yes.

DELEGATE KELLEHER: But not until we adopt it?

CHAIRMAN GRAYBILL: Well, I don't care; if you want to amend it, I suppose I could let you. The point is that if we amend it and then spend an hour debating the amendment and then it loses, its useless. I would rather decide whether we're going to put something on the ballot; and if so, you may amend it.

DELEGATE KELLEHER: Very good. Mr. Chairman, what I'm going to do is explain what my amendment would be if his motion passes.

CHAIRMAN GRAYBILL: All right.

DELEGATE KELLEHER: I am going to add the words "or public utility districts" and I'm going to add in the first part, so it'll read: "Any county, municipal subdivision or public utility districts of the state have"-H-A-V-E-"the power and authority to establish public corporations for the", and I'm going to add the word "acquisition" before the word "maintenance and operation of utilities". Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Is there other debate?

(No response)

CHAIRMAN GRAYBILL: Mr. Harper, do you want to close?

DELEGATE HARPER: No, Mr. Chairman, as I feel very much like Don Quixote on this; but as I remember the story of Don Quixote, the windmills didn't come and attack him. And we have tilted with some very lively windmills; in fact, this is the thing that has piqued my interest in this whole thing. We are constantly assured that we can already do all of this; that the amendment doesn't mean anything; that it won't change anything. And yet there's a terrific reaction toward putting this in. Now, is it Legislative? Well, I ask you if it's any more legislative than saying, "We'll have an B-hour day, unless we change our mind to have it either longer or shorter"-which is what we've put in-and several other instances I could cite you. Seriously, I, too, am thinking about the future, and I think the people ought to be; I think we ought to be. There will be a day when Billings is 300,000. I hate to think about that. Right now it might not be feasible for most Montana villages, towns, and even cities to consider this, but there might come a day when it would be feasible. If it's not feasible, if it's not profitable, cities or municipalities or public utility districts won't be formed and they won't acquire and maintain and operate utilities; so I suppose my basic idea is that-what will it hurt to give this a try? If we are this evenly divided here, this may or may not be an indication of public reaction to this. I have an idea that if it's put on the ballot, you'll discover that an awful lot of people in cities and municipalities across this state will be for the idea of allowing themselves this freedom.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harper's motion to add a subsection 2 to the Public Utilities Article of the Public Health proposal. The public—

Mr. McKeon.

DELEGATE McKEON: Can we have a roll call vote on this?

CHAIRMAN GRAYBILL: Yes. The proposal to say: "Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations provided by law." Roll call vote. All in favor, vote Aye; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate-Now, everyone should understand the motion is to place this on the ballot. I don't know whether I stated that, but that's what it's for.

Mr. Anderson, for what purpose do you rise?

DELEGATE ANDERSON To explain my vote.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ANDERSON: I have studied this Constitution, and in Article XIII, Section 5 and Section 6, which are now cancelled, I believe that this authority already rests with the city if-or county if they get legislative authority.

CHAIRMAN GRAYBILL: Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim Aye
Anderson, J. ..... Nay
Anderson, 0.. Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow Aye
Artz ..... Aye

Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Aye
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Absent
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Graybill	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Excused
Jacobsen	Nay
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Absent
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Aye
Romney	Aye
Rygg	Absent
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Nay
Warden	Excused
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 43 delegates have voted Aye; 49 have voted No.

CHAIRMAN GRAYBILL: 43 having voted Aye, 49, No, the issue fails. Are there other amendments or motions? If not, Mr. Murray would like a motion to rise and finally report on Public Health, Welfare, Labor and Industry and Education and Public Lands.

DELEGATE MURRAY: Mr. Chairman, I so move.

CHAIRMAN GRAYBILL: All in favor of rising and finally reporting on these two substantive-two Style and Drafting proposals, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

PRESIDENT GRAYBILL: Will the clerk please read the report of the Committee of the Whole.

CLERK HANSON: "March 17th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 10, Education, from the Committee on Style and Drafting, recommend as follows: and-that the committee rise and report. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: --should be "rise and report finally"--or "fully". "Rise and report finally". Very well, the motion is that this committee—

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move adoption of the Committee of the Whole report and that the Style Committee's reports Number 9 and 10 be referred to Order of Business Number 5.

PRESIDENT GRAYBILL: All in favor of Mr. Murray's motion that these two-that the Committee of the Whole report on these two articles be adopted and that they be placed in Order of Business Number 5, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Now, without objection, we'd like to be on Order of Business Number 7, Motions and Resolutions— No, Order of Business Number 1. All right, is there objection? Otherwise, we'll go to Order of Business Number 1.

Mr. Clerk.

CLERK HANSON: "Mr. President. We, your Committee on Rules and Resolutions, having had under consideration resolution Number 15, introduced by Delegate Johnson, recommend that the said resolution be not adopted. Committee on Rules and Resolutions. Signed: Murray, Chairman."

PRESIDENT GRAYBILL: Very well, that'll be referred to Order of Business Number 7. Now what's your other one?

CLERK HANSON: "Mr. President. We, the Committee on Style, Drafting, Transition and Submission transmit revisions of the Bill of Rights Article for consideration of the Convention on Order of Business Number 5." Mr. Chairman.

PRESIDENT GRAYBILL: Very well, the Bill of Rights has been received-the Bill of Rights Article has been received back and it's placed on Order of Business Number 5 for tomorrow morning, and Mr. Johnson's motion--or Mr. Johnson's resolution is on 7, and the Rules Committee proposal on that resolution has just been referred to Number 7. Without objection, the Chair would like to be on Order of Business Number 7.

Mr. Murray, will you take up Mr. Johnson's matter, and then we'll give it to Mr. Johnson.

DELEGATE MURRAY: Mr. President. I move that the report of the Committee on Rules and Resolutions that resolution Number 15, the resolution by Mr.-by Delegate Johnson-that it be not adopted--actually, be adopted-by this Convention. I think that all of you have had an opportunity to take a look at resolution Number 15. It reads: "Whereas, this Constitutional Convention has cost the State of Montana $700,000 in money and has cost its delegates about 8 months of their lives, devoted to study and research in the field of constitutional government; Whereas, we certainly do not want to waste the effort, money or time involved. Therefore, I move this Convention consider the following: The Montana Constitutional Convention shall, after completing debate on the proposed Constitution, recess for 5 months, to August 15, 1972, and then convene and reconsider our new proposed Constitution in its entirety. After this interim, used for knowledgeable consideration and observation, we will complete a superior document, more worthy of this dedicated group of delegates and more worthy of Montana." This matter was referred to the Committee on Rules and Resolutions. The committee met this morning, heard certain witnesses; met again at noon, heard other witnesses; took its vote, and unanimously-seven to nothing-recommended that the resolution be not adopted. Mr. Johnson presented to the committee his ideas, with respect to the recess which he requests in his resolution, most eloquently. He indicated that he felt that, quite frankly, we were in some difficulty with the proposition of having our proposed Constitution adopted at this time; that there were things in it that he did not believe that he fully understood and, because he could not understand them, at this time could not support them; would sincerely like to have an opportunity to go home and reflect on these matters and visit with his constituents to see if he could not persuade them to what we had done and, if not, to study the proposi-

tion more fully to see that he-make sure that he understand-understood what we had done; and then to return to ascertain if this Convention would, perhaps, if necessary, reconsider any action that it had taken on the various matters of concern to him and to others. And he is quite persuasive in this particular respect, and there is much merit to his proposition. Unfortunately, it is the position of the Committee on Rules and Resolutions that his resolution comes forth at a very late date, after this Convention has already decided that its election date should be held on June 6, 1972—just over 2 months from now; after this Convention has placed in motion the operation to accept bids-or receive bids for its voter information pamphlet and hasletthose bids; after this Convention has considered and pressed hard under its financial limitations to arrive at the point where we nearly are at this particular moment. And the Committee on Rules felt that it was not in the best interests of the delegates of this Convention nor of the citizens of the State of Montana that we delay the ending of our Convention, the adjournment sine die, and the submission of this matter to the voters on June 6, 1972. Now, I do not mean to advise this body that it is for financial reasons that the committee decided to vote against Mr. Johnson's resolution; it is not for financial reasons. As the President will report to you after this matter has been taken care of, we are solvent. We are in good financial condition, and perhaps we could return, but it is the position of the Committee on Rules, as I have explained, that this would not be a proper thing. There were many factors which came into our minds as we deliberated on this particular issue. We now have 100 of us here; we may not again have these 100. There are some of us who are a little older than others: and I hate to think that we might perhaps lose those-and, of course, we would have new delegates appointed-but you 100 would not be with us, or some of you. We take that chance if we delay this matter. We have placed into operation and have considered the staff necessary, have made all of the arrangements, we think, that we could have made in proper fashion to place this matter on the ballot in-June 6, 1972. We recognize another distinct difficulty and possibility; I cannot say that this is the final ruling on this matter, because should someone litigate the issue, there might be a different decision-but it occurred to the Chairman of the Rules Committee that if we delayed this matter-if we delayed adjournment sine die until after the June primary-that those of us-and I am not one, I assure you-who may have an interest in running for public office in this state this year, 1972, would most certainly be foreclosed from that possibility. And I could not, for one, participate in asking any of you to foreclose that if your hearts and minds are set on that particular endeavor, and if they are, as many of you have indicated, as I read in the newspapers, with you-that you are somewhat interested, then I think you should have that opportunity. And so, Mr. President and fellow delegates, it is our recommendation that the resolution be not adopted and that we proceed as we are scheduled. Thank you.

PRESIDENT GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President.

PRESIDENT GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: May I speak a little bit on this?

PRESIDENT GRAYBILL: You betcha, Mr. Johnson.

DELEGATE JOHNSON: Thank you, sir. Fellow delegates, I feel that-and I always have since I came up here-1 guess I better state my position, this special-interest group that I represent-they include the Norwegian sheepherders up in the northeastern part of the state and the Indians on the reservations and the Irish cowboys over in Butte and, of course, those prospectors down along the Yellowstone; that's all of Montana; and this is the group that I really came here to represent. I haven't had any particular friction-or, that's not the word, trouble with my people back home. They haven't brought a lot of pressure on me, but I know pretty much how they feel about these things. I don't want to see this effort that all you folks have made, concentrated effort for the last many months-and I'vemadeit, too; I started studying what little I could get hold of before we started getting these research analyst books, et cetera, when I had filed for the primary; I was very interested in doing a job here for Montana. This is a primary interest. It's cost a lot of money; it's cost a lot of people's times; and I surely do not want to waste it. I think we stand a little bit of a chance of wasting it. You heard-1 don't want to repeat what **Mr.** Murray told you because that would just take up some time. I might add that since we-or since I put the date of August 15th in here-that's an arbitrary date; that is a date, though, if we would meet at that time, we could still get it on the fall ballot. But I do think that the ideal thing to do would be actually to recess until-for a year, until after the session of the next Legislature, when this all would again be

available to us. I do believe we could do this in 10 days, or a short time. There might be two or three of us gone; I might not be here, either. Another winter would have gone by, and you can slip and fall under a horse pretty easy, you know, in that time. But there would be somebody to take my place, surely, and there would be somebody to take any of you fellows' place. There is not a one of us here that are indispensable, I'm sure; and there's no one here that isn't really dedicated to what he thinks is the best interest of Montana; I am sure of that. So I urge you to consider this very carefully when you vote. Thank you, Mr. Chairman, and all you people.

PRESIDENT GRAYBILL: Very well, is there any debate on this matter?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. I would like to say this: that I agree with a lot of things that Torrey says. I do wish that we had a little rest in there; and I do think we went at it too fast-and I sure would recommend for future Montana Constitutional Conventions that they take the example of North Dakota. I think North Dakota was right and that we were wrong in the way we handled ours, but I'm also looking at the State of Missouri. Theirs dragged on for about a year and a half, Torrey, and the people just plain lost interest in it, and when it got on the ballot, they just didn't even turn out and vote for it, as I understand it. And I think we've come this far now and we've done a pretty good job, and we should just hang in there.

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, there's no one respects the position of my colleague from District 1 more than I do. We're very good friends, although I do not support his resolution. I know it was made in good faith and probably expresses the feeling of many of us that we wish we did not have to be in such a hurry. In looking back over these past weeks, we have made many decisions, and I'm sure that Torrey will also think-when we're through and go out over the State of Montana to explain the Constitution, he will be one of those who has the best explanation of all and will do a great job. I think it's great that he had the courage to come at this time with his resolution. I'm proud to be serving with him. Thank you.

PRESIDENT GRAYBILL: Very well. Mr. Johnson, do you want to close?

DELEGATE JOHNSON: You betcha. We want a roll call.

PRESIDENT GRAYBILL: Oh, you want a roll call. Very well, a roll call will be had. The issue is on the motion of the Rules Committee that we recommend that the resolution be not adopted, that Mr. Johnson has presented. You have Mr. Johnson's resolution Number 15 before you, and you have the Rules Committee's recommendation that it be not adopted.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I don't mind using the board so that we know how we have voted on the issue, but the rules do not provide for a roll call on resolutions.

PRESIDENT GRAYBILL: The rules don't provide for a roll call vote on resolutions. Is that your point?

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I move that we suspend the rules in this case.

PRESIDENT GRAYBILL: Well, Mr. Murray?

DELEGATE MURRAY: I'll support that.

PRESIDENT GRAYBILL: All in favor of suspending the rules, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: So ordered. Now, we've got that done. All right, we're going to have a roll call vote on Mr. Johnson's—or on the Rules Committee proposal that we do not adopt Mr. Johnson's proposal. Now, if you vote Yes, you're voting with the Rules Committee not to adopt it; and if you vote No, you're voting with Mr. Johnson. So, the ballot is open. If you vote Yes, that's not to adopt it; if you vote No, that's to go with Mr. Johnson. So you vote Yes if you're ready to continue with the present planning, and you vote No if you want to wait till August, to put it bluntly. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, I'll close the ballot. Take the vote.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt. ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Excused
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield, Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius. ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Excused
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 67 voting Aye, 26 voting No.

PRESIDENT GRAYBILL: 67 having voted Aye to sustain the Rules Committee and 26 having voted No to wait till August, the motion fails.

Very well, Mr. Toole, would you come forward. Without objection, the Chair would like to move to Order of Business Number 8, Unfinished Business.

(Vice President Toole assumes the Chair)

VICE PRESIDENT TOOLE: The Chair will call on Mr. Graybill for a report on the budget.

DELEGATE GRAYBILL: Mr. President. Today is Friday, the 17th of March, and I have an Irish report for you-that's one that looks up on this day. If you'll take the budget report before you. I'd like to go over it with you. And I'd like to say, to begin with, that our financial condition looks brighter than it has at any time and it does appear that we will get through-if we proceed on the present plans, we'll get through our whole program in the black, which I think is very good news for this Convention. Now, first of all, notice that this budget is styled "March 24th". Now, it obviously isn't March 24th yet; it's March 17th; but I asked-it's-our costs, our daily costs are quite stable and fixed, and I asked Mr. Brown to estimate for us where we would stand at the end of next week. I'm not saying we'll be through on the-on Friday, but at least that gives us a pretty good idea of where we would be when we finished up and could adjourn. You'll notice that, by that time, we will have spent all the salary money; we will have spent all the wage money, except for $5,007, which has been put in as part of the federal grant. Now, I told you I would show you the federal grant, and if you look at the bottom of the second column, you'll see that our total money is now $529,281, and that's because we've added the $30,000 in. Now, we have not signed for the $30,000, because we needed the committee that we just created yesterday and we just haven't quite physically got it done, but the $30,000 is, we understand, available. Secondly, we cannot draw on the 30,000 until the 31st of March, but when we do, we can draw as of the 1st of March. So, the three numbers in the first column that are asterisked, the $5,007 and the $500 under Communications and the $23,900 at the bottom, are the tentative allocation of the $30,000 to the budget. The request for the HUD funds did include paying for the Style and Drafting costs after March 1st; that's why the $5,000 is up there in Style and Drafting. In other words, we will be able to lend ourselves money and recover from HUD money to pay the costs of Style and Drafting from March 1st on. Style and Drafting didn't have too much to do before then, but a little, but we can't pick anything up behind March 1st. But we can pick all the staff and lawyers' salaries up, and there's quite a lot of money there, because there are seven or eight typists up there. All right, that explains why that's up in that part of the budget. The rest of it is down there, lumped in Public Information, where it really will go. All right. Now, the next thing I'd like to point out to you is that, by next week, the employee benefits will all be exhausted, and the $5,007 lays there and will be available to cover some of our costs there at that time. Now, we will be in a deficit position in some of these categories by then, because-but we have balanced that by our contingent fund. You'll recall that our contingent fund was $40,000—the last item down there, as budgeted-and we've spent, by spreading it up there for these other costs to make the delegates' salaries and the wages and everything else come out even-we've spent all but 5,000 of that contingent fund by next March 24th. Now, the next thing you should note: we didn't lose our heads and buy you a lot more stationery. The stationery expenses by next Friday are accrued at 16,000 because we added in, at that line, the cost of the voter information pamphlet, which the bids came in at about twelve or thirteen thousand dollars-twelve thousand five-and we're buying a few extra copies-so twelve or thirteen thousand dollars. We put it on that line because, otherwise, it would distort our contracted services; and the fact of the matter is, our stationery was stable and nobody was buying any more stationery; and that's why it's thrown in there. That's why that account now is in grave deficit there. Communications-we have a little money left in postage, but we have accrued through next week enough, we believe, to send home the last batch of material that has to go home and go to the clerks and recorders and the libraries, so we're pretty close on that. I think that the telephone will also break about even then, although we might be a little over, because quite obviously we're going to have to keep some telephone service between March 24th and the 6th of June. I might tell you that the telephone company-I think I hinted this before—but the telephone company negotiated the bill with us when we took out all of that service. The upshot of it was that the bill through February 17th was negotiated to $4,600, and then, the addition from then till now brings it up, as you can see there, to $5,600. We had a bill for the first month of 5,100 once, but we talked them out of that, in a friendly manner. Okay. You can see that we anticipate spending about 500 more on the telephone up till June. Now, travel-technically, we're ahead on travel, because if we do not adjourn, if we work Monday and Tuesday and then have our final ceremonies, say, Thursday and don't send you home for Wednesday, we really have saved one round-trip. You've been paid two round-trips. I hope all of you haven't spent the money you're to go home on, but you really don't get another

round-trip unless we bring you back here, in case of some disaster. So we really ended up—we had—we budgeted three round-trips and we only spent two round-trips. Now, contracted services-I'm happy to say that we are, at the moment, in good shape in printing. I realize that many of you have told me that you thought we printed an awful lot of stuff and put it on the desks, but we have had an awfully good deal on printing downstairs. We—you know, we bought the printshop and operated it jointly with the state office, and it really costs a ridiculously low figure to put one sheet of paper on your desks. I don't want to tell you how much; we're not quite through yet, but we've gotten by pretty well on printing. Now, we're not quite through with printing, but we have accrued printing at the present rates through next-March 24th. It's conceivable that there might be some printing that we would need to get into in conjunction with voter information or voter education, but, basically, I think you can say that we got by well on printing, and that's one of the reasons we're in good shape today. Our equipment rental and Xerox and that sort of thing is going to come out pretty close. Our court reporter--we've estimated spending all that we've accrued. We might actually be off on that; it's rather difficult to say. We've done this by checking with the reporters as to how many pages per day they think they are running, but the truth ofthematteris they haven't typed a whole lot. That is, we haven't-it isn't-I think we have the transcript typed-perhaps Marie can tell us better than I-but I think it's typed up through maybe the 1st of March or something like that, but most of the debate is not typed yet. And exactly how many pages, we don't know, but based on the number of pages they estimated, and taking it through next Friday, we'll come out about even. On our per diem, we come out in the hole, as you can see, and that's part of the money used borrowed from the contingent fund. In other words, we spent a hundred and seventy-seven and we had budgeted a hundred and sixty. On our consultants, however, we came out ahead. We haven't spent near that amount of money, and we have a little there. On our Commission expense, I want you to note that we have, at the moment, picked up, by necessity, $3,400 worth of Commission expense. Now, about sixteen-fifteen or sixteen hundred dollars of this, you'll remember, was picked up in the form of office supplies that we agreed to take, and a few of the books. And the Commission had a debt which we did not pick up, which is not shown there. The reason that has grown to now $3,400 is that as we've laid off some employees who had been working for the Commission, some of them have been working more than a year for the state, and they had accrued vacations and they had accrued other fringe benefits, and we've had to pay our share of it, and since the Commission had no money, we have paid the Commission's share of those fringe benefits. On public information, because of some reverses in the filming industry, we didn't get our film thing worked out because of changing the date. We saved a lot of money there, and Public Information ended up with quite a bit of its money. And, of course, we've put with it the balance of the HUD money, the total being 46,000. Now, we hope to spend, say, 50,000 on public information, as that pamphlet-or as that memo said the other day, but you can see that the 50,000 is, in fact, available, because we have 5,000 left in the contingent fund, assuming that everything works out as of, say, March 24th next week. So, if everything works out fine and we spent-you see, the balance that we'll have unencumbered after next March 24th, after we adjourn, will be about $58,000. And if we spend, say, 50,000 for public information, we are in the black. So, I think that's good news and I'm happy to report it. I intend to continue to hold the line. And we might even be in the black more, but at least we can now see the end of the tunnel, and it looks like we're going to make it. Now, are there questions?

Mr. Monroe-Oh, excuse me, Mr. Toole. Mr. Acting Chairman, I—

VICE PRESIDENT TOOLE: Mr. Monroe.

DELEGATE MONROE: Will Mr. Graybill yield to a question?

DELEGATE GRAYBILL: Yes, Mr. Monroe.

DELEGATE MONROE: I was wondering: who will bear the expenses of the journal being printed?

DELEGATE GRAYBILL: Well, now, I think I know what you're getting at, and I'll discuss it with you. You don't mean the journal, which is what Rosemary types, the transcript and that. You mean the transcript, and the situation on the transcript is this: the $15,000 pays for one copy, which Marie Durkee delivers to us as she finishes it, and her contract provides for a hundred-$1.50 a page and so much a day-1 think it's $40 a day-and she has to deliver it by July 1st. She's typing on it, and so is Marie. That is, they split this and type-one types and one

works here, and so forth, but they don't pretend to be up with us. Now, when the rest of it is typed, they will give us this one copy. We now have about 1,200 pages of it. Now, because of the danger, quite frankly, that Mr. Toole and I saw in something might happen to that one copy, we did decide to print in our shop downstairs a few copies; and we tried to price it out, and we had a lot of difficulty getting a price, and finally, we got one and we determined to print about 10 copies for the pure purpose of having more than one. I didn't want a St. Louis incident to happen and have us lose the transcript, so we printed 10. Now, all we've printed so far is 10 copies of the first 1,100 pages, but we had intended to print 10 copies of the whole eight or nine thousand pages, as they become available. But one of the reasons, if I-I think this is an open convention; we might as well be completely open about it-one of the reasons I was off the Chair this morning was that we got an estimate up from downstairs that it was going to cost us $5,000 to print the rest of the transcript, because we weren't going to own the printshop after next week. And we had a little discussion about that and called a few people, and I'm happy to report that we will get our 10 copies for about $750 total, and they have dropped back down to a labor and materials only cost on us, and we're in good shape. This is about 10 copies of the transcript. Now, what we're going to do with those: if the Constitution happens to pass, the Legislature will clearly have the duty to provide printed copies of the transcript for law libraries and everybody else. If it happens to fail, I suppose there will not be such a great interest in printing the 8,000.page or 10,000-page transcript, and in that case, we would see that the Universities-both of them, major ones-and the Historical Society and-we'd spread these 10 copies among the major libraries and archives, and that'11 be that. And if you have a little mimeograph machine, why, we'll see that you can print one for yourself at 5 cents a page. Other questions?

VICE PRESIDENT TOOLE: Mr. Hanson.

DELEGATE ROD HANSON: Yes, Mr. President. Leo, on special expenses-per diem, there-we show a hundred and sixty thousand budgeted and a hundred and seventy-seven thousand five hundred spent, with nothing encumbered and no balance.

DELEGATE GRAYBILL: Well, the reason-that's what I explained. What Mr. Brown did-we only figured for only 9 weeks, I believe it was, see. Well, that ends tomorrow, but he computed, now, in the third column there, the hundred and seventy-seven thousand, what our per diem will be through next Friday. So, it ran us over our 9-week budget, and he used the money in the contingent fund-the 40,000 we initially had has been spread part of it back up there and part of it back, you see, at the top line. We've spent-we will have spent a hundred and eight thousand in our salaries, when we only have-had budgeted 96,000 for the first 9 weeks. And the same is true of staff; we budgeted at sixty-six and we spent seventy-one, et cetera, et cetera, see. So he's taken our famous contingent fund-it's now gone after next Friday, see.

DELEGATE ROD HANSON: (Inaudible)-the University budget comes out. (Laughter)

VICE PRESIDENT TOOLE: Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. Chairman-Mr. President. Some people are asking, "Why is it-are we getting 30,000 from the federal government?" And I can't give them an answer, and I was wondering if you could clear that up. Why do we get 30,000 from the federal government?

DELEGATE GRAYBILL: We applied for a grant from HUD. Many other have applied. The whole state reorganization program-that is, our 20-department reorganization program-is financed by HUD, the organizational part of it. Many other public bodies have done this. The State of North Dakota just got 40,000 from HUD for this same purpose. We applied for it, and we explained what we wanted it for, and we told them we wanted it so that the Style and Drafting Committee would have-we wanted it for funding part of the Convention expenses-namely, Style and Drafting; we wanted it for public education purposes, because we anticipated that without it, we would not have sufficient funds to adequately inform the public-and they will buy public education, which we're doing, and this is the voter information pamphlet and this is the panel programs on the TV and that sort of thing. In other words, the public information will be obviously funded half by them and half by us, and they have a program-HUD has a program which-the purpose of which is to assist any local governmental unit which cares-which attempts to improve its governmental forms or facilities-or any local governmental unit that is working on a project which will improve local government. And HUD

has a program for that, and we applied and we got it; that's all.

VICE PRESIDENT TOOLE: Any further discussion on the budget?

Mr. Blaylock.

DELEGATE GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. Leo, on this $50,000 we have that we're going to spend for this education, now, I take it, now, this is-will be neutral, insofar as it goes out on TV and radio and things like that. This is simply education; it's not pro-Constitution or anti-Constitution.

DELEGATE GRAYBILL: Well, when you say "neutral"—I mean, you can't honestly mean neutral. I mean-but we're going to let you and we're going to let Archie both explain it at the same time. (Laughter) Now, even I can't call that neutral, but we're going to (Laughter) explain it fairly. We have Mr. Schiltz's resolution, and we have him on the committee; and we're going to explain it fairly and broadly, and we're going to tell them what's in and what's out, and we're going to answer questions fairly, and we're going to put out information that is the-many of you have seen the Illinois thing; we'll do the same thing. We'll put the new text; we'll put in color what's been-what this changes; certain parts are out of the old Constitution; this is the same as certain parts of the old Constitution, et cetera, et cetera. And, yes, we're going to be objective. We're going to be objective. Any other questions?

VICE PRESIDENT TOOLE: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I would just like to say, on behalf of the other 99 delegates who I know must share my opinion, that it's highly commendable that we were able to operate in this fashion in these days when budgets are so seldom balanced. Thank you very much for all the hard work.

DELEGATE GRAYBILL: Well, if you celebrate this tonight, do it on somebody else's money. (Laughter)

VICE PRESIDENT TOOLE: Mr. Davis.

DELEGATE DAVIS: Mr. Slavedriver; I mean, Mr. President. This is off the budget, but what do you foresee our schedule next week? Now, it's a little off the budget.

DELEGATE GRAYBILL: Well. we're going to debate General Government tomorrow. May I use this time, Mr. President, to explain the schedule?

VICE PRESIDENT TOOLE: Yes, sir.

DELEGATE GRAYBILL: And I don't know, Carl, but the best estimates that I have are that we're going to debate General Government tomorrow. I don't know whether we'll finish, but it's possible that we might finish. Then on Monday morning, we have to take up Style and Drafting on Local Government and on General Government. They will-they have-theoretically, I think Mr. Schiltz has got Style and Drafting done on Local Government, or will have it tonight, but we can't get it printed tomorrow without overtime, and I still haven't let them do that. So-but they'll print that between 8:00 and 9:00 or 8:00 and 9:30 in the morning. We'll be able to go Monday morning on Style and Drafting on Local Government, and he will have style and drafted over the weekend on General Government and we'll be able to go on that as soon as we're finished. Now, if we have to debate a half a day on General Government, fine; but in other words, we'll finish up those Style and Draftings first. The reason we must go Monday on that is that the other processes simply can't go forward until we have style and drafted all of these 10 articles and send them back through Order of Business Number 5. Now, as soon as we have done that, we'll finish Order of Business Number 5 on Bill of Rights, which we might do tomorrow if we got through with General Government, or if we took it first. Either that, or General Government might take more than a day, see. But by Monday night, we ought to be through with that; that is, with Order of Business Number 5 on Bill of Rights. Then we've got Order of Business Number 5 on Local and General Government, which we'll either do Monday or Tuesday. By that time, Mr. Schiltz has got to come up with his corker, the ballots, and we've got to debate Style and Drafting's substantive proposal for a ballot. And after we've debated that, then Style and Drafting and the machines have to print and type. Now, that'11 be, I suppose, Tuesday and Wednesday. If we were really through Tuesday, we might shoot for Thursday; but if we're not really through Tuesday, we're probably shooting for Friday, in order to give them 1 day to pull this thing together, type up perfect copies so we can sign them, et cetera. And then Mr. Garlington is going to take care of us, on either Thursday or Friday, with a closing ceremony that shouldn't take all day, but it'll either take all morning or it'll take all afternoon-or, you know, till 3 or 4 o'clock-and

we'll be all through. Now, that's how I see it, but that's assuming you only talk 1 day on General Government and that you don't debate the ballot for 6 days.

VICE PRESIDENT TOOLE: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. President, I have a dual purpose here. One, I'd like to say that I would like to ask the President if Style and Drafting, which is going to meet at 8 o'clock tomorrow morning-that's one of the purposes-will you please point out that we don't get any of that $5,007 that the committee members—

Mr. President.

DELEGATE GRAYBILL: You mean that isn't-you mean you've given that money back to the staff? (Laughter) Right; that's for salaries for the staff, and it's for salaries for the secretaries, and it's for all the other people. You do get paid the same stipend as the rest of us do for the time you put in. (Laughter)

VICE PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. Vice President, I move that the Convention adopt the President's budget report.

VICE PRESIDENT TOOLE: You've heard the motion that the budget be adopted. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion is carried.

(President Graybill assumes the Chair)

PRESIDENT GRAYBILL: Very well. Members of the Committee, may we be on Order of Business Number 11. On Order of Business Number 11, I'd like to remind the Voter Education Committee that we want to have a meeting. Now, since we're this late, we'll make it very short, but let's have a short meeting in the-we'd better have it in the Rules Committee room here-the Rules Committee room-on adjournment. Secondly, I am asked to call on Mr. McCarvel. Do you want to make a motion, or is Mr. McNeil up for the same purpose?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I rise for a point of personal privilege on behalf of those of us who have sufficient Irish heritage to be able to celebrate this day with a clear conscience. For the record, I ask that St. Patrick forgive my good friend, Marshall Murray, for wearing a sacrilegious pink shirt while he's presiding over this body on this very special day. (Laughter)

PRESIDENT GRAYBILL: Very well, we'll note that.

Mr. McCarvel, do you want to make resolution Number 16?

DELEGATE McCARVEL: Yes, Mr. Chairman, if you would read-if you will, please.

PRESIDENT GRAYBILL: Would you like it read? Will the clerk read resolution Number 16.

CLERK HANSON: "Resolution Number 16, on the 17th. We, the undersigned, declare, on this 17th day of March, 1972, that Row 6 on the left side of Convention Hall, seats numbered 65 through 70, be known as "Irish Row", with a little Scotch. Signed: Joseph McCarvel, Number 65—"

PRESIDENT GRAYBILL: Mason O'Melvin—can't you read? (Laughter)

CLERK HANSON: I certainly can't. (Laughter) "Mike McKeon, Number 66; C. B. McNeil, Number 60—" No—"McDonough, Number 66; Mike McKeon, Number 67; C. B. McNeil, Number 68; Mason O'Melvin, Number 69; and Lyle Monroe, Number 70." Mr. Chairman.

PRESIDENT GRAYBILL: Well, I'd refer that to the Rules Committee, but you've just destroyed your credibility with the Rules Committee, and I think you're in trouble, Mr. McNeil. (Laughter)

DELEGATE McNEIL: Mr. Chairman, although that resolution states that the row is on the left, I would like the record to reflect that my good friend, Mason Melvin, has the incongruity of having the extreme left on his right and the extreme right on his left. (Laughter)

PRESIDENT GRAYBILL: And all the good sense in the middle, Mr. Melvin. (Laughter-Applause) Are there other important announcements before we adjourn?

Mr. Champoux.

DELEGATE CHAMPOLJX: You know, I couldn't let this go before letting you all know that last night in President Nixon's address, he totally agreed with the Educational Committee of the Montana Constitutional Convention and what you people passed, when he proposed that the Congress set up an Equal Educational Opportunities Act, requiring that-and I'm quoting-"every state and locality must grant equal educational opportunity to every person, regardless of race, color or national origin". I'm sure he got his message from us. Thank you. (Laughter)

PRESIDENT GRAYBILL: Very well. Mr. Murray, I wonder if you'd make a motion to adjourn.

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until 9:00 a.m. March 18th. 1972.

PRESIDENT GRAYBILL: Now, the— before you vote on that, the State Auditor's office will be open until 6 o'clock. You've got 15 minutes. All in favor of adjourning, say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed, No. (No response)

(The Convention adjourned at 5:45 p.m.)

March 18, 1972 **Forty-Ninth Day** **Convention Hall**
9:10 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all rise, Mr. Arbanas will lead us in the invocation this morning.

DELEGATE ARBANAS: Let us join together in the prayer of St. Francis. Lord, make me an instrument of Your peace. Where there's hatred, let me sow love. Where there's injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; where there is sadness, joy. 0 Divine Master, grant that I may not so much seek to be consoled as to console, to be understood as to understand, to be loved as to love, for it is in giving that we receive; it is in pardoning that we are pardoned; and it is in dying that we are born to eternal life. Amen.

PRESIDENT GRAYBILL: We'll take attendance today by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Delaney and Felt be excused this day?

PRESIDENT GRAYBILL: Delaney and Felt are excused.

CLERK HANSON: Delegate Hanson, Rod; Delegate Holland; Delegate Mahoney; Delegate Pemberton; Delegate Holland; Delegate Pemberton.

PRESIDENT GRAYBILL: Very well, take the attendance.

Aasheim ..... Aye
Anderson, J. Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
c am ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross .. .. Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce .. .. Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe .. .. Aye
Murray .. .. Aye
Noble ..... Aye

Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius. ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 96 delegates present, 2 excused, and 2 absent

PRESIDENT GRAYBILL: Very well, that's a quorum. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None,

PRESIDENT GRAYBILL: Order of Business Number 2, Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5. Ladies and gentlemen, under Order of Business Number 5 this morning, we have the Bill of Rights proposal, which we'll take up at this time. We will have placed upon your desks, we hope before the end of the session this morning, the Education and Public Health Articles for final adoption. And before I begin on the Bill of Rights section, Mr. Dahood has asked to be recognized.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I rise to a point of personal privilege and also on behalf of the Bill of Rights Committee. Yesterday morning, throughout several of the newspapers of the State of Montana, including the newspaper from my own area, the front page headlines carried stories that Con Con threatens no-fault insurance. A press release was issued yesterday. Unfortunately, we have not been given equal position with respect to that. So that the delegates may be fully informed, I wish to read from the release that was made yesterday in response to it: "It is totally beyond legal logic for anyone to contend that the Bill of Rights proposal has an effect on the no-fault insurance concept. There is absolutely no way that such a conclusion can be reached by a fair, sound-thinking person. The present attack on that section of the Bill of Rights which only restores to an injured workingman, in certain situations, his right to full legal redress is unfair, unjust, and, in many respects, dishonest. For a number of weeks, this section of the Bill of Rights was discussed, debated and circulated. Not a single critic of the section was able to seriously contend that this section prohibited the Legislature from considering no-fault insurance in the future." This section was fully debated by the Convention and, before that, at a public committee hearing after proper notice was posted. We indicated in our comments, we indicated in debate on the floor, the journal will reflect, the committee hearing records will show that we answered the several questions with respect to it to the effect that no-fault was not involved in any way. On behalf of the committee, I am going to add to the comments in the Bill of Rights proposal, so that there can never be any question about it under any circumstance nor by anyone, the following: "Further, it is the intent of the committee that the additional wording shall not be construed to preclude the adoption of a no-fault insurance plan for the State of Montana." Thank you for the privilege, Mr. Chairman.

PRESIDENT GRAYBILL: Very well. Will the clerk please read Order of Business Number 5, the Bill of Rights, Number 8. Now, that's this uncovered Order of Business Number 5 report on the Bill of Rights, which you should have before you, which we will use in finally adopting

the Bill of Rights Article. Does everyone have it?
(No response)

PRESIDENT GRAYBILL: Very well. Mr. Clerk, will you read the title and the preamble.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Bill of Rights, Number 8. Preamble." Mr. President.

PRESIDENT GRAYBILL: Very well, you have before you the preamble of the Bill of Rights Article, Number 8, on Order of Business Number 5. All in favor, vote Aye; and opposed, vote No on the voting machines. We're on Final Adoption, and we take a roll call vote on each article--or each section. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Absent
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye

Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

PRESIDENT GRAYBILL: Will the clerk please announce the vote.

CLERK HANSON: Mr. President, 91 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well. Read the title of the article and Section 1.

CLERK HANSON: "Declaration of Rights. Section 1. Popular sovereignty." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 1, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot. Everyone is present except those excused and Holland and Pemberton.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ... . Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye

Murray.. ..Aye
Noble ..Aye
Nutting ..Aye
Payne .. Aye
Pemberton .. .Absent
Rebal ..Aye
Reichert .. Aye
Robinson .. ..Aye
Roeder ..Aye
Rollins ..Aye
Romney .. ..Aye
Rygg .. ..Aye
Scanlin .. Aye
Schiltz .. Aye
Siderius ..Aye
Simon .. ..Aye
Skari .. ..Aye
Sparks ..Aye
Speer .. ..Aye
Studer .. ..Aye
Sullivan .. ..Aye
Swanberg ..Aye
Toole .. ..Aye
Van Buskirk .. .Aye
Vermillion .. Aye
Wagner ..Aye
Ward .. ..Aye
Warden ..Aye
Wilson .. ..Aye
Woodmansey .. ..Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2. Self-government." Mr. President.

PRESIDENT GRAYBILL: All those in favor of Section 2, on self-government, please vote Aye on the voting machines; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..Aye
Anderson, J. .. Aye
Anderson, O. ..Aye
Arbanas ..Aye
Arness ..Aye
Aronow ..Aye
Artz .. .Aye
Ask ..Aye
Babcock .. ..Aye
Barnard .. ..Aye
Bates.. .. ..Aye
Belcher .. Aye
Berg.. .. ..Aye
Berthelson .. .Aye
Blaylock ..Aye
Blend ..Absent
Bowman .. Aye
Brazier .. Aye
Brown.. .. ..Aye
Bugbee .. ..Aye
Burkhardt .. Aye
Cain .. ..Aye
Campbell .. Aye
Cate .. .Aye
Champoux ..Aye
Choate .. .Aye
Conover .. Aye
Cross.. .. ..Aye
Dahaod.. .. ..Aye
Davis ..Aye
Delaney .. Excused
Driscoll ..Aye
Drum ..Aye
Eck ..Aye
Erdmann .. ..Aye
Eskildsen ..Aye
Etchart .. Aye
Felt .. Excused
Foster .. ..Aye
Furlong ..Aye
Garlington .. Aye
Graybill .. Aye
Gysler .. ..Aye
Habedank .. Aye
Hanson, R.S. ..Aye
Hanson, R. .. ..Aye
Harbaugh .. Aye
Harlow .. ..Aye
Harper ..Aye
Harrington .. Aye
Heliker .. ..Aye
Holland. .. .Absent
Jacobsen .. ..Aye
James .. ..Aye
Johnson .. Aye
Joyce.. .. ..Aye
Kamhoot .. ..Aye
Kelleher .. Aye
Leuthold ..Aye
Loendorf ..Aye
Lorello ..Aye

Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Took ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Section 2 is therefore adopted. Section 3. All those delegates—

DELEGATE JOHNSON: Delegate Johnson. I voted Aye on the last one.

PRESIDENT GRAYBILL: Johnson wants to be shown as voting Aye on the last one. Very well.

DELEGATE JOHNSON: (Inaudible)

PRESIDENT GRAYBILL: So many as are in favor of Section 3, Inalienable rights, please vote Aye on the voting machine; opposed vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, we'll close the vote and take the ballot. Mr. Holland, the journal may show your presence.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscol ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye

Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward.. ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 4 is adopted. Section 5.

Mr. Clerk.

CLERK HANSON: That's section—

PRESIDENT GRAYBILL: Oh, right; right. Section 4, pardon me.

CLERK HANSON: "Section 4. Individual dignity." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 4, please vote Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Absent
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye

Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 4 is adopted. Section 5.

CLERK HANSON: "Section 5. Freedom of religion." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 5, vote Aye on the voting machines; so many as opposed, vote No. Any delegate hasn't voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye

Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland., ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye, and no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 5 is adopted. Section 6.

CLERK HANSON: "Section 6. Freedom of assembly." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 6, Freedom of assembly, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier.. ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye

Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Absent
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 6 is adopted. Section 7.

CLERK HANSON: "Section 7. Freedom of speech, expression, and press." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7, vote Aye; and opposed, vote No. All the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Mrs. Babcock?

DELEGATE BABCOCK: Babcock votes Aye.

PRESIDENT GRAYBILL: Babcockvotes Aye.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye

Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Absent
Roeder ..... Aye
Rollins., ... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward.. ..... Aye
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye

CLERK HANSON: Mr. President, Babcock voting Aye; 93 delegates voting Aye; 1 voting NO.

PRESIDENT GRAYBILL: Very well, Section 7 is adopted. Section 8.

CLERK HANSON: "Section 8. Right of participation." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 8, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot. Mr. McCarvel—McCarvel votes Aye.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Absent
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield. ..... Aye
Martin. ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden.. ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 76 delegates voting Aye, 19 voting No.

PRESIDENT GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I punched the button, but it did not record. I vote Aye.

PRESIDENT GRAYBILL: Speer votes Aye; make it 77 to 19.

CLERK HANSON: 77 voting Aye, 19 voting No.

PRESIDENT GRAYBILL: Very well, Section 8 is adopted. Section 9.

CLERK HANSON: "Section 9. Right to know." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Nay
Anderson, J..... Nay
Anderson, 0..... Aye
Arbanas.. ....Aye
Arness.....Aye
Aronow.....Aye
Artz ....Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ....Aye
Bates.....Aye
Belcher ..... Aye
Berg.. ....Aye
Berthelson ..... Aye
Blaylock.....Aye
Blend.....Aye
Bowman.....Aye
Brazier ..... Nay
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain.....Aye
Campbell ....Aye
Cate ....Aye
Champoux.....Aye
Choate.....Aye
Conover ..... Aye
Cross.....Aye
Dahood.....Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Nay
Drum.....Aye
Eck.....Aye
Erdmann ..... Aye
Eskildsen .....Aye
Etchart .....Aye
Felt ..... Excused
Foster ....Aye
Furlong.....Aye
Garlington.....Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland. ..... Nay
Jacobsen ....Aye
James ....Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ....Aye
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Nay
McCarvel.....Aye
McDonough ..... Aye
McKeon ....Aye
McNeil ....Aye
Melvin ..... Nay
Monroe.. ....Aye
Murray.. ....Aye
Noble.....Aye
Nutting.....Aye
Payne ....Aye
Pemberton ..... .Absent
Rebal.....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins. ..... Aye
Romney ....Aye
Rygg ....Aye
Scanlin ..... Nay
Schiltz..... Aye
Siderius..... Aye
Simon ..... Nay
Skari ....Aye
Sparks.....Aye
Spew.. ....Aye
Studer ..... Nay
Sullivan ....Aye

Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 74 delegates voting Aye, 23 voting No.

PRESIDENT GRAYBILL: Very well, Section 9 is adopted. Section 10.

CLERK HANSON: "Section 10. Right of privacy." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye

Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well, Section 10 is adopted. Section 11.

CLERK HANSON: "Section 11. Searches and seizures." Mr. Chairman.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 11, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye

Pemberton .Absent
Rebal .....Aye
Reichert Aye
Robinson Nay
Roeder .....Aye
Rollins .....Aye
Romney Aye
Rygg .....Aye
Scanlin .....Aye
Schiltz .....Aye
Siderius. .Aye
Simon .....Aye
Skari .....Aye
Sparks. Aye
Speer .....Aye
Studer .....Aye
Sullivan .....Aye
Swanberg .....Aye
Toole .....Aye
Van Buskirk .Aye
Vermillion Aye
Wagner .....Aye
Ward .....Aye
Warden .....Aye
Wilson .....Aye
Woodmansey Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 11 is adopted. Section—

DELEGATE KELLEHER: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I want it to show I voted Aye on that.

PRESIDENT GRAYBILL: Mr. Kelleher wants to be shown as Aye on Section 11; 94 to 2. All right. Section 12.

CLERK HANSON: "Section 12. Right to bear arms." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 12, vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. .....Aye
Anderson, 0 ..... Aye
Arbanas .....Aye
Arness .....Aye
Aronow .....Aye
Artz ....Aye
Ask ..... Aye
Babcock.. ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ....Aye
Berg.. ....Aye
Berthelson ..... Nay
Blaylock.. ....Aye
Blend .....Aye
Bowman .....Aye
Brazier.. ....Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell .....Aye
Cate .....Aye
Champoux ..... Aye
Choate .....Aye
Conover ....Aye
Cross .....Aye
Dahood .....Aye
Davis .....Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum .....Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen .....Aye
Etchart .....Aye
Felt ..... Excused
Foster ....Aye
Furlong .... Aye
Garlington .....Aye
Graybill ..... Aye
Gysler .....Aye
Habedank ..... Nay
Hanson, R.S. ..... .Aye
Hanson, R. ....Aye
Harbaugh ....Aye
Harlow ....Aye
Harper .....Aye
Harrington. ..... Absent
Heliker ....Aye
Holland ..... Nay
Jacobsen ....Aye
James ....Aye

Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Nay
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reich ert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 9 voting No.

PRESIDENT GRAYBILL: Very well, Section 12 is adopted. Section 13.

CLERK HANSON: "Section 13. Right of suffrage." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 13, vote Aye; opposed, No on the voting machine. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye

Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 13 is adopted. Section 14.

CLERK HANSON: "Section 14. Adult rights." Mr. President.

PRESIDENT GRAYBILL: All in favor of Section 14, vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Mrs. Pemberton, the journal may show your presence.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused

Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 85 delegates voting Aye, 10 voting No.

PRESIDENT GRAYBILL: Very well, Section 14 is adopted. Section 15.

CLERK HANSON: "Section 15. Rights of persons not adults." Mr. President.

PRESIDENT GRAYBILL: **So many as** shall be in favor of Section 15, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye

Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate. ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland., ... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson.. ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 13 voting No.

PRESIDENT GRAYBILL: Very well, Section 15 is adopted. Section 16.

CLERK HANSON: "Section 16. The administration of justice." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 16, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye

Bates.. ..Aye
Belcher ..Aye
Berg Nay
Berthelson Nay
Blaylock.. ..Aye
Blend ..Aye
Bowman Nay
Brazier Nay
Brown.. ..Aye
Bugbee ..Aye
Burkhardt ..Aye
Cain ..Aye
Campbell ..Aye
Cate ..Aye
Champoux Aye
Choate ..Aye
Conover Nay
Cross.. ..Aye
Dahood ..Aye
Davis ..Aye
Delaney Excused
Driscoll ..Aye
Drum ..Aye
Eck ..Aye
Erdmann Nay
Eskildsen Nay
Etchart Aye
Felt Excused
Foster ..Aye
Furlong Aye
Garlington ..Aye
Graybill Aye
Gysler Nay
Habedank Nay
Hanson, R.S. ..Aye
Hanson, R. Aye
Harbaugh ..Aye
Harlow ..Aye
Harper ..Aye
Harrington .Absent
Heliker ..Aye
Holland ..Aye
Jacobsen ..Aye
James ..Aye
Johnson Nay
Joyce ..Aye
Kamhoot Nay
Kelleher Aye
Leuthold ..Aye
Loendorf ..Aye
Lorello ..Aye
Mahoney Aye
Mansfield Aye
Martin ..Aye
McCarvel Aye
McDonough Aye
McKeon ..Aye
McNeil ..Aye
Melvin Nay
Monroe.. ..Aye
Murray.. ..Aye
Noble ..Aye
Nutting Nay
Payne Aye
Pemberton Aye
Rebal Nay
Reichert Aye
Robinson ..Aye
Roeder ..Aye
Rollins. Aye
Romney ..Aye
Rygg Nay
Scanlin.. ..Aye
Schiltz ..Aye
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Aye
Speer ..Aye
Studer Nay
Sullivan Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk ..Aye
Vermillion Aye
Wagner ..Aye
Ward Nay
Warden ..Aye
Wilson Nay
Woodmansey Nay

CLERK HANSON: Mr. President, 76 delegates voting Aye, 21 voting No.

PRESIDENT GRAYBILL: Very well, Section 16 is adopted. Section 17.

CLERK HANSON: "Section 17. Due process of law." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 17, vote Aye; so many as shall be opposed, vote No. Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim Aye
Anderson, J. Aye
Anderson, O. Aye

Arbanas.. ..Aye
Arness ..Aye
Aronow ..Aye
Artz ..Aye
Ask ..Aye
Babcock ..Aye
Barnard ..Aye
Bates.. ..Aye
Belcher ..Aye
Berg.. ..Aye
Berthelson ..Aye
Blaylock ..Aye
Blend ..Aye
Bowman ..Aye
Brazier ..Aye
Brown.. ..Aye
Bugbee ..Aye
Burkhardt ..Aye
c am ..Aye
Campbell ..Aye
Cate ..Aye
Champoux ..Aye
Choate ..Aye
Conover ..Aye
Cross ..Aye
Dahood ..Aye
Davis ..Aye
Delaney ..Excused
Driscoll ..Aye
Drum ..Aye
Eck ..Aye
Erdmann ..Aye
Eskildsen ..Aye
Etchart ..Aye
Felt ..Excused
Foster ..Aye
Furlong ..Aye
Garlington ..Aye
Graybill ..Aye
Gysler ..Aye
Habedank ..Aye
Hanson, R.S. ..Aye
Hanson, R. ..Aye
Harbaugh ..Aye
Harlow ..Aye
Harper ..Aye
Harrington ..Aye
Heliker ..Aye
Holland ..Aye
Jacobsen ..Aye
James ..Aye
Johnson ..Aye
Joyce ..Aye
Kamhoot ..Aye
Kelleher ..Aye
Leuthold ..Aye
Loendorf ..Aye
Lorello ..Aye
Mahoney ..Aye
Mansfield ..Aye
Martin ..Aye
McCarvel ..Aye
McDonough ..Aye
McKeon ..Aye
McNeil ..Aye
Melvin ..Aye
Monroe.. ..Aye
Murray.. ..Aye
Noble ..Aye
Nutting ..Aye
Payne ..Aye
Pemberton ..Aye
Rebal ..Aye
Reichert ..Aye
Robinson ..Aye
Roeder ..Aye
Rollins ..Aye
Romney ..Aye
Rygg ..Aye
Scanlin ..Aye
Schiltz ..Aye
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Aye
Speer ..Aye
Studer ..Aye
Sullivan ..Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk ..Aye
Vermillion ..Aye
Wagner ..Aye
Ward ..Aye
Warden ..Aye
Wilson ..Aye
Woodmansey ..Aye

CLERK HANSON: Mr. President, 98 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 17 is adopted. Section 18.

CLERK HANSON: "Section 18. State subject to suit."

PRESIDENT GRAYBILL: So many as shall be in favor of Section 18, vote Aye; so many as are opposed, vote No. Has every delegate voted? (No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer.. ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner.. ..... Aye
Ward ..... Nay
Warden.. ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, 13 voting No.

PRESIDENT GRAYBILL: Very well,

Section 18 is passed. Section 19.

CLERK HANSON: "Section 19. Habeas corpus." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 19, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye

Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 97 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, I'm absolutely appalled. I didn't see your Yes vote up there for Habeas Corpus. (Laughter)

PRESIDENT GRAYBILL: I wasn't sure what it meant, Mr. Johnson. (Laughter) Very well, Section 20.

CLERK HANSON: "Section 20. Initiation of proceedings." Mr. Chairman.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 20, vote Aye on the voting machines. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye

Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 97 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Section 20 is adopted. Section 21.

CLERK HANSON: "Section 21. Bail." Mr. President.

PRESIDENT GRAYBILL: As many as shall be in favor of Section 21, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Absent
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye

Nutting ..... Aye
Payne ..... Aye
Pemberton Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson Aye
Roeder Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz .Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Mr. Studer.

DELEGATE STUDER: (Inaudible)

PRESIDENT GRAYBILL: Mr. Studer wishes to be recorded as voting Aye; is that right? Aye on 90—on 21, make it 95.

CLERK HANSON: 95 voting Aye, 1 voting NO.

PRESIDENT GRAYBILL: Very well, Section 21 passes. Section 22.

CLERK HANSON: "Section 22. Excessive sanctions." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 22, vote Aye; opposed, No. Every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, I voted-1 wanted to vote Aye. I was sleeping.

PRESIDENT GRAYBILL: Mr. Jacobsen wishes to be recorded as voting Aye.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
c am ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye

Harbaugh ....Aye
Harlow ....Absent
Harper.....Aye
Harrington ..... .Absent
Heliker ....Aye
Holland.....Aye
Jacobsen ..... Aye
James ....Aye
Johnson ..... Aye
Joyce.....Aye
Kamhoot ....Aye
Kelleher ....Aye
Leuthold.....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Aye
Mansfield..... Aye
Martin.....Aye
McCarvel.....Aye
McDonough.....Aye
McKeon ....Aye
McNeil ....Aye
Melvin.....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble.....Aye
Nutting.....Aye
Payne ....Aye
Pemberton ..... Aye
Rebal.....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins, ... Aye
Romney ....Aye
Rygg ....Aye
Scanlin.....Aye
Schiltz ..... .Absent
Siderius. .....Aye
Simon ..... Aye
Skari ....Aye
Sparks.....Aye
Speer ....Aye
Studer ....Aye
Sullivan ....Aye
Swanberg.....Aye
Toole ....Aye
Van Buskirk.....Aye
Vermillion ..... Aye
Wagner.....Aye
Ward ....Aye
Warden.....Aye
Wilson.....Aye
Woodmansey ....Aye

CLERK **HANSON:** Mr. President, Jacobsen voting Aye; 95 delegates voting Aye; no delegates voting No.

PRESIDENT GRAYBILL: Section 23 has been adopted. Section 23.

CLERK HANSON: "Section 23. Detention." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 23, vote Aye; opposed, No. Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim.....Aye
Anderson, J. ..... .Absent
Anderson, 0. ..... Aye
Arbanas.. ....Aye
Arness.....Aye
Aronow ..... Aye
Artz ....Aye
Ask.....Aye
Babcock.. ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg.....Aye
Berthelson ..... Aye
Blaylock.....Aye
Blend.....Aye
Bowman.....Aye
Brazier ....Aye
Brown.. ....Aye
Bugbee ..... Aye
Burkhardt ....Aye
Cain.....Aye
Campbell ..... Aye
Cate.. ....Aye
Champoux ..... Aye
Choate.....Aye
Conover ..... Aye
Cross.. ....Aye
Dahood.....Aye
Davis.....Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum.....Aye
Eck.....Aye
Erdmann ....Aye
Eskildsen.....Aye
Etchart.....Aye
Felt ..... Excused
Foster ....Aye
Furlong ..... Aye

Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullwan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, 23 is adopted. 24.

CLERK HANSON: "Section 24. Rights of the accused." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 24, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye

Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin. ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 97 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 24 is adopted. Section 25.

CLERK HANSON: "Section 25. Self-incrimination and double jeopardy." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 25, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye

Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt., ... Excused
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin. ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Section 25 is adopted. Section 26.

CLERK HANSON: "Section 26. Trial by jury." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 26, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot on Number 26.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye

Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Absent
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg. ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, 4 voting No.

PRESIDENT GRAYBILL: Very well, Section 26 is adopted. Section 27.

CLERK HANSON: "Section 27. Imprisonment for debt." Mr. President.

PRESIDENT GRAYBILL: As many as shall be in favor of Section 27, say Aye-vote Aye; opposed, No. Every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, 0	Aye
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask.	Aye
Babcock..	Aye
Barnard	Aye
Bates..	Absent
Belcher	Nay
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Absent
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Absent
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Excused
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Excused
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Nay
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Aye
Leuthold	Aye
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Nay
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray..	Aye
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Nay
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward..	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. President, 86 delegates voting Aye, 9 voting No.

PRESIDENT GRAYBILL: Very well, Section 27 is adopted. Section 28.

CLERK HANSON: "Section 28. Rights of the convicted." Mr. President.

PRESIDENT GRAYBILL: So many as

shall be in favor of Section 28, vote Aye; and opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg... ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell.. ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong.. ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin., ... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble., ... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon.. ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: Section 28 is adopted. Section 29.

CLERK HANSON: "Section 29. Eminent domain." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 29, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Aye
Bates .. .. Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock .. .. Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell .. .. Aye
Cate .. .. Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart .. .. Aye
Felt ..... Excused
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe .. .. Aye
Murray .. .. Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins,, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin .. .. Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye

Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 85 delegates voting Aye, 12 voting No.

PRESIDENT GRAYBILL: Section 29 is adopted. Section 30.

CLERK HANSON: "Section 30. Treason and descent of estates." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 30, vote Aye; opposed, No. Have all the delegates voted?
(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?
(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield, ... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye

Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer.. ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 98 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, 30 is adopted. Section 31.

CLERK HANSON: "Section 31. Ex post facto, obligation of contracts, and irrevocable privileges." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 31, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye

Murray.. ..Aye
Noble ..Aye
Nutting ..Aye
Payne ..Aye
Pemberton ..Aye
Rebal ..Aye
Reichert ..Aye
Robinson ..Aye
Roeder ..Aye
Rollins ..Aye
Romney ..Aye
Rygg ..Aye
Scanlin.. ..Aye
Schiltz ..Aye
Siderius ..Aye
Simon ..Aye
Skari ..Aye
Sparks ..Aye
Speer ..Aye
Studer ..Aye
Sullivan ..Aye
Swanberg ..Aye
Toole ..Aye
Van Buskirk ..Aye
Vermillion ..Aye
Wagner ..Aye
Ward ..Aye
Warden ..Aye
Wilson ..Aye
Woodmansey ..Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Section 31 is adopted. Section 32.

CLERK HANSON: "Section 32. Civilian control of the military." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor, vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does **any** delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..Aye
Anderson, J. ..Aye
Anderson, 0. ..Aye
Arbanas ..Aye
Arness ..Aye
Aronow ..Aye
Artz ..Aye
Ask ..Aye
Babcock.. ..Aye
Barnard ..Aye
Bates ..Aye
Belcher ..Aye
Berg ..Aye
Berthelson ..Aye
Blaylock ..Aye
Blend ..Aye
Bowman ..Nay
Brazier ..Aye
Brown.. ..Nay
Bugbee ..Nay
Burkhardt ..Aye
c am ..Aye
Campbell ..Aye
Cate ..Aye
Champoux ..Aye
Choate ..Aye
Conover ..Aye
Cross ..Aye
Dahood ..Aye
Davis ..Aye
Delaney ..Excused
Driscoll ..Aye
Drum ..Aye
Eck ..Aye
Erdmann.. ..Aye
Eskildsen ..Absent
Etchart ..Aye
Felt ..Excused
Foster ..Aye
Furlong ..Aye
Garlington ..Aye
Graybill ..Aye
Gysler ..Aye
Habedank ..Aye
Hanson, R.S. ..Aye
Hanson, R. ..Aye
Harbaugh ..Aye
Harlow ..Aye
Harper ..Aye
Harrington ..Aye
Heliker ..Aye
Holland ..Aye
Jacobsen ..Aye
James ..Aye
Johnson ..Aye
Joyce ..Aye
Kamhoot ..Aye
Kelleher ..Aye
Leuthold ..Aye
Loendorf ..Aye

Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 94 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well, Section 32 is adopted. Section 33.

CLERK HANSON: "Section 33. Importation of armed persons." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 33, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Anybody want to change their vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson,0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart.. ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye

Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 33 is adopted. Section 34.

CLERK HANSON: "Section 34. Unenumerated rights." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 34, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye

Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 98 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Section 34 is adopted. Section 35.

CLERK HANSON: "Section 35."

PRESIDENT GRAYBILL: Servicemen—

CLERK HANSON: "-Servicemen, servicewomen, and veterans." Mr. President.

PRESIDENT GRAYBILL: So many as are in favor of Section 35, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye

Cross ..... Nay
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper. ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Spew ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion Aye
Wagner Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 78 delegates voting Aye, 19 voting No.

PRESIDENT GRAYBILL: 78 delegates voting Aye and 19 voting No, Section 35 is adopted. Ladies and gentlemen, you've adopted all of the Bill of Rights. Now, we're having placed on your desks the Education section, Order of Business Number 5, on Report Number 10, Education. We will take it now. I will go somewhat slower, since you haven't had it before you, but we need to finish up these this morning, if possible. So Section 10—or, I mean, report 10 on Education is now being passed out to you. While you're all looking at it, the Chair will call your attention to one style error. On the-line 5, after "Educational goals and duties", you should insert a "1" in parentheses. In other words, that's a three-section subsection—three subsections of Section 1; Number one did not get numbered. Put in a subsection 1 in parentheses, after the word "duties". I take it that's okay, Mr. Champoux?

DELEGATE CHAMPOUX: (Inaudible)

PRESIDENT GRAYBILL: Ladies and gentlemen, while we have a short break here, we'll let the pages put out Number 9 on Public Health, too. The pages will distribute it now, too. Very well, we're ready to go on Education. Will the clerk please read the title and Section 1 of the Education Article for final adoption.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Education, Report Number 10. Article. Education. Section 1. Educational goals and duties."; containing three subsections. Mr. President.

PRESIDENT GRAYBILL: Very well, we're voting on Section 1, Educational goals and duties, containing three subsections. So many as be in favor, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Absent
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye

Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 88 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 1 is adopted. Will the clerk read the title of Section 2.

CLERK HANSON: "Section 2. Public school funds"; containing no subsections. Mr. President.

PRESIDENT GRAYBILL: Well, he's technically right; that's an enumeration, it's not a subsection, but it is everything on page 1 and the first seven lines of page 2. Very well, everyone that's in favor of Section 2, Public school fund, vote Aye on the voting machine; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye

Robinson ..... Aye
Roeder ..... Aye
Rollins. Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 2 is adopted. Section 3.

CLERK HANSON: "Section 3. Public school fund inviolate." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 3, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Mrs. Cross, for what purpose do you rise?

DELEGATE CROSS: Mr. Chairman, I neglected to push the Aye button on time, but that is how I vote.

PRESIDENT GRAYBILL: All right, Mrs. Cross votes Aye.

Aasheim Aye
Anderson, J. Aye
Anderson, O.. Aye
Arbanas ..... Aye
Arness Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Absent
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher Aye
Leuthold ..... Aye
Loendorf ..... Aye

Lore110 ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mrs. Cross votes Aye; 94 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Section 3 is adopted. Section 4.

CLERK HANSON: "Section 4. Board of Land Commissioners." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 4, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Have all the delegates finished changing their votes? (Laughter)

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Absent
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye

Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Absent
James ..... Aye
Johnson.. ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer.. ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 62 delegates voting Aye, 33 voting No.

PRESIDENT GRAYBILL: Very well, Section 4 is adopted. Section 5.

CLERK HANSON: "Section 5. Public school fund revenue." Mr. President, two subsections.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 5 and its subsections, vote Aye; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher.. ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye

Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Absent
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg .. .. Aye
Toole ..... Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye and no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 5 is adopted. Section 6.

CLERK HANSON: "Section 6. Aid prohibited to sectarian schools"; containing two subsections. Mr. President.

PRESIDENT GRAYBILL: So many shall be in favor of Section 6 and its subsections, vote Aye; opposed, No.

DELEGATE McNEIL: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I rise to explain my vote.

PRESIDENT GRAYBILL: Very well.

DELEGATE McNEIL: **I am** in favor of subsection 1; I oppose subsection 2, which permits tax money to be sent for church schools. I therefore must vote against the entire section.

PRESIDENT GRAYBILL: Very well. Mr. Kelleher.

DELEGATE KELLEHER: I want to explain my vote. It's exactly the opposite of Mr. McNeil's (Laughter)

PRESIDENT GRAYBILL: Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson 0.	Aye
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Excused
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Nay
Etchart	Aye
Felt	Excused
Foster	Nay
Furlong,,	Nay
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland.,	Absent
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield,	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Nay
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius.	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Nay
Woodmansey	Aye

CLERK HANSON: Mr. President, 80 delegates voting Aye, 17 voting No.

PRESIDENT GRAYBILL: Very well, Section 6 is adopted. Section 7.

CLERK HANSON: "Section 7. Non

discrimination in education." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7, vote Aye; opposed, vote No.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I rise to explain my vote. I support all of Section 7 except the change of the word from "teach" to "advocate", which now permits the teaching of religion in the public schools. I therefore oppose the section.

PRESIDENT GRAYBILL: Has every delegate voted?

Mr. Anderson.

DELEGATE 0. ANDERSON: I rise to explain my vote, because I do not like the change from "taught" to "advocate".

PRESIDENT GRAYBILL: Any other delegate want to change their vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Nay
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye

Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, 9 voting No.

PRESIDENT GRAYBILL: Very well, Section 7 is adopted. Section 8.

CLERK HANSON: "Section 8. School district trustees." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 8, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye

Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden.. ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Section 8 is adopted. Section 9.

CLERK HANSON: "Section 9. Boards of Education"; containing three subsections. Mr. President.

PRESIDENT GRAYBILL: so many shall be in favor of Section 9 and all three subsections, vote Aye; so many shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates.. ..... Nay
Belcher ..... Nay
Berg ..... Aye
Berthelson ..... Nsy
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James.. ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye

Mahoney ..... Nay
Mansfield., ... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 60 delegates voting Aye, 38 voting No.

PRESIDENT GRAYBILL: 60 voting Aye, 38 voting No, Section 9 is adopted. Section 10.

CLERK HANSON: "Section 10. State University funds." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 10, which you'll find on page 5, vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J ..... Nay
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye

Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 88 delegates voting Aye, 7 voting No.

PRESIDENT GRAYBILL: Very well, Section 10 is adopted. If you'll turn the page to an unnumbered page, you'll find the article on Public Lands. Will the clerk read the title and section number.

CLERK HANSON: "Order of Business **Number** 5, Final Consideration, Style and Drafting, Public Lands, Report Number 10. Article. Public Lands. Section 1. Public land trust-disposition"; containing four subsections. Mr. President.

PRESIDENT GRAY-BILL: So many shall be in favor of Section 1 and all its subsections, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye

Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 97 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well. You have adopted the Public Lands Article, and we're finished with the articles on Education and Public Lands. If you'll take the sheet-the Public Health, Welfare, Labor and Industry Article that's placed before you this morning, we'll take final adoption of Public Health, Welfare, Labor and Industries Article. Is there anyone who doesn't have the article?

(No response)

PRESIDENT GRAYBILL: Very well, will the clerk read the title and the first section of article on nonmunicipal corporations.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Public Health, Welfare, Labor and Industry, Number 9. Article. Nonmunicipal corporations. Section 1. Limitation of powers." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1, Limitation of power, of the Nonmunicipal Corporations Article, Public Health, Report Number 9, please vote Aye on the voting machines; opposed, No. Has every delegate voted?

DELEGATE BABCOCK: I don't have that sheet-could I-could you wait a minute till I get it?

PRESIDENT GRAYBILL: Yes, let's get Mrs. Babcock one of these. Are there some extras down front?

DELEGATE BABCOCK: I got it-1 got it.

PRESIDENT GRAYBILL: Very well, the ballot is not closed, Mrs. Babcock. We're on Section 1, Nonmunicipal Corporations. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas .. .. Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates .. .. Aye
Belcher ..... Aye
Berg .. .. Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown .. .. Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross .. .. Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum .. .. Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray .. .. Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well,

Section 1 is adopted. Section 2.

CLERK HANSON: 'Section 2. Protection for citizenry." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye on the voting machines; so many as opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover.. ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Aye

Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden.. ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 88 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: 88 having voted Aye, Section 2 is adopted. Section 3.

CLERK HANSON: "Section 3. Retrospective law prohibition." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 3 vote Aye on the voting machines; and opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J. ..... Aye
Anderson, 0..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Absent
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood.. ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland., ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield., ... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay

Schiltz ..... Absent
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. President, 74 delegates voting Aye, 21 voting No.

PRESIDENT GRAYBILL: Very well, Section 3 is adopted. If you'll turn to page 2, we'll take the article on Labor. Will the clerk read the title and the first section.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Public Health, Welfare, Labor and Industry, Number 9. Article. Labor. Section 1. Department and commissioner." Mr. President.

PRESIDENT GRAYBILL: Very well, so many as shall be in favor of Section 1 of the Labor Article, vote Aye on the voting machine: so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye

McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: Very well, Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2. Eight-hour day." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson.0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Nay
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Excused
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye

Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey A y e

CLERK HANSON: Mr. President, 72 delegates voting Aye, 25 voting No.

PRESIDENT GRAYBILL: Very well, Section 2 is adopted. If you'll turn to page 3, we'll do the article on Institutions and Assistance. Will the clerk please read the title and the first section of this article.

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Public Health, Welfare, Labor and Industry, Number 9. Article. Institutions and Assistance. Section 1. Institutions." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 1 of the article on Institutions and Assistance, on page 3, please vote Aye on the voting machines; opposed, No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye

Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Absent
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 7 voting No.

PRESIDENT GRAYBILL: Very well, Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2. Restoration of rights." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, we'll close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye

Conover ..... Aye
Cross.. ....Aye
Dahood .....Aye
Davis .....Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum .....Aye
Eck .....Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Excused
Foster ....Aye
Furlong .....Aye
Garlington .....Aye
Graybill ..... Aye
Gysler ....Aye
Habedank ..... Aye
Hanson, R.S.....Aye
Hanson, R. ....Aye
Harbaugh ....Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ..... Aye
Joyce.. ....Aye
Kamhoot ....Aye
Kelleher ..... Aye
Leuthold .....Aye
Loendorf.....Aye
Lorello.....Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin.....Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ....Aye
Melvin.....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble.....Aye
Nutting.....Aye
Payne ....Aye
Pemberton ..... Aye
Rebal.....Aye
Reichert ..... Aye
Robinson ....Aye
Roeder.....Aye
Rollins. ..... Aye
Romney ....Aye
Rygg ....Aye
Scanlin ..... .Absent
Schiltz ..... .Absent
Siderius.....Aye
Simon ..... Aye
Skari ....Aye
Sparks.....Aye
Speer ....Aye
Studer ....Aye
Sullivan ....Aye
Swanberg.....Aye
Toole ....Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner.....Aye
Ward ..... Aye
Warden.....Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 2 has been adopted. Section 3.

CLERK HANSON: "Section 3. Assistance." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 3 of the Institutions and Assistance Article, vote Aye; so many as are opposed, vote No on the voting machines. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J. ..... Nay
Anderson, 0..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ....Aye
Ask.....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg.. ....Aye
Berthelson ..... Aye

Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate.. ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Spew.. ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 77 delegates voting Aye, 19 voting No.

PRESIDENT GRAYBILL: Very well, Section 3 is adopted. If you'll turn to page 4, we'll do the article on Public Utilities. Will the clerk read the title of the report and the title of the article,

CLERK HANSON: "Order of Business Number 5, Final Consideration, Style and Drafting, Public Health, Welfare, Labor and Industry, Number 9. Article. Public Utilities, Consumer Council." Mr. President.

PRESIDENT GRAYBILL: Very well, so many as shall be in favor of the consumer council article-or section be-vote Aye on the voting machines; so many as are opposed, vote No.

Mr. Toole.

DELEGATE TOOLE: Mr. President, I rise to explain my vote; Rule 20.

PRESIDENT GRAYBILL: All right. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman. ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Excused
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Excused
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins., ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. President, 67 delegates voting Aye, 28 voting No.

PRESIDENT GRAYBILL: Very well,

that section is adopted. Ladies and gentlemen, we have now finally adopted Bill of Rights, Education and Public Lands, and the Public Health Articles. The Chair has referred them to Style and Drafting for inclusion in the final Constitution.

Mr. Eskildsen, I think we should be in 15 minutes' recess before we get ready to go on General Government. Will you so move?

DELEGATE ESKILDSEN: Mr. President, I move that we stand in recess until 15 minutes to 11:00 this day.

PRESIDENT GRAYBILL: All in favor, vote Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: We're in recess.

(Convention recessed at 10:32 a.m.—reconvened at 11:09 a.m.)

PRESIDENT GRAYBILL: The Convention will be in order. The Convention will be in order. We have now completed the work we had for today on Order of Business Number 5. Order of Business Number 6, Adoption; none. Order of Business Number 7, Motions and Resolutions; I think there are none. Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move the Convention resolve itself into the Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well, the motion is to resolve this Convention into a Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: "March 18th, 1972. The following committee proposal is now on General Orders: General Government." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, we'll proceed to the General Government Article on the Committee-in the Committee of the Whole this morning. That's the gray one, Number 12, on General Government, and you'll want to turn to page 3. Now, before we proceed, Mr. Etchart has some amendments to the committee report.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I think you have the written amendments up there, but I'll—

CHAIRMAN GRAYBILL: Right. Do you want me to read them?

DELEGATE ETCHART: Yeah, if you would, please.

CHAIRMAN GRAYBILL: All right. The first is on Section 1, page 3, line 10 and line 13. Strike the word "departments" and insert therein "branches"; that's on line 10 and on line 13. In other words, on the first article-first section of the General Government Article, it should read, "The powers of the government of the state are divided into three distinct branches", instead of "departments". And then, on line 13, it says, "belongs to one of these branches", instead of "departments". The reason is to avoid confusion—the Executive Reorganization Act, which refers to 20 departments. The second amendment the committee wishes to make is to Section 4, on page 4, line 10. After the word "constitution", put in an asterisk, because we need to add a sentence, which can go at the top or bottom of the page. The sentence is: "The highway revenue provided for in Article blank, Section 6, shall nevertheless be subject to appropriation by initiative." Now, I'll say that slowly: "The highway revenue provided for in Article blank, Section 6, shall nevertheless be subject to appropriation by initiative." That goes on line 10, after the word "constitution"--an asterisk. Then on Section 4-the same Section 4, line 10, the last word is "eight". Strike the word "eight" and put "five". And on line 13, the same thing-strike the word "eight" and put "five". And then you go

to Section 5, on line 25, and strike "eight" and put "five"; and on 27, strike "eight" and put "five", So there are four places; on line 10 you strike the word "eight" and put "five"; line 13 you strike the word "eight" and put "five"; line 25 and line 27, strike the word "eight" and put "five". Now Mr. Etchart, I think we've cleaned it up for you. Very well, will the clerk please read the title and Section 1 of the—

Mr. Etchart, do you wish an opening statement?

DELEGATE ETCHART: No.

CHAIRMAN GRAYBILL: All right. Will the clerk please read the title and Section 1 of the article on General Government.

CLERK HANSON: "Montana Constitutional Convention, 1971.1972. General Government and Constitutional Amendment Committee proposal on General Government, Number 12. Introduced February 19th, 1972; Mark Etchart, Chairman. Be it proposed by the General Government-Constitutional Amendment Committee that there be a new article on General Government to read as follows: 'Article. General Government. Section 1. Separation of powers. The powers of the government of this state are divided into three distinct branches, the Legislative, Executive and Judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these branches shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted'." Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this Committee does rise and report, after having had under consideration General Government Proposal Number 12, Section 1, it recommend the same be adopted. Mr. Chairman, this section, with the exception of the title change from "distribution" to "separation", is identical to Article VI in the present Constitution. The committee feels a statement dividing the powers of government among the three branches of state government is essential to any constitution. The present article has been the crucial factor in determining much litigation and is an invaluable tool for the courts in deciding matters of governmental jurisdiction. A statement dividing the powers of government is designed to act as a check on overly ambitious branches of government. Mr. Chairman, I think that that explanation should be enough, as this separation of powers is well understood and well accepted.

CHAIRMAN GRAYBILL: Mr. Aronow, you have a proposed amendment to Section 1, right? Would you like the clerk to read it?

DELEGATE ARONOW: Yes, please.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, General Government proposal, on page 3, at line 15, by adding the following sentence: 'In the Judicial Department, there shall be a Clerk of the Supreme Court, who shall hold his office for the term of 6 years. He shall be elected by the electors at large of the state.' Signed: Aronow." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: We, earlier, in the Judicial Article, on a motion to delete, without any debate, eliminated the office of Clerk of the Supreme Court from the Constitution. This morning-Oh, and in that process, we eliminated the office in a rather cavalier fashion. There wasn't a word said; there wasn't a bit of debate; there was no discussion. It seemed like a good idea at the moment. This morning we adopted, on third reading, Section 3 of the Bill of Rights, the rights—and this is one of the individual rights-therights of pursuing life's basic necessities. We're not here to play God, to take away a man's livelihood, take away his office; he had a right to rely upon it. We did eliminate one office-that's the State Treasurer-but that treasurer is not able to run to succeed himself, so we did not deprive anyone of the right to make a living or the right to hold a job. We did eliminate the State Auditor, and then we put the State Auditor back in. And we should be consistent, at least. I admit that this probably is not the place in the Constitution where this matter should be handled, but Style and Drafting, I'm sure, can place it in the right article of the Constitution. And for the-and I'm-and I ask you all to have a little charity in your hearts, to be consistent, if that's possiblein this body, and not pull the rug out from any individual. And I ask your support for this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. When I campaigned for this Convention, I campaigned on the principle of a short ballot. I argued and debated, on the several occasions when the opportunity arose, that there was certain offices in

state government that did not participate in the determination of policy, and as a consequence, there was no real justification for their retention as elective offices. Arguments were presented here to the effect that that particular premise had to be countered with the requirement that the people be permitted to exercise their franchise of participating in government and this could truly be exercised only by allowing them to vote for certain offices at the elections held in the state. I balanced that reasoning with my own reasoning that I formulated and adopted prior to coming here, and I think my record will indicate that I accepted that particular premise so that the people could fully participate through the elective process, even though they voted for offices that would not be involved in policymaking. The only office that we eliminated-and the Treasurer's office, of course, is a different consideration, since there was no right to succeed oneself in that-was the office of Clerk of the Supreme Court-a gentleman who has served Montana so well and so ably; has been a friend of all; has never allowed the fact that he had party label to have anything to do with the way in which he greeted people that came into his office to either file documents, file briefs, seek services or seek his advice. He has been a real humanitarian over all the years; and although perhaps this has no real basis for consideration by us, he has taken it as a definite insult on a personal basis; he has felt that this Constitutional Convention has reflected upon him and his service to the state over all these years. And being somewhat fair about it, I think we should all-or would all have to agree there is some basis for his reaction to our action in that fashion. We have left the clerks of the District Courts throughout the 18 judicial districts and throughout the 56 counties on an elective basis; we have left the Montana Supreme Court on an elective basis. And I fail to see what justification there is, then, for taking this one individual office out of the entire judicial system and saying that, for him and for him alone, it shall be appointive. I submit that, as long as we did not go to the short ballot, that we should reconsider our position and adopt the motion that has been made by Delegate Aronow and allow Style and Drafting to make that correction in the judicial article; and I support the motion that's before this body.

CHAIRMAN GRAYBILL: Quite frankly, the Chair is disturbed by this amendment, because it seems to the Chair to be grafting onto the General Government Article in a-a reconsideration. The Chair will take 5 minutes and read the Judicial Article and see what it was we voted on, and if this is the same thing, the Chair is not going to allow reconsideration by this manner. There are other ways to do it, but the Chair is disturbed by this. So we'll be-stand in recess a moment while the Chair reads the Judicial Article.

(Recess)

CHAIRMAN GRAYBILL: The Chair is now ready to rule. The Chair observes that when we debated the Judicial Article, we debated a Section 12, the first four lines of which are identical with the proposed amendment. The second part of the article, that was deleted at that time-part of it dealt with-one sentence dealt with the clerks of the District Court, which there is no proposal to change here; the other part that was deleted at that time dealt with the term, qualifications and compensation of the District Court clerks, so the only part of Section 12 that was deleted that pertained at all-No, I'm wrong about that; Section 11 it was, Clerk of the Supreme Court. The first part was identical with what has been proposed in this amendment; the second part dealt only with the salary and qualifications and duties, to which the amendment here does not speak at all. The Chair is therefore going to rule that the proposed amendment to the General Government Article is identical with something that we deleted by a vote of 57 to 31. The Chair is going to disallow the amendment, at this time, of the General Government Article. You may challenge the ruling of the Chair. The Chair will announce, now, that if the Chair is sustained, the Chair will allow, at some appropriate time, when we finish general government or on recess, a motion to suspend the rules and reconsider whatever we've done in the Judicial Article for that purpose alone, so that the matter may be reached if this body wishes to reach it. But the Chair feels that we should not allow amendments to the other articles which have been reached and where other people have been bat-red by failure to be able to get enough people to suspend the rules or by failure to reconsider or by not being on the prevailing side at the right time. In other words, all these rules that-by which we protect our work should not be easily overturned by grafting onto the General Government Article something we have already decided. Now, that's the Chair's ruling; if you care to challenge it, well, let's challenge it.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. I'll challenge the rule of the Chair and ask for a

vote of the house to allow a vote on the amendment.

CHAIRMAN GRAYBILL: Very well. The Chair will allow Mr. Holland's challenge to the Chair's ruling. We will vote on it in a minute, after you've discussed it if you care to. You will recall that the motion that will be put is to sustain the challenge. So you would vote Yes to sustain Mr. Holland; you would vote No to sustain the Chair. The Chair has a right to explain his ruling. I think I've adequately explained my ruling to you; I won't explain it any more. You may discuss it.

Mr. Mahoney.

DELEGATE MAHONEY: I must rise to state I think the Chair is absolutely right in this ruling that you can't hook onto something, and there is a way-we've been doing always in the past-and beings this is the last article, I think it would be awful if, all of a sudden, we all got to hooking on things that have been in the past. And I am in favor-1 might state that I am in favor of Mr. Aronow's idea, but I think that the proper procedure is the way the Chair has said it.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. I think it's only fair to point out, in answer to Mr. Mahoney, that we haven't always done this this way in the past and that when we considered the Executive Article, we tacked on a provision relating to Legislature audit, and at the time that we did it, we discussed it and it was decided that, even though it belonged in the Legislative Article, that we'd consider it-put it in the Executive Article and then Style and Drafting could put it back in the Legislative Article, where it belonged, later on; and that was, in fact, done. If we do what we're proposed to do here now, we're just doing what we did before and the President has already established for it. I submit that we should go ahead and do this this way.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President. At this late stage of the game, I'm very, very disturbed at your latter statement, where you said that you could bring this matter up for reconsideration possibly later on. Does that mean, then, that after we have worked over these articles and have them in final consideration, that somebody can then amend them again?

CHAIRMAN GRAYBILL: Are you addressing an inquiry from me?

DELEGATE CHAMPOUX: I am addressing that to you, sir.

CHAIRMAN GRAYBILL: The Chair is of the opinion that this body is plenary, and if you want to suspend your rules at any time, you can suspend your rules. Now, whether or not you should is another matter, and I-but I think that the Chair has the right to rule that that should be done at an appropriate time. This is not a motion to suspend the rules. I'm not saying that I favor it or vote for it, but I'm saying that if we wanted to suspend the rules today and redo something, I guess we could. There's really nothing says we can't; we have a rule that says the rules can be suspended. I am merely pointing out there is a way to do it, and I'm not going to let them do it this way if I can help it. When they do it the otherway, those who don't want the rules suspended will have to defend themselves.

DELEGATE CHAMPOUX: May I just make one more comment, sir?

CHAIRMAN GRAYBILL: Yes, Mr. Champoux.

DELEGATE CHAMPOUX: I would caution every delegate in this assembly to be very aware of anything that comes, from now on, in this manner. Just think about everything that comes from now on. Thank you.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I would just like to point out to the delegation that in a one-house body, this is the only opportunity you have to reconsider anything that you've done if you have--until everyone is satisfied that the vote is exactly the way that we take it. Now, on the close votes, there's nothing wrong in reconsidering to see what we've-see if we've really done what we intended to do. If we had a two-body assembly, where it went back and forth, it's a little different; but with one body, this is the only opportunity we have-and that's in reconsideration. However, I do support the President in what he has said up there right now; this is not the right place to do it. But, later on, when the time is right, I'll support that move to reconsider, to suspend the rules, because it's only right that we give everybody a-one last chance to take a look at anything we do.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, Does anyone have the vote on that-from Mr. Eskildsen's-was it a close vote?

CHAIRMAN GRAYBILL: I announced it a few minutes ago as 58 to something-you mean the vote on this issue before? The vote to delete Section 11 as 57 to 31.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I would just like to caution the delegates that if we do not sustain the ruling of the Chair, then under this General Government, everyone here who has any dissatisfaction with any article can merely make an amendment, we'll have to debate every one of them. And the only proper way is to reconsider or suspend the rules.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Holland's motion challenging the decision of the Chair to disallow Mr. Aronow's amendment. The proper form is-of the question is: Does the house-or does the body sustain the challenge? That means, if you vote Aye-on a roll call vote, if you vote Aye, you're voting for Mr. Holland; if you vote Nay, you're voting to sustain the Chair.

Mrs. Pemberton, for what purpose do you rise?

DELEGATE PEMBERTON: I would just like to ask one question. I'm sorry to have it brought up right at this instant, but what-for the uninitiated in these affairs, what does final draft mean, then?

CHAIRMAN GRAYBILL: Final approval?

DELEGATE PEMBERTON: Yes, final approval-which we-1 thought that was the very end.

CHAIRMAN GRAYBILL: It is, except this body has the power to suspend its rules, Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you.

CHAIRMAN GRAYBILL: And when we adjourn sine die, that's the only thing we can't undo, then we're done. (Laughter) We're done as far as the constitutional drafting is concerned; we're not done as far as spending the money, but we're done considering the articles when we adjourn sine die.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I assume that under the rules as you announced them, if Mr. Holland's motion is defeated, we still have recourse to the right to suspend the rules and proceed?

CHAIRMAN GRAYBILL: Yes, I announced that I would allow, at some appropriate time, that remedy to be attempted. I don't want to tell you, but somebody's got to decide whether you can do this or a lot of people might be working over the noon hour. All right, is there any other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. The motion will be a roll call vote on whether or not to sustain the challenge of the Chair. If you vote Aye, you're sustaining the challenge; if you vote No, you're sustaining the Chair. I asked for the roll call, do I have any seconds?

(Affirmative response)

CHAIRMAN GRAYBILL: Okay, has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim Aye
Anderson, J. Aye
Anderson, O. Nay
Arbanas Nay
Arness Aye
Aronow Aye
Artz Aye
Ask Nay
Babcock Nay
Barnard Nay
Bates Nay
Belcher Nay
Berg Nay
Berthelson Nay
Blaylock Nay
Blend Nay
Bowman Nay

Brazier	Nay
Brown..	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Absent
Campbell	Absent
Cate..	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross..	Nay
Dahood	Nay
Davis	Nay
Delaney	Excused
Driscoll	Aye
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Excused
Foster	Nay
Furlong.	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper.	Nay
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Absent
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe..	Nay
Murray..	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins.	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius.	Nay
Simon	Nay
Skari	Nay
Sparks.	Nay
Speer	Nay
Studer	Nay
Sullivan	Aye
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 16 delegates voting Aye, 79 voting No.

CHAIRMAN GRAYBILL: 16 delegates having voted Aye and 79, No, the challenge is not sustained and Mr. Aronow's motion is wiped out. Is there other discussion of Section 1?

Mr. Kelleher.

DELEGATE KELLEHER: I don't like Section 1 because I feel that the Legislature is primus inter pares or, even more than that, that the Legislature is supreme, over the Executive and over the Judicial; but I am not going to make any amendments.

CHAIRMAN GRAYBILL: Is there other discussion of Section 1?

(No response)

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you for your consideration, upon a motion of Mr. Etchart that when this Committee does arise and report, after having had under consideration Section 1 of the General Government Article on general government, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, would you read Section 2.

CLERK HANSON: "Section 2. Continuity of government. The seat of government shall be in Helena except during periods of emergency resulting from disasters or enemy attack. The Legislative Assembly may enact laws to insure the continuity of governmental operations during a period of emergency. Such laws may deviate from other provisions of the Montana Constitution conflicting therewith but shall be effective only during the period of emergency that affects a particular office of the governmental operation." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this Committee does rise and report, after having had under consideration General Government Proposal Number 12, Section 2, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. This section would revise the provisions in Article X, Sections 2, 3 and 4, of the present Constitution relating to the seat of government and Article V, Section 46, relating to continuity of government. The proposed section is sufficient to allow the Legislature to enact laws to provide for continuity of government under any situation which may arise.

CHAIRMAN GRAYBILL: Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. You have before you, on Mr. Etchart's motion, Section 2. All in favor of Section 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And it's adopted. Will the clerk read Section 3?

CLERK HANSON: "Section 3. Oath of office. Members of the Legislative Assembly and all officers, executive, administerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath of affirmation, to-wit: 'I do solemnly swear or affirm that I will support, protect and defend the Constitution of the United States and the Constitution of the State of Montana and that I will discharge the duties of my office with fidelity; so help me God.' And no other oath, declaration or test shall be required as a qualification for any office or public trust." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this Committee does rise and report, after having had under consideration General Government Proposal Number 12, Section 3, it recommend the same be adopted. Mr. Chairman, this section on the oath is a shortened version of the oath presently contained in Article XIX, Section 1, of the present Constitution. This oath contains the intent of the present Constitution's oath, but without the extensive detail. The proposed oath also allows a person of any religious persuasion, including an atheist or agnostic, to take the oath without violating his principles. The provision also prohibits any other oath as a qualification for any state public office.

CHAIRMAN GRAYBILL: Very well, is there discussion of Section 3 and the oath?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Etchart that when this committee does arise and report, after having had under consideration Section 3, that we recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 3 is adopted. Will the clerk read Section 4.

CLERK HANSON: "Section 4. Initiative. The people may enact laws by initiative in all matters except appropriations of money and local or special laws prohibited by this Constitution. The highway revenue provided for in Article blank, Section 6, shall nevertheless be subject, to appro-

priation by initiative. Initiative petitions must be signed by 5 percent or more of the legal voters in each of one-third or more of the legislative representative districts, and the total number of signers must be 5 percent or more of the total legal voters of the state. Each petition must contain the full text of the proposed measure. Petitions must be filed with the Secretary of State 4 months or more prior to the election at which they will be voted upon. The enacting clause of all initiative measures shall be: 'Be it enacted by the people of the State of Montana'." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 12, Section 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: This is the provision for statutory initiative agreed on by the General Government and the Legislative Committees, jointly. The General Government Committee feels the petition requirements of 5 percent in each of one-third or more of the legislative representative districts and 5 percent or more of the total legal voters of the state are high enough to prevent frivolous legislative efforts by a small minority, yet low enough to allow serious popular measures to be initiated by the people. Incidentally, the 5 percent is 3 percent lower than the present Constitution allows for.

CHAIRMAN GRAYBILL: Very well. Mr. Loendorf, you have an amendment up here. Would you like the clerk to read it?

DELEGATE LOENDORF: Please, Mr. Chairman.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4, page 4, lines 18, 19 and 20, of the General Government Committee proposal Number 12 by deleting the following words: 'The enacting clause of all initiative measures shall be: Be it enacted by the people of the State of Montana.' Signed: Loendorf." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. The purpose of this amendment is to simply remove from the Constitution a provision which may prevent laws being declared void on a technical basis. This provision has nothing to do with the substance of anything. And let me explain by an analogy which, I think, illustrates the point, although it's perhaps not a fair analogy. Supposing this required-the Constitution required that initiatives be written out on yellow paper and someone drafted one on white paper and the court declared it void. That's exactly what has happened in the past under this-a similar provision. We also had under the Legislative Article a clause for bills, which is the same, only it read: "Be it enacted by the Legislative Assembly of the State of Montana." An old 1937 law was declared void on this basis when the Legislature inadvertently used the enacting clause: "Be it enacted by the people of the State of Montana" instead of "Be it enacted by the Legislative Assembly of the State of Montana." Neither of these phrases had anything to do with the law passed, yet the law was declared void because the Constitution required this phrase be a part of the bill. I was a member of the joint committee that met on this as a member of the Legislative subcommittee, and I'm sorry—and I would like to share the blame-for not having taken this sentence out earlier and having to bring it before the body now. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: The General Government Committee is all in favor of this amendment.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. The issue before us, then, is Mr. Loendorf's amendment to strike lines 18 through 20—most of those lines-the sentence being: "The enacting clause of all initiative measures shall be: 'Be it enacted by the people of the State of Montana.'"

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, might--would the gentleman, Mr. Etchart, yield to a question?

CHAIRMAN GRAYBILL: Mr. Etchart?

DELEGATE ETCHART: Yes

DELEGATE MAHONEY: Why did you continue to use the 4 months for this time, instead of going down to-with all our modern com-

munications and everything we have?

CHAIRMAN GRAYBILL: Now, just a minute, Mr. Mahoney; you're off the subject, aren't you? The subject is whether or not to eliminate—

DELEGATE MAHONEY: Oh-oh-I-I beg your pardon.

CHAIRMAN GRAYBILL: I haven't quite put that question to a vote yet; I was trying to. All right, now, everyone understands Mr. Loendorf wants to strike that "be it enacted" language. All in favor of Mr. Loendorf s amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, say NO.

(No response)

CHAIRMAN GRAYBILL: It carries, and the language will be stricken.

Now, Mr. Mahoney.

DELEGATE MAHONEY: Now, might I renew my question to Mr. Etchart?

DELEGATE ETCHART: Yes. Well, we thought the 4 months would give people enough time to consider it, even with our better communications.

DELEGATE MAHONEY: Can you--with all we have now-say these people-1 mean-this would mean July, this has to be in. I was wondering, did you ever give any thought to 60 days or something like that? I think we're going to try and get away from elections fooling around too long, having this long time between primaries. I'm wondering, if we don't defeat some things or get some things too long, that the people lose interest in them. Did you ever give any thought to that?

DELEGATE ETCHART: Well, the committee discussed it briefly, Mr. Mahoney, but didn't feel that there was any real advantage to shortening it up more than 4 months. We thought that it would be beneficial to have enough time for all the people to study it out.

DELEGATE MAHONEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I'm looking for the line-all I want to do, if I can find the right line-it's in line 16—and I would like to strike that from "four months" to "two months". I move it, Mr. Chairman, if I can without a written amendment. I couldn't get it up there later-It's only one word.

CHAIRMAN GRAYBILL: We'll allow your amendment, Mr. Mahoney. Mr. Mahoney wishes to amend line 16 by taking out the word "four" and putting in the word "two", so that it means that the petitions must be filed with the Secretary of State 2 months or more prior to the election. Mr. Mahoney, you through?

DELEGATE MAHONEY: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, as I have done so often in the past during this convention, I heartily endorse Mr. Mahoney's amendment.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I resist the motion to change this to 2 months. There are certain work to be done by the Secretary of State; things have to go out to the clerks-clerk and recorders office in connection with these matters, and I think that 2 months is just a little bit too short. I don't believe it hurts the people of the State of Montana to have something on their agenda for 4 months. Initiated measures are an unusual way of passing legislation. Preferably legislation should be passed by the Legislature, where it can be discussed, debated and all the changes that are made that are been made by this convention, to make good legislation. Initiative measures, by and large, in my opinion, are the result of a small group who get together, they come up with an idea, they don't discuss the thing properly, but they-as far as wordage is concerned—but they decide they want something done; so they put the measure on the ballot and away they go. And I think it will be well for the people of the State of Montana to have 4 months to deliberate on it; and I resist the amendment.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. President, I resist the amendment, and I think we should make clear that what we're saying here is that the petitions must be filed with the Secretary of State within 4 months, and not when they go out to the voter. It might be that the 4 months-that

gets the Secretary of State's office busy at getting these things printed up and sent out to the voters, and they should have, I think, at least 50 or 60 days to study these things. If these petitions were filed with the Secretary of State only 60 days before the election, the voters might have only 20 or 30 days to look over. So I think that if you want them to have 60 days to look it over, they should—the petition should be given to the Secretary of State about 4 months before the election.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, in answer to that, this Constitution isn't going to have very long out here, not 4 months or any time like that. It's just kind of getting in line with the Constitution. I believe we got about 30, 40 days after it gets down there-it's going to be 60 days, we have to be 60 days in there; so I think we're just kind of getting along with the way we're operating the Constitution.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, there is one other point that maybe Mr. Mahoney hadn't considered. In our referendum and initiative thing in the other article, we provide that the Secretary of State shall certify these petitions. Now, in order for him to do that, he's got to have the County Clerks-if this is a statewide petition, they have to be checked in the counties, and that's going to take a little time. If the petition is filed with him and he has to have it back to the people on the ballot within 60 days, it might not have time enough to go back to the counties for the County Clerks to certify the petitions within their respective counties. So I think that it takes, maybe, a little more than 60 days, and I believe the 4-month period would suffice.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Correction to what Mr. Choate said. If you are getting an initiative signed, they go through and are certified in all the counties first, and then only do they go to the Secretary of State's office. This is one of the big messes about getting an initiative petition. A person getting an initiative signed can get them all in to the county clerk, and then if the county clerk for some reason holds them up and doesn't get them in to the Secretary of State's office by the deadline, you're dead. So, after this date of getting them in to the Secretary of State's office, they do not then have to be checked by the County Clerks any more.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Mahoney's motion to change the word "four"-F-O-U-R-to the word "two" on line 16, so that you only have to have these petitions in to the Secretary of State 2 months before the election. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it.

Mr. Joyce, you have an amendment before the Chair, do you want us to read it?

DELEGATE JOYCE: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4 by adding a new sentence on line 28, page 9, to read as follows: 'The sufficiency of the initiative petitions—

CHAIRMAN GRAYBILL: -shall not be question—

CLERK HANSON: -shall not be questioned once the election is held.' Signed: Joyce."

CHAIRMAN GRAYBILL: Very well. He wants to add-Mr. Joyce wants to add a sentence, at the end of Section 4, to say: "The sufficiency of the petitions shall not be questioned once the election is held." Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I propose to add this sentence just to make perfectly clear-I--when I was a young lawyer and knew everything, much more than I do now, I had the privilege of being an assistant attorney general and had the privilege of arguing in the Supreme Court of Montana the veterans' bonus initiative, and one of the challenges that was made in that case, after the election was held and after it passed overwhelmingly, was that the petitions that had been circulated in the various counties were insufficient, that some of the names were forgeries, and that sort of thing. And the argument was made, quite seriously, that, since the Constitution required that these petitions be signed by the sufficient number in each county-and we had the dilemma, then, of going back and trying to prove whether or not some of them were forgeries. We argued to the Supreme Court that once the election

was held, it couldn't be challenged, but notwithstanding, the attorney on the other side kept needling us that the Constitution was mandatory. And so, I just thought that perhaps this little sentence wouldn't do any harm to--would make it perfectly clear in the future that once the election is held, why, you can't challenge the sufficiency of the petitions.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I rise in support of Mr. Joyce's amendment. I had personal experience with such an election where the petition was disqualified for strange reasons: because a physician put the word "Doctor" in front of his name, or a lady put "Mrs." in front of her name. We won in the Supreme Court, but I think this sort of thing would definitely need a remedy in this Constitution.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Joyce's amendment, which would add, at line 18 on page 4, a sentence which would say: "The sufficiency of the initiative petition shall not be questioned once the election is held." So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Is there other discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I move to amend, on page 4, line 16, the last word, "four", by deleting it and adding the word "three".

CHAIRMAN GRAYBILL: Very well. Mr. Foster has an amendment, similar to Mr. Mahoney's amendment, changing it from "four" to "three" instead of "four" to "two", so that everybody understands it.

Mr. Foster.

DELEGATE FOSTER: I think that the remarks that Delegate Mahoney made were very well put, and I also felt that some of the remarks of those who felt that 2 months was not quite sufficient time could be satisfied by making it 3 months. This is obviously a compromise between the two positions, and I thinkitwould improve the section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Etchart yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Etchart?

DELEGATE ETCHART: I yield.

DELEGATE ROBINSON: Mark, in the—your first General Government Article that we dealt with, on constitutional initiatives for calling a constitutional convention, you didn't mention any time limit in terms of when the petitions had to be filed. And I was wondering what your reasoning was in terms of why, now, you should put this in and not before in the other article.

DELEGATE ETCHART: Well, this is in the present Constitution, and we felt it has been well tested through the courts. And the-I think both the Legislative and-the Legislative Committee and our committee felt that there was some value in retaining a lot of the language from the present Constitution. So, I think that was the main reason we left it in.

DELEGATE ROBINSON: Mr. President. Will you yield to one more question?

DELEGATE ETCHART: I yield.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ROBINSON: I-I see that point, but when I compare these two articles, there just doesn't seem to be much consistency in terms of either procedure for initiative-and, of course, the numbers and percentages in the districts vary a great deal, too-, but it just seems that if you are going to write a time limit in on one initiative procedure, it should perhaps be written into the other, or I think, as we've kind of indicated just on the discussion that maybe 4 months is too much, 2 months is not enough, that this might be something better left to the Legislature to determine.

DELEGATE ETCHART: Well, I-Miss Robinson, in our-thinking of the committee is that the initiative on constitutional amendment would be used very, very rarely, so we didn't go into quite as much detail with it. Also, if you will notice, we require 10 percent of the voters on the constitutional provision and we only require 5 percent of the voters on our initiative in this section; and the reason for that was to make it easier to amend the statutes than it is to amend the Consti-

tution. So we feel that it will be a very rare occasion that the initiative will be used in constitutional revision and amendment; but this provision to amend the statutes probably will be used a— quite a bit.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Foster's amendment?

DELEGATE FOSTER: Could we have a roll call?

CHAIRMAN GRAYBILL: Mr. Foster wants a roll call vote. All in favor of Mr. Foster's amendment, which is to change "four" to "three", vote Aye on the voting machines; and all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, 0 ..... Nay
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Absent
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Absent
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins., ... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye

Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Absent
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 63 delegates voting Aye, 29 voting No.

CHAIRMAN GRAYBILL: 63 having voted Aye and 29 voting No, the amendment prevails and on line 16, you should amend the word "four" to "three".

Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I have something of a little more substantive nature here, I feel, and I think it ought to be brought up. This morning-first, I'll make-propose an amendment: it's very simple. It would simply delete the section that was added by voice after the asterisk in line 10 this morning--after the word "situation", in Section 4. Those words are "The highway revenue provided for in Article blank, Section 6, shall nevertheless be subject to appropriation by initiative." My amendment is to delete that, to restore the article to what it was before that addition was made. And I will give you my line of reasoning and not argue the point, then. Just-I think the body ought to be aware of what this will do. Mr. Etchart, Chairman of the committee, was perfectly correct when he pointed out that differences in the amendment to the Constitution by initiative procedure and in the amendment to statute initiative section we are now dealing with, Section 4. It takes 10 percent of the voters to get an initiative on the ballot to amend the Constitution; this section calls for 5 percent to get an initiative on the ballot to change a law. Now, put that one fact together with this fact: the first sentence of Section 4-the present Section 4 on initiative: "The people may enact laws by initiative on all matters except appropriations of money" and so forth. Now, then, our Legislative Committee at first was dealing with this matter before it was passed to General Government. We talked at length on this. We were very much in favor of the initiative and the referendum; completely in favor of it. We also came out, I think unanimously, in favor of making an exception in terms of appropriations. Now, for example, when the public starts making appropriations or starts cancelling appropriations that have been made and appropriations of funds on which agencies have already budgeted and so forth, you get into a really ticklish area. And so, while we were all for keeping everything open to the public in terms of initiative referendum, we were leery at that point, and so we supported wholeheartedly the General Government's approach to this matter of leaving appropriations out of this. Now, then, put those two things together. What one appropriation mentioned in the Constitution will now be eligible for removal by initiative initiated by only 5 percent of the people? You guessed it-the highway antidiversion measure-or however you want to title it. I feel that this inclusion is no accident. And I simply wanted to call it to the attention of the floor before it went through just as part. and parcel of this thing, which we have not had on our desks, you see, to look at as we have had the rest of it. And I think we just simply ought to know that we're making an exception for this one thing for a very specific purpose, contrary to the general rule in the first sentence of Section 4 and, of course, in a much weaker fashion, allowing an amendment of the Constitution on this one point for 5 percent instead of 10 percent as the original article called for.

CHAIRMAN GRAYBILL: Very well. The Chair will allow Mr. Harper an amendment, the purpose of which is to delete the material that was added by the committee before it presented this report, about the highway revenue provided for in Article blank, Section 6, "shall nevertheless be subject to appropriation by initiative". And it is now open for discussion.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I don't believe the addition to this Section 4, as made by the General Government Committee, was made because of any general disagreement with the principles which Mr. Harper discussed. However, this convention voted, in passing the Revenue and Finance measure, the following provision, which is Section 2, subsection 2, of Section 6: "Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the Legislature or by initiated measure approved by a majority of the qualified electors." This body, by a majority vote, has said in

that specific section that that particular thing could be initiated; and it's a matter of trying to eliminate a conflict between the initiative section which we have proposed and subsection 2 of Section 6, which this body has adopted, that that was added for. We would be very happy, I think, if they would strike out the initiated measure in subsection 2 of Section 6, but there's got to be some correlation between the two.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman and members of the committee. Some time ago, when we were debating the highway matter, Mr. Etchart came to me asking if we could take care of this conflict in Style and Drafting, and at that time I told him I thought it would need some kind of an amendment, either to the revenue and finance Section 6 article or to this one, and we decided that this would be the place to take care of it. I have no substantive interest in it, except that it would have been a substantive matter if it had come out of Style and Drafting with that amendment in there, because we wouldn't be entitled to make that amendment. So we thought the easiest way was to put this language in at this point so that the substantive material could be handled by the Committee of the Whole and then Style and Drafting would have no problems. There is definitely a conflict. If you read that section and keep in mind that Section 6 of the highway-of the revenue and finance provision allows just exactly what this prohibits-so there must be something done somewhere to remove that conflict.

CHAIRMAN GRAYBILL: For the benefit of the body, in case you don't have your Revenue and Finance Style and Drafting final adopted Section 6 before you, I'll read you subsection 2 of Section 6: "Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the Legislature or by initiated measure approved by a majority of the qualified electors." As I understand the situation-I'm not trying to argue it-the point is that that is a specific direction in Section 6 of Revenue and Finance that this money may be reached by initiation-I mean by initiative; we're now, in general government, setting up initiative; and ordinarily you can't appropriate by initiative, so there had to be an exception in the appropriation-in the General Government Article that denied the public the right to appropriate by initiative, and this is it. Now, let's discuss it.

Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Harper yield to a few questions, please, sir?

DELEGATE HARPER: Yes.

DELEGATE CHAMPOUX: Mr. Harper, is your point that it is now easier, under this new section, with the 5 percent added, to, so to speak, get at this money by initiative? Is thatyourpoint?

DELEGATE HARPER: Mr. Champoux, that's exactly the point. At the time the Revenue and Finance Article was written and this reference which the Chairman just read, amendment by initiative, we had then passed in this body the amendment by initiative, Section 9, of their style-General Government report Number 2, which tells you how you, by initiative, may change the Constitution. And now we are coming back later, after that, with 10 percent in mind, and we voted for that with-this was on the books, in a sense-and now we're moving at 5 percent. I'm not really that hot on it; I just want to be understood that we're substantively changing this and we're, of course, doing it for this one measure and one measure only.

DELEGATE CHAMPOUX: Is it your feeling, then, that we should increase this; is this your point OF not?

DELEGATE HARPER: Actually, I think --now I realize the boys-we're in a bind in terms of Style and Drafting and the rest of it-but it's something like we were talking to on Mr. Aronow's motion, although not completely. Really, if they want to make an exception to the way you amend the Constitution, it should have been put into—somewhere into Section 9 of their report Number 2, because Section 4 of the present report we are dealing with, initiative is talking about changing legislative matters; it is not talking about changing the Constitution. I don't want to belabor this point again, but I think it is a way of just cutting it in half, making it twice as easy to get the job done.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I would like to state that I don't know whether Mr. Harper is in error intentionally or just misstated himself, but this initiative does not have to do with amending the Constitution; this is legislative initiative. The initiative for amending the Constitution still requires 10 percent.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: He just told me that; he didn't ask me that. But if Imayrespond to it, well, then, I am-if I'm mistaken, it certainly is just because of my dumbness, and I'd like to clear it up. I thought this business we passed about the diversion money was going to be in the Constitution. See, I thought the Revenue and Finance Article was in-going to be in the Constitution; that's where I slipped up. Now if it is going to be in the Constitution, it seems to me like the only way to amend that is to amend the Constitution. That was my line of reasoning, Otto. Not true?

DELEGATE HABEDANK: No

DELEGATE HARPER: Well—

CHAIRMAN GRAYBILL: Mrs. Babcock, I will come to you; but Mrs. Robinson has been up.

DELEGATE ROBINSON: I merely wanted to point out I think Reverend Harper is exactly right. There's another thing that's been overlooked. Not only are there differences between these two procedures in terms of percentage-10 percent for a constitutional amendment and 5 percent for legislative enactment-but it's also in terms of the number of districts that this petition signatures have to be spread over. In the constitutional amendment, they have to be obtained in two-fifths of the legislative districts, and to amend--or to enact legislation by initiative, they only have to be in one-third. And when you are talking about a 5-percent variance in terms of actual population, and then also a 7-percent variance in terms of distribution of petition signatures, you're talking about some real substantial differences.

CHAIRMAN GRAYBILL: Mr. Choate

DELEGATE CHOATE: Mr. Chairman, I just might say that, for the edification of the people here, that in our committee we had no intention of trying to change this thing or put in something later. That is not the point of it. You see, our first article came out long before the revenue and finance article came out, and we had no way of knowing what that would have been; otherwise, we would have probably provided this in that report. And I'd say that if it could still be done, it probably would be more in order to revert it back to that one and leave it at 10 percent than as is presently provided for here. But that's the reason why it came out this way. Our report was out 2 weeks before the-or a week, at least, before the revenue and finance was; we had no knowledge of it.

CHAIRMAN GRAYBILL: Mrs. Babcock,

DELEGATE BABCOCK: Mr. Chairman, I was just going to ask Reverend Harper a question. I wondered if he was planning on building a canoe this summer; seeing as how he doesn't approve of highways, maybe he could travel by boat.

DELEGATE HARPER: The answer is "No, I'm not planning on building a canoe."

CHAIRMAN GRAYBILL: How about an ark? (Laughter)

DELEGATE HARPER: Well, if the deluge continues, I might have to, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I wish to apologize to the body for not noticing in-when it came out in Revenue and Taxation-or I'd have certainly been on my feet-that we were going to let electors appropriate and change this formula by initiative. I had thought that-and I hadn't read it, and I'm going to blame myself-I went to Mr. Schiltz later, and we discussed this this morning, and I didn't know that the electors was going to have any part of appropriation at all. And I think this is-Now, we have made a mistake; I think we have made a mistake in this body; and I think right now we could correct it by eliminating this and say, "You just can't do it over another section; let Style and Drafting determine that this is what the body wanted." And I think we have plenty of time here to do that at this time and leave this part where it says, "except appropriations". And I think this should be done and this is the time to do it. This is one of the problems that we're going to have in the future with-when the unicameral system gets in-and we're going to have to admit them and make mistakes and clean them up as we go along, Mr. President. And I think it would be well if we just amended that out and let Style and Drafting correct on the end and says, "There's no appropriation by anybody"; then this can't be done. If you go out here to the point of letting me come out here to get the gas, then, immediately you're going to find-we're going to be in a terrible shape. And I think we should draw back—admit our error, correct our mistake, right now. Now, I don't know if this is right or that we can do it, Mr. Chairman, and it'll take, probably, a ruling from the Chair. But I think we could go out and then let Style and Drafting correct it.

CHAIRMAN GRAYBILL: Mr. Harlow, you were up next.

DELEGATE HARLOW: Mr. Chairman. In order to clear up this confusion in regards to the initiative for amending the Constitution and the initiative for enacting laws or-there are two different requirements between amending the Constitution and enacting laws. We have no variation of thinking nor variation of initiative measures when we set up two different qualifications for amending the Constitution by initiative and for enacting laws by initiative. You cannot amend the Constitution through legislative action less than two-thirds of a total vote of the members; you can enact laws merely by a majority of those voting—so I do not think you need to be alarmed over the variation in these two things. Now, I think we do need to be alarmed by the sentencethatwasputin at the committee. And I was not present at the committee; I was away on Constitution--on Convention business and was unable to attend the meeting, so I'm not necessarily opposing the committee, but I am not-this is going to be real good, you'll get a laugh out of this-I'm not opposing the committee, but I don't think that's a good sentence to put in. So I think, keeping this thought in mind about the initiative for the amending the Constitution and initiative for laws, they should not be compatible. They should be different, as they are now. So let's just keep our minds on this section and not try to bring in the section on amending the Constitution by initiative. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of the motion to delete. And I think that maybe we could clear the whole matter up if somehow or other we could amend the tax and revenue section to say that the-somehow to read that the Legislature-such revenue may be appropriated for other purposes by three-fifths vote of the members of each house of the Legislature or by an initiated measure authorizing such appropriation. Because, as I recall, I think that must have been obviously the purpose-the intent of the committee, because it just never has been the situation of allowing people to appropriate money out of the public treasury by initiative in any constitution, because there may not be the money in there or they may appropriate more money than there is in there. And that just can't be, and I think that, obviously, the committee must have meant a-if the people got up an initiative authorizing the Legislature to divert it, that would be the same as a three-fifth vote. So I rise in support of the deletion in any event; let's not make the matter worse.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, if I recall correctly, the intent of the Committee of the Whole when we discussed this measure under Revenue and Finance-was to make the Highway Department more responsible to the Legislature. If this sentence changes that intent, then I think we should delete it.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Here's where we have to be cautious. Now, there's no mistake, Charley Mahoney, on the antidiversion amendment. That's been passed twice here. The intent of this committee-the intent of the committee can be questioned in terms of the percentage; 1'11 submit to that. But the general intent of this body has been known twice on that vote. Now, the question here is not one of appropriations, as I see it; not one of appropriations. That's already been settled—twice-when we passed that antidiversion amendment. The question here is the percentage of voters to be allowed to petition for an initiative appropriation which we allowed under the section that we passed under Revenue and Finance. Now, Charley is trying to give the Style and Drafting, as I see it, a substantial change that we've already voted on that would open up the Finance and Revenue Article again; and I'm opposed to it. Now, the Reverend Harper is right; this is a deluge to becloud the issue. The issue is the percentage we want to initiate a petition for appropriations.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I discussed this with my committee Chairman, and we would like to make it clear that our committee didn't put this in because we were for it. I'm violently opposed to appropriation by initiative; and I was-like Charley, I didn't know it was in that diversion fund. So we just wanted-The reason we put this amendment in was to bring it to the floor's attention that there was a conflict. I think, through-Mr. Schiltz brought it to the Chairman's attention. And I'm like Mr. Mahoney, possibly we'll have to suspend the rules; I don't think *Style* and Drafting can do it; but if you don't want appropriation by initiative, then I think what you're going to have to do is suspend the rules, delete that

from the antidiversion bill and then delete this. But if you want initiative-appropriation by initiative, then you're going to have to leave this in; and that's the decision this body's got to make-is what you want to do with that antidiversion measure.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I think perhaps we're getting away from the purpose of the section that we approved in Revenue and Finance, and perhaps when I'm finished, somebody from Revenue and Finance can either agree or disagree with my analysis. Now, I frankly don't see any conflict. I don't think we need the section that is proposed by General Government, because I think when you construe sections, they've got to be placed together and you've got to construe them in pari materia, which is a recognized rule of legal construction to come out with the sense of what's intended. And I think what was intended, as I understood Revenue and Finance when I voted on it-it was simply this: that with respect to only one fund-that is, the highway revenue fund and no other-the people would have a right to divert part of that fund by placing the matter on the ballot and a majority of the electors approving it. I agree with Delegate Mahoney, we cannot have anything done by way of initiative or by any other means that would tend to affect the budget considerations of the Legislature. I don't think we are doing that in Revenue and Finance. I think we're saying that only in that one particular instance may the electors, in that fashion, indicate they want part of that fund diverted. That, in my judgment, would not in any way upset the budget considerations of the Legislature. And I would like to have Revenue and Finance tell me whether or not that analysis is correct.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, of course, we're getting into a legal area. What I would like to suggest-if it's in order, I would like to suggest that we pass this Section 4 until, say 2:00 p.m. this day and that, personally, I think it would be all right to take this initiative part out of our Section 6, but I would like to have the opportunity to meet with our committee and see if they would agree on that. And that would be my reason for asking this: to give us a little time during the noon hour and maybe thresh this out and save some discussion on the floor. So I would move that we pass this Section 4 until 2:00 p.m. this day, if that hour is in thinking with yours.

CHAIRMAN GRAYBILL: Mr. Rygg has a motion to pass Section 4, substitution motion for Mr. Harper's motion to delete. Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of passing Section 4 until 2:00 p.m.-it has to be till 2:00 p.m.-it has to be till a time certain under the rules--all in favor of passing Section 4 till 2:00 p.m., say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's passed.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole stand in recess until 1:30 this afternoon.

CHAIRMAN GRAYBILL: The motion is to recess the Committee of the Whole until 1:30. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Just a moment-just a moment-Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Garlington, do you have an announcement?

DELEGATE GARLINGTON: Mr. Chairman, I would like to ask the members of the Ceremony Committee to meet in Room 431 up here for a brief meeting immediately upon adjournment.

CHAIRMAN GRAYBILL: Upon adjournment, the Rules-the Ceremonies Committeemeet upstairs. Very well, the motion to recess has passed. We're in—

Mr. Rygg, do you want a motion-do you want the Revenue and Finance in-?

DELEGATE RYGG: Room 437, immediately on recess, please.

CHAIRMAN GRAYBILL: -437. Which one is that?-Is that education-I mean, is that Local Government?

DELEGATE RYGG: Yes, Local Government.

CHAIRMAN GRAYBILL: That's Local Government. Very well. All in-you've all voted to recess, and we are recessed.

(Convention recessed at 12:30 p.m.—reconvened at 1:50 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. The Committee will be in order. Very well, members ofthecommittee, beforelunch we were considering Section 4. We moved to pass Section 4 until 2:00 p.m. It isn't quite 2:00 p.m., but it's nearly 2:00 p.m. Perhaps we can start the discussion there so that we don't have to go on to something that we're not all thinking about. The Revenue and Finance Committee has met during the lunch hour, and I understand that Mr. Rygg wishes to be recognized.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I'd like to speak on a point of personal privilege, if I may. Our committee, of course, met because we had to clear up what our actual reasoning or thinking was behind the wording in there--and sometimes what you think and what the words are don't agree-but we have come to the conclusion that we are in support of Mr. Harper's motion to delete, and we feel that if we can, probably like Mr. Dahood did this morning, read into the record our thinking on our terminology, that actually the two sections can stand as they are without conflict. Originally it was not the committee's thinking that the initiative of the people was to provide for the appropriating of funds or revenues, but our idea was that if a three-fifths vote of the Legislature could not be had, then the people would have the right by initiative to direct the Legislature to use these dedicated funds for other purposes. That really is the thinking of the committee when they wrote the article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Rygg, you'll have those comments sent to the journal and they'll be entered in the journal. Now, with that understanding, apparently it's the-as the Chair understands that, it's the sense of the Revenue and Finance Committee that they want their language left alone but that they did not mean to grant the power of appropriation to the people but only the power for the people to authorize the Legislature to appropriate. With that comment added to their committee report, we are now debating Mr. Harper's motion that the material added by the committee, when they be-when they presented their proposal today, to Section 4—namely, that the highway revenue provided for in Article blank, Section 6, shall be-nevertheless be subject to appropriation by initiative-they are suggesting that be deleted. Now, the issue is on Mr. Harper's motion to delete that language which was added to the General Government's Section 4. Is there other discussion?

Mr. Champoux.

DELEGATE CHAMPOUX: Mr. Chairman, fellow delegates, there is a point of contention in my mind. Now, if I can resolve this, I will vote for deletion; but if I can't, I will vote against deletion. Now, here's the problem, as I see it. If you look at the Revenue and Finance Article, Section 6, sub. 2, it says "such revenue may be"-now, notice the words, "may be-appropriated for other purposes by a three-fourths vote of the house of each members-three-fifths vote of the members of each house of the Legislature or by initiated measure--approved by a majority of the qualified electors". Now, the key words there, it seems to me, are "may be" and "by initiated measure approved by a majority of the qualified electors". Now, that section, to me as I read it, gives the right. Okay, now, if you go to the general education-the General Government, Section 4, it says: "The people may enact laws by initiative on all matters except"-now, again, there's the key word-"appropriations of money and local or special laws prohibited by this Constitution." Now, it seems to me that on the one hand we are given the right; and in this section, it's taken away from us. If you put the amendment in, then it comes in agreement when it says, "The highway revenue provided for in Section 6, sub. 2, nevertheless shall be subject to appropriation by initiative." Now, what happens if you take this out? Well, then, both of these sections, as I see it, are in conflict. Now, if they are in conflict, and I-if somebody can convince me that they aren't, I'd be willing to accept it-but if you take this out-this amendment-and they remain in conflict, well, then, who is to resolve that conflict if we leave this as it's stated in both areas in this Constitution? I submit that the courts would be the ones to resolve that conflict, and in the process you might dilute the strength of both of those sections or bring them into question as to what we really meant here. Now, if we see the problem and the conflict is obvious to us here, then we must resolve it in this assembly. Now, the issue here, as I see it, isn't-the issue isn't whether the people have the right to appropriate money for revenue purposes by initiative. That's not the

issue. Why isn't it the issue? Because we've already decided that issue by two votes when we voted for the antidiversion amendment. We've already decided that issue. That's locked up unless we want to open it up again and argue it out again, which, under the rules, we can do; but if we do that, of course, it will further weaken that antidiversion amendment. Now, having said that, if you delete this amendment, then you put this into conflict. Now, really, one of the problems may be here whether we feel philosophically whether people should have the right-the great majority of the people by initiative-to involve themselves in the budgeting process. Now, that may be a fundamental problem here. Now, we may-it seems to me we've resolved that when we voted for the antidiversion amendment. Now, maybe some of you weren't aware of this-that this thing was involved, this principle; but that's the way, as I see it; and to leave this unresolved here means that we have the conflict and it's going to be left up to the court. So I say, "Leave the amendment in if you want to keep appropriations by initiative of the people, and if you don't, take it out." But if you do that, then it's going to open up the antidiversion amendment, Section 6, into question, and something then has to be done with that. That's the way I-that's my problem. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and delegates. I concur wholeheartedly with Mr. Champoux's explanation of this whole matter. I think if we leave this amendment in, there will be no doubt about our intent. I did not and do not agree with the idea in the Revenue and Finance Section; but as long as it's there, let's leave it there; and in order to keep everything clear, let's leave this amendment as it is and then there will be no question in anyone's mind what our intent is.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I was satisfied with the explanation that Chairman Rygg presented to the delegates, and if that explanation is not going to resolve the situation, then I think we'd better take another look at exactly what we're doing here. If we're going to leave it the way it is, the question then, becomes-let's assume that a revenue measure for an appropriation is initiated by the people. Let's take two budgetary periods, '73 and '75, so the budget is passed, let's say, in '73, and then there's an initiative by the people diverting some of the highway funds for a particular special purpose. We know that we can't back up to the '73 budget-that's already balanced, based on certain revenues-so then it has to go into the budget that is going to be next considered by the Legislature, and we're saying to the Legislature, "We've already made a diversion with respect to income, and that is set aside; now build the rest of the budget around it." I think we're taking a power away from the budget-making body that I don't think the people want us to do, and I think it tends to interfere with the fiscal integrity of the state. I think our forefathers knew what they were talking about and what they were writing about when they wrote in the first Constitution that appropriation matters shall never be subject to any type of action by the people by way of initiative. Now, as I gathered from the comments of the Chairman of Revenue and Finance, what's in subsection 2 of Section 6 is merely this: that the people may indicate to the Legislature that they may-that they want a diversion to take place, and then the Legislature that meets after that particular expression by the people will then decide just exactly how they're going to fit that into the general overall budget. If that explanation isn't correct--much as I dislike suggesting this-then I think we'd better recognize that we've made a mistake with respect to the fiscal integrity of the state and we'd better take that particular provision of subsection 2 of Section 6 out of Revenue and Finance and delete the sentence that we're talking about in Section 4 of General Government. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I support the delegate from Deer Lodge. I don't see how in the world people are going to use this crazy section anyway, but it can cause all sorts of trouble and it can do little, if any, good. I don't see why it can-the Harper amendment to delete cannot be accepted and then the Convention suspend the rules and take up the Revenue and Finance and eliminate that last phrase. I don't think that is what any of us thought we were doing anyway; and then, as far as anyone being afraid to opening up the section now, I personally was against the thing, but after being run over by the locomotive and the whole bunch of cars afterwards twice, I'm quite sure that we-there would be no disposition on the part of anybody to go any farther. I support the Harper amendment.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I think we could debate this matter all day,

and I agree with Mr. Dahood that I'm a little concerned here about saying one thing in the Constitution and then having to explain that to the people by saying, "Well, there's something else in the record that makes that mean something that it doesn't say there"; and therefore I'm going to move, at this time, as a substitute motion, to suspend the rules so that we may consider deleting the language in Section 6, subsection 2, of the Revenue and Finance Report Number 7. And that language I would like to delete is on-found on page 6, lines 12 and 13; and I would make this amendment.

CHAIRMAN GRAYBILL: Mr. Loendorf, the Chair is going to rule you out of order on attempting to suspend the rules on a section that we're not debating. Now, I have already explained to this body once today that the people that want to amend it to take care of the Clerk of Court will have an opportunity to suspend the rules, but the time to suspend the rules on something in the Judicial Article is not while you are in the middle of debating the General Government Article. Now, we'll dispose of the Harper amendment one way or the other; and if you want to suspend the rules to change the Judicial Article, you can get in line with the people this morning. I'm not going to stop you from doing it, but I'm going to oppose doing it in the middle of the debate on General Government. Even though I see it's obviously apropos, it just seems to me we must follow the rules. Now, maybe you—If you care to challenge the Chair's ruling, go ahead.

DELEGATE LOENDORF: Yes. I'm not going to challenge the Chair's ruling, but that makes it awful difficult, it seems to me. This question has to be determined before we can determine Harper's amendment, so-okay, someone says No. I support Harper's amendment anyway.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. This brings up another question to me, and I might be wrong, but say that after we pass the Constitution and the people-now I have made-and so that they can have an amendment by initiative or by signatures-now, if this gets in in two spots, it will be-they'll have to go out and have two different amendments, as I understand, to try and arrive at the same thing. Now, if nothing else, if this Convention will not go any further, let's take this out of this article, so then the people won't have to go out and amend two articles of the Constitution when they try to amend this out, because I am sure that if this article is left this way, there will be an amendment submitted very quickly after this Constitution is adopted and—because if we don't, the people are going to find an awful lot of people will certainly not support the Constitution. I'd like to see it left, at least, if nothing else-and I said on this floor this morning and I'll repeat it again-1 wish to apologize to this Convention for not noticing this earlier. Then I think we could have had it better discussed on this point; and I'm going to take the blame for it. And I do think that this Convention-it won't hurt us to have a little confession of the soul and say we made a great mistake here and we're entitled to one in all the time we're at this Convention. We're entitled to one mistake, and I'm sure that the press won't ridicule us too much if we just honestly come out and we come to the point, if the majority-and I'll certainly support them to reconsider and limit it the same as we've limited the other--we did this in our other articles, right down definitely to a point-and say this is the only thing we're going to reconsider if we wish to take it out of that article. I'm willing to go that far, but to get a compromise here--and let's don't stand on protocol, let's don't do anything. Let's come out and send a document to these people. So, if you can't go for the suspension of the rules, please take this out so we won't make it tougher on the people to amend the Constitution, because I'm sure they're going to want to do it-letting appropriations by initiative would be terrible. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Mahoney yield to a question?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE AASHEIM: Mr. Mahoney, if we pass the Harper amendment, then you will agree to suspend the rules for the purpose of striking out, in the Revenue and Finance Article, this terminology: "or by initiated measure approved by a majority of the qualified electors"?

DELEGATE MAHONEY: I'll agree to that and limit it to that, so there's no other part of it's going to be open; and we have precedents for that in this body.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I will also go along with the Harper amendment with this supposition that we can suspend the rules and delete this section from the Revenue and Finance Article.

CHAIRMAN GRAYBILL: Mr. Aasheim, you have confused the Chair. I don't know about the rest of us. It would seem to me that, if you and Mr. Mahoney agreed to do that, you would strike Mr. Harper's amendment-or you would support Mr. Harper's amendment-is that what you mean? Very well, I understand.

Mr. Champoux.

DELEGATE CHAMPOUX: Would Chairman Sterling Rygg submit to a few questions, please, sir?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: (Inaudible)

DELEGATE CHAMPOUX: Mr. Rygg—Sterling, so we can get this cleared up in everyone's mind here, so that there isn't any confusion and we-1 don't agree with Charley Mahoney. I was aware, when I voted for this, exactly what we were doing, and I'm sure a lot of other people in this assembly were aware of what they were doing about this. However, I will submit that it could raise a number of problems. I will agree with that. Now, somebody had to put that in that section. Now, who did it in the committee and for what reason? Surely, the committee debated this.

DELEGATE RYGG: Well, we put it in there. Apparently we weren't too careful of the wording. We weren't aware of that. I don't know who put it in the committee. I can't tell you that, but it was put in there with the thinking that if the three-fifths vote was not gotten in the Legislature, then the people would have the right to ask the Legislature to use these funds for other purposes. I can't name the man; I don't know who it was. But that's-that was the thinking of the committee; that's why it went in there.

DELEGATE CHAMPOUX: Now, when you-may I ask another question, please?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE CHAMPOUX: When you did discuss this, did you think of it in terms of specific appropriations, or just simply opening it up for general appropriations?

DELEGATE RYGG: Well, we had no thought at all of having the people appropriate the money. That wasn't our thinking at all. Our thinking was that they could direct the Legislature to divert this money into-for other purposes than highway purposes. Nothing specific, no.

DELEGATE CHAMPOUX: May I make a few comments, sir?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Again, then -it seems to me, then, that what we're debating here is whether we want to accept the philosophy of the people to appropriate money by initiative. Now, this could be, as Mr. Dahood said, could result in a lot of problems, and I think that's the major point. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I object to the idea where Mr. Aasheim and Mr. Mahoney can make some kind of a deal and I'm supposed to go along with it, and I'm not going to. If we suspend the rules in order to do this, we ought to get back-and if we're going to make any deals, we ought to get back to what the committee intended, which was that the people can require the Legislature to do what that thing says. And that's what you said in your--was your intent, and I'm not party to any deals between Aasheim and Mahoney, I'll tell you that. (Laughter)

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: This morning, Delegate Dahood got up and, in response to some newspaper material, specifically stated for the record that the provision in the Bill of Rights did not mean to limit, in any intent, no-fault insurance for the State of Montana. The Revenue and Finance Committee did not intend that the people appropriate money, per se, when they wrote that in there. They did intend that the people. by initiative by a majority of the people, could direct the Legislature to use the money for purposes other than stated in the Constitution; and I submit to you that if we accepted Delegate Dahood's explanation this morning--and I think we accepted it in good faith that there was no intent--I think, by the same token, we can accept the same kind of reading into the record this afternoon that it was the intent of the Revenue and Finance Committee

to give the people by initiative-it's still a majority of the people, 51 percent-that we give them by initiative the right to direct the Legislature to use or appropriate highway revenues for purposes other than specifically stated in the Constitution. And I would like the delegation to support the Revenue and Finance position as they supported Delegate Dahood's proposal this morning.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I think that we're speaking of two different things here, because I believe that our article which Delegate Dahood spoke about this morning clearly did not say, and I think that the lawyers in the body who have looked at it could see no way it could be interpreted to say, that it prohibited no-fault insurance. The difference here is that, no matter what the intent of the committee was, that the provision clearly does say that this money may be appropriated by initiative. I can't see that we have this much of a problem. I think that if we go ahead and delete the provision from the General Government Article, accept Harper's amendment, I think that it's quite obvious that the group will agree to suspend the rules to go back and make the change we need. I don't think that we can delete it with the assurance that this will happen, but I think that-you know, considering that we're reasonable people—we don't want to submit a document to the public which is going to have to be amended and changed, as Mr. Mahoney suggested it might be. I think we-you know, we pretty well have to risk it at this point. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: I would like to ask a question of the Chair. I think the Chair has correctly ruled in regard to Mr. Loendorf's motion, particularly in respect to what was done otherwise. However, I think the real question that we're faced with is: you cannot properly vote on a motion to delete, assuming that this body is going to do something else in regard to the Revenue and Finance measure. And would it be in order to bring this matter to a head, out of context where it doesn't belong, but so we get one-the thing that should be decided first-decided-to challenge the ruling of the Chair and then see if we could get the Revenue and Finance Article ended and then go back to the other? Would the court--would the Chair entertain--would a challenge of the Chair's ruling affect that? That's what I'm trying to get at.

CHAIRMAN GRAYBILL: Well—

DELEGATE HABEDANK: I think the Chair's ruling is correct. I just don't want it to go the way the Chair—

CHAIRMAN GRAYBILL: You'd like to do it incorrectly, because it's easier?

DELEGATE HABEDANK: Yes. (Laughter)

CHAIRMAN GRAYBILL: Well, maybe the Chair would, too. The Chair is bothered by one thing. And I've listened carefully to the debate, and without entering into the debate, I would like to observe that you're really talking about three things, and not two things, out there. Some of you want to leave it as it is, with the Harper amendment in or out; some of you want to go back and change the antidiversion section; but when you get that group that wants to go back and change, some of you want to just knock out the words "initiative" and others of you want to say what the committee says it meant. And there's two things—there's two possibilities back there--and I think it's the fact that there are two possibilities when you get Section 6 opened that bothers the committee and a lot of other people. And, you know, you really are not of one mind when you get it opened, and I think that's what's bothering a lot of people about opening something that we don't know what we're going to do with when we get it open. We not only don't know whether we're going to go back and open it, Mr. Habedank—we don't know when we get it opened what we're going to do; and that's the problem. That's why the Chair is a little reluctant to-out of order and to make it easier—blow the lid off.

DELEGATE HABEDANK: I agree with the Chair as to what can happen, but whatever is decided there then, you know, it's decided and you can govern the other section accordingly. And if we're going to open it, it's my feeling we might just as well open it now and whatever way the lid blows off, that's the way it's blown; and then we can govern ourselves correctly in connection with the General Government Article.

CHAIRMAN GRAYBILL: I'm sure we'll hear some more debate.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, would it be possible to segregate this section from the Committee of the Whole report and—

CHAIRMAN GRAYBILL: There's a rule against segregation in the Committee of the Whole.

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I'd observe there's a fourth thing to add to what you've suggested that's in evidence here, and that is that there is a real reluctance on the part of some of the delegates to open up one article that we've already passed, because they see that this might lead to opening up other articles.

UNIDENTIFIED DELEGATE: True.

DELEGATE HARBAUGH: Now, I submit that for some delegates this might be an overriding consideration, and I don't think it ought to be. I don't think any of these articles are sacred. I think that any of them can be considered again, as many times as we want todoit, aslongaswewant to stay here; and I don't think that we should beso insecure about some little thing that we've got locked away in some article that we're afraid that this body might open it up and take it out of there. So, I would speak in favor of the motion to delete and take it from there.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: I speak in favor of Delegate Harper's motion to delete, but for a different reason, and that was the original reason that Delegate Harper talked about. Section 4 says that the people may enact laws by initiative on all matters except appropriations, and then we turn around and have an amendment: "The highway revenue provided for in Article blank, Section 6, shall nevertheless be subject to appropriation by initiative". Do we mean what we said in the first sentence, or are we going to change that? I think we ought to get-delete this and go from there.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in support of Delegate Harper's motion to delete, and I think that the Constitutional Convention delegates in 1889 stated so simply what we've attempted to state when they said that the people reserve to themselves power to propose laws and to enact or reject the same at the polls, except as to laws relating to appropriations of money. Now, this is what we intended in our Legislative Committee when we considered the initiative and the referendum, and I think this is what was intended by Delegate Etchart's committee, and I think that the intentions of the Finance Committee was-the intention was honorable, and I think it's a matter of semantics and the words "by initiated measure" are the words that are causing us all this difficulty. I remember discussing this on the floor. It didn't seem to create much difficulty then, because the intention was expressed. Perhaps the committee-the Revenue and Finance Committee-could reword this particular phrase, this section, so that we would not have this difficulty. They're not talking about appropriations, and I think that that's clear; if only they could express it in a clear manner, there would be no problem if we follow Delegate Harper's advice and delete this reference in this particular article.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, it might be worth pointing out that in the rationale on the Revenue Committee's Proposal Number 7, when they come to a discussion of this particular subject, the only thing they refer to there is the diversion of it by the Legislative Assembly. There's no mention made in their rationale as to initiative. It says: "The proposed section permits diversion of earmarked funds to other purposes if each house of the Legislative Assembly, by a three-fifths majority, approves such expenditure." In other words, the primary responsibility for review, assessment and, eventually, allocation of highway funds rests with the Legislature. That body is free to change the earmark. That's all it says. So that the record in this instance, in their report, is not very clear as to the initiative end of it.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: In reference to that, I agree that you're right, but it does say there, and eventually allocation of highway funds rests with the Legislature. So if you take that one, really that would supersede any mention of the initiative, because we do say here that it rests with the Legislature, so while we haven't said it in the words you say, I do believe we say it with that one sentence.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think we're all after the same objective. Right now we're stumbling over procedural blocks, and it may well be that I'm going to be ruled out of order, but at this time, I move that the rules be suspended for one purpose and one purpose only: to determine whether or not the words from Revenue and

Finance reading "or by initiated measure approved by a majority of the qualified voters" should be deleted. I so move.

CHAIRMAN GRAYBILL: Now, before the Chair rules on your motion, Mr. Dahood, the Chair wants to make a couple of inquiries.

Mr. McDonough, you did some of the drafting in Revenue and Finance. Can you put together language which would-Mr. Rygg and you-Mr. Rygg has explained what the committee meant. Can you put into language that can be put into Section 6 what the committee meant?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: In other words, you can do that?

DELEGATE McDONOUGH: I think we can, but we'll open up all of subsection 2. But I think it's-we can put in language to the effect that it may be appropriated by the Legislature for other purposes by a three-fifths vote or the people, by initiative, can authorize the Legislature to appropriate money to other purposes, which means, then, that if by initiative-the-if the initiative passes, the Legislature can appropriate money to other purposes, then, by a majority vote. Is that-1 think that's what the intention of the committee was by this language.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you have a comment?

DELEGATE SCHILTZ: I have a comment, Mr. Chairman. I havedifficulty between the words "require" and "authorize". I think if the people took this action, they would be requiring the Legislature. I would propose that if that-if Mr. Dahood's motion prevails and we do undertake this amendment, that after the word "electorate", we add the words "require the Legislature to appropriate" and then strike "may be appropriated" on-after that.

CHAIRMAN GRAYBILL: I don't know where you're amending. Are you in General Government or Judiciary?

DELEGATE SCHILTZ: No, I'm in-No, I'm in Revenue and Finance—

CHAIRMAN GRAYBILL: I mean Revenue and Finance. Allright, would you explain that again?

DELEGATE SCHILTZ: -in Helena, Montana. After the word "electorate" in that Section 2, add the words "require the Legislature to—"

CHAIRMAN GRAYBILL: After the word "electors"?

DELEGATE SCHILTZ: Well, I guess I'm in the original section and not the right one.

CHAIRMAN GRAYBILL: Well, I'm using the one you've already corrected for me, Mr. Schiltz.

DELEGATE SCHILTZ: I know, but I couldn't find that one.

CHAIRMAN GRAYBILL: I guess we're both in trouble.

DELEGATE SCHILTZ: I think after the word "electors"-somebody has it here-all right-Oh, I am in trouble, aren't I? I'd better sign off for a minute.

CHAIRMAN GRAYBILL: Yes, I think you'd better. Mr. Dahood, the Chair's problem-I see your problem, and I'm willing to try and work it out here, and I agree with Mr. Habedank that it's-it would be easier to work it out. The Chair is-1 want to be cautious on opening up Section 6, sub. 2, and so the Chair is interested, if possible, in opening it up in the most restrictive way possible. I don't want a 4-hour debate on antidiversion this afternoon if I can help it, so the Chair would defer to Mr. Rygg or Mr. McDonough, if either of them cared to make a motion to suspend the rules for the specific purpose of replacing certain language with other language. Now, when that's been done, if they'll do it, if you want to try and make it wider than that, you can. But, in other words, I would like to take the narrowest version first, and then if others don't like that, they'll have to widen it and they'll have to get a majority to go with them.

Mr. Furlong, for what purpose do you rise?

DELEGATE FURLONG: Mr. Chairman, to ask a question.

CHAIRMAN GRAYBILL: Very well, ask it.

DELEGATE FURLONG: If the body has accepted the intent of the Revenue and Finance Committee as it has been expressed here-and apparently they have, at least twice-my question is, cannot Style and Drafting actually then incorporate the intent of Revenue and Finance with. out really making a substantive change?

CHAIRMAN GRAYBILL: Well, I think that the thing has gone so far and there's so much question about what the real intent is that we'd better either clear it up by language or agree not to clear it up. The Chair would entertain a motion, to get at this, from the Revenue and Finance Committee, either Mr. Rygg or Mr. McDonough, that would suggest suspension of the rules for the specific purpose of deleting certain language from 6, sub. 2, and putting other language into 6, sub. 2, which language you would state. Now, if that— that's the narrowest I can conceive it. Then, if somebody wants to move to make it broader, why, we maybe can-maybe they can do that.

Mr. McDonough, do you understand me? Mr. McDonough-

DELEGATE McDONOUGH: Mr. President. I'm not sure I can make it at this time, though-to put the specific additional wording in. Well, I move that we suspend the rules for the specific and limited purposes-purpose only of reconsidering subsection 2 of Section 6 of the Revenue and Finance Article; such limited and specific purposes being striking the last 12 words from said subsection 2—

UNIDENTIFIED DELEGATE: Period.

CHAIRMAN GRAYBILL: No, the Chair won't accept it if he says "period", because then he's changed the meaning of the committee.

DELEGATE McDONOUGH: No, I didn't say "period" yet.

CHAIRMAN GRAYBILL: Well, I hear a lot of help. Mr. McDonough has the floor.

DELEGATE McDONOUGH: -and substitute in lieu thereof "or by initiated measure approved by a majority of the qualified electors, require the Legislature to appropriate such revenue-"

CHAIRMAN GRAYBILL: "Or by initiative measure approve by a majority of the electors" require what?

DELEGATE McDONOUGH: "-the Legislature to appropriate such revenue for other purposes." Could I restate the motion?

CHAIRMAN GRAYBILL: Yes.

DELEGATE McDONOUGH: Mr. President, I move that we suspend the rules for the limited and specific purpose only of adding to subsection 2 of Section 6 of the Revenue and Finance Article, after deleting the period, "require the Legislature to appropriate such revenue for other purposes".

CHAIRMAN GRAYBILL: Very well, now, the Chair understands the situation to be this. Why don't you listen till we've got it stated; then we'll discuss it. At present, the subsection 2 of Section 6 of Revenue and Finance says: "Such revenue may be appropriated for other purposes by a three-fifths vote of the member of the house of each Legislature or by initiated measure approved by the majority of the qualified voters." Now, the Revenue and Finance Committee proposes to add the words--add a comma and say "to require"--or "requiring the Legislature to appropriate such revenue for other purposes". The purpose of this amendment would be to make clear what the Revenue and Finance Committee meant; namely, that the initiative could require the Legislature to utilize highway funds but that it could not determine how they were to be appropriated or in what amounts. It merely would require the Legislature to go ahead and use the three-the highway funds. In other words, it limits the initiative measure to directing the Legislature to break the nondiversion, but it does not tell the Legislature in what measure or what nature to do that. Is that-have I correctly characterized your amendment? Yes?

DELEGATE McDONOUGH: One more check.

CHAIRMAN GRAYBILL: Mr. Furlong, I have correctly characterized your amendment? This amendment?

DELEGATE FURLONG: Yes, but in some of your comments, I think perhaps you went a little far when you said that-In other words, let me state it this way. I think the people at any time, under this section, by initiative-if you carry out the intent of the Revenue-would be that they may, in fact, direct the Legislature by the initiative for a specific purpose, because—

CHAIRMAN GRAYBILL: They can direct the breaking of the nondiversion for a purpose, but they can't appropriate—

DELEGATE FURLONG: Right. I agree.

CHAIRMAN GRAYBILL: -the money or decide the amounts and so forth, right?

DELEGATE FURLONG: Yes, but I felt

you were limiting it, that they could just tell them "you can now divert" and give them no other direction. I would think that initiative could give a specific direction to the kind of diversion that it had in mind.

CHAIRMAN GRAYBILL: All right. And in this sense, the initiative that the Revenue and Finance Committee proposes is not an appropriation initiative; it's just an initiative directing the Legislature that it can break the nondiversion rule. Now, if everybody understands that, that's the purpose of Mr. McDonough's amendment to clarify the language of the Revenue and Finance Commission's-Committee's meaning on Section 6, sub. 2. Now, for that purpose--and we don't have to do-we don't have to strike the 12 words; we use the 12 words and continue to explain them. For that purpose, the Chair will allow Mr. McDonough's rule to suspend the rules.

I take it, Mr. McDonough, that if you are successful in suspending the rules, someone will have to move to reconsider along the same lines and then we'll have to reconsider and do it. Is that correct?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: All right. Now, then, with that picture in mind, I'll be glad to hear your comments.

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, is an amendment in order?

CHAIRMAN GRAYBILL: An amendment to what they've done?

DELEGATE HARBAUGH: Yes.

CHAIRMAN GRAYBILL: An amendment-an amendment-the Chair will rule that since they are stating the language-I'm merely allowing them, if possible, to clean up their language-but since they have stated the language, an amendment is not going to be in order on this motion. Now, if you want to make another motion that's broader, you make it, and we'll see whether this body will suspend the rules for your motion. But I'm trying desperately not to open it up unless you can get 51 percent to do it. So, the Chair would rule that the purpose of this suspension is only to add the words that they said and not to add any amendments that they said. It's for that purpose only. It's either going to win or lose. That's the Chair's intent at the moment.

DELEGATE HARBAUGH: Thank you, Mr. Chairman. I-The amendment-no amendment, apparently, is in order at this time and therefore I think I would have to vote against the motion that is before us, because I think it's very obvious that we've backed into an alley and we can't turn around and what we need is some elbowroom. And I think we ought to open this section up so that we can work on it, and I'll vote against the motion.

CHAIRMAN GRAYBILL: Okay. Mr. Champoux, do you have a question?

DELEGATE CHAMPOUX: Yes, sir. **You** know how I get confused on Saturdays--and I—today is Saturday-and I've been hanging around with Charley Mahoney too much. But, two questions, if I may, sir. One-doesn't previous-do not previous motions take precedence? Don't we have another motion on the floor? I'm questioning the order here. And the second thing is, we're approaching this in terms of-as I see it, in terms of opening up this section that's finally gone through final reading. Is there anything that we could do with the general government thing to reword it to the extent that would show theintent of the Revenue and Finance Committee in terms of this Article 6, subsection 2? Two questions then, sir, if I may.

(Pause in proceedings to talk things out in the Chair)

CHAIRMAN GRAYBILL: Mr. Champoux has asked two good questions. Now, the Chair would like everybody to understand that all I'm trying to do is approach this carefully. We're suspending the rules, and obviously the rules--or the Revenue and Finance Committee has a position, and obviously others have a ppsition, and we have a problem. And you may do anything, eventually, but we're going to try and do it step by step here. And Mr. Habedank raised an issue. The Chair ruled that motions to suspend the rules were out of order in the middle of the discussion of General Government, and no one challenged him on that. But Mr. Habedank pointed out that that still left us with a very bad problem, and so the Chair has consider-is considering what to do in that regard. And the next thing the Chair did was then ask the Revenue and Finance Committee if they could clarify their language; and when I found out they could, I then asked them if they could state a motion to suspend the rules within only that clarification so that we wouldn't get on

three or four other things. Now, that's where we stand. But Mr. Champoux is correct that Mr. Harper's motion to delete is pending, and we've now checked the rules, and this is the way the situation stands: on Committee of the Whole debate-and, for that matter, in the Convention as a whole-a motion to reconsider is in order. Nothing is said one way or the other about the motion to suspend the rules--which, obviously, in this case is for the purpose of reconsidering but is technically not to reconsider-so the Chair could probably go either way and say that a motion to suspend the rules is obviously to reconsider, or it could go the other way and say that it isn't technically a motion to reconsider. Mr. Harper, you came in late. Are you aware of the quandary that we're in? How do you like it? (Laughter)

DELEGATE HARPER: I'd like it just fine if we can do the sensible thing about resolving it, and I'd be glad to tell you what that is, if you ask me. (Laughter)

CHAIRMAN GRAYBILL: Well, the Chair is aware of-it could do two things. It couldletyou withdraw your motion so that the motion to suspend the rules would be in order-except that I would then be faced with Mr. Etchart's motion to move the whole section, and I could probably get him to back off, too-or the Chair could move—could rule that a motion to suspend the rules is in fact a reconsideration in this case and go the other way. Or, third, the Chair could tell you all to wait till you're through discussing General Government and go back and handle this tomorrow.

DELEGATE HARPER: If the Chair would suffer a suggestion from the floor; why don't you just do suggestion Number 2, and then we'll be right going? Just consider this as a motion to reconsider and let us act on this and then we can—or if you want us to back off, I'm willing to back.

CHAIRMAN GRAYBILL: No, I think maybe your suggestion is just as good.

DELEGATE HARPER: Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney, do you have any direction for the Chair?

DELEGATE MAHONEY: Mr. Chairman. I would like to see-but I think it would be-look quite funny on the journal to be in the middle of this and then move to reconsider another branch. Now, if we just got the motion to get out of General Government and get over on that, it would be all right, but I'd like to see that we get off from--out of this one, and I think thisis-probably is technical, but I think it does make it easier. It would make it much easier for the Chair to make a ruling, and I think the Chair is being very fair in this ruling, and I think you're really going over-and I mean, I question the right to suspend the rules and a motion is pending would be exactly in order. Now, if Mr. Harper withdraws his motion, then I think the nicest thing would be-to dois just get off from General Government temporarily and ask to go into the other and General Orders, and then you could do it. I mean, I'm just trying to get out of one and into the other and not have two things being cluttering up the journal there; and I might be all wrong, but this is my suggestion.

CHAIRMAN GRAYBILL: Are you suggesting-are you saying that if I ask Mr. Harper to withdraw and then I ask Mr. Etchart to withdraw so we weren't actually considering Section 4 at the moment, that we could then, without objection, hear a motion to suspend the rules? Is that what you're suggesting, Mr. Mahoney?

DELEGATE MAHONEY: That we suspend the rules to go back on and get this-I'm trying to get you out of General Government back into Revenue and Finance. This is what I'm trying to do-and the record. This is what I'm trying to do, and I think that would be in order.

CHAIRMAN GRAYBILL: Mr. Brown, do you have any suggestions?

DELEGATE BROWN: Yes, I'd like to make one, too. (Laughter) I think everybody here is concerned and they know that we're trying to suspend the rules in good faith. What I would like to do is see Delegate Harper stay with his motion, and I assume that it will prevail and that part will be deleted. Then, go ahead and finish General Government, and then, at the propertime, move to suspend the rules to go back into Revenue. If the body would not do that, then we could come back to this section and put the provision back in, but let's move through General Government and trust the body to go back to Revenue and Finance and clean it up later.

CHAIRMAN GRAYBILL: Mr. McDonough, do you have a suggestion?

DELEGATE McDONOUGH: No, Mr. President, I just agree with Mr. Brown. That gives the Revenue and Finance a little more time to

think about any wording they might want to add or substract to subsection 2, and the Convention can still go about its business.

CHAIRMAN GRAYBILL: Well, I'll hear Mrs. Robinson.

DELEGATE ROBINSON: I just have one suggestion; that the next time you appoint a Revenue and Taxation Committee, you ought to consider putting a woman on it. (Laughter)

CHAIRMAN GRAYBILL: So we could change our mind more easily? (Laughter) I could get-Mrs. Mansfield might go on it for me. (Laughter)

Mr. Choate, I'll hear you.

DELEGATE CHOATE: All right. I think, Mr. Chairman, I might have the only other pertinent comment that could be added to all of this. It might be that we're at the same point that this fellow was, a long time ago, on an historic occasion, when he said, "Well, outside of that, Mrs. Lincoln, how did you enjoy the play?" (Laughter)

CHAIRMAN GRAYBILL: All right, now, having been duly—

Mr. Wilson, would you like to suggest to the Chair?

DELEGATE WILSON: Yes, I would, Mr. President. I think you're on General Government, and I think you should stay there. And I think you should finish the article and then, at the appropriate time, if there is need for consideration of this article on Revenue and Finance, I have faith in this body that they would come back to it and make such adjustment as is necessary.

CHAIRMAN GRAYBILL: Mr. Dahood, would you like to instruct the Chair?

DELEGATE DAHOOD: No, Mr. Chairman. I moved to suspend the rules. I'm going to withdraw that motion. I think what Delegate Brown suggested might be the best way to take care of it. I withdraw the motion to suspend the rules.

CHAIRMAN GRAYBILL: Mr. Scanlin, do you want to instruct me?

DELEGATE SCANLIN: No, I was just going to put a question to the Chair; but if we're going to withdraw everything, I'll withdraw my question.

CHAIRMAN GRAYBILL: Well, the Chair has thought about it, and I appreciate-I really do appreciate the patience that the body has shown and the help that I've had from some of the experts in the field. I think I was right in the first place not to break this article up, and I'm going to overrule Mr. Dahood's—or Mr. McDonough's motion that1 asked for-whoever it is-and I'm going to tell Mr. Habedank that I think he's absolutely right, morally, but he fouls me all up parliamentarywise, and I'm going to suggest that we finish the General Government Article and ask, if the Revenue and Finance Committee then want to, they can do what Mr. Aronow and Mr.-whoever it was this morning--wanted to do for the Clerk of Court, and we'll have them all do that all at one time and get that all out of the way. So we're going to go back to-I'm going to move that-I'm going to rule that all of these motions are out of order back to Harper. We're on Harper's motion. You're either going to have to accept it or defeat it, and then we'll clean this up afterwards. So, we're on Harper's motion unless someone wants to challenge the ruling of the Chair.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I just want to say I've been looking for a long time for something of Delegate Harper's that I could support in extended debate, and I have found it. (Laughter)

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: I think you're on the right track now, and I support Mr. Harper's amendment.

CHAIRMAN GRAYBILL: All right. Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'm really worried at this point, because I fear I must not understand it because I'm going to have to support Delegate Harper. Thank you. (Laughter)

CHAIRMAN GRAYBILL: Do you want to change your motion, Mr. Harper? (Laughter)

DELEGATE HARPER: I'm beginning to wonder about this motion. (Laughter-applause) Maybe I didn't think it through enough. You know, there was a little paper that was passed to us the other day-1 don't know from whom—"self-evaluation sheet for Con Con members". Did you see it? The last section—(e)—is on communica-

tions. You are supposed, as a Con Con member-it doesn't say Chairman-to check one of these: talks with God-this is on communication-talks with angels; talks to himself; argues with himself; loses arguments with himself. (Laughter) I will check the last and close and leave it to the body.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: I just want to apologize to Mr. Harper for wanting him to build a canoe; and I'll support his motion, too. (Laughter)

CHAIRMAN GRAYBILL: Mr. Studer, what's this got to do with your motion?

DELEGATE STUDER: I just want to-if he really wants to be worried, I support his motion, too. (Laughter)

CHAIRMAN GRAYBILL: Well, very well, the Chair just having checked "loses argument with himself', I will now put Mr. Harper's motion. All in favor of Mr. Harper's motion, which is to strike the additional language that the committee added here to Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and that language is deleted. Is there other discussion about Section 4?

(No response)

CHAIRMAN GRAYBILL: Very well, members of this committee, you have before you on your-for your consideration, on the recommendation of Mr. Etchart that when this committee does arise and report, after having had under consideration Section 4 as amended, that we recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Section 4, as amended, is adopted. Will the clerk read Section 5.

CLERK HANSON: "Section 5, subsection 1. The people may approve or reject acts of the Legislature by referendum, except appropriations of money. A referendum may be ordered by the Legislative Assembly or upon petition signed by 5 percent or more of the legal voters in each one-third or more of the legislative representative districts, and the total number of signers must be 5 percent or more of the total legal voters of the state. Referendum petitions must be filed with the Secretary of State no later than 6 months after adjournment of the Legislative Assembly which passed the bill." Mr. Chairman, Section 5, subsection 1.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration General Government Proposal Number 12, Section 5, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: This section contains the procedure for the two forms of statutory referendum, as agreed upon by the General Government and Legislative Committees. This provision is parallel to the present referendum provisions as contained in Article V, Section 1, of the present Constitution. The only changes are the petition requirements, which the General Government felt should be set at 5 percent of the legal voters. Well, incidentally, this isn't a change now, because this is the way it was. But "one-third or more of the legislative representative districts" are adopted and more of the total legal voters of the state for the petition referendum, so the committee set the petition requirement for requiring suspension of enforcement of a matter to be referred at 15 percent of the whole number of legal voters of a majority of the legislative representative districts of the state, and this provision is the same as is in the present Constitution, so this is quite close to what you have in the present Constitution. It's 5 percent, in line with what we did in initiative. I think that it's been pretty well discussed and should be ready for adoption.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you for your consideration on the recommendation of Mr. Etchart that when this committee does arise and report, after having had under consideration Section 5, that we recommend it be adopted—subsection 1, only. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, read Section 2-subsection 2.

CLERK HANSON: "Section 5, subsection 2. Acts of the Legislature referred to the people are in full force and effect unless suspended by petitions signed by 15 percent of the legal voters of a majority of the whole number of legislative representative districts of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election and the result has been determined and declared as provided by law." Mr. Chairman, Section 5, subsection 2.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration General Government Article Number 12, subsection 2, it recommend the same be adopted. Mr. Chairman, I covered this in my previous remarks, move for its adoption.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: Very well, you've heard Mr. Etchart's motion that we adopt subsection 2. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Read Section 6, please.

CLERK HANSON: "Section 6. Elections. All measures referred to the people shall be voted upon at a regular biennial election unless a special election is ordered by the Legislative Assembly." Mr. Chairman, Section 6.

DELEGATE ETCHART: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 12, Section 6, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: This section is self-explanatory and should be noncontroversial. I urge your adoption.

CHAIRMAN GRAYBILL: Is there any discussion of Section 6?
(No response)

CHAIRMAN GRAYBILL: You have heard Mr. Etchart's motion. All in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7.

CLERK HANSON: "Section 7. Legal voters. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of Governor in the regular election immediately preceding filing of petitions for initiative or referendum measures." Mr. Chairman, Section 7.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 12, Section 7, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart

DELEGATE ETCHART: This section is also self-explanatory. The only thing I would like to point out here is that we inserted the language "for the office of Governor" instead of just "for Governor" and-so that there couldn't be any question that the votes cast would be just for the man instead of for the office and this language would cover the votes cast for all of the candidates-or the two candidates running for Governor.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentle-

man, Mr. Etchart, yield, please?

CHAIRMAN GRAYBILL: Mr. Etchart?

DELEGATE ETCHART: Yes.

DELEGATE SCHILTZ: Mr. Etchart, what is the intent of your committee with regard to the term "regular elections"? You mean "general election", or do you mean any regularly held election, or what?

DELEGATE ETCHART: I think this would be a general election.

DELEGATE SCHILTZ: Would the gentleman yield?

DELEGATE ETCHART: Yes, sir, I yield.

DELEGATE SCHILTZ: Would you mind if Style and Drafting inserted "general" in there?

DELEGATE ETCHART: We would have no objection.

CHAIRMAN GRAYBILL: Is there other discussion of Section 7?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Etchart that when this committee does arise and report, after having had under consideration Section 7, that we recommend it be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Section 7 is adopted. Section 8.

CLERK HANSON: "Section 8. Gubernatorial veto. The Governor does not have power to veto initiative or referendum measures." Mr. Chairman, Section 8.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 12, Section 7, it recommend the same be adopted. Mr. Chair. man-Section 8; correction.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: This section prohibits the Governor from vetoing an initiative or referendum. The present Constitution also contains such a provision. The committee feels one man should not have the power to overturn a decision made by a majority of the state's electorate. This is the reason for including this section.

CHAIRMAN GRAYBILL: Mr. James— Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I just want to call to the attention of the body-1 suppose everybody already knows it-that this same matter is already covered in Section 10 of the Executive Committee, which has passed, and I'm in an anomalous position. I remember one time here I insisted that something about the veto power be included in the Executive Article, even though it was in the Legislative, and I don't know if the General Government people are all that touchy or-what's the word?-proud of their work, but at any rate it is covered under Section 10, and I just wondered if they wanted it stated here again, or what's their pleasure?

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I believe Mr. Joyce is right. We wrote this article prior to the time we voted on yours, and we also took this article out of our constitutional revision, so it is unnecessary. I will now move to delete it-Section 8.

CHAIRMAN GRAYBILL: Mr. Brown moves to delete Section 8.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, might I ask either Mr. Brown or Mr. Joyce what they've said in the other article?

DELEGATE JOYCE: You asking me, Charley? I have it in front of me if you—

DELEGATE MAHONEY: Good.

DELEGATE JOYCE: I did have; where is it, Jim? Section 10 of the Executive Article says that all bills passed by the Legislature except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions--and here are the key words-and initiative and referendum measures shall be submitted to the Governor for

his signature. All those things-all bills except those shall be submitted to the Governor, and so the point is that he may not veto those.

DELEGATE MAHONEY: That's fine, Mr. Chairman; that's all I wanted. I didn't want him vetoing constitutional amendments.

CHAIRMAN GRAYBILL: Mr. Joyce, do you have anything further?

DELEGATE JOYCE: No, I don't.

CHAIRMAN GRAYBILL: Any further discussion of Mr. Brown's motion to delete?
(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Brown's motion to delete, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and Section 8 is deleted. Section 9, Mr. Clerk.

CLERK HANSON: "Section 9. Restriction. This article is not applicable to constitutional revision as covered in Article blank of this Constitution." Mr. Chairman, Section 9.

DELEGATE ETCHART: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: I move that when this committee does rise and report, after having under consideration General Government Proposal Number 12, Section 9, it recommend the same be adopted. Mr. Chairman, this section is included to prevent any confusion with the initiative and referendum provisions on constitutional revision that are otherwise created in the Constitution, which was our Number 2 proposal from General Government, and we thought we should have this in there to keep the two separated.

CHAIRMAN GRAYBILL: Mr. Etchart, the Chair is confused. Explain a little more.

DELEGATE ETCHART: As you know, we provided in our constitutional revision article for amending the Constitution by initiative, and we also have an initiative provision in this article, and we wanted it clear that these provisions do not apply to the constitutional article.

CHAIRMAN GRAYBILL: I see. Is there discussion of Section 9?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 9, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 10.

CLERK HANSON: "Section 10. Recall. Laws shall be enacted to provide for the recall of all elected officials of the state and of its political subdivisions upon petition of the electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of Governor in the state or political subdivision of the official sought to be recalled." Mr. Chairman, Section 10.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, I move that when this committee does arise and report, having had under consideration Section 10 of the General Government Report Number 12, it consider the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: This section on recall is quite similar to twelve other state constitutions in that there are twelve other states which have, by constitutional provision, provided for recall of elected officials. Now, I mentioned before and I maintain that we have to consider—and I consider-elected officials not the masters of the people but the servants of the people. They are the employees, in a sense, and the people have the right not only to elect these people but if, for whatever reason they deem necessary, they have—they should have the right to recall them. I would point out that this 25-percent requirement for the number of people to sign that petition is very, very high. I recall one of the other delegates, earlier in this Convention, talking about petition signing, and he remarked how tough it was just to get 8 percent to get an initiative passed in the state; and 25 percent is more than three times that number.

Also, I'd like to point out that one of the states that has constitutional provision for recall is California. Now, we've all had this pocketbook, that many of us have been reading, called *The* Sometimes *Government,* which rates California the number 1 legislature in the country in terms of efficiency and responsiveness to the people, and it rates Montana number 43. Well, California has a recall provision and it requires only 12 percent for all elected officials to be recalled. We arerequiring 25 percent. I should point out that that 25 percent does not mean that the elected official is, in effect, fired, but that merely means he would stand for election against an opponent or perhaps some other method that the Legislature could provide. Now, there are some who suggest that if the legislators and other elected officials are going to be subject to recall, they are going to be bothered and harassed by people who are going to be bringing petitions to them and these legislators and other elected officials will be under considerable pressure, and I don't think that's true. I think that, as this body has shown, as I think the Legislature would show, that somebody suggesting that they're going to run out and get a petition is not going to threaten a legislator who can stand up [under] that kind of pressure. For the most part, as I point out, 25 percent is a very high number. In fact, I am, in a sense, liable to recall at any time, and I think anybody who is an employee working for somebody else is, in a sense, under recall-can be fired at any time-and you can live with it. There's no great problem there, so I move that we adopt this section on recall. I think it is entirely workable. I think it's something that-it's the people's right. It's not a privilege we're giving them, but a right they should have, and I think we should adopt this section and put it in the Constitution.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in opposition to the majority proposal on recall. We had a lengthy discussion yesterday concerning recall and the Local Government Article. We finally resolved the issue by moving to delete this section. I feel the same reasons we gave yesterday are applicable in this case. We had considered recall at some length in our Legislative Committee before we realized that General Government was going to handle this area. Therefore, I firmly feel that we should also delete this recall section in this article.

CHAIRMAN GRAYBILL: Mr. Loendorf, you have an amendment before the Chair on this. Do you want it read, or not?

DELEGATE LOENDORF: I was of the understanding there was a minority report to delete it. Will that be offered, or not?

CHAIRMAN GRAYBILL: Well now, let's see, page 16.

Mr. Etchart, is there a minority report going to be made at this time?

DELEGATE ETCHART: Yes, sir, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: As a substitute motion, I would move that when this committee does rise and report, after having had under consideration this article, that it adopt the minority proposal Number 2, on page 16, which is for deletion of the recall provision.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: We thought the recall provision was unnecessary and a dangerous harassment that would hinder an elected official in performance of his duties. Such a provision would tend to disrupt the political processes and keep Montana in a continuous state of confusion. The intent of recall is also basically covered under the present electoral system, as elected officials are subject to recall each time their office is up for election, and we submit that this is plenty of recall, that we already have it at our regular elections, and that this section should be deleted.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Would the clerk read my motion at this time.

CHAIRMAN GRAYBILL: Will the clerk read the motion of Mr. Loendorf.

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion, to amend Section 10, page 5, lines 24 through 30 of the General Government Committee Proposal Number 12, by deleting Section 10 in its entirety and substituting in lieu thereof the following: 'Laws may be enacted to provide for recall of all elected officials of the state and its political subdivisions.' Signed: Loendorf." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf, the Chair is going to-yours is a substitute motion to the motion to delete; is that it?

DELEGATE LOENDORF: It's a substitute motion, right.

CHAIRMAN GRAYBILL: Well, I guess that will work all right. Mr. Etchart, you made a motion to delete-right?-in its entirety-so now we have Mr. Etchart's—or Mr. Loendorfs language before us on a motion to substitute his language for the deletion; and the deletion, of course, would strike out the first language. So, I'll allow two substitute motions instead of the other amendment, and so forth. Very well, the issue is on Mr. Loendorfs motion to substitute the language that has been placed before you on your desks-is that right?—

DELEGATE LOENDORF: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: -in place of Mr. Etchart's motion to delete.

DELEGATE LOENDORF: I guess it has not been placed on the desks. I—

CHAIRMAN GRAYBILL: It is not on the desks?

DELEGATE LOENDORF: I think I can explain it, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, why don't I-I think they'd better write it down, then, so they know what it is, if they want to-some of them. "Laws may be enacted to provide for the recall of all elected officials of the state and its political subdivisions." That's all there is to it. "Laws may be enacted to provide for the recall of all elected officials of the state and its political subdivisions"-That language being in place of the motion to delete, the motion to delete having stricken-having proposed the striking of Section 10 in its original form on page 5.

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, my motion was also a motion to delete, the same as Mr. Etchart's, but a substitution. First of all, I would like to say I support Mr. Etchart's motion. I do not believe in constitutionalizing recall. I offer this motion merely to give the delegates a third option. The first-the majority report constitutionalizes recall; Mr. Etchart's motion deletes recall from the Constitution and would make statutory law providing for recall impossible to those offices and the terms of which are created in the Constitution. The motion I propose would not constitutionalize recall but make it completely optional with the Legislature to provide for it. If it is-if recall is adopted, I think this is the best approach to take for these reasons. It seems to me, providing for recall in the Constitution creates great inflexibility. For example, the terms of various offices will be different. I would think the Legislature may not want to provide for recall for offices elected for a very short term-for example, 2 to 4 years--whereas they may want to provide for recall for people elected say, 6 to 10 years. Also, to make recall effective, I think the Legislature would want to provide that a man could not be recalled during, say, the first 6 months or the first year for the term he is elected. Certainly, you don't want to recall a legislator before he's even gone to the legislator-Legislature and begin to make decisions. That would defeat the purpose of it. Finally, putting a percentage in a constitution creates a very inflexible, and perhaps unworkable, situation. Twenty-five percent might be unusually high; might be impossible to get statewide-or virtually impossible. So, for all these reasons, I think we should leave recall up to the Legislature. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Would Mr. Loendorf yield to a question?

DELEGATE LOENDORF: I yield.

DELEGATE REICHERT: I wonder, when you say "all elected officials"-in your discussion, you spoke about certain groups of officials possibly coming under recall because of the length of their terms-could this somehow be considered discriminatory?

DELEGATE LOENDORF: I guess I don't follow you, Mrs. Reichert.

DELEGATE REICHERT: (Inaudible)— the Legislature states that recall is possible for certain, perhaps judicial officers. Do you think this might be discriminatory as far as some of the other public officers are concerned, not being free from recall?

DELEGATE LOENDORF: **No,** as long as the Legislature has good reasons for making the distinctions. In fact, certain constitutions do dis-

tinguish between various offices. For example, they often provide for recall but exempt the Judiciary; and there are good reasons for that.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, ladies and gentlemen. I would resist the proposed amendment of Jerry Loendorf. Whether or not the recall provisions of a constitution can constitute harassment or not is a question you may decide, but if it is to be allowed, then I think it is absolutely necessary that the percentage which has been put in here by the committee be retained, as otherwise, you have created a situation where the Legislature in its wisdom may be disenchanted with some particular individual-some particular official, and, through pressure at a given time, make a low percentage and then change it in regard to somebody else. And it was the feeling of the committee-and is my feeling—that if we are to have recall, thepercentageshould be high enough that it cannot constitute harassment and it represents a genuine desire of the people of Montana to take some person out of office. We have some people who serve for 2 years, some for 4 years, some for 6 years, and now, some for 8 years, which are fairly long terms; and for that reason and that reason alone, it may be necessary that the people of Montana have an option to recall. I would call to your attention that in the state of North Dakota, they have had recall for a long time. It has not amounted to harassment over there, and in their situation they have provided in their constitution that the petition must be signed by electors equal in number to 25 percent of those who voted at the preceding general election. The feeling of the majority of the committee was, in response to numerous petitions and people who came to us, that a recall section should be offered to this delegation for their decision, but it was also our feeling that if it is offered, it should carry a definite percentage and it should not be discretionary, as it has been suggested by Mr. Loendorf. I would, however, move to amend-when the time comes, it can be-to correct the word we have eliminated and to help Style and Drafting put "general" election in between the words "preceding" and "election", but I would urge you not to support Jerry Loendorfs recommendation.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON:. Mr. President, I rise in support of Mr. Loendorf s amendment for most of the reasons that Mr. Habedank is against it. Most of the states that have dealt with recall have found that a blanket percentage is very—it just doesn't work. I think if you want recall, you should make it so it works. If you don't want recall-for example, Illinois has it, and to get a recall on the ballot you have to have 55 percent of the voters of the state-so, obviously, Illinois doesn't really care about recall. Kansas and California have-both haverecognized that 25 percent straight across the board isn't meaningful either. They have theirs on a sliding scale. You have a 25 percent on the local level, where it's easier to get signatures, and then for at-large elections across the state, they have reduced it to 15 percent; and it's all on a sliding scale according to difficulty in ascertaining signatures on a petition. I agree in theory with recall for the very reason that it first began during the progressive era of the United States-was to try and make the people feel that they had access to their representatives. And if you'll remember, for example, in the last Legislative Session, one of the reasons that the Legislature was able to increase the term of mayor and alderman under the aldermanic form of government was that, at the same time, they instituted recall to these local officials. The notion of recall has helped increase the length of term of certain elected officials; and perhaps since we have increased the term of judges in the State of Montana to 8 years in the Constitution, recall might not be a bad idea. But I think it's very unwise, if we-if the Convention itself believes in recall, to have a blanket 25 percent, because it just has not worked in other states; and if you don't want it to work, then let's delete it completely.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in support of Mr. Loendorfs amendment. The majority article is incompatible, as I see it, with local government. The administrative problems of determining down to precinct and ward in a local governmental unit would be time-consuming, expensive, and so on; and I think that the amendment would work much better. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Two things, quickly. I think we ought to note. One is that when we dealt with this at length in the Local Government Article, we constantly referred to this which was being proposed in the General Government

Article; and I think almost everybody had in their mind that when they voted against that, they probably were voting against the recall motion all the way through or there wouldn't be much sense in doing what we did on the Local Government Article. Secondly, just so that-1 think we ought to think this thing all the way through-let's take a look at 25 percent. Twenty-five percent of the voters of a single-member district-now, remember, a legislator runs from a single-member district henceforth if this Constitution passes. If, assuming a house of a hundred or a unicameral body of a hundred members, you have something under 7,000 live bodies in each single-member district on the one-man, one-vote theory which-I am not sure of these figures, but let's-most people around here seem to think that would produce about 3,500 voters, perhaps--registered voters-in that single-member district. If you're talking about a particular election, we hardly ever have over about 60 percent involved in elections. You may be talking about 2,000 people. Twenty-five percent of 2,000 is 500 people. Now, getting 500 signatures in one single-member district, say, in a city, is not really a tough thing to do, particularly if you have, say, one large union or one large bloc of anybodies who happen to be politically opposed to this particular person. Now, a case in point: Idaho has this. Idaho just recently, in a matter of a few months ago, recalled, in one district-someone correct me if I'm wrong on this-was it three legislators?

UNIDENTIFIED DELEGATE: Two.

DELEGATE HARPER: Two? What was the reason? These were bad people, immoral, not doing what they were supposed to do? No, they went to the Legislature and they voted to increase their salaries. They did what the Legislature is supposed to do; namely, in Idaho, to vote on the compensation for the Legislature. So, these people disagreed with that and they recalled them. And I could see this-again, I said this when the local government thing came up-as a sort of a club behind the door where a group says, "You know, we have more than 500 signatures we can produce; if you don't vote with our line, then we're going to put you into another election." And I can conceive that, in some districts, people who were not in line with one certain power bloc would just feel that they didn't even want to run under those circumstances, knowing that recall hung over them. Now-and statewide, I can see this in terms of a Governor-the percentage is so large that I don't think we'd have that kind of threat-but with single-member districts, I think we ought to bear this in mind. I think I shall vote against my friend, Mr. Loendorf's, motion and in favor of Mr. Etchart's minority proposal.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. As the author of the recall proposal, which I hoped would be a safety valve for the protection of the people, I rise to ask you to defeat the Loendorf amendment and bury my proposal. (Laughter) I appeared before the Legislative Committee and got soundly trounced. The Local Government Committee gave me a licking. And I felt the pulse of the Convention, and I think I'm licked.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, sort of in a little salve for Mr. Martin, he appeared before our committee and we did not soundly trounce him. We brought out a majority report, putting in recall in our committee report, and I'm-well, a little bewildered, like the rest of you delegates in here. We have a feeling here-when this Convention was first conceived and thought of, the thought that was in the mind of many of the people here, as well as many of the voters, was that we have a government that would be responsive to the people; and since the Convention has convened and the various winnowing of ideas and personalities and philosophies has taken place, we have that group that has been winnowed out that are strongly in support of a more responsive government. We have those, of course, who've been winnowed out who feel that our government right now is too responsive; we should make it so that it has even less and less response. Now, we come up here with this article dealing with recall, and I find those-some of those, let me put it, who are supporting responsive government are now opposing methods of making government responsive. Maybe they've been lobbied by somebody, I don't know whom. So I rise in opposition to the Loendorf motion, also in opposition to Mr. Etchart's motion, the minority motion, and in support of the majority. We are also going to longer terms for people. We have very few, if the Constitution is adopted by the people. Legislators-most of them will be elected on a 4-year term. Many of the 2-year terms will have disappeared; and we are talking longer and longer terms for elected officials, so I think the recall is very essential. What is wrong with allowing the people to correct their

mistakes at election? Why is it so wrong for the people to do that when it's perfectly all right for us here in this assembly. If we make a mistake, why, we come back and get a recall and bring it back out and correct our mistake. We don't feel that we are harassing ourselves or the article, either one—maybe we're sort of harassing the article by the time we beat it back and forth over the desks and over each other's heads-but I feel that we are here on the crossroads of responsive government; and if you are in support of responsive government and a government that will be for the benefit of the people, let's keep the majority report, the recall, here in the Legislature-in the Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to support the deletion of this section. I believe that it's very important it is deleted. I think that the delegates from Silver Bow County are a perfect example of this, as far as their voting in this Convention is concerned. Now, there are many different power groups that would be located, say, in Silver Bow County and should—because one of the delegates feels he is right in the way that he votes, this group could mass a petition for recall against this person, even though this person only voted because--what he believed was right, and he may have been right, but because of the feelings that run high during a certain period of time, this could not only injure this person-his character-for the rest of his life-this recall-and I think it's a very dangerous thing, and I think we should delete it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, again, I think we come down to a basic philosophy. This is the 49th day of this Convention. I think I've heard at least 10 times a day for49 days that this is a people's convention. We have dealt with many important items in this body. I feel that if we really believe in people, that we shouldn't be afraid of them. I stand in support of the majority report on recall. If we cannot trust ourselves to run for an office and do what we think people want, then they should have the right to remove us if they so choose.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I'm on the minority report, and I support the move to delete recall. They talk about the voice of the people. Actually, this is the voice of a vicious minority. And I might also add that, as Mr. Davis said, on Fridays we don't trust our elected officials, but this is Saturday, when we do, so we should delete recall.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I take no position on Saturdays-just on weekdays. (Laughter)

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Yes, Mr. President. I wonder what would have happened if this section was in effect at the present time. I seem to recollect that we had several letters-in fact, hundreds of letters- requesting positions that the delegates should take. I wonder, if they had that privilege, maybe they would have exercised it on some of the delegates. I support the motion to delete.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, I would merely like to point out that by having a recall provision and by requiring whatever percentage you do, whether it be 15 or 25 percent, this does not mean that you are automatically recalling the person that's in office. This just means that by getting these-this many signatures, his name will be placed on a ballot on which you will vote to decide whether to keep him in office or to seat [unseat] him. It's not an automatic thing once you've gotten these signatures on a petition.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I've always felt that if you can't stand the heat, you don't want to get in the pans, so maybe we'd keep some people out of politics that shouldn't be there if we keep the-this recall in.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates, our Local Government had recall in it for local officials. We allowed it to be deleted without too much argument because in our present Constitution there is a recall, and I'm going to go along with the majority on this because I think

that it should be there, just as I-for the reason I said the other day-absenteeism in some of our local areas should be reason enough for recall. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I do not agree with Delegate Jacobsen. We do not have a provision for recall in our present Constitution. There is a recall by statute.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I rise in support of the Loendorf amendment. Actually, we do have provision for all officials except those expressly mentioned in the Constitution. If they can be-The Legislature can pass recall measures, and the Loendorf amendment merely makes it possible for those that have constitutional status; so therefore I think it equalizes the—all people all over the state.

CHAIRMAN GRAYBILL: The question arises on Mr. Loendorf's motion-substitute motion to substitute this language for the motion to delete. Mr. Loendorfs language says: "Laws may be enacted to provide for the recall of all elected officials of the state and its political subdivisions." It has the effect of letting the Legislature enact recall laws. So many as shall be in favor of Mr. Loendorfs motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. So many as are in favor, vote Aye; so many as are opposed, vote No. Nonrecorded vote. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Pleasetake the ballot. Well, I don't need to take the ballot. It's 43 for and 41 against, so Mr. Loendorfs motion prevails. It's adopted 43 to 41. Very well, is there other language?

(No response)

CHAIRMAN GRAYBILL: Is there any other discussion or debate of Section 10, as amended?

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I think that all that Mr. Loendorf was trying to say was to put a period after "officials" on line 25 and change the "shall" to "may" on line 24, and that would have made it a lot easier for us to understand what we were doing.

CHAIRMAN GRAYBILL: Well, I did dictate the language to any of you that cared to write it down.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I would like to renew my motion to delete Mr. Loendorfs substitute motion, if I could.

CHAIRMAN GRAYBILL: Very well, Mr. Etchart now moves to delete Mr. Loendorf's motion-Mr. Loendorfs language. That's to delete amended Section 10.

Mr. Etchart, do you want to discuss it further?

DELEGATE ETCHART: I think it has been thoroughly discussed and would leave it to the vote of a body.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I made some reference to the question of recall in the Local Government Article, and I think that it's the same-that I referred to then is pertinent here, but I'm-certainly have confidence in the voters, but I'm concerned that we let a minority of voters overrule the majority; if not directly, at least indirectly. And I can see this being used as a club over the head of good officials, but I can also see it being used in the present situation as a club of the Legislature over the head of the Judicial. And I think that this is particularly disturbing, because when the Legislature can pass an act which would allow for example, a petition of 1 percent of the voters, or even a half a percent of the voters, to place a Supreme Court Justice up for a recall election, this is particularly disturbing; and I think that the motion of Delegate Etchart should be supported and we should reject this whole section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I'd just like to remind this body that today is an even-numbered day, the 18th, and it's on this day that we trust the Legislature, so I hope we defeat the

motion to delete.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. President, is a substitute motion in order?

CHAIRMAN GRAYBILL: A substitute which substitutes an entirely new paragraph is in order, but not to amend Mr. Loendorfs language. Mr. Davis.

DELEGATE DAVIS: I'd just like to call to Mr. Foster's attention: those same voters he started out saying that he trusts their wisdom are going to be electing those legislators to pass these laws, so I support the motion to leave the recall in, as Mr. Loendorf has very wisely effected a good compromise here.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Etchart's motion to delete Mr. Loendorf' s amended language for Section 10.

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: A roll call vote is called for. All in favor of deleting the new Loendorf language, vote Aye; all opposed, vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Nay
Anderson, O. ..... Aye
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Absent
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Absent
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Nay
Choate ..... Nay
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Absent
Drum ..... Absent
Eck ..... Absent
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Excused
Foster ..... Aye
Furlong ..... Absent
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Absent
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay

Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Aye
Schiltz ..... Nay
Siderius. ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 32 delegates voting Aye, 52 voting No.

CHAIRMAN GRAYBILL: 52 having voted No and 32 having voted Aye, the motion to delete fails. Very well, is there other discussion of Section 10, as amended by Mr. Loendorf?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Loendorf that when this body arise and report, after having had under consideration Section 10 as amended, that we recommend that Section 10 as amended be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. It's adopted as amended.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole stand in recess until 4 o'clock this day.

DELEGATES: No.

CHAIRMAN GRAYBILL: Ten minutes to 4:OO; how's that?

DELEGATES: Yes.

DELEGATE ESKILDSEN: With no objection, would 10 minutes to 4:00 be all right? (Laughter)

CHAIRMAN GRAYBILL: Very well, the motion is to recess until 10 minutes to 4:O0. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: And so ordered.

(Committee recessed at 3:37 p.m.--reconvened at 3:57 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in session.

DELEGATE ESKILDSEN: Mr. Chairman. Mr. Chairman.

CHAIRMAN GRAYBILL: The Committee will be in session. The Committee will be in session.

Mr. Eskildsen, for what purpose do you rise?

DELEGATE ESKILDSEN: Mr. Chairman, I rise to let the members of this body note that it is now 2 minutes to 4:00, and had you followed my motion, you would have had plenty of time to have gotten back by 4 o'clock. (Laughter)

CHAIRMAN GRAYBILL: Mr. Eskildsen, this body knows that, had your motion been 4:00, it would have been 4:10 before we got going. (Laughter) Very well, members of the body, we are ready to go on to Section 11. I have been asked to announce that-the order. There are several amendments on Section 11. We'll take the majority first, then the minority. There are amendments, at the moment, on the desk, from Harper, Leuthold, Kamhoot and Ask. There may be others. Will the clerk please read Section 11.

CLERK HANSON: "Section 11. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the Legislature or by the people through

initiative or referendum." Mr. Chairman, Section 11.

CHAIRMAN GRAYBILL: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration General Government Proposal Number 12, Section 11, it recommend the same be adopted. Mr. Chairman, this section is designed to replace Article XIX, Section 2, of the present Constitution. The present Constitution prohibits gambling of any kind. The proposed revision would continue this prohibition until the Legislature specifically legalized-legalizes particular forms. The proposed revision would alleviate a good deal of fear among the people that a constitutional change would open the door to all sorts of gambling problems that do not now exist in the state. The committee revised the specific and inflexible prohibition in the present Constitution because it feels that the Legislature should make the rules governing gambling. The committee recommends that, if at all possible, the Convention decision on lotteries and gambling-whatever we adopt today-be presented to the people as a separate issue when the Constitution is put to a vote.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration this Section 11, that the minority report be adopted. Section 11 reads: "Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the Legislature or by the people through initiative or referendum". The minority proposal and the majority proposal would accomplish the same end with regards to gambling. Both would leave the matter to statutory law, where extensive provisions prohibiting gambling already exist. Neither provision would legalize gambling of any nature. However, the majority proposal constitutionally states that situation. The minority feel that to state something is illegal until made legal is superfluous and redundant. If, as is the case, there are laws on the books, the laws will stay in force unless overturned by the Court, prohibited by the Constitution or changed by the Legislature. Discussion of any court action is speculative, and neither proposal prohibits the Legislature from acting on the present statutory laws. The minority does not feel it's necessary to list a specific instance in which the Legislature or people may act, when they have been given the general power to so do. Basically, the majority proposal is identical to the minority proposal. The minority feels that the majority provision also could be somewhat confusing to the voters, whereas no mention of gambling would save the confusion resulting from the redundant majority article--redundant. The minority would also like to point out that the majority proposal-if adopted, gambling would join treason as a constitutional crime, while such crimes as murder, rape and assault are statutory crimes. In this light, the minority wonders if gambling is really a basic and constitutional issue. Now, as my learned constituent, Breck Shampoo, said the other day-now, I want to stop here and say something. (Laughter) A great deal has been said and much more will doubtless be said on the issue of gambling and lotteries. From all this, it will become clear that the people of Montana, who are, of course, our paramount consideration, do want some moderation in our present constitutional prohibition against all forms of gambling. We do not propose, nor do the people of this state want, Nevada-type open gambling. Virtually all segments of our society do want to be able to legally play bingo. Possibly a state-operated lottery might have some merit; perhaps some beneficial revenue to Montana might result from it. Maybe other forms of moderate gambling, probably by a mandate of the people. But to constitutionalize bingo--really, I don't think it has constitutional status, and I think that this might be something to consider. We've heard about the great silent majority who will rise up and oppose anything that will change our present prohibition against gambling, and I think this is a myth. Here are petitions, numbering about 4,100 signatures, that have been voluntarily submitted to our committee or mailed to me, and I have about--oh, a total of about 4,900 signatures that have been put on, and this basically says that they want the Constitution to legalize gambling. We have no intention of doing that, of course. We had quite a few people who came to our committee and reported in-or testified in support of some form of relaxation of these restrictions, and we didn't have any witness who appeared in opposition to it. Many letters did come. Many have been written to me, and I'm sure most of you people have had at least some regarding this, in support of it. And, of course, there have been some written in opposition to it; but I have seen very few of those compared to the number of those who have felt in the affirmative. On our statewide radio-telephone program, we had 48 phone calls, 40 of which were in support of our basic proposal and only 8 in opposition to it.

We had a telephone conference call with a high school class at Columbus. There were 60 students there. One of the questions that we asked them was whether they favored deletion of Section 2 of Article XIX from the Constitution. They took a vote on it and unanimously said yes, they did want it. From all of this above data, it's eminently clear that we do have a mandate from the people to delete this section. The present statutes are likewise eminently clear and all-inclusive in their prohibition of all forms of gambling. I can well recall discussing this issue with my father when he was commissioned by the Legislature to do the code revision in 1947, which I know they are still the codes that are being used today in this Convention, and he assured me that under these statutes, all forms of gambling are illegal. Until the Legislature changes these laws, they are still in full force and effect. Presently, they can't do that anyway by-except by constitutional amendment. There are 32 laws on the books-statutes from 94.2401 to 94-2432—fourteen pages. They enumerate every game you've ever heard of. These are the statutes on gambling. Then 94-1421 prohibits betting on elections; 94-3001 to 3011 deal with lotteries. There are 10 statutes there-or 11. In the minority, we don't really see much reason to make any reference to gambling in the new Constitution. I don't feel it really is necessary for it to be a side issue on the ballot. However, if this be our choice, it would be simpler to put it as a side issue; our present Section 2 could be a side issue on the ballot for people to vote on if they want to sustain what we presently have. Otherwise, make no reference to it, because if we do refer to it in the main document, then it will be confusing to have—make-to reference to it. But I feel it will help sell the ballot-or the document-I really do-if we simply delete it. The majority of the voters want it that way, I feel, and it may be worthy to note that both in Idaho and Maryland-in their new proposed constitutions had antigambling provisions. Both of these were rejected. Of 19 states that have written new constitutions since 1945, Michigan, I understand, is the only state that asked for and ratified an antigambling provision. I think Montana is ready to reject the one that we've had since 1889. The Legislature, in their wisdom, can surely provide Montana with the sort of gambling legislation they want. After all, they are the voice of the people, and we shouldn't legislate any further up here. I urge you, fellow delegates, to support the minority position and delete Section 2 of Article XIX. If nothing else, it would ease the burden on our Committee on Style. Those guys over there, they-I'm always concerned when Jack gets up and says, "Well, nothing changed here--nothing substantive-simply language, that's all"-then you look at it, and you find he's emasculated it. Well, it's pretty hard-it's not a very mind-boggling job to style a deletion. I think they could handle that pretty good. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the Chair understands that the majority section, which is on page 6, would authorize all forms of gambling, et cetera--would not--would prohibit them unless authorized by the Legislature or the people on initiative and referendum; that the minority has proposed that this section be deleted.

Now, Mr. Harper is next.

DELEGATE HARPER: Mr. Chairman, will you have the clerk read my substitute motion for what is before us-the motion to amend Section 11, page 6.

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion, to amend Section 11, page 6, lines 1 through 4, of the General Government Committee proposal by striking it in its entirety and inserting in lieu thereof the following words: 'The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall maintain laws prohibiting the sale of lottery or gift enterprise tickets in the state.' Signed: Harper." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper, I'm going to amend that so it says, "I move, as a substitute to Mr. Choate's motion"-the point is exactly as it was awhile ago on the other one. I won't let you amend a deletion, but I'll let you put an absolutely new paragraph in in place of it. Now, I understand your motion is on the desks before the body, is that right?

DELEGATE HARPER: No, but you will find it in the old Constitution. Instead of saying "Legislative Assembly", it says "the Legislature", and it is what is in the present Constitution.

CHAIRMAN GRAYBILL: All right, maybe I'd better read it to them. Some may want to write it down. "The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall maintain laws prohibiting the sale of lottery or gift enterprise tickets in the state." So the situation is that the majority report has been deleted by-is proposed to be deleted by Mr. Choate's minority report and Mr. Harper's

language is substituted for the minority report's deletion.

Mr. Harper.

DELEGATE HARPER: Thank you, Mr. Chairman. Some of you guys haven't been in church in a long time, and you're getting ready to get a sermon. So relax-that's the way the congregation does. The other day, on Education, Mr. Champoux moved a pulpit in and set it on his desk; and in spite of the length of it, I applauded his idea, because I think the pulpit should be in the public forum and that every one of us, in a sense, has to be a minister to the others of us. I think we're really getting down to basic ideas about government when we are talking about gambling. Now, some implication is that-some have implied that this is not true; but, you know, unless your head is in the sand, one of the crucial issues of our time, right now, is how long we are going to countenance the sub rosa of government of criminals and gambling elements that is growing apace in many states and all across this nation and, indeed, around the world today. And in writing a Constitution, it's true that we write guidelines for law and organization, but also-and don't forget this-we help to establish the character of our state; and we set many prohibitions into our Constitution already. There are some things that we do not want our state government to do and there are some things that we tell them we do want them to do, and we are moving in a perfectly sound and sensible manner in the way of writing constitutions when we consider writing into our new Constitution what we have in our present Constitution-that one thing we want to prohibit in this state is gambling. We don't want to leave it to the Legislature so that every time this Legislature meets-and believe me, it will be every time this Legislature meets-that we have the gambling interests coming-knock on the door to get this legalized, that legalized, step by step, to get the whole business. The Legislators are going to have enough pressures upon them without having this constantly upon them, too. Now, there are so many things against legalized gambling that a person who takes his citizenship seriously just wonders where to start, really. It's certain that a state's greatness is measured only in terms of the character of its people. At times our state or local government or any agency, such as a church or civic club, gets pretty hungry for money; but any time an agency gets so hungry for money that it has to finance itself out of the weaknesses of its own people, it sows the seeds of its own destruction. No group is ever stronger than the ideals or standards of its people. Now, can anybody make a case for gambling on the basis that it's helpful in personal character-building, or in creating a strong society? If I may mix two metaphors, any way you cut the deck, it's "heads I win, and tails you lose" when it comes to gambling. The only arguments backed by proponents of legalized gambling are these: One, it goes on anyway so we may as well make it legal; two, it's an easy way to make money-the suggestion has been that the state may want, in the future, to avail itself of this easy opportunity to make money-and, thirdly, that, actually, legalized gambling operators won't act like illegal gambling operators; and all three of these arguments are not only false but shallow. If you want to take this "something that goes on anyway, we might as well make it legal", where will you stop? Allow drug traffic, prostitution, graft in government? An easy way for the state to make money? Well, not if you look at the facts. It's an easy way for gamblers to make money-ten to twenty billion dollars a year-but not for the state. If you want an example, we have one. You can look at Nevada-a crime rate twice the national average, and, of course, gambling isn't a crime anyone can be booked on in Nevada. Forcible rape, robbery-also double the national average. Add a liquor consumption two and six-tenths times the national average and, naturally, Nevada's motor vehicle death rate is three times the national average. But, you say, vast sums go into the state coffers from legalized gambling? Well, where it goes from there is a mystery. Nevada's health and welfare services rank below every other state in the Union. Educational systems and facilities are very poor. It has the highest suicide rate in the nation. Where does the money go? Two ways. One is so many added expenses of controlling the extra crime that Las Vegas and Reno have to have police forces two or three times as large as other United States cities of their size. Welfareexpenses will go crazy, and the rest of the money goes to feed the corruption that accompanies gambling everywhere. Now, as to the third argument, that legalized gambling people are far different from illegal gambling people, all of the crime commissions—remember the Kefauver Commission?-other federal and state and local commissions in late years-always come to the same conclusion; that gambling in America is a crooked business, run by crooks who-most often, who have no intention of giving the sucker a chance; and I don't even want to go into the detailed volumes that have been produced on this subject. It's enough to say that

thinking citizens of Montana don't want any permissive legislation that may damage persons, and gambling damages persons on many counts. Gambling is psychologically damaging. It chokes a person's achievement and fulfillment; and for a person who is neurotic, gambling actually can become addictive. But for every person, ourselves included, the philosophy of getting something for nothing is always psychologically damaging, By social and ethical rules of American conduct, gambling is an immoral business, and it taints those who operate it. Now, when it's kept illegal and occasionally swept under the rug in upheavals of moral reform, gambling has slight opportunity to work its colors into the permanent pattern of American life, but when given a base of legality, as has happened so spectacularly in Nevada, the morals and ethics of gamblers become a part of the accepted pattern of life. And that's not sermonizing; that's just repeating a fact. And here's another fact: gambling is economically damaging. In the first place, the gambling industry is nonproductive. It never creates any new wealth; it never performs any useful service. It drains the salaries, savings, and investments of individuals and families. It serves no human need. Almost invariably, the people who benefit from the gambling profit are connected with the destructive vices of our society; so in Wisconsin, Senator Wiley, several years ago, said that every one dollar that states raise from gambling revenue cause at least five dollars to be paid out in higher police costs, higher court costs, higher penitentiary costs, higher welfare costs. Where does gambling money come from-this easy money? Gambling profits always show up as deficits somewhere else, and that means-and I say it always means-the shoestore, the grocery store, the clothing store, the furniture store. Every dollar comes out of one pocket or another. Gambling has always been and always will be a parasite on the legitimate business community. Our state can't stand the social loss of gambling either. Gambling increases crimes like embezzlement. All studies show that the single biggest cause of embezzlement of funds is gambling. The same is true in terms of it adding to broken marriages, neglected children, poverty, even suicide. Now, I maintain, in closing, we just can't afford these losses, particularly-now, note this-when what we lose always goes into the treasure chest to keep crime syndicates running. Certainly, nobody in his right mind would want the hoodlum empire controlling most of the United States gambling to become any kind of a dominant factor in Montana society and politics, and yet we would be like the proverbial ostrich who sticks his head in the sand to think that we can allow legalized gambling in the future that will not be tied into these nationwide syndicates. The last comment: a lot of people have been writing in to say they wanted legalized gambling, and the implication has been made that if a lot of people had been against it, they would have been writing in, too. We've heard a lot about the issues the people will speak on. I speak now as a churchman. I know something about the church structure and various church groups across this state. And make no mistake about it, there are thousands of Montana people who are going about their normal lives now with no fear of the gambling blight; but their heads will come up out of the sand when this issue comes to light; and any constitution removing the protection against organized gambling is going, probably, to be stuck permanently in the sand of a negative vote.

CHAIRMAN GRAYBILL: Mr. Harper, you have one more minute under the IO-minute rule.

DELEGATE HARPER: I don't need it. I'm done, Mr. Chairman, with the final comment that these flowers you see sitting around here, making it look somewhat like a cemetery, are going to be very appropriate, I'm afraid, for the burial of a constitution that takes this article out of the Constitution without any chance, at least, for a popular vote on it.

CHAIRMAN GRAYBILL: Mr. Champoux, I think you were up next.

DELEGATE CHAMPOUX: Well, I'd like to direct a question at Mr. Choate here, if he'd yield.

CHAIRMAN GRAYBILL: Mr. Choate?

DELEGATE CHOATE: I yield.

DELEGATE CHAMPOUX: Mr. Choate, to allay any suspicions in my mind, or any others in this assembly, that there has been a notorious group pushing this-namely, Don Scandal, King Kong Kelleher, Ima Bleedingheart, Lyman Pure, Breck Shampoo, Pistol Pete Lorello, or Rod Dahood, or that notorious individual, Coffee Cup Kuglin-I'll vote for the measure.

CHAIRMAN GRAYBILL: Mr. Champoux, if you're through, I won't interrupt you. (Laughter)

DELEGATE CHOATE: If that's a question—

CHAIRMAN GRAYBILL: Very well, Mr. Dahood.

DELEGATE CHOATE: (Inaudible)-saw one of them once downtown, but I don't recall for sure.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'm satisfied that I respect Delegate Harper as much as I respect any delegate in this Constitutional Convention, and in speaking on the issue, I'm not really opposed to the general premises that he has put forth today. His argument and his brief, however, are filed in the wrong state. We are not here to legalize gambling in the relative terms which he has painted; and with respect to the immorality of gambling, the type of gambling that we're going to be talking about here, which I will come to later on in my remarks-there is no immorality about it. Acts of human conduct fall within two groups: malum prohibitum, because they are prohibited by legislative act, by the law of man, or malum in se, because they are prohibited by the law of God or the natural law. Several years back, I had the occasion to have a world-famous theologian visit in Anaconda-he occupies a very high position in Rome-and I put the question to him, and he stated that gambling, as such, was not immoral; it was not contrary to the law of God provided it did not bring any type of suffering, chaos, turmoil with the people who participate in that activity or upon the family of the individual who does participate. We are not here talking about the legalized gambling that brings crime, that brings syndication, that brings undesirable elements to the State of Montana; we're talking about removing a law that is unenforceable. I do not imbibe in alcoholic beverage. I would like to see prohibition back again, because, in my practice of law, I have seen that particular element that's manufactured by man cause more heartache, more heartbreak, more family disunity, more domestic strife than anything else I can point to, and I don't think it serves any good purpose. I don't think it serves any useful purpose, and if somebody would move here now that we reenact prohibition, I will vote for it. And as my Vice Chairman, Chet Blaylock, said, "God forbid," (Laughter) But what do we have in Montana? We have a situation that makes criminals out of a large segment of our society every day. Every time someone plays a football card or a baseball pool, goes to a bingo game, or has a friendly bet at a football game or a basketball tournament, they are actually violating the law of the State of Montana; and let me assure you, it's only a matter of degree, but they have committed a criminal act. Now, what we're talking about is the present unenforceable constitutional prohibition of the State of Montana that is not reasonable, that is not accepted by the population, and thatcannot be just, because the majority of citizens in Montana will not honor it. And what is good and what is just for a particular people has to be measured by the manner in which it's implemented by the actions and conduct of those people in this state whom we consider to be law-abiding citizens that contribute to their communities. What we're talking about is removing a prohibition and placing it on the ballot, letting the people decide whether or not their Legislature, their representatives, ought to have the right to permit bingo, to permit, perhaps, some type of school lottery in the future—that's the type of thing that I'm talking about. I don't want Nevada-type gambling in the State of Montana: and I don't think any good, sound-thinking citizen does; and I think that if we brought that to Montana, allowed it to come here, it would be a disaster for the state, for its economy and for its people; and then we would have all the arguments that Delegate Harper has presented, living arguments that would be a sad lesson for all of us. But we have situations where people have lonely lives, and if this particular activity, which is not morally wrong-for example, going to a church bingo party or going to a bingo affair that's conducted by the American Legion-allow some of the lonely retired people to have something to do, something wherethey can visit, where it's not going to cause them any particular harm, there can be nothing wrong with it. I was in the County Attorney's office in Deer Lodge County for several years; I've been in that area for 20 years, since my release from the service. I've watched that particular activity; and I know that, technically speaking, it violates the law; but I have not seen any of that activity that I talk about cause any particular social problems for anyone in the community; and I submit that we've got to face the issue precisely in its proper, fair focus. I don't think it's fair to stand up here and try and relate this particular situation to the legalized gambling that we have in Nevada, to the legalized gambling that's written in the journals and the magazines, because that's not what we're talking about at all.

And the people of the State of Montana have been upset about this situation over the decades, and they ought to have the right to look at it on the ballot and decide whether or not they want to legalize these particular things that I have specified so that everyone in the State of Montana shall have the law fairly and evenly applied with respect to them. At the moment, in the State of Montana, in one county, we have strict enforcement of that particular situation; in another, we have laxity with respect to enforcement. We have a case of total imbalance. We have consternation about the law enforcement officers-they don't know what to do. They know they're unpopular if they do something like that, yet there are certain segments of law enforcement that insist it be done. And some will say, "Continue to enforce an unpopular law; you'll bring about its revision or its abolition." I submit it's time to exercise good judgment and common sense. Let's put it on the ballot, let the people decide it, because all that we have in mind are the type of things that I have specified and not the type of gambling that was pictured for us by Delegate Harper. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I assume that at this point, we're debating the-generally, the three mattters-three motions that have been set before us. Is that correct? General debate is directed to all three of these?

CHAIRMAN GRAYBILL: Yes, general debate can be directed toward all three. I think that the debate at this point demonstrates that we don't want either one of the alternatives that have been set before us so far. I couldn't, in good conscience, I don't think, vote for Mr. Harper's amendment-or substitute motion. Neither could I vote for a motion which would remove this matter from the Constitution, as both the majority and the minority report do. I think that what Mr. Dahood has just said is very true. Rut I think that if we don't want the kind of hardcore gambling that he referred to in this state, then we had better do something here in this Constitution, and I don't believe that putting this issue on the ballot is the proper way to go about this. The majority and the minority proposal pointed out the fact that we have many, many statutes on the books at this point regulating gambling. Why do we have those statutes on the books? We have those statutes on the books precisely because we have a constitutional statement on this issue. Without that constitutional statement, we could very likely have wide-open gambling in this state and could have had it for years, and I don't think any of us wants that. If we want our state to be besieged, our Legislature to be besieged and harassed by gambling interests, then all we have to do is to take this out of the Constitution. And I speak from some background of experience. I spent 3 years in Wyoming and was closely associated there with a group of citizens who, year after year, went before the Legislature of the State of Wyoming to try to prevent the passage of legalized gambling bills in that Legislature; and we found ourselves powerless before these people who came in and who pushed gambling bills through one house-the Senate or through the House--and an interesting thing would happen. Just when it seemed that everything else had failed, as far as we were concerned, almost miraculously, the gambling issue was turned off. And how was it turned off? It was turned off by the Nevada people, because they didn't want the competition. And I submit to you that if gambling interests have this kind of power that they can manipulate and control alegislative body in this manner, that we don't want to leave the door open one crack for those people to come in and to influence our legislative bodies, and the only way to do this, therefore, is to write something in the Constitution which specifically prohibits certain types of gambling. Now, on the other side of the issue, we don't want to lock up the door and, as Mr. Dahood suggested, make criminals out of everyone who wants to play bingo; and I'm afraid that this is what's going back to the old constitutional statement, which Mr. Harper is proposing that we do, would do. So we need a compromise, and the compromise we need is one that is something like the one suggested by Mr. Kamhoot, which is on your desk and which we haven't come to, at this point, yet. Gambling is a constitutional issue. It's one of the fundamental principles of governmental structure that a constitution should include-things which protect the ethical and the moral rights of people. One more point along this line: the law enforcement people throughout this state, I believe, would welcome some type of clear constitutional statement on this issue. No one, from the Attorney General down to the lowliest Deputy Sheriff, in this state wants legalized gambling; but I think that we could do these people a great service if we could put something into the Constitution in the form of a compromise which would clarify this issue. I know that the proponents of these things always argue that they're going to solve the state's financial

crises. They used a very interesting argument in Wyoming when they came in there. They said, "We're going to solve the educational problems of this state; we're going to give 3 percent of the take to education." And in the same breath, those same people turned around and said, "There really isn't very much money involved here." How contradictory can you get? There are tremendous sums of money involved when we open this up. So I urge that we defeat all of these proposals that are before us and that we go on and pass a suitable compromise, which I think Mr. Kamhoot's article is. Thank you.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I think I can agree 100 percent with what Delegate Harper has said, with one exception. I stand for the removal of the image of hypocrisy from the Constitution of the State of Montana. I was one of the first, I think, to appear before the General Government Committee-one of the preliminary hearings on both the Choate and the Belcher proposals. 1 testified, and I still sustain the deletion proposal. My reasoning was well stated in an article in the Great Falls Tribune, which is now a matter of record. If there is any chance to fight any form of commercialized gambling in the State of Montana, I will be the first to volunteer; but I object to it being a constitutional article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I've been sitting here, shaking in my boots, preparing to answer the onslaught of Reverend Harper. Fortunately, you chose to recognize Delegate Dahood, who expressed my feelings precisely, is-in a much more eloquent way. I really do not react favorably to writing such words as "bingo" or "raffles" into the Constitution of the State of Montana. Thirty-five years ago, the game of bingo was unknown; and 35 years hence, it may be in limbo. I support Mr. Choate's minority proposal. I do not think it will turn Montana into another Nevada. I have been contacted by many people about this, and they're not gamblers; and I don't gamble, and gambling doesn't mean nothing to me. I think it's statutory. I told my constituents that it would probably be one of the first things that was taken out of our Constitution. It obviously has no place in a constitution. Therefore, Mr. Chairman, I sincerely hope that the minority proposal of Mr. Choate will be adopted.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman. I rise in support of the majority report, and I'd like to discuss, briefly, why I think it's a better plan. I have been a County Attorney and an attorney, and I've been involved in this gambling thing. And we do have laws now on the books prohibiting gambling; but if you read them closely, it says, except cigar stores, et cetera, may have card tables and games of chance as long as they give you trade chips; and I've seen how that's abused. Several years ago the Legislature passed a law allowing nonprofit church-or clubs to have slot machines; so immediately every bar in the state formed a nonprofit corporation--we had slot machines all over the state. They have finally declared that statute unconstitutional due to this present prohibition we have. So, any gambling law you write has to be very carefully done, and I think you'd have to have investigation like you do on liquor licenses to make sure that places that do have bingo-which I agree with Mr. Dahood's statements-and that form of gambling, if you'd call it such, must be investigated and licensed or make sure they aren't a fictitious club or a fictitious church. So, I would like the minority not adopted, because if the Legislature isn't careful and if they don't properly define these things, you could have wide-open gambling without knowing it, and it would happen fast. If you adopt these other amendments that are going to come in and describe bingo, then you're going to describe various gambling games that can be done under a constitutional provision. Now, if you've ever been to Las Vegas, they have what they call "Keno", and it's one of their biggest games there. And if you start to say in our Constitution that you can have bingo or raffles by nonprofit clubs and you get a liberal interpretation of what a nonprofit club is by the Legislature or the Supreme Court or we miss something in here trying to legislate, then you're going to lock in gambling into this Constitution such as you never, maybe, had dreamed about when we passed these provisions, so I think the only safe provision-this is an emotional issue-is to retain the language of the majority report, which continues to prohibit all forms of gambling until such as the Legislature specifically approves. That'11 keep a tight rein on it, and it'll be legislative action after they can deliberate on it and not try and write something into the Constitution. And I agree with Mr. Dahood's arguments that we aren't trying to do what Delegate Harper said. We are trying to provide what I think a great

many of the people want. Now, if they don't want it-we say we represent the people and we want to give them a voice in our government-then they'll defeat it; but why can't we give them the right to vote on it as a separate issue? And if we take the majority and they vote Yes, gambling will still be prohibited-in fact, we made it broader than the present Constitution-until the Legislature can deliberate and tell us what kind of gambling they want. So I respectfully submit, seriously consider these-and I've had experience with this trying to define a gambling device-and adopt the majority report and any abuses can then be corrected by the Legislature as they arise. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I rise in support of the remarks of Delegate Brown. I was a sheriff at the time of the fiasco when they had the nonprofit clubs and allowed the slot machines, and I have to take issue with Delegate Harbaugh. I think if we write a lot of definitions into this Constitution, that we're going to find ourselves in deep trouble. And, very simply put, I think it should be "there shall be no gambling" or "there shall be gambling", because any time we start adding conditions, we're going to find that we have nothing but court trouble; and I speak this as a former law enforcement officer. The Hickey Gambling Law, which is on the statutes right at the present time-in one section, it says that the game of Twenty-one is forbidden to be played; in the next section, it says that Blackjack can be played. I'm not too familiar with more than Whist, but from what I understand, Blackjack and Twenty-one are pretty much the same; and this is the sort of thing that we run into. I would suggest that everybody in here believes in majority rule or you wouldn't be here, and I would submit that the wisest thing this Convention could do would be to submit this on the ballot as an alternative, where the voters can decide whether to leave it to the Legislature or whether they decide that they want to have the present provision in the Constitution. Already we have provided putting the death penalty on there; I see nothing the matter with putting a section on having to do with suicide. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I have restrained myself all day. I'd like to say "Amen" to my brothers Harper and Harbaugh and Brown and all of them. I think this conversation is really excellent. I think it really points up the problem you have on this gambling. Of course, we all know that it's not the churches that are—really want to get the gambling. I'm pretty-I'm sure we could be pretty well unanimous on that. I mean, the churches aren't advocating legalized gambling. And, of course, the service clubs that each year-that have those gambling games in the back of the room, like the Elks, and then at the end of the year, at graduation, they give a good-citizenship award for the kid that's the best student in government-with the money they made off of the gambling down there at the bingo and stuff, see? And no one sees anything wrong with that, as long as they'reusingitto good purpose. So I suppose what this-we put this on the ballot, then we can say, "Now, we picked a hundred people to come from all over the State of Montana, but we don't-they didn't know whether gambling's really good or bad; we're going to leave that up to you people. But we know about antidiversion and education; but that gambling, you know, that's really too fundamental for us to determine, so we're going to let you people determine whether gambling is really what we call reform-better government." Now, we're going to let the people say-if you think this is going to make a better state and better government, well, let them vote on gambling. You've got a problem leaving it with the Legislature. The Legislature has met this issue headon—1940—1969, House Bill 400 was passed, was presented in the Forty-first Legislature, legalized gambling; Senate Bill 39 didn't pass, '69, legalized gambling; '67, House Bill 463—let's make a state lottery for the University System and finance education that way-didn't pass; 1965, House Bill 245, legalized gambling; 1965, House Bill 135, legalized gambling; 1963, House Bill 238, legalized bingo; and there you go. You know, this Legislature that, as we get near the end of this session, that we've spoken so highly of on Tuesdays and so poorly of on Wednesdays, you know, they stood right up and be counted. They've had a chance to put that on the ballot every time, but those poor legislators, they didn't think that was very good law to put out on the books of Montana, so they just said, "Let's"-"We'll just take the blame; we'll just take the roasting right here"-and they stood up and they were counted, and they didn't put it out on amendment; they put out other things that they thought were more important. And I would say that whatever issue you take here, let's take 'er standing up and let's take 'er right on the chin. Now, I think we can take a

muster here, and we've got a lot of eloquent voices and I hate to follow three ministers and a bishop-and Wade's a bishop--I mean, he's higher when it comes to eloquence than any of them-(Laughter)-to follow those fellows on any of the-on any of these reform things-but after doing 20 years in a County Attorney's office, law enforcement, and you have all the people come by and say, "Let's gamble during rodeo-a civic organization-it's a good thing for the community, you know, and it'll be good-we can put up street signs, and that's going to be good." It's a good civic project, and, of course, we don't want the guy next door-now, if a civic organization can do this, the guy next door to him, he's in competition with, can't do it-so, you know, they talk about this thing called "free enterprise"--we used to talk about years ago-and they say, "That doesn't hardly seem fair for us fellows to be running a joint here and paying tax and buying state liquor and the guy next door at the Elks Club, he can gamble and run us out of business, so we've got all those little problems-the law enforcement people." Now, I stood that for 20 years in my little town as the County Attorney; and on Wednesdays, I was a pretty good County Attorney, and on Tuesdays he got weak again and they'd say, "Well, we're going to give a $50 scholarship to the best fellow, so they're going to have a little bingo down at the Elks on Friday, but the money is going to go to a good cause." And then the church-they would have a little bingo. Let's not do it that way; let's decide here and now exactly whether this is good government, good reform. If you folks really think that this is really the kind of issue that you-there's a doubt in your mind-1 mean, if there's a doubt in your mind that this is one of the real big issues in our society and our government, you know-1 had an experience that way. I invaded four houses of ill fame in my community on the same day one time, and that was the worst thing that happened. The A-bomb didn't shake up the town near as much as this. The grocer about went out of business, the drug stores, the hairdressers, everybody in town-the guy-carpenter had his tools locked up, the appliance guy had stuff they're selling on time, and right on down the line. It was the worst economic shock you could get-(Laughter) Juke boxes and pay phones and everything else were locked up. (Laughter) Boy, now those are the kind of issues that really are fundamental in our society. (Laughter) And so, let's not pass it any place else. Let's just have the fun all right here ourselves and decide how you want to be counted here. This is going to be great. Let's see if this is one of the big issues of our day in 1972 or not. And shall we send it back to the folks back home and say, "That was too much for us, folks; you decide that 'cause-it might be reform, but it might not be-but we don't want to call it." Thank you. (Laughter)

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman. Now, the boys down there in the Little Big Horn in the Powder River country don't understand this raffle business. You don't hear them-you know, raffling my horse against your $40 blanket, or something of this kind or this-They have a saying down there, "ad pune val ad mute"-that means, in that vernacular, the cowboys say, "put up or shut up". (Laughter)

CHAIRMAN GRAYBILL: Mr. Ask, would you like to be next?

DELEGATE ASK: Mr. Chairman, I hate to follow that. (Laughter) I have a motion that's way down at the end of the list here, and I don't know if it solves the problem or not, but I agree with Delegate Harper on gambling. I think gambling-legalizing it-you're-it's just a license to steal. But Mr. Dahood has said it very well: it's a real practical problem to Montana, and I think we are going to have to decide here today how we're going to handle it. I think-Mr. Davis—I can see his idea how we're going to handle it. Well, I think we have to look at this at a-from a practical viewpoint of what's going to happen. Let's just stop and think. Mr. Choate said he had 4,300 names on a-petitions over there; and I would submit that we could probably get a thousand names on a petition tonight, a Saturday night in Helena; but I would venture to say that Reverend Harper could get 2,000 names tomorrow morning, Sunday. (Laughter) The people that sign petitions are out activating things all the time, It's the silent majority that we're not listening to here, and I think Delegate Harper is right. He said if we take gambling section out of our Constitution—the new one that we're going to submit--we're going to lose a lot of support from the silent majority. They're going to come out here and vote against everything good that we've done, just because we took out gambling. Now, the majority report has it in here that gambling is prohibited unless authorized by the Legislature of the people. This is not going to satisfy this group of people, I don't think. And, to me, we don't have too many side issues, and I think we should submit this as a

side issue. It's an emotional issue to the people; and it's not a constitutional issue, it's a moral issue, I guess; and my proposal-I don't know if I should discuss it, but maybe, briefly. What I have done is to submit this to the voter as an alternative. I've taken the majority report here, and they can vote for that, and then I have taken the first half a sentence of the majority that all forms of gambling are prohibited. Now we've got the issue, whether they want the Legislature to legalize it or if they want it prohibited absolutely. Now, we're going to get the people that are against gambling to come out and vote for our Constitution, and then they have a chance to vote against gambling here, absolutely; and also the people that are kind of on the fence here-they don't want wide-open gambling like Nevada, but they'll say, "Well, I like this one here, where it's prohibited unless the Legislature authorizes it." And I think we can talk all afternoon, but I think a solution like this to the people is going to solve our problem. And I don't submit it's a good constitutional argument; I'm just saying this is a practical approach and it's the one that we should take here. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I wasn't going to talk on this, but I can't resist, because the loggers have the same saying as the cowboys, and I thought that I should observe that to the body. Also, the-1 would like to support my friend, Mr. Davis. I think his analysis is the correct one; and the other day, he observed that after 90 days he became a lieutenant--and I think it must have been in the Marines. I like the attack that he wants to make, and I'd like to join his outfit. Carl, let's go get these guys. (Laughter)

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. Being from Missoula, we don't have the problems that Delegate Johnson has in the Powder River country or Delegate Davis has in the Dillon area. We have a more sophisticated type of sin in our area. I was chairman of the Law Day program about a year and a half ago, and I went to a great number of groups to give talks, and I told them that you have to respect the law and it depends on the individual and the individual should start in his own lives respecting the law, and they were very much impressed-business groups, businesswomen, things like this. And then, at the end, they'd say, "We'd like to thank you very much for being here today, and as part of being our guest and everything, we're going to let you draw the winning lottery ticket on who collects the pot today." (Laughter) And this sort of dubious honor, you know, sort of made me feel that maybe we're missing our point on this thing. I don't think it's a thing that should be placed on a side issue on the ballot at all; I think that we can decide it here. I think the majority is basically correct, or we could delete it altogether. But I could spend many hours going to respond to Reverend Harper, but I would like to close just with this one poem-it's called "Ode to Reverend George": Your ideals are great for the best in our state, your solution most commendable; but as you follow your star, accept us as we are, and don't make sin unconstitutional. Thank you. (Laughter)

CHAIRMAN GRAYBILL: Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. President. Would it be proper to submit another proposal at this time, or did you want to take a vote on one of the others?

CHAIRMAN GRAYBILL: You're next up. Let me see here a minute. You want to amend the majority proposal, and the majority proposal isn't before us yet. We have to either support or-the Chair might-you've heard enough, now-the Chair might outline for you what the situation is. We have the majority proposal, which would say that gambling is prohibited unless authorized by the Legislature or a referendum or initiative. Then you have the minority to delete the language, which really would allow the same thing but not foul up the Constitution with the language. Then you have Mr. Harper's motion to say that-which is-in effect, reenacts the present Constitutional prohibition against gambling. Now, Mr. Leuthold has an amendment, if we ever get to it, which would allow the-which would amend the majority report by deleting the words "acts of the Legislature", so that the Legislature couldn't authorize gambling, but the people could, through initiative or referendum. Then, Mr. Kamhoot has an amendment which would be in lieu of the first-in lieu of the majority proposal-and--"The Legislative Assembly shall have no power except as herein provided to authorize lotteries", et cetera, "and shall pass"-"to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lotteries", and so forth, "provided the games of chance commonly known as bingo and raffles shall be lawful if conducted by bona fide religious, charitable, civic, fraternal and veterans organizations", and that the Legislative

Assembly should enact legislation authorizing the playing-lawful playing of bingo and raffles—so, he would allow some gambling under the Legislative control. And then Mr. Ask has the proposal he described, which says to put on the ballot two issues: one, Section 11 as it is, that the legislator—Legislature or the people can now authorize gambling, but otherwise it's illegal; and, two, to make gambling illegal, period-in other words, the people should choose whether to make it illegal or whether to make it illegal only under the Legislature. And then, Mr. Johnson-No, I take it back—that's on-that's a new section. Then, Mrs. Reichert has one here, the upshot of which would be to place on the ballot a slightly different thing than Mr. Ask's: "The Legislature shall have no power to authorize lotteries or gift enterprises of any purpose and shall enact laws to prohibit the sale of lotteries and gift tickets"-similar to Mr. Harper's, except that goes on the ballot, Yes/No. Now, that's what's in the bag of tricks up here. And Mr. Leuthold, I don't mind putting yours, but yours doesn't apply to Harper's, whose is up next; so it would seem to me that you can describeit and then go ahead.

DELEGATE LEUTHOLD: I would like to call attention to the delegates—

CHAIRMAN GRAYBILL: Hold it a little closer.

DELEGATE LEUTHOLD: I'd like to call attention to the delegates that, in the discussion here, why, I feel that my proposal will offer somewhat of a compromise between the two extremes. I-in my proposal, I've merely deleted "the Legislature". Now, the-it would have to be submitted to the people, either in a referendum or the people would present an initiative to the Legislature; so the Legislature will be involved, but the final decision would be made by the people. Now, in all our other articles, the Bill of Rights and so forth, we've given power to the people to make decisions, and I think this is one place-it's a serious business, it's been presented as a serious business on the floor—and I couldn't preach a sermon like Reverend Harper, but like Delegate Davis, I'd like to say "Amen" to what he has said-but I think we have to give a little bit and yet not be too restrictive. In the proposal I am presenting, it will still be in the Constitution, but it can be submitted to the people; and I hope that you keep that compromise in mind as you do your voting.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, since 1889 we've had no gambling in Montana (Laughter) and I don't think now is the time for us to start it. I don't battle a bit with Delegate Harper's views about some of the woes that result from gambling. We all know that what he said is largely true, but there are other sides to the coin. I don't think that the Constitution of the State of Montana or other-any other state or any of our acts of the Legislature are-should be filled with sumptuary legislation, and that's what this is. We've seen the ghastly failure of Prohibition. We know that the idea was splendid. I think the late President Hoover called it "the noble experiment", but it failed. We recall the laws of the Puritans; you weren't allowed to kiss your wife in public, things of that character-didn't work. We've had this antigambling thing in the Constitution since the Constitution was promulgated in 1889, and every one of us knows that's ever been around the state of Montana at all that it has been outrageously flouted by a large section of the people. And that section of the people were the ones who were the victimized, largely by their refusal to heed the tenets of the law; the people who responded to the law and heeded it were largely uninjured by the gambling. So I think we've got into a position where we've got to do something about it. I don't like to see a constitutional provision which is flouted, ignored, contemptuously treated. I think that we should have something in our Constitution that we can abide with. So I think that perhaps it should be placed upon the ballot, as the delegate from Roundup suggests and as other people has suggested. I think it should be first exterpated from the Constitution in any form whatsoever and placed on the ballot, and the people that want to restrict gambling can-if they have the votes, they can see to it that the rest of the people who want to gamble can't do it, just like they haven't been able to do it since 1889; and the people who are in-desirous of gambling can do so, and they-ones that-who do not wish, if the gamblers prevail, can still refuse to gamble. So that way, everybody would have their cup of tea. But I don't think it's wise to continue the way we have been going since 1889. I think we should face it, as distasteful as the choice may be. It's no worse to place gambling proposition before the voters than it is to place the public lynch law on the ballot, and we've done that. So, I think that we'd better go ahead and follow the delegate from Roundup—take the matter out of the Constitution, let the people decide it, and then go from there.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I find, in these late weeks, that I'm usually very frequently agreeing with both Mr. Harper and with the distinguished gentleman from Ravalli, but now I don't have-1 can't agree with both of them, but I must say I agree with-1 couldn't agree more than I do with Mr. Harper. We're stating a document of principle here, one that's going to govern the State of Montana in all the foreseeable future, and I think we have to stand on a principle, and that is a principle that denies the institution of gambling. And I don't approve of any left-handed way of avoiding that principle by submitting it to the people, and I assume that's what Mr. Davis was saying, but I wasn't altogether sure. Now, in addition to that, Mr. Harper's proposal has an extremely practical effect. We can adopt that proposal in about 5 minutes and do away with about 3 hours more of debate on all the other proposals that I can see coming up. And I think he's eminently right, besides that. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, these last two speakers have kind of inspired me here. I'm wondering if I'm going to get a chance to introduce this proposal; so I would like to ask you, at this time, would it be in order?

CHAIRMAN GRAYBILL: Mr. Leuthold, I would skip over you simply because yours amends a specific one and I'm not trying to go out of order, but yours does amend a specific one that's not before us. If-in order to get your issue before us, Mr. Kamhoot, if you want to make a substitute motion to Mr. Harper's motion, we'll place yours before the body for awhile. May the clerk read it?

DELEGATE KAMHOOT: Yes. I would like to do that, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Clerk, will you read Mr. Kamhoot's?

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion to Mr. Harper's substitute motion to amend Section 11, page 6, of the General Government Number 12 committee proposal, line 1 through 4, in its entirety and inserting in lieu thereof the following language: 'The Legislative Assembly shall have no power, except as herein provided, to authorize lotteriesorgift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state, provided that games of chance commonly known as bingo and raffles shall be lawful if conducted by bona fide religious, charitable, civic, fraternal, or veteran organizations; and further provided that the Legislative Assembly shall enact legislation authorizing and regulating the lawful playing of bingo and the conducting of raffles so as to carry the provisions of this section into effect.' Signed: Kamhoot." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot, has your provision been placed before the delegates?

DELEGATE KAMHOOT: Mr. Chairman, it has.

CHAIRMAN GRAYBILL: Allright, just a moment, now.

Mr. Blaylock, for what purpose do you rise?

DELEGATE BLAYLOCK: To a point of order.

CHAIRMAN GRAYBILL: All right, what's your point?

DELEGATE BLAYLOCK: To see if I'm right. I thought-as I understand it, the majority moved the proposal on gambling—

CHAIRMAN GRAYBILL: Right.

DELEGATE BLAYLOCK: -then they moved as a substitute the minority proposal—

CHAIRMAN GRAYBILL: Right.

DELEGATE BLAYLOCK: -then Mr. Harper moved his as a substitute to those two, so we have two substitutes before the body, and in the past you have only allowed two substitute proposals at a time.

CHAIRMAN GRAYBILL: Well, Mr. Blaylock, you're partially right. I've, in the past, allowed three matters at a time, depending on how they were styled. I don't think I've allowed a substitute motion to a substitute motion before. It does seem to me that we have seven possibilities on gambling; I merely want to get all of them before the body. If I would style Kamhoot's an amendment to Harper's, then I would be authorized to do it under the old rule. It doesn't seem tomeitmakes much difference. Do you want to-do you object to my putting both of these before the body and letting them debate them all at once?

DELEGATE BLAYLOCK: Yes, I do. I think-because in the past, you've said-you've

always said, "Let's clear some of these out, then if we get back to it-"

CHAIRMAN GRAYBILL: Well, we've got three more to clear out later. All right, I'll tell you what I'll do. I'll strike the fact that it's a substitute motion. Mr. Kamhoot, I'll allow you to amend Mr. Harper's motion by striking the language thereof and inserting therein your language, which is of a similar nature but with a different aspect to it, and I'll call it an amendment instead of a substitute motion. I'm sorry, Mr. Blaylock. Just a moment.

Mr. Harper.

DELEGATE HARPER: May I simply point out-and I'm just trying to help you a little bit here-that, really, Mr. Kamhoot's is an amendment to mine in that it has exactly the same wording and then instead of-he just adds an additional—

CHAIRMAN GRAYBILL: Right. That's right. He adds additional language. He calls it—

DELEGATE HARPER: You saw that, I'm sure.

CHAIRMAN GRAYBILL: He called it—actually, he claimed in his written material before you that it was [an] amendment to the majority proposal, but what he's really doing is adding a sentence to Mr. Harper's Now, before you start, Mr. Kamhoot, I'd like to set the stage again, so that everyone keeps this in mind. The majority says, no gambling except the Legislature or the people can authorize it. The minority says, delete the entire section, because then we'll have the Legislature and the people able to authorize it. Mr. Harper says, "I'd like the old Constitution to say; namely, really, no gambling." Mr. Leuthold has an amendment to the majority which hasn't come up here which-yet, which would simply eliminate the Legislature and say we'd have no gambling unless the people allowed it. We have now got Mr. Kamhoot's before us, which says, no gambling except regulated bingo, et cetera, et cetera, can be authorized to certain people. And then, if we get through these, we have two ballot proposals--one by Mr. Ask to put Section 11 on the ballot and pair it with a no-gambling provision and let the people choose, and one by Mrs. Reichert which says, "Shall we put the old Constitution in-Yes or No?" Now, that's what's before us.

And, Mr. Kamhoot, if you'd like to discuss your proposal to add to Mr.-to add language to Mr. Harper's, you may do so now.

DELEGATE KAMHOOT: Thank you, Mr. Chairman. I thought it imperative, perhaps, that we get this one out here so we could discuss it before everyone ran down talking about the others and talking about this one before it had been presented. Delegate Dahaod is not in the room; I wish that he were. I believe that he gave all of the exact reasons why my amendment should be accepted here today, except that he wanted to go to the trouble of putting it on the ballot. So I certainly thank Wade for that. I think Delegate Brown, perhaps, said about the same thing-that the Legislature could very well control this. That is exactly what my amendment says: that the Legislature can control whatever evil may crop up in this. Delegate Romney and Delegate Schiltz, back here, have really inspired me, though, because they want to get it done with right quick and give it up to the people and let them get to thinking about it. I think Delegate Davis-Delegate Johnson said it properly: that we ought to settle it right here; and I think this is the place. I'm going to read my opening statement. There are reasons for that, and I'm sure that many of you will think about as we go along. I would hope that, if the press is here, that they pick this up exactly as I read it. This is a subject that I have thought about a good deal in the last several years. I have never been convinced that open gambling in Montana would be in the best interest of our state. I have no addiction to gambling, as some people do. I could either embrace an open gambling law or not; it wouldn't matter. However, I have had some unpleasant experience as a result of gambling. I'm very interested in removing certain restrictions from our Constitution which prohibit senior citizens from the enjoyment of many hours spent in the excitement of playing bingo for insignificant prizes of minor value. I also know that local service clubs have had difficulties in raising funds for their many community projects, since they cannot hold raffles to raise funds. This is not an interest that has developed since I came to this Convention. In 1969, I followed very closely the progress of Representative Stratton's bill to have an amendment presented to the voters for their consideration. This bill passed each house of our Legislature with a good margin. However, it never got on the ballot due to a Governor's veto. I introduced a delegate proposal in this Convention, which I hoped would accomplish the same thing. This proposal was rejected by the General Government Committeein their deliberations. The proposal was hastily and poorly drawn to accomplish what I really intended, and I agree with the committee's action.

Having given more thought, I decided to ask the highest legal office in our state for some very narrow guidelines within which the integrity of our gambling law could be preserved and still provide for the enjoyment of our senior citizens and, in addition, provide the means whereby civic clubs could again have a way to raise the badly needed funds for their community projects. I also feel it is proper and good judgment to have the confidence and advice of our state legal department. It is this same department that will be living with and enforcing this law if it is adopted heretoday, and I hope that this body, in its wisdom, will adopt my amendment. I thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I would resist the substitute motion-or the amended motion-whatever-we'll call it "Mr. Kamhoot's "-on the premise that we did study this problem for about a month in committee and, basically, the majority and minority reports differ very little, the only difference being that in the one instance we have language in the Constitution that makes reference to it and permits legislation to alter it-that--. The minority proposal differs only in that we feel that the wordage is redundant and unnecessary, because the statutes are clear and very definite and all-inclusive. So, a few things are emerging here that appear evident. It seems like we are generally agreed that the proposition, if put to the people, should allow them a choice either way-to retain the present prohibition that we have or to allow the Legislature to act. I think the Legislature does have the ability to write a good article-or a good statute, I should say-that would permit the kind of gambling that they know the people would prefer. I am sure they're not going to open it to any wide-open situation at all, and I think rather than for us to try to draw something hastily here and decide in an hour or two's time that it's a well-drawn statute, I think that we'd be well to accept either the majority or minority position-and preferably, the minority, because in this case, ifit's to be placed as a side issue on the ballot, the document could be written with a deletion of Section 2 of Article XIX and then that be placed-that present Section 2— be placed as a side issue. We would only have one for them to keep from being confused by; and this is the reason, basically, why we in the minority felt that a complete deletion of it on the one hand, with a chance to vote on retention of that section on the other. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Cain

DELEGATE CAIN: Well, I'd like to rise— raise another issue, and this is a matter of discrimination. If you accept Mr. Kamhoot's proposal, you are going against my right. I like a game you have not mentioned, and I want to play it in a place that you have not allowed. (Laughter)

CHAIRMAN GRAYBILL: While you're thinking about that-(Laughter)
Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I simply rise on a point of inquiry. Would Delegate Kamhoot yield to a question?

DELEGATE KAMHOOT: Yes, I'll yield, Mrs. Erdmann.

DELEGATE ERDMANN: I would like a definition of "raffles". This probably shows how limited my experience is, but legalized raffles— would this be legalized lottery? Thank you.

DELEGATE KAMHOOT: Mrs. Erdmann, I suppose one of the lawyers should do this. My idea of a raffle is where you sell chances on a— perhaps a radio or a freezer or something like these civic groups are always doing because they're trying to raise money that they can spend in their communities for the projects that they have. And, now, they can-have a very difficult time raising this, so the raffle, in my mind, is the selling of these chances so that they can provide the services for their communities. That's my interpretation of a raffle. If an attorney has a different one, why, I would certainly yield to any of them that would like to give it.

CHAIRMAN GRAYBILL: Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman and delegates. This has been one of the most healthy debates we have had on this floor, on one of the most controversial issues, without any heated arguments or anything. What we are really getting back to now is exactly what General Government Committee, in their weeks of deliberation on this thing, has discussed. We are getting back to the majority-or minority report. They both have the same end, really. The only difference between the majority and the minority report is that the majority report does spell out exactly what the people are voting on: the Legislature can enact it, or it can be done by referendum. Going back to Delegate Harper's remarks--we have our

head in the sand. I don't think we do. I don't think any of us have our head in the sand. We know people are gambling in this state. I go to church every Sunday that I'm home, if I can, and I went to his church here one Sunday and he gave a very fine sermon. I'm on the board of trustees of my own church in my hometown, but on a Saturday night, I might go out and play at a tavern for a dance, too. So I don't think I have my head in the sand, and I don't think that the committee did have. I think we should get to deliberating on these issues and get away with these proposals that are coming in and start voting on them and start eliminating them. I'm in favor of the majority report.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Just for a point of information. I understand that all these fairs they have parimutuel horseracing. How are they controlled, and how did that get into being?

CHAIRMAN GRAYBILL: Mr. Gysler, are you volunteering?

DELEGATE GYSLER: I'm volunteering. Parimutuel betting on horseraces was-is authorized by a statute; it is not authorized under the Constitution. The case has never been-come up before the Supreme Court, so just where it stands is anybody's game.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Will Mr. Gysler yield to a question?

CHAIRMAN GRAYBILL: Mr. Gysler?

DELEGATE GYSLER: Oh, I'll yield, I may have already told you all I know.

DELEGATE SIDERIUS: Is that considered legal-legal gambling?

DELEGATE GYSLER: Mr. Siderius, I don't really know what the term "legal" means. As long as nobody pushes the situation and files the case, I would presume it is going to be legal. I imagine it's legal until declared unlegal. (Laughter)

DELEGATE SIDERIUS: Will Mr.—

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Will Mr. Loendorf yield to a question?

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I yield.

DELEGATE SIDERIUS: What is your interpretation of that?

DELEGATE LOENDORF: Yes, Henry. The difference is this, I think. Gambling is defined as something where you pay some money—consideration; you take a chance and can win a prize. At a horserace you pay money, you exercise skill, and you win a prize. (Laughter) That's the—that's why on-track betting is legal; off-track betting-bookmaking-is not.

DELEGATE SIDERIUS: Will Mr. Loendorf yield to another question?

DELEGATE LOENDORF: I will yield.

DELEGATE SIDERIUS: Who is—who—you--would you be betting on the jockey or the horse, in that case?

DELEGATE LOENDORF: I-when I bet at the races, I'm gambling. (Laughter)

DELEGATE SIDERIUS: That's all.

CHAIRMAN GRAYBILL: All right, Mr. Ward.

DELEGATE WARD: Mr. Chairman, fellow delegates. I should state my case. I'm a veterinarian and these horses are part of my livelihood, and I would say that anybody puts a $2 bet on one of those horses, he's gambling, with no question. I don't do too well myself sometimes, and I even treat them, so-I'm forbidden to bet on them myself, according to statutes. I could tell you how this bill was put through in 1965. I helped lobby it a little bit, because I had a selfish interest. This bill was set up to circumvent the Constitution and was passed as a breeding-breeders' bill. It went through the Department of Agriculture, and so there's ways of getting around these things. This has a statute in it that designates every racemeet, that there be a race held for Montana-bred horses. Now, this means that any horse's papers-the owner's address is in Montana, and part of the purse goes back to that owner, no matter whether he's changed hands three or four or five times. It has never met the Supreme Court test, so when this bill went through, they had to repeal all the dogracing laws, which-we raced dogs for awhile in Montana, but nowwedon't-and, ofcourse, this horseracing industry in Montana isn't as big, but I

expect that as long as we don't go to the Supreme Court and they rule it out, that it'll get bigger. It brings in some income, and it's still a $2 bet.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I think this parimutuel betting brings up a good example, that if we try and get too restrictive and define bingo and raffles and things, we're going to get in trouble. There's no doubt in my mind that parimutuel betting is unconstitutional; the minute they start rocking the boat and taking it up to the Supreme Court. And Mr. Kamhoot's-he says bingo and raffles, they shall provide for it. If it's abused, the Legislature couldn't do anything about it; so I think, go with the majority, then the Legislature-it'll all be prohibited until they make specific exceptions under proper regulations—and put it on the ballot, like Mr. Ask has requested; and I hope we can vote.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. The Legislature has been brought in here a number of times as the logical body to decide this, and I would like to read a letter from Senator Thiessen from District 3, representing McCone and Richland Counties. This might help you make up your mind. "I am convinced that the antigambling clause ought to remain in the Constitution. The reason is that legalized gambling is not in the best interests of the state, and if you leave it up to the Legislature, it brings about a very serious problem when seeking new sources of funding state government. I think the least you can do is to place it on the ballot as an alternate proposal as the North Dakota people did in their final draft. Sincerely, C. R. Thiessen."

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. Webster defines a raffle as follows: "From the French, a dice game; a lottery in which a participant buys a chance to win the prize."

CHAIRMAN GRAYBILL: Very well. Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates, I wonder what the odds are on us voting tonight?

CHAIRMAN GRAYBILL: They're pretty good on voting tonight. (Laughter)

Mrs. Bates.

DELEGATE BATES: Fellow delegates, Earlier I wanted to give a loud "Amen" to Mr. Harper, too; and, delegates, I don't know if you've ever heard the explanation of sin-it's what others do, not what I do. And under Mr. Kamhoot's definition here, all we have to do is be a member of the right church or the right organization and then sin would be all right and it's no longer a sin. Also, our senior citizens-I have worked with senior citizens throughout the State of Montana. Senior citizens want the right to do something to be of service to the people; they want to feel needed and wanted. I don't really think they want bingo as full-time employment, but, friends, let me tell you that the one-armed bandit is no more addictive than the bingo tables, and I have seen this many years ago and-in the town of Butte, where, day after day, the same people would be going to the bingo tables. I feel very strongly about keeping this in our Constitution as it now is. If we do not do this, we must give it to the voters for their decision or we will place our Constitution in jeopardy. Thank you.

CHAIRMAN GRAYBILL: Now, the Chair is going to ask that we start sticking very strictly to the question here. And I think we've all heard quite a bit, and if you have something additional to offer, fine; but otherwise, let's get ready here to vote pretty soon.

Mr. Harbaugh.

DELEGATE HARBAUGH: Thank you, Mr. Chairman. I thought maybe you were confusing me with this rose here for a little while. Now, I think that really we have missed the point. There are two things that the people want, as I understand it; and I don't think that any of the proposals before us, other than Mr. Kamhoot's, satisfies what the people want. And it seems to me that the two things that they want are this: number one, they want the assurance that we will not have hard-core gambling in the State of Montana, and the only way we can provide that assurance is by some kind of constitutional statement-now, both the majority and the minority proposals fail at this point; secondly, they do want to be free to hold bingo and raffling games. Now, I fail to see how putting this thing on the ballot gives them the choice for what they want, because if we put this on the ballot in the way that has been proposed, they have to choose, then: one, either to throw the thing to the Legislature, which means opening it up to legalized gambling; or to have no gambling at all, which means that they cannot have the

social games that they want to have. And it seems to me that the only reasonable way out of this solution, even though it probably is not the kind of thing that we would like to see in the Constitution, is to vote for Mr. Kamhoot's proposal or one similar to that.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, fellow delegates. As you know, I get disturbed with words. I would like someone to tell me what bona tide religious organizations are, and then I also would like to bring your attention to the fact that Section 5 of the Bill of Rights, dealing with freedom of religion--no laws are to be passed, sort of, about religion-and here, if this amendment put forth by Mr. Kamhoot passes, you are passing laws either regulating or giving various privileges to religious organizations. So I think we are not on the right track, and with those few short remarks about what is a bona fide religious organization and can we pass laws giving religious organizations certain privileges that we do not give someone else, I don't think we're thinking very clearly. I am opposed to the Kamhoot amendment.

CHAIRMAN GRAYBILL: Mr. Habedank, you were up, and I don't want to go out of order.

DELEGATE HABEDANK: Thank you, Mr. President. In response to what Reverend Harper said, I would say "Amen". In response to what Mr. Dahood said, I would say "So be it". Mr. Davis has said that we should decide this issue here and now. I would point out to Mr. Davis that the people of Montana have never been given an opportunity to vote on this question since the first Constitution was adopted. Until this Constitution is adopted, the people have never had an opportunity to propose a constitutional amendment by initiative. It has always been necessary to secure a vote of two-thirds of both houses of the Legislature to have a constitutional matter referred to the people, and then they've had to consider whether or not it would come within the three-amendment procedure. This will be the first time, if the majority proposal is adopted and if it is given as an alternative, along with Reverend Harper's proposal, for the people to decide for themselves and settle once and for all this issue which we think we are so wise to determine. Reverend Harbaugh's proposal does not meet the situation, nor does Mr. Kamhoot's, because we attempt to do here in a matter of hours what the Legislature can work out in due care and change if they have made a mistake. We have put directions to the Legislature in specifics which are unwise, and I would like to refer to what Bruce Brown said in his remarks about why it is necessary that this go to the people. Bruce Brown, if you know him, is one of the most "nonconstitutional, everything is statutory" people you can meet, and for days and days he argued about "we should have this deleted from the Constitution", and it took a lot of thinking on his part to realize that the people were entitled to the assurance that some ill-conceived law that may remain on the books might open gambling wide and to bring-and to come into line with the majority proposal requiring specific action. I agree with Mr. Ask. First, I want to cover Mr. Leuthold's amendment. He would strike "by acts of the Legislature or", so it would appear that you could do this by the people through initiative or referendum. I would call to Mr. Leuthold's attention that the Legislature-any act of the Legislature can now be referred to the people by them, and if the people do not like it, it only takes a 5-percent vote to refer it; and I think it is much better for the Legislature to have the chance to struggle with these measures than to have them come in directly through initiative and for that reason the majority proposal-by acts of the Legislature-should remain in there. Mr. Ask has pointed out something very real to all of us. I would like to think that the people have something to vote for in connection with this Constitution, not something to vote against. If we accept Reverend Harper's proposal as it is and left that in the Constitution, all of the people who have never had an opportunity to vote on this question and express their will are being denied. By the—accepting the majority proposal, if it goes out as an alternate to the people, you can have the majority or you can have the Constitution as it was. The purists can vote against it and those who want the majority proposal can vote for it, but they still have the protection of the Legislature and initiative and referendum to take care of their positions on how far they want the Legislature to go; and I think, in all fairness, the people are entitled to finally have a chance to vote on this measure; and I think the proposals that they should have a chance to vote on are the Constitution as it is now, Section 2, as put in by Reverend Harper, and the majority proposal, Section 11. And the reason I think Section 11 should be in there, rather than the minority, is that it spells out to the people without any arguing, without any talking. You can say that the minority does this, but you're not sure. We think it does. But under Section 11, the majority

proposal, anyone voting on it knows thatifthey do not want to take the purist attitude that Reverend Harper takes and Jack Schiltz takes, that they do know that there will be no gambling which is not authorized by their representatives or by themselves; and I urge you to support the majority proposal and put it on the ballot.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I rise to second, I think, what Otto has spoken of, if I understand him. I didn't get sent here primarily to defend or reject the current section on gambling; I came for a number of interests in our Constitution. And I think when we are challenged to the heroic stand of doing this for the people, we may be ignoring the situation that we actually are in, and that is that in many reforms in government that we have already written in that we don't want to jeopardize, and I think-I've just lost a bet. Arbanas sent me a note a moment ago and said, "I'll bet you talk before I do," and I lost that bet and-but it seems to me that what Otto said gives us a chance to put on the ballot a choice between what we currently have and between the Section 11 which would-then we can come and fight in the Legislature every year and the Mafia can waste its money here in Helena, trying to get this thing through. I think our people are going to know that they don't want to sell out to this kind of extreme form of legalized gambling that Mr. Harper was outlining, but it would give, in the situation we find ourselves in, a strong reason for people to turn out and vote at our constitutional election.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Kamhoot's language to not allow gambling except for bingo and raffles, under control, in the religious, charitable, and so forth, institutions. Now, are there others that must discuss this?

Mr. Wilson.

DELEGATE WILSON: Mr. President, this has been belabored a lot. I would like to point out to this Convention, though-however, that the present statute-article you have in your Constitution has prevented syndicate gambling from entering the State of Montana. If this ever happens that they can get into Montana, it's going to propose a lot of problems for law enforcement; and I think law enforcement all over the state is against having this type of personnel get into the state. I would call for a roll call vote on the question, Mr. Chairman.

CHAIRMAN GRAYBILL: We'll have a roll call vote. Is there any discussion beforeweput Mr. Kamhoot's motion?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Kamhoot's motion that "The Legislative Assembly shall have no power, except as herein provided, to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state, provided that games of chance commonly known as bingo and raffles"-bingo and raffles-"shall be lawful if conducted by bona fide religious, charitable, civic, fraternal or veterans organizations; and further provided that the Legislative Assembly shall enact legislation authorizing and regulating the lawful playing of bingo and the conducting of raffles so as to carry the provisions of this section into effect."

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, may I close?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE KAMHOOT: I will be very brief. In the majority report-it's been mentioned several times that the majority report said that they would put it on the ballot. I don't believe it does say that, only in the remarks. Now, I realize there are probably other amendments that will do that. I would like to point that out, though-that as they have it in Section 11, it does not say they'll put it on the ballot. I have had a good deal of mail and other communication on this subject, and these have averaged at least three to one to not open Montana up to gambling except as this amendment will provide. It has been pointed out to me, and it is true, that gambling does not create any wealth; it only redistributes it. I have no personal interest in opening this up, other than I would certainly love to see some of our senior citizens be able to engage in this exciting and enjoyable thing. I have an amendment here that is very, very closely drawn. The guidelines are very tight. You can talk about it all you want to, but I think you'll find very few reasons-valid reasons-to say that this is not going to control this type of gambling, if we want to call it that. I would rather say that it would take it out of the category of calling it gambling and let a few of these people

live out their lives the way they would like to without harming the state by bringing in legalized gambling or submitting the Legislature to a tremendous pressure at every session-one group trying to open up the gambling; another group trying to keep it closed. I thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor of Mr. Kamhoot's proposition, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to—

Mr. Leuthold.

DELEGATE LEUTHOLD: When Delegate Kelleher left, he wanted me to inform you that he and Delegate Murray had paired on all gambling votes.

CHAIRMAN GRAYBILL: Very well. Pairs are not allowed, but if they're not here, I guess they're paired. (Laughter) Any other delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim Nay
Anderson, J. Nay
Anderson, O. Nay
Arbanas Nay
Arness Nay
Aronow Nay
Artz Aye
Ask Nay
Babcock Aye
Barnard Nay
Bates Nay
Belcher Nay
Berg Nay
Berthelson Nay
Blaylock Nay
Blend Nay
Bowman Nay
Brazier Nay
Brown Nay
Bugbee Nay
Burkhardt Nay
Cain Nay
Campbell Nay
Cate Nay
Champoux Nay
Choate Nay
Conover Nay
Cross Aye
Dahood Nay
Davis Aye
Delaney Excused
Driscoll Nay
Drum Absent
Eck Nay
Erdmann Nay
Eskildsen Absent
Etchart Nay
Felt Excused
Foster Absent
Furlong Nay
Garlington Aye
Gysler Nay
Habedank Nay
Hanson, R.S. Aye
Hanson, R. Aye
Harbaugh Aye
Harlow Nay
Harper Nay
Harrington Nay
Heliker Nay
Holland Nay
Jacobsen Aye
James Nay
Johnson Aye
Joyce Nay
Kamhoot Aye
Kelleher Absent
Leuthold Nay
Loendorf Aye
Lorello Nay
Mahoney Nay
Mansfield Nay
Martin Nay
McCarvel Nay
McDonough Nay
McKeon Nay
McNeil Nay
Melvin Nay
Monroe Nay
Murray Absent
Noble Nay
Nutting Aye
Payne Nay
Pemberton Nay
Rebal Nay
Reichert Nay
Robinson Nay
Roeder Nay
Rollins Nay
Romney Nay
Rygg Nay

Scanlin ..... Nay
Schiltz Nay
Siderius..... Nay
Simon ..... Nay
S ari Nay
Sparks..... Nay
Speer ..... Nay
Studer.....Aye
Sullivan Nay
Swanberg .. .Absent
Toole Nay
Van Buskirk .. .. Nay
Vermillion Nay
Wagner .. .. .. Nay
Ward .. .. Nay
Warden..... Nay
Wilson .....Aye
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 15 delegates voting Aye, 77 voting No.

CHAIRMAN GRAYBILL: 77 having voted No and 15 Aye, Mr. Kamhoot's motion is defeated. The issue is now on Mr. Harper's motion, which is the present Constitutional sections on gambling and prohibits gambling.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I think that Delegate Ward has adequately described the term when I used--when I said "hypocrisy in our present Constitution". I wonder if Delegate Cain would yield to a question.

CHAIRMAN GRAYBILL: Mrs. Cain?

DELEGATE CAIN: I yield.

DELEGATE SCANLIN: What is the name of your game? (Laughter)

DELEGATE CAIN: What if I would say "penny ante poker"? (Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Harper, I'll let you close if something else doesn't happen-but I'd like to let the rest of them debate, if they want to, Mr. Harper's proposition, shortly.

Mr. Habedank.

DELEGATE HABEDANK: I would like to ask a question, not debate, Mr. President. As I understood, Mr. Ask had a motion up there that would place the majority proposal and Harper's proposal on the ballot. Is this correct? And if we vote against Reverend Harper's proposal, what is the result, as far as getting these two issues on the ballot?

CHAIRMAN GRAYBILL: If we vote against Mr. Harper's motion, then I suppose the issue would be open for another substitute motion to put it on the ballot. That would leave the deletion one up. However, I don't see that Mr. Ask's—

(Inaudible remark from floor)

CHAIRMAN GRAYBILL: Well, I wouldn't say that.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, could I move my motion for all motions now pending-or substitute motion for all motions pending?

CHAIRMAN GRAYBILL: You placed me back in the position Mr. Blaylock had me, but I won't be able to get out so easily. In other words, your particular motion doesn't include Mr. Harper's language, and so it's not going to be easy to amend-to say that you're amending Mr. Harper's language. He's already a substitute motion. Mr. Blaylock pointed out that I don't generally allow two substitute motions.

DELEGATE ASK: Mr. Chairman, my wording is different, but it's the same basic intent-1 mean, much simpler.

CHAIRMAN GRAYBILL: Well-but Mrs. Reichert's motion is identical, so, you know, that puts me in a kind of a tough position, doesn't it?

DELEGATE ASK: Well, we can wait, I suppose, on that.

CHAIRMAN GRAYBILL: I don't like to make a second substitute motion, and yoursreally changes the whole language to a different set of facts.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would it help if I made my motion now, since it is identical to Reverend Harper's except I would like the proposition on the ballot? I'd like to point out the difference between mine and Mr. Ask's is that in the amendment I offered, there is a choice for deletion; in the amendment offered by Mr. Ask, there is no choice for deletion-it's either no gambling at all or gambling such as proposed in the majority proposal through the Legislature and initiative. So therefore, if it is in order, I could place my motion now; otherwise, I'll wait.

CHAIRMAN GRAYBILL: I suppose I could hold it in order, Mrs. Reichert, but it would put us in the position of deciding a lesser thing—namely, the ballot proposition-before we've decided on the basic thing, and I would prefer that you let Mr. Harper's motion be voted on one way or the other, and then we'll know whether that's the sense of the body. If it's the sense of the body, fine. If it isn't the sense of the body, you will be given an opportunity, and so will Mr. Ask, to make your motions.

Very well, I think we're ready for you, Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think this is the best process. If my motion is sustained, that will be that. If it's defeated, then these other suggestions can come up-like Mr. Ask's very fine suggestion. While his words are not exactly like those words in the present Constitution, I believe when we examine them, we'll find maybe it makes the issue more clear. I would just like to say, in closing, that I appreciate Mr. Campbell's poetic gesture a moment ago, although I am forced to observe it wasratherpoorpoetry (Laughter) and I'm not so sure but what maybe poor policy. Sometimes-I'll put in parentheses "if not always"-to act on principle is-turns out to be the most practical way to act in life, and it just--I've been called a purist. Maybe it's that way. I suppose my proposition could be put like this: that the only practical way to deal with gambling in a close-knit society like ours is to leave it completely alone. With that, I close.

CHAIRMAN GRAYBILL: Very well. The issue, which will be by roll call vote, is on Mr. Harper's substitute motion to put this language: "The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose and shall maintain laws prohibiting the sale of lottery and gift enterprise tickets in the state", which is the present constitutional amendment--or constitutional language. So many as are in favor, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates..	Aye
Belcher	Nay
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown..	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross..	Aye
Dahood	Nay
Davis	Aye
Delaney	Excused
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Nay
Felt	Excused
Foster	Absent
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Nay
Harper	Aye
Harrington	Nay
Heliker	Aye
Holland.,	Nay
Jacobsen	Nay
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye

Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Nay
Lore110 ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK **HANSON:** Mr. Chairman, 36 delegates voting Aye, 56 voting No.

CHAIRMAN GRAYBILL: 56 having voted No and 36 having voted Aye, Mr. Harper's motion is defeated. Now, the Chair would like to observe that Mr. Choate's minority to delete is up, and if either of you other two move to amend that, then the other-or move to substitute for that, the other won't be on. It doesn't much matter whether we delete it or whether we leave it alone. Let's defeat or sustain the motion to delete, and then we'll offer two amendments-yours and Mrs. Reichert's—and find out which way we want to do it, if that's what we want to do. Maybe we want to go back and leave it deleted, or maybe we want to go back and leave it the minority report--or the majority report. But let's get back to the basic proposition before we authorize the ballot thing. Otherwise, we're going to get only one ballot proposition before us at a time. Is that agreeable with you, Mr. Ask?

DELEGATE ASK: (Inaudible)

CHAIRMAN GRAYBILL: Mrs. Reichert?

DELEGATE REICHERT: (Inaudible)

CHAIRMAN GRAYBILL: Very well, we're on yours, Mr. Choate. Do you care to close?

DELEGATE CHOATE: Yes, Mr. Chairman, I'm ready to close, with the understanding that this proposition would permit the placing of our present Section 2 as a side issue on the ballot, because this has been the understanding of both the majority and minority committees, I believe, that the proposition of the side issue on the ballot could be in either case if this body wishes.

CHAIRMAN GRAYBILL: Well, you see, if we adopt yours, we'll have the slate clean and then we're ready to decide what to put on the ballot. If we don't adopt yours, we've got the majority report and somebody can move to amend it and somebody can move to substitute. All right, Mr. Choate has closed; and the proposition, then, ladies and gentlemen, by roll call vote, is on the minority report, which is to delete the majority report from the Constitution and take all references to gambling out of the Constitution. All in favor, vote aye; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, 0. Nay
Arbanas ..... Nay
Arness ..... Aye

Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Absent
Blaylock	Nay
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
c am	Aye
Campbell	Aye
Cate..	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Nay
Delaney	Excused
Driscoll	Aye
Drum	Absent
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Excused
Foster	Absent
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Absent
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe..	Aye
Murray..	Absent
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin..	Aye
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Absent
Toole	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson.,	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 30 delegates voting Aye, 60 voting No.

CHAIRMAN GRAYBILL: 60 having voted No and 30 Aye, the motion to delete fails, and we're back on Section 11.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, could I move my motion as a substitute motion for the majority report and have the clerk read it?

CHAIRMAN GRAYBILL: You may. No, we'll go to Mr. Leuthold's if we ever stay on the— Section 11. Let's decide the issue now whether

we're going to be on the ballot or not.

CLERK HANSON: "Mr. Chairman. I move that an alternative section to Section 11, page 6, of the General Government Proposal Number 12, be submitted with the new Constitution as a separate issue. The following proposal should be submitted: 'Section 11. Gambling. All forms of gambling, lotteries and gift enterprises are prohibited unless authorized by acts of the Legislature or by people through initiative or referendum. Section 11. Gambling. All forms of gambling, lotteries and gift enterprises are prohibited.' Signed: Ask." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask, are— is your proposal on the desks?

DELEGATE ASK: No, it is not. They said printing was closed, so—

CHAIRMAN GRAYBILL: Yes, that's right. Well, just-let me just state it. Tosummarize Mr. Ask's proposal, it is-and you may want to take notes on this-that Section 11, as it exists on page 6, be one alternative and that the first line of Section 11, putting a period after "prohibited", be the other alternative. In other words, we're either going to have, under his proposal, gambling-or no gambling except that the Legislature or the people may by-may do it, or we're going to have no gambling.

Now, Mr. Ask, do you want to explain that? And then I'll go to Mrs. Reichert.

DELEGATE ASK: Yes. Mr. Chairman, fellow delegates, this proposal puts the majority report and then the first line of the majority report on the ballot, and I think we've discussed it enough-the pros and cons of whether to put it on the ballot or not-or gambling-and I won't go into that. The only thing I would say-that they mentioned that Mr. Harper and Mrs. Reichert are going to put in the old Section 2, and the reason I used the first line of the present Section 11 is much clearer. If you look at the old Section 2, it says: "The Legislative Assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws-and shall pass laws— prohibit all-the sale of lottery or gift enterprise tickets in this state." What I'm saying, in my alternate here, is that all forms of gambling, lotteries and gift enterprises are prohibited-is prohibited. It will be clearer to the voters when they're voting whether they're voting for item Number 1 or item Number 2. They're the exact wording. One says it's prohibited; the other says it's prohibited unless authorized by acts of the Legislature. And some may say, "Well, why don't you just put one alternate on there?" And I don't think that's quite fair either, to just say-just-this is a half-way compromise between the people that think there ought to be some allowance of gambling-in other words, you just say "no gambling" or just leave it up to the Legislature. I mean, it's got to be-this is kind of in between, and I think this should be clear, and if this body does decide to submit it to the voters, I think there certainly would be no misunderstanding that-what the question is. Also, I'd like to refer to page 13 of the majority report. They indicate the committee recommends that, if at all possible, the Convention decision on lotteries and gambling be presented to the voters as a separate issue, and I think that's to the point we are right now. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in opposition to Mr. Ask's amendment. I think it is interesting, but I think it would be a much better choice for the voters to simply to able to say Yes or No to gambling. That is what they did in North Dakota. I call attention to your alternate-their alternate proposition Number 4, and it is simply what I have stated-Yes or No. I think that it would make it sound like an echo, but the minority proposal, when it suggested deletion, stated: "The minority proposal and the majority proposal would accomplish the same end with regards to gambling. Both would leave the matter to statutory law, where extensive provisions prohibiting gambling already exist. Neither provision would legalize gambling of any nature." And I contend, by just voting Yes or No on this constitutional provision, we'd accomplish the same thing as we would with Mr. Ask's amendment but the people wouldn't be given two choices they'd have to think about. I think we'd cloud the issue. I think it would be much simpler for the voters to either say Yes or No.

CHAIRMAN GRAYBILL: Mrs. Reichert, do you move, as an amendment to Mr. Ask's substitute motion, your language?

DELEGATE REICHERT: Yes. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Will the clerk please read it.

CLERK HANSON: "Mr. Chairman. I

move, as a substitute motion, to amend Section 11, page 6, line 1, of the General Government proposal by deleting it-"

CHAIRMAN GRAYBILL: Mr. Clerk, we'll just say that she moves to amend Mr. Ask's proposal by saying-go ahead-put an alternative on the ballot that says—

CLERK HANSON: "-that will read in the following manner: 'The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose and shall enact laws to prohibit the sale of lottery or gift enterprise tickets-Yes or No.' Signed: Reichert."

CHAIRMAN GRAYBILL: Very well, now, members of the body, you have before you two alternative ways of placing this on the ballot. One is a Yes/No proposition by Mrs. Reichert on the old constitutional language, which has prohibited gambling up till now. The other is stating that we shall have no gambling unless the Legislature allows it, or that we shall have no gambling at all. Those are the two things we're talking about. Now, Mrs.-let's see, you've talked.

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to oppose Miss Reichert's amendment. I feel that it would do a disservice to the people here who feel that the majority plank-I think it would be-1 just don't think it would get to the issue, and I think it would-the people would be mixed up on this, and I think it would be a poor way to go on the ballot. I would go along with Mr. Ask's. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I would oppose Mrs. Reichert's amendment, too, and the majority of the committee would be very happy to accept Mr. Ask's proposal, because this would do exactly what we had in mind. It would allow the voters to have a chance to have their say on whether they want gambling or not, with legislative controls, and it would reassure everyone that gambling would be prohibited until the Legislature actually authorized it by specific action. So the committee would endorse Mr. Ask's proposal, and I would oppose Mrs. Reichert's.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, I rise in support of Mrs. Reichert's amendment. I think this is one of the days that we should consider that the people do have some sense, and I think a clear Yes or a clear No would settle the question. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, would you read Delegate Ask's proposal without the Reichert amendment to it, please.

CHAIRMAN GRAYBILL: Delegate Ask's proposal is, the following proposals would be submitted to the ballot: "Section 11. Gambling. All forms of gambling, lotteries or gift enterprises are prohibited unless authorized by acts of the Legislature or by the people through initiative or referendum." Or, in place of that, "Section 11. Gambling. All forms of gambling, lotteries and gift enterprises are prohibited." In other words, it's Section 11 or Section 11 with a period after the word "prohibited". It has the effect of putting on the ballot whether they want no gambling or whether they want no gambling, but authorized by the Legislature, we can have it. It would have to be an alternative-the ballot would have to be prepared in the alternative somehow.

Mr. Davis, you were up.

DELEGATE DAVIS: Mr. President, fellow delegates. I reluctantly oppose Mrs. Reichert, after we've voted the same for 49 days, but I will have to oppose her on this issue. I think that Mr. Ask has come up, probably, with as good a compromise solution as we can have. If we do have gambling, it's going to be controlled by the Legislature. No one wants Las Vegas or Nevada type gambling in Montana. So, if they put both of them on, they both have to read--and, as Mrs. Blend says, they're going to be intelligent, so they can read, too, and decide which one they want. Then they can still get back to the type that the people want, through their elected representatives. If they want to continue to restrict it to bingo and so forth, they could do it. Under the Yes or No thing, it could be interpreted to open the states wide-open to all kinds of gambling, and for those who are—which I'm not-hut for those who are in favor of a little bit of gambling, which I consider to be just like being a little bit pregnant-but if they-if some do want just a little bit of gambling, well, let's give them a chance to do it.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I was wondering, is Mr. Ask's amendment now on

the floor and Section 11 on the floor that it could be amended?

CHAIRMAN GRAYBILL: Section 11 is the original motion. Mr. Ask's is an amendment—Mrs.--or a substitute motion, and Mrs. Reichert's is an amendment. We're going to consider Mrs. Reichert's first, but assuming we ever got to Mr. Ask's or Miss-or the original, and they, of course, could be amended—

DELEGATE BATES: Could I mention—what I would like to do here is have Section 11 amended by leaving out "by acts of the Legislature or-"

CHAIRMAN GRAYBILL: Well, that's Mr.-

DELEGATE BATES: -so that it would read-

CHAIRMAN GRAYBILL: That's—Grace, that's Mr. Leuthold's amendment. If we ever get back there, he'll make that amendment. He takes "the Legislature" out but leaves "the people" in.

DELEGATE BATES: That's right, and I would—

CHAIRMAN GRAYBILL: All right, that's Mr. Leuthold's-if we ever get back there.

DELEGATE BATES: Okay. Therefore, I would oppose Arlyne Reichert's amendment and would go for the alternate proposal with the amendment. Thank you.

CHAIRMAN GRAYBILL: The Chair wants to observe something. Maybe the two people that are up are going to observe it, but the Chair wants to point out to you that maybe Mr. Ask has proposed a Yes/No proposition, too. I'm sure that Mr. Schiltz, if he's awake back there, will have thought of the fact that the language of Mr. Ask's two proposals is identical down through the word "prohibited", so I presume the Constitution would contain the phrase "All forms of gambling, lotteries and gift enterprises are prohibited." Then the alternative would be, do you want the Legislature and the people by initiative and referendum to have the alternative to change-to allow gambling? Yes/No. I just want to point out that Style and Drafting may have this right back in the same Yes/No box, and you can decide what you want to do, but you ought to understand it.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think we're finally at the end of a long road or maybe coming out of the end of the tunnel. Let me make two observations. One is: Arlyne, I'm surprised at you. (Laughter) Now, I'm often surprised at you, but I mean on your wording. Actually, you say this would make a Yes/No deal and be very different from Mr. Ask's-"The Legislature shall have no power to authorize lotteries", et cetera. You say they can vote Yes on that, and that's substantial. But suppose you vote No? I guess the only thing you vote No to is the word "No", so the opposite would be, "The Legislature shall have power", and it would be put right back to the Legislature. I don't really see the difference between the two. I think Mr. Ask's is more clearly worded and draws the issue. And, now, may I refer back to some things I said earlier in helping to start this ball rolling-and we are concerned about this, and I am very concerned about it-1 think this would give people on-who want to keep the present Constitution as it is-the sense of it as it is-only more clearly stated in Mr. Ask's proposal-or in the majority proposal, I should say. It will give them the chance to vote for this, and they are not having to ratify a constitution that makes gambling legal at all in any phase. They can go that far. And the people who want to leave this, now, to the Legislature to give the kind of more freedom that the majority report is asking for have a chance to vote for it, too. Now, it is true we are not giving people who want wide-open gambling with no restrictions at all a chance, but I sense that this body does not want to even infer that we want that kind of thing here. So, it seems to me that Mr. Ask's proposal, now being accepted by the majority, is really the sensible way to go, and I'm personally quite pleased to see it.

CHAIRMAN GRAYBILL: Mr. Harper, the Chair feels constrained to comment. I hate to argue with you, but Mrs. Reichert's Yes/No proposition is Yes, to put this language in the Constitution, or No, to leave it out; which means that her alternative is the minority report of deletion. You see-you with me?

DELEGATE HARPER: Yes, I'm with you, but I simply suggest that it still would be up to the Legislature.

CHAIRMAN GRAYBILL: All right. I'm just-1 just think that I-I want everybody to understand what we're doing here.

DELEGATE HARPER: All right.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. I would like this delegation to know that, during the campaign-both in the primaries and the general election-I visited Alzada, Montana, and held my meetings in Dempsey Dodd's Bar and Cafe, which is-there aren't very many places in Alzada to meet. (Laughter) And the boys in Alzada, both times, said, "Mrs. Pemberton, how do you feel about gambling?" Well, the first time, I passed it off, and I said, "Well, everyone believes in motherhood and bingo." Well, the next time, they said the same thing-"How do you feel about gambling?" And I said, "You'revery serious," and they said, "Yes, we are." So, on behalf of Alzada, they are not interested in Rem-type or Las Vegas-type gambling, but they would like to see something to this effect in the Constitution. I suggest that it be deleted, but I would also support Mr. Ask. And thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert, would you like to close?

DELEGATE REICHERT: **Yes,** Mr. Chairman. I'd like to answer Delegate Harper. It'sreally too bad that he hadn't been a delegate to the North Dakota Constitutional Convention, because they came up with the exact same proposition that I mentioned and they have a Yes/No on their ballot. But I think that as far as-when we get right down to it, Mr. Ask's amendment and mine are identical, except he is stating that we could leave it to statutory law; I am stating merely that we could delete it and thereby statutory law would take care of the situation. And with that, I'll close.

CHAIRMAN GRAYBILL: Very well, the—

UNIDENTIFIED DELEGATES: Roll call.

CHAIRMAN GRAYBILL: We'll have a roll call vote. The issue is on Mrs. Reichert's amendment to put the old constitutional language--or the present constitutional language on the ballot as a Yes/No alternative. Ifthe people voted Yes, we'd leave it in; if the people voted No, we'd have no reference to gambling in the Constitution, and the Legislature, of course, could act in that case. Very well, all those in favor of Mrs. Reichert's proposition, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0	Nay
Arbanas	Nay
Arness.	Nay
Aronow	Nay
Artz	Nay
Ask.	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg..	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman.,	Nay
Brazier	Nay
Brown..	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Nay
Delaney	Excused
Driscoll	Aye
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Excused
Foster	Absent
Furlong.	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Nay
Harrington.	Nay

Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Absent
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe..	Aye
Murray..	Absent
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Nay
Roeder	Aye
Rollins.	Aye
Romney	Aye
Rygg	Aye
Scanlin..	Aye
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Absent
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 22 delegates voting Aye, 70 voting No.

CHAIRMAN GRAYBILL: 70 having voted No and 22 Aye, Mrs. Reichert's motion does not prevail and is defeated. We're now on Mr. Ask's motion that we have a ballot alternative, which is Section 11 against Section 11 down to the word "prohibited", period.

Mr. Leuthold.

DELEGATE LEUTHOLD: May I make a motion to Mr. Ask's?

CHAIRMAN GRAYBILL: You surely may. Do you want us to read it?

DELEGATE LEUTHOLD: I would like to submit my proposal incorporated in Mr. Ask's one section there.

CHAIRMAN GRAYBILL: All right, Mr. -read it as an amendment to Mr. Ask's first alternative, Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to amend Mr. Ask's Section 1 l-first Section ll-by deleting the following words: 'acts of the Legislature or by'. Signed: Leuthold." Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, now, Mr. Leuthold will amend Section 11-you can find the language on page 6—which is Mr. Ask's first alternative, and he takes out of it the right of the Legislature to act. In other words, he would say there shall be no gambling unless the people through initiative and referendum allow it.

Mr. Leuthold.

DELEGATE LEUTHOLD: Mr. President and delegates. Just briefly, I'd like to explain what I'm trying to do here. I feel that any proposal to the Legislature-they're going to be under terrific pressure, regardless of how the proposal is to be presented; and I feel that it will relieve a lot of their pressure if they, in proposing a gambling measure, can submit it to the people. And I feel that, in the final, the people should make that decision; so what I'm doing is taking the Legislature out. Now, they will still have the right to prepare a referendum to be submitted to the people, but the people will make the final decision.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I rise in opposition to that amendment. Mr. Habedank touched on it. But oftentimes initiatives are very loosely prepared; and this is a serious issue, an emotional one; and if you allow the Legislature to have the power, they'll take the time to investi-

gate it, have hearings and write proper bills. And I would really be worried if we take all that power away from them, so I think we should stay with the majority report.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, fellow delegates, I rise to oppose Mr. Leuthold's amendment. I agree with Mr. Brown that the Legislature will, in their wisdom, take thetime to do a good job on this, and also, I feel that it's not any more than what we have right now. All we're voting on is to do just exactly-we have now. We have theright, now, through theLegislature, to set up a referendum or initiative; so I don't think it's actually adding anything to it. Thank you.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. Chairman, I'd like to rise in support of Mr. Leuthold's amendment. I have spent-1 spent three sessions around here, and I know what they run up against. In 1969, George Johnson from Conrad brought in a bingo bill, and it was killed many times in the House, and they finally got it-he was able to bring it to life-it was killed and brought back in the Senate many times, and it was finally vetoed by the Governor. And at $10,000 a day or more, I think the Legislature has more important things to do; and this way, I think the people could make the choice.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I've been sitting here very quietly all afternoon, and I want to thank Tom that he sure-that he didn't put the farmers in there, because we would have been in a bad shape.

CHAIRMAN GRAYBILL: Very well, Mr.-someone else was up.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I just want to remind my friend from Lake County that the reason the Legislature could not do anything in '69 was because they had a constitutional inhibition.

CHAIRMAN GRAYBILL: Very well, the issue is—

Mrs. Bates.

DELEGATE BATES: Yes. I support Delegate Leuthold. I feel, however, that we should add another amendment. Would I be in order? It would be the end of this, to state that under thecontrol of the Legislature, should the people by referendum decide.

CHAIRMAN GRAYBILL: Well, Mrs. Bates, I don't see how that's physically possible. Now, if you want to prepare some language and send it up here—In other words, if you know the initiative process, it starts by a petition in the field, and after the initiative-Are you suppose—are you saying that the people can direct the Legislature to do this?

DELEGATE BATES: No, but the-if they initiate some type of gambling or lottery, then it should be under the control of the Legislature.

CHAIRMAN GRAYBILL: I see. I see.

DELEGATE BATES: And therefore I feel there should be an addition-but just exactly how it should be worded, I don't know-but I do feel that if the Legislature is to be strong-armed each year they are in session by the people that are for gambling, it would be a bad situation.

CHAIRMAN GRAYBILL: Mrs. Bates, the Chair sees your point-that you want whatever gambling is finally allowed, if it is, to be under the control of the Legislature. Let's wait till we get the final language. If the final language is bad and that's a flaw, then someone surely will make an amendment; but let's not make that amendment now, when we got two or three more to go here.

Mr. Davis.

DELEGATE DAVIS: Mr. President. Now, is Mr. Leuthold's to substitute completely for Mr. Ask's, or is he amending part of Mr. Ask's?

CHAIRMAN GRAYBILL: No, he's merely amending part of Mr. Ask's, at the moment.

DELEGATE DAVIS: I see. Thank you.

CHAIRMAN GRAYBILL: We're sort of having a test run on him. All right, the issue is on whether or not to amend the first half of Mr. Ask's proposal, to go on the ballot, by taking outthefact that the Legislature would be authorized to do this and leaving in only that the people would be authorized through initiative and referendum. All in favor of Mr. Leuthold's amendment, say-vote Aye; opposed, vote No. Have all the delegates voted? This is a roll call vote. It's the Chair's if there's any question.

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot, please.

Mr. Romney, for what purpose do you arise?

DELEGATE ROMNEY: (Inaudible) (Laughter)

CHAIRMAN GRAYBILL: Well, Mr. Romney, you may announce that you would have voted No if you'd had a chance. The record will so show. Mr. Romney wants the record to show he would have voted No if his button had registered.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas.	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask,,	Nay
Babcock	Nay
Barnard	Aye
Bates.	Aye
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman.	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
c ain.	Aye
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Excused
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Excused
Foster	Absent
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lore110	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Absent
Noble	Nay
Nutting	Aye
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Absent
Romney	Absent
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	**Nay**
Sullivan	**Nay**
Swanberg.	Absent
Took.	Nay
Van Buskirk	Nay
Vermillion	Nay

Wagner Nay
Ward Nay
Warden Nay
Wilson Nay
Woodmansey " " Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 12 delegates voting Aye, 77 voting No.

CHAIRMAN GRAYBILL: 77 having voted No, Mr. Leuthold's motion is defeated. We're back on Mr. Ask's proposal to place on the ballot a proposal that would say--an alternative that would give the people a chance to choose between Section 11 as it appears on page 6, and the first clause in Section 11—all forms of gambling and gift enterprises and so forth are prohibited, period. The choice would be between prohibiting gambling and prohibiting gambling unless authorized by the Legislature or the people.

Mr. Anderson.

DELEGATE OSCAR ANDERSON: I— As I said the other night, anything North Dakota can do, we can do better; and I support the Ask proposal to prove it. (Laughter)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Ask's amendment.

Mr. Ask, do you want to close?

DELEGATE ASK: I close.

CHAIRMAN GRAYBILL: He's closed. Very well, all in favor of Mr. Ask's proposal, vote Aye; and all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim Aye
Anderson, J. Aye
Anderson, O. Aye
Arbanas Aye
Arness Nay
Aronow Aye
Artz Aye
Ask Aye
Babcock Aye
Barnard Aye
Bates Aye
Belcher Aye
Berg.. Aye
Berthelson Aye
Blaylock Nay
Blend Aye
Bowman Aye
Brazier Aye
Brown Aye
Bugbee Aye
Burkhardt Aye
Cain Aye
Campbell Aye
Cate.. Aye
Champoux Aye
Choate Aye
Conover Aye
Cross.. Aye
Dahood Aye
Davis Aye
Delaney Excused
Driscoll Aye
Drum Absent
Eck Aye
Erdmann Aye
Eskildsen Absent
Etchart Aye
Felt Excused
Foster Absent
Furlong Aye
Garlington Aye
Gysler Aye
Habedank Aye
Hanson, R.S. Aye
Hanson, R. Aye
Harbaugh Nay
Harlow Aye
Harper Aye
Harrington Aye
Heliker Aye
Holland. Nay
Jacobsen Aye
James Aye
Johnson Aye
Joyce Aye
Kamhoot Aye
Kelleher Absent
Leuthold Nay
Loendorf Aye
Lorello Aye
Mahoney Aye
Mansfield Aye
Martin Aye
McCarvel Aye
McDonough Aye
McKeon Aye

McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins., ... Absent
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 83 delegates voting Aye, 8 voting No.

CHAIRMAN GRAYBILL: 83 having voted Aye and 8 voting No, Mr. Ask's motion prevails. It having prevailed, we don't reach Section 11. It having prevailed, Mr. Leuthold's amendment doesn't reach Section 11. Are there other proposed amendments to Section 11?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you, on the motion of Mr. Ask that when this committee does arise and report, after having had under consideration Section 11 as amended by his proposal, that we recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended. If you'll all turn to page 15 in your books.

Mr. Belcher, does the minority care to propose its new section?

DELEGATE BELCHER: Mr. Chairman-

CHAIRMAN GRAYBILL: If so, I'll have the clerk read it. Do you want it read?

DELEGATE BELCHER: Yes; if you would, please.

CHAIRMAN GRAYBILL: Will the clerk please read the minority proposal on page 15.

CLERK HANSON: "Minority Proposal Number 1. Be it proposed that there be a new constitutional section to read as follows: 'Section 12. Boundaries. The sovereignty and jurisdiction of the State of Montana shall prevail within the area encompassed by the following boundaries: Beginning at the point of intersection of the 104th meridian of west longitude and the 45th parallel of north latitude, thence clockwise west on said parallel to its intersection with the 111th meridian; south on said meridian to the crest of the Rocky Mountains; northwestward on said crest, the Continental Divide, to the summit of Lost Trail Pass, intersecting there with the southeast and the area of the Bitterroot-crest of the Bitterroot Mountains; hencenorthwestward on the crest of the Bitterroot Mountains and Range to the 116th meridian; north on said meridian to the 49th parallel; east on the said parallel to the 104th meridian; and south on the said meridian to the place of beginning'." Mr. Chairman.

CHAIRMAN GRAYBILL: Ladies and gentlemen, we do have some other things to finish up. We're nearly through with this article. I know it's late, but I think we'd better try to finish this article, so if you'll all stay with us and listen, we'll get through quickly. These shouldn't be very difficult matters.

Mr. Belcher.

DELEGATE BELCHER: Mr. Chairman, I move that when this committee does rise and report, that the-after having had under consideration General Government Proposal Number 12,

Section 12-I think it is-it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Belcher.

DELEGATE BELCHER: This is a very short article. We did have, in our old Constitution, the boundaries of Montana as defined. They were defined by the Organic Act, too, but a man by the name of Mr. Walter Stamm from Dillon has done a lot of research on this thing, and he has come up with a little better description. If we want a boundary for the State of Montana-I don't think we're going to be taken in by Idaho or North Dakota or Wyoming or Canada or any of those other states—but if you want boundaries listed in it, I propose this boundary that is listed in your General Government Number 12.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, there's a gentleman from my community who's been very interested in the boundaries being in the Constitution, and when I came up here I was not very encouraged that we could justify leaving these in. But, I see North Dakota and Hawaii and all the other states left theirs in. He's done a lot of work on this, and when I compare this with that beautiful Preamble that says "the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains", and then you get over here and we talk about the crest of the Rocky Mountains and the Continental Divide, the summit of Lost Trail Pass intersecting with the Bitterroot Mountains, I think it ties in there. I think it's beautiful. I think we should put it in. We've got plenty of other things in that aren't near as poetic as this, and I don't think you should have to go looking through all-get a research analyst to find out where your boundaries are any more, so I would support Mr. Belcher and put it back in our Constitution. I think it would be very nice in there.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman and fellow delegates. I submit that the description here is faulty. Now, I discussed this with the committee, and it doesn't indicate any jog for Yellowstone National Park. Now, Yellowstone National Park was formed a hundred years ago this year. Montana—the State of Montana—came into existence in 1889. More than likely, in the territorial act, this description was correct, but I submit that there's 3 miles' jog and down in the corner, that is still the property of the United States, because when I filled out the complaints before the United States Commissioner, one of the things was under the exclusive jurisdiction of the United States, and I don't think we should try to start a war with the federal government. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman and fellow delegates, I support these boundaries. In the research committee report, it said "all the waters within the boundaries of Montana", so if we don't have any boundaries, how do we know where we're going to get our water? Now, I do not have the fear that Delegate Melvin has. We have one other national park within the state--within the boundaries listed here-and we do not state in the boundaries that Montana includes all that land within these various boundaries except the Glacier National Park. And I do not think it is necessary or that we are jeopardizing our sovereignty by leaving that little piece of Yellowstone Park in the state of-within these boundaries on the thing. We know that's part of the National Park, the same as Glacier National Park is, and if we start excluding part of the Yellowstone National Park, we'll have a sort of a no-man's land in there that will be difficult to administer by anyone.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I'm not going to use this word "delete" after I leave this Convention, ever again. But the reason we deleted it-it's no big thing to debate all night—but our Organic Act had one description in it; our present Constitution has a description that's different from the Organic Act; and this third one-it might be correct; I'm not sure-but like Mr.—Delegate Melvin said, there is some doubt about it-and Walter Stamm is a very fine gentleman, and I appreciate all the work he's done-but I thought if there's going to be any ambiguity or differences in description, we'd be best to leave it out, and we can't change it anyway, and I'm ready to vote. Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman-I'm all in favor of getting the boundaries in. but—

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: —I think that-if you'll refer to the Article I in the present Constitution, the word "Bitterroot" is spelled two words, and I did that 82 years ago and it stood the test of time until the recent corruption of it by the Forest Service, and I suggest that Style take a good look at it.

CHAIRMAN GRAYBILL: Mr. Belcher-Mr. Habedank, do you want to speak?

DELEGATE HABEDANK: Yes. Mr. Brown pointed out his reasons for deleting. The reasons of the majority for putting it in have also been explained, in that we feel that a person should not have to go to ordinances and different items of this kind to find the boundaries. I'd point out to you that if, by some stretch of the imagination, this boundary is incorrect--as it's suggested it might be, in spite of all the research-we're not going to change Montana, because of the Organic Act, anyway. We'll just have what we have, and if we claim more than we've got, Uncle Sam won't give it to us, so we might as well claim all we can. (Laughter)

CHAIRMAN GRAYBILL: Mr. Belcher, you may close.

DELEGATE BELCHER: This will be very brief. This boundary thing, I think, is something that might help us with our Constitution. There are some sentimental people who would like to see the boundaries of their state defined, and this would do it. Thank you.

CHAIRMAN GRAYBILL: Members of the committee, you have before you for your consideration, when we do rise and report, upon the recommendation of Mr. Belcher that we recommend that the minority proposal Number 1 on boundaries be included and recommended for adoption. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted.

Mr. Jacobsen, you have a motion up here for a new section in General Government. May we read it?

DELEGATE JACOBSEN: Please, Mr. Chairman.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Jacobsen's motion.

CLERK HANSON: "Mr. Chairman. I move to amend Article XII, General Government, page 6, on the-of the General Government Committee report, by adding a new section to read as follows: 'Section 13. The Legislature shall provide that the State of Montana shall refrain from engaging in any monopolistic business. Any such existing monopoly must be dissolved by the Legislature in the first assembly after the adoption of this Constitution or by December 31, 1974. This section does not prevent the Legislature from regulating or taxing according to the law.' Signed: Jacobsen and Johnson." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen has proposed a new section to the General Government Article which has the effect of taking the State of Montana out of monopolistic businesses. It is similar to the one he had the other day-and I'm sure the purpose is the liquor control business, but I don't want to suggest that it's limited to that-but I'll let him discuss it. But that's the proposal.

Mr. Jacobsen.

DELEGATE JACOBSEN: You-Was the last proposal read there-the policing and so on'? The white one I gave you this morning?

CHAIRMAN GRAYBILL: No, I think that's not on it. Do you want to read the addition?

DELEGATE JACOBSEN: The one that I had-is that-that's the one-the white one I gave you this morning.

CHAIRMAN GRAYBILL: Well, I don't—this is the only one you gave us that I know of.

DELEGATE JACOBSEN: That's the one, then. As you possibly all know, I brought this up the other day, and the exact thing has happened that Mr. Vermillion told me would happen-that we're here at 6:30 in the evening on the last article on our General Government-so I'm not going to take a lot of time, but you've all been-have the reports of the—

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Yes?

CHAIRMAN GRAYBILL: Would you rather-1 don't want to put you in a bad position-would you rather run the risk of suspending the rules on Monday morning? I'll call on you on Monday morning.

DELEGATE JACOBSEN: If-1 know that a lot of delegates would like to get away at this time, and—

CHAIRMAN GRAYBILL: Well, I'm going to go through the rest of the things we have on the General Orders, but if you want to take it off now and try again-but you'll have to suspend the rules on Monday morning. I don't want you to feel that we-that you're cramped. If you want to withdraw it, you may then make a motion to suspend the rules Monday morning.

DELEGATE JACOBSEN: Well, that will fail, I am sure, so I'll go ahead with it right now. (Laughter)

CHAIRMAN GRAYBILL: That's a Hobson's choice, Mr. Jacobsen.

DELEGATE JACOBSEN: Yes. As you know, the monopoly liquor business in Montanais a political bureau of our state. It is and has been nothing more than a political football. With each change of political party, the liquor store vendors are changed, and possibly a lot of the sales people, too. If we could be assured of good businessmen or -women as vendors, it wouldn't be so bad, but this bureaucracy monopoly is nothing but political payoff for services rendered to either party. I sincerely believe we must take this opportunity to take politics out of our state government. There is just too much politics in politics. With the state out of the liquor business, we could make one more step towards trust in our elected officials and we would be creating a new industry for the private enterprise people of our state. Private enterprise, as I stated the other day, is the backbone of our nation. We would not lose one red cent by doing this but would gain millions of dollars as private enterprise would be paying taxes on not only new and improved properties, but on the inventory transferred from state stores to private stores—increased income taxes, too. You all have on your desks a paper pointing out the facts about the liquor business and a few of the many irregularities. On the reverse side are other facts and one idea how the Legislature can implement the liquor business to make sure that, the state has control, policing powers, and sets prices and taxes to prevent any loss of revenue. In fact, it could gain considerably through better business practices by private enterprise. Now, look at the actual operating statement of the Montana Liquor Control Board. Just look at the tremendous expense the board pays for a four million, nine hundred and thirty thousand net profit on hard liquor, and this statement clearly shows you that salaries and commissions were, in the year 1969-1970, $1,712,489. These will go up, because the liquor vendors now are under union. The result will be we will be paying extra prices for our liquor. Freight and drayage is another item—$249,999—which is added to the cost of our liquor. There's a double shipment of this. It's shipped into Helena and then reshipped out to the stores about the state, where if private enterprise had it, I'm sure that some of the breweries even could have warehouses and so on about our state to distribute in a better manner. Industrial accident insurance, $30,000; employee benefits, $162,000, which would, of course, be going up; store audit and examiners fees, $59,673; machine rentals, $41,475. This is a total of $2,677,000-plus; and, of course, any ordinary businessman can look at that net profit figure from the Liquor Department of four million nine hundred and thirty-one thousand, and with an expense of over two million, six hundred seventy-seven thousand, this is not good business. We can save, and I was told-as I repeat again-1 was told we could save over two and a half million by taking the state out of this business. Now, the expense sheet is only the start. With the employees of liquor stores unionizing-1 told you that-warehouses, a new warehouse is also planned at the—to the tune of three to four million dollars. The end results, of course, of these things will be just, of course, higher taxes to you. I can refer again to the half gallon of Ancient Age liquor that sells in Denver and Cheyenne, Wyoming, for $8.30. Here we pay eleven fifty-five. Let's, through the very—throw this-turn this very expensive business over to a private enterprise with private taxes, too, and we would help finance this great state. We have added many financial problems to our next legislative body. I want to see our state grow and prosper. It can do just this and keep full control over taxes, licenses, policing and markups. Bureaucracy must be reduced. We have spent a lot of time here considering and reconsidering many articles and sections. Now, consider your vote, as of the other day, by ridding our state of this monster bureau. Just think of the advice given us by John Gardiner and recited the other day. This is our one opportunity. When I was asked to-when I

decided to run for this Con Con, one of the things that I thought: "Well, this is my chance to see if I can't go over to Helena and help rid our state of some of the very poor political things that are in this state." Thank you. I think there's a few more people that want to speak on this.

CHAIRMAN GRAYBILL: Very well, is there—

Mrs. Robinson.

DELEGATE ROBINSON: Mr. President. I hate to do this, but I feel very strongly that this is the very same thing that Mr. Aronow proposed this morning. I think that if we do this, this really amounts to a reconsideration of a past action, and I think that we should deal with it accordingly. I don't see any difference in this and what Mr. Aronow attempted to do.

CHAIRMAN GRAYBILL: Mrs. Robinson, the Chair has thought about that, and you may be entirely right. The other day, when we discussed it in the other section, we did mention that it was a subject that probably fell much more within the ambit of General Government than the one this morning, but that may be.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: A point of order on this same matter. I would like to refer you to Section 159 of Mason's This is the same substantive matter that was killed here a couple of days ago, and I think the only way we can consider it is by reconsideration.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I submit that this is materially different than the one the other day and we owe these gentlemen the courtesy of the vote on this because this is much broader amendment than his original; although it reaches the same business, it may go well beyond it.

CHAIRMAN GRAYBILL: The Chair can look up the language that we had the other day. Is the language that Mr. Jacobsen has proposed today substantially different than it was before?

Mr. Jacobsen.

DELEGATE JACOBSEN: The section that he just read, did that say the Legislature shall provide that by December 31, 1975—

CHAIRMAN GRAYBILL: No—

DELEGATE JACOBSEN: Is that what the one you read said?

CHAIRMAN GRAYBILL: It says, "The Legislature shall provide that the State of Montana shall refrain from engaging in any monopolistic business."

DELEGATE JACOBSEN: Well, now, this proposal I handed you this morning, Mr. President, states: "Be it proposed by the Constitutional Convention of the State of Montana: Section 1. There shall be a new constitutional section to provide as follows: 'The Legislature shall provide that by December 31, 1975, the State of Montana shall no longer engage in the business of buying and selling liquor. This section does not prevent the Legislature from regulating-from voting-"'

CHAIRMAN GRAYBILL: All right, all right-Mr. Jacobsen, first of all, I'm not going to argue with you about whether you gave it to me or not this morning, but I-the one I-you gave me I have, but that's not the one you just read, so will you, first of all, withdraw the one you've made—or the one I have-which is the one we made.

DELEGATE JACOBSEN: Mr. President, I'd like to withdraw the—

CHAIRMAN GRAYBILL: All right. Now, then, having withdrawn that, will you bring to the Chair the one you have in your hand or one-give us a copy of it. We don't have it.

DELEGATE JACOBSEN: Yes.

CHAIRMAN GRAYBILL: Just send—either send us your copy or-Oh-1 don't know where the others are.

DELEGATE JACOBSEN: I gave them to you in your office this morning.

CHAIRMAN GRAYBILL: Right, and I brought them and gave them to the clerk. And that's what we're reading, so apparently you or we got mixed up and we have your old one instead of your new one.

DELEGATE JACOBSEN: That's the monopolizing one.

CHAIRMAN GRAYBILL: I understand, but that's-it's a new set that I had this morning, so you and I have gotten mixed up.

DELEGATE JACOBSEN: Yes. The monopoly business is not in this section I'm proposing. I'm strictly talking about the liquor business.

CHAIRMAN GRAYBILL: All right, now, Mr. Aasheim-Mr. Jacobsen, you do make your new one here?

DELEGATE JACOBSEN: Yes, I propose this; and if-you'll see it has policing and control powers with the Legislature.

CHAIRMAN GRAYBILL: Well, Mr. Aasheim, he has proposed a considerably different amendment here, limited to the liquor business-"The Legislature shall provide that by December 31, 1975, the State of Montana shall no longer engage in the business of buying and selling liquor. This section does not prevent the Legislature from regulating or taxing the retail or wholesale sale of liquor--regulating, controlling, policing or taxing the retail and wholesale sale of liquor." That is certainly a different matter than we discussed the other day and does seem to the Chair to fall within the ambit of General Government.

Mr. Aasheim.

DELEGATE AASHEIM: I would just like to read what the-what Mason's says: "It was an ancient rule that when a bill was once passed or rejected, another of the same substance could not be brought in again during the same session." However, they do have this alternative. They can, by reconsideration, do so-and that would be the order of business-order in which they should do it, I would say.

CHAIRMAN GRAYBILL: Well, I can't hold, Mr. Aasheim, that a bill regulating the sale of liquor-or an amendment taking us out of the liquor business is the same as an amendment taking us out of any monopolistic business. That's just not the same thing. The other is much broader, so I've got to rule that this is a different matter and it does fall within General Government. Now, 1'11 allow your amendment Mr.-I'll allow your motion, Mr. Jacobsen, and if anyone wants to challenge me, they can.

Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I feel that the motion of Mr. Jacobsen is in order. He appeared before the General Government Committee-he and Mr. Johnson-proposing this same idea two or three different times. The Committee turned it down. They didn't feel that it was part of the Constitution, and I rise in opposition to his motion because, as he said, it has been debated many, many times. And I merely want to state out that, from a survey of all of the states in the United States, of the 18 control states, they drink less whiskey and make moremoney than do the32 licensed states, so I see no reason why we should go out of the controlled liquor business. And I close.

CHAIRMAN GRAYBILL: So that the body understands where we are, I think Mr. Aasheim and I, at least have-we did find out that Mr. Jacobsen's first one was the old one and it's out, but his present one deals only with the liquor monopoly and not with any other monopoly and it is allowed, and we are debating it.

Mr. Berg.

DELEGATE BERG: Mr. Chairman, I rise in support of Mr. Jacobsen's motion, and I do this for a very different reason than what has yet been suggested, and that is this: Some time ago-a few days ago, as a matter of fact-1 received a letter from Mr. Toole, asking me to survey what we have done to see where we might find some area where money for the State of Montana has been saved rather than expended by this Convention in the construction of this Constitution. He called my attention to a suggestion of Mr. Garlington's that, perhaps, by the consolidation of Clerks of the Court in remote counties, there was a potential possible saving in excess of $500,000, but except for that one suggestion of Mr. Garlington's, I have been unable, until now, to make any suggestions to assist Mr. Toole in this problem that he raises. And I think it is a problem that all of us will be concerned with in the next 2 months. We will be confronted with the fact that this Constitution, if it is enacted, will be a more expensive form of government than what we have enjoyed before. We will have to demonstrate the benefits that come by the increased costs that we necessarily create. Here, however, is one opportunity for this Convention to say "money has been saved"-not only immediately but throughout the years. Now, I'm not certain of Mr. Jacobsen's figures, but they are significant and they are not only an initial saving of something like $6 million, they are an annual saving of something like $2 million. They also present to the peaceful-the people the possibility of buying liquor at rates comparable to what they are in Wyoming and Colorado, and to that

extent, they are a saving to the people. So there is great virtue in this proposal, not just on the proposition that we should get out of the liquor business-the state should get out of it-but on the proposition of assisting in the promotion, if you please, of this Constitution or at least an explanation of it, financially. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: How's it going to look like in the Constitution—read in the Constitution 40 years from now to, say, see this directive that is being proposed? I think the issue is still one of what kind of control the state ought to have. I don't think maybe we heard what Mr. Harlow read a moment ago-and I haven't been able to check out all these facts myself, but I assume this is correct-that 18 control states have a per capita consumption of one and thirty-eight hundredths gallons; 32 license states have a per capita consumption of one point eighty-eight--much higher. Yet, the 18 control states average $14.32 to $11 for the 32 license states in income. Now, I don't quite see a case being made that to be a control state means that you're losing money. This graph seems to be the other way around. There is one thing I can report on. The other day Mr. Jacobsen talked quite a bit about the legislative audit in 1969 finding all the things wrong with the-our public agency, the Liquor Control Board. At the time, I said one good thing about it was the legislative audit at least could audit a public board and make suggestions. He sent me a booklet-in fact, the report of the legislative audit at that time—that listed about 200 different things they thought ought to be changed in the procedure and setup of the Liquor Control Board. Mr. Mahoney and I took that legislative audit report, went down to the Auditor yesterday, said to the Auditor and the Assistant Chief Auditor, "Have any of these things been accomplished?" Their answer was—and you can check with them-that with the help of the managerial services department of our government, all of these corrections have now been made and the Liquor Control Board has asked for a new audit which, as I understand, is beginning this week or next; and they seem to think the situation is being handled in a public way. And I think that kind of responsible handling can be done as long as we have public control; but when it moves into the private sector, we not only raise consumption--which is really the big problem here-we will lower, over the long run, according to this graph, if we repeat what other licensed states have done, our revenue and we will have a monster entirely out of our control.

CHAIRMAN GRAYBILL: Mrs. Cain.

DELEGATE CAIN: There is just one short thing I want to say. I don't see how people who are interested in good government can tolerate the kind of things that have been happening within this liquor control.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, somebody can correct me if I'm wrong, but I believe it was in-1969 session of the Legislature that passed a bill to take the state out of the liquor business and the Governor vetoed it for-and as I recall, for one reason only, and that is it would cost the State of Montana too much money that we couldn't afford to lose. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman-just say I don't think the Legislature should allow the Liquor Control Board-because there still would be one, I'm sure-to lose any money on this proposition. They put the stamp tax right on at the distillery and in such a manner and in such an amount that they don't lose any money. Certainly don't want to take them out of the business to the extent where-or in any manner so it loses tax return to the State of Montana-that's certainly not the intention in any way-and my fairly extensive study of the figures would prove to me this would be very easily done. Thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, this same matter came up the other day. At least it has the same thrust. I think that it must be disposed of, but I don't feel that the figures that we have been-that we have had placed at our disposal provide us with any real ground for making the decision whether it is good or bad with respect to the state making a profit or not making a profit and whether or not it would make more otherwise, and I think that this is distinctly statutory. And in this connection, I would like to ask the Chairman if I may direct an inquiry to Delegate Donahue—McDonough, I mean.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: (Inaudible)

DELEGATE ROMNEY: Mr. McDonough—

DELEGATE McDONOUGH: Yes, sir.

DELEGATE ROMNEY: Would you give us the benefit of your thought on whether or not this is statutory?

DELEGATE McDONOUGH: Yes, it's about a hundred percent. (Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Jacobsen, do you want to close?

DELEGATE JACOBSEN: Thank you, Mr. President. For Mr. Romney's benefit, every figure that I showed on the paper and these things are actual facts right from the State Liquor Board's own figures. This is a photostat and is taken out of this book (Illustrating), and it's by the Liquor Control Board. Our-this monopoly is something. Now, I don't know but maybe one or two of the people that are working in the liquor business as far as the state control part of it-and I would hope that if we could get the state out of this liquor business, whether it is-should be in the Constitution or not, I don't know and I-maybe it shouldn't, but for the last 15 or 20 years, the Legislature has not acted, and there have been many attempts to do this. Now, there is payoffs and so on in broken-breakage and so on; and the Legislative Auditor, the man that wrote this book that was passed out amongst all of you, this hundred and fifty-seven pages-every page, like Mr. Harper said, has discrepancies and so on-and, of course, when women vendors use liquor store money and take money out of the till and buy their groceries with-for the month, then put their own check in-this is not good business. We have all kinds of this going on and you're first-and we don't want to forget the fact that private enterprise would take over the present liquor stores. They would be licensed; there would be license fees against those. The Legislature would control this operation, and they would police it just as they're doing now. If you read the items that I put before you, it gives facts-and all of those are absolute facts from this book and from the Liquor Control Board's own figures--and in closing, I could say that Torrey and I, of course, were told by General Government that this was a legislative item, and we know that this is a legislative item, but it has not been acted upon by the Legislature. This is our opportunity to clean up this politics within our system-this here political payoff. The thing that we can do here-that is a bureaucracy we should get away from, and if you'll again think of what Mr. Gardiner said the other night, it would help you in making up your mind that we do not need this. Now, Reverend Harper is for character and morals in government, and still he will allow to persist this monster bureaucracy. Liquor monopoly, with all its opportunities for fraud and so forth, should be and can be cleaned up by private enterprise. Take it out of politics except for strict control set up by our Legislature. Think about this. We came over here to clean up our government. Let's clean it up and direct the Legislature, whether it be to the Legislative Council or whether it actually is in the Constitution, but let's direct our Legislative Council to get the state out of this liquor business. Thank you.

UNIDENTIFIED DELEGATES: Roll call.

CHAIRMAN GRAYBILL: Right. We'll have a roll call. Wait till we vote, Bruce. Very well, the issue is on the motion of Mr. Jacobsen that we add a section to the General Government Article which would say: "Section 1. There shall be a new constitutional section to provide as follows: 'The Legislature shall provide that by December 31, 1975, the State of Montana will no longer engage in the business of buying and selling liquor. This section does not prevent the Legislature from regulating, controlling, policing, or taxing the retail and wholesale sale of liquor.'" So many as shall be in favor of Mr. Jacobsen's motion, vote Aye; so many as shall be opposed, vote No. have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O..	Nay
Arbanas	Aye
Arness	Nay
Aronow	Absent
Artz	Aye
Ask	Nay
Babcock	Nay

Barnard ..... Nay
Bates ..... Nay
Belcher ..... Absent
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Absent
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Absent
Cate ..... Absent
Champoux ..... Aye
Choate ..... Absent
Conover ..... Absent
Cross.. ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Excused
Driscoll ..... Absent
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt. ..... Excused
Foster ..... Absent
Furlong., ... Nay
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Absent
Heliker ..... Absent
Holland ..... Aye
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Absent
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Absent
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Absent
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Absent
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks ..... Nay
Spew ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 20 delegates voting Aye, 53 voting No.

CHAIRMAN GRAYBILL: 53 having voted No and only 20 voting Aye, the motion is defeated. Are there other new sections to be added to the General Government section-Article?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the body, you've completed the consideration, on General Orders, on Committee of the Whole of-report Number 12 of General Government.

Mr. Brown, may I have a motion that this committee rise and report finally on the General Government proposal?

DELEGATE BROWN: I so move.

CHAIRMAN GRAYBILL: Very well, the motion is to rise and report finally on General Government. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings reverted from Committee of the Whole to Convention, President Graybill in Chair)

PRESIDENT GRAYBILL: Will the clerk please read the title and signature of the Committee of the Whole report.

CLERK HANSON: "March 18, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 12 of the Committee on General Government, recommend as follows: That the Committee rise and finally report on General Government Article. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: Mr. Brown, may I have a motion that the committee report may be accepted-and that the-may be adopted -Mr. Brown, may I have a motion that the committee report may be adopted and that the General Government proposal may be sent to Style and Drafting for inclusion in Order of Business Number 5.

DELEGATE BROWN: I so move.

PRESIDENT GRAYBILL: All in favor of adopting the committee report, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, that should be referred to Order of Business Number 10, I think.

PRESIDENT GRAYBILL: Right. Right. The Chair will restate the motion. All in favor of accepting the report of the Committee of the Whole and referring it to Order of Business Number-to Style and Drafting for reference back on Order of Business Number 10, please say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed, No. (No response)

DELEGATE SCHILTZ: Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I would-If I may, I'd like to announce a Style and Drafting meeting at 2 o'clock tomorrow afternoon.

PRESIDENT GRAYBILL: Style and Drafting will meet at 2 o'clock tomorrow afternoon. Before we adjourn, delegates, I have been asked to read this into the record: "Delegates: We, the pages, would like to thank you for being so kind to us this past week. We've really enjoyed serving you and getting to know each of you. It is our hope that our paths will meet again." Signed by about 13 pages, some of whose names I can't pronounce, but I'll give it to the journal. Now, ladies and gentlemen-

Mr. Brown, would you like to give us a motion for Monday?

DELEGATE BROWN: Mr. President, I move that, pursuant to the general powers vested in the Montana Constitutional Convention and in accordance with the provisions of Section 7(6) of the Enabling Act, the Montana Constitutional Convention shall recess temporarily until 9:00 a.m. on Monday-on March 20, 1972.

PRESIDENT GRAYBILL: The motion is to recess the Convention until Monday at 9:00 a.m. All in favor, say Aye.

DELEGATES: Aye

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered, and thank you.

(Convention recessed at 7:05 p.m.)

March 20, 1972 **Fiftieth Day** **Convention Hall**
9:30 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The convention will be in order. If you'll all stand, John Anderson will lead us in the Pledge of Allegiance this morning.

(Delegate J. Anderson leading pledge, with delegates joining in)

PRESIDENT GRAYBILL: If you'll remain standing, Rachel1 Mansfield will lead us in the invocation this morning.

DELEGATE MANSFIELD: Let us pray. Blessed are they who are poor in spirit; theirs is the kingdom of God. Blessed are they who are meek and humble; they will inherit the earth. Blessed are they who will mourn in sorrow; they will be comforted. Blessed those in hunger and thirst for justice; they will be satisfied. Blessed are they who show more mercy; they will know mercy, too. Blessed are the hearts that are clean and holy; they will behold the Lord. Blessed are they who bring peace among us; they are the children of God. Blessed those who suffer from persecution; theirs is the kingdom of God. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Davis, Murray and Nutting be excused, please?

PRESIDENT GRAYBILL: They may.

CLERK HANSON: Delegate Arness, Delegate Cain, Delegate Delaney, Delegate Felt.

PRESIDENT GRAYBILL: Read them again.

CLERK HANSON: Delegate Arness, Delegate Delaney, Delegate Felt.

PRESIDENT GRAYBILL: Very well, take the attendance.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
cam ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye

Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Excused
Noble	Aye
Nutting	Excused
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. President, 94 delegates present; 3 absent, and 3 excused.

PRESIDENT GRAYBILL: Very well, the journal may so show.

Before we go on the order of business today, I'd like to make a short explanation. The Voter Education Committee has made arrangements to do some last-minute filming, and so we're going to have some lights again today. Now, we're going to try and have the lights only for some short periods of time, but there will be some time when we are going to have them on. And they'll be off as soon as they stop filming; and it will not be for a half hour like it is with video, since they're filming on tape. I realize this light will make it very difficult for people while it's on, and I have already spoken with the film crew so that they will keep it on as little as possible. But we would rather get your shining faces in the camera than nothing, and it won't last very long; but please be aware of it and put up with it if you can.

Now, Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: "Mr. President. We, your Committee on Style, Drafting, Transition and Submission, transmit herewith revisions of the Local Government Article, Number 11, for the consideration of the Convention. Signed: Schiltz, Chairman." "Mr. President. We, the Committee on Style, Drafting, Transition and Submission, transmit herewith revisions of General Government Article, report Number 12, for consideration of the Convention. Signed: Schiltz, Chairman." Mr. President.

PRESIDENT GRAYBILL: Very well, Local Government and General Government are accepted and referred to Order of Business Number 10 from Style and Drafting. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration. There is none until we finish these two that we just got on Order of Business Number 10, so there's none there. -6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: -7, Motions and Resolutions.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move we take Proposal Number 5, Judiciary, from Style and Drafting and place it on General Orders. I do this so that it'll be in the proper order of business when we do discuss it again and if we do reconsider and if we do make a motion to amend the rules.

PRESIDENT GRAYBILL: For the information of the body, we will at this time move to have Judiciary placed on General Orders and after that we will move to have Revenue and Finance placed on General Orders to take care of the two matters that arose on Saturday. You may do as you please, but that's the purpose of Mr. Eskildsen's motion, and it is to move Judiciary Article on to General Orders from Style and Drafting. All in favor of that motion say—

Mrs. Warden. Are you up?

DELEGATE WARDEN: (Inaudible)

PRESIDENT GRAYBILL: Oh, incidentally, Mr. Arness, your presence will be noted for the journal. Very well. All those in favor of moving the Judiciary Article from Style and Drafting to General Orders, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Chair is in doubt. All those in favor, vote Aye; and all those opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, 65 having voted Aye and 25 having voted No, Judiciary is moved to Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President. I move we take Proposal Number 7, Revenue and Finance, from Style and Drafting and placeit on General Orders, Order of Business Number 10, for the same purpose.

PRESIDENT GRAYBILL: Very well, the motion's to move Revenue and Finance proposal from Style and Drafting to General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. So those two are now on Order of Business Number 10. Are there other motions or resolutions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to move this Convention into a Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: Mr. President. March 20, 1972. The following committee proposals are now on General Orders: Local Government, General Government, Judiciary, Revenue and Finance.

CHAIRMAN GRAYBILL: The Chair would propose, unless there is objection, to taking up the Judiciary and Revenue and Finance matters first. Very well, the Chair is open to a motion.

Mr. Aronow.

DELEGATE ARONOW: Mr. President, I move that we suspend the rules under the Judiciary Article for the limited and-the purpose only of adding a section dealing with the clerk of the Supreme Court. You've had the sense of the proposal on your desks on Saturday; andifsuccessful in suspending the rules, we will then move to reconsider for the purpose of adding a section providing for the office of the clerk of the Supreme Court and his election. Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow, do you have any exra copies of that? The Chair and the clerk don't have copies.

DELEGATE ARONOW: Yes, I have one more.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aronow's motion to suspend the rules to add a section. If you happen to have Mr. Aronow's material before you--we would not add it to the General Government; we crossed that the other day. We would add it to Judiciary, but the sense of his proposal is contained in that material that he gave us last Saturday: "In the Judicial Department there shall be a clerk of the Supreme Court, who shall hold office for a term of 6 years. He shall be elected by the electors at large of the state." Is there discussion of the motion to suspend the rules and discussion of that point only?

(No response)

CHAIRMAN GRAYBILL: All right, we're ready to vote on it. Does anyone want a roll call vote? Mr. McKeon wants a roll call vote.

Mrs. Pemberton.

DELEGATE PEMBERTON: I just wanted to talk.

CHAIRMAN GRAYBILL: Very well, you may discuss the motion to suspend the rules.

DELEGATE PEMBERTON: At this point, I would like to know exactly where we are in suspending the rules for the clerk of the Supreme Court. Mr. Aronow, would you answer a question for me, please?

DELEGATE ARONOW: I'll yield, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you very much. I wrote you a note, but I didn't get it there in time. In suspending the rules for the clerk of the Supreme Court, this was deleted by the vote of the delegation; is that right?

DELEGATE ARONOW: That is correct.

DELEGATE PEMBERTON: And it was left out of the Constitution?

DELEGATE ARONOW: That is correct, Mrs. Pemberton.

DELEGATE PEMBERTON: In thatvote, when we were discussing the clerk of the Supreme Court and other officers, this was the only one that was left out of the Constitution?

DELEGATE ARONOW: No, there was one other, and that was the State Treasurer.

DELEGATE PEMBERTON: Yes, that's right.

DELEGATE ARONOW: But that involves no problem, due to the fact that the State Treasurer may not run to succeed himself. And this is the only office-at that time, I think, we were strongly considering a short ballot; and then we changed our minds and we did leave out the clerk of the court, which seems a discriminatory type of thing.

DELEGATE PEMBERTON: I think that's why--would I be out of order in putting in another motion at this time?

CHAIRMAN GRAYBILL: Well, it's got to be another motion to suspend the rules.

DELEGATE PEMBERTON: After the consideration to suspend rules, if that should go through?

CHAIRMAN GRAYBILL: I don't know the nature of your motion, Mrs. Pemberton.

DELEGATE PEMBERTON: Would you like to hear it?

CHAIRMAN GRAYBILL: In other words -Well, Mrs. Pemberton, we have a motion to suspend the rules for the limited purpose of considering the clerk of the Supreme Court. Do you want to enlarge the purpose, is that your—

DELEGATE PEMBERTON: No, it is not to enlarge the purpose; it is to appoint a clerk of the Supreme Court instead of electing him.

CHAIRMANGRAYBILL: Well, the Chair has Mr. Aronow's purpose as to add a section concerning the clerk of the Supreme Court.

Mr. Aronow, I realize you have suggested language, but the chair is about to rule, unless you object-do you want to make it only to elect him, Mr. Aronow?

DELEGATE ARONOW: That's my purpose at this moment, yes.

CHAIRMAN GRAYBILL: All right, now, the Chair will take the view that you have to put

the narrowest one first, and, therefore, the purpose for which he is opening is suspending the rules. Now, Mrs. Pemberton is to elect-is to put in a section that would require the election of the clerk of the Supreme Court. Now, if you want to amend his motion to suspend the rules, you may. And then we'll put that to the body first; and if that passes, fine; and if not, we'll go to his. Do you want to put in to elect or appoint-I mean, do you want to—

DELEGATE PEMBERTON: I would like very much to put in an amendment to appoint a clerk of the Supreme Court. I have words for that, if you would like to have them.

CHAIRMAN GRAYBILL: No, I think I know enough. That's your purpose, right?

DELEGATE PEMBERTON: Right.

CHAIRMAN GRAYBILL: So the body understands the situation, Mr. Aronow made a motion to suspend the rules to add a section concerning the clerk of the Supreme Court by election. Mrs. Pemberton has now made a substitute motion to suspend the rules and add a section concerning the clerk of the Supreme Court by appointment, Does everyone understand the situation? We'll vote on Mrs. Pemberton's first.

Mr. Harbaugh.

DELEGATE HARBAUGH: Could I ask a question of Mrs. Pemberton?

CHAIRMAN GRAYBILL: You may.

DELEGATE PEMBERTON: Yes, sir.

DELEGATE HARBAUGH: Appointment by whom?

DELEGATE PEMBERTON: Appointment by the Supreme Court, sir.

CHAIRMAN GRAYBILL: Is there a roll call desired on Mrs. Pemberton's motion?

Mr. Holland.

DELEGATE HOLLAND: I move for a roll call vote.

CHAIRMAN GRAYBILL: Very well, we'll take a roll call vote on Mrs. Pemberton's motion. All those in favor of suspending the rules to add a section concerning the clerk of the Supreme Court by appointment, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot.

Aasheim	Nay
Anderson, J	Nay
Anderson,0	Nay
Arbanas..	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock..	Aye
Barnard	Nay
Bates	Nay
Belcher	Aye
Berg..	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown..	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Excused
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Aye
Eskildsen	Nay
Etchart	Aye
Felt	Absent
Foster..	Aye
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S..	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Nay

Harrington	Nay
Heliker	Nay
Holland.	Nay
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Aye
Loendorf,	Nay
Lorello	Nay
Mahoney	Nay
Mansfield.	Aye
Martin.	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe..	Aye
Murray	Excused
Noble	Nay
Nutting	Excused
Payne	Aye
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin..	Aye
Schiltz	Nay
Siderius.	Nay
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer..	Aye
Sullivan	Nay
Swanberg	Absent
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden..	Aye
Wilson	Absent
Woodmansey	Aye

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I inadvertently pressed the wrong button; I want to vote Nay on this particular motion.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood, the ballot-the vote not having been announced, Mr. Dahood may be shown as voting Nay.

CLERK HANSON: Mr. President, 35 delegates voting Aye, 58 voting No.

CHAIRMAN GRAYBILL: **58** having voted No and 35 Aye, Mrs. Pemberton's motion is defeated. We're now on Mr. Aronow's motion to suspend the rules to add a section concerning the clerk of court to be selected by election.

Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I would like to expand that motion of Mr. Aronow's a little bit by adding these words--we all realize why we are suddenly desirous of having the Supreme Court office elected, and I think this will solve our dilemma and still give us back to our original thinking-that if I add these words that— after Mr. Aronow's: "The clerk of Supreme Court's office shall be elected only so long as Tom Kearney holds office." (Laughter) "Thereafter the office shall be appointed by the Supreme Court." If you do not wish to be so specific-however, I think it wouldn't hurt to have Tom Kearney's name in the Constitution-take off his and say "so long as the present incumbent holds office".

CHAIRMAN GRAYBILL: All right, I take it to be you want to make a substitute motion to Mr. Aronow, is that right, Mr. Harlow?

DELEGATE HARLOW: **Yes,** Mr. Chairman.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE HARLOW: **Yes,** Mr. Chairman. I'll move that this be added to—

CHAIRMAN GRAYBILL: All right, I've got it. See if I've stated it right. You want to suspend the rules to add a section concerning the clerk of the court to be elected for the--until the incumbent is no longer elected-or to be elected for the-as long as the incumbent holds office, is that right?

DELEGATE HARLOW: **Yes.** And from thereon the office shall be appointed by the Supreme court.

CHAIRMAN GRAYBILL: And thereafter appointed?

DELEGATE HARLOW: Yes.

CHAIRMAN GRAYBILL: Mr. Aronow, would you like to talk to that?

DELEGATE ARONOW: Mr. Chairman, I resist the amendment on the ground that I don't think that the offered amendment is made in good faith. Besides that, it's not good constitutional law; it has no place in the Constitution, and I hope that the delegates will vote against the amendment made by Mr. Harlow.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. You know, if this is really the problem, I think we're wasting time in this Convention. If the real problem is this one gentleman, I'm sure that Style and Drafting can take care of this in the transitional article by providing that present officeholders, until their term expires-this will take care of it. If that's all there is to it, leave it to Style and Drafting. Thank you.

CHAIRMAN GRAYBILL: Now, we're not going to discuss the substance, but if you want to discuss Mr. Harlow's motion to suspend the rules, okay.

Mr. Harper.

DELEGATE HARPER: May I ask a question, Mr. Chairman, that would have something to do with how I vote on any of these things and maybe to clear up a point? If we remove an office from the Constitution that's in the present Constitution that now is an elected office like this one, does this mean that automatically there will be no election or does the Legislature still have the choice? For example, could the Treasurer appear on a ballot as long as the Legislature decided that it should be an elective office; or when he is not mentioned in the Constitution, is he automatically-

CHAIRMAN GRAYBILL: I think your question's substantive, and I don't know who wants to answer it, but I'll take a shot at it. I think we're merely removing it from the Constitution and that the office-but I haven't checked the statutes to see whether the clerk of the court is statutory, but I presume he's also statutory. If anybody knows to the contrary, I wish they'd clear me up.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I would have to resist this motion. Now, either we make a decision to elect the clerk of the Supreme Court or we don't. This would be awful; I mean you wouldn't-Mr. Kearney wouldn't know whether he could run or not. I mean, this would be a very touchy thing, and if somebody else come along—now I think we've got to come out here under--and go under the Aronow motion and vote it up or down. This is my thinking, and I would hesitate to see in for one man. This is not in Constitution, Legislature could do it, but—

CHAIRMAN GRAYBILL: Very well, are you ready for the vote? A roll call has been demanded.

Mr. Harlow.

DELEGATE HARLOW: Just one remark. Mr. Aronow said that my motion's not made in good faith; it is made in good faith. This was not a facetious motion: and as we know that we are sympathetic to the present incumbent, we're not sympathetic to having the office elective. Thank you.

CHAIRMAN GRAYBILL: Has a roll call been demanded on Mr. Harlow's—? Mr. Studer, you demand one; okay. Very well, so many as are in favor of Mr. Harlow's motion, which is to suspend the rules to add a section on the clerk of court to be elected during the-as long as the present incumbent's there and thereafter be appointed, please vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay

Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Aye
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Aye
Dahood ..... Nay
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Nay
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Absent
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Absent
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Absent
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay

CLERK HANSON: Mr. President, 18 voting Aye, 72 voting No.

CHAIRMAN GRAYBILL: 72 having voted No and only 18 having voted Aye, the motion is defeated. We're back on Mr. Aronow's original motion to suspend the rules to add a section concerning the clerk of the Supreme Court to be elected.

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, just a point of clarification. Section 9 of our present Article VIII does provide a constitutional position for the clerk of the Supreme Court, to be elected for 6 years.

CHAIRMAN GRAYBILL: I-What are you talking about, Section 9 of what?

DELEGATE CHOATE: Section 9 of Article VIII of the present Judicial Article in our present Constitution does provide for that office constitutionally for a 6-year term.

CHAIRMAN GRAYBILL: Well, now you've raised a question which I don't think is correct, Mr. Choate, so the Chair will check it, Oh, the present Constitution; I see-1 thought you meant the one we'd adopted, okay.

Mr. James.

DELEGATE JAMES: Mr. Chairman, would Mr. Aronow yield?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I'll yield, Mr. Chairman.

DELEGATE JAMES: Cedor, if Tom Kearney is selected, as I assume he will be in the primary, he will run this fall for a (i-year term, is that right?

DELEGATE ARONOW: I don't know whether his term expires at this time or not, but when he does run, he will run for the 6-year term if my motion to suspend the rules carries and if motion to reconsider carries and then you decide here and the new Constitution is adopted. Under the old Constitution, he would run for a 6-year term; that is correct.

DELEGATE JAMES: Will Mr. Aronow yield?

CHAIRMAN GRAYBILL: He may, but the Chair is going to be awfully strict on making it concerning the motion to suspend the rules and not the substance of the matter.

DELEGATE ARONOW: (Inaudible)

DELEGATE JAMES: Okay, I was going to ask something on the substance and not the rules.

CHAIRMAN GRAYBILL: Yeah, let's try and stay off the substance; everybody understands what the purpose of the motion is.

Mrs. Robinson.

DELEGATE ROBINSON: Mr. President, I'd like to speak in opposition to the motion to reconsider-to suspend the rules, rather. It makes no difference, the *Revised Codes of Montana in* Title 82, beginning at chapter 5, clearly stipulate that there must be a clerk of the Supreme Court, who must be elected by the electors at large of the state and hold this office for a term of 6 years. Until the Legislature acts at some time in the future, there will continue to be a clerk of the Supreme Court elected by the State of Montana regardless of what we do in the Constitution, since we did not reconsider to make it an appointed office.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote. So many as are in favor of Mr. Aronow's motion to suspend the rules to add a section concerning the clerk of Supreme Court to be elected, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. ..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask. ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Absent
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman. ..... Nay
Brazier ..... Absent
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Nay
Cate ..... Nay
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye

Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Nay
Joyce	Aye
Kamhoot	Aye
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Excused
Noble	Aye
Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Aye
Swanberg	Nay
Toole	Nay
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 44 delegates voting Aye, 49 voting No.

CHAIRMAN GRAYBILL: 49 delegates having voted No, the motion to suspend the rules is defeated. Very well, the Chair will entertain a motion from Mr. Rygg concerning Revenue and Finance.

DELEGATE RYGG: I believe the clerk has it there; does he want to read it?

CHAIRMAN GRAYBILL: Well-

DELEGATE RYGG: All right. Mr. Chairman, I move to suspend the rules, and my purpose is to make a motion to reconsider subsection 2 of Section 6 of Revenue and Finance Article for the specific and limited purpose only of striking the last 12 words thereof.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg, excuse me. Would you restate your motion; I was interrupted.

DELEGATE RYGG: My motion is to suspend the rules, Mr. Chairman.

CHAIRMAN GRAYBILL: For what purpose?

DELEGATE RYGG: My purpose would then be, if it should carry through reconsideration, to make a motion to reconsider subsection 2 of Section 6 of the Revenue and Finance Article for the specific and limited purposes only of striking the last 12 words thereof.

CHAIRMAN GRAYBILL: Very well, the Chair understands that you want to make a motion to suspend the rules so that this body can reconsider Revenue and Finance, Section 6, sub. 2, for the specific purpose of striking 12 words. Is that correct?

DELEGATE RYGG: That's correct, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, make your-Do you have some discussion, Mr. Rygg?

DELEGATE RYGG: I'll be very brief. I would like to state the reason for this, though, if I may. Apparently the Revenue and Finance Committee invaded the General Government territory when we put in these last 12 words, and the majority of the committee believes we would be better off by retreating from this General Government domain. Now, we admit that deleting these 12 words will make a substantive change, because having this initiative was an extra safeguard, that's true. On the other hand, I seriously doubt if this initiative would ever be used, because with only a 60-percent majority needed, I honestly feel that the electorate could influence their Legislators enough to get this three-fifths vote and they would not have to go the initiative route. Now the initiative, of course, would still be available under General Government's Article, although it would be a little more difficult under that article, I will admit. But I do believe that, because of the fact that it is only a three-fifths vote and that the people, I think, could get the legislators to do that, I think that in order to avoid confusion and have any ambiguity at all in the two articles, I think we would be better off in sacrificing this small safeguard and correcting the Constitution to that extent. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, now, I think the body understands that Mr. Rygg wants to suspend the rules for the specific purpose of amending Revenue and Finance 6, sub. 2, to strike 12 words, and that it does make a substantive change. Is there otherdiscussion about themotion to suspend the rules only?

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I support the motion to suspend the rules for this purpose. The result of it will remove what I think is a clear conflict between this section and Section 4 of the General Government report Number 12; and I don't think we should let our fear of possibly opening up a whole article keep us from making this correction. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I resist the motion as stated. I think that this is a much too narrow a limitation to really consider the subject that we have before us which is, as I understand it, at least twofold; one in stating language which expresses the intent of the original majority position of the committee and the original vote taken by this body. And I would move to amend the motion of Delegate Rygg by stating "deleting or clarifying" the last-what is it-12 words of the section.

CHAIRMAN GRAYBILL: To delete or clarify the last 12 words of Section 6, sub. 2; is that right, Mr. Foster?

DELEGATE FOSTER: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster now has a substitute motion to delete or clarify-to suspend the rules for the purpose of deleting or clarifying the last 12 words of Section 6, sub. 2. Mr. Foster, if you can, discuss that without getting off the suspension of the rules.

DELEGATE FOSTER: Well, I would speak simply to the point that I think there was some confusion expressed in exactly what these words were intended for, and I think the basic intent of Mr. Rygg was to clarify a confusing point. And I think if we limit it to deleting it, that, in fact, we have limited it unnecessarily and that we should be also allowed to consider it before this body, clarifying the words. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I would like to resist the substitute motion just for this reason: that we tried several times on Saturday to get language would clarify this and still be in conformity with Section 4 of General Government. We were unable to do so. We did talk to one member of the General Government Committee, and it was his-1 don't think the committee, maybe, but at least it was his-and I don't know about the rest of them-that about the only way we could do would be to delete it so we could be in conformity. So we just feel that there isn't any way we can make it clear, and that is why we have taken this route, so I resist the motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I resist the motion to amend. I think the

Revenue and Finance Committee have taken the only alternative for clarification. If you'll look at what they have done, they're striking "or by initiated measure approved by a majority of the qualified electors". Under the General Government Article, initiation is possible now to amend the Constitution; and unless you're going to have a hopeless conflict between the two, it is necessary to have this whole phrase stricken. And I think the approach taken by the Revenue and Finance Committee is the only plausible one; otherwise, you'll be trying to write legislation on this floor which is just going to get us into more trouble. And the solution they have made is clear, it's unequivocal, and I think we should support them in this. And further, I think the Local Government Committee was led to believe by a lot of people that this would be taken care of when it reached this point of our convention. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Very well. Is there other discussion? If not, we'll have a vote; and I presume someone wants a roll call. Mr. Foster does. Is there any other discussion? Very well, the issue is on Mr. Foster's motion to suspend the rules to delete or clarify the last 12 words of Section 6, sub. 2. So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Very well, take the—

Mr. Simon-Mr. Studer-excuse me-Mr. Scanlin, for what purpose do you rise?

DELEGATE SCANLIN: For a little more clarification.

CHAIRMAN GRAYBILL: You're out of order. You may only rise to explain your vote at this time. I'm sorry.

DELEGATE SCANLIN: Can I cancel my vote out?

CHAIRMAN GRAYBILL: No, you can't cancel your vote out; I've closed it, but I haven't taken it. Does anybody else want to explain their vote before we take it?

(No response)

CHAIRMAN GRAYBILL: You may cast the ballot, Mr. Clerk. Once I push the button, you can't change it; you can't explain it until we announce it.

Aasheim	Nay
Anderson, J.	Nay
Anderson, 0.	Nay
Arbanas	Nay
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Absent
Babcock.	Aye
Barnard	Nay
Bates.	Aye
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman.	Nay
Brazier	Absent
Brown	Nay
Bugbee	Nay
Burkhardt	Aye
Cain	Nay
Campbell	Absent
Cate.	Aye
Champoux	Aye
Choate.	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Excused
Delaney	Absent
Driscoll	Absent
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Aye
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay

Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Excused
Noble ..... Nay
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay

CLERK HANSON: Mr. Chairman, 29 delegates voting Aye, 61 voting No.

CHAIRMAN GRAYBILL: Very well, 61 having voted No and 29 having voted Aye, that motion is defeated. We're now on Mr. Rygg's original motion to suspend the rules to move that Section 6, sub. 2, be reconsidered and amended by striking the last 12 words only. Is there further discussion?

Mr. Scanlin, is there anything you want clarified?

DELEGATE SCANLIN: No.

CHAIRMAN GRAYBILL: Okay. Roll call vote? A roll call vote, very well. So many as shall be in favor of Mr. Rygg's motion to suspend the rules, please vote Aye; so many as shall be opposed, please vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll cast the ballot.

Aasheim Aye
Anderson, J. ..... Aye
Anderson, O. Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow Nay
Artz ..... Nay
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson Aye
Blaylock Aye
Blend ..... Aye
Bowman ..... Aye
Brazier Absent
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell Absent
Cate ..... Aye
Champoux Nay
Choate ..... Aye
Conover Aye
Cross ..... Aye

Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Absent
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius. Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
sullivan ..... Aye
Swanberg .. Aye
Toole Nay
Van Buskirk Nay
Vermillion Aye
Wagner ..... Aye
Ward Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye

CLERK HANSON: Mr. Chairman, 81 delegates voting Aye, 9 voting No.

CHAIRMAN GRAYBILL: 81 delegates having voted Aye and 9 delegates having voted No, the rules are suspended and we will consider Revenue and Finance, Section 6, sub. 2.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. Having voted on the prevailing side, I move to reconsider subsection 2 of Section 6, the Revenue and Finance Article, for the specific and limited purpose only of striking the last 12 words thereof.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg moves to reconsider Section 6, sub. 2, of the Revenue and Finance Article for the specific purpose of striking the last 12 words.

Mr. Rygg.

DELEGATE RYGG: I don't believe there's any further explanation needed at this time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: This motion is on reconsideration only and not on the matter. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of reconsidering Section 6, sub. 2, for that purpose, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Mr. Rygg.

DELEGATE RYGG: I move to amend subsection 2 of Section 6, on line 16 of page 2, by inserting a period after the word "Legislature" and eliminating the last 12 words.

CHAIRMAN GRAYBILL: Would you give me your page reference again.

DELEGATE RYGG: It's on the final draft, Order of Business Number 5, Final Consideration, Number 7; it's on page 2, line 16.

CHAIRMAN GRAYBILL: Very well. If you happen to have that one before you-that's the Order of Business Number 5 on page 2, line 16—put a period after the word "Legislature"; if you have your other books, it's in subsection 2. Put a period after the word "Legislature" and strike "or by initiative measure approved by a majority of the qualified voters". That's the motion: to amend Section 6, sub. 2, by striking the last 12 words, which has the effect of striking the "initiative by the people" language.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I don't believe I should spend much time on this. I think the explanation I gave is the only one I can give; that we were unable to clarify this and the only solution we see is to delete these 12 words, which we admit is a substantive change. But we feel, in the interest of having less ambiguity in the Constitution, it would be in the best interest to let this one small safeguard go. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any other discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I'll try and be as brief as possible on this. My primary objection to this motion is that the strongest argument that was made for having anything at all in this Constitution to give special interest-special consideration to the highway group was that this was something that was needed by the people of Montana; this is something that was popular; this is something that everyone felt was important; this is something that everyone felt we had to have. At the time that this initiative provision was put in, it was the thinking of this body that, at the time when this was no longer needed, the time when this was no longer necessary-as everyone realizes, it will become necessary in the fairly near future-that then the people would have an easy opportunity of removing it. We have just taken that opportunity away from them if we approve this particular provision to take it out again, because, in fact, then we have constitutional&d the advantage, the special interest, the special consideration for the highways, because it will then have the same status as any other provision in the Constitution. In other words, if it is necessary for the people to take it out, they would have to do the same as any other amendment to the Constitution. We have the situation that we've given a supermajority to the special highway interests in the Legislature by giving them a 60-percent voting need to change it, and so as a result we've made it much easier to retain it in the Legislature. And now we're making it more difficult for the people, by popular demand, to remove this provision. I think it's unwise and I think it's not in keeping with the general philosophy of this body when we passed it in the Committee of the Whole, when we passed it in Style and Drafting, and when we passed it on final consideration. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I agree with Delegate Foster about this wholeheartedly. I'm very much interested in keeping those last 12 words in there, but I don't want to create an impossible constitutional situation for some future Supreme Court. And I wonder if Mr. McDonough would yield to a question.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE TOOLE: Do you foresee an impossible constitutional conflict if we leave the 12 words in there?

DELEGATE McDONOUGH: I foresee a number of lawsuits, possibly on whether or not we need 5 or 10 percent on an initiative petition to change this; possibly whether or not, if it is changed by initiative, how long does it last for the budgetary period or does it last forever; possibly are we only removing the restriction that they can't be used for other purposes or can we also by initiative extend it to say-earmark it for some other purpose other than the general fund. I can see a number of questions being raised by this

thing in here as it is, and especially in conflict with the General Government's Article.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen was up next.

DELEGATE JACOBSEN: Mr. President. May I ask a question of Mr. Rygg?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: (Inaudible)

DELEGATE JACOBSEN: Sterling, didn't you say that Article IV-or Section 4 of Article XII does the same thing as these 12 words do?

DELEGATE RYGG: Are you talking about Section 4, General Government?

DELEGATE JACOBSEN: Yes, General Government. Doesn't this allow the people to do the same thing on all matters of initiative?

DELEGATE RYGG: Well, not exactly, because, as Mr. McDonough mentioned, or if we take this out, I think it would be 10 percent, or otherwise it could be 5. So, as I stated earlier, they can still do it, but it would be more difficult; that is true. So it isn't just the same as Section 4; it requires more signers.

DELEGATE JACOBSEN: More signers in the general—

DELEGATE RYGG: Yes, that's my understanding.

DELEGATE JACOBSEN: Yeah, thank you.

CHAIRMAN GRAYBILL: Mr. Scanlin was next.

DELEGATE SCANLIN: Mr. Chairman, this was the area of my confusion. As I understand it, our reason for trying to remove these 12 words was to get the initiative out of the appropriation business. Am I wrong in that? I mean, the people of the State of Montana have no right to appropriate money by themselves except through their duly elected members of the Legislature. I thought that was the area of discussion.

CHAIRMAN GRAYBILL: Mr. Scanlin, your question is interesting, and I think some of the lawyers on the floor intend to answer it.

Mr. Joyce was up first.

DELEGATE JOYCE: It seems to me that Delegate Scanlin is correct. What we're trying to do, as I understand it, by the amendment offered by the Revenue and Finance Committee, is just to delete what inadvertently was inserted, which would give the people, by initiative, the power to appropriate money, which we all concede just can't be so. But I respectfully submit that Delegate Foster is in error in thinking that, by deleting these words, that it therefore requires for all time that the first sentence remain in the Constitution. There are several ways that the people can take this out, because-by simply having the Legislature submit a constitutional referendum to delete it, or the people, by initiative, can propose a constitutional convention-a constitutional amendment that will delete the words-so that it seems to me that it's perfectly proper to delete these words to make it perfectly clear that the people cannot appropriate money by initiative, but at the same time we still leave all the options open for amending the Constitution to delete the first sentence should the time ever arise when it's no longer thought desirable public policy to require that the highway funds be earmarked.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I certainly agree with the principles that have been established by Delegate Foster, and I think most of us agree with him. What he is overlooking is the fact that we have an absoluteunwieldy budget situation if we leave those 12 words in. It would be like a corporation having two boards of directors deciding on what should be within the budget, what is required by way of appropriation of the corporate funds. And if we leave this situation in, then we're going to interfere with the power of the Legislature to work on a budget and to appropriate money in a sensible, solid fiscal manner. And for that reason, I submit that Chairman Rygg is absolutely correct that these particular words must be removed from that section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. As I view this matter, there is an irreconcilableconflict between Section 4 of General Government, subsec-

tion 1, which reads: "The people may enact laws by initiative on all matters except appropriations of money." Whereas, the provision in—

CHAIRMAN GRAYBILL: Section 6—

DELEGATE BERG: -Section 6 of the article we now are considering is-such revenue may be appropriated for other purposes: (1) by a three-fifths vote of the members of each house, or (2) by initiated measure approved by a majority of the qualified electors. So that in General Government we are saying, by initiative, money may not be appropriated; but if we leave these words in subsection 2 of Section 6, we are saying exactly the opposite-that it may be so appropriated. And in my mind, the inconsistency is one that the court, I am sure, could not resolve. Therefore, for consis-*tency's* sake, it should be removed from subdivision 2 of Section 6.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellowdelegates. I hate to takeissue with three extremely competent lawyers, but I want to point out several inconsistencies here that they have presented. First of all, Mr. Joyce's indication that, in fact, if we take these words out, would leave it exactly the same are certainly not accurate. It would require a lo-percent petition of the people instead of a 5-percent petition, and I submit that 10 percent is about 10 times as hard to get as 5 percent. You get into a situation there where you have to get people to sign something on a petition, and 10 percent is extremely more difficult to get than 5 percent. Now, in relation to the question that Delegate Dahood and Delegate Berg have raised, there is some lack of clarity in subsection 2, on page 2 of the Revenue and Finance Article, but I submit that it is certainly not clear in the area of a conflict, because in reality the court could very easily rule that, by initiative, the people could allow the Legislature to appropriate, which was the intent in the first place. I submit that that is certainly what was the intent of this body when we passed it and was the intent of the committee when they presented it. Now, thecourtsmightrule that, in fact, the people could appropriate, but I submit, in view of the section as we have presently passed it under General Government, that it's very unlikely that the court would rule in that direction. And this, in fact, was the position taken, in my recollection anyway, by Delegate Dahood on Saturday. And I submit that, even though I had hoped that we could clarify this language in this discussion, that in fact the position, if we leave it as is, is certainly not untenable. It seems to me that the court, in their wisdom, will rule, in fact, under this wording that the people, by initiative, may allow the Legislature to appropriate from this particular fund; and I do not think it is an untenable situation for the courts to rule upon. I think it should be left as it is. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman and fellow delegates. I hate to see Mr. Foster boxed in by all these fine legal minds. In the first place, in Mr. Berg's argument that it's irreconcilable, I don't agree with Mr. Berg at all. I seldom do, I suppose. The general ruling is when there is a general prohibition and another provision which is specific, the specific will take precedence over the general exception. However, I think the thing-if the committee here really desires to keep the initiative and the referendum in, the solution is not to amend the highway antidiversion act, but go to Section 4 of the initiative act, where there is a prohibition against the people having initiative on all matters except appropriation of money, and put in after that "except as provided elsewhere in this Constitution". Then you have no conflict at all. Now as to what Mr. McDonough has said about the fact that the initiative might be difficult for the court to interpret as to whether or not it applies to one session-as for this budget only or things like that, well, of course, if the initiative is carefully drawn, why, there is no necessity for the court to make such an interpretation. If it is carelessly drawn, I agree with Mr. McDonough entirely, but this is the danger of initiative-very often they are carelessly drawn. But to say we have to knock out this whole thing because Section 4 has some conflict, I do not agree with, because all we've got to do is come back to Section 4-in the first place, I think an interpretation would be the specific takes over the general. That is, the highway referendum, being specific, would take over the general Section 4 of the Government. But if the committee truly desires to keep it in there, all we've got to do is suspend the rules and go back to the General Government initiative and make the exception for "as provided elsewhere in the Constitution".

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I'll make my remarks brief by quoting twice from Shakespeare. Once, I'm willing to go along with

this amendment to make "assurance triply sure"-it's already doubly sure: in the Article on General Government and in Section 16 of the Legislative Article-and I'll close with Shakespeare by saying that I want to see this resolved and not spend all day "writing a sonnet to a mistress' eyebrow".

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, fellow delegates. I concur with removing these 12 words, not only because of the possible interpretation by the courts later but the principles involved. Going home, I find the people were appalled at this measure and the possibility of involving and taking money from the highway by initiative of the people.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman and fellow delegates. Will Delegate Rygg yield to a question?

DELEGATE RYGG: I'll yield.

DELEGATE HARLOW: Did not, that is, during your comments about these 12 words, make the comment that this initiative was far the purpose of spurring the Legislature and not for the actual appropriation of the money?

DELEGATE RYGG: Certainly that was our intent, but apparently it could be misconstrued with words. That was our intent; yes, sir.

DELEGATE HARLOW: Yeah. Thank you, Mr. Rygg. Well, then, as I am in support of deleting these words because, as I interpret the work that we have done so far in regard to this line-1 realize I am not the interpretive mind like the legal minds-but there is nothing that would prohibit the people from an ordinary initiative of law to initiate a request to the Legislature encouraging them to make a decision to appropriate some of this money; so I do not feel that by taking out these six words--or nine words-that we are prohibiting the people from using the initiative process to encourage the Legislature to do things that the Legislature may be reticent in doing without a little encouragement. So I think this is a good thing to do, to eliminate all those things, and it has not taken away the intent that the Revenue Committee had in the beginning. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Barnard.

DELEGATE BARNARD: Mr. President. I have an amendment here that might straighten the thing out. I haven't got it quite completely written up—

CHAIRMAN GRAYBILL: Well, now, Mr. Barnard, we've got a motion that's to reconsider and a motion to suspend the rules, all of which are limited strictly to striking 12 words. Now—

DELEGATE BARNARD: Just limited to--strictly to striking the 12 words.

CHAIRMAN GRAYBILL: -they're still going to be restricted to striking 12 words, your amendment?

DELEGATE BARNARD: **No,** it would be just to change them just slightly, so I'll— (Inaudible)

CHAIRMAN GRAYBILL: **Yes,** I understand, but that was the whole problem on the touchy nature of the motion to suspend. Now, I don't see how you can make an amendment to striking 12 words that's going to change it; but if you can figure one out, okay. But I think that the Chair is duty-bound now, unless we go back and move to suspend for a broader purpose--now, if you want to try that, that's you know-that's all right. I'm not objecting to that, but I'm saying that we've carefully limited the reason and purpose for which it's open, and I don't see how you can amend it at this stage of the game.

DELEGATE BARNARD: Mr. President, all I had in mind was not to change the amendment more than just to clarify it, so it would clear up the situation we're faced with.

CHAIRMAN GRAYBILL: Well, if you want to write it out and send it up, 1'11 look at it; but the Chair is going to rule that we're within this limited suspension purpose, and until you enlarge the suspension purpose, I'm going to be terribly strict about that. But you can finish it if you want to. Is there other discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. President and fellow delegates. For the benefit of those who were not here during the argument on General Government, the initial attempt on the part of General Government to reconcile the conflict between these two articles was to do what Delegate Hol-

land suggested. This was voted down by a very large majority because it was felt it would be improper to allow this type of thing to occur insofar as appropriation is concerned. The only way that I see the court could clarify the situation, if you were to leave this in, is to do what Delegate Harper contended, in opposition to what I suggested, was the question of whether this would be a 10-percent vote or a 5-percent vote; and if you clarify this thing by analogy, the court, to eliminate conflict, would have to hold that the only initiated measure that you could have would be a constitutional amendment. Once that is done, the people would not be appropriating money, but they would probably remove the entire subsection 2 or else remove the earmarking funds. By constitutional amendment, the people can eliminate the earmarking of funds, or if they desire, they can eliminate subsection 2 and eliminate the ability of the Legislature to change the appropriations, Therefore, I think-I again urge you to follow the recommendation of the Revenue and Finance Committee to eliminate this conflict by striking the last 12 words.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: May I close? I only want to say in closing that, originally, the committee felt they should not reopen this section and change it, but after we discussed it and found out there seemed to be no way of clarifying it, then the majority of the committee decided that this was the route to go. It isn't any attempt on the committee to change anything, except we honestly felt that there was no other way out of it, to keep the ambiguity out of the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. I take it we want a roll call vote on this matter. Very well, so many as shall be in favor of Mr. Rygg's proposed amendment to Section 6, sub. 2, to strike the last 12 words, which are "or by initiated measure approved by a majority of the qualified electors", which has the effect of striking that initiative measure out of subsection 2, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: **Does** any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Absent
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Aye
Davis Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye

Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye

CLERK **HANSON:** Mr. Chairman, 79 delegates voting Aye, 13 voting No.

CHAIRMAN GRAYBILL: 7'9 having voted Aye and 13 having voted No, Section 6, sub. 2, is amended. Mr. Rygg, would you please move an amendment that when this committee does arise and report, after having had under consideration Section 6, sub. 2, of the Revenue and Finance Committee proposal, as amended, that the same be adopted.

DELEGATE RYGG: Yes, sir, I so move that.

CHAIRMAN GRAYBILL: Or same be recommended for adoption?

DELEGATE RYGG: As amended, right.

CHAIRMAN GRAYBILL: All in favor of Mr. Rygg's motion that we adopt this as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that the Committee of the Whole rise and report-and finally report.

CHAIRMAN GRAYBILL: The motion is that the committee arise and report finally on Judiciary and Revenue and Finance and refer them back to Style and Drafting. All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

PRESIDENT GRAYBILL: The Chair would like to announce that there is one other matter that some may wish to take up; and after we rise and finally report on thismatter, the Chair will entertain a motion for a 15-minute recess. And would Mr. Aasheim, Mr. Joyce, Mr. Etchart, Mr. McDonough or Mr. Rygg, and Mr. Blaylock please meet in the Rules Committee room on recess. Will the clerk please read the committee report.

CLERK HANSON: "March 20, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: that the Committee rise and finally report on Judiciary and Revenue and Finance and refer them back to Style and Drafting. Signed: Graybill, Chairman." Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adopt the Committee of the Whole report and that Judiciary and Revenue and Finance proposals be placed in Style and Drafting.

PRESIDENT GRAYBILL: For inclusion in the final document. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: I take it no one objected to not reading the report in full. Very well, Mr. Eskildsen, let's take a 15-minute recess.

DELEGATE ESKILDSEN: I move we stand in recess until 5 minutes to 11:00 this day.

PRESIDENT GRAYBILL: The motion is to recess until 5 minutes to 1 l:OO; all in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Brief recess)

PRESIDENT GRAYBILL: The Chair hesitates to do the next important business until we get some more people here, so I think we better send a page out in the hall and tell them to come to the meeting.

The Convention will come to order. Very well, members of our Convention, just before we recessed, we had finished the problem on Revenue and Finance and the problem on Judiciary. Another problem has now arisen, and the Chair intends to ask for a motion from Mr. Eskildsen to move the Executive proposal to Order of Business Number 10 so that we can consider a matter concerning the legislative post-auditor that has come up. Mr. Joyce will make the motion when we get there, and I'm sure you'll all understand it as soon as he explains it. But to get this matter underway, the Chair would like to ask Mr. Eskildsen if he has a motion to move Executive to Order of Business Number 10.

DELEGATE ESKILDSEN: Mr. President, without objection, may we be on Order of Business Number 7.

PRESIDENT GRAYBILL: Without objection, we'll be on Order of Business Number 7.

DELEGATE ESKILDSEN: Mr. President, I move that we take Executive proposal from Style and Drafting and refer it to Order of Business Number 10.

PRESIDENT GRAYBILL: The motion is to refer the Executive proposal, which is in Style and Drafting, to Order of Business Number 10, General Orders, for a Committee of the Whole discussion. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: So ordered.
Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move to suspend the rules for the limited purpose only of modifying—

PRESIDENT GRAYBILL: Now, Mr. Joyce, wait a minute.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Without objection, may we be on Order of Business Number 10?

PRESIDENT GRAYBILL: Without objection, we'll be on Order of Business Number 10.
Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well. The motion is to resolve this Convention into a Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed? (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Now, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that this committee suspend the rules for the limited purpose only of reconsidering Section 3, subsection 5, of the final report on the Executive Committee's Report Number 4.

CHAIRMAN GRAYBILL: Mr. Joyce, it's Section 4, subsection 5.

DELEGATE JOYCE: Section 4, subsection 5, pardon me.

CHAIRMAN GRAYBILL: Do you want to explain your limited purpose?

DELEGATE JOYCE: Thelimitedpurpose would be on line 26 of page 2. As adopted, the words now read: "The Legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law." If the motion to reconsider is to suspend the rules and subsequently the motion to reconsider is passed, I would then move that we substitute, in lieu of those words, the following words, that you can write down if you wish: "The Legislature shall establish a legislative post-audit committee which shall perform such post-auditing duties as may be prescribed by law." This question arises at the request of the current Legislative Post-Audit Committee. We met during the recess with the current members of that committee; they pointed out to us that, as the legislative post-auditor is now established, it is established by the rules of the Legislature whereby the Speaker of the House and the President of the Senate appoint this Legislative Post-Audit Committee, which is bipartisan in nature-has exactly the same number of each political party-and that this particular committee then does, in fact, appoint the legislative post-auditor, and he reports to that committee. And that-As we have written it into the Constitution, we are providing that the Legislature shall appoint this legislative post-auditor; and their concern is, if the appointment of a legislative post-auditor is thrown into the Legislature, that it will get involved in the politics of the Houses, depending on which particular party may happen to control the same-that as the system is currently established, it is guaranteed to be bipartisan in nature, and they prefer the language which I have proposed, rather than the language that's in the Constitution as adopted at this time.

CHAIRMAN GRAYBILL: Mr. Joyce. Okay, I think you've fully explained it. The Chair would like to restate this language so everybody has it if they want it: "The Legislature shall establish a Legislative Post-Audit Committee which shall perform such post-auditing duties as may be provided by law". Mr. Joyce, I changed your word to "provided", since that's what Style and Drafting has done all along and I'm trying to avoid going back to Style and Drafting again. Now, the purpose, then, of the Joyce motion to suspend the rules is to suspend the rules to consider Section 4, sub. 5, of the Executive Article for the purpose of changing the language from letting the Legislature appoint a post-audit to letting the Legislature establish a Post-Audit Committee, which would then have the duties that they now have. Now, is there other discussion on the motion to suspend the rules?

Mr. Joyce.

DELEGATE JOYCE: Before you put that-the word is "supervise", rather than "perform"—I think because this committee does not do the post-auditing as such.

CHAIRMAN GRAYBILL: Right.

DELEGATE JOYCE: They supervise the post-auditor that they appoint.

CHAIRMAN GRAYBILL: "Which shall supervise such post-auditing duties as may be provided by law"; I think that is correct.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President, would you want in this motion the proposition that, if adopted, that this sentence be placed in the Legislative Article-I mean, the Style and Drafting Committee be authorized to insert this in the Legislative Article in the proper position; would you want that in the motion?

CHAIRMAN GRAYBILL: I've spoken to Mr. Schiltz; is he here? Mr. Schiltz, is there any reason you couldn't move it to Legislative, Style and Drafting?

DELEGATE SCHILTZ: There's no reason, Mr. President, except that the Style and Drafting Committee agreed yesterday unanimously that it wasn't germane at that time to the rest of the content of the Legislative Article. And, so we had agreed among ourselves to put it in a group of four or five general provisions, where I submit to you it might stand out better than if it were in the Legislative Article. We'll do whatever

the committee wants, and we'd rather find it out now than have it moved the day after tomorrow.

CHAIRMAN GRAYBILL: Well, Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Schiltz yield to another question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: (Inaudible)

DELEGATE AASHEIM: I would move, Mr. Schiltz, to have it in Section 10, sub. 4, which reads now: "The Legislature may establish a Legislative Council and other interim committees." Would it belong here? I'm open to your suggestions. What would you suggest at this time?

DELEGATE SCHILTZ: Well, I don't know the one you're looking at now, because I have something else before me, but 10, sub. 4, of the-I'd have to look at it. I think as amended, it's now more germane to the Legislative Article; and I think if somebody wanted to make that motion, it would be appropriate.

DELEGATE AASHEIM: Well, Mr. President-

CHAIRMAN GRAYBILL: Mr. Aasheim, I would--we haven't done this yet; and before we leave it, I would entertain a motion from you as to put it in the Legislative Article.

DELEGATE AASHEIM: (Inaudible)—time. Would it not be in order now?

CHAIRMAN GRAYBILL: I see; if we haven't mentioned it, you mean? You want to ask Mr. Joyce to say "and place the language in the Legislative Article"?

DELEGATE AASHEIM: Instruct the Style and Drafting Committee to insert it in Section 10, sub. 4, of the article.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. May I add to my—

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE JOYCE: -motion to suspend the rules for that limited purpose, the additional words that I would further move later to have the language, if adopted, incorporated into the Legislative Article by the Style and Drafting Committee?

CHAIRMAN GRAYBILL: Very well. Now, we're ready to debate the motion to suspend the rules, and Mr. Scanlin has been up.

DELEGATE SCANLIN: Mr. Chairman, is a substitute motion in order to suspend the rules in order to delete this sentence?

CHAIRMAN GRAYBILL: Yes, I suppose it's in order.

DELEGATE SCANLIN: My reason being that, if it's already being carried out in the statutes, what are we getting so confused about?

CHAIRMAN GRAYBILL: You're making-are you making such a motion?

DELEGATE SCANLIN: I so move.

CHAIRMAN GRAYBILL: You make a motion to suspend the rules to reconsider Section 4, sub. 5, of the Executive Article to delete the sentence concerning the legislative post-auditor. All right, Mr. Scanlin has made a substitute motion to move to suspend the rules for the purpose of reconsidering Section 4, sub. 5, of the Executive Article, to delete the references therein to the legislative post-auditor.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I rise in opposition to the motion of Delegate Scanlin to reconsider for that purpose, and I do so because I feel honor-bound to call to the attention of the body that this particular section came in as the result of a floor debate-that was conducted between myself, as the chairman of the Executive Committee, and Mr. Felt, the member of my committee but who had offered this amendment. If the delegates will recall, this entire debate came about over the-amending the Executive Article with reference to the function of the state auditor. And after some debate, it was finally narrowed down to the language which currently appears in the Executive Article; and the rationale as to why we did that was to make it clear, constitutionally, that the Legislature could itself establish a post-auditing system and that it would not be in conflict with the state auditor as provided in the Executive Department. And that was the reason why this Convention took the action it did; and to now delete this matter, when Delegate Felt isn't here to defend his position, which, of course, is not

necessarily relevent—but at any rate, if-1 was trying to recall to the convention the action that we did take and the reason that we did do such a thing at the time that this particular subject matter was covered, when the Executive Article was under debate in the Committee of the Whole.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I likewise resist the motion to delete this and support the motion of Mr. Joyce to suspend the rules. I was asked by Chairman Schiltz of the Style and Drafting Committee to meet with the Legislative Council members who have been running-or supervising the post-auditing for the state, and one of the reasons, I think that you will remember, that we wanted to put this office into our Constitution was because it had worked so extremely well for the State of Montana. And these men, who are-have been serving in our state Legislature, are concerned about the present language, that we have adopted because they feel that the language we have that the Legislature could appoint this legislative post-auditor and thus throw the whole thing back into politics, which they have so scrupulously tried to keep out of politics and which I think they have. This is why we like this post-auditor so well-is because it has been kept out of politics, and they're very careful about when they put out these reports so that they don't come out at election time to try to hurt somebody running for office or anything like this; and it's done because this committee is balanced between Democrats and Republicans; and they want to keep it that way. They want to keep the authority within the Legislative Post-Audit Committee. And so I definitely support Mr. Joyce, and I hope thecommittee will go along, because I think these men have worked extremely well for the State of Montana.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, fellow delegates. First, Mr. Chairman, I'd like a point of information. Isn't it possible that part of this section could be moved to the Legislative Article by Style and Drafting without reopening this article?

CHAIRMAN GRAYBILL: It could be moved to Style and Drafting and, in fact, it has been moved to General Government by them, but that doesn't reach the substantive problem that the Legislative Council people want reached.

DELEGATE BATES: Well, Mr. Chairman, could I speak on this?

CHAIRMAN GRAYBILL: **You may** speak on the motion to suspend the rules.

DELEGATE BATES: I oppose suspending, for the simple reason that if Style and Drafting can remove this last sentence from this section that says: "The Legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law." It's something they can do now. In looking over the minutes of our Legislative Committee meeting, I find that it was the sense of the committee that the Legislative Council be left out of the Constitutional Article-wait a minute,-this-here it is— "it was the sense of the committee that the legislative audit was a good idea and that it should be left to statutory law." And it was our decision that this legislative post-audit was appointed by the Legislature for their protection and for their use.

CHAIRMAN GRAYBILL: All right. Mrs. Bates, I think you're now substantively arguing whether or not we should change this. I might point out, for your information, that that's precisely-Mr. Scanlin is trying to do precisely what you want to do-take it out of the Constitution. Now—

DELEGATE BATES: Not to take it out of the Constitution, but to move it into the Legislative Article.

CHAIRMAN GRAYBILL: Well, all right. Now, apparently you don't understand the situation. The situation is that Mr. Joyce moved a motion to suspend the rules, Section 4, sub. 5, to propose changing the substantive language so that we did not give the Legislature the power to appoint a post-auditor; rather, we gave them the power to establish a post-audit committee which would supervise the post-auditor. And the reason is to keep it out of politics. Mr. Scanlin, on the other hand, has made a substitute motion to suspend the rules for the purpose of striking from subsection 5, Section 4, of the Executive Article, all references to the legislative post-auditor. Now that's what Mr. Scanlin's motion is at the present time; that's the motion we're debating-whether or not to allow him to suspend the rules for that purpose.

Mrs. Bates.

DELEGATE BATES: I realize this. and—

CHAIRMAN GRAYBILL: Okay.

DELEGATE BATES: -but I oppose the motion from Joyce for this reason, and I feel that Style and Drafting can take care of this matter. Thank you.

CHAIRMAN GRAYBILL: All right. Well, that's-you're now arguing the issue, and I'm trying to avoid that. Is there any other discussion of Mr. Scanlin's motion to suspend the rules to delete the legislative post-auditor entirely?

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman. I rise in support of Mr. Scanlin's motion, not so much as I'm in opposition to Mr. Joyce's—because in the event that this does fail, I would support that because I feel we have made a mistake in dealing with that audit. Rut, as Mrs. Bates indicated, in our Legislative Committee we felt that this should be left out of the Constitution. This is one of the institutions of the State of Montana that is working; it is working very well. We could see no reason for writing it into the Constitution. We talked to the people in the Legislative Post-audit Commission downstairs, and they agreed that it shouldn't be written into the Constitution; and that's why the Legislative Committee took that position. I think that it's very clearly dealt with in the statutes.

CHAIRMAN GRAYBILL: All right, now, I don't mind you talking about the motion, but I don't want you to argue the substantive issue.

Mr. Roeder.

DELEGATE ROEDER: At the risk of suffering the slings and arrows of my seatmate, I rise in opposition to Mr. Scanlin's motion. And I think that there's some confusion here, in this respect: I think one of the reasons we mentioned legislative post-audit and other interim committees was to make it clear that we were trying to surmount the effect of a series of Supreme Court decisions in the 1950's that questioned the constitutionality of interim committees; and if we get to the debate stage, I think Mr. Berg ought to clarify that.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Scanlin's motion to suspend the rules?

Mr. Aasheim.

DELEGATE AASHEIM: I resist the motion by Mr. Scanlin and support the one by Mr. Joyce.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: I hesitate to get up in regard to a suspension of the rules, but in this case, I think if we were to delete this section I think it would be one of the most serious things that we could do. We would remove the watchdog that we need so badly.

CHAIRMAN GRAYBILL: Mr. Scanlin, do you want to close on your idea of suspending the rules?

DELEGATE SCANLIN: Thank you, Mr. Chairman. I wish to close simply by saying: if the law is working well now, and the last few words of line 25 says "as are prescribed by law", I see no reason to tamper with it, and consequently, I support my motion.

CHAIRMAN GRAYBILL: Is there a roll call vote called for?

UNIDENTIFIED DELEGATES: Roll call.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Scanlin's motion to suspend the rules for the purpose of taking out of Section 4, subsection 5, any reference to the legislative post-auditor-so many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Now, I'm sorry, Mr. Aasheim-I mean Mr. Schiltz and Mr. Aronow, you've got to sit in your own seats. The voting machine is keyed to your seats, and you've now voted for each other and that's illegal; and I don't want you both going to jail. If there had been a chance to send one, I might have considered it, but-(Laughter) I'm not going to tell you which one. (Laughter) All right, now, has every delegate voted the way he wants to vote, and does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot. The problem is you get the machine all fouled up, Cedor.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas " " "	Nay
Arness	Absent
Aronow	Nay

Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Aye
Choate	Nay
Conover	Aye
Cross	Aye
Dahood	Nay
Davis	Excused
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt,	Absent
Foster	Absent
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Aye
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Excused
Noble	Nay
Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Aye
Roeder	Nay
Rollins	Aye
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Absent
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 15 delegates voting Aye, 77 voting No.

CHAIRMAN GRAYBILL: 77 voting No and 15, Aye, Mr. Scanlin's motion has failed. Now we're back on Mr. Joyce's motion, which is to suspend the rules so that we can consider the Executive Article, Section 4, sub. 5, for the purpose of changing the legislative post-auditor language and giving-and putting in language to make it appoint-establish a committee which will run the post-audit. Now, is there other discussion on that motion to suspend the rules?

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman,

is the whole section open? If it is, it includes the Superintendent of Public Instruction, the Treasurer, the Auditor, and the whole bit; is that all open?

CHAIRMAN GRAYBILL: Now, Mrs. Babcock, I've said that the-subsection 5 is open for the purpose of changing the legislative post-auditor part only. If you're looking at your final, you're right; those other things are in there. But in your Style and Drafting, Style and Drafting put a subsection 6 into 5, and the only part that's open is the last sentence. Now, if you want to enlarge it, you can make another motion, but—

DELEGATE BABCOCK: Mr. Chairman, by all means, I don't want to enlarge it; and I rise in opposition to it. I think once we've voted on these for final vote that they should stay voted on for final vote.

CHAIRMAN GRAYBILL: All right. The only thing that's open, Mrs. Babcock, is the last sentence, which is the sentence concerning the post-auditor. Is there other discussion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman. It seems to me that what we're really trying to do here is constitution&x a procedure, and I would stand opposed to reopening it unless I had some more clear explanation of the purpose.

CHAIRMAN GRAYBILL: You may certainly find out; I don't want you to be misled here. You may inquire-or Mr. Joyce or Mr. Blaylock may reexplain to you the purpose. Mr. Joyce, Mr. Furlong would like the purpose reexplained.

DELEGATE JOYCE: Mr. Chairman. The purpose of my motion to suspend the rules would be for the limited purpose only ofdeleting, on page 2, line 25, beginning with the word "the", of Executive Report Number 4, by deleting the words "The Legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law". Then substitute in lieu thereof the following language: "The Legislature shall establish a Legislative Post-audit Committee which shall supervise such post-auditing duties as may be provided by law."

CHAIRMAN GRAYBILL: And, Mr. Furlong-

DELEGATE FURLONG: And further, to instruct the Style and Drafting Committee to insert the same-the new language, if adopted, in an appropriate section of the Legislative Article.

CHAIRMAN GRAYBILL: Is that sufficient, Mr. Furlong? Or do you want to know why they want to do that?

DELEGATE FURLONG: Mr. Chairman, it's sufficient. I still maintain that what we're doing is constitutionallyestablishingaprocedure. I don't know why it's really necessary.

CHAIRMAN GRAYBILL: Well, I certainly want everybody to understand why, and I understand why. And you may vote either way, but the reason is that we have given the Legislature the power to appoint the post-auditor. The present Legislative Post-audit Committee people feel that we may have thus placed the post-auditor in a political position where a majority in the Legislature would appoint him politically. The present practice is to have a Post-audit Committee which is not appointed by the Legislature but is appointed by the speaker of one house and somebody else. But, in other words, it's a procedure by which a committee is appointed and the committee chooses the post-auditor. They feel that this insulates the post-auditor from the direct control of the entire legislative body and thus takes it out of politics. Now, I don't know whether it will or not, but at least that's what they think-that it would have a better chance of doing than the way it is here. The purpose of the amendment is to address ourselves to that problem, if we do it. Now, whether it's a good idea or not, I'm not prepared to say.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. Would Mr. Joyce please yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I yield.

DELEGATE REICHERT: Delegate Joyce, when our Legislative Committee prepared its final report, as Delegate Aasheim stated, we have mentioned the Legislature may establish a Legislative Council and other interim committees. I had worked on this legislative post-audit; I was the one who had gone down to see our auditor. And in reporting back, I had discussed the issue with Mr. Felt; and he thought this "other interim committees" would permit exactly what the statement you have just suggested would do. Now, I want to ask you how this proposal now would differ from

the statement "The Legislature may establish other interim committees".

DELEGATE JOYCE: Well, in answer to that, I suppose it would differ from it in that it would be more specific than the section that you refer to. And to amplify-as I say, the reason that this was inserted into the Executive Article after extended debate, if you recall, in which Mr. Felt and I were on opposite sides of the debate, and finally it got stripped down to this language on my amendment from further language that he had proposed, and which was ultimately adopted by the Committee of the Whole and the convention itself on final reading of the Executive Article.

CHAIRMAN GRAYBILL: Mr.-

DELEGATE JOYCE: It could do the same thing; maybe it would and maybe it wouldn't. This is more specific.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. If I may address myself to Mrs. Reichert's question, I think the idea was that the legislative post-audit is an excellent institution and that it-we should make sure somehow that it's retained and, in order to do that, retain it by constitutional provision rather than let the Legislature willy-nilly abandon it at some time.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Just one comment in addition to what Mr. Schiltz just said. There has been a question-the Supreme Court has raised this-whether or not the Legislature has the authority to set up these interim committees. And that is why Mr. Felt made this suggestion, and that is why we have included in the committee-in this Legislative Article. And as Mr. Schiltz said, this makes it very plain and very specific that they can do this.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President, would Delegate Joyce yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE SKARI: Mr. Joyce, I think I understand now. The idea of this language is to keep the legislative post-auditor out of politics by selecting this person by a smaller committee than the entire legislative body. Still, is there any guarantee here that the Legislative Post-audit Committee will be balanced politically? I understand it has in the past.

DELEGATE JOYCE: Well, in answer to the question, I suppose I'd have to say that there is no guarantee as such, other than that the current members of the committee feel that, as the law is currently established, that it is out of politics, and this would be at least a strong directive to continue the system that they've established to keep it out of politics.

DELEGATE SKARI: Thank you.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman. I think this is good amendment to put it in here, and I'm sorry to the convention I didn't notice this before, but if you went out here and let the Legislature-and they had just the appointing— or selecting a legislative auditor. At least we're getting it back under a committee; we're getting it back under the Legislature where it should belong. And I think this is there, and we don't want to come out here and create another branch of government, which we-might happen if we had this individual this way. I sure hope that this amendment will prevail.

CHAIRMAN GRAYBILL: All right. Now, the amendment is on-or the motion is on a motion to suspend the rules. And I think we now have gotten everybody sufficiently educated so they at least know what they're voting about. So, I'm not going to cut off debate if you want to debate the motion, but I do think you should stick to the subject of suspending the rules if you want to discuss it now. Is there any further discussion?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to have Delegate Mahoney answer a question.

CHAIRMAN GRAYBILL: Mr. Mahoney, will you yield?

DELEGATE MAHONEY: I'll try.

DELEGATE BATES: Under the Legislative Article, interim committees are one of the things that's permitted. Why couldn't this be done—

CHAIRMAN GRAYBILL: Now, Mrs. Bates.

DELEGATE BATES: Am I—

CHAIRMAN GRAYBILL: All right, ask your question; but then, before you answer, Mr. Mahoney, the Chair is going to rule.

DELEGATE BATES: Why couldn't this be done under the present-the way it is now?

CHAIRMAN GRAYBILL: All right. That's a substantive question that you can debate if we ever suspend the rules and debate this matter, Mrs. Bates; so I'll rule it out of order. Is there any other question about the motion to suspend the rules?

(No response)

CHAIRMAN GRAYBILL: Do you want a roll call vote? The Chair wants a roll call vote; does he have some seconds?

(Affirmative response)

CHAIRMAN GRAYBILL: Good. All in favor of suspending the rules so that-on Mr. Joyce's motion so that we can go into Executive Article, Section 4, sub. 5, and change the nature of the legislative post-auditor to a post-audit committee, please vote Aye; and so many as are against that, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll cast the ballot.

Aasheim Aye
Anderson, J. Aye
Anderson, 0.. Aye
Arbanas Aye
Arness Absent
Aronow Aye
Artz Aye
Ask Aye
Babcock Nay
Barnard Aye
Bates Nay
Belcher Aye
Berg Aye
Berthelson Aye
Blaylock Aye
Blend Aye
Bowman Aye
Brazier Aye
Brown.. Aye
Bugbee Aye
Burkhardt Aye
Cain Aye
Campbell Nay
Cate Absent
Champoux Nay
Choate Aye
Conover Aye
Cross Aye
Dahood Aye
Davis Excused
Delaney Absent
Driscoll Aye
Drum Aye
Eck Aye
Erdmann Aye
Eskildsen Aye
Etchart Aye
Felt Absent
Foster Nay
Furlong Nay
Garlington Aye
Graybill Aye
Gysler Aye
Habedank Aye
Hanson, R.S. Aye
Hanson, R. Aye
Harbaugh Aye
Harlow Aye
Harper Aye
Harrington Aye
Heliker Aye
Holland Aye
Jacobsen Aye
James Aye
Johnson Aye
Joyce Aye
Kamhoot Aye
Kelleher Aye
Leuthold Aye
Loendorf Aye
Lorello Aye
Mahoney Aye
Mansfield Aye
Martin Aye
McCarvel Aye
McDonough Aye
McKeon Absent
McNeil Ave
Melvin Aye
Monroe Nay
Murray Excused

Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye

CLERK HANSON: Mr. Chairman, 80 delegates voting Aye, 10 voting No.

CHAIRMAN GRAYBILL: 80 voting Aye, 10 voting No, the motion carries.

Mr. Joyce, do you want to make a motion to reconsider for that specific purpose?

DELEGATE JOYCE: Mr. Chairman. Having voted on the prevailing side, I move that this committee reconsider its action in its previous consideration of Section 4, subsection 5, the last sentence thereof, which reads: "The Legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be prescribed by law." And my reference is to the Order of Business Number 5, Final Consideration, Style and Drafting Executive Article Number IV,

CHAIRMAN GRAYBILL: All in favor of the motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted.

Now, Mr. Joyce, do you want to state your motion?

DELEGATE JOYCE: Mr. Chairman, I move that when this committee does arise and report, that it recommend that the last sentence of Section 4, subsection 5, of the Executive Report Number 4 from Style and Drafting be amended to delete the following words: "The Legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law." And insert in lieu thereof the following language: "The Legislature shall establish a legislative Post-audit Committee which shall supervise such post-auditing duties as may be provided by law."

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I presume that I've already indicated the purpose of the proposed amendment, and I don't see any reason to elaborate any further on it.

CHAIRMAN GRAYBILL: Mrs. Bates, do you want to ask a question now?

DELEGATE BATES: Yes, Mr. Chairman. Mr. Mahoney, under the present Constitution--or the article as we now have it, with interim committees-why couldn't this be done without this wording?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I think it could if you would-without this wording, except I just now-first this body tried to delete that part under the Scanlin motion, and it was defeated. And so I would hesitate to let us get out of here without more--after we've debated, I think we should go ahead with this proposition now and leave it this way.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: In our committee we also discussed this locking in the Constitution a legislative post-audit, for the simple reason that it's a product of the Legislature that would be responsible to the Legislature. If they fail to use it in its proper perspective, it would be useless, and they would have this opportunity to do this anyway. And the way this reads, "the Legislature

shall establish", and they would have to regardless whether they used it or not. And so I oppose this.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, I wonder if Mr. Joyce would yield to a question.

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE BURKHARDT: Mr. Joyce, I'm wondering if, as a body, we wish to name a committee, or if you would react to whether we could simply say "The Legislature shall provide for post-auditing procedures." Could you react to that one?

DELEGATE JOYCE: Well, I could in that the people who asked us to make this reconsideration wanted to spell out that it should be done in the way that it is currently being done.

DELEGATE BURKHARDT: It seems to me, Mr. Chairman-I'm not terribly versed in this area, but in constitutional matters, if you simply say "the Legislature shall provide for post-auditing procedures", then they're definitely provided with that. And since we're not saying in the article that the committee must be balanced politically, we'd be accomplishing the same thing. I won't, at this moment, amend the motion, but I would simply put it out there for people to think about. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would just like to stand in support of Mr. Joyce's motion. I think this is one of the most important things that we can do. I think that the spelling out the fact that there shall be a legislative post-audit and that it shall be done in the manner as prescribed here is without a doubt the simplest; it's a working situation. I've checked with a number of people, and in the many-year distant future, I can't see that this would necessarily have to be changed. I think it's something that is working; it's a system that is set up; it's under-someone has said--under statute. Well, so it is; but I think this is an important enough item to be considered in the Constitution; and I would strongly support Mr. Joyce's motion.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates. I, too, support Mr. Joyce's motion. I think the legislative auditor is one of the finest things that our Legislature in the past few years has put into effect, and we should have this office and keep it out of politics if we can. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I join with this. We voted a moment ago not to delete it, so the only question now is how to word it. I think Mr. Joyce's committee proposal is plain and will do the job. I rise to ask this question: How does Mr. Aasheim's suggestion tie in here, or should it be tied in right here? Or do we need to instruct the Style and Drafting Committee to shift this to Article X, Section 4, of the Legislative Article?

CHAIRMAN GRAYBILL: Well the rules are, Mr. Harper, if that's directed to me—

DELEGATE HARPER: Yes.

CHAIRMAN GRAYBILL: The rules are suspended for a broad enough purpose that if this passes, the Chair will entertain a motion that the Style and Drafting Committee put it in the Legislative Article.

DELEGATE HARPER: Thank you. I'm not a betting man, as you are aware, but I'll bet this will pass if we'll all let ourselves vote on it right now.

CHAIRMAN GRAYBILL: Well, not yet. Mr. Hanson.

DELEGATE ROD HANSON: Mr. President. I hesitate to even ask a question, George, now. I would like to ask Delegate Joyce a question, if he'd yield.

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I yield.

DELEGATE ROD HANSON: Tom, was there strong feelings in the committee about the use of the word "shall" instead of "may"?

DELEGATE JOYCE: Yes, yes.

DELEGATE ROD HANSON: Okay, I support the amendment as suggested by Delegate Joyce, then.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I'd like to offer a substitute motion that would read: "The Legislature shall direct the state auditor to perform a post-audit as provided by law." And I'll be like Mr. Harper, I'll bet that this'11 fail; and I'm sure that Mr. Roeder will enjoy stomping back on me.

CHAIRMAN GRAYBILL: Now, wait a minute, Mrs. Babcock. Before you'vegot anything to bet on, you've got to go a little slower. "The Legislature shall-"

DELEGATE BABCOCK: "The Legislature shall direct the state auditor to perform a post-audit as provided by law." I believe in the committee that we intended—

CHAIRMAN GRAYBILL: Wait a minute, Mrs. Babcock. "-shall direct the state auditor to perform-"

DELEGATE BABCOCK: Don't you take shorthand, Mr. Graybill?

CHAIRMAN GRAYBILL: No, I don't. "-to perform" what?

DELEGATE BABCOCK: "-to perform a post-audit as provided by law".

CHAIRMAN GRAYBILL: "-audit as provided by law."

DELEGATE BABCOCK: As I recall— May I speak?

CHAIRMAN GRAYBILL: Mrs. Babcock, now wait a minute. I'm going to let you have the floor. "-provided by law". Now, I have to state it so the body understands what we're doing. Members of the committee, we now have Mrs. Babcock making a substitute motion to Mr. Joyce's motion, the subject of-the terms of which are that, in place of what he suggested, we put into the Constitution this sentence: "The Legislature shall direct the state auditor to perform a post-audit as provided by law."

Now, Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I believe, in having the auditor perform this audit, that this will definitely take it out of politics, because he's an elected official. And I believe that in our committee this was the original intent, to strengthen the auditor's office. And I'm almost sure that this won't fail, but I want to have it on the record-(Inaudible)

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I want to express my thanks to Mrs. Babcock for putting the thing in its proper focus. We had an extensive debate on that issue, which was roundly defeated 62 to 31. I hope that Delegate Babcock's motion doesn't prevail and that Delegate Joyce's does.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Just a point of order that Mrs. Babcock's motion is out of order in that the rules were not opened for that purpose but were opened for the specific purpose of offering the amendment which I suggested.

CHAIRMAN GRAYBILL: I think you are absolutely right. Mrs. Babcock, your motion is out of order, and I shouldn't have-but I got carried away there, Mrs. Babcock. Mrs. Babcock, if Mr. Joyce's motion doesn't prevail or even it it does, afterwards I'll let you make a motion to suspend the rules for the purpose of this if you want to; but I've already limited the purpose for which we can do this, and so I can't let you make that kind of an amendment. I can let you make a stylistic amendment or something of that nature, but I can't let you make one that changes the substance of what we suspended the rules for.

DELEGATE BABCOCK: Are out of order motions recorded in the journal?

CHAIRMAN GRAYBILL: I suppose they're in the transcript.

DELEGATE BABCOCK: All right, thank you.

CHAIRMAN GRAYBILL: My ruling will now be that Mrs. Babcock's motion is out of order. Thank you, Mr. Joyce, for catching me. All right, is there further discussion of Mr. Joyce's motion, which is to delete the last sentence of Section 4, sub. 5, of the Executive Article and put in: "The Legislature shall establish a Legislative Post-audit Committee which shall supervise such post-auditing duties as may be prescribed-as may be provided by law."

Very well, Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to make a substitute motion here and

say: "The Legislature may provide for the procedure for a legislative post-auditor period".

CHAIRMAN GRAYBILL: Your motion is out of order for the same reason as Mrs. Babcock's is. If you-and after we've done this, if you want to make another motion to suspend the rules and go through those steps, I'll be glad to let you; but I can't let you take advantage of the other people's going through the motion-when we voted on the-the point is this: when we voted on the motion to suspend the rules, everybody that voted at that time understood it was for a specific purpose and they knew the language. Now I can't let you make another one without going back and starting over again. Is there further discussion of Mr. Joyce's motion to substitute his language for the language that's presently in there?

(No response)

CHAIRMAN GRAYBILL: Is there a roll call that's been called for? So many as are in favor of Mr. Joyce's motion to substitute his language about the Legislative Audit Committee for that that's in there, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, close the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0. Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Nay
Belcher Aye
Berg ..... Aye
Berthelson Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier Aye
Brown ..... Aye
Bugbee Aye
Burkhardt Aye
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Nay
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Graybill ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Absent
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Absent
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent

Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Absent
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Nay
Woodmansey	Aye

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: Mr. Chairman, 79 delegates voting Aye, 9 voting No.

CHAIRMAN GRAYBILL: 79 having voted Aye and 9 voting No, Mr. Joyce's motion is adopted.

Mr. Aasheim, you may make a motion as to where to put it.

DELEGATE AASHEIM: I move Mr. Chairman, that this sentence from Section 4, subjection 5, lines 26 and 27, be directed to Style and Drafting to be incorporated into Section 10 of the Legislative Article, both unicameral and bicamera1 sections

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has made a motion to put this new language into the Legislative Article-Section 10 of the Legislative Article, unicameral and bicameral. Is there any discussion?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I think, too, this is where it belongs, and I go along with Mr. Aasheim; but is it possible to make an amendment on this sentence-or this section that will be moved?

CHAIRMAN GRAYBILL: Is it a stylistic or is it a substantive change?

DELEGATE BATES: It would be more or less style, I think; maybe substance.

CHAIRMAN GRAYBILL: Well, if you're going to change "shall" to "may", it's not style.

DELEGATE BATES: Well, I'll read it, and then you tell me.

CHAIRMAN GRAYBILL: Okay.

DELEGATE BATES: "The Legislature may provide for the procedure for a legislative post-audit period".

CHAIRMAN GRAYBILL: No, as soon as you say "may", it's "no". The point is, ladies and gentlemen, that this body, when Mr. Felt was here originally, put this principle of legislative post-audit into the Constitution. Now, this committee decided, in the motion that Mr. Joyce has made—carefully did not take it out. But when you say "may", then it's up to the Legislature whether it's in or out. Now, I'm going to come back to you, and you can make a motion to suspend the rules and change that, but you can't do it under Mr. Joyce's motion because it's too limited. And that would, you know-would make a major change, if the Legislature could do away with this if it wanted to. What we've said now is the Legislature must have some kind of a legislative post-audit. All right, is there other discussion of Mr. Aasheim's motion about putting it in the Legislative Article, Section 10?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. It's just a point of order in that the original language was "may", and since we had to consider the original language as well as the proposed change, I don't see that the wording "may" is out of order.

CHAIRMAN GRAYBILL: Mr. Foster, the original language in the article is "may"; the original language in the proposal of Mr. Joyce is "shall". Now the Chair is going to rule that the "shall" prescribes it here; but I am going to come back, and we are going to see if Mrs. Bates or Mrs. Babcock or yourself care to change that. I'll be happy to do it, but I can't let the body vote thinking that it's "shall" and then change it to "may" afterwards. That's my point. If you want to challenge me, go ahead.

DELEGATE FOSTER: No, I won't chal-

lenge you. I'll just say that since "may" was already in there, I think that we had to consider "may".

CHAIRMAN GRAYBILL: Well, it isn't in there now, Mr. Foster. All right, the issue then, is whether or not to put this new language in Section 10 of the Legislative Article. All in favor of moving it to Section 10 of the Legislative Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: That's adopted. Now, while we have this matter before us—

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I was just going to move that when this committee does arise and report, after having had under reconsideration Executive Article Number IV, Section 4, subsection 5, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Just let the Chair think a minute here, now. I think the Chair is going to rule you out of order for the moment, Mr. Joyce. We now have this subsection 4, sub. 5, before the committee, and before we close it up, so that we're not doing vain things, I want to offer an opportunity to others who might want to move to suspend the rules for a different purpose in conjunction with that section.

Mrs. Babcock, do you wish to so move?

DELEGATE BABCOCK: No, Mr. Chairman, but I would like to ask a question. Are all of these changes again placed on Order of Business Number 5 so that we can revote on them?

CHAIRMAN GRAYBILL: They are going to go directly to Order of Business Number 5, right.

DELEGATE BABCOCK: So we can change our vote then if we want to?

CHAIRMAN GRAYBILL: Yes. All right, Mrs. Babcock, you don't want to open it.

Mrs. Bates, do you want to make a motion to suspend the rules?

DELEGATE BATES: Yes, I would do so.

CHAIRMAN GRAYBILL: For what purpose?

DELEGATE BATES: To change the language for just one sentence. "The Legislature may provide for the procedure for a legislative post-audit"—I can't even read my own writing-Just one sentence.

CHAIRMAN GRAYBILL: Allright. Now, "The Legislature may provide-"

DELEGATE BATES: And-"for the procedure for a legislative post-audit."

CHAIRMAN GRAYBILL: May I say: "The Legislature may provide procedure"?

DELEGATE BATES: "-for the procedures for a legislative post-audit-or auditor".

CHAIRMAN GRAYBILL: Do you want to write it down and send it to the Chair?

DELEGATE BATES: Yes. Mr. Chairman, also, what section does this go into?

CHAIRMAN GRAYBILL: Well, at the moment, it's going to the Legislative, Section 10.

DELEGATE BATES: Section 10. Okay; fine. I'll write it down.

CHAIRMAN GRAYBILL: Very well. Mrs. Bates makes a motion to suspend the rules for the purpose of making the sentence say: "The Legislature may provide the procedures for a legislative post-audit". Is that correct, Mrs. Bates?

DELEGATE BATES: Yes.

CHAIRMAN GRAYBILL: "-the procedures for a legislative post-audit." Now, the meat of the matter is that it makes it discretionary; it says: "The Legislature may provide the procedures for a legislative post-audit."

Now, Mrs. Bates, do you want to discuss your motion to suspend the rules?

DELEGATE BATES: Yes, Mr. Chairman. I feel that this would be better than locking into the Constitution "shall" for something that may not be used effectively. And if it is as it is now, and the Legislature wants it, they can do so. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Mrs. Bate's motion?

(No response)

CHAIRMAN GRAYBILL: Shall we have a roll call or not? Yes, roll call. So many as shall be

in favor of Mrs. Bates' motion to suspend the rules for the purpose of making the legislative post-audit sentence read, "The Legislature may provide the procedures for a legislative post-audit", vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J. Nay
Anderson, 0..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask .....Absent
Babcock ..... Nay
Barnard ..... Nay
Bates.. ....Aye
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman,, ... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Nay
Cate.. ....Absent
Champoux ..... Nay
Choate..... Nay
Conover ..... Nay
Cross ..... Aye
Dahood .....Absent
Davis ..... Excused
Delaney ..... .Absent
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Aye
Felt .....Absent
Foster ....Aye
Furlong,, Nay
Garlington ..... Nay
Graybill ..... Nay
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ....Absent
Heliker ..... Nay
Holland., ...Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ....Absent
Kelleher ..... Nay
Leuthold .....Aye
Loendorf .....Aye
Lorello ..... .Absent
Mahoney .Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Excused
Noble ..... Nay
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... .Absent
Rebal .....Absent
Reichert ..... Aye
Robinson ..... Nay
Roeder .....Absent
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin .Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ....Absent
Studer ....Absent
Sullivan ..... Nay
Swanberg .....Absent
Toole ..... .Absent
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner Nay

Ward ..... Nay
Warden Nay
Wilson..... Nay
Woodmansey Nay

CHAIRMAN GRAYBILL: Mr. Driscoll. (To clerk) Will you push Mr. Driscoll's point? I didn't hear what you said, Mr.-

DELEGATE DRISCOLL: Driscoll votes NO.

CHAIRMAN GRAYBILL: Driscoll voting NO.

CLERK HANSON: Mr. Chairman, Driscoll votes No; 8 delegates voting Aye, 71 voting No.

CHAIRMAN GRAYBILL: Very well, 71 having voted No and 8 voting Aye, the motion is defeated.

Mr. Foster, do you want any motions?

DELEGATE FOSTER: (Inaudible)

CHAIRMAN GRAYBILL: Okay. Now, Mr. Joyce, the Chair will entertain a motion from you.

DELEGATE JOYCE: Mr. Chairman. I move that when this committee does arise and report, after having under reconsideration Order of Business Number 5, Final Consideration, Style and Drafting Executive Report Number 4, that it recommend the same be adopted as amended and that the Style and Drafting Committee be instructed to insert the same in the appropriate section of the Legislative Article.

CHAIRMAN GRAYBILL: So many as shall be in favor of Mr. Joyce's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, say No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Committee of the Whole rise and finally report.

CHAIRMAN GRAYBILL: The motion is that the Committee of the Whole rise and finally report on this matter. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

PRESIDENT GRAYBILL: Will the clerk please read the committee report.

CLERK HANSON: "March 20, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: That the committee rise and finally report. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Does anyone want the committee report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT.GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and it's adopted.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Without objection, may we be on Order of Business Number 7?

PRESIDENT GRAYBILL: Is there any objection to our moving to Order of Business Number 7, Motions and Resolutions?

(No response)

PRESIDENT GRAYBILL: Very well, without objection, Mr. Eskildsen, we're on Order of Business Number 7.

DELEGATE ESKILDSEN: Mr. President, I move we take the Legislative Article from Style and Drafting and place it on Order of Business Number 5.

PRESIDENT GRAYBILL: The motion is to take the Legislative Article from Style and

Drafting and place it on Order of Business Number 5; the purpose being to adopt into it by final roll call vote, as Mrs. Babcock pointed out, the language we are now moving to it. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed?
(No response)

PRESIDENT GRAYBILL: Very well, Legislature is back on Order of Business Number 5.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we take Revenue and Finance from Style and Drafting and place it on Order of Business Number 5.

PRESIDENT GRAYBILL: Very well. The purpose of this motion is that we failed to put this one on Order of Business Number 5 this morning; and we did amend that section, so we have to readopt that section on final vote in Order of Business Number 5. All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: Very well, both Revenue and Finance and Legislative are now on Order of Business Number 5, along with Local Government and General Government.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we stand in recess this day until 1:30.

PRESIDENT GRAYBILL: The motion is to recess this convention until 1:30 p.m. this afternoon. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Just a moment. All opposed, No.
(No response)

PRESIDENT GRAYBILL: We will recess after Mrs. Warden makes an announcement, I take it.

Mrs. Warden.

DELEGATE WARDEN: Could I see all the members of the Public Information Committee in the Rules Committee room, right now. Thank you.

PRESIDENT GRAYBILL: Very well. Public Information, in the Rules Committee room on recess. We are in recess.

(Convention recessed at 12:25 p.m.--reconvened at 1:50 p.m.)

PRESIDENT GRAYBILL: Members of the Committee-of the Convention, when we adjourned, we were on Order of Business Number 7, having moved Legislative and Revenue and Finance into Order of Business Number 5. Now it's come to our attention that we're not quite through with that, and so Mr. Eskildsen has another motion.

DELEGATE ESKILDSEN: Mr. President, I move we take the Executive proposal from Style and Drafting and refer it to Order of Business Number 5.

PRESIDENT GRAYBILL: The purpose of this motion is, in order to remove that material from Executive, we want to reenact the section with it removed so there's no question that it's properly done. All in favor of moving Executive from Style and Drafting to Order of Business Number 5, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: Very well, now we'll be on--without objection, we'll be on Order of Business Number 5. Now, ladies and gentlemen, if you have your Style and Drafting reports with you, you can follow this, but in any event we'll straighten it up for the record. We're going to take up first the Executive Proposal, Number 4, and we're going to reconsider Section 4 thereof, which appears on-page 2 of the Executive report. And the point of this is that Section 4 has, at the present time, five subdivisions, and the fifth subdivision used to contain the language: "The Legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law." Now, we took that out of that section of Executive this morning, and we left in the language Mrs. Babcock asked about: "The Superintendent of Public Instruction and the auditor shall have such duties as are pro-

vided by law." And we want to reenact on final adoption Section 4 of the Executive Article so that we have approved Section 4 with the deleted matter out. Is there anyone has any question about what we are voting on? It's final adoption on Executive Article, Section 4-Duties--with four--with five subsections. The last subsection has been amended this morning in Committee of the Whole and adopted by the Convention. Very well, the issue is on Section 4. So many as shall be in favor of adopting Section 4 of the Executive Article, as amended this morning, please vote Aye on the voting machine. So many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, will the clerk please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Absent
Artz ..... Absent
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Absent
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Absent
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Absent
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Absent
Speer ..... Aye

Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President 73 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: 73 having voted Aye and 5 voting No, Section 4, as amended, is adopted on final adoption. All right, now, ladies and gentlemen, if you'll take your Legislative Style and Drafting Report Number 3-Legislative Style and Drafting Report Number 3—and the amendment there is to Section 10 of the unicameral and Section 10 of the bicameral. We'll vote on these separately, since we did originally. Section 10 of the unicameral is on page 3-page 3—and what we will be doing is adding a subsection 6. Section 10 is on organization and procedure and it has-we'll be adding a subsection 5-I beg your pardon. It has four subsections, the last-the fourth of which is, "The Legislature may establish a Legislative Council and other interim committees." We will now be adding a subsection 5 to state: "The Legislature shall establish a Legislative Post-auditing Committee which shall supervise such post-auditing duties as may be provided by law." Now, the only mistake I made there is, it should say: "Legislative Post-audit Committee". "The Legislature shall establish a Legislative Post-audit Committee which shall supervise such post-auditing duties as may be provided by law." Subsection 5 of Section 10 of theunicameral Legislative Article.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, just for the purposes of-1 probably was asleep when this amendment-or I was thinking of something else when this amendment went in, but for styling purposes and to be uniform, I would like to work out some way to strike that word "such" and strike "as may be" so it conforms with the rest of the document.

PRESIDENT GRAYBILL: Then it would read: "-which shall supervise post-auditing duties provided by law." Is that what you want it to say?

DELEGATE SCHILTZ: (Inaudible)

PRESIDENT GRAYBILL: All right, on the Style and-what makes you think we can do this here?

DELEGATE SCHILTZ: I gave you the flag in the first instance. I said I didn't know that we could do it here, but if we could get some tacit agreement, it would save us going back or saving a section that provides-or that reads differently from all the rest of them.

PRESIDENT GRAYBILL: Mr. Eskildsen, are you with us? No, no-no, not on the phone. Mr. Eskildsen, the problem is that Style and Drafting would like to strike some unnecessary words. Do we have to go back to 10, then? Yes?

DELEGATE ESKILDSEN: No, I don't think so if it can be done without changing the intent of it.

PRESIDENT GRAYBILL: It doesn't change the intent.

DELEGATE ESKILDSEN: I think that they can do it in Style and Drafting then.

PRESIDENT GRAYBILL: Well, but can we do it here?

DELEGATE ESKILDSEN: Yes, we could do it here, if we-you want to make the motions.

PRESIDENT GRAYBILL: All right, Mr. Schiltz, make your motion again. We'll do it here, for better or for worse.

DELEGATE SCHILTZ: Well, I don't have the material in front of me, so I move that the word "such" and the words "as may be" be struck, and if anybody on my committee demurs, please raise his hand.

PRESIDENT GRAYBILL: All right. Now, I've done that on the copy I have here and it now reads: "The Legislature shall establish a Legislative Post-audit Committee which shall supervise post-auditing duties provided by law." We've struck the words-it used to say "which shall supervise such post-auditing duties"-they don't like that word "as may"-and we have struck the "as may"-and just said "as provided by law", so it now says: "-Post-audit Committee

which shall supervise post-auditing duties provided by law". So many as shall be in favor of that Style and Drafting change, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: All right, that's amended by Style and Drafting. All right, now we're back on Order of Business Number 5, and we're discussing amending Section 10 of the unicameral article by adding a subsection 5 thereto which will say: "The Legislature shall establish a Legislative Post-audit Committee which shall supervise post-auditing duties provided by law." So many as shall be in favor of so amending the unicameral Section 10, vote Aye; and so many as—

DELEGATES: Aye.

PRESIDENT GRAYBILL: No, no-on the voting machines this time. And so many as shall be opposed, vote No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Very well, we'll take the ballot.
Mr. Driscoll.

DELEGATE DRISCOLL: (Inaudible)

PRESIDENT GRAYBILL: Very well, Mr. Driscoll votes No. Change one Yes to No.

Aasheim Aye
Anderson, J. Aye
Anderson, 0. Aye
Arbanas Aye
Arness Aye
Aronow Aye
Artz Aye
Ask Nay
Babcock Nay
Barnard Aye
Bates Absent
Belcher Aye
Berg Aye
Berthelson Aye
Blaylock Aye
Blend Aye
Bowman Aye
Brazier Aye
Brown Aye
Bugbee Aye
Burkhardt Absent
Cain Aye
Campbell Aye
Cate Aye
Champoux Aye
Choate Aye
Conover Aye
Cross Aye
Dahood Aye
Davis Excused
Delaney Absent
Driscoll Nay
Drum Absent
Eck Aye
Erdmann Aye
Eskildsen Aye
Etchart Aye
Felt Absent
Foster Aye
Furlong Aye
Garlington Absent
Gysler Aye
Habedank Aye
Hanson, R.S. Aye
Hanson, R. Aye
Harbaugh Aye
Harlow Aye
Harper Aye
Harrington Aye
Heliker Aye
Holland. Absent
Jacobsen Aye
James Aye
Johnson Aye
Joyce Aye
Kamhoot Aye
Kelleher Aye
Leuthold Aye
Loendorf. Aye
Lorello Aye
Mahoney Absent
Mansfield Aye
Martin Aye
McCarvel Aye
McDonough Aye
McKeon Aye
McNeil Aye
Melvin Aye
Monroe Nay
Murray Excused
Noble Aye

Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Absent
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 81 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, we've adopted that in the unicameral article. Now, if you will turn on page 2 and 3, behind themanila divider sheet, to the bicameral article, we will put the same amendment to Section 10 of the bicameral article. Now, Section 10 of the bicameral article at this time contains five subdivisions. The new subdivisions will become sub. 5, and if you approve this, sub. 5 will become sub. 6. That's another Style and Drafting change. Let's put it this way: all in favor of making sub. 5—present sub. 5—sub. 6 so that sub. 5 is open, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: There, we've style and drafted it. Now, the motion is-all right, the motion is to put into Section 10 of the bicameral article a subdivision 5 which shall read: "The Legislature shall establish a Legislative Post-audit Committee which shall supervise post-auditing duties provided by law." So many as shall be in favor of the bicameral article with that language inserted as sub. 5 and the other sub. 5, sub. 6, vote Aye on the voting machines; and if you're opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

(Clerk Hanson informed the Chair that the voting machine had not operated properly)

PRESIDENT GRAYBILL: No good? Very well, the voting machine-now it's all right-84 to 4, you got it? Very well, something happened to the voting machine. We're going to void that ballot. So many as shall be in favor on the bicameral article-Section 10—to add that language as subsection 5 and make subsection 5 subsection 6, vote Aye on the voting machines. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Absent
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye

Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
scanlin . . . . . Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon . . . . . Aye
Skari Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson Nay
Woodmansey ..... Aye
Mr. President Aye

CLERK HANSON: Mr. President, 81 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: 81 voting Aye and 5 voting No, that amendment-that section is adopted as amended. Now, Mr. Aasheim has correctly pointed out that Section 15 of the unicameral article contains a reference to a referendum and contains the bicameral article's-Mr. Aasheim, I don't know if you need to make the motion. The point is, if you'll turn to page 6 in your legislative pamphlets--actually page 5 is Section 15—and on page 6, subsection 3(d), contains Section 10 out of the bicameral article, and we need to add thereto the subsection 5 to(d), Section 10, and make subsection 5, Section 6, just like we did before. So, at this time I'll put the question whether or not you wish to readopt Section 15, as amended. The issue, then, is whether to adopt Section 15 of the unicameral article, which contains Section 10 of the bicameral article as sub. 3 sub.(d), and therein add, as a sub. 5, the language: "The Legislature shall establish a Post-audit Committee which shall supervise post-auditing duties provided by law." So many as shall be in favor of Section 15 with that amendment, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Absent
Cain ..... Aye
Campbell ..... Aye
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 78 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: **78** having

voted Aye and 6 having voted No, that section is readopted on final reading. Now, ladies and gentlemen, if you'll turn to your Revenue and Finance Style and Drafting Report Number 7—Revenue and Finance-and if you'll turn to page 2 thereof--and on page 2 thereof you'll find Section 6, containing two subdivisions, and the second subdivision contains the 12 words which we struck therefrom this morning upon a motion to suspend the rules. So, at this time, I would like to put to the body for final adoption, Section 6, including two subdivisions, the second of which is amended, of the Revenue and Finance Article, Number X. The amended subdivision now says: "Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the Legislature period." So many as shall be in favor of Section 6, including two subdivisions, as amended, vote Aye on the voting machine. So many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim Aye
Anderson, J.H. Aye
Anderson, O. Aye
Arbanas Aye
Arness Absent
Aronow Aye
Artz Aye
Ask.. Nay
Babcock Aye
Barnard Aye
Bates Aye
Belcher Aye
Berg Aye
Berth&on Aye
Blaylock Aye
Blend Aye
Bowman Aye
Brazier Aye
Brown Aye
Bugbee Aye
Burkhardt Absent
Cain Aye
Campbell Aye
Cate Aye
Champoux Absent
Choate Aye
Conover Aye
Cross.. Aye
Dahood Aye
Davis Excused
Delaney Absent
Driscoll Aye
Drum Absent
Eck Aye
Erdmann Aye
Eskildsen Aye
Etchart Nay
Felt Absent
Foster Aye
Furlong,, Nay
Garlington Absent
Gysler Aye
Habedank Aye
Hanson, R.S. Aye
Hanson, R. Aye
Harbaugh Aye
Harlow Aye
Harper Aye
Harrington Aye
Heliker Aye
Holland. Absent
Jacobsen Aye
James.. Aye
Johnson Aye
Joyce Aye
Kamhoot Aye
Kelleher Aye
Leuthold Aye
Loendorf Aye
Lorello Aye
Mahoney Aye
Mansfield Aye
Martin Aye
McCarvel Aye
McDonough Aye
McKeon Absent
McNeil Aye
Melvin Aye
Monroe Nay
Murray Excused
Noble Aye
Nutting Excused
Payne Aye
Pemberton Aye
Rebal Aye
Reichert Aye
Robinson Aye
Roeder Aye
Rollins Aye
Romney Aye
Rygg Aye

Scanlin	Absent
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. President	Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: 83 having voted Aye and 3 voting No, Section 6, as amended, of Revenue and Finance is readopted. Now, if I rnay have your attention, someone has pointed out to me that on the second vote on the bicameral Legislative Article, they say I did not call for a No vote, and that's entirely proper-or possible. However, it was a recorded machine vote, and you could have voted No, and in fact some did. Does anyone want to test-or does anyone challenge that'? Now is the time to challenge it. It was overwhelmingly Aye.

(No response)

PRESIDENT GRAYBILL: So, if everybody understood that they could vote No, I guess the record may so show. We'll throw that one away.

All right, Mr. Eskildsen, I think we should-

DELEGATE ESKILDSEN: Without objection, Mr. President, may we be on Order of Business Number 10?

PRESIDENT GRAYBILL: Well, before we go to Order of Business Number 10, the Chair will reassign Revenue and Finance and Legislative and Executive back to Style and Drafting for inclusion in the final document, as amended. Very well, now, you want to be on Order of Business Number 10?

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, wasn't there one more? Wasn't there four of them? Maybe-let's see, Executive, Legislative, Revenue and Finance-I guess you're right. Pardon me. Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is that this Convention resolve itself into a Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention resolved into Committee of the Whole, Graybill, Chairman)

CHAIRMAN GRAYBILL: Very well, we're in Committee of the Whole now, and we will take up Report Number 11, Local Government. If you'll turn to page 5 in your Local Government Style and Drafting proposal. You will recall that—

Mr. Gysler, for what purpose do you arise?

DELEGATE GYSLER: Mr. Chairman, we had Number 11 on our desks this morning and the pages came along and took them away, and I haven't received another one yet.

CHAIRMAN GRAYBILL: Is there anyone else doesn't have Number 11? Will the pages get Mr. Gysler and Mr. Johnson Number 11. Look on my desk, Erv.

DELEGATE GYSLER: You're missing, too.

CHAIRMAN GRAYBILL: How about 11? How many don't have 11?

(Various delegates raised their hands)

CHAIRMAN GRAYBILL: All right, can the pages find some Number 1 1s? Check the-you might as well look for Number 12 while you're doing it. Now, those who did not get Number 11, hold up your hands, and the page will give them to you. May the committee be in order. Very well, we're going to take up first Local Government, Number 11 on page-you should turn to page 5. Now, before we do that, Mr. Schiltz, will you make a motion that we suspend the rules--suspend Rule **23,** concerning the 48 hours?

DELEGATE SCHILTZ: I move that we suspend Rule 23, the requirement that Style and Drafting reports be on the desks for 48 hours, or any other committee report, for the purpose of taking the matter up at this time.

CHAIRMAN GRAYBILL: Very well, the motion is to suspend Rule 23 on Local Government Proposal Number 11 so that we may consider it at this time, it not having lain 48 hours on your desks. All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk please read the title and Section 1 of the Proposal Number 11.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972, Report of Committee on Style, Drafting, Transition and Submission on Local Government, Number 11. Reported March 20, 1972; John M. Schiltz, Chairman. Be it proposed by the Local Government Committee that there be a new article on local government to read as follows: Article, Local Government. Section 1. Definition." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, if I can make a short statement first, I want the committee to know that I didn't quit with Mr. Woodmansey and that I'm up here because there's some filming being done, and then if I lapse into Wilsonesque or Mahoneyesque at some time, it won't be anything but a change in style; all the substance will still be there. Ready?

CHAIRMAN GRAYBILL: Very well.

DELEGATE SCHILTZ: I move that when this committee does rise and report, after having had under consideration Section 1, Local Government Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, there are no changes in Section 1.

CHAIRMAN GRAYBILL: Is there any discussion of Section 1?
(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of Section l-of Mr. Schiltz's motion that we adopt Section 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Read Section 2, Mr. Clerk.

CLERK HANSON: "Section 2. Counties." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 2, Style and Drafting Report Number 11, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Minor style changes. We changed the wording "adoption" to "date of ratification". Otherwise, a couple of singulars. We did change a "shall" to a "may" because there was a negative already in there. Otherwise, all style.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2?
(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of Section 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk please read Section 3.

CLERK HANSON: "Section 3. Forms of government"; containing two subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and **report,** after having had under consideration Section 3, subsection 1, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, some change in language. You'll note we did put a "such" in here, but it needed it because of a previous reference. Otherwise, minor style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 3, sub. 1?
(No response)

CHAIRMAN GRAYBILL: Very well, everyone in favor of Mr. Schiltz's motion on Section 3, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 3, sub. 2, Style and Drafting Report Number 11, it recommend the same be adopted. Again, Mr. Chairman, some rearrangement of language without any change in the substance. All style changes.

CHAIRMAN GRAYBILL: Very well, is there any discussion of Section 3, sub. 2?
(No response)

CHAIRMAN GRAYBILL: Very well. All in favor of Section 3, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 3-w 4.

CLERK HANSON: "Section 4. General powers"; containing two subsections. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, subsection 1, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chair. man, once again, we rearranged the language. We deleted the part about "under Sections 5 and 6" for the reason that that's the only way that any self-government powers could be had and we didn't see any necessity for-that's on line 12—any necessity for that language; put the material into subsections. Otherwise, it's all style.

CHAIRMAN GRAYBILL: Please note that 4, sub. 1, has (a), (b), and (c)in it now, so that we're talking about lines 11 through 23 on page 6. Is there any discussion?
(No response)

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. Schiltz's motion on Section 4, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4, sub. 2, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, sub. 2, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, we moved what had been a subsection 3 down and gave it the dignity of a subsection all by itself. The same material.

CHAIRMAN GRAYBILL: Is there any discussion of subsection 2?
(No response)

CHAIRMAN GRAYBILL: Very well. All in favor of Section 4, subsection 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, read Section 5.

CLERK HANSON: "Section 5. Self-government charters"; containing three subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, these are style changes. I will raise one flag. And on line 27, we struck out the words "and may set limits" for the reason that if nothing is said on that subject, the Legislature may set limits in any case. We thought the language unnecessary and so deleted it. Otherwise, some substitution of words and style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 5?
(No response)

CHAIRMAN GRAYBILL: Very well, all in favor of adopting Section 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 5 is adopted. Section 5, sub. 2, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 2, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, very few changes. Gave subsection 2 a new number, and that's all.

CHAIRMAN GRAYBILL: Any discussion of 5, sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 5, sub. 2, say Ave.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. — 5, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, sub. 3, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, we struck the words, on line 9, "with respect to a local government unit" because this is what, after all, we're talking about, and we didn't think they were necessary.

CHAIRMAN GRAYBILL: Any discussion of 5, sub. 3?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 5, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6, Mr. Clerk.

CLERK HANSON: "Section 6. Self-government powers." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, these are all rather minor style changes.

CHAIRMAN GRAYBILL: Any discussion of Section 6?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7, Mr. Clerk.

CLERK HANSON: "Section 7. Intergovernmental corperation." "-cooperation"; sorry. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 7, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, members of the committee. We completely rewrote Section 7, and if you read the way it was in the first instance and compare it with the way we rewrote it, I think you'll see why. It was one rather long, involved sentence, and we broke it up into possibly one or two sentences-in two sections-but think we made it eminently more readable without involving any substantive changes.

CHAIRMAN GRAYBILL: On Section 7, sub. l-is there any discussion?
(No response)

CHAIRMAN GRAYBILL: Sub. 1 contains (a), (b) and (c). Very well, all those in favor of Section 7, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and

report, after having had under consideration Section 7, sub. 2, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, this language was in what had been in just one section, and we made a subsection of it.

CHAIRMAN GRAYBILL: Any discussion of Section 7, sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8, Mr. Clerk.

CLERK HANSON: "Section 8. Initiative and referendum." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, style changes; nothing substantive altered.

CHAIRMAN GRAYBILL: Any changes in Section 8 to discuss?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 9.

CLERK HANSON: "Section 9. Voter review of local government"; containing two subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, subsection 1, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, we changed the word "adoption" to "ratification", as a more precise word. You'll notice we substituted "combination of units" instead of-on line 16—instead of using the word "jointly" or "joint unit" on line 17 and 18. We have not changed the substance.

CHAIRMAN GRAYBILL: Is there any question or debate about 9, sub. 1?
(No response)

CHAIRMAN GRAYBILL: All in favor of 9, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. — 9, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, subsection 2, Style and Drafting Report Number 11, it recommend the same be adopted. Mr. Chairman, very minor changes; no change in substance.

CHAIRMAN GRAYBILL: Any question about 9, sub. 2?
(No response)

CHAIRMAN GRAYBILL: Very well; all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: -9, sub. 2, is adopted. Now, please do not-we'll set the Local Government book aside, but please do not put it away. We're going to use it again. Now, members of the committee, we're prepared to start on General Government, Number 12, page 5. Mr. Schiltz, may the Chair have a motion that Rule 23, requiring that this be on the desks 48 hours before consideration on Style and Drafting's report, be waived.

DELEGATE SCHILTZ: Mr. Chairman, I move that Rule 23 be waived so that we may consider Style and Drafting Report Number 12, it not having lain on the desks for 48 hours.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. Very well, will the clerk read the title and Section 1 of the General Government Article.

CLERK HANSON: "Montana Constitutional Convention, 1971-72, Report of Committee on Style, Drafting, Transition and Submission of General Government, Number 12. Reported March 20, 1972; John M. Schiltz, Chairman. Be it proposed by the General Government and Constitutional Amendment Committee that there be a new article on General Government to read as follows: Article, General Government. Section 1. Separation of powers." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 1, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, on line 11, we took out the word "collection of', before "persons", so it reads "no person or persons", thinking it means exactly the same thing. Otherwise, style changes.

CHAIRMAN GRAYBILL: Is there any discussion of General Government Section 1?
(No response)

CHAIRMAN GRAYBILL: All those in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. It's adopted. Section 2, Mr. Clerk.

CLERK HANSON: "Section 2. Continuity of government." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 2, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, we made some of the usual style changes that everybody is used to by now-"Legislature" for "Legislative Assembly"--such laws-no significant changes. We had a little difficulty, just for information, on line 22. We put in the word "they" in our rearrangement. "They" refers to laws, and we couldn't think of a better way to do it and decided that was the best way.

CHAIRMAN GRAYBILL: Any discussion or debate of Section 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Section 3, Mr. Clerk.

CLERK HANSON: "Section 3. Oath of office." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 3, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, we made no changes-very few changes in the oath itself-I-No, we didn't change the oath itself. We made some changes in the preliminary material, but there's nothing that alters substance; we took out the offensive "to-wit"-all style changes.

CHAIRMAN GRAYBILL: Any discussion of Section 3?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4, sub. 1.

DELEGATE SCHILTZ: Mr.-

CLERK HANSON: "Section 4. Initiative"; containing three subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, subsection 1, Style and Drafting Report Number

12, it recommend the same be adopted. Mr. Chairman, we made no changes in subsection 1.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I would like to amend subsection 1 on page 2, line 6, by striking "prohibited by this Constitution". We consider this a style change, and I'd like to be heard.

CHAIRMAN GRAYBILL: All right, that would be on-I'm on page 6. What are you on, Mr. Brown?

DELEGATE BROWN: Well, I can go to 6. It would be line 9 on page 6.

CHAIRMAN GRAYBILL: Line 9—and you want to say "prohibited by this Constitution"-you want to strike all of that?

DELEGATE BROWN: Yes.

CHAIRMAN GRAYBILL: And you consider that a style change?

DELEGATE BROWN: That's correct.

CHAIRMAN GRAYBILL: All right, why don't you discuss it, and I'll read it.

DELEGATE BROWN: This provision is taken from our old Constitution, and it prohibits local or special laws as enumerated in the old Constitution. If you go to Article V, Section 26, of the old Constitution, it limits-it sets forth all the local or special laws that cannot be enacted by initiative or by the Legislative Department. We thought that there would be prohibitions in the Constitution against local or special laws; but in reading the Legislative Article, it only refers that the Legislature may not pass special or local laws. This conflict was brought to my attention by Mr. Mahoney, and I met with the committee and I met with Mr. Cromwell and Mr. Schiltz, and it was the sense of the committee that you could not pass special or local laws by initiative and we would provide for the prohibition elsewhere in the Constitution. Since that has not appeared elsewhere, we should strike that language so that it carries out the sense of the committee, and I'm sure the sense of the delegation; so we considered it a style change.

CHAIRMAN GRAYBILL: Very well, the Chair considers it a style change. Mr. Schiltz, do you care to speak on it?

DELEGATE SCHILTZ: The Style and Drafting Committee has no opinion on that. If it's the desire of the body to take out "prohibited by this Constitution", that's fine with us.

CHAIRMAN GRAYBILL: It would seem to the Chair that, especially with the conjunctive-we got two conjunctives in there, "or" and "and"-that we had better take out the rest of it or we may really have caused it to be very mixed up. Does anybody else want to discuss it?

(No response)

CHAIRMAN GRAYBILL: Very well, all of those in favor of Mr. Brown's motion to strike the words "prohibited by this Constitution", on line 9 and 10 on page 6, of the General Government Article, Number XIII-XII-so many as are in favor of Mr. Brown's motion to strike that language, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's amended by Mr. Brown's motion.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 4, subsection 1, Style and Drafting Report Number 12, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Is there other discussion of Section 4?

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Would you please have the clerk read that as amended.

CHAIRMAN GRAYBILL: Yes, I'll read it back. As amended, it says: "Initiative. 1. The people may enact laws by initiative on all matters except appropriations of money and local or special laws." And it struck out the words "prohibited by this Constitution", since there was no such prohibition of all those things in other parts of the Constitution. All right; now, as amended, is there further discussion? You've all heard Mr. Schiltz's motion that this section, as amended, be now adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, subsection 2, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, we rearranged this subsection--and considerably-but if you notice the material on lines 17 and 18—we moved that up, to begin the statement with it, so we didn't lose that material, and otherwise rearranged it stylistically.

CHAIRMAN GRAYBILL: Any discussion of Section 4, sub. 2?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 4, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, subsection 3, Style and Drafting Report Number 12, the same be adopted. Mr. Chairman, changed the word "once" to "after" for stylistic reason. No other changes.

CHAIRMAN GRAYBILL: Sub. 3; any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 4, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 5, please.

CLERK HANSON: "Section 5. Referendum"; containing two subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, these are all style changes. There are quite a few of them. On line 26, we deleted "may" and inserted "shall", which may or may not be a substantive change, but as we understand a referendum, once it's held or had, it's-"shall"is required rather than "may". Otherwise, made some of the usual style changes, like "qualified electors", which was in their first article. Incidentally, before anybody says anything about it, it's a style rule that for numerals or numbers that are less than 10, you spell them out; when they're more than 10, you use the numerals; so we knew what we were doing when we kept the F-I-V-E in there for five.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to ask Mr. Schiltz a question.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I yield.

DELEGATE HARBAUGH: On line 30, does the terminology "legislative representative districts" pose any question in your mind as it relates to unicameral or—

DELEGATE SCHILTZ: Well, that-1 know what you're talking about. That involved considerable discussion yesterday in the Style and Drafting Committee, and we decided that if we put-if we left "legislative representative districts" in as it was, there could be no doubt about it and if we did it any differently there might be.

DELEGATE HARBAUGH: Mr. Chairman, my thought is that throughout the unicameral, I believe we've referred to the legislators elected as senators, did we not? And this is-1 don't know what the solution would be, but—

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Well, it's a very difficult solution, and we decided that in both the unicameral and the bicameral articles, there is a representative district that is set up and that this would identify it in each of those articles.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, that was the thinking of the General Government Committee. We discussed this at great length, and we felt this was the only one that would cover both sections. However, Mr. President, I would like to, with your permission, go back to the preceding subsection 2 of Section 4 to call attention to the Style and Drafting Committee that in that section we have said: "Each initiative petition must contain the full text of the proposed measure." That is correct. But then, they went on to say "each shall be signed by at least 5 percent or more of the qualified electors". And it's a physical impossibility, of course, to have each petition signed by 5 percent or more; and I feel that the wording of the committee would be more accurate.

CHAIRMAN GRAYBILL: In other words, the wording "initiative petitions shall be signed by at least 5 percent".

DELEGATE HABEDANK: Yes, and then down below—

CHAIRMAN GRAYBILL: Indicating the whole petition, rather than each sheet of paper, which would have to get a little long.

DELEGATE HABEDANK: That's correct. And then, down below, "the petition shall be filed". In the interests of—

CHAIRMAN GRAYBILL: Where would that be?

DELEGATE HABEDANK: That would be down on line 19. In other words, I think it should read: "Initiative petitions shall be signed by at least 5 percent", and then on line 19, "petitions shall be filed with the Secretary of State", rather than each or just one petition. The way it's worded now, it would indicate one petition containing all of the names must be filed.

CHAIRMAN GRAYBILL: Well, the Chair will allow you and the Style and Drafting people to discuss this, and if we are in agreement on what to do, we'll go back and reconsider it.

Mr. Schiltz.

DELEGATE SCHILTZ: I think Mr. Habedank has a good point, and I wouldn't belabor the point. I would add-1 would strike "each" on line 11—I move to strike "each" on line 11—

CHAIRMAN GRAYBILL: Now, wait a minute. You can't do it yet. Do you think you can do this, though?

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: All right, let's have a motion to reconsider Section 4, sub. 2.

DELEGATE SCHILTZ: All right, I move that we reconsider Section 4, sub. 2, for style changes.

CHAIRMAN GRAYBILL: All in favor of reconsidering Section 4, sub. 2, for style changes, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: All right, now it's reconsidered.

DELEGATE SCHILTZ: Mr. Chairman, I move to strike the word "each" on line 11, make it capital "I" out of-on the first letter of initiative, add an "s" to petitions on that same line; on line 19, strike the word "A" and make a capital "P" of petitions, and add an "s".

CHAIRMAN GRAYBILL: All right, on line 12, it'll read: "Initiative petitions"-strike "each"-and go right to "shall"; right? "Initiative petitions shall be signed by at least 5 percent". Then you go down to line 19, and you're going to strike "A" and you're going to start with a capital "P" for petitions-"Petitions shall be filed"; right?

DELEGATE SCHILTZ: Right. I'm not sure you had the line 11 correct, though. It would read: "Initiative petitions must contain the full text—."

CHAIRMAN GRAYBILL: I see. And then you want to say: "Initiative petitions shall be signed"-is that right-or are you going to leave that "each" in? I see; you're making a change in a different line.

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Mr. Habedank, what do you think of his change?

DELEGATE HABEDANK: I would have changed it differently, but I think he's getting to it. I think we need to strike, then, on line 12, the other word "each" again, so it reads: "Initiative petitions must contain the full text of the proposed measure, shall be signed by at least 5 percent." In other words, you need to strike another each.

DELEGATE SCHILTZ: All right, I'll make another amendment. On line 12, change the comma-"the measure"-delete the period after "measure" and insert the word "and".

CHAIRMAN GRAYBILL: And strike "each", right?

DELEGATE SCHILTZ: And strike "each"; right.

CHAIRMAN GRAYBILL: Now, if everybody is with us, they've been very careful. All right, now, the Chair thinks that it now reads as follows: Section 4, sub. Z-capital "I"-"Initiative petitions must contain the full text of the proposed measure, and"-strike everything over to the word "shall"-"shall be signed by at least 5 percent of the qualified electors", et cetera. Then you go down to line 19, and it would say: "Petitions shall be filed with the Secretary of State at least 3 months--." Is that what you want, or do you want "the petitions"? Just "petitions". Now, Mr. Habedank, is that agreeable with you?

DELEGATE HABEDANK: Yes, except I think in line 21, it should go back to "they", then.

CHAIRMAN GRAYBILL: "At least 3 months prior to the election at which they will be voted upon", since we're not talking about many petitions, Mr.-you don't care?

DELEGATE HABEDANK: That isn't good, either. "Prior to the election at which-"

DELEGATE SCHILTZ: That's all right.

DELEGATE HABEDANK: "-they will be voted upon"? You wouldn't vote upon it.

CHAIRMAN GRAYBILL: "—the matter"?

DELEGATE SCHILTZ: "-the matter"—

DELEGATE HABEDANK: I prefer "the matter"-it would make more sense.

CHAIRMAN GRAYBILL: "At which the matter will be voted upon"? On line 21, put in, "the matter"? All right, now Section 4, sub. 2, reads: "Initiative petitions must contain the full text of the proposed measure, and shall be signed by at least 5 percent of the qualified electors in each of at least one-third of the legislative representative districts, and the total number of signers must be at least 5 percent of the total qualified electors of the state. Petitions shall be filed with the Secretary of State at least 3 months prior to the election at which the matter will be voted upon."

DELEGATE SCHILTZ: Couldn't we say "measure"? That's the previous word.

CHAIRMAN GRAYBILL: "-the measure will be voted upon"?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: "-at which the measure-"

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: "-will be voted upon".

Mr. Habedank.

DELEGATE HABEDANK: Would you consider, as long as you put the comma after the word "measure", striking the "and"? It would then read: "Initiative petitions must contain the full text of the proposed measure, shall be signed by at least 5 percent of the qualified electors in each of at least one-third of the legislative representative districts"-and then you have your "and"—

CHAIRMAN GRAYBILL: Okay. We have stricken "and" on line 12. Mr. Schiltz, you don't know how happy it makes the rest of us to be involved in Style and Drafting for a change.

DELEGATE SCHILTZ: You may all come to the meetings.

CHAIRMAN GRAYBILL: All right. Is that all right, Mr. Habedank?

DELEGATE HABEDANK: Yes. Thank you very much.

CHAIRMAN GRAYBILL: All right. Now, does anyone want that reread?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Yes. Okay. Section 4, sub. 2. "Initiative petitions must contain the full text of the proposed measure, shall be signed by at least 5 percent of the qualified electors in each of at least one-third of the legislative representative districts, and the total number of signers must be at least 5 percent of the total qualified electors of the state. Petitions shall be filed with the Secretary of State at least 3 months prior to the

election at which the measure will be voted upon." Is there further discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of the new language, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended.

DELEGATE SCHILTZ: Is it adopted, or have we just adopted the language?

CHAIRMAN GRAYBILL: All right, we've just adopted the language. Now, move it as amended, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, subsection 2, it recommend the same be-Style and Drafting Report Number 12, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4, sub. 3, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I previously moved Section 4, sub. 3, and noted that we'd only changed one word.

CHAIRMAN GRAYBILL: I see. All right, I guess we were down on Section 5.

DELEGATE SCHILTZ: No, we haven't passed 4, sub. 3. I just moved it, and then Mr. Habedank wanted—

CHAIRMAN GRAYBILL: I see.

DELEGATE SCHILTZ: Okay, I guess we did. Okay; all right.

CHAIRMAN GRAYBILL: I think sub. 3 is adopted, isn't that right?

DELEGATE SCHILTZ: Okay.

CHAIRMAN GRAYBILL: And we're on Section 5, sub. 1, which I think you'd better move again.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, I guess I did. I talked about the numerals and so on. Okay. Otherwise, no major changes, not even any major style changes. Oh, I did note that we changed "may" to "shall be", and I explained why.

CHAIRMAN GRAYBILL: Any discussion of Section 5, sub. 1?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 5, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 2, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, the committee will note here that we have made some style changes. We put the word "law" in here-or "act" in for "law", because in Section 1 they had referred to an act and we wanted one word throughout. And then, one other place we changed "bill" to "act"; I guess that was in the previous subsection.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I think we have the same change in subsection 2, line 9, that we had in subsection 2, Section 4. "Petitions" should be filed, not just one petition. In other words, that particular word should read "petitions"-line 9.

CHAIRMAN GRAYBILL: I see it.
Mr. Schiltz.

DELEGATE SCHILTZ: No problem. I move that-Mr. Chairman, I move that line-no,

let me see-that Section 5, subsection 2, Style and Drafting Report Number 12, line 9, that the word "petition" be made plural by adding an "s".

CHAIRMAN GRAYBILL: Very well, the motion is to make the word "petition" plural. All in favor, say Aye.

CHAIRMAN GRAYBILL: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: That's adopted. Now, you want to remove 5, sub. 2?

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, Style and Drafting Report Number 12, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of 5, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Section 6.

CLERK HANSON: "Section 6. Elections." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, the committee will note that we completely rewrote this, but it's very simple. We put it in the active voice as against the passive voice.

CHAIRMAN GRAYBILL: Is there any discussion of Section 6?
Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I think in your rewriting, you cut out a necessary word. Mr. Schiltz, what do you feel-that, in line 20, after the word "referendum", we put in "measures"-in other words, what are the people voting on? Am I wrong in my assumption?

DELEGATE SCHILTZ: Well, I don't think it's necessary, but if you want to make a motion, I won't resist it. I think we have used "measures" in the beginning. It wasn't in the original language.

DELEGATE HARLOW: In 6—

DELEGATE SCHILTZ: Well, we have all "measures", yes-so I see what you mean.

DELEGATE HARLOW: Yes.

DELEGATE SCHILTZ: Well, if you want to make the motion, go ahead.

DELEGATE HARLOW: Well, Mr. Chairman, I move that we amend the Style and Drafting report on General Government in Section 6, line 20, after the word "referendum", by inserting the word "measures".

CHAIRMAN GRAYBILL: Very well. Mr. Harlow proposes that we add the words "mea sores" so it reads: "The people shall vote on initiative and referendum measures at the general election unless the Legislature orders a special election." All in favor of Mr. Harlow's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz, do you want to put the—

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, Style and Drafting Report Number 12, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Further discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 6 is adopted as amended. Section 7.

CLERK HANSON: "Section 7. Number of electors." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 7, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, we completely rewrote this without changing anything substantive, for two reasons. We put it into the active voice as opposed to the passive, and we adopted the language we'd used in another article, and I can't tell you right now exactly what article that was.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I feel that the committee did change it, in line 30, when they left out the words "the office of' following the word "for", and I would move that they be reinstated-"votes cast for the office of Governor".

DELEGATE SCHILTZ: I agree to that, Mr. Chairman.

CHAIRMAN GRAYBILL: In other words, you add the votes for both the winner and the loser to get the total number of votes. All right, in line 30, Mr. Habedank has proposed a motion to add the words "the office of' before the word "Governor", so that it reads: "-shall be determined by the number of votes cast for the office of Governor in the preceding general election". So many as shall be in favor of Mr. Habedank's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The amendment is adopted.
Mr. Schiltz, do you want to put that again?

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 7, Style and Drafting Report Number 12, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Is there further discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 7 as amended, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Section 8 on page 8.

CLERK HANSON: "Section 8. Prohibition." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, we put the Roman numeral XIII in on line 3 because we've now worked out a schedule of where the articles will fall, and so we supplied that. Otherwise, style changes.

CHAIRMAN GRAYBILL: Any further discussion of Section 8?
(No response)

CHAIRMAN GRAYBILL: All in favor of Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 9.

CLERK HANSON: "Section 9. Recall." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, as we have been doing, we inserted "local government units" instead of "its political subdivisions". Otherwise, no change of any significance.

CHAIRMAN GRAYBILL: All in favor of Section 9, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Section 10.

CLERK HANSON: "Section 10. Gambling." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 12, it recommend the same be adopted. **Mr.** Chairman, you will note here, we have two Section 10s. They'll both be included in the Constitution; there'll be a choice to the voters, as was required by the Committee of the Whole. The adoption schedule, when we finally put it together on the entire Constitution, will provide for the deletion of one of them when the time comes.

CHAIRMAN GRAYBILL: Is there any question about either Section 10?

(No response)

CHAIRMAN GRAYBILL: All right. All in favor of the first Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Second Section 10, Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Both Section 10s are adopted. Section 11.

CLERK HANSON: "Section 11. Boundaries." Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, Style and Drafting Report Number 12, it recommend the same be adopted. Mr. Chairman, we have a rather major substantive change here on line 25; we made "Bitter Root" into two words. And on that same line, we edited the poet of wherever he's from, by putting a "t" in front of "hence", because there can be no doubt that thence was intended rather than hence.

CHAIRMAN GRAYBILL: All in favor of Section 11, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is not in doubt. (Laughter) You want a division?

UNIDENTIFIED DELEGATE: Yes.

CHAIRMAN GRAYBILL: All right. All in favor of Section 11, say Aye; and opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does every delegate know what they are voting on?

DELEGATES: No-(Laughter)

CHAIRMAN GRAYBILL: You're voting whether to change Bitter Root to two words or not. All in favor, vote Aye; and opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Close the ballot. 60 having voted to sustain Mr. Romney and 20 having voted against him, we're going to split Bitter Root. It's not a roll call, John, it's just a division. Very well, Section 11 is adopted.

Mr. McNeil was up first.

DELEGATE MCNEIL: Mr. Chairman, I move to reconsider Section 1 for a style change. Mr. Chairman, if my motion to reconsider Section 1 is passed, I would change the word "among" back to "into". When I first read this, I didn't catch the distinction till we got-after-to the committee comments on page 9. I see the committee comments again use the word "into". They say, "The power of government is one whole which is divided into three parts." The language in our present Constitution, which was the intent of the committee to retain, says the power is divided into three parts, and, of course, our present Constitution reads that way. So, if my motion to reconsider is affirmed, I would move to delete the word "among" and restore the word "into" on line 9, page 5.

CHAIRMAN GRAYBILL: Mr. Harper, do you want to speak on the motion to reconsider?

DELEGATE HARPER: It seems to me that you divide power among persons, rather than into them, or among groups—

CHAIRMAN GRAYBILL: I think that's —you're on the issue, Mr. Harper.

DELEGATE HARPER: I already sneaked it in.

CHAIRMAN GRAYBILL: Well. All right, the motion is-Mr. McNeil, did you vote on the prevailing side on Section 1 when it was adopted?

DELEGATE MCNEIL: Yes.

CHAIRMAN GRAYBILL: How did that happen? (Laughter)

DELEGATE MCNEIL: I didn't question it until I got to their comments.

CHAIRMAN GRAYBILL: Very well, Mr. McNeil has a motion to reconsider Section 1 of the General Government Article. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it'll be reconsidered.

Mr. McNeil, do you want to stateyourmotion?

DELEGATE MCNEIL: Mr. Chairman, I move to restore the language of the majority committee on line 9, page 5, of Style and Drafting's report by deleting the word "among" and returning it to the word "into".

Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, he wants to change the word on line 9 back into "into" and away from "among". He wants "among" to read "into"--"divided into three distinct branches", rather than "divided among three distinct branches".

Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I don't want there to be any doubt that there was any intention to change our separation of powers doctrine. The change which Delegate Harper referred to refers to English language construction, I guess; however, the language of the present Constitution, which it was the intent of the committee to retain, uses the word "into". That's the way it was passed by the Committee of the Whole, and I note, in explaining that change, Style and Drafting, on page 9, says: "The changes in language make plain that the power of government is one whole which is divided into three parts." For that reason, I would submit that the change would be substantive if it is not restored to the former language.

CHAIRMAN GRAYBILL: Anybody else want to discuss this?

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I think that we are eminently correct on this, and I think Mr. Harper's on target; and I would only observe that so far as the comments are concerned, that we would like you to do what we do and not what we say. I admit that we did say "into" back there, but it seems to me that "among" is grammatically and semantically correct in this case.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: I would support Mr. McNeil on this. I really think the committee wanted the word "into" there instead of "among", and we would like to see you adopt the word "into".

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Poor Jack Schiltz has to fight this alone, time after time. The committee wants "among".

DELEGATE BLAYLOCK: Mr. President, I also support "among". Let's have it grammatically correct.

CHAIRMAN GRAYBILL: Now, the Chair wants to observe that you're all going to be able to tell us which you prefer in about 1 minute, so if you got anything except to tell how you're going to vote, say it.

Mr. Choate.

DELEGATE CHOATE: That's just what1 was going to say. I concur with our Chairman of our committee. We would prefer to have it remain as the majority report.

CHAIRMAN GRAYBILL: All right, the issue is clearcut. It's between "among" and "into".

Mr. McNeil, you may close.

DELEGATE MCNEIL: Mr. Chairman, I submit that there are two committees here-one is Style and Drafting, arguing for a style change; the substantive committee has stated they want the word "into" retained. I submit that if we change that, we are treading in an area where somebody at some future time is

going to argue that a substantive change was intended; and for that reason, at this point of our proceedings in style and drafting, where there is some doubt, we ought to maintain or uphold the substantive committee; and I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. McNeil's motion, which is to go back to the word "into" and strike "among", so that it says "is divided into three distinct branches", vote Aye. So many as are opposed, vote No.

UNIDENTIFIED DELEGATE: (Inaudible)

CHAIRMAN GRAYBILL: No, we've already reconsidered it. This is on the issue. He moved, and the reconsideration was adopted by a voice vote. The ballot is open; and if you want to vote with Style and Drafting, you vote No; and if you want to vote with General Government, you vote Yes. Does anybody want to change their vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Absent
Arness ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Absent
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Absent
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Absent
Schiltz ..... Nay

Siderius..... Nay
Simon .....Aye
Skari .....Aye
Sparks, Aye
Speer Nay
Studer .....Aye
Sullivan .....Aye
Swanberg .....Aye
Toole .....Aye
Van Buskirk . .Aye
Vermillion Aye
Wagner .....Aye
Ward .....Aye
Warden .....Aye
Wilson .....Aye
Woodmansey . Aye
Mr. Chairman .Aye

CLERK HANSON: Mr. Chairman, 55 delegates voting Aye, 28 voting No.

CHAIRMAN GRAYBILL: 55 having voted Aye and 28 No, we'll go back to the word "into"--"into three distinct branches".

Mr. Schiltz, do you want to move 1 as amended?

DELEGATE SCHILTZ: No, that's what I was going to say. It would hurt me terribly to move this as amended. (Laughter)

CHAIRMAN GRAYBILL: Mr. Etchart, would you like to move 1 as amended?

DELEGATE ETCHART: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 1 of Style and Drafting Report Number 12, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended.

Now, Mr. Eskildsen, we'd like to rise and finally report.

DELEGATE ESKILDSEN: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN GRAYBILL: The motion is to rise and report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed:' (No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings revert to Convention-President Graybill in Chair)

PRESIDENT GRAYBILL: Will the clerk please read the committee report.

CLERK HANSON: "March 20, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: that the Committee rise and finally report. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Anybody want the committee report read fully?

DELEGATES: No.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: It's adopted. Now, without objection, we'll be on Order of Business Number 5.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I think we should move them to Order of Business Number 5 so we can vote on them—

PRESIDENT GRAYBILL: All right.

DELEGATE ESKILDSEN: I think we should be on Order of Business Number 7.

PRESIDENT GRAYBILL: All right, you want to move-all right, we'll be on Order of Business Number 7, then.

DELEGATE ESKILDSEN: I move that we place General Government, Number 12, to

Order of Business Number 5 and—

PRESIDENT GRAYBILL: Local Government Number 11.

DELEGATE ESKILDSEN: -Local Government Number 11 to Order of Business Number 5.

PRESIDENT GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Without objection, may we be on Order of Business Number 5?

PRESIDENT GRAYBILL: Without objection, we'll be on Order of Business Number 5. On Order of Business Number 5, we'll take up Local Government Number 9 first. Members of the Convention, if you'll take your Style and Drafting report and, instead of turning to page 5, if you'll turn to page 1, it will be easy to follow along on the clean text; and where there are changes, I will call it to your attention. There happen to be no changes at all on the Local Government Article. Very well, we're on Order of Business Number 5, Final Adoption.

Mr. Harbaugh, for what purpose do you rise?

DELEGATE HARBAUGH: Well, a question or a point of order. Don't we have to suspend rules to be on final consideration?

PRESIDENT GRAYBILL: No, final consideration has no time limit, so the matter having been put on it, we can go immediately into it. Ordinarily we would reprint it, but to save us the reprinting and since we have clean copy-well, to save us the reprinting and to get it out of the way so that Style and Drafting can continue now with putting together the whole Constitution, why, we'll go ahead. It's only on Order of Business Number 10 that we have the timelimits. Very well, will the clerk please read the title and Section 1 of the Local Government Article, Number 11.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972; Local Government Number 11. Be it proposed by Local Government Committee that there be a new article on Local Government to read as follows: Article, Local Government. Section l-Definition." Mr. President.

PRESIDENT GRAYBILL: Now, this time we vote by voting machine. We read you the section only, and then you have to decide. All right, the vote is on Section l-Definition, of the Local Government Article, Article XI-or Proposal Number 11. So many as are in favor of Section 1, vote Aye on the voting machines; opposed, vote No. Have all the delegates voted?

UNIDENTIFIED DELEGATE: No.

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas.. ..... Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Excused
Delaney ..... Absent

Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield,, ... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Absent
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 1 is adopted. Section 2, Mr. Clerk.

CLERK HANSON: "Section 2. Counties." Mr. President.

PRESIDENT GRAYBILL: **So many as** shall be in favor of Section 2-Counties, vote Aye on the voting machines; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the vote.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Absent
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye

Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Absent
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 79 voting Aye, 2 delegates voting No.

PRESIDENT GRAYBILL: Very well, 79 voting Aye, 2 No, that Section 2 is adopted. Section 3.

CLERK HANSON: "Section 3. Forms of Government"; containing two subsections. Mr. President.

PRESIDENT GRAYBILL: Section 3 has two subsections. All in favor, vote Aye; opposed, No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye

Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Absent
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 81 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 3 is adopted. Section 4, containing two subsections.

CLERK HANSON: "Section 4. General Powers." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 4 and two subsections, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Absent
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Absent
Toole ..... Nay
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 75 delegates voting Aye, 6 voting No.

PRESIDENT GRAYBILL: Very well, Section 4 is adopted. Section 5.

CLERK HANSON: "Section 5. Self-

government charters"; containing three subsections. Mr. President.

PRESIDENT GRAYBILL: Section 5. So many as are in favor of Section 5 and three subsections, vote Aye; and so many as are opposed, vote **No.** Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas .. .. Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg .. .. Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Bi-own ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross .. .. Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong. Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce .. .. Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe .. .. Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin .. .. Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Absent

Ward ..... Aye
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: 83 delegates voting Aye and one voting No, Section 5 is adopted. Section 6.

CLERK HANSON: "Section 6. Self-government powers." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 6, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent

Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Absent
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 85 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 6 is adopted. Section 7.

CLERK HANSON: "Section 7. Intergovernmental cooperation"; containing two subsections. Mr. Chairman.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 7 and its two subdivisions, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Absent
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard .. .. Aye
Bates .. .. Aye
Belcher ..... Aye
Berg .. .. Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate .. .. Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong, ... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye

Nutting..... Excused
Payne .....Aye
Pemberton Aye
Rebal .....Aye
Reichert Aye
Robinson .....Aye
Roeder .....Aye
Rollins. Aye
Romney Aye
Rygg.....Aye
Scanlin Aye
Schiltz .Absent
Siderius.....Aye
Simon .....Aye
Skari .....Aye
Sparks Aye
Speer.....Aye
Studer .....Aye
Sullivan .....Aye
Swanberg..... .....Aye
Toole.....Aye
Van Buskirk Aye
Vermillion .....Aye
W a g n e r .Absent
Ward ....Aye
Warden .....Absent
Wilson .....Absent
Woodmansey .....Aye
Mr. President .Aye

CLERK HANSON: Mr. President, 83 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Now, Mr. Clerk, you lost me. Tell me what the vote is.

CLERK HANSON: 83 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Section 7 is adopted. Section 8.

CLERK HANSON: "Section 8. Initiative and referendum." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 8, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... .Absent
Anderson, J.H..... Aye
Anderson, 0..... Aye
Arbanas.. ....Absent
Arness.....Aye
Aronow.....Aye
Artz ....Aye
Ask.....Aye
Babcock ....Aye
Barnard ....Aye
Bates.....Aye
Belcher Aye
Berg.. ....Aye
Berthelson ..... Aye
Blaylock.....Aye
Blend.....Aye
Bowman.....Aye
Brazier ..... Aye
Brown.. ....Absent
Bugbee ....Aye
Burkhardt ....Aye
Cain.....Aye
Campbell.. ....Absent
Cate ....Aye
Champoux ..... .Absent
Choate.....Aye
Conover ....Aye
Cross.. ....Aye
Dahood.....Aye
Davis. ..... Excused
Delaney ....Absent
Driscoll.....Aye
Drum.. ....Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen.....Aye
Etchart.....Aye
Felt.....Absent
Foster ....Aye
Furlong ..... Aye
Garlington ..... .Absent
Gysler ....Aye
Habedank .....,Aye
Hanson, R.S..... .Aye
Hanson, R. ....Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ..... Aye
Heliker ....Aye
Holland.....Aye
Jacobsen ..... Aye
James ....Aye
Johnson ..... .Absent
Joyce.....Aye

Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: 84 having voted Aye, Section 8 is adopted. Section 9.

CLERK HANSON: "Section 9. Voter review of local government"; containing two subsections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, vote Aye; and so **many** as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Absent
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Absent
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye

Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Ha-low ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Absent
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Absent
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President Aye

CLERK HANSON: Mr. President, 73 delegates voting Aye, 9 voting No.

PRESIDENT GRAYBILL: 73 delegates having voted Aye and 9 voting No, Section 9 is adopted and we're finished adopting Local Government, Number 11. Now, if you'll turn to General Government, Number 12, and again turn to page 1; we'll follow through on page 1; and there are some changes, and the Chair will call them to your attention as we go through. Will the clerk please read the title and Section 1 of the General Government Article.

CLERK HANSON: "Montana Constitutional Convention, 1971.1972, General Government Report Number 12. Be it proposed by the General Government Constitutional Amendment Committee that there be a new article on General Government to read as follows: Article, General Government. Section 1. Separation of powers, as amended." Mr. President.

PRESIDENT GRAYBILL: Very well. So many as shall be in favor of Section 1 of the General Government Article on separation of powers, please vote Aye; so many as are opposed, vote No. Now, Section 1 was amended from "among" to "into"; and if you're following on page 1, you should, on line 9, change the words "divided into three distinct branches"; so have that in mind. All in favor of Section 1, vote Aye; opposed, No. Have all the delegates voted'?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Mr. Habedank, for what purpose do you rise?

DELEGATE HABEDANK: I pushed the green button, but it didn't show. I wish to show I would have voted Aye.

PRESIDENT GRAYBILL: You wish to show you voted Aye?

DELEGATE HABEDANK: Yes.

PRESIDENT GRAYBILL: Check Mr. Habedank.

CLERK HANSON: Mr. President, Mr. Habedank voting Aye.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Absent
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: 85 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Section 1 is adopted. Section 2.

CLERK HANSON: "Section 2. Continuity

of government." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 2, vote Aye on the voting machines: so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye

Warden .Absent
Wilson .....Aye
Woodmansey Aye
Mr. President .....Aye

PRESIDENT GRAYBILL: Very well; announce the vote, please.

CLERK HANSON: Mr. President—

PRESIDENT GRAYBILL: Mr. James, for what purpose do you rise?

DELEGATE JAMES: Mr. Chairman, spring is here. I vote Aye.

PRESIDENT GRAYBILL: Mr. James wishes to vote Aye on Section 2.

CLERK HANSON: Mr. President, James voting Aye; 86 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well, Section 2 is adopted. Section 3.

CLERK HANSON: "Section 3. Oath of office." Mr. President.

PRESIDENT GRAYBILL: So many **as** shall be in favor of Section 3, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim .....Aye
Anderson, J.H.. .Aye
Anderson, O.. Aye
Arbanas .....Aye
Arness .....Absent
Aronow .....Aye
Artz .....Aye
Ask .....Aye
Babcock .....Aye
Barnard .....Aye
Bates .....Aye
Belcher Aye
Berg .....Aye
Berthelson Aye
Blaylock .....Aye
Blend .....Aye
Bowman .....Aye
Brazier .....Aye
Brown.. .....Aye
Bugbee .....Aye
Burkhardt .....Aye
Cain .....Absent
Campbell .....Absent
Cate .....Aye
Champoux .....Absent
Choate .....Aye
Conover .....Aye
Cross .....Aye
Dahood .....Aye
Davis .....Excused
Delaney .....Absent
Driscoll .....Aye
Drum .....Aye
Eck .....Aye
Erdmann .....Aye
Eskildsen .....Aye
Etchart .....Aye
Felt .....Absent
Foster .....Aye
Furlong .....Aye
Garlington .....Absent
Gysler .....Nay
Habedank .....Aye
Hanson, R.S. .....Aye
Hanson, R. .....Aye
Harbaugh .....Aye
Harlow .....Aye
Harper .....Aye
Harrington .....Aye
Heliker .....Aye
Holland. .....Aye
Jacobsen .....Aye
James .....Aye
Johnson .....Aye
Joyce .....Aye
Kamhoot .....Aye
Kelleher .....Aye
Leuthold .....Aye
Loendorf .....Aye
Lorello .....Aye
Mahoney .....Absent
Mansfield .....Aye
Martin .....Aye
McCarvel .....Aye
McDonough .....Aye
McKeon .....Aye
McNeil .....Aye
Melvin .....Aye
Monroe.. .....Aye
Murray.. .....Excused
Noble .....Aye
Nutting .....Excused
Payne .....Aye

Pemberton Aye
Rebal .....Aye
Reichert Aye
Robinson .....Aye
Roeder .....Aye
Rollins. Aye
Romney .....Aye
Rygg .....Aye
Scanlin " " Nay
Schiltz Aye
Siderius.. Aye
Simon .....Aye
Skari .Aye
Sparks .....Aye
Speer .....Aye
Studer .....Aye
Sullivan Aye
Swanberg .....Aye
Toole .....Aye
Van Buskirk .Aye
Vermillion Aye
Wagner .....Aye
Ward .....Aye
Warden .....Aye
Wilson .....Aye
Woodmansey .....Aye
Mr. President .Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: Very well, Section 3 is adopted. Now, Section 4, sub. 1, has an amendment. On Section 4, page 2, you want to put a period after the word "laws" on line 6 and strike "prohibited by this Constitution". And then, in subsection 2, you want to strike the word "each" and put a capital "I" on "Initiative" and put an "s" on "petitions", and on line 2, you've got to strike the word-or on line 9, you've got to strike the word "proposal", which is wrong in this text, and it's got to say "of the proposed measure," and then strike everything else over to-strike everything but the "shall"-"proposed measure shall be signed by at least 5 percent of the qualified electors"--and that's all right. Then, down in the bottom, it should-strike the "A" on line 13, and make it a capital "P" for "Petitions", with an "s" on it, and strike the--after the word "which"-"at which the measure"-strike the "it" on line 15. Mr. Schiltz, when I reread this, I wish you'd check your text, because your text was wrong here. It now reads: "Subsection 2. Initiative petitions must contain the full text of the proposed measure, shall be signed by at least 5 percent of the qualified electors in each of at least one-third of the legislative representative districts, and the total number of signers must be at least 5 percent of the total qualified electors of the state. Petitions shall be filed with the Secretary of State at least 3 months prior to the election at which the measure will be voted upon." I think that's correct. Very well, that--and then, subsection 3 has no amendments in it. So we're about to vote finally on Section 4, subs. 1, 2 and 3; and we have made the corrections on page 2 for you, if you followed us. They're the corrections we just voted on in Style and Drafting in the Committee of the Whole. So many as shall be in favor of Section 4 as we read it here with the amendments in it, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim .....Aye
Anderson, J.H.. .Aye
Anderson, O. .....Aye
Arbanas .....Aye
Arness .....Aye
Aronow .....Aye
Artz .....Aye
Ask .....Aye
Babcock .....Aye
Barnard .....Aye
Bates .....Aye
Belcher .....Aye
Berg .....Aye
Berthelson Aye
Blaylock .....Aye
Blend .....Aye
Bowman .....Aye
Brazier .....Aye
Brown .....Aye
Bugbee .....Aye
Burkhardt .....Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate.. ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent

Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong. ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lore110 ..... Aye
Mahoney ..... Absent
Mansfield., ... Aye
Martin. ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 91 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 4 is adopted 91 to 0. Section 5, Mr. Clerk.

CLERK HANSON: "Section 5. Referendum"; containing two subsections and subsection 2 as amended from Committee of the Whole.

PRESIDENT GRAYBILL: Very well, subsection 2, on page 3, line 1, put an "s" on "petitions". That's all there is to it. Page 3, line l-an "s" on "petitions", making the word plural. Now, so many as shall be in favor of Section 5, as amended, please vote Aye on the voting machines; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask., ... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye

Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate .. .. Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray.. ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 86 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 5 is adopted. Section 6.

CLERK HANSON: "Section 6. Elections"; as amended in Committee of the Whole. Mr. President.

PRESIDENT GRAYBILL: Section 6 was amended on page 3, line 8; after the word "referendum", you want to put in the word "measures"— "initiative and referendum measures at the general election". Now, including this amendment, which we made in Committee of the Whole a few minutes ago, so many as shall be in favor of Section 6, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Absent
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Absent
Brazier ..... Aye
Brown.. ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Absent
Siderius ..... Absent
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Absent
Mr. President ..... Aye

CLERK HANSON: Mr. President, 85 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Section 6 is adopted. Section 7.

CLERK HANSON: "Section 7. Number of electors"; as amended in Committee of the Whole. Mr. President.

PRESIDENT GRAYBILL: On line 13, page 3, after the word "for", you should put in the words "the office of'-so it'll be "the number of votes cast for the office of Governor". This amendment was made in Committee of the Whole a few minutes ago. Including that amendment, all those in favor of Section 7 vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: I'll cast the ballot, then.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas.. ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Absent
Belcher ..... Absent
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye

Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 88 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Section 7 is adopted. Section 8.

CLERK HANSON: "Section 8. Recall." Mr. President.

PRESIDENT GRAYBILL: No. Section 8. Prohibition.

CLERK HANSON: Oh. "Section 8. Prohibition." Excuse me.

PRESIDENT GRAYBILL: Section 8 is Prohibition, lines 15 to 17, page 3. So many as shall be in favor of Section 8, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, I'm going to close the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye

Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Absent
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, 89 having voted Aye, Section 8 is adopted. Section 9.

CLERK HANSON: "Section 9. Recall." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 9, vote Aye; opposed, vote No. All right, has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Delegates understand they're about to change the rule here. Anybody want to change their vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J.H. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Nay
Arness ..... Aye
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Nay
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Nay

Melvin ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble.. .. .. Nay
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert .. .. Nay
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Aye
Skari ..... Nay
Sparks.. ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Nay
Woodmansey A y e
Mr. President ..... Aye

CLERK HANSON: Mr. President, 38 voting Aye, 54 voting No.

PRESIDENT GRAYBILL: By your vote of 54 having voted No, you have deleted Section 9, on Recall, from the General Government Article; and that means there is norecallin the—no constitutional recall in the state if we do this, so I guess we've done it. Very well, Section 10.

CLERK HANSON: "Section 10. Gambling." Mr. President.

PRESIDENT GRAYBILL: The Chair feels that Section 10, of which there are two, is really a ballot alternative. And the Chair feels you should vote on both of them at once. Does anyone disagree with the Chair on that? In other words, you can't-we've checked them as to style and drafting. They are inconsistent; and the point is, they're to be put on the ballot as an alternative. I see no point in taking a separate ballot on final adoption except as a ballot alternative. Very well. Everyone understanding that you're voting on the ballot alternative and the nature of it and the language of it, so many as shall be in favor of the two Sections 10 as the ballot alternative, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher.. ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Absent
Cate ..... Aye
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Excused
Delaney ..... Absent
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent

Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson.. ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Nay
Mahoney ..... Absent
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Nay
McNeil ..... Aye
Melvin. ..... Aye
Monroe ..... Nay
Murray ..... Excused
Noble ..... Aye
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 81 delegates voting Aye, 11 voting No.

CLERK HANSON: 81 delegates having voted Aye, the ballot alternative on gambling is adopted. Section 11.

CLERK HANSON: "Section 11. Boundaries." Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section 11, on Boundaries, vote Aye; so many as shall be opposed, vote No. Members of the body, the Chair just struck the closed vote before he wanted to. Does anyone here wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J.H. ..... Aye
Anderson, O ..... Nay
Arbanas ..... Nay
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Absent
Cate ..... Nay
Champoux ..... Nay
Choate.. ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Excused
Delaney ..... Absent

Driscoll ..... Aye
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Absent
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Nay
Jacobsen ..... Absent
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Absent
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Excused
Noble ..... Nay
Nutting ..... Excused
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Aye
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. President ..... Aye

CLERK HANSON: Mr. President, 32 delegates voting Aye, 57 voting No.

PRESIDENT GRAYBILL: 57 delegates having voted No and 32 having voted Aye, the boundaries are stricken from the Constitution. Having completed your balloting on Local Government, Article XI and-or Proposal Number 11-and General Government Proposal Number 12, the Chair will refer these to Style and Drafting for inclusion in the final Constitution—

But I'll hear Mr. Habedank first.

DELEGATE HABEDANK: Mr. President, I merely desire to ask a question. I assume that Style and Drafting can change "10" to "9" and that we won't end up with a gap because of what we've done.

PRESIDENT GRAYBILL: It would be the Chair's understanding that they could. There are a number of style changes that they have to make in terms of the final article, in terms of putting numbers on them and things of that nature. The articles are not all numbered, so I'm sure that they could make "IO", "9". Is there any other question?

(No response)

PRESIDENT GRAYBILL: We still have to adopt the Constitution as a whole. Very well, the Chair will assign these to Style and Drafting for that purpose. Now, ladies and gentlemen, without objection I think we'll be on Order of Business Number 11, Announcements. First of all, the Chair would like to say that, unless I am misinformed, our work is done, unless we make some changes, until the Style and Drafting Committee makes its ballot proposal, which they tell me will be ready. Then the ballot includes the other two parts, the calendar and the-well, I never can remember that word, but the part where we tell

what statutes should be amended, and I understand that will be ready for debate Wednesday morning. It will not be printed and ready for debate tomorrow. However, the Chair feels that something may come up tomorrow; and the Chair does not like to recess you over till Wednesday, because we wouldn't get paid then; and I think something may come up and many of us will be necessary, so the Chair intends, at the moment, to recess until 9:00 tomorrow. At 9:00 tomorrow, we may have a short meeting unless something comes up that someone wants to bring up. Now, the Chair would like you to be apprised that if you have something, please let us know and let's bring it up at 9:00 tomorrow. Let's not bring it up at 5:00 Wednesday afternoon after we've finished the other debate, because at that point, it's going to be too late to make the necessary and appropriate changes. As I think we demonstrated today, it's not always easy to get everything straightened out after we make an amendment in these things, so we will recess in a few minutes till 9 o'clock tomorrow. Secondly, the Chair-I don't know whether the notice has been put on your desks or not, but the Chair understands that there is to be a no-host dinner at the Montana Club on Thursday night-the same arrangement as before, $5, including two drinks, and the drinking will be on a different floor than the dinner this time. I believe it's the intent of the special committee that out-of-town guests-the out-of-town guests thatwe'reinviting, and we are inviting some out-of-town guests to the Friday morning final ceremonies-that they will be invited guests to that meeting, but otherwise it would be delegates. Then you should have in mind that we-1 haven't gotten a final time from Mr. Garlington, but it's my understanding that Friday morning we will have the final ceremony, including signing and so forth, which will doubtless take most of the morning, but we should be done and be able to adjourn some time after that, at the end of that ceremony on Friday, so you'd probably have the afternoon to leave town if you wanted to. Style and Drafting wants to be called into session immediately upon adjournment this afternoon. Now, with those preliminary announcements, are there other announcements from the floor?

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, Natural Resources, over here in the corner, right after adjournment, for the purpose of signing each other's committee pictures.

PRESIDENT GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, the members of the old Public Information Committee, the one that is being superseded by the Voter Education, will have a no-host dinner tonight at the Colonial at 6:30.

PRESIDENT GRAYBILL: Dinner for Public Information Committee, tonight at 6:30 at the Colonial.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman, I have an inquiry to make of the Chair in regard to your report on the budget the other day. I think you made the statement-and you correct me if I'm wrong-that we have been paid for two round trips to the Convention and that we would not be paid for the third one.

PRESIDENT GRAYBILL: I'm glad you mentioned that, not so much to clear it up as to call a meeting of the budget subcommittee, and actually, the whole administration committee should be available on recess tomorow, after our 9 o'clock session. That's right; we've only had two round trips. However, that's all that we've taken-that we've had to take. I'm aware that many of us took a lot more. The Rules Committee met with me on this matter and has recommended to the budget subcommittee and then to the Administration Committee that, because the Enabling Act specifies that we're to get three, that we pay three. Now, that's going to be taken up by the Administration Committee tomorrow, and the Budget Committee; let's say that it's going to berecommended that we pay three, but I don't know what the committee will do. And then the committee will make a report to this body. Very well, I think we're ready to stand in recess until tomorrow morning at 9 o'clock.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we adjourn until 9:00 a.m., March 21, 1972.

PRESIDENT GRAYBILL: The motion is to recess until 9:00 a.m., tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 3:50 p.m.)

March 21. 1972 **Fifty-First Day** **Convention Hall**
9:30 a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in session. The Convention will come to order. I'm sorry that we are a little late this morning, but as usual, we were working on the Convention's business. And if you'll all stand, Reverend Burkhardt will lead us in an invocation this morning.

DELEGATE BURKHARDT: Let us pray. We pause, 0 God, toward the end of our work, giving deep thanks for the gift of life itself, for the grandeur and quiet beauty of our beloved Montana. We pray that somehow the work we have done here may offer promise to those who come after us, and that we may always deeply appreciate the part that every person has played in this task. In the spirit of our Lord, Amen.

PRESIDENT GRAYBILL: Very well, we'll take attendance by voting Aye on the voting machines. Those who vote No are not present-at least mentally. (Laughter)

CLERK HANSON: Mr. President, may Delegates Campbell and Toole be excused this day?

PRESIDENT GRAYBILL: Campbell and Toole are excused.

CLERK HANSON: Delegate Conover, Delegate Cross, Delegate Dahood, Delegate Davis, Delegate Champoux. Delegate Davis.

PRESIDENT GRAYBILL: Very well, take the attendance.

CLERK HANSON: Delegate Warden.

Aasheim		Present
Anderson,	J.H..	Present
Anderson,	0..	Present
Arbanas		Present
Arness		Present
Aronow		Present
Artz		Present
Ask		Present
Babcock		Present
Barnard		Present
Bates		Present
Belcher		Present
Berg		Present
Berthelson		Present
Blaylock		Present
Blend		Present
Bowman		Present
Brazier		Present
Brown..		Present
Bugbee		Present
Burkhardt		Present
Cain		Present
Campbell		Excused
Cate		Present
Champoux		Present
Choate		Present
Conover		Present
cross..		Present
Dahood		Present
Davis		Absent
Delaney		Present
Driscoll		Present
Drum		Present
Eck		Present
Erdmann		Present
Eskildsen		Present
Etchart		Present
Felt,		Present
Foster		Present
Furlong		Present
Garlington		Present
Gysler		Present
Habedank		Present
Hanson, R.S.		Present
Hanson, R.		Present
Harbaugh		Present
Harlow		Present
Harper		Present
Harrington		Present
Heliker		Present
Holland		Present
Jacobsen		Present
James		Present
Johnson		Present
Joyce		Present
Kamhoot		Present
Kelleher		Present
Leuthold		Present
Loendorf		Present
Lorello		Present
Mahoney		Present
Mansfield		Present
Martin		Present
McCarvel		Present
McDonough		Present
McKeon		Present
McNeil		Present
Melvin		Present
Monroe.		Present

Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Excused
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Absent
Wilson	Present
Woodmansey	Present
Mr. President	Present

CLERK HANSON: Mr. Chairman, 96 delegates present, 2 excused, and 2 absent.

PRESIDENT GRAYBILL: Very well, the journal may so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana 59601; March 21, 1972. Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15 (2), Extraordinary Senate Bill No. 6, Chapter EX-1, Laws of Montana 1971, the licenses of the following lobbyists have been suspended, as of March 21, 1972, for failure to file statements of expense within the period specified by law: license No. 3-72, Henry E. Lohr; 28-72, David L. Jackson; 58-72, Roy G. Crosby; 59-72, D. H. Siewert; 79.72, C. S. Robinson. The suspension of Gerald McCurdy, license No. 39-72, reported to you on February 22, 1972, is still in effect. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Are there other communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Very well. Order of Business Number 4, Introduction and Reference of Delegate Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972, Resolution Number 16, introduced March 21, 1972: A resolution to the Montana Constitutional Convention describing the presentation of the ballot." Do you want it read?

PRESIDENT GRAYBILL: Yes, read it in its entirety, please.

CLERK HANSON: "Whereas, all articles will be presented separately for a Yes or No vote; Whereas, any alternate proposals will be presented separately for a Yes or No vote; Whereas, in case any article fails to pass the election, then the provision under that department of the 1889 Constitution will be in effect, except as where it may conflict with the intent of any section of the adopted articles of the new Constitution which, thereby, will take precedence over the 1889 Constitutional provision. Now, therefore, be it resolved by the Constitutional Convention, State of Montana: The ballot will be drawn in such manner that all articles will be presented separately for a Yes or No vote; All alternative proposals will be presented separately for a Yes or No vote. Introduced by Torrey Johnson." Mr. President.

PRESIDENT GRAYBILL: Very well. Mr. Johnson, your resolution is being referred to Style and Drafting, since it deals with their problems. Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, Mr. Johnson's resolution was taken into consideration last night by Style and Drafting and, by unanimous vote of the committee, rejected. Our minutes reflect the reasons therefor. Sufficient to say that we thought it was unduly confusing, that it came too late for any more serious consideration, and that it would probably be quite expensive.

PRESIDENT GRAYBILL: It's the understanding of the Chair that the point of Mr. Johnson's resolution was that we consider section by section on the ballot the Constitution--or article by article, not section by section-the new Constitution. In other words, vote on each article, article by article, on the ballot. And apparently Style and Drafting did have access to the resolution and did consider it.

Mr. Johnson, do you care to discuss it at this time, since my reference to that committee obviously is not going to be effective. I'd be happy to let you at least discuss it. If any problem arises, I might have to refer it to Rules, but I certainly want you to have a chance to discuss it.

DELEGATE JOHNSON: Thank you, Mr. President. Ladies and gentlemen, it seems like I'm always a day late and a dollar short--maybe two dollars in this case, if it's going to be expensive to handle. But, however,-and I am sorry that I didn't get this in 2, 3 weeks ago. I didn't believe it would be necessary. I thought that the ballot proposition would come up and we'd all have a chance to discuss it; and so, I guess I was a little naive in that department. I believe that if we present this ballot to thevoters of Montana, article by article, that it would stand a much better chance of being passed, and I think they would take more of an interest in it. I've heard this kind of talk ever since last fall, and the people would like to have it article by article. Maybe it isn't quite as efficient as presenting it all in one block, but there's one thing sure: if there's one or two articles in the area that are very controversial throughout the whole state, they might stand to defeat the whole proposition. And I would like to see the voters have a chance to do just exactly this: if they wanted to, vote out one of these particular articles; and if you understood, as it was read, my reasoning is that if one of the articles is defeated, that the old section in our present Constitution would take precedence, and then if there's a conflict overlapping intent--or conflict in meaning with any of the sections in the new articles, which you all are aware there are some repetitious sections, repetitious insertions in separate articles that might overlap in meaning-and so, there my intent is that the adopted new proposal would take precedence over our present Constitution article in the area which we are--now, I suppose I've confused you more-but, in any event, I do not see a great problem with this. I think it could be worked out very handily, and I'd feel a great deal better about the whole situation, myself; I know that. I don't—this is an area where I think that we stand the best chance of putting this new Constitution across, and I hate to see it lose. There is a chance it'll lose, you know. You have to admitthis, andafterall the work that was put on it-there's a little bit of every one of us-or maybe quite a little bit of every one of us in this new proposed Constitution, and I'm sure you all feel as strongly as I do about it-the waste of time and the waste of money--and we want to do something for Montana-and this is a very vital thing and probably-and it is, without any doubt, the most important endeavor made in the several generations for the good of Montana. If there's anybody else that wants to talk on it, I'd sure like to hear them. I think you all understand my position. I'd like to answer any questions, if any come up, that you think I might be able to answer. Thank you very much for your consideration.

PRESIDENT GRAYBILL: Mr. Johnson, will you yield to a question from the Chair?

DELEGATE JOHNSON: Yes, sir.

PRESIDENT GRAYBILL: As we adopted these articles, I'm not sure that we made sure that they fit particularly well with the old Constitution, and I'm concerned, for example, as to where we put the veto power. The veto power is now in our Executive Article and the veto power in the old Constitution is in the Legislative Article, and we might be in a position that the wrong one got adopted and we wouldn't have any veto power or we might have two veto powers. Have you thought about that?

DELEGATE JOHNSON: Well, I think that, Mr. President, that the-if Style and Drafting couldn't take care of it, well, we'd have to leave it up to the Legislature to interpret it or make an amendment to cover it. But I insist that the new—

whichever proposal passes would have precedence over the present Constitution article it would have been put in place of had it been defeated.

PRESIDENT GRAYBILL: Well, my point is, if the new Legislative Article passed but the new Executive Article did not, then we wouldn't have any veto power.

DELEGATE JOHNSON: Well, yes, it's in the Legislative—

PRESIDENT GRAYBILL: No, it's in the Executive in our new one and it's in the Legislative in the old one. Well, all right, I just wanted to call-the problem is that I'm not sure the new Constitution dovetails with the old one so that, section by section, we'd have anything. Mr. Johnson, I think the problem is this. You've presented this resolution; I referred it to Style and Drafting; Style and Drafting has already considered it. It seems to me that you've tried to reach by resolution what you probably can attempt to reach by amendment when Style and Drafting presents its ballot substantive proposal, which I think will probably be this afternoon or tomorrow. Now, when they present their ballot proposal, their ballot will suggest that we vote on the Constitution and these three side issues; and at that time, by amendment to their ballot proposal, you could propose that we do it section by section-or article by article. And at that time, it would seem to me the body could debate whether they wanted to do it your way or the way Style and Drafting has proposed. So I think that's your best shot now. It doesn't do me any good to refer it to Rules, because by the time it got back, nothing would be accomplished.

DELEGATE JOHNSON: Well, Mr. President, you're suggesting then that I present it as an amendment or a proposal?

PRESIDENT GRAYBILL: I'm suggesting that, when the substantive report from Style and Drafting on ballot-on the ballot form-comes before this body for debate that, naturally, you can amend it; and your amendment, I presume from your resolution, would be to have it considered article by article; and at that time we could debate it as a body and we'll either agree with you or we'll agree with them.

DELEGATE JOHNSON: Thank you very much, Mr. President; I'll do that.

PRESIDENT GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, it seems to me it's a little irregular to come out and have a committee report before something is referred to them. I think that we should at least have the courtesy shown us by the Style and Drafting Committee, if they made a decision on something that hadn't even got to them, and I'm sure it didn't get to the Chair until just now. Could we have a reason why they did this ahead? Did they—what's the reason? Could we have some answer from the Style and Drafting Committee?

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Johnson brought it up to the committee and handed it to us and said, "I present this resolution to you. What is your action on it?"And we took action on it. When it came up this morning, the Chair referred it to the committee. I advised the Chair that we had already taken action and it would be useless to act on it again.

PRESIDENT GRAYBILL: Yes, Mr. Johnson took it, Mr. Mahoney, to the committee.

DELEGATE MAHONEY: Mr. President, when Mr. Johnson's resolution is referred to the Chair and like it was done this morning-now, out of courtesy, he probably took it to them; but this was no official action because it hadn't got to them officially. And I think that the Chair should—is—when they go out and you refer it and then they give you a report right then, I think this is a new thing. I've never heard of this, Mr. Chairman. I certainly don't like it.

PRESIDENT GRAYBILL: Well, the Chair did refer it to Style and Drafting, and I'll leave it referred and maybe they will come in with a report, Mr. Mahoney. All right, are there any other motions or resolutions?

(No response)

PRESIDENT GRAYBILL: Very well, we'll be on Order of Business Number 8, Unfinished Business.

Mr. Champoux.

DELEGATE CHAMPOUX: Pages, sir?

PRESIDENT GRAYBILL: Yes; pages, sir.

DELEGATE CHAMPOUX: Right. It's my pleasure this morning to introduce the new pages this week. Would all the pages come forward at this time. We also have a number of old pages

that-shall I use that term, "old"?-former pages that have come back and are donating their services without getting paid. The new pages are Marilyn Haugen of Augusta--would you please stand-Elizabeth Schrader of Great Falls; Peggy Quinn of Helena; Kathy Blake of Kalispell. And the former pages donating their services are Jack McLean of Brady and his twin brother, Jim McLean; Heidi Headapohl of Helena; Susan Leaphart of Helena; Tala Skari of Chester-she's the daughter of Carmen Skari; Carl Rostad of Helena. And Mr. Ray Lohman, at this time-and he hasn't had the opportunity to publicly express his appreciation for all of the pages that worked at this Convention-but he asked me this morning if I would put in the record his appreciation to all the pages that have worked at this Convention. They have been, he says, just great, and I think we all can echo that statement. Thank you very much.

(Applause)

PRESIDENT GRAYBILL: We want to thank you pages very much for helping us, and we're looking forward to the rest of the week. And your names will appear in the proceedings for today, and we'll see that you get a copy of the proceedings to take with you.

Very well, Order of Business Number 9, Special Orders.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 11, Committee Announcements and Other Announcements. Now, the Chair has a couple of announcements. The Montana Historical Society has asked me to remind the Convention delegates that the library archives there want to preserve the personal records collected during your connection with the Constitutional Convention. One-third of the delegates have expressed an intent to deposit their papers in the archives, and anyone else caring to do so would be most welcome. Records of the commission and the convention will be preserved in the society archives, but they would like your personal papers as well—campaign material, correspondence, notes, or any input that helped you decide on the issues for historical preservation. You can make arrangements for deposit now or in the future by a call or a letter to the Montana Historical Society archives. The number, if you want to write it down, is 442-2694-442-2694-and I was informed that if you want, they'll even send a box to put it in. So, just call them up and they'll help you clean up your desks. Then, as I understand it, there are reservation lists at the-Mr. Toole or my secretary has a reservation list for Thursday night's dinner, and I overheard a conversation yesterday which someone seemed to be implying that maybe we weren't inviting your wives. Of course we're inviting you and your wives. The suggestion was that we may have some out-of-town guests from the Convention and we're not really going to be too strict on in-town guests; but in other words, out-of-town guests and your wives, of course, are invited. Then, committee meetings. I'd like to announce the following committee meetings. I'm sure that Style and Drafting is going to meet immediately upon adjournment. Isn't that right, Mr. Schiltz?

DELEGATE SCHILTZ: That's correct.

PRESIDENT GRAYBILL: And the Administration Committee, including the budget subcommittee, should meet in the Rules Committee room immediately after-not after adjournment but after the adjournment of the meeting after adjournment, which I'll tell you about in a minute. So, in other words, we are going to meet when we break up here this morning. Mr. Murray, is the Rules room full of equipment, or is it available?

DELEGATE MURRAY: Mr. President, I understood that they were going to do some interviewing in that room for the film, so that it would not be available.

PRESIDENT GRAYBILL: Let's move the Administration Committee meeting up to the Legislative Committee room, whatever that is—428—is that right? What's your room number up there, Mags?

DELEGATE AASHEIM: -434.

PRESIDENT GRAYBILL: -434. Anyway, the committee room. The Administration Committee meeting will be in the committee room upstairs, then, after adjournment. Now, the select committee on the ceremonies Friday will meet-at 1 o'clock, did we say, Mr. Garlington?—

DELEGATE GARLINGTON: (Inaudible)

PRESIDENT GRAYBILL: —1 o'clock.

That could meet in my office; there's only five of us. That will be fine. And the Voter Education Committee should meet this afternoon-on adjournment this afternoon, which at this time is not too clear. Now, to explain to you what I think the program for the day will be, Style and Drafting is working on a problem involving the ballot, which may require debate at 2:00 p.m. this afternoon, so we are planning to recess the Convention until 2:00 p.m. this afternoon while Style and Drafting completes their work, and you probably should anticipate a debate on bicameral-unicameral aspects of some nature at 2 o'clock this afternoon. Then, between then-or immediately now, what we would like to do is have our adjournment now until 2:00 p.m., but it has been suggested by a number of you, and especially by some of the members of the Public-of the Voter Education Committee, that it might be well to have a short discussion this morning of some of the aspects of what you're going to be up against in terms of meeting the public or talking about the Constitution when you get back to your home communities. In other words, we want to have a little bull session in which we talk about what we might want to do when we each get home, and we'll discuss what we know now of the voter-or of the kits that we'll give you. So, immediately upon adjournment, those of you who are not involved in the Style and Drafting Committee meeting might wish to remain; and I'm hopeful that the committee chairmen will be willing to discuss very briefly the-what they consider significant about their particular committee's contribution to the new Constitution. In other words, we'll have about 45 minutes or an hour of discussion; and then, by 11 o'clock, we ought to be able to break up. Mr. Harbaugh has sent me a message. The answer, Mr. Harbaugh, would be the same as to Mr. Johnson-that you can take it up at the time the ballot is proposed. Very well, are there other announcements?

Mrs. Warden.

DELEGATE WARDEN: I would like to talk about two things, Mr. President. First, there may be one more issue of the daily clipping sheet. They are printing the Constitution downstairs, and we're going to try to Xerox the copy today. If it works, fine; and if it doesn't, that will be it-the one you got yesterday. The second thing is concerning the pictures that the Highway Department took. Two or three people have been to me, saying that they got two copies of the wrong one and not the one that they ordered. Now, I don't know whether I can solve this problem or not, because they, too, are in a bind because their crews are out on the road taking pictures and such things for the Highway Department; but if any of you have any problems, get them to me right after adjournment so that I can at least call and find out. It may be that they were put in the wrong packages, but I'll try to do what I can, but I don't promise miracles. Thank you.

PRESIDENT GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. President, I'd like to announce a very brief meeting for the Bill of Rights Committee in the committee room immediately after adjournment.

PRESIDENT GRAYBILL: You mean after the second adjournment, don't you? You're going to stay and talk with us a few minutes, aren't you? I was counting on calling on you.

DELEGATE DAHOOD: Yes, Mr. President. Immediately after the second adjournment. Thank you.

PRESIDENT GRAYBILL: Thank you.

All right, Mr. Eskildsen, may we have a motion until 2:00?

DELEGATE ESKILDSEN: Mr. President, I move we stand in recess until 2:00 p.m. this day.

PRESIDENT GRAYBILL: The motion is to recess till 2:00 p.m. this day. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 10:04 a.m.—reconvened at 2:10 p.m.)

PRESIDENT GRAYBILL: Mr. Woodmansey, would you close the back doors for us, please. The Convention will be in order. Ladies and gentlemen, we will start at Order of Business Number 1 and proceed through, in a moment, without objection, to Order of Business Number 10. You recall that we recessed this morning until this hour in order to take care of the ballot proposal of Style and Drafting. Mr. Clerk, Reports of Standing Committees.

CLERK HANSON: "Mr. President. We,

your Committee on Style, Drafting, Transition and Submission, having had referred to it Resolution Number 16 that all articles be presented separately on the ballot for a Yes or No vote; that any alternate proposal will be presented separately for a Yes or No vote; that in the case any article fails to pass the election, then the provision under that department of the 1889 Constitution will be in effect, except as where it may conflict with the intent of any section of the adopted articles of the new Constitution, which thereby will take precedence over the 1889 Constitutional provision, and having considered the same, report as follows: The Committee voted unanimously to reject the resolution for the reasons that the proposed plan for entire, too cumbersome, that it would be unintelligible and confusing to the voters, unduly expensive, and received too late to implement. Signed: John M. Schiltz, Chairman, Style, Drafting, Transition and Submission." Mr. President.

PRESIDENT GRAYBILL: Very well, the Chair will accept the resolution and file it; and, as we discussed this morning with Mr. Johnson, the matter may come up today when we discuss the ballot proposal, by way of amendment. No, I'm not going to adopt or not. I'm going to just accept and file the committee report. Now, Mr. Clerk, what other reports of standing committees?

CLERK HANSON: "Mr. President. We, your Committee on Style, Drafting and Transition herewith submits the proposed ballot for consideration by the Convention. Signed: Schiltz, Chairman." Mr. President.

PRESIDENT GRAYBILL: Very well, the adoption schedule which is now submitted by Style and Drafting is hereby referred to Order of Business Number 10. Without objection, we'll be on Order of Business Number 10. Is there objection'?

(No response)

PRESIDENT GRAYBILL: If not, Mr. Eskildsen, do you want to move?

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole. All those in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole, Graybill, Chairman)

CHAIRMAN GRAYBILL: Very well, members of the committee, we have before us on General Orders the adoption schedule which— and the transition schedule and the official ballot in three different versions, all of which are submitted by Style and Drafting. Now, it's my understanding that perhaps the best way to approach this subject is to have the Style and Drafting Committee explain what they have done here; and then, after their initial explanation and before debate, we will start and we will adopt-or we will read and adopt, in the Committee of the Whole, either a ballot or the adoption schedule or the transition schedule. In other words, we'll proceed through and we'll debate it, but after the explanation. So, without objection, we will now turn the meeting over to Mr. Schiltz, who will explain first, and when he's finished his explanation, we'll then consider the matter before you.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman and delegates. I think, Mr. Chairman, I would like to say that we might not be completely finished with the adoption schedule. We submitted it with the proposed ballot because we were hung-up on the ballot. Now, the adoption schedule and the proposed ballot will come in with our final report tomorrow morning, if we get all these matters resolved, with the complete Constitution in connection with it. But if that develops, I'm not prepared at this moment to do more than discuss the ballot problem, so perhaps we can take whether we finally pass it later.

PRESIDENT GRAYBILL: Very well. You go ahead, and we'll start with the ballot proposition, and then I'm sure that the adoption schedule and the transition schedule can be discussed and dealt with later.

DELEGATE SCHILTZ: All right. You all should have now on your desks what we call our "adoption schedule". As I explained to the President, this will be attached to our final report. Now, the thing we're concerned with most are the three ballots that you'll find on the back. First of all, you should be aware that in Report Number 3, at page 48, the Constitution of Montana, Article XIX, Sec-

tion 8, authorizes the Convention to do three things: revise, alter or amend the Constitution. Now, the Convention--as provided in Article XIX, Section 8: "The Convention's revisions, alterations or amendments should be-shall be submitted to the electors. Unless approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect." Now, Section 17, sub. 9, of the Enabling Act, the act under which we're operating, provides that if a majority of the electors voting at the special election held for the ratification of the Constitution shall vote for the proposals or that those-if they shall vote for the proposals of the Convention, they shall then be adopted. Now, there are six lawyers on the Style and Drafting Committee, and I am confident of the talent and ability of each one of them, and we are agreed that any choices that are put to the electors must prevail by a majority of those voting at the Constitutional Convention ratification election-or the Constitutional ratification election. Now, I want to make that very clear, and I think I'll illustrate that on the blackboard, if I may.

(Delegate Schiltz illustrating on blackboard)

DELEGATE SCHILTZ: Now, if you'll look at the blackboard, you'll see I've put up there "Constitution", by which I mean Constitution as a whole, the entire document. If 200,000 people vote on the Constitution, that will determine the number of votes cast at that election. Now, if we had alternate Number 1 which had two choices and there were 96,000 votes cast for the first choice and only 94,000 cast for the second choice, neither one of them would carry. The first-the 96,000 vote--wouldn't carry because, as we interpret the Enabling Act, it would require 100,001 votes in order for that proposition to be adopted as a part of the Constitution. That, in a nutshell, is what our problem is. Now, bear in mind that Style and Drafting received the Legislative Article from the Convention without any preference having been stated for either unicameral or bicameral. Now, if you will refer to the ballot on the back of the final report-the first ballot you come to-you will see that the first issue on the ballot, as much as I have put it up here, is for approval or disapproval of the entire Constitution, which contains both unicameral and bicameral sections, neither one having been adopted by the Convention. Now, the second issue on that ballot is whether the voter favors unicameral or bicameral. Now, if that were put out as that first ballot we drafted and as was more or less dictated by our having the Constitution with both of them in it-if that vote came out that way, then we would have neither unicameral nor bicameral and we'd be back to what we had in 1900-w 1889, or the present Legislative Section-Article. Now, Style and Drafting sees the possibility, as I indicated that neither one of those would pass and we'd be back where we started. Accordingly, Style and Drafting came to the conclusion that one or the other, unicameral or bicameral, should go into the Constitution. In other words, this Convention should adopt one or the other of them, so that that one for sure is in the Constitution, and then submit to the voters which one they want; and if they achieve a sufficient number of votes, the one that's left out would replace the one that's in; but bear in mind that it must, under this example-to overcome the one that is in there, it must achieve 100,001 votes, according to our analysis and interpretation of the Enabling Act. Now, there is one other option that we have and that's the third ballot--would you turn that over, John--where instead of two—yes—now, that revised ballot number 1 is what some of the people are interested in-in other words, they feel that if one goes in, that particular type of legislature has a definite edge in the balloting by the people, and so they would like to have one go in but nevertheless give the people two choices, one or the other. Now, if one of them-in other words, that would put them on an equal basis in the choice department but not on equal basis in what is included in the Constitution itself. Now, the third ballot is one that would put one or the other in and only give the voter one choice: do you want to take it out or do you want to leave it in? Now, before I finish that explanation, and that's the extent of what I have to say, except that so far as the Style and Drafting Committee is concerned, the gambling proposition is on all fours with the legislative proposition. In other words, as we got the material from the floor, we were-and you'll see that subsection 10, or whatever it is in the General Government, provides that both of them are in the Constitution, so that would put them in this same posture. Now, after you dispose of the legislative thing, I would hope that you would also dispose of the gambling proposition. We do conceive that we, as the Style and Drafting Committee, can choose which should go in in both instances, both legislative and gambling, but the legislative was such a vital thing that we chose not to do it but are going to be bound and guided by what you do on the floor. Now, the gambling proposition is not all that vital, in the view of the

committee, and we, if you don't act, will select one or the other to put in the ballot or to put in the Constitution, with the alternate to go on the ballot as a one-shot decision. Then you can reverse us if you want, but we'd rather you did both of them. I want to call your attention to one other thing. The committee is unanimous that it does not want any more options put on the ballot. We feel that this is plenty. All your fears were ungrounded. We only have on the ballot what we were directed to put on the ballot-or which-or what we must put on the ballot because we had no other choice. Thank you.

CHAIRMAN GRAYBILL: Very well, the Chair understands Mr. Schiltz to have said, on behalf of the Style and Drafting Committee-The Chair understands Mr. Schiltz to have said, on behalf of the Style and Drafting Committee, that they consider there to be a problem in the nature of the ballot. The Chair isn't going to explain this if we are going to sign books, so we're either going to listen or else let's quit signing the books till we've settled this. We have a serious problem here, and maybe I'm only explaining it to sort of clear my own mind, but the Chair understands Mr. Schiltz to have said that the ballot problem is this: what they call "official ballot" has a flaw in it because, assuming we could get 51 percent on the first proposition, for or against the Constitution, if we put the unicameral and the gambling issue as clear-cut alternatives, then each alternative must also get 51 percent-at least one of the two must get 51 percent or we have nothing in the Constitution about unicameral and gambling. It doesn't matter too much on the abolition of the death penalty, since there's nothing in there now and the 51 percent would merely add something, so as I understand the Style and Drafting Committee's position, it doesn't like that proposal, but that's a possibility. The second possibility, which they call "revised ballot number 1", has the effect of putting one proposition in the Constitution. Let's say the bicameral goes in the Constitution and the language down in III about the-the language about gambling goes in the Constitution-namely, "there shall be no gambling"-and then you put on the outside two propositions-(a) unicameral, (b) bicameral-and whichever one wins replaces what's in. Now, if the bicameral won on the outside and was already on the inside, it replaces itself, and so the bicameral wins. If the unicameral wins, it would replace the bicameral; and obviously, we could reverse those and put unicameral in. In other words, we could put into the Constitution the language of one of these two proposals and, in the case of gambling, the language "there shall be no gambling", and then we could substitute by whether either of the two alternatives got 51 percent. The advantage of this kind of ballot is that bicameral and unicameral both appear and people get a choice between two differents, and on the gambling thing, they get a choice between two differents. Then, as I understand it, the third ballot again puts one of these propositions in. It either puts unicameral or bicameral in and, in the case of gambling, it would put in the language "there shall be no gambling"; and then it puts the opposite one on the outside, and if it got 51 percent, it would replace. Now, the disadvantage to that is the one on the outside has, theoretically, a less chance than the one in the body because people may vote for the main proposition and not vote on the lesser one. Then the fourth thing I understand them to have said is that they do not want any more options. Now, I'm not sure how they want us to proceed. There are, of course, other alternatives than have been presented here, and we can discuss these alternatives. The Chair would have preferred to have an alternative and let you amend them, but the Style and Drafting people are concerned and want a discussion--or want our advice on how to do this. The Chair has at least one other idea of his own, and I presume many of you do, too. Mr. Schiltz, is the Style and Drafting Committee prepared to move any one of these ballots as the ballot?

DELEGATE SCHILTZ: No, your Honor—or Mr. Chairman-(Laughter)

CHAIRMAN GRAYBILL: You've fixed it so you and I can't go on the court, Mr. Schiltz. Now let's-(Laughter)

DELEGATE SCHILTZ: I tried to fix it so we could. But, in any case, we conceive the problem to be this: that if we had chosen one or the other of these, we would have had a debate tomorrow on the up or down of what we chose. So, in the interest of time, which is extremely tight, we asked the leadership if a debate could be scheduled so that we could get the sentiment of this Convention-or this committee before we did it so we'd eliminate that debate on Wednesday or Thursday, anticipating that it might involve some time. So, I don't want to move one or the other unless that would-1 certainly wouldn't move the one that we got hung-up on.

CHAIRMAN GRAYBILL: Well, all right,

I understand that the Style and Drafting Committee doesn't want to move any. I think the Chair will operate on this basis. We'll open the matter for discussion; people may, if they care to, move them; and we'll vote on them and dispose of them or amend them or come back to them as we please. And when we get through, we may or may not have some solution. Very well.

Mrs. Warden.

DELEGATE WARDEN: Mr. President, I would just like to say that I have looked through the first, second and third ballots; and as one who has worked in the polling places for several years, I would say we'd better make it simple or we will have nothing but confusion, because the first one is relatively simple-1 mean, a small amount of wordage. I think that's fine. I would like to see either the bicameral or the unicameral put into the Constitution, and I would prefer the unicameral, but I think we should make the wording on the voting as simple as possible because when you have too many words, people are confused. They don't like forms and they would rather not vote on something if it's too complicated.

CHAIRMAN GRAYBILL: Mr. Swanberg, you were up.

DELEGATE SWANBERG: I was wondering if we could have the Chair's idea? You indicated you had an idea. Do you care to disclose it at this time, or do you prefer to wait awhile?

CHAIRMAN GRAYBILL: All right, I'll tell you what my idea is. It occurs to me that when people vote on Proposition 1, for or against the Constitution, that if we let people who vote NO then vote on the other propositions, we're giving them a second shot that they maybe don't need. I think we should say that if you vote Yes, you can vote on the others and if you vote No, you can go home. It seems to me-1 understand a lot of people don't like that, but either way you do it, one side gets an extra vote; and I'd like to see the side get the extra vote that's voting for the Constitution. But maybe that's unfair. But, in other words, if you did that-you see, it doesn't make any difference if bicameral gets 51 percent of the votes if the Constitution, in fact, gets 49. Once the Constitution is dead, it doesn't matter what happens down below. So it seems to me that we ought to make it a rule of our election, and I think we have thatright, that you can vote for or against the Constitution, and if you vote for the Constitution, then you may choose what you want on the other ones. But I— Others may not agree, but that's my idea.

Mrs. Bugbee was up next.

DELEGATE BUGBEE: Mr. Chairman, I agree with Mrs. Warden very much. The thing that-this is difficult to understand, but I think weighing difficult words versus difficult ideas is one thing that Style and Drafting and all of us have to take up. Now, I, for instance would like to go on record--I don't even like the word "abolishing". I don't think many people really know what that word means, and when you say "for abolishing", you're talking-"for" is a word for something, and in the same word, you're having a word that is against something. I think that in itself is a confusing idea. And then, I think down--and I'm on the official ballot, the first one, "for allowing" the Legislature or the people to authorize gambling. This is a complex idea to have in a ballot, and I think overly complex, and it's a difficult one to weigh.

CHAIRMAN GRAYBILL: Mrs. Bugbee, I think your point is extremely well taken. I don't think, however, that Style and Drafting intends to imply that this is the wording they would suggest. I think-am I wrong, Mr. Schiltz? You're trying to discuss a form and not the words?

DELEGATE SCHILTZ: That's right, at this moment. We welcome those ideas, but I assume they would be changed tomorrow. The thing we're really interested in is which basic form they're interested in. Now, I just explained to Mrs. Warden behind me that certainly we aren't going to write opposite that box on, say, the second revised ballot, either "unicameral" or "bicameral". We're just going to put the Constitution in as it is, and that's only explanatory.

CHAIRMAN GRAYBILL: And there's been suggestions made that you use the one house and the two house language, and so forth, so let's presume for the benefit of today's debate that we are going to clean this language up as we've cleaned all the rest of it and we're going to make it just as simple languagewise as possible. But let's not argue whether we should use "against" or "for" or "abolish" or anything; let's argue the form. If we can decide on the form, at least Style and Drafting can go forward.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, this probably isn't going to come out this way in every case, but I notice on this first ballot, the

leading ones here, which I think have a little advantage when they go into the polling booth—will these be changed with alternate ballots-so many hundred ballots run and then these will be rotated?

CHAIRMAN GRAYBILL: That's what should be done, Mr. Kamhoot. You're absolutely right. The ballots should not always be in the same form, I think, but that would be a matter for the Rules Committee to see that the Secretary of State did.

DELEGATE KAMHOOT: Could I put a question to Delegate Schiltz, then?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE KAMHOOT: Yes, John. Is this your intent, that these would be rotated every so many hundred ballots?

DELEGATE SCHILTZ: We didn't even consider that, and that is a matter, as Mr. Graybill said, for the Rules Committee when they deal with the Secretary of State. I would prefer that it—personally, I would prefer that themostimportant things be at the first and that they stay that way on all ballots. I don't know what thelawis on that. I do know that you must rotate candidates, and I don't-I'm not sure that you rotate constitutional amendment provisions because the one on the bottom usually loses, so I would guess that that's not the law, but I haven't looked it up.

DELEGATE KAMHOOT: Well, Mr. Chairman, I would suggest here now, on these four proposals, looking down them, of course the first one, for the proposed Constitution, would probably have a little advantage, and this may be fine. I think we should all maybe feel that, but when you go to the next one, you have unicameral legislature first-I would think that the bicameral people would not like this too well; and you go to the third one and you have, "For abolishing the death penalty"—I would suppose the ones that are not for that would not like this. And then, as you go to the bottom one, of course, on the gambling, you have the same situation. And I find myself, outside of the first one, perhaps-I would feel I was in the minority being on the last box there. Thank you, Mr. Chairman

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think the Chair brought up a very fundamental question here that I think we should resolve before we decide anything farther, and that is the matter of people who vote against the proposed Constitution, whether or not they should have the right to vote on any of the other alternatives. It seems to me that the Chair would be in error there when he said that those who voted against the Constitution should not have the right to vote on the other propositions, because no matter, they will have to live with the Constitution if it is adopted. Consequently, they should have a right to vote on these other alternatives; and, Mr. Chairman, if it is in order, in order to settle this now, I shall so move, if that-if my motion would be in order, Mr. Chairman.

CHAIRMAN GRAYBILL: I'm perfectly willing it be in order.

DELEGATE AASHEIM: That anyone who votes against the proposed Constitution should also have the right to vote on any of the other alternate proposals.

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim has made a motion to the effect that those who oppose the Constitution by vote-that is, those who vote against the Constitution shall be allowed to vote on the other propositions nevertheless. That correctly state your proposition?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Very well, is there discussion?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I think, too, that we're going to have to permit this, because some people may be more interested in voting on the-one of the alternate proposals, such as gambling or the death penalty, and it just may upset them enough that they wouldn't vote for the Constitution. I was wondering, could I ask Delegate Schiltz a question about another matter on the ballot, or is that out of order now?

CHAIRMAN GRAYBILL: Well, we have a motion on the floor. I think we should stay fairly close to it-if it relates to this motion. Let's settle this matter. The only way we're going to get it settled is to start settling it.

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, what documentation do you have for suggesting that we could use a solution such as you have offered? I know Delegate Bates and Aasheim have indicated that they don't think it could be done.

CHAIRMAN GRAYBILL: Well, I think that we have to get a majority. I agree with the committee that we have to get a majority on each proposition, but they have demonstrated that there are ways of stating the ballot so that you can-so that if you get a majority on the Constitution at all, you have a majority on some proposition.

DELEGATE BLEND: I understand all of that.

CHAIRMAN GRAYBILL: Now, once you have that, my aim-if you want to know my full aim-my first aim is, I would like to adopt the Constitution; therefore, I want to encourage people to vote for the Constitution, and so I want to have the rules that in order to vote on these other funny little things, they have to play the game and vote for the Constitution. Now, that's my purpose or reason. As far as my authority, it matters not, I don't think-it doesn't matter at all ifnothing gets 51 percent down below-if anything gets 50 or 60 or 80 percent down below and we haven't got 51 percent up above, it doesn't make a whoop of difference; and it seems to me that we're talking about what Mr. Holland was talking about the other day-"double-shotting" it. The present time, we have a Constitution that does not allow gambling, so you could vote against the Constitution and then vote No on the gambling and you'd have two shots at not allowing gambling. I don't know, that seems to be somewhat offensive to me. I think they voted against the Constitution, they voted to not allow gambling and they shouldn't be allowed another shot atitin casetherest ofus vote for it. They should have to vote for it in order to vote for the Constitution. Now, I'll grant you that that's a substantive rule of the game that this Convention would have adopted and that even in spite of it, we would have to get 51 percent on all the propositions. But if we got 51 percent on the ballot, then I would be in favor of one of the ballots which allows us, then, automatically to get one of the other propositions in; and I just think it would--we'd have a better chance of passing the Constitution. I'm greedy, I guess.

DELEGATE BLEND: Well, it occurs to me that that would be the case if we knew that we were in the clear and could get a legislature. Thank you.

CHAIRMAN GRAYBILL: Now, the Chair would like to say one other thing. This has been a question directed to me, and I am not going to try and monopolize this discussion, but I am going to-1 would like to take the view, today, that I might participate in this argument. This seems to me to be a little different matter than the substance; and I'm not going to monopolize it; and everyone else can have their chance to speak, too; but please don't-if anyone is offended by my doing this, why, I'll be glad to relinquish the Chair, but otherwise, I'll just comment if someone asks.

Mr. Romney, you were up.

DELEGATE ROMNEY: Mr. Chairman, with respect to your proposal, as I understand it, the people would vote on the Constitution itself and those who voted No would not be permitted to vote on the other three proposals. Is that correct'?

CHAIRMAN GRAYBILL: That's right.

DELEGATE ROMNEY: Now, if you had -thank you, sir. Now, if the vote was close and— say a hundred and ten thousand voted for it and ninety thousand voted against it, the ninety thousand would then have no vote.

CHAIRMAN GRAYBILL: On what?

DELEGATE ROMNEY: The hundred and ten thousand would be voting on the other three propositions—

CHAIRMAN GRAYBILL: Right.

DELEGATE ROMNEY: -and if they broke in the same proportion, what would be the situation with respect getting the 51 percent under the Enabling Act?

CHAIRMAN GRAYBILL: I would use a form like ballot number l--revised ballot number l--which, in fact, places something in the Constitution so that when they voted For, they would have automatically voted for something.

DELEGATE ROMNEY: And that would be sufficient, you think?

CHAIRMAN GRAYBILL: Right. And then it would take 51 percent to take that out of there.

DELEGATE ROMNEY: That would take all--would that take care of any legal hurdles?

CHAIRMAN GRAYBILL: Well, we've got as many lawyers on this as we got opinions and—
Let's see, Mr. Davis, I think you're next.

DELEGATE DAVIS: Mr. President, if I may digress, I am happy that you are participating in this, and I may not have another opportunity, but I want to thank you for your leadership throughout this thing. On this particular issue, I most-1 have a very respectful concern. I, too, have thought for a long time the more issues you put on the ballot, you're inviting a double negative. In other words, a person will say, "I'm against the Constitution": and if something in the Constitution really concerns, they're going to vote against it, perhaps; and then they'll vote against-they'll vote down below. But, on the other hand, when we started out here with the Bill of Rights and people-the right of people to disagree, the right of people to vote, the rights of minorities, this would be a minority that then would be deprived of their right to vote on these other issues just because they didn't prevail on the first. It seems to me, wouldn't we be getting into some sort of inconsistency? In other words, in our desire to pass the document, if we disenfranchise those people who disagree with us-in other words, I should have the right, assuming that—say, I'm against the Constitution, but in the event the majority wants the Constitution, I should still have the right to be for or against the death penalty or unicameral or bicameral. It gives me a great deal of concern-I'm happy there are not more issues than this on the ballot, and I was hopeful there wouldn't be this many, but it seems to me we may be jockeying ourselves into a place where we're preventing whatever the minority it might be, assuming it is a minority, from voting on what, in effect, are constitutional amendments in three instances; if you don't vote for the first one, then you're not able to participate and vote on the type of government you want to live under, even though the majority says, "We want that Constitution," I say "I don't; but if we do have it, I still want gambling in or out, or death penalty in or out, or still want the right to vote on the type of Constitution I live under." I think we've got a fundamental difference ofopinion, and as I said at the outset, I think you've done a wonderful job—which doesn't enter into this-and all of our leadership, and I'd like the record to show that I'm sure that's the consensus of everybody here. On this particular issue, I'm glad you got the ball started, because someone had to, but it seems to me we're getting around to the place where we're-in our desire to pass the document, we may be disenfranchising a lot of people at the end that we were giving a lot of rights at the beginning that we're going to be taking away from them before we get through with the ball game.

CHAIRMAN GRAYBILL: Mr. Harper, I think you were next.

DELEGATE HARPER: Thank you. I think I agree with Carl on this. You've done a wonderful job, Mr. Chairman, and we appreciate it; but you might be stupid on this. (Laughter) That was the sense of—

CHAIRMAN GRAYBILL: You don't have to get permission to speak by telling me— (Laughter)

DELEGATE HARPER: That reminds me of a good joke I won't tell now. It might-let me embroider on what Carl said. Carl said you might disenfranchise these people. I'm not-I'm inclined to agree more with you on that, that if they have a chance to vote No, then they've made their choice. They're against the new Constitution; therefore they want to express their opinion. But that sounds right-but listen to this. Why are we putting these things on the ballot? So that people will have a chance to vote for something different-on the gambling issue, let's say-or for the same thing, without having to vote for the old Constitution. That's it. So when a person looks at that issue and he says-he sees that you have to vote Yes for the new Constitution and you've got something in here that he doesn't want, on either side of this vital issue, like on gambling or on-say, the bicameral is in there or unicameral is in there and he doesn't want it, he's probably smart enough to know that no way is that alternative going to carry-no way. Let's say the Constitution only carries by 51 percent; that would automatically mean that everybody who votes for the Constitution has to be for the alternative or the alternative couldn't carry because it wouldn't get a majority vote. Therefore, he figures out, "I can't take a chance on voting-allowing the gambling issue to be voted on, or I can't take a chance on allowing bicameral to slip out. You see, I have to vote against the Constitution." Now, I've probably muddied the water, but what I'm trying to get at is, the reason we put these things on the ballot is to give the people who would ordinarily be against the new Constitution a chance to vote No and still a chance to express themselves on these particular issues.

CHAIRMAN GRAYBILL: Mr. Jacobsen was next.

DELEGATE JACOBSEN: Mr. President, fellow delegates. I don't know whether the committee has considered the fact that we should have, suggesting your revised ballot Number 1, on-with an explanation at the top of the Constitution, whether we put bicameral or unicameral in it, and a brief explanation. That will be one ballot. Then we have another ballot, explanation on top, for replacing whichever one it is or against that. A third ballot for the gambling-for gambling or against gambling. And the bottom one, the fourth ballot, for abolishing the death penalty or against. Now, in my experience in being a judge and so on in election booths a lot of times, whenever we have the issues and there is a separate ballot for a bond issue or some special improvement district or something like this, the people are given that ballot and they vote those ballots. They vote each one. This way, they would have four ballots to see and consider instead of-then we would be sure that that ballot, for or against the Constitution, would have consideration and each of the others would be considered individually and independently. Very, very seldom did we ever find those special ballots where people did not mark them the way they felt. So I think it would be a way-it would cost a little bit more, maybe, for the printing of these ballots-and really not either. It could all be printed in one and cut in four pieces, or however they do it, but I think that this is something that should be considered.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. We were sent here as elected representatives of the people; we were to express the will of the people. We aren't doing it. The Chair has often stated from his position up there that this body can do anything it wishes. I think we should present this Constitution to the people without any alternatives. If unicameral is more strong than bicameral, then we should present it in that manner. If we want the death penalty and-that's the way it should be presented. We should present this thing to the people without any alternatives. We should take our job seriously as elected representatives of the people and do our job as it should be done. Now, how can I move that, Mr. Chairman?

CHAIRMAN GRAYBILL: Well, I think you can keep it in mind, but I don't see how it has anything to do with—

DELEGATE DRISCOLL: It has a lot to do with it.

CHAIRMAN GRAYBILL: Well, I suppose you're with me if you really believe that, because you're going to take all those other things off.

DELEGATE DRISCOLL: --all out. I want everything out. I would be-I'm a bicameralist, but if the sense of this body is for a unicameral legislature, then I'd accept it. We accepted the Revenue and Finance Article. We accepted the Education Article. We accept everything.

CHAIRMAN GRAYBILL: Mr. Driscoll, we've got a proposition before us; namely, that those who oppose the Constitution should be allowed to vote on other proposals nevertheless. I think we've got to dispose of that. At least, I don't see that your proposition has anything to do with that, Now, I have another one up here to delete one of the proposals, which you might support simply as a step toward your proposal; and as soon as we have gotten rid of this one, I'd entertain a motion and we'd find out whether the body wants to have any alternatives or not. But let's see if we can't solve Mr. Aasheim's motion first, and then we'll-I've written your name down here, and we'll remember you.

DELEGATE DRISCOLL: (Inaudible)

CHAIRMAN GRAYBILL: Pardon?

DELEGATE DRISCOLL: May I make that motion when the time comes?

CHAIRMAN GRAYBILL: Surely.

DELEGATE DRISCOLL: Thank you.

CHAIRMAN GRAYBILL: I think, Mrs. Bugbee, you're up again next.

DELEGATE BUGBEE: Thank you, Mr. Chairman. I am against Mr. Aasheim's motion for now because, taking the unicameral-bicameral argument, it seems to me that if someone votes against the Constitution, they are voting for the old bicameral system; so therefore they really should not have the option to vote either for the new bicameral or the unicameral. That's really giving them-it's a three-way choice, which I don't think is fair.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Well, I rise in sup-

port of Delegate Aasheim's motion and against the Chair, I guess, but notwithstanding-for this reason: it seems to me that his point is perfectly valid, but the further point-I don't see how you can practically do this. You destroy the secrecy of the ballot. You come in to vote, you have to announce how you're going to vote-that you're going to vote for the Constitution-before they'll give you any of the other ballots, and it seems to me that would be completely impractical to do and that you just couldn't do it.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I speak in strong support of Delegate Aasheim's motion. I think we're going to need all the good support we can have from the public, and I think—I understand your position, but I think that you would defeat yourself because it would amount to poor public relations. And we all understand that if the main framework of the Constitution fails, the amendments automatically do, too; but this is a risk we have to take. And it wouldn't be all lost even at that, because it would serve as a very strong hint to future sessions of the legislature just how Montana citizens felt about each of these three ballots; and I think it would still serve a useful purpose, but I don't believe that we could in any way deny the citizens the right to vote on the amendments, pro and con, and also on the main Constitution. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Delegate Schiltz yield to a question, please?

DELEGATE SCHILTZ: I yield.

DELEGATE REICHERT: Thank you. I have a copy of the Illinois ballot, and I notice the last statement in the explanation is: "The voter may vote on any of these propositions regardless of how a vote is cast on the proposed Constitution." Do you know why they did this in Illinois?

DELEGATE SCHILTZ: No, Mrs. Reichert, but we were-at least, I was--aware of that, having looked at that ballot. This question did come up in the committee. Mr. Holland raised it last night, and we decided that we didn't have enough legal research available to say that we could do that. We don't reject it or accept it, but I was aware that Illinois had that.

DELEGATE REICHERT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I have some statistics on the Illinois election-the result--and I think the most interesting factor is the one that reported that 57,124 persons voted for one or more alternate proposals but did not vote at the top on the Yes or No issue for the new constitution; and I think that is an interesting factor. Mr. Chairman, there is one other question that I would like to ask Mr. Schiltz related to this ballot suggestions. The idea of the revised ballot number 1 appeals to me greatly because I think that this would give the voters the best choice, the kind of choice I think we've intimated we would give them, a clear-cut choice between unicameral and bicameral; but in looking at this ballot, it looks so complicated. I think that for the case of simplicity, let's just assume that bicameral is in our-1 almost choke on the words-that bicameral is in the Constitution itself, and then we would say for the alternate Z-A, "for replacing bicameral with unicameral." Rather simple-2-B would be for retaining bicameral. Isn't that the way the ballot would look? I mean it wouldn't-this looks so complicated, Mr. Schiltz. I understand why-because you don't know which is what-but wouldn't it be rather simple, actually-I mean, Mrs. Warden brought up a good point. We hate to complicate, you know, the situation.

DELEGATE SCHILTZ: I yield, Mrs. Reichert. (Laughter) Yes, this was only done in this fashion, very hurriedly, to place before this Convention and this committee what the options are. This is not in final form. We'll arrange it so it's intelligible and very simple, if we once get the expression of the committee.

CHAIRMAN GRAYBILL: As a matter of fact, Mr. Schiltz, your ballot number 1 must be in error, because you can't replace the one that's in with the one that's out, so you've got to say, "for replacing"--on the number 2-A and 2-B, you've got to say, "for replacing bicameral with unicameral" or "for leaving bicameral in". You can't have them both replaced. But that's a minor matter.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I did not advance the proposition that the people who voted No on the Constitution would not be able to vote on the lower-on the side issues. The proposition I advanced the committee was-what we're faced with is, we're faced with the fact that a

certain number--we'll say 200,000 people vote on the first proposition, where we would get a split of 51 percent to 49 percent, and a corresponding—say 10 percent less voted on the lower proposition-we might have 48 to 47 percent. My proposition to the committee was that we should put a rule on that that the ballot is void unless they vote on all four propositions. Thus, we wouldn't have the decreasing vote, and if they vote for or against the Constitution but don't vote on the sideissues, then the ballot is void. And if-this would almost guarantee that we would not have this situation, we'd be running-that we're afraid we'll run into, where we'd have less than 50 percent for any one of the side issues. Now, that was my proposition. The idea of the committee was they weren't sure whether this would-how this--whether we could do this or not. No one cited any authority or gave any particular reason. The point was, we're in a bind. We weren't sure we'd be right. I would suggest upon what we're talking about, about forbidding people to vote, almost surely we'd be open to a question on that. We'd run into tremendously bad publicity from the newspapers, which might create a backlash which would-the people thinking they were being forbidden to vote unless they voted in favor of the Constitution would lead them to vote against the Constitution or not come out at all. And the third thing is that if we restrict the voting on the side issues to only those who vote for the Constitution and we lock in one choice up above, there's just no way that the side issues could get 50 percent. And I heartily endorse what Mr. Driscoll has said-that if we're going to come to anything like that, we should get busy. We're the elected representatives-get busy, and let the voters know what we want, and have no side issues at all.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman, in other states that have failed, having only the two propositions, for or against-in this matter-for instance, Maryland failed on one particular instance where they said that the sheriffs were being deleted from the Constitution, so they had a campaign and voted for the--against the Constitution. And I believe that if they have your plan of "for or against", then they may vote on these other issues. In our-1 know that many of the delegates, while they were campaigning, were asked this by the constituents in their district—what if you were-if we were opposed to some particular thing? And, of course, our answer was that the only way that this could be remedied would be to have it on the side ballot. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Would Mr. Aasheim yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I yield.

DELEGATE HARBAUGH: It **seems** to me that maybe we're getting the cart before the horse, Mags, with your motion; and I wonder if there is a sense of feeling in this body that maybe they do want us to delete some of the alternatives from the ballot-that-if we ought not to deal with that question first and then come back to the issue of how to vote, because it may be that, by the time we're through with it, there won't be any alternatives to vote on. I doubt that that will happen, but it's a possibility, and what I'd like to ask you is if you would consider withdrawing your motion--at least temporarily--until we could work our way through some of these. And I have a motion at the clerk's desk which I would put, if you would put that.

DELEGATE AASHEIM: What would—Mr. Harbaugh, before I answer your question, will you yield to a question?

DELEGATE HARBAUGH: Yes.

DELEGATE AASHEIM: What is your motion?

DELEGATE HARBAUGH: My motion is to remove the-one of the items from the ballot; namely, the death penalty issue.

DELEGATE AASHEIM: I see. Now, may I answer Mr. Harbaugh?

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think we should determine this now, and if we decide later we have made a poor decision, we can always go back and reconsider--and-that is, if you vote favorably on my motion-because I feel that it's very important to know how we're going to put these propositions on the ballot-whether or not the negative people can vote on the alternates-because if the negative people cannot vote, I think

all the alternates are dead because I'm not so sure that we're going to get the Constitution adopted—maybe by, say, a 55 to 45—I mean, let's assume we have 55,000 for and 45,000 against the Constitution. You see, if you eliminate those 45,000 people to vote on the alternates, you would have a very difficult time to get any proposition-to get the majority of the votes, so that's the reason I say we should decide this now and if we make an error we can always reconsider.

DELEGATE HARBAUGH: Thank you. I assume his answer is No.

CHAIRMAN GRAYBILL: I think it is, Mr. Harbaugh. (Laughter) Mr. Aasheim, will you yield to a question?

DELEGATE AASHEIM: I will.

CHAIRMAN GRAYBILL: I may join you later, but I think it's important that we discuss this carefully because I think it does condition everybody's mind to think about the real problem and I can see that you don't understand my side of it. For example, Mr. Aasheim, if you adopted ballot number 2-or the ballot-revised ballot number l-then the Constitution itself would have, for instance, bicameral in it, a prohibition against gambling in it, and nothing about the death penalty in it. And if it got 51 percent of the votes, it would have automatically carried those three propositions. Do you follow me?

DELEGATE AASHEIM: Yes, I follow you.

CHAIRMAN GRAYBILL: So there's no possibility that the-that some decision isn't going to be reached on these if, in fact, you adopt the Constitution. Now, don't misunderstand me. I'm not sure that's a good argument for my side, but it might clear up your thinking about my side. Do you understand?

DELEGATE AASHEIM: Yes, I understand, and I understand the problems. But if you—if we-may I answer now?

CHAIRMAN GRAYBILL: Yes.

DELEGATE AASHEIM: That if we do this, the alternate is dead. There's no use having it on the ballot. It's a Hobson's choice because there's no chance for the alternate carrying at all, and I do believe that this—

CHAIRMAN GRAYBILL: In otherwords, it's the alternate that you think is dead.

DELEGATE AASHEIM: The alternate is dead if you do that.

CHAIRMAN GRAYBILL: Mrs. Eck has been up quite awhile.

DELEGATE ECK: Mr. Chairman, really I was going to say about what Delegate Aasheim just said, and that is, you know, suppose you got as many **as 60** percent of the voters who voted for it, and then you would have to have of that 60 percent-you would have to have, you know, almost unanimously-you'd have to have 80 or 90 percent-my math's not that good-in order to get any one of the alternates on the ballot. Now, I can see a possibility-only I think that maybe it's too late to consider now-1 mean, I think that what Delegate Graybill had to-was considering was the fact that we are really either voting for the new Constitution or we're voting for the old Constitution. If we're voting for the old Constitution, then why should you be allowed to amend the new Constitution? Now, we could have considered the possibility of making these alternates down here more as amendments which would apply to either the new Constitution or the old Constitution, which would mean that we would get a good either--a good bicameral or a good unicameral, along with the old Constitution; and they could say something about the death penalty or about gambling. But I think that nooneisexpectingit to come this way, and I wouldn't even really want to consider it, but I think that if we went for-1 really think we'd be misleading people if we put it out and said you have to vote for the proposed Constitution in order to vote for the alternates, because, really, the alternates practically wouldn't have a chance. Thank you.

CHAIRMAN GRAYBILL: Very well. Now, the proposition is on Mr. Aasheim's motion that those who oppose the Constitution shall be allowed to vote on other propositions nevertheless. And before you speak, Mrs. Bates, the Chair would like to say that the Chair is persuaded that Mrs. Eck's and Mr. Aasheim's point that alternatives would have a difficult time is probably valid, and the Chair is also persuaded that Mr. Davis' point-and I think he made this point-is perhaps even more valid and that there's a sense in which as many people might vote for the new Constitution-no, let's see-there's a sense in which as many people might-yes-vote for the new Constitution as against it just to have-just to realize

that if they don't, none of those propositions are going to be adopted. So the Chair is about to switch his mind and would be glad to support Mr. Aasheim's position; but if there are those who want to come to my defense, we'll hear them.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, as far as having two strikes against it, you could also have two votes for it if you had the bicameral in the body of the article in the Constitution and then again on the proposition. So this goes either way. I had another suggestion, and I don't know if it's possible. They said we were all-powerful. If we wanted to put these alternates-I don't knowifit's possible, but usually doesn't an amendment just take simple majority? A Constitutional amendment? What if these were put on the-the alternates put on in such a form under-on the regular ballot, rather than on the Constitution itself-and this might--and I don't know if it's possible, but if we are as all-powerful as a body as I've heard stated here, it might be possible. Also, I wanted to say that Mr. Holland is ready to go to Australia with me because there they force them to vote. You have to vote-(Laughter) And so, I guess-one more thing while I'm up here, on Proposition 2 here, the example-I think rather than having "For" replacing one system over the other, there should always be an opportunity to vote either Yes or No on any proposition, and that would be my suggestion.

CHAIRMAN GRAYBILL: Very well, now, the question is on Mr. Aasheim's motion. Does anyone else care to discuss it-Mr. Aasheim's motion?

Mr. Wilson.

DELEGATE WILSON: Thank you, Mr. President. I have to agree with Mr. Aasheim. I don't think you can disenfranchise anyone from the privilege of voting and that if we assumed your proposition, this is just exactly what we're doing. And to further emphasize that, we're destroying the secret ballot, as been brought out here before. I think we have to give everyone a right to exercise this privilege of being able to vote on any question that's on the ballot, either for or against. If we get over this hurdle, I would have a suggestion to make that might clarify this, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I'd like to make a substitute motion for all motions pending. Am I in order?

CHAIRMAN GRAYBILL: I don't know. I don't know what you're going to move. (Laughter)

DELEGATE JOHNSON: I'd like to move for a proposition that would take us completely out of all this trouble, and I move that you-that the delegation consider my proposal as a ballot that's on your desks: "All articles will be presented separately for a Yes or No vote and any alternate proposals will be presented separately for a Yes or No vote."

CHAIRMAN GRAYBILL: Well, I'm not against taking that along with Mr. Driscoll's, but I think we're about ready. I haven't heard anyone support me yet; and if you'll all just quit voting, we might-or talking, we might be able to vote this one down and settle this one, in case we go this way. It seems to me if I allow yours, I've got to allow Driscoll's and three or four other propositions, including Harbaugh's; and I don't mind, but let's settle this issue. And Mrs. Payne says she supports me.

DELEGATE JOHNSON: Very well.

DELEGATE PAYNE: Mr. Chairman, I rise to support you, because we've been discussing this, and to answer Mr. Joyce, there is a way to do this. When we vote in a primary, we vote-they give us two ballots, a Democrat and a Republican-and thoseofus who areRepublicans take the Republican ballot and dispose of the Democratic ballot. We could do it the same way with this because we could take the-those of us who are for the new Constitution could just take that ballot and then we would have these choices to vote on.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. Graybill, I support your motion but didn't want to speak on it for fear you might lose it. But another way, in answer to Mr. Joyce's question-another way that it can be done is, you know, if you simply state if you're voting against the Constitution you do not vote on those other issues. The same thing happens when you have other ballots; and when you're supposed to vote for five candidates and you end up voting for six, the ballot is void. There are, you know, all kinds of ways that not following instructions can be handled.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I support the Chair and I'm not exactly sure why, but there's a very practical matter, I think, that deserves some consideration here. Looking at the first official ballot, the person who votes against the proposed Constitution is also going to go down the line-1 mean, if he's permitted to vote on these other alternatives-and he's going to vote, probably, for a bicameral legislature, because that's what he voted for up above; he's probably going to vote against abolishing the death penalty, because that's what he voted for above; and he's probably going to vote against the Legislature authorizing gambling, because that's what he voted for above; and so those people who are for a unicameral legislature wouldn't stand a chance, because the vote of the people for the Constitution is going to be split on that issue. Those people who are for abolishing the death penalty wouldn't stand a chance, because those people who are for the proposed Constitution will be split; and likewise on the gambling issue. So, as a practical matter, what you're going to have is a Constitution with a bicameral legislature, without abolishing the death penalty, and without authorizing gambling, if you let the negatives vote. That's what's going to happen, so we might just as well put in a Constitution that has those propositions in it and forget about alternatives, if that's what we're going to do-if we're going to let the negatives vote.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, I'd like to speak in support of Mags Aasheim. I think his motion is in the spirit of the new Bill of Rights, the right of participation: "The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation on the operation of the government prior to the final decision." Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Thank you, Mr. Chairman. I am going to have to resist the motion because, as the story of the boy that went up to the wise man and had his hands cupped and he said, "Is what I have in my hand dead or alive?" The wise man said, "I think that lies within your hands." I think we have the answer to this lying right on our desks here; it's been here all the time. This was clearly provided by the Enabling Act that permitted this Constitutional Convention-is that all of these items can be put on the ballot, one at a time, each section. It's in our Enabling Act, and that's the Johnson Amendment, Resolution Number 16. I think that interlocking of one section to another might be much easier to work out, and more fairly. You'd stand a better chanceofgetting all of the things that you do want in the new Constitution that we do not have in our present Constitution. Maybe the answer would lie there—is to put these items-1 think Mrs. Eck came quite close to it, and Mrs. Bates-that with these side items, why not put them all, section by section? We clearly can do this. Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Aasheim's motion.

Do you want to close, Mr. Aasheim?

DELEGATE AASHEIM: Yes, Mr. Chairman. I would like to advise Mr. Kamhoot that if we adopt my amendment, you can still vote for Mr. Johnson's amendment. It wouldn't matter at all. But let me make one thing clear again. Assuming there were 100,000 people voting on the Constitution, for or against it. We're not going to have a very big majority for it, I'm quite certain-suppose 60,000 vote for it. Now, then, to go down on the alternate, you've got to have 51,000 votes for the alternate; and that's going to be pretty hard to get-out of 60,000 voters, to get 51,000 voters for either unicameral or bicameral, either on all these other propositions-you have to have 51,000 out of 60,000 votes-so that's why I'm urging that we get these negative votes down here voting also, in the hopes that they will vote positively on one of these alternate propositions. I think it's a must or the alternate proposals are dead.

CHAIRMAN GRAYBILL: Mr.-We're ready to vote. Do you want a roll call vote?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: All right. So many as shall be in favor of Mr. Aasheim's motion, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim .....Aye

Anderson, J.H. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Nay
Bowman ..... Absent
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Nay
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Absent
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf. ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Absent
Murray ..... Nay
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton.. ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Excused
Van Buskirk ..... Aye
Vermillion ..... Absent
Wagner ..... Aye
Ward ..... Absent
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. Chairman, 80 delegates voting Aye, 11 voting No.

CHAIRMAN GRAYBILL: 80 delegates having voted Aye and 11 No, Mr. Aasheim's proposition prevails and we're going to let everybody vote on everything.

Now, the Chair would recognize Mr. Harbaugh, who was the first one up here with a proposal.

DELEGATE HARBAUGH: Maybe it would be-In the interest of saving some time-if I yielded to Mr. Driscoll and we could decide his motion, which-or does he have a motion? Mr. Driscoll-

CHAIRMAN GRAYBILL: Yes, I think I could, but I think it might be in the interests of time to do it your way.

DELEGATE HARBAUGH: All right, I'll put my motion then, if you would like to read it.

CHAIRMAN GRAYBILL: Mr. Harbaugh's motion is that we move to suspend the rules for the purpose of reconsidering the placing of the capital punishment question on the ballot in an alternative form. In other words, we have now directed Style and Drafting to place capital punishment on the ballot. He is moving to suspend the rules. If the suspension of the rules were allowed-and the specific pm-pose of his suspension is to pass a motion to the effect that we not place capital punishment on the ballot. In other words, he wants to reverse that action. If we suspended the rules and if we reconsidered and if we did reverse it, we would take capital punishment off the ballot as an alternative. You understand that there's nothing in the Constitution now prohibiting capital punishment and that the alternative of-is to be on the outside, so that it could be put in, and this would eliminate that possibility of its being put in.

Now, have I correctly stated your motion, Mr. Harbaugh?

DELEGATE HARBAUGH: Yes, Mr. Chairman, and if1 might just speak to the motion to suspend the rules for a moment. I think that there has been plenty of discussion and debate here to demonstrate that there are some serious reservations about having a long list of things, as I think we have, on this ballot as side issues and that. it would be very important for us, at this stage, to reconsider--at least this one issue as to whether or not it should be placed on the ballot, And if we could get reconsideration on this, I would speak to it.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to suspend the rules?

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I would like to enter the issue. Well, I'm sure you know where I stand on it. I'd like to talk about the-just the matter of having an alternate or not. I think I'd have to attest to you that, at least personally, on this issue-the death penalty-there is a tremendous amount of voter interest expressed that has been expressed to me personally and through the press and various other means, and I think that while I can understand the-Mr. Driscoll's motion with regard to just the straight thing-let's take our position, that's it. I think there is an advantage to the voter interest on some issues. I think this is the kind of thing that people-they are not going to discuss most of our issues on the street corner-you know, where people really stand around and fight with each other and get very interested. They are going to fight about these three issues, though. For them it might become more of an issue than the Constitution. I also think there is something to be said about taking away at least the illusion of being manipulated-you know, where you just have this one choice to make and that's it-"all or nothing" type thing. I think that there's something to be said there, that having some minor choices within the Constitution will take away that illusion of "it's all set, and I either take it or lose it". Thank YOU.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I want to point out to the Convention that what the Committee on Style and Drafting was worried about was on side issue number 1, that is on whether we have a unicameral or a bicameral, What we feared was that we would have less than a majority for either one of these propositions. Thus, we might wind up with a vote for a proposed Constitution without a legislature. Now, if such a thing happened, I don't have the foggiest notion of how the government would proceed. We come down to the death penalty and we come down to the gambling, we don't have the same crucial item. For instance, if neither 3-A or 3-B—for abolishing the death penalty or against abolishing the death penalty-gets less than 51 percent, it doesn't mean a thing to the Constitution; we still have a functioning Constitution. The same way with the, fourth proposition-4-A, 4-B—against gambling or for gambling-if either one gets 51 percent, we don't have any worries at all; we've still got a functioning Constitution. The only way we can get into a jackpot is if the first proposition-that is, the first side issue, the unicameral or the bicameral-fails. That is where this Constitution

can get into indescribable trouble. And we get down here to the death penalty, it would seem to me that in-the Reverend's motion to take it out doesn't mean a thing at all, because if the voters don't vote to take it out, then it's going to be automatically eliminated. We're not going to have any abolition of the death penalty anyhow. So if we don't get 51 percent, it doesn't mean a thing in the world. I realize he's made his motion, and I'm not going to make another motion to interfere with it; but I'd like to point out to the body, we've got to get down to proposition number 2 and decide what to do about this legislative thing, because that's where we're in trouble. And whether or not we knock out the death penalty at this spot doesn't mean a thing, because it would leave it in; and whether it got a majority or didn't get a majority, we'd still have the same old Constitution.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Wilson.

DELEGATE WILSON: Mr. President, would Mr. Schiltz yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE WILSON: I'm sort of at a loss here, Jack, listening to the discussion. A vote against the Constitution, you say, leaves us without any legislative body. Wouldn't it be your thinking that if the proposed Constitution fails, we revert back to the present Constitution?

DELEGATE SCHILTZ: My answer, Mr. Wilson, is that we could cover it in the transition and say that if-and that's what Illinois did that--about the-they submitted not the bicameral-unicameral, but the question of whether there should be single-member districts or the old running-at-large business, and they said that if that issue fails, then they go back to the original Constitution. And we could cover that in the same way, but it's our feeling-it's the feeling of the Style and Drafting Committee that there was a genuine interest in the house-or in the chamber in having a new and revised legislature that met once a year and that had a little more-well, it had different numbers, for one thing, and it had a little more flexibility for extra sessions or special sessions, and that we certainly-the reaction we got from the debate was that they would not want to go back to the 1889 system, that one of these two propositions should go in so we do have an improved Legislature. But we-the short answer is yes. In transition we could cover it so if one of them failed, we'd be back to the '89.

DELEGATE WILSON: Well, then, I submit that, with a little drafting change, this would be possible and we wouldn't be without a legislative body, however desirous we are of the improved one. This is what we're talking about here. We are talking about a new Constitution that has these different changes in it; and it does have the changed Legislative Article and it has several other articles that are changed; but if we don't adopt them, we go back to the old-or the present Constitution.

CHAIRMAN GRAYBILL: Now, Mr. Wilson, the Chair fell asleep up here, but I think we've gotten far from the motion to suspend the rules. So if you have anything further to say about the motion to suspend the rules, we'll hear it.

DELEGATE WILSON: I would be against suspending the rules, Mr. Chairman. We debated at length on this the other day; and if we open it up again, I can see where we'll be debating for many, many hours further. I'm against suspension of the rules.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harbaugh's motion to suspend the rules to consider the matter of the capital punishment proposed amendment. Is there other discussion of the suspension of the rules?

Mr. Champoux.

DELEGATE CHAMPOUX: I am also against suspending the rules. I think in this day and age we hear a lot about participatory democracy, and the people have sent us here-yes, and we do represent the people-but here's an opportunity to get the people involved directly in things that we are all quite unsure of. I imagine when we see these votes, they're going to be so close that is it really going to tell? And this is a good opportunity to get the people involved, have them know that they are—we are concerned about them and their views; and therefore I think that we should keep these-find some way of keeping these alternatives on the ballot; and I don't think that there are that many of them, personally. I'm against suspending the rules for that.

CHAIRMAN GRAYBILL: Very well, the issue is on suspension of the rules on Mr. Harbaugh's motion so that we can deal with the issue of whether or not to remove capital punishment.

Do you need to close on the suspension or argument?

DELEGATE HARBAUGH: I'd like to ask for a roll call vote—

CHAIRMAN GRAYBILL: Right.

DELEGATE HARBAUGH: --and I'd like to point out that when we voted on this first, the vote was 48 to 42 on the proposed language that Mr. Arbanas proposed; and it seems to me that if the public splits in anywhere near the same proportion, there is absolutely no possibility of the death penalty issue being decided one way or another on the ballot.

CHAIRMAN GRAYBILL: The Chair would like to observe it's going to be decided one way or the other, but it might not be decided affirmatively.

Mrs. Bates.

DELEGATE BATES: Yeah, Mr. Chairman. I was just discussing this again, and I was wondering if it would be possible to include the same-like we have in the old Constitution-in the new as far as the death penalty and gambling—

CHAIRMAN GRAYBILL: All right—

DELEGATE BATES: -is concerned.

CHAIRMAN GRAYBILL: -but, Mrs. Bates, you are not on the subject.

DELEGATE BATES: Yes, I am. Just a minute.

CHAIRMAN GRAYBILL: No, you can make a new motion to suspend the rules for a broader purpose, but Mr. Harbaugh's purpose is to suspend the rules for the purpose of, then, on reconsideration, taking this away from the ballot proposition; and you're now suggesting we add something else to the Constitution.

DELEGATE BATES: No, I realize this. And then if you included the old wording in it, then you could vote in the general election-save these for the general election as an amendment--which would only, then, require a simple majority on both of these issues, which would be a—

CHAIRMAN GRAYBILL: Mrs. Bates—

DELEGATE BATES: -possibility.

CHAIRMAN GRAYBILL: -you mentioned that possibility a while ago, and the Chair hasn't researched it, but we would either have to follow the present constitutional method of getting a constitutional amendment on, which I think is impossible at this stage of the game, or we'd have to wait till this Constitution was adopted and go with the new ones. But I know that somebody on the General Government-Mr. Etchart, you can't-there's no such thing as a constitutional-is there a constitutional amendment by initiative? Doesn't the Legislature have to propose it first?

DELEGATE ETCHART: At the present time it has to be proposed by the Legislature, but we have-in the new Constitution, we have it by initiative.

CHAIRMAN GRAYBILL: Right. So, Mrs. Bates, unless you could get to the next Legislature and persuade them to put it on the ballot for the second time around, I don't think it's going to work. Now, the issue is on Mr. Harbaugh's motion to suspend the rules. He's asked for a roll call vote. All those in favor of suspending the rules, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim	Nay
Anderson, J.H.	Nay
Anderson, O.	Nay
Arbanas	Nay
Arness	Aye
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Aye

Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Excused
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Nay
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Absent
Gysler ..... Nay
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Absent
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Absent
Lorello ..... Nay
Mahoney ..... Absent
Mansfield ..... Nay
Martin., ... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Absent
Murray.. ..... Nay
Noble ..... Nay
Nutting., ... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Nay
Reichert Nay
Robinson Nay
Roeder Nay
Rollins.. Nay
Romney Nay
Rygg ..... Aye
Scanlin Nay
Schiltz Nay
Siderius. Nay
Simon ..... Nay
Skari ..... Nay
Sparks,, Nay
Speer ..... Nay
Studer Absent
Sullivan Nay
Swanberg ..... Nay
Toole ..... Excused
Van Buskirk Nay
Vermillion Nay
Wagner,. Nay
Ward ..... Absent
Warden ..... Nay
Wilson ..... Nay
Woodmansey Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 12 delegates voting Aye, 78 voting No.

CHAIRMAN GRAYBILL: Very well, 12 delegates having-voting Aye and 78 voting NO, we have decided not to suspend the rules for the purpose of removing capital punishment. Now, Mr. Driscoll, I realize your proposition is similar to that, but it is broader. If you want to put it, we'll debate it; or if you want to hold it, we'll wait.

DELEGATE DRISCOLL: No, I wouldlike to put it, Mr. Chairman. I don't think it requires any debate. I would ask for an immediate vote. I would move to suspend the rules for the limited and express purpose of presenting the Constitution to the electorate with no alternatives. I don't think it calls for a great deal of debate. Just pass it, and then we'll get rid of the unicameral. (Laughter)

CHAIRMAN GRAYBILL: Well, the Chair observes that if we adopted it, we'd still have to find out which one went in; but I suppose we could do that. Very well, Mr. Driscoll has proposed to suspend the rules in such a manner that we could remove all three alternatives to the ballot. That involves the Legislative Article, the Bill of Rights Article, and the General Government Article; but we could suspend the rules to so do that. Is there

discussion of the motion to suspend the rules?

Mr. Kelleher.

DELEGATE KELLEHER: Speaking only on the motion to suspend, in our committee we debated this entire whole area 6 hours yesterday afternoon and last night, and without going into detail about the fact that those who want to get gambling may get a lot of their proponents to get in there and vote for gambling and get it so-the vote so heavy there that the Constitution itself could fail. And, of course, they might not realize that their gambling fails, too; but they still might vote for gambling and not the Constitution and cause it to fail. And after we visited with our committee again this morning and after listening to many arguments from many wise people-notjust lawyers, but wise people-nonlawyers--I am inclined to go along with Mr. Driscoll-to think that this is probably the only safe way of doing it. I am afraid that playing this numbers game, that anything below the original Constitution is going to fail. It's going to have to have a tremendous majority. In Illinois, over 57,000 people voted on the alternates and did not vote on the Constitution. And on their Legislative Article, 246,000 did not vote on the Legislative Article, and it just barely carried. They just-they gambled-but they had the old Constitution to go back on, and we don't. And our consultant-I'm not going to talk—maybe Mr. Schiltz would like to address himselfto this-but our consultant said it would be a terrific job to try to figure out. if both unicameral and bicameral failed and we went back to the old Constitution--we'd have to decide what articles are affected. You know, we didn't follow the same order in the new Constitution, and this would be a terrific problem.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to suspend?

Mr. Schiltz.

DELEGATE SCHILTZ: Well, I-it isn't directly on that, but a question was more or less directed to me, and I feel I should say that Mr. Cromwell does not take a legal position with our committee in any respect. I think what Mr. Kelleher was talking about was whether or not we put in the constitutional proposal that Mrs. Reichert had that there be several alternatives and we tried to pick what would stay in in the old Constitution and be added to that, and he did address himself to that.

CHAIRMAN GRAYBILL: Mr. Driscoll-Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, may I direct an inquiry to the Chair?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE HOLLAND: Is the sense of Mr. Driscoll's motion that, if we suspend the rules for the purpose of considering removing all these alternatives from the ballot, that we also can do any of the intermediate steps-that is, if the rules are suspended we can retain some, keep some, and modify some?

CHAIRMAN GRAYBILL: The Chair would rule that the-that he is proposing to suspend the rules, which does involve the Bill of Rights, simply because that's the one to which we tacked the proposal to put the capital punishment on the ballot, the Legislative and the General Government, but only for the purpose ofputtingin or out those three-that is, only for the purpose of handling the problem of the ballot alternative. Now, I realize that in the General Government and Bill of Rights, that's pretty easy; but I agree with you that in the Legislative, that's pretty tough, because I don't know how you decide that issue without coming to the other proposition; namely, which does go in.

DELEGATE HOLLAND: Well, my inquiry is this. If the rules are suspended for this purpose and the body then decides to take one of these alternatives on the Legislative and put it in with the other alternative to the side, would this be in order under the suspension of the rules proposed by the motion of Mr. Driscoll?

CHAIRMAN GRAYBILL: I would think what would be in order is-we would then go-let's take the easy one first-to Bill of Rights and we decide all over again what we just decided on Mr. Harbaugh, and we'd decide to do it or not to do it, and then we'd go to General Government and we'd decide whether to put--we've got the language—well, we'd decide whether to put language in-see, we've got the language "there shall be no gambling"-that's in both of them. We'd decide whether to put the language "except by the Legislature and the people" in or to throw it away. And then we'd go back to the other, and I don't think we'd have to debate unicameral and bicameral individually, but I think we would then have to decide whether we're going to put unicameral or bicameral on the ballot, because you can't have

a-you can't do away with the alternatives while you've still got both of them in the pot.

DELEGATE HOLLAND: May I make a substitute motion to suspend the rules?

CHAIRMAN GRAYBILL: Well, I'll hear it; I don't know whether you can make one.

DELEGATE HOLLAND: All right. I'll make a substitute motion to suspend the rules for the purposes of considering the entire question of the three side issues on the ballot; namely, the unicameral-bicameral question, the death penalty question, and the gambling question-to consider whether we should accept them as they are, modify them in any particular, or to completely remove them from the ballot. In other words, so we can fully discuss all of the various-fully discuss and vote and make motions upon all of the various alternatives that are open to us as a Committee of the Whole.

CHAIRMAN GRAYBILL: All right, Holland's motion--substitute motion-is to suspend the rules regarding these three areas-that is, the three areas that are now the ballot alternatives. But in addition to just removing them, which was the word Mr. Driscoll used, Mr. Holland wants to enlarge the suspension so that we may remove, modify, or otherwise deal with-is that what you said?

DELEGATE HOLLAND: Yes. Otherwise-modify or otherwise rearrange or deal with the three subjects.

CHAIRMAN GRAYBILL: I think "otherwise deal with" covers it.

DELEGATE HOLLAND: All right.

CHAIRMAN GRAYBILL: In other words, we'll be able to do anything we want with those three areas, in addition to remove. We can remove, modify, or otherwise deal with those three areas if we adopt your proposal. Is that what you're proposing?

DELEGATE HOLLAND: That's my proposal, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, that's Mr. Holland's proposal.

DELEGATE HOLLAND: Mr. Chairman, I make this motion not to interfere with Mr. Driscoll's motion, but to include that in. It would seem to me the sense of the body, from the addresses made to the body this afternoon, that something must be done. Just what it is, I'm not sure that the body has made up its mind; but1 think at this time we should suspend the rules so we can do what we have to do, whatever the body has in mind; and if we do suspend the rules at this time for this purpose, we can then attack the problem and solve it in the manner that the majority wishes to do so.

CHAIRMAN GRAYBILL: All right, now, the Chair wishes to caution the body that in the Chair's opinion you can arrange a ballot in some form under Style and Drafting's proposals without doing this. I don't think we're at any impasse, Mr. Holland; and I don't think we should lead them to believe that; but I'm perfectly willing to put the motion.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'd like to resist both these motions for now. I don't think we've discussed all the different things that we could do. For example, I have yet to be convinced that we could not write a Legislative Article that had everything in it. We did this in committee on purpose so that everything was exactly the same on almost-in almost every section. Only the sections that you would vote on would be "shall it be unicameral or bicameral"; and if the unicameral did not pass and the bicameral did not pass, you'd fall back only on that much of the present Constitution, which is bicameral and which could be, I think, as far as I can see, fitted in at every point; but you'd have the big bulk of your Legislative Article and we'd have-we could set up kind of a choice that we want to on the ballot without losing it all. And there may be other suggestions. I don't think we need to throw in the sponge yet. I think we can work out a good ballot.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, this is just a suggestion. Has anyone thought of having three boxes with "Do you prefer", at the top; "vote for one-the old Constitution, the new Constitution with a unicameral, or the old Constitution with the-or the new Constitution with a bicameral"?

CHAIRMAN GRAYBILL: Mrs. Babcock, if none of them got 51 percent, are we out? (Laughter)

Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I

also rise to resist Mr. Holland's motion. It would seem to me that we are going to have to be specific. He said in an earlier statement that the big hangup is on the placement of the unicameral-bicameral; and I think if we're going to suspend the rules, we should suspend it for the purpose of discussing, debating, and deciding upon one issue at a time, because you can see the discussions here-one man is up on the death penalty and the next one's up on the bicameral or the unicameral, and it's a little hard for the Chair to stay abreast of what is happening. Now, about a month ago, I remember discussing with some of the legislative people and at that time they talked with the Chair that at some point this body was going to take a vote on unicameral versus bicameral. I, for one, am not nervous about either way. I think the State of Montana is going to go ahead and we're going to have a good state with either system of government. But I don't see how we can go to the people without ever having taken a vote on either bicameral or unicameral; and I would like to remind the Chair and Mr. Aasheim that at that time we were assured that there would be vote taken by this body; and it would look to me like, at this point, the body should take a vote and the one that gets the most votes would go into the Constitution and the one that gets the least votes would become the alternate and we could move on and then move on to these other two issues that are on the ballot. So, therefore, I oppose Mr. Holland and make a substitute motion that we vote on bicameral-unicameral; the majority that wins the majority—the issue that wins the majority will be the one that is placed on the Constitution.

CHAIRMAN GRAYBILL: Now, wait a minute, Mr. Drum. I liked everything you said till that last. Can't we decide this issue? And I'll come back to you if you want to, but let's vote on these. We don't vote on these things before we make substitute motions, we're in real trouble--we don't know what we think. Pardon?

DELEGATE DRUM: I bow to the wisdom of the Chair and withdraw my motion.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, 1 don't like to delay this thing any longer, but I rise to resist the motion to suspend the rules and the motion to put the various articles on the ballot in the alternative. I think that we're just rehashing the entire thing by suspending the rules, and I think that it is absolutely impossible to follow the-from a practical standpoint and a drafting standpoint, within the limitations of time we've set upon ourselves, to do what Mr. Johnson would like to do. And I submit that the revised ballot number 2, for example only, which is the last one that we have from Style and Drafting, is the most practical alternative and that we should decide bicameral or unicameral is the issue to be placed in the Constitution and proceed with this matter.

CHAIRMAN GRAYBILL: Very well, now. The issue, however, is on Mr. Holland's motion to suspend the rules so that we can remove, modify, or otherwise deal with all three ballot alternative issues.

Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, regarding suspending the rules, I didn't want to make any change, but I just wanted to do it—there's no-in my opinion, the-or in the opinion of Style and Drafting, ballots number 2 and number 3 are substantive changes, which would require suspension of the rules and this body reconsidering them. My purpose in moving for suspension of rules was so we could start taking on the issues that Mr. Drum has just raised, one by one. And my reason for rising to suspend the rules for the whole thing was so we wouldn't have to keep suspending the rules every 10 minutes. Now, it's my impression--and you can ask for Mr. Schiltz if there's any difficulty-that we can't consider ballot number 2 without suspending the rules because it amounts to substantive changes, which the Style and Drafting can't recommend to this body without a suspension of the rules and reconsidering the whole item. I made the motion only to save time, to lay the whole thing out on the table so tie can start taking motions to handle the difficulties we're in.

CHAIRMAN GRAYBILL: Well, Mr. Holland, maybe I should speak to that. The Chair does not take that same view. The Chair takes the view that Style and Drafting has the substantive right to propose a ballot form, and whether it's the best or the only is another matter. And I'm certainly going to rule that Style and Drafting has a perfect right to suggest either one, two, or three; and I don't think that requires any suspension of the rules. Style and Drafting has a substantive right to propose a ballot alternative. Now, if Style and Drafting had proposed only unicameral-bicameral and gambling and had proposed dropping abolition, that might have required a change because we've already told them these three

things; but the Chair is going to rule that we can go on any one of these three or any other ones that Style and Drafting proposes, so long as they give us three ways to, in some fashion, present some kind of an alternative. But I don't mind putting your motion anyway.

DELEGATE HOLLAND: My point, Mr. Chairman, is that ballot number 2 inherently requires that we have to suspend the rules in all three subdivisions in order to comply with ballot number 2.

CHAIRMAN GRAYBILL: Are you talking about-let's talk about-you're talking about revised ballot number 2, which is really number 3?

DELEGATE HOLLAND: Let me take a look again. Yes. In order to adopt number 2, we would have to get-we would have to suspend the rules to have the body determine whether or not they want to put unicameral or bicameral up into the body of the proposition.

CHAIRMAN GRAYBILL: Well, all right. The Chair takes an entirely different view of that. I think that you people are a substantive committee for proposing the ballot and you do have to propose some form of alternative; but if you propose number 3, we can debate it and we can amend it without suspending the rules. We don't have to do-we-this body has certainly not in any way indicated to your committee, and the committee made it quite clear we weren't supposed to, the detailed method by which this alternativeis going to be presented. That's up to you to come back with. My only real difficulty with your committee is that you've come back with nothing yet and you've just asked us to help you. But, I mean, once you decide which one you're going to propose, we'll debate it. And if you don't decide pretty soon, we're liable to debate it anyway and decide it.

DELEGATE HOLLAND: (Inaudible)—probably yield to Mr. Schiltz, but it was my-it was the understanding in my sense of the—what I understood happened in thecommittee-while the form could be proposed by the Style and Drafting, picking the unicameral or bicameral, if you put up in the body, would be had--would be a change that this body itself would have to do; and that's why I moved for suspension of the rules.

CHAIRMAN GRAYBILL: Well, but this body wants you-if Style and Drafting will just take the bull by the horns, like the poor Rules Committee does every day, and propose one or the other, this body will make short work of deciding which one they want. They'll either put that one or amend it and put the other one. But you see, at the moment you haven't given us anything except an alternative ballot. But-So, I don't agree with you that we have to wait-or that we have to suspend the rules to do this ballot business, but I'm perfectly willing to suspend the rules for what I think Mr. Driscoll's purpose is; namely, to do away with those ballot alternatives. Isn't thatright, Mr. Driscoll?

DELEGATE DRISCOLL: That's right.

CHAIRMAN GRAYBILL: Mr. Driscoll's proposal is to do away with them, and that's what he said--"remove". Now, you've said "remove, modify, or otherwise deal with", and we can either put yours or you can withdraw it; it doesn't make any difference. And we'll decide it one way or the other. But if we decide for yours, I'm sure Mr. Driscoll's motion is going to be to remove them. Now, is there other discussion about Mr. Holland's motion to remove, modify, or otherwise deal with?

(No response)

CHAIRMAN GRAYBILL: Very well, I'll put that question. All right; all in favor of Mr. Holland's motion to remove-to suspend the rules so that we can remove, modify, or otherwise deal with the three ballot alternatives, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, it's defeated. Now, we're back on Mr. Driscoll's. Is there any more discussion of Mr. Driscoll's, which is to suspend the rules for the pure and only purpose of removing those alternatives, either all together or one-two-three?

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I close and ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well. All right. Very well; all in favor of Mr. Driscoll's motion to suspend the rules so that we may remove the three alternatives or one, two or three of them, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does **any** dele-

gate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J.H. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Nay
Arness ..... Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Absent
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Absent
Campbell ..... Excused
Cate ..... Nay
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Aye
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Nay
Martin. ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Excused
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 24 delegates voting Aye, 71 voting No.

CHAIRMAN GRAYBILL: Very well, 24

having voted Aye and 71 voted No, Mr. Driscoll's motion is defeated. Now, Mr. Drum, you're on my list (Laughter) but Mr. Johnson-Mr. Drum, I have two lists; don't worry. (Laughter) Mr. Johnson had a motion and he wanted to make it awhile ago, and I think I should let him have the chance next. We got to get these things either decided or out of the way.

Mr. Johnson.

DELEGATE JOHNSON: Mr. President, thank you. Ladies and gentlemen, you all have my proposition on your desk. It was made out in the form of a resolution to start with, but the Chair has agreed to let me present it as an amendment or a motion, and that's what I have done. Now, the sense of this would be the ballot would—presented-on the ballot would be presented all articles separately for a Yes or No vote, and also the alternative proposals would be presented in the same manner for a Yes or No vote. This is-a very simple way to present it. There would be no question what they were voting for or voting on, 'long as they'd read-in which-excuse me—which they'd have to do in any case-familiarize themselves with the content. Now, this is perfectly okay under the Enabling Act. I know that it would take a lot of time and work on the part of the Style and Drafting Committee, and I'm sorry about this. I wish that some of us had discussed this 2 months ago-well, the whole program, for that matter-on how we were going to put it on the ballot and had decided at that time. We would have-not have had this difficulty at this time, but I-unfortunately, that wasn't the case, so now the problem comes up. It would certainly cost a little money, probably, for the Style and Drafting to work this out—and a few days after the rest of us had left here, probably. I don't know just exactly how tough the mechanics would be, but I have it on good advice from several people that are supposed to know these things that this is very possible and legal in all aspects. I'd like to point out, since there are going to be some differences if the-or overlapping conflicts, I should say. In case one of the articles or more should fail in the election, our present Constitution article would have to take over in that department and there would be someoverlapping. This would be the hardest problems to contend with, and-but they're not impossible. I'm sure of this, It would take some time. Now, for instance, on the radio today-there were several people who heard this guy discuss it at noon-that the United States Supreme Court has struck out the l-year residency requirement in Tennessee; and that's going to cover all the rest of the states, apparently; and that makes our own that we just passed last week obsolete; and, so, there's probably going to be some more of this. There seems to be an awful lot of legislation going on in the U.S. Supreme Court and other state Supreme Courts that we're going to have to contend with, so there's going to be quite a number of these changes or overlapping conflicts ofmeaning and intent. Now, you know, we're going to have to live with this new Constitution, if it's accepted, for possibly a long time-70 or 80 years--maybe 50, the way things are traveling so fast now-but it should be a good long time; and I think whatever little extra time it takes or expense, we should be willing to abide by it. We want a good Constitution. There isn't a person here that doesn't, and I'm willing to sacrifice a little more time, if it would fall on me-of course, in this particular point, why, it would be the Style and Drafting, as I see it, that would take the brunt of it; and I'm sorry for that, but I can't help it. Well, I think that's probably all I have to say, Mr. Chairman, and thank you very much. Thank you, ladies and gentlemen, for listening.

CHAIRMAN GRAYBILL: Very well, those of you who have Mr. Johnson's Resolution 16 before you, the Chair will take it is the sense of his motion that the material presented on lines 23 through 26 is his motion; namely, that the ballot be drawn in such a manner that all articles will be presented separately for a Yes or No vote and all alternative proposals will be presented separately for a Yes or No vote. Is there discussion of Mr. Johnson's proposal?

Mr. Champoux.

DELEGATE CHAMPOUX: The only thing I'm interested in at this point-it's an intriguing idea-however, somewhere back in my reading, I think I've heard that this method has been used a number of times and it's failed quite frequently. Does anybody have the research on this? Does anyone-can they pull it out of their head or—have we got any research on it?

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I don't know where it has failed. I only know where it has succeeded, and that was in Pennsylvania. But Pennsylvania had a limited convention, not an unlimited convention, such as we had; and I understand they only had five propositions in the form of amendments on the ballot; but they were of this nature as he is suggesting. Now, nobody else

that I know of has submitted it this way that has been successful.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, as Mr.--or Delegate Johnson spoke, I tried to visualize what would happen in the voting booth. In the first place, each registered voter will receive a complete, detailed copy of this proposed Constitution with explanatory comments beneath it, and this will be in two colors. Now, supposedly, one would read this and digest it and make decisions at home or in the company of friends. Now, if one were to go through the proposed Constitution at the voting places, it would occur to me that each individual could spend possibly up to an hour doing this. I wonder, if they thought that the proposed detail would be at the voting place, if they would ever look at the copy they received at home. I think that it would take us weeks to vote if we were to follow such a proposition. I can't believe that a voter, when they got through the first third or half of it, would be inclined to go on, because of the time that it was taking. It might solve a problem for the delegates here today, but I don't think it would solve a problem for the voters or that it would bring out a better-51 percentage of vote on each section of the proposed Constitution, and I therefore would not be in favor of Mr. Johnson's motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, there is no way that the average voter would go through and take the time that would be necessary on this. I have found many times that when they even had three amendments on the ballot, they will look at them and say, "That's too many"; and I would strongly urge that we defeat the motion of Mr. Johnson.

CHAIRMAN GRAYBILL: Mr. Romney, you were up.

DELEGATE ROMNEY: Mr. Chairman, I wanted to answer a question made by Delegate Champoux, but I guess he's left the floor. As I understand it, the State of Hawaii also used this method and had 22 or 23 sections; and they passed most of them, but not all. Argument was that Hawaii being a new state and having adopted a constitution a few years previously was ripe for such a use of the amendment system. Now, there's no question but what our Constitution presently provides for use of the amendment system. It's rather a shame that it is advanced at this time, because of the situation where many items are— would be out of place and, if some of them should be defeated, there might not be any way of handling them, such as the Chairman indicated this morning with respect to the veto of the Governor; and I don't know just how that could be handled, although perhaps the Committee on Style might be able to figure it out. I do think that this would have been a splendid way of handling it, but at the present time, I'm afraid that it won't work.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Johnson's proposal that we present each article and alternative for a Yes-No vote separately.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I think it is the concern of all of us here that we have several articles in our proposed new document that we would like to see passed. We have-some of us have some reservations on some of the other articles. I think this is one method where you can get the desirable features in the new document passed by the people. It may be that they would— could be put on the ballot as committee proposals and cover each-it wouldn't have to be each section-and possibly that these methods could be explored towards a shorter form of putting it on the ballot; but I think this is one of the more desirable features of Mr. Johnson's proposal, that there is several articles in the proposed new document that I'm sure the people want and would like to have, there is some that there's quite a little question on, and that they may turn down the whole document for the same specific reason that these are included in the whole article. I think that Mr. Johnson's motion has a lot of merit, if there's any way of approaching it.

CHAIRMAN GRAYBILL: Very well, the issue is on—

Mr. Kamhoot, do you want to talk?

DELEGATE KAMHOOT: Very briefly, Mr. President.

CHAIRMAN GRAYBILL: Very well.

DELEGATE KAMHOOT: There's been quite a lot of resistance to this on the-by using the evidence that there would be too much on the ballot. I would question this, because we just decided in this Convention that there would be-an unlimited number amendments would be permitted on the ballot in the future, so what would be the

difference-talking about 13 now or 13 or 15 or 20 sometime in the future on our ballot-so I don't think this has much validity. I don't see why that each one of these sections must be printed in its entirety, as has been suggested, when certainly the people that are going to vote for this Constitution or against it are not going to have the whole Constitution printed on their ballot, so they're not going to read it that way, so why would they necessarily have to read all of it article by article? Why couldn't they briefthemselves beforehand, as they must do when they go to the polls to vote on this situation as we have it here. So, it seems like, if it could possibly be correlated between one article and the other, that we really should follow this route. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask-Mr. Artz.

DELEGATE ARTZ: Would Mr. Johnson yield to a question?

CHAIRMAN GRAYBILL: Mr. Johnson?

DELEGATE JOHNSON: I yield.

DELEGATE ARTZ: This morning, Torrey, there was some discussion that possibly it would be impossible to correlate the new and the old, in case certain sections were voted down if we follow your system. Have you researched that out, and do you have competent legal authority to say that that can be done'?

DELEGATE JOHNSON: Thank you, Bill. Yes, I did-well, I talked to the Attorney General about this, and he said it could be done. It's going to be-it would be a hard job, though, he said. It's hard. Everybody knows here it's hard. I was advised that before I went down and talked to him. Of course, here-there are lawyers in this place, and they've all said the same thing, except that several of them here didn't want to admit that it could be done. They said it was too difficult, and it would be difficult. However, probably the most difficult thing would be just the case that Mr. President brought up here this morning when we were discussing this-is in the field of the veto, which, if the Executive Article were taken out, it would be—it would leave us without a veto power there for a little while until something-which is difficult procedure. But the mechanics of it can be handled. I was assured of this, and I'm convinced and1 still think it's a very good proposition. Thank you. I didn't mean to talk all day on the answer, Bill.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes. I assume everybody is aware of this; but it isn't quite that simple, I don't think, Torrey. Let's put the case this way. Let's say the new Legislative Article passes and the new Executive Article fails. The new Legislative Article, to use your point of the veto, says the Governor shall not have a pocket veto and the old Executive Article says he does. Now, the people have just voted at the same instant for both of these. Now, then, what court could possibly say which one the people meant? And this is just-only-this is just one instance of the interlocking of all of these many sections that we've done. I think when we decided that we would write a new Constitution and not follow the exact outline of the old, we set ourselves to the kind of proposition that we have to make on the ballot.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, if I—I think I can answer that, just to ease the tension just a little bit. George, in the-we have statutes, you know, that we are running on most of the time anyway, and those are in effect and would be in effect until you could determine the proper procedure there of taking care of this. And in any case, where there is no overlapping conflict, what the people voted for in the new proposal-the new proposed Constitution--would take precedence over anything said in the present Constitution. Thank you.

CHAIRMAN GRAYBILL: Very well, now, the issue is on Mr. Johnson's motion that the ballot be drawn in such a manner that all articles would be presented separately for a Yes-No vote and all alternative proposals would be presented separately for a Yes-No vote. I trust we're going to have a roll call vote. All in favor of Mr. Johnson's proposal, vote Aye; all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll take the ballot.

Aasheim Nay
Anderson, J.H.. Nay
Anderson, O.. .. Nay
Arbanas ..... Nay

Arness ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Nay
Berg ..... Nay
Berth&on ..... Nay
Blaylock.. ..... Nay
Blend ..... Nay
Bowman,, ... Nay
Brazier ..... Nay
Brown ..... Absent
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Nay
Choate. ..... Nay
Conover ..... Aye
Cross ..... Nay
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Aye
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Absent
Murray ..... Nay
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius. ..... Nay
Simon ..... Absent
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Excused
Van Buskirk ..... Nay
Vermillion ..... Nay
wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. President ..... Nay

CLERK HANSON: Mr. Chairman, 22 delegates voting Aye, 66 voting No.

CHAIRMAN GRAYBILL: 22 having voted Aye, 66 having voted No, Mr. Johnson's proposal is defeated.

Now, Mr. Felt, does the Chair understand that you have a proposal?

DELEGATE FELT: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: The Chair would like to hear it. It's got another one, but I think I would like to hear yours.

DELEGATE FELT: Yes. I might be trying to bite off too much, because if this did carry, I think it would settle the entire ballot question, so I'd like to move that the revised ballot be as follows-I'm following the general form ofrevised ballot number 2 but with some variations from it. I move that the Style and Drafting Committee be authorized to choose the exact wording, but thatit include a provision to vote for the proposed Constitution, period, and a provision to vote against the proposed Constitution, period, and that Style and Drafting be instructed to put the unicameral legislative provision in the body of the Constitution and that it put the bicameral legislative body in as an available alternate. Second, that it provide provisions to vote for authorizing gambling or to prohibit the-to continue the prohibition of gambling. And, third, thatitprovideprovisions to vote for authorizing the death penalty or for abolishing the death penalty.

CHAIRMAN GRAYBILL: All right. The Chair understands that Mr. Felt has a motion, the substance of which is that Style and Drafting should make the ballot as follows: An opportunity to vote for or against the Constitution; included in the Consitution would be unicameral; as an alternative to the Constitution's unicameral article would he bicameral. This is like revised ballot number 2. In other words, the For and Against is the top two lines, with unicameral in, and if you put brackets around that-or strike out the word "bicameral", with an alternative, then, for bicameral. Then, secondly, Mr. Felt-if you'll—following number 2, they put prohibiting gambling in up above--and then you could make your alternative authorizing gambling or against authorizing gambling-is that what you mean'?

DELEGATE FELT: Yes, just so they give you the choice on the gambling issue and give you a choice on the death penalty issue.

CHAIRMAN GRAYBILL: "For", as you said-"For''--and I think you have a good point—''For authorizing the death penalty" and "Against authorizing the death penalty". In other words, you want to put the "For" and the "Against" there in such a manner that it comports with the death penalty. Is that right? Give them a choice on that?

DELEGATE FELT: Yes, a choice. And I would be glad to have Style and Drafting propose particular wording.

CHAIRMAN GRAYBILL: All right, now, this amounts to revised ballot number 2; and the Chair will entertain Mr. Felt's motion, and then there may be amendments made to it.

And for that purpose I'll recognize Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would move to amend Mr. Felt's motion to read the bicameral portion of the Legislative Article will be included in the body of the Constitution and the unicameral will be the alternate. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, the Chair will allow that. Now, let's get this down again so we all understand it. You may want to make some notes on this. There's an alternative for Yes or No on the Constitution itself, and the Constitution shall contain, in Felt's amendment, the unicameral. That's the subject of Mr. Drum's amendment. Then, number 2-w then there's a sub. to that. There is an alternative on the ballot for bicameral. Okay. Then, number 2, the Constitution will say-in addition to having the Constitution up there say "unicameral", the Constitution will also say "no gambling"; and the alternative to that will be, allow gambling by the people and the Legislature.

DELEGATE FELT: Mr. Chairman, are you explaining my motion?

CHAIRMAN GRAYBILL: That's what I'm trying to do.

DELEGATE FELT: No, I had intended to put into the body only the unicameral, leaving, the-on the gambling issue and on the death penalty issue, two alternatives to be voted either for or against—

CHAIRMAN GRAYBILL: All right.

DELEGATE FELT: --and I thought you had just now said that one of them went into the body.

CHAIRMAN GRAYBILL: All right. I understand that on the death penalty they vote for or against. but I have trouble then with your motion, Mr. Felt. I just want it to make sense. If you put an alternative For or Against—and you can do this, but the body's got to be aware of what you're doing-if you put the gambling matter as a pure alternative, For or Against, then we may have a 47 percent "For" and a 48 percent "Against" and we may, in fact, end up with nothing in the Constitution, which really means you're putting a third

proposition. Now, if that's what you mean to do, fine; but then it's got to be clear. The other thing, if you're following form 2, as you told us you were, it, as you notice, puts up at the top that you either have to prohibit or authorize gambling; and that goes in, too; and only the words "except as authorized by the Legislature and the people"- then it becomes the alternative. Now, if you do it the other way, you're really back to Mr. Choate's third proposition of having nothing in the Constitution. Which do you want?

DELEGATE FELT: I wish to run the risk in regard to the gambling issue and the death penalty issue that there be nothing in the Constitution. I felt that this was the decision that the body had made by deciding at various times that these would be put on the ballot as alternate issues. Perhaps that decision was made before they realized that it might result in nothing being in the Constitution. In my point of view, it would mean if nothing got into the Constitution on them, that the Legislature then, not being prohibited from dealing with the gambling question and not being prohibited from dealing with the matter of penalties, would have the discretionary power to deal with those problems.

CHAIRMAN GRAYBILL: All right. That's fine. I was misled when you said you were following number 2, which does it the other way, but we'll put it your way just so the public-so that the body knows. Now, the point is-let's all understand Mr. Felt's motion-his motion is that, number 1, we're going to put one of the two legislative forms in the Constitution and the one we're going to put in is unicameral, and in a minute we're going to let Mr. Drum amend that to bicameral. Just wait till I've finished explaining, and I'll come back to you. Then, number 2, he's going to put the gambling (a) (b), and if neither gets a 51 percent, then we have nothing about gambling in the Constitution. Now, the alternative to that-well, maybe I shouldn't explain that, but eventually I'll make a motion if nobody else does. All right. Third, he is going to do the same with the death penalty, which, of course, isn't in in the first place; and then we'd vote for or against putting something about the death penalty in; and if 51 percent went for it, we'd put it in, but if they went against it, we would leave it out, where it is now. All right. Now, to that, Mr. Drum has an amendment to change bicameral and unicameral around. Okay.

Mr. Davis.

DELEGATE DAVIS: Mr. President, I move as a substitute motion to all motions pending, if it's proper, that we put the bicameral in the Constitution and leave theunicameralon the side, period, and then treat these others as separate issues so we don't get them all mixed up together. I think-(Inaudible) Well, you left in the rest of your motion, though-of his, as I understood it. You only made an amendment which would leave the other two articles in.

CHAIRMAN GRAYBILL: All right, I understand what you've done, Mr. Davis, and that's a substitute motion and we'll allow it. Now, Mr. Davis eliminates all the other problems of the Felt amendment and says that-he only deals with point 1 of Mr. Felt's, and he would have us vote Yes or No on the Constitution with the bicameral in. Isn't that what you mean?

DELEGATE DAVIS: And unicameral as a side issue.

CHAIRMAN GRAYBILL: And unicameral out.

DELEGATE DAVIS: Yes, sir.

CHAIRMAN GRAYBILL: So he's not dealing with points 2 and 3, and so we're going to discuss first Mr. Davis' motion and presumably solve one way or the other what point 1 should be about bicameral-unicameral.

DELEGATE DAVIS: Mr. President, my only point in that is if-let's take these issues one by one as we've done throughout this Convention. We're getting at the end and everyone's, naturally, becoming impatient; but there could be some good arguments different people have or concern on the death penalty or concern on gambling as much as others are concerned about the unicameral or bicameral-and maybe more. So I think if we approach it this way, we'll probably make more progress if we talk about one thing at the time and go on down the line.

CHAIRMAN GRAYBILL: Very well, Mr. Harper.

DELEGATE HARPER: Mr. Chairman, may I amend Mr. Davis' substitute motion?

CHAIRMAN GRAYBILL: Wait a minute, I can't listen. Okay, shoot.

DELEGATE HARPER: I move to amend Mr. Davis' substitute motion by substituting the

word "unicameral" for "bicameral" in the body of the Constitution, "bicameral" for "unicameral" as the alternative.

CHAIRMAN GRAYBILL: Okay, I guess we can do that. Now, we've got all the amendments we can handle until something happens. Mr. Harper amends Mr. Davis' to put unicameral in and bicameral out. Unless someone has a real preference for the colors on those buttons, it doesn't make any difference. All right, we are now debating Mr. Harper's motion to have the first part of the ballot say you may vote Yes or No for the Constitution, but the Constitution will contain the unicameral article and the bicameral as an alternative.

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I think it's become perfectly clear that if we put either of these-oh, the death penalty or gambling or both-as strictly side issues, as you pointed out, it ought to be very clear that neither could pass because the vote is going to be divided somewhat, probably pretty evenly on these issues. If it were not going to be pretty evenly divided, we would have had a more top-heavy vote—

CHAIRMAN GRAYBILL: Now, Mr. Choate, I think your point is well taken to 2 and 3, but your point is not well taken as to 1 since neither side has proposed leaving them both out.

DELEGATE CHOATE: Right. So, the point being, that I think that on all three of these issues, we need to decide in this Convention by a majority vote on each of these issues; and those three should be put into the body of the Constitution; and the other would be as an alternate and would be bound to fail-so the three that we would select to go in will be weighted top-heavily in favor of them because they would be part of it. As two separate alternates would neither of them get a 51 percent majority, I don't believe, so I think that—and on this instance, if we put, we'll say, the issue of gambling as a side issue to vote on and it fails, then, in effect, we who originally proposed to delete it from the Constitution will have done so, because the new one won't make any reference to it, and if it fails, then you have no provision, see. That's all. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in support of Delegate Harper's substitute motion, and I'm wondering if the debate that was scheduled to start at 2:00 might start now at 4:30. May I speak to the question of inserting unicameral in the body of the new Constitution?

CHAIRMAN GRAYBILL: If you speak, you may speak on that, because we've got to decide that now, one way or the other.

DELEGATE REICHERT: All right. I'm not going to speak long, and I want to beseech my fellow delegates, whether they are bicameralists or unicameralists, to please follow suit. I hope that no one speaks more than a few minutes on either side. I want to apologize, first of all, because I'm afraid that during the course of the Convention some of my remarks have been misconstrued, and I'm talking about remarks about past legislative sessions. I want to make it very clear that I have not been critical of legislators themselves. I've had a lot of-oh, quite a few people say to me they thought I had been very unfair to our legislators, and I don't think-and I'm sure that I feel inside that these legislators operated as well as they could under the structure they were given. I feel that it is completely the fault of the bicameral system that they had the problems they had over the past seven sessions, and I hope that by trying the unicameral system-I'm very grateful to Delegate Hahedank for inserting that provision-by trying it till 1980, will give our legislators an opportunity to show what they can do for the State of Montana so that we're not always turning to the federal government, so that we can solve our own problems. I think we're perfectly capable of us solving our problems if we have a system which we can work. Now, I know that there are many reasons I could go into-like the one man-one vote being most important-but I'm not going to do that. I am going to ask my fellow delegates who are as concerned about this issue as I am to speak to the subject.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I support the motion for unicameral to be in the main body, and I'll he very brief. I think that it's no longer a matter of check and balances, to have two houses, but I do believe that-and I believe this would eliminate the duplication. I think, actually, that we've been spending all our time talking about form and structure and power and rights of government, hut the average taxpayer is more concerned about what hits his-concerns his pocketbook, and I believe people are very cost-

conscious, and I believe that the lower cost of the one house will appeal to most of the voters. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I would urge you people, on these motions that are now before the house, to defeat all of them. I would like to have a chance before we vote on this to go for that first ballot. In other words, go for broke. And on that first ballot, they are either for the proposed Constitution or they're against it. And then we have a vote straight-out by the people of the State of Montana for a unicameral or a bicameral, and we're not deciding it here, and I'm willing to take a chance. I think this business of running scared and saying, "Oh, the people aren't going to vote on that second issue, they're not that interested"-we'll have the people out, and I believe that we will have a majority vote on that second issue, and I would like to have you defeat all of these motions so we can at least get to this one and then either up or down on it. If you don't agree with me, fine, but we're asking to be-we're asking-being asked to decide two things right now: the form of the ballot and unicameral-bicameral. And I'd like a clear-cut choice on that first ballot; then go to the second one, you go to the third one, whichever one you want to choosethere, and go ahead with the unicameral-bicameral, if that's what you want to do; but let's have a free choice on this first ballot, whether we want to take a chance on the people. We've talked in here a lot about participatory democracy. Now, we're going to take that away from them, so I ask you to defeat all of these motions and let's get back to this first ballot.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, in line with what Chet Blaylock has just said, though I didn't know he was going to say it, I would like to make these remarks. In the North Dakota Constitution which will go before the body, there is this statement--and I'd like to read it to you if I may; it's very short-"The main proposition calls for a vote on the proposed 1972 Constitution. If a majority of the voters vote Yes, it shall be adopted. If a majority of the voters vote No, the proposed 1972 Constitution shall not be adopted. You may vote on any or all of the alternate propositions. If the main proposition fails, the vote on the alternate propositions shall have no effect." And then, following that, are some very brief statements with four alternate proposals, most of them merely to be marked by Yes or No.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, Chet Blaylock is correct. This is not a matter of whether or not we are for unicameral or we are for bicameral. The proposition is to be left to the judgment of the people, the voters of the State of Montana, and the first form here, which nobody seems to be talking about, is the one that should be used. I concur with Delegate Blaylock 100 percent and trust that you'll defeat all of these amendments and authorize issuance of the first one.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates. I signed my name on both of these proposals for bicameral and unicameral. I hope that we can try unicameral until 1980. The delegation we have here of 100 delegates proves to me that a bicameral [unicameral] Legislature will work, because we've had reconsideration on many things, and it's in the reconsideration of things we've passed and done that I, as just a layman—and I know a lot of others of you-that I found out more about what we're talking about. Thank you.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, this is the premise that I've been working on, too. I think that if we vote here for a unicameral or bicameral, we're infringing on our right of a secret ballot, and I think we should be going back to our community and giving them the right to choose a unicameral or bicameral. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I speak in favor of the motion before the house, in favor of including the unicameral proposition in the body of the document and the bicameral at the side of the document. I realize that, in doing this, that this body would be, in fact, stating a preference for the unicameral position, but I submit that this is not all that bad a situation. Delegate Driscoll had a motion before the house which would have settled it once and for all, but at least in this way we are giving the people the chance to vote against the unicameral if they are overwhelmingly in favor of retaining the bicameral, but at the same time we are at least

expressing our preference as a body to try the unicameral system. We've allowed for the alternative of them voting against it if they find it unsatisfactory. And I, for one, feel that the unicameral house will provide better representation for the minorities--whether they be rural Montanans, whether they be in the cities of Montana, or whoever they may be-and I feel that the issue of representation is extremely important in this field-and I feel that by placing the unicameral in the body of the Constitution and placing the bicameral as an alternative on the side, that we, in fact, give the people of Montana the preference of this body and we also give them the opportunity, if they feel so inclined, to vote against the preference of this body and retain the bicameral if the majority of the people of Montana would want to vote in that manner. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. I had hoped throughout this and supported throughout putting them both on the ballot. I missed the Style and Drafting report that there's some problem presented that the Enabling Act will still carry through after we adjourn, so a majority will not prevail and that's-is that correct-is what the Chair's understanding is—that a majority will-a simple majority will not write the article in the Constitution?

CHAIRMAN GRAYBILL: I don't-that isn't my-1 don't understand your question, Mr. Davis.

DELEGATE DAVIS: In other words, the 51 percent you have to get between bicameral or unicameral if they're both alternatives.

CHAIRMAN GRAYBILL: The sense of the Enabling Act, and really of the old Constitution, is that 51 percent of the people—or 50 plus one vote-50 percent plus one vote of the people have to support a proposition before it's adopted.

DELEGATE DAVIS: Well, I'm not any authority and haven't studied on that. I have serious reservations about it, however, since it seems to me that when the people vote on this new Constitution, the majority should prevail. But I won't pursue that because of the matter before us. I had hoped that these both be on the ballot and the person could go ahead and vote and let the people vote how they want. As it now comes that everybody is going to put themselves in this situation, I am going to support the bicameral proposition and go down in flames with them, not because of the finance part. I realize that's going to be more than unicameral. I think in the bicameral-or the bicameral is going to cost more money, which suddenly has become an issue here; after all the many things we've done from education, welfare and on, we're going to be concerned about money at this era. That's not surprising to me. When we went through, I thought I'd observe how a unicameral system works. We are now at the last day. I think we've all had a chance to observe how it works. We talked about revenue and finance-a lot of people were concerned. On the Highway Department—the Highway Department's run by a board, appointed by the Governor, of citizens-very responsible people doing the best job they can, I'm sure. At that time, the big argument was made, "we're going to make them responsive to the people, so we're going to take a three-fifths amend. ment, and that will make them responsive". All right, I voted to let them run the Highway Department. I didn't care any more about the League of Women Voters designing our highways than I did the Farm Bureau running the education system, but when we got to the education system, what we said about being responsive to the people didn't apply. I voted to give the Board of Regents power to run the school systems, too, because I think that's what you have to do; but the people that voted against the highway running their department voted against the Board of Regents running theirs completely; and that's happened in our unicameral system. It's going to go out that way. It's going to be a very bad, grave error we made on this thing. I've sat here and watched votes switch from 77 to 16 on Saturday to 76 to 17 on the following Monday and seen things we put in on Saturday completely changed the following Monday. They say that's the right to reconsider, butifyou're that unsure of yourself, with the lot of work we have to do and the Legislature will have to do, and that-1 think the system of checks and balance that worked throughout our history has worked very well, and I think it has-there's plenty of work for both the Senate and the House to do. With all the work that this Constitutional Convention is going to do, they're going to need all that and a lot of additional help at that. So, I'm going to support putting the bicameral in-that's the system that would normally be expected to be in-and let them vote on the alternate on the side.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I spoke out *strongly* against putting alternatives on

the ballot and hoped that we could make up our mind here. I supported Mr. Driscoll's amendment to that effect. Since that didn't carry and we are going to have alternatives, then I favor as wide-open an alternative as possible. Therefore, I oppose the motion of Mr. Felt, or whose ever it is now that it's been amended, and I agree with Mr. Blaylock that the people should have a wide-open choice on this. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. Miles Romney notwithstanding, Mr. Rollins notwithstanding, I am against Chet Blaylock's motion, and I am for the Constitution, and I am very apprehensive of what we are about to do here today because the figures just don't justify the approach we're about to take. Those figures on that board indicate very clearly to me that we may very well adopt a new Constitution and have an 1899 Legislature. It's almost inevitable, because those who vote against the Constitution are not going to take the trouble to vote for either unicameral or bicameral; and the result will be that the vote on bicameral or unicameral will not be sufficient, it will not be a majority, it will not carry, and we will necessarily on our legislative feature revert back to 1899 and lose all of the benefits that this new Legislative Article provides. This is, after all, the real issue that we are discussing here. This is an immensely important vote you're about to undertake.

CHAIRMAN GRAYBILL: Now, the Chair is disturbed; and no one getting up instantly, the Chair is going to enter the debate for a moment, if I may; and I'll sit up here if you'll let me. The Chair is disturbed. I think it's good that we have debated this this afternoon, because I think that the whole body is beginning to see the problems that have caused our excellent Style and Drafting Committee to literally come up with no proposal. It is not an easy problem. However, it need not necessarily be an impossible problem, either. Now, let's get back to the basics here. The Constitution says that the-"and unless so submitted and approved by a majority"--"a majority" is the word you want-"of the electors at the election, no such revision, alteration or amendment shall take effect." So, we know that a majority has to prevail before any revision, alteration or amendment takes effect. Then the Enabling Act came along, and it says: "The Convention may submit the proposals"-in the plural—"to the electorate in any of three forms. As a unit"---now, we've rejected that by rejecting the amendment to take these alternatives out. Number 3, in the form of a series of separate amendments-we've rejected that-that's Mr. Johnson's proposal. And "(b) submitted as a unit with the exception of separate proposals to bevoteduponindividually." Then it says down here: "If a majority"-that's what it is, it isn't 51 percent. We talk about that sometimes, but it's a majority--"of the electors voting at the special election". Now, Mr. Murray has already checked with the Secretary of State's office, and so that everybody understands, the Secretary of State says he is going to count the people that vote for and the people who vote against the Constitution, and whatever that number is, that's the ones he's going to count as voting. Isn't that correct, Mr. Murray? He's not going to count the pollbook, he's not going to count this and that and that and add them, because a lot of times the votes don't all add up. He's going to count the plus and the minus, or the For and Against on the Constitution, and that's the number voting, just like you do when you-the other day when we said the number for a referendum is the total for the office of Governor. Okay, now, "if a majority of the electors voting at the special election vote for the proposals of the Convention, then the Governor shall by proclamation declare the proposals to have been adopted." Now, that has caused the Style and Drafting Committee to come to the conclusion that we have to have not 51 percent, but a majority on each proposal. Now, for awhile there was a possibility and a suggestion, if you'll follow through the way this developed, that we could say that a vote for the Constitution implied a vote for one of the two alternatives on bicameral-unicameral and that a plurality on that issue could decide. Now, we could do that and we could say that that's what we mean and that the only vote that counted was on the 51 percent-or on the majority part-was the top one, but the lawyers on Style and Drafting are afraid this is risky. It does place in the hands of the Supreme Court the issue of whether or not plurality on unicameral-bicameral means anything. Now, ballot proposal that you've got before you, called "official", takes Mr. Blaylock's position and it says, "Let's vote For or Against the Constitution. Now, we either get 51 percent or not. If we don't, why, it doesn't matter; but if we do, then we'll vote for or against the unicameral-bicameral, for or against the other two propositions", and as Chet says, "we'll take our chances on getting 51 percent". And we could do that. And if you have an open ballot like that, it is certainly conceivable

that with any little margin up above, you'd have some margin on one of those other two articles, so we could--and it really wouldn't matter too much on the bottom two, but it does matter on the Legislative. So we could run that risk. It's to avoid that risk that the Style and Drafting proposes ballot number 2-not the second one, the third one—ballot number 2—and to avoid that risk, they have decided-or they suggested on this ballot, and that's the motion that Felt has before us now, we'll put one of those right in the Constitution and when you vote Yes on the Constitution, you've automatically voted for one of those. That avoids the risk of losing a Legislative Article and of losing the other two little items on the ballot. It does, however, provide the guy that's left out with a slight disadvantage. None of us, obviously, know how great the disadvantage is, but it does provide us with a disadvantage. So you've got to go on the proposition that Mr. Blaylock says--we'll just take the risk-or you got to go on the proposition that one of us is going to get a slight advantage—one of the two sides. Or, if you'll look at number l--revised ballot number l-here is another strange idea that sort of combines the two, and in this one-it's kind of hard to read because of all the alternatives there, but what it really is saying is that we'll put one in, all right; we'll put-let's say, bicameral in, so we can't lose; but instead of putting unicameral out, we'll put unicameral-bicameral out so that when the people make the choice on vote number 2, they're still making a choice between unicameral-bicameral. If bicameral wins, it substitutes for bicameral and, obviously nothing happens. If unicameral wins, it substitutes for bicameral-if it wins by 51 percent-it substitutes for bicameral and, obviously, something happens. The point being that on this one, when the people see ballot number 2-or choice number 2, they are still choosing between one-house and two-house instead of choosing one-house or nothing or two-house or nothing. Now, that's the three propositions you'vegot before you. And you can go with Mr. Felt's, which is perfectly-it's a safe one. It's got one of them in, and we-if we ever get 51 percent we can't lose. The only disadvantage to it is that one of us, one side, is going to take a licking. Or we can go with Mr. Blaylock's and say, "devil take the hindmost; we're going to go for broke, and we'll take our chances," in which case it's possible that you could piece together something of the old Constitution to take the place of that particular part if it lost. Or you can reserve your votes and go for a number 3—which puts either unicameral or bicameral in, and then it becomes less important-it's still important, but it becomes less important-and give them a clear unicameral-bicameral choice outside. Now, those are your three alternatives. You've got to either support Felt, or you've got to wait and support Blaylock, or somebody's got to make a motion to do the one in the middle.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I cannot see the logic in this proposition at all.

CHAIRMAN GRAYBILL: In any of them?

DELEGATE ROMNEY: No, this one—number 2.

CHAIRMAN GRAYBILL: Felt's.

DELEGATE ROMNEY: And the same goes for number 1. I can see the logic in the Blaylock proposition, although I admit there's some risk there, but is there not equally the risk in number 2, where you tie either the unicameral or the bicameral, I don't care which, into the Constitution itself-into the main body of the document? When you do that-let us say you put the bicameral in or the unicameral in with the main body of the Constitution, the electorate goes to the polls, they vote. The people who see the unicameral in there, who are against it, they vote against the unicameral and, in the same sweep of the hand, they vote against the Constitution in toto. The same thing would happen if it were the bicameral that were in there. They go to the polls; they're against the bicameral; they vote against the bicameral; and when they do, they're voting against the Constitution.

CHAIRMAN GRAYBILL: Well, that only would apply, Mr. Romney, if, in fact, you wrote it up in such a way that it was crystal clear that they did that. But if you simply wrote the Constitution and put into the-and it's available for their surveillance at the-they can look at it at the polls—but the North Dakota ballot, for example-it's really not possible to tell whether the one-house and two-house legislative alternative is in or out of the Constitution.

DELEGATE ROMNEY: Mr. Chairman, it's in the same bracket; and when they vote against the Constitution-or bicameral or unicameral, I don't care which it is, they're voting against the Constitution; and when you get the people who are against--say it's the bicameral—

you get the people who are against the bicameral voting against the Constitution, plus the people who are against the death penalty or one of the other things or against the 6—Section 6 in the finance section and against this and that and some other section, you're going to build up a majority that will be insurmountable.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I would like to ask you a question. I would like to vote on revised ballot number 1. Is the only way to get to that to defeat all the other ballots and then make a motion, or can we make another substitute motion for all motions pending? Because if we would accept revised ballot number 1, we would have all these things answered.

CHAIRMAN GRAYBILL: Well, the way to get at revised ballot number 1 is to wait till we've defeated at least something or until we've adopted something and then make a proposal to substitute for what we adopted.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: It was my understanding someplace along the line, and I'd like to be corrected if I'm wrong, that on revised ballot number 2, the For or Against would just be for the proposed Constitution and against the proposed Constitution. I think that if anything more is added to it, why, the people are starting to make a choice long before they want to make choices down below; and I think maybe the way this is worded up here is confusing people. Would Mr. Schiltz yield to a question here?

DELEGATE SCHILTZ: I yield.

DELEGATE ECK: Mr. Schiltz, would you intend to put more than "For the proposed Constitution" and "Against the proposed Constitution"?

DELEGATE SCHILTZ: As I explained earlier, Mrs. Eck-quite a lot earlier, and I don't blame you for having forgotten-this is only a guide so we can debate this matter. We would still, after we got that answer--would still adopt a ballot and possibly change it. We haven't even acted on that yet.

DELEGATE ECK: Mr. Chairman, I really think that this is where a lot of the misunderstanding is, here. If we do vote on this For and Against, up at the top, and then started adding things, I can't see that there's going to be that much confusion.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, am I right in that Mr. Felt's amendment, which was the original motion before us, was on revised ballot number 2 and he proposed some amendments to that?

CHAIRMAN GRAYBILL: His-it's the first half of revised ballot number 2, but he did not follow through on 3-A and 4-A.

DELEGATE MURRAY: Yes, but he did make some-just speaking to the legislative part of it, he-his motion spoke at least to the Legislative Article as we are discussing it, is that right?

CHAIRMAN GRAYBILL: Mr. Felt's is revised ballot number 2, as far as the Legislative Article and the Constitution is concerned, yes.

DELEGATE MURRAY: And he was unicameral in the body of the Constitution and bicameral out?

CHAIRMAN GRAYBILL: Yes.

DELEGATE MURRAY: And Drum then proposed an amendment, bicameral in and unicameral out?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MURRAY: And then we finally ended up with Harper.

CHAIRMAN GRAYBILL: Davis proposed-

DELEGATE MURRAY: Is Davis ahead of Harper then? Right. Davis limited the motion just to the Legislature.

CHAIRMAN GRAYBILL: Davis' and Harper's motions do not include the 3 and the 4.

DELEGATE MURRAY: That's right. So now the issue is on Harper's motion that we have the unicameral in the Constitution and the bicameral out, is that right?

CHAIRMAN GRAYBILL: That's the idea.

DELEGATE MURRAY: Under—general-

ly under revised ballot number 2?

CHAIRMAN GRAYBILL: Yes. Now, when we've decided that, if we decide it-you know, that doesn't-once we've got it in there, we still have to decide what to do with some of these other things.

DELEGATE MURRAY: Right. Well, I realize we have those other issues. Well, then, at this time, since we're all discussing revised ballot number 2, which in principle is where I think we should be, and since I'm a unicameral&, I would support Harper's motion.

CHAIRMAN GRAYBILL: You got it figured out, Mr. Murray.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I know there is no longer allowed any more amendments, but I was wondering-and I'd like to ask a question of Mr. Schiltz, with your permission-of Delegate Schiltz.

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE BATES: Mr. Schiltz, did you consider at any time including the-everything but the structure of the bicameral and the unicameral-within the Constitution package itself and leaving just the structure for the people to vote on? Could this be possible?

DELEGATE SCHILTZ: You're talking about the ballot or the Constitution?

DELEGATE BATES: I'm talking about the ballot just having the structure of the unicameral and the bicameral as an alternate vote; whereas, 'the body of the Constitution would include all the reforms we have acted on here.

DELEGATE SCHILTZ: Mr. Chairman, would Mrs. Bates yield to a question?

CHAIRMAN GRAYBILL: Mrs. Bates, would you yield?

DELEGATE BATES: Yes.

DELEGATE SCHILTZ: What do you mean by "the structure"?

DELEGATE BATES: I mean those first three sections of the Legislative Article.

CHAIRMAN GRAYBILL: What she means, Mr. Schiltz, is have you considered putting all of the things that both these people agree on in the Constitution and only having the one-house and the two-house and the numbers of the legislators out?

DELEGATE SCHILTZ: Yes, I think we considered that and rejected it.

DELEGATE BATES: Could I speak, then, on the motion before the floor? Delegates, I feel we should realize that it's a fact of life that no future legislature will cost less than they have in the past, regardless of what type, whether it's a "bi" or "uni". It has also been stated that the people want to express themselves, and I feel if we leave the unicameral in the Constitution itself, it will jeopardize the entire Constitution. And in regards to Mr. Harper saying at one time that whether we want a one-hump or a two-hump camel, well, I would feel much safer between two humps than try to straddle one and sliding off one side or the other. (Laughter) Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I think-I feel that Grace was onto a point, and I'm still uneasy about it-not the one hump or the two, because the thing that makes me for unicameral is that the two humps in the last 7 years have been going in opposite directions, and that makes a pretty untenable camel. The idea, though, that she had that she expressed in her question to Mr. Schiltz is exactly the idea under which the Legislative Committee labored in producing a document. We attempted to write a body of a Constitution, a Legislative Article, so that the only question would be in terms of the structure; and then whichever one passed, or actually if neither one passed-if we didn't get a 51 percent--we were aware of this-then it naturally would be bicameral. It would be the old bicameral, but we'd have all the rest of the new article in there; and we thought that could be a compatible kind of a situation. And I understand that the Style and Drafting Committee rejected this idea-because we drew this up in a lot of detail last night and gave it to them-but I'm not sure exactly why. Now, that's one thing. Second, I would be-1 think that some way we are in a bind here now, and I helped get us in a bind by getting that fourth amendment on there. Really, if we could deal with Mr. Blaylock's suggestion, votenumber 1 up or down—if we go for that, we haven't got the other. If we don't go for his

suggestion, then we'll know we want 1 in, and then we can come right back to this. And if I knew we could do that, I think I would withdraw my amendment-if he could immediately put number 1 up—and then we'd settle once and for all whether we want to go for broke that way or whether we want to go the safe way with ballot number 2; and then we can come right back to either way we approach it, bicameral or unicameral-it just depends on the button you push. Is that--would that help if I withdrew that?

CHAIRMAN GRAYBILL: Well, Mr. Harper, first of all, may I point out to you that under the Felt proposal, where one of the articles goes in, or under the proposal that Mr. Habedank just mentioned and I mentioned, the number-the revised 1, you're going to have all those articles in the Constitution anyway. So it's only under the Blaylock amendment that Mrs. Bates' point and your point makes any difference. Now, if we get to the Blaylock proposal, we might very well want to tell the Style and Drafting to tighten it up as far as possible and get as much into the tent before we decide as possible. But, under the other two, it really doesn't make a whoop of difference whether you shorten it up or not. Do you follow me?

DELEGATE HARPER: Yes, I do follow you. That's the reason I went a roundabout way to get at my question of whether Mr. Blaylock's proposal-and I assume he would make it for us to vote on number l-would be possible if I would withdraw my amendment at this juncture.

CHAIRMAN GRAYBILL: Well, there's one other point, and we could go to Mr. Blaylock's first and decide whether we wanted to go for broke and do as he says. But there's one other real problem that this body is at right now, and we're going to decide it on yours and Davis' amendment, and that is, this body still wants to know-and they're going to force us to decide sooner or later--which one's got the most votes—

DELEGATE HARPER: I don't object to that—

CHAIRMAN GRAYBILL: -and until we decide that, it doesn't really make any difference.

DELEGATE HARPER: -but if-but we've got-if we could have that, that's all right. But, see, we're tying in a ballot form along with that at the same time.

CHAIRMAN GRAYBILL: Well, my point is, it doesn't-we don't have to know which one's got the most votes to decide Blaylock's issue.

DELEGATE HARPER: That's my point exactly: and if we decide for his, then we can decide-we can take a straw vote or any other way you want—

CHAIRMAN GRAYBILL: But this—

DELEGATE HARPER: -to do—

CHAIRMAN GRAYBILL: —body—

DELEGATE HARPER: -it.

CHAIRMAN GRAYBILL: I just want to remind you that for a long time the Chair has resisted making this decision, and I can see written on their faces that they're going to decide this issue--which got the most votes-and if we do that, they're going to defeat Blaylock to find out and then they'll go back and think about Blaylock again. So we might as well find out which one goes in; and then, if Mr. Blaylock can convince us that neither ought to be in, probably we'll take one of them out.

Mr. Dahood.

DELEGATE DAHOOD: Well, Mr. Chairman, first of all, I think we've got to reason together very precisely. We have a basic general premise that we're avoiding at times in our discussion-and I think my dear friend, Chet Blaylock, avoids that premise-and that is simply this: a certain number of the voters are going to vote on whether they want a new Constitution or not. That number becomes binding upon us with respect to the other propositions. If they vote in favor of a new Constitution, that means the old one is gone when the transitional period is over. Then we come down to the question of going for broke, as Mr. Blaylock describes it; and let's assume that we don't have 50 percent plus one vote for either one, which may very well happen, because some people may vote for the top proposition and neglect the rest of the ballot. Then what do we have? Recognizing the major premise that we cannot get away from, that we will have to have 50 plus one votes of those that voted for the primary proposition with respect to the Constitution. We adopt the new Constitution, we don't have the requisite majority for the subsequent or secondary issue, the old Constitution is out. What legislative body do you have then? You don'thave the old one. You don't have anything, and so, as a consequence, we're compelled to take the risk here.

We have to make a choice with respect to bicameral or unicameral. The people sent us here for progressive reform. If they don't like it, they're going to have an alternative proposition to take the bicameral back or the unicameral back, whichever party prevails here; and we have no other solution as I view it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I've changed my mind three or four times this afternoon, but I think-let me suggest one other way out here. Maybe it's a-1 agree with Chet Blaylock and I agree with Mr. Romney that we're putting something in the Constitution, they're going to vote against it even though they are for it for other particulars. Why not on the ballot for the Constitution put-outline it in black-and put four items. Put "For the proposed Constitution, including unicameral"; the next one, "Against the new Constitution, including unicameral". Go on down-and "For the proposed Constitution with a bicameral"; and then, "Against the proposed Constitution with a bicameral". And then you put up in letters, "vote for one". So no matter how they vote, they don't have to make a choice. They're still going to take the new Constitution with whatever house they want; and you're going to give them four things, but they only vote for one. I think this solves the problem. This is where we're getting at, I feel. So, I would think we would turn down these motions and get back to Chet Blaylock's For and Against, but put four propositions rather than two.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, will Mr. Schiltz yield to a question, please?

DELEGATE SCHILTZ: I yield, but I might turn it over to Mr. Garlington or somebody.

DELEGATE REICHERT: Well, as you know, we've been talking about this for months, and my primary concern is giving the people an opportunity to choose, and I would go along with Mr. Blaylock's proposal completely if we had some assurance that we could include these points that we worked so hard to conform unicameral-bicameral, but I understand that. Now, my question to you is, Mr. Ask's point has really captured my imagination. Would it be possible for us to do this?

DELEGATE SCHILTZ: Well, I think it's possible for you to do anything. I haven't really thought of it all that long, I would suspect, without asking the committee, that we would be opposed to a great many propositions on the ground that the more propositions you have, the more likely one or more of them is to fail, and-but I'd have to take it up with the committee. I can't decide that.

CHAIRMAN GRAYBILL: Mr. Schiltz and Mrs. Reichert, Mr. Ask's proposal is indeed intriguing, but I've just worked it out and if a hundred thousand voters voted and twenty-five voted for each of those four propositions, nothing would happen.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, I see that point, but I think you're--we're going to-1 think we can do that. We can bracket the first two and bracket-have those two count, I think the— rather than take all four-the For and Against for unicameral and the For and Against as one unit— unitize it, and then you don't run into that problem.

CHAIRMAN GRAYBILL: I think that's just what we're doing, only we're doing it in a slightly different form. But you can't do it just— the way you had it is beautiful if you didn't have the rule about the majority.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I am going, if we get an opportunity in the fall, to vote for unicameralism; but I think what we ought to do is, I think we ought to put bicameralism in the body of the Constitution and then on the side put "bi" and "uni" both, so that the people can vote one or the other-they'll-neither will have any particular preference-they'd both be there. You'd check "bi" or you'd check "uni"; and that way, we would solve the problem. We would give the-we would draw the issue clearly between "bi" and "uni" out on the side. They could either vote "bi" or "uni"-and presume, hopefully, there'd be a majority vote for one or the other; but if there weren't, we'd still have "bi" in the Constitution. And it seems to me that that would be the better way to go for this reason: that the traditional thing is to have the bicameralism, and there are a lot of people who are just violently opposed to unicameralism and they would, if the unicameral was in the body of the Constitution, they may be tempted to double-shoot the turn, as my good friend, Dave Holland, says, and simply not take the chance of having a unicameral body by-and therefore vote

against the Constitution. And I don't think there are that many unicameralists that are that narrow, if I may say-(Laughter) And so, I think if we put the bicameral in the body of the Constitution and put "bi" and "uni" both where you take your pick out on the side and let that issue be fairly debated in the public forum as to which one would win, I think there will be a majority of the people will vote on that issue and one or the other will win and the people of Montana can live with it either way. But I am afraid that if we put unicameralism in the body of the Constitution, even though I think it's worth the try to go for unicameralism, that we would be jeopardizing the entire document because of, as I say, the tremendous opposition to unicameralism-they would be tempted to vote against the Constitution-so I would propose that that might be a solution to the problem and that would be fair all the way around and would guarantee us that we would at least have a bicameral modern Legislature and would still give the unicameralists and the bicameral&s the chance to fight the battle out in the public forum as to which one of them won, if both of them were listed side by side on the alternate.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I am very much in favor of unicameralism with the amendment which gives the people the opportunity to try it and see if they like it; but to me, if Style and Drafting would spend the time that they've spent on all our other measures, making them make sense, on revised ballot number 1, if we could ever get to it, we could have all this. And I would sure like some suggestions as to how we can get to revised ballot number 1 without voting against unicameralism.

CHAIRMAN GRAYBILL: Well, Mr. Habedank, what Mr. Joyce described is revised ballot number 1, except he'd put "bi" in and you'd put "uni" in-or maybe you wouldn't. But what he just described is revised number 1, and you're right, but whether we put "uni" in or "bi" in, we still haven't decided. It would seem to me that if we either adopted or defeated the Harper amendment, we could then take another amendment and try out Mr. Joyce's proposition or Mr. Blaylock's proposition. Let's see, I'd like to let a few newcomers in.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I would like to support Mr. Joyce's idea, because I believe that it is obvious that the bicameralists will vote for the document with the bicameral article in the body, and our present Constitution has this provision; so the only way the rest of the new Constitution will have a fair chance is to put the new Constitution before the voters as it is in the present, and that's with the bicameral provision in it. So, I support Mr. Joyce's idea.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I think if we took a poll here at this time, I think probably 100 of us would agree that the single most important thing that we came over here for was to change the Legislature. I don't think there's any question about that; and I think if you went out in the street and started talking to people, everyone would say, "Yes, we need change in the Legislative area." That being the case, it seems to me we have to give the voter every opportunity he can have to vote on this Legislative problem; and I would propose, therefore, that if we submit to them a new Constitution with either a bicameral or a unicameral article in it, that we at the same time and as a separate proposal that can stand or fall on its merits without reference to the rest of the Constitution, give them the right to vote on the other alternatives. In other words, if we put in the Constitution a unicameral article, then as a separate proposition, free and independent of anything else, "Do you favor the legislative bicameral article?" And if that's passed and the rest of it fails, then we have, in effect, passed an old Constitution with a new Legislative Article. I think it's vital to be given this opportunity, regardless of the rest of it. Thank you.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, after several hours with the Style and Drafting discussion of this, I was, for 3 of those 6 or so hours, where Chet Blaylock seems to be now-that is, feeling that we could somehow do this as gamblers and get our-simply assume that we're going to turn up with a majority; but the lawyers on the group convinced me, after at least 3 hours, that we simply had to make a choice and include something in the body. As I've listened to Mr. Swanberg, I think he's in error. We would have nothing. We would not have a new article. We would have no Constitution if we took the route that he's just suggested, but what concerns me is

the way in which it's been presented here this afternoon. I think George Harper was on target a moment ago. We get ready to vote on his particular amendment and we're not on a clear issue, because we're worrying, "Well, now, maybe Chet was right; maybe we don't have to vote on this the way we feel. We'll wait and get a chance to do it like the first proposal here", and it's very unclear. I would just say that if you're concerned to get something in the body and if you're a unicameralist and want that in there, you'd better vote Harper's amendment the first time around and see what happens.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: With the-Mr. Chairman, with the accumulation of the great minds here in this row and all of the various suggestions that have been put forth, we have come up with this suggestion, which I think may be quite palatable to everyone. Instead of having the four proposals, as Mr. Joyce mentioned-oh, Mr. Ask, excuse me-there's too many things around here; I can't keep track--why don't we put on the ballot these three votes-in other words, one square-voting for new Constitution with unicameral, for a new Constitution with bicameral, or against the new Constitution. There you have a person being allowed to choose between bicameral or unicameral and have the Constitution with it in to his liking; or if he doesn't like any of the Constitution, he can vote against it. Sort of gives you a double affirmative vote without the negative situation and gives you just the one single negative vote.

CHAIRMAN GRAYBILL: Mr. Harlow, may the Chair ask a question?

DELEGATE HARLOW: Yes.

CHAIRMAN GRAYBILL: What happens if a hundred thousand vote and thirty-three thousand vote for each of your propositions?

DELEGATE HARLOW: We're right back where we started from. We're in trouble. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, what if we broke all our rules and took a secret ballot and gave them all to the Rules Committee or the Style and Drafting tonight and came back in the morning?

CHAIRMAN GRAYBILL: Well, I think we're-we can vote on some of these, and we'll get somewhere here in a minute. But Mr. Skari hasn't spoken yet; then I'll come to you, Mr. Felt.

DELEGATE SKARI: Mr. President, as I understand it, then, our problem is really with the language in the Enabling Act-that somehow it wasn't written quite the way it should have been, evidently. Now, I'm not a lawyer, and I'm bothered by the intent of this. I'm sure that they—the people who wrote the act--would have intended that we be allowed to vote on these alternate proposals and that a simple plurality would carry. It seems, right now, under Mr. Blaylock's version here, we can take a chance here. One or other of the alternative proposals here, bicameral or unicameral, may carry by a majority of those who vote on the main body of the Constitution; or, two, the court could rule, possibly, that a simple plurality on the alternatives is all that's necessary. It seems to me that this was the intent of the act. We use our comments here. We say that they will use our comments someday to clarify what we do. I'd like just to pose a question to some of the lawyers that--are there any comments that we can go by?

CHAIRMAN GRAYBILL: Well, Mr. Skari, the problem started in 1889 when the amendatory process, which included a provision for a Constitutional Convention, which we are using today, said-"and unless submitted and so approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect". That's why the Enabling Act says-that you've got to have a majority on every proposition, because the founding fathers said that.

DELEGATE SKARI: I see—

CHAIRMAN GRAYBILL: And they said it because they felt strongly that a majority should support anything that we do. It's not a mistake. It's just what they said.

DELEGATE SKARI: I see. Well, thank you, Mr. President.

CHAIRMAN GRAYBILL: All right, Mr. Felt, do you want to close?

DELEGATE FELT: Well, my motion—

CHAIRMAN GRAYBILL: You can't close. Mr. Harper can, but we'll let you have a shot at it, because you started it.

DELEGATE FELT: Yes. I didn't even speak on my own motion but-or any of the amendments or substitutes. Members of the committee, of course the reason that we are here is because the Constitution of 1889 did not seem to us to be satisfactory, nor did it seem satisfactory to the people of Montana. And we're just seeing another example of that today. Our hands are somewhat tied. I have great sympathy for the position of Delegate Blaylock and particularly Delegate Romney, who said there's no logic to this. And Mr. Skari, pointed it out very well. It isn't a question, though, that we can avoid, because it's with us. The present Constitution simply doesn't give us the opportunity to frame these things the way we might prefer, unless we are, at the same time, willing to take risks that the whole thing can fail; and to many of us, at least, this is an unacceptable risk. I can certainly say I agree with that line of thought, because I am following it, certainly, in regard to the gambling issue and the death penalty issue-to put them both out there on the side, just give people a free choice. And I would have wished that this could have been done with the bicameral-unicameral issue, but I would feel so utterly stupid if we went through this whole process and, because of the risk pointed out by Delegate Berg and others-we get a favorable vote on the Constitution and end up without a legislative body-that I can't possibly stomach thatthought. And so, we've come up in this very convoluted process here of motions, amendments, substitute motions and choices, and we wish we had room for one more, and that would suit me. Frankly, I'm willing to support any of these things-the four that are before us and the one that will come before us-if we get an opportunity-because anything is preferable to this horrible catastrophe that could strike us and that the odds would tend, I think, to indicate that it will strike us if we take that chance. I regret very much that this is the situation, but it's just one of the reasons-one of the defects of our present Constitution, one of the reasons why we are here; and I hope in the one we are producing we are not passing on to some subsequent body the same kind of things. But those people who drew this, they didn't foresee this problem. They didn't have any clear intention about this matter, because they didn't think about it. I'm quite certain of that. I can't prove it, of course; but I agree there's no logic to it, but yet here it is. We have to live with what we've got. We have to make this difficult decision and hope that we're doing it right. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert, do you want to say a few words before we close?

DELEGATE REICHERT: Yes, Mr. Chairman, because I'm afraid that this vote is going to be terribly misconstrued. I know that, as Delegate Joyce said, he's for unicameralism but he's against Delegate Harper's proposal, which seemingly advocates unicameralism because it proposes putting unicameralism in the body, but he feels bicameralism should be in the body. I just hate to see this thing resolved this way, because we're not getting the vote we want. We thought that we should let the people know how the delegates felt about unicameralism. I wish there were some other way to handle this particular issue. Now, we talked just briefly about this other possibility, which I know I've discussed with you and others. We have in our Legislative Committee attempted in every session to make it uniform between unicameral and bicameral, and I just wish the Style and Drafting Committee could do something about incorporating these ideas for reform into the body of the new Constitution and simply asking the question, "Do you want a unicameral or a bicameral'?" We'd have all the reforms regarding bills, organization and procedures. I know it's been explained to me that this can't be done, but some of these other things, as Delegate Felt brought out, are impossible to live with, too. Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert, the Chair is concerned that you have this-still are concerned about this. If we adopt Mr. Felt's final motion to put unicameral in the Constitution, we will have all that language in the Constitution. If we adopt Mr. Joyce's proposal to put bicameral in the Constitution, we will have all that language in the Constitution. The only time we need to tighten up and get most of it in and only leave a little of it out is in the event Mr. Blaylock has the final red light. And at that point, ofcourse, we should consider whether or not to do that; but there's no use panicking on getting it all in until we decide which way we're going.

DELEGATE REICHERT: Well, that is the key question, because that is the only way the people will be given a choice, a real choice, without insisting on putting one or the other. That is the choice that I thought we would give them.

CHAIRMAN GRAYBILL: We're about to start on the second go-around, Mr. Wilson. Do you want to speak again?

DELEGATE WILSON: I rise for a point of

information, Mr. President.

CHAIRMAN GRAYBILL: Good. What is it?

DELEGATE WILSON: I simply cannot understand that, if we don't vote in the proposed Constitution, that we lose the old one. Would somebody clarify that for me? I would think that we lived with the old Constitution for some years, and probably pretty good; and if we don't have this new document, don't we have the old one?

CHAIRMAN GRAYBILL: There's no question that if we don't adopt the new one, we have the old one. The problem and the proposition from which your question springs, I think, is one where it was suggested that we might go, let's say, Mr. Blaylock's proposal, and we vote for or against the Constitution without clearly defining the Legislative Article, and that passes, so we have a new Constitution, but then both (a) and (b) fail-both unicameral and bicameral fail--and at that point, we'd have a new Constitution with no old Constitution, unless you wanted to go back in and start-the court would have to start picking up the pieces and deciding which part of the old one wasn't repealed. That's the only trouble, Mr. Wilson. And I don't know whether we'd have it or whether we wouldn't, and I don't think anyone here knows until the Supreme Court would decide whether we had some legislative left or not.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I think that the proposition enunciated by Delegate Ask has-is fertile with possibilities; and I feel the same way as Delegate Felt, that it would be a horrible situation if we should wake up without it-a Legislature; but I think that that Ask proposition can be handled and I think it should be explored before we dive off the bridge.

CHAIRMAN GRAYBILL: Well, may— will you yield for a question? Will you yield for a question, Mr. Romney?

DELEGATE ROMNEY: Yes, sir.

CHAIRMAN GRAYBILL: All right. Mr. Ask proposed four alternatives, and he said, "vote for one".

DELEGATE ROMNEY: Mr. Chairman, later he amended that statement, after his colloquy with you, and said that you'd bracket the "For" and-he'll speak to you again.

CHAIRMAN GRAYBILL: Bracket the "For" and the "Against" on the bicameral, yes.

DELEGATE ASK: I have drawn a picture.

CHAIRMAN GRAYBILL: Well, all right, now. I'm not against doing it, except I really think that's what the other three propositions do. And you can certainly make yours as soon as one is defeated, if you can beat the other guys to the draw, and we can consider it; but we've got three other people that have got propositions ready to go here, too, so—

Mr. Blaylock.

DELEGATE BLAYLOCK: Well, Mr. President, I'd like to make a suggestion. Now, a few minutes ago, Delegate Harper said he was willing to withdraw his, and I think Mr. Davis was up, willing to withdraw his. If these people would withdraw--agree to-and we get back to number 1 and that either goes up or down, because I'm with Mrs. Reichert-that, really, we're not getting a clear vote on unicameral-bicameral; there's other things mixed up in this vote right now. So, if these people would agree to withdraw and come back to number 1 and either put it up or down-that's up to you guys-you people, sorry-1 think that this would be the fastest way to solve this; and then we could move on and have a clear-cut vote on bicameral and unicameral, whether we want to put it in, whatever may be the case. So I'd like to suggest that, Mr. President.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, would you read that motion that I sent up about an hour-hour and a half ago and that looked like it would give a clear-cut decision. And it appears to me that if we were to take a vote of this body, we would then eliminate the question in people's mind as to what or where their position is going to be. If it is—

CHAIRMAN GRAYBILL: All right, I'll read it—

DELEGATE DRUM: -decided one way or another, then it looks like we could move forward.

CHAIRMAN GRAYBILL: I don't think you need to have-you're all too worried. The system is going to tell us what happens here as soon as we start voting, but I'll read it. "The bicameral portion of the Legislative Article be included in the body of the Constitution, with the unicameral por-

tion as an alternative when presented to the electorate." Now, that is nothing but Mr.-that's nothing but your amendment to Mr. Felt's first proposition.

DELEGATE DRUM: Mr. Chairman, my amendment to Mr. Felt's proposition still doesn't clarify the issue that he brought two other issues into the thing—

CHAIRMAN GRAYBILL: Right.

DELEGATE DRUM: -and what I'm saying and what Mrs. Reichert is saying—

CHAIRMAN GRAYBILL: Right.

DELEGATE DRUM: -if we can get a clear-cut vote on this thing, it's going to get us all home a lot earlier and it will—

CHAIRMAN GRAYBILL: Now, the Chair is—

DELEGATE DRUM: --allow us all to make a better decision—

CHAIRMAN GRAYBILL: -the Chair is—

DELEGATE DRUM: -on how it's going to go on the ballot.

CHAIRMAN GRAYBILL: The Chair is perfectly willing to do whatever they want to do. I've got a Felt motion, I've got your amendment, I've got Davis' substitute motion and Harper's amendment, and we can go right up the line and find out where they stand; or they can all withdraw if they want to, but I can't make them.

Mr. Simon.

DELEGATE SIMON: I'm not sure that I understand all this, but I'm wondering if we are going to get off dead center at all until this body takes the stand that they must vote where they stand first, on bicameral and unicameral, and it seems to me that the simple thing that we should do first is to just take a vote of this body which we put into the-just as simple as that-put it in-the bicameral win, they go in the body; if the unicameral win, they go in the body. Then we don't lose anything.

CHAIRMAN GRAYBILL: That's Mr. Drum's proposal, Mr. Simon.

DELEGATE SIMON: But we're in a position, right now, that I read about today. There was three fellows. Each went into a liquor store, and each one of them bought a quart of whiskey. They went out under a tree-it was Tom, Dick and Harry-they drank each one of them a quart of whiskey. And then one of them left. The other two sat there, and in a little while, one of them said, "Now, one of us have got up and walked away, but we've got to find out which one." And that's about the position we're in.

CHAIRMAN GRAYBILL: Mr. Simon, you're absolutely right. That's Mr. Drum's point; but the Chair's point is that we have four motions, and if they want to withdraw them, they can. But we've debated them for an hour, and maybe we can get at them that way. Another way is to vote on them. So, does anybody want to speak any more, or shall we vote?

DELEGATES: Vote.

CHAIRMAN GRAYBILL: Very well, let's vote. The issue is on Mr. Harper's amendment. Now, to set the stage, Mr. Felt made a proposition, which is on ballot number--revised ballot number 2; the top part thereof is all that is retained, because Mr. Drum amended it and Mr. Davis limited it to the bicameral-unicameral issue and Mr. Harper reversed it to the unicameral-bicameral issue. And so that everyone understands each other, after we get through voting on this, we're not going to be through. You can still amend it and test your next theory out. and Mr. Blaylock can test his theory, and Mr. Drum can test his theory, and we can all test our theories as soon as we've had a few votes-so there's nothing magic or final about anything until you're all decided. All right, so many as shall be in favor—and we're going to have roll call votes, right?

UNIDENTIFIED DELEGATE: Right.

CHAIRMAN GRAYBILL: Okay. So many as shall be in favor of Mr. Harper's amendment, which is to include unicameral in the body and put bicameral out in whatever we end up with on Mr. Felt's motion, say Aye-put unicameral in and put bicameral out. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote? Mr. Joyce, do you wish to explain your vote?

DELEGATE JOYCE: I wish to explain my vote. I'm voting No even though I'm a unicameralist.

CHAIRMAN GRAYBILL: Very well. Does any other delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll cast the ballot.

Aasheim ..... Nay
Anderson, J.H..... Nay
Anderson, 0..... Nay
Arbanas ..... Aye
Arness ..... .Absent
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock. ..... Nay
Barnard ..... Nay
Bates. ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Aye
Blaylock ..... Nay
Blend .....Aye
Bowman .....Aye
Brazier ..... Nay
Brown ..... Nay
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Excused
Cate ....Aye
Champoux ..... Nay
Choate.....Aye
Conover ..... Nay
Cross ..... Aye
Dahood ..... .Aye
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Nay
Eck .....Aye
Erdmann ..... Absent
Eskildsen ..... Nay
Etchart ..... Nay
Felt .....Aye
Foster ....Aye
Furlong. ..... Aye
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... .Aye
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... .Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland.....Aye
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold .....Aye
Loendorf..... Aye
Lore110 ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough..... Nay
McKeon ....Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ....Aye
Murray ....Aye
Noble ..... Nay
Nutting ..... Nay
Payne ....Aye
Pemberton ..... Nay
Rebal .....Absent
Reichert ..... Aye
Robinson ....Aye
Roeder .....Aye
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius..... .Aye
Simon ..... Aye
Skari ....Aye
Sparks ..... Nay
Speer ..... Aye
Studer ....Aye
Sullivan ..... Nay
Swanberg .....Aye
Toole ..... Excused
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ....Aye
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 44 delegates voting Aye, 51 voting No.

CHAIRMAN GRAYBILL: 44 having voted Aye and 51 having voted No, Mr. Harper's motion is defeated. We're now on Mr. Davis' motion to put bicameral in and unicameral out. Is there discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor of Mr. Davis' motion to put bicameral in and unicameral out, so many vote Aye; and so many as are opposed to Mr. Davis, vote No.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I'd like to explain my vote. Even though I'm for bicameral, I am voting No.

CHAIRMAN GRAYBILL: Very well. Has every delegate voted?

Mrs. Blaylock-Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, even though I'm a unicameralist, I'm voting Yes on this.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'll say the same.

CHAIRMAN GRAYBILL: The same as which'?

DELEGATE ECK: That I'm a unicameralist and am voting for bicameral in the body.

CHAIRMAN GRAYBILL: Okay, have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll cast the ballot.

Aasheim Aye
Anderson, J.H. Aye
Anderson, 0.. Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow Aye
Artz ..... Aye
Ask ..... Aye
Babcock Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Excused
Cate ..... Nay
Champoux ..... Aye
Choate ..... Nay
Conover ..... Nay
Cross.. ..... Aye
Dahood ..... Nay
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Absent
Eskildsen ..... Aye
Etchart ..... Aye
Felt. ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Nay
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf. ..... Nay
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye

McKeon ..... Nay
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Aye
Simon ..... Aye
Skari ..... Nay
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Excused
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Aye
Ward ..... Aye
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 60 delegates voting Aye, 35 voting No.

CHAIRMAN GRAYBILL: 60 delegates having voted Aye, 35 voting No, Mr. Davis' substitute motion prevails. Now, Mr. Davis'-let's understand where we stand. Mr. Davis' substitute motion was to use only the top half of revised ballot 2. In other words, he says that we should have a ballot that says: "For the proposed Constitution with the bicameral in" and "Against the proposed Constitution with thebicameral in"; and then, secondly, to replace that by "unicameral" on the outside. He said nothing about the other two things. Now, at this point, I think Mr. Felt and Mr. Drum are out and we now have the basic proposition which can be amended into any fashion that you want to amend it. We can either put the Joyce matter or we can put the Blaylock matter or we can

Mr. Blaylock-Mr. Joyce, he was up first. Let's let him-not this time but a long time ago—let's start with Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I move as a substitute motion that we put the first ballot-or use the first ballot when this goes to the people in June.

CHAIRMAN GRAYBILL: Use what's called the "official"—

DELEGATE BLAYLOCK: Yes, called the "official ballot".

CHAIRMAN GRAYBILL: Called "official ballot" for purposes of identification. Now, what this means-he's proposed that we use a ballot like the official ballot that was handed out to you today. Now, what this means is that neither bicameral nor unicameral would be in, but they would be a coequal alternative; and that's his substitute motion.

Mr. Dahood.

DELEGATE DAHOOD: Will Mr. Blaylock yield to a question?

CHAIRMAN GRAYBILL: Mr. Blaylock?

DELEGATE BLAYLOCK: Yes, Mr. Dahood.

DELEGATE DAHOOD: You know what the question is going to be. Now, Mr. Blaylock, in the event that neither of the propositions or neither of the alternatives receive 50 percent plus one vote, what happens to the legislative body in Montana?

DELEGATE BLAYLOCK: Well, this is why I used the phrase, Mr. Dahood, "go for broke-take a chance on the people voting for this". Now, I would believe-or my own feeling would be at this point, in order to assuage your fears and the other fears in here, that I would hope that Mrs. Reichert, at this point, would amend this to put in the-both parts of the bicameral and the unicameral, except for the first 1, 2 and 3. That's what I hoped for.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I have a motion to amend the-Mr. Blaylock's motion to amend so that if-in the event that 2-A and 2-B do not receive a majority plus one, that thereupon the Legislative Article would fail and that Article V of

the present Constitution would be incorporated into the remainder of the new Constitution. For the information of the delegates, Article V is the old Legislative Article.

CHAIRMAN GRAYBILL: All right, Mr. Holland has a substitute-or has an amendment-

DELEGATE HOLLAND: I make this—

CHAIRMAN GRAYBILL: -which says that if-that we're going to use the Blaylock format now-and if neither 2-A or 2-B get a majority, then old Article V is effective.

DELEGATE HOLLAND: Mr. Chairman.

CHAIRMAN GRAYBILL: Is that right?

DELEGATE HOLLAND: Yes. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: The State of Illinois had precisely the same problem we had. They had a constitution where it required a majority plus-a majority of the voters had to adopt the new constitution; so therefore, on every side issue, they provided that in the event that a majority did not adopt the particular side issue, that they would adopt-that the old-the portion of the old constitution that would cover the article would be there. I do this precisely so we'll not be branded as the biggest 100 fools in the State of-or in the United States of America. In the event-and I see this as a real possibility-that we would adopt a constitution providing in part for a three-unit body—Legislative, Executive and Judicial-and not have a Legislative branch; and this we cannot allow to happen. We kicked around in committee the possibility of substituting different portions for it. We decided the thing was unrealistic. Suggest that in the-1 suggest to you that in the State of Illinois, all of the side-the constitution itself and all of the side issues each received a majority, so they didn't have to fall back upon it. And I'm inclined to think that unicameral-this is the only way that unicameral and bicameral will ever get a true test from the voters, but I cannot go along with Mr. Blaylock's suggestion that we should just let the thing go. In effect, what I'm saying is, Mr. Blaylock is right. Let's give the voters a clear choice without one or the other being in the body; but in the event of a majority, which I submit the chances are very, very small, we still are not going to be in the foolish position of having a constitution without a legislative body.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, I think I need your help. I'd like to explain something. It seems to me that the Blaylock and the Holland amendment-this is another subject, it's on a basically different kind of a ballot. What I would like to do is to finish up where we've started now. We have now the bicameral in the body of the material, and I would like to suggest that the unicameral--and then, on the second-underneath that, that the unicameral bementioned first and then the bicameral as alternatives to that. You see, I'd like to get back on Mr. Davis' motion and get that thing cleaned up through the voting process and then go into the other so we have absolute alternatives that we eventually vote on.

CHAIRMAN GRAYBILL: Well, then, why don't you oppose the Holland amendment and vote No; and if it's defeated, fine; and if it's voted Yes, then move to amend it after it's in. But to just force me to switch horses now, it merely leaves a dogleg situation here. We now have Mr. Blaylock's substitute motion, which did have the effect of raising his issue, and we have Mr. Holland's amendment to that, which has the effect of putting into effect Article V of the old Constitution if Mr. Blaylock's propositions don't receive 51—a majority.

Mr. Berg.

DELEGATE BERG: Mr. Chairman, as I said before, I repeat again, I am opposed to Mr. Blaylock's motion. I am equally opposed, or not quite so violently opposed, to Mr. Holland's amendment for this reason-that if you accepted Mr. Blaylock's proposition without Mr. Holland's amendment, you may be sure that you have decimated the Legislative Article and left the whole matter for the courts to eventually do something with; whether they could repair the damage or not is highly problematical. If, on the other hand, you were to adopt Mr. Holland's amendment, at least this-you would know that you were going back to the 1899 Legislature, which would not have any of the reforms that we have today. It would not have annual sessions. It would not have the right to reconvene themselves. It would be limited to 60 calendar days. It would not have the right to reconvene itself. All of these things would go down the drain if that is the risk you take, and I cannot overemphasize how great that risk actually is,

because you must realize that those who vote against the Constitution are not going to be materially concerned with whether you have bicameral or unicameral, so that when you come to this second issue on the ballot, you have a very poor chance of ever having a majority for either bicameral or unicameral if you leave it in this state. In my mind, we have here, right now, the stake of this Constitution. All the reforms that are in it are at stake, and we'd better get this issue straightened around so that we do not lose the Constitution, regardless of whether we have unicameral or bicameral. But let us not risk the chance of going back to the 1899 Constitution Legislative Article, either in whole or in part.

CHAIRMAN GRAYBILL: Marie, do you need to change the tape? Very well, we'll stand at ease for a moment while we change the tape.

(At ease while tape changed)

CHAIRMAN GRAYBILL: We'll be in order. Members of the body, we'll be in order. We'll continue to debate and vote for awhile, and I think we might solve this.

Mr. Harper, you were up.

DELEGATE HARPER: Yes. Mr. Chairman, let me just ask you to reason one more little time here. We started this Convention the 17th day of January. I don't know when it was we went into the Legislative Committee room to start meeting, but the first thing we decided was that we weren't going to be in there if we didn't try to write the best of both. We came back to the floor of this Convention; everybody said, "that's right". We worked through the unicameral, we worked through the bicameral, we got the best of both. We deliberately wrote it so that, in almost every detail, the same wording can he used for unicameral or can be used for bicameral. We suggested to the committee that something like this-they could-and I'm asking why this couldn't be written into the Constitution like this: "If the unicameral alternative listed as issue number 1 on the ballot prevails, the following shall be sections 1, 2 and 3." That's where we say unicameral structure, give the size, and so forth. "If the bicameral alternative listed as issue number 1 on the ballot prevails, the following shall be Sections 1, 2 and 3." Okay, we've got that. That's the way Illinois did with theirs. That's the way, as I understand, North Dakota and some of the others are doing with theirs. No hassle, it's just right in there. Now, then, beginning with Section 4-Qualifications-I'm almost tempted to ask you to take that article out, and we could go down through it. You go all the way through-only with certain stylistic changes that anybody who didn't know anything could make, about one house or two house-No, I'm not-I'm thinking in terms of anybody being able to read. You come up with the idea that if unicameral passes, Sections 1, 2 or 3; if bicameral passes, then it's structure. Okay, now let's take Dave Holland's suggestion. If neither one passes, the structure applying from the old Constitution, which would be bicameral, would go in. Now, admittedly, it wouldn't have any-it doesn't have a number on it, because there's no limit-bottom or top limit-but it seems to me that no court-no court would say that that entire article is gone because your proposition on Sections 1, 2 and 3 didn't pass. I just can't see it. And it would be easily drawn together in an article that makes sense. So I don't think we've got to pass up Chet's proposition altogether. Now, then, the second thing. You know, all during the discussion of the Executive Article and the several other articles, every time things would come up, we said, "Wait a minute; there's going to he a great section of the public decidedly For or Against." Now, you tell me one other issue where people are more divided in a knowledgeable way than on this issue. So we wanted not to antagonize one whole bloc ofvoters, and so we deliberately went that fashion, and I still think we can go that fashion.

CHAIRMAN GRAYBILL: Mr. Harper, if Mr. Blaylock's motion prevails, I'll certainly offer you an opportunity to amend or to add to fix it so that 4 through 12 or something are identical, and you can do what you say. Would you yield for one question?

DELEGATE HARPER: Yes-or more.

CHAIRMAN GRAYBILL: Assuming we fixed that up and did all of that and then they had the election and neither unicameral or bicameral was adopted—

DELEGATE HARPER: Right.

CHAIRMAN GRAYBILL: --would you rather have Holland's old amendment-or some of the language from the old Constitution for Holland, or would you rather have the new bicameral article?

DELEGATE HARPER: For Sections 1, 2 and 3?

CHAIRMAN GRAYBILL: Right.

DELEGATE HARPER: I would prefer to have the new.

CHAIRMAN GRAYBILL: Very well, that's Mr. Joyce's proposition.

DELEGATE HARPER: Yes, except that we-if we put these two out here in an even battle, it's one thing. To put one in the body of the Constitution is just--well, you, yourself, and several others, have pointed out it practically affords no real alternative. Unless that thing out on the alternative has got about 75 percent of the voters in favor of it, it's not going to carry a majority.

CHAIRMAN GRAYBILL: Mr. Roeder, you haven't been up for a long time.

DELEGATE ROEDER: Sir, I haven't been up today. What Mr. Harper and what Mrs. Reichert really want is part of the Torrey Johnson resolution. They want it as it applies to the Legislative Article. Now, last night Mrs. Reichert said she's a very persistent woman. I say "Amen" to that. Now, Mr. Harper says that anybody who can read can interpolate the common elements of the bicameral and unicameral proposals where they are not incompatible, whatever that would mean, with the current Article V. And he says anyone who can read can do that. Well, there are some lawyers on the Style and Drafting Committee who are going to get up here in a series now and explain to you why Mr. Harper's assertion that anybody who can read can do that, is wrong. If Mr. Harper's proposal eventually prevails, Mr. Chairman, I wish to be removed as a member of the Style Committee, because we're going to be here a very long time on the Style Committee and we're going to have to take all the machinery downstairs and retape it. So please listen carefully as our lawyers explain to you why what Harper and Mrs. Reich& are after is not very easy to do. Our legal consultant says it's not possible to do. Now, I appreciate the motives behind Mr. Harper and Mrs. Reichert's persistence; that is, they feel this is the only way we are ever going to give the people a fair choice. Maybe that's the case, but it's not a possible one, in my eyes. And I would go back to Mr. Felt's notion that we have to do the best we can within the limitations that were imposed by some amanuensis who copied language and didn't even have any idea what he was doing to us. But we can't do anything like that. There are no political Immaculate Conceptions. (Laughter)

CHAIRMAN GRAYBILL: Mr. Harper is not convinced of that. (Laughter)

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move, as a substitute motion for all motions pending, that this—

CHAIRMAN GRAYBILL: No, we've got one substitute motion and an amendment to it, and we can't go anywhere till we dispose of them, Mr. Joyce.

DELEGATE JOYCE: You mean-1 thought we always got three.

CHAIRMAN GRAYBILL: Well, you have three, but when you get to a substitute--and we really have three now.

DELEGATE JOYCE: No, we don't.

CHAIRMAN GRAYBILL: Yes, we do.

DELEGATE JOYCE: We have Blaylock's—

CHAIRMAN GRAYBILL: Would you like me to tell you what they are? They're Mr. Davis' bicameral in and unicameral out, Mr. Blaylock's use the official ballot, and Mr. Holland's amendment to Mr. Blaylock's. Any time you get a substitute motion, you only get one amendment.

DELEGATE JOYCE: Well, Mr. Chairman, may I direct a question to Delegate Holland, then?

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Joyce.

DELEGATE JOYCE: Mr. Holland, would you mind withdrawing your motion for the time being and then, if Blaylock's carries, put it in again?

CHAIRMAN GRAYBILL: Now, before you say—

DELEGATE HOLLAND: I certainly would, Mr. Joyce.

CHAIRMAN GRAYBILL: Before you say—

DELEGATE JOYCE: You'll withdraw?

DELEGATE HOLLAND: I certainly would mind doing it. (Laughter)

DELEGATE JOYCE: You wouldn't-you won't withdraw, I take it.

CHAIRMAN GRAYBILL: And, Mr. Joyce, your motion-you see, we've got a substitute motion, and whatever you do would have to be material to the substitute motion. It'd have to be only an amendment, and that may be difficult for you to do at this point.

Mr. Davis.

DELEGATE DAVIS: Mr. President, you mentioned you had my motion pending. I think that my motion has already been passed; it's no longer pending. Isn't that correct?

CHAIRMAN GRAYBILL: Well, I guess it's-1 guess that's right, except it's incomplete in terms of the-we haven't got a proposition yet. It's only partly complete. We've settled on that part if that's the way it goes. All right, now, all we have to do is decide whether we're going to do what Holland and Blaylock think, and in case they-in case Blaylock prevails, then Davis is out and we're on a new proposition. You may amend Blaylock's back, but you can't use the-the Davis motion uses Mr. Felt's basis and the Blaylock motion uses an entirely different theory. Now, if you don't understand that, I'll explain it to you. Mr. Blaylock's was a substitute motion. Mr. Davis' motion says that we're going-it's on-it's based on what's called here "revised ballot number 2" and it says, "For the proposed Constitution, including bicameral, and Against the proposed Constitution including bicameral"; and then it's got on the outside for replacing unicameral. But Mr. Blaylock's motion says, "For the Constitution; Against the Constitution"; then 2-A, "For unicameral, Against-or For bicameral". So, they're entirely different propositions and one is a substitute motion for the other. And then we have the-Mr. Holland's amendment, which simply is a refinement on Mr. Blaylock's.

Mr. Felt.

DELEGATE FELT: As a point of order, I believe it would be, Mr. Chairman-and certainly conceding that the procedural situation has become somewhat scrambled--I feel that when Mr. Davis' motion carried, those that preceded it, including mine, were out of the picture totally—

CHAIRMAN GRAYBILL: Right.

DELEGATE FELT: -but that disposed of the main question, and I think that Mr. Blaylock-while I did notice he said "substitute motion" when he placed it, it was actually a main motion, because it started fresh. If I am correct in that, then it would appear to me that the Joyce amendment would be in order as a substitute motion.

CHAIRMAN GRAYBILL: Well, but, Mr. Felt, it isn't fresh, because Mr. Davis won and Mr. Davis is still in the picture.

DELEGATE FELT: Well—

CHAIRMAN GRAYBILL: We adopted Mr. Davis'. We can't just throw it away, having adopted it. That's where we are right now. We have the bicameral in and unicameral out on a ballot that we haven't touched the two other problems but which we've solved the top part until it's amended out.

DELEGATE FELT: Well, I would agree that the Blaylock amendment is inconsistent with the—

CHAIRMAN GRAYBILL: And therefore-

DELEGATE FELT: -action taken on the Davis motion, but even though it is, as long as the motion is entertained, I think that it is a main motion even though it would have the effect of negating what had been previously done. Negating.

CHAIRMAN GRAYBILL: Well, all right. You know, I'm trying to keep us on one or two theories at the same time instead of three or four; and we're on a theory that Mr. Blaylock has enunciated, and we ought to find out whether it prevails or whether it doesn't.

Mr. Swanberg.

DELEGATE SWANBERG: I would like to ask the Chair a question. If we have the bicameral provision in the body of the Constitution, with the unicameral provision as an alternate, will the voter get allowed-be allowed to vote twice?

CHAIRMAN GRAYBILL: Certainly. He'll be allowed to vote on the body of the thing and he'll be allowed to vote whether or not he wants-he'll be allowed to vote for theunicameral.

DELEGATE SWANBERG: Yes. Thank you very much.

CHAIRMAN GRAYBILL: All right, Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I want some clarification here. Just exactly what was Blaylock's amendment? Isn't it—

CHAIRMAN GRAYBILL: All right, I'll restate it before we put it. Are you ready to vote? I'll restate it. Now, the situation is this. Mr. Davis proposed that we have a constitutional ballot which says: "Vote For the Constitution with the bicameral article in or vote Against it with the bicameral article in-vote For or Against the Constitution with the bicameral article in". As a-and, then, as an outside subproposition, you may vote for the unicameral article, to substitute it in. That's the proposition that's up. But Mr. Blaylock made a substitute motion that, instead of that, we use a ballot which is now called the "official ballot", before you, and it doesn't have the bicameral in it at all. It has neither the bicameral nor the unicameral in the Constitution. It has "For the proposed Constitution, Against the proposed Constitution"; and then it has "For aunicameral or For a bicameral" as its second proposition; and, in fact, it has the same on 3 and 4, as you can see if you look at it. Now, that's whatwe're voting on, except that Mr. Holland said if 2-A and 2-B don't get a majority, then we will automatically assume and write it on the ballot that the old Constitution Article V becomes the law-or remains the law.

DELEGATE BATES: If we vote for Mr. Blaylock's motion, we are then, again, taking out the bicameral--out of the body?

CHAIRMAN GRAYBILL: You certainly are.

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I'll have to rise again to a point of order.

CHAIRMAN GRAYBILL: Okay.

DELEGATE AASHEIM: Mr. Davis' was a main motion, and it carried. If Mr. Blaylock-and I hesitate to do this, Chet-you will have to have a vote on the prevailing side to reconsider this proposition.

CHAIRMAN GRAYBILL: No, I don't think you will, because it's a substitute motion and it-and Mr. Davis'-you may call it a main motion if you want to, and I haven't said whether it is or not-but Mr. Davis does not have a total ballot before him. He's only got a piece of the ballot.

DELEGATE AASHEIM: Will you state Mr. Felt's motion-original motion.

CHAIRMAN GRAYBILL: Sure. Mr. Felt's motion has four-has three parts to it: one, an alternative with the unicameral in and an alternative with the bicameral out; then it's got the gambling alternative; and then it's got the death alternative. Mr. Drum amended that and said he wanted the bicameral in and the unicameral out, plus 2 and 3. Mr. Davis came along and said, "I move that we drop 2 and 3 and just decide 1."

DELEGATE AASHEIM: In other words, Mr. Davis' motion carried and negated Mr. Drum's and Mr.—

CHAIRMAN GRAYBILL: And Mr. Felt's.

DELEGATE AASHEIM: —Felt's. So, this is a major motion, and we-the Convention has decided that the ballot should contain the bicameral as a major issue with the unicameral as a side issue. Consequently, Mr. Blaylock's motion is out of order, and I have to challenge the motion of the Chair if you—

CHAIRMAN GRAYBILL: Well, you may challenge it if you want to, but the Chair is going to rule that it isn't finished and the Chair-let's put your challenge, and we'll find out where we stand. All right, Mr. Aasheim challenges the Chair on my ruling that Mr. Blaylock's motion is in order. Is that correct?

DELEGATE AASHEIM: That's right.

CHAIRMAN GRAYBILL: All right. Now, the Chair has an opportunity to explain his position, so the Chair is going to explain that we have several possibilities before us, and it has always been the Chair's desire to allow all of you to test your theories in this marketplace that we call this Convention, and until we have finally moved the final adoption of any article, we have allowed freely amendments. We don't have to reconsider until we've moved that when this committee does arise and report after da-da-da-da-da, we don't have to even reconsider within that time. I have always, throughout this Convention, allowed anybody to put any motion, because I want your ideas tested and this body has to finally be brought to the point where it honestly and fairly arrives at something by a majority. Now, there are several untested ideas yet floating around in the marketplace. Mr. Blaylock has one, Mr. Joyce has

one, and Mr. Harper possibly has one-he's got a part of a one. Secondly, the motion that we have, which is to put bicameral in and leave unicameral out, does not, in fact, solve the whole ballot problem, which is the issue before this body. Now, if you want to let the bicameralists steal the march here and say that they get in on this thing, then sustain Mr. Aasheim; but if you want to hear the rest of them out—

(Interruption from the floor--Inaudible)

CHAIRMAN GRAYBILL: Now, wait a minute. The Chair is going to finish. If you want to hear the rest of them out before you decide what this ballot is going to look like, then you sustain the Chair. Now, if you want to speak, Mr. Drum, you may; but when you finish speaking, I will reserve the right to again state the Chair's position because the Chair has an absolute right to be last on this.

YOU may speak, Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I rise to a point of, I believe, personal privilege. The Chair is expressing—

CHAIRMAN GRAYBILL: State your point.

DELEGATE DRUM: —an opinion. I think you should leave the Chair if you are going to say the bicameralists are stealing the march. You're showing an opinion. You're persuading the people to follow your line of thinking, and I don't think it's right for the Chair to do that.

CHAIRMAN GRAYBILL: Well, I-your point of privilege has been made, so there's no use of ruling on it, but the rules do provide that the presiding officer may cast his vote and that I have a right to explain my decision. Now, I haven't libeled or slandered anybody, but I think-my point is that if the bicameralists are able to now shut off debate so that we don't consider the others, they will have then got theirs in. I'm unwilling to do that until everyone's had his say. So if you want to vote that way-for the bicameralists, you do it. I don't think I'm slandering anybody. I'm probably-in fact, I voted bicameral twice so far this afternoon. But I will certainly state my position, and if you don't like it, I'm sorry. And you can raise another point of privilege if you like.

Mr. Drum, for what purpose do you rise?

DELEGATE DRUM: I rise to inquire about that amendment that I put in about an hour and 45 minutes ago that has never been brought before this body, and there have been about four or five different motions that have come up, and it has not received due consideration—

CHAIRMAN GRAYBILL: That's right, Mr. Drum—

DELEGATE DRUM: -and it would have solved the problem.

CHAIRMAN GRAYBILL: -and your motion and your amendment is after the rest of these, and if I ever get a chance, you're going to have a chance to make it. But if you prevail in supporting him, you're not going to have a chance to make it and neither is Mrs. Bates and neither are four or five other people. I'm against cutting off debate. If you want to cut off debate on the bicameral going in, vote with Mr. Aasheim.

For what purpose do you rise, Mr. Davis?

DELEGATE DAVIS: A question. From some of your conversation, is it your understanding, Mr. President, that we're trying to attempt, by my motion, not to further consider the death penalty or gambling?

CHAIRMAN GRAYBILL: No, I don't think that's your motion, and I don't even think that's Mr. Aasheim's. Mr. Aasheim is trying to freeze into the situation that bicameral must be in, when I don't think we have closed off debate on that issue. That's the point. And if he prevails, it will be on your halfmotion-which only half deals with the ballot.

Mr. Aasheim, for what purpose do you rise?

DELEGATE AASHEIM: I want to talk, too, on the motion to challenge-

CHAIRMAN GRAYBILL: Pardon? I can't hear you.

DELEGATE AASHEIM: I want to express my feeling here. I'm not trying to freeze—

CHAIRMAN GRAYBILL: Well, now, Mr. Aasheim, you expressed your opinion; and the Chair has the right to express his; and I don't think you need to express it after me, because then I only have to express it over.

DELEGATE AASHEIM: Mr. Chairman, you said that I am trying to freeze something into this thing, and I'm not trying to do that, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, all right, you may speak then, Mr. Aasheim.

DELEGATE AASHEIM: I am trying-we have pretty much decided now, by a vote, that the bicameral is supposed to be on the proposition with the Constitution, and I feel this: that Mr. Blaylock, if he wants to amend this, that he should move to amend this-Mr. Davis' motion--rather than bring in another major substantive motion here. That's my contention, because I'm certainly not-I'm not happy, I'm not gloating over the fact that we got the bicameral in the main issue at all, because I would like to have-like Mrs. Reichert said--would like to have a choice, but it's apparent we can't have that. And now, then, if we can, through amendment of Mr. Davis' proposition, fine. And I think that's the course we should take; and Mr. Blaylock's motion, I think, is out of order.

CHAIRMAN GRAYBILL: Well, I understand you think it's out of order, and now so that I'll clarify it again, I'd like to point out that the Chair has never in this Convention ruled that no one could amend or change something. In other words, you don't have to move to reconsider until after we put the proposition that when this committee does rise and report and finally adopt something. Now, we have not done that about the ballot yet, so your proposition that it takes a motion to reconsider is wrong, in view of what the Chair has done all along up till today, and I asked the body to let me continue to do what I've always done. Secondly, it's always been the Chair's proposition that any time anybody had a proposal, we wanted to let it be aired. There are still proposals before the body which cannot be aired ifyour-if you prevail. Now, the issue is on the challenge of the Chair. The vote will be by roll call. If you sustain the challenge, you sustain Mr. Aasheim; if you sustain the Chair, you vote No. So vote Yes to sustain the challenge and vote No to sustain the Chair.

For what purpose do you rise, Mr. Studer?

DELEGATE STUDER: Mr. President, before you put that question, I rise for personal privilege. I want to get this straight before I vote. I don't remember Mr. Blaylock even making a motion. As I understood it, Mr. Harper had a sub-motion-sub. to Davis and it was voted down. Blaylock said before that that if we would vote those two down, he would suggest-he suggested that if we voted those two down, as I understood it, that then he would come in with his motion.

CHAIRMAN GRAYBILL: Right.

DELEGATE STUDER: We voted down Harper's—

CHAIRMAN GRAYBILL: Right.

DELEGATE STUDER: -but we accepted Davis'—

CHAIRMAN GRAYBILL: Right.

DELEGATE STUDER: —so now we have it in.

CHAIRMAN GRAYBILL: And then, after that—

DELEGATE STUDER: I don't remember Blaylock making a motion.

CHAIRMAN GRAYBILL: Right. Well, after that, Mr. Studer, Mr. Blaylock did arise, and I did recognize Mr. Blaylock and he did make his motion, and then Mr. Holland amended it.

DELEGATE STUDER: Okay.

CHAIRMAN GRAYBILL: Okay, the ballot's open. So many delegates as want to sustain Mr. Aasheim in his challenge, vote Aye; so many as want to sustain the Chair, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Okay, take the ballot.

Aasheim	Aye
Anderson, J.H..	Aye
Anderson, 0..	Absent
Arbanas	Absent
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Absent
Babcock	Absent
Barnard	Aye
Bates	Aye
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay

Bugbee ..... Absent
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Absent
Choate. ..... Nay
Conover ..... Nay
Cross. ..... Nay
Dahood ..... Absent
Davis ..... Absent
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Absent
Erdmann ..... Absent
Eskildsen ..... Absent
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong. ..... Absent
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Absent
Harper ..... Absent
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Nay
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Nay
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Nay
Martin ..... Absent
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Nay
Murray. ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins.. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Absent
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks.. ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg. ..... Nay
Toole ..... Excused
Van Buskirk ..... Nay
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Aye
Woodmansey ..... Nay
Mr. President ..... Nay

CLERK HANSON: Mr. Chairman, 17 delegates voting Aye, 63 voting No.

CHAIRMAN GRAYBILL: 63 having voted No and 17 Aye, the challenge to the Chair is not sustained. Now, we're debating Mr. Holland's amendment, which is that if the Blaylock amendment happened to prevail and neither the bicameral nor the unicameral got a majority, that Article V of the old Constitution should then be substituted-or should then be considered back in effect. Is there further discussion of Mr. Holland's amendment?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I take it I'm correct that we're still sitting as a Committee of the Whole?

CHAIRMAN GRAYBILL: Right.

DELEGATE DAHOOD: I move that this Committee rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: Very well, the motion is that this committee rise and report progress. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. We'll write it up.

(Proceedings reverted to Convention with President Graybill presiding)

PRESIDENT GRAYBILL: Mr. Murray— Will the clerk please read the Committee of the Whole report.

CLERK HANSON: "March 21, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: that the Committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report that we rise and beg leave to sit again. All in favor, say Are.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed? (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move we stand adjourned until Wednesday, March 22nd, 1972, at 9 o'clock, a.m.

PRESIDENT GRAYBILL: The motion is to adjourn until 9 o'clock tomorrow morning. Mr. Schiltz, I understand you want a meeting, at 8 o'clock in the morning, of Style and Drafting.

DELEGATE SCHILTZ: Right.

PRESIDENT GRAYBILL: Very well; all in favor of the motion to adjourn until 9:00, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 6:15 p.m.)

March 22, 1972 **Fifty-Second Day** **Convention Hall**
9:25 a.m. **Helena, Montana**

DELEGATE HARBAUGH: Let us pray. God, our Father, in these weeks together we have each become aware of our individual strengths and weaknesses. We confess that from time to time we have each yielded to our pet prejudices without thinking of the common good, but we thank You, our Father, that in Your wisdom You have called us together as a collective body and that it is the will of that body which prevails, rather than the will of any one individual. As we finalize our work this week, give us grace and humility to speak not of what we have done as individuals but what we have done as a Convention, and as we reflect on the mechanics of this process which is greater than any one of us, may we be made aware of the movement of Your spirit, which is greater and above and among all of the processes of men. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegate Campbell be excused this day?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Cate, Delegate Dahood, Delegate Studer, Delegate Rygg, Delegate Robinson.

PRESIDENT GRAYBILL: Will you read the absences again.

CLERK HANSON: Delegate Rygg.

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim Present
Anderson, J.H. Present
Anderson, 0.. Present
Arbanas Present
Arness Present
Aronow Present
Artz Present
Ask Present
Babcock Present
Barnard Present
Bates Present
Belcher Present
Berg Present
Berthelson Present
Blaylock Present
Blend Present
Bowman Present
Brazier Present
Brown Present
Bugbee Present
Burkhardt Present
Cain Present
Campbell Excused
Cate Present
Champoux Present
Choate Present
Conover Present
Cross.. Present
Dahood Present
Davis Present
Delaney Present
Driscoll Present
Drum Present
Eck Present
Erdmann Present
Eskildsen Present
Etchart Present
Felt Present
Foster Present
Furlong Present
Garlington Present
Gysler Present
Habedank Present
Hanson, R.S. Present
Hanson, R. Present
Harbaugh Present
Harlow Present
Harper Present
Harrington Present
Heliker Present
Holland. Present
Jacobsen Present
James Present
Johnson Present
Joyce Present
Kamhoot Present
Kelleher Present
Leuthold Present
Loendorf. Present
Lore110 Present
Mahoney Present
Mansfield Present
Martin Present
McCarvel Present
McDonough Present
McKeon Present
McNeil Present

Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins.,	Present
Romney	Present
Rygg	Absent
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
S ari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg.	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present
Mr. President	Present

CLERK HANSON: Mr. President, 98 delegates present, 1 excused and 1 absent.

PRESIDENT GRAYBILL: Very well, the journal may so show. Reports of Standing Committees.

CLERK HANSON: "Mr. President. We, your Committee on Style, Drafting, Transition and Submission, herewith transmits its final report for consideration of the Convention. Sincerely, John M. Schiltz, Chairman."

PRESIDENT GRAYBILL: The Final Report of Style and Drafting is placed on General Orders. Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Communications.

CLERK HANSON: "Helena, Montana; March 22, 1972. Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter EX-1, Laws of Montana 1971, the license of Henry E. Lohr, license number 3-72, has been reinstated as of March 21, 1972. Sincerely yours, Frank Murray, secretary of State."

PRESIDENT GRAYBILL: Very well, I would like to explain briefly under Communications where the Chair thinks we are this morning, because some of you may not understand yet. We are going down the Order of Business and when we get to the Committee on Style and Drafting's Final Report, we are going to take it under General Orders first today. In the meantime, the Style and Drafting Committee has met and is working up a ballot proposal; and when that's finished, either late this morning or right after lunch, we will consider their ballot proposal and we will continue the debate that we had yesterday on the ballot; but while that matter is being ironed out in terms of the Style and Drafting coming up with their final ballot proposal, we will go ahead and adopt on Style and Drafting, article by article, the minor changes they have made in theconstitutional document. And when we have finished-so you'll understand-when we have finished adopting it article by article in Committee of the Whole, we will move it all to Adoption, Order of Business Number 6; and we will adopt it article by article in Number 6, finally, except that when we finish adopting it all article by article and when we have finished the ballot and moved it and the other articles, we're going to have to skip up into Adoption, then we will adopt it finally in Order of Business Number 6 as a whole. And the present plan is to adopt it today or tomorrow and then sign it on Friday morning, as you know, at 10:OO. But we will finish the adoption whenever we are able to, as soon as we arrive at the ballot and settle the Style and Drafting. So, that's what we're doing. We're going to start on this and go to the ballot later. Very well, Order of Business Number 4, Introduction.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: There's none there till we put it there today. Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders of the Day.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve the Convention into a Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole; Graybill, Chairman)

CLERK HANSON: "March 22, 1972. The following committee report is now on General Orders: Final Report." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen, will you move that we pass consideration of the partial Final Report we were working on yesterday and go to Style and Drafting's Final Report?

DELEGATE ESKILDSEN: I so move, Mr. President-MT. Chairman, that we go to the Final Report.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. If you'll turn to that report, and Mr. Schiltz will explain it-but if you'll turn to the first page after the signatures. This report, I think I can say, is somewhat different than the other in that we printed the Constitution clean and explained the differences or the Style and Drafting changes on one sheet, since there were only a few and since it would have required us to print the Constitution, 60 pages, twice to do it the other way.

Mr. Schiltz, have I correctly characterized your proposal?

DELEGATE SCHILTZ: Yes, Mr. Chairman. As you-I'd like to make a few remarks first.

CHAIRMAN GRAYBILL: Yes, sir; please do.

DELEGATE SCHILTZ: As you and possibly the rest of the Convention knows, I haven't had-we got this late last night and I haven't had any time to do my usual well-referenced job of explaining all this to you, so I'll welcome any comments as I go, because I'm going to be feeling my way a little bit. I would also like to say, Mr. Chairman, that we owe a great debt to the staff of the Style and Drafting Committee, Gardner Cromwell and our two lawyers, Sandy Muckelston and Diana Dowling, and especially to Betty Nelson, who has been the secretary and who knows everything there is to know in this capitol about printing. If any other state ever has a Constitutional Convention, I would recommend that staff to it. I would also like to commend the committee. It's been an excellent committee. Never once have I had any trouble getting a quorum. They've worked while this organization has been in session, they've come upstairs to pass on things so that the Convention wouldn't be delayed in any way, and all in all it's been an excellent committee and a good experience. Now, Mr. Chairman, I would like to say also, we'll take only the first 64 pages. The material in the back of the book is the material we were working on yesterday, and it will need some revision when we get to the point of recommending a ballot to the Convention. Yesterday, we purposely-and at the committee's insistence-I explained the dilemma the committee was in. We wanted to get the sense of this body before we attempted to draft a ballot, and we think we did get that sense yesterday, so this afternoon we'll take up the back of the book, which is the adoption schedule, the transition schedule, and the proposed ballot. Mr. Chairman, I move that when this committee does arise and report, after having had-Oh, I'm sorry, go ahead.

CHAIRMAN GRAYBILL: Mr. Chairman-Mr. Schiltz, first of all, I'd like a motion from you to suspend Rule 23, the 48-hour rule on this—

DELEGATE SCHILTZ: Yes, Mr. Chairman. I move to suspend Rule 23, the 24-hour rule, this not having lain on the desks for 24 hours.

CHAIRMAN GRAYBILL: 48 hours; that's all right.

DELEGATE SCHILTZ: For 48 hours.

CHAIRMAN GRAYBILL: All those in favor of suspending Rule 23, the 48-hour rule, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's suspended. Now, Mr. Schiltz, we'll start. Will the clerk please read the title of the report and the Preamble-just the title of the Preamble. Let's take it that way.

CLERK HANSON: "Montana Constitutional Convention, 1971-72. Report of Committee on Style and Drafting, Transition and Submission, Final Report. Reported March 22, 1972, John M. Schiltz, Chairman; William Burkhardt, Vice chairman." Mr. Chairman, Preamble.

CHAIRMAN GRAYBILL: The Preamble is on page 1.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Style and Drafting Committee's Final Report, the Preamble thereof, I recommend it adopt the same. Mr. Chairman, there are no changes in the Preamble.

CHAIRMAN GRAYBILL: Any discussion of the Preamble?
(No response)

CHAIRMAN GRAYBILL: All in favor of adopting the Preamble, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Article I.

CLERK HANSON: "Article I, Compact with the United States", page 2. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article Number I, Style and Drafting Final Report, it recommend the same be adopted. Mr. Chairman, there are no changes in the compact.

CHAIRMAN GRAYBILL: Any discussion of Article I?
(No response)

CHAIRMAN GRAYBILL: All in favor of Article I, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Article II.

CLERK HANSON: "Article II, Declaration of Rights," page 3. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article II, Final Report, Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman, we have no changes in the Bill of Rights in Article II.

CHAIRMAN GRAYBILL: Article II contains 35 sections. Is there any discussion of Article II? It has no changes.
(No response)

CHAIRMAN GRAYBILL: All in favor of Article II, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Article III.

CLERK HANSON: "Article III, General Government"; containing 9 subsections, beginning on page 11. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz, I think we're going to have to pass Article III because we have the two Section 9s on gambling in Article III. Am I correct?

DELEGATE SCHILTZ: You're correct in that, Mr. Chairman. I was going to suggest that we could possibly approve the drafting, with the understanding that as the proposed ballot will be-and it could be revised by any of several proposed ballots that might come up today-that we-with the understanding that only one of those gambling sections might be in the Constitution—and then, depending on how that vote goes, we will have approved the style.

CHAIRMAN GRAYBILL: Well, we'll certainly find out. Is there any objection to the style of Article III, with the understanding that there are two Section 9s shown there and that one or the other will probably be left in the Constitution, depending on how the ballot is drafted? We can't finally adopt Article III because we cannot say until you have passed on your ballot recommendation exactly what the form of Article IX will be. Is there any objection or any discussion of the style? There seem to be no changes.

(No response)

CHAIRMAN GRAYBILL: All in favor of Article III as to style, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's okay as to style.

DELEGATE SCHILTZ: Mr. Chairman, I don't think I moved it, did I?

CHAIRMAN GRAYBILL: Well, I don't think you can move it, because I think we do have to come back and—

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: -adopt it either with one or the other or neither or both in, after we get through with the ballot. So I've only made a note that it's adopted as to style. Article IV.

CLERK HANSON: "Article IV, Suffrage and Elections"; containing 6 subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article IV of the final report of Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman, there are no changes in Article IV.

CHAIRMAN GRAYBILL: Is there any discussion of Article IV?

(No response)

CHAIRMAN GRAYBILL: Very well; all in favor of Article IV, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, again, let's-the clerk could read Article V, but it's fouled up. Let's discuss Article V. There are two Article Vs-one begins on page 15, one begins on page 23. The one on 15 is unicameral and the one on 23 is bicameral. Now, in addition, there are some style changes in it that I think we could go through and explain and adopt. Do you want to—

DELEGATE SCHILTZ: Well, yes, Mr. Chairman. First of all, if you'll refer to the title page, Final Report, you'll see that we made some changes. We changed the-from "department" to "branch" throughout, and you'll find that in Section 5, Article XI, both unicameral and bicameral. And then-let me see—

CHAIRMAN GRAYBILL: Section 11?

DELEGATE SCHILTZ: Section 11 of Article V, both unicameral and bicameral, we changed to "branch". I don't have it marked, so I can't—

CHAIRMAN GRAYBILL: Well, it's in subsection 4 where it talks about—

DELEGATE SCHILTZ: On page 17, the first time.

CHAIRMAN GRAYBILL: (Inaudible)—on page 17, line 27, for one. I think—

DELEGATE SCHILTZ: And on page 26, line 5.

CHAIRMAN GRAYBILL: Page 26, line 5. I think the point for the body is that, as WC discussed the other day, we changed the word "department"-or the Style and Drafting has changed the word "department" to the word "branch", the purpose being that they felt that department was--might be confusing with the 20 departments of the state government but the word "branch" was used, then, to indicate Legislative,

Executive, Judicial branches. Let's get the sense of the body on that. All those in favor of allowing the Style and Drafting to change the word "department" to the word "branch" wherever it appears in the Legislative Article, please indicate so by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now, I think we have adopted that style.

DELEGATE SCHILTZ: Then, Mr. Chairman, we removed one entire section-the Code of Ethics-and you'll find that on page 59 as Section 4 under General Provisions, and you'll find the note under—

CHAIRMAN GRAYBILL: Page 54?

DELEGATE SCHILTZ: Yes, but I'm-or, no, I'm sorry, it's Article—

CHAIRMAN GRAYBILL: -59. Yes, the Code of Ethics is now on-in the General Provisions, Article XIII on page 59.

DELEGATE SCHILTZ: That's another one. Oh, and then, the Salary Commission which was in the Legislative Article, has been moved to Section 5, subsection 3.

CHAIRMAN GRAYBILL: The Salary Commission has been moved—

DELEGATE SCHILTZ: And that's on page 59, too.

CHAIRMAN GRAYBILL: -to page 59, also. All right, now, those are items-on that first page—

DELEGATE SCHILTZ: Then, Mr. Chairman-

CHAIRMAN GRAYBILL: —that's item 2-A and Z-C, isn't that right? And you also have moved 2-B?

DELEGATE SCHILTZ: That's right. Section 16, unicameral, we moved it from Article V; and Section 15 of the bicameral, to Revenue and Finance as Section 14.

CHAIRMAN GRAYBILL: And that's on page 43, at the bottom, if you want to see it. Now, let's take these up one at a time as they appear on that second page of the document here. The first one, 2-A, is moving the Salary Commission from the Legislature to the General Provisions; and as I recall the discussion on that, the reason for that is that the Salary Commission does relate to more than just the Legislature. It says on page 59: "For the"-"The Legislature shall create a Salary Commission to recommend compensation for the Judiciary and elected members of the Legislative and Executive branches." So, since it covers all branches, we-the Style and Drafting has moved the Salary Commission from Legislative to General Provisions.

DELEGATE SCHILTZ: Mr. Chairman, may I make an observation? That's where I got thrown there. On the first page there, that should say "subsection 3".

CHAIRMAN GRAYBILL: I see.

DELEGATE SCHILTZ: Oh, I see-No, I see where I got confused. It was Section 5, subsection 2, of the Legislature. I see. So there's no need to make a change. That's all right.

CHAIRMAN GRAYBILL: All right, now -what we need to know, then, is whether the body approves moving the Salary Commission from the Legislature to General Provisions. Is there discussion?

(No response)

CHAIRMAN GRAYBILL: We don't need to put this finally because we'll put the articles finally, but all in favor of moving the Salary Commission from Legislature to General Provisions, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And it's approved as to style. All right, now, the second one is the Prohibited Payments section, and it's been moved from the Legislative section to Revenue and Finance on page 43, and it pertains to: "Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuit thereof." Now, it was originally in Legislature because it was a limitation-or concerned appropriations, but it's been put in Revenue and Finance as the sort of

payments that are prohibited under that title, Prohibited Payments. Is there any discussion of moving that from the Legislative Article to the Revenue and Finance Article?

(No response)

CHAIRMAN GRAYBILL: If not, all in favor of moving that Prohibited Payments Article, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: That's adopted as to style.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I've now got this straight. We apparently got one number off somewhere here, so on that first page, under Salary Commission, the last word should be "Section 3" instead of "Section 4".

CHAIRMAN GRAYBILL: Okay, we'll make that amendment on our books.

DELEGATE SCHILTZ: And then, under Code of Ethics, instead of "Section 5" it should be "Section 4". And under Exemption Laws, it should be "Section 6-or Section 5" instead of "6" on the last word-"5" instead of "6". And then under Perpetuities, it should be "6" instead of "7".

CHAIRMAN GRAYBILL: Now, I hate to argue with you, but I think you've just--I've just checked the Code of Ethics, Mr. Schiltz, but it moved from the Legislature, and I haven't checked that, to Article XIII, General Provisions, and in General Provisions, it's-you're right, it's section—

DELEGATE SCHILTZ: That's Salary Commission.

CHAIRMAN GRAYBILL: Section 4. I see. Okay. So, are you saying, then, that the changes are on the Salary Commission-we changed to section-the last section number under General Provisions-to Section 3—

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: And under Code of Ethics we changed it to Section 4 under General Provisions.

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Is that all?

DELEGATE SCHILTZ: No. Exemption Laws, the last word should be-the last numeral should be "5" instead of "6".

CHAIRMAN GRAYBILL: How about Perpetuities?

DELEGATE SCHILTZ: And Perpetuities should be "6" instead of "7".

CHAIRMAN GRAYBILL: Somebody ran the wrong series there. All right. Now, we're down to the Code of Ethics. The Code of Ethics was originally the Legislative Article, and it's been moved to the General Provisions Article, as Section 4. Is there any discussion about that?

(No response)

CHAIRMAN GRAYBILL: "The Legislature shall provide a Code of Ethics prohibiting conflict between public duty and private interest for members of the Legislature and all state and local officers and employees." And since it was broadened to include all and since it is a Code of Ethics, it was put in General Provisions instead of in the Legislative Article. Any discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of moving the Code of Ethics to the General Provisions Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted as to style. Now, except for those changes, the two Legislative Articles-the one beginning on page 1.5 and the one beginning on page 23-have no other style changes in them, do they, Mr. Schiltz?

DELEGATE SCHILTZ: No other changes.

CHAIRMAN GRAYBILL: All right. Is there any discussion of them?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I notice this heading is "nonmunicipal corporations", and I happened to be on the committee that

worked down through Section 2, but I was not on the committee that worked over here, and I just want to get in the record that I had no part of a Salary Commission nor Code of Ethics at all, as far as the committee I was on. I'm just trying to get that into the record so that it will get out here and come out-and think that I had been on that and it was not on my committee.

DELEGATE SCHILTZ: Mr. Chairman, I think the major headnotes may have confused Mr. Mahoney. This is Article XIII, which is General Provisions, and then it has various subsections.

CHAIRMAN GRAYBILL: Only Section 1 is Nonmunicipal Corporations, Mr. Mahoney.

DELEGATE MAHONEY: Section 1 and 2 both came out of the Committee on Public Health and Welfare-

CHAIRMAN GRAYBILL: Right.

DELEGATE SCHILTZ: Both of those did, and I-the others were not.

CHAIRMAN GRAYBILL: Right-that's right.

DELEGATE MAHONEY: 1 just wanted the record to show.

CHAIRMAN GRAYBILL: Right, it shows it. Very well, is there other discussion of the Legislative Articles on page 15 and 23 as to style?
(No response)

CHAIRMAN GRAYBILL: Now, we are going to pass Article V as to final form, because this will depend perhaps-could depend perhaps-on the form of the ballot; but is there any discussion of them otherwise?
(No response)

CHAIRMAN GRAYBILL: If not, all in favor of the two Legislative Articles as to style, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: They're adopted as to style. Now, Mr. Clerk, read Section 6.

CLERK HANSON: "Article VI, The Executive"; containing 15 subsections. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article VI, Style and Drafting Final Report, itrecommend the same be adopted. Mr. Chairman, there are no changes in the Executive.

CHAIRMAN GRAYBILL: Unfortunately, I have to argue with you. Your thing says we changed "branch"-"department" to "branch"—

DELEGATE SCHILTZ: Oh-Oh, that's right—

CHAIRMAN GRAYBILL: —on Sections 1, **4, 5** and 15.

DELEGATE SCHILTZ: That's right. I'm sorry; I was already down to 2.

CHAIRMAN GRAYBILL: You can see at the beginning of the article where it says "the Executive Branch includes the Governor", and so forth. So, throughout the Executive Article, the Style and Drafting Committee has changed the word "department" to "branch" to distinguish it from the 20 departments. Is there any discussion of that change?
(No response)

CHAIRMAN GRAYBILL: All in favor of changing "department" to "branch" in Sections 1, 4, 5 and 15 of Article VI, which is the Executive Article, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: All right, we've adopted that change as to style. Now, I think we can adopt the whole thing, if you want to put your motion again, Mr. Schiltz.

DELEGATE SCHILTZ: Yes, Mr. Chairman. I move when this committee does arise and report, after having had under consideration section-or, Article VI, Style and Drafting Final Report, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Is there any discussion of Article VI?
(No response)

CHAIRMAN GRAYBILL: All in favor of Article VI, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Article VII.

CLERK HANSON: "Article VII, The Judiciary"; containing 11 subsections, beginning on page 36. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article VII, Style and Drafting Final Report, it recommend the same be adopted. Mr. Chairman, you'll note the change from this article. Section 12 was transferred to Section 13, General Provisions, as Section 5.

CHAIRMAN GRAYBILL: All right, we moved out of Judiciary and into that same General Provisions Article the small section on exemption laws-"The Legislature shall enact liberal homestead and exemption laws." We moved that out of Judiciary-Style and Drafting did-and into General Provisions.

DELEGATE SCHILTZ: And the same is true, Mr. Chairman, as to subsection 6-w Section 6 of General Provisions.

CHAIRMAN GRAYBILL: Right. We moved Perpetuities out of Judiciary and into General Provisions, and it says: "No perpetuities shall be allowed to exist except forcharitablepurposes." Is there any discussion of moving the exemption laws from Judiciary to General Provisions?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All right. Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted as to style. Is there any objection--or is there any discussion of moving Perpetuities from Judiciary to General Provisions?
(No response)

CHAIRMAN GRAYBILL: All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted as to style. Now, we've adopted as to style (A), (B), (C), (D) and (E) of Number 2. Now, Mr. Schiltz, I think we can adopt-or at least we can decide whether to adopt Judiciary itself, beginning on page 36.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 7— or Article VII, Style and Drafting report number— or Final Report, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Except for the two deletions we just made, there are no other changes in section—

DELEGATE SCHILTZ: No other changes.

CHAIRMAN GRAYBILL: Is there any discussion of Article VI?
(No response)

CHAIRMAN GRAYBILL: Very well; all in favor of Article VI of Style and Drafting, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATE SCHILTZ: Mr. Chairman, that was Article VII.

CHAIRMAN GRAYBILL: I'm sorry— Article VII, on the Judiciary. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk.

CLERK HANSON: "Article VIII, Revenue and Finance"; containing 14 subsections, beginning on page 41. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article VIII, Style and Drafting Final Report, it recommend the same be adopted. Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: The only change is that we added a section, which you all approved a few—

DELEGATE SCHILTZ: Which has already been approved, yeah.

CHAIRMAN GRAYBILL: Right. Is there any discussion?

DELEGATE SCHILTZ: Wait a minute. We've got one here. On page 43, we took out what is subsection 2 of 13—the first sentence, which reads: "The public school fund and the permanent funds of the Montana University System"-because it has already been-No, no, that isn't the one. Wait a minute. We're working on this one, Mr. Chairman. Well, that's our third comment, Mr. Chairman. In order to avoid repeating a sentence identical to that appearing as Section 3 of Article X, Education, the first sentence of subsection 2, Section 13, under Revenue and Finance, was deleted.

CHAIRMAN GRAYBILL: All right.

DELEGATE SCHILTZ: Now, if you look on page--where is that?

CHAIRMAN GRAYBILL: You've got to go to Article X to find out what it was.

DELEGATE SCHILTZ: Yes-page 48—it says-Section 3 says "The public school fund shall remain forever inviolate, guaranteed by the state against loss or diversion." Oh, I see. On page 43, we left that one in, I guess--now, let me see, that's Article-oh, we didn't change that at all, did we? Yes, we took that sentence out so it wouldn't appear in both sections. I'm sorry, Mr. Chairman and members of the committee, but I didn't get all that much time to work on this this morning.

CHAIRMAN GRAYBILL: Which one did you take out and which one did you put in?

DELEGATE SCHILTZ: On page 48, Revenue and Finance, we took out section-we took a sentence out from somewhere else and put it in here, I guess, is the—

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: First, may my presence be noted in the journal?

CHAIRMAN GRAYBILL: Your presence may be noted in the journal, Mr. Rygg.

DELEGATE RYGG: Well, I came in late. Now, it looks to me like the subsection 2 of Section 13 has been deleted. Is that correct? Is that now in the Public-in Education and Public Lands?

DELEGATE SCHILTZ: Mr. Chairman, I think I have it straight now. On page 43 there had been that same sentence that you will now find over on page 48 as Section 3. It occurred in two places in the Constitution, so we left it in on page 48 and deleted it-and it appeared as subsection 2 but is no longer there.

CHAIRMAN GRAYBILL: All right. The Chair thinks he understands. On page 48, you'll find a Section 3 on line 5, and it says-it's in Education-it says: "The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion." Now, that used to be the first sentence of 13, sub. 2—and then it used to say: "The public school fund and permanent funds of the Montana University System shall be safely invested." Is that right?

DELEGATE SCHILTZ: That's correct.

CHAIRMAN GRAYBILL: All right, so the sentence which is still in as the public school fund inviolate on page 48 used to be the beginning of Section 13, sub. 2; it's now been deleted.

DELEGATE SCHILTZ: Because they appeared in both places, then, sir.

CHAIRMAN GRAYBILL: That is comment number 3 on the first page that we're working on there. Is there any discussion of it by anyone?

(No response)

CHAIRMAN GRAYBILL: It's still in. It's just in a different place. All right; all in favor of allowing the Style and Drafting change which moved from the Revenue and Finance to the Education Article that sentence-or left it only in the Education Article-all in favor of that change—it's number 3 there-say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: All right, it's adopted as to style. Now, with that change, would you move—

DELEGATE SCHILTZ: Mr. Chairman, I

move when this committee does arise and report, after having had under consideration Article VIII, final Style and Drafting report, it recommend the same be adopted.

CHAIRMAN GRAYBILL: And Article VIII is the Revenue and Finance Article, right?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Beginning on page 41. Is there any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Article VIII, Revenue and Finance, as Style and Drafting has amended it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, it's adopted. Now, would the clerk read Article IX.

CLERK HANSON: "Article IX, Environment and Natural Resources"; containing four subsections, page 45 and 46. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article IX, Environment and Natural Resources Article, Style and Drafting Final Report, it recommend the same be adopted. Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Article IX, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Clerk, read Article X.

CLERK HANSON: "Article X, Education and Public Lands"; containing 11 subsections, pages 47 through 52. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article X, Education and Public Lands, Style and Drafting Final Report, it recommend the same be adopted. Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Is there any discussion of Article X?
(No response)

CHAIRMAN GRAYBILL: All in favor of Article X, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Article XI.

CLERK HANSON: "Article XI, Local Government"; containing nine subsections, pages 53 through 56. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article XI, Local Government, Style and Drafting Final Report, that it recommend the same be adopted. Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Local Government Article XI, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Article XII.

CLERK HANSON: "Article XII, Departments and Institutions"; containing 3 sections, page 57 and 58. Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article XII, Departments and Institutions, Style and Drafting Final Report, it recommend the same be adopted. Mr. Chairman, this is a gathering of three or four

items that didn't fall-three items-that didn't fall in any other particular place, and we called it-we took-we called it "Departments and Institutions", being three sections-the Department of Agriculture, Department of Labor, and then a general provision having to do with institutions and assistance.

CHAIRMAN GRAYBILL: Is there any discussion of Article XII?

(No response)

CHAIRMAN GRAYBILL: All in favor of Article XII, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Article XIII. Now, Mr. Schiltz, on Article XIII, on the first page, you have a change from "branch" to "department", but it's in Article XIII, Section 3 instead of Section 4.

DELEGATE SCHILTZ: That's right. It should be 3.

CHAIRMAN GRAYBILL: Is there any discussion of the change—

DELEGATE SCHILTZ: Which would be line 25.

CHAIRMAN GRAYBILL: -from the word "department" to the word "branch"?

(No response)

CHAIRMAN GRAYBILL: All in favor of changing the-"department" to "branch", say **Aye.**

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, other than that, we have all the additions that we've discussed already. We've put Perpetuities in there, Exemption Laws in there, Code of Ethics in there, and Salary Commission in there. But, other than that, there are no style changes.

Mr. Schiltz.

DELEGATE SCHILTZ: I don't think he's read the title.

CLERK HANSON: "Article XIII, General Provisions"; containing 6 sections, page 59 and **60.** Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Article XIII, Style and Drafting's Final Report, General Provisions, that it recommend the same be adopted. As you have noted, the changes-and there are no other changes from the material that we gathered this from-it hasn't been changed otherwise.

CHAIRMAN GRAYBILL: Any discussion of Article XIII?

(No response)

CHAIRMAN GRAYBILL: All in favor of Article XIII, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted.

CLERK HANSON: Article XIV—

CHAIRMAN GRAYBILL: Article XIV.

CLERK HANSON: "-containing 11 sections, Constitutional Revision", pages 61 through **64.** Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article XIV, Constitutional Revision, Final Report, Style and Drafting Committee, it recommend the same be adopted. Mr. Chairman, there are no changes.

CHAIRMAN GRAYBILL: Any discussion of Article XIV?

(No response)

CHAIRMAN GRAYBILL: All in favor of Article XIV, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Very well. We've adopted, as to style, Articles I to XIV, except for Articles III and V, which we have passed because of the ballot problem.

Mr. Eskildsen, I think the committee should rise and finally report on all articles except III and V.

DELEGATE ESKILDSEN: Mr. Chairman, I move that the committee rise and finally report on all articles except Section III and Section V.

CHAIRMAN GRAYBILL: You have heard the motion. Is there any objection?
(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: We'll rise and finally report on the articles except III and V, including the Preamble.

(Proceedings moved to Convention, with President Graybill presiding)

PRESIDENT GRAYBILL: Will the clerk please read the committee report.

CLERK HANSON: "March 22, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: thatthecommittee rise and finally report on Preamble and all articles except Articles III and V. Signed: Graybill, Chairman."

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Just a moment. Is there anyone that wants the report read in full?
(No response)

PRESIDENT GRAYBILL: Very well.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move for the adoption of the Committee of the Whole report and refer the report Committee on Style, Drafting, Transition and Submission, Final Report, to Order of Business Number 6.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report and refer it to Order of Business Number 6. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered. Without objection, we'll revert to Order of Business Number 6. Is there objection?
(No response)

PRESIDENT GRAYBILL: Very well, we're on Order of Business Number 6. Now, ladies and gentlemen, on Order of Business Number 6, we will today finally adopt, article by article, including the Preamble, the sections we have just approved, except for III and V. And, of course, when we have adopted III and V and the ballot and other appurtenances, we will then adopt the Constitution as a whole. We're not going to adopt it as a whole now, but we're going to adopt-or at least we're going to put the question on I through XIV, except for III and V, including the Preamble. This is on final adoption. It's roll call vote. No debate. Will the clerk please read the title of the Preamble and the article.

CLERK HANSON: "Montana Constitutional Convention, 1971. Report of Committee on Style, Drafting, Transition and Submission, Final Report. Schiltz, Chairman."

PRESIDENT GRAYBILL: Order of Business Number 6.

CLERK HANSON: "Order of Business Number 6. Preamble". Mr. President.

PRESIDENT GRAYBILL: For final consideration. So many as shall be in favor of the Preamble, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Preamble. Vote Aye if you're in favor of the Preamble; No if you're opposed to the Preamble. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Please cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard.. ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate.. ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland. ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Absent
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Absent
Wagner ..... Aye
Ward ..... Aye
Warden.. ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, 93 having voted Aye, the Preamble is adopted. Article I.

CLERK HANSON: "Article I, Compact with the United States". Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article I, vote Aye on the voting machines; opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye

Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye, 1 delegate voting No.

PRESIDENT GRAYBILL: Very well, Article I is adopted. Article II.

CLERK HANSON: "Article II, Declaration of Rights"; containing 35 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of the Declaration of Rights, vote Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?
(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?
(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0. ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye

Sparks ..... Aye
Spew ..... Aye
Studer ..... Absent
Sullivan ..... Aye
Swanberg .. Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion Aye
Wagner Aye
Ward Aye
Warden ..... Aye
Wilson . . . . . Nay
Woodmansey A y e
Mr. President Aye

CLERK HANSON: Mr. President, 92 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: Very well, Article II is adopted. Article IV.

(Inaudible comment from floor)

PRESIDENT GRAYBILL: No, we skipped III because III has to be withheld for the ballot.

CLERK HANSON: "Article IV, Suffrage and Elections"; containing 6 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article IV, Suffrage and Elections, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim Aye
Anderson, J.H. ..... Aye
Anderson, 0.. Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye

Monroe.. ....Aye
Murray ....Aye
Noble .....Aye
Nutting .....Aye
Payne ....Aye
Pemberton ..... .Aye
Rebal .....Aye
Reichert ....Aye
Robinson ....Aye
Roeder .....Aye
Rollins .....Aye
Romney ....Aye
Rygg ....Aye
Scanlin ....Aye
Schiltz ....Aye
Siderius .....Aye
Simon ....Aye
Skari ....Aye
Sparks .....Aye
Speer ....Aye
Studer ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ....Aye
Van Buskirk ..... .Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Aye
Warden .....Aye
Wilson .....Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 97 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: 97 having voted Aye, Section IV is adopted. I presume you all read in the paper that we're just one step ahead of the Supreme Court on that section. Section VI-we skip Section V. Section VI.

CLERK HANSON: "Section VI, The Executive"; containing 15 sections, page 29. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Section VI, on the Executive, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim .....Aye
Anderson, J.H. ..... Aye
Anderson, 0..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow .....Aye
Artz ....Aye
Ask .....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ..... Aye
Berg.. ....Aye
Berthelson ..... .Aye
Blaylock .....Aye
Blend .....Aye
Bowman ..... .Aye
Brazier ....Aye
Brown.. ....Aye
Bugbee ....Absent
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Excused
Cate ....Absent
Champoux ..... Aye
Choate .....Aye
Conover ..... Aye
Cross.. ....Aye
Dahood ..... Absent
Davis .....Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum .....Aye
Eck .....Aye
Erdmann ..... .Absent
Eskildsen ..... .Aye
Etchart .....Aye
Felt ....Aye
Foster ....Aye
Furlong. ..... Aye
Garlington .....Aye
Gysler ....Aye
Habedank ..... .Aye
Hanson, R.S..... .Aye
Hanson, R. ..... .Aye
Harbaugh ..... Nay
Harlow ....Aye
Harper .....Aye
Harrington ..... Aye
Heliker ..... Nay
Holland .....Aye
Jacobsen ..... Aye

James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe. ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 8 voting No.

PRESIDENT GRAYBILL: Very well, Section VI is adopted. Section VII.

CLERK HANSON: "Section 7"--or "Article VII, The Judiciary"; containing 11 sections. Mr. President.

PRESIDENT GRAYBILL: Right, I guess it's an Article VI that we adopted, not a section. Okay, so many as shall be in favor of Article VII, vote Aye on the voting machines; opposed, vote No. Every delegate voted?

(No response)

PRESIDENT GRAYBILL: Any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher.. ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown. ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis.. ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Aye

Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Aye
Rollins, ... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, 13 voting No.

PRESIDENT GRAYBILL: Very well, Article VII is adopted. Article VIII.

CLERK HANSON: "Article VIII, Revenue and Finance"; containing 14 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article VIII, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Nay
Anderson, J.H. ..... Nay
Anderson, O. ..... Nay
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Nay
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Nay
Bi-own ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Nay
Conover ..... Aye

Cross.. ..... .Aye
Dahood .....Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ....Aye
Drum .....Aye
Eck .....Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ....Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... .Aye
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ....Aye
Harper.....Aye
Harrington ....Aye
Heliker ....Aye
Holland ..... .Aye
Jacobsen ..... Aye
James ....Aye
Johnson ..... Nay
Joyce.. ....Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold .....Aye
Loendorf.....Aye
Lorello .....Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin .....Aye
McCarvel .....Aye
McDonough ..... Aye
McKeon ....Aye
McNeil ..... Nay
Melvin .....Aye
Monroe ....Aye
Murray.. ....Aye
Noble .....Aye
Nutting ..... Nay
Payne ....Aye
Pemberton ..... .Aye
Rebal .....Aye
Reichert ....Aye
Robinson ....Aye
Roeder .....Aye
Rollins ..... Aye
Romney ....Aye
Rygg ....Aye
Scanlin .....Aye
Schiltz .....Aye
Sicerius .....Aye
Simon ....Aye
Skari ....Aye
Sparks .....Aye
Speer ....Aye
Studer ..... Nay
Sullivan ....Aye
Swanberg .....Aye
Toole ....Aye
Van Buskirk ..... Nay
Vermillion ..... Aye
Wagner .....Aye
Ward ....Aye
Warden .....Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... .Aye

CLERK HANSON: Mr. President, 69 delegates voting Aye, 28 voting No.

PRESIDENT GRAYBILL: Very well, Article VIII is adopted. Article IX.

CLERK HANSON: "Article IX, Environment and Natural Resources"; containing 4 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article IX, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim Aye
Anderson, J.H. Aye
Anderson, O.. Aye
Arbanas Aye
Arness .....Aye
Aronow .....Aye
Artz.....Aye
Ask .....Aye
Babcock .Aye
Barnard .....Aye
Bates .....Aye
Belcher . . . Aye
Berg .Aye
Berthclson .Aye
Blaylock .....Aye

Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum.. ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield. ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin.. ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg. ..... Absent
Toole ..... Absent
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden.. ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 95 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: Very well, Article IX is adopted. Article X.

CLERK HANSON: "Article X, Education and Public Lands"; containing 11 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article X, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim	Aye
Anderson, J.H.	Nay
Anderson, 0	Aye
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Excused
Cate	Absent
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Absent
Davis	Aye
Delaney	Nay
Driscoll	Nay
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Nay
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Aye
Mr. President	Aye

CLERK HANSON: Mr. President, 66 delegates voting Aye, 31 voting No.

PRESIDENT GRAYBILL: Very well, Article X is adopted. Article XI.

CLERK HANSON: "Article XI, Local Government"; containing 9 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article XI, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis.. ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann Aye
Eskildsen.. ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland., ... Nay
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye

Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 96 delegates voting Aye, 1 voting No.

PRESIDENT GRAYBILL: Very well, Article XI is adopted. Article XII.

CLERK HANSON: "Article XII, Departments and Institutions"; containing 3 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article XII, vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Absent
Anderson, J.H ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Rates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Absent
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye

Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, 5 voting No.

PRESIDENT GRAYBILL: Very well, Article XII is adopted. Article XIII.

CLERK HANSON: "Article XIII, General Provisions"; containing 6 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article XIII, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Nay
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Nay
Etchart ..... Aye
Felt ..... Nay
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye

Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew.. ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 84 delegates voting Aye, 13 voting No.

PRESIDENT GRAYBILL: Very well, Article XIII is adopted. Article XIV.

CLERK HANSON: "Article XIV, Constitutional Revision"; containing 11 sections. Mr. President.

PRESIDENT GRAYBILL: So many as shall be in favor of Article XIV, vote Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Aye
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland, ... Aye
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye

McDonough ..... Aye
McKeon ..... Aye
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 93 delegates voting Aye, 3 voting No.

PRESIDENT GRAYBILL: 93 delegates having voted Aye and 3 voting No, Section XIV is adopted. Ladies and gentlemen, you've adopted the Preamble and Sections I through XIV, except III and V, which have been retained. We will retain these sections and the Preamble—

CLERK HANSON: Articles.

PRESIDENT GRAYBILL: Article—article-these articles and the Preamble in Order of Business Number 6 pending the arrival, hopefully, of the ballot and the other articles. Very well, without objections, I'd like to be on Order of Business Number 11 for a minute. Order of Business Number 11 is Announcements. We are having a dinner tomorrow night at the Montana Club, the usual $5 rate, including two drink tickets. The drinks will be on the third floor this time and dinner will be set up on the fifth-on the sixth floor, as usual. It'll be a-1 think Mrs. Payne has styled it an "awards dinner", and your wives and out-of-town guests are invited. We do need some reservations. We don't have everyone's reservations, I hope, that's coming, and we do need your reservations. This will be Thursday night, before the final signing on Friday morning. The signing on Friday morning is at 10 o'clock. If you have friends from out of town, you'd better let them know, because the newspapers did carry a 1 o'clock or 1:30 notice, which was wrong. Ten o'clock in the morning, barring unforeseen difficulties. Are there other announcements?

Mr. Habedank.

DELEGATE HABEDANK: I don't wish to make an announcement, I wish to ask a question. Someone called me the other day and said that they read in the papers where passes would be necessary to be here for the signing of the Convention. Is this correct?

PRESIDENT GRAYBILL: It's my understanding, from Mr. Garlington, that that is not correct. There'll be some seats saved in the front for our dignitaries. Other than that, we're going to set up as many extra chairs as we can in the aisles. We thought we would avoid the problem of trying to assign seats and let those first-come, first-served. I might just remind you, it amuses me, when I think back to the first discussion and debate that this group had, which was how many seats to give ourselves in the balcony-that took us an hour and a half and didn't make any difference. (Laughter) So, based on that, we decided not to bother assigning seats, so just tell them to come and we'll hope for the best.

Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting Committee will meet immediately upon recess.

PRESIDENT GRAYBILL: Now, we're planning to recess until 11 o'clock. And at 11 o'clock, we'll come back into session and Style and Drafting will be ready on the ballot. I would like to point out that we will recess reasonably promptly at 12 o'clock, regardless of the status of the debate, since there is a luncheon today for some of the wives and so forth, and the President gets to talk at that luncheon, so he's got to go.

Mr. Martin.

DELEGATE MARTIN: Mr. President, yesterday we ran out of people in the audience because of all the committee meetings elsewhere, and there are three committee chairmen who didn't have a chance to report-Delegate-Chairman Heliker and Chairman Etchart and the Judiciary. If we could have some time today in which they might have an opportunity to participate, I think it would be helpful.

PRESIDENT GRAYBILL: I think it would be, too. I think that-we've got-Style and Drafting needs to go now-let's plan to do that if we can adjourn before 5 o'clock tonight, but we will plan to let those three have 5 minutes at the end of the day.

DELEGATE MARTIN: One other-or two other things, if I may. I would appreciate if the chairmen of the substantive committees would get their letters to me sometime today, and I appreciate the support and recognize the difficulties that they're having, but if they could get-if I could have those, I would appreciate it very much. And, then, I might report that in response to my questionnaire, I have at the moment 52 responses. I would like to have a little-a few more, and I'm sure that the other delegates will bring them to my desk, I'll appreciate it.

PRESIDENT GRAYBILL: They have 25 minutes to work on them, haven't they?

DELEGATE MARTIN: Thank you.

PRESIDENT GRAYBILL: Mr. Eskildsen, let's have a 25-minute recess.

DELEGATE ESKILDSEN: Mr. President, let's recess—I move we recess until 11:00 a.m. this day.

PRESIDENT GRAYBILL: The motion is to recess till 11:00. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: We're in recess.

(Convention recessed at 10:35 a.m.—reconvened at 11:00 a.m.)

PRESIDENT GRAYBILL: The Convention will be in session. The Convention will be in session. Mrs. Reichert, will you please go out in the hall and tell the delegates we're in session? The Convention will be in order. Ladies and gentlemen of the Convention, Style and Drafting has completed its work but not its printing, and so it's useless to try to do anything before lunch on their proposal. We're going to recess in a moment or two until 2:00 p.m., at which time they will have their printing ready and we will have our debate on the ballot. Before we recess until 2:00 p.m., I'd like to mention that we would like those of you who would, to remain for about 20 minutes, and we will listen to the three committee chairmen we didn't hear yesterday, and I would like to discuss with you, very briefly, candidates for-people-persons that are delegates who might be candidates for office and what-how that might affect us. Other than that, we can stand in recess until 2:00 p.m., if Mr. Eskildsen will make a motion. And if those of you who will be good enough to remain and let those three delegates take over. Mr. Martin, will you come forward and take care of that meeting.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I move the Convention stand in recess until 2:00 pm. this day.

PRESIDENT GRAYBILL: The motion is to recess until 2:00 pm. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 11:14 a.m.—reconvened at 2:10 p.m.)

PRESIDENT GRAYBILL: The Convention will be in order. Ladies and gentlemen, we ended up with Order of Business Number 11. Without objection, we will start again on Order of Business Number 1. Will the clerk please read any committee reports.

CLERK HANSON: "Mr. President. We, your Committee on Style, Drafting, Transition and Submission herewith submit a revised adoption schedule, to substitute for the one distributed yesterday, for consideration by the Convention. Signed: Schiltz, Chairman."

PRESIDENT GRAYBILL: And it includes—in addition to adoption schedule, it

includes a new ballot. And I think we should probably make clear for the record that it's a revised adoption schedule, it's a revised ballot; but that the transition schedule that we got yesterday still applies and the adoption schedule and the ballot substitute for what we did yesterday-what we had handed us yesterday. In other words, yesterday we had an adoption schedule, transition schedule, and three ballots supplied us. The three ballots are now being substituted for by the one new ballot. The adoption schedule is being substituted for by the old-or by the new adoption schedule, Now, the Chair will refer these substituted matters to Order of Business Number 10. Now, without objection, we will be on Order of Business Number 10. Is there objection?

(No response)

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well, the motion is to resolve this Convention into Committee of the Whole for taking up these matters on Order of Business Number 10. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole; Graybill, Chairman)

CHAIRMAN GRAYBILL: Now, Mr. Schiltz will discuss this. Do you want to explain the order that you're going in to them, or would you like me to explain it?

DELEGATE SCHILTZ: I think it'd be fine if you explained it, Mr. Chairman; but first, I would like to move that Rule 23 be dispensed with for the consideration of the revised adoption schedule and attached ballot, this material not having lain on the desks for 48 hours.

CHAIRMAN GRAYBILL: Well, then, as a matter of fact, it should also include the transition schedule.

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: We did not waive Rule 24 yesterday.

DELEGATE SCHULTZ: That's right.

CHAIRMAN GRAYBILL: —23? Very well, Rule 23. Mr. Schiltz has made a motion to waive Rule 23 on the revised adoption schedule, the new revised or new ballot form, and on the transition schedule that we had laid on our desks yesterday. All in favor of waiving Rule 23, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. Now, I might explain that Mr. Schiltz has asked, and the Chair intends to follow this procedure. We'll discuss the ballot first. If we can arrive at a ballot, then we will go back and-we are on Order of Business 10—we will then take Article III and Article V up, because until we have cleaned up Article III and Article V, the adoption and transition schedules do not make sense. And then, having cleaned up Article III and Article V, based on the ballot work, we would then come back and take up the adoption schedule and the transition schedule. So that's why we're skipping around here-certain ones depend on certain other ones. Will the clerk please read the title of the new material and the word "ballot", I guess, and we'll start-the word "official ballot"-and we'll start there. I just want you to read the title of the report, which is Style and Drafting report, and then the ballot.

CLERK HANSON: "Revised-Style and Drafting report and revised adoption schedule and official ballot. The official ballot." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz,

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration the proposed official ballot, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: The-As you all

know, we spent four and a half hours yesterday working on this ballot. The main purpose was to get some sense of the Committee of the Whole attitude on unicameral-bicameral and some of the other issues that are placed thereon, As a result of that, which we in our committee, at least, felt was very helpful, we have unanimity or near unanimity-there may have been one dissenting vote at one point or another-on this proposed ballot, and we submit it for your consideration.

CHAIRMAN GRAYBILL: Now, members of the committee, the Chair would like to point out that when we concluded yesterday afternoon, we were on Mr. Davis' motion, based on what was then called "official"-or called "ballot number 2", with an amendment proposed by Mr. Blaylock and an amendment proposed by Mr. Holland. Now, since we rose and reported and asked leave to sit again, the pending matters-namely, Mr. Holland's and Mr. Blaylock's motions, on which no action had been taken-are considered by the Chair to have been wiped out. That leaves us with Mr. Davis' motion, which was to have the bicameral form of the Legislative Article placed in the Constitution and have a ballot that would say that you could vote for the Constitution with bicameral in it, et cetera-the first half of the so-called "ballot". Now, the Chair wishes to point out that the official ballot which Mr. Schiltz has just moved is, for all practical purposes, Mr. Davis' motion down through number 1 and number 2. In other words, it is a ballot including the bicameral house, two houses, in the first vote and including unicameral on the outside in the second vote. Now, Mr. Davis, you spoke with me and we can either consider your motion incorporated into the committee's report or you could withdraw. As far as I'm concerned, I'd like to consider it incorporated into the committee's position. Is that agreeable with you?

DELEGATE DAVIS: That's agreeable, Mr. President.

CHAIRMAN GRAYBILL: All right. Does everyone understand, the work we've done yesterday has been incorporated into 1 and 2 on the ballot here, and the work-the other motions that were made yesterday are now wiped out.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I should have explained, and you reminded me of it as you went through that, that when you get to the gambling proposition, which is number 3, that it was the committee's vote that the first Section 9, on page 13—and this is contemplated by the transition and adoption schedule-that the first Section 9, on page 13, would be the one that goes into the Constitution, so that if the vote went the other way, in the transition, that one would come out and the second Section 9 would go in.

CHAIRMAN GRAYBILL: Very well. Mr. Davis.

DELEGATE DAVIS: Mr. President, could we go ahead and finish with 1 and 2 before we get into gambling? Isn't that your thought, or are we going to open up 3 and 4 at this time?

CHAIRMAN GRAYBILL: Well, the whole ballot is proposed by Mr. Schiltz and there are explanations for 3 and 4, if he cares to make them now-how they appear there. It seems to me that their whole proposal is before us and we-1 have some amendments here which we can take or—let's see—

DELEGATE DAVIS: It was my thought yesterday and my motion that we would settle on 1 and 2, the form and style and so forth, before we get-and then take 3 and settle on it and 4, maybe; and we could knock them out better than intermingling them. It's just a suggestion.

CHAIRMAN GRAYBILL: The Chair is just looking here. I have three proposed amendments to the Transition Article. I have no proposed amendments to the official ballot. We can-the Chair will do whatever anybody moves here.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, do you have my proposed ballot?

CHAIRMAN GRAYBILL: I have your proposed ballot. Is it to be placed as a motion?

DELEGATE ASK: Could I place that as a motion before the body at this time?

CHAIRMAN GRAYBILL: You may.

DELEGATE ASK: Mr. Chairman, could I explain it?

CHAIRMAN GRAYBILL: All right. Just a moment. Mr. Ask, has your ballot form been placed before the body on all the desks?

DELEGATE ASK: Mr. Chairman, we had a few made. They're on every aisle. I don't think

everybody has a copy of it. There's some extra ones here; but if I could, for a few minutes, I'll explain it, and I think there will be no problem.

CHAIRMAN GRAYBILL: Very well, the Chair will allow as a-just a minute, let me read it here a minute-is it an amendment or a substitute motion, Mr. Ask?

DELEGATE ASK: It would be a substitute motion to the ballot.

CHAIRMAN GRAYBILL: All right, the Chair will allow, as a substitute motion to the motion of the Style and Drafting Committee, Mr. Ask's proposed ballot.

Mr. Ask.

DELEGATE ASK: Mr. Chairman and delegates. I feel that-I'm holding my ballot here now, and if you'll notice, it's put in two different blocks. The top blocks is block 1, "For the proposed Constitution". Then you have For and Against all the alternates-all three alternates. Down below, it's block l-block 2, "Against the Constitution", but they still have the right to vote For and Against all the alternates. At the top I have-of course, this could be explained differently, but-"If you are for the proposed Constitw tion, vote in block one below. If you are against the proposed Constitution, vote in block 2 below. You may vote on the three alternate propositions in whichever block you vote. Do not vote in block 1 and 2. If you vote in both blocks, your ballot will be void. If the main proposition fails, all alternatives fail." Now, I feel that this ballot is a true balloting of this Convention of what we have done up to this time-we have adopted a proposed Constitution with three alternates and we're submitting it to the people. You can vote for it or against it, but even though you vote against it or for it, you still have the right to vote on all three alternates, either for or against. And this is what we have done, and I submit that the majority report has put the bicameral in there-of course, I'm bicameral-but to me this isn't necessarily fair and it isn't what we have done up to this time. You put these alternates in there, and then if you're against them, you vote for or against them down below and to me, this is not a true and accurate ballot. Now, the only thing about this ballot is that if perchance you wouldn't get a majority voting for one of the alternates, such as the unicameral or bicameral-but the reason I put them in two blocks is that, no matter where you vote, you're voing to vote for the unicameral or the bicameral; so it's very, very, very unlikely that someone would vote in one of those blocks and not vote for either-for the unicameral or for the bicameral, so it's inconceivable to me that you wouldn't get a majority. And to me, this is the only way you can submit it to the people that's fair and accurate of what we have done up to this time, and that's the only thing that-in other words, if you're for the Constitution, you stay in block 1, you don't even fool around with block 2 but you get to vote on all the alternates. If you're against the Constitution, you can still-you can vote against the Constitution, but you still have the right to vote on—For or Against all the alternates. And to me, this is the democratic way to do it. And, to me, the Style and Drafting Committee, I don't think, is really too clear on that point. Bicameral is in there, but then you have, down below, For a unicameral or Against a bicameral; and to me, I don't know-1 can't really predict what's going to happen on that, We-the bicameralists may get clobbered, and maybe they won't-1 don't know. But the ballot that I have proposed, you're clearly going to know where they stand; and I'm submitting it to the body here so they can discuss it, and if they don't like it, of course, you can vote against it. Thank you.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I rise in opposition to Mr. Ask's proposal. The Style and Drafting Committee has submitted a very clear, simple ballot. I, defy anyone to make it clearer or simpler. Mr. Ask's ballot, by contrast, is extremely complex. It's a complicated version of Mr. Blaylock's go-for-broke ballot, which is a Russian roulette with five shells in the chamber. (Laughter) I might point out, in addition, that Mr. Ask's ballot points out that if you accidentally or intentionally go from one block to another, you void your ballot. A void ballot is a vote against the Constitution, because the total number of voters is determined by the number of people that pick up the ballot.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I must rise to agree with the remarks made here by Mr. Roeder a moment ago, and what we're all grappling with here is a three-way vote, and it seems to me that Mr. Ask's proposal almost guarantees the defeat of the Constitution. Take, for example, 200,000 people going to the polls to vote for the Constitution or against it, and let's say 100,000 plus 1 vote

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Constitution and 49,999 against, but 24,000 voted in the upper block for the bicameral and 24,000 below and 23,000 for the unicameral above and **23,000** below, you'd have 48,000 for and 46,000—for the bicameral-and 46,000 for the unicameral. It would be possible then to have a no Legislature, is that right?

DELEGATE ASK: That is conceivable-it could happen, but I submit it's unlikely.

CHAIRMAN GRAYBILL: Then we'd be in the position of having to depend on something like Mr. Holland's amendment yesterday to get the old Constitution back in.

DELEGATE ASK: I haven't gone on from there, but this could happen, all right.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, fellow delegates. As a member of the Style and Drafting Committee-I was one of two members of that committee that voted in favor of Mr. Ask's proposal-and we spent 6 hours—what's today, Wednesday?-6 hours Monday afternoon and evening on this and all the time we spent here yesterday. And I've been thinking long and hard about these-this numbers game that we've been playing, and I am-strongly suspect that on June the sixth, there may be some unicameralists around the state who just might urge their people to vote for a unicameral Legislature and leave that first box blank. Now, this is a possibility that we have to consider, so I don't think that this fear that there will not be enough votes—they did gamble to a certain extent in Illinois and a large number of people, as I said yesterday, did not vote on the question of multidistrict, rather single districts-and yet it passed. Now, it's true that Illinois had the old constitution to fall back on, but I suspect that there's going to be a rather heavy vote on this question of bicameral and unicameralism. In fact, at least in my own county of Yellowstone, it's been the only real issue-big issue-in this entire-during the time of this entire Convention, and Mr. Ask's proposal is a very simple proposal. It's very easy to understand. It's true that if you vote on both boxes, you void the ballot, but you can void a paper ballot-the other ballot—just as easily as you can void Mr. Ask's. And I submit that this proposal of Mr. Ask's gives the people a real fair choice on the one overriding and the biggest-not overriding, but the largest and perhaps the gravest issue that has faced this Con-

vention, which we have decided to pass on to the voters, whether we should have one-house or two-home Legislature.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Could I close on my motion, Mr. President, or someone else wish to speak? Oh, it's your motion, Tom; excuse me.

CHAIRMAN GRAYBILL: Mr. Ask, are you ready to close?
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, delegates. I've been on both sides of this for the last 2 days now, and I've sat and listened patiently. I listened all afternoon yesterday, and I was finally real pleased when one gentleman had the courage to rise and report progress and move along, because I could see we were all tired and wasn't getting anyplace. But the one thing that has finally come to me that I think is wrong with this particular ballot that is put out by the Style and Draft is the fact that it only has the unicameral before the people. I want both of them there so that they either have a choice, unicameral-bicameral—and I think we're making a mistake if we don't. As far as being hard to understand, even I can understand Tom Ask's; so if I can understand it, I know the people in my community can understand it. I don't think it's anything that would be real difficult to explain to the people. I just got to get off the idea that we can only have one thing down there for them to vote on—unicameral For, unicameral Against. If you'd asked me this morning, I might have felt different, but after studying this over the noon hour and thinking about it, I just think we're making a mistake if we don't put both names on there. I support Mr. Ask's on his.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, after contemplating this over nine holes in the golf course just a little while ago, where the weather was beautiful, I suggest we support the majority report.

CHAIRMAN GRAYBILL: Mr. Ask, do you want to close?
Mr. Jacobsen, do you want to speak?

DELEGATE JACOBSEN: I like Tom's proposal, It does give both parties-or both bicameral and unicameral a fair shake there. I still believe that possibly for the death penalty and for the authorized gambling, we should have separate ballots for those and possibly put these out-and possibly a light red, possibly, for the death penalty and a blue for the authorized gambling and a white for the other part-and have these separate ones, because I know that any others that have worked in the polling places as judges will know that when we've had special elections or elections for bond issues and so on, that that is a good way to get the vote and call attention to these things, especially for those people that have come to vote because of either one of these articles; and we hope that this will bring a lot of people out to vote; and I think then it wouldn't be as confusing to have all of these squares on the one ballot. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I rise in complete support of Tom Ask's proposal, I think that when we campaigned, at least in our county, we assured the people they'd have a clear-cut decision between the unicameral and bicameral. I do not believe that this is too difficult a proposal if they use very large print in the top of the ballot, which assures the people that they vote either in block 1 or block 2. I do not believe it is too difficult, and it gives a clear-cut decision. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I approve of the committee's report, and I would oppose Mr. Ask's report for the simple reason that I think it's too complicated. I would like a point of information here. Isn't it possible to change number 2 on this ballot, if we get back to it, for unicameral or for bicameral'?

CHAIRMAN GRAYBILL: It is.

DELEGATE BATES: Okay, that's all.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I just want to comment on one subject here. I've heard again and again, yesterday and today, the thought that we must have a clear-cut decision between unicameral and bicameral. The facts of the matter are that this is utterly and totally impossible, because there is a third group to be reckoned with, just like Mr. Swanberg said, and

that is the group that doesn't want to have any new Constitution at all; and if nobody were going to vote except those who were choosing the new Constitution, then you would have-we could easily frame the issue that would deal between the choice of "uni" or "bi". But in the nature of things, we have a third group in here; and that is what creates the hazard and that's why we dare not set it up so that we are in this position of voting on "uni" or "bi", in our idealism, and forgetting about the fact that those that are opposed to the whole project may succeed in defeating it with a very small minority of the actual numbers of people wanting progress in constitutional reform.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I support the Ask proposal. I do it because it does give a choice, and the same arguments that were made by the delegate from Missoula apply to the majority report-or plan which is before us, because the same people who would vote against the Constitution for any reason, being against it and not for either bicameral or unicameral, would also vote against the majority report. There's not so much opportunity for that in the Z-block system of Mr. Ask's, and so I support the Ask proposal.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, will Mr. Ask yield?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes, I'll yield.

DELEGATE JAMES: Tom, there's something bothers me. If you vote against the proposed Constitution and you vote for a unicameral Legislature, you're actually amending the old Constitution, aren't you?

DELEGATE ASK: Oh, I suppose-indirectly.

DELEGATE JAMES: Yes, but can you amend it-is this legal to amend it this way? This is something that's bothering me.

DELEGATE ASK: Well, if the alternates pass and the main proposition fails, all alternates fail, so-but, I mean, even though they vote against, you're still giving the right to vote For a unicameral-bicameral. or Against-For/Against the death penalty and For or Against gambling. And—

DELEGATE JAMES: But, actually, you're just voting For or Against the Constitution, and if the "For" carries, then the other things apply; otherwise, the top item doesn't-the "uni" or "bi"-if you're Against.

DELEGATE ASK: If the top item doesn't carry, why, the entire thing is defeated.

DELEGATE JAMES: Thank you.

CHAIRMAN GRAYBILL: Mr. Ask, you may close.

DELEGATE ASK: On Tuesdays we trust the Legislature. On-this is Wednesday-we trust the voters. And I think they're intelligent enough to go through this, and I think my ballot gives them a clear choice of what they want to do. And it is possible, but it is inconceivable to me, that you wouldn't receive a majority for either a bicameral or a unicameral Legislature; and even though they vote against, I still think they have the right and will want the right to vote on these three alternatives; and I think this is the only one that gives us a clear choice. The majority report of the Style and Drafting-I can't predict how that's going to come out, because the bicameral is in there and just the unicameral mentioned separately, What's the effect of this? I don't know. But I think-my ballot, you have a clear choice. You either go one way or the other. And with that I close, Mr. Chairman,

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as shall be in favor of the Ask proposal, vote Aye; so many as shall be opposed, vote No. Has everybody voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim		Nay
Anderson,	J.H..	Nay
Anderson,	O..	Aye
Arbanas		Nay
Arness		Absent
Aronow		Nay
Artz		Nay
Ask		Aye

Babcock ..... Aye
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Absent
Bowman ..... Nay
Brazier ..... Aye
Brown ..... Nay
Bugbee ..... Nay
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Excused
Cate ..... Aye
Champoux ..... Nay
Choate ..... Nay
Conover ..... Aye
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Nay
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Nay
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Nay
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Absent
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Absent
Sparks ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Absent
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 21 delegates voting Aye, 70 voting No.

CHAIRMAN GRAYBILL: 21 having voted Aye and 70 having voted No, Mr. Ask's proposal is defeated. Now, the Chair considers the issue now to be the Style and Drafting Committee's majority proposal, which, in fact, is the same as Davis' through 1 and 2.

Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to take up the challenge that Mr. Roeder offered a moment ago about simplifying this. I am wondering why, in the second part on the unicameral option, that there are two choices—For unicameral and Against unicameral? It seems to me that those persons who are—who want a bicam-

eral Legislature get two votes. They vote for the Constitution, thereby they vote for bicameral. Then they come down to Section 2 and they vote against unicameral, thereby they get another vote. And it would seem to me to simplify this ballot very much if we simply eliminated 2-B and allowed the people to either cast a Yes or No vote for unicameral, or vote for unicameral.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I am in complete agreement, Mr. President, with Mr. Harbaugh's comments, and I would move at this time that line marked 2-B be deleted from the proposed ballot.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg has an amendment which would eliminate line 2-B—2-B—from the ballot, so it would—so the sense of it would be that if you wanted to vote for unicameral, you could check it; but you didn't need to check against unicameral, you already having voted, presumably, up above. That's the sense of his motion.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I propose a substitute motion for the motion now pending—that the words "Against the unicameral" be stricken and that the words "For a bicameral, two-house Legislature" be inserted.

CHAIRMAN GRAYBILL: Very well. Mr. Driscoll has a substitute motion, the effect of which is to change, in line 2-B, the "Against" to "For" and the "unicameral" to "bicameral" so it would read: "For a bicameral". In other words, in the second vote, you would have "For a unicameral" or "For a bicameral". I might point out this has the effect of being ballot number 1 yesterday and, in my view, is the Joyce amendment of yesterday and is another alternative way of presenting this issue. Mr. Driscoll, have I fairly stated your motion?

DELEGATE DRISCOLL: Yes.

CHAIRMAN GRAYBILL: All right, we'll discuss Mr. Driscoll's motion.

Mr. Hanson—Rod.

DELEGATE ROD HANSON: Mr. President, this seems to be a question of 2-B or not 2-B—(Laughter)

CHAIRMAN GRAYBILL: We'll let that pass, Mr. Hanson.

DELEGATE ROD HANSON: Okay, it's a point of interest then. The way this is set up, do you need a majority or do you need 50 percent plus one vote in item 2 for a bicameral Legislature, if we put it in, or would the vote above take precedence over the bottom vote?

CHAIRMAN GRAYBILL: The vote above—it's the Chair's understanding, and I'll just try and answer that—it's the Chair's understanding that the word "majority" in the box up there says that when you voted up there, assuming a majority vote for the Constitution and you have the bicameral, then it takes a majority under 2 to prevail, so unicameral would have to get a majority there. Now, bicameral, if it got a majority there—it would have already been in above, so it wouldn't matter whether it got it or not—but if it got it, it wouldn't harm anything.

Mr. Harper, I think you were up next.

DELEGATE HARPER: Yes. I like the way this is worded, and I'd just as soon take it to court after the election, because it says: "The proposed Constitution includes a bicameral Legislature unless replaced by a majority vote for a unicameral in issue 2 immediately below." Now, I submit to you that the average person, when he is voting in the issue below, issue 2—if he saw that one got more than the other, he would call that a majority vote. But what we know we mean—we're not telling the voter this—but we know we mean that a majority of all of those who vote in this election, whether they vote in issue 2 or not—you could get a majority on one of those down there. Actually, of course, the bicameral doesn't have to get any votes. That's not really the issue. I'm glad to see the bicameral in it. I'm going to go for these words. The unicameral has to get 51 percent of the total electors voting in the election or it has no chance. It's quite conceivable that a unicameral could get a majority in number 2 and still not become the law; and I think a lot of people, if not confused, would be downright mad about that. So if we keep this wording the way it is, then I hope we'll go to court and go to bat for the majority vote; and if we don't mean that, then I think we ought to rephrase the language in this box and make it perfectly plain that you have to have a majority of all the people voting in this election before 2-A has a chance of carrying. You see the point?

CHAIRMAN GRAYBILL: Mr. Harper, I see the point, and if we happen to adopt Mr. Driscoll's motion, it's conceivable that the language in the box would have to be changed. Actually, the

way the committee drew it up, it is technically correct—that a majority still is a majority and unicameral would have to have a majority of—a majority is defined by the Constitution in the Enabling Act—before anything could happen, no matter what we told them.

DELEGATE HARPER: Mr. Chairman, let me read you again—"replaced by a majority vote in issue 2 immediately below." I submit to you that when people vote in issue 2, they will think a majority is the one that gets the most votes. Now, I don't believe I'm that dumb. I think the average citizen reading that will know that. Unless he knows—We spoke to a couple of members of the Supreme Court yesterday morning. We raised this issue, and they did not understand that this was in there.

CHAIRMAN GRAYBILL: You're not implying that the Supreme Court actually discussed this with you, are you? Because that would seem to me to be—

DELEGATE HARPER: I discussed it with them.

CHAIRMAN GRAYBILL: You just tell us which ones those are. You won't use those when you take it to court, because that—

DELEGATE HARPER: (Inaudible)—all discussed—

CHAIRMAN GRAYBILL: —would not be proper for a judge to do, Mr. Harper.

DELEGATE HARPER: We were not discussing the ballot. They said they were not aware of this complication in the Enabling Act.

CHAIRMAN GRAYBILL: Yes, well—they should not be discussing our ballot. They might be sitting on it, so I trust that nobody will put the Supreme Court in that terrible position again. I am very serious about that. You should not discuss constitutional issues with Supreme Court judges until they get there, so let's all stay away from them on this issue. You can go there afterwards, but we shouldn't prejudge them. I just point that out to the whole body. We really ought to stay away from the Supreme Court and let them have a fair chance to decide it, Mr. Harper.

DELEGATE HARPER: I didn't discuss a constitutional issue with them, Mr. Chairman, but I won't go into a long speech to refute your reputation of what you assume we talked about when you didn't know.

CHAIRMAN GRAYBILL: You said it; I didn't, Mr. Harper.

DELEGATE HARPER: I'm still up on this point and I think it's valid. I think the average citizen would read that and say that it means a majority vote in issue 2, since that's what it says, and I'd like to see that wording changed.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Driscoll's substitute motion to put the words "for a bicameral" in the second section.

Mr. Anderson.

DELEGATE OSCAR ANDERSON: Mr. President, a point of clarification. If someone voted for the Constitution and then later on, say in Section 2-A and 2-B, marked both of them, would that void the whole ballot or just that portion of the ballot that they voted for both—say 2-A and 2-B, or if they done this on 3 and 4?

CHAIRMAN GRAYBILL: It says in 2, "Vote for one". It says in 1, "Vote for one". It says in each of them, "Vote for one"; if you vote for two, you've—in my judgment, you have voided your ballot.

DELEGATE OSCAR ANDERSON: The entire ballot?

CHAIRMAN GRAYBILL: I don't know the answer to that. Maybe some other attorneys would like to judge that, but I don't know.

DELEGATE OSCAR ANDERSON: Does anyone else want to answer that question? I think that's an—important for us to consider.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I don't think you would void the ballot. I had an occasion to look that up one time in an election. You only void the position that you vote for if you don't properly mark the "X" in the right box, and not the whole ballot.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I support Mr. Driscoll's amendment because I think it will give a clearer choice and perhaps attract more votes to the issue and give us a better poll—

and that's all it's going to be is a poll. I have prepared some arithmetic on this question of the chance of the unicameral prevailing as a side issue, and I conclude that there's about a 95 percent probability that has no chance whatsoever. This would be true, of course, if we put the bicameral as a side issue, too. In other words, the one we put in the Constitution is almost certain to be adopted. Now, I had that printed and I would have had it on your desks by now, but steno pool made an error, so it had to go back through the process. You will get it a little later. But I think that on any reasonable assumptions that you make that the statement the Chair made yesterday that there would be a slight disadvantage to the one that's on the side ballot is quite wide of the mark, and that, as a matter of fact, the ones on the side ballot has no chance at all of being adopted except in very, very unusual circumstances.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Driscoll's substitute motion that we substitute the words on line 2-B, "For a bicameral, two-house, Legislature" in place of "Against a unicameral, one-house, Legislature". Mr. Ask, do you want to discuss it further?

DELEGATE ASK: Mr. Chairman, would Mr. Schiltz yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE ASK: Mr. Schiltz, if on the Driscoll amendment, that'll be for a bicameral—that'd be 2-B—say there is more votes for the unicameral than the bicameral yet it's not a majority equal to the ones voted for the Constitution, what would be the result?

DELEGATE SCHILTZ: You're saying what Mr. Harper was inquiring?

DELEGATE ASK: Was that his inquiry?

DELEGATE SCHILTZ: Well, you're saying that perhaps unicameral prevailed or bicameral prevailed—or whatever—by, say, 46 percent of the total vote cast?

DELEGATE ASK: Yes.

DELEGATE SCHILTZ: I would say that it would lose, and I say it would lose because the law is what the law is, no matter whether we add that language or don't add that language up in the box.

DELEGATE ASK: I see. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I support the Driscoll amendment, and I will offer, when we get through with that, an amendment to the wording in the box to clarify it so the people will know exactly what they're doing.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I speak in opposition to the Driscoll amendment and for the majority report, because it just seems as though this eliminates all of the confusion and all of the things that might happen in case of these minority votes.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I also rise in opposition to the Driscoll amendment, because it puts us right back where we were, where we have a fractured vote divided into three components, where perhaps nothing might pass. We've got to allow—I should say we have to provide a ballot here that will allow the Constitution to pass, and if we, down in item 2-B and 2-A, give them a choice between unicameral and bicameral, those in favor of the Constitution—this has been said about a hundred times now, but I'll say it again—those in favor of the Constitution divide themselves up into two camps, neither of which will constitute a majority of those voting, and we wind up again with a Constitution without a Legislature.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I rise in support of the Driscoll amendment because I think it will be the only true picture we get of how the voters feel about unicameral or bicameral. Otherwise, we will never know by those who voted Yes for the Constitution, because I am sure that most of those who favor unicameral will vote Yes. They will not refrain from voting or vote No, for that reason, but we'll have no conception of the feeling about unicameral. And if some of us want to mount an initiative campaign or do something along this line, we'll have no way of knowing what the true picture is unless we adopt something similar—or—I would like to see the Driscoll amendment adopted.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I wonder if there isn't another problem. I wonder if the language in the box might not imply to some voters that the bicameral we're thinking of is the-in fact, the bicameral Legislature of the old Constitution and that if they thought that, they might feel that they were voting, then, for the Legislative Article as it exists in the old Constitution and that when they came down to the second part, they might then feel that they were voting for the new proposals. And I think this would be seriously misleading the public, and I would have to vote against the Driscoll amendment on that basis.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President, I have a question, and maybe I'm stupid-I guess maybe I am on this-but I would like to know what would happen on 2-A and 2-B under the Driscoll plan if the bicameral didn't get 51 percent and the unicameral didn't get 51 percent and the proposed Constitution in box 1 had enough votes. Well, that has the bicameral in it. Where would we be?

CHAIRMAN GRAYBILL: Then the bicameral would be the Constitution, Mrs. Warden. That's the purpose of putting the bicameral in the Constitution.

DELEGATE WARDEN: Yes, but if you didn't vote on it down below to get a 51 percent, wouldn't that count?

CHAIRMAN GRAYBILL: It wouldn't matter if it didn't get 51 below if it got 51 above.

DELEGATE WARDEN: Okay, thank you.

CHAIRMAN GRAYBILL: Very well, Mr. Driscoll, you may close.

Well, Mr. Aasheim, do you want to speak?

DELEGATE AASHEIM: Yes, Mr. President. I support the Driscoll amendment. I think it's a clear ballot and there would be no question in the minds of the people, when they're voting, how they stand. As Mrs. Reichert said, we would then have a poll on how the populace stood on the two issues.

CHAIRMAN GRAYBILL: Mr. Driscoll, you may close.

DELEGATE DRISCOLL: Mr. Chairman, I close. Everything has been said, and we'll do our business now.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote; and the sense of what you're voting on now is whether to—Mr. Driscoll proposes making the second vote there, one between unicameral and bicameral; whereas, the committee proposal makes the second vote one between being for and against the unicameral. And, assuming the bicameral's in, you're now choosing the manner in which the one that's outside will appear. It will either appear as unicameral only or it will appear as unicameral and bicameral; and under either circumstance, there may be changes we need to make in the box above. Very well; so many as may be in favor of Mr. Driscoll's amendment, which puts the words "For a bicameral house" in as 2-B, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, O. ..... Aye
Arbanas Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask Aye
Babcock ..... Aye
Barnard ..... Nay
Bates ..... Aye
Belcher ..... Aye
Berg ..... Nay
Berthelson Nay
Blaylock ..... Aye
Blend ..... Nay
Bowman Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain Aye
Campbell Excused
Cate ..... Aye
Champoux Aye
Choate ..... Aye
Conover Aye

Cross.. ..Aye
Dahood.. ..Aye
Davis ..Aye
Delaney .Aye
Driscoll ..Aye
Drum ..Absent
Eck ..Aye
Erdmann .Aye
Eskildsen.. ..Aye
Etchart ..Aye
Felt ..Aye
Foster ..Aye
Furlong ..Aye
Garlington Nay
Gysler Nay
Habedank ..Aye
Hanson, R.S. ..Aye
Hanson, R. .Aye
Harbaugh Nay
Harlow ..Aye
Harper Aye
Harrington. Aye
Heliker ..Aye
Holland .Absent
Jacobsen ..Aye
James ..Aye
Johnson Nay
Joyce.. ..Aye
Kamhoot Nay
Kelleher Aye
Leuthold ..Aye
Loendorf. Nay
Lorello Nay
Mahoney Nay
Mansfield Nay
Martin Nay
McCarvel ..Aye
McDonough .Aye
McKeon ..Aye
McNeil ..Aye
Melvin ..Aye
Monroe.. ..Absent
Murray.. ..Absent
Noble Nay
Nutting ..Aye
Payne Nay
Pemberton Aye
Rebal ..Aye
Reichert Aye
Robinson Aye
Roeder Nay
Rollins Aye
Romney ..Aye
Rygg ..Aye
Scanlin ..Aye
Schiltz Nay
Siderius ..Aye
Simon Nay
Skari ..Aye
Sparks ..Aye
Spew Nay
Studer ..Aye
Sullivan ..Aye
Swanberg. Nay
Toole Nay
Van Buskirk ..Aye
Vermillion Aye
Wagner Nay
Ward ..Aye
Warden. Nay
Wilson. Nay
Woodmansey Nay
Mr. President Aye

CLERK HANSON: Mr. Chairman, 68 delegates voting Aye, 27 voting No.

CHAIRMAN GRAYBILL: Very well, since 68 have voted Aye and 27 No, Mr. Driscoll's motion passes and the second ballot now reads: "2-A, For a unicameral, one-house; 2-B, For a bicameral, two-house, Legislature."

Mr. Swanberg, this has, in my opinion, the effect of deleting your motion, which was to delete 2-B, but if you want to put it again, we'll test it.

DELEGATE SWANBERG: I think it would be futile, Mr. President. Nevertheless, I think the matter is important enough and I would ask for a roll call vote on my motion to delete.

CHAIRMAN GRAYBILL: Mr. Swanberg has again put the issue of whether to delete line 2-B, the point being that we'd now be deleting the line that says, "For a bicameral, two-house, Legislature." He wants a roll call vote. Is there any discussion?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, could Mr. Schiltz discuss this? What are the implications-what would be the implications of this? It sounds like a good idea to me.

CHAIRMAN GRAYBILL: Mr. Schiltz

DELEGATE SCHILTZ: You're talking about deleting 2-B altogether?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: Well, I have no brief for it, one way or another. I think that the

people ought to be given a choice, and that's what the committee decided, and so we, I think unanimously on that proposition, decided that we would give the people a choice in that connection. I don't-as to effect, I have no idea what the effect would be. I think the people could adopt the unicameral by voting for it there and overcome the bicameral that's in the first proposition by so doing, but I think they could also do it with two boxes-or two choices.

CHAIRMAN GRAYBILL: Very well, the—

Mrs. Bates, do you want to discuss his motion to delete line Z-B?

DELEGATE BATES: Yes. Mr. Chairman, if you did this and you left your first statement up above, that vote on all four issues, there really isn't a choice then. Either you would have to put "For a unicameral, Yes or No", or leave it as it is or change that again, because you have to provide the voters with a choice.

CHAIRMAN GRAYBILL: I think you're right. We might have to say, "you may vote on all four", but you couldn't say they should.

Very well, Mr. Swanberg, do you want to close?

DELEGATE SWANBERG: Just **a** few brief comments, Mr. President. We want to make this ballot as simple as possible and as easy to understand as possible, and we want to prepare a ballot whereby the Constitution can pass. It's pointless to stay here for 60 days working on a proposed Constitution and then submit a ballotthat's so complicated that it cannot possibly pass the voter or one which, by the laws of probability and the rules of arithmetic, could not possibly pass the voters. Now, I submit for your consideration that the voter, when he goes to the polls, has three choices. He can vote for the Constitution or he can vote against the Constitution, and then he has one third choice wherein--whereby he puts in a unicameral alternate if he wants it. Those are the three choices he has, and those are-those should be all that he has. To put a fourth one in simply muddies the water. Poll-taking is, I suppose, a nice thing to do; but when we're trying to get a Constitution passed, let's forget about taking polls; let's concentrate on trying to pass the Constitution. I would further submit for your consideration that those who favor the unicameral article would themselves be taking a poll by voting on that issue, so all we need here is three items-for the Constitution, against the Constitution, and for the unicameral alternate--and that's all we should submit to the people.

CHAIRMAN GRAYBILL: Mr. Wilson, for what purpose do you rise? Do you want to discuss it?

DELEGATE WILSON: Yes.

CHAIRMAN GRAYBILL: Very well.

DELEGATE WILSON: I hesitate to get up here, but I think that by the act of our last vote, we have caused a legal question on our ballot.

CHAIRMAN GRAYBILL: Well, we're not quite through with it yet, Mr. Wilson. Very well, I guess that we're ready to vote. It'll be a roll call vote. All those in favor of Mr. Swanberg's proposal to strike 2-B entirely, vote Aye; and all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim Nay
Anderson, J.H. Nay
Anderson, 0. Nay
Arbanas Nay
Arness Nay
Aronow Nay
Artz Nay
Ask Nay
Babcock Nay
Barnard Nay
Bates Nay
Belcher Nay
Berg Aye
Berthelson Aye
Blaylock Nay
Blend Aye
Bowman Aye
Brazier Nay
Brown Aye
Bugbee Aye
Burkhardt Nay
Cain Nay
Campbell Excused
Cate Nay
Champoux Aye
Choate Aye

Conover ..... Nay
Cross ..... Nay
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Nay
Foster ..... Nay
Furlong. ..... Nay
Garlington ..... Nay
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Nay
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Nay
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Absent
Murray.. ..... Absent
Noble ..... Nay
Nutting ..... Aye
Payne ..... Nay
Pemberton ..... Absent
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Aye
Roeder ..... Nay
Rollins, ... Aye
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks.. ..... Nay
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Nay
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. President ..... Nay

CHAIRMAN GRAYBILL: Mr. Habedank is on the aisle where you are. Will you take that to him, please, quickly.

CLERK HANSON: Mr. Chairman, 21 delegates voting Aye, 71 voting No.

CHAIRMAN GRAYBILL: 21 having voted Aye and 71 having voted No, Mr. Swanberg's motion is defeated.

Now, Mr. Mahoney, Mr. Habedank has a motion before the Chair, but I'm asking him about a word, and I think I want him to be next. Now, if you want to—

DELEGATE MAHONEY: (Inaudible)-point of information.

CHAIRMAN GRAYBILL: All right, that would be a fine thing to take the time.

DELEGATE MAHONEY: Could we have the Chairman of the Style and Drafting Committee tell me just where we are in Section 2 now, in relation to the majority?

DELEGATE SCHILTZ: I assume, Mr. Mahoney, that you're asking about whether the law that I explained and went through yesterday still obtains? Certainly, it does. We still need, down in Section 2, to get 50 percent of the vote, plus one, to overturn a bicameral Legislature. Is that your question?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Well, this-we go back to the board-say that the Constitution

passes, then we go down here in the unicameral and we get 40 percent unicameral and we get 35 percent bicameral. Where are we at?

DELEGATE SCHILTZ: Then we still have the Constitution with the bicameral in it on the vote for the Constitution up above.

CHAIRMAN GRAYBILL: And, Mr. Mahoney, the point of Mr. Habedank's motion is to clean up the language in the box a little there, because we've changed the word down below.

Mr. Habedank, do you wish to make your amendment?

DELEGATE HABEDANK: Yes, Mr. President.

CHAIRMAN GRAYBILL: Allright. Have you got a copy of it?

DELEGATE HABEDANK: I have it. Would you read it.

CHAIRMAN GRAYBILL: All right, Mr. Habedank proposes an amendment which says: "I move to amend the words in the box to read as follows: The proposed Constitution includes a bicameral, two-house Legislature unless replaced by a majority vote"-then he would add this language—"of those voting at this election, voting for a unicameral, one-house Legislature in issue 2 immediately below." Is that right? Do you want that second voting in?

DELEGATE HABEDANK: Strike the voting. I agree with you.

CHAIRMAN GRAYBILL: Strike the voting. All right, then it would say "a majority vote of those voting at this election for a unicameral, one-house Legislature on issue number 2 immediately below." In other words, he's added the words, "of those voting at this election", so it says, "a majority vote of those voting at this election, for a unicameral Legislature on issue number 2 below." And it has the effect, Mr. Mahoney, of clearing up Mr. Harper's point that the word "majority vote" is then defined as a certain majority vote; namely, a majority vote of those voting at this election. Is that right, Mr. Habedank?

DELEGATE HABEDANK: That's my intent, Mr. President. I feel that, with this, we are telling the people exactly what's going to happen. There's no question about it, even though the law may be otherwise, and I don't think that words are that-or a shortage of words is that important.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, on the contrary, I submit that Mr. Habedank has compounded the felony and made it possible to read that if the-what Mr. Mahoney was just asking-if down below there's a 35 and a 38 percent vote, one of those is going to carry. Now, if you read that carefully, that's what happens. It reads just like this: "The proposed Constitution includes a bicameral, two-house Legislature unless replaced by a majority vote of those voting at this election for a unicameral."

CHAIRMAN GRAYBILL: No, he's got "at this election comma".

DELEGATE SCHILTZ: Well, I don't-1 submit that that comma is not all that effective. I think it's more misleading than it was.

CHAIRMAN GRAYBILL: Well, all right, but he does have it there. May the Chair inquire of Mr. Schiltz—would you prefer if it said a majority vote of the total cast on ballot number 1?

DELEGATE SCHILTZ: Well, I heard Mr. Murray say yesterday that ballot number 1 is what the Secretary of State is going to adopt, and I don't trust the Secretary of State all that much. I have the feeling that if, down there on item number 4, we got 210,000 votes and on item number 1 we got 200,000 votes that he, by golly, ought to say that the total number of votes cast at this election was 210,000 votes. What Frank Murray says has never impressed me all that much, and it impresses me less on this subject. My point, Mr. Chairman, so far as the box is concerned--and I said it just a minute ago, and I think that any lawyer in the place would probably-or most of them, at least--would probably agree with me, that we don't need to delineate the law. The law is what the law is; and if it turns out that an odd voter misunderstands that and turns out to be disappointed, that's too bad, because the law is what the law is; and I don't think we need to play with that language at all.

CHAIRMAN GRAYBILL: Mrs. Eck, I think you were up before.

DELEGATE ECK: Mr. Chairman, would Mr. Schiltz yield for a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE ECK: Mr. Schiltz, would it clarify it at all-you know, thinking that some of us would like it clarified-if we say, "unless a majority of all those voting on this ballot-or in this election, vote for a unicameral Legislature in issue 2 immediately below"?

DELEGATE SCHILTZ: That would be infinitely better than what Mr. Habedank proposed. It would probably only clarify it if we printed the entire debate thattookplaceyesterday on the question of 50 percent plus one. I don't think we need to do any of that.

DELEGATE ECK: Mr. Chairman, I would like to submit this as a substitute amendment. Would you like to get me to take it up in writing?

CHAIRMAN GRAYBILL: Well, just a minute. If you'll make-If you'll read it to me slowly.

DELEGATE ECK: Okay.

CHAIRMAN GRAYBILL: "Unless"-after "unless".

DELEGATE ECK: "--unless a majority of all those voting in this election-or on this ballot"-whichever you think would be better— "on this ballot vote for a unicameral", et cetera.

CHAIRMAN GRAYBILL: Mr. Habedank, have you heard that language?

DELEGATE HABEDANK: Unless a majority of those voting on this ballot vote what?

DELEGATE ECK: For a unicameral—

CHAIRMAN GRAYBILL: "-for a unicameral Legislature in issue number 2 immediately below."

DELEGATE HABEDANK: Mr. Chairman, I don't think that takes away the effect of what I'm trying to do, and as far as Mr. Schiltz's position is concerned, I can agree with him. What we say probably won't affect the law, and that applies to what we say here as well as what he says, and I think what we're trying to say is a lot more coherent than what he's trying to say.

CHAIRMAN GRAYBILL: How about what Mrs. Eck is trying to say? (Laughter)

DELEGATE HABEDANK: I like what Mrs. Eck is trying to say.

DELEGATE ECK: Mr. Chairman, Mr. Brown just made another suggestion here and— which might clarify it a little better. He said that it might be better to have "also vote for a unicameral". In other words, at the end of the amendment, add an "also".

CHAIRMAN GRAYBILL: "-unless a majority of all those voting on this ballot also vote for a unicameral, one-house Legislature in issue number 2 immediately below."

DELEGATE ECK: That's right. Thank you.

CHAIRMAN GRAYBILL: All right. Now, just a minute so I keep straight up here. Mrs.-I'll allow Mrs. Eck's substitute amendment, and then we can defeat it or pass it. All right, now, the Chair will reset the stage, and then we'll discuss it. The box you have before you--now, Mr. Habedank moved that after the word "majority vote", we add "a majority vote of those voting at this election, for a unicameral, one-house, Legislature." Mrs. Eck has now made a substitute motion that we start up a little higher, at the word "unless", and it would say: "The proposed Constitution includes a bicameral, two-house, Legislature unless a majority of all those voting on this ballot also vote for a unicameral, one-house, Legislature in issue Number 2 below." That's the issue. Now, who'd like to discuss it?

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'd like to direct a question to Mr. Habedank.

DELEGATE HABEDANK: I yield.

DELEGATE HARBAUGH: Mr. Habedank, was the intent of-would the intent of what you meant in your original motion be clarified if we said, "of those voting for or against the Constitution"?

DELEGATE HABEDANK: No, I don't feel it would. I think "voting on this ballot", as Mrs. Eck has it, would cover the situation--or "voting on this proposition"--or any one of a number of words can be used.

DELEGATE HARBAUGH: Mr. Chairman, it seems to me that we're still somewhat confused by "voting on this ballot", that phrase, whether that applies to all of the subsections or whether it applies just to the first section of this ballot, and if the intention is to count as-for the

purpose of determining majority-just those who vote for or against the Constitution, then I think that's what we ought to say.

CHAIRMAN GRAYBILL: Well, that might be, Mr. Harbaugh. The Chair would just observe that Mr. Schiltz's point is still well taken. It doesn't matter what we say. Unless they get an absolute majority, nobody can allow unicameral in, so it really doesn't matter as long as you're not-it doesn't matter how you count it. It doesn't matter if you count 1, 2, 3, or 4—until an absolute majority of what the court will hold eventually is the number 1 issue, it doesn't matter; but if you want to make another one after we've amended or voted on these two, we can have another go at it.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I really think that Mr. Schiltz is right here, that probably the more words we add, the more confusing it's going to be. We're not following our exact words down below, and I would like to withdraw my amendment.

CHAIRMAN GRAYBILL: Mrs. Eck's is withdrawn. All right, Mr. Habedank's is not, yet, so we're voting on whether or not to add, after the words "a majority vote"-the phrase "a majority vote of those voting at this election, for a unicameral, one-house, election-one-house Legislature".

Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I think the further we go with this, the more confused we do become. And I wonder if it is necessary to put this information on the ballot, at all, that's contained in this box; and as a substitute motion, I would move that we delete it. It's certainly going to confuse the voters.

CHAIRMAN GRAYBILL: Now, Mr. Choate, I'm going to let you put that motion if you want to, but seven lawyers on Style and Drafting and the President and several other lawyers I've talked to all agree that you must have some language like this, otherwise Mr. Aasheim's point yesterday, that everybody that votes in the first box must be counted for bicameral, makes it impossible for unicameral ever to win if the Constitution wins. Do you follow us?

DELEGATE CHOATE: Well, I don't understand why that is so. Perhaps it is. For what reason would it be necessary that—

CHAIRMAN GRAYBILL: Because the Constitution would necessarily include bicameral, and when you vote it up there, if you don't have this caveat in there, then the court is going to hold that a vote up at the top is a vote for bicameral.

DELEGATE CHOATE: Well, I think it would anyway. Of course it would anyway, if it's in the document; but if we tell-why do we need to say that bicameral is contained in it? The fact that it is in the document-it appears to me that to state it again here is not necessary and would only add to the confusion of it. That's the point I make. We have a clear-cut choice for unicameral or bicameral down here in item 2, and it looks to me as though this is just superfluous to-and confusing. That's the point of it. I thinkit'll just add to the confusion.

CHAIRMAN GRAYBILL: Now, are you making your motion as a substitute motion? I've got one substitute motion, so I don't see how you can make another substitute motion. Oh, no, Mrs. Eck withdrew.

DELEGATE CHOATE: She withdrew, and hers was a substitute amendment to Mr. Habedank's motion.

CHAIRMAN GRAYBILL: All right, so you want to make a substitute motion anyway?

DELEGATE CHOATE: Well, yes, I do want to, Mr. Chairman, unless it is going to pose a legal problem if the—

CHAIRMAN GRAYBILL: Well, in the Chair's view, it's going to make the ballot illegal. Now, the Chair can come down on the floor and explain that if necessary, or maybe some of the other lawyers can, but—

DELEGATE CHOATE: No, that's all right. I'll take the Chair's word for it. If it is going to pose a legal problem, I'll withdraw the motion.

CHAIRMAN GRAYBILL: It's going to cause the court to hold that the first votes up there must necessarily be counted for bicameral, and then any votes in 2 are going to be added to that and it's going to be impossible for unicameral ever to get more than 51 percent-51 percent having been necessary at the first line-to ever get the thing adopted anyway. So you have effectively stopped any possibility of unicameral winning if you do that. Now, do you want to not make your motion?

DELEGATE CHOATE: I'll withdraw the motion.

CHAIRMAN GRAYBILL: All right, now, the issue is on Mr. Habedank's motion to add the words "of those voting at this election" into the box.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I have another proposal here that I'd like to make as a substitute motion to Mr. Habedank's, and I think maybe it'll clarify it. It would read like this: "The proposed Constitution includes a bicameral, two-house, Legislature which becomes law unless the majority of those voting at this election vote for a unicameral Legislature in issue number 2 immediately below."

CHAIRMAN GRAYBILL: "—which becomes law unless-"

DELEGATE AASHEIM: "-which becomes law unless the majority of those voting at this election vote for a unicameral Legislature in issue 2 immediately below."

CHAIRMAN GRAYBILL: "--unless a majority of those voting at this election vote for"-just-1 can't write faster—

DELEGATE AASHEIM: "-vote for a unicameral Legislature in issue 2 immediately below." Mr. Chairman, Mr. Schiltz—would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Nobody's got the floor yet. Just a minute. I have to get it down or else I lose it and it never gets taken care of. All right, Mr. Aasheim has a substitute motion which would say: "The proposed Constitution includes a bicameral, two-houses, Legislature"-he takes that much, and then he adds-"which becomes law unless a majority of those voting at this election vote for a unicameral, two-house, Legislature in issue 2 below"-immediately below, if you want to put it in there. I don't know.

DELEGATE AASHEIM: Mr. Chairman, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: (Inaudible)

DELEGATE AASHEIM: How does that sound for size?

DELEGATE SCHILTZ: Well, at first-my first impression was-it was all right, but it assumes that it's going to be law if number 1 is adopted, and, of course, number 1 might not be adopted. Now, the same might be said-it might be relieved by the word "proposed Constitution includes a bicameral". As we have it, I don't think we have the disability that you put in there by saying "which becomes law", because it won't become law unless number 1 is adopted.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I'll leave it for the assembly to decide.

CHAIRMAN GRAYBILL: You'll what?

DELEGATE AASHEIM: I'll leave it for the assembly. I won't withdraw at this time.

CHAIRMAN GRAYBILL: You won't withdraw it?

DELEGATE AASHEIM: No.

CHAIRMAN GRAYBILL: Okay. It's not withdrawn, it's up for discussion.

Mr. Roeder.

DELEGATE ROEDER: Will Mr. Habedank lead-or yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: Yes, I will.

DELEGATE ROEDER: Now, your proposal was, after the words "majority vote", to include "of those voting in this election".

DELEGATE HABEDANK: Yes, to correspond with our present Constitution.

DELEGATE ROEDER: I'm not sure I understood Mr. Schiltz's demurrer when he said the law is the law, but I think I see one problem that the addition of your words might bring about. Now, it is possible, I think, Mr. Habedank, that the provision that we're trying to surmount, that is in

Section 8 of Article XIX of the present Constitution, does not really necessarily go into effect for 2, 3 and 4. Now, I was not one of the lawyers in the Style Committee that the Chair referred to, but I have a notion that you could interpret Section 8, Article XIX, in such a way that it would not apply, so that if you had a simple majority on 2, 3 and 4 that was not, an absolute majority of the total vote in number 1, that they would still be valid. If my interpretation is right, would not the inclusion of your language change that and remove that possibility?

DELEGATE HABEDANK: Are you asking me a question?

DELEGATE ROEDER: Uh-huh.

DELEGATE HABEDANK: Yes, Mr. Roeder, I feel sure it would; and originally when I approached this proposition, I approached it from the standpoint that if the Constitution started out-or the vote started out for the proposed Constitution, including the alternate proposals receiving the majority votes cast for each alternate below, that would meet the test ofobjections in the Supreme Court, but I really don't feel that it's fair to run that risk here, much as I would like to have it that way. I think it's better to clarify it the way I have it clarified and eliminate that possibility. It says straight-out what it is, and ifthe body doesn't want to go for it, then I think it's something else; but as I look at it, as the Style and Drafting Committee has proposed this ballot, your construction is possible and we can have the lawsuit that George Harper said we could have; and I think we should clarify it at this stage.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and fellow delegates, I would rise as a member of the Style and Drafting Committee and salute the legal work of the seven minds that have been wrestling with this and our Chairman and Gardner Cromwell and two other legal assistants in the group. They've come up with terse, lean language which does not spell out everything but which does make the issue crystal-clear for the voter. If he's going to make it on the unicameral, he's got to have a majority of voters coming in on 2-A, and the main purpose for its being there is for his information as he moves through the ballot, and there is no question. The legal suit may be filed, but it will lose. There is no question, I have been convinced by these many good legal minds. It's clear as the Style and Drafting has presented it.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I thought I might indicate, for the consideration of the body, the problem that was confronting Style. The suggestion that Mr. Roeder makes is that the language "approved by a majority of electors voting at this election" may only apply to an amendment of the 1889 Constitution and may not necessarily be applicable to the proposed Constitution. This has been the problem that Style lawyers have wrestled with during the last week, and we all, I think, are in agreement that we ought not to risk that possible interpretation. In other words, we felt that there was sufficient doubt as to whetherit did or did not apply to the new Constitution that we ought to adopt it so that there was no question. I believe that accepting Mr. Habedank's amendment does, in a measure, also clarify and sustain this position that these amendments--or these alterations as to unicameral or bicameral, particularly as to unicameral, ought to be carried only if a majority of those voting at the election approve it. Therefore, I prefer Mr. Habedank's language because it is consistent with Section 8 of Article XIX and does resolve any possible conflict that the Style lawyers were confronted with. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I am going to withdraw my amendment in favor of the wording in the box as proposed by the Style and Drafting Committee.

CHAIRMAN GRAYBILL: All right, Mr. Aasheim's is withdrawn. Now, I wish you'd all listen. The Chair has a proposed amendment from Mr. Brown. I wish Mr. Schiltz and all of you experts would listen-see if it's any better. "The proposed Constitution will include a bicameral, two-house, Legislature unless a majority of those voting in this election choose a unicameral, one-house, Legislature in issue 2 immediately below." Now, it's very similar to the Committee's except it says the proposed Constitution will include a bicameral unless a majority of those voting, which is Mr. Aasheim's language, in this election— unless a majority of those voting in this election choose a unicameral, one-house, Legislature in issue 2 immediately below. It seems to change it from a slightly legalistic to a more personable

statement, but I don't know whether it's any better.

What do you think, Mr. Schiltz?

DELEGATE SCHILTZ: That's satisfactory with me. It gets away from that trouble I had with Mr. Habedank's, as though you were saying if you vote for one of these things below and get a majority, that it carries.

CHAIRMAN GRAYBILL: What do you think, Mr. Habedank?

DELEGATE HABEDANK: I like it.

CHAIRMAN GRAYBILL: What do you think, Mr. Berg?

DELEGATE BERG: I would prefer that it use the language "replaced by" instead of "choose".

CHAIRMAN GRAYBILL: "--unless a majority of those voting in this election replaced by"-it can't. It's got to say "choose". It's the people who choose.

DELEGATE BERG: "-is replaced by."

CHAIRMAN GRAYBILL: Oh-bicameral unless a majority of those voting in this election choose a unicameral Legislature''—I don't see where you can put in "replaced by".

DELEGATE BURKHARDT: Do you mean ''vote for", rather than "choose"-to vote for, rather than choose?

CHAIRMAN GRAYBILL: I'll read mine and then you can read it back: "The proposed"--or I'll read Brown's: "The proposed committee--or the proposed Constitution will include a bicameral, two-house, Legislature unless a majority of those voting in the election choose a unicameral, one-house, Legislature in issue 2 immediately below." Now, we could say "unless a majority of those voting in the Legislature vote for a unicameral", but choose is-probably has the advantage of being one letter shorter.

Mr. Berg.

DELEGATE BERG: I yield.

CHAIRMAN GRAYBILL: Mr. Brown, you'd better get this in. Do you want to make a motion?

DELEGATE BROWN: Yes, I'll move, Mr. President, but I think maybe instead of "choose", "vote for" would be better, because we do say "For" in issue 2.

CHAIRMAN GRAYBILL: All right.

DELEGATE BROWN: So, with that amendment, I will move that as-1 don't know what I'm moving-a substitute motion? Or a motion? Or amendment?

CHAIRMAN GRAYBILL: Well, just a minute and I'll find out. Mr. Habedank, are you going to withdraw or are you going to stay in?

DELEGATE HABEDANK: No, I'll withdraw mine in favor of Mr. Brown's, with that change.

CHAIRMAN GRAYBILL: Mr. Habedank's is withdrawn. You're just making a motion, Mr. Brown. You're making a motion that the language in the box be as follows-right? "The proposed Constitution will include a bicameral, two-house, Legislature unless a majority of those voting in this election vote for a unicameral, one-house, Legislature in issue 2 immediately below."

DELEGATE BROWN: I will so move.

CHAIRMAN GRAYBILL: All right, is there discussion of Mr. Brown's language?

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I support the amendment. We're right back to what we adopted yesterday in Mr. Davis' motion.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, all these lawyers and political scientists have got me thoroughly confused. Would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE HELIKER: Just exactly what is the issue? What is it you're trying—what is the problem that you're trying to solve here?

DELEGATE SCHILTZ: With the box?

DELEGATE HELIKER: With this amendment of Mr. Brown's,

DELEGATE SCHILTZ: Well, I think you should ask Mr. Brown to yield. I can tell you what—

DELEGATE HELIKER: You all seem to be agreeing on it.

DELEGATE SCHILTZ: Well, I asked if you meant the box. I'll start with the box. The purpose of the box is to warn people that there's an opportunity to replace the bicameral Legislature by voting in Number 2 below. Now, so far as I'm concerned, this language was all right. I sense that somebody has some disturbance about whether or not we have to put a further warning in there that they must carry the thing below by 50 percent of the vote plus one vote, so I don't have any trouble with this language if they want to do it. It's much better than what we had up till now, and so that's why I waved my hand and said it was all right.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Will Mr. Brown yield?

CHAIRMAN GRAYBILL: Mr. Brown?

DELEGATE BROWN: I will yield.

DELEGATE HELIKER: Would you answer my-the question which Mr. Schiltz didn't answer?

DELEGATE BROWN: Well, I don't know if I can. It seemed to be the sense of the people here that if you had 50 plus one vote for the Constitution but below there you had 48 percent for unicameral and 32 percent for bicameral, then the unicameral would not carry; but the people of Montana would be then thoroughly confused and say, "We voted for unicameral, why didn't we get it?" So we want to put right on the ballot-we can show them the ballot and say, "Here, it said 'a majority of those voting"'-so the people won't misunderstand. In other words, I'm afraid if you just say if a majority vote for unicameral, they will think they have carried unicameral when, in fact, they haven't.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE HELIKER: Now, there was something else involved in this discussion somewhere along the line to the effect that, if I understood it correctly, that if we did not include Mr. Brown's or Mr. Habedank's language, then that there might be an interpretation that the vote on part 2 of the ballot was an amendment to the new Constitution and thus not subject to the requirement of the old Constitution in Article XIX. Now, may I ask the Chair to give us his explanation?

CHAIRMAN GRAYBILL: Well, the issue you raise was partly discussed by me and partly discussed by Mrs. Eck or Mrs. Bugbee or someone-Mr. Berg-but the point is that if you put nothing, if you put no box there-you see, we have now put the bicameral article in the Constitution. You're with us there? That's what we did yesterday.

DELEGATE HELIKER: Right.

CHAIRMAN GRAYBILL: All right, now; having put it in there, if you put no box at all there, I think you force any court to say that when people vote for that Constitution, all those votes must really be counted for bicameral. And then if unicameral-you know, we can't even pass the Constitution unless we've got 51 percent, so automatically bicameral wins, because it had to have 51 percent or we have no Constitution anyway, and the vote on 2 becomes meaningless. In order to make the vote on 2 meaningful, you have to warn the public that it's possible to replace the one you put in with the one you are going to vote on below, so that's the purpose of the box. Now,-

DELEGATE HELIKER: Doesn't the box, as originally written, do that?

CHAIRMAN GRAYBILL: The box, as originally written, does that except-it does that in Mr. Schiltz's and my view, because it doesn't make any difference what we say, as long as we warn them the court is not going to let unicameral replace bicameral unless it has an absolute majority because of the Constitution and the Enabling Act.

DELEGATE HELIKER: Well, if we're all agreed on that, then I—

CHAIRMAN GRAYBILL: But--wait a minute-wait a minute--I get to answer. But the question was raised by Mr. Harper, and I think legitimately, that when you say "unless replaced by a majority vote", without describing the majority vote, you could have a different majority vote on 2 than you had on 1; and as Mr. Brown just answered to you, we'd be in a funny position with the public if a majority-that is, more than half of those voting on only number 2 supported uni-

cameral, but less than a majority of all the people voting on the ballot did, because then the people would think-since unicameral got a few more than bicameral, they'd think that unicameral won, but in fact it hadn't won because of the rule, so you have to state thatrule. Now, Mr. Brown has stated the rule-in the opinion of most of us here now, somewhat more skillfully than we originally stated it-by saying that the proposed Constitution will include this bicameral Legislature-so now they're all aware of that--unless a majority of those voting in the election-that's of all the people voting and not just on number 2—a majority of those voting in the election vote for a unicameral Legislature in issue 2 below. He's clearly pointed out that you got to have a majority, on number 2, of all of those in the election, not just on issue number 2, and in that sense his language is somewhat better than the original language in the box, in the opinion of those who have spoken so far.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE HELIKER: The problem is to-is one of informing the people, not of clearing up a legal question, is that right?

CHAIRMAN GRAYBILL: I think that's right, but it never hurts to inform-to do them both at the same time.

DELEGATE HELIKER: Well, we were told first that the law would be the law, regardless of whether—

CHAIRMAN GRAYBILL: What you're told is that if unicameral gets 50 percent less one, there is no way that any court or anybody else can put it into effect; so it doesn't matter how many votes it got-if it got all the votes in number 2 and nobody voted for bicameral, it wouldn't do unicameral any good unless it got 50 percent plus one.

DELEGATE HELIKER: Yes, and there is no question about that, regardless of what the wording is in the box?

CHAIRMAN GRAYBILL: Well, there's no question about that in the minds of the lawyers, because of the wording of the Enabling Act; but there is in Mr. Roeder's mind, and he may be entirely right; but the Enabling Act, which I read to you yesterday, does say, "must receive a majority"-the proposals-in the plural--must receive a majority of those voting at the election. Now, whatever that means. If that means all, it means all of it; if it means only the first, it means only the first. But since "proposals" is plural in the Enabling Act and since the Constitution, which I also read to you yesterday, says "a majority of those voting for the amendment, change, ratification"-there's about four words there and it's—and they're all modified by majority. Does that help you, Mr. Heliker?

DELEGATE HELIKER: Well, I'd like to ask Mr. Berg a question if I may.

CHAIRMAN GRAYBILL: Okay. Mr. Berg, you're up.

DELEGATE HELIKER: I want to get several legal opinions on this. I think it's a good policy in this Convention. Mr. Berg—

DELEGATE BERG: I yield.

DELEGATE HELIKER: Do I now understand correctly that there is no legal question to be cleared up here, that the law will be the same regardless of how you word this, whether you adopt Mr. Brown's amendment or not?

DELEGATE BERG: That would be my opinion, yes.

DELEGATE HELIKER: So, all we're doing is to inform the people.

DELEGATE BERG: We are informing the people by the ballot that it requires a majority of those voting at the election to carry unicameral.

DELEGATE HELIKER: Mr. Roeder's remarks, in your opinion, have no validity?

DELEGATE BERG: In my opinion, the—yes, I would agree with that.

DELEGATE HELIKER: All right. I'm more or less satisfied.

CHAIRMAN GRAYBILL: All right, now, the issue is on Mr. Brown's amendatory language for the box, and we'll vote on that after discussion, if anyone wants to discuss Mr. Brown's language further.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I would like to make a suggestion here because I think we are discussing the unicameral-bicameral

only in this box, whereas, we also have two other alternate issues. I would like to suggest to this group something on-like this: "The alternate issues below, 2, 3 and 4, will only be adopted if the prevailing vote is passed by a majority vote of all voters voting in this election."

CHAIRMAN GRAYBILL: Well, now, Mrs.—

DELEGATE BATES: Would that be possible?

CHAIRMAN GRAYBILL: It would be possible to say that, but that isn't necessarily a true statement. Now, the problem is-and I'm sure Mr. Schiltz and some of us can clear you up-the problem does not arise in the gambling issue or in the death penalty issue because the language does not have to be changed in the Constitution if you fail to get a 50 plus one percent vote.

DELEGATE BATES: Well, then, it's agreed that these two issues will be in the Constitution as they are now, then, and that it-that really—

CHAIRMAN GRAYBILL: Well, now, we have to decide yet, and I've got three amendments up here on how the gambling wants to appear in there; but the point is that some language will appear in the Constitution on gambling and it doesn't have to be changed, no matter whether the one outside wins or loses, because it's a matter of just tacking on another phrase or taking out a phrase. But in the bicameral-unicameral, you really have to substitute one for the other. That's why we have to have the box and the language.

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, Mr. Brown's move seems to me to be a good one, but now, what is the need for having box 2-B, then, when we have already explained this and where we know that if the-we vote for the proposed Constitution, it already includes the bicameral, why do we have to have any more than just one box below there, for a unicameral, one-house, Legislature?

CHAIRMAN GRAYBILL: Well, you don't-you really don't, Mr. Jacobsen, to get a vote, but you-but this body has decided a few minutes ago that they preferred putting bicameral-unicameral next to each other, rather than putting unicameral, Yes-No. They just felt the other form was fairer and more clear to the voter, and we've made that decision.

DELEGATE JACOBSEN: Then they would be voting, if they voted for the Constitution, it--already voting for bicameral. If they placed a vote in box 2 below, they'd be voting for bicameral again. Now, would that be the same as two votes for that bicameral?

CHAIRMAN GRAYBILL: No, no. And it wouldn't matter whether bicameral got a majority or not below, it's already-if it-if we get a Constitution above; but unicameral, as the box clearly explains, cannot win unless it gets a majority.

DELEGATE JACOBSEN: Then this is an unfair advantage for the bicameral, because we're-got them in the box up there and we've got them in the Constitution, we've got them down there a third time.

CHAIRMAN GRAYBILL: Well, you're right to this extent, that when we decided to put bicameral in instead of unicameral, there is a sense in which it gets an advantage. Now whether that's a great advantage or not, I don't know. If we'd turned around and put unicameral in, the reverse would have been the case. And if we put neither in, then we're up against the Blaylock problem yesterday, that if we don't get 51 percent on one or the other, we have no Legislative Article; so you just can't have your cake and eat it, too. You've got to take some problem in one way or the other, but we just decided that it would be fairer to put unicameral and bicameral side by side, and the public gets a clear shot at which one they want, rather than just putting unicameral, Yes-No. Now, that's what we did when we voted for Mr.-well, when we voted for Mr. Driscoll, right. When we voted for Mr. Davis, we put bicameral in. That's the first major decision. The second major decision is to put bicameral and unicameral together on the outside instead of just unicameral.

DELEGATE JACOBSEN: Then we could reconsider and take 2-B out after we voted on the box language, couldn't we?

CHAIRMAN GRAYBILL: I'm sure we could. We could do it by suspending the rules tomorrow. (Laughter) Right; we could, though. You're right.

Now, Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. One point I think we've made

beyond a reasonable doubt is that no matter what we put in the box, the voters are not going to understand the situation-because after 2 days, we can't understand the situation clearly. And, secondly, I think that the original language of the committee was very concise, it did the job that was necessary, they discussed it adequately at length, and I support the original wording in the box of the majority of the committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right. Now, the issue is on Mr. Brown's language.

Mr. Hanson.

DELEGATE ROD HANSON: Mr. Chairman, I wonder if Delegate Sparks would yield to a question, please? (Laughter)

CHAIRMAN GRAYBILL: Mrs. Sparks, will you yield?

DELEGATE SPARKS: (Indicating no. No audible response)

DELEGATE ROD HANSON: Thank you, Mr. President. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Sparks says she will not yield on this particular question.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, there's a related problem here. It's not precisely on the point, but now that we have items 2-A and 2-B, where they have a choice between unicameral and bicameral, I'm wondering if that can stand alone in case the Constitution, up above, is defeated. That gets back to the philosophy of our approach here, whether we're going to submit the Constitution as a whole or whether we're going to allow bits and pieces of it to pass; and as it stands there, it would be possible for a voter to look at the ballot and say, "Well, I'm against the Constitution but I sure am in favor of a unicameral Legislature, so I'm going to vote for the unicameral Legislature and leave the upper part blank." I think we have to take this into account somewhere in that box, if we want to do it that way. Now, there's two schools of thought here. One is that we were sent here to write a Constitution and nothing else, and we're going to submit a Constitution and nothing else, with a couple of alternates. The other school of thought is, no, we can amend the Constitution at-that we now have with a Legislative Article. If you want to do the latter, then I would suggest that items 2-A and 2-B--the wording be changed; instead of saying, "For a unicameral, one-house, Legislature", it read, "For a unicameral, one-house, Legislative Article", so that if it does pass, why, we have the article to go on.

CHAIRMAN GRAYBILL: I think, Mr. Swanberg, you raise a good point, and I think we should take it up, but I don't think it's material to the issue.

Mr. Johnson, do you want to discuss Mr. Brown's language?

DELEGATE JOHNSON: Mr. Chairman, I would like to discuss his language to this extent. I have a-I'd like to dress it up a little bit in an amendment to his language. May I do that? Am I in order?

CHAIRMAN GRAYBILL: Well, I suppose you are. Do you want to shoot, and we'll see what you say.

DELEGATE JOHNSON: In the box, put a period after "Legislature" in the second line. Then the following language: "If you wish to vote for a unicameral Legislature, mark "X" in 2-A below."

CHAIRMAN GRAYBILL: Well, now, the Chair will allow that if you insist, but you haven't explained the problem to them and you haven't solved the problem by saying that.

DELEGATE JOHNSON: I think that this is very, very simple. Anybody can understand this language. It says that there-the proposed Constitution includes a bicameral Legislature and if you wish-but if you wish to vote for a unicameral Legislature, mark "X" in 2-A below.

CHAIRMAN GRAYBILL: All right, then does that mean that we get both a bicameral and a unicameral if they both pass'? (Laughter)

DELEGATE JOHNSON: Well, it looked awful simple to me. I guess-(Laughter)

CHAIRMAN GRAYBILL: That's ex post facto. (Laughter) Now, Torrey, I think you've really got a problem, unless you go with Mr. Brown here, on your language. But if you want me to put it, I will.

DELEGATE JOHNSON: Mr. Chairman, I'll withdraw, and let's go after Mr. Brown's. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Yes. I'm afraid I helped to start this by saying that that wasn't clear to the voters, and I think Mr. Brown's does make it much clearer. On the other hand, it says that we are now, as a Constitutional Convention, playing Supreme Court and making the decision on this thing that we have said wasreally, maybe, up in the air, some time ago. I wish you or some lawyer here would say whether or not you are absolutely sure, following up what Mr. Heliker said, that there is no possibility that the Supreme Court could decide on a different interpretation of that old language in the 1889 Constitution. Someway, I hope we could leave that open. What we have done is we have moved from an assumption on which we started, that we could have an alternate on the ballot and get a fair vote from the people, we came-that we moved all through the Convention on that assumption, most of us. We could easily have declared our intent as a Constitutional Convention that this is what we meant—that a majority of the voters in the election approve the Constitution and that a majority of those voting on each issue would therefore carry the one article or the other into the Constitution. I think we could have written that into our Constitution, taken that as our stand, declared that as our intent, and had a pretty good chance of interpreting that on a real close vote, let's say, in the Supreme Court. Now, then, the lawyers have told us that they're sure that is not the interpretation. All I want to do is to put in the record that all of us are not sure that that is the only-that their interpretation is the only possible interpretation of this law. They have not asked for an attorney general's ruling. They have not asked for a Supreme Court declaratory judgment of any kind, though when the council that was preparing for the Constitutional Convention came to nub issues like this, they were all in agreement-asked the Supreme Court on three major issues and got a contrary view on every one of the three. We have a record of that in the material that was put out to us ahead of time. And I just simply wanted to leave-ifthereis any way to leave a little opening wedge for a contest, I'd like for this little speech in the record to be it.

CHAIRMAN GRAYBILL: Now, the Chair would like to observe that we do have to print this Constitution before we can sign it, and we have a lot more work to do. Now, I'm going to let you talk, but we'll stay here tonight and finish this, regardless, or we'll stay here tonight and fail to finish it. So you really ought to decide whether or not you're going to go along with the group—except on major issues-pretty soon, and then you ought to stick with them.

Mr. Kelleher, do you feel that Mr. Harper needs an answer?

DELEGATE KELLEHER: There is one thing that-and I go to-that has been bothering me from the beginning of this week, and that is Section 9 of that article-of Article XIX-and that's why I'm wondering about this language that Bruce has proposed. Let us assume that the Supreme Court decides that we have been called under Article VIII-and I ask the lawyers to seriously consider this-the last few sentences of Article VIII-and our revision. Our new Constitution, I assume, is a revision or an alteration that must be approved at an election--"and unless so submitted and approved by a majority of the electors voting at the election". Now, let us assume, going down to Section 9, the fifth line from the bottom of the present Constitution, that Proposal Number 2 for a unicameral Legislature or for a bicameral Legislature is interpreted by the Supreme Court as being an amendment, then we clearly fall into Section 9 of Article XIX, which says: "Said amendment or amendments shall be"-and this would include the gambling and the death penalty-"shall be submitted to the qualified voters"--electors-"of the state for their approval or rejection and such as are approved by a majority of those voting thereon"-now, that's similar to the North Dakota Constitution and the way they're working-operating under-"shall become part of the Constitution". Therefore, if proposals 2, 3 and 4 are considered as being under Section 9, then all they need is a majority of those voting on those propositions; but if we put this language in, then we are locking ourselves out of having those three proposals be deemed as amendments.

CHAIRMAN GRAYBILL: Now, the Chair feels it necessary to comment on what Mr. Kelleher has just said, for the record and for everybody's edification. The Section 9 to which Mr. Kelleher refers talks about amendments to this Constitution that have been proposed in either house of the Legislative Assembly, and it has nothing-it does have the language he says in it; and as Mr. McDonough said yesterday, the-or someone-I think it was McDonough, maybe Holland-that the fellows that wrote this Constitution surely didn't help us very much because they weren't very careful, but they did say that

Section 9 applies to amendments which may be prepared-proposed in either house of the Legislative Assembly; and I don't see how there's any way that the court can construe what we've done here as that. Now, they might construe it that way, but the Legislature is generally construed as not having the right to delegate its authority to make laws, and that's the only way you could ever get through Section 9 down to that language. On the other hand, there's a whole section-Section 8—right above it in the Constitution, which sets up this Constitutional Convention business; and it says: "and unless so submitted and approved by a majority of electors voting at the election"-it's a tougher test--"no such revision, alteration or amendment"-and when it says "no such"—which, of course, we know is a bad word—"revision, alteration or amendment", it seems to most of us lawyers that it is very difficult to argue to the Supreme Court Mr. Harper's position that if we have a majority on one thing, then we only have to have a plurality on the other. Now, I would have liked to suggest that-and I did suggest it to the Style and Drafting Committee-but it's a bootstraps operation wherein you have to say that we changed the Constitution to a plurality by putting it into one of our articles, and most of the lawyers believe that we are not safe in doing that. But, it's-it could be done, and then it would go to the Supreme Court for definition and they might then void our election. Now, to-it's possible to do it those ways and it's possible to do it without a majority voting on it, but you're courting a Supreme Court case. The point of the majority proposal here is, and especially with Mr. Brown's amendment, that we have a way of doing it that doesn't court a Supreme Court case nearly as clearly, so what we're trying to do is find the best way to do it and most likely avoid a Supreme Court case.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I also offer this suggestion, both to Mr. Harper and to Mr. Kelleher. I see no way that these side proposals can be considered amendments, because they're not amendments to the present Constitution. We have not adopted the new Constitution, so you can't amend that which does not exist. The vote of this body was to make them alternate proposals for portions of the submitted Constitution, so I see no way-well, I shouldn't say quite no way, because the Supreme Court can do anything-and I've seen in the past where they've done most anything-but it would seem most unlikely and unreasonable to believe that they would say that either proposal 2, 3 or 4 is an amendment. Thank you.

CHAIRMAN GRAYBILL: Now, the issue is on Mr. Brown's language for the box, which is: "The proposed Constitution will include a bicameral, two-house, Legislature unless a majority of those voting in the election vote for a unicameral, one-house, Legislature in issue number 2 immediately below." The Chair will rule from now on that Mr. Swanberg's point, which is an interesting one and might be taken up, is immaterial to this particular little vote; and, so, stay on Mr. Brown's language if you're going to discuss it.

Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman, I wonder if Mr. Schiltz would yield to a question.

DELEGATE SCHILTZ: I yield.

DELEGATE BURKHARDT: Jack, I'm wondering whether you were interpreting our Secretary of State's statement about what votes were going to count as the total number in this election. Is that endangered by the language of this box as now amended? In other words, he was going to say that the total number cast would be those in Section 1, issue 1, for and against the Constitution.

DELEGATE SCHILTZ: I don't think that is involved here. It says "in this election", which, so far as I'm concerned, means this election for the whole ballot.

DELEGATE BURKHARDT: Well, who's going to interpret that eventually?

DELEGATE SCHILTZ: Well, that's—on the side, this language would be apropos whether--whatever number were chosen.

DELEGATE BURKHARDT: Fine

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Brown's language. We'll have a roll call vote. So many as in favor of Brown's language, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Cast the ballot.

Aasheim ..... Absent
Anderson, J.H. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Nay
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Absent
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Excused
Cate.. ..... Absent
Champoux ..... Absent
Choate ..... Absent
Conover ..... Aye
Cross ..... Aye
Dahood ..... Aye
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Nay
Furlong. ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Aye
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Absent
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Nay
Rollins. ..... Aye
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Absent
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 73 delegates voting Aye, 13 voting No.

CHAIRMAN GRAYBILL: 73 voting Aye and 13 voting No, Mr. Brown's language has been adopted.

Now, Mr. Habedank, do you want this other amendment put? Or do you care about that?

DELEGATE HABEDANK: Yes, Mr. President. I feel that when we're talking about a unicameral, it should be called to the attention of the public that they are not voting for unicameral permanently but only until 1980. However, I would be willing to have that dressed up any way Style and Drafting does it. I don't feel this committee needs to sit here all afternoon and do it.

CHAIRMAN GRAYBILL: Mr. Schiltz and members of the body, Mr. Habedank has an amendment: "I move that the ballot be amended by Style and Drafting so as to show that the unicameral Legislature will be in effect only until 1980, when the question of continuing of the unicameral Legislature or reverting to a bicameral Legislature will be referred to the electors." This is a matter of explaining to the voters what's in the Constitution in terms of unicameral. I'll allow Mr. Habedank's amendment, and we can discuss it.

Mr. Schiltz.

DELEGATE SCHILTZ: Well, Mr. Chairman, the avowed object of the Style and Drafting Committee is apparent from the one-page ballot on 8½ x 11 paper that you have before you-is to make the ballot as simple as possible. Now, I assume that we could put half of the debates in here, as I indicated a little while ago. We could put everything I said yesterday up in front of the chamber in here, so that there could be no question in anyone's mind why it was necessary to put this caveat in here. We could do all that. Now, in addition, though, to what we have provided, the Convention, prior to April 6th, will send a complete Constitution to every living soul in Montana who's registered to vote, and if they aren't intelligent enough to read that and if they don't read the newspapers, I can see no reason in the world why we must put in everything that everybody can possibly think of that a voter might have some disability on or some question on or need some information on. The list is endless, absolutely endless, and I resist the motion.

CHAIRMAN GRAYBILL: The Chair would point out that the official ballot contains a sentence at the top: "The full text of the proposed Constitution and separate propositions is available for inspection at your polling place." Is there discussion'?

Mrs. Reichert.

DELEGATE REICHERT: In principle, I agree with what Delegate Schiltz has said. I think the less complicated the ballot is, the better; but in this particular case, I think this issue is critical, because we are not only voting for a unicameral—if we vote for it, we're also voting for reverting back to a bicameral in 1980; and I think that's the single most important feature of this unicameral proposition; and I would hope that somehow the Style and Drafting Committee, through the genius of its members, could find some way to inform the people that this is for a trial period and that automatically we could revert back to a bicameral.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Habedank's amendment. Does anyone want a roll call vote? Mr. Habedank wants a roll call vote. So many as shall be in favor of Mr. Habedank's amendment that we put the fact that it-that the unicameral will be subject to a vote in 1980 on the ballot, vote Aye; and so many as shall be opposed to that, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the ballot.

Aasheim		Nay
Anderson,	J.H.	Nay
Anderson,	O.	Aye
Arbanas		Nay
Arness		Absent
Aronow		Nay
Artz		Nay
Ask		Nay
Babcock		Nay
Barnard		Nay
Bates		Nay
Belcher		Absent
Berg		Nay
Berthelson		Nay
Blaylock		Nay
Blend		Nay
Bowman		Aye
Brazier		Aye
Brown		Nay
Bugbee		Aye
Burkhardt		Nay
Cain		Nay
Campbell		Excused
Cate		Absent

Champoux ..... Absent
Choate ..... Absent
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Absent
Erdmann ..... Aye
Eskildsen ..... Absent
Etchart ..... Absent
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Absent
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Absent
Lorello ..... Nay
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks. ..... Absent
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Absent
Van Buskirk ..... Absent
Vermillion ..... Absent
Wagner. ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman Nay

CLERK HANSON: Mr. Chairman, 21 delegates voting Aye, 58 voting No.

CHAIRMAN GRAYBILL: 21 having voted Aye and 58 No, the motion fails. Now, members of the body, I have before me an amendment to proposed-to Section 3 by Mr. Harper.

Mr. Harper, do you want me to read your amendment or not?

DELEGATE HARPER: Yes, please.

CHAIRMAN GRAYBILL: Mr. Clerk, do you want to read it.

CLERK HANSON: "Mr. Chairman, I move to amend Section 3 of the ballot by reversing the order of Section 9 of the General Government number 3 and putting the prohibition against allowing the Legislature into the body of the Constitution. Signed: Harper."

CHAIRMAN GRAYBILL: All right, now perhaps the Chair can explain this. Mr. Harper has proposed an amendment which would have the effect of putting a different section into the Constitution; and, Mrs. Bates, this explains why on this issue it's different than the bicameral-unicameral. At the present time, the Style and Drafting Committee has proposed putting into the Constitution the phrase--I don't know the whole words, but the substance of it is there shall be no gambling, and then you vote on 3, the exception—except if 51 percent vote for 3-A, for allowing the people or the Legislature to authorize it, then we

put "except as allowed by the people and the Legislature" back in. If, of course, more vote on-if not more than 50 percent vote on 3-A, why, then nothing happens and the Constitution continues to state-continues to say there shall be no gambling. Now, Mr. Harper proposes to say in the Constitution, "There shall be no gambling except as authorized by the Legislature and the people under referendum", and then he proposes to change 3 so that it says: For taking away the Legislature and the people's right to do this or Against taking it away. That's the only sense-is that right, Mr. Harper?

DELEGATE HARPER: Mr. Chairman, if-No, I understood exactly opposite. I understood what they have here to mean that what is written into the Constitution would be the allowance of the--authorizing the Legislature to change the prohibition on gambling and that I was moving to reverse-to put it the same way it is now in the Constitution.

CHAIRMAN GRAYBILL: All right. Well, then, what you-now that I've explained it, I am right, am I not, Mr. Schiltz, that the Constitution would say For--would say there shall be no gambling, and then the exception would write on the addition? Is that right?

DELEGATE SCHILTZ: No, the way the committee voted on it is as Mr. Harper says, that the longer Section 9, which you'll find on page 13 of the Final Report, would have the first one in it; and then the vote would be for continuing that allowance or against continuing that allowance.

CHAIRMAN GRAYBILL: I see. So, in other words, the Constitution will now say there shall be no gambling except if allowed by the Legislature and the people.

DELEGATE SCHILTZ: Yes. And Mr. Harper is asking that that be reversed.

CHAIRMAN GRAYBILL: I see. So, Mr. Harper's amendment is to say what I said first—namely, that the Constitution should simply say there shall be no gambling-and then the vote on 3 would add "except as authorized by the people" if a majority voted for it and would fail to add that if a majority didn't vote for it. Is that right, Mr. Harper?

DELEGATE HARPER: Yes, it is. I had a moment of hope there that I had misinterpreted this or misread it. Let me tell the body why I think this ought to be done. Several unicameral&s rose during the vote yesterday to say, "We are unicameralists, but we think the bicameral is the traditional." It has been in the Constitution that way, and the people who want to make the radical change should be forced on the ballot to come in with enough people to change it; and on the basis of tradition, that sounded like sense to some people, even who said they were unicameralists, and they went along with it. My assumption was that the Style and Drafting Committee would do the same thing with this Section 9, that it would continue what was in the present Constitution and then the people who wanted to change that now to authorize the Legislature or by initiative or referendum of the people to do it would, in a sense, have the burden of proof put on them as to why we should make the change. On that basis and on the basis of the reason for our choosing to have an alternative in the first place, I think we ought now to support this motion I have made to just turn the Style and Drafting Committee's proposal right around. Let me go over this one more time, because I think this is an essential point. In fact, this would be a point that I, personally, would have to ponder quite a bit. Many people in this state—though we may not have heard from all of them—many people in this state believe that the prohibition against gambling that our state has enjoyed is one of the most important things they could have. Everything else being equal, many of them would prefer to keep the old Constitution if that is the only way they can be assured that they can vote against gambling. Now, they will be aware of the kind of figuring that was done, and I think correctly so, by Mr. Heliker. They will be aware of our discussion of this first issue of how much chance an alternate has, and they will-there will be many among them who will say to these groups, "The only possible way you can be sure—you can be safe on the gambling issue is now to vote against the new Constitution." This is what I hoped and prayed would not come to the body of the Constitution this way. For this reason and for the reason that I think this traditional part should be maintained and those who want now to change it should have to carry on the alternate, I've made this amendment; and I hope it will be sustained by the body.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: I rise to resist the amendment by Delegate Harper. I think the vote was pretty clear the other day on this issue, and I

would, as a substitute motion, move that we adopt the majority-or the committee proposal from Style and Drafting, for the obvious reasons that the vote on the issue is fairly clear-cut. I wouldn't object to seeing both propositions put as side issues on the ballot to be voted on freely by the majority of the people and let the will ofthepeople decide the issue. I would prefer that the proposal to only authorize gambling by legislation be placed in the Constitution with a side issue to retain the present prohibition; but in either event, we should either allow a complete free choice by placing both issues on the side for selection for and against or else leave it as Style and Drafting has recommended. Thank you.

CHAIRMAN GRAYBILL: Now, Mr. Choate, I can't allow you to make a substitute motion back to the motion that's just been amended, because the way to do that is to defeat Mr. Harper's amendment. We already have the Style and Drafting moved, so your substitute motion was what was amended.

DELEGATE CHOATE: Okay.

CHAIRMAN GRAYBILL: Do you follow me? But, in other words, you can defeat the Harper motion. There's no use saying--reversing it. He's already reversed it once.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I think everyone will recall that yesterday we had a vote on Mr. Davis' motion that unicameral or bicameral—in that case, bicameral-be put in the body of the Constitution. Now, when I first began to explain the ballot, I said it was implicit in the ballot we were proposing that we would have this one section of the gambling in the Constitution, but I don't think there's been a motion and a vote. I was just suggesting to Mr. Harper that he move—rather than reverse this on the ballot, that he move that one of them belong-be put in the Constitution and the other be placed-or a vote on the other be placed as an alternate.

CHAIRMAN GRAYBILL: Well, Mr. Schiltz, you lost me. He has moved that the other one be placed in instead of the one that's in there. Is there anything wrong with that?

DELEGATE SCHILTZ: Well, I guess not. I just understood him to say that he moved that this Section 3 be reversed, and what I was concerned about is that-if he made that motion, that's fine.

CHAIRMAN GRAYBILL: The Chair understands the sense of the motion to be that he would put the language in the Constitution to say there shall be no gambling, and then Style and Drafting would have to restyle 3 so that the exception was placed outside.

Now, Mr. Kamhoot, I'm aware you have another amendment here, and it doesn't seem to me that it reaches the same point as this. It's a matter of explanation, isn't it? I don't see that it reaches the point that Mr. Harper and Mr. Choate are talking about.

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: I, I believe, like the language of mine a little better—

CHAIRMAN GRAYBILL: All right, we'll put yours-

DELEGATE KAMHOOT: -1 think Delegate Harper's—

CHAIRMAN GRAYBILL: -we'll put yours—

DELEGATE KAMHOOT: -is going for the same thing.

CHAIRMAN GRAYBILL: --we'll put yours as a substitute motion, but the language—Well, we'll put it. Mr. Clerk, do you want to read Mr. Kamhoot's. This will be a substitute motion to yours, Mr. Harper.

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'd like one change. I would like to use the language that Delegate Brown put in and was accepted by this body. I think it's better than what I had in mine, if he can do that in that box up above. It might save some time and arguing here on the floor.

CHAIRMAN GRAYBILL: Mr. Kamhoot, the Chair is confused, then, because the nature of the ballot and the form that's suggested by Style and Drafting, in either Mr. Harper's form or in the form that's offered here, does not require a box of that nature, and so it's only adding another matter to the ballot that's confusing. Now, maybe I don't understand you; but if you do it either way, you don't need a box because nothing is changed.

It's either added-nothing has to be substituted for-it's either added in or taken out.

DELEGATE KAMHOOT: Well, perhaps I am confused on this. The way I understand it is that there is nothing going to be included in the Constitution unless by a majority vote-50 percent plus one, something could be put in.

CHAIRMAN GRAYBILL: No, that's not the situation. The situation on the majority report is that the Constitution as written up and finished here, when we go back on section-on General Orders on the Constitution, will say there shall be no gambling except as authorized by the Legislature and the people. And then, if they-if that's in the Constitution, their Section 3 here, 3-B, must get 51 percent in order to take the last half of that idea-namely, except allowed by the Legislature and so forth--out. Now, Mr. Harper has proposed reversing that in this sense, that he would put into the Constitution only the first half of that sentence-namely, there shall be no gambling— and then he would make 3-A and -B say-for say ing "except as authorized by the people and the Legislature". And 51 percent would have to vote on that to put it in, so there's no explanation needed.

DELEGATE KAMHOOT: Very well, that is the point that I wanted to make. Then I will withdraw my amendment, but I would like to speak to Mr. Harper's amendment.

CHAIRMAN GRAYBILL: Very well, we'll withdraw your amendment, and you may speak on Mr. Harper's,

DELEGATE KAMHOOT: I think, to be consistent here, that this is a provision that we have had in our Constitution for, probably, I think, 82 years. It was in there from the start. It would seem that, in this case, as in all cases, the challenger must be the challenger. He has to prove his point if he wants to change something, so it would seem that this would only be proper, at this time, that, in our new document, that we would have the provision, as we had in our present Constitution, that there shall be no gambling. Now, if the people that want gambling in Montana in any manner, whether the Legislature provides for it or not, I think they should have to prove this point. Therefore, to be, as I said before, consistent with it, I would support Mr. Harper's amendment that we leave the section in the Constitution-before we vote on it even-that says gambling-all forms of gambling, lotteries and gift enterprises are prohibited. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, I don't wish to cover this whole section. Everyone talked-we spent about a day on it the other day as to whether we were going to be-have the gambling prohibition in the Constitution or not, and we decided to leave it on the ballot, but we did not decide to remove the present prohibition that's in the Constitution from the Constitution. We decided, as my understanding, to leave the alternate choice on the ballot. I support Mr. Harper's amendment; and I think it's very, very important, now that we're down to the last day and the last hour and we're all kind of tired, to not let something slip through and say the Constitutional Convention has removed the prohibition against gambling. If we want to put it on a side issue and the people vote on it, remove it. But I think it's extremely important--unless it's the will of this gathering, this group to do so-to be sure that that present prohibition remains in, which is Section 9 on page 13, the second one, and put the-and the other issue would be the contender, then; and I think we should go ahead and vote on it and see what the will of the body is; and it's either a For or Against proposition, it seems like. We've discussed it, and it's been discussed in Montana since time began.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, fellow delegates. Commenting on Mr. Kamhoot's statement that we have to challenge here, I don't think this is a challenge. I think this is a new Constitution we're writing, and I don't think we should forget this, and whether-1 would go along with the fact that the two of them be on the side ballot and neither one in, but the other day I think we were very explicit in voting down Mr. Harper's amendment, and I don't think we should put it back in right now. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, fellow delegates. I support Harper's amendment, and I do it for this reason. Even though I would concede that gambling can be legislative and it can be left up to the Legislature, I would call

to your attention that every person who feels the opposite, who feels that gambling should be-an antigambling clause should be in this Constitution-would be forced to vote against the Constitution, Now, those who want the first Section 9 in this Constitution cannot take the same position. If they want to defeat the Constitution, they can do so. There is nothing we can do about it; but if they do defeat the Constitution, they will then have the antigambling clause in it; and the only way that we can assure having this Constitution accepted universally by the people is to let those who have the present Constitution, the anti-gambling clause in it, have that in the Constitution as it is and those who want to take it out run the risk of coming in and voting it out. If enough people in the State of Montana want to do this, where both those who are in favor of the Constitution and those who are against the Constitution can vote, they can do it. I agree with Dr. Heliker, the odds are bad; but I don't think they're as bad as if they-only those who were for the Constitution could vote on it; and I would urge you most strongly to leave the Constitution as it is, keep Section 9, the second clause-"all forms of gambling, lotteries and gift enterprises are prohibited"-in the Constitution that will be adopted unless the other obtains a majority of all those voting on the question.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I see a lot of places in our old Constitution that we have completely kicked out the door and made radical changes in many areas without the concern of maintaining what was there before because it had been there so long. I think that the proper perspective on this issue would be to place it as a free choice item as a side issue, with both 3-A and 3-B placed as side issues with no reference to either one in the Constitution. I don't think there's anything that would cause a lot of alarm. If we offered it as free choice and made sure that—

CHAIRMAN GRAYBILL: Now, Mr. Choate, I'm perfectly happy that you've put this proposition, but this is the third time you've spoken on it, and what you're proposing is the deletion you proposed the other day that this Convention voted down. If we put both of them as a side issue, and you may make a motion to do that, then if they get 47 and 49 percent, nothing's in the Constitution. Now, if you want to do that, you make a motion to that; but you're not speaking to Harper's amendment, and it confuses the body not to understand. If you want to make that motion, do so; and we'll take your vote again; but that's a different issue than we're arguing on right now. Do you follow me?

DELEGATE CHOATE: Yes, I follow. All right.

CHAIRMAN GRAYBILL: Okay, now; if you want to make a motion, fine. If you don't, then let somebody else discuss the Harper amendment or else you discuss the Harper amendment.

DELEGATE CHOATE: All right, I move, then, that 3-A and 3-B be placed as side issues on the ballot for the choice of the voters.

CHAIRMAN GRAYBILL: All right, Mr. Choate has made an-proposes an amendment to-a substitute motion to section-to the third section of the ballot to place 3-A and -B-to make 3-A and -B say-one of them-3-A would say: "There shall be no gambling", and 3-B would say: "There shall be no gambling unless authorized by the Legislature and the public". In other words, place both gambling issues on the side and put nothing in the Constitution. That's Mr. Choate's proposal now, and that's what we're debating.

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I oppose Delegate Choate's motion and support Delegate Harper's motion; and without going into a lot of talk, I think that Delegate Habedank has made a real good point here. I think that the people that are opposed to gambling will vote for the new Constitution if we have that language in there. I think that the people that want gambling or want the Legislature to authorize gambling will come out and vote on the thing. I think that Mr. Choate's proposal will negate this typeofthing, so I would say that if we really want to pass this Constitution, if this is the main thing that we want to do, then we should vote for Mr. Harper's amendment.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE MCNEIL: Mr. Chairman, I oppose the Choate amendment. I support George Harper's amendment, wholeheartedly. And I disagree with Lyman Choate when he said we voted the other day for the majority proposal, which would permit the Legislature to authorize gambling. I voted for that because the motion was put to have that issue as an alternative on the ballot. The Style and Drafting report now is to not have

that as an alternative on the ballot but to have it in the body of the Constitution, so for that reason, I submit George Harper is 100 percent correct. In addition, I think there's a very practical reason to support George Harper's position, and that is the voter psychology. If we have this permission of gambling by the Legislature in the body of the Constitution, as submitted by the Style and Drafting Committee, those who oppose gambling in this state-and there's lots of them, including myself—will be tempted to vote against the Constitution, period, because it's in there. On the other hand, those who favor gambling, if gambling is out at the side-the permissiveness by the Legislature—rather than in the body, they won't vote against the Constitution, because the only way they can get gambling is to vote for the Constitution and vote for the side amendment. So, for that reason, I submit that the voter psychology-the best approach to getting this document passed is not to have gambling in the body-the permissiveness by the Legislature-but, rather, to have it as I voted for it the other day, to have the gambling authorized by the Legislature as the alternative and have in the body of the Constitution our present prohibition.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I can't help noticing that those who are speaking for the Harper amendment are those who voted against the gambling yesterday, and it just seems to me they're trying to reverse the decision of this house. When we voted on which of the propositions, unicameral or bicameral, were going into the body of the Constitution, it was by the will of this house. It was-Now we have an appeal that we should go by tradition. I wouldlike to say to the-1 understand what's going on here, but I think that the attempt really is to have us to reverse ourselves and that what should go into the Constitution-I kind of oppose both of these measures-I-should go in the Constitution what came out with the number 1 vote yesterday, or the other day, and that is the-that the Legislature could permit. I think that would reflect this group much more.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I rise as a member of Style and Drafting who voted against the recommendation of the committee to put the alternate in which allows the Legislature and the people to authorize the gambling, and I feel that some of the statements that have been made here this afternoon are misleading. We did not take a preference of this body in terms of what would definitely go in the Constitution. I voted on the prevailing side the other day because I wanted it as a side issue on the ballot and not because I wanted it in the body of the Constitution as a first choice. What complicates this now is the fact that Mr. Heliker is probably right in his statement about how things are going to happen on this election, and I feel that we create a tremendous backspin on this whole number 1 issue, For or Against the Constitution. We won't get a clear indication of the readiness of our people, in most areas, for reform; we'll simply get a vote up there on gambling or nongambling; and that's very discouraging. I would much rather have the alternate be something that is a new departure, rather than to assume that we can guess the voters of this state are going to take that much backspin in issue number 1. I would support George Harper's amendment.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, fellow delegates. I think somewhere along the line we're getting off. Mr. McNeil made a statement-we are now supporting Mr. Choate. I will support Mr. Choate's motion, which does not put this in the body of the Constitution-which leaves them both out-and I think this is the thing we should be talking on now, not the fact that this is still in the body of the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I oppose Mr. Choate's motion and support Mr. Harper's, I observe that we have, for the first time today, had two lawyers get up and make a very persuasive argument. I observe, also, however, the argument they made was psychological and not legal; and you can draw what conclusions you like from that.

CHAIRMAN GRAYBILL: All right, now, the issue is on Mr. Choate's motion to put-to take all the language out of the Constitution and put both of them as alternatives on the side. And we'll have a roll call vote. So many as shall be in favor of Mr. Choate's motion, vote Aye; so many as shall

be opposed, vote No. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Nay
Anderson, J.H. ..... Nay
Anderson, 0 ..... Nay
Arbanas ..... Aye
Arness ..... Nay
Aronow ..... Nay
Artz ..... Nay
Ask ..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend ..... Nay
Bowman ..... Nay
Brazier ..... Nay
Brown ..... Nay
Bugbee ..... Absent
Burkhardt ..... Nay
Cain ..... Aye
Campbell ..... Excused
Cate.. ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross ..... Nay
Dahood ..... Absent
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Absent
Felt ..... Absent
Foster ..... Aye
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Absent
Habedank ..... Nay
Hanson, R.S. ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Absent
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Absent
Johnson.. ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Nay
Loendorf ..... Absent
Lore110 ..... Aye
Mahoney ..... Nay
Mansfield ..... Nay
Martin., ... Nay
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe ..... Absent
Murray ..... Nay
Noble ..... Absent
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Aye
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins., ... Absent
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skan ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Absent
Wagner ..... Nay
Ward.. ..... Aye
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 16 dele-

gates voting Aye, 67 voting No.

CHAIRMAN GRAYBILL: 16 delegates having voted Aye and 67 having voted No, Mr. Choate's motion is defeated. We're now back on Mr. Harper's motion, which is to amend the Style and Drafting report so that we would put in the Constitution the simple language "There shall be no gambling" and put the exception "except as authorized by the people and the Legislature" as the one that has to get 51 percent, on the side.

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I've not had but just a few opportunities to support Mr. Harper. In this, I do wholeheartedly. The cowboys down there in the Powder River country have said quite a number of times when they get into arguments with a group, quot homines, tot sententiae. That means "many men, too many minds". (Laughter)

CHAIRMAN GRAYBILL: All right, the issue is on Mr. Harper's motion, which would have the effect of reversing the nature of the ballot here and would put the language "There shall be no gambling" in the Constitution and put the exception "except as authorized by the Legislature and the people" on the outside, so that you had to get51 percent to change the Constitution. All in favor of that motion, vote Aye; all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim		Aye
Anderson,	J.H..	Aye
Anderson,	O..	Aye
Arbanas		Nay
Arness.		Nay
Aronow		Nay
Artz		Aye
Ask		Aye
Babcock		Aye
Barnard		Aye
Bates		Aye
Belcher		Aye
Berg		Aye
Berthelson		Aye
Blaylock		Aye
Blend		Aye
Bowman		Aye
Brazier		Nay
Brown		Nay
Bugbee		Absent
Burkhardt		Aye
Cain		Aye
Campbell		Excused
Cate		Absent
Champoux		Nay
Choate		Nay
Conover		Aye
Cross..		Aye
Dahood		Aye
Davis		Aye
Delaney		Aye
Driscoll		Nay
Drum		Absent
Eck		Aye
Erdmann		Aye
Eskildsen		Nay
Etchart		Absent
Felt		Absent
Foster		Nay
Furlong		Nay
Garlington		Nay
Gysler		Absent
Habedank		Aye
Hanson, R.S.		Aye
Hanson, R.		Aye
Harbaugh		Absent
Harlow		Aye
Harper		Aye
Harrington		Nay
Heliker		Aye
Holland		Absent
Jacobsen		Aye
James		Absent
Johnson		Aye
Joyce..		Aye
Kamhoot		Aye
Kelleher		Nay
Leuthold		Aye
Loendorf		Aye
Lorello		Nay
Mahoney		Aye
Mansfield		Aye
Martin		Aye
McCarvel		Nay
McDonough		Nay
McKeon		Absent
McNeil		Aye
Melvin		Aye
Monroe		Nay
Murray..		Aye
Noble		Aye

Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Nay
Reichert ..... Aye
Robinson ..... Absent
Roeder ..... Aye
Rollins. ..... Absent
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Absent
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. Chairman ..... Aye

CLERK HANSON: Mr. Chairman, 63 delegates voting Aye, 23 voting No.

CHAIRMAN GRAYBILL: 63 delegates having voted Aye and 23 delegates having voted No, Mr. Harper's motion prevails and Style and Drafting will put the other words in the Constitution and change the nature of 3 so that it's clear how it works.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I think the language in-for the ballot on 3 obtains for either situation.

CHAIRMAN GRAYBILL: I think you're right. I think line 3-A now has to have 50 percent plus one and it will allow the exception going into the Constitution. All right.

Mr. Harlow.

DELEGATE HARLOW: I am a little bit disturbed at the wording on that voting part down there. I haven't thought up any real good wording now, but 3-B says "Against allowing the people or the Legislature to authorize gambling." Are you stating in there that you are making it impossible for the people to initiate an amendment to the Constitution? That's what it sound like.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes, we talked about that in the committee, and the people can initiate a constitutional amendment. We can't stop them from doing that, but they can't have an initiative measure that would say we have gambling if-or under any circumstances if the prohibition's in there, any more than the Legislature could pass an act having gambling while Mr. Harper's provision is in there.

DELEGATE HARLOW: Mr. Chairman, I'm still-feel that we can word that better, because reading that off and taking it just as it says there, it means that the people cannot initiate an amendment to the Constitution authorizing gambling.

CHAIRMAN GRAYBILL: Well, Mr. Harlow, surely you're not talking about the people's basic right to amend the Constitution, which they have for anything? The point is, whether to put into the Constitution language authorizing the people-you know, the language is specific that— that we passed the other day, and it says "or the people may by initiative"-isn't that what you're talking about?

DELEGATE HARLOW: Yes.

CHAIRMAN GRAYBILL: You see, the people by initiative--unless we authorize the people to do it by initiative on the gambling issue, then the people are forced to amend the Constitution; and as we had when Mr. Etchart discussed this, there's a different measure of initiative for amending the Constitution than there is for the other thing.

DELEGATE HARLOW: Yes, very true.

CHAIRMAN GRAYBILL: So it seems to me that this certainly sets the sense of what we're putting in in the exception, if we ever put it in.

DELEGATE HARLOW: Well, okay. I brought the point out, and that's the thing that I had in mind. I haven't any better solution right now. I may think up one a little later, so I-see how—

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President, I would like to make a motion-1 move to amend the wording of 3-A and 3-B to agree with the wording of Section 9, the sense of which would be, "For allowing the Legislature or the people through initiative or referendum to authorize gambling," and then it would be just the reverse in 3-B. In other words, in the one section they allow the Legislature or the people through initiative or referendum to authorize it, and in the other we didn't.

CHAIRMAN GRAYBILL: Mr. Habedank proposes an amendment to 3-A and -B, which would make them say, "For allowing the Legislature or the people throughinitiativeorreferendum to authorize gambling", and then "Against allowing the Legislature or the people through initiative or referendum to authorize gambling". In other words, he changes the order of it so that he can get the Legislature in front and the people through initiative or referendum-he adds people through initiative or referendum in order to cover Mr. Harlow's problem. That amendment is allowed. We'll discuss that.

Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I'd just like to speak against this. We've already cut the heart out of the so-called issue right here. We've made-we've put the prohibition against gambling into the Constitution. Now we want to muddle the words, which is basically this. This basically states, are you for or against this? Now, we want to muddle the words so there is a little bit of conflict there; and I say if we go along with this, we will have a problem. I think that the words that are put in by Mr. Habedank would make it a little harder for the people to understand exactly what they're voting for; and as everybody knows here, this is one of the most important things when people are voting-they vote very quickly sometimes, and this could hurt. Thank YOU.

CHAIRMAN GRAYBILL: Mr. Schiltz was up first.

DELEGATE SCHILTZ: Mr. Chairman, now that we only have two more to go, let's keep battling it out, shall we? You have an unerring instinct of going to the point that the committee started with and retreated from. We started with putting all those words in there, and the committee was unanimous that it was unnecessary to have them in in any respect and that this was much plainer to the normal voter-the average voter-just exactly what it was--amounted to. Just as Mr. Harrington said, you throw in a couple of words like "initiative" and "referendum", and down there in Powder River County, they probably know what they mean, but there may be other places where they don't. We resist the amendment-or I resist the amendment.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I think this is the time, now, to start asking ourselves whether gambling and the death penalty could be considered as separate items to be voted on by the people or whether it has to be part of the Constitution. And just as a beginner, I would suggest that our easiest solution to our wording problem is to cite our gambling alternate at length in our ballot. It's very short and simply says: "All forms of gambling, lotteries and gift enterprises are prohibited unless authorized by the acts of the Legislature or by the people through initiative and referendum". We could cite thatin—at length in the ballot and, underneath, simply say, "For inclusion in the proposed Constitution; Against inclusion in the proposed Constitution" and do the same thing with the death penalty, which is likewise short and simply says: "Death shall not be prescribed as a penalty for any crime against the state"-there is the sentenceverbatim which they vote upon and beneath that which—simply state, "For inclusion in the proposed Constitution; or Against inclusion in the proposed Constitution". Now, do we say "For inclusion in the proposed Constitution", or do we say "For the proposed amendment"? This gets at the heart of our problem here. This would allow, you see, on both of these points, for the public to be voting upon the gambling and the death penalty issue as a separate item; and whether the Constitution above won or lost, then the gambling and the death penalty thing would go through if they were approved, if that's what we want.

CHAIRMAN GRAYBILL: Mr. Swanberg, I understand your point as far as putting-there's a different way to put it on the ballot. I understand that; but on this issue of somehow creating an amendment, we're not authorized to create amendments, are we? We're authorized to create--or am I wrong?

DELEGATE SWANBERG: Well, I'm not quite sure, but I have here an analysis of the Enabling Act, and it says the Convention may submit

proposals to the electorate for ratification in any of the following forms: first, submitted as a unit in the form of a new Constitution; (b) submitted as a unit with the exception of separate proposals to be voted upon individually; or (c) submitted in the form of a series of separate amendments. Now, it doesn't say that we can combine-it's silent on whether we can use all three approaches, but it looks to me like we could.

CHAIRMAN GRAYBILL: I see what you mean. You've got two ideas there.

DELEGATE SWANBERG: Yes.

CHAIRMAN GRAYBILL: Maybe we can straighten them out here.

DELEGATE SWANBERG: The question seems to me to be one of tactics, primarily.

CHAIRMAN GRAYBILL: "Said constitution shall meet within 3 months after each election and prepare such revisions, alterations or amendments to the Constitution as maybe deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed for that purpose not more than 2"-and so forth. Now, I see your point, and perhaps we should cross it. I don't know whether you want to cross it yet or whether we want to clear up the Habedank amendment.

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I am opposed to the Habedank amendment, but I wonder how many delegates here appreciate the fact that there are a number of delegates on this floor and a number of observers that are beginning to think that we'regettingmuch too talkative and too verbose over the work of the committee. There are 11 members on the Style and Drafting Committee. They had no particular difficulty, apparently, in coming up with an official ballot. I'm willing to concede that the work that we've done so far was perhaps necessary. We're not going to an illiterate citizenry. We're going to an intelligent citizenry, and they're going to be able to look at this ballot and they're going to know now what they should do and what they should not do. And they've got language that's very simple and very understandable, and I anticipate we're going to have some argument, too, as to whether or not we can improve upon "For the death penalty or Against the death penalty". And sometimes there's a great deal of virtue in simplicity, and I think it's time that we finish our consideration of the official ballot; the two issues that remain are just as clear as they're ever going to be and there is no way to attain perfection-there is no way to satisfy everyone; and I think it's about time we paid some consideration and some tribute to the committee that spent hours and hours thinking about this problem and that have now presented to us, with the work we've already done. the best type of ballot that we're going to get. And I oppose the Habedank amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, my cowboys might not be too smart, but I think they can understand the ballot in the way it's presented, and I'm against cluttering it up with any more language and making it harder to understand.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I think I'm aboutthesimplest-minded person here, and I can understand it very well. I think we can go ahead with it.

CHAIRMAN GRAYBILL: Now, the issue is on the Habedank amendment; and if you want to discuss the Habedank amendment, Mr. Swanberg, fine; after we handle that, I'll discuss your other problem. All right, Mr. Habedank proposes an amendment which would say, in 3-A and 3-B, "allowing the Legislature"-"For allowing the Legislature and the people through initiative and referendum to authorize gambling and Against authorizing the Legislature and the people through initiative and referendum". Roll call vote. So many in favor of the Habedank amendment to change that language, vote Aye; so many against, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Now, every delegate clearly hasn't voted or else there are a lot ot them-and there are a lot not voting, but that's fine. We'll close the ballot.

Aasheim		Nay
Anderson,	J.H..	Nay
Anderson,	O..	Aye
Arbanas		Absent
Arness		Nay
Aronow		Nay

Artz ..... Nay
Ask ..... Aye
Babcock ..... Nay
Barnard ..... Nay
Bates.. ..... Nay
Belcher ..... Nay
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Nay
Blend. ..... Nay
Bowman ..... Nay
Brazier ..... Aye
Brown.. ..... Absent
Bugbee ..... Nay
Burkhardt ..... Nay
c ain ..... Aye
Campbell ..... Excused
Cate.. ..... Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Absent
Delaney ..... Absent
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Nay
Erdmann ..... Nay
Eskildsen ..... Absent
Etchart ..... Absent
Felt ..... Absent
Foster ..... Nay
Furlong,, ... Nay
Garlington ..... Nay
Gysler ..... Absent
Habedank ..... Aye
Hanson, R.S. ..... Absent
Hanson, R. ..... Aye
Harbaugh ..... Absent
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Nay
Holland., ... Absent
Jacobsen ..... Nay
James ..... Absent
Johnson ..... Nay
Joyce ..... Nay
Kamhoot ..... Nay
Kelleher ..... Nay
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Nay
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay
Rebal ..... Nay
Reichert ..... Nay
Robinson ..... Nay
Roeder ..... Nay
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Nay
Siderius ..... Nay
Simon ..... Nay
Skari ..... Nay
Sparks ..... Nay
Speer ..... Nay
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Nay
Van Buskirk ..... Nay
Vermillion ..... Absent
Wagner ..... Nay
Ward ..... Nay
Warden ..... Nay
Wilson ..... Nay
Woodmansey ..... Nay
Mr. Chairman ..... Nay

CLERK HANSON: Mr. Chairman, 9 delegates voting Aye, 73 voting No.

CHAIRMAN GRAYBILL: 9 delegates having voted Aye, 73 voting No, the motion of Mr. Habedank is defeated. Now, the Chair is going to take a very dim view of people discussing issues, who are not here, so I'm asking that the delegates that are not here and if they're in the hearing of my voice, that they come in. You--we're going to get in the position of people discussing things that have been discussed. We're nearly through. I think we ought to sit through and finish this up; and we have 18 members absent; and if they don't want to vote, that's fine; but then they'd better not come in and try to discuss, because I'm not going to recog-

nize them. Now, the Chair also has another observation to make that I would hope that everyone will listen to so we understand it, because you may want to take action on it. Mr. Swanberg hasraised the interesting point that this Convention could propose both a Constitution and some amendments to the old Constitution, and he's three times mentioned this and he just finished mentioning it, and it is-it would be possible to propose amendments on these issues or, for that matter, on any of the other issues that we've put in the Constitution. The language of the Enabling Act and, for that matter, the language of the old Constitution is broad enough, since it uses the words "may propose amendments"-is broad enough to authorize us to do that. We have not proceeded on that basis till now, and we're on the ballot. The Chair is going to rule that the proposals that we are considering, these three different proposals, were proposals made for inclusion in the new Constitution, which is clearly the way we adopted them when we made them proposals. The Chair is going to rule that we have not, as a body, considered them as possible amendments to the old Constitution except as they are inclusions in the new Constitution, which, of course, replaces the old if it passes. Therefore, the Chair is going to rule out of order any proposal that these be considered amendments, and if you don't like that, then you may stand and make a motion to suspend the rules, and if you can suspend the rules, we'll go back and consider these matters as amendments to the old Constitution, but until we've done that, we won't take any more time discussing the possibility of amendments other than the new Constitution we're considering.

Now, Mr. Swanberg, that's how I think I have to solve your problem, and you may make a motion to suspend the rules if you want to.

DELEGATE SWANBERG: Mr. President, I'm in total agreement with the Chair. I've been giving this a lot of thought; and I, too, agree that we're submitting a complete new ball game here to the public and that these three proposals that we have here-the unicameral-bicameral, the gambling issue and the death penalty-are being submitted to the electorate for a vote as possible alternates; but I submit the ballot itself is not quite clear on that point. I submit that the voter could look at that and say, "Well, I'm against the Constitution so I'll vote No, but, by golly, I'm for the death penalty, so I'm going to vote Yes down here", and there may be some confusion and a good deal of hard feelings if it turns out that they were in error, so perhaps some kind of language ought to be in here to state clearly and explicitly that these proposals are to be voted on and will be a part of our-the body of our law only in the event the new Constitution is passed. Whatever that language is, I don't know. I have a suggestion, that the Chair has, that has a sentence in it; but whether that's adequate or not is questionable. The sentence simply says: "If you voted for the proposed Constitution, you may also vote on whether the following proposals should be included within it," and then there's the death penalty and the gambling issue. That would clarify it, in my opinion.

CHAIRMAN GRAYBILL: All right, now, the Chair has before it some language from Mrs. Bates. Mrs. Bates, I don't know whether this should be made an amendment or not; but with your permission, the Chair will inquire of Mr. Schiltz and of some of the others and at least probe the possibility. The official ballot has instructions at the top-place an "X" in the box, express your preference. The full text is in-is available for inspection. Now, it might be that we would be well advised to add language to the instructions which might say something like this-this is Mrs. Bates' question: "The Constitution will be ratified only if a majority of those voting in this election vote for the Constitution. If the Constitution receives a majority, each alternative below-Sections--or 2, 3 and 4—must also receive the same majority." This would, of course, clear up Mr. Swanberg's point, the second sentence, saying that if the Constitution receives a majority, each of the alternatives below must also receive a majority--would clear up Mr. Swanberg's point that these are considered as an amendment. They'd have-they would--as an amendment to the old one. I don't know whether it's necessary to say that the Constitution will be ratified only if a majority of the voters vote, but it doesn't say that yet, and the query that Mr. Berg has placed on Mrs. Bates' thing is, is this covered in transition? In the Transition Article? Now, I asked Mr. Schiltz to yield after thinking about that, or about whether we should add that to the instructions. In other words, should the instructions say the Constitution will be ratified only if a majority of those voting in this election vote for it and, secondly, if it is ratified, then each alternative must also receive a majority.

Mr. Schiltz, do you have any thoughts?

DELEGATE SCHILTZ: Well, Mr. Chairman, I'd have to go through the Transition Sched-

ule; I don't think that's covered in the transition, though. There's no reason why it would be.

CHAIRMAN GRAYBILL: Or in the Adoption Schedule?

DELEGATE SCHILTZ: No, it wouldn't be in there either.

CHAIRMAN GRAYBILL: Well, Section 1 of the Adoption Schedule says "if approved by a majority of those voting".

DELEGATE SCHILTZ: That's right. There it is.

CHAIRMAN GRAYBILL: Would it be useful to add-you know, it isn't going to make much difference what's at the top of the ballot. It's -there's going to be a little box of something there, and would it be helpful to add sentences to the effect that a majority must vote before this Constitution is adopted and that if that happens, then the other three propositions must receive a majority? Would it be helpful to add thatlanguage at the top?

Mr. Brown-oh, you're just sitting down.

DELEGATE SCHILTZ: Well, Mr. Chairman, I don't know. If it didn't-what we have striven for is to stay away from too much language, as you can see. We thought we had the box pretty well tidied up and we had the top pretty limited. I wouldn't object, I guess, if it didn't add more stuff. One of the problems I had with Mr. Ask's proposal was that the instructions were so lengthy that I was afraid nobody'd get to the vote. I don't know, I would have to think about it more than I've thought about it now, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I sent that up just for information up there and wondered what you thought of it, but I feel that if we could put something like this-and maybe the Style and Drafting would want to work it over a little bit-on the top of the ballot, it would explain to the people a little better exactly what has to take place. And I'd like to so move that for their consideration.

'CHAIRMAN GRAYBILL: All right, I'll consider it moved or something like it moved. Now, the Chair has another question of the Style and Drafting Committee. I have been of the opinion that the material in the box was necessary to-because of the replacement of bicameral by unicameral, and I'm still of that opinion, but one of the things we did with Mr. Brown's language was say that unless a majority of those voting in this election voted for it, unicameral couldn't win. Have we ever said that unless a majority of those voting for 3 and 4 vote for it, they can't win, Mr. Schiltz? Or are we in the position of getting a plurality for 3-A? That-we all agree, I think, that that won't do it.

DELEGATE SCHILTZ: Mr. Chairman, if that's a problem,-am I on? If that's a problem we ought to put something up there like Mrs. Bates' material. We took the position that-as you can see from the other ballots we proposed, that we didn't think it was necessary to put any of this in; but then when the question wasraised, wedecided that it was essential that we have it in insofar as the Legislature was concerned, because we couldn't do without a Legislature; and we thought if we put something similar in each of the other ones, we were going to clutter the whole thing up so badly that it would be almost unintelligible. You can almost say by inference that 3 and 4 must have the same kind of vote on them; but maybe if there's a problem there, we could slip a couple of words in to satisfy Mrs. Bates' thoughts. I would like to have about 2 minutes to style that and get it into about seven or eight words, though, if I could.

CHAIRMAN GRAYBILL: What if it said, "The Constitution and any of the alternatives listed below will be ratified only if a majority of those voting in this election vote for them." Well, it seems to me we may need some such language, Mr. Schiltz.

DELEGATE SCHILTZ: Well, I think you could say, "A majority of those voting in this election is necessary to carry all issues."

CHAIRMAN GRAYBILL: All right, let's write that down and see where that takes us. "A majority of those voting in this election is necessary to carry"-is that what you want to say?- "carry the Constitution or other issues"-"to approve the Constitution or"-all right, "adopt the Constitution or any of the alternatives listed below."

DELEGATE SCHILTZ: I'm more satisfied with what I said. When we get up there in that room with no windows, we would have crossed out most of what you added to what I said.

CHAIRMAN GRAYBILL: I don't think I had it. "A majority of those voting in this election

is necessary to carry the Constitution or any of the alternatives listed below."

DELEGATE SCHILTZ: I just said, "all issues", which is about 14—

CHAIRMAN GRAYBILL: I see, "to carry all issues"-but that, to me, Mr. Schiltz, implies that a majority of those voting is necessary-but a majority on one might-certainly doesn't carry all issues. I think you've got to say "any issues".

DELEGATE SCHILTZ: How about "all four issues"?

CHAIRMAN GRAYBILL: Or how about "any issue".

DELEGATE SCHILTZ: All right, "or any issue".

CHAIRMAN GRAYBILL: How about "is necessary to adopt any issue".

DELEGATE SCHILTZ: Well, now, I'd have to go back in and see what the wording is on adoption, whether the vote constitutes an adoption-and I'd just—

CHAIRMAN GRAYBILL: Well, all right, do you want to use "carry"?

DELEGATE SCHILTZ: I would-1 think it's plain enough and clear enough.

CHAIRMAN GRAYBILL: A majority of those voting in this election is necessary to carry any issue.

DELEGATE SCHILTZ: That would satisfy me and, I think, inform the voters.

CHAIRMAN GRAYBILL: Now, Mrs. Bates, that does precisely-Mrs. Bates would withdraw hers and allow Mr. Schiltz to move that. Do you want to move that as part of the instructions, Mr. Schiltz?

DELEGATE SCHILTZ: I would move that that be placed on the top as a new sentence on the instructions we have now.

CHAIRMAN GRAYBILL: Is there-all right, Mr. Schiltz moves that we add, as a sentence in the instructions, the following: "A majority of those voting in this election is necessary to carry any issue". Is there discussion?

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I can see this as being misleading, because if a majority vote for one of the alternates down below and don't vote for the Constitution, it is not enough to carry them. I think, almost, you'd have to add that—something like "alternates 2 and 3 and 4 cannot carry unless the Constitution is ratified". I don't think that's the way it wants to be said.

CHAIRMAN GRAYBILL: How about "to carry the Constitution or any subissue"? Does the word "sub" help?

DELEGATE ECK: No, I don't think it does, because the subissues can only carry if the Constitution does.

CHAIRMAN GRAYBILL: Right, but doesn't "sub" imply that? Mr. Loendorf, have you got a little help?

DELEGATE LOENDORF: Would you read the language, Mr. Chairman.

CHAIRMAN GRAYBILL: The last one or Mr.--

DELEGATE LOENDORF: The whole sentence.

CHAIRMAN GRAYBILL: "A majority of those voting in this election is necessary to carry any issue".

DELEGATE LOENDORF: I think you've solved Mrs. Eck's problem, then, because you have used the words "in this election", which indicate the majority has to be a majority voting in the election, not on any separate issue.

CHAIRMAN GRAYBILL: No, but her point is that a majority might vote for the death penalty part and not for the Constitution, and it doesn't carry the issue.

DELEGATE LOENDORF: That's right.

CHAIRMAN GRAYBILL: "A majority of those voting in this election is necessary to carry the Constitution and also"-or, let's see-"and each alternative must"-let's see. All right, I think I've got it. What do we call them? It's a little long for Mr. Schiltz. Now, you might be able to work with this, Mr. Schiltz. "A majority of those voting in this election is necessary to carry the Constitution. In addition, each alternative must receive such a majority to carry." Where is Mr. Brown? He's our expert on this.

Mr. Berg. I'm sorry; I haven't been looking.

DELEGATE BERG: I only wanted to suggest that, instead of the word "carry", you use the word "approve", because that's the word that's used in Section 8 of Article XIX. And I was going to—

CHAIRMAN GRAYBILL: That's easy. But solve this other—

DELEGATE BERG: -then I was going to suggest, on the other one, "or any issue listed below".

CHAIRMAN GRAYBILL: But Mrs. Eck's point is that an issue can receive a majority and not be carried unless the majority of the-carries the Constitution, too. Well, maybe you should say "and".

Mr. Loendorf.

DELEGATE LOENDORF: Yes, Mr. Chairman, we can't make law in that sentence. It constitutes instructions to the voters. Therefore, I'd just leave it as you first proposed it.

CHAIRMAN GRAYBILL: "A majority of those voting in this election is necessary to carry any issue"?

DELEGATE LOENDORF: Yes.

CHAIRMAN GRAYBILL: Which implies that something else may be necessary, too, but at least a majority is.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I think that all of us are going to have to go home and do just what every trial lawyer does when he presents his case to a jury. When he has a written verdict in his hand and he asks that jury to go in and reach a decision, he's going to have to explain this ballot, and I don't see any reason to carry on this debate in an attempt to do all of these things, or we'll be here forever. I think those instructions are clear and that they're plain, and I think we ought to end with them just where they are.

CHAIRMAN GRAYBILL: The instructions-the only thing that's concerning us, Mr. Murray, there is nothing in the ballot now that says that 3 and 4 have to have this majority; and what's going to happen is that-or what could happen is that 49 percent could vote for the gamblers and 47 against; and the gamblers are going to think they won; and they're not going to win. And we're not going to have told them that. But I'm sure that that isn't going to change the law; but maybe to be fair, we ought to tell them they got to have a majority.

Mr. Murray.

DELEGATE MURRAY: What I'm trying to say to you is that we are going to advise the gamblers about that before they ever get into the poll booth.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I think we're overlooking a good opportunity here to do a little free advertising on the ballot, and I think we'd better take advantage of every opportunity we have to do this. And instead ofputtingit up at the top in instructions to voters, I think this, too, should be in a box; and I think it should be said loud and clear in that box that the following two proposals shall be ineffective-or words to this effect--unless the proposed Constitution is passed, so that those who want this gambling or whatever it is that they want will make darned sure that they vote for the Constitution in the first instance; otherwise, their activity is idle. Let's put it down there where they can be readily seen by all those who vote, and I think we'll get a lot of votes that way.

CHAIRMAN GRAYBILL: In other words, you'd put a box in after 1 and say: "If the Constitution receives a majority of the votes, the following propositions can be adopted by a majority."

DELEGATE SWANBERG: Even stronger than that.

CHAIRMAN GRAYBILL: How's that, Mr. Schiltz?

DELEGATE SWANBERG: I mean, it's just a good-it's a sort of a neon sign there, it seems to me, to get a little advertising.

CHAIRMAN GRAYBILL: All right. Mr. Swanberg has suggested that after the first ballot, we put in a box that says: "If the Constitution receives a majority of the votes in this election, the following propositions may be adopted by a majority of the votes in this election."

DELEGATE SCHILTZ: Mr. Chairman, I'll do whatever this committee votes to do. I have stated my feelings. I'm in accord with Mr. Murray; I don't think it's necessary. We are doing all sorts of brochures and one thing and another, and we've got the newspapers full of this 50 percent plus one

business. If they don't know now, they're never going to know. I don't see any reason to add another comma or period or anything else to this ballot as we have it right at this minute, but I'll do whatever-

CHAIRMAN GRAYBILL: And you—well, I'll hear **Mrs.** Eck.

DELEGATE ECK: Mr. Chairman, I'm inclined to agree with Mr. Schiltz, but I do have another wording here which might do what we want and also give us a little free advertising on the ballot. It would say: "Each issue listed below"--or how you want to define them—"requires a majority vote of those voting in this election, as well as a majority vote approving the proposed Constitution".

CHAIRMAN GRAYBILL: "Each issue below requires a majority vote-"

DELEGATE ECK: "-of those voting in this election, as well as a majority vote-"

CHAIRMAN GRAYBILL: "—in this election-"

DELEGATE ECK: Un-huh.

CHAIRMAN GRAYBILL: "--as well as a majority--"

DELEGATE ECK: "-vote approving proposed Constitution."

CHAIRMAN GRAYBILL: "-majority vote for the proposed Constitution"?

DELEGATE ECK: "For the proposed Constitution" would do just as well.

CHAIRMAN GRAYBILL: Mrs. Eck, will you move that?

DELEGATE ECK: Mr. Chairman, I move that this be added to the instructions at the top of the ballot.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you want to withdraw yours?

DELEGATE SCHILTZ: No, I don't.

CHAIRMAN GRAYBILL: You don't want to withdraw the one that says: "A majority of those voting in this election is necessary to carry any issue"?

DELEGATE SCHILTZ: Well, I—

CHAIRMAN GRAYBILL: Well, all right, leave it in there. But Mrs. Eck will amend it; and if she fails, you're up. All right. I feel like a Keno man making book. (Laughter) All right, the issue now is Mrs. Eck's motion that we add to the instructions a sentence saying: "Each issue below requires a majority vote of those voting in this election, as well as a majority vote for the proposed Constitution." Is there discussion?

Mr. Anderson.

DELEGATE OSCAR ANDERSON: Well, I understand there's three issues in here that don't require a majority vote in order to be placed in the Constitution.

CHAIRMAN GRAYBILL: No, you're not right about that, Oscar. There's not even two. There's none that don't require a majority vote.

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, since we've been discussing this, I think that we have the sense of the group and that Style and Drafting could handle this sentence, the structure of this sentence, and that maybe we just decide whether we want a short explanation of this type and let them really handle the wording.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: The time has rapidly come and has now arrived when Style and Drafting can no longer do anything, because we go to the printers tomorrow morning.

CHAIRMAN GRAYBILL: Well, Mr. Schiltz, we don't go to the printers until this is done.

DELEGATE SCHILTZ: Well, that's true enough.

CHAIRMAN GRAYBILL: So don't worry about the printer. I mean, we're going to write the Constitution; don't worry about the printer.

DELEGATE SCHILTZ: That's true enough, except that we can't have a committee meeting tomorrow morning and redo all this and still get it to the printers.

CHAIRMAN GRAYBILL: Right. Right.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, I've listened to a great deal of interest here this afternoon, and I think there that we're indicting

the educators around here. We have spent millions and millions of dollars in this state to educate these people to understand, and to me this is very plain, and I don't know as we got to get it down here so plain that-1 think we could stop. I like this original proposition. It looks good, and we talk about it, and let's don't indict the educators.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I agree with Mr. Mahoney. And being an educator, let's get on and vote with this thing. And I'm happy with the language that's in here.

CHAIRMAN GRAYBILL: All right, now, the Chair does have Mr. Schiltz and Mrs. Eck up. Do you want to vote on that, Mrs. Eck? All right, the issue is on Mrs. Eck's language to add, into the instructions, a sentence saying: "Each issue below requires a majority vote of those voting in this election, as well as a majority vote of the proposed Constitution." All in favor, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Mr. Berg, for what purpose do you rise?

DELEGATE BERG: Berg votes No.

CHAIRMAN GRAYBILL: Berg votes No.

Aasheim .. Nay
Anderson, J.H.. Nay
Anderson, O.. Nay
Arbanas ..... Aye
Arness Nay
Aronow ..... Nay
Artz ..... Nay
Ask..... Nay
Babcock ..... Nay
Barnard ..... Nay
Bates ..... Aye
Belcher .. Nay
Berg..... Nay
Berthelson Nay
Blaylock..... Nay
Blend Nay
Bowman .. .. .. Nay
Brazier Nay
Brown ..... Nay
Bugbee ....Aye
Burkhardt ..... Nay
Cain ..... Nay
Campbell ..... Excused
Cate ....Absent
Champoux ..... Nay
Choate ..... Nay
Conover ..... Nay
Cross ..... Nay
Dahood ..... Nay
Davis ..... Absent
Delaney ..... Nay
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Nay
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Absent
Foster ..... Nay
Furlong ..... Nay
Garlington ..... Nay
Gysler ..... Nay
Habedank ....Aye
Hanson, R.S..... Nay
Hanson, R. ..... Nay
Harbaugh ....Absent
Harlow ..... Nay
Harper..... Absent
Harrington ..... Nay
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ....Absent
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... .Absent
Leuthold ..... Nay
Loendorf ..... Nay
Lorello ..... .Absent
Mahoney ..... Nay
Mansfield. ..... .Absent
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ....Absent
McNeil ..... .Absent
Melvin ..... Nay
Monroe.. ....Absent
Murray ..... Nay
Noble ..... Nay
Nutting ..... Nay
Payne ..... Nay
Pemberton ..... Nay

Rebal	Nay
Reichert	Aye
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Absent
Vermillion	Absent
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 16 delegates voting Aye, 66 voting No.

(The official roll call shows 15 Aye, 67 Nay, 1 Excused, 17 absent and is correctly reported in the preceding roll call tabulation)

CHAIRMAN GRAYBILL: 66 having voted No, Mrs. Eck's motion is defeated.

Mr. Schiltz, do you want yours withdrawn, or do you want to put?

DELEGATE SCHILTZ: I will withdraw mine.

CHAIRMAN GRAYBILL: All right, it's withdrawn.

Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, as the ballot stands now, it's still not clear, in my opinion, under items 2 or 3, that a person who votes, for example, for allowing the Legislature to authorize gambling-it's not going to be clear to him, if he votes for it, what the situation is. I submit that we have a golden opportunity to pick up a lot of votes here simply by putting in, after item 2, a box-another box, and in that box something like this should be stated: "If you voted for the proposed Constitution above, you may also vote on whether the following proposals should be included within it." And that would be a clear and distinct statement to all those who vote on the gambling issue that they'd better vote for the Constitution up above if they want to change the gambling picture in Montana. I submit we'd pick up an awful lot of votes just by that simple tactic. All those who had strong feelings about the death penalty likewise would look at that box and say, "Well, I'd better vote for the Constitution if I want to abolish the death penalty in Montana", and in that way, I think we would strengthen our hand immeasurably. Whether you're For or Against gambling or the death penalty is beside the point here; so I would move, then, that after paragraph 2, the language which I just read to you and which you have on your desks beincluded in a box within it.

CHAIRMAN GRAYBILL: Very well. Now, Mr. Swanberg, I didn't get your exact language, but I got this: "If the Constitution receives a"-for a box after 2—"If the Constitution receives a majority of those voting, the following proposals may be approved by a majority of those voting at this election." Now, the Chair is aware of how impatient you all are, but the Chair has some sympathy for this because there is nothing on this ballot that explains that it takes a majority vote on 3 and 4. Now, you can go without it, but it does not now explain that and it is, in fact, necessary. And Mr. Anderson just pointed out he wasn't clear on that himself, so we have nothing there yet; and you can vote this down, but until-but it won't then be explained. Mr. Swanberg, is that language sufficient for you? "If the Constitution receives a majority of those voting, following proposals may be approved by a majority of those voting at this election."

DELEGATE SWANBERG: Mr. President, I'm not an ad writer. What we are writing here is a good ad. The language you have put in is okay. I would suggest we put something in and then we go over this ballot again and we can correct it again if we-need be. But it just seems to me that there's a golden opportunity here to pick up a lot of votes, and I'd like to take advantage of it, as well as clarify the situation. Those who vote No down here and-well, strike that. Let it go. It's too complicated.

CHAIRMAN GRAYBILL: All right. Well, I've got some language here that will do it. I don't know if it's good enough, and it can be amended.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, could I move a substitute motion? In the instructions-I think all we have to say in instructions is just one line to say: "If the proposed"-"If the vote on the proposed Constitution fails, all alternative issues also fail," period; and that should explain it. That would be just in the instructions.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. I think Mr. Ask, is-in about one-half of a sentence, has taken care of the whole thing. I-That'd be fine, I think.

CHAIRMAN GRAYBILL: Mr. Ask, are you saying, if the proposed Constitution fails to receive a majority of the votes cast, the alternative proposals also fail?
Mr. Swanberg.

DELEGATE SWANBERG: Let's think positively here. Let's not use the word "fail" anywhere in this ballot. And here we have the word "fail" used twice, and I submit that the language which the Chair just read puts it in positive terms and is far to be preferred.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, that sounded very good to start out with, but actually all these things don't fail because we are going to have one or the other, a bicameral or a unicameral.

CHAIRMAN GRAYBILL: No.

DELEGATE BATES: We've got in the old Constitution gambling.

CHAIRMAN GRAYBILL: Mrs. Bates, the propositions here fail if the first one doesn't pass.

DELEGATE BATES: (Inaudible)—propositions. But we have two votes—

CHAIRMAN GRAYBILL: All right. Well, we've got a clear-cut issue here between Mr. Ask's and Mr. Swanberg's, and Mr. Ask's has got the substitute motion and the issue is-Mr. Ask says in the instructions: "If the proposed Constitution fails to receive a majority of the votes cast, the alternative proposals also fail." And Mr. Swanberg, if you want to put it positively, has a box after the second paragraph-second ballot that says: "If the Constitution receives a majority of those voting at this election, the following proposals 3 and 4 may be approved by a majority of those voting." Now, the issue is on Mr. Ask's. I take it you're ready for the vote. All in favor-a roll call vote-say-vote Aye if you're in favor of Mr. Ask's, and vote No if you're not. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Does any delegate want to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J.H. ..... Aye
Anderson, O ..... Aye
Arbanas .. .. Aye
Arness ..... Aye
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock .. .. Aye
Barnard ..... Aye
Bates ..... Absent
Belcher ..... Aye
Berg ..... Nay
Berthelson ..... Nay
Blaylock ..... Aye
Blend ..... Aye
Bowman. ..... Aye
Brazier .. .. Aye
Brown ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate .. .. Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross .. .. Aye
Dahood ..... Nay
Davis ..... Nay
Delaney ..... Nay
Driscoll ..... Nay
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent

Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Nay
Harrington ..... Aye
Heliker ..... Nay
Holland, ... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson.. ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Absent
Leuthold ..... Aye
Loendorf ..... Nay
Lorello ..... Absent
Mahoney ..... Nay
Mansfield ..... Aye
Martin ..... Nay
McCarvel ..... Nay
McDonough ..... Nay
McKeon ..... Absent
McNeil ..... Nay
Melvin ..... Aye
Monroe ..... Absent
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Nay
Romney ..... Nay
Rygg ..... Nay
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Nay
Studer ..... Aye
Sullivan ..... Nay
Swanberg ..... Nay
Toole ..... Aye
Van Buskirk ..... Nay
Vermillion ..... Absent
Wagner ..... Aye
Ward ..... Nay
Warden ..... Absent
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President Aye

CLERK HANSON: Mr. Chairman, 60 delegates voting Aye, 27 voting No.

CHAIRMAN GRAYBILL: 60 having voted Aye and 27 having voted No, Mr. Ask's motion is presumed by the Chair to have passed and will be added to the instructions. Mr. Swanberg, since it does essentially the same thing in a negative manner as yours, the Chair rules that yours is lost by that.

Now, Mr. Schiltz, do you want to move that when this committee does arise and report, after having had under consideration the ballot proposed by the Style and Drafting Committee, that we recommend the same be adopted?

DELEGATE SCHILTZ: I make that motion, Mr. Chairman, as amended.

CHAIRMAN GRAYBILL: As amended. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted as amended. Now, members of the body, we have before us on-we'll set that aside on General Orders before reporting, and on General Orders in the Committee of the Whole, if you'll turn to Article III on General Government, in the proposal given you by the Style and Drafting Committee this morning-the final report of the Style and Drafting Committee-turn to Article III on page 11 and-in fact, turn to Article III on page 13, and it will now be necessary to fit our ballot that Mr. Schiltz moved, that the first Section 9 be deleted and the section-second Section 9 be left in. Isn't that correct, Mr. Schiltz?

DELEGATE SCHILTZ: That's correct, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, the issue, then, is on--would you make a motion that the first Section 9 be deleted, Mr. Schiltz?

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Article III, General Government, Style and Drafting Committee Final Report, that the section-the first Section 9, being lines 12 through 15 be deleted and that the article be adopted as amended.

CHAIRMAN GRAYBILL: Well, the Chair will strike the last part of your thing. I'm going to make two motions out of it. I want to adopt it after it's deleted. So we're just voting an the deletion. Does anyone want a roll call vote?

(No response)

CHAIRMAN GRAYBILL: All right. All in favor of deleting the first Section 9, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's approved. Now, will you put the—

DELEGATE SCHILTZ: Now Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article III, General Government, Style and Drafting Final Report, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: The motion is to adopt as for style and drafting, Article III as amended. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: And it's so ordered. Now, if you'll turn to Article V on page 15—

DELEGATE SCHILTZ: 15 to 22.

CHAIRMAN GRAYBILL: -to 22, the ballot will require that the language on page 15, 16, 17, 18, 19, 20, 21 and 22 be deleted and the language in the second Legislative Article, which is the bicameral article, remain in the Constitution.

DELEGATE SCHILTZ: I make that motion, Mr. Chairman.

CHAIRMAN GRAYBILL: The motion has been made that we delete the unicameral section of the Legislative Article V, being pages 15 to 22 in the Final Report of Style and Drafting. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's deleted.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Article V, the Legislature, Style and Drafting Committee's Final Report, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well, you're now voting that pages 23 through 28, being the bicameral form of the Legislature-Legislative Article-be left in the Constitution. So many as are in favor of Article V for style and drafting, bicameral, pages 23 to 28, vote Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted.

DELEGATE SCHILTZ: Mr. Chairman, did you want to do third reading on those now?

CHAIRMAN GRAYBILL: Well, we want to move to Section 5-to 5, yes-I'm not sure we want to do that before we go to-well, let's see-I think we need to go to your adoption schedule. Is it revised, or is it good anymore?

DELEGATE SCHILTZ: The revised adoption schedule works, yes.

CHAIRMAN GRAYBILL: Very well. Members of the body, if you'll turn to the revised adoption schedule-it's page-two pages long. I think the clerk had better read it and we'd better read along. Will the clerk please read the revised adoption schedule on General Orders, Committee of the Whole. Don't read the word "revised"; just start with the word "adoption".

CLERK HANSON: "Adoption schedule. These schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted, determining what changes result from the vote on each of the separately submitted issues, and establishing the general effective date of this Constitution. No provision of this schedule shall be published unless it becomes part of the Constitution as the result of the adoption of a separately submitted provision. Section 1. This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July lst, 1973, except as otherwise provided in Sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect. Section 2, subsection 1. If separate issue 2-A concerning the unicameral form of the Legislature is approved by a majority of those voting at the election and if proposed Constitution is approved by the electors, then: sub sub. (a) Article V, The Legislature, shall bedeleted and the following substituted therefore: Insert unicameral article in full here. Subsubsection (b). The words "of each house" are deleted from subsection 2 of Section 6 and from Section 8, Article VIII, Revenue and Finance. Subsubsection (c). The word "Legislature" is substituted for "Senate" in subsections 1, 2 and 4 of Section 8, Article VI, The Executive, and in subsections 1 and 2 of Section 8, Article VII, the Judiciary. Subsection 2. If separate issue 2-B concerning the bicameral form of the Legislature is approved by the electors and if the proposed Constitution is approved by the electors, then Article V, The Legislature, shall be retained. Section 3, subsection 1. If separate issue 3-A is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then Section 9 of Article III, General Government, shall be retained. Subsection 2. If separate issue 3-B is approved by the electors and if the proposed Constitution is approved by the electors, then Section 9 shall be deleted from Article III, General Government, and the following substituted therefor: 'Section 9, Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited."'

DELEGATE SCHILTZ: That will have to be changed.

CLERK HANSON: "Section 4. If separate issue 4-B is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then there shall be added to Section 28, Article II, Declaration of Rights, the following sentence: 'Death shall not be prescribed as a penalty for any crime against the state' and there shall be deleted from Section 21 of the same article the following: 'except for capital offenses, when the proof is evident or the presumption great."' Mr. Chairman, adoption schedule.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move to amend-we don't have numbered paper here, so—

CHAIRMAN GRAYBILL: Section 3 on page 2.

DELEGATE SCHILTZ: Section 3, sub. 2, on page 2, by deleting the words "9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited" and inserting in lieu thereof the words on page 13 of Style and Drafting report, which are lines 16 and-No-

CHAIRMAN GRAYBILL: What's—

DELEGATE SCHILTZ: Section 9—Well, it would be lines 12 through 15 on page 13 of Style and Drafting's report.

CHAIRMAN GRAYBILL: What does it say? Except as what?

DELEGATE SCHILTZ: It says: "Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the Legislature or by the people through initiative or referendum."

CHAIRMAN GRAYBILL: "--unless authorized by acts of the Legislature or the people"— by what-?--"initiative or referendum". Or "the people" by what?

DELEGATE SCHILTZ: Well, it-let me see-"unless prohibited"-"unless authorized by acts of the Legislature or by the people through initiative or referendum".

CHAIRMAN GRAYBILL: All right, now, this change is necessary because of what we did in voting for Mr. Harper's amendment.

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: And I'd like you also to move-you see, it's now going to be separate item 3-A that they must vote for, so up on

line-the top line there, sub. 2--"If separate issue 3-A is approved"-because 3-A will be for allowing the people, right?

DELEGATE SCHILTZ: Well, now, I'll have to think about that a minute.

CHAIRMAN GRAYBILL: 3-B is against.

DELEGATE SCHILTZ: Yes, that's right, that's right.

CHAIRMAN GRAYBILL: So the line has to be: "If separate issue 3-A is approved by the electors", then you put in this larger language that you have just read.

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: All right. Now, does everyone understand the change?

DELEGATE SCHILTZ: Mr. Chairman, I would like to make another amendment. At the top of that page, under-after the words "The Judiciary" and we have a subsection 2—

CHAIRMAN GRAYBILL: Right.

DELEGATE SCHILTZ: --we say: "If separate issue 2-B concerning the bicameral form of the Legislature is approved by the electors"-

CHAIRMAN GRAYBILL: Well, wait a minute, Mr. Schiltz. I'm going to take these one at a time. People have to know what they're doing here.

DELEGATE SCHILTZ: Oh, I'm sorry.

CHAIRMAN GRAYBILL: All right. Now, we are on sub. Z-Section 3, sub. 2, in the middle of the second page, and it will read: "If separate issue 3-A is approved"--and then it will go on-and instead of the quoted language it will have the longer quoted language, which is "all forms of gambling," and so forth "are prohibited unless authorized by the Legislature or by the people by initiative"--or "through initiative or referendum" -the longer language. Now, does everyone understand that we have to change that because of the Harper amendment? All right, are you ready to vote on that? Do we need to discuss that, Mr. Harper?

DELEGATE HARPER: No. Do you want also, at this time-are you going to put subsection 1 of Section 3 separately? Doesn't the 3-A need to be changed to 3-B? Just-in other words you change—

CHAIRMAN GRAYBILL: Where? Where are you?

DELEGATE HARPER: In the one you just read, subsection 2 of Section 3—

DELEGATE SCHILTZ: That's right.

DELEGATE HARPER: —you changed 3-B to 3-A. Now, you need to change 3-A to 3-B in the paragraph just above it, if you want to do that now or-1 just called it to your attention.

CHAIRMAN GRAYBILL: I see it. Yes, that's got to be 3-B. So, on line-up there where it says Section 3, number 1, it will say: "If separate issue 3-B."

Mr. Davis.

DELEGATE DAVIS: I'm-Mr. President, I'm wondering about that. It seems like the way the Constitution now reads, if you don't get a majority for or against gambling-in other words, if you don't get your 50 percent plus one, then separate 3-A still stays in, regardless of whether it's approved by a majority. So wouldn't the language be all right if you put in Section 3: "1. If separate issue 3-A is not approved by a majority of those voting at the election, if the proposed Constitution is approved, then Section 9, Article III, shall be retained"? Similarly up under your Judiciary.

CHAIRMAN GRAYBILL: I think, Mr. Davis that's-you see, what you're doing is, you have to cover 3-B somewhere and you're not going to cover 3-B at all, and if 3-B is approved by a majority, then the Section 9 that we just put in stays.

DELEGATE DAVIS: But if 3-B isn't approved by a majority—

CHAIRMAN GRAYBILL: Then it stays anyway.

DELEGATE DAVIS: Yes, it stays anyway.

CHAIRMAN GRAYBILL: Right.

DELEGATE DAVIS: Right. If the other one doesn't. All right.

CHAIRMAN GRAYBILL: Yeah. All right. Now, these amendments changing 3-A to 3-B and changing 3-B to 3-A and adding the extra language onto the Section 9 that would substitute are all that's necessary to effectuate Mr. Harper's amendment.

Mr. McDonough

DELEGATE McDONOUGH: Mr. President, I don't think we really need Section 3, subsection 1, under these circumstances.

CHAIRMAN GRAYBILL: Well—

DELEGATE McDONOUGH: Because then you're saying if 3-B is approved by a majority of the vote, it's retained. Well, it's retained anyway, whether or not-

CHAIRMAN GRAYBILL: Well, that's right, but it also is true if it's in there and it explains what happens to 3-B, and the same is true on the page before on this other one, so—

Mr. Schiltz.

DELEGATE SCHILTZ: I would agree with Mr. McDonough. I was going to make a motion-You see, they're both in the Constitution, and if the Constitution is approved—

CHAIRMAN GRAYBILL: All right. Do you want to strike Section 3, sub. 1, and restyle 2, sub. 1?

DELEGATE SCHILTZ: No, not at all-not altogether. I would strike the first line and three-fourths, so that we make a capital "I" on the "if', so that it reads, then: "If the proposed Constitution is approved by the electors, then Section 9 of Article III, General Government, shall be retained."

CHAIRMAN GRAYBILL: All right. Now, this still has the effect of effectuating the Harper amendment, right?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: All right, we'll allow that amendment, so that 1 now becomes: "If the proposed Constitution is approved, then Section 9"-and so forth-"shall be retained." 2 will read: "If section-separate issue 3-A", with this other language. Now, with all of those amendments in there, is everybody happy?

(No response)

CHAIRMAN GRAYBILL: I'd like a motion approving section-the--approving this part for style-Section 3.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 3 of the adoption schedule, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of approving Section 3 for style, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. All right.

DELEGATE SCHILTZ: Now, Mr. Chairman, for the same reason, on the first line and three-fourths of the-of this same page: "If separate issues 2-B concerning the bicameral form of the Legislature is approved by the electors and"—I would ask that that be struck and that a capital "I" "If' be inserted-and then we continue on with a capital "I" "If '.

CHAIRMAN GRAYBILL: All right. All in favor of amending the top of page 2, sub. 2, so that it says: "Sub. 2. If the proposed Constitution is approved by the electors"-then Article IV, Legislature, shall be retained. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Just a minute-

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman, I'm confused--a little more confused than I usually am. It seems to me that what we've just done in Section 3, when we state: "If the proposed Constitution is approved by the electors, then Section 9 of Article III, General Government, shall be retained-"

CHAIRMAN GRAYBILL: Yes, that's wrong, isn't it? That's wrong. You're right, that's wrong. We finally got Mr. McDonough (Laughter) because, Mr. McDonough-

DELEGATE McDONOUGH: No, you haven't; I moved to delete the whole section.

CHAIRMAN GRAYBILL: Oh, I guess we've got Mr. Schiltz again.

DELEGATE SCHILTZ: You got me again, but—

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Well, it still seems to me that if you put-if separate issue 3-B is not

approved by a majority of the voting and if the Constitution is approved, then 9 stays in.

DELEGATE SCHILTZ: Well, that's what I think, Mr. Chairman.

DELEGATE DAVIS: And I think you do the same thing on the Judiciary. Iftheunicameral is not approved, then the other stays in. In other words, just change the top of the page under Judiciary to: "If separate issue 2-A concerning the unicameral form of Legislature is not approved by the electors and if the proposed Constitution is approved by the electors, then Article V, The Legislature, shall be retained." And under Section 3: "1. If separate issue 3-B is not approved by the majority of those voting at election and if the proposed Constitution is approved by the electors, then Section 9 stays in."

CHAIRMAN GRAYBILL: All right, now, Mr. Davis, do you agree with me that we should have just changed it to 3-B in Section 3?

DELEGATE DAVIS: To 3-B, and then after "is" add a "not"-"if 3-B is not approved".

CHAIRMAN GRAYBILL: Oh.

DELEGATE DAVIS: Well, where are we now? Which is that-? All right, on Section 2, now, it's a separate issue-is 3-A—is that the separate issue? All right, then, if you leave the first part-If separate issue 3-A is not approved, then you leave it in; and if it is approved in number 2, then you take it out and make the substitution. Does that make sense or not?

CHAIRMAN GRAYBILL: I think you can do it either way-3-A is not approved or 3-B is approved.

Mr. Schiltz, which do you want?

DELEGATE SCHILTZ: Well, Mr. Chair. man, I would like to say thatperhaps we're having a misunderstanding here, and I'm sure we are, but it seems to me that if the proposed Constitution is approved by the electors, then the Article V, as we have amended it, shall be retained.

CHAIRMAN GRAYBILL: No, then you're not giving the other guy a chance.

DELEGATE SCHILTZ: No. That's right, you're not-you aren't giving it to that other one. I agree.

CHAIRMAN GRAYBILL: You're back with Mr. Choate. All right, now, how do you want it, Mr. Schiltz? Do you want it "If separate issue 3-A is not approved", or do you want it "If separate issue 3-B is approved"?

DELEGATE SCHILTZ: Oh, I don't think it matters too much.

CHAIRMAN GRAYBILL: Probably it's better "If separate issue 3-A is not approved".

DELEGATE SCHILTZ: Now you're in Section 3, sub. 1?

CHAIRMAN GRAYBILL: Yes.

DELEGATE SCHILTZ: All right.

CHAIRMAN GRAYBILL: And then we have to leave that language in. Now, I take it that we may reconsider Section 3 of this second page. All in favor of reconsidering, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Okay. Now, Mr. Davis, you will move that Section 3, sub. 1, read: "If separate issue 3-A is not approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then Section 9 of Article III, General Government, shall be retained." Is that your motion?

DELEGATE DAVIS: I so move.

CHAIRMAN GRAYBILL: All right; all in favor of Mr. Davis' motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: All right, now, that's all in again, with "3-A" and "not". All right. That's approved for style. Now we're back up on the words after "The Judiciary", sub. 2. And that should read what, Mr. Davis?

DELEGATE DAVIS: "If separate issue 2-A concerning the unicameral form of Legislature is not approved"-

CHAIRMAN GRAYBILL: "-2-A is not approved"—

DELEGATE DAVIS: "-and the Consti-

tution passes", then 2-B is automatically in, whether it passes or not.

CHAIRMAN GRAYBILL: All right, now, Mr. Davis, we did never adopt the other one, so we're back on it. If separate issue-Mr. Davis moves that it say: "Sub. 2. If separate issue 2-A concerning the bicameral form of the Legislature is not approved by the electors and if the proposed Constitution is approved by the electors, then Article V, The Legislature, shall be retained." Is that your motion?

DELEGATE DAVIS: It's my motion, except Mr. President should substitute "unicameral" for "bicameral" there.

CHAIRMAN GRAYBILL: Concerning the unicameral.

DELEGATE DAVIS: Yes.

CHAIRMAN GRAYBILL: All right, I'll restate it for the transcript: "If separate issue 2-A concerning the unicameral form of the Legislature is not approved by the electors and if the proposed Constitution is approved by theelectors, then Article V, The Legislature, shall be retained." All in favor of Mr. Davis' motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: All right, that's taken care of. Now, the Chair would like to raise the question of-I'd like you to read Section 4 again, gentlemen. Down here where it says: "and there shall be deleted from Section 21"—Mr. Dahood, have we got in there all-at the present time, that language "except for capital offenses, when the proof is evident or the presumption is great"?

DELEGATE SCHILTZ: Mr. Chairman, he isn't here, but I know about that. It's on pages 6 and 7 under Section 21, and we ran across that in our work.

CHAIRMAN GRAYBILL: What's that, Bill of Rights?

DELEGATE SCHILTZ: That's Bill of Rights, and its Bail, and it's over on page 7. It says: "All persons shall be bailable by sufficient sureties, except for capital offenses." Now, if capital punishment is abolished, why, that wouldn't obtain, and I have a flag on that to remind the committee of it.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'd like to ask a question, Mr. Schiltz.

DELEGATE SCHILTZ: Yes, I yield.

DELEGATE HARBAUGH: I fail to understand why it's necessary to delete that. It seems to me it has no relationship to the capital punishment issue. We're talking about bail here, not capital punishment.

DELEGATE SCHILTZ: What we're talking about, though, is if-Mr. Dahood, do you understand what we're talking about?

DELEGATE DAHOOD: No, I understand what you're talking about, and your position is correct.

DELEGATE SCHILTZ: You see, if capital offenses-there won't be capital offenses anymore. Capital punishment and capital offenses are coequal. You can only execute a person for a capital offense, so then capital offenses are—would no longer obtain in Section 21.

CHAIRMAN GRAYBILL: Mr. Harbaugh, a felony is different than a capital offense, is what they're saying, and a capital offense is an offense punishable by death. There being no offenses punishable by death anymore, we don't need that language. Very well, the Chair stands corrected, and I think Section 4 is okay.

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I don't want to hold up the works, but will we now be saying under Section 21, Bail, that all offenses are bailable, that there are no-for example, heinous crimes--murders, anything else-that aren't bailable?

CHAIRMAN GRAYBILL: That's what we'll be saying.

DELEGATE HARPER: I can see being-I can see Mr. Harbaugh's point, I think. I can see us being against capital punishment, but I don't necessarily want to lower my estimation of our—how heinous a capital offense might be. Now, if you used the word "capital"-again, the wrong way-but I mean the same kind of crime.

DELEGATE DAVIS: Well, Mr. President-

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: It seems like, to be consistent, you just about have to adopt this. When we adopted the Bill of Rights, we've already adopted the fact that all offenses are bailable except capital offenses, so we either have to go back-if the death penalty passes and they delete the death penalty, then you'd have to go back and try to work some wording in saying what sort of offenses. So I think we're at the stage now where you just about have to go with it and every offense is bailable, but the court then can adjust that as to amount. But, as a matter of fact, the federal government has pretty near held that anyway, haven't they? They let Angela out.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, would Mr. Davis yield to a question?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE ROD HANSON: Carl, is there any statutes on this thing-say that this is deleted from the Constitution, is there any statutes that may apply, and if not-let me make it a two-part question--and if not, then wouldn't the Legislature be free to pass such statutes?

CHAIRMAN GRAYBILL: Mr. Davis, do you want to answer?

DELEGATE DAVIS: I'm unable to answer that right at the moment. I was going to look to see what's in our present Constitution, but I think this is identical to the present Constitution, isn't it?

CHAIRMAN GRAYBILL: I think Mr. Brown is going to tell you that if you change the Constitution, you've changed the statute. Isn't that right, Mr. Brown?

DELEGATE BROWN: No, what I was going to say, Mr. President, we're out of order. We are on Style and Drafting, and we can't go back to the Bill of Rights. If the United States Supreme Court says the death penalty is unconstitutional, we'd be back to the old one. I think this discussion is out of order.

CHAIRMAN GRAYBILL: I think you're right, and I think if it's out of order, the last sentence of Section 4 has to be deleted. Now, maybe "capital offenses" should be "former capital offenses", but, Mr. Dahood, we'd be making a substantive change in Bill of Rights.

DELEGATE DAHOOD: Perhaps I can explain to the delegates. We considered this proposition in drafting the Bill of Rights. We saw no problem. We appreciated the fact death penalty might be a separate issue. Once it becomes a separate issue and it's voted upon-if it's-if abolition of the death penalty is voted upon, that particular phrase will then become inoperative. It's really no problem. California just had the problem. When they abolished the death penalty, they merely ruled that that particular portion in their constitution was not operative, and they granted bail to Angela Davis. We see no real problem at all.

CHAIRMAN GRAYBILL: Well, don't you agree, then, that we ought to delete this business about deleting it in the Bill of Rights, because it seems to me—

DELEGATE DAHOOD: If we're going to follow the strict rule with respect to substantive matters, yes. I was not going to stand and object to it, because it's going to bring about the result that I think we're going to have automatically anyway.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: I didn't mean that we couldn't put this in Section 4. And it probably should be in there; it would make a clearer Constitution. What I was trying to stop was a discussion about getting back and start amending the Bill of Rights, but I don't have any objection to Section 4 staying in. It will clarify the Constitution.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, later on in the Transition Schedule you'll see a section that authorizes the attorney general, once a year, to review the Constitution and delete anything that then must be deleted, and that's the reason for this having been in there.

CHAIRMAN GRAYBILL: All right, so it's okay to leave it in there, right?

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: Very well, I think we've amended the adoption schedule sufficiently. Do you want to move the entire adoption schedule, Mr.—

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: Just a minute.

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I move to amend Section 2, subsection 1, subsub. (c), at the top of unnumbered page 2-following the word "The Judiciary", change the period to a comma and add the following words: "and in subsection 1 of Section 2, Article XII, Departments and Institutions".

DELEGATE SCHILTZ: Could you do that a little slower, please?

DELEGATE HELIKER: Yes. Add, after inserting a comma, "and in subsection 1 of Section 2, Article XII, Departments and Institutions", where you have provision for a Commissioner of Labor confirmed by the Senate.

DELEGATE SCHILTZ: Can you give— could I ask for the page where that is, please.

CHAIRMAN GRAYBILL: Does this-is this after the period, where it says "Judiciary", or is this in the next paragraph, Mr.—

DELEGATE HELIKER: After the period.

CHAIRMAN GRAYBILL: After the word "Judiciary, period"?

DELEGATE HELIKER: Right. It's just adding one more section where you have to change "Senate" to "Legislature".

CHAIRMAN GRAYBILL: In other words, there's another place that you change "Senate" to "Legislature".

DELEGATE HELIKER: Mr. Chairman, on page 57.

DELEGATE SCHILTZ: -57, George?

DELEGATE HELIKER: Line 16.

CHAIRMAN GRAYBILL: Yes. Are you with us, Mr. Schiltz?

DELEGATE SCHILTZ: I have now found you. Now, I've got to get back to—

CHAIRMAN GRAYBILL: The computer must have goofed.

DELEGATE SCHILTZ: Yeah, this is tough work.

CHAIRMAN GRAYBILL: Is it all right to say "the Judiciary, and in subsection 1 of Section 2 of the article on Departments and Institutions"?

DELEGATE SCHILTZ: Well, I think we ought to be uniform and say the section numbers that he mentioned, and I think maybe he did, but I'll make sure-the subsections he numbered of— Section 2, Article XII, Departments and Institutions.

CHAIRMAN GRAYBILL: Okay, and that goes in right after the word "Judiciary comma".

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Mr. Chairman, I believe we have a Senate regardless of whether we have a bicameral or a unicameral, and this was, I think, the intention for these commissioners to be appointed by the Governor, then approved by the Senate-regardless of whether it was a unicameral or a bicameral-and I don't believe it need-should be changed.

CHAIRMAN GRAYBILL: Yeah, I think you may be right. What do you think of that, Mr. Heliker?

DELEGATE HELIKER: Well, isn't this the same thing in all cases?

DELEGATE SCHILTZ: Well, that's what I'm now checking out.

CHAIRMAN GRAYBILL: In other words, there's a—

DELEGATE SCHILTZ: Line 13, page 42—

CHAIRMAN GRAYBILL: -in other words, what's wrong with having the commissioner confirmed by the Senate? There's going to be a Senate, whether it's a unicameral or a bicameral Senate.

DELEGATE HELIKER: Well, I say again, aren't these all the same?

CHAIRMAN GRAYBILL: Well, that's what Mr. Schiltz is checking.

DELEGATE SCHILTZ: Well, no, this is— just applies to the unicameral situation, you see. No, wait-I've got to work on this.

CHAIRMAN GRAYBILL: Let's see, Section 8, 1, 2 and 4. They are confirmations. I don't

see why you need them-looks to me like subsection (c) is wrong, Mr. Schiltz, because at least the one on the Executive Article, subsections 1, 2 and 4, are concerning confirmation of appointments, and there's no reason why that can't still stay "Senate".

DELEGATE SCHILTZ: Well, I guess that's right.

CHAIRMAN GRAYBILL: All right, now, let's look at Judiciary.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Let's just check it out here-Judiciary-VIII, 1 and 2. Yeah, that's still to be-for the courts are to be confirmed by the Senate, too, so I think that the problem is that subsection (c) on page 1 is unnecessary, Mr. Schiltz.

DELEGATE SCHILTZ: I think that's right.

CHAIRMAN GRAYBILL: Mr. Garlington, do you have an opinion?

DELEGATE GARLINGTON: I want to point out, Mr. Chairman, that in Section 1 of Article V of the unicameral on page 15, line 4, it is said of the unicameral body thatitis "a Legislature". It doesn't call it "a Senate", it calls it "a Legislature".

CHAIRMAN GRAYBILL: It's a Legislature with members called "senators". All right, we either got to take it out or we got to put Mr. Heliker's in.

DELEGATE SCHILTZ: No, I think Mr. Garlington is right. We should put-1 got on that a minute ago-and we should put Mr. Heliker's in.

CHAIRMAN GRAYBILL: All right, the motion is to add to the top of the second page, after the word "Judiciary", a comma and "subsection 1 of Section 2, Article XII, Departments and Institutions period". All in favor of doing that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.
Now, Mr. Schiltz, do you think you're ready to move the adoption schedule as a whole?

DELEGATE SCHILTZ: I do. Mr. Chairman, I move when this Committee does arise and report, after having had under consideration the Adoption Schedule, Style and Drafting Final Report, it recommend the same be adopted.

CHAIRMAN GRAYBILL: So many as are in favor of adopting the Adoption Schedule as a whole, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. Now, we'll look at the Transition Schedule, which was in those papers you had yesterday and you probably should take apart-Transition Schedule.

DELEGATE SCHILTZ: It's the last page of the book, Mr. Chairman.

CHAIRMAN GRAYBILL: It is also in the book. If you have stricken-in your book you should have stricken the official ballot and you should have stricken the Adoption Schedule. It's the third from the last page in the book, and the Transition Schedule is identical there and on the pages that we had yesterday. Will the clerk please read the Transition Schedule so we can all become acquainted with it.

CLERK HANSON: "The report of the Committee on Style, Drafting, Transition and Submission, Final Report. Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been exhausted"--"been executed".

CHAIRMAN GRAYBILL: Executed.
(Laughter)

CLERK HANSON: "Once each year, the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from this schedule and no longer published as part of this Constitution. Section 1. Accelerated effective date; Section 2. Delayed effective date; Section 3. Prospective operation of declaration of rights; Section 4. Terms of Judiciary; Section 5. Terms of Legislators; Section 6. General transition. Section 1. Accelerated effective date. Section 14. Districting and apportionment, of Article V, The Legislature, shall be effective January 1, 1973. Section 2. Delayed effective date. The provisions of these—of

Sections 1, 2 and 3 of Article V. Legislature, shall not become effective until the date the first redistricting and reapportionment plan becomes law. Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive. Section 4. Terms of the Judiciary. Supreme Court justices, District Court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed. Section 5. Terms of Legislators. Subsection 1. The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law. Subsection 2. The senators first elected under this Constitution shall draw lots to establish a term of 2 years for one-half of their number. Section 6. General transition. Subsection 1. The rights and duties of all public bodies shall remain as if this Constitution had not been adopted, with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to or inconsistent with the provisions of this Constitution shall remain in force until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. Subsection 2. The validity of all public and private bonds, debts, and contracts and of all suits, actions, and rights of action shall continue as if no change had taken place. Subsection 3. All officers filing for any office by election or appointment shall continue the duties thereof until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto." Mr. Chairman, Transition Schedule.

CHAIRMAN GRAYBILL: All right. Now, there are some amendments to this, but they are all written and they can probably be taken care of easily.

Do you want to make a statement before you take up your first amendment, Mr. Schiltz?

DELEGATE SCHILTZ: Well, Mr. Chairman, the Transition Schedule, as you can tell from the reading we just had, is in order to have some continuity between the old Constitution and the new one and for an orderly transfer from that old Constitution to a new one, and I don't think I need to say any more than that.

CHAIRMAN GRAYBILL: All right, Mr. Schiltz, you have an amendment up here. May we read it?

DELEGATE SCHILTZ: Please.

CLERK HANSON: "Transition Schedule. Mr. Chairman. I move to amend Section 6, subsection 3, of the Transition Schedule by deleting the word 'there', after the word 'until', and adding, between 'until' and 'offices', the following: 'the end of the terms to which they were appointed or elected, and until their'. Signed: Schiltz."

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: This is in the last subsection, subsection 3, and the amendment deletes the word "their", after the word "until"—that's in the second line-and adds the following phrase: "the end of the terms to which they have been appointed or elected, and until their". Okay,

Now, Mr. Schiltz, do you want to discuss that?

DELEGATE SCHILTZ: Briefly, Mr. Chairman. This-there was some question in the minds of the committee and other people whether the secretary--or the treasurer and the clerk of the Supreme Court might be terminated prior to the time when their elected terms ran. In other words, without this language it was possible the Legislature could abolish their job and they would be out of business, so that language was put in there for that purpose.

CHAIRMAN GRAYBILL: It merely allows them to serve out the terms for which they're now elected, is that right?

DELEGATE SCHILTZ: That's correct.

CHAIRMAN GRAYBILL: All right, is there any discussion?

Mr. Mahoney.

DELEGATE MAHONEY: In this case and the case of the treasurer--and if he was elected this year-he would be out at the end of this year under this, wouldn't he?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I would like to ask Mr. Schiltz a question. Would he yield, please?

DELEGATE SCHILTZ: I yield.

DELEGATE McDONOUGH: Does this

affect the appointed boards that might be abolished by this Constitution-or changed? Would those appointed boards that are public office still remain until their term expires?

DELEGATE SCHILTZ: Well, I assume it would, Mr. McDonough. I don't know if there are any, but it's appointments that are appointed for a definite term and that's-but, of course, what we already had in there affected those same people to the same extent. This language just makes sure that they can serve to the end of their elected or appointed term.

CHAIRMAN GRAYBILL: Is there further discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. All right, Mr. Loendorf has an amendment. Do you want to read it-do you want us to read it, Mr. Loendorf?

(Chairman Graybill had pronounced Delegate Loendorf s name as Low-en-dorf-whereas it is correctly pronounced as Lynndorf)

DELEGATE LOENDORF: Yes, Mr. Redbill. (Laughter)

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Yes, Mr. Chairman, please.

CHAIRMAN GRAYBILL: We'll read it wrong if you aren't careful. (Laughter) Okay. Excuse me, Mr. Loendorf. It would have been easier, though, if they'd spelled it differently, wouldn't it? (Laughter)

DELEGATE LOENDORF: Yes.

CHAIRMAN GRAYBILL: Okay, Mr. Loendorfs amendment.

CLERK HANSON: "Transition schedule. Mr. Chairman. I move to amend Section 1 of the Transition Schedule by deleting, on the first line of Section 1, the word 'Section' and inserting in lieu thereof the following: 'Section 6 (session) and'. Signed: Loendorf."

CHAIRMAN GRAYBILL: That's on Section 1, and you want to delete the word "Section"?

DELEGATE LOENDORF: What it does, Mr. Chairman, it simply-1 don't really delete the word "Section"; I delete it and replace it with the word "Sections"-the plural.

CHAIRMAN GRAYBILL: Oh, 6 and 14, is that what you wanted to say?

DELEGATE LOENDORF: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: "-Sections 6 and 14", instead of just Section 14. All right, you may explain it.

DELEGATE LOENDORF: Okay. Very briefly, Mr. Chairman, this was an amendment approved by Style and Drafting this morning. However, we did not have time to have it typed and included as a part of the Transition Schedule here. Therefore, it's necessary to make this amendment from the floor. The purpose is-as you know, our Legislature now has more work than it can handle in 60 days. We're about to drop on it, if this Constitution passes, much more work. In other words, at this next session they'll have to take care of implementing legislation. By adopting this amendment, you merely allow Section 6 to become effective next January 1, rather than on July 1, 1973. In other words, it becomes effective 6 months earlier, and how this will help the Legislature is this: they can meet 60 legislative days, rather than 60 continuous days. You will relieve them from that pressure-cooker process they're in now, and you'll give them more time to consider not only their regular work but the additional work we're creating for them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Any discussion?
(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Loendorf s amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. All right, we have another one up here. Mr. Kelleher, do you want us to read yours? Pardon? May we read yours?

DELEGATE KELLEHER: (Inaudible)

CLERK HANSON: "Transition Schedule. Mr. Chairman. I move to amend Section 4, the Transition Schedule, by deleting the words 'become effective' and inserting in lieu thereof the following new words: 'is ratified'-so that the section reads as follows: 'Section 4-Terms of Judiciary. Supreme Court justices, District Courtjudges, and judges of the peace holding office when this Constitution is ratified shall serve the terms for which they were elected or appointed.' Signed: Heliker—Kelleher." Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher, do you want to explain that.

DELEGATE KELLEHER: All 28 district judges are up for reelection this year, and this would mean that they would get the 6-year terms instead of the 4-year terms.

CHAIRMAN GRAYBILL: Mr. Schiltz, do you have any comment?

DELEGATE SCHILTZ: Well, the only thing is, we've used the words "become effective" all throughout the Transition Schedule and the Adoption Schedule; we've got an effective date which uses that sort of terminology. Up in Section 1, we talk about "shall be effective January 1, 1973". That's-it's our terminology. I don't see either-how "is ratified" gives them any longer term than "becomes effective". I don't know-I'd like to have it explained.

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I assume that if it's ratified, that would be June the 6th. That would be the date of ratification, and they'll be running in November for terms beginning next January.

CHAIRMAN GRAYBILL: I guess-the Constitution doesn't become effective, Mr. Schiltz, until January 1, 1973. Is that before—

DELEGATE SCHILTZ: No—

CHAIRMAN GRAYBILL: Do their terms come before that?

DELEGATE SCHILTZ: The effective date of the Constitution will be July 1, 1973.

CHAIRMAN GRAYBILL: I see.

DELEGATE SCHILTZ: And I see now what Mr. Kelleher is getting at. I'm not—

CHAIRMAN GRAYBILL: Would you rather change it to-"and justices of the peace holding office-shall serve the terms for which they were elected"-or do you want to make it January Ist? Do you want to add that section up above under accelerated effective date?

DELEGATE SCHILTZ: No, I want to stay with what we have, which is "becomes effective", This matter came up in the committee, and we rejected the thought-I see now what it is-and decided that everybody would start after the effective date-and there's just as much reason to apply an accelerated effective date to every officer we have-1 don't--and I wouldn't want to fool with it.

CHAIRMAN GRAYBILL: In other words, if you vote for Mr. Kelleher, the judges that run this fall will get a 6-year term; but if you vote for the Style and Drafting Committee, the judges that run this fall get a 4-year term and the next ones will get a 6-year term. That's correct. All right; so many as are in favor of Mr. Kelleher's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and Mr. Kelleher's is defeated. Very well, are there other amendments? I have no more up here.

(No response)

CHAIRMAN GRAYBILL: If not, Mr. Kelleher- Mr. Schiltz, do you want to move the Transition Schedule as a whole?

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration the Transition Schedule, Style and Drafting Committee's Final Report, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted.

Now, Mr. Eskildsen, I'd move that this committee rise and report fully-or whatever you want to do.

DELEGATE ESKILDSEN: Mr. Chairman-

CHAIRMAN GRAYBILL: Just a moment.

Mr. Habedank.

DELEGATE HABEDANK: I may be wrong, but according to my schedule, we never did adopt the Legislative Article, Number III, that we amended. Did that ever get adopted completely?

CHAIRMAN GRAYBILL: Legislative on what?

DELEGATE HABEDANK: Article III, I think it is, by-a roll call vote is required.

CHAIRMAN GRAYBILL: Well, I-we're going to move now to Order of Business Number 6. We have just completed the style and drafting on Sections 5 and-or Article V and Article III, and we're going to VI.

Now, Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: Mr. Chairman, I rise to inquire if the sections in the ballot-l, 2, 3 and 4—were individually moved and approved, and if the record shows that?

CHAIRMAN GRAYBILL: No, they were not individually moved, they were-but I'm not sure they're sections. They're divisions. We moved the ballot as a whole on style and drafting.

DELEGATE ROMNEY: Is that all the record needs to show?

CHAIRMAN GRAYBILL: Do you--well, Mr. Schiltz and Mr. Murray, the official ballot is not really sectionalized. Do I have to have a separate motion on each ballot? We did approve each part and then we adopted it, but we didn't-any reason we can't rise and report the ballot as a whole?

DELEGATE SCHILTZ: Well, Mr. Chairman-

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I don't think the ballot or the adoption schedule will be part of the Constitution, and so I think they are each adopted as a whole, although they're sectionalized. The ballot isn't, but the adoption schedule is.

CHAIRMAN GRAYBILL: Now well, Mr. Schiltz, I didn't get the sense of your message.

DELEGATE SCHILTZ: Well-Well, may be I was wrong, but I-I didn't—

CHAIRMAN GRAYBILL: All right, let's put it this way. We have now voted, Mr. Romney, on the style and drafting of the ballot and we've adopted it for style and drafting. Now, Mr. Murray, should we move the ballot? We certainly can move III and V to Order of Business 6. Should we move the ballot and this other material to 6 or to 5? Mr. Hanson tells me that there's a rule that says the ballot and this transitional material all goes directly to 6. Is that correct?

DELEGATE MURRAY: Mr. Chairman, Rule 51, I think, requires that all of this material go to Order of Business Number 6.

CHAIRMAN GRAYBILL: "Committee of the Whole consideration of proposed constitutional ballot. The proposal of the Committee on Style shall be considered only as to the form of the proposed Constitution and the form and style of ballot. The report of the Committee of the Whole shall be referred to Order of Business Number 6. The vote on Order of Business Number 6 shall be without debate and be a recorded roll call vote of the delegates." So the rules-that's Rule 51—requires that the Style and Drafting Committee proposal on the Constitution as a whole and the ballot and this other material go directly to Order of Business Number 6. Now, in Order of Business Number 6, we will adopt the two articles individually and we will adopt this other material individually. We can take it separately, but I don't know that we'd take it singly. Is there—

Mr. Murray.

DELEGATE MURRAY: I think that we should move the Adoption Schedule, the Transition Schedule, the Ballot and III and V and take a vote on each one just to cover this.

CHAIRMAN GRAYBILL: Yes. Well, we'll do that, but Mr. Romney's question is, "Do we want to vote separately on parts 1, 2, 3 and 4 of the ballot?"

DELEGATE MURRAY: No, the ballot is considered in its entirety under these rules.

CHAIRMAN GRAYBILL: The ballot is proposed by Style and Drafting as a unit and it's to be considered as a unit. In other words, Mr. Romney, the ruling of-the rules--or the opinion of Mr. Murray and the ruling of the Chair would be that those numbers are not subsections of a ballot, they are distinguishing issues on a ballot, and that the ballot is a unit.

Mr. Romney.

DELEGATE ROMNEY: I do not object to it, but I thought that it not having been done, it was well to discuss it now.

CHAIRMAN GRAYBILL: Right, I think it is a good thing you mentioned it, and we will vote on each of those parts individually when we get to Order of Business Number 6, if that's all right with everybody.

All right, we need to move to rise and report finally, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move the Committee of the Whole rise and finally report. (Cheers from the delegates)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. And we'll do that promptly for you.

(Proceedings resolved into Convention with President Graybill presiding)

PRESIDENT GRAYBILL: Very well, the clerk will please read the Committee of the Whole report and the signature.

CLERK HANSON: "March 22, 1972. Mr. President. We, your Committee of the Whole, having had under consideration business on General Orders, recommend as follows: thatthecommittee rise and finally report. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Is there anyone that would like the Committee of the Whole report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well.

Mr. Eskildsen, will you move that the Committee of the Whole report be referred to Order of Business Number 6.

DELEGATE ESKILDSEN: Mr. President, I move the Committee of the Whole be adopted and that Proposal Number 3-Proposal Number 5, the Ballot, the Transition Schedule and the Adoption Schedule be placed on Order of Business Number 6.

PRESIDENT GRAYBILL: You have heard the motion. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: Very well. We're on Order of Business Number 6.

Mr. Eskildsen, do you want to move us to Order of Business Number 6?

DELEGATE ESKILDSEN: Without objection, may we be on Order of Business Number 6?

PRESIDENT GRAYBILL: Is there objection?

(No response)

PRESIDENT GRAYBILL: Very well, we're on Order of Business Number 6. On Order of Business Number 6, the Chair would like to take the balance of the Constitution first, and this morning we passed section--or, I mean, Article III, which is the General Government Article, beginning on page 11 and going through page 13, with the first Section 9 on gambling deleted. So many as shall be in favor of Article III, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Please take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O. ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye

Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown.. ..... Absent
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce.. ..... Aye
Kamhoot ..... Aye
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe.. ..... Absent
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK **HANSON:** Mr. Chairman, 84 delegates voting Aye, 2 voting No.

PRESIDENT GRAYBILL: 84 delegates having voted Aye; and 2 voting No, Article III is adopted. Now, if you'll turn to Article V-and it's the bicameral. Article V, beginning on page 23, continuing through page 28. So many as shall be in favor of Article V, The Bicameral Legislature, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, cast the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Absent
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates.. ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock.. ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Absent
Brown.. ..... Aye
Bugbee ..... Nay
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Absent
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong,, ... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Nay
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield., ... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray.. ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Nay
Roeder ..... Aye
Rollins., ... Nay
Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Nay
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Absent
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 77 delegates voting Aye, 9 voting No.

PRESIDENT GRAYBILL: 77 delegates having voted Aye and 9 voting No, section-or Article V is adopted. Now, if you'll take the ballot, as amended today, including the amendatory language and including the unicameral-bicameral, part 2, and including the reversal of Harper's on part 3 and including part 4. So many as shall be in

favor of the ballot proposal as amended and adopted this afternoon, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Absent
Choate ..... Nay
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Nay
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Nay
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Nay
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Nay
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Aye
Robinson ..... Nay
Roeder ..... Aye
Rollins ..... Nay
Romney ..... Nay
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Spew ..... Aye
Studer ..... Nay
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye

Woodmansey ....Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 79 delegates voting Aye, 11 voting No.

PRESIDENT GRAYBILL: 79 delegates having voted Aye and 11 No, the Ballot is adopted. Now, if you'll take the Adoption Schedule, as amended in Committee of the Whole and adopted for style, including the changes we've made this afternoon. So many as shall be in favor of the Adoption Schedule, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate want to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim .....Aye
Anderson, J. .....Aye
Anderson, 0 ..... Aye
Arbanas .....Aye
Arness .....Absent
Aronow ....Aye
Artz ....Aye
Ask .....Aye
Babcock ....Aye
Barnard ....Aye
Bates.. ....Aye
Belcher ....Aye
Berg.. ....Aye
Berthelson ..... Aye
Blaylock .....Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ....Aye
Brown.. ....Aye
Bugbee ....Aye
Burkhardt ....Aye
Cain .....Aye
Campbell ..... Excused
Cate .....Absent
Champoux ..... .Absent
Choate .....Aye
Conover ....Aye
Cross.. ....Aye
Dahood.. ....Absent
Davis .....Aye
Delaney ....Aye
Driscoll ..... Aye
Drum .....Absent
Eck ....Aye
Erdmann ....Aye
Eskildsen ....Aye
Etchart ....Aye
Felt ....Absent
Foster ....Aye
Furlong. ....Aye
Garlington ....Aye
Gysler ....Aye
Habedank ....Aye
Hanson, R.S..... ..Aye
Hanson, R. ....Aye
Harbaugh ....Aye
Harlow ....Aye
Harper ....Aye
Harrington ....Aye
Heliker ....Aye
Holland. ..... .Absent
Jacobsen ....Aye
James ....Aye
Johnson ....Aye
Joyce ....Aye
Kamhoot ....A$ e
Kelleher ....Aye
Leuthold ....Aye
Loendorf ....Aye
Lore110 ....Absent
Mahoney ....Aye
Mansfield ....Aye
Martin ....Aye
McCarvel ....Aye
McDonough ....Aye
McKeon ..... .Absent
McNeil ....Aye
Melvin ....Aye
Monroe ....Aye
Murray ....Aye
Noble ....Aye
Nutting ....Aye
Payne ....Aye
Pemberton ....Aye
Rebal ....Aye
Reichert ....Absent
Robinson ....Aye
Roeder ....Aye
Rollins. ....Aye
Romney ....Aye
Rygg ....Aye
Scanlin ....Aye
Schiltz ....Aye
Siderius ....Aye
Simon ....Aye
Skari ....Aye
Sparks ....Aye
Speer ....Aye

Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 89 delegates voting Aye, no delegates voting No.

PRESIDENT GRAYBILL: 89 delegates having voted Aye, the Adoption Schedule is adopted. All right, if you'll take the Transition Schedule that we worked on this afternoon and that we amended most recently. So many as shall be in favor of the Transition Schedule, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, O ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Absent
Choate ..... Aye
Conover ..... Aye
Cross ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye
Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... Aye
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Nay
Holland ..... Absent
Jacobsen ..... Aye
James ..... Aye
Johnson ..... Aye
Joyce ..... Aye
Kamhoot ..... Aye
Kelleher ..... Nay
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin ..... Aye
McCarvel ..... Aye
McDonough ..... Aye
McKeon ..... Absent
McNeil ..... Aye
Melvin ..... Aye
Monroe ..... Aye
Murray ..... Aye
Noble ..... Aye
Nutting ..... Aye
Payne ..... Aye
Pemberton ..... Aye
Rebal ..... Aye
Reichert ..... Absent
Robinson ..... Aye
Roeder ..... Aye
Rollins ..... Aye

Romney ..... Aye
Rygg ..... Aye
Scanlin ..... Aye
Schiltz ..... Aye
Siderius ..... Aye
Simon ..... Aye
Skari ..... Aye
Sparks ..... Aye
Speer ..... Aye
Studer ..... Aye
Sullivan ..... Aye
Swanberg ..... Aye
Toole Aye
Van Buskirk Aye
Vermillion Aye
Wagner ..... Aye
Ward ..... Aye
Warden ..... Aye
Wilson ..... Aye
Woodmansey Aye
Mr. President Aye

CLERK HANSON: Mr. President, 87 delegates voting Aye, 2 delegates voting No.

PRESIDENT GRAYBILL: 87 delegates having voted Aye and 2 No, the Transition Schedule is adopted. Now, ladies and gentlemen, you have adopted on Order of Business Number 6, Final Adoption, the Preamble, the fourteen sections of the Constitution, the ballot, the adoption schedule, the transition schedule. The Chair now puts the question to you to adopt the whole Constitution package, including the Preamble, the fourteen sections, the ballot, the adoption schedule, the transition schedule. So many as are in favor of that total package, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Mr. Simon.

DELEGATE SIMON: (Inaudible)-could Chairman of the Drafting Committee get back so he could vote? He left just a moment ago.

(Delegate Schiltz returned to the floor—laughter)

PRESIDENT GRAYBILL: Mr. Schiltz, we're voting on the Preamble, the fourteen sections, the ballot, the adoption schedule and the transition schedule as a lump. Do you want to vote?

DELEGATE SCHILTZ: Yes, I do, Mr. President.

PRESIDENT GRAYBILL: Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot.

Aasheim ..... Aye
Anderson, J. ..... Aye
Anderson, 0 ..... Aye
Arbanas ..... Aye
Arness ..... Absent
Aronow ..... Aye
Artz ..... Aye
Ask ..... Aye
Babcock.. ..... Aye
Barnard ..... Aye
Bates ..... Aye
Belcher ..... Aye
Berg.. ..... Aye
Berthelson ..... Aye
Blaylock ..... Aye
Blend ..... Aye
Bowman ..... Aye
Brazier ..... Aye
Brown ..... Aye
Bugbee ..... Aye
Burkhardt ..... Aye
Cain ..... Aye
Campbell ..... Excused
Cate ..... Absent
Champoux ..... Aye
Choate ..... Aye
Conover ..... Aye
Cross.. ..... Aye
Dahood ..... Absent
Davis ..... Aye
Delaney ..... Aye
Driscoll ..... Aye
Drum ..... Absent
Eck ..... Aye
Erdmann ..... Aye
Eskildsen ..... Aye
Etchart ..... Aye
Felt ..... Absent
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Aye

Habedank ..... Aye
Hanson, R.S. ..... Aye
Hanson, R. ..... .Aye
Harbaugh ..... Aye
Harlow ....Aye
Harper .....Aye
Harrington ..... Aye
Heliker ....Aye
Holland ..... .Absent
Jacobsen ....Aye
James ..... Aye
Joyce .....Aye
Kamhoot ....Aye
Kelleher ..... .Aye
Leuthold .....Aye
Loendorf .....Aye
Lorello ..... .Absent
Mahoney ..... Aye
Mansfield ..... Aye
Martin .....Aye
McCarvel .....Aye
McDonough ..... Aye
McKeon ..... .Absent
McNeil ....Aye
Melvin .....Aye
Monroe.. ....Aye
Murray.. ....Aye
Noble ..... Aye
Nutting .....Aye
Payne ..... Aye
Pemberton ..... .Aye
Rebal .....Aye
Reichert ..... .Absent
Robinson ....Aye
Roeder ..... Aye
Rollins .....Aye
Romney ....Aye
Rygg ....Aye
Scanlin.. ....Aye
Schiltz ..... Aye
Siderius .....Aye
Simon ..... Aye
Skari ....Aye
Sparks .....Aye
Spew.. ....Aye
Studer.. ....Aye
Sullivan ....Aye
Swanberg .....Aye
Toole ....Aye
Van Buskirk ..... Aye
Vermillion ..... Aye
Wagner .....Aye
Ward ....Aye
Warden .....Aye
Wilson ..... Aye
Woodmansey Aye
Mr. President Aye

CLERK HANSON: Mr. President, 90 delegates voting Aye, no delegates voting No.

(Applause)

PRESIDENT GRAYBILL: Very well, 90 delegates having voted Aye and none voting No, we've adopted the Constitution. Now, we will-the Chair, under Rule 51, hereby orders the Constitution enrolled, and the enrolling will be done and, as you know, Mr. Garlington will have it ready for us to sign on Friday morning. Now, the Chair—Friday morning at 10 o'clock. Now, without objection, the Chair would like to be on Order of Business Number 11, Announcements. Any objection? Mr. Harper, have you got an objection?

DELEGATE HARPER: No. There's a song out of World War II we should have sung—"Praise the Lord, We've Passed the Constitution". (Laughter)

PRESIDENT GRAYBILL: Well, I think that's what we have to do on June 6th, Mr. Harper, and then we'll sing. The Chair would like to announce that we will meet at 9 o'clock tomorrow. There are some matters-there's a report from Mr. Garlington's committee telling us how to act on Friday, there's a resolution, there are one or two other minor matters; however, the Chair will attempt to avoid any lengthy debates tomorrow morning and we may be able to get out of there pretty soon, but I would like to have attendance tomorrow morning, since you're going to be paid for that day.

Mr. Murray.

DELEGATE MURRAY: Just one thing, Mr. President. I think maybe some of the delegates would like to know that the pages have taken an estimate of the number of words in the newly proposed Constitution, and we estimate approximately 12,000 words, and that's as opposed to 28,000 in the present Constitution-some 43 percent smaller.

PRESIDENT GRAYBILL: Now, there's one other thing. In order that you might be aware of the Friday affairs as fast as possible and before you read it in the newspapers, the Chair would like Mr. Hanson to read this news release which the select committee has put out this afternoon. It'll only take a minute.

CLERK HANSON: "News Release. Cere-

monial Proceedings, Montana Constitutional Convention. The final signing and sealing of the proposed new Constitution will take place in Convention Hall at 10 o'clock a.m., Friday, March 24, 1972. The original document is to be signed by the President, attested by the Secretary, and then signed in alphabetical order by the delegates. This will be the last official session of the Convention. It will open in the usual manner with the Pledge of Allegiance to the flag and the Invocation, which will be given by Reverend H. R. Anderson, Jr., First Presbyterian Church of Great Falls, Montana. First Vice President John Toole will preside as master of ceremonies. This is of special interest, since his grandfather, John R. Toole, served as a delegate to the 1889 Convention and its original document bears his signature. As a matter of general interest, the 1889 Constitution will be displayed at the signature table in the care of its official custodian, the Secretary of State. A number of guests have been invited to participate in the proceedings. These include the chief executive, Governor Anderson; the chief justice, Justice Harrison; and the senior legislators of Montana, Senator Dave Manning of Hysham and Representative Thomas Haines of Missoula. Chief Old Person, who has just completed his term of service as President of the National Congress of American Indians, will also be present. Since youth groups of Montana have taken such marked interest in the Convention proceedings, the Governor of Boys' State and Girls' State, the President of YMCA Youth Constitutional Convention of 1972, and the Chairman of the University Student Presidents Association also will participate. The Constitutional Revision Commission and the Constitutional Convention Commission, as originators and sponsors of the Convention, will be represented by Mrs. Firman (Marge) Brown of Missoula, who served in both commissions. Following a closing address by President Graybill, the original document will be signed by the officers and delegates, after which the adjournment of the Convention sine die will occur. This date corresponds precisely to the projected last day on which the full Convention process was budgeted for. Payment out of the legislative appropriation provided for it. The proceedings will close with a benediction given by the Most Reverend Raymond G. Hutchinson, [sic] Bishop of the Diocese of Helena. J. C. Garlington, Chairman, Ceremonial Committee."

PRESIDENT GRAYBILL: Thank you, Mr. Hanson. The Chair would also like to announce that tomorrow the much-postponed meeting of the Voter Education Committee will take place-after our adjournment in the morning, tomorrow. And-are there other announcements for tomorrow or for tonight? Oh-Yeah, I guess that's all.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President.

PRESIDENT GRAYBILL: Just a moment, Mr. Eskildsen. Mrs. Pemberton is on her feet.

DELEGATE PEMBERTON: The women delegates who are still free are still expected in Room 127 at the Colonial.

PRESIDENT GRAYBILL: Is that a discriminatory note that's creeping in here at the last minute? (Laughter)

Are you on your feet, Mrs. Sullivan?

DELEGATE SULLIVAN: I am, Mr. President. For the record, may I say that it's Bishop Raymond G. Hunthausen, and not Hutchinson. John, only for the record.

PRESIDENT GRAYBILL: Very well,

All right, now, I guess, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, at times when we was working here I thought, maybe, that our alligator mouths was going to get away with our hummingbird brains, but I think we've done pretty well. And with that, I'd move that we stand adjourned until March 23, 9:00 a.m., 1972.

PRESIDENT GRAYBILL: Very well, the motion is to adjourn until 9:00 a.m. tomorrow. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 6:40 p.m.)

March 23, 1972 Fifty-Third Day Convention Hall
9:20 a.m. Helena, Montana

PRESIDENT GRAYBILL: The Convention will come to order. If you'll all stand, Reverend Harper will lead us in an invocation.

DELEGATE HARPER: You know, last night as I stood in the yard of our home and looked across this town to the beautiful lighted capitol dome, thrusting itself up into the darkness with its new-found brilliance, I know it may sound corny to say, but I had a moment of overwhelming pride that we had been privileged to be now a real part of what this lighted dome symbolizes, and I found myself wishing that the first man and woman who lit that first tallow candle in the first sod hut on the Montana prairie could have stood here with us, and maybe, as St. Paul said, they do, seeing as we are surrounded by so great a cloud of witnesses. Let's bow our heads to pray. Lord, we really do thank You that we have been privileged to share this once-in-a-lifetime privilege and opportunity together. And now remind us that our work is never done, that freedom is never free, that we must be willing to make payment on it every day for the rest of our lives. Assure us that brotherhood and peace is not so wild a dream as those who profit by postponing it pretend, and keep us working for others as long as You work. Amen.

PRESIDENT GRAYBILL: We will take attendance by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Bowman, Campbell and Lore110 be excused this day?

PRESIDENT GRAYBILL: Bowman, Campbell and Lore110 are excused.

CLERK HANSON: Delegate Blaylock, Delegate Bugbee, Delegate Dahood, Delegate Eck, Delegate Holland, Delegate Monroe, Delegate Wagner.

PRESIDENT GRAYBILL: Delegate Wagner is excused.

CLERK HANSON: Delegate Wagner excused. Delegate Holland.

PRESIDENT GRAYBILL: Very well, take the attendance.

Aasheim		Present
Anderson,	J.	Present
Anderson,	0..	Present
Arbanas		Present
Arness		Present
Aronow		Present
Artz		Present
Ask		Present
Babcock		Present
Barnard		Present
Bates		Present
Belcher		Present
Berg		Present
Berthelson		Present
Blaylock		Present
Blend		Present
Bowman		Excused
Brazier		Present
Brown		Present
Bugbee		Present
Burkhardt		Present
Cain		Present
Campbell		Excused
Cate		Present
Champoux		Present
Choate		Present
Conover		Present
Cross..		Present
Dahood		Present
Davis		Present
Delaney		Present
Driscoll		Present
Drum..		Present
Eck		Present
Erdmann		Present
Eskildsen		Present
Etchart		Present
Felt		Present
Foster		Present
Furlong		Present
Garlington		Present
Gysler		Present
Habedank		Present
Hanson, R.S		Present
Hanson, R.		Present
Harbaugh		Present
Harlow		Present
Harper		Present
Harrington		Present
Heliker		Present
Holland		Absent
Jacobsen		Present
James		Present
Johnson		Present
Joyce		Present
Kamhoot		Present
Kelleher		Present

Leuthold	Present
Loendorf	Present
Lore110	Excused
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
R0binson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Excused
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present
Mr. President	Present

CLERK HANSON: Mr. President, 95 delegates present, 4 excused, 1 absent.

PRESIDENT GRAYBILL: Very well, the journal may so show. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: "Mr. President, the Committee on Style, Drafting, Transition and Submission transmits the official ballot adopted by the Convention March 22, 1972. Sincerely, John M. Schiltz, Chairman, Committee on Style, Drafting, Transition and Submission."

PRESIDENT GRAYBILL: Very well, the Style and Drafting Committee having presented the Chair with the ballot-having submitted the ballot, the Chair will submit the ballot to the Rules Committee with the instructions that it be passed on to the Secretary of State for inclusion in the preparation of the ballots for the election. The Chair understands that the ballot will be printed and placed at the back of the Constitutions that we're getting ready for you in printing today so you'll have a ballot form to show people. The ballot is now accepted and transmitted. Very well, Order of Business Number 2, Select Committees.

Mr. Garlington, do you want to, at this time, discuss the proceedings tomorrow, so that everyone knows what we're doing?

DELEGATE GARLINGTON: Be very glad to, Mr. President. The Convention will convene tomorrow, not at 9 o'clock but at 10 o'clock, and will convene in the usual manner at that time; first, with the Pledge of Allegiance to the flag, the invocation, and the roll call, after which Vice President Toole will take the Chair to conduct the further proceedings. I want to inform you all that we will be invaded this afternoon by the commercial television people, who are going to establish themselves in the left-hand area here in order to make their records of these final closing proceedings. After Mr. Toole takes the Chair, there will be a matter of resolutions to be handled by the body, certain telegrams and other communications to be received, and then we will get to the introduction of the guests at the signing ceremonies. These guests will include the Governor, as the chief representative of the Executive Branch of government; the acting Chief Justice-it appearing to me last night that the chief himself is obligated to leave town today to be in Great Falls; and we'll have as a representative of the Legislative Branch the oldest, in point of service, legislator, Mr. Tom Haines of Missoula. Senator Manning, who I think is the dean of the legislative body, told me last night about 7 o'clock that he felt he would not be able to be here, and so we have concluded simply to have one representative of the Legislative Branch. Beyond that, we're going to have the Lieutenant Governor of Boys' State, the Governor of Girls' State, the President of the YMCA Constitutional Convention which met here in Helena in January and did a very creditable job of composing a convention-in fact, I thought of putting

it in as a delegate proposal at one time, because I thought it was really extremely well done. We will have a representative of the University Student Presidents Association-this is not quite the correct term, but you know who I mean. The Chairman of that group is our clerk, John Hanson, so we will be devoting him to professional service as our clerk, since this is a regular meeting of the group, so he is bringing in one of his co-chairmen for the purposes of this occasion. We will also have Chief Old Person, who is probably the highest-ranking member of the Indian culture that we have in Montana. Now, we have asked these people whom I have named to just give us, in effect, a word of greeting or a minute or two, because we recognize that the limitations of time in presenting any commercial television news coverage of these proceedings just can't drag out, drag out, drag out. So this will all proceed very rapidly. At the conclusion of the introduction of these guests--and I must mention that Mrs. Firman Brown of Missoula happens to have served on both the Constitutional Revision Commission and the Constitutional Convention Commission, so she is going to represent both of those groups from our antecedents and forebears. Senator MacDonald was Chairman of the Revision Commission, and he can't come. The other people who were the chairmen and vice chairmen of those groups are away somewhere, but Mrs. Brown will be here for both of them. Following the introduction of these guests and their brief comments, there will be an address to us by our President, and then we will proceed to the actual signing. The signing is going to be strictly in accordance with the rules. We're going to have that old table up in the corner right up here in front of the rostrum. It will have on it the old original Constitution of 1889, in the custody of Secretary of State. He will be here with the Great Seal. The rule calls for the final document, which is or the typewriters now, being readied for tomorrow, to be executed by the President and attested by the Secretary. So, at this table here, the President will come and sign, the Secretary will attest and affix the seal, after which the delegates are to sign the document in alphabetical order. So, without a lot of details, since we're accustomed to alphabetical order, we will begin here with Mr. Aasheim going right up to the table there and following with Mr. Anderson and right on through the list here, without any formality other than our own cooperation, so that one-by-one we go to the table and we sign the original document, which Mrs. Bowman will have there to see that we sign in the right place, and so on. We want also to have the original journal signed, so there will be a second document for each of us to sign on the table there, and Mrs. Bowman will be skippering that as well. While the rest of us are at our seats, we are going to get a few more copies of just the signature page of duplicate originals of the Constitution signed by all the delegates. We've had such practice autographing here in the last 3 or 4 weeks, and I am sure that won't be any additional problem. And just as a matter of historical record, we would like to have a duplicate original in the historical society or the state library, wherever it belongs, and perhaps one that can be in the Governor's office-that sort of thing. So we'll get some duplicate originals prepared, only in the signature pages, because we can't do the rest of it until there is more time for the machines to work at it. The Highway Department will be here to-be in the hall and take a little individual photograph of each of us as we sign the document, and we are hoping to arrange that the negative of the shot of each of us can be sent to each of us afterward so that we can then do whatever we want in the way of prints or enlargements or preservation of the thing as we may prefer. We have obtained a color print of this magnificent painting up here to give to each of you as a kind of a reminder of the ordeal through which you have now successfully passed, and we kind of think that that painting, plus the little photograph, will make a pretty good reminder for you of your participation in this Convention. We're working on another thought, which is to be able to obtain a full-sized duplicated copy of the original Constitution to give each of you for enough of a price to reimburse the state for the cost of the duplication. We don't know just what that is, but tomorrow morning on your desk, we hope to have a little kind of order form so that you can tell what the facts are about it and either have it or not as you may wish. I think, Mr.-then following the completion of the signing ceremonies, there will be the matter of formal adjournment, sine die, which Mr. Eskildsen will conduct, and then we will be having a final benediction by Bishop Hunthausen, and that will conclude the whole proceeding. As a guess as to time, we think that this will all certainly be accomplished by noon and then we'll be free to be on our way home. I guess I don't have any additional information to pass on at this time. Oh, the matter of signature of the document--we're going to use the sharp-pointed black felt pens for uniformity and ease of reproduction, so our thought is that all of us will do it in the same manner and the secretary will be provided with a supply of those so

that the signatures can be in proper form on the original document. I believe that's all I have to say, Mr. Chairman.

PRESIDENT GRAYBILL: Very well. Now, there may be some of you who have questions, and you may want to yield, Mr. Garlington. I have a question, so that everyone understands. Do we contemplate using signature pages with lines with the names typed under them so people can easily see who the signatures are.

DELEGATE GARLINGTON: That is our plan, yes, your honor. We are going to have them numbered and lined.

PRESIDENT GRAYBILL: Numbered and lined, so that you shouldn't have too much difficulty finding where to sign. Are there other questions about tomorrow's operations that you want to ask Mr. Garlington before we go on?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Garlington, would it be possible for people to take individual pictures of each one signing? Would the aisle be open for that purpose?

DELEGATE GARLINGTON: I think the aisle will be open. I will learn this afternoon from Mr. Tallon of the Highway Department how he wants to set it up here so that he can take, really, a pretty good picture of each of us as we sign the document at the table. Our hope is to not have too many of the TV lights spoil the photography. This is quite a problem, because of the glare of the lights on the lens, and he will kind of be here (illustrating). We'll have the table far enough over there so that it will be easy to pass up and down the center aisle here, and I think, beyond that, it's just a matter of individual skill at the photographing.

PRESIDENT GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Question. I don't suppose there'll be a hundred pens so we could take the pen with us that we signed the document with.

PRESIDENT GRAYBILL: Please don't take the pen, Mags-(Laughter) That would make it pretty narrow signing if you're the only one that got-(Laughter) Maybe Woodmansey might get the pen. I'm not-(Laughter) I suppose-the Highway is going to try and get individual pictures as we sign?

DELEGATE GARLINGTON: That's right.

PRESIDENT GRAYBILL: Right. And, if necessary, I imagine that either Cedor or Mrs. Bowman or maybe Mrs. Blend or Mr. Arness might trade chairs with the photographer or something. I would like to keep the aisle fairly clear so that people may use it to get to and from, but they might-I'm sure these people down here would be glad to share or put an extra chair in at that point. I am asking, tomorrow-we will have as many chairs set up as possible in the foyers on each side and perhaps other places in here to get more audience in, but I'm asking, tomorrow, that the delegates on the floor simply sit in their seats and not bring extra chairs into their area, for the simple reason that people will be looking at you and trying to identify you and I don't want to get the rows too badly out of line. We might make an exception to that in the case of a photographer at the front here, but let's try to keep the hundred chairs together, and then we'll fill up as much as we can without too much crowding the aisles on the edge. Are there other questions?

Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. President, is there any provision made for the wives of the delegates? Any particular area?

PRESIDENT GRAYBILL: No, it's first come, first served, but we want here-we're certainly happy if they can come in and sit on the floor; and you know, I don't mind you saving one, but we haven't put out passes. Other questions?

(No response)

PRESIDENT GRAYBILL: Very well, I think that takes care of the situation. We will start tomorrow morning as promptly as possible at 10:00, and we'll hope that everything goes well on the program. Order of Business Number 3, Communications.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5, Final Consideration.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Resolutions. Mr. Murray, where are you? Good morning, Mr. Murray. All right, Mr. Murray, we're going to start on 17. Have you got Resolution Number 17-m may the clerk read it? Clerk will read Resolution Number 17.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972. Resolution Number 17. Date introduced, March 22, 1972. Whereas, the Montana Constitutional Convention wishes to avoid challenges to its substantive and procedural work for violations of its rules or other technicalities. Now, therefore, it is hereby resolved: That the substantive work of the Montana Constitutional Convention shall not be subject to challenge on the basis of violations of Convention rules or other procedural technicalities, and for that purpose the delegates hereby ratify and affirm each and every substantive and procedural act taken by the Convention and its officers. Introduced by Committee on Rules and Resolutions, Marshall Murray, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the adoption of Resolution Number 17. By way of explanation, let me say that it's been suggested to the Rules Committee that we come forth with such a resolution. Because of the turmoil in the last few days of the Convention, particularly with respect to the waiver of our rules-the suspension of our rules, and particularly the matter of time, the advancement over the 48-hour rule, we felt that we might be exposing ourself to the possibility of some type of legal attack, either as to those particular measures which might have been affected by the suspension of the rules or the handling of those matters, perhaps, under the wrong order of business or, perhaps, even the entire Constitution itself, and we felt that it is something that should not happen and that we should not expose ourself to that possibility. I think that the resolution is ratherself-explanatory. It is the same type of action that stockholders take relative to the action of directors of a corporation in almost every instance, and I see nothing difficult about it. We are simply saying that it is our intention that we should not be subject to challenge on the basis of violations of Convention rules or other procedural technicalities, and for that purpose we ratify and affirm each and every substantive and procedural act taken by the Convention and its officers, and so we relate that to our procedures under our rules. The rules are our means of operation. And we do not think that any of the public should be able to take advantage of one of our rule problems, because-that certainly as far as anybody and—that I have discussed this problem with have been able to tell me, we have not had a substantive problem because of our rules, so I urge the adoption of the resolution.

PRESIDENT GRAYBILL: Very well, the resolution has the effect of ratifying the acts of the Convention and its officers and indicating that we don't wish technical procedural violations to stand in the way of the Constitution. Is there discussion of the resolution?

(No response)

PRESIDENT GRAYBILL: Very well; all in favor of the resolution, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Would you-Mr. Clerk, would you now read Resolution Number 18—Mrs. Reichert's.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972. Resolution Number 18. Date introduced: March 23, 1972. A resolution of the Montana Constitutional Convention to determine the delegates' preference for a unicameral or bicameral Legislature. Whereas, it is imperative that the people of Montana know the preference of the delegates regarding the legislative structure; Whereas, the record has not clearly shown the feelings of the body. Now, therefore, be it resolved by the Constitutional Convention of the State of Montana: There shall be a vote on this issue. Introduced by Arlyne Reichert, Mae Nan Robinson, and George Harper." Mr. President.

PRESIDENT GRAYBILL: Very well, this resolution, Number 18-may I have a copy, Mr. Clerk?-has been placed before the Chair for the purpose of raising this issue about the unicameral-bicameral vote. Mrs. Reichert and others are anxious to get a-at least the sense of the body here. If you adopt the resolution, which calls for a clear feeling-showing of the feelings, then the Chair would-if you adopt the resolution, then the Chair would put a motion that those favoring, lets say. unicameral vote Aye and those favoring bi-

camera1 vote No, and we could find out how many-what the numerical difference is, if you want to. Secondly, if you want to, I'll take it by roll call, but I don't care which way-which we do. But in any event, Mrs. Reichert's resolution has the effect of putting before this body a request that we take a vote, either a nonrecorded vote or a roll call vote--either one.

Mrs. Reichert.

DELEGATE REICHERT: Mr. President, fellow delegates, friends. When I discussed this resolution with others, I learned that my bicameral friend, Dick Nutting, had intended to submit a similar resolution. He deferred to me, and therefore I am presenting this. I am very pleased to have been a part of this Constitutional Convention. The fact that in 53 days we have produced a document, I think is a remarkable one, and I think we have a fine document as a result of our efforts. True, we've had our disappointments-some small, some big-but nevertheless, we conceived a Constitution and we're still friends. I believe that if there had been another body of 50 delegates down the hall in the senate chambers, going through the exact process simultaneously, it would have required at least 106 working days taken by the last Legislature to come up with any document at all. Now, I'm not going to talk any longer-maybe one more minute. I'm just going to say that the ballot is drawn up; now is the time for the people to know how each one of us feels about this significant issue. Now, several of you have told me that you were interested in unicameral, but your constituents are not. If unicameral is to have any chance at all on the ballot, we must let the people know how we feel. I am asking those of you who would personally be willing to try the unicameral Legislature at least until 1980 to please vote Aye on this resolution. Thank you. Mr. President, I would like a roll call vote.

PRESIDENT GRAYBILL: Mrs. Reichert, your request for a roll call vote stuns me for the moment. It seems to me that the sense of the resolution is that if we adopt the resolution, then the body will allow a vote to be taken; and I don't think I ought to take a roll call vote on adopting it, because then they would have accomplished your purpose--or at least they would have to follow themselves up on that-so the Chair would like to say that the vote will, at least initially, be oral on whether to adopt or not this resolution; and if it's adopted, then the Chair would be glad to take up the problem of what you want to know, whether you want the names or whether you just want the numbers or whether you want the buttons.

Now, Mr. Mahoney, do you want to discuss the motion-or the resolution?

DELEGATE MAHONEY: Well, I'm wondering, Mr. Chairman, what we going to accomplish here?

PRESIDENT GRAYBILL: We're really accomplishing a-what's the word I'm looking for?--a poll on unicameral-bicameral. She wants to know, and they want to know, what proportion of this hundred delegates would like unicameral. That's what we're really accomplishing.

DELEGATE MAHONEY: Would there be-in this question here, can anybody vote just about as they pleased? Or not vote? I-if the thing were accomplishing something, Mr. Chairman, I would certainly not object, but if you're just going out here to poll the delegates, maybe you could walk around with a petition or something and arrive at the same thing. To me, I just wonder, are you just trying to put a bunch of delegates on the spot, and it don't worry me-I'm bicameral-but I'm just wondering if we're doing-if this is what we're trying? I hope not, but I wonder.

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I would be forced not to vote on a roll call vote, but I would vote on a nonrecorded vote. Thank you, Mr. Chairman.

PRESIDENT GRAYBILL: Very well, is there other discussion of the resolution?

Mr. Davis.

DELEGATE DAVIS: Mr. President, I hate to ask this, but could you have the clerk read it again.

PRESIDENT GRAYBILL: Right, I'll read it again. "Whereas, it's imperative that the people of Montana know the preference of the delegates regarding the legislative structure; and Whereas, the record has not clearly shown the feelings of the body. Now, therefore, be it resolved by the Constitutional Convention of the State of Montana: that there shall be a vote on this issue." Now, whether it's recorded or not, we'd be glad to cross that bridge.

Mrs. Reichert, you asked the Chair-you asked the clerk to strike the word "recorded"—would you be-and you heard Mr. Scanlin-would you be satisfied with a vote where you knew the numbers rather than the names?

DELEGATE REICHERT: Not nearly as satisfied. I would really like a roll call vote-but if it's the wishes of the body not to express themselves, if they prefer not to have the people know how they feel, it's all right with me.

PRESIDENT GRAYBILL: All right, I think the people want to know that before they vote for this resolution, so—

Mr. Harper.

DELEGATE HARPER: Yes, Mr. Chairman. I think maybe most of you know that Delegate Dave Holland got married last night, and I'd like to ask on his behalf that nobody have a call of the house. (Laughter)

PRESIDENT GRAYBILL: Very well, we'll note that. All right, the Chair has-is there other discussion of this matter?

Mr. Wagner.

DELEGATE WAGNER: I'd like to announce my presence, Mr. President.

PRESIDENT GRAYBILL: Mr. Wagner's presence may be announced-shown on the journal. Very well, the Chair-seeing no one up to discuss the matter, the Chair has a way that I'd like to approach this. First of all, if you'll just all use your normal voices, all those that would be in favor of a recorded roll call vote, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All those that would be against a recorded roll callvote, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: All right. Well, the sense of the body is that if we do this, it's going to be a recorded roll call-and, of course, you don't have to vote if you don't want to—now—because overwhelmingly you've suggested that. Now, the Chair will now put Mrs. Reichert's resolution. All those in favor of her resolution that there be a recorded roll call vote on this issue, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: No.

PRESIDENT GRAYBILL: The Ayes have it, and we'll have a recorded roll call vote. All those in favor of unicameral Legislature, vote Aye on the voting machines; and all opposed, vote No. Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Has every delegate voted?

(No response)

PRESIDENT GRAYBILL: Does any delegate wish to change his vote?

(No response)

PRESIDENT GRAYBILL: Take the ballot. Now, before the clerk announces the vote, the greens are for unicameral and the reds are for bicameral. Does anyone wish to stand and change his vote?

(No response)

PRESIDENT GRAYBILL: Very well, announce the vote.

Aasheim	Nay
Anderson, John	Nay
Anderson, O	Absent
Arbanas	Aye
Arness	Aye
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Excused
Brazier	Nay
Brown	Absent
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Excused
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Absent
Dahood	Aye
Davis	Nay
Delaney	Nay

Driscoll ..... Nay
Drum ..... Nay
Eck ..... Aye
Erdmann.. ..... Aye
Eskildsen ..... Nay
Etchart ..... Nay
Felt ..... Aye
Foster ..... Aye
Furlong ..... Aye
Garlington ..... Aye
Gysler ..... Nay
Habedank ..... Aye
Hanson, R.S ..... Nay
Hanson, R. ..... Nay
Harbaugh ..... Aye
Harlow ..... Aye
Harper ..... Aye
Harrington ..... Aye
Heliker ..... Aye
Holland ..... Absent
Jacobsen ..... Aye
James ..... Nay
Johnson ..... Nay
Joyce ..... Aye
Kamhoot ..... Nay
Kelleher ..... Aye
Leuthold ..... Aye
Loendorf ..... Aye
Lorello ..... Excused
Mahoney ..... Absent
Mansfield ..... Absent
Martin ..... Absent
McCarvel ..... Aye
McDonough ..... Absent
McKeon ..... Aye
McNeil ..... Nay
Melvin ..... Nay
Monroe.. ..... Aye
Murray.. ..... Aye
Noble ..... Nay
Nutting ..... Nay
Payne ..... Aye
Pemberton ..... Nay
Rebal ..... Absent
Reichert ..... Aye
Robinson ..... Aye
Roeder ..... Aye
Rollins. ..... Aye
Romney ..... Aye
Rygg ..... Nay
Scanlin.. ..... Absent
Schiltz ..... Aye
Siderius ..... Nay
Simon ..... Nay
Skari ..... Aye
Sparks ..... Nay
Speer ..... Aye
Studer ..... Nay
Sullivan ..... Nay
Swanberg ..... Aye
Toole ..... Aye
Van Buskirk ..... Absent
Vermillion ..... Aye
Wagner ..... Nay
Ward ..... Nay
Warden ..... Aye
Wilson ..... Nay
Woodmansey ..... Aye
Mr. President ..... Aye

CLERK HANSON: Mr. President, 47 delegates voting green, 39 voting red.

PRESIDENT GRAYBILL: Very well, Mrs. Reichert, I think your purpose is accomplished.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, could I have the figure on how many abstained—or not voting?

PRESIDENT GRAYBILL: Well, you've got to add 47 and 39-that's 88, less 4—88—that's 12 less 4-8 abstained, roughly-8 abstained. Well, there's 4 absences; 88—isn't that right? Or is it 86?—86. All right. Well, then, 10 abstained-10 abstained.

Very well, will the clerk read Resolution Number 19.

CLERK HANSON: "Montana Constitutional Convention, 1971.1972. Resolution Number 19, introduced March 23, 1972. Whereas, the Montana Constitutional Convention has met in Helena and through Convention hearings, debates and sessions adopted a proposed Constitution which must be explained and presented to the voting public for its ratification on June 6, 1972; and Whereas, the Telecommunications, Inc., on behalf of the Montana Cable Television Association, has provided over 25 hours of Convention coverage for presentation on local and statewide cable television and has maintained personnel and equipment necessary to videotape portions of the Convention and numerous interviews with delegates and others, and has informed the voting public. Now, therefore, be it resolved that the Montana Constitutional Convention hereby thank Telecommunications, Inc., for the assistance it has given the Convention in presenting the work

of the Convention to the viewing audiences in Montana and hereby extends the Convention's sincere appreciation and thanks to Telecommunications, Inc., for the work it has done. Introduced by Committee on Rules and Resolutions, Marshall Murray, Chairman." Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the adoption of Resolution Number 19, which is self-explanatory and is merely for the purpose of thanking Telecommunications, Inc., for the assistance that they've given in the cable television field.

PRESIDENT GRAYBILL: The Chair would like to say that Telecommunications, Inc., did ask us that we do this, and I see nothing, personally, wrong with it; but you must vote on it. They have provided us with a great deal of coverage and more than normal and at some-at great expense to themselves. And if you feel so inclined to express your thanks for the coverage they have given this Convention, here's a method of doing it; and if you don't, then vote against it. Is there discussion?

(No response)

PRESIDENT GRAYBILL: Very well, all in favor of the resolution, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered-it's adopted. Now, Order of Business Number-there are no other resolutions or motions are there?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, in packing my boxes of papers, I came across some 32 delegate proposals that I forgot to put in, and I wonder if the Chair has any suggestion on what I might do with them? (Laughter)

PRESIDENT GRAYBILL: The Chair has-Mr. Kelleher, the Chair has two suggestions. I'm not going to mention the first one, but the second one is you might have a little bonfire and cook some wienies this afternoon. (Laughter) Very well, if there are no more motions or resolutions, the Chair wants to move to Order of Business Number 8, Unfinished Business. Now, one or two of you have asked for an opportunity to say something to this Convention, and at this time I would like to start by calling on Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, before I give a few thoughts that have been occurring to me, I want to announce that we have now-have it confirmed that the Highway photographer who will be here tomorrow will make the negatives available to each of us. They will be mailed to us by the office out here whenever they're finally prepared. And, now, Mr. Chairman, as we prepare to close the journal of this Convention, I think we should pause a moment to reflect upon what has happened, to reflect upon who we were at the beginning and what we have now become, where we started and where we now are. In one sense, we have finished our labors, but in a larger sense we have just begun. Ahead, I see not only the imminent task of ratification, but beyond that the more important task of leading our fellow Montanans into the reality of better government for a better society. Consider this Convention; conceived and born in partisan political strife, it has matured into thoughtful and objective concern for the rightness ofthings. Composed of people from every walk of life, amateurs one and all in basic constitutional doctrine, it has become soundly expert in applying proper principles with perceptive judgment. We, asindividuals, have been transformed from willing volunteers to dedicated and competent students of government on a statewide basis. The endless hours of study, research, and mutual consultation, culminating in these weeks of exacting debate and decision, have developed in us all a new value which I am concerned that we neither lose nor underrate. In fact, I think it has fastened upon us a new commitment to go the next mile and make sure that our labors bear fruit. This has not come easily. This Convention bears the unmistakable imprint of expert and committed leadership, utterly devoted to the successful achievement of its goals. Where we were partisan, we are nonpartisan. Where we were inflexible, we are flexible. Where we were hesitant, we are confident. Where we were skeptical of each other, we enjoy mutual respect and confidence. Our debates and discussions have never been marred by angry exchange or sarcastic derision. For these good fortunes, we owe a debt of great gratitude to our President, whose constant daily example in the performance of his most difficult and uncharted tasks has led us this far. The thoughtful prayers each morning for Divine guidance in our work have been answered before our very eyes. And where does this leave us now?

What have we really accomplished? What shall we say to the people who sent us here and paid us for this effort? Is it in our hearts to urge them one and all to approve our document? Have we been truly fair to all the varied people, groups, and interests whom we were charged to safeguard and to serve? These are sobering questions, and they rise in all our minds when the pressures of listening, deciding, and voting occasionally lessen. Being a firm believer in the wisdom of abiding by my principles, I tried to establish them early and adhere to them faithfully. I think I have done this, and it is time to test the result. I thought a Constitution should assure the citizen his personal freedoms. We have clearly done this by a Bill of Rights which not only has all the freedoms of the last 80 years, but includes a broad band of additionalrights that will serve well in our ever more complex society. A Constitution, I thought, should assure the citizen his political freedom, his right to vote, to be a candidate, to express his opinions, and to know what his government is doing to him and with him. Our personal example of totally public proceedings, and our consistent opening of all the doors and desks of government to the eyes and ears of the governed, makes this a reality in Montana. If it has been done, it can be done again, and only good can flow from that process. As a cross-check, I have searched our document for a provision that sets one person or interest above another, and I find none. A good Constitution has only those fundamental structures and guidelines within which all the competing interests and pressures of society may freely move, winning or losing as their merits are tested. Our document meets this high standard. It grants no special privilege to anyone, neither does it impose any special burden. Suspicious of none, it expects the best of us all. Finally, I thought a Constitution should assure a person's future freedoms, meaning his right to try a new system, expel a bad system, devise a new solution to a new problem, and explore constantly the way to live better with government. This we have achieved. We have unshackled and energized our Legislature. We have coupled authority with responsibility in our Executive. We have set the stage for equality in the burden of taxation. We have launched a strong citizen force charged with finding better solutions to the almost infinite problems of education. We have provided maximum opportunity for the varied communities of Montana to govern themselves in their own way. These are only a few examples, but they are ample to prove the case. The press has described our work as middle-of-the-road. which I suppose is to imply shortsighted timidity in our judgments. This is a vague value judgment. The truth is that most of the people are in themiddle of the road, and the Constitution has to be for the most of the people. It therefore should be where they are, and that it appears to be so is a sign to me that it has been well done. So, I shall be happy to face the waiting voters, and I have no apologies for our document. Derived as it is from the imperfect workings of imperfect people, it certainly has its faults. No one can be completely satisfied with it. I surely am not. Like all the rest of you, my ideas have sensed the green glow of victory, and the red burn of defeat. However, I believe in the collective wisdom and decisions of this group, even above my own convictions, however deep. I think our Constitution is the finest gift to the young people of Montana that it is within our power to give. We are giving them the gift of participation in their present and the management of their future, on a ship of state that is far more manageable and sensitive than the old one which we have had. I shall therefore be intensely proud to sign our document tomorrow. My act of signing will also be my act of commitment to do all I can to procure its ratification and, beyond that, to help whenever I can in its transition to full power and effectiveness. On a personal note, I am happy to have been numbered among you and to have you as my friends. Our land of the shining mountains and rolling plains will ever be more dear to me from this day on. Thank you.

(Applause)

PRESIDENT GRAYBILL: Thank you, Mr. Garlington, and I'm sure you've summed up the feelings of many of us in your statement.

Mr. James.

DELEGATE JAMES: Mr. Chairman, I think I echo the thoughts of all of us right now. I think we'd all like a copy of Jim's fine work. Is the printing press still operating?

PRESIDENT GRAYBILL: Well, it's jammed, but eventually we may be able to get it out, and I'm sure that we should have Mr. Garlington's remarks printed whenever it's possible.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, from time to time we had the pleasure of hearing that nationally known, and particularly Helena-known, barbershop quartet; and at this time I would like to call on that bullwhacker from Powder River, Torrey Johnson, to gather his

group about him and give us the joys that they have for us.

PRESIDENT GRAYBILL: Well, that's certainly unfinished business. (Laughter) Torrey, do you want to go ahead?

DELEGATE JOHNSON: Mr. Chairman and delegates. Thank you very much, Joe, for this opportunity. I was hoping that we wouldn't lose out on one last crescendo from the Back-Bench Barbershoppers. Would they start to get together, please, here, while I'm spieling, because when I get through, I want the timing to be just right. Now, you know, there's an old saying down in Powder River country-Fama contata semper vivat-(Laughter)-

PRESIDENT GRAYBILL: Mr. Johnson, would you repeat that for the record. (Laughter)

DELEGATE JOHNSON: Fama cantata semper vivat-

PRESIDENT GRAYBILL: Okay.

DELEGATE JOHNSON: That means, "may their musical fame last forever". (Laughter) I give you the Back-Bench Barbershoppers.

(Whereupon, Delegates Conover, Harper, Ward, Champoux, Scanlin and Johnson delivered vocal renditions of "Springtime in the Rockies" and a Happy Birthday salute to Delegate Bob Vermillion)

(Applause)

PRESIDENT GRAYBILL: Back-Benchers, would you sing a verse of that for Eskildsen. He's over the hump today, too.

(Whereupon, a chorus of Happy Birthday to Delegate Eskildsen was rendered)

(Applause)

DELEGATE HARPER: Mr. Chairman, it's great--after all of these days, day by day, with Joe getting up and saying, that we beg leave to rise and sit again, this is what we've hatched. (Laughter)

(The Back-Bench Barbershoppers concluded with their rendition of "Old Mill Stream" and parody thereon)

(Applause)

PRESIDENT GRAYBILL: Well, we want to thank you, Back-Benchers. And you know, they say that no constitutional document should be perfect, and you fit right in. (Laughter)

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, for point of information, would Mr. Johnson yield to a question?

PRESIDENT GRAYBILL: Mr. Johnson, will you yield?

DELEGATE JOHNSON: It scares me to death, but I will.

DELEGATE CROSS: Mr. Johnson, where did you learn your Latin? (Laughter)

DELEGATE JOHNSON: Well, now, Louise, I'm glad you asked me that. (Laughter) Actually, you know, I was born up in the Wolf Mountains in a little log cabin I helped my Daddy build-(Laughter)-and before I was 10 years old, there was an old fellow there that had escaped from the Jesuits and he was-he lived as a recluse, way back in the hills there, and he taught me everything I know. (Laughter)

PRESIDENT GRAYBILL: Mr. Davis.

DELEGATE DAVIS: In view of the test that was made on the unicameral, I want to make one more effort. Will Miss Sparks yield? (Laughter)

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Just for the record, Mr. President, the journal should show that Miss Sparks shook her head and responded "No"-silently. (Laughter)

PRESIDENT GRAYBILL: Mrs. Pemberton.

DELEGATE PEMBERTON: Just for the record, Mr. President, we'd like you to know that women don't talk too much.

PRESIDENT GRAYBILL: Mr. Harper.

DELEGATE HARPER: Just for the record, I think we probably all will agree that it is not only she who has said no words who hasn't said anything on this floor. (Laughter)

PRESIDENT GRAYBILL: Mr. Mahoney would like to follow that.

DELEGATE MAHONEY: I'm going back

to the more serious side of this, and I don't blame you for not speaking. I think it's marvelous. First, I want to congratulate these women on this floor. I think you have done a marvelous job, and there's never been any better in the Legislature-and a lot of them, I don't think, as good as you women have done here on this floor. It's been a great pleasure to see this many women, and I know in our future Legislatures we're going to have a lot more like you, and I want to say "Congratulations to a job well done" on you ladies. I think you've done a marvelous job. You've asked no odds, you've asked no edge. You have taken it right on this floor, and I certainly admire it. Number 2—You know, we got in here one day and we had two motions to move the previous question and we discussed it, and that motion hasn't been made during this whole Convention since. I think this is marvelous, that you didn't, at these times of debate, stand out here and then immediately try to shut off debate. You listened to everybody. You've set here--and I have watched the Legislature a good many times. So, I want to congratulate the body on that. Mr. Chairman, you've done a marvelous job of presiding. I think you've had a lot of patience. I don't think I would have had patience at all the time you've had. I haven't agreed with all your rulings, but they have been fair, and I want you to know that. I think it's been marvelous. I'll never-there will never be a hundred people get together and take their differences and stand up and fight toe-to-toe any better than this hundred people have done here; and you have no comparison in any legislatures that I have known. There's less bitterness—there's been less of that. Maybe this is caused by the seating. Maybe-I think maybe this wasn't a bad idea. You get all the groups on one side and that-and then they don't get to talking on the other side. I'm in hopes the next session the Legislatures will go to a alphabetical type of seating. I think it gives you much more independence-and especially a person like me who has always been independent anyway, even including this Convention. I'll tell you this. I'm signing the Constitution tomorrow, even if I did vote five times No yesterday. Mr. Monroe got away from me yesterday afternoon-he's got six. I've only got five votes against the Constitution. I am-1 don't agree with everything that Delegate Garlington has said. I'm going out, and I'm going to tell you, I'm going to explain the Constitution. I want that understood. I am going to explain it and give both sides of it, and I'm not going to tell them how to vote. This I'm going to do. But thanks again for treating me as nice as you have, and I certainly appreciate it. Thank you.

(Applause)

PRESIDENT GRAYBILL: Mr. Monroe.

DELEGATE MONROE: I just want to follow Mr. Mahoney and say that-I'm going to sign the Constitution, too; I'm going to work hard for its adoption.

(Applause)

PRESIDENT GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I have been accused of being fond of quoting Shakespeare, and I am. I have thought at times that what we have done here has been "Much Ado about Nothing". Sometimes I've felt that it was a "Comedy of Errors". I've even worried sometimes that it was "Twelfth Night", but now, Mr. Chairman, I'm proud to conclude that it all-"All's Well That Ends Well".

(Applause)

PRESIDENT GRAYBILL: Lucile Spew.

DELEGATE SPEER: Thank you, Mr. Chairman-Mr. President, now. This is a serious matter. I just wish to make clear for the record that I am single. I tried to correct both the Chair and the delegates for the first 2 weeks, and then I thought, when we got into substantive issues, perhaps this was not something that I should quibble about. But I feel that it has been a matter of discrimination, that I should have taken it to the Bill of Rights, and I hope the journal will show that my name-1 am Miss Speer. (Laughter)

PRESIDENT GRAYBILL: The journal may show it as "Ms".

(Laughter-Applause)

PRESIDENT GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President. Next to God, my country, family and friends, this has been the greatest experience of my life, and I know we've been one family and will look to the future with fondness on these members. Thank you, Mr. Chairman.

(Applause)

PRESIDENT GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: First of all, I want to take this opportunity to thank you all for

putting up with me. Now, we heard a lot about Studer's eagles, Lorello's pigeons, Harper's piccolos, but Champoux has been the only lonely duck in this Convention. (Laughter) Now, here I stand, Chief Little Duck. My feathers are fringed, my rear end is full of buckshot. I have damned few eagle feathers, but I'm still flying.

(Laughter-Applause)

PRESIDENT GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. President, being probably the only native-born maniac, having a birth certificate from Bangor, Maine, I am sure I have a voting record to prove the point.

(Laughter)

PRESIDENT GRAYBILL: Now, the Chair wishes the journal to show, in a little more formal manner than Mr. Harper made the announcement, that apparently Dave Holland did get married yesterday; and we're going to try and get him back for the signing; and I think that we all want to wish Dave well. And, if this is-if this report is correct, which I understand it is, I'm certain that we're all happy for Dave and would want the record to so show.

Very well. Mr. Rebal, where is your Lincoln Continental parked now? (Laughter)

DELEGATE REBAL: The Governor was more gracious than you. (Laughter)

PRESIDENT GRAYBILL: Don, he just hasn't been here as much. (Laughter)

DELEGATE REBAL: Well, I'd like the record to show that Dave Handball-or Dave Holland missed his handball match yesterday. (Laughter)

PRESIDENT GRAYBILL: Very well, unless there's other unfinished business, we'll move on to announcements. We'll move on, without objection, to Order of Business Number 11, Announcements, and Mr. Toole has an announcement.

DELEGATE TOOLE: Mr. Chairman, a meeting of Administrative Committee, 8:15 in the Rules Committee room tomorrow morning.

PRESIDENT GRAYBILL: That's 8:15 tomorrow morning, for the Administrative Committee, in the Rules Committee room here. That's an important but short meeting.

Mrs. Warden.

DELEGATE WARDEN: I would just like to thank everybody that has helped the Public Information Committee. I think this has been great. And I would also like to say that sometime today on your desk will be a report. I hope some of the ideas that are in this report can be used by the delegates when they go home, because they're kind of a compilation of all the different things we've done here. And, again, thank you so very much for your support.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I'd like to announce the last rendezvous of the Mitchell Gang in Room 437, immediately on recess.

PRESIDENT GRAYBILL: The Mitchell Gang, eh? Okay.

Mr. Murray.

DELEGATE MURRAY: Before I call the last Rules Committee meeting, I would like to discuss a little communication I received from the Laurel bard. It reads: "The silver-haired barrister, he sat and he smiled. His laugh wasinfectious, his temper was mild. He checked all the chicks with a practiced eye, but because of the rules, he refrained with a sigh." (Laughter) Then, I received another. This one is significant: "Leo, the lion, he pulled and he pushed. Hehammered and gaveled until he was bushed. But he got us to finish-the compact's complete. Graybill has triumphed, there will be no retreat."

(Laughter-Applause)

PRESIDENT GRAYBILL: Where were all those authors when we needed language on the ballot yesterday? (Laughter)

Mr. Murray.

DELEGATE MURRAY: Mr. President, he was on Style and he has practiced a little and gotten better as we've gone along. Rules Committee, immediately on adjournment, in the rules Committee room.

PRESIDENT GRAYBILL: Very well, other committee meetings?

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the other day Rod Hanson read a statement from Benjamin Franklin--and we have it-which will be distributed to the desks some time by the pages today. And one other thing: I've been trying to gather up some opinions from the delegates, and I

have, I think, all but eight. Will thoseeight-and I wish I could be a shepherd, like George here, and ask-but would those eight kind of-let me have their answers?

PRESIDENT GRAYBILL: Is that the unanswered eight, huh? All right.

Mr. Romney.

DELEGATE ROMNEY: Mr. President, delegates who have been participating in this "project brown envelope", I wish that whoever has it would get it back to desk 81 upon adjournment. I also, Mr. Chairman, wish to point out one thing that has perhaps escaped many of you as you looked and signed theselittle booklets. Never in all my born days did I ever see so many young people. (Laughter)

PRESIDENT GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Now that we have worked together for the past 2 months, I was wondering if the group here would be in favor of having any group reunion?

PRESIDENT GRAYBILL: Mrs. Van Buskirk, this subject has come up and we'll be taking care of it later, but not before the election. I might say, in reference to Mr. Romney's remarks, that if we haven't learned anything else at this Convention, we've learned how to write our names. (Laughter)

Very well. Mr. Brown, you had an announcement?

DELEGATE BROWN: Well, I'm rising on behalf of Delegate Sparks. She would like to correct the President-and in spite of what happened to Dave Holland, she is still Miss Sparks-and she didn't say No yesterday, she just shook her head—unless she wants to yield and speak for herself. She's still shaking. (Laughter)

PRESIDENT GRAYBILL: Very well.

Mrs. Warden.

DELEGATE WARDEN: Mr. President, are you going to make the announcement about the Voter Education Committee?

PRESIDENT GRAYBILL: Yes, I've got that down here yet.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. President, I would like to on behalf of the city of Helena and on behalf of the Colonial Club, thank all of you for being in Helena and for the wonderful things that you've done for the Colonial; and it's just been great to have you all here.

PRESIDENT GRAYBILL: All right, Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, I'd like to make one announcement. Being that this is all through now, why, I guess I can make it. No more pencils, no more books, no more delegates' cross-eyed looks. (Laughter)

PRESIDENT GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates, and the people of Helena. I'd really like to-Betty made me think of this-thank all the people of Helena and especially the tolerant police force for their attitude toward the delegates and their hospitality. And it's been a great experience.

PRESIDENT GRAYBILL: Very well. Now, we have a-1 have an announcement from Ray Loman, the Sergeant-at-Arms. The delegates can turn in their desk and locker keys at the sergeant's office, and also the black ring-binders belonging to the House can be returned to the sergeant's office. If you have envelopes for your keys-if you still have them in your desk drawers, he'd like the keys in the envelope; if not, I guess you can put them in one of the regular envelopes. He also has some cardboard boxes available to help you out. Mr. Hanson informs me that the post office keys should be returned to the post office. The printing clerk, Jean Fallan, has asked me to announce that, really, there isn't any printing available today. The presses are running as fast as possible, trying to get out 5,000 copies of the Constitution, 5,000 copies of the information sheet that will help you delegates discuss the Constitution intelligently; and when that's through, the leadership has three or four matters piled up, such as the copy of the official Constitution that Mr. Garlington referred to, and two or three other things; so we'd rather that you did not expect or ask the printing department to print for you today.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I've already had a request about these Constitutions. How much will they cost?

PRESIDENT GRAYBILL: I don't think we know, and if we can get them printed-which

we'll find out today-we'll try and get a little order blank on your desk tomorrow that you could fill out. We may have to send them to you later.

DELEGATE BLAYLOCK: I have a request, Mr. President, for as many as a thousand copies. So I just—

PRESIDENT GRAYBILL: Well, now, you understand that we are going to supply every delegate, tomorrow, with 50 copies of the Constitution, and we will continue to print and have available in the Constitutional Convention office here a lot of copies of the Constitution; as long as they're not being wasted, we don't mind printing them. We're going to print, I think, 10,000 copies and have 5,000 that we're going to give you tomorrow, but we just can't get that many through the print shop. As I told you the other day, a hundred is nothing but a hundred and sixty thousand sheets is a lot, and it takes some time. So, they-both the-the one that we are going to give you to take home is going to be single-spaced, but the one that Mr. Garlington is talking about would be a printed copy, with the signatures on it, of the copy that we are signing tomorrow of the official Constitution; and if we can work it out, we're going to try and print that, too; and if you want that, we may want you to defer the cost of that, which I would think would not be great. Let's see-now, let's see-the next announcement I have is that the Voter Education Committee will meet at 11 o'clock. I think probably we'd better meet in the Legislative Committee room on the fourth floor behind the Convention Hall. The Voter Education Committee, at 11 o'clock. Now, some of what you've seen this afternoon is but a mild prelude to the frivolity that it-will take place at the delegates' dinner tonight, so please get your reservations in for the delegates' dinner if they aren't already in. And I don't even know what time it starts—6:30, I believe—6:30 the drinking begins and dinner will be afterwards—(Laughter) Well, now, wait a minute. I guess I don't want to put that restriction on this body this afternoon. (Laughter)

Mr. Davis, you'd like to move to start earlier? (Laughter)

DELEGATE DAVIS: At least I'd like to get a roll call vote on it. (Laughter) Mr. President, on the side, it occurs to me we may not have an opportunity tomorrow, but I think that it might be appropriate to give a round of applause and express for the record our appreciation for our chief clerks, our journal clerk, and Marie, and our Sergeant-at-Arms, and all the people here in Helena at the Capitol for all the courtesies they have extended us in their research. We are about, now, at the end of the thing, really evaluating and realizing what a tremendous job a lot of people have done towards making this Commission a success--or this Convention a success-for the last 2 or 3 years in research and everything else; but I would like to give a big hand to all these folks up here-John and the ladies and Marie and the Sergeant-at-Arms for-and all the rest of the people here at the Capitol for all their help.

(Applause)

PRESIDENT GRAYBILL: Now, Mr. Davis, for your information, we will include in the record tomorrow, in the formal ceremony, a resolution which will formally memorialize them; but I think your personal expression of opinion is echoed by all the delegates. And I'm sure that we all deeply appreciate the work that our crew has done here; and I, personally, want to thank each of them. We've had a marvelous group and a marvelous working relationship, and I appreciate it.

Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. President, I'd like to add to what Carl just said; and many of us in this chamber have worked with Frank Morgan in the printing department; but there are many, many that haven't; and I think that Frank and his crew should be included in that, because I feel that he has done a real good job and gotten the work of the Convention out in very good shape.

PRESIDENT GRAYBILL: Very well.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, Marie gets paid by the page, and she's asked me to thank Carl Davis for his past services. (Laughter)

PRESIDENT GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. President, I assume we're all through, so I'll—

PRESIDENT GRAYBILL: Well, let's see, is there anyone else who would like to make an announcement?

(No response)

PRESIDENT GRAYBILL: Very well, Mr. Eskildsen, it's all yours.

DELEGATE ESKILDSEN: Mr. President, I move we stand adjourned until March 24th, 10:00 a.m., 1972.

PRESIDENT GRAYBILL: Before the Chair puts that motion, the office has just phoned in the last announcement. If there are any address changes from the directory-from the blue directory, please notify Mel McGuinn before you leave here, because we're going to have a lot of mailing to do to you; so if there are any address changes, Mel wants to know that before you leave. Very well, all in favor of adjourning until 10:00 a.m. tomorrow morning, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 10:40 a.m.)

March 24, 1972 **Fifty-Fourth Day** **Convention Hall**
lo:oo a.m. **Helena, Montana**

PRESIDENT GRAYBILL: The Convention will be in order. First of all, I'd like to welcome all of our friends who are here this morning for this final session of the Montana Constitutional Convention. I want to get started. I'm sure it's going to get hot in here before we get finished, and we'd like to get going. So if we'll all-if we're all ready, I'd like to first call upon the Reverend H. R. Anderson, Jr., of the First Presbyterian Church in Great Falls, Montana, who will lead us in an invocation. Will you please stand.

REVEREND ANDERSON: Let us pray. 0 God, by whose good purpose and will men have been granted authority and power in human affairs, we begin this ceremony by expressing our gratitude to You for all that has brought us to this significant hour. We thank You for the privileges and responsibilities given these delegates in their election; for their ability to discuss, debate and decide the issues brought before them; for the humility to listen and the courage to rethink; and above all, for the mutual accord that has brought this new document into being. Grant, 0 God, that the citizens of this state may give this document their highest and wisest consideration, that the future of this state may be enriched and enhanced to Your glory and the welfare and benefit of us all. Through Jesus Christ, our Lord, we pray. Amen.

PRESIDENT GRAYBILL: Very well, if you'll remain standing, I would like to ask Delegate Cedor Aronow to lead us in the Pledge of Allegiance.

Mr. Aronow.

(Delegate Aronow led the Convention and guests in the Pledge of Allegiance to the flag)

PRESIDENT GRAYBILL: Very well. As usual, we will take roll by voting Aye on the voting machines. Will the delegates please vote Aye on the voting machines. Very well, cast the ballot.

Aasheim	Present
Anderson, J.	Present
Anderson, 0..	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask..	Present
Babcock	Present
Barnard	Present
Bates..	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman.	Present
Brazier	Present
Brown..	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross..	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce..	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield.	Present

Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present
Mr. President	Present

CLERK HANSON: Mr. President, 100 delegates present.

PRESIDENT GRAYBILL: Very well, the journal may so show. At this time, without objection, the Chair would like this Convention to be on Order of Business Number 7, Motions and Resolutions. Is there objection?

(No response)

PRESIDENT GRAYBILL: Very well. At this time I'd like to call on Vice President Toole to take the Chair.

Mr. Toole.

VICE PRESIDENT TOOLE: Thank you, Mr. President. Order of Business Number 7, Motions and Resolutions. The clerk has a resolution to read, I believe.

CLERK HANSON: "Montana Constitutional Convention, 1971-1972. Resolution Number 20, introduced March 24, 1972. A resolution paying tribute to the employees and interns of the Convention. Whereas, as the Montana Constitutional Convention concludes, it is fitting for the membership to review the weeks of deliberations and assess accomplishments; Whereas, we find the fruits of our labor good and commend the proposed Constitution to all Montanans; Whereas, no summary of the Convention's accomplishments would be adequate without an accolade acknowledging the staffs dedicated work; Whereas, in recognition of the contributions to this nonpareil staff, it is hereby resolved that a lasting tribute to the following Convention employees be spread upon the Convention journal: Research Coordinator, Dale A. Harris; Research Analysts: Bill of Rights, Rick Applegate; Legislative, Rich Bechtel; Executive, Karen Beck; Judiciary, Sandra Muckelston; Local Government, Jerry Holloron; Revenue and Finance, Roger Barber; Education and Public Lands, Bruce Sievers; Public Health, Welfare and Labor, Dick Spall; Natural Resources and Agriculture, Chuck Sullivan; General Government and Constitutional Amendment, Jim Grady; Key Personnel: Style and Drafting, Gardner Cromwell; Research Coordinator, Diana Dowling; Committee Coordinator, Max Baucus; Public Information Director, Elizabeth Harrison; Chief Clerk, John Hanson; Printing Clerk, Jean Fallan; Bookkeeper, Al Brown; Chief Steno, Betty Jakovac; Librarian, Juanita Fontana; Steno Pool: Assistant Steno, Eve Seeley; MTST Typist, Gail Smith; MTST Typist, Jane Brown Jones; MTST Typist, Dee Christiansen; MTST Typist, Janice Saeman; Typist-Steno, Jean Geier; Typist-Steno, Ellen Reid; Typist-Steno, Mary Kunnary; Typist-Steno, Louise Sullivan; Typist-Steno, Bernice Jacobson; Typist-Steno, Douglas Easton; Typist-Steno, Louise Fulbright; Typist-Steno, Terry Sather; Others: Journal Clerk, Rosemary Acher; Assistant Journal Clerk, Rosella Wilson; Journal Typist, Beverly Hilger; Sergeant-at-Arms, Ray Loman; Supply Clerk, Warren Neyenhuis; Reading Clerk, Ed Smith; Committee Secretaries: Bill of Rights, Darlene Corbin; Legislative, Judy Pratt; Executive, Barbara Lester: Judiciary, Ellen McCarthy; Local Government, Pat Romine; Revenue and Finance, Karen Holliday; Education and Public Lands, Sally Watson; Public Health, Welfare and Labor, Sylvia Kinsey; Natural

Resources and Agriculture, Elaine Rung; General Government and Constitutional Amendment, Bobby Murphy; Other Secretaries: President, Roberta Moody; Vice President, Melba McGuinn; Executive Director, Bartley Carson; Floor Leaders and Rules Committee, Alice Berner; Public Information Secretary, Patricia Tyanich; Typist, Sue Phillips; Media, Mary Holt; Style and Drafting, Elizabeth Nelson; Secretary to the Clerk, Karen Kelly; Eastern and Western District Vice Presidents and Secretary, Dorothy ZurMuehlen; Duplicating: Frank Morgan, Beulah Walter, Elizabeth Vollertson, Patricia Warfield, Arnold Opitz, David Rodgers, David West, Frances Warner, Margaret Waddell, Vivian Sherwood, Michael Weber, Edward Perkl; Mail Room: Bill Thompson, Isabel Creighton, Lucille Reiner; Interns: Mark Bowlds, Robert J. Buzzas, Maureen Callahan, Pat Chvatal, John F. Crawford, Holly Darlington, Mona J. Earley, Gary Graham, Randall Gray, Kandice J. Hauf, Kayle Jackson, LeeAnn Jersey, Blake Johnson, Steve Jones, Kurt Krueger, Michael Larum, Dodge Leary, Nancy Lien, George Mahoney, John Murphy, George Paul, Ray Perryman, Jeffrey K. Rupp, Edwin Shannon, Robert Skaggs, Kathleen Sullivan, Don Walchuk." Mr. Vice President, Resolution Number 20.

VICE PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. Vice President, I move that Resolution Number 20 be adopted.

VICE PRESIDENT TOOLE: Members of the Convention, you've heard the resolution that the-the motion that theresolution be adopted. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, NO.

(No response)

VICE PRESIDENT TOOLE: Motion carried. There being no objection, we will now move to Order of Business Number 3, Communications.

CLERK HANSON: "March 23rd. Constitutional Convention, State Capitol, Helena, Montana. My compliments to delegates at the Constitutional Convention, staff and advisers, in completing the arduous and difficult task of reviewing and recommending revisions in Montana's Constitution. The people of Montana have demonstrated an interest in updating their state governmental process, and the work you have done at the Convention will be a major step forward in enabling the State of Montana to meet its responsibilities in a time of complex and difficult issues. While I have not seen the final document, I'm impressed with the spirit of unity and nonpartisan nature of your deliberations. Congratulations and my personal regards to all on this momentous occasion. Regards, Mike Mansfield, Majority Leader, US. Senate."

(Applause)

CLERK HANSON: "March 23rd. Leo Graybill, Jr., President, Montana Constitutional Convention, Helena, Montana. As you conclude your efforts, please relay my personal regards and congratulations to the delegates to the Montana Constitutional Convention for a difficult job well done. Generations to come will benefit from your diligence and devotion to the best interests of the public we serve. Sincerely, Lee Metcalf."

(Applause)

CLERK HANSON: "March 22nd. Leo Graybill, Jr., Montana Constitutional Convention, Helena, Montana. On the occasion of the closing of the Montana Constitutional Convention, I would like to take this opportunity to commend each of the delegates on their efforts on behalf of the people of Montana. Their initiative and responsive attitude for the laws of our state is greatly appreciated. Sincerely, Richard Shoup."

(Applause)

VICE PRESIDENT TOOLE: If there is no objection, we'll move now to Order of Business Number 9, Special Orders. And members of the Convention, distinguished guests, we have a gentleman with us who's come a long way to attend these ceremonies, and we appreciateit, and it gives me great pleasure to introduce to you at this time the Chief Executive of the State of Montana, His Excellency, Forrest Anderson.

(Applause)

GOVERNOR ANDERSON: Thank you very much. Mr. Chairman, distinguished members of the Constitutional Convention. This historic Convention was a session of only 2 months, and in this abbreviated space of time, you have attempted to decide the great issues of Montana, now and for the future. You have thought, you have argued, and you have compromised; and now the result of your efforts, this new Constitution, belongs to the people of Montana. If you had the

courage to make the changes that were necessary and the wisdom to avoid those that were not, Montanans will approve this Constitution. If the public interest was faithfully represented in your deliberations, Montana will approve this Constitution. And if you have provided for the protection of the rights of individuals, without placing unnecessary restrictions on government, Montana will approve the Constitution. I have not had an opportunity to study your work in its total and, thus, I don't want to comment at this time; but I know, having been in the Capitol and having watched you, you have worked hard; and I want to compliment every member of this august body, because you have done, in my judgment, that job which you were sent here to do. Your work, however, is not over. If I am correct, my judgment directs that you and all of us must, between now and June the 6th, sell this document to the people of Montana. You must sell this document the same way that I sold to the people of Montana the Montana Executive Reorganization Act. It was a tough job, but it was a good result; and I know you've had a tough job; and I think that you've done a good job; and I hope that you will go out and sell the efforts that you have used so extensively here-namely, a new Constitution-so that we can start a new era in this great state. During this Convention, you have received intense coverage from the news media, and I imagine that there are many delegates who now consider them politicians-consider themselves politicians. I assure you that if you, as delegates, attempt to use this Convention to further your immediate political ambitions, the efforts that you have made here will, in my judgment, be destroyed and chances for public approval of this document, a major document, will diminish in relation to the number who place personal considerations ahead of the sale of this Constitution. I ask you to go out and sell it, I think you've done a good job-and forget the politics for now. Let's get Montana moving forward, That was what you were sent down here to do, and I think up till now you have done a good job, and I hope-1 truly hope you continue to do a good job. In any place, any time, anywhere where you find it necessary or even advisable to call upon the Chief Executive to help you in the sale of this instrument to the people of Montana, please feel free to call on me. I will do everything I can on your behalf and on the behalf of the people of the state. Thank you very much, and God bless you.

(Applause)

VICE PRESIDENT TOOLE: Members of the Convention and guests, it gives me great pleasure at this time to introduce to you an old friend and one known to all of you, the acting Chief Justice of the State of Montana, the Honorable John C. Harrison.

(Applause)

ACTING CHIEF JUSTICE HARRISON: Mr. Chairman, members of this historic Constitutional Convention. I want to tell you how delighted I am to be here to represent the Supreme Court on this occasion. I must admit that it's with some surprise, in view of what I have read in the papers for the past several months, and particularly this morning's paper-and a temptation to use these few minutes in rebuttal is great, inasmuch as I have you all here-but that we will not do. I am sure that if this document is approved by the State of Montana-the people of the State of Montana—there will be much occasion to use the Supreme Court in the years ahead. God bless you, and have a safe trip home.

(Applause)

VICE PRESIDENT TOOLE: Thank you, Justice Harrison. We have with us this morning, members of the Convention and guests, a gentleman who drove 200-plus miles to be with us, the senior senator of the State Senate of Montana. He's been in these halls frequently during the past few weeks, not lobbying-observing and taking a profound interest in our proceedings. It gives me a great pleasure to introduce to you Senator James of Joplin.

(Applause)

SENATOR JAMES: Mr. Chairman, distinguished guests, ladies and gentlemen, delegates. It is my pleasure, in behalf of my colleagues in the Senate, to extend congratulations to the Convention, to your officers, in this auspicious event marking the completion of the drafting and the signing of the document that probably henceforth will be known as the Constitution of-the Montana Constitution of 1972. It is my hope and my wish, desire, and my prayer that after sufficient time has passed and after sufficient time has been taken by the public, including myself, to thoroughly read, study, analyze and digest this document, that it will be said that it is found to be adequate for our needs, sufficient for our liking and our desires, and that we may then be inspired to say, "The Constitution is well-written." You have done a good job, good and faithful delegates-a very, very good job. Thank you.

(Applause)

VICE PRESIDENT TOOLE: Thank you, Senator James. The Honorable Thomas Haines, the Dean of the House of Representatives, is not with us, apparently. We had hoped that he would be able to make it; unless he's hiding in the back of the Hall someplace, we regretfully have to announce that Tom couldn't make it. The Honorable Earl Old Person, Chairman of the Blackfeet Tribal Council, was scheduled to be with us but, likewise, had to cancel out atthelastminute; butit gives me a great deal of pleasure to introduce to you the next lady, Mrs. Firman Brown. She has been in this proceeding since the beginning. She was a member of the Constitutional Revision Commission, the Constitutional Convention Commission. She has studied constitutional history and is writing a dissertation on that now at the University of Montana, and there probably is no one who has exhibited more profound interest and continuing interest in this process than Marge Brown. It gives me a great deal of pleasure to call on her at this time.

(Applause)

MRS. BROWN: Mr. Chairman and members of the Convention, it's a tremendous privilege to be here. I am sure I speak for hundreds of Montanans who, in official and unofficial ways, in their cities and towns and counties and at the state level, have hoped for many, many years that Montana, in our time, might rewrite a Constitution. From an historical view, I think no one can ever accuse you of borrowing piecemeal from anywhere. This is a Montana Constitution, the product of your labors. I think it's a fine Constitution. I have high hopes for the new beginning in public affairs in Montana-that you have laid the basis for us all. And many thanks to you and congratulations on finishing your endeavors with all the energy and dedication that you have evidenced. Thank you.

(Applause)

VICE PRESIDENT TOOLE: Thank you, Marge. Miss Elaine Koyama has been with us before. She's the Governor of Girls' State, and we're very pleased to have her again. Elaine.

(Applause)

MISS KOYAMA: When I first heard that I was coming-or that I had the opportunity to come, my family and I sat down and my father said, "When I was your age, I wasn't even out of the county yet." He never had the opportunity to even come to the Capitol. And here I am: 17 years old, I have been working at the Capitol for 2 weeks previously, I am the Governor of Girls' State—which is a feat in itself-and I'm just filled with awe that Elaine Koyama is standing before you speaking on-at the Constitutional Convention, a document that you've put together that will be presented to the people. I will be able to vote for or against the Constitution-hopefully for. I know all the people that are here will be voting, and that means that the people who elected all the delegates and the people who are the delegates, and even myself, will be able to vote for what's going to be ruling us-the thing that is going to tell us what we can or cannot do, the thing that gives us our freedom and also restricts our freedom. That means, you know, that our United States is one of the few countries, the very few, that let the people decide. All I can say is "thank you", and thank you for working for all the people of Montana and, in turn, for the United States. It's a fantastic time to be here, and all I can say is "thank you".

(Applause)

VICE PRESIDENT TOOLE: Mr. Chris Milodragovich is the Lieutenant Governor of Boys' State, and it gives me a lot of pleasure to call on him at this time.

(Applause)

MR. MILODRAGOVICH: Mr. President, honored guests, ladies and gentlemen. I'm certainly proud and pleased that I was asked to speak to you today. Very few young people have the opportunity to address this historic assembly. I feel particularly honored as the present Governor of Montana Boys' State--excuse me, Lieutenant Governor--and also as a new voter in Montana. Boys' State was one of the great experiences of my life, not merely because I was elected to a public office, but because I saw the workings of government really in action. As a result of Boys' State, I feel I am better prepared to meet the challenges of a young citizen in our great democracy. On behalf of all Boys' Staters and young people in general, I wish you well in your closing deliberations. We're all watching for your finished article and hope it will be one which we can accept for several generations. We realize your task is not an easy one. We applaud your hard work, your dedication; and so I shall close with a mere "thank you".

(Applause)

VICE PRESIDENT TOOLE: The delegates will recall that, earlier in January, before we convened, the YMCA Youth Constitutional Convention met in this room and drew a Constitution which we considered to be a model and which was

a credit to these young people. We have the President of that Constitutional Convention with us, Mr. John Elliott. John.

(Applause)

MR. ELLIOTT: I'd first of all like to thank everyone for inviting me to represent the Youth Constitutional Convention. It's certainly an honor for me, and I'm sure the delegates will thank you for me also. It's kind of interesting that the constitution that we drew up was quite a bit different from yours. It's quite a bit different in a number of ways, mostly because it involves a lot of change. Good examples are that we almost completely appoint the major executive offices, and for the Judicial system we adopted a plan similar to the Missouri proposal, that I believe was introduced here. But there's a reason for this. That's because we weren't answerable to anyone but ourselves; and when you're in a situation like that, you can do just about anything you want; and we did, But you-you, in turn, are in quite a different situation. I always felt that when people criticized the Convention, they had to realize one thing—that you were walking a kind of tightrope-in between pleasing the voters of Montana who are, well, pretty conservative in nature, but at the same time wanting to change the Constitution to something more workable and viable. I think you've done that. You've changed it in many respects. You've done a lot of work, and I'd like to commend you for that work. And thank you again for inviting me to speak.

(Applause)

VICE PRESIDENT TOOLE: Thank you, John. Our last young person--and you have-you see we have them well-represented here because they are the people who will be living under the document that we have written, if it is ratified-is Mr. Joe Holland, President of the Montana Student Association.

(Applause)

MR. HOLLAND: Thank you, Mr. Vice President. Mr. President, members of the Constitutional Convention, ladies and gentlemen. I'm going to make this real short, and I hope it will express my feelings toward this gathering of delegates. I come to you representing the Montana Student Presidents Association. These are the presidents of all the colleges and universities in the State of Montana, and as their representative, I hope I can speak as a representative of some 30,000.plus college and university students in this state. As a student body president from one of our units, I have been given a lot of feedback from various articles-news articles, TV articles, TV programs--on the work that the Con Con has done, and I must say that student reaction has been good. We are a group of very appreciative people in the work that has been set forth in the Constitutional Convention, and hopefully the students in the universities and colleges in Montana will be satisfied with your work and will accept it as their guidelines to proceed with another leg in Montana's history, this being the kickoff point in that important leg. For your work, your time, your effort, I thank you very much, on behalf of the-all the students in the state. Thank you.

(Applause)

VICE PRESIDENT TOOLE: Thank you, Joe. Fellow delegates and distinguished guests, the brief remarks that I am about to make I consider to be the most significant and meaningful of anything I have said on this floor during this Convention. In the lifetime of all of us, we encounter a few rare individuals whose personal qualities elevate him far above those surrounding him. Since last November, I have been privileged to be closely associated with such a man. This Convention has completed its work within its allotted time and within the amount appropriated by the Legislative Assembly. I would like to remind the delegates, at this time, that this was accomplished without once resorting to the gag rule. The man to whom I refer cajoled us, but he never commanded us. When toughness was required, he exhibited toughness. In an enterprise where fairness was vital, he was invariably fair. When physical endurance was required, it was he who set the standard for others to follow. When patient explanation of complex issues was demanded, he never failed us. He was effectively stern, but inexorably patient. His anger never flared, and his sense of humor never failed. And, ladies and gentlemen, long after the rest of us were sleeping snug in our beds, this man labored over financial and administrative details. No item of unnecessary cost escaped his attention. Ladies and gentlemen, we meet here today to sign a great and progressive document which holds great promise for future generations of Montanans. In large measure, our accomplishment was made possible by the labors and the talents of this one man. Ladies and gentlemen, I give you your President, Leo Graybill, Jr.

(Applause)

PRESIDENT GRAYBILL: Mr. Vice President and ladies and gentlemen of the Montana

Constitutional Convention. First of all, John, I want to thank you for what were, obviously, marvelously pleasant remarks from you. I hope I have done some things to justify them, and I want to say now that if this Convention has been able to operate well and in a bipartisan spirit, which we all talked about in November, it is largely due to the services of John Toole, who has done a great deal to help make the thing work in that vein, and I think we all appreciate the partisanship, I guess, ended with my election.

(Applause)

PRESIDENT GRAYBILL: And for that we have John Toole to thank. I've also been interested in listening to the remarks of the administration and of the legislative representatives, and I agree with them that they should carefully read the document before deciding whether or not they are for or against this Constitution. I was most interested in listening to the remarks of these young people who have spoken to us, because they do represent-if we are successful here and if this is ratified, they do represent the people most concerned and the people for whom this Constitution will be long the basic law. But, actually, I come here today to talk with my friends, the delegates, and it's to you that I wish to address my remarks. We are about to complete our work here by signing the document we propose as the Constitution of the State of Montana. The part you have played in the drafting of it will be written in the history of Montana. As the one privileged to have acted as your chairman during these proceedings, I want to seize this opportunity to record some observations about this body and to praise you. Our weeks together here have been a courageous and a meaningful encounter. You know, when we first met in November, we were skeptical. We were novices, and we were unsure. You were, however, men and women of deep conviction and dedication to the cause of writing our new Constitution for Montana. You were dedicated to solving some of the pressing problems of our times, but also preserving the best of our present Constitution. We were a diverse group, eager to investigate, to draft proposals, and to take part in debate. Now, by your efforts and your knowledge, we have enlightened and educated each other and also others who have listened to our proceedings. Sometimes your proposals, individually, were accepted by the body or amended and adopted, and you have shown no undue pride or vanity. Sometimes your ideas were not fully accepted to the-by the body, and when the Convention rejected the ideas you advanced, you showed neither disappointment nor resentment. You simply perservered, and I commend you for it. Rarely has a group of men and women has it-had a task so pressing, so difficult and so monotonous; but that task was welcomed by you as a challenge and an opportunity to devise, revise and reshape the government of Montana. You have always gone ahead with the worthy goal of making Montana's government more responsible and more responsive to the people, both now and in the future. And so, I wish to offer you my sincere praise and congratulations for a job well done. I wish to commend you for your deep conviction and common sense, your clear judgment and heroic endurance, and above all, for your lofty and serene sense of duty, always with an eye to the future. The job of thinking, reasoning and writing this Convention is done. Now, I can only urge that you start working for its ratification on June 6th. We must personally reach everyone everywhere with the truths that are embodied in this document. It will not be easy, for the Constitution is not yet really understood. There are many who are skeptical of it and some who are hostile toward it, even without reason. George Washington said to the drafters of the federal Constitution before it was written-"If, to please the people, we offer what we ourselves disapprove, how can we defend our work? Let us raise a standard to which the wise and honest can repair. The event is in the hand of God." This body has raised the standard to which the wise and honest can repair. Benjamin Franklin, who also participated in that Convention, said of the work of the federal convention: "When a carpenter is making a table and wants to fit the boards together, he has to plane a little off from each edge." So, in this Constitution, each side would have to give way a little in order to fit together all the pieces of the new government. Here in the Montana Convention, this wisdom has been clearly shown. In the general spirit of compromise, our work has been completed. The Constitutional Convention has not been the work of any one man, nor has it been the work of the leading nine or ten men. It has truly been the work of all. Your ideas, your defense of your ideas have contributed, but so has your opposition to and your compromise with the ideas of others. And in the end, your acceptance of the counsel and thought of your fellow delegates has allowed us to generally agree on the principles we have included in our Constitution. And even though we hope we will walk out of this hall as a body agreed on this document, there may be some of us yet who will not sign, who cannot sign, having yielded more

than they can reckon with. To any of those, I can only recommend your own conscience as a guide in your final decision; but those will be only a few; and I will respect their decision. To the others who happily signed and who worked toward this moment, I urge also your pledge to work for ratification. The document we have made is worthy of that effort, and I would like to repeat that the event is in the hands of God. My heartfelt good wishes for your continued interest and involvement in state government. Montana is worthy of that and of our efforts. Thank you.

(Applause)

VICE PRESIDENT TOOLE: I was about to ask Mrs. Warden and Mr. Murray to come to the rostrum, but they're already enroute. And, Mr. President, will you please come up here?

DELEGATE WARDEN: This is always the time of the goodies, and it gives me great pleasure on behalf of all the 99 delegates to present to the one delegate who has been our Chairman and our President and who has guided us through this, two gifts from the body. Would you open this first?

PRESIDENT GRAYBILL: You sure I can open it? I don't know. Should I save the paper? Did the Convention buy it? (Laughter)

DELEGATE WARDEN: They threw that in for good measure.

PRESIDENT GRAYBILL: My goodness. My, it's a marvelous plaque. It says: "Leo Graybill, Jr., President of the 1971-72 Montana Constitutional Convention. In recognition of your fairness, dedication, and outstanding leadership. From the other 99 delegates." Thank you so much.

(Applause)

DELEGATE WARDEN: Leo, that was to hang on the wall of our office. This is to take home and enjoy.

(Mrs. Warden presented Mr. Graybill with a second gift)

PRESIDENT GRAYBILL: Do I open it? Wow! *The West of William H. Ashely, 1822-1838.* I'm sure it's a historically significant document about the history of the West, and it's beautifully printed and engraved and bound in leather. I guess we'll have to build a library. (Laughter) It's marvelous. Thank you very much.

DELEGATE MURRAY: And now, Mr. President, on behalf of the other 99 delegates, may I read this letter to you: "The Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Helena, Montana. Dear Mr. President: We, the delegates to the 1971-72 Montana Constitutional Convention, hereby express to you our sincere gratitude for the excellent manner in which you have conducted the affairs of this Convention. We stand in awe at your physical stamina, mental ability, infinite patience and total fairness. Regardless of the ultimate outcome of our labors, we want you to know that, in our unanimous opinion, you have left a giant imprint on Montana's history. We wish you well and invoke Divine blessings on you all the days of your life. Sincerely."

(Applause)

PRESIDENT GRAYBILL: Well, I must say that that's almost overwhelming, and I just want to thank you very much, and I want to say that there's never been a time nor a delegate that's ever had-done anything to make it hard, and I appreciate your sincere feelings here. Thank you very much.

(Applause)

VICE PRESIDENT TOOLE: Members of the Convention, we will now proceed to sign our new Constitution; and at this time, I want to introduce someone to you, well-known to all of you, who is involved in the process of getting this document signed and recorded-Mr. Frank Murray, the Secretary of State. Frank, would you stand up and take a bow, please.

(Mr. Murray stood to receive the applause of the assembly)

VICE PRESIDENT TOOLE: Will the President now go down and sign the new Constitution and have his signature attested by Mrs. Bowman, the Secretary?

(President Graybill affixed his signature)

(Applause)

VICE PRESIDENT TOOLE: Now, fellow delegates, as the clerk calls your name, so many delegates as wish to sign the new Constitution will please do so. The clerk will call the name of the delegates in alphabetical order, and I think you've been instructed on how to come up and what route to take getting back to your seats.

CLERK HANSON: Magnus Aasheim, District Number 4.

(Delegate Aasheim affixed his signature)

CLERK HANSON: John H. Anderson, Jr., District 21.

(Delegate Anderson affixed his signature)

CLERK HANSON: Oscar L. Anderson, District Number 3.

(Delegate Anderson affixed his signature)

CLERK HANSON: Harold Arbanas, District Number 13.

(Delegate Arbanas affixed his signature)

CLERK HANSON: Franklin Arness, District Number 23.

(Delegate Arness affixed his signature)

CLERK HANSON: Cedor B. Aronow, District Number 15.

(Delegate Aronow affixed his signature)

CLERK HANSON: William H. Artz—Bill-District Number 13.

(Delegate Artz affixed his signature)

CLERK HANSON: Thomas M. Ask, District Number 9.

(Delegate Ask affixed his signature)

CLERK HANSON: Betty Babcock, District 12.

(Delegate Babcock affixed her signature)

CLERK HANSON: Lloyd Barnard, District 5.

(Delegate Barnard affixed his signature)

CLERK HANSON: Grace C. Bates, District 11.

(Delegate Bates affixed her signature)

CLERK HANSON: Don E. Belcher, District 9.

(Delegate Belcher affixed his signature)

CLERK HANSON: Ben E. Berg, Jr., District 11.

(Delegate Berg affixed his signature)

CLERK HANSON: E. M. Berth&on, District Number 15.

(Delegate Berthelson affixed his signature)

CLERK HANSON: Chet Blaylock, District 8.

(Delegate Blaylock affixed his signature)

CLERK HANSON: Virginia H. Blend, District 13.

(Delegate Blend affixed her signature)

CLERK HANSON: Geoffrey L. Brazier, District 12.

(Delegate Brazier affixed his signature)

CLERK HANSON: Bruce M. Brown, District 2.

(Delegate Brown affixed his signature)

CLERK HANSON: Mrs. Daphne Bugbee, District 18.

(Delegate Bugbee affixed her signature)

CLERK HANSON: William A. Burkhardt, District 12.

(Delegate Burkhardt affixed his signature)

CLERK HANSON: Marjorie Cain, District 23.

(Delegate Cain affixed her signature)

CLERK HANSON: Bob Campbell, District 18.

(Delegate Campbell affixed his signature)

DELEGATE CAMPBELL: The Constitution is our child. Contrary to Governor Anderson's address, it is not for sale to the people of Montana; it's being placed up for adoption.

(Applause)

CLERK HANSON: Jerome J. Cate, District 8.

(Delegate Cate affixed his signature)

CLERK HANSON: Richard J. "Rick" Champoux, District 16.

(Delegate Champoux affixed his signature)

CLERK HANSON: Lyman W. Choate, District 2.

(Delegate Choate affixed his signature)

CLERK HANSON: Max Conover, District 8.

(Delegate Conover affixed his signature)

CLERK HANSON: C. Louise Cross, District 3.

(Delegate Cross affixed her signature)

CLERK HANSON: Wade J. Dahood, District 19.

(Delegate Dahood affixed his signature)

CLERK HANSON: Carl M. Davis, District 21.

(Delegate Davis affixed his signature)

CLERK HANSON: Douglas Delaney, District 10.

(Delegate Delaney affixed his signature)

CLERK HANSON: Maurice Driscoll, District 20.

(Delegate Driscoll affixed his signature)

CLERK HANSON: Dave Drum, District 8.

(Delegate Drum affixed his signature)

CLERK HANSON: Dorothy Eck, District 11.

(Delegate Eck affixed her signature)

CLERK HANSON: Marian S. Erdmann, District 13.

(Delegate Erdmann affixed her signature)

CLERK HANSON: Leslie Joe Eskildsen, District 5.

(Delegate Eskildsen affixed his signature)

CLERK HANSON: Mark Etchart, District 4.

(Delegate Etchart affixed his signature)

CLERK HANSON: James R. Felt, District 8.

(Delegate Felt affixed his signature)

CLERK HANSON: Donald R. Foster, District 10.

(Delegate Foster affixed his signature)

CLERK HANSON: Noel D. Furlong, District 16.

(Delegate Furlong affixed his signature)

CLERK HANSON: J. C. Garlington, District 18.

(Delegate Garlington affixed his signature)

CLERK HANSON: E. S. "Erv" Gysler, District 14.

(Delegate Gysler affixed his signature)

CLERK HANSON: Otto T. Habedank, District 3.

(Delegate Habedank affixed his signature)

CLERK HANSON: R. S. "Bob" Hanson, District 17.

(Delegate Hanson affixed his signature)

CLERK HANSON: Rod Hanson, District 15.

(Delegate Hanson affixed his signature)

CLERK HANSON: Gene Harbaugh, District 4.

(Delegate Harbaugh affixed his signature)

CLERK HANSON: Paul K. Harlow, District 23.

(Delegate Harlow affixed his signature)

CLERK HANSON: George Harper, District 12.

(Delegate Harper affixed his signature)

CLERK HANSON: Dan W. Harrington, District 20.

(Delegate Harrington affixed his signature)

CLERK HANSON: George B. Heliker, District 18.

(Delegate Heliker affixed his signature)

CLERK HANSON: David L. Holland, District 20.

(Delegate Holland affixed his signature)

CLERK HANSON: Arnold W. Jacobsen, District 16.

(Delegate Jacobsen affixed his signature)

CLERK HANSON: George H. James, District 23.

(Delegate James affixed his signature)

CLERK HANSON: Torrey B. Johnson, District 1.

(Delegate Johnson affixed his signature)

VICE PRESIDENT TOOLE: (Gaveling for order) Now, members of the Convention, I realize this is a long, drawn-out affair. It is also a most important and a most historical one, and it will not present us with the right kind of an impression to the media if the membership is wandering around and engaging in idle conversation, and I hope you will bear with us while the ceremony goes on and take your seats and be reasonably quiet.

CLERK HANSON: Thomas F. Joyce, District 20.

(Delegate Joyce affixed his signature)

CLERK HANSON: A. W. Kamhoot, District 6.

(Delegate Kamhoot affixed his signature)

CLERK HANSON: Robert Lee Kelleher from District 8.

(Delegate Kelleher affixed his signature)

CLERK HANSON: John H. Leuthold, District 7.

(Delegate Leuthold affixed his signature)

CLERK HANSON: Jerome T. Loendorf, District 12.

(Delegate Loendorf affixed his signature)

CLERK HANSON: Peter "Pete" Lorello, District 19.

(Delegate Lore110 affixed his signature)

CLERK HANSON: Joseph H. McCarvel, District 19.

(Delegate McCarvel affixed his signature)

CLERK HANSON: Russell C. McDonough, District 3.

(Delegate McDonough affixed his signature)

CLERK HANSON: Mike McKeon, District 19.

(Delegate McKeon affixed his signature)

CLERK HANSON: Charles B. McNeil, District 17.

(Delegate McNeil affixed his signature)

CLERK HANSON: Charles H. Mahoney, District 12.

(Delegate Mahoney affixed his signature)

CLERK HANSON: Mrs. Rachel1 K. Mansfield, District 14.

(Delegate Mansfield affixed her signature)

CLERK HANSON: Fred J. Martin, District 11.

(Delegate Martin affixed his signature)

CLERK HANSON: J. Mason Melvin, District 11.

(Delegate Melvin affixed his signature)

CLERK HANSON: Lyle R. Monroe, District 13.

(Delegate Monroe affixed his signature)

CLERK HANSON: Marshall Murray, District 16.

(Delegate Murray affixed his signature)

CLERK HANSON: Robert B. "Bob" Noble, District 13.

(Delegate Noble affixed his signature)

CLERK HANSON: Richard A. Nutting, District 7.

(Delegate Nutting affixed his signature)

CLERK HANSON: Mrs. Katie Payne, District 18.

(Delegate Payne affixed her signature)

CLERK HANSON: Catherine Pemberton, District 1.

(Delegate Pemberton affixed her signature)

CLERK HANSON: Donald Rebal, District 13.

(Delegate Rebal affixed his signature)

CLERK HANSON: Arlyne E. Reichert, District 13.

(Delegate Reichert affixed her signature)

CLERK HANSON: Mrs. Mae Nan Robinson, District 18.

(Applause)

(Mrs. Robinson affixed her signature)

CLERK HANSON: Richard B. Roeder, District 11.

(Delegate Roeder affixed his signature)

CHAIRMAN GRAYBILL: George W. Rollins, District 8.

(Delegate Rollins affixed his signature)

CLERK HANSON: Miles Romney, District 22.

(Delegate Romney affixed his signature)

CLERK HANSON: Sterling Rygg, District 16.

(Delegate Rygg affixed his signature)

CLERK HANSON: Don Scanlin, District Number 8.

(Delegate Scanlin affixed his signature)

CLERK HANSON: John M. Schiltz, District 8.

(Applause)

(Delegate Schiltz affixed his signature)

CLERK HANSON: Henry L. Siderius, District 16.

(Delegate Siderius affixed his signature)

CLERK HANSON: Clark E. Simon, District 8.

(Delegate Simon affixed his signature)

CLERK HANSON: Carman Skari, District 14.

(Delegate Skari affixed his signature)

CLERK HANSON: M. Lynn Sparks, District 20.

(Applause)

(Delegate Sparks affixed her signature)

CLERK HANSON: Lucile Spew, District 18.

(Applause)

(Delegate Speer affixed her signature)

CLERK HANSON: R. J. Studer, Sr., District 8.

(Delegate Studer affixed his signature)

(Applause)

CLERK HANSON: Mrs. John Justin **(Veronica)** Sullivan, District 20.

(Delegate Sullivan affixed her signature)

CLERK HANSON: William H. Swanberg, District 13.

(Delegate Swanberg affixed his signature)

CLERK HANSON: John H. Toole, District 18.

(Applause)

(Delegate Toole affixed his signature)

CLERK HANSON: Mrs. Edith Van Buskirk, District Number 14.

(Delegate Van Buskirk affixed her signature)

CLERK HANSON: Robert Vermillion, District 15.

(Delegate Vermillion affixed his signature)

CLERK HANSON: Roger A. Wagner, District Number 4.

(Delegate Wagner affixed his signature)

CLERK HANSON: Jack K. Ward, District 22.

(Delegate Ward affixed his signature)

CLERK HANSON: Margaret S. Warden, District 13.

(Delegate Warden affixed her signature)

CHAIRMAN GRAYBILL: Archie 0. Wil-

son, District 6.

(Applause)

(Delegate Wilson affixed his signature)

CLERK HANSON: Robert F. Woodmansey, District 13.

(Applause)

(Delegate Woodmansey affixed his signature)

SECRETARY BOWMAN: Mr. President, all 100 delegates have signed.

(Applause)

VICE PRESIDENT TOOLE: Mr. Murray will now affix the official Seal to the Constitution.

(Secretary of State Murray affixed the Great Seal of the State of Montana to the Constitution)

MR. MURRAY: Your order has been obeyed.

VICE PRESIDENT TOOLE: Thank you, Mr. Murray. All-

(Applause)

VICE PRESIDENT TOOLE: All of the speculation about who would and who would not sign has now officially terminated. (Laughter) And with that, I will turn the Chair back to our President.

PRESIDENT GRAYBILL: Without objection, we'll be on Order of Business Number 11, Announcements. The Chair has been asked to announce that, on adjournment, the four procedural committees who did not have pictures taken—we'll take some pictures right here in front as quickly as possible of the four procedural committees and the officers, as soon as we adjourn. The Chair has also been asked to announce that the printing presses have been rolling while we've been sitting here; and if you will all allow, the pages will, within about 20 minutes to a half an hour, put upon your desks 50 copies of the explanation of the Constitution and, for those who are from out of town, at least 25 copies of the Constitution. We're still stapling and we're not quite up, so those of you from Helena may have to pick up your copies of the Constitution a little later. We want those who are leaving town to be able to take as many as possible back with them. We've had-for the benefit of the audience-quite a difficult time stapling 10,000 copies of the Constitution. And if you will just be a little patient, within 15 or 20 minutes after adjournment, the pages will have put on your desks this material which you can take home with you so that you'll have it available. Are there other announcements?

(No response)

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen, have you a motion?

DELEGATE ESKILDSEN: Mr. President, many words have been spoken-many hours of deliberation, working from morning till night. Our job is now coming to a close. But from this hour on, we should dedicate ourselves to being available to our constituents so that they may find answers to the many questions that will be in their minds. Mr. President, there being no further business concerning the drafting of the proposed Constitution to come before us and our draft being completed and signed, I move that the Constitutional Convention at this hour, 12 o'clock noon, this day, March 24, 1972, be adjourned sine die.

PRESIDENT GRAYBILL: So many **as** shall be in favor of the motion to adjourn sine die, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: It's so ordered.

(Applause)

(Convention adjourned sine die at 12:00 noon, March 24, 1972)

PRESIDENT GRAYBILL: May I have your attention? Will you please remain standing. I, not looking at my green sheet, overlooked the benediction. At this time, the Most Reverend Raymond Hunthausen, the Bishop of Helena, will give us his invocation. Excuse me, Bishop.

BISHOP HUNTHAUSEN: Let us pray. Almighty God, our Father, in Your love You direct us to strive constantly for understanding, justice and love among ourselves. Mindful of this, we pray today that the sincere efforts made by this Constitutional Convention to improve the order and condition of our lives may effectively bring us closer to Your promised time, that time when true hospitality and peace will reign, when we shall beat our spears into pruning hooks and brother

will not raise his hand against brother. We thank You, Father, for Your goodness toward us, shown in so many ways; for the freedom we possess in our beautiful and bountiful land. We thank You for the friendships that were forged here among our people, and especially we thank You for these dedicated men and women of the Constitutional Convention, struggling to bring more of goodness and peace, respect and dignity into our lives. Finally, we pray that You continue to give all of us, Your people, the strength necessary to persevere in our dedication, our love for You and for one another. We ask this in the name of Christ, our Lord, Amen.

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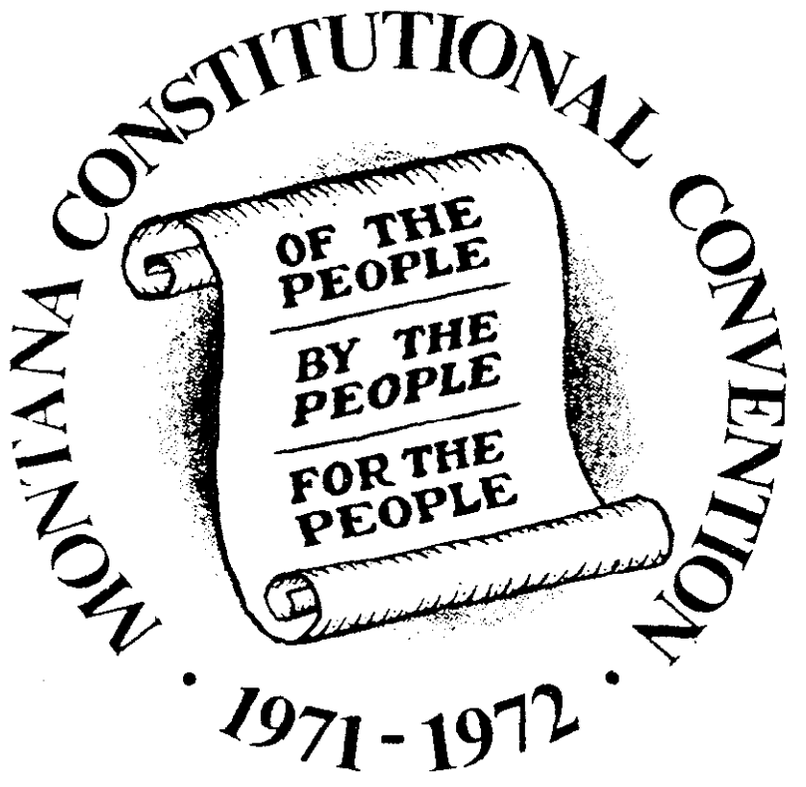

INDEX

PREFACE

When the new constitution for the state of Montana was published after its ratification in 1972, it included an index compiled by the Allen Smith Company, publisher, which referenced topics to the article and section numbers. The index for the proceedings is based upon that constitution index, with additional and expanded headings to cover operation and proceedings of the convention, the biographies and committee assignments of delegates, and a broader topic index.

Action on the Style and Drafting Committee proposals, final consideration, and adoption are not included in the individual designations in most cases (except for the individual articles). Discussion at these stages covered an entire article or section by number, rather than referring to topics within the article or section. In cases where amendments were made, a reference is included.

Volumes I and II, containing delegate and committee proposals and information about the delegates and the operation of the convention, were prepared by the Legal Services Division of the Legislative Council and printed in typewritten form. Later the transcript of the proceedings was compiled and edited by the Legislative Council and typeset by Color World of Bozeman, Montana, with the transcript beginning with page 1. Because pages 1 through 1113 appear in both the preliminary Volumes I and II and the transcript, Volumes III through VII, the index identifies pages as Vol. I, pages 1 through 544; Vol. II, pages 545 through 1113; or Trans. (for Transcript), pages 1 through 3047. Numbers of the transcript pages in each volume are listed on the volume spine.

Article and section numbers cited within the transcript are the numbers which appear in the committee proposals and are not always in agreement with the numbers as they finally appear in the adopted constitution. When referred to in the index, the adopted constitution number is used.

I wish to thank Diana Dowling, Executive Director of the Legislative Council, and the members of the Constitutional Convention Publishing Committee for their patience when progress of the index was slow indeed; Jacqueline Terrell, Legislative Council Code Indexer, for advice and encouragement; Valeri Hanson, of the Legislative Council Staff, for setting up the format and typing the copy for printing; and Phyllis Cote and Marie Fuhrmann, Legislative Council Proofreaders, for proofreading.

June, 1982
Margaret Liles

Montana
Table of Corresponding Sections
1889 Constitution to 1972 Constitution

Note: The 1972 Constitution was an entirely new Constitution. The following Table is a comparison from sections of the 1889 Constitution to sections of the 1972 Constitution that are the same, similar, or completely revised but containing the same subject matter. For further explanation of similarity or differences see Convention Notes and Compiler's Comments in the Montana Code Annotated-Annotations to the 1972 Constitution.

1889 Constitution	1972 Constitution
Article I	
Sec. 1	Deleted
Article II	
Sec. 1	Deleted
Article III	
Sec. 1	Art. II, Sec. 1
Sec. 2	Art. II, Sec. 2
Sec. 3	Art. II. Sec. 3
Sec. 4	Art. II, Sec. 5
Sec. 5	Art. II, Sec. 13
Sec. 6	Art. II, Sec. 16
Sec. 7	Art. II, Sec. 11
Sec. 8	Art. II, Sec. 20
Sec. 9	Art. II, Sec. 30
Sec. 10	Art. II, Sec. 1
Sec. 11	Art. II, Sec. 31
Sec. 12	Art. II, Sec. 27
Sec. 13	Art. II, Sec. 12
Sec. 14	Art. II. Sec. 29
Sec. 15	Art. IX, sec. 3
Sec. 16	Art. II, Sec. 24
Sec. 17	Art. II, Sec. 23
Sec. 18	Art. II, Sec. 25
Sec. 19	Art. II, Sec. 21
Sec. 20	Art. II, Sec. 22
Sec. 21	Art. II, Sec. 19
Sec. 22	Art. II, Sec. 32
Sec. 23	Art. II, Sec. 26
Sec. 24	Art. II, Sec. 28
Sec. 25	Deleted
Sec. 26	Art. II, Sec. 6
sec. 27	Art. II, Sec. 17
sec. 28	Deleted
sec. 29	Deleted
Sec. 30	Art. II, Sec. 34
Sec. 31	Art. II, Sec. 33
Article IV	
Sec. 1	Art. III, Sec. 1
Article V	
Sec. 1	Art. III. Sec. 4, 5, 6, 7 Art. V. Sec. 1
Sec. 2	Art. V, Sec. 3
sec. 3	Art. V, Sec. 4
Sec. 4	Art. V, Sec. 14
Sec. 5	Art. V, Sec. 6
Sec. 6	Art. V, Sec. 6
Sec. 7	Art. V, Sec. 9
Sec. 8	Art. V, Sec. 5
Sec. 9	Art. V, Sec. 10
Sec. 10	Art. V, Sec. 10
Sec. 11	Art. V, Sec. 10
Sec. 12	Art. v, Sec. 10
Sec. 13	Art. V, Sec. 10
Sec. 14	Art. V, Sec. 10
Sec. 15	Art. V. Sec. 8
Sec. 16	Art. V, Sec. 13
Sec. 17	Art. V, Sec. 13
Sec. 18	Art. V, Sec. 13
Sec. 19	Art. V, Sec. 11
Sec. 20	Deleted

1889 Constitution	1972 Constitution
Article V	
Sec. 21	Deleted
sec. 22	Deleted
Sec. 23	Art. V, Sec. 11
Sec. 24	Art. V, Sec. 11
Sec. 25	Deleted
sec. 26	Art. V, Sec. 12
sec. 27	Deleted
Sec. 28	Deleted
Sec. 29	Deleted
Sec. 30	Deleted
Sec. 31	Deleted
Sec. 32	Deleted
Sec. 33	Art. V, Sec. 11
sec. 34	Art. VIII, Sec. 14
Sec. 35	Art. V, Sec. 11
Sec. 36	Deleted
Sec. 37	Deleted
Sec. 38	Deleted
Sec. 39	Deleted
Sec. 40	Art. VI, Sec. 10
Sec. 41	Deleted
Sec. 42	Deleted
sec. 43	Deleted
Sec. 44	Deleted
Sec. 45	Repealed
Sec. 46	Art. III, Sec. 2
Article VI	
Sec. 1	Art. V, Sec. 14
Sec. 2	Art. V, Sec. 14
Sec. 3	Art. V, Sec. 14
Sec. 4	Art. V, Sec. 14
Sec. 5	Art. V, Sec. 14
Sec. 6	Art. V, Sec. 14
Article VII	
Sec. 1	Art. VI, Sec. 1, 4
Sec. 2	Art. VI, Sec. 2
Sec. 3	Art. VI, Sec. 3
Sec. 4	Art. VI, Sec. 5
Sec. 5	Art. VI, Sec. 4
Sec. 6	Art. VI, Sec. 13
Sec. 7	Art. VI, Sec. 6, 8
Sec. 8	Deleted
Sec. 9	Art. VI, Sec. 12
Sec. 10	Art. VI, Sec. 9, 15
Sec. 11	Art. VI, Sec. 11
sec. 12	Art. VI, Sec. 10
sec. 13	Art. VI, Sec. 10
Sec. 14	Art. VI, Sec. 14
Sec. 15	Art. VI, Sec. 4, 6
Sec. 16	Art. VI, Sec. 6
Sec. 17	Art. VI, Sec. 4
Sec. 18	Deleted
Sec. 19	Deleted
Sec. 20	Art. VI, Sec. 1
Sec. 21	Art. VI, Sec. 7
Article VIII	
Sec. 1	Art. VII, Sec. I
Sec. 2	Art. VII, Sec. 2
Sec. 3	Art. VII, Sec. 2

1889 Constitution	1972 Constitution
Article VIII	
Sec. 4	Deleted
Sec. 5	Art. VII, Sec. 3
Sec. 6	Art. VII, Sec. 8
Sec. 7	Art. VII, sec. 7
sec. 8	Art. VII., Sec. 8
sec. 9	Deleted
Sec. 10	Art. VII, Sec. 9
Sec. 11	Art. VII, Sec. 4
Sec. 12	Art. VII, Sec. 6, 7, 8
Sec. 13	Art. VII, Sec. 6
Sec. 14	Art. VII, Sec. 6
sec. 15	Deleted
sec. 16	Art. VII, Sec. 9
Sec. 17	Deleted
Sec. 18	Deleted
Sec. 19	Deleted
Sec. 7.0	Art. VII, Sec. 5, 7
Sec. 21	Art. VII. Sec. 5
Sec. 22	Deleted
Sec. 23	Deleted
Sec. 24	Deleted
Sec. 25	Deleted
Sec. 26	Deleted
Sec. 27	Deleted
Sec. 28	Deleted
Sec. 29	Art. VII, Sec. 7
sec. 30	Art. VII, Sec. 9
sec. 31	Art. VII, Sec. 9
Sec. 32	Deleted
sec. 33	Art. VII, Sec. 9
sec. 34	Art. VII, Sec. 8
sec. 35	Art. VII, Sec. 9
sec. 36	Deleted
sec. 37	Art. VII, Sec. 10
Article IX	
Sec. 1	Art. IV, Sec. 1
sec. 2	Art. IV, Sec. 2, 3
Sec. 3	Art. IV, Sec. 2
sec. 4	Art. IV, Sec. 6
Sec. 5	Deleted
Sec. 6	Art. IV, Sec. 2
sec. 7	Art. IV, Sec. 4
sec. 8	Art. IV, Sec. 2
sec. 9	Art. IV, Sec. 3
Sec. 10	Art. IV. sec. 4
Sec. 11	Art. IV: Sec. 4
Sec. 12	Art. IV, Sec. 2
Sec. 13	Art. IV, Sec. 5
Article X	
Sec. 1	Art. XII, Sec. 3
Sec. 2	Art. III, Sec. 2
Sec. 3	Art. III, Sec. 2
sec. 4	Deleted
Sec. 5	Art. XII, Sec. 3
Article XI	
Sec. 1	Art. X, Sec. 1
sec. 2	Art. X. Sec. 2
Sec. 3	Art. X; Sec. 3
Sec. 4	Art. X, Sec. 4

1889 Constitution	1972 Constitution
Article XI	
Sec. 5	Art. X, Sec. 5
Sec. 6	Art. X, Sec. 1
Sec. 1	Art. X, Sec. 1
Sec. 8	Art. X, Sec. 6
Sec. 9	Art. X, Sec. 7
Sec. 10	Art. X, Sec. 8
Sec. 11	Art. X, Sec. 9
Sec. 12	Art. X, Sec. 10
Article XII	
sec. 1	Deleted
Sec. 1a	Deleted
Sec. 1b	Art. VIII, Sec. 6
Sec. 2	Art. VIII, Sec. 5
Sec. 3	Deleted
Sec. 4	Deleted
Sec. 5	Art. VIII, Sec. 4
Sec. 6	
Sec. 7	Art. VIII, Sec. 2
Sec. 8	Deleted
sec. 9	Art. XII, Sec. I
Sec. 10	Art. VIII, Sec. I4
Sec. 11	Art. VIII, Sec. 1
Sec. 12	Art. VIII, Sec. 9
sec. 13	Art. VIII, Sec. I2
Sec. 14	Deleted
Sec. 15	Art. VIII, Sec. 3, 7
Sec. 16	Deleted
Sec. 17	Deleted
Sec. 18	Deleted
Article XIII	
Sec. 1	Deleted
Sec. 2	Art. VIII, Sec. 8
sec. 3	Art. VIII, Sec. 11
Sec. 4	Deleted
sec. 5	Art. VIII, Sec. 10
Sec. 6	Art. VIII, Sec. 10
Article XIV	
Sec. 1	Art. VI, Sec. 13
sec. 2	Deleted
Sec. 3	Deleted
sec. 4	Deleted
Sec. 5	Deleted
Article XV	
Sec. 1	Deleted

1889 Constitution	1972 Constitution
Article XV	
Sec. 2	Art. XIII, Sec. 1
Sec. 3	Deleted
Sec. 4	Deleted
Sec. 5	Deleted
Sec. 6	Deleted
Sec. 7	Deleted
Sec. 8	Deleted
Sec. 9	Deleted
Sec. 10	Deleted
Sec. 11	Deleted
Sec. 12	Deleted
Sec. 13	Art. XIII, Sec. 1
Sec. 14	Deleted
Sec. 15	Deleted
Sec. 16	Deleted
Sec. 11	Deleted
Sec. 18	Deleted
Sec. 19	Deleted
Sec. 20	Art. XIII, Sec. 1
Article XVI	
Sec. 1	Art. XI, Sec. 2
sec. 2	Art. XI, Sec. 2
Sec. 3	Deleted
Sec. 4	Art. XI, Sec. 3
Sec. 5	Art. XI, Sec. 3
sec. 6	Art. XI, Sec. 3
sec. 7	Art. XI, Sec. 3
sec. 8	Art. XI, Sec. 3
Article XVII	
Sec. 1	Art. X, Sec. 11
sec. 2	Art. X, Sec. 11
Sec. 3	Art. X, Sec. 11
Article XVIII	
Sec. 1	Art. XII, Sec. 1, 2
Sec. 2	Deleted
Sec. 3	Deleted
Sec. 4	Art. XII, Sec. 2
Sec. 5	Deleted
Article XIX	
Sec. 1	Art. III, Sec. 3
sec. 2	Art. III, Sec. 9
Sec. 3	Deleted
Sec. 4	Art. XIII, Sec. 5
Sec. 5	Art. XIII, Sec. 6

1889 Constitution	1972 Constitution
Article XIX	
Sec. 6	Deleted
Sec. 7	Deleted
Sec. 8	Art. XIV, Sec. 1, 4, 5, 6, 7
Sec. 9	Art. XIV, Sec. 8, 11
Article XX	
Sec. 1	Deleted
Sec. 2	Deleted
Sec. 3	Deleted
Sec. 4	Deleted
Sec. 5	Deleted
Sec. 6	Deleted
Sec. 7	Deleted
Sec. 8	Deleted
Sec. 9	Deleted
Sec. 10	Deleted
Sec. 11	Deleted
Sec. 12	Deleted
Sec. 13	Deleted
Sec. 14	Deleted
Sec. 15	Deleted
Sec. 16	Deleted
sec. 11	Deleted
Article XXI	
Sec. 1	Art. VIII, Sec. 1 3
Sec. 2	Deleted
sec. 3	Deleted
Sec. 4	Deleted
Sec. 5	Deleted
Sec. 6	Deleted
Sec. 1	Deleted
Sec. 8	Deleted
Sec. 9	Deleted
Sec. 10	Deleted
Sec. 11	Deleted
sec. 12	Deleted
Sec. 13	Deleted
Sec. 14	Deleted
Sec. 15	Deleted
Sec. 16	Deleted
Sec. 17	Deleted
sec. 18	Deleted

INDEX

AASHEIM, MAGNUS (ANTELOPE)
Biography, Vol. I 31
Committee assignment, Vol. I 24
Delegate Proposal
no. 119 (earmarking of revenues), Vol. I 246
Nomination of
grace bates as western district vice president, Trans. 56
leo graybill, jr,, as president, Trans. 9
Nominations
eastern district vice president, Trans. 52-53
president of convention, Trans. 12
declines nomination, Trans. 12
Remarks by, on
ballot, constitution, Trans. 543-544, 1629-1632, 286'7, 2872—2873, 2875, 2913—2915, 2957, 2964-2965
constitutional revision (Article XIV)
amendment
by legislature, Trans. 494-495, 502—503, 524
methods of, Trans. 464, 466, 471-474
initiative, Trans. 506
submission, Trans. 519
declaration of rights (Article II)
assembly; freedom of, Trans. 1648, 2479-2481
debt. imprisonment for, Trans. 1793-1794
departments and institutions (Article XII)
agriculture, special levies, Trans. 1368
institutions, Trans. 2276
labor, department of, Trans. 2311
public utility districts, Trans. 2410-2411, 2416, 2417-2418
veterans. Trans. 2276
education and public lands (Article X)
boards of education, Trans. 2070—2071, 2081, 2098, 2166
commissioner of higher education, Trans. 2098
educational goals and duties, Trans. 1970
non-discrimination in education, Trans. 2038—2039, 2043-2044
environment and natural resources (Article IX)
reclamation, Trans. 2211
executive (Article VI)
compensation, Trans. 993
duties, Trans. 912
special session, Trans. 960, 1104
vacancy, Trans. 933
veto power, Trans. 1720—1721, 1122
general government (Article III)
initiative, Trans. 2707-2709
judiciary (Article VII)
campaign expenses, Trans. 2197
qualifications, Trans. 1154, 1179
removal and discipline, Trans. 1125—1126
selection, Trans. 1100, 1106—1108, 1112
supreme court jurisdiction, Trans. 1043
terms of office, Trans. 1152
legislature (Article V) — majority report introduction, Trans. 543-544
bills, Trans. 644, 645, 1586—1587, 1623
compensation, Trans. 563, 1571—1572
disqualification, Trans. 1574—1576, 1578
districting and apportionment, Trans. 683, 695, 711—714, 716, 718—720, 737, 746—747
election and terms, Trans. 1569
impeachment, Trans. 676, 1589
legislative post-auditor, Trans. 2791—2792, 2794, 2797, 2803
organization and procedure, Trans. 616, 626, 629, 636, 731, 733—734
qualifications, Trans. 545-572
sessions, Trans. 584—585, 814, 817, 820-821, 1704

AASHEIM, MAGNUS (Cont.)
Remarks by, on (Cont.)
legislature (Cont.)
size, Trans. 766—767, 769, 780—782, 1595—1596, 1599—1600, 1612—1613
unicameral/bicameral, merits of, Trans. 759, 775-779
revenue and finance (Article VIII)
highway revenue non-diversion. Trans. 1436—1437, 1439, 2707—2709
investment of public funds, Trans. 1532—1534
property tax exemptions, Trans. 1417—1418, 1422—1423
state debt, Trans. 1495, 1500—1501
tax purposes, Trans. 1378, X399-1400
two-mill levy, Trans. 1549—1550, 1552, 1554—1555
suffrage and elections (Article IV)
absentee voting, Trans. 429
elections. Trans. 450
poll-booth registration, Trans. 429, 433, 434, 442, 443, 451-452

ABANDONED VEHICLES, Vol. I 187—188

ABOLITION OR DISSOLUTION OF LOCAL GOVERNMENT UNITS, Vol. 1135, 160, 201, 215, 253; Vol. II 782, 788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521

ABORTION
See RIGHT TO LIFE

ABSENTEE VOTING, Vol. 212, 336, 338, 341, 342; Vol. II 845, 847, 1045. 1091; Trans. 400, 422, 429, 431—433

ACCESS TO GOVERNMENTAL PROCESSES
See CITIZEN PARTICIPATION IN GOVERNMENTAL PROCESSES

ACCESS TO PUBLIC LANDS, Trans. 2145—2150

ACCOUNTABILITY FOR STATE REVENUE, Vol. I 307; Vol. II 581, 582, 586, 595, 596, 946, 949, 950, 952, 1066, 1098; Trans. 921, 924, 1001, 1002, 1376, 1516—1517
See also AUDITS

ACCOUNTING PROCEDURES
See STATEWIDE BUDGETING AND ACCOUNTING SYSTEM

ACCUSED, RIGHTS OF, Vol. I 105; Vol. II 623, 640-641, 960,965, 968,972, 1040, 1089; Trans. 1776

ACHER, ROSEMARY (JOURNAL CLERK), Vol. I 69; Trans. 1, 3032, 3035

ACTIONS
See CIVIL ACTIONS AND PROCEDURE; CRIMES AND CRIMINAL PROCEDURE

ACTS
See BILLS

ADDICTION TO ALCOHOL OR DRUGS, Trans. 1813-1846

ADJOURNMENT OF LEGISLATURE
Bicameral, Vol. I 275, 396, 404; Vol. II 865, 871, 877, 882, 885, 887, 1049,1053,1092, 1107; Trans. 601—602, 730—735
Unicameral, Vol. I 377, 387; Vol. II 862,868,874, 1047, 1105; Trans. 601—602

ADMINISTRATION COMMITTEE
hlembership and staff, Vol. 121; Trans. 357
Officers, appointment of, Trans. 95
Report, Trans. 112, 253-254
Responsibilities, Trans. 33, 67—68, 128

ADMINISTRATION, DEPARTMENT OF, Trans. 915,917, 1000, 1001, 1002, 1374, 2055—2056, 2057, 2068, 2085, 2119, 2120, 2123-2124, 2128, 2344, 2350, 2578, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2590, 2591

ADMINISTRATION OF JUSTICE, Vol. 188, 263, 318; Vol. II 622,636—637,959,964, 971, 1039, 1088; Trans. 1020—1021, 1024, 1753—1760, 1764, ,788, 1792, 2192, 2196, 2625
See also CIVIL ACTIONS AND PROCEDURE; CRIMES AND CRIMINAL PROCEDURE; JUDICIARY, Judicial power

ADMINISTRATIVE ACTIONS, REVIEW OF, Vol. I 85, 141, 511, 517, 550—551, 561, 562; Vol. II 914. 918, 925, 1061, 1096; Trans. 1049—1054, ,073, 1074, 1260

ADOPTION SCHEDULE
Adoption, Trans. 3013—3014
Committee report, Vol. II 1080—1081
Debate, committee report, Trans. 2596, 2828, 2863, 2878, 2946-2948, 2988, 2997-3004, 3008
Text as adopted, Vol. II 1104—1108

ADULT RIGHTS, Vol. 197; Vol. II 621, 635, 958, 963, 967, 970, 1039, 1088; Trans. 1695, 1745—1749
See also PUBLIC OFFICE. ELIGIBILITY FOR

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, Vol. II 797

A.F.L.-C.I.O., Trans. 583, 871, 883, 1356, 1359, 1412, ,429, 1443, 1463, 1482. 1484, 1745, 2073-2074, 2127, 212X-2129, 2331, 2332, 2356, 2362, 2530

AGE
Adulthood, Vol. 197; Vol. II 621, 635, 958, 963, 967, 970, 1039, 1088; Trans. 1695, 1745—1749
Elderly, See AGING AND AGED PERSONS
Electors, Vol. I 191, 332, 336, 337, 338, 341; Vol. II 845, 846, 847, 1045, 1091; Trans. 392, 433, 448

AGE (Cont.)
Military service, Vol. I 295; Trans. 965
Minors, Vol. I 166, 199; Vol. II 621—622, 635—636, 958, 964, 967, 970—971, 1039, ,088; Trans. 1749—1753
Public office holders
constitutional convention delegates, Vo,. I 1
executive branch, Vol. I 180, 228, 319—320, 445, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. X84-899, 978—986, 1693—1697
generally, Vol. I 97,191—192, 300, 336, 338, 341; Vol. II 621, 635; Trans. 414—417
judiciary, Vol. 187, 495—496, 498, 500, 522; Trans. 1119
legislators, Vol. I 383; Trans. 545, 560,564
sheriff, Vol. I 300
Public school students. Vol. I 170; Vol. II 721. 722. 728: Trans. 1948, 1949, 1958, 2006

AGENCIES, STATE
See also DEPARTMENTS OF STATE GOVERNMENT
Number of, Vol. I 442,450; Trans. 580, 944
Offices may not be relocated, Vol. 1273
Review of actions by, Vol. 185, 141, 511, 517, 550—551, 561, 562; Vol. II 914, 918, 925, 1061, 1096; Trans. 1049—1054, 1073, 1074, 1260

AGING AND AGED PERSONS
Provision of economic assistance and social and rehabilitative services for, Vol. 1297, 310; Vol. II 627, 674—675, 979, 983, 985, 988, 1076, 1102; Trans. 2270—2300
Tax credit for the elderly, Trans. 1420, 1421

AGRICULTURE
Appropriations for protection, enhancement and development of agriculture, Vol. I 101, 132. 246: Vol. II 550, 559. 560, 581, 586, 597-598, 936, 937, 938, 941, 1076, 1102; Trans. 1199, 1366—1370, 1378, 1547, 2364, 2539—2540
Department of agriculture, Vol. I 244; Vol. II 550, 559—560, 936-938, 941, 1076, 1102; Trans. 1199, 1363—1366, 2308—2309, 2310, 2743
Levies on livestock and agricultural commodities, Vol. I 101, 132, 246; Vol. II 550, 559, 560, 581, 586, 597-598, 936, 937, 938, 941, 1076, 1102; Trans. 1199, 1366—1370, ,378, 1547, 2364, 2539-2540
Maximum hours in regular day's work, agriculture and stock raising excepted, Vol. II 978, 982, 987; Trans. 2340-2342, 2601—2604
Taxation
agricultural and horticultural societies, Vol. I 306, 326; Vol. II 590; Trans. 1410
agricultural land and products, Vol. I 129; Trans. 1397, 1414, 1420, See also Levies on livestock and agricultural commodities
Water use, Vol. I 76, 145, 213. 255; Vol. II 552-553, 556—557, 931, 933, 935, 939, 1068, 1099; Trans. 1301—1351, See also WATER

AGRICULTURE, DEPARTMENT OF, Vol. I 244; Vol. II 550, 559-560, 936—938, 941, 1076, 1102; Trans. 1199, 1363—1366, 2308—2309, 2310, 2743

AID TO DEPENDENT CHILDREN, Trans. 2278, 2281, 2282, 2283, 2284, 2295

AID TO LOCAL GOVERNMENTS
See HIGHWAY REVENUE NON-DIVERSION; LOCAL GOVERNMENT, Revenue sharing by state

AID TO PRIVATE ENTITIES
See APPROPRIATIONS, Religious, charitable, industrial, educational. or benevolent purposes

AID TO SECTARIAN SCHOOLS
See SECTARIAN SCHOOLS

AIR QUALITY, Vol. I 75, 187—188, 261, 308; Vol. II 555; Trans. 1199—1200, 1222, 1260, 1266, 1484, 1520, 2529
See also ENVIRONMENT; POLLUTION AND POLLUTION CONTROL

ALCOHOLISM, DECRIMINALIZATION **OF, Trans. 1843-1846**

ALDRICH, HAROLD (REGIONAL DIRECTOR, BUREAU OF RECLAMATION), Trans. 1314, 1315, 1317, 1318, 1321, 1334

ALIMONY, Trans. 1793, 1794, 1795, 1797, 1798

ALT, CURT (PAGE), Trans. 254

AMENDATORY VETO, Vol. I 184, 232, 322, 433, 438, 450—452, 460; **Vol. II** 895—896, 901, 904, 908—909, **1058, 1094; Trans. 842, 948, 955**
See also VETO

AMENDMENT OF CONSTITUTION
See CONSTITUTIONAL REVISION

AMERICAN BAR ASSOCIATION, Trans. 1018, 1026, **1087, 2262**

AMERICAN COUNCIL OF EDUCATION, Trans. 2057

AMERICAN JUDICATURE SOCIETY, Trans. 1013, 1018, **1090**

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Trans. 1531

AMMONS, CARL (PAGE), Trans. 710

ANACONDA COMPANY. ,Trans. 1267., 1294. 1295. 1302. 1354, 1356, 1357, 1417, 1521, 1522, 1524, 1537, 2144, 2317, 2322

ANDERSON, c.R., Trans. 2143

ANDERSON, EVELYN (FIRST LADY OF THE STATE OF MONTANA), Trans. 1

ANDERSON, GOVERNOR FORREST H., Vol. I 2; Trans. 1, 2—3, 5-9, 1694, 1716, 3017, 3036—3037

ANDERSON, THE REVEREND H.R., JR. (FIRST PRESBYTERIAN CHURCH, GREAT FALLS)
Invocation. Trans. 3034

ANDERSON, JOHN H., JR. (ALDER)
Biography, **Vol.** I 31
Committee assignment, Vol. I 24
Remarks by, an
departments and institutions (Article **XII)**
public utility districts, Trans. 2612
education and public lands (Article X)
boards of education, Trans. 2131
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1204, 1217
reclamation. Trans. 1282
revenue and finance (Article VIII)
property tax administration. Trans. 1390

ANDERSON, OSCAR **L.** (SIDNEY)
Appointed to Post-Convention Procedural Administrative and Voter Education Affairs Committee, Trans. 2428
Biography, Vol. I 31
Committee assignment, Vol. I 24
Delegate Proposal
no. 89 (county boundaries; county seats), Vol. I 201—202
Remarks by, on
ballot, constitution, Trans. 2955, 2991
declaration of rights (Article II)
state subject to suit, Trans. 1763
departments and institutions (Article XII)
public assistance, Trans. 2284, 2292
public service commission, Trans. 2421
education and public lands (Article X)
indian education, Trans. 1952
non-discrimination in education, Trans. 2673
environment and natural resources (Article IX)
reclamation, Trans. 2212
water rights, Trans. 1317—1318, 1340
general government (Article III)
gambling, Trans. 2759
judiciary (Article VII)
campaign expenses, Trans. 2199—2200
legislature (Article V)
election and terms, Trans. 772
local government (Article XI) — majority report
introduction, Trans. 2512
counties, Trans. 2515—2516
recall, Trans. 2553—2554
revenue sharing, Trans. 2539, 2542
self-government charters, Trans. 2526—2527
voter review of local government, Trans. 2561, 2564
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1438
property tax administration, Trans. 2217—2218
property tax exemptions, Trans. 1425—1426
suffrage and elections (Article IV)
poll-booth registration, Trans. 433—434

ANDERSON, STANLEY (DIRECTOR OF UNIVERSITY **OF CALIFORNIA STUDY OF OMBUDSMAN PROGRAM), Trans.** 834

ANDERSON, UNIDENTIFIED
Remarks by, on
departments and institutions (Article XII)
public utility districts, Trans. 2612

ANNALA, BARRY (PAGE), Trans. 1183

ANNUAL SESSIONS OF LEGISLATURE, Vol. I 110,268, 376, 384-385, 395,402; Vol. II 861, 867—868, 874, 876, 880—881, 886—887, **1046, 1052, 1091, 1105; Trans. 579-593,** 796-797.8X-829

ANTIDIVERSIONARY AMENDMENT, Trans. 142X-1466, 1469—1489, **1501**
See also **HIGHWAY REVENUE NON-DIVERSION**

APPEALS
Constitutional convention
appeals to rulings of the chair, Vol. I 19, **197, 199**
aasheim (failed), Trans. 2913—2916
arness (failed), Trans. 1003
blaylock (failed), Trans. 2486—2487
cate (failed), Tram.572
dahood (withdrawn), Trans. 425-426
felt (failed), Trans. 1926—1928
holland (failed), Trans. 2691-2694
lorello (failed), Trans. 427-428
court of **appeals,** Vol. I 205—206; Trans. 1045, 1047, 1066, **See also SUPREME COURT**
District court jurisdiction, Vol. I 487, 489, 496, 501, 511, 517, 518; Vol. II 913-914, 918, 922, 925, 1061, 1096; Trans. 1049—1057, 1073—1080, 1141, 1781, 1784
Procedural rules promulgated by supreme court, Vol. 184, 140, 510, 515-516; Vol. II 913, 917, 922,924, 1061, 1096; **Trans.** 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071—1073, 1162—1163
Review of administrative actions, Vol. I 85, 141, 511, 517, 550—551, **561, 562;** Vol. II 914, 918, 925, 1061, 1096; Trans. 1049—1054, 1073, 1074, 1260
Salary appeals, teachers, Vol. I 239
State Tax Appeal Board, Vol. II 582, 585, 592—594; Trans. 1390, 1392, 1393, 1402, 1407
Supreme court jurisdiction, Vol. I 84—85, **140, 486. 488,** 493—494, 498, 510, 515; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1036-1044, 1071-1073, 1162—1163, 1344
Taxpayer grievances, Vol. II 582, 58'5, 589, 592—594, 946, 948, 950, 952, 1066, 1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489-1490

APPLEGATE, RICK (RESEARCH ANALYST), Vol. I 69; **Vol. II** 619; Trans. 1173, 1715, 1810, 3035

APPOINTMENTS BY GOVERNOR
Attorney General, Vol. I 442; **Trans.** 844,852, 867—870
Board of Public Education, Vol. I 283; Vol. II 719—720, 733, **995, 998, 1002, 1005,** 1071, 1100; Trans. 2049, 2089, 2096, 2172-2173
Board of Regents, Vol. I 196, 283, 287, 324; Vol. II 720, 735, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049. 2089. 2109. 2116.2119. 2126.2132. 2 1 3 6
Commissioner of Labor and Industry, Vol. II 670, 672, 978, 982, 985, 987; Trans. 1076, 1102, 2308—2315

APPOINTMENTS BY GOVERNOR (Cont.)
Confirmation by legislature, Vol. I 178, **183, 196, 214, 230,** 256, 283, 321, 324, 437, 449-450, 459, 511, 519—521; Vol. II 582, 585, 592, 670, 672, 676, 678, 683, 684, 719—720, 733, 735, 895, 900,904, 908, 914, 919, 922, 925—926, 944-947, 978, 982,985, 987,995, 998, 1002, 1005, 1054—1058, 1062, 1071, 1094, 1096—1097, 1100; Trans. 944-947, 1016-1017, 1023, 1033, 1084-1114, 1380, 2049, 2058, 2059, 2062, 2065, 2096, 2109, 2116, 2126, 2132, 2136, 2168—2170, 2172-2173, 2308-2315, 2345, 2373, 2376, 2380, 2386, 2493
Constitutional Convention Commission, Vol. 14
Delegation of appointive power to lieutenant governor prohibited, Vol. 1446
Departmental. Vol. I 183, 230-231, 321, 437, 449-450, 459; Vol. II 895, 900—901, 904, 908, 1057—1058, 1094; Trans. 868-869, $24, 944—947, 2309, 2313, 2345, 2376
Judicial Standards Commission, Vol. 1489-490, 502, 512. 523; **Trans. 1122**
Judiciary, Vol. 187, 141, 491-492, 506, 511-512, 519-521; Vol. II 914—915, $19, 922, 925-926, 1062, 1096-1097; Trans. 1012, 1016—1017, 1023, 1028, 1030—1033, 1084—1114
Public Utilities Commissioner, Vol. I 178; Vol. II 676, 678, 683, 684; **Trans.** 2373.2376, 2378, 2379.2380, 2383, 2386
Reapportionment Commission, Vol. I 162
Salary Commission, Vol. I 110, 134
State Board of Education, Vol. I 256, 287; Trans. 2058, 2059, 2062, 2065, 2089, 2168—2170, **See also Board of Public Education; Board of Regents**
State Board of Equalization, Trans. 1380, 1381, 1382. 1386-1387, 1395, 1397
State Engineer, Vol. I 214
State Tax **Appeal Board, Vol. II 582, 585, 592**
Superintendent of Public Instruction, See SUPERINTENDENT OF PUBLIC INSTRUCTION, Appointment
Vacancy in executive office, Vol. I 181, 233, 436, 447—448, 458, 465—466; Vol.11 894, 899—900, 904. **907,** 1057.1094; **Trans.** 929—933, 939—944

APPORTIONMENT OF STATE INTO LEGISLATIVE AND CONGRESSIONAL DISTRICTS, Vol. I 109—110, 162—163, 268, 274, 278, 379,381, 382, 392—393, 398—399, 407—408; Vol. II 863—864, 865—866, 870, 872—873, 874—875, 878-879, 883—884, 885, **888-889,** 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 545, 546, 551, 559, 562, 564, 510, 680—696, 711—725, 735—747, 162, 765, 766, 767, 769, 775, 1568, *1569,* 1590-1593, 1597
Accelerated effective date, Vol. II 1082, 1108; Trans. 3004, 3006, 3007-3008
Reapportionment Commission, Vol. I 109-110, 162, 278, 379,382, 392-393, 398-399, 407-408; Vol. II 863—864, 865-866, 870, 872-873, 874—875, 878—879, 883—884, 885, 888—889, 1048, 1050—1051, 1054—1055, 1092-1093, 1106, 1107; Trans. 559, 564, 681—696, 711-725, 735-741. 766, 767, 769,785, 789, 1590—1593

APPRAISAL OF PROPERTY, Vol. I 264-265; Vol. II 582, 584, 588-589, 945, 947, 950, 951, 1065, 1097; Trans. 1379—1409, 2158, 2286

APPROPRIATIONS
Bills, Vol. I 111, 276, 377-378, 389, 397, 405; II 862-863, 869, 874, 878, 882, 888, 1047, 1053~1054, 1092, 1106; Trans. 647—659
Budget
appropriations nut to exceed anticipated revenue, Vol. I 307; Vol. II 582, 586, 595, 946, 949, 950, 952, 1066, 1098; Trans. 1376, 1490, 1493, 1494, 1508-1509, 2135—2136, 2157, 2707
governor to submit to legislature, Vol. I 183, 231, 321, 432—433, 437. 446, 450, 459; Vol. II 895, 901, 908, 1058, 1094; Trans. 842, 947-948, 2103, 2136
Capitol buildings and grounds, Vol. I 130
Constitutional convention, Vol. I 5; Trans. 2372, 2429,
federal h.u.d. funds, Trans. 1273—1274, 1373, 1561, 2426-2429, 2618, 2619, 2620-2621
Expenditures
appropriation and issuance of warrant required, Vol. II 866, 873, 875, 879, 884, 889, 1067, 1098; Trans. 790—792, 797, 1366, 1376, 1517, 1888—1889
strict accountability of state and local governmental entities Vol. I 307; Vol. II 581, 582, 586, 595, 596, 946, 949, 950, 952, 1066, 1098: Trans. 921, 924, 1001, 1002, 1376, 1516—1517
Highway revenue non-diversion, Vol. I 101, 132, 187—188; Vol. II 580, 584-585, 591—592, 945-946, 948, 950, 951-952, 1065—1066, 1080, 1098, 1107; Trans. 1376, 1389—1390, 1428-1466, 1469—1489, 1501, 2220-2243. 2689, 2695, 2701—2717, 2779—2789
Initiative and referendum, appropriation by prohibited, Vol. I 257, 277—278; Vol. II 815, 816, 819, 820, 1019, 1020, 1022, 1023, 1025, 1043, 1090; Trans. 2689, 2695-2705, 2706-2718, 2785—2788
Legislature, governor may not veto appropriations for, Vol. I 378, 391, 397; Trans. 675, 948, 952-953
Religious, charitable, industrial, educational, or benevolent purposes — appropriations for prohibited, Vol. I 137, 189, 222, 276, 311, 312-313, 378, 389, 397, 405—406; Vol. II 629, 716, 719, 728—730, 743-747, 863, 869, 874, 878, 882, 888, 994, 997, 1002, 1004, 1047, 1054, 1070, 1092, 1100, 1106; Trans. 659-670, 1535, 1646, 1960, 2008-2031, 2235
Revenue sharing with local government entities, Vol. II 580-581, 787-789; Trans. 2537-2544
Special levies
livestock and agricultural commodities, Vol. I 101, 132, 246; Vol. II 550, 559, 560, 581, 586, 597-598, 936, 937, 938, 941, 1076, 1102; Trans. 1199, 1366-1370, 1378, 1547, 2364, 2539—2540
regulated companies (consumer counsel), Vol. II 980, 984, 989, 1073, 1103; Trans. 2400-2404, 2421
Veto, Vol. I 111, 189, 223, 231, 378, 390-391, 397, 406, 438, 451-452, 460; Vol. II 896, 901, 909, 1059, 1095; Trans. 948, 949, 956

ARBANAS, HAROLD (GREAT FALLS)
Biography, Vol. I 32
committee assignment, Vol. 124
Delegate Proposals
no. 106 (constitutional amendment), Vol. I 226-227
no. 107 (executive election), Vol. I 228-233
Invocations, Trans. 47, 269, 540, 1372, 2004, 2624
Nominated
convention secretary, Trans. 62
president of convention, Trans. 12
declines nomination, Trans. 12
Remarks by, on
ballot, constitution, Trans. 1816, 2877, 2980

ARBANAS, HAROLD (Cont.)
Remarks by, on (Cont.)
constitutional revision (Article XIV)
amendment, methods of, Trans. 472
constitutional convention, Trans. 486
constitutional preparatory commission, Trans. 457, 464-465
periodic submission, Trans. 462
declaration of rights (Article II)
death penalty, Trans. 1801—1803, 1812
participation, right of, Trans. 1659
right to know, Trans. 2489-2490, 2495
departments and institutions (Article XII)
labor, department. of, Trans. 2309, 2314-2315
merit system, Trans. 2344
public assistance, Trans. 2286, 2292
public utility districts, Trans. 2608-2609
education and public lands (Article X)
board of land commissioners, Trans. 1992
boards of education, Trans. 2063—2064, 2072, 2081, 2106—2107, 2118, 2134—2135, 2163—2164, 2170, 2585
commissioner of higher education, Trans. 2106—2107
educational goals and duties, Trans. 1958—1959, 1965
non-discrimination in education, Trans. 2036—2037, 2039
state university funds, accounting and audit, Trans. 2585
environment and natural resources (Article Ix)
environment, protection and improvement of, Trans. 1216—1217, 1231—1232, 1259—1260
water rights, Trans. 1332, 1334
executive (Article VI)
compensation, Trans. 993
duties, Trans. 902, 912
officers, Trans. 849-850, 1710
qualifications, Trans. 885
twenty departments, Trans. 936—937
general government (Article III,
gambling, Trans. 2980
legislature (Article V)
bills, Trans. 657, 660
compensation, Trans. 574, 576-577
districting and apportionment, Trans. 716, 720, 738
organization and procedure, Trans. 599-600, 604, 608
qualifications, Trans. 552-553, 564
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2231
property tax exemptions, Trans. 1422—1423

ARCHAEOLOGICAL AREAS, Vol. I 193; Vol. II 553, 558, 931—932, 933—934, 939—940, 1068, 1099; Trans. 1351—1352

ARMED FORCES
See MILITARY AFFAIRS

ARMS
Importation of armed persons, Vol. I 624, 645, 961, 966, 968, 973, 1041-1042, 1089; Trans. 1832
Right to bear arms, Vol. I 78—79; Vol. II 621, 634, 958, 963, 970, 1039, 1088; Trans. 1724-1744, 1816, 1832—1842, 1843, 2369

ARNESS, FRANKLIN (LIBBY)
Appointed to escort committee, Trans. 9
Biography, Vol. I32
Committee assignment, Vol. I24
Delegate Proposals
no. 9 (local government districts), Vol. I 92-93
no. 92 (judicial powers), Vol. I 205-206
no. 134 (property assessment), Vol. I 264-265
Nomination of Paul Harlow as Convention Secretary, Trans. 63

ARNESS, FRANKLIN (Cont.)
Remarks by, on
declaration of rights (Article II)
self-incrimination and double jeopardy, Trans. 1777—1778
trial by jury. Trans. 1783—1784, 1786—1787, 1789—1790
departments and institutions (Article XII)
public utility districts, Trans. 2GOG
education and public lauds (Article X)
aid to sectarian schools, Trans. 2024
boards of education, Trans. 2579, 2590—2591
educational goals and duties, Trans. 1986—1987
state university funds, accounting and audit, Trans. 2579, 2590—2591
executive (Article VI)
compensation, Trans. 991—993
general government (Article III)
gambling, Trans. 2738
general provisions (Article XIII)
people's advocate, Trans. 698
judiciary (Article VII), Trans. 1033
district court jurisdiction, Trans. 1056—1057, 1077
selection, Trans. 1107
supreme court
jurisdiction, Trans. 1040
organization, Trans. 1045
terms and pay, Trans. 993
legislature (Article V)
bills, Trans. 645—646, 654
conflict of interest, Trans. 790
districting and apportionment, Trans. 685, 744—745
qualifications, Trans. 555
unicameral/bicameral, merits of, Trans. 778
local government (Article XI)
general powers, Trans. 2522-2524
recall, Trans. 2549-2551, 2553
revenue sharing, Trans. 2538-2539
self-government
charters, Trans. 2528
powers, Trans. 2530-2531, 2533-2534
voter review of local government, Trans. 2557, 2565
suffrage and elections (Article IV)
pall-booth registration, Trans. 442-443

ARONOW, CEDOR **B. (SHELBY)**
Biography, Vol. I32
Committee assignment. Vol. I 24
Elected **Temporary** President of Convention, Trans. 9
Nominated **Temporary** President of Convention, Trans. 7
Remarks by, on
ballot. constitution, **Trans.** 2972
constitutional revision (Article XIV)
amendment by initiative, Trans. 512
declaration of rights (Article II)
death penalty, Trans. 1818
participation, right of, **Trans.** 1665
trial by jury, Trans. 1787
departments and institutions (Article XII)
agriculture, working hours, Trans. 2602
labor, working hours, Trans. 2319, 2602
public assistance, Trans. 2297-2298
public utilities
consumer protection, **Trans.** 2398
public service commission, **Trans.** 2395—2396
education and public lands (Article X)
aid to sectarian schools, Trans. 2024
environment and natural resources (Article IX)
environment, protection and improvement of, **Trans.** 1256
water rights, Trans. 1303—1305, 1310
executive (Article VI)
qualifications, Trans. 895
general government (Article III)
separation of powers, Trans. 2690
general provisions (Article XIII)
code of ethics, Trans. 793—796

ARONOW, CEDOR B (Cont.)
Remarks by, on (Cont.)
general provisions (Cont.)
people's advocate, **Trans.** 702—703, 830
salary commission, Trans. 575, 579
judiciary (Article VII)
clerks of court, Trans. 2690, 2772—2773, 2776, 2778
district court jurisdiction, Trans. 1075—1076
forfeiture of judicial position, Trans. 1149
judicial standards, Trans. 1029—1030
qualifications, Trans. 1120—1121
removal and discipline, Trans. 1122—1123, 1125—1126
supreme court organization, **Trans.** 1046, 1069—1070
terms and pay, Trans. 579
legislature (Article V)
bills, Trans. 638, 648—649, 655—656, 665
compensation, Trans. 575, **579**
disqualification, Trans. 597-598, 1575
impeachment, Trans. 678—679
organization and procedure, Trans. 605—606
qualifications, Trans. 548
size, Trans. 766
local government (Article XI)
revenue sharing, Trans. 2540-2541
revenue and finance (Article VIII)
equal valuation, Trans. 1410
highway revenue non-diversion, Trans. 1430, 1474
state debt, Trans. 1493—1494
two-mill levy, Trans. 1553
suffrage and elections (Article IV)
poll-booth registration, Trans. 440—441, 450
qualified elector, Trans. 395—396

ARONSON, FORMER GOVERNOR J. **HUGO, Trans. 1427, 1717, 2408**

ARREST
Immunity from
constitutional convention delegates, Vol. I 2
electors at palling places, Vol. I 339; Vol. II 845, 846, 847, 1045 1091; Trans. 418, 419—422, 532-533
legislators, Vol. I 110, 275, 377, 386, 396, 402; Vol. II 862, 868, 874, 87,881, 887, 1046, 1052, 1092, 1105; Trans. 594—595, **1573**
warrant far arrest, Vol. Ii8; Vol. II 621, 633, 958, 963, 967, 970, 1039, 1088; Trans. 1682—1684, 1751

ARTICLE I — **COMPACT WITH THE** UNITED **STATES**
Adoption, Trans. 2931-2933
Committee report, Vol. II 838—841, 1030—1032, 1037
Debate, style and drafting report, **Trans.** 2567—2572. 2921
Delegate Proposals, Vol. I 99, 294
Final consideration, Trans. 2570-2573
Text as adopted, Vol. II 1087

ARTICLE II — DECLARATION **OF** RIGHTS
Section I. Popular sovereignty
adoption. Trans. 2933-2934
committee report, Vol. II 620, 626, 957. 962, 967, 969, 1038
cross references, x489-1972 constitutions, Vol. II 646
debate
committee report. Trans. 1635—1636, 2232
style and drafting report. Trans. 2476. 2921
final consideration, Trans. 2627—2628
text as adopted, Vol. II 1087
Section 2. Self-government
adaption, **Trans.** 2933-2934
committee report, Vol. II 620, 626, 957, 962, 967, 969, 1038
cross references, 1889-1972 constitutions, Vol. II 646

ARTICLE II — DECLARATION OF RIGHTS (Cont.)
Section 2. Self-government (Cont.)
debate
committee report, Trans. 1636
style and drafting report, Trans. 2476, 2921
final consideration, Trans. 2628-2629
text as adopted, Vol. II 1087
Section 3. Inalienable rights
adoption, Trans. 2933-2934
committee report, Vol. II 620, 626—628, $57, $62, $67, 969, 1038
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1240, 1636-1640, 1642, 1756, 1809, 2294, 2370, 2690
style and drafting report, Trans. 2476—2477, 2921
delegate proposals, Vol. I 75, 96, 107, 108, 142, 207, 242, 261, 308—309
final consideration, Trans. 2629—2630
text as adopted, Vol. II ,087
Section 4. Individual dignity
adoption, Trans. 2933-2934
committee report, Vol. II 620, 628, 957, 962, 967, 969, 1038
debate
committee report, Trans. 1642—1646, 2032, 2044, 2151, 2496
style and drafting report, Trans. 2411, 2921
delegate proposals, Vol. 194, 105, 126, 127, 148, 149, 161, 223, 312—313
final consideration, Trans. 2630—2631
text as adopted, Vol. II 1087
Section 5. Freedom of religion
adoption, Trans. 2933-2934
committee report, Vol. II 620—621, 629, 957, 963, 969—970, 1038
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1646—1647, 1738, 2015, 2745
style and drafting report, Trans. 2477, 2921
delegate proposals, Vol. I 189—190, 312—313, 315
final consideration, Trans. 2631-2632
text as adapted, Vol. II 1087
Section 6. Freedom of assembly
adoption, Trans. 2933—2934
committee report, Vol. II 621, 629, 958, 963, 967, 970, 1038
cross references, 1889.1912 constitutions, Vol. II 646
debate
committee report, Trans. 1647—1649
style and drafting report, Trans. 2477-2481, 2921
final consideration, Trans. 2632-2633
text as adopted, Vol. II 1087
Section 7. Freedom of speech, expression, and press
adoption, Trans. 2933—2934
committee report, Vol. II 621, 629—630, 958, 963, 970, 1038
Cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1649—1651, 1675, 2491, 2493
style and drafting report, Trans. 2481, 2921
delegate proposal, Vol. I 127
final consideration, Trans. 2633-2634
text as adapted, Vol. II 1087
Section 8. Right of participation
adoption, Trans. 2933-2934
committee report, Vol. II 621, 630-631, 958, 963, 967, 970, 1038-1039
debate
committee report, Trans. 630-631, 845, 1221, 1651—1663, 1663—1669, 1733, 2560, 2875
style and drafting report, Trans. 2481—2482, 2921
delegate proposal, Vol. I 133
final consideration, Trans. 2634-2636
text as adopted, Vol. II 1088
Section 9. Right to know
adoption, Trans. 2933—2934
committee report, Vol. II 621, 631-632, 958, 963, 970, 1039

ARTICLE II — DECLARATION OF RIGHTS (Cont.)
Section 9. Right to know (Cont.)
debate
committee report, Trans. 1658, 1669—1680, 1733, 2176, 2201, 2560, 2578, 2582
style and drafting report, Trans. 2482—2500, 2500—2501, 2921
delegate proposals, Vol. I ill, 133, 157, 164, 276
final consideration, Trans. 2636-2637
text as adopted, Vol. II 1088
Section IO. Right of privacy
adoption, Trans. 2933-2934
committee report, Vol. II 621, 632-633, 958, 963, 970, 1039
debate
committee report, Trans. 1643, 1680—1682, 1683, 1684, 1685, 1688, 1730, 1733, 1850—1853, 2488
style and drafting report, Trans. 2501, 2921
delegate proposals, Vol. I $8, 127
final consideration, Trans. 2637-2638
text as adopted, Vol. II 1088
Section 11. Searches and seizures
adoption, Trans. 2933-2934
committee report, Vol. II 621, 633, 958, 963, 967, 970, 1039
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1682—1689, 1751, 1851, 1852
style and drafting report, Trans. 2501—2502, 2921
delegate proposal, Vol. I 98
final consideration, Trans. 2638-2639
text as adopted, Vol. II 1088
Section 12. Right to bear arms
adoption, Trans. 2933-2934
committee report, Vol. II 621, 634, 958, 963, 970, 1039
cross references, 1889.1972 constitutions, Vol. II 646
debate
committee report, Trans. 1724—1729, 1729—1744, 1816, 1832-1842, 1843, 2369
style and drafting report, Trans. 2502, 2921
delegate proposal, Vol. I 78—79
final consideration, Trans. 2639-2640
text as adopted, Vol. II 1088
Section 13. Right of suffrage
adoption, Trans. 2933-2934
committee report, Vol. II 621, 634, 958, 963, 970, 1039
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1738, 1744—1745
style and drafting report, Trans. 2502, 2921
final consideration, Trans. 2640-2641
text as adapted, Vol. II 1088
Section 14. Adult rights
adoption, Trans. 2933-2934
committee report, Vol. II 621, 635, 958, 963, 967, 970, 1039
debate
committee report, Trans. 1695, 1745—1749
style and drafting report, Trans. 2502, 2921
delegate proposal, Vol. I $7
final consideration, Trans. 2641—2642
text as adopted, Vol. II 1088
Section 15. Rights of persons not adults
adoption, Trans. 2933—2934
committee report, Vol. II 621-622, 635-636, $58, 964, $67, 970—971, 1039
debate
committee report, Trans. 1749—1753
style and drafting report, Trans. 2502-2503, 2921
delegate proposals, Vol. I 166, 199
final consideration, Trans. 2642-2643
text as adopted, Vol. II 1088
Section 16. The administration of justice
adoption, Trans. 2933-2934
committee report, Vol. II 622, 636—637, 959, 964, 971, 1039
cross references. 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1020—1021, 1024, 1753—1760, 1764, 1788, 1792, 2192, 2196, 2625
style and drafting report, Trans. 2503, 2921

ARTICLE II — DECLARATION OF RIGHTS (Cont.1
Section 16. The administration of justice (Cont.)
delegate proposals, Vol. I 88, 263, 318
final consideration, Trans. 2643—2644
text as adopted, Vol. II 1088
Section 17. Due process of law
adoption, Trans. 2933-2934
committee report, Vol. II 622, 637, 959, 964, 911, 1039
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1738, 1750, 1751, 1760
style and drafting report, Trans. 2503, 2921
delegate proposals, Vol. I 312, 328
final consideration, Trans. 2644—2645
text as adopted, Vol. II 1088
Section 18. State subject to suit
adoption, Trans. 2933-2934
committee report, Vol. II 622, 637—638, 959, 964, 967-968, 971, 1039—1040
debate
committee report, Trans. 1760 —1764, 2528
style and drafting report, Trans. 2503, 29'21
delegate proposal. Vol.I 124
final consideration, Trans. 2645—2647
text as adopted, Vol. II 1088
Section 19. Habeas corpus
adoption, Trans. 2933-2934
committee report, Vol. II 622, 638-639, 959, 964, 971, 1040
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report. Trans. 1764
style and drafting report, Trans. 2503—2504, 2921
final consideration, Trans. 2647—2648
text as adopted, Vol. II 1088
Section 20. Initiation of proceedings
adoption, Trans. 2933-2934
committee report, Vol. II 622. 639, 959, 964, 968, 971, 1040
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1764—1766
style and drafting report, Trans. 2504, 2921
delegate proposal, Vol. I 89
final consideration, Trans. 2648-2649
text as adopted, Vol. II 1088
Section 21. Bail
adaption, Trans. 2933-2934
committee report, Vol. II 622, 639-640, 959, 964, 968. 971, 1040, 1080, 1108
cross references. 1889-1972 constitutions, Vol. II 646
debate
adoption schedule, Trans. 2997, 3001-3002
committee report, Trans. 1771
style and drafting report, Trans. 2504, 2921
final consideration, Trans. 2649-2650
text as adopted, Vol. II 1088
Section 22. Excessive sanctions
adoption, Trans. 2933-2934
committee report, Vol. II 622, 640, 959, 964, 968, 971, 1040
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1771
style and drafting report,, Trans. 2504, 2921
delegate proposal, Vol. I 77
final consideration, Trans. 2650—2651
text as adapted, Vol. II 1088
Section 23. Detention
adoption, Trans. 2933-2934
committee report, Val. II 622-623, 640, 959—960, 965, 968, 971-972, 1040
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1751, 1771—1776, 1781
style and drafting report, Trans. 2504-2506, 2921
final consideration, Trans. 2651—2652
text as adopted, Vol. II 1089

ARTICLE II — DECLARATION OF RIGHTS (Cont.)
Section 24. Rights of the accused
adoption, Trans. 2933-2934
committee report, Vol. II 623, 640—641, 960, 965, 968, 972, 1040
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1776
style and drafting report, Trans. 2506, 2921
delegate proposal, Vol. I 105
final consideration, Trans. 2652—2653
text as adopted, Vol. II 1089
Section 25. Self-incrimination and double jeopardy
adoption, Trans. 2933—2934
committee report, Vol. II 623, 641, 960, 96.5, 968, 972, 1040
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1751, 1776-1779
style and drafting report, Trans. 2506, 2921
delegate proposals, Vol. 1 200, 251
final consideration, Trans. 2653—2654
text as adopted, Vol. II 1089
Section 26. Trial by jury
adoption, Trans. 2933-2934
committee report, Vol. II 623, 641—642, 960, 965, 968, 972, 1041
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1751, 1780—1792
style and drafting report, Trans. 2506—2507, 2921
delegate proposal, Vol. I 89
final consideration, Trans. 2654—2655
text as adopted, Vol. II 1089
Section 27. Imprisonment for debt
adoption, Trans. 2933-2934
committee report. Vol. II 623, 642, 960, 965, 968, 972, 1041
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1792—1800
style and drafting report, Trans. 2507, 2921
final consideration, Trans. 2655-2656
text as adopted, Vol. II 1089
Section 28. Rights of the convicted
adoption, Trans. 2933-2934
committee report, Vol. II 623, 642-643, 960, 965, 968, 972, 1041, 1080, 1108
cross references, 1889-1972 constitutions, Vol. II 646
debate
adoption schedule, Trans. 2997
committee report, Trans. 1076, 1800-1803, 1803-1825, 1846—1848, 2305
style and drafting report, Trans. 2507-2509, 2921
delegate proposals, Vol. 1 128, 218, 317
final consideration, Trans. 2656—2658
text as adopted, Vol. II 1089
Section 29. Eminent domain
adoption, Trans. 2933-2934
committee report, Vol. II 623, 643—644, 711, 960, 966, 972, 1041
cross references, 1889.1972 constitutions, Vol. II 646
debate
committee report, Trans. X325-1828
style and drafting report, Trans. 2509, 2921
delegate proposals, Vol. I 96, 177, 252, 308
final consideration, Trans. 2658—2659
text as adopted. Vol. II 1089
Section 30. Treason and descent of estates
adoption, Trans. 2933-2934
committee report, Vol. II 623-624, 644, 960, 966, 968, 972, 1041
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1828—1829
style and drafting report, Trans. 2509, 2921
final consideration, Trans. 2659-2660
text as adopted, Vol. II 1089

ARTICLE 11 — DECLARATION OF RIGHTS (Cont.)
Section 31. Ex post facto, obligation of contracts, and irrevocable privileges
adoption, Trans. 2933—2934
committee report, Vol. II 624, 644, 961, 966, 968, 973, 1041
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1829, 2266—2268
style and drafting report, Trans. 2509—2510, 2921
delegate proposal, Vol. I 207
final consideration, Trans. 2660—2661
text as adapted, Vol. II 1089
Section 32. Civilian control of the military
adoption, Trans. 2933-2934
committee report, Vol. II 624, 645, 961, 966, 968, 973, 1041
cross references, 18X9-1972 constitutions, Vol. II 646
debate
committee report, Trans. X329-1832
style and drafting report, Trans. 2510, 292,
delegate proposal, Vol. I 78
final consideration, Trans. 2661—2662
text as adopted, Vol. II 1089
Section 33. Importation of armed persons
adoption, Trans. 2933-2934
committee report, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1832
style and drafting report, Trans. 2510, 2921
final consideration, Trans. 2662-2663
text as adopted, Vol. II 1089
Section 34. Unenumerated rights
adaption, Trans. 2933-2934
committee report, Vol. II 624, 645, 961, 966, 968, 973, 1042
cross references, 1889.1972 constitutions, Vol. II 646
debate
committee report, Trans. 1832
style and drafting report, Trans. 2510, 2921
final consideration, Trans. 2663-2664
text as adopted, Vol. II IO89
Section 35. Servicemen, servicewomen, and veterans
adoption, Trans. 2933-2934
committee report, Vol. II 961, 966, 973, ,042
cross references, 1889-1972 constitutions, Vol. II 646
debate
committee report, Trans. 1842—1843, 2271, 2273
style and drafting report, Trans. 2510, 2921
delegate proposal, Vol. I326
final consideration, Trans. 2664-2665
text as adopted, Vol. II 1090

ARTICLE III — GENERAL GOVERNMENT
Section 1. Separation of powers
adoption, Trans. 3009—3010
committee report, Vol. II 815, 818, 1019, 1022, 1025, 1043
cross references, 1889-1972 constitutions, Vol. I, 826
debate
committee report. Trans. 676, 698. 699. 704. 851.1011. 1036, 1124, 2317, 2378, 2383, 2523, 2688, 2690—2695
style and drafting report, Trans. 2820, 2828-2831, 2921-2922, 2996
delegate proposal, Vol. I I86
final consideration, Trans. 2842—2843
text as adopted, Vol. II 1090
Section 2. Continuity of government
adoption, Trans. 3009—3010
committee report, Vol. II 815, 818-819, 1019, 1022, 1025, 1043
cross references, 1889-1972 constitutions, Vol. II 826
debate
committee report, Trans. 2695
style and drafting report, Trans. 2820, 2921—2922, 2996
delegate proposals, Vol. I 130—131, 278—279

ARTICLE III — GENERAL GOVERNMENT (Cont.)
Section 2. Continuity of government (Cont.)
final consideration, Trans. 2843—2845
text as adopted, Vol. II 1090
Section 3. Oath of office
adoption, Trans. 3009—3010
committee report, Vol. II 815, 819, 1019, 1022, 1025, 1043
cross references, 1889.1972 constitutions, Vol. II 826
debate
committee report, Trans. 2695
style and drafting report, Trans. 2820, 2921-2922, 2996
delegate proposal, Vol. I 125
final consideration, Trans. 2845—2846
text as adapted, Vol. II 1090
Section 4. Initiative
adoption, Trans. 3009—3010
committee report, Vol. I* 815—816, 819—820, 1019—1020, 1022—1023, 1025, 1043
cross references, 1889-1972 constitutions, Vol. II 826
debate
committee report, Trans. 2689, 2695—2705, 2706—2717, 2780, 2781, 2785-2786
style and drafting report, Trans. 2820-2822, 2823—2825, 2921-2922, 2996
delegate proposals, Vol. I 257-258, 277-278
final consideration. Trans. 2846—2847
text as adapted, Vol. II 1090
Section 5. Referendum
adoption, Trans. 3009—3010
committee report, Vol. II 816, 820, 1020, 1023, 1025, 1043—1044
cross references, 1889-1972 constitutions, Vol. II 826
debate
committee report, Trans. 2717—2718
style and drafting report, Trans. 2822—2823, 282: t-2826, 2921-2922, 2996
delegate proposals, Vol. I 257—258, 277—278
final consideration, Trans. 2847—2848
text as adopted, Vol. II 1090
Section 6. Elections
adoption, Trans. 3009—3010
committee report, Vol. II 816, 820, 1020, 1023, 1025, 1044
cross references, 1889-1972 constitutions, Vol. II 826
debate
committee report, Trans. 2718
style and drafting report, Trans. 2826, 2921-2922, 2996
delegate proposals, Vol. I 258, 277
final consideration, Trans. 2848-2849
text as adopted, Vol. II 1090
Section 7. Number of electors
adoption, Trans. 3009—3010
committee report, Vol. 11 816,821, 1020, 1023, 1025, 1044
cross references, 1889-1972 constitutions, Vol. II 826
debate
committee report, Trans. 2718—2719
style and drafting report, Trans. 2826-2827, 2921-2922, 2996
delegate proposals, Vol. I 258, 277
final consideration, Trans. 2849—2851
text as adopted, Vol. II 1090
Section 8. Prohibition
adaption, Trans. 3009—3010
committee report, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044
cross references, 1889-1972 constitutions, Vol. II 826
debate
committee report, Trans. 2720
style and drafting report, Trans. 2827, 2921—2922, 2996
final consideration, Trans. 2851—2852
text as adopted, Vol. II 1090
Section 9. Gambling
adoption, Trans. 3009—3010
committee report, Vol. II 816, 822, X25, 1020, 1024, 1025, 1044, 1080—1081, 1108
cross references, 1889-1972 constitutions, Vol. II 826

ARTICLE III — GENERAL GOVERNMENT (Cont.)
Section 9. Gambling (Cont.)
debate
adoption schedule, Trans. 2997
committee report, Trans. 2728—2760
style and drafting report, Trans. 2828, 2921-2922, 2996
delegate proposals, Vol. I 115, 121, 237, 247
final consideration, Trans. 2853-2854
text as adopted, Vol. II 1090

ARTICLE IV — SUFFRAGE AND ELECTIONS
Section 1. Ballot
adoption, Trans. 2934—2935
committee report, Vol. I 336, 337, 341; Vol. II 846, 847, 1045
cross references, 1889-1972 constitutions, Vol. I 344
debate
committee report, Trans. 391. 422. 532
style and drafting report, Trans. 118.5, 1196—1197, 2922
delegate proposal, Vol I 191
final consideration, Trans. 1861—1862
text as adopted, Vol. II 1091
Section 2. Qualified elector
adoption, Trans. 2934—2935
committee report, Vol. I 336, 337, 339-340, 341; Vol. II 845, 846, 847, 1045
references, 1889-1972 constitutions, Vol. I 344
debate
committee report, Trans. 392—400, 422, 532
style and drafting report, Trans. 1185, 1196—1197. 2922
delegate proposals, Vol. I 191, 260, 330, 332
final consideration, Trans. 1862—1863
text as adapted, Vol. II 1091
Section 3. Elections
adoption, Trans 2934—2935
committee report, Vol. I 336, 338, 341—343; Vol. II 846, 847, 1045
cross references, 1889.1972 constitutions, Vol. I 344
debate
committee report, Trans. 400—413, 422, 428-452, 467, 532, 533, 839
style and drafting report, Trans. 1185, 1196—1197, 2922
delegate proposals, Vol. I 144, 191, 212, 221, 260, 289, 330, 332
final consideration, Trans. 1863—1864
text as adopted, Vol. II 1091
Section 4. Eligibility for public office
adoption, Trans. 2934—2935
committee report, Vol. I 336, 338, 340, 341; Vol. II 621, 635, 845, 846, 847.1045
cross references, 1889-1972 constitutions, Vol. I 344
debate
committee report, Trans. 414-417, 422, 528-532, 634, 676, 885, 1745—1749
style and drafting report, Trans. 1185—1186, 1196—1197, 2922
delegate proposals, Vol. I 97, 191-192, 218
final consideration, Trans. 1864—1865
text as adapted, Vol. II 1091
Section 5. Result of elections
adoption, Trans. 2934—2935
committee report, Vol. I 336, 338-339, 341; Vol. II 846, 846, 847, 1045
cross references, 1889.1972 constitutions, Vol. I 344
debate
committee report, Trans. 417—419, 422, 532
style and drafting report, Trans. 1186, 1196—1197, 2922
delegate proposal, Vol. I 192
final consideration, Trans. 1865—1867
text as adopted, Vol. II 1091
Section 6. Privilege from arrest
adoption, Trans. 2934—2935
committee report, Vol. I 339; Vol. II 845, 846, 847, 1045
debate
committee report, Trans. 418, 419—422, 532—533
style and drafting report, Trans. 1186—1187, 1196—1197, 2922

ARTICLE IV — SUFFRAGE AND ELECTIONS (Cont.1
Section 6. Privilege from arrest (Cont.)
final consideration, Trans. 1X67-1868
text as adopted, Vol. II 1091

ARTICLE V — THE LEGISLATURE (BICAMERAL)
See also ADOPTION SCHEDULE
Section 1. Power and structure
adoption, Trans. 3010—3011
committee report, Vol. I 395, 400; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1106
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 628, 775-779, 785, 789, 853
style and drafting report, Trans. 1594—1595, 2922—2925, 2996
delegate proposal, Vol. I 274
final consideration, Trans. 1891—1892
text as adopted, Vol. II 1091
Section 2. Size
adoption, Trans. 3010-3011
committee report, Vol. I 395, 400-401, 411; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1106
cross references. 1889-1972 constitutions. Vol. I 416
debate
committee report, Trans. 744, 779-785, 789, 815, 819, 821-826
style and drafting report, Trans. 1595—1610, 2922-2925, 2996
delegate proposal, Vol. I 274
final consideration, Trans. 1892—1893
text as adopted, Vol. II 1091
Section 3. Election and terms
adoption, Trans. 3010-3011
committee report, Vol 1395, Vol 401; 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1107
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 785, 769, 1568—1569
style and drafting report, Trans. 1615, 2922—2925, 2996
delegate proposals, Vol. I 106, 274-275
final consideration, Trans. 1893-1894
text as adopted, Vol. II 1091
Section 4. Qualifications
adoption, Trans. 3010-3011
committee report, Vol. 1395, 401, 412; Vol. II 876, 880, 886, 1052
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 545—572, 728, 797—808, 1569—1570, 1696
style and drafting report, Trans. 1615—1616, 2922—2925, 2996
delegate proposal, Vol. I 274-275
final consideration, Trans. 1894—1896
text as adopted, Vol. II 1091
Section 5. Compensation
adoption, Trans. 3010—3011
committee report, Vol. I 395, 401-402, 413; Vol. II 876, 880, 886, 1052
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 572—579, 588, 589, 728, 992, 993, 1084, 1572
style and drafting report, Trans. 1616, 2922-2925, 2996
delegate proposals, Vol. I 275, 280
final consideration, Trans. 1896-1897
text as adopted, Vol. II 1091
Section 6. Sessions
adoption, Trans. 3010—3011
&mitt& report, Vol. 1 395, 402, 414—415; Vol. II 876—877, 880—881, 886—887, 1052
cross references, 1889.1972 constitutions, Vol. I 416

ARTICLE V — THE LEGISLATURE (BICAMERAL) (Cont.)
Section 6. Sessions (Cont.)
debate
committee report, Trans. 579—593, 728. 796-797, 813-829
style and drafting report, Trans. 1616, 1702—1704, 2922-2925, 2996
delegate proposals, Vol. I 106, 275, 280
final consideration, Trans. 1897—1898
text as adopted, Vol. II 1091
Section 7. Vacancies
adoption, Trans. 3010—3011
committee report, Vol. I 395-396, 402; Vol. II 877, 881, 887, 1052
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 549—550, 593-594, 725—727, 728
style and drafting report, Trans. 1616, 2922-2925, 2996
delegate proposals, Vol. I 275. 278
final consideration, Trans. 1898-1899
text as adopted, Vol. II 1091
Section 8. Immunity
adoption, Trans. 3010—3011
committee report, Vol. 1396, 402; Vol. II 877, 881, 887, 1052
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 594-595, 728, 1573
style and drafting report, Trans. 1616—1617, 2922-2925, 2996
delegate proposal, Vol. I 275
final consideration, Trans. 1899—1900
text as adopted, Vol. II 1092
Section 9. Disqualification
adoption, Trans. 3010—3011
committee report, Vol. I 396, 402—403; Vol. II 877, 881, 887, 1053
cross references, 1889.1972 constitutions, Vol. I 416
debate
committee report, Trans. 595-599, 728, 1573—1582, 1617—1620
style and drafting report, Trans. 1617—1620, 1859—1860, 2922-2925, 2996
delegate proposal, Vol. I 275
final consideration, Trans. 1900—1901
text as adopted, Vol. II 1092
Section 10. Organization and procedure
adoption, Trans. 3010—3011
committee report, Vol. I 396, 403—404; Vol. II 864—865, 871,875, 877, 881—882, 885, 887, 1049, 1053, 1107
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 599-631, 635-637, 728, 730-735, 785, 789, 2791—2806
style and drafting report, Trans. 1620—1621, 2922-2925, 2996
delegate proposals, vol. I 250. 275—276, 303
final consideration, Trans. 1901—1902, 2809—2812, 2815
text as adopted, Vol. II 1092
Section 11. Bills
adoption. Trans. 3010—3011
committee report, Vol. I 382, 396-397, 404—406; Vol. II 877—878, 882, 887—888, 1053—1054
cross references, 1889.1972 constitutions, Vol. I 416
debate
committee report, Trans. 637—673. 128. 1535. 2015
style and drafting report, Trans. 1621—1623, 1624—1625, 2922-2925, 2996
delegate proposals, Vol. I 137, 189. 222. 276
final consideration. Trans. 1902—1903
text as adopted, Vol. II 1092
Section 12. Local and special legislation
adoption, Trans. 3010—3011

ARTICLE V — THE LEGISLATURE (BICAMERAL) (Cont.)
Section 12. Local and special legislation (Cont.)
committee report, Vol. 1397. 406; Vol. II 878, 882, 888, 1054
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 674, 728
style and drafting report, Trans. 1625, 2922-2925, 2996
delegate proposals, Vol. I 156. 276
final consideration, Trans. 1903—1904
text as adopted, Vol. II 1092
Section 13. Impeachment
adoption, Trans. 3010—3011
committee report, Vol. I 397—398. 406—407; Vol. II 865, 871—872, 875, 878, 883, 885, 888, 1050, 1054. 1107
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 675—680, 728, 735, 785, 789
style and drafting report, Trans. 1625—1626, 2922-2925, 2996
delegate proposal, Vol. I 276—277
final consideration, Trans. 1904—1906
text as adopted, Vol. II 1092
Section 14. Districting and apportionment
adoption, Trans. 3010—3011
committee report, Vol. I 398—399, 407—408; Vol. II 865—866, 872—873, 875, 878—879, 883-884, 885, 888—889, 1050—1051, 1054—1055, 1107
Cross references, 1889-1972 constitutions, Vol. 1416
debate
committee report, Trans. 680—696, 711-725, 735—741, 742—747, 785, 789
style and drafting report, Trans. X26-1627, 1860, 2922-2925. 2996
delegate proposals, Vol. I 162—163, 274, 278
final consideration, Trans. 1906—1907
text as adopted, Vol. II 1092—1093

ARTICLE V — THE LEGISLATURE (UNICAMERAL)
Section I. Power and structure
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 376, 381-382; Vol. II 861, 867, 874, 1046
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 628, 747—760, 789, 853
style and drafting report, Trans. 1568, 2922—2925
delegate proposal, Vol. I 109
final consideration, Trans. 1870—1872
text as adopted. Vol. II 1105
Section 2. Size
adoption. See ADOPTION SCHEDULE
committee report, Vol. I 376, 382; Vol. II 861, 867, 874, 1046
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 690, 760—770, 789, 824, 825
style and drafting report, Trans. 1568, 1596—1600, 1611—1614, 2922—2925
delegate proposal, Vol. I 109
final consideration, Trans. 1872—1873
text as adapted, Vol. II 1105
Section 3. Election and terms
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 376, 383; Vol. II 861, 867, 874, 1046
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report. Trans. 770—775, 789
style and drafting report, Trans. 1568—1569, 2922—2925
delegate proposals, Vol. I 106, 110
final consideration, Trans. 1873—1874
text as adopted. Vol. II 1105
Section 4. Qualifications
adoption, See ADOPTION SCHEDULE

ARTICLE V — THE LEGISLATURE (UNICAMERAL) (Cont.)
Section 4. Qualifications (Cont.)
committee report, Vol. I 376, *383: Vol. II 861., 867., 674.* 1046
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 545-572, 797—808, I696
style and drafting report, Trans. 1569—1570, 1857—1858, 2922—2925
final consideration, Trans. 1874—1875
text as adopted, Vol. II 1105
Section 5. Compensation
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 376, 383-384; Vol. II 861, 867, 874, 1046
cross *references*, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 572—579, *588*, 589, 992, 993, 1084
style and drafting report, Trans. 1570—1572, 2922—-2925
delegate proposals, Vol. I 110, *280*
final consideration, Trans. 1875—1877, 18'78
text as adopted, Vol. II 1105
Section 6. Sessions
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 376, 384-385; Vol. II 861, 867—868, 874, 1046
cross references, 1X89-1972 constitutions, Vol. I416
debate
committee report, Trans. 579-593, 796-797, X13-829
style and drafting report, *Trans*. 1572—1573, 2922-2925
delegate proposal, Vol. I 110
final consideration, *Trans*. 1877—1878
text as adopted, Vol. II 1105
Section 7. Vacancies
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 376-377, 385—386; Vol. II 861—862, 868, 1046
cross *references*, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 549—550, 593—594, *725-727*
style and drafting report, Trans. 1573, 2922—2925
final consideration, Trans. 1X78-1879
text as adopted, Vol. II 1105
Section 8. Immunity
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 377, 386; Vol. II 862, 868, 874, 1046
cross references, 1889-1972 constitutions, Vol. I416
debate
committee report, Trans. 594-595
style and drafting report, Trans. 1573, 1858, 2922-2925
delegate proposal, Vol. I 110
final consideration, Trans. 1879—1880
text as adopted, Vol. II 1105
Section 9. Disqualification
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 377, 386; Vol. II 862, 868, 874, 1046—1047
cross references, 1889-1972 constitutions, Vol. 1416
debate
committee report, *Trans*. 595-599, 1617—1620
style and drafting report, Trans. 1573—1582, 2922-2925
final consideration. Trans. 1880—1881
text as adopted, Vol. II 1105
Section 10. Organization and procedure
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 377, 386-388; Vol. II 862, 868, 874, 1047
cross references, 1889.1972 constitutions, Vol. I 416
debate
committee report, Trans. 599-631, 635-637, 789, 2791—2806
style and drafting report, Trans. 1582—1583, 1858, 2922—2925
delegate proposals, Vol. I 110—111, 250

ARTICLE V — THE LEGISLATURE (UNICAMERAL) (Cont.)
Section 10. Organization and procedure (Cont.)
final consideration, Trans. 1X81-1883, 2809—2811
text as adopted, Vol. II 1105
Section 11. Bills
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 377-378, 388—389; Vol. II 862—863, 868—869, 874, 1047—1048
cross references. 1X89-1972 constitutions, Vol. I 416
debate
committee report, Trans. 637-673, 1535, 2015
style and drafting report, *Trans*. 1583-1587, 1623—1624, 2922—2925
delegate proposal, Vol. I 111
final consideration, Trans. 1883—1884
text as adopted, Vol. II 1105—1106
Section 12. Local and special legislation
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 378, 389—390; Vol. II 863, 869, 874, *1048*
cross references, 18X9-1972 constitutions, Vol. 1416
debate
committee report, Trans. 674
style and drafting report, Trans. 1587, 2922—2925
delegate proposal, *Vol*. I 111
final consideration, Trans. 18X4-1885
text as adopted, Vol. II 1106
Section 13. Impeachment
adoption, See ADOPTION SCHEDULE
committee report, Vol. I 378-379, 391-392; Vol. II 863, 869—870, 874, *1048*
cross references, 1889-1972 constitutions, Vol. 1416
debate
committee report, Trans. 675-680, 789
style and drafting report, Trans. 1587—1590, 2922-2925
delegate proposal, Vol. I 112
final consideration. Trans. 1X85-1886
text as adopted, Vol. II 1106
Section 14. Districting and apportionment
adoption. See ADOPTION SCHEDULE
committee report, Vol. I 379, 381, 392-393; Vol. II 863—864, 870, 874—875, *1048*
cross references, 1889-1972 constitutions, Vol. I 416
debate
committee report, Trans. 680—696, 711—725, *789*, *1568*
style and drafting report, *Trans*. 1590—1593, 1614—1615, *1858*, 2922—2925
delegate proposal, Vol. I 109—110
final consideration, Trans. 18X6-1887
text as adapted, Vol. II 1106
Section 15. Referendum of unicameral legislature
adoption, See ADOPTION SCHEDULE
committee report, Vol. II 864-866, X10-873, 875, *104X-1051*
debate
committee report, Trans. 785-789
style and drafting report. Trans. 1593—1594, 1627—1629, 1858—1859, 2922—2925
final consideration, Trans. 1X87-1888, 2812—2814
text as adopted, Vol. II 1106—1108

ARTICLE VI — THE EXECUTIVE
Section 1. Officers
adoption, *Trans*. 2935-2936
committee report. Vol. I 432, 435, 441-444, 449, 457, *462-463; Vol*. II 893, 898, 904, 906, 1056
cross references, 1889.1972 constitutions, Vol. I 467
debate
committee report, Trans. X43-878, 914—926, 994, 1008, 1695
style and drafting report, Trans. 1692-1693, 1707—1714, 1714—1718, 2925—2926
delegate proposals, Vol. I 180—181, 228, 319

ARTICLE VI — THE EXECUTIVE (Cont.)
Section 1. Officers (Cont.)
final consideration, Trans. 1922—1931
text as adopted, Vol. II 1093
Section 2. Election
adoption, Trans. 2935-2936
committee report, Vol. I 432, 435, 444-445, 457, 463—464; Vol. II 893, 898, 904, 906, 1056
cross references, 1889-1972 constitutions, Vol. I 467
debate
committee report, Trans. 878-882
style and drafting report, Trans. 1693, 1708—1714, 1714—1718, 2925—2926
delegate proposals, Vol. I 180—181, 228-229, 319
final consideration, Trans. 1923, 1931-1932
text as adopted, Vol. II 1093
Section 3. Qualifications
adoption, Trans. 2935-2936
committee report, Vol. I 435-436, 445, 457—458, 464; Vol. II 893, 898—899, 904, 906, 1056
cross references, 1889-1972 constitutions, Vol. 1467
debate
committee report, Trans. 883—899, 978-987
style and drafting report, Trans. 1693—1698, 1708—1714, 2925-2926
delegate proposals, Vol. I 180, 228, 319-320
final consideration, Trans. 1932-1933, 1945—1946
text as adopted, Vol. II 1093
Section 4. Duties
adoption, Trans. 2935-2936
committee report, Vol. 1435, 436, 441—444, 445—447, 458, 463,465; Vol. II 893-894, 899, 904, 907, 1056—1057
cross references, 1889.1972 constitutions, Vol. I 467
debate
committee report, Trans. 867, 899-907, 911-927, 995—1007
style and drafting report, Trans. 1698—1699, 1708—1714, 2925-2926
delegate proposals, Vol. I 181, 229, 320
final consideration, Trans. 1933—1934, 2807, 2809
text as adopted, Vol. II 1093
Section 5. Compensation
adoption, Trans. 2935-2936
committee report, Vol. I 432, 435, 436, 441, 447, 458; Vol. II 894, 899, 904, 907, 1057
cross references, 1889-1972 constitutions, Vol. I467
debate
committee report, Trans. 842, 927-929, 991-994
style and drafting report, Trans. 1699. 2925-2926
delegate proposals, Vol. I 181, 229, 320
final consideration, Trans. 1934—1935
text as adopted, Vol. II 1094
Section 6. Vacancy in office
adoption, Trans. 2935-2936
committee report, Vol. I 436, 447—448, 458, 465—466; Vol. II 894, 899-900, 904,901, 1057
cross references, 1889-1972 constitutions, Vol. I467
debate
committee report, Trans. 929—933, 939-944
style and drafting report, Trans. 1700, 1708—1714, 2925-2926
delegate proposals, Vol. I 181—182, 233, 322—323
final consideration, Trans. 1935-1936
text as adopted, Vol. II IO94
Section 7. Twenty departments
adoption, Trans. 2935-2936
committee report, Vol. I 436—437, 448—449, 458-459; Vol. II 894—895, 900, 904, 907—908, 1057
cross references, 1889-1972 constitutions. Vol. I 467
committee report, Trans. 933-939. 1364
style and drafting report, Trans. 1700, 1708—1714, 2925-2926
delegate proposals, Vol. I 182—183, 229-231, 321
final consideration, Trans. 1936—1937
text as adopted, Vol. II 1094

ARTICLE VI — THE EXECUTIVE (Cont.)
Section 8. Appointing power
adoption, Trans. 2933-2936
committee report, Vol. I 437, 449—450, 459; Vol. II 895, 900—901, 904,908, 1057—1058, 1080, 1107
cross references, 1889.1972 constitutions, Vol. I467
debate
committee report, Trans. 944-947
style and drafting report, Trans. 1700—1701, 2925-2926
delegate proposals, Vol. I 183, 230-231, 321
final consideration, Trans. 1938—1939
text as adopted, Vol. II 1094
Section 9. Budget and messages
adoption, Trans. 2935—2936
committee report, Vol. I 432-433, 437, 450, 459; Vol. II 895, 901, 908, IO58
cross references, 1889-1972 constitutions, Vol. I 467
debate
committee report, Trans. 842, 947-948
style and drafting report, Trans. 1701, 2925-2926
delegate proposals, Vol. I 183, 231, 321
final consideration. Trans. 1939—1940
text as adopted, Vol. II 1094
Section 10. Veto power
adoption, Trans. 2935-2936
committee report, Vol. I 355, 363, 378, 390-391, 397, 406. 433, 437-438, 446, 450-452, 459—460; Vol. II 816, 821, 895-896, 901, 904, 908—909, 1058—1059
cross references, 1889-1972 constitutions, Vol. I 467
debate
committee report, Trans. 522, 674—675, 728, 747, 842, 948—958, 2719—2720
style and drafting report, Trans. 1701—1702, 1720—1721, 1722—1723, 2925—2926
delegate proposals, Vol. I 111—112, 116—117, 120, 183—184, 211, 231—232, 258, 277, 321-322, 323
final consideration, Trans. 1940—1941
text as adopted, Vol. II 1094—1095
Section 11. Special session
adoption, Trans. 2935-2936
committee report, Vol. I 376, 384-385, 395, 402, 414—415, 438, 452, 460; Vol. II 861, 868, 874, 876-877, 881, 887, 901-902, 904, 909, 1046, 1052, 1059, 1091, 1105
cross references. 1889.1972 constitutions. Vol. I 467
committee report, Trans. 579-593, 728, 817, 826, 956, 958—961
style and drafting report, Trans. 1702—1704, 1723, 2925-2926
delegate proposals, Vol. I 106, 110, 183, 231, 275, 321
final consideration, Trans. 1941—1942
text as adopted, Vol. II 1095
Section 12. Pardons
adoption, Trans. 2935-2936
committee report, Vol. I 438, 452—453, 460, 466; Vol. II 896, 902, 904-905, 909, 1059
cross references, 1889-1972 constitutions, Vol. I 467
debate
committee report, Trans. 962-964
style and drafting report, Trans. 1704—1705, 2925-2926
delegate proposals, Vol. I 183, 231, 321
final consideration, Trans. 1942—1943
text as adopted, Vol. II 1095
Section 13. Militia
adoption, Trans. 2935-2936
committee report, Vol. I 438, 453-454, 460; Vol. II 896, 902, 905, 909. 1059
cross references, 1889-1972 constitutions, Vol. I 467
debate
committee report, Trans. 964—966
style and drafting report, Trans. 1705, 2925-2926
delegate proposals, Vol. I 182, 229, 295-296, 320

ARTICLE VI — THE EXECUTIVE (Cont.)
Section 13. Militia (Cont.)
final consideration, Trans. 1943—1944
text as adopted, Vol. II 1095
Section 14. Succession
adoption, Trans. 2935—2936
committee report, Vol. I 438-439, 454—456, 460—461; Vol. II 896—897, 902—903, \$05, 909—910, 1059—1060
cross references. 1889-1972 constitutions. Vol. I 467
committee report, Trans. 880, 887, 9X-931, 940—944, 966-973
style and drafting report, Trans. 1705—1707, 1708, 1718—1720, 1721—1722, 1723, 2925—2926
delegate proposals, Vol. I 181—182, 232-233, 278, 322-323
final consideration. Trans. 1944—1945
text as adopted, Vol. II 1095
Section 15. Information for governor
adoption, Trans. 2935—2936
committee report, Vol. II 897, 903, 905, 910, 1060
debate
committee report, Trans. 973-974
style and drafting report, Trans. 1707, 2925—2926
delegate proposal, Vol. I 229
final consideration, Trans. 1945—1947
text as adapted, Vol. II 1095

ARTICLE VII — THE JUDICIARY
Adoption schedule, Trans. 2997
Section 1. Judicial power
adoption, Trans. 2936—2937
committee report, Vol. I 486, 489, 493, 510, 514—515; Vol. II 913, 917,922, 924, 1061
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1019, 1035—1036, 1074
style and drafting report, Trans. 2176—2177, 2926
delegate proposals, Vol. I 84, 140, 205—206
final consideration, Trans. 2434-2435
text as adopted, Vol. II 1096
Section 2. Supreme court jurisdiction
adoption, Trans. 2936—2937
committee report, Vol. I 486, 493—494, 510, 515—516, 518; Vol. II 913, 917, 922, 924, 1061
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 652, 1012, 1015, 1020—1021, 1025, 1036—1044, 1071-1073, 1162—1163
style and drafting report, Trans. 2177-2179, 2926
delegate proposals, Vol. I 84—85, 112, 140, 205, 304
final consideration, Trans. 2435—2436
text as adopted, Vol. II 1096
Section 3. Supreme court organization
adoption, Trans. 2936—2937
committee report, Vol. I 486—487, 494-495, 510, 516; Vol. II \$13, \$17, \$22, 924, 1061
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1044—1049, 1063—1071
style and drafting report, Trans. 2179—2180, 2926
delegate proposals, Vol. I 84—85, 140—141, 205
final consideration, Trans. 2436—2438
text as adopted, Vol. II 1096
Section 4. District court jurisdiction
adoption, Trans. 2936—2937
committee report, Vol. I 487—488, 492, 496—497, 499, 501, 510—511, 516—518; Vol. II 913—914, 917-918, 922, 924-925, 1061—1062
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1016, 1019—1020, 1029~1030, 1036, 1041, 1049—1057, 1073~1080
style and drafting report, Trans. 2179, 2180—2181, 2926
delegate proposals, Vol. I 85—86, 88—89, 112, 141, 291

ARTICLE VII — THE JUDICIARY (Cont.)
Section 4. District court jurisdiction (Cont.)
final consideration, Trans. 2438—2439
tent as adopted, Vol. II 1096
Section 5. Justices of the peace
adoption, Trans. 2936—2937
committee report, Vol. I 489, 491, 500—501, 505; Vol. II 914, 918, 922, 925, 1062
debate
committee report, Trans. 1012, 1014, 1019, 1020, 1022, 1028, 1029, 1030, 1031, 1036, 1056—1057, 1074, 1076, 1083—1084, 1120, 1121, 1140—1147, 1149, 1154—1179 [referred to as section 16], 1401, 1402, 1482
style and drafting report, Trans. 2181—2182, 2184—2185 2926
delegate proposals, Vol. 1 88, 152, 205—206
final consideration, Trans. 2439—2440
text as adopted, Vol. 11 1096
Section 6. Judicial districts
adoption, Trans. 2936—2937
committee report, Vol. 1488, 497, 511, 518—519; Vol. 11 914, 918, 922, 925, 1062
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1080—1083 [referred to as section 5], 1110, 1163
style and drafting report, Trans. 2182—2183. 2926
delegate proposals, Vol. I 86, 88, 141, 163, 206
final consideration, Trans. 2440-2441
text as adopted, Vol. II 1096
Section 7. Terms and pay
adoption, Trans. 2936—2937
committee report, Vol. I 487, 488, 489, 491, 495, 500, 504, 511, 519; Vol. II 914, 919, 922, 925, 1062
cross references, 1889-1972 constitutions. Vol. I 528—530
debate
committee report, Trans. 1020, 1067, 1083-1084, 1086, 1087. 1089., 1090, 1093.1097, 1101, 1107., 1110; 1114—1119 [referred to as section 6], 1150—1154
style and drafting report, Trans. 2183—2185, 2926
delegate proposals, Vol. I 86, 87, 88, 206, 225
final consideration, Trans. 2441-2442
text as adopted, Vol. II 1096
Section 8. Selection
adoption, Trans. 2936-2937
committee report, Vol. I 511—512, 519-521; Vol. II 914-915, 919, 922, 925—926, 1062—1063, 1080, 1107
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1012—1014, 1016—1017, 1022—1028, 1030—1033, 1069, 1081—1082, 1084—1114 [referred to as section 7], 1116, 1838
style and drafting report, Trans. 2185—2186, 2926
delegate proposals, Vol. I 87, 141, 206
final consideration, Trans. 2442-2443
text as adopted, Vol. II 1096—1097
Section 9. Qualifications
adoption, Trans. 2936—2937
committee report, Vol. I 484, 487, 488, 489, 491, 492, 495—496, 498—499, 500, 505—506, 512, 521—523; Vol. II 915, 919—920, 922, 926, 1063
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1012, 1020, 1118—1119, 1119—1121 [referred to as section 8]. 1154, 1179, 1746—1747
style and drafting report, Trans. 2186—2187, 2926
delegate proposals, Vol. I 86—88, 141, 206
final consideration, Trans. 2443—2445
text as adopted, Vol. II 1097

ARTICLE VII — THE JUDICIARY (Cont.)
Section 10. Forfeiture of judicial position
adoption, Trans. 2936—2937
committee report, Vol. I 492, 506-507, 512, 522; Vol. II 915, 920, 926, 1063
cross references, 1889-1972 constitutions, Vol. I 528—530
debate
committee report, Trans. 1119-1121, 1148—1150 [referred to as section 8]
style and drafting report, Trans. X86-2187, 2926
final consideration, Trans. 2445-2446
text as adopted, Vol. II 1097
Section 11. Removal and discipline
adoption, Trans. 2936—2937
committee report, Vol. I 489—490, 501—503, 512—513, 518—519, 523—524; Vol. II 915-916, 920—921, 922—923, 926—927, 1063—1064
debate
committee report, Trans. 1029, 1122—1127 [referred to as section 10], 1163
style and drafting report, Trans. 2187—2188, 2926
delegate proposals, Vol. I 87—88, 141, 205, 206
final consideration, Trans. 2446-2447
text as adopted, Vol. II 1097

ARTICLE VIII — REVENUE AND FINANCE
Section 1. Tax purposes
adoption, Trans. 2937-2938
committee report, Vol. II 579—580, 582, 583, 584, 588, 945, 947,951, 1065
cross references, 1889-1972 constitutions, Vol. II 582
debate
committee report, Trans. 1376, 1377—1378
style and drafting report, Trans. 2217, 2926-2928
delegate proposals, Vol. I 95, 101, 114, 132, 306
final consideration, Trans. X61-2462
text as adopted, Vol. II 1097
Section 2. Tax power inalienable
adoption, Trans. 2937—2938
committee report, Vol. II 579-580, 581, 584, 588, 945, 947, 950, 951, 1065
cross references, 1889-1972 constitutions, Vol. II 581
debate
committee report, Trans. 1376, 1378-1379, 1425, 1501
style and drafting report, Trans. 2217, 2926-2928
delegate proposals, Vol. I 306
final consideration, Trans. 2462-2463
text as adopted, Vol. II 1097
Section 3. Property tax administration
adoption, Trans. 2937-2938
committee report, Vol. II 579—580, 582, 584, 588-591, 594, 945,947, 950, 951, 1065
cross references, 1889-1972 constitutions, Vol. II 582
debate
committee report, Trans. 1376, 1379-1409, 1501, 2158, 2286, 2289
style and drafting report, Trans. 2217—2218, 2219, 2926—2928
delegate proposals, Vol. I 129, 167, 174, 264-265, 306-307
final consideration, Trans. 2463-2464
text as adopted, Vol. II 1097
Section 4. Equal valuation
adoption, Trans. 2937—2938
committee report, Vol. II, 582, 584, 589—590, 945, 947, 950, 951, 1065
cross references, 1889-1972 constitutions, Vol. II 58,
debate
committee report, Trans. 1376, 1409—1410, 2153, 2289
style and drafting report, Trans. 2218-2219, 2926-2928
final consideration, Trans. 2464-2465
text as adopted, Vol. II ,097
Section 5. Property tax exemptions
adoption, Trans. 2937—2938
committee report, Vol. II 584, 588, 590—591, 599—601, 945, 947—948, 950, 951, 1065

ARTICLE VIII — REVENUE AND FINANCE (Cant.)
Section 5. Property tax exemptions (Cont.)
cross references, 1889-1972 constitutions, Vol. II 580
debate
committee report, Trans. 1376, 1379, 1410—1427, 1497, 1556—1558
style and drafting report, Trans. 2219—2220, 2926-2928
delegate proposals, Vol. I 99, 167, 306, 326
final consideration, Trans. 2465-2466
text as adopted, Vol. II 1097—1098
Section 6. Highway revenue non-diversion
adoption, Trans. 2937-2938
committee report, Vol. II 580, 584-585, 591-592, 945-946, 948,950, 951-952, 1065—1066, 1080, 1107
cross references, 1889-1972 constitutions, Vol. II 580
debate
committee report, Trans. 1376, 1389—1390, 1428—1466, 1469—1489, 1501, 2689, 2695, 2701—2705, 2706—2717. 2779—2789
style and drafting report, Trans. 2220-2243, 2926-2928
delegate proposals, Vol. I 101, 132, 187—188
final consideration, Trans. 2466-2467, 2779—2789, 2814—2815
text as adopted, Vol. II 1098
Section 7. Tax appeals
adoption, Trans. 2937-2938
committee report, Vol. II 582, 585, 589, 592-594, 946, 948, 950, 952. 1066
cross references, 1889-1972 constitutions, Vol. II 582
debate
committee report, Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489—1490
style and drafting report, Trans. 2243, 2926—2928
final consideration, Trans. 2467—2468
text as adopted, Vol. II 1098
Section 8. State debt
adoption, Trans. 2937—2938
committee report, Vol. II 583, 585—586, 594. 946. 948. 950. 952, 1066, 1080, 1107
cross references, 1889-1972 constitutions, Vol. II 583
debate
committee report, Trans. 1376, 1490—1508
style and drafting report, Trans. 2243-2244, 2926-2928
final consideration. Trans. 2468-2469
text as adopted, Vol. II 1098
Section 9. Balanced budget
adoption, Trans. 2937-2938
committee report, Vol. II 582, 586, 595, 946, 949, 950, 952, 1066
cross references, 1889-1972 constitutions, Vol. II 582
debate
committee report, Trans. 1376, 1490, 1493, 1494, 1508—1509, 2135—2136
style and drafting report, Trans. 2244, 2926-2928
delegate proposal, Vol. I 307
final consideration, Trans. 2469-2470
text as adopted, Vol. II 1098
Section 10. Local government debt
adoption, Trans. 2937-2938
committee report, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066
cross references, 1889-1972 constitutions, Vol. II 583
debate
committee report, Trans. 1509—1516
style and drafting report, Trans. 2244-2245, 2926-2928
final consideration, Trans. 2470-2472
text as adopted, Vol. II 1098
Section 11. Use of loan proceeds
adoption, Trans. 2937-2938
committee report, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066
cross references, 1889-1972 constitutions, Vol. II 583
debate
committee report, Trans. 1376, 1516
style and drafting report, Trans. 2245, 2926-2928

ARTICLE VIII — REVENUE AND FINANCE (Cont.)
Section 11. Use of loan proceeds (Cont.)
final consideration, Trans. 2472-2473
text as adopted, Vol. II 1098
Section 12. Strict accountability
adoption, Trans. 2937—2938
committee report, Vol. II 581, 582, 586, 595, 596, 946, 949, 950, 952, 1066
cross references, 1889-1972 constitutions, Vol. II 581
debate
committee report, Trans. 921, 924, 1001, 1002, 1376, 1516—1517
style and drafting report, Trans. 2245, 2926-2928
delegate proposal, Vol. I 307
final consideration, Trans. 2473-2474
text as adopted, Vol. II 1098
Section 13. Investment of public funds
adoption, Trans. 2937-2938
committee report, Vol. II 583, 586, 596-597, 602—603, 753—756, 946, 949,950, 952—953, 1066—1067
cross references. 1889-1972 constitutions. Vol. II 583
committee report, Trans. 1002, 1376, 1517—1546, 1948, 2068, 2150—2151
style and drafting report, Trans. 2245-2246, 2433-2434, 2926-2928
final consideration, Trans. 2474—2475
text as adopted, Vol. II 1098
Section 14. Prohibited payments
adoption, Trans. 2937-2938
committee report, Vol. II 866, 873, 815, 879, 884, 889, 1067
cross references. 1889-1972 constitutions. Vol. II 416
debate
committee report, Trans. 790—792, 797, 1366, 1376, 1511 (referred to as Article IV (bicameral), section 15, and (unicameral), section 16]
style and drafting report, Trans. 1627, 2923—2924, 2926-2928
final consideration, Trans. 1888—1889, 1907—1908
text as adopted, Vol. II 1098

ARTICLE IX — ENVIRONMENT AND NATURAL RESOURCES
Section 1. Protection and improvement
adoption, Trans. 2938-2939
committee report, Vol. II 550, 552, 554—555, 561-562, 931, 935, 935, 939, 1068
debate
committee report, Trans. 1199—1271, 1274—1275, 1637—1640
style and drafting report, Trans. 2210-2211, 2928
delegate proposals, Vol. I 75, 96, 101, 108, 193, 240, 252, 261, 308—309
final *consideration, Trans.* 2454—2455
text as adopted, Vol. II 1099
Section 2. Reclamation
adoption, Trans. 2938-2939
committee report, Vol. II 552, 555—556, 931, 933, 935, 939, 1068
debate
committee report, Trans. 1199-1200, 1275—1301, 1353—1363
style and drafting report, Trans. 2211-2213, 2928
final consideration, Trans. 2455-2456
text as adopted, Vol. II 1099
Section 3. Water rights
adoption, Trans. 2938—2939
committee report, Vol. II 552-553, 556-557, 931, 933, 935, 939, 1068
cross references, 1889-1972 constitutions, Vol. II 563
debate
committee report, Trans. 151, 1301—1351, 2377, 2761
style and drafting report, Trans. 2213-2214, 2928
delegate proposals, Vol. I 76, 145, 213—214, 255

ARTICLE IX — ENVIRONMENT AND NATURAL RESOURCES (Cont.)
Section 3. Water rights (Cont.1
final consideration, Trans. 2456—2457
text as adopted, Vol. II 1099
Section 4. Cultural resources
adoption, Trans. 2938-2939
committee report, Vol. II 550, 553, 558, 931-932, 933—934, 939—940, 1068
debate
committee report, Trans. 1199, 1351-1352
style and drafting report, Trans. 2214. 2928
delegate proposals, Vol. I 75, 193, 240
final consideration, Trans. 2457—2458
text as adopted. Vol. II 1099

ARTICLE X — EDUCATION AND PUBLIC LANDS
Section I. Educational goals and duties
adoption, Trans. 2939—2940
committee report, Vol. II 718, 721—725, 993, 996, 1002, 1003, 1069
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 1949—1989, 2022, 2151-2159, 2286
style and drafting report, Trans. 2572—2573, 2928
delegate proposals, Vol. I 95, 139, 143, 169—170, 204, 284
final consideration, Trans. 2665-2667
text as adopted, Vol. II 1099
Section 2. Public school fund
adoption, Trans. 2939-2940
committee report, Vol. II 583, 596, 718, 725—726, 993, 996-997, 1002, 1003, 1069
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 1957, 1989—1990, 1995, 2143
style and drafting report, Trans. 2573—2574, 2928
final consideration, Trans. 2667—2668
text as adopted, Vol. II 1099
Section 3. Public school fund inviolate
adoption, Trans. **2939-2940**
committee report, Vol. II 718, 726, 741—742, 993, 997, 1003—1004, 1069
cross references, 1889.1972 constitutions, Vol. II 757
debate
committee report, Trans. 1539—1544, 1948, 1990, 2146, 2148, 2:245-2246
style and drafting report, Trans. 2574, 2927, 2928
delegate proposals, Vol. 1: 169, 176
final consideration, Trans. 2668-2669
text as adopted, Vol. II 1100
Section 4. Board of **Land Commissioners**
adoption, Trans. 2939-2940
committee report, Vol. II 718—719, 726—727, 994, 997, 1002, 1004, 1069—1070
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 860, 863, 864, 865, 869, 874, 917, 1280, 1990-2002
style and drafting report, Trans. 2574-2575, 2928
delegate proposal, Vol. I 329
final consideration, Trans. 2669-2670
text as adopted, Vol. II 1100
Section 5. Public school fund revenue
adoption, Trans. 2939-2940
committee report, Vol. II 719, 727—728, 994, 997, 1002, 1004, 1070
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 149, 1948, 1977, 2006—2008
style and drafting report, Trans. 2515, 2928
delegate proposals, Vol. I 146, 169—170
final consideration, Trans. 2670—2671
text as adopted, Vol. II 1100

ARTICLE X -EDUCATION AND PUBLIC LANDS (Cont.)
Section 6. Aid prohibited to sectarian schools
adoption, Trans. 2939—2940
committee report, Vol. II 629,716, 719, 728—730, 743—747, 994, 995, 1002, 1004, 1070
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 1646, 1960, 2008—2031, 2235
style and drafting report, Trans. 2575—2576, 2928
delegate proposals, Vol. I 137, 189, 222, 311, 312, 313
final consideration, Trans. 2671-2672
text as adopted, Vol. II 1100
Section 7. Non-discrimination in education
adoption, Trans. 2939—2940
committee report, Vol. II 719, 730—731, 994, 997—998, 1002, 1004, 1070
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 2031—2045
style and drafting report, Trans. 2576, 2928
final consideration, Trans. 2672-2674
text as adopted, Vol. II 1100
Section 6. School district trustees
adoption, Trans. 2939—2940
committee report, Vol. II 719, 731, 735. 818, 994, 998.1002, 1004, 1070
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 858, 1961, 1971, 1975-1981, 2046—2048, 2050, 2051, 2060, 2061, 2062, 2069, 2073, 2075, 2103, 2165
style and drafting report, Trans. 2576, 2928
delegate proposals, Vol. I 122, 340
final consideration, Trans. 2674—2675
text as adopted, Vol. II 1100
Section 9. Boards of education
adoption, Trans. 2939—2940
committee report, Vol. II 719—720, 731—740, 994—995, 998—999, 1002, 1004—1005, 1070—1071
cross references, 1889-1972 constitutions. Vol. II 757
debate
committee report, Trans. 858, 862, 864, 873, 2046, 2049—2091, 2096—2137, 2137—2142, 2159-2174, 2894
style and drafting report, Trans. 2576—2593, 2928
delegate proposals, Vol. I 196, 197, 230, 256, 282—283, 287, 324
final consideration, Trans. 2675—2676
text as adopted, Vol. II 1100
Section 10. State university funds
adoption, Trans. 2939—2940
committee report, Vol. II 720, 740, 995, 999, 1002, 1005, 1071
cross references. 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 2056, 2142
style and drafting report, Trans. 2593-2594, 2928
delegate proposals, Vol. I 170, 196—197, 283
final consideration, Trans. 2676—2677
text as adopted, Vol. II 1100—1101
Section 11. Public land trust, disposition
adoption, Trans. 2939—2940
committee report, Vol. II 748—752, 1000—1001, 1002, 1006, 1071~1072
cross references, 1889-1972 constitutions, Vol. II 757
debate
committee report, Trans. 2142—2150
style and drafting report, Trans. 2593-2594, 2928
delegate proposals, Vol. I 266-267, 329
final consideration, Trans. 2677—2678
text as adopted, Vol. II 1101

ARTICLE XI — LOCAL GOVERNMENT
Section 1. Definition
adoption, Trans. 2940—2942

ARTICLE XI — LOCAL GOVERNMENT (Coot.)
Section 1. Definition (Coot.)
committee report, Vol. II 782, 785—786, 1009, 1012, 1073
debate
committee report, Trans. 2513—2514, 2537
style and drafting report, Trans. 2816, 2928
delegate proposals, Vol. I 135, 215, 253
final consideration. Trans. 2832-2833
text as adopted, Vol. II 1101
Section 2. Counties
adoption, Trans. 2940-2942
committee report, Vol. II 782, 785, 786—788, 1009, 1012, 1015, 1073
cross references, 1889-1972 constitutions, Vol. II 802
debate
committee report, Trans. 2514—2516
style and drafting report, Trans. 2816, 2928
delegate proposals, Vol. I 153, 160, 163, 201—202, 215
final consideration, Trans. 2833-2834
text as adopted, Vol. II 1101
Section 3. Forms of government
adoption, Trans. 2940-2942
committee report, Vol. I 525; Vol. II 780, 782, 785, 788—791, 1009, 1012, 1015, 1073
cross references, 1889-1972 constitutions, Vol. II 802
debate
committee report, Trans. 1129—1130, 1131, 1154—1158, 2512, 2513. 2516—2521, 2525, 2529, 2557, 2560
style and drafting report, Trans. 2816—2817, 2928
delegate proposals, Vol. I 80—81, 92—93, 102—104, 135—136, 215-216, 234, 253, 300—301, 314
final consideration, Trans. 2834-2835
text as adopted, Vol. II 1101
Section 4. General powers
adoption, Trans. 2940-2942
committee report, Vol. II 581, 780, 782—783, 791—795, 1009—1010, 1012—1013, 1015, 1073
debate
committee report, Trans. 2521-2524, 2530
style and drafting report, Trans. 2817. 2928
delegate proposals, Vol. I 136, 155—156, 215—216, 253, 314
final consideration, Trans. 2835—2836
text as adopted, Vol. II 1101
Section 5. Self-government charters
adoption, Trans. 2940-2942
committee report, Vol. II 783, xX-798, 1010, 1013, 1015, 1074
debate
committee report, Trans. 1512, 2512, 2524-2528, 2529, 2530., 2532., 2535
style and drafting report, Trans. 2817-2818, 2928
delegate proposals, Vol. I 82—83, 136, 155—156, 216, 219, 253-254
final consideration, Trans. 2836-2838
text as adopted, Vol. II 1101—1102
Section 6. Self-government powers
adoption, Trans. 2940—2942
committee report, Vol. II 783, 785, 796-798, 1010, 1013, 1015, 1074
debate
committee report, Trans. 2512, 2524, 2528-2534, 2548, 2609, 2610
style and drafting report, Trans. 2818, 2828
delegate proposals, Vol. I 136, 155—156, 216, 2%
final consideration. Trans. 2838-2839
text as adopted, Vol. II 1102
Section 7. Intergovernmental cooperation
adoption, Trans. 2940-2942
committee report, Vol. II 783, 798-799, 1010, 1013—1014, 1015, 1074
debate
committee report, Trans. 2526, 2534-2536
style and drafting report, Trans. 2818—2819, 2928

ARTICLE XI — **LOCAL GOVERNMENT (Cont.)**
Section 7. Intergovernmental cooperation (Cont.)
delegate proposals, Vol. I 136, 156, 254
final consideration, Trans. 2839—2840
text as adopted, Vol. II 1102
Section 8. Initiative and referendum
adoption, Trans. 2940—2942
committee report, Vol. II 783, 785, 799, 1010, 1014, 1074
debate
committee report, Trans. 2512, 2520, 2548—2549
style and drafting report, Trans. 2819, 2928
delegate proposals, Vol. I 138, 216, 254
final consideration, Trans. 2840—2841
text as adopted, Vol. **II 1102**
Section **9. Voter review of local** government
adoption, Trans. 2940-2942
committee report, Vol. II 784, 78.5, 800—801, 1010—1011, 1014, 1015, 1074—1075
debate
committee report, **Trans.** 2512—2513, 2555—2565
style and drafting report, Trans. 2819, 2928
delegate proposals, Vol. I 217, 234
final consideration, Trans. 2841—2842
text as adopted, Vol. **II 1102**

ARTICLE XII — DEPARTMENTS AND INSTITUTIONS
Section I. Agriculture
adoption, **Trans.** 2942-2943
committee report, Vol. **II 550,** 559—560, **581,** 586, **597-598,** 936—938, **941,** 1076
cross references, 1889-1972 constitutions, Vol. **II 563**
debate
committee report, **Trans.** 1199, 1363—1370, 1378, 1547
style and drafting report, Trans. 2214—2217, 2928—2929
delegate proposals, Vol. I 244, 246
final consideration, **Trans.** 2458—2460
text as adopted, Vol. II 1102
Section 2. Labor
adoption, Trans. 2942—2943
committee report, Vol. II 670—673, 978, 982, $85, $87, 1076, 1107
cross references, 1889-1972 constitutions, Vol. **II** 699
debate
committee report, **Trans.** 2308—2315, 2316-2328, 2333, **2340-2342, 2369-2372, 2601-2604**
style and drafting report, Trans. 2596, 2928—2929
delegate proposal, Vol. I 220
final consideration, **Trans.** 2682—2684
text as adopted, **Vol. II** 1102
Section 3. Institutions and assistance
adoption, **Trans.** 2942-2943
committee report, Vol. I 339, 453; Vol. **II 627,** 674—675, **$79, 983, 985, 988,** 1076
cross references, 1889-1972 constitutions, Vol. **II 699**
debate
committee report, Trans. 2270-2300, 2304—2308
style and drafting report, Trans. 2596—2598, 2928—2929
delegate proposals, Vol. I 105, 114, 273, 297, 310
final consideration, Trans. 2684—2687
text as adopted, Vol. II 1102

ARTICLE XIII — **GENERAL** PROVISIONS
Section 1. **Non-municipal** corporations
adoption, Trans. 2943-2944
committee report, **Vol.** II 666—669, 710—712, 977, $81, 985, 986, 1077
cross references, 1889-1972 constitutions, Vol. II 698—699, 710—712
debate
committee report, **Trans.** 2247—2269, 2398, 2924-2925
style and drafting report, Trans. 2,595, 2929
delegate proposal, Vol. I 172
final consideration, Trans. 2678—2682
text as adopted, Vol. II 1103

ARTICLE **XIII** — GENERAL PROVISIONS (Cont.)
Section 2. Consumer Counsel
adoption, Trans. 2943-2944
committee report. **Vol. II 980, $84, $89, 1077**
debate
committee report, Trans. 2400—2404
style and drafting report, Trans. 2598—2601, 2929
final consideration. Trans. 2687—2689
text as adapted, Vol. II 1103
Section 3. Salary Commission
adoption, Trans. 2943-2944
committee report, Vol. I 376, 383-384, 395, 402, 447; Vol. II 861. 867. 874. 876.880. 886. 1077
debate
committee report, **Trans.** 572-579, 589, 728, $92, 993, 1084 [referred to as Article **V (bicameral** and unicameral), section 5]
style and drafting report, Trans. 1570—1572, 1616, 2923-2925, 2929, 2996
delegate proposals, Vol. I 110, 134, 275, 280
final consideration, Trans. 1875—1877
text as adopted, Vol. II 1103
Section 4. Code of ethics
adoption, Trans. 2943—2944
committee report, Vol. II 866, 873, 875, 879, 884, 889, 1077
cross references, 1889-1972 constitutions, Vol. II 793
debate
committee report, **Trans.** 793—796, 797
style and drafting report, Trans. 1594, 1627, 2923—2925, **2929**
delegate proposal, Vol. 1 164
final consideration, Trans. 1889—1891 [referred to as Article V (unicameral), section 17], 1908—1909 [referred to as Article **V (bicameral), section** 16]
text as adopted, Vol. **II 1103**
Section 5. Exemption laws
adoption, **Trans.** 2943-2944
committee report, **Vol. I 526-527;** Vol. II 916, 921, $23, $27, 1077
cross references, 1889-1972 constitutions, Vol. I 530
debate
committee report, Trans. 1147
style **and** drafting report, Trans. 2188, 2924, 2926, 2929
final consideration, Trans. 2447—2448
text as adopted, Vol. II 1103
Section 6. Perpetuities
adoption, **Trans.** 2943-2944
committee report, Vol. I 526—527; Vol. II 916, 921, 923, 927, 1077
cross references, 1889-1972 constitutions, **Vol. 1530**
debate
committee report, Trans. 1147—1148
style and drafting report, Trans. 2188, 292% 2926. 2929
final consideration, Trans. 2448—2449
text as adopted, Vol. II 1103

ARTICLE XIV — CONSTITUTIONAL REVISION
Section 1. Constitutional convention
adoption, Trans. 2944—2945
committee report, Vol. I 352—353, 356—360; Vol. II **851-854, 856, 857-858,** 1078
cross references, 1889-1972 constitutions, Vol. I 365
debate
committee report, Trans. 453—455, 470—471
style and drafting report, Trans. 1187—1189, 2929
delegate proposals, Vol. **I** 150—151, 158, 209—211, 226—227
final consideration, Trans. 1868—1870, 1909—1910
text as adopted, Vol. II 1103
Section 2. Initiative for constitutional convention
adoption, **Trans.** 2944-2945
committee report, Vol. I 352, 356, 357—358; Vol. II 851, 8.53, 856, 857, 1078
cross references, 1889-1972 constitutions, **Vol.** I 365

ARTICLE XIV — CONSTITUTIONAL REVISION (Cont.)
Section 2. Initiative for constitutional convention Cont.)
debate
committee report, Trans. 454, 455-462, 471—476, 2698, 2699—2700
style and drafting report, Trans. 1189, 2929
delegate proposal, Vol. I 209
final consideration, Trans. 1870, 1910—1911
text as adopted, Vol. II 1103
Section 3. Periodic submission
adoption, Trans. 2944—2945
committee report, Vol. I 352, 356, 358-359; Vol. II 851, 853, 856, 857, 1078
cross references, 1889-1972 constitutions, Vol. I 365
debate
committee report, Trans. 454, 462—466 [referred to as section 3], 476—478
style and drafting report, Trans. 1189—1190, 2929
delegate proposals, Vol. I 158, 209—210, 227
final consideration, Trans. 1911—1912
text as adopted, Vol. II 1103
Section 4. Call of convention
adoption, Trans. 2944-2945
committee report, Vol. I 352, 356, 359—360; Vol. II 851, 853-854, 856, 857, 1078
cross references, 1889-1972 constitutions, Vcl. I 365
debate
committee report, Trans. 454, 481—485 [referred to as section 5], 489—490 [referred to as section 71
style and drafting report, Trans. 1190—1191, 2929
delegate proposals, Vol. I 150, 158, 210, 226-227
final consideration, Trans. 1912—1914
text as adopted, Vol. II 1103
Section 5. Convention expenses
adoptian, Trans. 2944-2945
committee report, Vol. I 353, 356-357, 359—360; Vol. II 851—852, 854, 856, 857, 1078
cross references. 1889-1972 constitutions, Vol. I 365
debate
committee report, Trans. 454, 485-489 [referred to as section 6]
style and drafting report, Trans. 1191, 2929
delegate proposals, Vol. I 150, 210, 226-227
final consideration, Trans. 1914—1915
text as adopted, Vol. II 1103
Section 6. Oath, vacancies
adoption, Trans. 2944-2945
committee report, Vol. I 353, 357, 360; Vol. II 852, 854, 856, 857-858, 1078
cross references, 1889-1972 constitutions, Vol. 1365
debate
committee report, Trans. 454, 489—490 [referred to as section 7]
style and drafting report, Trans. 1191, 2929
delegate proposals, Vol. I 150, 210, 226
final ccnsideratiCn. Trans. 1915—1916
text as adopted, Vol. II 1104
Section 7. Convention duties
adoption, Trans. 2944-2945
committee report, Vol. I 353, 357, 360; Vol. II 852, 854, 856, 858, 1078—1079
cross references, 1889-1972 constitutions, Vol. I 365
debate
committee report, Trans. 454, 490-491, 526-528 [referred to as section 8]
style and drafting report, Trans. 1191—1192, 2929
delegate proposals, Vol. I 150—151, 210, 226-227
final consideration, Trans. 1916—1917
text as adopted, Vol. II 1104
Section 8. Amendment by legislative referendum
adoption. Trans. 2944-2945
committee report, Vol. I 353-354, 357, 360—362; Vol. II 852, 854, 856, 858, 1079

ARTICLE XIV — CONSTITUTIONAL REVISION (Cont.)
Section 8. Amendment by legislative referendum (Cont.)
cross references, 1889-1972 constitutions, Vol. I 365
debate
committee report, Trans. 495—501, 505, 533-534 [referred to as section 11], 2711
style and drafting report, Trans. 1192, 2929
delegate proposals, Vol. I 119—120, 210—211, 257
final ccnsideratiCn, Trans. 1917—1918
text as adopted, Vol. II 1104
Section 9. Amendment by initiative
adoption, Trans. 2944-2945
committee report, Vol. I 354, 362-363, 410; Vol. II 852, 854-855, 856, 858, 1079
debate
committee report, Trans. 491—492, 505—514 [referred to as section 13], 2702, 2703, 2704, 2711, 2745
style and drafting report, Trans. 1192—1194, 2929
delegate proposals, Vol. I 119—120, 268, 277
final consideration, Trans. 1918—1919
text as adopted, Vol. II 1104
Section 10. Petition signers
adoption, Trans. 2944—2945
committee report, Vol. I 354, 362; Vol. II 852, 855, 856, 858, 1079
debate
committee report, Trans. 514 [referred to as section 14]
style and drafting report, Trans. 1194—1195, 2929
delegate proposals, Vol. I 119, 277
final consideration, Trans. 1919—1920
text as adopted, Vol. II 1104
Section 11. Submissian
adoption, Trans. 2944-2945
committee report, Vol. I 354, 363; Vol. II 852, 855, 856, 858, 1079
debate
committee report, Trans. 514-522, 534 [referred to as section 15]
style and drafting report, Trans. 1195—1196, 2929
delegate proposals, Vol. I 119—120, 211
final ccnsideratiCn, Trans. 1920—1921
text as adopted, Vol. II 1104

ARTZ, WILLIAM H. (GREAT FALLS)
Biography, Vol. I33
Committee assignment, Vcl. I 24
Remarks by, on
ballot, constitution, Trans. 2888
constitutional revision (Article XIV)
constitutional convention, Trans. 488
declaration of rights (Article II)
adult rights, Trans. 1747
convicts, rights of, Trans. 1847
death penalty, Trans. 1811
right to bear arms, Trans. 1736—1737
right to work, Trans. 2364
education and public lands (Article X)
aid to sectarian schools, Trans. 2017
boards of education, Trans. 2579-2582
educational goals and duties, Trans. 1981
state university funds, accounting and audit, Trans. 2579-2582
executive (Article VI)
duties, Trans. 918
officers, Trans. 855
general government (Article III)
liquor monopoly, Trans. 2254-2255
legislature (Article V)
legislative post-auditor, Trans. 1000, 1005—1006
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1451
investment of public funds, Trans. 1518—1521, 1533, 1536—1537

ARTZ, WILLIAM H (Cont.)
Remarks by, on (Cont.)
revenue and finance (Cont.)
property t a r
administration, Trans. 1388
exemptions, Trans. 1411—1412, 1414, 1423
suffrage and elections (Article IV)
eligibility for public office, Trans. 414, 530, 1747

ASK, THOMAS M. (ROUNDUP)
Appointed to
escort committee, Trans. 9
temporary rules committee, Trans. 24
Biography, Vol. I 33
Committee assignment, Vol. I 24
Delegate Proposals
no. 53 (election, justices of peace), Vol. I 152
no. 72 (taxation. mines and mining claims), Vol. I I74
no. 97 (local government article), Vol. I 215—217
no. 122 (public officers' salaries), Vol. I 249
Remarks by, on
ballot, constitution, Trans. 2900, 2904, 2948-2950, 2952, 2956, 2994
constitutional revision (Article XIV)
submission, Trans. 516
declaration of rights (Article II)
right to privacy, Trans. 1850—1852
trial by jury, Trans. 1785
departments and institutions (Article XIII
public utility districts, Trans. 2607
education and public lands (Article X)
boards of education, Trans. 2170
public land trust, access, Trans. 2148
environment and natural resources (Article IX)
reclamation, Trans. 1279—1280, 1292, 1294. 1300
water rights, Trans. 1335
executive (Article VI)
qualifications, Trans. 980
succession, Trans. 969
general government (Article III)
gambling, Trans. 2729, 2737—2738, 2748, 2751-2752, 2759
judiciary (Article VII)
campaign expenses, Trans. 2193—2194
district attorney, Trans. 1131
justices of the peace, Trans. 1141—1142, 1155
legislature [Article V)
bills, Trans. 667
qualifications, Trans. 570, 802
sessions, Trans. 587-588
size, Trans. 764, 1602
local government (Article XI)
forms of government, Trans. 2516-2521
revenue sharing, Trans. 2539, 2542—2543
self-government
charters, Trans. 2527—2528
powers, Trans. 2530—2532
voter review of local government, Trans. 2555—2556, 2560, 2564
revenue and finance (Article VIII)
local government debt, Trans. 1509—1511, 1514—1515
property tax administration, Trans. 1401
state debt, Trans. 1507—1508
suffrage and elections (Article I")
poll-booth registration, Trans. 430, 436, 444-445

ASSEMBLY, FREEDOM OF, Vol. II 621, 629, 958, 963, 967, 970, 1038, 1087; Trans. 1647—1649

ASSESSMENT OF PROPERTY, Vol. I 129, 174, 264—265, 306-307; Vol. II 579—580, 582, 584, 588—591, 945, 947, 950, 951, 1065, 1097; Trans. 1379-1409, 1501, 2286, 2289, 2518
See also TAX APPEALS; TAX EXEMPTIONS

ASSESSORS, Vol. II 782, 788, 1009, 1012, 1015, ,073, 1101; Trans. 1380, 1382, 1386, 1387, 1388, 1389, 1390, 1392, 1397. 1400, 1402, 1405, 1406, 1408. 1414, 1419. ,501

ASSISTANCE, PUBLIC
See PUBLIC ASSISTANCE

ASSOCIATED GENERAL CONTRACTORS, Trans. 2356

ATOMIC ENERGY COMMISSION, Trans. 1318

ATTAINDER OF TREASON OR FELONY BY LEGISLATURE, Vol. II 623—624, 644, 960, 966, 968, 972, 1041, 1089; Trans. 1X28-1829

ATTORNEYGENERAL
Appointment by governor, Vol. I 442; Trans. 844, 852, 867—870
Board of examiners, member of, Vol. I 443—444
Board of land commissioners, member of, Vol. I 329; Vol. II 718-719, 726—727, 994, 997, 1002, 1004, 1069—1070, 1100; Trans. 1990, 1991, 1993
Board of pardons, member of, Vol. I 453; Trans. 962
Boards of education, ex officio member of, Vol. I 287; Trans. 205X-2063, 20X-2081, 2102
Candidacy for public office, other government employment, Vol. I 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 928—929
Compensation, Vol. I 229, 320, 432, 436, 447, 458; Vol. II 894, 899, 904,907, 1057, 1094; Trans. 842, 927—928, 991—994
salary commission, Vol. I 134, 447; Vol. II 861, 867, 874, 876, 880, 886. 1077, 1103; Trans. 578—579, 992. 993, 1084, 1572
Duties, Vol. I 206, 435, 436, 441—442, 445—447, 457, 458, 462. 465: Vol. II 893-894. 898. 899., 904., 906; 907; 1056—1057, 1093; Trans. 844, 867—870, 873—878, 899—900, 905—906
Election, Vol. I 206, 228-229, 319, 435, 442, 445-446, 467, 462-464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 878—883
same political party as governor, Trans. 905—906
Elimination as constitutional office, Vol. 1442; Trans. 844, 852, 867—870, 1716—1718
Executive branch, member of, Vol. I 228, 319, 435, 441,442, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 843, 844, 845-846, 850, 852, 867—870, 994, 1716—1718
Impeachment, Vol. I 112, 276-277, 378—379, 391—392, 397-398, 406-407; Vol. II 821, 863, 865, 869—870, 871-872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675-680, 1587—1590, 2550
Legal counsel to governor, other state officers, Vol. I 442; Trans. 867—870
Legal officer of state, Vol. I 206, 436,442, 446—447, 458. 465; Vol. II 894, 899, 904. 907, 1057, 1093; Trans. 844, 905
Oath of office, Vol. I 125; Vol. II 815, 819, 1019, 1022, 1025, ,043, 1090; Trans. 2695
Other government employment prohibited, Vol. I 436, 458: Vol. II 894. 899, 904, 907. 1057.1094: Trans. 928-929
Qualifications, Vol. 1229, 320, 435-436, 445, 457—458, 464; Vol. II 893, 898-899, 904, 906, 1056, 1093; Trans. 884, 893-899, 984, 1693—1697, 1746—1747

ATTORNEY GENERAL (Cont.)
Recall, Vol. 191, 257—258, 277—278; Vol. II 816, 821—822, 824, 1020, 1024, 1025; *Trans.* 2720—2728, 2852—2853
Residence at seat of government, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056. 1093; Trans. 873-878
Term of office, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Vacancy in office, Vol. I 321, 436, 447—448, 458, 466; Vol. II 894, 900, 904, 907, 1057, 1094; Trans. 842, 932—933

ATTORNEYS
Admission to practice, Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1025, 1037, 1071, 1162, 1163
Counsel, right to, Vol. I 105; Vol. II 623. 640—641, $60, $65, 968, 972, 1040, 1089; Trans. 1052, 1751, 1776
County attorneys, Vol. I 216, 484, 489, 499-500, 525; Vol. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 830—831, 844, 901, 1069, 1130—1132, 1780, 1781, 1784, 1787, 2516—2521
District attorneys, Vol. I 513, 525; Trans. 1069, 1130—1132
Judicial officers, practice of law, Vol. 188, 491, 504-505, 512, 522; Vol. II 915, 1063, 1096; Trans. 1014, 1119-1121
Probate attorney, Vol. 1299; Trans. 1132—1136, 1146, 1147, 1161—1162
Prosecuting attorneys, Vol. I 171
Rules of practice and conduct, Vol. I 510, 515-516; Vol. II 913,917, 922,924, 1061, 1096; Trans. 1015, 1025, 1037, 1071, 1162, 1163

AUDITOR
Board of land commissioners, member of, Vol. II 994, 997, 1002, 1004, 1069—1070, 1100; *Trans.* 1999—2000
Board of pardons, member of, Trans. 962
Candidacy for public office, other government employment, Vol. 14.58: Vol. II 894, 899. 904, 907, 1057; 1094; Trans. 842, 928-929
Compensation, Vol. I 458; Vol. II 894, 899, 904, 907, 10.57, 1094; Trans. 842, 927—928, 991—994
salary commission, Vol. I 134, 447; Vol. II 861, 867, 874, 876, 880,886. 1077, 1103; Trans. 578—579, 992, 993, 1084, 1572
Duties, Vol. 1319, 441—442, 443, 449, 457, 458, 462—463, 465; Vol. II 893-894, 898, 899,904, 906, 907, 1056—1057. 1093; Trans. 843—857. 899—900, 907, 911, 913, 915, 975, 995—1007, 2792, 2801
Election, Vol. I 319, 457, 463-464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 878-883, 914
Elimination as constitutional office, Vol. I 432, 441—442 443, 449,463; Trans. M-857, 998, 2381, 2690
Executive branch, member of, Vol. I 319, 432, 441—442, 443, 449, 457, 462, 463; Vol. II 893, 898, 904,906., 1056. 1093; Trans. 842-857. 914—926, 994; 998, 2381, 2690
Impeachment, Vol. I 112, 276—277, 378-379, 391—392, 397—398, 406—407; Vol. II 821, 863. 865, 869-870, 871-872, 874, 875,878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1587—1590, *2550*
Insurance commissioner, Trans. 852, 856, 918—922, 925
Oath of office, Vol. I 125; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Other government employment prohibited, Vol. I 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929

AUDITOR (Cont.)
Qualifications, Vol. I 320, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 883-893, 914, 978—986, 1693—1697
Recall, Vol. I 91, 257—258, 277—278; Vol. II 816, 821—822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852—2853
Residence at seat of government, Vol. I 319, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Term of office, Vol. I 319, 457, 462; Vol. II 893. 898, 904, 906, 1056, 1093; Trans. 914
Vacancy in office. Vol. I 321, 458. 466: Vol. II 894. 900. 904. 907, 1057, 1094; Trans. 842

AUDITS
Investments, Vol. II 586, 596—597, 602—603, 753—756, $46, 949, 950, 952—953, 1066—1067, 1098; Trans. 1002, 1517—1546
Legislative post-audit, Vol. I 443, 444; Vol. II 894, 899, 904, 907, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 626, 844, 854, 914-921, 923, 952, 974-978. 995—1007, 1517, 1699, 2692. 2791—2806
Legislative pre-audit, Vol. I 443; Trans. 844, 917, 919, 920, 997, 2056, 2120, 2124, 2581
Liquor Control Board. *Trans.* 2249. 2250—2251. 2252. 2253, 2254, 2347, 2766, 2767
University system, Trans. 2055—2056, 2057, 2075, 2078, 2111, 2112, 2113, 2114, 2116, 2120, 2122, 2123—2124, 2127, 2128, 2130, 2174, 2581, 2584, 2585, 2586, 2588, 2590

BABCOCK, BETTY (HELENA)
Appointed to Post-Convention Procedural, Administrative and Voter Education Affairs Committee, Trans. 2426
Biography. Vol. I 33
Committee assignments, Vol. I 24, 95
Nominated Western District Vice President, Trans. 56
declines nomination, Trans. 57
Remarks by, on
ballot, constitution, Trans. 1819, 2882, 2902
constitutional revision (Article XIV)
initiative, *Trans.* 510
non-partisanship of convention, Trans. 483
declaration of rights (Article II)
adult rights, Trans. 1748
assembly, freedom of, Trans. 1648, 2479—2480
death penalty, Trans. I853
participation, right of, Trans. 1659
right to bear arms, Trans. 1739
right to privacy, Trans. 1681
searches and seizures. Trans. 16X7-1688
departments and institutions (Article XII)
agriculture, working hours, Trans. 2603
labor, working hours, Trans. 2322, 2326, 2603
merit system, Trans. 2347
public service commission, Trans. 2380, 2384
education and public lands (Article X)
board of land commissioners, Trans. I993
educational goals and duties, Trans. 1982
environment and natural resources (Article IX)
reclamation, Trans. 1354
executive (Article VI)
disqualification, Trans. 1577—1578
officers, Trans. 855
qualifications, Trans. 890, 894, 896, 982
twenty departments, Trans. 935
general government (Article III)
initiative, Trans. 2703, 2717
general provisions (Article XIII)
people's advocate, Trans. 837

BABCOCK, BETTY (Cont.)
Remarks by, on (Cont.)
judiciary (Article VII)
campaign expenses. Trans. 1170—1171, 1178, 2193
terms and pay. Trans. 1152
legislature (Article V)
bills, Trans. 646
disqualification, Trans. 1577—1578
legislative post-auditor, Trans. 1001—1002, 1005, 2795—2796, 2801—2804
organization and procedure, Trans. 621—622
local government (Article XI)
voter review of local government, Trans. 2564
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1443, 1445, 1462, 1470-1472, 1480, 1483—1486, 2703, 2717
two-mill levy, Trans. 1554
suffrage and elections (Article IV)
eligibility for public office, Trans. 1748
poll-booth registration, Trans. 448
Thanked far dinner given for delegates, Trans. 1274

BABCOCK, FORMER GOVERNOR TIM
Telegram expressing best wishes to delegates, sent from U.S.S.R., Trans. 47

BADEN, PHYLLIS (TEMPORARY PARLIAMENTARIAN), Trans. 1, 98

BAER, KERI (PAGE), Trans. 1692

BAIL
All but capital offenses bailable, Vol. II 622, 639—640, 959, 964, 968, 971, 1040, 1080, 1088, 1108; Trans. 1771, 1780
Excessive bail prohibited, Vol. II 622, 640, 959,964, 968, 971, 1040, 1088; Trans. 1771

BALLOTS
Constitution
as adopted, Trans. 1084—1085
alternative issues
bicameral/unicameral legislature, Trans. 543—544, 728-730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2890-2894, 2898. 2903, 2904, 2907—2912, 2949-2975, 2987, 2988, 2993, 2996, 2997—3001, 3003—3004
death penalty, Trans. 1477, 1478, 1805, 1807, ,808, 1809, 1810, 1812, 1814—1822, 2221, 2235, 2510, 2609, 2736, 2739, 2865, 2867, 2872, 2873, 2877-2883, 2890-2892, 2897, 2903, 2913, 2914, 2949, 2951, 2952, 2955, 2969. 2971, 2972, 2984, 2987-2989, 2993, 2994, 2996, 2997, 3001
gambling, Trans. 1477, 1810, 2221, 2254, 2729—2760, 2828, 2853-2854, 2864, 2865, 2867-2869, 2873, 2877, 2879, 2881-2883, 2890-2892, 2897, 2899, 2900, 2903, 2913, 2914, 2948, 2949, 2951, 2952, 2955, 2969, 2971, 2972, 2975-2986, 2987, 2990, 2993, 2997-2999, 3000
highway revenue non-diversion, Trans. 1458—1466, 1469—1489, 2221-2241
regulation of public utilities, Trans. 2605—2613
right to work, Trans. 1478, 2358-2367
unicameral/bicameral legislature, Trans. 543-544, 728—730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864-2867, 2869, 2870, 2873, 2877, 2881-2884, 2890—2894, 2898, 2903, 2904, 2907—2912, 2949-2975, 2987, 2988, 2993, 2996, 2997—3001, 3003-3004

BALLOTS (Cont.)
Constitution (Cont.)
format and voting, Trans. 334, 336, 1631, 2863-2916, 2919, 2921—2922, 2929, 2947—2995, 3008—3009
short ballot, long ballot, Vol. I 441; Trans. 843, 848, 849, 853, 2375, 2690-2691, 2773, See also CONSTITUTIONAL OFFICES
Secret ballot required, Vol. I 191, 336, 337, 341; Vol. II 845, 847, 1045, 1091; Trans. 391, 422, 532

BAR ADMISSION; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1025. 1037, 1071, 1162, 1163

BARBER, ROGER (RESEARCH ANALYST), Vol. I 69; Vol. II 578; Trans. 1, 3035

BARDANOUVE, FRANCIS, Trans. 919, 997, 1530

BARLOW, EARL, Trans. 1952

BARNARD, COLLEEN (PAGE), Trans. 254

BARNARD, LLOYD (SACO)
Biography, Vol. I34
Committee assignment, Vol. I 24
Remarks by, on
constitutional revision (Article XIV)
periodic submission, Trans. 517
declaration of rights (Article II)
right to hear arms, Trans. 1838
right to know, Trans. 2495
departments and institutions (Article XII)
agriculture, special levies, Trans. 1367
public utility districts, Trans. 2415, 2610
education and public lands (Article X)
aid to sectarian schools, Trans. 2017, 2029
boards of education, Trans. 2112, 2116—2117, 2126, 2128—2129, 2134, 2581, 2589
educational goals and duties, Trans. 1978—1979
non-discrimination in education, Trans. 2036
public school fund, Trans. 1541—1544, 1990
state university funds, accounting and audit, Trans. 2142, 2581, 2589
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1263
executive (Article VI)
officers, Trans. 864
general government (Article III)
liquor monopoly, Trans. 2252
judiciary (Article VII)
justices of the pea&, Trans. 1143
legislature (Article V)
bills, Trans. 649
qualifications, Trans. 553, 570
sessions, Trans. 589
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1443, 1481, 2223, 2237, 2238. 2787
investment of public funds, Trans. 1527, 1530, 1538—1539, 1541—1544, 2245—2246
suffrage and elections (Article IV)
eligibility for public office, Trans. 416

BASIC NECESSITIES, Vol. II 42, 610, 626—627, 957, 962, 967, 969, 1038, 1087; Trans. ,240, 1636—1637, 1642, 2294, 2370, 2690

BATES, GRACE C. (MANHATTAN)
Biography, Vol. I 34
Committee assignment, Vol. I24
Delegate Proposals
no. 117 (department of agriculture), Vol. I 244
no. 140 (legislative article), Vol. I 274—279
no. 141 (legislative salaries), Vol. I 280—281
Nominated Western District Vice President, Trans. 56
Nomination of Louise Cross as Convention Secretary, Trans. 62
Remarks by, on
ballot, constitution, Trans. 2867, 2874, 2879, 2898, 2913, 2951, 2959, 2968—2969, 2988, 2991, 2994
constitutional revision (Article XIV)
amendment by legislature, Trans. 501—502
initiative. Trans. 508
submission, Trans. 517
declaration of rights (Article II)
participation, right of, Trans. 1660
right to bear arms, Trans. 1738
departments and institutions (Article XII)
agriculture, department of, Trans. 2215
labor
department of, Trans. 2311
working hours, Trans. 2324, 2370—2371
public service commission, Trans. 2385
education and public lands (Article X)
aid to sectarian schools, Trans. 2026
board of land commissioners, Trans. 2001—2002
boards of education, Trans. 2075—2076, 2096, 2104—2105, 2159—2160, 2162—2163, 2168
commissioner of higher education, Trans. 2104—2105
public land trust, access, Trans. 2146—2147
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1205, 1239, 1274—1275
water rights, Trans. 1302, 1321, 1333, 1349—1350
executive (Article VI)
qualifications, Trans. 897, 983-984
succession, Trans. 1708, 1718—1720, 1722
veto power, Trans. 1721
general government (Article III)
gambling, Trans. 2144, 2753—2754, 2757
judiciary (Article VII)
campaign expenses, Trans. 116X-1169, 2190, 2197, 2202
terms and pay, Trans. 2183
legislature (Article V)
bills, Trans. 662, 1586
conference committees, Trans. 733
disqualification, Trans. 1579
districting and apportionment, Trans. 690, 692, 694, 720, 739—740, 744—746
election and terms, Trans. 773
impeachment, Trans. 675-678, 735
legislative post-auditor, Trans. 2793-2794, 2797—2804
organization and procedure, Trans. 620
parliamentary form of government, Trans. 753—754
qualifications, Trans. 545-548, 550, 553, 799—800, 804—805
sessions, Trans. 589
size, Trans. 765, 781, 784-785. 1597. 1602, 1607
unicameral/bicameral, merits of, Trans. 728, 1632
vacancies, Trans. 726—727
preamble, Trans. 36—37
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1438—1439, 1449, 1452, 1485—1486, 2787
Property tax exemptions, Trans. 1418
Suffrage and elections (Article IV)
poll-booth registration, Trans. 407, 411—412, 435

BAUCUS, MAX (COMMITTEE COORDINATOR)! Vol. I 30, 69; Trans. 362, 1273, 3035

BAUMANN, THE REVEREND MARTIN (FIRST LUTHERAN CHURCH, HELENA)
Invocation, Trans. 2424

BEARTUSK, DEBBIE (PAGE), Trans. 2209

BECHTEL, RICHARD (RESEARCH ANALYST), Vol. I 69, 375; Trans. 382, 3035

BECK, KAREN (RESEARCH ANALYST), Vol. 169,433; Trans. 3035

BELCHER, DON E. (ROUNDUP)
Biography, Vol. I 34
Committee assignment, Vol. I 24
Delegate Proposals
no. 28 (gambling), Vol. I 121
no. 36 (seat of government), Vol. I 130—131
Remarks by, on
boundaries, state, Trans. 2760—2762
constitutional revision (Article XIV)
amendment
by initiative, Trans. 507
methods of, Trans. 474
constitutional convention, Trans. 528
constitutional preparatory commission, Trans. 469
submission, Trans. 492
education and public lands (Article X)
public land trust, mineral rights, Trans. 2150
environment and natural resources (Article IX)
reclamation, Trans. 1292
executive (Article VI,
qualifications, Trans. 894, 982
general government (Article III)
gambling, Trans. 2742-2743
general provisions (Article XIII)
people's advocate, Trans. 704
legislature (Article V)
compensation, Trans. 575
suffrage and elections (Article IV)
poll-booth registration, Trans. 439
Seconds nomination of Grace Bates as Western District Vice President. Trans. 57

BEN DOV, DAVID (CONSUL GENERAL OF ISRAEL), Trans. 438

BENNETT, WALLACE (UNITED STATES SENATOR, UTAH), Trans. 2353

BERG, ADA (PAGE), Trans. 254

BERG, BEN E., JR. (BOZEMAN)
Biography, Vol. 135
Committee assignment. Vol. I 24
Remarks by, on
ballot, constitution, Trans. 2895, 2909—2910, 2965-2966, 2968, 2990
constitutional revision (Article XIV)
amendment by legislature, Trans. 503
declaration of rights (Article II)
debt, imprisonment for, Trans. 1794, 1798—1799
participation, right of, Trans. 1663—1664, 1666
right to know, Trans. 2496, 2499—2501
trial by jury, Trans. 1782, 1791—1792
departments and institutions (Article XII)
labor, collective bargaining, Trans. 2333-2334
education and public lands (Article X)
boards of education, Trans. 2110, 2121-2122, 2164

BERG, BEN E (Cont.)
Remarks by, on (Cont.)
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1268
water rights. Trans. 1307—1308, 1311, 1325. 1327—1331, 1334, 1343—1345, 1349—1350
executive (Article VI)
officers, Trans. 869
qualifications, Trans. 887—888
general government (Article III)
liquor monopoly, Trans. 2765—2766
general provisions (Article XIII)
non-municipal corporations, retrospective laws, Trans 2266, 2268
judiciary (Article VII) — minority report introduction, Trans. 1018—1025, 1028, 1032
clerks of court, Trans. 1127, 1129
disqualification, Trans. 1121—1122
district attorney, Trans. 1131
district court jurisdiction, Trans. 1049—1055, 1076, 1079—1080
forfeiture of judicial position, Trans. 1149—1150
judicial districts, Trans. 1080—1083
judicial power, Trans. 1036
justices of the peace, Trans. 1142, 1155, 1157
qualifications, Trans. 1119—1121
removal and discipline, Trans. 1125
selection, Trans. 1085, 1094—1095, 1112—1113
supreme court
jurisdiction, Trans. 1036—1044, 1073, 2178
organization, Trans. 1044—1047, 1063—1065
terms and pay, Trans. 1083—1084, 1115—1116, 1119, 1154
legislature (Article V)
bills, Trans. 660—661
disqualification, Trans. 596
election and terms, Trans. 771
organization and procedure, Trans. 602, 626—629, 636
sessions, Trans. 585-586, 822—823
size, Trans. 784, 822—823
unicameral/bicameral, merits of, Trans. 822
local government (Article XI)
intergovernmental cooperation, Trans. 2535—2536
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1437, 1461—1462, 2230, 2785—2786
investment of public funds, Trans. 1520—1521, 1535—1536, 1545—1546
state debt, Trans. 1492, 1499—1500, 1502
suffrage and elections (Article IV)
poll-booth registration, Trans. 404—405
Seconds nomination of Dorothy Eck as Western District Vice President, Trans. 55—56

BERNER, ALICE (SECRETARY), Vol. I 69; Trans. 3036

BERTHELSON, EARL M. (CONRAD)
Biography, Vol. I 35
Committee assignment, Vol. I 24
Delegate Proposals
no. 1 (environmental quality), Vol. I 75
no. 2 (water rights), Vol. I 76
no. 4 (right to bear arms), Vol. I 78—79
no. 7 (judicial article), Vol. I 84-90
Remarks by, on
declaration of rights (Article II)
right to bear arms, Trans. 1725—1726, 1740—1741
education and public lands (Article X)
aid to sectarian schools, Trans. 2019
executive (Article VI)
duties, Trans. 923
judiciary (Article VII)
campaign expenses, Trans. 1169—1170
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1484
investment of public funds, Trans. 1528—1529

BERTHELSON, EARL M (Cant.)
Remarks by, on (Cont.)
revenue and finance (Cont.)
property tax
administration, Trans. 1387
exemptions, Trans. 1413

BERTSCHE, WILLIAM, Trans. 2343, 2344—2345, 2346, 2347, 2348

BERWICK, BRUCE (PAGE), Trans. 104

BIBLIOGRAPHY
See also PUBLICATIONS CITED
General sources, Vol. I 71—72
Montana Constitutional Convention Commission sources, Vol. I 72—73
Montana Constitutional Convention sources, Vol. I 73—74

BICAMERALISM, MERITS OF, Vol. I 381-382; Trans. 728—730, 747—749, 759-760., 775—779, 786—789, 815, 822, 840, 1603, 1604, 1629—1633, 2221, 2580, 2866, 2871, 2880, 2883, 2884, 2892—2894, 2898, 2900—2901, 2903, 2905, 2907, 2911, 2954, 2957, 3022—3025
Alternative issue on constitution ballot, Trans. 543—544, 728—730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2890—2394, 2898, 2903, 2904, 2907-2912, 2949—2975, 2987, 2988, 2993, 2996, 2997—3001, 3003—3004

BICAMERAL LEGISLATURE
See LEGISLATURE — BICAMERAL

BIENNIAL SESSIONS, Vol. I 106, 414—415; Trans. 582-592, 813, 816—819

BILL OF RIGHTS
See ARTICLE II
Procedural or substantive rights created for first time prospective, not retroactive, Vol. II 1082, 1108; Trans. 3005, 3007—3008
Unenumerated rights not denied, impaired or disparaged, Vol. II 624, 645, 961,966, 968, 973, 1042, 1089; Trans. 1832

BILL OF RIGHTS COMMITTEE
Membership and staff, Vol. 122; Vol. II 618—619
Report
consideration in committee of the whole, Trans. 1634—1689, 1724—1766, 1771—1853
cross references, 1889-1972 constitution:;, Vol. II 646
delegate proposals considered, Vol. II 647—648
roll call votes on. in committee. Vol. II 658—660
text and comments
majority report, Vol. II 620—645
transmittal letter. Vol. II 618—619
Responsibilities, Trans. 33, 36—37, 150—151
Witnesses appearing before committee, Vol. II 650—657; Trans. 370—371

BILLS
Alteration or amendment changing original purpose prohibited, Vol. I 111, 276, 377, 388, 396, 404; Vol. II 862, 868, 874, 877, 882, RR7 1047, 1053, 1092, 1105; Trans. 637

BILLS (Cont.)
Appropriation bills. Vol. I 111. 216. 377—378. 388-389. 397, 405;. II 862—863, 874, 878, 882, 888, 1047, 1053—1054, 1092, 1106; Trans. 647—659
Carryover from one session to another, Vol. 1376,384, 33.5, 402, 414—415; Vol. II 861, 867, 874, 876, 880—881, 886, 1046, 1052, 1091, 1105; Trans. 579, 586, 816, 826
Challenge of law for technical errors in passage, Vol. I 111. 377. 388-389. 397.405:. Vol. II 863. 869, 874, 878, 882, 888, 1048, 1054, 1092, 1106; Trans. 647—659
Codification bills, Vol. I 111, 276, 377, 388—389, 397, 405; Vol. II 862, 869, 874, 878, 882, 888, 1047, 1053, 1092; Trans. 647—659
Enacting clause, Vol. I 111; Trans. 2696
Private religious, charitable. industrial, educational or benevolent purposes — appropriations for prohibited, Vol. I 137, 189, 222, 276, 311, 312—313, 378, 389, 397, 405—406; Vol. II 629, 716, 719, 728—730, 743—747, 863, 869, 874, 878, 882, 888, 994, 997, 1002, 1004, 1047, 1054, 1070, 1092, 1100, 1106; Trans. 659—670, 1535, 1646, 1960, 2008—2031, 2235
Recorded vote on, Vol. 1278,377, 388, 396—397, 405; Vol. II 862, 869, 874, 882, 888, 1047, 1053, 1092, 1105; Trans. 637—647, 671—672
Single subject, clearly expressed in title, Vol. I 111, 276, 377—378, 389, 397, 405; Vol. II 862, 869, 874, 878, 882, 888, 1047, 1053, 1092, 1106; Trans. 647—659
Special or local acts prohibited, Vol. I 111, 156, 276, 378, 389—390, 397, 406; Vol. II 863, 869, 874, 878, 882, 888, 1048, 1054, 1092, 1106; Trans. 674
Veto by governor, Vol. I 111—112, 116—117, 183—184, 231-232, 321-322. 323, 378, 390—391, 397, 406, 433, 437-438, 446, 450—452, 459—460; Vol. II 895-896, 901, 904, 908—909, 1058—1059, 1094—1095; Trans. 674—675, 747. 842. 948-958. 1702, 1720—1723, 2859, 2887—2888
Vote required for passage (majority vote), Vol. I 111, 276, 377, 388, 397, 405; Vol. II 862, 868—869, 874, 877, 882, 887, 1047, 1053, 1092, 1105; Trans. 647, 672—673

BILLY, ANN (PAGE), Trans. 358

BINGO GAMES, Vol. 1247; Trans. 2729, 2733, 2735—2741, 2744, 2746, 2753
See also GAMBLING

BLACK, EUGENE (FORMER ATTORNEY GENERAL OF MICHIGAN), Trans. 1219

BLAINE AMENDMENT, Trans. 2010, 2011, 2012, 2013, 2023, 2027. 2030

BLAKE, KATHY (PAGE), Trans. 2861

BLAYLOCK, CHET (LAUREL)
Biography, Vol. I 35
Committee assignment, Vol. I 24
Delegate Proposals
no. 25 (veto override), Vol. I 116—117
no. 49 (public school fund revenue), Vol. I 146—147
no. 154—withdrawn

BLAYLOCK, CHET (Cont.)
Nominated President of Convention, Trans. 12
declines nomination. Trans. 12
Nomination of Betty Babcock as Western District Vice President. Trans. 56
Remarks by, on
ballot, constitution, Trans. 2893, 2904, 2907, 2908, 2992
constitutional revision (Article XIV)
amendment by legislature, Trans. 497, 502
constitutional convention, Trans. 490
initiative, Trans. 506
declaration of rights (Article II)
individual dignity, Trans. 1643
participation, right of, Trans. 1660
popular sovereignty, Trans. 1635—1636
restoration of rights. Trans. 2305
right to bear arms, Trans. 1725—1727, 1735—1736, 1743, 1836—1837
right to know, Trans. 2485, 2490
right to work, Trans. 2361-2362
self-government, Trans. 1636
treason and descent of estates, Trans. 1828
departments and institutions (Article XII;
labor, working hours, Trans. 2320, 2341, 2601
public assistance, Trans. 2298
education and public lands (Article X)
aid to sectarian schools, Trans. 2014—2015, 2018
board of land commissioners, Trans. 1995—1996
boards of education, Trans. 2077, 2099—2100, 2114, 2131—2132
commissioner of higher education, Trans. 2099—2100
educational goals and duties, Trans. 2157
indian education, Trans. 1954
public school fond, Trans. 2007
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1203, 1231, 1281
reclamation, Trans. 1285, 1292, 1295
water rights, Trans. 1304, 1344
executive (Article VI)
compensation, Trans. 577-579
officers, Trans. 861—862, 870—871, 883
succession, Trans. 1720
twenty departments, Trans. 937
vacancy, Trans. 944
veto power, Trans. 957
general government (Article III)
liquor monopoly, Trans. 2253
separation of powers, Trans. 2829
general provisions (Article XIII)
consumer counsel, Trans. 2401
non-municipal corporations, consumer protection, Trans. 2248
people's advocate, Trans. 702—703
salary commission, Trans. 576, 577—579
judiciary (Article VII)
district court jurisdiction, Trans. 1078
forfeiture of judicial position, Trans. 1148—1149
qualifications, Trans. 1121
removal and discipline, Trans. 1124
supreme court
jurisdiction, Trans. 1072
organization, Trans. 1064
terms and pay, Trans. 577-579, 1084, 1116
legislature (Article V)
compensation, Trans. 575-579
disqualification, Trans. 1575—1576
districting and apportionment, Trans. 739, 745—746
legislative post-auditor, Trans. 1006, 2793
qualifications, Trans. 546, 551, 565, 569, 802—803
sessions, Trans. 586, 815
size, Trans. 783, 1601
unicameral/bicameral, merits of, Trans. 2907
unicameral, referendum of, Trans. 788
local government (Article XI)
self-government powers, Trans. 2529-2531

BLAYLOCX, CHET (Cant.)
Remarks by, on (Cont.)
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1480, 2233—2234
suffrage and elections (Article IV)
poll-booth registration, Trans. 447
qualified elector, Trans. 392-393, 394

BLEND, VIRGINIA HOGAN (GREAT FALLS)
Biography, Vol. I 36
Committee assignment, Vol. I 24
Delegate Proposals
no. 10 (equal rights), Vol. I 94
no. 11 (public school funding), Vol. I 95
no. 16 (earmarking of revenues), Vol. I 101
no. 23 (welfare funding), Vol. I 114
no. 42 (initiative, referendum and recall), Vol. I 138
Remarks by. on
ballot, constitution, Trans. 2868, 2887
constitutional revision (Article XIV)
amendment by legislature, Trans. 500
initiative, Trans. 508—509, 513
declaration of rights (Article II)
participation, right of, Trans. 1655
departments and institutions (Article XII)
labor, collective bargaining, Trans. 2333
public assistance, Trans. 2295
education and public lands (Article X)
board of land commissioners, Trans. 1996
boards of education, Trans. 2170
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1275
water rights, Trans. 1324—1325
executive (Article VI)
duties, Trans. 902
general government (Article III)
gambling, Trans. 2753
recall, Trans. 2723
judiciary (Article VII)
campaign expenses, Trans. 1166
clerks of court, Trans. 1130
terms and pay, Trans. 1151
legislature (Article V)
districting and apportionment, Trans. 685
qualifications, Trans. 807
local government (Article XI) — majority report
introduction, Trans. 2512—2513
intergovernmental cooperation, Trans. 2.535, 2536
revenue sharing, Trans. 2539-2540, 2543
self-government powers, Trans. 2532
voter review of local government, Trans. 2558
revenue and finance (Article VIII)
highway revenue non-diversion. Trans. 1445
suffrage and elections (Article IV)
poll-booth registration, Trans. 404

BLEWETT, ALEXANDER (CHAIRMAN, MONTANA CONSTITUTIONAL CONVENTION COMMISSION)
Acting chairman for organizational meeting, Trans 1—5
Commission report to Convention, Trans. 315

BLOCK GRANTS (FEDERAL), Vol. II 746; Trans. 664, 2011, 2014, 2025

BLUE LAWS
See WORK PERIOD, Sunday closing law

BOARD OF EXAMINERS, Vol. 1432, 443—444; Trans. 842, 844, 853, 2067
See also STATE EXAMINER

BOARD OF LABOR APPEALS, Trans. 2311, 2313

BOARD OF LAND COMMISSIONERS
Classification of public lands, Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
Composition, authority, Vol. I 329; Vol. II 718—719, 726—727, 994, 997, 1002, 1004, 1069—1070, 1100; Trans. 663, 664, 860, 863, 864, 865, 869, 874, 917, 1280, 1990-2002

BOARD OF PARDONS, Vol. I 432, 453, *GO. 466; Trans. 842, 962—964, 1818, 1819, 1823

BOARD OF PRISON COMMISSIONERS
See BOAR,, OF PARDONS

BOARD OF PUBLIC EDUCATION
See BOARDS OF EDUCATION

BOARD OF REGENTS
See BOARDS OF EDUCATION

BOARDS OF EDUCATION
Board of public education, Vol. I 282-283; Vol. II 719—720, 731-735, 740, 994, 995, 998, 1002, 1004—1005, 1070—1071, 1100; Trans. 858, 862, 864, 873, 874, 2049, 2070, 2096, 2162, 2172—2173, 2590
commissioner of higher education ex officio member, Vol. II 995, 998, 1005, 1071, 1100; Trans. 2097—2108
governor ex officio member, Vol. II 719—720, 733-735, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049-2052, 2096, 2097, 2100, 2102
superintendent of public instruction ex officio member, Vol. II 719-720, 733-735, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049—2052, 2096, 2097, 2100, 2103
Board of regents of higher education, Vol. I 196—197, 282-283, 287, 324; Vol. II 719, 720, 731—732, 734. 735—740, 994, 995. 998-999, 1002, 1004-1005, 1070—1071, 1100; Trans. 862, 864,873, 874, 2046, 2049-2091, 2097, 2098, 2100, 2102, 2103, 2104, 2105, 2106, 2109-2142, 2162, 2171, 257662593, 2894
"body corporate", Trans. 2049, 2052—2053, 2061, 2065, 2066-2067, 2078, 2085, 2105, 2106, 2109, 2110, 2114—2117, 2126
governor ex officio member. Vol. II 720, 735—736, 995, 998-999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2119, 2132—2133, 2584
superintendent of public instruction ex officio member, Vol. II 720, 735—736, 995, 998-999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2132-2133
Budget, Trans. 2049, 2050, 2055-2056, 2064, 2065—2066, 2067, 2068, 2078-2079, 20X3-2089, 2090, 2096, 2097, 2099, 2103, 2106, 2116, 2118, 2130, 2134, 2135, 2139, 2161, 2163
School district trustees. See also SCHOOL DISTRICTS
election, Vol. I 122—123; Trans. 858, 1977, 2046—2048, 2165
recall, Trans. 2551, 2553, See also RECALL
supervision and control of schools, Vol. I 122, 340; Vol. II 719, 731, 735, 818, 994, 998, 1002. 1004, 1070, 1100; Trans. 858, 1961, 1971, 1975-1981, 2046—2048, 2050, 2051, 2060, 2061, 2062, 2069, 2073, 2075, 2097, 2103, 2165.2514

BOARDS OF EDUCATION (Cont.)
State board of education, Vol. I 256, 282, 287, 443; Vol. II 719, 731—735, 736, 740, 994—995, 998—999, 1002, 1004—1005, 1070—1071, 1100; Trans. 858, 859, 860, 862, 863, 865, 874, 2049—2091, 2096—2103, 2125, 2134, 2159—2174, 2590
attorney general ex officio member, Vol. I 287; Trans. 2058—2063, 2079—2081, 2102
governor ex officio member, Vol. I 287; Trans. 2058—2063, 2065, 2079—2081, 2084, 2087, 2089—2090
superintendent of public instruction
executive officer, Trans. 2058—2063, 2067, 2072, 2081, 2084, 2087
en officio member. Vol. I 287. 443: Trans. 860.2067. 2079—2081, 2087, 2089—2090

BOARDS OF EQUALIZATION
County, Vol. II 593; Trans. 1380—1383, 1385—1387, 1390, 1393, 1396, 1397, 1400, 1401, 1490, 2153
state, Vol. I 264; Vol. II 593; Trans. 1379—1409, 1414, 1490, 1554, 2153, 2252, 2380

BOARDS OF HEALTH
County and district, Vol. II 794
State, Trans. 749—750, 1257, 2347

BOEDECKER, LOUIS G. (RAILROAD AND PUBLIC SERVICE COMMISSIONER), Trans. 2

BOLLINGER, GORDON, Trans. 2376, 2384, 2391

BONDS
See STOCKS AND BONDS

BONNEVILLE POWER ADMINISTRATION, Trans. 2419

BORDEN, DR. MORTON, Trans. 2057, 2074

BOSCHERT, THERESA (PAGE), Trans. 284

BOSSING, CAROL (PAGE). Trans. 284

BOUNDARIES
See also APPORTIONMENT OF STATE INTO LEGISLATIVE AND CONGRESSIONAL DISTRICTS
Judicial district, Vol. I 86, 88, 141, 163, 206, 488,197, 511, 518—519; Vol. II 914, 918,922, 925, 1062, 1096; Trans. 11X0-1083, 1163
Local government units. Vol. I 135, 160, 163, 201—202. 215, 253; Vol. II 782, 78.5, 786—788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2512, 2514—2516
state, Vol. I 118, 195; Vol. II 823, 1020—1021, 1024, 1025; Trans. 2760—2762, 2828, 2854—2855

BOVEY, CHARLES
Appointed to escort committee, Trans. 1

BOWLDS, MARK (INTERN), Vol. 170; Trans. 355, 3036

BOWMAN, JEAN M. (BILLINGS)
Convention Secretory
Appointments
delegate in charge of signing of proposed constitution, Trans. 3020

BOWMAN, JEAN M (Cont.)
Appointments (Cont.)
escort committee. Trans. 62
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
Biography, Vol. I36
Committee assignment, Vol. 124
Elected Convention Secretary, Trans. 65
Nominated Convention Secretary, Trans. 63
Remarks by, on
constitutional revision (Article XIV)
amendment
by legislature, Trans. 500. 502
methods of, Trans. 472—473
constitutional convention, Trans. 487
declaration of rights (Article II)
justice, administration of, Trans. 1754
right to know, Trans. 2495—2496
departments and institutions (Article XII)
labor, workmen's compensation, Trans. 1754
merit system, Trans. 2343-2344
public assistance, Trans. 2287—2288, 2297
education and public lands (Article X)
aid to sectarian schools, Trans. 2021, 2029
boards of education, Trans. 2064—2065, 2119, 2172—2173
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1266
executive (Article VI)
vacancy, Trans. 942
judiciary (Article VII)
campaign expenses, Trans. 1137
clerks of court, Trans. 1127
justices of the peace, Trans. 1031
selection, Trans. 1031, 1091, 1105
supreme court jurisdiction, Trans. 1072
legislature (Article V)
districting and apportionment, Trans. 687—689
local government (Article XI)
forms of government, Trans. 2520
recall, Trans. 2552
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1431, 2234
property tax exemptions, Trans. 1422
suffrage and elections (Article IV)
eligibility for public office, Trans. 414, 415

BOYS' STATE, Trans. 3017, 3019, 3038

BRANCHES OF GOVERNMENT
Executive branch, See ARTICLE VI; EXECUTIVE BRANCH
Judicial branch, See ARTICLE VII; JUDICIARY
Legislative branch, See ARTICLE V; LEGISLATURE
Parliament, Vol. I 26X-269, 410; Trans. 698, 749—759, 868, 2533—2534, 2560
Separation of powers, Vol. I 186; Vol. II 815, 818, 1019, 1022, 1025,1043,1090; Trans. 676, 698, 699, 704, 851, 1011, 1036, 1124, 2377, 2378, 2383, 2523, 2689, 2690—2695

BRANDEIS, SUPREME COURT JUSTICE LOUIS D., Vol. II 694, 1684, 2355

BRAZIER, GEOFFREY L. (HELENA)
Biography, Vol. I 36
Committee assignment, Vol. I 24
Delegate Proposals
no. 90 (disqualification of judges), Vol. I 203
no. 110 (succession in office), Vol. I 236
Nominated President of Convention, Trans. I3
declines nomination, Trans. 13

BRAZIER, GEOFFREY L (Cont.)
Remarks by, on
constitutional revision (Article XIV)
constitutional convention, Trans. 1190—1191
non-partisanship of convention, Trans. 483
environment and natural resources (Article IS)
cultural resources, Trans. 1352
environment, protection and improvement of, Trans. 1206, 1209, 1211—1213, 1221—1226, 1236, 1256, 1261
reclamation, Trans. 1283, 1287, 1295—1296
executive (Article VI)
officers, Trans. 1709
general provisions (Article XIII,
people's advocate, Trans. 836
judiciary (Article VII)
campaign expenses, Trans. 1168, 1170—1171, 1174—1175
probate attorney, Trans. 1135—1136
supreme court jurisdiction, Trans. 1073, 1162—1163
legislature (Article V)
bills, Trans. 656-657
unicameral/bicameral, merits of, Trans. 779
revenue and finance (Article VIII)
two-mill levy, Trans. 1555

BRENNER, JACK
Appointed to escort committee, Trans. 1

BROONER, ERNIE (PAGE), Trans. 284

BROWN, AL (PAYROLL CLERK), Vol. I 69; Trans. 240, 3035

BROWN, BRUCE M. (MILES CITY)
Eastern District Vice President
Appointments
escort committee for secretary bowman, Trans. 65
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
Biography, Vol. 137
Committee assignments, Vol. I 24, 357
Delegate Proposals
no. 26 (state boundaries), Vol. I 118
no. 82 (elective process), Vol. I 191—192
no. 84 (state boundaries), Vol. I 195
Elected Eastern District Vice President, Trans. 55
Nominations
eastern district vice president, Trans. 52
president of convention, Trans. 11
Remarks by, an
ballot, constitution, Trans. 2966-2967
boundaries, state, Trans. 2761
constitutional revision (Article XIV)
amendment by legislature, Trans. 498
constitutional convention, Trans. 488
declaration of rights (Article II)
adult rights, Trans. 1747—1748
persons not adults, rights of, Trans. 1751
right to know, Trans. 1675, 1677
searches and seizures, Trans. 1684—1685
departments and institutions (Article XII)
agriculture, working hours, Trans. 2603
labor, working hours, Trans. 2603
public utilities
public service commission, Trans. 2421
regulation of, Trans. 2390—2391
education and public lands (Article X)
aid to sectarian schools, Trans. 2012
boards of education, Trans. 2111
educational goals and duties, Trans. 1982, 2155
non-discrimination in education, Trans. 2032, 2034

BROWN, BKUCE M (Cont.)
Remarks by, an (Cont.)
environment and natural resources (Article IX)
reclamation, Trans. 1289
water rights, Trans. 1323—1324, 1339
executive (Article VI)
veto power, Trans. 2719
general government (Article III)
gambling, Trans. 2735—2736, 2744, 2756-2757
initiative, Trans. 2696, 2704—2705, 2715, 2821
recall, Trans. 2725
judiciary (Article VII)
clerks of court, Trans. 1129—1130
district court jurisdiction, Trans. 1053
selection, Trans. 1028, 1095
legislature (Article V)
bills, Trans. 666
organization and procedure, Trans. 614, 623
qualifications, Trans. 567, 802
sessions, Trans. 585, 818
size, Trans. 1597, 1604
local government (Article XI)
revenue sharing, Trans. 2544
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1815, 2221, 2225—2227, 2232, 2704—2705, 2715
investment of public funds, Trans. 1520, 1544
property tax administration, Trans. 1394
state debt, Trans. 1494, 1496, 1500—1503, 1507—1508
suffrage and elections (Article IV)
absentee voting, Trans. 432
eligibility for public office, Trans. 415, 416, 529—530, 1747—1748
poll-booth registration, Trans. 401-402, 405, 444
privilege from arrest, Trans. 420
qualified elector, Trans. 393, 394, 395, 397, 398
result of elections, Trans. 418
Request for removal from Public Information Committee granted, Trans. 357

BROWN, DONNA (GALLATIN COUNTY TRIBUNE), Trans. 1672

BROWNLEE, JUDGE E. GARDNER, Trans. 1019, 1158, 1159, 1750

BROWN, MARGE (MRS. FIRMAN), Trans. 3017, 3020, 3038

BROWN, MICHELE (PAGE), Trans. 710

BUDGET
Appropriations not to exceed anticipated revenue, Vol. I 307; Vol. II 582, 586, 595, 946, $49, 950, 952, 1066, 1098; Trans. 1376, 1490, 1493, 1494, 1508—1509, 2135—2136, 2157, 2707
Boards of education, Trans. 2049, 2050, 2055—2056, 2064, 2065—2066. 2067. 2068. 2078—2079, 2083-2089; 2090; 2096; 2097, 2099, 2103, 2106, 2116, 2118, 2130, 2134, 2135, 2139, 2161 2163
Convention, Vol. 15, 8, 14; Trans. 112—113, 127, 178, 227-248, 261, 321-325, 535—537, 902, 1373—1375, 2618—2622, 2856
Current amount of state budget, Trans. 580
Governor to submit to legislature, Vol. I 183, 231, 321, 432—433, 437, 446, 450, 459; Vol. II 895, 901, 908, 1058, 1094; Trans. 842, 947—948, 2103, 2136
Statewide budgeting and accounting system, Vol. II 596; Trans. 1517, 2055, 2056, 2120, 2577, 2578, 2581, 2582, 2585

BUGBEE, DAPHNE (MISSOULA)
Biography, Vol. I 37
Committee assignment, Vol. I 24
Delegate Proposals
no. 114 (public sightliness), Vol. I 240
no. 115 (transition), Vol. I 241
no. 131 (polling place registration), Vol. 1260
no. 146 (board of regents), Vol. I 287—288
Pamphlet on citizen's corps, Trans. 224
Remarks by, an
ballot, constitution, Trans. 2866, 2870, 2907, 2909, 2950, 2958
constitutional revision (Article XIV)
initiative, Trans. 508
non-partisanship of convention, Trans. 482
de&ration of rights (Article II)
militia, civilian control of, Trans. 1830—1831
departments and institutions (Article XII)
agriculture
department of, Trans. 1363—1364
special levies, Trans. 1368
labor, department of, Trans. 2309—2310, 2313
merit system, Trans. 2346
education and public lands (Article X)
aid to sectarian schools, Trans. 2028
boards of education, Trans. 2112—2113, 2123, 2139, 2586, 2588
indian education, Trans. 1954
non-discrimination in education, Trans. 2036, 2040, 2045
state university funds, accounting and audit, Trans. 2586, 2588
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1209, 1231, 1234
executive (Article VI)
qualifications, Trans. 1695
general provisions (Article XIII)
cods of ethics, Trans. 795
judiciary (Article VII)
campaign expenses, Trans. 1173, 2194—2195
legislature (Article V)
bills, Trans. 643
compensation, Trans. 574
organization and procedure, Trans. 599—630, 635-637, 730—731
sessions, Trans. 586, 816
size, Trans. 765
unicameral/bicameral, merits of, Trans. 2907
local government (Article XI)
self-government charters, Trans. 2525—2526
voter review of local government, Trans. 2557, 2563
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1446—1447, 1479
suffrage and elections (Article IV)
poll-booth registration, Trans. 407

BURXHARDT, WILLIAM A. (HELENA)
Appointments
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
vice chairman of style, drafting, transition and submission committee, Trans. 95
Biography, Vol. I 37
Committee assignment, Vol. I 25
Delegate Proposal
no. 171 (board of regents), Vol. I 324
Invocations, Trans. 109, 257, 287, 352, 377, 633, 1060, 2857
Remarks by, on
ballot, constitution, Trans. 2901—2902, 2965—2966, 2972, 2980
compact with united states (Article I), Trans. 2569
declaration of rights (Article II)
convicts, rights of, Trans. 2508
inalienable rights, environment, Trans. 1637—1639
militia, civilian control of, Trans. 1831

BURKHARDT, WILLIAM A (Cont.)
Remarks by, on (Cont.)
declaration of rights (Cont.)
participation, right of, Trans. 1665
restoration of rights, Trans. 2305
right to bear arms, Trans. 1840
departments and institutions (Article XII)
agriculture, working hours, Trans. 2602—2604
institutions, Trans. 2275
labor, working hours, Trans. 2602—2604
public assistance, Trans. 2288—2289
veterans, Trans. 2275
education and public lands (Article X)
aid to sectarian schools, Trans. 2008—2010, 2015, 2021, 2028—2029
boards of education, Trans. 2076—2077, 2089, 2100, 2134, 2166, 2586—2587, 2589
commissioner of higher education, Trans. 2100
educational goals and duties, Trans. 1959, 1967, 1984
non-discrimination in education, Trans. 2037, 2040—2041
school district trustees, Trans. 2047
state university funds. accounting and audit. Trans. 2586—2587. 2589'
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1205, 1213. 1235—1236
reclamation, Trans. 1293
water rights, Trans. 1338—1339
executive (Article 'VI,
officers, Trans. 863
general government (Article 111)
gambling, Trans. 2746, 2980
separation of powers, Trans. 2829
judiciary (Article VII)
campaign expenses, Trans. 1178, 2203—2204
legislature (Article V)
bills, Trans. 651—652, 663
campaign expenses, Trans. 1163, 1165
districting and apportionment, Trans. 720—721, 1592—1593
legislative post-auditor, Trans. 2800
qualifications, Trans. 559, 565, 806—807
sessions, Trans. 828
unicameral/bicameral, merits of, Trans. 777-778
suffrage and elections (Article IV)
eligibility for public office, Trans. 414, 415
poll-booth registration, Trans. 410, 442
qualified elector, Trans. 395

BURLINGTON NORTHERN RAILWAY COMPANY, Trans. 2264

BURNETT, WILLIAM (PRESIDING JUDGE, DENVER COUNTY COURT), Trans. 1076

BURR, DENNIS (CONSULTANT), Vol. 169; Vol. II 578

BUZZAS, ROBERT J. (INTERN), Vol. 1 70; Trans. 3036

CAIN, MARJORIE (LIBBY)
Biography, Vol. I 38
Committee assignment, Vol. I 25
Delegate Proposals
no. 41 (elections), Vol. I 144
no. 91 (educational opportunity,, Vol. I 204
Remarks by, on
declaration of rights (Article II)
convicts, rights of, Trans. 1823
education and public lands (Article X)
educational goals and duties, Trans. 1977, 1987
non-discrimination in education, Trans. 2033

CAIN, MARJORIE (Cont.)
Remarks by, on (Cont.)
general government (Article III)
gambling, Trans. 2742, 2748
liquor monopoly, Trans. 2766
legislature (Article V)
districting and apportionment, Trans. 720
revenue and finance (Article VIII)
investment of public funds, Trans. 1533, 1541
two-mill levy, Trans. 1552

CALLAHAN, MAUREEN (INTERN), Vol. I 70; Vol. II 716; Trans. 2143, 3036

CAMPAIGN EXPENSES, Vol. I 221, 235, 508—509; Vol. II 927; Trans. 1025—1026, 1088, 1115, 1137—1139, 1151—1152, 1163—1179, 2188—2205, 2431—2433, 2449—2453

CAMPBELL, ROBERT J. (MISSOULA)
Biography, Vol. I 38
Committee assignment, Vol. I 25
Delegate Proposals
no. 13 (age of majority), Vol. I 97
no. 14 (privacy in communications), Vol. I 98
no. 33 (individual rights), Vol. I 127
no. 34 (restoration of rights), Vol. I 128
no. 50 (equal protection), Vol. I 148
no. 51 (discrimination), Vol. I 149
no. 59 (preamble). Vol. I 159
no. 75 (eminent domain), Vol. I 177
no. 132 (environmental rights), Vol. I 261—262
no. 133 (remedies of injured person), Vol. I 263
Remarks by, on
ballot, constitution, Trans. 1816—1817
declaration of rights (Article II)
adult rights, Trans. 1745—1748, 1780
convicts, rights of, Trans. 2507
death penalty, Trans. 1814, 1816—1817, 1821
debt, imprisonment for, Trans. 1794
right to bear arms, Trans. 1739-1740, 1742—1743
right to privacy, Trans. 1680—1681, I851
searches and seizures, Trans. 1682—1683, 1885, 1888
trial by jury, Trans. 1780, 1784, 1787—1788
education and public lands (Article X)
aid to sectarian schools, Trans. 2025—2030
indian education, Trans. 1954
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1203—1204, 1206—1207, 1221, 1246—1247, 1249.1261, 1267
executive (Article VI)
qualifications, Trans. 884-885, 894, 980—981, 1693—1696
general government (Article Ill)
gambling, Trans. 2738
judiciary (Article VII)
justices of the peace, Trans. 1158
legislature (Article V)
hills, Trans. 653
organization and procedure, Trans. 620
size, Trans. 1597
suffrage and elections (Article IV)
eligibility for public office, Trans. 415
poll-booth registration, Trans. 411, 445
qualified elector, Trans. 397
Seconds nomination of John H. Toole as First Vice President, Trans. 29

CANDIDACY FOR PUBLIC OFFICE DURING TERM
Constitutional convention delegates, Trans. 267, 281—283, 2426, 2428, 2815
attorney general opinion on political positions convention delegates allowed to stand for in 1972 elections, Trans. 281—282

CANDIDACY FOR PUBLIC OFFICE DURING TERM (Cont.)
Executive officers, Vol. I 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 928—929
Judicial officers, Vol. 1492, 506—507, 512, 522; Vol. 11 915, 920, 926, 1063, 1097; Trans. 1119—1121, 1148—1150

CANDIDATES
See ELECTIONS

CANVASS OF ELECTIONS, Vol. I 212; Trans. 417, 1560

CAPITAL OFFENSES NOT BAILABLE, Vol. II 622, 639—640, 959, 964, 968, 971, 1040, 1080, 1088, 1108; Trans. 1771, 1780
See also DEATH PENALTY

CAPITAL PUNISHMENT
See DEATH PENALTY

CAPITOL OF STATE LOCATED IN HELENA, Vol. I 130-131; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2895
Executive officers to reside at seat of government, Vol. I 319, 435, 441, 457, 482; Vol. II 893, 898, 904, 906, 1058, 1093; Trans. 873—878
Expenditures for buildings and grounds, Vol. I 130

CARPENTER, TERRY (UNITED STATES SENATOR AND FORMER CONGRESSMAN, NEBRASKA), Trans. 325

CARROLL COLLEGE, Trans. 2021, 2022, 2153, 2157

CARRUTHERS, CHARLOTTE (PAGE), Trans. 383

CARSON, BARTLEY (SECRETARY), Vol. I 69; Trans. 98, 3038

CASCADE COUNTY TRADES AND LABOR ASSEMBLY, Trans. 2347

CASH AND ACCOUNTS RECEIVABLE
Taxation of, Vol. 1306; Vol. II 599, 600; Trans. 1411, 1412, 1413, 1414

CASSELLA, WILLIAM, JR., (EXECUTIVE DIRECTOR, NATIONAL MUNICIPAL LEAGUE), Trans. 277, 2513

CASTLES, WESLEY (ASSOCIATE JUSTICE), Trans. 2, 1058, 1082

CATE, JEROME J. (BILLINGS)
Biography, Vol. 138
Committee assignment, Vol. I25
Delegate Proposals
no. 3 (death penalty), Vol. I 77
no. 12 (environmental protection), Vol. I 98
no. 18 (right to counsel), Vol. l 105

CATE, JEROME J (Cont.)
Delegate Proposals (Cont.)
no. 30 (sovereign immunity), Vol. I 124
no. 39 (wage commission,, Vol. I 134
no. 55 (crime victims compensation), Vol. I 154
no. G4 (interest rate), Vol. I 165
no. 88 (self-incrimination), Vol. I 200
no. 124 (lie detector tests), Vol. I 251
no. 125 (eminent domain — environmental consideration), Vol. I 252
no. 147 (nominating convention delegates), Vol. I 289
Remarks by, on
ballot, constitution, Trans. 2875
compact with united states (Article I), Trans. 2569
declaration of rights (Article II)
individual dignity, Trans. 2477
private sexual acts, Trans. 1850
right to know, Trans. 1671
right to work, Trans. 1353
servicemen, servicewomen and veterans, Trans. 1843
departments and institutions (Article XII)
agriculture, working hours, Trans. 2603—2604
labor, working hours, Trans. 2318, 2323—2324, 2603—2604
education and public lands (Article X)
board of land commissioners, Trans. 1995—1998
public land trust, access, Trans. 2145—2149
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1206, x211-1214, 1216, 1219, 1226—1227, 1254—1255, 1259
reclamation, Trans. 1299, 1353, 1361
executive (Article VI)
compensation, Trans. 576
duties, Trans. 900—901, 903
officers, Trans. 867, 870, 1716—1717
qualifications. Trans. 896
succession., Trans. 967
general provisions (Article XIII,
people's advocate, Trans. 833
salary commission, Trans. 576, 578
judiciary (Article VII) — alternative proposal introduction, Trans. 1027—1028
campaign expenses, Trans. 1170, 1174
district court jurisdiction, Trans. 1054—1055, 1077—1078
supreme court
jurisdiction, Trans. 1037—1038, 1040
organization, Trans. 1047
terms and pay, Trans. 576
legislature (Article V)
bills, Trans. 1585
compensation, Trans. 576, 578
districting and apportionment, Trans. 685—691, 716—718, 721—723, 735—737, 743—745
election and terms, Trans. 771
impeachment, Trans. 676, 678
organization and procedure, Trans. 600, 610, 615, 621, 628—629
qualifications, Trans. 545, 548, 558—560, 567, 568
sessions, Trans. 586, 815, 817, 826
size, Trans. 766, 826
suffrage and elections (Article I")
poll-booth registration, Trans. 407—408, 444
Seconds nomination of Jean Bowman as Convention Secretary, Trans. 63

CAUCUSES AND CAUCUSING
Constitutional convention, Trans. 15, 96, 419—420, 605, 847, 1736
Legislature, Trans. 605—606, 689, 2493

CEMETERIES, PROPERTY TAX EXEMPTION, Vol. I 306; Vol. II 584, 590, 599, 945, 947—948, 950, 951, 1065, 1098: Trans. 1410, 1411, 1415

CENSURE
See JUDGES, Removal and discipline

CERTIORARI, WRIT OF
See WRITS

CHAMPOUX, RICHARD JAMES "RICK" (KALISPELL)
Biography, Vol. I 39
Committee assignment, Vol. I 25
Delegate Proposals
no. 43 (educational opportunity), Vol. I 139
no. 61 (equal protection), Vol. I 161
no. 172 (office of ombudsman), Vol. I 325
Invocation, Trans. 1182
Remarks by, on
ballot, constitution, Trans. 1820, 2878, 2886
declaration of rights (Article II)
right to bear arms, Trans. 1730
departments and institutions (Article XII)
agriculture, special levies, Trans. 1367
institutions, Trans. 2274
labor, collective bargaining, Trans. 2331—2332
veterans, Trans. 2274
education and public lands (Article X) — majority report introduction, Trans. 1948
aid to sectarian schools, Trans. 2021—2022, 2030
boards of education, Trans. 2049—2091, 2096—2142, 2161, 2163, 2165, 2171, 2578, 2584, 2586—2587
commissioner of higher education, Trans. 2100, 2102, 2105
educational goals and duties, Trans. 1951—1952, 1955, 1959, 1965, 1968—1969, 1977—1984, 1987, 2152, 2155, 2157
indian education, Trans. 1951—1952, 1955
non-discrimination in education, Trans. 2032—2034, 2036, 2038, 2040, 2045
public land trust, Trans. 2147
public school fund. Trans. 1540, 2007—2008
school district trustees. Trans. 2046—2048
state university funds, accounting and audit, Trans. 2578, 2584. 2586—2587
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1231, 1275
reclamation, Trans. 2212
executive (Article VI)
officers, Trans. 854, 860—862, 864, 874
qualifications, Trans. 887
general government (Article III)
gambling, Trans. 2732
initiative. Trans. 2102, 2704, 2706—2707, 2709, 2714
general provisions (Article XIII)
people's advocate, Trans. 701, 830, 833-834, 836
judiciary (Article VII)
campaign expenses, Trans. 1171, 2188—2190, 2199
clerks of court, Trans. 2776
legislature (Article V)
bills, Trans. 643—645, 673
election and terms, Trans. 771
organization and procedure, Trans. 618
qualifications, Trans. 547, 565
sessions, Trans. 587—588
size, Trans. 763—764
local government (Article XI)
revenue sharing, Trans. 2543
revenue and finance (Article VIII)
highway revenue non-diversion. Trans. 1476, 1478—1479, 1481, 1483—1484, 2706—2707, 2709, 2714
investment of public funds, Trans. 1521, 1523, 1528, 1533, 1535, 1540
property tar administration, Trans. 1390
suffrage and elections (Article IV)
poll-booth registration, Trans. 401, 439
Seconds nomination of Sterling Rygg as Western District Vice President, Trans. 56

CHANCELLORS, Trans. 2058, 2060, 2070, 2078, 2098, 2100, 2101, 2160, 2380

CHARITIES
Appropriations for private purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535
Bingo, gift enterprises; exemption for, Vol. I 237, 247; Trans. 2740—2741, 2746
Economic assistance and social and rehabilitative services, provision for, Vol. I 105, 114, 297; Vol. II 627, 674-675, 979, 983, 985, 988, 1076, 1102; Trans. 2270-2300
Perpetuities prohibited except for charitable purposes, Vol. I 526-527; Vol. II 916, 921, 923, 927, 1077, 1103; Trans. 1147—1148
Property tax exemption, Vol. I 306, Vol. II 926; Trans. 584, 590, 599, 945, 947-948, 950, 951, 1065, 1098; Trans. 1410, 1411, 1415

CHARTER COMMISSIONS (LOCAL GOVERNMENT), Vol. 182-83; Vol. II 795; Trans. 2225-2227

CHARTERS
Corporate, Vol. II 666, 668, 710, 977, 981, 986, ,077, 1103; Trans. 2247, See also CORPORATIONS
Local government, Vol. 182-83, 136, 155—156, 216, 219, 253-254; Vol. II 783, 795—796, 797-798, 1010, 1013, 1015, 1074, 1101—1102; Trans. 1512, 2512, 2524-2528, 2529, 2530, 2532, 2535

CHILDREN, RIGHTS OF, Vol. I 166, 199; Vol. II 621—622, 635-636, 958, 964, 967, 970-971, 1039, 1088; Trans. 1749—1753

CHILD SUPPORT, Trans. 1793, 1794, 1795, 1797, 1798

CHOATE, LYMAN W. (MILES CITY)
Biography, Vol. I 39
Committee assignment, Vol. I 25
Delegate Proposal
no. 24 (lotteries), Vol. I 115
Nomination of Bruce Brown as Eastern District Vice President, Trans. 52
Remarks by, on
ballot, constitution, Trans. 2892, 2963-2964, 2976—2977
constitutional revision (Article XIV)
initiative, Trans. 507
submission, Trans. 520
declaration of rights (Article II)
convicts, rights of, Trans. 1847
death penalty, Trans. 1809
ex post facto, obligation of contracts, and irrevocable privileges, Trans. 1829
restoration of rights, Trans. 2597—2598
right to bear arms, Trans. 1833, 1841
trial by jury, Trans. 1785
departments and institutions (Article XII)
agriculture, working hours, Trans. 2602
institutions, Trans. 2272
labor
collective bargaining, Trans. 2336
working hours, Trans. 2602
veterans, Trans. 2272

CHOATE, LYMAN W (Cont.)
Remarks by, on (Cont.)
education and public lands (Article X)
aid to sectarian schools, Trans. 2018
boards of education, Trans. 2164
environment and natural resources (Article IX)
water rights, Trans. 1318
executive (Article VI)
duties, Trans. 907
qualifications, Trans. 886-887, 896
vacancy, Trans. 931
general government (Article III)
gambling, Trans. 2729, 2732—2733, 2742, 2750
initiative, Trans. 2698, 2703, 2711, 2716
separation of powers, Trans. 2829
general provisions (Article XIII)
people's advocate, Trans. 701—702
judiciary (Article VII)
clerks of court, Trans. 2777
removal and discipline, Trans. 1125
terms and pay, Trans. 1152
legislature (Article V)
bills, Trans. 639
districting and apportionment, Trans. 692
election and terms, Trans. 773
organization and procedure, Trans. 611
qualifications, Trans. 565
local government (Article XI)
self-government charters, Trans. 2527-2528
voter review of local government, Trans. 2564
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1442, 1446, 2223, 2703. 2711, 2716
local government debt, Trans. 1512
property tax exemptions, Trans. 1419, 1421
suffrage and elections (Article IV)
eligibility for public office, Trans. 530
poll-booth registration, Trans. 408, 438
qualified elector, Trans. 397

CHRISTIAN, CLARK (PAGE), Trans. 1183

CHRISTIANSEN, BILL (HOUSE MINORITY LEADER), Trans. 2

CHRISTIANSEN, DEE (TYPIST), Vol. I 69; Trans. 3035

CHITTIM, LEWIS (STATE HIGHWAY ENGINEER), Trans. 1434, 1445, 1446, 1447

CHURCHES
Appropriation for religious purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405-406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535
Bingo, exemption for, Vol. 1247; Trans. 2738, 2740—2741, 2746
Compulsory attendance or support prohibited, Vol. I 190, 312
Discrimination on account of religious ideas prohibited, Vol. I 126, 161, 312-313; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 1642—1646, 2032, 2044
Establishment of religion, laws respecting prohibited, Vol. I 189—190, 312-313, 315; Vol. II 620-621, 629, 957, 963, 969—970, 1038, 1087; Trans. X46-1647, 1738, 2015, 2745
Free exercise of religion guaranteed, Vol. I 189—190, 312—313, 315; Vol. II 620—621, 629, 957, 963, 969—970, 1038, 1087; Trans. 1646—1647, 1738, 2015, 2745

CHURCHES (Cont.)
Laws favoring denomination or mode of worship prohibited, Vol. I 190, 312
Property tax exemption, Vol. I 306, 326; Vol. II 584, 590, 599, 945, 947—948, 950, 951, 1065, 1098; Trans. 1410, 1411, 1415, 2012
Schools
aid to sectarian schools prohibited, Vol. I 137, 189, 222, 311, 312, 313; Vol. II 629, 716, 719, 728—730, 743—747, 994, 997, 1002, 1004, 1070, 1100; Trans. 1646, 1960, 2008—2031, 2235
non-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045

CHVATAL, PAT (INTERN), Vol. I 70; Vol. II 781; Trans. 2512, 3036

CIGARETTE TAX, Vol. I 592; Trans. 1444, 1457, 1495, 1495

CITIES
See LOCAL GOVERNMENT

CITIZEN ACCESS TO GOVERNMENTAL PROCESSES
See CITIZEN PARTICIPATION IN GOVERNMENTAL PROCESSES

CITIZEN CORPS, Trans. 114, 220, 221, 224, 268, 1280, 1803

CITIZEN PARTICIPATION IN GOVERNMENTAL PROCESSES
Constitutional convention
citizen corps, Trans. 114, 220, 221, 224, 268, 1280, 1803
citizen suggestions, Vol. I 14—15; Trans. 161, 178, 179, 182, 226, 293—295, 349, 1142, 2518
committee meetings to be open to public and news media, Vol. I 8, 14; Trans. 125, 176—177, 370—371
recorded roll call vote, Vol. I 10, 11, 14, 15, 16, 19; Trans. 130, 136, 138—140, 144, 145, 176—177, 179, 180—182, 190, 196, 197—199
Consumer counsel to represent citizens' interests before public service commission, Vol. II 980, 984, 989, 1077, 1103; Trans. 2400—2404, 2407, 2421
County commission meetings open to public, Trans. 1652. 1653, 2491, 2493, 2499
Examination of government documents or observation of deliberation of public bodies, Vol. I 133, 157, 462—463; Vol. II 621, 631—632, 958, 963, 970, 1039, 1088; Trans. 1658, 1669—1680, 1733, 2201, 2560, 2578, 2582
Legislature
recorded vote required on bills, Vol. I 276, 377, 388, 396—397, 405; Vol. II 862, 869, 874, 882, 888, 1047, 1053, 1092, 1105; Trans. 637—647, 671—672
sessions and meetings open public, Vol. 1 111, 276, 375, 384, 387, 396, 403—404; Vol. II 862, 864, 868, 871, 874, 877, 881, 885, 887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 603—625, 1501, 1651, 1680
Participation by people in decision-making process of state and local government, Vol. I 133; Vol. II 621, 630—631, 635, 958, 963, 967, 970, 1038—1039, 1088; Trans. 630—631, 1221, 1651—1669, 1733, 2560, 2561, 2875

CITIZEN PARTICIPATION IN GOVERNMENTAL PROCESSES (Cont.)
People's advocate to provide information, Vol. I 292, 32.5, 379—380, 393-394, 399, 408—409; Trans. 696—705, 747, 829-838, 850, 852, 863, 870, 900—904, 2255, 2398, 2600
Supreme court opinions and decisions to be in writing, Vol. I 491, 505, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044, 1063—1066

CITIZENS COMPENSATION COMMISSION
See SALARY COMMISSION

CITIZENS CONFERENCE ON STATE LEGISLATURES, Vol. 1381

CITIZENSHIP, GOVERNOR'S POWER TO RESTORE, Vol. I 321, 438, 452—453, 460, 466; Vol. II 896, 902, 904—905, 909, 1059, 1095; Trans. 962

CIVIL ACTIONS AND PROCEDURE
Administration of justice, Vol. 188, 263, 318; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1020—1021, 1024, 1753—1760, 1764, 1788, 1792, 2192, 2196, 2625
Appeals
district court jurisdiction, Vol. I 487, 489, 496, 501, 511, 517, 518; Vol. II 913—914, 918, 922, 925, 1061, 1096; Trans. 1049—1057, 1073—1080, 1141, 1781, 1784
procedural rules
promulgated by supreme court, Vol. I 84, 140, 510, 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071—1073, 1162—1163
provided for by legislature, Vol. I 206
supreme court jurisdiction, Vol. I 84—85, 140, 486, 488, 493—494, 498, 510, 515; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1036—1044, 1071—1073, 1162—1163, 1344
Courts to be open to every person, Vol. 188, 263, 318; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760
Debt, imprisonment for, Vol. II 623, 642, 960, 965, 968, 972, 1041, 1089; Trans. 1792—1800
District court jurisdiction, Vol. I 85—86, 88-89, 112, 141, 291, 487—488, 489, 492, 496—497, 501, 510—511, 516-518; Vol. II 913—914, 917-918, 922, 924—925, 1061—1062, 1096; Trans. 1016, 1019—1020, 1029—1030, 1036, 1041, 1049—1057, 1073—1080, 1141, 1781, 1784
Due process of law, Vol. I 312, 328; Vol. II 622, 634, 635—636, 637, 959, 964, 971, 1039, 1088; Trans. 1738, 1750, 1751, 1760, 2389
Eminent domain, Vol. 196, 177, 252, 308; Vol. II 623, 643—644, 711, 960, 966, 972, 1041, 1089; Trans. 1267, 1294, 1348, 1654—1655, 1825—1828
Employment injury, Vol. I 263; Vol. II 622, 636—637, 672, 959, 964, 971, 1039, 1088; Trans. 1753—1760, 1764, 2192, 2625
Environmental rights, Vol. I 75, 96, 107, 108, 240, 252, 261, 308—309; Vol. II 552, 554—555, 561—562, 931, 933, 935, 939, 957, 962, 967, 969, 1038, 1068, 1087, 1099; Trans. 1199-1251, 1255—1271, 1274—1275, 1637—1640, 1756
Form of action, Vol. I 491, 504
Jury trial, Vol. I 89; Vol. II 623, 641—642, 960, 965, 968, 972, 1041, 1089; Trans. 1751, 1780—1792

CIVIL ACTIONS AND PROCEDURE (Cont.)
Justice court jurisdiction, Vol. 188-89, 152, 489, 500—501; Vol. II 914, 918, 922,925, 1062, 1096; Trans. 1014, 1030, 1056—1057, 1076, 1140—1147, 1157, 1158
Libel or slander, Vol. II 621, 630, 958, 963, 970, 1038, 1087; Trans. 1649—1651, 1675
Right and justice to be administered without sale, denial or delay, Vol. I 88, 263, 318; Vol. II 622, 636-637, 959,964, 971. 1039, 1088; Trans. 1753—1760
Rules of practice and procedure
promulgated by supreme court., Vol. I 84., 140.206., 510. 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071—1073, 1162—1163
provided for by legislature, Vol. I 206
Sovereign immunity, Vol. I 124; Vol. II 622, 637—638, 959, 964, 967—968, 971, 1039—1040, 1088; Trans. 1760—1764, 2528
Speedy remedy for injury, Vol. I 88, 263, 318; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760
Supreme court jurisdiction, Vol. I 84—85, 88-89, 112, 140. 304. 486, 488. 493—494. 498. 510. 515—516, 518; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1012, 1015, 1020—1021, 1025, 1036—1044, 1071—1073, 1162—1163, 2177—2178

CIVILIAN CONTROL OF THE MILITARY, Vol. I 78; Vol. II 624, 645, 961, 966, 968,973, 1041, 1089; Trans. 1829—1832

CIVIL RIGHTS
See ARTICLE II; ARTICLE IV
Discrimination because of race, color, sex, culture, social origin or condition, or political or religious ideas prohibited, Vol. I 94, 105, 126, 127, 148, 149, 161,305, 312-313; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 417, 1642—1646
Education, non-discrimination in, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623
Procedural or substantive rights created for first time prospective. not retroactive, Vol. II 1082, 1108; Trans. 3005. 3007—3008
Unenumerated rights not denied, impaired or disparaged, Vol. II 624, 645, 961, 966, 968, 973, 1042, 1089; Trans. 1832

CLERKS OF COURT
District court, Vol. I 86, 88, 216, 484, 488—489, 491, 499, 513, 524—525; Vol. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 847, 1014, 1042, 1127, 1129—1130, 2516—2521, 2691
Supreme court, Vol. I 85, 484, 487, 491, 495, 513, 515—516, 524; Trans. 847, 1012, 1014, 1021, ,029, 1042, 1069, 1127—1129, 1163, 2690—2691, 2708, 2716, 2772—2779, 3005

CLOSING CEREMONIES, Trans. 3034—3047

CLOSING CEREMONY COMMITTEE
Appointment, Trans. 2426
Closing ceremony outlined, Trans. 3019
News release by, Trans. 3016-3017

CLUBB, DARE (PAGE), Trans. 358

COAL, Vol. II 556, 580; Trans. 1200, 1223, 1236, 1276—1287, 1289, 1296, 1298, 1316, 1319, 1358, 1524, 1527

CODE OF ETHICS, Vol. I 164; Vol. II 866, 873, 875, 879, 884, 889, 1071, 1103; Trans. 789—790, 793—796
See also CONFLICTS OF INTEREST

COLBURG, DOLORES (SUPERINTENDENT OF PUBLIC INSTRUCTION), Trans. 2, 873—874, 1948, 2075, 2103, 2104, 2165

COLDIRON, MARGARET (PAGE), Trans. 383-384

COLLECTIVE BARGAINING, Vol. I 175, 185, 207—208; Vol. II 627-628, 664, 688—697; Trans. 2315, 2328—2340, 2344, 2346, 2351. 2353, 7,359, 2364
See also RIGHT TO WORK; STRIKES

COLLEGES AND UNIVERSITIES
See ARTICLE X; EDUCATION; specific college or university

COMMANDER-IN-CHIEF OF MILITIA, Vol. I 182, 229, 295—296, 320, 438, 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964—966

COMMISSIONER OF AGRICULTURE, Trans. 1364

COMMISSIONER OF HIGHER EDUCATION, Vol. II 995, 998, 999, 1002, 1005, 1071, 1100; Trans. 2057—2058, 2064, 2070, 2071, 2072, 2079, 2096, 2097—2108, 2118, 2119, 2122, 2124, 2127, 2130, 2132—2133, 2164, 2311

COMMISSIONER OF LABOR AND INDUSTRY, Vol. II 670, 672, 978, 982, 985, 987; Trans. 1076, 1102, 2308—2315

COMMISSION FOR REDISTRICTING AND REAPPORTIONING LEGISLATIVE AND CONGRESSIONAL DISTRICTS, Vol. I 109—110, 162, 278, 379. 382, 392-393, 398-399., 407-408; Vol. II 863-864, 865—866, 870, 872—873, 874—875, 878-879, 883—884, 885, 888—889, 1048, 1050—1051, 1054—1055, 1092-1093, 1106, 1107; Trans. 559, 564, 681—696, 711—725, 735—741, 766, 767, 769, 785, 789, 1590—1593

COMMITTEE ASSIGNMENTS, CONVENTION
See CONVENTION, OPERATION AND PROCEDURES

COMMITTEE REPORTS
Administration, Trans. 112, 253—254
Bill of rights
consideration in committee of the whole, Trans. 1634—1689, 1724—1766, 1771—1853
cross references, 1889-1972 constitutions, Vol. II 646
delegate proposals considered, Vol. II 647-648
roll call votes on, in committee, Vol. II 658—660

COMMITTEE REPORTS (Cont.)
Bill of rights (Cont.)
text and comments
majority report, Vol. 11 620—645
transmittal letter, Vol. II 618—619
Education and public lands
consideration in committee of the whole, Trans. 1948—2002, 2006—2091, 2096—2174
cross references, 1889-1972 constitutions, Vol. II 757
delegate proposals considered, Vol. II 758—759
roll call votes on, in committee, Vol. II 767—768
text and comments
majority report, Vol. II 718—740, 748—754
minority report Vol. II 741—747 755—756
transmit& letter, Vol. II 716—717
Executive
consideration in committee of the whole, Trans. 842—907, 911—987, 991—1009, 2791—2806
cross references, 1889-1972 constitutions, Vol. I 467
delegate proposals considered, Vol. I 468—469
roll call votes on. in committee, Vol. I 474--477
text and comments
majority report, Vol. I 435—456
minority report, Vol. I 457—466
transmittal letter, Vol. I 432—433
General government and constitutional amendment — constitutional revision
consideration in committee of the whole, Trans. 453—467, 470—528
cross references, 1889.1972 constitutions, Vol. I 365
delegate proposals considered, Vol. ,366
text and comments
majority report, Vol. I 352—364
transmittal letter, Vol. I 350
General government and constitutional amendment — general government
consideration in committee of the whole, Trans. 2689—2769
cross references, 1889-1972 constitutions, Vol. II 826
delegate proposals considered, Vol. II 827—830
roll call votes on, in committee, Vol. II 835
text and comments
majority report, Vol. II 815—822
minority report, Vol. II 823—825
transmittal letter, Vol. II 813—814
General government and constitutional amendment — suffrage and elections
consideration in committee of the whole, Trans. 391—424, 428—452, 528—532, *534*
cross references, 1889-1972 constitutions, Vol. I 344
delegate proposals considered, Vol. I 345—346
roll call votes on, in committee, Vol. I 348
text and comments
majority report, Vol. I 336—340
minority report, Vol. I 341—343
transmittal letter, Vol. I 334
Judiciary
consideration in committee of the whole, Trans. 1010—1057, 1063—1179
cross references, 1889-1972 constitutions, Vol. I 528—530
delegate proposals considered, Vol. I 531—532
roll call votes on, in committee, Vol. I 537—543
text and comments
majority report, Vol. I 486—509, 526—527
minority report, Vol. I 510—525
transmittal letter, Vol. I 484—485
Legislative
consideration in committee of the whole, Trans. 543—630, 635—705, 711—808, 813—838
cross references, 1889-1972 constitutions, Vol. I416
delegate proposals considered, Vol. I 417
roll call votes on, in committee, Vol. I 422—427
text and comments
bicameral
majority report, Vol. I 395—409
minority report, Vol. I 410—415
COMMITTEE REPORTS (Cont.)
Legislative (Cont.)
text and comments (Cont.)
unicameral
majority report, Vol. I 376—394
transmittal letter, Vol. I 374—375
Local government
consideration in committee of the whole, Trans. 2512—2544, 2548—2565
cross references, 1889-1972 constitutions, Vol. II 802
delegate proposals considered, Vol. II 803—804
roll call votes on, in committee, Vol. II 809
text and comments
majority report, Vol. II 782—801
transmittal letter, Vol. II 780—781
Natural resources and agriculture
consideration in committee of the whole
agriculture, Trans. 1363—1370
environment and natural resources, Trans. 1199—1271, 1274—1363
cross references, 1889-1972 constitutions, Vol. II 563
delegate proposals considered, Vol. II 564-565
roll call votes on, in committee, Vol. II 572—574
text and comments
agriculture
majority report, Vol. II 559—560
environment and natural resources
majority report. Vol. II 552-558
minority report, Vol. II 561-562
transmittal letter, Vol. II 550—551
Public health, welfare, labor and industry
consideration in committee of the whole
institutions and assistance, Trans. 2270—2300, 2304—2308
labor, Trans. 2308—2372
non-municipal corporations, Trans. 2247-2269
regulation of public utilities, Trans. 2373—2422
cross references, 1889-1972 constitutions, Vol. II 698—699, 710—711
delegate proposals considered, Vol. II 700
roll call votes on, in committee, Vol. II 707—709
text and comments
institutions and assistance
majority report, Vol. II 674—675
labor
majority report, Vol. II 670—673
minority report, Vol. II 688—697
non-municipal corporations
majority report, Vol. II 666—669
minority report, Vol. II 682
regulation of public utilities
majority report, Vol. II 676—682
minority report, Vol. II 683—687
transmittal letter, Vol. II 664—665
Public information, Trans. 113—114
Revenue and finance
consideration in committee of the whole, Trans. 1376—1558, 2779—2789
cross references, 1889-1972 constitutions, Vol. II 579-583
delegate proposals considered, Vol. II 605
roll call votes on, in committee, Vol. II 604, 613
text and comments
introduction, Vol. II 579-583
majority report, Vol. II 584—598
minority report, Vol. II 599—603
transmittal letter, Vol. II 578
Rules and resolutions, Trans. 114—116, 120—199
Style, Drafting, Transition and Submission Committee
(final report, Vol. II *1033—1085)*
(preliminary reports, Vol. II 837—1032)
adoption schedule
debate in committee of the whole, Trans. 2946—2948, 2997—3004
text and comments, Vol. II 1080—1081

COMMITTEE REPORTS (Cont.)
Style, Drafting, Transition and Submission Committee (Cont.)
compact with the united states
debate in committee of the whole, Trans. 2567—2572, 2921
text and comments, Vol. II 838-841, 1029—1032, 1037
constitutional revision
debate in committee of the whole, Trans. 1187—1196, 2929
text and comments, Vol. 11 850—858, 1078—1079
declaration of rights
debate in committee of the whole, Trans. 2476—2511, 2921
text and comments, Vol. 11 956—973, 1038—1042
education and public lands
debate in committee of the whole, Trans. 2572—2594, 2927, 2928
text and comments, Vol. II 992—1006, 1034, 1069—1072
executive
debate in committee of the whole, Trans. 1692—1724, 2925—2926
text and comments, Vol. II 892—910, 1034, 1056—1060
general government
debate in committee of the whole, Trans. 2820—2831, 2921-2922., 2996
text and comments, Vol. II 1018—1025, 1043—1044
judiciary
debate in committee of the whole, Trans. 2176—2206, 2431—2433, 2926
text and comments, Vol. II 912-927, 1034, 1061—1064
legislative — bicameral
debate in committee of the whole, Trans. 1594—1610, 1615—1627, 1859—1860, 2922—2925, 2996
text and comments, Vol. II 876—889, 1034, 1052—1055
legislative — unicameral
debate in committee of the whole, Trans. 1568—1594, 1596—1600, 1611—1616, 1623—1624, 1627—1629, 1857—1859, 2922—2925, 2997
text and comments, Vol. II 861—875, 1034, 1046—1051
local government
debate in committee of the whole, Trans. 2816—2819, 2928
text and comments, Vol. II 1008—1015, 1073—1075
natural resources and agriculture
debate in committee of the whole. Trans. 2210—2217. 2928—2929
text and comments. Vol. II 931—941. 1068. 1076
official ballot
debate in committee of the whole, Trans. 2858—2860, 2862—2863, 2946-2948
text and comments, Vol. 11 1084—1085
preamble
debate in committee of the whole, Trans. 2476, 2921
text and comments, Vol. 11 1036
public health, welfare, labor and industry
debate in committee of the whole, Trans. 2595—2613, 2928—2929
text and comments, Vol. 11 976—989, 1076, 1077
revenue and finance
debate in committee of the whole, Trans. 2217—2246 24X-2434, 2926—2928
text and comments, Vol. II 944—953. 1034. 1065—1067
suffrage and elections
debate in committee of the whole, Trans. 1185—1187, 1196—1197, 2922
text and comments, Vol. Ii 844-847, 1045
transition schedule
debate in committee of the whole, Trans. 2863, 2947, 3004—3008
text and comments, Vol. II 1082—1083

COMMITTEES, CONVENTION
Procedural
Administration committee
membership and staff, Vol. I 21; Trans. 357
officers, appointment of, Trans. 95
report, Trans. 112, 253—254
responsibilities, Trans. 33, 67-68, 128
Public information committee
membership and staff, Vol. I 21; Trans. 95, 357
officers, appointment of, Trans. 95, 357
report, ***Trans.*** 113—114
responsibilities, Trans. 33
Rules and resolutions committee
membership and staff, Vol. I 21
officers, appointment of, Trans. 95
report, Trans. 114—116, 120—199
responsibilities, Trans. 33
Style, drafting, transition and submission committee
commended, ***Trans.*** 1193
membership and staff, Vol. 1 21; ***Trans.*** 323
officers, appointment of, Trans. 95
reports
(final report, Vol. II 1033—1085)
(preliminary reports, Vol. II 837—1032)
adoption schedule
debate in committee of the whole, Trans. 2946—2948, 2997—3004
text and comments, Vol. 11 1080—1081
compact with the united states
debate in committee of the whole, Trans. 2567—2572, 2921
text and comments, Vol. II 838—841, 1029—1032, 1037
constitutional revision
debate in committee of the whole, Trans. 1187—1196, 2929
text and comments, Vol. 11 850—858, 1078—1079
declaration of rights
debate in committee of the whole, Trans. X76-2511, 2921
text and comments, Vol. II 956—973, 1038—1042
education and public lands
debate in committee of the whole, Trans. 2572—2594, ***2927, 2928***
text and comments, Vol. II 992—1006, 1034, 1069—1072
executive
debate in committee of the whole, Trans. 1692—1724, 2925—2926
text and comments, Vol. 11 892—910, 1034, 1056—1060
general government
debate in committee of the whole, Trans. 2820—2831, 2921—2922, 2996
text and comments, Vol. 11 1018—1025, 1043—1044
judiciary
debate in committee of the whole, Trans. 2176—2206, 2431—2433, ***2926***
text and comments, Vol. 11 912-927, 1034, 1061—1064
legislative — bicameral
debate in committee of the whole, Trans. 1594—1610, 1615—1627, 1859—1860, 2922—2925, 2996
text and comments, Vol. 11 876—889, 1034, 1052—1055
legislative — unicameral
debate in committee of the whole, Trans. 1568—1594, 1596—1600, 1611—1616, 1623—1624, 1627—1629, 1857—1859, 2922—2925, ***2997***
text and comments, Vol. 11 861—875, 1034, 1046—1051
local government
debate in committee of the whole, Trans. 2816—2819, 2928
text and comments, Vol. 11 1008—1015, 1073—1075
natural resources and agriculture
debate in committee of the whole, Trans. 2210—2217, 2928—2929
text and comments, Vol. II 931-941, 1068, 1076
official ballot
debate in committee of the whole, Trans. 2858—2860, 2862—2863, 2946—2948
text and comments, Vol. 11 1084—1085

COMMITTEES, CONVENTION (Cont.)
Style, drafting, transition and submission committee (Cont.)
reports (Cant.1
preamble
debate in committee of the whole, Trans. 2476, 2921
text and comments, Vol. II 1036
public health, welfare, labor and industry
debate in committee of the whole, Trans. 2595—2613, 2928—2929
text and comments, Vol. II 976—989, 1076, 1077
revenue and finance
debate in committee of the whole, Trans. 2217—2246, 2433—2434, 2926—2928
text and comments, Vol. III 944-953, 1034, 1065—1067
suffraee and elections
debate in committee of the whole, Trans. 1185—1187, 1196—1197, 2922
text and comments. Vol. II 844-847. 1045
transition schedule
debate in committee of the whole, Trans. 2863, 2947, 3004-3008
text and comments, Vol. II 1082—1083
responsibilities and powers of, Trans. 33, 34—35, 38, 151, 180, 1815—1816, 1817, 1819—1820
Select
Closing ceremony committee
appointment, Trans. 2426
closing ceremony outlined, Trans. 3019
news release by, Trans. 3016—3017
Post-convention procedural, administrative and voter education affairs committee
appointment, Trans. 2428
duties, Trans. 2427—2430
Temporary rules committee
chairman and vice chairman selected, Trans. 26
discharged, Trans. 103
membership, Trans. 24
organization and selection, Trans. 16—26
report accepted, Trans. 103
reports and recommendations
appointment of executive director and other employees, Trans. 47, 51, 65—68
committees, Trans. 32-40
convention hall, Trans. 102—103
designation of chairmen and vice chairmen of committees, Trans. 42, 47—48
election of secretary, Trans. 47-48, 50—52
election of vice presidents, Trans. 47-50
thanked, Trans. 46, 103
Substantive
Bill of rights committee
membership and staff, Vol. I 22; Vol. II 618—619
report
consideration in committee of the whole, Trans. 1634—1689, 1724—1766, 1771—1853
cross references, 1889.1972 constitutions, Vol. II 646
delegate proposals considered, Vol. II 647—648
roll call votes on, in committee, Vol. II 658—660
text and comments
majority report, Vol. II 620—645
transmittal letter, Vol. II 618—619
responsibilities. Trans. 33. 36—37 150—151
witnesses appearing before committee, Vol. II 650—657; Trans. 370—371
Education and public lands committee
membership and staff, Vol. I 23; Trans. 112
report
consideration in committee of the whole, Trans. 1948—2002, 2006—2091, 2096—2174
cross references, 1889-1972 constitutions, Vol. II 757
delegate proposals considered, Vol. II 758-759
roll call votes on, in committee, Vol. II 767—768
text and comments
majority report, Vol. II 718—740, 748-754
minority report, Vol. II 741-747, 755—756
transmittal letter, Vol. II 716—717
COMMITTEES, CONVENTION (Cont.)
Education and public lands committee (Cont.)
responsibilities, Trans. 33, 3.5, 36, 38-39, 40, 146—151
witnesses appearing before committee, Vol. II 761—766; Trans. 2069
Executive committee
membership and staff, Vol. I 22, 433
report
consideration in committee of the whole, Trans. 842—907, 911—987, 991—1009, 2791—2806
cross references, 1889-1972 constitutions, Vol. I 467
delegate proposals considered, Vol. I 468—469
roll call votes on. in committee, Vol. I 474—477
text and comments
majority report, Vol. I 435—456
minority report, Vol. I 457—466
transmittal letter, Vol. 1432-433
responsibilities, Trans. 33
witnesses appearing before committee, Vol. I 470—473; Trans. 285, 297,991
General government and constitutional amendment committee
membership and staff, Vol. I 23, 334, 350
report — constitutional revision
consideration in committee of the whole, Trans. 453—467, 470—528
cross references, 1889.1912 constitutions, Vol. I 385
delegate proposals considered, Vol. I 366
text and comments
majority report, Vol. I 352—364
transmittal letter, Vol. I 350
report — general government
consideration in committee of the whole, Trans. 2689—2769
cross references, 1889-1972 constitutions, Vol. II 828
delegate proposals considered. Vol. II 827—830
roll call votes on, in committee, Vol. II 835
text and comments
majority report, Vol. II 815-822
minority report, Vol. II 823-825
transmittal letter, Vol. II 813-814
report — suffrage and elections
consideration in committee of the whole, Trans. 391—424, 428—452, 528—532, 534
cross references, 1889-1972 constitutions, Vol. I 344
delegate proposals considered, Vol. I 345-346
roll call votes on, in committee, Vol. I 348
text and comments
majority report, Vol. I 336—340
minority report, Vol. I 341—343
transmittal letter, Vol. I 334
responsibilities. Trans. 33, 34, 36—37, 150—151
witnesses appearing before committee, Vol. I 347, 387; Vol. II 831-834; Trans. 370—371, 397
Judiciary committee
membership and staff, Vol. I 22, 485
report
consideration in committee of the whole, Trans. 1010—1057, 1063—1179
cross references, 1889-1972 constitutions, Vol. I 528—530
delegate proposals considered, Vol. I 531—532
roll call votes on, in committee, Vol. I 537—543
text and comments
majority report, Vol. I 486—509, 526—527
minority report, Vol. I 510—525
transmittal letter, Vol. I 484-485
responsibilities, Trans. 33, 37
witnesses appearing before committee, Vol. I 533—536; Trans. 1011, 1013, 1019, 1042
Legislative committee
membership and staff, Vol. I 22, 375; Trans. 112
report
consideration in committee of the whole, Trans. 543—630, 635—705, 711—808, 813—838

COMMITTEES, CONVENTION (Cont.,
Legislative committee (Cont.)
report (Cont.)
cross references, 1889-1972 constitutions, Vol. 1416
delegate proposals considered, Vol. I 417
roll call votes on, in committee, Vol. I 422—427
text and comments
bicameral
majority report, Vol. I 395—409
minority report, Vol. I 410—415
unicameral
majority report, Vol. I 376—394
transmittal letter, Vol. I 374-375
responsibilities, Trans. 33, 35-36, 37, 38
witnesses appearing before committee, Vol. I 418—421
Local government committee
membership and staff, Vol. I 22; Vol. II 781
report
consideration in committee of the whole, Trans. 2512—2544, 2548—2565
cross references, 1889-1972 constitutions, Vol. II 802
delegate proposals considered, Vol. II 803-804
roll call votes on, in committee, Vol. II 809
text and comments
majority report, Vol. II 782—801
transmittal letter, Vol. II 780—781
responsibilities, Trans. 33, 37
witnesses appearing before committee, Vol. II 805—808; Trans. 298
Natural resources and agriculture committee
membership and staff, Vol. I 22; Vol. II 551
report
consideration in committee of the whole
agriculture, Trans. 1363—1370
environment and natural resources, Trans. 1199—1271, 1274—1363
cross references, 1889-1972 constitutions, Vol. II 563
delegate proposals considered, Vol. II 564—565
roll call votes on, in committee, Vol. II 572-574
text and comments
agriculture
majority report, Vol. II 559—560
environment and natural resources
majority report, Vol. II 552-558
minority report, Vol. II 561—562
transmittal letter, Vol. II 550—551
responsibilities, Trans. 33, 35, 38, 39,146—151
witnesses appearing before committee, Vol. II 566—571; Trans. 301, 1203
Public health, welfare, labor and industry committee
membership and staff, Vol. I 23; Vol. II 664
report
consideration in committee of the whole
institutions and assistance, Trans. 2270—2300, 2304—2308
labor, Trans. 2308—2372
non-municipal corporations, Trans. 2247—2269
regulation of public utilities, Trans. 2373-2422
cross references, 1889-1972 constitutions, Vol. II 698—699, 710—711
delegate proposals considered, Vol. II 700
roll call votes on, in committee, Vol. II 707—709
text and comments
institutions and assistance
majority report, Vol. II 674—675
labor
majority report, Vol. 11 670—673
minority report, Vol. II 688-697
non-municipal corporations
majority report, Vol. II GGG-GG9
minority report, Vol. II 682
regulation of public utilities
majority report, Vol. II 676—682
minority report, Vol. II 683—687
transmittal letter, Vol. II 664—665

COMMITTEES, CONVENTION (Cont.)
Public health, welfare, labor and industry committee (Cont.)
responsibilities, Trans. 33, 39
witnesses appearing before committee, Vol. II 701—706; Trans. 300, 363
Revenue and finance committee
membership and staff, Vol. 1 23; Vol. II 578
report
consideration in committee of the whole, Trans. 1376—1558, 2779-2789
cross references, 1889-1972 constitutions, Vol. 11 579-583
delegate proposals considered, Vol. II 605
roll call votes on. in committee. Vol. II 604, 613
text and comments
introduction, Vol. II 579-583
majority report, Vol. II 584-598
minority report, Vol. II 599—603
transmittal letter, Vol. II 578
responsibilities, Trans. 33
witnesses appearing before committee, Vol. II FOG-612

COMMITTEES, LEGISLATIVE
Meetings open to public, Vol. I 111, 276, 377, 384, 387, 396, 403—404; Vol. II 862, 864, 868, 871, 874, 817, 881, 885,887, 1047, 1049, 1053. 1092, 1105, 1107; Trans. 603-625, 1501, 1651, 1680
Power to establish, Vol. 1250, 377, 387-388, 396, 404; Vol II 862, 864—865, 868, 871,874, 877, 881—882, 885,887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 581—582, 585, 586, 625—630, 635—637, 2791—2806

COMMUNICATIONS, PRIVACY IN, Vol. I 98; Vol. II 633; Trans. 1683—1688
See SEARCHES AND SEIZURES

COMMUNITY COLLEGES, Vol. II 732. 740: Trans. 1509 1948, 1967, 1978, 1987, 2050, 2051, 2052, 2053, 2058, 2068. 2084, 2086, 2097, 2100, 2109, 2110, 2121, 2131, 2161

COMMUTATIONS OF SENTENCES, Vol. I 183, 231, 321, 438, 446, 452-453, 460, 466; Vol. II 896, 902, 904-905, 909, 1059, 1095; Trans. 962-964, 1805

COMPACT WITH THE UNITED STATES, Vol. I 99, 294; Vol. II 838-841, 1030-1032, 1037, 1087; Trans. 2567—2572

COMPENSATION
Compensation of public officials may not be diminished during term of office, Vol. 188, 181, 229, 249. 320, 436, 447, 458, 491, 504, 511, 519; Vol. II 914. 919. $22, 925, 1062, 1096; Trans. 842. 927-928, 1083—1084, 1115—1119
Constitutional convention, 1972
delegates, Vol. I 3, 11; Trans. 136
employees
executive director, Vol. I 8; Trans. 66. 127
other, Vol. 12, 3, 9; Trans. 66, 112, 128, 240—248
officers, Vol. I 3, 11; Trans. 136
Constitutional convention delegates, Vol. I 150, 210, 226. 353, 356-357, 359; Vol. II 851, 854, 856, 857, 1078, 1103; Trans. 454, 485-486
Equal pay for equal work, state and federal employees, Vol. I 225; Trans. 2349-2351

COMPENSATION (Con,.)
Executive officers
attorney general, Vol. I 229, 320, '432: 436, 447, 458; "0,. II 894. 899, 904, 907, 1057, 1094; Trans. 842, 927-928, 991-994
auditor, Vol. I 458; Vol. 11 894, 899, 904, 907, 1057, 1094; Trans. 842, w-928, 991-994
governor, Vol. I 181, 229, 320, 432, 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927—928, 991—994
lieutenant governor, Vol. I 181, 229, 320, 432, 436, 447, 455; Vol. Ii 894, 899, 904, 907, 1057, 1094; Trans. 842, 927-928. 991—994
secretary of state, Vol. I 320, 432, 436, 447, 458; Vol. I, 894, 899, 904, 907, 1057, 1094; Trans. 842, 927—928, 991—994
superintendent of public instruction, Vol. I 320, 432, 435, 436, 441, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 870, 927-928, 991-994, 2059
treasurer, Vol. 1320; Vol. II 894, 899, 904; Trans. 927—928, 991—994
Judicial officers
judges, Vol. 188, 206, 225, 491, 504, 511, 519; Vol. II 914, 919, 922, 925, 1062, 1096; Trans. 1067, 1083—1084, 1107, 1115—1119, 1150—1154
justices of the peace, Vol. I 152, 225, 489, 491, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1020, 1029, 1083—1084, 1140—1147, 1157, 1158
magistrates, Vol. I 86
Legislators
bicameral, Vol. I 275, 280, 395, 401—402,3; Vol. II 876, 880, 886, 1052, 1091; Trans. 572-579, 588, 589, 1572
unicameral, Vol. I 110, 280, 376, 383-384; Vol. II 861, 867, 874, 1046, 1105; Trans. 572—579, 588, 589, 1572
Minimum wage to be established by legislature, Vol. I 272
Officers first elected or appointed under new constitution. Vol. I 249
Salary commission, Vol. I 110, 134, 275, 280. 376. 383—384. 395, 402, 447; Vol. II 861, 867, 874, 876, 880, 886, 1077, 1103; Trans. 572-579, 992, 993, 1084, 1572
state employees, compensation equal to federal employee compensation, Vol. I 225; Trans. 2349-2351
Teachers, Vol. 1239

COMPLAINT, CRIMINAL OFFENSES PROSECUTED BY, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766

COMPULSORY ARBITRATION, Trans. 2367—2369

CONCEALED WEAPONS, Vol. I 78—79; Vol. II 621, 634 958, 963, 970, 1039, 1088; Tram. 1724, 1734, 1743, 1834

CONDITIONAL VETO
See AMENDATORY VETO

CONFERENCE COMMITTEES (LEGISLATURE), Vol. I 303, 382, 396, 400, 403, 404; Trans. 731—734, 748

CONFLICTS OF INTEREST
Constitutional convention delegates, Vol. I 10; Trans. 133—135, 136, 1262, 1725, 2384, 2429, 2606, 2687
Legislators and other public officials, Vol. I 164; Vol. II 866, 873, 875, 879, 884, 889, 1077, 1103; Trans. 789—790, 793—796

CONGRESSIONAL DISTRICTS, Vol. I 163, 379, 392-393, 398-399, 407—408; Vol. II 863—864, 865-866, 870, 872—873, 874-875, 878—879, 883—884, 885, 888—889, 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 681—696

CONOVER, MAX (BROADVIEW)
Biography, Vol. I 39
Committee assignment, Vol. I 25
Delegate Proposal
no. 74 (public school fund,, Vol. I 176
Remarks by, on
declaration of rights (Article II)
right to bear arms, Trans. 1734
departments and institutions (Article XII)
agriculture
department of, Trans. 2215-2216
special levies, Trans. 1367
institutions, Trans. 2271
education and public lands (Article X)
aid to sectarian schools, Trans. 2016—2017, 2019—2021, 2027—2028
board of land commissioners, Trans. 1991, 1993, 2001—2002
boards of education, Trans. 2084, 2588
educational goals and duties, Trans. 1966
public land trust, access, Trans. 2147-2148
public school fund, Trans. 1540
state university funds, accounting and audit, Trans. 2588
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1207—1208, 1269
water rights, Trans. 1309—1310
executive (Article VI)
officers, Trans. 863—864
general government (Article III)
gambling, Trans. 2757
judiciary (Article VII)
justices of the peace, Trans. 1154—1156
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1483
investment of public funds, Trans. 1540
property tax
administration, Trans. 1392-1393, 1406—1407
exemptions, Trans. 1421
strict accountability, Trans. 1517
suffrage and elections (Article IV,
poll-booth registration, Trans. 445-446

CONSECUTIVE TERMS OF OFFICE, LIMITATION ON, Vol. I 236; Trans. 361—362

CONSERVATION
Environment, provision for protection and improvement, Vol. I 75, 96, 107, 108, 193, 240, 252, 261, 308—309; Vol. II 550, 552, 554-555, 561-562, 931, 933, 935, 939, 1068, 1099; Trans. 1199—1271, 1274—1275, 1637—1640
Reclamation of lands, Vol. II 552, 555-556, 931, 933, 935, 939, 1068, 1099; Trans. 1199—1200, 1275—1301, x353-1363
Water rights. Vol. I 76, 145, 213, 255; Vol. II 552—553, 556-557, 931, 933, 935, 939, 1068, 1099; Trans. 151, 1301—1351, 2377, 2761
Wildlife habitat, Trans. 2144

CONSOLIDATION OF COUNTY OFFICES, Vol. I 80—81, 216, 301; Vol. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521

CONSOLIDATION OR MERGER OF LOCAL GOVERNMENT UNITS, Vol. I 135, 160, 201, 215, 253; Vol. II 782, 787—788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521, 2523, 2535, 2536, 2549, 2560

CONSTITUTION, 1972
See also CONSTITUTIONAL REVISION
Adoption schedule, Vol. II 1080~1081, 1104—1108; Trans. 2596, 2828, 2878, 2946—2948, 2988, 2997—3004, 3008
Ballot
alternative issues
bicameral/unicameral legislature, Trans. 543—544, 728—730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2890—2894, 2898, 2903, 2904, 2907—2912, 2949—2975, 2987, 2988, 2993, 2996, 2997—3001, 3003-3004
death penalty, Trans. 1477, 1478, 1805, 1807, 1808, ,809, 1810, 1812, 1814—1822, 2221, 2235, 2510, 2609, 2736, 2739, 2865, 2867, 2872, 2873, 2877—2883, 2890~2892, 2897, 2903, 2913, 2914, 2949, 2951, 2952, 2955, 2969, 2971, 2972, 2984, 2987—2989, 2993, 2994, 2996, 2997. 3001
gambling. Trans. 1477, 1810, 2221, 2254, 27X-2760, 2828, 2853-2854, 2864, 2865, 2867—2869, 2873, 2871, 2879, 2881~2883, 2890—2892, 2897, 2899, 2900, 2903, 2913, 2914, 2948, 2949, 2951, 2952, 2955, 2969, 2971, 2972, 2975—2986, 2987, 2990, 2993, 2997—2999, 3000
highway revenue non-diversion, Trans. 1458—1466, 1469—1489, 2221—2241
regulation of public utilities, Trans. 2605—2613
right to work, Trans. 1478, 2358—2367
unicameral/bicameral legislature, Trans. 543-544, 728—730, 759—760, 822, 1596—1597, 1603, 1604, X29-1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2X90-2894, 2898, 2903, 2904, 2907—2912, 2949—2975, 2987, 2988, 2993, 2996, 2997—3001, 3003-3004
as adopted, Trans. 1084—1085
format and voting, Trans. 334, 336, 1631, 2863—2916, 2919, 2921—2922, 2929, 2947—2995, 3008—3009
short ballot, long ballot, Vol. I 441; Trans. 843, 848, 849, 853, 2375, 2690—2691, 2773, See also CONSTITUTIONAL OFFICES
Certification of revision or alteration of or amendment to Constitution by President and Secretary, Vol. I 4, 9; Trans. 50—51, 127—128
Compact with the United States not affected by new constitution, Vol. I 99, 294, Vol. II 838-841, 1030—1032, 1037, 1087; Trans. 2567—2572
Comparison of length of 1889, 1972 constitutions, Trans. 3016
Election
canvass of, Trans. 1560
clarification of "special election", Trans. 345, 1559
cost of special election, Trans. 331—333
date and type of election, Vol. I 3—4; Trans. 116—117, 216—217, 289, 330—345, 1559—1560, 2427 2615
notice of, Trans. 1560

CONSTITUTION, 1972 (Cont.)
Printing of, Trans. 1560, 1561
Referendum of unicameral legislature. Vol. II 864—866, 870—873, 875, 1048—1051, 1106—1108; Trans. 785—789
Signatures of convention delegates, Vol. II 1110—1113
Submission to voters, Vol. I 3—4; Trans. 116—117, 216—217, 289, 330—345, 1559—1560, 2427, 2615
Text as adopted, Trans. 1087—1109
Transition schedule
effective dates of sections 1, 2, 3, 6 and I4 of Article V, Vol. II 1082, 1108; Trans. 3004-3008, 3014—3015
general transition, Vol. I 92-93, 241, 249; Vol. II 1082—1083, 1108—1109; Trans. 2776, 3005, 3007—3008
prospective operation of declaration of rights, Vol. II 1082, 1108: Trans. 3005. 3007-3008
terms of office
elected and appointed officials, Vol. I 241, 249, Vol. II 1082—1083, 1108—1109; Trans. 2776, 3005, 3007-3008
judicial officers, Vol. I 88, 206; Vol. II 1082, 1108; Trans. 1115—1116, 3005, 3007—3008
legislators, Vol. II 1082, 1108; Trans. 1568—1571, 1591—1593, 1628—1629, 2776, 3005, 3007-3008
Voter information pamphlet, Trans. 332, 336, 1374, 1560—1561, 2427, 2428, 2429, 2430, 2453, 2615, 2618, 2619, 2620

CONSTITUTIONAL CONVENTION COMMISSION, Trans. 2971. 3017. 3020. 3038
See also CONSTITUTIONAL PREPARATORY COMMISSION
Appointments to, Vol. I 4; Trans. 1026—1027
Commended, Trans. 9, 98, 480
Funds and expenditures of, Trans. 245—246, 248, 315, 322-323, 537, 1374, 2619
Provided for in Enabling Act, Vol. I 4-5
Report and recommendations of, Vol. II 673; Trans. 315, 324, 1152, 1991

CONSTITUTIONAL CONVENTION ENABLING ACT
Text, Vol. I 1—5

CONSTITUTIONAL OFFICES, Vol. I 180—181, 228, 319, 432, 435, 441—444, 449, 457, 462—463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 448, 842, 843—870, 913, 994, 998, 1008, 1695, 1707—1718, 2381, 2690, 2691, 2713, 2776, 3005

CONSTITUTIONAL PREPARATORY COMMISSION
See also CONSTITUTIONAL CONVENTION COMMISSION
Provided for, Vol. I 210, 352, 356, 358-359; Trans. 454, 456—462, 463—466, 478—481

CONSTITUTIONAL REVISION
See also CONSTITUTION, 1972; CONSTITUTION OF THE UNITED STATES; CONVENTION, OPERATION AND PROCEDURES
Alteration or abolition of constitution exclusive right of people, Vol. II 620, 626, 957, 962, 967, 969, 1038, 1044, 1087; Trans. 1636
Amendment by
constitutional convention, See Constitutional convention

CONSTITUTIONAL REVISION (Cont.)
Amendment by (Cont.)
initiative, Vol. I 119—120, 257, 268, 277, 354, 362.-363, 410; Vol. II 852, 854—855, 856, 858, 1079, 1104; Trans. 498, 505—514, 2699, 2702, 2703, 2704, 2711, 2745, 2780, 2781, 2785, 2788
other constitutional provisions on initiative not applicable. Vol. II 816, 821, 1020, 1023—1024. 1025 1044, 1090; Trans. 2720
legislature, Trans. 493-505, 522—526
by referendum, Vol. I 119, 210—211, 257, 353-354, 360—362; Vol. II 852, 854, 856, 858, 1079, 1104; Trans. 495—501, 2785
other constitutional provisions on referendum not applicable, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
by ⅔ vote of succeeding legislature, Vol. I 211, 354, 360—362; Trans. 493—495, 496—498, 501—505
Constitutional amendments
effective date, Vol. I 210, 353, 357, 360; Vol. II 852, 854, 855, 856, 858, 1079, 1104; Trans. 454, 491—492, 495, 501,505
identification and separate vote when more than one amendment submitted in any election, Vol. I 120, 211, 354, 363: Vol. II 852, 855, 856, 858. 1079. 1104; Trans. 514—522
limitation on number that may be submitted in election, Vol. I 120; Trans. 514-522, 1482, 2236
submission to voters for ratification or rejection, Vol. I 150—151, 210, 226—227, 353, 357, 360; Vol. II 852, 854, 856, 858, 1079, 1104; Trans. 454, 490—491
veto power of governor does not extend to, Vol. I 120, 183—184, 211, 321—322, 355, 363, 378, 391, 397, 406, 437, 450—451, 459; Vol. II 895. 901, 904.908. 1058, 1094: Trans. 522, 94X-958
Constitutional convention
call of, Vol. I 150, 158, 210, 226—227, 352, 356, 359—360; Vol. II 851, 853—854, 856, 857. 1078, 1103; Trans. 454. 481-485, 4X9-490
by initiative, Vol. I 209, 352, 356, 357—358; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455—462, 471—476, 2698, 2699—2700
other constitutional provisions on initiative not applicable, Vol. 11 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
by referendum, Vol. I 209, 352, 356, 357; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455, 2698
other constitutional provisions on referendum not applicable, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
delegates
compensation, Vol. I 150, 210, 226, 353, 356-357, 359; Vol. II 851, 854, 856, 857, 1078, 1103; Trans. 454.485-486
duties, Vol. I 150, 210, 226, 353, 357; Vol. II 852, 854, 856, 858, 1078—1079, 1104; Trans. 454, 490—491, 526—528
election, Vol. I 150, 210, 226—227, 353, 356, 359; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 481—485
number, Vol. I 150, 210, 226—227, 352—353, 356, 359; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 481
oath, Vol. I 150, 210, 226, 353, 357, 360; Vol. II 853, 854, 856, 857—858, 1078, 1104; Trans. 454, 489—490
qualifications, Vol. I 150, 210, 226, 353, 357, 360; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 4X9-490
vacancies, Vol. I 150, 210, 226, 353, 357, 360; Vol. II 852, 854, 856, 857—858, 1078, 1104; Trans. 454, 489—490

CONSTITUTIONAL REVISION (Cont.)
Constitutional convention (Cont.)
election
date of election for ratification or rejection, Vol. I 151, 226—227, 353, 360; Vol. II 852, 854, 856, 858, 1079, 1104; Trans. 454, 490—491
partisan or non-partisan, Vol. I 150, 210, 227, 353, 356, 359; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 481—485
expenses, Vol. I 150, 210, 226—227, 353, 357, 359; Vol. II 851, 854, 856, 857, 1078, 1103; Trans. 454, 485—488
legislature to submit question of calling, Vol. I 150, 209, 226, 352, 356, 357; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455, 481
meeting date, Vol. I 150, 158, 210, 226—227, 353, 356, 357, 359, 360; Vol. II 851, 856, 1078, 1103; Trans. 454,485, 489, 526-528
periodic submission of question of calling, Vol. I 158, 209—210, 227, 352, 356, 358; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 462—466, 476—478
Constitutional preparatory commission, Vol. I 210, 352, 356, 358—359; Trans. 454, 456-462, 463—466, 478—481
General Government article provisions on initiative and referendum not applicable to constitutional revision, Vol. II 816, 821, 1020, 1023-1024, 1025, 1044, 1090; Trans. 2720
Petitions
amendment by initiative, Vol. I 119, 354, 362—363; Vol. II 852, 854—855, 856, 858, 1079, 1104; Trans. 505-514
call of convention by initiative. Vol. I 209. 352. 356, 357-358; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455—456, 471
other constitutional provisions on initiative and referendum not applicable, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
referendum of amendment by legislature, Vol. I 211, 354; Trans. 498, 501—508
other constitutional provisions on initiative and referendum not applicable, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
signers, determination of number needed, Trans. 514
Submission to voters, Vol. I 150—151, 210, 226—227, 353, 357, 360; Vol. II 852, 854, 856, 856, 1079, 1104; Trans. 454, 490—491

CONSTITUTIONAL REVISION SUBCOMMITTEE, Trans. 948

CONSTITUTION OF THE UNITED STATES
Governor may not veto ratification of proposed amendments to, Vol. I 183, 321, 437, 450—451, 459; Vol. II 895, 901, 904, 908, 1058, 1094

CONSUMER COUNSEL, Vol. II 980, 984, 989, 1077, 1103; Trans. 2400—2404, 2407, 2421
See also PEOPLE'S ADVOCATE; PUBLIC SERVICE COMMISSION, Duty to represent utility customers

CONSUMER PROTECTION
Corporate practices, laws for protection and education of people, Vol. I 172; Vol. II 666, 668, 710—712, 977, 981, 986, 1077, 1103; Trans. 2247—2258

CONSUMER PROTECTION (Cont.)
Public service commission — duty to represent utility customers, Trans. 2397-2400
Utility companies, provision for consumer counsel to represent consumer interests before public service commission, Vol. II 980, 984, 989, 1077; Trans. *1103*, 2400—2404, *2407*, 2421

CONTESTED ELECTIONS (LEGISLATORS), Vol. I 377, 386—387, 396, 403; Vol. II 862, 864, 868, 871, 814, 875, 811, 881, 885, 887, 1047, 1049, 1053, 1092. 1105, 1107; Trans. 599—601

CONTINUITY OF GOVERNMENT IN EMERGENCY, Vol. I 278—279; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
See also EMERGENCIES

CONTRACTS
Corporations, law imposing new liability prohibited, Vol. II 666, 669, 711, 977, 981, 986, 1077, 1103; *Trans.* 2266-2269
Impairing obligation of contracts, law prohibited, Vol. I 207; Vol. II 624, 644, 961, 966, 968, 973, 1041, 1089; Trans. 1829, 2266-2268

CONTROLLER, STATE, Vol. I 463; *Trans.* 845

CONVENTION FOR REVISION, ALTERATION, OR AMENDMENT OF CONSTITUTION
See CONSTITUTIONAL REVISION, Constitutional convention

CONVENTION, OPERATION AND PROCEDURES
Adjournment sine die. *Trans.* 3046
Appeals to rulings of the chair, Vol. I 19; Trans. 197 199
aasheim (failed), Trans. 2913—2916
arness (failed). Trans. 1003
blaylock (failed), Trans. X86-2487
cate (failed), Trans. 572
dahood (withdrawn), Trans. 425—426
felt (failed), Trans. 1926—1928
holland (failed), Trans. 2691—2694
lorello (failed), Trans. 427-428
Bibliography, Vol. I 71—74, See also PUBLICATIONS CITED
Budget and expenditures, Vol. 15, 8, 14; Trans. 112—113, 127, 178, 227-248, 261, 321—325, 535—537, 902, 1373—1375, 2618—2622, 2856
Call of, Vol. I 1
Call to order
convention, Trans. IO9
organizational meeting, Vol. I 2, Trans. 1
Caucuses and caucusing, Trans. 15, 96, 419—420, 605, 847, 1736
Citizen corps. Trans. 114. 220-221, 224, 268, 1280, 1803
Citizen suggestions, Vol. I 14—15, Trans. 161, 178, 179 182, 226, 293—295, 349, 1142, 2518
Closing ceremonies, Trans. 3034—3047
Committee of the Whole, rules relating to, Vol. I II--12; *Trans.* 137—145, 155—158, 159
Committee reports
rules relating to, Vol. I II, 13—15; Trans. 137—140, 156—158, 176—178, 180, 227
text, See COMMITTEE REPORTS
Committees, See also COMMITTEES, CONVENTION
chairman and vice chairman, appointment, Vol. I 12; Trans. 42, 47, 75—91, 94—95, 101—102, 152, 357

CONVENTION, OPERATION AND PROCEDURES (Cont.)
Committees (Cont.)
meetings to be open to public and news media, Vol. I 8, 14; Trans. 125, 176—177, 370—371
membership and staff
appointment of, Trans. 40—44, 45—46, 93, 95, 99—101, 112, 152
list of, Vol. I 21—23
reassignment of a&ointments, Trans. 44, 45—46, 112—113, 212—213, 357
rules relating to, Vol. I 12—14, 15—16; Trans. 146—178, 180—181, 182
Constitutional Convention Commission, Trans. 2971, 3017, 3020, 3038
appointments to, Vol. 14; Trans. 1026—1027
commended, Trans. 9, 98, 480
funds and expenditures of, Trans. 245—246, 248, 315, 322-323, 537, 1374, 2619
provided for in enabling act, Vol. I 4—5
report and recommendations, Vol. II 673; Trans. 315, 324, 1152, 1991
Constitutional Convention Enabling Act text. Vol. I 1—5
"Convention hall", designation of, Vol. I 8; Trans. 68, 102—103, 125
Delegate districts
convention delegates by, Vol. I 66-68
map of, Vol. I 65
Delegate Proposals
rules relating-to. Vol. I 14—15; Trans. 137, 177, 178, 180, 227, 361
text, See DELEGATE PROPOSALS
Delegates, See DELEGATES, CONVENTION
Documentary film, Trans. 231-232, 237-239, 323, 536, 1374, 2619
Documents
charges for, *Trans.* 251—252, 387
distribution
to public, Trans. 249-253, 267, 268, 273, 313, 2618, 2620
within convention, Trans. 387, 425
Election of officers
president, Vol. I I, 2, 8; Trans. 9—16, 126
secretary, Vol. I I, 8; Trans. 47—48, 50—52, 62-65, I26
temporary president, Vol. I 2; Trans. 7-9
vice presidents
district vice presidents, Vol. I I, 8; Trans. 47-50, 51—62, I26
first vice president, Vol. I I, 2, 8; Trans. 28-32, 126
Employees, See Staff
Funding
federal h.u.d. funds, Trans. 1273—1274, 1373, 1561, 2426-2429, 2618, 2619, 2620—2621
state appropriations, Vol. I 5; Trans. 2372, 2429, 2430
Hearings
format, Trans. 350
location, Vol. 18; *Trans.* 125, 176, 259-260
notice, Vol. I 13; *Trans.* 116, 153—154, 160—176, 178
open to public and news media, Vol. I 13, 14; Trans. 176—177, GO5
scheduling, Vol. I 13; *Trans.* 119—120, 349—350, 358—361
testimony taken by telephone, *Trans.* 370—371, 374-375, 832-834, 885, 988, 1221—1222, 2729—2730
Journal and transcript of proceedings, Vol. I 2, 9, II; Trans. 127—128, 145, 176—177, 1375, 2428, 2619-2620, 3020, See also Documents
Lobbyists and lobbying, Vol. 13, 18; Trans. 68—75, 126, 190, 871, 883, 1227, 1389, 1443, 1451, 1458, 1463, 1738, 2069, 2326, 2429, 2492, 2724, See also Witnesses
licenses reinstated, Trans. 369, 378, 383, 535, 812, 1691, 1769, 2209, 2919
licenses suspended, Trans. 353, 706, 1565, 2858
"thirty-minute rule", Vol. I 8, 18; Trans. 69, 71, 75, 125—126, 190

CONVENTION, OPERATION AND PROCEDURES (Cont.)
Oath of office
administration of, Trans. 5
prescribed, Vol. I 1, 2
Officers
compensation
first vice president, Vol. I 3, 11; Trans. 136
president, Vol. I 3, 11; Trans. 136
duties
president, Vol. I 8-9; Trans. 127, 151
secretary, Vol. I 9; Trans. 50—51, 127—128
vice presidents
district vice president, Vol. I 9; Trans. 48—49, 127, 128
first vice president, Vol. I 9; Trans. 27—28, 127, 128
election
president, Vol. I 1, 2, 8; Trans. 9—16, 126
secretary, Vol. I I, 8; Trans. 47—48, 50—52, 62—65, 126
temporary president, Vol. I 2; Trans. 7—9
vice presidents
district vice presidents, Vol. I 1, 8; Trans. 47—50, 51—62. 126
first vice president, Vol. I 1, 2, 8; Trans. 28—32, 126
list and photos of, Vol. I 29—30
vacancies, Vol. I 9; Trans. 127, 128
Organizational meeting, Vol. I 1; Trans. 1—108
Pages
introduced, Trans. 104, 254, 284, 305, 358, 383—384, 710, 1183, 1691—1692, 2209, 2210, 2860—2861
letter thanking delegates, Trans. 2769
selection of, Trans. 112—113
Parking, Trans. 155, 470, 910
Parliamentary procedure, See PUBLICATIONS CITED, Mason, Paul
Partisanship, Trans. 15, 16, 45, 76, 79, 81, 92-93, 482, 605, 688, 847, 3(140
Posting of colors, Trans. 2
Presentations to President of Convention
gavel made by jim osborne of glendive, Trans. 374
gift from people of israel, Trans. 438
plaque and the west of william h. ashley, 1822—1838 from delegates, Trans. 3041
Presentation to Governor Forrest A. Anderson of pen and gavel used by William Andrews Clark, presiding in the 1889 Constitutional Convention, Trans. 1
Recess, Trans. 117, 216—217, 289, 330, 332, 334, 335, 345—347, 2430, 2614—2617
Resolutions
rules relating to, Vol. I 14—15; Trans. 178—179, 182
text, See RESOLUTIONS
Rules
adoption, Vol. I 1; Trans. 120—199
amendment or suspension, Vol. I 19; Trans. 197
application, Vol. I 11; Trans. 145
temporary rules, Vol. I 2; Trans. 18—19
text, Vol. I 6—20
Salaries
delegates, Vol. I 3, 11; Trans. 136
employees
executive director, Vol. I 3, 8; Trans. 66, 127
other, Vol. 12. 3, 9; Trans. 66, 112, 128, 240—248
officers, Vol. I 3, 11; Trans. 136
Schedule, Vol. I 20; Trans. 178, 199, 216—217, 262, 1062, 2621
Signing of proposed constitution, Trans. 3041—3046
Staff
appointment of, Vol. I 1, 2, 9; Trans. 47—48, 67—68, 128
compensation, Vol. I 2, 3, 9; Trans. 66, 112, 128, 240—248
executive director
appointment, Vol. 18; Trans. 47, 51, 65—67, 126—127
compensation, Vol. I 8; Trans. 66, 127
duties, Vol. 19, 14; Trans. 50, 51, 65, 128
interns
duties, Trans. 113
list of, Vol. I 70

CONVENTION, OPERATION AND PROCEDURES (Cont.)
Staff (Cont.)
list of, Vol. I 30, 69—70
preparatory work of constitutional convention, Vu,. I 1
resolution thanking, Trans. 3035—3036
retained after constitutional convention, Trans. 2428
Vacancies
delegates, Vol. I 1, 8, 10, 11; Trans. 120—125, 135—136
officers, Vol. I 9; Trans. 127, 128
Voting
pairing, Vol. I 20; Trans. 122, 218—220
recorded roll call vote, Vol. I 10, 11, 14, 15, 16, 19; Trans. 130, 136, 138—140, 144, 145, 176—177, 179, 180-182, 190, 196, 197—199
Witnesses
list of
bill of rights committee, Vol. II 650—657
education and public lands committee, Vol. II 761-766
executive committee, Vol. I 470—473
general government and constitutional amendment
constitutional revision, Vol. II 367
general government, Vol. II 831—834
suffrage and elections, Vol. I 347
judiciary committee. Vol. I 533—536
legislative committee, Vol. I 418—421
local government committee, Vol. II 805—808
natural resources and agriculture committee, Vol. II 566—571
public health, welfare, labor, and industry committee, Vol. II 701—706
revenue and finance committee, Vol. II 606-612
testimony and production of records by, Vol. I 2, 14; Trans. 176, 349, 370—371, 374—375
Workweek, Trans. 116, 152—153, 203—212

CONVICTS
Commutations of sentences, Vol. I 183, 231, 321, 438, 446, 452—453, 460, 466; Vol. II 896.902, 904—905, 909, 1059, 1095; Trans. 962—964, 1805
Cruel and unusual punishment prohibited, Vol. II 622, 640, 959, 964, 968, 971, 1040, 1088; Trans. 1771, 1814, 1844, 1846
Death penalty, Vol. I 77, 128; Vol. II 643, 968, 1080, 1108; Trans. 1800—1822, 2360, See also CONSTITUTION, Ballot
Employment in licensed occupations, Vol. II 643; Trans. 1800, 1801, 1822—1825, 2507—2509
Pardons, Vol. I 183, 231. 321, 337, 438, 446, 452—453, 460, 466; Vol. II 896, 902, 904-905, 909, 1059, 1095; Trans. 962—964
Parole, Trans. 395, 396, 397, 398, 1823
Punishment founded on principles of prevention and reformation. Vol. I 128. 337—338:, Vol. II 623, 642%643,960, 965, $68,972, 1041, 1089; Trans. 392, 395, 397, 1800, 1802, 1804, 1809, 1811, 1812, 1821, 1823, 2305
Reprieves, Vol. 1183, 231, 321, 438, 446, 452—453, 460, 466; Vol. II 896, 902, 904-905, 909, 1059, 1095; Trans. 962—964
Restoration of rights, Vol. I 128, 317, 337—338; Vol. II 623, 642—643, 960, 965, 968.972., 1041. 1089, 1091; Trans. 678, 1800—1803, 1823, 2305, 2507—2509, See also Pardons; Parole
Right to vote, hold office, Vol. I 191, 218, 317, 336, 337-338, 341; Vol. II 845, 846, 847, 1045, 1091: Trans. 392, 395, 397—398, 528—532, 678, 800. 802, 1747, 1800—1803, 1846—1848
Solitary confinement, Vol. I 218; Trans. 1846—1848

COPP, DAVID (PAGE), Trans. 284

CORBIN, DARLENE (SECRETARY), Vol. 169; Vol. II 619; Trans. 3035

CORPORATIONS
See also STOCKS AND BONDS
Appropriation for private association or corporation prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397. 'm-406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535
Charters granted, modified or dissolved in pursuance of general law, Vol. II 666,668, 710, 917, 981, 986, 1077, 1103; Trans. 2247
Consumer protection laws to be provided, Vol. I 172; Vol. II 666, 668, 710—712, 977, 981, 986, 1077, 1103; Trans. 2247—2258
Cumulative voting, Vol. II 666, 668-669, 710; Trans. 225X-2263, 2398
License tax, Trans. 2254
Long-short haul clause, Vol. II 666, 669,710; Trans. 2263—2265
Public utility corporations, Vol. I 179, 248; Vol. II 685—687; Trans. 2255, 2376, 2379, 2404—2420, 2605—2613
Retrospective law imposing new liability prohibited, Vol. II 666, 669, 711, 977, 981, 986, 1077, 1103; Trans. 2266—2269
Special privileges, franchises or immunities prohibited, Vol. 1207; Vol. II 624, 644, 961, 966, 968, 973, 1041, 1089; Trans. 1829, 2266-2268
Tax exemptions
Montana corporations, stocks of, Vol. II 599, 601; Trans. 1411, 1412, 1413
municipal corporations, Vol. I 326; Vol. II 584, 590, 599, 945, 947-948, 950, 951. 1065. 1098; Trans. 1410, 1411
Unclaimed shares and dividends part of public school fund, Vol. II 718, 725—726, 993, 996, 1002, 1003, 1069, 1099; Trans. 1989—1990
Watered stock provision, Vol. II 666, 669, 711; Trans. 2265-2266, 2398

COUNSEL
See also ATTORNEYS
Attorney general to be legal counsel to governor, other state officers, Vol. 1442; Trans. 867—870
Right to, Vol. I 105; Vol. II 623, 640—641, 960, 965, 968, 972, 1040, 1089; Trans. 1052, 1751, 1776

COUNTIES
See also LOCAL GOVERNMENT
Change of boundary or county seat, Vol. 1160, 163, 201—202, 215, 253; Vol. II 782, 785, 786-788, 791, 1009, 1012,1015, 1073, 1101; Trans. 2512, 2514—2516
County commissioner districts, Vol. I 102—103; Vol. II 785
Deemed those existing on date of ratification of constitution, Vol. I 201—202, 215; Vol. II 782, 785, 786—788, 1009, 1012, 1015, 1073. 1101; Trans. 2514—2516
Executive branch, county part of, Trans. 2522—2524, 2543
Location of county offices, Vol. I 153; Trans 2513
Optional form of government, Vol. I 80—81, 92—93, 102-104, 135—136, 215-216, 253, 300—301, 314, 525; Vol. II 780, 782, 785, 788—791, 1009, 1012, 1015, 1073, 1101; Trans. 2512, 2513, 2516—2521, 2525

COUNTY ATTORNEYS, Vol. I 216, 484, 489, 499—500, 525; Vol. II 582, 788, 790, 1009, 1012,1015, 1073, 1101; Trans. 830—831, 844, 901, 1069, 1130—1132, 1780, 1781, 1784, ,787, 2516—2521
See also DISTRICT ATTORNEYS

COUNTY OFFICERS
See also EDUCATION, Boards of education, school district trustees
Assessor, Vol. I 80, 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516
Clerk and recorder, Vol. I 80, 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2518, 2519, 2520
Clerk of district court, Vol. 186, 88, 216, 484, 488-489, 491,499, 513, 524—525; Vol. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 847, 1014, 1042, 1127, 1129—1130, 2516-2521, 2691
Coroner, Vol. I 80, 253, 300; Vol. II 782, 788, 790. 1009, 1012, 1015, 1073, 1101; Trans. 2516
County attorney, Vol. I 216, 484, 489, 499—500, 525; Vol. II 782,788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 830—831, 844,901, 1069, 1130—1132, 1780, 1781, 1784, 1787, 2516—2521
County commissioners
appointments to fill vacancies, Vol. I 80—81,300, 385-386, 491-492, 506
assessment of property, Trans. 1380—1382, 1386, 1390, 1392, 1393, 1396, 1398, 1400, 1402, 1406, 1407, 1501, 1554
consolidation of county offices, Vol. I 80—81. 216, 301; Vol. II 782,, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521
election. Vol. I 102—104. 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 849, 2516, 2518, 2519, 2521.2552, 2557, 2560
open meetings, Trans. 1652, 1653, 2491, 2493, 2499; See also CITIZEN PARTICIPATION IN GOVERN MENTAL PROCESSES
Public administrator, Vol. I 80, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516
Sheriff, Vol. 180, 216, 253, 300: Vol. II 782., 788., 790., 1009., 1012, 1015, 1073, 1101; Trans. 2516, 2517
Superintendent of schools., Vol. I 80, 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2519, 252"
Surveyor, Vol I 80, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2520
Treasurer, Vol. I 80, 216, 253, 300; Vol. II 782, 788, 796. 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2520

COUNTY OFFICES, CONSOLIDATION OF, Vol. I 80—81, 216, 301; Vol. II 782, 788, 790, 1009,1012, 1015, 1073, 1101; Trans. 2516-2521

COUNTY SEATS, CHANGE OF, Vol. I 201, 215; Vol. II 782, 786, 788, 791. 1009, 1012, 1015, 1073, 1101; Trans. 2514—2516

COURT ADMINISTRATOR, Trans. 1021, 1042, 1073

COURT CASES CITED
Ashcraft vs. Montana Power Company, Vol. II 636; Trans. 1754, 1755, 1756, 1757, 2192
Bacus vs. Lake County, 138 M 69, 354 P2d 1056 (1960), Vol. II 793; Trans. 2522-2523
Benson vs. School District No. 1 of Silver Bow County, 136 M 77 (1959), Vol. II 689; Trans. 2328

COURT CASES CITED (Cont.)
Brown vs. Board of Education, 347 US 483 (1954), Vol. II 724: Trans. 1011, 1950
Citizens Committee for Hudson Valley vs. Volpe, Trans. 1261
Doyle vs. City of Dearborn, 121 NW.2d 473, 477 (1963), Trans. 281-282
Durfee vs. Harper, 22 M 354 (1899), Vol. I 362
Evans vs. Board of County Commissioners, Colo. 482 P2d 968, 969 (1971), Vol. II 638
Federal Power Commission vs. Hope Natural Gas Company, 320 us 591 (1944), Vol. II 680; Trans. 2389
Federal Power Commission vs. Natural Gas Pipeline Company, 315 US 575 (1942), Vol. II 680; Trans. 2389
42nd Legislative Assembly vs. Lennon, 156 M 416, 481 P2d 330, 333 (1971), Trans. 282. 283
Griswold vs. Connecticut, 381 US 459 (1965), Vol. II 632, 645; Trans. 1681
Harrington vs. Butte Miner Co., 48 M 550, 554, 139 I' 451 (1914), Vol. II 630; Trans. 1649, 1650
Herrin vs. Sieben, 46 M 226, 127 P 323 (1912), Trans. 1308
Hinsey vs. District Court, Trans. 1039
I,, re McDonald, 49 M 454, 143 P 947 (1914), Vol. II 639
Lemon vs. Kurtzman, 403 US 602 (1971), Vol. II 746
Missoula vs. Missoula County, 139 M 256, 362 P2d 539 (1961), Trans. 2522—2523
Nagle vs. Kelsey, 102 M 8, 55 P2d 685 (1936), Trans. 2178
National Labor Relations Board vs. General Motors Corporation, 373 US 734 (1963), Vol. II 696
Platb vs. Hi-Ball Contractors, Inc., 136 M 263, 362 P2d 1021 (1961), Vol. II 793; Trans. 2522-2523
Pointer vs. Texas, Trans. 1773, 1775
Power vs. Texas, Trans. 1844
Robinson vs. California, Trans. 1844
Scenic Hudson Preservation Conference vs. Federal Power Commission, Trans. 1260
Serrano vs. Priest, 96 Cal. Rptr. GO1 (1971), Vol. II 581, 589, 723, 724; Trans. 299, 1379, 1380, 1386, 1387—1388, 1390, 1399, 1400, 1402, 1549, 1550, 1552, 1556, 1948, 1961, 1962, 1964, 1965. 1967, 1968, 1969, 1972, 1977, 1978, 1979, 2051, 2153. 2151
Smythe vs. Ames, Trans. 2389
State ex rel Barney vs. Hawkins, 79 M 506, 257 P 411 (1927), Trans. 282
State ex rel City of Missoula vs. Holmes, 100 M 256, 47 P2d 624 (1935), Vol. II 793
State ex rel Kern vs. Arnold, 100 M 346, 49 P2d 976 (1935), Vol. II 793
State ex rel Olson vs. Public Service Commission, 131 M 272 (1957), Vol. II 680; Trans. 2389
State ex rel Public Service Commission vs. Brannon, 86 M 200, 208 (1929), Vol. II 740
State ex rel School District No. 29 vs. Cooney, 102 M 521 (1936), Vol. II 732: Trans. 2050
State vs. Brecht, 157 M 264,185 P2d 47, 28 St. Rep. 468, 473 (May 1971), Vol. II 632
State vs. Storm, 127 M 414, 265 P2d 971 (1954), Trans 1775
Thompson vs. Babcock, 147 M 46 (1966), Vol. II 750
Tobacco River Power Company vs. Public Service Commission, 109 M 521 (1940), Vol. II 680; Trans. 2389, 2391, 2392
Udall vs. Federal Power Commission, Trans. 1261
United States vs. White, Trans. 1852
Utah Power and Light Company vs. Public Service Commission, 107 Utah 155 (1944), Vol. II 680; Trans. 2389
Zderick vs. Silver Bow County, 154 M 118 (1969), Vol. II 689; Trans. 2328, 2331

COURT OF APPEALS, Vol. I 205—206; Trans. 1045, 1047, 1066
See also SUPREME COURT

COURTS
See also ADMINISTRATION OF JUSTICE; COURT CASES CITED; IMPEACHMENT OF OFFICERS; INITIATION OF PROCEEDINGS; JUDGES
court of appeals, Vol. I 205—206; Trans. 1045, 1047, 1066, See also Supreme court
District
assignment of judges for temporary service from one district or county to another, Vol. I 86, 488, 497, 511, 518; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1041, 1042, 1045—1046, 1073, 1080—1083, 1163
boundaries of districts, Vol. I 86, 88, 141, 163, 206, 488, 497, 511, 518—519; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080-1083, 1163
clerks of court, Vol. I 86, 88, 216, 484, 488—489, 491, 499, 513, 524—525; Vol. II 782. 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 847, 1014, 1042, 1127, 1129—1130, 2516—2521, 2691
judge pro tempore, Vol. I 492, 507
judicial districts, Vol. 186, 88, 141, 163, 206, 488, 497, 511, 518-519; Vol. II 914, 918, 922, 925, 1062, 1096: Trans. 1080—1083, 1110, 1163
jurisdiction, Vol. I 85—86, 88—89, 112, 141, 291, 487—488, 489, 492, 496—497, 501, 510—511, 516—518; Vol. II 913-914, 917—918, 922, 924-925, 1061—1062, 1096; Trans. 1016, 1019—1020, 1029-1030, 1036, 1041, 1049—1057, 1073—1080, 1141, 1781, 1784
number of districts; establishment, change, Vol. I 86, 88, 141, 206, 488, 497, 511, 518—519; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080—1083, 1163
number of judges, Vol. I 86, 141, 488, 511, 518; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080—1083, 1086
probate court system in district court, Vol. I 291; Trans. 1076
process extends to all parts of state, Vol. 185, 141; Vol. II 487—488, 496, 511, 517-518, 913, 918, 922, 925, 1061, 1096: Trans. 1049. 1073—1080
prosecution of criminal actions in district court, Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766
substitution of district court judge for supreme court justice, Vol. I 85, 141, 205, 487, 494—495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044—1049. 1066—1069. 1073. 1081. 1122
tribunal for impeachment of supreme court judge, Vol. I 112, See also IMPEACHMENT OF OFFICERS
vesting of judicial power in, Vol. I 84, 140, 486, 493, 510, 514; Vol. II 913, 917, 922, 925, 1061, 1096; Trans. 1019, 1035—1036, 1074, 1158
writs of error and appeal from district court decisions, Vol. I 488, 498
Domestic relations. Trans. 1076
Justices of the peace
absence from state forfeits judicial position, Vol. I 492, 507; Vol. II 915. 920. 926, 1063, 1097; Trans. 1120—1121
academy proposed, Trans. 1020
compensation, Vol. I 152, 225, 489, 491, 500; Vol. II 914, 918, 922., 925, 1062, 1096; Trans. 1020, 1029. 1083—1084, 1140—1147, 1157, 1158
disqualification, Vol. I 203, 512, 523; Trans. 1022,
election, Vol. I 489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1029, 1140—1147, 1156, 1158, 1159

COURTS (Cont.)
Justices of the peace (Cont.)
elimination from constitution, Trans. 1012, 1019, 1020, 1,028, 1029, 1031, 1036, 1074, 1140, 1142—1144, 1149, 1156—1161, 1401, 1402, 1482
facilities, Vol. I 489, 500; Vol. 11 914, 918, 922, 925, 1062, 1096; Trans. 1140—1147
fee system, Trans. ,029, 1140, 1157
impeachment, Vol. 1 112, 276-277, 378—379, 391—392, 397-398, 406—407; Vol. II 821, 863, 865, 869—870, 871—872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1025, 1029, 1123, 1126, 1587—1590, 2550
jurisdiction. Vol. I 88—89, 152, 489, 500—501; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1014, 1030, 1056—1057, 1076, 1140—1147, 1157, 1158
number of justices, Vol. I 152, 489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1014, 1029, 1140, 1157.11 59
political candidacy forfeits judicial position, Vol. I 492, 506—507, 512, 522; Vol. II 915, 920, 926, 1063, 1097; Trans. 1119—1121, 1148—1150
practice of law prohibited, V" I. 1491, 505; Trans. 1014, 1149
qualifications, Vol. I 152, 489, 500; Vol. II 914, 918, 922, 925, 1062, 1096: Trans. 1014. 1029. 1030. 1120 1 1 2 1 ; 1140—1147, 1157—1158
recall, Vol. I 91, 257-258, 277—278; Vol. II 816, 821-822, 824, 1020, 1024, 1025; Trans. 2720~2728, 2852-2853
removal and discipline, Vol. I 87-88, 141, 205, 206, 489-490, 501-503, 512—513, 518—519, 523-524; Vol. II 915—916, 920—921, 922—923, 926—927, 1063—1064, 1097; Trans. 1029, 1122—1127, See also disqualification; impeachment; recall
residence requirements, Vol. I 491; Trans. 505
term, Vol. I 152, 489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1083-1084, 1140, 1151—1154, 1157. 2183—2184
justices in office a" effective date of new constitution, Vol. I 88, 206; Vol. II 1082, 1108; Trans. 1115—1116, 3005, 3007-3008
vesting of judicial power in justice courts, Vol. I 486, 493, 514; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1012, 1019—1020, 1036, 1069, 1074—1075, 1158
Labor-management conciliation court, Vol. I 331
Law clerks, Trans. 1045, 1046, 1047, 1066
Municipal, Vol. I 88, 489, 501, 514; Trans. 1020, 1144
Police, Vol. 188, 489, 501, 514; Trans. 1020, 1054, 1055, 1056, 1077. 1121. 1144. 1784
Probate, Vol. I 291; Trans. 1076, See also PROBATE ATTORNEY
Small claims, Vol. I 500—501; Trans. 1014, 1020, 1030, 1057, 1074—1076, 1078, 1142—1144, 1158
Supreme court
administrative control over other courts, Vol. 184, 510, 515—516; Trans. 1020—1021, 1036—1044, 1071—1073
assignment of district judge for temporary service from one district or county to another, Vol. I 86, 511, 518; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1041, 1042, 1045—1046, 1073, 1080—1083, 1163
building, Trans. 1066—1067, 1493
clerks of court. Vol. I 85, 484. 487. 495. 513. 515—516, 524: Trans. 847, 1012; 1014, 1021, 1042, 1069, 1127—1129, 1163, 2690—2691, 2108, 2716, 2772—2779, 3005
commission an practice, Trans. 1025, 1095, 1124—1125
composition of court, Vol. I 85, 140—141, 486—487, 494-495, 510, 516; Vol. II 913, 917, 922, 924. 1061. 1096: Trans. 1044—1049. 1066—1071

COURTS (Cont.)
Supreme court (Cont.)
cost of, Trans. 1046, 1047, 1048
court administrator, Trans. 1021, 1042
court of record, Vol. I 84, 490, 503; Trans. 1050, 1077
jurisdiction, Vol. I X4-85, 88-89, 112, 140, 304, 486, 488, 493-494, 498, 510, 515—516, 518; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1012, 1015, 1020—1021, 1025, 1036—1044, 1071—1073, 1162—1163, 2177—2178
jury, Vol. I 494
law clerks, Trans. 1045, 1046, 1047, 1066
number of justices, Vol. 185, 140—141, 486, 494-495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044—1049, 1066—1071
opinions and decisions to be in writing, Vol. I 491, 505, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044, 1063—1066
per curiam decisions, Trans. 1064, 1065
process extends to all parts of state, Vol. II 511, 517, 518, 913, 917, 922, 924, 1061, 1096; Trans. 1049, 1073—1080, 1162—1163
rulemaking power, Vol. 184, 140, 510, 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071—1073, 1162—1163
substitution of district court judge for justice, Vol. I 85, 141, 205, 487, 494-495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044-1049, 1066—1069, 1073, 1081, 1122
supervisory control over other courts, Vol. I 84, 140, 493, 510, 515—516; Vol. II 913,917, 922, 924, 1061, 1096; Trans. 1036—1044, 1071—1073, 1127, 1162—1163
vesting of judicial power in, Vol. I 84, 140, 486, 493, 510, 514; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1019, 1035—1036, 1074, 1158
workload. Trans. 1046—1048, 1058, 1066—1067, 1141
Uniformity of laws relating to, Vol. I 490—491, 503

CRAWFORD, JOHN F. (INTERN), Vol. 170, 433; Trans. 3036

CREIGHTON, ISABEL (MAIL ROOM), Trans. 3036

CRIMES **AND CRIMINAL PROCEDURE**
See also FELONIES
Addiction to alcohol or drugs, decriminalization "f, Trans. 1843—1846
Administration of justice, Vol. I 88, 263, 318; Vol. II 622, 636-637, 959, 964, 971, 1039, 1088; Trans. 1020—1021, 1024, 1753—1760, 1764, 1788, 1792, 2192. 2196. 2625
Appeals
district court jurisdiction, Vol. I 487, 489, 496, 501, 511, 517, 518; Vol. II 913—914, 918, 922, 925, 1061, 1096; Trans. 1049-1057, 1073-1080, 1141, 1781. 1784
procedural rules promulgated by supreme court, Vol. I 84, 140, 510, 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071—1073, 1162—1163
supreme court jurisdiction, Vol. I 84—85, 140, 486, 488, 493-494, 498, 510, 515; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1036—1044, 1071-1073, 1162—1163, 1344
Appear and defend in person and by counsel, right to, Vol. II 623, 640—641, 960, 965, 968, 972, 1040, 1089: Trans. 1776
Arrest
electors at polling places, immunity "f, Vol. I 339:. Vol. II 845, 846, 847, 1045, 1091; Trans. 418, 419—422, 532—533

CRIMES AND CRIMINAL PROCEDURE (Cont.)
Arrest (Cont.)
legislators, immunity of, Vol. I 110, 275, 377, 386, 396, 402; Vol. II 862, 868, 874, 877, 881, 887, 1046, 1052, 1092, 1105; Trans. 594-595, 1573
warrant for, Vol. I 98; Vol. 11 621, 633, 958, 963, 967, 970, 1039, 1088; Trans. 1682—1684, 1751
Bail
all but capital offenses bailable, Vol. II 622, 639—640, 959, 964, 968, 971, 1040, 1080, 1088, 1108; Trans. 1771, 1780
excessive bail prohibited, Vol. II 622, 640, 959, 964, 968, 971, 1040, 1088; Trans. 1771
Complaint, criminal offenses prosecuted by, Vol. I 89; Vol. II 622,639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766
Concealed weapons, Vol. I 78—79; Vol. II 621, 634, 958, 963, 970, 1039, 1088; Trans. 1724, 1734, 1743, 1834
Counsel, right t", Vol. I 105; Vol. II 623, 640—641, 960, 965, 968, 972, 1040, 1089; Trans. 1052, 1751, 1776
Courts to be open to every person, Vol. I 88, 263, 318; Vol.11 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760
Cruel and unusual punishment, Vol. II 622, 640,969, 964, 968, 971, 1040, 1088; Trans. 1771, 1814, 1844, 1846
Death penalty, Vol. I 77, 128; Vol. II 643, 968, 1080, 1108; Trans. 1477, 1478, 1800—1822, 2221, 3235, 2360, 2510, 2609, 2736, 2739, See also CONSTITUTION, Ballot issues
Debt, imprisonment for, Vol. II 623, 642, 960, 965, 968, 972, 1041, 1089; Trans. 1792—1800
District court jurisdiction, Vol. 185-86, 88-89, 112, 141, 291, 487—488, 489, 492, 496—497, 501, 510—511, 516—518; Vol. II 913—914, 917—918, 922, 924-925, 1061—1062, 1096; Trans. 1016, 1019—1020, 1029—1030, 1036, 1041, 1049—1057, 1073—1080, 1141, 1781, 1784
Double jeopardy prohibited, Vol. 1200; Vol. II 623, 641, 960,965, 968, 972, 1040,1089; Trans. 1776—1779
Due process of law. Vol. 1 312. 328: Vol. II 622. 634, 635—636, 637, 959, 964, 971, 1039, 1088; Trans. 1738.1750, 1751, 1760, 2389
Fines
excessive fines prohibited, Vol. II 622, 640, 959, 964, 968, 971, 1040, 1088; Trans. 1771
remission by governor, Vol. I 183. 321, 438, 452—453, 460, 466; Vol. II 896. 902. 904—905. 909. 1059. 1095; Trans. 962—964
Grand jury, Vol. I 89; Vol. II 622. 639. 959. 964. 968. 971 1040, 1088; Trans. 1765—1766, 2499, 2501
Habeas corpus
court jurisdiction, Vol. I 85, 140, 486, 488, 493—494, 496—497, 510, 515—516; Vol. II 913, 917, 922. 924, 1061, 1096; Trans1036, 1037, 1071—1073, 1162—1163
privilege never to be suspended, Vol. II 622, 63X-639, 959, 964,911, 1040, 1088; Trans. 1764
Indictment, criminal offenses prosecuted by, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766
Information, criminal offenses prosecuted by, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766
Initiation of proceedings. Vol. 189: Vol. II 622. 639. 959. 964, 968, 971, 1040, 1088; Trans. 1764—1766
Jury trial
right t", Vol. I 89; Vol. II 623, 640—642, 965, 968, 972, 1041, 1089; Trans. 1751, 1780—1792
speedy public trial by impartial jury, Vol. II 623, 640—641, 960, 965, 972, 1040, 1089; Trans. 1776

CRIMES AND CRIMINAL PROCEDURE (Cont.)
Jury trial (Cont.)
unanimous verdict required, Vol. I 89; Vol. II 623, 641—642, 960, 968, 968,972, 1041, 1089; Trans. 1780—1786, 2353
waiver of, Vol. I 89; Vol. II 623, 641—642, 960, 965, 968, 972, 1041, 1089; Trans. 1780, 1786—1788
Justice court jurisdiction. Vol. I 88—89, 152, 489, 500—501; Vol. II 914, 918. 922, 925, 1062, 1096; Trans. 1014, 1030, 1056—1057, 1076, 1140—1147, 1157, 1158
Libel or slander, Vol. II 621, 630, 958, 963, 970, 1038, 1087; Trans. 1649—1651, 1675
Murder of law enforcement officer, capital punishment for, Trans. 1815, 1817—1818, ,820
Punishment
cruel and unusual punishments prohibited, Vol. II 622, 640, 959, 964,968, 971, 1040, 1088; Trans. 1771, 1814. 1844.1846
founded on principles of prevention and reformation, Vol. I 128, 337-338; Vol. II 623, 642-643, 960, 965, 968, 912, 1041, 1089; Trans. 392,395, 397, 1800, 1802, 1804, 1509, 1811, 1812, 1821, 1823, 2305
local government may not define and provide for, Vol. I 136, 254; Vol. II 797; Trans. 2528
Restoration of rights, Vol. I 128, 317, 337-338; Vol. II 623, 642—643. 960. 965. 968. 972. 1041, 1045, 1089; Trans. 678, 1800—1803,1823, 2305, 2507—2509
Right and justice to be administered without sale, denial or delay, Vol. 188, 263, 318; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760
Rights of accused, Vol. I 105; Vol.11 623, 640—641, 960, 965,968, 972, 1040, 1059; Trans. 1776
Rights of convicted
employment in licensed occupations, Vol. II 643; Trans. 1800, 1801, 1822—1825, 2507—2509
punishment founded on principles of prevention and reformation, Vol. I 128, 337—338; Vol. II 1089; Trans392395, 397,1800 972,802 1041, 1804, 1809, 1811, 1812, 1821, 1823, 2305
restoration of rights, Vol. I 128, 317, 337-338; Vol. II 623, 642-643, 960,965, 968, 972, 1041, 1089; Trans. 678, 1800—1803, 1823. 2305. 2507-2509
right to vote, hold office, Vol. I 191, 218, 317, 336, 337-338, 341; Vol. II 845, 846, 847, 1045, 1091; Trans. 392, 395, 397—398, 528—532, 678, 800,802, 1747, 1800—1803, 1846—1848
Rules of practice and procedure
promulgated by supreme court, Vol. I 84, 140, 510, 515-516; Vol. II 913. 917, 922, 924, 1061, 1096; Trans. 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071—1073, 1162—1163
provided for by legislature, Vol. I 206
Searches and seizures, Vol. 198; Vol. II 621, 633, 958, 963, 967, 970, 1039, 1088; Trans. 1682—1689, 1751, 1851, 1852
Self-incrimination, compulsion prohibited, Vol. I 200, 251; Vol. II 623, 641, 960, 965, 968, 972, 1040, 1089; Trans. 1751, 1776—1779
Sexual deviation, Trans. 1848—1850
Speedy public trial, right to, Vol. II 623, 640—641, 960, 965,972. 1040. 1089; Trans. 1776
Supreme court jurisdiction, Vol. I 84—85, 88—89, 112, 140, 304,486, 488, 493—494, 498, 510, 515—516, 518; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1012, 1015, 1020—1021, 1025, 1036—1044, 1071—1073, 1162—1163. 2177—2178
Venue, change of, Vol. II 623, 640—641, 960. 965, 972, 1040, 1089; Trans. 1776

CRIMES AND CRIMINAL PROCEDURE (Cont.)
Victims, compensation of, Vol. I 154; Trans. 1809
Witnesses
accused's right to meet face to face and have process to compel attendance, Vol. II 623, 640—641, 960, 965, 968, 972, 1040, 1089; Trans. 1776
detention of, Vol. II 622—623, 640, 959—960, 965, 968, 971—972, 1040, 1089; Trans. 1751, 1771—1776

CRIME VICTIMS' RIGHTS, Vol. I 154; Trans. 1809

CROMWELL, GARDNER (CONSULTANT), Vol. I 69; Trans. 323, 342, 2215, 2920, 2965, 3035

CROSS, C. LOUISE (GLENDIVE)
Appointed to escort committee, Trans. 9
Biography, Vol. I 40
Comments on goals of constitutional revision, Trans. 110
Committee assignment, Vol. 125
Delegate Proposal
no. 162 (environment), Vol. I 308—309
Nominated Convention Secretary, Trans. 62
Remarks by, on
ballot, constitution, Trans. 2893
constitutional revision (Article XIV)
submission, Trans. 520
declaration of rights (Article II)
assembly, freedom of, Trans. 1649
militia, civilian control of, Trans. 1831
right to bear arms, Trans. 1727—1728
trial by jury, Trans. 1790—1791
departments and institutions (Article XII)
institutions and assistance, Trans. 2288
labor. department of, Trans. 2313
public utilities
consumer protection, Trans. 2398
public service commission, Trans. 2378
education and public lands (Article X)
boards of education, Trans. 2585
public land trust, Trans. 2144
state university funds, accounting and audit, Trans. 2585
environment and natural resources (Article IX) — majority report introduction, Trans. 1199—1200
environment, protection and improvement of, Trans. 1212, 1251—1252, *1255*, 1269, *2211*, 2212, *2454*
reclamation, Trans. 1276—1277, 1282—1283, *1293*, *X358-1359*
waler rights, Trans. 1320, 1326
executive (Article VI)
officers, Trans. 863
general government (Article III)
gambling, Trans. 2744
initiative, Trans. 2704
recall, Trans. 2725
legislature (Article V)
organization and procedure, Trans. 606
sessions, Trans. 822
size, Trans. 822
local government (Article XI)
self-government charters, Trans. 2527
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1462, 2704
sales tax, Trans. 1549

CRUEL AND UNUSUAL PUNISHMENT, Vol. II 622,640, *959*, *964,968*, *971*, 1040, 1088; *Trans.* 1771, 1814, 1844, 1846
See also DEATH PENALTY

CULTURAL RESOURCES, Vol. I 75, 193, 240; Vol. II 550, *553*, *558*, 931—932, *933-934*, 939—940, 1068, 1099; Trans. 1199, 1351—1352
See also INDIANS, Education, preservation of cultural integrity

CUMULATIVE VOTING, Vol. II 666, 668—669, 710; Trans. *225X-2263*, *2398*

CURE, BOB (PAGE), Trans. 284

CURTIS, CARL (UNITED STATES SENATOR, NEBRASKA), Trans. 3353

DAHOOD, WADE JOSEPH (ANACONDA)
Biography, Vol. I 40
Comments on goals of constitutional revision. Trans. 110—111
Committee assignment, Vol. I 25
Nomination of Dorothy Eck as Western District Vice President, Trans. 55
Remarks by, on
ballot, constitution, Trans. 1816, 2899—2900, 2908, 2985
boundaries, state, Trans. 2761
constitutional revision (Article XIV)
amendment by legislature, Trans. 503
declaration of rights (Article II) — majority report introduction, Trans. 1634—1635
assembly, freedom of, Trans. 1648, 2478—2480
convicts, rights of, Trans. 2507—2509
death penalty, Trans. 1805, 1807, 1811
debt, imprisonment for, Trans. 1795—1798
detention of witnesses, Trans. 1772—1774, 2506
eminent domain, Trans. 1826—1828
inalienable rights, environment, Trans. 1637—1638
individual dignity, Trans. 1643—1645
justice, administration of, Trans. 1755—1758
militia, civilian control of, Trans. 1830—1831
no-fault insurance, Trans. 2625
participation, right of, Trans. 1652—1653, 1655—1657, 1661, 1663—1664, 1667—1668
persons not adults, rights of, Trans. 1751—1752
proceedings, initiation of, Trans. 1765—1766
restoration of rights, Trans. 2305—2306, 2597
right to bear arms, Trans. 1730—1731, 1734, 1739
right to know, Trans. 1673—1675, 1678—1680, 2482—2486, *2489*, 2494—2497, 2499—2500
right to life, Trans. 1640
right to privacy, Trans. 1682, 1852—1853
searches and seizures, Trans. 1686—1688
self-incrimination and double jeopardy, Trans. 1777—1779
speech, expression and press, freedom of, Trans. 1649—1651
state subject to suit, Trans. 1763—1764
trial by jury, Trans. 1782—1783, 1785, 1788—1790
departments and institutions (Article XII)
labor, workmen's compensation, Trans. 1755—1758
education and public lands (Article X)
board of land commissioners, Trans. 1992, 1999
boards of education, Trans. 2070, 2114
non-discrimination in education, Trans. 2041, 2045
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1256—1258, 1260—1263, 1267—1269
reclamation, Trans. *1277*, 1292, *1354*
executive (Article VI)
officers, Trans. 852—853
pardons, Trans. 963
qualifications, Trans. 888, 983
general government (Article HI,
gambling, Trans. 2733—2734, 2985
initiative, Trans. 2705, 2707, 2711—2712, 2716
separation of powers, Trans. 2690—2691

DAHOOD, WADE JOSEPH (Cont.)
Remarks by, on (Cont.)
general provisions (Article XIII)
non-municipal corporations. retrospective laws, Trans. 2266—2267
peoples advocate, Trans. 830
judiciary (Article VII)
campaign expenses, Trans. 1165—1166, 2201—2203
clerks of court. Trans. 2690—2691
justices of the peace, **Trans.** 1142—1143, 1157
selection, Trans. 1095
supreme court organization, Trans. 1045—1048, 1067
terms and pay, Trans. 1116
legislature (Article V)
sessions, **Trans.** 814, 819-821, 825—826
size, Trans. X7-768, 781. 819, 821, 825—826
revenue and finance **(Article** VIII)
highway revenue non-diversion, Trans. 2705, 2707, 2711-2712, 2716. 2785
suffrage and elections (Article IV)
eligibility for public office, Trans. 530
poll-booth registration, Trans. 406—407, 434-435, 441—446
qualified elector, Trans. 397

DALY, GENE (ASSOCIATE JUSTICE), Trans. 2

DARLINGTON, HOLLY (INTERN), Vol. I 70

DARROW, GEORGE, Trans. 1214, 1217, 1224

DAVENPORT, JOHN, Trans. 2355

DAVIS, CARL M. (DILLON)
Biography, Vol. I 40
Committee assignment, Vol. I 25
Delegate Proposals
no. 68 (public school funds), Vol. I 169—170
no. 69 (prosecuting attorneys), Vol. I 171
no. 127 (water rights), Vol. I 255
no. 135 (public lands), Vol. I 266—267
Invocation, Trans. 708
Nomination of Cedor Aronow as Temporary **President of Convention, Trans. 7**
Remarks by, on
ballot, constitution, Trans. 2869, 2891, 2894, 2912, 2914, 2948, 2951, 2978
compact with united states (Article I), Trans. 2567—2569
constitutional revision (Article XIV)
constitutional preparatory commission, Trans. 464
declaration of rights (Article II)
assembly, freedom of, Trans. 2480
convicts, rights of, Trans. 529—531
death penalty, Trans. 1809—1810
debt, imprisonment for, Trans. 1795
detention of witnesses, Trans. 1774—1775
eminent domain, Trans. 1826—1827
Participation, right of, Trans. 1652—1653, 1668
right to bear arms, Trans. 1729—1730
right to know, Trans. 1677, 1680, 2485, 2488, 2491-2492, 2495
searches and seizures, Trans. 1686
speech, expression and press, freedom of, **Trans.** 1650
trial by jury, Trans. 1781, 1784, 1789
departments and institutions (Article XII)
agriculture, working hours, Trans. 2602
labor
collective bargaining, Trans. 2339
working hours, Trans. 2321, 2324, 2370, 2602
public utilities
districts, Trans. 2407, 2611
public service commission, Trans. 2378—2379

DAVIS, **CARL** M (Cont.)
Remarks by, on (Cont.)
education and public lands (Article X)
board of land commissioners, Trans. 1992, 1997—1998, 2002
boards of education, Trans. 2086, 2089, 2098, 2102—2104, 2121—2122, 2127, 2129, 2131, 2133-2136, 2588—2589
commissioner of higher education, Trans. 2098, 2102—2104
educational goals and duties, Trans. 1962, 1967—1968, 1979—1980, 1982—1983
libraries, Trans. 1968
non-discrimination in education, Trans. 2032, 2045
public land trust
access, Trans. 2145-2146, 2148
mineral rights. Trans. 2150
public school fund. Trans. 1539—1540
school district trustees, Trans. 2048
state university funds
accounting and audit, Trans. 2588—2589
inviolate. Trans. 2142
environment and natural resources (Article IX)
reclamation, Trans. 1294—1295, 1358—1359
water rights, Trans. 1302, 1309, 1310, 1X5-1316, 1320—1323, 1326—1327, 1329, 1333—1334, 1348
executive (Article "I)
compensation, Trans. 928
duties, Trans. 912
officers, Trans. 865, 872-873
qualifications, Trans. 8X5-886, 889, 890, 978—979, 985, 1695
succession, Trans. 968-969
general government (Article III)
gambling, Trans. 2736-2737, 2753, 2757, 2978
recall, Trans. 2725, 2727
judiciary (Article VII)
campaign expenses, Trans. 1163
district court jurisdiction, Trans. 1078—1079
forfeiture of judicial position, Trans. 1149
judicial districts, Trans. 1083
justices of the peace, Trans. 1158
probate attorney, Trans. 1133
removal and discipline, Trans. 1126
selection, Trans. 1092—1094, 1096
supreme court
jurisdiction, Trans. 1041
organization, Trans. 1045—1046
terms of office, Trans. ,152
legislature (Article V)
bills, Trans. 648-649, 652
disqualification, Trans. 596, 1575—1577
districting and apportionment, Trans. 684, 736—737
impeachment, Trans. 678—679
organization and procedure, Trans. 623
parliamentary form of government, **Trans.** 752
qualifications, Trans. 565, 804—805
sessions, Trans. 822
size, **Trans.** 762—765, 768, 779—780, 782—783, 822, 1595—1597, 1600—1601, 1605
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1433—1434, 1447—1448, 1454, 1459—1460, 1476—1478
investment of public funds, Trans. 1527—1528, 1539—1540
property tax
administration, Trans. 1404, 1405, 1408
exemptions, Trans. 1413, 1419, 1421. 1425
state debt, **Trans.** 1501
suffrage and elections (Article IV)
absentee voting, Trans. 431
elections, Trans. 451
eligibility for public office, **Trans.** 529-531

DAVIS. CARL RI (Cont.)
Remarks by, on (Cont.)
suffrage and elections (Cont.1
privilege from arrest, Trans. 420
qualified elector, Trans. 398
Seconds nomination of Bruce Brown as Eastern District Vice President, Trans. 52

DAVIS, STEVE (PAGE), Trans. 305

DEATH PENALTY, Vol. I 77, 128; Vol. II 643, 968, 1080, 1108; Trans. 1477, 1478, 1800—1822, 2221, 2235, 2360, 9510, 2609, 2736, 2739
Alternative issue on constitution ballot. Trans. 1477, 1478, 1805, 1807, 1808, 1809, 1810, 1812, 1814—1822, 2221, 2235, 2510, 2609, 2736, 2739, 2865, 2867, 2872, 2873, 2877—2883, 2890—2892, 2897, 2903, 2913, 2914, 2949, 2951, 2952, 2955, 2969, 2971, 2972, 2984, 2987—2989, 2993, 2994, 2996, 2997, 3001

DEBT, IMPRISONMENT FOR, Vol. II 623, 642, 960, 965, 968, 972, 1041, 1089; Trans. 1792—1800

DEBT LIMITATIONS
See also BUDGET
Balanced budget, Vol. I 307; Vol. II 582, 586,595, 946, 949, 950, 952, 1066, 1098; Trans. 1376, 1490, 1493, 1494, 1508—1509, 2135—2136, 2157, 2707
Interest rate limited to 12 percent, Vol. I 165
Local government, Vol. II 583, 586, 595,946, 949, 950, 952, 1066, 1098; Trans. 1492, 1509—1516, 2513, 2515, 2529, 2549
state, Vol. II 583, 585—586, 594,946, 948,950, 952, 1066, 1080, 1098, 1107; Trans. 1376, 1490—1508

DECEDENTS' ESTATES
Descent of, Vol. II 623—624, 644,960, 966,968, 972, 1041, 1089; Trans. 1828—1829
Escheated to state, Vol. II 718, 725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1989
Probate, Vol. 1291, 299, 517; Trans. 1132—1138, 1146, 1147, 1161—1162

DECKER COAL COMPANY, Trans. 1524

DECLARATION OF RIGHTS
See ARTICLE II
Procedural or substantive rights created for first time prospective, not retroactive, Vol. II 1082, 1108; Trans. 3005, 3007—3008
Unenumerated rights not denied. impaired or disparaged, Vol. II 624, 645, 961, 966, 968, 973, 1042, 1089; Trans. 1832

DELANEY, DOUGLAS (GRASS RANGE)
Biography, Vol. I 41
Committee assignment, Vol. I 25
Remarks by, on
declaration of rights (Article II)
death penalty, Trans. 1811
departments and institutions (Article XII)
agriculture, department of, Trans. 2216
environment and natural resources (Article IX)
reclamation, Trans. 1278, 1290, 1293
judiciary (Article VII)
terms and pay, Trans. 2183—2184

DELANEY, DOUGLAS (Cont.,
Remarks by, on (Cont.)
legislature (Article V)
districting and apportionment, Trans. 744
revenue and finance (Article VIII)
property tax administration. Trans. 1393—1394

DELEGATE DISTRICTS
See DELEGATES, Delegate districts

DELEGATEPROPOSALS
No. I — Environmental quality (Berthelson)
committee consideration
bill of rights, Vol. II 647
natural resources and agriculture, Vol. II 564
text, Vol. I 75
No. 2 -Water rights (Berth&on)
committee consideration
natural resources and agriculture, Vol. II 564
references to in debate, Trans. 455, 1303, 1306
text. Vol. I 76
No. 3 — Death penalty (Cate, et al)
committee consideration
bill of rights, Vol. II 643, 647
reference to in debate, Trans. 1801
text, Vol. I 77
No. 4 -Right to bear arms (Berth&on)
committee consideration
bill of rights, Vol. II 634, 647
references to in debate, Trans. 1725, 1739, 1740
text, Vol. I 78—79
No. 5 — Election, county officers (Payne)
committee consideration
local government, Vol. II 803
text, Vol. I 80—81
No. 6 — Local charters (Payne,
committee consideration
local government, Vol. II 803
reference to in debate, Trans. 1199
text, Vol. I 82—83
No. 7 — Judicial article (Berth&on, et al)
committee consideration
judiciary, Vol. I 531
text, Vol. I 84—90
No. 8 — Recall of public officers (Martin, et al)
committee consideration
general government, Vol. II 827
text, Vol. I 91
No. 9 — Local government districts (Arness)
committee consideration
local government, Vol. II 780, 803
reference to in debate, Trans. 2512
text, Vol. I 92-93
No. IO — Equal rights (Blend)
committee consideration
bill of rights, Vol. II 628, 647
reference to in debate, Trans. 1642
text, Vol. I 94
No. II — Public school funding (Blend)
committee consideration
education, Vol. II 758
revenue and finance, Vol. II 605
text, Vol. I 95
No. I2 — Environmental protection (Cate)
committee consideration
bill of rights, Vol. II 647
natural resources., Vol. II 564
references to in debate, Trans. 1200—1201, 1216
text, Vol. I 96
No. 13 -Age of majority (Campbell, et al)
committee consideration
bill of rights, Vol. II 635, 647
reference to in debate. Trans. 337
text, Vol. I 97

DELEGATE PROPOSALS (Cont.1
No. 14 — Privacy in communications (Campbell, et al)
committee consideration
bill of rights, Vol. II 633. 647
text, Vol. I 98
No. 15 -Public and Indian lands (Scanlin, et al)
committee consideration
bill of rights, Vol. II 647, 840
text, Vol. I 99—100
No. 16 — Earmarking of revenues (Blend)
committee consideration
revenue and finance, Vol. II 605
text, Vol. I 101
No. 17 — Election of county commissioners (Jacobsen)
committee consideration
local government, Vol. II 803
text, Vol. I 102—104
No. 18 -Right to counsel (Cate, et al)
committee consideration
bill of rights, Vol. II 647
text, Vol. I 105
No. 19 — Legislature, meeting date (Romney)
committee consideration
legislative, Vol. I 417
text, Vol. I 106
No. 20 -Environmental quality (McNeil)
committee consideration
bill of rights, Vol. II 647
natural resources, Vol. II 564
reference to in debate, Trans. 1234
text, Vol. I 107
No. 21 — Environmental quality (McNeil)
committee consideration
bill of rights, Vol. II 647
natural resources, Vol. II 564
reference to in debate, Trans. 1234
text, Vol. I 108
No. 22 — Unicameral legislature (Reichert, et al)
committee consideration
legislative, Vol. I 417
text, Vol. I 109—113
No. 23 — Welfare funding (Blend)
committee consideration
local government, Vol. II 803
revenue and finance, Vol. II 605
text, Vol. I 114
No. 24 -Lotteries (Choate)
committee consideration
general government, Vol. II 827
text, Vol. I 115
No. 25 -Veto override (Blaylock, et al)
committee consideration
executive, Vol. I 468
legislative, Vol. I 417
text, Vol. I 116—117
No. 28 — State boundaries (Brown)
committee consideration
general government, Vol. II 821
text. Vol. I 118
No. 27 -Constitutional amendment (Mahoney)
committee consideration
general government, Vol. I 366
text, Vol. I 119—120
No. 28 — Gambling (Belcher)
committee consideration
general government, Vol. II 827
text, Vol. I 121
No. 29 -School elections (Erdmann, et al)
committee consideration
education, Vol. II 758
general government, Vol. I 345
text, Vol. I 122—123

DELEGATE PROPOSALS (Cont.)
No. 30 — Sovereign immunity (Cate, et al)
committee consideration
bill of rights, Vol. II 638, 647
judiciary, Vol. I 531
text, Vol. I 124
No. 31 — Oath of office (Harlow)
committee consideration
general government, Vol. II 828
text, Vol. I 125
No. 32 — Discrimination (Robinson. et al)
committee consideration
bill of rights, Vol. II 628, 647
references to in debate. Trans. 1642, 1644
text, Vol. I 126
No. 33 -Individual rights (Campbell, et al)
committee consideration
bill of rights, Vol. II 632, 647
text, Vol. I 127
No. 34 -Restoration of rights (Campbell, et al)
committee consideration
bill of rights, Vol. II 647
judiciary, Vol. I 531
text, Vol. I 128
No. 35 — Preferential taxation (Robinson)
committee consideration
revenue and finance, Vol. II 605
text, Val. I 129
No. 38 — Seat of government (Belcher, et al)
committee consideration
general government, Vol. II 828
text, Vol. I 130—131
No. 37 — Earmarking of revenues (Foster, et al)
committee consideration
revenue and finance, Vol. II 605
text, Vol. I 132
No. 38 — Citizen participation (Foster, et al)
committee consideration
bill of rights, Vol. II 631, 648
judiciary, Vol. I 531
reference to in debate, Trans. 1651
text, Vol. I 133
No. 39 — Wage commission (Cate, et al)
committee consideration
executive, Vol. I 447, 468
text, Vol. I 134
No. 40 — Local government article (Felt, et al)
committee consideration
local government, Vol. I 241
text, Vol. I 135—136
No. 41 — Aid to charities, non-public schools (Leuthold)
committee consideration
education, Vol. II 758
text, Vol. I 137
No. 42 — Initiative, referendum and recall (Blend)
committee consideration
general government, Vol. II 827
text, Vol. I 138
No. 43 — Educational opportunity (Champoux, et al)
committee consideration
education, Vol. II 158
text, Vol. I 139
No. 44 — Judicial article (Loendorf)
committee consideration
judiciary, Vol. I 531
text, Vol. I 140—141
No. 45 — Right to basic necessities (Monroe, et al)
committee consideration
bill of rights, Vol. II 627, 648
public health. Vol. II 700
text, Vol. I 142
No. 46 — Public school financing (McKeon)
committee consideration
education, Vol. II 758
revenue and finance. Vol. II 605
text, Vol. I 143

DELEGATE PROPOSALS (Cont.)
No. 47 — Elections (Cain)
committee consideration
general government, Vol. I 345
text, Vol. I 144
No. 48 -Water rights (Etchart)
committee consideration
natural resources, Vol. II 564
references to in debate, Trans. 1346. 1347
text, Vol. I 145
No. 49 -Public school fund revenue (Blaylock, et al)
committee consideration
education, Vol. II 758
text, Vol. I 146—147
No. 50 -Equal protection (Campbell)
committee consideration
bill of rights, Vol. II 628, 648
reference to in debate, Trans. 1642
text. Vol. I 148
No. 51 — Discrimination (Campbell)
committee consideration
bill of rights, Vol. II 628, 648
reference to in debate, Trans. 1642
text, Vol. I 149
No. 52 — Constitutional convention delegates (Warden)
committee consideration
general government, Vol. I 366
text, Vol. I 150—151
No. 53 — Election, justices of peace (Ask, et al)
committee consideration
judiciary, Vol. I 531
text, Vol. I 152
No. 54 — Location of county offices (Rollins)
committee consideration
local government, Vol. II 803
text, Vol. I 153
No. 55 -Crime victims compensation (Cate)
committee consideration
bill of rights, Vol. II 648
text, Vol. I 154
No. 56 — **Local government article (Erdmann)**
committee consideration
local government, Vol. II 803
tent, Vol. I 155—156
No. 57 — Citizen access (Eck, et al)
committee consideration
bill of rights, Vol. II 631, 648
reference to in debate, Trans. 1670
text, Vol. I 157
No. 58 — Constitutional convention (Harbaugh, et al)
committee consideration
general government, Vol. I 366
text, Vol. I 158
No. 59 -Preamble (Campbell and Robinson)
committee consideration
bill of rights, Vol. II 625, 648
text, Vol. I 159
No. 60 — Abolition of counties (Hanson, R., et al)
committee consideration
local government, Vol. II 803
text, Vol. I 160
No. 61 -Equal protection (Champoux, et al)
committee consideration
bill of rights, Vol. II 628, 648
reference to in debate, Trans. 1642
text, Vol. I 161
No. 62 — Reapportionment (Payne, et al)
committee consideration
general government, Vol. II 830
text, Vol. I 162-163
No. 63 — Financial disclosure (Vermillion, et al)
committee consideration
legislative, Vol. I 417
text, Vol. I 164

DELEGATE PROPOSALS (Cant.)
No. 64 **-Interest rate (Cate, et al)**
committee consideration
general government, Vol. II 828
text, Vol. I 165
No. 65 -Rights of minors (Monroe, et al)
committee consideration
bill of rights, Vol. II 636, 648
reference to in debate, Trans. 1750
text, Vol. I 166
No. 66 -Excise taxes (Schiltz, et al)
committee consideration
revenue and finance, Vol. II 605
text, Vol. I 167
No. 67 **-Preamble (Foster, et al)**
committee consideration
bill of rights, Vol. I, 625, 648
text, Vol. I 168
No. 68 — Public school funds (Davis)
committee consideration
education, Vol. II 758
reference to in debate, Trans. 1967
text, Vol. I 169—170
No. 69 -Prosecuting attorneys (Davis, et al)
committee consideration
judiciary, Vol. I 531
text, Vol. I 171
No. 70 -Consumer protection (Speer, et al)
committee consideration
public health, Vol. II 700
text, Vol. I 172
No. 71 -Merit system (Speer, et al)
committee consideration
public health, Vol. II 700
text. Vol. I 173
No. 72 — Taxation, mines and mining claims (Ask, et al)
committee consideration
revenue and finance, Vol. II 605
text, Vol. I 174
No. 73 — Collective bargaining (Heliker, et al)
committee consideration
public health, Vol. II 700
text, Vol. I 175
No. 74 — Public school fund (Conover, et al)
committee consideration
education, Vol. II 758
text, Vol. I 176
No. 75 — Eminent domain (Campbell, et al)
committee consideration
bill of rights, Vol. II 644, 700
reference to in debate, Trans. ,825
text, Vol. I 177
No. 76 — Public utilities (Heliker, et al)
committee consideration
public health, Vol. II 684, 700
text, Vol. I 178—179
No. 77 — Executive article (Roeder)
committee consideration
executive. Vol. I 468
references to in debate, Trans. 935, 937
text, Vol. I 180—184
No. 78 -Right to work (Studer, et al)
committee consideration
public health, Vol. II 700
reference to in debate, Trans. 2566
text, Vol. I 185
withdrawal of sponsorship, Trans. 321—322
No. 79 — Governmental powers (McNeil)
committee consideration
general government, Vol. II 818
local government, Vol. II 803
revenue and finance, Vol. II 605
text, Vol. I 186

DELEGATE PROPOSALS (Cont.)
No. SO — Highway fees and taxes (Toole, et a,)
committee consideration
revenue and finance, Vol. II 605
tent. Vol. I 187—188
No. 81 — Religious liberty (Harrington, et al)
committee consideration
bill of rights, Vol. II 648
reference to in debate, Trans. 302
text, Vol. I 189—190
No. 82 -Elective process (Brown)
committee consideration
general government, Vol. I 345
text, Vol. I 191—192
No. 83 -Historic sites (Jacobsen, et al)
committee consideration
natural resources, Vol. II 564
text, Vol. I 193—194
No. 84 -State boundaries (Brown)
committee consideration
general government, Vol. II 827
text, Vol. I 195
No. 85 -University system (Rollins)
committee consideration
education, Vol. II 758
text, Vol. I 196—197
No. 86 — Preamble (Rollins)
committee consideration
bill of rights, Vol. II 625, 648
text, Vol. I 198
No. 87 — Rights of minors (Foster, et al)
committee consideration
bill of rights, Vol. II 648
reference to in debate, Trans. 1750
text, Vol. I 199
No. 88 — Self-incrimination (Cate)
committee consideration
bill of rights, Vol. II 636, 641, 648
text, Vol. I 200
No. 89 — County boundaries; county seats (Anderson, o., et al)
committee consideration
local government, Vol. II 804
text, Vol. I 201—202
No. SO — Disqualification of judges (Brazier)
committee consideration
judiciary, Vol. I 523, 531
text, Vol. I 203
No. 91 -Educational opportunity (Cain, et al)
committee consideration
education, Vol. II 758
text, Vol. I 204
No. 92 -Judicial powers (Arness, et al)
committee consideration
judiciary, Vol. I 531
text, Vol. I 205—206
No. 93 — Collective bargaining (Siderius, et al)
committee consideration
hill of rights, Vol. II 627, 648
natural resources, Vol. II 564
text, Vol. I 207—208
No. 94 — Constitutional amendment (Habedank)
committee consideration
general government, Vol. I 366
text, Vol. I 209—211
No. 95 — Canvassing boards (Erdmann, et al)
committee consideration
general government, Vol. I 345
text, Vol. I 212
No. 96 — Water rights (Erdmann, et al)
committee consideration
natural resources, Vol. II 565
text, Vol. I 213—214
NO. 97 — Local government article (Ask)
committee consideration
local government, Vol. II 804
text, Vol. I 215—217

DELEGATE PROPOSALS (Cont.)
No. 98 — Rights of prisoners (Kelleher)
committee consideration
bill of rights, Vol. II 643, 648
reference to in debate, Trans. 1800
text, Vol. I 218
No. 99 — City manager government (Kelleher)
committee consideration
local government, Vol. II 804
text, Vol. I 219
No. 100 -Workweek (Kelleher)
committee consideration'
bill of rights, Vol. II 648
text, Vol. I 220
No. 101 Campaign spending (Kelleher)
committee consideration
legislative, Vol. I 417
text; Vol. I 221
No. 102 — Support of private colleges (Kelleher)
committee consideration
education, Vol. II 758
text, Vol. I 222
No. 103 — Right to be born, to die (Kelleher)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 223
No. 104 — Mineral rights (Kelleher)
committee consideration
natural resources, Vol. II 565
text, Vol. I 224
No. 105 — Equal pay (Kelleher)
committee consideration
public health, Vol. II 700
reference to in debate, Trans. 2350
text, Vol. I 225
No. 106 — Constitutional amendment (Arbanas, et al)
committee consideration
general government, Vol. I 366
text, Vol. I 226—227
No. 107 -Executive election (Arbanas)
committee consideration
executive, Vol. I 468
text, Vol. I 228—233
No. 108 — County government (Eck, et al)
committee consideration
local government, Vol. II 804
reference to in debate, Trans. 1638
text, Vol. I 234
No. 109 -Political contributions (Kelleher)
committee consideration
revenue and finance, Vol. II 605
text, Vol. I 235
No. 110 — Succession in office (Brazier)
committee consideration
executive, Vol. I 468
local government, Vol. II 804
text, Vol. I 236
No. 111 -Gambling (Harbaugh, et al)
committee consideration
general government, Vol. II 327
text, Vol. I 237
No. 112 — Wholesale liquor business (Jacobsen, et al)
committee consideration
general government, Vol. II 323
text, Vol. I 238
No. 113 — Teachers' salaries (Roeder)
committee consideration
education, Vol. II 758
text, Vol. I 239
No. 114 — Public sightliness (Bugbee, et al)
committee consideration
natural resources, Vol. II 565
text, Vol. I 240

DELEGATE PROPOSALS (Cont.)
No. 115 -Transition (Bugbee, et "I)
committee consideration
general government, Vol. II 829
text, Vol. I 241
No. 116 — Citizen responsibility (Ward, et al)
committee consideration
bill of rights, Vol. II 627, 649
reference to in debate, Trans. 1637
text, Vol. I 242-243
No. 117 — Department of Agriculture (Bates, et al)
committee consideration
natural resources, Vol. II 565
text, Vol. I 244
No. 118 -Preamble (Ward, et al)
committee consideration
bill of rights, Vol. II 625, 649
text, Vol. I 245
No. 119 -Earmarking of revenues (Aasheim, et al)
committee consideration
revenue and finance, Vol. II 605
text, Vol. I 246
No. 120 — Bingo games (Kamhoot, et al)
committee consideration
general government, Vol. II 828
reference to in debate, Trans. 2741
text, Vol. I 247
No. 121 -Public utility corporations (Harlow, et al)
committee consideration
public health, Vol. II 687, 700
reference to in debate, Trans. 2404
text, Vol. I 248
No. 122 — Salaries of public officers (Ask, et al)
committee consideration
local government, Vol. II 804
text, Vol. I 249
No. 123 — Legislative interim committees (Felt, et al)
committee consideration
legislative, Vol. I 417
text, Vol. I 250
No. 124 -Lie detector tests (Cate, et al)
committee consideration
bill of rights, Vol. II 633, 641, 649
text, Vol. I 251
No. 125 — Eminent domain, environmental consideration (Cat")
committee consideration
bill of rights, Vol. II 649
text, Vol. I 252
No. 126 -Local government article (Speer)
committee consideration
local government, Vol. II 804
text, Vol. I 253-254
No. 127 -Water rights (Davis, et al)
committee consideration
natural resources, Vol. II 565
reference to in debate, Trans. 1307
text, Vol. I 255
No. 128 — Board of Education (Robinson, et al)
committee consideration
education, Vol. II 758
text, Vol. I 256
No. 129 — Recall (Harlow)
committee consideration
general government, Vol. II 827
text, Vol. I 257—258
No. 130 -Public libraries (Robinson, et al)
committee consideration
education, Vol. II 758
general government, Vol. II 329
text, Vol. I 259
No. 131 — Polling place registration (Bugbee, et al)
committee consideration
general government, Vol. I 345
text, Vol. I 260

DELEGATE PROPOSALS (Cont.)
No. 132 — Environmental rights (Campbell, Foster, et al)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 261—262
No. 133 -Remedies of injured person (Campbell, et al)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 263
No. 134 -Property assessment (Arness, et al)
committee consideration
local government, Vol. II 804
text, Vol. I 264—265
No. 135 — Public lands (Davis, et al)
committee consideration
education, Vol. II 758
natural resources, Vol. II 565
text, Vol. I 266-267
No. 136 — Parliament (Kelleher, et al)
committee consideration
executive, Vol. I 468
legislative, Vol. I 417
reference to in debate, Trans. 698
text, Vol. I 268—270
No. 137 -Employee benefits (McKeon, et al)
committee consideration
judiciary, Vol. I 532
text, Vol. I 271
No. 138 — Minimum wage (McKeon, et al)
committee consideration
public health, Vol. II 700
reference to in debate, Trans. 363
text, Vol. I 272
No. 139 -State institutions (McKeon)
committee consideration
general government, Vol. II 829
reference to in debate, Trans. 2275
text, Vol. 1273
No. 140 — Legislative article (Bates, et al)
committee consideration
legislative, Vol. I 417
text, Vol. I 274—279
No. 141 — Legislative salaries (Bates, et al)
committee consideration
legislative, Vol. I 417
text, Vol. I 280—281
No. 142 -Boards of education (Tool")
committee consideration
education, Vol. II 758
text, Vol. I 282-233
No. 143 — Free public education (Tool")
committee consideration
education, Vol. II 758
text, Vol. I 284
No. 144 — Merit system (Loendorf)
committee consideration
public health, Vol. II 673, 700
text, Vol. I 285
No. 145 — Retirement systems (Loendorf)
committee consideration
judiciary, Vol. I 532
text, Vol. I 286
No. 146 — Board of Regents (Bugbee, et al)
committee consideration
education, Vol. II 758
text, Vol. I 287—288
No. 147 -Nominating convention delegates (Cate, et al)
committee consideration
general government, Vol. I 345
text, Vol. I 289
No. 148 — Full employment (McCarvel, et al)
committee consideration
public health, Vol. 11 700

DELEGATE PROPOSALS (Cont.)
No. 148 -Full employment (Cont.)
references to in debate, Trans. 363, 2295
text, Vol. I 290
No. 149 -Probate court system (McKeon)
committee consideration
judiciary, Vol. I 532
text, Vol. I 291
No. 150 -People's advocate (Kelleher, et a,)
committee consideration
legislative, Vol. I417
text, Vol. I 292—293
No. 151 — Rights of Indians (Monroe, et al)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 294
No. 152 -Military affairs (McKeon, et al)
committee consideration
executive, Vol. I 489
text, Vol. I 295—296
No. 153 -Institutional care (Holland, et al)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 297
No. 154 — Withdrawn
No. 155 — County probate administrator (Wilson, et al)
committee consideration
judiciary, Vol. 1 532
reference to in debate, Trans. 1133
text, Vol. I 299
No. 156 — Election of sheriffs (Melvin)
committee consideration
local government, Vol. II 804
text, Vol. I 300—301
No. 157 — Monopolies; liquor business (Johnson, et al)
committee consideration
general government, Vol. II 828
text, Vol. I 302
No. 158 — Conference committee reports (Romney)
committee consideration
legislative, Vol. I 417
text, Vol. I 303
No. 159 — Acts of parliament (Kelleher)
committee consideration
judiciary, Vol. I 532
text, Vol. I 304
No. 160 — Participation in political process (Monroe, et al)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 305
No. 161 -Taxation and finance (Felt. et al)
committee consideration
revenue and finance, Vol. II 600, 605
references to in debate, Trans. 1377, 1412
text, Vol. I 306—307
No. 162 — Environment (Cross, et al)
committee consideration
natural resources, Vol. II 565
references to in debate, Trans. 1200—1201, 1216
text, Vol. I 308—309
No. 163 -Rights of committed (Sullivan. et al)
committee consideration
bill of rights, Vol. II 849
judiciary, Vol. I 532
text, Vol. I 310
No. 164 -Aid to sectarian causes, non-public education (Harbaugh)
committee consideration
education, Vol. II 758
text, Vol. I 311
DELEGATE PROPOSALS (Cont.)
No. 165 — Equal protection; support of religious activities (Loendorf)
committee consideration
bill of rights, Vol. II 649
text. Vol. I 312—313
No. 166 — County government (Payne)
committee consideration
local government, Vol. II 804
text, Vol. I 314
No. 167 -Religious freedom (Monroe)
committee consideration
bill of rights, Vol. II 649
text, Vol. I 315—316
No. 168 — Rights of felons (Kelleher)
committee consideration
judiciary, Vol. I 532
text, Vol. I317
No. 169 -Access to courts (Kelleher)
committee consideration
judiciary, Vol. I 532
text, Vol. I 318
No. 170 — Executive department (Wilson, et al)
committee consideration
executive, Vol. I 469
text, Vol. I 319—323
No. 171 -Board of Regents (Burkhardt)
committee consideration
education, Vol. II 758
text, Vol. I 324
No. 172 — Office of ombudsman (Champoux, et al)
committee consideration
general government, Vol. II 829
text, Vol. I 325
No. 173 — Taxation, disabled veterans (Loendorf, et al)
committee consider&on
revenue and finance, Vol. II 605
text, Vol. I 326—327
No. 174 -Individual rights (Habedank)
committee consideration
judiciary, Vol. I 532
text. Vol. I 328
No. 175 — School lands (Harbaugh)
committee consideration
education, Vol. II 758
text, Vol. I 329
No. 176 — Mandatory vote (Kelleher)
committee consideration
judiciary, Vol. I 532
text, Vol. I 330
No. 177 — Labor-management conciliation court (McCarvel, et al)
committee consideration
public health, Vol. II 700
reference to in debate. Trans. 383
text, Vol. I 331
No. 178 — Elective process (McKeon)
committee consideration
general government, Vol. I 345
text, Vol. I 332

DELEGATES, CONVENTION
See also CONVENTION, OPEATION AND PROCEDURES; individual delegates' names
Absences, rules relating to, Vol. I 8, 10; Trans. 120—125, 130, 182, 190, 196
Biographies and photos of, Vol. I 31—64
Candidacy for elective office, Trans. 267, 281—283, 2426, 2428, 2615
Committee assignments
alphabetical list of, Vol. 1 24—28
list of, by committee, Vol. I 21—23
rules relating to, Vol. 1 I?; Trans. 152, 178
Compensation, Vol. I 3, 11; Trans. 136

DELEGATES, CONVENTION (Cont.)
Conflict of interest, Vol. I 10; Trans. 133—135, 136, 1262, 1725, 2384, 2429, 2606, 2687
Contemptuous behavior of, rule relating to, Vol. I 10; Trans. 131—133, 136, 155, 159
Delegate districts
list of delegates by, Vol. I 66-68
map of, Vol. I 65
Duties, Vol. I 1, 2
Election, Vol. I 1
Memento of convention (photograph and reprint of Charles Russell painting), Trans. 3020
Number, Vol. I,
Oath of office
administration of, Trans. 5
prescribed, "a,. I 1, 2
Preference vote an unicameral/bicameral issue, Trans. 3022-3025
Privilege from arrest, Vol. I2
Qualifications, Vol. I 1
Seating, Vol. I 10; Trans. 32, 44—45, 92, 128—129, 136, 3029
Signing of constitution document, Vol. II 1110—1113; Trans. 3041-3046
Vacancies, Vol. I 1, 8, 10, 11; Trans. 120—125, 135—136

DEPARTMENTS AND INSTITUTIONS
See ARTICLE XII

DEPARTMENTS OF STATE GOVERNMENT
See also specific departments; STATE AGENCIES
Agriculture department, Vol. 1244; Vol. II 550, 559—560, 936-938, 941. 1076, 1102; Trans. 1199, 1363—1366, 2308-2309, 2310, 2743
Appeals from administrative agencies, district court jurisdiction, Vol. I 85, 141, 511, 517, 550-551, 561, 562; Vol. II 914, 918, 925, 1061, 1096; Trans. 1049—1054, 1073, 1074, 1260
Appointment of officers, Vol. I 183, 230—231, 321,437, 449-450, 459; Vol. II 895, 900—901, 904, 908, 1057—1058, 1094; Trans. 868-869, 924, 944-947, 2309, 2313, 2345, 2376
nominations not confirmed by legislature, Vol. I 230, 437, 449-450, 459; Vol. II 895, 901, 904, 908, 1058, 1094; Trans. 947
Governor as supervisor of, Vol. I 183, 230, 437, 449—450, 459; Vol. II 895, 900, 904, 908, 1057—1058, 1094; Trans. 944—947
Heads of departments
removal from office, Vol. I 183, 230, 437, 449—450, 459; Vol. II 895, 900—901, 904, 908, 1057—1058, 1094; Trans. 868, 944, 946
reports to governor, Vol. I 229; Vol. II 897, 903, 905, 910, 1060, 1095; Trans. 973—974
Labor and industry department, Vol. I 220, 271, 272, 290, 331; Vol. II 670, 672, 978, 982, 985, 987, 1076, 1107; Trans. 2308—2315
Local government department proposed, Trans. 2526, 2521
Number of principal departments, Vol. I 182—183, 229-231, 321, 436-437, 448—449, 458—459; Vol. II 894-895, 900, 904, 907—908, 1057, 1094; Trans. 933-939, 1364, 2310, 2689
Single executive to head each department, Vol. I 183, 230,437, 449—450, 459; Vol. II 895, 900-901, 904, 908, 1057—1058, 1094; Trans. 849, 944
Temporary commissions, Vol. I 321, 437,448, 459; Vol. II 895, 900, 904, 908, 1057, 1094; Trans. 934

DEPOSITIONS OF WITNESSES, Vol. II 622-623, 640, 959-960, 965, 968, 971-972, 1040, 1089; Trans. 1771—1776, 2505—2506

DETENTION OF WITNESSES. Vol. II 622—623. 64". 959-960, 965, 968, 971-972, 1040, 1089; Trans. 1771—1776, 1781, 2505—2506

DIEHL, DOUG (PAGE), Trans. 305

DIGNITY
See INDIVIDUAL DIGNITY

DILLON'S RULE, Vol. II 792, 793; Trans. 2522-2524, 2530, 2534

DISABILITY OF GOVERNOR, Vol. I 181—182, 232-233, 322-323, 433, 439, 455-456, 461; Vol. I, 896—897, 902—903, 905, 909-910, 1059—1060, 1095; Trans. 842, 969—972, 1706, 1719

DISABLED PERSONS, PROVISION OF ECONOMIC ASSISTANCE AND SOCIAL AND REHABILITATIVE SERVICES, Vol. I 297, 310, 339; Vol. II 674, 675, 979, 983, 985, 988, 1076, 1102; Trans. 2270—2300, 2304-2308

DISASTERS
Continuity of government, Vol. I 278-279, 374; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Governor's authority to call militia forces, Vol. I 182, 229, 320. 438, 453-454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964—966
Importation of armed forces, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration. Vol. I 182. 320: Trans. 1830

DISCLOSURE OF INTEREST
See CONFLICTS OF INTEREST

DISCRIMINATION BECAUSE OF RACE, COLOR, SEX, CULTURE, SOCIAL ORIGIN OR CONDITION, OR POLITICAL OR RELIGIOUS IDEAS PROHIBITED, Vol. I 94, 105, 126, 127, 148, 149, 161, 305, 312-313; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 417, 1642—1646
Nan-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623

DISINCORPORATION OF LOCAL GOVERNMENT UNITS, Vol. I 135, 215, 253; Vol. II 782, 788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2516-2521

DISQUALIFICATION
Governor, Vol. I 182, 232,322, 323, 438—439, 454—455, 460—461; Vol. II 896-897, 902-903, 905, 909-910, 1059—1060, 1095; Trans. 966—973, 1718
Judges, Vol. 1203, 512. 523; Trans. 1015—1016. 1022. 1025. 1041, 1045—1046, 1083, 1121—1122, See also JUDGES, Forfeiture of judicial position; Removal and discipline

DISQUALIFICATION (Cont.)
Justices of the peace, Vol. 1203, 512, 523; Trans. 1022, 1121—1122
Legislators, Vol. I 275, 377,386, 396. 402—403; Vol. **II 862,** 868, 814, 877,881, 887, 1046—1047, 1053, 1092, 1105; Trans. 595—599, 1573—1582, 1617—1620

DISSOLUTION (PARLIAMENT), Vol. I 269; **Trans.** 749—759

DISTRIBUTION OF POWERS, Vol. I 186; Vol. **II** 815, **818, 1019, 1022, 1025, 1043, 1090; Trans.** 676, 698, 699, 704,851, 1124, 2377, 2378, 2383, 2523, 2689, 2690—2695
See also **BRANCHES OF GOVERNMENT**

DISTRICT ATTORNEYS, Vol. **I** 513, **525;** Trans. **1069,** 1130—1132
See also COUNTY **ATTORNEYS**

DISTRICT COURTS
See also JUDGES; JUDICIARY
Assignment of judges for temporary service from one district or county to another, Vol. I 86,488, 497,511, 518; **Vol. II 914, 918, 922,** 925, 1062, 1096; Trans. 1041, 1042, 1045—1046, 1073, 1080—1083, 1163
Boundaries of districts, Vol. I 86, **88,** 141, 163, 206,488, 497, 511, 518—519; Vol. **II 914, 918, 922, 925,** 1062, **1096;** Trans. 1080—1083, 1163
Clerks of court, Vol. I 86, **88, 216, 484,** 488—490, 499, 513, 524-525: Vol. II 782. 788.190, 1009. 1012, 1015, 1073, 1101; Trans. 847, 1014, 1042, 1127, 1129—1130, 2516—2521, 2691
Judge pro tempore, Vol. 1492. 507
Judicial districts, Vol. **186,** 88, 141, **163, 206, 488, 497, 511.** 518-519; Vol. **II 914, 918. 922,925, 1062,** 1096; Trans. 1080-1083, 1110, 1163
Jurisdiction, Vol. I 85—86, 88—89, **112, 141,** 291, 487—488, 489, 492, 496—497, 501, 510—511, 516—518; Vol. II 913—914, 917—918, 922, 924-925, 1061—1062, 1096; **Trans.** 1016. 1019—1020, 1029—1030, 1036, 1041, 1049—1057, 1073—1080, 1141, 1781, 1784
Number of districts — establishment, change, Vol. I 86, 88, 141, 206, 488, 497, 511, 518—519; **vol. II 914, 918,922, 925, 1062,** 1096; **Trans.** 1080—1083, 1163
Number of judges, Vol. 141, I 86, **88,** 141, 518; **II 914, 918, 922, 925, 1062, 1096; Trans.** 1080—1083, 1086
Probate court system in district court, Vol. I 291; Trans. **1076**
Process extends to all parts of state, Vol. 185, 141; Vol. II 487—488. 496. 511. 517—518. 913. 918. 922. 925, 1061, 1096; Trans. 1049, 1073—1080
Prosecution of criminal actions in district court, Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; **Trans.** 1764—1766
Substitution of district court judge far supreme court justice, Vol. 185, 141, 205, 487, 494—495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans.1044—1049, 1066—1069, 1073, 1081, 1122
Tribunal for impeachment of Supreme Court judge, Vol I 11 2 See also **IMPEACHMENT OF OFFICERS**
Vesting of judicial power in, Vol. 184, 140, 486, 493, 510. – I; Vol. **II 913, 917, 922, 925, 1061,** 1096; **Trans. 1019,** 1035—1036, **1074, 1158**
Writs of error and appeal from district court de&ions, Vol. **I 488, 498**

DISTRICTING AND APPORTIONMENT OF STATE INTO LEGISLATIVE AND CONGRESSIONAL DISTRICTS, Vol. I 109—110, 162—163, **268, 274, 278, 379,** 381, 382, 392—393, 398—399, 407—408; Vol. II 863—864, 865—866, 870, 872—873, 874—875, 878—879, 883—884, 885, **8X8-889,** 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 545, 546, 551.559.562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 767, 769, 775, 1568, 1569, 1590—1593, 1597
Accelerated effective date, Vol. II 1082, 1108; **Trans.** 3004, 3006, 3007-3008
Reapportionment Commission, Vol. I 109—110, 162, **278,** 379, 382, 392—393, 398—399, 407—408; Vol. II 863-864, 865-866, 870, 872—873, 874—875, 878—879, 883—884, 885, 888—889, 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 559, 564, 681—686, 711—725, 735—741, 766, 767, 769, 785, 789, 1590—1593

DISTRICTS, JUDICIAL, Vol. I 86, 88, 141, **163, 206, 488,** 497, 511, 518—519; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080—1083, 1110, 1163

DISTRICTS, LOCAL GOVERNMENT, Vol. I 92—93; Vol. II 780; **Trans.** 2512

DISTRICTS, PUBLIC UTILITY, Vol. I 179, 248; Vol. II 685—687; **Trans.** 2255. 2376, 2379, 2404—2420, 2605—2613

DIVIDENDS, UNCLAIMED, Vol. II 718, 725-726, 993, 996, 1002, 1003, 1069, 109% Trans. 1989—1990

DIVORCE, Vol. I 487, **496-497; Trans.** 1074, **1794,** 1797

DOGRACING, Trans. 2743

DOMESTIC RELATIONS COURT, Trans. **1076**

DOUBLE JEOPARDY, Vol. I 200; **Vol. II 623, 641, 960, 965,** 968,912, 1040, 1089; **Trans.** 1776—1779

DOUGLAS, SUPREME COURT JUSTICE WILLIAM O., Vol. II 693; Trans. 2352

DOWLING, DIANA (RESEARCH COORDINATOR; COUNSEL), Vol. I 69; **Trans. 2429, 2920,** 2965, 3035

DOWNEY, GAIL (PAGE), Trans. 1183

DRISCOLL, JEANNE (PAGE), Trans. 305

DRISCOLL, MAURICE (BUTTE)
Biography, Vol. I41
Committee assignment, Vol. I25

DRISCOLL, MAURICE (Cont.)
Remarks by, on
ballot, constitution, Trans. 2870, 2880, 2884, 2954, 2957
education and public lands (Article X)
aid to sectarian schools, Trans. 2012
boards of education, Trans. 2061—2063, 2079, 2111, 2582 2590
state university funds, accounting and audit, Trans. 2582, 2590
environment and natural resources (Article IX)
reclamation, Trans. 1277
executive (Article VI)
election, Trans. 880
officers, Trans. 860
qualifications, Trans. 894
legislature (Article V)
organization and procedure, Trans. 604—605
qualifications, Trans. 546, 550-552, 556-559
unicameral/bicameral, merits of, Trans. 2880, 2884, 2954, 2957
revenue and finance (Article VIII)
highway revenue non-diversion. Trans. 1475—1476. 2230
property tax administration, Trans. 1390
tax purposes, Trans. 2461
Seconds nomination of Paul Harlow as Convention Secretary, Trans. 63

DRIVER EDUCATION, Vol. II 584-585, 591-592, 945—946, 948, 950, 951—952, 1065—1066, 1098; Trans. 1428, 1431, 1432, 1433, 1436, 1437, 1438, 1439, 1440, 1441, 1447, 1460, 1470, 1471, 1488, 2221, 2222, 2225, 2241

DRUG ABUSE, DECRIMINALIZATION OF, Trans 1843—1846

DRUM, DAVE (BILLINGS)
Biography, Vol. 141
Committee assignment, Vol. I 25
Remarks by, an
ballot, constitution, Trans. 2882-2883, 2890, 2904—2905, 2914
constitutional revision (Article XIV)
submission, Trans. 516—517
departments and institutions (Article XII)
agriculture, working hours, Trans. 2601, 2604
labor, working hours, Trans. 2322, 2601, 2604
public utility districts, Trans. 2414—2415
education and public lands (Article X)
board of land commissioners, Trans. 1997, 2001
boards of education, Trans. 2579, 2586
educational goals and duties, Trans. 1970—1971
state university funds, accounting and audit, Trans. 2579, 2586
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1275
water rights, Trans. 1311, 1317, 1337
executive (Article VI)
qualifications, Trans. $84
general provisions (Article XIII)
non-municipal corporations, cumulative voting, Trans. 2262
judiciary (Article VII)
campaign expenses, Trans. 1172, 2201
legislature (Article V)
bills, Trans. 662-664, 667—668
districting and apportionment, Trans. 718
qualifications, Trans. 550—551, 555
unicameral/bicameral, merits of, Trans. 1630—1631, 2883

DRUM, DAVE (Cont.)
Remarks by, on (Cont.)
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1434—1437, 1442, 1445, 1449, 1457, 1473—1474, 1485, 2237-2238
investment of public funds, Trans. 1529—1530
local government debt, Trans. 1514
property tax
administration, Trans. X388-1390, X392-1393
exemptions, Trans. 1415
state debt, Trans. 1491-1492
suffrage and elections (Article IV)
poll-booth registration, Trans. 435-436
Seconds nomination of Bruce Brown as Eastern District Vice President, Trans. 53-54

DUAL OFFICE HOLDING PROHIBITED
Executive officers, Vol. I 180, 229, 436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929
Judges, Vol. 188, 491. 492, 504, 507, 512, 522; "al. 11 915, 920, 926, 1063, 1097; Trans. 1119—1121, 1148—1150
Legislators, Vol. I 275, 377, 386, 396, 402—403; Vol. II 862, 868, 874, 877, 881, 887, 1046—1047, 1053, 1092, 1105; Trans. 595—599, 1573—1582, 1617—1620

DUE PROCESS OF LAW, Vol. 1312, 328; Vol. II 622, 634, 635-636, 637, 959, 964, 971, 1039, 1088; Trans. 1738, 1750, 1751, 1760, 2389

DURKEE, MARIE (REPORTER), Vol. I 69; Trans. 3032

DUTIES
Constitutional convention, 1972
delegates, Vol. I 1, 2
officers
president, Vol. I 8-9; Trans. 127, 151
secretary, Vol. I 9: Trans. 50—51. 127—128
vice presidents
district vice presidents, Vol. I 9; Trans. 48-49, 127, 128
first vice president, Vol. I 9; Trans. 27-28, 127, 128
Constitutional convention delegates, Vol. I 150, 210, 226, 353, 357; Vol. II 852, 854, 856, 858, 1078—1079, 1104; Trans. 454, 490—491, 526—528
Executive branch
attorney general, Vol. I 206,435, 436, 441—442, 445—447, 457, 458. 462, 465: Vol. II 893-894, 898. 899, 904; 906, 907; 1056—1057, 1093; Trans. 844, 867—870, 873—878, 899—900, 905—906
auditor, Vol. I 319, 441-442, 443, 449, 457, 458, 462—463, 465; Vol. II 893-894, 898, 899, 904, 906, 907, 1056—1057, 1093; Trans. 843—857, 899—900, 907, 911, 913, 915, 975. 995-1007, 2792, 2801
governor, Vol. 1319. 435. 436. 441, 445—446. 457. 458. 462. 465; Vol. II 893894, 906, 907, 1056—1057, 1093; Trans. 843, 899
lieutenant governor. Vol. I 181, 228, 319, 320, 322, 403, 435, 441-442, 445, 457, 458, 462, 465; Vol. II 893—894, 898, 899, 904, 907, 1056—1057, 1093: Trans. 600, 842.843, 873—878. 879. 880, 899-904, 970
secretary of state, Vol. I 319, 322, 435, 436, 441-443, 445—446, 457, 458, 462-463, 465; Vol. II 893—894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 844, 873—878, 899-900, 904—905, 1193—1194

DUTIES (Cont.)
Executive branch (Cont.)
superintendent of public instruction, Vol. I 319, 435, 441, *443, 457,* 462—463; Vol. II 893-894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 844, 873—878, 899—900, 927, 2049—2091, *2096, 2097, 2099, 2103, 2104, 2106*
treasurer, Vol. I 319, 441—442, 443, 449, 462—463; Vol. II 894, 898, 899, 904; Trans. 843-857 899—900, 906—907, 911—914, 919, 1005, 1708—1714

DWELLINGS, PROPERTY TAX EXEMPTION, Vol. II 599, 601; Trans. *1411,* 1412, 1413, 1415, *1416,* 1420, 1421, *1422*

DWYER, DAVE (PAGE), Trans. 358

DZIVI, DICK (SENATE MAJORITY LEADER), Trans. 2

EARLEY, MONA J. (INTERN), Vol. I 70; Vol. II 551; Trans. 3036

EARMARKING OF REVENUE, Vol. I 101, 132; Vol. II 580; *Trans.2157*
See also HIGHWAY REVENUE NON-DIVERSION; SPECIAL LEVIES

EASTER, ANDREA (PAGE), Trans. 710

EASTON, DOUGLAS (TYPIST-STENOGRAPHER), *Trans. 3035*

EAVESDROPPING
See SEARCHES AND SEIZURES

ECK, DOROTHY (BOZEMAN)
Western District Vice President
Appointments
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
vice chairman of administration committee, Trans. $5
Biography, Vol. I42
Committee assignment, Vol. I 25
Delegate Proposals
no. 57 (citizen *access), Vol. I 157*
no. 108 (county government), Vol. I 234
Elected Western District Vice President, Trans. 62
Nominated Western District Vice President, Trans. 55
Remarks by, on
ballot, constitution, Trans. 2873, 2897, 2907, 2961—2963, 2989, 2991
compact with the united states (Article I), Trans. 2568
declaration of rights (Article II)
alcohol and drug abuse, decriminalization of, Trans. 1844
assembly, freedom of, Trans. 2478, 2480
death penalty, Trans. 1808
inalienable rights, environment, Trans. 1638
individual dignity, Trans. 1844
justice, administration of, Trans. I758
participation, right of, Trans. 1651, 1858, 1666, 1668
right to know, Trans. 1669—1671, 2482, 2488-2489
searches and seizures, Trans. 1686—1687
unenumerated rights, Trans. I832
departments and institutions (Article XII)
agriculture, department of, Trans. 1365

ECK, DOROTHY (Cont.)
Remarks by, on (Cont.)
departments and institutions (Cont.)
institutions, Trans. 2274
labor
department of, Trans. 2311
workmen's compensation, Trans. 1758
public assistance, Trans. 2288
veterans, Trans. 2274
education and public lands (Article X)
boards of education, Trans. 2069—2070, 2097—2098, 2104—2105, 2173, *2581-2582, 2587-2588*
commissioner of higher education, Trans. 2097-2098, 2104—2105
educational goals and duties, Trans. 2154
indian education, Trans. 1950—1951
non-discrimination in education, Trans. 2038
state university funds, accounting and audit, Trans. 2581—2582, 2587—2588
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1221—1222, 1248, 1268—1269, 2210
reclamation, Trans. 1292
water rights, Trans. 1333, 1339—1340
executive (Article VI)
duties, Trans. 919
succession, Trans. *1706,* 1719—1720
veto power, Trans. *1702, 1721*
general government (Article III)
initiative, Trans. *2710*
general provisions (Article XIII)
consumer counsel, Trans. 2600
non-municipal corporations, retrospective laws, Trans. *2268*
people's advocate, Trans. 697—698, 703-704
judiciary (Article VII)
justices of the peace, Trans. 1144
supreme court organization, Trans. *1064*
legislature (Article V)
bills, Trans. 641, 843
districting and apportionment, Trans. 1591—1593
organization and procedure, Trans. 606
qualifications, Trans. 555, 565
sessions, Trans. 589—590
size, Trans. 1605
unicameral/bicameral, merits of, Trans. 2907
vacancies, Trans. *726*
local government (Article XI)
voter review of local government, Trans. 2560—2561
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1465, 1479, 1484, *2222,* 2225—2228, 2230, 2710
property tax administration, Trans. 1392
state debt, Trans. 1496, 1500
suffrage and elections (Article IV)
poll-booth registration, Trans. 410, 438-439

ECK, KAREN (PAGE), Trans. 254

EDUCATION
See ARTICLE X
Age, public school students, Vol. I 170; Vol. II 721, 722, 728; Trans. 1948, 1949, 1958, 2006
Appropriation for private educational purposes prohibited, Vol. I 137, 189, 222, 278, 378, *389, 397,* 405—406; Vol. II 883, 889, 874, *878, 882, 888, 1047,* 1054, 1092, 1106; *Trans.* 659—670, *1535*
Attorney general, ex officio member of state board of education, Vol. I 287; Trans. 2058—2063, 2079—2081, 2102
Average number belonging, Vol. II 723; Trans. 1553, 1976, 1977, 1979, 1984

EDUCATION (Cont.)
Boards of education
board of public education, Vol. I 282—283; Vol. II 719—720, 731—735, 740, 994-995, 998, 1002, 1004—1005, 1070—1071, 1100; Trans. 858, 862, 864, 873, 874, 2049, 2070, 2096, 2162, 2172—2173, 2590
commissioner of higher education ex officio member, Vol. II 995, 998, 1005, 1071, 1100; Trans. 2097—2108
governor ex officio member. Vol. II 719—720, 733-735, 995, 998, 1002, 1035, 1071, 1100; Trans. 2049—2052, 2096, 2097, 2100, 2102
superintendent of public instruction ex officio member, Vol. II 719—720, 733—736, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049—2052, 2096, 2097, 2100, 2103
board of regents of higher education, Vol. I 196—197, 282—283, 281, 324; Vol. II 719, 720, n-732, 734, 735-740, 994, 995, 998—999, 1002, 1004—1005, 1070—1071, 1100; Trans. 862, 864, 873, 874, 2046, 2049—2091, 2097, 2098, 2100, 2102, 2103, 2104, 2105, 2106, 2109—2142, 2162, 2171, 2576—2593, 2894
"body corporate", Trans. 2049, 2052-2053, 2061, 2065, 2066—2067, 2078, 2085, 2105, 2106, 2109, 2110, 2114—2117, 2126
governor ex officio member, Vol. II 720, 735—736, 995, 998-999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2119, 2132-2133, 2584
superintendent of public instruction ex officio member, Vol. II 720, 735-736, 995, 998—999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2132—2133
budget, Trans. 2049, 2050, 2055—2056, 2064, 2065-2066, 2067, 2068, 2078—2079, 2083—2089, 2090, 2096, 2097. 2099, 2103, 2106, 2116, 2118, 2130, 2134, 2135, 2139, 2161, 2163
school district trustees, See also School districts
election, Vol. I 122—123; Trans. 858, 1977, 2046—2048, 2165
recall, Trans. 2551, 2553, See also RECALL
supervision and control of schools, Vol. I 122, 340; Vol. II 719, 731, 735, 818, 994, 998, 1002, 1004, 1070, 1100; Trans. 858, 1961, 1971, 1975-1981, 2046—2048, 2050, 2051, 2060, 2061, 2062, 2069, 2073, 2075, 2097, 2103, 2165, 2514
state board of education Vol. I 256, 282, 287, 443; Vol. II 719, 731—733, 734, 736, 740, 994—995, 998-999, 1002, 1004—1005, 1070—1071, 1100; Trans. 858, 859, 860, 862, 863, 865, 874, 2049—2091, 2096—2103, 2125, 2134, 2159-2174
attorney general ex officio member, Vol. I 287, Trans. 2058—2063, 2079—2081, 2102
governor ex officio member, Vol. I 287; Trans. 2058-2063, 2065, 2079—2081, 2084, 2087, 2089—2090
superintendent of public instruction
executive officer, Trans. 2058—2063, 2067, 2072, 2081, 2087
ex officio member, Vol. I 287, 443; Trans. 860, 2067, 2079—2081, 2087, 2089—2090
Chancellor, Trans. 2058, 2060, 2070, 2078. 2098, 2100. 2101. 2160, 2380
Commissioner of higher education, Vol. II 995, 998, 999, 1002. 1005. 1071, 1100; Trans. 2057—2058, 2064, 2070, 2071, 2072, 2079, 2096, 2097—2108, 2118, 2119, 2122, 2124, 2127, 2130, 2136, 2138, 2142, 2311
Discrimination prohibited, Vol. II 719, 730—731, 994, 997—998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623
District trustees, See Boards of education, school district trustees
EDUCATION (Cont.)
Duties of legislature in regard to educational goals, Vol. 195, 139, 143, 169—170, 204, 284; Vol. II 718, 721—725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1960-1989, 2022, 2151—2159, 2286
Educational goals and duties of the state, Vol. I 139, 169—170, 204, 284; Vol. II 718, 721—725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1949—1989, 2022, 2151—2159
Equality of opportunity guaranteed, 139, 169, 204, 284; Vol. II 718, 721-725, 993, 996, 1002, 1003. 1069, 1099; Trans. 1379, 1949—1950, 1972, 2151, 2152, See also Discrimination prohibited
Free public elementary and secondary schools, vol. I 95, 169—170, 204, 284; Vol. II 718, 721-725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1960—1989, 2151
Funding of
elementary and secondary schools, vol. I 95, 143, 146, 169-170, 176, 204, 284; Vol. II 580, 589—590, 718, 722—725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1379, 1387—1388, 1390, 1392, 1399, 1406, 1430, 1447, 1460, 1470, 1550, 1553, 1949, 1950, 1957, 1960—1989, 1995, 2006, 2007, 2046, 2286, 2298. 2538
school foundation program, Vol. II 589, 723, 745; Trans. 1549, 1550, 1551, 1553, 1958, 1961—1964, 1966, 1968—1970, 1972, 1976, 1977, 1979, 1982—1983, 1987, 2007, 2017, 2084, 2151—2159, 2297
statewide property tax levy for education, Vol. II 725; Trans. 2165, 2408, 2539, 2541, 2543
two-mill levy, Vol. II 581; Trans. 1501, 1549—1556, 1967, 1985, 2153, 2165, 2199, 2200, 2538
Goals of educational system, Vol. I 139, 169—170, 204, 284; Vol. II 718, 721-725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1949—1989, 2022, 2151—2159
Governor, ex officio member of boards of education, Vol. I 287; Vol. II 719-720, 733—736, 995, 998—999, 1002, 1005, 1071, 1100; Trans. 2049—2052, 2058—2063, 2065, 2079—2081, 2084, 2087, 2089-2090, 2096, 2097, 2100, 2102, 2109, 2116, 2119, 2132—2133, 2584
Indians, cultural integrity to be preserved, Vol. II 993, 996, 1003, 1069, 1099; Trans. 1950—1957, 2012, 2036, 2040, 2199
Non-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623
Property tax exemption, Vol. I 306, 326; Vol. II 584, 590—591, 599—601, 945, 947—948, 950, 951, 1065, 1097—1098; Trans. 1410—1427
Public education, board of, Vol. I 282—283; Vol. II 719-720, 731-735, 740, 994,995, 998, 1002, 1004-1005, 1070—1071, 1100; Trans. 858, 862, 864, 873, 874, 2049, 2070, 2096, 2162, 2172—2173, 2590
commissioner of higher education ex officio member, Vol. II 995, 998, 1005, 1071, 1100; Trans. 2097—2108
governor ex officio member, Vol. II 719-720, 733-735, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049—2052, 2096, 2097, 2100, 2102
superintendent of public instruction ex officio member, Vol. II 719—720, 733—736, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049-2052, 2096, 2097, 2100, 2103
Public school fund
apportionment of interest and income, Vol. I 146, 169—170; Vol. II 719. 727-728, 994, 997, 1002, 1004, 1070, 1100; Trans. 2006-2008

EDUCATION (Cont.)
Public school fund (Cont.)
composition of, Vol. II 583, 596, 718, 725—726, 993, 996-997, 1002, 1003, 1069, 1099; Trans. 1989—1990, 1995, 2143
investment, Vol. II 583, 586, 596—597, 602—603, 753—756, 946, 949, 950, 952-953, 1066—1067, 1098; Trans. 1517—1546, 1993
inviolate and guaranteed against loss or diversion, Vol. I 169, 176; Vol. II 718, 726, 741—742, 993, 991, 1003—1004, 1069, 1100; Trans. 1539—1544, 1948, 1990, 2146, 2148, 2245—2246
Regents, board of, Vol. I 196—197, 282-283, 287, 324; Vol. II 719, 720, n-732, 734, 735—740, 994, 995, 998-999, 1002, 1004—1005, 1070—1071, 1100; Trans. 862, 864, 873, 874, 2046, 2049-2091, 2097, 2098, 2100, 2102, 2103, 2104, 2105, 2106, 2109—2142, 2162. 2171. 2576-2593.2894
"body corporate", Trans. 2049, 2052—2053, 2061, 2065, 2066—2067, 2078, 2085, 2105.2106, 2109, 2110, 2114—2117, 2126
governor ex officio member, Vol. II 720, 735-736, 995, 998-999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2119, 2132—2133, 2584
superintendent of public instruction ex officio member. Vol. Ii 720, 735-736, 995, 998-999, 1002; 1005, 1071, 1100; Trans. 2109, 2116, 2132—2133
Religion
aid to sectarian schools prohibited, Vol. I 137, 189, 222, 311, 312—313; Vol. II 629, 716, 719, 728—730, 743—747, 994, 997, 1002, 1004, 1070, 1100; Trans. 1646, 1960, 2008-2031, 2235
appropriation for private educational purposes prohibited, Vol. 1137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659-670, 1535
non-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623
School districts, See also Boards of education, school district trustees
distribution of revenue to, Vol. I 146, 169—170; Vol. II 719, 727—728, 994, 997, 1002, 1004, 1070, 1100; Trans. 2006—2008
elections, Vol. I 122, 144, 170; Vol. II 731; Trans. 405, 1977, 2046—2048, 2165
indebtedness, Trans. 1509—1516
intergovernmental cooperation, Vol. I 136, 156, 254; Vol. II 783, 798—799, 1010, 1013—1014, 1015, 1074, 1102; Trans. 2534-2535
sovereign immunity, Vol. I 124; Vol. II 622, 637-638, 959, 964, 967-968, 971, 1039—1040, 1088; Trans. 1760—1764
School foundation program, Vol. II 589, 123, 745; Trans. 1549, 1550, 1551, 1553, 1958, 1961—1964, 1966, 1968—1970, 1972, 1976, 1977, 1979, 1982-1983, 1987, 2007, 2017, 2084, 2151—2159, 2297
School lands
apportionment of income to school districts, Vol. I 146, 169—170; Vol. II 719, 727—728, 994, 997, 1002, 1004, 1070, 1100; Trans. 2006-2008
board of land commissioners, Vol. I 329; Vol. II 718—719, 726—727, 994, 997, 1002, 1004, 1069—1070, 1100; Trans. 860, 863, 864, 865, 869, 874, 911, 1280, 1990—2002
public school funds, proceeds from lands part of, Vol. II 583, 596,718, 725—726, 993, 996-997, 1002, 1003, 1069, 1099; Trans. 1989—1990, 1995, 2143

EDUCATION (Cont.)
Sectarian schools
aid prohibited. Vol. I 137, 189, 222, 311, 312, 313; Vol. II 629, 716,719, 728—730, 743—747, 994, 997, 1002, 1004, 1070, 1100; Trans. 1646, 1960, 2008—2031, 2235
appropriation for private educational purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869,874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535
State board of education, Vol. 1256, 282, 287, 443; Vol. II 719, 731—735, 736, 740, 994—995, 998—999, 1002, 1004—1005, 1070—1071, 1100; Trans. 858, 859, 860, 862, 863, 865, 874, 2049—2091, 2096—2103, 2125, 2134, 2159—2174
attorney general ex officio member, Vol. I 287; Trans. 2058—2063, 2079—2081, 2082
governor ex officio member, Vol. I 287; Trans. 2058-2063, 2065, 2079—2081, 2084, 2087, 2089—2090
superintendent of public instruction
executive officer, Trans. 2058—2063, 2067, 2072, 2081, 2084, 2087
ex officio member, Vol. I 287, 443; Trans. 860, 2067, 2079—2081, 2087, 2089—2090
State's share of cost of elementary and secondary school systems, Vol. 1143; Vol. II 718, 721-725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1949—1950, 1957, 1960—1989, 2151-2159, See also Funding of elementary and secondary schools
Statewide property tax levy for education, Vol. II 725; Trans. 2165, 2408, 2539, 2541, 2543
Superintendent of Public Instruction, See SUPERINTENDENT OF PUBLIC INSTRUCTION

Teachers
merit system, included in, Trans. 2343-2344
religious or partisan test or qualification may not he required, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031-2045
salaries, Vol. I 239
Two-mill levy on property taxes, Vol. II 581; Trans. 1501, 1549—1556, 1967, 1985, 2153, 2165, 2199, 2200, 2538
University funds
audit, Vol. II 995, 999, 1002, 1005, 1071, 1100; Trans. 2106, 2109—2115, 2116, 2120, 2122, 2123, 2124, 2128, 2131, 2132, 2577—2593
investment, Vol. I 170, 283; Vol. II 583, 586, 596-597, 602-603, 720, 740, 753—756, 946, 949, 950, 952-953, 995, 999, 1002, 1005, 1066—1067, 1071, 1098, 1100, 1101; Trans. 1517—1546, 2142
inviolate and guaranteed against loss or diversion, Vol. II 720, 740, 995, 999, 1002, 1005, 1071, 1100—1101; Trans. 2142
University system governed by board of regents, Vol. I 196—197, 282-283, 287, 324; Vol. II 720, 735—740, 995, 998—999, 1002, 1005, 1071, 1100; Trans. 873, 2049-2091, 2103, 2109—2142, 2171, 2576—2593
audit of funds under control of board, Vol. II 995, 999, 1002, 1005, 1071, 1100; Trans. 2106, 2109—2115, 2116. 2120, 2122, 2123, 2124, 2128, 2131, 2132, 2577—2593
commissioner of higher education, appointment by board, Vol. II 995,999, 1002, 1005, 1071,1100; Trans. 2118, 2119, 2130, 2132—2133
governor ex officio member of board, Vol. II 720, 735-736, 995, 998—999, 1002, 1005, 1071,1100; Trans. 2109, 2116, 2119, 2132—2133, 2584
superintendent of public instruction ex officio member of board, Vol. II 720, 735—736, 995, 998-999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2132—2133

EDUCATION AND PUBLIC LANDS **COMMITTEE**
Membership and staff, Vol. 123; Trans. II2
Report
consideration in committee of the whole, Trans. 1948—2002, 2006—2091, 2096—2174
cross references, 1889-1972 constitutions, Vol. II 757
delegate proposals considered, Vol. II 758—759
roll call votes on, in committee, Vol. II 767—768
text and comments
majority report, Vol. II 718—740, 748—754
minority report, Vol. 11 741—747, 755—756
transmittal letter, Vol. II 716—717
Responsibilities, Trans. 33, 35, 36, 38—39, 40, 146—151
Witnesses appearing before committee, Vol. II 761—766; Trans. 2069

ELECTIONS
See also ELECTORS
Absentee voting, Vol. I 191, 212, 336, 338, 341, 342; Vol. II 845, 847, 1045, 1091; Trans. 400, 422, 429, 431-433
Abuses of electoral process, Vol. I 332,341, 342-343; Vol. II 845, 847, 1045, 1091; Trans. 450, 533
Administration of, Vol. I 191, 336, 338; Vol. II 845, 847, 1045, 1091; Trans. 400, 405, 450
Arrest immunity at polling places, Vol. I 339; Vol. II 845, 846, 847, 1045, 1091; Trans. 418, 419—422, 532-533
Ballot — secret ballot required, Vol. I 191, 336, 337, 341; Vol. II 845, 847, 1045, 1091; Trans. 391, 422, 532, See also Constitution, ballot
Campaign **expenses,** Vol. I 221, 235, 508—509; Vol. II 927; Trans. 1025—1026, 1088, 1115, 1137—1139, 1151, 1152, 1163—1179, 2188—2205
Candidates for public office, eligibility, Vol. I 97, 191—192, 218, 319—320, 336, 338, 340, 341; Vol. II 621, 635, 845, 846, 847, 1045, 1091; Trans. 414—417. 422. 528-532. 534. 678,885, 1745—1749, See also CANDIDACY FOR PUBLIC OFFICE DURING TERM
Canvass of, Vol. I 212; Trans. 417
Constitution
as adopted, Trans. 1084—1085
ballot
alternative issues
bicameral/unicameral legislature, **Trans.** 543-544, 728—730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881-2884, 2890—2894, 2898, 2903, 2904, 2907—2912, 2949-2975, 2987, 2988, 2993, 2996, 2997-3001, 3003-3004
death penalty, Trans. 1477, 1478, 1805, 1807, 1808, 1809, 1810, 1812, 1814—1822, 2221, 2235, 2510, 2609, 2736, 2739, 2865, 2867, 2872, 2873, 2877—2883, 2890—2892, 2897, 2903, 2913, 2914, 2949, 2951, 2952, 2955, 2969, 2971, 2972, 2984, 2987-2989, 2993, 2994, 2996, 2997, 3001
gambling, Trans. 1477, 1810, 2221, 2254, 2729—2760, 2828, 2853-2854, 2864, 2865, 2867-2869, 2873, 2877, 2879, 2881-2883, 2890-2892, 2897, 2899, 2900, 2903, 2913, 2914, 2948, 2949, 2951, 2952, 2955, 2969, 2971, 2972, 2975—2986, 2987, 2990, 2993, 2997-2999, 3000
highway revenue non-diversion, Trans. 1458-1466, 1469—1489, 2221—2241
regulation of public utilities, Trans. X05-2613

ELECTIONS (Cont.,
Constitution (Cont.)
ballot (Cont.)
alternative issues (Cont.)
right t" work, Trans. 1478, 2358-2367
unicameral/bicameral legislature, Trans. 543-544, 728-730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2890-2894, 2898, 2903, 2904, 2907-2912, 2949-2975, 2987, 2988, 2993, 2996, 2997—3001, 3003—3004
format and voting, Trans. 334, 336, 1631, 2863—2916, 2919, 2921—2922, 2929, 2947—2995, 3008-3009
short ballot, long ballot, Vol. I 441; Trans. 843, 848, 849, 853, 2375, 2690—2691, 2773, See also CONSTITUTIONAL OFFICES
canvass. Trans. 1560
clarification of "special election", Trans. 345, 1559
cost of special election, Trans. 331—333
date and type of election, Vol. I 3-4; Trans. 116—117, 216—217, 289, 330—345, 1559—1560, 2427, 2615
notice. Trans. 1560
partisan or non-partisan election, Vol. I 150, 210, 227, 353, 356, 359; Vol. II 851, 853, 866, 857, 1078, 1103; Trans. 454, 481-485
Constitutional revision
convention delegates, Vol. I 150, 210, 226-227, 353, 356, 359; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454. 481—485
date of election for ratification or rejection, Vol. I 151, 226—227, 353, 360; Vol. II 852, 854, 856, 858. 1079. 1104: Trans 454 490—491
Convention, election of delegates: Vol. I 1, See also CONVENTION, OPERATION AND PROCEDURES, Election of officers
Corporations — cumulative voting, Vol. II 666, 668-669, 710; **Trans.** 2258-2263, 2398
Electors, qualifications, See ELECTORS
Executive officers
attorney general, Vol. I 206, 228-229, 319, 435,442, 445-446,457, 462—464; Vol. II 893, 898, 904,906, 1056, 1093; Trans. 878-883
same political party as governor, Trans. 905—906
auditor, Vol. I 319, 457, 463-464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 87X-883.914
governor, Vol. I 180, 228, 319, 435, 444, 457, 463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 878-883
joint filing with candidate or lieutenant governor, Vol. I 181, 229, 320, 435, 444, 448, 457, 463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 842, 843,854, 879-881, 887, 902, 929
lieutenant governor, Vol. I 180—181, 229, 319, 320, 435, 444, 457. 463; Vol. II 893, 898, 904, 906, 1056, **1093; Trans.** 878—883
joint filing with candidate for governor, Vol. I 181, 229, 320, 435, 444, 448, 457, 463; Vol. II 893, 898,904, 906, 1056, 1093; Trans. 842, 843, 854. 879—881, 887. 902.929
secretary of state, Vol. I 319, 435. 441, 444-445. 457, 462—464; Vol. II 893, 898, 904; 906, 1056, 1093: Trans. 878—883
superintendent of public instruction, Vol. I 283, 319, 432, 435,441, 443, 444—445, 457, 462—464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 870—878, 878—883, 2052, 2065, 2067, 2068, 2075, 2103
treasurer, Vol. 1319, 432,457, 463; Vol. II 893, 898,904; Trans. 878—883, 1708—1714
Free exercise of suffrage guaranteed, Vol. II 621, 634, 958, 963, 970, 1039, 1088; Trans. 1738, 1744—1745
Immunity from arrest at polling places, Vol. I 339; Vol. II 845, 846, 847, 1045, 1091; Trans. 418, 419—422, 532—533

ELECTIONS (Cont.)
Initiative and referendum, Vol. I 258, 277; Vol. II 818, 820, 1020, 1023, 1025, 1044, 1090; Trans 2718
Judicial officers
judges, Vol. 187, 141, 206,487, 495, 511-512, 519—521; Vol. II 915, 919, 922, 926,1062—1063, 1096—1097; Trans. 1012—1014, 1016—1017, 1022—1028, 1030—1033, 1069, 1081—1082, 1084—1114, 1116, 1137, 1152, 1165, 1166, 1169, 1170, 1838, 2190, 2193, 2194, 2196, 2691
justices of the peace, Vol. I 489, 500; Vol. II 914, 918, 922, 925, 1062 1096; Trans. 1029, 1140—1147, 1156, 1158, 1159
Legislators
bicameral, Vol. I 275, 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091,1107; Trans. 1568—1569
contested elections, Vol. I 398, 403; Vol. II 884, 871, 875, 877. 881. 885, 887. 1049, 1053, 1092. 1107; Trans. 599-601
each house judge of election and qualifications of members, Vol. I 396, 403; Vol. II 864, 871, 875, 877, 881, 885. 887, 1049, 1053, 1092, 1107; Trans. 599—601
unicameral, Vol. I 110, 376, 383; Vol. 11 861, 867, 874, 1046, 1105; Trans. 770—775, 789
contested elections, Vol. I 377, 386—387; Vol. II 862, 868, 874, 1047, 1105; Trans. 599—601
Local government
alternative form to be submitted to electors, Vol. I 217, 234; Vol. II 784, 785, 800—801, 1010—1011, 1014, 1015, 1074—1075, 1102; Trans. 2512—2513. 2555—2565
county government optional form, officers to be elected, Vol. I 80—81, 102—104, 216,253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521
plurality of votes elects, Vol. I 192, 336, 338—339, 341; Vol. II 845, 846, 847, 1045, 1091; Trans. 417—419. 422. 532
self-government charters, Vol. I 82—83; Vol. II 1010. 1013, 1015, 1074, 1101—1102; Trans. 2524—2528
Penalty for failure to vote, Vol. I 330
Poll-booth registration, Vol. I 260, 332, 341, 342-343; Vol. II 845, 847, 1045, 1091; Trans. 400—413, 422. 428—452. 467. 839
Presidential nominating convention delegates, Vol. I 289
Presidential primary, Vol. 1289
Purity of elections assured, Vol. 1332, 341—343; Vol. II 845, 847, 1045, 1091
Qualifications of electors, See ELECTORS
Registration requirements, Vol. I 191, 260, 330. 332, 336, 337, 338, 341, 342-343; Vol. II 845, 847, 1045, 1091; Trans. 392, 393, 394, 396, 400—413. 422. 428-452. 467. 839
Residence requirements, Vol. I 191, 332, 336, 337, 338, 339—340, 341, 342-343; Vol. II 845, 847, 1045, 1091; Trans. 392, 393, 394, 396, 400, 408, 410, 417
Results, plurality of votes elects. Vol. I 192, 336. 338—339, 341; Vol. II 845, 846, 847. 1045, 1091; Trans. 417-419, 422, 532
School elections, Vol. I 122, 144, 170; Vol. II 731; Trans. 405, 1977. 2046—2048, 2165
Secret ballot required, Vol. I 191, 333336341; Vol. II 845. 847. 1045. 1091; Trans. 391. 422. 532
Special election to fill vacancies in legislature, Vol. I 376—377, 385—386, 395-396, 402; Vol. II 861—862, 868, 877, 881, 887, 1046, 1052, 1091, 1105; Trans. 593-594, 725-727
Types of elections, Vol. I 144

ELECTORS
See also ELECTIONS
Age requirements, Vol. I 191, 332, 336, 337, 338, 341; Vol. II 845, 846, 847, 1045, 1091; Trans. 392, 433, 448
Free exercise of suffrage guaranteed, Vol. II 621, 634, 958, 963, 970, 1039, 1088; Trans. 1738, 1744—1745
Immunity from arrest at polling places, Vol. 1339; Vol. II 845, 846, 847, 1045, 1091; Trans. 418, 419—422, 532—533
Penalty for failure to vote, Vol. 1330
Persons not allowed to vote, Vol. I 191, 218, 332, 336, 337—338, 339, 341; Vol. II 845,848, 847, 1045, 1091; Trans. 392, 396
Property ownership qualification for voting, Vol. 1340; Trans. 408,417, 429, 447
Qualifications, Vol. I 191, 260, 332, 336, 337, 338, 339-340, 341, 342, 343; Vol. II 845, 846, 847, 1045, 1091; Trans. 392-400, 408, 410, 417
Registration requirements, Vol. I 191, 260, 330, 332, 336, 337, 338, 341, 342-343; Vol. II 845, 847, 1045, 1091; Trans. 392, 393, 394, 396, 4006413, 422, 428—452, 467, 839
Residence requirements, Vol. I 191, 332, 336, 337. 338. 339—340, 341. 342-343; Vol. II 845, 847, 1045, 1091; Trans. 392. 393, 394, 398, 400, 408, 410,417

ELECTRONIC SURVEILLANCE, Vol. I 98; Vol. II 633; Trans. 1671—1672, 1683—1688
See also SEARCHES AND SEIZURES

ELIGIBILITY FOR PUBLIC OFFICE, Vol. I 97, 191—192, 218, 300, 338, 338, 340, 341; Vol. II 621, 635, 643, 845, 846, 847, 1045, 1091; Trans. 414—417, 528—532, 678, 1745—1749
See also QUALIFICATIONS

ELISON, DR. LARRY (PROFESSOR, UNIVERSITY OF MONTANA SCHOOL OF LAW,, Trans. 1794, 1851

ELLINGSON, BUFORD (GOVERNOR OF TENNESSEE), Trans. 2353

ELLIOT, NANCY (PAGE), Trans. 305

ELLIOTT. THE REVEREND FRANKLIN (MAYFLOWER CONGREGATIONAL CHURCH, BILLINGS)
Invocation, Trans. 810

ELLIOTT, JOHN (PRESIDENT, YMCA YOUTH CONSTITUTIONAL CONVENTION), Trans. 3039

EMERGENCIES
Continuity of government, Vol. I 278—279, 374; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Governor's authority to call militia forces, Vol. I 182, 229, 320, 438, 453-454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964-966
Importation of armed forces. Vol. II 624.645. 961. 986. 968, 973,1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration, Vol. I 182, 320; Trans. 1830

EMINENT DOMAIN, Vol. I 96. 177, 252. 308; Vol. II 623, 643—644, 711, 960, 966, 972, 1041, 1089; Trans. 1267, 1294, 1348, 1654-1655, 1825—1828

EMPLOYEES, CONVENTION
See CONVENTION, OPERATION AND PROCEDURES, Staff

EMPLOYMENT
Benefits available on equal basis, Vol. I271
Collective bargaining, Vol. I 175, 185, 207—208; Vol. II 627—628, 664.688-697: Trans. 2315. 2328—2340, 2344, 2346, 2351, 2353, 2359, 2364, See also Right to work; Strikes
Compulsory arbitration, Trans. 2367-2369
Court of labor-management conciliation, Vol. I 331
Department of labor and industry, Vol. 1220, 271, 272, 290, 331; Vol. II 670, 672, 978, 982, 985, 987, 1076, 1107; Trans. 2308—2315
Discrimination in hiring and promotion practices prohibited, Vol. I 126, 149, 161; Trans 1643, 1644, 2035-2043
Equal pay for equal work for state and federal employees, Vol. 1225; Trans. 2349—2351
Injury incurred in employment, right to legal redress far, Vol. I 263; Vol. II 622, 636-637, 672, 959, 964, 971, 1039, 1088; Trans. 1753—1760, 1764, 2192, 2625
Legislature to establish guidelines for state employment, Vol. I 233
Licensed occupations, convicts in, Vol. II 643; Trans. 1800, 1801, 1822—1825, 2507—2509
Lie detector tests prohihited as condition of employment, Vol. I 251; Vol. II 633, 641
Maximum hours in regular day's work, Vol. II 672~673,978, 982,987; Trans. 2308, 2316—2328, 2333, 2340—2342, 2601—2604
Merit system. Vol. I 173, 233, 285; Vol. II 671, 673, 681, 689, 691; Trans. 2308, 2315—2316, 2328, 2329, 2336, 2342—2350, 2355-2356, 2364
Minimum wage to be established by legislature, Vol. I 272
Other government employment during term of office prohibited, Vol. I 180, 229, 436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929, See also DUAL OFFICEHOLDING PROHIBITED
Pursuit of life's basic necessities, right to, Vol. I 142; Vol. II 620, 626-627, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, 2294, 2370, 2690
Retirement systems (public employees)
investment of funds, Vol. II 602—603, 946, 949, 950, 952, 1066, 1098; Trans. 1518—1546
membership in, a contractual relationship, Vol. I286
Right to participate in political process guaranteed, Vol. I 305
Right to work, Vol. I 185; Vol. II 627—628, 664, 692—697; Trans. 320—321, 1353, 1478, 1642, 1727, 2331, 2351—2367, 2369, 2530, 2531, 2532, 2533, 2566, 2611, See also Collective bargaining; Strikes
Salaries, See COMPENSATION
State and subdivisions to provide employment to involuntarily unemployed, Vol. I 290
Strikes, Vol. I185; Vol. II 689, 691—694; Trans. 2328, 2329, 2330, 2332, 2333, 2336, 2351-2352, 2363, 2367—2368, See also Collective bargaining; Right to work
Sunday-closing law, Vol. I 220; Trans. 2369—2372
Wages, See COMPENSATION

EMPLOYMENT (Cont.)
Workday, maximum hours, Vol. II 672—673, 978, 982, 987; Trans. 2308, 2316-2328, 2333, 2340—2342, 2601—2604
Workmen's compensation, Vol. I 263; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760, 2158, 2257, 2313, 2320, 2325

ENABLING ACT (CONSTITUTIONAL CONVENTION)
Text, Vol. I 1—5

ENEMY ATTACK
Continuity of government, Vol. I 278—279, 374; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Governor's authority to call militia forces, Vol. I 182, 229. 320, 438, 453-454, 460; Vol. II 896, 902,905, 909, 1059, 1095; Trans. 964—966
Importation of armed forces, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration, Vol. I 182, 320; Trans. 1830

ENVIRONMENT
Citizens' duties regarding, Vol. I 75, 107, 108, 261, 308; Vol. II 550, 552, 554—555, 931, 933, 935, 939, 1068, 1099; Trans. 1200—1254
Legal proceedings to enforce environmental rights. Vol. I 75, 96, 308; Vol. II 552, 554—555, 561—562, 931, 933, 935, 939, 1068, 1099; Trans. 1203, 1211—1246, 1251—1254, 1255—1271. 1638
"Physical environment", use of term, Trans. 1211—1213
Private property rights in conflict with environmental rights, Vol. I 240, 262; Trans. 1214—1217, 1221, 1223, 1224, 1230, 1236, 1257,1261—1271
Prohibition of smoking in public buildings, Trans. 1274—1275
Protection, maintenance and improvement, Vol. I 75, 96, 107, 108, 193, 240, 252, 261, 308-309; Vol. II 550,552, 554—555, 931, 933, 935, 939. 1068,1099; Trans. 1199—1271. 1274—1275, 1637—1646
Public trust, environment as, Vol. I 96, 308—309; Vol. II 555: Trans. 1201, 1206, 1211-1228, 1238, 1247, 1257, ;261, 1266, 1639, 1645, 1731
Reclamation of lands, Vol. II 552, 555—556, 931, 933, 935, 939. 1068, 1099; Trans. 1199—1200, 1275—1301, 1353—1363
Right to clean and healthful environment. Vol. I 75, 96, 107, 108, 240, 252, 261, 308—309; Vol. II 552, 554—555, 561—562, 931, 933, 935, 939, 957, 962, 967, 969, 1038, 1068, 1087, 1099; Trans. 1199—1251, 1255—1271, 1274—1275, 1637—1640, 1756
State's duties regarding, Vol. I 15, 107, 193, 240, 261, 308—309; Vol. II 550, 552, 554—555, 931, 933, 935, 939, 1068, 1099; Trans. 1200—1271

ENVIRONMENTAL QUALITY COUNCIL, Trans. 1229, 1239

EQUALIZATION OF VALUATION OF PROPERTY FOR TAX PURPOSES
See EQUAL VALUATION OF PROPERTY FOR TAX PURPOSES

EQUAL OPPORTUNITY
See DISCRIMINATION BECAUSE OF RACE, COLOR, SEX, CULTURE, SOCIAL ORIGIN OR CONDITION, OR POLITICAL OR RELIGIOUS IDEAS PROHIBITED

EQUAL PAY FOR EQUAL WORK (STATE AND FEDERAL EMPLOYEES), Vol. I 225; Trans. 2349—2351

EQUAL PROTECTION OF THE LAWS, ""I. 1 $4, 105, 126, 127, 118, 161, 223, 312; Vol. II 620, 628, 634, 635—636, 957, 962, 967, 969, 1038, 1087; Trans. 1642—1646, 1950

EQUAL RIGHTS
See SEXUAL DISCRIMINATION

EQUAL RIGHTS AMENDMENT, Vol. II 628; Trans. 1642

EQUAL VALUATION OF PROPERTY FOR TAX PURPOSES, Vol. II 581, 582, 584, 589—590, 945, 947, 950,951, 1065, 1097; Trans. 1376, 1409—1410, 2153, 2289

ERDMANN, MARIAN S. (GREAT FALLS)
Biography, Vol. 142
Committee assignment, Vol. I 25
Delegate Proposals
no. 29 (school elections), Vol. 1 122—123
no. 56 (local government article), Vol. 1 155—156
no. 95 (canvassing boards), Vol. 1 212
no. 96 (water rights), Vol. 1 213—214
Remarks by, on
ballot, constitution, Trans. 2871, 2892—2893, 2951
constitutional revision (Article XIV)
amendment by legislature, Trans. 494
constitutional convention, Trans. 488
declaration of rights (Article 11)
death penalty, Trans. 1807—1808
right to bear arms, Trans. 1727
right to know, Trans. 2494
departments and institutions (Article XII)
labor, collective bargaining, Trans. 2331
merit system, Trans. 2343
public assistance, Trans. 2281—2282, 2289
education and public lands (Article X)
boards of education, Trans. 2164
environment and natural resources (Article IX)
water rights, Trans. 1301—1302, 1304, 1308, 1309, 1316, 1321, 1347, 1349—1350
executive (Article "I)
officers, Trans. 848, 1712
qualifications, Trans. $80
general government (Article 111)
gambling, Trans. 2742
general provisions (Article XIII)
code of ethics, Trans. 796
people's advocate, Trans. 699
judiciary (Article VII)
campaign expenses, Trans. 2199
legislature (Article V)
bills, Trans. 672, 1622
qualifications, Trans. 801
size, Trans. 1598
unicameral/bicameral, merits of, Trans. 759, 2892-2893
local government (Article Xl)
revenue sharing, Trans. 2537—2538, 2542
voter review of local government, Trans. 2558
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1451. 1464., 2222
property tax exemptions, Trans. 1415
suffrage and elections (Article IV)
poll-booth registration, Trans. 405

ESKILDSEN, LESLIE "JOE" (MALTA)
Appointments
escort committee, Trans. 16, 62

ESKILDSEN, LESLIE (Cont.)
Appointments (Cont.)
temporary rules committee, Trans. 24
vice chairman of rules committee, Trans. $5
Biography, Vol. 142
Committee assignment, Vol. I 25
Designated Vice-Chairman of Temporary Rules Committee, Trans. 26
Nominated President of Convention, Trans. 14
declines nomination, Trans. 14
Remarks by, on
ballot, constitution, Trans. 1820, 2951
declaration of rights (Article 11)
participation, right of, Trans. 2493
departments and institutions (Article XII)
agriculture, department of, Trans. 2216
public utility districts, Trans. 2610
education and public lands (Article X)
board of land commissioners, Trans. 1999
boards of education, Trans. 2079—2080, 2579
educational goals and duties, Trans. 1971
State university funds, accounting and audit, Trans. 2579
executive (Article VI)
election, Trans. 878
officers, Trans. 872
succession, Trans. 970—971
veto power, Trans. 955
general provisions (Article XIII)
people's advocate, Trans. 700—701
perpetuities, Trans. 1147
judiciary (Article VII)
campaign expenses, Trans. 1169, 1177—1178, 2194—2195
selection. Trans. 1030
supreme court organization, Trans. 1046
terms and "BY. Trans. 1152
legislature (Article V)
bills, Trans. 638-639, 642
conference committees, Trans. 733
parliamentary form of government, Trans. 754
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2229
property tax administration, Trans. 1380—1386, 1394-1397, 1402—1403, 2218

ESTATES
Descent of, Vol. II 623—624. 644 960, 966, 968, 972, 1041, 1089; Trans. 1828—-1829
Escbeated to state, Vol II 718, 725, 993, 996, 1002, 1003, 1069, 1099; Trans. 1989
Probate, Vol. 1291, 299, 517; Trans. 1132—1138, 1146, 1147, 1161—1162

ETCHART, MARK (GLASGOW)
Biography, Vol. 143
Committee assignment, Vol. 125
Delegate Proposal
no. 48 (water rights), Vol. 1 145
Nomination of Magnus Aasheim as Eastern District Vice President, Trans. 52—53
Remarks by, on
ballot, constitution, Trans. 2901
constitutional revision (Article XIV) — committee report, Trans. 453—526
constitutional convention, Trans. 1187
declaration of rights (Article II)
convicts, rights of, Trans. 528
departments and institutions (Article XII)
agriculture, working hours, Trans. 2601
labor, working hours, Trans. 2601
environment and natural resources (Article lx)
water rights, Trans. 1308—1309, 1313—1314, ,322, 1335, 1341, 1344, 1346—1347
executive (Article VI)
veto power, Trans. 2719

ETCHART, MARK (Cont.)
Remarks by. on (Coot.)
general government (Article III)
continuity, Trans. 2695
elections, Trans. 2718
gambling, Trans. 2753
initiative, Trans. 2696, 2699—2700, 2716
number of electors, Trans. 2718—2719
oath, Trans. 2695
prohibition (constitutional revision), Trans. 2720
recall, Trans. 2121, 2726
referendum, Trans. 2717—2718
separation of powers, Trans. 2690, 2829
general provisions (Article XIII)
people's advocate, Trans. 697
judiciary (Article VII)
judicial power, Trans. 2435
legislature (Article V)
bills, Trans. 638
organization and procedure, Trans. 604, 608, 610
size, Trans. 1602
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1481, 2716
property tax
administration, Trans. 1395—1396
exemptions, Trans. 1557
suffrage and elections (Article IV) — majority report
introduction, Trans. 391
ballot, Trans. 391
elections, Trans. 400, 405
eligibility for public office, Trans. 414
poll-booth registration, Trans. 441
qualified elector, Trans. 392-393, 395, 398
result of elections, Trans. 417

ETHICS, CODE PROHIBITING CONFLICTS OF INTEREST, Vol. I 164; Vol. II 866, 873, 875, 879, 884, 889, 1077, 1103; Trans. 789—790, 793—796

EXAMINATION OF PUBLIC DOCUMENTS, Vol. 1 133, 157; Vol. II 621, 631—632, 958, 963, 970, 1039, 1088; Trans. 1658, 1669—1680, 1733, 2560, 2578, 2562
See also CITIZEN PARTICIPATION IN GOVERNMENTAL PROCESSES

EXAMINER
See STATE EXAMINER

EXCESSIVE SANCTIONS, Vol. I 77; Vol. II 622, 640, 959, 964, 968, 971, 1040, 1088; Trans. 1771

EXCISE TAXES, Vol. I 167; Trans. 1386, 1413, 1502, 1512, 1536
See also HIGHWAY REVENUE NON-DIVERSION; SALES AND USE TAXES

EXECUTIVE BRANCH
See also ATTORNEY GENERAL; AUDITOR; DEPARTMENTS OF STATE GOVERNMENT; GOVERNOR, LIEUTENANT GOVERNOR; PARLIAMENT; SECRETARY OF STATE; SUPERINTENDENT OF PUBLIC INSTRUCTION; TREASURER
Candidacy for public office during term, Vol. I 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 928-929

EXECUTIVE BRANCH (Cont.)
Code of ethics, Vol. I 164; Vol. II 866. 873, 875, 879, 884, 889, 1077, 1103; Trans. 793—796
Compensation of officers, Vol. I 181, 229, 320, 432, 435, 436, 441, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927-929, 991-994
salary commission, Vol. I 134, 447; Vol. II 861, 867, 874, 876, 880, 886, 1077, 1103; Trans. 578—579, 992, 993, 1084, 1572
Continuity of government in emergency, Vol. I 278—279; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
County as part of, Trans. 2522—2524, 2543
Duties of officers
attorney general, Vol. 1206. 435, 436, 441—442, 445—447, 457, 458, 462, 465; Vol. II 893—894, 898, 899. 904. 906. 907. 1056—1057, 1093; Tram. 844, 867—870, 873—878, 899—900, 905—906
auditor, Vol. I 319, 441—442, 443, 449, 457, 458, 462-463, 465; Vol. II 893-894, 898, 899, 904, 906, 907, 1056—1057, 1093; Trans. 843—857, 899—900, 907, 911, 913, 915, 975, 995-1007, 2792, 2801
governor, Vol. I 319, 435, 436, 441, 445-446, 457, 458, 462, 465; Vol. II 893-894, 899, 906, 907, 1056—1057, 1093; Trans. 843, 899
lieutenant governor, Vol. I 181, 228, 319, 320, 322, 403, 435, 441—442, 445, 457, 458, 462, 465; Vol. II 893-894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 600, 842, 843, 873—878, 879, 880, 899—904, 970
secretary of state, Vol. I 319, 322, 435, 436, 441—443, 445—446, 457, 458, 462-463, 465; Vol. II 893-894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 844, 873—878, 899-900, 904—905, 1193—1194
superintendent of public instruction, Vol. I 319, 435, 441, 443, 457, 462-463; Vol. II 893—894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 844, 873—878, 899—900, 927, 2049-2091, 2096. 2097. 2099. 2103. 2104. 2106
treasurer, Vol. I 319, 441—442, 443, 449, 462—463; Vol. II 894, 898, 899, 904; Trans. 843-857, 899-900, 906—907, 911-914, 919, 1005, 1708—1714
Election of officers, Vol. I 180-181, 228-229, 319, 432, 435, 444—445, 457, 463—464; Vol. II 893, 898, 904. 906. 1056. 1093; Trans. 878—883. 914, 1708—1714, 1714—1718
Governor
executive power vested in, Vol. I 180, 228, 320, 445, 449, 458, 465; Vol. II 893-894, 899, 904, 907, 1056, 1093; Trans. 934, 974
power to make changes in organization of executive branch, Vol. I 183, 230, 437; Trans. 935-939
Impeachment, Vol. I 112, 182, 276—277, 378—379, 391—392, 397—398, 406-407; Vol. II 821, 863, 865, 869—870, 871—872, 874, 875, 878, 883, 885, 888. 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 968, 1587—1590, 2550
Oath of office, Vol. I 125; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Officers comprising executive branch, Vol. I 180—181, 228, 319. 432, 435, 441-444, 449, 457, 462—463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 448, 842, 843-870, 913, 994, 998, 1008, 1695, 1707—1718, 2381, 2690, 2691, 2773, 2776, 3005
Other government employment prohibited during term, Vol. I 180, 229, 436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929

EXECUTIVE BRANCH (Cont.)
Public right of participation in decision-making process, Vol. I 133; Vol. II 621, 630—631, **635.958,** 963, 967, 970, 1038—1039, 1088; Trans. 630—631, 845, 1221, 1651—1669, 1733, 2560, 2561, 2875
Qualifications of officers, Vol. I 180, 228—229, 319—320, 435-436, 441, 445, 457—458, 464; Vol. II 893, 898-899, 904, 906, 1056, 1093; Trans. 858, 861, 870, 874, 883—899, 914, 978—987, 1693—1698, 1746—1747
Removal from **office**
impeachment, Vol. I 112, 182, 276—277, 378—379, **391-392,** 397—398, 406-407; Vol. II 821, 863, 865, 869—870, 871—872, 874, 875, 878, 883, 885, 888, **1048, 1050,** 1054, **1092,** 1106, 1107; Trans. 675-680, 968, 1587—1590, 2550
recall, Vol. I 91, 257—258, 277, 278; Vol. II 816, 821—822, 824, **1020,** 1024, 1025; Trans. 2720—2728, 2852-2853
Residence of officers at seat of government, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, **906, 1056,** 1093; Trans. 873-878
Separation of powers, Vol. I 186; Vol. II 815, 818, 1019, 1022, 1025, 1043, 1090; Trans. 676, 698, **699,** 704, 851, 1011, 1036, 1124, 2377, 2378, 2383, 2523, 2689, 2690—2695
Succession to office
governor, **Vol.** I 181—182, 232-233, 278, 323, 438—439, 454—456, 460—461; Vol. II 896-897, 902-903, 905, 909-910, 1059—1060, 1095; Trans. 880, 887, 930—931, 940—944, 966—973, 1714—1715, 1718—1720
legislature to provide for temporary succession in case of emergency, Vol. I 278
lieutenant governor, Vol. I 181, 233, 278, 320, 322-323, 436, 447, 458, 465—466; Vol. II 894, 899—900, 904, 907, 1057, **1094; Trans.** 929, 939—944
Terms of office, Vol. I 180, 228-229, 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873-878
elected or appointed officers in office on effective date of new constitution, Vol. I 241, 249; Vol. II 1082—1083; Trans. 2776, 3005, 3007—3008
Vacancy in office, Vol. I 181—182, 232—233, 278, 320, 321, 322—323, 436, 438—439, 447—448, 454-456, 458, 460—461, 465—466; Vol. II 894.896-897, 899-900, 902—903, 904, **905,** 907, 909—910, 1057, 1059—1060, 1094, 1095; **Trans.** 842, 880, 887, 929—933, 939—944, 966—973, 1718—1720

EXECUTIVE CLEMENCY, Vol. I 183, 231, 321, 438, 452-453, 460, 466; Vol. II 896, 902, 904—905, 909, 1059, 1095; Trans. 962—964

EXECUTIVE COMMITTEE
Membership and staff, Vol. 122, 433
Report
consideration in committee of the whole, Trans. 842—907, 911—987, 991—1009, 2791—2806
cross references, 1889-1972 constitutions, Vol. II 467
delegate proposals considered, Vol. I 468-469
roll call votes on, in committee, Vol. I 474-477
text and comments
majority report, Vol. I 435—456
minority report, Vol. I 457—466
transmittal letter, Vol. 1432-433
Responsibilities, Trans. **33**
Witnesses appearing before committee, Vol. I 470—473; **Trans.** 285, **297, 991**

EXECUTIVE REORGANIZATION, Vol. I 441-442, 443, 448-449, 450, 462, 463; Vol. II Trans 580, 842, 843, 844, 845, **849,** 850, 851, 858, 869, **913, 917, 922, 923, 934, 935,** 936, **937,** 938, 944, 974, 1000, 1363—1365, 1381, 1398, 1517. 1529, 1692, 1700, 2215, 2309, 2313, 2315, 2620, 2689, 3037

EXEMPTIONS
Liberal **exemption** laws to be enacted, Vol. I 526—527; Vol. II 916, 921, 923, 927, 1077, 1103; Trans. 1147, 1413
Tax exemptions, Vol. I 99, 167, 306. 326: Vol. II 580. 584. 588, 590—591, 599—601, 945, 947—948, 950, 951, 1065, 1097-1098; Trans. 1379, 1410-1427, **1497,** 1556—1558, 2217—2218

EX POST FACTO LAWS, Vol. I 207; Vol. II 624, 644, 961, 966, 968,973, 1041, 1089; Trans. 1829, 2266-2268

EXPRESSION, **FREEDOM OF,** Vol. I 127; Vol. II 621, 629—630, 958, 963, 970, 1038, 1087; Trans. 1649—1651, 1675, 2491, 2493

FABRICK, DICK, Trans. 1341

FALLAN, JEAN (PRINTING CLERK), Vol. I 69; Trans. 3035

FASBENDER, LARRY (HOUSE MINORITY **LEADERSHIP),** Trans. **2**

FELDMAN. HERTHA (PAGE), Trans. 358

FELONIES
See also CONVICTS; CRIMES **AND CRIMINAL PROCEDURE**
Attainder of felony by legislature prohibited, Vol. II 623—624, 644, **960, 966, 968, 972,** 1041, 1089; Trans. 1828—1829
District court jurisdiction, Vol. I 85—86, 88—89, 487—488, 489, 496—497, 500, 516, 518; Vol. II 913—914, 917—918, 922, 924—925, 1061—1062, 1096; Trans. 1074—1080, 1140
Local governments may not define or provide for punishment of felony, Vol. I 136, 254: Vol. II 797; Trans. 2528

FELONS
See CONVICTS

FELT, JAMES R. (BILLINGS)
Biography, Vol. 143
Committee assignment, Vol. **125**
Delegate Proposals
no. 40 (local government article), Vol. I 135—136
no. 123 (legislative interim committees), Vol. I 250
"0. 161 (taxation and finance), Vol. I 306—307
Nominated President of Convention, Trans. 13
declines nomination, Trans. 13
Nomination of Bruce Brown as President of Convention, Trans. 11
Remarks by, on
ballot, constitution, Trans. 544, 2889-2891, 2902—2903 2912
constitutional revision (Article XIV)
amendment
by legislature, Trans. 493-495, 522-524
methods of, Trans. 475

FELT, JAMES R (Cont.)
Remarks by, on (Cont.)
constitutional revision (Cont.)
constitutional preparatory commission, Trans. 480—481
submission, Trans. 514-519
declaration of rights (Article II)
death penalty, Trans. 1811—1812
education and public lands (Article X)
boards of education, Trans. 2135
public land trust, Trans. 35
environment and natural resources (Article IX)
water rights, Trans. 1321
executive (Article VI)
duties, Trans. 913, 914—916, 923—924
officers, Trans. 853, 874, 1708—1709
general provisions (Article XIII)
non-municipal corporations, retrospective laws, Trans. 2267
judiciary (Article VII)
campaign expenses, Trans. 1138
justices of the peace, Trans. 1159
probate attorney, Trans. 1135—1136
legislature (Article V)
bills, Trans. 640
legislative post-auditor, Trans. 974-975, 977, 995—999, 1004—1005
organization and procedure, Trans. 626, 628, 635
parliamentary form of government, Trans. 754
qualifications, Trans. 559—560
size, Trans. 1606—1607
unicameral, referendum of, Trans. 788
revenue and finance (Article VIII)
highway revenue "on-diversion, Trans. 2223, 2229—2231, 2239—2240

FILKA, FIRST LIEUTENANT JOSEPH J., JR.
Capitol flag flown at half-staff in honor of, Trans. 362

FILLNER, MYRNA (PAGE), Trans. 383

FINANCIAL DISCLOSURE, Vol. I 164
See also CONFLICTS OF INTEREST

FINES AND FORFEITURES
Excessive fines prohibited, Vol. II 622. 649, 959, 964, 968, 971. 1040, 1088; Trans. 1771
Remission by governor, Vol. I 321, 433, 438, 452-453, 460, 466; Vol. II 896, 902, 904—905, 909, 1059, 1095; Trans. 962-964

FIREARMS
See ARMS

FISH AND GAME COMMISSION, Trans. 1335, 1336, 1339, 1351

FISH AND GAME, DEPARTMENT OF, Trans. 1237, 1304, 1306, 1314, 1320, 1328—1330, 1336, 1337, 1347, 1351—1352, 2148, 2149, 2288

FISH AND WILDLIFE, Vol. I 76, 261; Vol. II 552, 556; Trans. 1229, 1237, 1238

FISHER, CHRIS (PAGE), Trans. 2209

FLATHEAD WILDLIFE, INC., Trans. 1727

FOLEY, DAN (BILLINGS GAZETTE STATE BUREAU WRITER), Trans. 290, 333, 867, 1671—1672

FONTANA, JUANITA (LIBRARIAN), Vol. I 69; Trans. 3035

FORD, FORMER GOVERNOR SAM C., Trans. 1319

FOSTER, DONALD R. (LEWISTOWN)
Biography, Vol. I 43
Committee assignment, Vol. I25
Delegate Proposals
no. 37 (earmarking of revenues), Vol. I 132
no. 38 (citizen participation), Vol. I 133
no. 67 (preamble), Vol. I 168
no. 87 (rights of minors), Vol. I 199
no. 132 (environmental rights), Vol. I 261—262
Remarks by, on
ballot, constitution, Trans. 2893—2894, 2969—2970
constitutional revision (Article XIV)
constitutional convention, Trans. 487
declaration of rights (Article II)
armed persons, importation of, Trans. 1832
convicts, rights of, Trans. 529
detention of witnesses, Trans. 1772
participation, right of, Trans. 1656—1658
right to bear arms, Trans. 1739—1740, 1836
right to know, Trans. 1671—1672, 1677, 2490, 2494
trial by jury, Trans. 1781, 1790
departments and institutions (Article XII)
agriculture, working hours, Trans. 2602
labor, working hours, Trans. 2318, 2340, 2602
education and public lands (Article X)
board of land commissioners, Trans. 1993
boards of education, Trans. 2130—2131
non-discrimination in education, Trans. 2044
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1205, 1215, 1243—1244
reclamation, Trans. 1287—1289
executive (Article VI)
officers, Trans. 862—863, 1715
qualifications, Trans. 982—983
general government (Article III)
initiative, Trans. 2699
recall, Trans. 2726
general provisions (Article XIII)
non-municipal corporations
cumulative voting, Trans. 2261
retrospective laws, Trans. 2266—2268
people's advocate, Trans. 699, 834—835
judiciary (Article VII)
campaign expenses, Trans. 2193
supreme court organization, Trans. 1049
legislature (Article V)
bills, Trans. 649—650, 660
legislative post-auditor, Trans. 2803—2804
qualifications, Trans. 551—552, 561, 568
size, Trans. 762, 766, 767, 1597—1598, 1606
unicameral/bicameral, merits of, Trans. 2893—2894
local government (Article XI)
recall, Trans. 2553
self-government powers, Trans. 2531—2533
revenue and finance (Article VIII)
highway revenue "on-diversion, Trans. 1435, 1438—1440, 1449—1450, 1457, 1481—1482, 2236—2237, 2780, 2784, 2786
property tax exemptions, Trans. 1415—1416
suffrage and elections (Article IV)
eligibility for public office, Trans. 529
poll-booth registration, Trans. 436-437, 448
Seconds nomination of Bruce Brow" as Eastern District Vice President, Trans. 53

FOWLER, MARGE
Invocation, Trans. 2546

FRANCHISE
See SUFFRAGE, RIGHT OF

FRANKLIN, BENJAMIN, Trans. 3040

FREEPORT TAXES, Trans. 1420, 1421, 1422

FUEHRER, LESLIE (PAGE), Trans. 358

FULBRIGHT, LOUISE (TYPIST-STENOGRAPHER), Trans. 3035

FURLONG, BRIAN (PAGE), Trans. 2209

FURLONG, NOEL D. (KALISPELL)
Biography, Vol. I 44
Committee assignment, Vol. I 25
Remarks by, on
constitutional revision (Article XIV)
submission, Trans. 492
declaration of rights (Article II)
right to know, Trans. 2493
departments and institutions (Article XII)
labor, working hours, Trans. 2319—2320
public assistance, Trans. 2282—2284
education and public lands (Article X)
boards of education, Trans. 25'78
educational goals and duties, Trans. 2156—2157
state university funds, accounting and audit, Trans. 2578
environment and natural resources (Article IX)
water rights, Trans. 1318
executive (Article VI)
officers, Trans. 872
qualifications, Trans. 984
special session, Trans. 1703
general government (Article III,
initiative, Trans. 2709—2710, 2712, 2714
general provisions (Article XIII)
people's advocate, Trans. 702, 831
judiciary (Article VII)
campaign expenses, Trans. 2193
justices of the peace, Trans. 1141
legislature (Article V)
disqualification, Trans. 1580—1581, 1617—1618
legislative post-auditor, Trans. 2796
sessions, Trans. 813—814, 816, 827—828, 1703
local government (Article XI)
voter review of local government, Trans. 2558
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1432—1433, 1437—1438, 1444, 1475, 2234, 2709—2710, 2712, 2714
investment of public funds, Trans. 1534
property tax administration, Trans. 1388, 1407
state debt, Trans. 1494
two-mill levy, Trans. I554

GACKLE, SARAH (PAGE)
Introduced, Trans. 710
Invocation, Trans. 989

GALOSSI, LELLO (PAGE), Trans. 353

GAMBLING, Vol. I 115, 121, 231. 247: Vol. 118X.822,825., 1020, 1024, 1025,1044, 1080—1081, 1090, 1108; Trans. 370, 1477, 2155, 2221, 2235, 2254, 2533, 2728—2760
Alternative issue on constitution ballot. Trans. 1477, 1810, 2221, 2254, 2729—2760, 2828, 2853-2854, 2864, 2865, 2867—2869, 2873, 2877, 2879, 2881—2883, 2890—2892, 2897, 2899. 2900, 2903, 2913, 2914, 2948, 2949, 2951, 2952. 2955. 2969. 2971., 2972., 2975—2986, 2987, 2996, 2993, 2997—2999, 3000

GARDINER, JOHN W. (FORMER SECRETARY OF HEALTH, EDUCATION AND WELFARE, FOUNDER OF COMMON CAUSE), Trans. 1853, 1856—1857, **2192,** 2191, 2255, 2256, 2352, **2763**

GARLINGTON, JAMES c. (MISSOULA)
Appointed Chairman of Closing Ceremony Committee, Trans. 2426
Biography, Vol. 144
Committee assignment, Vol. 125
Presentation of St. **Patrick's Day flowers to male delegates, Trans.** 2566
Remarks by, on
ballot. constitution, Trans. 2951-2952
declaration of rights (Article II)
adult rights, Trans. 1746—1747
participation, right of, Trans. 1654—1655, 1658—1659
state subject to suit, Trans. 1762
education and public lands (Article X)
boards of education, Trans. 2065, 2089, 2098—2099, 2590
commissioner of higher education, Trans. 2098—2099
state university funds, accounting and audit, Trans. 2590
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1236—1237
executive (Article VI)
compensation, Trans. 992
duties, Trans. 912—913, 920—921
officers, Trans. 851—852, 868—869, 873—874
succession, Trans. 967—968
vacancy, Trans. 941
general provisions (Article XIII)
non-municipal corporations, cumulative voting, Trans. 2259—2260
judiciary (Article VII)
campaign expenses, Trans. 1173, 2196
district court jurisdiction, Trans. 1052
selection, Trans. 1032—1033, 1095
terms and pay, Trans. 1115—1116, 1151, 1152
legislature (Article V)
districting and apportionment,, Trans. 685, 691-693, 695, 718
legislative post-auditor, Trans. 1000—1002, 1004
organization and procedure, Trans. 616—617
sessions, Trans. 582-583, 815
size, Trans. 782, 815
local government (Article XI)
forms of government, Trans. 2521
voter review of local government, Trans. 2558
suffrage and elections (Article IV)
eligibility for public office, Trans. 1746—1747
poll-booth registration, Trans. 436, 439—440
qualified elector, Trans. 396

GEIER, JEAN (TYPIST-STENOGRAPHER), Vol. **I** 69; **Trans.** 3035

GENERAL GOVERNMENT
See ARTICLE III

GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE
Membership and staff, Vol. 123, 334, 350
Report
consideration in committee of the whole, Trans. 453—467, 470—528
cross references, 1889-1972 constitutions, Vol. I 365
delegate proposals considered, Vol. I 366
text and comments
majority report, Vol. I 352—364
transmittal letter, Vol. I 350
Responsibilities, Trans. 33, 34, 36-37, 150—151
Witnesses appearing before committee, Vol. I 347, 367; Vol. II 831-834; Trans. 370-371, 397

GENERAL PROVISIONS
See ARTICLE XIII

GHOST TOWNS, Vol. I 558; Trans. 1351

GIFT ENTERPRISES
See GAMBLING

GILLULY, SAM (DIRECTOR, MONTANA HISTORICAL SOCIETY), Trans. 262, ,352

GIRLS' STATE, Trans. 3017, 3019, 3038

GLASGOW IRRIGATION DISTRICT, Trans. 1313, 1344

GLOVER, TOM (PAGE), Trans. 710

GOPHER, ROBERT, Trans. 1951

GORDON, DR. CLANCY, Trans. 1756

GOVERNOR
Absence from state, Vol. I 323, 439, 454—456, 461; Vol. II 896,902, 905, 909-910, 1059—1060, 1095; Trans. 842, 968—969, 1705
Appointments
attorney general, Vol. 1442; Trans. 844, 852, 867—870
board of public education, Vol. I 283; Vol. II 719—720, 733, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049, 2089, 7.096, 2172—2173
board of regents, Vol. I 196, 283, 287, 324; Vol. II 720, 735, 935,998, 1002, 1005, 1071, 1100; Trans. 2049, 2089, 2109, 2116, 2119, 2126, 2132, 2136
commissioner of labor and industry, Vol. II 670, 672, 978, 982, 985, 987, 1076, 1102; Trans. 2308—2315
confirmation by legislature, Vol. I 178, 183, 196, 214, 230. 256, 283, 321, 324, 437, 449—450, 459, 511, 519-521; Vol. II 582, 585, 592, 670, 672, 676, 678, 683, 684, 719—720, 733, 735,895, 900, 904, 908, 914, 919, 922. 925—926, 944-947, 978,982, 985, 987, 995, 998, 1002, 1005, 1054—1058, 1062, 1071, 1094, 1096—1097, 1100; Trans. 944—947. 1016—1017, 1023; 1033, 1084-1114, 1380, 2049, 2058. 2059, 2062, 2065, 2096, 2109, 2116, 2126, 2132, 2136, 2168—2170, 2172—2173, 2308—2315, 2345. 2373. 2376. 2380, 2386, 2493

GOVERNOR (Cont.)
Appointments (Cont.)
constitutional convention commission, Vol. I 4
delegation of appointive power to lieutenant governor prohibited, Vol. I 446
departmental, Vol. I 183, 230—231, 321,437, 449—450, 459; Vol. II 895, 900-901, 904, 908, 1057—1058, 1094; Trans. 868—869, 924, 944-947, 2309, 2313, 2345, 2376
judicial standards commission, Vol. I 489—490, 502, 512. 523; Trans. 1122
judiciary, Vol. 187, 141, 491-492, 506, 511—512, 519—521; Vol. II 914-915, 919, 922, 925-926, 1062, 1096—1097; Trans. 1012, 1016—1017, 1023, 1028, 1030~1033, 1084—1114
public utilities commissioner, Vol. I 178; Vol. II 676, 678, 683,684; Trans. 2373, 2376, 2378, 2379, 2380, 2383, 2386
reapportionment commission, Vol. I 162
salary commission, Vol. I 110, 134
state board of education, Vol. I 256, 287; Trans. 2058, 2059, 2062, 2065, 2089, 2168—2170. See also board of public education; board of regents
state board of equalization, Trans. 1380, 1381, 1382, 1386—1387, 1395, 1397
state engineer. Vol. I 214
state tax appeals board, Vol. II 582, 585, 592
superintendent of public instruction, See SUPERINTENDENT OF PUBLIC INSTRUCTION, Appointment
vacancy in executive office, Vol. I 181, 233, 436, 447-448, 458, 465—466; Vol. II 894, 899—900, 904, 907, 1057, 1094; Trans. 929-933, 939—944
Board of examiners, member of, Vol. I 443-444
Board of land commissioners, member of, Vol. 1329; Vol. II 718-719,126-127. ,994,997., 1002, 1004, 1069—1070, 1100; Trans. 864, 1990, 1991, 1993
Board of pardons
executive clemency to be upon recommendation of, Vol. I 460 466
member of, Vol. 1453; Trans. 962
Boards of education, ex officio member of, Vol. I 287; Vol. II 719—720, 733—736, 995, 998—999, 1002, 1005, 1071, 1100; Trans. 2049—2052, 2058—2063, 2065, 2079—2081, 2084, 2087, 2089—2090, 2096, 2097, 2100, 2102, 2109, 2116, 2119, 2132—2133, 2584
Budget, submission to legislature, Vol. I 183, 231, 321, 432-433, 437,446, 450,459; Vol. II 895, 901, 908, 1058, 1094; Trans. 842, 947-948, 2103, 2136
Candidacy for public office during term, Vol. I 436, 447, 458; Vol. II 894, 899, 904,907, 1057, 1094; Trans. 842, 928-929
Citizenship, power to restore, Vol. 1 321, 438, 452-453, 460, 466; Vol. II 896, 902, 904-905, 909, 1059, 1095; Trans. 962
Commander-in-chief of militia, Vol. I 182, 229, 295-296, 320, 438, 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964—966
Compensation, Vol. I 181, 229. 320, 432, 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927—928, 991—994
salary commission, Vol. 1134,447; Vol. II 861, 867, 874, 876, 880,886, 1077, 1103; Trans. 578-579, 992, 993, 1084, 1572
Constitutional convention, call to order and act as temporary president, Vol. I 2
Death, succession of lieutenant governor, Vol. I 181—182, 232-233, 323, 438—439, 454-456, 460—461; Vol. II 896—897, 902-903, 905, 909—910, 1059—1060, 1095; Trans.880, 887. 930-931, 940-944, 966-973, 1714—1715, 1718—1720

GOVERNOR (Cont.)
Delegation of constitutional powers to lieutenant governor prohibited, Vol. I 181, 320, 445, 446, 458, 465; Vol. II 894, 899, 904, 907, 1056—1057, 1093; Trans. 900, 903
Departments of state government, supervisor of, Vol. I 183, 230, 437, 449—450, 459; Vol. II 895, 900, 904,908, 1057—1058, 1094; Trans. 944-947
Disability, Vol. I 181—182, 232-233, 322-323, 433, 439, 455—456, 461; Vol. II 896—897, 902—903, 905, 909—910, 1059—1060, 1095; Trans. 842, 969-972, 1706, 1719
Disqualification, Vol. I 182, 232, 322, 323, 438-439, 454-455, 460—461; Vol. II 896-897, 902—903, 905, 909—910, 1059—1060, 1095; Trans. 966—973, 1718
Duties, Vol. I 319, 435, 436, 441, 445—446, 457, 458, 462, 465; Vol. II 893-894, 899, 906, 907, 1056—1057, 1093; Trans. 843, 899
Election, Vol. I 180, 228, 319, 435, 444, 457, 463; Vol. 11 893, 898. 904. 906. 1056. 1093: Trans. 878-883
joint filing with candidate for lieutenant governor, Vol. I 181, 229, 320, 435, 444, 448, 457, 463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 842, 843, 8.54, 879—881, 887, 902, 929
Executive branch, office in, Vol. I 180, 228, 319, 435, 441, 457, 462—463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 843, 845. 994
Executive power vested in office of, Vol. 1180, 228, 320, 445, 449, 458, 465; Vol. II 893—894, 899, 904, 907, 1056, ,093; Trans. 934, 974
Fines and forfeitures, power to suspend or remit, Vol. I 183, 321, 438, 452—453, 460,466; Vol. II 896,902, 904—905, SOS, 1059, 1095; Trans. 962-W
Impeachment, Vol. I 112, 182, 276—277, 378-379, 391-392, 397-398, 406—407; Vol. II 821, 863, 865, 869—870, 871—872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 968, 1587—1590, 2550
Inability to serve, Vol. I 181—182, 232-233, 322-323, 433, 439, 455—456, 461; Vol. II 896—897, 902-903, 905, 909—910, 1059-1060, 1095; Trans. 842, 969-972, 1706, 1719
Information from branches and departments of government. authority to require. Vol. I 229; Vol. II 897, 903, 905, 910, 1060, 1095; Trans. 973—974
Legislative confirmation of appointments, Vol. I 178, 183, 196, 214. 230, 256, 283, 321, 324, 437, 449-450, 459,511, 519-521; Vol. II 582, 585, 592,670, 672,676, 678,683, 684, 719—720, 733, 735, 895, 900,904, 908, 914, 919,922, 925—926, 944—947, 978, 982, 985, 987, 995, 998, 1002, 1005, 1054—1058, 1062, 1071, 1094, 1096—1097, 1100; Trans. 944-947, 1016—1017, 1023, 1033, 1084—1114, 1380, 2049, 2058, 2059, 2062, 2065, 2096, 2109, 2116, 2126, 2132, 2136, 2168—2170, 2172—2173, 2308—2315, 2345, 2313, 2376, 2380, 2386, 2493
Limit on tenure, Vol. 1229
Messages to legislature, Vol. I 183, 231, 321, 437.450. 459: Vol. II 895. 901. 908. 1058. 1094: Trans. 947-948
Military affairs
call of militia, Vol. I 182. 229, 320. 438. 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964-966
commander-in-chief of militia, Vol. I 182. 229, 295-296, 320, 438, 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964—966

GOVERNOR (Cont.)
Military affairs (Cont.)
importation of armed persons, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042, 1089; Trans. 1832
proclamation of martial law, Vol. I 182, 320; Trans. 1830
Oath of office. Vol. I 125; Vol. 11 815.819. 1019. 1022. 1025. 1043, 1090; Trans. 2695
Other government employment prohibited during term, Vol. I 180, 229, 436, 458; Vol. II 894, 899, 904, 907, 1057, ,094; Trans. 928-929
Power to make changes in organization of executive branch. Vol. I 183. 230.437: Trans. 935-939
Proclamation of martial law, Vol. I 182, 320; Trans. 1830
Qualifications, Vol. I 180, 228, 319—320, 435, 445, 457, 464; Vol. II 893, 898, 904, 906, 10.56, 1093; Trans. 8X3-893, 978-986, 1693—1697
Recall, Vol. I 91, 257—258, 277—278; Vol. II 816, 821—822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852—2853
Reports to by branches and departments of government, Vol. I 229; Vol. II 897, 903, 905, 910, 1060, 1095; Trans. 973-974
Reprieves, commutations and pardons, Vol. I 183, 231, 321, 438, 446, 452-453, 460, 466; Vol. II 896, 902, 904-905, 909, 1059, 1095; Trans. 962-964
Residence at seat of government, Vol. 1319,435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Special sessions of legislature, authority to convene. Vol. I 106, 110, 183, 231, 275, 321, 376, 384-385, 395, 402, 414—415, 438, 452, 460; Vol. II 861, 868, 874, 876—877, 881, 887, 901-902, 904, 909, 1046, 1052, 1059, 1091, 1095, 1105; Trans. 579—593, 817, 826, 958—961, 1702—1704
Succession to office, Vol. I 181—182, 232-233, 278, 322-323, 438—439, 454-456, 460—461; Vol. II 896-897, 902-903, 905, 909—910, 1059—1060, 1095; Trans. 880, 887, 930—931, 940—944, 966—973, 1714-1715, 1718—1720
Term of office, Vol. I 180, 228—229, 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Vacancies in executive or administrative offices, governor's appointing power, Vol. I 181, 183, 230-231, 233, 321, 436, 437, 447—448, 449—450, 458, 459, 465-466; Vol. II 894, 895, 899-900, 900-901, 904, 907, 908, 1057—1058, 1094; Trans. 868, 924, 929—933, 939—944, 944—947, 2309, 2313, 2345, 2376
Vacancy in office of, Vol. I 181—182, 232—233, 278,323, 438—439, 454-456, 460—461; Vol. II 896—897, 902—903, 905, 909-910, 1059—1060, 1095; Trans. 842, 880, 887, 930—931, 940—944, 966—973, 1714—1715, 1718—1720
Veto power, Vol. I 111—112, 116—117, 183—184, 231—232, 321-322, 323, 378, 390-391, 397, 406, 433, 437—438, 446, 450-452, 459—460; Vol. II 895—896, 901, 904, 908-909, 1058—1059, 1094-1095; Trans. 674-675, 747, 842, 948-958, 1702, 1720—1723, 2859, 2887—2888
Veto power, restrictions on
appropriations for the legislature, Vol. I 378, 391, 397; Trans. 675, 948, 952-953
constitutional amendment, Vol. 1120, 183-184, 211. 321-322, 355, 363, 378, 391, 397, 406, 437, 450—451, 459; Vol. II 895, 901, 904, 908, 1058, 1094; Trans. 522, 94X-956

GOVERNOR (Cont.)
Veto power, restrictions on (Cont.)
initiative and referendum, Vol. I 111, 258, 277, 358, 391, 397, 406, 437, 450—452, 459; Vol. II 816, 821, 895, 901, 904, 908, 1058, 1094; Trans. 675, 948—958, 2719—2720
resolutions, Vol. I 378, 391, 397, 406, 437, 450—451, 459; Vol. II 895, 901, 904, 908, 1058, 1094; Trans. 675, 948-958

GRADY, JAMES (RESEARCH ANALYST), Vol. I 69, 334, 350; Vol. II 813; Trans. 373, 3035

GRAHAM, BILLY, Trans. 1741

GRAHAM, GARY (INTERN), Vol. I 70; Trans. 3036

GRAHAM, PATRIC (PAGE). Trans. 383

GRAND JURY, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1765—1766, 2499, 2501

GRANGER, ORVILLE (PAGE), Trans. 1692

GRAYBILL, LEO, JR. (GREAT FALLS)
President
Acceptance speech, Trans. 16
Appointed Chairman of Post-Convention Procedural, Administrative and Voter Education Affairs Committee, Trans. 2426
Biography, Vol. I44
Closing remarks, Trans. 3039—3041
Committee assignment, Vol. I25
Elected President of Convention, Trans. 16
Letter of gratitude from delegates, Trans. 3041
"New Montana Constitution", State Government, Spring 1973, Vol. I 71
Nominated President of Convention, Trans. 9
Opening remarks to Convention, Trans. 110—111
Presentations
gavel made by jim osborne of glendive, Trans. 374
gift from people of israel, Trans. 438
plaque and the west of william h. ashley, 1822—1838 from delegates, Trans. 3041
Remarks by, on
constitutional revision (Article XIV)
amendment by initiative, Trans. 509
non-partisanship of convention, Trans. 483
declaration of rights (Article II)
right to know, Trans. 2496—2497
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1265—1267
executive (Article VI)
vacancy, Trans. 930—931, 940—944
judiciary (Article VII)
campaign expenses, Trans. 1167, 1169—1170, 2197—2198, 2202—2203
revenue and finance (Article VIII)
highway revenue non-diversion; Trans. 1458—1465, 1469—1470, 2227, m - 2 2 3 9
Resolution No. 5 (Convention budget), Trans. 227

GRAYBILL, MRS. LEO, JR., Trans. 117

GRAYBILL, LEO, SR., Trans. 117, 1974

GRAYBILL, MRS. LEO, SR., Trans. 117

GRAY, RANDALL (INTERN), Vol. I 70; Vol. II 578; Trans. 2545, 3036

GRAZING DISTRICTS, Vol. I 246

GREAT FALLS, COLLEGE OF, Trans. 365—366, 2020, 2021, 2022, 2024

GROSS PROCEEDS TAX, Trans. 1376, 1414

GUNCONTROL
See RIGHT TO BEAR ARMS

GYSLER, CARL (PAGE), Trans. 383

GYSLER, E.S. "ERV" (FORT BENTON)
Biography, Vol. I45
Committee assignment, Vol. I 26
Remarks by, on
ballot, constitution, Trans. 2951, 2956
constitutional revision (Article XIV)
amendment by initiative, Trans. 507—508
constitutional preparatory commission, Trans. 461
submission, Trans. 492
declaration of rights (Article II)
right to bear arms, Trans. 1737—1738
right to work, Trans. 2364
searches and seizures, Trans. 1687
departments and institutions (Article XII)
agriculture
department of, Trans. 1363—1365
special levies, Trans. 1366—1367, 1369
labor
department of, Trans. 2310
working hours. Trans. 2325
public utility districts, Trans. 2407
education and public lands (Article X)
hoard of land commissioners, Trans. 1993
boards of education, Trans. 2058—2061, 2063, 2064, 2081—2082, 2165—2166
educational goals and duties, Trans. 1978
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1203, 1214—1215, 1232—1233, 1242, 1248, 1251—1252, 1269
reclamation, Trans. 1284, 1289
water rights, Trans. 1305, 1309, 1313, 1326, 1336—1337, 2214
executive (Article VI)
qualifications, Trans. 1696
general government (Article III)
gambling, Trans. 2743
initiative, Trans. 2716
liquor monopoly, Trans. 2766
recall, Trans. 2725—2727
general provisions (Article XIII)
code of ethics, Trans. 795
judiciary (Article VII)
campaign expenses, Trans. 2195
supreme court *organization, Trans. 1047*
legislature (Article V)
appropriations b&warrant; prohibited payments, Trans
bills, Trans. 646
organization and procedure, Trans. 628
qualifications, Trans. 557, 570
size, Trans. 1598, 1607
local government (Article XI)
definition. Trans. 2514
revenue sharing, Trans. 2537—2540

GYSLER, E.S (Cont.)
Remarks by, on (Cont.)
revenue and finance (Article VIII)
highway revenue non-diversion, 'Trans. 1442, 1454, 2716
property tax administration, Trans. 1396
two-mill levy, Trans. 1550—1551, 1553
suffrage and elections (Article IV)
absentee voting, Trans. 432

HABEAS CORPUS
Jurisdiction
district court, Vol. I 488, 496—497
supreme court, Vol. 185, 140, 486, 493—494, 510, 515—516; Vol. II 913, 917, 922,924, 1061, 1096; Trans. 1036, 1037, 1071—1073, 1162—1163
Privilege never to be suspended, Vol. II 622, 638—639, 959, 964, 911, 1040. 1088; Trans. 1764

HABEDANK, OTTO T. (SIDNEY)
Appointed to escort committee, Trans. 32
Biography, Vol. I 45
Committee assignment, Vol. I26
Delegate Proposals
no. 94 (constitutional amendment), Vol. I 209—211
no. 174 (individual rights), Vol. I 328
Nomination of Delegates as President of Convention
magnus aasheim, Trans. 12
harold arbanas, Trans. I2
chet blaylock, Trans. 12
geoffrey brazier, Trans. 13
leslie eskildsen, Trans. 14
james r. felt, Trans. 13
paul harlow, Trans. 14
david I. holland, Trans. 13
charles h. mahoney, Trans. 14
sterling rygg, Trans. 13
james m. schiltz, Trans. 13
john h. toole, Trans. 13
Remarks by, on
ballot, constitution, Trans. 2897, 2901, 2956, 2961-2962, 2964-2965, 2974, 2978—2979, 2984
boundaries, state, Trans. 2762
constitutional revision (Article XIV)
amendment
by initiative, Trans. 507, 509, 513, 1189, 1193, 1195
by legislature, Trans. 496, 502, 523, 526
methods of, Trans. 466, 472, 474-475
constitutional convention, Trans. 485-487, 490, 527, 1187—1188
constitutional preparatory commission, Trans. 456—460, 465, 478—480
non-partisanship of convention, Trans. 482
periodic submission, Trans. 463
submission, Trans. 491, 492, 518
declaration of rights (Article II)
accused, rights of, Trans. ,776
adult rights, Trans. 1747
convicts, rights of, Trans. 1822—1823
death penalty, Trans. 1802, 1805—1806
detention of witnesses, Trans. 1772
eminent domain, Trans. 1827—1828
individual dignity, Trans. 1642—1643
justice, administration of, Trans. 1754—1755, 1758
participation, right of, Trans. 1652
right to bear arms. Trans. 1738
state subject to suit, Trans. 1760—1761
trial by jury, Trans. 1780—1781
departments and institutions (Article XII)
labor, workmen's compensation, Trans. 1755, ii58
public utility districts, Trans. X05-2606
education and public lands (Article X)
boards of education, Trans. 2111, 2168—2169
educational goals and duties, Trans. 1961—1962, 1964, 1973, 1983—1985, 2151—2154, 2158

HABEDANK, OTTO T (Cont.)
Remarks by, on (Cont.)
environment and natural resources (Article IX)
reclamation, Trans. 1296, 1355, 1359—1361
water rights, Trans. 1344
executive (Article VI)
compensation, Trans. 929
duties, Trans. 927
qualifications, Trans. 885, 979, 986
twenty departments, Trans. 937—938
vacancy, Trans. 932—933, 940—943
general government (Article III)
gambling, Trans. 2745—2746, 2748, 2979
initiative, Trans. 2697, 2701—2703, 2710, 2823
number of electors, Trans. 2827
recall, Trans. 2723
referendum, Trans. 2823, 2825
general provisions (Article XIII)
non-municipal c&orations, long-short haul provision, Trans. 2264
judiciary (Article VII)
campaign expenses, Trans. 1176—1177, 2193, 2202—2203, 2432
judicial districts, Trans. IO82
removal and discipline, Trans. 1124—1125
supreme court
jurisdiction, Trans. 1040
organization, Trans. 1066—1067
legislature (Article V)
bills, Trans. 656, 663-664
disqualification, Trans. 1575—1578, 1580
districting and apportionment, Trans. 737
election and terms, Trans. 771
legislative post-auditor, Trans. 1002—1004
qualifications, Trans. 800, 805, 1570
unicameral/bicameral, merits of, Trans. 786, 788—789, 2901
revenue and finance (Article "III)
highway revenue non-diversion, Trans. 1433, 1438, 2225, 2701—2703, 2710, 2780—2781, 2787—2788
investment of public funds, Trans. 1526, 1533—1534
property tax administration, Trans. 1394—1395, 2218
state debt, Trans. 1499—1501
suffrage and elections (Article IV)
eligibility for public office, Trans. 1747
poll-booth registration, Trans. 403—404

HAGENSTON, ARTHUR
Appointed to escort committee, Trans. 1

HAIL INSURANCE PROGRAM, Vol. I 246; Trans. 2216

HAINES, THOMAS, Trans. 3017, 3019, 3038

HALVERSON, SANDY (PAGE), Trans. 1183

HANSEN, CLIFFORD (UNITED STATES SENATOR, WYOMING), Trans. 2353

HANSON, JOHN (CHIEF CLERK), Vol. I 30, 69; Trans. 3032, 3035

HANSON, ROD (FAIRFIELD)
Biography, Vol. I46
Committee assignment, Vol. I26
Delegate Proposal
no. 60 (abolition of counties), Vol. I 160
Remarks by, on
ballot, constitution, Trans. 2954, 2979

HANSON, ROD (Cont.)
Remarks by, on (Cont.)
constitutional revision (Article XIV)
amendment by
initiative, Trans. 507
legislature, Trans. 497
declaration of rights (Article II)
assembly, freedom of, Trans. 1648
departments and institutions (Article XII)
labor, working hours, Trans. 2317—2318
public assistance, Trans. 27.88
public utility districts, Trans. 2407
education and public lands (Article X)
boards of education, Trans. 2067, 2071-2072, 2166
educational goals and duties, Trans. 1967, 1979, 2156
school district trustees, Trans. 2048
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1208
water rights, Trans. 1322, 1337
judiciary (Article VII)
campaign expenses, Trans. 1165
clerks of court, Trans. 1130
selection, Trans. 1090—1091, 1108
terms and pay, Trans. 1151
legislature (Article V)
bills, Trans. 641—643
districting and apportionment, Trans. 689, 715
legislative post-auditor, Trans. 2800
qualifications. Trans. 568-569
sessions, Trans. 588-589
size, Trans. 784, 1612
revenue and finance (Article "III)
highway revenue non-diversion, Trans. 2225
property tar administration, Trans. 1406
suffrage and elections (Article IV)
poll-booth registration, Trans. 408
Seconds nomination of **Cedor Aronow** as Temporary President of Convention, Trans. 7

HANSON, R.S. "BOB" (POLSON)
Biography, Vol. I 45
Committee assignment, Vol. I 26
Remarks by, on
declaration of rights (Article II)
bail, Trans. 1771
habeas corpus, Trans. 1764
militia, civilian control of, Trans. 1829—1830
proceedings, initiation of, Trans. 1765
departments and institutions (Article XII)
public utility districts, Trans. 2407
education and public lands (Article X)
educational goals and duties, Trans. 1989
indian education, Trans. 1954
general government (Article III)
gambling, Trans. 2757
legislature (Article V)
size, Trans. 782

HANSON, UNIDENTIFIED
Remarks by, on
departments and institutions (Article XII)
public utility districts, Trans. 2605
education and public lands (Article X)
boards of education, Trans. 2580
state university funds, accounting and audit, Trans. 2580
executive (Article VI)
compensation, Trans. 993
legislature (Article V)
sessions, Trans. 814—815
Seconds nomination of **Magnus** Aasheim as Eastern District Vice President, Trans. 53

HARBAUGH, GENE (POPLAR)
Appointed to Post-Convention Procedural, Administrative and Voter Education Affairs Committee. Trans. 2426
Biography, Vol. I46
Committee assignment, Vol. I 26
Delegate Proposals
no. 58 (constitutional convention), Vol. I 158
no. 111 (gambling), Vol. I 237
no. 164 (aid to sectarian causes, non-public education), Vol. I 311
no. 175 (school lands), Vol. I 329
Invocations, Trans. 202, 292, 356, 381, 1690, 2302, 2918
Remarks by, on
ballot, constitution, Trans. 1817, 2872-2873, 2877, 2879, 2953—2954, 2957, 2962—2963
constitutional revision (Article XIV)
amendment, methods of, Trans. 471—472
periodic submission, Trans. 462
declaration of rights (Article II)
death penalty, Trans. 1808—1809, 1817, 2872, 2879
participation, right of, Trans. 1655—1656, 1660, 1663—1665
right to bear arms, Trans. 1737
departments and institutions (Article XII)
agriculture, working hours, Trans. '2602
labor, working hours, Trans. 2602
public utility districts, Trans. 2609
education and public lands (Article X)
aid to sectarian schools, Trans. 2010—2011, 2015, 2020—2022, 2024
board of land commission&s, Trans. 2001
boards of education, Trans. 2099, 2104, 2172
commissioner of higher education, Trans. 2099, 2104
educational goals and duties, Trans. 1949—1950, 1955, 1957, 1959-1961, 1963, 1966, 1969—1973, 1975—1978, 1980—1981, 1984, 1989, 2151, 2155
indian education, Trans. 1953
non-discrimination in education, Trans. 2035—2039, 2041
public land trust, access, Trans. 2148
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1260, 1263
executive (Article VI)
officers, Trans. 857-858, 864, 865, 871
qualifications, Trans. 982
general government (Article III)
gambling, Trans. 2734-2735, 2744—2745
initiative, Trans. 2711, 2714
referendum, Trans. 2822
judiciary (Article VII)
campaign expenses, Trans. 2189, 2194
clerks of court, Trans. 2774
selection, Trans. 1028
legislature (Article V)
bills, Trans. 652
districting and apportionment, Trans. 744
organization and procedure, Trans. 627-629
qualifications, Trans. 553. 565
size, Trans. 780-781
local government (Article XI)
forms of government, Trans. 2520
self-government charters, Trans. 2528
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2228—2229, 2235, 2711, 2714
two-mill levy, Trans. 1553, 1554

HARLOW, PAUL K. (THOMPSON FALLS)
Appointed to Closing Ceremony Committee, Trans 2426
Biography, Vol. I 46
Committee assignment, Vol. I 26
Delegate Proposals
no. 31 (oath of office). Vol. I 125

HARLOW, PAUL K (Cont.)
Delegate Proposals (Cont.)
no. 121 (public utility corporations), Vol. I 248
no. 129 (recall), Vol. I 257—258
Nominated Convention Secretary, Trans. 63
Nominated President of Convention, Trans. 14
declines nomination, Trans. 14
Remarks by, on
ballot, constitution, Trans. 2902, 2983-2984
boundaries, state, Trans. 2761
constitutional revision (Article XIV)
amendment by legislature, Trans. 523
constitutional preparatory commission, Trans. 458—459
declaration of rights (Article II)
eminent domain, Trans. 1828
right to bear arms, Trans. 1738, 1838
departments and institutions (Article XII)
agriculture, special levies, Trans. 1368
labor, department of, Trans. 2311
public utility districts, Trans. 2405—2407, 2419
education and public lands (Article X)
boards of education. Trans. 2580
educational goals and duties, Trans. 1978
non-discrimination in education, Trans. 2032, 2039—2040
state university funds, accounting and audit, Trans. 2580
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1213, 1266—1267, 1274
reclamation, Trans. 1289—1290, 1293
general government (Article III)
elections, Trans. 2826
gambling, Trans. 2745
initiative, Trans. 2704
liquor monopoly, Trans. 2765
recall, Trans. 2724—2725
judiciary (Article VII)
campaign expenses, Trans. 1166
clerks of court, Trans. 2775—2776
district court jurisdiction, Trans. 1077
justices of the peace, Trans. 1142
selection, Trans. 1091—1092, 1105
legislature (Article V)
bills, Trans. 641, 646
districting and apportionment, Trans. 689, 719—720
impeachment, Trans. 1588—1589, 1625—1626
qualifications, Trans. 554
unicameral/bicameral, merits of, Trans. 2580
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1434, 2704, 2787
suffrage and elections (Article IV)
poll-booth registration, Trans. 404, 439—441, 443, 446
privilege from arrest, Trans. 420
qualified elector, Trans. 393

HARPER, GEORGE (HELENA)
Appointed to Post-Convention Procedural, Administrative and Voter Education Affairs Committee, Trans. 2426
Biography, Vol. 147
Committee assignment, Vol. I26
Invocations, Trans. 94, 118, 215, 308, 386,909, 1272, 1768, 3018
Remarks by, on
ballot, constitution, Trans. 1815-1816, 2869, 2882, 2888, 2891—2892, 2898—2899, 2910—2911, 2954—2956, 2971, 2975—2976
constitutional revision (Article XIV)
amendment by legislature, Trans. 496—498, 501, 503—504
constitutional preparatory commission, 'Trans. 460
non-partisanship of convention, Trans. 483
submission. Trans. 492, 518
declaration of rights (Article II)
death penalty, Trans. 1803—1804, 1811
individual dignity, Trans. 1644

HARPER, GEORGE (Cont.)
Remarks by, on (Cont.)
declaration of rights (Cont.)
militia, civilian control of, Trans. 1831
right to know, Trans. 1674, 2499
right to privacy, Trans. 1681—1682, 1850, 1852
treason and descent of estates, Trans. 1828—1829
departments and institutions (Article XII)
agriculture, working hours, Trans. 2604
labor, working hours, Trans. 2604
merit system, Trans. 2342, 2346—2347
public assistance, Trans. 2292
public utilities
consumer protection, Trans. 2397
districts, Trans. 2410, 2605, 2607—2608, 2611—2612
public service commission, Trans. 2395
education and public lands (Article X)
aid to sectarian schools, Trans. 2012—2013, 2021—2022
boards of education, Trans. 2073, 2083—2085, 2088, 2096, 2160—2161, 2163—2165, 2171
educational goals and duties, Trans. 1979
indian education, Trans. 1951
non-discrimination in education, Trans. 2036, 2043
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1217—1218, 1235, 1256, 1258—1259
reclamation, Trans. 1283—1284, 1358
executive (Article VI)
duties, Trans. 920
election, Trans. 880
militia, Trans. 965-966
officers, Trans. 864
pardons, Trans. 964
qualifications, Trans. 886, 897, 979—980
special session. Trans. 959-960
general government (Article III)
gambling, Trans. 2730-2732, 2741, 2749, 2754, 2898, 2975-2976
initiative, Trans. 2698, 2701—2703, 2715, 2717
liquor monopoly, Trans. 2251-2252, 2766
recall, Trans. 2723-2724
separation of powers, Trans. 2828-2629
general provisions (Article XIII)
consumer counsel, Trans. 2401
non-municipal corporations, cumulative voting, Trans. 2260
people's advocate, Trans. 703, 833
salary commission, Trans. 577
judiciary (Article VII)
campaign expenses, Trans. 1176, 2197
clerks of court, Trans. 2776
district court jurisdiction, Trans. 1057
selection, Trans. 1105
legislature (Article V)
hills, Trans. 639—640, 643, 665, 671, 673, 1587
compensation, Trans. 574, 577
districting and apportionment, Trans. 692-693, 1590—1591
election and terms, Trans. 1569
legislative post-auditor, Trans. 2800
organization and procedure, Trans. 610—611, 615-616, 618—619, 622—623, 636
parliamentary form of government, Trans. 755—756
qualifications, Trans. 569
sessions, Trans. 583, 586—587, 817—818, 824
size, Trans. 760—761, 779, 824
unicameral/bicameral
merits of, Trans. 2911
referendum of, Trans. 786
vacancies, Trans. 726
local government (Article XI)
recall, Trans. 2552
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1442—1443, 1457, 1460, 1476, 2220, 2701—2703, 2715, 2717

HARPER, GEORGE (Cont.)
Remarks by, on (Cont.)
revenue and finance (Cont.)
property tax
administration, Trans. 1401
exemptions, Trans. 1415, 1418—1419, 1424—1426
state debt. Trans. 1500
suffrage and elections (Article IV)
poll-booth registration, Trans. 407, 430, 435
Resolution No. 18 (Unicameral-Bicameral preference), Trans. 3022

HARRINGTON, CHARLES
Appointed to escort committee, Trans. 1

HARRINGTON, DANIEL W. (BUTTE)
Biography, Vol. I47
Birth of child noted, Trans. 542
Committee assignment, Vol. I26
Delegate Proposal
no.81 (religious liberty), Vol. I 189—190
Remarks bv. on
ballot, constitution, Trans. 2978, 2980, 2984
constitutional revision (Article XIV)
non-partisanship of convention, Trans. 482
declaration of rights (Article II)
adult rights, Trans. 1749
right to bear arms, Trans. 1731
right to work, Trans. 2363-2364
departments and institutions (Article XII)
labor
collective bargaining, Trans. 2332-2333
working hours, Trans. 2321-2322
merit system, Trans. 2344
public assistance, Trans. 2292
education and public lands (Article X)
aid to sectarian schools, Trans. 2019
educational goals and duties, Trans. 1964—1965, 1971, 1917. 2156
public school fund revenue, Trans. 2006—2007
school district trustees, Trans. 2047—2048
environment and natural resources (Article IX)
reclamation, Trans. 1293
executive (Article VI)
officers, Trans. 854—855, 863, 1712
general government (Article III)
gambling, Trans. 2753, 2757
recall, Trans. 2725
general provisions (Article XIII)
people's advocate, Trans. 830
judiciary (Article VII)
clerks of court, Trans. 1130
justices of the peace, Trans. 1140—1141, 1144, 1146, 1156, 1159
legislature (Article V)
qualifications, Trans. 553-554
sessions, Trans. 821
size, Trans. 764, 823, 826
suffrage and elections (Article IV)
eligibility for public office, Trans. 1749
poll-booth registration. Trans. 439

HARRIS, ALBERTA (PAGE), Trans. 2209

HARRIS, DALE (EXECUTIVE DIRECTOR), Vol. I 30, 69, 71; Trans. 9, 35, 98, 99, 244-246, 315—316, 362, 365, 3035

HARRISON, ELIZABETH N. (PUBLIC INFORMATION DIRECTOR), Vol. I 30, 69; Trans. 3035

HARRISON, JAMES T. (CHIEF JUSTICE), Trans. 2, 5, 1025, 1042

HARRISON, JAMES T., JR. (HOUSE MAJORITY LEADER), Trans. 2, 685

HARRISON, JOHN (ASSOCIATE JUSTICE), Trans. 2, 3037

HARVEY, PAUL, Trans. 1741

HASWELL, FRANK (ASSOCIATE JUSTICE), Trans. 2

HAUF, KANDICE J. (INTERN), Vol. I 70; Vol. II 665; Trans. 2247, 3036

HAUGEN, MARILYN (PAGE), Trans. 286,

HAWKS, CLYDE
Appointed to escort committee, Trans. 1

HAZELBAKER, FRANK, Trans. 2381-2382, 2384, 2391

HEADAPOHL, HEIDI (PAGE), Trans. 254, 2861

HEARINGS
Constitutional convention
format for, Trans. 350
location, Vol. I 8; Trans. 125, 176, 259—260
notice of, Vol. I 13; Trans. 116, 153—154, 160—176, 178
open to public and news media, Vol. I 13, 14; Trans. 176—177, 605
scheduling of, Vol. I 13; Trans. 119—120, 349—350, 358-361
testimony taken by telephone, Trans. 370-371, 374-375, 832-834, 885, 988, 1221—1222, 2729—2730
Judicial research and qualifications committee, removal of judicial officers, Vol. I 87
Legislature
hearings "pen to public, Vol. I 111, 276, 377, 387, 396, 403-404; Vol. II 862, 864, 868, 871, 874, 877, 881, 885, 887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 603-625, 1501, 1651, 1680
notice, Vol. I 111, 377, 384,387, 396, 403—404; Trans. 614-625, 1501, 1651

HELENA TO BE SEAT OF GOVERNMENT, Vol. I 131; Vol. II 815, 818, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Executive officers to reside at seat of government, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873-878

HELIKER, GEORGE B. (MISSOULA)
Biography, Vol. I 47
Committee assignment, Vol. I26
Delegate Proposals
no. 73 (collective bargaining), Vol. I 175
no. 76 (public utilities), Vol. I 178—179
Remarks by, on
ballot, constitution, Trans. 2955—2956, 2966--2968, 2980
constitutional revision (Article XIV)
amendment by initiative, Trans. 508, 513

HELIKER, GEORGE B (Cont.)
Remarks by, on (Cont.)
declaration of rights (Article II)
participation, right of, Trans. 1667
restoration of rights, Trans. 2305—2306
right to bear arms, Trans. 1731—1732
right to know, Trans. 1680
right to work, Trans. 2364
departments and institutions (Article XII)
agriculture, working hours, Trans. 2603
institutions, Trans. 2272
labor
collective bargaining, Trans. 2330, 2333-2336, 2338-2339
department of, Trans. 2308—2310, 2313
working hours, Trans. 2317-2320, 2325, 2603
merit system, Trans. 2316, 2342
public assistance, Trans. 2288-2289, 2292—2293, 2298-2299
public utilities
consumer protection, Trans. 2397—2398
districts, Trans. 2414, 2606, 2610
public service commission, Trans. 2373-2375, 2383-2384, 2386, 2388—2395
veterans, Trans. 2272
education and public lands (Article X)
boards of education, Trans. 2073—2075, 2110—2111, 2113-2115, 2117—2118, 2127—2128, 2174, 2578, 2582-2584, 2589
non-discrimination in education, Trans. 2034—2035
school district trustees, Trans. 2046
state university funds, accounting and audit, Trans. 2578, 2582—2584, 2589
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1206, 1212—1213
reclamation, Trans. 1357, 1359
executive (Article VI)
duties, Trans. 902
qualifications, Trans. 893-896, 980, 985—986
general government (Article III)
liquor monopoly, Trans. 2253-2254
general provisions (Article XIII)
consumer counsel, Trans. 2400—2402
non-municipal corporations, Trans. 2247, X53-2254, 2260—2261
cumulative voting, Trans. 2260—2261
people's advocate, Trans. 835-836
judiciary (Article VII)
district court jurisdiction, Trans. 1052
selection, Trans. 1033—1034
legislator+ (Article V)
bills, Trans. 645-646, 654
organization and procedure, Trans. 608—611
qualifications, Trans. 568—569
sessions, Trans. 819
size, Trans. 767
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1438, 1456—1457
investment of public funds, Trans. 1525—1526, 1545—1546
suffrage and elections (Article IV)
poll-booth registration, Trans. 410, 439

HICKMAN, MARCO (PAGE), Trans. 1183

HIGHWAY COMMISSION, Trans. $52, 1438, 1447, 2166

HIGHWAY PATROL, Trans. 1021, 1428, 1431, 1432, ,433, 1437, 1445, 1447, 1459, 1471, 2221, 2222, 2225

HIGHWAY REVENUE NON-DIVERSION, Vol. I 101, 132 187—188; Vol. II 584-585, 591—592 945—946, 948, 950, 951-952, 1065—1066, 1080, 1098, 1107; Trans. 1376, 1389—1390 1428—1466, 1469—1489, 1501, 2220—2243 2689, 2695, 2701—2717, 2779—2789
Alternative issues on constitution ballot, Trans. 1458—1466, 1469—1489, 2221-2241

HIGHWAY SAFETY, ENFORCEMENT OF, Vol. II 584-585, 591-592, 945-946, 948, $50, 951-952, 1065—1066, 1098; Trans. 1428, 1437, 2241

HIGHWAYS, DEPARTMENT OF, Trans. 1353, 1428—1466, 1469—1489, 1500, 1501, 1551, 1654, 1762, 1826, 1827, 2072, 2103, 2123, 2125-2126, 2135, 2165, 2222, 2223, 2237, 2238, 2318, 2577, 2589, 2704, 2894

HILGER, BEV (TYPIST), Vol. I 69; Trans. 3035

HISTORIC AREAS, Vol. I 75. 193, 240; Vol. II 553, 558, Berkeley pit, Trans. 931—932, 933—934, 939-941, 1068, 1099 1278, 1283, 1288,

HOERNER-WALDORF COMPANY, Trans. 1213, ,267

HOLLAND, DAVID L. (BUTTE)
Appointed Chairman of Judiciary Committee, Trans 102
Biography, Vol. I 48
Committee assignment, Vol. I 26
Congratulations extended to upon marriage, Trans. 3030
Delegate Proposal
no. 153 (institutional care), Vol. I 297
Nominated President of Convention, Trans. I3
declines nomination, Trans. 13
Remarks by, on
ballot, constitution, Trans. 2871-2872, 2877-2878, 2881-2884, 2908-2909, 2911
declaration of rights (Article II)
death penalty, Trans. 1818
individual dignity, Trans. 1644
participation, right of, Trans. 1659—1660
searches and seizures, Trans. 1684, 1686
state subject to suit, Trans. 1761
trial by jury, Trans. 1788—1790, 1792
departments and institutions (Article XII)
institutions, Trans. 2275
labor, collective bargaining, Trans. 2331-2332
merit system, Trans. 2345
public service commission, Trans. 2379-2381
veterans, Trans. 2275
education and public lands (Article X)
libraries. Trans. 1968
environment and natural resources (Article Ix)
reclamation, Trans. 1277—1278
water rights, Trans. 1337—1338
executive (Article VI)
officers, Trans. 847-848, 869
vacancy, Trans. 941
general provisions (Article XIII)
exemption laws, Trans. 1147
judiciary (Article VII) — majority report introduction, Trans. 1010—1017, 1031
clerks of court, Trans. 1127
district court jurisdiction, Trans. 1050—1054, 1056, IO77
justices of the peace. Trans. 1142, 1157—1158
selection, Trans. 1085—1086, 1092, 1094, 1109

HOLLAND, DAVID L (Cant.)
Remarks by, on (Cont.)
judiciary (Cont.)
supreme court jurisdiction, Trans. 2177—2178
terms and pay, Trans. 1084, 1116
legislature (Article V)
bills, Trans. 650, 653
disqualification, Trans. 1618
sessions, Trans. 822
size, Trans. 822, 1598
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2221, 2235—2236, 2786
suffrage and elections (Article IV)
poll-booth registration, Trans. 409, 441
qualified elector, Trans. 394
Seconds nomination of Leo Graybill, Jr., as President of Convention, Trans. 10
Seconds nomination of Veronica Sullivan as Western District Vice President, Trans. 56

HOLLAND, JOE (PRESIDENT, MONTANA STUDENT PRESIDENTS ASSOCIATION), Trans. 3039

HOLLAND, MARCIA (PAGE), Trans. 1183

HOLLIDAY, KAREN (SECRETARY), Vol. I 69; Vol. II 578; Trans. 247—248, 3035

HOLLORON, JERRY (RESEARCH ANALYST), Vol. 169; Vol. II 781; Trans. 244—245, 2512, 2513, 2516, 3035

HOLT, MARY (SECRETARY), Trans. 3036

HOMESTEAD, LIBERAL LAWS TO BE ENACTED, Vol. I 526—527; Vol. II 916, 921, 923, 927, 1077, 1103; Trans. 1147, 1413

HOMOSEXUALITY, Trans. 1848—1850

HORSERACING, Trans. 2743, 2744

HOSPITALS, PROPERTY TAX EXEMPTION, Vol. 1306, 326; Vol. II 584, 590, 599, 945, 947—948, 950, 951, 1065, 1098; Trans. 1410, 1411, 1415

HOTEL AND RESTAURANT EMPLOYEES UNION: Trans. 2317

HOUSEHOLDGOODSANDFURNITURE,PROPERTY TAX EXEMPTION, Vol. 1306; Vol. II 579, 599, 600; Trans. 1377, 1411, 1412, 1413, 1417, 1419, 1423, 1557

HOUSE OF REPRESENTATIVES
See also LEGISLATURE-BICAMERAL; LEGISLATURE-UNICAMERAL
Accelerated effective date of Article V, sections 6, 14, Vol. II 1082; Trans. 3004, 3006, 3007—3008
Delayed effective date of Article V. sections I. 2. 3. Vol. II 1082; Trans. 1570—1571, 3004-3005, 3007-3008

HOUSE OF REPRESENTATIVES (Cont.)
Election and terms of members, Vol. 1'106, 275, 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1107; Trans. 785, 789, 1568—1569
members in office on effective date of new constitution, Vol. II 1082; Trans. 1568—1571, 1591—1593, 1628—1629, 3005, 3007—3008
Impeachment brought by two-thirds vote, Vol. 1277, 398, 407; Vol. II 865, 872, 874, 875, 878, 883, 885, 888, 1050, 1054, 1092, 1107; Trans. 675—680, 728, 735, 785, 789
Number of members, Vol. 1274, 395, 400-401, 411; Vol. 11 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 690, 744, 779-785, 815, 819, 821—826, 1595—1610
One member for each district, Vol. I 162—163, 274, 278, 381, 398-399, 407—408; Vol. II 865—866, 872—873, 875, 878—879, 883—884, 885, 888-889, 1050—1051, 1054—1055, 1092—1093, 1107; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 767, 769, 775, 1568, 1569, 1590—1593, 1597
Vesting of legislative powers in house of representatives, Vol. I 274, 395,400; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 628, 775—779, 785, 189

HUMAN DIGNITY INVIOLABLE, Vol. 194, 105, 126, 127, 148, 149, 161, 223, 312—313; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 1642—1646, 2032, 2044, 2151, 2496

HUNTHAUSEN, MOST REVEREND RAYMOND G. (BISHOP, HELENA DIOCESE)
Benediction, Trans. 3046—3047

HUMPHREY, HUBERT M., Trans. 1741

IMPEACHMENT OF OFFICERS
Conviction, vote required, Vol. I 112, 140, 277, 378, 391—392, 398, 407; Vol. II 863, 865, 870, 872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1106, 1107; Trans. 1588—1589
Initiation of proceedings, Vol. I 112, 140, 276, 378, 391-392, 398, 407; Vol. II 863, 865, 869, 872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1106, 1107; Trans. 1588—1589
Officers subject to impeachment, Vol. I 112, 140, 276, 378, 391, 397, 406; Vol. II 863, 865, 869, 871—872, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1106, 1107; Trans. 675—680, 1025, 1029, 1123, 1126, 1587—1589, 2550
Removal from office upon conviction, Vol. I 112, 140, 277, 378—379, 391, 398, 407; Vol. II 863, 865, 870, 872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1106, 1107; Trans. 1589—1590
Tribunal, Vol. 184, 140, 276, 378, 391—392, 398, 406—407, 493, 514; Vol. II 863, 865, 869, 872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 676—677, 735, 1588—1589

IMPLIED CONSENT LAW, Vol. 11641

IMPORTATION OF ARMED PERSONS, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042, 1089; Trans. 1832

INALIENABLE RIGHTS
Acquiring, possessing and protecting property, Vol. I 142. 207. 242: Vol. II 620. 626—628. 957. 962: 967: 969; 1038, 1087; Trans. 1240, 1636—1637, 1642, 1809, See also RIGHT TO BEAR ARMS
Clean and healthful environment. Vol. I 75, 96, 107, 108, 261, 308—309; Vol. II 957, 962, 967, 969, 1038, 1087; Trans. 1637—1640, 1756, See also ENVIRONMENT. Right to clean and healthful environment
Enjoying and defending life and liberty. Vol. I 142. 207. 242; Vol. II 620, 626—628, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, 1809, See also INDIVIDUAL DIGNITY; RIGHT TO BEAR ARMS; RIGHT TO LIFE
Pursuing life's basic necessities, Vol. I 142; Vol. II 620, 626—627, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, 2294, 2370, 2690. See also INDIVIDUAL DIGNITY
Seeking safety, health and happiness, Vol. I 142, 207, 242: Vol. II 620, 626—627, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, See also RIGHT TO BEAR ARMS

INCOME TAXES, Vol. II 580, 588; Trans. 1377, 1386, 1399, 1413, 1425, 1457, 1495, 1502, 1512, 1550, 1555, 2153, 2155, 2157, 2254, 2413, 2163

INCORPORATION OR DISINCORPORATION OF LOCAL GOVERNMENT UNITS, Vol. I 135, 215, 253; Vol. II 782, 788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521

INCRIMINATION, SELF
See SELF-INCRIMINATION

INDIANS
Discrimination because of race or culture prohibited, Vol. I 126, 148, 149, 161; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 411, 1642—1646
non-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623
Education, preservation of cultural integrity, Vol. II 993, 996, 1003, 1069. 1099: Trans. 1950—1957. 2012. 2036, 2040; 2199'
Lands under jurisdiction of Congress, Vol. I 99; Vol. II 838-841, 1030—1032, 1037, 1087; Trans. 1286, 2567—2573

INDICTMENT, CRIMINAL OFFENSES PROSECUTED BY, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766

INDIGENT PERSONS
Provision of economic assistance and social and rehabilitative services for, Vol. I 297, 310, 339; Vol. II 627, 674—675, 979, 983, 985, 988, 1076, 1102; Trans. 2270—2300
Right to counsel, Vol. I 105
State institutions may not charge fees, Vol. I297

INDIVIDUAL DIGNITY, Vol. 194, 105, 126, 127, 148, 149, 161. 223. 312—313; Vol. II 620. 628. 957. 962; 967; 969, 1038; 1087; Trans. 1642—1646, 2032, 2044, 2151, 2496
Non-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 26'23

INFORMATION, CRIMINAL OFFENSES PROSECUTED BY, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766

INITIATION OF PROCEEDINGS, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766

INITIATIVE
See also REFERENDUM
Appropriation of money excepted, Vol. I 257, 277-278; Vol. II 815,819, 1019, 1022, 1025, 1043, 1090; Trans. 2689, 2695—2705, 2706—2717, 2785—2788
Constitutional revision
initiative for amendment of constitution, Vol. I 119—120, 257, 268, 277, 354, 362-363, 410; Vol. II 852. 854-855. 856. 858. 1079. 1104; Trans. 498; 505-514; 2699, 2702, 2703, 2704, 2711, 2745, 2780, 2781, 2785, 2788
initiative for call of convention, Vol. 1209, 352, 356, 357—358; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455—462, 471—476, 2698, 2699—2700
provisions of Article Ill not applicable, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
Debt, creation of by initiative, Trans. 1495, 1496, 1499, 1500, 1501, 1503, 1507—1508
Elections on measures, general or special, Vol. I 258, 277; Vol. II 816, 820, 1020, 1023, 1025, 1044, 1090: Trans. 2718
Enacting clause, Vol. I 258; Vol. II 816; Trans. 2696-2697
Gambling may be authorized by, Vol. I 121; Vol. II 816, 822, 825, 1020, 1024, 1025, 1044, 1090; Trans. 2728—2760
Highway revenue subject to appropriation by initiative, Vol. II 946, 948, 950, 952; Trans. 2689, 2695—2705. 2706—2717. 2779—2789
Local and special laws excepted, Vol. I 257, 277—278; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695, 2706
Local government
intergovernmental cooperation, Vol. II 783, 798, 1010, 1014, 1074, 1102; Trans. 2534-2535
powers extended to qualified electors of local government unit, Vol. I 138, 216, 254; Vol. II 783, 785, 799, 1010, 1014, 1074, 1102; Trans. 2512, 2520, 2548—2549
self-government charters, Vol. II 1010, 1013, 1074, 1102; Trans. 2524—2528
Number of qualified electors, how determined, Vol. I 258, 277; Vol. II 816, 821, 1020, 1023, 1025, 1044, 1090; Trans. 2718—2719
Petitions
contents, signing, tiling, Vol. I 257—258, 277; Vol. II 815—816, 819—820, 1019—1020, 1022—1023, 1025, 1043, 1090; Trans. 2696—2697, 2703. 2785—2786
enacting clause prescribed, Vol. I 258; Trans. 2696
Powers of, vested in the people, Vol. I 109, 257, 268, 274, 277, 376, 381, 395, 400, 410; Vol. II 815, 819—820, 861, 864, 867, 871, 874, 875, 876, 880, 885, 886, 1019, 1022, 1025, 1043, 1046, 1049, 1052, 1090, 1091, 1105, 1106; Trans. 747—760. 775-779. 2695, 2785—2786
Veto prohibited, Vol. I 111, 258, 277, 378, 391, 397, 406, 437, 450—452, 459; Vol. II 816, 821, 895, 901, 904, 908, 1058, 1094; Trans. 675, 948-958, 2719-2720

INJUNCTION, WRIT OF
See WRITS

INSTITUTIONALIZED PERSONS, Vol. I 297, 310, 339; Vol. II 979, 983, 985, 988, 1076, 1102; Trans. 2304—2308
See also CONVICTS; UNSOUND MIND, PERSONS OF

INSTITUTIONS
Committed persons, rights (If, Vol. I 297, 310, 339; Vol. I, 979, 983, 9[15, 988, 1076, 1102; Trans. 2304-2308
Establishment of, Vol. I 310; Vol. II 674-675, 979, 983, 985, 988, 1076, 1102; Trans. 2210-2278
Location may not be changed, Vol. I 273
No fee may be charged, Vol. 1297
Property tax exemption. Vol. I 306. 326: Vol. II 584, 590—591, 599—601, 945; 947—948, 950, 951. 1065, 1097—1098; Trans. 1410—1427
Reports to governor, Vol. II 897, 903, 905, 910, 1060, 1095; Trans. 973-974

INSTITUTIONS, BOARD OF, Trans. 2079, 2270, 2271, 2274

INSTITUTIONS, DEPARTMENT OF, Vol. 1453; Trans 662, 963

INSURANCE COMMISSIONER, Trans. 852, 856, 918—922, 925

INSURRECTION
Continuity of government, Vol. 1 278-279; Vol. II 815, 818—819, 1019, 1022. 1025. 1043. 1090: Trans. 2695
Governor's authority to call militia forces, Vol. I 182. 229, 320,438, 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans.964—966, 1830
Importation of armed forces, Vol. II 624, 645, 961,966, 968,973, 1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration, Vol. I 182, 320; Trans. 1830

INTEREST RATES, Vol. I 165

INTERGOVERNMENTAL COOPERATION, Vol. I 136, 156, 254; Vol. II 783. 798—799. 1010. 1013—1014, 1015, 1074,1102Trans.2526, 2534-2535

INTERIM COMMITTEES (LEGISLATIVE), Vol. I 250, 377, 387—388, 396, 404, 414—415; Vol. II 862, 864—865, 868, 871, 874,875, 877, 881—882, 885, 887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 581—582, 585,586. 625—630, 635—637, 814, 915, 952, 999, 1006—1007, 2792, 2794, 2796, 2797, 2799

INTERNATIONAL UNION OF OPERATING ENGINEERS, Trans. 1482

INTERTRIBAL COUNCIL, Trans. 2568

INVASION BY FOREIGN POWER
Continuity of government, Vol. I 278-279; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695

INVASION BY FOREIGN POWER (Cont.)
Governor's authority to call militia forces, Vol. I 182, 229, 320, 438, 453—454, 460; Vol. II 896. 902, 905, 909, 1059, 1095; Trans. 964—966, 1830
Impartation of armed forces, Vol. II 624, 645,961, 966, 966,973, 1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration, Vol. I 182, 320; Trans. 1830

INVASION OF PRIVACY, Vol. I 98, 127[57;Vol. II 621, 631—633, 641,958, 963, 970, 1039, 1088; Trans. 1643, 1669—1680, 1680—1682, 1683, 1684. 1685, 1688, 1730, 1733, 1850—1853, 2352, 2484, 2485, 2488, 2489, 2490, 2494, 2496

INVESTMENT OF PUBLIC FUNDS, Vol. II 583. 586, 596—597, 602—603, 753—756, 946, 949, 950, 952-953, 1066—1067, 1098; Trans. 1002, 1517—1546, 1948, 2068, 2150—2151
See also EDUCATION, Public school fund; University funds

IRON AND STEEL INSTITUTE, Trans. 1463

IRREVOCABLE PRIVILEGES, Vol. I 207; Vol. II 624, 644, 961, 966, 968, 973, 1041, 1089; Trans. 1829, 2266—2268

IRRIGATION
See WATER, Uses of

ITEM VETO
See LINE ITEM VETO

JACOBSEN, ARNOLD W. (WHITEFISH)
Biography, Vol. I 48
Committee assignment, Vol. I 26
Delegate Proposals
no. 17 (election of county commissioners), Vol. I 102—104
no. 83 (historic sites), Vol. I 193—194
no. 112 (wholesale liquor business), Vol. I 238
Nomination of Sterling Rygg as Western District Vice President, Trans. 56
Remarks by, on
ballot, constitution, Trans. 2870, 2893, 2951, 2969
compact with the united states (Article I), Trans. 2568
declaration of rights (Article II)
debt, imprisonment for, Trans. 1794—1795
right to bear arms, Trans. 1727, 1733—1734, 1833, 1837
right to work, Trans. 2363
departments and institutions (Article XII)
institutions, Trans. 2272
veterans, Trans. 2272
education and public lands (Article X)
educational goals and duties, Trans. 1959—1960, 1982-1983
environment and natural resources (Article IX)
cultural resources, Trans. 1351—1352
environment, protection and improvement of, Trans. 1248
reclamation, Trans. 1287, 1354
executive (Article VI)
duties, Trans. 918
qualifications, Trans. 979
general government (Article III)
liquor monopoly, Trans. 2248-2249, 2255—2256, 2762—2765, 2767
recall, Trans. 2725—2726

JACOBSEN, ARNOLD W (Cont.)
Remarks by, on (Cont.)
general provisions (Article XIII)
people's advocate, Trans. 702
judiciary (Article VII)
campaign expenses, Trans. 2196
probate attorney, Trans. 1133
legislature (Article V)
election and terms, Trans. 771
legislative post-auditor, Trans. 2800
qualifications, Trans. 553
size, Trans. 1607
unicameral/bicameral, merits of, Trans. 2893
local government (Article XI)
forms of government, Trans. 2521
recall, Trans. 2552
voter review of local government, Trans. 2559, 2563-2564
preamble, Trans. 1635
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2785
property tax exemptions, Trans. 1422
Seconds nomination of Louise Cross as Convention Secretary, Trans. 63

JACOBSON, BERNICE (TYPIST-STENOGRAPHER), Trans. 3035

JACKSON, KAYLE (INTERN), Vol. I 70; Trans. 538,704, 3036

JACKSON, MELODY (PAGE), Trans. 1692

JAKOVAC, BETTY (CHIEF STENOGRAPHER), Vol. I 69; Trans. 3035

JAMES, GEORGE H. (LIBBY)
Appointed to escort committee, Trans. 32
Biography, Vol. I 48
Committee assignment, Vol. I 26
Remarks by, on
ballot, constitution, Trans. 1816, 2875, 2952
constitutional revision (Article XIV)
constitutional convention, Trans. 527—528
submission, Trans. 520
declaration of rights (Article II)
accused, rights of, Trans. 1776
convicts, rights of, Trans. 1800—1801
death penalty, Trans. 1816
eminent domain, Trans. 1825—1826
ex post facto, obligation of contracts, and irrevocable privileges, Trans. 1829
right to hear arms, Trans. 1728, 1838
right to work, Trans. 2359
self-incrimination and double jeopardy, Trans. 1776—1777
departments and institutions (Article XII)
labor, working hours, Trans. 2326
public service commission, Trans. 2395
education and public lands (Article X)
aid to sectarian schools, Trans. 2015—2016
hoards of education, Trans. 2105
commissioner of higher education, Trans. 2105
educational goals and duties, Trans. 1937, 1988
indian education, Trans. 1952—1953, 1955
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1202, 1205, 1207—1209, 1275
water rights, Trans. 1340
executive (Article VI)
officers, Trans. 863
qualifications, Trans. 887, 1696

JAMES, GEORGE H (Cont.)
Remarks by, on (Cont.)
general government (Article III)
gambling, Trans. 2744
judiciary (Article VII)
campaign expenses, Trans. 1177—1178, 2198
clerks of court, Trans. 2778
legislature (Article V)
districting and apportionment, Trans. 688—689
election and terms, Trans. 773
sessions, Trans. 817, 821
unicameral/bicameral, merits of, Trans. 760
local government (Article XI)
voter review of local government, Trans. 2558
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1479—1480
property tax exemptions, Trans. 1422
Seconds nomination of Paul Harlow as Convention Secretary, Trans. 63

JAMES, TED
Concluding address, Trans. 3037
Introduced, Trans. 3037

JERSEY, DAVID (INTERN), Vol. I 70; Vol. II 551

JERSEY, LEE ANN (INTERN), Vol. I 70; Vol. II 551; Trans. 3036

JOHNSON, BLAKE (INTERN), Vol. 170; Vol. II 578; Trans. 3036

JOHNSON, DENISE (PAGE), Trans. 2209

JOHNSON, TORREY B. (BUSBY)
Biography, Vol. I 49
Committee assignment, Vol. I 26
Delegate Proposal
no. 157 (monopolies; liquor business), Vol. I 302
Remarks by, on
ballot, constitution, Trans. 2859—2860, 2874, 2886, 2888, 2970, 2982
compact with the united states (Article I), Trans. 2569
constitutional revision (Article XIV)
initiative, Trans. 507, 512
declaration of rights (Article II)
convicts, rights of, Trans. 1846—1847
death penalty, Trans. 1807
ex post facto, obligation of contracts, and irrevocable privileges, Trans. 1829
habeas corpus, Trans. 1764
justice, administration of, Trans. 1758
right to bear arms, Trans. 1730, 1840—1841
departments and institutions (Article XII)
agriculture
special levies, Trans. 1368
working hours, Trans. 2602
labor
working hours, Trans. 2602
workmen's compensation, Trans. 1758
education and public lands (Article X)
board of land commissioners, Trans. 1996
indian education, Trans. 1951
public land trust, access, Trans. 2148
school district trustees, Trans. 2047
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1217
reclamation, Trans. 1289
executive (Article VI)
officers, Trans. 355

JOHNSON, TORREY B (Cont.)
Remarks by, on (Cont.)
general government (Article III)
gambling, Trans. 2737
liquor monopoly, Trans. 2249—2251, 2766
judiciary (Article VII)
campaign expenses, Trans. 1166—1172, 2199
legislature (Article V)
disqualification, Trans. 596, 597—599
districting and apportionment, Trans. 742—744
local and special legislation. Trans. 674
parliamentary form of government, Trans. 752
qualifications, Trans. 547-548, 556, 560, 563
sessions, Trans. 825
size, Trans. 780, 825
local government [Article Xl)
revenue sharing. Trans. 2544
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1443—1446, I459
property tax
administration, Trans. 1400—1401
exemptions, Trans. 1556—1557
suffrage and elections (Article IV)
poll-booth registration, Trans. 437, 447, 451
Resolutions
no. 15 (convention recess), Trans. 2430
no. 16 (constitution ballot), Trans. 2858

JONES, ELSIE (MANSION COOK), Trans. 2347

JONES, JANE BROWN (TYPIST), Vol. I 69; Trans. 3035

JONES, STEVE (INTERN), Vol. I 70, 375; Trans. 382, 3036

JOURNAL AND TRANSCRIPT OF PROCEEDINGS, CONVENTION, Vol. I 2, 9, 11; Trans. 127—128, 145, 176—177, 1375, 2428, 2619—2620, 3020
See also CONVENTION, OPERATION AND PROCEDURES, Documents

JOURNAL OF PROCEEDINGS, LEGISLATURE, Vol. I 111, 276, 377, 387, 396, 403; Vol. II 862, 864, 868, 871, 874, 875, 877, 881, 885, 887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 599—601, 638, 671

JOYCE, THOMAS F. (BUTTE)
Appointments
escort committee, Trans. 16
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
temporary rules committee, Trans. 24
Biography, Vol. I 49
Comments an goals of constitutional revision, Trans. 111
Committee assignment, Vol. I 26
Remarks by, on
ballot, constitution, Trans. 2870—2871, 2900—2901, 2905
constitutional revision (Article XIV)
amendment, methods of, Trans. 475
constitutional convention, Trans. 488
declaration of rights (Article II)
debt, imprisonment for, Trans. 1792—1799
participation, right of, Trans. 1656—1657, 1661—1662
departments and institutions (Article XII)
agriculture, department of, Trans. 1364'
labor, collective bargaining, Trans. 2330—2331, 2336—2337
merit system, Trans. 2345

JOYCE, THOMAS F (Cant.)
Remarks by, on (Cont.)
education and public lands (Article X)
educational goals and duties, Trans. 1970, 2155—2156
environment and natural resources (Article IX)
reclamation, Trans. 1278—1279, 1354, 1356—1357
executive (Article VI) — majority report introduction, Trans. 842-843
appointing power, Trans. 944-947
compensation, Trans. 927, 928, 992, 994
duties, Trans. 899—907, 913, 921—922
election, Trans. 878-883
information from officers of executive branch, Trans. 974
militia. Trans. 964-966
officers, Trans. 843-845, 855-856, 859-860, 865, 870—871, 1708—1710, 1712
pardons, Trans. 962-964
qualifications, Trans. 883-884, 892, 893-899, 986
special session, Trans. 958—961, 1703—1704
succession, Trans. 966—973, 1719
twenty departments, Trans. 934—937
vacancy, Trans. 929—930, 932—933, 940, 943—944
veto power, Trans. 947-949, 953-358, 1721, 1722—1723, 2719—2720
general government (Article III)
initiative, Trans. 2698—2699, 2704
general provisions (Article XIII)
people's advocate, Trans. 832-833
salary commission, Trans. 578—579
judiciary (Article VII)
district attorney, Trans. 1131
justices of the peace, Trans. 1143—1144
selection, Trans. 1102, 1104—1105, 1111—1112
supreme court jurisdiction, Trans. 1038, 1042—1043
terms and pay, Trans. 579
legislature (Article V)
bills, Trans. 661
compensation, Trans. 578—579
disqualification, Trans. 1578—1581
districting and apportionment, Trans. 686
impeachment, Trans. 677, 679
legislative post-auditor, Trans. 998—999, 1004—1007, 2791-2793, 2796—2797, 2799—2801, 2804, 2806
organization and procedure, Trans. 619—620, 629—630
qualifications, Trans. 552-553, 559, 797—799, 801, 803-804, 807
sessions, Trans. 584, 824—825, 1703—1704
size, Trans. 764, 824-825, 1602—1604
unicameral/bicameral, merits of, Trans. 2900-2901, 2905
vacancies, Trans. 725
revenue and finance (Article VIII)
highway revenue non-diversion. Trans. 1473—1474, 1479, 2704, 2785
investment of public funds, Trans. 1530
local government debt, Trans. 1513
state debt, Trans. 1495, 1505—1506
two-mill levy, Trans. 1553
suffrage and elections (Article IV)
poll-booth registration, Trans. 438
qualified elector, Trans. 394

JUDGE PRO TEMPORE, Vol. I 492, 507

JUDGE, LIEUTENANT GOVERNOR THOMAS L., Trans. 2

JUDGES
See also COURTS; JUDICIARY; JUSTICES OF THE PEACE
Absence from state forfeits judicial position, Vol. 1492, 507; Vol. II 915, 920, 926, 1063, 1097; Trans. 1120—1121

JUDGES (Cont.)
Appointees to vacated term may not be candidates, Vol. I 206, 491—492; Trans. 1016, 1091, 1108
Appointment of member of legislature as district judge. Trans. 1575—1579
Approval or rejection by electors, Vol. I 87, 512, 520—521; Vol. II 915, 919, 922, 926, 1062—1063, 1096—1097; Trans. 1026, 1028, 1031, 1084—1085, 1087, 1093—1096, 1099—1100, 1102, 1112, 1113, 1116
Assignment of judges for temporary service from one district or county to another, Vol. I 86, 488, 497, 511, 518; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1041, 1042, 1045—1046, 1073, 1080—1083, 1163
Campaign funds, Vol. I 508—509; Vol. II 927; Trans. 1025—1026, 1088, 1115, 1137—1139, 1151—1152, 1163—1179, 2188—2205, 2431—2433, 2449—2453
Compensation, Vol. 188, 206, 225, 491, 504, 511, 519; Vol. II 914, 919, 922, 925, 1062, 1096; Trans. 1067, 1083—1084, 1107, 1115—1119, 1150—1154
salary commission, Vol. I 134; Vol. II 861, 867, 874, 876, 880, 886, 1077, 1103; Trans. 578—579, 992, 993, 1084, 1572
Disqualification, Vol. 1203, 512, 523; Trans. 1015—1016, 1022, 1025, 1041, 1045—1046, 1083, 1121—1122, See also Forfeiture of judicial position; Removal and discipline
Districts — number of judges, establishment, Vol. I 86, 88, 141, 163, 206, 488, 497, 511, 518—519; Vol. II $14, $18, 922, $25, 1062, 1096; Trans. 1080—1083
Election, Vol. I 87, 141, 206, 487, 495, 511-512, 519—521; Vol. II 915, 919, 922, 926, 1062-1063, 1096—1097; Trans. 1012—1014, 1016—1017, 1022—1028, 1030—1033, 1069, 1081—1082, 1084—1114, 1116, 1137, 1152, 1165, 1166, 1169, 1170, 1838, 2190, 2193, 2194, 2196, 2691, See also Campaign funds; Selection
Forfeiture of judicial position, Vol. I 492, 507, 512, 522; Vol. II 915, 920, 926, 1063, 1097; Trans. 1119-1121, 1148—1150, See also Disqualification; Removal and discipline
Impeachment, Vol. 1112, 276-277, 378-379, 391—392, 397-398, 406—407; Vol. II 821, 863, 865, 869—870, 871—872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1025, 1029, 1123, 1126, 1587—1590, 2550
Judge pro tempore, Vol. I 492, 507
Judicial standards commission, Vol. 1489-490, 492, 501—503, 506—507, 512—513, 523—524; Vol. II 915-916, 920—921, 922-923, 926-927, 1063—1064, 1097; Trans. 1025, 1029, 1122—1127
Nominations by governor, Vol. I 87, 141, 491-492, 506, 511-512. 519-521: Vol. II 914—915, 919, 922, 925-926, 1062; 1096—1097; Trans. 1012, 1016—1017, 1023, 1028, 1030—1033, 1084—1114
Nominations confirmed by senate, Vol. 1511, 519—521; Vol. II 914, 922, 925-926, 1062, 1096—1097; Trans. 1023, 1033, 1084—1085, 1087, 1092, 1094, 1099, 1105, 1109, 1112, 1113
Number of judges
district court, Vol. I 86, 141, 488, 511, 518; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080~1083, 1086
supreme court, Vol. I 85, 140—141, 205, 486, 494—495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044—1049, 1066—1071

JUDGES (Cont.)
Oath of office, Vol. I 125: Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Political candidacy forfeits judicial position, Vol. I 492, 506—507, 512, 522; Vol. II 915, 920, 926, 1063, 1097; Trans. 1119~1121, 1148—1150
Practice of law prohibited, Vol. 188, 491, 504—505, 512, 522; Vol. II 915, 1063, 1096; Trans. 1119—1121
Qualifications, Vol. I 86—88, 141, 206, 484, 487, 488, 491, 495—496, 498—499, 504-506, 512, 521—523; Vol. II 915, 919—920, 922, 926, 1063, 1097; Trans. 1012, 1020, 1119—1121. 1746—1747
Recall, Vol. I 91, 257-258, 277—278; Vol. II 816, 821-822, 824, 1020, 1024, 1025; Trans. 2720~2728, 2852-2853
Removal and discipline, Vol. I 87—88, 141, 205, 206, 489—490, 501—503, 512-513, 518—519, 523—524; Vol. II 915—916, 920—921, 922—923, 926—927, 1063—1064, 1097: Trans. 1029, 1122—1127, 1163
Residence requirements. Vol. 1487. 488. 491. 495—496, 498, 505, 512, 522—523; Vol. II 915, 920, 922, 926, 1063, 1097; Trans. 1119—1121
Selection. Vol. I 87, 141, 206, 511—512, 519—521; Vol. II 914—915, 919, 922, 925-926, 1062~1063, 1096—1097; Trans. 1012—1014, 1016—1017, 1022—1028, 1030—1033, 1069, 1081-1082, 1084—1114, 1116, 1152, 1165, 1838, 2196
Solicitation of compensation on account of office prohibited, Vol. 1491, 504, 512, 522; Vol. II $15, 1063, 1096; Trans. 1118—1119, 1119—1121
Substitution of district court judge for supreme court justice, Vol. I 85, 141, 205, 487, 494-495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044-1049, 1066—1069, 1073, 1081, 1122
Term of office, Vol. 1 87, 206, 487, 488, 495, 497, 511, 519; Vol. II 914, 919, 922, 925, 1062, 1096; Trans. 1020, 1081, 1083—1084, 1086, 1087, 1089, 1090, 1093, 1097, 1101, 1107, 1110, 1115—1119, 1150—1154
judges and justices in office on effective date of new constitution, Vol. I 88, 206; Vol. II 1082, 1108; Trans. 1115—1116, 3005, 3007—3008
Vacancies, Vol. I 87, 141, 206, 278, 491—492, 506, 511-512, 519-521: Vol. II 914—915. 919. 922. 925—926, 1062—1063, 1096—1097; Trans. 1016, 1084—1114

JUDICIAL COUNCIL
Nominating Committee, Vol. I 87, 520—521; Trans. 1023
Research and Qualifications Committee, Vol. I 87—88

JUDICIAL DISTRICTS, Vol. I 86, 88,141, 163, 206, 486, 497, 511, 518-519; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080—1083, 1110, 1163

JUDICIAL NOMINATING COMMITTEE, Vol. I 87, 520—521; Trans. 1023

JUDICIAL RESEARCH AND QUALIFICATIONS COMMITTEE, Vol. 187-88

JUDICIAL STANDARDS COMMISSION, Vol. 1489-490, 492, 501—503, 506—507, 512—513, 523-524; Vol. II 915—916, 920-921, 922—923, 926—927, 1063—1064, 1097; Trans. 1025, 1029, 1122—1127
See also JUDICIAL COUNCIL

JUDICIARY
See also ARTICLE VII: CIVIL ACTIONS AND PROCEDURE; COURTS; CRIMES AND CRIMINAL PROCEDURE; JUDGES; JUSTICES OF THE PEACE
Administrative control by supreme court, Vol. I 84, 510, 515—516; Trans. 1020—1021. 1036—1044. 1071—1073
Clerks of court
district court, Vol. I 86, 88, 216, 484, 488-489, 491, 499, 513, B-525; Vol. II 782,788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 847, 1014, 1042, 1127, 1129—1130, 2516—2521, 2691
supreme court, Vol. I 85, 484,487, 491,495, 513, 515—516, 524: Trans. 847. 1012. 1014. 1021. 1029. 1042, 1069, 1127—1129, 1163, 2690—2691, 2708, 2716, 2772—2779, 3005
Court administrator, Trans. 1021. 1042. 1073
Courts to be open to ever, person, Vol. I 88, 263, 318; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088: Trans. 1753—1760
Due process of law, Vol. I 112, 328; Vol. II 622, 634, 635—636, 637, 959, 964, 971, 1039, 1088; Trans. 1738, 1750, 1751, 1760, 2389
Initiation of proceedings, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1764—1766
Judicial council, Vol. I 87—88, 520—521; Trans. 1023
Judicial districts, Vol. I 86, 88, 141, 163, 206, 488, 497, 511, 518—519; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1080—1083, 1110, 1163
Judicial power, Vol. I 84, 140, 205—206, 486, 489, 493, 510, 514-515; Vol. II 913, 917, 922,924, 1061, 1096; Trans. 1019, 1035—1036, 1074
Judicial standards commission, Vol. I 489—490, 492, 501—503, 506—507, 512—513, 523—524; Vol. II 915—916, 920—921, 922-923, 926—927, 1063—1064, 1097; Trans. ,025, 1029, 1122—1127
Justice of peace academy proposed, Trans. 1020
"Montana Plan". Trans. 1011, 1012. 1013. 1016. 1017. 1023. 1027, 1029, 1033, 1034, 1042, 1045, io54, 1076, 1082, 1084, 1087, ,092. 1095,1140, 1141, 1143, 1158, 2196
Other courts provided by law, judicial power vested in, Vol. I 140, 205, 486, 493, 510, 514; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1035—1036, 1069, 1074—1075, 1158
Right and justice to be administered without sale, denial or delay, Vol. I 88, 263, 318; Vol. II 622, 636—637. 959. 964. 971. 1039. 1088: Trans. 1753—1760
Separation of powers, Vol. I 186; Vol. II 815, 818, 1019, 1022, 1025, 1043, 1090; Trans. 676, 698, 699, 704, 851, 1011, 1036, 1124, 2377, 2378, 2383, 2523, 2689, 2690—2695
Speedy remedy afforded for every injury of person, property or character, Vol. I 88, 263, 318; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760
Supervisory control by supreme court, Vol. I 84, 140, 493. 510, 515—516; Vol. II 913., 917., 922., 924, 1061, 1096; Trans. 1036—1044, 1071—1073, 1127, 1162—1163
Uniformity of laws relating to courts, Vol. I 490—491, 503

UDICIARY COMMITTEE
Membership and staff, Vol. I 22, 485
Report
consideration in committee of the whole, Trans. 1010—1057, 1063—1179
cross references, 1889-1972 constitutions, Vol. I 528—530

JUDICIARY COMMITTEE (Cont.)
Report (Cont.)
delegate proposals considered, Vol. I 531-532
roll call votes on, in committee, Vol. I 537—543
text and comments
majority report, Vol. I 486—509, 526—527
minority report, Vol. I 510-525
transmittal letter, Vol. I 484—485
Responsibilities. Trans. 33, 37
Witnesses appearing before committee, Vol. I 533—536; Trans. 1011, 1013, 1019, 1042

JURY TRIAL
Grand jury, Vol. I 89; Vol. II 622, 639, 959, 964, 968, 971, 1040, 1088; Trans. 1765-1766, 2499, 2501
Number of jurors for
trial, Vol. I 89; Vol. II 623, 641—642, 960, 965, 968, 972, 1041, 1089; Trans. 1780—1786, 1787
verdict, Vol. I 89; Vol. II 623641—642, 960, 965, 968, 972, 1041, 1089; Trans. 1780—1786, 2353
Right to, Vol. I 89; Vol. II 623I, 641-642, 960, 965, 968, 972, 1041, 1089; Trans. 1751, 1780—1792
Speedy public trial by impartial jury guaranteed, Vol. II 623, 640—641, 960, 965, 972, 1040, 1089; Trans. 1776
Supreme court jury, Vol. I 494
Waiver of, Vol. I 89; Vol. II 623, 641—642, 960, 965, 968, 972, 1041, 1,089; Trans. 1780, 1786—1788

JUSTICES OF THE PEACE
See also JUDGES; JUDICIARY; MAGISTRATES
Absence from state forfeits judicial position. Vol. I 492. 507; Vol. II 915, 920, 926, 1063, 1097; Trans. 1120—1121
Academy proposed, Trans. 1020
Compensation, Vol. I 152, 225,489, 491, 500; Vol. II 914, 918, 922. 925, 1062, 1096; Trans. 1020, 1029, 1083—1084, 1140—1147, 1157, 1158
Disqualification, Vol. I 203, 512, 523; Trans. 1022, 1121—1122
Election, Vol. 1489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1029, 1140—1147, 1156, 1158, 1159
Elimination from constitution, Trans. 1012, 1019, 1020, 1028, 1029, 1031, 1036, 1074, 1140, 1142—1144, 1149, 1156—1161, 1401, 1402, 1482
Facilities, Vol. 1489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1140—1147
Fee system, Trans. 1029, 1140, 1157
Impeachment, Vol. I 112, 276—277, 378—379, 391—392, 397-398, 406—407; Vol. II 821, 863, 865, 869—870, 871—872, 874. 875. 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1025, 1029, 1123, 1126, 1587—1590, 2550
Jurisdiction, Vol. I 88-89, 152, 489, 500—501; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1014, 1030, 1056—1057, 1076, 1140—1147, 1157, 1158
Number of justices, Vol. I 152, 489, 500; Vol. II 914, 918, 922. 925, 1062, 1096; Trans. 1014, 1029, 1140, 1157, 1159
Political candidacy forfeits judicial position, Vol. 1492, 506—507, 512, 522; Vol. II 915, 920, 926, 1063. 1097; Trans. 1119—1121, 1148—1150
Practice of law prohibited. Vol. I 491, 505; Trans. 1014, 1030, 1149
Qualifications, Vol. I 152, 489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1014, 1029, 1030, 1120, 1121, 1140—1147, 1157—1158
Recall. Vol. I 91, 257—258, 277—278; Vol. II 816, 821—822. 824, 1020, 1024, 1025; Trans. 2720-2728; 2852—2853

JUSTICES OF THE PEACE (Cont.)
Removal and discipline, Vol. I 87—88, 141, 205, 206, 489—490, 501—503, 512—513, 518—519, 523-524; Vol. II 915—916, 920—921, 922—923, 926—927, 1063—1064, 1097; Trans. 1029, 1122—1127, See also Disqualification; Impeachment; Recall
Residency requirements, Vol. 1491; Trans. 505
Term, Vol. I 152; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1083, 1084, 1140, 1151—1154, 1157, 2183—2184
justices in office on effective date of new constitution. Vol. I 88, 206; Vol. II 1082, 1108; Trans. 1115—1116, 3005, 3007-3008
Vesting of judicial power in justice courts, Vol. I 486, 493, 514; Vol. II 913,917, 922,924, 1061, 1096; Trans. 1012, 1019—1020, 1036, 1069, 1074—1075, 1158

KALLAND, MARVIN (SPELLED TALLON), HIGHWAY DEPARTMENT
Photographer for delegates signing constitution, Trans. 3021

KAMHOOT, ARTHUR WALTON (FORSYTH)
Biography, Vol. I 49
Committee assignment, Vol. I 26
Delegate Proposal
no. 120 (bingo games,, Vol. I 247
Remarks by, on
ballot, constitution, Trans. 2866-2867, 2875, 2887-2888, 2977—2978
declaration of rights (Article II)
death penalty, Trans. 1808
right to bear arms, Trans. 1730, 1740
right to work, Trans. 2359—2361
trial by jury, Trans. 1783
departments and institutions (Article XII)
agriculture, department of, Trans. 1365
labor, collective bargaining, Trans. 2332
public assistance, Trans. 2286-2295
public utility districts, Trans. 2415, 2611
education and public lands (Article X)
aid to sectarian schools, Trans. 2022
boards of education, Trans. 2082
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1203—1204, 1218—1219, 1235, 1247
reclamation, Trans. 1283—1286, 1293, 1353—1354, 1356, 2212
water rights, Trans. 1347
executive (Article VI)
election, Trans. 881
officers, Trans. 850, 1712
pardons, Trans. 963-964
qualifications, Trans. 983
general government (Article III)
gambling, Trans. 2740-2742, 2746—2747, 2753
initiative, Trans. 2716
liquor monopoly, Trans. 2251
general provisions (Article XIII)
non-municipal corporations, Trans. 2251
people's advocate, Trans. 703, 832
judiciary (Article VII)
campaign expenses, Trans. 2200—2201
probate attorney, Trans. 1133
legislature (Article V)
compensation, Trans. 575
qualifications, Trans. 553, 803
local government (Article Xl)
forms of government, Trans. 2519—2520
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1482—1483, 2716

KAMHOOT, ARTHUR (Cant.)
Remarks by, on (Cont.)
revenue and finance (Cont.)
local government debt, Trans. 1511—1512, 1514
property tax administration, Trans. 1390—1391
suffrage and elections (Article IV)
poll-booth registration, Trans. 409—410, 445
privilege from arrest, Trans. 420

KAMP, LOIS (PAGE), Trans. 1691—1692

KEARNEY, THOMAS J. (CLERK OF THE SUPREME COURT), Trans. 2, 2175, 2776, 2778

KELLEHER, DAVID (PAGE), Trans. 710

KELLEHER, ROBERT LEE (BILLINGS)
Biography, Vol. I 50
Committee assignment, Vol. I 26
Delegate Proposals
no. 98 (rights of prisoners), Vol. I 218
no. 99 (city manager government), "al., 219
no. 100 (work week), Vol. I 220
no. 101 (campaign spending), Vol. I 221
no. 102 (support of private colleges), Vol. I 222
no. 103 (right to be born, to die), Vol. I 223
no. 104 (mineral rights), Vol. I 224
no. 105 (equal pay), Vol. I 225
no. 109 (political contributions), Vol. I 235
no. 136 (parliament), Vol. I 268—270
no. 150 (people's advocate), Vol. I 292-293
no. 159 (acts of parliament), Vol. I 304
no. 168 (rights of felons), Vol. I 317
no. 169 (access to courts), Vol. I 318
no. 176 (mandatory vote), Vol. I 330
Nomination of Marshall Murray as First Vice President, Trans. 29
Remarks by, on
ballot, constitution, Trans. 2881, 2950—2951, 2971
constitutional revision (Article XIV)
non-partisanship of convention, Trans. 482-483
declaration of rights (Article II)
adult rights, Trans. 1779
alcohol and drug abuse, decriminalization of, Trans. 1843—1845
convicts, rights of, Trans. 1846—1847
death penalty, Trans. 1810, 1815, 1818, 1820
detention of witnesses, Trans. 1772—1773, 1775, 2505—2506
private sexual acts, Trans. 1849
restoration of rights, Trans. 2598
right to bear aims, Trans. 1833, 1835—1836, 1838
right to life, Trans. 1640
right to privacy, Trans. 1852
departments and institutions (Article XII)
labor
compensation of state employees, Trans. 2349—2350
compulsory arbitration, Trans. 2367-2368
department of, Trans. 2312, 2315
working hours, Trans. 2323, 2369—2371
public assistance, Trans. 2283, 2298
public utility districts, Trans. 2611—2612
education and public lands (Article X)
aid to sectarian schools, Trans. 2022-2023, 2671
boards of education, Trans. 2082
environment and natural resources (Article IX)
reclamation, Trans. 1299
water rights, Trans. 1324
executive (Article VI)
compensation, Trans. 928-929
duties, Trans. 900, 924
officers, Trans. 867-868, 1717

KELLEHER, ROBERT (Cont.,
Remarks by, on (Cont.)
executive (Cont.)
qualifications. Trans. 1695—1696
twenty departments. Trans. 938
veto power, Trans. 949—951
general government (Article III)
initiative, Trans. 2697
liquor monopoly, Trans. 2252—2253
separation of powers, Trans. 2694
general provisions (Article XIII)
people's advocate, Trans. 699—700, 835-836
judiciary (Article VII)
campaign expenses, Trans. 2195
selection, Trans. 1086—1088, 1100—1101
legislature (Article V)
districting and apportionment, Trans. 691, 636, 720—721, 736
organization and procedure, Trans. 606—607
parliamentary form of government, Trans. 749—752, 754, 757
qualifications, Trans. 554, 567-569, 1570
unicameral/bicameral, merits of, Trans. 778
local government (Article XI)
recall, Trans. 2550—2551, 2554
voter review of local government, Trans. 2556, 2558—2559
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1448, 1483, 2241
sales tax, Trans. 1547
state debt, Trans. 1503
suffrage and elections (Article IV)
absentee voting, Trans. 431—433
poll-booth registration, Trans. 411, 447
privilege from arrest, Trans. 419—420
qualified elector. Trans. 393-394, 396, 397

KELLY, KAREN (SECRETARY), Vol. I 69; Trans. 3036

KINSEY, SYLVIA (SECRETARY), Vol. 169; Vol. II 665; Trans. 2247. 3035

KLINGMAN, NANCY (PAGE), Trans. 2209

KNIFE RIVER COAL COMPANY, Trans. 1282

KORIZEK, WILLIAM A. (DIRECTOR, HELENA VOCATIONAL-TECHNICAL CENTER), Trans. 2052

KORSMOE, ROBERTA (PAGE), Trans. 2209

KOYAMA, ELAINE (GOVERNOR OF GIRLS' STATE), Trans. 325, 326—327, 1562, 3038

KRUEGER, KURT (INTERN), Vol. I 70; Trans. 3036

KRUSCHEV, NIKITA, Trans. 775

KUNNARY, MARY (TYPIST-STENOGRAPHER), Vol. I 69; Trans. 3035

LABOR
Benefits available on equal basis, Vol. I 271

LABOR (Cont.)
Collective bargaining, Vol. I 175, 185, 207—208; Vol. II 627—628, 664, 688—697; Trans. 2315, 2328—2340, 2344, 2346, '2351, 2353, 2359, 2364, See also Right to work; Strikes
Compulsory arbitration, Trans. 2367—2369
Court of labor-management conciliation, Vol. 1331
Department of labor and industry, Vol. I 220, 271, 272, 290, 331; Vol. II 670, 672, 978, 982, 385, 987, 1076, 1107: Trans. 2308—2315
Discrimination in hiring and promotion practices prohibited, Vol. I 126, 149, 161; Trans. 1643. 1644. 2035—2043
Equal pay for equal work for state and federal employees, Vol. I 225; Trans. 2349—2351
Injury incurred in employment, right to legal redress for, Vol. I 263; Vol. II 622, 636—637, 672, 959, 964, 971, 1039, 1088; Trans. 1753—1760, 1764, 2192, 2625
Legislature to establish guidelines for state employment, Vol. I 233
Licensed occupations, convicts in, Vol. II 643; Trans. 1800, 1801, 1822—1825, 2507—2509
Lie detector tests prohibited as condition of employment, Vol. I 251; Vol. II 633, 641
Maximum hours in regular day's work, Vol. II 672-673, 978, 982, 987; Trans. 2308, 2316—2328, 2333, 2340—2342, 2601—2604
Merit system, Vol. I 173, 233, 285; Vol. II 671, 673, 681, 689, 691; Trans. 2308, 2315—2316, 2328, 2323, 2336, 2342—2350, 2355—2356, 2364
Minimum wage to be established by legislature, Vol. 1 272
Pursuit of life's basic necessities, right to, Vol. I 142; Vol. II 620, 626—627, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, 2294, 2370, 2690
Retirement systems (public employees)
investment of funds, Vol. II 602—603, 946, 949, 950, 352, 1066, 1098; Trans. 1518—1546
membership in, a contractual relationship, Vol. I 286
Right to participate in political process guaranteed, Vol. I 305
Right to work, Vol. I 185; Vol. II 627-628, 664, 692—697; Trans. 320—321, 1353, 1478, 1642, 1727, 2331, 2351—2367, 2369, 2530, 2531, 2532, 2533, 2566, 2611, See also Collective bargaining; Strikes
Salaries, See COMPENSATION
State and subdivisions to provide employment to involuntarily unemployed, Vol. I 290
Strikes, Vol. 1 185; Vol. II 689, 691-694; Trans. 2328, 2329, 2330, 2332, 2333, 2336, 2351—2352, 2363, 2367—2368, See also Collective bargaining; Right to work
Sunday-closing law, Vol. I 220; Trans. 2369—2372
Wages, See COMPENSATION
Workmen's compensation, Vol. I 263; Vol. II 622, 636—637, 959, 964, 971, 1039, 1088; Trans. 1753—1760, 2158, 2257, 2313, 2320, 2325

LABOR AND INDUSTRY, DEPARTMENT OF, Vol. I 220, 271. 272. 290. 331: Vol. II 670. 672. 978, 982, 985, 987, 1076, 1107; Trans. 2308—2315

LABOR-MANAGEMENT CONCILIATION COURT, Vol. I 331

LABOR UNIONS, Vol. I 175. 185. 207—208: Vol. II 627—628. 664, 688—697; Trans. 1642, 2128—2129, 2295, 2315, 2317, 2318, 2324, 2325, 2326, 2328—2340, 2344, 2351—2367, 2367—2369
See also A.F.L.-C.I.O.

LAND GRANTS
Proceeds from, part of public school fund, Vol. II 583, 596, 718, 725—726, 993, 996—997, 1002, 1003, 1069, 1099; Trans. 1989—1990, 1995, 2143
Restrictions on disposition of, Vol. I 266—267; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150

LANDS
Board of Land Commissioners
classification of public lands, Vol II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
composition, authority, Vol. I 329; Vol. II 718—719, 726—727, 994, 997, 1002, 1004, 1069—1070, 1100; Trans. 663, 664, 860, 863, 864, 865, 869, 814,917, 1280, 1990—2002
Indian lands, disclaimer of rights to, Vol. I $9, 294; Vol. II 838-841, 1030-1032, 1037, 1087; Trans. 1286, 2x-2573
Public lands
access to, Trans. 2145—2150
board of land commissioners — composition, authority, Vol. 1329; Vol. II 718—719, 726—727, 994, 997, 1002, 1004,1069—1070,1100; Trans. 860, 863, 864, 865, 869, 874, 917, 1280, 1990—2002
classification of public lands by board, Vol. II 748—752, 1000-1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
disposition of, Vol. I 266-267, 329; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. X42-2150
exchange of, Vol. I 266—267, 329; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
mineral rights, Trans. 1399, 2150, 2568
property tax exemption, Vol. I 99, 306, 326; Vol. II 584, 590-591, 599, 945, 947, 950,951, 1065, 1097; Trans. 1410—1427, 2217—2218
public school fund, lands included in, Vol. II 718, 725—726, 993, 996-997, 1002, 1003, 1069, 1099; Trans. 1989—1990, 1995, 2143
recreational use of, Trans. 2143, 2145—2150
trust status of public lands, Vol. I 266-267, 329; Vol. II 748—752, 1000—1001, 1002, 1006, 1071-1072, 1101; Trans. 2143, 2145, 2147
united states
jurisdiction over lands of to remain with congress, Vol. I 99; Vol. II 838-841, 1030-1032, 1037, 1087
restrictions on disposition of land grants from, Vol. I 266—267; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072,1101; Trans. 2142—2150

LARUM, MICHAEL (INTERN), Vol. I 70; Vol. II 619; Trans. 3036

LAW CLERKS, Trans. 1045, 1046,1047, 1066

LAW ENFORCEMENT OFFICERS
Capital punishment for murder of, Trans. 1815, 1817—1818, 1820

LAWS
See BILLS

LAWYERS
Admission to practice, Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1025, 1031, 1071,1162, 1163

LAWYERS (Cont.)
Counsel, right to, Vol. I 105; Vol. II 623, 640—641, 960, 965, 968, 972, 1040, 1089; Trans. 1052, 1751, 1776
County attorneys, Vol. I 216, *a*, 489, 499—500, 525; Vol. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 830—831, 844, 901, 1069, 1130—1132, 1780, 1781, 1784, 1787, 2516—2521
District attorneys, Vol. I 513, 525; Trans. 1069. 1130—1132
Judicial officers, practice of law, Vol. I 88, 491, 504—505, 512, 522; Vol. II 915, 1063, 1096; Trans. 1014, 1119—1121
Probate attorney, Vol. I 299; Trans. 1132—1136, 1146, 1147, 1161—1162
Prosecuting attorneys, Vol. I 171
Rules of practice and conduct, Vol. 1510, 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1015, 1025, 1037, 1071, 1162, 1163

LEAGUE OF CITIES AND TOWNS, Trans. 298, 2526, 2527

LEAGUE OF CONSERVATION VOTERS, Trans. 1229

LEAGUE OF WOMEN VOTERS, Trans. 583, 851, $19, 1173, 1222, 1225, 1392, 2274

LEAPHART, SUSAN (PAGE), Trans. 104, 2209, 2861

LEARY, DODGE (INTERN), Vol. 170,485; Trans. 388, 3036

LEGISLATIVE COMMITTEE
Membership and staff, Vol. I 22, 375; Trans. 112
Report
consideration in committee of the whole, Trans. 543—630, 635—705, 711—808, 813—838
cross references, 1889-1972 constitutions. Vol. I 416
delegate proposals considered, Vol. I 417
roll call votes on, in committee, Vol. I 422-427
text and comments
bicameral
majority report, Vol. I 395-409
minority report, Vol. I 410—415
unicameral
majority report, Vol. I 376—394
transmittal letter, Vol. I 374-375
Responsibilities, Trans. 33, 35-36, 37, 38
witnesses appearing before committee, Vol. I 418—421

LEGISLATIVE COUNCIL, Vol. 1460, 453,454; Vol. II 673, 734; Trans. 854,859, $14, 916,948, 952, 1136, 1395, 1557, 1708, 2051, 2250, 2264, 2267, 2375, 2376, 2381-2382, 2391, 2400, 2526, 2767. 2793
Establishment of, Vol. I 388; Vol. II 862, 864—865, 868, 871, 874, 875, 877, 881—882, 885, 887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 581—582, 625, 636-637

LEGISLATIVE POST-AUDIT, Vol. I 443, 444; Vol. II 894, 899, 904, 907, 1047, 1049, 1053, 1092,1105, 1107; Trans. 626,844, 854, 914—921, $23, 952, 974—978, 995—1007, 1517, 1699, 2692, 2791—2806
See also AUDITS; LEGISLATIVE PRE-AUDIT

LEGISLATIVE PRE-AUDIT, Vol. I 443; Trans. 844, 917, 919, 920, 997, 2056, 2120, 2124, 2581
See also AUDITS; LEGISLATIVE POST-AUDIT

LEGISLATURE — BICAMERAL
See also ARTICLE V; HOUSE OF REPRESENTATIVES; SENATE
Adjournment, limitations upon, Vol. I 275, 396, 404; Vol. II 865, 871, 877, 882, 885, 887, 1049, 1053, 1092, 1107; Trans. 601—602, 730—735
Alternative issue on constitutional ballot on bicameral or unicameral legislature, Trans. 728—730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2890—2894, 2898, 2903, 2904, 2907—2912, 2949—2975, 2987, 2988, 2993, 2996. 2997—3001. 3003-3004
Annual sessions, Vol. I 395, 402; Vol. II 876, 880-881, 886—887, 1052, 1091; Trans. 579—593, 796—797, 813—829
Apportionment, Vol. I 162—163, 274, 278, 381, 398-399, 'm-408; Vol. II 865-866, 872—873, 875, 878—879, 883—884, 885, 888—889, 1050—1051, 1054—1055, 1092—1093, 1107; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 767, 769, 775, 1568, 1569, 1590—1593, 1597
Arrest, immunity of members, Vol. I 275, 396, 402; Vol. II 877, 881, 887, 1052, 1092; Trans. 594-595, 1573
Attendance of absent members, less than majority may compel, Vol. I 275, 396, 403; Vol. II 864. 871, 875, 877, 881, 885, 887, 1049, 1053; 1092, 1107; Trans. 601—602
Bicameralism, merits of, Vol. I 381-382; Trans. 728—730, 747-749, 759—760, 775—779, 786—789, 815, 822, 840, 1603, 1604, 1629—1633, 2221, 2580, 2866, 2871, 2880, 2883, 2884, 2892—2894, 2898, 2900-2901, 2903, 2905, 2907. 2911, 2954. 2957. 3022-3025
Biennial sessions, Vol. I 106, 414—415; Trans. 582-592, 813, 816—819
Bills, See also BILLS
carryover from one session to another, Vol. I 395, 402, 414—415; Vol. II 876, 880—881, 886, 1052, 1091; Trans. 579, 586, 816, 826
form and procedure for passage, Vol. I 276, 396—397, 404—406; Vol. II 877—878, 882. 887—888, 1053—1054, 1092; Trans. 637—673, 728, 1535, 2015
governor's veto power, Vol. I 116—117, 183—184, 231—232, 321-322. 323. 397, 406. 437—438. 446, 450—452, 459—460; Vol. II 895—896, 901, 904, 908—909, 1058—1059, 1094—1095; Trans. 747,842, 948—958, 1701—1702, 1720—1723. 2859 X387-2888
recorded vote required, Vol. I 276, 396—397, 405; Vol. II 882, 888, 1053, 1092; Trans. 637-647, 671-672
Budget, submission by governor, Vol. I 183, 231, 321, 432—433, 437, 446, 450, 459; Vol. II 895, 901, 908, 1058, 1094; Trans. 842, 947—948, 2103, 2136
Campaign funds, Vol. I 221
Citizen access
proceedings open to public, Vol. I 276, 396, 403—404; Vol. II 864, 871, 874, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 603—625, 1501, 1651, 1680
recorded vote rewired on bills. Vol. I 276. 396-397. 405: 'Vol. II 882, 888, 1053, 1092; Trans. 637—647, 671-672
Code of ethics, Vol. I 164; Vol. II 866, 873, 875, 879, 884, 889, 1077, 1103; Trans. 789—790, 793-796, See also Conflicts of interest

LEGISLATURE — BICAMERAL (Cont.1
Commission for redistricting and reapportioning legislative and congressional districts. Vol. I 162. 278. 398—399, 407—408; Vol. II 865—866, 872—873, 878—879, 883—884, 885, 888—889, 1050—1051, 1054—1055, 1092—1093, 1107; Trans. 559, 564, 681—696, 711—725, 735—741, 766, 767, 769, 1590—1593
Committees
meetings open to public, Vol. I 276, 396, 403—404; Vol. II 864, 871, 874, 877, 881, 885,887, 1049, 1053, 1092, 1107; Trans. 603—625, 1501, 1651, 1680
power to establish, Vol. I 250, 396, 404; Vol. II 864—865, 871, 877, 881—882, 885, 887, 1049, 1053, 1092, 1107; Trans. 581-582, 585, 586, 625—630, 635—637, 2791—2806
Compensation
members. Vol. I 275, 280, 395, 401—402, 413; Vol. II 876, 860, 886, 1052, 1091; Trans. 572-579, 588, 589. 1572
salary commission, Vol. I 134, 275, 280, 395, 402; Vol. II 876, 880, 886, 1077, 1103; Trans. 572—579, 992, 993, 1084, 1572
Composition, Vol. I 274, 395, 400; Vol. II 864, 871, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 775—779
Conference committees, Vol. 1303, 382, 396, 400, 403, 404; Trans. 731—734, 748
Conflicts of interest, Vol. I 164; Trans. 789—790, See also Code of ethics
Contested elections. Vol. I 396. 403: Vol. II 864. 871. 875. 877. 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 599—601, 789
Continuity of **government** in **emergency**, Vol. I 278—279; vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Disqualification, Vol. I 275, 396, 402 —403; Vol. II 877, 881, 887, 1053, 1092; Trans. 595-599. 1573—1582, 1617—1620
Districting and apportionment, Vol. I 162—163, 274, 278, 381, 398-399, 407—408; Vol. II 865—866, 872—873, 875, 878—879, 883—884, 885, 888-889. 1050-1051. 1054-1055. 1092—1093, 1107; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 767, 769, 775, 1568, 1569, 1590—1593, 1597
Effective dates of new constitutional provisions, Vol. II 1082, 1108; Trans. 3004-3005, 3014—3015
Election of members, Vol. 1275, 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1107; Trans. 1568—1569
contested elections, Vol. I 396, 403; Vol. II 864, 871, 875, 877,881. 885,887, 1049. 1053, 1092, 1107; Trans. 599—601
each house judge of election and qualifications of members, Vol. 1396, 403; Vol. II 864, 871, 875, 877. 881, 885,887, 1049, 1053, 1092, 1107; Trans. 599-601
Expulsion of member, Vol. I 275, 396, 403; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 599-601
Governor's power to **convene**, Vol. I 106, 183, 231, 275, 321, 395, 402, 414-415, 438, 452, 460; Vol. II 876—877. 881. 887. 901—902. 904. 909. 1052, 1059, 1091, 1095; Trans. 579—593, 817, 826, 958—961, 1702—1704
Hearings
notice, Vol. I 396, 403—404; Trans. 614-625, 1501, 1651
open to public, Vol. I 276, 396, 403—404; Vol. II 864, 871, 874, 877,881, 885,887, 1049, 1053, 1092, 1107; Trans. 603—625, 1501, 1651, 1680

LEGISLATURE — BICAMERAL (Cont.)
House of representatives. number "f members, Vol. I 274, 395, 400-401, 411; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 690, 744, 779—785, 815, 819, 821—826, 1595—1610
one member for each district, Vol. I 162—163, 274, 2'18, 381, 398-399, 407—408; Vol. II 865—866, 872—873, 875, 878—879, 883—884, 885, 888489, 1050—1051, 1054—1055, 1092—1093, 1107: Trans. 545. 546. 551. 559, 562, 564, 570, 680—696, k-725; 735—747, 762, 765, 766, 767, 7692, 7775, 1568, 1569, 1590—1593, 1597
Immunity of members from arrest, Vol. I 275, 396, 402; Vol. II 877, 881. 887, 1052, 1092; Trans. 594495, 1573
Impeachment of officers, Vol. I 276—277, 397—398, 406—407; Vol. II 865, 871-872, 875, 878, 883, 885, 888, 1050, 1054, 1092, 1107; Trans. 675—680, 735
Initiative and referendum powers reserved by the people, Vol. I 274, 277, 395,400; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 775—779, See also INITIATIVE; REFERENDUM
Interim committees, Vol. 1250,396, 404; Vol. II 414-415, 864—865, 871, 875, 877, 881-882, 885, 887, 1049, 1053, 1092, 1107; Trans. 581-582, 585, 586, 625—630, 635—637, 814, 915, 952, 999, 1006—1007, 2792, 2794, 2796, 2797, 2799
Joint rules, Vol. I 303, 396, 404; Trans. 731, 734—735
Journal of proceedings, Vol. I 276, 396,403; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092. 1107: Trans. 599—601. 638. 671
Legislative council. establishment of, Vol. II 864-865, 871, 875, 877, 881-882, 885, 887, 1049, 1053, 1092, 1107; Trans. 581—582, 625, 636-W
Legislative post-audit, Vol. 1443, 444; Vol. II 894, 899, 904,907, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 626. 844. 854. 914—921. 923, 952, 974—978, 995—1007, 1517, 1699, 2692, 2791—2806
Length of sessions, Vol. I 275, 280, 395, 402, 414; Vol. II 876, 881, 886—887, 1052, 1091; Trans. 579-593, 796—797, 813—829, 1482
Local and special legislation prohibited, Vol. 1156, 276, 397, 406; Vol. II 878, 882, 888, 1054, 1092; Trans. 674
Members' power to convene legislature, Vol. I 183, 275, 321, 395, 402, 414-415, 438, 452, 460; Vol. It 876, 881, 887, 901-902, 904, 1052, 1091; Trans. 579-582, 585-587, 590-593, 817, 826, 956, 958—961
Messages submitted by governor, Vol. 1183, 231, 321, 437, 450, 459; Vol. II 895, 901, 908, 1058, 1094: Trans. 947—948
Number of members, Vol. 395, 400—401, 411; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 690, 744, 779—785, 815, 819, 821-826, 1595—1610
Oath of office, Vol. 125; Vol. 315, II 819, 1019, 1022, 1025, 1043, 1090; Trans. 595, 2695
Officers chosen from members, Vol. 1276, 396,403; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092, 1101; Trans. 599—601
Open meetings, Vol. I 276, 396, 403-404; Vol. II 864, 871, 874, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 603—625, 1501, 1651, 1680
Other public office, disqualification from holding, Vol. I 275, 396, 402—403; Vol. II 877, 881, 887, 1053, 1092; Trans. 5X-599, 1573—1582, 1617—1620

LEGISLATURE — BICAMERAL (Cont.)
People's advocate. Vol. 1292, 325, 3X-380, 393—394, 399, 408—409; Trans. 696—705, 747, 829-838, 850, 852, 863, 870, 900—904, 2255, 2398, 2600
Power, Vol. I 274, 395, 400; Vol. 11 864, 871. 875. 876, 880, 885. 886. 1049. 1052. 1091. 1106: Trans. 628, 775—779, 853
Punishment of member, Vol. I 275, 396,409; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 599—601
Qualifications of members, Vol. I 274—275, 395, 401, 412; Vol. II 876, 880, 886, 1052, 1091; Trans. 545-572.682. 797—808. 1569—1570. 1696
election and qualifications judged by each house, Vol. I 396, 403; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 599-601
Quorum, Vol. I 275, 396, 403; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 601-602
Reapportionment Commission, Vol. I 162, 278, 398-399, 407-408; Vol. II 865—866, 872—873, 878-879, 883-884, 885, 888-889, 1050—1051, 1054—1055, 1092—1093, 1107; Trans. 559, 564, 681-696, 711—725, 735-741, 766, 767, 769, 1590—1593
Recall of members. Vol. I 91. 257—258. 277—278. Vol. II 816, 821-822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852—2853
Recess, limitations on, Vol. I 275, 396, 404; Vol. II 865, 871, 875, 877, 882, 885, 887, 1049, 1053, 1092, 1107; Trans. 590, 730—735
Representatives, number of members, Vol. I 274, 395, 400—401, 411; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 690, 744, 779—785, 815, 819, 821—826, 1595—1610
one member for each district, Vol. I 162-163, 274, 278. 381, 398-399, 407—408; Vol. II 865-866, 872-873, 875, 878-879, 883-884, 885, 888-889, 1050—1051, 1054—1055, 1092-1093, 1107; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 161, 769, 775, 1568, 1569, 1590-1593, 1597
Rules for proceedings, Vol. I 275, 303, 396,403, 404; Vol. II 864, 871, 875, 877, 881, 885, 887, 1049, 1053, 1092, 1107; Trans. 599-601, 731, 734-735
Senate, number of members, Vol. 1274, 395, 400—401, 411; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 690, 744. 779-785, 815, 819, 821—826, 1595—1610
districts, composition of, Vol. I 162—163, 274, 278, 381, 398-399. 407-408; Vol. II 865-866, 872-873, 875, 878-879, 883—884, 885, 888—889, 1050—1051, 1054—1055, 1092-1093, 1107; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 767, 769, 775, 1568, 1569, 1590-1593, 1597
Separation of powers. Vol. I 186; Vol. II 815, 818, 1019, 1022, 1025, 1043, 1090; Trans. 676, 698, 699, 704, 851, 1011, 1036, 1124, 2377, 2378, 2383, 2523, 2689, 2690-2695
Sessions
annual, Vol. I 395, 402; Vol. II 876, 881, 886-887, 1052, 1091; Trans. 579-593, 796—797, 813-829
biennial, Vol. I 106, 414—415; Trans. 582-592, 813, 816-819
length of, Vol. 1275, 280, 395, 402, 414; Vol. II 876, 881, 886—887, 1052, 1091; Trans. 579-593, 796—797, 813—829, 1482

LEGISLATURE — BICAMERAL (Cont.)
Sessions (Cont.)
open to public, Vol. I 276, 396, 403—404; Vol. II 864, 871, 874, 8'i7.881., 885., 887., 1049., 1053. 1092, 1107; Trans. 603—625. 1501. 1651. 1680
special, Vol. I 106, 183, 231, 275, 321, 395, 402, 414—415, 438, 4:52, 460; Vol. II 876-877, 881, 887, 901—902, 904,909, 1052, 1059, 1091, 1095; Trans. 579—593, 817,826, 956, 958—961, 1702—1704
Size, Vol. I 274, 395, 400—401, 411; Vol. II 864, 871, 875, 876, 880,885, 886, 1049, 1052, 1091, 1106; Trans. 690,744, 779—785, 815, 819, 821—826, 1595—1610
Special sessions
governor's power to convene, Vol. I 106, 183, 231, 275, 321, 395, 402, 414—415, 438, 452, 460; Vol. II 876-877, 881,887, 901—902, 904, 909, 1052, 1059, 1091, 1095; Trans. 579-593, 817, 826, 958—961, 1702—1704
members' power to convene, Vol. I 183, 275, 321, 395, 402, 414—415, 438, 452,460; Vol.11 876,881, 887, 901—902, 904, 1052, 1091; Trans. 579-582, 585—587, 590—593, 817, 826, 956, 958—961
Speech or debate, members not to be questioned on, Vol. I 275, 396, 402; Vol. II 877, 881, 887, 1052, 1092; Trans. 594—595, 728
structure, Vol. I 274, 395, 400; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049. 1052. 1091. 1106: Trans. 775—779
Terms of members, Vol. I 106, 275, 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1107; Trans. 1568—1569
legislators elected before effective date of new constitution, Vol. II 1082, 1108; Trans. 1568—1571, 1591—1593, 1628—1629, 3005, 3007—3008
senators first elected under new constitution, Vol. II 1082, 1108; Trans. 1568—1571, 1591—1593, 1628—1629, 2776, 3005, 3007-3008
Vacancies, Vol. I 275, 278, 395-396, 402; Vol. II 877, 881, 887, 1052, 1091; Trans. 549—550, 593—594, 725—727
Vesting of legislative power in, Vol. 1274, 395, 400; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 628, 775—779
Veto override, Vol. I 111—112, 116—117, 184, 231, 322, 378, 390—391, 397, 406, 438, 451, 460; Vol. II 896,901, 904, 907, 1058, 1094; Trans. 948, 949, 955—958

LEGISLATURE — UNICAMERAL
See also ARTICLE V
Adjournment, Vol. I 377, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 601—602
Alternative issue on constitution ballot on unicameral or bicameral legislature, Trans. 728-730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2813, 2877, 2881—2884, 2890—2894, 2898, 2903, 2904, 2907—2912, 2949—2975, 2987, 2988, 2993, 2996, 2997—3001, 3003—3004
Annual sessions, Vol. I 110, 376, 384-385; Vol. II 861, 867-868, 814, 1046, 1105; Trans. 579—593, 796—797, 813—829
Apportionment, Vol. I 109—110, 379, 392-393; Vol. II 863—864, 870, 874—875, 1048, 1106; Trans. 545, 546, 551, 359, 562, 564,570, 680—696, 711—725, 735—747, 762, 765, 766, 767,769, 775, 1568, 1569, 1590—1593, 1597
Arrest, immunity of members, Vol. I 110, 377, 386; Vol. II 862, 868,874, 1046, 1105; Trans. 594-595, 1573

LEGISLATURE — UNICAMERAL (Cont.)
Attendance of absent members, less than majority may compel, Vol. I 110—111, 377, 387; Vol. II 862, 868,874, 1047, 1105; Trans. 601—602, 789
Bills, See also BILLS
carryover from one session to another, Vol. I 376, 384; Vol. II 861, 867, 874, 1046, 1105; Trans. 579, 586, 816,826
form and procedure for passage, Vol. I 111, 377-378, 388-389; Vol. II 862—863, 865, 868—869, 874—875, 1047—1048, 1105—1106; Trans. 637—673, 1535, 2015, 2696
governor's veto power, Vol. I 111—112, 116—117, 183—184, 231—232, 321—322, 323, 378, 390—391, 437—438, 446, 450—452, 459—460; Vol. II 895-896, 901, 904, 908-909, 1058—1059, 1094—1095; Trans. 674—675, 747, 842, 948—958, 1701—1702, 1720—1723, 2859, 2887-2888
recorded vote required, Vol. I 377, 388; Vol. II 862, 869, 874, 1047, 1105; Trans. 637-647, 671—672
Budget, submission by governor, Vol. I 183, 231, 321, 432-433, 437,450, 459; Vol. II 895, 901, 908, 1058, 1094; Trans. 842, 947-948, 2103, 2136
Campaign funds, Vol. 1 221
Citizen access
proceedings "pen to public, Vol. I 111, 377, 384, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 603-625, 1501, 1651, 1680
recorded vote required on bills, Vol. I 377, 388; Vol. II 862, 869,874, 1047, 1105; Trans. 637-647, 671-672
Code of ethics, Vol. I 164; Vol. II 866, 873, 875, 879, 884, 889, 1077, 1103: Trans. 789—790, 793-796, See also Conflicts of interest
Commission for redistricting and reapportioning legislative and congressional districts, Vol. I 109-110, 379, 382, 392-393; Vol. II 863—864, 870, 874—875, 1048, 1106; Trans. 559, 564, 681-696, 711-725, 735—741, 766, 767, 769, 1590—1593
Committees
meetings open to public, Vol. I 111, 377, 384, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 603-625, 1501, 1651, 1680
power to establish, Vol. I 377, 387-388; Vol. II 862, 868, 874, 1047, 1105; Trans. 581-582, 585, 586, 625—630, 635-637, See also Legislative post-audit
Compensation
members, Vol. I 110, 280, 376, 383-384; Vol. II 861, 867, 874, 1046, 1105; Trans. 572-579, 588, 1572
salary commission, Vol. I 110, 134, 280, 376, 383-384; Vol. II 861, 867, 874, 1077, 1103; Trans. 572-579, 992, 993, 1084, 1572
Composition, Vol. I 109, 376, 381-382; Vol. II 861, 867, 874, 1046, 1105; Trans. 747-760, 824, 825
Conflicts of interest, Vol. I 164; Trans. 789—790, See also Code of ethics
Contested elections, Vol. 1377, 386-387; Vol. II 862, 868, 874, 1047, 1105; Trans. 599-601
Continuity of government in emergency, Vol. I 278-279; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Disqualification, Vol. I 377, 386; Vol. II 862, 868, 874, 1046—1047, 1105; Trans. 595-599, 1573—1582, 1617—1620
Districting and apportionment, Vol. I 109—110, 379, 392-393; Vol. II 863-864, 870, 874-875, 1048, 1106; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711-725, 735-747, 162,765, 766, 767,769, 775, 1568, 1569, 1590-1593, 1597

LEGISLATURE — UNICAMERAL (Cont.)
Effective dates of new constitutional provisions, Vol. II 1082, 1108: Trans. 3004—3005, 3014—3015
Election of members, Vol. 1110, 376, 383; Vol. II 661, 867, 874, 1046, 1105; Trans. 770—775
contested elections, Vol. I 377. 386—387; Vol. II 862, 868, 874, 1047, 1105; Trans. 599—601
Expulsion of member, Vol. I 110, 377, 387; Vol. II 862, 868, 874. 1047, 1105: Trans. 599—601
Governor's power to **convene**, Vol. I 110, 376, 384—385; Vol. II 861, 868, 874, 909, 1046, 1059, 1095, 1105; Trans. 579-593, 817, 826, 958-961, 1702—1704
Hearings and meetings
notice of, Vol. I 111, 377, 384, 387; Trans. 614-625, 1501, 1651
open to public, Vol. I 111, 377, 384, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 603—625, 1501, 1651, 1680
Immunity of **members** from arrest, Vol. I 110, 377, 386; Vol. II 862, 868, 874, 1046, 1105; Trans. 594—595, 1573
Impeachment of officers, Vol. I 112, 378—379, 391—392; Vol. II 863. 869—870, 874, 1048, 1106; Trans. 675—680
Initiative and referendum powers reserved to people, Vol. I 109, 376, 381; Vol. II 861, 867, 874, 1046, 1105; Trans. 747—760, See also INITIATIVE; REFERENDUM
Interim committees, Vol. I 377, 387—388, 414—415; Vol. II 862, 868, 874, 1047, 1105; Trans. 581—582, 585, 586, 625—630, 635—637, 814,915, 952, 999, 1006—1007, 2792, 2794, 2796, 2797. 2799
Journal of proceedings, Vol. I 111, 377, 387; Vol. II 862, 868, 8'74, 1047, 1105; Trans. 599—601, 638, 671
Legislative council, establishment of, Vol. I 388; Vol. II 862, 868, 874, 1047, 1105; Trans. 581-582, 625.636-637
Legislative post-au&t, Vol. 1443, 444; Vol. II 894, 899, 904,907, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 626,844, 854, 914—921, 923, 952, 974—978, 995—1007, 1517, 1699, 2692, 2791—2806
Length of sessions, Vol. I 376, 384-385; Vol. II 861, 867—868, 874, 1046, 1105; Trans. 579—593, 796—797, 813—829, 1482
Local and special Legislation prohibited, Vol. I 111, 156, 378, 389—390; Vol. II 863, 869, 874, 1048, 1106; Trans.674
Majority and minority leaders' power to convene, Vol. I 110, See also Members' power to convene
Members' power to convene, Vol. I 110, 376, 384—385; Vol. II 861, 868, 874, 1046, 1105; Trans. 579—582, 585—587, 590—593, 817, 826, 956, 958—961
Messages submitted by governor, Vol. 1183, 231, 321, 437, 450, 459; Vol. II 895, $01, 908, 1058, 1094; Trans. 947—948
Number of members. Vol. I 109, 376. 382: Vol. II 861, 867, 874, 1046, 1105; Trans.690, 760—770, 824, 825
Oath of office, Vol. 125;Vol813I 819, 1019, 1022, 1025, 1043.1090; Trans. 595, 2695
Officers chosen from members, Vol. I 110, 377, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 599-601
Open meetings, Vol. I 111, 377, 384, 387; Vol. II 862, 868, 874., 1047, 1105; Trans. 603—625. 1501. 1651, 1680
Other public office, disqualification from holding, Vol. I 377, 386; Vol. II 862, 868, 874, 1046—1047, 1105; Trans. 595—599, 1573—1582, 1617—1620

LEGISLATURE — UNICAMERAL (Cont.)
People's advocate, Vol. 1292, 325, 3X-380, 393—394, 399, 408—409; Trans. 696—705, 747, 829—838, 850, 852, 863, 870, 900-904, 2255, 2398, 2600
Power, Vol. I 109, 376, 381-382; Vol. II 861, 867, 874, 1046, 1105; Trans. 628, 747—760, 853
Punishment of member, Vol. 1110, 377, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 599—601
Qualifications of members, Vol. I 376, 383; Vol. II 861, 867, 874, 1046, 1105; Trans. 545—572, 797—808, 1569—1570, 1696
Quorum, Vol. I 110—111, 377,387; Vol. II 862, 868, 874, 1047, 1105; Trans. 601—602
Reapportionment Commission, Vol. I 109—110, 379, 382, 392-393; Vol. II 863-864, 870, 874—875, 1048, 1106; Trans. 559, 564, 681—696, 711—725, 735—741, 766, 767, 769, 1590—1593
Recall of members, Vol. 191, 257—258, 277—278; Vol. II 816, 821-822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852—2853
Referendum of unicameral legislature, Vol. II 864—866, 870—873, 875, 1048—1051, 1106—1108; Trans. 785-789
Rules for proceedings, Vol. I 377. 387:. Vol. II 862.868. 874, 1047, 1105; Trans. 599—601
Separation of powers, Vol. I 186; Vol. II 815, 818, 1019, 1022, 1025., 1043, 1090: Trans. 676, 696., 699, 704, 851, 1011, 1036, 1124, 2377, 2378, 2383, 2523, 2689, 2690—2695
Sessions
annual, Vol. I 110, 376, 384—385; Vol. II 861, 867—868, 874, 1046, 1105; Trans. 579-593, 796—797, 813—829
length of, Vol. I 376, 384—385; Vol. II 861, 867—868, 874, 1046, 1105; Trans. 579—593, 796—797, 813—829, 1482
open to public, Vol. I 111. 377. 384. 387: Vol. II 862. 868., 874, 1047, 1105; Trans. 603—625, 1501, 1651, 1680
special. Vol. I 110, 376, 384—385; Vol. II 861, 868, 874, 909, 1046, 1059, 1095, 1105; Trans. 579-593, 817, 826, 956, 958-961, 1702—1704
Size, Vol. I 109, 376, 382; Vol. II 861, 867, 874, 1046, 1105; Trans. 690, 760—770, 824, 825
Special sessions
governor's power to convene, Vol. I 110, 376, 384—385; Vol. II 861, 868, 874, 909, 1046, 1059. 1095, 1105; Trans. 579—593, 817, 826, 958—961, 1702-1704
majority and minority leaders' power to convene, Vol. I 110
members' power to convene, Vol. I 110, 376, 384—385; Vol. II 861, 868,814, 1046, 1105; Trans. 579-582, 585-587, 590—593, 817, 826, 956, 958-961
Speech or debate, members not to be questioned on, Vol. I 110, 377, 386; Vol. II 862, 868. 874, 1046, 1105; Trans. 594—595
Structure, Vol. I 109, 376, 381—382; Vol. II 861, 867, 874, 1046, 1105; Trans. 747—760, 824, 825
Terms of members, Vol. I 110, 376, 383; Vol. 11861, 867, 874, 1046, 1105; Trans. 770—775
transition from unicameral to bicameral legislature following proposed 1980 referendum. Vol. II 865—866, 870—873, 875, 1048—1051, 1106—1108; Trans. 786
transition to new constitution .Vol II 1082, 1108: .Trans. 1568—1571, 1591—1593, 1628—1629, 2776, 3005, 3007—3008
Unicameralism, merits of, Vol. I 381—382; Trans. 728—730, 747—749, 759—760, 775—779, 786—789, 815, 822, 840, 1603, 1604, 1629—1633, 2221, 2580, 2866, 2871, 2880, 2883, 2884, 2892—2894, 2898, 2900—2901, 2903, 2905, 2907, 2911, 2954, 2957, 3022—3025

LEGISLATURE — UNICAMERAL (Cont.)
Vacancies, Vol. I 376—377, 385—386; Vol. II 861—862, 868, 1046, 1105; Trans. 549—550, 593—594, 725—727
Vesting of legislative power in, Vol. I 109, 376, 381-382; Vol. II 861, 867, 874, 1046, 1105; Trans. 628, 747—760
Veto override, Vol. I 111—112, 116—117, 184, 231, 322, 378, 390—391, 397, 406, 438, 451, 460; Vol. II 896, 901, 904, 907, 1058, 1094; Trans. 948, 949, 955-958

LENDING OF CREDIT, Vol. II 583

LESTER, BARBARA (SECRETARY), Vol. I 69, 433; Trans. 3035

LEUTHOLD, JOHN H. (MOLT)
Biography, Vol. I50
Committee assignment, Vol. I26
Delegate Proposal
no. 41 (aid to charities, non-public schools), Vol. I 137
Remarks by, on
education and public lands (Article X)
boards of education, Trans. 2086
general government (Article III)
gambling, Trans. 2738—2739, 2756
general provisions (Article XIII)
people's advocate, Trans. 696-697
judiciary (Article VII)
district court jurisdiction, Trans. 1074—1075
probate attorney, Trans. 1147
legislature (Article V)
bills, Trans. 644, 663
qualifications, Trans. 556
size, Trans. 765—766
suffrage and elections (Article IV)
privilege from arrest, Trans. 418, 419

LEWIS, ANTHONY (NEW YORK TIMES NEWS SERVICE), Trans. I224

LIBEL, Vol. II 621, 630, 958, $63, 970, 1038, 1087; Trans. 1649—1651, 1675

LIBRARIES
Distribution of convention documents to, Trans. 249—251, 2618, 2620
Legislature to provide for. Vol. I 259: Vol. II 718. 721 724, 993, 996, 1002, 1003, 1069, 1099; Trans. 1960, 1963, 1964, 1965, 1967, 1968, 1981 1985
Property tax exemption, Vol. 1326; Vol. II 584, 590, 599, 945, 947-948, 950, 951, 1065, 1097; Trans. 1410, 1411, 1415, 2539

LICENSED OCCUPATIONS, CONVICTS EMPLOYED IN, Vol. II 643; Trans. 1800, 1801, 1822—1825, 2507—2509

LIE DETECTOR TESTS, Vol. I 251; Vol. II 633, 641

LIEN, NANCY (INTERN), Vol. 170; Vol. II 716; Trans. 2143, 3036

LIEUTENANT GOVERNOR
Candidacy for public office during term, Vol. I 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 928-929
Compensation, Vol. I 181, 229, 320, 432, 436, 447, 458; Vol II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927—928, 991—994
salary commission, Vol. I 134, 447; Vol. II 861, 867, 874, 876, 880, 886, 1077, 1103; Trans. 578—579, 992, 993, 1084, 1572
Delegation of governor's constitutional powers prohibited, Vol. I 181, 320, 445, 446, 458, 465; Vol. II 894. 899, 904, 907, 1056—1057, 1093; Trans. 900, 903
Duties, Vol. I 181, 228, 319, 320, 322, 403, 435, 441—442, 445, 457, 458, 462, 465; Vol. II 893-894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 600, 842, 843, 873—878, 879, 880, 899-904, 970
Election, Vol. I 180—181, 229, 319, 320, 435, 444, 457, 463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 878-883
joint filing with candidate for governor, Vol. I 181, 229. 320, 435, 444, 448, 457, 463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 842, 843, 854, 879-881, 887, 902, 929
Elimination as constitutional office, Trans. 1714—1715
Executive branch, member of, Vol. 1180, 228, 319, 435, 441, 457, 462—463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 843, 845, 994
Impeachment, Vol. I 112, 182, 276—277, 378—379, 391—392, 397—398, 406—407; Vol. II 821, 863, 865, 869—870, 871-872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1587—1590, 2550
Oath of office, Vol. I 125; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Other government employment prohibited during term, Vol. I 436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929
President of senate, Vol. I 181, 320, 322, 403, 444; Trans. 600, 880, 900, 970
Qualifications, Vol. I 180, 228, 319—320, 435, 445, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 883-893, 978—986, 1693-1697
Recall, Vol. I 91, 257—258, 277-278; Vol. II 816, 821—822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852—2853
Residence at seat of government, Vol. 1319,435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Succession to office, Vol. I 181, 233, 278, 320, 322-323, 436, 447, 458, 465—466; Vol. II 894, 899-900, 904, 907. 1057, 1094: Trans. 929, 940-944
Term of office, Vol. I 181, 228, 319, 320, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Vacancy in office, Vol. I 181, 233, 320, 322-323, 436, 447, 458; Vol. II 894, 899—900, 904, 907, 1057, 1094; Trans. 842, 929-931, 939-944

LIFE AND LIBERTY
May not be deprived without due process of law, Vol. I 312., 328:, Vol. II 622. 634. 635—636, 637. 959, 964, 971, 1039, 1088; i-ram. 1738, 1750, 1751, 1760, 2389
Right to pursue guaranteed, Vol. I 142, 207, 242; Vol. II 620, 626—628, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, 1809, See also INDIVIDUAL DIGNITY; RIGHT TO BEAR ARMS: RIGHT TO LIFE

LINDBERGH, CHARLES, Trans. 387, 468, 541, 1205, 1216 1224, 1230, I284

LINE ITEM VETO, Vol. I 111, 184, 231, 323, 378, 390-391, 397, 406, 438, 451-452, 460; Vol. II 896, 901,909, 1059, 1096; Trans. 948,956
See also VETO

LIQUOR CONTROL BOARD, Trans. 2248-2249, 2250—2251, 2252, 2253, 2347, 2763, 2766, 2767

LIQUOR, SALE OF BY STATE, Vol. I 238, 302; Trans. 2248—2258, 2762—2768

LISTON, MAJOR WILLIAM M., MONTANA NATIONAL GUARD, Trans. 2

LIVESTOCK
Department of, Trans. 1365
Levies for disease control and indemnification, predator control, inspection, protection, research and promotion, Vol. I 101, 132, 246; Vol. II 550, 559, 560, 581, 586, 597—598, 936, 937, 938, 941, 1076, 1102; Trans. 1199, 1366—1370, 1378, 1547, 2364, 2539—2540

LIVESTOCK COMMISSION, Trans. 1368

LIVESTOCK SANITARY BOARD, Trans. 1368

LOAN PROCEEDS, USE OF, Vol. II 583, 586, 595, 946, 949, 950,952, 1066, 1098; Trans. 1516

LOBBYISTS AND LOBBYING
Convention, Vol. 13, 18; Trans. 68-75, 126, 190, 871, 883, 1227, 1389, 1443, 1451, 1458.1463, 1738, 2069, 2326, 2429, 2492, 2724, See also CONVENTION, OPERATION AND PROCEDURES, Witnesses
licenses reinstated, Trans. 369, 378, 383, 535, 812, 1691, 1769, 2209, 2919
licenses suspended, Trans. 353, 706, 1565, 2858
"thirty-minute rule", Vol. I 8. 18; Trans. 69, 71, 75, 125—126, 190
Legislature, Vol. I 381, 382; Vol. II 682; Trans. 748, 752, 762, 763, 776, 790, 830, 950, 980, 981, 985, 1293.1392, 1431, 1557, 1756, 2049—2050, 2061, 2066, 2076, 2100, 2273, 2274, 2492, 2743

LOCAL ACTS PROHIBITED
By initiative, Vol. I 257, 277-278; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695, 2706
By legislature, Vol. I 111, 156, 276, 378, 389-390, 397, 406; Vol. II 863, 869, 874, 878, 882, 888, 1048, 1054, 1092, 1106; Trans. 674
By referendum, Vol. 1258, 278

LOCAL GOVERNMENT
See ARTICLE XI
Abolition or dissolution of local government units, Vol. I 135, 160, 201, 215, 253; Vol. II 782. 788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2516-2521
Board of supervisors, Vol. I 92
Charter commission, Vol. 182-83; Vol. II 795; Trans. 2225—2227

LOCAL GOVERNMENT (Cant.)
Code of ethics for officers and employees, Vol. II 866, 873, 875, 879, 884, 889, 1077, 1103; Trans. 793-796
Consolidation of county offices, Vol. I 80—81, 216, 301; Vol. II 782, 788, 790, 1009. 1012, 1015, 1073, 1101; Trans. 2516-2521
Consolidation or merger of local government units, Vol. I 135, 160, 201, 215, 253; Vol. II 782, 787—788, 791, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521, 2523, 2535, 2536, 2549, 2560
Counties
change of boundary or county seat, Vol. I 160, 163, 201-202. 215. 253; Vol. II 782. 785, 786—788, 791: 1009, 1012, 1015,1073, 1101; Trans. 2512, 2514-2516
deemed those existing on date of ratification of constitution, Vol. I 201-202, 215; Vol. II 782, 785, 786—788, 1009, 1012, 1015, 1073, 1101; Trans. 2514—2516
executive branch, county part of, Trans. 2522-2524, 2543
location of county offices. Vol. I 153: Trans. 2513
optional form of government, Vol. I 80—81, 92-93, 102—104, 135—136, 215—216, 253, 300—301, 314,525; Vol. II 780,782, 785, 788-791, 1009, 1012, 1015, 1073, 1101; Trans. 2512, 2513, 2516-2521, 2525
County commissioner districts, Vol. I 102—103; Vol. II 785
County officers, See also EDUCATION, School district trustees
assessor, Vol. 180, 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516
clerk and recorder, Vol. I 80, 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2518, 2518, 2519, 2520
clerk of district court. Vol. I 86 88. 216. 484. 488-489. 491. 499, 513, 524—525; Vdl. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 847, 1014, 1042, 1127, 1129-1130, 2516—2521, 2691
coroner, Vol. 180, 253, 300; Vol. II 182, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans.2516
county attorney, Vol.I 216, 484, 489, 499—500, 525; Vol. II 782, 788, 790, 1009, 1012, 1015, 1073, 1101; Trans. 830—831, 844. 901, 1069. 1130-1132, 1780, 1781, 1784, 1787, 2516-2521
county commissioners
appointments to fill vacancies, Vol. I 80—81, 300, 385—386, 491—492, 506
assessment of property, Trans. 1380—1382, 1386, 1390, 1392, 1393, 1396, 1398, 1400, 1402, 1406, 1407, 1501, 1554
consolidation of county offices, Vol. I 80—81, 216, 301; Vol. II 782. 788. 790. 1009. 1012. 1015. 1073. 1101: Trans.2516—2521
election, Vol. I 102—104, 216, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 849, 2516, 2518, 2519, 2521, 2552, 2557, 2560
open meetings, Trans. 1652, 1653, 2491, 2493, 2499, See also Public right of participation in decision-making process
public administrator, Vol. 180, 253, 300; Vol. II 782, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516
sheriff, Vol. I 80, 216, 253, 300; Vol. II 782, 788, 790, 1009, 1012. 1015. 1073. 1101: Trans. 2516, 2517
superintendent of schools, Vol. I 80, 216, 253, 300; Vol. II 182, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2519, 2520
surveyor, Vol. I 80, 253, 300; Vol. II 182, 788, 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2520
treasurer, Vol. 180, 216, 253, 300; Vol. II 702, 788, 796, 1009, 1012, 1015, 1073, 1101; Trans. 2516, 2520

LOCAL GOVERNMENT (Cont.)
Debt limitations established by legislature, Vol. II 583, 586, 595,946, 949, 950, 952, 1066, 1098; Trans. 1492, 1509—1516, 2513. 2515, 2529, 2549
Definition of "local government units", Vol. I 135, 215, 253; Vol. II 782, 785—786, 1009, 1012, 1073, 1101; Trans. 2513—2514, 2537
Department of local government proposed, Trans. 2526, 2527
Districts, Vol. I 92—93; Vol. II 780; Trans. 2512
Establishment of local government units by law, Vol. I 215,253; Vol. II 782, 785—786, 1009, 1012, 1073, 1101; Trans. 2513-2514
Expenditures, strict accountability for, Vol. I 307; Vol. II 586, 595, 596, 946, 949, 950, 952, 1066, 1098; Trans. 921,924, 1001, 1002, 1516—1517, 2512
Incorporation or disincorporation of local government units, Vol. I 135, 215, 253; Vol. II 782, 788, '791, 1009, 1012, 1015, 1073, 1101; Trans. 2516—2521
Indebtedness, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066, 1098; Trans. 1492, 1509—1516, 2513, 2515, 2529, 2549
Initiative and referendum powers, Vol. I 138, 216, 254; Vol. II 783, 785, 799, 1010, 1014, 1074, 1102; Trans. 2512, 2520, 2548—2549
Intergovernmental cooperation, Vol. I 136, 156, 254; Vol. II 783, 798—799, 1010, 1013—1014, 1015, 1074, 1102; Trans. 2526, 2534—2536
Investment of funds, Vol. II 583, 586, 596—597, 602—603, 753—756, 946, 949, 950, 952—953, 1066—1067, 1098; Trans. 1517—1546
Loan proceeds used only for purposes specified, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066, 1098; Trans. 1516
"Local government units" defined, Vol. I 135, 215, 253; Vol. II 782, 785—786, 1009, 1012, 1073, 1101; Trans. 2513—2514, 2537
Optional forms of government, Vol. I 80—81, 92—93, 102—104, 135—136, 215—216, 253, 300—301, 314., 525: Vol. II 780. 782, 785 7X8-791, 1009, 1012, 1015, 1073, 1101; Trans. 2512, 2513, 2516-2521, 2525, 2557, 2560
Powers
local government unit adopting self-government charter, Vol. I 136, 155—156, 216, 254; Vol. II 783, 785, 796—798, 1010, 1013, 1015, 1074, 1102; Trans. 2512, 2528-2534, 2548
local government unit without self-governing powers, Vol. I 136, 155—156, 215—216, 253—254, 314; Vol. II 581, 780, 782—783, 791—795, 1009—1010, 1012—1013, 1015, 1073, 1101; Trans. 2521—2524
Public right of participation in decision-making process, Vol. I 133; Vol. II 621, 630—631, 635, 958, 963, 967, 970, 103X-1039, 1088; Trans. 1651—1669, 1733, 2560, 2875
Public utility districts, Vol. I 179, 248; Vol. II 685—687; Trans. 2255, 2376, 2319, 2404-2420, 2605—2613
Recall of officers, Vol. I 138, 216, 254; Vol. II 783, 785, 799—800; Trans. 2512. 2549—2555.2558. 2561, 2721, 2723, 2725, 2726, 2X52-2853
Revenue sharing by state, Vol. II 580—581, 783, 799; Trans. 2537-2544
Review of structure of government, Vol. 1217, 234; Vol. II 784, 785, 800—801, 1010—1011, 1014, 1015, 1074—1075, 1102: Trans. 2512—2513. 255512565
Self-government charters, Vol. I 82—83, 136, 155—156, 216, 219, 253-254; Vol. II 783, 795—796, 797—798, 1010, 1013, 1015, 1074, 1101—1102; Trans. 1512, 2512, 2524-2528, 2529, 2530, 2532, 2535

LOCAL GOVERNMENT (Cont.)
Sovereign immunity, Vol. I 124; Vol. II 622, 637—638, 959, 964, 967—968, 971, 1039—1040, 1088: Trans. 1760—1764, 2528
Special districts as units of local government, Trans. 2514
Special improvement districts, Vol. II 584, 590—591, 599-601, 945, 947—948, 950, 951, 1065, 1098; Trans. 1410, 1411
Study commissions, Vol. II 800; Trans. 2555—2556, 2560
Taxation
appeal procedures, Vol. II 582, 585, 589, 592—594, 946, 948, 950, 952, 1066, 1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 14X9-1490
power to levy taxes, Vol. I 156, 254; Vol. II 581, 583, 588, 601. 798: Trans. 1379., 1390. 1512, 2527. 2528, 2529 2530, 2531 2532, 2533 2537
property exempt from taxation. Vol. I 306 326; Vol II 5x4. 590-591, 599—601, 945, 947—948, 950, 951, 1065, 1097—1098; Trans. 1410—1427
strict accountability for revenue received, Vol. I 307; Vol. II 581, 582, 586, 595, 596, 946, 949, 950, 952, 1066, 1098; Trans. 921, 924, 1001, 1002, 1516—1517
Voter review of structure of government, Vol. I 217, 234; Vol. II 784, 785, X00-801, 1010—1011, 1014, 1015, 1074—1075, 1102; Trans. 2512—2513. 2555—2565

LOCAL GOVERNMENT COMMITTEE
Membership and staff, Vol. I 22; Vol. II 781
Report
consideration in committee of the whole, Trans. 2512—2544, 2548-2565
cross references, 18X9-1972 constitutions, Vol. II 802
delegate proposals considered, Vol. II 803-804
roll call votes on, in committee, Vol. II 809
text and comments
majority report, Vol. II 782—801
transmittal letter, Vol. II 780—781
Responsibilities, Trans. 33, 37
Witnesses appearing before committee, Vol. II 805—808; Trans. 298

LOENDORF, JEROME T. (HELENA)
Appointed to Post-Convention Procedural Administrative and Voter Education Affairs Committee, Trans. 2426
Biography, Vol. I 50
Committee assignment, Vol. 126
Delegate Proposals
no. 44 (judicial article), Vol. I 140—141
no. 144 (merit system), Vol. I 285
no. 145 (retirement systems), Vol. I 286
no. 165 (equal protection; support of religious activities), Vol. I 312—313
no. 173 (taxation, disabled veterans), Vol. I 326—327
Remarks by, on
ballot, constitution, Trans. 544, 29X9-2990
compact with the united states (Article I), Trans. 2569
constitutional revision (Article XIV)
amendment by legislature, Trans. 497
submission, Trans. 519
declaration of rights [Article II)
assembly, freedom of, Trans. 2478
debt, imprisonment for, Trans. 1797
individual dignity, Trans. 1643
right to know, Trans. 1674
searches and seizures, Trans. 1688
self-incrimination and double jeopardy, Trans. 1779
speech, expression and press, freedom of Trans 1649

LOENDORF, JEROME T (Cont.)
Remarks by, on (Cont.)
departments and institutions (Article XII)
merit system, Trans. 2342—2345
education and public lands (Article X)
aid to sectarian schools, Trans. 2013—2016, 2020, 2022-2029
boards of education, Trans. 2118
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1207—1208
water rights, Trans. 1334
executive (Article VI)
qualifications, Trans. 890
special session, Trans. 959
vacancy, Trans. 932
general government (Article III)
gambling, Trans. 2743
initiative, Trans. 2696, 2707-2708
recall, Trans. 27'2-2723
general provisions (Article XIII)
code of ethics, Trans. 795
consumer counsel, Trans. 2599—2600
non-municipal corporations
cumulative voting, Trans. 2259
retrospective laws, Trans. 3267
watered stock, Trans. 2266
long-short haul provision, Trans. 2263-2264
judiciary (Article VII)
district court jurisdiction, Trans. 1075, 1078
probate attorney, Trans. 1133—1134
terms and pay, Trans. 1118
legislature (Article V)
appropriations by warrant, prohibited payments, Trans. 791
bills, Trans. 644, 656-657, 671—672, 673, 1585
conference committees, Trans. 734—735
conflicts of interest, Trans. 790
disqualification, Trans. 596
districting and apportionment, Trans. 1591—1592
impeachment, Trans. 678—679
organization and procedure, Trans. 602, 625—626
parliamentary form of government, Trans. 752—753
qualifications, Trans. 548
sessions, Trans. 580—582, 590
size, Trans. 764-765
unicameral/bicameral, merits of, Trans. 787—788
local government (Article XI)
forms of government, Trans. 2519
recall, Trans. 2551
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1441, 2707—2708, 2780

LOMAN, RAY (SERGEANT AT ARMS), Vol. I 69; Trans. 357, 2861, 3032, 3035, 3036

LONGBALLOT
See CONSTITUTION. Ballot

LONG-SHORT HAUL CLAUSE, Vol. II 666, 669, 710; Trans. 2263—2265

LORELLO, PETER (ANACONDA)
Biography, Vol. I 51
Committee assignment. Vol. I 26
Remarks by, on
constitutional revision (Article XIV)
submission, Trans. 520
declaration of rights (Article II)
right to work, Trans. 2359, 2366
servicemen, servicewomen and veterans, Trans. 1843

LORELLO, PETER (Cont.)
Remarks by, on (Cant.)
departments and institutions (Article XII)
institutions, Trans. 2272
veterans, Trans. 2272
education and public lands (Article X)
aid to sectarian schools, Trans. 2017
environment and natural resources (Article IX)
reclamation, Trans. 1282—1283
executive (Article VI)
militia, Trans. 965
officers, Trans. 1711
qualifications, Trans. 888
legislature (Article V)
organization and procedure, Trans. 607
revenue and finance (Article VIII)
property tax administration, Trans. 1391
suffrage and elections (Article IV)
poll-booth registration, Trans. 408-409, 444

LOTTERIES, Vol. I 115, 121, 237, 247; Vol. II 816, 822, 825, 1020, 1024, 1025, 1044, 1080—1081, 1090, 1108; Trans. 370, 1471, 2155, 2221, 2235, 2254, 2533, 2728—2760

LUCAS, JAMES **(SPEAKER OF** THE **HOUSE OF** REPRESENTATIVES), Trans. 2, 6

MAGISTRATES, Vol. I 86—88, 141, 489, 490, 491, 501—502, 504, 505, 511, 518; Vol. II 922; Trans. 1054, 1055, 1056, 1075, 1076, 1080, 1082, 1140, 1141, 1143, 1144, 1157, 1158
See also JUDGES; JUSTICES **OF** THE PEACE; MUNICIPAL **COURTS; POLICE** COURTS

MAHONEY, CHARLES **H. (CLANCY)**
Biography, Vol. I 51
Committee assignment, Vol. I 26
Delegate Proposal
no. 21 (constitutional amendment), Vol. I 119—120
Nominated President of Convention, Trans. 13
declines nomination, Trans. 13
Remarks by, on
ballot, constitution, Trans. 2960—2961, 2991—2992
constitutional revision (Article XIV)
amendment by
initiative, **Trans.** 476, 479, 505—506, 508
legislature, **Trans.** 524
constitutional convention, Trans. 489
constitutional preparatory commission, Trans. 459
declaration of rights (Article II)
right to know, Trans. 2493-2494
right to work, Trans. 2364
departments and institutions (Article XII)
agriculture, working hours, Trans. 2604
institutions, Trans. 2272
labor
collective bargaining, Trans. 2338
compulsory arbitration, Trans. 2368
department of, Trans. 2309—2310, 2312—2313
working hours, Trans. 2318, 2604
public assistance, Trans. 2283—2284, 2286-2287
public utilities
consumer protection, Tram. 2398
districts, Trans. 2407-2408, 2411, 2610—2611
public service commission, Trans. 2375—2377, 2381, 2383-2384, 2386, 2391—2392, 2396
veterans, Trans. 2272
education and public lands (Article X)
aid to sectarian schools, Trans. 2024-2025

MAHONEY, CHARLES H (Cant.)
Remarks by, on (Cont.)
education and public lands (Cont.)
boards of education, Trans. 2078—2079, 2087, 2089, 2100—2101, 2119—2120, 2124—2126, 2135—2136, 2165, 2174, 2584—2585
commissioner of higher education, Trans. 2100—2101
state university funds, accounting and audit, Trans. 2384-2583
environment and natural resources (Article IX)
reclamation, Trans. 1293—1294
water rights, Trans. 1311, 1319—1320, 1338, 1347
executive (Article VI)
duties, Trans. 921
information from officers of executive branch, Trans 973-974
officers. Trans. 1714
twenty departments, Trans. 937-938
veto power, Trans. 953, 1721, 2719—2720
general government (Article III)
initiative, Trans. 2696—2698, 2703, 2708, 2713
separation of powers, Trans. 2692
general provisions (Article XIII)
code of ethics, Trans. 2925
consumer counsel, Trans. 2401
non-municipal corporations
cumulative voting, Trans. 2260—2261
long-short haul clause, Trans. 2264
salary commission, Trans. 2925
judiciary (Article VII)
campaign expenses, Trans. 2189—2190, 2199—2200, 2202
clerks of court, Trans. 2776
supreme court organization, Trans. 1044, 1066—1067
legislature (Article V)
appropriations by warrant, prohibited payments, Trans. 790—791
hills, Trans. 639
districting and apportionment, Trans. 693, 718—719, 721-723
legislative post-auditor, Trans. 999—1000, 1007, 2797, 2799
organization and procedure, Trans. 603—604, 610, 625—626
parliamentary form of government, Trans. 756
qualifications, Trans. 804—805
sessions, Trans. 625
size, Trans. 823
local government (Article XI)
revenue sharing, Trans. 2541
voter review of local government, Trans. 2559—2560
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1444—1445, 1449, 2220, 2703, 2708, 2715
investment of public funds, Trans. 1534—1535
property tax
administration, Trans. 1400
exemptions, Trans. 1416—1417, 1420—1421
state debt, Trans. 1492—1494, 1497—1498
two-mill levy, Trans. 1531

MAHONEY, **EUGENE**
Appointed to escort committee. Trans. 1

MAHONEY, GEORGE (INTERN), Vol. I 70; Vol. II 665; Trans. 2247, 3036

MAJORITY, AGE **OF,** Vol. 197; Vol. II 621, 635, 958,963, 967, 970, 1039, 1088; Trans. 1695, 1745—1749

MANDAMUS, WRIT OF
See WRITS

MANNING, DAVE, Trans. 3017, 3019

MANSFIELD, SENATOR MIKE, Trans. 2353, 2376, 3036

MANSFIELD, RACHELL **K.** (GEYSER)
Biography, Vol. I 51
Committee assignment, Vol. I 26
Invocation, Trans. 2770
Remarks by, on
ballot, constitution, Trans. 2872, 2693
constitutional revision (Article XIV)
amendment by initiative, Trans. 510
declaration of rights (Article II)
assembly, freedom of, Trans. 1647
death penalty, Trans. 1808
individual dignity, Trans. 1642
right to bear arms, Trans. 1728, 1732
right to know, Trans. 2495
speech, expression and press, freedom of, Trans. 1649
judiciary (Article VII)
terms and pay, Trans. 1150
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1483
property tax administration, Trans. 1396
two-mill levy. Trans. 1354
suffrage and elections (Article IV)
poll-booth registration, Trans. 404, 448
Seconds nomination of **Magnus Aasheim as Eastern District Vice President, Trans. 53**
Withdrawat of sponsorship, Delegate Proposal No. 78, Trans. 320—321

MARGOLIS, LARRY (EXECUTIVE SECRETARY OF THE CITIZENS CONFERENCE ON STATE LEGISLATURES), Trans. 309, 730. 950

MARSHALL, WALTER, Trans. 1, 9

MARTIAL **LAW**
See MILITARY **AFFAIRS**

MARTIN, FRED J. (LIVINGSTON)
Appointments
escort committee, Trans. 9
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
vice chairman of public information committee, Trans. 357
Biography, Vol. 152
Committee assignments, Vol. I 26, 357
Delegate Proposal
no. 8 (recall of public officers), Vol. I 91
Introduces former Governor J. Hugo **Aronson,** Trans. 1427
Remarks by, on
ballot, constitution, Trans. 2966
constitutional revision (Article XIV)
amendment by initiative, Trans. 309
constitutional convention, Trans. 490
declaration of rights (Article II)
death penalty, Trans. 1807
right to know, Trans. 1672—1673, 1675, 2462, 2490-2491
departments and institutions (Article XII)
merit system, Trans. 2347
education and public lands (Article X)
aid to sectarian schools, Trans. 2021
boards of education, Trans. 2068, 2071, 2104, 2123-2124, 2139, 2378-2379
commissioner of higher education, Trans. 2104

MARTIN, FRED J (Cont.)
Remarks by, on (Cont.)
education and public lands (Cont.)
educational goals and duties, Trans. 1957—1958, 1968, 1975—1980
public school fund revenue, Trans. 2007—2008
school district trustees, Trans. 2047—2048
state university funds, accounting and audit, Trans. 2578-2579
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1219—1220
reclamation, Trans. 1361
executive (Article "I)
duties, Trans. 916—918, 925
election, Trans. 878
officers, Trans. 850—851, 874-875, 1711
qualifications, Trans. 886, 1696
general government (Article III)
initiative, Trans. 2711
recall, Trans. 2724
general provisions (Article XIII)
code of ethics, Trans. 794
people's advocate, Trans. 704, 831
judiciary (Article VII)
campaign expenses, Trans. 2189, 2204
legislature (Article V)
legislative post-auditor, Trans. 995, 1001, 1006—1007, 2794, 2801
organization and procedure, Trans. 604
parliamentary form of government, Trans. 756—757
qualifications, Trans. 561, 803
size. Trans. 161"
local government (Article Xl)
recall, Trans. 2552
voter review of local government, Trans. 2561, 2563—2564
revenue and finance (Article VIII)
highway revenue non-diversion. Trans. 1431, 2711
state debt, Trans. 1497
two-mill levy, Trans. 1550
suffrage and elections (Article I")
poll-booth registration, Trans. 411

MASS TRANSIT, Vol. I 187—188; Trans. 1429, 1430, 1431, 1445, 1458, 1459, 1465

MATHERS, BILL (SENATE MINORITY LEADER), Trans. 2

MCCALLUM, DEBBIE (PAGE), Trans. 305, 306

MCCARTHY, ELLEN (SECRETARY), Vol. I 69, 485; Trans. 388. 3035

MCCARVEL, JOSEPH H. (ANACONDA)
Biography, Vol. I 52
Committee assignment, Vol. I26
Delegate Proposals
no. 148 (full employment), Vol. 1 290
no. 177 (labor-management conciliation), Vol. I 331
Nomination of Veronica Sullivan as Western District Vice President, Trans. 56
Remarks by, an
declaration of rights (Article II)
death penalty, Trans. 1X02-1803
justice, administration of, Trans. 1757
departments and institutions (Article XII)
agriculture, working hours, Trans. 2804
labor
collective bargaining, Trans. 2328—2329
department of, Trans. 2312

MCCARVEL, JOSEPH H (Cont.)
Remarks by, on (Cont.)
departments and institutions (Cont.)
labor (Cont.)
working hours, Trans. 2316—2317, 2320—2324, 2326, X340-2342, 2604
workmen's compensation, Trans. 1757
public assistance, Trans. 2288
public utilities
consumer protection, Trans. 2399
districts, Trans. 2412
public service commission, Trans. 2376
education and public lands (Article X)
educational goals and duties, Trans. 1969
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1207, 1275
executive (Article VI)
compensation. Trans. 929
qualifications, Trans. 895
vacancy, Trans. 930-931
general government (Article III)
liquor monopoly, Trans. 2252
judiciary (Article VII)
terms and pay, Trans. 1151
suffrage and elections (Article IV)
absentee voting, Trans. 432
Resolution establishing "Irish Row", Trans. 2622

MCCLAY, SARAH (PAGE), Trans. 383

MCCLEARY, KATHY (PAGE), Trans. 358

MCCRORY, DR. JOHN (PROFESSOR, UNIVERSITY OF MONTANA SCHOOL OF LAW), Trans. 1206, 1207, 1242—1243

MCDONOUGH, RUSSELL C. (GLENDIVE)
Biography, Vol. 152
Committee assignment, Vol. I26
Remarks by, an
ballot, constitution, Trans. 2955
declaration of rights (Article II)
adult rights, Trans. 1747
detention of witnesses, Trans. 1774
justice, administration of, Trans. 1757—1758
participation, right of, Trans. 1668
right to know, Trans. 1679
trial by jury, Trans. 1791
departments and institutions (Article XII)
labor
collective bargaining, Trans. 2333
workmen's compensation, Trans. 1757—1758
public utility districts, Trans. 2409, 2419, 2610—2611
education and public lands (Article X)
boards of education, Trans. 2582
educational goals and duties, Trans. 1962—1963, 1968—1969, 1972, 1985, 2155
public school fund, Trans. 1540—1542, 1544
state university funds, accounting and audit, Trans. 2582
environment and natural resources (Article IX)
reclamation, Trans. 1284—1285, 1293, 1295
water rights, Trans. 1333, 1342
general government (Article III,
initiative, Trans. 2712—2716
liquor monopoly, Trans. 2767
general provisions (Article XIII)
non-municipal corporations, Trans. 2248
retrospective laws, Trans. 2267—2268
legislature (Article V)
bills. Trans. 652
legislative post-auditor, Trans. 1002

'DONOUGH, RUSSELL C (Cont.)
'emarks by, on (Cont.)
legislature (Cont.)
organization and procedure, Trans. 622
vacancies, Trans. 594
local government (Article XI)
revenue sharing, Trans. 2542—2543
revenue and finance (Article "III)
highway revenue non-diversion, Trans. 1450—1451, 1475—1476, 1487—1488, 2228, 2784—2785
investment of public funds, Trans. 1526, 1535, 1540—1542, 1544, 2242, 2712—2716
local government debt, Trans. 1512—1513
property tax
administration, Trans. 1386—1387, 1391, 1399, 1406—1407, 2219
exemptions, Trans. 1413—1414, 1416—1420, 1422, 1423, 1425—1426
state debt, Trans. 1492, 1494—1497, 1502—1503
two-mill levy, Trans. 1550—1552
suffrage and elections (Article IV)
eligibility for public office, Trans. 1747

'GUINN, MELBA (SECRETARY), Vol. I 69; Trans. 3036

'KEON, MIKE (ANACONDA)
iography, Vol. I 53
ommittee assignment, Vol. I 27
'elegate Proposals
no. 46 (public school financing), Vol. I 143
no. 137 (employee benefits), Vol. I 271
no. 138 (minimum wage), Vol. I 272
no. 139 (state institutions), Vol. I 273
no. 149 (probate court system,, Vol. I 291
no. 152 (military affairs), Vol. I 295-296
no. 178 (elective process,, Vol. I 332
emarks by, on
declaration of rights (Article II)
death penalty, Trans. 1804—1805
participation, right of, Trans. 1658
servicemen, servicewomen and veterans, Trans. 1842—1843
departments and institutions (Article XII)
labor
collective bargaining, Trans. 2334-2335
compulsory arbitration, Trans. 2368
working hours, Trans. 2322
merit system, Trans. 2315, 2342, 2348
public utility districts, Trans. 2404—2405, 2406—2407, 2411—2413, 2416, 2606-2607, 2611
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1236
general provisions (Article XIII)
people's advocate, Trans. 829—830, 836—837
judiciary (Article VII)
selection, Trans. 1095—1096
legislature (Article V)
organization and procedure, Trans. 617
size, Trans. 781
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1454, 1457
investment of public funds, Trans. 1521
property tax
administration, Trans. 1387—1388
exemptions, Trans. 1412-1413, 1418
two-mill levy, Trans. 1554
suffrage and elections (Article IV)
poll-booth registration, Trans. 402, 436, 441

LEAN, JACK (PAGE), Trans. 2861

LEAN, JIM (PAGE), Trans. 2209, 2861

MCNEIL, CHARLES B. "C.B." (POLSON)
Biography, Vol. I 53
Committee assignment, Vol. I 27
Delegate Proposals
no. 20 (environmental quality), Vol. I 107
no. 21 (environmental quality), Vol. I 108
no. 79 (governmental powers), Vol. I 186
Remarks by, on
ballot, constitution, Trans. 2979—2980
constitutional revision (Article XIV)
constitutional convention, Trans. 528
constitutional preparatory commission, Trans. 458, 480
declaration of rights (Article II)
assembly, freedom of, Trans. 1647—1648, 2477, 2479
convicts, rights of, Trans. 1847
inalienable rights, environment, Trans. 1638
militia, civilian control of, Trans. 1831
participation, right of, Trans. 1666—1667
right to bear arms, Trans. 1733
departments and institutions (Article XII)
agriculture
department of, Trans. 1364
working hours, Trans. 2604
labor, working hours, Trans. 2604
public assistance, Trans. 2284—2285, 2290—2291, 2294
public utilities
public service commission, Trans. 2377—2378, 2421
regulation of, Trans. 2391
education and public lands (Article X)
aid to sectarian schools, Trans. 2016, 2018—2019. 2671
indian education, Trans. 1955
non-discrimination in education, Trans. 2673
environment and natural resources (Article IX) majority report introduction, Trans. 1200—1201
environment, protection and improvement of, Trans. 1205, 1209, 1216, 1221, 1243, 1244, 1247, 1252, 1254—1256, 2210—2211
reclamation. Trans. 1284
water rights, Trans. 1301, 1303—1307, 1311, 1312, 1314-1320, 1329—1330, 1334, 1337, 1340, 1344. 1346
executive (Article VI)
duties, Trans. 902
officers, Trans. 868
qualifications, Trans. 889, '383
vacancy, Trans. 943
general government (Article III)
gambling, Trans. 2979—2980
separation of powers. Trans. 2828—2830
general provisions (Article XIII)
consumer counsel, Trans. 2598
people's advocate, Trans. 698—699, 835
judiciary (Article VII), Trans. 1028—1029
campaign expenses, Trans. 2189
district court jurisdiction, Trans. 1076—1077
judicial districts, Trans. 1082—1083
justices of the peace. Trans. 1140—1141
removal and discipline, Trans. 1123—1124
supreme court
jurisdiction, Trans. 1041—1042
organization, Trans. 1045
legislature (Article V)
bills, Trans. 649—650, 658, 1584—1585
districting and apportionment, Trans. 695, 719
impeachment, Trans. 676—677, 679
qualifications, Trans. 559, 564
size, Trans. 783, 1595
local government (Article XI)
forms of government, Trans. 2521
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1454, 1481
investment of public funds, Trans. 2474
suffrage and elections (Article IV)
eligibility for public office, Trans. 416
poll-booth registration, Trans. 405—406, 447
result of elections, Trans. 418—419

MCQUILLAN, CARINA (PAGE), Trans. 710

MELCHER, CONGRESSMAN JOHN, Trans. 1220, 1286

MELVIN, J. MASON (BOZEMAN)
Biography, Vol. I 53
Birth of grandchild noted, Trans. 542
Committee assignment, Vol. I27
Delegate Proposal
no. 156 (election of sheriffs), Vol. I 300—301
Remarks by, on
boundaries, state, Trans. 2761
constitutional revision (Article XIV)
amendment by
initiative, Trans. 511-512
legislature, Trans. 502
submission, Trans. 520
declaration of rights (Article II)
death penalty, Trans. 1806
proceedings, initiation of, Trans. 1765
searches and seizures, Trans. 1685—1686
trial by jury, Trans. 1781—1782
departments and institutions (Article XII)
institutions, Trans. 2271—2272
education and public lands (Article X)
boards of education, Trans. 2585
state university funds, accounting and audit, Trans.2585
general government (Article III)
gambling, Trans. 2736
judiciary (Article VII)
campaign expenses, Trans. 2189, 2195
judicial districts, Trans. 1083
removal and discipline, Trans. 1124
selection, Trans. 1085—1086, 1100, 1108—1111
supreme court organization, Trans. 1066
legislature (Article V)
qualifications, Trans. 800
local government (Article XI)
self-government charters, Trans. 2527
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1431—1432, 1438, 1462
suffrage and elections (Article IV)
privilege from arrest, Trans. 420

MENTALLY INCOMPETENT PERSONS, Vol. I 191,332, 336, 337-339, 341; Vol. II 845, 846, 847, 1045, 1091; Trans.392
See also INSTITUTIONALIZED PERSONS

MERGOTT, GEORGE (PAGE), Trans. 104

MERIT RETENTION OF JUDGES
See JUDGES, Approval or rejection by electors

MERIT SELECTION OF JUDGES
See JUDGES, Selection

MERIT SYSTEM, Vol. I 173, 233, 285; Vol. II 671, 673, 681, 689, 691; Trans. 2308, 2315—2316, 2328, 2329, 2336, 2342-2350, 2355—2356, 2364

METCALF, SENATOR LEE, Vol. II 686; Trans. 1224, 1286, 2054, 2378, 2383, 2384, 2402, 2404, 2405, 3036

MICHELLE, SISTER JEAN
Invocation, Trans. 372

MILITARY AFFAIRS
Age limitations of militia forces, Vol. I 295; Trans. 965
Civilian control of the military, Vol. I 78; Vol. II 624, 645, 961,966, 968, 973, 1041089; Trans. 1829—1832
Continuity of government in emergency, Vol. I 278—279; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Importation Of armed persons, Vol. I 624, 645, 961, 966, 968,973, 1041—1042, 1089; Trans. I832
Martial law, proclamation and duration, Vol. I 182, 320; Trans. 1830
Military reservations, Vol. 1453
Militia forces of state
call of forces, Vol. I 182, 229, 320, 438, 453—454, 460; Vol. II 896, 902, 905, SOS, 1059, 1095; Trans. 964—966
composition of forces, Vol. I 295, 438, 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964—966
executive officers may be members of, Trans. 929
governor as commander-in-chief, Vol. I 182, 295—296, 320-, 438 , 453-454, 460; IVol896,896902, 905,909, 1059, 1095; Trans. 964—966
legislators may be members of, Vol II 862,868,874,877, 881,887, 1047, 1053, 1092, 1105; Trans. 1575—1576, 1579
Quartering of soldiers, Vol. I 624,645,961,966,968, 973, 1041, 1089; Trans. 1829—1832
Servicemen and servicewomen, Vol. I 339—340; vol. II 961, 966, 973, 1042, 1090; Trans. 431—433, 1842—1843
Veterans
special consideration by legislature, Vol. II 961, 966, 973, 1042, 1090; Trans. 1842—1843
tax exemptions for disabled veterans, Vol. 1326; Vol. II 599, 601; Trans. 1411, 1412, 1413, 1415, 1420, 1421. 1422
veterans' homes, Vol. II 979, 983, 985, 988, 1076, 1102; Trans. 2270—2278

MILLER, CHRIS (PAGE), Trans. 1183

MILODRAGOVICH, CHRIS (LIEUTENANT GOVERNOR, BOYS' STATE), Trans 3038

MINERALS AND MINERAL RIGHTS, Vol. I 174, 224, 261, 308; Vol. II 556, 580, 588: Trans. 1200, 1223, 1236, 1276—1287, 1289, 1296, 1298, 1318, 1319, 1358, 1399, 1420, 1524, 1527, 1996, 2143, 2150, 2254, 2568

MINIMUM WAGE, Vol. 1272

MINING, RECLAMATION OF LANDS, Vol. II 552, 555—556, 931, 933,935, 939, 1068, 1099; Trans. 1199—1200, 1275—1301, 1353—1363

MINORS, Vol. I 166, 199; Vol. II 621-622, 635-636, 958, 964, 967, 970—971, 1039, 1088; Trans. 1749—1753

MISS INDIAN AMERICA, Trans. 1566

MONOPOLIES, Vol. I 302; Trans. 2248, 2253, 2373, 2375, 2404, 2418, 2762—2768

MONROE, LYLE R. II (GREAT FALLS)
Appointed to escort committee, Trans. 9
Biography, Vol. I 54
Committee assignment, Vol. I27
Delegate Proposals
no. 45 (right to basic necessities), Vol. I 142
no. 65 (rights of minors), Vol. I 166
no. 151 (rights of indians), Vol. I 294
no. 160 (participation in political process), Vol. I 305
no. 167 (religious freedom), Vol. I 315—316
Nomination of Harold Arbanas as Convention Secretary, Trans. 62
Remarks by, on
ballot, constitution, Trans. 1816
declaration of rights (Article II)
convicts, rights of, Trans. 530
death penalty, Trans. 1816
inalienable rights, Trans. 1636—1637
persons not adults, rights of, Trans. 1749—1751
religion, freedom of, Trans. 1646—1647
right to bear arms, Trans. 1837
right to know, Trans. 2493
departments and institutions (Article XII)
public assistance, Trans. 2281, 2285, 2291, 2294-2295
public utilities, consumer protection, Trans. 2398
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1239, 1262—1263
executive (Article VI)
duties, Trans. 901
officers, Trans. I'll2
qualifications, Trans. 982, 1696
general provisions (Article XIII)
consumer counsel, Trans. 2401
people's advocate, Trans. 701, 704, 835
legislature (Article V)
bills, Trans. 661, 664—665
qualifications, Trans. 554
local government (Article XI)
revenue sharing, Trans. 2543-2544
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1476, 2223, 2231
suffrage and elections (Article IV)
eligibility for public office, Trans. 530
poll-booth registration, Trans. 411

MONTANA ADVISORY COUNCIL ON CHILDREN AND YOUTH, Trans. 277, 1750, 1751

MONTANA ASSOCIATION OF COUNTY COMMISSIONERS, Trans. 221, 298, 1382. 2527

MONTANA ASSOCIATION OF SCHOOL ADMINISTRATORS, Trans. 1958

MONTANA AUTOMOBILE DEALERS ASSOCIATION, Trans. 1443, 1457, 2233

MONTANA BAR ASSOCIATION, Trans. 1013, 1014, 1018, 1038, 1048, 1095, 1104, 1107, 1122, 1132, 1159, 1784, I788

MONTANA CABLE TELEVISION ASSOCIATION, Trans. 3025-3026

MONTANA CATHOLIC CONFERENCE, Trans. 2027

MONTANA CHAMBER OF COMMERCE, Trans. 1450, 1463, 2364

MONTANA CITIZENS CONFERENCE FOR COURT IMPROVEMENT, Trans. 1011, 1017—1018, 1033, 1045, 1140

MONTANA CONTRACTORS COUNCIL, Trans. 2604

MONTANA COUNTY ASSESSORS ASSOCIATION, Trans. 1382. 1398

MONTANA COUNTY ATTORNEYS ASSOCIATION, Trans. 1780, 1781, 1784

MONTANA CRIMINAL LAW COMMISSION, Trans. 1806

MONTANA-DAKOTA UTILITIES COMPANY, Trans. 1306, 2373, 2379, 2408, 2412, 2415, 2610

MONTANA EDUCATION ASSOCIATION, Trans. 1948, 1958, 2051, 2061, 2068—2069, 2158

MONTANA FARMERS UNION, Trans. 1443, 1484, 2383

MONTANA GHOST TOWN SOCIETY, Trans. 1351

MONTANA GRAINGROWERS ASSOCIATION, Trans 2383

MONTANA GUN COLLECTORS ASSOCIATION, Trans. 1727

MONTANA HARDWARE AND IMPLEMENT DEALERS ASSOCIATION, Trans 1443

MONTANA HIGHWAY USERS FEDERATION, Trans 1443, 1450

MONTANA HISTORICAL SOCIETY, Trans. 262, 1351, 1352, 2620, 2861

MONTANA JUDGES ASSOCIATION, Trans. 1018, 1124

MONTANA LABOR RELATIONS BOARD, Trans. 2367

MONTANA MOTOR TRANSPORT ASSOCIATION, Trans. 1443

MONTANA PETROLEUM ASSOCIATION, Trans. 1443, 2233

MONTANA PLAN FOR JUDICIAL REFORM, Trans. 1011, 1012. 1013, 1016, 1017, 1023, 1027, 1029, 1033, 1034, 1042, 1045, 1054, 1076, 1082, 1084, 1087, 1092, 1095, 1140, 1141, 1143, 1158, 2196

MONTANA POWER COMPANY, Trans. 1306, 1522, 1754, 1755—1758, 2192, 2373, 2376, 2379, 2381, 2363, 2391, 2392, 2398, 2405, 2406, 2408, 2413, 2414, 2415, 2488, 2610, 2611

MONTANA PRESS ASSOCIATION, Trans. 1671, 1672, 1673, 2201, 2491

MONTANA PUBLIC EMPLOYEES ASSOCIATION, Trans. 2343

MONTANA RIFLE AND PISTOL ASSOCIATION, Trans. 1727

MONTANA SCHOOL BOARDS ASSOCIATION, Trans. 1958, 1962, 1993, 2060, 2061, 2069, 2102, 2158

MONTANA STUDENT BAR ASSOCIATION, Trans. 1018

MONTANA STUDENT PRESIDENTS ASSOCIATION, Trans. 397, 3017, 3020, 3039

MONTANA TAXPAYERS ASSOCIATION, Trans. 1443, 2158

MONTANA TRIAL LAWYERS ASSOCIATION, Trans. 1014, 1019, 1756

MONTANA WILDLIFE FEDERATION, Trans. 1727

MONTESQUIEU, CHARLES LOUIS DE SECONDAT, Trans. 757, 949, 950

MOODY, ROBERTA (SECRETARY), Vol. I 69; Trans. 3036

MORGAN, FRANK (PRINTING DEPARTMENT), Trans. 3032. 3036

MORMONS, Vol. II 629; Trans. 1647

MORTGAGES, PROPERTY TAX EXEMPTION, Vol. I 306, 326; Vol. II 590, 599, 601; Trans. 1410, 1411, 1412

MOUNTAIN BELL, Trans. 2373

MOYNIHAN, DANIEL PATRICK (FORMER ASSISTANT TO PRESIDENT NIXON), Trans. 751

MUCKELSTON, SANDRA (RESEARCH ANALYST; COUNSEL), Vol. I 69, 485; Trans. 388, 2920, 3035, 2178, 2965

MUNICIPAL COURTS, Vol. I 88, 489, 501, 514; Trans. 1020, 1144

MUNICIPALITIES
See LOCAL GOVERNMENT

MURPHY, BOBBIE (SECRETARY), Vol. I 69, 334, 350; Vol. II 813; Trans. 373, 3036

MURPHY, JOHN (INTERN), Vol. I 70; Vol. II 716; Trans. 2143. 3036

MURRAY, FRANK (SECRETARY OF STATE), Trans. 2, 2961, 3041
- Affixing of great seal of the state of Montana to proposed constitution, Trans. 3046
- Communications regarding lobbyist licenses suspended or reinstated, Trans. 353, 369, 378, 383, 535, 706, 812, 1565, 1691, 1769, 2209, 2858, 2919

MURRAY, MARSHA (PAGE), Trans. 1692

MURRAY, MARSHALL (KALISPELL)
- Appointments
  - chairman of rules committee, Trans. 95
  - escort committee, Trans. 16
  - post-convention procedural, administrative and voter education affairs committee, Trans. 2426
  - temporary rules committee, Trans. 24
- Biography, Vol. 154
- Committee assignment, Vol. 1 27
- Designated Chairman of Temporary Rules Committee, Trans. 26
- Nominated First Vice President, Trans. 29
  - declines nomination, Trans. 30
- Reading of letter of gratitude from delegates to President Graybill, Trans. 3041
- Remarks by, on
  - ballot, constitution, Trans. 2883, 2X86-2887, 2897—2898, 2990
  - constitutional revision (Article XIV)
    - submission, Trans. 491-492, 515
  - declaration of rights (Article II)
    - debt, imprisonment for, Trans. 1793
    - due process of law, Trans. 1760
    - justice, administration of, Trans. 1753—1754
    - right to bear arms, Trans. 1728—1729
    - state subject to wit, Trans. 1760—1763
  - departments and institutions (Article XII)
    - agriculture, Trans. 1363, 1369
      - special levies, Trans. 1366
    - labor, workmen's compensation, Trans. 1753—1754
  - education and public lands (Article X)
    - boards of education, Trans. 2173—2174
    - educational goals and duties, Trans. 2151—2159
    - public land trust, Trans. 36
  - environment and natural resources (Article IX)
    - cultural resources, Trans. 1351—1352
    - environment, protection and improvement of, Trans. 1223—1224, 1251, ,254, 1267—1268, ,275
    - reclamation, Trans. 1276
    - water rights, Trans. 1301, 1303-1304, 1346, 1349
  - executive (Article VI)
    - duties, Trans. 905
    - succession, Trans. 1720
  - general provisions (Article XIII)
    - consumer counsel, Trans. 2600
    - people's advocate, Trans. 829
  - judiciary (Article VII)
    - district court jurisdiction, Trans. 1079
  - legislature (Article V)
    - legislative post-auditor, Trans. 995
    - organization and procedure, Trans. 605—606, 607—610, 615
    - qualifications, Trans. 549

MURRAY, MARSHALL (Cont.)
Remarks by, on (Cont.)
legislature (Cont.)
unicameral/bicameral, merits of, Trans. 2898
vacancies, Trans. 549
revenue and finance (Article VIII)
highway revenue ""n-diversion, Trans. 1465—1466, 1473—1474
suffrage and elections (Article IV)
poll-booth registration, Trans. 402—403, 410, 435
result of elections, Trans. 417, 418

MURRY, JIM, Trans. 2362, 2530, 2531

MUTUAL FUNDS, Trans. 2261

NATIONAL ASSOCIATION OF MANUFACTURERS, Trans. 1463

NATIONAL ASSOCIATION TO KEEP AND BEAR ARMS, Trans. 295, 1727, 1736

NATIONAL EDUCATION AND FINANCE PROJECT, Trans. 2020

NATIONAL GUARD
See MILITARY AFFAIRS, Militia forces of state

NATIONAL MUNICIPAL LEAGUE, Vol. II 797; Trans. 298

NATIONAL RIFLE ASSOCIATION, Trans. 1725, 1727, 1734, 1736

NATIONAL RIGHT TO WORK COMMITTEE, Vol. II 697

NATIONAL SCHOOL BOARDS ASSOCIATION, Trans. 2060

NATURALIZATION POWER OF DISTRICT COURT, Vol. I 85, 141, 487, 496, 518; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1050, 1054—1055, 1074

NATURAL RESOURCES
See also ENVIRONMENT
Depletion and degradation, provision for preventive remedies, Vol. I 224, 261, 308—309; Vol. II 550,552, 554—555, 561-562, 931,933, 935, 939, 1068, 1099; Trans. 1200, 1201, 1243, 1254—1255, 1741, 2143—2144, 2146, 2405, 2406
Reclamation of lands, Vol. II 552, 555-556, 931, 933, 935, 939, 1068, 1099; Trans. 1199—1200, 1275—1301, 1353—1363
Water and water rights
access to public waters, Vol. I 76; Trans. 1303—1312
board of control to supervise waters of the state, Vol. I 213
ownership of, Vol. I 76, 145, 213, 255, Vol. II 552, 556—557, 931. 933. 935. 939. 1068, 1099: Trans. 1301. 1303—1312
priority of appropriations for use, Vol. I 145, 213; Vol. II 553, 556—557; Trans. 1346—1348
public trust, water as, Trans. 1214—1228

NATURAL RESOURCES (Cont.)
Water and water rights (Cont.)
rights, Trans. 151, 2377, 2761
administration, control and regulation of, Vol. I 76, 213, 255; Vol. II 553, 556-557, 931, 933. 935. 939, 1068, 1099; Trans. 1349—1351
appeals from district court to supreme court, Trans. 1344
control of water use rights in district court, Trans. 1343—1345
filing of, Trans. 1301
quality, Vol. I 75, 261, 308; Vol. II 555; Trans. 1199
recognition and confirmation of existing rights, Vol. I 255; Vol. II 552, 556—557, 931, 933, 935, 939, 1068, 1099; Trans. 1301—1303
records of. Vol. II 931. 933. 935. 939: Trans. 1349—1351
uses of, Vol. I 76. 145, 213, 255; Vol. II 552-553, 556-557, 931, 933, 935, 939, 1068,1099; Trans. 1301—1351
water commissioners, Vol. II 557; Trans. 1301, 1336, 1343—1345

NATURAL RESOURCES AND AGRICULTURE COMMITTEE
Membership and staff, Vol. I 22; Vol. II 551
Report
consideration in committee of the whole
agriculture, Trans. 1363—1370
environment and natural resources, Trans. 1199—1271, 1274—1363
cross references, 1889-1972 constitutions, Vol. II 563
delegate proposals considered, Vol. II 564—565
roll call votes on, in committee, Vol. II 572-574
text and comments
agriculture
majority report, Vol. II 559—560
environment and natural resources
majority report, Vol. II 552-558
minority report, Vol. II 561—562
transmittal letter, Vol. II 550—551
Responsibilities, Trans. 33, 35, 38, 39, 146—151
Witnesses appearing before committee, Vol. II 566—571; Trans. 301, 1203

NECESSITIES
See BASIC NECESSITIES

NELSON, BETTY (SECRETARY), Vol. I 69; Trans. 2920, 3036

NET PROCEEDS TAX, Vol. II 580

NEWMAN, LESLIE ANN (PAGE), Trans. 1692

NEYERHUIS, WARREN (SUPPLY CLERK), Vol. I 69; Trans. 3035

NICHOLS, NORRIS, Trans. 1530

NOBLE, ROBERT B. (GREAT FALLS)
Biography, Vol. I 54
Committee assignment, Vol. I 27
Remarks by, on
education and public lands (Article X)
aid to sectarian schools. Trans. 2018
non-discrimination in e&cation, Trans. 2031—2032, 2036
executive (Article VI)
officers, Trans. 863

NO-FAULT INSURANCE, Trans. 2625, 2709, 2710

NOISE POLLUTION, Vol. I 75
See also ENVIRONMENT

NOMINATING CONVENTIONS, PRESIDENTIAL, Vol. I 289

NON-PROFIT ORGANIZATIONS
Appropriations for private purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535
Bingo, gift enterprises; exemption for, Vol. 1237, 247; Trans. 2740-2741, 2146
Perpetuities prohibited except for charitable purposes, Vol. I 526-527; Vol. II 916, 921, 923, 927, 1077, 1103; Trans. 1147—1148
Property tax exemption, Vol. I 306, 326; Vol. II 584, 590, 599, 945, 947-948, 950,951, 1065, 1098; Trans. 1410, 1411, 1415

NON-RESIDENTS, TAXATION OF, Vol. I99

NORTH DAKOTA CONSTITUTIONAL CONVENTION
Greetings from, Trans. 270
Greetings to, Trans. 94

NORTHERN MONTANA COLLEGE, Trans. 2052, 2075, 2121, 2131

NORTHERN PACIFIC RAILWAY COMPANY, Trans. 1284

NOTARY PUBLIC, LEGISLATOR MAY SERVE AS, Vol. II 862, 868, 874, 877, 881, 887, 1047, 1053, 1092, 1105; Trans. 1579

NUTTING, RICHARD A. (SILESIA)
Biography, Vol. I 55
Committee assignment, Vol. I27
Nomination of Sterling Rygg as First Vice President, Trans. 29
Remarks by, on
constitutional revision (Article XIV)
amendment by legislature, Trans. 500, 524
constitutional convention, Trans. 489
constitutional preparatory commission, Trans. 460, 465
submission, Trans. 514
departments and institutions (Article XII)
agriculture, working hours, Trans. 2602
labor, working hours. Trans. 2602
education and public lands (Article X)
boards of education, Trans. 2084, 2088, 2122—2124
educational goals and duties, Trans. 1957, 1981—1982, 2157
environment and natural resources (Article IX)
water rights, Trans. 1315, 1350
executive (Article VI)
compensation, Trans. 927, 991, 993
general government (Article III)
recall, Trans. 2726
general provisions (Article XIII)
salary commission, Trans. 573, 577
judiciary (Article VII)
campaign expenses, Trans. 2432
legislature (Article V)
bills, Trans. 637-638, 647, 659—661, 672-673
compensation, Trans. 573-575, 577

NUTTING, RICHARD A (Cont.)
Remarks by, on (Cont.)
legislature (Cont.)
districting and apportionment, Trans. 683—685, 688, 695, 712—716, 737
organization and procedure, Trans. 614—615, 620
parliamentary form of government, Trans. 756
qualifications, Trans. 564
sessions, Trans. 582, 584-586, 588—591, 813—814, 816—819, 826
local government (Article XI)
definition, Trans. 2514
revenue and finance (Article VIII)
property tax
administration, Trans. 1402
exemptions, Trans. 1419—1420, 1423—1426

OATH OF OFFICE
Convention
administration of, Trans. 5
prescribed, Vol. I 1, 2
Delegates to constitutional convention, Vol. I 150, 210, 226, 353, 357, 360; Vol. II 852, 854, 856, 857—858, 1078, 1104; Trans. 454, 489—490
Members of legislature, all executive, ministerial and judicial officers. Vol. 1 125: Vol. II 815. 819, 1019, 1022, 1025, 1043, 1090; Trans. 595, 2695

OBLIGATION OF CONTRACT, Vol. 1207; Vol. II 624, 644, 961,966, 968, 973, 1041, 1089; Trans. 1829, 2266-2268

OFFICERS, CONVENTION
See CONVENTION, OPERATION AND PROCEDURES, Election of officers

OIL AND GAS, Vol. II 580; Trans. 1289, 2155, 2254

OLD PERSON, CHIEF EARL, Trans. 3017, 3020, 3028

OLD PERSONS
Provision of economic assistance and social and rehabilitative services for, Vol. I 297, 310; Vol. II 627, 674-675, 979, 983, 985, 988, 1016, 1102; Trans. 2270~2300
Tax credit for the elderly, Trans. 1420, 1421

OMBUDSMAN
See PEOPLE'S ADVOCATE

OPERATION OF CONVENTION
See CONVENTION, OPERATION AND PROCEDURES

OPITZ, ARNOLD (PRINTING DEPARTMENT), Trans. 3036

ORGANIZATIONAL MEETING, Vol. I 1; Trans. 1—108

OSBORNE, JIM
Presentation of gavel made by, to President of Convention. Trans. 374

PACIFIC POWER AND LIGHT COMPANY, Trans. 2373, 2406

PAGES
See CONVENTION, OPERATION AND PROCEDURES, Pages

PARDONS, vol. I 183. 231, 321, 337, 438, 446, 452-453, 460, 466; Vol. II 896, 902, 904—905, 909, 1059, 1095; Trans. 962—964

PARIMUTUEL BETTING
See HORSERACING

PARLIAMENT, Vol. I 268—269, 410; Trans. 698, 749—759, 868, 2533-2534, 2560

PARLIAMENTARY PROCEDURE, CONVENTION
See PUBLICATIONS CITED, Mason. Paul

PAROLE, Trans. 395, 396, 397, 398, 1823

PARTICIPATION IN GOVERNMENTAL PROCESSES
See PUBLIC PARTICIPATION IN GOVERNMENTAL PROCESSES

PATTERSON, CAROLYN (PAGE). Trans. 1692

PAUL, GEORGE (INTERN), Vol. I 70; Vol. II 619; Trans. 3036

PAYNE, KATIE (MISSOULA)
Appointed to Post-Convention Procedural, Administrative and Voter Education Affairs Committee, Trans. 2426
Biography, Vol. I 55
Committee assignment, Vol. I 27
Delegate Proposals
no. 5 (election, county officers), Vol. I 80—81
no. 6 (local charters), Vol. I 'a-83
no. 62 (reapportionment), Vol. I 162—163
no. 166 (county government), Vol. I 314
Remarks by, on
ballot, Trans. 2874
declaration of rights (Article II)
right to bear arms, Trans. ,729
departments and institutions (Article XII)
labor, working hours. Trans. 2319—2320
public utility districts, Trans. 2609
executive (Article VI)
succession, Trans. 1705—1706
judiciary (Article VII)
campaign expenses, Trans. 1167—1168
legislature (Article V)
sessions, Trans. 815
size, Trans. 1596

'EACEABLE ASSEMBLY, Vol. II 621, 629,958, 963, 967, 970, 1038, 1087; Trans. 1647—1649

'EALE, JOHN, Trans. 43

EMBERTON, CATHERINE HOWELL (BROADUS)
Appointments
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
vice chairman of judiciary committee, Trans. 102

PEMBEKTON, CATHERINE (Cont.)
Biography, Vol. 155
Committoe assignment, Vol. I 27
Congratulated on 42nd wedding anniversary, Trans. 97
Remarks by, on
departments and institutions (Article XII)
institutions, Trans. 2277
labor, working hours, Trans. 2322-2323
veterans, Trans. 2277
education and public lands (Article X)
indian education, Trans. 1955
general government (Article III)
gambling, Trans. 2755
judiciary (Article VII) — minority report introduction, Trans. 1017—1018
clerks of court, Trans. 2773—2774
justices of the peace, Trans. 1143
supreme court organization, Trans. 1065
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1465—1466
property tan administration, Trans. 1398
suffrage and elections (Article IV)
poll-booth registration, Trans. 430
Seconds nomination of Bruce Brown as
eastern district vice president, Trans. 53
president of convention, Trans. 11

PEOPLE'S ADVOCATE, Vol. I 292, 325, 379—380, 393—394, 399, 40X-409; Trans. 696—705, 747, 829—838, 850. 852. 863. 870. 900—904. 2255, 2398, 2600
See also CONSUMER COUNSEL

PERIODIC SUBMISSION OF QUESTION OF CALLING CONSTITUTIONAL CONVENTION, Vol. I 158, 209—210, 227, 352, 356, 358; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 462—466, 476—478

PERKL, EDWARD (PRINTING DEPARTMENT), Trans. 3036

PERPETUITIES, Vol. I 526-527; Vol. II 916, 921, 923, 927, 1077, 1103; Trans. 1147—1148

PERRYMAN, RAY (INTERN), Vol. I 70; Trans. 3036

PERSONAL PROPERTY TAXES, Vol. I 95, 114, 306; Vol. II 579, 599, 600; Trans. 1377, 1397, 1399, 1411, 1412, 1419, 1557, 2249, 2537, 2538, 2539, 2540, 2542

PETITION FOR REDRESS, RIGHT TO, Vol. II 621, 629, 958, 963, 967,970, 1038, 1087; Trans. 1647—1649

PETITIONS
Charter (local government), Vol. I82
Constitutional revision
amendment by initiative, Vol. I 119, 354, 362-363; Vol. II 852, 854—855, 856, 858, 1079, 1104; Trans. 505—514
call of convention by initiative, Vol. I 209, 352, 356, 357-358; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455—456, 471
limit on number of amendments by initiative petition in each election. Vol. I 120

PETITIONS (Cont.)
Constitutional revision (Cont.)
other constitutional provisions on initiative not applicable, Vol. II 816, 821, 1020, 1023—1024, 1025, 1044, 1090; Trans. 2720
petition signers, determination of number needed, Trans. 514
referendum of amendment by legislature, Vol. I 211, 354, Trans. 498, 501-508
Initiative
contents, signing, filing, Vol. I 257—258, 277; Vol. II 815—816, 819—820, 1019—1020, 1022—1023, 1025, 1043, 1090; Trans 2696—2697. 2703. 2785—2786
enacting clause prescribed, Vol. I 258; Trans. 2696
Number of qualified electors, how determined, Vol. I 258. 7.77: Vol. II 816. 821,020, 1023, 1025, 1044, 1090; Trans. 2718—2719
Referendum — contents, signing, filing, Vol. I 258, 277; Vol. II 816, 820, 1020, 1023, 1025, 1043—1044, 1090; Trans. 2698, 2703
Veto prohibited, Vol. I 111, 258, 277, 378, 391, 397, 406, 437, 450-452, 459; Vol. II 816, 821, 895, 901, 904. 908. 1058. 1094: Trans. 675, 948-958. 2719—2720

PETROLEUM INSTITUTE, Trans. 1463

PHILLIPS, EUGENE
Appointed to escort committee, Trans. 1

PHILLIPS, SUE (TYPIST), Vol. I 69; Trans. 240, 3036

"POCKET" VETO, Vol. I 390, 433; Trans. 842, 948, 949, 954, 956
See also VETO

POLICE COURTS, Vol. I 88, 489, 501, 514; Trans. 1020, 10.54, 1055, 1056, 1077, 1121, 1144, 1784

POLITICAL ACTIVITIES, EMPLOYEE'S RIGHT TO ENGAGE IN, Vol. 1305

POLITICAL CANDIDACY DURING TERM OF OFFICE
Constitutional convention delegates, Trans. 267, 281—283, 2426, 2428, 2615
attorney general opinion on political positions convention delegates allowed to stand far in 1972 elections, Trans. 281-282
Executive officers, Vol. I 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 928-929
Judicial officers, Vol. I 492, 506—507, 512, 522: Vol. II 915, 920, 926, 1063. 1097; Trans. 1119—1121 1148—1150

POLITICAL PARTIES
Campaign funds, Vol. I 221, 235, 508-509; Vol. II 927; Trans. 1025—1026, 1088, 1115, 1137—1139, 1151—1152, 1163—1179, 2188—2205, 2431-2433. 2449-2453
Delegates to national presidential nominating convention, Vol. 1289
Governor, joint filing with candidate for lieutenant governor, Vol. I 181, 229, 320, 435, 444, 448, 457, 463; Vol. II 893, 898. 904, 906, 1056, 1093; Trans. 842, 843, 854, 879—881, 887, 902, 929
Judges prohibited from holding party office, Vol. 1512, 521-523; Vol. II 915, 920, 926, 1063, 1097; Trans. 1119—1121

POLITICAL POWER VESTED IN AND DERIVED FROM THE PEOPLE, Vol. II 620, 626, 957, 962, 967,969, 1038, 1087; Trans. 1635—1636, 2232

POLITICAL RIGHTS
Non-discrimination in exercise of, Vol. I 126, 161, 305, X2-313; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087: Trans. 1642—1646

POLITICAL SUBDIVISIONS
See LOCAL GOVERNMENT

POLL-BOOTH REGISTRATION, Vol. I 260, 332,341, 342—343; Vol. II 845, 847, 1045, 1091; Trans. 400-413, 422, 428—452, 467, 839
See also VOTER REGISTRATION

POLLUTION AND POLLUTION CONTROL, Vol. II 797; Trans. 749—750, 1199, 1222, 1257, 1259, 1422, 1423, 1457, 1484, 1520, 1521, 2221, 2222, 2529
See also ENVIRONMENT

POLYGAMY, Vol. II 629; Trans. 1647

POPULAR SOVEREIGNTY, Vol. II 620, 626, 957, 962, 967, 969, 1038, 1087; Trans. 1635—1636, 2232

POST-AUDIT, LEGISLATIVE, Vol. I 443, 444; Vol. II 894, 899, 904,907, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 626, 844, 854, 914-921, 923, 952, 974-978, 995—1007, 1517, 1699, 2692, 2791—2806
See also AUDITS: LEGISLATIVE PRE-AUDIT

POST-CONVENTION PROCEDURAL, ADMINISTRATIVE AND VOTER EDUCATION AFFAIRS COMMITTEE
Appointment, Trans. 2426
Duties. Trans. 2427-2430

PRATT, JUDITH (SECRETARY), Vol. 169,375; Trans. 382. 3035

PREAMBLE
Adoption, Trans. 2930-2931
Committee report, Vol. II 620,625, 957, 962, 969, 1036
Debate
committee report, Trans. 36-37, 1634, 1954, 2761
style and drafting report, Trans. 2476, 2921
Delegate proposals, Vol. I 159, 168, 198, 245
Final consideration, Trans. 2626—2627
Text as adopted, Vol. II 1087

PREDATOR CONTROL, Vol. II 559, 560, 586, 597-598, 936, 937, 938, 941, 1016, 1102; Trans. 1366—1370, 1547

PRESIDENTIAL NOMINATING CONVENTIONS, Vol. I 289

PRESIDENT, CONVENTION
See CONVENTION, OPERATION AND PROCEDURES. Officers; GRAYBILL, LEO, JR.

PRESS, FREEDOM OF, Vol. II 621, 629—630, $58, 963, 970, 1038. 1087; Trans. 1649—1651, 1675, 2491, 2493

PRINCIPLES OF PREVENTION AND REFORMATION BASIS OF PUNISHMENT FOR CRIMES. Vol. I 128, 337—338. Vol. II 623, 642—643, 960, 965, 968, 972, 1041, 1089; Trans. 392, 395, 397, 1800, 1802, 1804, 1809, 1811, 1812, 1821, 1823, 2305

PRIVACY, RIGHT OF, Vol. 198, 127, 157; Vol. II 621, 631—633, 641, 958, 963, 970, 1039, 1088; Trans. 1643, 1669—1680, 1680—1682, 1683, 1684, 1685, 1688, 1730, 1733, 1850—1853, 2352, 2484, 2485, 2488, 2489, 2490, 2494, 2496
See also RIGHT TO KNOW

PRIVATE SCHOOLS
Aid to sectarian schools prohibited, Vol. I 137, 189, 222, 311, 312—313; Vol. II 629, 716, 719, 728—730, 743—747, 994, 997, 1002, 1004, 1070, 1100; Trans. 1646, 1960, 2008—2031, 2235
Appropriation for private educational purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535

PRIVATE SEXUAL ACTS, Trans. 1848—1850

PRIVILEGES
See IRREVOCABLE PRIVILEGES

PROBATE, Vol. I 291, 299, 487, 496—497, 517; Trans. 1132—1138, 1146, 1147, 1161—1162

PROBATE ADMINISTRATOR, Vol. I 299; Trans. 1132—1138

PROBATE ATTORNEY, Vol. 1299; Trans. 1132—1136, 1146, 1147, 1161—1162

PROBATE COURT, Vol. I 291; Trans. 1076

PROCEEDINGS, INITIATION OF, Vol. I 89; Vol. 11622, 639,959, 964. 968, 971, 1040, 1088; Trans. 1764—1766

PROCEDURES OF CONVENTION
See CONVENTION, OPERATION AND PROCEDURES

PROCESS, EXTENT OF
District court, Vol. I 85, 141; Vol. II 487—488, 496, 511, 517-518, 913, 918, 922, 925, 1061, 1096; Trans. 1049, 1073—1080
Supreme court, Vol. II 511, 517, 518, 913, 917, 922, 924, 1061. 1096; Trans. 1049. 1073—1080. 1162—1163

PROHIBITED PAYMENTS, Vol. II 866, 873, 875, 879,884, 889, 1067, 1098; Trans. 790—792, 797, 1517

PROHIBITION, WRIT OF
See WRITS

PROPERTY
See also ESTATES
Appraisal, Vol. I 264—265; Vol. II 582, 584, 588—589, 945, 947, 950, 951, 1065,1097; Trans. 1379—1409, 2158, 2286
Descent of estates. Vol. II 623—624, 644, 960, 966, 968. 972, 1041, 1089; Trans. 1828—1829
Discrimination in sale or rental prohibited, Vol. I 126, 149, 161; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 1642—1646
Eminent domain, right of, Vol. I 96, 177, 252, 308; Vol. II 623, 643—644, 711, 960, 966, 972, 1041, 1089; Trans. 1267, 1294, 1348, 1654—1655, 1825-1828
Homestead and exemption laws, Vol. I 526—527; Vol. II 916, 921, 923,927, 1077, 1103; Trans. 1147, 1413
Perpetuities prohibited except for charitable purposes, Vol. I 526—527; Vol. II 916, 921, 923, 927, 1077, 1103; Trans. 1147—1148
Right of persons to acquire, possess and protect, Vol. I 142, 207, 242; Vol. II 620, 626—628, 957, 962, 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642, 1809
State liability for injury to person or property, Vol. I 124; Vol. II 622, 637—638, 959, 964, 967—968, 971, 1039—1040, 1088; Trans. 1760—1764, 2528
May not he taken without due process of law. Vol. I 312, 328; Vol. II 622. 634, 635—636, 637, 959.964. 971. 1039. 1088: Trans. 1738. 1760
Taxes
appeal procedure, Vol. II 582, 585, 589, 592-594, 946, 948, 950, 952, 1066, 1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489—1490
exemptions, Vol. I 99, 167, 306, 326; Vol. II 580, 584, 588, 590—591, 599—601, 945, 947—948, $50, 951, 1065, 1097—1098; Trans. 1379, 1410—1427, 1497, 1556—1558, 2217—2218
rate of taxation for operation of state government, Trans. 1549—1556
statewide levy for education, Vol. II 725; Trans. 2165, 2408, 2539, 2541, 2543, See also two-mill levy
two-mill levy, Vol. II 581; Trans. 1501, 1549—1556, 1967, 1985, 2153, 2165, 2199, 2200, 2538, See also statewide levy for education
valuation of property
appraisal, assessment and equalization, Vol. I 129, 174, 264—265, 306—307; Vol. II 579—580, 582, 584, 588—591, 945, 947, 950, 951, 1065, 1097; Trans. 1379—1409, 1501, 2158, 2219, 2286. 2289. 2518
equal valuation, Vol. II 581, 582, 584, 589—590, 945, 947, 950, 951,1065, 1097; Trans. 1376, 1409~1410, 2153, 2289

PROSECUTING ATTORNEYS, Vol. I 171

PROSTITUTION, Trans. 2533

PROTEST OF GOVERNMENTAL ACTION, Vol. II 621, 629, 958, 963, 967, 970, 1038, 1087; Trans. 1647—1649

PUBLIC ASSISTANCE
Funding of, Vol. I 114; Trans. 1399, 1400, 1430, 1447, 1454, 1470, 2236, 2278—2300, 2538, 2541
Indigent persons, right to counsel, Vol. I 105
Inmates of state institutions, no fee may be charged, Vol. I 297
Residence requirements for receipt of, Trans. 2281, 2283, 2284
State's duty to provide, Vol. II 627, 674—675, 979, 983, 985, 988, 1076, 1102; Trans. 1636—1637, 1748, 2278—2300, 2358, 2360

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PUBLIC EDUCATION
See EDUCATION; SUPERINTENDENT OF PUBLIC INSTRUCTION

PUBLIC EMPLOYEES RETIREMENT SYSTEM
See RETIREMENT SYSTEMS (PUBLIC EMPLOYEES)

PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE
Membership and staff, Vol. I 23; Vol. II 664
Report
consideration in committee of the whole
institutions and assistance, Trans. 2270—2300, 2304—2308
labor, Trans. 2308—2372
non-municipal corporations, Trans. 2247—2269
regulation of public utilities, Trans. 2373—2422
cross references, 1889-1972 constitutions, Vol. II 698—699, 710—711
delegate proposals considered, Vol. II 700
roll call votes on, in committee, Vol. II 707—709
text and comments
institutions and assistance, majority report, Vol. II 674—675
labor
majority report, Vol. II 670—673
minority report, Vol. II 688—697
non-municipal corporations
majority report, Vol. II 666—669
minority report, Vol. II 682
regulation of public utilities
majority report, Vol. II 676—682
minority report, Vol. II 683—687
transmittal letter, Vol. II 664—665

PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE (Cont.)
Responsibilities, Trans. 33, 39
Witnesses appearing before committee, Vol. II 701—706; Trans. 300, 363

PUBLIC HEARINGS
See HEARINGS

PUBLIC INFORMATION COMMITTEE
Membership and staff, Vol. I 21; Trans. 95, 357
Officers, appointment of, Trans. 95, 357
Report, Trans. 113—114
Responsibilities, Trans. 33

PUBLIC LANDS
Access to, Trans. 2145—2150
Apportionment of income from, to school districts, Vol. I 146, 169—170; Vol. II 719, 727—728, 994, 997, 1002, 1004, 1070, 1100; Trans. 2006—2008
Board of land commissioners — composition, authority, Vol. I 329; Vol. II 718—719, 726-727, $94, 997, 1002, 1004, 1069—1070, 1100; Trans. 860, 863, 864, 865, 669,874, 917,1280, 1990-2002
Classification of public lands by board, Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
Disposition of, Vol. I 266—267, 329; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
Exchange of, Vol. I 266—267, 329; Vol. II 748-752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
Mineral rights, Trans. 1399, 2150, 2568
Property tax exemption, Vol. I $9, 306, 326; Vol. II 584, 590—591, 599, 945, 947, 950, 951, 1065, 1097; Trans. 1410—1427, 2217—2218
Public school fund, lands included in, Vol. II 718, 725—726, 993, 996—997, 1002, 1003, 1069, 1099; Trans. 1989—1990, 1995, 2143, See also PUBLIC SCHOOL FUND
Recreational use of, Trans. 2143, 2145—2150
Trust status of public lands, Vol. I 266—267, 329; Vol. II 748-752, 1000-1001, 1002, 1006, 1071—1072, 1101; Trans. 2143, 2145, 2147
United States
jurisdiction over lands of to remain with congress, Vol. I 99; Vol. II 838-841, 1030—1032, 1037, IO87
restrictions on disposition of land grants from, Vol. I 266—267; Vol. II 748—752, 1000—1001. 1002. 1006, 1071—1072, 1101; Trans. 2142—2150

PUBLIC OFFICE
Conflicts of interest, Vol. I 164; Vol. II 866, 873, 875, 879, 884. 889. 1077, 1103: Trans. 789-790. 793-796
Disqualification
governor, Vol. I 182, 232, 322, 323, 438-439, 454-455, 460—461; Vol. II 896-897, 902-903, $05, 909—910, 1059—1060, 1095; Trans. 966-973, 1718
judges, Vol. 1203, 512, 523; Trans. 1015—1016, 1022, 1026, 1041, 1045—1046, 1083, 1121—1122, See also JUDGES, Forfeiture of judicial position; Removal and discipline
justices of the peace, Vol. 1203, 512, 523; Trans. 1022, 1121—1122
legislators, Vol. I 275, 377, 386, 396, 402-403; Vol. II 862, 868, 874, 877, 881, 887, 1046—1047, 1053, 1092, 1105; Trans. 595—599, 1573—1582, 1617—1620

PUBLIC OFFICE (Cont.)
Dual office holding prohibited
executive officers, Vol. I 180, 229, 436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929
judges, Vol. I 88, 491, 492, 504, 507, 512, 522; Vol. II 915, 920, 926, 1063, 1097; Trans. 1199—1121. 1148—1150
legislators, Vol. I 275, 377, 386, 396, 402-403; Vol. II 862, 868, 814. 817, 881, 887, 1046—1047, 1053, 1092, 1105; Trans. 595—599, 15X-1582, 1617-1620
Eligibility, Vol. I 97, 191—192, 218, 300, 336, 338, 340, 341; Vol. II 621, 635. 643, 845, 846, 847, 1045, 1091; Trans. 414—417, 528—532, 678, 1745—1749
Oath, Vol. I 125; Voi. II 815, 819. 1019, 1022, 1035, 1043, 1090; Trans. 595, 2695

PUBLIC PARTICIPATION IN GOVERNMENTAL PROCESSES
Constitutional convention
citizen corps, Trans. 114, 220, 221, 224, 268, 1280, 1803
citizen suggestions, Vol. I 14—15; Trans. 161, 178, 179, 182, 226, 293—295, 349, 1142, 2518
committee meetings to be open to public and news media, Vol. 18, 14; Trans. 125, 176—177, 370—371
recorded roll call vote, Vol. I IO, 11, 14, 15, 16, 19; Trans. 130, 136, 138-140, 144, 145, 176—177, 179, 180—182, 190, 196, 197—199
Consumer counsel to represent citizens' interests before public service commission, Vol. II 980, 984, 989, 1077, 1103; Trans. 2400-2404, 2407, 2421
County commission meetings open to public, Trans. 1652, 1653, 2491, 2493, 2499
Examination of government documents or observation of deliberation of public bodies, Vol. I 133, 157, 462-463; Vol. II 621, 631—632. 958. 963. 970. 1039. 1088: Trans. 1658, 1669—1680, 1733, 2261, 2560, 2578, 2582
Legislature
recorded vote required on bills, Vol. I 276, 377, 388, 396-397, 405; Vol. II 862, 869, 874, 882, 888, 1047, 1053, 1092, 1105; Trans. 637—647, 671—672
sessions and meetings open to public, Vol. I 111, 276, 377, 384, 387, 396, 403—404; Vol. II 862,864, 868. 871.874. 877. 881.885. 887. 1047. 1049, 1053, 1092, 1105, 1107; Trans. 603—625, 1501, 1651, 1680
Participation by people in decision-making process of state and local government, Vol. I 133; Vol. II 621, 630-631, 635, 958, 963, 967, 970, 1038-1039, 1088; Trans. 630—631, 1221, 1651—1669, 1733, 2560, 2561, 2875
People's advocate to provide information, Vol. 1292, 325, 379-380, 393-394, 399, 408—409; Trans. 696—705, 747, 829—838, 850, 852, 863, 870, 900-904, 2255, 2398, 2600
Supreme court opinions and decisions to be in writing, Vol. I 491, 505, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044, 1063—1066

PUBLIC SCHOOL FUND
Apportionment of interest and income, Vol. I 146, 169—170; Vol. II 719, 727—728, 994, 997, 1002, 1004, 1070, 1100; Trans. 2006—2008
Composition, Vol. II 583, 596, 718, 725—726, 993, 996-997, 1002, 1003, 1069, 1099; Trans. 1989—1990, 1995, 2143

PUBLIC SCHOOL FUND (Cont.)
Investment, Vol. II 583, 586, 596—597, 602—603, 753—756, 946, 949., 950, 952—953, 1066—1067, 1098: Trans. 1517—1546, 1993
Inviolate and guaranteed against loss or diversion, Vol. I 169, 176; Vol. II 718, 726, 741—742, $93, 997, 1003—1004, 1069, 1100; Trans. 1539—1544, 1948, 1990, 2146, 2148, 2245-2246

PUBLIC SCHOOLS
See EDUCATION; SUPERINTENDENT OF PUBLIC INSTRUCTION

PUBLIC SERVICE COMMISSION
See also RAILROAD AND PUBLIC SERVICE COMMISSION
Duty to represent utility customers, Trans. 2397—2400
Impartiality of staff, Trans. 2394—2397
Powers, Trans. 2000, 2388-2394

PUBLIC TRANSPORTATION, Vol. I 187—188; Trans. 1429, 1430, 1431, 1445, 1458, 1459, 1465

PUBLIC TRUST
Environment, Vol. I 96, 308—309; Vol. II 555; Trans. 1201, 1206, 1211—1228, 1238, 1247, 1257, 1261, 1266, 1639, 1645, 1731
Public lands, Vol. I 266-267, 329; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2143, 2145, 2147
Water. Trans. 1214—1228

PUBLIC UTILITIES
Alternate issue on constitution ballot on regulation of public utilities, Trans. 2605—2613
Consumer counsel to represent consumer interests before public service commission. Vol. II 980, 988-989, 1077, 1103; Trans. 2400—2404, 2407, 2421
"Fair value rule", Vol. II 680; Trans. 2374, 2388-2393
Public service commission
duty to represent utility customers, Trans. 2397-2400
impartiality of staff, Trans. 2394—2397
powers, Trans. 2000, 2388—2394
Public utilities commissioner, Vol. I 178—179; Vol. II 676—684; Trans. 2373-2387, 2420-2421
Public utility districts, Vol. I 179, 248; Vol. II 685—687; Trans. 2255, 2376, 2379, 2404—2420, 2605—2613
Special privileges, franchises or immunities prohibited, Vol. 1207; Vol. II 624, 644, 961, 966, 968, $73, 1041, 1089; Trans. 1829, 2266-2268

PUBLIC UTILITIES COMMISSIONER, Vol. I 178—179; Vol. II 676—684; Trans. 2373-2387, 2420—2421

PUBLIC WELFARE, DEPARTMENT OF, Trans. 2278, 2280, 2284, 2287, 2296, 2347

PUNISHMENT OF CRIME
Cruel and unusual punishment, Vol. II 622, 640, 959, $64, $68, 971, 1040, 1088; Trans. 1771, 1814, 1844, 1846

PUNISHMENT OF CRIME (Cont.)
Death penalty, Vol. I 77, 128: Vol. II 643, $68, 1080, 1108; Trans. 1477, 1478, 1800—1822, 2221, 2235, 2360, 2510, 2609, 2736, 2739
Debt, imprisonment for, Vol. II 623, 642, 960, $65, $68, 972, 1041, 1089; Trans. 1792—1800
Excessive fines prohibited, Vol. 177; Vol. II 622, 640, 959, 964, 968, 971, 1040, 1088; Trans. 1771
Prevention and reformation principles as foundation, Vol. I 128, 337-338; Vol. II 623, 642—643, 960. 965. 968. 972. 1041, 1089; Trans. 392. 395, 397; 1800, 1802, 1804, 1809, 1811, 1812, 1821, 1823, 2305
Restoration of rights, Vol. I 128, 317, 337-338; Vol. II 623, 642—643, 960, 965, 968, 972, 1041, 1045, 1089, 1091; Trans. 678, 1800—1803, 1823, 2305, X507-2509, See also PARDONS; PAROLE

QUALIFICATIONS
Constitutional convention delegates, Vol. I I, 150, 210, 226, 353, 357, 360; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 489—490
Electors, Vol. I 191, 260, 332, 336, 337, 338, 339—340, 341, 342—343; Vol. II 845, 846, 847, 1045, 1091; Trans. 392-400, 408, 410, 417, See also ELECTORS; VOTER REGISTRATION
Executive branch
attorney general, Vol. I 229, 320, 435-436, 445, 457-458, 464; Vol. II 893, 898-899, 904, 906, 1056, 1093; Trans. 884, 893—899, 984, 1693—1697, 1746—1747
auditor, Vol. I 320, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 883-893, 914, 978—986, 1693—1697
governor, Vol. I 180, 228, 319—320, 435, 445, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 883—893, 978—986, 1693—1697
lieutenant governor, Vol. I 180, 228, 319—320, 435, 445, 457, 464; Vol. II 893, 898, $04, $06, 1056, 1093; Trans. 883—893, 978—986, 1693—1697
secretary of state, Vol. I 319—320, 435, 445, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 883—893, 978—986, 1693—1697
superintendent of public instruction, Vol. I 319—320, 435, 441—443, 457, 464; Vol. II 893, 898—899, 904, 906, 1056, 1093; Trans. 858, 861, 870, 874, 883—893, 978, 986—987, 1693—1697
treasurer, Vol. I 319-320, 457, 464; Vol. II 893, 898-899, 904; Trans. 883-894, 978-986, 1693—1697, 1708—1714
Judiciary
clerks of court, Vol. 1491, 513, 524—525; Trans. 1127—1129, 1129—1130
judges, Vol. I 86—88, 141, 206, 484, 487, 488, 491, 495-496, 498-499, 504—506, 512, 521—523; Vol. II 915, 919—920, 922, 926, 1063, 1097; Trans. 1012, 1020, 1119—1121, 1746—1747
justices of the peace, Vol. I 152. 489. 500: Vol. II 914. 918. 922,925, 1062, 1096; Trans. 1014, 1029, 1030, 1120, 1121, 1140—1147, 1157—1158
magistrates, Vol. I 86—87, 141, 491, 504, 505
Legislators
bicameral, Vol. I 274-275, 395, 401, 412; Vol. II 876, 880, 886, 1052, 1091; Trans. 545—572, 682, 797—808, 1569—1570, 1696
election and qualifications judged by each house, Vol. I 396., 403:, Vol. II 864. 871. 875. 877. 881. 885, 887, 1049, 1053, 1092, 1107; Trans. 599—601
unicameral, Vol. I 316, 383; Vol. II 861, 867, 874, 1046, 1105; Trans. 545—572, 797-808, 1569—1570, 1696
Parliament, members of, Vol. I 268, 410; Trans. 749-759

QUARTERING OF TROOPS, Vol. II 624, 645, 961, 966, 968, 973, 1041, 1089; Trans. 1829—1832

QUINN, PEGGY (PAGE), Trans. 2861

QUIST, CARL (PAGE), Trans. 104

QUO WARRANTO, WRIT OF
See WRITS

RACIAL DISCRIMINATION, Vol. I 126, 148, 149, 161, 312-313; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 1642—1646
Non-discrimination in education. Vol. II 719, 730—731. 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623

RADER, CLYDE
Appointed to escort committee, Trans. 1

RAFFLES, Trans. 2737, 2738, 2739, 2740, 2741, 2742, 2744, 2746
See also GAMBLING

RAILROAD AND PUBLIC SERVICE COMMISSION, Vol. II 678; Trans. 2284, 2314, 2376, 2371, 2378, 2379, 2380, 2381, 2382, 2388-2394, 2394-2397, 2397—2400, 2400-2404, 2410, 2414, 2416, 2599, 2600

RAMLEAU, JAMES (PAGE), Trans. 254, 331

RANKIN, FORMER CONGRESSWOMAN JEANNETTE, Trans. 1694, 1699, 1745, 2206, 2236, 2300, 2301, 2431

RATTLER, JOE (PAGE), Trans. 710

RAVALLI COUNTY FISH AND WILDLIFE ASSOCIATION, Trans. 1336

REAPPORTIONMENT AND REDISTRICTING
See DISTRICTING AND APPORTIONMENT

REAPPORTIONMENT COMMISSION, Vol. I 109—110, 162, 278, 379, 382, 392—393, 398—399, 407—408; Vol. II 863-864, 865—866, 870, 872—873, 874—875, 878—879, 883—884, 885, 888—889, 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 559, 564, 681-696, 711—725, 735-741, 766, 767, 769, 785, 789, 1590—1593

REBAL, DONALD (GREAT FALLS)
Biography, Vol. I 56
Committee assignment, Vol. I 27
Remarks by, on
departments and institutions (Article XII)
public utility districts, Trans. 2606
education and public lands (Article X)
non-discrimination in education, Trans. 2044

REBAL, DONALD (Cont.)
Remarks by, on (Cont.)
environment and natural resources (Article IX)
cultural resources, Trans. 1351
environment, protection and improvement of, Trans. 1204, 1215, 1238, 1247—1249
reclamation, Trans. 1281, 1296

REBER, BECKY (PAGE), Trans. 1183

RECALL
General government, Vol. 191, 257—258, 277—278; Vol. II 816, 821—822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852-2853
Local government, Vol. I 138, 216, 254; Vol. II 783, 785, 799—800; Trans. 2512, 2549—2555, 2558, 2561, 2721, 2723, 2725, 2726, 2852-2853

RECESS
Convention, Trans. 117, 216—217, 289, 330, 332, 334,335, 345—347, 2430, 2614—2617
Legislature, Vol. I 275, 396, 404; Vol. II 865, 871, 875, 877, 882, 885,887, 1049, 1053, 1092, 1107; Trans. 590, 730—735

RECLAMATION OF LANDS, Vat. II 552, 555-556, 931, 933, 935, 939, 1068, 1099; Trans. 1199—1200, 1275—1301, 1353—1363

RECREATIONAL AREAS, Vol. 175, 129, 193; Vol. II 553, 558, 931—932, 933—934, 939-940, 1068, 1099; Trans. 1351—1352, 2143, 2145—2150

REDISTRICTING AND REAPPORTIONMENT, Vol. I 109—110, 162-163, 266, 274, 278, 379, 381, 382, 392—393, 398—399, 407—408; Vol. II 863—864, 865—866, 870, 872—873, 874-875, 878—879, 883—884, 885, 888-889, 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 545, 546, 551, 559, 562, 564, 570, 680—696, 711—725, 735—747, 762, 765, 766, 767, 769, 775, 1568, 1569, 1590—1593, 1597
Accelerated effective date, Vol. II 1082, 1108; Trans. 3004, 3006, 3007—3008
Reapportionment commission, Vol. I 109—110, 162, 278, 379, 382, 392—393, 398-399, 407-408; Vol. II 863—864, 865—866, 870, 872—873, 874-875, 878-879, 883—884, 885, 888—889, 1048, 1050—1051, 1054—1055, 1092—1093, 1106, 1107; Trans. 559, 564, 681—696, 711—725, 735—741, 766, 767, 769, 785, 189, 1590—1593

REDUCTION VETO, Vol. I 111; Trans. 949
See also VETO

REFERENDUM
See also INITIATIVE
Appropriation of money excepted, Vol. I 257, 278; Vol. II 816, 820, 1020, 1023, 1025, 1043, 1090; Trans. 2717—2718
Constitutional revision
referendum for amendment of constitution, Vol. I 119, 210—211, 257, 353—354, 360—362; Vol. II 852. 854.856. 858, 1079, 1104: Trans. 495-501, 2785

REFERENDUM (Cont.)
Constitutional revision (Cont.)
referendum for call of convention, Vol. I 209, 352, 356, 357; Vol. II 851, 853, 856, 857, 1078, 1103; Trans. 454, 455, 2698
provisions of Article III not applicable, Vol. II 816, 821, 1020, 1023-1024, 1025, 1044, 1090; Trans. 2720
Debt, creation of by referendum, Trans. 1495, 1496, 1499, 1500, 1501, 1503, 1505, 1506, 1507—1508
Elections on measures, general or special, Vol. I 258, 277; Vol. II 816, 820, 1020, 1023, 1025, 1044, 1090; Trans. 2718
Gambling may be authorized by, Vol. I 121; Vol. II 816 822, 825, 1020, 1024, 1025, 1044, 1090; Trans. 2728—2760
Laws necessary for preservation of public peace, health or safety excepted, Vol. 1257, 278
Local and special laws excepted, Vol. I 258, 278
Local government, powers extended to qualified electors of local government unit, Vol. I 138; 216, 254; Vol. II 183, 785, 799, 1010, 1014, 1074, 1102: Trans. 2512, 2520, 2548-2549
intergovernmental cooperation, Vol. II 783, 798, 1010, 1014, 1074, 1102: Trans. 2534—2536
Number of qualified electors, how determined, Vol. I 258, 277; Vol. II 816, 821, 1020, 1023, 1025, 1044, 1090; Trans. 2718-2719
Petitions — contents, signing, filing, Vol. I 258, 277; Vol. II 816, 820, 1020, 1023, 1025, 1043—1044, 1090; Trans. 2698. 2703
Powers of, vested in the people, Vol. I 109, 257—258, 268, 274, 277, 376, 381, 395, 400, 410; Vol. II 816, 820, 861, 864, 867, 871, 874, 875, 876, 880, 885, 886, 1020, 1023, 1025, 1043, 1046, 1049, 1052, 1090, 1091, 1105, 1106; Trans. 747—760. 775—779, 2717—2718
Suspension of referred act., requirements, Vol. I 258, 277; Vol. II 816, 820, 1020, 1023, 1025, 1044, 1090; Trans. 2718
Unicameral legislature, referendum of, Vol. II 864—866, 870—873, 875, 1048—1051, 1106—1108; Trans. 785i-789
Veto prohibited, Vol. I 111, 258, 277, 378, 391, 397, 406, 437, 450—452, 459; Vol. II 816, 821, 895, 901, 904, 908, 1058, 1094; Trans. 675, 948-958, 2719—2720

REFORMATION AND PREVENTION, PRINCIPLES OF, Vol. I 128, 337—338; Vol. II 623, W-643, 960, 965, 968, 972, 1041, 1089; Trans. 392, 395, 397, 1800, 1802, 1804, 1809, 1811, 1812, 1821, 1823, 2305

REGENTS OF HIGHER EDUCATION, BOARD OF
See EDUCATION, Regents, board of

REGULATED COMPANIES, TAXES ON, Vol. II 980,984, 989, 1077, 1103; Trans. 2400-2404, 242,

REHABILITATIVE SERVICES
See SOCIAL AND REHABILITATIVE SERVICES

REICHERT, ARLYNE E. (GREAT FALLS)
Biography, Vol. I 56
Committee assignment, Vol. I 27
Delegate Proposal
no. 22 (unicameral legislature), Vol. I 109—113, 221

REICHERT, ARLYNE E (Cont.)
Remarks by, on
ballot, constitution, Trans. 2871, 2892, 2900, 2903, 2956, 2974
constitutional revision (Article XIV)
submission, Trans. 516
departments and institutions (Article XII)
labor, working hours, Trans. 2320—2321
public assistance, Trans. 2281
public utilities
consumer protection, Trans. 2398
public service commission, Trans. 2317
education and public lands (Article X)
aid to sectarian schools, Trans. 2029
boards of education, Trans. 2120—2121
indian education, Trans. 1954
non-discrimination in education, Trans. 2037
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1232, 1241—1244
water rights, Trans. 1316—1317, 1340—1341
executive (Article VI,
information from officers of executive branch, Trans. 975
qualifications, Trans. 887
veto power, Trans. 958
general government (Article III)
gambling, Trans. 2748, 2752, 2755
initiative, Trans. 2711
liquor monopoly, Trans. 2257-2258
recall, Trans. 2721-2722, 2726
general provisions (Article XIII)
non-municipal corporations, consumer protection, Trans. 2257—2258
people's advocate, Trans. 702
judiciary (Article VII)
district court jurisdiction, Trans. 1076
justices of the peace, Trans. 1142, 1158—1159
selection, Trans. 1031, 1092
supreme court organization, Trans. 1047
legislature (Article V)
bills, Trans. 640, 642, 645, 652-653, 759—760
compensation, Trans. 1571
disqualification, Trans. 596, 1574
districting and apportionment, Trans. 723
election and terms, Trans. 1569
legislative post-auditor, Trans. 2796—2797
organization and procedure, Trans. 604, 607.-608
power and structure, Trans. 747-749
sessions, Trans. 583—584, 589, 820
size, Trans. 824, 1596, 1611—1612
unicameral/bicameral, merits of, Trans. 747—749, 759—760, 2871, 2892. 2903
local government (Article XI)
voter review of local government, Trans. 2558
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1432, 1434, 1464, 2711
investment of public funds, Trans. 1523—1524
property tax
administration, Trans. 1401—1402
exemptions, Trans. 1421
state debt, Trans. 1493—1494
suffrage and elections (Article IV)
poll-booth registration, Trans. 411, 442
Resolution No. IS (Unicameral-Bicameral preference), Trans. 3022

REICHERT, CLARY (PAGE), Trans. 254

REID, ELLEN (TYPIST-STENOGRAPHER), Vol. I 69; Trans. 3035

REINER, LUCILLE (MAIL ROOM), Trans. 3036

RELIGION
Appropriation for religious purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869, 874, 878, 882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535
Bingo, exemption for churches, Vol. II 1247; Trans. 2738, 2740—2741, 2746
Compulsory church attendance or support prohibited, Vol. I 190, 312
Discrimination on account of religious ideas prohibited, Vol. I 126, 161, 312—313; Vol. II 620, 628, 857, 962, 967, 969, 1038, 1087; Trans. 1642—1646, 2032, 2044
Establishment of religion, laws respecting prohibited, Vol. I 189-190, 312—313, 315; Vol. II 620—621, 629, 957, 963, 969—970, 1038, 1087; Trans. 1646—1647, 1738, 2015, 2745
Free exercise of religion guaranteed, Vol. I 189—190, 312-313, 315; Vol. II 620—621, 629, 957, 963, 969—970, 1038, 1087; Trans. X46-1647, 1738, 2015, 2745
Laws favoring denomination or mode of worship prohibited, Vol. I 190, 312
Property tax exemption, Vol. I 306, 326; Vol. II 584,590, 599, 945, 947-948, 950, 951, 1065, 1098; Trans. 1410, 1411, 1415, 2012
Schools
aid to sectarian schools prohibited, Vol. I 137, 189, 222, 311, 312, 313; Vol. II 629, 716, 719, 728—730, 743—747, 994, 997, 1002, 1004, 1070, 1100; Trans. 1646, 1960, 2008-2031, 2235
non-discrimination in education, Vol. II 719, 730—731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031-2045

REPRESENTATIVES
See HOUSE OF REPRESENTATIVES

REPRIEVES, Vol. I 183, 231, 321, 438, 446, 452—453, 460, 466; Vol. II 896, 902, 904—905, 909, 1059, 1095; Trans. 962-964

RESIDENCE REQUIREMENTS
County commissioners, Vol. I 103—104
Electors, Vol. I 191, 332, 336, 337, 338, 339—340, 341, 342-343; Vol. II 845, 847, 1045, 1091; Trans. 392, 393, 394, 396, 400, 408, 410, 417
Executive officers, Vol. I 180, 228, 320, 435, 445, 457, 464; Vol. II 893, 898, 906, 1056, 1093; Trans. 861, 883, 893-899, 985
to reside at seat of government, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873-878
Judges, Vol. I 487, 488, 491, 495—496, 498, 505, 512, 522—523; Vol. II 915, 920, 922, 926, 1063, 1097; Trans. 1119—1121
Justices of the peace, Vol. I 491; Trans. 505
Legislators, Vol. I 376, 383, 395, 401, 412; Vol. II 861, 867, 874, 876, 880, 886, 1046, 1052, 1091, 1105; Trans. 545—572, 682, 797—808, 1570
Welfare recipients, Trans. 2281, 2283, 2284

RESOLUTIONS
No. 1 — Rules Committee — Establishing convention workweek (adopted), Trans. 203—212
No. 2 — Roeder — Urging members and staff of the Legislative Council to give consideration to citizens' suggestions submitted to the Convention (killed), Trans. 226, 295

RESOLUTIONS (Cont.)
No. 3 — Roeder — Providing that certain citizens' suggestions be forwarded to the Legislative Council (adopted), Trans. 226, 293-294
No. 4 — Prescribing titles and salaries of Convention employees (adopted), Trans. 240-248
No. 5 — Graybill — Convention budget (adopted), Trans. 227—240, 248
No. 6 — Toole — Providing for schedule of fees and distribution of Convention documents (adopted), Trans. 249-253
No. 7 — Convention schedule (adopted), Trans. 226—227
No. 8 — Sending greetings to the North Dakota Constitutional Convention (adopted), Trans. 271-272
No. 9 — Rules Committee — Providing that Convention recess he not longer than two days (adopted), Trans. 345, 347
No. 10 — Rules Committee — Providing type and date of election for ratification or rejection of Constitution (adopted). Trans. 330-345
No. 11 — Rules Committee — Establishing procedures for election for ratification or reiection of Constitution (adopted), Trans. 15X-1562. 1566—1567
No. 12 — Rules Committee — Requesting fiscal note from Revenue Department (adopted), Trans. 2094—2095
No. 13 — Rules Committee — Appointment of select committee for purpose of preparing and arranging for concluding ceremonies of Convention (adopted), Trans. 2426
NO. 14 — Rules Committee — Establish committee to manage and conclude procedural, administrative and voter education affairs of Convention after adjournment (adopted), Trans. 2426—2430
NO. 15 — Johnson — Convention to recess, reconvene to reconsider proposed Constitution (killed), Trans. 2430, 2614—2617
No. 16 — Johnson — Presentation of ballot (referred to and rejected by Committee on Style, Drafting, Transition, and Submission), Trans. 2858-2860, 2862-2863, 2875, 2886, 2911
No. 17 — Rules Committee — Ratification of acts by delegates to avoid challenges to Constitution on rules violations or other technicalities (adopted), Trans. 3022
No. 18 — Reichert, Robinson, Harper — Calling for vote on delegates' preference for unicameral or bicameral legislature (adopted), Trans. 3022-3025
No. 19 — Rules Committee — Thanking Telecommunications, Inc., for televising Convention and presenting its work to the viewing audiences in Montana (adopted), Trans. 3025—3026
No. 20 — Resolution paying tribute to employees and interns of Convention (adopted), Trans. 3035-3036
McCarvel — Establishing "Irish Row" (proposed), Trans. 2622
Studer — Recognizing accomplishments of Presidents Washington and Lincoln (adopted), Trans. 707

RESTORATION OF RIGHTS
Convicts, Vol. I 128, 317, 337-338; Vol. II 623, 642-643, 960, 965, 968, 972, 1041, 1045, 1089, 1091; Trans. 678, 1800—1803, 1823, 2303, 2507-2509, See also PARDONS; PAROLE
Institutionalized persons, Vol. I 310, 339; Vol. II 979, 983, 985,988, 1076, 1102; Trans. 2304—2308, See also UNSOUND MIND, PERSONS OF

RETIREMENT SYSTEMS (PUBLIC EMPLOYEES)
Investment of funds, Vol. II 602—603, 946, 949, 950, 952, 1066, 1098; Trans. 1518—1546
Membership in, a contractual relationship, Vol. I 286

RETROSPECTIVE LAWS, Vol. II 666, 669, 711, 977, 981, 986, 1077, 1103; Trans. 2266-2269

REVENUE AND FINANCE
See ARTICLE VIII
Appeal procedures for taxpayer grievances, Vol. II 582,585, 589, 592—594, 946, 948,950, 952, 1066.1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489—1490
Budget
appropriations not to exceed anticipated revenue, Vol. I 307; Vol. II 582, 586, 595, 946, 949, 950, 932, 1066, 1098; Trans. 1376, 1490, 1493, 1494, 1508—1509 2135—2136. 2157. 2707
boards of education, Trans. 2049, 2050, 2055—2056, 2064, 2065—2066, 2067, 2068, 2078—2079, 2083—2089, 2090, 2096, 2097, 2099, 2103, 2106, 2116, 2118, 2130, 2134, 2135, 2139, 2161, 2163
convention, Vol. I 5, 8, 14; Trans. 112—113, 127, 178, 227—248, 261, 321—325, 535—537, 902, 1373—1375, 2618—2622, 2856
current amount of state budget, Trans. 580
governor to prepare, Vol. I 183, 231, 321, 432—433, 437, 446, 450,459; Vol. II 895, 901, 908, 1058, 1094; Trans. 842, 947—948, 2103, 2136
statewide budgeting and accounting system, Vol. II 596; Trans. 1517, 2055, 2056, 2120, 2577, 2578, 2581, 2582, 2585
Consumer counsel, special tax on revenues of regulated companies for, Vol. II 980, 984, 989, 1071, 1103; Trans. 2400—2404, 2421
Earmarking, Vol. I 101, 132; Vol. II 580; Trans. 2157, See also Highway revenues; Special levies
Expenditures
appropriation and issuance of warrant required, Vol. II 866, 873, 875, 879, 884, 889, 1067, 1098; Trans. 790—792, 797, 1366, 1376, 1517, 1888—1889
strict accountability, Vol. I 307; Vol. II 381, 382, 586, 595, 596, 946, 949, 950, 952, 1066, 1098; Trans. 921, 924, 1001, 1002, 1316, 1516—1517
Highway revenues, restrictions on use of, Vol. I 101, 132, 187—188; Vol. II 580. 584-585. 591-592. 945—946, 948, 950. 951—952, 1065—1066, 1080, 1098, 1107; Trans. 1376, 1389—1390, 1428—1466, 1469—1489, 1501, 2220—2243, 2689, 2695, 2701—2717, 2779—2789
Indebtedness
local government debt limitations, Vol. II 583, 586, 595, 946, 949.950. .952. .1066. .1098:. Trans. 1492. 1509—1516, 2513, 2515, 2529, 2549
state debt, Vol. II 583, 585-586, 594, 946, 948, 950, 952, ,066, 1080, 1098, 1107; Trans. 1376, 1490-1508

REVENUE AND FINANCE (Cont.)
Investment of public funds, Vol. II 583, 586, 596—597, 602—603, 753—756, 946, 949, 950, 952-953, 1066—1067, 1098; Trans. 1517—1546, 1948, 2068, 2150—2151
Levy of taxes by general laws for public purposes, Vol. 195, 101, 114, 132, 306; Vol. II 579—580, 582, 583, 584, 588, 945, 947, 951, 1065, 1097; Trans. 1376, 1377—1378
Livestock and agricultural commodities, levies for disease control and indemnification,. predator control, inspection, protection, research and promotion, Vol. I 101, 132, 246; Vol. II 550, 539, 560, 581, 586, 597—598, 936, 937, 938, 941, 1076, 1102; Trans. 1199, 1366—1370, 1378, 1547, 2364, 2539—2540
Loan proceeds to be used only for purposes specified, Vol. II 583, 586, 593, 946, 949, 950, 952, 1066. 1098: Trans. 1516
Local government
debt limitation, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066, 1098; Trans. 1492, 1509—1516, 2513, 2515, 2529, 2549
power to levy taxes, Vol. I 156, 254; Vol. II 581, 583, 588, 601,798:. Trans. 1379. 1390. 1512. .2527. 2528. 2529. 2530. 2531. 2532. 2533. 2537. See also Revenue sharing
Power to tax inalienable, Vol. I 306; Vol. II 579—580, 581, 584, 588, 945, 947, 950, 951, 1065; Trans. 1376. 1378—1379, 1425, 1501
Property taxes
appeal procedure, Vol. II 582,585, 589, 592-594, 946, 948, 950,952, 1066, 1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489—1490
exemptions, Vol. 199, 167, 306, 326; Vol. II 580, 584, 588, 590—591, 599—601, 945, 947—948, 950, 951, 1065, 1097—1098; Trans. 1379, 1410—1427, 1497, 1556—1558, 2217—2218
rate of taxation for operation of state government, Trans. 1549—1556
statewide levy for education, Vol. II 725; Trans. 2165, 2408, 2539, 2541, 2543, See also two-mill levy
two-mill levy, Vol. II 581; Trans. 1501, 1549—1556, 1967, 1985.2153.2x5.2199. 2200. 2538. See also statewide levy for education
valuation of property
appraisal, assessment and equalization, Vol. I 129. 174. 264—265, 306—307; Vol. II 579—580, 582, 584, 588—591, 945, 947, 950, 951, 1065, 1097; Trans. 1379—1409, 1501, 2158, 2219, 2286, 2289.2518
equal valuation, Vol. II 581, 582, 584, 589—590, 945, 947, 950,951, 1065, 1097; Trans. 1376, 1409—1410, 2153, 2289
Revenue sharing with local government units, Vol. II 580—581, 783, 799; Trans. 2537—2544
Revenues received. strict accountabilitv. Vol. I 307: .Vol. II 581, 582, 586, 595, 596: 946, 949, 950, $52, 1066, 1098; Trans. 921, 924, 1001, 1002, 1376, 1516—1517
Special improvement districts authorized, Vol. I 684, 590-591, 599-601, 945, 947—948, 950, 951. 1065, 1098: Trans. 1410—1411
Special levies
livestock and agricultural commodities, Vol. I 101, 132, 246: Vol. II 550. 559. 560. 581. 586. 597—598. 936, 937, 938, 941, 1076, 1102; Trans. 1199, 1366—1370, 1378, 1547, 2364, 2539—2540
regulated companies (consumer counsel), Vol. II 980, 984, 989, 1077, 1103; Trans. 2400—2404, 2421
State debt, Vol. II 583, 585—586, 594, 946, 948,950, 952, 1066, 1080, 1098, 1107; Trans. 1376, 1490—1508
State tax appeal board, Vol. II 582, 585, 592-594; Trans. 1390, 1392, 1393, 1402, 1407

REVENUE AND FINANCE (Cont.)
Taxation, See TAXATION
Tar purposes, Vol. I 95, 101, 114, 132, 306; Vol. ,I 579—580, 582, 583, 584, 588, 945, 947, 951, 1065, 1097; Trans. 1376, 1377—1378
Trust and legacy fund, Vol. II 583, 596, 716, 754; Trans. 1376, 1517, 1524, 1525, 1539

REVENUE AND FINANCE COMMITTEE
Membership and staff, Vol. 123; Vol. II 578
Report
consideration in committee of the whole, Trans. 1376—1558, 2779—2789
cross references, 1889-1972 constitutions, Vol. II 579—583
delegate proposals considered, Vol. II 605
roll call votes on, in committee, Vol. II 604, 613
text and comments
introduction, Vol. II 579-583
majority report, Vol. II 584-598
minority report, Vol. II 599—603
transmittal letter, Vol. II 578
Responsibilities, Trans. 33
Witnesses appearing before committee, Vol. II 606—612

REVENUE, DEPARTMENT OF, Trans. 1380, 1381, 1770, 2094—2095, 2297, 2350

REVENUE SHARING (STATE), Vol. II 580-581, 783, 799; Trans. 2537—2544

RICHARD, M.E. (FORMER CHAIRMAN, STATE BOARD OF EDUCATION), Vol. 11734

RICHARDS, MAURY, Trans. 2051

RIGHTS, DECLARATION OF
See ARTICLE II
Procedural or substantive rights created for first time prospective, not retroactive, Vol. II 1082, 1108; Trans. 3005, 3007—3008
Unenumerated rights not denied, impaired or disparaged, Vol. II 624, 645, 961, 966, 968, 973, 1042, 1089; Trans. 1832

RIGHTS, INALIENABLE
See INALIENABLE RIGHTS

RIGHTS OF PERSONS NOT ADULTS, Vol. I 166, 199; Vol. II 621—622, 635—636, 958, 964, 967, 970—971, 1039, 1088; Trans. 1749—1753

RIGHT TO BEAR ARMS, Vol I 78—791. 621, I634, 958, 963, 970, 1039, 1088; Trans. 1724—1744, 1816, 1832—1842, 1843, 2369

RIGHT TO DIE, Vol. I 223

RIGHT TO KNOW, Vol. I 133, 157; Vol. II 621, 631—632, 958, 963, 970, 1039, 1088; Trans. 1658, 1669—1680, 1733, 2201, 2560, 2578, 2562
See also PRIVACY, RIGHT OF; CITIZEN PARTICIPATION IN GOVERNMENTAL PROCESSES

RIGHT TO LIFE, Vol. 1223; Vol. II 627; Trans. 1640—1642

RIGHT TO WORK, Vol. I 185; Vol. II 627-628, 664, 692-697; Trans. 320-321, 1353, 1478, 1642, 1727, 2331, 2351—2367, 2369, 2530, 2531, 2532, 2533, 2566, 2611
Alternative issue on constitution ballot, Trans. 1478, 2358—2367

RIOTS
Continuity of government, Vol. I 278—279; Vol. II 815, 81X-819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Governor's authority to call militia forces, Vol. I 182, 229. 320, 438, 453—454, 460; Vol. II 896, 902, 905, 909, 1059, 1095; Trans. 964—966, 1830
Importation of armed forces, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration. Vol. I 182, 320; Trans. 1830

ROBINSON, MAE NAN (MISSOULA)
Biography, Vol. I 56
Committee assignment, Vol. I 27
Condolences expressed to, Trans. 104
Delegate Proposals
no. 32 (discrimination), Vol. I 126
no. 35 (preferential taxation), Vol. I 129
no. 59 (preamble), Vol. I I59
no. 128 (board of education), Vol. I 256
no. 130 (public libraries), Vol. I 259
Invocation, Trans. 364
Nomination of John H. Toole as First Viee President, Trans. 28—29
Remarks by, on
ballot, constitution, Trans. 2874
boundaries, state, Trans. 2761
constitutional revision (Article XIV)
amendment by initiative, Trans. 509, 511—513
constitutional preparatory commission. Trans. 456—460, 463—465, 479
declaration of rights (Article II)
individual dignity, Trans. 1644—1645
participation, right of, Trans. 1661
searches and seizures, Trans. 1683—1688
departments and institutions (Article XII)
labor, collective bargaining, Trans. 2336
public assistance, Trans. 2292
education and public lands (Article X)
boards of education, Trans. 2067—2068
educational goals and duties, Trans. I987
non-discrimination in education, Trans. 2033
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1204, 1229—1230, 1232—1235, 1239—1240, 1252, 1260—1261, 1268
reclamation, Trans. 1288
executive (Article VI)
officers, Trans. 854, 855
qualifications, Trans. 890, 981-982
veto power, Trans. 954
general government (Article III,
initiative, Trans. 2699, 2703, 2716
recall, Trans. 2723, 2725
general provisions (Article XIII)
code of ethics, Trans. 794
people's advocate. Trans. 698, 703
judiciary (Article VII)
clerks of court, Trans. 2778
justices of the peace, Trans. 1158
legislature (Article V)
bills, Trans. 651, 662
conference committees, Trans. 731—732
disqualification, Trans. 595, 598

ROBINSON, MAE NAN (Cont.)
Remarks by, on (Cont.)
legislature (Cont.)
districting and apportionment, Trans. 693—694, 740, 746
election and terms, Trans. 771—772
immunity, Trans. 595
legislative post-auditor, Trans. 2194
organization and procedure, Trans. 606, 608
power and structure, Trans. 777
qualifications, Trans. 546—547, 565, 801
sessions, Trans. 588, 819, 822
size, Trans. 822
vacancies, Trans. 593—594, 725
local government (Article XI)
voter review of local government, Trans. 2561
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1463, 2232, 2103, 2716
suffrage and elections (Article IV)
poll-booth registration, Trans. 437
Resolution No. 18 (Unicameral-Bicameral preference), Trans. 3022

ROBINSON, PATTIE (PAGE), Trans. 2209

ROCK CREEK CANAL COMPANY, Trans. 1305

ROCKY MOUNTAIN COLLEGE, Trans. 2010, 2013, 2020, 2021. 2024

RODGERS, DAVID (PRINTING DEPARTMENT), Trans. 3036

ROEDER, RICHARD B. (BOZEMAN)
Biography, Vol. I 57
Committee assignment. Vol. I 27
Delegate Proposals
no. 77 (executive article), Vol. I 180—184
no. 113 (teachers' salaries), Vol. I 239
Invocation, Trans. 328
Remarks by, on
ballot, constitution, Trans. 2911, 2949, 2964-2965
constitutional revision (Article XIV)
amendment by legislature, Trans. 500
education and public lands (Article X)
boards of education, Trans. 2588-2589
state university funds. accounting and audit, Trans. 2588-2589
environment and natural resources (Article IX)
reclamation, Trans. 1278
executive (Article VI)
duties, Trans. 919
officers, Trans. 846, 994, 1707—1708, 1711
pardons, Trans. 963
special session, Trans. 961
twenty departments, Trans. 934-935, 937
general provisions (Article XIII)
non-municipal corporations, long-short haul provision, Trans. 2263
legislature (Article V)
bills, Trans. 649, 651—652
legislative post-auditor, Trans. 1000—1001, 2794
organization and procedure, Trans. 617, 619
sessions, Trans. 824
size, Trans. 824
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1443
investment of public funds, Trans. 1534
Resolutions
no. 2 (citizens' suggestions), Trans. 226
no. 3 (citizens' suggestions), Trans. 226

ROLLINS, GEORGE W. (BILLINGS)
Biography, Vol. I 57
Committee assignment, Vol. 121
Delegate Proposals
no. 54 (location of county offices), Vol. I 153
no. 85 (university system), Vol. I 196—197
no. 86 (preamble), Vol. I 198
Nomination of Jean Bowman as Convention Secretary, Trans. 63
Remarks by, on
ballot, constitution, Trans. 2894-2895
constitutional revision (Article XIV)
non-partisanship of convention, Trans. 481-482
declaration of rights (Article II)
militia, civilian control of, Trans. 1830
religion, freedom of, Trans. 1647
right to bear arms, Trans. 1732, 1737, 1833
departments and institutions (Article XII)
public service commission, Trans. 2377
education and public lands (Article X)
boards of education, Trans. 2084, 2115-2122, 2131—2132
executive (Article VI)
qualifications, Trans. 888—889
judiciary (Article VII)
campaign expenses, Trans. 2197
legislature (Article V)
qualifications, Trans. 546, 549—550
vacancies, Trans. 549-550, 594, 725—726
local government (Article XI)
definition, Trans. 2514
voter review of local government, Trans. 2557
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1464—1465, 1482, 2238, 2786—2787
local government debt, Trans. 1513—1514
property tax administration, Trans. 1393

ROMINE, PAT (SECRETARY), Vol. I 69; Vol. II 781; Trans. 2512. 3035

ROMNEY, MILES (HAMILTON)
Appointed to Temporary Rules Committee, Trans. 24
Biography, Vol. I 57
Committee assignment, Vol. I 27
Delegate Proposals
no. 19 (legislature, meeting date), Vol. 1 106
no. 158 (conference committee reports), Vol. I 303
Remarks by, on
ballot, constitution, Trans. 2868, 2887, 2893, 2896, 2904, 2952
boundaries, state, Trans. 2762
constitutional revision (Article XIV)
amendment by
initiative, Trans. 507—508, 510
legislature, Trans. 502-503, 523
constitutional convention, Trans. 486-487
constitutional preparatory commission, Trans. 459-460, 480
periodic submission, Trans. 462
submission, Trans. 515-516
declaration of rights (Article II)
death penalty, Trans. 1806
debt, imprisonment for, Trans. 1796-1797, 1799
participation, right of, Trans. 1668—1669
right to bear arms, Trans. 1734—1735, 1840
right to know, Trans. 2490, 2494-2495, 2497
right to work, Trans. 2365—2366
trial by jury, Trans. 1785
departments and institutions (Article XII)
merit system, Trans. 2346—2347
public assistance, Trans. 2291
public utilities
districts, Trans. 2407, 2411-2412
public service commission, Trans. 2381, 2420

ROMNEY, MILES (Cont.)
Remarks by, on (Cont.)
education and public lands (Article X)
aid to sectarian schools, Trans. 2020—2021
board of land commissioners, Trans. 1993
boards of education, Trans. 2077—2078, 2085, 2106, 2112
commissioner of higher education, Trans. 2106
educational goals and duties, Trans. 2157
non-discrimination in education, Trans. 2041, 2044
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1205, 1212—1213, 1239, 1262, 1275
reclamation, Trans. 1280—1282, 1294—1296
water rights, Trans. 1306—1307, 1321, 1335—1336
executive (Article VI)
compensation, Trans. 993
duties, Trans. 923
election, Trans. 880
veto power, Trans. 675, 952-953
general government (Article III,
gambling, Trans. 2739, 2757-2758
initiative, Trans. 2707
liquor monopoly, Trans. 2254, 2766-2767
general provisions (Article XIII)
code of ethics, Trans. 793-794
judiciary (Article VII)
campaign expenses, Trans. 1171—1173, 2202
probate attorney, Trans. 1134—1135
supreme court organization, Trans. 1046, 1065—1067
terms and pay. Trans. 1116—1119, 1151—1152
legislature (Article V)
bills, Trans. 640, 668
compensation, Trans. 577
conference committees, Trans. 732-733
districting and apportionment, Trans. 690—691
election and terms, Trans. 773
impeachment, Trans. 677
organization and procedure, Trans. 604, 607
parliamentary form of government, Trans. 753
qualifications, Trans. 546, 560—561, 802
sessions, Trans. 586, 824—825
size, Trans. 764, 767, 783—784, 824—825, 1604—1605, 1612—1613
local government (Article XI)
recall, Trans. 2552—2553
self-government powers, Trans. 2532-2534
voter review of local government, Trans. 2556-2557, 2559, 2561, 2563
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 144'7, 1463—1464, 2223, 2226, 2232-2233, 2241, 2707
investment of public funds, Trans. 1524—1525, 1530
property tax exemptions, Trans. 1419
sales tan, Trans. 1547
two-mill levy, Trans. 1551—1552
suffrage and elections (Article IV)
poll-booth registration, Trans. 412, 446
qualified elector, Trans. 396

ROSTAD, CARL (PAGE), Trans. 1692, 2861

RULES AND RESOLUTIONS COMMITTEE
Membership and staff, Vol. I 21
Officers, appointment, of, Trans. 95
Report, Trans. 114—116, 120—199
Responsibilities, Trans. 33

RULES, CONVENTION
Adoption, Vol. I 1; Trans. 120—199
Amendment or suspension, Vol. I 19; Trans. 197
Application, Vol. I 11; Trans. 145
Temporary rules, Vol. I 2; Trans. 18—19
Text, Vol. I 6—20

RULES, LEGISLATIVE, Vol. 1275, 303, 377, 387, 396, 403, 404; Vol. 11 862, 864, 868, 871, 874, 875, 877, 881, 885, 887, 1047, 1049, 1053, 1092, 1105, 1107; Trans. 599—601, 731, 734—735

RUNG, ELAINE (SECRETARY), Vol. I 69; Vol. II 551; Trans. 3036

RUPP, JEFFREY K. (INTERN), Vol. I 70; Vol. II 716; Trans. 2143, 3036

RYGG, MARY (PAGE), Trans. 305

RYGG, M. STERLING (KALISPELL)
Biography, Vol. I 58
Committee assignment, Vol. I27
Nominated President of Convention, Trans. 13
declines nomination, Trans. 13
Nominated First Vice President, Trans. 29
declines nomination, Trans. 31
Nominated Western District Vice President, Trans. 56
Remarks by, on
constitutional revision (Article XIV)
submissian, Trans. 519—520
declaration of rights (Article II)
persons not adults, rights of, Trans. 1750—1751
right to bear arms, Trans. ,732
state subject to suit, Trans. 1762
departments and institutions (Article XII)
agriculture, special levies, Trans. 1367, 1546—1547
institutions, Trans. 2270—2276
public service commission, Trans. 2380
veterans, Trans. 2270—2276
education and public lands (Article X)
hoards of education, Trans. 2058, 2085—2088, 2098, 2116, 2119, 2123, 2136, 2138, 2576—2578, 2580-2581, 2585, 2588, 2591
commissioner of higher education, Trans. 2098
educational goals and duties, Trans. 1966, 2156
state university funds, accounting and audit, Trans. 2576—2578, 2580—2581, 2585, 2588, 2591
environment and natural resources (Article IX)
water rights, Trans. 1315
executive (Article VI)
duties, Trans. 921
general government (Article III)
initiative, Trans. 2705-2706, 2709, 2711
general provisions (Article XIII)
code of ethics, Trans. 793—794
legislature (Article V)
appropriations by warrant, prohibited payments, Trans. 791
parliamentary form of government, Trans. 755
sessions, Trans. 585. 818—819
revenue and finance (Article VIII) — majority report
introduction, Trans. 1376—1377
balanced budget, Trans. 1508
equal valuation, Trans. 1409—1410
highway revenue non-diversion, Trans. 1428—1429, 1431, 1449—1450, 1454, 1456—1458, 1471—1473, 1488, 2222, 2238, 2705—2706, 2709, 2711, 2779—2780, 2783—2785, 2787—2789
investment of public funds, Trans. 1517—1518, 1546
local government debt, Trans. 1509
property tax
administration, Trans. 1379—1380, 1397, 1406
exemptions, Trans. 1410—1411, 1415, 1423, 1425
state debt, Trans. 1490~1491, 1497, 1499, 1503, 1505—1506
strict accountability, Trans. 1516—1517
taxation
appeals, Trans. 1489—1490

RYGG, M. STERLING (Cont.)
Remarks by, on (Cont.)
revenue and finance (Cont.!
taxation (Cont.)
power, Trans. 1378—1379
purposes, Trans. 1377—1378
two-mill levy, Trans. I550
use of loan proceeds, Trans. 1516

SAEMAN, JANICE (TYPIST), Vol. I 69; Trans. 3035

SAFETY, HEALTH AND HAPPINESS
Right of person to seek, Vol. I 142, 207, 242; Vol. II 620, 626—627, 957, 962. 967, 969, 1038, 1087; Trans. 1240, 1636—1637, 1642

SALARIES
Compensation of public officials may not be diminished during term of office., Vol. I 88, 181, 229, 249, 320, 436, 447, 458, 491, 504, 511, 519; Vol. II 914, 919, 922, 925, 1062, 1096; Trans. 842, 927-928, 1083—1084, 1115—1119
Constitutional convention delegates, Vol. I 150, 210, 226, 353, 356—357, 359; Vol. II 851, 854,856, 857, 1078, 1103; Trans. 454, 485-486
Constitutional convention, 1972
delegates, Vol. I 3, 11; Trans. 136
employees
executive director, Vol. I 8; Trans. 66, 127
other, Vol. I 2, 3, 9; Trans. 66, 112, 128, 240-248
officers, Vol. I 3, 11; Trans. 136
Equal pay for equal work (state and federal employees), Vol. I 225; Trans. 2349—2351
Executive officers
attorney general, Vol. I 229, 320, 432, 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927—928, 991—994
auditor, Vol. 1458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927—928, 991—994
governor, Vol. I 181, 229, 320, 432,436, 447, 458; Vol. II 894, 899. 904, 907. 1057. 1094; Trans. 842. 927—928, 991—994
lieutenant governor, Vol. I 181, 229, 320, 432, 436, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 927-928, 991-994
secretary of state, Vol. I 320, 432, 436, 447, 458; Vol. II 894, 899, 904, 901, 1057, 1094; Trans. 842, 927—928, 991—994
superintendent of public instruction, Vol. I 320, 432, 435, 436, 441, 447, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 842, 870, 927-928, 991-994. 2059
treasurer, Vol. I 320; Vol. II 894, 899, 904; Trans. 927—928, 991-994
Judicial officers
judges, Vol. I 88, 206, 225, 491, 504, 511, 519; Vol. II 914, 919, 922, 925, 1062, 1096; Trans. 1067, 1083—1084, 1107, 1115—1119, 1150—1154
justices of the peace, Vol. I 152, 225, 489, 491, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1020, 1029, 1083—1084, 1140—1147, 1157, 1158
magistrates, Vol. I 86
Legislators
bicameral, Vol. I 275, 280, 395, 401—402, 413; Vol. II 876, 880,886, 1052, 1091; Trans. 572—579, 588, 589, 1572
unicameral, Vol. I 110, 280, 376, 383-384; Vol. II 861, 867, 874, 1046,1105; Trans. 572-579, 588, 589, 1572
Minimum wage to be established by legislature, Vol. I 212

SALARIES (Cont.)
Officers first elected or appointed under new constitution, Vol. 1249
Salary commission, Vol. I 110, 134, 275, 280, 376, 383—384, 395, 402, 447; Vol. II 861, 867, 874, 876, 880, 886, 1077, 1103; Trans. 572—579, 992, 993, 1084, I572
State employees compensation equal to federal employees compensation, Vol. I 225; Trans. 2349-2351
Teachers, Vol. I 239

SALARY COMMISSION. Vol. I 110, 134, 275, 280, 376, 3X3-384, 395, 402, 447; Vol. II 861,867, 874, 876, 880, 886, 1077, 1103; Trans. 572-579, 992,993, 1084, 1572

SALES AND USE TAXES, Trans. 1399, 1420, 1425, 1547—1549, 1550, 1553, 1554, 1555, 1970, 1982, 1983, 2153, 2155, 2235, 2405, 2530, 2531, 2532, 2533, 2541

SATHER, TERRY (TYPIST-STENOGRAPHER), Trans. 3035

SAXBY, DOYLE (DIRECTOR, DEPARTMENT OF ADMINISTRATION), Trans. 917, 1001, 2055—2056, 2128

SAXBY, KENT (PAGE), Trans. 383

SCANLIN, DONALD A. (BILLINGS)
Biography, Vol. I 58
Committee assignment, Vol. I 27
Delegate Proposal
no. 15 (public and indian lands), Vol. I 99-100
Invocations, Trans. 223, 274, 314, 368, 469, 1468, 1855. 2093, 2546
Remarks by., on
compact with the united states (Article I), Trans. 2567-2568
constitutional revision (Article XIV)
amendment by
initiative, Trans. 507
legislature, Trans. 523-524
constitutional convention, Trans. 526-528
declaration of rights (Article II)
restoration of rights, Trans. 2306
right to bear arms, Trans. 1840
departments and institutions (Article XII)
institutions, Trans. 2273, 2275
merit system, Trans. 2315, 2342
public assistance, Trans. 2287
public utilities
consumer protection, Trans. 2399
districts, Trans. 2415, 2609—2610
public service commission, Trans. 2386
veterans, Trans. 2273, 2275
education and public lands (Article X)
aid to sectarian schools, Trans. 202"
boards of education, Trans. 2068, 2087-2088, 2106, 2166, 2173
commissioner of higher education, Trans. 2106
educational goals and duties, Trans. 1965
environment and natural resources (Article IX,
environment, protection and improvement of, Trans. 1219, 1238, 1267
reclamation, Trans. 1288
water rights, Trans. 1335, 1350

SCANLIN, DONALD A (Cont.)
Remarks by, on (Cont.)
executive (Article VI)
qualifications, Trans. 1695
general government (Article III)
gambling, Trans. 2735, 2748
recall. Trans. 2726
general provisions (Article XIII)
consumer counsel, Trans. 2401
non-municipal corporations, cumulative voting, Trans. 2259
people's advocate, Trans. 702, 830—832
judiciary (Article VII)
campaign expenses, Trans. 1169
probate attorney, Trans. 1136, 1161
selection, Trans. 1091
terms and pay, Trans. 1151
legislature (Article V)
election and terms, Trans. 773
legislative post-auditor, Trans. 2792, 2794
qualifications, Trans. 546, 555—556, 801
size, Trans. 765, 769
vacancies, Trans. 725
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1430, 1432—1433, 1435, 1481, 2223, 2227, 2236, 2785
property tax
administration, Trans. 1398—1399
exemptions, Trans. 1424
suffrage and elections (Article I")
poll-booth registration, Trans. 409, 412, 434

SCENIC AREAS, Vol. I 129,75, 193, Vol240; I553, 558, 931—932, 933—934, 939—940, 1068, 1099; Trans. 1351—1352

SCHILTZ, JOHN M. (BILLINGS)
Appointments
chairman of style, drafting, transition and submission committee, Trans. 95
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
Biography, Vol. I58
Committee assignment, Vol. I 27
Delegate Proposal
no. 66 (excise taxes), Vol. I 167
Introduction of Leo Graybill, Sr., Trans. 1974
Nominated President of Convention, Trans. 13
declines nomination, Trans. 13
Remarks by, on
ballot, constitution, Trans. 1815. 2863-2867, 2871, 2878, 2881. 2897—2898, 2900, 2947-2948, 2950, 2956, 2958-2962, 2964, 2966, 2972, 2974, 2976, 2977, 2983, 2987—2991, 2993-2995
compact with the united states (Article I), Trans. 2567-2568
constitutional revision (Article XIV)
constitutional convention, Trans. 455
declaration of rights (Article II)
assembly, freedom of, Trans. 2477-2481
convicts, rights of, Trans. 2507—2509
death penalty, Trans. 1815
restoration of rights, Trans. 2597—2598
right to bear arms, Trans. 1735, 1840—1841
right to know., Trans. 1677
speech, expression and press, freedom of, Trans. 1651
state subject to suit, Trans. 1761
departments and institutions (Article XII)
agriculture, special levies, Trans. 1367
labor, working hours, Trans. 2601
public service commission, Trans. 2378
education and public lands (Article X)
aid to sectarian schools, Trans. 2012
boards of education, Trans. 2576—2577, 2592-2593

SCHILTZ, JOHN M (Cont.)
Remarks by, on (Cont.)
education and public lands (Cont.)
educational goals and duties, Trans. 2154
indian education, Trans. 1951
public land trust, access, Trans. 2146
state university funds, accounting and audit, Trans. 2576—2577, 2592—2593
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1231, 1237, 1255, 1275
reclamation, Trans. 1294—1295, 1298, 1360
water rights, Trans. 1307, 1310, 1323, 1325, 1326, 1328—1329, 1335, 1339
executive (Article VI)
appointing power, Trans. 945, 946
compensation, Trans. 578
duties, Trans. 920
special session, Trans. 1703—1704
succession, Trans. 967—968, 1720
vacancy, Trans. 931
veto power, Trans. 1721
general government (Article III)
elections, Trans. 2626
gambling, Trans. 2740, 2995-2996
initiative, Trans. 2702, 2709, 2712, 2823-2826
number of electors, Trans. 2827
referendum, Trans. 2822
separation of powers, Trans. 2829, 2831
general provisions (Article XIII)
consumer counsel, Trans. 2598-2600
salary commission, Trans. 578
judiciary (Article VII) — majority report introduction, Trans. 1025—1027
campaign expenses, Trans. 1137, 1165—1166, 1168—1169, 1171, 1177—1178, 2189—2194, 2203—2204
disqualification, Trans. 1121
district court jurisdiction, Trans. 1051, 1053, 1055—1057, 1074—1075, 1077—1078
forfeiture of judicial position, Trans. 1149
judicial districts, Trans. 1082
probate attorney, Trans. 1134
removal and discipline, Trans. 1124, 1126
selection, Trans. 1090. 1099, 1108—1109, 1111
supreme court
jurisdiction, Trans. 1039—1041, 1071—1073
organization, Trans. 1048
terms and pay, Trans. 578, 1115, 1153
legislature (Article V)
bills, Trans. 673
compensation, Trans. 578
disqualification. Trans. 1573—1582
districting and apportionment, Trans. 687, 690, 693, 715—716 ,720 736
legislative post-auditor, Trans. 999, 2791—2792, 2797
organization and procedure, Trans. 628
qualifications, Trans. 560, 803, 805
sessions, Trans. 1703—1704
size, Trans. 1608
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1457, 1472—1473, 1475—1476, 1484, 2220, 2226, 2228, 2241-2243, 2702, 2709, 2712
state debt, Trans. 1491—1492, 1500
suffrage and elections (Article IV)
eligibility for public office, Trans. 416
Seconds nomination of John H. Toole as First Vice President, Trans. 29

SCHOOL DISTRICTS
Distribution of revenue to, Vol. I 146, 169—170; Vol. II 719, 727—728, 994, 997, 1002, 1004, 1070, 1100; Trans. 2006—2008
Elections, Vol. I 122, 144, 170; Vol. II 731; Trans. 405, 1977, 2046—2048, 2165

SCHOOL DISTRICTS (Cant.)
Indebtedness, Trans. 1509—1516
Intergovernmental cooperation, Vol. I 136, 156, 254; Vol. II 783, 798—799, 1010, 1013—1014, 1015, 1074, 1102; Trans. 2534-2535
Sovereign immunity, Vol. I 121: Vol. II 622, 637—638, 959, 964, 967—968, 971, 1039—1040, 1088; Trans. 1760—1764
Trustees
election, Vol. I 122-123; Trans. 858, ,977, 2046—2048, 2165
recall, Trans. 2551, 2553
supervision and control of schools, Vol. I 122, 340; Vol. II 719,731, 735,818, 994, 998, 1002, 1004, 1070, 1100; Trans. 858, 1961, 1971, 1975—1981, 2046-2043. 2050. ,2051., 2060., 2061, 2062, 2069, 2073, 2075, 2097, 2103, 2165, 2514

SCHOOL FOUNDATION PROGRAM, Vol. II 589, 723, 745; Trans. 1549. ,1550. ,1551., 1553, 1958, 1961—1964, 1966, 1968—1970, 1972, 1916, 1977, 1979, 1982-1983, 1987, 2007, 2017, 2084, 2151—2159, 2297

SCHOOL LANDS
See PUBLIC LANDS

SCHOOLS
See EDUCATION; SUPERINTENDENT OF PUBLIC INSTRUCTION; specific college or university

SCHRADER, ELIZABETH (PAGE), Trans. 2861

SCHULTZE, CHARLES (FORMER DIRECTOR OF BUREAU OF THE BUDGET), Trans. 751

SCHULZ, LEONARD
Appointed to escort committee, Trans. 1

SCHWINDEN, TED (COMMISSIONER OF STATE LANDS), Trans. 1292, 1991, 1992, 1995, 2147

SCHYE, ELMER, Trans. 1480

SCIENTIFIC AREAS, Vol. I 193; Vol. II 553, 558, 931-932, 933—934, 939—940, 1068, 1099; Trans. 1351—1352

SEARCHES AND SEIZURES. Vol. 198: Vol. II 621. 633 958, 963,967, 970, 1039, 1088; Trans. 1682—1689, 1751, 1851, 1852

SEARCH WARRANTS, Vol. 198; Vol.621I, 63958,963. 967, 970, 1039, 1088; Trans. 1682, 1683, 1638

SEAT OF GOVERNMENT IN HELENA, Vol. I 130—131; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Executive officers to reside at seat of government, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878

SECRETARYOFSTATE
Board of examiners, member of, Vol. I 443-444; Trans. 844
Board of **land** commissioners, member of, Vol. II 718-719, 726—727, 994, 997, 1002, 1004, 1069—1070, 1100; Trans. 1990.1991, 1992—1995
Board of pardons, member of, Vol. 1453
Candidacy for public office during term, Vol. I 436, 447, 458; Vol. II 894, 899. 904. 907. 1057. 1094: Trans. 842, 928—929
Compensation, Vol. 1320, 432., 436., 447., 458; Vol. II 894 899, 904, 907, 1057, 1094; Trans. 842, 927-928, 931-994
salary commission, Vol. I 134, 447; Vol. II 867, 874, 876, 880, 886, 1017, 1103; Trans. 578-579, 992, 993, 1084, 1572
Duties, Vol. I 319, 322, 4:15, 436, 441—443, 445—446, 457, 458, 462—463, 465: Vol. II 893-894. 898. 899, 904, 907, 1056—1057, 1093; Trans 844, 873—878, 899—900, 904-905, 1193—1194
Election, Vol. I 319, 435, 441, 444-445, 457, 462-464; Vol. II 893, 898, 904, $06, 1056, 1093; Trans. 878—883
Elimination as constitutional office, Trans. 1715—1716
Executive branch, member of, Vol. I 319, 435, 441, 457, 462-463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 843, 845, 850, 994, 1715—1716
Impeachment, Vol. I 112, 276-277, 378—379, 391-392, 397-398, 406-407; Vol. II 821, 863, 865, 869—870, 871—872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1587—1590, 2550
Oath of office, Vol. I 125; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Other government employment prohibited, Vol. 1436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929
Qualifications, Vol. I 319-320, 435, 445, 457, 464; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 883—893, 978—986, 1693—1697
Recall, Vol. 191, 257—258, 277-278; Vol. II 816, 821-822, 824, 1020, 1024, 1025; Trans. 2720-2728, 2852-2853
Residence at seat of government required, Vol. 1319, 435, 441. 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
State **seal** to be kept and used by, Vol. 1322, 436, 446-447, 458, 465; Vol. II 894, 898,899, 904,907, 1057, 1093
Term of office, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
Vacancy in office, Vol. 1321, 436, 447-448, 458, 466; Vol. II 894, 900, 904, 907, 1057, 1094; Trans. 842. 932-933

SECTARIAN **SCHOOLS**
Aid to sectarian schools prohibited, Vol. I 137, 189, 222, 311, 312, 313; Vol. II 629, 716, 719, 728—730, 743—747, 994, 997, 1002, 1004, 1010, 1100; Trans. 1646, ,960, 2008-2031, 2235
Appropriation for private educational purposes prohibited, Vol. I 137, 189, 222, 276, 378, 389, 397, 405—406; Vol. II 863, 869, 874, 878,882, 888, 1047, 1054, 1092, 1106; Trans. 659—670, 1535

SECURITIES
See STOCKS AND BONDS

SEELEY, EVE (STENOGRAPHER), Vol. I 69; Trans. 3035

SEITZ, PATSY (PAGE), Trans. I692

SELF-GOVERNMENT CHARTERS, Vol. I 82—83, 136, 155—156, 216, 219, 253-254; Vol. II 783, 795—796, 797—798, 1010, 1013, 1015, 1074, 1101—1102; Trans. 1512, 2512, 2524-2528, 2529, 2530, 2532, 2535

SELF-GOVERNMENT POWERS (LOCAL GOVERNMENT), Vol. I 136, 155—156, 216, 254; Vol. II 783, 785, 796—798, 1010, 1013, 1015, 1074, 1102; Trans. 2512, 2528—2534, 2548

SELF GOVERNMENT, RIGHT OF, Vol. II 620, 626, 957, 962, 967, 969, 1038, 1087; Trans. 1636

SELF-INCRIMINATION, Vol. I 200, 251; Vol. II 623, 641, 960, 965, 968, 972, 1040, 1089; Trans. 1751, 1776—1779

SENATE
See also LEGISLATURE-BICAMERAL; LEGISLATURE-UNICAMERAL
Accelerated effective date of Article V, sections 6, 14, Vol. II 1082; Trans. 3004, 3006, 3007—3008
Delayed effective date of Article V, sections I, 2, 3, Vol. II 1082; Trans. 1570—1571, 3004-3005, 3007-3008
Districts, composition of, Vol. I 162—163, 274, 278, 381, 398—399, 407—408; Vol. II 865—866, 872%-873,875, 878—879, 883—884, 885, 888—889, 1050—1051, 1054—1055, 1092—1093, 1107; Trans. 545.546, 551, 559, 562,564, 570, 680—696, 711—725, m-147. 762, 765, 766, 767, 769, 775, 1568, 1569, 1590—1593, 1597
Election and terms of members, Vol. I 106, 275, 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1107; Trans. 785, 789, 1568—1569
members in office on effective date of new constitution, Vol. II 1082; Trans. 1568—1571. 1591—1593. 1628—1629, 3005, 3007-3008
Impeachment, tribunal for, Vol. I 84, 276, 398, 406-407, 493, 514; Vol. II 865, 812, 874, 875, 878, 883, 885, 888, 1050, 1054, 1092, 1107; Trans. 676-677, 735
Lieutenant governor to act as president, Vol. I 181, 320, 322, 403, 444; Trans. 600,880, 900, 970
Number of members, Vol. I 274,395, 400—401, 411; Vol. II 864, 871, 875, 876, 880,885, 886, 1049, 1052, 1091, 1106; Trans. 690, 744,
Vesting of legisla779—785,819, in 821—826, 1595—1610 powers senate, Vol. I 274, 395, 400; Vol. II 864, 871, 876, 876, 880, 885, 886, 1049, 1052, 1091, 1106; Trans. 628, 775—779, 785, 789

SENATE CHAMBERS
Renovation of, Trans. 786

SENIOR CITIZENS
Provision of economic assistance and social and rehabilitative services for, Vol. I 297, 310; Vol. II 627, 674-675, 979, 983, 985, 988, 1076, 1102; Trans. 2270—2300
Tax credit for the elderly, Trans. 1420, 1421

SEPARATION OF POWERS AMONG BRANCHES OF GOVERNMENT, Vol. I 186; vol. II 815, 818, 1019, 1022, 1025, 1043, 1090; Trans. 676, 698, 699, 704, 851, 1011, 1036, 1124, 2377, 2378, 2383, 2523, 2689, 2690—2695

SERVICEMEN AND SERVICEWOMEN, Vol. I 339—340; Vol. II 961, 966, 973, 1042, 1090; Trans. 431—433, 1842—1843
See also MILITARY AFFAIRS; VETERANS

SESSIONS OF THE LEGISLATURE
Bicameral
annual, Vol. I 395, 402; Vol. II 876, 880—881, 886—887, 1052, 1091; Trans. 579-593, 796-797, 813-829
biennial, Vol. I 106, 414-415; Trans. 582-592, 813, 816—819
length of, Vol. 12'75, 280, 395. 402, 414; Vol. II 876, 881, 886-887, 1052, 1091; Trans. 579-593, 796—797, 813—829, 1482
open to public, Vol. I 276, 396, 403-404; Vol. II 864, 871, 874,877, 881, 885,887, 1049, 1053, 1092, 1107; Trans. 603-625, 1501, 1651, 1680
special sessions, Vol. I 106, 183, 231, 275, 321, 395, 402, 414—415, 438, 452, 460; Vol. II 876—877, 881, 887, 901-902, 904, 909, 1052, 1059, 1091, 1095; Trans. 579—593, 817, 826, 956, 958—961, 1702—1704
governor's power to convene legislature, Vol. I 106, 183, 231, 275, 321, 395,402, 414—415, 438, 452, 460; Vol. II 876-877, 881, 887, 901-902, 904, 909, 1052, 1059, 1091, 1095; Trans. 5X-593, 817, 826, 958—961, 1702-1704
members' power to convene legislature, Vol. I 183, 275, 321, 395, 402, 414—415, 438, 452, 460; Vol. II 876,881, 887, 901—902, 904, 1052, 1091; Trans. 579—582, 585—587, 590—593, 817, 826, 956, 958-961
Parliament, Vol. I 268; Trans. 749-759
Unicameral
annual, Vol. I 110,376, 384-385; Vol. II 861, 867—868, 874, 1046, 1105; Trans. 579—593, 796—797, 813-829
length of, Vol. 1376, 384-385; Vol. II 861, 867—868, 874, 1046, 1105; Trans. 579-593, 796-797, 813-829, I482
open to public, Vol. I 111, 377, 384, 387; Vol. II 862, 868, 874, 1047, 1105; Trans. 603-625, 1501, 1651, 1680
special sessions, Vol. I 110, 376, 384-385; Vol. II 861, 868, 874,909, 1046, 1059, 1095, 1105; Trans. 579-593, 817, 826, 956, 958-961, 1702—1704
governor's Power to convene legislature, Vol. I 110, 376, 384-385; Vol. II 861, 868, 874, 909, 1046, 1059, 1095, 1105; Trans. 579—593, 817, 826, 95X-961, 1702—1704
majority and minority leaders' power to convene legislature, Vol. I 110
members' power to convene legislature, Vol. I 110, 376, 384-385; Vol. II 861, 868,874, 1046, 1105; Trans. 579-582, 585—587, 590—593, 817, 826,956, 958-961

SEVENTH DAY ADVENTISTS, Trans. 2370

SEXUAL DEVIATION, Trans. 1848—1850

SEXUAL DISCRIMINATION, Vol. 194, 126, 148, 149, 161, 340, 454, 460; Vol. II 620, 628, 957, 962, 967, 969, 1038, 1087; Trans. 417, 1642-1646
Non-discrimination in education, Vol. II 719, 730-731, 994, 997-998, 1002, 1004, 1070, 1100; Trans. 2031—2045, 2623

SHANNON, EDWIN (INTERN), Vol. I 70; Vol. II 578; Trans. 3036

SHERWOOD, VIVIAN (PRINTING DEPARTMENT), Trans. 3036

SHIPP, ANDY (PAGE), Trans. 2209

SHORTBALLOT
See BALLOTS, Constitution

SHOUP, CONGRESSMAN RICHARD, Trans. 3036

SIDERIUS, HENRY L. (KALISPELL)
Biography, Vol. I 59
Committee assignment, Vol. I27
Delegate Proposal no. 93 (collective bargaining), Vol. I 207—208
Remarks by, on
ballot, constitution, Trans. 2985
declaration of rights (Article II)
right to bear arms, Trans. 1739
departments and institutions (Article XII)
institutions, Trans. 2271, 2274
public utility districts, Trans. 2412
veterans, Trans. 2271, 2274
education and public lands (Article X)
board of land commissioners, Trans. 2002
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1217, 1238
reclamation, Trans. 1238, 1288—1289
water rights. Trans. 1341
executive (Article VI)
officers, Trans. 869
twenty departments, Trans. 935
general government (Article III)
gambling, Trans. 2743
judiciary (Article VII)
probate attorney, Trans. 1133
supreme court organization, Trans. 1048
terms and pay, Trans. 1152
legislature (Article V)
qualifications, Trans. 803—804
size, Trans. 765
local government (Article XI)
recall, Trans. 2553
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1484
property tax administration, Trans. 1402
Seconds nomination of Sterling Rygg as Western District Vice President, Trans. 56

EVERS, BRUCE (RESEARCH ANALYST), vol. I 69; Vol. II 716; Trans. 2143, 3035

EWERT, DEL, Trans. 1450

NATURES OF CONVENTION DELEGATES, Vol. II 1110—1113

ION, CLARK E. (BILLINGS)
ppointed to Closing Ceremony Committee, Trans. 2426
ography, Vol. I 59
mmittee assignment, Vol. I 27
marks by, on
allot, constitution, Trans. 1484, 1485, 2905

SIMON, CLARK E (Cont.)
Remarks by, on (Cont.)
constitutional revision (Article XIV)
amendment by legislature, Trans. 502
declaration of rights (Article II)
alcohol and drug abuse, decriminalization of, Trans 1844—1845
death penalty, Trans. 1818—1819
education and public lands (Article X)
public land trust. Trans. 2144—2145
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1220
water rights. Trans. 2213
executive (Article VI)
duties, Trans. 924
officers, Trans. 853—854
legislature (Article V)
size, Trans. 764
unicameral/bicameral, merits of, Trans. 2905
local government (Article XI)
initiative and referendum, Trans. 2548-2549
self-government powers, Trans. 2534
voter review of local government, Trans. 2557
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1448—1449, 1484—1485
suffrage and elections (Article IV)
absentee voting, Trans. 432-433

SIMONSON, PASTOR LIONEL B.
Invocation. Trans. 1—2

SINGLE-MEMBER DISTRICTS
See also DISTRICTING AND APPORTIONMENT
County commissioners. Vol. I 104
Legislature, Vol. I 162—163, 274, 278, 381, 383, 392—393, 398-399, 407-408; Vol. II 865—866, 872-873, 875, 878-879, 883-884, 885, 888-889, 1050-1051, 1054—1055, 1092—1093, 1107; Trans. 545. 546. 550—561, 562, 564, 569, 570, 577, 680—696, 711—725, 726, 735-747, 748, 760—761, 763, 765, 766, 767, 789, 775, 783, 785,789, 798, 799, 801,803, 804, 831, 1568, 1569, 1590—1593, 1597, 1602—1604, 1614—1615

SKAGGS. ROBERT (INTERN), Vol. I 70, 334,350; Vol. II 813; Trans. 373, 3036

SKARI, CARMAN M. (CHESTER)
Biography, Vol. 159
Committee assignment, Vol. I 27
Invocation, Trans. 2208
Remarks by, an
ballot, constitution, Trans. 2902
constitutional revision (Article XIV)
amendment by legislature, Trans. 498, 524
declaration of rights (Article II)
right to bear arms. Trans. 1739
right to know, Trans. 1677—1678
departments and institutions (Article XI)
labor, working hours, Trans. 2325
public assistance. Trans. 2289
public utility districts, Trans. 2412—2413
education and public lands (Article X)
aid to sectarian schools, Trans. 2018—2019
board of land commissioners, Trans. 1996
boards of education, Trans. 2122, 2139
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1230

SKARI, CARMAN M (Cont.)
Remarks by, on (Cont.)
executive (Article VI)
duties, Trans. 922-923
general provisions (Article XIII)
salary commission, Trans. 577
judiciary (Article VII)
forfeiture of judicial position, Trans. 1149
legislature (Article V)
bills, Trans. 653
compensation, Trans. 573, 577
districting and apportionment, Trans. 680—682, 684, 688, 715,738, 1593
legislative post-auditor, Trans. 2797
qualifications, Trans. 561—562, 570
size, Trans. 766, 1612
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2238
property tan administration, Trans. 1397
two-mill levy, Trans. 1552—1553
suffrage and elections (Article IV)
poll-booth registration, Trans. 409

SKARI, TALA (PAGE), Trans. 1692, 2861

SLANDER, Vol. II 621, 630,968, 963, 970, 1038, 1087; Trans. 1649—1651. 1675

SLOT MACHINES, Trans. 2735, 2736
See also GAMBLING

SMALL CLAIMS COURT, Vol. I 500—501; Trans. 1014, 1020, 1030, 1057, 1074—1076, 1078, 1142—1144, 1158
See also COURTS

SMALL, FRANK
Thanked for sending flowers to the lady delegates, Trans. 312

SMITH, ED (READING CLERK), Vol. I 69; Trans. 3035

SMITH, GAIL (TYPIST), Vol. I 69; Trans. 3035

SOCIAL AND REHABILITATIVE SERVICES, Vol. I 114, 297, 310; Vol. II 627, 674—675, 979,983, 985, 998, 1076, 1102; Trans. 2270-2300
See also PUBLIC ASSISTANCE
State institutions may not charge fees, Vol. I 297

SOLDIERS, QUARTERING OF, Vol. II 624, 645, 961, 966, 968,973, 1041, 1089; Trans. 1829—1832

SOLITARY CONFINEMENT, Vol. I 218; Trans. 1X46-1848

SOVEREIGN IMMUNITY, Vol. I 124; Vol. II 622, 637—638, 959, 964, 967-968, 971, 1039—1040, 1088; Trans. 1760—1764, 2528

SOVEREIGNTY
Popular sovereignty, Vol. II 620, 626, 957, 962, 967, 969, 1038, 1087; Trans. 1635—1636, 2232
State sovereignty, Vol. II 620, 626, 957, 962, 967, 969, 1038, 1087; Trans. 1636

SPALL, RICHARD (RESEARCH ANALYST), Vol. I 69; Vol. II 665; Trans. 240, 244, 2247, 3035

SPARKS, M. LYNN (BUTTE)
Biography, Vol. I 60
Committee assignment. Vol. I 27

SPECIAL ACTS PROHIBITED
By initiative. Vol. 1257. , 977—978; Vol. II 815. 819. 1019 1022, 1025, 1043, 1090; Trans. 2695, 2706
By legislature, Vol. I 111, 156, 276, 378, 3X9-390. 397, 406; Vol. II 863, 869, 874, 878, 882, 888, 1048, 1054, 1092, 1106; Trans. 674
By referendum, Vol. I 258, 278

SPECIAL IMPROVEMENT DISTRICTS, Vol. II 584, 590—591, 599-601, 945, 947—948, 950, 951, 1065, 1098; Trans. 1410, 1411

SPECIAL LEVIES
Livestock and agricultural commodities, Vol. I 101, 132, 246; Vol. II 550, 559, 560, 581, 586, 597-598, 936,937, 938, 941, 1076, 1102; Trans. 1199, 1366—1370, 1378, 1547, 2364, 2539—2540
Regulated companies (consumer counsel), Vol. II 980, 984,989, 1077, 1103; Trans. 2400—2404, 2421

SPECIAL PRIVILEGES, FRANCHISES OR IMMUNITIES, Vol. I 207; Vol. II 624, 644, 961, 966, 968, 973, 1041, 1089; Trans. 1829.2266-2268

SPECIAL SESSIONS OF THE LEGISLATURE
See also SESSIONS OF THE LEGISLATURE
Governor's power to convene, Vol. 106,I 110, 183, 231, 275, 321, 376, 384—385, 395. 402. 414—415, 438, 452, 460; Vol: II 861, 868, 874, 876—877, 881, 887, 901—902, 904, 909, 1046, 1052, 1059, 1091, 1095, 1105; Trans. 579-593, 817, 826, 95X-961, 1702-1704
Majority and minority leaders' power to convene, Vol. I 110
Members' power to convene, Vol. I, 110, 183, 275, 321, 376, 384—385, 395, 402, 414—415, 438, 452, 460; Vol. II 861, 868, 874, 876, 881, 887, 901-902, 904, 1046, 1052, 1091, 1105; Trans. 579-582, 5X5-587, 590—593, 817, 826, 956, 958—961

SPEECH, FREEDOM OF, Vol. I 127; Vol. II 621, 629-630, 958, 963, 970, 1038, 1087; Trans. X49-1651, 1675, 2491, 2493

SPEEDY PUBLIC TRIAL, RIGHT TO, Vol. II 623, 640—641, 960, 966, 972, 1040, 1089; Trans. 1776

SPEEDY REMEDY FOR INJURY, Vol. 188, 263, 318; Vol. II 622, 636-637, 959, 964, 971, 1039, 1088; Trans. 1753—1760

SPEER, LUCILE (MISSOULA)
Appointed to Closing Ceremony Committee, Trans. 2426

SPEER, LUCILE (Cont.)
Biography, Vol. I GO
Committee assignment, Vol. 121
Delegate Proposals
no. 70 (consumer protection). Vol. I 172
no. 71 (merit system), Vol. I 173
"0. 126 (local government article), Vol. I 253—254
Remarks by, on
constitutional revision (Article XIV)
constitutional preparatory commission, Trans. 460—461
declaration of rights (Article II)
death penalty, Trans. 1802
participation, right of, Trans. 2635
departments and institutions (Article XII)
labor
collective bargaining, Trans. 2334
department of, Trans. 2312
public assistance, Trans. 2298
education and public lands (Article X)
hoards of education, Trans. 2138—2139, 2584
libraries, Trans. 1964
state university funds, accounting and audit, Trans. 2584
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1231
executive (Article VI)
officers, Trans. 864
general provisions (Article XIII)
people's advocate, Trans. 704
judiciary (Article VII), Trans. 1031
legislature (Article V)
bills, Trans. 760
disqualification, Trans. 591
sessions, Trans. 590
unicameral/bicameral, merits of, Trans. 760
local government (Article XI)
self-government
charters, Trans. 2524—2526, 2528
powers, Trans. 2529-2530, 2532, 2534
voter review of local government, Trans. 2558
revenue and finance (Article VIII)
investment of public funds, Trans. 1526—1527
property tax administration, Trans. 1391
suffrage and elections (Article IV)
poll-booth registration, Trans. 411, 447
Thanks expressed to far information booklet, Trans. 107
"We, the People: an Introduction to the Montana Constitutional Convention", Vol. I 72; Trans. 2365

STAFF, CONVENTION
See CONVENTION, OPERATION AND PROCEDURES, Staff

STAMM, WALTER, Trans. 2761

STAMP TAX, Trans. 2249, 2766

STARK, JOAN (PAGE), Trans. 358

STATE AGENCIES
See also DEPARTMENTS OF STATE GOVERNMENT
Number of, Vol. I 442, 450; Trans. 580, 944
Offices may not be relocated, Vol. I 273
Review of actions by, Vol. I 85, 141, 511, 517, 550—551, 561, 562; Vol. II 914, 918, 925, 1061, 1096; Trans. 1049—1054, 1073, 1074, 1260

STATE AUDITOR
See AUDITOR

STATE BOARD OF EDUCATION, Vol. I 256, 282, 287. 443; Vol. II 719, 731—735, 736, 740, 994-995, 998—999, 1002, 1004—1005, 1070—1071, 1100; Trans. 858, 859, 860, 862, 863, 865, 874, 2049-2091, 2096—2103, 2125, 2134, 2159—2174, 2590
Attorney general ex officio member. Vol. I 287; Trans. 2058—2063, 2079—2081, 2102
Governor ex officio member, Vol. I 287; Trans. 2058—2063, 2065, 2079-2081, 2084, 2087, 2089—2090
Superintendent of public instruction
executive officer, Trans. 2058—2063, 2067, 2072, 2081, 2084, 2087, 2096—2103
ex officio member, Vol. I 287, 443; Trans. 860, 2067, 2079—2081, 2087. 2089—2090

STATE BOARD OF EQUALIZATION, Vol. I 264; Vol. II 593; Trans. 1379—1409, 1414, 1490, 1554, 2153, 2252, 2380

STATE BOUNDARIES, Vol. I 118, 195; Val. II 823, 1020—1021, 1024, 1025; Trans. 2760—2762, 2828, 2854-2855

STATE CAPITOL AT HELENA, Vol. I 130—131; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Executive officers to reside at seat of government, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878

STATE DEBT, Vol. II 583, 585—586, 594, 946, 948, 950, 952, 1066, 1080, 1098, 1107; Trans. 1376, 1490—1508

STATE ENGINEER, Vol. I 214; Trans. 1343—1344

STATE EXAMINER, Vol. I 432, 441—442, 444, 449; Trans. 842, 843, 844-845, 915, 923, 934, 1001
See also BOARD OF EXAMINERS

STATE LANDS
See PUBLIC LANDS

STATE LANDS AND INVESTMENTS, DEPARTMENT OF, Trans. 1526—1527, 1529, 1530, 1533, 1535, 1540, 2001, 2056, 2143, 2146

STATE LIABILITY, Vol. I 124; Vol. II 622, 637—638, 959 964, 967—968, 971, 1039—1040, 1088; Trans. 1760—1764, 2528

STATE SOVEREIGNTY, Vol. II 620, 626, 957, 962, 967, 969, 1038, 1087; Trans. 1636

STATE SUBJECT TO SUIT. Vol. I 124; Vol. II 622 637—638, 959, 964, 967—968, 971, 1039—1040, 1088; Trans. 1760—1764, 2528

STATE TAX APPEAL BOARD, Vol. II 582, 585, 592—594; Trans. 1390, 1392, 1393, 1402, 1407

STATE TREASURER
See TREASURER

STATEWIDE BUDGETING AND ACCOUNTING SYSTEM, Vol. II 596; Trans. 1517, 2055, 2056, 2120, 2577, 2578, 2581, 2582, 2585

STATEWIDE PROPERTY TAX LEVY FOR EDUCATION, Vol. II 725; Trans. 2165, *2408, 2539, 2541, 2543*
See also TWO-MILL LEVY

STATUTES
See BILLS

STEELE, ERNEST (RAILROAD AND PUBLIC SERVICE COMMISSIONER), Trans. 2

STEIGER, SAM (UNITED STATES CONGRESSMAN, ARIZONA), Trans. 2354-2355

STEPHENSON, ALEX (STATE TREASURER), *Trans.* 2

STOCKS AND BONDS
Investment of public funds in, Vol. II 583, 602—603, *946,* 949, 950, 952—953, 1066—1067, *1098;* **Trans.** 1517—1546
Taxation of, Vol. I 306; Vol. II 579—580, 599, 600, 601; *Trans.* 1411, 1412, 1413, 1414

STOWAKIN, ROGER, Trans. 1965

STRIKES, Vol. I 185; Vol. II 689, 691-694; Trans. 2328, 2329, 2330, 2332, 2333, 2336, 2351—2352, 2363, 2367—2368
See also COLLECTIVE BARGAINING; RIGHT TO WORK

STUDER, R.J., SR. (BILLINGS)
Biography, Vol. I 60
Committee assignment, vol. I28
Delegate Proposal
no. 78 (right to work,, Vol. I 185
Remarks by, on
constitutional revision (Article XIV)
constitutional convention, Trans. 487
declaration of rights (Article II)
convicts, rights of, Trans. 530
death penalty, Trans. 1807
participation, right of, Trans. *1660*
right to bear arms, Trans. 1732—1733
right to work, Trans. 2351—2359, 2364—2365
self-incrimination and double jeopardy, Trans. 1778-1779
departments and institutions (Article XII)
agriculture, working hours, Trans. 2604
labor
collective bargaining, Trans. 2329-2330
department of. Trans. 2313
working hours; Trans. 2321, 2325-2326, 2604
education and public lands (Article X)
aid to sectarian schools, Trans. 2019-2020
board of land commissioners, Trans. 1999
environment and natural resources (Article IX)
reclamation, Trans. 1285, 1353, 1358
water rights, Trans. 1317
executive (Article "I)
compensation, Trans. 993
qualifications, Trans. 895

STUDER, R.J (Cont.)
Remarks by, on (Cont.)
general government (Article II,, initiative, Trans. 2727
general provisions (Article XIII)
code of ethics, Trans. 794
judiciary (Article VII)
campaign expenses, Trans. 2195
probate attorney, Trans. 1135
legislature (Article V)
organization and procedure, *Trans.* 606
parliamentary form of government, Trans. 755
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1477—1478, 1485, 2717
suffrage and elections (Article IV)
eligibility for public office, Trans. 530
Resolution (Presidents Washington and Lincoln), Trans. 707

STUTSMAN, LEWIS (DEPUTY COMMISSIONER OF LICENSES, NEW YORK CITY), Trans. *1735*

STYLE, DRAFTING, TRANSITION AND SUBMISSION COMMITTEE
Commended, Trans. 1193
Membership and staff, Vol. 121; Trans. 323
Officers, appointment of, Trans. 95
Reports
(final report, Vol. II 1033—1085)
(preliminary reports, Vol. II 837—1032)
adoption schedule
debate in committee of the whole, Trans. 2946-2948, 2997—3004
text and comments, Vol. II 1080—1081
compact with the united states
debate in committee of the whole, Trans. 2567-2572, 2921
text and comments, Vol. II X38-841, 1029—1032, 1037
constitutional revision
debate in committee of the whole, Trans. 1187—1196, 2929
text and comments, Vol. II 850—858, 1078—1079
declaration of rights
debate in committee of the whole. Trans. 2476—2511, *2921*
teat and comments, Vol. II 950-963971038—1042
education and public lands
debate in committee of the whole, *Trans.* 2572-2594, 2927, 2928
text and comments, Vol. II 992—1006, 1034, 1069—1072
executive
debate in committee of the whole, *Trans.* 1692—1724, 2925-2926
text and comments, Vol. II 892—910. 1034. 1056-1060
general government
debate in committee of the whole, Trans. 2820—2831, 2921-2922, 2996
text and comments, Vol. II 1018—1025, 1043-1044
judiciary
debate in committee of the whole, Trans. 2176—2206, *2431-2433, 2926*
text and comments, Vol. II 912-927. 1034. 1061—1064
legislative — bicameral
debate in committee of the whole, Trans. 1594—1610, 1615—1627, 1859—1860, 2922—2925, 2996
text and comments, Vol. II 876—889, 1034, 1052—1055
legislative — unicameral
debate in committee of the whole, *Trans.* 1568—1594, 1596—1600, 1611—1616, 1623—1624, 1627—1629, 1857—1859, 2922—2925, 2997
text and comments. Vol. II 861—875 1034 1046—1051

STYLE, DRAFTING, TRANSITION AND SUBMISSION COMMITTEE (Cont.)
Reports (Cont.)
local government
debate in committee of the whole, Trans. 2816—2819, 2928
text and comments, Vol. II 1008—1015, 1073—1075
natural resources and agriculture
debate in committee of the whole, Trans. 2210—2217, 2928—2929
text and comments, Vol. II 931-941, 1068, 1076
official ballot
debate in committee of the whole, Trans. 2858—2860, 2862-2863, 2946—2948
text and comments, Vol. II 1084-1085
preamble
debate in committee of the whole, Trans. 2476, 2921
text and comments, Vol. II 1036
public health, welfare, labor and industry
debate in committee of the whole, Trans. 2595-2613, 2928-2929
text and comments, Vol. II 976—989, 1076, 1077
revenue and finance
debate in committee of the whole, Trans. 2217—2246, 2433—2434, 2926—2928
text and comments, Vol. II 944—953, 1034, 1065—1067
suffrage and elections
debate in committee of the whole, Trans. 1185—1187, 1196—1197, 2922
text and comments, Vol. II 844—847, 1045
transition schedule
debate in committee of the whole, Trans. 2863, 2947, 3004-3008
text and comments, Vol. II 1082~1083
Responsibilities and powers of, Trans. 33, 34—35, 38, 151, 180, 1815—1816, 1817, 1819—1820

SUBMISSION OF CONSTITUTION TO VOTERS, Vol. I 3—4; Trans. 116—117, 216-217, 289, 330-345, 1559—1560, 2427, 2615

SUBPOENA, SERVICE OF
See PROCESS, EXTENT OF

SUCCESSION TO OFFICE
Governor, Vol. I 181—182, 232-233, 278, 323, 438—439, 454-456, 460—461; Vol. II 896—897, W-903, 905, 909-910, 1059—1060, 1095; Trans. 880, 887, 930—931, 940—944, 966—973, 1714—1715, 1718—1720
Legislature to provide for temporary succession in case of emergency, Vol. I 278
Lieutenant governor, Vol. I 181, **233, 278, 320, 322-323,** 436,447, 458, 465-466: Vol. II 894, 899-900, 904, 907, 1057, 1094; Trans. 929, 939-944

SUFFRAGE AND ELECTIONS
See ARTICLE IV

SUFFRAGE, RIGHT OF, Vol. II 621, 634, 958, 963, 970, 1039, 1088; Trans. 1738, 1744—1745
Rights of felons, Vol. I 191, 218, 317, 336, 337—338, 341; Vol. II 845, 846, 847, ,045, 1091; Trans. 392, 395, 397-398, moo--1803, 1846—1848

SUICIDE, Vol. II 623-624, 644, 960, 966, 968, 972, 1041, 1089; Trans. 1828—1829

SULLIVAN. REVEREND BERNARD (PASTOR OF ST. MARY'S CATHOLIC CHURCH IN HELENA)
Invocation, Trans. 280

SULLIVAN, **CHARLES (RESEARCH ANALYST),** Vol. I 70; Vol. II 551; Trans. 240, 244, 3035

SULLIVAN, **KATHERINE (INTERN), Vol. I 70.485;** Trans. 355, 388, 3036

SULLIVAN, **LOUISE (TYPIST-STENOGRAPHER), Vol.** I 70; Trans.3035

SULLIVAN, VERONICA (BUTTE)
Appointed to Closing Ceremony Committee, Trans 2426
Biography, Vol. I 61
Committee assignment, Vol. 128
Delegate Proposal
no. 163 (rights of committed), Vol. I 310
Invocation, Trans. **1564**
Nominated Western District Vice President, Trans. 56
declines nomination, Trans. 57
Remarks by, on
declaration of rights (Article II)
debt, imprisonment for, Trans. 1792
excessive sanctions, Trans. 1771
restoration of rights, Trans. 2304—2306
suffrage, Trans. 1745
departments and institutions (Article XII)
public service commission, Trans. 2385
general provisions (Article XIII)
consumer counsel. Trans. 2401

SUMMONS, SERVICE OF, Trans. 1056
See also PROCESS, EXTENT OF

SUNDAY CLOSING LAW, Vol. I 220; Trans. 2369—2372

SUPERINTENDENT OF PUBLIC INSTRUCTION
Appointment, Vol. I 432, **435, 441. 443, 444-445; Trans. 842,** 843, 844, 847, 854, 857—866, 870—878, **933, See also Election**
Board of land commissioners, member of, Vol. I 329; Vol. II 718—719, 726-727, 994, 997, 1002, 1004, 1069~1070, 1100; Trans. 860, 863, 864, 865, 874, 1990, 1991, 1993
Board of public education, ex officio member of, Vol. II 719—720, 733—736, 995, 998, 1002, 1005, 1071, 1100; Trans. 2049—2052, 2096, 2097, 2100, 2103
Board of regents of higher education, ex officio member of, Vol. II 720, 735-736, 995, 998—999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2132—2133
Candidacy for public office during term, Vol. 1436, 447, 458; Vol. II 899, 904, 907, 1057, 1094; Trans. 842, 928-929
Compensation, Vol. I 320, 432, 435, 436, **441, 447, 458;** Vol. II 894, 899, 904,907, 1057, 1094; Trans. 842, 870. 927—928. 991—994, 2059
salary commission. Vol. 1'134, 447; Vol. II 867,874, 876, 880, 886, 1077, 1103; Trans. 578—579, 992, 993, 1084, 1572
Duties, Vol. 1319, 435, 441, 443, 457, 462—463; Vol. II 893—894, 898, 899, 904, 907, 1056—1057, 1093; Trans. 844, 873—878, 899—900, 927, 2049-2091, 2096, 2097, 2099, 2103, 2104, 2106

SUPERINTENDENT OF PUBLIC INSTKUCTION (Cont.)
Election, Vol. 1283, 319, 432, 435, 441, 443, 444-445, 457, 462—464; Vol. II 893, 898, 904, BOG, 1056, 1093; Trans. 870—878, 878-883, 2052, 2065, 2067, 2068, 2075, 2103, See also Appointment
Executive branch, member of, Vol. I 319, 435,441, 457, 462—463; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 842, 843, 844, 845, 850, 857—865, 871, 883, 994
Impeachment, Vol. I 112, 276—277 378—379, 391—392, 397-398, 406—407; Vol. II 821, 863, 865, 869—870, 871-872, 874, 875, 878, 883, 885, 888, 1048, 1050, 1054, 1092, 1106, 1107; Trans. 675—680, 1587—1590, 2550
Oath of office, Vol. I 125; Vol. II 815, 819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Other Government employment prahibited. Vol. 1436, 458; Vol. II 894, 899, 904, 907, 1057, 1094; Trans. 928-929
Qualifications, Vol. I 319—320, 435, 441-443, 457, 464; Vol. II 893, 898-899, 904, 906, 1056, 1093; Trans. 858, 861, 870, 874, 883-893, 978, 986—987, 1693—1697
Recall, Vol. 191, 257—258, 277-278; Vol. II 816, 821-822, 824, 1020, 1024, 1025; Trans. 2720—2728, 2852-2853
Residence at seat of government, Vol. 1319,435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873-878
State board of education
executive officer of, Trans. 2058—2063, 2067, 2072, 2081, 2087
ex officio member of, Vol. I 287, 443; Trans. 860, 2067, 2079-2081, 2087, 2089—2090
Term of office, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898,904, 906, 1056, 1093; Trans. 873—878
Vacancy in office, Vol. I 321, 436, 448, 458, 466; Vol. II 894, 899400, 904. 907, 1057, 1094; Trans. 842

SUPERVISORY CONTROL, WRIT OF, Vol. 185, 140, 493; Trans. 1039, 1040, 1041, 1073, 1163

SUPREME COURT
See also COURT CASES CITED; COURT OF APPEALS; JUDGES; JUDICIARY
Administrative control over other courts. Vol. I 84 510. 515—516; Trans. 1020—1021, 1036—1044, 1071—1073
Assignment of district court judge for temporary service from one district or county to another, Vol. 186, 488,497, 511, 518; Vol. II 914, 918, 922, 925, 1062,1096; Trans. 1041, 1042, 1045—1046, 1073, 1080-1083, 1163
Building, Trans. 1066—1067, 1493
Clerks of court, Vol. 185, 484, 487, 495, 513, 515—516, 524; Trans. 847, 1012, 1014,1021, 1029, 1042. 1069, 1127—1129, 1163, 2690-2691, 2708, 2716, 2772—2779,3005
Commission on practice, Trans. 1025, 1095, 1124—1125
Composition of court, Vol. 185, 140—141, 486—487, 494—495, 510,516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044-1049, 1066—1071
Cast of, Trans. 1046, 1047, 1048
Court administrator, Trans. 1021, 1042
Court of record, Vol. I 84,490, 503; Trans. 1050, 1077
Jurisdiction, Vol. I 84—85, 88-89, 112, 140, 304, 486, 488, 493-494, 498, 510, 515—516, 518; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 652, 1012, 1015, 1020—1021, 1025, 1036—1044, 1071—1073, 1162—1163, 1344, 2177—2178

SUPREME COURT (Cont.)
Jury, Vol. I 494
Law clerks. Trans. 1045. 1046, 1045., 1066
Number of justices, Vol. I 85, 140—141, 486, 494-495, 510, 516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1044—1049, 1066—1071
Opinions and decisions to be in writing, Vol. 1491, 505, 510, 516; Vol. II 913. 917, 922, 924, 1061, 1096; Trans. 1044, 1063—1066
Per curiam decisions, Trans. 1064, 1065
Process extends to all "arts of state. Vol. II 511. 517 518, 913, 917, 922, 924, 1061, 1096; Trans. 1049, 1073—1080,1162—1163
Rulemaking power, Vol. 184, 140, 510, 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1012, 1015, 1021—1022, 1025, 1036—1044, 1069, 1071-1073, 1162—1163
Substitution of district court judge for justice, Vol. I 85, 141, 205, 487,494—495, 510, 516; Vol. II 913, 917. 922. 924. 1061 1096; Trans. 1044—1049, 1066—1069, 1073, 1081, 1122
Supervisory control over other courts, Vol. 184, 140, 493, 510, 515—516; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1036-1044, 1071—1073, 1127, 1162—1163
Vesting of judicial power in, Vol. 184, 140, 486, 493, 510, 514; Vol. II 913,917, 922, 924, 1061, 1096; Trans. 1019, 1035—1036, 1074, 1158
Workload, Trans. 1046—1048, 1058, 1066—1067, 1141

SURRENDERCLAUSE
See ARTICLE VIII, Section 2

SWANBERG, RANDALL
Appointed to escort committee, Trans. 1

SWANBERG, WILLIAM H. (GREAT FALLS)
Biography, Vol. I 61
Committee assignment, Vol. I 28
Remarks by, on
ballot, constitution, Trans. 2866, 2901, 2912, 2949-2950, 2954, 2956, 295X-2959, 2970, 2984—2985, 2987, 2990, 2993-2994
constitutional revision (Article XIV)
amendment by initiative, Trans. 510
departments and institutions (Article XII)
institutions, Trans. 2270—2271, 2273—2275
labor
collective bargaining, Trans. 2329, 2334
compensation of state employees, Trans. 2350
department of, Trans. 2312
working hours, Trans. 2320, 2323
merit system, Trans. 2344—2346
public assistance. Trans. 2278-2285, 2290, 2297
public utilities
consumer protection, Trans. 2398
districts, Trans. 2409—2410, 2415-2416, 2609, 2609—2610
public service commission, Trans. 2378
veterans, Trans. 2270—2271, 2273—2275
education and public lands (Article X)
hoard of land commissioners, Trans. 2000
boards of education, Trans. 2078
environment and natural resources (Article IX)
environment, protection and improvement of, Trans 1238—1239
reclamation, Trans. I286
water rights, Trans. 1335, 1347—1348
executive (Article VI)
election, Trans. 881
officers, Trans. 852. 868
qualifications, Trans. 887, 897

SWANBERG, WILLIAM H (Cont.)
Remarks by, on (Cont.)
general provisions (Article XIII)
non-municipal corporations
cumulative voting, Trans. 2259
retrospective laws, Trans. 2267
people's advocate, Trans. 830—831
judiciary (Article VII)
campaign expenses, Trans. 1177, 2200
judicial districts, Trans. 1081—1082
selection, Trans. 1089—1090, 1109—1110, 1112—1113
legislature (Article V)
organization and procedure, Trans. 630—631
qualifications, Trans. 556-557, 561, 564
sessions, Trans. 589
local government (Article XI)
revenue sharing, Trans. 2541—2542
revenue and finance (Article VIII)
highway revenue "on-diversion, Trans. 1448, I484
investment of public funds, Trans. 1521—1523, 1526. 1530—1531
state debt, Trans. 1493, 1495—1496, 1505—1506
suffrage and elections (Article IV)
poll-booth registration, Trans. 402, 408
Seconds nomination of Harold Arbanas as Convention Secretary, Trans. 62

SWINBURNE, ALGERNON CHARLES, Trans. 508

TASK FORCE ON ECONOMIC GROWTH AND OPPORTUNITY, Trans. 2017

TAX APPEALS, Vol. II 582, 585, 589, 592—594, 946, 948, $50, 952, 1066, 1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489—1490

TAXATION
See also REVENUE AND FINANCE
Agricultural and timber lands, Vol. I 129; Trans. 1397
Agricultural products, livestock, Trans. 1414, 1420, See also SPECIAL LEVIES, Livestock and agricultural commodities
Beer and liquor taxes, Trans. 2248, 2255
Cigarette tax, Vol. I 592; Trans. 1444, 1457, 1495, 1497
Excise tares, Vol. I 167; Trans. 1386, 1413, 1502, 1512, 1550, See also Sales and "se taxes; HIGHWAY REVENUE NON-DIVERSION
Freeport, Trans. 1420. 1421. 1422
Fuel tax, See HIGHWAY REVENUE NON-DIVERS ION
Gross proceeds tar, Trans. 1376, 1414
Gross vehicle weight, See HIGHWAY REVENUE NON-DIVERSION
Income-producing property, Vol. II 600
Income tax. Vol. I 580. 588; Trans. 1377, 1386. 1399. 1413., 1425; 1457, 1495, 1502, 1512: 1550: 1555, 2153, 2155, 2157, 2254. 2413, 2763
Indian lands, Vol. I$$
Inventories, Trans. 1414
Mines, minerals and mining stocks, Vol. I 174; Vol. II 580, 588; Trans. 1120, 2254
Motor vehicles. See HIGHWAY REVENUE NON-DIVERSION
Net proceeds tax, Vol. II 580
Non-residents' land, Vol. I$9
Oil and gas, Vol. II 580, 2155, 2254
Personal property, Vol. I 95, 114, 306; Vol. II 579, 599, 600; Trans. 1377, 1397. 1399, 1411, 1412, 1419, 1557, 2249, 2537, 2538, 2539, 2540, 2542

TAXATION (Cont.)
Property taxes
appeal procedure, Vol. II 582, 585, 589, 592—594, 946, $48, 950, 952, 1066, 1098; Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489—1490
exemptions, Vol. 199, 167, 306, 326; Vol. II 580, 584, 588, 590—591, 599—601, 945, 947—948, $50, 951. 1065, 1097—1098; Trans. 1379, 1410—1427, 1497, 1556—1558, 2217—2218
rate of taxation for operation of state government, Trans. 1549-1556
statewide levy far education, Vol. II 725; Trans. 2165, 2408, 2539, 2541, 2543, See also two-mill levy
two-mill levy, Vol. II 581; Trans. 1501, 1549—1556, 1967, 1985, 2153, 2165, 2199, 2200, 2538, See also statewide levy for education
valuation of property
appraisal, assessment and equalization, Vol. I 129, 174, 264—265, 306—307; Vol. II 579—580, 582, 584, 588-591, 945, 947, 950, $51, 1065, 1097; Trans. 1379—1409, 1501, 2158, 2219, 2286, 2289, 2518
equal valuation, Vol. II 581, 582, 584, 589—590, $45, 947, 950,951, 1065, 1097; Trans. 1376, 1409—1410, 2153, 2289
Public lands, See Tax exemptions, government-owned property
Public utilities, Trans. 2406, 2407, 2408, 2410, 2411, 2412, 2413, 2419, See also Tax exemptions, municipal corporations
Railroads and transportation systems, Trans. 1551—1552
Recreational lands, Vol. I 129
Regulated companies, Vat. II $80, 984, 989, 1077, 1103; Trans. 2400—2404, 2421
Sales and "se taxes, Trans. 1399, 1420, 1425, 1547—1549, 1550, 1553, 1554, 1555, 1970, 1982, 1983, 2153, 2155, 2235, 2405, 2530, 2531, 2532, 2533. 2541
School lands, See Tax exemptions, government-owned property
Stamp tax, Trans. 2249, 2766
Tax exemptions
agricultural and horticultural societies, Vol. 1 306, 326; Vol II 590; Trans. 1410
cash and accounts receivable, Vol. I 306; Vol. II 599, 600; Trans. 1411, 1412, 1413, 1414
cemeteries, Vol. I 306, 326; Vol. II 584, 590, 599, 945, 947-948, 950, 951, 1065, 1098; Trans. 1410, 1411, 1415
charitable institutions, Vol. I 306, 326; Vol. II 584, 590—591, 599—601, 945, 947-948, 950, 951, 1065, 1097~1098; Trans. 1410, 1411, 1415
churches, Vol. I 306. 326: Vol. II 584. 590. 599. $45. 947-948, 950, 951, 1065, 1098; Trans. 1410, 1411, 1415, 2012
credit for the elderly, Trans. 1420, 1421
dwellings, Vol. II 599, 601; Trans. 1411, 1412, 1413, 1415, 1416, 1420, 1421, 1422
government-owned property, Vol. I 99, 306, 326; Vol. II 584, 590—591, 599—601, 945, 947-948, 950, 951, 1065, 1097—1098; Trans. 1410, 1411, 2219
homestead exemption, Vol. I 526—527; Vol. II 916, $21, 923, 921, 1077, 1103; Trans. 1147, ,413
hospitals, Vol. I 306, 326; Vol. II 584, 590, 599, 945, 947-948, 950, 951, 1065, 1098; Trans. 1410, 1411,1415
household goods and furniture, Vol. I 306; Vol. II 579, 599, 600; Trans. 1377, 1411, 1412, 1413, 1417, 1419, 1423. 1557
libraries, Vol. I 326; Vol. II 584, 590, 599, $45, 947—948, 950, 951, 1065, 1097; Trans. 1410, 1411, 1415, 2539
mortgages, Vol. I 306, 326; Vol. II 590, 599, 601; Trans. 1410, 1411, 1412

TAXATION (Cont.)
Tax exemptions (Cont.)
municipal corporations, Vol. 1326; Vol. II 584, 590, 599, 945, 947—948, 950, 951, 1065, 1098; Trans. 1410,1411
new business and industry. Trans. 1418, 1422
personal property, Vol. I 306; Vol. II 599, 600; Trans. 1411, 1412, 1419, 1557
pollution control equipment, Trans. 1422, 1423
property of disabled veterans, Vol. I 326; Vol. II 699, 601; Trans. 1411, 1412, 1413, 1415, 1420, 1421. 1422
property used for educational purposes, Vol. I 306, 326; Vol. II 584, 590—591, 599—601, 945, 947—948, 950, 951, 1065, 1097—1098; Trans. 1410, 1411, 1415
securities, stocks and bonds, Vol. I 306; Vol. II 579—580, 599, 601; Trans. 1411, 1412, 1413, 1414
stocks of Montana corporations, Vol. II 599, 601; Trans. 1411, 1412, 1413
wearing apparel, Vol. I 306; Vol. III 599-600; Trans. 1411, 1412, 1557
Uniformity clause, Vol. II 582; Trans. 1376, 1378, 1425

TAX EXEMPTIONS, Vol. I 99, 167, 306, 326. 526—527; Vol. II 580, 584, 588, 590—591, 599—601, 916, 921, 923,927, 945, 947—948, 950, 951, 1065, 1077,1097—1098,1103; Trans. 1147, 1376, 1379, 1410—1427, 1497, 1556—1558, 2217—2218

TAYLOR, DR. ROBERT, Trans. 688, 743

TEACHERS
See EDUCATION, Teachers

TEACHERS' SALARY EQUITY BOARD, Vol. I 239

TELECOMMUNICATIONS, INC.
Thanked, Trans. 3025-3026

TEMPORARY RULES COMMITTEE
Chairman and vice chairman selected, Trans. 26
Discharged, Trans. 103
Membership, Trans. 24
Organization and selection, Trans. 16-26
Report accepted, Trans. 103
Reports and recommendations
appointment of executive director and other employees, Trans. 47, 51, 65-68
committees, Trans. 32—40
convention hall. Trans. 102—103
designation of chairmen and vice chairmen "f committees, Trans. 42, 47-48
election of secretary, Trans. 47—48,50—52
election of vice presidents, Trans. 47—50
Thanked, Trans. 46, 103

TERM OF OFFICE
Elected or appointed officers in office on effective date of new constitution, Vol. I 241, 249; Vol. II 1082—1083; Trans. 2776, 3005, 3007-3008
Executive officers
attorney general, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873-878
auditor, Vol. I 319, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 914

TERM OF OFFICE (Cont.)
Executive officers (Cont.)
governor, Vol. I 180, 228—229, 319, 435, 441, 457, 462; Vol. II 893, 898, 904. 906. 1056, 1093; Trans. 873-878
lieutenant governor, Vol. I 181, 228, 319, 320, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
secretary of state, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873-878
superintendent of public instruction, Vol. I 319, 435, 441, 457, 462; Vol. II 893, 898, 904, 906, 1056, 1093; Trans. 873—878
treasurer, Vol. 1319, 462; Vol. II 893, 898, 904; Trans. 3005
Extension of term prohibited, Vol. I276
Judicial officers
judges, Vol. I 87, 206, 487, 488, 495, 497, 511, 519; Vol. II 914, 919, 922, 925, 1062, 1096; Trans. 1020, 1081, 1083—1084, 1086, 1087, 1089, 1090, 1093, 1097, 1101, 1107, 1110, 1115—1119, 1150—1154
judicial officers in office on effective date of new constitution, Vol. I 88, 206; Vol. II 1082, 1108; Trans. 1115—1116, 3005, 3007-3008
justices of the peace, Vol. I 152, 489, 500; Vol. II 914, 918, 922, 925, 1062, 1096; Trans. 1083—1084, 1140, 1151—1154, 1157, 2183—2184
Legislators
bicameral, Vol. I 106, 274—275, 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1091, 1107; Trans. 1568—1569
legislators elected before effective date of new constitution, Vol. II 1082, 1108; Trans. 1568—1571, 1591—1593, 1628—1629, 3005, 3007—3008
senators first elected under new constitution, Vol. II 1082, 1108; Trans. 156X-1571, 1591—1593, 1628—1629, 2776, 3005, 3007—3008
unicameral, Vol. I 110, 316, 383; Vol. II 861, 867, 874, 1046, 1105; Trans. 770—775
transition from unicameral to bicameral legislature following proposed I980 referendum, Vol. II 865—866, 870—873, 875, 1048—1051, 1106—1108; Trans. 786
transition to new constitution, Vol. II 1082, 1108; Trans. 1568—1571, 1591—1593, 1628—1629, 2776, 3005, 3007-3008
Limit on consecutive terms. Vol. I 229, 236; Trans. 361—362
Parliament, members of, Vol. I 268, 410; Trans. 749—759

TESTIMONY OF WITNESSES, Vol. II 622-623, 640, 959-960, 965, 968, 971-972, 1040, 1089; Trans. 1771—1776

THIESSEN, C.R., Trans. 2384, 2744

THOMPSON, BILL (MAIL ROOM), Trans. 3036

TIEL, CHRIS (PAGE), Trans. 2210

TIMBER, Vol. I 129; Trans. 1279, 1281—1282, 1287—1289, 1292, 1397

TIMBER PRODUCTS ASSOCIATION, Trans. 1463

TOOLE, BRUCE
Appointed to escort committee, Trans. 1

TOOLE, JOHN H. (MISSOULA)
First Vice President
Acceptance speech, Trans. 32
Appointments
chairman of administration committee, Trans. 95
chairman of public information committee, Trans. 95
escort david be,, dor, consul general of israel, to rostrum, Trans. 438
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
temporary rules committee, Trans. 24
Biography, Vol. I 61
Comments on goals of constitutional revision, Trans. 110
Committee assignments, Vol. 128, 112, 351
Delegate Proposals
no. 80 (highway fees and taxes), Vol. I 187—188
no. 142 (boards of education), Vol. 1 282-283
no. 143 (free public education), Vol. I 284
Elected First Vice President, Trans. 32
Nominated President of Convention, Trans. 13
declines nomination, Trans. 13
Nominated First Vice President, Trans. 28—29
Remarks by, on
declaration of rights (Article III
inalienable rights. environment, Trans. 1638
right to bear arms, Trans. 1730
departments and institutions (Article XII)
labor
department of, Trans. 2313
working hours. Trans. 2321
public utilities
districts, Trans. 2606
public service commission. Trans. 2384
education and public lands (Article X)
aid to sectarian schools, Trans. 2011
boards of education, Trans. 2066—2067, 2072, 2115, 2118, 2136, 2138, 2579, 2582, 2588
state university funds, accounting and audit, Trans. 2519, 2582, 2588
environment and natural resources (Article IX)
water rights, Trans. 1310
executive (Article VI)
officers, Trans. 1711
general government (Article III)
gambling, Trans. 2735, 2744
initiative, Trans. 2699
general provisions (Article XIII)
code of ethics, Trans. 793
consumer counsel, Trans. 2687
non-municipal corporations, cumulative voting, Trans. 2262
people's advocate, Trans. 698
judiciary (Article VII) — minority report, support of, Trans. 1027
campaign expenses, Trans. 2432
clerks of court, Trans. 1128
legislature (Article V)
bills, Trans. 666
disqualification, Trans. 598
organization and procedure. Trans. 606
preamble, Trans. 1635
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1429—1430, 1442-1443, 1451, 1460, 1472, 1480, 2221—2222, 2226, 2228, 2231—2232, 2784—2785
investment of public funds, Trans. 1521
property tax
administration, Trans. 1402
exemptions, Trans. 1423
Removed from Public Information Committee, Trans. 357
Resolution No. 6 (Convention Documents), Trans. 249
Seconds nomination of Dorothy Eek as Western District Vice President, Trans. 56

TOUCHE, ROSS, BAILEY AND SMART, Trans. 2579, 2581—2582, 2591

TOURIST PROMOTION, Vol. II 584—585, 591-592, 945—946, 948, 950, 951—952, 1065—1066, 1098; Trans. 1428, 1436, 1447, 1459, 1470, 1484, 2222, 2241

TOWE, TOM, Trans. 687

TOWNS
See LOCAL GOVERNMENT

TRADE PRACTICES
Consumer counsel to represent consumer interests before public service commission, Vol. II 980, 984, 989, 1077, 1103; Trans. 2400—2404, 2407, 2421
Public service commission's duty to represent utility customers, Trans. 2397-2400
Special privileges, franchises or immunities prohibited, Vol. I 207; Vol. II 624, 644, 961, 966, 968, 973, 1041, 1089; Trans. 1829, 2266—2268
Utility companies, provision for consumer counsel to represent consumer interests before public service commission, Vol. II 980, 984, 989, 1077, 1103; Trans. 2400-2404, 2407, 2421

TRANSITION SCHEDULE
Section 1. Accelerated effective date
adoption, Trans. 3014-3015
committee report, Vol. II 1082
debate, Trans. 3004, 3006, 3007-3008
text as adopted, Vol. II 1108
Section 2. Delayed effective date
adaption, Trans. 3014-3015
committee report, Vol. II 1082
debate, Trans. 1570—1571, 3004-3005, 3007-3008
text as adopted, Vol. II 1108
Section 3. Prospective operation of declaration of rights
adoption, Trans. 3014-3015
committee report, Vol. II 1082
debate, Trans. 3005, 3007-3008
text as adopted, Vol. II 1108
Section 4. Terms of judiciary
adoption, Trans. 3014-3015
committee report, Vol. II 1082
debate, Trans. 1115—1116, 3005, 3007-3008
delegate proposals, Vol. I 88, 206
tent as adopted, Vol. II 1108
Section 5. Terms of legislators
adoption, Trans. 3014-3015
committee report, Vol. II 1082
debate, Trans. 1570—1571, 1591—1593, 1629, 3005, 3007-3008
text as adopted, Vol. 11 1108
Section 6. General transition
adoption, Trans. 3014—3015
committee report, Vol. II 1082-1083
debate, Trans. 2776, 3005, 3007-3008
delegate proposals, Vol. I 92-93, 241, 249
text as adopted, Vol. II 1108—1109

TRANSPORTATION (GOODS), Vol. II 666, 669, 710; Trans. 2263-2265
See also MASS TRANSIT

TREASON, Vol. II 623—624, 644, 825, 846, 960, 966, 968, 972, 1041, 1089; Trans. 1828—1829

TREASURER
Candidacy for public office during term, Vol. II 894, 904; Trans. 842, 928-929
Compensation, Vol. I 320; Vol. II 894, 899, 904; Trans. 927—928, 991—994
Duties, Vol. I 319, 441—442, 443, 449, 462-463; Vol. II 894, 898, 899,904; Trans. 843-857, 899—900, 906—907, 911—914, 919, 1005, 1708—1714
Election, Vol. I 319, 432, 457, 463; Vol. II 893, 898, 904; Trans. 878—883, 1708—1714
Elimination as constitutional office, Vol. I 432, 441-442, 443, 449, 463; Trans. 842—857, 913, 1708—1714, 2690, 2691, 2773, 2776, 3005
Executive branch, member of, Vol. I 319, 432, 441-442, 443, 449, 462,463; Vol. II 893, 898, 904; Trans. 842-857, 913, 1708—1714, 2690, 2691, 2773, 2776, 3005
Other government employment prohibited, Vol. II 894, 904; Trans. 928-929
Qualifications, Vol. I 319—320, 457, 464; Vol. II 893, 898-899, 904; Trans. 883—894, 978-986, 1693—1697. 1708—1714
Residence at seat of government, Vol. 1319,462; Vol. II 893, 898,904
Term of office, Vol. I 319, 462; Vol. II 893, 393, 904; Trans. 3005
Vacancy, Vol. I 458, 466; Vol. II 894, 900, 904; Trans. 842, 1708—1714

TRIAL BY JURY, RIGHT TO, Vol. I 89; Vol. II 623, 641—642, 960,965, 968,972, 1041, 1089; Trans. 1751, 1780—1792

TRUDEAU, MIKE (PAGE), Trans. 1183

TRUMAN, FORMER PRESIDENT HARRY S., Trans. 830, 2337

TRUST AND LEGACY FUND, Vol. II 583, 596,716, 754; Trans. 1376, 1517, 1524, 1525, 1539

TUCKER, WARD LESLIE (PAGE), Trans. 104

TWO-MILL LEVY, Vol. II 581; Trans. 1501, 1549—1556, 1967, 1985, 2153, 2165, 2199, 2200, 2538
See also STATEWIDE PROPERTY TAX LEVY FOR EDUCATION

TWO SOVEREIGNTIES RULE, Vol. II 641, Trans. 1777, 1778

TYANICH, PAT (SECRETARY), Vol. I 70; Trans. 3036

UNBORN, RIGHTS OF
See RIGHT TO LIFE

UNEMPLOYMENT BENEFITS, Vol. I 271, 290; Trans. 2309—2310, 2312

UNENUMERATED RIGHTS, Vol. II 624, 645, 961, 966, 968, 973, 1042, 1089; Trans. 1832

UNICAMERALISM, MERITS OF, Vol. I 381—382; Trans. 728—730, 747—749, 759—760, 775-779, X3-789; 815, 822, 840, 1603, 1604, 1629—1633, 2221, 2580, 2866, 2871, 2880, 2883, 2884, 2892—2894, 2898, 2900—2901, 2903, 2905, 2907, 2911. 2954, 2957, 3022-3025
Alternative issue on constitution ballot, Trans. 543—544, 728—730, 759—760, 822, 1596—1597, 1603, 1604, 1629—1633, 2221, 2864—2867, 2869, 2870, 2873, 2877, 2881—2884, 2890—2894, 2898, 2903, 2904, 2907—2912, 2949—2975, 2987, 2988, 2993, 2996, 2997—3001, 3003-3004

UNICAMERAL LEGISLATURE
See LEGISLATURE — UNICAMERAL

UNIFIED ACCOUNTING PROCEDURES, Vol. II 596; Trans. 1517, 2055, 2056, 2120, 2577, 2578, 2581. 2582, 2585

UNIFIED INVESTMENT PROGRAM, Vol. 1583; Vol. I, 586, 596—597, 602—603, 753—756, 946, 949, 950, 952-953, 1066—1067, 1098; Trans. 1517, 1526, 1528, 1530, 1536, 1537, 1543, 1544, 2056, 2068

UNIONS, LABOR
See LABOR

UNITED STATES
Compact with the United States not affected by new constitution, Vol. I 99, 294; Vol. II 838-841, 1030—1032, 1037, 1087; Trans. 2567—2572
Constitution of the United States, governor may not veto ratification of proposed amendments, Vol. I 183, 321, 437, 450-451, 459; Vol. II 895, 901, 904, 908, 1058. 1094
Jurisdiction over lands of to remain with congress, Vol. I 99; Vol. II 838—841, 1030—1032. 1037, 1087
Land grants, restrictions on disposition of, Vol. I 266—267; Vol. II 748—752, 1000—1001, 1002, 1006, 1071—1072, 1101; Trans. 2142—2150
Property tax exemptions, Vol. I 99, 326; Vol. II 584, 590, 599, 945, 947-948, 950, 951, 1065, 1098; Trans. 1410, 1411, 2219

UNITED STATES COMMISSION ON HIGHER EDUCATION, Trans. 2587

UNITED TRIBAL COUNCIL, Trans. 2567—2568

UNIVERSITIES
See EDUCATION; specific college or university

UNIVERSITY SYSTEM
Board of regents, Vol. I 196—197. 282—283. 287. 324: Vol. II 720. 735—740, 995, 998—999. 1002 1005, 1071,1100; Trans. 873, 2049—2091, 2103, 2109-2142, 2171, 2576—2593
commissioner of higher education, appointment by board. Vol. II 995, 999, 1002, 1005. 1071,1100; Trans. 2118, 2119, 2130, 2132—2133

UNIVERSITY SYSTEM (Cont.)
Board of regents (Cont.)
governor ex officio member of board, Vol. II 720, 735—736, 995, 998—999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2119, 2132—2133, 2584
superintendent of public instruction ex officio member of board, Vol. II 720, 735-736, 935, 998—999, 1002, 1005, 1071, 1100; Trans. 2109, 2116, 2132-2133
Funds
audit, Vol. II 995, 999, 1002, 1005, 1071, 1100; Trans. 2106, 2109—2115, 2116, 2120, 2122, 2123, 2124, 2128, 2131, 2132, 2577—2593, See also AUDITS, University system
investment. Vol. I 170, 283; Vol. II 583, 586, 596-597, 602—603, 720, 740, 753—756, $46, $49, 950, 952—953, 995, 399, 1002, 1005, 1066—1067, 1071, 1098, 1100, 1101; Trans. 1517—1546, 2142
inviolate and guaranteed against loss or diversion, Vol. II 720, 740,995, 999, 1002, 1005, 1071, 1100—1101; Trans. 2142

UNRUH, JESSE (FORMER SPEAKER OF CALIFORNIA ASSEMBLY), Trans. 217, 636, 734

UNSOUND MIND, PERSONS OF, Vol. I 191, 332, 336, 337-339, 341; Vol. II 845, 846, 847, 1045, 1091; Trans. 392
See also INSTITUTIONALIZED PERSONS

USURY
See INTEREST RATES

UTILITIES
See PUBLIC UTILITIES

VACANCIES
Constitutional convention delegates, Vol. I 150, 210, 226, 353, 357, 360; Vol. II 852, 854, 856, 857—858, 1078, 1104; Trans. 454, 489—490
Convention. 1972
delegates, Vol. I 1, 8, 10, 11; Trans. 120-125, 135—136
officers, Vol. I 9; Trans. 127, 128
Executive officers
attorney general, Vol. 1321, 436, 447—448, 458, 466; Vol. II 894,900, 904, 907, 1057, 1094; Trans. 842, 932-333
auditor, Vol. I 321, 458, 466; Vol. II 894, 900, 904, 907, 1057, 1094; Trans. 842
governor, Vol. I 181—182, 232—233. 278, 323, 438—439, 454—456, 460—461; vol. II 896—897, 902—903, 905, 909—910, 1059—1060, 1095; Trans. 842, 880, 887, 930—931, 940—944, 966-973, 1714—1715, 1718—1720
lieutenant governor, Vol. I 181, 233, 320, 322-323, 436, 447, 458; Vol. II 894, 899—900, 904, 907, 1057, 1094; Trans. 842, 929—931, 939-944
secretary of state, Vol. I 321, 436, 447—448, 458, 466; Vol. II 894, 900, 904, 907, 1057, 1094; Trans. 842, 932—933
superintendent of public instruction, Vol. I 321, 436, 448, 458, 466; Vol. II 894, 899-900, 904, 907, 1051, 1094; Trans. 842
treasurer, Vol. I 458, 466; Vol. II 894, 900, 904; Trans. 842, 1708—1714
Executive or administrative officers, governor's appointing power, Vol. I 181, 183, 230—231, 233, 321,436, 435, 447—448, 449—450, 458, 453, 465—466; Vol. II 894, 895, 899—900, 900—901, 304, 907, 908, 1057—1058, 1034; Trans. 868, $24, 929-333, 939—944, 944—947, 2309, 2313, 2345, 2376

VACANCIES (Cont.)
Judiciary, Vol. 187, 141, 206, 278, 491—492, 506, 511—512, 519—521; Vol. II 914—915, $13, $22, 925—926, 1062—1063, 1096—1097; Trans. 1016, 1084—1114
Legislature, Vol. I 275, 278, 376—377, 385—386, 395-396, 402; Vol. II 861—862, 868, 877, 881, 887, 1046, 1052, 1091, 1105; Trans. 549—550, 593—594, 725—727

VALUATION OF PROPERTY FOR TAX PURPOSES
Appraisal, assessment and equalization, Vol. I 129, 174, 264-265, 306—307; Vol. II 579—580, 582, 584, 588-591. 345, 947, 950, 951, 1065, 1097; Trans. 1379—1409, 1501, 2158, 2219, 2286, 2289, 2518
Equal valuation, Vol. II 581, 582, 584, 589—590, 945, 947, 950, 951, 1065, 1097; Trans. 1376, 1409—1410, 2153, 2289

VAN BUSKIRK, EDITH M. (HAVRE)
Biography, Vol. I 62
Committee assignment, Vol. I 28
Remarks by, on
departments and institutions (Article XII)
labor, department of, Trans. 2312
merit system, Trans. 2346
public assistance, Trans. 2288
public utility districts, Trans. 2404, 2606
executive (Article VI)
qualifications, Trans. 1008
general provisions (Article XIII)
non-municipal corporations, cumulative voting, Trans 2260
revenue and finance (Article VIII)
property tax administration, Trans. 1399
suffrage and elections (Article IV)
poll-booth registration, Trans. 444

VAN WORMER, BRAD (PAGE), Trans. 1692

VENUE, CHANGE OF, Vol. II 623, 640—641, 960, 965, 972, 1040, 1089; Trans. ,776

VERMILLION, ROBERT JAMES (SHELBY)
Appointed to Post-Conventian Procedural, Administrative and Voter Education Affairs Committee, Trans. 2426
Biography, Vol. I 62
Committee assignment, Vol. I 28
Delegate Proposal
no. 63 (financial disclosure), Vol. I 164
Remarks by, on
constitutional revision (Article XIV)
amendment by
initiative, Trans. 506, 510
legislature, Trans. 498
constitutional preparatory commission, Trans. 461
declaration of rights (Article II)
participation, right of, Trans. 1659
searches and seizures, Trans. 1685—1686
environment and natural resources (Article IX)
environment, protection and improvement of, Trans. 1219, 1242
reclamation, Trans. 1348
executive (Article VI)
officers, Trans. 994

VERMILLION, ROBERT (Cont.)
Remarks by, on (Cont.)
general government (Article 111)
initiative, Trans. 2697—2698
liquor monopoly. Trans. 2254
recall, Trans. 2720—2721, 2727
general provisions (Article XIII1
code of ethics, Trans. 795—796
legislature (Article V)
parliamentary form of government, Trans. 755
size, Trans. 765
vacancies, Trans. 726
revenue and finance (Article VIII)
investment of public funds, Trans. I535
suffrage and elections (Article IV)
poll-booth registration, Trans. 400—413, 433-434, 441, 447, 448,450

VETERANS
Special consideration by legislature, Vol. II 961, 966, 973, 1042, 1090; Trans. 1842—1843
Tax exemptions for disabled veterans, Vol. I 326; Vol. II 599,601; Trans. 1411, 1412, 1413, 1415, 1420, 1421, 1422
Veterans' homes, Vol. II 979, 983,985, 988, 1076, 1102; Trans. 2270-2278

VETERANS COUNCIL OF FLATHEAD COUNTY, Trans. 2274

VETO
Amendatory, Vol. I 184, 232, 322, 433, 438, 450-452, 460; Vol. II 895-896, 901, 904, 908-909, 1058, 1094; Trans. 842,948, 955
Line item, Vol. I 111, 184, 231, 323,378, 390-391, 397, 406, 438, 451-452, 460; Vol. II 896, 901, 909, 1059, 1095; Trans. 948, 956
Override, Vol. I 111—112, 116—117, 184, 231, 322, 378, 390—391,397, 406, 438, 451, 460; Vol. II 896, 901, 904, 907, 1058, 1094; Trans. 948, 949, 955-958
"Packet", Vol. I 390, 433; Trans. 842, 948, 949, 954, 956
Power of governor, Vol. I 111—112, 116—117, 183—184, 231—232, 321—322, 323, 378, 390-391, 397, 406, 433, 437—438, 446, 450—452, 459—460; Vol. II 895-896, 901, 904, 908-909, 1058—1059, 1094—1095; Trans. 674-675, 747,842, 948—958, 1702, 1720—1723, 2859, 2887—2888
Power of governor, restrictions on
appropriations for the legislature, Vol. I 378, 391, 397; Trans. 675, 948, 952-953
constitutional amendment, Vol. I 120, 183—184, 211, 321—322, 355, 363, 378, 391, 397, 406, 437, 450—451, 459; Vol. II 895, 901, 904, 908, 1058, 1094; Trans. 522, 948-958
initiative and referendum, Vol. I 111, 258, 277, 378, 391, 397, 406, 437, 450—452, 459; Vol. 11816, 821, 895, 901, 904, 908, 1058, 1094; Trans. 675, 948-958, 2719—2720
resolutions, Vol. I 378, 391, 397, 406, 437. 450—451, 459; Vol. II 895, 901, 904, 908, 1058, 1094; Trans. 675, 948-958
Reduction, Vol. I 111; Trans. 949

VICTIMS OF CRIME, COMPENSATION OF, Vol. I 154; Trans. 1809

VOCATIONAL EDUCATION, Trans. 2059—2060, 2062, 2068, 2070, 2071, 2073, 2075, 2076, 2078, 2087, 2097, 2100, 2103, 2106, 2111, 2121, 2131, 2161
See also VOCATIONAL-TECHNICAL CENTERS

VOCATIONAL-TECHNICAL CENTERS, Vol. II 735; Trans. 777, 1967, 1981, 1987, 2025, 2050, 2051—2052, 2053, 2058, 2062, 2069, 2084, 2086
See also VOCATIONAL EDUCATION

VOLLERTSON, ELIZABETH (PRINTING DEPARTMENT), Trans. 3036

VOTER INFORMATION PAMPHLET, Trans. 332, 336, 1374, 1560—1561, 2427, 2428, 2429, 2430, 2453, 2615, 2618, 2619, 2620

VOTER REGISTRATION, Vol. I 191, 260,330, 332, 336, 337, 338, 341-343; Vol. II 845, 847, 1045, 1091; Trans. 392, 393, 394,396, 400—413, 422, 428—452, 467, 839

VOTER REVIEW OF STRUCTURE OF LOCAL GOVERNMENT, Vol. I 217, 234; Vol. II 784, 785, 800—801, 1010—1011, 1014, 1015, 1074—1075, 1102; Trans. 2512—2513, 2555-2565

VOTING
See ELECTIONS; ELECTORS

WADDELL, MARGARET (PRINTING DEPARTMENT), Trans. 3036

WAGE COMMISSION
See SALARY COMMISSION

WAGNER, ROGER A. (NASHUA)
Biography, Vol. I 62
Committee assignment, Vol. I 28
Remarks by, on
education and public lands (Article X)
educational goals and duties, Trans. 1976
revenue and finance (Article VIII)
property tan administration, Trans. 1396
Withdrawal of sponsorship, Delegate Proposal No. 78, Trans. 320-321

WALCHUK, DON (INTERN), Vol. I 70; Trans. 3036

WALTER, BEULAH (PRINTING DEPARTMENT), Trans. 3036

WAR
Civilian control of the military, Vol. I 78: Vol. II 624. 645, 961, 966, 968, 973, 1041, 1089; Trans. 1X29-1832
Continuity of government in emergency, Vol. I 278-279; Vol. II 815, 818—819, 1019, 1022, 1025, 1043, 1090; Trans. 2695
Governor's authority to call militia forces, Vol. I 182, 229, 320, 438, 453-454, 460; Vol. II 896, 902, 905, SOS, 1059, 1095; Trans. 964—966
Importation of armed persons, Vol. II 624, 645, 961, 966, 968, 973, 1041—1042, 1089; Trans. 1832
Martial law, proclamation and duration, Vol. I 182, 320; Trans. 1830

WAR (Cont.)
Quartering of soldiers, Vol. II 624, 645, 961, $66, $68, $73, 1041, 1089; Trans. 1X29-1832
Servicemen, servicewomen and veterans, Vol. I 339—340; Vol. II 961, 966, 973, 1042, 1090; Trans. 431—433, 1842—1843, See also VETERANS

WARDEN, MARGARET S. (GREAT FALLS,
Appointments
chairman of public information committee, Trans. 357
post-convention procedural, administrative and voter education affairs committee, Trans. 2426
temporary rules committee, Trans. 24
vice chairman of public information committee, Trans. 95
Biography, Vol. I 63
Committee assignments, Vol. 128, 357
Delegate Proposal
no. 52 (constitutional convention delegates), Vol. I 150—151
Preparation and distribution of newspaper containing convention-related clippings, Trans. 224, 284, 2862
Presentation of
gifts from delegates to president graybill, Trans. 3041
scroll commemorating charles m. russell month, Trans. 1565
Remarks by, on
ballot, constitution, Trans. 2866, 2887, 2957
declaration of rights (Article II)
right to bear arms, Trans. 1X32-1833, 1835
departments and institutions (Article XII)
public assistance, Trans. 2288
education and public lands (Article X)
board of land commissioners, Trans. 1991—1994
boards of education, Trans. 2065—2066
libraries, Trans. 1965
executive (Article VI)
duties. Trans. 918—919
officers, Trans. 84X-849, 855, 1712
judiciary (Article VII)
clerks of court, Trans. 1128
justices of the peace, Trans. 1141
legislature (Article V)
disqualification, Trans. 596
legislative post-auditor, Trans. 2800
sessions, Trans. 589
unicameral/bicameral, merits of, Trans. 2866
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 2231
property tax administration, Trans. 1396
suffrage and elections (Article IV)
poll-booth registration, Trans. 429—430

WARD, JACK K. (HAMILTON)
Biography, Vol. 163
Committee assignment, Vol. I 28
Delegate Proposals
no. 116 (citizen responsibility), Vol. I 242-243
no. 118 (preamble), Vol. I 245
Remarks by, on
departments and institutions (Article XII)
agriculture, special levies, Trans. 1368
labor
department of, Trans. 2311—2312
working hours, Trans. 2324—2325
merit system, Trans. 2343
public assistance, Trans. 228X-2289, 2295-2296
public utilities
consumer protection, Trans. 2398
districts, Trans. 2413
public service commission. Trans. 2383
executive (Article VI)
qualifications, Trans. 890, 897
general government (Article III)
gambling, Trans. 2743—2744
liquor monopoly, Trans. 2254

WARD, JACK K (Cont.,
Remarks by, on (Cont.)
general provisions (Article XIII)
consumer counsel, Trans. 2401
non-municipal corporations, Trans. 2247-2248, 2254
cumulative voting, Trans. 2258, 2261
retrospective laws, Trans. 2266—2268
watered stock, Trans. 2265
long-short haul provision, Trans. 2263—2264
judiciary (Article VII)
selection. Trans. 1032

WARFIELD, PATRICIA (PRINTING DEPARTMENT), Trans. 3036

WARNER, FRANCES (PRINTING DEPARTMENT), Trans. 3036

WARRANTS
Appropriation and issuance of warrant required, Vol. II 866, 873, 875, 879, 884, 889, 1067, 1098; Trans. 790—792, 797, 1366, 1376, 1517, 1888—1889
Arrest, warrant for, Vol. I 98; Vol. II 621, 633, $58, 963, $67, 970, 1039, 1088; Trans. 1682—1684, 1751
State auditor custodian of, Trans. 1000, 1005, 2056

WASHINGTON, GEORGE, Trans. 3040

WASHINGTON WATER POWER, Trans. 1290, 2406

WATER
Access to public waters, Vol. I 76; Trans. 1303—1312
Board of control to supervise waters of the state, Vol. I 213
Ownership of, Vol. I 76, 145, 213, 255; Vol. II 562, 556—557, 931, 933, 935, 939, 1068, 1099; Trans. 1301, 1303—1312
Priority of appropriations for use, Vol. I 145, 213; Vol. II 553, 556—557; Trans. 1346—1348
Public trust, water as, Trans. 1214—1228
Rights, Trans. 151, 237'7, 2761
administration, control and regulation of, Vol. I 76, 213, 255; Vol. II 553, 556—557, 931, $33, 935, $39, 1068, 1099; Trans. 1349—1351
appeals from district court to supreme court, Trans. 1344
control of water use rights in district court, Trans. 1343—1345
filing of, Trans. 1301
recognition and confirmation of existing rights, Vol. I 255; Vol. II 552, 556-557, 931, 933, 935, 939, 1068, 1099; Trans. 1301—1303
records of, Vol. II 931, $33, 935, 939; Trans. 1349—1351
Uses of, Vol. 176, 145, 213, 255; Vol. II 552—553, 556-557, 931, 933, 935, 939, 1068, 1099; Trans. 1301—1351
Water commissioners, Vol. II 557; Trans. 1301, 1336, 1343—1345

WATERMAN, VIRGINIA
Appointed temporary reporter, Trans. 1

WATKINS, WILLIAM (PAGE), Trans. 383

WATSON, THE REVEREND LEONARD (FIRST PRESBYTERIAN CHURCH, HELENA)
Invocation. Trans. 264

WATSON, SALLY (SECRETARY), Vol. I 70; Vol. II 716; Trans. 2143, 3035

WATT, ROBERT D., Trans. 1413

WEAPONS
See ARMS

WEBER, MICHAEL (PRINTING DEPARTMENT), Trans. 3036

WELFARE
Funding of, Vol. I 114; Trans. 1399, 1400, 1430, 1447, 1454, 1470, 2236, 2278—2300, 2538, 2541
Indigent persons, right to counsel, Vol. I 105
Institutions, no fee may be charged inmates of, Vol. I 297
Residence requirements for receipt of, Trans. 2281, 2283, 2284
State's duty to provide, Vol. II 627, 674—675, 979. 983, 985, 988, 1076, 1102; Trans. 1636—1637, 1748, 2278—2300, 2358, 2360

WENSTROM, FRANK A. (PRESIDENT, CONSTITUTIONAL CONVENTION OF NORTH DAKOTA)
Resolution of best wishes from, Trans. 270

WEST, DAVID (PRINTING DEPARTMENT), Trans. 3036

WESTERN ENERGY COMPANY, Trans. 301, ,282

WESTERN INTERSTATE COMMISSION ON HIGHER EDUCATION, Trans. 2021

WESTERN MONTANA COLLEGE, Trans. 812, 2121, 2131

WESTERN MONTANA FISH AND GAME ASSOCIATION, Trans. 1329—1330, 1336, 1727, 1731.1743

WHEAT RESEARCH AND MARKETING, Vol. I 246

WHEELER, FORMER SENATOR BURTON K.
Congratulatory message on 90th birthday, **Trans.** 1180

WHITWER, SAMUEL (PRESIDENT OF ILLINOIS CONSTITUTIONAL CONVENTION), Trans. 2 **1969—1970**

WILDLIFE
See FISH AND WILDLIFE

WILSON, ARCHIE 0. (HYSHAM)
Biography, Vol. I 63
Committee assignment, Vol. I 28
Delegate Proposals
no. 155 (county probate administrator), Vol. I 299
no. 170 (executive department), Vol. I 319-323
Remarks by, on
ballot, constitution, **Trans. 2874, 2878,** 2887, 2903—2904, **2959,** 2985

WILSON, ARCHIE 0 (Cont.)
Remarks by, on (Cont.)
constitutional revision (Article XIV)
periodic submission, Trans. 463
declaration of rights (Article II)
death penalty, **Trans.** 1809
participation, right of, **Trans.** 1661
right to bear arms, Trans. 1733
right to know, Trans. 2500—2501
right to work, Trans. 2362—2363
state subject to suit, **Trans.** 1762—1763
departments and institutions (Article XII)
agriculture, working hours, Trans. 2601
labor
collective bargaining, Trans. 2335
compensation of state employees, Trans. 2350
working hours, Trans. 2601
public assistance, Trans. 2289, 2291, 2298
public utility districts, Trans. 2413—2414
education and public lands (Article X)
board of land commissioners, Trans. 1993, 1997
boards of education, Trans. 2072—2073, 2101—2102
commissioner of higher education, Trans. 2101—2102
indian education, Trans. 1953, 1955
non-discrimination in education, Trans. 2041
public land trust, access, Trans. 2147
environment and natural resources (Article IX)
reclamation, **Trans.** 1298
water rights, Trans. 1310, 1312—1313, 1332-1334, 1346-1347, 1350
executive (Article VI)
duties, Trans. 900, 906, 911—913, 924-925
election, Trans. 879-880
officers, Trans. 845—846, 856, 869—870, 872—873, 875, 1710—1711
pardons, Trans. 963
qualifications, Trans. 884, 891, 984
twenty departments. Trans. 936
general government (Article III)
gambling, Trans. 2746
initiative, Trans. 2716
recall, Trans. 2725
general provisions (Article XIII)
consumer counsel, Trans. 2600
judiciary (Article VII)
campaign expenses, Trans. 1177, 2197
district court jurisdiction, Trans. IO53
probate attorney, **Trans.** 1132—1134, 1136
legislature (Article V)
bills, Trans. 664
legislative post-auditor, Trans. 1000—1001
qualifications, **Trans.** 803
sessions, Trans. **587, 588, 818**
size, Trans. 1604
local government (Article Xl)
voter review of local government, Trans. 2563, 2565
revenue and finance (Article VIII)
highway revenue non-diversion, Trans. 1432, 1441, 1452—1453, 1461, 1480, **1483,** 2716
property tax administration, **Trans.** 1397—1398, 1402, 1407
state debt, Trans. 1494
two-mill levy, Trans. 1553—1554
suffrage and elections (Article IV)
poll-booth **registration,** Trans. 447—448
qualified elector, **Trans.** 398

WILSON, ROSELLA (ASSISTANT JOURNAL CLERK), Vol. I 70; Trans. 3035

WIRETAPPING, **Vol.** I 98; Vol. II 633; Trans. 1671—1672, 1683—1688
See also SEARCHES AND SEIZURES

WITNESSES
Accused's right to meet face to face and have process to compel attendance, Vol. II 623, 640—641, 960, 965, 968, 912, 1040, 1089; Trans. 1776
Convention
list of
bill of rights committee, Vol. 11 650—657
education and public lands committee, Vol. II 761—766
executive committee, Vol. I 470—473
general government and constitutional amendment committee
constitutional revision, Vol. II 367
general government, Vol. II 831—834
suffrage and elections, Vol. 1 341
judiciary committee, Vol. I 533-536
legislative committee, Vol. I 418-421
local government committee, Vol. II 805-808
natural resources and agriculture committee, Vol. II 566—571
public health, welfare, labor and industry committee, Vol. 11 701—706
revenue and finance committee, Vol. II 606—612
testimony and production of records by, Vol. I 2, 14; Trans. 176, 349, 370-371, 374-375
Depositions of, Vol. 11 622.623, 640, 959-960, 965, 968, 971—972, 1040, 1089; Trans. 1771—1776, 2505—2506
Detention of, Vol. 11 622-623, 640, 959-960, 965, 968, 971—972, 1040, 1089; Trans. 1771—1776

WOMEN, EQUAL RIGHTS FOR
See DISCRIMINATION BECAUSE OF RACE, COLOR, SEX, CULTURE, SOCIAL ORIGIN OR CONDITION, OR POLITICAL OR RELIGIOUS IDEAS PROHIBITED

WOODAHL, ROBERT L. (ATTORNEY GENERAL), Trans. 2, 1716
Opinion on political positions Convention delegates allowed to stand for in 1972 elections, Trans. 281—282

WOODMANSEY, ROBERT F. (GREAT FALLS)
Biography, Vol. I 64
Committee assignment, Vol. 1 26
Expression of sympathy on death of father, Trans. 223
Remarks by, on
declaration of rights (Article II)
death penalty, Trans. 1801—1802
departments and institutions (Article XII)
agriculture, working hours, Trans. 2603
labor, working hours, Trans. 2603
education and public lands (Article X)
aid to sectarian schools, Trans. 2018
board of land commissioners, Trans. 1992—1993
boards of education, Trans. 2061, 2084, 2100
commissioner of higher education. Trans. 2100
educational goals and duties, Trans. 1968—1969, 1986—1987
non-discrimination in education, Trans. 2037
public school fund, Trans. 1989

WOODMANSEY, ROBERT F (Cont.)
Remarks by, on (Cont.1
executive (Article VI)
officers, Trans. 851

WOOD PRODUCTS ASSOCIATION, Trans. 1443

WORKMEN'S COMPENSATION. Vol. I 263; vol. II 622, 636-637, 959, 964, 971, 1039, 1088; Trans. 1753—1760, 2158, 2257, 2313, 2320, 2325

WORK PERIOD
Convention workweek, Trans. 116, 152—153, 203—212
Eight-hour day, Vol. 11 672-673, 982, 987; Trans. 2308, 2316—2328, 2333, 2340—2342, 2601—2604
Sunday closing law, Vol. I 220; Trans. 2369—2372

WRITS, Vol. I 85, 140, 486. 488, 493-494, 496-497, 498, 510, 515, 516—517; Vol. II 622, 638-639, 913, 917, 922, 924, 959, 964, 971, 1040, 1061, 1088, 1096; Trans. 1019, 1036, 1037, 1039—1040, 1041, 1049, 1050, 1071—1073, 1074, 1162—1163, 2177—2178
Certiorari, Vol. I 85, 140, 486, 488, 493-494, 496; Trans. 1037, 1040, 1046, 1053
Error and appeal from district court decisions, Vol. I 488. 498
Habeas corpus
jurisdiction
district court, Vol. 1 488, 496—497
supreme court, Vol. I 85, 140, 486, 493-494, 510, 515; Vol. II 913, 917, 922, 924, 1061, 1096; Trans. 1036, 1037, 1071—1073, 1162—1163
privilege never to be suspended, Vol. II 622, 638-639, 959, 964, 971, ,040, ,088; Trans. 1764
Injunction, Vol. I 85, 140,486, 488, 493—494, 496
Mandamus, Vol. I 85, 140, 486, 488, 493—494, 496; Trans. 1037
Prohibition, Vol. I 85, 140, 486, 488, 493—494, 496—497; Trans. 1037, 1040
Quo warranto, Vol. I 85. 140, 486, 488, 493—494, 496
Supervisory control, Vol. I 85, 140, 493; Trans. 1039, 1040, 1041, 1073, ,163

YMCA "YOUTH IN GOVERNMENT'. Trans. 984

YOUTH CONSTITUTIONAL CONVENTION, Trans. 1694, 1696, 3017, 3019—3020, 3028—3029, 3038—3039

ZONING LAWS, Vol. II 799; Trans. 2523, 2559

ZUELKE, TOM (PAGE), Trans. 1183

ZUR MUEHLEN, DOROTHY (SECRETARY), Vol. I 70; Trans. 3036